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CHAPTER 1—THE COMPTROLLER OF THE CURRENCY

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12. Seal of Comptroller.
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§ 1. Office of Comptroller of the Currency

There shall be in the Department of the Treasury a bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of national currency secured by United States bonds and, under the general supervision of the Board of Governors of the Federal Reserve System, of all Federal Reserve notes, except for the cancellation and destruction, and accounting with respect to such cancellation and destruction, of Federal Reserve notes unfit for circulation, the chief officer of which bureau shall be called the Comptroller of the Currency and shall perform his duties under the general directions of the Secretary of the Treasury. The Comptroller of the Currency shall have the same authority over matters within the jurisdiction of the Comptroller as the Director of the Office of Thrift Supervision has over matters within the Director's jurisdiction under section 1462a(b)(3) of this title. The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Comptroller of the Currency.

(R.S. § 324; Dec. 23, 1913, ch. 6, § 10 (par.), 38 Stat. 261; June 3, 1922, ch. 205, 42 Stat. 621; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 89–427, § 1, May 20, 1966, 80 Stat. 161; Pub. L. 103–325, title III, § 331(b)(2), Sept. 23, 1994, 108 Stat. 2232; Pub. L. 111–203, title III, § 314(a), July 21, 2010, 124 Stat. 1523.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, § 314(a), (d), July 21, 2010, 124 Stat. 1523, 1524, provided that, effective on the transfer date, this section is amended to read as follows:

§ 1. Office of the Comptroller of the Currency

(a) Office of the Comptroller of the Currency established

There is established in the Department of the Treasury a bureau to be known as the ''Office of the Comptroller of the Currency'' which is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction.

(b) Comptroller of the Currency

(1) In general

The chief officer of the Office of the Comptroller of the Currency shall be known as the Comptroller of the Currency. The Comptroller of the Currency shall perform the duties of the Comptroller of the Currency under the general direction of the Secretary of the Treasury. The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Comptroller of the Currency, and may not intervene in any matter or proceeding before the Comptroller of the Currency (including agency enforcement actions), unless otherwise specifically provided by law.

(2) Additional authority

The Comptroller of the Currency shall have the same authority with respect to functions transferred to the Comptroller of the Currency under the Enhancing Financial Institution Safety and Soundness Act of 2010 as was vested in the Director of the Office of Thrift Supervision on the transfer date, as defined in section 311 of that Act.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The bureau referred to in text is known as the Office of the Comptroller of the Currency.

CODIFICATION

R.S. § 324 derived from act June 3, 1864, ch. 106, § 1, 13 Stat. 99, which was the National Bank Act. See section 38 of this title.

Section is comprised of R.S. § 324, as amended by the eighth paragraph of act Dec. 23, 1913, § 10.

AMENDMENTS

1994—Pub. L. 103–325 inserted at end ''The Comptroller of the Currency shall have the same authority over matters within the jurisdiction of the Comptroller as the Director of the Office of Thrift Supervision has over matters within the Director's jurisdiction under section 1462a(b)(3) of this title. The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Comptroller of the Currency.''

1966—Pub. L. 89–427 inserted exception relating to cancellation and destruction, and accounting with respect to the cancellation and destruction, of Federal Reserve notes unfit for circulation.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title III, § 314(d), July 21, 2010, 124 Stat. 1524, provided that: ''This section [enacting section 4b of this title and amending this section and section 11 of this title], and the amendments made by this section, shall take effect on the transfer date.''

[For definition of ''transfer date'' as used in section 314(d) of Pub. L. 111–203, set out above, see section 5301 of this title.]

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, were not included in transfer of functions of officers, agencies, and employees of Department of the Treasury to Secretary of the Treasury, made by Reorg. Plan No. 26 of 1950, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280. See section 321(c)(2) of Title 31, Money and Finance.

§ 2. Comptroller of the Currency; appointment; term

The Comptroller of the Currency shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold his office for a term of five years unless sooner removed by the President, upon reasons to be communicated by him to the Senate.

(R.S. § 325; Aug. 23, 1935, ch. 614, title II, § 209, 49 Stat. 707.)

CODIFICATION

R.S. § 325 derived from act June 3, 1864, ch. 106, § 1, 13 Stat. 99, which was the National Bank Act. See section 38 of this title.

Provisions of this section which prescribed the annual basic compensation of the Comptroller of the Currency were omitted to conform to the provisions of the Executive Schedule. See section 5314 of Title 5, Government Organization and Employees.

AMENDMENTS

1935—Act Aug. 23, 1935, struck out ''on the recommendation of the Secretary of the Treasury'' after ''President'', where first appearing, and changed the salary from ''$5,000 a year'' to ''$15,000 a year''.

REPEALS

Act Oct. 15, 1949, ch. 695, § 4, 63 Stat. 880, formerly cited as a credit to this section, was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 655.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, were not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 3. Oath of Comptroller

The Comptroller of the Currency shall, within fifteen days from the time of notice of his appointment, take and subscribe the oath of office.

(R.S. § 326; Pub. L. 86–251, § 1(d), Sept. 9, 1959, 73 Stat. 488; Pub. L. 92–310, title II, § 223(a), June 6, 1972, 86 Stat. 206.)

CODIFICATION

R.S. § 326 derived from act June 3, 1864, ch. 106, § 1, 13 Stat. 99, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1972—Pub. L. 92–310 struck out provisions which required the Comptroller to give a bond in the sum of $250,000.

1959—Pub. L. 86–251 increased the surety bond requirement from $100,000 to $250,000.

§ 4. Deputy Comptrollers

The Secretary of the Treasury shall appoint no more than four Deputy Comptrollers of the Currency, one of whom shall be designated First Deputy Comptroller of the Currency, and shall fix their salaries. Each Deputy Comptroller shall take the oath of office and shall perform such duties as the Comptroller shall direct. During a vacancy in the office or during the absence or disability of the Comptroller, each Deputy Comptroller shall possess the power and perform the duties attached by law to the office of the Comptroller under such order of succession following the First Deputy Comptroller as the Comptroller shall direct.

(R.S. § 327; Mar. 4, 1923, ch. 252, § 209(b), 42 Stat. 1467; Pub. L. 86–251, § 1(a), Sept. 9, 1959, 73 Stat. 487; Pub. L. 92–310, title II, § 223(b), June 6, 1972, 86 Stat. 206.)

CODIFICATION

R.S. § 327 derived from act June 3, 1864, ch. 106, § 1, 13 Stat. 99, which was the National Bank Act. See section 38 of this title.

R.S. § 327, contained after the word ''Secretary'' the following ''who shall be entitled to a salary of two thousand five hundred dollars a year, and'' which was omitted from this section on authority of act Mar. 4, 1923, § 209(b), fourth sentence, which was classified to section 9a of this title and regulated the salaries of deputy comptrollers.

AMENDMENTS

1972—Pub. L. 92–310 struck out provisions which required each Deputy Comptroller to give a bond in the sum of $100,000.

1959—Pub. L. 86–251 provided for the appointment of four Deputy Comptrollers instead of one, the designation of one as the First Deputy, the fixing of salaries, increase in surety bond requirement from $50,000 to $100,000 and order of succession.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 4a. Delegation of authority by Comptroller

The Comptroller of the Currency may delegate to any duly authorized employee, representative, or agent any power vested in the office by law.

(R.S. § 327A, as added Pub. L. 96–221, title VII, § 707(a), Mar. 31, 1980, 94 Stat. 188.)

§ 4b. Deputy Comptroller for the supervision and examination of Federal savings associations

The Comptroller of the Currency shall designate a Deputy Comptroller, who shall be responsible for the supervision and examination of Federal savings associations.

(R.S. § 327B, as added Pub. L. 111–203, title III, § 314(b), July 21, 2010, 124 Stat. 1524.)

EFFECTIVE DATE

Section effective on the transfer date, see section 314(d) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1 of this title.

§§ 5, 6. Repealed. Pub. L. 86–251, § 1(b), (c)(1), Sept. 9, 1959, 73 Stat. 487, 488

Section 5, act Mar. 4, 1909, ch. 297, § 1, 35 Stat. 867, related to appointment, succession in office and penal bond of assistant deputy comptroller. See section 4 of this title.

Section 6, act Mar. 4, 1923, ch. 252, title II, § 209(b) (pt.), 42 Stat. 1467, related to appointment, oath of office, penal bond, assigned duties and administration of national agricultural credit corporation provisions of third Deputy Comptroller. See section 4 of this title.

§ 7. Chief of examining division

The Comptroller of the Currency may designate a national bank examiner to act as chief of the examining division in his office.

(Jan. 3, 1923, ch. 22, 42 Stat. 1096.)

CODIFICATION

Section is based on Treasury Department Appropriation Act, 1924, act Jan. 3, 1923.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

SIMILAR PROVISIONS

Similar provisions were contained in act Feb. 17, 1922, ch. 55, 42 Stat. 375, and in earlier appropriation acts.

§ 8. Clerks

The Comptroller of the Currency shall employ, from time to time, the necessary clerks, to be

appointed and classified by the Secretary of the Treasury, to discharge such duties as the comptroller shall direct.

(R.S. § 328.)

CODIFICATION

R.S. § 328 derived from act June 3, 1864, ch. 106, § 1, 13 Stat. 100, which was the National Bank Act. See section 38 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 9. Additional examiners, clerks, and other employees

The Comptroller of the Currency is authorized to employ such additional examiners, clerks, and other employees as he deems necessary to carry out the provisions of sections 4, 6, 9, 10, 1151 to 1318, and 1322 of this title and to assign to duty in the office of his bureau in Washington such examiners and assistant examiners as he shall deem necessary to assist in the performance of the work of that bureau.

(Mar. 4, 1923, ch. 252, title II, § 209(b), 42 Stat. 1467.)

REFERENCES IN TEXT

Section 6, referred to in text, was repealed by Pub. L. 86–251, § 1(c)(1), Sept. 9, 1959, 73 Stat. 488.

Sections 1151, 1161 to 1163, 1171, 1172, 1181, 1182, 1191, 1201, 1202, 1211 to 1215, 1221 to 1223, 1231, 1232, 1241 to 1244, 1246, 1247, 1249, 1251, 1261, 1271, 1281 to 1283, 1291 to 1293, 1301 to 1303, and 1322 of this title, included within the reference to sections 1151 to 1318, and 1322 of this title, were repealed by Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466.

Section 1151a, included within the reference to sections 1151 to 1318 of this title, was repealed by Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624.

Sections 1245, 1248, and 1311 to 1318, included within the reference to sections 1151 to 1318 of this title, were repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

The bureau referred to in text is known as the Office of the Comptroller of the Currency.

CODIFICATION

Section is comprised of subsec. (b), third sentence, of section 209 of act Mar. 4, 1923. For classification to this title of other provisions of section 209, see Tables.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 9a. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 645

Section, act Mar. 4, 1923, ch. 252, title II, § 209(b), 42 Stat. 1467, authorized Comptroller to fix in advance pay of deputy comptrollers, examiners, clerks, and certain other employees.

§ 10. Salaries of Deputy Comptrollers, examiners, and other employees as part of bank examination expenses

The salaries of the Deputy Comptrollers and of all national bank examiners and assistant examiners assigned to duty in the office of the bureau in Washington in connection with the supervision of national banks shall be considered part of the expenses of the examinations provided for by subchapter XV of chapter 3 of this title.

(Mar. 4, 1923, ch. 252, title II, § 209(b), 42 Stat. 1467; Pub. L. 86–251, § 1(c)(2), Sept. 9, 1959, 73 Stat. 488.)

REFERENCES IN TEXT

Subchapter XV [§ 481 et seq.] of chapter 3 of this title, referred to in text, was in the original a reference to section 5240 of the Revised Statutes.

CODIFICATION

Section is comprised of subsec. (b), fifth sentence, of section 209 of act Mar. 4, 1923. For classification to this title of other provisions of section 209, see Tables.

AMENDMENTS

1959—Pub. L. 86–251 included all Deputy Comptrollers instead of only two deputy comptrollers and struck out provisions deeming the salaries of deputy comptroller, examiners, assistant examiners, clerks and other employees as expenses of administration of national agricultural credit corporation provisions and considering the salary of the additional deputy comptroller as partly an expense of administration in proportion to time spent in such administration.

§ 11. Interest in national banks

It shall not be lawful for the Comptroller or the Deputy Comptroller of the Currency, either directly or indirectly, to hold an interest in any national bank.

(R.S. § 329; Pub. L. 106–569, title XII, § 1233(b), Dec. 27, 2000, 114 Stat. 3037; Pub. L. 111–203, title III, § 314(c), July 21, 2010, 124 Stat. 1524.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, § 314(c), (d), July 21, 2010, 124 Stat. 1524, provided that, effective on the transfer date, this section is amended by inserting before the period at the end the following: ''or any Federal savings association''. See Effective Date of 2010 Amendment note below.

CODIFICATION

R.S. § 329 derived from act June 3, 1864, ch. 106, § 1, 13 Stat. 99, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2000—Pub. L. 106–569 substituted ''to hold an interest in any national bank'' for ''to be interested in any association issuing national currency under the laws of the United States''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 314(d) of Pub. L. 111–203, set out as a note under section 1 of this title.

§ 12. Seal of Comptroller

The seal devised by the Comptroller of the Currency for his office, and approved by the Secretary of the Treasury, shall continue to be the seal of office of the comptroller, and may be renewed when necessary. A description of the seal, with an impression thereof, and a certificate of approval by the Secretary of the Treasury, shall be filed in the office of the Secretary of State.

(R.S. § 330; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 317.)

CODIFICATION

R.S. § 330 derived from act June 3, 1864, ch. 106, § 2, 13 Stat. 100, which was the National Bank Act. See section 38 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 13. Rooms for Currency Bureau

There shall be assigned, from time to time, to the Comptroller of the Currency, by the Secretary of the Treasury, suitable rooms in the Treasury Building for conducting the business of the Currency Bureau, containing safe and secure fireproof vaults, in which the Comptroller shall deposit and safely keep all the plates not necessarily in the possession of engravers or printers, and other valuable things belonging to his department; and the Comptroller shall from time to time furnish the necessary furniture, stationery, fuel, lights, and other proper conveniences for the transaction of the business of his office.

(R.S. § 331.)

REFERENCES IN TEXT

The bureau referred to in text is known as the Office of the Comptroller of the Currency.

CODIFICATION

R.S. § 331 derived from act June 3, 1864, ch. 106, § 3, 13 Stat. 100, which was the National Bank Act. See section 38 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 14. Report of Comptroller

The Comptroller of the Currency shall make an annual report to Congress. The report required under this section shall include the report required under section 57a(f)(7) of title 15.

(R.S. § 333; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 317; Aug. 7, 1946, ch. 770, § 1(39), 60 Stat. 869; Pub. L. 106–569, title XI, § 1103(c), Dec. 27, 2000, 114 Stat. 3031.)

CODIFICATION

R.S. § 333 derived from acts June 3, 1864, ch. 106, § 61, 13 Stat. 117, and Feb. 19, 1873, ch. 166, 17 Stat. 466. Act June 3, 1864, was the National Bank Act. See section 38 of this title.

AMENDMENTS

2000—Pub. L. 106–569 inserted at end ''The report required under this section shall include the report required under section 57a(f)(7) of title 15.''

1946—Act Aug. 7, 1946, repealed in the opening clause, the requirement that the report to Congress shall be submitted at the commencement of its session, and repealed all provisions prescribing contents of the exhibits in the report.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 15. Repealed. Aug. 7, 1946, ch. 770, § 1(40, 50), 60 Stat. 869, 870

Section, act Apr. 28, 1902, ch. 594, § 1, 32 Stat. 138, required inclusion of expenses of liquidation of national banks in annual report of Comptroller of the Currency.

§ 16. Funding of Office

The Comptroller of the Currency may collect an assessment, fee, or other charge from any entity described in section 1813(q)(1) of this title, as the Comptroller determines is necessary or appropriate to carry out the responsibilities of the Office of the Comptroller of the Currency. In establishing the amount of an assessment, fee, or charge collected from an entity under this section, the Comptroller of the Currency may take into account the nature and scope of the activities of the entity, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other factor, as the Comptroller of the Currency determines is appropriate. Funds derived from any assessment, fee, or charge collected or payment made pursuant to this section may be deposited by the Comptroller of the Currency in accordance with the provisions of section 192 of this title. Such funds shall not be construed to be Government funds or appropriated monies, and shall not be subject to apportionment for purposes of chapter 15 of title 31 or any other provision of law. The authority of the Comptroller of the Currency under this section shall be in addition to the authority under subchapter XV of chapter 3.

The Comptroller of the Currency shall have sole authority to determine the manner in which the obligations of the Office of the Comptroller of the Currency shall be incurred and its disbursements and expenses allowed and paid, in accordance with this section, except as provided in chapter 71 of title 5 (with respect to compensation).

(R.S. § 5240A, as added Pub. L. 111–203, title III, § 318(b), July 21, 2010, 124 Stat. 1526.)

REFERENCES IN TEXT

Subchapter XV of chapter 3, referred to in first par., was in the original a reference to section 5240 of the Revised Statutes.

EFFECTIVE DATE

Pub. L. 111–203, title III, § 318(e), July 21, 2010, 124 Stat. 1527, provided that: ''This section [enacting this section and amending sections 248, 481, 482, and 1820 of this title], and the amendments made by this section, shall take effect on the transfer date.''

[For definition of ''transfer date'' as used in section 318(e) of Pub. L. 111–203, set out above, see section 5301 of this title.]

CHAPTER 2—NATIONAL BANKS

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26. Comptroller to determine if association can commence business.
27. Certificate of authority to commence banking.
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29. Power to hold real property.
30. Change of name or location.
31. Rights and liabilities as affected by change of name.
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33 to 34c. Transferred.
35. Organization of State banks as national banking associations.
36. Branch banks.
37. Associations governed by chapter.
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40. Virgin Islands; extension of National Bank Act.
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51. Repealed.
51a. Preferred stock; issuance authorized.
51b. Dividends, voting, and retirement of preferred stock; individual liability.
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51c. ''Common stock'', ''capital'', and ''capital stock'' defined.
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53. When capital stock paid in.
54. Repealed.
55. Enforcing payment of deficiency in capital stock; assessments; liquidation; receivership.
56. Prohibition on withdrawal of capital; unearned dividends.
57. Increase of capital by provision in articles of association.
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60. National bank dividends.
61. Shareholders' voting rights; cumulative and distributive voting; preferred stock; trust shares; proxies, liability restrictions; percentage requirement exclusion of trust shares.
62. List of shareholders.
63, 64. Repealed.
64a. Individual liability of shareholders; limitation on liability.
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71. Election.
71a. Number of directors; penalties.
72. Qualifications.
73. Oath.
74. Vacancies.
75. Legal holiday, annual meeting on; proceedings where no election held on proper day.
76. President of bank as member of board; chairman of board.
77, 78. Repealed.

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81. Place of business.
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86a to 89. Omitted or Repealed.
90. Depositaries of public moneys and financial agents of Government.
91. Transfers by bank and other acts in contemplation of insolvency.
92. Acting as insurance agent or broker.
92a. Trust powers.
93. Violation of provisions of chapter.
93a. Authority to prescribe rules and regulations.
94. Venue of suits.
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95. Emergency limitations and restrictions on business of members of Federal reserve system; designation of legal holiday for national banking associations; exceptions; ''State'' defined.
95a. Regulation of transactions in foreign exchange of gold and silver; property transfers; vested interests, enforcement and penalties.
95b. Ratification of acts of President and Secretary of the Treasury under section 95a.

SUBCHAPTER V—OBTAINING AND ISSUING CIRCULATING NOTES

101 to 110. Repealed.

SUBCHAPTER VI—REDEMPTION AND REPLACEMENT OF CIRCULATING NOTES

121. Repealed.
121a. Redemption of notes unidentifiable as to bank of issue.
122 to 127. Repealed.

SUBCHAPTER VII—PROCEEDINGS ON FAILURE OF BANK TO REDEEM CIRCULATING NOTES

131 to 138. Repealed.

SUBCHAPTER VIII—RESERVE CITIES; LAWFUL RESERVES

141. Omitted.
142. Banks in reserve cities; reserves.
143. Banks in Alaska and insular possessions; lawful money reserves.
144. Certain balances counted toward reserves in dependencies and insular possessions.
145, 146. Repealed.

SUBCHAPTER IX—FORMATION OF ASSOCIATIONS TO ISSUE GOLD NOTES

151 to 153. Repealed.

SUBCHAPTER X—BANK EXAMINATIONS; REPORTS

161. Reports to Comptroller of the Currency.
162, 163. Repealed.
164. Penalty for failure to make reports.
165. Omitted.

SUBCHAPTER XI—MISCELLANEOUS PROVISIONS REGARDING UNITED STATES BONDS IN RELATION TO NATIONAL BANKS

168 to 177. Repealed.

Sec.
177a. Funds available for cost of transporting and redeeming national and Federal Reserve bank notes.
178. Repealed.

SUBCHAPTER XII—VOLUNTARY DISSOLUTION

181. Voluntary dissolution; appointment and removal of liquidating agent or committee; examination.
182. Notice of intent to dissolve.
183 to 186. Repealed.

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191. Appointment of receiver for a national bank.
192. Default in payment of circulating notes.
193. Notice to present claims.
194. Dividends on adjusted claims; distribution of assets.
195. Repealed.
196. Expenses.
197. Shareholders' meeting; continuance of receivership; appointment of agent; winding up business; distribution of assets.
197a. Resumption of business by closed bank on consent of depositors.
198. Purchase by receiver of property of bank; request to Comptroller.
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201. Short title.
202. Definitions.
203. Appointment of conservator.
204. Examinations.
205. Termination of conservatorship.
206. Conservator; powers and duties.
207, 208. Repealed.
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215. Consolidation of banks within same State.
215a. Merger of national banks or State banks into national banks.
215a–1. Interstate consolidations and mergers.
215a–2. Expedited procedures for certain reorganizations.
215a–3. Mergers and consolidations with subsidiaries and nonbank affiliates.
215b. Definitions.
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SUBCHAPTER XVII—DISPOSITION OF UNCLAIMED PROPERTY RECOVERED FROM CLOSED NATIONAL BANKS

216. Purpose.
216a. Definitions.
216b. Disposition of unclaimed property.
216c. Rules and regulations.
216d. Severability.

SUBCHAPTER I—ORGANIZATION AND GENERAL PROVISIONS

§ 21. Formation of national banking associations; incorporators; articles of association

Associations for carrying on the business of banking under title 62 of the Revised Statutes may be formed by any number of natural persons, not less in any case than five. They shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed by the persons uniting to form the association, and a copy of them shall be forwarded to the Comptroller of the Currency, to be filed and preserved in his office.

(R.S. § 5133.)

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in text, was in the original ''this Title'' meaning title LXII of the Revised Statutes, consisting of R.S. §§ 5133 to 5244, which are classified to this section and sections 16, 22 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. § 5133 derived from act June 3, 1864, ch. 106, § 5, 13 Stat. 100, which was the National Bank Act. See section 38 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 21a. Amendment of articles of association

Except as otherwise specifically provided by law, or by the articles of association of the particular national banking association, the articles of association of a national banking association may be amended with respect to any lawful matter, and any action requiring the approval of the stockholders of such association may be had by the approving vote of the holders of a majority of the voting shares of the stock of the association obtained at a meeting of the stockholders called and held pursuant to notice given by mail at least ten days prior to the meeting or pursuant to a waiver of such notice given by all stockholders entitled to receive notice of such meeting. A certified copy of every amendment to the articles of association adopted by the shareholders of a national banking association shall be forwarded to the Comptroller of the Currency, to be filed and preserved in his office.

(Pub. L. 86–230, § 13, Sept. 8, 1959, 73 Stat. 458.)

§ 22. Organization certificate

The persons uniting to form such an association shall, under their hands, make an organization certificate, which shall specifically state:

First. The name assumed by such association; which name shall include the word ''national''.

Second. The place where its operations of discount and deposit are to be carried on, designating the State, Territory, or District, and the particular county and city, town, or village.

Third. The amount of capital stock and the number of shares into which the same is to be divided.

Fourth. The names and places of residence of the shareholders and the number of shares held by each of them.

Fifth. The fact that the certificate is made to enable such persons to avail themselves of the advantages of title 62 of the Revised Statutes.

(R.S. § 5134; Pub. L. 86–230, § 25, Sept. 8, 1959, 73 Stat. 466; Pub. L. 97–320, title IV, § 405(b), Oct. 15, 1982, 96 Stat. 1512.)

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in par. Fifth, was in the original ''this Title'' meaning title LXII of the Revised Statutes, consisting of R.S. §§ 5133 to 5244, which are classified to this section and sections 16, 21, 23 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. § 5134 derived from act June 3, 1864, ch. 106, § 6, 13 Stat. 101, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1982—Par. First. Pub. L. 97–320 struck out ''and be subject to the approval of the Comptroller of the Currency'' after ''national''.

1959—Par. First. Pub. L. 86–230 substituted ''which named shall include the word 'national' and be'' for ''which name shall be''.

§ 23. Acknowledgment and filing of certificate

The organization certificate shall be acknowledged before a judge of some court of record, or notary public; and shall be, together with the acknowledgment thereof, authenticated by the seal of such court, or notary, transmitted to the Comptroller of the Currency, who shall record and carefully preserve the same in his office.

(R.S. § 5135.)

CODIFICATION

R.S. § 5135 derived from act June 3, 1864, ch. 106, § 6, 13 Stat. 101, which was the National Bank Act. See section 38 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 24. Corporate powers of associations

Upon duly making and filing articles of association and an organization certificate a national banking association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

Second. To have succession from February 25, 1927, or from the date of its organization if organized after February 25, 1927, until such time as it be dissolved by the act of its shareholders owning two-thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or a special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons.

Fifth. To elect or appoint directors, and by its board of directors to appoint a president, vice president, cashier, and other officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places.

Sixth. To prescribe, by its board of directors, bylaws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of title 62 of the Revised Statutes. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock; *Provided*, That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on August 23, 1935. As used in this section the term ''investment securities'' shall mean marketable obligations, evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term ''investment securities'' as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise per-

mitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks, or obligations which are insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act [12 U.S.C. 1749aaa et seq.] or obligations which are insured by the Secretary of Housing and Urban Development (hereinafter in this sentence referred to as the ''Secretary'') pursuant to section 207 of the National Housing Act [12 U.S.C. 1713], if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States, or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association, or the Government National Mortgage Association, or mortgages, obligations or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1454 or 1455], or obligations of the Federal Financing Bank or obligations of the Environmental Financing Authority, or obligations or other instruments or securities of the Student Loan Marketing Association, or such obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949 [42 U.S.C. 1460(h)]) as are secured by an agreement between the local public agency and the Secretary in which the local public agency agrees to borrow from said Secretary, and said Secretary agrees to lend to said local public agency, monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments, or such obligations of a public housing agency (as defined in the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.]) as are secured (1) by an agreement between the public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Secretary if such contract shall contain the covenant by the Secretary which is authorized by subsection (g) of section 6 of the United States Housing Act of 1937, as amended [42 U.S.C. 1437d(g)], and if the maximum sum and the maximum period specified in such contract pursuant to said subsection 6(g) [42 U.S.C. 1437d(g)] shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations, or (3) by a pledge of both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937 [42 U.S.C. 1437d(g)], and a loan under an agreement between the local public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations) will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity: *Provided*, That in carrying on the business commonly known as the safe-deposit business the association shall not invest in the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the capital stock of the association actually paid in and unimpaired and 15 per centum of its unimpaired surplus. The limitations and restrictions herein contained as to dealing in and underwriting investment securities shall not apply to obligations issued by the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the Inter-American Development Bank[1] Bank for Economic Cooperation and Development in the Middle East and North Africa,,[2] the North American Development Bank, the Asian Development Bank, the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation,,[2] or obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account, nor to bonds, notes and other obligations issued by the Tennessee Valley Authority or by the United States Postal Service: *Provided*, That no association shall hold obligations issued by any of said organizations as a result of underwriting, dealing, or purchasing for its own account (and for this pur-

[1] So in original. Probably should be followed by a comma.

[2] So in original.

pose obligations as to which it is under commitment shall be deemed to be held by it) in a total amount exceeding at any one time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968 [42 U.S.C. 3931 et seq.], and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act [42 U.S.C. 3937(a) or 3937(c)]. Notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock issued by any State housing corporation incorporated in the State in which the association is located and may make investments in loans and commitments for loans to any such corporation: *Provided*, That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the association exceed at any time 5 per centum of its capital stock actually paid in and unimpaired plus 5 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. However, unless the association owns at least 80 per centum of the stock of such agricultural credit corporation the amount invested by the association at any one time in the stock of such corporation shall not exceed 20 per centum of the unimpaired capital and surplus of the association: *Provided further*, That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions or depository institution holding companies (as defined in section 1813 of this title) and such bank or company and all subsidiaries thereof are engaged exclusively in providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a ''banker's bank''), but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of the association's capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company. The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); (B) are small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(53)]); or (C) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)).[3] The exception provided for the securities described in subparagraphs (A), (B), and (C) shall be subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both.

A national banking association may deal in, underwrite, and purchase for such association's own account qualified Canadian government obligations to the same extent that such association may deal in, underwrite, and purchase for such association's own account obligations of the United States or general obligations of any State or of any political subdivision thereof. For purposes of this paragraph—

(1) the term ''qualified Canadian government obligations'' means any debt obligation which is backed by Canada, any Province of Canada, or any political subdivision of any such Province to a degree which is comparable to the liability of the United States, any State, or any political subdivision thereof for any obligation which is backed by the full faith and credit of the United States, such State, or such political subdivision, and such term includes any debt obligation of any agent of Canada or any such Province or any political subdivision of such Province if—

(A) the obligation of the agent is assumed in such agent's capacity as agent for Canada or such Province or such political subdivision; and

(B) Canada, such Province, or such political subdivision on whose behalf such agent is acting with respect to such obligation is ultimately and unconditionally liable for such obligation; and

(2) the term ''Province of Canada'' means a Province of Canada and includes the Yukon Territory and the Northwest Territories and their successors.

In addition to the provisions in this paragraph for dealing in, underwriting, or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank's own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of title 26) issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State, if the national bank is well capitalized (as defined in section 1831*o* of this title).

[3] So in original. The period probably should be preceded by an additional closing parenthesis.

Eighth. To contribute to community funds, or to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare, such sums as its board of directors may deem expedient and in the interests of the association, if it is located in a State the laws of which do not expressly prohibit State banking institutions from contributing to such funds or instrumentalities.

Ninth. To issue and sell securities which are guaranteed pursuant to section 1721(g) of this title.

Tenth. To invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis, but such investment may not exceed 10 percent of the assets of the association.

Eleventh. To make investments directly or indirectly, each of which is designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs). An association shall not make any such investment if the investment would expose the association to unlimited liability. The Comptroller of the Currency shall limit an association's investments in any 1 project and an association's aggregate investments under this paragraph. An association's aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the association's capital stock actually paid in and unimpaired and 5 percent of the association's unimpaired surplus fund, unless the Comptroller determines by order that the higher amount will pose no significant risk to the affected deposit insurance fund, and the association is adequately capitalized. In no case shall an association's aggregate investments under this paragraph exceed an amount equal to the sum of 15 percent of the association's capital stock actually paid in and unimpaired and 15 percent of the association's unimpaired surplus fund. The foregoing standards and limitations apply to investments under this paragraph made by a national bank directly and by its subsidiaries.

(R.S. § 5136; July 1, 1922, ch. 257, § 1, 42 Stat. 767; Feb. 25, 1927, ch. 191, § 2, 44 Stat. 1226; June 16, 1933, ch. 89, § 16, 48 Stat. 184; Aug. 23, 1935, ch. 614, title III, § 308, 49 Stat. 709; Feb. 3, 1938, ch. 13, § 13, 52 Stat. 26; June 11, 1940, ch. 301, 54 Stat. 261; June 29, 1949, ch. 276, § 1, 63 Stat. 298; July 15, 1949, ch. 338, title VI, § 602(a), 63 Stat. 439; Apr. 9, 1952, ch. 169, 66 Stat. 49; Aug. 2, 1954, ch. 649, title II, § 203, 68 Stat. 622; Aug. 23, 1954, ch. 834, § 2, 68 Stat. 771; July 26, 1956, ch. 741, title II, § 201(c), 70 Stat. 667; Pub. L. 86–137, § 2, Aug. 6, 1959, 73 Stat. 285; Pub. L. 86–147, § 10, Aug. 7, 1959, 73 Stat. 301; Pub. L. 86–230, § 1(a), Sept. 8, 1959, 73 Stat. 457; Pub. L. 86–278, Sept. 16, 1959, 73 Stat. 563; Pub. L. 86–372, title IV, § 420, Sept. 23, 1959, 73 Stat. 679; Pub. L. 88–560, title VII, § 701(c), Sept. 2, 1964, 78 Stat. 800; Pub. L. 89–369, § 10, Mar. 16, 1966, 80 Stat. 72; Pub. L. 89–754, title V, § 504(a)(1), Nov. 3, 1966, 80 Stat. 1277; Pub. L. 90–19, § 27(a), May 25, 1967, 81 Stat. 28; Pub. L. 90–448, title VIII, §§ 804(c), 807(j), title IX, § 911, title XVII, § 1705(h), Aug. 1, 1968, 82 Stat. 543, 545, 550, 605; Pub. L. 91–375, § 6(d), Aug. 12, 1970, 84 Stat. 776; Pub. L. 92–318, title I, § 133(c)(1), June 23, 1972, 86 Stat. 269; Pub. L. 91–143, § 12(b), Dec. 9, 1969, as added Pub. L. 92–349, title I, § 101, July 13, 1972, 86 Stat. 466; Pub. L. 92–500, § 12(n), Oct. 18, 1972, 86 Stat. 902; Pub. L. 93–100, § 5(c), Aug. 16, 1973, 87 Stat. 344; Pub. L. 93–224, § 14, Dec. 29, 1973, 87 Stat. 941; Pub. L. 93–234, title II, § 207, Dec. 31, 1973, 87 Stat. 984; Pub. L. 93–383, title II, § 206, title VIII, § 805(c)(1), Aug. 22, 1974, 88 Stat. 668, 726; Pub. L. 96–221, title VII, § 711, Mar. 31, 1980, 94 Stat. 189; Pub. L. 97–35, title XIII, § 1342(a), Aug. 13, 1981, 95 Stat. 743; Pub. L. 97–320, title IV, § 404(b), Oct. 15, 1982, 96 Stat. 1511; Pub. L. 97–457, § 18, Jan. 12, 1983, 96 Stat. 2509; Pub. L. 98–440, title I, § 105(c), Oct. 3, 1984, 98 Stat. 1691; Pub. L. 98–473, title I, § 101(1) [title I, § 101], Oct. 12, 1984, 98 Stat. 1884, 1885; Pub. L. 100–86, title I, § 108, Aug. 10, 1987, 101 Stat. 579; Pub. L. 100–449, title III, § 308, Sept. 28, 1988, 102 Stat. 1877; Pub. L. 101–513, title V, § 562(c)(10)(B), (e)(1)(B), Nov. 5, 1990, 104 Stat. 2036, 2037; Pub. L. 102–485, § 6(a), Oct. 23, 1992, 106 Stat. 2774; Pub. L. 103–182, title V, § 541(h)(1), Dec. 8, 1993, 107 Stat. 2167; Pub. L. 103–325, title II, § 206(c), title III, §§ 322(a)(1), 347(b), Sept. 23, 1994, 108 Stat. 2199, 2226, 2241; Pub. L. 104–208, div. A, title I, § 101(c) [title VII, § 710(b)], title II, § 2704(d)(7), Sept. 30, 1996, 110 Stat. 3009–121, 3009–181, 3009–489; Pub. L. 106–102, title I, § 151, Nov. 12, 1999, 113 Stat. 1384; Pub. L. 109–171, title II, § 2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, § 9(a), Feb. 15, 2006, 119 Stat. 3616; Pub. L. 109–351, title III, § 305(a), Oct. 13, 2006, 120 Stat. 1970; Pub. L. 110–289, div. B, title V, § 2503(a), July 30, 2008, 122 Stat. 2857.)

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in par. Seventh, was in the original ''this Title'' meaning title LXII of the Revised Statutes, consisting of R.S. §§ 5133 to 5244, which are classified to this section and sections 16, 21, 22, 23, 24a, 25a, 25b, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

Section 9 of the National Capital Transportation Act of 1969, referred to in par. Seventh, is section 9 of Pub. L. 91–143, as added by section 101 of title I of Pub. L. 92–349, July 13, 1972, 86 Stat. 464, which is not classified to the Code.

The Federal Farm Loan Act, referred to in par. Seventh, is act July 17, 1916, ch. 245, 39 Stat. 360, which was classified to section 641 et seq. of this title prior to its repeal by Pub. L. 92–181, § 5.26(a), Dec. 10, 1971, 85 Stat. 624. See chapter 23 (§ 2001 et seq.) of this title.

The National Housing Act, referred to in par. Seventh, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title XI of the National Housing Act is title XI of act June 27, 1934, ch. 847, as added by act Nov. 3, 1966, Pub. L. 89–754, title V, § 502(a), 80 Stat. 1274, which is classified generally to subchapter IX–B (§ 1749aaa et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 110 of the Housing Act of 1949 [42 U.S.C. 1460], referred to in par. Seventh, was omitted from the Code pursuant to section 5316 of Title 42, The Public Health and Welfare, which terminated authority to make grants or loans under title I of that Act [42 U.S.C. 1450 et seq.] after Jan. 1, 1975.

The United States Housing Act of 1937, referred to in par. Seventh, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, Aug. 22, 1974, 88 Stat.

653, and is classified to chapter 8 (§ 1437 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Housing and Urban Development Act of 1968, referred to in par. Seventh, is Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IX of the Housing and Urban Development Act is classified principally to chapter 49 (§ 3931 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1701 of this title and Tables.

CODIFICATION

Amendment by Pub. L. 98–473 is based on section 211(a) of title II of S. 2416, as introduced in the Senate on Mar. 13, 1984, which was enacted into permanent law by section 101(1) of Pub. L. 98–473.

R.S. § 5136 derived from act June 3, 1864, ch. 106, § 8, 13 Stat. 101, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2008—Par. Eleventh. Pub. L. 110–289, which directed substitution of ''is designed primarily to promote the public welfare, including the welfare of'' for ''promotes the public welfare by benefitting primarily'' in first sentence, was executed by making the substitution for ''promotes the public welfare by benefiting primarily'' to reflect the probable intent of Congress.

2006—Par. Eleventh. Pub. L. 109–351 amended par. generally. Prior to amendment, par. read as follows: ''Eleventh. To make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs). A national banking association may make such investments directly or by purchasing interests in an entity primarily engaged in making such investments. An association shall not make any such investment if the investment would expose the association to unlimited liability. The Comptroller of the Currency shall limit an association's investments in any 1 project and an association's aggregate investments under this paragraph. An association's aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the association's capital stock actually paid in and unimpaired and 5 percent of the association's unimpaired surplus fund, unless the Comptroller determines by order that the higher amount will pose no significant risk to the Deposit Insurance Fund, and the association is adequately capitalized. In no case shall an association's aggregate investments under this paragraph exceed an amount equal to the sum of 10 percent of the association's capital stock actually paid in and unimpaired and 10 percent of the association's unimpaired surplus fund.''

Pub. L. 109–173, in fifth sentence, substituted ''Deposit Insurance Fund'' for ''affected deposit insurance fund''.

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(7). See 1996 Amendment note below.

1999—Par. Seventh. Pub. L. 106–102 inserted at end ''In addition to the provisions in this paragraph for dealing in, underwriting, or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank's own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of title 26) issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State, if the national bank is well capitalized (as defined in section 1831*o* of this title).''

1996—Par. Seventh. Pub. L. 104–208, § 101(c) [§ 710(b)], in seventh sentence, inserted ''Bank for Economic Cooperation and Development in the Middle East and North Africa,'' after ''the Inter-American Development Bank''.

Par. Eleventh. Pub. L. 104—208, § 2704(d)(7), which directed the amendment of the fifth sentence by substituting ''Deposit Insurance Fund'' for ''affected deposit insurance fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Par. Seventh. Pub. L. 103–325, § 347(b), in last sentence of first par., substituted ''(15 U.S.C. 78c(a)(41)). The exception provided for the securities described in subparagraphs (A), (B), and (C) shall be subject to such regulations'' for ''(15 U.S.C. 78c(a)(41))), subject to such regulations''.

Pub. L. 103–325, § 322(a)(1)(A), in fifth proviso inserted ''or depository institution holding companies (as defined in section 1813 of this title)'' after ''(except to the extent directors' qualifying shares are required by law) by depository institutions''.

Pub. L. 103–325, § 322(a)(1)(B), which directed substitution in fifth proviso of ''services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a 'banker's bank')'' for ''services for other depository institutions and their officers, directors and employees'', was executed by making the substitution for ''services for other depository institutions and their officers, directors, and employees'' to reflect the probable intent of Congress.

Pub. L. 103–325, § 206(c), substituted ''(B) are small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934); or (C) are mortgage related securities'' for ''or (B) are mortgage related securities''.

1993—Par. Seventh. Pub. L. 103–182 inserted ''the North American Development Bank,'' after ''Inter-American Development Bank,''.

1992—Par. Eleventh. Pub. L. 102–485 added par. Eleventh.

1990—Par. Seventh. Pub. L. 101–513 inserted ''the European Bank for Reconstruction and Development,'' before ''the Inter-American Development Bank,'' and substituted ''the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation,'' for ''the African Development Bank or the Inter-American Investment Corporation,''.

1988—Par. Seventh. Pub. L. 100–449 inserted provisions authorizing national banking associations to deal in, underwrite, and purchase Canadian government obligations for the association's own account.

1987—Par. Tenth. Pub. L. 100–86 added par. Tenth.

1984—Par. Seventh. Pub. L. 98–473 inserted reference to the Inter-American Investment Corporation.

Pub. L. 98–440 inserted provision that the limitations and restrictions contained in this paragraph as to an association purchasing investment securities for its own account shall not apply to securities offered and sold pursuant to section 15 U.S.C. 77d(5), or that are mortgage related securities (as defined in 15 U.S.C. 78c(a)(41)), subject to such regulations as the Comptroller of the Currency may prescribe.

1983—Par. Seventh. Pub. L. 97–457 substituted ''10 per centum of the association's'' for ''10 per centum of its'' after ''exceed at any time''.

1982—Par. Seventh. Pub. L. 97–320 substituted ''*Provided further*, That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions and such bank or company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and

employees, but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of its capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company'' for ''*Provided further*, That, notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation if the stock of such bank is owned exclusively by other banks (except to the extent State law requires directors qualifying shares) and if such bank is engaged exclusively in providing banking services for other banks and their officers, directors, or employees, but in no event shall the total amount of such stock held by the association exceed at any time 10 per centum of its capital stock and paid in and unimpaired surplus, and in no event shall the purchase of such stock result in the association's acquiring more than 5 per centum of any class of voting securities of such bank''.

1981—Par. Seventh. Pub. L. 97–35 inserted reference to the African Development Bank.

1980—Par. Seventh. Pub. L. 96–221 inserted proviso relating to purchase of stock in bankers' banks.

1974—Par. Seventh. Pub. L. 93–383 substituted ''section 6(g) of the United States Housing Act of 1937'' for references to section 1421a(b) of title 42 wherever appearing, struck out ''either'' before ''(1)'', ''(which obligations shall have a maturity of not more than eighteen months)'' in cl. (1) and ''or'' before ''(2)'', added cl. (3), and inserted reference to mortgages, obligations, or other securities sold by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or 1455 of this title.

1973—Par. Seventh. Pub. L. 93–234 authorized investments by national banks in agricultural credit corporations.

Pub. L. 93–224 inserted ''or obligations of the Federal Financing Bank'' after ''or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association''.

Pub. L. 93–100 inserted provision that the association may purchase shares of stock issued by state housing corporations incorporated in the state in which the association is located and make investments in loans and commitments for loans to such corporations with certain limitations.

1972—Par. Seventh. Pub. L. 92–500 inserted ''or obligations of the Environmental Financing Authority'' after ''Government National Mortgage Association''.

Pub. L. 92–349 inserted provisions that limitations and restrictions contained in this section as to dealing in and underwriting investment securities shall not apply to obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969.

Pub. L. 92–318 included obligations or other instruments or securities of the Student Loan Marketing Association.

1970—Par. Seventh. Pub. L. 91–375 made limitations and restrictions contained in this section as to dealing in and underwriting investment securities inapplicable to bonds, notes and other obligations issued by the United States Postal Service.

1968—Par. Seventh. Pub. L. 90–448, § 807(j), inserted ''or the Government National Mortgage Association'' after ''Federal National Mortgage Association''.

Pub. L. 90–448, § 911, authorized the association to purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to sections 3931–3940 of title 42, and to make investments in a partnership, limited partnership, or joint venture formed pursuant to section 3937(a) or 3937(c) of title 42.

Pub. L. 90–448, § 1705(h), included obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes.

Par. Ninth. Pub. L. 90–448, § 804(c), added par. Ninth.

1967—Par. Seventh. Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development (hereafter in this sentence referred to as the 'Secretary')'' for ''Federal Housing Administrator''; and ''Secretary'' for ''Housing and Home Finance Administrator'' after ''local public agency and the'', for ''Administrator'' in two instances just before ''agrees to lend'', and for ''Public Housing Administration'' wherever appearing in cls. (1) and (2), respectively.

1966—Par. Seventh. Pub. L. 89–754 made limitations and restrictions for dealing, underwriting, and purchasing for its own account of investment securities inapplicable to obligations which are insured by Secretary of Housing and Urban Development under provisions relating to mortgage insurance for group practice facilities.

Pub. L. 89–369 inserted provisions that limitations and restrictions contained in this section as to dealing in and underwriting investment securities shall not apply to obligations issued by the Asian Development Bank.

1964—Par. Seventh. Pub. L. 88–560 substituted ''or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association'' for ''or obligations of the Federal National Mortgage Association''.

1959—Par. Seventh. Pub. L. 86–372 substituted ''monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments'' for ''prior to the maturity of such obligations (which obligations shall have a maturity of not more than eighteen months), monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity'' after ''local public agency,''.

Pub. L. 86–278 substituted ''any'' for ''either'' before ''of said organizations'' in last sentence.

Pub. L. 86–230 struck out ''or the Home Owners' Loan Corporation'' after ''Federal Home Loan Banks''.

Pub. L. 86–147 inserted provisions that limitations and restrictions contained in this section as to dealing in and underwriting investment securities shall not apply to obligations issued by the Inter-American Development Bank.

Pub. L. 86–137 inserted provisions that limitations and restrictions contained in this section as to dealing in and underwriting investment securities shall not apply to bonds, notes and other obligations issued by the Tennessee Valley Authority.

1959—Par. Seventh. Pub. L. 86–372 substituted ''monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments'' for ''prior to the maturity of such obligations (which obligations shall have a maturity of not more than eighteen months), monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity'' following ''local public agency,''.

Pub. L. 86–278 substituted ''any'' for ''either'' before ''of said organizations'' in last sentence.

Pub. L. 86–230 struck out ''or the Home Owners' Loan Corporation'' after ''Federal Home Loan Banks''.

Pub. L. 86–147 inserted provisions that limitations and restrictions contained in this section as to dealing in and underwriting investment securities shall not apply to obligations issued by the Inter-American Development Bank.

Pub. L. 86–137 inserted provisions that limitations and restrictions contained in this section as to dealing in and underwriting investment securities shall not apply to bonds, notes and other obligations issued by the Tennessee Valley Authority.

1956—Par. Seventh. Act July 26, 1956, removed restriction which prohibited a national bank from investing in obligations of the thirteen banks for cooperatives an amount exceeding 10 percent of its capital stock actually paid in and unimpaired and 10 percent of its unimpaired surplus.

1954—Par. Seventh. Act Aug. 23, 1954, substituted ''thirteen banks for cooperatives organized under the Farm Credit Act of 1933, or any of them'' for ''Central Bank for Cooperatives'' in last sentence.

Act Aug. 2, 1954, substituted ''or obligations of the Federal National Mortgage Association'' for ''or obligations of national mortgage associations'' in sixth sentence.

1952—Par. Seventh. Act Apr. 9, 1952, enabled national banks and State member banks of the Federal Reserve System to receive compensation in the distribution of debentures issued by the Central Bank for Cooperation.

1949—Par. Seventh. Act July 15, 1949, inserted, in next to last sentence, ''or such obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) as are secured by an agreement between the local public agency and the Housing and Home Finance Administrator in which the local public agency agrees to borrow from said Administrator, and said Administrator agrees to lend to said local public agency, prior to the maturity of such obligations (which obligations shall have a maturity of not more than eighteen months), monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, or such obligations of a public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured either (1) by an agreement between the public housing agency and the Public Housing Administration in which the public housing agency agrees to borrow from the Public Housing Administration, and the Public Housing Administration agrees to lend to the public housing agency, prior to the maturity of such obligations (which obligations shall have a maturity of not more than eighteen months), monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, or (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Public Housing Administration if such contract shall contain the covenant by the Public Housing Administration which is authorized by subsection (b) of section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said subsection 22(b) shall not be less than the annual amount and the period for payment, which are requisite to provide for the payment when due of all installments of principal and interest on such obligations''.

Act June 29, 1949, inserted last sentence to permit national banks and State member banks of the Federal Reserve System to deal in and underwrite obligations issued by the International Bank subject to certain limitations.

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

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

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

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

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

EFFECTIVE DATE OF 2006 AMENDMENT

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

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(7) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 347(d) of Pub. L. 103–325 provided that: ''The amendments made by this section [amending this section and section 78c of Title 15, Commerce and Trade] shall become effective upon the date of promulgation of final regulations under subsection (c) [set out below].''

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1372 of Pub. L. 97–35, set out as an Effective Date note under section 290i of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1973 AMENDMENTS

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

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

EFFECTIVE DATE OF 1970 AMENDMENT

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

EFFECTIVE DATE OF 1968 AMENDMENT

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

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 26, 1956, effective Jan. 1, 1957, see section 202(a) of act July 26, 1956.

EFFECTIVE DATE OF 1933 AMENDMENT

Section 16 of act June 16, 1933, provided that restrictions of this section as to dealing in investment securities shall take effect one year after June 16, 1933.

REGULATIONS

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

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

ABOLITION OF HOME OWNERS' LOAN CORPORATION

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

§ 24a. Financial subsidiaries of national banks

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

(1) In general

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

(2) Conditions and requirements

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

(A) the financial subsidiary engages only in—

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

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

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

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

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

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

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

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

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

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

(E) except as provided in paragraph (4), the national bank meets any applicable rating or other requirement set forth in paragraph (3); and

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

(3) Rating or comparable requirement

(A) In general

A national bank meets the requirements of this paragraph if—

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

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

(B) Consolidated total assets

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

(4) Financial agency subsidiary

The requirement in paragraph (2)(E) shall not apply with respect to the ownership or

control of a financial subsidiary that engages in activities described in subsection (b)(1) of this section solely as agent and not directly or indirectly as principal.

(5) Regulations required

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

(6) Indexed asset limit

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

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

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

(b) Activities that are financial in nature

(1) Financial activities

(A) In general

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

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

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

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

(i) Proposals raised before the Secretary of the Treasury

(I) Consultation

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

(II) Board view

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

(ii) Proposals raised by the Board

(I) Board recommendation

The Board may, at any time, recommend in writing that the Secretary of the Treasury find an activity to be financial in nature or incidental to a financial activity for purposes of this section.

(II) Time period for secretarial action

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

(2) Factors to be considered

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

(A) the purposes of this Act[1] and the Gramm-Leach-Bliley Act;

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

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

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

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

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

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

(3) Authorization of new financial activities

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

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

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

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

[1] So in original.

(c) Capital deduction

(1) Capital deduction required

In determining compliance with applicable capital standards—

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

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

(2) Financial statement disclosure of capital deduction

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

(d) Safeguards for the bank

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

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

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

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

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

(1) In general

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

(2) Agreement to correct conditions

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

(3) Imposition of conditions

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

(A) the Comptroller of the Currency may impose such limitations on the conduct or activities of the national bank or any subsidiary of the national bank as the Comptroller of the Currency determines to be appropriate under the circumstances and consistent with the purposes of this section; and

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

(4) Failure to correct

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

(5) Consultation

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

(f) Failure to maintain public rating or meet applicable criteria

(1) In general

A national bank that does not continue to meet any applicable rating or other requirement of subsection (a)(2)(E) of this section after acquiring or establishing a financial subsidiary shall not, directly or through a subsidiary, purchase or acquire any additional equity capital of any financial subsidiary until the bank meets such requirements.

(2) Equity capital

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

(g) Definitions

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

(1) Affiliate, company, control, and subsidiary

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

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

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

(3) Financial subsidiary

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

sured depository institutions other than a subsidiary that—

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

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

(4) Eligible debt

The term ''eligible debt'' means unsecured long-term debt that—

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

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

(5) Well capitalized

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

(6) Well managed

The term ''well managed'' means—

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

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

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

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

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

AMENDMENT OF SECTION

Pub. L. 111–203, title IX, §939(d), (g), July 21, 2010, 124 Stat. 1886, 1887, provided that, effective 2 years after July 21, 2010, this section is amended:

(1) in subsection (a)(2)(E), by substituting ''standards of credit-worthiness established by the Comptroller of the Currency'' for ''any applicable rating'';

(2) in the heading for subsection (a)(3), by substituting ''Requirement'' for ''Rating or Comparable Requirement'';

(3) by amending subsection (a)(3)(A) to read as follows:

''(A) In general

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

(4) in the heading for subsection (f), by substituting ''meet standards of credit-worthiness'' for ''maintain public rating or''; and

(5) in subsection (f)(1), by substituting ''standards of credit-worthiness established by the Comptroller of the Currency'' for ''any applicable rating''.

REFERENCES IN TEXT

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

Section 25 of the Federal Reserve Act, referred to in subsec. (g)(3)(B), is classified to subchapter I (§601 et seq.) of chapter 6 of this title. Section 25A of the Federal Reserve Act is classified to subchapter II (§611 et seq.) of chapter 6 of this title.

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

PRIOR PROVISIONS

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

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE

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

§25. Omitted

CODIFICATION

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

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

(a) Prohibited activities

A national bank may not—

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery;[1]

(4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

(b) Use of banking premises prohibited

A national bank may not permit—

(1) the use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a) of this section, or

(2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank under subsection (a) of this section.

(c) Definitions

As used in this section—

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

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

(A) a random selection;

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

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

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

(d) Lawful banking services connected with operation of lotteries

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

(e) Regulations; enforcement

The Comptroller of the Currency shall issue such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

(R.S. § 5136B, formerly § 5136A, as added Pub. L. 90–203, § 1(a), Dec. 15, 1967, 81 Stat. 608; renumbered R.S. § 5136B, Pub. L. 106–102, title I, § 121(a)(1), Nov. 12, 1999, 113 Stat. 1373.)

EFFECTIVE DATE

Section 6 of Pub. L. 90–203 provided that: ''The amendments made by this Act [adding this section, sections 339, 1730c, and 1829a of this title, and section 1306 of Title 18, Crimes and Criminal Procedure] shall take effect on April 1, 1968.''

[1] So in original. The word ''or'' probably should appear.

§ 25b. State law preemption standards for national banks and subsidiaries clarified

(a) Definitions

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

(1) National bank

The term ''national bank'' includes—

(A) any bank organized under the laws of the United States; and

(B) any Federal branch established in accordance with the International Banking Act of 1978 [12 U.S.C. 3101 et seq.].

(2) State consumer financial laws

The term ''State consumer financial law'' means a State law that does not directly or indirectly discriminate against national banks and that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

(3) Other definitions

The terms ''affiliate'', ''subsidiary'', ''includes'', and ''including'' have the same meanings as in section 1813 of this title.

(b) Preemption standard

(1) In general

State consumer financial laws are preempted, only if—

(A) application of a State consumer financial law would have a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by that State;

(B) in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N. A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996), the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers; and any preemption determination under this subparagraph may be made by a court, or by regulation or order of the Comptroller of the Currency on a case-by-case basis, in accordance with applicable law; or

(C) the State consumer financial law is preempted by a provision of Federal law other than title 62 of the Revised Statutes.

(2) Savings clause

Title 62 of the Revised Statutes and section 371 of this title do not preempt, annul, or affect the applicability of any State law to any subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank).

(3) Case-by-case basis

(A) Definition

As used in this section the term ''case-by-case basis'' refers to a determination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national

bank that is subject to that law, or the law of any other State with substantively equivalent terms.

(B) Consultation

When making a determination on a case-by-case basis that a State consumer financial law of another State has substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Bureau of Consumer Financial Protection and shall take the views of the Bureau into account when making the determination.

(4) Rule of construction

Title 62 of the Revised Statutes does not occupy the field in any area of State law.

(5) Standards of review

(A) Preemption

A court reviewing any determinations made by the Comptroller regarding preemption of a State law by title 62 of the Revised Statutes or section 371 of this title shall assess the validity of such determinations, depending upon the thoroughness evident in the consideration of the agency, the validity of the reasoning of the agency, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

(B) Savings clause

Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

(6) Comptroller determination not delegable

Any regulation, order, or determination made by the Comptroller of the Currency under paragraph (1)(B) shall be made by the Comptroller, and shall not be delegable to another officer or employee of the Comptroller of the Currency.

(c) Substantial evidence

No regulation or order of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption of such provision in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996).

(d) Periodic review of preemption determinations

(1) In general

The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall publish a notice in the Federal Register announcing the decision to continue or rescind the determination or a proposal to amend the determination. Any such notice of a proposal to amend a determination and the subsequent resolution of such proposal shall comply with the procedures set forth in subsections (a) and (b) of section 43 of this title.

(2) Reports to Congress

At the time of issuing a review conducted under paragraph (1), the Comptroller of the Currency shall submit a report regarding such review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report submitted to the respective committees shall address whether the agency intends to continue, rescind, or propose to amend any determination that a provision of Federal law preempts a State consumer financial law, and the reasons therefor.

(e) Application of State consumer financial law to subsidiaries and affiliates

Notwithstanding any provision of title 62 of the Revised Statutes or section 371 of this title, a State consumer financial law shall apply to a subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank) to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.

(f) Preservation of powers related to charging interest

No provision of title 62 of the Revised Statutes shall be construed as altering or otherwise affecting the authority conferred by section 85 of this title for the charging of interest by a national bank at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of ''interest'' under such provision.

(g) Transparency of OCC preemption determinations

The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.

(h) Clarification of law applicable to nondepository institution subsidiaries and affiliates of national banks

(1) Definitions

For purposes of this subsection, the terms ''depository institution'', ''subsidiary'', and ''affiliate'' have the same meanings as in section 1813 of this title.

(2) Rule of construction

No provision of title 62 of the Revised Statutes or section 371 of this title shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank).

(i) Visitorial powers

(1)[1] In general

In accordance with the decision of the Supreme Court of the United States in Cuomo v. Clearing House Assn., L. L. C. (129 S. Ct. 2710 (2009)), no provision of title 62 of the Revised Statutes which relates to visitorial powers or otherwise limits or restricts the visitorial authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring an action against a national bank in a court of appropriate jurisdiction to enforce an applicable law and to seek relief as authorized by such law.

(j) Enforcement actions

The ability of the Comptroller of the Currency to bring an enforcement action under title 62 of the Revised Statutes or section 45 of title 15 does not preclude any private party from enforcing rights granted under Federal or State law in the courts.

(R.S. § 5136C, as added and amended Pub. L. 111–203, title X, §§ 1044(a), 1045, 1047(a), July 21, 2010, 124 Stat. 2014, 2017, 2018.)

REFERENCES IN TEXT

The International Banking Act of 1978, referred to in subsec. (a)(1)(B), is Pub. L. 95–369, Sept. 17, 1978, 92 Stat. 607, which enacted chapter 32 (§ 3101 et seq.) and sections 347d and 611a of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under sections 247, 611a, and 3101 of this title and formerly set out as notes under sections 36, 247, and 601 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

Title 62 of the Revised Statutes, referred to in subsecs. (b)(1)(C), (2), (4), (5)(A), (e), (f), (h)(2), (i)(1), and (j), was in the original a reference to ''this title'' or ''This title'' meaning title LXII of the Revised Statutes, consisting of R.S. §§ 5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

For classification of title LXII of the Revised Statutes of the United States, referred to in subsec. (b)(5)(B), see note above.

AMENDMENTS

2010—Subsec. (h). Pub. L. 111–203, § 1045, added subsec. (h).

Subsecs. (i), (j). Pub. L. 111–203, § 1047(a), added subsecs. (i) and (j).

[1] So in original. No par. (2) has been enacted.

EFFECTIVE DATE

Enactment and amendment of section by Pub. L. 111–203 effective on the designated transfer date, see section 1048 of Pub. L. 111–203, set out as a note under section 5551 of this title.

§ 26. Comptroller to determine if association can commence business

Whenever a certificate is transmitted to the Comptroller of the Currency, as provided in title 62 of the Revised Statutes, and the association transmitting the same notifies the Comptroller that all of its capital stock has been duly paid in, and that such association has complied with all the provisions of title 62 of the Revised Statutes required to be complied with before an association shall be authorized to commence the business of banking, the Comptroller shall examine into the condition of such association, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each of its directors, and the amount of the capital stock of which each is the owner in good faith, and generally whether such association has complied with all the provisions of title 62 of the Revised Statutes required to entitle it to engage in the business of banking; and shall cause to be made and attested by the oaths of a majority of the directors, and by the president or cashier of the association, a statement of all the facts necessary to enable the Comptroller to determine whether the association is lawfully entitled to commence the business of banking.

(R.S. § 5168; Pub. L. 86–230, § 2, Sept. 8, 1959, 73 Stat. 457.)

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in text, was in the original ''this Title'' meaning title LXII of the Revised Statutes, consisting of R.S. §§ 5133 to 5244, which are classified this section and to sections 16, 21, 22 to 24a, 25a, 25b, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. § 5168 derived from act June 3, 1864, ch. 106, § 17, 13 Stat. 104, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1959—Pub. L. 86–230 substituted ''all'' for ''at least 50 per centum'' before ''of its capital stock''.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 27. Certificate of authority to commence banking

(a) If, upon a careful examination of the facts so reported, and of any other facts which may come to the knowledge of the Comptroller, whether by means of a special commission appointed by him for the purpose of inquiring into

the condition of such association, or otherwise, it appears that such association is lawfully entitled to commence the business of banking, the Comptroller shall give to such association a certificate, under his hand and official seal, that such association has complied with all the provisions required to be complied with before commencing the business of banking, and that such association is authorized to commence such business. But the Comptroller may withhold from an association his certificate authorizing the commencement of business, whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by title 62 of the Revised Statutes. A National Bank Association, to which the Comptroller of the Currency has heretofore issued or hereafter issues such certificate, is not illegally constituted solely because its operations are or have been required by the Comptroller of the Currency to be limited to those of a trust company and activities related thereto.

(b)(1) The Comptroller of the Currency may also issue a certificate of authority to commence the business of banking pursuant to this section to a national banking association which is owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions or depository institution holding companies and is organized to engage exclusively in providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a ''banker's bank'').

(2) Any national banking association chartered pursuant to paragraph (1) shall be subject to such rules, regulations, and orders as the Comptroller deems appropriate, and, except as otherwise specifically provided in such rules, regulations, or orders, shall be vested with or subject to the same rights, privileges, duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the national banking laws to a national bank.

(R.S. §5169; Pub. L. 95–630, title XV, §1504, Nov. 10, 1978, 92 Stat. 3713; Pub. L. 96–221, title VII, §712(a), (c), Mar. 31, 1980, 94 Stat. 189, 190; Pub. L. 97–320, title IV, §404(a), Oct. 15, 1982, 96 Stat. 1511; Pub. L. 103–325, title III, §322(a)(2), Sept. 23, 1994, 108 Stat. 2227.)

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in subsec. (a), was in the original ''this Title'' meaning title LXII of the Revised Statutes, consisting of R.S. §§5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 25b, 26, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. §5169 derived from act June 3, 1864, ch. 106, §§12, 18, 13 Stat. 102, 104, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–325, §322(a)(2)(A), inserted ''or depository institution holding companies'' after ''by other depository institutions''.

Pub. L. 103–325, §322(a)(2)(B), which directed substitution of ''services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a 'banker's bank')'' for ''services for other depository institutions and their officers, directors and employees'', was executed by making the substitution for ''services for other depository institutions and their officers, directors, and employees'' to reflect the probable intent of Congress.

1982—Pub. L. 97–320 designated existing provisions as subsec. (a) and added subsec. (b).

1980—Pub. L. 96–221, §712(a), (c), temporarily inserted provisions relating to treatment of national banking associations as additional banks within the contemplation of section 1842 of this title. See Termination Date of 1980 Amendment note below.

1978—Pub. L. 95–630 inserted provision that a National Bank Association, to which the Comptroller of the Currency has heretofore issued or hereafter issues such certificate, is not illegally constituted solely because its operations are or have been required by the Comptroller of the Currency to be limited to those of a trust company and activities related thereto.

TERMINATION DATE OF 1980 AMENDMENT

Section 712(c) of Pub. L. 96–221 provided that: ''The amendments made by this section [amending this section and section 1842 of this title] are hereby repealed on October 1, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1505 of Pub. L. 95–630 provided that: ''This title [amending this section and sections 1715z–10 and 2902 of this title and amending provisions set out as a note under section 1666f of Title 15, Commerce and Trade] shall take effect upon enactment [Nov. 10, 1978].''

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 28. Repealed. Pub. L. 103–325, title VI, §602(e)(1), Sept. 23, 1994, 108 Stat. 2291

Section, R.S. §5170, required publication of certificate of authority to commence banking for 60 days after issuance.

CODIFICATION

R.S. §5170 derived from act June 3, 1864, ch. 106, §18, 13 Stat. 104, which was the National Bank Act. See section 38 of this title.

§ 29. Power to hold real property

A national banking association may purchase, hold, and convey real estate for the following purposes, and for no others:

First. Such as shall be necessary for its accommodation in the transaction of its business.

Second. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as it shall purchase at sales under judgments, decrees, or mortgages held by the association, or shall purchase to secure debts due to it.

But no such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years except as otherwise provided in this section.

For real estate in the possession of a national banking association upon application by the association, the Comptroller of the Currency may approve the possession of any such real estate by such association for a period longer than five years, but not to exceed an additional five years, if (1) the association has made a good faith attempt to dispose of the real estate within the five-year period, or (2) disposal within the five-year period would be detrimental to the association. Upon notification by the association to the Comptroller of the Currency that such conditions exist that require the expenditure of funds for the development and improvement of such real estate, and subject to such conditions and limitations as the Comptroller of the Currency shall prescribe, the association may expend such funds as are needed to enable such association to recover its total investment.

Notwithstanding the five-year holding limitation of this section or any other provision of title 62 of the Revised Statutes, any national banking association which on October 15, 1982, held, directly or indirectly, real estate, including any subsurface rights or interests therein, that since December 31, 1979, had not been valued on the books of such association for more than a nominal amount, may continue to hold such real estate, rights, or interests for such longer period of time as would be permitted a State chartered bank by the law of the State in which the association is located if the aggregate amount of earnings from such real estate, rights, or interests is separately disclosed in the annual financial statements of the association.

(R.S. § 5137; Feb. 25, 1927, ch. 191, § 3, 44 Stat. 1227; Pub. L. 96–221, title VII, § 701(a), Mar. 31, 1980, 94 Stat. 186; Pub. L. 97–25, title III, § 302, July 27, 1981, 95 Stat. 145; Pub. L. 97–320, title IV, § 413, Oct. 15, 1982, 96 Stat. 1521.)

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in last par., was in the original ''this title'' meaning title LXII of the Revised Statutes, consisting of R.S. §§ 5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 25b, 26, 27, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. § 5137 derived from act June 3, 1864, ch. 106, § 28, 13 Stat. 107, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1982—Pub. L. 97–320 substituted ''Notwithstanding the five-year holding limitation of this section or any other provision of title 62 of the Revised Statutes, any national banking association which on October 15, 1982, held, directly or indirectly, real estate, including any subsurface rights or interests therein, that since December 31, 1979, had not been valued on the books of such association for more than a nominal amount, may continue to hold such real estate, rights, or interests for such longer period of time as would be permitted a State chartered bank by the law of the State in which the association is located if the aggregate amount of earnings from such real estate, rights, or interests is separately disclosed in the annual financial statements of the association'' for ''Notwithstanding any other provision of this section, any national banking association which, on July 27, 1981, held title to and possession of real estate which was carried on the association's books at a nominal value on December 31, 1979, may continue to hold such real estate until December 31, 1982, if the earnings from such real estate are separately disclosed in the financial statements of the association''.

1981—Pub. L. 97–25 inserted provision that any national banking association which, on July 27, 1981, held title to and possession of real estate which was carried on the association's books at a nominal value on December 31, 1979, may continue to hold such real estate until December 31, 1982, if the earnings from such real estate are separately disclosed in the financial statements of the association.

1980—Pub. L. 96–221 inserted provisions relating to authorization to hold real estate in the possession of a national banking association upon application by the association.

1927—Par. First. Act Feb. 25, 1927, struck out ''immediate,'' before ''accommodation,'' in par. First.

§ 30. Change of name or location

(a) Name change

Any national banking association, upon written notice to the Comptroller of the Currency, may change its name, except that such new name shall include the word ''National''.

(b) Location change

Any national banking association, upon written notice to the Comptroller of the Currency, may change the location of its main office to any authorized branch location within the limits of the city, town, or village in which it is situated, or, with a vote of shareholders owning two-thirds of the stock of such association for a relocation outside such limits and upon receipt of a certificate of approval from the Comptroller of the Currency, to any other location within or outside the limits of the city, town, or village in which it is located, but not more than thirty miles beyond such limits.

(c) Coordination with section 36 of this title

In the case of a national bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State from which the bank relocated such office only to the extent authorized in section 36(e)(2) of this title.

(d) Retention of "Federal" in name of converted Federal savings association

(1) In general

Notwithstanding subsection (a) of this section or any other provision of law, any depository institution, the charter of which is converted from that of a Federal savings association to a national bank or a State bank after November 12, 1999, may retain the term ''Fed-

eral'' in the name of such institution if such institution remains an insured depository institution.

(2) Definitions

For purposes of this subsection, the terms ''depository institution'', ''insured depository institution'', ''national bank'', and ''State bank'' have the meanings given those terms in section 1813 of this title.

(May 1, 1886, ch. 73, § 2, 24 Stat. 18; Pub. L. 86–230, § 3, Sept. 8, 1959, 73 Stat. 457; Pub. L. 97–320, title IV, § 405(a), Oct. 15, 1982, 96 Stat. 1512; Pub. L. 97–457, § 19(a), Jan. 12, 1983, 96 Stat. 2509; Pub. L. 103–328, title I, § 102(b)(2), Sept. 29, 1994, 108 Stat. 2350; Pub. L. 106–102, title VII, § 723, Nov. 12, 1999, 113 Stat. 1471.)

AMENDMENTS

1999—Subsec. (d). Pub. L. 106–102 added subsec. (d).

1994—Subsec. (c). Pub. L. 103–328 added subsec. (c).

1983—Subsec. (b). Pub. L. 97–457 inserted ''for a relocation outside such limits'' after ''stock of such association''.

1982—Pub. L. 97–320 designated existing provisions as subsec. (a), substituted provisions permitting a change of name upon written notice to the Comptroller, such new name to include ''National'', for provisions permitting a change of name or location of the main office, with approval of the Comptroller, within city limits, etc., or outside such limits by vote of shareholders, such change to be validated by certificate of approval, and added subsec. (b).

1959—Pub. L. 86–230 required approval of Comptroller of the Currency before a national bank could change location of its main office within the limitations of the city, town, or village in which it is situated.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 31. Rights and liabilities as affected by change of name

All debts, liabilities, rights, provisions, and powers of the association under its old name shall devolve upon and inure to the association under its new name.

(May 1, 1886, ch. 73, § 3, 24 Stat. 19.)

§ 32. Liabilities and suits as affected by change of name or location

Nothing contained in sections 30 and 31 of this title shall be so construed as in any manner to release any national banking association under its old name or at its old location from any liability, or affect any action or proceeding in law in which said association may be or become a party or interested.

(May 1, 1886, ch. 73, § 4, 24 Stat. 19.)

§§ 33 to 34c. Transferred

CODIFICATION

Act Nov. 7, 1918, ch. 209, 40 Stat. 1043, as amended, formerly classified to sections 33 to 34c of this title, which related to consolidation and merger of national banking associations and such associations and State banks, was completely amended by Pub. L. 86–230, § 20, Sept. 8 1959 73 Stat. 460, and is classified to sections 215 to 215b of this title.

Section 33, acts Nov. 7, 1918, ch. 209, § 1, 40 Stat. 1043; June 16, 1933, ch. 89, § 24(a), 48 Stat. 190; Aug. 23, 1935, ch. 614, § 330, 49 Stat. 718, related to consolidation of national banks, capital stock, dissenting shareholders, notice and valuation of shares. See section 215 of this title.

Section 34, act Nov. 7, 1918, ch. 209, § 2, 40 Stat. 1044, related to effect of consolidation on rights and liabilities. See section 215 of this title.

Section 34a, act Nov. 7, 1918, ch. 209, § 3, as added Feb. 25, 1927, ch. 191, § 1, 44 Stat. 1225, and amended June 16, 1933, ch. 89 § 24, 48 Stat. 190; Aug. 23, 1935, ch. 614, § 331, 49 Stat. 719; July 14, 1952, ch. 722, § 2, 66 Stat. 601, related to consolidation of State bank, etc. with national bank, capital stock and dissenting shareholders. See section 215 of this title.

Section 34b, act Nov. 7, 1918, ch. 209, § 4, as added July 14, 1952, ch. 722, § 1, 66 Stat. 599, related to merger of national banking associations or State banks into national banking associations. See section 215a of this title.

Section 34c, act Nov. 7, 1918, ch. 209, § 5, as added July 14, 1952, ch. 722, § 1, 66, Stat. 601, related to definitions. See section 215b of this title.

§ 35. Organization of State banks as national banking associations

Any bank incorporated by special law of any State or of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a national banking association under the provisions of the existing laws may, by the vote of the shareholders owning not less than fifty-one per centum of the capital stock of such bank or banking association, with the approval of the Comptroller of the Currency be converted into a national banking association, with a name that contains the word ''national'': *Provided*, *however*, That said conversion shall not be in contravention of the State law. In such case the articles of association and organization certificate may be executed by a majority of the directors of the bank or banking institution, and the certificate shall declare that the owners of fifty-one per centum of the capital stock have authorized the directors to make such certificate and to change or convert the bank or banking institution into a national association. A majority of the directors, after executing the articles of association and the organization certificate, shall have power to execute all other papers and to do whatever may be required to make its organization perfect and complete as a national association. The shares of any such bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the association until others are elected or appointed in accordance with the provisions of the statutes of the United States. When the Comptroller has given to such bank or banking association a certificate that the provisions of this Act have been complied with, such bank or banking association, and all its stockholders, officers, and employees shall have the same powers and privileges and shall be subject to the same duties, liabilities, and regulations, in all respects, as shall have been prescribed by the Federal Reserve Act [12 U.S.C. 221 et seq.] and the National Banking Act for associations originally organized as national banking associations.

The Comptroller of the Currency may, in his discretion and subject to such conditions as he may prescribe, permit such converting bank to retain and carry at a value determined by the Comptroller such of the assets of such converting bank as do not conform to the legal requirements relative to assets acquired and held by national banking associations. The Comptroller of the Currency may not approve the conversion of a State bank or State savings association to a national banking association or Federal savings association during any period in which the State bank or State savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, a State bank supervisor or the appropriate Federal banking agency with respect to a significant supervisory matter or a final enforcement action by a State Attorney General.

(R.S. § 5154; Dec. 23, 1913, ch. 6, § 8, 38 Stat. 258; Aug. 23, 1935, ch. 614, title III, § 312, 49 Stat. 711; Pub. L. 97–457, § 19(b), Jan. 12, 1983, 96 Stat. 2509; Pub. L. 111–203, title VI, § 612(b), July 21, 2010, 124 Stat. 1612.)

REFERENCES IN TEXT

This Act, referred to in first par., may refer to the Federal Reserve Act, act Dec. 23, 1913, from which this wording is derived; or section 5154 of the Revised Statutes which the Federal Reserve Act amended; or act June 3, 1864, from which R.S. § 5154 was derived; or Congress might have intended to refer to the preceding provisions of the 1913 amendment. Similar reference in R.S. § 5154 prior to 1913 amendment was to ''this Title,'' meaning title 62 of the Revised Statutes, which title comprised the National Bank Act (June 3, 1864, ch. 106, 13 Stat. 99). See section 38 of this title. Note also specific reference to the Federal Reserve Act and the National Banking Act in first par.

The Federal Reserve Act, referred to in text, is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The National Banking Act, referred to in text, is probably intended to be a reference to the National Bank Act, act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified principally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code see References in Text note set out under section 38 of this title.

CODIFICATION

R.S. § 5154 derived from act June 3, 1864, ch. 106, § 44, 13 Stat. 112, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2010—Pub. L. 111–203 inserted at end ''The Comptroller of the Currency may not approve the conversion of a State bank or State savings association to a national banking association or Federal savings association during any period in which the State bank or State savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, a State bank supervisor or the appropriate Federal banking agency with respect to a significant supervisory matter or a final enforcement action by a State Attorney General.''

1983—Pub. L. 97–457 substituted ''with a name that contains the word 'national' '' for ''with any name approved by the Comptroller of the Currency'' after ''national banking association,''.

1935—Act Aug. 23, 1935, added last par.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

EXCEPTION TO PROHIBITION ON APPROVAL OF CONVERSIONS

Pub. L. 111–203, title VI, § 612(d), July 21, 2010, 124 Stat. 1613, provided that: ''The prohibition on the approval of conversions under the amendments made by subsections (a), (b), and (c) [enacting section 214d of this title and amending this section and section 1464 of this title] shall not apply, if—

''(1) the Federal banking agency that would be the appropriate Federal banking agency after the proposed conversion gives the appropriate Federal banking agency or State bank supervisor that issued the cease and desist order (or other formal enforcement order) or memorandum of understanding, as appropriate, written notice of the proposed conversion including a plan to address the significant supervisory matter in a manner that is consistent with the safe and sound operation of the institution;

''(2) within 30 days of receipt of the written notice required under paragraph (1), the appropriate Federal banking agency or State bank supervisor that issued the cease and desist order (or other formal enforcement order) or memorandum of understanding, as appropriate, does not object to the conversion or the plan to address the significant supervisory matter;

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

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

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

NOTIFICATION OF PENDING ENFORCEMENT ACTIONS

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

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

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

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

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

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

''(B) provide the Federal banking agency that would be the appropriate Federal banking agency for

the institution after the proposed conversion access to all investigative and supervisory information relating to the proceedings described in subparagraph (A).''

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

§ 36. Branch banks

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

(a) Lawful and continuous operation

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

(b) Converted State banks

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

(A) might be established under subsection (c) of this section as a new branch of the resulting national bank, and is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank;

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

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

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

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

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

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

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

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

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

(c) New branches

A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: *Provided*, That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock.

(d) Branches resulting from interstate merger transactions

A national bank resulting from an interstate merger transaction (as defined in section 1831u(f)(6)[1] of this title) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B) of this

[1] See References in Text note below.

section) of such bank in accordance with section 1831u of this title.

(e) Exclusive authority for additional branches

(1) In general

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

(2) Retention of branches

In the case of a national bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State which was the bank's home State (as defined in subsection (g)(3)(B) of this section) before the relocation of such office only to the extent the bank would be authorized, under this section or any other provision of law referred to in paragraph (1), to acquire, establish, or commence to operate a branch in such State if—

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

(B) the branch resulted from—

(i) an interstate merger transaction approved pursuant to section 1831u of this title; or

(ii) a transaction after May 31, 1997, pursuant to which the bank received assistance from the Federal Deposit Insurance Corporation under section 1823(c) of this title.

(f) Law applicable to interstate branching operations

(1) Law applicable to national bank branches

(A) In general

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

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

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

(B) Enforcement of applicable State laws

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

(C) Review and report on actions by Comptroller

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

(2) Treatment of branch as bank

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

(3) Rule of construction

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

(g) State "opt-in" election to permit interstate branching through de novo branches

(1) In general

Subject to paragraph (2), the Comptroller of the Currency may approve an application by a national bank to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch if—

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

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

(2) Conditions on establishment and operation of interstate branch

(A) Establishment

An application by a national bank to establish and operate a de novo branch in a host State shall be subject to the same requirements and conditions to which an application for an interstate merger transaction is subject under paragraphs (1), (3), and (4) of section 1831u(b) of this title.

(B) Operation

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

(3) Definitions

The following definitions shall apply for purposes of this section:

(A) De novo branch

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

(i) is originally established by the national bank as a branch; and

(ii) does not become a branch of such bank as a result of—

(I) the acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or

(II) the conversion, merger, or consolidation of any such institution or branch.

(B) Home State

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

(C) Host State

The term ''host State'' means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(h) Repealed. Pub. L. 104–208, div. A, title II, § 2204, Sept. 30, 1996, 110 Stat. 3009–405

(i) Prior approval of branch locations

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

(j) "Branch" defined

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

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

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

(*l*) "State bank" and "bank" defined

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

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

REFERENCES IN TEXT

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

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

CODIFICATION

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

AMENDMENTS

2010—Subsec. (g)(1)(A). Pub. L. 111–203 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''there is in effect in the host State a law that—

''(i) applies equally to all banks; and

''(ii) expressly permits all out-of-State banks to establish de novo branches in such State; and''.

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

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

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

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

Subsec. (g). Pub. L. 103–328, § 103(a), added subsec. (g).

Pub. L. 103–328, § 102(b)(1)(A), redesignated subsec. (g) as (k).

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

1962—Subsec. (b). Pub. L. 87–721 substituted provisions permitting a national bank resulting from the conversion of a State bank to retain and operate as a branch any office which was a branch of the State bank immediately prior to conversion if such office might be established as a new branch of the resulting national bank, and is approved by the Comptroller for continued operation as a branch of the resulting bank, or any office which was a branch of any bank on Feb. 25, 1927, or any office which is approved by the Comptroller for continued operation as a branch, and a national bank resulting from consolidation of a national bank under whose charter the consolidation is effected with another bank or banks to retain and operate any office which, immediately prior to consolidation, was in operation as a main office or branch office of any bank (other than the national bank) participating in the consolidation if it might be established as a new branch of the resulting bank, and if the Comptroller approves of its continued operation, or was in operation as a branch of any bank participating in the consolidation and which, on Feb. 25, 1927, was in operation as a branch of any bank, or was in operation as a branch of the national bank and which, on Feb. 25, 1927, was not in operation as a branch of any bank, if the Comptroller approves of its continued operation, for provisions which permitted State banks converted into or consoli-

dated with national banking associations after Feb. 25, 1927, or two or more national banking associations which are consolidated, to retain and operate only those branches which may have been in lawful operation on Feb. 25, 1927, and inserted provisions prohibiting the Comptroller from granting approval under clauses (1)(C) and (2)(C) if a State bank resulting from the conversion or consolidation would be prohibited by law of the State from retaining and operating as a branch an identically situated office which was a branch of the national bank or State bank immediately prior to the conversion or consolidation.

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

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

1933—Subsecs. (c), (d). Act June 16, 1963, amended subsecs. (c) and (d).

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

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

RIGHT OF STATE TO OPT OUT

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

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

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

§ 37. Associations governed by chapter

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

(R.S. § 5157.)

REFERENCES IN TEXT

Chapters 2, 3, and 4 of title 62 of the Revised Statutes, referred to in text, was in the original ''chapters two, three, and four of this Title,'' meaning chapters 2, 3, and 4 of title 62 of the Revised Statutes, consisting of R.S. §§ 5157 to 5244, which are classified to this section and sections 16, 26, 27, 43, 55, 56, 60, 62, 81, 83 to 86, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 481 to 485, 501, 541, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5157 to 5244 to the Code, see Tables.

§ 38. The National Bank Act

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

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

REFERENCES IN TEXT

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

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

Nothing in title 62 of the Revised Statutes shall affect any appointments made, acts done, or proceedings had or commenced prior to the third day of June 1864, in or toward the organization of any national banking association under the act of February 25, 1863; but all associations which, on the third day of June 1864, were organized or commenced to be organized under that act, shall enjoy all the rights and privileges granted, and be subject to all the duties, liabilities, and restrictions imposed by title 62 of the Revised Statutes, notwithstanding all the steps prescribed by title 62 of the Revised Statutes for the organization of associations were not pursued, if such associations were duly organized under that act.

(R.S. § 5156.)

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in text, was in the original ''this Title'' meaning title LXII of the Revised Statutes, consisting of R.S. §§ 5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

Act of February 25, 1863, referred to in text, was act Feb. 25, 1863, ch. 58, 12 Stat. 665, which was the original National Bank Act, and was repealed by act June 3, 1864, ch. 106, § 62, 13 Stat. 118.

CODIFICATION

R.S. § 5156 derived from act June 3, 1864, ch. 106, § 62, 13 Stat. 118, which was the National Bank Act. See section 38 of this title.

§ 40. Virgin Islands; extension of National Bank Act

The National Bank Act, as amended [12 U.S.C. 21 et seq.], and all other Acts of Congress relating to national banks, shall, insofar as not locally inapplicable after July 19, 1932, apply to the Virgin Islands of the United States.

(July 19, 1932, ch. 508, 47 Stat. 703.)

REFERENCES IN TEXT

The National Bank Act, referred to in text, is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified principally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

§ 41. Guam; extension of National Bank Act

The National Bank Act [12 U.S.C. 21 et seq.], and all other Acts of Congress relating to national banks, shall, insofar as not locally inapplicable after August 1, 1956, apply to Guam.

(Aug. 1, 1956, ch. 852, § 2, 70 Stat. 908.)

REFERENCES IN TEXT

The National Bank Act, referred to in text, is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified principally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

§ 42. Territorial application

The provisions of all Acts of Congress relating to national banks shall apply in the several States, the District of Columbia, the several Territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(Pub. L. 86–230, § 14, Sept. 8, 1959, 73 Stat. 458.)

§ 43. Interpretations concerning preemption of certain State laws

(a) Notice and opportunity for comment required

Before issuing any opinion letter or interpretive rule, in response to a request or upon the agency's own motion, that concludes that Federal law preempts the application to a national bank of any State law regarding community reinvestment, consumer protection, fair lending, or the establishment of intrastate branches, or before making a determination under section 36(f)(1)(A)(ii) of this title, the appropriate Federal banking agency (as defined in section 1813 of this title) shall—

(1) publish in the Federal Register notice of the preemption or discrimination issue that the agency is considering (including a description of each State law at issue);

(2) give interested parties not less than 30 days in which to submit written comments; and

(3) in developing the final opinion letter or interpretive rule issued by the agency, or making any determination under section 36(f)(1)(A)(ii) of this title, consider any comments received.

(b) Publication required

The appropriate Federal banking agency shall publish in the Federal Register—

(1) any final opinion letter or interpretive rule concluding that Federal law preempts the application of any State law regarding community reinvestment, consumer protection, fair lending, or establishment of intrastate branches to a national bank; and

(2) any determination under section 36(f)(1)(A)(ii) of this title.

(c) Exceptions

(1) No new issue or significant basis

This section shall not apply with respect to any opinion letter or interpretive rule that—

(A) raises issues of Federal preemption of State law that are essentially identical to those previously resolved by the courts or on which the agency has previously issued an opinion letter or interpretive rule; or

(B) responds to a request that contains no significant legal basis on which to make a preemption determination.

(2) Judicial, legislative, or intragovernmental materials

This section shall not apply with respect to materials prepared for use in judicial proceedings or submission to Congress or a Member of Congress, or for intragovernmental use.

(3) Emergency

The appropriate Federal banking agency may make exceptions to subsection (a) of this section if—

(A) the agency determines in writing that the exception is necessary to avoid a serious and imminent threat to the safety and soundness of any national bank; or

(B) the opinion letter or interpretive rule is issued in connection with—

(i) an acquisition of 1 or more banks in default or in danger of default (as such terms are defined in section 1813 of this title); or

(ii) an acquisition with respect to which the Federal Deposit Insurance Corporation provides assistance under section 1823(c) of this title.

(R.S. § 5244, as added Pub. L. 103–328, title I, § 114, Sept. 29, 1994, 108 Stat. 2366.)

CODIFICATION

Another R.S. § 5244 is classified to section 8 of Title 33, Navigation and Navigable Waters.

SUBCHAPTER II—CAPITAL, STOCK, AND STOCKHOLDERS

§ 51. Repealed. Pub. L. 106–569, title XII, § 1233(c), Dec. 27, 2000, 114 Stat. 3037

Section, R.S. § 5138; Mar. 14, 1900, ch. 41, § 10, 31 Stat. 48; Feb. 25, 1927, ch. 191, § 4, 44 Stat. 1227; June 16, 1933, ch. 89, § 17(a), 48 Stat. 185; Aug. 23, 1935, ch. 614, title III, § 309, 49 Stat. 709, related to capital and surplus requirements.

§ 51a. Preferred stock; issuance authorized

Notwithstanding any other provision of law, any national banking association may, with the approval of the Comptroller of the Currency and by vote of shareholders owning a majority of the stock of such association, upon not less than five days' notice, given by registered mail or by certified mail pursuant to action taken by its board of directors, issue preferred stock of one or more classes, in such amount and with such par value as shall be approved by said Comptroller, and make such amendments to its articles of association as may be necessary for this purpose; but, in the case of any newly organized national banking association which has not yet is-

sued common stock, the requirement of notice to and vote of shareholders shall not apply. No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in and notice thereof, duly acknowledged before a notary public by the president, vice president, or cashier of said association, has been transmitted to the Comptroller of the Currency and his certificate obtained specifying the amount of such issue of preferred stock and his approval thereof and that the amount has been duly paid in as a part of the capital of such association; which certificate shall be deemed to be conclusive evidence that such preferred stock has been duly and validly issued.

(Mar. 9, 1933, ch. 1, title III, § 301, 48 Stat. 5; June 15, 1933, ch. 79, 48 Stat. 147; Aug. 23, 1935, ch. 614, title III, § 336, 49 Stat. 720; Pub. L. 86–507, § 1(9), June 11, 1960, 74 Stat. 200.)

AMENDMENTS

1960—Pub. L. 86–507 inserted ''or by certified mail'' after ''registered mail''.

1935—Act Aug. 23, 1935, amended last sentence generally.

1933—Act June 15, 1933, struck out all of former section and inserted a new section which incorporated all former provisions and inserted ''of one or more classes,'' in first sentence.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 51b. Dividends, voting, and retirement of preferred stock; individual liability

(a) Notwithstanding any other provision of law, whether relating to restriction upon the payment of dividends upon capital stock or otherwise, the holders of such preferred stock shall be entitled to receive such cumulative dividends and shall have such voting and conversion rights and such control of management, and such stock shall be subject to retirement in such manner and upon such conditions, as may be provided in the articles of association with the approval of the Comptroller of the Currency. The holders of such preferred stock shall not be held individually responsible as such holders for any debts, contracts, or engagements of such association, and shall not be liable for assessments to restore impairments in the capital of such association as now provided by law with reference to holders of common stock.

(b) No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full; and, if the association is placed in voluntary liquidation or a conservator or a receiver is appointed therefor, no payments shall be made to the holders of the common stock until the holders of the preferred stock shall have been paid in full the par value of such stock plus all accumulated dividends.

(Mar. 9, 1933, ch. 1, title III, § 302, 48 Stat. 5; June 15, 1933, ch. 79, 48 Stat. 148; Pub. L. 96–221, title VII, § 702, Mar. 31, 1980, 94 Stat. 186.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–221 struck out limitation on payment of cumulative dividends at a rate not exceeding 6 per centum per annum.

1933—Subsec. (a). Act June 15, 1933, struck out former subsec. (a) and inserted a new subsec. (a) which incorporated all former provisions and inserted ''Notwithstanding any other provision of law, whether relating to restriction upon the payment of dividends upon capital stock or otherwise'' and ''and conversion rights,'' in first sentence.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 51b–1. Consideration of preferred stock in determining impairment of capital; dividends; retirement

If any part of the capital of a national bank, State member bank, or bank applying for membership in the Federal Reserve System consists of preferred stock, the determination of whether or not the capital of such bank is impaired and the amount of such impairment shall be based upon the par value of its stock even though the amount which the holders of such preferred stock shall be entitled to receive in the event of retirement or liquidation shall be in excess of the par value of such preferred stock. If any such bank or trust company shall have outstanding any capital notes or debentures of the type which the Reconstruction Finance Corporation is authorized to purchase pursuant to the provisions of section 51d of this title, the capital of such bank may be deemed to be unimpaired if the sound value of its assets is not less than its total liabilities, including capital stock, but excluding such capital notes or debentures and any obligations of the bank expressly subordinated thereto. Notwithstanding any other provision of law, the holders of preferred stock issued by a national banking association pursuant to the provisions of the Emergency Banking and Bank Conservation Act, approved March 9, 1933, as amended, shall be entitled to receive such cumulative dividends on the purchase price received by the association for such stock and, in the event of the retirement of such stock, to receive such retirement price, not in excess of such purchase price plus all accumulated dividends, as may be provided in the articles of association with the approval of the Comptroller of the Currency. If the association is placed in voluntary liquidation, or if a conservator or a receiver is appointed therefor, no payment shall be made to the holders of common stock until the holders of preferred stock shall have been paid in full such amount as may be provided in the articles of association with the approval of the Comptroller of the Currency, not in excess of such purchase price of such preferred stock plus all accumulated dividends.

(Aug. 23, 1935, ch. 614, title III, § 345, 49 Stat. 722; Pub. L. 96–221, title VII, § 703, Mar. 31, 1980, 94 Stat. 186.)

REFERENCES IN TEXT

Section 51d of this title, referred to in text, which was section 304 of the Emergency Banking and Bank

Conservation Act, approved March 9, 1933, ch. 1, 48 Stat. 6, as amended, and which authorized the Reconstruction Finance Corporation, upon the request of the Secretary of the Treasury approved by the President, to purchase, or to make loans upon, the capital stock of any bank or trust company requiring funds for capital purposes in connection with its organization or reorganization, and which made provision for the purchase of the capital notes of banks organized in States which subject holders of preferred stock to double liability and for the sale of any stock or notes purchased under such authority, was repealed by act June 30, 1947, ch. 166, title II, § 206(b), (*o*), 61 Stat. 208. However, according to the information received from the Department of the Treasury, the second sentence of this section is not obsolete even though it contains such obsolete reference to section 51d of this title, and even though, under 1957 Reorg. Plan No. 1, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, the Reconstruction Finance Corporation was abolished, for many banks have outstanding debentures which they obtained pursuant to the provisions of section 51d, and which they are not required to redeem; and their benefits or entitlements conferred by the second sentence of this section will remain until the debentures are redeemed.

The Emergency Banking and Bank Conservation Act, approved March 9, 1933, as amended, referred to in text, is act Mar. 9, 1933, ch. 1, 48 Stat. 1, as amended, which is classified to sections 51a, 51b, 51c, 51d, 95 to 95b, 201 to 212, 248, 347b, 347c, 347d, and 445 of this title and section 5 of Title 50, Appendix, War and National Defense.

AMENDMENTS

1980—Pub. L. 96–221 struck out limitation on payment of cumulative dividends at a rate not exceeding 6 per centum per annum.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 51c. "Common stock", "capital", and "capital stock" defined

The term ''common stock'' as used in sections 51a, 51b, 51c, and 51d[1] of this title means stock of national banking associations other than preferred stock issued under the provisions of said sections. The term ''capital'' as used in provisions of law relating to the capital of national banking associations shall mean the amount of unimpaired common stock plus the amount of preferred stock outstanding and unimpaired; and the term ''capital stock'', as used in sections 101, 177, and 178[1] of this title, shall mean only the amount of common stock outstanding.

(Mar. 9, 1933, ch. 1, title III, § 303, 48 Stat. 5.)

REFERENCES IN TEXT

Section 51d of this title, referred to in text, was repealed by act June 30, 1947, ch. 166, title II, § 206(b), (*o*), 61 Stat. 208. For effect of the repeal on outstanding debentures held by banks, see note under section 51b–1 of this title.

Sections 101, 177, and 178 of this title, referred to in text, were repealed by Pub. L. 103–325, title VI, § 602(f)(2), (5), Sept. 23, 1994, 108 Stat. 2292, 2293.

§§ 51d to 51f. Repealed. June 30, 1947, ch. 166, title II, § 206(b), (*o*), 61 Stat. 208

Section 51d, acts Mar. 9, 1933, ch. 1, title III, § 304, 48 Stat. 6; Mar. 24, 1933, ch. 8, § 2, 48 Stat. 21; Mar. 20, 1936, ch. 160, § 1, 49 Stat. 1185; June 25, 1940, ch. 427, § 1, 54 Stat. 572, related to subscription for and sale of preferred stock in banks by the Reconstruction Finance Corporation.

Sections 51e and 51f, act Mar. 20, 1936, ch. 160, §§ 2, 3, 49 Stat. 1185, related to rate of interest on loans and separability provisions.

§ 52. Par value and incidents of stock; transfer of shares

The capital stock of each association shall be divided into shares of $100 each, or into shares of such less amount as may be provided in the articles of association, and be deemed personal property, and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired.

Certificates issued after August 23, 1935, representing shares of stock of the association shall state (1) the name and location of the association, (2) the name of the holder of record of the stock represented thereby, (3) the number and class of shares which the certificate represents, and (4) if the association shall issue stock of more than one class, the respective rights, preferences, privileges, voting rights, powers, restrictions, limitations, and qualifications of each class of stock issued shall be stated in full or in summary upon the front or back of the certificates or shall be incorporated by a reference to the articles of association set forth on the front of the certificates. Every certificate shall be signed by the president and the cashier of the association, or by such other officers as the by-laws of the association shall provide, and shall be sealed with the seal of the association.

After August 23, 1935, no certificate evidencing the stock of any such association shall bear any statement purporting to represent the stock of any other corporation, except a member bank or a corporation engaged on June 16, 1934, in holding the bank premises of such association, nor shall the ownership, sale, or transfer of any certificate representing the stock of any such association be conditioned in any manner whatsoever upon the ownership, sale, or transfer of a certificate representing the stock of any other corporation, except a member bank or a corporation engaged on June 16, 1934 in holding the bank premises of such association: *Provided*, That this section shall not operate to prevent the ownership, sale, or transfer of stock of any other corporation being conditioned upon the ownership, sale, or transfer of a certificate representing stock of a national banking association.

(R.S. § 5139; Feb. 25, 1927, ch. 191, § 16, 44 Stat. 1233; June 16, 1933, ch. 89, § 18, 48 Stat. 186; Aug. 23, 1935, ch. 614, title III, §§ 310(a), 335, 49 Stat. 710, 720.)

CODIFICATION

R.S. § 5139 derived from act June 3, 1864, ch. 106, § 12, 13 Stat. 102, which was the National Bank Act. See section 38 of this title.

[1] See References in Text note below.

AMENDMENTS

1935—Act Aug. 23, 1935, § 335, added second par.

Act Aug. 23, 1935, § 310(a), among other changes in last par., inserted proviso.

1933—Act June 16, 1933, added last par.

1927—Act Feb. 25, 1927, inserted ''or into shares of such less amount as may be provided in the articles of association'' in first sentence.

§ 53. When capital stock paid in

All of the capital stock of every national banking association shall be paid in before it shall be authorized to commence business.

(R.S. § 5140; Pub. L. 86–230, § 4, Sept. 8, 1959, 73 Stat. 457.)

CODIFICATION

R.S. § 5140 derived from act June 3, 1864, ch. 106, § 14, 13 Stat. 103, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1959—Pub. L. 86–230 substituted requirement that all the capital stock of a national bank must be paid in before it commences business for permissive authority to be open for business upon payment of 50 per centum of the capital stock and installment payment of the remaining 50 per centum.

§ 54. Repealed. Pub. L. 86–230, § 5, Sept. 8, 1959, 73 Stat. 457

Section, R.S. § 5141, related to failure to pay installments, remedy and effect if reduction of capital resulted.

§ 55. Enforcing payment of deficiency in capital stock; assessments; liquidation; receivership

Every association which shall have failed to pay up its capital stock, as required by law, and every association whose capital stock shall have become impaired by losses or otherwise, shall, within three months after receiving notice thereof from the Comptroller of the Currency, pay the deficiency in the capital stock, by assessment upon the shareholders pro rata for the amount of capital stock held by each; and the Treasurer of the United States shall withhold the interest upon all bonds held by him in trust for any such association, upon notification from the Comptroller of the Currency, until otherwise notified by him. If any such association shall fail to pay up its capital stock, and shall refuse to go into liquidation, as provided by law, for three months after receiving notice from the comptroller, a receiver may be appointed to close up the business of the association, according to the provisions of section 192 of this title. *And provided*, That if any shareholder or shareholders of such bank shall neglect or refuse, after three months' notice, to pay the assessment, as provided in this section, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such shareholder or shareholders to be sold at public auction (after thirty days' notice shall be given by posting such notice of sale in the office of the bank, and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto,)[1] to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders.

(R.S. § 5205; June 30, 1876, ch. 156, § 4, 19 Stat. 64.)

CODIFICATION

R.S. § 5205 derived from act Mar. 3, 1873, ch. 269, § 1, 17 Stat. 603.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, formerly set out in the Appendix to Title 5, Government Organization and Employees. See section 321(c) of Title 31, Money and Finance. The Comptroller of the Currency and the Treasurer of the United States, both referred to in this section, are officers of the Treasury Department, but such Plan excepted, from the transfer, any function vested by law in the Comptroller of the Currency.

APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, § 4, 47 Stat. 1567.

§ 56. Prohibition on withdrawal of capital; unearned dividends

No association, or any member thereof, shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by any association, while it continues its banking operations, to an amount greater than its undivided profits, subject to other applicable provisions of law. But nothing in this section shall prevent the reduction of the capital stock of the association under section 59 of this title.

(R.S. § 5204; Pub. L. 103–325, title VI, § 602(h)(1), Sept. 23, 1994, 108 Stat. 2294.)

CODIFICATION

R.S. § 5204 derived from act June 3, 1864, ch. 106, § 38, 13 Stat. 110, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1994—Pub. L. 103–325 substituted ''undivided profits, subject to other applicable provisions of law'' for ''net profits then on hand, deducting therefrom its losses and bad debts'' in second sentence and struck out after second sentence ''All debts due to any associations, on which interest is past due and unpaid for a period of six months, unless the same are well secured, and in process of collection, shall be considered bad debts within the meaning of this section.''

§ 57. Increase of capital by provision in articles of association

Any national banking association may, with the approval of the Comptroller of the Currency, and by a vote of shareholders owning two-thirds of the stock of such associations, increase its

[1] So in original.

capital stock to any sum approved by the said comptroller, but no increase in capital shall be valid until the whole amount of such increase is paid in and notice thereof, duly acknowledged before a notary public by the president, vice president, or cashier of said association, has been transmitted to the Comptroller of the Currency and his certificate obtained specifying the amount of such increase in capital stock and his approval thereof, and that it has been duly paid in as part of the capital of such association: *Provided, however*, That a national banking association may, with the approval of the Comptroller of the Currency, and by the vote of shareholders owning two-thirds of the stock of such association, increase its capital stock by the declaration of a stock dividend, provided that the surplus of said association, after the approval of the increase, shall be at least equal to 20 per centum of the capital stock as increased. Such increase shall not be effective until a certificate certifying to such declaration of dividend, signed by the president, vice president, or cashier of said association and duly acknowledged before a notary public, shall have been forwarded to the Comptroller of the Currency and his certificate obtained specifying the amount of such increase of capital stock by stock dividend, and his approval thereof.

(R.S. §5142; Feb. 25, 1927, ch. 191, §5, 44 Stat. 1227.)

CODIFICATION

R.S. §5142 derived from act June 3, 1864, ch. 106, §13, 13 Stat. 103, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1927—Act Feb. 25, 1927, among other changes, inserted proviso.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 58. Repealed. Pub. L. 86–230, § 6, Sept. 8, 1959, 73 Stat. 457

Section, act May 1, 1886, ch. 73, §1, 24 Stat. 18, related to increase of capital by vote of shareholders. See section 57 of this title.

§ 59. Reduction of capital

(a) In general

Subject to the approval of the Comptroller of the Currency, a national banking association may, by a vote of shareholders owning, in the aggregate, two-thirds of its capital stock, reduce its capital.

(b) Shareholder distributions authorized

As part of its capital reduction plan approved in accordance with subsection (a), and with the affirmative vote of shareholders owning at least two thirds of the shares of each class of its stock outstanding (each voting as a class), a national banking association may distribute cash or other assets to its shareholders.

(R.S. §5143; Dec. 23, 1913, ch. 6, §28, 38 Stat. 274; Aug. 23, 1935, ch. 614, title III, §334, 49 Stat. 720; Pub. L. 109–351, title III, §304, Oct. 13, 2006, 120 Stat. 1970.)

CODIFICATION

R.S. §5143 derived from act June 3, 1864, ch. 106, §13, 13 Stat. 103, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2006—Pub. L. 109–351 amended section generally. Prior to amendment, section read as follows: ''Any association formed under title 62 of the Revised Statutes may, by the vote of shareholders owning two-thirds of its capital stock, reduce its capital to any sum not below the amount required by title 62 of the Revised Statutes to authorize the formation of associations; but no such reduction shall be allowable which will reduce the capital of the association below the amount required for its outstanding circulation, nor shall any reduction be made until the amount of the proposed reduction has been reported to the Comptroller of the Currency and such reduction has been approved by said Comptroller of the Currency and no shareholder shall be entitled to any distribution of cash or other assets by reason of any reduction of the common capital of any association unless such distribution shall have been approved by the Comptroller of the Currency and by the affirmative vote of at least two-thirds of the shares of each class of stock outstanding, voting as classes.''

1935—Act Aug. 23, 1935, substituted ''and no shareholder shall be entitled to any distribution of cash or other assets by reason of any reduction of the common capital of any association unless such distribution shall have been approved by the Comptroller of the Currency and by the affirmative vote of at least two-thirds of the shares of each class of stock outstanding, voting as classes'' for ''and by the Federal Reserve Board or by the organization committee pending the organization of the Federal Reserve Board''.

§ 60. National bank dividends

(a) In general

Subject to subsection (b), the directors of any national bank may declare a dividend of so much of the undivided profits of the bank as the directors judge to be expedient.

(b) Approval required under certain circumstances

A national bank may not declare and pay dividends in any year in excess of an amount equal to the sum of the total of the net income of the bank for that year and the retained net income of the bank for the preceding 2 years, minus the sum of any transfers required by the Comptroller of the Currency and any transfers required to be made to a fund for the retirement of any preferred stock, unless the Comptroller of the Currency approves the declaration and payment of dividends in excess of such amount.

(R.S. §5199; Aug. 23, 1935, ch. 614, title III, §315, 49 Stat. 712; Pub. L. 86–230, §21(a), Sept. 8, 1959, 73 Stat. 465; Pub. L. 103–325, title VI, §602(h)(2), Sept. 23, 1994, 108 Stat. 2294; Pub. L. 109–351, title III, §302(a), Oct. 13, 2006, 120 Stat. 1970.)

CODIFICATION

R.S. §5199 derived from act June 3, 1864, ch. 106, §33, 13 Stat. 109, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2006—Pub. L. 109–351 amended section generally. Prior to amendment, section related to periodic declarations

of dividends subject to certain surplus fund requirements and to the approval of the Comptroller of the Currency in certain situations.

1994—Subsec. (a). Pub. L. 103–325, § 602(h)(2)(A), (B), substituted ''undivided profits of the association, subject to the limitations in subsection (b) of this section,'' for ''net profits of the association'' in first sentence and ''net income'' for ''net profits'' wherever subsequently appearing.

Subsec. (b). Pub. L. 103–325, § 602(h)(2)(B), substituted ''net income'' for ''net profits'' in two places.

Subsec. (c). Pub. L. 103–325, § 602(h)(2)(C), struck out subsec. (c) which read as follows: ''For the purpose of this section the term 'net profits' shall mean the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets, after deducting from the total thereof all current operating expenses, actual losses, accrued dividends on preferred stock, if any, and all Federal and State taxes.''

1959—Pub. L. 86–230 designated existing provisions as subsec. (a), authorized the declaration of dividends, quarterly and annually, when at least one-tenth of the bank's net profits of the preceding half year or of the preceding two consecutive half-year periods has been carried to the surplus fund, respectively, and added subsecs. (b) and (c).

1935—Act Aug. 23, 1935, among other changes, inserted proviso.

§ 61. Shareholders' voting rights; cumulative and distributive voting; preferred stock; trust shares; proxies, liability restrictions; percentage requirement exclusion of trust shares

In all elections of directors, each shareholder shall have the right to vote the number of shares owned by him for as many persons as there are directors to be elected, or, if so provided by the articles of association of the national bank, to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal or to distribute them on the same principle among as many candidates as he shall think fit; and in deciding all other questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him; except that (1) this shall not be construed as limiting the voting rights of holders of preferred stock under the terms and provisions of articles of association, or amendments thereto, adopted pursuant to the provisions of section 51b of this title; (2) in the election of directors, shares of its own stock held by a national bank as sole trustee, whether registered in its own name as such trustee or in the name of its nominee, shall not be voted by the registered owner unless under the terms of the trust the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and unless such donor or beneficiary actually directs how such shares shall be voted; and (3) shares of its own stock held by a national bank and one or more persons as trustees may be voted by such other person or persons, as trustees, in the same manner as if he or they were the sole trustee. Shareholders may vote by proxies duly authorized in writing; but no officer, clerk, teller, or bookkeeper of such bank shall act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote. Whenever shares of stock cannot be voted by reason of being held by the bank as sole trustee such shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite percentage of shares.

(R.S. § 5144; June 16, 1933, ch. 89, § 19, 48 Stat. 186; Aug. 23, 1935, ch. 614, title III, § 311, 49 Stat. 710; Sept. 3, 1954, ch. 1263, § 21, 68 Stat. 1234; Pub. L. 86–114, § 4, July 28, 1959, 73 Stat. 264; Pub. L. 89–485, § 13(c), July 1, 1966, 80 Stat. 242; Pub. L. 109–351, title III, § 301, Oct. 13, 2006, 120 Stat. 1969.)

CODIFICATION

R.S. § 5144 derived from act June 3, 1864, ch. 106, § 11, 13 Stat. 102, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2006—Pub. L. 109–351 substituted ''or, if so provided by the articles of association of the national bank, to cumulate'' for ''or to cumulate'' and struck out comma after ''his shares shall equal''.

1966—Pub. L. 89–485 struck out: clause (4) requirement of a voting permit from the Board for voting shares controlled by a holding company affiliate of a national bank except when voting in favor of voluntary liquidation of an association; second par. definition of control of shares by a holding company affiliate; third par. prescribing procedure for obtaining a voting permit: application to Board, grant or denial of permit in the public interest, factors for consideration, and conditions described in subsecs. (a) to (e) for granting a permit; subsec. (a) requirement of agreement of the holding company affiliate to an examination of the affiliate by bank examiners, reports by such examiners, examination of affiliated banks, and publication of individual or consolidated statements of condition of such banks; subsec. (b) provisions for possession of readily marketable assets other than bank stock and reinvestment of a prescribed amount of net earnings in such assets; subsec. (c) provisions for reserve of assets, use of assets for capital replacement, and situations involving more than one holding company affiliate; subsec. (d) provisions for penalties for false entries; subsec. (e) requirements for disclosure in application of a absence of securities company status and for declaration of dividends out of net earnings; penultimate par. prescribing procedure for revocation of voting permit and prohibiting the use of the bank as a depositary for public moneys of the United States and payment of dividends to the affiliate; and last par. authorization for forfeiture of rights, privileges, and franchises of national banks.

1959—Subsec. (c). Pub. L. 86–114 authorized the Board to designate one of the chain of holding company affiliates which would have to maintain the 12 percent reserve and exempted the other holding company affiliates from the requirement.

1954—Subsec. (d). Act Sept. 3, 1954, substituted ''section 1005 of Title 18'' for ''section 592 of this title''.

1935—Act Aug. 23, 1935, amended first par., first sentence of third par., and inserted ''and the provisions of this subsection, instead of subsection (b), shall apply to all holding company affiliates with respect to any shares of bank stock owned or controlled by them as to which there is no statutory liability imposed upon the holders of such bank stock'' at end of subsec. (c).

1933—Act June 16, 1933, inserted provisions for cumulative voting of shares or distribution of votes on a cumulative voting principle, prohibited national banks holding their own shares as sole trustee from voting such shares but permitted such shares to be voted when held by another person or persons as trustees with the bank, denied voting rights to shares controlled by a holding company affiliate of a national bank unless a voting permit was first obtained, provided for application for a voting permit to the Federal Reserve Board, specified conditions for granting the voting permit and

procedure for its revocation, and authorized the forfeiture of a National Bank's rights, privileges, and franchises upon such revocation.

§ 62. List of shareholders

The president and cashier of every national banking association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted. Such list shall be subject to the inspection of all the shareholders and creditors of the association, and the officers authorized to assess taxes under State authority, during business hours of each day in which business may be legally transacted. A copy of such list, verified by the oath of such president or cashier, shall be transmitted to the Comptroller of the Currency within ten days of any demand therefor made by him.

(R.S. § 5210; May 18, 1953, ch. 59, § 1, 67 Stat. 27.)

CODIFICATION

R.S. § 5210 derived from act June 3, 1864, ch. 106, § 40, 13 Stat. 111, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1953—Act May 18, 1953, changed the requirement for annual transmission of a copy of the shareholders list to the Comptroller of the Currency by authorizing the Comptroller to acquire such copy at any time on 10 days' notice.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, § 4, 47 Stat. 1567.

§§ 63, 64. Repealed. Pub. L. 86–230, § 7, Sept. 8, 1959, 73 Stat. 457

Section 63, R.S. § 5151, related to individual liability of shareholders.

Section 64, act Dec. 23, 1913, ch. 6, § 23, 38 Stat. 273, related to transfer of shares as affecting individual liability of shareholders. Limitation on liability of shareholders, see section 64a of this title.

The status of former section 63 of this title had been doubtful. At different times it had been held to have been repealed, superseded, and superseded only in part by former section 64 of this title which related to the same subject. See *American T. Co.* v. *Grut*, C.C.A. 1935, 80 F.2d 155; *Miller* v. *Hamner*, C.C.A. 1920, 269 F. 891; and *First Nat. Bank* v. *First Nat. Bank*, D.C. 1926, 14 F.2d 129.

§ 64a. Individual liability of shareholders; limitation on liability

The additional liability imposed upon shareholders in national banking associations by the provisions of sections 63 and 64 of this title shall not apply with respect to shares in any such association issued after June 16, 1933. Such additional liability shall cease on July 1, 1937, with respect to all shares issued by any association which shall be transacting the business of banking on July 1, 1937: *Provided*, That not less than six months prior to such date, such association shall have caused notice of such prospective termination of liability to be published in a newspaper published in the city, town, or county in which such association is located, and if no newspaper is published in such city, town, or county, then in a newspaper of general circulation therein. If the association fail[1] to give such notice as and when above provided, a termination of such additional liability may thereafter be accomplished as of the date six month[2] subsequent to publication, in the manner above provided. In the case of each association which has not caused notice of such prospective termination of liability to be published prior to May 18, 1953, the Comptroller of the Currency shall cause such notice to be published in the manner provided in this section, and on the date six months subsequent to such publication by the Comptroller of the Currency such additional liability shall cease.

(June 16, 1933, ch. 89, § 22, 48 Stat. 189; Aug. 23, 1935, ch. 614, title III, § 304, 49 Stat. 708; May 18, 1953, ch. 59, § 2, 67 Stat. 27.)

REFERENCES IN TEXT

Sections 63 and 64 of this title, referred to in text, were repealed by Pub. L. 86–230, § 7, Sept. 8, 1959, 73 Stat. 457.

AMENDMENTS

1953—Act May 18, 1953, provided for termination of the additional liability, referred to in the section, by action of the Comptroller of the Currency with regard to those associations which had not, prior to May 18, 1953, caused notice of termination to be published.

1935—Act Aug. 23, 1935, added second and third sentences.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 65. Repealed. Pub. L. 86–230, § 8, Sept. 8, 1959, 73 Stat. 457

Section, acts June 30, 1876, ch. 156, § 2, 19 Stat. 63; Sept. 3, 1954, ch. 1263, § 22, 68 Stat. 1234, related to enforcement of shareholders' individual liability by creditors on liquidation. Limitation on liability of shareholders, see section 64a of this title.

§ 66. Personal liability of representatives of stockholders

Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be, if living and competent to act and hold the stock in his own name.

(R.S. § 5152.)

CODIFICATION

R.S. § 5152 derived from act June 3, 1864, ch. 106, § 63, 13 Stat. 118, which was the National Bank Act. See section 38 of this title.

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[1] So in original. Probably should be "fails".

[2] So in original. Probably should be "months".

§ 67. Individual liability of shareholders; compromises; authority of receiver

Any receiver of a national banking association is authorized, with the approval of the Comptroller of the Currency and upon the order of a court of record of competent jurisdiction, to compromise, either before or after judgment, the individual liability of any shareholder of such association.

(Feb. 25, 1930, ch. 58, 46 Stat. 74.)

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer to Secretary of the Treasury, see note set out under section 1 of this title.

APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, § 4, 47 Stat. 1567.

SUBCHAPTER III—DIRECTORS

§ 71. Election

The affairs of each association shall be managed by not less than five directors, who shall be elected by the shareholders at a meeting to be held at any time before the association is authorized by the Comptroller of the Currency to commence the business of banking; and afterward at meetings to be held on such day of each year as is specified therefor in the bylaws. The directors shall hold office for a period of not more than 3 years, and until their successors are elected and have qualified. In accordance with regulations issued by the Comptroller of the Currency, a national bank may adopt bylaws that provide for staggering the terms of its directors.

(R.S. § 5145; Pub. L. 88–232, § 1, Dec. 23, 1963, 77 Stat. 472; Pub. L. 106–569, title XII, § 1205(a), Dec. 27, 2000, 114 Stat. 3033.)

CODIFICATION

R.S. § 5145 derived from act June 3, 1864, ch. 106, §§ 9, 10, 13 Stat. 102, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2000—Pub. L. 106–569 substituted ''for a period of not more than 3 years'' for ''for one year'' and inserted at end ''In accordance with regulations issued by the Comptroller of the Currency, a national bank may adopt bylaws that provide for staggering the terms of its directors.''

1963—Pub. L. 88–232 substituted ''on such day of each year as is specified therefor in the bylaws'' for ''on such day in January of each year as is specified therefor in the articles of association''.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 71a. Number of directors; penalties

After one year from June 16, 1933, notwithstanding any other provision of law, the board of directors, board of trustees, or other similar governing body of every national banking association and of every State bank or trust company which is a member of the Federal Reserve System shall consist of not less than five nor more than twenty-five members, except that the Comptroller of the Currency may, by regulation or order, exempt a national bank from the 25-member limit established by this section. If any national banking association violates the provisions of this section and continues such violation after thirty days' notice from the Comptroller of the Currency, the said Comptroller may appoint a receiver or conservator therefor, in accordance with the provisions of existing law. If any State bank or trust company which is a member of the Federal Reserve System violates the provisions of this section and continues such violation after thirty days' notice from the Board of Governors of the Federal Reserve System, it shall be subject to the forfeiture of its membership in the Federal Reserve System in accordance with the provisions of section 327 of this title.

(June 16, 1933, ch. 89, § 31, 48 Stat. 194; June 16, 1934, ch. 546, § 4, 48 Stat. 971; Aug. 23, 1935, ch. 614, title II, § 203(a), title III, § 306, 49 Stat. 704, 708; Pub. L. 106–569, title XII, § 1205(b), Dec. 27, 2000, 114 Stat. 3034.)

AMENDMENTS

2000—Pub. L. 106–569 inserted before period at end of first sentence '', except that the Comptroller of the Currency may, by regulation or order, exempt a national bank from the 25-member limit established by this section''.

1935—Act June 16, 1934, as amended by act Aug. 23, 1935, § 306, repealed a former provision of this section relating to stock ownership requirements of directors, trustees, or members of similar governing bodies of any national banking association, or of any State bank or trust company which is a member of the Federal Reserve System.

1934—Act June 16, 1934, repealed a former provision of this section relating to stock ownership requirements of directors, trustees, or members of similar governing bodies of member banks of the Federal Reserve System.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 72. Qualifications

Every director must, during his whole term of service, be a citizen of the United States, and at least a majority of the directors must have resided in the State, Territory, or District in which the association is located, or within one hundred miles of the location of the office of the association, for at least one year immediately preceding their election, and must be residents of such State or within one-hundred-mile territory of the location of the association during their continuance in office, except that the Comptroller may, in the discretion of the Comptroller, waive the requirement of residency, and waive the requirement of citizenship in the case of not more than a minority of the total number

of directors. Every director must own in his or her own right either shares of the capital stock of the association of which he or she is a director the aggregate par value of which is not less than $1,000, or an equivalent interest, as determined by the Comptroller of the Currency, in any company which has control over such association within the meaning of section 1841 of this title. If the capital of the bank does not exceed $25,000, every director must own in his or her own right either shares of such capital stock the aggregate par value of which is not less than $500, or an equivalent interest, as determined by the Comptroller of the Currency, in any company which has control over such association within the meaning of section 1841 of this title. Any director who ceases to be the owner of the required number of shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place.

(R.S. §5146; Feb. 28, 1905, ch. 1163, 33 Stat. 818; Mar. 1, 1921, ch. 100, 41 Stat. 1199; Feb. 25, 1927, ch. 191, §17, 44 Stat. 1233; Apr. 27, 1956, ch. 215, 70 Stat. 119; Pub. L. 95–369, §2, Sept. 17, 1978, 92 Stat. 608; Pub. L. 96–221, title VII, §710, Mar. 31, 1980, 94 Stat. 189; Pub. L. 103–325, title III, §313, Sept. 23, 1994, 108 Stat. 2221; Pub. L. 104–208, div. A, title II, §2241, Sept. 30, 1996, 110 Stat. 3009–418; Pub. L. 106–569, title XII, §1233(a), Dec. 27, 2000, 114 Stat. 3037.)

CODIFICATION

R.S. §5146 derived from act June 3, 1864, ch. 106, §§9, 10, 13 Stat. 102, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2000—Pub. L. 106–569 inserted before period at end of first sentence ‘‘, and waive the requirement of citizenship in the case of not more than a minority of the total number of directors’’.

1996—Pub. L. 104–208 substituted ‘‘except that the Comptroller may, in the discretion of the Comptroller, waive the requirement of residency’’ for ‘‘except that in the case of an association which is a subsidiary or affiliate of a foreign bank, the Comptroller of the Currency may in his discretion waive the requirement of citizenship in the case of not more than a minority of the total number of directors’’ before period at end of first sentence.

1994—Pub. L. 103–325, which directed the substitution of ‘‘a majority’’ for ‘‘two thirds’’, was executed by making the substitution for ‘‘two-thirds’’ in first sentence to reflect the probable intent of Congress.

1980—Pub. L. 96–221 inserted provisions setting forth additional ownership requirements with respect to equivalent interest determinations by the Comptroller of the Currency.

1978—Pub. L. 95–369 authorized the Comptroller of the Currency, in case of associations which are subsidiaries of affiliates of foreign banks, to waive citizenship requirements of not more than a minority of the total number of directors.

1956—Act Apr. 27, 1956, substituted ‘‘two-thirds’’, ‘‘one hundred’’, ‘‘one-hundred-mile’’, for ‘‘three-fourths’’, ‘‘fifty’’, and ‘‘fifty-mile’’, respectively.

1927—Act Feb. 25, 1927, substituted a minimum value of stock ownership for minimum number of shares in both instances.

§ 73. Oath

Each director, when appointed or elected, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such association, and will not knowingly violate or willingly permit to be violated any of the provisions of title 62 of the Revised Statutes, and that he is the owner in good faith, and in his own right, of the number of shares of stock required by title 62 of the Revised Statutes, subscribed by him, or standing in his name on the books of the association, and that the same is not hypothecated, or in any way pledged, as security for any loan or debt. The oath shall be taken before a notary public, properly authorized and commissioned by the State in which he resides, or before any other officer having an official seal and authorized by the State to administer oaths, except that the oath shall not be taken before any such notary public or other officer who is an officer of the director's bank. The oath, subscribed by the director making it, and certified by the notary public or other officer before whom it is taken, shall be immediately transmitted to the Comptroller of the Currency and shall be filed and preserved in his office for a period of ten years.

(R.S. §5147; Feb. 20, 1925, ch. 274, 43 Stat. 955.)

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in text, was in the original ‘‘this Title’’ meaning title LXII of the Revised Statutes, consisting of R.S. §§5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72, 74 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. §5147 derived from act June 3, 1864, ch. 106, §9, 13 Stat. 102, which was the National Bank Act. See section 38 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 74. Vacancies

Any vacancy in the board shall be filled by appointment by the remaining directors, and any director so appointed shall hold his place until the next election.

(R.S. §5148.)

CODIFICATION

R.S. §5148 derived from act June 3, 1864, ch. 106, §10, 13 Stat. 102, which was the National Bank Act. See section 38 of this title.

§ 75. Legal holiday, annual meeting on; proceedings where no election held on proper day

When the day fixed in the bylaws for the regular annual meeting of the shareholders falls on a legal holiday in the State in which the bank is located, the shareholders meeting shall be held, and the directors elected, on the next following banking day. If, from any cause, an election of directors is not made on the day fixed, or in the event of a legal holiday, on the next following banking day, an election may be held on any

subsequent day within sixty days of the day fixed, to be designated by the board of directors, or, if the directors fail to fix the day, by shareholders representing two-thirds of the shares, at least ten days' notice thereof in all cases having been given by first-class mail to the shareholders.

(R.S. § 5149; Pub. L. 86–230, § 9, Sept. 8, 1959, 73 Stat. 457; Pub. L. 88–232, § 2, Dec. 23, 1963, 77 Stat. 472.)

CODIFICATION

R.S. § 5149 derived from act June 3, 1864, ch. 106, § 10, 13 Stat. 102, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1963—Pub. L. 88–232 substituted ''bylaws'' for ''articles of association''.

1959—Pub. L. 86–230 provided that when the day fixed for the regular annual meeting of the shareholders falls on a legal holiday, the meeting shall be held on the next following banking day and authorized election of directors to be held within sixty days of a fixed day upon ten days' notice to the shareholders by first-class mail instead of upon thirty days' notice in newspaper and at a date designated in the articles or bylaws or by the shareholders.

§ 76. President of bank as member of board; chairman of board

The president of the bank shall be a member of the board and shall be the chairman thereof, but the board may designate a director in lieu of the president to be chairman of the board, who shall perform such duties as may be designated by the board.

(R.S. § 5150; Feb. 25, 1927, ch. 191, § 6, 44 Stat. 1228.)

CODIFICATION

R.S. § 5150 derived from act June 3, 1864, ch. 106, § 9, 13 Stat. 102, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1927—Act Feb. 25, 1927, amended section generally. Prior to amendment, section read as follows: ''One of the directors, to be chosen by the board, shall be president of the board.''

§ 77. Repealed. Pub. L. 89–695, title II, § 207, Oct. 16, 1966, 80 Stat. 1055

Section, act June 16, 1933, ch. 89, § 30, 48 Stat. 193, provided authority for removal of directors or officers of national banks, District banks, or State member banks for continued violations of law or for continued unsafe or unsound practices in conducting the business of such banks.

CODIFICATION

Section 401 of Pub. L. 89–695, Oct. 16, 1966, 80 Stat. 1056, which provided for reenactment of this section effective upon expiration of the period ending at the close of June 30, 1972, was repealed by Pub. L. 91–609, title IX, § 908, Dec. 31, 1970, 84 Stat. 1811.

CONDITIONS GOVERNING EMPLOYMENT OF PERSONNEL NOT REPEALED, MODIFIED, OR AFFECTED

Nothing contained in section 207 of Pub. L. 89–695 repealing this section to be construed as repealing, modifying, or affecting section 1829 of this title, see section 206 of Pub. L. 89–695, set out as a note under section 1813 of this title.

§ 78. Repealed. Pub. L. 106–102, title I, § 101(b), Nov. 12, 1999, 113 Stat. 1341

Section, acts June 16, 1933, ch. 89, § 32, 48 Stat. 194; Aug. 23, 1935, ch. 614, § 307, 49 Stat. 709, related to certain persons excluded from serving as officers, directors, or employees of member banks.

EFFECTIVE DATE OF REPEAL

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

SUBCHAPTER IV—REGULATION OF THE BANKING BUSINESS; POWERS AND DUTIES OF NATIONAL BANKS

§ 81. Place of business

The general business of each national banking association shall be transacted in the place specified in its organization certificate and in the branch or branches, if any, established or maintained by it in accordance with the provisions of section 36 of this title.

(R.S. § 5190; Feb. 25, 1927, ch. 191, § 8, 44 Stat. 1229.)

CODIFICATION

R.S. § 5190 derived from act June 3, 1864, ch. 106, § 8, 13 Stat. 101, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1927—Act Feb. 25, 1927, among other changes, inserted ''and in the branch or branches, if any, established or maintained by it in accordance with the provisions of section 36 of this title''.

§ 82. Repealed. Pub. L. 97–320, title IV, § 402, Oct. 15, 1982, 96 Stat. 1510

Section, R.S. § 5202; Dec. 23, 1913, ch. 6, § 13 (par.), 38 Stat. 264; Sept. 7, 1916, ch. 461, 39 Stat. 753; Apr. 5, 1918, ch. 45, § 20, 40 Stat. 512; Oct. 22, 1919, ch. 79, § 2, 41 Stat. 297; Mar. 4, 1923, ch. 252, title V, § 504, 42 Stat. 1481; Feb. 25, 1927, ch. 191, § 11, 44 Stat. 1231; Jan. 22, 1932, ch. 8, § 5, formerly § 6, 47 Stat. 8, renumbered and amended June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202; May 20, 1933, ch. 35, § 2, 48 Stat. 73; June 19, 1934, ch. 653, § 2, 48 Stat. 1107; Sept. 8, 1959, Pub. L. 86–230, § 10, 73 Stat. 458; Sept. 9, 1959, Pub. L. 86–251, § 2, 73 Stat. 488; July 24, 1970, Pub. L. 91–351, title II, § 201(b), 84 Stat. 451; Jan. 4, 1975, Pub. L. 93–646, § 11, 88 Stat. 2337, provided that no national banking association could at any time be indebted, or in any way liable, to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, plus 50 percent of the amount of its unimpaired surplus fund, except on account of demands of the nature following: notes of circulation; moneys deposited with or collected by the association; bills of exchange or drafts drawn against money actually on deposit to the credit of the association, or due thereto; liabilities to the stockholders of the association for dividends and reserve profits; liabilities incurred under the provisions of the Federal Reserve Act; liabilities incurred under the provisions of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]; liabilities created by the indorsement of accepted bills of exchange payable abroad actually owned by the indorsing bank and discounted at home or abroad; liabilities incurred under the provisions of sections 1031 to 1033 of this title; liabilities incurred on account of loans made with the express approval of the Comptroller of the Currency under former section 84(9) of this title; liabilities incurred under the provisions of section 352a of this title; liabilities incurred in connection with sales of mortgages, or par-

ticipations therein, to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and liabilities incurred in borrowing from the Export-Import Bank of the United States.

§ 83. Loans by bank on its own stock

(a) General prohibition

No national bank shall make any loan or discount on the security of the shares of its own capital stock.

(b) Exclusion

For purposes of this section, a national bank shall not be deemed to be making a loan or discount on the security of the shares of its own capital stock if it acquires the stock to prevent loss upon a debt previously contracted for in good faith.

(R.S. § 5201; Pub. L. 106–569, title XII, § 1207(a), Dec. 27, 2000, 114 Stat. 3034.)

CODIFICATION

R.S. § 5201 derived from act June 3, 1864, ch. 106, § 35, 13 Stat. 110, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2000—Pub. L. 106–569 amended section catchline and text generally. Prior to amendment, text read as follows: ''No association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale; or, in default thereof, a receiver may be appointed to close up the business of the association, according to section 192 of this title.''

§ 84. Lending limits

(a) Total loans and extensions of credit

(1) The total loans and extensions of credit by a national banking association to a person outstanding at one time and not fully secured, as determined in a manner consistent with paragraph (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 per centum of the unimpaired capital and unimpaired surplus of the association.

(2) The total loans and extensions of credit by a national banking association to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitation contained in paragraph (1) of this subsection.

(b) Definitions

For the purposes of this section—

(1) the term ''loans and extensions of credit'' shall include all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and, to the extent specified by the Comptroller of the Currency, such term shall also include any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(2) the term ''person'' shall include an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

(c) Exceptions

The limitations contained in subsection (a) of this section shall be subject to the following exceptions:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(2) The purchase of bankers' acceptances of the kind described in section 372 of this title and issued by other banks shall not be subject to any limitation based on capital and surplus.

(3) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 35 per centum of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 per centum of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States shall not be subject to any limitation based on capital and surplus.

(5) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Comptroller of the Currency, shall not be subject to any limitation based on capital and surplus.

(8)(A) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring

the paper shall be subject under this section to a maximum limitation equal to 25 per centum of such capital and surplus, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section.

(B) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(9)(A) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the note covered, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section, to a maximum limitation equal to 25 per centum of such capital and surplus.

(B) Loans and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section, to a limitation of 25 per centum of such capital and surplus.

(10) Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus.

(d) Authority of Comptroller of the Currency

(1) The Comptroller of the Currency may prescribe rules and regulations to administer and carry out the purposes of this section, including rules or regulations to define or further define terms used in this section and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit.

(2) The Comptroller of the Currency also shall have authority to determine when a loan putatively made to a person shall for purposes of this section be attributed to another person.

(R.S. §5200; June 22, 1906, ch. 3516, 34 Stat. 451; Sept. 24, 1918, ch. 176, §6, 40 Stat. 967; Oct. 22, 1919, ch. 79, §1, 41 Stat. 296; Feb. 25, 1927, ch. 191, §10, 44 Stat. 1229; May 20, 1933, ch. 35, §1, 48 Stat. 73; June 16, 1933, ch. 89, §26(a), 48 Stat. 191; Aug. 23, 1935, ch. 614, title III, §321(b), 49 Stat. 713; June 11, 1942, ch. 404, §8, 56 Stat. 356; July 15, 1949, ch. 338, title VI, §602(b), 63 Stat. 440; July 22, 1937, ch. 517, §15(a), as added Aug. 14, 1946, ch. 964, §5, 60 Stat. 1079; amended Pub. L. 85–748, §1(c), Aug. 25, 1958, 72 Stat. 841; Pub. L. 86–251, §3, Sept. 9, 1959, 73 Stat. 488; Pub. L. 87–723, §4(c)(4), Sept. 28, 1962, 76 Stat. 672; Pub. L. 90–19, §27(b), May 25, 1967, 81 Stat. 29; Pub. L. 92–318, title I, §133(c)(2), June 23, 1972, 86 Stat. 270; Pub. L. 97–320, title IV, §401(a), Oct. 15, 1982, 96 Stat. 1508; Pub. L. 97–457, §17(a), Jan. 12, 1983, 96 Stat. 2509; Pub. L. 111–203, title VI, §610(a), July 21, 2010, 124 Stat. 1611.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 111–203, title VI, §610(a), (c), July 21, 2010, 124 Stat. 1611, 1612, provided that, effective 1 year after the transfer date, subsection (b) of this section is amended:

(1) in paragraph (1), by substituting ''shall include—

''(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;

''(B) to the extent specified by the Comptroller of the Currency, any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

''(C) any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the national banking association and the person;''

for ''shall include'' and all that follows through the end of the paragraph;

(2) in paragraph (2), by substituting ''; and'' for the period at the end; and

(3) by adding at the end the following:

''(3) the term 'derivative transaction' includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.''

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 372 of this title, referred to in subsec. (c)(2), was in the original a reference to ''section 13 of the Federal Reserve Act''. Provisions of section 13 describing bankers' acceptances are classified to section 372 of this title. Other provisions of section 13 are classified to sections 342 to 347, 347c, 347d of this title.

CODIFICATION

R.S. §5200 derived from act June 3, 1864, ch. 106, §29, 13 Stat. 108, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1983—Subsec. (b)(1). Pub. L. 97–457 inserted a comma before ''to the extent specified by the Comptroller of the Currency''.

1982—Pub. L. 97–320 amended section generally. Prior to amendment, section read as follows: ''The total obligations to any national banking association of any person, copartnership, association, or corporation shall at no time exceed 10 per centum of the amount of the capital stock of such association actually paid in and unimpaired and 10 per centum of its unimpaired surplus

fund. The term 'obligations' shall mean the direct liability of the maker or acceptor of paper discounted with or sold to such association and the liability of the indorser, drawer, or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such association and shall include in the case of obligations of a copartnership or association the obligations of the several members thereof and shall include in the case of obligations of a corporation all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest. Such limitation of 10 per centum shall be subject to the following exceptions:

''(1) Obligations in the form of drafts or bills of exchange drawn in good faith against actually existing values shall not be subject under this section to any limitation based upon such capital and surplus.

''(2) Obligations arising out of the discount of commercial or business paper actually owned by the person, copartnership, association, or corporation negotiating the same shall not be subject under this section to any limitation based upon such capital and surplus.

''(3) Obligations drawn in good faith against actually existing values and secured by goods or commodities in process of shipment shall not be subject under this section to any limitation based upon such capital and surplus.

''(4) Obligations as indorser or guarantor of notes, other than commercial or business paper excepted under paragraph (2) of this section, having a maturity of not more than six months, and owned by the person, corporation, association, or copartnership indorsing and negotiating the same, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

''(5) Obligations in the form of banker's acceptances of other banks of the kind described in section 372 of this title shall not be subject under this section to any limitation based upon such capital and surplus.

''(6) Obligations of any person, copartnership, association or corporation, in the form of notes or drafts secured by shipping documents, warehouse receipts or other such documents transferring or securing title covering readily marketable nonperishable staples when such property is fully covered by insurance, if it is customary to insure such staples, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus when the market value of such staples securing such obligation is not at any time less than 115 per centum of the face amount of such obligation, and to an additional increase of limitation of 5 per centum of such capital and surplus in addition to such 25 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 120 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 30 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 125 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 35 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 130 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 40 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 135 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 45 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 140 per centum of the face amount of such additional obligation, but this exception shall not apply to obligations of any one person, copartnership, association, or corporation arising from the same transactions and/or secured by the identical staples for more than ten months. Obligations of any person, copartnership, association, or corporation in the form of notes or drafts secured by shipping documents, warehouse receipts, or other such documents transferring or securing title covering refrigerated or frozen readily marketable staples when such property is fully covered by insurance, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus when the market value of such staples securing such obligation is not at any time less than 115 per centum of the face amount of such additional obligation, but this exception shall not apply to obligations of any one person, copartnership, association or corporation arising from the same transactions and/or secured by the identical staples for more than six months.

''(7) Obligations of any person, copartnership, association, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the notes covered by such documents shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus. Obligations arising out of the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which bear a full recourse endorsement or unconditional guarantee of the seller and are secured by the cattle being sold, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

''(8) Obligations of any person, copartnership, association, or corporation secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, Treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States, shall (except to the extent permitted by rules and regulations prescribed by the Comptroller of the Currency, with the approval of the Secretary of the Treasury) be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

''(9) Obligations representing loans to any national banking association or to any banking institution organized under the laws of any State, or to any receiver, conservator, or superintendent of banks, or to any other agent, in charge of the business and property of any such association or banking institution, when such loans are approved by the Comptroller of the Currency, shall not be subject under this section to any limitation based upon such capital and surplus.

''(10) Obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that such obligations are secured or covered by guaranties, or by commitments or agreements to take over or to purchase, made by any Federal Reserve bank or by the United States or any department, bureau, board, commission, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States: *Provided*, That such guaranties, agreements, or commitments are unconditional and must be performed by payment of cash or its equivalent within sixty days after demand. The Comptroller of the Currency is authorized to define the terms herein used if and when he may deem it necessary.

''(11) Obligations of a local public agency (as defined in section 110(h) of the Housing Act of 1949 [42 U.S.C. 1460(h)]) or of a public housing agency (as defined in the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.]) which have a maturity of not more than eighteen months shall not be subject under this section to any limitation, if such obligations are secured by an agreement between the obligor agency and the Secretary of Housing and Urban Development in which the agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity, which monies under the terms of said agreement are required to be used for that purpose.

''(12) Obligations insured by the Secretary of Agriculture pursuant to the Bankhead-Jones Farm Tenant Act, as amended [7 U.S.C. 1000 et seq.], or the Act of August 28, 1937, as amended (relating to the conservation of water resources), or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

''(13) Obligations as endorser or guarantor of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person, copartnership, association, or corporation transferring the same, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus: *Provided, however*, That if the bank's files or the knowledge of its officers of the financial condition of each maker of such obligations is reasonably adequate, and upon certification by an officer of the bank designated for that purpose by the board of directors of the bank, that the responsibility of each maker of such obligations has been evaluated and the bank is relying primarily upon each such maker for the payment of such obligations, the limitations of this section as to the obligations of each such maker shall be the sole applicable loan limitation: *Provided further*, That such certification shall be in writing and shall be retained as part of the records of such bank.

''(14) Obligations of the Student Loan Marketing Association shall not be subject to any limitation based upon such capital and surplus.''

1972—Par. (14). Pub. L. 92–318 added par. (14).

1967—Par. (11). Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' for ''Housing and Home Finance Administrator or the Public Housing Administration'' and ''Secretary'' for ''Administrator or Administration'' wherever appearing, respectively.

1962—Par. (12). Pub. L. 87–723 inserted ''or title V of the Housing Act of 1949'' before ''shall be subject under this section''.

1959—Par. (6). Pub. L. 86–251, § 3(a), substituted ''secured by'' for ''secured upon'' and inserted exception with respect to obligations secured by documents transferring or securing title covering refrigerated or frozen readily marketable staples.

Par. (7). Pub. L. 86–251, § 3(b), inserted exception with respect to obligations arising out of the discount by dealers in dairy cattle of paper given in payment for dairy cattle.

Par. (8). Pub. L. 86–251, § 3(c), struck out ''in the form of notes'' after ''corporation''.

Par. (13). Pub. L. 86–251, § 3(d), added par. (13).

1958—Par. (12). Pub. L. 85–748 amended section 15(a) of act July 22, 1937, as added by act Aug. 14, 1946, by inserting sentence amending R.S. § 5200 by adding par. (12).

1949—Par. (11). Act July 15, 1949, added par. (11).

1942—Par. (10). Act June 11, 1942, added par. (10).

1935—Par. (8). Act Aug. 23, 1935, inserted ''Treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States''.

1933—Par. (1). Act June 16, 1933, inserted provision relating to obligations of a corporation and its subsidiaries in second sentence.

Par. (9). Act May 20, 1933, added par. (9).

1927—Act Feb. 25, 1927, reenacted section, subdividing it into eight numbered exceptions.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title VI, § 610(c), July 21, 2010, 124 Stat. 1612, provided that: ''The amendments made by this section [amending this section and section 1464 of this title] shall take effect 1 year after the transfer date.''

[For definition of ''transfer date'' as used in section 610(c) of Pub. L. 111–203, set out above, see section 5301 of this title.]

EFFECTIVE DATE OF 1982 AMENDMENT

Section 401(b) of Pub. L. 97–320 provided that: ''This section [amending this section] shall take effect upon the expiration of one hundred and eighty days after the date of its enactment [Oct. 15, 1982].''

REPEALS

Repealing provisions of Consolidated Farmers Home Administration Act of 1961 as not having the effect of repealing the amendment to this section enacted by act July 22, 1937, § 15(a), as added Aug. 14, 1946, see section 341(a) of Pub. L. 87–128, title III, Aug. 8, 1961, 75 Stat. 318, set out as a note under section 1921 of Title 7, Agriculture.

SAVINGS PROVISION

Section 26(b) of act June 16, 1933, provided: ''The amendment made by this section [amending this section] shall not apply to such obligations of subsidiaries held by such association on the date this section takes effect.''

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, § 3, 47 Stat. 1567.

§ 85. Rate of interest on loans, discounts and purchases

Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under title 62 of the Revised Statutes. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding 7 per centum, or 1 per centum in excess of the discount rate on ninety day commercial paper in effect at the Federal re-

serve bank in the Federal reserve district where the bank is located, whichever may be the greater, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. The maximum amount of interest or discount to be charged at a branch of an association located outside of the States of the United States and the District of Columbia shall be at the rate allowed by the laws of the country, territory, dependency, province, dominion, insular possession, or other political subdivision where the branch is located. And the purchase, discount, or sale of a bona fide bill of exchange, payable at another place than the place of such purchase, discount, or sale, at not more than the current rate of exchange for sight drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest.

(R.S. §5197; June 16, 1933, ch. 89, §25, 48 Stat. 191; Aug. 23, 1935, ch. 614, title III, §314, 49 Stat. 711; Pub. L. 93–501, title II, §201, Oct. 29, 1974, 88 Stat. 1558; Pub. L. 96–104, title I, §101, Nov. 5, 1979, 93 Stat. 789; Pub. L. 96–161, title II, §201, Dec. 28, 1979, 93 Stat. 1235; Pub. L. 96–221, title V, §529, Mar. 31, 1980, 94 Stat. 168.)

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in text, was in the original ''this Title'' meaning title LXII of the Revised Statutes, consisting of R.S. §§5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83, 84, 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. §5197 derived from act June 3, 1864, ch. 106, §30, 13 Stat. 108, which was the National Bank Act. See section 38 of this title.

Section 201 of Pub. L. 96–161, cited as a credit to this section, was repealed by section 529 of Pub. L. 96–221, effective at the close of Mar. 31, 1980. The amendment of this section by that repealed provision, described in the 1979 Amendments note below, shall continue in effect for limited purposes pursuant to section 529. See Savings Provisions note, describing the provisions of section 529 of Pub. L. 96–221, set out below.

Section 101 of Pub. L. 96–104, cited as a credit to this section, was repealed by section 212 of Pub. L. 96–161, effective at the close of Dec. 27, 1979. The amendment of this section by that repealed provision, described in the 1979 Amendments note below, shall continue in effect for limited purposes pursuant to section 212 of Pub. L. 96–161. See Savings Provisions note, describing the provisions of section 212 of Pub. L. 96–161, set out below. The amendment by Pub. L. 96–104, §101, was duplicated with identical language in the amendment made by Pub. L. 96–161, §201. See 1979 Amendments note below.

Section 201 of Pub. L. 93–501, cited as a credit to this section, was repealed by Pub. L. 96–104, §1, Nov. 5, 1979, 93 Stat. 789. The amendment of this section by that repealed provision, described in the 1974 Amendment note set out under this section, was duplicated in 1979 with identical language under section 101 of Pub. L. 96–104. See 1979 Amendments note below.

AMENDMENTS

1980—Pub. L. 96–221 repealed Pub. L. 96–104 and title II of Pub. L. 96–161, resulting in the striking out of ''or in the case of business or agricultural loans in the amount of $25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located,'' before ''whichever may be the greater'' in two places. See Codification and 1979 Amendment notes under this section.

1979—Pub. L. 96–161 inserted provisions relating to a 5 per centum interest rate on business or agricultural loans in the amount of $25,000 or more that were identical to provisions inserted earlier by Pub. L. 96–104. See Codification note above.

Pub. L. 96–104 substituted ''or in the case of business or agricultural loans in the amount of $25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located, whichever may be the greater'' for ''whichever may be the greater'' in two places. See Codification note above.

1974—Pub. L. 93–501 substituted ''or in the case of business or agricultural loans in the amount of $25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located, whichever may be the greater'' for ''whichever may be the greater'' in two places.

1935—Act Aug. 23, 1935, inserted third sentence.

1933—Act June 16, 1933, authorized interest at the alternative rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the Federal reserve district where the bank is located if greater.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 529 of Pub. L. 96–221 provided that the amendment made by that section is effective at the close of Mar. 31, 1980.

EFFECTIVE DATE OF 1979 AMENDMENTS

Section 207 of Pub. L. 96–161, which provided that amendment by Pub. L. 96–161 was applicable to loans made in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section made by Pub. L. 96–161 to apply with respect to loans made in such State; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment to the constitution of such State which prohibits the charging of interest at the rates provided in the amendment of this section by Pub. L. 96–161, was repealed by Pub. L. 96–221, title V, §529, Mar. 31, 1980, 94 Stat. 168.

Section 107 of Pub. L. 96–104, which provided that amendment by Pub. L. 96–104 was applicable to loans made by any State during the period beginning on Nov. 5, 1979, and ending on the earlier of July 1, 1981, or the date after Nov. 5, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section to apply with respect to loans made in such State, or the date on which such State certifies that the voters of such State have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State, which prohibits the charging of interest at the rates provided in the amendment of this section, was repealed by Pub. L. 96–161, title II, §212, Dec. 28, 1979, 93 Stat. 1239.

EFFECTIVE AND TERMINATION DATES OF 1974 AMENDMENT

Section 206 of Pub. L. 93–501, which provided that amendment by Pub. L. 93–501 applicable to loans made in any state after Oct. 29, 1974, but prior to the earlier

of July 1, 1977, or the date (after Oct. 29, 1974) of enactment by the state of a law prohibiting the charging of interest at the rates provided in the amendment of this section, was repealed by Pub. L. 96–104, § 1, Nov. 5, 1979, 93 Stat. 789.

SAVINGS PROVISIONS

Section 529 of Pub. L. 96–221 provided in part that, notwithstanding the repeal of Pub. L. 96–104 and title II of Pub. L. 96–161, the provisions added to this section by those repealed laws shall continue to apply to any loan made, any deposit made, or any obligation issued in any State during any period when those provisions were in effect in such State.

Section 212 of Pub. L. 96–161 provided in part that, notwithstanding the repeal, effective at the close of Dec. 27, 1979, of Pub. L. 96–104 [which had enacted sections 86a, 371b–1, 1730e, and 1831a of this title, amended sections 85, 1425b, and 1828 of this title and section 687 of Title 15, Commerce and Trade, repealed sections 371b–1, 1730e, and 1831a of this title and notes set out under sections 371b–1 and 1831a of this title, and enacted provisions set out as notes under this section and sections 86a, 371b–1, and 1831a of this title], the amendment which had been made by title I of Pub. L. 96–104 and the provisions of that title would continue to apply to any loan made in any State on or after Nov. 5, 1979, but prior to the repeal of Pub. L. 96–104, and that the amendments made by title II of Pub. L. 96–104 would continue to apply to any deposit made or obligation issued in any State on or after Nov. 5, 1979, but prior to the repeal of Pub. L. 96–104.

Section 1 of Pub. L. 96–104 provided in part that, notwithstanding the repeal of titles II and III of Pub. L. 93–501 [which had enacted sections 371b–1, 1730e, and 1831a of this title, amended sections 85, 1425b, and 1828 of this title, and section 687 of Title 15, Commerce and Trade, and enacted provisions set out as notes under sections 371b–1 and 1831a of this title], the amendments which had been made by title II of that Act and the provisions of such title would continue to apply to any loan made in any State during the period specified in section 206 of such Act [set out as a note under section 1831a of this title] and that the amendments which had been made by title III of such Act would continue to apply to any deposit made or obligation issued in any State during the period specified in section 304 of such Act [set out as a note under section 371b–1 of this title].

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

In any case in which one or more provisions of, or amendments made by, title V of Pub. L. 96–221 [enacting sections 86a, 1730g, 1735f–7a, 1785(g), and 1831d of this title and section 687(i) of Title 15, Commerce and Trade, and enacting provisions set out as notes under sections 86a, 1730g, and 1735f–7 of this title], section 1735f–7 of this title, or any other provisions of law, including this section, apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate, see section 528 of Pub. L. 96–221, set out as a note under section 1735f–7a of this title.

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

Section 213 of Pub. L. 96–161 provided that the provisions of title II of Pub. L. 96–161, which amended this section, repealed provisions which had formerly amended this section, and enacted provisions set out as notes under this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates.

§ 86. Usurious interest; penalty for taking; limitations

The taking, receiving, reserving, or charging a rate of interest greater than is allowed by section 85 of this title, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same: *Provided*, That such action is commenced within two years from the time the usurious transaction occurred.

(R.S. § 5198.)

CODIFICATION

R.S. § 5198 (less last sentence) derived from act June 3, 1864, ch. 106, § 30, 13 Stat. 108, which was the National Bank Act. See section 38 of this title.

Section is based on R.S. § 5198, less last sentence as added by act Feb. 18, 1875, ch. 80, § 1, 18 Stat. 320, which is classified to section 94 of this title.

§ 86a. Omitted

CODIFICATION

Section, Pub. L. 96–221, title V, § 511, Mar. 31, 1980, 94 Stat. 164; Pub. L. 96–399, title III, § 324(b), (d), Oct. 8, 1980, 94 Stat. 1648, which authorized interest on business or agricultural loans of $1,000 or more at a rate of not more than 5 per centum in excess of the discount rate, was omitted pursuant to section 512 of Pub. L. 96–221 which made these provisions applicable only with respect to such loans made in any State during the period beginning on April 1, 1980, and ending on the earlier of (1) April 1, 1983, or (2) the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly that such State does not want these provisions to apply with respect to loans made in such State.

A prior section 86a, Pub. L. 96–161, title II, § 205, Dec. 28, 1979, 93 Stat. 1237, similar to this section as enacted by Pub. L. 96–221, was repealed by section 529 of Pub. L. 96–221, effective at the close of Mar. 31, 1980, except that its provisions would continue to apply to any loan made, any deposit made, or any obligation issued in any State during any period when that section was in effect in such State. For the effective date provisions relating to the prior section 86a, see section 207 of Pub. L. 96–161.

Another prior section 86a, Pub. L. 96–104, title I, § 105, Nov. 5, 1979, 93 Stat. 791, identical to this section as enacted by Pub. L. 96–161, was repealed by section 212 of Pub. L. 96–161, effective at the close of Dec. 27, 1979, except that its provisions would continue to apply to loans made in any State on or after Nov. 5, 1979, but prior to such repeal.

Section 301 of Pub. L. 96–104, which limited the applicability of Pub. L. 96–104 to those States having a constitutional provision that all contracts for a greater rate of interest than 10 per centum per annum are void as to both principal and interest, was repealed by section 212 of Pub. L. 96–161, effective at the close of Dec. 27, 1979.

§§ 87 to 89. Repealed. Pub. L. 103–325, title VI, § 602(e)(2)–(4), Sept. 23, 1994, 108 Stat. 2291

Section 87, R.S. § 5203, related to restriction on use by bank of its circulating notes.

Section 88, R.S. § 5206, related to restriction on use by bank of notes of other banks.

Section 89, R.S. § 5196, related to duty of bank to receive circulating notes of other banks in payment of debts.

§ 90. Depositaries of public moneys and financial agents of Government

All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safe-keeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government: *Provided*, That the Secretary shall, on or before the 1st of January of each year, make a public statement of the securities required during that year for such deposits. And every association so designated as receiver or depositary of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid into the Government for internal revenue, or for loans or stocks: *Provided*, That the Secretary of the Treasury shall distribute the deposits herein provided for, as far as practicable, equitably between the different States and sections.

Any national banking association may, upon the deposit with it of any funds by any State or political subdivision thereof or any agency or other governmental instrumentality of one or more States or political subdivisions thereof, including any officer, employee, or agent thereof in his official capacity, give security for the safekeeping and prompt payment of the funds so deposited to the same extent and of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State.

Any national banking association may, upon the deposit with it of any funds by any federally recognized Indian tribe, or any officer, employee, or agent thereof in his or her official capacity, give security for the safekeeping and prompt payment of the funds so deposited by the deposit of United States bonds and otherwise as may be prescribed by the Secretary of the Treasury for public funds under the first paragraph of this section.

Notwithstanding chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, the Secretary may select associations as financial agents in accordance with any process the Secretary deems appropriate and their reasonable duties may include the provision of electronic benefit transfer services (including State-administered benefits with the consent of the States), as defined by the Secretary.

(R.S. § 5153; Mar. 3, 1901, ch. 871, 31 Stat. 1448; Mar. 4, 1907, ch. 2913, § 3, 34 Stat. 1290; Dec. 23, 1913, ch. 6, § 27, 38 Stat. 274; Aug. 4, 1914, ch. 225, 38 Stat. 682; June 25, 1930, ch. 604, 46 Stat. 809; Aug. 18, 1950, ch. 754, 64 Stat. 463; Pub. L. 96–153, title III, § 323(f), Dec. 21, 1979, 93 Stat. 1120; Pub. L. 104–208, div. A, title I, § 101(f) [§ 2(1)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–386.)

CODIFICATION

In text, ''chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' substituted for ''the Federal Property and Administrative Services Act of 1949, as amended'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

R.S. § 5153 derived from act June 3, 1864, ch. 106, § 45, 13 Stat. 113, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1996—Pub. L. 104–208 added fourth par.

1979—Pub. L. 96–153 added third par.

1950—Act Aug. 18, 1950, permitted national banks to accept and give security for deposits of funds made by agencies or governmental instrumentalities or States or political subdivisions thereof and by their officers, employees or agents.

1930—Act June 25, 1930, added second par.

§ 91. Transfers by bank and other acts in contemplation of insolvency

All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by chapter 4 of title 62 of the Revised Statutes, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court.

(R.S. § 5242.)

REFERENCES IN TEXT

Chapter 4 of title 62 of the Revised Statutes, referred to in text, was in the original ''this chapter'', meaning chapter 4 of title 62 of the Revised Statutes, consisting of R.S. §§ 5220 to 5244, which are classified to this section and sections 16, 43, 93, 93a, 181, 182, 192 to 194, 196, and 481 to 485 of this title. See, also, section 709 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5220 to 5244 to the Code, see Tables.

CODIFICATION

R.S. § 5242 derived from act June 3, 1864, ch. 106, § 52, 13 Stat. 115, which was the National Bank Act, and act Mar. 3, 1873, ch. 269, § 2, 17 Stat. 603. See section 38 of this title.

§ 92. Acting as insurance agent or broker

In addition to the powers now vested by law in national banking associations organized under the laws of the United States any such association located and doing business in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, may, under such rules and reg-

ulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent: *Provided, however*, That no such bank shall in any case assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal: *And provided further*, That the bank shall not guarantee the truth of any statement made by an assured in filing his application for insurance.

(Dec. 23, 1913, ch. 6, § 13 (par.), as added Sept. 7, 1916, ch. 461, 39 Stat. 753; amended Pub. L. 97–320, title IV, § 403(b), Oct. 15, 1982, 96 Stat. 1511.)

CODIFICATION

Section is based on the eleventh par. of section 13 of act Dec. 23, 1913, as amended. The eleventh par. constituted the ninth par. of section 13 in 1916 (39 Stat. 752, 753), became the tenth par. in 1923 (42 Stat. 1478), and became the eleventh par. in 1932 (47 Stat. 715). For further details, see Codification notes under sections 342 to 344 of this title.

For decision by U.S. Supreme Court that, despite faulty placement of quotation marks, act Sept. 7, 1916, placed within section 13 of act Dec. 23, 1913, each of the ten pars. located between the phrases that introduced the amendments to sections 13 and 14 of said act, that only the seventh par. (rather than seventh to tenth pars.) comprised the amended R.S. § 5202, and that section 20 of act Apr. 5, 1918 (40 Stat. 512) (which amended R.S. § 5202 comprised of a single par.), did not amend section 13 of said act so as to repeal the eighth to tenth pars., see *United States National Bank of Oregon* v. *Independent Insurance Agents of America, Inc., et al.*, 508 U.S. 439, 113 S.Ct. 2173, 124 L.Ed. 2d 402 (1993). As the result of subsequent amendments, such seventh to tenth pars. of section 13 now constitute the ninth to twelfth pars. The ninth par. amended former section 82 of this title, and the tenth to twelfth pars. are classified to sections 361, 92, and 373, respectively, of this title.

AMENDMENTS

1982—Pub. L. 97–320 struck out ''; and may also act as the broker or agent for others in making or procuring loans on real estate located within one hundred miles of the place in which said bank may be located, receiving for such services a reasonable fee or commission'' after ''may act as agent'' and ''guarantee either the principal or interest of any such loans or'' after ''shall in any case''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–320 effective upon the expiration of 180 days after Oct. 15, 1982, see section 403(c) of Pub. L. 97–320, set out as a note under section 371 of this title.

MORATORIUM

Pub. L. 100–86, title II, § 201(a), (b)(5), Aug. 10, 1987, 101 Stat. 581, 583, provided that, during period beginning Mar. 6, 1987, and ending Mar. 1, 1988, national banks and Federal branches or agencies of foreign banks could not expand their insurance agency activities pursuant to this section into places where they were not conducting such activities as of Mar. 5, 1987.

§ 92a. Trust powers

(a) Authority of Comptroller of the Currency

The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

(b) Grant and exercise of powers deemed not in contravention of State or local law

Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of this section.

(c) Segregation of fiduciary and general assets; separate books and records; access of State banking authorities to reports of examinations, books, records, and assets

National banks exercising any or all of the powers enumerating[1] in this section shall segregate all assets held in any fiduciary capacity from the general assets of the bank and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this section. The State banking authorities may have access to reports of examination made by the Comptroller of the Currency insofar as such reports relate to the trust department of such bank, but nothing in this section shall be construed as authorizing the State banking authorities to examine the books, records, and assets of such bank.

(d) Prohibited operations; separate investment account; collateral for certain funds used in conduct of business

No national bank shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the bank awaiting investment shall be carried in a separate account and shall not be used by the bank in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Comptroller of the Currency.

(e) Lien and claim upon bank failure

In the event of the failure of such bank the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the estate of the bank.

[1] So in original. Probably should be ''enumerated''.

(f) Deposits of securities for protection of private or court trusts; execution of and exemption from bond

Whenever the laws of a State require corporations acting in a fiduciary capacity to deposit securities with the State authorities for the protection of private or court trusts, national banks so acting shall be required to make similar deposits and securities so deposited shall be held for the protection of private or court trusts, as provided by the State law. National banks in such cases shall not be required to execute the bond usually required of individuals if State corporations under similar circumstances are exempt from this requirement. National banks shall have power to execute such bond when so required by the laws of the State.

(g) Officials' oath or affidavit

In any case in which the laws of a State require that a corporation acting as trustee, executor, administrator, or in any capacity specified in this section, shall take an oath or make an affidavit, the president, vice president, cashier, or trust officer of such national bank may take the necessary oath or execute the necessary affidavit.

(h) Loans of trust funds to officers and employees prohibited; penalties

It shall be unlawful for any national banking association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than $5,000, or imprisoned not more than five years, or may be both fined and imprisoned, in the discretion of the court.

(i) Considerations determinative of grant or denial of applications; minimum capital and surplus for issuance of permit

In passing upon applications for permission to exercise the powers enumerated in this section, the Comptroller of the Currency may take into consideration the amount of capital and surplus of the applying bank, whether or not such capital and surplus is sufficient under the circumstances of the case, the needs of the community to be served, and any other facts and circumstances that seem to him proper, and may grant or refuse the application accordingly: *Provided*, That no permit shall be issued to any national banking association having a capital and surplus less than the capital and surplus required by State law of State banks, trust companies, and corporations exercising such powers.

(j) Surrender of authorization; board resolution; Comptroller certification; activities affected; regulations

Any national banking association desiring to surrender its right to exercise the powers granted under this section, in order to relieve itself of the necessity of complying with the requirements of this section, or to have returned to it any securities which it may have deposited with the State authorities for the protection of private or court trusts, or for any other purpose, may file with the Comptroller of the Currency a certified copy of a resolution of its board of directors signifying such desire. Upon receipt of such resolution, the Comptroller of the Currency, after satisfying himself that such bank has been relieved in accordance with State law of all duties as trustee, executory,[2] administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics or other fiduciary, under court, private, or other appointments previously accepted under authority of this section, may, in his discretion, issue to such bank a certificate certifying that such bank is no longer authorized to exercise the powers granted by this section. Upon the issuance of such a certificate by the Comptroller of the Currency, such bank (1) shall no longer be subject to the provisions of this section or the regulations of the Comptroller of the Currency made pursuant thereto, (2) shall be entitled to have returned to it any securities which it may have deposited with the State authorities for the protection of private or court trusts, and (3) shall not exercise thereafter any of the powers granted by this section without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this section. The Comptroller of the Currency is authorized and empowered to promulgate such regulations as he may deem necessary to enforce compliance with the provisions of this section and the proper exercise of the powers granted therein.

(k) Revocation; procedures applicable

(1) In addition to the authority conferred by other law, if, in the opinion of the Comptroller of the Currency, a national banking association is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise, the powers granted by this section or otherwise fails or has failed to comply with the requirements of this section, the Comptroller may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this section. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the association.

(2) Such hearing shall be conducted in accordance with the provisions of section 1818(h) of this title, and subject to judicial review as provided in such section, and shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or later date is set by the Comptroller at the request of any association so served.

(3) Unless the association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent, or if upon the record made at any such hearing, the Comptroller shall find that any allegation specified in the notice of charges has been established, the

[2] So in original. Probably should be ''executor,''.

Comptroller may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this section, except that such order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

(4) A revocation order shall become effective not earlier than the expiration of thirty days after service of such order upon the association so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

(Pub. L. 87–722, §1, Sept. 28, 1962, 76 Stat. 668; Pub. L. 96–221, title VII, §704, Mar. 31, 1980, 94 Stat. 187.)

AMENDMENTS

1980—Subsec. (k). Pub. L. 96–221 added subsec. (k).

SAVINGS PROVISION

Section 2 of Pub. L. 87–722 provided that: ''Nothing contained in this Act [enacting this section, amending sections 581 and 584(a)(2) of Title 26, and repealing section 248(k) of this title] shall be deemed to affect or curtail the right of any national bank to act in fiduciary capacities under a permit granted before the date of enactment of this Act [Sept. 28, 1962] by the Board of Governors of the Federal Reserve System, nor to affect the validity of any transactions entered into at any time by any national bank pursuant to such permit. On and after the date of enactment of this Act the exercise of fiduciary powers by national banks shall be subject to the provisions of this Act and the requirements of regulations issued by the Comptroller of the Currency pursuant to the authority granted by this Act.''

§ 93. Violation of provisions of chapter

(a) Forfeiture of franchise; personal liability of directors

If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of title 62 of the Revised Statutes, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper district or Territorial court of the United States in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation.

(b) Civil money penalty

(1) First tier

Any national banking association which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such association who, violates any provision of title 62 of the Revised Statutes or any of the provisions of section 92a of this title, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(2) Second tier

Notwithstanding paragraph (1), any national banking association which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such association who, commits any violation described in paragraph (1) which—[1]

(A)(i) commits any violation described in any[2] paragraph (1);

(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such association; or

(iii) breaches any fiduciary duty;

(B) which violation, practice, or breach—

(i) is part of a pattern of misconduct;

(ii) causes or is likely to cause more than a minimal loss to such association; or

(iii) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(3) Third tier

Notwithstanding paragraphs (1) and (2), any national banking association which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such association who—

(A) knowingly—

(i) commits any violation described in paragraph (1);

(ii) engages in any unsafe or unsound practice in conducting the affairs of such association; or

(iii) breaches any fiduciary duty; and

(B) knowingly or recklessly causes a substantial loss to such association or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.

(4) Maximum amounts of penalties for any violation described in paragraph (3)

The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—

(A) in the case of any person other than a national banking association, an amount to not[3] exceed $1,000,000; and

(B) in the case of a national banking association, an amount not to exceed the lesser of—

(i) $1,000,000; or

[1] So in original. The words '', commits any violation described in paragraph (1) which'' probably should not appear.

[2] So in original. The word ''any'' probably should not appear.

[3] So in original. Probably should be ''not to''.

(ii) 1 percent of the total assets of such association.

(5) Assessment; etc.

Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Comptroller of the Currency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(6) Hearing

The association or other person against whom any penalty is assessed under this subsection shall be afforded an agency hearing if such association or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this subsection.

(7) Disbursement

All penalties collected under authority of this subsection shall be deposited into the Treasury.

(8) "Violate" defined

For purposes of this section, the term ''violate'' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(12)[4] Regulations

The Comptroller shall prescribe regulations establishing such procedures as may be necessary to carry out this subsection.

(c) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such an association (including a separation caused by the closing of such an association) shall not affect the jurisdiction and authority of the Comptroller of the Currency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such association (whether such date occurs before, on, or after August 9, 1989).

(d) Forfeiture of franchise for money laundering or cash transaction reporting offenses

(1) In general

(A) Conviction of title 18 offenses

(i) Duty to notify

If a national bank, a Federal branch, or Federal agency has been convicted of any criminal offense under section 1956 or 1957 of title 18, the Attorney General shall provide to the Comptroller of the Currency a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

(ii) Notice of termination; pretermination hearing

After receiving written notification from the Attorney General of such a conviction, the Comptroller of the Currency shall issue to the national bank, Federal branch, or Federal agency a notice of the Comptroller's intention to terminate all rights, privileges, and franchises of the bank, Federal branch, or Federal agency and schedule a pretermination hearing.

(B) Conviction of title 31 offenses

If a national bank, a Federal branch, or a Federal agency is convicted of any criminal offense under section 5322 or 5324 of title 31, after receiving written notification from the Attorney General, the Comptroller of the Currency may issue to the national bank, Federal branch, or Federal agency a notice of the Comptroller's intention to terminate all rights, privileges, and franchises of the bank, Federal branch, or Federal agency and schedule a pretermination hearing.

(C) Judicial review

Section 1818(h) of this title shall apply to any proceeding under this subsection.

(2) Factors to be considered

In determining whether a franchise shall be forfeited under paragraph (1), the Comptroller of the Currency shall take into account the following factors:

(A) The extent to which directors or senior executive officers of the national bank, Federal branch, or Federal agency knew of, or were involved in, the commission of the money laundering offense of which the bank, Federal branch, or Federal agency was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the national bank, Federal branch, or Federal agency which were designed to prevent the occurrence of any such offense.

(C) The extent to which the national bank, Federal branch, or Federal agency has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the bank, Federal branch, or Federal agency was found guilty.

(D) The extent to which the national bank, Federal branch, or Federal agency has implemented additional internal controls (since the commission of the offense of which the bank, Federal branch, or Federal agency was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the forfeiture of the franchise.

(3) Successor liability

This subsection shall not apply to a successor to the interests of, or a person who acquires, a bank, a Federal branch, or a Federal agency that violated a provision of law de-

[4] So in original. No pars. (9) to (11) have been enacted.

scribed in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

(4) "Senior executive officer" defined

The term ''senior executive officer'' has the same meaning as in regulations prescribed under section 1831i(f) of this title.

(d)[5] Authority

The Comptroller of the Currency may act in the Comptroller's own name and through the Comptroller's own attorneys in enforcing any provision of title 62 of the Revised Statutes, regulations thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Comptroller of the Currency is a party.

(R.S. § 5239; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Pub. L. 95–630, title I, § 103, Nov. 10, 1978, 92 Stat. 3643; Pub. L. 97–320, title IV, § 424(d)(3), (f), (g), Oct. 15, 1982, 96 Stat. 1523; Pub. L. 97–457, § 24, Jan. 12, 1983, 96 Stat. 2510; Pub. L. 101–73, title IX, §§ 905(e), 907(e), Aug. 9, 1989, 103 Stat. 460, 469; Pub. L. 102–550, title XV, § 1502(a), Oct. 28, 1992, 106 Stat. 4045; Pub. L. 103–322, title XXXIII, § 330017(b)(2), Sept. 13, 1994, 108 Stat. 2149; Pub. L. 103–325, title III, § 331(b)(3), title IV, §§ 411(c)(2)(C), 413(b)(2), Sept. 23, 1994, 108 Stat. 2232, 2253, 2254.)

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in subsecs. (a), (b)(1), and (d), was in the original ''this Title'' meaning title LXII of the Revised Statutes, consisting of R.S. §§ 5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. § 5239 derived from act June 3, 1864, ch. 106, § 53, 13 Stat. 116, which was the National Bank Act. See section 38 of this title.

Act Mar. 3, 1911, conferred the powers and duties of the former circuit courts upon the district courts.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–322, § 330017(b)(2), and Pub. L. 103–325, § 413(b)(2), amended section identically, redesignating subsec. (c), relating to forfeiture of franchise for money laundering, as (d).

Subsec. (d). Pub. L. 103–322, § 330017(b)(2), and Pub. L. 103–325, § 413(b)(2), amended section identically, redesignating subsec. (c), relating to forfeiture of franchise for money laundering, as (d).

Pub. L. 103–325, § 331(b)(3), added subsec. (d) relating to authority.

Subsec. (d)(1)(B). Pub. L. 103–325, § 411(c)(2)(C), substituted ''section 5322 or 5324 of title 31'' for ''section 5322 of title 31''.

1992—Subsec. (c). Pub. L. 102–550 added subsec. (c) relating to forfeiture of franchise for money laundering.

1989—Subsec. (b). Pub. L. 101–73, § 907(e), amended subsec. (b) generally, revising and restating as pars. (1) to (8) and (12) provisions of former pars. (1) to (8).

Subsec. (c). Pub. L. 101–73, § 905(e), added subsec. (c) relating to notice after separation from service.

1982—Subsec. (b)(1). Pub. L. 97–320, as amended by Pub. L. 97–457, inserted ''or any of the provisions of section 92a of this title'', and substituted ''may be assessed'' for ''shall be assessed'' and ''title'' for ''chapter''.

1978—Pub. L. 95–630 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 907(*l*) of Pub. L. 101–73 provided that: ''The amendments made by this section [amending this section and sections 481, 504, 505, 1467a, 1786, 1817, 1818, 1828, 1847, and 1972 of this title] shall apply with respect to conduct engaged in by any person after the date of the enactment of this Act [Aug. 9, 1989], except that the increased maximum civil penalties of $5,000 and $25,000 per violation or per day may apply to such conduct engaged in before such date if such conduct—

''(1) is not already subject to a notice (initiating an administrative proceeding) issued by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act [12 U.S.C. 1813(q)]) or the National Credit Union Administration Board; and

''(2) occurred after the completion of the last report of examination of the institution involved by the appropriate Federal banking agency (as so defined) occurring before the date of the enactment of this Act.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 109 of title I of Pub. L. 95–630 provided that: ''Any amendment made by this title which provides for the imposition of civil penalties [enacting sections 504 and 505 of this title and amending this section and sections 1464, 1730, 1730a, 1786, 1818, 1828, and 1847 of this title] shall apply only to violations occurring or continuing after the date of its enactment [Nov. 10, 1978].''

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 93a. Authority to prescribe rules and regulations

Except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to another regulatory agency, the Comptroller of the Currency is authorized to prescribe rules and regulations to carry out the responsibilities of the office, except that the authority conferred by this section does not apply to section 36 of this title or to securities activities of National Banks under the Act commonly known as the ''Glass-Steagall Act''.

(R.S. § 5239A, as added Pub. L. 96–221, title VII, § 708, Mar. 31, 1980, 94 Stat. 188.)

REFERENCES IN TEXT

The Glass-Steagall Act, referred to in text, probably refers to act June 16, 1933, ch. 89, 48 Stat. 162, as amended, also known as the Banking Act of 1933 or the Glass-Steagall Act, 1933, rather than to act Feb. 27, 1932, ch. 58, 47 Stat. 56, known as the Glass-Steagall Act, 1932. Section 16 of the 1933 act, which amended section 24 (Seventh) of this title, related in part to securities activities of national banks. For complete classification of these Acts to the Code, see Tables.

§ 94. Venue of suits

Any action or proceeding against a national banking association for which the Federal De-

[5] So in original. Probably should be ''(e)''.

posit Insurance Corporation has been appointed receiver, or against the Federal Deposit Insurance Corporation as receiver of such association, shall be brought in the district or territorial court of the United States held within the district in which that association's principal place of business is located, or, in the event any State, county, or municipal court has jurisdiction over such an action or proceeding, in such court in the county or city in which that association's principal place of business is located.

(R.S. § 5198; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 320; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Pub. L. 97–320, title IV, § 406, Oct. 15, 1982, 96 Stat. 1512; Pub. L. 97–457, § 20(a), Jan. 12, 1983, 96 Stat. 2509.)

CODIFICATION

The last sentence of R.S. § 5198, as added by act Feb. 18, 1875, ch. 80, § 1, 18 Stat. 320, appears to have been derived from act June 3, 1864, ch. 106, § 57, 13 Stat. 116, which was the National Bank Act. See section 38 of this title.

Section is comprised of last sentence of R.S. § 5198 as added by act Feb. 18, 1875, ch. 80, § 1, 18 Stat. 320. The remaining sentences of R.S. § 5198 are classified to section 86 of this title.

Act Mar. 3, 1911, conferred powers and duties of former circuit courts on district courts.

AMENDMENTS

1982—Pub. L. 97–320, as amended by Pub. L. 97–457, amended section generally. Prior to amendment section read as follows: ''Actions and proceedings against any association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 20(b) of Pub. L. 97–457 provided that: ''The amendment made by subsection (a) [amending this section] shall be deemed to have taken effect upon the enactment of Public Law 97–320 [Oct. 15, 1982].''

§ 94a. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section, act July 12, 1882, ch. 290, § 4, 22 Stat. 163, related to jurisdiction and venue. See sections 1348 and 1394 of Title 28, Judiciary and Judicial Procedure.

§ 95. Emergency limitations and restrictions on business of members of Federal Reserve System; designation of legal holiday for national banking associations; exceptions; "State" defined

(a) In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President. Any individual, partnership, corporation, or association, or any director, officer or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense.

(b)(1) In the event of natural calamity, riot, insurrection, war, or other emergency conditions occurring in any State whether caused by acts of nature or of man, the Comptroller of the Currency may designate by proclamation any day a legal holiday for the national banking associations located in that State. In the event that the emergency conditions affect only part of a State, the Comptroller of the Currency may designate the part so affected and may proclaim a legal holiday for the national banking associations located in that affected part. In the event that a State or a State official authorized by law designates any day as a legal holiday for ceremonial or emergency reasons, for the State or any part thereof, that same day shall be a legal holiday for all national banking associations or their offices located in that State or the part so affected. A national banking association or its affected offices may close or remain open on such a State-designated holiday unless the Comptroller of the Currency by written order directs otherwise.

(2) For the purpose of this subsection, the term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

(Mar. 9, 1933, ch. 1, title I, § 4, 48 Stat. 2; Pub. L. 96–221, title VII, § 705, Mar. 31, 1980, 94 Stat. 187; Pub. L. 97–320, title IV, § 407, Oct. 15, 1982, 96 Stat. 1513; Pub. L. 97–457, § 21, Jan. 12, 1983, 96 Stat. 2509.)

AMENDMENTS

1983—Subsec. (b)(1). Pub. L. 97–457 inserted ''a State or'' before ''a State official''.

1982—Subsec. (b)(1). Pub. L. 97–320 substituted ''In the event that a State official authorized by law designates any day as a legal holiday for ceremonial or emergency reasons, for the State or any part thereof, that same day shall be a legal holiday for all national banking associations or their offices located in that State or the part so affected. A national banking association or its affected offices may close or remain open on such a State-designated holiday unless the Comptroller of the Currency by written order directs otherwise'' for ''In the event that a State or a State official authorized by law designates any day as a legal holiday for either emergency or ceremonial reasons for all banks chartered by that State to do business within that State, that same day shall be a legal holiday for all national banking associations chartered to do business within that State unless the Comptroller of the Currency shall by written order permit all national banking associations located in that State to remain open''.

1980—Pub. L. 96–221 designated existing provisions as subsec. (a) and added subsec. (b).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

BANK HOLIDAY OF 1933

Proclamations Nos. 2039, 2040, and 2070, dated Mar. 6, 1933, Mar. 9, 1933, and Dec. 30, 1933, respectively, related to the temporary suspension of banking transactions beginning Mar. 6, 1933, by all member banks of the Federal Reserve System.

Pursuant to Ex. Ord. No. 6073, dated March 10, 1933, formerly set out as a note under this section, the Secretary of the Treasury by order of March 11, 1933, authorized all Federal reserve banks and nonmember banks and other banking institutions to resume their normal and usual banking functions on March 13, 1933, subject to certain restrictions. See 31 C.F.R. 121.20–121.22. The fifth and sixth paragraphs of Ex. Ord. No. 6073, relating to the removal of gold coin, gold bullion, or gold certificates from the United States by corporations, etc., including banking institutions and authorization of banking institutions to pay out gold coin, gold bullion or gold certificates, were revoked by Ex. Ord. No. 11825, Dec. 31, 1974, 40 F.R. 1003, set out as a note under section 95a of this title.

PROC. NO. 2725. EXEMPTION OF MEMBER BANKS OF FEDERAL RESERVE SYSTEM

Proc. No. 2725, Apr. 7, 1947, 12 F.R. 2343, 61 Stat. 1062, provided:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of the authority vested in me by section 5(b) of the Trading with the Enemy Act of October 6, 1917, 40 Stat. 415, as amended [section 5(b) of Appendix to Title 50], and section 4 of the act of March 9, 1933, 48 Stat. 2 [this section] and by virtue of all other authority vested in me, do hereby, in the interest of the internal management of the Government, proclaim, order, direct, and declare that the said proclamations of March 6 and March 9, 1933, and Executive order of March 10, 1933, as amended, are further amended to exclude from their scope banking institutions which are members of the Federal Reserve System: *Provided, however*, That no banking institution shall pay out any gold coin, gold bullion, or gold certificates, except as authorized by the Secretary of the Treasury, or allow the withdrawal of any currency for hoarding.

This proclamation shall become effective as of March 15, 1947.

§ 95a. Regulation of transactions in foreign exchange of gold and silver; property transfers; vested interests, enforcement and penalties

(1) During the time of war, the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this section or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this section, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term ''United States'' means the United States and any place subject to the jurisdiction thereof; *Provided, however*, That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. As used in this subdivision the term ''person'' means an individual, partnership, association, or corporation.

(4) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regula-

tion or prohibition by this paragraph do not include those which are otherwise controlled for export under section 2404 of title 50, Appendix, or under section 2405 of title 50, Appendix to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18.

(Oct. 6, 1917, ch. 106, § 5(b), 40 Stat. 415; Sept. 24, 1918, ch. 176, § 5, 40 Stat. 966; Mar. 9, 1933, ch. 1, title I, § 2, 48 Stat. 1; May 7, 1940, ch. 185, § 1, 54 Stat. 179; Dec. 18, 1941, ch. 593, title III, § 301, 55 Stat. 839; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 69 Stat. 1352; Pub. L. 95–223, title I, §§ 101(a), 102, 103(b), Dec. 28, 1977, 91 Stat. 1625, 1626; Pub. L. 100–418, title II, § 2502(a)(1), Aug. 23, 1988, 102 Stat. 1371; Pub. L. 103–236, title V, § 525(b)(1), Apr. 30, 1994, 108 Stat. 474.)

CODIFICATION

Section 5(b) of act Oct. 6, 1917, is part of the Trading with the Enemy Act and is also classified to section 5(b) of the Appendix to Title 50, War and National Defense.

Words '', including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this section in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas'' following ''to the jurisdiction thereof:'' in subsec. (3) were omitted on authority of 1946 Proc. No. 2695, which granted the Philippine Islands independence, and which was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse. Proc. No. 2695 is set out as a note under section 1394 of Title 22.

AMENDMENTS

1994—Par. (4). Pub. L. 103–236 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The authority granted to the President in this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise controlled for export under section 2404 of title 50, Appendix, or with respect to which no acts are prohibited by chapter 37 of title 18.''

1988—Par. (4). Pub. L. 100–418 added par. (4).

1977—Par. (1). Pub. L. 95–223, §§ 101(a), 102, substituted ''During the time of war, the President may, through any agency that he may designate, and under such rules and regulations'' for ''During the time of war or during any other period of national emergency declared by the President, the President may, through any agency, that he may designate, or otherwise, and under such rules and regulations'' in the provisions preceding subpar. (A), and, in the provisions following subpar. (B), struck out ''; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of the subdivision'' after ''control of such person''.

Par. (3). Pub. L. 95–223, § 103(b), struck out provisions that whoever willfully violated any of the provisions of this subdivision or of any license, order, rule, or regulation issued thereunder, could be fined not more than $10,000, or, if a natural person, could be imprisoned for not more than ten years, or both; and that any officer, director, or agent of any corporation who knowingly participated in that violation could be punished by a like fine, imprisonment, or both.

1941—Act Dec. 18, 1941, broadened the powers of the President to take, administer, control, use and liquidate foreign-owned property and added a flexibility of control which enabled the President and the agencies designated by him to cope with the problems surrounding alien property, its ownership or control, on the basis of the particular facts in each case.

1940—Act May 7, 1940, included dealings in evidences of indebtedness or ownership of property in which foreign states, nationals or political subdivisions thereof have an interest.

1933—Act Mar. 9, 1933, amended section generally by, among other things, extending the President's power to any time of war or national emergency, by permitting regulations to be issued by any agency designated by the President, by providing for the furnishing under oath of complete information relative to transactions under this section and by placing sanctions on violations to the extent of a $10,000 fine or ten years imprisonment.

1918—Act Sept. 24, 1918, inserted provisions relating to the hoarding or melting of gold or silver coin or bullion or currency and to the regulation of transactions in bonds or certificates of indebtedness.

DELEGATION OF POWERS

Delegation of President's powers under this section to Secretary of the Treasury and Alien Property Custodian; and transfer of Alien Property Custodian's powers to Attorney General, see Ex. Ord. Nos. 9095 and 9788, set out as notes under section 6 of the Appendix to Title 50, War and National Defense.

All powers conferred upon President by this section delegated to Secretary of the Treasury by Memorandum of the President dated Feb. 12, 1942, 7 F.R. 1409.

ADMINISTRATION OF EXPORT ADMINISTRATION ACT

For provisions relating to the administration of the Export Administration Act, see Executive Orders set out as notes under section 2403 of Title 50, Appendix, War and National Defense.

LIMITATION ON EXERCISE OF EMERGENCY AUTHORITIES

Section 525(b)(2) of Pub. L. 103–236 provided that: ''The authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act [this section], which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act [Apr. 30, 1994], do not include the authority to regulate or prohibit, directly or indirectly, any activity which, under section 5(b)(4) of the Trading With the Enemy Act, as amended by paragraph (1) of this subsection, may not be regulated or prohibited.''

Section 2502(a)(2) of Pub. L. 100–418 provided that: ''The authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act [this section], which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act [Aug. 23, 1988], do not include the authority to regulate or prohibit, directly or indirectly, any activity which, under section 5(b)(4) of the Trading With the Enemy Act, as added by paragraph (1) of this subsection, may not be regulated or prohibited.''

EXTENSION AND TERMINATION OF NATIONAL EMERGENCY POWERS UNDER THE TRADING WITH THE ENEMY ACT

Section 101(b), (c) of Pub. L. 95–223 provided that:

''(b) Notwithstanding the amendment made by subsection (a) [amending par. (1) of this section], the authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act [this section], which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, may continue to be exercised with respect to such country, except that, unless extended, the exercise of such authorities shall terminate (subject to the savings provisions of the second sentence of section 101(a) of the National

Emergencies Act [section 1601(a) of Title 50, War and National Defense]) at the end of the two-year period beginning on the date of enactment of the National Emergencies Act [Sept 14, 1976]. The President may extend the exercise of such authorities for one-year periods upon a determination for each such extension that the exercise of such authorities with respect to such country for another year is in the national interest of the United States.

''(c) The termination and extension provisions of subsection (b) of this section supersede the provisions of section 101(a) [section 1601(a) of Title 50, War and National Defense] and of title II [section 1621 et seq. of Title 50] of the National Emergencies Act to the extent that the provisions of subsection (b) of this section are inconsistent with those provisions.''

REMOVAL OF LIMITATIONS AND RESTRAINTS IN FINANCING EXPORTS

Pub. L. 92–126, § 2, Aug. 17, 1971, 85 Stat. 346, provided that: ''In connection with section 2 of Executive Order Number 11387, dated January 1, 1968 [formerly set out below] and any rule, regulation, or guideline established by the Board of Governors of the Federal Reserve System in connection with a voluntary foreign credit restraint program, there shall be no limitation or restraint, or suggestion that there be a limitation or restraint, on the part of any bank or financial institution in connection with the extension of credit for the purpose of financing exports of the United States.''

WORLD WAR II ALIEN PROPERTY CUSTODIAN

Reestablishment and termination of Office of Alien Property Custodian during World War II, see notes under section 6 of the Appendix to Title 50, War and National Defense.

DIPLOMATIC PROPERTY OF GERMANY AND JAPAN

Ex. Ord. No. 9760, July 24, 1946, 11 F.R. 7999, set out in notes to section 6 of Title 50, Appendix, War and National Defense, supersedes conflicting provisions of Ex. Ord. No. 8389, set out below.

EXECUTIVE ORDER NO. 6260

Ex. Ord. No. 6260, Aug. 28, 1933, as amended by Ex. Ord. No. 6359, Oct. 25, 1933; Ex. Ord. No. 6556, Jan. 12, 1934; Ex. Ord. No. 6560, Jan. 15, 1934; Ex. Ord. No. 10896, Nov. 29, 1960, 25 F.R. 12281; Ex. Ord. No. 10905, Jan. 14, 1961, 26 F.R. 321; Ex. Ord. No. 11037, July 20, 1962, 27 F.R. 6967, formerly set out as a note under this section, which related to the hoarding, export, and earmarking of gold coin, bullion, or currency, and transactions in foreign exchange, was revoked by Ex. Ord. No. 11825, Dec. 31, 1974, 40 F.R. 1003, set out below.

EXECUTIVE ORDER NO. 6560

Ex. Ord. No. 6560, Jan. 15, 1934, as amended by Ex. Ord. No. 8389. April 10, 1940, 6 p.m. E. S. T., 5 F.R. 1400; Ex. Ord. No. 8405, May 10, 1940, 7:55 a.m. E. S. T., 5 F.R. 1677; Ex. Ord. No. 8493, July 25, 1940, 5 F.R. 2667, formerly set out as a note under this section, which declared the existence of a national emergency and prescribed regulations for the investigation, regulation, and prohibition of transactions in foreign exchange, transfers of credit between or payments by banking institutions, and export of currency or silver coin by persons within the United States or subject to its jurisdiction, was based on authority of section 95a of this title (act Oct. 6, 1917, ch. 106, § 5(b), 40 Stat. 415, comprising part of the Trading With the Enemy Act) which was amended in 1977 to remove the powers of the President to regulate transactions during a period of national emergency other than a war.

EX. ORD. NO. 8389. REGULATING TRANSACTIONS IN FOREIGN EXCHANGE AND FOREIGN-OWNED PROPERTY, PROVIDING FOR THE REPORTING OF ALL FOREIGN-OWNED PROPERTY

Ex. Ord. No. 8389, Apr. 10, 1940, 5 F.R. 1400, as amended by Ex. Ord. No. 8405, May 10, 1940, 5 F.R. 1677; Ex. Ord. No. 8446, June 17, 1940, 5 F.R. 2279; Ex. Ord. No. 8484, July 15, 1940, 5 F.R. 2586; Ex. Ord. No. 8493, July 25, 1940, 5 F.R. 2667; Ex. Ord. No. 8565, Oct. 10, 1940, 5 F.R. 4062; Ex. Ord. No. 8701, Mar. 4, 1941, 6 F.R. 1285; Ex. Ord. No. 8711, Mar. 13, 1941, 6 F.R. 1443; Ex. Ord. No. 8721, Mar. 24, 1941, 6 F.R. 1622; Ex. Ord. No. 8746, Apr. 28, 1941, 6 F.R. 2187; Ex. Ord. No. 8785, June 14, 1941, 6 F.R. 2897; Ex. Ord. No. 8832, July 26, 1941, 6 F.R. 3715; Ex. Ord. No. 8963, Dec. 9, 1941, 6 F.R. 6348; Ex. Ord. No. 8998, Dec. 26, 1941, 6 F.R. 6787, provided:

SECTION 1. CERTAIN FOREIGN BANKING TRANSACTIONS PROHIBITED

All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in this Order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);

B. All payments by or to any banking institution within the United States;

C. All transactions in foreign exchange by any person within the United States;

D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

E. All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

SECTION 2. DEALINGS IN FOREIGN SECURITIES; REGULATIONS

A. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise:

(1) The acquisition, disposition or transfer of, or other dealing in, or with respect to, any security or evidence thereof on which there is stamped or imprinted, or to which there is affixed or otherwise attached, a tax stamp or other stamp of a foreign country designated in this Order or a notarial or similar seal which by its contents indicates that it was stamped, imprinted, affixed or attached within such foreign country, or where the attendant circumstances disclose or indicate that such stamp or seal may, at any time, have been stamped, imprinted, affixed or attached thereto; and

(2) The acquisition by, or transfer to, any person within the United States of any interest in any security or evidence thereof if the attendant circumstances disclose or indicate that the security or evidence thereof is not physically situated within the United States.

B. The Secretary of the Treasury may investigate, regulate, or prohibit under such regulations, rulings, or instructions as he may prescribe, by means of licenses or otherwise, the sending, mailing, importing or otherwise bringing, directly or indirectly, into the United States, from any foreign country, of any securities or evidences thereof or the receiving or holding in the United States of any securities or evidences thereof so brought into the United States.

SECTION 3. FOREIGN COUNTRIES AFFECTED; EFFECTIVE DATE OF PROHIBITIONS

The term ''foreign country designated in this Order'' means a foreign country included in the following

schedule, and the term ''effective date of this Order'' means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

(a) April 8, 1940—
Norway and
Denmark;
(b) May 10, 1940—
The Netherlands,
Belgium and
Luxembourg;
(c) June 17, 1940—
France (including Monaco);
(d) July 10, 1940—
Latvia, Estonia and
Lithuania;
(e) October 9, 1940—
Rumania;
(f) March 4, 1941—
Bulgaria;
(g) March 13, 1941—
Hungary;
(h) March 24, 1941—
Yugoslavia;
(i) April 28, 1941—
Greece; and
(j) June 14, 1941—
Albania,
Andorra,
Austria,
Czechoslovakia,
Danzig,
Finland,
Germany,
Italy,
Liechtenstein,
Poland,
Portugal,
San Marino,
Spain,
Sweden,
Switzerland, and
Union of Soviet Socialist Republics;
(k) June 14, 1941—
China and
Japan;
(*l*) June 14, 1941—
Thailand;
(m) June 14, 1941—
Hong Kong.

The ''effective date of this Order'' with respect to any foreign country not designated in this Order shall be deemed to be June 14, 1941.

SECTION 4. RECORDS OF FOREIGN BANKING AND SECURITY TRANSACTIONS; INVESTIGATIONS

A. The Secretary of the Treasury and/or the Attorney General may require, by means of regulations, rulings, instructions, or otherwise, any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, from time to time and at any time or times, complete information relative to, any transaction referred to in section 5(b) of the Act of October 6, 1917 (40 Stat. 415) [this section], as amended, or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect, including the production of any books of account, contracts, letters, or other papers, in connection therewith, in the custody or control of such person, either before or after such transaction is completed; and the Secretary of the Treasury and/or the Attorney General may, through any agency, investigate any such transaction or act, or any violation of the provisions of this Order.

B. Every person engaging in any of the transactions referred to in sections 1 and 2 of this Order shall keep a full record of each such transaction engaged in by him, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least one year after the date of such transaction.

SECTION 5. DEFINITIONS

A. As used in the first paragraph of section 1 of this Order ''transactions (which) involve property in which any foreign country designated in this Order, or any national thereof, has * * * any interest of any nature whatsoever, direct or indirect,'' shall include but not by way of limitation (i) any payment or transfer to any such foreign country or national thereof, (ii) any export or withdrawal from the United States to such foreign country, and (iii) any transfer of credit, or payment of an obligation, expressed in terms of the currency of such foreign country.

B. The term ''United States'' means the United States and any place subject to the jurisdiction thereof, and the term ''continental United States'' means the States of the United States, the District of Columbia, and the Territory of Alaska: *Provided, however*, That for the purposes of this Order the term ''United States'' shall not be deemed to include any territory included within the term ''foreign country'' as defined in paragraph D of this section.

C. The term ''person'' means an individual, partnership, association, corporation, or other organization.

D. The term ''foreign country'' shall include, but not by way of limitation,

(i) The state and the government thereof on the effective date of this Order as well as any political subdivision, agency, or instrumentality thereof or any territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof.

(ii) Any other government (including any political subdivision, agency, or instrumentality thereof) to the extent and only to the extent that such government exercises or claims to exercise *de jure* or *de facto* sovereignty over the area which on such effective date constituted such foreign country, and

(iii) Any territory which on or since the effective date of this Order is controlled or occupied by the military, naval or police forces or other authority of such foreign country;

(iv) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any of the foregoing. Hong Kong shall be deemed to be a foreign country within the meaning of this subdivision.

E. The term ''national'' shall include,

(i) Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order,

(ii) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order had or has had its principal place of business in such foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, such foreign country and/or one or more nationals thereof as herein defined.

(iii) Any person to the extent that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any national of such foreign country, and

(iv) Any other person who there is reasonable cause to believe is a ''national'' as herein defined.

In any case in which by virtue of the foregoing definition a person is a national of more than one foreign country, such person shall be deemed to be a national of each such foreign country. In any case in which the combined interests of two or more foreign countries designated in this Order and/or nationals thereof are sufficient in the aggregate to constitute, within the

meaning of the foregoing, control of 25 per centum or more of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of a partnership, association, corporation or other organization, but such control or a substantial part of such stock, shares, bonds, debentures, notes, drafts, or other securities or obligations is not held by any one such foreign country and/or national thereof, such partnership, association, corporation or other organization shall be deemed to be a national of each of such foreign countries. The Secretary of the Treasury shall have full power to determine that any person is or shall be deemed to be a ''national'' within the meaning of this definition, and the foreign country of which such person is or shall be deemed to be a national. Without limitation of the foregoing, the term ''national'' shall also include any other person who is determined by the Secretary of the Treasury to be, or to have been, since such effective date, acting or purporting to act directly or indirectly for the benefit or under the direction of a foreign country designated in this Order or national thereof, as herein defined.

F. The term ''banking institution'' as used in this Order shall include any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or brokers, and each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate ''banking institution''.

G. The term ''this Order'', as used herein, shall mean Executive Order No. 8389 of April 10, 1940, as amended.

SECTION 6. CONSTRUCTION WITH EX. ORD. NO. 6560; SAVING CLAUSE

Executive Order No. 8389 of April 10, 1940, as amended, shall no longer be deemed to be an amendment to or a part of Executive Order No. 6560 of January 15, 1934. Executive Order No. 6560 of January 15, 1934, and the Regulations of November 12, 1934, are hereby modified in so far as they are inconsistent with the provisions of this Order, and except as so modified, continue in full force and effect. Nothing herein shall be deemed to revoke any license, ruling, or instruction now in effect and issued pursuant to Executive Order No. 6560 of January 15, 1934, as amended, or pursuant to this Order; provided, however, that all such licenses, rulings, or instructions shall be subject to the provisions hereof. Any amendment, modification or revocation by or pursuant to the provisions of this Order of any orders, regulations, rulings, instructions or licenses shall not affect any act done, or any suit or proceeding had or commenced in any civil or criminal case prior to such amendment, modification or revocation, and all penalties, forfeitures and liabilities under any such orders, regulations, rulings, instructions or licenses shall continue and may be enforced as if such amendment, modification or revocation had not been made.

SECTION 7. REGULATIONS BY SECRETARY OF THE TREASURY

Without limitation as to any other powers or authority of the Secretary of the Treasury or the Attorney General under any other provision of this Order, the Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations, rulings, and instructions to carry out the purposes of this Order and to provide therein or otherwise the conditions under which licenses may be granted by or through such officers or agencies as the Secretary of the Treasury may designate, and the decision of the Secretary with respect to the granting, denial or other disposition of an application or license shall be final.

SECTION 8. OFFENSES AND PENALTIES UNDER ACT OCT. 6, 1917

Section 5(b) of the Act of October 6, 1917, as amended, provides in part:

''* * * Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.''

SECTION 9. AMENDMENTS OF ORDER AND REGULATIONS PRESCRIBED THEREUNDER

This Order and any regulations, rulings, licenses or instructions issued hereunder may be amended, modified or revoked at any time.

[Ex. Ord. No. 8389 and the regulations and general rulings issued thereunder by the Secretary of the Treasury were approved and confirmed by Res. May 7, 1940, ch. 185, § 2, 54 Stat. 179.]

[Ex. Ord. No. 9760, July 24, 1946, 11 F.R. 7999, 50 U.S.C. App., § 6 note, relating to diplomatic property of Germany and Japan in the United States, supersedes conflicting provisions of Ex. Ord. No. 8389, set out above.]

EXECUTIVE ORDERS NOS. 8446, 8484, 8565, 8701, 8711, 8721, 8746

The application of Ex. Ord. No. 6560, §§ 9 to 14, to French property by Ex. Ord. No. 8446, 5 F.R. 2279; to Latvian, Estonian and Lithuanian property by Ex. Ord. No. 8484, 5 F.R. 2586; to Rumanian property by Ex. Ord. No. 8565, 5 F.R. 4062; to Bulgarian property by Ex. Ord. No. 8701, 6 F.R. 1285; to Hungarian property by Ex. Ord. No. 8711, 6 F.R. 1443; to Yugoslav property by Ex. Ord. No. 8721, 6 F.R. 1622; to Greek property by Ex. Ord. No. 8746, 6 F.R. 2187, was incorporated in the provisions of Ex. Ord. No. 8389 as amended by Ex. Ord. No. 8785, set out above.

EX. ORD. NO. 9747. FUNCTIONS OF ALIEN PROPERTY CUSTODIAN AND TREASURY DEPARTMENT CONTINUED IN PHILIPPINES

Ex. Ord. No. 9747, July 3, 1946, 11 F.R. 7518, provided: The terms and provisions of Executive Order 9095 of March 11, 1942, as amended [formerly set out as a note under section 6 of the Appendix to Title 50, War and National Defense], and Executive Order No. 8389 of April 10, 1940, as amended [set out above], shall continue in force in the Philippines after July 4, 1946, and all powers and authority delegated by the said Executive Orders to the Alien Property Custodian and to the Secretary of the Treasury, respectively, shall after July 4, 1946, continue to be exercised in the Philippines by the said officers, respectively, as therein provided.

EXECUTIVE ORDER NO. 10348

Ex. Ord. No. 10348, Apr. 26, 1952, 17 F.R. 3769, which provided that Ex. Ord. No. 8389, Apr. 10, 1940, 5 F.R. 1400, as amended, set out above, and all delegations, designations, regulations, rulings, instructions, and licenses issued under such order, should be continued in force according to their terms for the duration of the period of the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950, set out as a note preceding section 1 of the Appendix to Title 50, War and National Defense, was superseded by Ex. Ord. No. 11281, May 13, 1966, 31 F.R. 7215, set out as a note under section 6 of the Appendix to Title 50.

EXECUTIVE ORDER NO. 11387

Ex. Ord. No. 11387, Jan. 1, 1968, 33 F.R. 47, which prohibited transfers of capital to or within a foreign country or to any national thereof outside the United States by a person subject to the jurisdiction of the United States who owns a 10 percent interest in a foreign business venture, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EX. ORD. NO. 11825. REVOCATION OF EXECUTIVE ORDERS PERTAINING TO REGULATION OF ACQUISITION OF, HOLDING OF, OR OTHER TRANSACTIONS IN GOLD

Ex. Ord. No. 11825, Dec. 31, 1974, 40 F.R. 1003, provided:

By virtue of the authority vested in me by section 1 of the Act of August 8, 1950, 64 Stat. 419, and section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a) [this section], and as President of the United States, and in view of the provisions of section 3 of Public Law 93–110, 87 Stat. 352, as amended by section 2 of Public Law 93–373, 88 Stat. 445, [set out as notes under section 442 of former Title 31, Money and Finance], it is ordered as follows:

SECTION 1. Executive Order No. 6260 of August 28, 1933, as amended by Executive Order No. 6359 of October 25, 1933, Executive Order No. 6556 of January 12, 1934, Executive Order No. 6560 of January 15, 1934, Executive Order No. 10896 of November 29, 1960, Executive Order No. 10905 of January 14, 1961, and Executive Order No. 11037 of July 20, 1962; the fifth and sixth paragraphs of Executive Order No. 6073, March 10, 1933 [formerly set out as a note under section 95 of this title]; sections 3 and 4 of Executive Order No. 6359 of October 25, 1933 [formerly set out as a note under section 248 of this title]; and paragraph 2(d) of Executive Order No. 10289 of September 17, 1951 [set out as a note under section 301 of Title 3, The President], are hereby revoked.

SECTION 2. The revocation, in whole or in part, of such prior Executive orders relating to regulation on the acquisition of, holding of, or other transactions in gold shall not affect any act completed, or any right accruing or accrued, or any suit or proceeding finished or started in any civil or criminal cause prior to the revocation, but all such liabilities, penalties, and forfeitures under the Executive orders shall continue and may be enforced in the same manner as if the revocation had not been made.

This order shall become effective on December 31, 1974.

GERALD R. FORD.

§ 95b. Ratification of acts of President and Secretary of the Treasury under section 95a

The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by section 95a of this title, are approved and confirmed.

(Mar. 9, 1933, ch. 1, title I, § 1, 48 Stat. 1.)

CODIFICATION

This section is also set out as a note under section 5 of Title 50, Appendix, War and National Defense.

SUBCHAPTER V—OBTAINING AND ISSUING CIRCULATING NOTES

§§ 101 to 110. Repealed. Pub. L. 103–325, title VI, § 602(e)(5)–(11), (f)(2)–(4)(A), (g)(9), Sept. 23, 1994, 108 Stat. 2292, 2294

Section 101, acts Mar. 14, 1900, ch. 41, § 12, 31 Stat. 49; Oct. 5, 1917, ch. 74, § 2, 40 Stat. 342, provided for delivery of circulating notes in blank to national banking associations depositing bonds with Treasurer of United States.

Section 101a, R.S. § 5159; Dec. 23, 1913, ch. 6, § 17, 38 Stat. 268; June 21, 1917, ch. 32, § 9, 40 Stat. 239, related to deposit of bonds to secure circulating notes.

Section 102, R.S. § 5158, construed term ''United States bonds'' as including registered bonds.

Section 103, act Oct. 5, 1917, ch. 74, § 3, 40 Stat. 342, related to denominations of notes and limitation on amount of $1 and $2 notes.

Section 104, R.S. § 5172; May 30, 1908, ch. 229, § 11, 35 Stat. 551; Dec. 23, 1913, ch. 6, § 27, 38 Stat. 274; Aug. 4, 1914, ch. 225, 38 Stat. 682; Mar. 3, 1919, ch. 101, § 4, 40 Stat. 1315, related to printing and form of circulating notes.

Section 105, act June 20, 1874, ch. 343, § 5, 18 Stat. 124, provided that Comptroller of Currency was to print charter numbers of association on national bank notes.

Section 106, act Mar. 3, 1875, ch. 130, § 1, 18 Stat. 372, provided for printing national-bank notes on distinctive paper adopted by Secretary of the Treasury.

Section 107, R.S. § 5173, related to custody of plates and dies procured for printing notes and payment of expenses.

Section 108, R.S. § 5174; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 252, related to examination of plates, dies, and other material from which national-bank circulation was printed, and destruction of obsolete material.

Section 109, R.S. § 5182; Jan. 13, 1920, ch. 38, 41 Stat. 387, provided that banks could issue and circulate notes the same as money if signed by officers in manner of obligatory promissory notes payable on demand at place of business, and specified demands for which such notes were to be received.

Section 110, R.S. § 5183; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 320, prohibited banks from issuing unauthorized notes.

SUBCHAPTER VI—REDEMPTION AND REPLACEMENT OF CIRCULATING NOTES

§ 121. Repealed. Pub. L. 103–325, title VI, § 602(f)(4)(B), Sept. 23, 1994, 108 Stat. 2292

Section, acts June 20, 1874, ch. 343, § 3, 18 Stat. 123; Dec. 23, 1913, ch. 6, § 20, 38 Stat. 271; May 29, 1920, ch. 214, § 1, 41 Stat. 654, provided that every national banking association was to establish reserve in Treasury for redemption of notes by Treasurer of United States, forward notes unfit for use to Treasurer for disposition, and reimburse expenses of Treasury.

§ 121a. Redemption of notes unidentifiable as to bank of issue

Whenever any Federal Reserve bank notes or Federal Reserve notes are presented to the Treasurer of the United States for redemption and such notes cannot be identified as to the bank of issue or the bank through which issued, the Treasurer of the United States may redeem such notes under such rules and regulations as the Secretary of the Treasury may prescribe.

(June 13, 1933, ch. 62, § 1, 48 Stat. 127; Pub. L. 89–427, § 4(a), May 20, 1966, 80 Stat. 161; Pub. L. 103–325, title VI, § 602(g)(8)(A), Sept. 23, 1994, 108 Stat. 2294.)

AMENDMENTS

1994—Pub. L. 103–325, § 602(g)(8)(A)(ii), which directed the amendment of this section by striking out '', and the notes, other than Federal Reserves notes, so redeemed shall be forwarded to the Comptroller of the Currency for cancellation and destruction'' after ''Treasury may prescribe'', was executed by striking out text which contained the word ''Reserves'' rather than ''Reserve'', to reflect the probable intent of Congress.

Pub. L. 103–325, § 602(g)(8)(A)(i), substituted ''Whenever any Federal Reserve bank notes,'' for ''Whenever any national-bank notes, Federal Reserve bank notes,''.

1966—Pub. L. 89–427 excepted Federal Reserve notes from the category of notes which, upon redemption by the Treasurer of the United States, must be forwarded to the Comptroller of the Currency for cancellation and destruction.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of the Treasury, see note set out under section 55 of this title.

§ 122. Repealed. Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section, act July 14, 1890, ch. 708, § 6, 26 Stat. 289, related to deposits received by the Treasurer from na-

tional banks made to redeem circulating notes of such banks and disposition of those deposits.

§ 122a. Redeemed notes of unidentifiable issue; funds charged against

Federal Reserve bank notes redeemed by the Treasurer of the United States under section 121a of this title shall be charged against the balance of deposits for the retirement of Federal Reserve bank notes under the provisions of sections 122 and 445[1] of this title; and charges for Federal Reserve notes redeemed by the Treasurer of the United States under section 121a of this title shall be apportioned among the twelve Federal Reserve banks as determined by the Board of Governors of the Federal Reserve System.

(June 13, 1933, ch. 62, § 2, 48 Stat. 128; Pub. L. 89–427, § 4(b), May 20, 1966, 80 Stat. 161; Pub. L. 103–325, title VI, § 602(g)(8)(B), Sept. 23, 1994, 108 Stat. 2294.)

REFERENCES IN TEXT

Section 122 of this title, referred to in text, was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068.

Section 445 of this title, referred to in text, was repealed by act June 12, 1945, ch. 186, § 3, 59 Stat. 238.

AMENDMENTS

1994—Pub. L. 103–325 struck out ''National-bank notes and'' before ''Federal Reserve bank notes redeemed'' and ''national-bank notes and'' after ''deposits for the retirement of''.

1966—Pub. L. 89–427 substituted provisions allowing the Board of Governors of the Federal Reserve System to determine the proper apportioning between the Federal Reserve banks of the charges for the redemption by the Treasurer of the United States of Federal Reserve notes that are unidentifiable as to bank of issue for provisions that set out the exact formula for determining the proper apportioning of charges using a proportion based upon the amount of Federal Reserve notes of each Federal Reserve bank in circulation in the 31st day of December of the year preceding the date of redemption, with the amount apportioned under the formula charged by the Treasurer of the United States against deposit in the gold-redemption fund made by the bank or its Federal Reserve agent.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of the Treasury, see note set out under section 55 of this title.

§§ 123 to 126. Repealed. Pub. L. 103–325, title VI, § 602(e)(12), (13), (f)(4)(C), (6), Sept. 23, 1994, 108 Stat. 2292, 2293

Section 123, R.S. § 5195; June 20, 1874, ch. 343, § 3, 18 Stat. 123, related to redemption of notes by bank at own counter.

Section 124, R.S. § 5184; June 23, 1874, ch. 455, § 1, 18 Stat. 206, related to destroying and replacing notes unfit for use.

Section 125, act July 28, 1892, ch. 317, 27 Stat. 322, related to redemption of lost or stolen notes.

Section 126, act June 20, 1874, ch. 343, § 8, 18 Stat. 125, related to duty of Treasurer, designated depositaries, and national-bank depositaries of United States to return notes of failed or liquidated banks to Treasury for redemption.

[1] See References in Text note below.

§ 127. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 633

Section, act Mar. 3, 1875, ch. 130, § 3, 18 Stat. 399, provided for a clerical force for redemption of circulating notes.

SUBCHAPTER VII—PROCEEDINGS ON FAILURE OF BANK TO REDEEM CIRCULATING NOTES

§§ 131 to 138. Repealed. Pub. L. 103–325, title VI, § 602(e)(14)–(21), Sept. 23, 1994, 108 Stat. 2292

Section 131, R.S. § 5226; June 20, 1874, ch. 343, § 3, 18 Stat. 123, related to protest of notes and waiver of demand and notice of protest.

Section 132, R.S. § 5227, related to appointment by Comptroller of the Currency of special agent to examine failure of national banking association to redeem its circulating notes and provided for forfeiture of association's bonds to United States based on findings of agent.

Section 133, R.S. § 5228; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 320, prohibited banking associations from continuing in business after default.

Section 134, R.S. § 5229, provided that, upon declaration of forfeiture of association's bonds, Comptroller of the Currency was to notify holders of circulating notes to present notes for payment and was authorized to cancel bonds pledged by association.

Section 135, R.S. § 5232, related to disposition of redeemed notes and perpetuation of evidence of payment of such notes.

Section 136, R.S. § 5233, related to cancellation of redeemed notes.

Section 137, R.S. § 5230, provided Comptroller of the Currency with option of selling defaulting association's bonds at auction, rather than cancelling them, and granted United States paramount lien on all association assets in case of deficiencies from such sale.

Section 138, R.S. § 5231, related to private sale of defaulting association's bonds by Comptroller of the Currency.

SUBCHAPTER VIII—RESERVE CITIES; LAWFUL RESERVES

§ 141. Omitted

CODIFICATION

Section, R.S. § 5191 (part); acts Dec. 23, 1913, ch. 6, § 2 (part), 38 Stat. 251; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704, which set out a list of reserve and central reserve cities and permitted the Board of Governors of the Federal Reserve System to reclassify, add to, or terminate the designation of such cities, was apparently included in the 1926 ed. of the Code on the basis of authorities other than the source credits. Accordingly, and because the continuing accuracy of the table was doubtful, this section was omitted.

Some of the other provisions of R.S. § 5191 are classified to sections 142 and 143 of this title and some were not included in the Code.

For classification of other provisions of section 2 of act Dec. 23, 1913, see Codification note set out under section 222 of this title.

CENTRAL RESERVE AND RESERVE CITIES

Pub. L. 86–114, § 3(b), July 28, 1959, 73 Stat. 263, provided that: ''Effective three years after the date of the enactment of this Act [July 28, 1959]—

''(1) New York and Chicago are reclassified as reserve cities under the Federal Reserve Act;

''(2) the classification 'central reserve city' under the Federal Reserve Act, and the authority of the Board of Governors of the Federal Reserve System to classify or reclassify cities as 'central reserve cities' under such Act, are terminated;

''(3) section 5192 of the Revised Statutes of the United States (12 U.S.C., sec. 144) is amended by striking out 'central reserve or';

''(4) section 2 of the Act of March 3, 1887 (ch. 378; 24 Stat. 560) is repealed;

''(5) the last paragraph of section 2 of the Federal Reserve act (12 U.S.C., sec. 224) is amended by striking out 'and central reserve cities';

''(6) section 11(e) of the Federal Reserve Act (12 U.S.C., sec. 248e) is amended by striking out 'and central reserve' each place it appears;

''(7) the third paragraph (lettered (a)) of section 19 of the Federal Reserve Act (12 U.S.C., sec. 462) is amended by striking out 'or central reserve';

''(8) the fifth paragraph (lettered (c)) of such section 19 is repealed;

''(9) subparagraph (2) of the sixth paragraph of such section 19 (as added by the first section of this Act) is amended by striking out 'and a member bank in a central reserve city may hold and maintain the reserve balances which are in effect under this section for member banks described in paragraph (a) or (b),';

''(10) the seventh paragraph of such section 19 is amended by striking out clauses (1), (2), (3), and (4) and inserting in lieu thereof the following: '(1) by member banks in reserve cities, (2) by member banks not in reserve cities, or (3) by all member banks'; and

''(11) the seventh paragraph of such section is further amended by striking out 'and central reserve cities'.''

§ 142. Banks in reserve cities; reserves

National banking associations located in reserve cities or central reserve cities shall maintain reserves provided for in section 462 of this title for banks so located.

(R.S. § 5191 (part); Dec. 23, 1913, ch. 6, §§ 19, 27, 38 Stat. 270, 274; Aug. 4, 1914, ch. 225, 38 Stat. 682; Aug. 15, 1914, ch. 252, 38 Stat. 691; June 21, 1917, ch. 32, § 10, 40 Stat. 239.)

REFERENCES IN TEXT

Section 462 of this title, referred to in text, was omitted from the Code. See section 461 of this title.

CODIFICATION

R.S. § 5191 derived from act June 3, 1864, ch. 106, § 31, 13 Stat. 108, which was the National Bank Act, and act Mar. 1, 1872, ch. 22, 17 Stat. 32. See section 38 of this title.

Some of the other provisions of R.S. § 5191 were classified to section 141 of this title prior to its omission from the Code, some are classified to section 143 of this title, and some were not included in the Code.

TERMINATION OF CENTRAL RESERVE CITIES

Central reserve cities terminated, see section 3(b) of Pub. L. 86–114 set out as a note under former section 141 of this title.

§ 143. Banks in Alaska and insular possessions; lawful money reserves

Every national banking association located in Alaska or in a dependency or insular possession or any part of the United States outside of the continental United States, and not a member of the Federal reserve system, shall at all times have on hand in lawful money of the United States an amount equal to at least 15 percent of the aggregate amount of its deposits in all respects. Whenever the lawful money of any such association shall fall below 15 percent of its deposits such association shall not increase its liabilities by making any new loans or discounts other than by discounting or purchasing bills of exchange payable at sight nor make any dividends of its profits until the required proportion between the aggregate amount of its deposits and its lawful money of the United States has been restored. And the Comptroller of the Currency shall notify any such association whose lawful money reserve shall be below the amount required to be kept on hand to make good such reserve, and if such association shall fail for thirty days thereafter so to make good its lawful money the Comptroller may, with the concurrence of the Secretary of the Treasury, appoint a receiver to wind up the business of the association as provided in section 192 of this title.

(R.S. § 5191 (part).)

CODIFICATION

R.S. § 5191 derived from act June 3, 1864, ch. 106, § 31, 13 Stat. 108, which was the National Bank Act, and act Mar. 1, 1872, ch. 22, 17 Stat. 32. See section 38 of this title.

Some of the other provisions of R.S. § 5191 were classified to section 141 of this title prior to its omission from the Code, some are classified to section 142 of this title, and some were not included in the Code.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 144. Certain balances counted toward reserves in dependencies and insular possessions

Four-fifths of the reserve of 15 per centum which a national bank located in a dependency or insular possession or any part of the United States outside of the continental United States, and not a member of the Federal Reserve System, is required to keep, may consist of balances due such bank from associations approved by the Comptroller of the Currency and located in any one of the reserve cities as now or hereafter defined by law or designated by the Board of Governors of the Federal Reserve System.

(R.S. § 5192; July 1, 1952, ch. 536, 66 Stat. 314; Pub. L. 86–70, § 7, June 25, 1959, 73 Stat. 142; Pub. L. 86–114, § 3(b)(3), July 28, 1959, 73 Stat. 263.)

CODIFICATION

R.S. § 5192 derived from act June 3, 1864, ch. 106, § 31, 13 Stat. 108, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1959—Pub. L. 86–114 struck out ''central reserve or'' before ''reserve cities''.

Pub. L. 86–70 struck out ''in Alaska or'' before ''in a dependency''.

1952—Act July 1, 1952, reduced the required amount of cash on hand from two-fifths to one-fifth of the required reserve of 15 per centum.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–114 effective three years after July 28, 1959, see section 3(b) of Pub. L. 86–114, set out as a Central Reserve and Reserve Cities note under former section 141 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not

included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§§ 145, 146. Repealed. Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section 145, act July 14, 1890, ch. 708, § 2, 26 Stat. 289, authorized counting of treasury notes held by national banking associations as part of their lawful reserve.

Section 146, act July 12, 1882, ch. 290, § 12, 22 Stat. 165, related to holding of gold and silver certificates by national banking associations.

SUBCHAPTER IX—FORMATION OF ASSOCIATIONS TO ISSUE GOLD NOTES

§§ 151 to 153. Repealed. Pub. L. 103–325, title VI, § 602(e)(22), (23), (f)(7), Sept. 23, 1994, 108 Stat. 2292, 2293

Section 151, R.S. § 5185; Jan. 19, 1875, ch. 19, 18 Stat. 302, related to organization of associations to issue gold notes.

Section 152, R.S. § 5186, related to mandatory establishment of lawful money reserves by associations issuing gold notes and reception by such associations of gold notes of other associations in payment of debts.

Section 153, act Feb. 14, 1880, ch. 25, 21 Stat. 66, related to conversion of gold banks into currency banks.

SUBCHAPTER X—BANK EXAMINATIONS; REPORTS

§ 161. Reports to Comptroller of the Currency

(a) Reports of condition; form; contents; date of making; publication

Every association shall make reports of condition to the Comptroller of the Currency in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]. The Comptroller of the Currency may call for additional reports of condition, in such form and containing such information as he may prescribe, on dates to be fixed by him, and may call for special reports from any particular association whenever in his judgment the same are necessary for his use in the performance of his supervisory duties. Each report of condition shall contain a declaration by the president, a vice president, the cashier, or by any other officer designated by the board of directors of the bank to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of the report of condition shall be attested by the signatures of at least three of the directors of the bank other than the officer making such declaration, with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct. Each report shall exhibit in detail and under appropriate heads the resources and liabilities of the association at the close of business on any past day specified by the Comptroller, and shall be transmitted to the Comptroller within the period of time specified by the Comptroller. Special reports called for by the Comptroller need contain only such information as is specified by the Comptroller in his request therefor, and publication of such reports need be made only if directed by the Comptroller.

(b) Payment of dividends

Every association shall make to the Comptroller reports of the payment of dividends, including advance reports of dividends proposed to be declared or paid in such cases and under such conditions as the Comptroller deems necessary to carry out the purposes of the laws relating to national banking associations in such form and at such times as he may require.

(c) Reports of affiliates; form; contents; date of making; publication; penalties

Each national banking association shall obtain from each of its affiliates other than member banks and furnish to the Comptroller of the Currency not less than four reports during each year, in such form as the Comptroller may prescribe, verified by the oath or affirmation of the president or such other officer as may be designated by the board of directors of such affiliate to verify such reports, disclosing the information hereinafter provided for as of dates identical with those for which the Comptroller shall during such year require the reports of the condition of the association. Each such report of an affiliate shall be transmitted to the Comptroller at the same time as the corresponding report of the association, except that the Comptroller may, in his discretion, extend such time for good cause shown. Each such report shall contain such information as in the judgment of the Comptroller of the Currency shall be necessary to disclose fully the relations between such affiliate and such bank and to enable the Comptroller to inform himself as to the effect of such relations upon the affairs of such bank. The Comptroller shall also have power to call for additional reports with respect to any such affiliate whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of the conditions of the association with which it is affiliated. Such additional reports shall be transmitted to the Comptroller of the Currency in such form as he may prescribe.

(R.S. § 5211; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 252; Dec. 28, 1922, ch. 18, 42 Stat. 1067; Feb. 25, 1927, ch. 191, § 13, 44 Stat. 1232; June 16, 1933, ch. 89, § 27, 48 Stat. 191; Pub. L. 86–230, §§ 11, 22(b), Sept. 8, 1959, 73 Stat. 458, 466; Pub. L. 86–671, § 5, July 14, 1960, 74 Stat. 551; Pub. L. 89–485, § 13(d), July 1, 1966, 80 Stat. 243; Pub. L. 101–73, title IX, § 911(b)(1), Aug. 9, 1989, 103 Stat. 478; Pub. L. 103–325, title III, § 308(a), Sept. 23, 1994, 108 Stat. 2218.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (a), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

R.S. § 5211 derived from act June 3, 1864, ch. 106, § 34, 13 Stat. 109, which was the National Bank Act, and act Mar. 3, 1869, ch. 130, § 1, 15 Stat. 326. See section 38 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–325, § 308(a)(1), struck out before period at end of fifth sentence "; and the statement of resources and liabilities in the same form in which it is made to the Comptroller shall be published in a newspaper published in the place where such association is established, or if there is no newspaper in

the place, then in the one published nearest thereto in the same county, at the expense of the association, and such proof of publication shall be furnished as may be required by the Comptroller''.

Subsec. (c). Pub. L. 103–325, § 308(a)(2), struck out after third sentence ''The reports of such affiliates shall be published by the association under the same conditions as govern its own condition reports.''

1989—Subsec. (a). Pub. L. 101–73, § 911(b)(1)(A), in fifth sentence substituted ''within the period of time specified by the Comptroller'' for ''within ten days after the receipt of a request therefor from him''.

Subsec. (c). Pub. L. 101–73, § 911(b)(1)(B), struck out at end ''Any such affiliated bank which fails to obtain and furnish any report required under this section shall be subject to a penalty of $100 for each day during which such failure continues.''

1966—Subsec. (c). Pub. L. 89–485 struck out second sentence stating that the term ''affiliate'' shall include holding company affiliates as well as other affiliates.

1960—Subsec. (a). Pub. L. 86–671, § 5(a), designated existing provisions of former first par. as subsec. (a), substituted provisions relating to the making of reports of condition in accordance with the Federal Deposit Insurance Act and additional reports of condition containing declaration of officer for former provisions requiring minimum of three reports annually verified by an officer, inserted provisions respecting contents and publication of special reports and deleted requirement for making reports of payment of dividends, which is incorporated in subsec. (b) of this section.

Subsec. (b). Pub. L. 86–671, § 5(a), designated existing provisions of former first par. as subsec. (b).

Subsec. (c). Pub. L. 86–671, § 5(b), designated existing provisions of former second par. as subsec. (c) and substituted ''four'' for ''three'' in first sentence.

1959—Pub. L. 86–230 required transmission of reports to the Comptroller within ten instead of five days and the making of reports of the payment of dividends including advance reports of dividends proposed to be declared or paid, respectively.

1933—Act June 16, 1933, added second par.

1927—Act Feb. 25, 1927, inserted ''or of a vice-president, or of an assistant cashier of the association designated by its board of directors to verify such reports in the absence of the president and cashier, taken before a notary public properly authorized and commissioned by the State in which such notary resides and the association is located, or any other officer having an official seal, authorized in such State to administer oaths'' in first sentence, and ''and the statement of resources and liabilities together with acknowledgment and attestation'', in second sentence.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 911(i)[(g)] of Pub. L. 101–73 provided that: ''The amendments made by this section [amending this section and sections 164, 324, 1782, 1817, 1847, and 1882 of this title] shall apply with respect to reports filed or required to be filed after the date of the enactment of this Act [Aug. 9, 1989].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–671 effective Jan. 1, 1961, see section 7 of Pub. L. 86–671, set out as a note under section 1817 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 162. Repealed. Pub. L. 86–671, § 6, July 14, 1960, 74 Stat. 552.

Section, act Feb. 26, 1881, ch. 82, 21 Stat. 352, prescribed the manner of verification of reports of condition of national banks. See section 1817 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1961, see section 7 of Pub. L. 86–671, set out as an Effective Date of 1960 Amendment note under section 1817 of this title.

§ 163. Repealed. Pub. L. 86–230, § 22(a), Sept. 8, 1959, 73 Stat. 466

Section, R.S. § 5212, related to report of dividends and net earnings. See section 161 of this title.

§ 164. Penalty for failure to make reports

(a) First tier

Any association which—

(1) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error—

(A) fails to make, obtain, transmit, or publish any report or information required by the Comptroller of the Currency under section 161 of this title, within the period of time specified by the Comptroller; or

(B) submits or publishes any false or misleading report or information; or

(2) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The association shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

(b) Second tier

Any association which—

(1) fails to make, obtain, transmit, or publish any report or information required by the Comptroller of the Currency under section 161 of this title, within the period of time specified by the Comptroller; or

(2) submits or publishes any false or misleading report or information,

in a manner not described in subsection (a) of this section shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(c) Third tier

Notwithstanding subsections (a) and (b) of this section, if any association knowingly or with reckless disregard for the accuracy of any information or report described in subsection (b) of this section submits or publishes any false or misleading report or information, the Comptroller may assess a penalty of not more than $1,000,000 or 1 percent of total assets of the association, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(d) Assessment; etc.

Any penalty imposed under subsection (a), (b), or (c) of this section shall be assessed and collected by the Comptroller of the Currency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

(e) Hearing

Any association against which any penalty is assessed under this subsection[1] shall be afforded an agency hearing if such association submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this section.

(R.S. § 5213; Pub. L. 86–230, § 12, Sept. 8, 1959, 73 Stat. 458; Pub. L. 101–73, title IX, § 911(b)(2), Aug. 9, 1989, 103 Stat. 478.)

CODIFICATION

R.S. § 5213 derived from act Mar. 3, 1869, ch. 130, §§ 1, 2, 15 Stat. 326, 327.

AMENDMENTS

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows: ''Every association which fails to make and transmit any report required under section 161 of this title shall be subject to a penalty of $100 for each day after the periods, respectively, therein mentioned, that it delays to make and transmit its report. Whenever any association delays or refuses to pay the penalty herein imposed, after it has been assessed by the Comptroller of the Currency, the amount thereof may be retained by the Treasurer of the United States, upon the order of the Comptroller of the Currency, out of the interest, as it may become due to the association, on the bonds deposited with him to secure circulation. All sums of money collected for penalties under this section shall be paid into the Treasury of the United States.''

1959—Pub. L. 86–230 substituted ''section 161 of this title'' for ''either section 161 or 163 of this title''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–73 applicable with respect to reports filed or required to be filed after Aug. 9, 1989, see section 911(i) of Pub. L. 101–73, set out as a note under section 161 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 165. Omitted

CODIFICATION

Section, R.S. § 5241, related to limitation of visitorial powers. See section 484 of this title.

SUBCHAPTER XI—MISCELLANEOUS PROVISIONS REGARDING UNITED STATES BONDS IN RELATION TO NATIONAL BANKS

§§ 168 to 177. Repealed. Pub. L. 103–325, title VI, § 602(e)(24)–(31), (f)(4)(D), (5)(A), Sept. 23, 1994, 108 Stat. 2292, 2293

Section 168, R.S. § 5160, authorized associations to take up bonds upon returning circulating notes to Comptroller of the Currency.

Section 169, R.S. § 5161, related to exchange of United States coupon bonds for registered bonds.

Section 170, R.S. § 5162; Aug. 23, 1935, ch. 614, § 313, 49 Stat. 711, related to manner of making transfers of bonds.

Section 171, R.S. § 5163, related to establishment of registry of transferred bonds by Comptroller of the Currency.

Section 172, R.S. § 5164, required Comptroller of the Currency to notify national banking associations of transfers from its accounts.

Section 173, R.S. § 5165, related to examination of registry and bonds by Comptroller of the Currency and Treasurer of United States.

Section 174, R.S. § 5166, related to annual examination of bonds by national banking associations.

Section 175, R.S. § 5167, related to custody of bonds and collection of interest.

Section 176, acts June 20, 1874, ch. 343, § 4, 18 Stat. 124; June 21, 1917, ch. 32, § 9, 40 Stat. 239, provided that associations desiring to withdraw circulating notes could, upon deposit of money with Treasurer of United States, withdraw bonds on deposit with Treasurer for security of such notes.

Section 177, acts July 12, 1882, ch. 290, § 8, 22 Stat. 164; Mar. 14, 1900, ch. 41, § 12, 31 Stat. 49; June 21, 1917, ch. 32, § 9, 40 Stat. 239, related to amount of bonds banks were required to keep on deposit with Treasurer of United States, as security for circulating notes, and authorized banks having deposits in excess of such amount to reduce, or retire in full, their circulation by depositing lawful money.

§ 177a. Funds available for cost of transporting and redeeming national and Federal Reserve bank notes

The cost of transporting and redeeming outstanding national bank notes and Federal Reserve bank notes as may be presented to the Treasurer of the United States for redemption shall be paid from the regular annual appropriation for the Department of the Treasury.

(Oct. 10, 1940, ch. 841, 54 Stat. 1093; Pub. L. 103–325, title VI, § 602(g)(10), Sept. 23, 1994, 108 Stat. 2294.)

AMENDMENTS

1994—Pub. L. 103–325 amended section generally. Prior to amendment, section read as follows: ''After the reimbursement to the Treasury from funds derived from assessments made pursuant to section 177 of this title, of all costs lawfully charged thereto for the fiscal year ending June 30, 1941, the balance of such funds shall be covered into the Treasury as miscellaneous receipts; and thereafter the cost of transporting and redeeming such outstanding national bank notes and Federal Reserve bank notes as may be presented to the Treasurer of the United States for redemption shall be paid from the regular annual appropriations for the Treasury Department.''

§ 178. Repealed. Pub. L. 103–325, title VI, § 602(f)(5)(B), Sept. 23, 1994, 108 Stat. 2293

Section, acts July 12, 1882, ch. 290, § 9, 22 Stat. 164; Mar. 14, 1900, ch. 41, § 12, 31 Stat. 49; Mar. 4, 1907, ch. 2913, § 4, 34 Stat. 1290, authorized national banking associations desiring to withdraw circulating notes to deposit money with Treasurer of United States and withdraw bonds or other securities securing such notes.

SUBCHAPTER XII—VOLUNTARY DISSOLUTION

§ 181. Voluntary dissolution; appointment and removal of liquidating agent or committee; examination

Any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock. If the liquidation is to be effected in whole or in part through the sale of any of its assets to and the assumption of its deposit liabilities by another bank, the purchase

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

and sale agreement must also be approved by its shareholders owning two-thirds of its stock unless an emergency exists and the Comptroller of the Currency specifically waives such requirement for shareholder approval.

The shareholders shall designate one or more persons to act as liquidating agent or committee, who shall conduct the liquidation in accordance with law and under the supervision of the board of directors, who shall require a suitable bond to be given by said agent or committee. The liquidating agent or committee shall render annual reports to the Comptroller of the Currency on the 31st day of December of each year showing the progress of said liquidation until the same is completed. The liquidating agent or committee shall also make an annual report to a meeting of the shareholders to be held on the date fixed in the articles of association for the annual meeting, at which meeting the shareholders may, if they see fit, by a vote representing a majority of the entire stock of the bank, remove the liquidating agent or committee and appoint one or more others in place thereof. A special meeting of the shareholders may be called at any time in the same manner as if the bank continued an active bank and at said meeting the shareholders may, by vote of the majority of the stock, remove the liquidating agent or committee. The Comptroller of the Currency is authorized to have an examination made at any time into the affairs of the liquidating bank until the claims of all creditors have been satisfied, and the expense of making such examinations shall be assessed against such bank in the same manner as in the case of examinations made pursuant to subchapter XV of chapter 3 of this title.

(R.S. §5220; Aug. 23, 1935, ch. 614, title III, §317, 49 Stat. 712; Pub. L. 86–230, §15, Sept. 8, 1959, 73 Stat. 458.)

REFERENCES IN TEXT

Subchapter XV [§481 et seq.] of chapter 3 of this title, referred to in second par., was in the original a reference to section 5240 of the Revised Statutes.

CODIFICATION

R.S. §5220 derived from act June 3, 1864, ch. 106, §42, 13 Stat. 112, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1959—Pub. L. 86–230 required shareholder approval of purchase and sale agreement where there is liquidation of a bank effected through sale of its assets and assumption of deposit liabilities and authorized waiver of such requirement in an emergency.

1935—Act Aug. 23, 1935, added second par.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§182. Notice of intent to dissolve

Whenever a vote is taken to go into liquidation it shall be the duty of the board of directors to cause notice of this fact to be certified, under the seal of the association, by its president or cashier, to the Comptroller of the Currency, and publication thereof to be made for a period of two months in every issue of a newspaper published in the city or town in which the association is located, or if no newspaper is there published, then in the newspaper published nearest thereto, that the association is closing up its affairs, and notifying its creditors to present their claims against the association for payment.

(R.S. §5221; Aug. 9, 1955, ch. 626, 69 Stat. 546.)

CODIFICATION

R.S. §5221 derived from act June 3, 1864, ch. 106, §42, 13 Stat. 112, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1955—Act Aug. 9, 1955, struck out provisions relating to publication in a newspaper published in the City of New York, and notification to holders of national bank notes to present them for payment.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§§183 to 186. Repealed. Pub. L. 103–325, title VI, §602(e)(32)–(35), Sept. 23, 1994, 108 Stat. 2292

Section 183, R.S. §5222, provided that, within six months of voting to liquidate, an association was to deposit with Treasurer of United States money sufficient to redeem all outstanding circulation.

Section 184, R.S. §5223, exempted associations which wound up business for purpose of consolidating with another association from requirement to deposit money to redeem all outstanding circulation.

Section 185, R.S. §5224; Feb. 18, 1875, ch. 80, §1, 18 Stat. 320, related to reassignment of bonds to association and redemption of notes.

Section 186, R.S. §5225; Feb. 27, 1877, ch. 69, §1, 19 Stat. 252, related to destruction of redeemed notes by Treasurer.

SUBCHAPTER XIII—RECEIVERSHIP

§191. Appointment of receiver for a national bank

(a) In general

The Comptroller of the Currency may, without prior notice or hearings, appoint a receiver for any national bank (and such receiver shall be the Federal Deposit Insurance Corporation if the national bank is an insured bank (as defined in section 1813(h) of this title)) if the Comptroller determines, in the Comptroller's discretion, that—

(1) 1 or more of the grounds specified in section 1821(c)(5) of this title exist; or

(2) the association's board of directors consists of fewer than 5 members.

(b) Judicial review

If the Comptroller of the Currency appoints a receiver under subsection (a), the national bank may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such bank is located, or in the United States District Court for the District of Columbia, for an order requiring the Comptroller of the Currency to remove the receiver, and the court shall, upon the merits, dismiss such action or direct the Comptroller of the Currency to remove the receiver.

(June 30, 1876, ch. 156, § 2, formerly § 1, 19 Stat. 63; Pub. L. 86–230, § 16, Sept. 8, 1959, 73 Stat. 458; Pub. L. 102–242, title I, § 133(b), Dec. 19, 1991, 105 Stat. 2271; renumbered § 2 and amended Pub. L. 102–550, title XVI, § 1603(d)(6), (7), Oct. 28, 1992, 106 Stat. 4080; Pub. L. 109–351, title VII, § 701(a), Oct. 13, 2006, 120 Stat. 1984.)

PRIOR PROVISIONS

A prior section 2 of act June 30, 1876, was classified to section 65 of this title, prior to repeal by Pub. L. 86–230, § 8, Sept. 8, 1959, 73 Stat. 457.

AMENDMENTS

2006—Pub. L. 109–351, § 701(a)(1), which directed the general amendment of the section catchline by replacing it with ''Appointment of receiver for a national bank'' followed by ''(a) In general'' and the words ''The Comptroller of the Currency'', was executed by inserting the new catchline and the subsec. (a) designation and heading but not the words ''The Comptroller of the Currency'' which already appeared in text, to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 109–351, § 701(a)(2), added subsec. (b).

1992—Pub. L. 102–550, § 1603(d)(7)(B), substituted ''appoint a receiver for any national bank (and such receiver shall be the Federal Deposit Insurance Corporation if the national bank is an insured bank (as defined in section 1813(h) of this title))'' for ''appoint the Federal Deposit Insurance Corporation as receiver for any national banking association'' in introductory provisions.

Pub. L. 102–550, § 1603(d)(6), amended directory language of Pub. L. 102–242, § 133(b). See 1991 Amendment note below.

1991—Pub. L. 102–242, § 133(b), as amended by Pub. L. 102–550, § 1603(d)(6), amended section generally. Prior to amendment, section read as follows: ''Whenever any national banking association shall be dissolved, and its rights, privileges, and franchises declared forfeited, as prescribed in section 93 of this title, or whenever any creditor of any national banking association shall have obtained a judgment against it in any court of record, and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the comptroller shall become satisfied of the insolvency of a national banking association, he may, after due examination of its affairs, in either case, appoint a receiver, who shall proceed to close up such association.''

1959—Pub. L. 86–230 struck out provisions which required receiver to enforce the personal liability of shareholders.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–351, title VII, § 701(c), Oct. 13, 2006, 120 Stat. 1985, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1821 of this title] shall apply with respect to conservators or receivers appointed on or after the date of enactment of this Act [Oct. 13, 2006].''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1609 of Pub. L. 102–550 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b) or any other provision of this subtitle [subtitle A (§§ 1601–1609) of title XVI of Pub. L. 102–550, see Tables for classification], the amendments made by this subtitle to the Federal Deposit Insurance Corporation Improvement Act of 1991, the Federal Deposit Insurance Act, and any other law shall take effect as if such amendments had been included in the Federal Deposit Insurance Corporation Improvement Act of 1991 [Pub. L. 102–242] as of the date of the enactment of such Act [Dec. 19, 1991].

''(b) EFFECTIVE DATE OF CERTAIN AMENDMENTS.—In the case of any amendment made by this subtitle to any provision of law added or amended by the Federal Deposit Insurance Corporation Improvement Act of 1991 [see Tables for classification] effective after December 19, 1992, the amendment made by this subtitle shall take effect on the effective date of the amendment made by the Federal Deposit Insurance Corporation Improvement Act of 1991.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 133(g) of Pub. L. 102–242 provided that: ''The amendments made by this section [amending this section and sections 203, 248, 1464, and 1821 of this title] shall become effective 1 year after the date of enactment of this Act [Dec. 19, 1991].''

SHORT TITLE

Section 1 of act June 30, 1876, as added by act Oct. 28, 1992, Pub. L. 102–550, title XVI, § 1603(d)(7)(A), 106 Stat. 4080, provided that: ''This Act [enacting this section, sections 65 and 197 of this title, and section 424 of former Title 31, Money and Finance, and amending section 55 of this title] may be cited as the 'National Bank Receivership Act'.''

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, § 4, 47 Stat. 1567.

TERMINATION OF NATIONAL BANK CLOSED RECEIVERSHIP FUND

Pub. L. 96–221, title VII, §§ 721–723, Mar. 31, 1980, 94 Stat. 190, 191, as amended Pub. L. 97–320, title IV, § 409, Oct. 15, 1982, 96 Stat. 1515, provided that:

''SEC. 721. The purpose of this part [enacting this provision] is to terminate the closed receivership fund by—

''(1) providing final notice of availability of liquidating dividends to creditors of national banks which have been closed and for which the Comptroller has appointed a receiver other than the Federal Deposit Insurance Corporation;

''(2) barring rights of creditors to collect liquidating dividends from the Comptroller of the Currency after a reasonable period of time following such final notice; and

''(3) refunding to the Comptroller the principal amount of such fund and any income earned thereon.

''SEC. 722. For purposes of this part—

''(1) the term 'closed receivership fund' means the aggregation of undisbursed liquidating dividends from national banks which have been closed and for which the Comptroller has appointed a receiver other than the Federal Deposit Insurance Corporation, held by the Comptroller in his capacity as successor to receivers of those banks;

''(2) the term 'Comptroller' means the Comptroller of the Currency;

''(3) the term 'claimant' means a depositor or other creditor who asserts a claim against a closed national bank for a liquidating dividend; and

''(4) the term 'liquidating dividend' means an amount of money in the closed receivership fund determined by a receiver of a closed national bank or by the Comptroller to be owed by that bank to a depositor or other creditor.

''SEC. 723. (a) The Comptroller shall publish notice once a week for four weeks in the Federal Register that all rights of depositors and other creditors of closed national banks to collect liquidating dividends from the closed receivership fund shall be barred after twelve months following the last date of publication of such notice.

''(b) The Comptroller shall pay the principal amount of a liquidating dividend, exclusive of any income earned thereon, to a claimant presenting a valid claim, if the claimant applies to collect within twelve months following the last date notice is published.

''(c) If a creditor shall fail to apply to collect a liquidating dividend within twelve months after the last date notice is published, all rights of the claimant against the closed receivership fund with respect to the liquidating dividend shall be barred.

''(d) The principal amount of any liquidating dividends (1) for which claims have not been asserted within twelve months following the last date notice is published or (2) for which the Comptroller has determined a valid claim has not been submitted shall, together with any income earned on liquidating dividends and other moneys, if any, remaining in the closed receivership fund, be covered into the general funds of the Comptroller.''

§ 192. Default in payment of circulating notes

On becoming satisfied, as specified in sections 131 and 132[1] of this title, that any association is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the Comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the Comptroller, and also make report to the Comptroller of all his acts and proceedings.

Provided, That the Comptroller may, if he deems proper, deposit any of the money so made in any regular Government depositary, or in any State or national bank either of the city or town in which the insolvent bank was located, or of a city or town as adjacent thereto as practicable; if such deposit is made he shall require the depositary to deposit United States bonds or other satisfactory securities with the Treasurer of the United States for the safekeeping and prompt payment of the money so deposited: *Provided*, That no security in the form of deposit of United States bonds, or otherwise, shall be required in the case of such parts of the deposits as are insured under section 12B of the Federal Reserve Act, as amended. Such depositary shall pay upon such money interest at such rate as the Comptroller may prescribe, not less, however, than 2 per centum per annum upon the average monthly amount of such deposits.

(R.S. §5234; May 15, 1916, ch. 121, 39 Stat. 121; Aug. 23, 1935, ch. 614, title III, §339, 49 Stat. 721; Pub. L. 86–230, §17, Sept. 8, 1959, 73 Stat. 458; Pub. L. 103–325, title VI, §602(g)(11), Sept. 23, 1994, 108 Stat. 2294.)

References in Text

Sections 131 and 132 of this title, referred to in text, were repealed by Pub. L. 103–325, title VI, §602(e)(14), (15), Sept. 23, 1994, 108 Stat. 2292.

Section 12B of the Federal Reserve Act, as amended, referred to in text, formerly classified to section 264 of this title, has been withdrawn from the Federal Reserve Act and incorporated in the Federal Deposit Insurance Act which is classified generally to chapter 16 (§1811 et seq.) of this title.

Codification

R.S. §5234 derived from act June 3, 1864, ch. 106, §50, 13 Stat. 114, which was part of the National Bank Act. See section 38 of this title.

Amendments

1994—Pub. L. 103–325 struck out ''has refused to pay its circulating notes as therein mentioned, and'' before ''is in default''.

1959—Pub. L. 86–230 struck out provisions which required receiver to enforce the personal liability of shareholders.

1935—Act Aug. 23, 1935, inserted second proviso in second par.

Transfer of Functions

For transfer of functions to Secretary of the Treasury, see note set out under section 55 of this title.

Application to District of Columbia

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, §4, 47 Stat. 1567.

Interest on Deposits

So much of existing law requiring the payment of interest with respect to any funds deposited by the United States or by any public instrumentality, agency, or officer thereof, as is inconsistent with sections 371a, 371b, 374, 374a, 461, former sections 462 to 465, and section 466 of this title, repealed, see section 371a of this title.

§ 193. Notice to present claims

The Comptroller shall, upon appointing a receiver, cause notice to be given, by advertisement in such newspapers as he may direct, for three consecutive months, calling on all persons who may have claims against such association to present the same, and to make legal proof thereof.

(R.S. §5235.)

Codification

R.S. §5235 derived from act June 3, 1864, ch. 106, §50, 13 Stat. 114, which was part of the National Bank Act. See section 38 of this title.

Exception as to Transfer of Functions

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

Application to District of Columbia

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, §4, 47 Stat. 1567.

§ 194. Dividends on adjusted claims; distribution of assets

From time to time, the comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or ad-

[1] See References in Text note below.

judicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held.

(R.S. § 5236; Pub. L. 103–325, title VI, § 602(g)(12), Sept. 23, 1994, 108 Stat. 2294.)

CODIFICATION

R.S. § 5236 derived from act June 3, 1864, ch. 106, § 50, 13 Stat. 114, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1994—Pub. L. 103–325 struck out '', after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association'' after ''From time to time''.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc. in the District of Columbia by act Mar. 4, 1933, ch. 274, § 4, 47 Stat. 1567.

§ 195. Repealed. Pub. L. 103–325, title VI, § 602(e)(36), Sept. 23, 1994, 108 Stat. 2292

Section, R.S. § 5237; Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167, related to injunction by bank denying failure to redeem notes.

§ 196. Expenses

All expenses of any preliminary or other examinations into the condition of any association shall be paid by such association. All expenses of any receivership shall be paid out of the assets of such association before distribution of the proceeds thereof.

(R.S. § 5238; Pub. L. 103–325, title VI, § 602(g)(13), Sept. 23, 1994, 108 Stat. 2294.)

CODIFICATION

R.S. § 5238 derived from act June 3, 1864, ch. 106, § 51, 13 Stat. 115, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1994—Pub. L. 103–325 struck out at beginning ''All fees for protesting the notes issued by any national banking association shall be paid by the person procuring the protest to be made, and such association shall be liable therefor; but no part of the bonds deposited by such association shall be applied to the payment of such fees.''

§ 197. Shareholders' meeting; continuance of receivership; appointment of agent; winding up business; distribution of assets

(a) Whenever any national banking association shall have been or shall be placed in the hands of a receiver, as provided in section fifty-two hundred and thirty-four [12 U.S.C. 192] and other sections of the Revised Statutes of the United States and section 1821(c) of this title, and when, as provided in section 194 of this title, there has been paid to each and every creditor of such association whose claim or claims as such creditor shall have been proved or allowed as therein prescribed, the full amount of such claims, and all expenses of the receivership, the Comptroller of the Currency or the Federal Deposit Insurance Corporation, where that Corporation has been appointed receiver of the bank, shall call a meeting of the shareholders of the association by giving notice thereof for thirty days in a newspaper published in the town, city, or county where the business of the association was carried on, or if no newspaper is there published, in the newspaper published nearest thereto. At such meeting the shareholders shall determine whether the receiver shall be continued and shall wind up the affairs of the association, or whether an agent shall be elected for that purpose, and in so determining the shareholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock in number of shares shall be necessary to determine whether the receiver shall be continued, or whether an agent shall be elected. In case such majority shall determine that the receiver shall be continued, the receiver shall thereupon proceed with the execution of the trust, and shall sell, dispose of, or otherwise collect the assets of the association, and shall possess all the powers and authority, and be subject to all the duties and liabilities originally conferred or imposed upon such receiver so far as they remain applicable. In case such meeting shall, by the vote of a majority of the stock in number of shares, determine that an agent shall be elected, the meeting shall thereupon proceed to elect an agent, voting by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the person who shall receive votes representing at least a majority of stock in number of shares shall be declared the agent for the purposes hereinafter provided; and when such agent shall have executed a bond to the shareholders conditioned for the payment and discharge in full or, to the extent possible from the remaining assets of the association, of each and every claim that may thereafter be proved and allowed by and before a competent court and for the faithful performance of his duties, in the penalty fixed by the shareholders at such meeting, with a surety or sureties to be approved by the district court of the United States for the district where the business of the association was carried on, and shall have filed such bond in the office of the clerk of such court, the Comptroller and the receiver, or the Federal Deposit Insurance Corporation, where that Corporation has been appointed receiver of the bank, shall thereupon transfer and deliver to such agent all the uncollected or other assets of the association then remaining in the hands or subject to the order and control of the Comptroller and such receiver, or either of them, or the Federal Deposit Insurance Corporation; and for this purpose the Comptroller and such receiver, or the Federal Deposit Insurance Corporation, as the case may be, are severally empowered and directed to execute any deed, assignment, transfer, or other instrument in writing that may be necessary and proper; and upon the execution and delivery of such instrument to such agent the Comptroller and such receiver or the Federal Deposit Insurance Corporation shall by vir-

tue of this Act be discharged from any and all liabilities to the association and to each and all the creditors and shareholders thereof.

(b) Upon receiving such deed, assignment, transfer, or other instrument the person elected such agent shall hold, control, and dispose of the assets and property of the association which he may receive under the terms hereof for the benefit of the shareholders of the association, and he may in his own name, or in the name of the association, sue and be sued and do all other lawful acts and things necessary to finally settle and distribute the assets and property in his hands, and may sell, compromise, or compound the debts due to the association, with the consent and approval of the district court of the United States for the district where the business of the association was carried on, and shall at the conclusion of his trust render to such district court a full account of all his proceedings, receipts, and expenditures as such agent, which court shall, upon due notice, settle and adjust such accounts and discharge such agent and sureties upon such bond. In case any such agent so elected shall die, resign, or be removed, any shareholder may call a meeting of the shareholders of the association in the town, city, or village where the business of the association was carried on, by giving notice thereof for thirty days in a newspaper published in such town, city, or village, or if no newspaper is there published, in the newspaper published nearest thereto, at which meeting the shareholders shall elect an agent, voting by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and when such agent shall have received votes representing at least a majority of the stock in number of shares, and shall have executed a bond to the shareholders conditioned for the payment and discharge in full or, to the extent possible from the remaining assets of the association, of each and every claim that may thereafter be proved and allowed by and before a competent court and for the faithful performance of his duties, in the penalty fixed by the shareholders at such meeting, with a surety or sureties, to be approved by such court, and file such bond in the office of the clerk of that court, he shall have all the rights, powers, and duties of the agent first elected as hereinbefore provided. At any meeting held as hereinbefore provided administrators or executors of deceased shareholders may act and sign as the decedent might have done if living, and guardians of minors and trustees of other persons may so act and sign for their ward or wards or cestui que trust. The proceeds of the assets or property of any such association which may be undistributed at the time of such meeting or may be subsequently received shall be distributed as follows:

First. To pay the expenses of the execution of the trust to the date of such payment.

Second. To repay any amount or amounts which have been paid in by any shareholder or shareholders of the association upon and by reason of any and all assessments made upon the stock of the association by order of the Comptroller of the Currency in accordance with the provisions of the statutes of the United States.

Third. To pay the balance ratably among such stockholders, in proportion to the number of shares held and owned by each. Such distribution shall be made from time to time as the proceeds shall be received and as shall be deemed advisable by the Comptroller of the Currency, or the Federal Deposit Insurance Corporation if continued as receiver of the bank under subsection (a) of this section, or such agent, as the case may be.

(June 30, 1876, ch. 156, §3, 19 Stat. 63; Aug. 3, 1892, ch. 360, 27 Stat. 345; Mar. 2, 1897, ch. 354, 29 Stat. 600; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Pub. L. 86–230, §18, Sept. 8, 1959, 73 Stat. 458.)

REFERENCES IN TEXT

Section fifty-two hundred and thirty-four and other sections of the Revised Statutes of the United States, referred to in subsec. (a), are classified to section 192 of this title and other sections of the Code. See Tables.

This Act, referred to in subsec. (a), is act June 30, 1876, ch. 156, 19 Stat. 63, as amended, sections 1 to 4 of which are classified as a note under section 191 of this title and to section 191 of this title, this section, and section 55 of this title, respectively. Section 5 of the Act, which was classified to section 424 of former Title 31, was repealed and reenacted as section 5153 of Title 31, Money and Finance, by Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 877.

AMENDMENTS

1959—Subsec. (a). Pub. L. 86–230 designated former first par., less last sentence, as subsec. (a), and incorporated references to Federal Deposit Insurance Corporation respecting receiverships under section 1821(c) of this title, convocation of shareholders, transfer of assets, execution of instruments and discharge from liability, omitted provision for deposit of money with the Treasurer of the United States for the redemption of the circulating notes of the association, and for the value of shares as a test to determine whether a majority vote has been cast in a stockholders' meeting, required the windup agent to file a bond to the shareholders in an amount satisfactory to them with sureties approved by appropriate district court instead of a bond from the shareholders satisfactory to the Comptroller and to condition the bond to payment of proved claims to the extent possible from the remaining instead of payment of the claims in full, only.

Subsec. (b). Pub. L. 86–230 designated former last sentence of first par. and second par., as subsec. (b), and omitted provisions which related to refusal of agent to serve as a ground for the calling of an election of another agent, to the value of shares as a test to determine whether a majority vote has been cast in a stockholders' meeting, required the bond of the windup agent to be conditioned for payment of proved claims to the extent possible from the remaining assets instead of payment of the claims in full, only, and provided for the distribution of the balance as shall be deemed advisable by the Federal Deposit Insurance Corporation.

TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see Exception as to Transfer of Functions note set out under section 1 of this title.

Act Mar. 3, 1911, conferred upon the district courts all powers formerly vested in the former circuit courts.

APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, §4, 47 Stat. 1567.

§ 197a. Resumption of business by closed bank on consent of depositors

In any case in which, in the opinion of the Comptroller of the Currency, it would be to the advantage of the depositors and unsecured creditors of any national banking association whose business has been closed, for such association to resume business upon the retention by the association, for a reasonable period to be prescribed by the Comptroller, of all or any part of its deposits, the Comptroller is authorized, in his discretion, to permit the association to resume business if depositors and unsecured creditors of the association representing at least 75 per centum of its total deposit and unsecured credit liabilities consent in writing to such retention of deposits. Nothing in this section shall be construed to affect in any manner any powers of the Comptroller under the provisions of law in force on June 16, 1933, with respect to the reorganization of national banking associations.

(June 16, 1933, ch. 89, § 29, 48 Stat. 193.)

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 198. Purchase by receiver of property of bank; request to Comptroller

Whenever the receiver of any national bank duly appointed by the Comptroller of the Currency, and who shall have duly qualified and entered upon the discharge of his trust, shall find it in his opinion necessary, in order to fully protect and benefit his said trust, to the extent of any and all equities that such trust may have in any property, real or personal, by reason of any bond, mortgage, assignment, or other proper legal claim attaching thereto, and which said property is to be sold under any execution, decree of foreclosure, or proper order of any court of jurisdiction, he may certify the facts in the case, together with his opinion as to the value of the property to be sold, and the value of the equity his said trust may have in the same, to the Comptroller of the Currency, together with a request for the right and authority to use and employ so much of the money of said trust as may be necessary to purchase such property at such sale.

(Mar. 29, 1886, ch. 28, § 1, 24 Stat. 8.)

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, § 4, 47 Stat. 1567.

§ 199. Approval of request

Such request, if approved by the Comptroller of the Currency, shall be, together with the certificate of facts in the case, and his recommendation as to the amount of money which, in his judgment, should be so used and employed, submitted to the Secretary of the Treasury, and if the same shall likewise be approved by him, the request shall be by the Comptroller of the Currency allowed, and notice thereof, with copies of the request, certificate of facts, and indorsement of approvals, shall be filed with the Treasurer of the United States.

(Mar. 29, 1886, ch. 28, § 2, 24 Stat. 8.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of the Treasury, see note set out under section 55 of this title.

APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, § 4, 47 Stat. 1567.

§ 200. Payment

Whenever any such request shall be allowed as hereinbefore provided, the said Comptroller of the Currency shall be, and is, empowered to draw upon and from such funds of any such trust as may be deposited with the Treasurer of the United States for the benefit of the bank in interest, to the amount as may be recommended and allowed and for the purpose for which such allowance was made: *Provided, however*, That all payments to be made for or on account of the purchase of any such property and under any such allowance shall be made by the Comptroller of the Currency direct, with the approval of the Secretary of the Treasury, for such purpose only and in such manner as he may determine and order.

(Mar. 29, 1886, ch. 28, § 3, 24 Stat. 8.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of the Treasury, see note set out under section 55 of this title.

APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, § 4, 47 Stat. 1567.

SUBCHAPTER XIV—BANK CONSERVATION ACT

§ 201. Short title

This subchapter may be cited as the ''Bank Conservation Act.''

(Mar. 9, 1933, ch. 1, title II, § 201, 48 Stat. 2.)

§ 202. Definitions

As used in this subchapter, the term ''bank'' means any national banking association or any other financial institution chartered or licensed under Federal law and subject to the supervision of the Comptroller of the Currency; the term ''voluntary dissolution and liquidation'' means a transaction pursuant to section 181 of this title that involves the assumption of the bank's insured deposit liabilities and the sale of the bank, or of control of the bank, as a going concern; and the term ''State'' means any State, Territory, or possession of the United States, and the Canal Zone.

(Mar. 9, 1933, ch. 1, title II, § 202, 48 Stat. 2; Pub. L. 101–73, title VIII, § 801, Aug. 9, 1989, 103 Stat.

441; Pub. L. 109–351, title VII, § 725(b), Oct. 13, 2006, 120 Stat. 2001; Pub. L. 109–356, title I, § 123(b), Oct. 16, 2006, 120 Stat. 2028.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2006—Pub. L. 109–351 and 109–356 amended section identically, substituting ''means any national'' for ''means (1) any national'' and striking out '', and (2) any bank or trust company located in the District of Columbia and operating under the supervision of the Comptroller of the Currency'' before first semicolon.

1989—Pub. L. 101–73, § 801(1), in cl. (1), extended term ''bank'' to include any financial institution chartered or licensed under Federal law and subject to supervision of Comptroller of the Currency.

Pub. L. 101–73, § 801(2), in cl. (2), inserted definition of term ''voluntary dissolution and liquidation''.

§ 203. Appointment of conservator

(a) Appointment

The Comptroller of the Currency may, without prior notice or hearings, appoint a conservator (which may be the Federal Deposit Insurance Corporation) to the possession and control of a bank whenever the Comptroller of the Currency determines that 1 or more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act [12 U.S.C. 1821(c)(5)] exist.

(b) Judicial review

(1) In general

Not later than 20 days after the initial appointment of a conservator pursuant to this section, the bank may bring an action in the United States district court for the judicial district in which the home office of such bank is located, or in the United States District Court for the District of Columbia, for an order requiring the Comptroller to terminate the appointment of the conservator, and the court, upon the merits, shall dismiss such action or shall direct the Comptroller to terminate the appointment of such conservator. The Comptroller's decision to appoint a conservator pursuant to this section shall be set aside only if the court finds that such decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(2) Stay

The conservator may request that any judicial action or proceeding to which the conservator or the bank is or may become a party be stayed for a period of up to 45 days after the appointment of the conservator. Upon petition, the court shall grant such stay as to all parties.

(3) Actions and orders

Except as otherwise provided in this subsection, no court may take any action regarding the removal of a conservator, or restrain, or affect the exercise of powers or functions of a conservator. A court, upon application by the Comptroller, shall have jurisdiction to enforce an order of the Comptroller relating to—

(A) the conservatorship and the bank in conservatorship, or

(B) restraining or affecting the exercise of powers or functions of a conservator.

(c) Additional grounds for appointment

In addition to the foregoing provisions, the Comptroller may appoint a conservator for a bank if—

(1) the bank, by an affirmative vote of a majority of its board of directors or by an affirmative vote of a majority of its shareholders, consents to such appointment, or

(2) the Federal Deposit Insurance Corporation terminates the bank's status as an insured bank.

The appointment of a conservator pursuant to this subsection shall not be subject to review.

(d) Exclusive authority

The Comptroller shall have exclusive power and jurisdiction to appoint a conservator for a bank. Whenever the Comptroller appoints a conservator for any bank, the Comptroller may appoint the Federal Deposit Insurance Corporation conservator for such bank. The Federal Deposit Insurance Corporation, as such conservator, shall have all the powers granted under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators of banks under this Act and any other provision of law. The Comptroller may also appoint another person as conservator, who shall be subject to the provisions of this Act.

(e) Replacement of conservator

The Comptroller may, without notice or hearing, replace a conservator with another conservator. Such replacement shall not affect the bank's right under subsection (b) of this section to obtain judicial review of the Comptroller's original decision to appoint a conservator.

(Mar. 9, 1933, ch. 1, title II, § 203, 48 Stat. 2; Pub. L. 101–73, title VIII, § 802, Aug. 9, 1989, 103 Stat. 442; Pub. L. 102–242, title I, § 133(c), Dec. 19, 1991, 105 Stat. 2271.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (d), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

This Act, referred to in subsec. (d), is act Mar. 9, 1933, ch. 1, 48 Stat. 1, as amended, popularly known as the Emergency Banking and Bank Conservation Act, which is classified to sections 51a, 51b, 51c, 51d, 95 to 95b, 201 to 212, 248, 347b, 347c, 347d, 445 of this title and to section 5 of Title 50, Appendix, War and National Defense.

Section 51d of this title was repealed by act June 30, 1947, ch. 166, title II, § 206(b), (*o*), 61 Stat. 208. For effect of the repeal on outstanding debentures held by banks, see References in Text note set out under section 51b–1 of this title.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–242 amended subsec. (a) generally, substituting present provisions for provisions which specified circumstances under which Comptroller could appoint conservator.

1989—Pub. L. 101–73 amended section generally, changing structure of section from a single unlettered paragraph to one consisting of subsections (a) to (e).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–242 effective 1 year after Dec. 19, 1991, see section 133(g) of Pub. L. 102–242, set out as a note under section 191 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

CONSERVATORS OF STATE BANKS

Ex. Ord. No. 6080, Mar. 18, 1933, provided for appointment of conservators of State banks under certain regulations.

§ 204. Examinations

The Comptroller of the Currency (in consultation with the Board of Directors of the Federal Deposit Insurance Corporation when the Corporation is appointed conservator) is authorized to examine and supervise the bank in conservatorship as long as the bank continues to operate as a going concern. The Comptroller may use reports and other information provided by the Federal Deposit Insurance Corporation for this purpose.

(Mar. 9, 1933, ch. 1, title II, § 204, 48 Stat. 3; Pub. L. 101–73, title VIII, § 803, Aug. 9, 1989, 103 Stat. 443.)

AMENDMENTS

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows: ''The Comptroller of the Currency shall cause to be made such examinations of the affairs of such bank as shall be necessary to inform him as to the financial condition of such bank, and the examiner shall make a report thereon to the Comptroller of the Currency at the earliest practicable date.''

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 205. Termination of conservatorship

(a) General rule

At any time the Comptroller[1] becomes satisfied that it may safely be done and that it would be in the public interest, the Comptroller (with the agreement of the Board of Directors of the Federal Deposit Insurance Corporation when the Corporation has been appointed conservator) may—

(1) terminate the conservatorship and permit the involved bank to resume the transaction of its business subject to such terms, conditions, and limitations as the Comptroller may prescribe; or

(2) terminate the conservatorship upon a sale, merger, consolidation, purchase and assumption, change in control, or voluntary dissolution and liquidation of the involved bank.

(b) Other grounds for termination

The Comptroller also may terminate the conservatorship upon the appointment of a receiver pursuant to section 191 of this title.

[1] So in original. Probably should be ''Comptroller of the Currency''.

(c) Enforcement under Federal Deposit Insurance Act

Such terms, conditions, and limitations as may be prescribed under subsection (a)(1) of this section shall be enforceable under the provisions of section 8(i) of the Federal Deposit Insurance Act [12 U.S.C. 1818(i)], to the same extent as an order issued pursuant to section 8(b) of the Federal Deposit Insurance Act [12 U.S.C. 1818(b)] which has become final. The bank may bring an action in the United States district court for the judicial district in which the home office of such bank is located or in the United States District Court for the District of Columbia for an order requiring the Comptroller to terminate the order. An action for judicial review of the terms, conditions, and limitations may not be commenced later than 20 days from the date of the termination of the conservatorship or the imposition of the order, whichever is later.

(d) Action upon termination

(1) In general

Upon termination of the conservatorship under subsection (a)(2) of this section, the Federal Deposit Insurance Corporation, as conservator, or when another person is appointed conservator, such other person, shall conclude the affairs of the conservatorship in accordance with paragraph (2).

(2) Deposit and distribution of proceeds

(A) Within 180 days of the sale, merger, consolidation, purchase and assumption, change in control, or voluntary dissolution and liquidation, the conservator shall deposit all net proceeds received from the transaction, less any outstanding expenses of the conservatorship, with the United States district court for the judicial district in which the home office of such bank is located and shall cause notice to be published for three consecutive months and notify by mail all known and remaining creditors and shareholders. Within 60 days thereafter, any depositor, creditor, or other claimant of the bank, or any shareholder of the bank may bring an action in interpleader in that court for distribution of the proceeds. The district court shall distribute such funds equitably. If no such action is instituted within one year after the date the funds are deposited with the district court, title to such net proceeds shall revert to the United States and the district court shall remit the funds to the Treasury of the United States.

(B) The conservator shall be deemed to have discharged all responsibility of the conservatorship upon the deposit of the proceeds with the district court and giving the required notifications.

(Mar. 9, 1933, ch. 1, title II, § 205, 48 Stat. 3; Pub. L. 101–73, title VIII, § 804, Aug. 9, 1989, 103 Stat. 443.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (c), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

AMENDMENTS

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows: ''If the Comptroller of the Currency becomes satisfied that it may safely be done and that it would be in the public interest, he may, in his discretion, terminate the conservatorship and permit such bank to resume the transaction of its business subject to such terms, conditions, restrictions and limitations as he may prescribe.''

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 206. Conservator; powers and duties

(a) General powers

A conservator shall have all the powers of the shareholders, directors, and officers of the bank and may operate the bank in its own name unless the Comptroller[1] in the order of appointment limits the conservator's authority.

(b) Subject to rules of Comptroller

The conservator shall be subject to such rules, regulations, and orders as the Comptroller from time to time deems appropriate; and, except as otherwise specifically provided in such rules, regulations, or orders or in section 209 of this title, shall have the same rights and privileges and be subject to the same duties, restrictions, penalties, conditions, and limitations as apply to directors, officers, or employees of a national bank.

(c) Payment of depositors and creditors

The Comptroller may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors such amounts as in the opinion of the Comptroller may safely be used for that purpose. All depositors and creditors who are similarly situated shall be treated in the same manner.

(d) Compensation of conservator and employees

The conservator and professional employees appointed to represent or assist the conservator shall not be paid amounts greater than are payable to employees of the Federal Government for similar services, except that the Comptroller of the Currency may authorize payment at higher rates (but not in excess of rates prevailing in the private sector), if the Comptroller determines that paying such higher rates is necessary in order to recruit and retain competent personnel.

(e) Expenses

All expenses of any such conservatorship shall be paid by the bank and shall be a lien upon the bank which shall be prior to any other lien.

(Mar. 9, 1933, ch. 1, title II, § 206, 48 Stat. 3; Pub. L. 101–73, title VIII, § 805, Aug. 9, 1989, 103 Stat. 445.)

AMENDMENTS

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows: ''While such bank is in the hands of the conservator appointed by the Comptroller of the Currency, the Comptroller may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, such amounts as in the opinion of the Comptroller may safely be used for this purpose; and the Comptroller may, in his discretion, permit the conservator to receive deposits, but deposits received while the bank is in the hands of the conservator shall not be subject to any limitation as to payment or withdrawal, and such deposits shall be segregated and shall not be used to liquidate any indebtedness of such bank existing at the time that a conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of such bank existing at the time such conservator was appointed. Such deposits received while the bank is in the hands of the conservator shall be kept on hand in cash, invested in the direct obligations of the United States, or deposited with a Federal reserve bank. The Federal reserve banks are authorized to open and maintain separate deposit accounts for such purpose, or for the purpose of receiving deposits from State officials in charge of State banks under similar circumstances.''

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§§ 207, 208. Repealed. Pub. L. 101–73, title VIII, § 808, Aug. 9, 1989, 103 Stat. 446

Section 207, acts Mar. 9, 1933, ch. 1, title II, § 207, 48 Stat. 3; May 20, 1933, ch. 34, 48 Stat. 72, prescribed conditions for reorganization of banks, requiring consent of depositors and other creditors, of stockholders, or of both depositors and other creditors and stockholders, namely that the reorganization plan be fair and equitable to depositors, other creditors, and stockholders and be in the public interest; that the plan be consented to in writing; and that the approved plan be binding on all consenting or nonconsenting depositors, creditors, and stockholders.

Section 208, act Mar. 9, 1933, ch. 1, title II, § 208, 48 Stat. 4, made the provisions for segregation of deposits inapplicable after termination of conservatorship, and provided for termination of conservatorship after publication of notice of termination and mailing of a copy of such notice by registered mail to depositors of record.

§ 209. Liability protection

(a) Federal agency and employees

In any case in which the conservator is a Federal agency or an employee of the Government, the provisions of chapters 161 and 171 of title 28 shall apply with respect to such conservator's liability for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.

(b) Other conservators

In any case where the conservator is not a conservator described in subsection (a) of this section, the conservator shall not be liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute gross negligence, including any similar conduct or any form of intentional tortious conduct, as determined by a court.

[1] So in original. Probably should be ''Comptroller of the Currency''.

(c) Indemnification

The Comptroller[1] shall have authority to indemnify the conservator on such terms as the Comptroller deems proper.

(Mar. 9, 1933, ch. 1, title II, § 209, 48 Stat. 5; Sept. 3, 1954, ch. 1263, § 23, 68 Stat. 1234; Pub. L. 101–73, title VIII, § 806, Aug. 9, 1989, 103 Stat. 445.)

AMENDMENTS

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows: ''Conservators appointed pursuant to the provisions of this subchapter shall be subject to the provisions of and to the penalties prescribed by sections 334, 656, and 1005 of title 18; and sections 202, 216, 281, 431, 432, and 433 of title 18, in so far as applicable, are extended to apply to contracts, agreements, proceedings, dealings, claims and controversies by or with any such conservator or the Comptroller of the Currency under the provisions of this subchapter.''

1954—Act Sept. 3, 1954, corrected references to title 18.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 210. Governmental powers unimpaired

Nothing in this subchapter shall be construed to impair in any manner any powers of the President, the Secretary of the Treasury, the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System.

(Mar. 9, 1933, ch. 1, title II, § 210, 48 Stat. 5; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 211. Rules and regulations

(a) In general

The Comptroller of the Currency may prescribe such rules and regulations as the Comptroller may deem necessary to carry out the provisions of this Act.

(b) F.D.I.C. as conservator

In any case in which the Federal Deposit Insurance Corporation is the conservator, any rules or regulations prescribed by the Comptroller shall be consistent with any rules and regulations prescribed by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

(Mar. 9, 1933, ch. 1, title II, § 211, 48 Stat. 5; Pub. L. 101–73, title VIII, § 807, Aug. 9, 1989, 103 Stat. 446.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is act Mar. 9, 1933, ch. 1, 48 Stat. 1, as amended, popularly known as the Emergency Banking and Bank Conservation Act, which is classified to sections 51a, 51b, 51c, 51d, 95 to 95b, 201 to 212, 248, 347b, 347c, 347d, and 445 of this title and section 5 of Title 50, Appendix, War and National Defense.

Section 51d of this title was repealed by act June 30, 1947, ch. 166, title II, § 206(b), (*o*), 61 Stat. 208. For effect of the repeal on outstanding debentures held by banks, see References in Text note set out under section 51b–1 of this title.

The Federal Deposit Insurance Act, referred to in subsec. (b), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

AMENDMENTS

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows: ''The Comptroller of the Currency is authorized and empowered, with the approval of the Secretary of the Treasury, to prescribe such rules and regulations as he may deem necessary in order to carry out the provisions of this subchapter. Whoever violates any rule or regulation made pursuant to this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than one year, or both.''

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 212. Right to amend; separability

The right to alter, amend, or repeal this Act is expressly reserved. If any provision of this Act, or the application there of to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(Mar. 9, 1933, ch. 1, title V, § 502, 48 Stat. 7.)

REFERENCES IN TEXT

This Act, referred to in text, is act Mar. 9, 1933, ch. 1, 48 Stat. 1, as amended, popularly known as the Emergency Banking and Bank Conservation Act, which is classified to sections 51a, 51b, 51c, 51d, 95 to 95b, 201 to 212, 248, 347b, 347c, 347d, and 445 of this title and section 5 of Title 50, Appendix, War and National Defense.

Section 51d of this title was repealed by act June 30, 1947, ch. 166, title II, § 206(b), (*o*), 61 Stat. 208. For effect of the repeal on outstanding debentures held by banks, see References in Text note set out under section 51b–1 of this title.

CODIFICATION

This section was not enacted as part of title II of act Mar. 9, 1933, ch. 1, 48 Stat. 2, which comprises this subchapter.

§ 213. Transferred

CODIFICATION

Section, act Jan. 30, 1934, ch. 6, § 13, 48 Stat. 343, relating to ratification of acts of the President and Secretary of the Treasury, was transferred to section 824 of former Title 31, and subsequently repealed by Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 1068, the first section of which enacted Title 31, Money and Finance.

SUBCHAPTER XV—CONVERSION OF NATIONAL BANKS INTO STATE BANKS

§ 214. Definitions

(a) As used in this subchapter and section 321 of this title the term ''State bank'' means any

[1] So in original. Probably should be ''Comptroller of the Currency''.

bank, banking association, trust company, savings bank (other than a mutual savings bank), or other banking institution which is engaged in the business of receiving deposits and which is incorporated under the laws of any State, any Territory of the United States, Puerto Rico, or the Virgin Islands, or which is operating under the Code of Law for the District of Columbia.

(b) For purposes of merger or consolidation under this subchapter and section 321 of this title the term ''national banking association'' means one or more national banking associations, and the term ''State bank'' means one or more State banks.

(Aug. 17, 1950, ch. 729, §1, 64 Stat. 455; Sept. 3, 1954, ch. 1263, §24, 68 Stat. 1234; Pub. L. 109–351, title VII, §725(f), Oct. 13, 2006, 120 Stat. 2002; Pub. L. 109–356, title I, §123(f), Oct. 16, 2006, 120 Stat. 2029.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–351 and 109–356 amended subsec. (a) identically, striking out ''(except a national banking association)'' before period at end.

1954—Act Sept. 3, 1954, substituted ''this subchapter and section 321 of this title'' for ''sections 214 to 214c, 264(e)(2), (i)(2), (v)(4), and 321 of this title'' wherever appearing.

SEPARABILITY

Section 9 of act Aug. 17, 1950, provided that: ''If any provision of this Act [enacting this subchapter and amending of sections 264 and 321 of this title], or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.''

§ 214a. Procedure for conversion, merger, or consolidation; vote of stockholders

A national banking association may, by vote of the holders of at least two-thirds of each class of its capital stock, convert into, or merge or consolidate with, a State bank in the same State in which the national banking association is located, under a State charter, in the following manner:

(a) Approval of board of directors; publication of notice of stockholders' meeting; waiver of publication; notice by registered or certified mail

The plan of conversion, merger, or consolidation must be approved by a majority of the entire board of directors of the national banking association. The bank shall publish notice of the time, place, and object of the shareholders' meeting to act upon the plan, in some newspaper with general circulation in the place where the principal office of the national banking association is located, at least once a week for four consecutive weeks: *Provided*, That newspaper publication may be dispensed with entirely if waived by all the shareholders and in the case of a merger or consolidation one publication at least ten days before the meeting shall be sufficient if publication for four weeks is waived by holders of at least two-thirds of each class of capital stock and prior written consent of the Comptroller of the Currency is obtained. The national banking association shall send such notice to each shareholder of record by registered mail or by certified mail at least ten days prior to the meeting, which notice may be waived specifically by any shareholder.

(b) Rights of dissenting stockholders

A shareholder of a national banking association who votes against the conversion, merger, or consolidation, or who has given notice in writing to the bank at or prior to such meeting that he dissents from the plan, shall be entitled to receive in cash the value of the shares held by him, if and when the conversion, merger, or consolidation is consummated, upon written request made to the resulting State bank at any time before thirty days after the date of consummation of such conversion, merger, or consolidation, accompanied by the surrender of his stock certificates. The value of such shares shall be determined as of the date on which the shareholders' meeting was held authorizing the conversion, merger, or consolidation, by a committee of three persons, one to be selected by majority vote of the dissenting shareholders entitled to receive the value of their shares, one by the directors of the resulting State bank, and the third by the two so chosen. The valuation agreed upon by any two of three appraisers thus chosen shall govern; but, if the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment as provided herein, such shareholder may within five days after being notified of the appraised value of his shares appeal to the Comptroller of the Currency, who shall cause a reappraisal to be made, which shall be final and binding as to the value of the shares of the appellant. If, within ninety days from the date of consummation of the conversion, merger, or consolidation, for any reason one or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of such shares, the Comptroller shall upon written request of any interested party, cause an appraisal to be made, which shall be final and binding on all parties. The expenses of the Comptroller in making the reappraisal, or the appraisal as the case may be, shall be paid by the resulting State bank. The plan of conversion, merger, or consolidation shall provide the manner of disposing of the shares of the resulting State bank not taken by the dissenting shareholders of the national banking association.

(Aug. 17, 1950, ch. 729, §2, 64 Stat. 455; Pub. L. 86–507, §1(10), June 11, 1960, 74 Stat. 200; Pub. L. 96–221, title VII, §706, Mar. 31, 1980, 94 Stat. 188.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–221 substituted ''majority'' for ''unanimous''.

1960—Subsec. (a). Pub. L. 86–507 inserted ''or by certified mail'' after ''registered mail''.

§ 214b. Continuation of business and corporate entity

The franchise of a national banking association as a national banking association shall automatically terminate when its conversion into or its merger or consolidation with a State bank under a State charter is consummated and the resulting State bank shall be considered the same business and corporate entity as the na-

tional banking association, although as to rights, powers, and duties the resulting bank is a State bank. Any reference to such national banking association in any contract, will, or document shall be considered a reference to the State bank if not inconsistent with the provisions of the contract, will, or document or applicable law.

(Aug. 17, 1950, ch. 729, § 3, 64 Stat. 456.)

§ 214c. Conversions in contravention of State law

No conversion of a national banking association into a State bank or its merger or consolidation with a State bank shall take place under this subchapter and section 321 of this title in contravention of the law of the State in which the national banking association is located; and no such conversion, merger, or consolidation shall take place under said sections unless under the law of the State in which such national banking association is located State banks may without approval by any State authority convert into and merge or consolidate with national banking associations under limitations or conditions no more restrictive than those contained in section 214a of this title with respect to the conversion of a national bank into, or merger or consolidation of a national bank with, a State bank under State charter.

(Aug. 17, 1950, ch. 729, § 4, 64 Stat. 456; July 12, 1952, ch. 696, 66 Stat. 590; Sept. 3, 1954, ch. 1263, § 25, 68 Stat. 1235.)

AMENDMENTS

1954—Act Sept. 3, 1954, substituted ''this subchapter and section 321 of this title'' for ''sections 214 to 214c, 264(e)(2), (i)(2), (v)(4), and 321 of this title''.

1952—Act July 12, 1952, amended section so that the limitation of this section beyond which State law cannot go will be measured by the standard set out in section 214a of this title for National-to-State conversions.

§ 214d. Prohibition on conversion

A national banking association may not convert to a State bank or State savings association during any period in which the national banking association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the Comptroller of the Currency with respect to a significant supervisory matter.

(Aug. 17, 1950, ch. 729, § 10, as added Pub. L. 111–203, title VI, § 612(a), July 21, 2010, 124 Stat. 1612.)

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

SUBCHAPTER XVI—CONSOLIDATION AND MERGER

§ 215. Consolidation of banks within same State

(a) In general

Any national bank or any bank incorporated under the laws of any State may, with the approval of the Comptroller, be consolidated with one or more national banking associations located in the same State under the charter of a national banking association on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each association or bank proposing to consolidate, and be ratified and confirmed by the affirmative vote of the shareholders of each such association or bank owning at least two-thirds of its capital stock outstanding, or by a greater proportion of such capital stock in the case of such State bank if the laws of the State where it is organized so require, at a meeting to be held on the call of the directors after publishing notice of the time, place, and object of the meeting for four consecutive weeks in a newspaper of general circulation published in the place where the association or bank is located, or, if there is no such newspaper, then in the paper of general circulation published nearest thereto, and after sending such notice to each shareholder of record by certified or registered mail at least ten days prior to the meeting, except to those shareholders who specifically waive notice, but any additional notice shall be given to the shareholders of such State bank which may be required by the laws of the State where it is organized. Publication of notice may be waived, in cases where the Comptroller determines that an emergency exists justifying such waiver, by unanimous action of the shareholders of the association or State bank.

(b) Liability of consolidated association; capital stock; dissenting shareholders

The consolidated association shall be liable for all liabilities of the respective consolidating banks or associations. The capital stock of such consolidated association shall not be less than that required under existing law for the organization of a national bank in the place in which it is located: *Provided*, That if such consolidation shall be voted for at such meetings by the necessary majorities of the shareholders of each association and State bank proposing to consolidate, and thereafter the consolidation shall be approved by the Comptroller, any shareholder of any of the associations or State banks so consolidated who has voted against such consolidation at the meeting of the association or bank of which he is a stockholder, or who has given notice in writing at or prior to such meeting to the presiding officer that he dissents from the plan of consolidation, shall be entitled to receive the value of the shares so held by him when such consolidation is approved by the Comptroller upon written request made to the consolidated association at any time before thirty days after the date of consummation of the consolidation, accompanied by the surrender of his stock certificates.

(c) Valuation of shares

The value of the shares of any dissenting shareholder shall be ascertained, as of the effective date of the consolidation, by an appraisal made by a committee of three persons, composed of (1) one selected by the vote of the holders of the majority of the stock, the owners of which are entitled to payment in cash; (2) one selected by the directors of the consolidated banking association; and (3) one selected by the two so selected. The valuation agreed upon by

any two of the three appraisers shall govern. If the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment, that shareholder may, within five days after being notified of the appraised value of his shares, appeal to the Comptroller, who shall cause a reappraisal to be made which shall be final and binding as to the value of the shares of the appellant.

(d) Appraisal by Comptroller; expenses of consolidated association; sale and resale of shares; State appraisal and consolidation law

If, within ninety days from the date of consummation of the consolidation, for any reason one or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of such shares, the Comptroller shall upon written request of any interested party cause an appraisal to be made which shall be final and binding on all parties. The expenses of the Comptroller in making the reappraisal or the appraisal, as the case may be, shall be paid by the consolidated banking association. The value of the shares ascertained shall be promptly paid to the dissenting shareholders by the consolidated banking association. Within thirty days after payment has been made to all dissenting shareholders as provided for in this section the shares of stock of the consolidated banking association which would have been delivered to such dissenting shareholders had they not requested payment shall be sold by the consolidated banking association at an advertised public auction, unless some other method of sale is approved by the Comptroller, and the consolidated banking association shall have the right to purchase any of such shares at such public auction, if it is the highest bidder therefor, for the purpose of reselling such shares within thirty days thereafter to such person or persons and at such price not less than par as its board of directors by resolution may determine. If the shares are sold at public auction at a price greater than the amount paid to the dissenting shareholders the excess in such sale price shall be paid to such shareholders. The appraisal of such shares of stock in any State bank shall be determined in the manner prescribed by the law of the State in such cases, rather than as provided in this section, if such provision is made in the State law; and no such consolidation shall be in contravention of the law of the State under which such bank is incorporated.

(e) Status of consolidated association; property rights and interests vested and held as fiduciary

The corporate existence of each of the consolidating banks or banking associations participating in such consolidation shall be merged into and continued in the consolidated national banking association and such consolidated national banking association shall be deemed to be the same corporation as each bank or banking association participating in the consolidation. All rights, franchises, and interests of the individual consolidating banks or banking associations in and to every type of property (real, personal, and mixed) and choses in action shall be transferred to and vested in the consolidated national banking association by virtue of such consolidation without any deed or other transfer. The consolidated national banking association, upon the consolidation and without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises, and interests, including appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, and committee of estates of lunatics, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any one of the consolidating banks or banking associations at the time of consolidation, subject to the conditions hereinafter provided.

(f) Removal as fiduciary; discrimination

Where any consolidating bank or banking association, at the time of the consolidation, was acting under appointment of any court as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or committee of estates of lunatics, or in any other fiduciary capacity, the consolidated national banking association shall be subject to removal by a court of competent jurisdiction in the same manner and to the same extent as was such consolidating bank or banking association prior to the consolidation. Nothing contained in this section shall be considered to impair in any manner the right of any court to remove the consolidated national banking association and to appoint in lieu thereof a substitute trustee, executor, or other fiduciary, except that such right shall not be exercised in such a manner as to discriminate against national banking associations, nor shall any consolidated national banking association be removed solely because of the fact that it is a national banking association.

(g) Issuance of stock by consolidated association; preemptive rights

Stock of the consolidated national banking association may be issued as provided by the terms of the consolidation agreement, free from any preemptive rights of the shareholders of the respective consolidating banks.

(Nov. 7, 1918, ch. 209, §2, formerly §1, as added Pub. L. 86–230, §20, Sept. 8, 1959, 73 Stat. 460; renumbered §2 and amended Pub. L. 103–328, title I, §102(b)(4)(C), Sept. 29, 1994, 108 Stat. 2351.)

CODIFICATION

Provisions similar to those comprising this section were contained in sections 1 and 2 of act Nov. 7, 1918, ch. 209, 40 Stat. 1043, and section 3 of act Nov. 7, 1918, ch. 209, added Feb. 25, 1927, ch. 191, §1, 44 Stat. 1225 (formerly classified to sections 33 to 34a of this title) prior to the complete amendment and renumbering of act Nov. 7, 1918, by Pub. L. 86–230.

AMENDMENTS

1994—Pub. L. 103–328 inserted section catchline and, in subsec. (a), inserted heading and substituted ''Any national bank'' for ''Any national banking association''.

SHORT TITLE

Section 1 of act Nov. 7, 1918, ch. 209, as added Sept. 29, 1994, Pub. L. 103–328, title I, §102(b)(4)(C), 108 Stat. 2351,

provided that: ''This Act [enacting this subchapter] may be cited as the 'National Bank Consolidation and Merger Act'.''

§ 215a. Merger of national banks or State banks into national banks

(a) Approval of Comptroller, board and shareholders; merger agreement; notice; capital stock; liability of receiving association

One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this subchapter, may merge into a national banking association located within the same State, under the charter of the receiving association. The merger agreement shall—

(1) be agreed upon in writing by a majority of the board of directors of each association or State bank participating in the plan of merger;

(2) be ratified and confirmed by the affirmative vote of the shareholders of each such association or State bank owning at least two-thirds of its capital stock outstanding, or by a greater proportion of such capital stock in the case of a State bank if the laws of the State where it is organized so require, at a meeting to be held on the call of the directors, after publishing notice of the time, place, and object of the meeting for four consecutive weeks in a newspaper of general circulation published in the place where the association or State bank is located, or, if there is no such newspaper, then in the newspaper of general circulation published nearest thereto, and after sending such notice to each shareholder of record by certified or registered mail at least ten days prior to the meeting, except to those shareholders who specifically waive notice, but any additional notice shall be given to the shareholders of such State bank which may be required by the laws of the State where it is organized. Publication of notice may be waived, in cases where the Comptroller determines that an emergency exists justifying such waiver, by unanimous action of the shareholders of the association or State banks;

(3) specify the amount of the capital stock of the receiving association, which shall not be less than that required under existing law for the organization of a national bank in the place in which it is located and which will be outstanding upon completion of the merger, the amount of stock (if any) to be allocated, and cash (if any) to be paid, to the shareholders of the association or State bank being merged into the receiving association; and

(4) provide that the receiving association shall be liable for all liabilities of the association or State bank being merged into the receiving association.

(b) Dissenting shareholders

If a merger shall be voted for at the called meetings by the necessary majorities of the shareholders of each association or State bank participating in the plan of merger, and thereafter the merger shall be approved by the Comptroller, any shareholder of any association or State bank to be merged into the receiving association who has voted against such merger at the meeting of the association or bank of which he is a stockholder, or has given notice in writing at or prior to such meeting to the presiding officer that he dissents from the plan of merger, shall be entitled to receive the value of the shares so held by him when such merger shall be approved by the Comptroller upon written request made to the receiving association at any time before thirty days after the date of consummation of the merger, accompanied by the surrender of his stock certificates.

(c) Valuation of shares

The value of the shares of any dissenting shareholder shall be ascertained, as of the effective date of the merger, by an appraisal made by a committee of three persons, composed of (1) one selected by the vote of the holders of the majority of the stock, the owners of which are entitled to payment in cash; (2) one selected by the directors of the receiving association; and (3) one selected by the two so selected. The valuation agreed upon by any two of the three appraisers shall govern. If the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment, that shareholder may, within five days after being notified of the appraised value of his shares, appeal to the Comptroller, who shall cause a reappraisal to be made which shall be final and binding as to the value of the shares of the appellant.

(d) Application to shareholders of merging associations: appraisal by Comptroller; expenses of receiving association; sale and resale of shares; State appraisal and merger law

If, within ninety days from the date of consummation of the merger, for any reason one or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of such shares, the Comptroller shall upon written request of any interested party cause an appraisal to be made which shall be final and binding on all parties. The expenses of the Comptroller in making the reappraisal or the appraisal, as the case may be, shall be paid by the receiving association. The value of the shares ascertained shall be promptly paid to the dissenting shareholders by the receiving association. The shares of stock of the receiving association which would have been delivered to such dissenting shareholders had they not requested payment shall be sold by the receiving association at an advertised public auction, and the receiving association shall have the right to purchase any of such shares at such public auction, if it is the highest bidder therefor, for the purpose of reselling such shares within thirty days thereafter to such person or persons and at such price not less than par as its board of directors by resolution may determine. If the shares are sold at public auction at a price greater than the amount paid to the dissenting shareholders, the excess in such sale price shall be paid to such dissenting shareholders. The appraisal of such shares of stock in any State bank shall be determined in the manner prescribed by the law of the State in such cases, rather than as provided in this section, if such provision is made in the State law; and no such merger shall be in contravention of the law of the State under

which such bank is incorporated. The provisions of this subsection shall apply only to shareholders of (and stock owned by them in) a bank or association being merged into the receiving association.

(e) Status of receiving association; property rights and interests vested and held as fiduciary

The corporate existence of each of the merging banks or banking associations participating in such merger shall be merged into and continued in the receiving association and such receiving association shall be deemed to be the same corporation as each bank or banking association participating in the merger. All rights, franchises, and interests of the individual merging banks or banking associations in and to every type of property (real, personal, and mixed) and choses in action shall be transferred to and vested in the receiving association by virtue of such merger without any deed or other transfer. The receiving association, upon the merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises, and interests, including appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, and committee of estates of lunatics, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any one of the merging banks or banking associations at the time of the merger, subject to the conditions hereinafter provided.

(f) Removal as fiduciary; discrimination

Where any merging bank or banking association, at the time of the merger, was acting under appointment of any court as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or committee of estates of lunatics, or in any other fiduciary capacity, the receiving association shall be subject to removal by a court of competent jurisdiction in the same manner and to the same extent as was such merging bank or banking association prior to the merger. Nothing contained in this section shall be considered to impair in any manner the right of any court to remove the receiving association and to appoint in lieu thereof a substitute trustee, executor, or other fiduciary, except that such right shall not be exercised in such a manner as to discriminate against national banking associations, nor shall any receiving association be removed solely because of the fact that it is a national banking association.

(g) Issuance of stock by receiving association; preemptive rights

Stock of the receiving association may be issued as provided by the terms of the merger agreement, free from any preemptive rights of the shareholders of the respective merging banks.

(Nov. 7, 1918, ch. 209, §3, formerly §2, as added Pub. L. 86–230, §20, Sept. 8, 1959, 73 Stat. 463; renumbered §3, Pub. L. 103–328, title I, §102(b)(4)(A), Sept. 29, 1994, 108 Stat. 2351.)

CODIFICATION

Provisions similar to those comprising this section were contained in section 4 of act Nov. 7, 1918, ch. 209, as added July 14, 1952, ch. 722, §1, 66 Stat. 599 (formerly classified to section 34b of this title), prior to the complete amendment and renumbering of act Nov. 7, 1918, by Pub. L. 86–230.

§ 215a–1. Interstate consolidations and mergers

(a) In general

A national bank may engage in a consolidation or merger under this subchapter with an out-of-State bank if the consolidation or merger is approved pursuant to section 1831u of this title.

(b) Scope of application

Subsection (a) of this section shall not apply with respect to any consolidation or merger before June 1, 1997, unless the home State of each bank involved in the transaction has in effect a law described in section 1831u(a)(3) of this title.

(c) Definitions

The terms ''home State'' and ''out-of-State bank'' have the same meaning as in section 1831u(f)[1] of this title.

(Nov. 7, 1918, ch. 209, §4, as added Pub. L. 103–328, title I, §102(b)(4)(D), Sept. 29, 1994, 108 Stat. 2351.)

REFERENCES IN TEXT

Section 1831u of this title, referred to in subsec. (c), was subsequently amended, and subsec. (f) of section 1831u no longer defines the terms ''home State'' and ''out-of-State bank''. However, such terms are defined elsewhere in that section.

§ 215a–2. Expedited procedures for certain reorganizations

(a) In general

A national bank may, with the approval of the Comptroller, pursuant to rules and regulations promulgated by the Comptroller, and upon the affirmative vote of the shareholders of such bank owning at least two-thirds of its capital stock outstanding, reorganize so as to become a subsidiary of a bank holding company or of a company that will, upon consummation of such reorganization, become a bank holding company.

(b) Reorganization plan

A reorganization authorized under subsection (a) of this section shall be carried out in accordance with a reorganization plan that—

(1) specifies the manner in which the reorganization shall be carried out;

(2) is approved by a majority of the entire board of directors of the national bank;

(3) specifies—

(A) the amount of cash or securities of the bank holding company, or both, or other consideration to be paid to the shareholders of the reorganizing bank in exchange for their shares of stock of the bank;

(B) the date as of which the rights of each shareholder to participate in such exchange will be determined; and

(C) the manner in which the exchange will be carried out; and

[1] See References in Text note below.

(4) is submitted to the shareholders of the reorganizing bank at a meeting to be held on the call of the directors in accordance with the procedures prescribed in connection with a merger of a national bank under section 215a of this title.

(c) Rights of dissenting shareholders

If, pursuant to this section, a reorganization plan has been approved by the shareholders and the Comptroller, any shareholder of the bank who has voted against the reorganization at the meeting referred to in subsection (b)(4) of this section, or has given notice in writing at or prior to that meeting to the presiding officer that the shareholder dissents from the reorganization plan, shall be entitled to receive the value of his or her shares, as provided by section 215a of this title for the merger of a national bank.

(d) Effect of reorganization

The corporate existence of a national bank that reorganizes in accordance with this section shall not be deemed to have been affected in any way by reason of such reorganization.

(e) Approval under the Bank Holding Company Act

This section does not affect in any way the applicability of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.] to a transaction described in subsection (a) of this section.

(Nov. 7, 1918, ch. 209, §5, as added Pub. L. 106–569, title XII, §1204(2), Dec. 27, 2000, 114 Stat. 3033.)

REFERENCES IN TEXT

The Bank Holding Company Act of 1956, referred to in subsec. (e), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

§215a–3. Mergers and consolidations with subsidiaries and nonbank affiliates

(a) In general

Upon the approval of the Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates.

(b) Scope

Nothing in this section shall be construed—

(1) to affect the applicability of section 1828(c) of this title; or

(2) to grant a national bank any power or authority that is not permissible for a national bank under other applicable provisions of law.

(c) Regulations

The Comptroller shall promulgate regulations to implement this section.

(Nov. 7, 1918, ch. 209, §6, as added Pub. L. 106–569, title XII, §1206, Dec. 27, 2000, 114 Stat. 3034.)

§215b. Definitions

As used in this subchapter, the term—

(1) ''State bank'' means any bank, banking association, trust company, savings bank (other than a mutual savings bank), or other banking institution which is engaged in the business of receiving deposits and which is incorporated under the laws of any State, or which is operating under the Code of Law for the District of Columbia;

(2) ''State'' means the several States and Territories, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia;

(3) ''Comptroller'' means the Comptroller of the Currency; and

(4) ''Receiving association'' means the national banking association into which one or more national banking associations or one or more State banks, located within the same State, merge.

(Nov. 7, 1918, ch. 209, §7, formerly §3, as added Pub. L. 86–230, §20, Sept. 8, 1959, 73 Stat. 465; renumbered §5, Pub. L. 103–328, title I, §102(b)(4)(B), Sept. 29, 1994, 108 Stat. 2351; renumbered §7, Pub. L. 106–569, title XII, §1204(1), Dec. 27, 2000, 114 Stat. 3033; amended Pub. L. 109–351, title VII, §725(e), Oct. 13, 2006, 120 Stat. 2002; Pub. L. 109–356, title I, §123(e), Oct. 16, 2006, 120 Stat. 2029.)

CODIFICATION

Provisions similar to those comprising this section were contained in section 5 of act Nov. 7, 1918, ch. 209, as added July 14, 1952, ch. 722, §1, 66 Stat. 601 (formerly classified to section 34c of this title), prior to the complete amendment and renumbering of act Nov. 7, 1918, by Pub. L. 86–230.

AMENDMENTS

2006—Par. (1). Pub. L. 109–351 and 109–356 amended par. (1) identically, striking out ''(except a national banking association located in the District of Columbia)'' before semicolon at end.

§215c. Mergers, consolidations, and other acquisitions authorized

(a) In general

Subject to sections 1815(d)(3)[1] and 1828(c) of this title and all other applicable laws, any national bank may acquire or be acquired by any insured depository institution.

(b) Expedited approval of acquisitions

(1) In general

Any application by a national bank to acquire or be acquired by another insured depository institution which is required to be filed with the Comptroller of the Currency under any applicable law or regulation shall be approved or disapproved in writing by the agency before the end of the 60-day period beginning on the date such application is filed with the agency.

(2) Extensions of period

The period for approval or disapproval referred to in paragraph (1) may be extended for an additional 30-day period if the Comptroller of the Currency determines that—

(A) an applicant has not furnished all of the information required to be submitted; or

(B) in the Comptroller's judgment, any material information submitted is substantially inaccurate or incomplete.

[1] See References in Text note below.

(c) Rule of construction

No provision of this section shall be construed as authorizing a national bank or a subsidiary of a national bank to engage in any activity not otherwise authorized under this Act[1] or any other law governing the powers of national banks.

(d) "Acquire" defined

For purposes of this section, the term ''acquire'' means to acquire, directly or indirectly, ownership or control through a merger or consolidation or an acquisition of assets or assumption of liabilities, provided that following such merger, consolidation, or acquisition, an acquiring insured depository institution may not own the shares of the acquired insured depository institution.

(R.S. §5156A, as added Pub. L. 102–242, title V, §502(b), Dec. 19, 1991, 105 Stat. 2393; amended Pub. L. 104–208, div. A, title II, §2201(b)(1), Sept. 30, 1996, 110 Stat. 3009–403.)

REFERENCES IN TEXT

Section 1815(d)(3) of this title, referred to in subsec. (a), which related to optional conversions by insured depository institutions subject to special rules on deposit insurance payments, was struck out and former section 1815(d)(1)(C) redesignated section 1815(d)(3) by Pub. L. 109–173, §8(a)(4), (5)(D), Feb. 15, 2006, 119 Stat. 3610, 3611.

This Act, referred to in subsec. (c), probably means the National Bank Act, act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified principally to chapter 2 (§21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

CODIFICATION

Section was not enacted as part of act Nov. 7, 1918, ch. 209, as added Sept. 8, 1959, Pub. L. 86–230, §20, 73 Stat. 460, which comprises this subchapter.

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–208 substituted ''under any applicable law'' for ''by section 1815(d)(3) of this title or any other applicable law''.

SUBCHAPTER XVII—DISPOSITION OF UNCLAIMED PROPERTY RECOVERED FROM CLOSED NATIONAL BANKS

§ 216. Purpose

The purpose of this subchapter is to dispose of unclaimed property in the possession, custody, or control of the Comptroller of the Currency by—

(1) providing final notice of the availability of unclaimed property from closed national banks;

(2) barring rights of claimants to obtain such property from the Comptroller after a reasonable period of time following such notice; and

(3) authorizing the Comptroller to dispose of such property for which no claims have been filed and validated under this subchapter.

(Pub. L. 96–221, title VII, §731, as added Pub. L. 97–320, title IV, §408, Oct. 15, 1982, 96 Stat. 1513; amended Pub. L. 109–351, title VII, §725(c)(1), Oct. 13, 2006, 120 Stat. 2001; Pub. L. 109–356, title I, §123(c)(1), Oct. 16, 2006, 120 Stat. 2029.)

AMENDMENTS

2006—Par. (1). Pub. L. 109–351 and 109–356 amended par. (1) identically, striking out ''and closed banks in the District of Columbia'' before semicolon at end.

§ 216a. Definitions

For purposes of this subchapter—

(1) the term ''Comptroller'' means the Comptroller of the Currency;

(2) the term ''unclaimed property'' means any articles, items, assets, other property, or the proceeds thereof from safe deposit boxes or other safekeeping arrangements with closed national banks, which are in the possession, custody, or control of the Comptroller in its capacity as successor to receivers of those banks; and

(3) the term ''claimant'' means any person or entity, including a State under applicable statutory law, asserting a demonstrable legal interest in title to, or custody or possession of, unclaimed property.

(Pub. L. 96–221, title VII, §732, as added Pub. L. 97–320, title IV, §408, Oct. 15, 1982, 96 Stat. 1513; amended Pub. L. 109–351, title VII, §725(c)(2), Oct. 13, 2006, 120 Stat. 2001; Pub. L. 109–356, title I, §123(c)(2), Oct. 16, 2006, 120 Stat. 2029.)

AMENDMENTS

2006—Par. (2). Pub. L. 109–351 and 109–356 amended par. (2) identically, striking out ''or closed banks in the District of Columbia'' after ''closed national banks''.

§ 216b. Disposition of unclaimed property

(a) Limitations for filing claims; publication of notice in Federal Register; contents of notice; disclosure of descriptive information; inspection of specific property

(1) Within twelve months following October 15, 1982, the Comptroller shall publish formal notice in the Federal Register that all claims to rights of any claimant to obtain title to, or custody or possession of, any unclaimed property in the possession, custody, or control of the Comptroller must be filed within twelve months following the last date of publication of such formal notice in the Federal Register or shall thereafter be barred.

(2) Such notice shall contain the names of last known owners, if any, names and locations of affected closed banks, and a general description of the types of unclaimed property held by the Comptroller. The Comptroller may provide additional notice in local communities as it deems appropriate.

(3)(A) The Comptroller shall not disclose, by publication, inspection or otherwise, information relating to the ownership or description of any specific unclaimed property prior to publication of formal notice under this section.

(B) Thereafter, the Comptroller shall disclose descriptive information of specific unclaimed property only to a claimant thereof. The Comptroller may recoup expenses associated with any publication or other provision of notice from any sale of property authorized by this subchapter. Reasonable opportunity for inspection of specific property by a claimant thereof shall be provided in Washington, District of Columbia.

(b) Delivery of property to claimant upon proof of entitlement; determination of validity of claims; recoupment of expenses; liability for losses; insurance requirements

(1) The Comptroller shall deliver such property to any claimant or his or her legally authorized representative upon receiving proof deemed adequate by the Comptroller that such claimant is entitled to the property, but only if the claimant files for the property within twelve months following the last date formal notice is published in the Federal Register.

(2)(A) The Comptroller shall have authority to determine the validity of all claims filed. The Comptroller may recoup expenses associated with the handling and processing of claims from any sale of property authorized by this subchapter.

(B) All expenses associated with the delivery of any property shall be borne by the claimant. The Comptroller shall not be responsible for any loss in connection with the handling, storage, or delivery of any property to the claimant. The Comptroller may require the claimant to purchase insurance to cover the risk of any loss.

(c) Vesting of rights, title and interest in unclaimed property in United States; sale, use, destruction or disposition of property; proceeds of sale as miscellaneous receipts

(1) If, after twelve months from the date formal notice is published in the Federal Register, any such property remains in the possession, custody, or control of the Comptroller for which no valid claim has been filed, all rights, title, and interest in such property shall immediately be vested in the United States.

(2) The Comptroller shall thereupon, in his discretion, sell, use, destroy, or otherwise dispose of any such unclaimed property. Such disposition may include donations to the Smithsonian Institution for addition to the national collection.

(3) The proceeds of any sale authorized by this section, after recoupment by the Comptroller of any expenses incurred hereunder, shall be covered into the Treasury as miscellaneous receipts.

(d) Liability for determination of validity of claims; liability for delivery, sale, etc., of property

The United States, the Comptroller, or any officer, employee, or agent thereof shall not be subject to personal or legal liability for any determination as to the validity of any claim or claims filed under this subchapter or for any delivery, sale, destruction, or other disposition of unclaimed property.

(e) Court action for determination of ownership, etc., in State or Federal court of competent jurisdiction; de novo nature of action; parties

(1) A court action to determine legal ownership, entitlement, or right to possession may be filed in any State or Federal court of competent jurisdiction other than against the United States, the Comptroller, or any officer, agent, or employee thereof.

(2) Such actions shall be determined de novo without regard to any agency determination or any disposition or delivery by the Comptroller of any particular property to any person.

(3) The United States, the Comptroller, or any officer, employee, or agent thereof shall neither be a party to any such judicial proceeding nor be bound by any decision, decree, or order resulting therefrom.

(f) Jurisdiction of United States Court of Federal Claims of actions against United States, Comptroller, officer, etc.; scope of review of actions of Comptroller; limitations; claims against Comptroller, officer, etc., as claim against United States

(1) The United States Court of Federal Claims shall have exclusive jurisdiction to hear and determine any suit brought against the United States, the Comptroller, or any officer, employee, or agent thereof with regard to any determination of a claim or the disposition of any unclaimed property.

(2) The United States Court of Federal Claims may set aside actions of the Comptroller only if such actions are found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(3) All claims for which the United States Court of Federal Claims has jurisdiction under this subsection shall be barred unless suit is filed within two years from the date of expiration of the twelve-month notice period provided by this subchapter.

(4) For purposes of section 1491 of title 28, any Claim[1] against the Comptroller, the United States, or any officer, employee, or agent thereof shall be considered a claim against the United States.

(Pub. L. 96–221, title VII, § 733, as added Pub. L. 97–320, title IV, § 408, Oct. 15, 1982, 96 Stat. 1513; amended Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Subsec. (f)(1) to (3). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 216c. Rules and regulations

The Comptroller may issue rules and regulations necessary or appropriate to carry out this subchapter.

(Pub. L. 96–221, title VII, § 734, as added Pub. L. 97–320, title IV, § 408, Oct. 15, 1982, 96 Stat. 1515.)

§ 216d. Severability

If any provision of this subchapter or the application of such provision to any person or circumstance is held invalid, the remainder of this subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Pub. L. 96–221, title VII, § 735, as added Pub. L. 97–320, title IV, § 408, Oct. 15, 1982, 96 Stat. 1515.)

[1] So in original. Probably should not be capitalized.

CHAPTER 3—FEDERAL RESERVE SYSTEM

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334. Reports from affiliates; penalty for failure to furnish.
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347. Advances to member banks on their notes.
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347c. Advances to individuals, partnerships, and corporations; security; interest rate.
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374. Acting as agent for nonmember bank in getting discounts from reserve bank.
374a. Acting as agent for nonbanking borrower in making loans on securities to dealers in stocks, bonds, etc.; penalties.
375. Purchases from directors; sales to directors.
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392. Depositaries of Government funds as confined to banks in Federal reserve system; member banks as depositaries.
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414. Authority of Board of Governors respecting issuance of notes; interest; lien.
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417. Custody and safe-keeping of notes issued to and collateral deposited with Reserve agent.
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505. Civil money penalty.
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SUBCHAPTER I—DEFINITIONS, ORGANIZATION, AND GENERAL PROVISIONS AFFECTING SYSTEM

§ 221. Definitions

Wherever the word ''bank'' is used in this chapter, the word shall be held to include State bank, banking association, and trust company, except where national banks or Federal reserve banks are specifically referred to. For purposes of this chapter, a State bank includes any bank which is operating under the Code of Law for the District of Columbia.

The terms ''national bank'' and ''national banking association'' used in this chapter shall be held to be synonymous and interchangeable. The term ''member bank'' shall be held to mean any national bank, State bank, or bank or trust company which has become a member of one of the Federal reserve banks. The term ''board'' shall be held to mean Board of Governors of the Federal Reserve System; the term ''district'' shall be held to mean Federal reserve district; the term ''reserve bank'' shall be held to mean Federal reserve bank; the term ''the continental United States'' means the States of the United States and the District of Columbia.

The terms ''bonds and notes of the United States'', ''bonds and notes of the Government of the United States'', and ''bonds or notes of the United States'' used in this chapter shall be held to include certificates of indebtedness and Treasury bills issued under section 3104 of title 31.

(Dec. 23, 1913, ch. 6, §1 (pars.), 38 Stat. 251; Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704; Pub. L. 86–70, §8(a), June 25, 1959, 73 Stat. 142; Pub. L. 97–258, §2(c), Sept. 13, 1982, 96 Stat. 1058; Pub. L. 109–351, title VII, §725(a)(1), Oct. 13, 2006, 120 Stat. 2001; Pub. L. 109–356, title I, §123(a)(1), Oct. 16, 2006, 120 Stat. 2028.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

This section is comprised of the second to fourth pars. of section 1 of act Dec. 23, 1913. The first par. of section 1 is classified to section 226 of this title.

AMENDMENTS

2006—Pub. L. 109–351 and 109–356 amended section identically, inserting ''For purposes of this chapter, a State bank includes any bank which is operating under the Code of Law for the District of Columbia.'' at end of first par.

1982—Pub. L. 97–258 inserted provisions defining ''bonds and notes of the United States'', ''bonds and notes of the Government of the United States'', and ''bonds or notes of the United States''. These provisions are based on acts Sept. 24, 1917, ch. 56, §5(c), 40 Stat. 290; Apr. 4, 1918, ch. 44, §4, 40 Stat. 504; Mar. 3, 1919, ch. 100, §3, 40 Stat. 1311; restated June 17, 1929, ch. 26, 46 Stat. 20 (former 31 U.S.C. 754(c)).

1959—Pub. L. 86–70 inserted definition of ''the continental United States''.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 221a. Additional definitions

As used in this chapter—

(a) The terms ''banks'', ''national bank'', ''national banking association'', ''member bank'', ''board'', ''district'', and ''reserve bank'' shall have the meanings assigned to them in section 221 of this title.

(b) Except where otherwise specifically provided, the term ''affiliate'' shall include any corporation, business trust, association, or other similar organization—

(1) Of which a member bank, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 per centum of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; or

(2) Of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of a member bank who own or control either a majority of the shares of such bank or more than 50 per centum of the number of shares voted for the election of directors of such bank at the preceding election, or by trustees for the benefit of the shareholders of any such bank; or

(3) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one member bank; or

(4) Which owns or controls, directly or indirectly, either a majority of the shares of capital stock of a member bank or more than 50 per centum of the number of shares voted for the election of directors of a member bank at the preceding election, or controls in any manner the election of a majority of the directors of a member bank, or for the benefit of whose shareholders or members all or substantially all the capital stock of a member bank is held by trustees.

(June 16, 1933, ch. 89, § 2, 48 Stat. 162; Aug. 23, 1935, ch. 614, title III, § 301, 49 Stat. 707; Pub. L. 89–485, § 13(a), (b), July 1, 1966, 80 Stat. 242.)

REFERENCES IN TEXT

As used in this chapter, referred to in text, was in the original ''As used in this Act and in any provision of law amended by this Act'', meaning act June 16, 1933, ch. 89, 48 Stat. 162, as amended, known as the Banking Act of 1933. For complete classification of this Act to the Code, see References in Text note set out under section 227 of this title and Tables.

AMENDMENTS

1966—Subsec. (b)(4). Pub. L. 89–485, § 13(a), added par. (4) which incorporates definitions of ''holding company affiliate'' contained in cls. (1) and (2) of former subsec. (c) of this section, and substituted ''a member bank'' for ''any one bank'' in first two places.

Subsec. (c). Pub. L. 89–485, § 13(b), repealed definition of ''holding company affiliate'', cls. (1) and (2) thereof now being incorporated in the subsec. (b)(4) definition of ''affiliate'', substituting ''a member bank'' for ''any one bank'' in first two places and the par. excluding therefrom any corporations stock of which is fully owned by the United States and any organization determined by the Board of Governors of the Federal Reserve System not to be engaged, directly or indirectly, as a business in holding the stock of, or managing or controlling, banks, banking associations, savings banks, or trust companies.

1935—Subsec. (c). Act Aug. 23, 1935, added last par.

§ 222. Federal reserve districts; membership of national banks

The continental United States, excluding Alaska, shall be divided into not less than eight nor more than twelve districts. Such districts may be readjusted and new districts may from time to time be created by the Board of Governors of the Federal Reserve System, not to exceed twelve in all: *Provided*, That the districts shall be apportioned with due regard to the convenience and customary course of business and shall not necessarily be coterminous with any State or States. Such districts shall be known as Federal reserve districts and may be designated by number. When the State of Alaska or Hawaii is hereafter admitted to the Union the Federal Reserve[1] districts shall be readjusted by the Board of Governors of the Federal Reserve System in such manner as to include such State. Every national bank in any State shall, upon commencing business or within ninety days after admission into the Union of the State in which it is located, become a member bank of the Federal Reserve System by subscribing and paying for stock in the Federal Reserve bank of its district in accordance with the provisions of this chapter and shall thereupon be an insured bank under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], and failure to do so shall subject such bank to the penalty provided by section 501a of this title.

(Dec. 23, 1913, ch. 6, § 2 (part), 38 Stat. 251; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 85–508, § 19, July 7, 1958, 72 Stat. 350; Pub. L. 86–3, § 17, Mar. 18, 1959, 73 Stat. 12.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The Federal Deposit Insurance Act, referred to in text, is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section is based on part of the first par. of section 2 of act Dec. 23, 1913. Some of the other provisions of the first par. are classified to section 223 of this title, and some were not included in the Code.

The second par. of section 2 is classified in part to section 225 of this title. The rest of the second par. was not included in the Code.

The third par. of section 2 is classified in part to section 282 of this title. The rest of the third par. was not included in the Code.

The fourth par. of section 2 is classified to section 502 of this title.

The sixth and seventh pars. of section 2 are classified to section 501a of this title.

The ninth par. of section 2 is classified to section 283 of this title.

The tenth par. of section 2 was classified in part to former section 284 of this title. The rest of the tenth par. was not included in the Code.

The eleventh and twelfth pars. of section 2 are classified to sections 285 and 286, respectively, of this title.

The thirteenth par. of section 2 is classified in part to section 224 of this title and in part to section 281 of this title. The rest of the thirteenth par. was not included in the Code.

The fifth and eighth pars. of section 2 were not included in the Code.

Former section 141 of this title purportedly derived from part of section 2 of act Dec. 23, 1913. But see Codification note set out under former section 141 of this title.

AMENDMENTS

1959—Pub. L. 86–3 required readjustment of districts when the State of Hawaii is admitted to the Union.

1958—Pub. L. 85–508 required readjustment of districts when the State of Alaska is admitted to the Union, and inserted provisions requiring national banks to become members of the Federal Reserve System upon commencing business or within 90 Days after admission into the Union of the State in which they are located.

[1] Capitalized as in original.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. C16, and Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. C74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

§ 223. Number of Federal reserve cities in district

A Federal reserve district shall contain only one Federal reserve city.

(Dec. 23, 1913, ch. 6, § 2 (part), 38 Stat. 251.)

CODIFICATION

Section is based on part of the first par. of section 2 of act Dec. 23, 1913. Some of the other provisions of the first par. are classified to section 222 of this title, and some were not included in the Code. For classification of other pars. of section 2 of this Act, see Codification note under section 222 of this title.

§ 224. Status of reserve cities under former statutes

The organization of reserve districts and Federal reserve cities shall not be construed as changing the present status of reserve cities except in so far as this chapter changes the amount of reserves that may be carried with approved reserve agents located therein.

(Dec. 23, 1913, ch. 6, § 2 (part), 38 Stat. 253; Pub. L. 86–114, § 3(b)(5), July 28, 1959, 73 Stat. 264.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of part of the thirteenth par. of section 2 of act Dec. 23, 1913. Some of the other provisions of the thirteenth par. are classified to section 281 of this title, and some were not included in the Code. For classification of other pars. of section 2 of this Act, see Codification note set out under section 222 of this title.

AMENDMENTS

1959—Pub. L. 86–114 struck out ''and central reserve cities'' after ''reserve cities''.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–114 effective three years after July 28, 1959, see section 3(b) of Pub. L. 86–114, set out as a Central Reserve and Reserve Cities note under former section 141 of this title.

PRIOR PROVISIONS

Provisions relating to reserve cities and central reserve cities were contained in R.S. §§ 5191, 5192, and act Mar. 3, 1887, ch. 378, §§ 1, 2, 24 Stat. 559, 560.

§ 225. Federal reserve banks; title

A Federal reserve bank shall include in its title the name of the city in which it is situated, as ''Federal Reserve Bank of Chicago.''

(Dec. 23, 1913, ch. 6, § 2 (part), 38 Stat. 252.)

CODIFICATION

Section is based on part of the second par. of section 2 of act Dec. 23, 1913. The rest of the second par. was not included in the Code. For classification of other pars. of section 2 of this Act, see Codification note set out under section 222 of this title.

§ 225a. Maintenance of long run growth of monetary and credit aggregates

The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates.

(Dec. 23, 1913, ch. 6, § 2A, as added Pub. L. 95–188, title II, § 202, Nov. 16, 1977, 91 Stat. 1387; amended Pub. L. 95–523, title I, § 108(a), Oct. 27, 1978, 92 Stat. 1897; Pub. L. 100–418, title III, § 3005(c), Aug. 23, 1988, 102 Stat. 1375; Pub. L. 106–569, title X, § 1003(a), Dec. 27, 2000, 114 Stat. 3028.)

CODIFICATION

Another section 202 of Pub. L. 95–188 amended section 302 of this title.

AMENDMENTS

2000—Pub. L. 106–569 struck out provisions after first sentence relating to annual reports to Congress, transmittal of reports to Congressional Committees, consultations with Committees, report of Committee, changing conditions affecting achievement of objectives and plans, and explanation for deviations from objectives and plans.

1988—Pub. L. 100–418 inserted '', including an analysis of the impact of the exchange rate of the dollar on those trends'' after ''the Nation'' in cl. (1).

1978—Pub. L. 95–523 substituted provisions relating to independent written reports of the Board of Governors to the Congress for provisions relating to the consultations of the Board of Governors with Congress at semiannual hearings, substituted ''the objectives and plans with respect to the ranges'' for ''such ranges'', inserted ''of the monetary and credit aggregates disclosed in the reports submitted under this section'' after ''growth or diminution'', and inserted proviso respecting the inclusion of an explanation of reasons for revisions or deviations in subsequent consultations and reports.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 108(b) of Pub. L. 95–523 provided that: ''The amendment made by subsection (a) [amending this section] takes effect on January 1, 1979.''

§ 225b. Appearances before and reports to the Congress

(a) Appearances before the Congress

(1) In general

The Chairman of the Board shall appear before the Congress at semi-annual hearings, as specified in paragraph (2), regarding—

(A) the efforts, activities, objectives and plans of the Board and the Federal Open Market Committee with respect to the conduct of monetary policy; and

(B) economic developments and prospects for the future described in the report required in subsection (b) of this section.

(2) Schedule

The Chairman of the Board shall appear—

(A) before the Committee on Banking and Financial Services of the House of Representatives on or about February 20 of even numbered calendar years and on or about July 20 of odd numbered calendar years;

(B) before the Committee on Banking, Housing, and Urban Affairs of the Senate on or about July 20 of even numbered calendar years and on or about February 20 of odd numbered calendar years; and

(C) before either Committee referred to in subparagraph (A) or (B), upon request, following the scheduled appearance of the Chairman before the other Committee under subparagraph (A) or (B).

(b) Congressional report

The Board shall, concurrent with each semiannual hearing required by this section, submit a written report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking and Financial Services of the House of Representatives, containing a discussion of the conduct of monetary policy and economic developments and prospects for the future, taking into account past and prospective developments in employment, unemployment, production, investment, real income, productivity, exchange rates, international trade and payments, and prices.

(c) Public access to information

The Board shall place on its home Internet website, a link entitled ''Audit'', which shall link to a webpage that shall serve as a repository of information made available to the public for a reasonable period of time, not less than 6 months following the date of release of the relevant information, including—

(1) the reports prepared by the Comptroller General under section 714 of title 31;

(2) the annual financial statements prepared by an independent auditor for the Board in accordance with section 248b of this title;

(3) the reports to the Committee on Banking, Housing, and Urban Affairs of the Senate required under section 343(3) of this title (relating to emergency lending authority); and

(4) such other information as the Board reasonably believes is necessary or helpful to the public in understanding the accounting, financial reporting, and internal controls of the Board and the Federal reserve banks.

(Dec. 23, 1913, ch. 6, §2B, as added Pub. L. 106–569, title X, §1003(b)(1), Dec. 27, 2000, 114 Stat. 3028; amended Pub. L. 111–203, title XI, §1103(a), July 21, 2010, 124 Stat. 2118.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–203 added subsec. (c).

CHANGE OF NAME

Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

§ 226. "Federal Reserve Act"

The short title of the Act of December 23, 1913, ch. 6, 38 Stat. 251, shall be the ''Federal Reserve Act.''

(Dec. 23, 1913, ch. 6, §1 (par.), 38 Stat. 251.)

REFERENCES IN TEXT

The Act of December 23, 1913, ch. 6, referred to in text, is classified to this section, sections 1, 35, 59, 90, 92, 141, 142, 221, 222 to 225b, 241 to 246, 247 to 247b, 248, 248–1, 248a, 248b, 261 to 263, 281 to 290, 301 to 308, 321 to 336, 338 to 339a, 341 to 352, 353 to 361, 371 to 371b, 371b–2 to 376, 391, 392, 393, 411 to 416, 418 to 421, 441 to 448, 461, 462, 462b to 467, 481 to 486, 501a to 506, 521, 522, 531, 601 to 604a, and 611 to 633 of this title and as a provision set out as a note under this section. Subsecs. (a)–(c) and (h)–(k) of section 22 of the Act, which were classified to former sections 593 to 599 of this title, were repealed and restated in sections 217 to 220, 433, 655, 656, 1005, 1014, 1906, and 1909 of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, §§1, 21, 62 Stat. 683, 862, the first section of which enacted Title 18. Sections 217 to 220 of Title 18 were subsequently renumbered sections 212 to 215 of Title 18, respectively, by Pub. L. 87–849, §1(d), Oct. 23, 1962, 76 Stat. 1125. Sections 212 and 213 of Title 18, as renumbered by Pub. L. 87–849, were subsequently repealed by Pub. L. 108–198, §2(a), Dec. 19, 2003, 117 Stat. 2899. For complete classification of this Act to the Code, see Tables.

CODIFICATION

This section is comprised of the first par. of section 1 of act Dec. 23, 1913. The second to fourth pars. of section 1 are classified to section 221 of this title.

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title II, §2001(a), Sept. 30, 1996, 110 Stat. 3009–394, provided that: ''This title [see Tables for classification] may be cited as the 'Economic Growth and Regulatory Paperwork Reduction Act of 1996'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–491, §1, Oct. 24, 1992, 106 Stat. 3144, provided that: ''This Act [amending section 522 of this title] may be cited as the 'Federal Reserve Bank Branch Modernization Act'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–86, §1(a), Aug. 10, 1987, 101 Stat. 552, provided that: ''This Act [enacting sections 371c–1, 1439–1, 1441, 1442a, 1467, 1467a, 1730h, 1730i, 1772b, 1772c, 3806, and 4001 to 4010 of this title and section 3334 of Title 31, Money and Finance, amending sections 24, 248a, 481, 619, 1430, 1436, 1464, 1467, 1725 to 1727, 1729 to 1730a, 1730h, 1757, 1761a, 1761b, 1764, 1766, 1767, 1785 to 1788, 1813, 1817, 1821, 1823, 1828, 1831d, 1832, 1841 to 1843, 1846, 1849, and 3106 of this title, sections 905 and 906 of Title 2, The Congress, sections 45, 46, and 57a of Title 15, Commerce and Trade, and sections 3328, 3702, 3712, 9101, and 9105 of Title 31, providing for future repeal of sections 1442a, 1467a, and 1730i of this title, enacting provisions set out as notes under sections 226, 248a, 619, 1437, 1441, 1464, 1467, 1467a, 1730, 1730a, 1751, 1811, 1841, and 4001 of this title and section 3328 of Title 31, and amending provisions set out as a note under section 1729 of this title]

may be cited as the 'Competitive Equality Banking Act of 1987'.''

Pub. L. 100–86, title I, §100, Aug. 10, 1987, 101 Stat. 554, provided that: ''This title [enacting section 371c–1 of this title, amending sections 24, 619, 1430, 1730, 1730a, 1813, 1828, 1831d, 1832, 1841 to 1843, and 1846 of this title, and enacting provisions set out as notes under sections 226, 619, 1730a, and 1841 of this title] may be cited as the 'Competitive Equality Amendments of 1987'.''

Pub. L. 100–86, title III, §301, Aug. 10, 1987, 101 Stat. 585, provided that: ''This title [enacting section 1441 of this title, amending sections 1430, 1436, 1725, 1727, and 1730 of this title and section 9101 of Title 31, Money and Finance, and enacting provisions set out as a note under section 1730 of this title] may be cited as the 'Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987'.''

Pub. L. 100–86, title IV, §401, Aug. 10, 1987, 101 Stat. 604, provided that: ''This title [enacting sections 1442a, 1467, 1467a, 1730h, and 1730i of this title, amending sections 1464, 1467, 1729 to 1730a, and 1730h of this title, and section 9105 of Title 31, Money and Finance, providing for future repeal of sections 1442a, 1467a, and 1730i of this title, and enacting provisions set out as notes under sections 1437, 1441, 1467, and 1467a of this title] may be cited as the 'Thrift Industry Recovery Act'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–320, §1, Oct. 15, 1982, 96 Stat. 1469, provided that: ''This Act [enacting sections 216 to 216d, 1701j–3, 1795j, 1866, 1867, 3208, and 3801 to 3805 of this title and section 1099 of Title 20, Education, amending sections 22, 24, 27, 29, 30, 84, 93, 94, 95, 371, 371c, 375a, 375b, 461, 484, 504, 505, 1425a, 1426, 1428a, 1430, 1431, 1436, 1437, 1462, 1464, 1718, 1719, 1725, 1726, 1727, 1728, 1729, 1730, 1730a, 1752, 1752a, 1753, 1755, 1757, 1760, 1761, 1761a, 1761b, 1761c, 1763, 1764, 1766, 1770, 1771, 1782, 1783, 1785, 1786, 1795f, 1813, 1814, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1831c, 1832, 1841, 1842, 1843, 1847, 1861, 1862, 1863, 1864, 1865, 1972, 3106, 3204, 3305, 3412, 3414, and 3503 of this title, section 109 of Title 11, Bankruptcy, sections 1602 and 1603 of Title 15, Commerce and Trade, and sections 8103 and 8105 of Title 42, The Public Health and Welfare, repealing section 82 of this title and provisions set out as a note under section 461 of this title, enacting provisions set out as notes under this section, sections 84, 371, 371c, 1461, 1464, 1811, 1817, 1823, 3503, and 3801 of this title, and sections 1602 and 1603 of Title 15, and amending provisions set out as notes under sections 92 and 191 of this title] may be cited as the 'Garn-St Germain Depository Institutions Act of 1982'.''

Pub. L. 97–320, title IV, §410(a), Oct. 15, 1982, 96 Stat. 1515, provided that: ''This section [amending sections 371c, 375b, 1820, 1828 and 1972 of this title, and enacting provisions set out as a note under section 371c of this title] may be cited as the 'Banking Affiliates Act of 1982'.''

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–221, §1, Mar. 31, 1980, 94 Stat. 132, provided that: ''This Act [enacting sections 4a, 86a, 93a, 248a, 1730g, 1735f–7a, 1831d, and 3501 to 3524 of this title, and section 1646 of Title 15, Commerce and Trade, amending sections 24, 27, 29, 51b, 51b–1, 72, 85, 92, 95, 214a, 248, 342, 347b, 355, 360, 371a, 412, 461, 463, 481, 1425a, 1425b, 1431, 1464, 1724, 1726, 1728, 1752, 1757, 1763, 1785, 1787, 1795, to 1795i, 1813, 1817, 1821, 1828, 1832, 1842, and 1843 of this title, and sections 57a, 687, 1602 to 1607, 1610, 1612, 1613, 1631, 1632, 1635, 1637, 1638, 1640, 1641, 1643, 1663, 1664, 1665a, 1666, 1666d, 1667d, and 1691f of Title 15, repealing sections 86a, 371b–1, 1730e, and 1831a of this title, and sections 1614, 1636, and 1639 of Title 15, enacting provisions set out as notes under this section, sections 27, 85, 86a, 191, 248, 355, 371a, 1425a, 1724, 1730g, 1735f–7, 1735f–7a, 1787, 1813, 1817, 3101, 3501, and 3521 of this title, and sections 1601, 1602, and 1607 of Title 15, and repealing provisions set out as notes under sections 85, 86a, 371b–1, and 1831a of this title] may be cited as the 'Depository Institutions Deregulation and Monetary Control Act of 1980'.''

Pub. L. 96–221, title I, §101, Mar. 31, 1980, 94 Stat. 132, provided that: ''This title [enacting section 248a of this title, amending sections 248, 342, 347b, 355, 360, 412, 461, 463, and 1425a of this title and enacting provisions set out as notes under sections 248 and 355 of this title] may be cited as the 'Monetary Control Act of 1980'.''

Pub. L. 96–221, title III, §301, Mar. 31, 1980, 94 Stat. 145, provided that: ''This title [amending sections 371a, 1431, 1464, 1724, 1728, 1752, 1757, 1763, 1785, 1787, 1795 to 1795i, 1813, 1817, 1821, 1828, and 1832 of this title and enacting provisions set out as notes under sections 371a, 1724, 1787, 1813, and 1817 of this title] may be cited as the 'Consumer Checking Account Equity Act of 1980'.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–630, §1, Nov. 10, 1978, 92 Stat. 3641, provided: ''That this Act [enacting sections 375b, 504, 505, 635a–1 to 635a–3, 1795 to 1795i, 1831c, 3106a, 3201 to 3207, 3301 to 3308, and 3401 to 3422 of this title, sections 1693 to 1693r of Title 15, Commerce and Trade, and section 2153e–1 of Title 42, The Public Health and Welfare, amending sections 27, 93, 375a, 412, 635, 635e to 635g, 1451, 1462, 1464, 1715z–10, 1726, 1728 to 1730a, 1752 to 1756, 1757 to 1759, 1761 to 1763, 1766, 1767, 1771, 1772a, 1781 to 1789, 1795b to 1795g, 1813, 1817 to 1821, 1828, 1832, 1843, 1844, 1847, 1865, 1972, and 2902 of this title, sections 5108, 5314, and 5315 of Title 5, Government Organization and Employees, sections 709 and 1114 of Title 18, Crimes and Criminal Procedure, and sections 67 and 856 of former Title 31, Money and Finance, enacting provisions set out as notes under sections 27, 93, 375b, 461, 601, 635, 1451, 1728, 1730, 1751, 1752, 1795, 1817, 1832, 3201, 3301, 3401, and 3415 of this title, and sections 1601 and 1693 of Title 15; and amending provisions set out as notes under this section, section 461 of this title, and section 1666f of Title 15] may be cited as the 'Financial Institutions Regulatory and Interest Rate Control Act of 1978'.''

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–188, title II, §201, Nov. 16, 1977, 91 Stat. 1387, provided that: ''This title [enacting section 225a of this title, amending sections 242 and 302 of this title and section 208 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note under section 242 of this title] may be cited as the 'Federal Reserve Reform Act of 1977'.''

SHORT TITLE OF 1932 AMENDMENT

Act Feb. 27, 1932, ch. 58, 47 Stat. 56, which enacted sections 347a and 347b of this title, and amended section 412 of this title, is popularly known as the Glass-Steagall Act, 1932.

SEPARABILITY; RIGHT TO AMEND, ALTER OR REPEAL

Pub. L. 100–86, title XII, §1205, Aug. 10, 1987, 101 Stat. 663, provided that: ''If any provision of this Act [see Short Title of 1987 Amendment note above] or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.''

Sections 30 and 31, formerly 29 and 30, respectively, of act Dec. 23, 1913, as renumbered by act Nov. 10, 1978, Pub. L. 95–630, title I, §101, 92 Stat. 3641, provided:

''SEC. 30. If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

''SEC. 31. The right to amend, alter, or repeal this Act is hereby expressly reserved.''

§ 227. "Banking Act of 1933"

The short title of the Act of June 16, 1933, ch. 89, 48 Stat. 162, shall be the ''Banking Act of 1933.''

(June 16, 1933, ch. 89, § 1, 48 Stat. 162.)

REFERENCES IN TEXT

The Banking Act of 1933, also known as the Glass-Steagall Act, 1933, referred to in text, is classified to sections 24, 33, 34a, 36, 51, 52, 61, 64a, 71a, 77, 78, 84, 85, 161, 197a, 221a, 227, 242, 244, 248, 289, 301, 304, 321, 329, 333 to 338, 347, 348a, 371a, 371b, 371c, 371d, 374a, 375a, 377, 378, 481, and 632 of this title. For complete classification of this Act to the Code, see Tables.

RIGHT TO AMEND, ALTER OR REPEAL; SEPARABILITY

Section 34 of act June 16, 1933, provided: ''The right to alter, amend, or repeal this Act is hereby expressly reserved. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby''.

§ 228. "Banking Act of 1935"

The act of August 23, 1935, ch. 614, 49 Stat. 684, may be cited as the ''Banking Act of 1935.''

(Aug. 23, 1935, ch. 614, § 1, 49 Stat. 684.)

REFERENCES IN TEXT

The Banking Act of 1935, referred to in text, is classified to sections 2, 24, 33 to 34c, 35, 36, 51, 51a, 51b–1, 52, 59 to 61, 64a, 71a, 78, 84, 85, 170, 181, 192, 221a, 228, 241, 242, 244, 247a, 248, 263, 287, 288, 321, 324, 336, 341, 343, 347b, 352a, 355, 357, 371, 371a, 371b, 371c, 375a, 377, 378, 461, 462a–1, 462b, 465, 481, 482, 486, 619, 1702, 1703, 1709, and 1713 of this title; section 101 of Title 11, Bankruptcy; section 19 of Title 15, Commerce and Trade. See, also, sections 217, 218, 334, 655, 656, 709, 1005, 1906, 1909, and 2113 of Title 18, Crimes and Criminal Procedure. For complete classification of this Act to the Code see Tables.

SEPARABILITY

Section 346 of act Aug. 23, 1935, provided: ''If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.''

SUBCHAPTER II—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

§ 241. Creation; membership; compensation and expenses

The Board of Governors of the Federal Reserve System (hereinafter referred to as the ''Board'') shall be composed of seven members, to be appointed by the President, by and with the advice and consent of the Senate, after August 23, 1935, for terms of fourteen years except as hereinafter provided, but each appointive member of the Federal Reserve Board in office on such date shall continue to serve as a member of the Board until February 1, 1936, and the Secretary of the Treasury and the Comptroller of the Currency shall continue to serve as members of the Board until February 1, 1936. In selecting the members of the Board, not more than one of whom shall be selected from any one Federal Reserve district, the President shall have due regard to a fair representation of the financial, agricultural, industrial, and commercial interests, and geographical divisions of the country. The members of the Board shall devote their entire time to the business of the Board and shall each receive basic compensation at the rate of $15,000 per annum, payable monthly, together with actual necessary traveling expenses.

(Dec. 23, 1913, ch. 6, § 10 (par.), 38 Stat. 260; June 3, 1922, ch. 205, 42 Stat. 620; Aug. 23, 1935, ch. 614, title II, § 203(b), 49 Stat. 704.)

CODIFICATION

Section is comprised of first par. of section 10 of act Dec. 23, 1913. Pars. 2–7 and 8 of section 10; par. 9 of section 10, as added June 3, 1922, ch. 205, 42 Stat. 621; par. 10 of section 10, as added Aug. 23, 1935, ch. 614, § 203(d), 49 Stat. 705; and par. (12) of section 10, as added Pub. L. 111–203, title XI, § 1108(b), July 21, 2010, 124 Stat. 2126, are classified to sections 242 to 247, 1, 522, 247a, and 247b, respectively, of this title. No par. between pars. (10) and (12) has been enacted.

AMENDMENTS

1935—Act Aug. 23, 1935, § 203(b), increased the appointive membership from six to seven, terminated the membership of the Secretary of the Treasury and the Comptroller of the Currency, raised the tenure from twelve to fourteen years and increased the annual salary from $12,000 to $15,000.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, provided that: ''Hereafter the Federal Reserve Board shall be known as the 'Board of Governors of the Federal Reserve System,' and the governor and the vice governor of the Federal Reserve Board shall be known as the 'chairman' and the 'vice chairman,' respectively, of the Board of Governors of the Federal Reserve System.''

REPEALS

Act Oct. 15, 1949, ch. 695, § 4, 63 Stat. 880, formerly cited as a credit to this section, which was used as authority to substitute ''$16,000'' for ''$15,000'' in the last sentence, was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 655.

GENERAL ACCOUNTING OFFICE STUDY OF CONFLICTS OF INTEREST

Pub. L. 106–102, title VII, § 728, Nov. 12, 1999, 113 Stat. 1475, provided that the Comptroller General of the United States was to conduct a study analyzing the conflict of interest faced by the Board of Governors of the Federal Reserve System between its role as a primary regulator of the banking industry and its role as a vendor of services to the banking and financial services industry and, before the end of the 1-year period beginning on Nov. 12, 1999, submit a report to the Congress, together with recommendations for such legislative or administrative actions as the Comptroller General determined to be appropriate.

COMPENSATION OF BOARD OF GOVERNORS

Annual basic compensation of Chairman and Members of Board of Governors, see sections 5313 and 5314 of Title 5, Government Organization and Employees.

§ 242. Ineligibility to hold office in member banks; qualifications and terms of office of members; chairman and vice chairman; oath of office

The members of the Board shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any member bank, except that this restriction shall not apply to a member who has served the full term for which he was appointed. Upon the expiration of the term of any appointive member of the Federal Reserve Board in office on August 23, 1935, the President shall fix the term of the successor to such member at not to exceed fourteen years, as designated by the President at the time of nomination, but in

such manner as to provide for the expiration of the term of not more than one member in any two-year period, and thereafter each member shall hold office for a term of fourteen years from the expiration of the term of his predecessor, unless sooner removed for cause by the President. Of the persons thus appointed, 1 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of 4 years, and 2 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairmen of the Board, each for a term of 4 years, 1 of whom shall serve in the absence of the Chairman, as provided in section 244 of this title, and 1 of whom shall be designated Vice Chairman for Supervision. The Vice Chairman for Supervision shall develop policy recommendations for the Board regarding supervision and regulation of depository institution holding companies and other financial firms supervised by the Board, and shall oversee the supervision and regulation of such firms. The Chairman of the Board, subject to its supervision, shall be its active executive officer. Each member of the Board shall within fifteen days after notice of appointment make and subscribe to the oath of office. Upon the expiration of their terms of office, members of the Board shall continue to serve until their successors are appointed and have qualified. Any person appointed as a member of the Board after August 23, 1935, shall not be eligible for reappointment as such member after he shall have served a full term of fourteen years.

(Dec. 23, 1913, ch. 6, §10 (par.), 38 Stat. 260; June 3, 1922, ch. 205, 42 Stat. 620; June 16, 1933, ch. 89, §6(a), 48 Stat. 166; Aug. 23, 1935, ch. 614, title II, §203(b), 49 Stat. 704; Pub. L. 95–188, title II, §204(a), Nov. 16, 1977, 91 Stat. 1388; Pub. L. 111–203, title XI, §1108(a)(1), July 21, 2010, 124 Stat. 2126.)

CODIFICATION

Section is comprised of second par. of section 10 of act Dec. 23, 1913. For classification to this title of other pars. of section 10, see note set out under section 241 of this title.

AMENDMENTS

2010—Pub. L. 111–203 substituted ''Of the persons thus appointed, 1 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of 4 years, and 2 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairmen of the Board, each for a term of 4 years, 1 of whom shall serve in the absence of the Chairman, as provided in section 244 of this title, and 1 of whom shall be designated Vice Chairman for Supervision. The Vice Chairman for Supervision shall develop policy recommendations for the Board regarding supervision and regulation of depository institution holding companies and other financial firms supervised by the Board, and shall oversee the supervision and regulation of such firms.'' for ''Of the persons thus appointed, one shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of four years, and one shall be designated by the President, by and with the consent of the Senate, to serve as Vice Chairman of the Board for a term of four years.''

1977—Pub. L. 95–188 substituted in third sentence ''one shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of four years, and one shall be designated by the President, by and with the consent of the Senate, to serve as Vice Chairman of the Board for a term of four years'' for ''one shall be designated by the President as chairman and one as vice chairman of the Board, to serve as such for a term of four years''.

1935—Act Aug. 23, 1935, §203(b), extended term of appointive members from twelve to fourteen years, and inserted provisions for continuance in office until successor qualified and against reappointment.

1933—Act June 16, 1933, extended term of appointive members from ten to twelve years.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title XI, §1108(a)(2), July 21, 2010, 124 Stat. 2126, provided that: ''The amendment made by subsection (a) [amending this section] takes effect on the date of enactment of this title [July 21, 2010] and applies to individuals who are designated by the President on or after that date to serve as Vice Chairman of Supervision.''

EFFECTIVE DATE OF 1977 AMENDMENT; APPLICABILITY

Section 204(b) of Pub. L. 95–188 provided that: ''The amendment made by subsection (a) [amending this section] takes effect on January 1, 1979, and applies to individuals who are designated by the President on or after such date to serve as Chairman or Vice Chairman of the Board of Governors of the Federal Reserve System.''

REPEALS

Act Mar. 3, 1919, ch. 101, §2, 40 Stat. 1315, formerly cited as a credit to this section, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 644.

COMPENSATION OF CHAIRMAN OF BOARD

Annual basic compensation of Chairman of Board of Governors, see section 5313 of Title 5, Government Organization and Employees.

§ 243. Assessments upon Federal reserve banks to pay expenses

The Board of Governors of the Federal Reserve System shall have power to levy semiannually upon the Federal reserve banks, in proportion to their capital stock and surplus, an assessment sufficient to pay its estimated expenses and the salaries of its members and employees for the half year succeeding the levying of such assessment, together with any deficit carried forward from the preceding half year, and such assessments may include amounts sufficient to provide for the acquisition by the Board in its own name of such site or building in the District of Columbia as in its judgment alone shall be necessary for the purpose of providing suitable and adequate quarters for the performance of its functions. After September 1, 2000, the Board may also use such assessments to acquire, in its own name, a site or building (in addition to the facilities existing on such date) to provide for the performance of the functions of the Board. After approving such plans, estimates, and specifications as it shall have caused to be prepared, the Board may, notwithstanding any other provision of law, cause to be constructed on any site so acquired by it a building or buildings

suitable and adequate in its judgment for its purposes and proceed to take all such steps as it may deem necessary or appropriate in connection with the construction, equipment, and furnishing of such building or buildings. The Board may maintain, enlarge, or remodel any building or buildings so acquired or constructed and shall have sole control of such building or buildings and space therein.

(Dec. 23, 1913, ch. 6, § 10 (par.), 38 Stat. 261; June 3, 1922, ch. 205, 42 Stat. 621; June 19, 1934, ch. 653, § 4, 48 Stat. 1108; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 106–569, title X, § 1001, Dec. 27, 2000, 114 Stat. 3027.)

CODIFICATION

Section is comprised of third par. of section 10 of act Dec. 23, 1913. For classification to this title of other pars. of section 10, see note set out under section 241 of this title.

AMENDMENTS

2000—Pub. L. 106–569 inserted ''After September 1, 2000, the Board may also use such assessments to acquire, in its own name, a site or building (in addition to the facilities existing on such date) to provide for the performance of the functions of the Board.'' after first sentence, inserted ''or buildings'' after ''building'' wherever appearing in third and fourth sentences, and substituted ''constructed on any site'' for ''constructed on the site'' in third sentence.

1934—Act June 19, 1934, inserted provisions after ''the preceding half year'' in first sentence and inserted second and third sentences.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 244. Principal offices of Board; chairman of Board; obligations and expenses; qualifications of members; vacancies

The principal offices of the Board shall be in the District of Columbia. At meetings of the Board the chairman shall preside, and, in his absence, the vice chairman shall preside. In the absence of the chairman and the vice chairman, the Board shall elect a member to act as chairman pro tempore. The Board shall determine and prescribe the manner in which its obligations shall be incurred and its disbursements and expenses allowed and paid, and may leave on deposit in the Federal Reserve banks the proceeds of assessments levied upon them to defray its estimated expenses and the salaries of its members and employees, whose employment, compensation, leave, and expenses shall be governed solely by the provisions of this chapter and rules and regulations of the Board not inconsistent therewith; and funds derived from such assessments shall not be construed to be Government funds or appropriated moneys. No member of the Board of Governors of the Federal Reserve System shall be an officer or director of any bank, banking institution, trust company, or Federal Reserve bank or hold stock in any bank, banking institution, or trust company; and before entering upon his duties as a member of the Board of Governors of the Federal Reserve System he shall certify under oath that he has complied with this requirement, and such certification shall be filed with the secretary of the Board. Whenever a vacancy shall occur, other than by expiration of term, among the seven members of the Board of Governors of the Federal Reserve System appointed by the President as above provided, a successor shall be appointed by the President, by and with the advice and consent of the Senate, to fill such vacancy, and when appointed he shall hold office for the unexpired term of his predecessor.

(Dec. 23, 1913, ch. 6, § 10 (par.), 38 Stat. 261; June 3, 1922, ch. 205, 42 Stat. 621; June 16, 1933, ch. 89, § 6(b), 48 Stat. 167; Aug. 23, 1935, ch. 614, title II, § 203(a)–(c), 49 Stat. 704, 705.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act, specific amendments thereof'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of fourth par. of section 10 of act Dec. 23, 1913. For classification to this title of other pars. of section 10, see Codification note set out under section 241 of this title.

Word ''seven'' was substituted for ''six'' in last sentence on authority of section 203(b) of act Aug. 23, 1935, which increased membership of the Board of Governors.

AMENDMENTS

1935—Act Aug. 23, 1935, § 203(c), substituted second and third sentences for former related provisions.

1933—Act June 16, 1933, fixed the principal offices of the Board, made the Secretary of the Treasury chairman, provided for chairman pro tempore, and referred to disbursements, obligations, salaries and leaves.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 245. Vacancies during recess of Senate

The President shall have power to fill all vacancies that may happen on the Board of Governors of the Federal Reserve System during the recess of the Senate by granting commissions which shall expire with the next session of the Senate.

(Dec. 23, 1913, ch. 6, § 10 (par.), 38 Stat. 260; June 3, 1922, ch. 205, 42 Stat. 620; Aug. 23, 1935, ch. 614, title II, § 203(a), 49, Stat. 704.)

CODIFICATION

Section is comprised of fifth par. of section 10 of act Dec. 23, 1913. For classification to this title of other pars. of section 10, see Codification note set out under section 241 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 246. Powers of Secretary of the Treasury as affected by chapter

Nothing in this chapter contained shall be construed as taking away any powers heretofore vested by law in the Secretary of the Treasury which relate to the supervision, management,

and control of the Treasury Department and bureaus under such department, and wherever any power vested by this chapter in the Board of Governors of the Federal Reserve System or the Federal reserve agent appears to conflict with the powers of the Secretary of the Treasury, such powers shall be exercised subject to the supervision and control of the Secretary.

(Dec. 23, 1913, ch. 6, § 10 (par.), 38 Stat. 261; June 3, 1922, ch. 205, 42 Stat. 621; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of sixth par. of section 10 of act Dec. 23, 1913. For classification to this title of other pars. of section 10, see Codification note set out under section 241 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 247. Reports to Congress

The Board of Governors of the Federal Reserve System shall annually make a full report of its operations to the Speaker of the House of Representatives, who shall cause the same to be printed for the information of the Congress. The report required under this paragraph shall include the reports required under section 1691f of title 15, section 57a(f)(7) of title 15, section 1613 of title 15, and section 247a of this title.

(Dec. 23, 1913, ch. 6, § 10 (par.), 38 Stat. 261; June 3, 1922, ch. 205, 42 Stat. 621; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 106–569, title XI, § 1103(b), Dec. 27, 2000, 114 Stat. 3030.)

CODIFICATION

Section is comprised of seventh par. of section 10 of act Dec. 23, 1913. For classification to this title of other pars. of section 10, see Codification note set out under section 241 of this title.

AMENDMENTS

2000—Pub. L. 106–569 inserted at end ''The report required under this paragraph shall include the reports required under section 1691f of title 15, section 57a(f)(7) of title 15, section 1613 of title 15, and section 247a of this title.''

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

MEMBERSHIP OF INTERNATIONAL BANKS IN FEDERAL RESERVE SYSTEM; REPORT TO CONGRESS

Pub. L. 95–369, § 3(g), Sept. 17, 1978, 92 Stat. 610, provided that the Board report to Congress not later than 270 days after Sept. 17, 1978 recommendations with respect to permitting corporations organized or operating under section 25 or 25(a) of the Federal Reserve Act to become members of Federal Reserve Banks.

EFFECT OF INTERNATIONAL BANKING ACT OF 1978 ON INTERNATIONAL BANKS; REPORT TO CONGRESS

Pub. L. 95–369, § 3(h), Sept. 17, 1978, 92 Stat. 610, provided that: ''As part of its annual report pursuant to section 10 of the Federal Reserve Act [this section], the Board shall include its assessment of the effects of the amendments made by this Act [see Short Title note set out under section 3101 of this title] on the capitalization and activities of corporations organized or operating under section 25 or 25(a) of the Federal Reserve Act [sections 601 to 604 and 611 to 631 of this title], and on commercial banks and the banking system.''

§ 247a. Records of action on policy relating to open-market operation and policies determined generally; inclusion in report to Congress

The Board of Governors of the Federal Reserve System shall keep a complete record of the action taken by the Board and by the Federal Open Market Committee upon all questions of policy relating to open-market operations and shall record therein the votes taken in connection with the determination of open-market policies and the reasons underlying the action of the Board and the Committee in each instance. The Board shall keep a similar record with respect to all questions of policy determined by the Board, and shall include in its annual report to the Congress a full account of the action so taken during the preceding year with respect to open-market policies and operations and with respect to the policies determined by it and shall include in such report a copy of the records required to be kept under the provisions of this section.

(Dec. 23, 1913, ch. 6, § 10 (par.), as added Aug. 23, 1935, ch. 614, title II, § 203(d), 49 Stat. 705.)

CODIFICATION

Section is comprised of tenth par. of section 10 of act Dec. 23, 1913, as added Aug. 23, 1935. For classification to this title of other pars. of section 10, see Codification note set out under section 241 of this title.

§ 247b. Appearances before Congress

The Vice Chairman for Supervision shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives and at semi-annual hearings regarding the efforts, activities, objectives, and plans of the Board with respect to the conduct of supervision and regulation of depository institution holding companies and other financial firms supervised by the Board.

(Dec. 23, 1913, ch. 6, § 10(12), as added Pub. L. 111–203, title XI, § 1108(b), July 21, 2010, 124 Stat. 2126.)

CODIFICATION

Section is comprised of par. (12) of section 10 of act Dec. 23, 1913. No par. between pars. (10) and (12) has been enacted. For classification to this title of other pars. of section 10, see Codification note set out under section 241 of this title.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

§ 248. Enumerated powers

The Board of Governors of the Federal Reserve System shall be authorized and empowered:

(a) Examination of accounts and affairs of banks; publication of weekly statements; reports of liabilities and assets of depository institutions; covered institutions

(1) To examine at its discretion the accounts, books, and affairs of each Federal reserve bank and of each member bank and to require such statements and reports as it may deem necessary. The said board shall publish once each week a statement showing the condition of each Federal reserve bank and a consolidated statement for all Federal reserve banks. Such statements shall show in detail the assets and liabilities of the Federal reserve banks, single and combined, and shall furnish full information regarding the character of the money held as reserve and the amount, nature, and maturities of the paper and other investments owned or held by Federal reserve banks.

(2) To require any depository institution specified in this paragraph to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates. Such reports shall be made (A) directly to the Board in the case of member banks and in the case of other depository institutions whose reserve requirements under sections 461, 463, 464, 465, and 466 of this title exceed zero, and (B) for all other reports to the Board through the (i) Federal Deposit Insurance Corporation in the case of insured State nonmember banks, savings banks, and mutual savings banks, (ii) National Credit Union Administration Board in the case of insured credit unions, (iii) the Director of the Office of Thrift Supervision in the case of any savings association which is an insured depository institution (as defined in section 1813 of this title) or which is a member as defined in section 1422 of this title, and (iv) such State officer or agency as the Board may designate in the case of any other type of bank, savings and loan association, or credit union. The Board shall endeavor to avoid the imposition of unnecessary burdens on reporting institutions and the duplication of other reporting requirements. Except as otherwise required by law, any data provided to any department, agency, or instrumentality of the United States pursuant to other reporting requirements shall be made available to the Board. The Board may classify depository institutions for the purposes of this paragraph and may impose different requirements on each such class.

(b) Permitting or requiring rediscounting of paper at specified rate

To permit, or, on the affirmative vote of at least five members of the Board of Governors, to require Federal reserve banks to rediscount the discounted paper of other Federal reserve banks at rates of interest to be fixed by the Board.

(c) Suspending reserve requirements

To suspend for a period not exceeding thirty days, and from time to time to renew such suspension for periods not exceeding fifteen days, any reserve requirements specified in this chapter.

(d) Supervising and regulating issue and retirement of notes

To supervise and regulate through the Secretary of the Treasury the issue and retirement of Federal Reserve notes, except for the cancellation and destruction, and accounting with respect to such cancellation and destruction, of notes unfit for circulation, and to prescribe rules and regulations under which such notes may be delivered by the Secretary of the Treasury to the Federal Reserve agents applying therefor.

(e) Adding to or reclassifying reserve cities

To add to the number of cities classified as reserve cities under existing law in which national banking associations are subject to the reserve requirements set forth in section 20 of this Act, or to reclassify existing reserve cities or to terminate their designation as such.

(f) Suspending or removing officers or directors of reserve banks

To suspend or remove any officer or director of any Federal reserve bank, the cause of such removal to be forthwith communicated in writing by the Board of Governors of the Federal Reserve System to the removed officer or director and to said bank.

(g) Requiring writing off of doubtful or worthless assets of banks

To require the writing off of doubtful or worthless assets upon the books and balance sheets of Federal reserve banks.

(h) Suspending operations of or liquidating or reorganizing banks

To suspend, for the violation of any of the provisions of this chapter, the operations of any Federal reserve bank, to take possession thereof, administer the same during the period of suspension, and, when deemed advisable, to liquidate or reorganize such bank.

(i) Requiring bonds of agents; safeguarding property in hands of agents

To require bonds of Federal reserve agents, to make regulations for the safeguarding of all collateral, bonds, Federal reserve notes, money, or property of any kind deposited in the hands of such agents, and said board shall perform the duties, functions, or services specified in this chapter, and make all rules and regulations necessary to enable said board effectively to perform the same.

(j) Exercising supervision over reserve banks

To exercise general supervision over said Federal reserve banks.

(k) Delegation of certain functions; power to delegate; review of delegated activities

To delegate, by published order or rule and subject to subchapter II of chapter 5, and chapter 7, of title 5, any of its functions, other than those relating to rulemaking or pertaining principally to monetary and credit policies, to one or more administrative law judges, members or employees of the Board, or Federal Reserve

banks. The assignment of responsibility for the performance of any function that the Board determines to delegate shall be a function of the Chairman. The Board shall, upon the vote of one member, review action taken at a delegated level within such time and in such manner as the Board shall by rule prescribe. The Board of Governors may not delegate to a Federal reserve bank its functions for the establishment of policies for the supervision and regulation of depository institution holding companies and other financial firms supervised by the Board of Governors.

(*l*) Employing attorneys, experts, assistants, and clerks; salaries and fees

To employ such attorneys, experts, assistants, clerks, or other employees as may be deemed necessary to conduct the business of the board. All salaries and fees shall be fixed in advance by said board and shall be paid in the same manner as the salaries of the members of said board. All such attorneys, experts, assistants, clerks, and other employees shall be appointed without regard to the provisions of the Act of January sixteenth, eighteen hundred and eighty-three (volume twenty-two, United States Statutes at Large, page four hundred and three), and amendments thereto, or any rule or regulation made in pursuance thereof: *Provided*, That nothing herein shall prevent the President from placing said employees in the classified service.

(m) [Repealed]

(n) Board's authority to examine depository institutions and affiliates

To examine, at the Board's discretion, any depository institution, and any affiliate of such depository institution, in connection with any advance to, any discount of any instrument for, or any request for any such advance or discount by, such depository institution under this chapter.

(*o*) Authority to appoint conservator or receiver

The Board may appoint the Federal Deposit Insurance Corporation as conservator or receiver for a State member bank under section 1821(c)(9) of this title.

(p) Authority

The Board may act in its own name and through its own attorneys in enforcing any provision of this title,[1] regulations promulgated hereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Board is a party and which involves the Board's regulation or supervision of any bank, bank holding company (as defined in section 1841 of this title), or other entity, or the administration of its operations.

(q) Uniform protection authority for Federal reserve facilities

(1) Notwithstanding any other provision of law, to authorize personnel to act as law enforcement officers to protect and safeguard the premises, grounds, property, personnel, including members of the Board, of the Board, or any Federal reserve bank, and operations conducted by or on behalf of the Board or a reserve bank.

(2) The Board may, subject to the regulations prescribed under paragraph (5), delegate authority to a Federal reserve bank to authorize personnel to act as law enforcement officers to protect and safeguard the bank's premises, grounds, property, personnel, and operations conducted by or on behalf of the bank.

(3) Law enforcement officers designated or authorized by the Board or a reserve bank under paragraph (1) or (2) are authorized while on duty to carry firearms and make arrests without warrants for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States committed or being committed within the buildings and grounds of the Board or a reserve bank if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony. Such officers shall have access to law enforcement information that may be necessary for the protection of the property or personnel of the Board or a reserve bank.

(4) For purposes of this subsection, the term ''law enforcement officers'' means personnel who have successfully completed law enforcement training and are authorized to carry firearms and make arrests pursuant to this subsection.

(5) The law enforcement authorities provided for in this subsection may be exercised only pursuant to regulations prescribed by the Board and approved by the Attorney General.

(r) Voting; documentation of determinations

(1) Any action that this chapter provides may be taken only upon the affirmative vote of 5 members of the Board may be taken upon the unanimous vote of all members then in office if there are fewer than 5 members in office at the time of the action.

(2)(A) Any action that the Board is otherwise authorized to take under section 343(3) of this title may be taken upon the unanimous vote of all available members then in office, if—

(i) at least 2 members are available and all available members participate in the action;

(ii) the available members unanimously determine that—

(I) unusual and exigent circumstances exist and the borrower is unable to secure adequate credit accommodations from other sources;

(II) action on the matter is necessary to prevent, correct, or mitigate serious harm to the economy or the stability of the financial system of the United States;

(III) despite the use of all means available (including all available telephonic, telegraphic, and other electronic means), the other members of the Board have not been able to be contacted on the matter; and

(IV) action on the matter is required before the number of Board members otherwise required to vote on the matter can be contacted through any available means (including all available telephonic, telegraphic, and other electronic means); and

(iii) any credit extended by a Federal reserve bank pursuant to such action is payable upon demand of the Board.

[1] See References in Text note below.

(B) The available members of the Board shall document in writing the determinations required by subparagraph (A)(ii), and such written findings shall be included in the record of the action and in the official minutes of the Board, and copies of such record shall be provided as soon as practicable to the members of the Board who were not available to participate in the action and to the Chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate and to the Chairman of the Committee on Financial Services of the House of Representatives.

(s) Federal Reserve transparency and release of information

(1) In general

In order to ensure the disclosure in a timely manner consistent with the purposes of this chapter of information concerning the borrowers and counterparties participating in emergency credit facilities, discount window lending programs, and open market operations authorized or conducted by the Board or a Federal reserve bank, the Board of Governors shall disclose, as provided in paragraph (2)—

(A) the names and identifying details of each borrower, participant, or counterparty in any credit facility or covered transaction;

(B) the amount borrowed by or transferred by or to a specific borrower, participant, or counterparty in any credit facility or covered transaction;

(C) the interest rate or discount paid by each borrower, participant, or counterparty in any credit facility or covered transaction; and

(D) information identifying the types and amounts of collateral pledged or assets transferred in connection with participation in any credit facility or covered transaction.

(2) Mandatory release date

In the case of—

(A) a credit facility, the Board shall disclose the information described in paragraph (1) on the date that is 1 year after the effective date of the termination by the Board of the authorization of the credit facility; and

(B) a covered transaction, the Board shall disclose the information described in paragraph (1) on the last day of the eighth calendar quarter following the calendar quarter in which the covered transaction was conducted.

(3) Earlier release date authorized

The Chairman of the Board may publicly release the information described in paragraph (1) before the relevant date specified in paragraph (2), if the Chairman determines that such disclosure would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose or conduct of covered transactions.

(4) Definitions

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

(A) Credit facility

The term ''credit facility'' has the same meaning as in section 714(f)(1)(A) of title 31.

(B) Covered transaction

The term ''covered transaction'' means—

(i) any open market transaction with a nongovernmental third party conducted under section 353 of this title or section 354, 355, or 356 of this title, after July 21, 2010; and

(ii) any advance made under section 347b of this title after July 21, 2010.

(5) Termination of credit facility by operation of law

A credit facility shall be deemed to have terminated as of the end of the 24-month period beginning on the date on which the credit facility ceases to make extensions of credit and loans, unless the credit facility is otherwise terminated by the Board before such date.

(6) Consistent treatment of information

Except as provided in this subsection or section 343(3)(D) of this title, or in section 714(f)(3)(C) of title 31, the information described in paragraph (1) and information concerning the transactions described in section 714(f) of such title, shall be confidential, including for purposes of section 552(b)(3) of title 5, until the relevant mandatory release date described in paragraph (2), unless the Chairman of the Board determines that earlier disclosure of such information would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose of conduct of the relevant transactions.

(7) Protection of personal privacy

This subsection and section 343(3)(C) of this title, section 714(f)(3)(C) of title 31, and subsection (a) or (c) of section 1109 of the Dodd-Frank Wall Street Reform and Consumer Protection Act shall not be construed as requiring any disclosure of nonpublic personal information (as defined for purposes of section 6802 of title 15) concerning any individual who is referenced in collateral pledged or assets transferred in connection with a credit facility or covered transaction, unless the person is a borrower, participant, or counterparty under the credit facility or covered transaction.

(8) Study of FOIA exemption impact

(A) Study

The Inspector General of the Board of Governors of the Federal Reserve System shall—

(i) conduct a study on the impact that the exemption from section 552(b)(3) of title 5 (known as the Freedom of Information Act) established under paragraph (6) has had on the ability of the public to access information about the administration by the Board of Governors of emergency credit facilities, discount window lending programs, and open market operations; and

(ii) make any recommendations on whether the exemption described in clause (i) should remain in effect.

(B) Report

Not later than 30 months after July 21, 2010, the Inspector General of the Board of

Governors of the Federal Reserve System shall submit a report on the findings of the study required under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and publish the report on the website of the Board.

(9) Rule of construction

Nothing in this section is meant to affect any pending litigation or lawsuit filed under section 552 of title 5 (popularly known as the Freedom of Information Act) on or before July 21, 2010.

(Dec. 23, 1913, ch. 6, § 11, 38 Stat. 261; Sept. 7, 1916, ch. 461, 39 Stat. 752; Sept. 26, 1918, ch. 177, § 2, 40 Stat. 968; Mar. 3, 1919, ch. 101, § 3, 40 Stat. 1315; Feb. 27, 1921, ch. 75, 41 Stat. 1146; June 26, 1930, ch. 612, 46 Stat. 814; Mar. 9, 1933, ch. 1, title I, § 3, 48 Stat. 2; June 16, 1933, ch. 89, § 7, 48 Stat. 167; Aug. 23, 1935, ch. 614, title II, § 203(a), title III, §§ 321(a), 342, 49 Stat. 704, 713, 722; June 12, 1945, ch. 186, § 1(c), 59 Stat. 237; Pub. L. 86–114, § 3(b)(6), July 28, 1959, 73 Stat. 264; Pub. L. 86–251, § 3(c), Sept. 9, 1959, 73 Stat. 488; Pub. L. 87–722, § 3, Sept. 28, 1962, 76 Stat. 670; Pub. L. 89–427, § 2, May 20, 1966, 80 Stat. 161; Pub. L. 89–765, Nov. 5, 1966, 80 Stat. 1314; Pub. L. 90–269, § 1, Mar. 18, 1968, 82 Stat. 50; Pub. L. 95–251, § 2(a)(3), Mar. 27, 1978, 92 Stat. 183; Pub. L. 96–221, title I, § 102, Mar. 31, 1980, 94 Stat. 132; Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068; Pub. L. 97–457, § 17(b), Jan. 12, 1983, 96 Stat. 2509; Pub. L. 101–73, title VII, § 744(i)(1), Aug. 9, 1989, 103 Stat. 439; Pub. L. 102–242, title I, §§ 133(f), 142(c), Dec. 19, 1991, 105 Stat. 2273, 2281; Pub. L. 102–550, title XVI, § 1603(d)(9), Oct. 28, 1992, 106 Stat. 4080; Pub. L. 103–325, title III, §§ 322(d), 331(d), title VI, § 602(g)(2), Sept. 23, 1994, 108 Stat. 2227, 2232, 2293; Pub. L. 106–102, title VII, § 735, Nov. 12, 1999, 113 Stat. 1479; Pub. L. 107–56, title III, § 364, Oct. 26, 2001, 115 Stat. 333; Pub. L. 107–297, title III, § 301, Nov. 26, 2002, 116 Stat. 2340; Pub. L. 111–203, title III, §§ 318(c), 366(1), title XI, §§ 1103(b), 1108(c), July 21, 2010, 124 Stat. 1527, 1556, 2118, 2126.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 366(1), July 21, 2010, 124 Stat. 1546, 1556, provided that, effective on the transfer date, subsection (a)(2) of this section is amended by inserting ''State savings associations that are insured depository institutions (as defined in section 1813 of this title),'' after ''case of insured'', by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency'', by inserting ''Federal'' before ''savings association which''; and by striking ''savings and loan association'' and inserting ''savings association''. See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title III, § 318(c), (e), July 21, 2010, 124 Stat. 1527, provided that, effective on the transfer date, this section is amended by adding at the end the following:

(s) Assessments, fees, and other charges for certain companies

(1) In general

The Board shall collect a total amount of assessments, fees, or other charges from the companies described in paragraph (2) that is equal to the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to such companies.

(2) Companies

The companies described in this paragraph are—

(A) all bank holding companies having total consolidated assets of $50,000,000,000 or more;

(B) all savings and loan holding companies having total consolidated assets of $50,000,000,000 or more; and

(C) all nonbank financial companies supervised by the Board under section 5323 of this title.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Sections 461, 463, 464, 465, and 466 of this title, referred to in subsec. (a)(2), was in the original ''section 19 of the Federal Reserve Act''. Provisions of section 19 relating to reserve requirements are classified to the cited sections. For complete classification of section 19 to the Code, see References in Text note set out under section 461 of this title.

This chapter, referred to in subsecs. (c), (h), (i), (n), (r)(1), and (s)(1), was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

Reference in subsec. (e) to ''section 20 of this Act'' means section 20 of the Federal Reserve Act which is not classified to the Code. Since section 20 does not set forth any reserve requirements, section 19 of the Federal Reserve Act might have been intended. For provisions of section 19 relating to reserve requirements, see note above.

The Act of January sixteenth, eighteen hundred and eighty-three, referred to in subsec. (*l*), is act Jan. 16, 1883, ch. 27, 22 Stat. 403, as amended, which enacted section 42 of former Title 40, Public Buildings, Property, and Works, and sections 632, 633, 635, 637, 638, and 640 to 642a of former Title 5, Executive Departments and Government Officers and Employees. For complete classification of this Act to the Code, see Tables. Section 42 of former Title 40 was repealed and reenacted as section 8165 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304. The sections that were classified to former Title 5 were repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, the first section of which enacted Title 5, Government Organization and Employees. For distribution of former sections of Title 5 into the revised Title 5, see table at the beginning of Title 5.

This title, referred to in subsec. (p), probably should read ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act, which does not contain titles. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

Subsection (a) or (c) of section 1109 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (s)(7), is subsec. (a) or (c) of section 1109 of Pub. L. 111–203, title XI, 124 Stat. 2127, 2128, which is not classified to the Code.

July 21, 2010, referred to in subsec. (s)(8)(B), was in the original ''the date of enactment of this section'', which was translated as meaning the date of enactment of Pub. L. 111–203 which added subsec. (s), to reflect the probable intent of Congress.

CODIFICATION

In subsec. (k), ''subchapter II of chapter 5, and chapter 7, of title 5'' was substituted for ''the Administra-

tive Procedure Act'' on authority of section 7(b) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section is comprised of section 11 of act Dec. 23, 1913. The fourteenth par. of section 16 of act Dec. 23, 1913, which formerly constituted subsec. (*o*) of this section, is now classified to section 248–1 of this title.

AMENDMENTS

2010—Subsec. (k). Pub. L. 111–203, § 1108(c), inserted at end ''The Board of Governors may not delegate to a Federal reserve bank its functions for the establishment of policies for the supervision and regulation of depository institution holding companies and other financial firms supervised by the Board of Governors.''

Subsec. (s). Pub. L. 111–203, § 1103(b), added subsec. (s) relating to Federal Reserve transparency and release of information.

2002—Subsec. (r). Pub. L. 107–297 added subsec. (r).

2001—Subsec. (q). Pub. L. 107–56 added subsec. (q).

1999—Subsec. (m). Pub. L. 106–102 substituted ''[Repealed]'' for text of subsec. (m) which related to percentage of capital and surplus represented by loans to be determined by the Federal Reserve Board.

1994—Subsec. (d). Pub. L. 103–325, § 602(g)(2), substituted ''Secretary of the Treasury'' for ''bureau under the charge of the Comptroller of the Currency'' before ''the issue and retirement'' and for ''Comptroller'' before ''to the Federal Reserve agents''.

Subsec. (m). Pub. L. 103–325, § 322(d), which directed substitution of ''15 percent'' for ''10 percentum'' wherever appearing, was executed by substituting ''15 percent'' for ''10 per centum'' in two places to reflect the probable intent of Congress.

Subsec. (p). Pub. L. 103–325, § 331(d), added subsec. (p).

1992—Subsecs. (*o*), (p). Pub. L. 102–550 redesignated subsec. (p) as (*o*).

1991—Subsec. (n). Pub. L. 102–242, § 142(c), which directed addition of subsec. (n) at end of section, was executed by adding subsec. (n) after subsec. (m). See Construction of 1991 Amendment note below.

Subsec. (p). Pub. L. 102–242, § 133(f), added subsec. (p).

1989—Subsec. (a)(2)(iii). Pub. L. 101–73 substituted ''the Director of the Office of Thrift Supervision in the case of any savings association which is an insured depository institution (as defined in section 1813 of this title)'' for ''Federal Home Loan Bank Board in the case of any institution insured by the Federal Savings and Loan Insurance Corporation''.

1983—Subsec. (m). Pub. L. 97–457 substituted ''under section 84(c)(4) of this title'' for ''under paragraph (8) of section 84 of this title'' after ''in the case of national banks''.

1982—Subsec. (n). Pub. L. 97–258 struck out subsec. (n) which provided that, whenever in the judgment of the Secretary of the Treasury such action was necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, could require any or all individuals, partnerships, associations, and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals, partnerships, associations, and corporations and that, upon receipt of such gold coin, gold bullion or gold certificates, the Secretary of the Treasury would pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States.

1980—Subsec. (a). Pub. L. 96–221 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (k). Pub. L. 95–251 substituted ''administrative law judges'' for ''hearing examiners''.

1968—Subsec. (c). Pub. L. 90–269 struck out requirements for establishment by the Board of Governors of the Federal Reserve System of a graduated tax on the deficiency in the gold reserve whenever the reserve held against Federal Reserve notes fell below 25 percent and for an automatic increase in the rates of interest or discount fixed by the Board in an amount equal to the graduated tax imposed.

1966—Subsec. (d). Pub. L. 89–427 excepted the cancellation and destruction, and the accounting with respect to the cancellation and destruction, of notes unfit for circulation from the area of responsibility exercised by the Board of Governors of the Federal Reserve System through the Bureau of the Comptroller of the Currency over the issue and retirement of Federal Reserve notes.

Subsec. (k). Pub. L. 89–765 added subsec. (k). A former subsec. (k) was repealed by Pub. L. 87–722, § 3, Sept. 28, 1962, 76 Stat. 670.

1962—Subsec. (k). Pub. L. 87–722 repealed subsec. (k) which related to the authority of the Board of Governors of the Federal Reserve System to permit national banks to act as trustees, etc., and is now covered by section 92a of this title.

1959—Subsec. (e). Pub. L. 86–114 substituted ''reserve cities'' for ''reserve and central reserve cities'' in two places.

Subsec. (m). Pub. L. 86–251 struck out ''in the form of notes'' after ''represented by obligations'' in proviso.

1945—Subsec. (c). Act June 12, 1945, substituted ''25 per centum'' for ''40 per centum'', and ''20 per centum'' for ''32½ per centum'' wherever appearing.

1935—Subsec. (k). Act Aug. 23, 1935, § 342, amended last sentence of third par.

Subsec. (m). Act Aug. 23, 1935, § 321(a), inserted proviso at end of first sentence.

1933—Subsec. (m). Act June 16, 1933, amended provisions generally.

Subsec. (n). Act Mar. 9, 1933, added subsec. (n).

1930—Subsec. (k). Act June 26, 1930, added last par.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 318(c) of Pub. L. 111–203 effective on the transfer date, see section 318(e) of Pub. L. 111–203, set out as an Effective Date note under section 16 of this title.

Amendment by section 366(1) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by sections 1103(b) and 1108(c) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 133(f) of Pub. L. 102–242 effective 1 year after Dec. 19, 1991, see section 133(g) of Pub. L. 102–242, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 108 of title I of Pub. L. 96–221 provided that: ''This title [enacting section 248a of this title, amending this section and sections 342, 347b, 355, 360, 412, 461, 463, 505, and 1425a of this title, and enacting provisions set out as notes under sections 226 and 355 of this title] shall take effect on the first day of the sixth month which begins after the date of the enactment of this title [Mar. 31, 1980], except that the amendments re-

garding sections 19(b)(7) and 19(b)(8)(D) of the Federal Reserve Act [section 461(b)(7) and (b)(8)(D) of this title] shall take effect on the date of enactment of this title.''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–114 effective three years after July 28, 1959, see section 3(b) of Pub. L. 86–114, set out as a Central Reserve and Reserve Cities note under former section 141 of this title.

CONSTRUCTION OF 1991 AMENDMENT

Section 1603(e)(2) of Pub. L. 102–550 provided that: ''The amendment made by section 142(c) of the Federal Deposit Insurance Corporation Improvement Act of 1991 [Pub. L. 102–242] (adding a paragraph at the end of section 11 of the Federal Reserve Act [this section]) shall be considered to have been executed before the amendment made by section 133(f) of the Federal Deposit Insurance Corporation Improvement Act of 1991 [amending this section].''

EXECUTIVE ORDER NO. 6359

Ex. Ord. No. 6359, Oct. 25, 1933, as amended by Ex. Ord. No. 11825, Dec. 31, 1974, 40 F.R. 1003, which provided for receipt on consignment of gold by the United States mints and assay offices, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EX. ORD. NO. 10547. INSPECTION OF STATISTICAL TRANSCRIPT CARDS

Ex. Ord. No. 10547, July 27, 1954, 19 F.R. 4661, required statistical transcript cards submitted with, or prepared by the Internal Revenue Service from, corporation income tax returns for the taxable years ending after June 30, 1951, and before July 1, 1952, to be open to inspection by the Board of Governors of the Federal Reserve System as an aid in executing the powers conferred upon such Board by this section, such inspection to be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in T.D. 6081, 19 F.R. 4666.

§ 248–1. Rules and regulations for transfer of funds and charges therefor among banks; clearing houses

The Board of Governors of the Federal Reserve System shall make and promulgate from time to time regulations governing the transfer of funds and charges therefor among Federal reserve banks and their branches, and may at its discretion exercise the functions of a clearing house for such Federal reserve banks, or may designate a Federal reserve bank to exercise such functions, and may also require each such bank to exercise the functions of a clearing house for depository institutions.

(Dec. 23, 1913, ch. 6, §16 (par.), 38 Stat. 268; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; Pub. L. 96–221, title I, §105(d), Mar. 31, 1980, 94 Stat. 140.)

CODIFICATION

Section is comprised of the thirteenth par. (formerly the fourteenth par.) of section 16 of act Dec. 23, 1913, which was formerly classified to section 248(*o*) of this title. For classification to this title of other pars. of section 16, see Codification note set out under section 411 of this title.

AMENDMENTS

1980—Pub. L. 96–221, which directed amendment of ''[t]he fourteenth paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 248(*o*))'' by substituting ''depository institutions'' for ''its member banks'', was executed by making the substitution in this section to reflect the probable intent of Congress.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on first day of sixth month which begins after Mar. 31, 1980, see section 108 of Pub. L. 96–221, set out as a note under section 248 of this title.

§ 248a. Pricing of services

(a) Publication of pricing principles and proposed schedule of fees; effective date of schedule of fees

Not later than the first day of the sixth month after March 31, 1980, the Board shall publish for public comment a set of pricing principles in accordance with this section and a proposed schedule of fees based upon those principles for Federal Reserve bank services to depository institutions, and not later than the first day of the eighteenth month after March 31, 1980, the Board shall begin to put into effect a schedule of fees for such services which is based on those principles.

(b) Covered services

The services which shall be covered by the schedule of fees under subsection (a) of this section are—

(1) currency and coin services;
(2) check clearing and collection services;
(3) wire transfer services;
(4) automated clearinghouse services;
(5) settlement services;
(6) securities safekeeping services;
(7) Federal Reserve float; and
(8) any new services which the Federal Reserve System offers, including but not limited to payment services to effectuate the electronic transfer of funds.

(c) Criteria applicable

The schedule of fees prescribed pursuant to this section shall be based on the following principles:

(1) All Federal Reserve bank services covered by the fee schedule shall be priced explicitly.

(2) All Federal Reserve bank services covered by the fee schedule shall be available to nonmember depository institutions and such services shall be priced at the same fee schedule applicable to member banks, except that nonmembers shall be subject to any other terms, including a requirement of balances sufficient for clearing purposes, that the Board may determine are applicable to member banks.

(3) Over the long run, fees shall be established on the basis of all direct and indirect costs actually incurred in providing the Federal Reserve services priced, including interest on items credited prior to actual collection, overhead, and an allocation of imputed costs which takes into account the taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm, except that the pricing principles shall give due

regard to competitive factors and the provision of an adequate level of such services nationwide.

(4) Interest on items credited prior to collection shall be charged at the current rate applicable in the market for Federal funds.

(d) Budgetary consequences of decline in volume of services

The Board shall require reductions in the operating budgets of the Federal Reserve banks commensurate with any actual or projected decline in the volume of services to be provided by such banks. The full amount of any savings so realized shall be paid into the United States Treasury.

(e) Parity in clearing

All depository institutions, as defined in section 461(b)(1) of this title, may receive for deposit and as deposits any evidences of transaction accounts, as defined by section 461(b)(1) of this title from other depository institutions, as defined in section 461(b)(1) of this title or from any office of any Federal Reserve bank without regard to any Federal or State law restricting the number or the physical location or locations of such depository institutions.

(Dec. 23, 1913, ch. 6, § 11A, as added Pub. L. 96–221, title I, § 107, Mar. 31, 1980, 94 Stat. 140; amended Pub. L. 100–86, title VI, § 612(a), Aug. 10, 1987, 101 Stat. 652.)

AMENDMENTS

1987—Subsec. (e). Pub. L. 100–86 added subsec. (e).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 612(b) of Pub. L. 100–86 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this title [Aug. 10, 1987].''

EFFECTIVE DATE

Section effective on first day of sixth month which begins after Mar. 31, 1980, see section 108 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 248 of this title.

§ 248b. Annual independent audits of Federal reserve banks and Board

The Board shall order an annual independent audit of the financial statements of each Federal reserve bank and the Board.

(Dec. 23, 1913, ch. 6, § 11B, as added Pub. L. 106–102, title VII, § 726, Nov. 12, 1999, 113 Stat. 1475.)

§ 249. Repealed. Pub. L. 94–412, title V, § 501(c), Sept. 14, 1976, 90 Stat. 1258

Section, act Aug. 8, 1947, ch. 517, 61 Stat. 921, dealt with regulation of consumer credit.

SAVINGS PROVISION

Repeal by Pub. L. 94–412 not to affect any action taken or proceeding pending at the time of repeal, see section 501(h) of Pub. L. 94–412, set out as a note under section 1601 of Title 50, War and National Defense.

§ 250. Independence of financial regulatory agencies

No officer or agency of the United States shall have any authority to require the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Director of the Federal Housing Finance Agency, or the National Credit Union Administration to submit legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the agency submitting them and do not necessarily represent the views of the President.

(Pub. L. 93–495, title I, § 111, Oct. 28, 1974, 88 Stat. 1506; Pub. L. 103–325, title III, § 331(a), Sept. 23, 1994, 108 Stat. 2232; Pub. L. 106–102, title VI, § 606(e)(2), Nov. 12, 1999, 113 Stat. 1455; Pub. L. 110–289, div. A, title I, § 1102(b), July 30, 2008, 122 Stat. 2664.)

CODIFICATION

Section was not enacted as part of the Federal Reserve Act which comprises this chapter.

AMENDMENTS

2008—Pub. L. 110–289 substituted ''the Director of the Federal Housing Finance Agency'' for ''the Federal Housing Finance Board''.

1999—Pub. L. 106–102 substituted ''Director of the Office of Thrift Supervision, the Federal Housing Finance Board,'' for ''Federal Home Loan Bank Board,''.

1994—Pub. L. 103–325 inserted ''the Comptroller of the Currency,'' after ''Federal Deposit Insurance Corporation,''.

§ 251. Repealed. Pub. L. 104–208, div. A, title II, § 2224(a), Sept. 30, 1996, 110 Stat. 3009–415

Section, Pub. L. 102–242, title IV, § 477, Dec. 19, 1991, 105 Stat. 2387; Pub. L. 102–550, title XVI, § 1606(i)(3), Oct. 28, 1992, 106 Stat. 4089, required Board of Governors of Federal Reserve System to collect and publish information on availability of credit to small businesses.

§ 252. Credit availability assessment

(a) Study

(1) In general

Not later than 12 months after September 30, 1996, and once every 60 months thereafter, the Board, in consultation with the Director of the Office of Thrift Supervision, the Comptroller of the Currency, the Board of Directors of the Corporation, the Administrator of the National Credit Union Administration, the Administrator of the Small Business Administration, and the Secretary of Commerce, shall conduct a study and submit a report to the Congress detailing the extent of small business lending by all creditors.

(2) Contents of study

The study required under paragraph (1) shall identify, to the extent practicable, those factors which provide policymakers with insights into the small business credit market, including—

(A) the demand for small business credit, including consideration of the impact of economic cycles on the levels of such demand;

(B) the availability of credit to small businesses;

(C) the range of credit options available to small businesses, such as those available from insured depository institutions and other providers of credit;

(D) the types of credit products used to finance small business operations, including the use of traditional loans, leases, lines of credit, home equity loans, credit cards, and other sources of financing;

(E) the credit needs of small businesses, including, if appropriate, the extent to which such needs differ, based upon product type, size of business, cash flow requirements, characteristics of ownership or investors, or other aspects of such business;

(F) the types of risks to creditors in providing credit to small businesses; and

(G) such other factors as the Board deems appropriate.

(b) Use of existing data

The studies required by this section shall not increase the regulatory or paperwork burden on regulated financial institutions, other sources of small business credit, or small businesses.

(Pub. L. 104–208, div. A, title II, § 2227, Sept. 30, 1996, 110 Stat. 3009–417.)

CODIFICATION

Section was enacted as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Federal Reserve Act which comprises this chapter.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of this title.

STUDY OF FINANCIAL MODERNIZATION'S EFFECT ON THE ACCESSIBILITY OF SMALL BUSINESS AND FARM LOANS

Pub. L. 106–102, title I, § 109, Nov. 12, 1999, 113 Stat. 1362, provided that:

''(a) STUDY.—The Secretary of the Treasury, in consultation with the Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act [12 U.S.C. 1813(z)]), shall conduct a study of the extent to which credit is being provided to and for small businesses and farms, as a result of this Act [see Tables for classification] and the amendments made by this Act.

''(b) REPORT.—Before the end of the 5-year period beginning on the date of the enactment of this Act [Nov. 12, 1999], the Secretary, in consultation with the Federal banking agencies, shall submit a report to the Congress on the study conducted pursuant to subsection (a) and shall include such recommendations as the Secretary determines to be appropriate for administrative and legislative action.''

DEFINITIONS

Section 2001(c) of title II of div. A of Pub. L. 104–208, provided that: ''Except as otherwise specified in this title [see Tables for classification], the following definitions shall apply for purposes of this title:

''(1) APPRAISAL SUBCOMMITTEE.—The term 'Appraisal Subcommittee' means the Appraisal Subcommittee established under section 1011 of the Federal Financial Institutions Examination Council Act of 1978 [12 U.S.C. 3310] (as in existence on the day before the date of enactment of this Act [Sept. 30, 1996]).

''(2) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

''(3) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(4) CORPORATION.—The term 'Corporation' means the Federal Deposit Insurance Corporation.

''(5) COUNCIL.—The term 'Council' means the Financial Institutions Examination Council established under section 1004 of the Federal Financial Institutions Examination Council Act of 1978 [12 U.S.C. 3303].

''(6) INSURED CREDIT UNION.—The term 'insured credit union' has the same meaning as in section 101 of the Federal Credit Union Act [12 U.S.C. 1752].

''(7) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.''

SUBCHAPTER III—FEDERAL ADVISORY COUNCIL

§ 261. Creation; membership; compensation; meetings; officers; procedure; quorum; vacancies

There is created a Federal Advisory Council, which shall consist of as many members as there are Federal reserve districts. Each Federal reserve bank by its board of directors shall annually select from its own Federal reserve district one member of said council, who shall receive such compensation and allowances as may be fixed by his board of directors subject to the approval of the Board of Governors of the Federal Reserve System. The meetings of said advisory council shall be held at Washington, District of Columbia, at least four times each year, and oftener if called by the Board of Governors of the Federal Reserve System. The council may in addition to the meetings above provided for hold such other meetings in Washington, District of Columbia, or elsewhere, as it may deem necessary, may select its own officers and adopt its own methods of procedure, and a majority of its members shall constitute a quorum for the transaction of business. Vacancies in the council shall be filled by the respective reserve banks, and members selected to fill vacancies shall serve for the unexpired term.

(Dec. 23, 1913, ch. 6, § 12 (par.), 38 Stat. 263; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

CODIFICATION

Section is comprised of first par. of section 12 of act Dec. 23, 1913. Second par. of section 12 is classified to section 262 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 262. Powers

The Federal Advisory Council shall have power, by itself or through its officers, (1) to confer directly with the Board of Governors of the Federal Reserve System on general business conditions; (2) to make oral or written representations concerning matters within the jurisdiction of said board; (3) to call for information and to make recommendations in regard to discount rates, rediscount business, note issues, reserve

conditions in the various districts, the purchase and sale of gold or securities by reserve banks, open-market operations by said banks, and the general affairs of the reserve banking system.

(Dec. 23, 1913, ch. 6, § 12 (par.), 38 Stat. 263; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

CODIFICATION

Section is comprised of second par. of section 12 of act Dec. 23, 1913. First par. of section 12 is classified to section 261 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

SUBCHAPTER IV—FEDERAL OPEN MARKET COMMITTEE

§ 263. Federal Open Market Committee; creation; membership; regulations governing open-market transactions

(a) There is hereby created a Federal Open Market Committee (hereinafter referred to as the ''Committee''), which shall consist of the members of the Board of Governors of the Federal Reserve System and five representatives of the Federal Reserve banks to be selected as hereinafter provided. Such representatives shall be presidents or first vice presidents of Federal Reserve banks and, beginning with the election for the term commencing March 1, 1943, shall be elected annually as follows: One by the board of directors of the Federal Reserve Bank of New York, one by the boards of directors of the Federal Reserve Banks of Boston, Philadelphia, and Richmond, one by the boards of directors of the Federal Reserve Banks of Cleveland and Chicago, one by the boards of directors of the Federal Reserve Banks of Atlanta, Dallas, and St. Louis, and one by the boards of directors of the Federal Reserve Banks of Minneapolis, Kansas City, and San Francisco. In such elections each board of directors shall have one vote; and the details of such elections may be governed by regulations prescribed by the committee, which may be amended from time to time. An alternate to serve in the absence of each such representative shall likewise be a president or first vice president of a Federal Reserve bank and shall be elected annually in the same manner. The meetings of said Committee shall be held at Washington, District of Columbia, at least four times each year upon the call of the chairman of the Board of Governors of the Federal Reserve System or at the request of any three members of the Committee.

(b) No Federal Reserve bank shall engage or decline to engage in open-market operations under sections 348a and 353 to 359 of this title except in accordance with the direction of and regulations adopted by the Committee. The Committee shall consider, adopt, and transmit to the several Federal Reserve banks, regulations relating to the open-market transactions of such banks.

(c) The time, character, and volume of all purchases and sales of paper described in sections 348a and 353 to 359 of this title as eligible for open-market operations shall be governed with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.

(Dec. 23, 1913, ch. 6, § 12A, as added June 16, 1933, ch. 89, § 8, 48 Stat. 168; amended Aug. 23, 1935, ch. 614, title II, § 205, 49 Stat. 705; July 7, 1942, ch. 488, § 1, 56 Stat. 647.)

AMENDMENTS

1942—Subsec. (a). Act July 7, 1942, substituted second, third, and fourth sentences for former second and third sentences.

1935—Act Aug. 23, 1935, amended provisions relating to membership in subsec. (a), substituted ''Committee'' for ''Federal Reserve Board'' and ''Board'' in subsec. (b), and omitted subsec. (d).

SUBCHAPTER V—FEDERAL DEPOSIT INSURANCE CORPORATION

§ 264. Transferred

CODIFICATION

Section, act Dec. 23, 1913, ch. 6, § 12B, as added June 16, 1933, ch. 89, § 8, 48 Stat. 168; amended June 16, 1934, ch. 546, § 1 (1)–(10), 48 Stat. 969, 970; June 28, 1935, ch. 335, 49 Stat. 435; Aug. 23, 1935, ch. 614, title I, § 101, 49 Stat. 684; Apr. 21, 1936, ch. 244, 49 Stat. 1237; May 25, 1938, ch. 276, 52 Stat. 442; June 16, 1938, ch. 489, 52 Stat. 767; June 20, 1939, ch. 214, § 2, 53 Stat. 842; Apr. 13, 1943, ch. 62, § 1, 57 Stat. 65; Aug. 5, 1947, ch. 492, §§ 2, 4, 61 Stat. 773; June 25, 1948, ch. 645, § 21, 62 Stat. 862; Oct. 15, 1949, ch. 695, § 4, 63 Stat. 880; Aug. 17, 1950, ch. 729, §§ 5–7, 64 Stat. 457, relating to the Federal Deposit Insurance Corporation, was withdrawn from the Federal Reserve Act and made a separate act to be known as the Federal Deposit Insurance Act, by section 1 of act Sept. 21, 1950, ch. 967, 64 Stat. 873. The Federal Deposit Insurance Act is classified to chapter 16 (§ 1811 et seq.) of this title.

§ 265. Insured banks as depositaries of public money; duties; security; discrimination between banks prohibited; repeal of inconsistent laws

All insured banks designated for that purpose by the Secretary of the Treasury shall be depositaries of public money of the United States (including, without being limited to, revenues and funds of the United States, and any funds the deposit of which is subject to the control or regulation of the United States or any of its officers, agents, or employees, and Postal Savings funds), and the Secretary is authorized to deposit public money in such depositaries, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government as may be required of them. The Secretary of the Treasury shall require of the insured banks thus designated satisfactory security by the deposit of United States bonds or otherwise, for the safekeeping and prompt payment of public money deposited with them and for the faithful performance of their duties as financial agents of the Government: *Provided*, That no such security shall be required for the safekeeping and prompt payment of such parts of the deposits of the public money in such banks as are insured deposits and each officer, employee, or agent of the United States having official custody of public funds and lawfully depositing the same in an

insured bank shall, for the purpose of determining the amount of the insured deposits, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the United States having official custody of public funds and lawfully depositing the same in the same insured bank in custodial capacity. Notwithstanding any other provision of law, no department, board, agency, instrumentality, officer, employee, or agent of the United States shall issue or permit to continue in effect any regulations, rulings, or instructions or enter into or approve any contracts or perform any other acts having to do with the deposit, disbursement, or expenditure of public funds, or the deposit, custody, or advance of funds subject to the control of the United States as trustee or otherwise which shall discriminate against or prefer national banking associations, State banks members of the Federal Reserve System, or insured banks not members of the Federal Reserve System, by class, or which shall require those enjoying the benefits, directly or indirectly, of disbursed public funds so to discriminate. All Acts or parts thereof in conflict herewith are repealed. The terms ''insured bank'' and ''insured deposit'' as used in this section shall be construed according to the definitions of such terms in section 1813 of this title.

(June 11, 1942, ch. 404, § 10, 56 Stat. 356; Sept. 3, 1954, ch. 1263, § 26, 68 Stat. 1235.)

CODIFICATION

Section was formerly classified to section 1110 of the Appendix to Title 50, War and National Defense.

AMENDMENTS

1954—Act Sept. 3, 1954, substituted ''section 1813'' for ''section 264'' in last sentence.

§ 266. State-chartered banks and other institutions as depositaries of public money; fiscal agents; duties

Banks, savings banks, and savings and loan, building and loan, homestead associations (including cooperative banks), and credit unions created under the laws of any State and the deposits or accounts of which are insured by a State or agency thereof or corporation chartered pursuant to the laws of any State may be depositaries of public money and may be employed as fiscal agents of the United States. The Secretary of the Treasury is authorized to deposit public money in any such institution, and shall prescribe such regulations as may be necessary to enable such institutions to become depositaries of public money and fiscal agents of the United States. Each such institution shall perform all such reasonable duties as depositary of public money and fiscal agent of the United States as may be required of it including services in connection with the collection of taxes and other obligations owed the United States.

(Pub. L. 95–147, § 2(d), Oct. 28, 1977, 91 Stat. 1228.)

CODIFICATION

Section was not enacted as part of the Federal Reserve Act, which comprises this chapter.

SUBCHAPTER VI—CAPITAL AND STOCK OF FEDERAL RESERVE BANKS; DIVIDENDS AND EARNINGS

§ 281. Capital

No Federal reserve bank shall commence business with a subscribed capital less than $4,000,000.

(Dec. 23, 1913, ch. 6, § 2 (part), 38 Stat. 253.)

CODIFICATION

Section is comprised of part of the thirteenth par. of section 2 of act Dec. 23, 1913. Some of the other provisions of the thirteenth par. are classified to section 224 of this title, and some were not included in the Code. For classification of other pars. of section 2 of this Act, see Codification note set out under section 222 of this title.

§ 282. Subscription to capital stock by national banking association

Every national banking association within each Federal reserve district shall be required to subscribe to the capital stock of the Federal reserve bank for that district in a sum equal to six per centum of the paid-up capital stock and surplus of such bank, one-sixth of the subscription to be payable on call of the Board of Governors of the Federal Reserve System, one-sixth within three months and one-sixth within six months thereafter, and the remainder of the subscription, or any part thereof, shall be subject to call when deemed necessary by the Board, said payments to be in gold or gold certificates.

(Dec. 23, 1913, ch. 6, § 2 (part), 38 Stat. 252; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

CODIFICATION

Section is based on part of the third par. of section 2 of act Dec. 23, 1913. The rest of the third par. was not included in the Code. For classification of other pars. of section 2 of this Act, see Codification note set out under section 222 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 283. Public subscription to capital stock

No individual, copartnership, or corporation other than a member bank of its district shall be permitted to subscribe for or to hold at any time more than $25,000 par value of stock in any Federal reserve bank. Such stock shall be known as public stock and may be transferred on the books of the Federal reserve bank by the chairman of the board of directors of such bank.

(Dec. 23, 1913, ch. 6, § 2 (par.), 38 Stat. 253.)

CODIFICATION

Section is comprised of the ninth par. of section 2 of act Dec. 23, 1913. For classification of other pars. of section 2 of this Act, see Codification note set out under section 222 of this title.

§ 284. Omitted

CODIFICATION

Section, act Dec. 23, 1913, ch. 6, § 2 (part), 38 Stat. 253, was omitted as obsolete pursuant to a communication

from the Board of Governors of the Federal Reserve System dated Mar. 7, 1941, which stated ''As originally enacted the Federal Reserve Act provided for a Reserve Bank Organization Committee to have charge of the initial steps in organizing the Federal Reserve System and this Committee was authorized to allot Federal Reserve Bank stock to the United States in the event that subscriptions to such stock by banks and by the public were inadequate. However, subscriptions by member banks were adequate and there was no necessity or authority for the allocation of any stock to the United States. Accordingly, [this section] is now of no practical effect, and may be regarded as obsolete.''

This section was based on part of the tenth par. of section 2 of act Dec. 23, 1913. The rest of the tenth par. was not included in the Code. For classification of other pars. of section 2 of this Act, see Codification note set out under section 222 of this title.

§ 285. Nonvoting stock

Stock not held by member banks shall not be entitled to voting power.

(Dec. 23, 1913, ch. 6, § 2 (par.), 38 Stat. 253.)

CODIFICATION

Section is comprised of the eleventh par. of section 2 of act Dec. 23, 1913. For classification of other pars. of section 2 of this Act, see Codification note set out under section 222 of this title.

§ 286. Transfers of stock; rules and regulations

The Board of Governors of the Federal Reserve System is empowered to adopt and promulgate rules and regulations governing the transfers of said stock.

(Dec. 23, 1913, ch. 6, § 2 (par.), 38 Stat. 253; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

CODIFICATION

Section is based on the twelfth par. of section 2 of act Dec. 23, 1913. For classification of other pars. of section 2 of this Act, see Codification note set out under section 222 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 287. Value of shares of stock; increase and decrease of stock; member banks as shareholders; surrender of shares

The capital stock of each Federal reserve bank shall be divided into shares of $100 each. The outstanding capital stock shall be increased from time to time as member banks increase their capital stock and surplus or as additional banks become members, and may be decreased as member banks reduce their capital stock or surplus or cease to be members. Shares of the capital stock of Federal reserve banks owned by member banks shall not be transferred or hypothecated. When a member bank increases its capital stock or surplus, it shall thereupon subscribe for an additional amount of capital stock of the Federal reserve bank of its district equal to 6 per centum of the said increase, one-half of said subscription to be paid in the manner hereinbefore provided for original subscription, and one-half subject to call of the Board of Governors of the Federal Reserve System. A bank applying for stock in a Federal reserve bank at any time after the organization thereof must subscribe for an amount of the capital stock of the Federal reserve bank equal to 6 per centum of the paid-up capital stock and surplus of said applicant bank, paying therefor its par value plus one-half of 1 per centum a month from the period of the last dividend. When a member bank reduces its capital stock or surplus it shall surrender a proportionate amount of its holdings in the capital stock of said Federal Reserve bank. Any member bank which holds capital stock of a Federal Reserve bank in excess of the amount required on the basis of 6 per centum of its paid-up capital stock and surplus shall surrender such excess stock. When a member bank voluntarily liquidates it shall surrender all of its holdings of the capital stock of said Federal Reserve bank and be released from its stock subscription not previously called. In any such case the shares surrendered shall be canceled and the member bank shall receive in payment therefor, under regulations to be prescribed by the Board of Governors of the Federal Reserve System, a sum equal to its cash-paid subscriptions on the shares surrendered and one-half of 1 per centum a month from the period of the last dividend not to exceed the book value thereof, less any liability of such member bank to the Federal Reserve bank.

(Dec. 23, 1913, ch. 6, § 5, 38 Stat. 257; Aug. 23, 1935, ch. 614, title II, § 203(a), title III, § 319(a), 49 Stat. 704, 713.)

AMENDMENTS

1935—Act Aug. 23, 1935, § 319(a), amended last four sentences.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 288. Cancellation of stock held by member bank on insolvency or discontinuance of banking operations for sixty days; repayment of cash-paid subscriptions

If any member bank shall be declared insolvent and a receiver appointed therefor, the stock held by it in said Federal reserve bank shall be canceled, without impairment of its liability, and all cash-paid subscriptions on said stock, with one-half of 1 per centum per month from the period of last dividend, if earned, not to exceed the book value thereof, shall be first applied to all debts of the insolvent member bank to the Federal reserve bank, and the balance, if any, shall be paid to the receiver of the insolvent bank.

If any national bank which has not gone into liquidation as provided in section 181 of this title, and for which a receiver has not already been appointed for other lawful cause, shall discontinue its banking operations for a period of sixty days the Comptroller of the Currency may, if he deems it advisable, appoint a receiver for such bank. The stock held by the said national bank in the Federal reserve bank of its district shall thereupon be canceled and said national bank shall receive in payment therefor, under regulations to be prescribed by the Board of Governors of the Federal Reserve System, a sum

equal to its cash-paid subscriptions on the shares canceled and one-half of 1 per centum a month from the period of the last dividend, if earned, not to exceed the book value thereof, less any liability of such national bank to the Federal reserve bank.

(Dec. 23, 1913, ch. 6, §6, 38 Stat. 258; Apr. 23, 1930, ch. 207, §1, 46 Stat. 250; Aug. 23, 1935, ch. 614, title II, §203(a), title III, §319(b), 49 Stat. 704, 713.)

AMENDMENTS

1935—Act Aug. 23, 1935, §319(b), struck out provision requiring execution of certificate of reduction of capital stock.

1930—Act Apr. 23, 1930, among other changes, added second par.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 289. Dividends and surplus funds of reserve banks; transfer for fiscal year 2000

(a) Dividends and surplus funds of reserve banks

(1) Stockholder dividends

(A) In general

After all necessary expenses of a Federal reserve bank have been paid or provided for, the stockholders of the bank shall be entitled to receive an annual dividend of 6 percent on paid-in capital stock.

(B) Dividend cumulative

The entitlement to dividends under subparagraph (A) shall be cumulative.

(2) Deposit of net earnings in surplus fund

That portion of net earnings of each Federal reserve bank which remains after dividend claims under paragraph (1)(A) have been fully met shall be deposited in the surplus fund of the bank.

(b)[1] Transfer for fiscal year 2000

(1) In general

The Federal reserve banks shall transfer from the surplus funds of such banks to the Board of Governors of the Federal Reserve System for transfer to the Secretary of the Treasury for deposit in the general fund of the Treasury, a total amount of $3,752,000,000 in fiscal year 2000.

(2) Allocated by Fed

Of the total amount required to be paid by the Federal reserve banks under paragraph (1) for fiscal year 2000, the Board shall determine the amount each such bank shall pay in such fiscal year.

(3) Replenishment of surplus fund prohibited

During fiscal year 2000, no Federal reserve bank may replenish such bank's surplus fund by the amount of any transfer by such bank under paragraph (1).

(Dec. 23, 1913, ch. 6, §7(a), (b), 38 Stat. 258; Mar. 3, 1919, ch. 101, §1, 40 Stat. 1314; June 16, 1933, ch. 89, §4, 48 Stat. 163; Pub. L. 103–66, title III, §3002(a), Aug. 10, 1993, 107 Stat. 337; Pub. L. 103–325, title VI, §602(d), Sept. 23, 1994, 108 Stat. 2291; Pub. L. 106–113, div. B, §1000(a)(5) [title III, §302], Nov. 29, 1999, 113 Stat. 1536, 1501A–304.)

CODIFICATION

Section is comprised of subsec. (a) [formerly first undesignated par.] of section 7 of act Dec. 23, 1913, and subsec. (b) [enacted by Pub. L. 106–113, div. B, §1000(a)(5) [title III, §302(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–304] of section 7. Another subsec. (b) of section 7 is classified to section 290 of this title. Subsec. (c) of section 7 is classified to section 531 of this title.

AMENDMENTS

1999—Subsec. (a)(3). Pub. L. 106–113, §1000(a)(5) [title III, §302(1)], struck out heading and text of par. (3). Text read as follows: ''During fiscal years 1997 and 1998, any amount in the surplus fund of any Federal reserve bank in excess of the amount equal to 3 percent of the total paid-in capital and surplus of the member banks of such bank shall be transferred to the Board for transfer to the Secretary of the Treasury for deposit in the general fund of the Treasury.''

Subsec. (b). Pub. L. 106–113, §1000(a)(5) [title III, §302(2)], added subsec. (b).

1994—Par. (1)(B). Pub. L. 103–325, §602(d)(1), inserted ''(A)'' after ''subparagraph''.

Par. (2). Pub. L. 103–325, §602(d)(2), substituted ''paragraph (1)(A)'' for ''subparagraph (A)''.

1993—Pub. L. 103–66 inserted section catchline and amended section generally. Prior to amendment, section read as follows: ''After all necessary expenses of a Federal reserve bank shall have been paid or provided for, the stockholders shall be entitled to receive an annual dividend of 6 per centum on the paid-in capital stock, which dividend shall be cumulative. After the aforesaid dividend claims have been fully met, the net earnings shall be paid into the surplus fund of the Federal reserve bank.''

1933—Act June 16, 1933, provided that net earnings shall be paid into surplus instead of to the United States as a franchise tax.

EFFECTIVE DATE OF 1933 AMENDMENT

Section 4 of act June 16, 1933, provided that the amendment made by that section is effective July 1, 1932.

ADDITIONAL TRANSFERS FOR FISCAL YEARS 1997 AND 1998

Pub. L. 103–66, title III, §3002(b), Aug. 10, 1993, 107 Stat. 337, provided that:

''(1) IN GENERAL.—In addition to the amounts required to be transferred from the surplus funds of the Federal reserve banks pursuant to section 7(a)(3) of the Federal Reserve Act [former 12 U.S.C. 289(a)(3)], the Federal reserve banks shall transfer from such surplus funds to the Board of Governors of the Federal Reserve System for transfer to the Secretary of the Treasury for deposit in the general fund of the Treasury, a total amount of $106,000,000 in fiscal year 1997 and a total amount of $107,000,000 in fiscal year 1998.

''(2) ALLOCATION BY FED.—Of the total amount required to be paid by the Federal reserve banks under paragraph (1) for fiscal year 1997 or 1998, the Board of Governors of the Federal Reserve System shall determine the amount each such bank shall pay in such fiscal year.

''(3) REPLENISHMENT OF SURPLUS FUND PROHIBITED.—No Federal reserve bank may replenish such bank's surplus fund by the amount of any transfer by such

[1] See Codification note below.

bank under paragraph (1) during fiscal years 1997 and 1998.''

§ 290. Use of earnings transferred to the Treasury

The net earnings derived by the United States from Federal reserve banks shall, in the discretion of the Secretary, be used to supplement the gold reserve held against outstanding United States notes, or shall be applied to the reduction of the outstanding bonded indebtedness of the United States under regulations to be prescribed by the Secretary of the Treasury. Should a Federal reserve bank be dissolved or go into liquidation, any surplus remaining, after the payment of all debts, dividend requirements as hereinbefore provided, and the par value of the stock, shall be paid to and become the property of the United States and shall be similarly applied.

(Dec. 23, 1913, ch. 6, §7(b), 38 Stat. 258; Pub. L. 103–66, title III, §3002(c)(1), Aug. 10, 1993, 107 Stat. 337.)

CODIFICATION

Section is comprised of subsec. (b) [formerly second undesignated par.] of section 7 of act Dec. 23, 1913. Subsec. (a) and another subsec. (b) [enacted by Pub. L. 106–113, div. B, §1000(a)(5) [title III, §302(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–304] of section 7 are classified to section 289 of this title. Subsec. (c) of section 7 is classified to section 531 of this title.

AMENDMENTS

1993—Pub. L. 103–66 inserted section catchline.

SUBCHAPTER VII—DIRECTORS OF FEDERAL RESERVE BANKS; RESERVE AGENTS AND ASSISTANTS

§ 301. Powers and duties of board of directors; suspension of member bank for undue use of bank credit

Every Federal reserve bank shall be conducted under the supervision and control of a board of directors.

The board of directors shall perform the duties usually appertaining to the office of directors of banking associations and all such duties as are prescribed by law.

Said board of directors shall administer the affairs of said bank fairly and impartially and without discrimination in favor of or against any member bank or banks and may, subject to the provisions of law and the orders of the Board of Governors of the Federal Reserve System, extend to each member bank such discounts, advancements, and accommodations as may be safely and reasonably made with due regard for the claims and demands of other member banks, the maintenance of sound credit conditions, and the accommodation of commerce, industry, and agriculture. The Board of Governors of the Federal Reserve System may prescribe regulations further defining within the limitations of this chapter the conditions under which discounts, advancements, and the accommodations may be extended to member banks. Each Federal reserve bank shall keep itself informed of the general character and amount of the loans and investments of its member banks with a view to ascertaining whether undue use is being made of bank credit for the speculative carrying of or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions; and, in determining whether to grant or refuse advances, rediscounts, or other credit accommodations, the Federal reserve bank shall give consideration to such information. The chairman of the Federal reserve bank shall report to the Board of Governors of the Federal Reserve System any such undue use of bank credit by any member bank, together with his recommendation. Whenever, in the judgment of the Board of Governors of the Federal Reserve System, any member bank is making such undue use of bank credit, the Board may, in its discretion, after reasonable notice and an opportunity for a hearing, suspend such bank from the use of the credit facilities of the Federal Reserve System and may terminate such suspension or may renew it from time to time.

(Dec. 23, 1913, ch. 6, §4 (pars.), 38 Stat. 255; June 16, 1933, ch. 89, §3(a), 48 Stat. 163; Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of pars. 6 to 8 of section 4 of act Dec. 23, 1913.

Pars. 1 to 3 and 25 of section 4 were omitted from the code as executed.

Pars. 4 and 5, 9 to 12, 13 to 15, 16 to 21, 22, 24, and 26 of section 4, and par. 23 of section 4 as added June 21, 1917, ch. 32, §2, 40, Stat. 232, are classified to sections 341, 302, 303, 304, 305, 307, 308, and 306, respectively, of this title.

AMENDMENTS

1933—Act June 16, 1933, among other changes, added all after first sentence in third par.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 302. Number of members; classes

Such board of directors shall be selected as hereinafter specified and shall consist of nine members, holding office for three years, and divided into three classes, designated as classes A, B, and C.

Class A shall consist of three members, without discrimination on the basis of race, creed, color, sex, or national origin, who shall be chosen by and be representative of the stockholding banks.

Class B shall consist of three members, who shall represent the public and shall be elected without discrimination on the basis of race, creed, color, sex, or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers.

Class C shall consist of three members who shall be designated by the Board of Governors of

the Federal Reserve System. They shall be elected to represent the public, without discrimination on the basis of race, creed, color, sex, or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers.

(Dec. 23, 1913, ch. 6, §4 (pars.), 38 Stat. 255; Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704; Pub. L. 95–188, title II, §202, Nov. 16, 1977, 91 Stat. 1387.)

CODIFICATION

Section is comprised of pars. 9 to 12 of section 4 of act Dec. 23, 1913. For classification to this title of other pars. of section 4, see Codification note set out under section 301 of this title.

Provisions of section which related to appointment of Class C directors when the necessary subscriptions to the capital stock have been obtained for the organization of any Federal Reserve Bank and which required the organization committee to exercise the powers and duties appertaining to the office of chairman in the organization of such Federal Reserve Bank pending the designation of a chairman, were omitted as obsolete.

Another section 202 of Pub. L. 95–188 enacted section 225a of this title.

AMENDMENTS

1977—Second par. Pub. L. 95–188, §202(a), required Class A members to be chosen without discrimination on the basis of race, creed, color, sex or national origin.

Third par. Pub. L. 95–188, §202(b), substituted requirement that Class B members represent the public and be elected without discrimination on the basis of race, creed, color, sex, or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers for prior requirement that such Class B members, at the time of their election, be actively engaged in their district in commerce, agriculture or some other industrial pursuit.

Fourth par. Pub. L. 95–188, §202(c), required Class C members to be elected to represent the public, without discrimination on the basis of race, creed, color, sex, or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 303. Qualifications and disabilities

No Senator or Representative in Congress shall be a member of the Board of Governors of the Federal Reserve System or an officer or a director of a Federal reserve bank.

No director of class B shall be an officer, director, or employee of any bank.

No director of class C shall be an officer, director, employee, or stockholder of any bank.

(Dec. 23, 1913, ch. 6, §4 (pars.), 38 Stat. 255; Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704.)

CODIFICATION

Section is comprised of pars. 13 to 15 of section 4 of act Dec. 23, 1913. For classification to this title of other pars. of section 4, see Codification note set out under section 301 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 304. Class A and class B directors; selection

Directors of class A and class B shall be chosen in the following manner: The Board of Governors of the Federal Reserve System shall classify the member banks of the district into three general groups or divisions designating each group by number. Each group shall consist as nearly as may be of banks of similar capitalization. Each member bank shall be permitted to nominate to the chairman of the board of directors of the Federal reserve bank of the district one candidate for director of class A and one candidate for director of class B. The candidates so nominated shall be listed by the chairman, indicating by whom nominated, and a copy of said list shall, within fifteen days after its completion, be furnished by the chairman to each member bank. Each member bank by a resolution of the board or by an amendment to its bylaws shall authorize its president, cashier, or some other officer to cast the vote of the member bank in the elections of class A and class B directors: *Provided*, That whenever any member banks within the same Federal Reserve district are subsidiaries of the same bank holding company within the meaning of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], participation in any such nomination or election by such member banks, including such bank holding company if it is also a member bank, shall be confined to one of such banks, which may be designated for the purpose by such holding company.

Within fifteen days after receipt of the list of candidates the duly authorized officer of a member bank shall certify to the chairman his first, second, and other choices for director of class A and class B, respectively, upon a preferential ballot upon a form furnished by the chairman of the board of directors of the Federal reserve bank of the district. Each such officer shall make a cross opposite the name of the first, second, and other choices for a director of class A and for a director of class B, but shall not vote more than one choice for any one candidate. No officer or director of a member bank shall be eligible to serve as a class A director unless nominated and elected by banks which are members of the same group as the member bank of which he is an officer or director.

Any person who is an officer or director of more than one member bank shall not be eligible for nomination as a class A director except by banks in the same group as the bank having the largest aggregate resources of any of those of which such person is an officer or director.

Any candidate having a majority of all votes cast in the column of first choice shall be declared elected. If no candidate have a majority of all the votes in the first column, then there shall be added together the votes cast by the electors for such candidates in the second column and the votes cast for the several candidates in the first column. The candidate then having a majority of the electors voting and the highest number of combined votes shall be declared elected. If no candidate have a majority of electors voting and the highest number of votes when the first and second choices shall have been added, then the votes cast in the third

column for other choices shall be added together in like manner, and the candidate then having the highest number of votes shall be declared elected. An immediate report of election shall be declared.

(Dec. 23, 1913, ch. 6, § 4 (pars.), 38 Stat. 256; Sept. 26, 1918, ch. 177, § 1, 40 Stat. 968; June 26, 1930, ch. 614, 46 Stat. 815; June 16, 1933, ch. 89, § 3(b), 48 Stat. 163; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 89–485, § 13(e), July 1, 1966, 80 Stat. 243.)

REFERENCES IN TEXT

The Bank Holding Company Act of 1956, referred to in text, is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

CODIFICATION

Section is comprised of pars. 16 to 21 of section 4 of act Dec. 23, 1913. For classification to this title of other pars. of section 4, see Codification note set out under section 301 of this title.

AMENDMENTS

1966—Pub. L. 89–485 substituted proviso restricting participation in nomination or election of directors by member banks to one member bank whenever any member banks within the same Federal reserve district are subsidiaries of the same bank holding company, such member bank to be designated for the purpose by the holding company for former proviso restricting the selection of directors by member banks to one member bank when two or more member banks within the same Federal reserve district are affiliated with the same holding company affiliate, such member bank to be designated for such purpose by the holding company affiliate.

1933—Act June 16, 1933, inserted proviso at end of second par.

1930—Act June 26, 1930, amended last par.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 305. Class C directors; selection; "Federal reserve agent"

Class C directors shall be appointed by the Board of Governors of the Federal Reserve System. They shall have been for at least two years residents of the district for which they are appointed, one of whom shall be designated by said board as chairman of the board of directors of the Federal reserve bank and as ''Federal reserve agent.'' He shall be a person of tested banking experience and in addition to his duties as chairman of the board of directors of the Federal reserve bank he shall be required to maintain, under regulations to be established by the Board of Governors of the Federal Reserve System, a local office of said board on the premises of the Federal reserve bank. He shall make regular reports to the Board of Governors of the Federal Reserve System and shall act as its official representative for the performance of the functions conferred upon it by this chapter. He shall receive an annual compensation to be fixed by the Board of Governors of the Federal Reserve System and paid monthly by the Federal reserve bank to which he is designated. One of the directors of class C shall be appointed by the Board of Governors of the Federal Reserve System as deputy chairman to exercise the powers of the chairman of the board when necessary. In case of the absence of the chairman and deputy chairman, the third class C director shall preside at meetings of the board.

(Dec. 23, 1913, ch. 6, § 4 (par.), 38 Stat. 256; June 21, 1917, ch. 32, § 2, 40 Stat. 232; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of par. 22 of section 4 of act Dec. 23, 1913. For classification to this title of other pars. of section 4, see Codification note set out under section 301 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 306. Assistants to Federal reserve agent

Subject to the approval of the Board of Governors of the Federal Reserve System, the Federal reserve agent shall appoint one or more assistants. Such assistants, who shall be persons of tested banking experience, shall assist the Federal reserve agent in the performance of his duties and shall also have power to act in his name and stead during his absence or disability. The Board of Governors of the Federal Reserve System shall require such bonds of the assistant Federal reserve agents as it may deem necessary for the protection of the United States. Assistants to the Federal reserve agent shall receive an annual compensation, to be fixed and paid in the same manner as that of the Federal reserve agent.

(Dec. 23, 1913, ch. 6, § 4 (par.), as added June 21, 1917, ch. 32, § 2, 40 Stat. 232; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

CODIFICATION

Section is comprised of par. 23 of section 4 of act Dec. 23, 1913, as added June 21, 1917. For classification to this title of other pars. of section 4, see Codification note set out under section 301 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 307. Compensation of directors

Directors of Federal reserve banks shall receive, in addition to any compensation otherwise provided, a reasonable allowance for necessary expenses in attending meetings of their respective boards, which amount shall be paid by the respective Federal reserve banks. Any compensation that may be provided by boards of directors of Federal reserve banks for directors, officers or employees shall be subject to the ap-

proval of the Board of Governors of the Federal Reserve System.

(Dec. 23, 1913, ch. 6, § 4 (par.), 38 Stat. 257; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

CODIFICATION

Section is comprised of par. 24 of section 4 of act Dec. 23, 1913. For classification to this title of other pars. of section 4, see Codification note set out under section 301 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 308. Terms of directors; vacancies

At the first meeting of the full board of directors of each Federal reserve bank, it shall be the duty of the directors of classes A, B, and C, respectively, to designate one of the members of each class whose term of office shall expire in one year from the 1st of January nearest to date of such meeting, one whose term of office shall expire at the end of two years from said date, and one whose term of office shall expire at the end of three years from said date. Thereafter every director of a Federal reserve bank chosen as hereinbefore provided shall hold office for a term of three years. Vacancies that may occur in the several classes of directors of Federal reserve banks may be filled in the manner provided for the original selection of such directors, such appointees to hold office for the unexpired terms of their predecessors.

(Dec. 23, 1913, ch. 6, § 4 (par.), 38 Stat. 257.)

CODIFICATION

Section is comprised of par. 26 of section 4 of act Dec. 23, 1913. For classification to this title of other pars. of section 4, see Codification note set out under section 301 of this title.

SUBCHAPTER VIII—STATE BANKS AS MEMBERS OF SYSTEM

§ 321. Application for membership

Any bank incorporated by special law of any State, operating under the Code of Law for the District of Columbia, or organized under the general laws of any State or of the United States, including Morris Plan banks and other incorporated banking institutions engaged in similar business, desiring to become a member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal Reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. For the purposes of membership of any such bank the terms ''capital'' and ''capital stock'' shall include the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation. The Board of Governors of the Federal Reserve System, subject to the provisions of this chapter and to such conditions as it may prescribe pursuant thereto may permit the applying bank to become a stockholder of such Federal Reserve bank.

Upon the conversion of a national bank into a State bank, or the merger or consolidation of a national bank with a State bank which is not a member of the Federal Reserve System, the resulting or continuing State bank may be admitted to membership in the Federal Reserve System by the Board of Governors of the Federal Reserve System in accordance with the provisions of this section, but, otherwise, the Federal Reserve bank stock owned by the national bank shall be canceled and paid for as provided in section 287 of this title. Upon the merger or consolidation of a national bank with a State member bank under a State charter, the membership of the State bank in the Federal Reserve System shall continue.

Any such State bank which on February 25, 1927, has established and is operating a branch or branches in conformity with the State law, may retain and operate the same while remaining or upon becoming a stockholder of such Federal Reserve bank; but no such State bank may retain or acquire stock in a Federal Reserve bank except upon relinquishment of any branch or branches established after February 25, 1927, beyond the limits of the city, town, or village in which the parent bank is situated: *Provided, however*, That nothing herein contained shall prevent any State member bank from establishing and operating branches in the United States or any dependency or insular possession thereof or in any foreign country, on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by national banks except that the approval of the Board of Governors of the Federal Reserve System, instead of the Comptroller of the Currency, shall be obtained before any State member bank may hereafter establish any branch and before any State bank hereafter admitted to membership may retain any branch established after February 25, 1927, beyond the limits of the city, town, or village in which the parent bank is situated. The approval of the Board shall likewise be obtained before any State member bank may establish any new branch within the limits of any such city, town, or village.

(Dec. 23, 1913, ch. 6, § 9 (pars.), 38 Stat. 259; June 21, 1917, ch. 32, § 3, 40 Stat. 232; Feb. 25, 1927, ch. 191, § 9, 44 Stat. 1229; June 16, 1933, ch. 89, § 5(a), (b), 48 Stat. 164; June 16, 1934, ch. 546, § 2, 48 Stat. 971; Aug. 23, 1935, ch. 614, title II, § 203(a), title III, § 338, 49 Stat. 704, 721; Aug. 17, 1950, ch. 729, § 8, 64 Stat. 458; July 15, 1952, ch. 753, § 2(a), 66 Stat. 633; Pub. L. 108–386, § 8(h), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 109–351, title VII, § 725(a)(2), Oct. 13, 2006, 120 Stat. 2001; Pub. L. 109–356, title I, § 123(a)(2), Oct. 16, 2006, 120 Stat. 2028.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of the first three pars. of section 9 of act Dec. 23, 1913, as amended. The first par. of this section is comprised of the first par. of section 9 as amended in 1917 (40 Stat. 232). The second par. of this section was added as a new par. to follow the first par. of section 9, by act Aug. 17, 1950. The third par. of this section originally constituted the second par. of section 9, as amended by act Feb. 25, 1927, and became the third par. when act Aug. 17, 1950 added the new second par. The fourth to twenty-third pars. of section 9, as amended, are classified to sections 322 to 338a of this title. Section 329a of this title, which was based on par. twelve of section 9, was omitted from the Code. Paragraph twenty-two of section 9, which was classified to section 337 of this title, was repealed by Pub. L. 89–485, § 13(g), July 1, 1966, 80 Stat. 243.

AMENDMENTS

2006—Pub. L. 109–351 and 109–356 amended section identically, substituting ''incorporated by special law of any State, operating under the Code of Law for the District of Columbia, or'' for ''incorporated by special law of any State, or'' in first sentence of first par.

2004—Pub. L. 108–386 struck out ''(except within the District of Columbia)'' before period at end of last sentence of third par.

1952—Act July 15, 1952, inserted last sentence to third par.

1950—Act Aug. 17, 1950, inserted second par., permitting application for membership in the Federal Reserve System by the State bank resulting from a conversion, merger, or consolidation transaction involving a national bank, except where the national bank merges or consolidates with a State bank already a member of System in which case the membership continues.

1935—Act Aug. 23, 1935, § 338, inserted phrase in third (formerly second) par. beginning ''except that the approval of the Board of Governors''.

1934—Act June 16, 1934, inserted third sentence in first par.

1933—Act June 16, 1933, inserted ''including Morris Plan banks and other incorporated banking institutions engaged in similar business'' in first par. and inserted proviso to third (formerly second) par. through ''branches of national banks''.

1927—Act Feb. 25, 1927, inserted second par. which became third par. in 1950. See Codification note above.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–386, § 8(i), Oct. 30, 2004, 118 Stat. 2232, provided that: ''The amendments made by this section [amending this section, sections 1709, 1813, 1817, 1820, 1821, 1828, 1841, 1842, 1881, 3206, and 3207 of this title, and sections 78c, 78*l*, and 78q of Title 15, Commerce and Trade] shall take effect on the date of the enactment of this Act [Oct. 30, 2004].''

Pub. L. 108–386, § 9, Oct. 30, 2004, 118 Stat. 2233, provided that: ''Except as otherwise provided, this Act [amending this section, sections 1709, 1813, 1817, 1820, 1821, 1828, 1841, 1842, 1881, 3206, and 3207 of this title, and sections 78c, 78*l*, and 78q of Title 15, Commerce and Trade, and enacting provisions set out as notes under this section and section 1811 of this title] and the amendments made by this Act shall apply with respect to fiscal year 2005 and each succeeding fiscal year.''

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, abolished Reconstruction Finance Corporation.

§ 322. Determination on application

In acting upon such applications the Board of Governors of the Federal Reserve System shall consider the financial condition of the applying bank, the general character of its management, and whether or not the corporate powers exercised are consistent with the purposes of this chapter.

(Dec. 23, 1913, ch. 6, § 9 (par.), as added June 21, 1917, ch. 32, § 3, 40 Stat. 233; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of the fourth par. of section 9 of act Dec. 23, 1913, as amended. The fourth par. constituted the second par. of section 9 in 1917 (40 Stat. 232), became the third par. in 1927 (44 Stat. 1229), and became the fourth par. in 1950 (64 Stat. 458). For further details, see Codification note set out under section 321 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 323. Stock in Federal reserve banks; method of payment

Whenever the Board of Governors of the Federal Reserve System shall permit the applying bank to become a stockholder in the Federal reserve bank of the district its stock subscription shall be payable on call of the Board of Governors of the Federal Reserve System, and stock issued to it shall be held subject to the provisions of this chapter.

(Dec. 23, 1913, ch. 6, § 9 (par.), 38 Stat. 259; June 21, 1917, ch. 32, § 3, 40 Stat. 233; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of the fifth par. of section 9 of act Dec. 23, 1913, as amended. The fifth par. constituted the third par. of section 9 in 1917 (40 Stat. 232), became the fourth par. in 1927 (44 Stat. 1229), and became the fifth par. in 1950 (64 Stat. 458). For further details, see Codification note set out under section 321 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 324. Laws applicable on becoming members

All banks admitted to membership under authority of this section shall be required to com-

ply with the reserve and capital requirements of this chapter, to conform to those provisions of law imposed on national banks which prohibit such banks from lending on or purchasing their own stock and which relate to the withdrawal or impairment of their capital stock, and to conform to the provisions of sections 56 and 60(b) of this title with respect to the payment of dividends; except that any reference in any such provision to the Comptroller of the Currency shall be deemed for the purposes of this sentence to be a reference to the Board of Governors of the Federal Reserve System. Such banks and the officers, agents, and employees thereof shall also be subject to the provisions of and to the penalties prescribed by sections 334, 656, and 1005 of title 18, and shall be required to make reports of condition and of the payment of dividends to the Federal Reserve bank of which they become a member. Not less than three of such reports shall be made annually on call of the Federal Reserve bank on dates to be fixed by the Board of Governors of the Federal Reserve System. Any bank which (A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make or publish any report required under this paragraph, within the period of time specified by the Board, or submits or publishes any false or misleading report or information, or (B) inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The bank shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any bank which fails to make or publish such reports within the period of time specified by the Board, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any bank knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Board may assess a penalty of not more than $1,000,000 or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Board in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any bank against which any penalty is assessed under this subsection shall be afforded an agency hearing if such bank submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this paragraph. Such reports of condition shall be in such form and shall contain such information as the Board of Governors of the Federal Reserve System may require.

(Dec. 23, 1913, ch. 6, §9 (par.), 38 Stat. 259; June 21, 1917, ch. 32, §3, 40 Stat. 233; Aug. 23, 1935, ch. 614, title III, §320, 49 Stat. 713; Sept. 3, 1954, ch. 1263, §27, 68 Stat. 1236; Pub. L. 86–230, §21(b), Sept. 8, 1959, 73 Stat. 466; Pub. L. 101–73, title IX, §911(d), Aug. 9, 1989, 103 Stat. 480; Pub. L. 103–325, title III, §308(c), Sept. 23, 1994, 108 Stat. 2218.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of the sixth par. of section 9 of act Dec. 23, 1913, as amended. The sixth par. constituted the fourth par. of section 9 in 1917 (40 Stat. 232), became the fifth par. in 1927 (44 Stat. 1229), and became the sixth par. in 1950 (64 Stat. 458). For further details, see Codification note set out under section 321 of this title.

AMENDMENTS

1994—Pub. L. 103–325 struck out before period at end ''and shall be published by the reporting banks in such manner and in accordance with such regulations as the said Board may prescribe''.

1989—Pub. L. 101–73 substituted provisions for different and increasing levels of penalties, assessment and collection of penalties, and agency hearings for provision that failure to make such reports within ten days after the date they were called for would subject the offending bank to a penalty of $100 a day for each day that it failed to transmit such report, such penalty to have been collected by the Federal Reserve bank by suit or otherwise.

1959—Pub. L. 86–230 required State member banks to comply with section 60(b) of this title and inserted provisions requiring a reference to the Comptroller of the Currency to be deemed a reference to the Board of Governors of the Federal Reserve System.

1954—Act Sept. 3, 1954, substituted ''sections 334, 656, and 1005 of title 18'' for ''section 592 of this title'', and ''Board of Governors of the Federal Reserve System'' for ''Federal Reserve Board''.

1935—Act Aug. 23, 1935 inserted last sentence of section.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–73 applicable with respect to reports filed or required to be filed after Aug. 9, 1989, see section 911(i) of Pub. L. 101–73, set out as a note under section 161 of this title.

§ 325. Examinations

As a condition of membership such banks shall likewise be subject to examinations made by direction of the Board of Governors of the Federal Reserve System or of the Federal reserve bank by examiners selected or approved by the Board of Governors of the Federal Reserve System.

(Dec. 23, 1913, ch. 6, §9 (par.), as added June 21, 1917, ch. 32, §3, 40 Stat. 233; amended Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704.)

CODIFICATION

Section is comprised of the seventh par. of section 9 of act Dec. 23, 1913, as amended. The seventh par. constituted the fifth par. of section 9 in 1917 (40 Stat. 232), became the sixth par. in 1927 (44 Stat. 1229), and became the seventh par. in 1950 (64 Stat. 458). For further de-

tails, see Codification note set out under section 321 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 326. Acceptance of examinations and reports by State authorities; special examinations

Whenever the directors of the Federal reserve bank shall approve the examinations made by the State authorities, such examinations and the reports thereof may be accepted in lieu of examinations made by examiners selected or approved by the Board of Governors of the Federal Reserve System: *Provided*, *however*, That when it deems it necessary the board may order special examinations by examiners of its own selection and shall in all cases approve the form of the report. The expenses of all examinations, other than those made by State authorities, may, in the discretion of the Board of Governors of the Federal Reserve System, be assessed against the banks examined and, when so assessed, shall be paid by the banks examined. The Board of Governors of the Federal Reserve System, at its discretion, may furnish any report of examination or other confidential supervisory information concerning any State member bank or other entity examined under any other authority of the Board, to any Federal or State agency or authority with supervisory or regulatory authority over the examined entity, to any officer, director, or receiver of the examined entity, and to any other person that the Board determines to be proper.

(Dec. 23, 1913, ch. 6, § 9 (par.), as added June 21, 1917, ch. 32, § 3, 40 Stat. 233; amended June 26, 1930, ch. 611, § 1, 46 Stat. 814; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 106–102, title VII, § 727(a), Nov. 12, 1999, 113 Stat. 1475.)

CODIFICATION

Section is comprised of the eighth par. of section 9 of act Dec. 23, 1913, as amended. The eighth par. constituted the sixth par. of section 9 in 1917 (40 Stat. 232), became the seventh par. in 1927 (44 Stat. 1229), and became the eighth par. in 1950 (64 Stat. 458). For further details, see Codification note set out under section 321 of this title.

AMENDMENTS

1999—Pub. L. 106–102 inserted last sentence and struck out former last sentence which read as follows: ''Copies of the reports of such examinations may, in the discretion of the Board of Governors of the Federal Reserve System, be furnished to the State authorities having supervision of such banks, to officers, directors, or receivers of such banks, and to any other proper persons.''

1930—Act June 26, 1930, amended next to last sentence and inserted last sentence.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 327. Surrender of stock and cancellation of memberships

If at any time it shall appear to the Board of Governors of the Federal Reserve System that a member bank has failed to comply with the provisions of this subchapter, or the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto, or has ceased to exercise banking functions without a receiver or liquidating agent having been appointed therefor, it shall be within the power of the board after hearing to require such bank to surrender its stock in the Federal reserve bank and to forfeit all rights and privileges of membership. The Board of Governors of the Federal Reserve System may restore membership upon due proof of compliance with the conditions imposed by this subchapter.

(Dec. 23, 1913, ch. 6, § 9 (par.), 38 Stat. 259; June 21, 1917, ch. 32, § 3, 40 Stat. 233; Apr. 23, 1930, ch. 207, § 2, 46 Stat. 251; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 9 of act Dec. 23, 1913, which is classified generally to this subchapter (§ 321 et seq.).

CODIFICATION

Section is comprised of the ninth par. of section 9 of act Dec. 23, 1913, as amended. The ninth par. constituted the seventh par. of section 9 in 1917 (40 Stat. 232), became the eighth par. in 1927 (44 Stat. 1229), and became the ninth par. in 1950 (64 Stat. 458). For further details, see Codification note set out under section 321 of this title.

AMENDMENTS

1930—Act Apr. 23, 1930, inserted ''or has ceased to exercise banking functions without a receiver or liquidating agent having been appointed therefor,'' to first sentence.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 328. Withdrawals from membership

Any State bank or trust company desiring to withdraw from membership in a Federal Reserve bank may do so, after six months' written notice shall have been filed with the Board of Governors of the Federal Reserve System, upon the surrender and cancellation of all of its holdings of capital stock in the Federal reserve bank: *Provided*, That the Board of Governors of the Federal Reserve System, in its discretion and subject to such conditions as it may prescribe, may waive such six months' notice in individual cases and may permit any such State bank or trust company to withdraw from membership in a Federal reserve bank prior to the expiration of six months from the date of the written notice of its intention to withdraw: *Provided*, *however*, That no Federal reserve bank shall, except under express authority of the Board of Governors of the Federal Reserve System, cancel within the same calendar year more than 25 per centum of its capital stock for the purpose of effecting voluntary withdrawals during that year. All such applications shall be dealt with in the order in which they are filed with the board. Whenever a member bank shall surrender its stock holdings in a Federal reserve bank, or

shall be ordered to do so by the Board of Governors of the Federal Reserve System, under authority of law, all of its rights and privileges as a member bank shall thereupon cease and determine, and after due provision has been made for any indebtedness due or to become due to the Federal reserve bank it shall be entitled to a refund of its cash-paid subscription with interest at the rate of one-half of 1 per centum per month from date of last dividend, if earned, the amount refunded in no event to exceed the book value of the stock at that time, and shall likewise be entitled to repayment of deposits and of any other balance due from the Federal reserve bank.

(Dec. 23, 1913, ch. 6, §9 (par.), as added June 21, 1917, ch. 32, §3, 40 Stat. 233; amended Apr. 17, 1930, ch. 175, 46 Stat. 170; Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704.)

CODIFICATION

Section is comprised of the tenth par. of section 9 of act Dec. 23, 1913, as amended. The tenth par. constituted the eighth par. of section 9 in 1917 (40 Stat. 232), became the ninth par. in 1927 (44 Stat. 1229), and became the tenth par. in 1950 (64 Stat. 458). For further details, see Codification note set out under section 321 of this title.

AMENDMENTS

1930—Act Apr. 17, 1930, amended part of section preceding second proviso.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 329. Capital stock required as condition precedent to membership

No applying bank shall be admitted to membership unless it possesses capital stock and surplus which, in the judgment of the Board of Governors of the Federal Reserve System, are adequate in relation to the character and condition of its assets and to its existing and prospective deposit liabilities and other corporate responsibilities: *Provided*, That no bank engaged in the business of receiving deposits other than trust funds, which does not possess capital stock and surplus in an amount equal to that which would be required for the establishment of a national banking association in the place in which it is located, shall be admitted to membership unless it is, or has been, approved for deposit insurance under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]. The capital stock of a State member bank shall not be reduced except with the prior consent of the Board.

(Dec. 23, 1913, ch. 6, §9 (par.), 38 Stat. 259; June 21, 1917, ch. 32, §3, 40 Stat. 234; Mar. 4, 1923, ch. 252, title IV, §401, 42 Stat. 1478; June 16, 1933, ch. 89, §17(b), 48 Stat. 185; July 15, 1952, ch. 753, §1, 66 Stat. 633.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in text, is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section is comprised of the eleventh par. of section 9 of act Dec. 23, 1913, as amended. The eleventh par. constituted the ninth par. of section 9 in 1917 (40 Stat. 232), became the tenth par. in 1927 (44 Stat. 1229), and became the eleventh par. in 1950 (64 Stat. 458). For further details, see Codification note set out under section 321 of this title.

AMENDMENTS

1952—Act July 15, 1952, vested in Board of Governors discretion with respect to admission of State banks to membership.

1933—Act June 16, 1933, dropped alternative method of meeting the capital requirement and inserted proviso.

§ 329a. Omitted

CODIFICATION

Section, act Dec. 23, 1913, ch. 6, §9 (par.), as added Aug. 23, 1935, ch. 614, title II, §202, 49 Stat. 704, related to waiver of the requirements of sections 321 to 338 of this title for admission to membership in the case of a bank which was required to become a member of the Federal Reserve System under a former provision of subsection (y) of former section 264 of this title, which provision was repealed by act June 20, 1939, ch. 214, §2, 53 Stat. 842.

This section was based on the twelfth par. of section 9 of act Dec. 23, 1913, as amended. The twelfth par. constituted the eleventh par. of section 9 when added in 1935, and became the twelfth par. in 1950 (64 Stat. 458). For further details, see Codification note set out under section 321 of this title.

§ 330. Laws applicable on becoming members; discounts for State banks

Banks becoming members of the Federal reserve system under authority of this subchapter shall be subject to the provisions of this subchapter and to those of this chapter which relate specifically to member banks, but shall not be subject to examination under the provisions of sections 481 and 482 of this title. Subject to the provisions of this chapter and to the regulations of the board made pursuant thereto, any bank becoming a member of the Federal reserve system shall retain its full charter and statutory rights as a State bank or trust company, and may continue to exercise all corporate powers granted it by the State in which it was created, and shall be entitled to all privileges of member banks, except that the Board of Governors of the Federal Reserve System may limit the activities of State member banks and subsidiaries of State member banks in a manner consistent with section 1831a of this title. No Federal reserve bank shall be permitted to discount for any State bank or trust company notes, drafts, or bills of exchange of any one borrower who is liable for borrowed money to such State bank or trust company in an amount greater than that which could be borrowed lawfully from such State bank or trust company were it a national banking association. The Federal reserve bank, as a condition of the discount of notes, drafts, and bills of exchange for such State bank or trust company, shall require a certificate or guaranty to the effect that the borrower is not liable to such bank in excess of the amount provided by this subchapter, and will not be permitted to become liable in excess of this amount while such notes, drafts, or bills of exchange are under discount with the Federal reserve bank.

(Dec. 23, 1913, ch. 6, § 9 (par.), as added June 21, 1917, ch. 32, § 3, 40 Stat. 234; amended July 1, 1922, ch. 274, 42 Stat. 821; Pub. L. 102–242, title III, § 303(b), Dec. 19, 1991, 105 Stat. 2353.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 9 of act Dec. 23, 1913, which is classified generally to this subchapter (§ 321 et seq.).

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of the thirteenth par. of section 9 of act Dec. 23, 1913, as amended. The thirteenth par. constituted the tenth par. of section 9 in 1917 (40 Stat. 232), became the eleventh par. in 1927 (44 Stat. 1229), became the twelfth par. in 1935 (49 Stat. 704), and became the thirteenth par. in 1950 (64 Stat. 458). For further details, see Codification note set out under sections 321 and 329 of this title.

AMENDMENTS

1991—Pub. L. 102–242 substituted '', except that the Board of Governors of the Federal Reserve System may limit the activities of State member banks and subsidiaries of State member banks in a manner consistent with section 1831a of this title. No Federal reserve bank'' for '': *Provided, however*, That no Federal reserve bank''.

§ 331. Certifying checks on State banks admitted as members

It shall be unlawful for any officer, clerk, or agent of any bank admitted to membership under authority of this subchapter, to certify any check drawn upon such bank unless the person or company drawing the check has on deposit therewith at the time such check is certified an amount of money equal to the amount specified in such check. Any check so certified by duly authorized officers shall be a good and valid obligation against such bank, but the act of any such officer, clerk, or agent in violation of this subchapter, may subject such bank to a forfeiture of its membership in the Federal reserve system upon hearing by the Board of Governors of the Federal Reserve System.

(Dec. 23, 1913, ch. 6, § 9 (par.), as added June 21, 1917, ch. 32, § 3, 40 Stat. 234; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 9 of act Dec. 23, 1913, which is classified generally to this subchapter (§ 321 et seq.).

CODIFICATION

Section is comprised of the fourteenth par. of section 9 of act Dec. 23, 1913, as amended. The fourteenth par. constituted the eleventh par. of section 9 in 1917 (40 Stat. 232), became the twelfth par. in 1927 (44 Stat. 1229), became the thirteenth par. in 1935 (49 Stat. 704), and became the fourteenth par. in 1950 (64 Stat. 458). For further details, see Codification notes set out under sections 321 and 329a of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 332. Depositaries of public money; financial agents; security required

All banks or trust companies incorporated by special law or organized under the general laws of any State, which are members of the Federal reserve system, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. The Secretary of the Treasury shall require of the banks and trust companies thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safe keeping and prompt payment of the public money deposited with them and for the faithful performance of their duties as financial agents of the Government.

(Dec. 23, 1913, ch. 6, § 9 (par.), as added May 7, 1928, ch. 507, 45 Stat. 492.)

CODIFICATION

Section is comprised of the fifteenth par. of section 9 of act Dec. 23, 1913, as amended. The fifteenth par. constituted the thirteenth par. of section 9 in 1928 (45 Stat. 492), became the fourteenth par. in 1935 (49 Stat. 704), and became the fifteenth par. in 1950 (64 Stat. 458). For further details, see Codification notes set out under sections 321 and 329a of this title.

§ 333. Mutual savings banks; application and admission to membership in Federal Reserve System

Any mutual savings bank having no capital stock (including any other banking institution the capital of which consists of weekly or other time deposits which are segregated from all other deposits and are regarded as capital stock for the purposes of taxation and the declaration of dividends), but having surplus and undivided profits not less than the amount of capital required for the organization of a national bank in the same place, may apply for and be admitted to membership in the Federal Reserve System in the same manner and subject to the same provisions of law as State banks and trust companies, except that any such savings bank shall subscribe for capital stock of the Federal reserve bank in an amount equal to six-tenths of 1 per centum of its total deposit liabilities as shown by the most recent report of examination of such savings bank preceding its admission to membership. Thereafter such subscription shall be adjusted semiannually on the same percentage basis in accordance with rules and regulations prescribed by the Board of Governors of the Federal Reserve System. If any such mutual savings bank applying for membership is not permitted by the laws under which it was organized to purchase stock in a Federal reserve bank, it shall, upon admission to the system, deposit with the Federal reserve bank an amount equal to the amount which it would have been required to pay in on account of a subscription to capital stock. Thereafter such deposit shall be adjusted semiannually in the same manner as subscriptions for stock. Such deposits shall be

subject to the same conditions with respect to repayment as amounts paid upon subscriptions to capital stock by other member banks and the Federal reserve bank shall pay interest thereon at the same rate as dividends are actually paid on outstanding shares of stock of such Federal reserve bank. If the laws under which any such savings bank was organized be amended so as to authorize mutual savings banks to subscribe for Federal reserve bank stock, such savings bank shall thereupon subscribe for the appropriate amount of stock in the Federal reserve bank, and the deposit hereinbefore provided for in lieu of payment upon capital stock shall be applied upon such subscription. If the laws under which any such savings bank was organized be not amended at the next session of the legislature following the admission of such savings bank to membership so as to authorize mutual savings banks to purchase Federal reserve bank stock, or if such laws be so amended and such bank fail within six months thereafter to purchase such stock, all of its rights and privileges as a member bank shall be forfeited and its membership in the Federal Reserve System shall be terminated in the manner prescribed in this subchapter with respect to State member banks and trust companies. Each such mutual savings bank shall comply with all the provisions of law applicable to State member banks and trust companies, with the regulations of the Board of Governors of the Federal Reserve System and with the conditions of membership prescribed for such savings bank at the time of admission to membership, except as otherwise hereinbefore provided with respect to capital stock.

(Dec. 23, 1913, ch. 6, §9 (par.), as added June 16, 1933, ch. 89, §5(c), 48 Stat. 164; amended Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 9 of act Dec. 23, 1913, which is classified generally to this subchapter (§321 et seq.).

CODIFICATION

Section is comprised of the sixteenth par. of section 9 of act Dec. 23, 1913, as amended. The sixteenth par. constituted the fourteenth par. of section 9 in 1933 (48 Stat. 164), became the fifteenth par. in 1935 (49 Stat. 704), and became the sixteenth par. in 1950 (64 Stat. 458). For further details, see Codification notes set out under sections 321 and 329a of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 334. Reports from affiliates; penalty for failure to furnish

Each bank admitted to membership under this subchapter shall obtain from each of its affiliates other than member banks and furnish to the Federal reserve bank of its district and to the Board of Governors of the Federal Reserve System not less than three reports during each year. Such reports shall be in such form as the Board of Governors of the Federal Reserve System may prescribe, shall be verified by the oath or affirmation of the president or such other officer as may be designated by the board of directors of such affiliate to verify such reports, and shall disclose the information hereinafter provided for as of dates identical with those fixed by the Board of Governors of the Federal Reserve System for reports of the condition of the affiliated member bank. Each such report of an affiliate shall be transmitted as herein provided at the same time as the corresponding report of the affiliated member bank, except that the Board of Governors of the Federal Reserve System may, in its discretion, extend such time for good cause shown. Each such report shall contain such information as in the judgment of the Board of Governors of the Federal Reserve System shall be necessary to disclose fully the relations between such affiliate and such bank and to enable the board to inform itself as to the effect of such relations upon the affairs of such bank. The reports of such affiliates shall be published by the bank under the same conditions as govern its own condition reports.

Any such affiliated member bank may be required to obtain from any such affiliate such additional reports as in the opinion of its Federal reserve bank or the Board of Governors of the Federal Reserve System may be necessary in order to obtain a full and complete knowledge of the condition of the affiliated member bank. Such additional reports shall be transmitted to the Federal reserve bank and the Board of Governors of the Federal Reserve System and shall be in such form as the Board of Governors of the Federal Reserve System may prescribe.

Any such affiliated member bank which fails to obtain from any of its affiliates and furnish any report provided for by the two preceding paragraphs of this section shall be subject to a penalty of $100 for each day during which such failure continues, which, by direction of the Board of Governors of the Federal Reserve System, may be collected, by suit or otherwise, by the Federal reserve bank of the district in which such member bank is located.

(Dec. 23, 1913, ch. 6, §9 (pars.), as added June 16, 1933, ch. 89, §5(c), 48 Stat. 165; amended Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704; Pub. L. 89–485, §13(f), July 1, 1966, 80 Stat. 243.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 9 of act Dec. 23, 1913, which is classified generally to this subchapter (§321 et seq.).

CODIFICATION

Section is comprised of the seventeenth to nineteenth pars. of act Dec. 23, 1913, as amended. These pars. constituted pars. fifteen to seventeen of section 9 in 1933 (48 Stat. 165), became pars. sixteen to eighteen in 1935 (49 Stat. 704), and became pars. seventeen to nineteen in 1950 (64 Stat. 458). For further details, see Codification notes set out under sections 321 and 329a of this title.

AMENDMENTS

1966—Pub. L. 89–485 struck out last sentence of third par. stating that term ''affiliate'' shall include holding company affiliates as well as other affiliates for the purposes of such par. and preceding two pars.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 335. Dealing in investment securities; limitations and conditions

State member banks shall be subject to the same limitations and conditions with respect to the purchasing, selling, underwriting, and holding of investment securities and stock as are applicable in the case of national banks under paragraph ''Seventh'' of section 24 of this title. This section shall not apply to any interest held by a State member bank in accordance with section 24a of this title and subject to the same conditions and limitations provided in such section.

(Dec. 23, 1913, ch. 6, § 9 (par.), as added June 16, 1933, ch. 89, § 5(c), 48 Stat. 165; amended Pub. L. 106–102, title I, § 121(d)(2), Nov. 12, 1999, 113 Stat. 1381.)

CODIFICATION

Section is comprised of the twentieth par. of section 9 of act Dec. 23, 1913, as amended. The twentieth par. constituted the eighteenth par. of section 9 in 1933 (48 Stat. 16), became the nineteenth par. in 1935 (49 Stat. 704), and became the twentieth par. in 1950 (64 Stat. 458). For further details, see Codification notes set out under sections 321 and 329a of this title.

AMENDMENTS

1999—Pub. L. 106–102 inserted at end ''This section shall not apply to any interest held by a State member bank in accordance with section 24a of this title and subject to the same conditions and limitations provided in such section.''

EFFECTIVE DATE OF 1999 AMENDMENT

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

§ 336. Certificates of stock; representation of stock of other corporations

After August 23, 1935, no certificate evidencing the stock of any State member bank shall bear any statement purporting to represent the stock of any other corporation, except a member bank or a corporation engaged on June 16, 1934, in holding the bank premises of such member bank, nor shall the ownership, sale, or transfer of any certificate representing the stock of any State member bank be conditioned in any manner whatsoever upon the ownership, sale, or transfer of a certificate representing the stock of any other corporation, except a member bank or a corporation engaged on June 16, 1934 in holding the bank premises of such member bank: *Provided*, That this subchapter shall not operate to prevent the ownership, sale, or transfer of stock of any other corporation being conditioned upon the ownership, sale, or transfer of a certificate representing stock of a State member bank.

(Dec. 23, 1913, ch. 6, § 9 (par.), as added June 16, 1933, ch. 89, § 5(c), 48 Stat. 165; amended Aug. 23, 1935, ch. 614, title III, § 310(b), 49 Stat. 710.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 9 of act Dec. 23, 1913, which is classified generally to this subchapter (§ 321 et seq.).

CODIFICATION

Section is comprised of the twenty-first par. of section 9 of act Dec. 23, 1913, as amended. The twenty-first par. constituted the nineteenth par. of section 9 in 1933 (48 Stat. 165), became the twentieth par. in 1935 (49 Stat. 704), and became the twenty-first par. in 1950 (64 Stat. 458). For further details, see Codification notes set out under sections 321 and 329a of this title.

AMENDMENTS

1935—Act Aug. 23, 1935, among other changes, inserted proviso.

§ 337. Repealed. Pub. L. 89–485, § 13(g), July 1, 1966, 80 Stat. 243

Section, act Dec. 23, 1913, ch. 6, § 9 (par.), as added June 16, 1933, ch. 89, § 5(c), 48 Stat. 166, required agreements of State member banks with holding company affiliates to be subject to voting restrictions and to provide for forfeiture of membership on failure to file agreement.

This section was comprised of the twenty-second par. of section 9 of act Dec. 23, 1913, as amended. The twenty-second par. constituted the twentieth par. of section 9 when added in 1933, became the twenty-first par. in 1935 (49 Stat. 704), and became the twenty-second par. in 1950 (64 Stat. 458). For further details, see Codification notes set out under sections 321 and 329a of this title.

§ 338. Examination of affiliates; forfeiture of membership on refusal of affiliate to give information or pay expense

In connection with examinations of State member banks, examiners selected or approved by the Board of Governors of the Federal Reserve System shall make such examinations of the affairs of all affiliates of such banks as shall be necessary to disclose fully the relations between such banks and their affiliates and the effect of such relations upon the affairs of such banks. The expense of examination of affiliates of any State member bank may, in the discretion of the Board of Governors of the Federal Reserve System, be assessed against such bank and, when so assessed, shall be paid by such bank. In the event of the refusal to give any information requested in the course of the examination of any such affiliate, or in the event of the refusal to permit such examination, or in the event of the refusal to pay any expenses so assessed, the Board of Governors of the Federal Reserve System may, in its discretion, require any or all State member banks affiliated with such affiliate to surrender their stock in the Federal Reserve bank and to forfeit all rights and privileges of membership in the Federal Reserve System, as provided in this subchapter.

(Dec. 23, 1913, ch. 6, § 9 (par.), as added June 16, 1933, ch. 89, § 5(c), 48 Stat. 166; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 9 of act Dec. 23, 1913, which is classified generally to this subchapter (§ 321 et seq.).

CODIFICATION

Section is comprised of the twenty-second par. of section 9 of act Dec. 23, 1913, as amended. The twenty-sec-

ond par. constituted the twenty-first par. of section 9 in 1933 (48 Stat. 166), became the twenty-second par. in 1935 (49 Stat. 704), and became the twenty-third par. in 1950 (64 Stat. 458), and became the twenty-second par. in 1966 (80 Stat. 243). For further details, see Codification notes set out under sections 321 and 329a of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 338a. Investments to promote public welfare and community development; limitation on investments

A State member bank may make investments directly or indirectly, each of which is designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs), to the extent permissible under State law. A State member bank shall not make any such investment if the investment would expose the State member bank to unlimited liability. The Board shall limit a State member bank's investment in any 1 project and a State member bank's aggregate investments under this paragraph. The aggregate amount of investments of any State member bank under this paragraph may not exceed an amount equal to the sum of 5 percent of the State member bank's capital stock actually paid in and unimpaired and 5 percent of the State member bank's unimpaired surplus, unless the Board determines, by order, that a higher amount will pose no significant risk to the affected deposit insurance fund; and the State member bank is adequately capitalized. In no case shall the aggregate amount of investments of any State member bank under this paragraph exceed an amount equal to the sum of 15 percent of the State member bank's capital stock actually paid in and unimpaired and 15 percent of the State member bank's unimpaired surplus. The foregoing standards and limitations apply to investments under this paragraph made by a State member bank directly and by its subsidiaries.

(Dec. 23, 1913, ch. 6, § 9(23), formerly § 9 (par.), as added Pub. L. 102–485, § 6(b), Oct. 23, 1992, 106 Stat. 2774; amended Pub. L. 104–208, div. A, title II, § 2704(d)(8), Sept. 30, 1996, 110 Stat. 3009–489; Pub. L. 109–171, title II, § 2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, § 9(b), Feb. 15, 2006, 119 Stat. 3616; renumbered § 9(23) and amended Pub. L. 109–351, title III, § 305(b), Oct. 13, 2006, 120 Stat. 1971; Pub. L. 110–289, div. B, title V, § 2503(b), July 30, 2008, 122 Stat. 2857.)

CODIFICATION

Section is comprised of par. (23) (the twenty-third par.) of section 9 of act Dec. 23, 1913, as amended. For further details, see Codification note set out under section 321 of this title.

AMENDMENTS

2008—Pub. L. 110–289, which directed substitution of ''is designed primarily to promote the public welfare, including the welfare of'' for ''promotes the public welfare by benefitting primarily'' in first sentence, was executed by making the substitution for ''promotes the public welfare by benefiting primarily'' to reflect the probable intent of Congress.

2006—Pub. L. 109–351 amended section generally. Prior to amendment, section read as follows: ''State member banks may make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs), to the extent permissible under State law, and subject to such restrictions and requirements as the Board of Governors of the Federal Reserve System may prescribe by regulation or order. A bank shall not make any such investment if the investment would expose the bank to unlimited liability. The Board shall limit a bank's investments in any 1 project and bank's aggregate investments under this paragraph. A bank's aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the bank's capital stock actually paid in and unimpaired and 5 percent of the bank's unimpaired surplus fund, unless the Board determines by order that the higher amount will pose no significant risk to the Deposit Insurance Fund, and the bank is adequately capitalized. In no case shall a bank's aggregate investments under this paragraph exceed an amount equal to the sum of 10 percent of the bank's capital stock actually paid in and unimpaired and 10 percent of the bank's unimpaired surplus fund.''

Pub. L. 109–173, in fourth sentence, substituted ''Deposit Insurance Fund'' for ''affected deposit insurance fund''.

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(8). See 1996 Amendment note below.

1996—Pub. L. 104—208, § 2704(d)(8), which directed the amendment of the fourth sentence by substituting ''Deposit Insurance Fund'' for ''affected deposit insurance fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

§ 339. Participation by State member banks in lotteries and related activities

(a) Prohibited activities

A State member bank may not—

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery; [1]

(4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

(b) Use of banking premises prohibited

A State member bank may not permit—

(1) the use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a) of this section, or

[1] So in original. The word ''or'' probably should appear.

(2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank under subsection (a) of this section.

(c) Definitions

As used in this section—

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

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

(A) a random selection;

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

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

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

(d) Lawful banking services connected with operation of lottery

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

(e) Regulations; enforcement

The Board of Governors of the Federal Reserve System shall issue such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

(Dec. 13, 1913, ch. 6, § 9A, as added Pub. L. 90–203, § 2, Dec. 15, 1967, 81 Stat. 609.)

CODIFICATION

Section was enacted as section 9A of act Dec. 13, 1913, and not as part of section 9 of such act which comprises this subchapter.

EFFECTIVE DATE

Section effective Apr. 1, 1968, see section 6 of Pub. L. 90–203, set out as a note under section 25a of this title.

§ 339a. Resolution of clearing banks

(a) Conservatorship or receivership

(1) Appointment

The Board may appoint a conservator or receiver to take possession and control of any uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 4422 of this title to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank.

(2) Powers

The conservator or receiver for an uninsured State member bank referred to in paragraph (1) shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

(b) Board authority

The Board shall have the same authority with respect to any conservator or receiver appointed under subsection (a) of this section, and the uninsured State member bank for which the conservator or receiver has been appointed, as the Comptroller of the Currency has with respect to a conservator or receiver for a national bank and the national bank for which the conservator or receiver has been appointed.

(c) Bankruptcy proceedings

The Board (in the case of an uninsured State member bank which operates, or operates as, such a multilateral clearing organization) may direct a conservator or receiver appointed for the bank to file a petition pursuant to title 11, in which case, title 11 shall apply to the bank in lieu of otherwise applicable Federal or State insolvency law.

(Dec. 13, 1913, ch. 6, § 9B, as added Pub. L. 106–554, § 1(a)(5) [title I, § 112(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–392.)

CODIFICATION

Section was enacted as section 9B of act Dec. 13, 1913, and not as part of section 9 of such act which comprises this subchapter.

SUBCHAPTER IX—POWERS AND DUTIES OF FEDERAL RESERVE BANKS

§ 341. General enumeration of powers

Upon the filing of the organization certificate with the Comptroller of the Currency a Federal reserve bank shall become a body corporate and as such, and in the name designated in such organization certificate, shall have power—

First. To adopt and use a corporate seal.

Second. To have succession after February 25, 1927, until dissolved by Act of Congress or until forfeiture of franchise for violation of law.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law or equity.

Fifth. To appoint by its board of directors a president, vice presidents, and such officers and employees as are not otherwise provided for in this chapter, to define their duties, require bonds for them and fix the penalty thereof, and to dismiss at pleasure such officers or employees. The president shall be the chief executive officer of the bank and shall be appointed by the Class B and Class C directors of the bank, with the approval of the Board of Governors of the Federal Reserve System, for a term of 5 years; and all other executive officers and all employees of the bank shall be directly responsible to the president. The first vice president of the bank shall be appointed in the same manner and for the same term as the president, and shall, in the absence or disability of the president or during a vacancy in the office of president, serve as chief executive officer of the bank. Whenever a

vacancy shall occur in the office of the president or the first vice president, it shall be filled in the manner provided for original appointments; and the person so appointed shall hold office until the expiration of the term of his predecessor.

Sixth. To prescribe by its board of directors, bylaws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

Seventh. To exercise by its board of directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this chapter and such incidental powers as shall be necessary to carry on the business of banking within the limitations prescribed by this chapter.

Eighth. Upon deposit with the Treasurer of the United States of any bonds of the United States in the manner provided by existing law relating to national banks, to receive from the Secretary of the Treasury circulating notes in blank, registered and countersigned as provided by law, equal in amount to the par value of the bonds so deposited, such notes to be issued under the same conditions and provisions of law as relate to the issue of circulating notes of national banks secured by bonds of the United States bearing the circulating privilege, except that the issue of such notes shall not be limited to the capital stock of such Federal reserve bank.

But no Federal reserve bank shall transact any business except such as is incidental and necessarily preliminary to its organization until it has been authorized by the Comptroller of the Currency to commence business under the provisions of this chapter.

(Dec. 23, 1913, ch. 6, § 4 (pars.), 38 Stat. 254; Feb. 25, 1927, ch. 191, § 18, 44 Stat. 1234; Aug. 23, 1935, ch. 614, title II, § 201, 49 Stat. 703; Pub. L. 103–325, title VI, § 602(g)(1), Sept. 23, 1994, 108 Stat. 2293; Pub. L. 111–203, title XI, § 1107, July 21, 2010, 124 Stat. 2126.)

REFERENCES IN TEXT

This chapter, referred to in the Fifth, Seventh, and closing pars., was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of pars. 4 and 5 of section 4 of act Dec. 23, 1913. For classification to this title of other pars. of section 4, see Codification note set out under section 301 of this title.

AMENDMENTS

2010—Pub. L. 111–203 amended fifth power by substituting ''The president shall be the chief executive officer of the bank and shall be appointed by the Class B and Class C directors of the bank, with the approval of the Board of Governors of the Federal Reserve System, for a term of 5 years; and all other executive officers and all employees of the bank shall be directly responsible to the president.'' for ''The president shall be the chief executive officer of the bank and shall be appointed by the board of directors, with the approval of the Board of Governors of the Federal Reserve System, for a term of five years; and all other executive officers and all employees of the bank shall be directly responsible to him.''

1994—Pub. L. 103–325 amended eighth power by substituting ''Secretary of the Treasury'' for ''Comptroller of the Currency''.

1935—Act Aug. 23, 1935, amended fifth power.

1927—Act Feb. 25, 1927, amended second power.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 1935 AMENDMENT

Section 201 of act Aug. 23, 1935, provided that the amendment made by that section is effective Mar. 1, 1936.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of the Treasury, see note under section 55 of this title.

§ 342. Deposits; exchange and collection; member and nonmember banks or other depository institutions; charges

Any Federal reserve bank may receive from any of its member banks, or other depository institutions, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation or other items, and also, for collection, maturing notes and bills; or, solely for purposes of exchange or of collection may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district or other items, and maturing notes and bills payable within its district; or, solely for the purposes of exchange or of collection, may receive from any nonmember bank or trust company or other depository institution deposits of current funds in lawful money, national-bank notes, Federal reserve notes, checks and drafts payable upon presentation or other items, or maturing notes and bills: *Provided*, Such nonmember bank or trust company or other depository institution maintains with the Federal Reserve bank of its district a balance in such amount as the Board determines taking into account items in transit, services provided by the Federal Reserve bank, and other factors as the Board may deem appropriate: *Provided further*, That nothing in this or any other section of this chapter shall be construed as prohibiting a member or nonmember bank or other depository institution from making reasonable charges, to be determined and regulated by the Board of Governors of the Federal Reserve System, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks.

(Dec. 23, 1913, ch. 6, § 13 (par.), 38 Stat. 263; Sept. 7, 1916, ch. 461, 39 Stat. 752; June 21, 1917, ch. 32, § 4, 40 Stat. 235; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 96–221, title I, § 105(a), Mar. 31, 1980, 94 Stat. 139.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of the first par. of section 13 of act Dec. 23, 1913. The second par., par. (3), and the fourth to eighth and tenth to fourteenth pars. of section 13 are classified to sections 92, 343 to 347, 347c, 347d, 361, 372, and 373 of this title.

For decision by U.S. Supreme Court that, despite faulty placement of quotation marks, act Sept. 7, 1916, placed within section 13 of act Dec. 23, 1913, each of the ten pars. located between the phrases that introduced the amendments to sections 13 and 14 of said act, that only the seventh par. (rather than seventh to tenth pars.) comprised the amended R.S. § 5202, and that section 20 of act Apr. 5, 1918 (40 Stat. 512) (which amended R.S. § 5202 comprised of a single par.), did not amend section 13 of said act so as to repeal the eighth to tenth pars., see *United States National Bank of Oregon* v. *Independent Insurance Agents of America, Inc., et al.*, 508 U.S. 439, 113 S.Ct. 2173, 124 L.Ed. 2d 402 (1993). As the result of subsequent amendments, such seventh to tenth pars. of section 13 now constitute the ninth to twelfth pars. The ninth par. amended former section 82 of this title, and the tenth to twelfth pars. are classified to sections 361, 92, and 373, respectively, of this title.

AMENDMENTS

1980—Pub. L. 96–221 inserted references to other depository institutions and provisions respecting applicability to other items presented for payment, and substituted provisions setting forth items to constitute required balance to include items in transit, Federal Reserve bank services, and other appropriate factors, for provisions requiring the balance to be sufficient to offset items in transit held for the account of the bank.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on first day of sixth month which begins after Mar. 31, 1980, see section 108 of Pub. L. 96–221, set out as a note under section 248 of this title.

§ 343. Discount of obligations arising out of actual commercial transactions

Upon the indorsement of any of its member banks, which shall be deemed a waiver of demand, notice and protest by such bank as to its own indorsement exclusively, any Federal reserve bank may discount notes, drafts, and bills of exchange arising out of actual commercial transactions; that is, notes, drafts, and bills of exchange issued or drawn for agricultural, industrial, or commercial purposes, or the proceeds of which have been used, or are to be used, for such purposes, the Board of Governors of the Federal Reserve System to have the right to determine or define the character of the paper thus eligible for discount, within the meaning of this chapter. Nothing in this chapter contained shall be construed to prohibit such notes, drafts, and bills of exchange, secured by staple agricultural products, or other goods, wares, or merchandise from being eligible for such discount, and the notes, drafts, and bills of exchange of factors issued as such making advances exclusively to producers of staple agricultural products in their raw state shall be eligible for such discount; but such definition shall not include notes, drafts, or bills covering merely investments or issued or drawn for the purpose of carrying or trading in stocks, bonds, or other investment securities, except bonds and notes of the Government of the United States. Notes, drafts, and bills admitted to discount under the terms of this paragraph must have a maturity at the time of discount of not more than ninety days, exclusive of grace.

(3)(A)[1] In unusual and exigent circumstances, the Board of Governors of the Federal Reserve System, by the affirmative vote of not less than five members, may authorize any Federal reserve bank, during such periods as the said board may determine, at rates established in accordance with the provisions of section 357 of this title, to discount for any participant in any program or facility with broad-based eligibility, notes, drafts, and bills of exchange when such notes, drafts, and bills of exchange are indorsed or otherwise secured to the satisfaction of the Federal reserve bank: *Provided*, That before discounting any such note, draft, or bill of exchange, the Federal reserve bank shall obtain evidence that such participant in any program or facility with broad-based eligibility is unable to secure adequate credit accommodations from other banking institutions. All such discounts for any participant in any program or facility with broad-based eligibility shall be subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe.

(B)(i) As soon as is practicable after July 21, 2010, the Board shall establish, by regulation, in consultation with the Secretary of the Treasury, the policies and procedures governing emergency lending under this paragraph. Such policies and procedures shall be designed to ensure that any emergency lending program or facility is for the purpose of providing liquidity to the financial system, and not to aid a failing financial company, and that the security for emergency loans is sufficient to protect taxpayers from losses and that any such program is terminated in a timely and orderly fashion. The policies and procedures established by the Board shall require that a Federal reserve bank assign, consistent with sound risk management practices and to ensure protection for the taxpayer, a lendable value to all collateral for a loan executed by a Federal reserve bank under this paragraph in determining whether the loan is secured satisfactorily for purposes of this paragraph.

(ii) The Board shall establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent. Such procedures may include a certification from the chief executive officer (or other authorized officer) of the borrower, at the time the borrower initially borrows under the program or facility (with a duty by the borrower to update the certification if the information in the certification materially changes), that the borrower is not insol-

[1] So in original.

vent. A borrower shall be considered insolvent for purposes of this subparagraph, if the borrower is in bankruptcy, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 5381 et seq.], or any other Federal or State insolvency proceeding.

(iii) A program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any other Federal or State insolvency proceeding, shall not be considered a program or facility with broad-based eligibility.

(iv) The Board may not establish any program or facility under this paragraph without the prior approval of the Secretary of the Treasury.

(C) The Board shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(i) not later than 7 days after the Board authorizes any loan or other financial assistance under this paragraph, a report that includes—

(I) the justification for the exercise of authority to provide such assistance;

(II) the identity of the recipients of such assistance;

(III) the date and amount of the assistance, and form in which the assistance was provided; and

(IV) the material terms of the assistance, including—

(aa) duration;

(bb) collateral pledged and the value thereof;

(cc) all interest, fees, and other revenue or items of value to be received in exchange for the assistance;

(dd) any requirements imposed on the recipient with respect to employee compensation, distribution of dividends, or any other corporate decision in exchange for the assistance; and

(ee) the expected costs to the taxpayers of such assistance; and

(ii) once every 30 days, with respect to any outstanding loan or other financial assistance under this paragraph, written updates on—

(I) the value of collateral;

(II) the amount of interest, fees, and other revenue or items of value received in exchange for the assistance; and

(III) the expected or final cost to the taxpayers of such assistance.

(D) The information required to be submitted to Congress under subparagraph (C) related to—

(i) the identity of the participants in an emergency lending program or facility commenced under this paragraph;

(ii) the amounts borrowed by each participant in any such program or facility;

(iii) identifying details concerning the assets or collateral held by, under, or in connection with such a program or facility,

shall be kept confidential, upon the written request of the Chairman of the Board, in which case such information shall be made available only to the Chairpersons or Ranking Members of the Committees described in subparagraph (C).

(E) If an entity to which a Federal reserve bank has provided a loan under this paragraph becomes a covered financial company, as defined in section 201 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 5381], at any time while such loan is outstanding, and the Federal reserve bank incurs a realized net loss on the loan, then the Federal reserve bank shall have a claim equal to the amount of the net realized loss against the covered entity, with the same priority as an obligation to the Secretary of the Treasury under section 210(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 5390(b)].

(Dec. 23, 1913, ch. 6, §13 (pars.), 38 Stat. 263; Sept. 7, 1916, ch. 461, 39 Stat. 752; Mar. 4, 1923, ch. 252, title IV, §402, 42 Stat. 1478; July 21, 1932, ch. 520, §210, 47 Stat. 715; Aug. 23, 1935, ch. 614, title II, §203(a), title III, §322, 49 Stat. 704, 714; Pub. L. 102–242, title IV, §473, Dec. 19, 1991, 105 Stat. 2386; Pub. L. 111–203, title XI, §1101(a), July 21, 2010, 124 Stat. 2113.)

REFERENCES IN TEXT

This chapter, referred to in the first par., was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in par. (3)(B)(ii), (iii), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376. Title II of the Act is classified principally to subchapter II (§5381 et seq.) of chapter 53 of this title. For complete classification of the Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section is comprised of the second par. and par. (3) of section 13 of act Dec. 23, 1913. Act Mar. 4, 1923, split the second par. of section 13, as amended in 1916 (39 Stat. 752), into two pars., the first of which constitutes the first par. of this section and the second of which constitutes section 344 of this title. Act July 21, 1932, added the second par. of this section which was designated to follow the second par. of section 13. Pub. L. 111–203, §1101(a)(1), designated the second par. as par. (3). For classification to this title of other pars. of section 13, see Codification note set out under section 342 of this title.

AMENDMENTS

2010—Pub. L. 111–203, §1101(a)(1)–(4), designated second par. as par. (3)(A), substituted ''any participant in any program or facility with broad-based eligibility'' for ''any individual, partnership, or corporation'', ''bill of exchange,'' for ''bill of exchange for an individual or a partnership or corporation'', and ''such participant in any program or facility with broad-based eligibility'' for ''such individual, partnership, or corporation''.

Par. (3)(A). Pub. L. 111–203, §1101(a)(5), which directed substitution of ''for any participant in any program or facility with broad-based eligibility'' for ''for individuals, partnerships, corporations'', was executed by making the substitution for ''for individuals, partnerships, or corporations'', to reflect the probable intent of Congress.

Par. (3)(B) to (E). Pub. L. 111–203, §1101(a)(6), added subpars. (B) to (E).

1991—Pub. L. 102–242 struck out ''of the kinds and maturities made eligible for discount for member banks

under other provisions of this chapter'' after first reference to ''bills of exchange'' in second par.

1935—Act Aug. 23, 1935, § 322, substituted words immediately preceding proviso for ''indorsed and otherwise secured to the satisfaction of the Federal reserve bank.''

1932—Act July 21, 1932, added second par.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

REFERENCES TO THIRD UNDESIGNATED PARAGRAPH DEEMED TO BE REFERENCES TO PARAGRAPH (3)

Pub. L. 111–203, title XI, § 1101(c), July 21, 2010, 124 Stat. 2115, provided that: ''On and after the date of enactment of this Act [July 21, 2010], any reference in any provision of Federal law to the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343) shall be deemed to be a reference to section 13(3) of the Federal Reserve Act [12 U.S.C. 343(3)], as so designated by this section.''

§ 344. Discount or purchase of bills to finance agricultural shipments

Upon the indorsement of any of its member banks, which shall be deemed a waiver of demand, notice, and protest by such bank as to its own indorsement exclusively, and subject to regulations and limitations to be prescribed by the Board of Governors of the Federal Reserve System, any Federal reserve bank may discount or purchase bills of exchange payable at sight or on demand which grow out of the domestic shipment or the exportation of nonperishable, readily marketable agricultural and other staples and are secured by bills of lading or other shipping documents conveying or securing title to such staples: *Provided*, That all such bills of exchange shall be forwarded promptly for collection, and demand for payment shall be made with reasonable promptness after the arrival of such staples at their destination: *Provided further*, That no such bill shall in any event be held by or for the account of a Federal reserve bank for a period in excess of ninety days. In discounting such bills Federal reserve banks may compute the interest to be deducted on the basis of the estimated life of each bill and adjust the discount after payment of such bills to conform to the actual life thereof.

(Dec. 23, 1913, ch. 6, § 13 (par.), as added Mar. 4, 1923, ch. 252, title IV, § 402, 42 Stat. 1479; amended May 29, 1928, ch. 884, 45 Stat. 975; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

CODIFICATION

Section is comprised of the fourth par. of section 13 of act Dec. 23, 1913, as amended. The act of Mar. 4, 1923, split the second par. of section 13, as amended in 1916 (39 Stat. 752), into two pars., the first of which constitutes the first par. of section 343 of this title and the second as this section, making it the third par. of section 13. However, the third par. became the fourth par. when act July 21, 1932, added a new par. to follow the second par. For further details, see Codification note set out under section 343 of this title. For classification to this title of other pars. of section 13, see Codification note set out under section 342 of this title.

AMENDMENTS

1928—Act May 29, 1928, amended part of first sentence preceding proviso.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 345. Rediscount of notes, drafts, and bills for member banks; limitation of amount

The aggregate of notes, drafts, and bills upon which any person, copartnership, association, or corporation is liable as maker, acceptor, indorser, drawer, or guarantor, rediscounted for any member bank, shall at no time exceed the amount for which such person, copartnership, association, or corporation may lawfully become liable to a national banking association under the terms of section 84 of this title: *Provided, however*, That nothing in this section shall be construed to change the character or class of paper now eligible for rediscount by Federal reserve banks.

(Dec. 23, 1913, ch. 6, § 13 (par.), 38 Stat. 264; Mar. 3, 1915, ch. 93, 38 Stat. 958; Sept. 7, 1916, ch. 461, 39 Stat. 752; Apr. 12, 1930, ch. 140, 46 Stat. 162.)

CODIFICATION

Section is comprised of the fifth par. of section 13 of act Dec. 23, 1913, as amended. The fifth par. constituted the third par. of section 13 in 1916 (39 Stat. 752), became the fourth par. in 1923 (42 Stat. 1478), and became the fifth par. in 1932 (47 Stat. 715). For further details, see Codification notes set out under sections 343 and 344 of this title. For classification to this title of other pars. of section 13, see Codification note set out under section 342 of this title.

AMENDMENTS

1930—Act Apr. 12, 1930, among other changes, inserted proviso.

§ 346. Discount of acceptances

Any Federal reserve bank may discount acceptances of the kinds hereinafter described, which have a maturity at the time of discount of not more than ninety days' sight, exclusive of days of grace, and which are indorsed by at least one member bank: *Provided*, That such acceptances if drawn for an agricultural purpose and secured at the time of acceptance by warehouse receipts or other such documents conveying or securing title covering readily marketable staples may be discounted with a maturity at the time of discount of not more than six months' sight exclusive of days of grace.

(Dec. 23, 1913, ch. 6, § 13 (par.), 38 Stat. 264; Mar. 3, 1915, ch. 93, 38 Stat. 958; Sept. 7, 1916, ch. 461, 39 Stat. 752; Mar. 4, 1923, ch. 252, title IV, § 403, 42 Stat. 1479.)

REFERENCES IN TEXT

Words ''hereinafter described'' are from the sixth par. of section 13 of the Federal Reserve Act, see Codification note below. Reference could be to acceptances described in the remaining paragraphs of section 13, which are contained in sections 82, 347, 347c, and 372 of this title, or to acceptances described in subsequent

sections of the Federal Reserve Act, sections 14 et seq. of act Dec. 23, 1913.

CODIFICATION

Section is comprised of the sixth par. of section 13 of act Dec. 23, 1913, as amended. The sixth par. constituted the fourth par. of section 13 in 1916 (39 Stat. 752), became the fifth par. in 1923 (42 Stat. 1478), and became the sixth par. in 1932 (47 Stat. 715). For further details, see Codification notes under sections 343 and 344 of this title. For classification to this title of other pars. of section 13, see Codification note set out under section 342 of this title.

§ 347. Advances to member banks on their notes

Any Federal reserve bank may make advances for periods not exceeding fifteen days to its member banks on their promissory notes secured by the deposit or pledge of bonds, notes, certificates of indebtedness, or Treasury bills of the United States, or by the deposit or pledge of debentures or other such obligations of Federal intermediate credit banks which are eligible for purchase by Federal reserve banks under section 350 of this title, or by the deposit or pledge of bonds issued under the provisions of subsection (c) of section 1463[1] of this title; and any Federal reserve bank may make advances for periods not exceeding ninety days to its member banks on their promissory notes secured by such notes, drafts, bills of exchange, or bankers' acceptances as are eligible for rediscount or for purchase by Federal reserve banks under the provisions of this chapter, or secured by such obligations as are eligible for purchase under section 355 of this title. All such advances shall be made at rates to be established by such Federal reserve banks, such rates to be subject to the review and determination of the Board of Governors of the Federal Reserve System. If any member bank to which any such advance has been made shall, during the life or continuance of such advance, and despite an official warning of the reserve bank of the district or of the Board of Governors of the Federal Reserve System to the contrary, increase its outstanding loans secured by collateral in the form of stocks, bonds, debentures, or other such obligations, or loans made to members of any organized stock exchange, investment house, or dealer in securities, upon any obligation, note, or bill, secured or unsecured, for the purpose of purchasing and/or carrying stocks, bonds, or other investment securities (except obligations of the United States) such advance shall be deemed immediately due and payable, and such member bank shall be ineligible as a borrower at the reserve bank of the district under the provisions of this section for such period as the Board of Governors of the Federal Reserve System shall determine: *Provided*, That no temporary carrying or clearance loans made solely for the purpose of facilitating the purchase or delivery of securities offered for public subscription shall be included in the loans referred to in this section.

(Dec. 23, 1913, ch. 6, §13 (par.), as added Sept. 7, 1916, ch. 461, 39 Stat. 753; amended May 19, 1932, ch. 191, §6, 47 Stat. 160; May 12, 1933, ch. 25, title II, §28, 48 Stat. 46; June 16, 1933, ch. 89, §9, 48 Stat. 180; Jan. 31, 1934, ch. 7, §16(a), 48 Stat. 348; Apr. 27, 1934, ch. 168, §7(a), 48 Stat. 646; Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704; Pub. L. 87–353, §3(c), Oct. 4, 1961, 75 Stat. 773; Pub. L. 90–505, §3(a), Sept. 21, 1968, 82 Stat. 856.)

REFERENCES IN TEXT

Section 1463 of this title, referred to in text, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 648.

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of the eighth par. of section 13 of act Dec. 23, 1913, as amended. The eighth par. constituted the sixth par. of section 13 in 1916 (39 Stat. 752, 753), became the seventh par. in 1923 (42 Stat. 1478), and became the eighth par. in 1932 (47 Stat. 715). For further details, see Codification notes under sections 343 and 344 of this title. For classification to this title of other pars. of section 13, see Codification note set out under section 342 of this title.

AMENDMENTS

1968—Pub. L. 90–505 added promissory notes of members banks secured by such obligations as are eligible for purchase under section 355 of this title to the list of types of promissory notes of member banks on which the Federal reserve bank may make advances for periods not exceeding 90 days.

1961—Pub. L. 87–353 struck out provision authorizing any Federal reserve bank to make advances to its member banks on their promissory notes secured by the deposit or pledge of Federal Farm Mortgage Corporation bonds issued under the Federal Farm Mortgage Corporation Act.

1934—Act Apr. 27, 1934, inserted first phrase preceding the semicolon in first sentence.

Act Jan. 31, 1934, inserted second phrase preceding the semicolon in first sentence.

1933—Act June 16, 1933, amended section generally.

Act May 12, 1933, added Federal farm-loan bonds as security for advances.

1932—Act May 19, 1932, inserted clause in first sentence which begins ''or by the deposit or pledge of debentures''.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 347a. Advances to member bank groups; inadequate amounts of eligible and acceptable assets; liability of individual banks in group; distribution of loans among banks of group; rate of interest; notes accepted for advances as collateral security for Federal reserve notes; foreign obligations as security for advances

Upon receiving the consent of not less than five members of the Board of Governors of the Federal Reserve System, any Federal reserve bank may make advances, in such amount as the board of directors of such Federal reserve bank may determine, to groups of five or more member banks within its district, a majority of them independently owned and controlled, upon their time or demand promissory notes, provided the bank or banks which receive the proceeds of such advances as herein provided have

[1] See References in Text note below.

no adequate amounts of eligible and acceptable assets available to enable such bank or banks to obtain sufficient credit accommodations from the Federal reserve bank through rediscounts or advances other than as provided in section 347b[1] of this title. The liability of the individual banks in each group must be limited to such proportion of the total amount advanced to such group as the deposit liability of the respective banks bears to the aggregate deposit liability of all banks in such group, but such advances may be made to a lesser number of such member banks if the aggregate amount of their deposit liability constitutes at least 10 per centum of the entire deposit liability of the member banks within such district. Such banks shall be authorized to distribute the proceeds of such loans to such of their number and in such amount as they may agree upon, but before so doing they shall require such recipient banks to deposit with a suitable trustee, representing the entire group, their individual notes made in favor of the group protected by such collateral security as may be agreed upon. Any Federal reserve bank making such advance shall charge interest or discount thereon at a rate not less than 1 per centum above its discount rate in effect at the time of making such advance. No such note upon which advances are made by a Federal reserve bank under this section shall be eligible under section 412 of this title as collateral security for Federal reserve notes.

No obligations of any foreign government, individual, partnership, association, or corporation organized under the laws thereof shall be eligible as collateral security for advances under this section.

Member banks are authorized to obligate themselves in accordance with the provisions of this section.

(Dec. 23, 1913, ch. 6, §10A, formerly §10(a), as added Feb. 27, 1932, ch. 58, §1, 47 Stat. 56; amended Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704; renumbered §10A, Pub. L. 102–242, title I, §142(a)(1), Dec. 19, 1991, 105 Stat. 2279.)

REFERENCES IN TEXT

Section 347b of this title, referred to in first par., was in the original a reference to section 10(b), meaning section 10(b) of the Federal Reserve Act. Section 10(b) of that Act was renumbered section 10B by Pub. L. 102–242, title I, §142(a)(2), Dec. 19, 1991, 105 Stat. 2279, without a corresponding amendment to this section.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 347b. Advances to individual member banks on time or demand notes; maturities; time notes secured by mortgage loans covering one-to-four family residences

(a) In general

Any Federal Reserve bank, under rules and regulations prescribed by the Board of Governors of the Federal Reserve System, may make advances to any member bank on its time or demand notes having maturities of not more than four months and which are secured to the satisfaction of such Federal Reserve bank.

Notwithstanding the foregoing, any Federal Reserve bank, under rules and regulations prescribed by the Board of Governors of the Federal Reserve System, may make advances to any member bank on its time notes having such maturities as the Board may prescribe and which are secured by mortgage loans covering a one-to-four family residence. Such advances shall bear interest at a rate equal to the lowest discount rate in effect at such Federal Reserve bank on the date of such note.

(b) Limitations on advances

(1) Limitation on extended periods

Except as provided in paragraph (2), no advances to any undercapitalized depository institution by any Federal Reserve bank under this section may be outstanding for more than 60 days in any 120-day period.

(2) Viability exception

(A) In general

If—

(i) the head of the appropriate Federal banking agency certifies in advance in writing to the Federal Reserve bank that any depository institution is viable; or

(ii) the Board conducts an examination of any depository institution and the Chairman of the Board certifies in writing to the Federal Reserve bank that the institution is viable,

the limitation contained in paragraph (1) shall not apply during the 60-day period beginning on the date such certification is received.

(B) Extensions of period

The 60-day period may be extended for additional 60-day periods upon receipt by the Federal Reserve bank of additional written certifications under subparagraph (A) with respect to each such additional period.

(C) Authority to issue a certificate of viability may not be delegated

The authority of the head of any agency to issue a written certification of viability under this paragraph may not be delegated to any other person.

(D) Extended advances subject to paragraph (3)

Notwithstanding paragraph (1), an undercapitalized depository institution which does not have a certificate of viability in effect under this paragraph may have advances outstanding for more than 60 days in any 120-day period if the Board elects to treat—

(i) such institution as critically undercapitalized under paragraph (3); and

(ii) any such advance as an advance described in subparagraph (A)(i) of paragraph (3).

(3) Advances to critically undercapitalized depository institutions

(A) Liability for increased loss

Notwithstanding any other provision of this section, if—

[1] See References in Text note below.

(i) in the case of any critically undercapitalized depository institution—

(I) any advance under this section to such institution is outstanding without payment having been demanded as of the end of the 5-day period beginning on the date the institution becomes a critically undercapitalized depository institution; or

(II) any new advance is made to such institution under this section after the end of such period; and

(ii) after the end of that 5-day period, the Deposit Insurance Fund of the Federal Deposit Insurance Corporation incurs a loss exceeding the loss that the Corporation would have incurred if it had liquidated that institution as of the end of that period,

the Board shall, subject to the limitations in subparagraph (B), be liable to the Federal Deposit Insurance Corporation for the excess loss, without regard to the terms of the advance or any collateral pledged to secure the advance.

(B) Limitation on excess loss

The liability of the Board under subparagraph (A) shall not exceed the lesser of the following:

(i) The amount of the loss the Board or any Federal Reserve bank would have incurred on the increases in the amount of advances made after the 5-day period referred to in subparagraph (A) if those increased advances had been unsecured.

(ii) The interest received on the increases in the amount of advances made after the 5-day period referred to in subparagraph (A).

(C) Federal Reserve to pay obligation

The Board shall pay the Federal Deposit Insurance Corporation the amount of any liability of the Board under subparagraph (A).

(D) Report

The Board shall report to the Congress on any excess loss liability it incurs under subparagraph (A), as limited by subparagraph (B)(i), and the reasons therefore, not later than 6 months after incurring the liability.

(4) No obligation to make advances

A Federal Reserve bank shall have no obligation to make, increase, renew, or extend any advance or discount under this chapter to any depository institution.

(5) Definitions

(A) Appropriate Federal banking agency

The term ''appropriate Federal banking agency'' has the same meaning as in section 1813 of this title.

(B) Critically undercapitalized

The term ''critically undercapitalized'' has the same meaning as in section 1831*o* of this title.

(C) Depository institution

The term ''depository institution'' has the same meaning as in section 1813 of this title.

(D) Undercapitalized depository institution

The term ''undercapitalized depository institution'' means any depository institution which—

(i) is undercapitalized, as defined in section 1831*o* of this title; or

(ii) has a composite CAMEL rating of 5 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution.

(E) Viable

A depository institution is ''viable'' if the Board or the appropriate Federal banking agency determines, giving due regard to the economic conditions and circumstances in the market in which the institution operates, that the institution—

(i) is not critically undercapitalized;

(ii) is not expected to become critically undercapitalized; and

(iii) is not expected to be placed in conservatorship or receivership.

(Dec. 23, 1913, ch. 6, §10B, formerly §10(b), as added Feb. 27, 1932, ch. 58, §2, 47 Stat. 56; amended Feb. 3, 1933, ch. 34, 47 Stat. 794; Mar. 9, 1933, ch. 1, title IV, §402, 48 Stat. 7; Aug. 23, 1935, ch. 614, title II, §204, 49 Stat. 705; Pub. L. 93–449, §5, Oct. 18, 1974, 88 Stat. 1368; Pub. L. 96–221, title I, §106, Mar. 31, 1980, 94 Stat. 140; renumbered §10B and amended Pub. L. 102–242, title I, §142(a)(2), (b), Dec. 19, 1991, 105 Stat. 2279; Pub. L. 104–208, div. A, title II, §2704(d)(9), Sept. 30, 1996, 110 Stat. 3009–489; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §9(c), Feb. 15, 2006, 119 Stat. 3616.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(4), was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

AMENDMENTS

2006—Subsec. (b)(3)(A)(ii). Pub. L. 109–173 substituted ''the Deposit Insurance Fund of'' for ''any deposit insurance fund in''.

Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(9). See 1996 Amendment note below.

1996—Subsec. (b)(3)(A)(ii). Pub. L. 104—208, §2704(d)(9), which directed the amendment of cl. (ii) by substituting ''the Deposit Insurance Fund of'' for ''any deposit insurance fund in'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1991—Pub. L. 102–242, §142(b), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1980—Pub. L. 96–221 struck out second sentence of first par. relating to interest on notes under this section.

1974—Pub. L. 93–449 inserted provisions relating to advances on time notes secured by mortgage loans covering one-to-four family residences.

1935—Act Aug. 23, 1935, struck out provision prescribing termination date of section.

1933—Act Mar. 9, 1933, struck out proviso which extended applicability to member banks regardless of their capital, and empowered President to extend termination date one year beyond March 3, 1934.

Act Feb. 3, 1933, extended termination date from ''March 3, 1933'' to ''March 3, 1934''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 142(d) of Pub. L. 102–242 provided that: ''The amendment made by subsection (b) [amending this section] shall take effect at the end of the 2-year period beginning on the date of enactment of this Act [Dec. 19, 1991].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on first day of sixth month which begins after Mar. 31, 1980, see section 108 of Pub. L. 96–221, set out as a note under section 248 of this title.

EXPIRATION

Proclamation No. 2076, Feb. 16, 1934, 48 Stat. 1734, extended section to Mar. 3, 1935. See 1935 amendment note above.

§ 347c. Advances to individuals, partnerships, and corporations; security; interest rate

Subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe, any Federal reserve bank may make advances to any individual, partnership, or corporation on the promissory notes of such individual, partnership, or corporation secured by direct obligations of the United States or by any obligation which is a direct obligation of, or fully guaranteed as to principal and interest by any agency of the United States. Such advances shall be made for periods not exceeding 90 days and shall bear interest at rates fixed from time to time by the Federal reserve bank, subject to the review and determination of the Board of Governors of the Federal Reserve System.

(Dec. 23, 1913, ch. 6, § 13 (par.), as added Mar. 9, 1933, ch. 1, title IV, § 403, 48 Stat. 7; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 90–505, § 3(b), Sept. 21, 1968, 82 Stat. 856.)

CODIFICATION

Section is comprised of the thirteenth par. of section 13 of act Dec. 23, 1913, as added by act Mar. 9, 1933. For additional details concerning the enactment and numbering of the first twelve and fourteenth pars. of section 13, see Codification notes set out under sections 92, 342 to 347, 347d, 361, 372, and 373 of this title.

AMENDMENTS

1968—Pub. L. 90–505 added promissory notes secured by any obligation which is a direct obligation of, or fully guaranteed as to principal and interest by, any agency of the United States to the list of types of promissory notes on which federal reserve banks may make advances to individuals, partnerships, and corporations.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 347d. Transactions between Federal Reserve banks and branch or agency of foreign bank; matters considered

Subject to such restrictions, limitations, and regulations as may be imposed by the Board of Governors of the Federal Reserve System, each Federal Reserve bank may receive deposits from, discount paper endorsed by, and make advances to any branch or agency of a foreign bank in the same manner and to the same extent that it may exercise such powers with respect to a member bank if such branch or agency is maintaining reserves with such Reserve bank pursuant to section 3105 of this title. In exercising any such powers with respect to any such branch or agency, each Federal Reserve bank shall give due regard to account balances being maintained by such branch or agency with such Reserve bank and the proportion of the assets of such branch or agency being held as reserves under section 3105 of this title. For the purposes of this paragraph, the terms ''branch'', ''agency'', and ''foreign bank'' shall have the same meanings assigned to them in section 3101 of this title.

(Dec. 23, 1913, ch. 6, § 13 (par.), as added Pub. L. 95–369, § 7(b), Sept. 17, 1978, 92 Stat. 621.)

CODIFICATION

Section is comprised of the fourteenth (last) par. of section 13 of act Dec. 23, 1913, as added by act Sept. 17, 1978. For additional details concerning the enactment and numbering of the first thirteen pars. of section 13, see Codification notes set out under sections 92, 342 to 347, 347c, 361, 372, and 373 of this title.

PRIOR PROVISIONS

A prior section 347d, act Mar. 9, 1933, ch. 1, § 404, as added Mar. 24, 1933, ch. 8, § 1, 48 Stat. 20, which related to direct loans to State banks and trust companies, was omitted from the Code as terminated since by its own terms, it was effective for only one year following date of its enactment, Mar. 24, 1933.

§ 348. Discount of obligations given for agricultural purposes or based upon livestock; collateral security for Federal reserve notes

Upon the indorsement of any of its member banks, which shall be deemed a waiver of demand, notice, and protest by such bank as to its own indorsement exclusively, any Federal reserve bank may, subject to regulations and limitations to be prescribed by the Board of Governors of the Federal Reserve System, discount notes, drafts, and bills of exchange issued or drawn for an agricultural purpose, or based upon livestock, and having a maturity, at the time of discount, exclusive of days of grace, not exceeding nine months, and such notes, drafts, and bills of exchange may be offered as collateral security for the issuance of Federal reserve notes under the provisions of section 16 of this Act: *Provided*, That notes, drafts, and bills of ex-

change with maturities in excess of six months shall not be eligible as a basis for the issuance of Federal reserve notes unless secured by warehouse receipts or other such negotiable documents conveying or securing title to readily marketable staple agricultural products or by chattel mortgage upon livestock which is being fattened for market.

(Dec. 23, 1913, ch. 6, § 13A (par.), formerly § 13a, as added Mar. 4, 1923, ch. 252, title IV, § 404, 42 Stat. 1479; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; renumbered § 13A, Pub. L. 102–242, title I, § 142(e)(1), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

Section 16 of this Act, referred to in text, means section 16 of act Dec. 23, 1913. For classification of section 16 to this title, see Codification note set out under section 411 of this title.

CODIFICATION

Section is comprised of first par. of section 13A, formerly section 13a, as added Mar. 4, 1923. Pars. 2 to 5 of section 13A are set out as sections 349 to 352 of this title, respectively.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 348a. Transactions with foreign banks; supervision of Board of Governors of the Federal Reserve System

The Board of Governors of the Federal Reserve System shall exercise special supervision over all relationships and transactions of any kind entered into by any Federal reserve bank with any foreign bank or banker, or with any group of foreign banks or bankers, and all such relationships and transactions shall be subject to such regulations, conditions, and limitations as the Board may prescribe. No officer or other representative of any Federal reserve bank shall conduct negotiations of any kind with the officers or representatives of any foreign bank or banker without first obtaining the permission of the Board of Governors of the Federal Reserve System. The Board of Governors of the Federal Reserve System shall have the right, in its discretion, to be represented in any conference or negotiations by such representative or representatives as the Board may designate. A full report of all conferences or negotiations, and all understandings or agreements arrived at or transactions agreed upon, and all other material facts appertaining to such conferences or negotiations, shall be filed with the Board of Governors of the Federal Reserve System in writing by a duly authorized officer of each Federal reserve bank which shall have participated in such conferences or negotiations.

(Dec. 23, 1913, ch. 6, § 14(g), as added June 16, 1933, ch. 89, § 10, 48 Stat. 181; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 349. Rediscount for intermediate credit banks of obligations given for agricultural purposes; discount of notes made pursuant to section 1031

Any Federal reserve bank may, subject to regulations and limitations to be prescribed by the Board of Governors of the Federal Reserve System, rediscount such notes, drafts, and bills mentioned in section 348 of this title for any Federal intermediate credit bank, except that no Federal reserve bank shall rediscount for a Federal intermediate credit bank any such note or obligation which bears the indorsement of a nonmember State bank or trust company which is eligible for membership in the Federal reserve system in accordance with subchapter VIII of this chapter. Any Federal reserve bank may also, subject to regulations and limitations to be prescribed by the Board of Governors of the Federal Reserve System, discount notes payable to and bearing the indorsement of any Federal intermediate credit bank covering loans or advances made by such bank pursuant to the provisions of section 1031[1] of this title which have maturities at the time of discount of not more than nine months, exclusive of days of grace, and which are secured by notes, drafts, or bills of exchange eligible for rediscount by Federal Reserve banks.

(Dec. 23, 1913, ch. 6, § 13A (par.), formerly § 13a, as added Mar. 4, 1923, ch. 252, title IV, § 404, 42 Stat. 1479; amended May 19, 1932, ch. 191, § 5, 47 Stat. 160; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; renumbered § 13A, Pub. L. 102–242, title I, § 142(e)(1), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

Subchapter VIII of this chapter, referred to in text, was in the original ''section 9 of this Act'', meaning section 9 of act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. Section 9 of the act is classified generally to subchapter VIII (§ 321 et seq.) of this chapter.

Section 1031 of this title, referred to in text, was repealed by Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624. See section 2074 of this title.

CODIFICATION

Section is comprised of second par. of section 13A, formerly section 13a, as added Mar. 4, 1923. Pars. 1, 3 to 5 of section 13A are set out as sections 348, 350 to 352 of this title, respectively.

AMENDMENTS

1932—Act May 19, 1932, inserted last sentence.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 350. Purchase and sale of debentures and like obligations of intermediate credit banks and agricultural credit corporations

Any Federal reserve bank may also buy and sell debentures and other such obligations issued by a Federal intermediate credit bank or by a national agricultural credit corporation, but only to the same extent as and subject to

[1] See References in Text note below.

the same limitations as those upon which it may buy and sell bonds issued under title I of the Federal Farm Loan Act.

(Dec. 23, 1913, ch. 6, § 13A (par.), formerly § 13a, as added Mar. 4, 1923, ch. 252, title IV, § 404, 42 Stat. 1480; renumbered § 13A, Pub. L. 102–242, title I, § 142(e)(1), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

Title I of the Federal Farm Loan Act, referred to in text, is title I of act July 17, 1916, ch. 245, 39 Stat. 360. Title I was classified to chapter 7 (§ 641 et seq.) of this title, and was repealed by Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624.

CODIFICATION

Section is comprised of third par. of section 13A, formerly section 13a, as added Mar. 4, 1923. Pars. 1, 2, 4 and 5 of section 13A are set out as sections 348, 349, 351 and 352 of this title, respectively.

NATIONAL AGRICULTURAL CREDIT CORPORATION

Title II of the Agricultural Credits Act, act Mar. 4, 1923, title II, §§ 201–217, 42 Stat. 1461, authorized creation of national agricultural credit corporations, prior to repeal by Pub. L. 86–230, Sept. 18, 1959, § 24, 73 Stat. 466. Prior to such repeal, act June 16, 1933, § 77, 48 Stat. 292, had prohibited the creation, after June 16, 1933, of national agricultural credit corporations authorized to be formed under the Agricultural Credits Act.

§ 351. Obligations of cooperative marketing association as issued or drawn for agricultural purposes

Notes, drafts, bills of exchange, or acceptances issued or drawn by cooperative marketing associations composed of producers of agricultural products shall be deemed to have been issued or drawn for an agricultural purpose, within the meaning of sections 348 and 349 to 352 of this title, if the proceeds thereof have been or are to be advanced by such association to any members thereof for an agricultural purpose, or have been or are to be used by such association in making payments to any members thereof on account of agricultural products delivered by such members to the association, or if such proceeds have been or are to be used by such association to meet expenditures incurred or to be incurred by the association in connection with the grading, processing, packing, preparation for market, or marketing of any agricultural product handled by such association for any of its members: *Provided*, That the express enumeration in this section of certain classes of paper of cooperative marketing associations as eligible for rediscount shall not be construed as rendering ineligible any other class of paper of such associations which is now eligible for rediscount.

(Dec. 23, 1913, ch. 6, § 13A (par.), formerly § 13a, as added Mar. 4, 1923, ch. 252, title IV, § 404, 42 Stat. 1480; renumbered § 13A, Pub. L. 102–242, title I, § 142(e)(1), Dec. 19, 1991, 105 Stat. 2281.)

CODIFICATION

Section is comprised of fourth par. of section 13A, formerly section 13a, as added Mar. 4, 1923. Pars. 1 to 3 and 5 of section 13A are set out as sections 348, 349, 350 and 352 of this title, respectively.

§ 352. Limitation on amount of obligations of certain maturities which may be discounted and rediscounted

The Board of Governors of the Federal Reserve System may, by regulation, limit to a percentage of the assets of a Federal reserve bank the amount of notes, drafts, acceptances, or bills having a maturity in excess of three months, but not exceeding six months, exclusive of days of grace, which may be discounted by such bank, and the amount of notes, drafts, bills, or acceptances having a maturity in excess of six months, but not exceeding nine months, which may be rediscounted by such bank.

(Dec. 23, 1913, ch. 6, § 13A (par.), formerly § 13a, as added Mar. 4, 1923, ch. 252, title IV, § 404, 42 Stat. 1480; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; renumbered § 13A, Pub. L. 102–242, title I, § 142(e)(1), Dec. 19, 1991, 105 Stat. 2281.)

CODIFICATION

Section is comprised of fifth par. of section 13A, formerly section 13a, as added Mar. 4, 1923. Pars. 1 to 4 of section 13A are set out as sections 348, 349 to 351 of this title, respectively.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 352a. Repealed. Pub. L. 85–699, title VI, § 601, Aug. 21, 1958, 72 Stat. 697

Section, act Dec. 23, 1913, ch. 6, § 13b, as added June 19, 1934, ch. 653, § 1, 48 Stat. 1105; amended Aug. 23, 1935, ch. 614, title III, § 323, 49 Stat. 714, authorized Federal Reserve Banks to make loans to industrial and commercial businesses and to discount or purchase industrial obligations from financial institutions, and created an industrial advisory committee.

EFFECTIVE DATE OF REPEAL

Section 601 of Pub. L. 85–699 provided that the repeal of this section is effective one year after Aug. 21, 1958.

SAVINGS PROVISION

Section 601 of Pub. L. 85–699 provided that the repeal of this section shall not affect the power of any Federal Reserve bank to carry out, or protect its interest under, any agreement theretofore made or transaction entered into in carrying on operations under this section.

FUND FOR MANAGEMENT COUNSELING

Section 602(a), (b) of Pub. L. 85–699 provided that:

''(a) Within sixty days after the enactment of this Act [Aug. 21, 1958], each Federal Reserve bank shall pay to the United States the aggregate amount which the Secretary of the Treasury has heretofore paid to such bank under the provisions of section 13b of the Federal Reserve Act [this section]; and such payment shall constitute a full discharge of any obligation or liability of the Federal Reserve bank to the United States or to the Secretary of the Treasury arising out of subsection (e) of said section 13b [subsec. (e) of this section] or out of any agreement thereunder.

''(b) The amounts repaid to the United States pursuant to subsection (a) of this section shall be covered into a special fund in the Treasury which shall be available for grants under section 7(d) of the Small Business Act [section 636(d) of Title 15, Commerce and Trade]. Any remaining balance of funds set aside in the Treasury for payments under section 13b of the Federal Re-

serve Act [this section] shall be covered into the Treasury as miscellaneous receipts.''

§ 353. Purchase and sale of cable transfers, acceptances and bills

Any Federal reserve bank may, under rules and regulations prescribed by the Board of Governors of the Federal Reserve System, purchase and sell in the open market, at home or abroad, either from or to domestic or foreign banks, firms, corporations, or individuals, cable transfers and bankers' acceptances and bills of exchange of the kinds and maturities by this chapter made eligible for rediscount, with or without the indorsement of a member bank.

(Dec. 23, 1913, ch. 6, § 14 (par.), 38 Stat. 264; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of introductory provisions of section 14 of act Dec. 23, 1913. Subsecs. (a) to (g) of section 14 are set out as sections 354 to 359 and 348a of this title, respectively.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 354. Transactions involving gold coin, bullion, and certificates

Every Federal reserve bank shall have power to deal in gold coin and bullion at home or abroad, to make loans thereon, exchange Federal reserve notes for gold, gold coin, or gold certificates, and to contract for loans of gold coin or bullion, giving therefor, when necessary, acceptable security, including the hypothecation of United States bonds or other securities which Federal reserve banks are authorized to hold.

(Dec. 23, 1913, ch. 6, § 14(a), 38 Stat. 264.)

CODIFICATION

Section is comprised of subsec. (a) of section 14 of act Dec. 23, 1913. For classification to this title of remainder of section 14, see Codification note set out under section 353 of this title.

§ 355. Purchase and sale of obligations of National, State, and municipal governments; open market operations; purchases and sales from or to United States; maximum aggregate amount of obligations acquired directly from or loaned directly to United States

Every Federal Reserve bank shall have power:

(1) To buy and sell, at home or abroad, bonds and notes of the United States, bonds issued under the provisions of subsection (c) of section 1463[1] of this title and having maturities from date of purchase of not exceeding six months, and bills, notes, revenue bonds, and warrants with a maturity from date of purchase of not exceeding six months, issued in anticipation of the collection of taxes or in anticipation of the receipt of assured revenues by any State, county, district, political subdivision, or municipality in the continental United States, including irrigation, drainage and reclamation districts, and obligations of, or fully guaranteed as to principal and interest by, a foreign government or agency thereof, such purchases to be made in accordance with rules and regulations prescribed by the Board of Governors of the Federal Reserve System. Notwithstanding any other provision of this chapter, any bonds, notes, or other obligations which are direct obligations of the United States or which are fully guaranteed by the United States as to principal and interest may be bought and sold without regard to maturities but only in the open market.

(2) To buy and sell in the open market, under the direction and regulations of the Federal Open Market Committee, any obligation which is a direct obligation of, or fully guaranteed as to principal and interest by, any agency of the United States.

(Dec. 23, 1913, ch. 6, § 14(b), 38 Stat. 264; Jan. 31, 1934, ch. 7, § 16(b), 48 Stat. 348; Apr. 27, 1934, ch. 168, § 7(b), 48 Stat. 646; Aug. 23, 1935, ch. 614, title II, §§ 203(a), 206(a), 49 Stat. 704, 706; Mar. 27, 1942, ch. 199, title IV, § 401, 56 Stat. 180; Apr. 28, 1947, ch. 44, 61 Stat. 56; June 30, 1950, ch. 425, 64 Stat. 307; June 23, 1952, ch. 454, 66 Stat. 154; June 29, 1954, ch. 422, 68 Stat. 329; June 25, 1956, ch. 447, 70 Stat. 339; Pub. L. 85–476, June 30, 1958, 72 Stat. 261; Pub. L. 86–567, July 1, 1960, 74 Stat. 295; Pub. L. 87–353, § 3(d), Oct. 4, 1961, 75 Stat. 773; Pub. L. 87–506, June 28, 1962, 76 Stat. 112; Pub. L. 88–344, June 30, 1964, 78 Stat. 235; Pub. L. 89–484, June 30, 1966, 80 Stat. 235; Pub. L. 89–597, § 6, Sept. 21, 1966, 80 Stat. 825; Pub. L. 90–300, May 4, 1968, 82 Stat. 113; Pub. L. 91–360, July 31, 1970, 84 Stat. 668; Pub. L. 92–45, July 2, 1971, 85 Stat. 100; Pub. L. 93–93, Aug. 14, 1973, 87 Stat. 314; Pub. L. 93–495, title I, § 109, Oct. 28, 1974, 88 Stat. 1505; Pub. L. 94–125, Nov. 12, 1975, 89 Stat. 678; Pub. L. 95–22, title II, § 201, Apr. 19, 1977, 91 Stat. 49; Pub. L. 95–128, title II, § 209, Oct. 12, 1977, 91 Stat. 1131; Pub. L. 95–154, Nov. 7, 1977, 91 Stat. 1256; Pub. L. 95–534, Oct. 27, 1978, 92 Stat. 2032; Pub. L. 96–18, §§ 1, 3, June 8, 1979, 93 Stat. 35, 36; Pub. L. 96–221, title I, § 105(b)(2), Mar. 31, 1980, 94 Stat. 140.)

REFERENCES IN TEXT

Section 1463 of this title, referred to in par. (1), was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 648.

This chapter, referred to in par. (1), was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of subsec. (b) of section 14 of act Dec. 23, 1913. For classification to this title of remainder of section 14, see Codification note set out under section 353 of this title.

AMENDMENTS

1980—Par. (1). Pub. L. 96–221 inserted provisions relating to obligations of a foreign government or agency thereof.

[1] See References in Text note below.

1979—Par. (1). Pub. L. 96–18, § 1(a), struck out proviso under which Federal Reserve banks had been allowed, until May 1, 1979, to buy and sell either in the open market or directly from or to the United States bonds, notes, or other obligations which were direct obligations of the United States or which were fully guaranteed by the United States and, after Apr. 30, 1979, had allowed such obligations to be purchased but only in the open market.

Pub. L. 96–18, § 3(b), inserted provision that notwithstanding any other provision of this chapter, any bonds, notes, or other obligations which are direct obligations of the United States or which are fully guaranteed by the United States as to principal and interest may be bought and sold without regard to maturities but only in the open market.

Par. (2). Pub. L. 96–18, §§ 1(b), 3(a), temporarily substituted ''the United States or any agency of the United States, and to lend, under the direction and regulations of the Federal Open Market Committee, any such obligation to the Secretary of the Treasury'' for ''any agency of the United States''. See Effective and Termination Dates of 1979 Amendment note set out below.

Pars. (3), (4). Pub. L. 96–18, §§ 1(c), 3(a), temporarily added pars. (3) and (4). See Effective and Termination Dates of 1979 Amendment note set out below.

1978—Par. (1). Pub. L. 95–534 substituted ''May 1, 1979'' for ''May 1, 1978'' and ''April 30, 1979'' for ''April 30, 1978''.

1977—Par. (1). Pub. L. 95–154 substituted ''May 1, 1978'' for ''October 1, 1977'' and ''April 30, 1978'' for ''September 30, 1977''.

Pub. L. 95–128 substituted ''October 1, 1977'' for ''November 1, 1978'' and ''September 30, 1977'' for ''October 31, 1978''.

Pub. L. 95–22 substituted ''November 1, 1978'' for ''November 1, 1976'' and ''October 31, 1978'' for ''October 31, 1976''.

1975—Par. (1). Pub. L. 94–125 substituted ''November 1, 1976'' for ''November 1, 1975'' and ''October 31, 1976'' for ''October 31, 1975''.

1974—Par. (1). Pub. L. 93–495 substituted ''November 1, 1975 for ''November 1, 1973'' and ''October 31, 1975'' for ''October 31, 1973''.

1973—Par. (1). Pub. L. 93–93 substituted ''November 1, 1973'' for ''July 1, 1973'' and ''October 31, 1973'' for ''June 30, 1973''.

1971—Par. (1). Pub. L. 92–45 substituted ''July 1, 1973'' for ''July 1, 1971'' and ''June 30, 1973'' for ''June 30, 1971''.

1970—Par. (1). Pub. L. 91–360 substituted ''July 1, 1971'' for ''July 1, 1970'' and ''June 30, 1971'' for ''June 30, 1970''.

1968—Par. (1). Pub. L. 90–300 substituted ''July 1, 1970'' for ''July 1, 1968'' and ''June 30, 1970'' for ''June 30, 1968''.

1966—Pub. L. 89–597 designated existing provisions as par. (1) and added par. (2).

Pub. L. 89–484 substituted ''July 1, 1968'' for ''July 1, 1966'' and ''June 30, 1968'' for ''June 30, 1966''.

1964—Pub. L. 88–344 substituted ''July 1, 1966'' for ''July 1, 1964'', and ''June 30, 1966'' for ''June 30, 1964''.

1962—Pub. L. 87–506 substituted ''July 1, 1964'' for ''July 1, 1962'' and ''June 30, 1964'' for ''June 30, 1962.''

1961—Pub. L. 87–353 struck out provision authorizing every Federal reserve bank to buy and sell, at home or abroad, bonds of the Federal Farm Mortgage Corporation having maturities from date of purchase of not exceeding six months.

1960—Pub. L. 86–567 substituted ''July 1, 1962'' for ''July 1, 1960'' and ''June 30, 1962'' for ''June 30, 1960''.

1958—Pub. L. 85–476 substituted ''July 1, 1960'' for ''July 1, 1958'' and ''June 30, 1960'' for ''June 30, 1958''.

1956—Act June 25, 1956, substituted ''July 1, 1958'' for ''July 1, 1956'' and ''June 30, 1958'' for ''June 30, 1958''.

1954—Act June 29, 1954, substituted ''July 1, 1956'' for ''July 1, 1954'' and ''June 30, 1956'' for ''June 30, 1954''.

1952—Act June 23, 1952, substituted ''July 1, 1954'' for ''July 1, 1952'' and ''June 30, 1954'' for ''June 30, 1952''.

1950—Act June 30, 1950, substituted ''July 1, 1952'' for ''July 1, 1950'' and ''June 30, 1952'' for ''June 30, 1950''.

1947—Act Apr. 28, 1947, substituted proviso which allows the Federal Reserve banks to buy and sell either in the open market or directly from or to the United States any bonds, notes, or other obligations which are direct obligations of the United States or are fully guaranteed by the United States but limits the aggregate amount to be held at any one time to $5,000,000,000, and after June 30, 1950 allows such obligation to be purchased, but only in the open market for former proviso.

1942—Act Mar. 27, 1942, amended proviso generally.

1935—Act Aug. 23, 1935, § 206(a), inserted proviso.

1934—Act Apr. 27, 1934, authorized purchase and sale of bonds issued under subsec. (c) of [former] section 1463 of this title.

Act Jan. 31, 1934, authorized purchase and sale of bonds of Federal Farm Mortgage Corporation.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EFFECTIVE DATE AND APPLICABILITY OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on first day of sixth month which begins after Mar. 31, 1980, see section 108 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 248 of this title.

Section 105(b)(2) of Pub. L. 96–221 provided that the amendment by that section is applicable as this section is in effect on first day of sixth month which begins after March 31, 1980, and as it will be in effect on June 1, 1981.

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENT

Section 3(a) of Pub. L. 96–18 provided that: ''Except for the amendments made by subsection (a) of the first section of this Act [amending par. (1) of this section], and except for the amendment made by subsection (b) of this section [amending par. (1) of this section effective upon the expiration of the two-year period beginning on June 8, 1979], the amendments made by this Act [enacting section 359a of this title and pars. (3) and (4) of this section and amending par. (2) of this section] shall be effective only during the two-year period which begins on the date of enactment of this Act [June 8, 1979]. Upon the expiration of such period, each provision of law amended by this Act [enacting section 359a of this title and amending this section], except section 14(b)(1) of the Federal Reserve Act [par. (1) of this section], is amended to read as it did immediately prior to the enactment of this Act.''

Section 3(b) of Pub. L. 96–18 provided that the amendment made by that section is effective ''Upon the expiration of the 2-year period which begins on the date of enactment of this Act [June 8, 1979]''.

EXPIRATION OF 1942 AMENDMENT

Amendment of the proviso of this section by act Mar. 27, 1942, remained in force only until the date fixed by section 645 of Appendix to Title 50, War and National Defense, after which provisions in force before the amendment again became effective. Before the 1942 amendment, the proviso of this section read: ''*Provided*, That any bonds, notes, or other obligations which are direct obligations of the United States or which are fully guaranteed by the United States as to principal and interest may be bought and sold without regard to maturities but only in the open market.''

§ 356. Purchase of commercial paper from member banks and sale of same

Every Federal reserve bank shall have power to purchase from member banks and to sell, with or without its indorsement, bills of ex-

change arising out of commercial transactions, as hereinbefore defined.

(Dec. 23, 1913, ch. 6, § 14(c), 38 Stat. 264.)

CODIFICATION

Section is comprised of subsec. (c) of section 14 of act Dec. 23, 1913. For classification to this title of remainder of section 14, see Codification note under section 353 of this title.

§ 357. Establishment of rates of discount

Every Federal reserve bank shall have power to establish from time to time, subject to review and determination of the Board of Governors of the Federal Reserve System, rates of discount to be charged by the Federal reserve bank for each class of paper, which shall be fixed with a view of accommodating commerce and business, but each such bank shall establish such rates every fourteen days, or oftener if deemed necessary by the Board.

(Dec. 23, 1913, ch. 6, § 14(d), 38 Stat. 264; Apr. 13, 1920, ch. 128, 41 Stat. 550; Mar. 4, 1923, ch. 252, title IV, § 407, 42 Stat. 1480; Aug. 23, 1935, ch. 614, title II, §§ 203(a), 206(b), 49 Stat. 704, 706.)

CODIFICATION

Section is comprised of subsec. (d) of section 14 of act Dec. 23, 1913. For classification to this title of remainder of section 14, see Codification note under section 353 of this title.

AMENDMENTS

1935—Act Aug. 23, 1935, § 206(b), inserted words at end of section beginning ''but each such''.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 358. Establishment of accounts for purposes of open-market operations; correspondents and agencies

Every Federal reserve bank shall have power to establish accounts with other Federal reserve banks for exchange purposes and, with the consent or upon the order and direction of the Board of Governors of the Federal Reserve System and under regulations to be prescribed by said Board, to open and maintain accounts in foreign countries, appoint correspondents, and establish agencies in such countries wheresoever it may be deemed best for the purpose of purchasing, selling, and collecting bills of exchange, and to buy and sell, with or without its indorsement, through such correspondents or agencies, bills of exchange (or acceptances) arising out of actual commercial transactions which have not more than ninety days to run, exclusive of days of grace, and which bear the signature of two or more responsible parties, and, with the consent of the Board of Governors of the Federal Reserve System, to open and maintain banking accounts for such foreign correspondents or agencies, or for foreign banks or bankers, or for foreign states as defined in section 632 of this title. Whenever any such account has been opened or agency or correspondent has been appointed by a Federal reserve bank, with the consent of or under the order and direction of the Board of Governors of the Federal Reserve System, any other Federal reserve bank may, with the consent and approval of the Board of Governors of the Federal Reserve System, be permitted to carry on or conduct, through the Federal reserve bank opening such account or appointing such agency or correspondent, any transaction authorized by this section under rules and regulations to be prescribed by the board.

(Dec. 23, 1913, ch. 6, § 14(e), 38 Stat. 264; Sept. 7, 1916, ch. 461, 39 Stat. 754; June 21, 1917, ch. 32, § 6, 40 Stat. 235; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Apr. 7, 1941, ch. 43, § 1, 55 Stat. 131.)

CODIFICATION

Section is comprised of subsec. (e) of section 14 of act Dec. 23, 1913. For classification to this title of remainder of section 14, see Codification note under section 353 of this title.

AMENDMENTS

1941—Act Apr. 7, 1941, inserted in first sentence ''and which bear the signature of two or more responsible parties'' and ''or for foreign states as defined in section 632 of this title''.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 359. Purchase and sale of acceptances of intermediate credit banks and agricultural credit corporations

Every Federal reserve bank shall have power to purchase and sell in the open market, either from or to domestic banks, firms, corporations, or individuals, acceptances of Federal intermediate credit banks and of national agricultural credit corporations, whenever the Board of Governors of the Federal Reserve System shall declare that the public interest so requires.

(Dec. 23, 1913, ch. 6, § 14(f), as added Mar. 4, 1923, ch. 252, title IV, § 405, 42 Stat. 1480; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

CODIFICATION

Section is comprised of subsec. (f) of section 14 of act Dec. 23, 1913, as added Mar. 4, 1923. For classification to this title of remainder of section 14, see Codification note under section 353 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

NATIONAL AGRICULTURAL CREDIT CORPORATION

Title II of the Agricultural Credits Act, act Mar. 4, 1923, title II, §§ 201–217, 42 Stat. 1461, authorized creation of national agricultural credit corporations, prior to repeal by Pub. L. 86–230, Sept. 8, 1959, § 24, 73 Stat. 466. Prior to such repeal, act June 16, 1933, § 77, 48 Stat. 292, had prohibited the creation, after June 16, 1933, of national agricultural credit corporations authorized to be formed under the Agricultural Credits Act.

§ 359a. Omitted

CODIFICATION

Section, act Dec. 23, 1913, ch. 6, § 14(h), as added June 8, 1979, Pub. L. 96–18, § 2, 93 Stat. 35, which authorized

the Secretary of the Treasury to borrow and sell in open market, and required the repurchase and return of obligations to Federal Reserve Banks, was effective only during the two-year period that began June 8, 1979, as provided by section 3(a) of Pub. L. 96–18.

§ 360. Receiving checks and drafts on deposit at par; charges for collections, exchange, and clearances

Every Federal reserve bank shall receive on deposit at par from depository institutions or from Federal reserve banks checks and other items, including negotiable orders of withdrawal and share drafts and drafts drawn upon any of its depositors, and when remitted by a Federal reserve bank, checks and other items, including negotiable orders of withdrawal and share drafts and drafts drawn by any depositor in any other Federal reserve bank or depository institution upon funds to the credit of said depositor in said reserve bank or depository institution. Nothing herein contained shall be construed as prohibiting a depository institution from charging its actual expense incurred in collecting and remitting funds, or for exchange sold to its patrons. The Board of Governors of the Federal Reserve System shall, by rule, fix the charges to be collected by the depository institutions from its patrons whose checks and other items, including negotiable orders of withdrawal and share drafts are cleared through the Federal reserve bank and the charge which may be imposed for the service of clearing or collection rendered by the Federal reserve bank.

(Dec. 23, 1913, ch. 6, § 16 (par.), 38 Stat. 265; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 96–221, title I, § 105(c), Mar. 31, 1980, 94 Stat. 140.)

CODIFICATION

Section is comprised of the twelfth par. (formerly the thirteenth par.) of section 16 of act Dec. 23, 1913. For classification to this title of other pars. of section 16, see Codification note set out under section 411 of this title.

AMENDMENTS

1980—Pub. L. 96–221, which directed amendment of ''[t]he thirteenth paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 360)'' by substituting ''depository institutions'' for ''member banks'' wherever appearing and ''depository institution'' for ''member bank'' wherever appearing and by inserting ''and other items, including negotiable orders of withdrawal and share drafts'' after ''checks'' wherever appearing, was executed to this section to reflect the probable intent of Congress.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on first day of sixth month which begins after Mar. 31, 1980, see section 108 of Pub. L. 96–221, set out as a note under section 248 of this title.

§ 361. Bills receivable, bills of exchange, acceptances; regulations by Board of Governors

The discount and rediscount and the purchase and sale by any Federal reserve bank of any bills receivable and of domestic and foreign bills of exchange, and of acceptances authorized by this chapter, shall be subject to such restrictions, limitations, and regulations as may be imposed by the Board of Governors of the Federal Reserve System.

(Dec. 23, 1913, ch. 6, § 13 (par.), 38 Stat. 264; Sept. 7, 1916, ch. 461, 39 Stat. 753; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is based on the tenth par. of section 13 of act Dec. 23, 1913, as amended. The tenth par. constituted the eighth par. of section 13 in 1916 (39 Stat. 753), became the ninth par. in 1923 (42 Stat. 1478), and became the tenth par. in 1932 (47 Stat. 715). For further details, see Codification notes under sections 342 to 344 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

§§ 362 to 364. Omitted

CODIFICATION

Section 362, act June 1, 1955, ch. 113, title I, 69 Stat. 72, which related to reimbursement of Federal Reserve banks and branches for necessary expenses incident to deposit of withheld taxes in Government depositories, was from the Treasury-Post Office Appropriation Act, 1956, and was not repeated in subsequent appropriation acts.

Similar provisions were contained in the following prior appropriation acts:

May 28, 1954, ch. 242, title I, 68 Stat. 144.
June 18, 1953, ch. 132, title I, 67 Stat 67.
June 30, 1952, ch. 523, title I, 66 Stat. 289.
Aug. 11, 1951, ch. 301, title I, 65 Stat. 182.
Sept. 6, 1950, ch. 896, Ch. IV, title I, 64 Stat. 634.
June 30, 1949, ch. 286, title I, 63 Stat. 358.
June 14, 1948, ch. 466, title I, 62 Stat. 409.

Section 363, act June 1, 1955, ch. 113, title I, 69 Stat. 72, which related to reimbursement of Federal Reserve banks and branches for necessary expenses incident to verification and destruction of unfit United States paper currency, was from the Treasury-Post Office Appropriation Act, 1956, and was not repeated in subsequent appropriation acts.

Similar provisions were contained in the following prior appropriation act: May 28, 1954, ch. 242, title I, 68 Stat. 144.

Section 364, act Sept. 26, 1970, Pub. L. 91–422, title II, 84 Stat. 875, which related to reimbursement of Federal Reserve banks and branches for expenditures as fiscal agents of the United States on account of Post Office Department operations, was from the Treasury, Post Office, and Executive Office Appropriation Act, 1971, and was not repeated in subsequent appropriation acts.

SUBCHAPTER X—POWERS AND DUTIES OF MEMBER BANKS

§ 371. Real estate loans

(a) Authorization to make real estate loans; orders, rules, and regulations of Comptroller of the Currency

Any national banking association may make, arrange, purchase or sell loans or extensions of

credit secured by liens on interests in real estate, subject to section 1828(*o*) of this title and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.

(b) Eligibility for discount as commercial paper of notes representing loans financing construction of residential or farm buildings; prerequisites

Notes representing loans made under this section to finance the construction of residential or farm buildings and having maturities not to exceed nine months shall be eligible for discount as commercial paper within the terms of the first paragraph of section 343 of this title if accompanied by a valid and binding agreement to advance the full amount of the loan upon the completion of the building entered into by an individual, partnership, association, or corporation acceptable to the discounting bank.

(Dec. 23, 1913, ch. 6, § 24, 38 Stat. 273; Sept. 7, 1916, ch. 461, 39 Stat. 754; Feb. 25, 1927, ch. 191, § 16, 44 Stat. 1232; June 27, 1934, ch. 847, § 505, 48 Stat. 1263; Aug. 23, 1935, ch. 614, title II, § 208, title III, § 328, 49 Stat. 706, 717; Mar. 28, 1941, ch. 31, § 8, 55 Stat. 62; July 22, 1937, ch. 517, § 15(a), as added Aug. 14, 1946, ch. 964, § 5, 60 Stat. 1079; May 25, 1948, ch. 334, § 9, 62 Stat. 265; Oct. 25, 1949, ch. 729, § 6, 63 Stat. 906; Apr. 20, 1950, ch. 94, title V, § 502, 64 Stat. 80; Sept. 1, 1951, ch. 378, title II, § 207, title V, § 503, 65 Stat. 303, 312; Aug. 15, 1953, ch. 510, 67 Stat. 613; July 22, 1954, ch. 561, 68 Stat. 525; Aug. 28, 1937, ch. 870, § 10(f), as added Aug. 17, 1954, ch. 751, § 1(4), 68 Stat. 736; Aug. 11, 1955, ch. 781, §§ 1, 2, 69 Stat. 633, 634; Pub. L. 85–536, § 3, July 18, 1958, 72 Stat. 396; Pub. L. 86–251, § 4, Sept. 9, 1959, 73 Stat. 489; Pub. L. 87–70, title VIII, § 804(c), title IX, § 902, June 30, 1961, 75 Stat. 188, 191; Pub. L. 87–717, Sept. 28, 1962, 76 Stat. 662; Pub. L. 88–341, June 30, 1964, 78 Stat. 233; Pub. L. 88–560, title X, § 1004, Sept. 2, 1964, 78 Stat. 807; Pub. L. 89–117, title II, § 201(b)(2), title XI, § 1111, Aug. 10, 1965, 79 Stat. 465, 509; Pub. L. 89–754, title V, § 504(a)(2), Nov. 3, 1966, 80 Stat. 1277; Pub. L. 90–19, § 26, May 25, 1967, 81 Stat. 28; Pub. L. 90–448, title IV, § 416(b), title XVII, § 1718, Aug. 1, 1968, 82 Stat. 518, 609; Pub. L. 91–351, title VII, § 704, July 24, 1970, 84 Stat. 462; Pub. L. 91–609, title VII, § 727(c), Dec. 31, 1970, 84 Stat. 1803; Pub. L. 93–383, title VII, § 711, title VIII, § 802(i)(1), Aug. 22, 1974, 88 Stat. 716, 725; Pub. L. 97–320, title IV, § 403(a), Oct. 15, 1982, 96 Stat. 1510; Pub. L. 102–242, title III, § 304(b), Dec. 19, 1991, 105 Stat. 2354.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–242 substituted ''section 1828(*o*) of this title and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order'' for ''such terms, conditions, and limitations as may be prescribed by the Comptroller of the Currency by order, rule, or regulation''.

1982—Subsec. (a). Pub. L. 97–320 amended subsec. (a) generally. Prior to amendment subsec. (a) read as follows:

''(1) Any national banking association may make real estate loans, secured by liens upon unimproved real estate, upon improved real estate, including improved farmland and improved business and residential properties, and upon real estate to be improved by a building or buildings to be constructed or in the process of construction, in an amount which when added to the amount unpaid upon prior mortgages, liens, encumbrances, if any, upon such real estate does not exceed the respective proportions of appraised value as provided in this section. A loan secured by real estate within the meaning of this section shall be in the form of an obligation or obligations secured by a mortgage, trust deed, or other instrument, which shall constitute a lien on real estate in fee or, under such rules and regulations as may be prescribed by the Comptroller of the Currency, on a leasehold under a lease which does not expire for at least ten years beyond the maturity date of the loan, and any national banking association may purchase or sell any obligations so secured in whole or in part. The amount of any such loan hereafter made shall not exceed 66⅔ per centum of the appraised value if such real estate is unimproved, 75 per centum of the appraised value if such real estate is improved by offsite improvements such as streets, water, sewers, or other utilities, 75 per centum of the appraised value if such real estate is in the process of being improved by a building or buildings to be constructed or in the process of construction, or 90 per centum of the appraised value if such real estate is improved by a building or buildings. If any such loan exceeds 75 per centum of the appraised value of the real estate or if the real estate is improved with a one- to four-family dwelling, installment payments shall be required which are sufficient to amortize the entire principal of the loan within a period of not more than thirty years.

''(2) The limitations and restrictions set forth in paragraph (1) shall not prevent the renewal or extension of loans heretofore made and shall not apply to real estate loans (A) which are insured under the provisions of the National Housing Act [12 U.S.C. 1701 et seq.], (B) which are insured by the Secretary of Agriculture pursuant to title I of the Bankhead-Jones Farm Tenant Act, or the Act of August 28, 1937, as amended, or title V of the Housing Act of 1949, as amended, [42 U.S.C. 1471 et seq.], or (C) which are guaranteed by the Secretary of Housing and Urban Development, for the payment of the obligations of which the full faith and credit of the United States is pledged, and such limitations and restrictions shall not apply to real estate loans which are fully guaranteed or insured by a State, or any agency or instrumentality thereof, or by a State authority for the payment of the obligations of which the faith and credit of the State is pledged, if under the terms of the guaranty or insurance agreement the association will be assured of repayment in accordance with the terms of the loan, or to any loan at least 20 per centum of which is guaranteed under chapter 37 of title 38, or to obligations guaranteed under section 1440 of title 42.

''(3) Loans which are guaranteed or insured as described in paragraph (2) shall not be taken into account in determining the amount of real estate loans which a national banking association may make in relation to its capital and surplus or its time and savings deposits or in determining, the amount of real estate loans secured by other than first liens. Where the collateral for any loan consists partly of real estate security and partly of other security, including a guaranty or endorsement by or an obligation or commitment of a person other than the borrower, only the amount by which the loan exceeds the value as collateral of such other security shall be considered a loan upon the security of real estate, and in no event shall a loan be considered as a real estate loan where there is a valid and binding agreement which is entered into by a financially responsible lender or other party either directly with the association or which is for the benefit of or has been assigned to the association and pursuant to which agreement the lender or other party is required to advance to the association within sixty months from the date of the making of such loan the full amount of the loan to be made by the association upon the security of real estate. Except as otherwise provided, no such association shall make real estate loans in an aggregate sum in excess of the amount of the capital stock of such associa-

tion paid in and unimpaired plus the amount of its unimpaired surplus fund, or in excess of the amount of its time and savings deposits, whichever is greater: *Provided*, That the amount unpaid upon real estate loans secured by other than first liens, when added to the amount unpaid upon prior mortgages, liens, and encumbrances, shall not exceed in an aggregate sum 20 per centum of the amount of the capital stock of such association paid in and unimpaired plus 20 per centum of the amount of its unimpaired surplus fund.''

Subsec. (b). Pub. L. 97–320 redesignated subsec. (d) as (b) and struck out former subsec. (b) ''Any national banking association may make real estate loans secured by liens upon forest tracts which are properly managed in all respects. Such loans shall be in the form of an obligation or obligations secured by mortgage, trust deed, or other such instrument; and any national banking association may purchase or sell any obligations so secured in whole or in part. The amount of any such loan, when added to the amount unpaid upon prior mortgages, liens, and encumbrances, if any, shall not exceed 66⅔ per centum of the appraised fair market value of the growing timber, lands, and improvements thereon offered as security and the loan shall be made upon such terms and conditions as to assure that at no time shall the loan balance, when added to the amount unpaid upon prior mortgages, liens, and encumbrances, if any, exceed 66⅔ per centum of the original appraised total value of the property then remaining. No such loan shall be made for a longer term than three years; except that any such loan may be made for a term not longer than fifteen years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize the principal of the loan within a period of not more than fifteen years and at a rate at least 6⅔ per centum per annum. All such loans secured by liens upon forest tracts shall be included in the permissible aggregate of all real estate loans and, when secured by other than first liens, in the permissible aggregate of all real estate loans secured by other than first liens, prescribed in subsection (a) of this section, but no national banking association shall make forest tract loans in an aggregate sum in excess of 50 per centum of its capital stock paid in and unimpaired plus 50 per centum of its unimpaired surplus fund.''

Subsec. (c). Pub. L. 97–320 struck out subsec. (c) ''Loans made to finance the construction of a building or buildings and having maturities of not to exceed sixty months where there is a valid and binding agreement entered into by a financially responsible lender or other party to advance the full amount of the bank's loan upon completion of the building or buildings, and loans made to finance the construction of residential or farm buildings and having maturities of not to exceed sixty months, may be considered as real estate loans if the loans qualify under this section, or such loans may be classed as commercial loans whether or not secured by a mortgage or similar lien on the real estate upon which the building or buildings are being constructed, at the option of each national banking association that may have an interest in such loan: *Provided*, That no national banking association shall invest in, or be liable on, any such loans classed as commercial loans under this subsection in an aggregate amount in excess of 100 per centum of its actually paid-in and unimpaired capital plus 100 per centum of its unimpaired surplus fund.''

Subsec. (d). Pub. L. 97–320 redesignated subsec. (d) as (b).

Subsec. (e). Pub. L. 97–320 struck out subsec. (e) ''Loans made to any borrower (i) where the association looks for repayment by relying primarily on the borrower's general credit standing and forecast of income, with or without other security, or (ii) secured by an assignment of rents under a lease, and where, in either case described in clause (i) or (ii) above, the association wishes to take a mortgage, deed of trust, or other instrument upon real estate (whether or not constituting a first lien) as a precaution against contingencies, and loans in which the Small Business Administration cooperates through agreements to participate on an immediate or deferred or guaranteed basis under the Small Business Act [15 U.S.C. 631 et seq.], shall not be considered as real estate loans within the meaning of this section but shall be classed as commercial loans.''

Subsec. (f). Pub. L. 97–320 struck out subsec. (f) ''Any national banking association may make loans upon the security of real estate that do not comply with the limitations and restrictions in this section, if the total unpaid amount loaned, exclusive of loans which subsequently comply with such limitations and restrictions, does not exceed 10 per centum of the amount that a national banking association may invest in real estate loans. The total unpaid amount so loaned shall be included in the aggregate sum that such association may invest in real estate loans.''

Subsec. (g). Pub. L. 97–320 struck out subsec. (g) ''Loans made pursuant to this section shall be subject to such conditions and limitations as the Comptroller of the Currency may prescribe by rule or regulation.''

1974—Subsec. (a). Pub. L. 93–383, §§711, 802(i)(1), designated unlettered first par. as subsec. (a), substantially revised provisions relating to real estate loans by associations, and inserted reference to obligations guaranteed by section 1440 of title 42.

Subsecs. (b) to (f). Pub. L. 93–383, §711, designated unlettered second, third, fourth, and fifth pars. as subsecs. (b) to (f) and substantially revised provisions relating to real estate loans secured by liens upon forest tracts, loans made to finance the construction of buildings, notes representing loans, repayment of loans, and waiver of restrictions and limitations.

Subsec. (g). Pub. L. 93–383, §711, added subsec. (g) authorizing the Comptroller of the Currency to prescribe rules and regulations relating to loans.

1970—Pub. L. 91–609 authorized national banks to invest in obligations guaranteed under part B of the Urban Growth and New Community Development Act of 1970.

Pub. L. 91–351 substituted in cl. (3) of third sentence of first par. ''90 per centum'' for ''80 per centum'' and ''thirty years'' for ''twenty-five years'', and in first sentence of third par. ''sixty months'' for ''thirty-six months'' wherever appearing.

1968—Pub. L. 90–448, §416(b), substituted ''any national banking association may make loans or purchase obligations for land development which are secured by mortgages insured under title X of the National Housing Act or guaranteed under title IV of the Housing and Urban Development Act of 1968'' for ''any national banking association may make loans for land development which are secured by mortgages insured under title X of the National Housing Act'' in first par.

Pub. L. 90–448, §1718, substituted ''in whole or in part and at any time or times prior to the maturity of such obligation'' for ''when the entire amount of such obligation is sold to the association'' wherever appearing in first and second pars., ''thirty-six months'' for ''twenty-four months'' in two places in second par., and ''Loans made to any borrower (i) where the association looks for repayment by relying primarily on the borrower's general credit standing and forecast of income, with or without other security, or (ii) where the association relies on other security as collateral for the loans (including but not limited to a guaranty of a third party), and where, in either case described in clause (i) or (ii) above, the association wishes to take a mortgage, deed of trust, or other instrument upon real estate (whether or not constituting a first lien) as a precaution against contingencies, such loans shall not be considered as real estate loans within the meaning of this section but shall be classed as ordinary non-real-estate loans'' for ''Loans made to manufacturing and industrial businesses where the association looks for repayment out of the operations of the borrower's business, relying primarily on the borrower's general credit standing and forecast of operations, with or without other security, but wishes to take a mortgage

on the borrower's real estate as a precaution against contingencies, shall not be considered as real estate loans within the meaning of this section but shall be classed as ordinary commercial loans'' in last par.

1967—Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' for ''Housing and Home Finance Administrator'' in first sentence of fourth par.

1966—Pub. L. 89–754 permitted national banking associations to make loans for group practice facilities which are secured by mortgages insured under subchapter IX–B of chapter 13 of this title.

1965—Pub. L. 89–117 permitted national banking associations to make loans for land development which are secured by mortgages insured under title X of the National Housing Act and increased from 18 months to 24 months the maximum maturity of industrial, commercial, and residential construction loans.

1964—Pub. L. 88–560 substituted in cl. (3) of third sentence of first par. ''80'' for ''75'' per centum and ''twenty-five'' for ''20'' years.

Pub. L. 88–341 substituted ''60 per centum of the appraised fair market value of the growing timber, lands, and improvements thereon'' for ''40 per centum of the appraised value of the economically marketable timber'', ''60 per centum of the original appraised total value of the property'' for ''40 per centum of the original appraised value of the economically marketable timber'', increased the permissible loan term from 2 to 3 years in the case of unamortized loans, from 10 to 15 years in the case of amortized loans, and decreased the annual rate from 10 to 6⅔ per centum.

1962—Pub. L. 87–717 increased aggregate real estate loan limitation from 60 to 70 per centum of a bank's time and savings deposits, and limitation on maturities for loans made to finance the construction of residential or farm buildings, from nine months or less to eighteen months or less.

1961—Pub. L. 87–70 inserted '', or title V of the Housing Act of 1949, as amended'' after ''sections 590r to 590x–3 of title 16'' in first par., and in next to last par. inserted provisions permitting home improvement loans which are insured under section 1709(k) or 1715k(h) of this title to be made without regard to the first lien requirements of this section.

1959—Pub. L. 86–251, § 4(a), substituted in second sentence of first par., ''under a lease which does not expire for at least 10 years beyond the maturity date of the loan'' for ''(1) under a lease for not less than ninety-nine years which is renewable or (2) under a lease having a period of not less than fifty years to run from the date the loan is made or acquired by the national banking association''.

Pub. L. 86–251, § 4(b)(1), (2), added cl. (3) in third sentence of first par., redesignated former cl. (3) as cl. (4), and prohibited the application of the described limitations and restrictions to State-guaranteed loans.

Pub. L. 86–251, § 4(c), inserted provisions in third par. classifying certain loans for construction of industrial or commercial buildings as ordinary commercial loans and authorized investments in or liability on loans in an amount that includes 100 per centum of its unimpaired surplus fund.

Pub. L. 86–251, § 4(d), added par. classifying certain loans to manufacturing and industrial businesses as ordinary commercial loans.

1958—Pub. L. 85–536 amended fourth par. by striking out ''or the Small Business Administration'' after ''Housing and Home Finance Administrator'' and ''or the Small Business Act of 1953'' after ''or 1701g–1 of this title'', and inserting provisions exempting loans in which the Small Business Administration cooperates through agreements to participate on an immediate or deferred basis from the restrictions or limitations of this section imposed upon loans secured by real estate.

1955—Act Aug. 11, 1955, § 1, amended first par. generally to increase the percentage of the loan to the appraised value of the property from 60 to 66⅔ percent in the case of 40 percent amortized residential mortgage loans not exceeding a 10-year maturity, and to permit national banks to make a residential real-estate loan in an amount not to exceed 66⅔ percent of the appraised value of the property and for a term not longer than 20 years.

Act Aug. 11, 1955, § 2, amended third par. by increasing from 6 to 9 months construction loans for the purpose of financing residential or farm buildings.

1954—Act Aug. 17, 1954, amended third sentence of first par. by inserting '', or sections 590r to 590x–3 of title 16'' after ''sections 1001–1005d of title 7''.

Act July 22, 1954, amended fourth par. by inserting references to the Small Business Administration and to the Small Business Act of 1953.

1953—Act Aug. 15, 1953, amended section by inserting new second par. to permit the making of real estate loans secured by first liens upon forest tracts which are properly managed.

1951—Act Sept. 1, 1951, § 207, amended third sentence of first par. by inserting a reference to subchapter X of chapter 13 of this title.

Act Sept. 1, 1951, § 503, amended third par. by inserting a reference to the Housing and Home Finance Administrator, and references to sections 1701g and 1701g–1 of this title.

1950—Act Apr. 20, 1950, amended third sentence of first par. by substituting ''1748–1748g, or 1706c of this title'' for ''or 1748–1748g of this title''.

1949—Joint Res. Oct. 25, 1949, amended first par. by striking out second sentence and inserting new second sentence, and by inserting ''sections 1707–1715, 1736–1742, and 1748–1748g of this title'' for ''sections 1707–1715 and 1736–1742 of this title''.

1948—Act May 25, 1948, amended third par. by striking out references to certain lending authority which the Corporation was granted under section 604(a) of title 15, as amended in 1947, and which it does not now have.

1946—Act Aug. 14, 1946, amended first par. by inserting ''or which are insured by the Secretary of Agriculture pursuant to sections 1001–1005d of title 7''.

1941—Act Mar. 28, 1941, amended third sentence of first par. by inserting reference to sections 1736 to 1742 of this title.

1935—Act Aug. 23, 1935, amended first par. and added third par.

1934—Act June 27, 1934, amended first par. and added second par.

1927—Act Feb. 25, 1927, amended first par.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 403(c) of Pub. L. 97–320 provided that: ''This section [amending this section and section 92 of this title] shall take effect upon the expiration of one hundred and eighty days after the date of its enactment [Oct. 15, 1982].''

REPEALS

Repealing provisions of Consolidated Farmers Home Administration Act of 1961 as not having the effect of repealing the amendments to this section enacted by act July 22, 1937, § 15(a), as added Aug. 14, 1946, and Aug. 28, 1937, § 10(f), as added Aug. 17, 1954, see section 341(a) of Pub. L. 87–128, title III, Aug. 8, 1961, 75 Stat. 318, set out as a References in Other Laws note under section 1921 of Title 7, Agriculture.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 371a. Payment of interest on demand deposits

No member bank shall, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand: *Provided*, That nothing herein contained shall be construed as prohibiting the payment of interest in accordance with the terms of any certificate of deposit or other contract entered into in good

faith which is in force on the date on which the bank becomes subject to the provisions of this section; but no such certificate of deposit or other contract shall be renewed or extended unless it shall be modified to conform to this section, and every member bank shall take such action as may be necessary to conform to this section as soon as possible consistently with its contractual obligations: *Provided further*, That this section shall not apply to any deposit of such bank which is payable only at an office thereof located outside of the States of the United States and the District of Columbia: *Provided further*, That until the expiration of two years after August 23, 1935, this section shall not apply (1) to any deposit made by a savings bank as defined in section 12B of this Act, as amended, or by a mutual savings bank, or (2) to any deposit of public funds made by or on behalf of any State, county, school district, or other subdivision or municipality, or to any deposit of trust funds if the payment of interest with respect to such deposit of public funds or of trust funds is required by State law. So much of existing law as requires the payment of interest with respect to any funds deposited by the United States, by any Territory, District, or possession thereof, or by any public instrumentality, agency, or officer of the foregoing, as is inconsistent with the provisions of this section is repealed. Notwithstanding any other provision of this section, a member bank may permit withdrawals to be made automatically from a savings deposit that consists only of funds in which the entire beneficial interest is held by one or more individuals through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to written authorization from the depositor to make such payments or transfers in connection with checks or drafts drawn upon the bank, pursuant to terms and conditions prescribed by the Board.

(Dec. 23, 1913, ch. 6, § 19(i), formerly § 19 par. (12), as added June 16, 1933, ch. 89, § 11(b), 48 Stat. 181; amended Aug. 23, 1935, ch. 614, title III, § 324(c), 49 Stat. 714; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; renumbered § 19(i), Pub. L. 89–597, § 2(b), Sept. 21, 1966, 80 Stat. 824; Pub. L. 96–161, title I, § 101(a), Dec. 28, 1979, 93 Stat. 1233; Pub. L. 96–221, title III, §§ 302(a), 307, Mar. 31, 1980, 94 Stat. 145, 147.)

REPEAL OF SECTION

Pub. L. 111–203, title VI, § 627(a)(1), (b), July 21, 2010, 124 Stat. 1640, provided that, effective 1 year after July 21, 2010, this section is repealed.

REFERENCES IN TEXT

Section 12B of this Act [Federal Reserve Act], as amended, referred to in text, formerly classified to section 264 of this title, has been withdrawn from the Federal Reserve Act and incorporated in the Federal Deposit Insurance Act which is classified to chapter 16 (§ 1811 et seq.) of this title.

This section, referred to in the last sentence, means section 19 of act Dec. 23, 1913, as amended, which is classified to sections 142, 371a, 371b, 371b–1, 374, 374a, 461, 463 to 466, 505, and 506 of this title.

CODIFICATION

Words ''(including the Philippine Islands)'' following ''or any possession thereof'' were omitted from text on authority of Proc. No. 2695, which granted independence to the Philippine Islands pursuant to section 1394 of Title 22. Proc. No. 2695 is set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1980—Pub. L. 96–221, §§ 302(a), 307, inserted provision identical to provision added by Pub. L. 96–161 respecting authorization of member banks to permit withdrawals to be made automatically from savings deposits consisting only of funds in which the entire beneficial interest is held by one or more individuals through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to written authorization from the depositor to make such transfer or payments in connection with checks or drafts drawn upon the bank, and repealed the amendment made by Pub. L. 96–161. See Repeals and Effective Date of 1980 Amendment notes below.

1979—Pub. L. 96–161 inserted provision allowing member banks to permit withdrawals to be made automatically from a savings deposit that consists only of funds in which the entire beneficial interest is held by one or more individuals through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to written authorization from the depositor to make such payments or transfers in connection with checks or drafts drawn upon the bank, pursuant to terms and conditions prescribed by the Board.

1935—Act Aug. 23, 1935, affected three provisos and added last sentence.

EFFECTIVE DATE OF REPEAL

Pub. L. 111–203, title VI, § 627(b), July 21, 2010, 124 Stat. 1640, provided that: ''The amendments made by subsection (a) [amending sections 1464 and 1828 of this title and repealing this section] shall take effect 1 year after the date of the enactment of this Act [July 21, 2010].''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 306 of title III of Pub. L. 96–221 provided that: ''The amendments made by sections 302, 304, and 305 of this title [amending this section and sections 1464, 1752, 1757, 1763, 1785, and 1828 of this title] shall take effect at the close of March 31, 1980, and the amendments made by section 303 of this title [amending section 1832 of this title] shall take effect on December 31, 1980.''

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENT

Section 104 of Pub. L. 96–161 which provided that the amendments made by sections 101–103 [amending this section and sections 1464, 1752, 1757, and 1828 of this title] shall take effect on Dec. 31, 1979, and shall remain in effect until the close of Mar. 31, 1980, was omitted from the Code in view of the repeal of the amendments made by sections 101–103 of Pub. L. 96–161 by Pub. L. 96–221, title III, § 307, Mar. 31, 1980, 94 Stat. 147.

REPEALS

Amendment by section 101 of Pub. L. 96–161, cited as a credit to this section, was repealed at the close of Mar. 31, 1980, by section 307 of Pub. L. 96–221, and substantially identical provisions were enacted by section 302 of Pub. L. 96–221, such amendments to take effect at the close of Mar. 31, 1980.

§ 371b. Rate of interest on time deposits; payment of time deposits before maturity; waiver of notice requirements for withdrawal of savings deposits

The Board may from time to time, after consulting with the Board of Directors of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board, prescribe rules governing the advertisement of interest on de-

posits by member banks on time and savings deposits. The provisions of this section shall not apply to any deposit which is payable only at an office of a member bank located outside of the States of the United States and the District of Columbia. During the period commencing on October 15, 1962, and ending on October 15, 1968, the provisions of this paragraph shall not apply to the rate of interest which may be paid by member banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

(Dec. 23, 1913, ch. 6, §19(j), formerly §19 (par. 13), as added June 16, 1933, ch. 89, §11(b), 48 Stat. 182; amended Aug. 23, 1935, ch. 614, title III, §324(c), 49 Stat. 714; Pub. L. 87–827, §1, Oct. 15, 1962, 76 Stat. 953; Pub. L. 89–79, §1, July 21, 1965, 79 Stat. 244; renumbered §19(j) and amended Pub. L. 89–597, §2(b), (c), Sept. 21, 1966, 80 Stat. 824; Pub. L. 90–505, §2(a), Sept. 21, 1968, 82 Stat. 856; Pub. L. 96–221, title II, §207(b)(4)–(6), Mar. 31, 1980, 94 Stat. 144.)

AMENDMENTS

1980—Pub. L. 96–221 struck out provisions relating to payment of interest on deposits, prescribing of different limitations by the Board for different classes of deposits, and payment of time deposits before maturity.

1968—Pub. L. 90–505 gave Board power to prescribe rules governing the payment and advertising of interest on deposits.

1966—Pub. L. 89–597, §2(c), made authority of Board to prescribe maximum permissible rates of interest that may be paid by member banks on time and savings deposits discretionary rather than mandatory, required prior consultations with the FDIC Board and the FHLB Board, authorized different rate limitations for different classes of deposits, for deposits of different amounts, or according to such other reasonable bases as the Board may deem desirable in the public interest, and struck out provision for rate limitation according to the varying discount rates of member banks in the several Federal Reserve districts.

1965—Pub. L. 89–79 extended until Oct. 15, 1968, the period during which the provisions of this paragraph do not apply to the rate of interest payable by member banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

1962—Pub. L. 87–827 inserted sentence making this paragraph inapplicable, during the period commencing on October 15, 1962, and ending upon the expiration of three years after such date, to the rate of interest which may be paid by member banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

1935—Act Aug. 23, 1935, among other changes, inserted ''except upon such conditions and in accordance with such rules and regulations as may be prescribed by the said Board'' to second sentence and proviso.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 207(b) of Pub. L. 96–221 provided in part that the amendment made by that section is effective 6 years after Mar. 31, 1980.

EFFECTIVE AND TERMINATION DATES OF 1966 AMENDMENT

Section 7 of Pub. L. 89–597, as amended, formerly set out as an Effective and Termination Dates of 1966 Amendment note under section 461 of this title (which provided in part that amendment of this section by section 2(c) of Pub. L. 89–597 was effective only to Dec. 15, 1980, and that on Dec. 15, 1980, this section was amended to read as it would without the amendment by section 2(c) of Pub. L. 89–597), was repealed by section 207(a) of Pub. L. 96–221.

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

TIME DEPOSITS; INTEREST RATES, LIMITATION

Pub. L. 93–123, Oct. 15, 1973, 87 Stat. 448, provided that in carrying out the Act of September 21, 1966 (Pub. L. 89–597) [enacting section 1425b of this title, amending sections 355, 371b, 461, and 1828 of this title and section 771 of former Title 31, repealing section 462a–1 of this title, and enacting provisions set out as notes under section 461 of this title] and other provisions of law, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board take action to limit rates of interest or dividends paid on time deposits of less than $100,000 by institutions regulated by them, prior to repeal by Pub. L. 96–221, title II, §207(b)(13), Mar. 31, 1980, 94 Stat. 144, eff. 6 years after Mar. 31, 1980.

§ 371b–1. Repealed. Pub. L. 96–221, title V, § 529, Mar. 31, 1980, 94 Stat. 168

Section, act Dec. 23, 1913, ch. 6, §19(k), as added Dec. 28, 1979, Pub. L. 96–161, title II, §208, 93 Stat. 1238, provided that no member bank or affiliate thereof, or any successor or assignee of such member bank or affiliate or any endorser, guarantor, or surety of such member bank or affiliate could plead, raise, or claim directly or by counterclaim, setoff, or otherwise, with respect to any deposit or obligation of such member bank or affiliate, any defense, right, or benefit under any provision of a statute or constitution of a State or of a territory of the United States, or of any law of the District of Columbia, regulating or limiting the rate of interest which could be charged, taken, received, or reserved, that any such provision was preempted, and that no civil or criminal penalty which would otherwise have been applicable under such provision would apply to such member bank or affiliate or to any other person.

EFFECTIVE DATE OF REPEAL

Section 529 of Pub. L. 96–221 provided in part that the repeal of this section is effective at the close of Mar. 31, 1980.

SAVINGS PROVISION

Section 529 of Pub. L. 96–221 provided in part that, notwithstanding the repeal of Pub. L. 96–104 and title II of Pub. L. 96–161, this section [which had been enacted by those laws] shall continue to apply to any loan made, any deposit made, or any obligation issued in any State during any period when this section was in effect in such State.

PRIOR PROVISIONS

A prior section 371b–1, act Dec. 23, 1913, ch. 6, §19(k), as added Nov. 5, 1979, Pub. L. 96–104, title II, §201, 93 Stat. 792, identical to this section as added by Pub. L. 96–161, was repealed by section 212 of Pub. L. 96–161, effective at the close of Dec. 27, 1979, except that its provisions would continue to apply to deposits made or obligations issued in any State on or after Nov. 5, 1979, but prior to such repeal. See Effective Date of 1979 Amendment note set out below.

A prior section 371b–1, act Dec. 23, 1913, ch. 6, §19(k), as added Oct. 29, 1974, Pub. L. 93–501, title III, §301, 88 Stat. 1560, identical to this section as added by Pub. L. 96–104, was repealed by section 1 of Pub. L. 96–104 except

that its provisions shall continue to apply to any deposit made or obligation issued in any State during the period specified in section 304 of Pub. L. 93–501. See Effective and Termination Date of 1974 Amendment note set out below.

EFFECTIVE DATE OF 1979 AMENDMENTS

Prior to its repeal by section 529 of Pub. L. 96–221, section 211 of Pub. L. 96–161 provided that: ''The amendments made by sections 208, 209, and 210 of this title [enacting this section and amending sections 1425b and 1828 of this title] shall apply only with respect to deposits made or obligations issued in any State during the period beginning on the date of the enactment of this Act [Dec. 28, 1979] and ending on the earliest of—

''(1) in the case of a State statute, July 1, 1980;

''(2) the date, after the date of the enactment of this Act [Dec. 28, 1979], on which such State adopts a law stating in substance that such State does not want the amendments made by sections 208, 209, and 210 of this title to apply with respect to such deposits and obligations; or

''(3) the date on which such State certifies that the voters of such State, after the date of the enactment of this Act [Dec. 28, 1979], have voted in favor of, or to retain, any law, provision of the constitution of such state, or amendment to the constitution of such State which limits the amount of interest which may be charged in connection with such deposits and obligations.''

Prior to its repeal by section 212 of Pub. L. 96–161, section 204 of Pub. L. 96–104 provided that: ''The amendments made by this title [enacting this section and amending sections 1425b and 1828 of this title] shall apply only with respect to deposits made or obligations issued in any State during the period beginning on the date of the enactment of this Act [Nov. 5, 1979] and ending on the earlier of—

''(1) July 1, 1981;

''(2) the date, after the date of the enactment of this Act [Nov. 5, 1979], on which such State adopts a law stating in substance that such State does not want the amendments made by this title to apply with respect to such deposits and obligations; or

''(3) the date on which such State certifies that the voters of such State, after the date of the enactment of this Act [Nov. 5, 1979], have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment to the constitution of such State which limits the amount of interest which may be charged in connection with such deposits and obligations.''

EFFECTIVE AND TERMINATION DATES OF 1974 AMENDMENT

Prior to its repeal by section 1 of Pub. L. 96–104, section 304 of title III of Pub. L. 93–501 provided that: ''The amendments made by this title [which enacted this section and amended sections 1425b and 1828 of this title] shall apply to any deposit made or obligation issued in any State after the date of enactment of this title [Oct. 29, 1974], but prior to the earlier of (1) July 1, 1977 or (2) the date (after such date of enactment) on which the State enacts a provision of law which limits the amount of interest which may be charged in connection with deposits or obligations referred to in the amendments made by this title.''

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

Section 213 of Pub. L. 96–161 provided that the provisions of title II of Pub. L. 96–161, which enacted this section, repealed former section 371b–1 of this title, and enacted provisions set out as a note under this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates.

§ 371b–2. Interbank liabilities

(a) Purpose

The purpose of this section is to limit the risks that the failure of a large depository institution (whether or not that institution is an insured depository institution) would pose to insured depository institutions.

(b) Aggregate limits on insured depository institutions' exposure to other depository institutions

The Board shall, by regulation or order, prescribe standards that have the effect of limiting the risks posed by an insured depository institution's exposure to any other depository institution.

(c) "Exposure" defined

(1) In general

For purposes of subsection (b) of this section, an insured depository institution's ''exposure'' to another depository institution means—

(A) all extensions of credit to the other depository institution, regardless of name or description, including—

(i) all deposits at the other depository institution;

(ii) all purchases of securities or other assets from the other depository institution subject to an agreement to repurchase; and

(iii) all guarantees, acceptances, or letters of credit (including endorsements or standby letters of credit) on behalf of the other depository institution;

(B) all purchases of or investments in securities issued by the other depository institution;

(C) all securities issued by the other depository institution accepted as collateral for an extension of credit to any person; and

(D) all similar transactions that the Board by regulation determines to be exposure for purposes of this section.

(2) Exemptions

The Board may, at its discretion, by regulation or order, exempt transactions from the definition of ''exposure'' if it finds the exemptions to be in the public interest and consistent with the purpose of this section.

(3) Attribution rule

For purposes of this section, any transaction by an insured depository institution with any person is a transaction with another depository institution to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that other depository institution.

(d) Insured depository institution

For purposes of this section, the term ''insured depository institution'' has the same meaning as in section 1813 of this title.

(e) Rulemaking authority; enforcement

The Board may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and

carry out the purpose of this section. The appropriate Federal banking agency shall enforce compliance with those regulations under section 1818 of this title.

(Dec. 23, 1913, ch. 6, § 23, as added Pub. L. 102–242, title III, § 308(a), Dec. 19, 1991, 105 Stat. 2362.)

EFFECTIVE DATE

Section 308(c) of Pub. L. 102–242 provided that: ''The amendment made by this section [enacting this section] shall become effective 1 year after the date of enactment of this Act [Dec. 19, 1991].''

REGULATIONS

Section 308(b) of Pub. L. 102–242 provided that: ''The Board shall prescribe reasonable transition rules to facilitate compliance with section 23 of the Federal Reserve Act [12 U.S.C. 371b–2] (as added by subsection (a)).''

§ 371c. Banking affiliates

(a) Restrictions on transactions with affiliates

(1) A member bank and its subsidiaries may engage in a covered transaction with an affiliate only if—

(A) in the case of any affiliate, the aggregate amount of covered transactions of the member bank and its subsidiaries will not exceed 10 per centum of the capital stock and surplus of the member bank; and

(B) in the case of all affiliates, the aggregate amount of covered transactions of the member bank and its subsidiaries will not exceed 20 per centum of the capital stock and surplus of the member bank.

(2) For the purpose of this section, any transaction by a member bank with any person shall be deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.

(3) A member bank and its subsidiaries may not purchase a low-quality asset from an affiliate unless the bank or such subsidiary, pursuant to an independent credit evaluation, committed itself to purchase such asset prior to the time such asset was acquired by the affiliate.

(4) Any covered transactions and any transactions exempt under subsection (d) of this section between a member bank and an affiliate shall be on terms and conditions that are consistent with safe and sound banking practices.

(b) Definitions

For the purpose of this section—

(1) the term ''affiliate'' with respect to a member bank means—

(A) any company that controls the member bank and any other company that is controlled by the company that controls the member bank;

(B) a bank subsidiary of the member bank;

(C) any company—

(i) that is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the member bank or any company that controls the member bank; or

(ii) in which a majority of its directors or trustees constitute a majority of the persons holding any such office with the member bank or any company that controls the member bank;

(D)(i) any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the member bank or any subsidiary or affiliate of the member bank; or

(ii) any investment company with respect to which a member bank or any affiliate thereof is an investment advisor as defined in section 80a–2(a)(20) of title 15; and

(E) any company that the Board determines by regulation or order to have a relationship with the member bank or any subsidiary or affiliate of the member bank, such that covered transactions by the member bank or its subsidiary with that company may be affected by the relationship to the detriment of the member bank or its subsidiary; and

(2) the following shall not be considered to be an affiliate:

(A) any company, other than a bank, that is a subsidiary of a member bank, unless a determination is made under paragraph (1)(E) not to exclude such subsidiary company from the definition of affiliate;

(B) any company engaged solely in holding the premises of the member bank;

(C) any company engaged solely in conducting a safe deposit business;

(D) any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and

(E) any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized under applicable State or Federal law or regulation or, in the absence of such law or regulation, for a period of two years from the date of the exercise of such rights or the effective date of this Act, whichever date is later, subject, upon application, to authorization by the Board for good cause shown of extensions of time for not more than one year at a time, but such extensions in the aggregate shall not exceed three years;

(3)(A) a company or shareholder shall be deemed to have control over another company if—

(i) such company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the other company;

(ii) such company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company; or

(iii) the Board determines, after notice and opportunity for hearing, that such company or shareholder, directly or indirectly, exercises a controlling influence over the management or policies of the other company; and

(B) notwithstanding any other provision of this section, no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraph (1)(C) of this subsection or if the company owning or controlling such shares is a business trust;

(4) the term ''subsidiary'' with respect to a specified company means a company that is controlled by such specified company;

(5) the term ''bank'' includes a State bank, national bank, banking association, and trust company;

(6) the term ''company'' means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term ''company'' includes a ''member bank'' and a ''bank'';

(7) the term ''covered transaction'' means with respect to an affiliate of a member bank—

(A) a loan or extension of credit to the affiliate;

(B) a purchase of or an investment in securities issued by the affiliate;

(C) a purchase of assets, including assets subject to an agreement to repurchase, from the affiliate, except such purchase of real and personal property as may be specifically exempted by the Board by order or regulation;

(D) the acceptance of securities issued by the affiliate as collateral security for a loan or extension of credit to any person or company; or

(E) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate;

(8) the term ''aggregate amount of covered transactions'' means the amount of the covered transactions about to be engaged in added to the current amount of all outstanding covered transactions;

(9) the term ''securities'' means stocks, bonds, debentures, notes, or other similar obligations; and

(10) the term ''low-quality asset'' means an asset that falls in any one or more of the following categories:

(A) an asset classified as ''substandard'', ''doubtful'', or ''loss'' or treated as ''other loans especially mentioned'' in the most recent report of examination or inspection of an affiliate prepared by either a Federal or State supervisory agency;

(B) an asset in a nonaccrual status;

(C) an asset on which principal or interest payments are more than thirty days past due; or

(D) an asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.

(11) REBUTTABLE PRESUMPTION OF CONTROL OF PORTFOLIO COMPANIES.—In addition to paragraph (3), a company or shareholder shall be presumed to control any other company if the company or shareholder, directly or indirectly, or acting through 1 or more other persons, owns or controls 15 percent or more of the equity capital of the other company pursuant to subparagraph (H) or (I) of section 1843(k)(4) of this title or rules adopted under section 122 of the Gramm-Leach-Bliley Act, if any, unless the company or shareholder provides information acceptable to the Board to rebut this presumption of control.

(c) Collateral for certain transactions with affiliates

(1) Each loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate by a member bank or its subsidiary shall be secured at the time of the transaction by collateral having a market value equal to—

(A) 100 per centum of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit, if the collateral is composed of—

(i) obligations of the United States or its agencies;

(ii) obligations fully guaranteed by the United States or its agencies as to principal and interest;

(iii) notes, drafts, bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(iv) a segregated, earmarked deposit account with the member bank;

(B) 110 per centum of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of obligations of any State or political subdivision of any State;

(C) 120 per centum of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of other debt instruments, including receivables; or

(D) 130 per centum of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of stock, leases, or other real or personal property.

(2) Any such collateral that is subsequently retired or amortized shall be replaced by additional eligible collateral where needed to keep the percentage of the collateral value relative to the amount of the outstanding loan or extension of credit, guarantee, acceptance, or letter of credit equal to the minimum percentage required at the inception of the transaction.

(3) A low-quality asset shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate.

(4) The securities issued by an affiliate of the member bank shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, that affiliate or any other affiliate of the member bank.

(5) The collateral requirements of this paragraph shall not be applicable to an acceptance that is already fully secured either by attached documents or by other property having an ascertainable market value that is involved in the transaction.

(d) Exemptions

The provisions of this section, except subsection (a)(4) of this section, shall not be applicable to—

(1) any transaction, subject to the prohibition contained in subsection (a)(3) of this section, with a bank—

(A) which controls 80 per centum or more of the voting shares of the member bank;

(B) in which the member bank controls 80 per centum or more of the voting shares; or

(C) in which 80 per centum or more of the voting shares are controlled by the company that controls 80 per centum or more of the voting shares of the member bank;

(2) making deposits in an affiliated bank or affiliated foreign bank in the ordinary course of correspondent business, subject to any restrictions that the Board may prescribe by regulation or order;

(3) giving immediate credit to an affiliate for uncollected items received in the ordinary course of business;

(4) making a loan or extension of credit to, or issuing a guarantee, acceptance, or letter of credit on behalf of, an affiliate that is fully secured by—

(A) obligations of the United States or its agencies;

(B) obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(C) a segregated, earmarked deposit account with the member bank;

(5) purchasing securities issued by any company of the kinds described in section 1843(c)(1) of this title;

(6) purchasing assets having a readily identifiable and publicly available market quotation and purchased at that market quotation or, subject to the prohibition contained in subsection (a)(3) of this section, purchasing loans on a nonrecourse basis from affiliated banks; and

(7) purchasing from an affiliate a loan or extension of credit that was originated by the member bank and sold to the affiliate subject to a repurchase agreement or with recourse.

(e) Rules relating to banks with financial subsidiaries

(1) Financial subsidiary defined

For purposes of this section and section 371c–1 of this title, the term ''financial subsidiary'' means any company that is a subsidiary of a bank that would be a financial subsidiary of a national bank under section 24a of this title.

(2) Financial subsidiary treated as an affiliate

For purposes of applying this section and section 371c–1 of this title, and notwithstanding subsection (b)(2) of this section or section 371c–1(d)(1) of this title, a financial subsidiary of a bank—

(A) shall be deemed to be an affiliate of the bank; and

(B) shall not be deemed to be a subsidiary of the bank.

(3) Exceptions for transactions with financial subsidiaries

(A) Exception from limit on covered transactions with any individual financial subsidiary

Notwithstanding paragraph (2), the restriction contained in subsection (a)(1)(A) of this section shall not apply with respect to covered transactions between a bank and any individual financial subsidiary of the bank.

(B) Exception for earnings retained by financial subsidiaries

Notwithstanding paragraph (2) or subsection (b)(7) of this section, a bank's investment in a financial subsidiary of the bank shall not include retained earnings of the financial subsidiary.

(4) Anti-evasion provision

For purposes of this section and section 371c–1 of this title—

(A) any purchase of, or investment in, the securities of a financial subsidiary of a bank by an affiliate of the bank shall be considered to be a purchase of or investment in such securities by the bank; and

(B) any extension of credit by an affiliate of a bank to a financial subsidiary of the bank shall be considered to be an extension of credit by the bank to the financial subsidiary if the Board determines that such treatment is necessary or appropriate to prevent evasions of this chapter and the Gramm-Leach-Bliley Act.

(f) Rulemaking and additional exemptions

(1) The Board may issue such further regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out the purposes of this section and to prevent evasions thereof.

(2) The Board may, at its discretion, by regulation or order exempt transactions or relationships from the requirements of this section if it finds such exemptions to be in the public interest and consistent with the purposes of this section.

(3) RULEMAKING REQUIRED CONCERNING DERIVATIVE TRANSACTIONS AND INTRADAY CREDIT.—

(A) IN GENERAL.—Not later than 18 months after November 12, 1999, the Board shall adopt final rules under this section to address as covered transactions credit exposure arising out of derivative transactions between member banks and their affiliates and intraday extensions of credit by member banks to their affiliates.

(B) EFFECTIVE DATE.—The effective date of any final rule adopted by the Board pursuant to subparagraph (A) shall be delayed for such period as the Board deems necessary or appropriate to permit banks to conform their activities to the requirements of the final rule without undue hardship.

(Dec. 23, 1913, ch. 6, §23A, as added June 16, 1933, ch. 89, §13, 48 Stat. 183; amended Aug. 23, 1935, ch. 614, title III, §327, 49 Stat. 717; June 30, 1954, ch. 434, §1, 68 Stat. 358; Pub. L. 86–230, §1(b), Sept. 8, 1959, 73 Stat. 457; Pub. L. 89–485, §§12(a), 13(h), July 1, 1966, 80 Stat. 241, 243; Pub. L. 97–320,

title IV, § 410(b), Oct. 15, 1982, 96 Stat. 1515; Pub. L. 97–457, § 22, Jan. 12, 1983, 96 Stat. 2509; Pub. L. 106–102, title I, § 121(b), Nov. 12, 1999, 113 Stat. 1378; Pub. L. 111–203, title VI, §§ 608(a), 609(a), July 21, 2010, 124 Stat. 1608, 1611.)

AMENDMENT OF SECTION

Pub. L. 111–203, title VI, § 609, July 21, 2010, 124 Stat. 1611, provided that, applicable with respect to any covered transaction between a bank and a subsidiary of the bank, as those terms are defined in this section, that is entered into on or after July 21, 2010, and effective 1 year after the transfer date, subsection (e) of this section is amended by striking paragraph (3) and redesignating paragraph (4) as (3). See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title VI, § 608(a), (d), July 21, 2010, 124 Stat. 1608, 1611, provided that, effective 1 year after the transfer date, this section is amended:

(1) in subsection (b)—

(A) in paragraph (1), by striking out subpar. (D) and adding a new subpar. (D) to read as follows: ''any investment fund with respect to which a member bank or affiliate thereof is an investment adviser; and''; and

(B) in paragraph (7)—

(i) in subparagraph (A), by inserting before the semicolon at the end the following: '', including a purchase of assets subject to an agreement to repurchase'';

(ii) in subparagraph (C), by striking out '', including assets subject to an agreement to repurchase,'';

(iii) in subparagraph (D), by inserting ''or other debt obligations'' after ''acceptance of securities'' and striking out ''or'' at the end; and

(iv) by adding at the end the following:

''(F) a transaction with an affiliate that involves the borrowing or lending of securities, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate; or

''(G) a derivative transaction, as defined in paragraph (3) of section 84(b) of this title, with an affiliate, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate;'';

(2) in subsection (c)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by substituting ''subsidiary, and any credit exposure of a member bank or a subsidiary to an affiliate resulting from a securities borrowing or lending transaction, or a derivative transaction, shall be secured at all times'' for ''subsidiary'' and all that follows through ''time of the transaction''; and

(ii) in each of subparagraphs (A) to (D), by substituting ''letter of credit, or credit exposure'' for ''or letter of credit'';

(B) by striking paragraph (2) and redesignating paragraphs (3) to (5) as (2) to (4), respectively;

(C) in paragraph (2), as so redesignated, by inserting before the period at the end '', or credit exposure to an affiliate resulting from a securities borrowing or lending transaction, or derivative transaction''; and

(D) in paragraph (3), as so redesignated, by inserting ''or other debt obligations'' after ''securities'' and substituting ''guarantee, acceptance, or letter of credit issued on behalf of, or credit exposure from a securities borrowing or lending transaction, or derivative transaction to,'' for ''or guarantee'' and all that follows through ''behalf of,'';

(3) in subsection (d)(4), in the matter preceding subparagraph (A), by substituting ''issuing a guarantee, acceptance, or letter of credit on behalf of, or having credit exposure resulting from a securities borrowing or lending transaction, or derivative transaction to,'' for ''or issuing'' and all that follows through ''behalf of,''; and

(4) in subsection (f)—

(A) in paragraph (2)—

(i) by striking out ''or order'';

(ii) by striking the Board [sic; probably means ''The Board''] and inserting the following: ''(A) In general.—The Board'';

(iii) by substituting ''if—

''(i) the Board finds the exemption to be in the public interest and consistent with the purposes of this section, and notifies the Federal Deposit Insurance Corporation of such finding; and

''(ii) before the end of the 60-day period beginning on the date on which the Federal Deposit Insurance Corporation receives notice of the finding under clause (i), the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.''

for ''if it finds'' and all that follows through the end of the paragraph; and

(iv) by adding at the end the following:

''(B) Additional exemptions.—

''(i) National banks.—The Comptroller of the Currency may, by order, exempt a transaction of a national bank from the requirements of this section if—

''(I) the Board and the Office of the Comptroller of the Currency jointly find the exemption to be in the public interest and consistent with the purposes of this section and notify the Federal Deposit Insurance Corporation of such finding; and

''(II) before the end of the 60-day period beginning on the date on which the Federal Deposit Insurance Corporation receives notice of the finding under subclause (I), the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

''(ii) State banks.—The Federal Deposit Insurance Corporation may, by order, exempt a transaction of a State nonmember bank, and the Board may, by order, exempt a transaction of a State member bank, from the requirements of this section if—

''(I) the Board and the Federal Deposit Insurance Corporation jointly find that the exemption is in the public interest and consistent with the purposes of this section; and

''(II) the Federal Deposit Insurance Corporation finds that the exemption does not present an unacceptable risk to the Deposit Insurance Fund.''; and

(B) by adding at the end the following:

''(4) Amounts of covered transactions.—The Board may issue such regulations or interpretations as the Board determines are necessary or appropriate with respect to the manner in which a netting agreement may be taken into account in determining the amount of a covered transaction between a member bank or a subsidiary and an affiliate, including the extent to which netting agreements between a member bank or a subsidiary and an affiliate may be taken into account in determining whether a covered transaction is fully secured for purposes of subsection (d)(4). An interpretation under this paragraph with respect to a specific member bank, subsidiary, or affiliate shall be issued jointly with the appropriate Federal banking agency for such member bank, subsidiary, or affiliate.''

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (b)(2)(E), probably means the effective date as provided by Pub. L. 97–320, which completely revised this section. Section 410(c) of Pub. L. 97–320 set out as an Effective Date of 1982 Amendment note below, provided that this section shall apply to any transaction entered into after Oct. 15, 1982 with certain exceptions.

The Gramm-Leach-Bliley Act, referred to in subsecs. (b)(11) and (e)(4)(B), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338. Section 122 of the Act is set out as a note under section 1843 of this title. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

This chapter, referred to in subsec. (e)(4)(B), was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. For complete classification of this act to the Code, see References in Text note set out under section 226 of this title and Tables.

AMENDMENTS

1999—Subsec. (b)(11). Pub. L. 106–102, §121(b)(2), added par. (11).

Subsec. (e). Pub. L. 106–102, §121(b)(1)(B), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106–102, §121(b)(1)(A), (3), redesignated subsec. (e) as (f) and added par. (3).

1983—Subsec. (d)(1). Pub. L. 97–457, §22(1), substituted ''subject to the prohibition contained in subsection (a)(3) of this section'' for ''except for the purchase of a low-quality asset which is prohibited''.

Subsec. (d)(6). Pub. L. 97–457, §22(2), inserted '', subject to the prohibition contained in subsection (a)(3) of this section,'' after ''market quotation or''.

1982—Pub. L. 97–320 amended section generally by substituting provisions in lettered subsections relating to restrictions on transactions with affiliates, collateral for such transactions, exemptions for certain transactions and rulemaking and additional exemptions, for prior undesignated paragraphs which read as follows:

''No member bank shall (1) make any loan or any extension of credit to, or purchase securities under repurchase agreement from, any of its affiliates, or (2) invest any of its funds in the capital stock, bonds, debentures, or other such obligations of any such affiliate, or (3) accept the capital stock, bonds, debentures, or other such obligations of any such affiliate as collateral security for advances made to any person, partnership, association, or corporation, if, in the case of any such affiliate, the aggregate amount of such loans, extensions of credit, repurchase agreements, investments, and advances against such collateral security will exceed 10 per centum of the capital stock and surplus of such member bank, or if, in the case of all such affiliates, the aggregate amount of such loans, extensions of credits, repurchase agreements, investments, and advances against such collateral security will exceed 20 per centum of the capital stock and surplus of such member bank.

''Within the foregoing limitations, each loan or extension of credit of any kind or character to an affiliate shall be secured by collateral in the form of stocks, bonds, debentures, or other such obligations having a market value at the time of making the loan or extension of credit of at least 20 per centum more than the amount of the loan or extension of credit, or of at least 10 per centum more than the amount of the loan or extension of credit if it is secured by obligations of any State or of any political subdivision or agency thereof: *Provided*, That the provisions of this paragraph shall not apply to loans or extensions of credit secured by obligations of the United States Government, the Federal intermediate credit banks, the Federal land banks, or the Federal Home Loan Banks, or by such notes, drafts, bills of exchange, or bankers' acceptances as are eligible for rediscount or for purchase by Federal Reserve Banks. A loan or extension of credit to a director, officer, clerk, or other employee, or any representative of any such affiliate, shall be deemed a loan to the affiliate to the extent that the proceeds of such loan are used for the benefit of or transferred to the affiliate.

''The provisions of this section shall not apply to any affiliate (1) engaged solely in holding the bank premises of the member bank with which it is affiliated; (2) engaged solely in conducting a safe-deposit business or the business of an agricultural credit corporation or livestock loan company; (3) in the capital stock of which a national banking association is authorized to invest pursuant to section 25 of this Act, as amended [12 U.S.C. 601 et seq.], or a subsidiary of such affiliate, all the stock of which (except qualifying shares of directors in an amount not to exceed 10 per centum) is owned by such affiliate; (4) organized under section 25(a) of this Act, as amended [12 U.S.C. 611 et seq.], of this title, or a subsidiary of such affiliate, all the stock of which (except qualifying shares of directors in an amount not to exceed 10 per centum) is owned by such affiliate; (5) engaged solely in holding obligations of the United States or obligations fully guaranteed by the United States as to principal and interest, the Federal intermediate credit banks, the Federal land banks, the Federal Home Loan Banks; (6) where the affiliate relationship has arisen out of a bona fide debt contracted prior to the date of the creation of such relationship; or (7) where the affiliate relationship exists by reason of the ownership or control of any voting shares thereof by a member bank as executor, administrator, trustee, receiver, agent, depositary, or in any other fiduciary capacity, except where such shares are held for the benefit of all or a majority of the stockholders of such member bank; but as to any such affiliate, member banks shall continue to be subject to other provisions of law applicable to loans by such banks and investments by such banks in stocks, bonds, debentures, or other such obligations. The provisions of this section shall likewise not apply to indebtedness of any affiliate for unpaid balances due a bank on assets purchased from such bank or to loans secured by, or extensions of credit against, obligations of the United States or obligations fully guaranteed by the United States as to principal and interest.

''For the purposes of this section, (1) the term 'extension of credit' and 'extensions of credit' shall be deemed to include (A) any purchase of securities, other assets or obligations under repurchase agreement, and (B) the discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse, except that the acquisition of such paper by a member bank from another bank, without recourse, shall not be deemed to be a 'discount' by such member bank for such other bank; and (2) noninterest-bearing deposits to the credit of a bank shall not be deemed to be a loan or advance or extension of credit to the bank of deposit, nor shall the giving of immediate credit to a bank upon uncollected items received in the ordinary course of business be deemed to

be a loan or advance or extension of credit to the depositing bank.

''For the purposes of this section, the term 'affiliate' shall include, with respect to any member bank, any bank holding company of which such member bank is a subsidiary within the meaning of the Bank Holding Company Act of 1956, as amended [12 U.S.C. 1841 et seq.], and any other subsidiary of such company.

''The provisions of this section shall not apply to (1) stock, bonds, debentures, or other obligations of any company of the kinds described in section 4(c)(1) of the Bank Holding Company Act of 1956, as amended [12 U.S.C. 1843(c)(1)]; (2) stock, bonds, debentures, or other obligations accepted as security for debts previously contracted, provided that such collateral shall not be held for a period of over two years; (3) shares which are of the kinds and amounts eligible for investment by national banks under the provisions of section 24 of this title; (4) any extension of credit by a member bank to a bank holding company of which such bank is a subsidiary or to another subsidiary of such bank holding company, if made within one year after July 1, 1966, and pursuant to a contract lawfully entered into prior to January 1, 1966; or (5) any transaction by a member bank with another bank the deposits of which are insured by the Federal Deposit Insurance Corporation, if more than 50 per centum of the voting stock of such other bank is owned by the member bank or held by trustees for the benefit of the shareholders of the member bank.''

1966—Pub. L. 89–485 added last three pars. and struck out from third par. introductory statement that term ''affiliate'' shall include holding company affiliates as well as other affiliates, respectively. Such added pars. make ''extension of credit'' cover all purchases under repurchase agreements and the discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse, excluding therefrom such discounts by one bank for another, if without recourse, exclude from being deemed a loan, advance, or extension of credit noninterest bearing deposits to the credit of a bank or the giving of immediate credit to a bank for uncollected items received in the ordinary course of business, define term ''affiliate'' (superseding one stricken from par. three), and exempt stocks, bonds, debentures, or other obligations of companies described in section 4(c)(1) of the Bank Holding Company Act of 1956, as amended; or accepted as security for debts previously contracted, shares of the kind and amounts eligible for investment by national banks under section 24 of this title, loans by a bank to its holding company or a fellow subsidiary if made within one year after July 1, 1966 and pursuant to a contract lawfully entered before Jan. 1, 1966, and transactions between a member bank and a majority-owned insured bank.

1959—Pub. L. 86–230 struck out from second and third pars. references to Home Owners' Loan Corporation after Federal Home Loan Banks.

1954—Act June 30, 1954, amended third par. substituting ''solely'' for ''on June 16, 1934'' after ''(1) engaged'' and struck out ''or in maintaining and operating properties acquired for banking purposes prior to such date'' after ''is affiliated''.

1935—Act Aug. 23, 1935, amended third par.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title VI, § 608(d), July 21, 2010, 124 Stat. 1611, provided that: ''The amendments made by this section [amending this section and sections 371c–1 and 1468 of this title] shall take effect 1 year after the transfer date.''

[For definition of ''transfer date'' as used in section 608(d) of Pub. L. 111–203, set out above, see section 5301 of this title.]

Pub. L. 111–203, title VI, § 609(b), (c), July 21, 2010, 124 Stat. 1611, provided that:

''(b) PROSPECTIVE APPLICATION OF AMENDMENT.—The amendments made by this section [amending this section] shall apply with respect to any covered transaction between a bank and a subsidiary of the bank, as those terms are defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), that is entered into on or after the date of enactment of this Act [July 21, 2010].

''(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the transfer date.''

[For definition of ''transfer date'' as used in section 609(b), (c) of Pub. L. 111–203, set out above, see section 5301 of this title.]

EFFECTIVE DATE OF 1999 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

Section 410(c) of Pub. L. 97–320 provided that: ''Section 23A of the Federal Reserve Act, as amended by this section [this section], shall apply to any transaction entered into after the date of enactment of this Act [Oct. 15, 1982], except for transactions which are the subject of a binding written contract or commitment entered into on or before July 28, 1982, and except that any renewal of a participation in a loan outstanding on July 28, 1982, to a company that becomes an affiliate as a result of the enactment of this Act [see section 1 of Pub. L. 97–320, set out as a Short Title of 1982 Amendments note under section 226 of this title], or any participation in a loan to such an affiliate emanating from the renewal of a binding written contract or commitment outstanding on July 28, 1982, shall not be subject to the collateral requirements of this Act.''

§ 371c–1. Restrictions on transactions with affiliates

(a) In general

(1) Terms

A member bank and its subsidiaries may engage in any of the transactions described in paragraph (2) only—

(A) on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such bank or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies, or

(B) in the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliated companies.

(2) Transactions covered

Paragraph (1) applies to the following:

(A) Any covered transaction with an affiliate.

(B) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase.

(C) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise.

(D) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the bank or to any other person.

(E) Any transaction or series of transactions with a third party—

(i) if an affiliate has a financial interest in the third party, or

(ii) if an affiliate is a participant in such transaction or series of transactions.

(3) Transactions that benefit affiliate

For the purpose of this subsection, any transaction by a member bank or its subsidiary with any person shall be deemed to be a transaction with an affiliate of such bank if any of the proceeds of the transaction are used for the benefit of, or transferred to, such affiliate.

(b) Prohibited transactions

(1) In general

A member bank or its subsidiary—

(A) shall not purchase as fiduciary any securities or other assets from any affiliate unless such purchase is permitted—

(i) under the instrument creating the fiduciary relationship,

(ii) by court order, or

(iii) by law of the jurisdiction governing the fiduciary relationship; and

(B) whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of such bank.

(2) Exception

Subparagraph (B) of paragraph (1) shall not apply if the purchase or acquisition of such securities has been approved, before such securities are initially offered for sale to the public, by a majority of the directors of the bank based on a determination that the purchase is a sound investment for the bank irrespective of the fact that an affiliate of the bank is a principal underwriter of the securities.

(3) Definitions

For the purpose of this subsection—

(A) the term ''security'' has the meaning given to such term in section 78c(a)(10) of title 15; and

(B) the term ''principal underwriter'' means any underwriter who, in connection with a primary distribution of securities—

(i) is in privity of contract with the issuer or an affiliated person of the issuer;

(ii) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

(iii) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(c) Advertising restriction

A member bank or any subsidiary or affiliate of a member bank shall not publish any advertisement or enter into any agreement stating or suggesting that the bank shall in any way be responsible for the obligations of its affiliates.

(d) Definitions

For the purpose of this section—

(1) the term ''affiliate'' has the meaning given to such term in section 371c of this title (but does not include any company described in section[1] (b)(2) of such section or any bank);

(2) the terms ''bank'', ''subsidiary'', ''person'', and ''security'' (other than security as used in subsection (b) of this section) have the meanings given to such terms in section 371c of this title; and

(3) the term ''covered transaction'' has the meaning given to such term in section 371c of this title (but does not include any transaction which is exempt from such definition under subsection (d) of such section).

(e) Regulations

The Board may prescribe regulations to administer and carry out the purposes of this section, including—

(1) regulations to further define terms used in this section; and

(2) regulations to—

(A) exempt transactions or relationships from the requirements of this section; and

(B) exclude any subsidiary of a bank holding company from the definition of affiliate for purposes of this section,

if the Board finds such exemptions or exclusions are in the public interest and are consistent with the purposes of this section.

(Dec. 23, 1913, ch. 6, § 23B, as added Pub. L. 100–86, title I, § 102(a), Aug. 10, 1987, 101 Stat. 564; amended Pub. L. 106–102, title VII, § 738, Nov. 12, 1999, 113 Stat. 1480; Pub. L. 111–203, title VI, § 608(b), July 21, 2010, 124 Stat. 1610.)

AMENDMENT OF SUBSECTION (e)

Pub. L. 111–203, title VI, § 608(b), (d), July 21, 2010, 124 Stat. 1610, 1611, provided that, effective 1 year after the transfer date, subsection (e) of this section is amended:

(1) by striking out the undesignated matter following subparagraph (B);

(2) by substituting

''(1) In general

''The Board''

for ''The Board'';

(3) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting margins accordingly;

(4) in paragraph (1)(B), as so redesignated—

(A) in the matter preceding clause (i), by inserting before ''regulations'' the following: ''subject to paragraph (2), if the Board finds that an exemption or exclusion is in the public interest and is consistent with the purposes of this section, and notifies the Federal Deposit Insurance Corporation of such finding,''; and

(B) in clause (ii), by substituting a period for the comma at the end; and

(5) by adding at the end the following:

(2) Exception

The Board may grant an exemption or exclusion under this subsection only if, during the 60-day period beginning on the date of receipt of notice of the finding from the Board under paragraph (1)(B), the Federal Deposit Insurance Corporation does not object, in writing, to such exemption or exclusion, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

[1] So in original. Probably should be ''subsection''.

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–102 amended text of par. (2) generally. Prior to amendment, text read as follows: ''Subparagraph (B) of paragraph (1) shall not apply if the purchase or acquisition of such securities has been approved, before such securities are initially offered for sale to the public, by a majority of the directors of the bank who are not officers or employees of the bank or any affiliate thereof.''

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 year after the transfer date, see section 608(d) of Pub. L. 111–203, set out as a note under section 371c of this title.

§ 371d. Investment in bank premises or stock of corporation holding premises

(a) Conditions of investment

No national bank or State member bank shall invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank, or make loans to or upon the security of any such corporation—

(1) unless the bank receives the prior approval of the Comptroller of the Currency (with respect to a national bank) or the Board (with respect to a State member bank);

(2) unless the aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation that is an affiliate of the bank, is less than or equal to the amount of the capital stock of such bank; or

(3) unless—

(A) the aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation that is an affiliate of the bank, is less than or equal to 150 percent of the capital and surplus of the bank; and

(B) the bank—

(i) has a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of the most recent examination of such bank;

(ii) is well capitalized and will continue to be well capitalized after the investment or loan; and

(iii) provides notification to the Comptroller of the Currency (with respect to a national bank) or to the Board (with respect to a State member bank) not later than 30 days after making the investment or loan.

(b) Definitions

For purposes of this section—

(1) the term ''affiliate'' has the same meaning as in section 221a of this title; and

(2) the term ''well capitalized'' has the same meaning as in section 1831*o*(b) of this title.

(Dec. 23, 1913, ch. 6, § 24A, as added June 16, 1933, ch. 89, § 14, 48 Stat. 184; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; June 30, 1954, ch. 434, § 2, 68 Stat. 358; Pub. L. 104–208, div. A, title II, § 2206, Sept. 30, 1996, 110 Stat. 3009–405.)

AMENDMENTS

1996—Pub. L. 104–208 inserted section catchline and amended text generally. Prior to amendment, text read as follows: ''No national bank, without the approval of the Comptroller of the Currency, and no State member bank, without the approval of the Board of Governors of the Federal Reserve System, shall (1) invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank, or (2) make loans to or upon the security of the stock of any such corporation, if the aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation which is an affiliate of the bank, as defined in section 221a of this title, will exceed the amount of the capital stock of such bank.''

1954—Act June 30, 1954, inserted ''together with the amount of any indebtedness incurred by any such corporation which is an affiliate of the bank, as defined in section 221a of this title''.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 372. Bankers' acceptances

(a) Institutions; drafts and bills of exchange; types

Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 3105 of this title (hereinafter in this section referred to as ''institutions''), may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace—

(i) which grow out of transactions involving the importation or exportation of goods;

(ii) which grow out of transactions involving the domestic shipment of goods; or

(iii) which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

(b) Ratio limit of bills to unimpaired capital stock and surplus

Except as provided in subsection (c) of this section, no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subsection (h) of this section.

(c) Authorization for special ratio limit; foreign banks

The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus or, in the case

of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subsection (h) of this section.

(d) Ratio limit for domestic transactions

Notwithstanding subsections (b) and (c) of this section, with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for such institution under this section.

(e) Ratio limit for single entity; foreign banks; security

No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subsection (h) of this section, unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

(f) Exception for participation agreements

With respect to an institution which issues an acceptance, the limitations contained in this section shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution.

(g) Definitions by Board

In order to carry out the purposes of this section, the Board may define any of the terms used in this section, and, with respect to institutions which do not have capital or capital stock, the Board shall define an equivalent measure to which the limitations contained in this section shall apply.

(h) Dollar equivalent of foreign bank paid-up capital stock and surplus

Any limitation or restriction in this section based on paid-up and unimpaired capital stock and surplus of an institution shall be deemed to refer, with respect to a United States branch or agency of a foreign bank, to the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Board, and if the foreign bank has more than one United States branch or agency, the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation or restriction.

(Dec. 23, 1913, ch. 6, §13 (par.), 38 Stat. 264; Mar. 3, 1915, ch. 93, 38 Stat. 958; Sept. 7, 1916, ch. 461, 39 Stat. 752; June 21, 1917, ch. 32, §5, 40 Stat. 235; Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704; Pub. L. 97–290, title II, §207, Oct. 8, 1982, 96 Stat. 1239.)

REFERENCES IN TEXT

Section 3105 of this title, referred to in subsec. (a), was in the original a reference to section 7 of the International Banking Act of 1978, Pub. L. 95–369, Sept. 17, 1978, 92 Stat. 620, which enacted sections 347d and 3105 of this title.

CODIFICATION

Section is comprised of the seventh par. of section 13 of act Dec. 23, 1913, as amended. The seventh par. constituted the fifth par. of section 13 in 1916 (39 Stat. 752), became the sixth par. in 1923 (42 Stat. 1478), and became the seventh par. in 1932 (47 Stat. 715). For further details, see Codification notes under sections 343 and 344 of this title. For classification to this title of other pars. of section 13, see Codification note set out under section 342 of this title.

The seventh par. of section 13 of the Federal Reserve Act [this section] as amended in 1982 by Pub. L. 97–290 contained lettered subpars. (A) through (H). For purposes of codification those lettered subpars. (A) through (H) have been translated as subsecs. (a) through (h), ''paragraph'' has been translated as ''section'', and ''subparagraph'' has been translated as ''subsection''.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–290 designated first sentence of existing provisions as subsec. (a), inserted reference to foreign banks and their subdivisions, further designated the specifications for drafts or bills as cl. (i)–(iii), and in cl. (ii) as so designated, struck out requirement that shipping documents conveying or securing title be attached at acceptance.

Subsec. (b). Pub. L. 97–290 designated second independent clause of second sentence of existing provisions as subsec. (b), substituted ''no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus'' for ''no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid-up and unimpaired capital stock and surplus'' and inserted provisions relating to a United States branch or agency of a foreign bank.

Subsec. (c). Pub. L. 97–290 designated first proviso of second sentence of existing provisions as subsec. (c), struck out provision applying the subsec. to all banks regardless of capital stock or surplus, substituted a limit of 200 per centum for 100 per centum, and inserted provisions relating to a United States branch or agency of a foreign bank.

Subsec. (d). Pub. L. 97–290 designated second proviso of second sentence of existing provisions as subsec. (d), substituted ''Notwithstanding subsections (b) and (c) of this section, with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for such institution under this section.'' for ''*Provided further*, That the aggregate of acceptances growing out of domestic transactions shall in no event exceed 50 per centum of such capital stock and surplus.''

Subsec. (e). Pub. L. 97–290 designated first independent clause of second sentence of existing provisions as subsec. (e), substituted ''institution'' for ''member bank'' and ''bank'' and ''accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount'' for ''accept, whether in a foreign or domestic transaction, for any one person, company, firm, or corporation to an amount'', and inserted provisions relating to a United States branch or agency of a foreign bank.

Subsecs. (f) to (h). Pub. L. 97–290 added subsecs. (f) to (h).

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 373. Acceptance of drafts or bills drawn by banks in foreign countries or dependencies of United States for purpose of dollar exchange

Any member bank may accept drafts or bills of exchange drawn upon it having not more than three months' sight to run, exclusive of days of grace, drawn under regulations to be prescribed by the Board of Governors of the Federal Reserve System by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies, or insular possessions. Such drafts or bills may be acquired by Federal reserve banks in such amounts and subject to such regulations, restrictions, and limitations as may be prescribed by the Board of Governors of the Federal Reserve System: *Provided, however*, That no member bank shall accept such drafts or bills of exchange referred to[1] this paragraph for any one bank to an amount exceeding in the aggregate ten per centum of the paid-up and unimpaired capital and surplus of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or by some other adequate security: *Provided further*, That no member bank shall accept such drafts or bills in an amount exceeding at any time the aggregate of one-half of its paid-up and unimpaired capital and surplus.

(Dec. 23, 1913, ch. 6, § 13 (par.), as added Sept. 7, 1916, ch. 461, 39 Stat. 754; amended Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704.)

CODIFICATION

Section is based on the twelfth par. of section 13 of act Dec. 23, 1913, as amended. The twelfth par. constituted the tenth par. of section 13 in 1916 (39 Stat. 754), became the eleventh par. in 1923 (42 Stat. 1478), and became the twelfth par. in 1932 (47 Stat. 715). For further details, see Codification notes under sections 342 to 344 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 374. Acting as agent for nonmember bank in getting discounts from reserve bank

No member bank shall act as the medium or agent of a nonmember bank in applying for or receiving discounts from a Federal reserve bank under the provisions of this chapter, except by permission of the Board of Governors of the Federal Reserve System.

(Dec. 23, 1913, ch. 6, § 19(e), formerly § 19 (par. 8), 38 Stat. 270; June 21, 1917, ch. 32, § 10, 40 Stat. 239; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; renumbered § 19(e), Pub. L. 89–597, § 2(b), Sept. 21, 1966, 80 Stat. 824.)

[1] So in original. Probably should be followed by "in".

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of part of subsec. (e), formerly eighth par., of section 19 of act Dec. 23, 1913, as redesignated by Pub. L. 89–597. Remainder of subsec. (e) of such section 19 is classified to section 463 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 374a. Acting as agent for nonbanking borrower in making loans on securities to dealers in stocks, bonds, etc.; penalties

No member bank shall act as the medium or agent of any nonbanking corporation, partnership, association, business trust, or individual in making loans on the security of stocks, bonds, and other investment securities to brokers or dealers in stocks, bonds, and other investment securities. Every violation of this provision by any member bank shall be punishable by a fine of not more than $100 per day during the continuance of such violation; and such fine may be collected, by suit or otherwise, by the Federal reserve bank of the district in which such member bank is located.

(Dec. 23, 1913, ch. 6, § 19(d), formerly § 19 (par. 7), as added June 16, 1933, ch. 89, § 11(a), 48 Stat. 181; renumbered § 19(d), Pub. L. 89–597, § 2(b), Sept. 21, 1966, 80 Stat. 824.)

CODIFICATION

Section is comprised of subsec. (d), formerly seventh par., of section 19 of act Dec. 23, 1913, as redesignated by Pub. L. 89–597.

§ 375. Purchases from directors; sales to directors

Any member bank may contract for, or purchase from, any of its directors or from any firm of which any of its directors is a member, any securities or other property, when (and not otherwise) such purchase is made in the regular course of business upon terms not less favorable to the bank than those offered to others, or when such purchase is authorized by a majority of the board of directors not interested in the sale of such securities or property, such authority to be evidenced by the affirmative vote or written assent of such directors: *Provided, however*, That when any director, or firm of which any director is a member, acting for or on behalf of others, sells securities or other property to a member bank, the Board of Governors of the Federal Reserve System by regulation may, in any or all cases, require a full disclosure to be made, on forms to be prescribed by it, of all commissions or other considerations received, and whenever such director or firm, acting in his or its own behalf, sells securities or other property to the bank the Board of Governors of the Federal Reserve System, by regulation, may require a full disclosure of all profit realized from such sale.

Any member bank may sell securities or other property to any of its directors, or to a firm of which any of its directors is a member, in the regular course of business on terms not more favorable to such director or firm than those offered to others, or when such sale is authorized by a majority of the board of directors of a member bank to be evidenced by their affirmative vote or written assent: *Provided, however*, That nothing in this section contained shall be construed as authorizing member banks to purchase or sell securities or other property which such banks are not otherwise authorized by law to purchase or sell.

(Dec. 23, 1913, ch. 6, §22(d), as added Sept. 26, 1918, ch. 177, §5, 40 Stat. 971; amended Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704; Pub. L. 111–203, title VI, §615(b), July 21, 2010, 124 Stat. 1615.)

AMENDMENT OF SECTION

Pub. L. 111–203, title VI, §615(b), (c), July 21, 2010, 124 Stat. 1615, provided that, effective on the transfer date, this section is amended to read as follows:

''§375. [Reserved]''.

See Effective Date of 2010 Amendment note below.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title VI, §615(c), July 21, 2010, 124 Stat. 1615, provided that: ''The amendments made by this section [amending this section and section 1828 of this title] shall take effect on the transfer date.''

[For definition of ''transfer date'' as used in section 615(c) of Pub. L. 111–203, set out above, see section 5301 of this title.]

§ 375a. Loans to executive officers of banks

(1) General prohibition; authorization for extension of credit; conditions for credit

Except as authorized under this section, no member bank may extend credit in any manner to any of its own executive officers. No executive officer of any member bank may become indebted to that member bank except by means of an extension of credit which the bank is authorized to make under this section. Any extension of credit under this section shall be promptly reported to the board of directors of the bank, and may be made only if—

(A) the bank would be authorized to make it to borrowers other than its officers;

(B) it is on terms not more favorable than those afforded other borrowers;

(C) the officer has submitted a detailed current financial statement; and

(D) it is on condition that it shall become due and payable on demand of the bank at any time when the officer is indebted to any other bank or banks on account of extensions of credit of any one of the three categories respectively referred to in paragraphs (2), (3), and (4) in an aggregate amount greater than the amount of credit of the same category that could be extended to him by the bank of which he is an officer.

(2) Mortgage loans

A member bank may make a loan to any executive officer of the bank if, at the time the loan is made—

(A) it is secured by a first lien on a dwelling which is expected, after the making of the loan, to be owned by the officer and used by him as his residence, and

(B) no other loan by the bank to the officer under authority of this paragraph is outstanding.

(3) Educational loans

A member bank may make extensions of credit to any executive officer of the bank to finance the education of the children of the officer.

(4) General limitation on amount of credit

A member bank may make extensions of credit not otherwise specifically authorized under this section to any executive officer of the bank, in an amount prescribed in a regulation of the member bank's appropriate Federal banking agency.

(5) Partnership loans

Except to the extent permitted under paragraph (4), a member bank may not extend credit to a partnership in which one or more of its executive officers are partners having either individually or together a majority interest. For the purposes of paragraph (4), the full amount of any credit so extended shall be considered to have been extended to each officer of the bank who is a member of the partnership.

(6) Endorsement or guarantee of loans or assets; protective indebtedness

This section does not prohibit any executive officer of a member bank from endorsing or guaranteeing for the protection of the bank any loan or other asset previously acquired by the bank in good faith or from incurring any indebtedness to the bank for the purpose of protecting the bank against loss or giving financial assistance to it.

(7) Continuation of violation

Each day that any extension of credit in violation of this section exists is a continuation of the violation for the purposes of section 1818 of this title.

(8) Rules and regulations; definitions

The Board of Governors of the Federal Reserve System may prescribe such rules and regulations, including definitions of terms, as it deems necessary to effectuate the purposes and to prevent evasions of this section.

(Dec. 23, 1913, ch. 6, §22(g), as added June 16, 1933, ch. 89, §12, 48 Stat. 182; amended June 14, 1935, ch. 245, 49 Stat. 375; Aug. 23, 1935, ch. 614, title III, §326(c), 49 Stat. 716; Apr. 25, 1938, ch. 173, 52 Stat. 223; June 20, 1939, ch. 214, §1, 53 Stat. 842; Pub. L. 90–44, §1, July 3, 1967, 81 Stat. 109; Pub. L. 95–630, title I, §110, Nov. 10, 1978, 92 Stat. 3665; Pub. L. 97–320, title IV, §421, Oct. 15, 1982, 96 Stat. 1522; Pub. L. 103–325, title III, §334(a), Sept. 23, 1994, 108 Stat. 2233; Pub. L. 109–351, title VI, §601(a), Oct. 13, 2006, 120 Stat. 1978.)

CODIFICATION

Proviso which permitted renewal or extension of loans made to executive officers prior to June 16, 1933, for periods expiring not more than five years from June 16, 1939, was omitted as obsolete.

AMENDMENTS

2006—Pars. (6) to (10). Pub. L. 109–351 redesignated pars. (7), (8), and (10) as (6), (7), and (8), respectively, and struck out former pars. (6) and (9) which related to report of date and amount of credit extensions, security, and uses of proceeds upon excessive extension of credit and report of loan activity since previous report of condition, respectively.

1994—Par. (2). Pub. L. 103–325 in introductory provisions substituted ''A member'' for ''With the specific prior approval of its board of directors, a member''.

1982—Par. (2). Pub. L. 97–320, § 421(a), struck out ''not exceeding $60,000'' after ''may make a loan''.

Par. (3). Pub. L. 97–320, § 421(a), struck out '', not exceeding the aggregate amount of $20,000 outstanding at any one time,'' after ''officer of the bank''.

Par. (4). Pub. L. 97–320, § 421(b), substituted ''in an amount prescribed in a regulation of the member bank's appropriate Federal banking agency'' for ''not exceeding the aggregate amount of $10,000 outstanding at any one time''.

1978—Par. (2). Pub. L. 95–630 substituted ''$60,000'' for ''$30,000''.

Par. (3). Pub. L. 95–630 substituted ''$20,000'' for ''$10,000''.

Par. (4). Pub. L. 95–630 substituted ''$10,000'' for ''$5,000''.

1967—Par. (1). Pub. L. 90–44 rewrote in first sentence of provisions designated as par. (1) the prohibition of former first sentence against any executive officer borrowing or otherwise becoming indebted to a member bank of which he is an officer and against any member bank making any loan or extending credit in any other manner to any of its own executive officers, authorized member banks to extend credit to such executive officers and to report such extensions to the board of directors, and provided in subpars. (A) to (D) conditions for such extension of credit.

Pars. (2), (3). Pub. L. 90–44 inserted provisions, designated as pars. (2) and (3), for mortgage loans and educational loans, respectively.

Par. (4). Pub. L. 90–44 incorporated proviso of first sentence in provisions designated as par. (4), increased amount of available credit from $2,500 to $5,000, and struck out requirement of prior approval of credit by majority of entire board of directors.

Par. (5). Pub. L. 90–44 substituted provisions, designated as par. (5), for extension of credit to partnerships for former provisions of third sentence that ''Borrowing by, or loaning to, a partnership in which one or more executive officers of a member bank are partners having either individually or together a majority interest in said partnership, shall be considered within the prohibition of this section''.

Par. (6). Pub. L. 90–44 incorporated reporting requirement of second sentence in provisions designated as par. (6) but limited it to extensions of credit from other banks to the executive officers as exceeded amounts available to such officers from their member banks under pars. (2) to (4) of this section.

Par. (7). Pub. L. 90–44 designated provisions of fourth sentence as par. (7).

Par. (8). Pub. L. 90–44 designated proviso of sixth sentence as par. (8) and identified the violation as one for purposes of section 1818 of this title.

Par. (9). Pub. L. 90–44 added requirement, designated as par. (9), that member banks report all loans made under authority of this section since previous report of condition.

Par. (10). Pub. L. 90–44 designated provisions of fifth sentence as par. (10) and substituted general authorization for definition of terms for former specific authorization for definition of ''executive officer'' and for determination what shall be deemed to be a borrowing, indebtedness, loan, or extension of credit.

Pub. L. 90–44 struck out former sixth sentence, less proviso, which provided for removal from office in manner prescribed in former section 77 of this title of any executive officer of member bank accepting a loan or extension of credit in violation of this section.

1939—Act June 20, 1939, substituted ''June 16, 1939,'' for ''from such date'', in first sentence.

1938—Par. (1). Act Apr. 25, 1938, substituted ''six'' for ''five'' in first sentence.

1935—Act Aug. 23, 1935, added last two provisos.

Act June 14, 1935, struck out a proviso and inserted in lieu thereof first proviso.

EFFECTIVE DATE OF 1978 AMENDMENT

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

§ 375b. Extensions of credit to executive officers, directors, and principal shareholders of member banks

(1) In general

No member bank may extend credit to any of its executive officers, directors, or principal shareholders, or to any related interest of such a person, except to the extent permitted under paragraphs (2), (3), (4), (5), and (6).

(2) Preferential terms prohibited

(A) In general

A member bank may extend credit to its executive officers, directors, or principal shareholders, or to any related interest of such a person, only if the extension of credit—

(i) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank;

(ii) does not involve more than the normal risk of repayment or present other unfavorable features; and

(iii) the bank follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank.

(B) Exception

Nothing in this paragraph shall prohibit any extension of credit made pursuant to a benefit or compensation program—

(i) that is widely available to employees of the member bank; and

(ii) that does not give preference to any officer, director, or principal shareholder of the member bank, or to any related interest of such person, over other employees of the member bank.

(3) Prior approval required

A member bank may extend credit to a person described in paragraph (1) in an amount that, when aggregated with the amount of all other outstanding extensions of credit by that bank to each such person and that person's related interests, would exceed an amount prescribed by reg-

ulation of the appropriate Federal banking agency (as defined in section 1813 of this title) only if—

(A) the extension of credit has been approved in advance by a majority vote of that bank's entire board of directors; and

(B) the interested party has abstained from participating, directly or indirectly, in the deliberations or voting on the extension of credit.

(4) Aggregate limit on extensions of credit to any executive officer, director, or principal shareholder

A member bank may extend credit to any executive officer, director, or principal shareholder, or to any related interest of such a person, only if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to that person and that person's related interests, would not exceed the limits on loans to a single borrower established by section 84 of this title. For purposes of this paragraph, section 84 of this title shall be deemed to apply to a State member bank as if the State member bank were a national banking association.

(5) Aggregate limit on extensions of credit to all executive officers, directors, and principal shareholders

(A) In general

A member bank may extend credit to any executive officer, director, or principal shareholder, or to any related interest of such a person, if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to its executive officers, directors, principal shareholders, and those persons' related interests would not exceed the bank's unimpaired capital and unimpaired surplus.

(B) More stringent limit authorized

The Board may, by regulation, prescribe a limit that is more stringent than that contained in subparagraph (A).

(C) Board may make exceptions for certain banks

The Board may, by regulation, make exceptions to subparagraph (A) for member banks with less than $100,000,000 in deposits if the Board determines that the exceptions are important to avoid constricting the availability of credit in small communities or to attract directors to such banks. In no case may the aggregate amount of all outstanding extensions of credit to a bank's executive officers, directors, principal shareholders, and those persons' related interests be more than 2 times the bank's unimpaired capital and unimpaired surplus.

(6) Overdrafts by executive officers and directors prohibited

(A) In general

If any executive officer or director has an account at the member bank, the bank may not pay on behalf of that person an amount exceeding the funds on deposit in the account.

(B) Exceptions

Subparagraph (A) does not prohibit a member bank from paying funds in accordance with—

(i) a written preauthorized, interest-bearing extension of credit specifying a method of repayment; or

(ii) a written preauthorized transfer of funds from another account of the executive officer or director at that bank.

(7) Prohibition on knowingly receiving unauthorized extension of credit

No executive officer, director, or principal shareholder shall knowingly receive (or knowingly permit any of that person's related interests to receive) from a member bank, directly or indirectly, any extension of credit not authorized under this section.

(8) Executive officer, director, or principal shareholder of certain affiliates treated as executive officer, director, or principal shareholder of member bank

(A) In general

For purposes of this section, any executive officer, director, or principal shareholder (as the case may be) of any company of which the member bank is a subsidiary, or of any other subsidiary of that company, shall be deemed to be an executive officer, director, or principal shareholder (as the case may be) of the member bank.

(B) Exception

The Board may, by regulation, make exceptions to subparagraph (A) for any executive officer or director of a subsidiary of a company that controls the member bank if—

(i) the executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank; and

(ii) the assets of such subsidiary do not exceed 10 percent of the consolidated assets of a company that controls the member bank and such subsidiary (and is not controlled by any other company).

(9) Definitions

For purposes of this section:

(A) Company

(i) In general

Except as provided in clause (ii), the term ''company'' means any corporation, partnership, business or other trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or other business entity.

(ii) Exceptions

The term ''company'' does not include—

(I) an insured depository institution (as defined in section 1813 of this title); or

(II) a corporation the majority of the shares of which are owned by the United States or by any State.

(B) Control

A person controls a company or bank if that person, directly or indirectly, or acting through or in concert with 1 or more persons—

(i) owns, controls, or has the power to vote 25 percent or more of any class of the company's voting securities;

(ii) controls in any manner the election of a majority of the company's directors; or

(iii) has the power to exercise a controlling influence over the company's management or policies.

(C) Executive officer

A person is an ''executive officer'' of a company or bank if that person participates or has authority to participate (other than as a director) in major policymaking functions of the company or bank.

(D) Extension of credit

(i) In general

A member bank extends credit by making or renewing any loan, granting a line of credit, or entering into any similar transaction as a result of which a person becomes obligated (directly or indirectly, or by any means whatsoever) to pay money or its equivalent to the bank.

(ii) Exceptions

The Board may, by regulation, make exceptions to clause (i) for transactions that the Board determines pose minimal risk.

(E) Member bank

The term ''member bank'' includes any subsidiary of a member bank.

(F) Principal shareholder

The term ''principal shareholder''—

(i) means any person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company; and

(ii) does not include a company of which a member bank is a subsidiary.

(G) Related interest

A ''related interest'' of a person is—

(i) any company controlled by that person; and

(ii) any political or campaign committee that is controlled by that person or the funds or services of which will benefit that person.

(H) Subsidiary

The term ''subsidiary'' has the same meaning as in section 1841 of this title.

(10) Board's rulemaking authority

The Board of Governors of the Federal Reserve System may prescribe such regulations, including definitions of terms, as it determines to be necessary to effectuate the purposes and prevent evasions of this section.

(Dec. 23, 1913, ch. 6, § 22(h), as added Pub. L. 95–630, title I, § 104, Nov. 10, 1978, 92 Stat. 3644; amended Pub. L. 97–320, title IV, §§ 410(e), 422, Oct. 15, 1982, 96 Stat. 1520, 1522; Pub. L. 102–242, title III, § 306(a)–(h), Dec. 19, 1991, 105 Stat. 2355, 2357–2359; Pub. L. 102–550, title IX, § 955, title XVI, § 1605(a)(10), Oct. 28, 1992, 106 Stat. 3895, 4086; Pub. L. 103–325, title III, § 334(b), Sept. 23, 1994, 108 Stat. 2233; Pub. L. 104–208, div. A, title II, § 2211, Sept. 30, 1996, 110 Stat. 3009–410; Pub. L. 111–203, title VI, § 614(a), July 21, 2010, 124 Stat. 1614.)

AMENDMENT OF PARAGRAPH (9)(D)(i)

Pub. L. 111–203, title VI, § 614, July 21, 2010, 124 Stat. 1614, provided that, effective 1 year after the transfer date, paragraph (9)(D)(i) of this section is amended by:

(1) substituting ''the person'' for ''a person'';

(2) striking out ''extends credit by making'' and inserting ''extends credit to a person by—

''(I) making'';

(3) substituting ''; or'' for the period at the end; and

(4) adding at the end the following:

''(II) having credit exposure to the person arising from a derivative transaction (as defined in section 84(b) of this title), repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and the person.''

See Effective Date of 2010 Amendment note below.

PRIOR PROVISIONS

A prior section 22(h) of act Dec. 23, 1913, ch. 6, as added June 19, 1934, ch. 653, § 3, 48 Stat. 1107, was classified to section 596 of this title, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

AMENDMENTS

1996—Par. (2)(A). Pub. L. 104–208, § 2211(a)(1), (2), designated existing provisions as subpar. (A), inserted heading, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and adjusted margins.

Par. (2)(B). Pub. L. 104–208, § 2211(a)(3), added subpar. (B). Former subpar. (B) redesignated cl. (ii) of subpar. (A).

Par. (2)(C). Pub. L. 104–208, § 2211(a)(1), redesignated subpar. (C) as cl. (iii) of subpar. (A).

Par. (8)(B). Pub. L. 104–208, § 2211(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The Board may, by regulation, make exceptions to subparagraph (A), except as that subparagraph makes applicable paragraph (2), for an executive officer or director of a subsidiary of a company that controls the member bank, if that executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank.''

1994—Par. (8). Pub. L. 103–325 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1992—Par. (6)(B)(i). Pub. L. 102–550, § 1605(a)(10), substituted ''or'' for ''and'' at end.

Par. (9)(D). Pub. L. 102–550, § 955(a), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Par. (9)(F). Pub. L. 102–550, § 955(b), designated portion of existing provisions as cl. (i), realigned margin, substituted ''; and'' for period at end, and added cl. (ii).

1991—Pub. L. 102–242, § 306(a), amended section generally, substituting provisions relating to extensions of credit to executive officers, directors, and principal shareholders of member banks for provisions relating to prohibitions respecting loans and extensions of credit to executive officers and directors of banks, political or campaign committees, etc.

Par. (1). Pub. L. 102–242, § 306(d)(2), inserted ''(5),'' after ''(4),''.

Par. (2)(C). Pub. L. 102–242, § 306(b), added subpar. (C).

Par. (4). Pub. L. 102–242, § 306(c), inserted '', director,'' after ''executive officer'' in heading and text.

Par. (5). Pub. L. 102–242, § 306(d)(1), added par. (5).

Par. (7). Pub. L. 102–242, § 306(e), added par. (7).

Par. (8). Pub. L. 102–242, § 306(f), struck out ''bank holding'' before ''company of which the member''.

Par. (9)(E). Pub. L. 102–242, § 306(g), added subpar. (E).

Par. (9)(F). Pub. L. 102–242, § 306(h), struck out last sentence of subpar. (F) which read as follows: ''For purposes of paragraph (4), if a member bank has its main banking office in a city, town, or village with a population of less than 30,000, the preceding sentence shall apply with '18 percent' substituted for '10 percent'.''

1982—Par. (2). Pub. L. 97–320, § 422, substituted ''an amount prescribed in a regulation of the appropriate Federal banking agency'' for ''$25,000''.

Par. (6)(C) to (F). Pub. L. 97–320, § 410(e), redesignated subpars. (D) to (G) as (C) to (F), respectively. Former subpar. (C), relating to definition of term ''extension of credit'', was struck out.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title VI, § 614(b), July 21, 2010, 124 Stat. 1614, provided that: ''The amendments made by this section [amending this section] shall take effect 1 year after the transfer date.''

[For definition of ''transfer date'' as used in section 614(b) of Pub. L. 111–203, set out above, see section 5301 of this title.]

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1605(a)(10) of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 306(*l*) of Pub. L. 102–242 provided that: ''The amendments made by this section [amending this section and sections 1468, 1828, and 1972 of this title] shall become effective upon the earlier of—

''(1) the date on which final regulations under subsection (m)(1) [set out below] become effective [May 18, 1992, see 57 F.R. 22417]; or

''(2) 150 days after the date of enactment of this Act [Dec. 19, 1991].''

EFFECTIVE DATE

Section 2101 of Pub. L. 95–630 provided that: ''Except as otherwise provided herein, this Act [see Short Title of 1978 Amendment note set out under section 226 of this title] shall take effect upon the expiration of one hundred and twenty days after the date of its enactment [Nov. 10, 1978].''

REGULATIONS

Section 306(m) of Pub. L. 102–242 provided that:

''(1) IN GENERAL.—The Board of Governors of the Federal Reserve System shall, not later than 120 days after the date of enactment of this Act [Dec. 19, 1991], promulgate final regulations to implement the amendments made by this section [amending this section and sections 1468, 1828, and 1972 of this title], other than the amendments made by subsections (i) and (k) [amending sections 1468 and 1828 of this title].

''(2) LIMITING EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS.—The Federal Deposit Insurance Corporation and Director of the Office of Thrift Supervision shall each, not later than 120 days after the date of enactment of this Act, promulgate final regulations prescribing the maximum amount that a nonmember insured bank or insured savings association (as the case may be) may lend under section 22(g)(4) of the Federal Reserve Act [12 U.S.C. 375a(4)], as made applicable to those institutions by subsections (k) and (i), respectively.''

EXISTING TRANSACTIONS NOT AFFECTED BY 1991 AMENDMENTS

Section 306(n) of Pub. L. 102–242 provided that: ''The amendments made by this section [amending this section and sections 1468, 1828, and 1972 of this title] do not affect the validity of any extension of credit or other transaction lawfully entered into on or before the effective date of those amendments [see Effective Date of 1991 Amendment note above].''

REPORTING OF CREDIT BY EXECUTIVE OFFICERS AND DIRECTORS

Section 306(*o*) of Pub. L. 102–242 provided that: ''An executive officer or director of an insured depository institution, a bank holding company, or a savings and loan holding company, the shares of which are not publicly traded, shall report annually to the board of directors of the institution or holding company the outstanding amount of any credit that was extended to such executive officer or director and that is secured by shares of the institution or holding company.''

§ 376. Rate of interest paid to directors, etc.

No member bank shall pay to any director, officer, attorney, or employee a greater rate of interest on the deposits of such director, officer, attorney, or employee than that paid to other depositors on similar deposits with such member bank.

(Dec. 23, 1913, ch. 6, § 22(e), as added Sept. 26, 1918, ch. 177, § 5, 40 Stat. 971.)

§ 377. Repealed. Pub. L. 106–102, title I, § 101(a), Nov. 12, 1999, 113 Stat. 1341

Section, acts June 16, 1933, ch. 89, § 20, 48 Stat. 188; Aug. 23, 1935, ch. 614, title II, § 203(a), title III, § 302, 49 Stat. 704, 707, prohibited member banks from affiliating with organizations dealing in securities and provided for penalties.

EFFECTIVE DATE OF REPEAL

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

§ 378. Dealers in securities engaging in banking business; individuals or associations engaging in banking business; examinations and reports; penalties

(a) After the expiration of one year after June 16, 1933, it shall be unlawful—

(1) For any person, firm, corporation, association, business trust, or other similar organization, engaged in the business of issuing, underwriting, selling, or distributing, at wholesale or retail, or through syndicate participation, stocks, bonds, debentures, notes, or other securities, to engage at the same time to any extent whatever in the business of receiving deposits subject to check or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of the depositor: *Provided*, That the provisions of this paragraph shall not prohibit national banks or State banks or trust companies (whether or not members of the Federal Reserve System) or other financial institutions or private bankers from dealing in, underwriting, purchasing, and selling investment securities, or issuing securities, to the extent permitted to national banking associations by the provisions of section 24 of this title: *Provided further*, That nothing in this paragraph shall be construed as affecting in any way such right as any bank, banking association, savings bank, trust company, or other banking

institution, may otherwise possess to sell, without recourse or agreement to repurchase, obligations evidencing loans on real estate; or

(2) For any person, firm, corporation, association, business trust, or other similar organization to engage, to any extent whatever with others than his or its officers, agents or employees, in the business of receiving deposits subject to check or to repayment upon presentation of a pass book, certificate of deposit, or other evidence of debt, or upon request of the depositor, unless such person, firm, corporation, association, business trust, or other similar organization (A) shall be incorporated under, and authorized to engage in such business by, the laws of the United States or of any State, Territory, or District, and subjected, by the laws of the United States, or of the State, Territory, or District wherein located, to examination and regulation, or (B) shall be permitted by the United States, any State, territory, or district to engage in such business and shall be subjected by the laws of the United States, or such State, territory, or district to examination and regulations or, (C) shall submit to periodic examination by the banking authority of the State, Territory, or District where such business is carried on and shall make and publish periodic reports of its condition, exhibiting in detail its resources and liabilities, such examination and reports to be made and published at the same times and in the same manner and under the same conditions as required by the law of such State, Territory, or District in the case of incorporated banking institutions engaged in such business in the same locality.

(b) Whoever shall willfully violate any of the provisions of this section shall upon conviction be fined not more than $5,000 or imprisoned not more than five years, or both, and any officer, director, employee, or agent of any person, firm, corporation, association, business trust, or other similar organization who knowingly participates in any such violation shall be punished by a like fine or imprisonment or both.

(June 16, 1933, ch. 89, § 21, 48 Stat. 189; Aug. 23, 1935, ch. 614, title III, § 303, 49 Stat. 707; Pub. L. 86–230, § 23, Sept. 8, 1959, 73 Stat. 466; Pub. L. 90–448, title VIII, § 804(d), Aug. 1, 1968, 82 Stat. 543; Pub. L. 95–369, § 12, Sept. 17, 1978, 92 Stat. 624.)

AMENDMENTS

1978—Subsec. (a)(2)(B). Pub. L. 95–369 inserted reference to permission by the United States to engage in such business and subjection by the laws of the United States to examination and regulation.

1968—Subsec. (a)(1). Pub. L. 90–448 inserted ‘‘, or issuing securities’’ in first proviso.

1959—Subsec. (a). Pub. L. 86–230 inserted ‘‘and subjected, by the laws of the United States, or of the State, Territory, or District wherein located, to examination and regulation,’’ after ‘‘District,’’ in cl. (2)(A).

1935—Subsec. (a). Act Aug. 23, 1935, added two provisos to end of par. (1) and amended par. (2) generally.

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by Pub. L. 90–448, see section 808 of Pub. L. 90–448, set out as a note under section 1716b of this title.

SUBCHAPTER XI—DEPOSITARIES AND FISCAL AGENTS

§ 391. Federal reserve banks as Government depositaries and fiscal agents

The moneys held in the general fund of the Treasury, except the 5 per centum fund for the redemption of outstanding national-bank notes may, upon the direction of the Secretary of the Treasury, be deposited in Federal reserve banks, which banks, when required by the Secretary of the Treasury, shall act as fiscal agents of the United States; and the revenues of the Government or any part thereof may be deposited in such banks, and disbursements may be made by checks drawn against such deposits.

(Dec. 23, 1913, ch. 6, § 15 (par.), 38 Stat. 265; Pub. L. 90–269, § 2, Mar. 18, 1968, 82 Stat. 50.)

CODIFICATION

Section is comprised of first par. of section 15 of act Dec. 23, 1913. Par. 2 of section 15 and par. 3 of section 15, as added Mar. 4, 1923, ch. 252, title IV, § 406, 42 Stat. 1480, are classified to sections 392 and 393, respectively, of this title.

AMENDMENTS

1968—Pub. L. 90–269 struck out provision which excepted funds provided in this chapter for the redemption of Federal Reserve notes from deposit in Federal reserve banks.

§ 391a. Reimbursement of Federal Reserve Banks

Beginning in fiscal year 1998 and thereafter, there are appropriated such sums as may be necessary to reimburse Federal Reserve Banks in their capacity as depositaries and fiscal agents for the United States for all services required or directed by the Secretary of the Treasury to be performed by such banks on behalf of the Treasury or other Federal agencies.

(Pub. L. 105–61, title I, Oct. 10, 1997, 111 Stat. 1276.)

§ 392. Depositaries of Government funds as confined to banks in Federal reserve system; member banks as depositaries

No public funds of the postal savings, or any Government funds, shall be deposited in the continental United States in any bank not belonging to the system established by this chapter: *Provided, however*, That nothing in this chapter shall be construed to deny the right of the Secretary of the Treasury to use member banks as depositaries.

(Dec. 23, 1913, ch. 6, § 15 (par.), 38 Stat. 265; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ‘‘this Act’’, meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Words ‘‘of the Philippine Islands, or’’ after ‘‘No public funds’’ were deleted on authority of 1946 Proc. No. 2695, which granted independence to the Philippine Islands pursuant to section 1394 of Title 22. Proc. No. 2695 is set

out as a note under section 1394 of Title 22, Foreign Relations and Intercourse.

Section is comprised of second par. of section 15 of act Dec. 23, 1913. Par. 1 of section 15 and par. 3 of section 15, as added Mar. 4, 1923, ch. 252, title IV, § 406, 42 Stat. 1480, are classified to sections 391 and 393, respectively, of this title.

§ 393. Federal reserve banks as depositaries for Farm Credit System

The Federal Reserve banks are authorized to act as depositaries for and fiscal agents of any Federal land bank, Federal intermediate credit bank, bank for cooperatives, or other institutions of the Farm Credit System.

(Dec. 23, 1913, ch. 6, § 15 (par.), as added Mar. 4, 1923, ch. 252, title IV, § 406, 42 Stat. 1480; amended Pub. L. 92–181, title V, § 5.41, formerly § 5.27(b), Dec. 10, 1971, 85 Stat. 625; renumbered § 5.41(b), Pub. L. 99–205, title II, § 205(a)(2), Dec. 23, 1985, 99 Stat. 1703; renumbered § 5.41, Pub. L. 100–233, title VIII, § 805(ff)(2), Jan. 6, 1988, 101 Stat. 1717.)

CODIFICATION

Section is comprised of third par. of section 15 of act Dec. 23, 1913, as added Mar. 4, 1923. Pars. 1 and 2 of section 15 are classified to sections 391 and 392, respectively, of this title.

AMENDMENTS

1971—Pub. L. 92–181 substituted ''Federal land bank, Federal intermediate credit bank, bank for cooperatives, or other institutions of the Farm Credit System'' for ''national agricultural credit corporation or Federal intermediate credit bank''.

§ 394. Federal reserve banks as depositaries for and fiscal agents of Home Owners' Loan Corporation

The Federal Reserve banks are authorized, with the approval of the Secretary of the Treasury, to act as depositaries, custodians, and fiscal agents for the Home Owners' Loan Corporation.

(Apr. 27, 1934, ch. 168, § 8, 48 Stat. 646.)

ABOLITION OF HOME OWNERS' LOAN CORPORATION

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

§ 395. Federal reserve banks as depositaries, custodians and fiscal agents for Commodity Credit Corporation

The Federal Reserve banks are authorized to act as depositaries, custodians, and fiscal agents for the Commodity Credit Corporation.

(July 16, 1943, ch. 241, § 3, 57 Stat. 566.)

TRANSFER OF FUNCTIONS

Administration of program of Commodity Credit Corporation transferred to Secretary of Agriculture by Reorg. Plan No. 3 of 1946, § 501, eff. July 16, 1946, 11 F.R. 7877, 60 Stat. 1100. See Appendix to Title 5, Government Organization and Employees.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Corporations of Department of Agriculture, boards of directors and officers of such corporations, Advisory Board of Commodity Credit Corporation, and Farm Credit Administration or any agency, officer or entity of, under, or subject to supervision of Administration were excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER XII—FEDERAL RESERVE NOTES

§ 411. Issuance to reserve banks; nature of obligation; redemption

Federal reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank.

(Dec. 23, 1913, ch. 6, § 16 (par.), 38 Stat. 265; Jan. 30, 1934, ch. 6, § 2(b)(1), 48 Stat. 337; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

REFERENCES IN TEXT

Phrase ''hereinafter set forth'' is from section 16 of the Federal Reserve Act, act Dec. 23, 1913. Reference probably means as set forth in sections 17 et seq. of the Federal Reserve Act. For classification of these sections to the Code, see Tables.

CODIFICATION

Section is comprised of first par. of section 16 of act Dec. 23, 1913. Pars. 2 to 5, 6 (formerly 7), 7 to 10 (formerly 8 to 11, respectively), 12 (formerly 13), 13 (formerly 14), and 14 to 16 (formerly 15, 16, and 18, respectively) of section 16 of act Dec. 23, 1913, are classified to sections 412 to 415, 416, 418 to 421, 360, 248–1, and 467, respectively, of this title.

Former pars. 6 and 17 of section 16 of act Dec. 23, 1913, formerly classified to sections 415 and 467, respectively, of this title, were repealed by Pub. L. 90–269, §§ 5, 7, Mar. 18, 1968, 82 Stat. 50.

Par. 11 (formerly 12) of section 16 of act Dec. 23, 1913, formerly classified to section 422 of this title, was superseded by act June 26, 1934, ch. 756, § 1(a), (b)(3), 48 Stat. 1225.

AMENDMENTS

1934—Act Jan. 30, 1934, struck out from last sentence provision permitting redemption in gold.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 412. Application for notes; collateral required

Any Federal Reserve bank may make application to the local Federal Reserve agent for such amount of the Federal Reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal Reserve agent of collateral in amount equal to the sum of the Federal Reserve notes thus applied for and issued pursuant to such application. The collateral security thus

offered shall be notes, drafts, bills of exchange, or acceptances acquired under section 92, 342 to 348, 349 to 352, 361, 372, or 373 of this title, or bills of exchange endorsed by a member bank of any Federal Reserve district and purchased under the provisions of sections 348a and 353 to 359 of this title, or bankers' acceptances purchased under the provisions of said sections 348a and 353 to 359 of this title, or gold certificates, or Special Drawing Right certificates, or any obligations which are direct obligations of, or are fully guaranteed as to principal and interest by, the United States or any agency thereof, or assets that Federal Reserve banks may purchase or hold under sections 348a and 353 to 359 of this title or any other asset of a Federal Reserve bank. In no event shall such collateral security be less than the amount of Federal Reserve notes applied for. The Federal Reserve agent shall each day notify the Board of Governors of the Federal Reserve System of all issues and withdrawals of Federal Reserve notes to and by the Federal Reserve bank to which he is accredited. The said Board of Governors of the Federal Reserve System may at any time call upon a Federal Reserve bank for additional security to protect the Federal Reserve notes issued to it. Collateral shall not be required for Federal Reserve notes which are held in the vaults of, or are otherwise held by or on behalf of, Federal Reserve banks.

(Dec. 23, 1913, ch. 6, § 16 (par.), 38 Stat. 265; Sept. 7, 1916, ch. 461, 39 Stat. 754; June 21, 1917, ch. 32, § 7, 40 Stat. 236; Feb. 27, 1932, ch. 58, § 3, 47 Stat. 57; Feb. 3, 1933, ch. 34, 47 Stat. 794; Jan. 30, 1934, ch. 6, § 2(b)(2), 48 Stat. 338; Mar. 6, 1934, ch. 47, 48 Stat. 398; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Mar. 1, 1937, ch. 20, 50 Stat. 23; June 30, 1939, ch. 256, 53 Stat. 991; June 30, 1941, ch. 264, 55 Stat. 395; May 25, 1943, ch. 102, 57 Stat. 85; June 12, 1945, ch. 186, § 2, 59 Stat. 237; Pub. L. 90–349, § 5(a), June 19, 1968, 82 Stat. 189; Pub. L. 95–630, title I, § 113, Nov. 10, 1978, 92 Stat. 3671; Pub. L. 96–221, title I, § 105(b)(1), Mar. 31, 1980, 94 Stat. 140; Pub. L. 106–122, Dec. 6, 1999, 113 Stat. 1638; Pub. L. 108–100, § 19(d), Oct. 28, 2003, 117 Stat. 1193.)

CODIFICATION

Section is comprised of second par. of section 16 of act Dec. 23, 1913. For classification to this title of other pars. of section 16, see Codification note set out under section 411 of this title.

AMENDMENTS

2003—Pub. L. 108–100 inserted ''or any other asset of a Federal Reserve bank'' before period at end of third sentence and '', or are otherwise held by or on behalf of,'' after ''in the vaults of'' in last sentence.

1999—Pub. L. 106–122 substituted ''acceptances acquired under section 92, 342 to 348, 349 to 352, 361, 372, or 373 of this title'' for ''acceptances acquired under the provisions of sections 92, 342 to 347, 347c, 347d, 361, 372, and 373 of this title''.

1980—Pub. L. 96–221 inserted provisions relating to purchase, etc., of assets by Federal Reserve banks, and eliminating collateral requirement for Federal Reserve notes held in Federal Reserve bank vaults.

1978—Pub. L. 95–630 substituted ''any obligations which are direct obligations of, or are fully guaranteed as to principal and interest by, the United States or any agency thereof'' of ''direct obligations of the United States''.

1968—Pub. L. 90–349 added Special Drawing Right certificates to the types of allowable collateral security which may be tendered for Federal Reserve notes.

1945—Act June 12, 1945, substituted '', or direct obligations of the United States.'' for proviso after ''gold certificates'' in first sentence which limited period during which direct obligations of the United States could be accepted as collateral security.

1943—Act May 25, 1943, substituted ''June 30, 1945'' for ''June 30, 1943,'' in proviso.

1941—Act June 30, 1941, substituted ''June 30, 1943'' for ''June 30, 1941'' in proviso.

1939—Act June 30, 1939, substituted ''June 30, 1941'' for ''June 30, 1939'' in proviso.

1937—Act Mar. 1, 1937, extended until June 30, 1939, period within which direct obligations of the United States may be accepted as collateral security under this section, and struck out provision authorizing President to extend period.

1934—Act Mar. 6, 1934, amended proviso and two sentences immediately following.

Act Jan. 30, 1934, amended portion of third sentence before proviso.

1933—Act Feb. 3, 1933, substituted ''March 3, 1934'' for ''March 3, 1933'' wherever appearing.

1932—Act Feb. 27, 1932, inserted proviso and two sentences immediately following.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on first day of sixth month which begins after Mar. 31, 1980, see section 108 of Pub. L. 96–221, set out as a note under section 248 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

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

UNITED STATES OBLIGATIONS AS COLLATERAL; EXTENSION OF PERIOD

The period within which direct obligations of the United States could be accepted as collateral security under this section was extended to Mar. 3, 1937, by Proclamation No. 2117, of Feb. 14, 1935, 49 Stat. 3437; extended to June 30, 1939, by act Mar. 1, 1937; extended to June 30, 1941, by act June 30, 1939; extended to June 30, 1943, by act June 30, 1941; and extended to June 30, 1945, by act May 25, 1943. Act June 12, 1945, amended section to remove the time limitation.

§ 413. Distinctive letter and serial number of notes; cancellation of notes unfit for circulation; accounting; apportionment of credit among Federal Reserve banks

Federal Reserve notes shall bear upon their faces a distinctive letter and serial number which shall be assigned by the Board of Governors of the Federal Reserve System to each Federal Reserve bank. Federal Reserve notes unfit for circulation shall be canceled, destroyed, and accounted for under procedures prescribed and at locations designated by the Secretary of the Treasury. Upon destruction of such notes, credit with respect thereto shall be apportioned among the twelve Federal Reserve banks as determined by the Board of Governors of the Federal Reserve System.

(Dec. 23, 1913, ch. 6, § 16 (par.), 38 Stat. 266; June 21, 1917, ch. 32, § 7, 40 Stat. 236; Jan. 30, 1934, ch.

6, §2(b)(3), (4), 48 Stat. 338; Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704; June 12, 1945, ch. 186, §1(a), 59 Stat. 237; July 19, 1954, ch. 547, 68 Stat. 495; Pub. L. 89–3, §1, Mar. 3, 1965, 79 Stat. 5; Pub. L. 89–427, §3, May 20, 1966, 80 Stat. 161; Pub. L. 90–269, §3, Mar. 18, 1968, 82 Stat. 50.)

CODIFICATION

Section is comprised of third par. of section 16 of act Dec. 23, 1913. For classification to this title of other pars. of section 16, see Codification note set out under section 411 of this title.

AMENDMENTS

1968—Pub. L. 90–269 substituted requirement that Federal Reserve notes bear upon their faces a distinctive letter and serial number which shall be assigned by the Board of Governors to each Federal Reserve bank for former requirement that each Federal Reserve bank maintain reserves in gold certificates of not less than 25 percent against its Federal Reserve notes in actual circulation and former provisions respecting redemption by the Treasury of Federal Reserve notes.

1966—Pub. L. 89–427 substituted provisions that Federal Reserve notes unfit for circulation be canceled, destroyed, and accounted for under procedures prescribed and at locations designated by the Secretary of the Treasury and that credit with respect to the destruction of the notes be apportioned among the twelve Federal Reserve banks as determined by the Board of Governors of the Federal Reserve System for provisions that Federal Reserve notes unfit for circulation be returned by the Federal Reserve agents to the Comptroller of the Currency for cancellation and destruction.

1965—Pub. L. 89–3 struck out requirement that each Federal Reserve bank maintain reserves in gold certificates against deposit liabilities.

1954—Act July 19, 1954, which directed striking out ''Whenever Federal reserve notes issued through one Federal Reserve bank shall be received by another Federal Reserve bank, they shall be promptly returned for credit or redemption to the Federal Reserve bank through which they were originally issued or, upon direction of such Federal Reserve bank, they shall be forwarded direct to the Treasurer of the United States to be retired. No Federal Reserve bank shall pay out notes issued through another under penalty of a tax of 10 per centum upon the face value of notes so paid out.'', was executed, to reflect the probable intent of Congress, by striking out the third and fourth sentences, which read as follows: ''Whenever Federal reserve notes issued through one Federal reserve bank shall be received by another Federal reserve bank, they shall be promptly returned for credit or redemption to the Federal reserve bank through which they were originally issued or, upon direction of such Federal reserve bank, they shall be forwarded direct to the Treasurer of the United States to be retired. No Federal reserve bank shall pay out notes issued through another under penalty of a tax of ten per centum upon the face value of notes so paid out.''

1945—Act June 12, 1945, amended first sentence generally by striking out ''or lawful money'' after ''reserves in gold certificates'', substituting ''25 per centum'' for ''35 per centum'' and ''40 per centum'', respectively.

1934—Act Jan. 30, 1934, amended first, fifth, and sixth sentences.

CHANGE OF NAME

Section 203(a) of Act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 414. Authority of Board of Governors respecting issuance of notes; interest; lien

The Board of Governors of the Federal Reserve System shall have the right, acting through the Federal Reserve agent, to grant in whole or in part, or to reject entirely the application of any Federal Reserve bank for Federal Reserve notes; but to the extent that such application may be granted the Board of Governors of the Federal Reserve System shall, through its local Federal Reserve agent, supply Federal Reserve notes to the banks so applying, and such bank shall be charged with the amount of the notes issued to it and shall pay such rate of interest as may be established by the Board of Governors of the Federal Reserve System on only that amount of such notes which equals the total amount of its outstanding Federal Reserve notes less the amount of gold certificates held by the Federal Reserve agent as collateral security. Federal Reserve notes issued to any such bank shall, upon delivery, together with such notes of such Federal Reserve bank as may be issued under subchapter XIII[1] of this chapter upon security of United States 2 per centum Government bonds, become a first and paramount lien on all the assets of such bank.

(Dec. 23, 1913, ch. 6, §16 (par.), 38 Stat. 266; June 21, 1917, ch. 32, §7, 40 Stat. 237; Jan. 30, 1934, ch. 6, §2(b)(5), 48 Stat. 338; Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704; June 12, 1945, ch. 186, §1(b), 59 Stat. 237; Pub. L. 90–269, §4, Mar. 18, 1968, 82 Stat. 50.)

REFERENCES IN TEXT

Subchapter XIII of this chapter, referred to in text, was in the original ''section 18 of this Act'', meaning section 18 of act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. Section 18 of the act was classified generally to subchapter XIII (§441 et seq.) of this chapter.

CODIFICATION

Section is comprised of fourth par. of section 16 of act Dec. 23, 1913. For classification to this title of other pars. of section 16, see Codification note set out under section 411 of this title.

AMENDMENTS

1968—Pub. L. 90–269 repealed first sentence provisions that Board of Governors require each Federal Reserve bank to maintain on deposit in the Treasury a sum in gold certificates sufficient, in the judgment of the Secretary of the Treasury, for redemption of Federal Reserve notes issued to such bank, but not less than 5 percent of total amount of notes issued less amount of gold certificates held by the Federal Reserve agent as collateral security, and counting and including such deposit of gold certificates as part of the 25 percent reserve formerly required by section 413 of this title to be maintained against Federal Reserve notes in actual circulation and substituted in the first, formerly second sentence, ''Board of Governors of the Federal Reserve System'' for ''Board''.

1945—Act June 12, 1945, substituted in first sentence ''25 per centum reserve required by section 413 of this title to be maintained against Federal Reserve notes in actual circulation'' for ''40 per centum reserve required by section 413 of this title''.

1934—Act Jan. 30, 1934, amended first sentence.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

[1] See References in Text note below.

§ 415. Reduction of liability for outstanding notes by depositing notes and collateral and payment of notes of series prior to 1928; reissue of deposited notes

Any Federal Reserve bank may at any time reduce its liability for outstanding Federal Reserve notes by depositing with the Federal Reserve agent its Federal Reserve notes, gold certificates, Special Drawing Right certificates, or lawful money of the United States. Federal Reserve notes so deposited shall not be reissued, except upon compliance with the conditions of an original issue. The liability of a Federal Reserve bank with respect to its outstanding Federal Reserve notes shall be reduced by an amount paid by such bank to the Secretary of the Treasury under section 4 of the Old Series Currency Adjustment Act.

(Dec. 23, 1913, ch. 6, § 16 (par.), 38 Stat. 267; June 21, 1917, ch. 32, § 7, 40 Stat. 237; Jan. 30, 1934, ch. 6, § 2(b)(5), 48 Stat. 339; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 87–66, § 8(a), June 30, 1961, 75 Stat. 147; Pub. L. 90–269, § 5, Mar. 18, 1968, 82 Stat. 50; Pub. L. 90–349, § 5(b), June 19, 1968, 82 Stat. 189.)

REFERENCES IN TEXT

Section 4 of the Old Series Currency Adjustment Act, referred to in text, which was classified to section 913 of former Title 31, was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, the first section of which enacted Title 31, Money and Finance.

CODIFICATION

Section is comprised of the fifth par. of section 16 of act Dec. 23, 1913. Section was formerly comprised of the fifth and sixth pars. of section 16 of act Dec. 23, 1913, before repeal of the sixth par. by Pub. L. 90–269, see 1968 Amendment note below. For classification to this title of other pars. of section 16, see Codification note set out under section 411 of this title.

AMENDMENTS

1968—Pub. L. 90–349 added Special Drawing Right certificates to the types of deposits which Federal Reserve banks may use in reducing their liability for outstanding Federal Reserve notes.

Pub. L. 90–269 struck out second par. (sixth par. of section 16 of Act Dec. 23, 1913), which read as follows: ''The Federal Reserve agent shall hold such gold certificates or lawful money available exclusively for exchange for the outstanding Federal Reserve notes when offered by the Reserve bank of which he is a director. Upon the request of the Secretary of the Treasury the Board of Governors of the Federal Reserve System shall require the Federal Reserve agent to transmit to the Treasurer of the United States so much of the gold certificates held by him as collateral security for Federal Reserve notes as may be required for the exclusive purpose of the redemption of such Federal Reserve notes, but such gold certificates when deposited with the Treasurer shall be counted and considered as if collateral security on deposit with the Federal Reserve agent.''

1961—Pub. L. 87–66 provided for reduction of liability for outstanding notes by payment of notes of series prior to 1928.

1934—Act Jan. 30, 1934, struck out ''gold'' wherever it appeared before ''gold certificates,'' and inserted ''certificates'' after ''gold'' wherever latter stood alone.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 416. Withdrawal of collateral deposited to protect notes and substitution of other collateral; retirement of notes; payment of notes of series prior to 1928; recovery of collateral; reissue of deposited notes

Any Federal Reserve bank may at its discretion withdraw collateral deposited with the local Federal Reserve agent for the protection of its Federal Reserve notes issued to it, and shall at the same time substitute therefor other collateral of equal amount with the approval of the Federal Reserve agent under regulations to be prescribed by the Board of Governors of the Federal Reserve System. Any Federal Reserve bank may retire any of its Federal Reserve notes by depositing them with the Federal Reserve agent or with the Treasurer of the United States, and such Federal Reserve bank shall thereupon be entitled to receive back the collateral deposited with the Federal Reserve agent for the security of such notes. Any Federal Reserve bank shall further be entitled to receive back the collateral deposited with the Federal Reserve agent for the security of any notes with respect to which such bank has made payment to the Secretary of the Treasury under section 4 of the Old Series Currency Adjustment Act. Federal Reserve notes so deposited shall not be reissued except upon compliance with the conditions of an original issue.

(Dec. 23, 1913, ch. 6, § 16 (par.), 38 Stat. 267; June 21, 1917, ch. 32, § 7, 40 Stat. 237; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 87–66, § 8(b), June 30, 1961, 75 Stat. 147; Pub. L. 90–269, § 6, Mar. 18, 1968, 82 Stat. 50.)

REFERENCES IN TEXT

Section 4 of the Old Series Currency Adjustment Act, referred to in text, which was classified to section 913 of former Title 31, was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, the first section of which enacted Title 31, Money and Finance.

CODIFICATION

Section is comprised of the sixth par. (formerly the seventh par.) of section 16 of act Dec. 23, 1913. For classification to this title of other pars. of section 16, see Codification note set out under section 411 of this title.

AMENDMENTS

1968—Pub. L. 90–269 repealed fourth sentence which provided that Federal Reserve banks shall not be required to maintain the reserve or the redemption fund against Federal Reserve notes which have been retired, or as to which payment has been made to the Secretary of the Treasury under section 4 of the Old Series Currency Adjustment Act, on notes of series prior to 1928.

1961—Pub. L. 87–66 provided for recovery of collateral upon payment of notes of series prior to 1928 and removed requirement of reserve or redemption fund for such notes.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of the Treasury, see note set out under section 55 of this title.

§ 417. Custody and safe-keeping of notes issued to and collateral deposited with Reserve agent

All Federal Reserve notes and all gold certificates, Special Drawing Right certificates, and

lawful money issued to or deposited with any Federal Reserve agent under the provisions of the Federal Reserve Act shall hereafter be held for such agent, under such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe, in the joint custody of himself and the Federal Reserve bank to which he is accredited. Such agent and such Federal Reserve bank shall be jointly liable for the safe-keeping of such Federal Reserve notes, gold certificates, Special Drawing Right certificates, and lawful money. Nothing herein contained, however, shall be construed to prohibit a Federal Reserve agent from depositing gold certificates and Special Drawing Right certificates with the Board of Governors of the Federal Reserve System, to be held by such Board subject to his order, or with the Treasurer of the United States for the purposes authorized by law.

(June 21, 1917, ch. 32, §7 (par.), 40 Stat. 238; Jan. 30, 1934, ch. 6, §2(b)(6), 48 Stat. 339; Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704; Pub. L. 90–349, §5(c), June 19, 1968, 82 Stat. 189.)

REFERENCES IN TEXT

The Federal Reserve Act, referred to in text, is act Dec. 23, 1913, ch. 6, 38 Stat. 251. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

Hereafter, referred to in text, probably means on and after June 21, 1917.

CODIFICATION

Section is comprised of last par. of section 7 of act June 21, 1917. The preceding pars. of section 7 amended pars. two, three, four, five, six, and seven of section 16 of act Dec. 23, 1913. For classification to this title of section 16, see Codification note set out under section 411 of this title.

AMENDMENTS

1968—Pub. L. 90–349, which directed amendment of ''[t]he seventh paragraph of section 16 of the Federal Reserve Act, as amended (12 U.S.C. 417)'' by inserting '', Special Drawing Right certificates,'' after ''gold certificates'' in the first sentence, ''Special Drawing Right certificates,'' after ''gold certificates,'' in the second sentence, and ''and Special Drawing Right certificates'' after ''gold certificates'' in the third sentence, was executed by making the insertions in this section, to reflect the probable intent of Congress.

1934—Act Jan. 30, 1934, which directed general amendment of the eighth par. of section 16 of the Federal Reserve Act, was executed to this section, to reflect the probable intent of Congress. Prior to amendment, text read as follows: ''All Federal reserve notes and all gold, gold certificates, and lawful money issued to or deposited with any Federal reserve agent under the provisions of the Federal reserve Act shall hereafter be held for such agent, under such rules and regulations as the Federal Reserve Board may prescribe, in the joint custody of himself and the Federal reserve bank to which he is accredited. Such agent and such Federal reserve bank shall be jointly liable for the safe-keeping of such Federal reserve notes, gold, gold certificates, and lawful money. Nothing herein contained, however, shall be construed to prohibit a Federal reserve agent from depositing gold or gold certificates with the Federal Reserve Board, to be held by such board subject to his order, or with the Treasurer of the United States for the purposes authorized by law.''

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of the Treasury, see note set out under section 55 of this title.

§ 418. Printing of notes; denomination and form

In order to furnish suitable notes for circulation as Federal reserve notes, the Secretary of the Treasury shall cause plates and dies to be engraved in the best manner to guard against counterfeits and fraudulent alterations, and shall have printed therefrom and numbered such quantities of such notes of the denominations of $1, $2, $5, $10, $20, $50, $100, $500, $1,000, $5,000, $10,000 as may be required to supply the Federal Reserve banks. Such notes shall be in form and tenor as directed by the Secretary of the Treasury under the provisions of this chapter and shall bear the distinctive numbers of the several Federal reserve banks through which they are issued.

(Dec. 23, 1913, ch. 6, §16 (par.), 38 Stat. 267; Sept. 26, 1918, ch. 177, §3, 40 Stat. 969; Pub. L. 88–36, title I, §3, June 4, 1963, 77 Stat. 54; Pub. L. 103–325, title VI, §602(g)(3), Sept. 23, 1994, 108 Stat. 2293.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of the seventh par. (formerly the eighth par.) of section 16 of act Dec. 23, 1913. For classification to this title of other pars. of section 16, see Codification note set out under section 411 of this title.

AMENDMENTS

1994—Pub. L. 103–325, which directed amendment of ''[t]he 1st sentence of the 8th undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 418)'' by substituting ''the Secretary of the Treasury shall'' for ''the Comptroller of the Currency shall under the direction of the Secretary of the Treasury,'' was executed by making the substitution in this section for ''the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury,'' to reflect the probable intent of Congress.

1963—Pub. L. 83–36, which directed amendment of ''[t]he first sentence of the ninth paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 418)'' by inserting ''$1, $2,'' after ''notes of the denominations of'', was executed by making the insertion in this section, to reflect the probable intent of Congress.

1918—Act Sept. 26, 1918, which directed general amendment of ''the ninth paragraph of section sixteen of the Federal reserve Act, as amended by the Acts approved September seventh, nineteen hundred and sixteen, and June twenty-first, nineteen hundred and seventeen,'' was executed to the eighth par. of section 16 of act Dec. 23, 1913 (now classified to this section), to reflect the probable intent of Congress. Prior to amendment, text read as follows: ''In order to furnish suitable notes for circulation as Federal reserve notes, the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury, cause plates and dies to be engraved in the best manner to guard against counterfeits and fraudulent alterations, and shall have printed therefrom and numbered such quantities of such notes of the denominations of $5, $10, $20, $50, $100, as may be required to supply the Federal reserve banks.

Such notes shall be in form and tenor as directed by the Secretary of the Treasury under the provisions of this Act and shall bear the distinctive numbers of the several Federal reserve banks through which they are issued.''

§ 419. Delivery of notes prior to delivery to banks

When such notes have been prepared, the notes shall be delivered to the Board of Governors of the Federal Reserve System subject to the order of the Secretary of the Treasury for the delivery of such notes in accordance with this chapter.

(Dec. 23, 1913, ch. 6, § 16 (par.), 38 Stat. 267; May 29, 1920, ch. 214, § 1, 41 Stat. 654; Pub. L. 103–325, title VI, § 602(g)(4), Sept. 23, 1994, 108 Stat. 2293.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of the eighth par. (formerly the ninth par.) of section 16 of act Dec. 23, 1913. For classification to this title of other pars. of section 16, see Codification note set out under section 411 of this title.

On authority of act May 29, 1920, which abolished offices of Assistant Treasurers and distributed their functions, ''designated depositary'' substituted for ''subtreasury'' in 1926 ed. of the Code.

AMENDMENTS

1994—Pub. L. 103–325, which directed general amendment of ''[t]he 9th undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 419)'', was executed to this section to reflect the probable intent of Congress. Prior to amendment, section read as follows: ''When such notes have been prepared, they shall be deposited in the Treasury, or in the designated depositary or mint of the United States nearest the place of business of each Federal reserve bank and shall be held for the use of such bank subject to the order of the Comptroller of the Currency for their delivery, as provided by this chapter.''

§ 420. Control and direction of plates and dies; expense of issue and retirement of notes paid by banks

The plates and dies to be procured by the Secretary of the Treasury for the printing of such circulating notes shall remain under his control and direction, and the expenses necessarily incurred in executing the laws relating to the procuring of such notes, and all other expenses incidental to their issue and retirement, shall be paid by the Federal reserve banks, and the Board of Governors of the Federal Reserve System shall include in its estimate of expenses levied against the Federal reserve banks a sufficient amount to cover the expenses herein provided for.

(Dec. 23, 1913, ch. 6, § 16 (par.), 38 Stat. 267; Pub. L. 103–325, title VI, § 602(g)(5), Sept. 23, 1994, 108 Stat. 2293.)

REFERENCES IN TEXT

Phrase ''herein provided for'', referred to in text, probably means as provided for in section 16 of act Dec. 23, 1913. For classification to this title of section 16, see Codification note set out under section 411 of this title.

CODIFICATION

Section is comprised of the ninth par. (formerly the tenth par.) of section 16 of act Dec. 23, 1913. For classification to this title of other pars. of section 16, see Codification note set out under section 411 of this title.

AMENDMENTS

1994—Pub. L. 103–325, which directed amendment of ''[t]he 10th undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 420)'' by substituting ''Secretary of the Treasury'' for ''Comptroller of the Currency'' and ''Board of Governors of the Federal Reserve System'' for ''Federal Reserve Board'', was executed by making the substitutions in this section to reflect the probable intent of Congress.

§ 421. Examination of plates and dies

The Secretary of the Treasury may examine the plates, dies, bed pieces, and other material used in the printing of Federal Reserve notes and issue regulations relating to such examinations.

(Dec. 23, 1913, ch. 6, § 16 (par.), 38 Stat. 267; Pub. L. 103–325, title VI, § 602(g)(6), Sept. 23, 1994, 108 Stat. 2293.)

CODIFICATION

Section is comprised of the tenth (formerly the eleventh) par. of section 16 of act Dec. 23, 1913. For classification to this title of other pars. of section 16, see Codification note set out under section 411 of this title.

AMENDMENTS

1994—Pub. L. 103–325, which directed general amendment of ''[t]he 11th undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 421)'', was executed to this section to reflect the probable intent of Congress. Prior to amendment, text read as follows: ''The examination of plates, dies, bed pieces, and so forth, and regulations relating to such examination of plates, dies, and so forth, of national-bank notes provided for in section 108 of this title, is extended to include notes herein provided for.''

§ 422. Omitted

CODIFICATION

Section, act Dec. 23, 1913, ch. 6, § 16 (par.), 38 Stat. 267, which made permanent appropriations for printing notes besides authorizing use of certain printing stock on hand Dec. 23, 1913, was superseded by act June 26, 1934, ch. 756, § 1(a), (b)(3), 48 Stat. 1225.

SUBCHAPTER XIII—CIRCULATING NOTES AND BONDS SECURING SAME

§§ 441 to 448. Omitted

CODIFICATION

Sections, act Dec. 23, 1913, ch. 6, § 18, 38 Stat. 268, as amended by acts Mar. 9, 1933, ch. 1, title IV, § 401, 48 Stat. 6; Sept. 23, 1994, Pub. L. 103–325, title VI, § 602(g)(7), 108 Stat. 2293, are omitted as obsolete.

Section 441 provided that at any time during a period of twenty years from Dec. 23, 1915, any member bank desiring to retire the whole or any part of its circulating notes file with the Treasurer of the United States an application to sell for its account, at par and accrued interest, United States bonds, securing circulation to be retired.

Section 442 related to purchase of bonds by reserve banks.

Section 443 related to transfer of bonds purchased, payment, and cancellation of circulating notes of member banks.

Section 444 related to issuance of circulating notes to reserve banks purchasing bonds.

Section 445 provided for issuance of circulating notes to Federal Reserve banks. Act June 12, 1945, ch. 186, §3, 59 Stat. 238, provided that all power and authority with respect to the issuance of circulating notes, known as Federal Reserve bank notes, pursuant to this section would cease and terminate on June 12, 1945.

Section 446 related to exchange by reserve banks of bonds bearing circulating privilege for those without such privilege.

Section 447 related to form of bonds and conditions of issuance.

Section 448 related to exchange of one-year gold notes for 3 per centum gold bonds.

SUBCHAPTER XIV—BANK RESERVES

§ 461. Reserve requirements

(a) Establishment of applicable definitions, payment of interest, obligations as deposits, and regulations

The Board is authorized for the purposes of this section[1] to define the terms used in this section,[1] to determine what shall be deemed a payment of interest, to determine what types of obligations, whether issued directly by a member bank or indirectly by an affiliate of a member bank or by other means, and, regardless of the use of the proceeds, shall be deemed a deposit, and to prescribe such regulations as it may deem necessary to effectuate the purposes of this section[1] and to prevent evasions thereof.

(b) Additional definitions; required amounts of reserves maintained against transaction accounts; waiver of ratio limits in extraordinary circumstances; supplemental reserves; reserves related to foreign obligations or assets; exemption for certain deposits; discount and borrowing; transitional adjustments; additional exemptions and waivers; earnings on balances

(1) The following definitions and rules apply to this subsection, subsection (c) of this section, and sections 248–1, 248a, 342, 360, and 412 of this title:

(A) The term ''depository institution'' means—

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813] or any bank which is eligible to make application to become an insured bank under section 5 of such Act [12 U.S.C. 1815];

(ii) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(iii) any savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(iv) any insured credit union as defined in section 1752 of this title or any credit union which is eligible to make application to become an insured credit union pursuant to section 1781 of this title;

(v) any member as defined in section 1422 of this title;

(vi) any savings association (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) which is an insured depository institution (as defined in such Act [12 U.S.C. 1811 et seq.]) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act; and

(vii) for the purpose of sections 248–1, 342 to 347, 347c, 347d, and 372 of this title, any association or entity which is wholly owned by or which consists only of institutions referred to in clauses (i) through (vi).

(B) The term ''bank'' means any insured or noninsured bank, as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], other than a mutual savings bank or a savings bank as defined in such section.

(C) The term ''transaction account'' means a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such term includes demand deposits, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.

(D) The term ''nonpersonal time deposits'' means a transferable time deposit or account or a time deposit or account representing funds deposited to the credit of, or in which any beneficial interest is held by, a depositor who is not a natural person.

(E) The term ''reservable liabilities'' means transaction accounts, nonpersonal time deposits, and all net balances, loans, assets, and obligations which are, or may be, subject to reserve requirements under paragraph (5).

(F) In order to prevent evasions of the reserve requirements imposed by this subsection, after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, the Board of Governors of the Federal Reserve System is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account or deposit may be used to provide funds directly or indirectly for the purpose of making payments or transfers to third persons or others.

(2)(A) Each depository institution shall maintain reserves against its transaction accounts as the Board may prescribe by regulation solely for the purpose of implementing monetary policy—

(i) in a ratio of not greater than 3 percent (and which may be zero) for that portion of its total transaction accounts of $25,000,000 or less, subject to subparagraph (C); and

(ii) in the ratio of 12 per centum, or in such other ratio as the Board may prescribe not greater than 14 per centum (and which may be zero), for that portion of its total transaction accounts in excess of $25,000,000, subject to subparagraph (C).

(B) Each depository institution shall maintain reserves against its nonpersonal time deposits in the ratio of 3 per centum, or in such other ratio not greater than 9 per centum and not less than

[1] See References in Text note below.

zero per centum as the Board may prescribe by regulation solely for the purpose of implementing monetary policy.

(C) Beginning in 1981, not later than December 31 of each year the Board shall issue a regulation increasing for the next succeeding calendar year the dollar amount which is contained in subparagraph (A) or which was last determined pursuant to this subparagraph for the purpose of such subparagraph, by an amount obtained by multiplying such dollar amount by 80 per centum of the percentage increase in the total transaction accounts of all depository institutions. The increase in such transaction accounts shall be determined by subtracting the amount of such accounts on June 30 of the preceding calendar year from the amount of such accounts on June 30 of the calendar year involved. In the case of any such 12-month period in which there has been a decrease in the total transaction accounts of all depository institutions, the Board shall issue such a regulation decreasing for the next succeeding calendar year such dollar amount by an amount obtained by multiplying such dollar amount by 80 per centum of the percentage decrease in the total transaction accounts of all depository institutions. The decrease in such transaction accounts shall be determined by subtracting the amount of such accounts on June 30 of the calendar year involved from the amount of such accounts on June 30 of the previous calendar year.

(D) Any reserve requirement imposed under this subsection shall be uniformly applied to all transaction accounts at all depository institutions. Reserve requirements imposed under this subsection shall be uniformly applied to nonpersonal time deposits at all depository institutions, except that such requirements may vary by the maturity of such deposits.

(3) Upon a finding by at least 5 members of the Board that extraordinary circumstances require such action, the Board, after consultation with the appropriate committees of the Congress, may impose, with respect to any liability of depository institutions, reserve requirements outside the limitations as to ratios and as to types of liabilities otherwise prescribed by paragraph (2) for a period not exceeding 180 days, and for further periods not exceeding 180 days each by affirmative action by at least 5 members of the Board in each instance. The Board shall promptly transmit to the Congress a report of any exercise of its authority under this paragraph and the reasons for such exercise of authority.

(4)(A) The Board may, upon the affirmative vote of not less than 5 members, impose a supplemental reserve requirement on every depository institution of not more than 4 per centum of its total transaction accounts. Such supplemental reserve requirement may be imposed only if—

(i) the sole purpose of such requirement is to increase the amount of reserves maintained to a level essential for the conduct of monetary policy;

(ii) such requirement is not imposed for the purpose of reducing the cost burdens resulting from the imposition of the reserve requirements pursuant to paragraph (2);

(iii) such requirement is not imposed for the purpose of increasing the amount of balances needed for clearing purposes; and

(iv) on the date on which the supplemental reserve requirement is imposed, except as provided in paragraph (11), the total amount of reserves required pursuant to paragraph (2) is not less than the amount of reserves that would be required if the initial ratios specified in paragraph (2) were in effect.

(B) The Board may require the supplemental reserve authorized under subparagraph (A) only after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board. The Board shall promptly transmit to the Congress a report with respect to any exercise of its authority to require supplemental reserves under subparagraph (A) and such report shall state the basis for the determination to exercise such authority.

(C) If a supplemental reserve under subparagraph (A) has been required of depository institutions for a period of one year or more, the Board shall review and determine the need for continued maintenance of supplemental reserves and shall transmit annual reports to the Congress regarding the need, if any, for continuing the supplemental reserve.

(D) Any supplemental reserve imposed under subparagraph (A) shall terminate at the close of the first 90-day period after such requirement is imposed during which the average amount of reserves required under paragraph (2) are less than the amount of reserves which would be required during such period if the initial ratios specified in paragraph (2) were in effect.

(5) Foreign branches, subsidiaries, and international banking facilities of nonmember depository institutions shall maintain reserves to the same extent required by the Board of foreign branches, subsidiaries, and international banking facilities of member banks. In addition to any reserves otherwise required to be maintained pursuant to this subsection, any depository institution shall maintain reserves in such ratios as the Board may prescribe against—

(A) net balances owed by domestic offices of such depository institution in the United States to its directly related foreign offices and to foreign offices of nonrelated depository institutions;

(B) loans to United States residents made by overseas offices of such depository institution if such depository institution has one or more offices in the United States; and

(C) assets (including participations) held by foreign offices of a depository institution in the United States which were acquired from its domestic offices.

(6) The requirements imposed under paragraph (2) shall not apply to deposits payable only outside the States of the United States and the District of Columbia, except that nothing in this subsection limits the authority of the Board to impose conditions and requirements on member banks under section 25 of this Act [12 U.S.C. 601 et seq.] or the authority of the Board under section 3105 of this title.

(7) Any depository institution in which transaction accounts or nonpersonal time deposits are held shall be entitled to the same discount and borrowing privileges as member banks. In the administration of discount and borrowing privileges, the Board and the Federal Reserve banks shall take into consideration the special needs of savings and other depository institutions for access to discount and borrowing facilities consistent with their long-term asset portfolios and the sensitivity of such institutions to trends in the national money markets.

(8)(A) Any depository institution required to maintain reserves under this subsection which was engaged in business on July 1, 1979, but was not a member of the Federal Reserve System on or after that date, shall maintain reserves against its deposits during the first twelve-month period following the effective date of this paragraph in amounts equal to one-eighth of those otherwise required by this subsection, during the second such twelve-month period in amounts equal to one-fourth of those otherwise required, during the third such twelve-month period in amounts equal to three-eighths of those otherwise required, during the fourth twelve-month period in amounts equal to one-half of those otherwise required, and during the fifth twelve-month period in amounts equal to five-eighths of those otherwise required, during the sixth twelve-month period in amounts equal to three-fourths of those otherwise required, and during the seventh twelve-month period in amounts equal to seven-eighths of those otherwise required. This subparagraph does not apply to any category of deposits or accounts which are first authorized pursuant to Federal law in any State after April 1, 1980.

(B) With respect to any bank which was a member of the Federal Reserve System during the entire period beginning on July 1, 1979, and ending on the effective date of the Monetary Control Act of 1980, the amount of required reserves imposed pursuant to this subsection on and after the effective date of such Act that exceeds the amount of reserves which would have been required of such bank if the reserve ratios in effect during the reserve computation period immediately preceding such effective date were applied may, at the discretion of the Board and in accordance with such rules and regulations as it may adopt, be reduced by 75 per centum during the first year which begins after such effective date, 50 per centum during the second year, and 25 per centum during the third year.

(C)(i) With respect to any bank which is a member of the Federal Reserve System on the effective date of the Monetary Control Act of 1980, the amount of reserves which would have been required of such bank if the reserve ratios in effect during the reserve computation period immediately preceding such effective date were applied that exceeds the amount of required reserves imposed pursuant to this subsection shall, in accordance with such rules and regulations as the Board may adopt, be reduced by 25 per centum during the first year which begins after such effective date, 50 per centum during the second year, and 75 per centum during the third year.

(ii) If a bank becomes a member bank during the four-year period beginning on the effective date of the Monetary Control Act of 1980, and if the amount of reserves which would have been required of such bank, determined as if the reserve ratios in effect during the reserve computation period immediately preceding such effective date were applied, and as if such bank had been a member during such period, exceeds the amount of reserves required pursuant to this subsection, the amount of reserves required to be maintained by such bank beginning on the date on which such bank becomes a member of the Federal Reserve System shall be the amount of reserves which would have been required of such bank if it had been a member on the day before such effective date, except that the amount of such excess shall, in accordance with such rules and regulations as the Board may adopt, be reduced by 25 per centum during the first year which begins after such effective date, 50 per centum during the second year, and 75 per centum during the third year.

(D)(i) Any bank which was a member bank on July 1, 1979, and which withdrew from membership in the Federal Reserve System during the period beginning July 1, 1979, and ending on March 31, 1980, shall maintain reserves during the first twelve-month period beginning on October 15, 1982, in amounts equal to one-half of those otherwise required by this subsection, during the second such twelve-month period in amounts equal to two-thirds of those otherwise required, and during the third such twelve-month period in amounts equal to five-sixths of those otherwise required.

(ii) Any bank which withdraws from membership in the Federal Reserve System after March 31, 1980, shall maintain reserves in the same amount as member banks are required to maintain under this subsection, pursuant to subparagraphs (B) and (C)(i).

(E) This subparagraph applies to any depository institution that, on August 1, 1978, (i) was engaged in business as a depository institution in a State outside the continental limits of the United States, and (ii) was not a member of the Federal Reserve System at any time on or after such date. Such a depository institution shall not be required to maintain reserves against its deposits held or maintained at its offices located in a State outside the continental limits of the United States until the first day of the sixth calendar year which begins after the effective date of the Monetary Control Act of 1980. Such a depository institution shall maintain reserves against such deposits during the sixth calendar year which begins after such effective date in an amount equal to one-eighth of that otherwise required by paragraph (2), during the seventh such year in an amount equal to one-fourth of that otherwise required, during the eighth such year in an amount equal to three-eighths of that otherwise required, during the ninth such year in an amount equal to one-half of that otherwise required, during the tenth such year in an amount equal to five-eighths of that otherwise required, during the eleventh such year in an amount equal to three-fourths of that otherwise required, and during the twelfth such year in an amount equal to seven-eighths of that otherwise required.

(9) This subsection shall not apply with respect to any financial institution which—

(A) is organized solely to do business with other financial institutions;

(B) is owned primarily by the financial institutions with which it does business; and

(C) does not do business with the general public.

(10) In individual cases, where a Federal supervisory authority waives a liquidity requirement, or waives the penalty for failing to satisfy a liquidity requirement, the Board shall waive the reserve requirement, or waive the penalty for failing to satisfy a reserve requirement, imposed pursuant to this subsection for the depository institution involved when requested by the Federal supervisory authority involved.

(11)(A)(i) Notwithstanding the reserve requirement ratios established under paragraphs (2) and (5) of this subsection, a reserve ratio of zero per centum shall apply to any combination of reservable liabilities, which do not exceed $2,000,000 (as adjusted under subparagraph (B)), of each depository institution.

(ii) Each depository institution may designate, in accordance with such rules and regulations as the Board shall prescribe, the types and amounts of reservable liabilities to which the reserve ratio of zero per centum shall apply, except that transaction accounts which are designated to be subject to a reserve ratio of zero per centum shall be accounts which would otherwise be subject to a reserve ratio of 3 per centum under paragraph (2).

(iii) The Board shall minimize the reporting necessary to determine whether depository institutions have total reservable liabilities of less than $2,000,000 (as adjusted under subparagraph (B)). Consistent with the Board's responsibility to monitor and control monetary and credit aggregates, depository institutions which have reserve requirements under this subsection equal to zero per centum shall be subject to less overall reporting requirements than depository institutions which have a reserve requirement under this subsection that exceeds zero per centum.

(B)(i) Beginning in 1982, not later than December 31 of each year, the Board shall issue a regulation increasing for the next succeeding calendar year the dollar amount specified in subparagraph (A), as previously adjusted under this subparagraph, by an amount obtained by multiplying such dollar amount by 80 per centum of the percentage increase in the total reservable liabilities of all depository institutions.

(ii) The increase in total reservable liabilities shall be determined by subtracting the amount of total reservable liabilities on June 30 of the preceding calendar year from the amount of total reservable liabilities on June 30 of the calendar year involved. In the case of any such twelve-month period in which there has been a decrease in the total reservable liabilities of all depository institutions, no adjustment shall be made. A decrease in total reservable liabilities shall be determined by subtracting the amount of total reservable liabilities on June 30 of the calendar year involved from the amount of total reservable liabilities on June 30 of the previous calendar year.

(12) EARNINGS ON BALANCES.—

(A) IN GENERAL.—Balances maintained at a Federal Reserve bank by or on behalf of a depository institution may receive earnings to be paid by the Federal Reserve bank at least once each calendar quarter, at a rate or rates not to exceed the general level of short-term interest rates.

(B) REGULATIONS RELATING TO PAYMENTS AND DISTRIBUTIONS.—The Board may prescribe regulations concerning—

(i) the payment of earnings in accordance with this paragraph;

(ii) the distribution of such earnings to the depository institutions which maintain balances at such banks, or on whose behalf such balances are maintained; and

(iii) the responsibilities of depository institutions, Federal Home Loan Banks, and the National Credit Union Administration Central Liquidity Facility with respect to the crediting and distribution of earnings attributable to balances maintained, in accordance with subsection (c)(1)(A), in a Federal Reserve bank by any such entity on behalf of depository institutions.

(C) DEPOSITORY INSTITUTIONS DEFINED.—For purposes of this paragraph, the term ''depository institution'', in addition to the institutions described in paragraph (1)(A), includes any trust company, corporation organized under section 25A [12 U.S.C. 611 et seq.] or having an agreement with the Board under section 25 [12 U.S.C. 601 et seq.], or any branch or agency of a foreign bank (as defined in section 3101 of this title).

(c) Promulgation of rules and regulations respecting maintenance of balances

(1) Reserves held by a depository institution to meet the requirements imposed pursuant to subsection (b) of this section shall, subject to such rules and regulations as the Board shall prescribe, be in the form of—

(A) balances maintained for such purposes by such depository institution in the Federal Reserve bank of which it is a member or at which it maintains an account, except that (i) the Board may, by regulation or order, permit depository institutions to maintain all or a portion of their required reserves in the form of vault cash, except that any portion so permitted shall be identical for all depository institutions, and (ii) vault cash may be used to satisfy any supplemental reserve requirement imposed pursuant to subsection (b)(4) of this section, except that all such vault cash shall be excluded from any computation of earnings pursuant to subsection (b) of this section; and

(B) balances maintained by a depository institution in a depository institution which maintains required reserve balances at a Federal Reserve bank, in a Federal Home Loan Bank, or in the National Credit Union Administration Central Liquidity Facility, if such depository institution, Federal Home Loan Bank, or National Credit Union Administration Central Liquidity Facility maintains such funds in the form of balances in a Federal Reserve bank of which it is a member or at which it maintains an account. Balances received by a depository institution from a second depository institution and used to satisfy the reserve requirement imposed on such sec-

ond depository institution by this section shall not be subject to the reserve requirements of this section imposed on such first depository institution, and shall not be subject to assessments or reserves imposed on such first depository institution pursuant to section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817), section 404 of the National Housing Act (12 U.S.C. 1727),[1] or section 202 of the Federal Credit Union Act (12 U.S.C. 1782).

(2) The balances maintained to meet the reserve requirements of subsection (b) of this section by a depository institution in a Federal Reserve bank or passed through a Federal Home Loan Bank or the National Credit Union Administration Central Liquidity Facility or another depository institution to a Federal Reserve bank may be used to satisfy liquidity requirements which may be imposed under other provisions of Federal or State law.

(Dec. 23, 1913, ch. 6, §19(a)–(c), formerly §19 (pars.), 38 Stat. 270; June 21, 1917, ch. 32, §10, 40 Stat. 239; Aug. 23, 1935, ch. 614, title III, §324(a), 49 Stat. 714; renumbered §19(a)–(c) and amended Pub. L. 89–597, §2(a), Sept. 21, 1966, 80 Stat. 823; Pub. L. 91–151, title I, §§4(a), 5, Dec. 23, 1969, 83 Stat. 374, 375; Pub. L. 93–501, title I, §101(a), Oct. 29, 1974, 88 Stat. 1557; Pub. L. 96–221, title I, §§103, 104(a), Mar. 31, 1980, 94 Stat. 133, 138; Pub. L. 97–35, title III, §385, Aug. 13, 1981, 95 Stat. 433; Pub. L. 97–320, title IV, §411, title VII, §708, Oct. 15, 1982, 96 Stat. 1520, 1540; Pub. L. 101–73, title VII, §744(i)(2), (3), Aug. 9, 1989, 103 Stat. 439; Pub. L. 109–351, title II, §§201, 202, title VI, §603, Oct. 13, 2006, 120 Stat. 1968, 1969, 1980; Pub. L. 111–203, title III, §366(2), July 21, 2010, 124 Stat. 1556.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 111–203, title III, §§351, 366(2), July 21, 2010, 124 Stat. 1546, 1556, provided that, effective on the transfer date, subsection (b) of this section is amended, in paragraphs (1)(F) and (4)(B), by substituting ''Comptroller of the Currency'' for ''Director of the Office of Thrift Supervision''. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This section, referred to in subsec. (a), means section 19 of act Dec. 23, 1913, as amended, which is classified to sections 142, 371a, 371b, 371b–1, 374, 374a, 461, 463 to 466, 505, and 506 of this title.

The Federal Deposit Insurance Act, referred to in subsec. (b)(1)(A)(vi), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

Section 25 of this Act and section 25, referred to in subsec. (b)(6), (12)(C), mean section 25 of act Dec. 23, 1913, ch. 6, which is classified to subchapter I (§601 et seq.) of chapter 6 of this title.

For the effective date of the Monetary Control Act of 1980, referred to in subsec. (b)(8), see section 108 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 248 of this title.

Section 25A, referred to in subsec. (b)(12)(C), means section 25A of act Dec. 23, 1913, ch. 6, known as the Edge Act, which is classified to subchapter II (§611 et seq.) of chapter 6 of this title.

Section 404 of the National Housing Act (12 U.S.C. 1727), referred to in subsec. (c)(1)(B), was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

CODIFICATION

Section is comprised of subsecs. (a) to (c), formerly first six pars., of section 19 of act Dec. 23, 1913 (such first, second through fifth, and sixth pars. formerly classified to sections 461, 462, and 462b of this title, respectively), as redesignated by Pub. L. 89–597. For credits prior to enactment of Pub. L. 89–597 on Sept. 21, 1966, see notes set out under sections 462 and 462b of this title.

AMENDMENTS

2006—Subsec. (b)(2)(A). Pub. L. 109–351, §202, substituted ''a ratio of not greater than 3 percent (and which may be zero)'' for ''the ratio of 3 per centum'' in cl. (i) and ''(and which may be zero),'' for ''and not less than 8 per centum,'' in cl. (ii).

Subsec. (b)(4)(C) to (E). Pub. L. 109–351, §201(b)(1), redesignated subpars. (D) and (E) as (C) and (D), respectively, and struck out former subpar. (C) which read as follows: ''The supplemental reserve authorized under subparagraph (A) shall be maintained by the Federal Reserve banks in an Earnings Participation Account. Except as provided in subsection (c)(1)(A)(ii) of this section, such Earnings Participation Account shall receive earnings to be paid by the Federal Reserve banks during each calendar quarter at a rate not more than the rate earned on the securities portfolio of the Federal Reserve System during the previous calendar quarter. The Board may prescribe rules and regulations concerning the payment of earnings on Earnings Participation Accounts by Federal Reserve banks under this paragraph.''

Subsec. (b)(12). Pub. L. 109–351, §201(a), added par. (12).

Subsec. (c)(1)(A). Pub. L. 109–351, §201(b)(2), substituted ''subsection (b)'' for ''subsection (b)(4)(C)''.

Subsec. (c)(1)(B). Pub. L. 109–351, §603, struck out ''which is not a member bank'' after ''balances maintained by a depository institution''.

1989—Subsec. (b)(1)(A)(vi). Pub. L. 101–73, §744(i)(2), amended cl. (vi) generally. Prior to amendment, cl. (vi) read as follows: ''any insured institution as defined in section 1724 of this title or any institution which is eligible to make application to become an insured institution under section 1726 of this title; and''.

Subsec. (b)(1)(F), (4)(B). Pub. L. 101–73, §744(i)(3), substituted ''Director of the Office of Thrift Supervision'' for ''Federal Home Loan Bank Board''.

1982—Subsec. (b)(1)(E), (F). Pub. L. 97–320, §411(c), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (b)(4)(A)(iv). Pub. L. 97–320, §411(b), inserted ''except as provided in paragraph (11)''.

Subsec. (b)(8)(D)(i). Pub. L. 97–320, §708(1), substituted provisions relating to reserve requirements for banks which withdraw from the Federal Reserve System for provision that any bank which was a member bank on July 1, 1979, and which withdrew from membership in the Federal Reserve System during the period beginning on July 1, 1979, and ending on the day before March 31, 1980, would maintain reserves beginning on March 31, 1980, in an amount equal to the amount of reserves it would have been required to maintain if it had been a member bank on March 31, 1980, and that after March 31, 1980, any such bank was directed to maintain reserves in the same amounts as member banks were required to maintain under this subsection, pursuant to subparagraphs (B) and (C)(i).

Subsec. (b)(8)(D)(ii). Pub. L. 97–320, §708(2), struck out ''on or'' after ''Reserve System''.

Subsec. (b)(11). Pub. L. 97–320, §411(a), added par. (11).

1981—Subsec. (b)(8)(E). Pub. L. 97–35 substituted provisions relating to applicability to any depository institution that was on Aug. 1, 1978, engaged in such business in a State outside the continental limits and was not a member of the Federal Reserve System at any time on or after such date, for provisions relating to applicability to any depository institution that was on Aug. 1, 1978, engaged in such business under the laws of a State, was not a member of the Federal Reserve Sys-

tem on that date, and the principal office of which was outside the continental limits on that date and has remained outside ever since.

1980—Subsec. (b). Pub. L. 96–221, §103, substituted provisions setting forth additional definitions applicable to reserve requirements and requirements respecting amounts of reserves maintained against transaction accounts, waiver of ratio limits in extraordinary circumstances, supplemental reserves, reserves related to foreign obligations or assets, exemptions for certain deposits, discounts and borrowings, transitional adjustments, and additional exemptions and waivers, for provisions relating to determinations respecting maintenance of reserves against deposits.

Subsec. (c). Pub. L. 96–221, §104(a), substituted provisions relating to the promulgation of rules and regulations respecting maintenance of balances, for provisions relating to form of reserves held by member banks.

1974—Subsec. (a). Pub. L. 93–501 substituted ''and, regardless of the use of the proceeds, shall be deemed a deposit'' for ''shall be deemed a deposit''.

1969—Subsec. (a). Pub. L. 91–151, §4(a), authorized Board to determine type of obligations that would be deemed deposits.

Subsec. (b). Pub. L. 91–151, §5, authorized Board to prescribe ratio of indebtedness of member banks to foreign banks, up to a maximum of 22 percent.

1966—Pub. L. 89–597 designated first par. provisions of section 19 of act Dec. 23, 1913, as subsec. (a), substituted a general provision authorizing Board to define terms used in sections 142, 371a, 371b, 374, 374a, and 463 to 466 of this title for former provisions defining terms ''demand deposits'', ''gross demand deposits'', ''deposits payable on demand'', ''time deposits'', ''savings deposits'', and ''trust funds'', struck out inclusion of ''savings deposits'' in term ''time deposits'' in regard to reserve requirements of member banks, and added subsecs. (b) and (c) to such section 19, superseding second through sixth pars., which authorized Board to fix reserve requirements against time deposits between the limits of 3 and 10 percent, in lieu of prior limits of 3 and 6 percent, and struck out provision for modification of reserve requirements to prevent injurious credit to expansion or contraction.

1935—Act Aug. 23, 1935, abrogated statutory construction of demand deposits.

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–351, title II, §203, Oct. 13, 2006, 120 Stat. 1969, as amended by Pub. L. 110–343, div. A, title I, §128, Oct. 3, 2008, 122 Stat. 3796, provided that: ''The amendments made by this title [amending this section] shall take effect October 1, 2008.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on first day of sixth month which begins after Mar. 31, 1980, except that the amendments regarding subsec. (b)(7) and (8)(D) effective on Mar. 31, 1980, see section 108 of Pub. L. 96–221, set out as a note under section 248 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 101(b) of Pub. L. 93–501 provided that: ''The amendment made by subsection (a) [amending this section] shall not apply to any bank holding company which has filed prior to the date of enactment of this Act [Oct. 29, 1974], an irrevocable declaration with the Board of Governors of the Federal Reserve System to divest itself of all of its banks under section 4 of the Bank Holding Company Act [12 U.S.C. 1843], or to any debt obligation which is an exempted security under section 3(a)(3) of the Securities Act of 1933 [15 U.S.C. 77c(a)(3)].''

EFFECTIVE AND TERMINATION DATES OF 1966 AMENDMENT

Section 7 of Pub. L. 89–597, as amended by Pub. L. 90–87, Sept. 21, 1967, 81 Stat. 226; Pub. L. 90–505, §1, Sept. 21, 1968, 82 Stat. 856; Pub. L. 91–71, Sept. 22, 1969, 83 Stat. 115; Pub. L. 91–151, title I, §1, Dec. 23, 1969, 83 Stat. 371; Pub. L. 92–8, §1, Mar. 31, 1971, 85 Stat. 13; Pub. L. 92–15, §1, May 18, 1971, 85 Stat. 38; Pub. L. 93–63, July 6, 1973, 87 Stat. 147; Pub. L. 93–100, §1, Aug. 16, 1973, 87 Stat. 342; Pub. L. 93–495, title I, §107, Oct. 28, 1974, 88 Stat. 1505; Pub. L. 94–200, title I, §101, Dec. 31, 1975, 89 Stat. 1124; Pub. L. 95–22, title I, §101, Apr. 19, 1977, 91 Stat. 49; Pub. L. 95–188, title I, §101, Nov. 16, 1977, 91 Stat. 1387; Pub. L. 95–630, title XVI, §1601, Nov. 10, 1978, 92 Stat. 3713, which provided effective and termination dates for 1966 amendments by Pub. L. 89–597 (affecting sections 371b, 1425b, and 1828(g) of this title), was repealed by section 207(a) of Pub. L. 96–221.

ELIMINATION OR REDUCTION OF INTEREST RATE DIFFERENTIAL BETWEEN SAVINGS BANKS AND SAVINGS AND LOAN, BUILDING AND LOAN, OR HOMESTEAD ASSOCIATIONS

Pub. L. 94–200, title I, §102, Dec. 31, 1975, 89 Stat. 1124, as amended by Pub. L. 95–630, title XVI, §1602, Nov. 10, 1978, 92 Stat. 3713, which had provided that an interest rate differential for any category of deposits or accounts which was in effect on December 10, 1975, between (1) any bank (other than a savings bank) the deposits of which were insured by the Federal Deposit Insurance Corporation and (2) any savings and loan, building and loan, or homestead association (including cooperative banks) the deposits or accounts of which were insured by the Federal Savings and Loan Insurance Corporation or any mutual savings bank as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(j)) [section 1813(f) of this title] could not be eliminated or reduced unless (A) written notification was given by the Board of Governors of the Federal Reserve System to the Congress; and (B) the House of Representatives and the Senate approved, by concurrent resolution, the proposed elimination or reduction of the interest rate differential, was repealed by Pub. L. 97–320, title III, §326(a), Oct. 15, 1982, 96 Stat. 1500. See section 326(b)–(d) of Pub. L. 97–320, set out as a note under section 1828 of this title. See, also, section 207(b)(1) of Pub. L. 96–221 providing for repeal of section 102 of Pub. L. 94–200 effective 6 years after Mar. 31, 1980.

INTEREST RATES: CONTROLS

Section 1 of Pub. L. 89–597 provided that: ''The Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, in implementation of their respective powers under existing law and this Act [enacting section 1425b of this title, amending this section, sections 355, 371b, and 1828 of this title, and section 771 of former Title 31, Money and Finance, repealing section 462a–1 of this title and enacting provisions set out as notes under this section], shall take action to bring about the reduction of interest rates to the maximum extent feasible in the light of prevailing money market and general economic conditions.''

Effective and termination dates of control of interest rates provisions, see Effective and Termination Dates of 1966 Amendment note above.

OUTSTANDING RATE REGULATIONS

Section 5 of Pub. L. 89–597 provided that: ''Any regulation prescribed by the Board of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation with respect to the payment of deposits and interest thereon by member banks or insured nonmember banks which is in effect when this Act is enacted [Sept. 21, 1966] shall continue in effect unless and until it is modified or rescinded after consultation with the Board of Directors or the Board of Governors, as the case may be, and the Federal Home Loan Bank Board.''

Effective and termination dates of existing rate regulations, see Effective and Termination Dates of 1966 Amendment note under this section.

§ 462. Omitted

CODIFICATION

Section, acts Dec. 23, 1913, ch. 6, §19 (par.), 38 Stat. 270; Aug. 15, 1914, ch. 252, 38 Stat. 691; June 21, 1917, ch. 32, §10, 40 Stat. 239; Sept. 26, 1918, ch. 177, §4, 40 Stat. 970; July 28, 1959, Pub. L. 86–114, §§1, 2(a), 3(b)(7)–(9), 73 Stat. 863, which related to balances member banks were required to keep in reserve banks, was omitted from the Code in view of the striking out of second through fifth pars. of section 19 of act Dec. 23, 1913 (formerly comprising this section), and incorporation of provisions of such paragraphs in subsecs. (a) to (c) of section 19 of act Dec. 23, 1913 by section 2(a) of Pub. L. 89–597, Sept. 21, 1966, 80 Stat. 823. See section 461 of this title.

§ 462a. Repealed. Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section, act Apr. 24, 1917, ch. 4, §7, 40 Stat. 37, related to reserves against United States deposits.

§ 462a–1. Repealed. Pub. L. 89–597, § 2(d), Sept. 21, 1966, 80 Stat. 824

Section, act Dec. 23, 1913, ch. 6, §19 (par.), as added Aug. 23, 1935, ch. 614, title III, §324(d), 49 Stat. 715; amended Apr. 13, 1943, ch. 62, §2, 57 Stat. 65, prescribed maintenance of same bank reserves against deposits by United States as were required against other deposits.

§§ 462b, 462c. Omitted

CODIFICATION

Section 462b, act Dec. 23, 1913, ch. 6, §19 (par.), as added May 12, 1933, ch. 25, title III, §46, 48 Stat. 54; amended Aug. 23, 1935, ch. 614, title II, §207, 49 Stat. 706; July 7, 1942, ch. 488, §2, 56 Stat. 648; July 28, 1959, Pub. L. 86–114, §§2(b), 3(b)(10), (11), 73 Stat. 263, 264, related to change of requirements as to reserves in order to prevent credit expansion or contraction, and was omitted from the Code in view of the striking out of the sixth par. of section 19 of act Dec. 23, 1913 (formerly comprising this section), and incorporation of its provisions in subsecs. (a) to (c) of section 19 of act Dec. 23, 1913 by section 2(a) of Pub. L. 89–597, Sept. 21, 1966, 80 Stat. 823. See section 461 of this title.

Section 462c, act Dec. 23, 1913, ch. 6, §19 (par.), as added Aug. 16, 1948, ch. 836, §2, 62 Stat. 1291, related to change of requirements as to reserves to check credit expansion, and terminated on June 30, 1949.

§ 463. Limitation on amount of balance with any depository institution without access to Federal Reserve advances

No member bank shall keep on deposit with any depository institution which is not authorized to have access to Federal Reserve advances under section 347b[1] of this title a sum in excess of 10 per centum of its own paid-up capital and surplus.

(Dec. 23, 1913, ch. 6, §19(e), formerly §19 (par. 8), 38 Stat. 270; Aug. 15, 1914, ch. 252, 38 Stat. 691; June 21, 1917, ch. 32, §10, 40 Stat. 239; renumbered §19(e), Pub. L. 89–597, §2(b), Sept. 21, 1966, 80 Stat. 824; Pub. L. 96–221, title I, §105(e), Mar. 31, 1980, 94 Stat. 140.)

REFERENCES IN TEXT

Section 347b of this title, referred to in text, was in the original a reference to section 10(b) of this Act, meaning section 10(b) of the Federal Reserve Act. Section 10(b) of that Act was renumbered section 10B by Pub. L. 102–242, title I, §142(a)(2), Dec. 19, 1991, 105 Stat. 2279, without a corresponding amendment to this section.

CODIFICATION

Section is comprised of part of subsec. (e), formerly eighth par., of section 19 of act Dec. 23, 1913, as redesignated by Pub. L. 89–597. Remainder of subsec. (e) of such section 19 is classified to section 374 of this title.

AMENDMENTS

1980—Pub. L. 96–221 substituted provisions limiting amount of balance required to be kept with any depository institution without access to Federal Reserve advances, for provisions limiting amount of balance required to be kept with any State bank or trust company.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on first day of sixth month which begins after Mar. 31, 1980, see section 108 of Pub. L. 96–221, set out as a note under section 248 of this title.

§ 464. Checking against and withdrawal of reserve balance

The required balance carried by a member bank with a Federal reserve bank may, under the regulations and subject to such penalties as may be prescribed by the Board of Governors of the Federal Reserve System, be checked against and withdrawn by such member bank for the purpose of meeting existing liabilities.

(Dec. 23, 1913, ch. 6, §19(f), formerly §19 (par. 9), 38 Stat. 270; Aug. 15, 1914, ch. 252, 38 Stat. 691; June 21, 1917, ch. 32, §10, 40 Stat. 239; Aug. 23, 1935, ch. 614, title II, §203(a), 49 Stat. 704; July 7, 1942, ch. 488, §3, 56 Stat. 648; renumbered §19(f), Pub. L. 89–597, §2(b), Sept. 21, 1966, 80 Stat. 824.)

CODIFICATION

Section is comprised of subsec. (f), formerly ninth par., of section 19 of act Dec. 23, 1913, as redesignated by Pub. L. 89–597.

AMENDMENTS

1942—Act July 7, 1942, struck out proviso which prohibited making new loans or paying dividends until required balance was restored.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 465. Basis for ascertaining deposits against which required balance is determined

In estimating the reserve balances required by this chapter, member banks may deduct from the amount of their gross demand deposits the amounts of balances due from other banks (except Federal Reserve banks and foreign banks) and cash items in process of collection payable immediately upon presentation in the United States, within the meaning of these terms as defined by the Board of Governors of the Federal Reserve System.

(Dec. 23, 1913, ch. 6, §19(g), formerly §19 (par. 10), 38 Stat. 270; Aug. 15, 1914, ch. 252, 38 Stat. 692; June 21, 1917, ch. 32, §10, 40 Stat. 240; Aug. 23, 1935, ch. 614, title III, §324(b), 49 Stat. 714; re-

[1] See References in Text note below.

numbered § 19(g), Pub. L. 89–597, § 2(b), Sept. 21, 1966, 80 Stat. 824.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of subsec. (g), formerly tenth par., of section 19 of act Dec. 23, 1913, as redesignated by Pub. L. 89–597.

AMENDMENTS

1935—Act Aug. 23, 1935, changed method of estimating reserve balances.

§ 466. Reserves of banks in dependencies or insular possessions

National banks, or banks organized under local laws, located in a dependency or insular possession or any part of the United States outside the continental United States, may remain nonmember banks, and shall in that event maintain reserves and comply with all the conditions now provided by law regulating them; or said banks may with the consent of the Board of Governors of the Federal Reserve System, become member banks of any one of the reserve districts, and shall in that event take stock, maintain reserves, and be subject to all the other provisions of this chapter.

(Dec. 23, 1913, ch. 6, § 19(h), formerly § 19 (par. 11), 38 Stat. 270; Aug. 15, 1914, ch. 252, 38 Stat. 692; June 21, 1917, ch. 32, § 10, 40 Stat. 240; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 86–70, § 8(b), June 25, 1959, 73 Stat. 142; renumbered § 19(h), Pub. L. 89–597, § 2(b), Sept. 21, 1966, 80 Stat. 824.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of subsec. (h), formerly eleventh par., of section 19 of act Dec. 23, 1913, as redesignated by Pub. L. 89–597.

AMENDMENTS

1959—Pub. L. 86–70 struck out ''in Alaska or'' before ''in a dependency''.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 467. Deposits of gold coin, gold certificates, and Special Drawing Right certificates with United States Treasurer

The Secretary of the Treasury is authorized and directed to receive deposits of gold or of gold certificates or of Special Drawing Right certificates with the Treasurer or any designated depositary of the United States when tendered by any Federal Reserve bank or Federal Reserve agent for credit to its or his account with the Board of Governors of the Federal Reserve System. The Secretary shall prescribe by regulation the form of receipt to be issued by the Treasurer or designated depositary to the Federal Reserve bank or Federal Reserve agent making the deposit, and a duplicate of such receipt shall be delivered to the Board of Governors of the Federal Reserve System by the Treasurer at Washington upon proper advices from any designated depositary that such deposit has been made. Deposits so made shall be held subject to the orders of the Board of Governors of the Federal Reserve System and deposits of gold or gold certificates shall be payable in gold certificates, and deposits of Special Drawing Right certificates shall be payable in Special Drawing Right certificates, on the order of the Board of Governors of the Federal Reserve System to any Federal Reserve bank or Federal Reserve agent at the Treasury or at the subtreasury of the United States nearest the place of business of such Federal Reserve bank or such Federal Reserve agent. The order used by the Board of Governors of the Federal Reserve System in making such payments shall be signed by the chairman or vice chairman, or such other officers or members as the Board may by regulation prescribe. The form of such order shall be approved by the Secretary of the Treasury.

The expenses necessarily incurred in carrying out these provisions, including the cost of the certificates or receipts issued for deposits received, and all expenses incident to the handling of such deposits shall be paid by the Board of Governors of the Federal Reserve System and included in its assessments against the several Federal Reserve banks.

Nothing in this section[1] shall be construed as amending section six of the Act of March fourteenth, nineteen hundred, as amended by the Acts of March fourth, nineteen hundred and seven, March second, nineteen hundred and eleven, and June twelfth, nineteen hundred and sixteen, nor shall the provisions of this section[1] be construed to apply to the deposits made or to the receipts or certificates issued under those Acts.

(Dec. 23, 1913, ch. 6, § 16 (pars.), as added June 21, 1917, ch. 32, § 8, 40 Stat. 238; amended May 29, 1920, ch. 214, § 1, 41 Stat. 654; Jan. 30, 1934, ch. 6, § 2(b)(7), (8), 48 Stat. 339, 340; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 89–3, § 2, Mar. 3, 1965, 79 Stat. 5; Pub. L. 90–269, § 7, Mar. 18, 1968, 82 Stat. 50; Pub. L. 90–349, § 5(d), June 19, 1968, 82 Stat. 189.)

REFERENCES IN TEXT

Words ''this section'', referred to in last par., mean section 16 of act Dec. 23, 1913. For classification to this title of section 16, see Codification note set out under section 411 of this title.

Section six of the Act of March fourteenth, nineteen hundred, as amended by the Acts of March fourth, nineteen hundred and seven, March second, nineteen hundred and eleven, and June twelfth, nineteen hundred and sixteen, referred to in text, which was classified to section 429 of former Title 31, was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, the first section of which enacted Title 31, Money and Finance.

[1] See References in Text note below.

CODIFICATION

Section is comprised of the fourteenth to sixteenth pars. of section 16 of act Dec. 23, 1913. Section was formerly comprised of the fifteenth to eighteenth pars. of section 16 of act Dec. 23, 1913, before repeal of the sixth and seventeenth pars. of section 16 by Pub. L. 90–269, see 1968 Amendment notes set out under this section and section 415 of this title. For classification to this title of other pars. of section 16, see Codification note set out under section 411 of this title.

On authority of act May 29, 1920, which abolished offices of Assistant Treasurers and distributed their functions, the 1926 ed. of the Code omitted two references to Assistant Treasurers; those references were restored by act January 30, 1934.

AMENDMENTS

1968—Pub. L. 90–349, which directed amendment of ''[t]he fifteenth paragraph of section 16 of the Federal Reserve Act, as amended (12 U.S.C. 467),'' by inserting ''or of Special Drawing Right certificates'' after ''gold certificates'' in the first sentence and substituting ''Deposits so made shall be held subject to the orders of the Board of Governors of the Federal Reserve System and deposits of gold or gold certificates shall be payable in gold certificates, and deposits of Special Drawing Right certificates shall be payable in Special Drawing Right certificates, on the order of the Board of Governors of the Federal Reserve System to any Federal Reserve bank or Federal Reserve agent at the Treasury or at the subtreasury of the United States nearest the place of business of such Federal Reserve bank or such Federal Reserve agent.'' for the third sentence, was executed to the first par. of this section to reflect the probable intent of Congress.

Pub. L. 90–269, which directed striking out of ''[t]he paragraph which, prior to the amendments made by this Act [amending sections 248, 391, and 413 to 416 of this title and sections 405b, 408a, 408b, and 821 of Title 31, Money and Finance, and repealing section 408 of Title 31], was the eighteenth paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 467)'', was executed, to reflect the probable intent of Congress (see H.R. Rept. No. 1095, 90th Cong., pp. 1–7 (purpose of legislation), 10 (Ramseyer version) (1968)), by striking out the third par. of this section (seventeenth par. of section 16 of act Dec. 23, 1913), which read as follows: ''Deposits made under this section standing to the credit of any Federal Reserve bank with the Board of Governors of the Federal Reserve System shall, at the option of said bank, be counted as part of the lawful reserve which it is required to maintain against outstanding Federal Reserve notes.''

1965—Pub. L. 89–3, which directed amendment of ''[t]he eighteenth paragraph of section 16 of the Federal Reserve Act, as amended (12 U.S.C. 467), * * * by substituting a period for the comma after the word 'notes' and striking out the remainder of the paragraph'', was executed to the third par. of this section (seventeenth par. of section 16 of act Dec. 23, 1913) to reflect the probable intent of Congress.

1934—Act Jan. 30, 1934, which directed general amendment of the sixteenth and eighteenth pars. of act Dec. 23, 1913, was executed to the first and third pars. of this section (fifteenth and seventeenth pars. of section 16 of act Dec. 23, 1913, respectively) to reflect the probable intent of Congress. Prior to amendment, the first par. of this section authorized and directed the Secretary of the Treasury to receive deposits of gold coin or gold certificates and to prescribe by regulation the form of a receipt to be issued to the Federal reserve bank or agent; the third par. of this section provided that a Federal reserve bank's gold deposits could count towards its reserve requirement.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of the Treasury, see note set out under section 55 of this title.

SUBCHAPTER XV—BANK EXAMINATIONS

§ 481. Appointment of examiners; examination of member banks, State banks, and trust companies; reports

The Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall appoint examiners who shall examine every national bank as often as the Comptroller of the Currency shall deem necessary. The examiner making the examination of any national bank shall have power to make a thorough examination of all the affairs of the bank and in doing so he shall have power to administer oaths and to examine any of the officers and agents thereof under oath and shall make a full and detailed report of the condition of said bank to the Comptroller of the Currency: *Provided*, That in making the examination of any national bank the examiners shall include such an examination of the affairs of all its affiliates other than member banks as shall be necessary to disclose fully the relations between such bank and such affiliates and the effect of such relations upon the affairs of such bank; and in the event of the refusal to give any information required in the course of the examination of any such affiliate, or in the event of the refusal to permit such examination, all the rights, privileges, and franchises of the bank shall be subject to forfeiture in accordance with section 2 of the Federal Reserve Act, as amended (U.S.C., title 12, secs. 141, 222–225, 281–286, and 502).[1] The Comptroller of the Currency shall have power, and he is authorized, to publish the report of his examination of any national banking association or affiliate which shall not within one hundred and twenty days after notification of the recommendations or suggestions of the Comptroller, based on said examination, have complied with the same to his satisfaction. Ninety days' notice prior to such publicity shall be given to the bank or affiliate.

The examiner making the examination of any affiliate of a national bank shall have power to make a thorough examination of all the affairs of the affiliate, and in doing so he shall have power to administer oaths and to examine any of the officers, directors, employees, and agents thereof under oath and to make a report of his findings to the Comptroller of the Currency. If any affiliate of a national bank refuses to pay any assessments, fees, or other charges imposed by the Comptroller of the Currency pursuant to this subchapter or fails to make such payment not later than 60 days after the date on which they are imposed, the Comptroller of the Currency may impose such assessments, fees, or charges against the affiliated national bank, and such assessments, fees, or charges shall be paid by such national bank. If the affiliation is with 2 or more national banks, such assessments, fees, or charges may be imposed on, and collected from, any or all of such national banks in such proportions as the Comptroller of the Currency may prescribe. The examiners and assist-

[1] See References in Text note below.

ant examiners making the examinations of national banking associations and affiliates thereof herein provided for and the chief examiners, reviewing examiners and other persons whose services may be required in connection with such examinations or the reports thereof, shall be employed by the Comptroller of the Currency with the approval of the Secretary of the Treasury; the employment and compensation of examiners, chief examiners, reviewing examiners, assistant examiners, and of the other employees of the office of the Comptroller of the Currency whose compensation is and shall be paid from assessments on banks or affiliates thereof or from other fees or charges imposed pursuant to this subchapter shall be without regard to the provisions of other laws applicable to officers or employees of the United States. The funds derived from such assessments, fees, or charges may be deposited by the Comptroller of the Currency in accordance with the provisions of section 192 of this title and shall not be construed to be Government funds or appropriated monies; and the Comptroller of the Currency is authorized and empowered to prescribe regulations governing the computation and assessment of the expenses of examinations herein provided for and the collection of such assessments from the banks and/or affiliates examined or of other fees or charges imposed pursuant to this subchapter. Such funds shall not be subject to apportionment for the purpose of chapter 15 of title 31 or under any other authority. If any affiliate of a national bank shall refuse to permit an examiner to make an examination of the affiliate or shall refuse to give any information required in the course of any such examination, the national bank with which it is affiliated shall be subject to a penalty of not more than $5,000 for each day that any such refusal shall continue. Such penalty may be assessed by the Comptroller of the Currency and collected in the same manner as expenses of examinations. The Comptroller of the Currency, upon the request of the Board of Governors of the Federal Reserve System, is authorized to assign examiners appointed under this subchapter to examine foreign operations of State banks which are members of the Federal Reserve System.

(R.S. § 5240 (pars.); Feb. 19, 1875, ch. 89, 18 Stat. 329; Dec. 23, 1913, ch. 6, § 21, 38 Stat. 271; June 16, 1933, ch. 89, § 28, 48 Stat. 192; Aug. 23, 1935, ch. 614, title II, § 203(a), title III, § 343, 49 Stat. 704, 722; June 30, 1948, ch. 762, § 1, 62 Stat. 1163; Apr. 30, 1956, ch. 228, § 1, 70 Stat. 124; Pub. L. 96–221, title VII, § 709, Mar. 31, 1980, 94 Stat. 188; Pub. L. 100–86, title V, § 505(b), Aug. 10, 1987, 101 Stat. 633; Pub. L. 101–73, title IX, § 907(f), Aug. 9, 1989, 103 Stat. 470; Pub. L. 102–242, title I, § 114(b), Dec. 19, 1991, 105 Stat. 2248; Pub. L. 111–203, title III, § 318(a)(1), July 21, 2010, 124 Stat. 1526.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, § 318(a)(1), (e), July 21, 2010, 124 Stat. 1526, 1527, provided that, effective on the transfer date, this section is amended, in the second undesignated paragraph, in the fourth sentence, by substituting ''set and adjusted subject to chapter 71 of title 5 and without regard to the provisions of other laws applicable to officers or employees of the United States'' for ''without regard to the provisions of other laws applicable to officers or employees of the United States''. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 2 of the Federal Reserve Act, referred to in first par., is section 2 of act Dec. 23, 1913, ch. 6, 38 Stat. 251, which is classified to former section 141, sections 222 to 225 and 281 to 283, former section 284, and sections 285, 286, 501a, and 502 of this title. See Codification note set out under section 222 of this title.

This subchapter, referred to in second par., was in the original a reference to this section, meaning section 5240 of the Revised Statutes.

CODIFICATION

R.S. § 5240 derived from act June 3, 1864, ch. 106, § 54, 13 Stat. 116, which was part of the National Bank Act. See section 38 of this title.

R.S. § 5240, as amended by acts Dec. 23, 1913, July 2, 1932, June 16, 1933, Pub. L. 101–73, and Pub. L. 102–242, is comprised of 7 undesignated paragraphs. Pars. 1 and 2 are classified to section 481 of this title, pars. 3 and 4 are classified to section 482 of this title, and pars. 5 to 7 are classified to sections 483 to 485, respectively, of this title.

AMENDMENTS

1991—Pub. L. 102–242, in second par., inserted second and third sentences and struck out former second and third sentences which read as follows: ''The expense of examinations of such affiliates may be assessed by the Comptroller of the Currency upon the affiliates examined in proportion to assets or resources held by the affiliates upon the dates of examination of the various affiliates. If any such affiliate shall refuse to pay such expenses or shall fail to do so within sixty days after the date of such assessment, then such expenses may be assessed against the affiliated national bank and, when so assessed, shall be paid by such national bank: *Provided, however*, That, if the affiliation is with two or more national banks, such expenses may be assessed against, and collected from, any or all of such national banks in such proportions as the Comptroller of the Currency may prescribe.'', in fourth sentence, inserted ''or from other fees or charges imposed pursuant to this subchapter'' after ''assessments on banks or affiliates thereof'', and in fifth sentence, inserted '', fees, or charges'' before ''may be deposited'' and ''or of other fees or charges imposed pursuant to this subchapter'' before period.

1989—Pub. L. 101–73, in second par., increased the penalty for refusal to allow the examination from $100 to $5,000.

1987—Pub. L. 100–86 inserted after fifth sentence of second par. ''Such funds shall not be subject to apportionment for the purpose of chapter 15 of title 31 or under any other authority.''

1980—Pub. L. 96–221 inserted provisions relating to examination of foreign operations of State banks which are members of the Federal Reserve System, and substituted provisions authorizing examinations as often as the Comptroller deems necessary, for provisions requiring examinations twice in every calendar year, and provisions authorizing the Comptroller to waive one examination or require additional examinations.

1956—Act Apr. 30, 1956, allowed Comptroller to waive 1 of the 2 examinations required each year, but not more than one waiver every two years.

1948—Act June 30, 1948, struck out in first sentence after first proviso of second par. '', including retirement annuities to be fixed by the Comptroller of the Currency,''.

1935—Act Aug. 23, 1935, § 343, substituted in first sentence after first proviso of second par. ''including retirement annuities to be fixed by the Comptroller of the Currency, is and shall be'' for ''is''.

1933—Act June 16, 1933, inserted proviso and last two sentences at end of first par. and added second par.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 318(e) of Pub. L. 111–203, set out as an Effective Date note under section 16 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of $5,000 and $25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(*l*) of Pub. L. 101–73, set out as a note under section 93 of this title.

EFFECTIVE DATE OF 1948 AMENDMENT

Amendment by act June 30, 1948, effective on first day of first pay period beginning at least 30 days after June 30, 1948, see section 5 of that act.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 482. Employees of Office of Comptroller of the Currency; appointment; compensation and benefits

Notwithstanding any of the provisions of section 481 of this title or section 301(f)(1) of title 31 to the contrary, the Comptroller of the Currency shall fix the compensation and number of, and appoint and direct, all employees of the Office of the Comptroller of the Currency. Rates of basic pay for all employees of the Office may be set and adjusted by the Comptroller without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5. The Comptroller may provide additional compensation and benefits to employees of the Office if the same type of compensation or benefits are then being provided by any other Federal bank regulatory agency or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees of the Office, the Comptroller shall consult with, and seek to maintain comparability with, other Federal banking agencies.

The Comptroller of the Currency may impose and collect assessments, fees, or other charges as necessary or appropriate to carry out the responsibilities of the office[1] of the Comptroller. Such assessments, fees, and other charges shall be set to meet the Comptroller's expenses in carrying out authorized activities.

(R.S. § 5240 (pars.); Feb. 19, 1875, ch. 89, 18 Stat. 329; Dec. 23, 1913, ch. 6, § 21, 38 Stat. 272; July 2, 1932, ch. 392, 47 Stat. 568; Aug. 23, 1935, ch. 614, title III, § 343, 49 Stat. 722; Apr. 30, 1956, ch. 228, §§ 2, 3, 70 Stat. 124; Pub. L. 101–73, title XII, § 1202, Aug. 9, 1989, 103 Stat. 520; Pub. L. 102–242, title I, § 114(a), Dec. 19, 1991, 105 Stat. 2248; Pub. L. 102–550, title XVI, § 1603(b)(5), Oct. 28, 1992, 106 Stat. 4079; Pub. L. 103–325, title III, § 331(b)(1), Sept. 23, 1994, 108 Stat. 2232; Pub. L. 111–203, title III, § 318(a)(2), July 21, 2010, 124 Stat. 1526.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, § 318(a)(2), (3), July 21, 2010, 124 Stat. 1526, 1527, provided that, effective on the transfer date, this section is amended, in the first undesignated paragraph, in the first sentence, by substituting ''shall, subject to chapter 71 of title 5, fix'' for ''shall fix''. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Provisions of section 481 of this title, referred to in first par., was in the original ''preceding provisions of this section'', meaning R.S. § 5240. See Codification note set out below.

CODIFICATION

R.S. § 5240 derived from act June 3, 1864, ch. 106, § 54, 13 Stat. 116, which was part of the National Bank Act. See section 38 of this title.

Section is comprised of third and fourth pars. of R.S. § 5240, as amended. The former fifth par. of R.S. § 5440, which comprised the third par. of this section, was repealed by Pub. L. 102–242. See Codification note set out under section 481 of this title.

AMENDMENTS

1994—Pub. L. 103–325 inserted ''or section 301(f)(1) of title 31'' after ''provisions of section 481 of this title''.

1992—Pub. L. 102–550 substituted ''office'' for ''duties'' in second par.

1991—Pub. L. 102–242 added second par. and struck out former second and third pars. which read as follows:

''The expense of the examinations provided for in this subchapter shall be assessed by the Comptroller of the Currency upon national banks in proportion to their assets or resources. The assessments may be made more frequently than annually at the discretion of the Comptroller of the Currency. The annual rate of such assessment shall be the same for all national banks, except that banks examined more frequently than twice in one calendar year shall, in addition, be assessed the expense of these additional examinations.

''In addition to the expense of examination to be assessed by the Comptroller of the Currency as heretofore provided, all national banks exercising fiduciary powers and all banks or trust companies in the District of Columbia exercising fiduciary powers shall be assessed by the Comptroller of the Currency for the examination of their fiduciary activities a fee adequate to cover the expense thereof.''

1989—Pub. L. 101–73, in first paragraph, substituted ''Notwithstanding any of the provisions of section 481 of this title to the contrary, the Comptroller of the Currency shall fix the compensation and number of, and appoint and direct, all employees of the Office of the Comptroller of the Currency. Rates of basic pay for all employees of the Office may be set and adjusted by the Comptroller without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5. The Comptroller may provide additional compensation and benefits to employees of the Office if the same type of compensation or benefits are then being provided by any other Federal bank regulatory agency or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees of the Office, the Comptroller shall consult with, and seek to maintain comparability with, other Federal banking agencies.''

[1] So in original. Probably should be capitalized.

for ''The Comptroller of the Currency shall fix the salaries of all bank examiners and make report thereof to Congress.'' and redesignated remaining sentences of first paragraph as a second paragraph. Former second paragraph became third paragraph.

1956—Act Apr. 30, 1956, provided that assessments may be made more frequently than annually and the annual rate of such assessment shall be the same for all national banks except that banks examined more than twice in one year shall be assessed the expense of the additional examinations, and based additional charges for examining all national banks exercising fiduciary powers and all banks or trust companies in the District of Columbia exercising fiduciary powers on the cost of making the examination rather than the amount of trust assets under administration.

1935—Act Aug. 23, 1935, substituted in first sentence ''The Comptroller of the Currency'' for ''The Federal Reserve Board, upon the recommendation of the Comptroller of the Currency''.

1932—Act July 2, 1932, added last par.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 318(e) of Pub. L. 111–203, set out as an Effective Date note under section 16 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 483. Special examination of member banks; information of condition furnished to Board of Governors of the Federal Reserve System

In addition to the examinations made and conducted by the Comptroller of the Currency, every Federal reserve bank may, with the approval of the Federal reserve agent or the Board of Governors of the Federal Reserve System, provide for special examination of member banks within its district. The expense of such examinations may, in the discretion of the Board of Governors of the Federal Reserve System, be assessed against the banks examined, and, when so assessed, shall be paid by the banks examined. Such examinations shall be so conducted as to inform the Federal reserve bank of the condition of its member banks and of the lines of credit which are being extended by them. Every Federal reserve bank shall at all times furnish to the Board of Governors of the Federal Reserve System such information as may be demanded concerning the condition of any member bank within the district of the said Federal reserve bank.

(R.S. § 5240 (par.); Feb. 19, 1875, ch. 89, 18 Stat. 329; Dec. 23, 1913, ch. 6, § 21, 38 Stat. 272; June 26, 1930, ch. 611, § 2, 46 Stat. 814; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

CODIFICATION

R.S. § 5240 derived from act June 3, 1864, ch. 106, § 54, 13 Stat. 116, which was part of the National Bank Act. See section 38 of this title.

Section is comprised of fifth par. of R.S. § 5240, as amended. See Codification note set out under section 481 of this title.

AMENDMENTS

1930—Act June 26, 1930, substituted second sentence ''The expense of such examinations may, in the discretion of the Federal Reserve Board, be assessed against the banks examined, and, when so assessed, shall be paid by the banks examined.'' for ''The expense of such examinations shall be borne by the bank examined.''

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 484. Limitation on visitorial powers

(a) No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

(b) Notwithstanding subsection (a) of this section, lawfully authorized State auditors and examiners may, at reasonable times and upon reasonable notice to a bank, review its records solely to ensure compliance with applicable State unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with such laws.

(R.S. § 5240 (par.); Feb. 19, 1875, ch. 89, 18 Stat. 329; Dec. 23, 1913, ch. 6, § 21, 38 Stat. 272; Pub. L. 97–320, title IV, § 412, Oct. 15, 1982, 96 Stat. 1521; Pub. L. 97–457, § 23(a), Jan. 12, 1983, 96 Stat. 2510.)

CODIFICATION

R.S. § 5240 derived from act June 3, 1864, ch. 106, § 54, 13 Stat. 116, which was part of the National Bank Act. See section 38 of this title.

Section is comprised of sixth par. of R.S. § 5240, as amended. See Codification note set out under section 481 of this title.

Section 412 of Pub. L. 97–320, set out in the credit of this section, was amended by section 23(a) of Pub. L. 97–457 to correct an error in the directory language of section 412 of Pub. L. 97–320. That amendment involved only directory language and not the content of the text being amended by Pub. L. 97–320 so no change in the text of this section resulted from the amendment by Pub. L. 97–457.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–320, as amended by Pub. L. 97–457, designated existing provisions as subsec. (a), and amended subsec. (a) generally. Prior to amendment subsec. (a) read as follows: ''No bank shall be subject to any visitorial powers other than such as are authorized by law, or vested in the courts of justice or such as shall be or shall have been exercised or directed by Congress, or by either House thereof or by any committee of Congress or of either House duly authorized''.

Subsec. (b). Pub. L. 97–320, as amended by Pub. L. 97–457, added subsec. (b).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 23(b) of Pub. L. 97–457 provided that: ''The amendment made by subsection (a) [amending section 412 of Pub. L. 97–320, which amended this section] shall be deemed to have taken effect upon the enactment of Public Law 97–320 [Oct. 15, 1982].''

§ 485. Examination of Federal reserve banks

The Board of Governors of the Federal Reserve System shall, at least once each year, order an examination of each Federal reserve bank, and upon joint application of ten member banks the Board of Governors of the Federal Reserve System shall order a special examination and report of the condition of any Federal reserve bank.

(R.S. § 5240 (par.); Feb. 19, 1875, ch. 89, 18 Stat. 329; Dec. 23, 1913, ch. 6, § 21, 38 Stat. 272; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

CODIFICATION

R.S. § 5240 derived from act June 3, 1864, ch. 106, § 54, 13 Stat. 116, which was part of the National Bank Act. See section 38 of this title.

Section is comprised of seventh par. of R.S. § 5240, as amended. See Codification note set out under section 481 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 486. Waiver of requirements as to reports from or examinations of affiliates

Whenever member banks are required to obtain reports from affiliates, or whenever affiliates of member banks are required to submit to examination, the Board of Governors of the Federal Reserve System or the Comptroller of the Currency, as the case may be, may waive such requirements with respect to any such report or examination of any affiliate if in the judgment of the said Board or Comptroller, respectively, such report or examination is not necessary to disclose fully the relations between such affiliate and such bank and the effect thereof upon the affairs of such bank.

(Dec. 23, 1913, ch. 6, § 21 (par.), as added Aug. 23, 1935, ch. 614, title III, § 325, 49 Stat. 715.)

CODIFICATION

This section was not enacted as part of R.S. § 5240 which comprises this subchapter. Act Dec. 23, 1913, derived from R.S. § 5240.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

SUBCHAPTER XVI—CIVIL LIABILITY OF FEDERAL RESERVE AND MEMBER BANKS, SHAREHOLDERS, AND OFFICERS

§ 501. Liability of Federal reserve or member bank for certifying check when amount of deposit was inadequate

It shall be unlawful for any officer, director, agent, or employee of any Federal reserve bank, or any member bank as defined in this chapter, to certify any check drawn upon such Federal reserve bank or member bank unless the person, firm, or corporation drawing the check has on deposit with such Federal reserve bank or member bank, at the time such check is certified, an amount of money not less than the amount specified in such check. Any check so certified by a duly authorized officer, director, agent, or employee shall be a good and valid obligation against such Federal reserve bank or member bank; but the act of any officer, director, agent, or employee of any such Federal reserve bank or member bank in violation of this section shall, in the discretion of the Board of Governors of the Federal Reserve System, subject such Federal reserve bank to the penalties imposed by subsection (h) of section 248 of this title, and shall subject such member banks, if a national bank, to the liability and proceedings on the part of the Comptroller of the Currency provided for in section 192 of this title, and shall, in the discretion of the Board of Governors of the Federal Reserve System, subject any other member bank to the penalties imposed by subchapter VIII of chapter 3 of this title for the violation of any of the provisions of this chapter.

(R.S. § 5208; Sept. 26, 1918, ch. 177, § 7, 40 Stat. 972; Feb. 25, 1927, ch. 191, § 12, 44 Stat. 1231; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''the act of December 23, 1913, known as the Federal Reserve Act,'' and ''said act,'' respectively, meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

Subchapter VIII of chapter 3 of this title, referred to in text, was in the original ''section nine of said Federal reserve Act''. Section 9 is classified generally to subchapter VIII (§ 321 et seq.) of chapter 3 of this title.

CODIFICATION

R.S. § 5208 derived from act Mar. 3, 1869, ch. 135, 15 Stat. 335.

The last sentence of R.S. § 5208, as amended, which provided penalties for certification of certain checks, was repealed by section 21 of act June 25, 1948, ch. 645, 62 Stat. 862, 865, and the provisions thereof were reenacted as section 1004 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1927—Act Feb. 25, 1927, substituted ''deposited in the bank of the drawer thereof'' after ''regularly'' in last sentence.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 501a. Forfeiture of franchise of national banks for failure to comply with provisions of this chapter

Should any national banking association in the United States now organized fail within one year after December 23, 1913, to become a member bank or fail to comply with any of the provisions of this chapter applicable thereto, all of the rights, privileges, and franchises of such association granted to it under the national-bank Act [12 U.S.C. 21 et seq.], or under the provisions

of this chapter, shall be thereby forfeited. Any noncompliance with or violation of this chapter shall, however, be determined and adjudged by any court of the United States of competent jurisdiction in a suit brought for that purpose in the district or territory in which such bank is located, under direction of the Board of Governors of the Federal Reserve System, by the Comptroller of the Currency in his own name before the association shall be declared dissolved. In cases of such noncompliance or violation, other than the failure to become a member bank under the provisions of this chapter, every director who participated in or assented to the same shall be held liable in his personal or individual capacity for all damages which said bank, its shareholders, or any other person shall have sustained in consequence of such violation.

Such dissolution shall not take away or impair any remedy against such corporation, its stockholders, or officers, for any liability or penalty which shall have been previously incurred.

(Dec. 23, 1913, ch. 6, § 2 (pars.), 38 Stat. 252; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The national-bank Act, referred to in text, is act June 3, 1864, ch. 106, 13 Stat. 99, which is classified principally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

CODIFICATION

Section is comprised of the sixth and seventh pars. of section 2 of act Dec. 23, 1913. For classification of other pars. of section 2 of this Act, see Codification note set out under section 222 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 502. Liability of shareholders of Federal reserve banks on contracts, etc.

The shareholders of every Federal reserve bank shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of their subscriptions to such stock at the par value thereof in addition to the amount subscribed, whether such subscriptions have been paid up in whole or in part under the provisions of this chapter.

(Dec. 23, 1913, ch. 6, § 2 (par.), 38 Stat. 252.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

CODIFICATION

Section is comprised of the fourth par. of section 2 of act Dec. 23, 1913. For classification of other pars. of section 2 of this Act, see Codification note set out under section 222 of this title.

§ 503. Liability of directors and officers of member banks

If the directors or officers of any member bank shall knowingly violate or permit any of the agents, officers, or directors of any member bank to violate any of the provisions of sections 375, 375a, 375b, and 376 of this title or regulations of the board made under authority thereof, or any of the provisions of sections 217, 218, 219, 220,[1] 655, 1005, 1014, 1906, or 1909 of title 18, every director and officer participating in or assenting to such violation shall be held liable in his personal and individual capacity for all damages which the member bank, its shareholders, or any other persons shall have sustained in consequence of such violation.

(Dec. 23, 1913, ch. 6, § 22(f), as added Sept. 26, 1918, ch. 177, § 5, 40 Stat. 971; amended Sept. 3, 1954, ch. 1263, § 28, 68 Stat. 1236.)

REFERENCES IN TEXT

Sections 217, 218, 219, and 220 of title 18, referred to in text, were renumbered sections 212, 213, 214, and 215 of title 18, respectively, by Pub. L. 87–849, § 1(d), Oct. 23, 1962, 76 Stat. 1125. Sections 212 and 213 of title 18, as redesignated, were subsequently repealed by Pub. L. 108–198, § 2(a), Dec. 19, 2003, 117 Stat. 2899.

CODIFICATION

In text, ''sections 375, 375a, 375b, and 376 of this title'' was in the original ''this section'', meaning section 22 of act Dec. 23, 1913, which was also classified to sections 593 to 599 of this title. Such sections were repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948, and the provisions thereof were reenacted as sections 217, 218, 219, 220, 655, 1005, 1014, 1906, and 1909 of Title 18, Crimes and Criminal Procedure. Reference to such repealed sections was omitted from the text in view of act Sept. 3, 1954, which amended the text by incorporating therein the reference to the sections of Title 18.

AMENDMENTS

1954—Act Sept. 3, 1954, inserted ''or any of the provisions of sections 217, 218, 219, 220, 655, 1005, 1014, 1906, or 1909 of title 18,''.

§ 504. Civil money penalty

(a) First tier

Any member bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such member bank who, violates any provision of section 371c, 371c–1, 375, 375a, 375b, 376, or 503 of this title, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(b) Second tier

Notwithstanding subsection (a) of this section, any member bank which, and any institution-af-

[1] See References in Text note below.

filiated party (within the meaning of section 1813(u) of this title) with respect to such member bank who[1]

(1)(A) commits any violation described in subsection (a) of this section;

(B) recklessly engages in an unsafe or unsound practice in conducting the affairs of such member bank; or

(C) breaches any fiduciary duty;

(2) which violation, practice, or breach—

(A) is part of a pattern of misconduct;

(B) causes or is likely to cause more than a minimal loss to such member bank; or

(C) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(c) Third tier

Notwithstanding subsections (a) and (b) of this section, any member bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such member bank who—

(1) knowingly—

(A) commits any violation described in subsection (a) of this section;

(B) engages in any unsafe or unsound practice in conducting the affairs of such credit union;[2] or

(C) breaches any fiduciary duty; and

(2) knowingly or recklessly causes a substantial loss to such credit union[2] or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subsection (d) of this section for each day during which such violation, practice, or breach continues.

(d) Maximum amounts of penalties for any violation described in subsection (c)

The maximum daily amount of any civil penalty which may be assessed pursuant to subsection (c) of this section for any violation, practice, or breach described in such subsection is—

(1) in the case of any person other than a member bank, an amount to not exceed $1,000,000; and

(2) in the case of a member bank, an amount not to exceed the lesser of—

(A) $1,000,000; or

(B) 1 percent of the total assets of such member bank.

(e) Assessment; etc.

Any penalty imposed under subsection (a), (b), or (c) of this section shall be assessed and collected[3] by

(1) in the case of a national bank, by the Comptroller of the Currency; and

(2) in the case of a State member bank, by the Board,

in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(f) Hearing

The member bank or other person against whom any penalty is assessed under this section shall be afforded an agency hearing if such member bank or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this section.

(g) Disbursement

All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(h) "Violate" defined

For purposes of this section, the term ''violate'' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(i) Regulations

The Comptroller of the Currency and the Board shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

(m)[4] Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to a member bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such bank (whether such date occurs before, on, or after August 9, 1989).

(Dec. 23, 1913, ch. 6, § 29, as added Pub. L. 95–630, title I, § 101, Nov. 10, 1978, 92 Stat. 3641; amended Pub. L. 97–320, title IV, § 424(c), (d)(1), (e), Oct. 15, 1982, 96 Stat. 1523; Pub. L. 101–73, title IX, §§ 905(f), 907(g), Aug. 9, 1989, 103 Stat. 461, 470.)

CODIFICATION

In subsec. (a), ''section 371c, 371c–1, 375, 375a, 375b, 376, or 503 of this title'' was in the original ''section 22, 23A, or 23B'', meaning section 22, 23A, or 23B of the Federal Reserve Act. Sections 23A and 23B are classified to sections 371c and 371c–1, respectively, of this title. Subsections (d) to (h) of section 22 are classified to sections 375, 375a, 375b, 376, and 503 of this title.

AMENDMENTS

1989—Pub. L. 101–73, § 907(g), amended section generally, substituting provisions of subsecs. (a) to (i) for former provisions which related to the following: subsec. (a), making loans, extensions of credit, purchases of securities, etc., respecting affiliates, executive officers, etc.; subsec. (b), amount of penalty; subsec. (c), opportunity for hearing; subsec. (d), review by United States court of appeals; subsec. (e), action by Attorney

[1] So in original. Probably should be followed by a dash.

[2] So in original. Probably should be ''such member bank''.

[3] So in original. Probably should be followed by a dash rather than ''by''.

[4] So in original. No subsecs. (j) to (*l*) have been enacted.

General for failure to pay assessment; subsec. (f), promulgation of regulations; and subsec. (g), penalties covered into Treasury of United States.

Subsec. (m). Pub. L. 101–73, § 905(f), added subsec. (m).

1982—Subsec. (a). Pub. L. 97–320, § 424(c), (d)(1), inserted proviso giving agency discretionary authority to compromise, etc., any civil money penalty imposed under its authority, and substituted ''may be assessed'' for ''shall be assessed'', respectively.

Subsec. (d). Pub. L. 97–320, § 424(e), substituted ''twenty days from the service'' for ''ten days from the date''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 907(g) of Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of $5,000 and $25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(*l*) of Pub. L. 101–73, set out as a note under section 93 of this title.

EFFECTIVE DATE

Section effective with respect to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95–630 set out as an Effective Date of 1978 Amendment note under section 93 of this title.

§ 505. Civil money penalty

(1) First tier

Any member bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such member bank who, violates any provision of this section, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(2) Second tier

Notwithstanding paragraph (1), any member bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such member bank who—

(A)(i) commits any violation described in paragraph (1);

(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such member bank; or

(iii) breaches any fiduciary duty;

(B) which violation, practice, or breach—

(i) is part of a pattern of misconduct;

(ii) causes or is likely to cause more than a minimal loss to such member bank; or

(iii) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(3) Third tier

Notwithstanding paragraphs (1) and (2), any member bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such member bank who—

(A) knowingly—

(i) commits any violation described in paragraph (1);

(ii) engages in any unsafe or unsound practice in conducting the affairs of such member bank; or

(iii) breaches any fiduciary duty; and

(B) knowingly or recklessly causes a substantial loss to such member bank or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.

(4) Maximum amounts of penalties for any violation described in paragraph (3)

The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—

(A) in the case of any person other than a member bank, an amount not to exceed $1,000,000; and

(B) in the case of a member bank, an amount not to exceed the lesser of—

(i) $1,000,000; or

(ii) 1 percent of the total assets of such member bank.

(5) Assessment; etc.

Any penalty imposed under paragraph (1), (2), or (3) may be assessed and collected by the Board in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(6) Hearing

The member bank or other person against whom any penalty is assessed under this section shall be afforded an agency hearing if such member bank or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this section.

(7) Disbursement

All penalties collected under authority of this section shall be deposited into the Treasury.

(8) "Violate" defined

For purposes of this section, the term ''violate'' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(9) Regulations

The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

(Dec. 23, 1913, ch. 6, § 19(*l*), formerly § 19(j), as added Pub. L. 95–630, title I, § 102, Nov. 10, 1978, 92 Stat. 3642; renumbered § 19(*l*), Pub. L. 96–221, title I, § 105(f), Mar. 31, 1980, 94 Stat. 140; amended Pub. L. 97–320, title IV, § 424(a), (d)(2), (e), Oct. 15, 1982, 96 Stat. 1522, 1523; Pub. L. 101–73, title IX, § 907(h), Aug. 9, 1989, 103 Stat. 472.)

REFERENCES IN TEXT

This section, referred to in pars. (1) and (8), means section 19 of act Dec. 23, 1913, as amended, which is classified to sections 142, 371a, 371b, 371b–1, 374, 374a, 461, 463 to 466, 505, and 506 of this title.

AMENDMENTS

1989—Pub. L. 101–73 amended section generally, revising and restating as pars. (1) to (9) provisions of former pars. (1) to (7) which related to civil penalty respecting depository, reserve, etc., requirements; amount; hearing; review; action by Attorney General; and regulations.

1982—Par. (1). Pub. L. 97–320, § 424(a), (d)(2), inserted proviso giving Board discretionary authority to compromise, etc., any civil money penalty imposed under this section, and substituted ''may be assessed'' for ''shall be assessed''.

Par. (4). Pub. L. 97–320, § 424(e), substituted ''twenty days from the service'' for ''ten days from the date''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of $5,000 and $25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(*l*) of Pub. L. 101–73, set out as a note under section 93 of this title.

EFFECTIVE DATE

Section effective with respect to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95–630 set out as an Effective Date of 1978 Amendment note under section 93 of this title.

§ 506. Notice after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to a member bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the Board to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such bank (whether such date occurs before, on, or after August 9, 1989).

(Dec. 23, 1913, ch. 6, § 19(m), as added Pub. L. 101–73, title IX, § 905(g), Aug. 9, 1989, 103 Stat. 461.)

REFERENCES IN TEXT

This section, referred to in text, means section 19 of act Dec. 23, 1913, as amended, which is classified to sections 142, 371a, 371b, 371b–1, 374, 374a, 461, 463 to 466, 505, and 506 of this title.

SUBCHAPTER XVII—RESERVE-BANK BRANCHES

§ 521. Reserve-bank branches; establishment; directors; discontinuance of branches; approval for erection of branch bank building

The Board of Governors of the Federal Reserve System may permit or require any Federal reserve bank to establish branch banks within the Federal reserve district in which it is located or within the district of any Federal reserve bank which may have been suspended. Such branches, subject to such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe, shall be operated under the supervision of a board of directors to consist of not more than seven nor less than three directors, of whom a majority of one shall be appointed by the Federal reserve bank of the district, and the remaining directors by the Board of Governors of the Federal Reserve System. Directors of branch banks shall hold office during the pleasure of the Board of Governors of the Federal Reserve System.

The Board of Governors of the Federal Reserve System may at any time require any Federal reserve bank to discontinue any branch of such Federal reserve bank established under this section. The Federal reserve bank shall thereupon proceed to wind up the business of such branch bank, subject to such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe.

No Federal Reserve bank shall have authority hereafter to enter into any contract or contracts for the erection of any branch bank building of any kind or character or to authorize the erection of any such building, except with the approval of the Board of Governors of the Federal Reserve System.

(Dec. 23, 1913, ch. 6, § 3, 38 Stat. 253; June 21, 1917, ch. 32, § 1, 40 Stat. 232; Feb. 25, 1927, ch. 191, § 19, 44 Stat. 1234; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 87–622, § 2, Aug. 31, 1962, 76 Stat. 418.)

AMENDMENTS

1962—Pub. L. 87–622 added par. providing that no Federal Reserve Bank shall have authority to enter into any contract for the erection of a branch bank building or to authorize the erection of such building, except with the approval of the Board of Governors of the Federal Reserve System.

1927—Act Feb. 25, 1927, added par. authorizing the Federal Reserve Board to discontinue and wind up the business of branch banks.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 522. Federal Reserve branch bank buildings

No Federal Reserve bank may authorize the acquisition or construction of any branch building, or enter into any contract or other obligation for the acquisition or construction of any branch building, without the approval of the Board.

(Dec. 23, 1913, ch. 6, § 10 (par.), as added June 3, 1922, ch. 205, 42 Stat. 622; amended Feb. 6, 1923, ch. 60, 42 Stat. 1223; July 30, 1947, ch. 352, 61 Stat. 520; May 29, 1953, ch. 87, 67 Stat. 41; Pub. L. 87–622, § 1, Aug. 31, 1962, 76 Stat. 418; Pub. L. 93–495, title I, § 108, Oct. 28, 1974, 88 Stat. 1505; Pub. L. 102–491, § 2, Oct. 24, 1992, 106 Stat. 3144.)

CODIFICATION

Section is comprised of ninth paragraph of act Dec. 23, 1913, § 10, as added June 3, 1922. For classification to this title of other pars. of section 10, see Codification note set out under section 241 of this title.

AMENDMENTS

1992—Pub. L. 102–491 amended section generally. Prior to amendment, section read as follows: ''No Federal reserve bank shall have authority hereafter to enter into any contract or contracts for the erection of any

branch bank building of any kind or character, or to authorize the erection of any such building, if the cost of the building proper, exclusive of the cost of the vaults, permanent equipment, furnishings, and fixtures, is in excess of $250,000: *Provided*, That nothing herein shall apply to any building under construction prior to June 3, 1922: *Provided further*, That the cost as above specified shall not be so limited as long as the aggregate of such costs which are incurred by all Federal Reserve banks for branch bank buildings with the approval of the Board of Governors after July 30, 1947 does not exceed $140,000,000.''

1974—Pub. L. 93–495 increased from $60,000,000 to $140,000,000 the limitation on aggregate costs of constructing branch bank buildings.

1962—Pub. L. 87–622 increased from $30,000,000 to $60,000,000 the limitation on aggregate costs of constructing branch bank buildings.

1953—Act May 29, 1953, increased from $10,000,000 to $30,000,000 the limitation on aggregate cost of constructing branch bank buildings.

1947—Act July 30, 1947, inserted proviso exempting limitation on cost of construction where aggregate costs do not exceed $10,000,000.

CHAPTER 4—TAXATION

SUBCHAPTER I—FEDERAL RESERVE BANKS

Sec.
531. Exemption from taxation.

SUBCHAPTER II—NATIONAL BANK CIRCULATION

541. Tax on circulating notes generally.
542 to 547. Omitted or Repealed.

SUBCHAPTER III—NATIONAL BANK SHARES

548. State taxation.

SUBCHAPTER IV—STATE BANK CIRCULATION

561 to 570. Omitted.

SUBCHAPTER I—FEDERAL RESERVE BANKS

§ 531. Exemption from taxation

Federal reserve banks, including the capital stock and surplus therein and the income derived therefrom shall be exempt from Federal, State, and local taxation, except taxes upon real estate.

(Dec. 23, 1913, ch. 6, § 7(c), 38 Stat. 258; Mar. 3, 1919, ch. 101, § 1, 40 Stat. 1314; Pub. L. 103–66, title III, § 3002(c)(2), Aug. 10, 1993, 107 Stat. 338.)

CODIFICATION

Section is comprised of subsec. (c) [formerly third undesignated par.] of section 7 of act Dec. 23, 1913. Subsec. (a) of section 7 and subsec. (b) [enacted by Pub. L. 106–113, div. B, § 1000(a)(5) [title III, § 302(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–304] of section 7 are classified to section 289 of this title. Another subsec. (b) of section 7 is classified to section 290 of this title.

AMENDMENTS

1993—Pub. L. 103–66 inserted section catchline.

SUBCHAPTER II—NATIONAL BANK CIRCULATION

§ 541. Tax on circulating notes generally

In lieu of all existing taxes, every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one-half of 1 per centum each half year upon the average amount of its notes in circulation.

(R.S. § 5214; Mar. 3, 1883, ch. 121, § 1, 22 Stat. 488.)

CODIFICATION

R.S. § 5214 derived from act June 3, 1864, ch. 106, § 41, 13 Stat. 111, which was part of the National Bank Act. See section 38 of this title.

§ 542. Omitted

CODIFICATION

Section, act Mar. 14, 1900, ch. 41, § 13, 31 Stat. 49, related to tax on circulating notes secured by 2 per centum bonds.

§ 543. Repealed. Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section, act Dec. 21, 1905, ch. 3, § 1, 34 Stat. 5, related to tax on circulating notes secured by Panama Canal 2 per centum bonds and rights and privileges of such bonds.

§§ 544 to 547. Omitted

CODIFICATION

Section 544, R.S. § 5215; act Mar. 3, 1883, ch. 121, § 1, 22 Stat. 488, related to half-yearly return of circulation.

Section 545, R.S. § 5216; act Mar. 3, 1883, ch. 121, § 1, 22 Stat. 488, related to penalty for failure to make return.

Section 546, R.S. § 5217, related to enforcing tax on circulation.

Section 547, R.S. § 5218; act June 10, 1921, ch. 18, § 304, 42 Stat. 24, related to refunding excess tax.

REPEALS

Effective July 1, 1935, the permanent appropriation provided for in former section 547 of this title was repealed by act June 26, 1934, ch. 756, § 2, 48 Stat. 1226, such act authorizing in lieu thereof, an annual appropriation from the general fund of the Treasury.

REDEMPTION OF BONDS; TERMINATION OF CIRCULATING NOTES

In a communication from the Treasury Department dated February 17, 1941, it was stated ''The Secretary of the Treasury called for redemption the only outstanding issues of United States bonds bearing the circulation privilege as follows:

''2% Consols. of 1930, as of July 1, 1935,

''2% Panama Canal bonds of 1916–36, and

''2% Panama Canal bonds of 1918–38, as of August 1, 1935.

''The retirement of these issues automatically put an end to National Bank note circulation and the collection of the tax thereon.''

SUBCHAPTER III—NATIONAL BANK SHARES

§ 548. State taxation

For the purposes of any tax law enacted under authority of the United States or any State, a national bank shall be treated as a bank organized and existing under the laws of the State or other jurisdiction within which its principal office is located.

(R.S. § 5219; Mar. 4, 1923, ch. 267, 42 Stat. 1499; Mar. 25, 1926, ch. 88, 44 Stat. 223; Pub. L. 91–156, §§ 1(a), 2(a), Dec. 24, 1969, 83 Stat. 434.)

CODIFICATION

R.S. § 5219 derived from act June 3, 1864, ch. 106, § 41, 13 Stat. 111, which was the National Bank Act, and act Feb. 10, 1868, ch. 7, 15 Stat. 34. See section 38 of this title.

AMENDMENTS

1969—Pub. L. 91–156, § 2(a), substituted provisions directing that national banks, for purposes of both Fed-

eral and State tax laws, be treated as banks organized and existing under the laws of the State or other jurisdiction within which each bank's principal office is located for provisions placing restrictions on the taxation of national bank shares and, for the period until the effective date of such amendment, set out interim provisions regarding intangible personal property taxes of States and local governments on national banks.

Pub. L. 91–156, §1(a), added par. 5.

1926—Act Mar. 25, 1926, among other changes inserted ''on their net income'' in cl. (3) of former opening par., and added cl. (4) thereto, and inserted proviso in former subsec. 1(c).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 1(b) of Pub. L. 91–156 provided that: ''The amendment made by subsection (a) of this section [setting out interim provisions regarding intangible personal property taxes of State and local governments on national banks] shall be effective from the date of enactment of this Act [Dec. 24, 1969] until the effective date [Jan. 1, 1973] of the amendment made by section 2(a) of this Act [removing restrictions on the taxation of national bank shares and directing that national banks, for purposes of both Federal and State tax laws, be treated as banks organized and existing under the laws of the State or other jurisdiction within which each bank's principal office is located].''

Section 2(b) of Pub. L. 91–156, as amended by Pub. L. 92–213, §4(a), Dec. 22, 1971, 85 Stat. 775, provided that: ''The amendment made by subsection (a) [removing all special restriction on the taxation of national bank shares by State and local taxing authorities] becomes effective on January 1, 1973''.

SAVINGS PROVISION

Section 3 of Pub. L. 91–156, as amended by Pub. L. 92–213, §4(a), Dec. 22, 1971, 85 Stat. 775, provided that:

''(a) Except as provided in subsection (b) of this section, prior to January 1, 1973, no tax may be imposed on any class of banks by or under authority of any State legislation in effect prior to the enactment of this Act [Dec. 24, 1969] unless

''(1) the tax was imposed on that class of banks prior to the enactment of this Act [Dec. 24, 1969], or

''(2) the imposition of the tax is authorized by affirmative action of the State legislature after the enactment of this Act [Dec. 24, 1969].

''(b) The prohibition of subsection (a) of this section does not apply to

''(1) any sales tax or use tax complementary thereto,

''(2) any tax (including a documentary stamp tax) on the execution, delivery, or recordation of documents, or

''(3) any tax on tangible personal property (not including cash or currency), or for any license, registration, transfer, excise or other fee or tax imposed on the ownership, use or transfer of tangible personal property,

imposed by a State which does not impose a tax, or an increased rate of tax, in lieu thereof.''

STATE TAXATION OF FEDERALLY INSURED FINANCIAL INSTITUTIONS; STUDY AND REPORT BY ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Pub. L. 93–100, §7, Aug. 16, 1973, 87 Stat. 347, eff. on the 30th day after Aug. 16, 1973, as amended by Pub. L. 93–495, title I, §114, Oct. 28, 1974, 88 Stat. 1507; Pub. L. 94–222, §§1, 4, Feb. 27, 1976, 90 Stat. 197, 198, eff. Jan. 1, 1976, provided that it was to be cited as the ''State Taxation of Depositories Act''; that it was applicable to taxable years or periods beginning on or after Aug. 16, 1973; that an efficient banking system and the free flow of commerce would be furthered by clarification of principles as to State taxation of interstate transactions of banks and other depositories; that taxes measured by income or receipts or other ''doing business'' taxes in states where depositories do not have their principal offices, should be deferred until uniform and equitable methods are developed; that no such taxes should be imposed on or after Aug. 16, 1973 and before Sept. 12, 1976; that ''insured depository'' means any bank or institution insured under the Federal Deposit Insurance Act or the Federal Savings and Loan Insurance Corporation or any member institution of a Federal home loan bank; that ''State'' means the several States of the United States, the District of Columbia, the Virgin Islands, Guam, and American Samoa; and that the Advisory Commission on Intergovernmental Relations should study the matter of State ''doing business'' taxes and report to Congress no later than Dec. 31, 1974.

STUDY BY BOARD OF GOVERNORS OF FEDERAL RESERVE SYSTEM; REPORT BY JUNE 22, 1972

Section 4(b) of Pub. L. 92–213 required the Board of Governors of the Federal Reserve System to make a study of the probable impact on the revenues of State and local governments of the extension until Jan. 1, 1973, under subsection (a), of the termination date of interim provisions regarding intangible personal property taxes of State and local governments on national banks and to report the results of its study to the Congress not later than six months after Dec. 22, 1971.

STUDY BY BOARD OF GOVERNORS OF FEDERAL RESERVE SYSTEM; REPORT BY DEC. 31, 1970

Section 4 of Pub. L. 91–156 provided that the Board of Governors of the Federal Reserve System make a study to determine the probable impact on the banking system and other economic effects of the changes in existing law made by section 2 of this Act [amending this section] and that such study include the Board's recommendation as to what additional Federal legislation may be needed to reconcile the promotion of economic efficiency in the banking system with the achievement of effectiveness and local autonomy in meeting the fiscal needs of the States and their political subdivisions. The results of the Board's study were to be made to Congress not later than December 31, 1970.

SUBCHAPTER IV—STATE BANK CIRCULATION

§§ 561 to 570. Omitted

REPEALS

Provisions of these sections were incorporated in Title 26, Internal Revenue Code, as follows:

This Title	Title 26
561	1905, I.R.C. 1939; 4882, I.R.C. 1954
562	1900(b)(2), I.R.C. 1939; 4881, I.R.C. 1954
563	1900(b)(2) I.R.C. 1939; 4881, I.R.C. 1954
564	1902(b), I.R.C. 1939; 6151(a), I.R.C. 1954
565	1901, I.R.C. 1939; 4883, I.R.C. 1954
566	1902(a)(1)(2), I.R.C. 1939; 6011(a), 6065(a), 6071, 6091(b)(1), (2), I.R.C. 1954
567	1903, 1904, I.R.C. 1939; 4885, I.R.C. 1954
568	1902(a)(4), I.R.C. 1939; omitted, I.R.C. 1954
569	1906, I.R.C. 1939; 4883, I.R.C. 1954
570	3798, I.R.C. 1939; 7507, I.R.C. 1954

Insofar as they related exclusively to internal revenue they were repealed by section 4(a) of enacting section of 1939 Internal Revenue Code, preceding subtitle A of Title 26, I.R.C. 1939.

CHAPTER 5—CRIMES AND OFFENSES

SUBCHAPTER I—IN GENERAL

Sec.
581. Repealed.
582. Receipt of United States or bank notes as collateral.

Sec.
583 to 588d. Repealed.
SUBCHAPTER II—FEDERAL RESERVE AND MEMBER BANKS, OFFICERS, EMPLOYEES, AND EXAMINERS
591 to 599. Repealed.

SUBCHAPTER I—IN GENERAL

§ 581. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, R.S. § 5187, related to unauthorized issue of circulating notes. See section 334 of Title 18, Crimes and Criminal Procedure.

§ 582. Receipt of United States or bank notes as collateral

No national banking association shall hereafter offer or receive United States notes or national-bank notes as security or as collateral security for any loan of money, or for a consideration agree to withhold the same from use, or offer or receive the custody or promise of custody of such notes as security, or as collateral security, or consideration for any loan of money. Any association offending against the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined not more than $1,000 and a further sum equal to one-third of the money so loaned. The officer or officers of any association who shall make any such loan shall be liable for a further sum equal to one-quarter of the money loaned; and any fine or penalty incurred by a violation of this section shall be recoverable for the benefit of the party bringing such suit.

(R.S. § 5207.)

CODIFICATION

R.S. § 5207 derived from act Feb. 19, 1869, ch. 32, 15 Stat. 270.

§§ 583 to 588d. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section 583, R.S. § 5243; act Aug. 23, 1935, ch. 614, title III, § 318, 49 Stat. 712, related to use of words ''National'', ''Federal'', or ''United States''. See section 709 of Title 18, Crimes and Criminal Procedure.

Section 584, act May 24, 1926, ch. 377, § 1, 44 Stat. 628, related to spurious advertisements or representations as to Federal farm loans and bonds. See section 709 of Title 18, Crimes and Criminal Procedure.

Section 585, acts May 24, 1926, ch. 377, § 2, 44 Stat. 628; Aug. 23, 1935, ch. 614, title III, § 332, 49 Stat. 719, related to use of words ''Federal'', ''United States'', ''Deposit Insurance'', ''reserve''. See section 709 of Title 18, Crimes and Criminal Procedure.

Section 586, act May 24, 1926, ch. 377, § 3, 44 Stat. 628, related to false advertisements or representations as to membership in Federal Reserve System. See section 709 of Title 18, Crimes and Criminal Procedure.

Section 587, acts May 24, 1926, ch. 377, § 4, 44 Stat. 628; Aug. 23, 1935, ch. 614, title III, § 332, 49 Stat. 719, related to penalties for violations of former sections 584–586. See section 709 of Title 18, Crimes and Criminal Procedure.

Section 588, act May 24, 1926, ch. 377, § 5, 44 Stat. 629, related to separability of former sections 584 to 587.

Section 588a, acts May 18, 1934, ch. 304, § 1, 48 Stat. 783; Aug. 23, 1935, ch. 614, title III, § 333, 49 Stat. 720, defined ''bank''. See section 2113 of Title 18, Crimes and Criminal Procedure.

Section 588b, acts May 18, 1934, ch. 304, § 2, 48 Stat. 783; Aug. 24, 1937, ch. 747, 50 Stat. 749; June 29, 1940, ch. 455, 54 Stat. 695, related to robbery of bank. See section 2113 of Title 18, Crimes and Criminal Procedure.

Section 588c, act May 18, 1934, ch. 304, § 3, 48 Stat. 783, related to killing or kidnapping as incident to robbery of a bank. See section 2113 of Title 18, Crimes and Criminal Procedure.

Section 588d, act May 18, 1934, ch. 304, § 4, 48 Stat. 783, related to jurisdiction of bank crimes. See section 3231 of Title 18, Crimes and Criminal Procedure.

SUBCHAPTER II—FEDERAL RESERVE AND MEMBER BANKS, OFFICERS, EMPLOYEES, AND EXAMINERS

§§ 591 to 599. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section 591, R.S. § 5208; acts July 12, 1882, ch. 290, § 13, 22 Stat. 166; Sept. 26, 1918, ch. 177, § 7, 40 Stat. 972; Feb. 25, 1927, ch. 191, § 12, 44 Stat. 1231, related to unlawful certification of checks. See section 1004 of Title 18, Crimes and Criminal Procedure.

Section 592, R.S. § 5209; acts Sept. 26, 1918, ch. 177, § 7, 40 Stat. 972; Aug. 23, 1935, ch. 614, title III, § 316, 49 Stat. 712, related to embezzlement. See sections 334, 656, and 1005 of Title 18, Crimes and Criminal Procedure.

Section 593, acts Dec. 23, 1913, ch. 6, § 22(a), 38 Stat. 272; Sept. 26, 1918, ch. 177, § 5, 40 Stat. 970; Feb. 25, 1927, ch. 191, § 15, 44 Stat. 1232; Aug. 23, 1935, ch. 614, title III, § 326(a), 49 Stat. 715, related to loans and gratuities.

Section 594, acts Dec. 23, 1913, ch. 6, § 22(b), 38 Stat. 272; Sept. 26, 1918, ch. 177, § 5, 40 Stat. 970; Aug. 23, 1935, ch. 614, title III, § 326(b), 49 Stat. 716, related to bank examiners performing other services for compensation and disclosure of information. See sections 1906 and 1909 of Title 18, Crimes and Criminal Procedure.

Section 595, acts Dec. 23, 1913, ch. 6, § 22(c), 38 Stat. 272; June 21, 1917, ch. 32, § 11, 40 Stat. 240; Sept. 26, 1918, ch. 177, § 5, 40 Stat. 970, related to officers and employees accepting commissions and gifts for procuring loans. See section 215 of Title 18, Crimes and Criminal Procedure.

Section 596, act Dec. 23, 1913, ch. 6, § 22(h), as added June 19, 1934, ch. 653, § 3, 48 Stat. 1107, related to false statements or overvaluation of securities to secure loan. See section 1014 of Title 18, Crimes and Criminal Procedure.

Section 597, act Dec. 23, 1913, ch. 6, § 22(i), as added June 19, 1934, ch. 653, § 3, 48 Stat. 1107, related to embezzlement, etc. See sections 655 and 1005 of Title 18, Crimes and Criminal Procedure.

Section 598, act Dec. 23, 1913, ch. 6, § 22(j), as added June 19, 1934, ch. 653, § 3, 48 Stat. 1107, related to application of former sections 202 to 207 of Title 18, Crimes and Criminal Procedure.

Section 599, act Dec. 23, 1913, ch. 6, § 22(k), as added June 19, 1934, ch. 653, § 3, 48 Stat. 1107, related to fees, commissions, and bonuses in connection with loans. See section 214 of Title 18, Crimes and Criminal Procedure.

CHAPTER 6—FOREIGN BANKING

SUBCHAPTER I—ESTABLISHMENT BY NATIONAL BANKS OF FOREIGN BRANCHES AND INVESTMENTS IN BANKS DOING FOREIGN BUSINESS
Sec.
601. Authorization; conditions and regulations.
602. Reports and examinations.
603. Restrictions imposed by Board of Governors of the Federal Reserve System on banks purchasing stock in corporations doing foreign business.
604. Accounts of foreign branches; profit and loss.
604a. Regulations authorizing exercise by foreign branches of usual powers of local banks; restrictions.
605. Repealed.

Sec.

SUBCHAPTER II—ORGANIZATION OF CORPORATIONS TO DO FOREIGN BANKING

611. Formation authorized; fiscal agents; depositaries in insular possessions.
611a. Statement of purposes; rules and regulations.
612. Articles of association; contents.
613. Signing of articles of association; forwarding to and filing by Board of Governors of the Federal Reserve System; organization certificate; contents.
614. Organization certificate; acknowledgment; forwarding to, filing, and approval by Board of Governors of the Federal Reserve System; permit to do business; body corporate; name; seal; corporate succession; contracts; suits; directors, officers, and employees; bylaws.
615. Powers of corporation.
616. Place of carrying on business; when business may be begun.
617. Engaging in commerce or trade in commodities; price fixing; forfeiture of charter; acts forbidden to directors, officers, agents, or employees.
618. Capital stock; amount; when paid in.
619. Capital stock; by whom held; ownership of capital stock by foreign bank.
620. Members of Board of Governors of the Federal Reserve System without interest in corporation.
621. Liability of shareholders on unpaid subscriptions; membership of corporation in Federal reserve bank prohibited.
622. Forfeiture of rights and privileges; dissolution; liability of directors and officers.
623. Voluntary liquidation.
624. Appointment of receiver or conservator.
625. Stockholders' meetings; books and records; reports; examination.
626. Dividends; surplus fund.
627. State taxation.
628. Extension of corporate existence.
629. Conversion of banking corporations into Federal corporations; procedure.
630. Offenses by officers of corporation; punishment.
631. False representations as to liability of United States for acts of corporation; punishment.
632. Jurisdiction of United States courts; disposition by banks of foreign owned property.
633. Potential liability on foreign accounts.

SUBCHAPTER I—ESTABLISHMENT BY NATIONAL BANKS OF FOREIGN BRANCHES AND INVESTMENTS IN BANKS DOING FOREIGN BUSINESS

§ 601. Authorization; conditions and regulations

Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Board of Governors of the Federal Reserve System for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, the following powers:

First. To establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States.

Second. To invest an amount not exceeding in the aggregate 10 per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions.

Third. To acquire and hold, directly or indirectly, stock or other evidences of ownership in one or more banks organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Governors of the Federal Reserve System, shall be incidental to the international or foreign business of such foreign bank; and, notwithstanding the provisions of section 371c of this title, to make loans or extensions of credit to or for the account of such bank in the manner and within the limits prescribed by the Board by general or specific regulation or ruling.

Until January 1, 1921, any national banking association, without regard to the amount of its capital and surplus, may file application with the Board of Governors of the Federal Reserve System for permission, upon such conditions and under such regulations as may be prescribed by said board, to invest an amount not exceeding in the aggregate 5 per centum of its paid-in capital and surplus in the stock of one or more corporations chartered or incorporated under the laws of the United States or of any State thereof and, regardless of its location, principally engaged in such phases of international or foreign financial operations as may be necessary to facilitate the export of goods, wares, or merchandise from the United States or any of its dependencies or insular possessions to any foreign country: *Provided*, *however*, That in no event shall the total investments authorized by this subchapter by any one national bank exceed 10 per centum of its capital and surplus.

Such application shall specify the name and capital of the banking association filing it, the powers applied for, and the place or places where the banking or financial operations proposed are to be carried on. The Board of Governors of the Federal Reserve System shall have power to approve or to reject such application in whole or in part if for any reason the granting of such application is deemed inexpedient, and shall also have power from time to time to increase or decrease the number of places where such banking operations may be carried on.

(Dec. 23, 1913, ch. 6, § 25 (pars.), 38 Stat. 273; Sept. 7, 1916, ch. 461, 39 Stat. 755; Sept. 17, 1919, ch. 60, §§ 1, 2, 41 Stat. 285, 286; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 89–485, § 12(b), July 1, 1966, 80 Stat. 241.)

REFERENCES IN TEXT

This subchapter, referred to in the proviso to the fifth par., was in the original ''this section'', meaning section 25 of act Dec. 23, 1913, which is classified to this subchapter (§ 601 et seq.).

CODIFICATION

Section is comprised of the first three undesignated pars. of section 25 of act Dec. 23, 1913, which comprises this subchapter.

The fourth undesignated par. of section 25 is classified to section 602 of this title.

The fifth undesignated par. of section 25 is classified to section 603 of this title.

The sixth undesignated par. of section 25 is classified to section 604 of this title.

The former seventh undesignated par. was classified to former section 605 of this title.

The seventh undesignated par. is classified to section 604a of this title.

AMENDMENTS

1966—Pub. L. 89–485 struck out ''either or both of'' before ''the following powers'' in introductory par.

Par. Third. Pub. L. 89–485 added par. Third.

1919—Act Sept. 17, 1919, added par. beginning ''Until January 21, 1921'' and inserted ''financial'' in first sentence of last par.

1916—Act Sept. 7, 1916, among other changes, added par. Second, and provisions relating to restrictions on purchasing stock in other banks, investigations as to compliance with regulations, disposal of interest and separation of accounts, etc. which are now contained in section 602 et seq. of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

STUDY BY SECRETARY OF THE TREASURY OF DISCRIMINATORY PRACTICES BY FOREIGN NATIONS AGAINST UNITED STATES BANKS; REPORT AND RECOMMENDATIONS TO CONGRESS

Pub. L. 95–369, § 9(a), formerly § 9, Sept. 17, 1978, 92 Stat. 623, renumbered Pub. L. 95–630, title III, § 311, Nov. 10, 1978, 92 Stat. 3678, provided that the Secretary of the Treasury conduct a study of discriminatory practices by foreign nations against United States banks and report his findings and recommendations to Congress on or before one year after Sept. 17, 1978, along with a description of efforts taken by the United States to eliminate any foreign laws or practices that discriminate against United States banks or serve as a barrier to the financing of United States exports to any country.

§ 602. Reports and examinations

Every national banking association operating foreign branches shall be required to furnish information concerning the condition of such branches to the Comptroller of the Currency upon demand, and every member bank investing in the capital stock of banks or corporations described in section 601 of this title shall be required to furnish information concerning the condition of such banks or corporations to the Board of Governors of the Federal Reserve System upon demand, and the Board of Governors of the Federal Reserve System may order special examinations of the said branches, banks, or corporations at such time or times as it may deem best.

(Dec. 23, 1913, ch. 6, § 25 (par.), 38 Stat. 273; Sept. 7, 1916, ch. 461, 39 Stat. 755; Sept. 17, 1919, ch. 60, § 3, 41 Stat. 286; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

CODIFICATION

Section is comprised of the fourth undesignated par. of section 25 of act Dec. 23, 1913, which comprises this subchapter. For classification of other pars. of section 25 of this Act, see Codification note under section 601 of this title.

AMENDMENTS

1919—Act Sept. 17, 1919, substituted ''above'' for ''subparagraph 2 of the first paragraph of this section'' in the original, which for purposes of codification appears in text as a reference to section 601 of this title.

1916—Act Sept. 7, 1916, substituted ''operating'' for ''which shall receive authority to establish foreign branches'' and inserted ''every member bank investing in the capital stock of banks or corporations described in subsection second of section 601 of this title''.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 603. Restrictions imposed by Board of Governors of the Federal Reserve System on banks purchasing stock in corporations doing foreign business

Before any national bank shall be permitted to purchase stock in any corporation described in section 601 of this title, the said corporation shall enter into an agreement or undertaking with the Board of Governors of the Federal Reserve System to restrict its operations or conduct its business in such manner or under such limitations and restrictions as the said board may prescribe for the place or places wherein such business is to be conducted. If at any time the Board of Governors of the Federal Reserve System shall ascertain that the regulations prescribed by it are not being complied with, said board is authorized and empowered to institute an investigation of the matter and to send for persons and papers, subpoena witnesses, and administer oaths in order to satisfy itself as to the actual nature of the transactions referred to. Should such investigation result in establishing the failure of the corporation in question, or of the national bank or banks which may be stockholders therein, to comply with the regulations laid down by the said Board of Governors of the Federal Reserve System, such national banks may be required to dispose of stock holdings in the said corporation upon reasonable notice.

(Dec. 23, 1913, ch. 6, § 25 (par.), as added Sept. 7, 1916, ch. 461, 39 Stat. 755; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.)

CODIFICATION

Section is comprised of the fifth undesignated par. of section 25 of act Dec. 23, 1913, which comprises this subchapter. For classification of other pars. of section 25 of this Act, see Codification note under section 601 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 604. Accounts of foreign branches; profit and loss

Every national banking association operating foreign branches shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office, and shall at the end of

each fiscal period transfer to its general ledger the profit or loss accrued at each branch as a separate item.

(Dec. 23, 1913, ch. 6, § 25 (par.), 38 Stat. 273; Sept. 7, 1916, ch. 461, 39 Stat. 756.)

CODIFICATION

Section is comprised of the sixth undesignated par. of section 25 of act Dec. 23, 1913, which comprises this subchapter. For classification of other pars. of section 25 of this Act, see Codification note under section 601 of this title.

The words ''national banking association operating foreign branches'' were in the original ''such banking association''.

AMENDMENTS

1916—Act Sept. 7, 1916, substituted ''accrued'' for ''accruing''.

§ 604a. Regulations authorizing exercise by foreign branches of usual powers of local banks; restrictions

Regulations issued by the Board of Governors of the Federal Reserve System under this subchapter, in addition to regulating powers which a foreign branch may exercise under other provisions of law, may authorize such a foreign branch, subject to such conditions and requirements as such regulations may prescribe, to exercise such further powers as may be usual in connection with the transaction of the business of banking in the places where such foreign branch shall transact business. Such regulations shall not authorize a foreign branch to engage in the general business of producing, distributing, buying or selling goods, wares, or merchandise; nor, except to such limited extent as the Board may deem to be necessary with respect to securities issued by any ''foreign state'' as defined in section 632 of this title, shall such regulations authorize a foreign branch to engage or participate, directly or indirectly, in the business of underwriting, selling, or distributing securities.

(Dec. 23, 1913, ch. 6, § 25 (par.), as added Pub. L. 87–588, Aug. 15, 1962, 76 Stat. 388.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25 of act Dec. 23, 1913, which is classified to this subchapter (§ 601 et seq.).

CODIFICATION

Section is comprised of the seventh undesignated par. of section 25 of act Dec. 23, 1913, which comprises this subchapter. For classification of other pars. of section 25 of this Act, see Codification note under section 601 of this title.

§ 605. Repealed. Aug. 23, 1935, ch. 614, title III, § 329, 49 Stat. 717

Section, act Dec. 23, 1913, ch. 6, § 25 (par.), 38 Stat. 273, as amended by act Sept. 7, 1916, ch. 461, 39 Stat. 755, related to interlocking directors, officers, and employees. See section 19 of Title 15, Commerce and Trade.

Section was comprised of the former seventh undesignated par. of section 25 of act Dec. 23, 1913, which comprises this subchapter. For classification of other pars. of section 25 of this Act, see Codification note under section 601 of this title.

SUBCHAPTER II—ORGANIZATION OF CORPORATIONS TO DO FOREIGN BANKING

§ 611. Formation authorized; fiscal agents; depositaries in insular possessions

Corporations to be organized for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions as provided by this subchapter and to act when required by the Secretary of the Treasury as fiscal agents of the United States, may be formed by any number of natural persons, not less in any case than five: *Provided*, That nothing in this subchapter shall be construed to deny the right of the Secretary of the Treasury to use any corporation organized under this subchapter as depositaries in Panama and the Panama Canal Zone, or other insular possessions and dependencies of the United States.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; amended Feb. 27, 1921, ch. 73, 41 Stat. 1145; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 2517, 60 Stat. 1352; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Section is comprised of par. 1 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter.

Par. 2 (undesignated) is classified to section 611a of this title.

Pars. 3 to 5 (undesignated), formerly pars. 2 to 4 (undesignated), respectively, are classified to sections 612 to 614, respectively, of this title.

Pars. 6 and 7 (undesignated), formerly pars. 5 and 6 (undesignated), respectively, are classified to section 615 of this title.

Pars. 8 to 15 (undesignated), formerly pars. 7 to 14 (undesignated), respectively, are classified to sections 616 to 623, respectively, of this title.

Par. (16), formerly par. 16 (undesignated), formerly par. 15 (undesignated), is classified to section 624 of this title.

Pars. 17 to 23 (undesignated), formerly pars. 16 to 22 (undesignated), are classified to sections 625 to 631 of this title.

Words ''in the Philippine Islands and'' following ''Canal Zone, or'' were deleted on authority of Proc. No. 2695, which granted independence to the Philippine Islands pursuant to section 1394 of Title 22, Foreign Relations and Intercourse. Proc. No. 2695 is set out as a note under section 1394 of Title 22.

AMENDMENTS

1921—Act Feb. 27, 1921, inserted proviso.

SHORT TITLE

Section 25A, formerly section 25(a) of act Dec. 23, 1913, ch. 6, as added by act Dec. 24, 1919, ch. 18, 41 Stat.

378, which is classified to this subchapter, is popularly known as the ''Edge Act''.

§ 611a. Statement of purposes; rules and regulations

The Congress declares that it is the purpose of this subchapter to provide for the establishment of international banking and financial corporations operating under Federal supervision with powers sufficiently broad to enable them to compete effectively with similar foreign-owned institutions in the United States and abroad; to afford to the United States exporter and importer in particular, and to United States commerce, industry, and agriculture in general, at all times a means of financing international trade, especially United States exports; to foster the participation by regional and smaller banks throughout the United States in the provision of international banking and financing services to all segments of United States agriculture, commerce, and industry, and, in particular small business and farming concerns; to stimulate competition in the provision of international banking and financing services throughout the United States; and, in conjunction with each of the preceding purposes, to facilitate and stimulate the export of United States goods, wares, merchandise, commodities, and services to achieve a sound United States international trade position. The Board of Governors of the Federal Reserve System shall issue rules and regulations under this subchapter consistent with and in furtherance of the purposes described in the preceding sentence, and, in accordance therewith, shall review and revise any such rules and regulations at least once every five years, the first such period commencing with the effective date of rules and regulations issued pursuant to section 3(a) of the International Banking Act of 1978, in order to ensure that such purposes are being served in light of prevailing economic conditions and banking practices.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Pub. L. 95–369, § 3(b), Sept. 17, 1978, 92 Stat. 608; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

Section 3(a) of the International Banking Act of 1978, referred to in text, is Pub. L. 95–369, § 3(a), Sept. 17, 1978, 92 Stat. 608, which is set out below.

CODIFICATION

Section is comprised of par. 2 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

ELIMINATION OR MODIFICATION OF RESTRICTIONS LIMITING FOREIGN BANKING; CONGRESSIONAL DECLARATION OF PURPOSE

Section 3(a) of Pub. L. 95–369 provided that: ''It is the purpose of this section [adding this section, amending sections 614, 615, 618, and 619 of this title, and enacting provisions set out as note under section 247 of this title] to eliminate or modify provisions in section 25(a) [now 25A] of the Federal Reserve Act [this subchapter] that (1) discriminate against foreign-owned banking institutions, (2) disadvantage or unnecessarily restrict or limit corporations organized under section 25(a) of the Federal Reserve Act in competing with foreign-owned banking institutions in the United States or abroad or (3) impede the attainment of the Congressional purposes set forth in section 25(a) of the Federal Reserve Act as amended by subsection (b) of this section [adding this section]. In furtherance of such purpose, the Congress believes that the Board should review and revise its rules, regulations, and interpretations issued pursuant to section 25(a) of the Federal Reserve Act to eliminate or modify any restrictions, conditions, or limitations not required by section 25(a) of the Federal Reserve Act, as amended, that (1) discriminate against foreign-owned banking institutions, (2) disadvantage or unnecessarily restrict or limit corporations organized under section 25(a) of the Federal Reserve Act in competing with foreign-owned banking institutions in the United States or abroad, or (3) impede the attainment of the Congressional purposes set forth in section 25(a) of the Federal Reserve Act as amended by subsection (b) of this section. Rules and regulations pursuant to this subsection and section 25(a) of the Federal Reserve Act shall be issued not later than 150 days after the date of enactment of this section [Sept. 17, 1978] and shall be issued in final form and become effective not later than 120 days after they are first issued.''

§ 612. Articles of association; contents

The persons described in section 611 of this title shall enter into articles of association which shall specify in general terms the objects for which the association is formed and may contain any other provisions not inconsistent with law which the association may see fit to adopt for the regulation of its business and the conduct of its affairs.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

The persons described in section 611 of this title, referred to in text, was in the original ''Such persons''.

CODIFICATION

Section is comprised of par. 3 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

§ 613. Signing of articles of association; forwarding to and filing by Board of Governors of the Federal Reserve System; organization certificate; contents

Articles of association described in section 612 of this title shall be signed by all of the persons intending to participate in the organization of the corporation and, thereafter, shall be forwarded to the Board of Governors of the Federal Reserve System and shall be filed and preserved in its office. The persons signing the said articles of association shall, under their hands, make an organization certificate which shall specifically state:

First. The name assumed by such corporation, which shall be subject to the approval of the Board of Governors of the Federal Reserve System.

Second. The place or places where its operations are to be carried on.

Third. The place in the United States where its home office is to be located.

Fourth. The amount of its capital stock and the number of shares into which the same shall be divided.

Fifth. The names and places of business or residence of the persons executing the certificate and the number of shares to which each has subscribed.

Sixth. The fact that the certificate is made to enable the persons subscribing the same, and all other persons, firms, companies, and corporations, who or which may thereafter subscribe to or purchase shares of the capital stock of such corporation, to avail themselves of the advantages of this subchapter.

(Dec. 23, 1913, ch. 6, § 25A (pars.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

Articles of association described in section 612 of this title, referred to in text, was in the original ''Such articles of association''.

This subchapter, referred to in par. sixth, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

CODIFICATION

Section is comprised of par. 4 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 614. Organization certificate; acknowledgment; forwarding to, filing, and approval by Board of Governors of the Federal Reserve System; permit to do business; body corporate; name; seal; corporate succession; contracts; suits; directors, officers, and employees; bylaws

The persons signing the organization certificate shall duly acknowledge the execution thereof before a judge of some court of record or notary public, who shall certify thereto under the seal of such court or notary, and thereafter the certificate shall be forwarded to the Board of Governors of the Federal Reserve System to be filed and preserved in its office. Upon duly making and filing articles of association and an organization certificate, and after the Board of Governors of the Federal Reserve System has approved the same and issued a permit to begin business, the association shall become and be a body corporate, and as such and in the name designated therein shall have power to adopt and use a corporate seal, which may be changed at the pleasure of its board of directors; to have succession for a period of twenty years unless sooner dissolved by the act of the shareholders owning two-thirds of the stock or by an act of Congress or unless its franchises become forfeited by some violation of law; to make contracts; to sue and be sued, complain, and defend in any court of law or equity; to elect or appoint directors; and, by its board of directors, to appoint such officers and employees as may be deemed proper, define their authority and duties, require bonds of them, and fix the penalty thereof, dismiss such officers or employees, or any thereof, at pleasure and appoint others to fill their places; to prescribe, by its board of directors, bylaws not inconsistent with law or with the regulations of the Board of Governors of the Federal Reserve System regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers and employees appointed, its property transferred, and the privileges granted to it by law exercised and enjoyed.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 95–369, § 3(c), Sept. 17, 1978, 92 Stat. 609; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

CODIFICATION

Section is comprised of par. 5 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

AMENDMENTS

1978—Pub. L. 95–369 struck out '', all of whom shall be citizens of the United States'' after ''to elect or appoint directors''.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 615. Powers of corporation

Each corporation organized as provided in sections 611 to 614 of this title shall have power, under such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe:

(a) Dealings in drafts, checks, bills of exchange, acceptances, and other evidences of indebtedness; purchase and sale of securities; letters of credit; purchase and sale of coin, bullion, and exchange; borrowing and loaning money; issue of debentures, bonds, and notes; deposits; limitation of liabilities; reserves

To purchase, sell, discount, and negotiate, with or without its indorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to purchase and sell, with or without its indorsement or guaranty, securities, including the obligations of the United States or of any State thereof but not including shares of stock in any corporation except as herein provided; to accept bills or drafts drawn upon it subject to such limitations and restrictions as the Board of Governors of the Federal Reserve System may impose; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to issue debentures, bonds, and promissory notes under such general conditions

as to security and such limitations as the Board of Governors of the Federal Reserve System may prescribe; to receive deposits outside of the United States and to receive only such deposits within the United States as may be incidental to or for the purpose of carrying out transactions in foreign countries or dependencies or insular possessions of the United States; and generally to exercise such powers as are incidental to the power conferred by this Act or as may be usual, in the determination of the Board of Governors of the Federal Reserve System, in connection with the transaction of the business of banking or other financial operations in the countries, colonies, dependencies, or possessions in which it shall transact business and not inconsistent with the powers specifically granted herein. Nothing contained in this subchapter shall be construed to prohibit the Board of Governors of the Federal Reserve System, under its power to prescribe rules and regulations, from limiting the aggregate amount of liabilities of any or all classes incurred by the corporation and outstanding at any one time. Whenever a corporation organized under this subchapter receives deposits in the United States authorized by this subchapter, it shall carry reserves in such amounts as the Board of Governors of the Federal Reserve System may prescribe for member banks of the Federal Reserve System.

(b) Branches or agencies

To establish and maintain for the transaction of its business branches or agencies in foreign countries, their dependencies or colonies, and in the dependencies or insular possessions of the United States, at such places as may be approved by the Board of Governors of the Federal Reserve System and under such rules and regulations as it may prescribe, including countries or dependencies not specified in the original organization certificate.

(c) Purchase of stock in other corporations

With the consent of the Board of Governors of the Federal Reserve System to purchase and hold stock or other certificates of ownership in any other corporation organized under the provisions of this subchapter, or under the laws of any foreign country or a colony or dependency thereof, or under the laws of any State, dependency, or insular possession of the United States but not engaged in the general business of buying or selling goods, wares, merchandise, or commodities in the United States, and not transacting any business in the United States except such as in the judgment of the Board of Governors of the Federal Reserve System may be incidental to its international or foreign business: *Provided*, *however*, That, except with the approval of the Board of Governors of the Federal Reserve System, no corporation organized under this subchapter shall invest in any one corporation an amount in excess of 10 per centum of its own capital and surplus, except in a corporation engaged in the business of banking, when 15 per centum of its capital and surplus may be so invested: *Provided further*, That no corporation organized under this subchapter shall purchase, own, or hold stock or certificates of ownership in any other corporation organized under this subchapter or under the laws of any State which is in substantial competition therewith, or which holds stock or certificates of ownership in corporations which are in substantial competition with the purchasing corporation.

Nothing contained herein shall prevent corporations organized under this subchapter from purchasing and holding stock in any corporation where such purchase shall be necessary to prevent a loss upon a debt previously contracted in good faith; and stock so purchased or acquired in corporations organized under this subchapter shall, within six months from such purchase, be sold or disposed of at public or private sale, unless the time to so dispose of same is extended by the Board of Governors of the Federal Reserve System.

(Dec. 23, 1913, ch. 6, § 25A (pars.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 95–369, § 3(d), (e), Sept. 17, 1978, 92 Stat. 609; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

Each corporation organized as provided in sections 611 to 614 of this title, referred to in first par., was in the original ''Each corporation so organized''.

This act, referred to in subsec. (a), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

This subchapter, referred to in subsecs. (a) and (c), was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

Organized under this subchapter, referred to in subsec. (c), was in the original ''organized hereunder'', meaning under section 25A of act Dec. 23, 1913, which comprises this subchapter.

CODIFICATION

Section is comprised of pars. 6 and 7 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–369, § 3(d), struck out '', but in no event having liabilities outstanding thereon at any one time exceeding ten times its capital stock and surplus'' after ''under such general conditions as to security and such limitations as the Board of Governors of the Federal Reserve System may prescribe''.

Pub. L. 95–369, § 3(e), which directed substituting ''for member banks of the Federal Reserve System'' for '', but in no event less than ten per centum of its deposits,'' in the third sentence, was executed by making the substitution for '', but in no event less than 10 per centum of its deposits'' to reflect the probable intent of Congress.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 616. Place of carrying on business; when business may be begun

No corporation organized under this subchapter shall carry on any part of its business in

the United States except such as, in the judgment of the Board of Governors of the Federal Reserve System, shall be incidental to its international or foreign business: *And provided further*, That except such as is incidental and preliminary to its organization, no such corporation shall exercise any of the powers conferred by this subchapter until it has been duly authorized by the Board of Governors of the Federal Reserve System to commence business as a corporation organized under the provisions of this subchapter.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

CODIFICATION

Section is comprised of par. 8 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 617. Engaging in commerce or trade in commodities; price fixing; forfeiture of charter; acts forbidden to directors, officers, agents, or employees

No corporation organized under this subchapter shall engage in commerce or trade in commodities except as specifically provided in this subchapter, nor shall it, either directly or indirectly, control or fix or attempt to control or fix the price of any such commodities. The charter of any corporation violating this provision shall be subject to forfeiture in the manner provided in this subchapter. It shall be unlawful for any director, officer, agent, or employee of any such corporation to use or to conspire to use the credit, the funds, or the power of the corporation to fix or control the price of any such commodities, and any such person violating this provision shall be liable to a fine of not less than $1,000 and not exceeding $5,000 or imprisonment not less than one year and not exceeding five years, or both, in the discretion of the court.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

CODIFICATION

Section is comprised of par. 9 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

§ 618. Capital stock; amount; when paid in

No corporation shall be organized under the provisions of this subchapter with a capital stock of less than $2,000,000, one-quarter of which must be paid in before the corporation may be authorized to begin business, and the remainder of the capital stock of such corporation shall be paid in installments of at least 10 per centum on the whole amount to which the corporation shall be limited as frequently as one installment at the end of each succeeding two months from the time of the commencement of its business operations until the whole of the capital stock shall be paid in: *Provided, however*, That whenever $2,000,000 of the capital stock of any corporation is paid in the remainder of the corporation's capital stock or any unpaid part of such remainder may, with the consent of the Board of Governors of the Federal Reserve System and subject to such regulations and conditions as it may prescribe, be paid in upon call from the board of directors; such unpaid subscriptions, however, to be included in the maximum of 10 per centum of the national bank's capital and surplus which a national bank is permitted under the provisions of this Act to hold in stock of corporations engaged in business of the kind described in this subchapter and subchapter I of this chapter. The capital stock of any such corporation may be increased at any time, with the approval of the Board of Governors of the Federal Reserve System, by a vote of two-thirds of its shareholders or by unanimous consent in writing of the shareholders without a meeting and without a formal vote, but any such increase of capital shall be fully paid in within ninety days after such approval; and may be reduced in like manner, provided that in no event shall it be less than $2,000,000. No corporation, except as herein provided, shall during the time it shall continue its operations, withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. Any national bank may invest in the stock of any corporation organized under this subchapter. The aggregate amount of stock held by any national bank in all corporations engaged in business of the kind described in this subchapter or subchapter I of this chapter shall not exceed an amount equal to 10 percent of the capital and surplus of such bank unless the Board determines that the investment of an additional amount by the bank would not be unsafe or unsound and, in any case, shall not exceed an amount equal to 20 percent of the capital and surplus of such bank.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; amended June 14, 1921, ch. 22, 42 Stat. 28; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; Pub. L. 95–369, § 3(d), Sept. 17, 1978, 92 Stat. 609; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281; Pub. L. 104–208, div. A, title II, § 2307, Sept. 30, 1996, 110 Stat. 3009–426.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

This Act, referred to in text, is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

Subchapter I of this chapter, referred to in text, was in the original ''section 25 of the Federal Reserve Act as amended'' and ''section 25'', which is classified to subchapter I (§ 601 et seq.) of this chapter.

CODIFICATION

Section is comprised of par. 10 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

AMENDMENTS

1996—Pub. L. 104–208 inserted last sentence and struck out former last sentence which read as follows: ''Any national banking association may invest in the stock of any corporation organized under the provisions of said sections, but the aggregate amount of stock held in all corporations engaged in business of the kind described in this subchapter and subchapter I of this chapter shall not exceed 10 per centum of the subscribing bank's capital and surplus.''

1978—Pub. L. 95–369 struck out proviso limiting liabilities outstanding at any one time upon debentures, bonds and promissory notes to not in excess of ten times its paid in capital and surplus, after ''stock of corporations engaged in business of the kind described in this subchapter and subchapter I of this chapter''.

1921—Act June 14, 1921, amended section generally, inserting two provisos.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 619. Capital stock; by whom held; ownership of capital stock by foreign bank

Except as otherwise provided in this subchapter, a majority of the shares of the capital stock of any such corporation shall at all times be held and owned by citizens of the United States, by corporations the controlling interest in which is owned by citizens of the United States, chartered under the laws of the United States or of a State of the United States, or by firms or companies, the controlling interest in which is owned by citizens of the United States. Notwithstanding any other provisions of this subchapter, one or more foreign banks, institutions organized under the laws of foreign countries which own or control foreign banks, or banks organized under the laws of the United States, the States of the United States, or the District of Columbia, the controlling interests in which are owned by any such foreign banks or institutions, may, with the prior approval of the Board of Governors of the Federal Reserve System and upon such terms and conditions and subject to such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe, own and hold 50 per centum or more of the shares of the capital stock of any corporation organized under this subchapter and any such corporation shall be subject to the same provisions of law as any other corporation organized under this subchapter, and the terms ''controls'' and ''controlling interest'' shall be construed consistently with the definition of ''control'' in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841]. For the purposes of the preceding sentence of this paragraph the term ''foreign bank'' shall have the meaning assigned to it in the International Banking Act of 1978 [12 U.S.C. 3101 et seq.]. Any company, other than a bank as defined in section 2 of the Bank Holding Company Act of 1956, that after March 5, 1987, directly or indirectly acquires control of a corporation organized or operating under the provisions of this subchapter or subchapter I of this chapter shall be subject to the provisions of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.] in the same manner and to the same extent that bank holding companies are subject thereto, except that such company shall not by reason of this paragraph be deemed a bank holding company for the purpose of section 3 of the Bank Holding Company Act of 1956 [12 U.S.C. 1842].

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; amended Aug. 23, 1935, ch. 614, title III, § 329, 49 Stat. 717; Pub. L. 95–369, § 3(f), Sept. 17, 1978, 92 Stat. 609; Pub. L. 100–86, title I, § 102(c)(1), Aug. 10, 1987, 101 Stat. 566; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

The International Banking Act of 1978, referred to in text, is Pub. L. 95–369, Sept. 17, 1978, 92 Stat. 607, which enacted chapter 32 (§ 3101 et seq.) and sections 347d and 611a of this title, amended this section and sections 72, 378, 614, 615, 618, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under sections 247, 611a, and 3101 of this title and formerly set out as notes under sections 36, 247, and 601 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

Subchapter I of this chapter, referred to in text, was in the original ''section 25'', meaning section 25 of the Federal Reserve Act, which is classified to subchapter I (§ 601 et seq.) of this chapter.

The Bank Holding Company Act of 1956, referred to in text, is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

CODIFICATION

Section is comprised of par. 11 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

AMENDMENTS

1987—Pub. L. 100–86 inserted provisions which related to any company, other than bank as defined in section 2 of Bank Holding Company Act of 1956, that after Mar. 5, 1987, directly or indirectly acquires control of corporation organized or operating under provisions of this subchapter or subchapter I of this chapter to be subject to provisions of Bank Holding Company Act of 1956 in same manner and to same extent that bank

holding companies are subject thereto, except that such company shall not by reason of this paragraph be deemed bank holding company for purpose of section 3 of such Act.

1978—Pub. L. 95–369 inserted ''Except as otherwise provided in this subchapter'' before ''a majority of the shares'', and inserted provision relating to the ownership of 50 per centum of the shares of capital stock by a foreign bank with prior approval of the Board of Governors of the Federal Reserve System.

1935—Act Aug. 23, 1935, struck out provisions relating to application of section 19 of title 15, to directors, officers or employees of corporations organized under sections 611–631 of this title, and excepting certain persons who received approval of Federal Reserve Board, from application of this section.

EXCEPTION FOR MIDLAND BANK, LONDON, ENGLAND

Section 102(c)(2) of Pub. L. 100–86 provided that: ''The amendment made by paragraph (1) [amending this section] does not apply to an acquisition pursuant to the application by Midland Bank, plc, London, England, pending before the Board of Governors of the Federal Reserve System on July 1, 1987, to acquire a corporation organized or operating under section 25(a) [now 25A] of the Federal Reserve Act [12 U.S.C. 611 et seq.]. If Midland Bank, plc, London, England, is not otherwise subject to section 4 of the Bank Holding Company Act of 1956 [12 U.S.C. 1843], the financial activities of Midland Bank, plc, London, England, in the United States shall, upon the determination of the Board of Governors of the Federal Reserve System made at any time, be subject to section 4 of the Bank Holding Company Act of 1956.''

§ 620. Members of Board of Governors of the Federal Reserve System without interest in corporation

No member of the Board of Governors of the Federal Reserve System shall be an officer or director of any corporation organized under the provisions of this subchapter or of any corporation engaged in similar business organized under the laws of any State, nor hold stock in any such corporation, and before entering upon his duties as a member of the Board of Governors of the Federal Reserve System he shall certify under oath to the Secretary of the Treasury that he has complied with this requirement.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

CODIFICATION

Section is comprised of par. 12 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 621. Liability of shareholders on unpaid subscriptions; membership of corporation in Federal reserve bank prohibited

Shareholders in any corporation organized under the provisions of this subchapter shall be liable for the amount of their unpaid stock subscriptions. No such corporation shall become a member of any Federal reserve bank.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

CODIFICATION

Section is comprised of par. 13 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

§ 622. Forfeiture of rights and privileges; dissolution; liability of directors and officers

Should any corporation organized under this subchapter violate or fail to comply with any of the provisions of this subchapter, all of its rights, privileges, and franchises derived herefrom may thereby be forfeited. Before any such corporation shall be declared dissolved, or its rights, privileges, and franchises forfeited, any noncompliance with or violation of such laws shall, however, be determined and adjudged by a court of the United States of competent jurisdiction, in a suit brought for that purpose in the district or territory in which the home office of such corporation is located, which suit shall be brought by the United States at the instance of the Board of Governors of the Federal Reserve System or the Attorney General. Upon adjudication of such noncompliance or violation, each director and officer who participated in, or assented to, the illegal act or acts shall be liable in his personal or individual capacity for all damages which the said corporation shall have sustained in consequence thereof. No dissolution shall take away or impair any remedy against the corporation, its stockholders, or officers for any liability or penalty previously incurred.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

Organized under this subchapter, referred to in text, was in the original ''organized hereunder'', meaning under section 25A of act Dec. 23, 1913, which comprises this subchapter (§ 611 et seq.).

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913.

CODIFICATION

Section is comprised of par. 14 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 623. Voluntary liquidation

Any corporation organized under this subchapter may go into voluntary liquidation and be closed by a vote of its shareholders owning two-thirds of its stock.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

Any corporation organized under this subchapter, referred to in text, was in the original ''Any such corporation''.

CODIFICATION

Section is comprised of par. 15 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

§ 624. Appointment of receiver or conservator

(A) IN GENERAL.—The Board may appoint a conservator or receiver for a corporation organized under the provisions of this subchapter to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank, and the conservator or receiver for such corporation shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

(B) EQUIVALENT AUTHORITY.—The Board shall have the same authority with respect to any conservator or receiver appointed for a corporation organized under the provisions of this subchapter under this section and any such corporation as the Comptroller of the Currency has with respect to a conservator or receiver of a national bank and the national bank for which a conservator or receiver has been appointed.

(C) TITLE 11 PETITIONS.—The Board may direct the conservator or receiver of a corporation organized under the provisions of this subchapter to file a petition pursuant to title 11, in which case, title 11 shall apply to the corporation in lieu of otherwise applicable Federal or State insolvency law.

(Dec. 23, 1913, ch. 6, § 25A(16), formerly § 25(a) (par.), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; renumbered § 25A (par.), Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281; renumbered § 25A(16), and amended Pub. L. 106–554, § 1(a)(5) [title I, § 112(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–396.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

CODIFICATION

Section is comprised of par. (16) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

AMENDMENTS

2000—Pub. L. 106–554 amended section catchline and text generally. Prior to amendment, text read as follows: ''Whenever the Board of Governors of the Federal Reserve System shall become satisfied of the insolvency of any corporation organized under this subchapter, it may appoint a receiver who shall take possession of all of the property and assets of the corporation and exercise the same rights, privileges, powers, and authority with respect thereto as are now exercised by receivers of national banks appointed by the Comptroller of the Currency of the United States: *Provided, however*, That the assets of the corporation subject to the laws of other countries or jurisdictions shall be dealt with in accordance with the terms of such laws.''

§ 625. Stockholders' meetings; books and records; reports; examination

Every corporation organized under the provisions of this subchapter shall hold a meeting of its stockholders annually upon a date fixed in its bylaws, such meeting to be held at its home office in the United States. Every such corporation shall keep at its home office books containing the names of all stockholders thereof, and the names and addresses of the members of its board of directors, together with copies of all reports made by it to the Board of Governors of the Federal Reserve System. Every such corporation shall make reports to the Board of Governors of the Federal Reserve System at such times and in such form as it may require; and shall be subject to examination once a year and at such other times as may be deemed necessary by the Board of Governors of the Federal Reserve System by examiners appointed by the Board of Governors of the Federal Reserve System, the cost of such examinations, including the compensation of the examiners, to be fixed by the Board of Governors of the Federal Reserve System and to be paid by the Corporation examined.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

CODIFICATION

Section is comprised of par. 17 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 626. Dividends; surplus fund

The directors of any corporation organized under the provisions of this subchapter may, semiannually, declare a dividend of so much of the net profits of the corporation as they shall judge expedient; but each corporation shall, before the declaration of a dividend, carry one-tenth of its net profits of the preceding half year to its surplus fund until the same shall amount to 20 per centum of its capital stock.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

CODIFICATION

Section is comprised of par. 18 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

§ 627. State taxation

Any corporation organized under the provisions of this subchapter shall be subject to tax by the State within which its home office is located in the same manner and to the same extent as other corporations organized under the laws of that State which are transacting a similar character of business. The shares of stock in such corporation shall also be subject to tax as the personal property of the owners or holders thereof in the same manner and to the same extent as the shares of stock in similar State corporations.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

CODIFICATION

Section is comprised of par. 19 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

§ 628. Extension of corporate existence

Any corporation organized under the provisions of this subchapter may at any time within the two years next previous to the date of the expiration of its corporate existence, by a vote of the shareholders owning two-thirds of its stock, apply to the Board of Governors of the Federal Reserve System for its approval to extend the period of its corporate existence for a term of not more than twenty years, and upon certified approval of the Board of Governors of the Federal Reserve System such corporation shall have its corporate existence for such extended period unless sooner dissolved by the act of the shareholders owning two-thirds of its stock, or by an Act of Congress or unless its franchise becomes forfeited by some violation of law.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

CODIFICATION

Section is comprised of par. 20 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 629. Conversion of banking corporations into Federal corporations; procedure

Any bank or banking institution, principally engaged in foreign business, incorporated by special law of any State or of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a corporation under the provisions of this subchapter may, by the vote of the shareholders owning not less than two-thirds of the capital stock of such bank or banking association, with the approval of the Board of Governors of the Federal Reserve System, be converted into a Federal corporation of the kind authorized by this subchapter with any name approved by the Board of Governors of the Federal Reserve System: *Provided, however*, That said conversion shall not be in contravention of the State law. In such case the articles of association and organization certificate may be executed by a majority of the directors of the bank or banking institution, and the certificate shall declare that the owners of at least two-thirds of the capital stock have authorized the directors to make such certificate and to change or convert the bank or banking institution into a Federal corporation. A majority of the directors, after executing the articles of association and the organization certificate, shall have power to execute all other papers and to do whatever may be required to make its organization perfect and complete as a Federal corporation. The shares of any such corporation may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the corporation until others are elected or appointed in accordance with the provisions of this subchapter. When the Board of Governors of the Federal Reserve System has given to such corporation a certificate that the provisions of this subchapter have been complied with, such corporation and all its stockholders, officers, and employees shall have the same powers and privileges, and shall be subject to the same duties, liabilities, and regulations, in all respects, as shall have been prescribed by this subchapter for corporations originally organized thereunder.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

CODIFICATION

Section is comprised of par. 21 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 630. Offenses by officers of corporation; punishment

Every officer, director, clerk, employee, or agent of any corporation organized under this subchapter who embezzles, abstracts, or willfully misapplies any of the moneys, funds, credits, securities, evidences of indebtedness or assets of any character of such corporation; or who, without authority from the directors, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, debenture, draft, bill of exchange, mortgage, judgment, or decree; or who makes any false entry in any book, report, or statement of such corporation with intent, in either case, to injure or defraud such corporation or any other company, body politic or corporate, or any individual person, or to deceive any officer of such corporation, the Board of Governors of the Federal Reserve System, or any agent or examiner appointed to examine the affairs of any such corporation; and every receiver of any such corporation and every clerk or employee of such receiver who shall embezzle, abstract, or willfully misapply or wrongfully convert to his own use any moneys, funds, credits, or assets of any character which may come into his possession or under his control in the execution of his trust or the performance of the duties of his employment; and every such receiver or clerk or employee of such receiver who shall, with intent to injure or defraud any person, body politic or corporate, or to deceive or mislead the Board of Governors of the Federal Reserve System, or any agent or examiner appointed to examine the affairs of such receiver, shall make any false entry in any book, report, or record of any matter connected with the duties of such receiver; and every person who with like intent aids or abets any officer, director, clerk, employee, or agent of any corporation organized under this subchapter, or receiver or clerk or employee of such receiver as aforesaid in any violation of this subchapter, shall upon conviction thereof be imprisoned for not less than two years nor more than ten years, and may also be fined not more than $5,000, in the discretion of the court.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

CODIFICATION

Section is comprised of par. 22 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, changed name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

§ 631. False representations as to liability of United States for acts of corporation; punishment

Whoever being connected in any capacity with any corporation organized under this subchapter, represents in any way that the United States is liable for the payment of any bond or other obligation, or the interest thereon, issued or incurred by any corporation organized under this subchapter, or that the United States incurs any liability in respect of any act or omission of the corporation, shall be punished by a fine or[1] not more than $10,000 and by imprisonment for not more than five years.

(Dec. 23, 1913, ch. 6, § 25A (par.), formerly § 25(a), as added Dec. 24, 1919, ch. 18, 41 Stat. 378; renumbered § 25A, Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this section'', meaning section 25A of act Dec. 23, 1913, which is classified to this subchapter (§ 611 et seq.).

Organized under this subchapter, referred to the second time in text, was in the original ''organized hereunder'', meaning under section 25A of act Dec. 23, 1913.

CODIFICATION

Section is comprised of par. 23 (undesignated) of section 25A of act Dec. 23, 1913, which comprises this subchapter. For complete classification of section 25A of this Act, see Codification note set out under section 611 of this title.

§ 632. Jurisdiction of United States courts; disposition by banks of foreign owned property

Notwithstanding any other provision of law, all suits of a civil nature at common law or in equity to which any corporation organized under the laws of the United States shall be a party, arising out of transactions involving international or foreign banking, or banking in a dependency or insular possession of the United States, or out of other international or foreign financial operations, either directly or through the agency, ownership, or control of branches or local institutions in dependencies or insular possessions of the United States or in foreign countries, shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such suits; and any defendant in any such suit may, at any time before the trial thereof,

[1] So in original. Probably should be ''of''.

remove such suits from a State court into the district court of the United States for the proper district by following the procedure for the removal of causes otherwise provided by law. Such removal shall not cause undue delay in the trial of such case and a case so removed shall have a place on the calendar of the United States court to which it is removed relative to that which it held on the State court from which it was removed.

Notwithstanding any other provision of law, all suits of a civil nature at common law or in equity to which any Federal Reserve bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such suits; and any Federal Reserve bank which is a defendant in any such suit may, at any time before the trial thereof, remove such suit from a State court into the district court of the United States for the proper district by following the procedure for the removal of causes otherwise provided by law. No attachment or execution shall be issued against any Federal Reserve bank or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court.

Whenever (1) any Federal Reserve bank has received any property from or for the account of a foreign state which is recognized by the Government of the United States, or from or for the account of a central bank of any such foreign state, and holds such property in the name of such foreign state or such central bank; (2) a representative of such foreign state who is recognized by the Secretary of State as being the accredited representative of such foreign state to the Government of the United States has certified to the Secretary of State the name of a person as having authority to receive, control, or dispose of such property; and (3) the authority of such person to act with respect to such property is accepted and recognized by the Secretary of State, and so certified by the Secretary of State to the Federal Reserve bank, the payment, transfer, delivery, or other disposal of such property by such Federal Reserve bank to or upon the order of such person shall be conclusively presumed to be lawful and shall constitute a complete discharge and release of any liability of the Federal Reserve bank for or with respect to such property.

Whenever (1) any insured bank has received any property from or for the account of a foreign state which is recognized by the Government of the United States, or from or for the account of a central bank of any such foreign state, and holds such property in the name of such foreign state or such central bank; (2) a representative of such foreign state who is recognized by the Secretary of State as being the accredited representative of such foreign state to the Government of the United States has certified to the Secretary of State the name of a person as having authority to receive, control, or dispose of such property; and (3) the authority of such person to act with respect to such property is accepted and recognized by the Secretary of State, and so certified by the Secretary of State to such insured bank, the payment, transfer, delivery, or other disposal of such property by such bank to or upon the order of such person shall be conclusively presumed to be lawful and shall constitute a complete discharge and release of any liability of such bank for or with respect to such property. Any suit or other legal proceeding against any insured bank or any officer, director, or employee thereof, arising out of the receipt, possession, or disposition of any such property shall be deemed to arise under the laws of the United States and the district courts of the United States shall have exclusive jurisdiction thereof, regardless of the amount involved; and any such bank or any officer, director, or employee thereof which is a defendant in any such suit may, at any time before trial thereof, remove such suit from a State court into the district court of the United States for the proper district by following the procedure for the removal of causes otherwise provided by law.

Nothing in this section shall be deemed to repeal or to modify in any manner any of the provisions of the Gold Reserve Act of 1934, as amended, the Silver Purchase Act of 1934, as amended, or subdivision (b) of section 5 of the Act of October 6, 1917, as amended, or any actions, regulations, rules, orders, or proclamations taken, promulgated, made, or issued pursuant to any of such statutes. In any case in which a license to act with respect to any property referred to in this section is required under any of said statutes, regulations, rules, orders, or proclamations, notification to the Secretary of State by the proper Government officer or agency of the issuance of an appropriate license or that appropriate licenses will be issued on application shall be a prerequisite to any action by the Secretary of State pursuant to this section, and the action of the Secretary of State shall relate only to such property as is included in such notification. Each such notification shall include the terms and conditions of such license or licenses and a description of the property to which they relate.

For the purposes of this section, (1) the term ''property'' includes gold, silver, currency, credits, deposits, securities, choses in action, and any other form of property, the proceeds thereof, and any right, title, or interest therein; (2) the term ''foreign state'' includes any foreign government or any department, district, province, county, possession, or other similar governmental organization or subdivision of a foreign government, and any agency or instrumentality of any such foreign government or of any such organization or subdivision; (3) the term ''central bank'' includes any foreign bank or banker authorized to perform any one or more of the functions of a central bank; (4) the term ''person'' includes any individual, or any corporation, partnership, association, or other similar organization; and (5) the term ''insured bank'' shall have the meaning given to it in section 12B of this Act.

(Dec. 23, 1913, ch. 6, §25B, formerly §25(b), as added June 16, 1933, ch. 89, §15, 48 Stat. 184; amended Apr. 7, 1941, ch. 43, §2, 55 Stat. 131; renumbered §25B, Pub. L. 102–242, title I, §142(e)(3), Dec. 19, 1991, 105 Stat. 2281.)

REFERENCES IN TEXT

The Gold Reserve Act of 1934, as amended, referred to in text, is act Jan. 30, 1934, ch. 6, 48 Stat. 337, as amended, which enacted sections 315b, 405b, 408a, 408b, 440 to 446, 754a, 754b, 822a, 822b, and 824 of former Title 31, Money and Finance, and amended sections 314, 316, 733, 734, 752, 753, 767, 771, and 821 of former Title 31 and sections 411, 412, 413, 414, 415, 417, and 467 of this title. Title 31 was revised, codified, and enacted into law by Pub. L. 97–258, §1, Sept. 13, 1982, 96 Stat. 877. For disposition of sections of former Title 31 into revised Title 31, see Table preceding section 101 of Title 31. For complete classification of this Act to the Code, see Tables.

The Silver Purchase Act of 1934, as amended, referred to in text, is act June 19, 1934, ch. 674, 48 Stat. 1178, which was classified to sections 311a, 316a, 316b, 405a, 448 to 448e, 734a, and 734b of former Title 31, Money and Finance, and was repealed by Pub. L. 88–36, title I, §1, June 4, 1963, 77 Stat. 54. For complete classification of this Act to the Code, see Tables.

Subdivision (b) of section 5 of the Act of October 6, 1917, referred to in text, is classified to section 95a of this title and section 5(b) of Title 50, Appendix, War and National Defense.

Section 12B of this Act, referred to in the text, was section 12B of the Federal Reserve Act and was formerly classified to section 264 of this title. Section 12B was withdrawn from the Federal Reserve Act and made a separate act to be known as the Federal Deposit Insurance Act by section 1 of act Sept. 21, 1950, ch. 967, 64 Stat. 873. The Federal Deposit Insurance Act is classified generally to chapter 16 (§1811 et seq.) of this title.

CODIFICATION

Section was enacted as section 25B, formerly section 25(b), of the Federal Reserve Act, and not as part of section 25A of that Act which comprises this subchapter.

AMENDMENTS

1941—Act Apr. 7, 1941, added last four pars.

§ 633. Potential liability on foreign accounts

(a) Exceptions from repayment requirement

A member bank shall not be required to repay any deposit made at a foreign branch of the bank if the branch cannot repay the deposit due to—

(1) an act of war, insurrection, or civil strife; or

(2) an action by a foreign government or instrumentality (whether de jure or de facto) in the country in which the branch is located;

unless the member bank has expressly agreed in writing to repay the deposit under those circumstances.

(b) Regulations

The Board and the Comptroller of the Currency may jointly prescribe such regulations as they deem necessary to implement this section.

(Dec. 23, 1913, ch. 6, §25C, as added Pub. L. 103–325, title III, §326(a), Sept. 23, 1994, 108 Stat. 2229.)

CODIFICATION

Section was enacted as section 25C of the Federal Reserve Act, and not as part of section 25A of that Act which comprises this subchapter.

EXISTING CLAIMS NOT AFFECTED

Section 326(c) of Pub. L. 103–325 provided that: ''Section 25C of the Federal Reserve Act [this section] (as added by subsection (a)) shall not be applied retroactively and shall not be construed to affect or apply to any claim or cause of action addressed by that section arising from events or circumstances that occurred before the date of enactment of this Act [Sept. 23, 1994].''

CHAPTER 6A—EXPORT-IMPORT BANK OF THE UNITED STATES

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SUBCHAPTER I—GENERAL PROVISIONS

§ 635. Powers and functions of Bank

(a) General banking business; use of mails; publication of documents, reports, contracts, etc.; use of assets and allocated or borrowed money; payment of dividends; medium-term financing; dissemination of information; enhancement of medium-term program

(1) There is created a corporation with the name Export-Import Bank of the United States, which shall be an agency of the United States of America. The objects and purposes of the Bank shall be to aid in financing and to facilitate exports of goods and services, imports, and the exchange of commodities and services between the United States or any of its territories or insular possessions and any foreign country or the agencies or nationals of any such country, and in so doing to contribute to the employment of United States workers. The Bank's objective in authorizing loans, guarantees, insurance, and credits shall be to contribute to maintaining or increasing employment of United States workers. In connection with and in furtherance of its objects and purposes, the bank is authorized and empowered to do a general banking business except that of circulation; to receive deposits; to purchase, discount, rediscount, sell, and negotiate, with or without its endorsement or guaranty, and to guarantee notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to guarantee, insure, coinsure, and reinsure against political and credit risks of loss; to purchase, sell, and guarantee securities but not to purchase with its funds any stock in any other corporation except that it may acquire any such stock through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness to it; to accept bills and drafts drawn upon it; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to perform any act herein authorized in participation with any other person, including any individual, partnership, corporation, or association; to adopt, alter, and use a corporate seal, which shall be judicially noticed; to sue and to be sued, to complain and to defend in any court of competent jurisdiction; to represent itself or to contract for representation in all legal and arbitral proceedings outside the United States; and the enumeration of the foregoing powers shall not be deemed to exclude other powers necessary to the achievement of the objects and purposes of the bank. The bank shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Government. The Bank is authorized to publish or arrange for the publication of any documents, reports, contracts, or other material necessary in connection with or in furtherance of its objects and purposes without regard to the provisions of section 501 of title 44 whenever the Bank determines that publication in accordance with the provisions of such section would not be practicable. Subject to regulations which the Bank shall issue pursuant to section 553 of title 5, the Bank may impose and collect reasonable fees to cover the costs of conferences and seminars sponsored by, and publications provided by, the Bank, and may accept reimbursement for travel and subsistence expenses incurred by a director, officer, or employee of the Bank, in accordance with subchapter I of chapter 57 of title 5. Amounts received under the preceding sentence shall be credited to the fund which initially paid for such activities and shall be offset against the expenses of the Bank for such activities. The bank is authorized to use all of its assets and all moneys which have been or may hereafter be allocated to or borrowed by it in the exercise of its functions. Net earnings of the bank after reasonable provision for possible losses shall be used for payment of dividends on capital stock. Any such dividends shall be deposited into the Treasury as miscellaneous receipts.

(2) In order for the Bank to be competitive in all of its financing programs with countries whose exports compete with United States exports, the Bank shall establish a program that—

(A) provides medium-term financing where necessary to be fully competitive—

(i) at rates of interest to the customer which are equal to rates established in international agreements; and

(ii) in amounts up to 85 percent of the total cost of the exports involved; and

(B) enables the Bank to cooperate fully with the Secretary of Commerce and the Administrator of the Small Business Administration to develop a program for purposes of disseminating information (using existing private institutions) to small business concerns regarding the medium-term financing provided under this paragraph.

(3) ENHANCEMENT OF MEDIUM-TERM PROGRAM.—To enhance the medium-term financing program established pursuant to paragraph (2), the Bank shall establish measures to—

(A) improve the competitiveness of the Bank's medium-term financing and ensure that its medium-term financing is fully competitive with that of other major official export credit agencies;

(B) ease the administrative burdens and procedural and documentary requirements imposed on the users of medium-term financing;

(C) attract the widest possible participation of private financial institutions and other sources of private capital in the medium-term financing of United States exports; and

(D) render the Bank's medium-term financing as supportive of United States exports as is its Direct Loan Program.

(b) Guarantees, insurance, and extension of credit functions; competitive with Government-supported rates and terms and conditions of foreign exporting countries; survey and report; interest rates; private capital encouragement; national interest determinations; delivery of United States services in international commerce; small business concern encouragement; coverage of losses by Foreign Credit Insurance Association; loans to Union of Soviet Socialist Republics for fossil fuel research, etc.; nuclear safeguards violations resulting in limitations on exports and credit; defense article credit sales to less developed countries; amount outstanding; supplementation of Commodity Credit Corporation programs; limitations on authority of Bank; prohibition relating to Angola

(1)(A) It is the policy of the United States to foster expansion of exports of manufactured goods, agricultural products, and other goods and services, thereby contributing to the promotion and maintenance of high levels of employment and real income, a commitment to reinvestment and job creation, and the increased development of the productive resources of the United States. To meet this objective in all its programs, the Export-Import Bank is directed, in the exercise of its functions, to provide guarantees, insurance, and extensions of credit at rates and on terms and other conditions which are fully competitive with the Government-supported rates and terms and other conditions available for the financing of exports of goods and services from the principal countries whose exporters compete with United States exporters, including countries the governments of which are not members of the Arrangement (as defined in section 635i–3(h)(3) of this title). The Bank shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in government-supported export financing and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce government subsidized export financing.

(B) It is further the policy of the United States that loans made by the Bank in all its programs shall bear interest at rates determined by the Board of Directors, consistent with the Bank's mandate to support United States exports at rates and on terms and conditions which are fully competitive with exports of other countries, and consistent with international agreements. For the purpose of the preceding sentence, rates and terms and conditions need not be identical in all respects to those offered by foreign countries, but should be established so that the effect of such rates, terms, and conditions for all the Bank's programs, including those for small businesses and for medium-term financing, will be to neutralize the effect of such foreign credit on international sales competition. The Bank shall consider its average cost of money as one factor in its determination of interest rates, where such consideration does not impair the Bank's primary function of expanding United States exports through fully competitive financing. The Bank may not impose a credit application fee unless (i) the fee is competitive with the average fee charged by the Bank's primary foreign competitors, and (ii) the borrower or the exporter is given the option of paying the fee at the outset of the loan or over the life of the loan and the present value of the fee determined under either such option is the same amount. It is also the policy of the United States that the Bank in the exercise of its functions should supplement and encourage, and not compete with, private capital; that the Bank, in determining whether to provide support for a transaction under the loan, guarantee, or insurance program, or any combination thereof, shall consider the need to involve private capital in support of United States exports as well as the cost of the transaction as calculated in accordance with the requirements of the Federal Credit Reform Act of 1990 [2 U.S.C. 661 et seq.]; that the Bank shall accord equal opportunity to export agents and managers, independent export firms, export trading companies, and small commercial banks in the formulation and implementation of its programs; that the Bank should give emphasis to assisting new and small business entrants in the agricultural export market, and shall, in cooperation with other relevant Government agencies, including the Commodity Credit Corporation, develop a program of education to increase awareness of export opportunities among small agribusinesses and cooperatives; that loans, so far as possible consistent with the carrying out of the purposes of subsection (a) of this section, shall generally be for specific purposes, and, in the judgment of the Board of Directors, offer reasonable assurance of repayment; and that in authorizing any loan or guarantee, the Board of Directors shall take into account any serious adverse effect of such loan or guarantee on the competitive position of United States industry, the availability of materials which are in short supply in the United States, and employment in the United States, and shall give particular emphasis to the objective of strengthening the competitive position of United States exporters and thereby of expanding total United States exports. Only in cases where the President, after consultation with the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, determines that such action would be in the national interest where such action would clearly and importantly advance United States policy in such areas as international terrorism (including, when relevant, a foreign nation's lack of cooperation in efforts to eradicate terrorism), nuclear proliferation, the enforcement of the Foreign Corrupt Practices Act of 1977, the Arms Export Control Act [22 U.S.C. 2751 et seq.], the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.], or the Export Administration Act of 1979 [50 U.S.C. App. 2401 et seq.], environmental protection and human rights (such as are provided in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948) (including child labor), should the Export-Import Bank deny applications for credit for nonfinancial or noncommercial considerations. Each such determination shall be delivered in writing to the President of the Bank, shall state

that the determination is made pursuant to this section, and shall specify the applications or categories of applications for credit which should be denied by the Bank in furtherance of the national interest.

(C) Consistent with the policy of section 3261 of title 22 and section 2151q[1] of title 22, the Board of Directors shall name an officer of the Bank whose duties shall include advising the President of the Bank on ways of promoting the export of goods and services to be used in the development, production, and distribution of nonnuclear renewable energy resources, disseminating information concerning export opportunities and the availability of Bank support for such activities, and acting as a liaison between the Bank and the Department of Commerce and other appropriate departments and agencies.

(D) It is further the policy of the United States to foster the delivery of United States services in international commerce. In exercising its powers and functions, the Bank shall give full and equal consideration to making loans and providing guarantees for the export of services (independently, or in conjunction with the export of manufactured goods, equipment, hardware or other capital goods) consistent with the Bank's policy to neutralize foreign subsidized credit competition and to supplement the private capital market.

(E)(i)(I) It is further the policy of the United States to encourage the participation of small business in international commerce.

(II) In exercising its authority, the Bank shall develop a program which gives fair consideration to making loans and providing guarantees for the export of goods and services by small businesses.

(ii) It is further the policy of the United States that the Bank shall give due recognition to the policy stated in section 631(a) of title 15 that ''the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise''.

(iii) In furtherance of this policy, the Board of Directors shall designate an officer of the Bank who—

(I) shall be responsible to the President of the Bank for all matters concerning or affecting small business concerns; and

(II) among other duties, shall be responsible for advising small business concerns of the opportunities for small business concerns in the functions of the Bank, with particular emphasis on conducting outreach and increasing loans to socially and economically disadvantaged small business concerns (as defined in section 637(a)(4) of title 15), small business concerns (as defined in section 632(a) of title 15) owned by women, and small business concerns (as defined in section 632(a) of title 15) employing fewer than 100 employees, and for maintaining liaison with the Small Business Administration and other departments and agencies in matters affecting small business concerns.

(iv) The Director appointed to represent the interests of small business under section 635a(c) of this title shall ensure that the Bank carries out its responsibilities under clauses (ii) and (iii) of this subparagraph and that the Bank's financial and other resources are, to the maximum extent possible, appropriately used for small business needs.

(v) To assure that the purposes of clauses (i) and (ii) of this subparagraph are carried out, the Bank shall make available, from the aggregate loan, guarantee, and insurance authority available to it, an amount to finance exports directly by small business concerns (as defined under section 632 of title 15) which shall be not less than 20 percent of such authority for each fiscal year. From the amount made available under the preceding sentence, it shall be a goal of the Bank to increase the amount made available to finance exports directly by small business concerns referred to in section 635a(i)(1) of this title.

(vi) The Bank shall utilize the amount set aside pursuant to clause (v) of this subparagraph to offer financing for small business exports on terms which are fully competitive with regard to interest rates and with regard to the portion of financing which may be provided, guaranteed, or insured. Financing under this clause (vi) shall be available without regard to whether financing for the particular transaction was disapproved by any other Federal agency.

(vii)(I) The Bank shall utilize a part of the amount set aside pursuant to clause (v) to provide lines of credit or guarantees to consortia of small or medium size banks, export trading companies, State export finance agencies, export financing cooperatives, small business investment companies (as defined in section 662 of title 15), or other financing institutions or entities in order to finance small business exports.

(II) Financing under this clause (vii) shall be made available only where the consortia or the participating institutions agree to undertake processing, servicing, and credit evaluation functions in connection with such financing.

(III) To the maximum extent practicable, the Bank shall delegate to the consortia or other financing institutions or entities the authority to approve financing under this clause (vii).

(IV) In the administration of the program under this clause (vii), the Bank shall provide appropriate technical assistance to participating consortia and may require such consortia periodically to furnish information to the Bank regarding the number and amount of loans made and the creditworthiness of the borrowers.

(viii) In order to assure that the policy stated in clause (i) is carried out, the Bank shall promote small business exports and its small business export financing programs in cooperation with the Secretary of Commerce, the Office of International Trade of the Small Business Administration, and the private sector, particularly small business organizations, State agencies, chambers of commerce, banking organizations, export management companies, export trading companies, and private industry.

(ix) The Bank shall provide, through creditworthy trade associations, export trading companies, State export finance companies, export finance cooperatives, and other multiple-exporter organizations, medium-term risk protec-

[1] See References in Text note below.

tion coverage for the members and clients of such organizations. Such coverage shall be made available to each such organization under a single risk protection policy covering its members or clients. Nothing in this provision shall be interpreted as limiting the Bank's authority to deny support for specific transactions or to disapprove a request by such an organization to participate in such coverage.

(x) The Bank shall implement technology improvements that are designed to improve small business outreach, including allowing customers to use the Internet to apply for the Bank's small business programs.

(F) Consistent with international agreements, the Bank shall urge the Foreign Credit Insurance Association to provide coverage against 100 per centum of any loss with respect to exports having a value of less than $100,000.

(G) Participation in or access to long-, medium-, and short-term financing, guarantees, and insurance provided by the Bank shall not be denied solely because the entity seeking participation or access is not a bank or is not a United States person.

(H)(i) It is further the policy of the United States to foster the development of democratic institutions and market economies in countries seeking such development, and to assist the export of high technology items to such countries.

(ii) In exercising its authority, the Bank shall develop a program for providing guarantees and insurance with respect to the export of high technology items to countries making the transition to market based economies, including eligible East European countries (within the meaning of section 5402 of title 22).

(iii) As part of the ongoing marketing and outreach efforts of the Bank, the Bank shall, to the maximum extent practicable, inform high technology companies, particularly small business concerns (as such term is defined in section 632 of title 15), about the programs of the Bank for United States companies interested in exporting high technology goods to countries making the transition to market based economies, including any eligible East European country (within the meaning of section 5402 of title 22).

(iv) In carrying out clause (iii), the Bank shall—

(I) work with other agencies involved in export promotion and finance; and

(II) invite State and local governments, trade centers, commercial banks, and other appropriate public and private organizations to serve as intermediaries for the outreach efforts.

(I) The President of the Bank shall undertake efforts to enhance the Bank's capacity to provide information about the Bank's programs to small and rural companies which have not previously participated in the Bank's programs. Not later than 1 year after November 26, 1997, the President of the Bank shall submit to Congress a report on the activities undertaken pursuant to this subparagraph.

(J) The Bank shall implement an electronic system designed to track all pending transactions of the Bank.

(K) The Bank shall promote the export of goods and services related to renewable energy sources.

(L) The Bank shall require an applicant for assistance from the Bank to disclose whether the applicant has been found by a court of the United States to have violated the Foreign Corrupt Practices Act of 1977, the Arms Export Control Act [22 U.S.C. 2751 et seq.], the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.], or the Export Administration Act of 1979 [50 U.S.C. App. 2401 et seq.] within the preceding 12 months, and shall maintain, in cooperation with the Department of Justice, for not less than 3 years a record of such applicants so found to have violated any such Act.

(2) PROHIBITION ON AID TO MARXIST-LENINIST COUNTRIES.—

(A) IN GENERAL.—The Bank in the exercise of its functions shall not guarantee, insure, extend credit, or participate in the extension of credit—

(i) in connection with the purchase or lease of any product by a Marxist-Leninist country, or agency or national thereof; or

(ii) in connection with the purchase or lease of any product by any other foreign country, or agency or national thereof, if the product to be purchased or leased by such other country, agency, or national is, to the knowledge of the Bank, principally for use in, or sale or lease to, a Marxist-Leninist country.

(B) MARXIST-LENINIST COUNTRY DEFINED.—

(i) IN GENERAL.—For purposes of this paragraph, the term ''Marxist-Leninist country'' means any country that maintains a centrally planned economy based on the principles of Marxism-Leninism, or is economically and militarily dependent on any other such country.

(ii) SPECIFIC COUNTRIES DEEMED TO BE MARXIST-LENINIST.—Unless otherwise determined by the President in accordance with subparagraph (C), the following countries are deemed to be Marxist-Leninist countries for purposes of this paragraph:

(I) Cambodian People's Republic.

(II) Democratic People's Republic of Korea.

(III) Democratic Republic of Afghanistan.

(IV) Lao People's Democratic Republic.

(V) People's Republic of China.

(VI) Republic of Cuba.

(VII) Socialist Federal Republic of Yugoslavia.

(VIII) Socialist Republic of Vietnam.

(IX) Tibet.

(C) PRESIDENTIAL DETERMINATION THAT A COUNTRY HAS CEASED TO BE MARXIST-LENINIST.—If the President determines that any country on the list contained in subparagraph (B)(ii) has ceased to be a Marxist-Leninist country (within the definition of such term in subparagraph (B)(i)), such country shall not be treated as a Marxist-Leninist country for purposes of this paragraph after the date of such determination, unless the President subsequently determines that such country has again become a Marxist-Leninist country.

(D) PRESIDENTIAL DETERMINATION RELATING TO FINANCING IN THE NATIONAL INTEREST.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to guarantees, insurance, or extensions of credit by the Bank to a country, agency, or national described in clause (i) or (ii) of subparagraph (A) (in connection with transactions described in such clauses) if the President determines that such guarantees, insurance, or extensions of credit are in the national interest.

(ii) SEPARATE DETERMINATION FOR CERTAIN TRANSACTIONS.—The President shall make a separate determination under clause (i) for each transaction described in clause (i) or (ii) of subparagraph (A) for which the Bank would extend a loan in an amount equal to or greater than $50,000,000.

(iii) REPORT OF CLAUSE (i) DETERMINATIONS TO CONGRESS.—Any determination by the President under clause (i) shall be reported to the Congress not later than the earlier of—

(I) the end of the 30-day period beginning on the date of such determination; or

(II) the date the Bank takes final action with respect to the first transaction involving the country, agency, or national for which such determination is made after January 4, 1975, unless a report of a determination with respect to such country, agency, or national was made and reported before January 4, 1975.

(iv) REPORT OF CLAUSE (ii) DETERMINATIONS TO CONGRESS.—Any determination by the President under clause (ii) shall be reported to the Congress not later than the earlier of—

(I) the end of the 30-day period beginning on the date of such determination; or

(II) the date the Bank takes final action with respect to the transaction for which such determination is made.

(3) Except as provided by the fourth sentence of this paragraph, no loan or financial guarantee or general guarantee or insurance facility or combination thereof (i) in an amount which equals or exceeds $100,000,000, or (ii) for the export of technology, fuel, equipment, materials, or goods or services to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities, shall be finally approved by the Board of Directors of the Bank, unless in each case the Bank has submitted to the Congress with respect to such loan, financial guarantee, or combination thereof, a detailed statement describing and explaining the transaction, at least 25 days of continuous session of the Congress prior to the date of final approval. For the purpose of the preceding sentence, continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 25 day period referred to in such sentence. Such statement shall contain—

(A) in the case of a loan or financial guarantee—

(i) a brief description of the purposes of the transaction;

(ii) the identity of the party or parties requesting the loan or financial guarantee;

(iii) the nature of the goods or services to be exported and the use for which the goods or services are to be exported; and

(iv) in the case of a general guarantee or insurance facility—

(I) a description of the nature and purpose of the facility;

(II) the total amount of guarantees or insurance; and

(III) the reasons for the facility and its methods of operation; and

(B) a full explanation of the reasons for Bank financing of the transaction, the amount of the loan to be provided by the Bank, the approximate rate and repayment terms at which such loan will be made available and the approximate amount of the financial guarantee.

If the Bank submits a statement to the Congress under this paragraph and either House of Congress is in an adjournment for a period which continues for at least ten days after the date of submission of the statement, then any such loan or guarantee or combination thereof may, subject to the second sentence of this paragraph, be finally approved by the Board of Directors upon the termination of the twenty-five-day period referred to in the first sentence of this paragraph or upon the termination of a thirty-five-calendar-day period (which commences upon the date of submission of the statement), whichever occurs sooner.

(4)(A) If the Secretary of State determines that—

(i) any country that has agreed to International Atomic Energy Agency nuclear safeguards materially violates, abrogates, or terminates, after October 26, 1977, such safeguards;

(ii) any country that has entered into an agreement for cooperation concerning the civil use of nuclear energy with the United States materially violates, abrogates, or terminates, after October 26, 1977, any guarantee or other undertaking to the United States made in such agreement;

(iii) any country that is not a nuclear-weapon state detonates, after October 26, 1977, a nuclear explosive device;

(iv) any country willfully aids or abets, after June 29, 1994, any non-nuclear-weapon state to acquire any such nuclear explosive device or to acquire unsafeguarded special nuclear material; or

(v) any person knowingly aids or abets, after September 23, 1996, any non-nuclear-weapon state to acquire any such nuclear explosive device or to acquire unsafeguarded special nuclear material,

then the Secretary of State shall submit a report to the appropriate committees of the Congress and to the Board of Directors of the Bank stating such determination and identifying each country or person the Secretary determines has so acted.

(B)(i) If the Secretary of State makes a determination under subparagraph (A)(v) with respect to a foreign person, the Congress urges the Secretary to initiate consultations immediately

with the government with primary jurisdiction over that person with respect to the imposition of the prohibition contained in subparagraph (C).

(ii) In order that consultations with that government may be pursued, the Board of Directors of the Bank shall delay imposition of the prohibition contained in subparagraph (C) for up to 90 days if the Secretary of State requests the Board to make such delay. Following these consultations, the prohibition contained in subparagraph (C) shall apply immediately unless the Secretary determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subparagraph (A)(v). The Board of Directors of the Bank shall delay the imposition of the prohibition contained in subparagraph (C) for up to an additional 90 days if the Secretary requests the Board to make such additional delay and if the Secretary determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(iii) Not later than 90 days after making a determination under subparagraph (A)(v), the Secretary of State shall submit to the appropriate committees of the Congress a report on the status of consultations with the appropriate government under this subparagraph, and the basis for any determination under clause (ii) that such government has taken specific corrective actions.

(C) The Board of Directors of the Bank shall not give approval to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to any country, or to or by any person, identified in the report described in subparagraph (A).

(D) The prohibition in subparagraph (C) shall not apply to approvals to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to a country with respect to which a determination is made under clause (i), (ii), (iii), or (iv) of subparagraph (A) regarding any specific event described in such clause if the President determines and certifies in writing to the Congress not less than 45 days prior to the date of the first approval following the determination that it is in the national interest for the Bank to give such approvals.

(E) The prohibition in subparagraph (C) shall not apply to approvals to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to or by a person with respect to whom a determination is made under clause (v) of subparagraph (A) regarding any specific event described in such clause if—

(i) the Secretary of State determines and certifies to the Congress that the appropriate government has taken the corrective actions described in subparagraph (B)(ii); or

(ii) the President determines and certifies in writing to the Congress not less than 45 days prior to the date of the first approval following the determination that—

(I) reliable information indicates that—

(aa) such person has ceased to aid or abet any non-nuclear-weapon state to acquire any nuclear explosive device or to acquire unsafeguarded special nuclear material; and

(bb) steps have been taken to ensure that the activities described in item (aa) will not resume; or

(II) the prohibition would have a serious adverse effect on vital United States interests.

(F) For purposes of this paragraph:

(i) The term ''country'' has the meaning given to ''foreign state'' in section 1603(a) of title 28.

(ii) The term ''knowingly'' is used within the meaning of the term ''knowing'' in section 78dd–2(h)(3) of title 15.

(iii) The term ''person'' means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity.

(iv) The term ''nuclear-weapon state'' has the meaning given the term in Article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons, signed at Washington, London, and Moscow on July 1, 1968.

(v) The term ''non-nuclear-weapon state'' has the meaning given the term in section 6305(5) of title 22.

(vi) The term ''nuclear explosive device'' has the meaning given the term in section 6305(4) of title 22.

(vii) The term ''unsafeguarded special nuclear material'' has the meaning given the term in section 6305(8) of title 22.

(5) The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with (A) the purchase of any product, technical data, or other information by a national or agency of any nation which engages in armed conflict, declared or otherwise, with the Armed Forces of the United States, (B) the purchase by any nation (or national or agency thereof) of any product, technical data, or other information which is to be used principally by or in any such nation described in clause (A), or (C) the purchase of any liquid metal fast breeder nuclear reactor or any nuclear fuel reprocessing facility. The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with the purchase of any product, technical data, or other information by a national or agency of any nation if the President determines that any such transaction would be contrary to the national interest.

(6)(A) The Bank shall not guarantee, insure, or extend credit, or participate in an extension of credit in connection with any credit sale of defense articles and defense services to any country.

(B) Subparagraph (A) shall not apply to any sale of defense articles or services if—

(i) the Bank is requested to provide a guarantee or insurance for the sale;

(ii) the President determines that the defense articles or services are being sold primarily for anti-narcotics purposes;

(iii) section 2291j(e) of title 22 does not apply with respect to the purchasing country;

(iv) the President determines, in accordance with subparagraph (C), that the sale is in the national interest of the United States; and

(v) the Bank determines that, notwithstanding the provision of a guarantee or insurance for the sale, not more than 5 percent of the guarantee and insurance authority available to the Bank in any fiscal year will be used by the Bank to support the sale of defense articles or services.

(C) In determining whether a sale of defense articles or services would be in the national interest of the United States, the President shall take into account whether the sale would—

(i) be consistent with the anti-narcotics policy of the United States;

(ii) involve the end use of a defense article or service in a major illicit drug producing or major drug-transit country (as defined in section 2291(e) of title 22); and

(iii) be made to a country with a democratic form of government.

(D)(i) The Board shall not give approval to guarantee or insure a sale of defense articles or services unless—

(I) the President determines, in accordance with subparagraph (C), that it is in the national interest of the United States for the Bank to provide such guarantee or insurance;

(II) the President determines, after consultation with the Assistant Secretary of State for Human Rights and Humanitarian Affairs, that the purchasing country has complied with all restrictions imposed by the United States on the end use of any defense articles or services for which a guarantee or insurance was provided under subparagraph (B), and has not used any such defense articles or services to engage in a consistent pattern of gross violations of internationally recognized human rights; and

(III) such determinations have been reported to the Speaker and the Committee on Financial Services of the House of Representatives, and to the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate, not less than 25 days of continuous session of the Congress before the date of such approval.

(ii) For purposes of clause (i), continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 25-day period referred to in such clause.

(E) The provision of a guarantee or insurance under subparagraph (B) shall be deemed to be the provision of security assistance for purposes of section 2304 of title 22 (relating to governments which engage in a consistent pattern of gross violations of internationally recognized human rights).

(F) To the extent that defense articles or services for which a guarantee or insurance is provided under subparagraph (B) are used for a purpose other than anti-narcotics purposes, they may be used only for those purposes for which defense articles and defense services sold under the Arms Export Control Act [22 U.S.C. 2751 et seq.] (relating to the foreign military sales program) may be used under section 4 of such Act [22 U.S.C. 2754].

(G) As used in subparagraphs (B), (C), (D), and (F), the term ''defense articles or services'' means articles, services, and related technical data that are designated as defense articles and defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act [22 U.S.C. 2778, 2794(7)] and listed on the United States Munitions List (part 121 of title 22 of the Code of Federal Regulations).

(H) Once in each calendar quarter, the Bank shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives on all instances in which the Bank, during the reporting quarter, guaranteed, insured, or extended credit or participated in an extension of credit in connection with any credit sale of an article, service, or related technical data described in subparagraph (G) that the Bank determined would not be put to a military use or described in subparagraph (I)(i). Such report shall include a description of each of the transactions and the justification for the Bank's actions.

(I)(i) Subparagraph (A) shall not apply to a transaction involving defense articles or services if—

(I) the Bank determines that—

(aa) the defense articles or services are nonlethal; and

(bb) the primary end use of the defense articles or services will be for civilian purposes; and

(II) at least 15 calendar days before the date on which the Board of Directors of the Bank gives final approval to Bank participation in the transaction, the Bank provides notice of the transaction to the Committees on Financial Services and on Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and on Appropriations of the Senate.

(ii) Not more than 10 percent of the loan, guarantee, and insurance authority available to the Bank for a fiscal year may be used by the Bank to support the sale of defense articles or services to which subparagraph (A) does not apply by reason of clause (i) of this subparagraph.

(iii) Not later than September 1 of each fiscal year, the Comptroller General of the United States, in consultation with the Bank, shall submit to the Committees on Financial Services and on Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and on Appropriations of the Senate a report on the end uses of any defense articles or services described in clause (i) with respect to which the Bank provided support during the second preceding fiscal year.

(7) In no event shall the Bank have outstanding at any time in excess of 7½ per centum of

the limitation imposed by section 635e of this title for such guarantees, insurance, credits or participation in credits with respect to exports of defense articles and services to countries which, in the judgment of the Board of Directors of the Bank, are less developed.

(8) The Bank shall supplement but not compete with private capital and the programs of the Commodity Credit Corporation to ensure that adequate financing will be made available to assist the export of agricultural commodities, except that, consistent with paragraph (1)(A) of this subsection, the Bank in assisting any such export transactions shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in Government-supported export financing, and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce Government subsidized export financing. In order to carry out the purposes of this subsection, the Bank shall consult with the Secretary of Agriculture and where the Secretary of Agriculture has recommended against Bank financing of the export of a particular agricultural commodity, shall take such recommendation into consideration in determining whether to provide credit or other assistance for any export sale of such commodity, and shall consider the importance of agricultural commodity exports to the United States export market and the nation's balance of trade in deciding whether or not to provide assistance under this subsection.

(9)(A) The Board of Directors of the Bank shall, in consultation with the Secretary of Commerce and the Trade Promotion Coordinating Committee, take prompt measures, consistent with the credit standards otherwise required by law, to promote the expansion of the Bank's financial commitments in sub-Saharan Africa under the loan, guarantee, and insurance programs of the Bank.

(B)(i) The Board of Directors shall establish and use an advisory committee to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion described in subparagraph (A).

(ii) The advisory committee shall make recommendations to the Board of Directors on how the Bank can facilitate greater support by United States commercial banks for trade with sub-Saharan Africa.

(iii) The advisory committee shall terminate on September 30, 2011.

(C) The Bank shall include in the annual report to the Congress submitted under section 635g(a) of this title a separate section that contains a report on the efforts of the Bank to—

(i) improve its working relationships with the African Development Bank, the African Export-Import Bank, and other institutions in the region that are relevant to the purposes of subparagraph (A) of this paragraph; and

(ii) coordinate closely with the United States Foreign Service and Foreign Commercial Service, and with the overall strategy of the United States Government for economic engagement with Africa pursuant to the African Growth and Opportunity Act [19 U.S.C. 3701 et seq.].

(D) Consistent with the requirement that the Bank obtain a reasonable assurance of repayment in connection with each transaction the Bank supports, the Bank shall, in consultation with the entities described in subparagraph (C), seek to qualify a greater number of appropriate African entities for participation in programs of the Bank.

(10)(A) The Bank shall not, without a specific authorization by law, guarantee, insure, or extend credit (or participate in the extension of credit) to—

(i) assist specific countries with balance of payments financing; or

(ii) assist (as the primary purpose of any such guarantee, insurance, or credit) any country in the management of its international indebtedness, other than its outstanding obligations to the Bank.

(B) Nothing contained in subparagraph (A) shall preclude guarantees, insurance, or credit the primary purpose of which is to support United States exports.

(11) PROHIBITION RELATING TO ANGOLA.—The Bank may not guarantee, insure, or extend (or participate in the extension of) credit in connection with any export of any good (other than food or an agricultural commodity) or service to the People's Republic of Angola until the President certifies to the Congress that free and fair elections have been held in Angola in which all participants were afforded free and fair access, and that the government of Angola—

(A) is willing, and is actively seeking, to achieve an equitable political settlement of the conflict in Angola, including free and fair elections, through a mutual cease-fire and a dialogue with the opposition armed forces;

(B) has demonstrated progress in protecting internationally recognized human rights, and particularly in—

(i) ending, through prosecution or other means, involvement of members of the military and security forces in political violence and abuses of internationally recognized human rights;

(ii) vigorously prosecuting persons engaged in political violence who are connected with the government; and

(iii) bringing to justice those responsible for the abduction, torture, and murder of citizens of Angola and citizens of the United States; and

(C) has demonstrated progress in its respect for, and protection of—

(i) the freedom of the press;

(ii) the freedom of speech;

(iii) the freedom of assembly;

(iv) the freedom of association (including the right to organize for political purposes);

(v) internationally recognized worker rights; and

(vi) other attributes of political pluralism and democracy.

The President shall include in each report made pursuant to this paragraph a detailed statement with respect to each of the conditions set forth in this paragraph. This paragraph shall not be construed to impose any requirement with respect to Angola that is more restrictive than

any requirement imposed by this section generally on all other countries.

(12) PROHIBITION RELATING TO RUSSIAN TRANSFERS OF CERTAIN MISSILE SYSTEMS.—If the President of the United States determines that the military or Government of the Russian Federation has transferred or delivered to the People's Republic of China an SS–N–22 missile system and that the transfer or delivery represents a significant and imminent threat to the security of the United States, the President of the United States shall notify the Bank of the transfer or delivery as soon as practicable. Upon receipt of the notice and if so directed by the President of the United States, the Board of Directors of the Bank shall not give approval to guarantee, insure, extend credit, or participate in the extension of credit in connection with the purchase of any good or service by the military or Government of the Russian Federation.

(13) PROHIBITION ON ASSISTANCE TO DEVELOP OR PROMOTE CERTAIN RAILWAY CONNECTIONS AND RAILWAY-RELATED CONNECTIONS.—The Bank shall not guarantee, insure, or extend (or participate in the extension of) credit in connection with the export of any good or service relating to the development or promotion of any railway connection or railway-related connection that does not traverse or connect with Armenia and does traverse or connect Baku, Azerbaijan, Tbilisi, Georgia, and Kars, Turkey.

(c) Guarantees, insurance, coinsurance, and reinsurance functions; fractional charge; aggregate outstanding amount; fees and premiums; issuance, service and adjustments by agents; transferability of guarantees

(1) The Bank shall charge fees and premiums commensurate, in the judgment of the Bank, with risks covered in connection with the contractual liability that the Bank incurs for guarantees, insurance, coinsurance, and reinsurance against political and credit risks of loss.

(2) The Bank may issue such guarantees, insurance, coinsurance, and reinsurance to or with exporters, insurance companies, financial institutions, or others, or groups thereof, and where appropriate may employ any of the same to act as its agent in the issuance and servicing of such guarantees, insurance, coinsurance, and reinsurance, and the adjustment of claims arising thereunder.

(3) TRANSFERABILITY OF GUARANTEES.—

(A) IN GENERAL.—With respect to medium-term and long-term obligations insured or guaranteed by the Bank after October 15, 1986, the Bank shall authorize the unrestricted transfer of such obligations by the originating lenders or their transferees to other lenders without affecting, limiting, or terminating the guarantee or insurance provided by the Bank.

(B) GUARANTEE COVERAGE.—For the guarantee program provided for in this subsection, the Bank may provide up to 100 percent coverage of the interest and principal if the Board of Directors determines such coverage to be necessary to ensure acceptance of Bank guarantees by financial institutions for any transaction in any export market in which the Bank is open for business.

(d) Equal and nondiscriminatory opportunities for domestic companies to bid for insurance

(1) In carrying out its responsibilities under this subchapter, the Bank shall work to ensure that United States companies are afforded an equal and nondiscriminatory opportunity to bid for insurance in connection with transactions assisted by the Bank.

(2) COMPETITIVE OPPORTUNITY FOR INSURANCE COMPANIES.—In the case of any long-term loan or guarantee of not less than $10,000,000, the Bank shall seek to ensure that United States insurance companies are accorded a fair and open competitive opportunity to provide insurance against risk of loss in connection with any transaction with respect to which such loan or guarantee is provided.

(3) RESPONSIVE ACTIONS.—If the Bank becomes aware that a fair and open competitive opportunity is not accorded to any United States insurance company in a foreign country with respect to which the Bank is considering a loan or guarantee, the Bank—

(A) may approve or deny the loan or guarantee after considering whether such action would be likely to achieve competitive access for United States insurance companies; and

(B) shall forward information regarding any foreign country that denies United States insurance companies a fair and open competitive opportunity to the Secretary of Commerce and to the United States Trade Representative for consideration of a recommendation to the President that access by such country to export credit of the United States should be restricted.

(4) NOTICE OF APPROVAL.—If the Bank approves a loan or guarantee with respect to a foreign country notwithstanding information regarding denial by that foreign country of competitive opportunities for United States insurance companies, the Bank shall include notice of such approval and the reason for such approval in the report on competition in officially supported export credit required under subsection (b)(1)(A) of this section.

(5) DEFINITIONS.—For purposes of this section—

(A) the term ''United States insurance company''—

(i) includes an individual, partnership, corporation, holding company, or other legal entity which is authorized (or in the case of a holding company, subsidiaries of which are authorized) by a State to engage in the business of issuing insurance contracts or reinsuring the risk underwritten by insurance companies; and

(ii) includes foreign operations, branches, agencies, subsidiaries, affiliates, or joint ventures of any entity described in clause (i); and

(B) the term ''fair and open competitive opportunity'' means, with respect to the provision of insurance by a United States insurance company, that the company—

(i) has received notice of the opportunity to provide such insurance; and

(ii) has been evaluated for such opportunity on a nondiscriminatory basis.

(e) Limitation on assistance which adversely affects the United States

(1) In general

The Bank may not extend any direct credit or financial guarantee for establishing or expanding production of any commodity for export by any country other than the United States, if—

(A) the Bank determines that—

(i) the commodity is likely to be in surplus on world markets at the time the resulting commodity will first be sold; or

(ii) the resulting production capacity is expected to compete with United States production of the same, similar, or competing commodity; and

(B) the Bank determines that the extension of such credit or guarantee will cause substantial injury to United States producers of the same, similar, or competing commodity.

In making the determination under subparagraph (B), the Bank shall determine whether the facility that would benefit from the extension of a credit or guarantee is reasonably likely to produce a commodity in addition to, or other than, the commodity specified in the application and whether the production of the additional commodity may cause substantial injury to United States producers of the same, or a similar or competing, commodity.

(2) Outstanding orders and preliminary injury determinations

(A) Orders

The Bank shall not provide any loan or guarantee to an entity for the resulting production of substantially the same product that is the subject of—

(i) a countervailing duty or antidumping order under title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.]; or

(ii) a determination under title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.].

(B) Affirmative determination

Within 60 days after June 14, 2002, the Bank shall establish procedures regarding loans or guarantees provided to any entity that is subject to a preliminary determination of a reasonable indication of material injury to an industry under title VII of the Tariff Act of 1930. The procedures shall help to ensure that these loans and guarantees are likely to not result in a significant increase in imports of substantially the same product covered by the preliminary determination and are likely to not have a significant adverse impact on the domestic industry. The Bank shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the implementation of these procedures.

(C) Comment period

The Bank shall establish procedures under which the Bank shall notify interested parties and provide a comment period of not less than 14 days (which, on request of any affected party, shall be extended to a period of not more than 30 days) with regard to loans or guarantees reviewed pursuant to subparagraph (B) or (D).

(D) Consideration of investigations under title II of the Trade Act of 1974

In making any determination under paragraph (1) for a transaction involving more than $10,000,000, the Bank shall consider investigations under title II of the Trade Act of 1974 that have been initiated at the request of the President of the United States, the United States Trade Representative, the Committee on Finance of the Senate, or the Committee on Ways and Means of the House of Representatives, or by the International Trade Commission on its own motion.

(E) Anti-circumvention

The Bank shall not provide a loan or guarantee if the Bank determines that providing the loan or guarantee will facilitate circumvention of an order or determination referred to in subparagraph (A).

(3) Exception

Paragraphs (1) and (2) shall not apply in any case where, in the judgment of the Board of Directors of the Bank, the short- and long-term benefits to industry and employment in the United States are likely to outweigh the short- and long-term injury to United States producers and employment of the same, similar, or competing commodity.

(4) Definition

For purposes of paragraph (1)(B), the extension of any credit or guarantee by the Bank will cause substantial injury if the amount of the capacity for production established, or the amount of the increase in such capacity expanded, by such credit or guarantee equals or exceeds 1 percent of United States production.

(5) Designation of sensitive commercial sectors and products

Not later than 120 days after December 20, 2006, the Bank shall submit a list to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, which designates sensitive commercial sectors and products with respect to which the provision of financing support by the Bank is deemed unlikely by the President of the Bank due to the significant potential for a determination that such financing support would result in an adverse economic impact on the United States. The President of the Bank shall review on an annual basis thereafter the list of sensitive commercial sectors and products and the Bank shall submit an updated list to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of such sectors and products.

(6) Financial threshold determinations

For purposes of determining whether a proposed transaction exceeds a financial threshold under this subsection or under the proce-

dures or rules of the Bank, the Bank shall aggregate the dollar amount of the proposed transaction and the dollar amounts of all loans and guarantees, approved by the Bank in the preceding 24-month period, that involved the same foreign entity and substantially the same product to be produced.

(7) Procedures to reduce adverse effects of loans and guarantees on industries and employment in United States

(A) Consideration of economic effects of proposed transactions

If, in making a determination under this paragraph with respect to a loan or guarantee, the Bank conducts a detailed economic impact analysis or similar study, the analysis or study, as the case may be, shall include consideration of—

(i) the factors set forth in subparagraphs (A) and (B) of paragraph (1); and

(ii) the views of the public and interested parties.

(B) Notice and comment requirements

(i) In general

If, in making a determination under this subsection with respect to a loan or guarantee, the Bank intends to conduct a detailed economic impact analysis or similar study, the Bank shall publish in the Federal Register a notice of the intent, and provide a period of not less than 14 days (which, on request by any affected party, shall be extended to a period of not more than 30 days) for the submission to the Bank of comments on the economic effects of the provision of the loan or guarantee, including comments on the factors set forth in subparagraphs (A) and (B) of paragraph (1). In addition, the Bank shall seek comments on the economic effects from the Department of Commerce, the Office of Management and Budget, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

(ii) Content of notice

The notice shall include appropriate, nonproprietary information about—

(I) the country to which the goods involved in the transaction will be shipped;

(II) the type of goods being exported;

(III) the amount of the loan or guarantee involved;

(IV) the goods that would be produced as a result of the provision of the loan or guarantee;

(V) the amount of increased production that will result from the transaction;

(VI) the potential sales market for the resulting goods; and

(VII) the value of the transaction.

(iii) Procedure regarding materially changed applications

(I) In general

If a material change is made to an application for a loan or guarantee from the Bank after a notice with respect to the intent described in clause (i) is published under this subparagraph, the Bank shall publish in the Federal Register a revised notice of the intent, and shall provide for a comment period, as provided in clauses (i) and (ii).

(II) Material change defined

As used in subclause (I), the term ''material change'', with respect to an application, includes—

(aa) a change of at least 25 percent in the amount of a loan or guarantee requested in the application; and

(bb) a change in the principal product to be produced as a result of any transaction that would be facilitated by the provision of the loan or guarantee.

(C) Requirement to address views of adversely affected persons

Before taking final action on an application for a loan or guarantee to which this section applies, the staff of the Bank shall provide in writing to the Board of Directors the views of any person who submitted comments pursuant to subparagraph (B).

(D) Publication of conclusions

Within 30 days after a party affected by a final decision of the Board of Directors with respect to a loan or guarantee makes a written request therefor, the Bank shall provide to the affected party a non-confidential summary of the facts found and conclusions reached in any detailed economic impact analysis or similar study conducted pursuant to subparagraph (B) with respect to the loan or guarantee, that were submitted to the Board of Directors.

(E) Rule of interpretation

This paragraph shall not be construed to make subchapter II of chapter 5 of title 5 applicable to the Bank.

(F) Regulations

The Bank shall implement such regulations and procedures as may be appropriate to carry out this paragraph.

(f) Authority to deny application for assistance based on fraud or corruption by party involved in the transaction

In addition to any other authority of the Bank, the Bank may deny an application for assistance with respect to a transaction if the Bank has substantial credible evidence that any party to the transaction or any party involved in the transaction has committed an act of fraud or corruption in connection with the transaction.

(g) Process for notifying applicants of application status

The Bank shall establish and adhere to a clearly defined process for—

(1) acknowledging receipt of applications;

(2) informing applicants that their applications are complete or, if incomplete or containing a minor defect, of the additional mate-

rial or changes that, if supplied or made, would make the application eligible for consideration; and

(3) keeping applicants informed of the status of their applications, including a clear and timely notification of approval or disapproval, and, in the case of disapproval, the reason for disapproval, as appropriate.

(h) Response to application for financing; implementation of online loan request and tracking process

(1) Response to applications

Within 5 days after the Bank receives an application for financing, the Bank shall notify the applicant that the application has been received, and shall include in the notice—

(A) a request for such additional information as may be necessary to make the application complete;

(B) the name of a Bank employee who may be contacted with questions relating to the application; and

(C) a unique identification number which may be used to review the status of the application at a website established by the Bank.

(2) Website

Not later than September 1, 2007, the Bank shall exercise the authority granted by subparagraphs (E)(x) and (J) of subsection (b)(1) to establish, and thereafter to maintain, a website through which—

(A) Bank products may be applied for; and

(B) information may be obtained with respect to—

(i) the status of any such application;

(ii) the Small Business Division of the Bank; and

(iii) incentives, preferences, targets, and goals relating to small business concerns (as defined in section 632(a) of title 15), including small business concerns exporting to Africa.

(July 31, 1945, ch. 341, § 2, 59 Stat. 526; Dec. 28, 1945, ch. 602, 59 Stat. 666; June 9, 1947, ch. 101, § 1, 61 Stat. 130; May 21, 1953, ch. 64, § 1, 67 Stat. 28; Pub. L. 87–311, Sept. 26, 1961, 75 Stat. 673; Pub. L. 88–101, § 1(a), Aug. 20, 1963, 77 Stat. 128; Pub. L. 90–267, § 1(a)–(c), Mar. 13, 1968, 82 Stat. 47–49; Pub. L. 92–126, § 1(b)(1), (2), (5), (6), Aug. 17, 1971, 85 Stat. 345, 346; Pub. L. 93–646, §§ 2–6, 13, Jan. 4, 1975, 88 Stat. 2333–2335, 2337; Pub. L. 95–143, §§ 1–3, Oct. 26, 1977, 91 Stat. 1210; Pub. L. 95–630, title XIX, §§ 1902–1904, 1907(a), 1909, 1910, 1915, 1916, Nov. 10, 1978, 92 Stat. 3724–3727; Pub. L. 96–470, title II, § 210, Oct. 19, 1980, 94 Stat. 2245; Pub. L. 98–181, title VI, §§ 612, 616(a), 617, 618(a), (c), 619(b)–(d), 620(a), 622, Nov. 30, 1983, 97 Stat. 1255, 1257, 1258, 1260, 1261; Pub. L. 99–440, title II, § 204, Oct. 2, 1986, 100 Stat. 1096; Pub. L. 99–472, §§ 2–11, 20(a), Oct. 15, 1986, 100 Stat. 1200–1203, 1209; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–418, title III, § 3304, Aug. 23, 1988, 102 Stat. 1384; Pub. L. 100–690, title IV, § 4703, Nov. 18, 1988, 102 Stat. 4293; Pub. L. 101–240, title I, §§ 101(a), (c), (d), 102, Dec. 19, 1989, 103 Stat. 2493–2495; Pub. L. 101–513, title V, § 562 (part), Nov. 5, 1990, 104 Stat. 2031; Pub. L. 101–623, § 16, Nov. 21, 1990, 104 Stat. 3357; Pub. L. 102–145, § 121(2), (3), Oct. 28, 1991, as added Pub. L. 102–266, § 102, Apr. 1, 1992, 106 Stat. 95; Pub. L. 102–429, title I, §§ 104, 105, 107, 109(a), 110–112(d), 114, 116, 121(a), Oct. 21, 1992, 106 Stat. 2189, 2190, 2193–2196, 2198; Pub. L. 102–583, §§ 6(c), 12(a), (c)(1)(A), Nov. 2, 1992, 106 Stat. 4932, 4935; Pub. L. 103–149, § 4(b)(5), Nov. 23, 1993, 107 Stat. 1505; Pub. L. 103–236, title VIII, § 825, Apr. 30, 1994, 108 Stat. 514; Pub. L. 103–428, § 1(a), (b), Oct. 31, 1994, 108 Stat. 4375; Pub. L. 103–447, title I, § 102(a), Nov. 2, 1994, 108 Stat. 4693; Pub. L. 104–201, div. A, title XIII, § 1303(a), Sept. 23, 1996, 110 Stat. 2702; Pub. L. 105–121, §§ 5, 7(a), 9–12, Nov. 26, 1997, 111 Stat. 2529, 2530; Pub. L. 106–569, title XI, §§ 1103(d)(1), 1104(a)(1), (2), Dec. 27, 2000, 114 Stat. 3031; Pub. L. 107–189, §§ 2, 6(a), (b), 7–8(b), 11, 13, 15–19, 21, 24(a)(1)–(2)(D), (b)(1)–(3), June 14, 2002, 116 Stat. 698, 700, 704–709; Pub. L. 109–438, §§ 3(a), (b)(2), (c), 5, 6(b)(2), 7, 8, 11, 12, 13(b), (c), 14(b), Dec. 20, 2006, 120 Stat. 3268, 3269, 3272, 3273, 3276, 3277, 3279, 3280.)

AMENDMENT OF SECTION

For termination of amendment by section 1(c) of Pub. L. 103–428, see Effective and Termination Dates of 1994 Amendments note below.

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (b)(1)(B), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, § 13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§ 661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (b)(1)(B), (L), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

The Arms Export Control Act, referred to in subsec. (b)(1)(B), (L), (6)(F), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

The International Emergency Economic Powers Act, referred to in subsec. (b)(1)(B), (L), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, as amended, which is classified generally to chapter 35 (§ 1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The Export Administration Act of 1979, referred to in subsec. (b)(1)(B), (L), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.

Section 2151q of title 22, referred to in subsec. (b)(1)(C), was repealed by Pub. L. 96–533, title III, § 304(g), Dec. 16, 1980, 94 Stat. 3147. See section 2151d(a)(2), (b)(2), (c) of Title 22, Foreign Relations and Intercourse.

The African Growth and Opportunity Act, referred to in subsec. (b)(9)(C), is title I of Pub. L. 106–200, May 18, 2000, 114 Stat. 252, as amended, which is classified principally to chapter 23 (§ 3701 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 19 and Tables.

The Tariff Act of 1930, referred to in subsec. (e)(2)(A)(i), (B), is act June 17, 1930, ch. 497, 46 Stat. 590,

as amended. Title VII of the Act is classified generally to subtitle IV (§ 1671 et seq.) of chapter 4 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

The Trade Act of 1974, referred to in subsec. (e)(2)(A)(ii), (D), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Title II of the Act is classified generally to subchapter II (§ 2251 et seq.) of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

December 20, 2006, referred to in subsec. (e)(5), was in the original ''the date of the enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 109–438, which enacted subsec. (e)(5), to reflect the probable intent of Congress.

CODIFICATION

Section 1(c) of Pub. L. 90–267 added pars. (2) to (5) of subsec. (b) and another section of Pub. L. 90–267 also designated 1(c) substituted ''$3,500,000,000'' for ''$2,000,000,000'' in subsec. (c)(1). See, also, 1968 Amendments hereunder.

AMENDMENTS

2006—Subsec. (b)(1)(A). Pub. L. 109–438, § 13(b), (c), inserted '', including countries the governments of which are not members of the Arrangement (as defined in section 635i–3(h)(3) of this title)'' after ''United States exporters'' in second sentence and struck out fourth to twelfth sentences which related to compliance reporting requirements.

Subsec. (b)(1)(E)(v). Pub. L. 109–438, § 14(b), inserted at end ''From the amount made available under the preceding sentence, it shall be a goal of the Bank to increase the amount made available to finance exports directly by small business concerns referred to in section 635a(i)(1) of this title.''

Subsec. (b)(1)(E)(vii)(III). Pub. L. 109–438, § 6(b)(2), inserted ''or other financing institutions or entities'' after ''consortia''.

Subsec. (b)(9)(B)(iii). Pub. L. 109–438, § 3(a), substituted ''2011'' for ''2006''.

Subsec. (b)(9)(C), (D). Pub. L. 109–438, § 3(b)(2), (c), added subpars. (C) and (D).

Subsec. (b)(13). Pub. L. 109–438, § 11, added par. (13).

Subsec. (e)(1). Pub. L. 109–438, § 7(1), inserted concluding provisions.

Subsec. (e)(2)(C). Pub. L. 109–438, § 8(b), inserted ''of not less than 14 days (which, on request of any affected party, shall be extended to a period of not more than 30 days)'' after ''comment period''.

Subsec. (e)(2)(E). Pub. L. 109–438, § 7(2), added subpar. (E).

Subsec. (e)(5) to (7). Pub. L. 109–438, §§ 5, 7(3), 8(a), added pars. (5) to (7).

Subsecs. (g), (h). Pub. L. 109–438, § 12, added subsecs. (g) and (h).

2002—Subsec. (a)(1). Pub. L. 107–189, § 2, substituted ''The objects and purposes of the Bank shall be to aid in financing and to facilitate exports of goods and services, imports, and the exchange of commodities and services between the United States or any of its territories or insular possessions and any foreign country or the agencies or nationals of any such country, and in so doing to contribute to the employment of United States workers. The Bank's objective in authorizing loans, guarantees, insurance, and credits shall be to contribute to maintaining or increasing employment of United States workers.'' for ''The objects and purposes of the bank shall be to aid in financing and to facilitate exports and imports and the exchange of commodities and services between the United States or any of its Territories or insular possessions and any foreign country or the agencies or nationals thereof.''

Subsec. (b)(1)(A). Pub. L. 107–189, §§ 11, 13(b), substituted ''not later than June 30 of each year'' for ''on an annual basis'' in fourth sentence, inserted ''(including through use of market windows)'' after ''which foreign exporters compete with the United States exporters'' in fifth sentence, inserted ''With respect to the preceding sentence, the Bank shall use all available information to estimate the annual amount of export financing available from each government and government-related agency.'' after fifth sentence, and inserted at end ''The Bank shall include in the annual report a description of all Bank transactions which shall be classified according to their principal purpose, such as to correct a market failure or to provide matching support. The Bank shall include in the annual report a description of the efforts undertaken under subparagraph (K).''

Subsec. (b)(1)(B). Pub. L. 107–189, §§ 15, 17, 21, 24(a)(1), substituted ''Committee on Financial Services of the House of Representatives'' for ''Committee on Banking and Financial Services of the House of Representatives'' and inserted ''(including, when relevant, a foreign nation's lack of cooperation in efforts to eradicate terrorism)'' after ''international terrorism'', ''the enforcement of the Foreign Corrupt Practices Act of 1977, the Arms Export Control Act, the International Emergency Economic Powers Act, or the Export Administration Act of 1979,'' after ''nuclear proliferation,'' and ''(such as are provided in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948)'' after ''human rights''.

Subsec. (b)(1)(E)(iii)(II). Pub. L. 107–189, § 7(b), inserted '', with particular emphasis on conducting outreach and increasing loans to socially and economically disadvantaged small business concerns (as defined in section 637(a)(4) of title 15), small business concerns (as defined in section 632(a) of title 15) owned by women, and small business concerns (as defined in section 632(a) of title 15) employing fewer than 100 employees,'' after ''Bank''.

Subsec. (b)(1)(E)(v). Pub. L. 107–189, § 7(a), substituted ''20 percent'' for ''10 percent''.

Subsec. (b)(1)(E)(x). Pub. L. 107–189, § 8(a), added cl. (x).

Subsec. (b)(1)(H)(ii), (iii). Pub. L. 107–189, § 24(b)(1), made technical amendment to reference in original act which appears in text as reference to section 5402 of title 22.

Subsec. (b)(1)(J). Pub. L. 107–189, § 8(b), added subpar. (J).

Subsec. (b)(1)(K). Pub. L. 107–189, § 13(a), added subpar. (K).

Subsec. (b)(1)(L). Pub. L. 107–189, § 19, added subpar. (L).

Subsec. (b)(6)(D)(i)(III). Pub. L. 107–189, § 24(a)(2)(A), substituted ''Committee on Financial Services of the House of Representatives'' for ''Committee on Banking, Finance and Urban Affairs of the House of Representatives''.

Subsec. (b)(6)(E). Pub. L. 107–189, § 24(b)(3), substituted ''internationally'' for ''international''.

Subsec. (b)(6)(H). Pub. L. 107–189, § 24(a)(2)(B), substituted ''Committee on Financial Services of the House of Representatives'' for ''Committee on Banking, Finance and Urban Affairs of the House of Representatives''.

Subsec. (b)(6)(I)(i)(II), (iii). Pub. L. 107–189, § 24(a)(2)(C), (D), substituted ''Committees on Financial Services'' for ''Committees on Banking, Finance and Urban Affairs''.

Subsec. (b)(9)(A). Pub. L. 107–189, § 6(b), inserted '', in consultation with the Secretary of Commerce and the Trade Promotion Coordinating Committee,'' after ''shall''.

Subsec. (b)(9)(B)(iii). Pub. L. 107–189, § 6(a), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''The advisory committee shall terminate 4 years after November 26, 1997.''

Subsec. (b)(12). Pub. L. 107–189, § 24(b)(2), realigned margins.

Subsec. (e)(2) to (4). Pub. L. 107–189, § 18, substituted ''Paragraphs (1) and (2)'' for ''Paragraph (1)'' in par. (2), added a new par. (2), and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (f). Pub. L. 107–189, § 16, added subsec. (f).

2000—Subsec. (b)(1)(A). Pub. L. 106–569, § 1103(d)(1), substituted ''The Bank shall, on an annual basis, report'' for ''The Bank shall, on a annual basis, report'' and inserted at end ''The annual report required under this subparagraph shall include the report required under section 635i–3(g) of this title.''

Subsec. (b)(1)(D). Pub. L. 106–569, § 1104(a)(1), struck out ''(i)'' after ''(D)'' and struck out cl. (ii) which read as follows: ''The Bank shall include in its annual report a summary of its programs regarding the export of services.''

Subsec. (b)(8). Pub. L. 106–569, § 1104(a)(2), struck out at end ''The Bank shall include in the report to Congress under section 635g(a) of this title a description of the measures undertaken by it pursuant to this subsection.''

1997—Subsec. (b)(1)(A). Pub. L. 105–121, § 10, in first sentence, substituted ''real income, a commitment to reinvestment and job creation, and the increased development of the productive resources of the United States'' for ''real income and to the increased development of the productive resources of the United States''.

Subsec. (b)(1)(B). Pub. L. 105–121, § 11, inserted ''(including child labor)'' after ''human rights'' in penultimate sentence.

Pub. L. 105–121, § 5(2), inserted at end ''Each such determination shall be delivered in writing to the President of the Bank, shall state that the determination is made pursuant to this section, and shall specify the applications or categories of applications for credit which should be denied by the Bank in furtherance of the national interest.''

Pub. L. 105–121, § 5(1), in penultimate sentence, inserted '', after consultation with the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate,'' after ''President''.

Subsec. (b)(1)(I). Pub. L. 105–121, § 9, added subpar. (I).

Subsec. (b)(9). Pub. L. 105–121, § 7(a), added par. (9).

Subsec. (b)(12). Pub. L. 105–121, § 12, added par. (12).

1996—Subsec. (b)(4). Pub. L. 104–201 amended par. (4) generally, restating provisions of former single par. as subpars. (A) to (F) with addition of provisions relating to persons knowingly aiding or abetting non-nuclear-weapon states to acquire nuclear explosive devices or unsafeguarded special nuclear material and requiring Secretary of State to initiate consultations with governments having jurisdiction over such persons.

1994—Subsec. (b)(4). Pub. L. 103–236 inserted ''(as defined in section 6305(4) of title 22), or that any country has willfully aided or abetted any non-nuclear-weapon state (as defined in section 6305(5) of title 22) to acquire any such nuclear explosive device or to acquire unsafeguarded special nuclear material (as defined in section 6305(8) of title 22).'' after ''device'' at end of first sentence.

Subsec. (b)(6)(C)(ii). Pub. L. 103–447 substituted ''defined in section 2291(e) of title 22'' for ''determined under section 2291j(h) or 2291(e), as appropriate, of title 22''.

Subsec. (b)(6)(H). Pub. L. 103–428, § 1(b), (c), temporarily inserted ''or described in subparagraph (I)(i)'' before period at end of first sentence. See Effective and Termination Dates of 1994 Amendments note below.

Subsec. (b)(6)(I). Pub. L. 103–428, § 1(a), (c), temporarily added subpar. (I). See Effective and Termination Dates of 1994 Amendments note below.

1993—Subsec. (b)(9). Pub. L. 103–149 struck out par. (9) which prohibited the Bank from taking certain actions with respect to business affecting Republic of South Africa.

1992—Subsec. (a)(3). Pub. L. 102–429, § 121(a)(1), struck out ''(A) IN GENERAL.—'' before ''To enhance the medium-term'', redesignated cls. (i) to (iv) as subpars. (A) to (D), respectively, and struck out former subpar. (B) which read as follows: ''REPORT REQUIRED.—Not later than April 15, 1988, the Bank shall transmit a report to the Congress analyzing the measures adopted to enhance medium-term financing.''

Subsec. (b)(1)(A). Pub. L. 102–429, § 121(a)(2), added sentence at end and struck out former last sentence which read as follows: ''The Bank shall also include in the annual report a description of each loan by the Bank involving the export of any product or service related to the production, refining or transportation of any type of energy or the development of any energy resource with a statement assessing the impact, if any, on the availability of such products, services, or energy supplies thus developed for use within the United States.''

Subsec. (b)(1)(B). Pub. L. 102–429, § 104, inserted after first semicolon in fifth sentence ''that the Bank, in determining whether to provide support for a transaction under the loan, guarantee, or insurance program, or any combination thereof, shall consider the need to involve private capital in support of United States exports as well as the cost of the transaction as calculated in accordance with the requirements of the Federal Credit Reform Act of 1990;''.

Subsec. (b)(1)(E)(v). Pub. L. 102–429, § 121(a)(3), substituted ''not less than 10 percent of such authority for each fiscal year.'' for ''not less than—

''(I) 6 per centum of such authority for fiscal year 1984;

''(II) 8 per centum of such authority for fiscal year 1985; and

''(III) 10 per centum of such authority for fiscal year 1986 and thereafter.''

Pub. L. 102–429, § 116, inserted ''directly'' after ''to finance exports''.

Subsec. (b)(1)(H). Pub. L. 102–429, § 114, added subpar. (H).

Subsec. (b)(2)(B). Pub. L. 102–429, § 110, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(i) IN GENERAL.—For the purposes of this paragraph, the term 'Marxist-Leninist country' means any country which—

''(I) maintains a centrally planned economy based on the principles of Marxist-Leninism, or

''(II) is economically and militarily dependent on the Union of Soviet Socialist Republics or on any other Marxist-Leninist country.

''(ii) SPECIFIC COUNTRIES DEEMED TO BE MARXIST-LENINIST.—Unless otherwise determined by the President in the manner provided in subparagraph (C), the following countries are deemed to be Marxist-Leninist countries for purposes of this paragraph:

''Cambodian People's Republic.
''Cooperative Republic of Guyana.
''Czechoslovak Socialist Republic.
''Democratic People's Republic of Korea.
''Democratic Republic of Afghanistan.
''Estonia.
''German Democratic Republic.
''Hungarian People's Republic.
''Lao People's Democratic Republic.
''Latvia.
''Lithuania.
''Mongolian People's Republic.
''People's Democratic Republic of Yemen.
''People's Republic of Albania.
''People's Republic of Angola.
''People's Republic of Benin.
''People's Republic of Bulgaria.
''People's Republic of China.
''People's Republic of the Congo.
''People's Republic of Mozambique.
''Polish People's Republic.
''Republic of Cuba.
''Republic of Nicaragua.
''Socialist Ethiopia.
''Socialist Federal Republic of Yugoslavia.
''Socialist Republic of Romania.
''Socialist Republic of Vietnam.
''Surinam.
''Tibet.
''Union of Soviet Socialist Republics (including its captive constituent republics).''

Subsec. (b)(6)(A). Pub. L. 102–583, § 12(c)(1)(A), which directed the substitution of '', except as otherwise pro-

vided in subparagraph (B).'' for ''designated'' and all that follows through the end of the subparagraph could not be executed because the words did not appear subsequent to the amendment by Pub. L. 102–429, §112(d)(1). See below.

Pub. L. 102–429, §112(d)(1), struck out before period at end ''designated under section 4916 of title 26 as an economically less developed country for purposes of the tax imposed by section 4911 of title 26. The prohibitions set forth in this subparagraph shall not apply with respect to any transaction the consummation of which the President determines would be in the national interest and reports such determination (within thirty days after making the same) to the Senate and House of Representatives. In making any such determination the President shall take into account, among other considerations, the national interest in avoiding arms races among countries not directly menaced by the Soviet Union or by Communist China; in avoiding arming military dictators who are denying social progress to their own peoples; and in avoiding expenditures by developing countries of scarce foreign exchange needed for peaceful economic progress''.

Subsec. (b)(6)(B). Pub. L. 102–429, §112(d)(2)(A), struck out '', and section 32 of the Arms Export Control Act,'' after ''Subparagraph (A)''.

Subsec. (b)(6)(B)(iii). Pub. L. 102–583, §6(c)(1), substituted ''section 2291j(e) of title 22'' for ''section 2291(h)(5) of title 22''.

Subsec. (b)(6)(B)(iv), (v). Pub. L. 102–429, §112(a)(1), (2), (d)(2)(B), inserted ''and'' at end of cl. (iv) and substituted ''articles or services.'' for ''articles and services; and'' at end of cl. (v).

Subsec. (b)(6)(B)(vi). Pub. L. 102–583, §12(a), which directed the substitution of ''1997'' for ''1992'' in cl. (vi), could not be executed because cl. (vi) was struck out by Pub. L. 102–429, §112(a)(3). See below.

Pub. L. 102–429, §112(a)(3), struck out cl. (vi) which read as follows: ''the sale is made on or before September 30, 1992.''

Subsec. (b)(6)(C)(ii). Pub. L. 102–583, §6(c)(2), substituted ''determined under section 2291j(h) or 2291(e), as appropriate, of title 22'' for ''defined in section 2291(i) of title 22''.

Subsec. (b)(6)(D)(i). Pub. L. 102–429, §112(b), (d)(3), struck out ''and'' at end of subcl. (I), added subcl. (II), redesignated former subcl. (II) as (III), and substituted ''determinations have'' for ''determination has'' in subcl. (III).

Subsec. (b)(6)(D)(ii). Pub. L. 102–429, §112(d)(4), substituted ''clause'' for ''sentence'' before period at end.

Subsec. (b)(6)(G). Pub. L. 102–429, §112(d)(5), substituted ''or services'' for ''and services''.

Subsec. (b)(6)(H). Pub. L. 102–429, §112(c), added subpar. (H).

Subsec. (b)(11), (12). Pub. L. 102–429, §111, redesignated par. (12) as (11), substituted ''The President'' for ''Notwithstanding any determination by the President under paragraph (2) or (11), the'', and struck out former par. (11) which read as follows: ''PROHIBITION RELATING TO ANGOLA.—Notwithstanding any determination by the President under paragraph (2), the Bank may not guarantee, insure, or extend credit (or participate in the extension of credit) in connection with any export of goods or services, except food or agricultural commodities, to the People's Republic of Angola until the President certifies to the Congress that no combatant forces or military advisors of the Republic of Cuba or of any other Marxist-Leninist country (as such term is defined in paragraph (2)(B)) remain in Angola.''

Subsec. (c)(1). Pub. L. 102–429, §109(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Bank is authorized and empowered to charge against the limitations imposed by section 635e of this title, not less than 25 per centum of the related contractual liability which the Bank incurs for guarantees, insurance, coinsurance, and reinsurance against political and credit risks of loss. The aggregate amount of guarantees, insurance, coinsurance, and reinsurance which may be charged on this fractional basis pursuant to this section shall not exceed $25,000,000,000 outstanding at any one time. Fees and premiums shall be charged in connection with such contracts commensurate, in the judgment of the Bank, with risks covered.''

Subsec. (c)(3). Pub. L. 102–429, §105, designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (d)(2) to (5). Pub. L. 102–429, §107, added pars. (2) to (5) and struck out former pars. (2) and (3) which read as follows:

''(2) In furtherance of such effort, the Chairman of the Bank shall review Bank policies and programs in regard to this issue, and in coordination with the United States Trade Representative and the appropriate agencies of the Department of State, the Department of the Treasury, and the Department of Commerce, undertake actions designed to promote equal and nondiscriminatory opportunities to bid for insurance in connection with all aspects of international trade activities.

''(3) The Bank shall report to the Committee or Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than May 15, 1984, regarding—

''(A) the existing obstacles to equal and nondiscriminatory bidding for insurance related to transactions assisted by the Bank;

''(B) the efforts that the Bank has taken in addressing such problems; and

''(C) recommendations for such legislative or administrative actions as the Bank considers necessary.''

Subsec. (f). Pub. L. 102–429, §121(a)(4), struck out subsec. (f) which related to interest subsidy payments.

1991—Subsec. (b)(3). Pub. L. 102–145, §121(2), (3), as added by Pub. L. 102–266, amended par. (3) in introductory provisions by redesignating cl. (iii) as (ii) and striking out ''(ii) in an amount which equals or exceeds $25,000,000 for the export of goods or services involving research, exploration, or production of fossil fuel energy resources in the Union of Soviet Socialist Republics,''.

1990—Subsec. (b)(6)(B)(vi). Pub. L. 101–513 and Pub. L. 101–623 amended cl. (vi) identically, substituting ''1992'' for ''1990''.

1989—Subsec. (a)(1). Pub. L. 101–240, §101(c), substituted ''Subject to regulations which the Bank shall issue pursuant to section 553 of title 5, the Bank may'' for ''The Bank may'' in sixth sentence and inserted before period '', and may accept reimbursement for travel and subsistence expenses incurred by a director, officer, or employee of the Bank, in accordance with subchapter I of chapter 57 of title 5'' and inserted before period in seventh sentence ''and shall be offset against the expenses of the Bank for such activities''.

Subsec. (b)(6)(G). Pub. L. 101–240, §101(d), substituted ''subparagraphs (B), (C), (D), and (F)'' for ''this paragraph''.

Subsec. (b)(12). Pub. L. 101–240, §102, added par. (12).

Subsec. (f)(2). Pub. L. 101–240, §101(a)(1), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''AUTHORITY TO MAKE PAYMENTS SUBJECT TO MINIMUM AMOUNT OF DIRECT LOAN AUTHORITY.—The authority to enter into commitments to make interest subsidy payments under paragraph (1) shall be effective for any fiscal year only if the aggregate principal amount of direct loans the Bank may obligate in such fiscal year is equal to or greater than $700,000,000.''

Subsec. (f)(3). Pub. L. 101–240, §101(a)(1), (2), redesignated par. (4) as (3) and amended it generally. Prior to amendment, such par. read as follows:

''(A) IN GENERAL.—Subject to subparagraph (B), there are authorized to be appropriated to the Bank, for any fiscal year beginning after fiscal year 1986, such sums as may be necessary to carry out the purposes of this subsection.

''(B) BUDGET SCORING.—No amount is authorized to be appropriated for commitments to make interest subsidy payments on loans for which the Bank extends a

loan guarantee commitment if any amount of such loan guarantee commitment is scored as budget authority in any estimate of budget authority prepared pursuant to any provision of the Congressional Budget and Impoundment Control Act of 1974.'' Former par. (3) redesignated (2).

Subsec. (f)(4), (5). Pub. L. 101–240, § 101(a)(1), (3), redesignated par. (5) as (4) and substituted ''1991'' for ''1988''. Former par. (4) redesignated (3).

1988—Subsec. (b)(6). Pub. L. 100–690 designated existing provision as subpar. (A), substituted ''subparagraph'' for ''paragraph'', and added subpars. (B) to (G).

Subsec. (e)(1)(A)(i). Pub. L. 100–418, § 3304(a), substituted ''commodity will first be sold'' for ''productive capacity is expected to become operative''.

Subsec. (e)(2). Pub. L. 100–418, § 3304(b), substituted ''short- and long-term injury'' for ''injury'' and ''producers and employment'' for ''producers''.

Subsec. (e)(3). Pub. L. 100–418, § 3304(c), added par. (3).

1986—Subsec. (a)(1). Pub. L. 99–472, § 2, inserted provisions which related to imposition and collection of reasonable fees by Bank to cover costs of conferences and seminars sponsored, and publications provided, by Bank, and credit of amounts thus received to fund which initially paid for such activities.

Subsec. (a)(3). Pub. L. 99–472, § 4, added par. (3).

Subsec. (b)(1)(B). Pub. L. 99–472, §§ 3, 5, substituted ''need not be identical in all respects to those'' for ''need not be equivalent to those'' and inserted provisions which prohibited Bank from imposing credit application fee unless Bank's fee is competitive with average fee charged by Bank's primary foreign competitors, and option of paying fee at outset of, or over life of, loan is given to borrower or exporter, and present value of fee determined under either option is same amount.

Subsec. (b)(1)(E)(ix). Pub. L. 99–472, § 6, added cl. (ix).

Subsec. (b)(1)(G). Pub. L. 99–472, § 7, added subpar. (G).

Subsec. (b)(2). Pub. L. 99–472, § 8, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Bank in the exercise of its functions shall not guarantee, insure, or extend credit, or participate in any extension of credit—

''(A) in connection with the purchase or lease of any product by a Communist country (as defined in section 2370(f) of title 22), or agency, or national thereof, or

''(B) in connection with the purchase or lease of any product by any other foreign country, or agency or national thereof, if the product to be purchased or leased by such other country, agency, or national is, to the knowledge of the Bank, principally for use in, or sale or lease to, a Communist country (as so defined),

unless the President determines that guarantees, insurance, or extensions of credit in connection therewith to such Communist or such other country or agency or national thereof would be in the national interest. The President shall make a separate determination with respect to each transaction in which the bank would extend a loan to such Communist or other country, or agency, or national thereof an amount of $50,000,000 or more. Any determination required under the first sentence of this paragraph shall be reported to the Congress not later than the earlier of thirty days following the date of such determination, or the date on which the Bank takes final action on a transaction which is the first transaction involving such country or agency or national after January 4, 1975, unless a determination with respect to such country or agency or national has been made and reported prior to January 4, 1975. Any determination required to be made under the second sentence of this paragraph shall be reported to the Congress not later than the earlier of thirty days following the date of such determination or the date on which the Bank takes final action on the transaction involved.''

Subsec. (b)(6). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (b)(9). Pub. L. 99–440 designated existing provisions of par. (9) as subpar. (A), substituted ''Except as provided in subparagraph (B), in no event'' for ''In no event'', and added subpar. (B).

Subsec. (b)(11). Pub. L. 99–472, § 9, added par. (11).

Subsec. (c)(3). Pub. L. 99–472, § 10, added par. (3).

Subsecs. (e), (f). Pub. L. 99–472, §§ 11, 20(a), added subsecs. (e) and (f).

1983—Subsec. (a)(1). Pub. L. 98–181, § 616(a)(1), substituted ''the exchange of commodities and services'' for ''the exchange of commodities''.

Subsec. (a)(2). Pub. L. 98–181, § 622, added par. (2).

Subsec. (b)(1)(A). Pub. L. 98–181, §§ 612(a), 616(a)(2), in second sentence inserted ''in all its programs'' after ''To meet this objective'', inserted ''fully'' after ''other conditions which are'', and substituted ''exports of goods and services'' for ''exports''.

Subsec. (b)(1)(B). Pub. L. 98–181, §§ 612(b), (c), 618(a)(1), substituted provisions that loans under this section shall bear interest at rates consistent with the Bank's mandate to support exports at rates and on terms and conditions which are fully competitive with exports of other countries, and consistent with international agreements, and that such rates, terms and conditions need not be equivalent to those offered by foreign countries, but should be established so as to neutralize the effect of such foreign credit on international sales competition, and that the Board shall consider its average cost of money in determination of interest rates, where such consideration does not impair the Bank's function of expanding exports through fully competitive financing for provisions that loans made by the Bank had to be at interest at rates determined by the Board of Directors of the Bank, taking into consideration the average cost of money to the Bank as well as the Bank's mandate to support United States exports at rates and on terms and conditions which were competitive with exports of other countries; inserted ''export trading companies,'' after ''independent export firms,''; and struck out provision which required the Bank to give due recognition to the policy stated in section 631(a) of Title 15 that the government should aid, counsel, assist, and protect the interests of small business in order to preserve free competitive enterprise, and that in furtherance of this policy the Board of Directors had to designate an officer of the Bank to handle small business concerns, including advising small businessmen and maintaining liaison with the Small Business Administration and other departments and agencies in matters affecting small business concerns.

Subsec. (b)(1)(D). Pub. L. 98–181, § 616(a)(3), added subpar. (D).

Subsec. (b)(1)(E). Pub. L. 98–181, § 618(a)(2), added subpar. (E).

Subsec. (b)(1)(F). Pub. L. 98–181, § 618(c), added subpar. (F).

Subsec. (b)(3). Pub. L. 98–181, § 619(b), substituted ''no loan or financial guarantee or general guarantee or insurance facility'' for ''no loan or financial guarantee'' in provisions preceding subpar. (A).

Subsec. (b)(3)(A). Pub. L. 98–181, § 619(c), inserted language limiting existing provisions to loans or financial guarantees, designated existing provisions as cls. (i), (ii), and (iii), and added cl. (iv).

Subsec. (b)(4). Pub. L. 98–181, § 620(a), substituted ''the Secretary'' for ''he'' before ''determines that any country'' in first sentence, and before ''has determined to have so acted'' in second sentence.

Subsec. (b)(7) to (10). Pub. L. 98–181, § 619(d), redesignated second par. (7) and par. (8), as added by Pub. L. 95–630, as pars. (8) and (9), respectively, and added par. (10).

Subsec. (d). Pub. L. 98–181, § 617, added subsec. (d).

1980—Subsec. (b)(1)(A). Pub. L. 96–470 substituted ''annual'' for ''semiannual'' in three places.

1978—Subsec. (b)(1)(A). Pub. L. 95–630, § 1910, substituted ''manufactured goods, agricultural products, and other goods and services'' for ''goods and related services''.

Subsec. (b)(1)(B). Pub. L. 95–630, §§ 1904, 1916, inserted ''that the Bank should give emphasis to assisting new

and small business entrants in the agricultural export market, and shall, in cooperation with other relevant Government agencies, including the Commodity Credit Corporation, develop a program of education to increase awareness of export opportunities among small agribusinesses and cooperatives;'' after ''in matters affecting small business concerns;'' and substituted ''and shall give particular emphasis to the objective of strengthening the competitive position of the United States exporters and thereby of expanding total United States exports. Only in cases where the President determines that such action would be in the national interest where such action would clearly and importantly advance United States policy in such areas as international terrorism, nuclear proliferation, environmental protection and human rights, should the Export-Import Bank deny applications for credit for nonfinancial or noncommercial considerations'' for ''and shall also take into account, in consultation with the Secretary of State, the observance of and respect for human rights in the country to receive the exports supported by a loan or financial guarantee and the effect such exports may have on human rights in such country''.

Subsec. (b)(1)(C). Pub. L. 95–630, §1907(a), added subpar. (C).

Subsec. (b)(3). Pub. L. 95–630, §1902, substituted ''Except as provided by the fourth sentence of this paragraph, no loan'' for ''No loan'' and ''$100,000,000'' for ''$60,000,000'' and inserted provisions following subpar. (B).

Subsec. (b)(7) to (9). Pub. L. 95–630, §§1909, 1915, added a second par. (7) and par. (8), which were editorially designated pars. (8) and (9). See 1983 Amendment note above.

Subsec. (c)(1). Pub. L. 95–630, §1903, substituted ''$25,000,000,000'' for ''$20,000,000,000''.

1977—Subsec. (b)(1)(A). Pub. L. 95–143, §1, inserted ''and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce government subsidized export financing'' after ''government-supported export financing''.

Subsec. (b)(1)(B). Pub. L. 95–143, §2, inserted '', and shall also take into account, in consultation with the Secretary of State, the observance of and respect for human rights in the country to receive the exports supported by a loan or financial guarantee and the effect such exports may have on human rights in such country'' after ''employment in the United States''.

Subsec. (b)(3). Pub. L. 95–143, §3(a), inserted ''(i)'' after ''No loan or financial guarantee or combination thereof'' and '', or (iii) for the export of technology, fuel, equipment, materials, or goods or services to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities,'' after ''Union of Soviet Socialist Republics'' and substituted '', (ii) in an amount'' for ''shall be finally approved by the Board of Directors of the Bank, and no loan or financial guarantee or combination thereof''.

Subsec. (b)(4) to (7). Pub. L. 95–143, §3(b), (c), added par. (4), redesignated former par. (4) as (5) and, as so redesignated, added cl. (C), and redesignated former pars. (5) and (6) as (6) and (7), respectively.

1975—Subsec. (a)(1). Pub. L. 93–646, §2, inserted provisions authorizing the Bank to guarantee, insure, coinsure, and reinsure against political and credit risks of loss, to represent itself or to contract for representation in all legal and arbitral proceedings outside the United States, and to publish any documents, reports, etc., without regard to section 501 of title 44, whenever compliance with such section would not be practicable.

Subsec. (a)(2). Pub. L. 93–646, §13, eff. at the close of Sept. 30, 1976, repealed par. (2), which related to inclusion of receipts and disbursements of the bank in the federal budget and exemption of such receipts and disbursements from budget limitations, to the transmittal to Congress of a budget for program activities and for administrative expenses of the bank, and to the annual report of the net lending of the bank.

Subsec. (b)(1). Pub. L. 93–646, §3, designated existing provisions as subpars. (A) and (B), and as so designated, substituted provisions requiring a comparison of the rates and terms of the Bank with other countries for provisions requiring a report to include ways in which the Bank's terms are equal to or superior to those of other countries, and inserted provisions requiring the appointment of a Bank officer to be responsible for all matters affecting small business, and to act as liaison with the Small Business Administration and other agencies in matters affecting small business concerns, in order to carry out the policy of the Small Business Act.

Subsec. (b)(2). Pub. L. 93–646, §4, inserted provision requiring a separate Presidential determination of national interest with respect to each transaction over $50,000,000, and substituted provision requiring a report to Congress either within 30 days of the President's finding or on the day the Bank takes final action on the proposed credit, whichever is earlier, for provision requiring a report of his finding to Congress within thirty days after making such finding.

Subsec. (b)(3) to (6). Pub. L. 93–646, §5, added par. (3) and redesignated former pars. (3), (4), and (5) as (4), (5) and (6), respectively.

Subsec. (c)(1). Pub. L. 93–646, §6, removed the $10 billion limit on the Bank's insurance authority, and increased the Bank's authority to charge such guarantees and insurance on a fractional charge basis from $10 billion to $20 billion.

1971—Subsec. (a). Pub. L. 92–126, §1(b)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(1). Pub. L. 92–126, §1(b)(6), inserted provisions declaring the policy of the United States to be to foster expansion of goods and related services, contributing to the proposition and maintenance of high levels of employment and real income and to the increased development of the productive resources of the United States and laid down directives to achieve this objective.

Subsec. (b)(3). Pub. L. 92–126, §1(b)(5), substituted provisions prohibiting the Bank from extending assistance in export sales to any nation which engages in armed conflict with the United States or to any other nation when the export is to be used principally by or in any nation which engages in armed conflict with the United States and further prohibiting such assistance to any export sales which the President determines would be contrary to the national interest for provisions placing limitations on the Bank's activity in connection with any nation which supplies goods or assistance to a country with whom the United States is engaged in armed conflict.

Subsec. (c)(1). Pub. L. 92–126, §1(b)(2), increased the amount of insurance outstanding at any one time from ''$3,500,000,000'' to ''$10,000,000,000''.

1968—Subsec. (a). Pub. L. 90–267, §1(a), changed name of ''Export-Import Bank of Washington'' to ''Export-Import Bank of the United States''.

Subsec. (b)(1). Pub. L. 90–267, §1(b), designated existing provisions as par. (1) and required the Board of Directors when authorizing loans to take into account the possible adverse effects upon the economy of the United States.

Subsec. (b)(2) to (5). Pub. L. 90–267, §1(c), added pars. (2) to (5).

Subsec. (c)(1). Pub. L. 90–267, §1(a), (c), increased amount of insurance outstanding at any one time from $2,000,000,000 to $3,500,000,000 and changed name of ''Export-Import Bank of Washington'' to ''Export-Import Bank of the United States''.

1963—Subsec. (c)(1). Pub. L. 88–101 substituted ''$2,000,000,000'' for ''$1,000,000,000''.

1961—Subsec. (c). Pub. L. 87–311 amended subsection generally, and among other changes, authorized the Bank to guarantee, insure, coinsure, and reinsure United States exporters and foreign exporters doing business in the United States, increased the maximum amount of insurance, etc., outstanding at any one time to $1,000,000,000, limited the types of risks the Bank

would insure, etc., to political and credit risks, required reserves to be maintained at not less than 25 per centum of the related contractual liability of the Bank, provided that for contracts of insurance, etc., only the Bank's liabilities represented by the aforementioned reserves shall be considered for purposes of applying the limitations of section 635e of this title, required the charging of fees and premiums, and authorized issuance of insurance, etc., to exporters, insurance companies, financial institutions, or others, and where appropriate, to employ any of the same as agent, and struck out provisions authorizing insurance for the benefit of United States citizens against loss of tangible personal property of United States origin, exported from the United States, and located in a friendly country, from hostile or warlike actions including internal strife, or from governmental confiscation or expropriation, to the extent owned by the assured or constituting security for obligations owed the assured, limiting the issuance of insurance to the extent that it could not be obtained from private companies authorized to do business in the United States, or from United States Government agencies providing marine or air war-risk insurance, permitting reinsurance of companies authorized to do an insurance business in the United States, or to use such company or companies as agent, and limiting the term of coverage of any insurance issued to one year, subject to renewals or extensions, from time to time, of one year periods.

1953—Subsec. (c). Act May 21, 1953, added subsec. (c).

1947—Subsec. (a). Act June 9, 1947, provided for the reincorporation of the Bank as a corporate agency of the United States and specifically provided for the following powers which the bank formerly possessed by implication: (1) to acquire stock through the enforcement of any lien or pledge or to satisfy an indebtedness; (2) to sue and be sued, to complain and defend in any court of competent jurisdiction; (3) to use the United States mails as any other executive department; and (4) after provision for possible losses to use the net earnings as dividends on capital stock and to deposit said dividends as miscellaneous receipts in the Treasury.

1945—Subsec. (a). Act Dec. 28, 1945, inserted ''(or the Philippine Islands)'' after ''any foreign country''.

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENTS

Pub. L. 103–428, §1(c), Oct. 31, 1994, 108 Stat. 4376, as amended by Pub. L. 105–121, §4, Nov. 26, 1997, 111 Stat. 2529; Pub. L. 109–438, §4, Dec. 20, 2006, 120 Stat. 3269, provided that: ''The amendments made by this section [amending this section] shall remain in effect during the period beginning on the date of enactment of this Act [Oct. 31, 1994] and ending on September 30, 2011.''

[Pub. L. 111–117, div. F, title VI, Dec. 16, 2009, 123 Stat. 3341, provided in part: ''That notwithstanding section 1(c) of Public Law 103–428 [set out above], as amended, sections 1(a) and (b) of Public Law 103–428 [amending this section] shall remain in effect through October 1, 2010''.]

[Prior similar extensions of section 1(a) and (b) of Pub. L. 103–428 were contained in the following acts:

[Pub. L. 111–8, div. H, title VI, Mar. 11, 2009, 123 Stat. 858.

[Pub. L. 110–161, div. J, title II, Dec. 26, 2007, 121 Stat. 2289.

[Pub. L. 109–102, title I, Nov. 14, 2005, 119 Stat. 2172.

[Pub. L. 108–447, div. D, title I, Dec. 8, 2004, 118 Stat. 2968.

[Pub. L. 108–199, div. D, title I, Jan. 23, 2004, 118 Stat. 143.

[Pub. L. 108–7, div. E, title I, Feb. 20, 2003, 117 Stat. 159.

[Pub. L. 107–229, §129, as added by Pub. L. 107–240, §5, Oct. 11, 2002, 116 Stat. 1494.]

[For provisions continuing functions of Export-Import Bank of the United States through June 14, 2002, notwithstanding section 1(c) of Pub. L. 103–428, set out above, see Continuation of Bank Functions note set out under section 635f of this title.]

Amendment by Pub. L. 103–236 effective 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103–236, set out as an Effective Date note under section 6301 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1917 of title XIX of Pub. L. 95–630 provided that: ''This title [enacting sections 635a–1 to 635a–3 of this title and section 2153e–1 of Title 42, The Public Health and Welfare, and amending this section and sections 635e to 635g of this title] shall take effect upon enactment [Nov. 10, 1978].''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–438, §1(a), Dec. 20, 2006, 120 Stat. 3268, provided that: ''This Act [enacting section 635g–1 of this title, amending this section and sections 635a, 635e, 635f, 635g, 635i–3, and 635i–5 of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under this section] may be cited as the 'Export-Import Bank Reauthorization Act of 2006'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–189, §1(a), June 14, 2002, 116 Stat. 698, provided that: ''This Act [enacting section 635i–9 of this title, amending this section, sections 635a, 635e to 635g, 635i–3, 635i–6, and 635i–8 of this title, section 5315 of Title 5, Government Organization and Employees, sections 9 and 11 of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, and section 1105 of Title 31, Money and Finance, enacting provisions set out as notes under this section, sections 635a, 635g, and 635i–9 of this title, and section 5315 of Title 5, and amending provisions set out as a note under this section] may be cited as the 'Export-Import Bank Reauthorization Act of 2002'.''

SHORT TITLE OF 1997 AMENDMENT

Section 1(a) of Pub. L. 105–121 provided that: ''This Act [amending this section and sections 635a, 635f, and 635i–3 of this title, enacting provisions set out as notes under this section and section 635f of this title, and amending provisions set out as a note under this section] may be cited as the 'Export-Import Bank Reauthorization Act of 1997'.''

SHORT TITLE OF 1992 AMENDMENT

Section 1(a) of Pub. L. 102–429 provided that: ''This Act [enacting sections 635i–5 to 635i–7 of this title, section 831 of Title 2, The Congress, and sections 4727 to 4729 of Title 15, Commerce and Trade, amending this section and sections 635a, 635b, 635e, 635f, and 635i–3 of this title, and sections 4052 and 4721 of Title 15, repealing sections 635c, 635i to 635i–2, and 635i–4 of this title, section 713b of Title 15, and section 2772 of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as notes under this section, section 635a of this title, and section 4728 of Title 15] may be cited as the 'Export Enhancement Act of 1992'.''

SHORT TITLE OF 1988 AMENDMENT

Section 3301 of Pub. L. 100–418 provided that: ''This subtitle [subtitle D (§§3301–3304) of title III of Pub. L. 100–418, amending this section and section 635i–3 of this title and enacting provisions set out as a note under section 635i–3 of this title] may be cited as the 'Export-Import Bank and Tied Aid Credit Amendments of 1988'.''

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99–472 provided that: ''This Act [enacting section 635i–3 of this title and section 262h of Title 22, Foreign Relations and Intercourse, amending this section and sections 635a, 635a–2, 635a–3, and 635e to 635g of this title, and enacting provisions set out as a note under section 635g of this title] may be cited as the 'Export-Import Bank Act Amendments of 1986'.''

SHORT TITLE OF 1983 AMENDMENT

Section 601 of title VI of Pub. L. 98–181 provided that: ''This title [enacting sections 635i–1, 635i–2, and 635*o*–635t of this title and section 1671g of Title 19, Customs Duties, amending this section, sections 635a, 635a–2, 635a–3, 635a–4, 635b, 635e, 635f, and 635g of this title, and sections 1671a and 1671b of Title 19, and enacting provisions set out as notes under sections 635a and 635*o* of this title] may be cited as the 'Export-Import Bank Act Amendments of 1983'.''

For short title of part C (§§ 641–647) of title VI of Pub. L. 98–181, which enacted subchapter III (§ 635*o* et seq.) of this chapter and section 1671g of Title 19 and amended sections 1671a and 1671b of Title 19, as the ''Trade and Development Enhancement Act of 1983'', see Short Title note set out under section 635*o* of this title.

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–35, title III, § 380, Aug. 13, 1981, 95 Stat. 431, provided that: ''This subtitle [subtitle B (§§ 380–385) of title III of Pub. L. 97–35, amending sections 461 and 635e of this title, and section 369 of former Title 31, Money and Finance, enacting provisions set out as a note under section 369 of former Title 31, and amending provisions set out as notes under sections 1735f–7 and 1904 of this title] may be cited as the 'Banking and Related Programs Authorization Adjustment Act'.''

SHORT TITLE OF 1978 AMENDMENT

Section 1901 of title XIX of Pub. L. 95–630 provided: ''That this title [enacting sections 635a–1 to 635a–3 of this title and section 2153e–1 of Title 42, The Public Health and Welfare, amending this section and sections 635e to 635g of this title, and enacting provisions set out as a note under this section] may be cited as the 'Export-Import Bank Act Amendments of 1978'.''

SHORT TITLE OF 1975 AMENDMENT

Section 1 of Pub. L. 93–646 provided that: ''This Act [amending this section and sections 82 and 635d to 635g of this title and enacting provisions set out as notes under this section] may be cited as the 'Export-Import Bank Amendments of 1974'.''

SHORT TITLE OF 1971 AMENDMENT

Section 1(a) of Pub. L. 92–126 provided that: ''This Act [amending this section and sections 635e and 635f of this title and enacting provisions set out as notes under section 95a of this title] may be cited as the 'Export Expansion Finance Act of 1971'.''

SHORT TITLE

Section 1 of act July 31, 1945, provided: ''That this Act [this subchapter] may be cited as the 'Export-Import Bank Act of 1945'.''

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of Title 22, Foreign Relations and Intercourse, and section 161(d) of Pub. L. 103–236, set out as a note under section 2651a of Title 22.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b)(6) of this section delegated to Secretary of State by section 1(s) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of Title 22, Foreign Relations and Intercourse.

BOARD OF DIRECTORS

A Board of Directors was reestablished for the Export-Import Bank of Washington by section 1 of act Aug. 9, 1954, ch. 660, 68 Stat. 677, amending section 635a of this title. The Board had previously been abolished and its functions transferred to the Managing Director of the Bank by Reorg. Plan No. 5 of 1953, eff. June 30, 1953, 18 F.R. 3741, 67 Stat. 637, set out as a note under section 635a of this title. The 1953 Reorg. Plan was superseded by sections 1, 4 of act Aug. 9, 1954. See section 635a of this title and 1954 Amendment and Effective Date of 1954 Amendment notes thereunder.

HISTORY OF BANK

The Export-Import Bank of Washington was organized as a District of Columbia banking corporation under Ex. Ord. No. 6581, Feb. 2, 1934. It was continued as an agency of the United States by act Jan. 31, 1935, ch. 2, § 9, 49 Stat. 4, formerly set out as section 713b of Title 15, Commerce and Trade, as amended by acts Jan. 26, 1937, ch. 6, § 2(a), 50 Stat. 5; Mar. 4, 1939, ch. 5, § 1(b)(c), 53 Stat. 510; Mar. 2, 1940, ch. 34, 54 Stat. 38; Sept. 26, 1940, ch. 734, § 3, 54 Stat. 962, and repealed by section 10 of act July 31, 1945. The Second Export-Import Bank of Washington, D.C., was established under Ex. Ord. No. 6638, Mar. 9, 1934. Its commitments were transferred to the Export-Import Bank of Washington and it was abolished by Ex. Ord. No. 7365, May 7, 1936, 1 F.R. 372. The ''Export-Import Bank of Washington'' was renamed the ''Export-Import Bank of the United States''. See the 1968 Amendment note under this section.

WAIVER OF SANCTIONS

Sanctions contained in subsec. (b)(4) waived in certain regards with respect to India and Pakistan by the following Determinations of the President, set out as notes under section 2799aa–1 of Title 22, Foreign Relations and Intercourse:

Determination of President of the United States, No. 2000–4, Oct. 27, 1999, 64 F.R. 60649.

Determination of President of the United States, No. 2000–18, Mar. 16, 2000, 65 F.R. 16297.

MASTER GUARANTEE AGREEMENTS WITH AFRICAN REGIONAL FINANCIAL INSTITUTIONS

Pub. L. 109–438, § 3(b)(1), Dec. 20, 2006, 120 Stat. 3268, provided that: ''Within 1 year after the date of the enactment of this Act [Dec. 20, 2006], the Export-Import Bank of the United States shall seek to ensure that there is in effect a contract between each approved lender in Africa and the Bank, which sets forth the Bank's guarantee undertakings and related obligations between the Bank and each lender.''

ENHANCE DELEGATED LOAN AUTHORITY FOR MEDIUM TERM TRANSACTIONS

Pub. L. 109–438, § 6(b)(1), Dec. 20, 2006, 120 Stat. 3272, provided that: ''The Export-Import Bank of the United States shall seek to expand the exercise of authority under section 2(b)(1)(E)(vii) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)(E)(vii)) with respect to medium term transactions for small business concerns.''

DEADLINE FOR ENHANCING DELEGATED LOAN AUTHORITY FOR MEDIUM TERM TRANSACTIONS

Pub. L. 109–438, § 6(b)(3), Dec. 20, 2006, 120 Stat. 3272, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2006], the Export-Import Bank of the United States shall make available lines of credit and guarantees to carry out section 2(b)(1)(E)(vii) of the Export-Import Bank Act of 1945 [12 U.S.C. 635(b)(1)(E)(vii)] pursuant to policies and procedures established by the Board of Directors of the Export-Import Bank of the United States.''

GAO STUDY OF BANK PERFORMANCE STANDARDS FOR ASSISTANCE TO SMALL BUSINESSES, ESPECIALLY THOSE OWNED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS AND THOSE OWNED BY WOMEN

Pub. L. 109–438, § 19, Dec. 20, 2006, 120 Stat. 3282, provided that:

''(a) PERFORMANCE STANDARDS.—The Bank shall develop a set of performance standards for determining the extent to which the Bank has carried out successfully subparagraphs (E) and (I) of section 2(b)(1) of the Export-Import Bank Act of 1945 [12 U.S.C. 635(b)(1)(E), (I)], and the functions described in subsections (f)(1), (g)(1), (h)(1), and (i)(1) of section 3 of such Act [12 U.S.C. 635a(f)(1), (g)(1), (h)(1), (i)(1)].

''(b) ASSESSMENT OF STANDARDS.—Within 18 months after the date of the enactment of this Act [Dec. 20, 2006], the Comptroller General of the United States shall transmit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate—

''(1) an assessment of the performance standards developed by the Bank pursuant to subsection (a); and

''(2) using the performance standards developed pursuant to subsection (a), an assessment of the Bank's efforts to carry out subparagraphs (E) and (I) of section 2(b)(1) of the Export-Import Bank Act of 1945 [12 U.S.C. 635(b)(1)(E), (I)], and the functions described in subsections (f)(1), (g)(1), (h)(1), and (i)(1) of section 3 of such Act [12 U.S.C. 635a(f)(1), (g)(1), (h)(1), (i)(1)].''

GAO REPORT ON COMPARATIVE RESERVE PRACTICES OF EXPORT CREDIT AGENCIES AND PRIVATE BANKS

Pub. L. 107–189, §14, June 14, 2002, 116 Stat. 705, provided that: ''Within 1 year after the date of the enactment of this Act [June 14, 2002], the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report that examines the reserve ratios of the Export-Import Bank of the United States as compared with the reserve practices of private banks and foreign export credit agencies.''

REPORTS TO CONGRESS

Pub. L. 105–121, §7(b), Nov. 26, 1997, 111 Stat. 2529, as amended by Pub. L. 107–189, §6(c), June 14, 2002, 116 Stat. 700, provided that: ''Within 6 months after the date of enactment of this Act [Nov. 26, 1997], and annually for each of the 8 years thereafter, the Board of Directors of the Export-Import Bank of the United States shall submit to Congress a report on the steps that the Board has taken to implement section 2(b)(9)(B) of the Export-Import Bank Act of 1945 [12 U.S.C. 635(b)(9)(B)] and any recommendations of the advisory committee established pursuant to such section.''

DECLARATION OF POLICY

Section 101 of Pub. L. 102–429 provided that: ''The Congress finds that—

''(1) as the world's largest economy, the United States has an enormous stake in the future of the global trading system;

''(2) exports are a crucial force driving the United States economy;

''(3) during 1991, the value of United States exports increased by 7.1 percent from the 1990 level to $421,600,000,000, supporting more than 7,000,000 full-time United States jobs, and affecting the lives of all of the people of the United States;

''(4) exports also support the global strategic position of the United States;

''(5) a significant part of a country's influence is drawn from the reputation of its goods, its industrial connections with other countries, and the capital it has available for investment, and trade finance is a critical component of this equation;

''(6) the growth in United States exports has increased the demand for financing from the Export-Import Bank of the United States;

''(7) during 1991, the value of exports assisted by the Export-Import Bank rose 28.7 percent, from $9,700,000,000 to $12,100,000,000, the highest level since 1981;

''(8) the Export-Import Bank used its entire budget authority provided for 1991, and still could not meet all of the demand for its financing assistance; and

''(9) accordingly, the charter of the Export-Import Bank, which is scheduled to expire on September 30, 1992, must be renewed in order that the Bank continue to arrange competitive and innovative financing for the foreign sales of United States exporters.''

REPORT ON FINANCING OF SERVICES

Section 119 of Pub. L. 102–429 directed Export-Import Bank of the United States, not later than 1 year after Oct. 21, 1992, to submit a report to Congress on ways of facilitating the export financing of high technology services.

REPORT ON DEMAND FOR TRADE FINANCE FOR THE BALTIC STATES, THE INDEPENDENT STATES OF THE FORMER SOVIET UNION, AND CENTRAL AND EASTERN EUROPE

Section 120 of Pub. L. 102–429 directed Export-Import Bank, not later than 1 year after Oct. 21, 1992, to transmit to Congress a report analyzing present and future demand for loans, guarantees, and insurance for trade between the United States and the Baltic States, between the United States and the independent States of the former Soviet Union, and between the United States and Central and Eastern Europe, and to make recommendations regarding the adequacy of financing for trade between the United States and such countries.

EXPORT-IMPORT PROGRAMS TO PEOPLE'S REPUBLIC OF CHINA PROHIBITED UNLESS CERTAIN CONDITIONS MET

Section 103 of Pub. L. 101–240 provided that:

''(a) Notwithstanding any other provision of law and subject to the provisions of subsections (b) and (c), the Export-Import Bank of the United States shall not finance any trade with, nor extend any loan, credit, credit guarantee, insurance or reinsurance to the People's Republic of China.

''(b) The prohibitions described in subsection (a) of this section shall not apply to food or agricultural commodities.

''(c) The President may waive the prohibitions in subsection (a) if he makes a report to Congress either—

''(1) that the Government of the People's Republic of China has made progress on a program of political reform throughout the country, as well as in Tibet, which includes—

''(A) lifting of martial law;

''(B) halting of executions and other reprisals against individuals for the nonviolent expression of their political beliefs;

''(C) release of political prisoners;

''(D) increased respect for internationally recognized human rights, including freedom of expression, the press, assembly, and association; and

''(E) permitting a freer flow of information, including an end to the jamming of Voice of America and greater access for foreign journalists; or

''(2) it is in the national interest of the United States to terminate a suspension under subsection (a).''

EXPORT-IMPORT BANK PROGRAMS FOR POLAND AND HUNGARY

Pub. L. 101–179, title III, §303, Nov. 28, 1989, 103 Stat. 1312, provided that:

''(a) AUTHORITY TO EXTEND CREDIT TO POLAND AND HUNGARY.—Notwithstanding section 2(b)(2) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(2)), the Export-Import Bank of the United States may guarantee, insure, finance, extend credit, and participate in the extension of credit in connection with the purchase or lease of any product by the Republic of Hungary or any agency or national thereof or by the Polish People's Republic or any agency or national thereof.

''(b) PRIVATE FINANCIAL INTERMEDIARIES TO FACILITATE EXPORTS TO POLAND.—Consistent with the provisions of the Export-Import Bank Act of 1945 (12 U.S.C. 635 and following), the Export-Import Bank of the United States shall work with private financial inter-

mediaries in Poland to facilitate the export of goods and services to Poland.''

RESTRICTIONS ON LOANS

Section 12 of Pub. L. 93–646 provided that, until Jan. 3, 1975, no loan, guarantee, insurance, or credit could be extended by the Export-Import Bank of the United States to the Union of Soviet Socialist Republics.

EX. ORD. NO. 12166. DELEGATION OF FUNCTION OF PRESIDENT RELATING TO APPLICATION FOR CREDIT TO SECRETARY OF STATE

Ex. Ord. No. 12166, Oct. 19, 1979, 44 F.R. 60971, provided:

By the authority vested in me as President of the United States of America by Section 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(1)(B)), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1–101. The function vested in the President by Section 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(1)(B)), is delegated to the Secretary of State. That function is the authority to determine that a denial by the Export-Import Bank of an application for credit would be in the national interest, where such action could clearly and importantly advance United States policy in such areas as international terrorism, nuclear proliferation, environmental protection and human rights.

1–102. Before making such a determination, the Secretary of State shall consult with the Secretary of Commerce and the heads of other interested Executive agencies.

1–103. In accord with Section 2(b)(1)(B) of that Act, only in those cases where the Secretary of State has made such a determination should the Export-Import Bank deny an application for credit for nonfinancial or noncommercial considerations.

JIMMY CARTER.

ASSIGNMENT OF FUNCTIONS UNDER SECTION 530 OF THE FOREIGN RELATIONS AUTHORIZATION ACT FOR FISCAL YEARS 1994 AND 1995, AND SECTION 2(b)(4) OF THE EXPORT-IMPORT BANK ACT OF 1945, AS AMENDED

Memorandum of President of the United States, Mar. 23, 2007, 72 F.R. 18103, provided:

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby assign to you:

(1) the functions of the President under section 530 of the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995 (Public Law 103–236) (22 U.S.C. 2429a–2); and

(2) the functions of the President under section 2(b)(4) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635).

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

PRESIDENTIAL DETERMINATIONS RELATING TO COUNTRIES DEEMED TO BE MARXIST-LENINIST COUNTRIES

The following Presidential Determinations determined that the listed countries had ceased to be Marxist-Leninist countries within the definition of such term in subsection (b)(2)(B)(i) of this section:

Determination No. 2009–20, June 12, 2009, 74 F.R. 28865.—Kingdom of Cambodia.

Determination No. 2009–21, June 12, 2009, 74 F.R. 28867.—Lao People's Democratic Republic.

§ 635a. Management of Bank

(a) Establishment as independent agency

The Export-Import Bank of the United States shall constitute an independent agency of the United States and neither the Bank nor any of its functions, powers, or duties shall be transferred to or consolidated with any other department, agency, or corporation of the Government unless the Congress shall otherwise by law provide.

(b) President and First Vice President of the Bank; appointment; duties

There shall be a President of the Export-Import Bank of the United States, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, and who shall serve as chief executive officer of the Bank. There shall be a First Vice President of the Bank, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, who shall serve as President of the Bank during the absence or disability of or in the event of a vacancy in the office of President of the Bank, and who shall at other times perform such functions as the President of the Bank may from time to time prescribe.

(c) Board of Directors; composition; oath; terms; duties; quorum; bylaws

(1) There shall be a Board of Directors of the Bank consisting of the President of the Export-Import Bank of the United States, who shall serve as Chairman, the First Vice President who shall serve as Vice Chairman, and three additional persons appointed by the President of the United States by and with the advice and consent of the Senate.

(2) Of the five members of the Board, not more than three shall be members of any one political party.

(3) Omitted

(4) Before entering upon his duties, each of the directors shall take an oath faithfully to discharge the duties of his office.

(5) The directors, in addition to their duties as members of the Board, shall perform such additional duties and may hold such other offices in the administration of the Bank as the President of the Bank may from time to time prescribe.

(6) A quorum of the Board of Directors shall consist of at least three members.

(7) The Board of Directors shall adopt, and may from time to time amend, such bylaws as are necessary for the proper management and functioning of the Bank, and shall, in such bylaws, designate the vice presidents and other officers of the Bank and prescribe their duties.

(8)(A) The terms of the directors, including the President and the First Vice President of the Bank, appointed under this section shall be four years, except that—

(i) during their terms of office, the directors shall serve at the pleasure of the President of the United States;

(ii) the term of any director appointed after November 30, 1983, to serve before January 20, 1985, shall expire on January 20, 1985;

(iii) of the directors first appointed to serve beginning on or after January 21, 1985, two directors (other than the President and First Vice President of the Bank) shall be appointed for terms of two years, as designated by the President of the United States at the time of their appointment; and

(iv) any director first appointed to serve for a term beginning on any date after January 21, 1985, shall serve only for the remainder of the period for which such director would have been appointed if such director's term had begun on January 21, 1985. If such term would have expired before the date on which such director's term actually begins, the term of such director shall be the four-year period, or remainder thereof, as if such director had been preceded by a director whose term had begun on January 21, 1985.

(B) Of the five members of the Board appointed by the President, not less than one such member shall be selected from among the small business community and shall represent the interests of small business.

(C) Any person chosen to fill a vacancy shall be appointed only for the unexpired term of the director whom such person succeeds.

(D) Any director whose term has expired may be reappointed.

(E) Any director whose term has expired may continue to serve on the Board of Directors until the earlier of—

(i) the date on which such director's successor is qualified; or

(ii) the end of the 6-month period beginning on the date such director's term expires.

(9) At the request of any 2 members of the Board of Directors, the Chairman of the Board shall place an item pertaining to the policies or procedures of the Bank on the agenda for discussion by the Board. Within 30 days after the date such a request is made, the Chairman shall hold a meeting of the Board at which the item shall be discussed.

(d) Advisory Committee; appointment; composition; meetings; advice to Bank; report to Congress

(1)(A) There is established an Advisory Committee to consist of 17 members who shall be appointed by the Board of Directors on the recommendation of the President of the Bank.

(B) Such members shall be broadly representative of environment, production, commerce, finance, agriculture, labor, services, and State government.

(2)(A) Not less than three members appointed to the Advisory Committee shall be representative of the small business community.

(B) Not less than 2 members appointed to the Advisory Committee shall be representative of the labor community, except that no 2 representatives of the labor community shall be selected from the same labor union.

(C) Not less than 2 members appointed to the Advisory Committee shall be representative of the environmental nongovernmental organization community, except that no 2 of the members shall be from the same environmental organization.

(3) The Advisory Committee shall meet at least once each quarter.

(4) The Advisory Committee shall advise the Bank on its programs, and shall submit, with the report specified in section 635(b)(1)(A) of this title, its own comments to the Congress on the extent to which the Bank is meeting its mandate to provide competitive financing to expand United States exports, and any suggestions for improvements in this regard.

(e) Conflicting personal interests

(1) No director, officer, attorney, agent, or employee of the Bank shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting such individual's personal interests, or the interests of any corporation, partnership or association in which such individual is directly or indirectly personally interested.

(2) The General Counsel of the Bank shall ensure that the directors, officers, and employees of the Bank have available appropriate legal counsel for advice on, and oversight of, issues relating to personnel matters and other administrative law matters by designating an attorney to serve as Assistant General Counsel for Administration, whose duties, under the supervision of the General Counsel, shall be concerned solely or primarily with such issues.

(f) Small Business Division

(1) Establishment

There is established a Small Business Division (in this subsection referred to as the ''Division'') within the Bank in order to—

(A) carry out the provisions of subparagraphs (E) and (I) of section 635(b)(1) of this title relating to outreach, feedback, product improvement, and transaction advocacy for small business concerns (as defined in section 632(a) of title 15);

(B) advise and seek feedback from small business concerns on the opportunities and benefits for small business concerns in the financing products offered by the Bank, with particular emphasis on conducting outreach, enhancing the tailoring of products to small business needs and increasing loans to small business concerns;

(C) maintain liaison with the Small Business Administration and other departments and agencies in matters affecting small business concerns; and

(D) provide oversight of the development, implementation, and operation of technology improvements to strengthen small business outreach, including the technology improvement required by section 635(b)(1)(E)(x) of this title.

(2) Management

The President of the Bank shall appoint an officer, who shall rank not lower than senior vice president and whose sole executive function shall be to manage the Division. The officer shall—

(A) have substantial recent experience in financing exports by small business concerns; and

(B) advise the Board, particularly the director appointed under subsection (c)(8)(B) to represent the interests of small business, on matters of interest to, and concern for, small business.

(g) Small business specialists

(1) Dedicated personnel

The President of the Bank shall ensure that each operating division within the Bank has

staff that specializes in processing transactions that primarily benefit small business concerns (as defined in section 632(a) of title 15).

(2) Responsibilities

The small business specialists shall be involved in all aspects of processing applications for loans, guarantees, and insurance to support exports by small business concerns, including the approval or disapproval, or staff recommendations of approval or disapproval, as applicable, of such applications. In carrying out these responsibilities, the small business specialists shall consider the unique business requirements of small businesses and shall develop exporter performance criteria tailored to small business exporters.

(3) Approval authority

In an effort to maximize the speed and efficiency with which the Bank processes transactions primarily benefitting small business concerns, the small business specialists shall be authorized to approve applications for working capital loans and guarantees, and insurance in accordance with policies and procedures established by the Board. It is the sense of Congress that the policies and procedures should not prohibit, where appropriate, small business specialists from approving applications for working capital loans and guarantees, and for insurance, in support of exports which have a value of less than $10,000,000.

(4) Identification

The Bank shall prominently identify the small business specialists on its website and in promotional material.

(5) Employee evaluations

The evaluation of staff designated by the President of the Bank under paragraph (1), including annual reviews of performance of duties related to transactions in support of exports by small business concerns, and any resulting recommendations for salary adjustments, promotions, and other personnel actions, shall address the criteria established pursuant to subsection (h)(2)(B)(iii) and shall be conducted by the manager of the relevant operating division following consultation with the officer appointed to manage the Small Business Division pursuant to subsection (f)(2).

(6) Staff recommendations

Staff recommendations of denial or withdrawal for medium-term applications, exporter held multi-buyer policies, single buyer policies, and working capital applications processed by the Bank shall be transmitted to the officer appointed to manage the Small Business Division pursuant to subsection (f)(2) not later than 2 business days before a final decision.

(7) Rule of interpretation

Nothing in this subchapter shall be construed to prevent the delegation to the Division of any authority necessary to carry out subparagraphs (E) and (I) of section 635(b)(1) of this title.

(h) Small Business Committee

(1) Establishment

There is established a management committee to be known as the ''Small Business Committee''.

(2) Purpose and duties

(A) Purpose

The purpose of the Small Business Committee shall be to coordinate the Bank's initiatives and policies with respect to small business concerns (as defined in section 632(a) of title 15), including the timely processing and underwriting of transactions involving direct exports by small business concerns, and the development and coordination of efforts to implement new or enhanced Bank products and services pertaining to small business concerns.

(B) Duties

The duties of the Small Business Committee shall be determined by the President of the Bank and shall include the following:

(i) Assisting in the development of the Bank's small business strategic plans, including the Bank's plans for carrying out section 635(b)(1)(E) (v) and (x) of this title, and measuring and reporting in writing to the President of the Bank, at least once a year, on the Bank's progress in achieving the goals set forth in the plans.

(ii) Evaluating and reporting in writing to the President of the Bank, at least once a year, with respect to—

(I) the performance of each operating division of the Bank in serving small business concerns;

(II) the impact of processing and underwriting standards on transactions involving direct exports by small business concerns; and

(III) the adequacy of the staffing and resources of the Small Business Division.

(iii) Establishing criteria for evaluating the performance of staff designated by the President of the Bank under subsection (g)(1).

(iv) Coordinating the provision of services with other United States Government departments and agencies to small business concerns.

(3) Composition

(A) Chairperson

The Chairperson of the Small Business Committee shall be the officer appointed to manage the Small Business Division pursuant to subsection (f)(2). The Chairperson shall have the authority to call meetings of the Small Business Committee, set the agenda for Committee meetings, and request policy recommendations from the Committee's members.

(B) Other members

Except as otherwise provided in this subsection, the President of the Bank shall determine the composition of the Small Business Committee, and shall appoint or remove the members of the Small Business

Committee. In making such appointments, the President of the Bank shall ensure that the Small Business Committee is comprised of—

(i) the senior managing officers responsible for underwriting and processing transactions; and

(ii) other officers and employees of the Bank with responsibility for outreach to small business concerns and underwriting and processing transactions that involve small business concerns.

(4) Reporting

The Chairperson shall provide to the President of the Bank minutes of each meeting of the Small Business Committee, including any recommendations by the Committee or its individual members.

(i) Office of financing for socially and economically disadvantaged small business concerns and small business concerns owned by women

(1) Establishment

The President of the Bank shall establish in the Small Business Division an office whose sole functions shall be to continue and enhance the outreach activities of the Bank with respect to, and increase the total amount of loans, guarantees, and insurance provided by the Bank to support exports by, socially and economically disadvantaged small business concerns (as defined in section 637(a)(4) of title 15) and small business concerns owned by women.

(2) Management

The office shall be managed by a Bank officer of appropriate rank who shall report to the Bank officer designated under subsection (f)(2).

(3) Staffing

To the maximum extent practicable, the President of the Bank shall ensure that qualified minority and women applicants are considered when filling any position in the office.

(July 31, 1945, ch. 341, §3, 59 Stat. 527; Aug. 9, 1954, ch. 660, §1, 68 Stat. 677; Pub. L. 90–267, §1(a), (d), Mar. 13, 1968, 82 Stat. 47, 49; Pub. L. 98–181, title VI, §§613, 614(a), 620(b), Nov. 30, 1983, 97 Stat. 1255, 1261; Pub. L. 99–472, §18, Oct. 15, 1986, 100 Stat. 1205; Pub. L. 102–429, title I, §113, Oct. 21, 1992, 106 Stat. 2195; Pub. L. 105–121, §§6, 8, Nov. 26, 1997, 111 Stat. 2529, 2530; Pub. L. 106–46, §1(a), Aug. 11, 1999, 113 Stat. 227; Pub. L. 107–189, §24(b)(4), June 14, 2002, 116 Stat. 709; Pub. L. 109–438, §§6(a), 14(a), 15, 18(a), Dec. 20, 2006, 120 Stat. 3270, 3280, 3281.)

CODIFICATION

Provisions of subsecs. (b) and (c)(3) of this section, which prescribed the annual compensation of the President, the First Vice President, and other members of the Board of Directors, were omitted to conform to the provisions of the Executive Schedule. See sections 5314 and 5315 of Title 5, Government Organization and Employees.

AMENDMENTS

2006—Subsec. (c)(9). Pub. L. 109–438, §15, added par. (9).

Subsec. (d)(1)(A). Pub. L. 109–438, §18(a)(1)(A), substituted ''17'' for ''15''.

Subsec. (d)(1)(B). Pub. L. 109–438, §18(a)(1)(B), inserted ''environment,'' before ''production,''.

Subsec. (d)(2)(C). Pub. L. 109–438, §18(a)(2), added subpar. (C).

Subsecs. (f) to (h). Pub. L. 109–438, §6(a), added subsecs. (f) to (h).

Subsec. (i). Pub. L. 109–438, §14(a), added subsec. (i).

2002—Subsec. (d)(2)(B). Pub. L. 107–189 realigned margins.

1999—Subsec. (c)(6). Pub. L. 106–46 amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''A majority of the Board of Directors shall constitute a quorum.''

1997—Subsec. (d)(2). Pub. L. 105–121, §8, designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e). Pub. L. 105–121, §6, designated existing provisions as par. (1) and added par. (2).

1992—Subsec. (d)(1)(A). Pub. L. 102–429 substituted ''15 members'' for ''twelve members''.

1986—Subsec. (c)(8)(E). Pub. L. 99–472 added subpar. (E).

1983—Subsec. (c). Pub. L. 98–81, §614(a), designated first through seventh sentences as pars. (1) through (7), respectively, substituted ''The'' for ''Terms of the directors shall be at the pleasure of the President of the United States, and the'' at beginning of par. (5) as so designated, and added par. (8).

Subsec. (d). Pub. L. 98–181, §613, amended subsec. (d) generally. Prior to amendment subsec. (d) read as follows: ''There shall be an Advisory Committee of nine members, appointed by the Board of Directors on the recommendation of the President of the Bank, who shall be broadly representative of production, commerce, finance, agriculture and labor. The Advisory Committee shall meet one or more times per year, on the call of the President of the Bank, to advise with the Bank on its program. Members, not otherwise in the regular full-time employ of the United States, may be compensated at rates not exceeding the per diem equivalent of the rate for grade 18 of the General Schedule (5 U.S.C. 5332) for each day spent in travel or attendance at meetings of the Committee, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the Government service employed intermittently.''

Subsec. (e). Pub. L. 98–181, §620(b), substituted ''such individual's'' for ''his'' and ''such individual'' for ''he''.

1968—Subsecs. (a) to (c). Pub. L. 90–267, §1(a), changed name of ''Export-Import Bank of Washington'' to ''Export-Import Bank of the United States''.

Subsec. (d). Pub. L. 90–267, §1(d), substituted provisions for compensation of members, not otherwise in the regular full-time employ of the United States, at rates not exceeding the per diem equivalent of the rate for grade 18 of the General Schedule for each day spent in travel or attendance at meetings of the Committee, and for allowance of travel expenses, when serving away from home or regular place of business, as authorized by section 5703 of title 5 for individuals in the Government service employed intermittently for former provisions for allowance for attendance at meetings and travel expenses of $50 and $10, respectively.

1954—Act Aug. 9, 1954, amended section generally to provide for the independent management of the Bank under a Board of Directors and for the appointment of a President and First Vice President of the Bank.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 4 of act Aug. 9, 1954, provided that: ''The provisions of this Act for the appointment of a President and a First Vice President of the Bank and the members of the Board of Directors shall be effective upon its enactment [Aug. 9, 1954]. The remaining provisions of this Act shall become effective when the President and First Vice President of the Bank and one other member

of the Board of Directors initially appointed hereunder enter upon office, and shall thereupon supersede Reorganization Plan No. 5 of 1953 [set out below].''

UNTIED AID

Pub. L. 107–189, §10(a), June 14, 2002, 116 Stat. 702, provided that:

''(1) NEGOTIATIONS.—The Secretary of the Treasury shall seek to negotiate an OECD Arrangement on Untied Aid. In the negotiations, the Secretary should seek agreement on subjecting untied aid to the rules governing the Arrangement, including the rules governing disclosure.

''(2) REPORT TO THE CONGRESS.—Within 1 year after the date of the enactment of this Act [June 14, 2002], the Secretary of the Treasury shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the successes, failures, and obstacles in initiating negotiations, and if negotiations were initiated, in reaching the agreement described in paragraph (1).''

BOARD OF DIRECTORS; EXCEPTION TO QUORUM REQUIREMENT

Pub. L. 106–46, §1(b), Aug. 11, 1999, 113 Stat. 227, as amended by Pub. L. 106–62, §122, Sept. 30, 1999, 113 Stat. 509; Pub. L. 106–85, Oct. 29, 1999, 113 Stat. 1297; Pub. L. 106–88, Nov. 5, 1999, 113 Stat. 1304; Pub. L. 106–94, Nov. 10, 1999, 113 Stat. 1311; Pub. L. 106–105, Nov. 18, 1999, 113 Stat. 1484; Pub. L. 106–106, Nov. 19, 1999, 113 Stat. 1485, provided that: ''Notwithstanding section 3(c)(6) of the Export-Import Bank Act of 1945 [12 U.S.C. 635a(c)(6)], if, during the period that begins on July 21, 1999, and ends on December 2, 1999, there are fewer than three persons holding office on the Board of Directors of the Export-Import Bank of the United States, the entire membership of such Board of Directors shall constitute a quorum until the end of such period.''

COMPENSATION OF EMPLOYEES

Pub. L. 102–429, title I, §117, Oct. 21, 1996, 106 Stat. 2196, provided that:

''[(a) Repealed. Pub. L. 102–429, title I, §117(b), Oct. 21, 1996, 106 Stat. 2196.]

''(b) SUNSET.—Effective 2 years after the date of enactment of this Act [Oct. 21, 1992], subsection (a) is hereby repealed.

''(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Export-Import Bank of the United States shall submit a report to the Congress on—

''(1) the recruitment and employee retention problems of the Bank;

''(2) any relief from such problems afforded by the Office of Personnel Management;

''(3) any use of the authority provided in subsection (a); and

''(4) the conclusions and recommendations of the Bank with respect to—

''(A) whether such problems have been satisfactorily addressed; and

''(B) whether or not the authority of subsection (a) should be extended.''

[Pub. L. 111–117, div. F, title VI, Dec. 16, 2009, 123 Stat. 3341, provided in part: ''That notwithstanding subsection (b) of section 117 of the Export Enhancement Act of 1992 [Pub. L. 102–429, set out above], subsection (a) thereof shall remain in effect until October 1, 2010.'']

[Prior similar extensions of section 117(a) of Pub. L. 102–429 were contained in the following acts:

[Pub. L. 111–8, div. H, title VI, Mar. 11, 2009, 123 Stat. 859.

[Pub. L. 110–161, div. J, title II, Dec. 26, 2007, 121 Stat. 2290.

[Pub. L. 109–102, title I, Nov. 14, 2005, 119 Stat. 2173.

[Pub. L. 108–447, div. D, title I, Dec. 8, 2004, 118 Stat. 2969.

[Pub. L. 108–199, div. D, title I, Jan. 23, 2004, 118 Stat. 143.

[Pub. L. 108–7, div. E, title I, Feb. 20, 2003, 117 Stat. 160.

[Pub. L. 107–115, title I, Jan. 10, 2002, 115 Stat. 2119.

[Pub. L. 106–429, §101(a) [title I], Nov. 6, 2000, 114 Stat. 1900, 1900A–4.

[Pub. L. 106–113, div. B, §1000(a)(2) [title I], Nov. 29, 1999, 113 Stat. 1535, 1501A–64.

[Pub. L. 105–277, div. A, §101(d) [title I], Oct. 21, 1998, 112 Stat. 2681–150, 2681–151.

[Pub. L. 105–118, title I, Nov. 26, 1997, 111 Stat. 2387.

[Pub. L. 104–208, div. A, title I, §101(c) [title I], Sept. 30, 1996, 110 Stat. 3009–121, 3009–122.

[Pub. L. 104–107, title I, Feb. 12, 1996, 110 Stat. 705.

[Pub. L. 103–306, title IV, Aug. 23, 1994, 108 Stat. 1623.]

REPORT ON REGIONAL OFFICES

Section 118 of Pub. L. 102–429 directed Export-Import Bank, not later than 1 year after Oct. 21, 1992, to submit a report to Congress on the Bank's plan to establish and operate regional offices.

APPOINTMENT OF MEMBER OF BOARD TO REPRESENT INTERESTS OF SMALL BUSINESS COMMUNITY

Section 614(b) of Pub. L. 98–181 provided that: ''In order to carry out the amendment made by subsection (a) regarding section 3(c)(8)(B) of the Export-Import Bank Act of 1945 [subsec. (c)(8)(B) of this section], the first member, other than a member who will serve as Chairman or Vice Chairman of the Bank, appointed by the President of the United States to the Board of Directors of the Export-Import Bank of the United States after the date of the enactment of this section [Nov. 30, 1983] shall be selected from among the small business community and shall represent the interests of small business.''

BOARD OF DIRECTORS; ADVISORY COMMITTEE

A Board of Directors and an Advisory Committee reestablished for the Export-Import Bank of Washington, see note set out under section 635 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

TERMINATION OF FOREIGN ECONOMIC ADMINISTRATION

Foreign Economic Administration and office of its Administrator terminated by Ex. Ord. No. 9630, Sept. 27, 1945, 10 F.R. 12245.

REORGANIZATION PLAN NO. 5 OF 1953

18 F.R. 3741, 67 Stat. 637

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 30, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [see 5 U.S.C. 901 et seq.].

THE EXPORT-IMPORT BANK OF WASHINGTON

SECTION 1. THE MANAGING DIRECTOR

There is hereby established the office of Managing Director of the Export-Import Bank of Washington, hereinafter referred to as the ''Managing Director.'' The Managing Director shall be appointed by the President by and with the advice and consent of the Senate, and shall receive compensation at the rate of $17,500 per annum.

SEC. 2. DEPUTY DIRECTOR

There is hereby established the office of Deputy Director of the Export-Import Bank of Washington. The

Deputy Director shall be appointed by the President by and with the advice and consent of the Senate, shall receive compensation at the rate of $16,000 per annum, shall perform such functions as the Managing Director may from time to time prescribe, and shall act as Managing Director during the absence or disability of the Managing Director or in the event of a vacancy in the office of Managing Director.

SEC. 3. ASSISTANT DIRECTOR

There is hereby established the office of Assistant Director of the Export-Import Bank of Washington. The Assistant Director shall be appointed by the Managing Director under the classified civil service, shall receive compensation at the rate now or hereafter fixed by law for grade GS–18 of the general schedule established by the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5], and shall perform such functions as the Managing Director may from time to time prescribe.

SEC. 4. FUNCTIONS TRANSFERRED TO THE MANAGING DIRECTOR

All functions of the Board of Directors of the Export-Import Bank of Washington are hereby transferred to the Managing Director.

SEC. 5. GENERAL POLICIES

The National Advisory Council on International Monetary and Financial Problems shall from time to time establish general lending and other financial policies which shall govern the Managing Director in the conduct of the lending and other financial operations of the bank.

SEC. 6. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Managing Director may from time to time make such provisions as he deems appropriate authorizing the performance of any of the functions of the Managing Director by any other officer, or by any agency or employee, of the bank.

SEC. 7. ABOLITION

The following are hereby abolished: (1) The Board of Directors of the Export-Import Bank of Washington, including the offices of the members thereof provided for in section 3(a) of the Export-Import Bank Act of 1945, as amended [subsection (a) of this section]; (2) the Advisory Board of the Bank, together with the functions of the said Advisory Board; and (3) the function of the Chairman of the Board of Directors of the Export-Import Bank of Washington of being a member of the National Advisory Council on International Monetary and Financial Problems. The Managing Director shall make such provisions as may be necessary for winding up any outstanding affairs of the said abolished boards and offices not otherwise provided for in this reorganization plan.

SEC. 8. EFFECTIVE DATE

Sections 3 to 7, inclusive, of this reorganization plan shall become effective when the Managing Director first appointed hereunder enters upon office pursuant to the provisions of this reorganization plan.

[A Board of Directors was reestablished for the Export-Import Bank of Washington by section 1 of act Aug. 9, 1954, ch. 660, 68 Stat. 677, which amended this section. The Board had previously been abolished and its functions transferred to the Managing Director of the Bank by Reorg. Plan No. 5 of 1953, set out above. The 1953 Reorg. Plan was superseded by sections 1, 4 of act Aug. 9, 1954. See this section and 1954 Amendment and Effective Date of 1954 Amendment notes set out above. The ''Export-Import Bank of Washington'' was renamed the ''Export-Import Bank of the United States'' by Pub. L. 90–267, §1(a), Mar. 13, 1968, 82 Stat. 47.]

UNITED STATES TRADE REPRESENTATIVE AND SECRETARY OF COMMERCE AS ADDITIONAL MEMBERS OF BOARD OF DIRECTORS OF EXPORT-IMPORT BANK OF THE UNITED STATES

For provisions directing that the United States Trade Representative and the Secretary of Commerce serve, ex officio and without vote, as additional members of the Board of Directors of the Export-Import Bank of the United States, see section 3 of 1979 Reorg. Plan No. 3, set out in the Appendix to Title 5, Government Organization and Employees.

§ 635a–1. Export credit competition

(a) The President is authorized and requested to begin negotiations at the ministerial level with other major exporting countries to end predatory export financing programs and other forms of export subsidies, including mixed credits, in third country markets as well as within the United States. The President shall report to the Congress prior to January 15, 1979, on progress toward meeting the goals of this section.

(b) The Export-Import Bank of the United States is authorized to provide guarantees, insurance, and extensions of credit at rates and terms and other conditions which are, in the opinion of the Board of Directors of the Bank, competitive with those provided by the government-supported export credit instrumentalities of other nations.

(Pub. L. 95–630, title XIX, §1908, Nov. 10, 1978, 92 Stat. 3725.)

CODIFICATION

Section was enacted as part of the Export-Import Bank Act Amendments of 1978, and not as part of the Export-Import Bank Act of 1945 which comprises this subchapter.

EFFECTIVE DATE

Section effective Nov. 10, 1978, see section 1917 of Pub. L. 95–630, set out as an Effective Date of 1978 Amendment note under section 635 of this title.

§ 635a–2. Implementation of regulations and procedures to lessen adverse effect of loans and guarantees on industries in United States; report by United States International Trade Commission; written consideration of views of adversely affected parties

The Bank shall implement such regulations and procedures as may be appropriate to insure that full consideration is given to the extent to which any loan or financial guarantee is likely to have an adverse effect on industries, including agriculture, and employment in the United States, either by reducing demand for goods produced in the United States or by increasing imports to the United States. To carry out the purposes of this subsection,[1] the Bank shall request, and the United States International Trade Commission shall furnish, a report assessing the impact of the Bank's activities on industries and employment in the United States. Such report shall include an assessment of previous loans or financial guarantees and shall provide recom-

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

mendations concerning general areas which may adversely affect domestic industries, including agriculture, and employment. After October 1, 1983, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. In all cases to which this section applies, the Bank shall consider and address in writing the views of parties or persons who may be substantially adversely affected by the loan or guarantee prior to taking final action on the loan or guarantee. This requirement does not subject the Bank to the provisions of subchapter II of chapter 5 of title 5.

(Pub. L. 95–630, title XIX, § 1911, Nov. 10, 1978, 92 Stat. 3726; Pub. L. 98–181, title VI, § 632, Nov. 30, 1983, 97 Stat. 1262; Pub. L. 99–472, § 12, Oct. 15, 1986, 100 Stat. 1204.)

CODIFICATION

Section was enacted as part of the Export-Import Bank Act Amendments of 1978, and not as part of the Export-Import Bank Act of 1945 which comprises this subchapter.

AMENDMENTS

1986—Pub. L. 99–472 inserted provisions which required written consideration by Bank of views of parties or persons who may be substantially adversely affected by loan or guarantee prior to taking final action on loan or guarantee without subjecting Bank to subchapter II of chapter 5 of title 5.

1983—Pub. L. 98–181 inserted provision that after October 1, 1983, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

EFFECTIVE DATE

Section effective Nov. 10, 1978, see section 1917 of Pub. L. 95–630, set out as an Effective Date of 1978 Amendment note under section 635 of this title.

§ 635a–3. Export-Import Bank financing to match foreign financing

(a) Noncompetitive financing; inquiry by Secretary; notification of foreign country and prospective parties to transaction

(1) Upon receipt of information that foreign sales to the United States are being offered involving foreign official export credits which exceed limits under existing standstills, minutes, or practices to which the United States and other major exporting countries have agreed, irrespective of whether these credits are being offered by governments which are signatories to such standstills, minutes, or practices, the Secretary of the Treasury shall immediately conduct an inquiry to determine whether ''noncompetitive financing'' is being offered. The inquiry, and where appropriate, the determination and authorization to the Export-Import Bank of the United States referred to in this section shall be completed and made within 60 days of the receipt of such information.

(2) If the Secretary determines that such foreign ''noncompetitive'' financing is being offered, the Secretary shall request the immediate withdrawal of such financing by the foreign official export credit agency involved.

(3) If the offer is not withdrawn or if there is no immediate response to the withdrawal request, the Secretary of the Treasury shall notify the country offering such financing and all parties to the proposed transaction that the Eximbank may be authorized to provide competing United States sellers with financing to match that available through the foreign official export financing entity.

(b) Issuance of authorization to Bank to provide guarantees, insurance, and credits to competing United States sellers

The Secretary of the Treasury shall issue such authorization to the Bank to provide guarantees, insurance, and credits to competing United States sellers, unless the Secretary determines that—

(1) the availability of foreign official noncompetitive financing is not likely to be a significant factor in the sale; or

(2) the foreign noncompetitive financing has been withdrawn.

(c) Provision of financing by Bank pursuant to authorization

Upon receipt of authorization by the Secretary of the Treasury, the Export-Import Bank may provide financing to match that offered by the foreign official export credit entity: *Provided, however*, That loans, guarantees and insurance provided under this authority shall conform to all provisions of the Export-Import Bank Act of 1945, as amended [12 U.S.C. 635 et seq.].

(Pub. L. 95–630, title XIX, § 1912, Nov. 10, 1978, 92 Stat. 3726; Pub. L. 98–181, title VI, §§ 631, 633, Nov. 30, 1983, 97 Stat. 1262, 1263; Pub. L. 99–472, § 15, Oct. 15, 1986, 100 Stat. 1204.)

REFERENCES IN TEXT

The Export-Import Bank Act of 1945, as amended, referred to in subsec. (c), is act July 31, 1945, ch. 341, 59 Stat. 526, as amended, which is classified generally to subchapter 1 (§ 635 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 635 of this title and Tables.

CODIFICATION

Section was enacted as part of the Export-Import Bank Act Amendments of 1978, and not as part of the Export-Import Bank Act of 1945 which comprises this subchapter.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–472, § 15(b), which directed the insertion of ''irrespective of whether these credits are being offered by governments which are signatories to such standstills, minutes, or practices,'' after ''major export countries have agreed,'' was executed by inserting that phrase after ''major exporting countries have agreed,'' as the probable intent of Congress.

Subsec. (b). Pub. L. 99–472, § 15(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Secretary of the Treasury shall only issue such authorization to the Bank to provide guarantees, insurance and credits to competing United States sellers, if the Secretary determines that:

''(1) the availability of foreign official noncompetitive financing is likely to be a significant factor in the sale, and

''(2) the foreign noncompetitive financing has not been withdrawn on the date the Bank is authorized to provide competitive financing.''

1983—Subsec. (a)(1). Pub. L. 98–181, § 631(1), inserted provision that the inquiry, and where appropriate, the determination and authorization to the Export-Import Bank of the United States referred to in this section

shall be completed and made within 60 days of the receipt of such information.

Subsec. (a)(2). Pub. L. 98–181, § 633(b), substituted ''the Secretary shall request'' for ''he shall request''.

Subsec. (b). Pub. L. 98–181, § 633(a), substituted ''if the Secretary determines that'' for ''if he determines that'' in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98–181, § 631(2), substituted ''significant factor'' for ''determining factor''.

EFFECTIVE DATE

Section effective Nov. 10, 1978, see section 1917 of Pub. L. 95–630, set out as an Effective Date of 1978 Amendment note under section 635 of this title.

§ 635a–4. Guarantees for export accounts receivable and inventory

The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other public or private creditors to export trading companies as defined in section 1843(c)(14)(F)(i) of this title, or to other exporters, when such loans are secured by export accounts receivable, inventories of exportable goods, accounts receivable from leases, performance contracts, grant commitments, participation fees, member dues, revenue from publications, or such other collateral as the Board of Directors may deem appropriate, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size, and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

(Pub. L. 97–290, title II, § 206, Oct. 8, 1982, 96 Stat. 1239; Pub. L. 98–181, title VI, § 616(b), Nov. 30, 1983, 97 Stat. 1257.)

CODIFICATION

Section was enacted as part of the Bank Export Services Act, and not as part of the Export-Import Bank Act of 1945 which comprises this subchapter.

AMENDMENTS

1983—Pub. L. 98–181 substituted ''export accounts receivable, inventories of exportable goods, accounts receivable from leases, performance contracts, grant commitments, participation fees, member dues, revenue from publications, or such other collateral as the Board of Directors may deem appropriate,'' for ''export accounts receivable or inventories of exportable goods''.

§ 635b. Capitalization of Bank; method of capital stock payments; public-debt transactions; issuance of stock certificates

The Export-Import Bank of the United States shall have a capital stock of $1,000,000,000 subscribed by the United States. Certificates evidencing stock ownership of the United States shall be issued by the Bank to the President of the United States, or to such other person or persons as the President may designate from time to time, to the extent of payments made for the capital stock of the Bank.

(July 31, 1945, ch. 341, § 4, 59 Stat. 528; Pub. L. 90–267, § 1(a), Mar. 13, 1968, 82 Stat. 47; Pub. L. 98–181, title VI, § 620(c), Nov. 30, 1983, 97 Stat. 1261; Pub. L. 102–429, title I, § 121(b), Oct. 21, 1992, 106 Stat. 2198.)

AMENDMENTS

1992—Pub. L. 102–429 inserted second sentence and struck out former second through last sentences which read as follows: ''Payment for $1,000,000 of such capital stock shall be made by the surrender to the Bank for cancellation of the common stock issued prior to July 31, 1945, by the Bank and purchased by the United States. Payment for $174,000,000 of such capital stock shall be made by the surrender to the Bank for cancellation of the preferred stock heretofore issued by the Bank and purchased by the Reconstruction Finance Corporation. Payment for the $825,000,000 balance of such capital stock shall be subject to call at any time in whole or in part by the Board of Directors of the Bank. For the purpose of making payments of such balance, the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued after July 31, 1945, under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include such purpose. Payment under this section of the subscription of the United States to the Bank and repayments thereof shall be treated as public-debt transactions of the United States. Certificates evidencing stock ownership of the United States shall be issued by the Bank to the President of the United States, or to such other person or persons as the President may designate from time to time, to the extent of the common and preferred stock surrendered and other payments made for the capital stock of the Bank under this section.''

1983—Pub. L. 98–181 substituted ''the President'' for ''he'' before ''may designate''.

1968—Pub. L. 90–267 changed name of ''Export-Import Bank of Washington'' to ''Export-Import Bank of the United States''.

§ 635c. Repealed. Pub. L. 102–429, title I, § 121(c)(1), Oct. 21, 1992, 106 Stat. 2199

Section, act July 31, 1945, ch. 341, § 5, 59 Stat. 528, related to reimbursement of Reconstruction Finance Corporation for cancellation of Bank stock, public debt transactions, and payment of accumulated dividends.

§ 635d. Issuance of debentures, bonds, etc.; obligations redeemable; payment of interest; obligations purchasable by Secretary of the Treasury; public-debt transactions

The Export-Import Bank of the United States is authorized to issue from time to time for purchase by the Secretary of the Treasury its notes, debentures, bonds, or other obligations; but the aggregate amount of such obligations outstanding at any one time shall not exceed $6,000,000,000. Such obligations shall be redeemable at the option of the bank before maturity in such manner as may be stipulated in such obligations and shall have such maturity as may be determined by the Board of Directors of the bank with the approval of the Secretary of the Treasury. Each such Bank obligation issued to the Treasury after January 4, 1975, shall bear in-

terest at a rate not less than the current average yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding the issuance of the obligation of the Bank as determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Bank issued hereunder and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued after July 31, 1945, under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include such purpose. Payment under this section of the purchase price of such obligations of the Bank and repayments thereof by the Bank shall be treated as public-debt transactions of the United States.

(July 31, 1945, ch. 341, §5, formerly §6, 59 Stat. 528; June 9, 1947, ch. 101, §2, 61 Stat. 131; Oct. 3, 1951, ch. 445, §1(a), 65 Stat. 367; Aug. 9, 1954, ch. 660, §3(a), 68 Stat. 678; Pub. L. 85–424, §1(1), May 22, 1958, 72 Stat. 133; Pub. L. 90–267, §1(a), Mar. 13, 1968, 82 Stat. 47; Pub. L. 93–646, §7, Jan. 4, 1975, 88 Stat. 2336; renumbered §5, Pub. L. 102–429, title I, §121(c)(2), Oct. 21, 1992, 106 Stat. 2199.)

CODIFICATION

''Chapter 31 of title 31'' and ''that chapter'' substituted in text for ''the Second Liberty Bond Act, as amended'' and ''that Act'', respectively, on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 5 of act July 31, 1945, ch. 341, was classified to section 635c of this title, prior to repeal by Pub. L. 102–429, §121(c)(1).

AMENDMENTS

1975—Pub. L. 93–646 substituted provision making mandatory that each Bank obligation bear interest at a rate not less than the current average yield on outstanding obligations of comparable maturity, for provision requiring that only the current average rate be taken into consideration.

1968—Pub. L. 90–267 changed name of ''Export-Import Bank of Washington'' to ''Export-Import Bank of the United States''.

1958—Pub. L. 85–424 substituted ''$6,000,000,000'' for ''$4,000,000,000''.

1954—Act Aug. 9, 1954, substituted ''$4,000,000,000'' for ''three and one-half times the authorized capital stock of the Bank''.

1951—Act Oct. 3, 1951, substituted ''three and one-half'' for ''two and one-half''.

1947—Act June 9, 1947, struck out ''and bear such rate of interest'' before ''as may be determined'' in the second sentence and added the third sentence relating to the rate of interest on obligations.

EFFECTIVE DATE OF 1954 AMENDMENT

For effective date of amendment by act Aug. 9, 1954, see note set out under section 635a of this title.

BOARD OF DIRECTORS

A Board of Directors reestablished for the Export-Import Bank of Washington, see note under section 635 of this title.

§ 635e. Aggregate loan, guarantee, and insurance authority

(a) Limitation on outstanding amounts

(1) In general

The Export-Import Bank of the United States shall not have outstanding at any one time loans, guarantees, and insurance in an aggregate amount in excess of the applicable amount.

(2) Applicable amount

In paragraph (1), the term ''applicable amount'' means—

(A) during fiscal year 2002, $80,000,000,000;

(B) during fiscal year 2003, $85,000,000,000;

(C) during fiscal year 2004, $90,000,000,000;

(D) during fiscal year 2005, $95,000,000,000; and

(E) during fiscal year 2006, and each fiscal year thereafter through fiscal year 2011,[1]

(3) Subject to appropriations

All spending and credit authority provided under this subchapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(b) Presidential determination

(1) In general

Not later than March 31 of each fiscal year, the President of the United States shall determine whether the authority available to the Bank for such fiscal year will be sufficient to meet the Bank's needs, particularly those needs arising from—

(A) increases in the level of exports unforeseen at the time of the original budget request for such fiscal year;

(B) any increased foreign export credit subsidies; or

(C) the lack of progress in negotiations to reduce or eliminate export credit subsidies.

(2) Request for legislation

(A) In general

If the President of the United States finds that the amount of direct loan authority or guarantee authority available to the Bank for the fiscal year involved exceeds the amount which will be necessary to carry out the Bank's functions consistent with the availability of qualified applications and limitations imposed by law during such year, the President of the United States shall promptly transmit to the Congress a request for legislation to eliminate the amount of such excess direct loan, loan guarantee, or insurance authority.

(B) Continued availability of authority

The Bank shall continue to make remaining amounts of its authority available for the fiscal year involved, in accordance with its practices and the requirements of this subchapter, unless otherwise directed pursuant to law.

(July 31, 1945, ch. 341, §6, formerly §7, 59 Stat. 529; Oct. 3, 1951, ch. 445, §1(b), 65 Stat. 367; May

[1] So in original. The comma probably should be followed by a dollar amount and a period.

21, 1953, ch. 64, §2, 67 Stat. 28; Aug. 9, 1954, ch. 660, §3(b), 68 Stat. 678; Pub. L. 85–424, §1(2), May 22, 1958, 72 Stat. 133; Pub. L. 88–101, §1(b), Aug. 20, 1963, 77 Stat. 128; Pub. L. 90–267, §1(a), (e), Mar. 13, 1968, 82 Stat. 47, 49; Pub. L. 92–126, §1(b)(3), Aug. 17, 1971, 85 Stat. 345; Pub. L. 93–646, §8, Jan. 4, 1975, 88 Stat. 2336; Pub. L. 95–630, title XIX, §§1905, 1914, Nov. 10, 1978, 92 Stat. 3725, 3727; Pub. L. 97–35, title III, §381(a), Aug. 13, 1981, 95 Stat. 431; Pub. L. 98–181, title VI, §§615, 620(d), Nov. 30, 1983, 97 Stat. 1256, 1261; Pub. L. 99–472, §§13, 17, Oct. 15, 1986, 100 Stat. 1204, 1205; Pub. L. 102–145, §121(1), Oct. 28, 1991, as added Pub. L. 102–266, §102, Apr. 1, 1992, 106 Stat. 95; renumbered §6 and amended Pub. L. 102–429, title I, §§109(b), 121(c)(2), Oct. 21, 1992, 106 Stat. 2193, 2199; Pub. L. 106–569, title XI, §1104(a)(3), Dec. 27, 2000, 114 Stat. 3031; Pub. L. 107–189, §5, June 14, 2002, 116 Stat. 699; Pub. L. 109–438, §9, Dec. 20, 2006, 120 Stat. 3275.)

PRIOR PROVISIONS

A prior section 6 of act July 31, 1945, ch. 341, was renumbered section 5 and is classified to section 635d of this title.

AMENDMENTS

2006—Subsec. (a)(2)(E). Pub. L. 109–438 amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''during fiscal year 2006, $100,000,000,000.''

2002—Subsec. (a). Pub. L. 107–189 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The Export-Import Bank of the United States shall not have outstanding at any one time loans, guaranties, and insurance in an aggregate amount in excess of $75,000,000,000. All spending and credit authority provided under this subchapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.''

2000—Subsec. (b)(2), (3). Pub. L. 106–569 redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: ''Not later than April 15 of each year, the President of the United States shall transmit to the Congress a report on such determination.''

1992—Pub. L. 102–429, §109(b), inserted section catchline, redesignated former subsec. (a)(1) as subsec. (a), inserted subsec. heading, substituted ''$75,000,000,000'' for ''$40,000,000,000'', redesignated former subsec. (a)(2) as subsec. (b), redesignated former subpar. (A)(i) as par. (1), former subcls. (I) to (III) as subpars. (A) to (C), respectively, former subpar. (A)(ii) as par. (2), former subpar. (B) as par. (3), and former cls. (i) and (ii) as subpars. (A) and (B), respectively, inserted headings for subsec. (b), pars. (1) to (3), and subpars. (A) and (B) of par. (3), and struck out former subsec. (a)(3) which read as follows: ''AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated $145,259,000 for fiscal year 1987 to cover the subsidy cost of new direct loans obligated by the Bank in that fiscal year. Any amounts appropriated under this paragraph shall be permanent additions to the capital and reserves of the Bank.''

1991—Subsec. (b). Pub. L. 102–145, §121(1), as added by Pub. L. 102–266, struck out subsec. (b) which read as follows: ''After January 4, 1975, the Bank shall not approve any loans or financial guarantees, or combination thereof, in connection with exports to the Union of Soviet Socialist Republics in an aggregate amount in excess of $300,000,000. No such loan or financial guarantee, or combination thereof, shall be for the purchase, lease, or procurement of any product or service for production (including processing and distribution) of fossil fuel energy resources. Not more than $40,000,000 of such aggregate amount shall be for the purchase, lease, or procurement of any product or service which involves research or exploration of fossil fuel energy resources. The President may establish a limitation in excess of $300,000,000 if the President determines that such higher limitation is in the national interest and if the President reports such determination to the Congress together with the reasons therefor, including the amount of such proposed increase which would be available for the export of products and services for research, exploration, and production (including processing and distribution) of fossil fuel energy resources in the Union of Soviet Socialist Republics, and if, after the receipt of such report together with the reasons, the Congress adopts a concurrent resolution approving such determination.''

1986—Subsec. (a)(1). Pub. L. 99–472, §17, substituted ''All spending and credit authority'' for ''All spending authority''.

Subsec. (a)(3). Pub. L. 99–472, §13, added par. (3).

1983—Subsec. (a)(2). Pub. L. 98–181, §615, amended par. (2) generally, substituting provisions requiring a Presidential determination, not later than March 31 of each fiscal year, as to whether the authority available to the Bank for such fiscal year will be sufficient to meet the Bank's needs, requiring the President to transmit to Congress a report on such determination no later than April 15 of each year, and establishing procedures if the direct loan or guarantee authority available exceeds the amount necessary, for provision limiting gross obligations for the principal amount of direct loans authorized by the Bank during fiscal years 1982 and 1983 to $10,478,000,000, and designating specified amounts thereof for each fiscal year.

Subsec. (b). Pub. L. 98–181, §620(d), substituted ''the President'' for ''he'' before ''determines that such higher limitation'' and ''reports such determination''.

1981—Subsec. (a). Pub. L. 97–35 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (a). Pub. L. 95–630 substituted ''$40,000,000,000'' for ''$25,000,000,000'' and inserted provision that all spending authority provided under this chapter be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

1975—Subsec. (a). Pub. L. 93–646, §8(1), (2), designated existing provisions as subsec. (a) and substituted ''$25,000,000,000'' for ''$20,000,000,000''.

Subsec. (b). Pub. L. 93–646, §8(3), added subsec. (b).

1971—Pub. L. 92–126 substituted ''$20,000,000,000'' for ''$13,500,000,000''.

1968—Pub. L. 90–267 changed name of ''Export-Import Bank of Washington'' to ''Export-Import Bank of the United States'' and substituted ''$13,500,000,000'' for ''$9,000,000,000''.

1963—Pub. L. 88–101 substituted ''$9,000,000,000'' for ''$7,000,000,000''.

1958—Pub. L. 85–424 substituted ''$7,000,000,000'' for ''$5,000,000,000''.

1954—Act Aug. 9, 1954, substituted ''$5,000,000,000'' for ''four and one-half times the authorized capital stock of the Bank''.

1953—Act May 21, 1958, substituted ''loans, guaranties, and insurance'' for ''loans and guaranties''.

1951—Act Oct. 3, 1951, substituted ''four and one-half'' for ''three and one-half''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective Nov. 10, 1978, see section 1917 of Pub. L. 95–630, set out as a note under section 635 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

For effective date of amendment by act Aug. 9, 1954, see note set out under section 635a of this title.

§ 635f. Termination date of Bank's functions; exceptions; liquidation

Export-Import Bank of the United States shall continue to exercise its functions in connection

with and in furtherance of its objects and purposes until the close of business on September 30, 2011, but the provisions of this section shall not be construed as preventing the bank from acquiring obligations prior to such date which mature subsequent to such date or from assuming prior to such date liability as guarantor, endorser, or acceptor of obligations which mature subsequent to such date or from issuing, either prior or subsequent to such date, for purchase by the Secretary of the Treasury or any other purchasers, its notes, debentures, bonds, or other obligations which mature subsequent to such date or from continuing as a corporate agency of the United States and exercising any of its functions subsequent to such date for purposes of orderly liquidation, including the administration of its assets and the collection of any obligations held by the bank.

(July 31, 1945, ch. 341, §7, formerly §8, 59 Stat. 529; June 9, 1947, ch. 101, §3, 61 Stat. 131; Oct. 3, 1951, ch. 445, §1(c), 65 Stat. 367; Pub. L. 85–55, June 17, 1957, 71 Stat. 82; Pub. L. 88–101, §2, Aug. 20, 1963, 77 Stat. 128; Pub. L. 90–267, §1(a), (f), Mar. 13, 1968, 82 Stat. 47, 49; Pub. L. 92–126, §1(b)(4), Aug. 17, 1971, 85 Stat. 345; Pub. L. 93–331, July 4, 1974, 88 Stat. 289; Pub. L. 93–374, Aug. 14, 1974, 88 Stat. 445; Pub. L. 93–425, Sept. 30, 1974, 88 Stat. 1166; Pub. L. 93–450, Oct. 18, 1974, 88 Stat. 1368; Pub. L. 93–646, §9, Jan. 4, 1975, 88 Stat. 2336; Pub. L. 95–143, §4, Oct. 26, 1977, 91 Stat. 1211; Pub. L. 95–407, Sept. 30, 1978, 92 Stat. 882; Pub. L. 95–630, title XIX, §1906, Nov. 10, 1978, 92 Stat. 3725; Pub. L. 98–109, §6, Oct. 1, 1983, 97 Stat. 746; Pub. L. 98–143, Nov. 1, 1983, 97 Stat. 916; Pub. L. 98–181, title VI, §611, Nov. 30, 1983, 97 Stat. 1254; Pub. L. 99–472, §14, Oct. 15, 1986, 100 Stat. 1204; renumbered §7 and amended Pub. L. 102–429, title I, §§102, 121(c)(2), Oct. 21, 1992, 106 Stat. 2187, 2199; Pub. L. 105–46, §122, Sept. 30, 1997, 111 Stat. 1158; Pub. L. 105–121, §2(a), Nov. 26, 1997, 111 Stat. 2528; Pub. L. 107–189, §3, June 14, 2002, 116 Stat. 699; Pub. L. 109–438, §2, Dec. 20, 2006, 120 Stat. 3268.)

Prior Provisions

A prior section 7 of act July 31, 1945, ch. 341, was renumbered section 6 and is classified to section 635e of this title.

Amendments

2006—Pub. L. 109–438 substituted ''2011'' for ''2006''.

2002—Pub. L. 107–189 substituted ''September 30, 2006'' for ''September 30, 2001''.

1997—Pub. L. 105–121 substituted ''September 30, 2001'' for ''September 30, October 23, 1997''.

Pub. L. 105–46 substituted ''October 23, 1997'' for ''1997''.

1992—Pub. L. 102–429, §102, substituted ''1997'' for ''1992''.

1986—Pub. L. 99–472 substituted ''September 30, 1992'' for ''September 30, 1986''.

1983—Pub. L. 98–181 substituted ''September 30, 1986'' for ''November 18, 1983''.

Pub. L. 98–143 substituted ''November 18, 1983'' for ''October 31, 1983''.

Pub. L. 98–109 substituted ''October 31, 1983'' for ''September 30, 1983''.

1978—Pub. L. 95–630 substituted ''September 30, 1983'' for ''December 31, 1978''.

Pub. L. 95–407 substituted ''December 31, 1978'' for ''September 30, 1978''.

1977—Pub. L. 95–143 substituted ''September 30, 1978'' for ''June 30, 1978''.

1975—Pub. L. 93–646 substituted ''June 30, 1978'' for ''November 30, 1974''.

1974—Pub. L. 93–450 substituted ''November 30, 1974'' for ''October 15, 1974''.

Pub. L. 93–425 substituted ''October 15, 1974'' for ''September 30, 1974''.

Pub. L. 93–374 substituted ''September 30, 1974'' for ''July 30, 1974''.

Pub. L. 93–331 substituted ''July 30, 1974'' for ''June 30, 1974''.

1971—Pub. L. 92–126 substituted ''June 30, 1974'' for ''June 30, 1973'' and ''Secretary of the Treasury or any other purchasers'' for ''Secretary of the Treasury''.

1968—Pub. L. 90–267 changed name of ''Export-Import Bank of Washington'' to ''Export-Import Bank of the United States'' and substituted ''June 30, 1973'' for ''June 30, 1968''.

1963—Pub. L. 88–101 substituted ''June 30, 1968'' for ''June 30, 1963''.

1957—Pub. L. 85–55 substituted ''June 30, 1963'' for ''June 30, 1958''.

1951—Act Oct. 3, 1951, substituted ''June 30, 1958'' for ''June 30, 1953''.

1947—Act June 9, 1947, struck out former section and inserted present section to provide for the termination of the Bank as of June 30, 1953, and its orderly liquidation thereafter.

Effective Date of 1997 Amendment

Section 2(b) of Pub. L. 105–121 provided that: ''The amendment made by this section [amending this section] shall take effect on September 30, 1997.''

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–630 effective Nov. 10, 1978, see section 1917 of Pub. L. 95–630, set out as a note under section 635 of this title.

Continuation of Bank Functions

Provisions extending the date that the Export-Import Bank of the United States could continue to exercise its functions in connection with and in furtherance of its objects and purposes notwithstanding the dates specified in this section and section 1(c) of Pub. L. 103–428, set out as an Effective and Termination Dates of 1994 Amendments note under section 635 of this title, were contained in the following acts:

Pub. L. 107–186, §1, May 30, 2002, 116 Stat. 589, extending the date to June 14, 2002.

Pub. L. 107–168, §1, May 1, 2002, 116 Stat. 131, extending the date to May 31, 2002.

Pub. L. 107–156, §1, Mar. 31, 2002, 116 Stat. 117, extending the date to Apr. 30, 2002.

Pub. L. 107–115, title V, §588, Jan. 10, 2002, 115 Stat. 2174, extending the date to Mar. 31, 2002.

Pub. L. 107–44, §115, as added by Pub. L. 107–48, Oct. 12, 2001, 115 Stat. 261, extending the date to Jan. 10, 2002.

Pub. L. 107–44, §115, Sept. 28, 2001, 115 Stat. 256, extending the date to Oct. 16, 2001, prior to repeal by Pub. L. 107–48, Oct. 12, 2001, 115 Stat. 261.

Termination date for Bank's functions was temporarily extended until the following dates by the acts listed below:

Until Nov. 7, 1997, by Pub. L. 105–64, Oct. 23, 1997, 111 Stat. 1343.

Until Nov. 9, 1997, by Pub. L. 105–68, Nov. 7, 1997, 111 Stat. 1453.

Until Nov. 10, 1997, by Pub. L. 105–69, Nov. 9, 1997, 111 Stat. 1454.

Until Nov. 14, 1997, by Pub. L. 105–71, Nov. 10, 1997, 111 Stat. 1456.

Until Nov. 26, 1997, by Pub. L. 105–84, Nov. 14, 1997, 111 Stat. 1628.

Financial Assistance to the Union of Soviet Socialist Republics

Section 1 of Pub. L. 93–450 provided in part that the Bank shall not authorize any financial assistance to the Union of Soviet Socialist Republics during the life

of Pub. L. 93–450, which extended the termination date from Oct. 15, 1974, to Nov. 30, 1974.

§ 635g. Report to Congress; time for submission; contents

(a) Annual submission of report

The Export-Import Bank of the United States shall transmit to the Congress annually a complete and detailed report of its operations. Such report shall be as of the close of business on the last day of each fiscal year.

(b) Report on allocation of sums set aside for small business exports

(1) The Bank shall include in its annual report to the Congress a report on the allocation of the sums set aside for small business exports pursuant to section 635(b)(1)(E) of this title.

(2) Such report shall specify—

(A) the total number and dollar volume of loans made from the sums set aside;

(B) the number and dollar volume of loans made through the consortia program under section 635(b)(1)(E)(vii) of this title;

(C) the amount of guarantees and insurance provided for small business exports;

(D) the number of recipients of financing from the sums set aside who have not previously participated in the Bank's programs;

(E) the number of commitments entered into in amounts less than $500,000; and

(F) any recommendations for increasing the participation of banks and other institutions in the programs authorized under section 635(b)(1)(E) of this title.

(3) For the purpose of this subsection, the Bank's report shall be transmitted to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives.

(c) Technology to assist small businesses

The Bank shall include in its annual report to the Congress under subsection (a) of this section for each of fiscal years 2002 through 2006 a report on the efforts made by the Bank to carry out subparagraphs (E)(x) and (J) of section 635(b)(1) of this title, and on how the efforts are assisting small business concerns (as defined in section 632(a) of title 15).

(d) Number of small business suppliers of Bank users

The Bank shall estimate on the basis of an annual survey or tabulation the number of entities that are suppliers of users of the Bank and that are small business concerns (as defined in section 632(a) of title 15) located in the United States, and shall include the estimate in its annual report to the Congress under subsection (a) of this section.

(e) Outreach to certain small businesses

The Bank shall include in its annual report to the Congress under subsection (a) of this section a description of outreach efforts made by the Bank to any socially and economically disadvantaged small business concerns (as defined in section 637(a)(4) of title 15), small business concerns (as defined in section 632(a) of title 15) owned by women, and small business concerns (as defined in section 632(a) of title 15) employing fewer than 100 employees.

(f) Additional reports

Not later than March 31 of each year, the Bank shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate reports on—

(1) the extent to which the Bank has been able to use the authority provided, and has complied with the mandates contained, in section 635(b)(1)(E) of this title, and to the extent the Bank has been unable to fully use such authority and comply with such mandates, a report on the reasons for the Bank's inability to do so and the steps the Bank is taking to remedy such inability;

(2) the extent to which financing has been made available to small business concerns (described in subsection (e)) to enable them to participate in exports by major contractors, including through access to the supply chains of the contractors through direct or indirect funding;

(3) the specific measures the Bank will take in the upcoming year to achieve the small business objectives of the Bank, including expanded outreach, product improvements, and related actions;

(4) the progress made by the Bank in supporting exports by socially and economically disadvantaged small business concerns (defined in section 637(a)(4) of title 15) and small business concerns (as defined in section 632(a) of title 15) owned by women, including estimates of the amounts made available to finance exports directly by such small business concerns, a comparison of these amounts with the amounts made available to all small business concerns, and a comparison of such amounts with the amounts so made available during the 2 preceding years;

(5) with respect to each type of transaction, the interest and fees charged by the Bank to exporters (including a description of fees and interest, if any, charged to small business concerns), buyers, and other applicants in connection with each financing program of the Bank, and the highest, lowest, and average fees charged by the Bank for short term insurance transactions;

(6) the effects of the fees on the ability of the Bank to achieve the objectives of the Bank relating to small business;

(7) the fee structure of the Bank as compared with those of foreign export credit agencies; and

(8)(A) the efforts made by the Bank to carry out subparagraphs (E)(x) and (J) of section 635(b)(1) of this title, including the total amount expended by the Bank to do so; and

(B) if the Bank has been unable to comply with such subparagraphs—

(i) an analysis of the reasons therefor; and

(ii) what the Bank is doing to achieve, and the date by which the Bank expects to have achieved, such compliance.

(July 31, 1945, ch. 341, §8, formerly §9, 59 Stat. 529; Pub. L. 90–267, §1(a), Mar. 13, 1968, 82 Stat. 47; Pub. L. 93–646, §10, Jan. 4, 1975, 88 Stat. 2336;

Pub. L. 95–630, title XIX, § 1907(b), Nov. 10, 1978, 92 Stat. 3725; Pub. L. 98–181, title VI, §§ 618(b), 623, Nov. 30, 1983, 97 Stat. 1259, 1262; Pub. L. 99–472, § 20(b), (c), Oct. 15, 1986, 100 Stat. 1209, 1210; renumbered § 8, Pub. L. 102–429, title I, § 121(c)(2), Oct. 21, 1992, 106 Stat. 2199; Pub. L. 106–569, title XI, § 1104(a)(4), Dec. 27, 2000, 114 Stat. 3032; Pub. L. 107–189, § 12, June 14, 2002, 116 Stat. 704; Pub. L. 109–438, § 20, Dec. 20, 2006, 120 Stat. 3282.)

PRIOR PROVISIONS

A prior section 8 of act July 31, 1945, ch. 341, was renumbered section 7 and is classified to section 635f of this title.

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–438 added subsec. (f).

2002—Subsecs. (c) to (e). Pub. L. 107–189 added subsecs. (c) to (e).

2000—Subsec. (b). Pub. L. 106–569 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''The report shall contain a description of actions taken by the Bank in pursuance of the policy of aiding, counseling, assisting, and protecting, insofar as is possible, the interests of small business concerns and of the activities of the member of the Board appointed to represent the interest of small business. In addition, the Bank shall include in the report a description of specific activities and programs undertaken by it to achieve the policy of section 3261 of title 22, and section 2151q of title 22, as required by section 635(b)(1)(C) of this title.''

Subsec. (c). Pub. L. 106–569 redesignated subsec. (c) as (b) and directed redesignation of subsec. (e) as (c).

Subsec. (d). Pub. L. 106–569 struck out subsec. (d) which required report to include actions taken by Bank to aid industries, preserve and create highly skilled jobs, and enhance opportunity for business growth and expansion and comments of Advisory Committee.

Subsec. (e). Pub. L. 106–569, which directed redesignation of subsec. (e) as (c), could not be executed. See 1986 Amendment note and Termination Date of 1986 Amendment note below.

1986—Subsec. (e). Pub. L. 99–472 temporarily added subsec. (e). See Termination Date of 1986 Amendment note below.

1983—Subsec. (b). Pub. L. 98–181, § 618(b)(1), inserted ''and of the activities of the member of the Board appointed to represent the interests of small business''.

Subsec. (c). Pub. L. 98–181, § 618(b)(2), added subsec. (c).

Subsec. (d). Pub. L. 98–181, § 623, added subsec. (d).

1978—Subsec. (b). Pub. L. 95–630 inserted provision that in addition, the Bank include in the report a description of specific activities and programs undertaken by it to achieve the policy of section 3261 of title 22, and section 2151q of title 22, as required by section 635(b)(1)(C) of this title.

1975—Pub. L. 93–646 designated existing provisions as subsec. (a), substituted provisions calling for an annual report as of the close of business on the last day of each fiscal year, for provisions calling for a semiannual report as of the close of business on June 30 and Dec. 31 of each year, and added subsec. (b).

1968—Pub. L. 90–267 changed name of ''Export-Import Bank of Washington'' to ''Export-Import Bank of the United States''.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

TERMINATION DATE OF 1986 AMENDMENT

Section 20(c) of Pub. L. 99–472 provided that: ''Effective March 2, 1988, the amendment made by subsection (b) [amending this section] is repealed.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective Nov. 10, 1978, see section 1917 of Pub. L. 95–630, set out as a note under section 635 of this title.

REPORTS

Pub. L. 107–189, § 8(c), June 14, 2002, 116 Stat. 701, provided that: ''The Export-Import Bank of the United States shall include in the annual report required by section 8(a) of the Export-Import Bank Act of 1945 [12 U.S.C. 635g(a)] for each of fiscal years 2002 through 2006 a report on the efforts made by the Bank to carry out subparagraphs (E)(x) and (J) of section 2(b)(1) of such Act [12 U.S.C. 635(b)(1)], and on how the efforts are assisting small businesses.''

FINANCING FOR RENEWABLE ENERGY PROJECTS

Pub. L. 101–167, title V, § 534(d), Nov. 21, 1989, 103 Stat. 1231, provided that:

''(1) Of the financing provided by the Export-Import Bank that is utilized for the support of exports for the energy sector, the Bank shall seek to provide not less than 5 per centum of such financing for renewable energy projects.

''(2) The Export-Import Bank shall take all appropriate steps to finance information exchanges and training whose purpose it is to help link United States producers in the renewable energy sector with assistance programs and potential foreign customers.

''(3) Beginning on April 15, 1990, the Chairman of the Export-Import Bank shall submit an annual report to the Committees on Appropriations on the Bank's implementation of this subsection.''

SUBMISSION OF ANNUAL REPORT

Pub. L. 89–348, § 2(9), Nov. 8, 1965, 79 Stat. 1312, modified requirement relating to submission of reports to Congress by providing for annual reports instead of semiannual reports.

§ 635g–1. Annual competitiveness report

(a) In general

Not later than June 30 of each year, the Bank shall submit to the appropriate congressional committees a report that includes the following:

(1) Actions of Bank in providing financing on a competitive basis, and to minimize competition in government-supported export financing

A description of the actions of the Bank in complying with the second and third sentences of section 635(b)(1)(A) of this title. In this part of the report, the Bank shall include a survey of all other major export-financing facilities available from other governments and government-related agencies through which foreign exporters compete with United States exporters (including through use of market windows (as defined pursuant to section 635i–3(h)(7) of this title)) and, to the extent such information is available to the Bank, indicate in specific terms the ways in which the Bank's rates, terms, and other conditions compare with those offered from such other governments directly or indirectly. With respect to the preceding sentence, the Bank shall use all available information to estimate the annual amount of export financing available from each such government and government-related agency. In this part of the report, the Bank shall include a survey of a representative number of United States exporters and United States commercial lending institutions which

provide export credit on the experience of the exporters and institutions in meeting financial competition from other countries whose exporters compete with United States exporters.

(2) Role of Bank in implementing strategic plan prepared by the Trade Promotion Coordinating Committee

A description of the role of the Bank in implementing the strategic plan prepared by the Trade Promotion Coordinating Committee in accordance with section 4727 of title 15.

(3) Tied aid credit program and fund

The report required by section 635i–3(g) of this title.

(4) Purpose of all Bank transactions

A description of all Bank transactions which shall be classified according to their principal purpose, such as to correct a market failure or to provide matching support.

(5) Efforts of Bank to promote export of goods and services related to renewable energy sources

A description of the activities of the Bank with respect to financing renewable energy projects undertaken under section 635(b)(1)(K) of this title, and an analysis comparing the level of credit extended by the Bank for renewable energy projects with the level of credit so extended for the preceding fiscal year.

(6) Size of Bank program account

A separate section which—

(A) compares, to the extent practicable, the size of the Bank program account with the size of the program accounts of the other major export-financing facilities referred to in paragraph (1); and

(B) makes recommendations, if appropriate, with respect to the relative size of the Bank program account, based on factors including whether the size differences are in the best interests of the United States taxpayer.

(7) Co-financing programs of the Bank and of other export credit agencies

A description of the co-financing programs of the Bank and of the other major export-financing facilities referred to in paragraph (1), which includes a list of countries with which the United States has in effect a memorandum of understanding relating to export credit agency co-financing and, if such a memorandum is not in effect with any country with a major export credit-financing facility, an explanation of why such a memorandum is not in effect.

(8) Services supported by the Bank and by other export credit agencies

A separate section which describes the participation of the Bank in providing funding, guarantees, or insurance for services, which shall include appropriate information on the involvement of the other major export-financing facilities referred to in paragraph (1) in providing such support for services, and an explanation of any differences among the facilities in providing the support.

(9) Export finance cases not in compliance with the arrangement

Detailed information on cases reported to the Bank of export financing that appear not to comply with the Arrangement (as defined in section 635i–3(h)(3) of this title) or that appear to exploit loopholes in the Arrangement for the purpose of obtaining a commercial competitive advantage. The President of the Bank, in consultation with the Secretary of the Treasury, may provide to the appropriate congressional committees the information required by this subsection in a separate and confidential report, instead of providing such information in the report required by this subsection.

(10) Foreign export credit agency activities not consistent with the WTO agreement on subsidies and countervailing measures

A description of the extent to which the activities of foreign export credit agencies and other entities sponsored by a foreign government, particularly those that are not members of the Arrangement (as defined in section 635i–3(h)(3) of this title), appear not to comply with the Arrangement and appear to be inconsistent with the terms of the Agreement on Subsidies and Countervailing Measures referred to in section 3511(d)(12) of title 19, and a description of the actions taken by the United States Government to address the activities. The President of the Bank, in consultation with the Secretary of the Treasury, may provide to the appropriate congressional committees, the information required by this subsection in a separate and confidential report, instead of providing such information in the report required by this subsection.

(b) Inclusion of additional comments

The report required by subsection (a) shall include such additional comments as any member of the Board of Directors may submit to the Board for inclusion in the report.

(c) Appropriate congressional committees

The term ''appropriate congressional committees'' means the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(July 31, 1945, ch. 341, §8A, as added Pub. L. 109–438, §13(a), Dec. 20, 2006, 120 Stat. 3277.)

§ 635h. Exemption from prohibition of section 955 of title 18

Notwithstanding the provisions of section 955 of title 18, any person, including any individual, partnership, corporation, or association, may act for or participate with the Export-Import Bank of the United States in any operation or transaction, or may acquire any obligation issued in connection with any operation or transaction, engaged in by the Bank.

(July 31, 1945, ch. 341, §9, formerly §11, 59 Stat. 529; Sept. 3, 1954, ch. 1263, §29, 68 Stat. 1237; Pub. L. 90–267, §1(a), Mar. 13, 1968, 82 Stat. 47; renumbered §9, Pub. L. 102–429, title I, §121(c)(3), Oct. 21, 1992, 106 Stat. 2199.)

PRIOR PROVISIONS

A prior section 9 of act July 31, 1945, ch. 341, was renumbered section 8 and is classified to section 635g of this title.

AMENDMENTS

1968—Pub. L. 90–267 changed name of ''Export-Import Bank of Washington'' to ''Export-Import Bank of the United States''.

1954—Act Sept. 3, 1954, substituted ''section 955 of title 18'' for ''section 804a of title 31''.

§§ 635i to 635i–2. Repealed. Pub. L. 102–429, title I, § 121(c)(1), Oct. 21, 1992, 106 Stat. 2199

Section 635i, act July 31, 1945, ch. 341, §12, as added June 9, 1947, ch. 101, §4, 61 Stat. 131; amended Mar. 13, 1968, Pub. L. 90–267, §1(a), 82 Stat. 47, related to assumption of rights and liabilities of existing Bank by Export-Import Bank of the United States including transfer of funds, property, personnel, etc.

Section 635i–1, act July 31, 1945, ch. 341, §13, as added Nov. 30, 1983, Pub. L. 98–181, title VI, §619(a), 97 Stat. 1260, related to establishment of special facilities in support of export transactions to Brazil and Mexico.

Section 635i–2, act July 31, 1945, ch. 341, §14, as added Nov. 30, 1983, Pub. L. 98–181, title VI, §621, 97 Stat. 1261, related to notification to Congress of decrease in capital level of Bank.

§ 635i–3. Tied Aid Credit Fund and program

(a) Findings

The Congress finds that—

(1) tied aid and partially untied aid credits offered by other countries are a predatory method of financing exports because of their market-distorting effects;

(2) these distortions have caused the United States to lose export sales, with resulting losses in economic growth and employment;

(3) these practices undermine market mechanisms that would otherwise result in export purchase decisions made on the basis of price, quality, delivery, and other factors directly related to the export, where official financing is not subsidized and would be a neutral factor in the transaction;

(4) support of commercial exports by donor countries with tied aid and partially untied aid credits impedes the growth of developing countries because it diverts development assistance funds from essential developmental purposes;

(5) the Bank has, at a minimum, the following two tasks—

(A)(i) first, the Bank should match foreign export credit agencies and aid agencies when they engage in tied aid outside the confines of the Arrangement and when they exploit loopholes, such as untied aid;

(ii) such matching is needed to provide the United States with leverage in efforts at the OECD to reduce the overall level of export subsidies;

(iii) only through matching foreign export credit offers can the Bank buttress United States negotiators in their efforts to bring these loopholes within the disciplines of the Arrangement; and

(iv) in order to bring untied aid within the discipline of the Arrangement, the Bank should consider initiating highly competitive financial support when the Bank learns that foreign untied aid offers will be made; and

(B) second, the Bank should support United States exporters when the exporters face foreign competition that is consistent with the Arrangement and the Subsidies Code of the World Trade Organization, but which places United States exporters at a competitive disadvantage; and

(6) there should be established in the Bank a tied aid program to target the export markets of those countries, including those that are not a party to the Arrangement, which make extensive use of tied aid or partially untied aid credits, or untied aid used to promote exports as if it were tied aid, for commercial advantage for the purposes of—

(A) enforcing compliance with the existing Arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes; and

(B) facilitating efforts to negotiate, establish, and enforce new or revised comprehensive international arrangements effectively restricting the use of tied aid and partially untied aid credits, or untied aid used to promote exports as if it were tied aid, for commercial purposes; and

(C) promoting compliance with Arrangement rules among foreign export credit agencies that are not a party to the Arrangement;

and such program should be used aggressively for such purposes.

(b) Establishment of tied aid credit program

(1) In general

The Bank shall establish a tied aid credit program under which grants shall be made from funds available in the Tied Aid Credit Fund established under subsection (c) of this section—

(A) to supplement the financing of a United States export when there is a reasonable expectation that predatory financing will be provided by another country for a sale by a competitor of the United States exporter with respect to such export and with special attention to matching tied aid and partially untied aid credits extended by other governments—

(i) in violation of the Arrangement; or

(ii) in cases in which the Bank determines that United States trade or economic interests justify the matching of tied aid credits extended in compliance with the Arrangement, including grandfathered cases;

(B) to supplement the financing of United States exports to foreign markets which are actual or potential export markets for any country which the Bank determines—

(i) engages in predatory official export financing through the use of tied aid or partially untied aid credits, and impedes negotiations or violates agreements on tied aid to eliminate the use of such credits for commercial purposes; or

(ii) engages in predatory financing practices that seek to circumvent international agreements on tied aid; or

(C) to supplement the financing of United States exports under such other circumstances as the Bank may determine to be appropriate for carrying out the purposes of this section.

(2) Administration of program

The tied aid credit program shall be administered by the Bank—

(A) in consultation with the Secretary and in accordance with the principles, process, and standards developed pursuant to paragraph (5) of this subsection and the purposes described in subsection (a)(5) of this section;

(B) in cooperation with United States exporters and private financial institutions or entities, and in consultation with other Federal agencies, as appropriate; and

(C) in consultation with the National Advisory Council on International Monetary and Financial Policies.

(3) Coordination with other export financing

Under the tied aid credit program, the Bank may combine grants from the Tied Aid Credit Fund with—

(A) any guarantee, insurance, or other extension of credit provided by the Bank under this subchapter;

(B) any export financing provided by any private financial institution or other entity; and

(C) any other type of export financing,

in such manner and under such terms as the Bank determines to be appropriate, including combinations of export financing in the form of blended financing and parallel financing.

(4) Information on countries which engage in official predatory export financing and impede negotiations

In order to assist the Bank to make the most efficient use of funds available for supplemental financing under paragraph (1)(B), the United States Trade Representative and the Secretary of Commerce may provide information on principal sectors and key markets of countries described in paragraph (1)(B) to the Bank, the Secretary, and the National Advisory Council on International Monetary and Financial Policies. The Bank shall also request and take into consideration the views of the private sector on principal sectors and key markets of countries described in paragraph (1)(B).

(5) Principles, process, and standards governing use of the Fund

(A) In general

The Secretary and the Bank jointly shall develop a process for, and the principles and standards to be used in, determining how the amounts in the Tied Aid Credit Fund could be used most effectively and efficiently to carry out the purposes of subsection (a)(6) of this section.

(B) Content of principles, process, and standards

(i) Consideration of certain principles and standards

In developing the principles and standards referred to in subparagraph (A), the Secretary and the Bank shall consider administering the Tied Aid Credit Fund in accordance with the following principles and standards:

(I) The Tied Aid Credit Fund should be used to leverage multilateral negotiations to restrict the scope for aid-financed trade distortions through new multilateral rules, to police existing rules, and to seek compliance by those countries that are not a party to the Arrangement.

(II) The Tied Aid Credit Fund will be used to counter a foreign tied aid credit confronted by a United States exporter when bidding for a capital project.

(III) Credible information about an offer of foreign tied aid will be required before the Tied Aid Credit Fund is used to offer specific terms to match such an offer. In cases where information about a specific offer of foreign tied aid (or untied aid used to promote exports as if it were tied aid) is not available in a timely manner, or is unavailable because the foreign export credit agency involved is not subject to the reporting requirements under the Arrangement, then the Bank may decide to use the Tied Aid Credit Fund based on credible evidence of a history of such offers under similar circumstances or other forms of credible evidence.

(IV) The Tied Aid Credit Fund will be used to enable a competitive United States exporter to pursue further market opportunities on commercial terms made possible by the use of the Fund.

(V) Each use of the Tied Aid Credit Fund will be in accordance with the Arrangement unless a breach of the Arrangement has been committed by a foreign export credit agency.

(VI) The Tied Aid Credit Fund may only be used to defend potential sales by United States companies to a project that is environmentally sound.

(VII) The Tied Aid Credit Fund may be used to preemptively counter potential foreign tied aid offers without triggering foreign tied aid use.

(ii) Process

In handling individual applications involving the use or potential use of the Tied Aid Credit Fund the following process shall exclusively apply pursuant to subparagraph (A):

(I) The Bank shall process an application for tied aid in accordance with the principles and standards developed pursuant to subparagraph (A) and clause (i) of this subparagraph.

(II) Twenty days prior to the scheduled meeting of the Board of Directors at which an application will be considered (unless the Bank determines that an earlier discussion is appropriate based on the facts of a particular financing), the Bank shall brief the Secretary on the application and deliver to the Secretary

such documents, information, or data as may reasonably be necessary to permit the Secretary to review the application to determine if the application complies with the principles and standards developed pursuant to subparagraph (A) and clause (i) of this subparagraph.

(III) The Secretary may request a single postponement of the consideration by the Board of Directors of the application for up to 14 days to allow the Secretary to submit to the Board of Directors a memorandum objecting to the application.

(IV) Case-by-case decisions on whether to approve the use of the Tied Aid Credit Fund shall be made by the Board of Directors, except that the approval of the Board of Directors (or a commitment letter based on that approval) shall not become final (except as provided in subclause (V)), if the Secretary indicates to the President of the Bank in writing the Secretary's intention to appeal the decision of the Board of Directors to the President of the United States and makes the appeal in writing not later than 20 days after the meeting at which the Board of Directors considered the application.

(V) The Bank shall not grant final approval of an application for any tied aid credit (or a commitment letter based on that approval) if the President of the United States, after consulting with the President of the Bank and the Secretary, determines within 30 days of an appeal by the Secretary under subclause (IV) that the extension of the tied aid credit would materially impede achieving the purposes described in subsection (a)(6). If no such Presidential determination is made during the 30-day period, the approval by the Bank of the application (or related commitment letter) that was the subject of such appeal shall become final.

(C) Initial principles, process, and standards

As soon as is practicable but not later than 6 months after June 14, 2002, the Secretary and the Bank shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a copy of the principles, process, and standards developed pursuant to subparagraph (A).

(D) Transitional principles and standards

The principles and standards set forth in subparagraph (B)(i) shall govern the use of the Tied Aid Credit Fund until the principles, process, and standards required by subparagraph (C) are submitted.

(E) Update and revision

The Secretary and the Bank jointly should update and revise, as needed, the principles, process, and standards developed pursuant to subparagraph (A), and, on doing so, shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a copy of the principles, process, and standards so updated and revised.

(6) Reconsideration of decisions

(A) In general

Taking into consideration the time sensitivity of transactions, the Board of Directors of the Bank shall expeditiously pursuant to paragraph (2) reconsider a decision of the Board to deny an application for the use of the Tied Aid Credit Fund if the applicant submits the request for reconsideration within 3 months of the denial.

(B) Procedural rules

In any such reconsideration, the applicant may be required to provide new information on the application.

(c) Tied Aid Credit Fund

(1) In general

There is hereby established within the Bank a fund to be known as the ''Tied Aid Credit Fund'' (hereinafter in this section referred to as the ''Fund''), consisting of such amounts as may be appropriated to the Fund pursuant to the authorization contained in subsection (e) of this section.

(2) Expenditures from Fund

Amounts in the Fund shall be available for grants made by the Bank under the tied aid credit program established pursuant to subsection (b) of this section and to reimburse the Bank for the amount equal to the concessionality level of any tied aid credits authorized by the Bank.

(d) Consistency with Arrangement

Any export financing involving the use of a grant under the tied aid credit program shall be consistent with the procedures established by the Arrangement, as in effect at the time such financing is approved.

(e) Authorization

There are authorized to be appropriated to the Fund such sums as may be necessary to carry out the purposes of this section. Such sums are authorized to remain available until expended.

(f) Nonreviewability

No action taken under this section shall be reviewable by any court, except for abuse of discretion.

(g) Report to Congress

(1) In general

The Bank, in consultation with the Secretary, shall submit an annual report on tied aid credits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(2) Contents of reports

Each report required under paragraph (1) shall contain a description of—

(A) the implementation of the Arrangement restricting tied aid and partially un-

tied aid credits for commercial purposes, including the operation of notification and consultation procedures;

(B) all principal offers of tied aid credit financing by foreign countries during the previous 6-month period, including all offers notified by countries participating in the Arrangement, and in particular—

(i) offers grandfathered under the Arrangement; and

(ii) notifications of exceptions under the Arrangement;

(C) any use by the Bank of the Tied Aid Credit Fund to match specific offers, including those that are grandfathered or exceptions under the Arrangement; and

(D) other actions by the United States Government to combat predatory financing practices by foreign governments, including additional negotiations among participating governments in the Arrangement.

(3) Confidential information

To the extent the Bank determines any information required to be included in the report under this subsection should not be made public, such information may be submitted separately on a confidential basis or provided orally, rather than in written form, to the Chairmen and ranking minority Members of the Committees of the Senate and the House of Representatives with jurisdiction over the subject matter of the report.

(h) Definitions

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

(1) Tied aid and partially untied aid credit

The terms ''tied aid credit'' and ''partially untied aid credit'' mean any credit which—

(A) has a grant element greater than zero percent, as determined by the Development Assistance Committee of the Organization for Economic Cooperation and Development;

(B) is, in fact or in effect, tied to—

(i) the procurement of goods or services from the donor country, in the case of tied aid credit; or

(ii) the procurement of goods or services from a restricted number of countries, in the case of partially untied aid credit; and

(C) is financed either exclusively from public funds or partly from public and partly from private funds.

(2) Secretary

The term ''Secretary'' means the Secretary of the Treasury.

(3) Arrangement

The term ''Arrangement'' means the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development.

(4) Blended financing

The term ''blended financing'' means financing provided through any combination of official development assistance, official export credits, and private commercial credit which is integrated into a single agreement with a single set of financial terms.

(5) Parallel financing

The term ''parallel financing'' means financing provided by any combination of official development assistance, official export credits, and private commercial credit which is not integrated into a single agreement and does not have a single set of financial terms.

(6) Offers grandfathered under the Arrangement

The term ''offers grandfathered under the Arrangement'' means—

(A) financing offers made or lines of credit extended on or before February 15, 1992; or

(B) financing offers extended for subloans under lines of credit referred to in subparagraph (A) made on or before August 15, 1992, or, in the case of Mexico, on or before December 31, 1992.

(7) Market window

The Bank, in consultation with the Secretary of the Treasury, shall define ''market window'' for purposes of this section.

(July 31, 1945, ch. 341, §10, formerly §15, as added Pub. L. 99–472, §19, Oct. 15, 1986, 100 Stat. 1205; amended Pub. L. 100–217, Dec. 29, 1987, 101 Stat. 1454; Pub. L. 100–418, title III, §3302(b), Aug. 23, 1988, 102 Stat. 1383; Pub. L. 101–240, title I, §101(b), Dec. 19, 1989, 103 Stat. 2493; Pub. L. 101–513, title V, §562(d), Nov. 5, 1990, 104 Stat. 2036; renumbered §10 and amended Pub. L. 102–429, title I, §§103, 121(c)(4), Oct. 21, 1992, 106 Stat. 2187, 2199; Pub. L. 104–97, §1, Jan. 11, 1996, 109 Stat. 984; Pub. L. 104–107, title V, §579, Feb. 12, 1996, 110 Stat. 751; Pub. L. 105–121, §3, Nov. 26, 1997, 111 Stat. 2528; Pub. L. 106–569, title XI, §1103(d)(2), Dec. 27, 2000, 114 Stat. 3031; Pub. L. 107–189, §§9, 10(c), (d), 24(a)(2)(E), June 14, 2002, 116 Stat. 701, 703, 704, 708; Pub. L. 109–438, §10, Dec. 20, 2006, 120 Stat. 3275.)

PRIOR PROVISIONS

A prior section 10 of act July 31, 1945, ch. 341, repealed section 713b of Title 15, Commerce and Trade.

AMENDMENTS

2006—Subsec. (a)(6). Pub. L. 109–438, §10(b)(1)(A), inserted '', including those that are not a party to the Arrangement,'' after ''countries'' in introductory provisions.

Subsec. (a)(6)(C). Pub. L. 109–438, §10(b)(1)(B), (C), added subpar. (C).

Subsec. (b)(5)(B)(i)(I). Pub. L. 109–438, §10(b)(2)(A)(i), struck out ''and'' after ''multilateral rules,'' and inserted '', and to seek compliance by those countries that are not a party to the Arrangement'' before period.

Subsec. (b)(5)(B)(i)(III). Pub. L. 109–438, §10(b)(2)(A)(ii), inserted at end ''In cases where information about a specific offer of foreign tied aid (or untied aid used to promote exports as if it were tied aid) is not available in a timely manner, or is unavailable because the foreign export credit agency involved is not subject to the reporting requirements under the Arrangement, then the Bank may decide to use the Tied Aid Credit Fund based on credible evidence of a history of such offers under similar circumstances or other forms of credible evidence.''

Subsec. (b)(5)(B)(ii). Pub. L. 109–438, §10(a), amended cl. (ii) heading and text generally. Prior to amendment,

text read as follows: ''Once the principles, process and standards referred to in subparagraph (A) are followed, the final case-by-case decisions on the use of the Tied Aid Credit Fund shall be made by the Bank: *Provided however*, That the Bank shall not approve the extension of a proposed tied aid credit if the President of the United States determines, after consulting with the President of the Bank and the Secretary of the Treasury, that the extension of the tied aid credit would materially impede achieving the purposes described in subsection (a)(6) of this section.''

2002—Subsec. (a)(4). Pub. L. 107–189, §10(c)(1), struck out ''and'' at end.

Subsec. (a)(5). Pub. L. 107–189, §10(c)(3), added par. (5). Former par. (5) redesignated (6).

Pub. L. 107–189, §10(c)(2), inserted '', or untied aid used to promote exports as if it were tied aid,'' before ''for commercial'' in introductory provisions and in subpar. (B).

Subsec. (a)(6). Pub. L. 107–189, §10(c)(3), redesignated par. (5) as (6).

Subsec. (b)(2)(A). Pub. L. 107–189, §9(a)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: ''in consultation with the Secretary and in accordance with the Secretary's recommendations on how such credits could be used most effectively and efficiently to carry out the purposes described in subsection (a)(5) of this section;''.

Subsec. (b)(5). Pub. L. 107–189, §9(a)(2), added par. (5).

Subsec. (b)(6). Pub. L. 107–189, §9(b), added par. (6).

Subsec. (g)(1). Pub. L. 107–189, §24(a)(2)(E), substituted ''Committee on Financial Services of the House of Representatives'' for ''Committee on Banking, Finance and Urban Affairs of the House of Representatives''.

Subsec. (h)(7). Pub. L. 107–189, §10(d), added par. (7).

2000—Subsec. (g)(1). Pub. L. 106–569 substituted ''The Bank'' for ''On or before October 15, 1992, and every 6 months thereafter, the Bank'' and ''submit an annual report'' for ''submit a report''.

1997—Subsec. (c)(2). Pub. L. 105–121, §3(a), struck out ''through September 30, 1997'' after ''authorized by the Bank''.

Subsec. (e). Pub. L. 105–121, §3(b), amended first sentence generally. Prior to amendment first sentence read as follows: ''There are authorized to be appropriated to the Fund such sums as may be necessary for each of fiscal years 1996 and 1997.''

1996—Subsec. (c)(2). Pub. L. 104–107, §579(a), which directed substitution of ''1997'' for ''1995'', could not be executed because ''1995'' does not appear in text after amendment by Pub. L. 104–97. See below.

Pub. L. 104–97, §1(a), substituted ''1997'' for ''1995''.

Subsec. (e). Pub. L. 104–107, §579(b), which directed substitution of ''1996 and 1997'' for ''1993, 1994, and 1995'', could not be executed because that language does not appear in text after general amendment by Pub. L. 104–97. See below.

Pub. L. 104–97, §1(b), substituted ''There are authorized to be appropriated to the Fund such sums as may be necessary for each of fiscal years 1996 and 1997.'' for ''There are authorized to be appropriated to the Fund $500,000,000 for each of fiscal years 1993, 1994, and 1995.''

1992—Subsec. (a). Pub. L. 102–429, §103(c)(1), (2), substituted ''predatory'' for ''predacious'' in par. (1), struck out ''temporary'' before ''tied aid program'' in introductory provisions of par. (5), and substituted ''existing Arrangement'' for ''existing arrangement'' in par. (5)(A).

Subsec. (b)(1). Pub. L. 102–429, §103(c)(3)(A), substituted ''The'' for ''To carry out the purposes of subsection (a)(5) of this section, the''.

Subsec. (b)(1)(A). Pub. L. 102–429, §103(c)(1), (3)(B), substituted ''predatory'' for ''predacious'' and inserted before semicolon ''and with special attention to matching tied aid and partially untied aid credits extended by other governments—'' followed by cls. (i) and (ii).

Subsec. (b)(1)(B). Pub. L. 102–429, §103(c)(1), (3)(C), in cl. (i) substituted ''predatory'' for ''predacious'' and ''partially untied aid credits, and impedes negotiations or violates agreements on tied aid to eliminate the use of such credits for commercial purposes; or'' for ''partially untied aid credits; and'', added cl. (ii), and struck out former cl. (ii) which read as follows: ''impedes negotiations to eliminate the use of such credits for commercial purposes; or''.

Subsec. (b)(2). Pub. L. 102–429, §103(c)(4), (5), struck out ''of the Treasury'' after ''Secretary'' in subpar. (A) and substituted ''United States exporters and private financial institutions or entities, and in consultation with other Federal agencies'' for ''private financial institutions or entities'' in subpar. (B).

Subsec. (b)(4). Pub. L. 102–429, §103(c)(6), inserted at end ''The Bank shall also request and take into consideration the views of the private sector on principal sectors and key markets of countries described in paragraph (1)(B).''

Subsec. (c)(2). Pub. L. 102–429, §103(a), substituted ''September 30, 1995'' for ''fiscal year 1992''.

Subsec. (e). Pub. L. 102–429, §103(b), amended subsec. (e) generally, substituting present provisions for provisions which authorized appropriations for fiscal years 1987 through 1992 and provided authority for Presidential rescission.

Subsec. (g)(1). Pub. L. 102–429, §103(c)(7), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''REPORT REQUIRED.—Before the end of the 6-month period beginning on October 15, 1986, and every six months thereafter, the Bank, in consultation with the Secretary, shall prepare and transmit a report on tied aid credits to the President of the Senate and the Speaker of the House of Representatives.''

Subsec. (g)(2). Pub. L. 102–429, §103(c)(7), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''CONTENTS OF REPORT.—Each report required by paragraph (1) shall contain a description of—

''(A) the principal offers of predacious financing by foreign countries during the course of the previous 6 months;

''(B) steps taken by the United States to combat specific predacious financing practices of foreign countries;

''(C) any use by the Bank of the Tied Aid Credit Fund to match specific predacious financing practices of foreign countries and to initiate tied aid credit offers;

''(D) any additional steps the United States may take in the future to discourage use of predacious financing practices; and

''(E) the progress achieved by negotiations conducted to carry out the purposes described in subsection (a)(5) of this section.''

Subsec. (h). Pub. L. 102–429, §103(c)(8), substituted ''For purposes of this section, the following definitions shall apply:'' for ''For the purpose of this section—'' in introductory provisions and added par. (6).

1990—Subsec. (c)(2). Pub. L. 101–513, §562(d)(2), substituted ''1992'' for ''1991''.

Subsec. (e)(1). Pub. L. 101–513, §562(d)(1), substituted ''for fiscal year 1990, $300,000,000, and for each of fiscal years 1991 and 1992, $500,000,000'' for ''and for fiscal years 1990 and 1991, $300,000,000''.

1989—Subsec. (a)(5). Pub. L. 101–240, §101(b)(1), substituted ''for the purposes of—'', pars. (A) and (B), and concluding provisions for ''for the purpose of facilitating the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes, and such program should be aggressively used until such an arrangement is established.''

Subsec. (b)(1). Pub. L. 101–240, §101(b)(2), inserted introductory provisions and struck out former introductory provisions which read as follows: ''For the purpose of facilitating the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes, the Bank shall establish a tied aid credit program under which grants shall be made from funds available in the Tied Aid Credit Fund established under subsection (c) of this section—''.

Subsec. (b)(2)(A). Pub. L. 101–240, §101(b)(3), substituted ''carry out the purposes described in sub-

section (a)(5) of this section'' for ''promote the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes''.

Subsec. (c)(2). Pub. L. 101–240, § 101(b)(4), substituted ''amount equal to the concessionality level'' for ''cost'' and ''through fiscal year 1991'' for ''during fiscal years 1986, 1987, 1988, and 1989''.

Subsec. (e)(1). Pub. L. 101–240, § 101(b)(7), which directed the insertion of '', and for fiscal years 1990, 1991, and 1992, $200,000,000'' after ''$300,000,000'' was not executed in view of earlier amendment by section 101(b)(5) of Pub. L. 101–240, which inserted '', and for fiscal years 1990 and 1991, $300,000,000'' after ''$300,000,000'', and in view of Senate floor amendment of the bill which added the authorization contained in section 101(b)(5) and was intended to replace the authorization now appearing in section 101(b)(7). See Cong. Rec., Vol. 135, pt. 22, pp. 31199, 31203.

Pub. L. 101–240, § 101(b)(5), inserted '', and for fiscal years 1990 and 1991, $300,000,000'' after ''$300,000,000''.

Subsec. (g)(2)(E). Pub. L. 101–240, § 101(b)(6), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''any progress achieved in negotiations to establish a comprehensive international arrangement restricting the use of tied aid and partially untied credits for commercial purposes.''

1988—Subsecs. (c)(2), (e)(1). Pub. L. 100–418 substituted ''1988, and 1989'' for ''and 1988''.

1987—Subsec. (c)(2). Pub. L. 100–217 substituted ''during fiscal years 1986, 1987, and 1988'' for ''during fiscal year 1986''.

USE OF FUND TO DISCOURAGE PREDATORY FINANCING PRACTICES

Section 3302(a) of Pub. L. 100–418 provided that: ''The Congress finds that—

''(1) negotiations have led to an international agreement to increase the grant element required in tied aid credit offers;

''(2) concern continues to exist that countries party to the agreement may continue to offer tied aid credits that deviate from the agreement;

''(3) in such cases, the United States could continue to lose export sales in connection with the aggressive, and in some cases, unfair, tied aid practices of such countries; and

''(4) in such cases, the Export-Import Bank of the United States should continue to use the Tied Aid Credit Fund established by section 15(c) [now 10(c)] of the Export-Import Bank Act of 1945 [12 U.S.C. 635i–3(c)] to discourage the use of such predatory financing practices.''

§ 635i–4. Repealed. Pub. L. 102–429, title I, § 121(c)(1), Oct. 21, 1992, 106 Stat. 2199

Section, act July 31, 1945, ch. 341, § 16, as added Oct. 21, 1986, Pub. L. 99–509, title II, § 2002, 100 Stat. 1880, related to procedures and terms for sale of Bank loans to public.

§ 635i–5. Environmental policy and procedures

(a) Environmental effects consideration

(1) In general

Consistent with the objectives of section 635(b)(1)(A) of this title, the Bank shall establish procedures to take into account the potential beneficial and adverse environmental effects of goods and services for which support is requested under its direct lending and guarantee programs. Such procedures shall provide for the public disclosure of environmental assessments and supplemental environmental reports required to be submitted to the Bank, including remediation or mitigation plans and procedures, and related monitoring reports. The preceding sentence shall not be interpreted to require the public disclosure of any information described in section 1905 of title 18. Such procedures shall apply to any transaction involving a project—

(A) for which long-term support of $10,000,000 or more is requested from the Bank;

(B) for which the Bank's support would be critical to its implementation; and

(C) which may have significant environmental effects upon the global commons or any country not participating in the project, or may produce an emission, an effluent, or a principal product that is prohibited or strictly regulated pursuant to Federal environmental law.

(2) Authority to withhold financing

The procedures established under paragraph (1) shall permit the Board of Directors, in its judgment, to withhold financing from a project for environmental reasons or to approve financing after considering the potential environmental effects of a project.

(b) Use of Bank programs to encourage certain exports

(1) In general

The Bank shall encourage the use of its programs to support the export of goods and services that have beneficial effects on the environment or mitigate potential adverse environmental effects (such as exports of products and services used to aid in the monitoring, abatement, control, or prevention of air, water, and ground contaminants or pollution, or which provide protection in the handling of toxic substances, subject to a final determination by the Bank, and products and services for foreign environmental projects dedicated entirely to the prevention, control, or cleanup of air, water, or ground pollution, including facilities to provide for control or cleanup, and used in the retrofitting of facility equipment for the sole purpose of mitigating, controlling, or preventing adverse environmental effects, subject to a final determination by the Bank). The Board of Directors shall name an officer of the Bank to advise the Board on ways that the Bank's programs can be used to support the export of such goods and services. The officer shall act as liaison between the Bank and other Federal Government agencies, including the agencies whose representatives are members of the Environmental Trade Promotion Working Group of the Trade Promotion Coordinating Committee, with respect to overall United States Government policy on the environment.

(2) Limitations on authorization of appropriations

In addition to other funds available to support the export of goods and services described in paragraph (1), there are authorized to be appropriated to the Bank not more than $35,000,000 for the cost (as defined in section 661a(5) of title 2) of supporting such exports. If, in any fiscal year, the funds appropriated in accordance with this paragraph are not fully utilized due to insufficient qualified trans-

actions for the export of such goods and services, such funds may be expended for other purposes eligible for support by the Bank.

(c) Inclusion in report to Congress

The Bank shall provide in its annual report to the Congress a summary of its activities under subsections (a) and (b) of this section.

(d) Interpretation

Nothing in this section shall be construed to create any cause of action.

(July 31, 1945, ch. 341, §11, formerly §17, as added and renumbered §11, Pub. L. 102–429, title I, §§106, 121(c)(5), Oct. 21, 1992, 106 Stat. 2189, 2199; amended Pub. L. 103–428, §2(a), Oct. 31, 1994, 108 Stat. 4376; Pub. L. 109–438, §18(b), Dec. 20, 2006, 120 Stat. 3281.)

CODIFICATION

Another section 11 of act July 31, 1945, ch. 341, was renumbered section 14 and is classified to section 635i–8 of this title.

PRIOR PROVISIONS

A prior section 11 of act July 31, 1945, ch. 341, was renumbered section 9 and is classified to section 635h of this title.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–438 inserted after first sentence ''Such procedures shall provide for the public disclosure of environmental assessments and supplemental environmental reports required to be submitted to the Bank, including remediation or mitigation plans and procedures, and related monitoring reports. The preceding sentence shall not be interpreted to require the public disclosure of any information described in section 1905 of title 18.''

1994—Subsec. (b). Pub. L. 103–428 inserted par. (1) designation and heading, inserted before period at end of first sentence ''(such as exports of products and services used to aid in the monitoring, abatement, control, or prevention of air, water, and ground contaminants or pollution, or which provide protection in the handling of toxic substances, subject to a final determination by the Bank, and products and services for foreign environmental projects dedicated entirely to the prevention, control, or cleanup of air, water, or ground pollution, including facilities to provide for control or cleanup, and used in the retrofitting of facility equipment for the sole purpose of mitigating, controlling, or preventing adverse environmental effects, subject to a final determination by the Bank)'', and added par. (2).

§ 635i–6. Debt reduction; Enterprise for the Americas Initiative

(a) Definitions

For purposes of this section—

(1) the term ''eligible country'' means a country designated by the President in accordance with subsection (b) of this section;

(2) the term ''Facility'' means the entity established in the Department of the Treasury by section 1738 of title 7; and

(3) the term ''IMF'' means the International Monetary Fund.

(b) Eligibility for benefits under the Facility

(1) Requirements

To be eligible for benefits from the Facility under this section, a country must—

(A) be a Latin American or Caribbean country;

(B) have in effect, have received approval for, or, as appropriate in exceptional circumstances, be making significant progress toward—

(i) an IMF standby arrangement, extended IMF arrangement, or an arrangement under the structural adjustment facility or enhanced structural adjustment facility or, in exceptional circumstances, an IMF monitored program or its equivalent; and

(ii) as appropriate, structural or sectoral adjustment loans from the International Bank for Reconstruction and Development or the International Development Association;

(C) have put in place major investment reforms in conjunction with an Inter-American Development Bank loan or otherwise be implementing, or making significant progress toward, an open investment regime; and

(D) if appropriate, have agreed with its commercial bank lenders on a satisfactory financing program, including, as appropriate, debt or debt service reduction.

(2) Eligibility determinations

The President shall determine whether a country is an eligible country for purposes of paragraph (1).

(c) Loans eligible for sale, reduction, or cancellation

(1) Authority to sell, reduce, or cancel certain loans

Notwithstanding any other provision of law, the President may, in accordance with this section, sell to any eligible purchaser any loan or portion thereof made before January 1, 1992, to any eligible country or any agency thereof pursuant to this subchapter, or, on receipt of payment from an eligible purchaser, reduce or cancel such loan or portion thereof, only for the purpose of facilitating—

(A) debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps; or

(B) a debt buy-back by an eligible country of its own qualified debt, only if the eligible country uses an additional amount of the local currency of the eligible country, equal to not less than 40 percent of the price paid for such debt by such eligible country, or the difference between the price paid for such debt and the face value of such debt, to support activities that link conservation and sustainable use of natural resources with local community development, and child survival and other child development activities, in a manner consistent with sections 1738f through 1738k of title 7,

if the sale, reduction, or cancellation would not contravene any term or condition of any prior agreement relating to such loan.

(2) Terms and conditions

Notwithstanding any other provision of law, the President shall, in accordance with this section, establish the terms and conditions under which loans may be sold, reduced, or canceled pursuant to this section.

(3) Treatment under securities laws

The filing of a registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.] shall not be required with respect to the sale or offer for sale by the Bank of a loan or any interest therein pursuant to this section. For purposes of the Securities Act of 1933, the Bank shall not be deemed to be an issuer or underwriter with respect to any subsequent sale or other disposition of such loan (or any interest therein) or any security received by an eligible purchaser pursuant to any debt-for-equity swap, debt-for-development swap, or debt-for-nature swap.

(4) Administration

The Facility shall notify the Bank of purchasers that the President has determined to be eligible, and shall direct the Bank to carry out the sale, reduction, or cancellation of a loan pursuant to this section. The Bank shall make an adjustment in its accounts to reflect the sale, reduction, or cancellation.

(5) Limitations

The authorities of this subsection may be exercised only to such extent as provided for in advance in appropriations Acts, as necessary to implement the Federal Credit Reform Act of 1990 [2 U.S.C. 661 et seq.].

(d) Deposit of proceeds

The proceeds from the sale, reduction, or cancellation of any loan sold, reduced, or canceled pursuant to this section shall be deposited in the United States Government account or accounts established for the repayment of such loan.

(e) Eligible purchasers

A loan may be sold pursuant to subsection (c)(1)(A) of this section only to a purchaser who presents plans satisfactory to the President for using the loan for the purpose of engaging in debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(f) Debtor consultation

Before the sale to any eligible purchaser, or any reduction or cancellation pursuant to this section, of any loan made to an eligible country, the President shall consult with the country concerning the amount of loans to be sold, reduced, or canceled and their uses for debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(g) Authorization of appropriations

For the sale, reduction, and cancellation of loans or portions thereof pursuant to this section, there are authorized to be appropriated to the President such sums as may be necessary, which are authorized to remain available until expended.

(July 31, 1945, ch. 341, § 12, formerly § 18, as added and renumbered § 12, Pub. L. 102–429, title I, §§ 108, 121(c)(6), Oct. 21, 1992, 106 Stat. 2191, 2199; amended Pub. L. 107–189, § 24(b)(5), June 14, 2002, 116 Stat. 709; Pub. L. 110–246, title III, § 3001(b)(1)(A), (2)(L), June 18, 2008, 122 Stat. 1820.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (c)(3), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Federal Credit Reform Act of 1990, referred to in subsec. (c)(5), is title V of Pub. L. 93–344, as added Pub. L. 101–508, title XIII, § 13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§ 661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 621 of Title 2 and Tables.

PRIOR PROVISIONS

A prior section 12 of act July 31, 1945, ch. 341, was classified to section 635i of this title, prior to repeal by Pub. L. 102–429, § 121(c)(1).

AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110–246 made technical amendment to reference in original act which appears in text as reference to section 1738 of title 7.

Subsec. (c)(1)(B). Pub. L. 110–246 made technical amendment to reference in original act which appears in text as reference to sections 1738f through 1738k of title 7.

2002—Subsec. (a)(1). Pub. L. 107–189 substituted ''subsection (b) of this section'' for ''section (b) of this section''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–246 effective May 22, 2008, see section 4(b) of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 635i–7. Cooperation on export financing programs

The Bank shall, subject to appropriate memoranda of understanding—

(1) provide complete and current information on all of its programs and financing practices to—

(A) the Small Business Administration and other Federal agencies involved in promoting exports and marketing export financing programs; and

(B) State and local export financing organizations that indicate a desire to participate in export promotion; and

(2) consistent with the provisions of section 4721(f)(2) of title 15, undertake a program to provide training for personnel designated in such memoranda with respect to such financing programs.

(July 31, 1945, ch. 341, § 13, formerly § 19, as added and renumbered § 13, Pub. L. 102–429, title I, §§ 115, 121(c)(7), Oct. 21, 1992, 106 Stat. 2196, 2199.)

PRIOR PROVISIONS

A prior section 13 of act July 31, 1945, ch. 341, was classified to section 635i–1 of this title, prior to repeal by Pub. L. 102–429, § 121(c)(1).

§ 635i–8. Special debt relief for poorest, most heavily indebted countries

(a) Debt reduction authority

The President may reduce amounts of principal and interest owed by any eligible country to the Bank as a result of loans or guarantees made under this subchapter.

(b) Limitations

(1) Types of debt reduction

The authority provided by subsection (a) of this section may be exercised only to imple-

ment multilateral agreements to reduce the burden of official bilateral debt as set forth in the minutes of the so-called ''Paris Club'' (also known as ''Paris Club Agreed Minutes'').

(2) Eligible countries

(A) "Eligible country" defined

As used in subsection (a) of this section, the term ''eligible country'' means any country that—

(i) has excessively burdensome external debt;

(ii) is eligible to borrow from the International Development Association; and

(iii) is not eligible to borrow from the International Bank for Reconstruction and Development.

(B) Determinations

Subject to subparagraph (A), the President may determine whether a country is an eligible country for purposes of subsection (a) of this section.

(c) Conditions

The authority provided by this section may be exercised only with respect to a country whose government—

(1) does not have an excessive level of military expenditures;

(2) has not repeatedly provided support for acts of international terrorism;

(3) is not failing to cooperate on international narcotics control matters; and

(4) (including its military or other security forces) does not engage in a consistent pattern of gross violations of internationally recognized human rights.

(d) Appropriations

The authority provided by subsection (a) of this section may be exercised only in such amounts or to such extent as is provided in advance in appropriations Acts.

(July 31, 1945, ch. 341, §14, formerly §11, as added Pub. L. 103–87, title V, §570(b), Sept. 30, 1993, 107 Stat. 970; renumbered §14, Pub. L. 103–428, §2(b), Oct. 31, 1994, 108 Stat. 4376; Pub. L. 107–189, §24(b)(6), June 14, 2002, 116 Stat. 709.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–189 substituted ''principal'' for ''principle''.

DELEGATION OF AUTHORITY WITH RESPECT TO DEBT REDUCTION FOR POOREST COUNTRIES

Memorandum of President of the United States, June 20, 1994, 59 F.R. 33413, provided:

Memorandum for the Secretary of the Treasury

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994 (Public Law 103–87) (the ''Act'') [enacting 12 U.S.C. 635i–8], section 14 of the Export-Import Bank Act of 1945 (12 U.S.C. 635—635i–8) [probably means 12 U.S.C. 635i–8], and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

1. There are delegated to the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Defense, the functions, authorities, and duties conferred upon the President by section 570(a) of the Act [107 Stat. 970].

2. There are delegated to the Secretary of the Treasury, in consultation with the Secretary of State and the President of the Export-Import Bank, the functions, authorities, and duties conferred upon the President by section 570(b) of the Act and section 14(a) of the Export-Import Bank Act of 1945 (12 U.S.C. 635—635i–8).

The Secretary of the Treasury is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 635i–9. Market windows

(a) Enhanced transparency

To ensure that the Bank financing remains fully competitive, the United States should seek enhanced transparency over the activities of market windows in the OECD Export Credit Arrangement. If such transparency indicates that market windows are disadvantaging United States exporters, the United States should seek negotiations for multilateral disciplines and transparency within the OECD Export Credit Arrangement.

(b) Authorization

The Bank may provide financing on terms and conditions that are inconsistent with those permitted under the OECD Export Credit Arrangement—

(1) to match financing terms and conditions that are being offered by market windows on terms that are inconsistent with those permitted under the OECD Export Credit Arrangement, if—

(A) matching such terms and conditions advances the negotiations for multilateral disciplines and transparency within the OECD Export Credit Arrangement; or

(B) transparency verifies that the market window financing is being offered on terms that are more favorable than the terms and conditions that are available from private financial markets; and

(2) when the foreign government-supported institution refuses to provide sufficient transparency to permit the Bank to make a determination under paragraph (1).

(c) Definition

In this section, the term ''OECD'' means the Organization for Economic Cooperation and Development.

(July 31, 1945, ch. 341, §15, as added Pub. L. 107–189, §10(b)(1), June 14, 2002, 116 Stat. 703.)

REPORT

Pub. L. 107–189, §10(b)(2), June 14, 2002, 116 Stat. 703, provided that: ''Within 2 years after the date of the enactment of this Act [June 14, 2002], the Secretary of the Treasury shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the rationale for seeking or not seeking negotiations for multilateral disciplines and transparency, the successes, failures, and obstacles in initiating negotiations, and if negotiations were initiated, in reaching an agreement.''

SUBCHAPTER II—EXPORT FINANCING

§ 635j. Export financing program to foster foreign trade and commercial interest of the United States

(a) Congressional statement of policy

It is the policy of the Congress that the Export-Import Bank of the United States should facilitate through loans, guarantees, and insurance (including coinsurance and reinsurance) those export transactions which, in the judgment of the Board of Directors of the Bank, offer sufficient likelihood of repayment to justify the Bank's support in order to actively foster the foreign trade and long-term commercial interest of the United States.

(b) Designation of transactions on books of the Bank; limitation on commitments

The Bank shall specially designate loans, guarantees, and insurance on the books of the Bank made under authority of this subchapter. In connection with guarantees and insurance, not less than 25 per centum of the related contractual liability of the Bank shall be taken into account for the purpose of applying the limitation imposed by section 635e of this title; but the full amount of the related contractual liability of such guarantees and insurance shall be taken into account for the purpose of applying the limitation in section 635(c)(1) of this title, concerning the amount of guarantees and insurance the Bank may have outstanding at any one time thereunder. The aggregate amount of loans plus 25 per centum of the contractual liability of guarantees and insurance outstanding at any one time under this subchapter shall not exceed $500,000,000.

(Pub. L. 90–390, § 1, July 7, 1968, 82 Stat. 296; Pub. L. 96–470, title I, § 115, Oct. 19, 1980, 94 Stat. 2240.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–470 struck out subsec. (c) which required the Board of Directors of the Bank to submit to Congress for the calendar ending Sept. 30, 1968, and each calendar quarter thereafter, a report of all actions taken under authority of sections 635j to 635n of this title during such quarter.

EX. ORD. NO. 11420. EXPORT EXPANSION ADVISORY COMMITTEE

Ex. Ord. No. 11420, July 31, 1968, 33 F.R. 10997, provided:

WHEREAS foreign trade is an essential and continuing element in sustaining the growth, strength, and prosperity of our economy, contributes to the improvement of our balance of payments, and fosters the long-term commercial interest of the United States; and

WHEREAS, on March 20, 1968, I requested the Congress to empower the Export-Import Bank of the United States to use up to $500,000,000 of its loan, guarantee, and insurance authority to finance a broadened program to sell American goods in foreign markets; and

WHEREAS the Congress has authorized the Bank to extend loans, guarantees, and insurance which, in the judgment of the Board of Directors of the Bank, offer sufficient likelihood of repayment to justify the Bank's support in order to actively foster the foreign trade and long-term commercial interest of the United States; and

WHEREAS it is desirable and appropriate that guidance concerning the commercial interests and the balance of payments objectives of the United States be provided to the Board of Directors of the Bank in the use of such loan, guarantee, and insurance authority allocated to finance export expansion, and I have stated that I would establish an Export Expansion Advisory Committee to provide such guidance to the Board of Directors of the Bank:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. *Establishment of Advisory Committee*. (a) There is hereby established the Export Expansion Advisory Committee (hereinafter referred to as ''the Committee'').

(b) The Committee shall be composed of the following members: the Secretary of Commerce, who shall be Chairman of the Committee, the Secretary of the Treasury, the Secretary of State, and the President and Chairman of the Board of the Export-Import Bank of the United States.

SEC. 2. *Functions of the Committee*. The Committee shall review and make recommendations concerning applications and proposals for loans, guarantees, and insurance to be charged against allocations made to finance export expansion and shall provide guidance to the Board of Directors of the Bank concerning the use of such allocations with the view to fostering the foreign trade and long-term commercial interest of the United States.

SEC. 3. *Construction*. Nothing in this order shall be construed to abrogate, modify, or restrict any function vested by law in, or assigned pursuant to law to, any Federal agency or any officer thereof or to any Federal interagency council or committee. As used herein the term ''any Federal agency'' includes any executive department and any other executive agency.

LYNDON B. JOHNSON.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

§ 635k. Apportionment of losses incurred on loans, guarantees, and insurance; reimbursement; contingent obligations

In the event of any losses, as determined by the Board of Directors of the Bank, incurred on loans, guarantees, and insurance extended under this subchapter, the first $100,000,000 of such losses shall be borne by the Bank; the second $100,000,000 of such losses shall be borne by the Secretary of the Treasury; and any losses in excess thereof shall be borne by the Bank. Reimbursement of the Bank by the Secretary of the Treasury of the amount of losses which are to be borne by the Secretary of the Treasury as aforesaid shall be from funds made available pursuant to section 635*l* of this title. All guarantees and insurance issued by the Bank shall be considered contingent obligations backed by the full faith and credit of the Government of the United States of America.

(Pub. L. 90–390, § 2, July 7, 1968, 82 Stat. 297.)

§ 635*l*. Authorization for appropriation of funds for losses

There are hereby authorized to be appropriated to the Secretary of the Treasury without

fiscal year limitation $100,000,000 to cover the amount of any losses which are to be borne by the Secretary of the Treasury as provided in section 635k of this title.

(Pub. L. 90–390, § 3, July 7, 1968, 82 Stat. 297.)

§ 635m. Loans, guarantees, and insurance subject to the provisions of this chapter

Nothing in this subchapter shall be construed as a limitation on the powers of the Bank under subchapter I of this chapter; and except as to the standard of reasonable assurance of repayment required under section 635(b)(1) of this title, all loans, guarantees, and insurance extended hereunder shall be subject to the provisions of subchapter I of this chapter and to the policies of the Bank with respect to terms of repayment, interest rates, fees, and premiums applicable to loans, guarantees, and insurance extended under subchapter I of this chapter.

(Pub. L. 90–390, § 4, July 7, 1968, 82 Stat. 297.)

§ 635n. Prohibition of loans, guarantees, and insurance as to sales of defense articles or services

The Bank shall not extend loans, guarantees, or insurance under this subchapter in connection with the sale of defense articles or defense services.

(Pub. L. 90–390, § 5, July 7, 1968, 82 Stat. 297.)

SUBCHAPTER III—TIED AID CREDIT EXPORT SUBSIDIES

§ 635*o*. Congressional statement of purpose

The purpose of this subchapter is—

(1) to expand employment and economic growth in the United States by expanding United States exports to the markets of the developing world;

(2) to stimulate the economic development of countries in the developing world by improving their access to credit for the importation of United States products and services for developmental purposes;

(3) to neutralize the predatory financing engaged in by many nations whose exports compete with United States exports, and thereby restore export competition to a market basis; and

(4) to encourage foreign governments to enter into effective and comprehensive agreements with the United States to end the use of tied aid credits for exports, and to limit and govern the use of export credit subsidies generally.

(Pub. L. 98–181, title VI, § 642, Nov. 30, 1983, 97 Stat. 1263.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this part'', meaning part C (§§ 641–647) of title VI of Pub. L. 98–181, Nov. 30, 1983, 97 Stat. 1263, known as the Trade and Development Enhancement Act of 1983, which enacted this subchapter and section 1671g of Title 19, Customs Duties, and amended sections 1671a and 1671b of Title 19. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 641 of Pub. L. 98–181 provided that: ''This part [part C (§§ 641–647) of title VI of Pub. L. 98–181, enacting this subchapter and section 1671g of Title 19, Customs Duties, and amended sections 1671a and 1671b of Title 19] may be referred to as the 'Trade and Development Enhancement Act of 1983'.''

§ 635p. Presidential mandate to negotiate; objectives

The President shall vigorously pursue negotiations to limit and set rules for the use of tied aid for exports. The negotiating objectives of the United States should include reaching agreements—

(1) to define the various forms of tied aid credit, particularly mixed credits under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development (hereinafter in this subchapter referred to as the ''Arrangement'');

(2) to phase out the use of government-mixed credits by a date certain;

(3) to set rules governing the use of public-private cofinancing, or other forms of mixed financing, which may have the same result as government-mixed credits of drawing on concessional development assistance to produce subsidized export financing;

(4) to raise the threshold for notification of the use of tied aid credit to a 50 per centum level of concessionality;

(5) to improve notification procedures so that advance notification must be given on all uses of tied aid credit; and

(6) to prohibit the use of tied aid credit for production facilities for goods which are in structural oversupply in the world.

(Pub. L. 98–181, title VI, § 643, Nov. 30, 1983, 97 Stat. 1263.)

§ 635q. Establishment of tied aid credit program in United States Export-Import Bank

(a) Establishment and elements of program; cooperation with Trade and Development Agency and private institutions and entities

(1) The Chairman of the Export-Import Bank of the United States shall establish, within the Export-Import Bank of the United States, a program of tied aid credits for United States exports.

(2) The program shall be carried out in cooperation with the Trade and Development Agency and with private financial institutions or entities, as appropriate.

(3) The program may include—

(A) the combined use of the credits, loans, or guarantees offered by the Export-Import Bank of the United States with concessional financing or grants made available under section 635r(d) of this title, by methods including the blending of the financing of, or parallel financing by, the Bank and the Trade and Development Agency; and

(B) the combined use of credits, loans, or guarantees offered by the Bank, with financing offered by private financial institutions or entities, by methods including the blending of the financing of, or parallel financing by, the Bank and private institutions or entities.

(b) Purpose of program

The purpose of the tied aid credit program under this section is to offer or arrange for fi-

nancing for the export of United States goods and services which is substantially as concessional as foreign financing for which there is reasonable proof that such foreign financing is being offered to, or arranged for, a bona fide foreign competitor for a United States export sale.

(c) Fund

The Chairman of the Bank is authorized to establish a fund, as necessary, for carrying out the tied aid credit program described in this section.

(d) Availability of concessional financing or grants

Concessional financing or grants made available under section 635r(d) of this title for the purposes of the mixed financing program established under this section shall be made available in accordance with the provisions of section 635r(c) of this title.

(Pub. L. 98–181, title VI, § 644, Nov. 30, 1983, 97 Stat. 1264; Pub. L. 100–418, title II, § 2204(c)(1)(A), Aug. 23, 1988, 102 Stat. 1330; Pub. L. 102–549, title II, § 202(c)(1), Oct. 28, 1992, 106 Stat. 3658.)

AMENDMENTS

1992—Subsec. (a)(2), (3)(A). Pub. L. 102–549 substituted ''Development Agency'' for ''Development Program''.

1988—Subsec. (a)(2). Pub. L. 100–418, § 2204(c)(1)(A)(i), substituted ''Trade and Development Program'' for ''Agency for International Development''.

Subsec. (a)(3)(A). Pub. L. 100–418, § 2204(c)(1)(A)(ii), substituted ''made available under section 635r(d) of this title'' for ''offered by the Agency for International Development'' and ''Trade and Development Program'' for ''Agency for International Development''.

Subsec. (d). Pub. L. 100–418, § 2204(c)(1)(A)(iii), substituted ''made available under section 635r(d) of this title'' for ''offered by the Agency for International Development'' and ''section 635r(c) of this title'' for ''subsections (c) and (d) of section 635r of this title''.

TRANSITION PROVISIONS

Section 2204(d)(2) of Pub. L. 100–418 provided that:

''(A) The Administrator of the Agency for International Development shall transfer to the Director of the Trade and Development Program [now Trade and Development Agency] all records, contracts, applications, and any other documents or information in connection with the functions transferred by virtue of the amendments made by subsection (c)(1) [amending sections 635q and 635r of this title].

''(B) All determinations, regulations, and contracts—

''(i) which have been issued, made, granted, or allowed to become effective by the President, the Agency for International Development, or by a court of competent jurisdiction, in the performance of the functions transferred by virtue of the amendments made by subsection (c)(1), and

''(ii) which are in effect at the time this section takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with the law by the President, the Director of the Trade and Development Program [now Trade and Development Agency], or other authorized official, by a court of competent jurisdiction, or by operation of law.

''(C)(i) The amendments made by subsection (c)(1) shall not affect any proceedings, including notices of proposed rulemaking, or any application for any financial assistance, which is pending on the effective date of this section [Aug. 23, 1988] before the Agency for International Development in the exercise of functions transferred by virtue of the amendments made by subsection (c)(1). Such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued.

''(ii) Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section [amending sections 635q, 635r, and 635s of this title, section 5314 of Title 5, Government Organization and Employees, and section 2421 of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as a note under section 2421 of Title 22] had not been enacted. Orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Director of the Trade and Development Program [now Trade and Development Agency] or other authorized official, by a court of competent jurisdiction, or by operation of law.

''(iii) Nothing in this subparagraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

''(iv) The Director of the Trade and Development Program [now Trade and Development Agency] is authorized to issue regulations providing for the orderly transfer to the Trade and Development Program of proceedings continued under this subparagraph.

''(D) With respect to any function transferred by virtue of the amendments made by subsection (c)(1) and exercised on or after the effective date of this section [Aug. 23, 1988], reference in any other Federal law to the Agency for International Development or any officer shall be deemed to refer to the Trade and Development Program [now Trade and Development Agency] or other official to which such function is so transferred.''

§ 635r. Establishment of tied aid credit program administered by Trade and Development Agency

(a) Establishment and elements of program

The Director of the Trade and Development Agency shall carry out a program of tied aid credits for United States exports. The program shall be carried out in cooperation with the Export-Import Bank of the United States and with private financial institutions or entities, as appropriate. The program may include—

(1) the combined use of the credits, loans, or guarantees offered by the Bank with concessional financing or grants made available under subsection (d) of this section, by methods including the blending of the financing of, or parallel financing by, the Bank and the Trade and Development Agency; and

(2) the combination of concessional financing or grants made available under subsection (d) of this section with financing offered by private financial institutions or entities, by methods including the blending of the financing of, or parallel financing by, the Trade and Development Agency and private institutions or entities.

(b) Combination of funds with financing by Export-Import Bank or private commercial financing

These funds may be combined with financing by the Export-Import Bank of the United States or private commercial financing in order to offer, or arrange for, financing for the exportation of United States goods and services which is substantially as concessional as foreign financing for which there is reasonable proof that such foreign financing is being offered to, or ar-

ranged for, a bona fide foreign competitor for a United States export sale.

(c) Limitation on use of Agency funds; authorization for establishment of fund

(1) Funds which are used to carry out a tied aid credit program authorized by subsections (a) and (b) of this section shall be offered only to finance United States exports which can reasonably be expected to contribute to the advancement of the development objectives of the importing country or countries, and shall be consistent with the economic, security, and political criteria used to establish country allocations of Economic Support Funds.

(2) The Director of the Trade and Development Agency is authorized to establish a fund, as necessary, for carrying out a tied aid credit financing program as described in this section.

(d) Use of Economic Support Funds

Funds available to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2346 et seq.] may be used by the Director of the Trade and Development Agency, with the concurrence of the Secretary of State (as provided under section 531 of the Foreign Assistance Act of 1961 [22 U.S.C. 2346]), for the purposes for which funds made available under this subsection are authorized to be used in section 635q of this title and this section. The Secretary of State shall exercise his authority in cooperation with the Administrator of the Agency for International Development. Funds made available pursuant to this subsection may be used to finance a tied aid credit activity in any country eligible for tied aid credits under this subchapter.

(Pub. L. 98–181, title VI, §645, Nov. 30, 1983, 97 Stat. 1264; Pub. L. 100–418, title II, §2204(c)(1)(B), Aug. 23, 1988, 102 Stat. 1330; Pub. L. 102–549, title II, §202(c), Oct. 28, 1992, 106 Stat. 3658.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (d), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapter 4 of part II of the Foreign Assistance Act of 1961 is classified generally to part IV (§2346 et seq.) of subchapter II of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

This subchapter, referred to in subsec. (d), was in the original ''this Act'' and was translated as meaning the Trade and Development Enhancement Act of 1983, part C (§§641–647) of title VI of Pub. L. 98–181, Nov. 30, 1983, 97 Stat. 1263, as amended, which enacted this subchapter and section 1671g of Title 19, Customs Duties, and amended sections 1671a and 1671b of Title 19. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

1992—Pub. L. 102–549 substituted ''Development Agency'' for ''Development Program'' in section catchline and wherever appearing in subsecs. (a), (c), and (d).

1988—Pub. L. 100–418, §2204(c)(1)(B)(i), in section catchline, substituted reference to program administered by Trade and Development Program for reference to program in Agency for International Development.

Subsec. (a). Pub. L. 100–418, §2204(c)(1)(B)(ii)(I), substituted ''Director of the Trade and Development Program shall carry out'' for ''Administrator of the Agency for International Development shall establish within the Agency''.

Subsec. (a)(1). Pub. L. 100–418, §2204(c)(1)(B)(ii)(II), (III), substituted ''made available under subsection (d) of this section'' for ''offered by the Agency for International Development'' and ''Trade and Development Program'' for ''Agency for International Development''.

Subsec. (a)(2). Pub. L. 100–418, §2204(c)(1)(B)(ii)(IV), (V), substituted ''made available under subsection (d) of this section'' for ''offered by the Agency for International Development'' and ''Trade and Development Program'' for ''Agency for International Development''.

Subsec. (c)(1). Pub. L. 100–418, §2204(c)(1)(B)(iii)(I), which directed that par. (1) be amended by striking out ''of the Agency for International Development'' after ''Funds'', was executed by striking out ''of the agency for International Development'', to reflect the probable intent of Congress.

Subsec. (c)(2). Pub. L. 100–418, §2204(c)(1)(B)(iii)(II), substituted ''Director of the Trade and Development Program'' for ''Administrator of the Agency for International Development''.

Subsec. (d). Pub. L. 100–418, §2204(c)(1)(B)(iv), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The Administrator of the Agency for International Development may draw on Economic Support Funds allocated for Commodity Import Programs to finance a tied aid credit activity.''

§ 635s. Implementation

(a)(1) The National Advisory Council on International Monetary and Financial Policies shall coordinate the implementation of the tied aid credit programs authorized by sections 635q and 635r of this title.

(2) No financing may be approved under the tied aid credit programs authorized by section 635q or 635r of this title without the unanimous consent of the members of the National Advisory Council on International Monetary and Financial Policies.

(b) The Trade and Development Agency shall be represented at any meetings of the National Advisory Council on International Monetary and Financial Policies for discussion of tied aid credit matters, and the representative of the Trade and Development Agency at any such meeting shall have the right to vote on any decisions of the Advisory Council relating to tied aid credit matters.

(Pub. L. 98–181, title VI, §646, Nov. 30, 1983, 97 Stat. 1265; Pub. L. 100–418, title II, §2204(c)(2), Aug. 23, 1988, 102 Stat. 1331; Pub. L. 102–549, title II, §202(c)(1), Oct. 28, 1992, 106 Stat. 3658.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–549 substituted ''Development Agency'' for ''Development Program'' in two places.

1988—Subsec. (b). Pub. L. 100–418 added subsec. (b).

§ 635t. Definitions

For purposes of this subchapter—

(1) the term ''tied aid credit'' means credit—

(A) which is provided for development aid purposes;

(B) which is tied to the purchase of exports from the country granting the credit;

(C) which is financed either exclusively from public funds, or, as a mixed credit, partly from public and partly from private funds; and

(D) which has a grant element, as defined by the Development Assistance Committee

of the Organization for Economic Cooperation and Development, greater than zero percent;

(2) the term ''government-mixed credits'' means the combined use of credits, insurance, and guarantees offered by the Export-Import Bank of the United States with concessional financing or grants offered by the Agency for International Development to finance exports;

(3) the term ''public-private cofinancing'' means the combined use of either official development assistance or official export credit with private commercial credit to finance exports;

(4) the term ''blending of financings'' means the use of various combinations of official development assistance, official export credit, and private commercial credit, integrated into a single package with a single set of financial terms, to finance exports;

(5) the term ''parallel financing'' means the related use of various combinations of separate lines of official development assistance, official export credits, and private commercial credit, not combined into a single package with a single set of financial terms, to finance exports; and

(6) the term ''Bank'' means the Export-Import Bank of the United States.

(Pub. L. 98–181, title VI, §647, Nov. 30, 1983, 97 Stat. 1265.)

CHAPTER 7—FARM CREDIT ADMINISTRATION

CODIFICATION

The bulk of this chapter was repealed by Pub. L. 92–181, §5.26(a), Dec. 10, 1971, 85 Stat. 625, which completely rewrote the farm credit laws and represented a fundamental reworking of the statutory basis for the farm credit system. The farm credit system is covered in chapter 23 (§2001 et seq.) of this title. See notes set out under section 2001 of this title.

FARM CREDIT ADMINISTRATION; GENERAL ADMINISTRATIVE PROVISIONS

§§ 636 to 636h. Repealed. Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 636, acts May 12, 1933, ch. 25, title II, §40, 48 Stat. 51; Sept. 6, 1966, Pub. L. 89–554, §8(a), 80 Stat. 648, provided for organization of Farm Credit Administration. See section 2247 of this title.

Section 636a, act Aug. 6, 1953, ch. 335, §2, 67 Stat. 390, stated Congressional declaration of policy concerning agricultural credit. See section 2001 of this title.

Section 636a note, act Aug. 6, 1953, ch. 335, §1, 67 Stat. 390, provided that such act Aug. 6, 1953, should be known as ''Farm Credit Act of 1953''.

Section 636b, act Aug. 6, 1953, ch. 335, §3, 67 Stat. 390, covered the creation of Farm Credit Administration as an independent agency in executive branch. See section 2241 et seq. of this title.

Section 636c, acts Aug. 6, 1953, ch. 335, §4, 67 Stat. 390; Aug. 11, 1955, ch. 785, title IV, §402, 69 Stat. 666; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387; Aug. 2, 1966, Pub. L. 89–525, §6, 80 Stat. 335, provided for creation of Federal Farm Credit Board. See section 2242 et seq. of this title.

Section 636d, act Aug. 6, 1953, ch. 335, §5, 67 Stat. 392; Aug. 18, 1959, Pub. L. 86–168, title I, §104(j), 73 Stat. 387; Oct. 4, 1961, Pub. L. 87–367, title III, §302(a), 75 Stat. 793, provided for position of Governor of Farm Credit Administration. See section 2244 et seq. of this title.

Section 636e, act Aug. 6, 1953, ch. 335, §6, 67 Stat. 393, covered duties of Federal Farm Credit Board. See section 2227 of this title.

Section 636f, acts Aug. 6, 1953, ch. 335, §7, 67 Stat. 393; Aug. 11, 1955, ch. 785, title I, §110(c), 69 Stat. 662; Oct. 4, 1961, Pub. L. 87–353, §3(n), 75 Stat. 774, provided for abolishment of certain offices and funds under program as it existed prior to 1953.

Section 636g, acts Aug. 6, 1953, ch. 335, §8, 67 Stat. 394; July 26, 1956, ch. 741, title I, §107(a), 70 Stat. 666; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, authorized delegation of powers to institutions in farm credit districts. See section 2253 of this title.

Section 636h, act Aug. 6, 1953, ch. 335, §17(b), 67 Stat. 399, covered administrative expenditures of Farm Credit Administration. See section 2249 of this title.

§§ 637, 638. Repealed. Aug. 6, 1953, ch. 335, §19, 67 Stat. 400

Section 637, acts May 12, 1933, ch. 25, title II, §39, 48 Stat. 50; June 16, 1933, ch. 98, title VIII, §80(a), 48 Stat. 273, related to certain functions, powers, authority, and duties of Land Bank Commissioner.

Section 638, act June 16, 1933, ch. 98, title VIII, §80, 48 Stat. 273, changed name of office of Farm Loan Commissioner to Land Bank Commissioner, contained provisions relating to his term of office, and contained provisions relating to appointment (within the Farm Credit Administration), compensation, expenses and duties of a Production Credit Commissioner, a Cooperative Bank Commissioner, and an Intermediate Credit Commissioner.

EFFECTIVE DATE OF REPEAL

Repeal effective 120 days after Aug. 6, 1953, see section 18 of act Aug. 6, 1953.

§§ 639, 640. Repealed. Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 639, act June 16, 1933, ch. 98, title VIII, §82, 48 Stat. 273, made a supplementary grant of powers to Governor of Farm Credit Administration.

Section 640, act June 16, 1933, ch. 98, title VIII, §85, 48 Stat. 273, authorized Farm Credit Administration to have a seal. See section 2248 of this title.

§640–1. Omitted

CODIFICATION

Section, act July 1, 1944, ch. 364, 58 Stat. 675, related to prepayment of balance of purchase price with respect to contracts or agreements for sale of real estate having been in force for five years.

DISTRICT ORGANIZATIONS UNDER SUPERVISION OF FARM CREDIT ADMINISTRATION; FARM CREDIT DISTRICTS AND FARM CREDIT BOARDS

§§ 640a to 640*l*. Repealed. Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 640a, acts Aug. 19, 1937, ch. 704, §5(a), 50 Stat. 704; Oct. 29, 1949, ch. 786, §5, 63 Stat. 986, created farm credit districts. See section 2221 of this title.

Section 640b, acts Aug. 19, 1937, ch. 704, §5(b), 50 Stat. 704; Aug. 6, 1953, ch. 335, §14, 67 Stat. 396; Aug. 11, 1955, ch. 785, title IV, §401(a), 69 Stat. 666; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, provided for creation of district farm credit boards. See section 2222 of this title.

Section 640c, act Aug. 19, 1937, ch. 704, §5(c), 50 Stat. 704, provided for initial board of directors of each district.

Section 640d, acts Aug. 19, 1937, ch. 704, §5(d), 50 Stat. 704; Aug. 6, 1953, ch. 335, §15, 67 Stat. 397; Aug. 11, 1955, ch. 785, title IV, §401(b), 69 Stat. 666; July 26, 1956, ch.

741, title I, §106(a)(1), 70 Stat. 666; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, provided for replacement of district directors. See section 2221 et seq. of this title.

Section 640e, acts Aug. 19, 1937, ch. 704, §5(e), 50 Stat. 705; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387; Aug. 2, 1966, Pub. L. 89–525, §5, 80 Stat. 334, provided for nomination of elected directors. See section 2223 of this title.

Section 640f, acts Aug. 19, 1937, ch. 704, §5(f), 50 Stat. 705; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387; Aug. 2, 1966, Pub. L. 89–525, §5, 80 Stat. 334, provided for election of elected directors. See section 2223 of this title.

Section 640g, act Aug. 19, 1937, ch. 704, §5(g), 50 Stat. 705, provided for term of office and filling of vacancies. See section 2221 et seq. of this title.

Section 640h, acts Aug. 19, 1937, ch. 704, §5(h), 50 Stat. 705; July 26, 1956, ch. 741, title I, §106(a)(2), 70 Stat. 666, set out general qualifications of members of each farm credit board. See section 2222 of this title.

Section 640i, act Aug. 19, 1937, ch. 704, §5(i), 50 Stat. 706, made felons and defrauders ineligible for membership. See section 2222 of this title.

Section 640j, act Aug. 19, 1937, ch. 704, §5(j), 50 Stat. 706, provided for compensation of members of farm credit boards. See section 2226 of this title.

Section 640k, act Aug. 19, 1937, ch. 704, §5(k), 50 Stat. 706, declared sections 640a to 640j of this title as not affecting laws making agricultural credit laws applicable to territories and possessions.

Section 640*l*, acts Aug. 19, 1937, ch. 704, §6, 50 Stat. 706; July 26, 1956, ch. 741, title I, §106(b), 70 Stat. 666; Aug. 18, 1959, Pub. L. 86–168, title II, §201, 73 Stat. 387; Sept. 6, 1966, Pub. L. 89–554, §8(a), 80 Stat. 649, set out status of farm credit banks and employees. See section 2221 et seq. of this title.

SUBCHAPTER I—FEDERAL LAND BANKS, JOINT-STOCK LAND BANKS, AND FEDERAL LAND BANK ASSOCIATIONS

§§ 641, 642. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 641, acts July 17, 1916, ch. 245, title I, §1, 39 Stat. 360; Mar. 4, 1923, ch. 252, title I, §§1, 2, 42 Stat. 1454; Ex. Ord. No. 6084, Mar. 27, 1933, directed that act July 17, 1916, be administered by the Farm Credit Administration.

Section 642, act July 17, 1916, ch. 245, title I, §2, 39 Stat. 360; Ex. Ord. No. 6084, Mar. 27, 1933, defined terms ''first mortgage'' and ''farm-loan bonds''.

ADMINISTRATIVE PROVISIONS RELATIVE TO THIS SUBCHAPTER

§ 651. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, act July 17, 1916, ch. 245, title I, §3, 39 Stat. 360; Ex. Ord. No. 6084, Mar. 27, 1933, provided for creation of Federal Farm Loan Bureau.

§§ 652 to 655. Repealed. Aug. 6, 1953, ch. 335, § 19, 67 Stat. 400

Sections, act July 17, 1916, ch. 245, title I, §3 (part), 39 Stat. 360, related to appointment, compensation, and oath of Land Bank Commissioner, restriction on his right to engage in certain business and filling vacancies.

Section 652 was amended by act Mar. 4, 1923, ch. 252, title III, §301, 42 Stat. 1473; Ex. Ord. No. 6084, Mar. 27, 1933; and act June 16, 1933, ch. 98, title VIII, §80(a), 48 Stat. 273.

Sections 653, 654, and 655 were each amended by Ex. Ord. No. 6084, Mar. 27, 1933; and act June 16, 1933, ch. 98, title VIII, §80(a), 48 Stat. 273.

EFFECTIVE DATE OF REPEAL

Repeal effective 120 days after Aug. 6, 1953, see section 17 of act Aug. 6, 1953.

§§ 656, 656a. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 656, acts July 17, 1916, ch. 245, title I, §3, 39 Stat. 361; Apr. 20, 1920, ch. 154, §1, 41 Stat. 570; Ex. Ord. No. 6084 Mar. 27, 1933; Aug. 19, 1937, ch. 704, §§5(a), 20, 50 Stat. 704, 710; Aug. 18, 1959, Pub. L. 86–168, title I, §101(a), 73 Stat. 384, provided for appointment of registrars, appraisers, and examiners.

Section 656a, act Aug. 19, 1937, ch. 704, §20, 50 Stat. 710, provided for designation of farm credit examiners.

§ 657. Repealed. Sept. 21, 1944, ch. 412, § 601(d), 58 Stat. 741, eff. July 1, 1944

Section, act July 17, 1916, ch. 245, title I, §3, 39 Stat. 361, as amended by acts Mar. 4, 1923, ch. 252, title III, §302, 42 Stat. 1473; Mar. 4, 1925, ch. 524, §3, 43 Stat. 1262; June 26, 1930, ch. 613, 46 Stat. 815, related to payment of salaries and expenses of certain employees of Federal Farm Loan Bureau.

§§ 658, 659. Repealed. Pub. L. 86–168, title I, § 101(b), (c), Aug. 18, 1959, 73 Stat. 384, eff. Dec. 31, 1959

Section 658, acts July 17, 1916, ch. 245, title I, §3, 39 Stat. 361; Mar. 4, 1923, ch. 252, title III, §302, 42 Stat. 1473; Mar. 4, 1925, ch. 524, §3, 43 Stat. 1262, related to compensation and manner of payment of Federal land-bank appraisers and appraisers or inspectors of Federal intermediate credit banks.

Section 659, acts July 17, 1916, ch. 245, title I, §3, 39 Stat. 361; Mar. 4, 1925, ch. 524, §4, 43 Stat. 1263, related to employment of attorneys, experts, and other employees.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 31, 1959, see section 104(k) of Pub. L. 86–168.

§§ 660 to 665. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 660, act July 17, 1916, ch. 245, title I, §3, 39 Stat. 361; Ex. Ord. No. 6084, Mar. 27, 1933, provided for submission of statements covering salaries paid by land banks.

Section 661, act July 17, 1916, ch. 245, title I, §3, 39 Stat. 361; Ex. Ord. No. 6084, Mar. 27, 1933, required filing of an annual report to Congress by Farm Credit Administration. See section 2221 et seq. of this title.

Section 662, acts July 17, 1916, ch. 245, title I, §3, 39 Stat. 361; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 18, 1959, Pub. L. 86–168, title I, §101(d), 73 Stat. 384, provided for examinations and reports. See section 2254 of this title.

Section 663, acts July 17, 1916, ch. 245, title I, §3, 39 Stat. 361; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 11, 1955, ch. 785, title III, §301(a), 69 Stat. 664; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, provided for statements of condition of land bank associations and land banks. See section 2254 of this title.

Section 664, act July 17, 1916, ch. 245, title I, §3, 39 Stat. 361; Ex. Ord. No. 6084, Mar. 27, 1933, authorized preparation of bulletins and circulars by Farm Credit Administration. See section 2252 of this title.

Section 665, acts Jan. 23, 1932, ch. 9, §6, 47 Stat. 14; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 11, 1955, ch. 785, title I, §110(d), 69 Stat. 662, authorized Farm Credit Administration to make rules and regulations. See section 2252 of this title.

ORGANIZATION OF FEDERAL LAND BANKS

§ 671. Repealed. Aug. 19, 1937, ch. 704, § 7(a), 50 Stat. 707

Section, act July 17, 1916, ch. 245, title I, §4, 39 Stat. 362, related to designation of Federal land bank districts by Farm Credit Administration.

§§ 672 to 677a. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 672, acts July 17, 1916, ch. 245, title I, § 4, 39 Stat. 362; Feb. 27, 1921, ch. 78, 41 Stat. 1148; Mar. 4, 1923, ch. 252, title III, § 303, 42 Stat. 1474; Mar. 4, 1929, ch. 700, 45 Stat. 1558; May 17, 1932, ch. 190, 47 Stat. 158; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 19, 1937, ch. 704, § 5(a), 50 Stat. 704; June 30, 1945, ch. 204, § 3, 59 Stat. 267; Oct. 29, 1949, ch. 786, § 1(a), 63 Stat. 985; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, provided for establishment of Federal land banks. See section 2011 of this title.

Section 672a, acts Mar. 10, 1924, ch. 46, § 2, 43 Stat. 17; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 19, 1937, ch. 704, § 5(a), 50 Stat. 704, provided for extension of farm credit system under Farm Credit Administration to Hawaii.

Section 673, act July 17, 1916, ch. 245, title I, § 4, 39 Stat. 362; Ex. Ord. No. 6084, Mar. 27, 1933, provided for temporary management of Federal land banks.

Section 674, acts July 17, 1916, ch. 245, title I, § 4, 39 Stat. 362; June 16, 1933, ch. 98, title VIII, § 80(a), 48 Stat. 273; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, set out requisite contents of organization certificates for land banks.

Section 675, act July 17, 1916, ch. 245, title I, § 4, 39 Stat. 363; Ex. Ord. No. 6084, Mar. 27, 1933, authorized changes in organization certificates on direction of Farm Credit Administration.

Section 676, act July 17, 1916, ch. 245, title I, § 4, 39 Stat. 363; Ex. Ord. No. 6084, Mar. 27, 1933, set time for commencement of corporate existence of land banks and enumerated their powers. See section 2012 of this title.

Section 677, acts July 17, 1916, ch. 245, title I, § 4, 39 Stat. 363; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, set time for termination of temporary management of land banks.

Section 677a, acts July 17, 1916, ch. 245, title I, § 4, 39 Stat. 363; Mar. 4, 1923, ch. 252, title III, § 304, 42 Stat. 1474; June 16, 1933, ch. 98, title VII, § 70a(a)(1)–(4), title VIII, § 80(a), 48 Stat. 269, 273; Aug. 19, 1937, ch. 704, § 7(b), 50 Stat. 707, provided for compensation of director of farm credit boards of each farm credit district. See section 2226 of this title.

§§ 678 to 682. Omitted

CODIFICATION

Sections were stricken by act Aug. 19, 1937, ch. 704, § 7(b), 50 Stat. 707, and former section 677a of this title was substituted in lieu thereof.

Section 678, acts July 17, 1916, ch. 245, title I, § 4, 39 Stat. 363; Mar. 4, 1923, ch. 252, title III, § 304, 42 Stat. 1474; June 16, 1933, ch. 98, title VII, § 70a(a)(1), 48 Stat. 269, related to number and qualifications of directors.

Section 678a, act June 16, 1933, ch. 98, title VII, § 70a(b), 48 Stat. 270, related to successors of directors.

Section 679, acts July 17, 1916, ch. 245, title I, § 4, 39 Stat. 363; Mar. 4, 1923, ch. 252, title III, § 304, 42 Stat. 1474; June 16, 1933, ch. 98, title VII, § 70a(a)(2), 48 Stat. 270, related to nomination of candidates for local directors.

Section 680, acts July 17, 1916, ch. 245, title I, § 4, 39 Stat. 363; Mar. 4, 1923, ch. 252, title III, § 304, 42 Stat. 1474; June 16, 1933, ch. 98, title VII, § 70a(a)(3), 48 Stat. 270, related to election of local directors.

Section 681, acts July 17, 1916, ch. 245, title I, § 4, 39 Stat. 363; Mar. 4, 1923, ch. 252, title III, § 304, 42 Stat. 1474; June 16, 1933, ch. 98, title VII, § 70a(a)(4), 48 Stat. 270, related to appointment and election of district directors and director at large, and filling of vacancies.

Section 682, acts July 17, 1916, ch. 245, title I, § 4, 39 Stat. 363; Mar. 4, 1923, ch. 252, title III, § 304, 42 Stat. 1474, related to qualifications of directors and limitation on engagement in other business.

§ 682a. Repealed. Aug. 19, 1937, ch. 704, § 7(c), 50 Stat. 707

Section, act June 3, 1935, ch. 164, § 23, 49 Stat. 320, related to disqualification of persons convicted of felony or fraud for positions with Federal land banks. See section 640i of this title.

§ 683. Omitted

Section, acts July 17, 1916, ch. 245, title I, § 4, 39 Stat. 363; Mar. 4, 1923, ch. 252, title III, § 304, 42 Stat. 1474; June 16, 1933, ch. 98, title VII, § 70, title VIII, § 80a, 48 Stat. 269, 273, related to compensation and allowances of directors, officers, and employees, and was stricken by act Aug. 19, 1937, ch. 704, § 7(b), 50 Stat. 707. Section 70 of act June 16, 1933, ch. 98, was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 648. See section 2226 of this title.

CAPITAL STOCK OF FEDERAL LAND BANKS

§§ 691 to 697. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 691, act July 17, 1916, ch. 245, title I, § 5, 39 Stat. 364; Ex. Ord. No. 6084, Mar. 27, 1933, provided for minimum amount of original capital for Federal land banks. See section 2013 of this title.

Section 692, act July 17, 1916, ch. 245, title I, § 5, 39 Stat. 364, provided for distribution and value of stock for Federal land banks. See section 2013 of this title.

Section 693, acts July 17, 1916, ch. 245, title I, § 5, 39 Stat. 364; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, covered transfer of stock held by land bank associations. See section 2013 of this title.

Section 694, acts July 17, 1916, ch. 245, title I, § 5, 39 Stat. 364; Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, title VIII, § 80(a), 48 Stat. 273; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, covered dividends for land bank stock. See section 2013 of this title.

Section 695, acts July 17, 1916, ch. 245, title I, § 5, 39 Stat. 364; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 19, 1937, ch. 704, § 5(a), 50 Stat. 704, covered subscription by United States for unsubscribed balance of original capital stock of Federal land banks. See section 2001 et seq. of this title.

Section 696, acts July 17, 1916, ch. 245, title I, § 5, 39 Stat. 364; Jan. 23, 1932, ch. 9, § 1, 47 Stat. 12; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, covered retirement of original stock of Federal land banks. See section 2051 of this title.

Section 697, acts July 17, 1916, ch. 245, title I, § 5, 39 Stat. 364; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 18, 1959, Pub L. 86–168, title I, § 104(h), 73 Stat. 387, set out required proportion of capital of Federal land banks that had to be held in form of quick assets. See section 2051 of this title.

§ 698. Repealed. Aug. 11, 1955, ch. 785, title III, § 302, 69 Stat. 664

Section, act July 17, 1916, ch. 245, title I, § 5 (par.), as added Jan. 23, 1932, ch. 9, § 2, 47 Stat. 12, related to subscriptions by United States to capital stock of Federal land banks.

LAND BANKS AS GOVERNMENT DEPOSITARIES AND AGENTS

§ 701. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, act July 17, 1916, ch. 245, title I, § 6, 39 Stat. 365, covered land banks as government depositaries and agents. See section 2012 of this title.

FEDERAL LAND BANK ASSOCIATIONS GENERALLY

§§ 711 to 724. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 711, acts July 17, 1916, ch. 245, title I, § 7, 39 Stat. 365; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, provided for organization of land bank associations. See section 2031 of this title.

Section 712, acts July 17, 1916, ch. 245, title I, §7, 39 Stat. 365; Aug. 19, 1937, ch. 704, §21, 59 Stat. 266; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), (i), 73 Stat. 387, provided for directors, officers, and loan committee of land bank associations. See section 2031 et seq. of this title.

Section 713, acts July 17, 1916, ch. 245, title I, §7, 39 Stat. 365; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 18, 1959, Pub. L. 86–168, title I, §104(i), 73 Stat. 387, provided for compensation and qualifications of directors. See section 2032 of this title.

Section 714, acts July 17, 1916, ch. 245, title I, §7, 39 Stat. 365; Mar. 4, 1923, ch. 252, title III, §305, 42 Stat. 1476; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 11, 1955, ch. 785, title III, §301(b), 69 Stat. 664; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), (i), 73 Stat. 387, set out duties of manager of each land bank association. See section 2031 of this title.

Section 715, acts July 17, 1916, ch. 245, title I, §7, 39 Stat. 365; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), (i), 73 Stat. 387, provided for expenses of personnel of land bank associations. See section 2033 of this title.

Section 716, acts July 17, 1916, ch. 245, title I, §7, 39 Stat. 365; June 3, 1935, ch. 164, §19(a), (b), 49 Stat. 319; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), (i), 73 Stat. 387, provided for incorporators, organization, directors, and managers of land bank associations. See section 2031 et seq. of this title.

Section 717, acts July 17, 1916, ch. 245, title I, §7, 39 Stat. 365; Aug. 18, 1959, Pub. L. 86–168, title I, §104(i), 73 Stat. 387, covered report and affidavit accompanying articles of association. See section 2031 of this title.

Section 718, act July 17, 1916, ch. 245, title I, §7, 39 Stat. 365; Ex. Ord. No. 6084, Mar. 27, 1933, provided for investigation of solvency of applicants for incorporation. See section 2254 of this title.

Section 719, acts July 17, 1916, ch. 245, title I, §7, 39 Stat. 365; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 19, 1937, ch. 704, §8, 50 Stat. 707; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, covered grant or refusal of charters to land bank associations. See section 2031 et seq. of this title.

Section 720, acts July 17, 1916, ch. 245, title I, §7, 39 Stat. 365; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, authorized receipt of funds to be loaned to members. See section 2033 of this title.

Section 721, acts July 17, 1916, ch. 245, title I, §7, 39 Stat. 365; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, covered subscriptions to land bank stock as collateral and retirement of stock. See section 2034 of this title.

Section 722, act July 17, 1916, ch. 245, title I, §7, 39 Stat. 365, placed a limitation on reduction of capital stock of land banks. See section 2034 of this title.

Section 723, acts July 17, 1916, ch. 245, title I, §7 (pt.), as added Mar. 4, 1933, ch. 270, §1, 47 Stat. 1547; amended May 12, 1933, ch. 25, title II, §26, 48 Stat. 44; June 16, 1933, ch. 98, title VIII, §80(a), 48 Stat. 273; Jan. 31, 1934, ch. 7, §6, 48 Stat. 346; Aug. 19, 1937, ch. 704, §§5(a), 22, 50 Stat. 704, 710; Oct. 29, 1949, ch. 786, §1(b), 63 Stat. 986; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), (i), 73 Stat. 387; Oct. 4, 1961, Pub. L. 87–353, §3(a), (e), 75 Stat. 773, 774, authorized direct loans. See section 2020 of this title.

Section 724, acts Aug. 19, 1937, ch. 704, §25(b), 50 Stat. 711; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, provided for loans when an association's stock is impaired. See section 2020 of this title.

Capital Stock of Federal Land Bank Associations

§§ 731 to 734. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 731, acts July 17, 1916, ch. 245, title I, §8, 39 Stat. 367; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, set a $5 par value for shares of land bank association stock. See section 2031 of this title.

Section 732, acts July 17, 1916, ch. 245, title I, §8, 39 Stat. 367; Aug. 9, 1937, ch. 704, §23, 50 Stat. 710, set out voting privileges for land bank association stock. See section 2034 of this title.

Section 733, acts July 17, 1916, ch. 245, title I, §8, 39 Stat. 367; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, limited borrowers to members. See section 2034 of this title.

Section 734, acts July 17, 1916, ch. 245, title I, §8, 39 Stat. 367; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 11, 1955, ch. 785, title III, §301(c), 69 Stat. 664; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, provided for increases in stock. See section 2034 of this title.

Federal Land Bank Associations; Special Provisions

§§ 741 to 747. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 741, acts July 17, 1916, ch. 245, title I, §9, 39 Stat. 368; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, covered members' rights to loans. See section 2201 of this title.

Section 742, acts July 17, 1916, ch. 245, title I, §9, 39 Stat. 368; Aug. 18, 1959, Pub. L. 86–168, title I, §102(a), 73 Stat. 384, covered payments for stock from proceeds of member's mortgage loan. See section 2033 of this title.

Section 743, acts July 17, 1916, ch. 245, title I, §9, 39 Stat. 368; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, authorized retention of commissions on interest payments. See section 2033 of this title.

Section 744, acts July 17, 1916, ch. 245, title I, §9, 39 Stat. 368; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, provided for individual liability of shareholders.

Section 744a, acts June 16, 1933, ch. 98, title VII, §72, 48 Stat. 271; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, relieved shareholders of land bank associations of personal liability for contracts, debts, and engagements entered into after June 16, 1933.

Section 745, acts July 17, 1916, ch. 245, title I, §9, 39 Stat. 368; June 3, 1935, ch. 164, 20, 49 Stat. 319; Aug. 19, 1937, ch. 704, §24, 50 Stat. 710; June 30, 1945, ch. 204, §1(b), 59 Stat. 266; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), (i), 73 Stat. 387, provided for new members for land bank associations. See section 2033 of this title.

Section 746, act July 17, 1916, ch. 245, title I, §9 (par.) as added Aug. 19, 1937, ch. 704, §25(a), 50 Stat. 710; amended Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, provided for a common board of directors for two or more associations. See section 2032 of this title.

Section 747 act July 17, 1916, ch. 245, title I, §9 (par.), as added Aug. 19, 1937, ch. 704, §25(a), 50 Stat. 711; amended Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, provided for transfer of powers to a loan committee. See section 2033 of this title.

Appraisal for Farm Loans

§§ 751 to 757. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 751, acts July 17, 1916, ch. 245, title I, §10(a), 39 Stat. 369; Apr. 20, 1920, ch. 154, §2, 41 Stat. 570; June 30, 1945, ch. 204, §2, 59 Stat. 266; Aug. 18, 1959, Pub. L. 86–168, title I, §102(b), 73 Stat. 384, covered investigation of applications for mortgage loans by the loan committee. See section 2033 of this title.

Section 752, acts July 17, 1916, ch. 245, title I, §10(b), 39 Stat. 369; Apr. 20, 1920, ch. 154, §2, 41 Stat. 570; June 30, 1945, ch. 204, §2, 59 Stat. 266; Aug. 18, 1959, Pub. L. 86–168, title I, §102(b), 73 Stat. 385, covered submission of loan applications and required reports to land banks. See section 2033 of this title.

Section 753, acts July 17, 1916, ch. 245, title I, §10(c), 39 Stat. 369; June 30, 1945, ch. 204, §2, 59 Stat. 266; Aug. 18, 1959, Pub. L. 86–168, title I, §102(b), 73 Stat. 385, provided for form for appraisal reports.

Section 754, acts July 17, 1916, ch. 245, title I, §10(d), 39 Stat. 369; Aug. 18, 1959, Pub. L. 86–168, title I, §102(b),

73 Stat. 385, dealt with conflicting interests of farm credit or land bank appraisers, committeemen, and association directors. See section 2254 of this title.

Section 755, acts July 17, 1916, ch. 245, title I, §10(e), 39 Stat. 369; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 18, 1959, Pub. L. 86–168, title I, §102(b), 73 Stat. 385, provided for appraisal standards studies by Federal land banks. See section 2033 of this title.

Section 756, acts July 17, 1916, ch. 245, title I, §10(f), 39 Stat. 369; Aug. 18, 1959, Pub. L. 86–168, title I, §102(b), 73 Stat. 385, covered appraisals, reports, and standards by farm credit appraisers. See section 2012 of this title.

Section 757, act July 17, 1916, ch. 245, title I, §10(g), as added Aug. 11, 1955, ch. 785, title III, §303, 69 Stat. 664; amended Aug. 18, 1959, Pub. L. 86–168, title I, §102(b), 73 Stat. 385, set out duties of farm credit appraisers. See section 2254 of this title.

POWERS OF FEDERAL LAND BANK ASSOCIATIONS

§ 761. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, acts July 17, 1916, ch. 245, title I, §11, 39 Stat. 369; Apr. 20, 1920, ch. 154, §3, 41 Stat. 570; Ex. Ord. No. 6084 Mar. 27, 1933; Aug. 19, 1937, ch. 704, §25(c), 50 Stat. 713; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, enumerated powers of Federal land bank associations. See section 2033 of this title.

RESTRICTION ON LOANS OF FEDERAL LAND BANKS BASED ON FIRST MORTGAGES

§§ 771, 772. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 771, acts July 17, 1916, ch. 245, §12, 39 Stat. 370; Apr. 20, 1920, ch. 154, §4, 41 Stat. 570; Mar. 4, 1923, ch. 252, title III, §§306, 307, 42 Stat. 1476; Mar. 4, 1933, ch. 270, §2, 47 Stat. 1547; Ex. Ord. No. 6084, Mar. 27, 1933; May 12, 1933, ch. 25, title II, §§24, 25, 41, 48 Stat. 43, 44, 51; June 16, 1933, ch. 98, title VII, §§73, 74, title VIII, §80(a), 48 Stat. 271, 273; June 3, 1935, ch. 164, §§3, 18, 22, 49 Stat. 314, 319; June 24, 1936, ch. 762, 49 Stat. 1912; July 22, 1937, ch. 516, §1, 50 Stat. 521; Aug. 19, 1937, ch. 704; §§5(a), 12, 50 Stat. 704, 708; June 16, 1938, ch. 462, §1, 52 Stat. 709; June 29, 1940, ch. 441, §1, 54 Stat. 684; June 27, 1942, ch. 449, §1, 56 Stat. 391; June 30, 1945, ch. 204, §4, 59 Stat. 267; Oct. 29, 1949, ch. 786, §2, 63 Stat. 986; Aug. 11, 1955, ch. 785, title III, §304, 69 Stat. 664; Aug. 18, 1959, Pub. L. 86–168, title I, §104(a), (h), 73 Stat. 386, 387; Oct. 3, 1961, Pub. L. 87–343, §1(a), 75 Stat. 758; Aug. 2, 1966, Pub. L. 89–525, §2, 80 Stat. 334; Dec. 15, 1967, Pub. L. 90–204, §2, 81 Stat. 612, set out restrictions on loans. See section 2011 et seq. of this title.

Section 772, acts July 17, 1916, ch. 245, title I, §12, 39 Stat. 370; Jan. 31, 1934, ch. 7, §7, 48 Stat. 346; Oct. 4, 1961, Pub. L. 87–353, §3(f), 75 Stat. 774, authorized transmittal of loan funds to land bank associations either in form of current funds or farm loan bonds.

§ 773. Omitted

CODIFICATION

Section, act May 15, 1922, ch. 190, §3, 42 Stat. 542, which related to mortgages on farm lands under United States reclamation projects, and contained a definition of ''first mortgage'' as used in section 771 of this title, was omitted because of the repeal of section 771 and other sections of this title that were based on the Federal Farm Loan Act.

§ 773a. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, acts June 4, 1936, ch. 496, 49 Stat. 1461; Oct. 4, 1961, Pub. L. 87–353, §3(k), 75 Stat. 774, provided for loans on lands in drainage, irrigation, or conservancy districts.

POWERS OF FEDERAL LAND BANKS GENERALLY

§ 781. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, acts July 17, 1916, ch. 245, §13, 39 Stat. 372; Jan. 23, 1932, ch. 9, §5, 47 Stat. 14; Mar. 4, 1933, ch. 270, §§3, 4, 47 Stat. 1548; Ex. Ord. No. 6084, Mar. 27, 1933; May 12, 1933, ch. 25, title II, §§22, 23, 48 Stat. 42, 43; June 16, 1933, ch. 98, title VII, §79, title VIII, §80(a), 48 Stat. 272, 273; Jan. 31, 1934, ch. 7, §8(a), 48 Stat. 347; Aug. 19, 1937, ch. 704, §§5(a), 15(a), (b), 16, 17, 19, 50 Stat. 704, 708, 709; June 30, 1945, ch. 204, §§5–7, 59 Stat. 267; Oct. 29, 1949, ch. 786, §3, 63 Stat. 986; June 1, 1955, ch. 117, 69 Stat. 81; Aug. 11, 1955, ch. 785, title III, §305, 69 Stat. 665; July 26, 1956, ch. 741, title I, §104(e), 70 Stat. 664; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387; Oct. 4, 1961, Pub. L. 87–353, §3(g), (h), 75 Stat. 774; Aug. 2, 1966, Pub. L. 89–525, §2, 80 Stat. 334, enumerated powers of Federal land banks generally. See section 2012 of this title.

RESTRICTIONS ON FEDERAL LAND BANKS

§ 791. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, acts July 17, 1916, ch. 245, title I, §14, 39 Stat. 372; Mar. 4, 1933, ch. 270, §5(a), (b), 47 Stat. 1549; June 16, 1933, ch. 98, title VII, §§71, 75(a), 48 Stat. 271; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, set out an enumeration of restriction on Federal land banks. See section 2012 et seq. of this title.

LOANS BY FEDERAL LAND BANKS THROUGH AGENTS

§§ 801 to 808. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 801, acts July 17, 1916, ch. 245, title I, §15, 39 Stat. 373; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, authorized loans by Federal land banks through agents. See section 2020 of this title.

Section 802, acts July 17, 1916, ch. 245, title I, §15, 39 Stat. 373; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, covered manner of making loan through agents. See section 2020 of this title.

Section 803, act July 17, 1916, ch. 245, title I, §15, 39 Stat. 373, placed limits on who could be employed as agent. See section 2020 of this title.

Section 804, act July 17, 1916, ch. 245, title I, §15, 39 Stat. 373, covered expenses of and commissions to agents. See section 2020 of this title.

Section 805, act July 17, 1916, ch. 245, title I, §15, 39 Stat. 373, provided for addition of expenses of agents to loans. See section 2020 of this title.

Section 806, act July 17, 1916, ch. 245, title I, §15, 39 Stat. 373, covered collection of loan payments. See section 2020 of this title.

Section 807, act July 17, 1916, ch. 245, title I, §15, 39 Stat. 373, covered indorsement of loans and liability thereon. See section 2020 of this title.

Section 808, acts July 17, 1916, ch. 245, title I, §15, 39 Stat. 373; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, provided when loans were to cease. See section 2020 of this title.

JOINT-STOCK LAND BANKS

§§ 810 to 824. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 810, act May 12, 1933, ch. 25, title II, §29, 48 Stat. 46, prohibited making of loans or issuing of bonds after May 12, 1933, by joint-stock land banks.

Section 811, act July 17, 1916, ch. 245, title I, §16, 39 Stat. 374, provided for organization of joint-stock banks.

Section 812, act July 17, 1916, ch. 245, title I, §16, 39 Stat. 374, provided for individual liability of shareholders in joint-stock land banks.

Section 813, act July 17, 1916, ch. 245, title I, §16, 39 Stat. 374, covered powers, duties, and liabilities of joint-stock land banks.

Section 814, act July 17, 1916, ch. 245, title I, §16, 39 Stat. 374, placed a limit on amount of issue of bonds and prohibited transacting of unauthorized business.

Section 815, act July 17, 1916, ch. 245, title I, §16, 39 Stat. 374; Ex. Ord. No. 6084, Mar. 27, 1933, provided for minimum allowable capital stock for joint-stock land banks.

Section 816, act July 17, 1916, ch. 245, title I, §16, 39 Stat. 374, prohibited issuance of bonds before capital stock of joint-stock land banks was entirely paid up.

Section 817, act July 17, 1916, ch. 245, title I, §16, 39 Stat. 374; Ex. Ord. No. 6084, Mar. 27, 1933, set out required form for bonds issued by joint-stock land banks.

Section 818, acts July 17, 1916, ch. 245, title I, §16, 39 Stat. 374; Mar. 4, 1931, ch. 518, §1, 46 Stat. 1548, set out interest rates and restrictions on mortgage loans for joint-stock land banks.

Section 819, act July 17, 1916, ch. 245, title I, §16, 39 Stat. 374, set a limitation on interest rates.

Section 820, act July 17, 1916, ch. 245, title I, §16, 39 Stat. 374, prohibited unauthorized commissions or charges by joint-stock land banks.

Section 821, act July 17, 1916, ch. 245, title I, §16, 39 Stat. 374; Ex. Ord. No. 6084, Mar. 27, 1933, authorized issuance of bonds by joint-stock land banks.

Section 822, act July 17, 1916, ch. 245, title I, §16 (par.), as added May 29, 1920, ch. 215, 41 Stat. 691, and amended Ex. Ord. No. 6084, Mar. 27, 1933, provided for voluntary liquidation of joint-stock land banks.

Section 823, act July 17, 1916, ch. 245, title I, §16 (pars.), as added May 29, 1920, ch. 215, 41 Stat. 691; amended Mar. 4, 1925, ch. 524, §5, 43 Stat. 1263; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, provided for acquisition of assets of a liquidating joint-stock land bank.

Section 824, act July 17, 1916, ch. 245, title I, §16 (par.), as added Mar. 4, 1931, ch. 518, §2, 46 Stat. 1548; amended Ex. Ord. No. 6084, Mar. 27, 1933, covered insolvency and receivership of joint-stock land banks.

POWERS OF FARM CREDIT ADMINISTRATION

§§ 831 to 833. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 831, acts July 17, 1916, ch. 245, title I, §17, 39 Stat. 375; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 19, 1937, ch. 704, §9, 50 Stat. 707; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, contained an enumeration of the powers of Farm Credit Administration. See section 2252 of this title.

Section 832, acts Sept. 21, 1944, ch. 412, title VI, §601(a) to (c), 58 Stat. 740; Aug. 11, 1955, ch. 785, title III, §307, 69 Stat. 665; July 26, 1956, ch. 741, title I, §108, 70 Stat. 667; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, provided for allocation of administrative expenses rendered each year by Farm Credit Administration. See section 2250 of this title.

Section 833, act Sept. 21, 1944, ch. 412, title VI, §602, 58 Stat. 741, authorized purchase of manuscripts, data, and special reports by Farm Credit Administration.

APPLICATIONS FOR FARM-LOAN BONDS

§§ 841 to 844. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 841, act July 17, 1916, ch. 245, title I, §18, 39 Stat. 375; Ex. Ord. No. 6084, Mar. 27, 1933, provided for application for farm loan bonds. See section 2154 of this title.

Section 842, act July 17, 1916, ch. 245, title I, §18, 39 Stat. 375; Ex. Ord. No. 6084, Mar. 27, 1933, provided for investigation and appraisal of securities tendered. See section 2154 of this title.

Section 843, act July 17, 1916, ch. 245, title I, §18, 39 Stat. 375; Ex. Ord. No. 6084, Mar. 27, 1933, provided for transmission of decisions to land bank and registrar.

Section 844, act July 17, 1916, ch. 245, title I, §18, 39 Stat. 375; Ex. Ord. No. 6084, Mar. 27, 1933, required Farm Credit Administration to execute a writing when approving a farm-loan bond issue.

ISSUE OF FARM-LOAN BONDS

§§ 851 to 857. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 851, act July 17, 1916, ch. 245, title I, §19, 39 Stat. 376; Ex. Ord. No. 6084, Mar. 27, 1933, set out duties of farm-loan registrar on approval of a bond issue.

Section 852, act July 17, 1916, ch. 245, title I, §19, 39 Stat. 376; Ex. Ord. No. 6084, Mar. 27, 1933, covered return of collateral security whenever Farm Credit Administration rejects entirely an application for an issue of farm-loan bonds.

Section 853, act July 17, 1916, ch. 245, title I, §19, 39 Stat. 376; Ex. Ord. No. 6084, Mar. 27, 1933, provided for disposition of security on approval of an application for issue of farm-loan bonds.

Section 854, acts July 17, 1916, ch. 245, title I, §19, 39 Stat. 376; Mar. 4, 1933, ch. 270, §6(a), 47 Stat. 1549; Ex. Ord. No. 6084, Mar. 27, 1933, set out conditions for mortgages eligible as collateral.

Section 855, act July 17, 1916, ch. 245, title I, §19, 39 Stat. 376, set out duties of farm loan registrars and authorized receipt of United States bonds or cash in lieu of mortgages withdrawn.

Section 856, act July 17, 1916, ch. 245, title I, §19, 39 Stat. 376; Ex. Ord. No. 6084, Mar. 27, 1933, authorized Farm Loan Administration to call on any farm loan bank for additional security to protect the bonds issued by it.

Section 857, act July 17, 1916, ch. 245, title I, §19 (par.), as added Mar. 4, 1933, ch. 270, §6(b), 47 Stat. 1549; amended June 30, 1945, ch. 204, §8, 59 Stat. 268, covered deposit of acceptable collateral security with farm loan registrar.

FORM OF FARM LOAN BONDS

§§ 861 to 864. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 861, acts July 17, 1916, ch. 245, title I, §20, 39 Stat. 377; Apr. 20, 1920, ch. 154, §5, 41 Stat. 571; Mar. 4, 1921, ch. 151, 41 Stat. 1362; Aug. 13, 1921, ch. 63, 42 Stat. 159; Ex. Ord. No. 6084, Mar. 27, 1933; June 30, 1945, ch. 204, §9, 59 Stat. 268; Aug. 18, 1958, Pub. L. 86–168, title I, §104(b), 73 Stat. 386, authorized issuance of farm loan bonds in amount, denominations, and terms as Farm Credit Administration authorized. See section 2153 of this title.

Section 862, act July 17, 1916, ch. 245, title I, §20, 39 Stat. 377; Ex. Ord. No. 6084, Mar. 27, 1933, directed the Farm Credit Administration to prescribe rules and regulations concerning circumstances and manner in which farm loan bonds shall be paid and retired. See section 2153 of this title.

Section 863, act July 17, 1916, ch. 245, title I, §20, 39 Stat. 377, directed that farm loan bonds be delivered through registrar of the district to bank applying for them.

Section 864, acts July 17, 1916, ch. 245, title I, §20, 39 Stat. 377; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 18, 1959, Pub. L. 86–168, title I, §104(b), 73 Stat. 386, covered preparation of bonds, custody of plates and dies, exchange for registered bonds, and reexchange for coupons.

SPECIAL PROVISIONS OF FARM LOAN BONDS

§§ 871 to 886. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 871, act July 17, 1916, ch. 245, title I, §21, 39 Stat. 377; Ex. Ord. No. 6084, Mar. 27, 1933, provided that land banks be bound by the acts of officers and Farm Credit Administration in issue of bonds.

Section 872, act July 17, 1916, ch. 245, title I, § 21, 39 Stat. 377; Ex. Ord. No. 6084, Mar. 27, 1933, covered liability of each land bank for bonds issued by it and by other land banks.

Section 873, act July 17, 1916, ch. 245, title I, § 21, 39 Stat. 377, directed that board of directors of each land bank obligate each such bank to become liable on farm loan bonds.

Section 874, acts July 17, 1916, ch. 245, title I, § 21, 39 Stat. 377; Apr. 20, 1920, ch. 154, § 6, 41 Stat. 571; Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, title VII, § 75(b), title VIII, § 80(a), 48 Stat. 271, 273; June 30, 1945, ch. 204, § 10(a), 59 Stat. 268, provided for signing and attesting of bonds and certificate of Land Bank Commissioner.

Section 875, act July 17, 1916, ch. 245, title I, § 21 (par.), as added Mar. 4, 1923, ch. 252, title III, § 308, 42 Stat. 1476, authorized consolidation of bonds and their sale through a common selling agency.

Section 876, act July 17, 1916, ch. 245, title I, § 21 (par.), as added Mar. 4, 1923, ch. 252, title III, § 308, 42 Stat. 1476; amended June 16, 1933, ch. 98, title VIII, §§ 80(a), 81, 48 Stat. 273, provided for signature and attestation of bonds, joint and several obligations, and recitals.

Section 877, act July 17, 1916, ch. 245, title I, § 21 (par.), as added Mar. 4, 1923, ch. 252, title III, § 308, 42 Stat. 1476, directed that consolidated bonds be made payable at any land bank and authorized provisions making them payable at Federal reserve banks or other designated banks as well.

Section 878, act July 17, 1916, ch. 245, title I, § 21 (par.), as added Mar. 4, 1923, ch. 252, title III, § 308, 42 Stat. 1476; amended Mar. 4, 1925, ch. 524, § 6, 43 Stat. 1264; June 16, 1933, ch. 98, title VIII, §§ 80(a), 81, 48 Stat. 273, directed that land banks on whose behalf consolidated bonds are issued be bound by acts of Land Bank Commissioner and any deputy land bank commissioner.

Section 879, act July 17, 1916, ch. 245, title I, § 21 (par.), as added Mar. 4, 1923, ch. 252, title III, § 308, 42 Stat. 1476; amended June 16, 1933, ch. 98, title VIII, §§ 80(a), 81, 48 Stat. 273, directed that boards of directors of land banks, before participating in a consolidated issue, obligate such banks to be liable on farm loan bonds and to be bound by action of Land Bank Commissioner and any deputy land bank commissioner.

Section 880, act July 17, 1916, ch. 245, title I, § 21 (par.), as added Mar. 4, 1923, ch. 252, title III, § 308, 42 Stat. 1476; amended Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, title VII, § 75(b), title VIII, § 80(a), 48 Stat. 271, 273; June 30, 1945, ch. 204 § 10(b), 59 Stat. 269, covered certificate of Land Bank Commissioner appearing on face of every farm loan bond issued.

Section 881, act July 17, 1916, ch. 245, title I, § 21, 39 Stat. 377; Mar. 4, 1923, ch. 252, title VIII, § 308, 42 Stat. 1476; Mar. 4, 1933, ch. 270, § 7, 47 Stat. 1550; Ex. Ord. No. 6084, Mar. 27, 1933, covered special provisions of farm loan bonds, consolidated bonds, the participation of land banks in their issuance, and collateral.

Section 882, act July 17, 1916, ch. 245, title I, § 21 (par.), as added Mar. 4, 1923, ch. 252, title III, § 308, 42 Stat. 1476; amended Ex. Ord. No. 6084, Mar. 27, 1933, covered action to be taken upon failure of a participating bank to pay interest or principal.

Section 883, act July 17, 1916, ch. 245, title I, § 21 (par.), as added Mar. 4, 1923, ch. 252, title III, § 308, 42 Stat. 1476; amended Aug. 19, 1937, ch. 704, § 18, 50 Stat. 709, covered bond committee of Federal land banks and acts of such committee in conducting its business.

Section 884, act July 17, 1916, ch. 245, title I, § 21 (par.), as added Mar. 4, 1923, ch. 252, title III, § 308, 42 Stat. 1476; amended Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, title VIII, §§ 80(a), 81, 48 Stat. 273, set out duties of bond committee on contemplation of an issue of consolidated bonds.

Section 885, act July 17, 1916, ch. 245, title I, § 21 (par.), as added Mar. 4, 1923, ch. 252, title III, § 308, 42 Stat. 1476, covered proper charging of expenses of bond committee and of sale of bonds.

Section 886, act July 17, 1916, ch. 245, title I, § 21 (par.), as added Mar. 4, 1923, ch. 252, title III, § 308, 42 Stat. 1476, provided for compensation of members of bond committee.

Application of Amortization and Interest Payments

§§ 891 to 899. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 891, acts July 17, 1916, ch. 245, title I, § 22, 39 Stat. 378; Oct. 29, 1949, ch. 786, § 4, 63 Stat. 986, covered payments on mortgages pledged as collateral for a bond issue, notice to farm-loan registrar, and cancellation of mortgage and discharge of lien on full payment.

Section 892, act July 17, 1916, ch. 245, title I, § 22, 39 Stat. 378, covered withdrawal of collateral and substitution of other security.

Section 893, act July 17, 1916, ch. 245, title I, § 22, 39 Stat. 378; Ex. Ord. No. 6084, Mar. 27, 1933, provided for place and mode of payment of bonds or interest thereon and cancellation of payment.

Section 894, act July 17, 1916, ch. 245, title I, § 22, 39 Stat. 378, provided for withdrawal of collateral security on surrender of bonds.

Section 895, act July 17, 1916, ch. 245, title I, § 22, 39 Stat. 378, covered interest payments on pledged securities.

Section 896, act July 17, 1916, ch. 245, title I, § 22, 39 Stat. 378, provided for payment of bonds, coupons, and interest at maturity.

Section 897, acts July 17, 1916, ch. 245, title I, § 22, 39 Stat. 378; Mar. 4, 1923, ch. 252, title III, § 309, 42 Stat. 1477; Jan. 31, 1934, ch. 7, § 8(b), 48 Stat. 347; Aug. 19, 1937, ch. 704, §§ 5(a), 15(c), 50 Stat. 704, 708; Oct. 4, 1961, Pub. L. 87–353, § 3(i), 75 Stat. 774, provided for a trust fund from payments on mortgages held as collateral.

Section 898, act July 17, 1916, ch. 245, title I, § 22, 39 Stat. 378, covered deposit of trust funds with registrars as substituted collateral security.

Section 899, act July 17, 1916, ch. 245, title I, § 22, 39 Stat. 378, covered notice to registrars of dispositions of principal payments on mortgages held as collateral and transfer to registrar on demand.

Reserves and Dividends of Land Banks

§§ 901 to 903. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 901, acts July 17, 1916, ch. 245, title I, § 23, 39 Stat. 379; Jan. 23, 1932, ch. 9, § 3(a), 47 Stat. 13; Aug. 11, 1955, ch. 785, title III, § 306(a), 69 Stat. 665; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(c), 73 Stat. 386, provided for amount to be carried in reserve accounts, withdrawal of excess, and restoration of impairment. See section 2051 of this title.

Section 902, acts July 17, 1916, ch. 245, title I, § 23, 39 Stat. 379; Jan. 23, 1932, ch. 9, § 3(a), (b), 47 Stat. 13; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 11, 1955, ch. 785, title III, § 306(a), 69 Stat. 665, authorized declaration of dividends on balance of net earnings and investment of reserves. See section 2051 et seq. of this title.

Section 903, act July 17, 1916, ch. 245, title I, § 23 (par.), as added Aug. 6, 1953, ch. 335, § 10, 67 Stat. 395, provided for payment of franchise tax before dividends. See section 2051 of this title.

Reserve and Dividends of Federal Land Bank Associations

§§ 911 to 915. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 911, acts July 17, 1916, ch. 245, title I, § 24, 39 Stat. 379; Jan. 23, 1932, ch. 9, § 4, 47 Stat. 13; Aug. 11, 1955, ch. 785, title III, § 306(b), 69 Stat. 665; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(d), (h), 73 Stat. 386, 387, provided for amount to be carried in reserve account by land bank associations. See section 2052 of this title.

Section 912, acts July 17, 1916, ch. 245, title I, § 24, 39 Stat. 379; Jan. 23, 1932, ch. 9, § 4, 47 Stat. 13, covered

making good of any impairment of reserve before payment of any dividends.

Section 913, acts July 17, 1916, ch. 245, title I, § 24, 39 Stat. 379; Jan. 23, 1932, ch. 9, § 4, 47 Stat. 13; June 3, 1935, ch. 164, § 4, 49 Stat. 315, provided for payment of dividends by land bank associations on balance of net earnings. See section 2052 of this title.

Section 914, act July 17, 1916, ch. 245, title I, § 24, 39 Stat. 379; Ex. Ord. No. 6084, Mar. 27, 1933, covered investment of reserves of land bank associations.

Section 915, act July 17, 1916, ch. 245, title I, § 24, 39 Stat. 379, provided for disposition of reserves on liquidation of land bank associations.

DEFAULTED FARM LOANS

§ 921. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, acts July 17, 1916, ch. 245, title I, § 25, 39 Stat. 380; Mar. 4, 1923, ch. 252, title III, § 310, 42 Stat. 1477; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, provided for notice to indorsing association in event of a default on a mortgage held by a land bank and for making good of such default by association.

EXEMPTION FROM TAXATION

§ 931. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, acts July 17, 1916, ch. 245, title I, § 26, 39 Stat. 380; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, exempted land banks and land bank associations from taxation and directed that mortgages and bonds be deemed instrumentalities of government. See section 2055 of this title.

§ 931a. Omitted

CODIFICATION

Provisions of this section, act May 28, 1938, ch. 289, § 817, 52 Stat. 578, were incorporated as section 3799 of Title 26 (I.R.C. 1939). See section 76 of Title 26, Internal Revenue Code.

§§ 932, 933. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 932, act July 17, 1916, ch. 245, title I, § 26, 39 Stat. 380, covered joint-stock land banks and limitations on state taxation of shares thereof.

Section 933, acts July 17, 1916, ch. 245, title I, § 26, 39 Stat. 380; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, prohibited a construction of statute which might serve to render exempt real property of land banks and land bank associations from state, county, or municipal taxes.

INVESTMENT IN FARM-LOAN BONDS

§§ 941 to 943. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 941, act July 17, 1916, ch. 245, title I, § 27, 39 Stat. 380, directed that farm-loan bonds be deemed lawful investments for all fiduciary and trust funds.

Section 942, act July 17, 1916, ch. 245, title I, § 27, 39 Stat. 380, covered buying and selling of farm-loan bonds by member banks of the Federal reserve system.

Section 943, act July 17, 1916, ch. 245, title I, § 27, 39 Stat. 380, covered additional purchases and sales by Federal reserve banks.

EXAMINATIONS

§§ 951, 952. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 951, acts July 17, 1916, ch. 245, title I, § 28, 39 Stat. 381; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 19, 1937, ch. 704, § 20, 50 Stat. 710, provided for appointment of farm credit examiners.

Section 952, acts July 17, 1916, ch. 245, title I, § 28, 39 Stat. 381; Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, title VIII, § 80(a), 48 Stat. 273; Aug. 19, 1937, ch. 704, § 20, 50 Stat. 710; July 12, 1943, ch. 215, 57 Stat. 424; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, covered requirements, responsibilities, and penalties applicable to examiners, and made provision for examinations and reports.

§ 953. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 643

Section, act July 17, 1916, ch. 245, title I, § 28, 39 Stat. 381, related to salaries of Farm credit examiners.

RECEIVERS AND CONSERVATORS

§§ 961 to 963. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 961, acts July 17, 1916, ch. 245, title I, § 29, 39 Stat. 381; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 19, 1937, ch. 704, § 5(a), 50 Stat. 704; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, covered institution and conduct of receiverships for land bank associations and duties and powers of receivers.

Section 962, act July 17, 1916, ch. 245, title I, § 29, 39 Stat. 381; Ex. Ord. No. 6084, Mar. 27, 1933, covered the disposition of moneys collected by receivers and reports to be made thereon.

Section 963, acts July 17, 1916, ch. 245, title I, § 29, 39 Stat. 381; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, provided for institution and conduct of receiverships for federal and joint-stock land banks.

§ 963a. Repealed. June 30, 1947, ch. 166, title II, § 206(c), 61 Stat. 208

Section, act May 12, 1933, ch. 25, § 27, 48 Stat. 45, related to authorization of receiver to borrow money for paying taxes on real estate.

§§ 964 to 966. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 964, acts July 17, 1916, ch. 245, title I, § 29, 39 Stat. 381; Ex. Ord. No. 6084, Mar. 27, 1933; July 16, 1933, ch. 98, title VIII, § 80(a), 48 Stat. 273; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, provided for disposition of land bank association's stock in land bank on declaration of insolvency and appointment of receiver for association.

Section 965, acts July 17, 1916, ch. 245, title I, § 29, 39 Stat. 381; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, required written consent from Farm Credit Administration for a land bank, land bank association, or joint stock land bank to go into voluntary liquidation.

Section 966, act July 17, 1916, ch. 245, title I, § 29 (par.), as added Mar. 4, 1923, ch. 252, title III, § 311, 42 Stat. 1748, and amended Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387, provided for disposition of a land bank association's stock in land bank on voluntary liquidation of an association and for personal liability of members.

DISSOLUTION AND APPOINTMENT OF RECEIVERS

§ 967. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, act July 17, 1916, ch. 245, title I, § 29 (pars.), as added Aug. 19, 1937, ch. 704, § 25(d), 50 Stat. 713; amended Aug. 18, 1959, Pub. L. 86–168, title I, § 104(e), (h), 73 Stat. 386, 387, provided for a conservator in lieu of a receiver for land bank associations which have failed to meet their outstanding obligations.

STATE LEGISLATION IMPAIRING SECURITY OF FARM LOANS

§§ 971 to 973. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 971, acts July 17, 1916, ch. 245, title I, § 30, 39 Stat. 382; Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, title VIII, § 80(a), 48 Stat. 273, directed Land Bank Commissioner to make examination of State legislation which might impair the security of farm loans.

Section 972, acts July 17, 1916, ch. 245, title I, § 30, 39 Stat. 382; Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, title VIII, § 80(a), 48 Stat. 273, authorized Farm Credit Administration to declare first mortgages on farm lands ineligible as basis for an issue of farm loan bonds.

Section 973, act July 17, 1916, ch. 245, title I, § 30, 39 Stat. 382; Ex. Ord. No. 6084, Mar. 27, 1933, authorized Farm Credit Administration to prepare a statement for chief executive of any state setting forth in what respects requirement of Administration cannot be complied with under existing State laws.

PENALTIES

§§ 981 to 987. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section 981, acts July 17, 1916, ch. 245, title I, § 31, 39 Stat. 382; June 3, 1935, ch. 164, § 21, 49 Stat. 319, related to false statements in applications for loans. See section 1014 of Title 18, Crimes and Criminal Procedure.

Section 982, act July 17, 1916, ch. 245, title I, § 31, 39 Stat. 382, related to counterfeiting bonds or coupons. See section 493 of Title 18.

Section 983, act July 17, 1916, ch. 245, title I, § 31, 39 Stat. 382, related to charging or receiving unauthorized fees or commissions. See sections 216 and 1907 of Title 18.

Section 984, act July 17, 1916, ch. 245, title I, § 31, 39 Stat. 382, related to fraud and embezzlement. See sections 657 and 1006 of Title 18.

Section 985, act July 17, 1916, ch. 245, title I, § 31, 39 Stat. 382, related to false pretenses as to character of bonds or coupons. See section 1013 of Title 18.

Section 986, act July 17, 1916, ch. 245, title I, § 31, 39 Stat. 382, related to detection and arrest of violators. See section 3056 of Title 18.

Section 987, act July 17, 1916, ch. 245, title I, § 31 (par.), as added June 16, 1933, ch. 98, title VII, § 78, 48 Stat. 272, related to false statements by mortgagee. See section 1011 of Title 18.

GOVERNMENT DEPOSITS IN LAND BANKS

§ 991. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, act July 17, 1916, ch. 245, title I, § 32, 39 Stat. 384; Ex. Ord. No. 6084, Mar. 27, 1933, covered government deposits in land banks, interest rate, security, and maximum amounts.

§§ 992 to 993. Repealed. Pub. L. 87–353, § 3(a), (w), Oct. 4, 1961, 75 Stat. 773, 774

Section 992, act July 17, 1916, ch. 245, § 32 (par.), as added May 12, 1933, ch. 25, title II, § 21, 48 Stat. 41; amended June 16, 1933, ch. 98, title VIII, § 80(a), 48 Stat. 273, related to Government guaranty of interest on qualified Federal land bank bonds issued during limited period, use of proceeds of such bonds, limitation on aggregate amount of such bonds, payment of interest by Government on inability of issuing bank and rights of Government after such payment.

Section 992a, act Jan. 31, 1934, ch. 7, § 5, 48 Stat. 346, prohibited any Federal land bank, ninety days after January 31, 1934, from issuing any bonds under provisions of section 992 of this title, subject to guarantee of interest on such bonds by United States except for purpose of refinancing any bond which was or had been issued subject to such guarantee of interest.

Section 993, act July 17, 1916, ch. 245, § 32 (par.), as added May 12, 1933, ch. 25, title II, § 21, 48 Stat. 41, related to delivery of bonds issued under section 992 of this title in payment of certain mortgages.

ORGANIZATION EXPENSES

§ 1001. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, act July 17, 1916, ch. 245, title I, § 33, 39 Stat. 384, appropriated $100,000 for carrying this chapter into effect.

LIMITATION OF COURT DECISIONS

§ 1011. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, act July 17, 1916, ch. 245, title I, § 34, 39 Stat. 384, set limits on effects of any court decisions respecting validity of provisions of act July 17, 1916, ch. 245, 39 Stat. 360.

AMENDMENTS TO CHAPTER

§ 1012. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, act July 17, 1916, ch. 245, title I, § 35, 39 Stat. 384, reserved to Congress the right to amend, alter, or repeal former subchapter I or III of this chapter.

SUBCHAPTER II—LOANS TO FARMERS BY LAND BANK COMMISSIONER

§ 1016. Repealed and Omitted

CODIFICATION

Section (except subsec. (h)), acts May 12, 1933, ch. 25, title II, § 32, 48 Stat. 48; June 16, 1933, ch. 98, title VIII, § 80(a), 48 Stat. 273; Jan. 31, 1934, ch. 7, §§ 9, 10, 48 Stat. 347; June 11, 1934, ch. 446, 48 Stat. 929; May 28, 1935, ch. 150, § 32, 49 Stat. 300; June 3, 1935, ch. 164, § 2, 49 Stat. 313; July 22, 1937, ch. 516, § 2, 50 Stat. 521; Aug. 19, 1937, ch. 704, §§ 13, 14, 50 Stat. 708; June 16, 1938, ch. 462, § 2, 52 Stat. 709; Feb. 1, 1940, ch. 19, 54 Stat. 19; June 29, 1940, ch. 441, § 1, 54 Stat. 684; June 3, 1942, ch. 321, 56 Stat. 306; June 27, 1942, ch. 449, § 2, 56 Stat. 392; June 26, 1943, ch. 146, 57 Stat. 196; June 30, 1944, ch. 329, 58 Stat. 646; June 30, 1945, ch. 204, §§ 11–13, 59 Stat. 269; July 12, 1946, ch. 570, § 1, 60 Stat. 532; June 30, 1947, ch. 166, title II, § 206(h), 61 Stat. 208; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387; Oct. 4, 1961, Pub. L. 87–353, § 3(b), 75 Stat. 773, related to general provisions governing loans to farmers by Land Bank Commission, prior to repeal by Pub. L. 87–353, § 3(b), Oct. 4, 1961, 75 Stat. 773.

Subsec. (h) provided: ''Any instrument heretofore or hereafter executed on behalf of the Land Bank Commissioner and/or the Federal Farm Mortgage Corporation by a Federal land bank, through its duly authorized officers, shall be conclusively presumed to have been duly authorized by the Land Bank Commissioner and the Federal Farm Mortgage Corporation.''

§§ 1017 to 1019. Repealed. Pub. L. 87–353, § 3(b), Oct. 4, 1961, 75 Stat. 773

Section 1017, acts May 12, 1933, ch. 25, title II, § 33, 48 Stat. 49; June 16, 1933, ch. 98, title VIII, § 80(a), 48 Stat. 273, authorized Land Bank Commissioner to make rules and regulations and to appoint, employ and fix compensation of officers, employees, attorneys and agents.

Section 1018, acts May 12, 1933, ch. 25, title II, § 34, 48 Stat. 49; June 16, 1933, ch. 98, title VIII, § 80(a), 48 Stat. 273, related to making available to Land Bank Commissioner of facilities of Federal land banks and Federal land bank associations.

Section 1019, act May 12, 1933, ch. 25, title II, §35, 48 Stat. 49, prescribed a penalty of not more than $1,000 fine or six months' imprisonment or both for false representations in obtaining loan.

SUBCHAPTER II–A—FEDERAL FARM MORTGAGE CORPORATION

§§ 1020 to 1020a–1. Repealed. Pub. L. 87–353, §3(a), (v), Oct. 4, 1961, 75 Stat. 773, 774

Section 1020, act Jan. 31, 1934, ch. 7, §1, 48 Stat. 344, provided for establishment of Federal Farm Mortgage Corporation, and for board of directors, bylaws, regulations and employment of officers and employees.

Section 1020a, act Jan. 31, 1934, ch. 7, §2, 48 Stat. 345, related to period of succession of Federal Farm Mortgage Corporation, its powers, free use of mails and use of Government facilities.

Section 1020a–1, act Sept. 21, 1944, ch. 412, title VI, §603, 58 Stat. 741, provided for treatment of capital investment expenditures as nonadministrative expenses.

ABOLITION OF FEDERAL FARM MORTGAGE CORPORATION

Pub. L. 87–353, §§1, 2, Oct. 4, 1961, 75 Stat. 773, abolished Federal Farm Mortgage Corporation established by the Act of Jan. 31, 1934, 48 Stat. 344, formerly set out in section 1020 of this title, terminated all powers and functions of Corporation, transferred all assets owned by Corporation and all authority of the Corporation relating to collection of notes receivable from Federal land banks to Secretary of the Treasury, authorized Federal land bank of appropriate district to execute in its own name or the name of Corporation any instrument necessary to perfect title to real property (other than reserved mineral interests) which appeared to be in Land Bank Commissioner in a particular district or Corporation, reserved mineral interests of Corporation which were not disposed of to United States of America to be administered by Secretary of the Interior, provided that any moneys collected by Secretary of the Treasury by virtue of act be deposited in general fund of the Treasury as miscellaneous receipts and further provided that no proceeding commenced by or against the Corporation would abate as the court on motion filed within twelve months after the date of enactment of the act (Oct. 4, 1961) could allow the same to be maintained by or against Secretary of the Treasury.

§§ 1020a–2, 1020a–3. Omitted

CODIFICATION

Section 1020a–2, act June 4, 1956, ch. 355, title IV, 70 Stat. 239, which related to maximum amounts available for administrative expenses, was from the Department of Agriculture and Farm Credit Administration Appropriation Act, 1957, and was not repeated in subsequent appropriation acts.

Section 1020a–3, Pub. L. 87–112, title IV, July 26, 1961, 75 Stat. 240, which limited the aggregate amount of bonds issued and outstanding, was from the Department of Agriculture and Related Agencies Appropriation Act, 1962, and was not repeated in subsequent appropriations acts.

SIMILAR PROVISIONS

Similar provisions to section 1020a–2 of this title were contained in the following acts:
May 23, 1955, ch. 43, title IV, 69 Stat. 62.
June 29, 1954, ch. 409, title IV, 68 Stat. 317.
July 28, 1953, ch. 251, title II, 67 Stat. 222.
July 5, 1952, ch. 574, title II, 66 Stat. 353.
Aug. 31, 1951, ch. 374, title III, 65 Stat. 245.
Sept. 6, 1950, ch. 896, Ch. VI, title II, 64 Stat. 677.
June 29, 1949, ch. 280, title II, 63 Stat. 346, 347.

Similar provisions to section 1020a–3 of this title were contained in the following acts:
June 29, 1960, Pub. L. 86–532, title III, 74 Stat. 244.
July 8, 1959, Pub. L. 86–80, title III, 73 Stat. 179.
June 13, 1958, Pub. L. 85–459, title III, 72 Stat. 199.
Aug. 2, 1957, Pub. L. 85–118, title IV, 71 Stat. 339.

§§ 1020b, 1020c. Repealed. Pub. L. 87–353, §3(a), Oct. 4, 1961, 75 Stat. 773

Section 1020b, acts Jan. 31, 1934, ch. 7, §3, 48 Stat. 345; June 25, 1940, ch. 427, §4, 54 Stat. 573; June 30, 1945, ch. 204, §14, 59 Stat. 269; July 12, 1946, ch. 570, §2, 60 Stat. 532, prescribed the capital of the Federal Farm Mortgage Corporation to be in the sum of $200,000,000 and provided for subscription by the United States and repayment by the Corporation.

Section 1020c, acts Jan. 31, 1934, ch. 7, §4(a), 48 Stat. 345; Apr. 27, 1934, ch. 168, §14, 48 Stat. 647, authorized the issuance of bonds not exceeding $2,000,000,000 at any one time and provided for purchase and sale by United States and exchange of such bonds for consolidated farm loan bonds.

§1020c–1. Omitted

CODIFICATION

Section, act June 4, 1956, ch. 355, title IV, 70 Stat. 240, which limited the aggregate amount of bonds issued and outstanding, was from the Department of Agriculture and Farm Credit Administration Appropriation Act, 1957, and was not repeated in subsequent appropriation acts.

SIMILAR PROVISIONS

Similar provisions to section 1020c–1 of this title were contained in the following acts:
May 23, 1955, ch. 43, title IV, 69 Stat. 62.
June 29, 1954, ch. 409, title IV, 68 Stat. 318.
July 28, 1953, ch. 251, title II, 67 Stat. 222.
July 5, 1952, ch. 574, title II, 66 Stat. 353.
Aug. 31, 1951, ch. 374, title III, 65 Stat. 244.
Sept. 6, 1950, ch. 896, Ch. VI, title II, 64 Stat. 678.
June 29, 1949, ch. 280, title II, 63 Stat. 347.
June 30, 1948, ch. 773, title II, 62 Stat. 1191.

§§ 1020d to 1020h. Repealed. Pub. L. 87–353, §3(a), Oct. 4, 1961, 75 Stat. 773

Section 1020d, acts Jan. 31, 1934, ch. 7, §4(b), 48 Stat. 346; Aug. 19, 1937, ch. 704, §§2, 4, 50 Stat. 703; June 30, 1945, ch. 204, §15, 59 Stat. 269, provided for the purchase of consolidated farm loan bonds, loans to Federal and joint-stock land banks, investment in mortgages, extensions, and sale and assignment of notes and mortgages.

Section 1020e, act Jan. 31, 1934, ch. 7, §4(c), 48 Stat. 346, related to preparation of bonds.

Section 1020f, acts Jan. 31, 1934, ch. 7, §12, 48 Stat. 347; Feb. 26, 1934, ch. 33, 48 Stat. 360, provided for exemptions from taxation.

Sections 1020g, 1020h, act Jan. 31, 1934, ch. 7, §§17, 18, 48 Stat. 348, 349, related to the severability clause and reservation of right to amend, and short title, respectively.

SUBCHAPTER II–B—LOANS TO FARMERS BY GOVERNOR OF FARM CREDIT ADMINISTRATION

§§ 1020i to 1020n. Repealed. Aug. 14, 1946, ch. 964, §2(a)(2), 60 Stat. 1062

Sections 1020i to 1020n, act Jan. 29, 1937, ch. 7, §§1–6, 50 Stat. 5, provided for loans to farmers by the Governor of the Farm Credit Administration for production and harvesting of crops, feed for livestock and other related purposes.

§1020n–1. Omitted

CODIFICATION

Section, acts June 30, 1939, ch. 253, title II, 53 Stat. 979; June 25, 1940, ch. 421, 54 Stat. 569; July 1, 1941, ch.

267, 55 Stat. 444; July 22, 1942, ch. 516, 56 Stat. 701, related to the personal liability of Federal employees approving loans fraudulently obtained under sections 1020i to 1020n and 1020*o* of this title, which were repealed by act Aug. 14, 1946, ch. 964, §2(a)(2), 60 Stat. 1062.

§1020*o*. Repealed. Aug. 14, 1946, ch. 964, §2(a)(2), 60 Stat. 1062

Section, act Jan. 29, 1937, ch. 7, §7, 50 Stat. 7, related to appropriations and expenditures for loans under sections 1020i to 1020n of this title.

SUBCHAPTER III—FEDERAL INTERMEDIATE CREDIT BANKS

CODIFICATION

Provisions of this subchapter concerning Federal intermediate credit banks constituted title II of the Federal Farm Loan Act, act July 17, 1916, ch. 245, 39 Stat. 360, as added to that act by act Mar. 4, 1923, ch. 252, title I, 42 Stat. 1454. The Federal Farm Loan Act was repealed by Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624.

This subchapter formerly constituted chapter 8 of this title.

ORGANIZATION

§§1021 to 1023. Repealed. Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 1021, act July 17, 1916, ch. 245, title II, §201(a), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1454; amended Ex. Ord. No. 6084, Mar. 27, 1933, authorized the Farm Credit Administration to grant charters for 12 intermediate credit banks. See section 2071 of this title.

Section 1022, act July 17, 1916, ch. 245, title II, §201 (b), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1454; amended June 16, 1933, ch. 98, title VII, §76(a), 48 Stat. 271; Aug. 19, 1937, ch. 704, §10, 50 Stat. 707; July 26, 1956, ch. 741, title I, §104(a), 70 Stat. 663, covered the location, directors, officers, employees, and by-laws of intermediate credit banks. See section 2072 of this title.

Section 1023, act July 17, 1916, ch. 245, title II, §201(c), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1454; amended Aug. 19, 1937, ch. 704, §26, 50 Stat. 715, set out the corporate powers of intermediate credit banks. See section 2072 of this title.

§1023a. Omitted

CODIFICATION

Section, Pub. L. 85–459, title III, June 13, 1958, 72 Stat. 199, which related to availability of funds for administrative expenses, was from the Department of Agriculture and Farm Credit Administration Appropriation Act, 1959, and was not repeated in subsequent appropriation acts.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:
Aug. 2, 1957, Pub. L. 85–118, title IV, 71 Stat. 339.
June 4, 1956, ch. 355, title IV, 70 Stat. 240.
May 23, 1955, ch. 43, title IV, 69 Stat. 62.
June 29, 1954, ch. 409, title IV, 68 Stat. 318.
July 28, 1953, ch. 251, title II, 67 Stat. 222.
July 5, 1952, ch. 574, title II, 66 Stat. 353.
Aug. 31, 1951, ch. 374, title III, 65 Stat. 244.
Sept. 6, 1950, ch. 896, Ch. VI, title II, 64 Stat. 678.
June 29, 1949, ch. 280, title II, 63 Stat. 346, 347.

§§1023b to 1027. Repealed. Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 1023b, act July 26, 1956, ch. 741, title II, §201(b), 70 Stat. 667, provided for utilization of funds for administrative expenses of intermediate credit banks.

Section 1024, act July 17, 1916, ch. 245, title II, §201(d), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1454, authorized intermediate credit banks to serve as fiscal agents for the United States.

Section 1025, act July 17, 1916, ch. 245, title II, §201(e), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1454; amended Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, covered insolvency and receivership of intermediate credit banks.

Section 1026, act July 17, 1916, ch. 245, title II, §201(f), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1454; amended Ex. Ord. No. 6084, Mar. 27, 1933, provided for grant of charters to intermediate credit banks upon application in form prescribed by Farm Credit Administration.

Section 1027, act July 26, 1956, ch. 741, title I, §101(a) to (c), 70 Stat. 659, covered merger of production credit corporations in Federal intermediate credit banks.

Section 1027 note, act July 26, 1956, ch. 741, §2, 70 Stat. 659, set out a Congressional declaration of policy to be followed in construing provisions of act July 26, 1956.

DISCOUNTS AND LOANS

§§1031 to 1033. Repealed. Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 1031, act July 17, 1916, ch. 245, title II, §202(a), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1455; amended Mar. 4, 1925, ch. 524, §7, 43 Stat. 1264; June 26, 1930, ch. 616, §1, 46 Stat. 816; May 19, 1932, ch. 191, §1, 47 Stat. 159; June 16, 1933, ch. 98, title VII, §76(b), (c), 48 Stat. 271; Ex. Ord. No. 6084, Mar. 27, 1933; June 3, 1935, ch. 164, §5(a), (b), 49 Stat. 315; July 26, 1956, ch. 741, title I, §104(b), 70 Stat. 663; Oct. 4, 1965, Pub. L. 89–237, §1(a), 79 Stat. 922; Aug. 2, 1966, Pub. L. 89–525, §3(a), 80 Stat. 334, set out lending powers of intermediate credit banks. See section 2074 of this title.

Section 1032, act July 17, 1916, ch. 245, title II, §202(b), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1455, placed a limitation on amount of purchases by intermediate credit banks for national banks, State banks, trust companies, or saving institutions.

Section 1033, act July 17, 1916, ch. 245, title II, §202(c), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1455; amended June 26, 1930, ch. 616, §2, 46 Stat. 816; July 26, 1956, ch. 741, title I, §104(c), 70 Stat. 664; Aug. 18, 1959, Pub. L. 86–168, title I, §104(f), 73 Stat. 386; Oct. 3, 1961, Pub. L. 87–343, §1(b), 75 Stat. 758, covered maturity, sale, and purchase of loans, advances, and discounts of intermediate credit banks.

§1034. Repealed. June 3, 1935, ch. 164, §5(c), 49 Stat. 315

Section, act July 17, 1916, ch. 245, title II, §202(d), as added act Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1456, related to interest and discount charges and rediscount of paper of other intermediate credit banks.

ISSUE OF DEBENTURES

§§1040 to 1045. Repealed. Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 1040, act Aug. 19, 1937, ch. 704, §39, 50 Stat. 718, defined ''debenture'' and ''debentures'' as used in purchase, sale, or use as security of debentures issued by or for benefit of intermediate credit banks.

Section 1041, act July 17, 1916, ch. 245, title II, §203(a), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1456; amended Ex. Ord. No. 6084, Mar. 27, 1933; June 3, 1935, ch. 164, §6(a), 49 Stat. 315; Aug. 19, 1937, ch. 704, §27, 50 Stat. 715; July 26, 1956, ch. 741, title I, §104(f), 70 Stat. 664; Oct. 4, 1965. Pub. L. 89–237, §1(b), 79 Stat. 922; June 18, 1968, Pub. L. 90–345, §1(a), 82 Stat. 182, empowered intermediate credit banks to borrow money and issue and sell collateral trust debentures. See section 2074 of this title.

Section 1042, act July 17, 1916, ch. 245, title II, §203(b), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1456;

amended Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 19, 1937, ch. 704, §28, 50 Stat. 715; Sept. 20, 1966, Pub. L. 89–595, 80 Stat. 821, directed Farm Credit Administration to prescribe rules and regulations governing collateral and handling thereof and to fix interest rates.

Section 1043, act July 17, 1916, ch. 245, title II, §203(c), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1456; amended Ex. Ord. No. 6084, Mar. 27, 1933, prohibited assumption of liability on debentures or other obligations issued pursuant to former section 1041 of this title by the United States.

Section 1044, act July 17, 1916, ch. 245, title II, §203(d), as added June 3, 1935, ch. 164, §6(b), 49 Stat. 315; amended July 26, 1956, ch. 741, title I, §104(f), 70 Stat. 664, authorized intermediate credit banks to issue and sell consolidated debentures or other similar obligations.

Section 1045, act July 17, 1916, ch. 245, title II, §203(e), as added June 3, 1935, ch. 164, §6(b), 49 Stat. 316; amended July 26, 1956, ch. 741, title I, §104(f), 70 Stat. 664, covered investment of fiduciary and trust funds in debentures and other similar obligations of intermediate credit banks and security for public deposits.

Discount Rates

§§ 1051 to 1053. Repealed. Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 1051, act July 17, 1916, ch. 245, title II, §204(a), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1456; amended Mar. 4, 1925, ch. 524, §2, 43 Stat. 1262; Ex. Ord. No. 6084, Mar. 27, 1933; June 3, 1935, ch. 164, §7, 49 Stat. 316; July 26, 1956, ch. 741, title I, §104(d), 70 Stat. 664, provided for discount rates to be charged by intermediate credit banks. See section 2075 of this title.

Section 1052, act July 17, 1916, ch. 245, title II, §204(b), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1456; amended Ex. Ord. No. 6084, Mar. 27, 1933, placed a limitation on interest rate charged original borrower on paper discounted with bank.

Section 1053, act July 17, 1916, ch. 245, title II, §204(c), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1456; amended Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 19, 1937, ch. 704, §29, 50 Stat. 715, covered purchases by intermediate credit banks of debentures or other similar obligations issued by or for benefit of such bank or other intermediate credit banks.

Capital Stock and Participation Certificates

§§ 1061, 1062. Repealed. Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 1061, act July 17, 1916, ch. 245, title II, §205, as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1457; amended May 19, 1932, ch. 191, §2, 47 Stat. 159; Ex. Ord. No. 6084, Mar. 27, 1933; Jan. 31, 1934, ch. 7, §15(b), (c), 48 Stat. 348; July 26, 1956, ch. 741, title I, §102, 70 Stat. 660; Oct. 4, 1965, Pub. L. 89–237, §1(c), 79 Stat. 922; June 18, 1968, Pub. L. 90–345, §1(b), 82 Stat. 183; Oct. 17, 1968, Pub. L. 90–582, §1, 82 Stat. 1145, provided for classes of stock, ownership, dividends, retirement of stock, liens, and participation certificates of intermediate credit banks. See section 2073 of this title.

Section 1062, act July 17, 1916, ch. 245, title II, §206(a), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1457; amended Mar. 4, 1925, ch. 524, §1, 43 Stat. 1262, provided for salaries and expenses of Federal Farm Loan Bureau and for assessments against banks for proportionate share of expense.

Application of Earnings

§ 1072. Repealed. Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, act July 17, 1916, ch. 245, title II, §206(b), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1457; amended Mar. 4, 1925, ch. 524, §1, 43 Stat. 1262; May 19, 1932, ch. 191, §3, 47 Stat. 1459; Aug. 19, 1937, ch. 704, §30, 50 Stat. 715; July 26, 1956, ch. 741, title I, §103, 70 Stat. 662; Oct. 4, 1965, Pub. L. 89–237, §1(d), 79 Stat. 923; June 18, 1968, Pub. L. 90–345, §1(c), 82 Stat. 183, provided for application of net earnings of intermediate credit banks. See section 2077 of this title.

Liability on Debentures or Other Such Obligations

§ 1081. Repealed. Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, act July 17, 1916, ch. 245, title II, §207, as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1458; amended May 19, 1932, ch. 191, §4, 47 Stat. 159; Ex. Ord. No. 6084, Mar. 27, 1933, covered liability of intermediate credit banks on debentures or other such obligations. See section 2074 of this title.

Examinations and Reports

§§ 1091 to 1095. Repealed. Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 1091, act July 17, 1916, ch. 245, title II, §208(a), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1458; amended Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 19, 1937, ch. 704, §20, 50 Stat. 710, authorized Comptroller of the Currency to furnish reports of condition of banks and other lending institutions rediscounting with intermediate credit banks and covered examinations and audit of credit banks.

Section 1092, act July 17, 1916, ch. 245, title II, §208(b), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1458; amended Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 2, 1966, Pub. L. 89–525, §3(b), 80 Stat. 334, authorized Farm Credit Administration to require reports from intermediate credit banks.

Section 1093, act July 17, 1916, ch. 245, title II, §208(c), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1458; amended Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 19, 1937, ch. 704, §20, 50 Stat. 710; Aug. 18, 1959, Pub. L. 86–168, title I, §104(g), 73 Stat. 387, covered investigations and reports by farm credit appraisers and examiners.

Section 1094, act July 17, 1916, ch. 245, title II, §208(d), as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1458; amended Ex. Ord. No. 6084, Mar. 27, 1933, authorized assessment of cost of investigations and examination against organization investigated.

Section 1095, act July 17, 1916, ch. 245, title II, §208(e), as added June 3, 1935, ch. 164, §8, 49 Stat. 316; amended Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; Aug. 19, 1937, ch. 704, §31, 50 Stat. 716, provided for reports on condition of institutions receiving loans or deposits.

Rules and Regulations

§ 1101. Repealed. Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, act July 17, 1916, ch. 245, title II, §209, as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1459; amended Ex. Ord. No. 6084, Mar. 27, 1933, authorized promulgation of rules and regulations by Farm Credit Administration covering operation of intermediate credit banks.

Tax Exemption

§ 1111. Repealed. Pub. L. 92–181, title V, §5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, act July 17, 1916, ch. 245, title II, §210, as added Mar. 4, 1923, ch. 252, title I, §2, 42 Stat. 1459, set out a tax exemption for capital and income of intermediate credit banks and provided that their debentures be deemed instrumentalities of the government. See section 2079 of this title.

PENALTY PROVISIONS

§§ 1121 to 1128. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section 1121, act July 17, 1916, ch. 245, title II, § 211(a), as added Mar. 4, 1923, ch. 252, title I, § 2, 42 Stat. 1459, related to offenses by officers, employees, or agents. See sections 657 and 1006 of Title 18, Crimes and Criminal Procedure.

Section 1122, act July 17, 1916, ch. 245, title II, § 211(b), as added Mar. 4, 1923, ch. 252, title I, § 2, 42 Stat. 1459, related to false statements to banks. See section 1014 of Title 18.

Section 1123, act July 17, 1916, ch. 245, title II, § 211(c), as added Mar. 4, 1923, ch. 252, title I, § 2, 42 Stat. 1459, related to overvaluation of property for loan purposes. See section 1014 of Title 18.

Section 1124, act July 17, 1916, ch. 245, title II, § 211(d), as added Mar. 4, 1923, ch. 252, title I, § 2, 42 Stat. 1459, related to offenses by examiners. See sections 1907 and 1909 of Title 18.

Section 1125, act July 17, 1916, ch. 245, title II, § 211(e), as added Mar. 4, 1923, ch. 252, title I, § 2, 42 Stat. 1459, related to offenses by officers, employees, and agents. See section 215 of Title 18.

Section 1126, act July 17, 1916, ch. 245, title II, § 211(f), as added Mar. 4, 1923, ch. 252, title I, § 2, 42 Stat. 1459, related to forgery and counterfeiting offenses. See section 493 of Title 18.

Section 1127, act July 17, 1916, ch. 245, title II, § 211(g), as added Mar. 4, 1923, ch. 252, title I, § 2, 42 Stat. 1459, related to false representations as to debentures, etc., of banks. See section 1013 of Title 18.

Section 1128, act July 17, 1916, ch. 245, title II, § 211(h), as added Mar. 4, 1923, ch. 252, title I, § 2, 42 Stat. 1459, related to use of words ''Federal intermediate credit bank''. See section 709 of Title 18.

§ 1129. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, act July 17, 1916, ch. 245, title II, § 212, as added Mar. 4, 1923, ch. 252, title I, § 2, 42 Stat. 1461, prohibited unauthorized charging of fees or commissions by intermediate credit banks.

SUBCHAPTER IV—PRODUCTION CREDIT ASSOCIATIONS

§ 1131. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 648

Section, acts June 16, 1933, ch. 98, title I, § 2, 48 Stat. 257; Aug. 19, 1937, ch. 704, § 11, 50 Stat. 708, provided for establishment of twelve Production Credit Corporations, their locations and officers.

§ 1131a. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, act June 16, 1933, ch. 98, title I, § 3, 48 Stat. 257, provided for the granting of a charter to the Production Credit Corporation, and authorized the directors to adopt by-laws. Section 3 of act June 16, 1933, was amended by act July 26, 1956, ch. 741, title I, § 105(b), 70 Stat. 665, to eliminate provisions relating to the Production Credit Corporation. Section 3 of act June 16, 1933, was classified in its entirety to section 1134a of this title.

§ 1131a–1. Omitted

CODIFICATION

Section, act June 4, 1956, ch. 355, title IV, 70 Stat. 240, which related to availability of funds for administrative expenses, was from the Department of Agriculture and Farm Credit Administration Appropriation Act, 1957, and was not repeated in subsequent appropriation acts.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:
May 23, 1955, ch. 43, title IV, 69 Stat. 62.
June 29, 1954, ch. 409, title IV, 68 Stat. 318.
July 28, 1953, ch. 251, title II, 67 Stat. 222.
July 5, 1952, ch. 574, title II, 66 Stat. 353.
Aug. 31, 1951, ch. 374, title III, 65 Stat. 244.
Sept. 6, 1950, ch. 896, Ch. VI, title II, 64 Stat. 678.
June 29, 1949, ch. 280, title II, 63 Stat. 346, 347.

§ 1131b. Repealed. July 26, 1956, ch. 741, title I, § 105(c), 70 Stat. 665

Section, act June 16, 1933, ch. 98, title I, § 4, 48 Stat. 257, provided for capital stock of Production Credit Corporations, value of shares, amount and subscription for initial stock, and payments for stock subscribed on behalf of the United States.

§ 1131c. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, acts June 16, 1933, ch. 98, title I, § 6, 48 Stat. 259; Aug. 6, 1953, ch. 335, § 11, 67 Stat. 395; July 26, 1956, ch. 741, title I, § 105(e), 70 Stat. 665; Oct. 17, 1968, Pub. L. 90–582, § 2(a), 82 Stat. 1145, covered purchase of stock of production credit associations and payment, retirement, and cancellation of stock. See section 2094 of this title.

PRODUCTION CREDIT ASSOCIATIONS

§§ 1131d to 1131g. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 1131d, acts June 16, 1933, ch. 98, title II, § 20, 48 Stat. 259; July 26, 1956, ch. 741, title I, § 105(f), 70 Stat. 665, authorized organization of production credit associations and provided for charters, bylaws, powers of governor, and other powers of such associations. See section 2093 of this title.

Section 1131e, acts June 16, 1933, ch. 98, title II, § 21, 48 Stat. 260; Aug. 11, 1955, ch. 785, title II, § 201, 69 Stat. 663; July 26, 1956, ch. 741, title I, § 105(g), 70 Stat. 665, provided for capital stock of production credit associations and its value, classes, voting rights, limitations on transfer, exchange, and dividends. See section 2094 of this title.

Section 1131e–1, acts Aug. 6, 1953, ch. 335, § 16, 67 Stat. 399; July 26, 1956, ch. 741, title I, § 107(b), 70 Stat. 666; Oct. 17, 1968, Pub. L. 90–582, § 2(b), 82 Stat. 1145, provided for issuance of class C stock for production credit associations and conditions, privileges, restrictions, limitations, and qualifications placed on such stock.

Section 1131f, acts June 16, 1933, ch. 98, title II, § 22, 48 Stat. 261; Aug. 11, 1955, ch. 785, title II, § 202, 69 Stat. 663; July 26, 1956, ch. 741, title I, § 105(h), 70 Stat. 665; Oct. 3, 1961, Pub. L. 87–343, § 2(2), 75 Stat. 758; Oct. 4, 1965, Pub. L. 89–237, § 2(a), 78 Stat. 924, covered application of earnings of production credit associations and restoration of capital, impairment, surplus account, distribution of earnings, and allocation on a patronage basis. See section 2095 of this title.

Section 1131g, acts June 16, 1933, ch. 98, title II, § 23, 48 Stat. 261; Aug. 11, 1955, ch. 785, title II, § 204, 69 Stat. 663; July 26, 1956, ch. 741, title I, § 105(i), 70 Stat. 665; Oct. 4, 1965, Pub. L. 89–237, § 2(b), 79 Stat. 924; Dec. 15, 1967, Pub. L. 90–204, § 3(a), 81 Stat. 612; June 18, 1968, Pub. L. 90–345, § 2, 82 Stat. 183, authorized loans to farmers by production credit associations, terms and conditions, rates of interest, security, limitations on indebtedness, ownership of stock, and investments in equity reserve. See section 2096 of this title.

§ 1131g–1. Repealed. July 26, 1956, ch. 741, title I, § 105(q), 70 Stat. 666

Section, act June 16, 1933, ch. 98, title VIII, § 86a, as added June 27, 1934, ch. 847, title V, § 504, 48 Stat. 1263,

which was formerly designated section 1131gg of this title, authorized production credit associations to make loans to farmers for home alterations, repairs and improvements without purchase of class B stock, and permitted associations to sell, discount, assign, or otherwise dispose of such loans.

§§ 1131g–2, 1131h. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 1131g–2, acts June 18, 1934, ch. 574, 48 Stat. 983; June 3, 1935, ch. 164, §17(c), 49 Stat. 318, provided for loans to oyster planters and purchase and discount of paper by intermediate credit banks.

Section 1131h, act June 16, 1933, ch. 98, title II, §24, 48 Stat. 261, covered borrowing from and rediscounting paper with intermediate credit banks and limitations on power to borrow from or rediscount paper with other institutions.

REVOLVING FUND

§ 1131i. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, acts June 16, 1933, ch. 98, title I, §5, 48 Stat. 258; Jan. 31, 1934, ch. 7, §§14, 15(a), 48 Stat. 348; July 26, 1956, ch. 741, title I, §105(d), 70 Stat. 665; Oct. 3, 1961, Pub. L. 87–343, §2(1), 75 Stat. 758, provided for a revolving fund for investment in production credit association and intermediate credit banks. See Revolving Funds note under section 2152 of this title.

§ 1131j. Transferred

CODIFICATION

Section, acts June 18, 1934, ch. 574, 48 Stat. 983; June 3, 1935, ch. 164, §17(c), 49 Stat. 318, transferred to section 1131g–2 of this title.

SUBCHAPTER V—REGIONAL BANKS FOR COOPERATIVES AND CENTRAL BANK FOR COOPERATIVES

REGIONAL BANKS

§§ 1134 to 1134e. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 1134, acts June 16, 1933, ch. 98 title I, §2, 48 Stat. 257; Aug. 19, 1937, ch. 704, §11, 50 Stat. 708; July 26, 1956, ch. 741, title I, §105(a), 70 Stat. 664, authorized creation of regional banks for cooperatives and establishment of boards of directors of such banks. See section 2121 of this title.

Section 1134a, acts June 16, 1933, ch. 98, title I, §3, 48 Stat. 257; July 26, 1956, ch. 741, title I, §105(b), 70 Stat. 665, provided for charters and bylaws for banks for cooperatives. See section 2121 of this title.

Section 1134b, act June 16, 1933, ch. 98, title IV, §40, 48 Stat. 264, provided for capital stock of banks for cooperatives and its amounts, value, and payments. See section 2124 of this title.

Section 1134c, acts June 16, 1933, ch. 98, title IV, §41, 48 Stat. 264; June 3, 1935, ch. 164, §14, 49 Stat. 317; Aug. 19, 1937, ch. 704, §36, 50 Stat. 717; Oct. 31, 1949, ch. 792, title IV, §417(a), 63 Stat. 1058; Aug. 11, 1955, ch. 785, title I, §107, 69 Stat. 662; July 26, 1956, ch. 741, title I, §105(k), 70 Stat. 665; Aug. 2, 1966, Pub. L. 89–525, §4(a), 80 Stat. 334; Dec. 15, 1967, Pub. L. 90–204, §3(b), 81 Stat. 612, covered lending powers of banks for cooperatives. See section 2122 of this title.

Section 1134d, acts June 16, 1933, ch. 98, title IV, §42, 48 Stat. 264; Aug. 6, 1953, ch. 335, §13, 67 Stat. 396; Aug. 11, 1955, ch. 785, title I, §101, 69 Stat. 655, provided for stock of banks for cooperatives. See section 2124 of this title.

Section 1134e, acts June 16, 1933, ch. 98, title IV, §43, 48 Stat. 265; Oct. 17, 1968, Pub. L. 90–582, §3, 82 Stat. 1145, provided for retirement of stock in banks for cooperatives held by the government. See section 2126 of this title.

CENTRAL BANK

§§ 1134f to 1134m. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 1134f, act June 16, 1933, ch. 98, title III, §30, 48 Stat. 261, authorized the creation of a central bank for cooperatives. See section 2121 of this title.

Section 1134g, acts June 16, 1933, ch. 98, title III, §31, 48 Stat. 262; Aug. 11, 1955, ch. 785, title I, §104, 69 Stat. 659; June 11, 1960, Pub. L. 86–503, §1 (part), 74 Stat. 197, provided for a board of directors for central bank for cooperatives. See section 2123 of this title.

Section 1134h, acts June 16, 1933, ch. 98, title III, §32, 48 Stat. 262; Aug. 11, 1955, ch. 785, title I, §105, 69 Stat. 661, set out powers of board of directors for central bank for cooperative. See section 2123 of this title.

Section 1134i, acts June 16, 1933, ch. 98, title III, §33, 48 Stat. 262; Aug. 11, 1955, ch. 785, title I, §108(a), 69 Stat. 662, provided for capital stock of central bank for cooperatives. See section 2124 of this title.

Section 1134j, acts June 16, 1933, ch. 98, title III, §§34, 38, 48 Stat. 262, 264; June 3, 1935, ch. 164, §13, 49 Stat. 317; Aug. 19, 1937, ch. 704, §35, 50 Stat. 716; Oct. 31, 1949, ch. 792, title IV, §417(b), 63 Stat. 1059; Aug. 11, 1955, ch. 785, title I, §§106, 108(b), 69 Stat. 661, 662; July 26, 1956, ch. 741, title I, §105(j), 70 Stat. 665; Aug. 2, 1966, Pub. L. 89–525, §4(a), 80 Stat. 334; Dec. 15, 1967, Pub. L. 90–204, §3(b), 81 Stat. 612, authorized central bank to make loans and provided for prevention of duplication of effort on part of central bank and banks for cooperatives. See section 2122 of this title.

Section 1134k, acts June 16, 1933, ch. 98, title III, §35, 48 Stat. 263; June 3, 1935, ch. 164, §15, 49 Stat. 318; Aug. 11, 1955, ch. 785, title I, §102, 69 Stat. 658, made regional bank stock provisions applicable to ownership of stock by central bank borrowers and provided for payments for such stock. See section 2130 of this title.

Section 1134*l*, acts June 16, 1933, ch. 98, title III, §36, 48 Stat. 263; Aug. 6, 1953, ch. 335, §12, 67 Stat. 395; Aug. 11, 1955, ch. 785, title I, §103(a), 69 Stat. 658; Oct. 3, 1961, Pub. L. 87–343, §2(3), 75 Stat. 758; Aug. 31, 1964, Pub. L. 88–528, 78 Stat. 736, provided for disposition of earnings and maintenance of reserves of central bank. See section 2132 of this title.

Section 1134m, acts June 16, 1933, ch. 98, title III, §37, 48 Stat. 263; Aug. 23, 1954, ch. 834, §1, 68 Stat. 770, covered debentures, amount of such debentures, security, preparation, and issuance of such debentures, and consolidated debentures of central and regional banks for cooperatives. See section 2153 of this title.

SUBCHAPTER VI—PROVISIONS COMMON TO PRODUCTION CREDIT ASSOCIATIONS, AND REGIONAL AND CENTRAL BANKS FOR COOPERATIVES

§§ 1138 to 1138c. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section 1138, acts June 16, 1933, ch. 98, title VI, §60, 48 Stat. 266; Aug. 19, 1937, ch. 704, §5(a), 50 Stat. 704; July 26, 1956, ch. 741, title I, §105(*l*), 70 Stat. 666, set out general corporate powers common to banks for cooperatives and production credit associations. See sections 2093 and 2122 of this title.

Section 1138a, acts June 16, 1933, ch. 98, title VI, §61, 48 Stat. 267; July 26, 1956, ch. 741, title I, §105(m), 70 Stat. 666, provided for examination of parts of farm credit system by examiners of Farm Credit Administration. See section 2254 of this title.

Section 1138b, acts June 16, 1933, ch. 98, title VI, §62, 48 Stat. 267; Jan. 31, 1934, ch. 7, §11, 48 Stat. 347; July 26, 1956, ch. 741, title I, §105(n), 70 Stat. 666; Oct. 4, 1961, Pub. L. 87–353, §3(j), 75 Stat. 774, gave designated parts of farm credit system authority to act as fiscal agents of United States.

Section 1138c, acts June 16, 1933, ch. 98, title VI, § 63, 48 Stat. 267, Aug. 11, 1955, ch. 785, title II, § 205, 69 Stat. 663; July 26, 1956, ch. 741, title I, § 105(*o*), 70 Stat. 666, provided that obligations of banks for cooperatives and production credit associations be deemed instrumentalities of United States and provided for termination of tax exemption after retirement of government-owned stock. See sections 2098 and 2134 of this title.

§ 1138d. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, acts June 16, 1933, ch. 98, title VI, § 64, 48 Stat. 267; Jan. 31, 1934, ch. 7, § 13, 48 Stat. 347, related to offenses and penalties. See sections 371, 433, 493, 657, 658, 1006, and 1014 of Title 18, Crimes and Criminal Procedure.

§ 1138e. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, acts June 16, 1933, ch. 98, title VI, § 65, 48 Stat. 269; Aug. 11, 1955, ch. 785, title I, § 110(a), 69 Stat. 662; July 26, 1956, ch. 741, title I, § 105(p), 70 Stat. 666, provided for receivership and voluntary liquidation for production credit associations and banks for cooperatives. See section 2183 of this title.

§ 1138f. Repealed. Aug. 11, 1955, ch. 785, title I, § 110(b), 69 Stat. 662

Section, acts June 16, 1938, ch. 98, title VI, § 66, 48 Stat. 269; Oct. 28, 1949, ch. 782, title XII, § 1201, 63 Stat. 972; Oct. 24, 1951, ch. 554, § 3, 65 Stat. 614; June 28, 1955, ch. 189, § 5, 69 Stat. 178, limited to $14,620 per annum compensation which could be paid directors, officers, or employees of banks for cooperatives, production credit corporations, and production credit associations.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of month next following 120 days after Aug. 11, 1955, see section 112 of act Aug. 11, 1955.

CHAPTER 7A—AGRICULTURAL MARKETING

Sec.

1141. Declaration of policy; effective merchandising of agricultural commodities; speculation; cooperative marketing; surpluses; administration of chapter.
1141a. Repealed.
1141b. General powers of Farm Credit Administration.
1141c. Special powers of administration.
1141d. Revolving fund.
1141d–1. Interest rates on loans made from revolving fund.
1141e. Loans to cooperative associations.
1141f. Miscellaneous loan provisions.
1141g. Omitted.
1141h. Avoidance of duplication; cooperation with other governmental establishments; obtaining information and data; cooperation with States, Territories, and agencies or subdivisions thereof; indicating research problems; transfer of offices, functions, etc.
1141i. Examination of books and accounts.
1141j. Miscellaneous provisions.

CODIFICATION

This chapter contains the Agricultural Marketing Act, approved June 15, 1929.

In view of the amendments to the Agricultural Marketing Act made by the Farm Credit Act of 1933, approved June 16, 1933, and by the Farm Credit Act of 1935, approved June 3, 1935, and of the transfer of its administration to the Governor of the Farm Credit Administration by Executive Order No. 6084, set out preceding section 2241 of this title, the provisions of the Agricultural Marketing Act, as amended, have been transferred to this chapter from Title 7, Agriculture.

§ 1141. Declaration of policy; effective merchandising of agricultural commodities; speculation; cooperative marketing; surpluses; administration of chapter

(a) It is declared to be the policy of Congress to promote the effective merchandising of agricultural commodities in interstate and foreign commerce so that the industry of agriculture will be placed on a basis of economic equality with other industries, and to that end to protect, control, and stabilize the currents of interstate and foreign commerce in the marketing of agricultural commodities and their food products—

(1) by minimizing speculation.

(2) by preventing inefficient and wasteful methods of distribution.

(3) by encouraging the organization of producers into effective associations or corporations under their own control for greater unity of effort in marketing and by promoting the establishment and financing of a farm marketing system of producer-owned and producer-controlled cooperative associations and other agencies.

(4) by aiding in preventing and controlling surpluses in any agricultural commodity, through orderly production and distribution, so as to maintain advantageous domestic markets and prevent such surpluses from causing undue and excessive fluctuations or depressions in prices for the commodity.

(b) There shall be considered as a surplus for the purposes of this chapter any seasonal or year's total surplus, produced in the United States and either local or national in extent, that is in excess of the requirements for the orderly distribution of the agricultural commodity or is in excess of the domestic requirements for such commodity.

(c) The Farm Credit Administration shall execute the powers vested in it by this chapter only in such manner as will, in the judgment of the administration, aid to the fullest practicable extent in carrying out the policy above declared.

(June 15, 1929, ch. 24, § 1, 46 Stat. 11; Ex. Ord. No. 6084, Mar. 27, 1933.)

CODIFICATION

Section was formerly classified to section 521 of Title 7, Agriculture.

CHANGE OF NAME

''Farm Credit Administration'' and ''administration'' substituted in text for ''Federal Farm Loan Board'' and ''board'', respectively, pursuant to Ex. Ord. No. 6084, set out preceding section 2241 of this title.

SHORT TITLE

For short title of this chapter as the Agricultural Marketing Act, see section 1141j(e) of this title.

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1141a. Repealed. Aug. 6, 1953, ch. 335, § 19, 67 Stat. 400

Section, act June 15, 1929, ch. 24, §2, 46 Stat. 11; Ex. Ord. No. 6084, Mar. 27, 1943; act Oct. 15, 1949, ch. 695, §6(a), 63 Stat. 881, related to appointment, compensation, qualifications, term of office, and expenses of the Governor of the Farm Credit Administration. See section 2244 et seq. of this title.

§ 1141b. General powers of Farm Credit Administration

The Farm Credit Administration—

(1) shall maintain its principal office within the Washington, D.C.-Maryland-Virginia standard metropolitan statistical area, and such other offices in the United States as in its judgment are necessary.

(2) shall have an official seal which shall be judicially noticed.

(3) shall make an annual report to Congress upon the administration of this chapter and any other matter relating to the better effectuation of the policy declared in section 1141 of this title, including recommendations for legislation.

(4) may make such regulations as are necessary to execute the functions vested in it by this chapter.

(5) may appoint and fix the salaries of a secretary and such experts, and, in accordance with chapter 51 and subchapter III of chapter 53 of title 5, and subject to the provisions of the civil service laws, such other officers and employees as are necessary to execute such functions.

(6) may make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding) as are necessary to execute such functions. Expenditures by the administration shall be allowed and paid upon the presentation of itemized vouchers therefor approved by the governor of the administration.

(7) may sell at public or private sale to the highest responsible bidder, upon such terms and after such public advertisement as the Farm Credit Administration may deem in the public interest, any property, real or personal, or any interest therein, acquired by the United States on account of or as a result of any loans made from the revolving fund authorized by section 1141d of this title; may lease any such property, pending its sale, on such terms and for such period, not in excess of five years, as the Farm Credit Administration may deem in the public interest; and may incur and pay, from the said revolving fund, obligations and expenses for the operation, upkeep, maintenance, repair, disposition, insurance, and protection of any such property: *Provided*, That section 6101 of title 41 shall not be construed to apply to any purchase or service on account of such property.

(June 15, 1929, ch. 24, §4, 46 Stat. 13; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 19, 1937, ch. 704, §37, 50 Stat. 717; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 96–592, title V, §510, Dec. 24, 1980, 94 Stat. 3451.)

CODIFICATION

In par. (5), ''chapter 51 and subchapter III of chapter 53 of title 5'' substituted for ''the Classification Act of 1949'' on authority of section 7(b) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

In par. (7), ''section 6101 of title 41'' substituted for ''section 3709 of the Revised Statutes'' on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Section was formerly classified to section 524 of Title 7, Agriculture.

AMENDMENTS

1980—Par. (1). Pub. L. 96–592 substituted provisions requiring the principal office to be within the Washington, D.C.–Maryland–Virginia standard metropolitan statistical area for provisions requiring the principal office to be in the District of Columbia.

1949—Act Oct. 28, 1949, substituted the ''Classification Act of 1949'' for the ''Classification Act of 1923''.

1937—Par. (7). Act Aug. 19, 1937, added par. (7).

CHANGE OF NAME

''Farm Credit Administration'' and ''administration'' substituted in text for ''board'' and ''governor'' substituted for ''chairman'' pursuant to Ex. Ord. No. 6084, set out preceding section 2241 of this title.

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

REPEAL OF AUTHORITY

Repeal of authority of the Farm Credit Administration to make emergency crop production, feed, seed, drought, and rehabilitation loans on Aug. 14, 1946, see note set out under sections 1001 to 1005d of Title 7, Agriculture.

SEPARABILITY

Section 40 of act Aug. 19, 1937, provided as follows:

''Sec. 40. (a) If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

''(b) The right to alter, amend, or repeal this Act is hereby expressly reserved.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in par. (3) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 166 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Farm Credit Administration or any agency, officer, or entity of, under, or subject to super-

vision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1141c. Special powers of administration

The administration is authorized and directed—

(1) to promote education in the principles and practices of cooperative marketing of agricultural commodities and food products thereof.

(2) to encourage the organization, improvement in methods, and development of effective cooperative associations.

(3) to keep advised from any available sources and make reports as to crop prices, experiences, prospects, supply, and demand, at home and abroad.

(June 15, 1929, ch. 24, §5, 46 Stat. 13; Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, title V, §50(a), 48 Stat. 265.)

CODIFICATION

Section was formerly classified to section 525 of Title 7, Agriculture.

AMENDMENTS

1933—Act June 16, 1933, repealed pars. (4) and (5) relating to powers of the Farm Board to investigate overproduction and to miscellaneous investigations by the Farm Board.

CHANGE OF NAME

''Administration'' substituted in text for ''board'' pursuant to Ex. Ord. No. 6084, set out preceding section 2241 of this title.

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1141d. Revolving fund

There is authorized to be appropriated the sum of $500,000,000 which shall be made available by the Congress as soon as practicable after the approval of this chapter and shall constitute a revolving fund to be administered by the administration as provided in this chapter. Any and all funds derived from the sale, lease, operation, or other disposition of any property, real or personal, acquired by the United States on account of or as a result of any loan made pursuant to the provisions of this chapter, shall be covered into and become a part of said revolving fund. Effective June 25, 1962, the sum authorized to be appropriated for the aforesaid revolving fund is reduced from $500,000,000 to $150,000,000 and any amount in said fund in excess of $150,000,000 (including any amount thereof used to purchase capital stock in the central and regional banks for cooperatives) shall be credited to miscellaneous receipts of the Treasury.

(June 15, 1929, ch. 24, §6, 46 Stat. 14; Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, title III, §§33, 34, title IV, §§40, 41, 48 Stat. 262, 264; Aug. 19, 1937, ch. 704, §38, 50 Stat. 718; Pub. L. 87–494, June 25, 1962, 76 Stat. 109.)

CODIFICATION

Section was formerly classified to section 526 of Title 7, Agriculture.

AMENDMENTS

1962—Pub. L. 87–494 reduced sum authorized to be appropriated to $150,000,000.

1937—Act Aug. 19, 1937, inserted second sentence.

1933—Act June 16, 1933, amended provision pertaining to administration of the fund.

CHANGE OF NAME

''Administration'' substituted in text for ''board'' pursuant to Ex. Ord. No. 6084, set out preceding section 2241 of this title.

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1141d–1. Interest rates on loans made from revolving fund

Interest rates in excess of the rates set forth in notes or other obligations taken by the Federal Farm Board or the Farm Credit Administration for loans made from the revolving fund authorized by section 1141d of this title shall not be charged or collected on any of said loans, whether such loans have been heretofore or are hereafter paid in whole or in part, except that in those cases where a borrower by specific contract has agreed to pay a higher rate of interest, the contract rate shall be charged for the period agreed upon; and the amount of any interest collected in excess of the rates thus set forth or contracted for shall be refunded out of said fund or credited on the borrower's indebtedness.

(June 22, 1939, ch. 239, 53 Stat. 853.)

CODIFICATION

Section was not enacted as part of the Agricultural Marketing Act which comprises this chapter.

CHANGE OF NAME

Federal Farm Board changed in 1933 to Farm Credit Administration by Ex. Ord. No. 6084, set out preceding section 2241 of this title.

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1141e. Loans to cooperative associations

(a) Upon application by any cooperative association the administration is authorized to make loans to it from the revolving fund to assist in—

(1) the effective merchandising of agricultural commodities and food products thereof and the financing of its operations;

(2) the construction or acquisition by purchase or lease, or refinancing the cost of such construction or acquisition, of physical facilities.

(b) No loan shall be made to any cooperative association unless, in the judgment of the administration, the loan is in furtherance of the policy declared in section 1141 of this title, and the cooperative association applying for the loan has an organization and management, and business policies, of such character as to insure the reasonable safety of the loan and the furtherance of such policy.

(c) Loans for the construction or acquisition by purchase or lease of physical facilities, or for refinancing the cost of such construction or acquistion,[1] shall be subject to the following conditions:

(1) No loan shall be made in an amount in excess of 60 per centum of the appraised value of the security therefor.

(2) No loan for the purchase or lease of such facilities shall be made unless the Governor of the Farm Credit Administration finds that the purchase price or rent to be paid is reasonable.

(d) Loans for the construction or purchase of physical facilities, together with interest on the loans, shall be repaid upon an amortization plan over a period not in excess of twenty years.

(June 15, 1929, ch. 24, §7, 46 Stat. 14; Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, title V, §§50–53, 48 Stat. 265; June 3, 1935, ch. 164, §§9, 10, 49 Stat. 316.)

CODIFICATION

Section was formerly classified to section 527 of Title 7, Agriculture.

AMENDMENTS

1935—Subsecs. (a)(2), (c)(1). Act June 3, 1935, amended subsecs. (a)(2) and (c)(1).

1933—Act June 16, 1933, repealed provisions authorizing loans to form clearing house associations; for education of producers in advantages of cooperative marketing; and to enable cooperatives to advance a greater share of the market price of commodities than was practicable under other credit facilities.

CHANGE OF NAME

''Administration'' substituted in text for ''board'' pursuant to Ex. Ord. No. 6084, set out preceding section 2241 of this title.

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1141f. Miscellaneous loan provisions

(a) Repealed. Pub. L. 89–525, §4(b), Aug. 2, 1966, 80 Stat. 334.

(b) Payments of principal or interest upon any such loan or advance shall be covered into the revolving fund.

(c) Loans to any cooperative association or stabilization corporation shall be made upon the terms specified in this chapter and upon such other terms not inconsistent therewith and upon such security as the administration deems necessary.

(d) No loan or insurance agreement shall be made by the administration if in its judgment the agreement is likely to increase unduly the production of any agricultural commodity of which there is commonly produced a surplus in excess of the annual marketing requirements.

(June 15, 1929, ch. 24, §8, 46 Stat. 14; Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, title V, §54, 48 Stat. 266; June 3, 1935, ch. 164, §11, 49 Stat. 316; Aug. 19, 1937, ch. 704, §5(a), 50 Stat. 704; Aug. 11, 1955, ch. 785, title I, §109, 69 Stat. 662; Pub. L. 89–525, §4(b), Aug. 2, 1966, 80 Stat. 334.)

CODIFICATION

Section was formerly classified to section 528 of Title 7, Agriculture.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–525 repealed subsec. (a) which provided that loans to cooperative associations made by any bank for cooperatives shall bear such rates of interest as the board of directors of the bank shall from time to time determine with the approval of the Farm Credit Administration, but in no case shall the rate of interest exceed 6 per centum per annum on the unpaid principal of a loan. See section 2122 of this title.

1955—Subsec. (a). Act Aug. 11, 1955, provided that boards of directors for banks would prescribe interest rates on loans in place of requirements relating interest rates on loans made by banks for cooperatives to interest rates charged by Federal intermediate credit banks and Federal land banks.

1937—Subsec. (a). Act Aug. 19, 1937, substituted ''farm credit district'' for ''land bank district''.

[1] So in original. Probably should be ''acquisition,''.

1935—Subsec. (a). Act June 3, 1935, among other changes, inserted proviso.
1933—Subsec. (a). Act June 16, 1933, among other changes, modified interest rates.

CHANGE OF NAME

''Administration'' substituted in text for ''board'' pursuant to Ex. Ord. No. 6084, set out preceding section 2241 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Aug. 11, 1955, effective on first day of month next following 120 days after Aug. 11, 1955, see section 112 of act Aug. 11, 1955 (69 Stat. 662).

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2, of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1141g. Omitted

CODIFICATION

Section, act June 15, 1929, ch. 24, §9, 46 Stat. 15; Ex. Ord. No. 6084, Mar. 27, 1933, provided for the recognition, upon application of the advisory commodity committee, of stabilization corporations for commodities, and prescribed functions and operations in connection therewith. Ex. Ord. No. 6084 abolished the authority conferred by this section and ordered the Farm Credit Administration to take appropriate steps for winding up the activities of such corporations. The order is set out as a note preceding section 2241 of this title.

§ 1141h. Avoidance of duplication; cooperation with other governmental establishments; obtaining information and data; cooperation with States, Territories, and agencies or subdivisions thereof; indicating research problems; transfer of offices, functions, etc.

(a) The administration shall, in cooperation with any governmental establishment in the Executive branch of the Government, including any field service thereof at home or abroad, avail itself of the services and facilities thereof in order to avoid preventable expense or duplication of effort.

(b) The President may by Executive order direct any such governmental establishment to furnish the administration such information and data as such governmental establishment may have pertaining to the functions of the administration; except that the President shall not direct that the administration be furnished with any information or data supplied by any person in confidence to any governmental establishment in pursuance of any provision of law or of any agreement with a governmental establishment.

(c) The administration may cooperate with any State or Territory, or department, agency, or political subdivision thereof, or with any person.

(d) The administration shall, through the governor, indicate to the appropriate bureau or division of the Department of Agriculture any special problem on which a research is needed to aid in carrying out the provisions of this chapter.

(e) The President is authorized, by Executive order, to transfer to or retransfer from the jurisdiction and control of the administration the whole or any part of (1) any office, bureau, service, division, commission, or board in the Executive branch of the Government engaged in scientific or extension work, or the furnishing of services, with respect to the marketing of agricultural commodities, (2) its functions pertaining to such work or services, and (3) the records, property, including office equipment, personnel, and unexpended balances of appropriation, pertaining to such work or services.

(June 15, 1929, ch. 24, §13, 46 Stat. 17; Ex. Ord. No. 6084, Mar. 27, 1933.)

CODIFICATION

Section was formerly classified to section 533 of Title 7, Agriculture.

CHANGE OF NAME

''Administration'' substituted in text for ''board'' pursuant to Ex. Ord. No. 6084, set out preceding section 2241 of this title.

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1141i. Examination of books and accounts

Vouchers approved by the Governor of the Farm Credit Administration for expenditures from the revolving fund pursuant to any loan or advance or from insurance moneys pursuant to any insurance agreement, shall be final and conclusive upon all officers of the Government; except that all financial transactions of the administration shall, subject to the above limitations, be examined by the Government Accountability Office at such times and in such manner as the Comptroller General of the United States may by regulation prescribe.

(June 15, 1929, ch. 24, §14, 46 Stat. 18; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 30, 1954, ch. 1076, §1(30), 68 Stat. 968; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

CODIFICATION

Section was formerly classified to section 534 of Title 7, Agriculture.

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1954—Act Aug. 30, 1954, repealed former second sentence which required the Comptroller General to make reports to Congress on examinations of Farm Credit Administration transactions under the agricultural marketing revolving fund, in violation of law, together with his recommendations. See chapter 91 of Title 31, Money and Finance.

CHANGE OF NAME

''Governor of the Farm Credit Administration'' and ''administration'' substituted in text for ''chairman of the board'' and ''board'', respectively, pursuant to Ex. Ord. No. 6084, set out preceding section 2241 of this title.

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

INSURANCE AGREEMENTS

Insurance agreements, referred to in the text, were authorized to be made by section 11 of act June 15, 1929, which section was repealed by act June 16, 1933, ch. 98, title V, §50(a), 48 Stat. 265. Section 11 authorized the former Federal Farm Board, upon application of cooperative associations, to enter into agreements subject to specified conditions, for the insurance of the associations against loss through price decline in the agricultural commodity handled by the associations and produced by the members thereof.

§ 1141j. Miscellaneous provisions

(a) "Cooperative association" defined

As used in this chapter, the term ''cooperative association'' means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services: *Provided, however*, That such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third. That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.

(b) Speculation prohibited

It shall be unlawful for the governor, or any officer or employee of the Farm Credit Administration to speculate directly or indirectly, in any agricultural commodity or product thereof, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subdivision shall upon conviction thereof be fined not more than $10,000, or imprisoned not more than ten years, or both.

(c) Confidential information; disclosure prohibited

It shall be unlawful (1) for any cooperative association, stabilization corporation, clearinghouse association, or commodity committee, or (2) for any director, officer, employee, or member or person acting on behalf of any such association, corporation, or committee, to which or to whom information has been imparted in confidence by the administration, to disclose such information in violation of any regulation of the administration. Any such association, corporation, or committee, or director, officer, employee, or member thereof, violating this subdivision, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(d) Separability clause

If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person, circumstance, commodity, or class of transactions with respect to any commodity is held invalid, the validity of the remainder of the chapter and the applicability of such provision to other persons, circumstances, commodities, and classes of transactions shall not be affected thereby.

(e) Citation of chapter

This chapter may be cited as the ''Agricultural Marketing Act.''

(f) "Agricultural commodity" defined

As used in this chapter, the term ''agricultural commodity'' includes, in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine and gum rosin, as defined in section 92 of title 7.

(June 15, 1929, ch. 24, §15, 46 Stat. 18; Mar. 4, 1931, ch. 520, §3, 46 Stat. 1550; Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, title V, §55, 48 Stat. 266; June 3, 1935, ch. 164, §12, 49 Stat. 317; Pub. L. 110–234, title I, §1610, May 22, 2008, 122 Stat. 1018; Pub. L. 110–246, §4(a), title I, §1610, June 18, 2008, 122 Stat. 1664, 1746.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub.

L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Section was formerly classified to section 535 of Title 7, Agriculture.

AMENDMENTS

2008—Subsecs. (d) to (g). Pub. L. 110–246, § 1610, redesignated subsecs. (e) to (g) as (d) to (f), respectively, and struck out former subsec. (d) which read as follows: ''The inclusion in any governmental report, bulletin, or other such publication hereafter issued or published of any prediction with respect to cotton prices is prohibited. Any officer or employee of the United States who authorizes or is responsible for the inclusion in any such report, bulletin, or other publication of any such prediction, or who knowingly causes the issuance or publication of any such report, bulletin, or other publication containing any such prediction, shall, upon conviction thereof, be fined not less than $500 or more than $5,000, or imprisoned for not more than five years, or both: *Provided*, That this subdivision shall not apply to the Governor of the Farm Credit Administration when engaged in the performance of his duties herein provided.''

1935—Subsec. (a). Act June 3, 1935, amended definition of cooperative association and inserted second sentence in par. ''Third''.

1933—Subsec. (a). Act June 16, 1933, among other changes, inserted proviso and all subsequent thereto.

1931—Subsec. (g). Act Mar. 4, 1931, added subsec. (g).

CHANGE OF NAME

''The Governor'' and ''Farm Credit Administration'' substituted in text for ''any member'' and ''board'', respectively, and ''Governor of the Farm Credit Administration'' substituted for ''members of the board'', pursuant to Ex. Ord. No. 6084, set out preceding section 2241 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 7B—REGIONAL AGRICULTURAL CREDIT CORPORATIONS

Sec.

1148. Regional agricultural credit corporations; creation; capital; management; loans; rediscounts; supervision
1148a to 1148a–3. Repealed.
1148a–4. Security for economic disaster and special livestock loans.
1148b. Additional powers of regional agricultural credit corporations.
1148c. Consolidation or merger.
1148d. Rights and powers unaffected by sections 1148b and 1148c.

§ 1148. Regional agricultural credit corporations; creation; capital; management; loans; rediscounts; supervision

The Farm Credit Administration is authorized to create in any of the twelve farm credit districts where it may deem the same to be desirable a regional agricultural credit corporation with a paid-up capital of not less than $3,000,000, to be subscribed for by the Farm Credit Administration and paid for out of the unexpended balance of the amounts allocated and made available to the Secretary of Agriculture under section 2 of the Reconstruction Finance Corporation Act. Such corporations shall be managed by officers and agents to be appointed by the Farm Credit Administration under such rules and regulations as it may prescribe. Such corporations are authorized and empowered to make loans or advances to farmers and stockmen, the proceeds of which are to be used for an agricultural purpose (including crop production), or for the raising, breeding, fattening, or marketing of livestock, to charge such rates of interest or discount thereon as in their judgment are fair and equitable, subject to the approval of the Farm Credit Administration, and to rediscount with the Farm Credit Administration and the various Federal reserve banks and Federal intermediate credit banks any paper that they acquire which is eligible for such purpose. All expenses incurred in connection with the operation of such corporations shall be supervised and paid by the Farm Credit Administration under such rules and regulations as its board of directors may prescribe.

(July 21, 1932, ch. 520, § 201(e), 47 Stat. 713; Aug. 19, 1937, ch. 704, § 5(a), 50 Stat. 704; June 30, 1947, ch. 166, title II, § 206, 61 Stat. 208.)

REFERENCES IN TEXT

Section 2 of the Reconstruction Finance Corporation Act, referred to in text, refers to section 2 of the act of Jan. 22, 1932, ch. 8, 47 Stat. 5, wherein the sum of $50,000,000 was made available to the Secretary of Agriculture for the purpose of making certain emergency crop loans or advances to farmers. Act June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202 further amended section 2, as amended, of the Reconstruction Finance Corporation Act by eliminating provisions relating to the Secretary of Agriculture and the emergency crop loans or advances.

AMENDMENTS

1947—Act June 30, 1947, substituted ''Farm Credit Administration'' for ''Reconstruction Finance Corporation'' wherever appearing.

CHANGE OF NAME

Act Aug. 19, 1937, substituted ''farm credit districts'' for ''Federal land-bank districts''.

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

Ex. Ord. No. 6084 of Mar. 27, 1933, set out preceding section 2241 of this title, transferred to the jurisdiction and control of the Farm Credit Administration the functions defined in section 5(e) of the Order, as follows: ''The functions of the Reconstruction Finance

Corporation and its Board of Directors relating to the appointment of officers and agents to manage regional agricultural credit corporations formed under section 201(e) of the Emergency Relief and Construction Act of 1932 [this section]; relating to the establishment of rules and regulations for such management; and relating to the approval of loans and advances made by such corporations and of the terms and conditions thereof.''

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1148a. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, acts June 16, 1933, ch. 98, title VIII, §84, 48 Stat. 273; June 30, 1947, ch. 166, title II, §206, 61 Stat. 208, provided for reduction of capital of regional agricultural credit corporations by Farm Credit Administration. See section 2252 of this title.

§§ 1148a–1 to 1148a–3. Repealed. Pub. L. 87–128, title III, § 341(a), Aug. 8, 1961, 75 Stat. 318

Section 1148a–1, acts Apr. 6, 1949, ch. 49, §1, 63 Stat. 43; Aug. 5, 1950, ch. 592, §1(a), 64 Stat. 414, provided for transfer of functions of Regional Agricultural Credit Corporation, Washington, D.C., to Secretary of Agriculture to make disaster loans, abolished such corporation, provided for transfer of assets, funds, rights, liabilities, use of revolving, transfer of personnel and delegation of authority by Secretary of Agriculture.

Section 1148a–2, acts Apr. 6, 1949, ch. 49, §2, 63 Stat. 44; July 14, 1953, ch. 192, §1, 67 Stat. 149; July 7, 1955, ch. 278, §§1, 2, 69 Stat. 263; July 15, 1955, ch. 373, 69 Stat. 366; July 11, 1958, Pub. L. 85–516, 72 Stat. 357; July 26, 1961, Pub. L. 87–106, 75 Stat. 220, authorized the Secretary of Agriculture to make loans to farmers and stockmen, prescribed the rates of interest and terms and conditions of the loans, provided for economic disaster loans and rates of interest and terms thereof, special livestock loans, the effective period of such loans, security, rate of interest, terms and conditions of such loans and local loan committees, emergency assistance in furnishing feed and seed, utilization of Agriculture Department agencies, utilization of revolving fund and transfer of funds into the revolving fund.

Section 1148a–3, act Apr. 6, 1949, ch. 49, §3(a), 63 Stat. 44, provided that no suit or other judicial proceeding instituted by or against the Regional Agricultural Credit Corporation shall abate by reason of sections 1148a–1 and 1148a–2 of this title and permitted substitution of the Secretary as a party in place of the Corporation within six months after Apr. 16, 1949.

For subject matter of former sections 1148a–1 to 1148a–3 of this title see section 1921 et seq. of Title 7, Agriculture.

EFFECTIVE DATE OF REPEAL

Repeal effective one hundred and twenty days after Aug. 8, 1961, or such earlier date as the provisions of chapter 50 of Title 7, Agriculture, are made effective by regulations of Secretary of Agriculture, except that repeal of section 1148a–2(c) of this title shall not be effective prior to Jan. 1, 1962, see section 341(a) of Pub. L. 87–128, set out as a note under section 1921 of Title 7.

Repeal effective Oct. 15, 1961, by former section 300.1 of Title 6, Code of Federal Regulations, see Effective Date note set out under section 1921 of Title 7.

CREDIT EMERGENCY LOANS: TERMINATION DATE

Act Aug. 31, 1954, ch. 1145, 68 Stat. 999, as amended by acts June 30, 1955, ch. 249, 69 Stat. 223; July 7, 1955, ch. 278, §3, 69 Stat. 263; Aug. 1, 1956, ch. 829, §4, 70 Stat. 804, which authorized the Secretary of Agriculture to make emergency loans for any agricultural purpose until June 30, 1957, described persons eligible for such loans and provided for utilization of a revolving fund of the Farm Credit Administration for loans and administrative expenses and additions to such fund from liquidation of loans, was repealed effective one hundred and twenty days after Aug. 8, 1961, or such earlier date as the provisions of chapter 50 of Title 7, Agriculture, are made effective by regulations of Secretary of Agriculture by provisions of section 341(a) of Pub. L. 87–128, set out as a note under section 1921 of Title 7. See section 1961 et seq. of Title 7.

§ 1148a–4. Security for economic disaster and special livestock loans

Loans under section 1148a–2(b) and (c)[1] of this title shall be secured by the personal obligation and available security of the producer or producers, and in the case of loans to corporations or other business organizations, by the personal obligation and available security of each person holding as much as 10 per centum of the stock or other interest in the corporation or organization.

(July 14, 1953, ch. 192, §2, 67 Stat. 150.)

REFERENCES IN TEXT

Section 1148a–2(b) and (c) of this title, referred to in text, was repealed by Pub. L. 87–128, title III, §341(a), Aug. 8, 1961, 75 Stat. 318.

§ 1148b. Additional powers of regional agricultural credit corporations

Each regional agricultural credit corporation, created under the authority of section 1148 of this title, in addition to the powers granted prior to August 19, 1937, shall have and, upon order or approval of the Farm Credit Administration, shall exercise the following rights, powers, and authority:

(a) Places of transacting business

To conduct, transact, and operate its business in any State in the continental United States, in the District of Columbia, and in Puerto Rico.

(b) Borrow money

To borrow money (other than by way of discount) from any other regional agricultural credit corporation, or any Federal intermediate credit bank, and to give security therefor.

(c) Loans

To lend any of its available funds to any other regional agricultural credit corporation at such rates of interest and upon such terms and conditions as may be approved by the Farm Credit Administration.

(d) Sale to or purchase from other like corporations

To sell to or purchase from any other regional agricultural credit corporation or any corporation formed by consolidation or merger as provided in section 1148c of this title, any part of or all the assets of any such corporation, upon such terms and conditions as may be approved by the Farm Credit Administration, including the assumption of the liabilities of any such corporation, in whole or in part.

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[1] See References in Text note below.

(Aug. 19, 1937, ch. 704, § 32, 50 Stat. 716; June 30, 1947, ch. 166, title II, § 206(s), 61 Stat. 209.)

AMENDMENTS

1947—Subsec. (b). Act June 30, 1947, struck out ''Reconstruction Finance Corporation'' after ''credit corporation''.

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1148c. Consolidation or merger

(a) Power of Farm Credit Administration

The Farm Credit Administration shall have the power and authority to order and effect the consolidation or merger of two or more regional agricultural credit corporations, on such terms and conditions as it shall direct.

(b) Status of corporations formed by consolidation

The Farm Credit Administration is authorized to grant charters to, prescribe bylaws for, and fix the capital of, regional agricultural credit corporations which may be formed by the consolidation of two or more regional agricultural credit corporations, and to approve or prescribe such amendments to the charter and bylaws of any regional agricultural credit corporation as it may from time to time deem necessary. Corporations formed by the consolidation of two or more regional agricultural credit corporations, as herein provided, shall have all the rights, powers, authority, and exemptions and shall be subject to the same supervision and control in the same manner as provided by law in respect to regional agricultural credit corporations organized under section 1148 of this title.

(Aug. 19, 1937, ch. 704, § 33, 50 Stat. 717; June 30, 1947, ch. 166, title II, § 206(s), 61 Stat. 209.)

AMENDMENTS

1947—Subsec. (b). Act June 30, 1947, repealed provisions relating to the payment of the expenses of corporations formed by the consolidation of two or more regional agricultural credit corporations.

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1148d. Rights and powers unaffected by sections 1148b and 1148c

Nothing contained in sections 1148b and 1148c of this title shall be construed as limiting the rights, powers, and authority granted prior to August 19, 1937, to the regional agricultural credit corporations, the Farm Credit Administration, or the Governor thereof by any Acts of Congress or Executive orders.

(Aug. 19, 1937, ch. 704, § 34, 50 Stat. 717.)

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 8—ADJUSTMENT AND CANCELLATION OF FARM LOANS

Sec.

1150. Compromise, adjustment, and cancellation of farm loans; conditions; delegation of powers and duties by Secretary of Agriculture.
1150a. Farm loans to which chapter is applicable.
1150b. Authorization of appropriations.
1150c. Self-hauling of hay or other roughages under hay transportation assistance program; liability for or refund of excess payments; availability of funds for payments.

CODIFICATION

For provisions similar to former chapter 8 of this title, relating to federal intermediate credit banks, see Part A (§ 2071 et seq.) of subchapter II of chapter 23 of this title.

§ 1150. Compromise, adjustment, and cancellation of farm loans; conditions; delegation of powers and duties by Secretary of Agriculture

The Secretary of Agriculture, hereinafter referred to as the Secretary, is authorized and directed to compromise, adjust, or cancel indebtedness arising from loans and payments made or credit extended to farmers under the provisions of the several Acts of Congress or programs enumerated in section 1150a of this title: *Provided*, That the Secretary finds, after such investigation as he deems sufficient to establish the facts, that (1) said indebtedness has been due and payable for five years or more; (2) the debtor is unable to pay said indebtedness in full and has no reasonable prospect of being able to do so; (3) the debtor has acted in good faith in an

effort to meet his obligation; and (4) the principal amount of said indebtedness is not in excess of $1,000. The Secretary is further authorized at his discretion to cancel and discharge indebtedness arising under said Acts of Congress or programs when the amount of said indebtedness is less than $10, or the debtor is deceased and there is no reasonable prospect of recovering from his estate, or his whereabouts has remained unknown for two years and there is no reasonable prospect of obtaining collection, or he has been discharged of the indebtedness in any proceeding under the Bankruptcy Act or under title 11. The compromises, adjustments, or cancelations[1] authorized by this section shall be effected through such agencies, upon such terms and conditions, and subject to such regulations, as the Secretary may prescribe, and the Secretary may delegate the exercise of any such powers and functions to such officers or employees of the Department of Agriculture as he may designate.

(Dec. 20, 1944, ch. 623, §1, 58 Stat. 836; Pub. L. 95–598, title III, §305, Nov. 6, 1978, 92 Stat. 2674.)

REFERENCES IN TEXT

The Bankruptcy Act, referred to in text, is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

AMENDMENTS

1978—Pub. L. 95–598 substituted ''Bankruptcy Act or under title 11'' for ''Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' ''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

TRANSFER OF FUNCTIONS

All functions of all officers, agencies, and employees of the Department of Agriculture were transferred, with certain exceptions, to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Corporations of Department of Agriculture, boards of directors and officers of such corporations, Advisory Board of Commodity Credit Corporation, and Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1150a. Farm loans to which chapter is applicable

The provisions of this chapter shall apply to any indebtedness of farmers arising from loans or payments made or credit extended to them under any of the following Acts or programs: (a) July 1, 1918 (40 Stat. 635); March 3, 1921 (41 Stat. 1347); March 20, 1922 (42 Stat. 467); April 26, 1924 (43 Stat. 110); February 25, 1927 (44 Stat. 1245); February 28, 1927 (44 Stat., part II, 1251); February 25, 1929 (45 Stat. 1306), as amended May 17, 1929 (46 Stat. 3); March 3, 1930 (46 Stat. 78–79), as amended April 24, 1930 (46 Stat. 254); December 20, 1930 (46 Stat. 1032), as amended February 14, 1931 (46 Stat. 1160); February 23, 1931 (46 Stat. 1276); January 22, 1932 (47 Stat. 5); March 3, 1932 (47 Stat. 60); February 4, 1933 (47 Stat. 795); February 23, 1934 (48 Stat. 354); June 19, 1934 (48 Stat. 1056); February 20, 1935 (49 Stat. 28); March 21, 1935 (49 Stat. 50); April 8, 1935 (49 Stat. 115); (Executive Order Numbered 7305); January 29, 1937 (50 Stat. 5); and February 4, 1938 (52 Stat. 27); (b) Agricultural Adjustment Act (of 1933); Bankhead Cotton Act of April 21, 1934, on account of the several cotton tax-exemption certificate pools; Jones-Connally Cattle Act of April 7, 1934; Emergency Appropriation Act, fiscal year 1935, approved June 19, 1934; Kerr Tobacco Act of June 28, 1934, and Public Resolution Numbered 76, approved March 14, 1936; section 32 of the Act of August 24, 1935, and related legislation; Supplemental Appropriation Act, fiscal year 1936; sections 7 to 17 of the Soil Conservation and Domestic Allotment Act; Sugar Act of 1937; sections 303 and 381(a) of the Agricultural Adjustment Act of 1938 and related or subsequent legislation authorizing parity or price adjustment payments; title IV and title V of the Agricultural Adjustment Act of 1938 and related legislation; any amendment to any of the foregoing Acts heretofore and any other Act of Congress heretofore enacted authorizing payments to farmers under programs administered through the Agricultural Adjustment Agency; (c) Loans made by or through the Resettlement Administration of the Farm Security Administration out of funds appropriated or made available by or pursuant to the following Acts; April 8, 1935 (49 Stat. 115); June 22, 1936 (49 Stat. 1608); February 9, 1937 (50 Stat. 8); June 29, 1937 (50 Stat. 352); The Bankhead-Jones Farm Tenant Act, July 22, 1937 (50 Stat. 522 et seq.); the Water Facilities Act of August 28, 1937 (50 Stat. 869 et seq.); March 2, 1938 (52 Stat. 83, Public Resolution Numbered 80); June 21, 1938 (52 Stat. 809); June 30, 1939 (53 Stat. 927); June 26, 1940 (Public Resolution Numbered 88); flood-restoration loans, Second Deficiency Appropriation Act, 1943 (57 Stat. 537, 542); and subsequent legislation appropriating or making available funds for such loans; commodity loan, purchase, sale, and other programs of the Commodity Credit Corporation; and crop-insurance programs formulated pursuant to title V of the Agricultural Adjustment Act of 1938 (the Federal Crop Insurance Act), and any amendment or supplement thereto heretofore or hereafter enacted. This chapter shall also apply to any indebtedness of farmers evidenced by notes or accounts receivable, title to which has been acquired in the liquidation of loans to cooperative associations made under the provisions of the Act of June 15, 1929 (46 Stat. 11).

(Dec. 20, 1944, ch. 623, §2, 58 Stat. 836.)

REFERENCES IN TEXT

Act of January 22, 1932 (47 Stat. 5), referred to in text, is act Jan. 22, 1932, ch. 8, 47 Stat. 5, as amended, known

[1] So in original. Probably should be ''cancellations''.

as the Reconstruction Finance Corporation Act, which was formerly classified to chapter 14 (§ 601 et seq.) of Title 15, Commerce and Trade, and which has been eliminated from the Code. For complete classification of this Act prior to its elimination from the Code, see Tables.

Act of March 3, 1932 (47 Stat. 60), referred to in text, is act Mar. 3, 1932, ch. 70, 47 Stat. 60, which is classified generally to chapter 10 (§ 1401 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

Act of April 8, 1935 (49 Stat. 115), and (Executive Order Numbered 7305), referred to in text, mean act Apr. 8, 1935, ch. 48, 49 Stat. 115, and Ex. Ord. No. 7305, Feb. 28, 1936, respectively, which were formerly classified to Chapter 16 (§ 721 et seq.) of Title 15, as legislation supplementary to the Federal Emergency Relief Act of 1933. Such provisions have been eliminated from the Code.

Act of June 19, 1934 (48 Stat. 1056), referred to in text, probably means act June 19, 1934, ch. 648, title II, § 1, 48 Stat. 1056. See References in Text note for the Emergency Appropriation Act, fiscal year 1935, below.

Act of January 29, 1937 (50 Stat. 5), referred to in text, is act Jan. 29, 1937, ch. 7, 50 Stat. 5, which was formerly classified to subchapter II–B (§ 1020i et seq.) of chapter 7 of this title, and which was repealed by act Aug. 14, 1946, ch. 964, § 2(a)(2), 60 Stat. 1062.

The Agricultural Adjustment Act (of 1933), referred to in text, probably means title I of act May 12, 1933, ch. 25, 48 Stat. 31, as amended, known as the Agricultural Adjustment Act, which is classified generally to chapter 26 (§ 601 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 7 and Tables.

The Bankhead Cotton Act of April 21, 1934, referred to in text, is act Apr. 21, 1934, ch. 157, 48 Stat. 598, as amended, which is classified generally to chapter 27 (§ 701 et seq.) of Title 7. The Bankhead Cotton Act was substantially repealed by act Feb. 10, 1936, ch. 42, 49 Stat. 1106. For complete classification of this Act to the Code, see Tables.

The Jones-Connally Cattle Act of April 7, 1934, referred to in text, is act Apr. 7, 1934, ch. 103, 48 Stat. 528, which is classified to sections 608, 608b, 609, 611, 612, and 612a of Title 7. For complete classification of this Act to the Code, see Tables.

Emergency Appropriation Act, fiscal year 1935, approved June 19, 1934, referred to in text, is act June 19, 1934, ch. 648, title II, 48 Stat. 1055, relevant provisions of which were classified to sections 604 and 605 of Title 7, and section 59 of former Title 49, Transportation. Section 605 of Title 7 was repealed by act June 30, 1947, ch. 166, title II, § 206(d), 61 Stat. 208, and section 59 of former Title 49, was repealed by Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see Tables.

The Kerr Tobacco Act of June 28, 1934, referred to in text, is act June 28, 1934, ch. 866, §§ 1 to 16, 48 Stat. 1275, as amended, which was formerly classified to chapter 28 (§ 751 et seq.) of Title 7, and which was repealed by act Feb. 10, 1936, ch. 42, 49 Stat. 1106.

Section 32 of the Act of August 24, 1935, referred to in text, is classified to section 612c of Title 7.

Supplemental Appropriation Act, fiscal year 1936, referred to in text, is act Feb. 11, 1936, ch. 49, 49 Stat. 1134, provisions of which were formerly classified to chapter 16 (§ 721 et seq.) of Title 15, Commerce and Trade, as legislation supplementary to the Federal Emergency Relief Act of 1933. Such provisions have been eliminated from the Code. For complete classification of this Act to the Code, see Tables.

Sections 7 to 17 of the Soil Conservation and Domestic Allotment Act, referred to in text, are classified to sections 590g, 590h, 590i, and 590j to 590q of Title 16, Conservation. Section 16 of the Act, classified to section 590p of Title 16, was repealed by Pub. L. 104–127, title III, § 336(b)(1), Apr. 4, 1996, 110 Stat. 1006.

The Sugar Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 898, 50 Stat. 903, which was formerly classified to chapter 34 (§ 1100 et seq.) of Title 7, Agriculture. The Sugar Act of 1937 expired on Dec. 31, 1947, and was superseded by the Sugar Act of 1948, which in turn expired on Dec. 31, 1974, and which has now been eliminated from the Code. For complete classification of the Sugar Act of 1937 to the Code prior to its expiration, see Tables.

Sections 303 and 381(a) of the Agricultural Adjustment Act of 1938, referred to in text, are classified to sections 1303 and 1381(a), respectively, of Title 7. Section 1381 of Title 7, was omitted from the Code.

The Agricultural Adjustment Act of 1938, referred to in text, is act Feb. 16, 1938, ch. 30, 52 Stat. 31, as amended. Title IV of the Act was formerly classified to subchapter III (§ 1401 et seq.) of chapter 35 of Title 7, and has been eliminated from the Code. Title V of the Act, formerly known as the Federal Crop Insurance Act, is classified generally to chapter 36 (§ 1501 et seq.) of Title 7. For complete classification of these Acts to the Code, see sections 1281 and 1501 of Title 7 and Tables.

Act of June 22, 1936 (49 Stat. 1608), referred to in text, probably means act June 22, 1936, ch. 689, title II, 49 Stat. 1608, provisions of which were formerly classified to chapter 16 (§ 721 et seq.) of Title 15, Commerce and Trade, as legislation supplementary to the Federal Emergency Relief Act of 1933. Such provisions have been eliminated from the Code.

Act of June 29, 1937 (50 Stat. 352), referred to in text, probably means act June 29, 1937, ch. 401, 50 Stat. 357, provisions of which were formerly classified to chapter 16 (§ 721 et seq.) of Title 15, as legislation supplementary to the Federal Emergency Relief Act of 1933. Such provisions have been eliminated from the Code. For complete classification of this Act to the Code, see Tables.

The Bankhead-Jones Farm Tenant Act, referred to in text, is act July 22, 1937, ch. 517, 50 Stat. 522, as amended, which is classified generally to chapter 33 (§ 1000 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1000 of Title 7 and Tables.

The Water Facilities Act of August 28, 1937 (50 Stat. 869 et seq.), referred to in text, is act Aug. 28, 1937, ch. 870, 50 Stat. 869, which was formerly classified to sections 590r to 590x–4 of Title 16, Conservation, and was repealed by section 341(a) of Pub. L. 87–128, title III, Aug. 8, 1961, 75 Stat. 318. See chapter 50 (§ 1921 et seq.) of Title 7, Agriculture.

Acts of March 2, 1938 (52 Stat. 83, Public Resolution Numbered 80), June 21, 1938 (52 Stat. 809), and June 30, 1939 (53 Stat. 927), referred to in text, are acts Mar. 2, 1938, ch. 38, 52 Stat. 83, June 21, 1938, ch. 554, 52 Stat. 809, and June 30, 1939, ch. 252, 53 Stat. 927, respectively, which were formerly classified to chapter 16 (§ 721 et seq.) of Title 15, Commerce and Trade, as legislation supplementary to the Federal Emergency Relief Act of 1933. Such provisions have been eliminated from the Code.

Act of June 26, 1940 (Public Resolution Numbered 88), referred to in text, is act June 26, 1940, ch. 432, 54 Stat. 611, provisions of which were formerly classified to section 609i of Title 15, and also to chapter 16 (§ 721 et seq.) of Title 15, as legislation supplementary to the Federal Emergency Relief Act of 1933. Such provisions have been eliminated from the Code. For complete classification of this Act to the Code, see Tables.

The Federal Crop Insurance Act, referred to in text, is subtitle A of title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, which is classified generally to subchapter I (§ 1501 et seq.) of chapter 36 of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1501 of Title 7 and Tables.

Act of June 15, 1929 (46 Stat. 11), referred to in text, is act June 15, 1929, ch. 24, 46 Stat. 11, known as the Agricultural Marketing Act, which is classified generally to chapter 7A (§ 1141 et seq.) of this title. For complete classification of this Act to the Code, see section 1141j(e) of this title and Tables.

TRANSFER OF FUNCTIONS

Functions of all officers, agencies, and employees of Department of Agriculture transferred, with certain exceptions, to Secretary of Agriculture by Reorg. Plan No. 2, of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Agricultural Adjustment Agency and administration of programs of Commodity Credit Corporation and Federal Crop Insurance Corporation transferred to Secretary of Agriculture by Reorg. Plan No. 3 of 1946, §501, eff. July 16, 1946, 11 F.R. 7877, 60 Stat. 1100, set out in the Appendix to Title 5. See, also, notes under sections 610 and 1503 of Title 7, Agriculture.

Farm Security Administration abolished, see note under sections 1001 to 1006 of Title 7, Agriculture.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Corporations of Department of Agriculture, boards of directors and officers of such corporations, Advisory Board of Commodity Credit Corporation, and Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1150b. Authorization of appropriations

There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amount as may be necessary to enable the Secretary to carry out the provisions of this chapter, and the current and subsequent appropriations to enable the Secretary to administer the respective Acts of Congress or programs to which the aforesaid payments or loans or extensions of credit relate shall also be available for the administrative expenses of carrying out this chapter.

(Dec. 20, 1944, ch. 623, §3, 58 Stat. 837.)

TRANSFER OF FUNCTIONS

Functions of all officers, agencies, and employees of Department of Agriculture transferred, with certain exceptions, to Secretary of Agriculture by Reorg. Plan. No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Corporations of Department of Agriculture, boards of directors and officers of such corporations, Advisory Board of Commodity Credit Corporation, and Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, effective June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1150c. Self-hauling of hay or other roughages under hay transportation assistance program; liability for or refund of excess payments; availability of funds for payments

Notwithstanding any other provision of law, no persons who have received or have owing to them, prior to September 24, 1980, payments at rates announced by the Secretary of Agriculture for self-hauling of hay or other roughages under the hay transportation assistance program shall be liable for, or be obligated to refund, any amount that is determined by the Secretary to be in excess of the payment computed in accordance with the maximum rate provided by section 8 of the Farmer-to-Consumer Direct Marketing Act of 1976: *Provided*, That the Secretary determines that such persons have otherwise complied with the terms and conditions of, and are otherwise entitled to payments under, the hay transportation assistance program. Any payments made pursuant to this section shall be made out of funds appropriated or otherwise available on September 24, 1980 for disaster relief.

(Dec. 20, 1944, ch. 623, §4, as added Pub. L. 96–356, Sept. 24, 1980, 94 Stat. 1177.)

REFERENCES IN TEXT

Section 8 of the Farmer-to-Consumer Direct Marketing Act of 1976, referred to in text, is section 8 of Pub. L. 94–463, Oct. 8, 1976, 90 Stat. 1983, which is set out as a note under section 5145 of Title 42, The Public Health and Welfare.

CODIFICATION

''This section'' and ''September 24, 1980'', referred to in the last sentence, were in the original ''this Act'' and ''the date of enactment of this Act''. These references were editorially translated as Pub. L. 96–356, Sept. 24, 1980, 94 Stat. 1177 and the date of enactment of Pub. L. 96–356, as the probable intent of Congress.

PRIOR PROVISIONS

A prior section 1150c, act Dec. 20, 1944, ch. 623, §4, 58 Stat. 837, related to false representations, acceptance of fees, etc., prior to repeal by act June 25, 1948, 645 §21, 62 Stat. 862, effective Sept. 1, 1948. See sections 217 and 1026 of Title 18, Crimes and Criminal Procedure.

CHAPTER 9—NATIONAL AGRICULTURAL CREDIT CORPORATIONS

FORMATION

§ 1151. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Section, act Mar. 4, 1923, ch. 252, title II, §201, 42 Stat. 1461, related to purpose, incorporators, articles of association and signing and filing thereof.

§ 1151a. Repealed. Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624

Section, act June 16, 1933, ch. 98, title VII, §77, 48 Stat. 272, prohibited formation of agricultural credit corporations after June 16, 1933.

REQUISITES OF ARTICLES AND CERTIFICATE

§§ 1161 to 1163. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Sections, act Mar. 4, 1923, ch. 252, title II, §202(a)–(c), 42 Stat. 1461, related to organization certificate and contents, name of corporation, and acknowledgment of organization certificate and articles of association, respectively.

CORPORATE POWERS

§§ 1171, 1172. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Section 1171, act Mar. 4, 1923, ch. 252, title II, §202(d), 42 Stat. 1462, related to corporate powers in general, directors and officers.

Section 1172, acts Mar. 4, 1923, ch. 252, title II, § 203(a), 42 Stat. 1462; Feb. 8, 1927, ch. 74, 44 Stat. 1059, related to additional powers under regulation of Comptroller.

DEBENTURES AND OTHER OBLIGATIONS; LIABILITY; SECURITY

§§ 1181, 1182. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Sections, act Mar. 4, 1923, ch. 252, title II, § 203(b), (c), 42 Stat. 1464, related to liability of United States for debentures and other obligations issued by credit corporations and additional real-estate security for obligations, respectively.

LIMITATIONS

§ 1191. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Section, act Mar. 4, 1923, ch. 252, title II, § 204, 42 Stat. 1464, related to restrictions on amount of indebtedness and on advances, etc., to single persons and on dealings in livestock.

INTEREST RATES

§§ 1201, 1202. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Sections, act Mar. 4, 1923, ch. 252, title II, § 205(a), (b), 42 Stat. 1464, related to charges on loans and discounts and exacting unlawful interest, respectively.

CAPITAL STOCK

§§ 1211 to 1215. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Sections, act Mar. 4, 1923, ch. 252, title II, § 206(a)–(e), 42 Stat. 1464, related to amount of capital stock and payment as condition to grant of certificate to do business, increase or reduction of capital stock and withdrawal of paid-in capital, transfer of shares, collection of unpaid subscriptions, and shareholders voting by proxy, respectively.

REDISCOUNT CORPORATIONS

§§ 1221 to 1223. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Sections, act Mar. 4, 1923, ch. 252, title II, § 207(a)–(c), 42 Stat. 1465, related to rediscount powers, limitation upon indebtedness and deposit of bonds or securities, respectively.

PERMIT TO BEGIN BUSINESS

§§ 1231, 1232. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Sections, act Mar. 4, 1923, ch. 252, title II, § 208(a), (b), 42 Stat. 1466, related to deposit of bonds or obligations of United States as condition to issue of permit and determination as to grant of permit, respectively.

MISCELLANEOUS ADMINISTRATIVE PROVISIONS

§§ 1241 to 1244. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Sections, act Mar. 4, 1923, ch. 252, title II, § 209(a), (b) (pt.), (c), (d), 42 Stat. 1467, related to supervision by Comptroller of Currency, assessment of credit corporations to pay administrative expenses, appointment and compensation of examiners of National Agricultural Credit Corporations and laws applicable, and expenses of examinations, respectively.

§ 1245. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, act Mar. 4, 1923, ch. 252, title II, § 209(e), 42 Stat. 1468, related to loans and gratuities to examiners.

§§ 1246, 1247. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Sections, act Mar. 4, 1923, ch. 252, title II, § 209(f), (g), 42 Stat. 1468, related to reports to Comptroller of Currency and licenses to act as inspectors of livestock as basis for loans, suspension or revocation of licenses and false representations as to holding of license, respectively.

§ 1248. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, act Mar. 4, 1923, ch. 252, title II, § 209(h), 42 Stat. 1468, related to false statements in inspection reports. See section 1014 of Title 18, Crimes and Criminal Procedure.

§ 1249. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Section, act Mar. 4, 1923, ch. 252, title II, § 209(i), 42 Stat. 1468, related to allotment to Department of Agriculture of amount necessary for administration of functions vested therein.

BANKS OF FEDERAL RESERVE SYSTEM AS STOCKHOLDERS

§ 1251. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Section, act Mar. 4, 1923, ch. 252, title II, § 210, 42 Stat. 1469, related to right to file application for stock and discretion of Comptroller of Currency.

TAXATION

§ 1261. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Section, act Mar. 4, 1923, ch. 252, title II, § 211, 42 Stat. 1469, related to scope of authority of State to tax.

DEPOSITS

§ 1271. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Section, act Mar. 4, 1923, ch. 252, title II, § 212, 42 Stat. 1469, related to deposits in Federal reserve member banks.

CONVERSION OF CORPORATIONS

§§ 1281 to 1283. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Sections, act Mar. 4, 1923, ch. 252, title II, § 213(a)–(c), 42 Stat. 1469, related to conversion of State agricultural or livestock financing corporations into National Agricultural Credit Corporations, articles of association and organization certificate, and powers, duties, and liabilities of converted corporation, respectively.

CONSOLIDATION OF CORPORATIONS

§§ 1291 to 1293. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Sections, act Mar. 4, 1923, ch. 252, title II, § 214(a)–(c), 42 Stat. 1470, related to procedure for consolidation and capital stock, dissenting stockholders, and effect of consolidation, respectively.

INSOLVENCY, RECEIVERSHIP, AND LIQUIDATION

§§ 1301 to 1303. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Sections, act Mar. 4, 1923, ch. 252, title II, § 215(a)–(c), 42 Stat. 1471, related to appointment and powers of receiver, appointment and powers of shareholders' agents, and voluntary liquidation, respectively.

PENALTY PROVISIONS

§§ 1311 to 1318. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section 1311, act Mar. 4, 1923, ch. 252, title II, § 216(a), 42 Stat. 1471, related to various criminal acts of officers, employees, or agents. See section 709 of Title 18, Crimes and Criminal Procedure.

Section 1312, act Mar. 4, 1923, ch. 252, title II, § 216(b), 42 Stat. 1472, related to false statements. See section 1014 of Title 18.

Section 1313, act Mar. 4, 1923, ch. 252, title II, § 216(c), 42 Stat. 1472, related to overvaluation of property offered as security. See section 1014 of Title 18.

Section 1314, act Mar. 4, 1923, ch. 252, title II, § 216(d), 42 Stat. 1472, related to offenses by examiners. See sections 1908 and 1909 of Title 18.

Section 1315, act Mar. 4, 1923, ch. 252, title II, § 216(e), 42 Stat. 1472, related to acceptance of gifts by officers. See section 215 of Title 18.

Section 1316, act Mar. 4, 1923, ch. 252, title II, § 216(f), 42 Stat. 1473, related to forgery, etc. See section 493 of Title 18.

Section 1317, act Mar. 4, 1923, ch. 252, title II, § 216(g), 42 Stat. 1473, related to false representations as to debentures. See section 1013 of Title 18.

Section 1318, act Mar. 4, 1923, ch. 252, title II, § 216(h), 42 Stat. 1473, related to unlawful use of words ''National Agricultural Credit Corporation''. See section 709 of Title 18.

PARTIAL INVALIDITY; AMENDMENTS AND REPEALS

§ 1321. Omitted

CODIFICATION

Section, act Mar. 4, 1923, ch. 252, title V, § 507, 42 Stat. 1482, related to partial invalidity of chapter.

§ 1322. Repealed. Pub. L. 86–230, § 24, Sept. 8, 1959, 73 Stat. 466

Section, act Mar. 4, 1923, ch. 252, title II, § 217, 42 Stat. 1473, related to amendment or repeal of chapter.

CHAPTER 10—LOCAL AGRICULTURAL-CREDIT CORPORATIONS, LIVESTOCK-LOAN COMPANIES AND LIKE ORGANIZATIONS; LOANS TO INDIVIDUALS TO AID IN FORMATION OR TO INCREASE CAPITAL STOCK

Sec.

1401. Authorization of loans by Governor of Farm Credit Administration; regulations.
1402. Limitations on loans; financial structure of corporation, approval.
1403. Minimum paid-in capital stock required to warrant loans.
1404. Authorization of appropriations; revolving fund.

§ 1401. Authorization of loans by Governor of Farm Credit Administration; regulations

The Governor of the Farm Credit Administration is authorized to make advances or loans to individuals, under such regulations as he may prescribe, for the purpose of assisting in forming local agricultural-credit corporations, livestock-loan companies, or like organizations, or of increasing the capital stock of such corporations, companies, or organizations qualified to do business with Federal intermediate credit banks, or to which such privileges may be extended.

(Mar. 3, 1932, ch. 70, § 1, 47 Stat. 60; Ex. Ord. No. 6084, Mar. 27, 1933.)

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

''Governor of the Farm Credit Administration'' substituted for ''Secretary of Agriculture'' and other changes were effected by Ex. Ord. No. 6084, which is set out preceding section 2241 of this title.

§ 1402. Limitations on loans; financial structure of corporation, approval

(a) Limitation on loans to individual stockholders

No loans shall be made to individual stockholders on the capital stock of, or to create or increase the capital stock of such corporation, company, or organization in an amount in excess of 75 per centum of the par value of the capital stock of such corporation, company, or organization owned by or proposed to be subscribed to by such individual.

(b) Approval of financial structure of corporation by Governor of Farm Credit Administration

No loan shall be made upon the capital stock of any corporation until the Governor of the Farm Credit Administration shall find that the financial structure of such corporation is sound and unimpaired and by him approved, nor shall any loan be made upon the capital stock of such corporation until the management of such company shall be made known to and approved by the Governor, and the Governor shall have the right at any time to declare the indebtedness to the Government that may be created hereunder due whenever in his judgment the financial structure of the corporation shall become so impaired or the management become so unsatisfactory as to jeopardize the interests of the Government.

(Mar. 3, 1932, ch. 70, § 2, 47 Stat. 60; Ex. Ord. No. 6084, Mar. 27, 1933.)

TRANSFER OF FUNCTIONS

Establishment of Farm Credit Administration as an independent agency, composition of Farm Credit Administration, appointment of Governor of Farm Credit Administration, and duties thereof, including duty to perform functions, etc., of Farm Credit Administration, see section 2241 et seq. of this title.

''Governor of the Farm Credit Administration'' and ''Governor'' substituted for ''Secretary of Agriculture'' and ''Secretary'', respectively, and other changes were effected by Ex. Ord. No. 6084, which is set out preceding section 2241 of this title.

§ 1403. Minimum paid-in capital stock required to warrant loans

No loan or advance shall be made to any individual upon the capital stock of or to create or

increase the capital stock of any corporation, unless the paid-in capital stock of such corporation shall be at least $10,000.

(Mar. 3, 1932, ch. 70, § 3, 47 Stat. 60.)

§ 1404. Authorization of appropriations; revolving fund

To carry out the provisions of this chapter, including all expenses incurred thereunder, there are authorized to be appropriated, out of the unexpended balances of appropriations made to carry out the provisions of Public Resolution Numbered 112, Seventy-first Congress (46 Stat. 1032), as amended by the Interior Department Appropriation Act for the fiscal year ending June 30, 1932, and as amended by Public Resolution Numbered 120 (46 Stat. 1167), and out of the collections from loans made under Public Resolution Numbered 112, as so amended, a sum not exceeding $10,000,000, which sum shall be paid into a revolving fund. Not to exceed 2 per centum of such fund may be used for expenses of administration. All moneys received from time to time upon the repayment of any advance or loan made pursuant to this chapter, together with the interest, shall be paid into the revolving fund and shall thereafter be available for the purposes and in the manner hereinbefore provided.

(Mar. 3, 1932, ch. 70, § 4, 47 Stat. 60.)

CHAPTER 11—FEDERAL HOME LOAN BANKS

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1449. Reservation of right to amend or repeal chapter.

§ 1421. Short title

This chapter may be cited as the ''Federal Home Loan Bank Act.''

(July 22, 1932, ch. 522, § 1, 47 Stat. 725.)

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–102, title VI, § 601, Nov. 12, 1999, 113 Stat. 1450, provided that: ''This title [amending sections 250, 1422, 1422b, 1424, 1426, 1427, 1429, 1430, 1432, 1436, 1438, 1441b, 1464, and 1467a of this title, repealing sections 1442a and 1447 of this title, and enacting provisions set out as a note under section 1441b of this title] may be cited as the 'Federal Home Loan Bank System Modernization Act of 1999'.''

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–204, § 1(a), Dec. 17, 1993, 107 Stat. 2369, provided that: ''This Act [enacting section 1447 of this title and section 8C of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, Government Organization and Employees, amending sections 1441a, 1811, 1813, 1815, 1817, 1818, 1821, 1822, 1824, 1831j, and 1831q of this title, sections 5314 and 5315 of Title 5, and sections 8D to 8G and 11 of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, enacting provisions set out as notes under sections 1441a, 1811, 1817, 1821, 1822, 1827, and 1831q of this title and section 3 of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, and amending provisions set out as notes under section 396f of Title 16, Conservation, and section 1611 of Title 43, Public Lands] may be cited as the 'Resolution Trust Corporation Completion Act'.''

SHORT TITLE OF 1991 AMENDMENTS

Pub. L. 102–233, § 1, Dec. 12, 1991, 105 Stat. 1761, provided that: ''This Act [enacting section 2907 of this title, amending sections 1441, 1441a, 1441b, 1786, 1818, 1821, 1821a, 1833b, 1833e, 3345, and 3348 of this title, sections 5313 and 5314 of Title 5, Government Organization and Employees, and section 11 of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, enacting provisions set out as notes under this section and sections 1441, 1441a, and 1831n of this title, and amending provisions set out as notes under sections 1437 and 1441a of this title] may be cited as the 'Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991'.''

Pub. L. 102–233, title III, § 301, Dec. 12, 1991, 105 Stat. 1767, provided that: ''This title [amending sections 1441, 1441a, 1441b, 1786, 1818, 1821, 1833b, and 1833e of this title, sections 5313 and 5314 of Title 5, Government Organiza-

tion and Employees, and section 11 of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, enacting provisions set out as notes under sections 1441 and 1441a of this title, and amending provisions set out as notes under sections 1437 and 1441a of this title] may be cited as the 'Resolution Trust Corporation Thrift Depositor Protection Reform Act of 1991'.''

Pub. L. 102–18, §1, Mar. 23, 1991, 105 Stat. 58, provided that: ''This Act [amending sections 1441a and 1812 of this title and enacting provisions set out as notes under section 1441a of this title] may be cited as the 'Resolution Trust Corporation Funding Act of 1991'.''

§ 1422. Definitions

As used in this chapter—

(1)(A) BANK.—The term ''Federal Home Loan Bank'' or ''Bank'' means a bank established under the authority of this chapter.

(B) BANK SYSTEM.—The term ''Federal Home Loan Bank System'' means the Federal Home Loan Banks under the supervision of the Director.

(2) STATE.—The term ''State'', in addition to the States of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(3) The term ''member'' means any institution which has subscribed for the stock of a Federal Home Loan Bank.

(4) The term ''home mortgage loan'' means a loan made by a member upon the security of a home mortgage.

(5) The term ''home mortgage'' means a mortgage upon real estate, in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable or (2) under a lease having a period of not less than fifty years to run from the date the mortgage was executed, upon which is located, or which comprises or includes, one or more homes or other dwelling units, all of which may be defined by the Director and shall include, in addition to first mortgages, such classes of first liens as are commonly given to secure advances on real estate by institutions authorized under this chapter to become members, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(6) The term ''unpaid principal,'' when used in respect of a loan secured by a home mortgage means the principal thereof less the sum of (1) payments made on such principal, and (2) in cases where shares or stock are pledged as security for the loan, the payments made on such shares or stock plus earnings or dividends apportioned or credited thereon.

(7) An ''amortized'' or ''installment'' home mortgage loan shall, for the purposes of this chapter, be a home mortgage loan to be repaid or liquidated in not less than eight years by means of regular weekly, monthly, or quarterly payments made directly in reduction of the debt or upon stock or shares pledged as collateral for the repayment of such loan.

(8) SAVINGS ASSOCIATION.—The term ''savings association'' has the meaning given to such term in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

(9) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' means—

(A) an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]), and

(B) except as used in sections 1441a and 1441b of this title, an insured credit union (as defined in section 1752 of this title).

(10) COMMUNITY FINANCIAL INSTITUTION.—

(A) IN GENERAL.—The term ''community financial institution'' means a member—

(i) the deposits of which are insured under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]; and

(ii) that has, as of the date of the transaction at issue, less than $1,000,000,000 in average total assets, based on an average of total assets over the 3 years preceding that date.

(B) ADJUSTMENTS.—The $1,000,000,000 limit referred to in subparagraph (A)(ii) shall be adjusted annually by the Director, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.

(11) DIRECTOR.—The term ''Director'' means the Director of the Federal Housing Finance Agency.

(12) AGENCY.—The term ''Agency'' means the Federal Housing Finance Agency, established under section 4511 of this title.

(July 22, 1932, ch. 522, §2, 47 Stat. 725; June 27, 1934, ch. 847, §507, 48 Stat. 1264; May 28, 1935, ch. 150, §1, 49 Stat. 293; July 14, 1952, ch. 723, §10(c), 66 Stat. 604; Pub. L. 86–70, §9(a), June 25, 1959, 73 Stat. 142; Pub. L. 86–624, §5(a), July 12, 1960, 74 Stat. 411; Pub. L. 87–779, §2(a), Oct. 9, 1962, 76 Stat. 779; Pub. L. 101–73, title VII, §§701(a), 710(b)(1), Aug. 9, 1989, 103 Stat. 411, 418; Pub. L. 106–102, title VI, §602, Nov. 12, 1999, 113 Stat. 1450; Pub. L. 110–289, div. A, title II, §§1203, 1204(8), (10), 1211(a), July 30, 2008, 122 Stat. 2785, 2786, 2790.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in par. (10)(A)(i), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

AMENDMENTS

2008—Par. (1). Pub. L. 110–289, §1203(1), (2), redesignated par. (2) as (1) and struck out former par. (1). Prior to amendment, text read as follows: ''The terms 'Finance Board' and 'Board' mean the Federal Housing Finance Board established under section 1422a of this title.''

Par. (1)(B). Pub. L. 110–289, §1204(8), substituted ''the Director'' for ''the Board''.

Pars. (2) to (4). Pub. L. 110–289, §1203(2), redesignated pars. (3) to (5) as (2) to (4), respectively. Former par. (2) redesignated (1).

Par. (5). Pub. L. 110–289, §1204(8), substituted ''the Director'' for ''the Board''.

Pub. L. 110–289, §1203(2), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pars. (6) to (9). Pub. L. 110–289, §1203(2), (3), redesignated pars. (7) to (9) and (12) as (6) to (9), respectively. Former par. (6) redesignated (5).

Par. (10). Pub. L. 110–289, §1203(1), (3), redesignated par. (13) as (10) and struck out former par. (10). Prior to amendment, text read as follows: ''The term 'Chairperson' means the Chairperson of the Board.''

Par. (10)(A)(ii). Pub. L. 110–289, §1211(a), substituted ''$1,000,000,000'' for ''$500,000,000''.

Par. (10)(B). Pub. L. 110–289, §1211(a), substituted ''$1,000,000,000'' for ''$500,000,000''.

Pub. L. 110–289, §1204(10), substituted ''the Director'' for ''the Finance Board''.

Pars. (11) to (13). Pub. L. 110–289, §1203(1), (3), (4), added pars. (11) and (12), redesignated former pars. (12) and (13) as (9) and (10), respectively, and struck out former par. (11). Prior to amendment, text read as follows: ''The term 'Secretary' means the Secretary of Housing and Urban Development.''

1999—Par. (1). Pub. L. 106–102, §602(1), substituted ''terms 'Finance Board' and 'Board' mean'' for ''term 'Board' means''.

Par. (3). Pub. L. 106–102, §602(2), added par. (3) and struck out former par. (3) which read as follows: ''The term 'State' includes the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.''

Par. (13). Pub. L. 106–102, §602(3), added par. (13).

1989—Pars. (1), (2). Pub. L. 101–73, §701(a)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which defined ''board'' and ''Federal Home Loan Bank''.

Par. (4). Pub. L. 101–73, §701(a)(2), which directed amendment of par. (4) by striking out ''(except when used in reference to the member of the Board)'' after '''member''', was executed by striking out ''(except when used in reference to a member of the board)'' as the probable intent of Congress.

Par. (5). Pub. L. 101–73, §710(b)(1), struck out ''or a nonmember borrower'' after ''member''.

Pars. (9) to (12). Pub. L. 101–73, §701(a)(3), added pars. (9) to (12) and struck out former par. (9) which read as follows: ''The term 'nonmember borrower' includes an institution authorized to secure advances from a Federal Home Loan Bank under the provisions of subsection (e) of section 1426 of this title.''

1962—Subsec. (6). Pub. L. 87–779 substituted ''upon which is located, or which comprises or includes, one or more homes or other dwelling units, all of which may be defined by the Board'' for ''upon which there is located a dwelling for not more than four families''.

1960—Subsec. (3). Pub. L. 86–624 struck out reference to Territory of Hawaii.

1959—Subsec. (3). Pub. L. 86–70 substituted ''Territory of Hawaii'' for ''Territories of Alaska and Hawaii''.

1952—Subsec. (3). Act July 14, 1952, inserted ''Guam,''.

1935—Subsec. (6). Act May 28, 1935, substituted ''four families'' for ''three families''.

1934—Subsec. (6). Act June 27, 1934, struck out ''first'' before ''mortgage'' and inserted ''or (2) under a lease having a period of not less than fifty years to run from the date the mortgage was executed''.

§§ 1422a, 1422b. Repealed. Pub. L. 110–289, div. A, title II, § 1204(1), July 30, 2008, 122 Stat. 2785

Section 1422a, act July 22, 1932, ch. 522, §2A, as added Pub. L. 101–73, title VII, §702(a), Aug. 9, 1989, 103 Stat. 413; amended Pub. L. 102–550, title XIII, §1391, title XVI, §1608, Oct. 28, 1992, 106 Stat. 4009, 4089, established the Federal Housing Finance Board.

Section 1422b, act July 22, 1932, ch. 522, §2B, as added Pub. L. 101–73, title VII, §702(a), Aug. 9, 1989, 103 Stat. 414; amended Pub. L. 106–102, title VI, §606(e)(1), Nov. 12, 1999, 113 Stat. 1454, related to powers and duties of the Federal Housing Finance Board.

§ 1423. Federal Home Loan Bank districts; number and boundaries; establishment of Federal Home Loan Banks; names

(a) In general

As soon as practicable the Director shall divide the continental United States, Puerto Rico, the Virgin Islands, Guam, and the Territories of Alaska and Hawaii into not less than eight nor more than twelve districts. Such districts shall be apportioned with due regard to the convenience and customary course of business of the institutions eligible to and likely to subscribe for stock of a Federal Home Loan Bank to be formed under this chapter, but no such district shall contain a fractional part of any State. The districts thus created may be readjusted and new districts may from time to time be created by the Director, not to exceed twelve in all. Such districts shall be known as Federal Home Loan Bank districts and may be designated by number. As soon as practicable the Director shall establish, in each district, a Federal Home Loan Bank at such city as may be designated by the Director. Its title shall include the name of the city at which it is established.

(b) Authority to reduce districts

Notwithstanding subsection (a), the number of districts may be reduced to a number less than 8—

(1) pursuant to a voluntary merger between Banks, as approved pursuant to section 1446(b) of this title; or

(2) pursuant to a decision by the Director to liquidate a Bank pursuant to section 4617 of this title.

(July 22, 1932, ch. 522, §3, 47 Stat. 726; July 14, 1952, ch. 723, §10(c), 66 Stat. 604; Pub. L. 101–73, title VII, §701(b)(1), (3)(A), Aug. 9, 1989, 103 Stat. 412; Pub. L. 110–289, div. A, title II, §§1204(8), 1210, July 30, 2008, 122 Stat. 2786, 2790.)

AMENDMENTS

2008—Pub. L. 110–289, §1210, designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 110–289, §1204(8), substituted ''the Director'' for ''the Board'' wherever appearing.

1989—Pub. L. 101–73 substituted ''Board'' for ''board'' wherever appearing.

1952—Act July 14, 1952, inserted ''Guam,'' after ''Virgin Islands,''.

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

§ 1424. Eligibility for membership

(a) Criteria for eligibility

(1) In general

Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, community development financial institution, or any insured depository institution (as defined in section 1422 of this title), shall be eligible to become a member of a Federal Home Loan Bank if such institution—

(A) is duly organized under the laws of any State or of the United States;

(B) is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States or, in the case of a community development financial institution, is certified as a community development financial institution under the Community Development Banking and Financial Institutions Act of 1994 [12 U.S.C. 4701 et seq.].;[1] and

(C) makes such home mortgage loans as, in the judgment of the Director, are long-term loans (except that in the case of a savings bank, this subparagraph applies only if, in the judgment of the Director, its time deposits, as defined in section 461 of this title, warrant its making such loans).

(2) Qualified thrift lender

An insured depository institution that is not a member on January 1, 1989, may become a member of a Federal Home Loan Bank only if—

(A) the insured depository institution (other than a community financial institution) has at least 10 percent of its total assets in residential mortgage loans;

(B) the insured depository institution's financial condition is such that advances may be safely made to such institution; and

(C) the character of its management and its home-financing policy are consistent with sound and economical home financing.

(3) Certain institutions

An insured depository institution commencing its initial business operations after January 1, 1989, may become a member of a Federal Home Loan Bank if it complies with regulations and orders prescribed by the Director for the 10 percent asset requirement (described in the[2] paragraph (2)) within one year after the commencement of its operations.

(4) Limited exemption for community financial institutions

A community financial institution that otherwise meets the requirements of paragraph (2) may become a member without regard to the percentage of its total assets that is represented by residential mortgage loans, as described in subparagraph (A) of paragraph (2).

(b) Location requirement

An institution eligible to become a member under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of the bank of a district adjoining such district, if demanded by convenience and then only with the approval of the Director.

(c) Inspection and regulation requirements

Notwithstanding the provisions of clause (2) of subsection (a) of this section requiring inspection and regulation under law as a condition with respect to eligibility for membership, any building and loan association which would be eligible to become a member of a Federal Home Loan Bank except for the fact that it is not subject to inspection and regulation under the banking laws or similar laws of the State in which such association is organized shall, upon subjecting itself to such inspection and regulation as the Director shall prescribe, be eligible to become a member.

(July 22, 1932, ch. 522, §4, 47 Stat. 726; June 13, 1933, ch. 64, §3, 48 Stat. 129; Pub. L. 101–73, title VII, §§701(b)(1), (3)(A), 704(a), 710(b)(1), Aug. 9, 1989, 103 Stat. 412, 415, 418; Pub. L. 106–102, title VI, §605, Nov. 12, 1999, 113 Stat. 1452; Pub. L. 110–289, div. A, title II, §§1204(8), 1206, July 30, 2008, 122 Stat. 2786, 2787.)

REFERENCES IN TEXT

The Community Development Banking and Financial Institutions Act of 1994, referred to in subsec. (a)(1)(B), is subtitle A (§§101–121) of title I of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2163, which is classified principally to subchapter I (§4701 et seq.) of chapter 47 of this title. For complete classification of subtitle A to the Code, see Short Title note set out under section 4701 of this title and Tables.

Section 461 of this title, referred to in subsec. (a)(1)(C), was in the original ''section 19 of the Federal Reserve Act''. Definition provisions of section 19 are classified to section 461 of this title. Other provisions of section 19 are classified to sections 142, 371a, 371b, 371b–1, 374, 374a, 463 to 466, 505, and 506 of this title.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–289, §1206(1), which directed insertion of ''community development financial institution,'' after ''savings bank,'', was executed by making the insertion after ''savings bank,'' the first time appearing.

Subsec. (a)(1)(B). Pub. L. 110–289, §1206(2), which directed insertion of ''or, in the case of a community development financial institution, is certified as a community development financial institution under the Community Development Banking and Financial Institutions Act of 1994.'' after ''United States,'', was executed by making the insertion after ''United States'' to reflect the probable intent of Congress.

Subsecs. (a)(1)(C), (3), (b), (c). Pub. L. 110–289, §1204(8), substituted ''the Director'' for ''the Board'' wherever appearing.

1999—Subsec. (a)(2) to (4). Pub. L. 106–102 inserted ''(other than a community financial institution)'' after ''institution'' in par. (2)(A), designated concluding provisions of par. (2) as par. (3), inserted heading and substituted ''paragraph (2)'' for ''preceding sentence'', and added par. (4).

1989—Subsec. (a). Pub. L. 101–73, §704(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, or savings bank shall be eligible to become a member of, or a nonmember borrower of, a Federal Home Loan Bank if such institution (1) is duly organized under the laws of any State or of the United States; (2) is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States; and (3) makes such home mortgage loans as in the judgment of the board, are long-term loans (and in the case of a savings bank if, in the judgment of the board, its time deposits, as defined in section 461 of this title, warrant its making such loans). No institution shall be eligible to become a member of, or a nonmember borrower of, a Federal Home Loan Bank if, in the judgment of the board, its financial condition is such that advances may not safely be made to such institution or the character of its management or its home-financing policy is inconsistent with sound and economical home financing, or with the purposes of this chapter.''

[1] So in original.

[2] So in original. The word ''the'' probably should not appear.

Subsec. (b). Pub. L. 101–73, § 710(b)(1), struck out ''or a nonmember borrower'' after ''eligible to become a member''.

Pub. L. 101–73, § 701(b)(1), (3)(A), substituted ''Board'' for ''board''.

Subsec. (c). Pub. L. 101–73, § 701(b)(1), (3)(A), substituted ''Board'' for ''board''.

1933—Subsec. (d). Act June 13, 1933, struck out subsec. (d) which provided for direct loans to homeowners. See chapter 12 (§ 1461 et seq.) of this title.

§§ 1425 to 1425b. Repealed. Pub. L. 101–73, title VII, §§ 705, 716, 720, Aug. 9, 1989, 103 Stat. 416, 421, 423

Section 1425, acts July 22, 1932, ch. 522, § 5, 47 Stat. 727; Dec. 24, 1969, Pub. L. 91–152, title IV, § 416(a), 83 Stat. 401, related to limitation on lawful contract rate of interest receivable by members and nonmember borrowers, and applicability to home mortgage loans on single-family dwellings.

Section 1425a, act July 22, 1932, ch. 522, § 5A, as added June 27, 1950, ch. 369, § 1, 64 Stat. 256; amended Aug. 11, 1955, ch. 783, title I, § 109(a)(3), 69 Stat. 640; Sept. 21, 1968, Pub. L. 90–505, § 4, 82 Stat. 856; Mar. 31, 1980, Pub. L. 96–221, title I, § 104(b), title IV, § 405, 94 Stat. 139, 158; Oct. 8, 1980, Pub. L. 96–399, title III, § 325(a), 94 Stat. 1648; Oct. 15, 1982, Pub. L. 97–320, title III, § 332, 96 Stat. 1504; Oct. 17, 1984, Pub. L. 98–479, title II, § 207, 98 Stat. 2235, related to liquidity requirements for savings and loan associations and other members.

Section 1425b, act July 22, 1932, ch. 522, § 5B, as added Sept. 21, 1966, Pub. L. 89–597, § 4, 80 Stat. 824; amended Sept. 21, 1968, Pub. L. 90–505, § 2(c), 82 Stat. 856; Dec. 23, 1969, Pub. L. 91–151, § 2(b), 83 Stat. 372; Oct. 29, 1974, Pub. L. 93–501, title I, § 103, title III, § 303, 88 Stat. 1558, 1560; Nov. 5, 1979, Pub. L. 96–104, title II, § 203, 93 Stat. 793; Dec. 28, 1979, Pub. L. 96–161, title II, § 210, 93 Stat. 1239; Mar. 31, 1980, Pub. L. 96–221, title II, § 207(b)(7)–(9), title V, § 529, 94 Stat. 144, 168, related to rate of interest payable on deposits, shares or withdrawable accounts by members, insured institutions and other nonmember financial institutions.

§ 1426. Capital structure of Federal home loan banks

(a) Regulations

(1) Capital standards

Not later than 18 months after November 12, 1999, the Director shall issue regulations prescribing uniform capital standards applicable to each Federal home loan bank, which shall require each such bank to meet—

(A) the leverage requirement specified in paragraph (2); and

(B) the risk-based capital requirements, in accordance with paragraph (3).

(2) Leverage requirement

(A) In general

The leverage requirement shall require each Federal home loan bank to maintain a minimum amount of total capital based on the total assets of the bank and shall be 5 percent.

(B) Treatment of stock and retained earnings

In determining compliance with the minimum leverage ratio established under subparagraph (A), the paid-in value of the outstanding Class B stock and the amount of retained earnings shall be multiplied by 1.5, and such higher amounts shall be deemed to be capital for purposes of meeting the 5 percent minimum leverage ratio, except that a Federal home loan bank's total capital (determined without taking into account any such multiplier) shall not be less than 4 percent of the total assets of the bank.

(3) Risk-based capital standards

(A) Risk-based capital standards

The Director shall, by regulation, establish risk-based capital standards for the Federal Home Loan Banks to ensure that the Federal Home Loan Banks operate in a safe and sound manner, with sufficient permanent capital and reserves to support the risks that arise in the operations and management of the Federal Home Loans Banks.

(B) Consideration of other risk-based standards

In establishing the risk-based standard under subparagraph (A), the Director shall take due consideration of any risk-based capital test established pursuant to section 1361 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4611) for the enterprises (as defined in that Act [12 U.S.C. 4501 et seq.]), with such modifications as the Director determines to be appropriate to reflect differences in operations between the Federal home loan banks and those enterprises.

(4) Other regulatory requirements

The regulations issued by the Director under paragraph (1) shall—

(A) permit each Federal home loan bank to issue, with such rights, terms, and preferences, not inconsistent with this chapter and the regulations issued hereunder, as the board of directors of that bank may approve, any 1 or more of—

(i) Class A stock, which shall be redeemable in cash and at par 6 months following submission by a member of a written notice of its intent to redeem such shares; and

(ii) Class B stock, which shall be redeemable in cash and at par 5 years following submission by a member of a written notice of its intent to redeem such shares;

(B) provide that the stock of a Federal home loan bank may be issued to and held by only members of the bank, and that a bank may not issue any stock other than as provided in this section;

(C) prescribe the manner in which stock of a Federal home loan bank may be sold, transferred, redeemed, or repurchased; and

(D) provide the manner of disposition of outstanding stock held by, and the liquidation of any claims of the Federal home loan bank against, an institution that ceases to be a member of the bank, through merger or otherwise, or that provides notice of intention to withdraw from membership in the bank.

(5) Definitions of capital

For purposes of determining compliance with the capital standards established under this subsection—

(A) permanent capital of a Federal home loan bank shall include—

(i) the amounts paid for the Class B stock; and

(ii) the retained earnings of the bank (as determined in accordance with generally accepted accounting principles); and

(B) total capital of a Federal home loan bank shall include—

(i) permanent capital;

(ii) the amounts paid for the Class A stock;

(iii) consistent with generally accepted accounting principles, and subject to the regulation of the Director, a general allowance for losses, which may not include any reserves or allowances made or held against specific assets; and

(iv) any other amounts from sources available to absorb losses incurred by the bank that the Director determines by regulation to be appropriate to include in determining total capital.

(6) Transition period

Notwithstanding any other provision of this chapter, the requirements relating to purchase and retention of capital stock of a Federal home loan bank by any member thereof in effect on the day before November 12, 1999, shall continue in effect with respect to each Federal home loan bank until the regulations required by this subsection have taken effect and the capital structure plan required by subsection (b) of this section has been approved by the Director and implemented by such bank.

(b) Capital structure plan

(1) Approval of plans

Not later than 270 days after the date of publication by the Director of final regulations in accordance with subsection (a) of this section, the board of directors of each Federal home loan bank shall submit for approval by the Director a plan establishing and implementing a capital structure for such bank that—

(A) the board of directors determines is best suited for the condition and operation of the bank and the interests of the members of the bank;

(B) meets the requirements of subsection (c) of this section; and

(C) meets the minimum capital standards and requirements established under subsection (a) of this section and other regulations prescribed by the Director.

(2) Approval of modifications

The board of directors of a Federal home loan bank shall submit to the Director for approval any modifications that the bank proposes to make to an approved capital structure plan.

(c) Contents of plan

The capital structure plan of each Federal home loan bank shall contain provisions addressing each of the following:

(1) Minimum investment

(A) In general

Each capital structure plan of a Federal home loan bank shall require each member of the bank to maintain a minimum investment in the stock of the bank, the amount of which shall be determined in a manner to be prescribed by the board of directors of each bank and to be included as part of the plan.

(B) Investment alternatives

(i) In general

In establishing the minimum investment required for each member under subparagraph (A), a Federal home loan bank may, in its discretion, include any 1 or more of the requirements referred to in clause (ii), or any other provisions approved by the Director.

(ii) Authorized requirements

A requirement is referred to in this clause if it is a requirement for—

(I) a stock purchase based on a percentage of the total assets of a member; or

(II) a stock purchase based on a percentage of the outstanding advances from the bank to the member.

(C) Minimum amount

Each capital structure plan of a Federal home loan bank shall require that the minimum stock investment established for members shall be set at a level that is sufficient for the bank to meet the minimum capital requirements established by the Director under subsection (a) of this section.

(D) Adjustments to minimum required investment

The capital structure plan of each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust the minimum investment required of each member of that bank, as necessary to ensure that the bank remains in compliance with applicable minimum capital levels established by the Director, and shall require each member to comply promptly with any adjustments to the required minimum investment.

(2) Transition rule

(A) In general

The capital structure plan of each Federal home loan bank shall specify the date on which it shall take effect, and may provide for a transition period of not longer than 3 years to allow the bank to come into compliance with the capital requirements prescribed under subsection (a) of this section, and to allow any institution that was a member of the bank on November 12, 1999, to come into compliance with the minimum investment required pursuant to the plan.

(B) Interim purchase requirements

The capital structure plan of a Federal home loan bank may allow any member referred to in subparagraph (A) that would be required by the terms of the capital structure plan to increase its investment in the stock of the bank to do so in periodic installments during the transition period.

(3) Disposition of shares

The capital structure plan of a Federal home loan bank shall provide for the manner of dis-

position of any stock held by a member of that bank that terminates its membership or that provides notice of its intention to withdraw from membership in that bank.

(4) Classes of stock

(A) In general

The capital structure plan of a Federal home loan bank shall afford each member of that bank the option of maintaining its required investment in the bank through the purchase of any combination of classes of stock authorized by the board of directors of the bank and approved by the Director in accordance with its regulations.

(B) Rights requirement

A Federal home loan bank shall include in its capital structure plan provisions establishing terms, rights, and preferences, including minimum investment, dividends, voting, and liquidation preferences of each class of stock issued by the bank, consistent with regulations of the Director and market requirements.

(C) Reduced minimum investment

The capital structure plan of a Federal home loan bank may provide for a reduced minimum stock investment for any member of that bank that elects to purchase Class B[1] in a manner that is consistent with meeting the minimum capital requirements of the bank, as established by the Director.

(D) Liquidation of claims

The capital structure plan of a Federal home loan bank shall provide for the liquidation in an orderly manner, as determined by the bank, of any claim of that bank against a member, including claims for any applicable prepayment fees or penalties resulting from prepayment of advances prior to stated maturity.

(5) Limited transferability of stock

The capital structure plan of a Federal home loan bank shall—

(A) provide that any stock issued by that bank shall be available only to and held only by members of that bank and tradable only between that bank and its members; and

(B) establish standards, criteria, and requirements for the issuance, purchase, transfer, retirement, and redemption of stock issued by that bank.

(6) Bank review of plan

Before filing a capital structure plan with the Director, each Federal home loan bank shall conduct a review of the plan by—

(A) an independent certified public accountant, to ensure, to the extent possible, that implementation of the plan would not result in any write-down of the redeemable bank stock investment of its members; and

(B) at least one major credit rating agency, to determine, to the extent possible, whether implementation of the plan would have any material effect on the credit ratings of the bank.

[1] So in original. Probably should be ''Class B stock''.

(d) Termination of membership

(1) Voluntary withdrawal

Any member may withdraw from a Federal home loan bank if the member provides written notice to the bank of its intent to do so and if, on the date of withdrawal, there is in effect a certification by the Director that the withdrawal will not cause the Federal Home Loan Bank System to fail to meet its obligation under section 1441b(f)(2)(C) of this title to contribute to the debt service for the obligations issued by the Resolution Funding Corporation. The applicable stock redemption notice periods shall commence upon receipt of the notice by the bank. Upon the expiration of the applicable notice period for each class of redeemable stock, the member may surrender such stock to the bank, and shall be entitled to receive in cash the par value of the stock. During the applicable notice periods, the member shall be entitled to dividends and other membership rights commensurate with continuing stock ownership.

(2) Involuntary withdrawal

(A) In general

The board of directors of a Federal home loan bank may terminate the membership of any institution if, subject to regulations of the Director, it determines that—

(i) the member has failed to comply with a provision of this chapter or any regulation prescribed under this chapter; or

(ii) the member has been determined to be insolvent, or otherwise subject to the appointment of a conservator, receiver, or other legal custodian, by a Federal or State authority with regulatory and supervisory responsibility for the member.

(B) Stock disposition

An institution, the membership of which is terminated in accordance with subparagraph (A)—

(i) shall surrender redeemable stock to the Federal home loan bank, and shall receive in cash the par value of the stock, upon the expiration of the applicable notice period under subsection (a)(4)(A) of this section;

(ii) shall receive any dividends declared on its redeemable stock, during the applicable notice period under subsection (a)(4)(A) of this section; and

(iii) shall not be entitled to any other rights or privileges accorded to members after the date of the termination.

(C) Commencement of notice period

With respect to an institution, the membership of which is terminated in accordance with subparagraph (A), the applicable notice period under subsection (a)(4) of this section for each class of redeemable stock shall commence on the earlier of—

(i) the date of such termination; or

(ii) the date on which the member has provided notice of its intent to redeem such stock.

(3) Liquidation of indebtedness

Upon the termination of the membership of an institution for any reason, the outstanding

indebtedness of the member to the bank shall be liquidated in an orderly manner, as determined by the bank and, upon the extinguishment of all such indebtedness, the bank shall return to the member all collateral pledged to secure the indebtedness.

(e) Redemption of excess stock

(1) In general

A Federal home loan bank, in its sole discretion, may redeem or repurchase, as appropriate, any shares of Class A or Class B stock issued by the bank and held by a member that are in excess of the minimum stock investment required of that member.

(2) Excess stock

Shares of stock held by a member shall not be deemed to be ''excess stock'' for purposes of this subsection by virtue of a member's submission of a notice of intent to withdraw from membership or termination of its membership in any other manner.

(3) Priority

A Federal home loan bank may not redeem any excess Class B stock prior to the end of the 5-year notice period, unless the member has no Class A stock outstanding that could be redeemed as excess.

(f) Impairment of capital

If the Director or the board of directors of a Federal home loan bank determines that the bank has incurred or is likely to incur losses that result in or are expected to result in charges against the capital of the bank, the bank shall not redeem or repurchase any stock of the bank without the prior approval of the Director while such charges are continuing or are expected to continue. In no case may a bank redeem or repurchase any applicable capital stock if, following the redemption, the bank would fail to satisfy any minimum capital requirement.

(g) Rejoining after divestiture of all shares

(1) In general

Except as provided in paragraph (2), and notwithstanding any other provision of this chapter, an institution that divests all shares of stock in a Federal home loan bank may not, after such divestiture, acquire shares of any Federal home loan bank before the end of the 5-year period beginning on the date of the completion of such divestiture, unless the divestiture is a consequence of a transfer of membership on an uninterrupted basis between banks.

(2) Exception for withdrawals from membership before 1998

Any institution that withdrew from membership in any Federal home loan bank before December 31, 1997, may acquire shares of a Federal home loan bank at any time after that date, subject to the approval of the Director and the requirements of this chapter.

(h) Treatment of retained earnings

(1) In general

The holders of the Class B stock of a Federal home loan bank shall own the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.

(2) Exception

Except as specifically provided in this section or through the declaration of a dividend or a capital distribution by a Federal home loan bank, or in the event of liquidation of the bank, a member shall have no right to withdraw or otherwise receive distribution of any portion of the retained earnings of the bank.

(3) Limitation

A Federal home loan bank may not make any distribution of its retained earnings unless, following such distribution, the bank would continue to meet all applicable capital requirements.

(July 22, 1932, ch. 522, §6, 47 Stat. 727; June 27, 1934, ch. 847, §509, 48 Stat. 1264; May 28, 1935, ch. 150, §2, 49 Stat. 293; June 27, 1950, ch. 369, §2, 64 Stat. 257; Aug. 11, 1955, ch. 783, title I, §109(a)(1), 69 Stat. 640; Pub. L. 87–210, §§1, 2, Sept. 8, 1961, 75 Stat. 482, 483; Pub. L. 96–153, title III, §327, Dec. 21, 1979, 93 Stat. 1121; Pub. L. 97–320, title III, §§353, 355, Oct. 15, 1982, 96 Stat. 1507, 1508; Pub. L. 97–457, §16, Jan. 12, 1983, 96 Stat. 2509; Pub. L. 101–73, title VII, §§701(b)(1), (3)(A), 706, 710(b)(2), (3), 715, Aug. 9, 1989, 103 Stat. 412, 416, 418, 421; Pub. L. 106–102, title VI, §608, Nov. 12, 1999, 113 Stat. 1456; Pub. L. 106–569, title XII, §1224, Dec. 27, 2000, 114 Stat. 3036; Pub. L. 110–289, div. A, title I, §1110(b), title II, §1204(4), (10), July 30, 2008, 122 Stat. 2676, 2786.)

REFERENCES IN TEXT

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, referred to in subsec. (a)(3)(B), is title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to chapter 46 (§4501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note under section 4501 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289, §1204(10), substituted ''the Director'' for ''the Finance Board'' wherever appearing in subsecs. (a)(1), (3)(B), (4) to (6), (b)(1)(C), (2), (c)(1), (4)(A), (C), (6), (d)(1), (f), and (g).

Subsec. (a)(3)(A). Pub. L. 110–289, §1110(b)(1), added subpar. (A) and struck out former subpar. (A). Prior to amendment, text read as follows: ''Each Federal home loan bank shall maintain permanent capital in an amount that is sufficient, as determined in accordance with the regulations of the Finance Board, to meet—

''(i) the credit risk to which the Federal home loan bank is subject; and

''(ii) the market risk, including interest rate risk, to which the Federal home loan bank is subject, based on a stress test established by the Finance Board that rigorously tests for changes in market variables, including changes in interest rates, rate volatility, and changes in the shape of the yield curve.''

Subsec. (a)(3)(B). Pub. L. 110–289, §1110(b)(2), substituted ''(A)'' for ''(A)(ii)''.

Subsec. (b)(1). Pub. L. 110–289, §1204(4)(A), (10), substituted ''the Director'' for ''the Finance Board'' and ''approval by the Director'' for ''Finance Board approval'' in introductory provisions.

Subsecs. (c)(4)(B), (d)(2)(A). Pub. L. 110–289, §1204(4)(B), substituted ''regulations of the Director'' for ''Finance Board regulations''.

2000—Subsec. (a)(1). Pub. L. 106–569 substituted ''18 months'' for ''1 year'' in introductory provisions.

1999—Pub. L. 106–102 amended section generally, substituting present provisions for provisions authorizing banks to issue capital stock and providing for minimum subscriptions, retirement of oversubscriptions, cancellation of oversubscriptions, aggregate unpaid loan principal, reports and information, payments for stock, transfer or hypothecation of stock, withdrawal or removal of members, surrender and cancellation of stock, prepayment penalties, disposal of stock, dividends, and acquisition of membership after expiration of period of withdrawal.

1989—Subsec. (a). Pub. L. 101–73, §§ 701(b)(1), (3)(A), 706(1), redesignated subsec. (b) as (a), substituted ''Board'' for ''board'', and struck out former subsec. (a) which related to minimum amount of capital stock and subscription books.

Subsec. (b). Pub. L. 101–73, §§ 701(b)(1), (3)(A), 706(1), redesignated subsec. (c) as (b) and substituted ''Board may'' for ''Federal Home Loan Bank Board may'' in par. (1), and ''The Board'' for ''The Federal Home Loan Bank Board'' in par. (5). Former subsec. (b) redesignated (a).

Subsecs. (c), (d). Pub. L. 101–73, § 706(1), redesignated subsecs. (d) and (h) as (c) and (d), respectively. Former subsec. (c) redesignated (b).

Subsec. (e). Pub. L. 101–73, § 710(b)(3), which directed amendment of subsec. (e) by striking out ''or deprive any nonmember borrower of the privilege of further advances,'' after ''remove any member from membership,'' was executed by striking ''or deprive any nonmember borrower of the privilege of obtaining further advances,'' as the probable intent of Congress.

Pub. L. 101–73, § 710(b)(2), struck out ''or nonmember borrower'' after ''such member'' wherever appearing.

Pub. L. 101–73, § 706(2), substituted ''If any member's membership in a Federal Home Loan Bank is terminated, the indebtedness of such member to the Federal Home Loan Bank shall be liquidated in an orderly manner (as determined by the Federal Home Loan Bank), and upon completion of such liquidation, the capital stock in the Federal Home Loan Bank owned by such member shall be surrendered and canceled. Any such liquidation shall be deemed a prepayment of any such indebtedness, and shall be subject to any penalties or other fees applicable to such prepayment.'' for ''In any such case, the indebtedness of such member or nonmember borrower to the Federal Home Loan Bank shall be liquidated, and the capital stock in the Federal Home Loan Bank owned by such member shall be surrendered and canceled, except that in the case of a voluntary withdrawal, such liquidation shall be deemed a prepayment of any such indebtedness, and shall be subject to any penalties applicable to such prepayment.''

Pub. L. 101–73, §§ 701(b)(1), (3)(A), 706(1), redesignated subsec. (i) as (e), substituted ''Board'' for ''board'' wherever appearing, and struck out former subsec. (e) which related to loans to institutions not authorized to subscribe to stock.

Subsec. (f). Pub. L. 101–73, §§ 701(b)(1), (3)(A), 706(1), redesignated subsec. (j) as (f), substituted ''Board'' for ''board'', and struck out former subsec. (f) which related to subscription by United States, maximum amounts, and payments.

Subsec. (g). Pub. L. 101–73, § 706(1), redesignated subsec. (k) as (g) and struck out former subsec. (g) which related to retirement of stock of United States.

Subsec. (h). Pub. L. 101–73, § 715, substituted ''10'' for ''five''.

Pub. L. 101–73, § 706(3), substituted ''charter as a Federal savings association (as defined in section 1813 of this title)'' for ''charter from the Federal Home Loan Bank Board''.

Pub. L. 101–73, § 706(1), redesignated subsec. (m) as (h). Former subsec. (h) redesignated (d).

Subsecs. (i) to (k). Pub. L. 101–73, § 706(1), redesignated former subsecs. (i) to (k) as (e) to (g), respectively.

Subsec. (m). Pub. L. 101–73, § 706(1), redesignated former subsec. (m) as (h).

1983—Subsec. (m). Pub. L. 97–457 substituted ''banks or in connection with obtaining a charter from the Federal Home Loan Bank Board'' for ''Banks'' after ''between''.

1982—Subsec. (c)(2). Pub. L. 97–320, § 353, struck out cl. (i) limitations which had prohibited members from reducing stock to less than the amount held on Sept. 8, 1961, except for a reduction at any time to not less than 2 percent of its aggregate unpaid loan principal as of the beginning of the calendar year in which reduction was made, but not less than $500, or if reduced to less than 2 percent, such reduction to be in the discretion of the Board; and reenacted cl. (ii) limitations as par. (2), substituting ''the Board defining such term'' for ''said Board defining said term''.

Subsec. (i). Pub. L. 97–320, § 355(a), provided for treatment of a liquidation of indebtedness, in the case of a voluntary withdrawal of an institution from membership, as a prepayment of the indebtedness, subject to applicable prepayment penalties.

Subsec. (m). Pub. L. 97–320, § 355(b), added subsec. (m).

1979—Subsec. (c)(2)(ii). Pub. L. 96–153 substituted ''twenty'' for ''twelve''.

1961—Subsec. (c). Pub. L. 87–210, § 1, amended subsection generally, and among other changes, authorized the bank to adjust at the end of each calendar year, under Board regulations, the stock held by each member, to retire stock of members in excess of required amounts, prohibited members to reduce stock to less than the amount held on Sept. 8, 1961, except for a reduction at any time to not less than 2 percent of its aggregate unpaid loan principal as of the beginning of the calendar year in which reduction is made, but not less than $500, or if reduced to less than 2 percent, such reduction to be in the discretion of the Board, provided that no bank shall act so as to cause the aggregate outstanding advances, within the meaning of regulations of the Board defining said term, to exceed 12 times the amounts paid in by members for outstanding capital stock held by such members, defined term ''aggregate unpaid loan principal'' and authorized the board to require members to submit reports and information for purposes of this subsection.

Subsec. (*l*). Pub. L. 87–210, § 2, repealed subsec. (*l*) which required members to acquire, hold and maintain their stock holding in an amount equal to at least 2 per centum of the aggregate of the unpaid principal of such member's home mortgage loans, home-purchase contracts, and similar obligations, but not less than $500, and provided for the retirement of Government-owned stock.

1955—Subsec. (i). Act Aug. 11, 1955, provided that a Federal savings and loan association may not withdraw voluntarily, inserted proviso clause in item (ii), and inserted provisions authorizing removal of a member institution which has a management or home-financing policy of a character inconsistent with sound and economical home financing or with the purposes of this chapter.

1950—Subsec. (*l*). Act June 27, 1950, added subsec. (*l*).

1935—Subsec. (k). Act May 28, 1935, omitted exception clause relating to stock held by the United States.

1934—Subsecs. (c), (e). Act June 27, 1934, substituted ''$500'' for ''$1,500''.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 7 of Pub. L. 87–210 provided that: ''This Act [amending this section and section 1727 of this title and enacting provisions set out as a note under section 1727 of this title] shall become effective on January 1 next following the date of its enactment [Sept. 8, 1961].''

§ 1426a. Exclusion from certain requirements

(a) In general

The Federal Home Loan Banks shall be exempt from compliance with—

(1) sections 78m(e), 78n(a), and 78n(c) of title 15, and related Commission regulations;

(2) section 78*o* of title 15, and related Commission regulations, with respect to trans-

actions in the capital stock of a Federal Home Loan Bank;

(3) section 78q–1 of title 15, and related Commission regulations, with respect to the transfer of the securities of a Federal Home Loan Bank; and

(4) the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.].

(b) Member exemption

The members of the Federal Home Loan Bank System shall be exempt from compliance with sections 78m(d), 78m(f), 78m(g), 78n(d), and 78p of title 15, and related Commission regulations, with respect to ownership of or transactions in the capital stock of the Federal Home Loan Banks by such members.

(c) Exempted and Government securities

(1) Capital stock

The capital stock issued by each of the Federal Home Loan Banks under section 1426 of this title are—

(A) exempted securities, within the meaning of section 77c(a)(2) of title 15; and

(B) exempted securities, within the meaning of section 78c(a)(12)(A) of title 15, except to the extent provided in section 78*oo* of title 15.

(2) Other obligations

The debentures, bonds, and other obligations issued under section 1431 of this title are—

(A) exempted securities, within the meaning of section 77c(a)(2) of title 15;

(B) government securities, within the meaning of section 78c(a)(42) of title 15; and

(C) government securities, within the meaning of section 80a–2(a)(16) of title 15.

(3) Brokers and dealers

A person (other than a Federal Home Loan Bank effecting transactions for members of the Federal Home Loan Bank System) that effects transactions in the capital stock or other obligations of a Federal Home Loan Bank, for the account of others or for that person's own account, as applicable, is a broker or dealer, as those terms are defined in paragraphs (4) and (5), respectively, of section 78c(a) of title 15, but is excluded from the definition of—

(A) the term ''government securities broker'' under section 78c(a)(43) of title 15; and

(B) the term ''government securities dealer'' under section 78c(a)(44) of title 15.

(d) Exemption from reporting requirements

The Federal Home Loan Banks shall be exempt from periodic reporting requirements under the securities laws pertaining to the disclosure of—

(1) related party transactions that occur in the ordinary course of the business of the Banks with members; and

(2) the unregistered sales of equity securities.

(e) Tender offers

Commission rules relating to tender offers shall not apply in connection with transactions in the capital stock of the Federal Home Loan Banks.

(f) Regulations

(1) In general

The Commission shall promulgate such rules and regulations as may be necessary or appropriate in the public interest or in furtherance of this section and the exemptions provided in this section.

(2) Considerations

In issuing regulations under this section, the Commission shall consider the distinctive characteristics of the Federal Home Loan Banks when evaluating—

(A) the accounting treatment with respect to the payment to the Resolution Funding Corporation;

(B) the role of the combined financial statements of the Federal Home Loan Banks;

(C) the accounting classification of redeemable capital stock; and

(D) the accounting treatment related to the joint and several nature of the obligations of the Banks.

(g) Definitions

As used in this section—

(1) the terms ''Bank'', ''Federal Home Loan Bank'', ''member'', and ''Federal Home Loan Bank System'' have the same meanings as in section 1422 of this title;

(2) the term ''Commission'' means the Securities and Exchange Commission; and

(3) the term ''securities laws'' has the same meaning as in section 78c(a)(47) of title 15.

(Pub. L. 110–289, div. A, title II, §1208, July 30, 2008, 122 Stat. 2788.)

REFERENCES IN TEXT

The Trust Indenture Act of 1939, referred to in subsec. (a)(4), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77aaa of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Housing and Economic Recovery Act of 2008, and also as part of the Federal Housing Finance Regulatory Reform Act of 2008, and not as part of the Federal Home Loan Bank Act which comprises this chapter.

§1427. Directors

(a) Number; election; qualifications; conflicts of interest

(1) In general

Subject to paragraphs (2) through (4), the management of each Federal Home Loan Bank shall be vested in a board of 13 directors, or such other number as the Director determines appropriate.

(2) Board makeup

The board of directors of each Bank shall be comprised of—

(A) member directors, who shall comprise at least the majority of the members of the board of directors; and

(B) independent directors, who shall comprise not fewer than ⅖ of the members of the board of directors.

(3) Selection criteria

(A) In general

Each member of the board of directors shall be—

(i) elected by plurality vote of the members, in accordance with procedures established under this section; and

(ii) a citizen of the United States.

(B) Independent director criteria

(i) In general

Each independent director that is not a public interest director under clause (ii) shall have demonstrated knowledge of, or experience in, financial management, auditing and accounting, risk management practices, derivatives, project development, or organizational management, or such other knowledge or expertise as the Director may provide by regulation.

(ii) Public interest

Not fewer than 2 of the independent directors shall have more than 4 years of experience in representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections.

(iii) Conflicts of interest

No independent director may, during the term of service on the board of directors, serve as an officer of any Federal Home Loan Bank or as a director, officer, or employee of any member of a Bank, or of any person that receives advances from a Bank.

(4) Definitions

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

(A) Independent director

The terms ''independent director'' and ''independent directorship'' mean a member of the board of directors of a Federal Home Loan Bank who is a bona fide resident of the district in which the Federal Home Loan Bank is located, or the directorship held by such a person, respectively.

(B) Member director

The terms ''member director'' and ''member directorship'' mean a member of the board of directors of a Federal Home Loan Bank who is an officer or director of a member institution that is located in the district in which the Federal Home Loan Bank is located, or the directorship held by such a person, respectively.

(b) Directorships

(1) Member directorships

Each member directorship shall be designated by the Director as representing the members located in a particular State, and shall be filled by a person who is an officer or director of a member located in that State, each of which members shall be entitled to nominate an eligible person for such directorship, and such office shall be filled from such nominees by a plurality of the votes which such members may cast in an election held for the purpose of filling such office, in which election each such member may cast for such office a number of votes equal to the number of shares of stock in such bank required by this chapter to be held by such member at the end of the calendar year next preceding the election, as determined pursuant to regulation of the Director, but not in excess of the average number of shares of stock in such bank required by this chapter to be held at the end of such calendar year by the respective members of such bank located in such State, as so determined. No person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of Federal Home Loan Bank director. As used in this subsection and in subsection (c) of this section, the term ''member'' means a member of a Federal home loan bank which was a member of such bank at the end of such calendar year.

(2) Independent directorships

(A) Elections

Each independent director—

(i) shall be elected by the members entitled to vote, from among eligible persons nominated, after consultation with the Advisory Council of the Bank, by the board of directors of the Bank; and

(ii) shall be elected by a plurality of the votes of the members of the Bank at large, with each member having the number of votes for each such directorship as it has under paragraph (1) in an election to fill member directorships.

(B) Criteria

Nominees shall meet all applicable requirements prescribed in this section.

(C) Nomination and election procedures

Procedures for nomination and election of independent directors shall be prescribed by the bylaws of each Federal Home Loan Bank, in a manner consistent with the rules and regulations of the Agency.

(c) Apportionment among States in bank district; designation of State location

The number of member directorships designated as representing the members located in each separate State in a bank district shall be determined by the Director in the approximate ratio of the percentage of the required stock, as determined pursuant to regulation of the Director, of the members located in that State at the end of the calendar year next preceding the date of the election to the total required stock, as so determined, of all members of such bank at the end of such year, except that in the case of each State such number shall not be less than one and shall not be more than six. Notwithstanding any other provision of this section, (A) except as provided in clause (B) of this sentence, if at any time the number of member directorships so designated as representing the members located in any State would not be at least equal to the total number of elective directorships which, on December 31, 1960, were filled by officers or directors of members whose principal places of

business were located in such State, the Director shall add to the board of directors of the bank of the district in which such State is located such number of member directorships, and shall so designate the directorship or directorships thus added, that the number of member directorships designated as representing the members located in such State will equal said total number, and (B) clause (A) of this sentence shall not apply to the directorships of any Federal Home Loan Bank resulting from the merger of any 2 or more such Banks. Any member directorship so added shall exist only until the expiration of its first term. The Director shall, with respect to each member of a Federal home loan bank, designate the State in the district of such bank in which such member shall, for the purposes of this subsection and subsection (b) of this section, be deemed to be located, and may from time to time change any such designation, but if the principal place of business of any such member is located in a State of such district it shall be the duty of the Director to designate such State as the State in which such member shall, for said purposes, be deemed to be located. As used in the second sentence of this subsection, the term ''total number of elective directorships'' means the total number of elective directorships on the board of directors of the bank of the district in which such State was located on December 31, 1960, and the term ''members'' where used for the second time in such sentence means members of such bank.

(d) Terms; rules and regulations governing nominations and elections

The term of each director shall be 4 years. The board of directors of each Federal home loan bank and the Director shall adjust the terms of members first elected after July 30, 2008, to ensure that the terms of the members of the board of directors are staggered with approximately ¼ of the terms expiring each year. If any person, before or after, or partly before and partly after, September 8, 1961, has been elected to each of three consecutive full terms as a director of a Federal home loan bank and has served for all or part of each of said terms, such person shall not be eligible for election to a directorship of such bank for a term which begins earlier than two years after the expiration of the last expiring of said three terms. The Director is authorized to prescribe such rules and regulations as it may deem necessary or appropriate for the nomination and election of directors of Federal home loan banks, including, without limitation on the generality of the foregoing, rules and regulations with respect to the breaking of ties and with respect to the inclusion of more than one directorship on a single ballot and the methods of voting and of determining the results of voting in such cases.

(e) Continuation of existing terms; directorship for the Commonwealth of Puerto Rico

Each term, outstanding on the effective date of the amendment to this section abolishing the division of elective directors into classes, of an elective or appointive directorship then existing shall continue until its original date of expiration, and any elective or appointive directorship in existence on said date shall continue to exist to the same extent as if it had been established by or under this section on or after said date. The Director in its[1] discretion may shorten the next succeeding term of any such elective directorship to one year, and may fill such term by appointment. The term ''States'' or ''State'' as used in this section shall mean the States of the Union, the District of Columbia, and the Commonwealth of Puerto Rico. The Director, by regulation or otherwise, may add an additional elective directorship to the board of directors of the bank of any district in which the Commonwealth of Puerto Rico is included at the time such directorship is added and which does not then include five or more States, may fix the commencement and the duration, which shall not exceed two years, of the initial term of any directorship so added, and may fill any such initial term by appointment: *Provided*, That (1) any directorship added pursuant to the foregoing provisions of this sentence shall be designated by the Director, pursuant to subsection (b) of this section, as representing the members located in the Commonwealth of Puerto Rico, (2) such designation of such directorship shall not be changed, and (3) such directorship shall automatically cease to exist if and when the Commonwealth of Puerto Rico ceases to be included in such district.

(f) Vacancies

(1) In general

A Bank director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office.

(2) Election process

In the event of a vacancy in any Bank directorship, such vacancy shall be filled by an affirmative vote of a majority of the remaining Bank directors, regardless of whether such remaining Bank directors constitute a quorum of the Bank's board of directors. A Bank director so elected shall satisfy the requirements for eligibility which were applicable to his predecessor. If any Bank director shall cease to have any qualification set forth in this section, the office held by such person shall immediately become vacant, and such person shall not continue to act as a Bank director.

(g) Chairperson and Vice Chairperson

(1) Election

The Chairperson and Vice Chairperson of the board of directors of each Federal home loan bank shall be elected by a majority of all the directors of such bank from among the directors of the bank.

(2) Terms

The term of office of the Chairperson and the Vice Chairperson of the board of directors of a Federal home loan bank shall be 2 years.

(3) Acting Chairperson

In the event of a vacancy in the position of Chairperson of the board of directors or during the absence or disability of the Chairperson, the Vice Chairperson shall act as Chairperson.

[1] So in original.

(4) Procedures

The board of directors of each Federal home loan bank shall establish procedures, in the bylaws of such board, for designating an acting chairperson for any period during which the Chairperson and the Vice Chairperson are not available to carry out the requirements of that position for any reason and removing any person from any such position for good cause.

(h) Appointment where members hold less than $1,000,000 of capital stock

If at any time when nominations are required members shall hold less than $1,000,000 of the capital stock of the Federal home loan bank, the Director shall appoint a director or directors to fill the place or places for which such nominations are required, and the Director may, prior to the filing of the certificate mentioned in section 1432 of this title, appoint directors who shall be respectively designated by it as appointive directors and as member directors, in accordance with the provisions of this section.

(i) Directors' compensation

(1) In general

Each bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, in accordance with the resolutions adopted by such directors, subject to the approval of the board.

(2) Annual report

The Director shall include, in the annual report submitted to the Congress pursuant to section 4521 of this title, information regarding the compensation and expenses paid by the Federal Home Loan Banks to the directors on the boards of directors of the Banks.

(j) Duties of directors

Such board of directors shall administer the affairs of the bank fairly and impartially and without discrimination in favor of or against any member, and shall, subject to the provisions hereof, extend to each institution authorized to secure advances such advances as may be made safely and reasonably with due regard for the claims and demands of other institutions, and with due regard to the maintenance of adequate credit standing for the Federal Home Loan Bank and its obligations.

(k) Indemnification of directors, officers, and employees

The board of directors of each Bank shall determine the terms and conditions under which such Bank may indemnify its directors, officers, employees or agents.

(*l*)[2] Withholding of compensation

Notwithstanding any other provision of this section, a Federal Home Loan Bank shall not transfer, disburse, or pay compensation to any executive officer, or enter into an agreement with such executive officer, without the approval of the Director, for matters being reviewed under section 4518 of this title.

(*l*)[2] Transition rule

Any member of the board of directors of a Bank elected or appointed in accordance with this section prior to July 30, 2008, may continue to serve as a member of that board of directors for the remainder of the existing term of service.

(July 22, 1932, ch. 522, §7, 47 Stat. 730; May 28, 1935, ch. 150, §3, 49 Stat. 294; Aug. 11, 1955, ch. 783, title I, §109(a)(2), 69 Stat. 640; Pub. L. 86–349, §§1, 2, Sept. 22, 1959, 73 Stat. 625; Pub. L. 87–211, §1, Sept. 8, 1961, 75 Stat. 486; Pub. L. 87–676, Sept. 19, 1962, 76 Stat. 559; Pub. L. 93–541, §3, Dec. 26, 1974, 88 Stat. 1739; Pub. L. 101–73, title VII, §§707, 710(b)(4), Aug. 9, 1989, 103 Stat. 417, 418; Pub. L. 106–102, title VI, §606(a), (b), Nov. 12, 1999, 113 Stat. 1452, 1453; Pub. L. 110–289, div. A, title I, §1113(b)(3), title II, §§1202, 1204(8)–(10), July 30, 2008, 122 Stat. 2678, 2783, 2786.)

REFERENCES IN TEXT

The effective date of the amendment to this section, referred to in subsec. (e), probably means the effective date of Pub. L. 87–211. See Effective Date of 1961 Amendment note below.

CODIFICATION

Section 1202(2) of Pub. L. 110–289, which directed amendment of this section by substituting ''member'' for ''elective'' wherever appearing other than in subsecs. (d), (e), and (f), was executed by making the substitution in subsec. (h) but not in subsecs. (b) and (c) to reflect the probable intent of Congress and subsequent amendment by Pub. L. 110–289, §1202(3)(A), (4)(A). See 2008 Amendment notes below.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1202(1), added subsec. (a) and struck out former subsec. (a) which related to number, appointment and election, qualifications, and conflicts of interest of Federal Home Loan Bank directors.

Subsec. (b). Pub. L. 110–289, §1202(3), designated existing provisions as par. (1), inserted subsec. (b) and par. (1) headings, substituted ''Each member directorship'' for ''Each elective directorship'', and added par. (2).

Pub. L. 110–289, §1202(2), which directed substitution of ''member'' for ''elective'' wherever appearing, was not executed in subsec. (b) because of subsequent amendment by Pub. L. 110–289, §1202(3)(A). See Amendment and Codification notes above.

Subsec. (b)(1). Pub. L. 110–289, §1204(8), substituted ''the Director'' for ''the Board'' in two places.

Subsec. (c). Pub. L. 110–289, §1204(8), (9), substituted ''the Director'' for ''the Board'' wherever appearing and ''The Director'' for ''The Board''.

Pub. L. 110–289, §1202(4)(B), in second sentence, inserted ''(A) except as provided in clause (B) of this sentence,'' before ''if at any time'' and '', and (B) clause (A) of this sentence shall not apply to the directorships of any Federal Home Loan Bank resulting from the merger of any 2 or more such Banks'' before period at end.

Pub. L. 110–289, §1202(4)(A), substituted ''member'' for ''elective'' wherever appearing before ''directorship'' or ''directorships'', except second place appearing in second sentence and each place appearing in fifth sentence.

Pub. L. 110–289, §1202(2), which directed substitution of ''member'' for ''elective'' wherever appearing, was not executed in subsec. (c) because of subsequent amendment by Pub. L. 110–289, §1202(4)(A). See Amendment and Codification notes above.

Subsec. (d). Pub. L. 110–289, §1204(9), (10), substituted ''the Director'' for ''the Finance Board'' and ''The Director'' for ''The Board'.

Pub. L. 110–289, §1202(5), in first sentence, struck out '', whether elected or appointed,'' after ''each director'' and substituted ''4 years'' for ''3 years'', in second sentence, struck out ''or appointed'' after ''first elected''

[2] So in original. Two subsecs. (*l*) have been enacted.

and substituted ''July 30, 2008'' for ''November 12, 1999'' and ''¼'' for ''⅓'', and in third sentence, substituted ''a'' for ''an elective'' after ''full terms as'' and after ''for election to'' and struck out ''in any elective directorship or elective directorships'' after ''Federal home loan bank''.

Subsec. (e). Pub. L. 110–289, §1204(8), (9), substituted ''The Director'' for ''The Board'' in two places and ''the Director'' for ''the Board''.

Subsec. (f)(1). Pub. L. 110–289, §1202(6)(B), struck out ''appointed or'' before ''elected'' in two places.

Subsec. (f)(2), (3). Pub. L. 110–289, §1202(6)(A), (C), redesignated par. (3) as (2), substituted ''Election process'' for ''Elected bank directors'' in heading, struck out ''elective'' after ''in any'' and after ''If any'' in text, and struck out former par. (2). Prior to amendment, text of par. (2) read as follows: ''In the event of a vacancy in any appointive Bank directorship, such vacancy shall be filled through appointment by the Board for the unexpired term. If any appointive Bank director shall cease to have the qualifications set forth in subsection (a) of this section, the office held by such person shall immediately become vacant, but such person may continue to act as a Bank director until his or her successor assumes the vacated office or the term of such office expires, whichever occurs first.''

Subsec. (h). Pub. L. 110–290, §1204(8), substituted ''the Director'' for ''the Board'' in two places.

Pub. L. 110–289, §1202(2), substituted ''member'' for ''elective''.

Subsec. (i). Pub. L. 110–289, §1202(7), substituted ''Each'' for ''Subject to paragraph (2), each'' in par. (1), added par. (2), and struck out former par. (2) which related to limitations on compensation of members of the board of directors of a Federal home loan bank.

Subsec. (*l*). Pub. L. 110–289, §1202(8), added subsec. (*l*) relating to transition rule.

Pub. L. 110–289, §1113(b), added subsec. (*l*) relating to withholding of compensation.

1999—Subsec. (a). Pub. L. 106–102, §606(a)(1), substituted '', and each of whom shall be either a bona fide resident of the district in which such bank is located or an officer or director of a member of such bank located in that district'' for ''and bona fide residents of the district in which such bank is located''.

Subsec. (d). Pub. L. 106–102, §606(a)(2), substituted ''The term of each director, whether elected or appointed, shall be 3 years. The board of directors of each Federal home loan bank and the Finance Board shall adjust the terms of members first elected or appointed after November 12, 1999, to ensure that the terms of the members of the board of directors are staggered with approximately ⅓ of the terms expiring each year.'' for ''The term of each elective directorship shall be two years and the term of each appointive directorship shall be four years.''

Subsec. (g). Pub. L. 106–102, §606(a)(3), added subsec. (g) and struck out former subsec. (g) which read as follows: ''The Board shall designate one of the directors of each bank to be chairman, and one to be vice chairman, of the board of directors of such bank.''

Subsec. (i). Pub. L. 106–102, §606(b), inserted heading, designated existing provisions as par. (1), inserted heading, substituted ''Subject to paragraph (2), each bank may pay its directors'' for ''Each bank may pay its directors'', and added par. (2).

1989—Subsec. (a). Pub. L. 101–73, §707(1), inserted provisions relating to requirements for at least 2 of the directors and provisions respecting conflicts of interests, and substituted provisions relating to appointment under section 1422a of this title for provisions relating to appointment under section 1437(b) of this title.

Subsec. (b). Pub. L. 101–73, §707(2), inserted after first sentence ''No person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of Federal Home Loan Bank director.''

Subsec. (f). Pub. L. 101–73, §707(3), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''In the event of a vacancy in any appointive or elective directorship, such vacancy shall be filled through appointment by the Board for the unexpired term: *Provided*, That if any director shall cease to have the qualifications set forth in subsection (a) of this section, or if any elective director shall cease to have any qualification set forth in this section, the office held by such director shall immediately become vacant, but such director may continue to act as such director until his successor assumes the vacated office or the term of such office expires, whichever shall first occur.''

Subsec. (j). Pub. L. 101–73, §710(b)(4), struck out ''or nonmember borrower'' after ''against any member''.

Subsec. (k). Pub. L. 101–73, §707(4), added subsec. (k).

1974—Subsec. (a). Pub. L. 93–541 increased number of directors from twelve to fourteen, increased number of appointive directors from four to six, and in proviso relating to districts including five or more States, substituted provisions authorizing increase of appointive directors to a number not exceeding three-fourths the number of elective directors for provisions authorizing increase of appointive directors to a number not exceeding one-half the number of elective directors.

1962—Subsec. (e). Pub. L. 87–676 included Commonwealth of Puerto Rico within term ''States'' or ''State'', and authorized Board to add an additional elective directorship to board of bank of any district in which Commonwealth of Puerto Rico is included at time such directorship is added and which doesn't include five or more States, and to fill such initial term by appointment, provided, that any such added directorship shall be designated as representing members in Commonwealth of Puerto Rico, that such designation shall not be changed, and that such directorship shall cease to exist if and when Commonwealth of Puerto Rico ceases to be included in such district.

1961—Subsec. (a). Pub. L. 87–211 authorized Board to increase appointive directors in any district which includes five or more States to a number not exceeding one-half number of elective directors, directed Board to exercise its authority to increase the elective directors to a number at least equal to number of States in a district whenever number of elective directors in district is not at least equal to number of States in district, and struck out provisions which related to apportionment of additional elective directors, required at least one but not more than three elective directors from any of the States in any district in which number of elective directors is increased, limited number of elective directors in any one district to not more than eleven, and defined term ''States''. See subsec. (c) of this section.

Subsec. (b). Pub. L. 87–211 amended subsection generally, substituting provisions relating to designation of elective directorships, nominations for such office, manner of election, and voting power of each member, for provisions which required four directors to be appointed by Board, limited their term of office to four years, and which authorized Board to increase total number of appointive directors to not more than one-half total number of elective directors in cases where number of elective directors has been increased. See subsec. (a) of this section.

Subsec. (c). Pub. L. 87–211 required number of elective directorships designated as representing members located in each separate State in a bank district to be determined by Board in approximate ratio of percentage of required stock of members located in that State at end of calendar year next preceding date of election to total required stock of all members of such bank at end of such year, except that in case of each State such number shall not be less than one and not more than six, directed Board, in cases where number of elective directorships in any State would not be at least equal to total number of elective directorships in such State on Dec. 31, 1960, to add such number of elective directorships so that their number will equal such total number, provided that an elective directorship so added shall exist only until expiration of its first term, authorized designation of State location of each member,

defined terms ''total number of elective directorships'' and ''members'', and struck out provisions which related to election of two directors from each of classes A, B, and C and limited their term of office to two years. See subsec. (d) of this section.

Subsec. (d). Pub. L. 87–211 established term of each elective directorship at two years and of each appointive directorship at four years, restricted eligibility for election of persons elected to each of three consecutive full terms and who have served for all or part of each of said terms, empowered Board to prescribe rules and regulations for nomination and election of directors, and struck out provisions which required two directors to be elected by members of bank without regard to classes and limited their term of office to two years.

Subsec. (e). Pub. L. 87–211 amended subsection generally, substituting provisions permitting continuation of terms of elective and appointive directorships, empowering Board to shorten next succeeding term of any elective directorship to one year and to fill such term by appointment, defining terms ''States'' and ''State'', for provisions which required the Board to divide members of each bank into either group A, B, or C, permitted each member to nominate persons for election as directors of class corresponding to group to which member belongs, and limited each member to one vote for each director in its class.

Subsec. (f). Pub. L. 87–211 substituted ''In the event of a vacancy in any appointive or elective directorship, such vacancy shall be filled through appointment by the Board for the unexpired term'' for ''Any director appointed or elected as provided in this section to fill a vacancy shall hold office only until the expiration of the term of his predecessor'', and inserted proviso stating that if any director ceases to have the qualifications set forth in this section his office shall immediately become vacant but permits him to act as such director until his successor assumes the vacated office or the term of his office expires, whichever first occurs.

Subsec. (g). Pub. L. 87–211 reenacted subsec. (g) without change.

Subsec. (h). Pub. L. 87–211 authorized Board, prior to filing of the certificate mentioned in section 1432 of this title, to appoint directors and required Board to designate appointees as either appointive or elective directors, and struck out provisions which permitted directors appointed under this subsection to serve until expiration of the calendar year during which they took office.

1959—Subsec. (a). Pub. L. 86–349, §1, authorized increase of up to 13 in number of elective directors of bank having district which includes five or more States.

Subsec. (b). Pub. L. 86–349, §2, authorized increase in number of appointive directors of up to one-half number of elective directors in district in which number of elective directors were increased pursuant to subsec. (a), and provided for expiration of term of initial incumbent of any office so established.

1955—Subsec. (a). Act Aug. 11, 1955, authorized an increase in number of elective directors of any Federal Home Loan Bank having a district which includes five or more States.

1935—Act May 28, 1935, amended subsecs. (a) to (c) generally, added subsec. (d), and redesignated former subsecs. (d) to (i) as (e) to (j).

EFFECTIVE DATE OF 1961 AMENDMENT

Section 2 of Pub. L. 87–211 provided that: ''The amendment made by this Act [amending this section] shall take effect on the second day of the first calendar year which begins after the date of enactment of this Act [Sept. 8, 1961].''

EFFECTIVE DATE OF 1935 AMENDMENT

Section 3 of act May 28, 1935, provided that the amendment made by that section is effective Jan. 1, 1936.

§ 1428. Examination of State laws, regulations, and procedures; studies of values, etc.

The Director shall cause to be made from time to time examinations of the laws of the various States of the United States and the regulations and procedure thereunder governing conditions under which institutions of the kinds which may become members or nonmember borrowers under this chapter are permitted to be formed or to do business, or relating to the conveying or recording of land titles, or to homestead and other rights, or to the enforcement of the rights of holders of mortgages on lands securing loans, or otherwise. If any such examination shall indicate, in the opinion of the Director, that under the laws of any such State or the regulations or procedure thereunder there would be inadequate protection to a Federal Home Loan Bank in making or collecting advances under this chapter, the Director may withhold or limit the operation of any Federal Home Loan Bank in such State until satisfactory conditions of law, regulation, or procedure shall be established. In any State where State examination of members or nonmember borrowers is deemed inadequate for the purposes of the Federal Home Loan Banks, the Director shall establish such examination, all or part of the cost of which may be considered as part of the cost of making advances in such State. The banks and/or the Director may make studies of trends of home and other property values, methods of appraisals, and other subjects such as they may deem useful for the general guidance of their policies and operations and those of institutions authorized to secure advances.

(July 22, 1932, ch. 522, §8, 47 Stat. 731; Pub. L. 101–73, title VII, §701(b)(1), (3)(A), Aug. 9, 1989, 103 Stat. 412; Pub. L. 110–289, div. A, title II, §1204(8), (9), July 30, 2008, 122 Stat. 2786.)

AMENDMENTS

2008—Pub. L. 110–289 substituted ''The Director'' for ''The Board'' and ''the Director'' for ''the Board'' wherever appearing.

1989—Pub. L. 101–73 substituted ''Board'' for ''board'' wherever appearing.

§ 1428a. Repealed. Pub. L. 101–73, title VII, § 718, Aug. 9, 1989, 103 Stat. 422

Section, act July 22, 1932, ch. 522, §8a, as added May 28, 1935, ch. 150, §4, 49 Stat. 294; amended 1947 Reorg. Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Dec. 26, 1974, Pub. L. 93–541, §6, 88 Stat. 1739; Oct. 15, 1982, Pub. L. 97–320, title III, §354, 96 Stat. 1508, established Federal Savings and Loan Advisory Council.

§ 1429. Eligibility to secure advances

Any member of a Federal Home Loan Bank shall be entitled to apply in writing for advances. Such application shall be in such form as shall be required by the Federal Home Loan Bank. Such Federal Home Loan Bank may at its discretion deny any such application, or may grant it on such conditions as the Federal Home Loan Bank may prescribe.

(July 22, 1932, ch. 522, §9, 47 Stat. 731; Pub. L. 101–73, title VII, §§701(b)(1), (3)(A), 710(a), Aug. 9, 1989, 103 Stat. 412, 418; Pub. L. 106–102, title VI, §606(f)(1), Nov. 12, 1999, 113 Stat. 1455.)

AMENDMENTS

1999—Pub. L. 106–102 struck out ''with the approval of the Board'' after ''Federal Home Loan Bank'' in second sentence and struck out '', subject to the approval of the Board,'' after ''deny any such application, or'' in third sentence.

1989—Pub. L. 101–73, § 710(a), struck out ''or nonmember borrower'' after ''Any member''.

Pub. L. 101–73, § 701(b)(1), (3)(A), substituted ''Board'' for ''board'' wherever appearing.

§ 1430. Advances to members

(a) In general

(1) All advances

Each Federal Home Loan Bank is authorized to make secured advances to its members upon collateral sufficient, in the judgment of the Bank, to fully secure advances obtained from the Bank under this section or section 1431(g) of this title.

(2) Purposes of advances

A long-term advance may only be made for the purposes of—

(A) providing funds to any member for residential housing finance; and

(B) providing funds to any community financial institution for small businesses, small farms, small agri-businesses, and community development activities.

(3) Collateral

A Bank, at the time of origination or renewal of a loan or advance, shall obtain and maintain a security interest in collateral eligible pursuant to one or more of the following categories:

(A) Fully disbursed, whole first mortgages on improved residential property (not more than 90 days delinquent), or securities representing a whole interest in such mortgages.

(B) Securities issued, insured, or guaranteed by the United States Government or any agency thereof (including without limitation, mortgage-backed securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Corporation, and the Government National Mortgage Association).

(C) Cash or deposits of a Federal Home Loan Bank.

(D) Other real estate related collateral acceptable to the Bank if such collateral has a readily ascertainable value and the Bank can perfect its interest in the collateral.

(E) Secured loans for small business, agriculture, or community development activities or securities representing a whole interest in such secured loans, in the case of any community financial institution.

(4) Additional bank authority

Subparagraphs (A) through (E) of paragraph (3) shall not affect the ability of any Federal Home Loan Bank to take such steps as it deems necessary to protect its security position with respect to outstanding advances, including requiring deposits of additional collateral security, whether or not such additional security would be eligible to originate an advance. If an advance existing on August 9, 1989, matures and the member does not have sufficient eligible collateral to fully secure a renewal of such advance, a Bank may renew such advance secured by such collateral as the Bank determines is appropriate. A member that has an advance secured by such insufficient eligible collateral must reduce its level of outstanding advances promptly and prudently in accordance with a schedule determined by the Federal home loan bank.

(5) Review of certain collateral standards

The Director may review the collateral standards applicable to each Federal home loan bank for the classes of collateral described in subparagraphs (D) and (E) of paragraph (3), and may, if necessary for safety and soundness purposes, require an increase in the collateral standards for any or all of those classes of collateral.

(6) Definitions

For purposes of this subsection, the terms ''small business'', ''agriculture'', ''small farm'', ''small agri-business'', and ''community development activities'' shall have the meanings given those terms by regulation of the Director.

(b) Appraisals and other investigations; acceptance of home mortgages as collateral security only by approval of Director

For the purposes of this section, each Home Loan Bank shall have power to make, or to cause or require to be made, such appraisals and other investigations as it may deem necessary. No home mortgage otherwise eligible to be accepted as collateral security for an advance by a Home Loan Bank shall be accepted if any director, officer, employee, attorney or agent of the Home Loan Bank or of the borrowing institution is personally liable thereon, unless the Director has specifically approved such acceptance.

(c) Notes of borrowing members; interest rate; lien on stock

Such advances shall be made upon the note or obligation of the member secured as provided in this section, bearing such rate of interest as the Federal home loan bank may approve or determine, and the Federal Home Loan Bank shall have a lien upon and shall hold the stock of such member as further collateral security for all indebtedness of the member to the Federal Home Loan Bank.

(d) Obligation to repay; additional security; sale of advances to other banks

The institution applying for an advance shall enter into a primary and unconditional obligation to pay off all advances, together with interest and any unpaid costs and expenses in connection therewith according to the terms under which they were made, in such form as shall meet the requirements of the bank. The bank shall reserve the right to require at any time, when deemed necessary for its protection, deposits of additional collateral security or substitutions of security by the borrowing institution, and each borrowing institution shall assign additional or substituted security when and as so required. Any Federal Home Loan Bank shall have power to sell to any other Federal Home

Loan Bank, with or without recourse, any advance made under the provisions of this chapter, or to allow to such bank a participation therein, and any other Federal Home Loan Bank shall have power to purchase such advance or to accept a participation therein, together with an appropriate assignment of security therefor.

(e) Priority of certain secured interests

Notwithstanding any other provision of law, any security interest granted to a Federal Home Loan Bank by any member of any Federal Home Loan Bank or any affiliate of any such member shall be entitled to priority over the claims and rights of any party (including any receiver, conservator, trustee, or similar party having rights of a lien creditor) other than claims and rights that—

(1) would be entitled to priority under otherwise applicable law; and

(2) are held by actual bona fide purchasers for value or by actual secured parties that are secured by actual perfected security interests.

(g)[1] Community support requirements

(1) In general

Before the end of the 2-year period beginning on August 9, 1989, the Director shall adopt regulations establishing standards of community investment or service for members of Banks to maintain continued access to long-term advances.

(2) Factors to be included

The regulations promulgated pursuant to paragraph (1) shall take into account factors such as a member's performance under the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.] and the member's record of lending to first-time homebuyers.

(h) Special liquidity advances

(1) In general

Subject to paragraph (2), the Federal Home Loan Banks may, upon the request of the Director of the Office of Thrift Supervision, make short-term liquidity advances to a savings association that—

(A) is solvent but presents a supervisory concern because of such association's poor financial condition; and

(B) has reasonable and demonstrable prospects of returning to a satisfactory financial condition.

(2) Interest on and security for special liquidity advances

Any loan by a Federal Home Loan Bank pursuant to paragraph (1) shall be subject to all applicable collateral requirements, including the requirements of subsection (a) of this section, and shall be at an interest rate no less favorable than those made available for similar short-term liquidity advances to savings associations that do not present such supervisory concern.

(i) Community investment program

(1) In general

Each Bank shall establish a program to provide funding for members to undertake community-oriented mortgage lending. Each Bank shall designate a community investment officer to implement community lending and affordable housing advance programs of the Banks under this subsection and subsection (j) of this section and provide technical assistance and outreach to promote such programs. Advances under this program shall be priced at the cost of consolidated Federal Home Loan Bank obligations of comparable maturities, taking into account reasonable administrative costs.

(2) Community-oriented mortgage lending

For purposes of this subsection, the term ''community-oriented mortgage lending'' means providing loans—

(A) to finance home purchases by families whose income does not exceed 115 percent of the median income for the area,

(B) to finance purchase or rehabilitation of housing for occupancy by families whose income does not exceed 115 percent of median income for the area,

(C) to finance commercial and economic development activities that benefit low- and moderate-income families or activities that are located in low- and moderate-income neighborhoods, and

(D) to finance projects that further a combination of the purposes described in subparagraphs (A) through (C).

(j) Affordable housing program

(1) In general

Pursuant to regulations promulgated by the Director, each Bank shall establish an Affordable Housing Program to subsidize the interest rate on advances to members engaged in lending for long term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates.

(2) Standards

The Board's[2] regulations shall permit Bank members to use subsidized advances received from the Banks to—

(A) finance homeownership by families with incomes at or below 80 percent of the median income for the area;

(B) finance the purchase, construction, or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term; or

(C) during the 2-year period beginning on July 30, 2008, use such percentage as the Director may by regulation establish of any subsidized advances set aside to finance homeownership under subparagraph (A) to refinance loans that are secured by a first mortgage on a primary residence of any family having an income at or below 80 percent of the median income for the area.

(3) Priorities for making advances

In using advances authorized under paragraph (1), each Bank member shall give priority to qualified projects such as the following:

[1] So in original. No subsec. (f) has been enacted.

[2] So in original. Probably should be ''The Director's''.

(A) purchase of homes by families whose income is 80 percent or less of the median income for the area,

(B) purchase or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States; and

(C) purchase or rehabilitation of housing sponsored by any nonprofit organization, any State or political subdivision of any State, any local housing authority or State housing finance agency.

(4) Report

Each member receiving advances under this program shall report annually to the Bank making such advances concerning the member's use of advances received under this program.

(5) Contribution to program

Each Bank shall annually contribute the percentage of its annual net earnings prescribed in the following subparagraphs to support subsidized advances through the Affordable Housing Program:

(A) In 1990, 1991, 1992, and 1993, 5 percent of the preceding year's net income, or such prorated sums as may be required to assure that the aggregate contribution of all the Banks shall not be less than $50,000,000 for each such year.

(B) In 1994, 6 percent of the preceding year's net income, or such prorated sum as may be required to assure that the aggregate contribution of the Banks shall not be less than $75,000,000 for such year.

(C) In 1995, and subsequent years, 10 percent of the preceding year's net income, or such prorated sums as may be required to assure that the aggregate contribution of the Banks shall not be less than $100,000,000 for each such year.

(6) Grounds for suspending contributions

(A) In general

If a Bank finds that the payments required under this paragraph are contributing to the financial instability of such Bank, it may apply to the Director for a temporary suspension of such payments.

(B) Financial instability

In determining the financial instability of a Bank, the Director shall consider such factors as (i) whether the Bank's earnings are severely depressed, (ii) whether there has been a substantial decline in membership capital, and (iii) whether there has been a substantial reduction in advances outstanding.

(C) Review

The Director shall review the application and any supporting financial data and issue a written decision approving or disapproving such application. The Board's[2] decision shall be accompanied by specific findings and reasons for its action.

(D) Monitoring suspension

If the Director grants a suspension, it shall specify the period of time such suspension shall remain in effect and shall continue to monitor the Bank's financial condition during such suspension.

(E) Limitations on grounds for suspension

The Director shall not suspend payments to the Affordable Housing Program if the Bank's reduction in earnings is a result of (i) a change in the terms for advances to members which is not justified by market conditions, (ii) inordinate operating and administrative expenses, or (iii) mismanagement.

(F) Congressional notification and action

The Director shall notify the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not less than 60 days before such suspension takes effect. Such suspension shall become effective unless a joint resolution is enacted disapproving such suspension.

(7) Failure to use amounts for affordable housing

If any Bank fails to utilize or commit the full amount provided in this subsection in any year, 90 percent of the amount that has not been utilized or committed in that year shall be deposited by the Bank in an Affordable Housing Reserve Fund administered by the Director. The 10 percent of the unutilized and uncommitted amount retained by a Bank should be fully utilized or committed by that Bank during the following year and any remaining portion must be deposited in the Affordable Housing Reserve Fund. Under regulations established by the Director, funds from the Affordable Housing Reserve Fund may be made available to any Bank to meet additional affordable housing needs in such Bank's district pursuant to this section.

(8) Net earnings

The net earnings of any Federal Home Loan Bank shall be determined for purposes of this paragraph—

(A) after reduction for any payment required under section 1441 or 1441b of this title; and

(B) before declaring any dividend under section 1436 of this title.

(9) Regulations

The Director shall promulgate regulations to implement this subsection. Such regulations shall, at a minimum—

(A) specify activities eligible to receive subsidized advances from the Banks under this program;

(B) specify priorities for the use of such advances;

(C) ensure that advances made under this program will be used only to assist projects for which adequate long-term monitoring is available to guarantee that affordability standards and other requirements of this subsection are satisfied;

(D) ensure that a preponderance of assistance provided under this subsection is ultimately received by low- and moderate-income households;

(E) ensure that subsidies provided by Banks to member institutions under this program are passed on to the ultimate borrower;

(F) establish uniform standards for subsidized advances under this program and subsidized lending by member institutions supported by such advances, including maximum subsidy and risk limitations for different categories of loans made under this subsection; and

(G) coordinate activities under this subsection with other Federal or federally-subsidized affordable housing activities to the maximum extent possible.

(10) Other programs

No provision of this subsection or subsection (i) of this section shall preclude any Bank from establishing additional community investment cash advance programs or contributing additional sums to the Affordable Housing Reserve Fund.

(11) Advisory Council

Each Bank shall appoint an Advisory Council of 7 to 15 persons drawn from community and nonprofit organizations actively involved in providing or promoting low- and moderate-income housing in its district. The Advisory Council shall meet with representatives of the board of directors of the Bank quarterly to advise the Bank on low- and moderate-income housing programs and needs in the district and on the utilization of the advances for these purposes. Each Advisory Council established under this paragraph shall submit to the Director at least annually its analysis of the low-income housing activity of the Bank by which it is appointed.

(12) Reports to Congress

(A) The Director shall monitor and report annually to the Congress and the Advisory Council for each Bank the support of low-income housing and community development by the Banks and the utilization of advances for these purposes.

(B) The analyses submitted by the Advisory Councils to the Director under paragraph (11) shall be included as part of the report required by this paragraph.

(C) REPORTS.—The Director shall annually report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the collateral pledged to the Banks, including an analysis of collateral by type and by Bank district.

(D) SUBMISSION TO CONGRESS.—The Director shall submit the reports under subparagraphs (A) and (C) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 180 days after July 30, 2008.

(13) Definitions

For purposes of this subsection—

(A) Low- or moderate-income household

The term ''low- or moderate-income household'' means any household which has an income of 80 percent or less of the area median.

(B) Very low-income household

The term ''very low-income household'' means any household that has an income of 50 percent or less of the area median.

(C) Low- or moderate-income neighborhood

The term ''low- or moderate-income neighborhood'' means any neighborhood in which 51 percent or more of the households are low- or moderate-income households.

(D) Affordable for very-low income households

For purposes of paragraph (2)(B) the term ''affordable for very-low income households'' means that rents charged to tenants for units made available for occupancy by low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the income for the area (as determined by the Secretary of Housing and Urban Development) with adjustment for family size.

(k) Public use database

(1) Data

Each Federal Home Loan Bank shall provide to the Director, in a form determined by the Director, census tract level data relating to mortgages purchased, if any, including—

(A) data consistent with that reported under section 4543 of this title;

(B) data elements required to be reported under the Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.]; and

(C) any other data elements that the Director considers appropriate.

(2) Public use database

(A) In general

The Director shall make available to the public, in a form that is useful to the public (including forms accessible electronically), and to the extent practicable, the data provided to the Director under paragraph (1).

(B) Proprietary information

Not withstanding subparagraph (A), the Director may not provide public access to, or disclose to the public, any information required to be submitted under this subsection that the Director determines is proprietary or that would provide personally identifiable information and that is not otherwise publicly accessible through other forms, unless the Director determines that it is in the public interest to provide such information.

(July 22, 1932, ch. 522, § 10, 47 Stat. 731; Apr. 27, 1934, ch. 168, § 10, 48 Stat. 646; June 27, 1934, ch. 847, § 501, 48 Stat. 1261; May 28, 1935, ch. 150, §§ 5, 6, 49 Stat. 294, 295; Mar. 28, 1941, ch. 31, § 7, 55 Stat. 62; Aug. 1, 1947, ch. 431, 61 Stat. 714; Apr. 20, 1950, ch. 94, title V, § 501, 64 Stat. 80; Sept. 1, 1951, ch. 378, title II, § 208, 65 Stat. 303; Aug. 2, 1954, ch. 649, title V, § 502, 68 Stat. 634; Pub. L. 85–857, § 13(e), Sept. 2, 1958, 72 Stat. 1264; Pub. L. 87–779, § 2(b), Oct. 9, 1962, 76 Stat. 779; Pub. L. 88–560, title IX, § 906, Sept. 2, 1964, 78 Stat. 805; Pub. L. 93–449, § 4(c), Oct. 18, 1974, 88 Stat. 1367; Pub. L.

95–128, title IV, § 406, Oct. 12, 1977, 91 Stat. 1137; Pub. L. 97–320, title III, § 352, Oct. 15, 1982, 96 Stat. 1507; Pub. L. 97–457, § 15, Jan. 12, 1983, 96 Stat. 2509; Pub. L. 100–86, title I, § 105, title III, § 306(d), Aug. 10, 1987, 101 Stat. 575, 601; Pub. L. 101–73, title VII, §§ 701(b)(1), (3)(A), 710(b)(4), (5), (c), 714, 721, Aug. 9, 1989, 103 Stat. 412, 418, 419, 423; Pub. L. 102–550, title XIII, § 1392(a), Oct. 28, 1992, 106 Stat. 4009; Pub. L. 106–102, title VI, §§ 604(a)–(c), 606(f)(2), Nov. 12, 1999, 113 Stat. 1451, 1452, 1455; Pub. L. 110–289, div. A, title II, §§ 1204(5), (8)–(10), (12), 1211(b), 1212, 1218, July 30, 2008, 122 Stat. 2786, 2790, 2793.)

REFERENCES IN TEXT

The Community Reinvestment Act of 1977, referred to in subsec. (g)(2), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, as amended, which is classified generally to chapter 30 (§ 2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

The Home Mortgage Disclosure Act of 1975, referred to in subsec. (k)(1)(B), is title III of Pub. L. 94–200, Dec. 31, 1975, 89 Stat. 1125, which is classified generally to chapter 29 (§ 2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2801 of this title and Tables.

AMENDMENTS

2008—Subsec. (a)(2)(B). Pub. L. 110–289, § 1211(b)(1), struck out ''and'' before ''small agri-businesses'' and inserted '', and community development activities'' before period at end.

Subsec. (a)(3)(E). Pub. L. 110–289, § 1211(b)(2), inserted ''or community development activities'' after ''agriculture,''.

Subsec. (a)(5). Pub. L. 110–289, § 1204(9), substituted ''The Director'' for ''The Board''.

Subsec. (a)(6). Pub. L. 110–289, § 1211(b)(3), struck out ''and'' before '' 'small agri-business' '' and inserted '', and 'community development activities' '' before ''shall''.

Pub. L. 110–289, § 1204(10), substituted ''the Director'' for ''the Finance Board''.

Subsec. (b). Pub. L. 110–289, § 1204(5), (8), substituted ''approval of Director'' for ''formal Board resolution'' in heading and substituted ''the Director'' for ''the Board'' and struck out ''by formal resolution'' before ''such acceptance'' in text.

Subsecs. (g)(1), (j)(1). Pub. L. 110–289, § 1204(8), substituted ''the Director'' for ''the Board''.

Subsec. (j)(2)(C). Pub. L. 110–289, § 1218, added subpar. (C).

Subsec. (j)(6)(A), (B). Pub. L. 110–289, § 1204(12), substituted ''Director'' for ''Federal Housing Finance Board''.

Subsec. (j)(6)(C). Pub. L. 110–289, § 1204(9), substituted ''The Director'' for ''The Board''.

Subsec. (j)(6)(D). Pub. L. 110–289, § 1204(8), substituted ''the Director'' for ''the Board''.

Subsec. (j)(6)(E). Pub. L. 110–289, § 1204(9), substituted ''The Director'' for ''The Board''.

Subsec. (j)(6)(F). Pub. L. 110–289, § 1204(12), substituted ''Director'' for ''Federal Housing Finance Board''.

Subsec. (j)(7). Pub. L. 110–289, § 1204(8), substituted ''the Director'' for ''the Board'' in two places.

Subsec. (j)(9). Pub. L. 110–289, § 1204(12), substituted ''Director'' for ''Federal Housing Finance Board'' in introductory provisions.

Subsec. (j)(11) to (12)(B). Pub. L. 110–289, § 1204(8), (9), substituted ''the Director'' for ''the Board'' and ''The Director'' for ''The Board'' wherever appearing.

Subsec. (j)(12)(C), (D). Pub. L. 110–289, § 1212(1), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: ''The Comptroller General of the United States shall audit and evaluate the Affordable Housing Program established by this subsection after such program has been operating for 2 years. The Comptroller General shall report to Congress on the conclusions of the audit and recommend improvements or modifications to the program.''

Subsec. (k). Pub. L. 110–289, § 1212(2), added subsec. (k).

1999—Pub. L. 106–102, § 604(b), amended section catchline generally.

Subsec. (a). Pub. L. 106–102, § 604(a), inserted heading, designated first sentence of introductory provisions as par. (1) and inserted heading, substituted par. (2) for former second sentence of introductory provisions which read as follows: ''All long-term advances shall only be made for the purpose of providing funds for residential housing finance.'', designated third sentence of introductory provisions as par. (3), inserted heading, redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (3) and realigned margins, in subpar. (C), substituted ''Cash or deposits'' for ''Deposits'', in subpar. (D), struck out at end ''The aggregate amount of outstanding advances secured by such other real estate related collateral shall not exceed 30 percent of such member's capital.'', and added subpar. (E), redesignated former par. (5) as (4), inserted heading, substituted ''Subparagraphs (A) through (E) of paragraph (3)'' for ''Paragraphs (1) through (4)'', struck out ''and the Board'' after ''such collateral as the Bank'' and substituted ''determined by the Federal home loan bank'' for ''determined by the Board'', and added pars. (5) and (6).

Subsec. (c). Pub. L. 106–102, § 606(f)(2)(A), substituted ''Federal home loan bank'' for ''Board'' before ''may approve or determine'' and struck out at end ''At no time shall the aggregate outstanding advances made by any Federal Home Loan Bank to any member exceed twenty times the amounts paid in by such member for outstanding capital stock held by it exceed twenty times the value of the security required to be deposited under subsection (e) of section 1426 of this title.''

Subsec. (d). Pub. L. 106–102, § 606(f)(2)(B), struck out ''and the approval of the Board'' after ''requirements of the bank'' in first sentence and substituted ''Any'' for ''Subject to the approval of the Board, any'' in third sentence.

Subsec. (e). Pub. L. 106–102, § 604(c), struck out subsec. (e) relating to qualified thrift lender status.

1992—Subsec. (e)(2). Pub. L. 102–550 added sentence at end and struck out former second sentence which read as follows: ''The aggregate amount of any Bank's advances to members that are not qualified thrift lenders shall not exceed 30 percent of a Bank's total advances.''

1989—Subsec. (a). Pub. L. 101–73, § 714(a), substituted ''upon collateral sufficient, in the judgment of the Bank, to fully secure advances obtained from the Bank under this section or section 1431(g) of this title. All long-term advances shall only be made for the purpose of providing funds for residential housing finance. A Bank, at the time of origination or renewal of a loan or advance, shall obtain and maintain a security interest in collateral eligible pursuant to one or more of the following categories:'' and pars. (1) to (5) for ''upon such security as the Board may prescribe.''

Subsec. (b). Pub. L. 101–73, § 701(b)(1), (3)(A), substituted ''Board'' for ''board''.

Subsec. (c). Pub. L. 101–73, § 710(b)(4), (5), struck out ''or nonmember borrower'' after ''obligation of the member'', and '', or made to a nonmember borrower'' after ''stock held by it''.

Pub. L. 101–73, § 701(b)(1), (3)(A), substituted ''Board'' for ''board''.

Subsec. (d). Pub. L. 101–73, § 701(b)(1), (3)(A), substituted ''Board'' for ''board'' wherever appearing.

Subsec. (e). Pub. L. 101–73, § 714(b), which directed the general amendment of subsec. (e), was executed to the subsec. (e) added by section 105 of Pub. L. 100–86, as the probable intent of Congress. As thus executed, the amendment substituted provisions relating to qualified thrift lender status for provisions relating to reduced eligibility for advances for certain members which were not qualified thrift lenders.

Subsec. (g). Pub. L. 101–73, § 710(c), added subsec. (g).
Subsec. (h). Pub. L. 101–73, § 714(c), added subsec. (h).
Subsecs. (i), (j). Pub. L. 101–73, § 721, added subsecs. (i) and (j).

1987—Subsec. (e). Pub. L. 100–86, § 306(d), added subsec. (e) relating to priority of certain secured interests.

Pub. L. 100–86, § 105, added subsec. (e) relating to reduced eligibility for advances for certain members which are not qualified thrift lenders.

1982—Subsec. (a). Pub. L. 97–320, § 352(1), as amended by Pub. L. 97–457, amended subsec. (a) generally. Prior to amendment subsec. (a) read as follows: ''Each Federal Home Loan Bank is authorized to make advances to its members upon the security of home mortgages, or obligations of the United States, or obligations fully guaranteed by the United States, subject to such regulations, restrictions, and limitations as the Board may prescribe. Any such advance shall be subject to the following limitations as to amount:

''(1) If secured by a mortgage insured under the provisions of title I, title II, title VI, title VIII, or title IX of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq., 1736 et seq., 1748 et seq., and 1750 et seq., respectively], the advance may be for an amount not in excess of 90 per centum of the unpaid principal of the mortgage loan.

''(2) If secured by a home mortgage given in respect of an amortized home mortgage loan which was for an original term of six years or more, or in cases where shares of stock, which are pledged as security for such loan, mature in a period of six years or more, the advance may be for an amount not in excess of 65 per centum of the unpaid principal of the home mortgage loan; but in no case shall the amount of the advance exceed 60 per centum of the value of the real estate securing the home mortgage loan.

''(3) If secured by a home mortgage given in respect of any other home mortgage loan, the advance shall not be for an amount in excess of 50 per centum of the unpaid principal of the home mortgage loan; but in no case shall the amount of such advance exceed 40 per centum of the value of the real estate securing the home mortgage loan.

''(4) If secured by obligations of the United States, or obligations fully guaranteed by the United States, the advance shall not be for an amount in excess of the face value of such obligations.''

Subsec. (b). Pub. L. 97–320, § 352(2), struck out provisions relating to acceptance of home mortgages as collateral security for advances by a Home Loan Bank.

Subsec. (c). Pub. L. 97–320, § 352(3), substituted ''twenty'' for ''twelve'' wherever appearing.

1977—Subsec. (b). Pub. L. 95–128 substituted prohibition against acceptance of a home mortgage as collateral security for an advance by a Federal Home Loan Bank if, at the time the advance is made, the home mortgage exceeds a sum equal to the dollar limitation under the first proviso of the first sentence of section 1464(c) of this title for each home or other dwelling unit covered by such mortgage for prior prohibition where the home mortgage exceeded a sum equal to $55,000 (except that with respect to dwellings in Alaska, Guam, and Hawaii the foregoing limitation, might, by regulation of the Board, be increased by not to exceed 50 per centum) for each home or other dwelling unit covered by the mortgage.

1974—Subsec. (b). Pub. L. 93–449 substituted provisions limiting the home mortgage to a sum not to exceed $55,000, except with respect to dwellings in Alaska, Guam, etc., for provisions limiting the home mortgage to a sum not to exceed $40,000.

1964—Subsec. (b). Pub. L. 88–560 substituted ''thirty'' for ''twenty-five'' in cl. (1) and ''$40,000'' for ''$35,000'' in cl. (2).

1962—Subsec. (b). Pub. L. 87–779 substituted ''exceeds a sum equal to $35,000 for each home or other dwelling unit covered by such mortgage'' for ''exceeds $35,000''.

1958—Subsec. (b). Pub. L. 85–857 inserted ''chapter 37 of title 38,'' after ''Servicemen's Readjustment Act of 1944, as amended,''.

1954—Subsec. (b)(2). Act Aug. 2, 1954, substituted ''$35,000'' for ''$20,000''.

1951—Subsec. (a)(1). Act Sept. 1, 1951, inserted a reference to subchapter X of chapter 13 of this title.

1950—Subsec. (a) (1). Act Apr. 20, 1950, § 501(1), substituted ''subchapters I, II, VI, and VIII of chapter 13 of this title'' for ''sections 1707–1715b and 1736–1742 of this title''.

Subsec. (b). Act Apr. 20, 1950, § 501(2), inserted ''unless such home mortgage is insured under the National Housing Act, as amended, or insured or guaranteed under the Servicemen's Readjustment Act of 1944, as amended'' after ''Maturity'' in first sentence.

1947—Subsec. (b). Act Aug. 1, 1947, increased period collateral security can run from twenty years to twenty-five years.

1941—Subsec. (a)(1). Act Mar. 28, 1941, inserted reference to sections 1736–1742 of this title.

1935—Subsec. (a). Act May 28, 1935, § 5, added cl. (4).
Subsec. (b)(1). Act May 28, 1935, § 6, substituted ''twenty'' for ''fifteen'' and omitted reference to value of real estate in cl. 2.

1934—Subsec. (a). Act June 27, 1934, amended subsec. (a) generally.
Subsec. (b). Act Apr. 27, 1934, inserted ''unless the amount,'' etc. to end of first sentence.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding Part 1 of Title 38, Veterans' Benefits.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (j)(12)(A) of this section relating to requirement to report annually to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 170 of House Document No. 103–7.

AUTHORIZATION OF APPROPRIATIONS FOR DISBURSEMENT TO FEDERAL HOME LOAN BANKS FOR ADJUSTMENT OF INTEREST CHARGES

Pub. L. 91–351, title I, § 101, July 24, 1970, 84 Stat. 450, provided that:

''(a) There is authorized to be appropriated not to exceed $250,000,000, without fiscal year limitation, to be used by the Federal Home Loan Bank Board for disbursement to Federal home loan banks for the purpose of adjusting the effective interest charged by such banks on short-term and long-term borrowing to promote an orderly flow of funds into residential construction. The disbursement of sums appropriated hereunder shall be made under such terms and conditions as may be prescribed by the Board to assure that such sums are used to assist in the provision of housing for low- and middle-income families, and that such families share fully in the benefits resulting from the disbursement of such sums. No member of a Federal home loan bank shall use funds the interest charges on which have been adjusted pursuant to the provisions of this section to make any loan, if—

''(1) the effective rate of interest on such loan exceeds the effective rate of interest on such funds pay-

able by such member by a percentile amount which is in excess of such amount as the Board determines to be appropriate in furtherance of the purposes of this section; or

''(2) the principal obligation of any such loan which is secured by a mortgage on a residential structure exceeds the dollar limitations on the maximum mortgage amount, in effect on the date the mortgage was originated, which would be applicable if the mortgage was insured by the Secretary of Housing and Urban Development under section 203(b) or 207 of the National Housing Act [section 1709(b) or 1713 of this title].

''(b) Not more than 20 per centum of the sums appropriated pursuant to subsection (a) shall be disbursed in any one Federal home loan bank district.''

§ 1430a. Omitted

CODIFICATION

Section, act July 22, 1932, ch. 522, § 10a, as added June 27, 1934, ch. 847, § 502, 48 Stat. 1261, provided for advances by Federal Home Loan Banks to finance home repairs, improvements, and alterations until July 1, 1936.

§ 1430b. Advances to nonmember mortgagee; terms and conditions

(a) In general

Each Federal Home Loan Bank is authorized to make advances to nonmember mortgagees approved under title II of the National Housing Act [12 U.S.C. 1707 et seq.]. Such mortgagees must be chartered institutions having succession and subject to the inspection and supervision of some governmental agency, and whose principal activity in the mortgage field must consist of lending their own funds. Such advances shall not be subject to the other provisions and restrictions of this chapter, but shall be made upon the security of insured mortgages, insured under title II of the National Housing Act. Advances made under the terms of this section shall be at such rates of interest and upon such terms and conditions as shall be determined by the Director, but no advance may be for an amount in excess of 90 per centum of the unpaid principal of the mortgage loan given as security.

(b) Exception

An advance made to a State housing finance agency for the purpose of facilitating mortgage lending that benefits individuals and families that meet the income requirements set forth in section 142(d) or 143(f) of title 26, need not be collateralized by a mortgage insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.] or otherwise, if—

(1) such advance otherwise meets the requirements of this subsection; and

(2) such advance meets the requirements of section 1430(a) of this title, and any real estate collateral for such loan comprises single family or multifamily residential mortgages.

(July 22, 1932, ch. 522, § 10b, as added May 25, 1935, ch. 150, § 7, 49 Stat. 295; amended Pub. L. 101–73, title VII, § 701(b)(1), (3)(A), Aug. 9, 1989, 103 Stat. 412; Pub. L. 102–550, title XIII, § 1392(b), Oct. 28, 1992, 106 Stat. 4009; Pub. L. 110–289, div. A, title II, § 1204(8), July 30, 2008, 122 Stat. 2786.)

REFERENCES IN TEXT

The National Housing Act, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified generally to subchapter II (§ 1707 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289 substituted ''the Director'' for ''the Board''.

1992—Pub. L. 102–550 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1989—Pub. L. 101–73 substituted ''Board'' for ''Federal Home Loan Bank Board''.

§ 1430c. Housing goals

(a) In general

The Director shall establish housing goals with respect to the purchase of mortgages, if any, by the Federal Home Loan Banks. Such goals shall be consistent with the goals established under sections 4561 through 4564 of this title.

(b) Considerations

In establishing the goals required by subsection (a), the Director shall consider the unique mission and ownership structure of the Federal Home Loan Banks.

(c) Transition period

To facilitate an orderly transition, the Director shall establish interim target goals for purposes of this section for each of the 2 calendar years following July 30, 2008.

(d) Monitoring and enforcement of goals

The requirements of section 4566[1] of this title, shall apply to this section, in the same manner and to the same extent as that section applies to the Federal housing enterprises.

(e) Annual report

The Director shall annually report to Congress on the performance of the Banks in meeting the goals established under this section.

(July 22, 1932, ch. 522, § 10C, as added Pub. L. 110–289, div. A, title II, § 1205, July 30, 2008, 122 Stat. 2786.)

REFERENCES IN TEXT

Section 4566 of this title, referred to in subsec. (d), was in the original ''section 1336 of the Federal Housing Enterprises Safety and Soundness Act of 1992'', which was translated as meaning section 1336 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, to reflect the probable intent of Congress.

§ 1431. Powers and duties of banks

(a) Borrowing money; issuing bonds and debentures; general powers

Each Federal Home Loan Bank shall have power, subject to rules and regulations prescribed by the Director, to borrow and give security therefor and to pay interest thereon, to issue debentures, bonds, or other obligations upon such terms and conditions as the Director may approve, and to do all things necessary for carrying out the provisions of this chapter and all things incident thereto.

(b) Issuance of consolidated Federal Home Loan Bank debentures; restrictions

The Office of Finance, as agent for the Banks, may issue consolidated Federal Home Loan

[1] See References in Text note below.

Bank debentures which shall be the joint and several obligations of all Federal Home Loan Banks organized and existing under this chapter, in order to provide funds for any such bank or banks, and such debentures shall be issued upon such terms and conditions as such Office may prescribe. No such debentures shall be issued at any time if any of the assets of any Federal Home Loan Bank are pledged to secure any debts or subject to any lien, and neither the Office of Finance nor any Federal Home Loan Bank shall have power to pledge any of the assets of any Federal Home Loan Bank, or voluntarily to permit any lien to attach to the same while any of such debentures so issued are outstanding. The debentures issued under this section and outstanding shall at no time exceed five times the total paid-in capital of all the Federal Home Loan Banks as of the time of the issue of such debentures. It shall be the duty of the Office of Finance not to issue debentures under this section in excess of the notes or obligations of member institutions held and secured under section 1430(a) of this title by all the Federal Home Loan Banks.

(c) Issuance of Federal Home Loan Bank bonds

At any time that no debentures are outstanding under this chapter, or in order to refund all outstanding consolidated debentures issued under this section, the Office of Finance, as agent for the Banks, may issue consolidated Federal Home Loan Bank bonds which shall be the joint and several obligations of all the Federal Home Loan Banks, and shall be secured and be issued upon such terms and conditions as such Office may prescribe.

(d) Additional or substituted collateral on adjustment of equities

The Director shall have full power to require any Federal Home Loan Bank to deposit additional collateral or to make substitutions of collateral or to adjust equities between the Federal Home Loan Banks.

(e) Acceptance of deposits; restrictions on transaction of banking business; collection and settlement of checks, drafts, etc.; charges; rules and regulations

(1) Each Federal Home Loan Bank shall have power to accept deposits made by members of such bank or by any other Federal Home Loan Bank or other instrumentality of the United States, upon such terms and conditions as the Director may prescribe, but no Federal Home Loan Bank shall transact any banking or other business not incidental to activities authorized by this chapter.

(2)(A) The Director may, subject to such rules and regulations, including definitions of terms used in this paragraph, as the Director shall from time to time prescribe, authorize Federal Home Loan Banks to be drawees of, and to engage in, or be agents or intermediaries for, or otherwise participate or assist in, the collection and settlement of (including presentment, clearing, and payment of, and remitting for), checks, drafts, or any other negotiable or nonnegotiable items or instruments of payment drawn on or issued by members of any Federal Home Loan Bank or by institutions which are eligible to make application to become members pursuant to section 1424 of this title, and to have such incidental powers as the Director shall find necessary for the exercise of any such authorization.

(B) A Federal Home Loan Bank shall make charges, to be determined and regulated by the Director consistent with the principles set forth in section 248a(c) of this title, or utilize the services of, or act as agent for, or be a member of, a Federal Reserve bank, clearinghouse, or any other public or private financial institution or other agency, in the exercise of any powers or functions pursuant to this paragraph.

(C) The Director is authorized, with respect to participation in the collection and settlement of any items by Federal Home Loan Banks, and with respect to the collection and settlement (including payment by the payor institution) of items payable by Federal savings and loan associations and Federal mutual savings banks, to prescribe rules and regulations regarding the rights, powers, responsibilities, duties, and liabilities, including standards relating thereto, of such Federal Home Loan Banks, associations, or banks and other parties to any such items or their collection and settlement. In prescribing such rules and regulations, the Director may adopt or apply, in whole or in part, general banking usage and practices, and, in instances or respects in which they would otherwise not be applicable, Federal Reserve regulations and operating letters, the Uniform Commercial Code, and clearinghouse rules.

(f) Rediscount of notes held by other banks; purchase of bonds of other banks

The Director is authorized and empowered to permit or to require Federal Home Loan Banks, upon such terms and conditions as the Director may prescribe, to rediscount the discounted notes of members held by other Federal Home Loan Banks, or to make loans to, or make deposits with, such other Federal Home Loan Banks, or to purchase any bonds or debentures issued under this section.

(g) Reserves

Each Federal Home Loan Bank shall at all times have at least an amount equal to the current deposits received from its members invested in (1) obligations of the United States, (2) deposits in banks or trust companies, (3) advances with a maturity of not to exceed five years which are made to members, upon such terms and conditions as the Director may prescribe, and (4) advances with a maturity of not to exceed five years which are made to members whose creditor liabilities (not including advances from the Federal home loan bank) do not exceed 5 per centum of their net assets, and which may be made without the security of home mortgages or other security, upon such terms and conditions as the Director may prescribe.

(h) Investment of surplus funds

Such part of the assets of each Federal Home Loan Bank (except reserves and amounts provided for in subsection (g) of this section) as are not required for advances to members, may be invested, to such extent as the bank may deem

desirable and subject to such regulations, restrictions, and limitations as may be prescribed by the Director, in obligations of the United States, in obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or section 1455 of this title, in the stock of the Federal National Mortgage Association, in stock, obligations, or other securities of any small business investment company formed pursuant to section 681 of title 15, for the purpose of aiding members of the Federal Home Loan Bank System, and in such securities as fiduciary and trust funds may be invested in under the laws of the State in which the Federal Home Loan Bank is located.

(i) Treasury purchase of banks' obligations; exercise of authority

The Secretary of the Treasury is authorized in his discretion to purchase any obligations issued pursuant to this section, as heretofore, now, or hereafter in force and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, as now or hereafter in force, and the purposes for which securities may be issued under chapter 31 of title 31, as now or hereafter in force, are extended to include such purchases. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public-debt transactions of the United States. The Secretary of the Treasury shall not at any time purchase any obligations under this paragraph if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this paragraph to an amount greater than $4,000,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon terms and conditions as shall be determined by the Secretary of the Treasury and shall bear such rate of interest as may be determined by the Secretary of the Treasury taking into consideration the current average market yield for the month preceding the month of such purchase on outstanding marketable obligations of the United States.

In addition to obligations authorized to be purchased by the preceding paragraph, the Secretary of the Treasury is authorized to purchase any obligations issued pursuant to this section in amounts not to exceed $2,000,000,000. The authority provided in this paragraph shall expire August 10, 1975.

Notwithstanding the foregoing, the authority provided in this subsection may be exercised during any calendar quarter beginning after October 28, 1974, only if the Secretary of the Treasury and the Chairperson of the Director[1] certify to the Congress that (1) alternative means cannot be effectively employed to permit members of the Federal Home Loan Bank System to continue to supply reasonable amounts of funds to the mortgage market, and (2) the ability to supply such funds is substantially impaired because of monetary stringency and a high level of interest rates. Any funds borrowed under this subsection shall be repaid by the Home Loan Banks at the earliest practicable date.

(j) Audits

Notwithstanding the provisions of section 9105(a)(1)(B)[2] of title 31, audits by the Government Accountability Office of the financial transactions of a Federal Home Loan Bank shall not be limited to periods during which Government capital has been invested therein. The provisions of sections 9107(c)(2) and 9108(d)(1) of title 31 shall not apply to any Federal Home Loan Bank.

(k) Bank loans to the Deposit Insurance Fund

(1) Loans authorized

Subject to paragraph (3), the Federal Home Loan Banks may, upon the request of the Federal Deposit Insurance Corporation, make loans to such Corporation for the use of the Deposit Insurance Fund.

(2) Liability of the Fund

Any loan by a Federal Home Loan Bank pursuant to paragraph (1) shall be a direct liability of the Deposit Insurance Fund.

(3) Interest on and security for such loans

Any loan by a Federal Home Loan Bank pursuant to paragraph (1) shall—

(A) bear a rate of interest not less than such Bank's current marginal cost of funds, taking into account the maturities involved; and

(B) be adequately secured.

***(l)* Temporary authority of Treasury to purchase obligations; conditions**

(1) Authority to purchase

(A) General authority

In addition to the authority under subsection (i) of this section, the Secretary of the Treasury is authorized to purchase any obligations issued by any Federal Home Loan Bank under any section of this chapter, on such terms and conditions as the Secretary may determine and in such amounts as the Secretary may determine. Nothing in this subsection requires a Federal Home Loan Bank to issue obligations or securities to the Secretary without mutual agreement between the Secretary and the Federal Home Loan Bank. Nothing in this subsection permits or authorizes the Secretary, without the agreement of the Federal Home Loan Bank, to engage in open market purchases of the common securities of any Federal Home Loan Bank.

(B) Emergency determination required

In connection with any use of this authority, the Secretary must determine that such actions are necessary to—

[1] So in original. See 2008 Amendment note below.

[2] See References in Text note below.

(i) provide stability to the financial markets;

(ii) prevent disruptions in the availability of mortgage finance; and

(iii) protect the taxpayer.

(C) Considerations

To protect the taxpayers, the Secretary of the Treasury shall take into consideration the following in connection with exercising the authority contained in this paragraph:

(i) The need for preferences or priorities regarding payments to the Government.

(ii) Limits on maturity or disposition of obligations or securities to be purchased.

(iii) The Federal Home Loan Bank's plan for the orderly resumption of private market funding or capital market access.

(iv) The probability of the Federal Home Loan Bank fulfilling the terms of any such obligation or other security, including repayment.

(v) The need to maintain the Federal Home Loan Bank's status as a private shareholder-owned company.

(vi) Restrictions on the use of Federal Home Loan Bank resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes.

(D) Reports to Congress

Upon exercise of this authority, the Secretary shall report to the Committees on the Budget, Financial Services, and Ways and Means of the House of Representatives and the Committees on the Budget, Finance, and Banking, Housing, and Urban Affairs of the Senate as to the necessity for the purchase and the determinations made by the Secretary under subparagraph (B) and with respect to the considerations required under subparagraph (C), and the size, terms, and probability of repayment or fulfillment of other terms of such purchase.

(2) Rights; sale of obligations and securities

(A) Exercise of rights

The Secretary of the Treasury may, at any time, exercise any rights received in connection with such purchases.

(B) Sale of obligations

The Secretary of the Treasury may, at any time, subject to the terms of the security or otherwise upon terms and conditions and at prices determined by the Secretary, sell any obligation acquired by the Secretary under this subsection.

(C) Deficit reduction

The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

(i) dedicated for the sole purpose of deficit reduction; and

(ii) prohibited from use as an offset for other spending increases or revenue reductions.

(D) Application of sunset to purchased obligations

The authority of the Secretary of the Treasury to hold, exercise any rights received in connection with, or sell, any obligations purchased is not subject to the provisions of paragraph (4).

(3) Funding

For the purpose of the authorities granted in this subsection, the Secretary of the Treasury may use the proceeds of the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include such purchases and the exercise of any rights in connection with such purchases. Any funds expended for the purchase of, or modifications to, obligations and securities, or the exercise of any rights received in connection with such purchases under this subsection shall be deemed appropriated at the time of such purchase, modification, or exercise.

(4) Termination of authority

The authority under this subsection (*l*), with the exception of paragraphs (2) and (3) of this subsection, shall expire December 31, 2009.

(5) Authority of the Director with respect to executive compensation

The Director shall have the power to approve, disapprove, or modify the executive compensation of the Federal Home Loan Bank, as defined under Regulation S-K, 17 C.F.R. 229.

(July 22, 1932, ch. 522, §11, 47 Stat. 733; June 27, 1934, ch. 847, §503, 48 Stat. 1261; June 27, 1950, ch. 369, §§3, 4, 64 Stat. 257; Aug. 2, 1954, ch. 649, title II, §204(a), 68 Stat. 622; Pub. L. 88–560, title VII, §701(d)(1), Sept. 2, 1964, 78 Stat. 800; Pub. L. 90–448, title VIII, §807(k), Aug. 1, 1968, 82 Stat. 545; Pub. L. 91–151, title I, §3, Dec. 23, 1969, 83 Stat. 374; Pub. L. 91–609, title IX, §914, Dec. 31, 1970, 84 Stat. 1815; Pub. L. 93–383, title VIII, §805(c)(2), Aug. 22, 1974, 88 Stat. 727; Pub. L. 93–495, title I, §112, Oct. 28, 1974, 88 Stat. 1506; Pub. L. 96–153, title III, §324, Dec. 21, 1979, 93 Stat. 1121; Pub. L. 96–221, title III, §311, Mar. 31, 1980, 94 Stat. 149; Pub. L. 97–320, title I, §125(c), Oct. 15, 1982, 96 Stat. 1485; Pub. L. 101–73, title VII, §§701(b)(1)–(3)(A), (c), 709, 710(b)(6), Aug. 9, 1989, 103 Stat. 412, 418; Pub. L. 104–208, div. A, title II, §2704(d)(11)(A), div. D, title II, §208(h)(2), Sept. 30, 1996, 110 Stat. 3009–489, 3009–747; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §9(d)(1), Feb. 15, 2006, 119 Stat. 3616; Pub. L. 110–289, div. A, title I, §1117(c), title II, §1204(3), (8), (9), July 30, 2008, 122 Stat. 2686, 2786; Pub. L. 111–203, title XIII, §1304(c), July 21, 2010, 124 Stat. 2134.)

REFERENCES IN TEXT

Section 9105 of title 31, referred to in subsec. (j), was amended generally by Pub. L. 101–576, title III, §305, Nov. 15, 1990, 104 Stat. 2853, and, as so amended, subsec. (a) does not contain a par. (1)(B). Prior to the general amendment, subsec. (a)(1)(B) related to audits of mixed-ownership Government corporations during periods in which capital of the United States Government was invested therein.

CODIFICATION

In subsecs. (i) (first par.) and (j), ''chapter 31 of title 31'' substituted for ''the Second Liberty Bond Act'', and ''section 9105(a)(1)(B) of title 31'' and ''sections 9107(c)(2) and 9108(d)(1) of title 31'' substituted for ''the first sentence of section 202 of the Government Corporation Control Act [31 U.S.C. 857]'' and ''the first sentence of subsection (d) of section 303 of the Government Corporation Control Act [31 U.S.C. 868(d)]'', respectively, on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2010—Subsec. (*l*)(2)(C), (D). Pub. L. 111–203 added subpar. (C) and redesignated former subpar. (C) as (D).

2008—Pub. L. 110–289, §1204(9), substituted ''The Director'' for ''The Board'' wherever appearing in subsecs. (d) to (f).

Pub. L. 110–289, §1204(8), substituted ''the Director'' for ''the Board'' wherever appearing in subsecs. (a) and (e) to (i).

Subsec. (b). Pub. L. 110–289, §1204(3)(A), substituted ''The Office of Finance, as agent for the Banks,'' for ''The Board'' and ''such Office'' for ''the Board'' in first sentence and ''the Office of Finance'' for ''the Board'' in second and fourth sentences.

Subsec. (c). Pub. L. 110–289, §1204(3)(B), substituted ''the Office of Finance, as agent for the Banks,'' for ''the Board'' before ''may issue'' and ''such Office'' for ''the Board'' before ''may prescribe''.

Subsec. (f). Pub. L. 110–289, §1204(3)(C), struck out the two commas after ''permit'' and inserted ''or'' and struck out the comma after ''require''.

Subsec. (*l*). Pub. L. 110–289, §1117(c), added subsec. (*l*).

2006—Subsec. (k). Pub. L. 109–173 substituted ''the Deposit Insurance Fund'' for ''SAIF'' in heading and ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund'' in pars. (1) and (2).

Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(11)(A). See 1996 Amendment note below.

2004—Subsec. (j). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1996—Subsec. (h). Pub. L. 104–208, §208(h)(2), substituted ''section 681 of title 15'' for ''section 681(d) of title 15''.

Subsec. (k). Pub. L. 104–208, §2704(d)(11)(A), which directed the amendment of subsec. (k) by substituting ''the Deposit Insurance Fund'' for ''SAIF'' in heading and ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund'' in pars. (1) and (2), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1989—Subsecs. (a) to (d). Pub. L. 101–73, §701(b)(1), (3)(A), substituted ''Board'' for ''board'' wherever appearing.

Subsec. (e)(1). Pub. L. 101–73, §709(1), inserted ''incidental to activities'' after ''other business not''.

Pub. L. 101–73, §701(b)(1), (3)(A), substituted ''Board'' for ''board''.

Subsec. (e)(2)(C). Pub. L. 101–73, §701(c)(1), which directed insertion of ''Federal Home Loan'' before ''Banks,'' was executed the second time that term appeared, because ''Federal Home Loan'' already preceded the term ''Banks,'' the first place it appeared.

Subsec. (f). Pub. L. 101–73, §709(2), which directed amendment of subsec. (f) by striking out ''or whenever in the judgment of at least 4 members of the board an emergency exists requiring such action'' after ''empowered to permit,'', was executed by striking out ''or whenever in the judgment of at least four members of the board an emergency exists requiring such action'', as the probable intent of Congress. The amendment probably should also have struck out the comma after ''empowered to permit'' and the words '', to require,'' after ''such action''.

Pub. L. 101–73, §701(b)(1), (3)(A), substituted ''Board'' for ''board'' wherever appearing.

Subsec. (g). Pub. L. 101–73, §710(b)(6), struck out ''or nonmember borrowers'' after ''made to members'' wherever appearing.

Subsec. (h). Pub. L. 101–73, §710(b)(6), struck out ''or nonmember borrowers'' after ''advances to members''.

Pub. L. 101–73, §701(b)(1), (3)(A), substituted ''Board'' for ''board''.

Subsec. (i). Pub. L. 101–73, §701(c)(2), inserted ''Federal'' before ''Home Loan Bank System''.

Pub. L. 101–73, §701(b)(1), (2), substituted ''Chairperson of the Board'' for ''Chairman of the Federal Home Loan Bank Board''.

Subsec. (k). Pub. L. 101–73, §709(3), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: ''The Federal Home Loan Banks are hereby authorized, as directed by the Board, to make loans to the Federal Savings and Loan Insurance Corporation. All such loans shall be made in accordance with the provisions of section 1725(d) of this title.''

1982—Subsec. (k). Pub. L. 97–320 added subsec. (k).

1980—Subsec. (e). Pub. L. 96–221 designated existing provisions as par. (1) and added par. (2).

1979—Subsec. (h). Pub. L. 96–153 inserted provisions relating to stock, obligations, or other securities of any small business investment company formed pursuant to section 681(d) of title 15, for the purpose of aiding members of the Federal Home Loan Bank System.

1974—Subsec. (h). Pub. L. 93–383 inserted reference to mortgages, obligations, or other securities sold by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or 1455 of this title.

Subsec. (i). Pub. L. 93–495 substituted ''obligations under this paragraph'' for ''obligations under this subsection'' wherever appearing in fourth sentence of initial par., in second par. substituted provisions authorizing purchase of obligations issued pursuant to this section in amounts not to exceed $2,000,000,000, for provisions relating to exercise of authority of this subsection by the Secretary of the Treasury, and added third par.

1970—Subsec. (g). Pub. L. 91–609 substituted ''five years'' for ''one year'' in items (3) and (4).

1969—Subsec. (i). Pub. L. 91–151 increased the borrowing limit to $4,000,000,000 and made it a requirement that the rate charged on such borrowing be set at the current market yield on Treasury obligations and added a new paragraph which allows the Secretary to permit members of the Home Loan Bank System to continue to supply funds to the mortgage market during tight market conditions.

1968—Subsec. (h). Pub. L. 90–448 inserted ''or the Government National Mortgage Association, in the stock of the Federal National Mortgage Association''.

1964—Subsec. (h). Pub. L. 88–560 substituted ''in obligations, participations, or other instruments of or issued by the Federal National Mortgage Association'' for ''in obligations of the Federal National Mortgage Association''.

1954—Subsec. (h). Act Aug. 2, 1954, inserted reference to obligations of the Federal National Mortgage Association.

1950—Subsec. (g). Act June 27, 1950, §3, struck out requirement that sums paid in on outstanding capital subscriptions of members from the base for determining the amount of money which the Federal Home Loan Banks shall at all times have invested.

Subsecs. (i), (j). Act June 27, 1950, §4, added subsecs. (i) and (j).

1934—Subsecs. (i), (j). Act June 27, 1934, among other changes, struck out subsecs. (i) and (j).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(11)(A) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

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

§ 1432. Incorporation of banks; corporate powers; housing project loans

(a) The directors of each Federal Home Loan Bank shall, in accordance with such rules and regulations as the Director may prescribe, make and file with the Director at the earliest practicable date after the establishment of such bank, an organization certificate which shall contain such information as the Director may require. Upon the making and filing of such organization certificate with the Director, such bank shall become, as of the date of the execution of its organization certificate, a body corporate, and as such and in its name as designated by the Director it shall have power to adopt, alter, and use a corporate seal; to make contracts; to purchase or lease and hold or dispose of such real estate as may be necessary or convenient for the transaction of its business; to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal; to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of its business,;[1] to define their duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner in which its affairs may be administered, consistent with applicable laws and regulations, as administered by the Director. No officer, employee, attorney, or agent of a Federal home loan bank who receives compensation, may be a member of the board of directors. Each such bank shall have all such incidental powers, not inconsistent with the provisions of this chapter, as are customary and usual in corporations generally.

(b) Subject to such regulations as may be prescribed by the Director, one or more Federal home loan banks may acquire, hold, or dispose of, in whole or in part, or facilitate such acquisition, holding, or disposition by members of any such bank of, housing project loans, or interests therein, having the benefit of any guaranty under section 2181 of title 22, as now or hereafter in effect, or loans, or interests therein, having the benefit of any guaranty under section 2184 of title 22 or any commitment or agreement with respect to such loans, or interests therein, made pursuant to either of such sections. This authority extends to the acquisition, holding, and disposition of loans, or interests therein, having the benefit of any guaranty under section 2181 or 2182 of title 22 or such sections as hereafter amended or extended, or of any commitment or agreement for any such guaranty.

(July 22, 1932, ch. 522, § 12, 47 Stat. 735; Pub. L. 89–754, title X, § 1016(a), Nov. 3, 1966, 80 Stat. 1293; Pub. L. 90–448, title XVII, § 1717, Aug. 1, 1968, 82 Stat. 609; Pub. L. 91–609, title IX, § 907(a), Dec. 31, 1970, 84 Stat. 1811; Pub. L. 101–73, title VII, § 701(b)(1), (3)(A), Aug. 9, 1989, 103 Stat. 412; Pub. L. 106–102, title VI, § 606(d), Nov. 12, 1999, 113 Stat. 1454; Pub. L. 110–289, div. A, title II, § 1204(8), (10), July 30, 2008, 122 Stat. 2786.)

REFERENCES IN TEXT

Section 2184 of title 22, referred to in subsec. (b), which related to housing projects in Latin American countries, was omitted in the general amendment made by section 105 of Pub. L. 91–175, Dec. 30, 1969, 83 Stat. 807. See section 2182 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289 substituted ''administered by the Director'' for ''administered by the Finance Board'' and ''the Director'' for ''the Board'' wherever appearing.

Subsec. (b). Pub. L. 110–289, § 1204(8), substituted ''the Director'' for ''the Board''.

1999—Subsec. (a). Pub. L. 106–102, § 606(d)(1), struck out '', but, except with the prior approval of the Board, no bank building shall be bought or erected to house any such bank, or leased by such bank under any lease for such purpose which has a term of more than ten years'' after ''convenient for the transaction of its business'', struck out ''subject to the approval of the Board'' after ''necessary for the transaction of its business'', substituted ''and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner in which its affairs may be administered, consistent with applicable laws and regulations, as administered by the Finance Board. No officer, employee, attorney, or agent of a Federal home loan bank'' for ''and, by its Board of directors, to prescribe, amend, and repeal bylaws, rules, and regulations governing the manner in which its affairs may be administered; and the powers granted to it by law may be exercised and enjoyed subject to the approval of the Board. The president of a Federal Home Loan Bank may also be a member of the Board of directors thereof, but no other officer, employee, attorney, or agent of such bank,'', and, in penultimate sentence, substituted ''board of directors'' for ''Board of directors'' after ''may be a member of the''.

Subsec. (b). Pub. L. 106–102, § 606(d)(2), substituted ''Federal home loan banks'' for ''Federal home loans banks''.

1989—Subsec. (a). Pub. L. 101–73 substituted ''Board'' for ''board'' wherever appearing.

1970—Subsec. (b). Pub. L. 91–609 extended authority to make housing project loans to acquisition, holding, and disposition of loans, or interest therein, having benefit of any guaranty under section 2181 or 2182 of title 22 or such sections as hereafter amended or extended, or of any commitment or agreement for any such guaranty.

1968—Pub. L. 90–448 designated existing provisions as subsec. (a) and added subsec. (b).

1966—Pub. L. 89–754 substituted ''but, except with the prior approval of the board, no bank building shall be bought or erected to house any such bank, or leased by such bank under any lease'' for ''but no bank building shall be bought or erected to house any such bank, nor shall any such bank make any lease'' in second sentence.

[1] So in original.

§ 1433. Exemption from taxation; obligations acceptable as credit on debt of home owner

Any and all notes, debentures, bonds, and other such obligations issued by any bank, and consolidated Federal Home Loan Bank bonds and debentures, shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The bank, including its franchise, its capital, reserves, and surplus, its advances, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that in[1] any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The notes, debentures, and bonds issued by any bank, with unearned coupons attached, shall be accepted at par by such bank in payment of or as a credit against the obligation of any home-owner debtor of such bank.

(July 22, 1932, ch. 522, §13, 47 Stat. 735; May 28, 1935, ch. 150, §8, 49 Stat. 295.)

AMENDMENTS

1935—Act May 28, 1935, inserted ''and consolidated Federal Home Loan Bank bonds and debentures'' in first sentence.

§ 1434. Depositaries of public money; financial agents

When designated for that purpose by the Secretary of the Treasury, each Federal Home Loan Bank shall be a depositary of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and it may also be employed as a financial agent of the Government; and it shall perform all such reasonable duties as depositary of public money and financial agent of the Government as may be required of it.

(July 22, 1932, ch. 522, §14, 47 Stat. 736.)

§ 1435. Obligations as lawful investments; liability of United States for debentures, etc., issued by banks

Obligations of the Federal Home Loan Banks issued with the approval of the Board or the Director under this chapter shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. The Federal reserve banks are authorized to act as depositaries, custodians, and/or fiscal agents for Federal Home Loan Banks in the general performance of their powers under this chapter. All obligations of Federal Home Loan Banks shall plainly state that such obligations are not obligations of the United States and are not guaranteed by the United States.

[1] So in original. Word ''in'' probably should not appear.

(July 22, 1932, ch. 522, §15, 47 Stat. 736; Pub. L. 101–73, title VII, §701(b)(1), (3)(A), Aug. 9, 1989, 103 Stat. 412; Pub. L. 110–289, div. A, title II, §1204(7), July 30, 2008, 122 Stat. 2786.)

AMENDMENTS

2008—Pub. L. 110–289 inserted ''or the Director'' after ''the Board''.

1989—Pub. L. 101–73 substituted ''Board'' for ''board''.

§ 1436. Reserves and dividends; emergency suspensions of requirements

(a) Accumulation and maintenance of reserves; payment of dividends

Each Federal Home Loan Bank may carry to a reserve account from time-to-time such portion of its net earnings as may be determined by its board of directors. Each Federal Home Loan Bank shall establish such additional reserves and/or make such charge-offs on account of depreciation or impairment of its assets as the Director shall require from time to time. No dividends shall be paid except out of previously retained earnings or current net earnings remaining after reductions for all reserves, chargeoffs, purchases of capital certificates of the Financing Corporation, and payments relating to the Funding Corporation required under this chapter have been provided for, other than chargeoffs or expenses incurred by a Bank in connection with the purchase of capital stock of the Financing Corporation under section 1441 of this title or payments relating to the Funding Corporation Principal Fund under section 1441b(e) of this title. The reserves of each Federal Home Loan Bank shall be invested, subject to such regulations, restrictions, and limitations as may be prescribed by the Director, in direct obligations of the United States, in obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or section 1455 of this title, and in such securities as fiduciary and trust funds may be invested in under the laws of the State in which the Federal Home Loan Bank is located.

(b) Assistance to member institutions in event of severe financial conditions

Notwithstanding subsection (a) of this section or any other provision of this chapter, if the Director determines that severe financial conditions exist threatening the stability of member institutions, the Director may suspend temporarily the requirements of subsection (a) of this section that a portion of net earnings be set aside semiannually by each Federal Home Loan Bank to a reserve account and permit each Federal Home Loan Bank to declare and pay dividends out of undivided profits.

(c) Exception in case of losses in connection with Financing Corporation stock

(1) In general

Notwithstanding subsection (a) of this section, if—

(A) a Federal Home Loan Bank incurs a chargeoff or an expense in connection with

such bank's investment in the stock of the Financing Corporation under section 1441 of this title;

(B) the Director determines there is an extraordinary need for the member institutions of the bank to receive dividends; and

(C) the bank has reduced all reserves (other than the reserve account required by the first 2 sentences of subsection (a) of this section) to zero,

the Director may authorize such bank to declare and pay dividends out of undivided profits (as such term is defined in section 1441(d)(7) of this title) or the reserve account required by the first 2 sentences of subsection (a) of this section.

(2) Requirements of section 1441 of this title not affected

Notwithstanding any payment of dividends by any Federal Home Loan Bank pursuant to an authorization by the Director under paragraph (1), the applicable provisions of section 1441 of this title shall continue to apply with respect to such bank, and to such bank's investment in the Financing Corporation, in the same manner and to the same extent as if such payment had not been made.

(July 22, 1932, ch. 522, §16, 47 Stat. 736; Aug. 2, 1954, ch. 649, title II, §204(a), 68 Stat. 622; Pub. L. 88–560, title VII, §701(d)(2), Sept. 2, 1964, 78 Stat. 800; Pub. L. 90–448, title VIII, §807(*l*), Aug. 1, 1968, 82 Stat. 545; Pub. L. 93–383, title VIII, §805(c)(3), Aug. 22, 1974, 88 Stat. 727; Pub. L. 97–320, title I, §124, Oct. 15, 1982, 96 Stat. 1485; Pub. L. 100–86, title III, §306(a), Aug. 10, 1987, 101 Stat. 600; Pub. L. 101–73, title VII, §§701(b)(1), (3)(A), 724(a), Aug. 9, 1989, 103 Stat. 412, 428; Pub. L. 106–102, title VI, §606(g), Nov. 12, 1999, 113 Stat. 1455; Pub. L. 110–289, div. A, title II, §1204(8), July 30, 2008, 122 Stat. 2786.)

AMENDMENTS

2008—Pub. L. 110–289 substituted ''the Director'' for ''the Board'' wherever appearing.

1999—Subsec. (a). Pub. L. 106–102, in third sentence substituted ''previously retained earnings or current net earnings'' for ''net earnings'' and struck out '', and then only with the approval of the Federal Housing Finance Board'' after ''section 1441b(e) of this title'' and struck out fourth sentence which read as follows: ''Beginning on January 1, 1992, the preceding sentence shall be applied by substituting 'previously retained earnings or current net earnings' for 'net earnings'.''

1989—Subsec. (a). Pub. L. 101–73, §724(a)(1), substituted ''Each Federal Home Loan Bank may carry to a reserve account from time-to-time such portion of its net earnings as may be determined by its board of directors.'' for ''Each Federal Home Loan Bank shall carry to a reserve account semiannually 20 per centum of its net earnings until said reserve account shall show a credit balance equal to 100 per centum of the paid-in capital of such bank. After said reserve has reached 100 per centum of the paid-in capital of said bank, 5 per centum of its net earnings shall be added thereto semiannually. Whenever said reserve shall have been impaired below 100 per centum of the paid-in capital it shall be restored before any dividends are paid.''

Pub. L. 101–73, §724(a)(2), substituted ''No dividends shall be paid except out of net earnings remaining after reductions for all reserves, chargeoffs, purchases of capital certificates of the Financing Corporation, and payments relating to the Funding Corporation required under this chapter have been provided for, other than chargeoffs or expenses incurred by a Bank in connection with the purchase of capital stock of the Financing Corporation under section 1441 of this title or payments relating to the Funding Corporation Principal Fund under section 1441b(e) of this title, and then only with the approval of the Federal Housing Finance Board. Beginning on January 1, 1992, the preceding sentence shall be applied by substituting 'previously retained earnings or current net earnings' for 'net earnings'.'' for ''No dividends shall be paid except out of net earnings remaining after all reserves and charge-offs required under this chapter have been provided for, and then only with the approval of the board.''

Pub. L. 101–73, §701(b)(1), (3)(A), substituted ''Board'' for ''board'' wherever appearing.

1987—Subsec. (c). Pub. L. 100–86 added subsec. (c).

1982—Pub. L. 97–320 designated existing provisions as subsec. (a) and added subsec. (b).

1974—Pub. L. 93–383 inserted reference to mortgages, obligations, or other securities sold by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or section 1455 of this title.

1968—Pub. L. 90–448 authorized investments in obligations, participations, or other instruments issued by the Government National Mortgage Association.

1964—Pub. L. 88–560 substituted ''in obligations, participations, or other instruments of or issued by the Federal National Mortgage Association'' for ''in obligations of the Federal National Mortgage Association''.

1954—Act Aug. 2, 1954, inserted reference to obligations of Federal National Mortgage Association in last sentence.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 724(b) of Pub. L. 101–73 provided that: ''The amendment made by subsection (a)(1) [amending this section] shall take effect on January 1, 1992.''

EFFECTIVE DATE OF 1968 AMENDMENT

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

§ 1437. Repealed. Pub. L. 101–73, title VII, § 703(a), Aug. 9, 1989, 103 Stat. 415

Section, acts July 22, 1932, ch. 522, §17, 47 Stat. 736; 1947 Reorg. Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Aug. 11, 1955, ch. 783, title I, §109(a)(3), 69 Stat. 640; June 29, 1977, Pub. L. 95–56, 91 Stat. 252; Aug. 4, 1977, Pub. L. 95–90, §§1, 2, 91 Stat. 564; Oct. 15, 1982, Pub. L. 97–320, title I, §127, 96 Stat. 1486; Jan. 12, 1983, Pub. L. 97–457, §8, 96 Stat. 2507; Nov. 30, 1983, Pub. L. 98–181, title VII, §702(b), 97 Stat. 1267, set forth powers and duties, etc., of Federal Home Loan Bank Board.

TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION AND FEDERAL HOME LOAN BANK BOARD

Pub. L. 101–73, title IV, §§401–406, Aug. 9, 1989, 103 Stat. 354–363, as amended by Pub. L. 102–233, title III, §313, Dec. 12, 1991, 105 Stat. 1770; Pub. L. 111–203, title III, §367(5), July 21, 2010, 124 Stat. 1556, provided that:

''SEC. 401. FSLIC AND FEDERAL HOME LOAN BANK BOARD ABOLISHED.

''(a) IN GENERAL.—

''(1) FSLIC.—Effective on the date of the enactment of this Act [Aug. 9, 1989], the Federal Savings and Loan Insurance Corporation established under section 402 of the National Housing Act [former 12 U.S.C. 1725] is abolished.

''(2) FHLBB.—Effective at the end of the 60-day period beginning on the date of the enactment of this Act, the Federal Home Loan Bank Board and the position of Chairman of the Federal Home Loan Bank Board are abolished.

''(b) DISPOSITION OF AFFAIRS.—

''(1) IN GENERAL.—During the 60-day period beginning on the date of the enactment of this Act [Aug.

9, 1989], the Chairman of the Federal Home Loan Bank Board—

''(A) shall, solely for the purpose of winding up the affairs of the Federal Savings and Loan Insurance Corporation and the Federal Home Loan Bank Board—

''(i) manage the employees of the Board and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee pursuant to section 403; and

''(ii) manage any property of the Board and the Corporation until such property is transferred pursuant to section 405; and

''(B) may take any other action necessary for the purpose of winding up the affairs of the Corporation and the Board.

''(2) AVAILABILITY OF FUNDS IN FSLIC RESOLUTION FUND ON A REIMBURSABLE BASIS.—

''(A) AVAILABILITY OF FUNDS.—Notwithstanding any provision of section 11A of the Federal Deposit Insurance Act [12 U.S.C. 1821a] (as added by section 215 of this Act), funds in the FSLIC Resolution Fund shall be available to the Chairman of the Federal Home Loan Bank Board to pay any expense incurred in carrying out the requirements of paragraph (1).

''(B) PAYMENT BY FDIC.—Upon the request of the Chairman of the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation shall pay to the Chairman from the FSLIC Resolution Fund the amounts requested for expenses described in subparagraph (A).

''(C) EXCLUSIVE SOURCE OF FUNDS.—No funds or other property of the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation (other than the FSLIC Resolution Fund) may be used by the Chairman of the Federal Home Loan Bank Board to pay any expense incurred in carrying out any provision of this title [see Tables for classification].

''(D) REIMBURSEMENT BY SUCCESSOR AGENCIES.—Disbursements from the FSLIC Resolution Fund pursuant to subparagraph (A) which are attributable to employees described in paragraph (1)(A)(i) and property described in paragraph (1)(A)(ii) shall be reimbursed by the agency to which any such employee or property is transferred.

''(c) AUTHORITY AND STATUS OF CHAIRMAN OF THE FEDERAL HOME LOAN BANK BOARD.—

''(1) IN GENERAL.—Notwithstanding the repeal of section 17 of the Federal Home Loan Bank Act [12 U.S.C. 1437] by section 703 of this Act, the repeal of section 402(c) of the National Housing Act [12 U.S.C. 1725(c)] by section 407 of this title, the abolishment of the Federal Savings and Loan Insurance Corporation under section 401 of this title, the Chairman of the Federal Home Loan Bank Board shall have any authority vested in the Chairman or the Board before such date of enactment [Aug. 9, 1989] which is necessary for the Chairman to carry out the requirements of this section, paragraphs (1) and (2) of section 403(b), and section 405(a) during the 60-day period beginning on such date.

''(2) OTHER PROVISIONS.—For purposes of paragraph (1), the Chairman of the Federal Home Loan Bank Board shall continue to be—

''(A) treated as an officer of the United States during the 60-day period referred to in such subparagraph; and

''(B) entitled to compensation at the annual rate of basic pay payable for level III of the Executive Schedule [5 U.S.C. 5314].

''(3) NO ADDITIONAL COMPENSATION IF APPOINTED DIRECTOR.—During the 60-day period beginning on the date of the enactment of this Act [Aug. 9, 1989], the Chairman of the Federal Home Loan Bank Board shall not be entitled to any additional compensation by reason of his appointment as Director of the Office of Thrift Supervision.

''(d) STATUS OF EMPLOYEES BEFORE TRANSFER.—

''(1) EMPLOYEES OF FSLIC.—Any employee of the Federal Savings and Loan Insurance Corporation shall be treated as an employee of the Federal Home Loan Bank Board for purposes of subsection (b)(1)(A)(i).

''(2) RULE OF CONSTRUCTION.—The repeal of section 17 of the Federal Home Loan Bank Act [12 U.S.C. 1437] by section 703 of this Act, the repeal of section 402(c) of the National Housing Act [12 U.S.C. 1725(c)] by section 407 of this title, and the abolishment of the Federal Savings and Loan Insurance Corporation under section 401 of this title, shall not be construed as affecting the status of employees of such Corporation or of the Federal Home Loan Bank Board as employees of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee pursuant to section 403.

''(e) CONTINUATION OF SERVICES.—

''(1) IN GENERAL.—The Director of the Office of Thrift Supervision, the Chairperson of the Oversight Board of the Resolution Trust Corporation, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairperson of the Federal Housing Finance Board may use the services of employees and other personnel and the property of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation, on a reimbursable basis, to perform functions which have been transferred to such agencies for such time as is reasonable to facilitate the orderly transfer of functions transferred pursuant to any other provision of this Act [see Tables for classification] or any amendment made by this Act to any other provision of law.

''(2) REIMBURSEMENT.—The reimbursement required under paragraph (1) with respect to employees, personnel, and property described in such paragraph shall be made to the FSLIC Resolution Fund and shall be taken into account in determining the amount of any reimbursement required under subsection (b)(2)(D).

''(3) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States (including any Federal home loan bank), and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation before the enactment of this Act [Aug. 9, 1989] in connection with functions that are transferred to the Office of Thrift Supervision, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or the Federal Housing Finance Board shall—

''(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

''(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

''(f) SAVINGS PROVISIONS RELATING TO FSLIC.—

''(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Savings and Loan Insurance Corporation, or any other person, which—

''(A) arises under or pursuant to any section of title IV of the National Housing Act [former 12 U.S.C. 1724 et seq.]; and

''(B) existed on the day before the date of the enactment of this Act [Aug. 9, 1989].

''(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Federal Savings and Loan Insurance Corporation, or any Federal home loan bank with respect to any function of the Corporation which was delegated to employees of such bank, shall abate by reason of the enactment of this Act [see Tables for classification], except that the appropriate successor to the interests of such Corporation shall be substituted for the Corporation or the Federal home loan bank as a party to any such action or proceeding.

''(g) SAVINGS PROVISIONS RELATING TO FHLBB.—

''(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Home Loan Bank Board, or any other person, which—

''(A) arises under or pursuant to the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.], the Home Owners' Loan Act of 1933 [12 U.S.C. 1461 et seq.], or any other provision of law applicable with respect to such Board (other than title IV of the National Housing Act [former 12 U.S.C. 1724 et seq.]); and

''(B) existed on the day before the date of the enactment of this Act [Aug. 9, 1989].

''(2) CONTINUATION OF SUITS.—

''(A) [sic] IN GENERAL.—No action or other proceeding commenced by or against the Federal Home Loan Bank Board, or any Federal home loan bank with respect to any function of the Board which was delegated to employees of such bank, shall abate by reason of the enactment of this Act [see Tables for classification], except that the appropriate successor to the interests of such Board shall be substituted for the Board or the Federal home loan bank as a party to any such action or proceeding.

''(h) CONTINUATION OF ORDERS, RESOLUTIONS, DETERMINATIONS, AND REGULATIONS.—Subject to section 402, all orders, resolutions, determinations, and regulations, which—

''(1) have been issued, made, prescribed, or allowed to become effective by the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board (including orders, resolutions, determinations, and regulations which relate to the conduct of conservatorships and receiverships), or by a court of competent jurisdiction, in the performance of functions which are transferred by this Act [see Tables for classification]; and

''(2) are in effect on the date this Act takes effect [Aug. 9, 1989],

shall continue in effect according to the terms of such orders, resolutions, determinations, and regulations and shall be enforceable by or against the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the Federal Housing Finance Board, or the Resolution Trust Corporation, as the case may be, until modified, terminated, set aside, or superseded in accordance with applicable law by the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the Federal Housing Finance Board, or the Resolution Trust Corporation, as the case may be, by any court of competent jurisdiction, or by operation of law.

''(i) IDENTIFICATION OF REGULATIONS WHICH REMAIN IN EFFECT PURSUANT TO THIS SECTION.—Before the end of the 60-day period beginning on the date of the enactment of this Act [Aug. 9, 1989], the Director of the Office of Thrift Supervision and the Chairperson of the Federal Deposit Insurance Corporation shall—

''(1) identify the regulations and orders which relate to the conduct of conservatorships and receiverships in accordance with the allocation of authority between them under this Act [see Tables for classification] and the amendments made by this Act; and

''(2) promptly publish notice of such identification in the Federal Register.

''SEC. 402. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.

''(a) REGULATIONS RELATING TO INSURANCE FUNCTIONS.—All regulations and orders of the Federal Savings and Loan Insurance Corporation, or the Federal Home Loan Bank Board (in such Board's capacity as the board of trustees of such Corporation), which are in effect on the date of the enactment of this Act [Aug. 9, 1989] and relate to—

''(1) the provision, rates, or cancellation of insurance of accounts; or

''(2) the administration of the insurance fund of the Federal Savings and Loan Insurance Corporation,

shall remain in effect according to the terms of such regulations and orders and shall be enforceable by the Federal Deposit Insurance Corporation unless determined otherwise by such Corporation after consultation with the Director of the Office of Thrift Supervision and, with respect to regulations and orders relating to the scope of deposit insurance coverage, pursuant to subsection (c).

''(b) IDENTIFICATION OF REGULATIONS WHICH REMAIN IN EFFECT PURSUANT TO THIS SECTION.—Before the end of the 60-day period beginning on the date of the enactment of this Act [Aug. 9, 1989], the Director of the Office of Thrift Supervision and the Chairperson of the Federal Deposit Insurance Corporation shall—

''(1) identify the regulations and orders referred to in subsection (a) of this section in accordance with the allocation of authority between them under this Act [see Tables for classification] and the amendments made by this Act; and

''(2) promptly publish notice of such identification in the Federal Register.

''(c) PROCEDURE FOR DIFFERENCES IN DEPOSIT INSURANCE COVERAGE BETWEEN FSLIC AND FDIC.—

''(1) TRANSITION RULE.—Until the effective date of regulations prescribed under paragraph (3)(B), any determination of the amount of any insured deposit in any depository institution which becomes an insured depository institution as a result of the amendment made to section 4(a) of the Federal Deposit Insurance Act [12 U.S.C. 1814(a)] by section 205(1) of this Act shall be made in accordance with the regulations and interpretations of the Federal Savings and Loan Insurance Corporation for determining the amount of an insured account which were in effect on the day before the date of the enactment of this Act [Aug. 9, 1989].

''(2) LIMITATION ON EXTENT OF COVERAGE.—During the period beginning on the date of the enactment of this Act and ending on the effective date of regulations prescribed under paragraph (3)(B), the amount of any insured account which is required to be treated as an insured deposit pursuant to paragraph (1) shall not exceed the amount of insurance to which such insured account would otherwise have been entitled pursuant to the regulations and interpretations of the Federal Savings and Loan Insurance Corporation which were in effect on the day before the date of the enactment of this Act.

''(3) UNIFORM TREATMENT OF INSURED DEPOSITS.—The Federal Deposit Insurance Corporation shall—

''(A) review its regulations, principles, and interpretations for deposit insurance coverage and those established by the Federal Savings and Loan Insurance Corporation; and

''(B) on or before the end of the 270-day period beginning on the date of the enactment of this Act, prescribe a uniform set of regulations which shall be applicable to all insured deposits in insured depository institutions (except to the extent any provision of this Act, any amendment made by this Act to the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], or any other provision of law requires or explicitly permits the Federal Deposit Insurance Corporation to treat insured deposits of Savings Association Insurance Fund members differently than insured deposits of Bank Insurance Fund members).

''(4) FACTORS REQUIRED TO BE CONSIDERED.—In prescribing regulations providing for the uniform treatment of deposit insurance coverage, the Federal Deposit Insurance Corporation shall consider all relevant factors necessary to promote safety and soundness, depositor confidence, and the stability of deposits in insured depository institutions.

''(5) NOTICE; EFFECTIVE DATE.—Regulations prescribed under this subsection shall—

''(A) provide for effective notice to depositors in insured depository institutions of any change in deposit insurance coverage which would result under such regulations; and

''(B) take effect on or before the end of the 90-day period beginning on the date such regulations become final.

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) INSURED ACCOUNT.—The term 'insured account' has the meaning given to such term in section 401(c) of the National Housing Act [former 42 U.S.C. 1724(c)] (as in effect before the date of the enactment of this Act [Aug. 9, 1989]).

''(B) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the meaning given to such term in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)].

''(d) INTERIM TREATMENT OF CUSTODIAL ACCOUNTS.—

''(1) IN GENERAL.—Subject to paragraph (2) and notwithstanding subsection (a) or any limitation contained in the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] relating to the amount of deposit insurance available to any 1 borrower, amounts held in custodial accounts in insured depository institutions (as defined in section 3(c)(2) of such Act [12 U.S.C. 1813(c)(2)]) for the payment of principal, interest, tax, and insurance payments for mortgage borrowers, shall be insured under the Federal Deposit Insurance Act in the amount of $100,000 per mortgage borrower.

''(2) TREATMENT AFTER EFFECTIVE DATE OF NEW REGULATIONS.—After the effective date of the regulations prescribed under subsection (c)—

''(A) the amount of deposit insurance available for custodial accounts shall be determined in accordance with such regulations; and

''(B) paragraph (1) shall cease to apply with respect to such accounts.

''(e) TREATMENT OF REFERENCES IN ADJUSTABLE RATE MORTGAGE INSTRUMENTS.—

''(1) IN GENERAL.—For purposes of adjustable rate mortgage instruments that are in effect as of the date of enactment of this Act [Aug. 9, 1989], any reference in the instrument to the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Bank Board, or institutions insured by the Federal Savings and Loan Insurance Corporation before such date shall be treated as a reference to the Federal Deposit Insurance Corporation, the Federal Housing Finance Board, the Office of Thrift Supervision, or institutions which are members of the Savings Association Insurance Fund, as appropriate on the basis of the transfer of functions pursuant to this Act [see Tables for classification], unless the context of the reference requires otherwise.

''(2) SUBSTITUTION FOR INDEXES.—If any index used to calculate the applicable interest rate on any adjustable rate mortgage instrument is no longer calculated and made available as a direct or indirect result of the enactment of this Act, any index—

''(A) made available by the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, or the Chairperson of the Federal Housing Finance Board pursuant to paragraph (3); or

''(B) determined by the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, or the Chairperson of the Federal Housing Finance Board, pursuant to paragraph (4), to be substantially similar to the index which is no longer calculated or made available,

may be substituted by the holder of any such adjustable rate mortgage instrument upon notice to the borrower.

''(3) AGENCY ACTION REQUIRED TO PROVIDE CONTINUED AVAILABILITY OF INDEXES.—Promptly after the enactment of this subsection [Aug. 9, 1989], the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairperson of the Federal Housing Finance Board shall take such action as may be necessary to assure that the indexes prepared by the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Bank Board, and the Federal home loan banks immediately prior to the enactment of this subsection and used to calculate the interest rate on adjustable rate mortgage instruments continue to be available.

''(4) REQUIREMENTS RELATING TO SUBSTITUTE INDEXES.—If any agency can no longer make available an index pursuant to paragraph (3), an index that is substantially similar to such index may be substituted for such index for purposes of paragraph (2) if the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, or the Chairperson of the Federal Housing Finance Board, as the case may be, determines, after notice and opportunity for comment, that—

''(A) the new index is based upon data substantially similar to that of the original index; and

''(B) the substitution of the new index will result in an interest rate substantially similar to the rate in effect at the time the original index became unavailable.

''SEC. 403. DETERMINATION OF TRANSFERRED FUNCTIONS AND EMPLOYEES.

''(a) ALL FHLBB AND FSLIC EMPLOYEES SHALL BE TRANSFERRED.—All employees of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation shall be identified for transfer under subsection (b) to the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the Federal Housing Finance Board.

''(b) FUNCTIONS AND EMPLOYEES TRANSFERRED.—

''(1) IN GENERAL.—The Director of the Office of Thrift Supervision, the Chairperson of the Oversight Board of the Resolution Trust Corporation, the Chairperson of the Federal Deposit Insurance Corporation, the Chairperson of the Federal Housing Finance Board, and the Chairman of the Federal Home Loan Bank Board (as of the day before the date of the enactment of this Act [Aug. 9, 1989]) shall jointly determine the functions or activities of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation, and the number of employees of such Board and Corporation necessary to perform or support such functions or activities, which are transferred from the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation to the Office of Thrift Supervision, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or the Federal Housing Finance Board, as the case may be.

''(2) ALLOCATION OF EMPLOYEES.—The Director of the Office of Thrift Supervision, the Chairperson of the Oversight Board of the Resolution Trust Corporation, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairperson of the Federal Housing Finance Board shall allocate the employees of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation consistent with the number determined pursuant to paragraph (1) in a manner which such Director, Chairman, and Chairpersons, in their sole discretion, deem equitable, except that, within work units, the agency preferences of individual employees shall be accommodated as far as possible.

''(c) FEDERAL HOME LOAN BANK PERSONNEL.—Employees of the Federal home loan banks or the joint offices of such banks who, on the day before the date of the enactment of this Act [Aug. 9, 1989], are performing functions or activities on behalf of the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation shall be treated as employees of the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for purposes of determining, pursuant to subsection (b)(1), the number of employees performing or supporting functions or activities of such Board or Corporation to the extent such functions or activities are transferred to the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Resolution Trust Corporation, or the Federal Housing Finance Board.

''(d) FSLIC EMPLOYEES ENGAGED IN CONSERVATORSHIP OR RECEIVERSHIP FUNCTIONS.—Individuals who, on the day before the date of the enactment of this Act [Aug. 9, 1989], are employed by the Federal Savings and Loan Insurance Corporation in such Corporation's capacity as conservator or receiver of any insured depository institution shall be treated as employees of the Federal Savings and Loan Insurance Corporation for purposes of determining, pursuant to subsection (b)(1), the number of employees performing or supporting functions or activities of such Corporation if such conservatorship or receivership is transferred to the Federal Deposit Insurance Corporation or the Resolution Trust Corporation.

''SEC. 404. RIGHTS OF EMPLOYEES OF ABOLISHED AGENCIES.

''All employees identified for transfer under subsection (b) of section 403 (other than individuals described in subsection (c) or (d) of such section) shall be entitled to the following rights:

''(1) Each employee so identified shall be transferred to the appropriate agency or entity for employment no later than 60 days after the date of the enactment of this Act [Aug. 9, 1989] and such transfer shall be deemed a transfer of function for the purpose of section 3503 of title 5, United States Code.

''(2) Each transferred employee shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 1 year after the date of transfer, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

''(3)(A) In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

''(B) An agency or entity may decline a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policymaking, policy-determining, or policy-advocating character, and noncareer positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

''(4) If any agency or entity to which employees are transferred determines, after the end of the 1-year period beginning on the date the transfer of functions to such agency or entity is completed, that a reorganization of the combined work force is required, that reorganization shall be deemed a 'major reorganization' for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

''(5) Any employee accepting employment with any agency or entity (other than the Office of Thrift Supervision) as a result of such transfer may retain for 1 year after the date such transfer occurs membership in any employee benefit program of the Federal Home Loan Bank Board, including insurance, to which such employee belongs on the date of the enactment of this Act [Aug. 9, 1989] if—

''(A) the employee does not elect to give up the benefit or membership in the program; and

''(B) the benefit or program is continued by the Director of the Office of Thrift Supervision.

The difference in the costs between the benefits which would have been provided by such agency or entity and those provided by this section shall be paid by the Director of the Office of Thrift Supervision. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director of the Office of Thrift Supervision, the employee shall be permitted to select an alternate Federal health insurance program within 30 days of such election or notice, without regard to any other regularly scheduled open season.

''(6) Any employee employed by the Office of Thrift Supervision as a result of the transfer may retain membership in any employee benefit program of the Federal Home Loan Bank Board, including insurance, which such employee has on the date of enactment of this Act, if such employee does not elect to give up such membership and the benefit or program is continued by the Director of the Office of Thrift Supervision. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director of the Office of Thrift Supervision, such employee shall be permitted to select an alternate Federal health insurance program within 30 days of such election or discontinuance, without regard to any other regularly scheduled open season.

''(7) A transferring employee in the Senior Executive Service shall be placed in a comparable position at the agency or entity to which such employee is transferred.

''(8) Transferring employees shall receive notice of their position assignments not later than 120 days after the effective date of their transfer.

''(9) Upon the termination of the Resolution Trust Corporation pursuant to section 21A(m)[(*o*)] of the Federal Home Loan Bank Act [12 U.S.C. 1441a(*o*)], any employee of the Federal Deposit Insurance Corporation assigned to the Resolution Trust Corporation shall be reassigned to a position within the Federal Deposit Insurance Corporation in accordance with the provisions of paragraphs (2) and (4) through (7) of this section, except that the liability for any difference in the costs of benefits described in paragraph (5) shall be a liability of the Resolution Trust Corporation and not the Office of Thrift Supervision.

''SEC. 405. DIVISION OF PROPERTY AND FACILITIES.

''Before the end of the 60-day period beginning on the date of the enactment of this Act [Aug. 9, 1989], the Director of the Office of Thrift Supervision, the Chairperson of the Oversight Board of the Resolution Trust Corporation, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairperson of the Federal Housing Finance Board shall jointly divide all property of the Federal Savings and Loan Insurance Corporation and the Federal Home Loan Bank Board used to perform functions and activities of the Federal Home Loan Bank Board among the Office of Thrift Supervision, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, and the Federal Housing Finance Board in accordance with the division of responsibilities, functions, and activities effected by this Act [see Tables for classification]. Any disagreement between them in so doing shall be resolved by the Director of the Office of Management and Budget.

''SEC. 406. REPORT.

''Before the end of the 60-day period beginning on the date of the enactment of this Act [Aug. 9, 1989], the Chairman of the Federal Home Loan Bank Board shall provide by written report to the Secretary of the Treasury, the Director of the Office of Management and Budget, and the Congress, a final accounting of the finances and operations of the Federal Savings and Loan Insurance Corporation.''

[Pub. L. 111–203, title III, §§ 351, 367(5), July 21, 2010, 124 Stat. 1546, 1556, effective on the transfer date (defined in section 5301 of this title), section 402 of Pub. L. 101–73, set out above, is amended:

(A) in subsection (a), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency'';

(B) by striking subsection (b);

(C) in subsection (e)—

(i) in paragraph (1), by striking ''Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(ii) in each of paragraphs (2), (3), and (4), by striking ''Director of the Office of Thrift Supervision'' each place that term appears and inserting ''Comptroller of the Currency''; and

(D) by striking ''Federal Housing Finance Board'' each place that term appears and inserting ''Federal Housing Finance Agency''.]

TRANSFERRED EMPLOYEES OF FEDERAL HOME LOAN BANKS AND JOINT OFFICES

Pub. L. 101–73, title VII, §722, Aug. 9, 1989, 103 Stat. 426, provided that:

''(a) IN GENERAL.—Each employee of the Federal Home Loan Banks or joint offices of such Banks performing a function identified for transfer under section 403 of this Act [set out above], including employees who otherwise would be ineligible for employment by the United States because of their citizenship, shall be transferred for employment not later than 60 days after the date of the enactment of this Act [Aug. 9, 1989].

''(b) NOTICE TO EMPLOYEES.—Transferring employees shall receive notice of their position assignments not later than 120 days after the effective date of their transfer.

''(c) GUARANTEED POSITION.—Each transferred employee shall be guaranteed a position with the same status and tenure as that held by such employee on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated for one year after the date of transfer, except for cause.

''(d) PAY AND BENEFITS.—Each employee transferred under this section shall be entitled to receive, during the one-year period immediately following the transfer, pay and benefits comparable to those received by such employee immediately preceding the transfer. Where necessary or appropriate to further the safety and soundness of the thrift industry, the employing agency may continue the pre-transfer compensation of any transferring employee for up to 2 years beyond the expiration of the period provided for under the preceding sentence. Such pay and benefits shall be subject to the comparability provisions of this Act [see Tables for classification]. Any transferred employee who suffers a reduction of pay or benefits as a result of such comparability provisions shall be compensated for such reduction during the 1 year period following the transfer by assessments from the Federal Home Loan Bank or joint office of such Banks, from which the employee transferred. In any event, this subsection shall only apply to a transferred employee while such employee remains with the agency to which the employee is transferred.

''(e) HEALTH INSURANCE.—If the health insurance program of a transferred employee is not continued by the agency to which the employee is transferred, such employee may elect to participate in the agency's health insurance program notwithstanding health conditions pre-existing at the time of election or enrollment into an alternate health insurance program of the agency to which he or she is transferred and without regard to any other regularly scheduled open season. Such election shall be made within 30 days of the transfer.

''(f) EQUITABLE TREATMENT.—The Director of the Office of Thrift Supervision or the Chairperson of the Federal Housing Finance Board shall take such action as is necessary on a case-by-case basis so that employees transferring under this section receive equitable treatment regarding credit for prior service with a Federal entity or instrumentality, or with a Federal Home Loan Bank or joint office of such Banks, with respect to the transferring employees' retirement accounts and the transferring employees' accrued leave or vacation time, in recognition of the transferring employees' supervisory service.

''(g) SPECIAL RULE FOR CERTAIN ANNUITANTS.—An individual who was a reemployed annuitant on July 26, 1989, and who is transferred under this section, shall not be subject to the deduction from pay required by section 8344 or 8468 of title 5, United States Code, during the 1-year period beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Aug. 9, 1989].''

TRANSITIONAL PROVISIONS

Pub. L. 101–73, title VII, §723, Aug. 9, 1989, 103 Stat. 427, provided that:

''(a) FEDERAL HOME LOAN BANKS' SHARE OF ADMINISTRATIVE EXPENSES.—The Federal Home Loan Banks shall pay to the Director of the Office of Thrift Supervision the amount obtained by multiplying the administrative expenses of the Office of Thrift Supervision incurred in connection with functions of the Banks that are transferred to the Office (less any fees or assessments collected by the Office) by a fraction—

''(1) the numerator of which is the amount of such expenses of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation paid by the Banks during the 1-year period ending on the date of enactment of this Act [Aug. 9, 1989]; and

''(2) the denominator of which is the total expenses of such Board and Corporation during such period.

No payment under this subsection is required after December 31, 1989.

''(b) COMPENSATION OF SUPERVISORY AND EXAMINATIONS EMPLOYEES.—The Federal Home Loan Banks shall continue to pay the compensation of employees of the Federal Home Loan Banks or the joint offices of such banks who, on the day before the date of the enactment of this Act [Aug. 9, 1989], are performing supervisory and examination functions until such supervisory and examination functions are transferred under this Act [see Tables for classification]. Thereafter, the obligation of the Federal Home Loan Banks hereunder to pay such applicable compensation shall continue until the later of—

''(1) the date which is 120 days after the date of transfer of such supervisory and examination functions to the Office of Thrift Supervision, or

''(2) March 31, 1990.

Payment of such compensation by the Federal Home Loan Banks shall be in lieu of, and not in addition to, the payment of compensation by the Office of Thrift Supervision.

''(c) FACILITIES AND SUPPORT SERVICES.—Until December 31, 1990, the Federal Home Loan Banks, as necessary, shall (with respect to supervisory and examination functions performed by employees transferred from the Federal Home Loan Banks or joint offices of such Banks to the Office of Thrift Supervision), provide the Office of Thrift Supervision facilities and support services comparable to those presently provided for the employees of the Federal Home Loan Banks or joint offices of such Banks performing such supervisory and examination functions, including office space, furniture and equipment, computer, personnel, and other support services. With respect to supervisory and examination functions presently performed by employees of individual Federal Home Loan Banks, each such Bank will only be required to provide such facilities and support services to the extent that the functions continue to be performed in that Bank's offices.

''(d) PRINCIPAL SUPERVISORY AGENT.—Beginning on the date of enactment of this Act [Aug. 9, 1989] until the Director of the Office of Thrift Supervision shall otherwise provide, the Principal Supervisory Agent for each Federal Home Loan Bank district shall be the senior supervisory official (other than the President of the Federal Home Loan Bank) employed by the Federal Home Loan Bank in such district on the day before the date of the enactment of this Act, and such employees performing supervisory and examination functions shall continue to be responsible for the supervision and examination of savings associations within such district.''

SPECIAL ACCOUNT

Pub. L. 101–73, title VII, §725, Aug. 9, 1989, 103 Stat. 429, provided that: ''At the time of dissolution of the

Federal Home Loan Bank Board, all such moneys and funds as shall remain in the special deposit account of the Federal Home Loan Bank Board, or other such accounts, shall become the property of the Federal Housing Finance Board.''

IMPROVEMENTS IN SUPERVISORY PROCESS

Pub. L. 100–86, title IV, §407(a)–(c), Aug. 10, 1987, 101 Stat. 616, 617, provided that:

''(a) ENHANCED FLEXIBILITY IN THE SUPERVISORY PROCESS.—The Federal Home Loan Bank Board (acting as such under the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.] and in the Board's capacity as the board of trustees of the Federal Savings and Loan Insurance Corporation under section 402(a) of the National Housing Act [12 U.S.C. 1725(a)]) shall issue guidelines which provide greater flexibility for supervisory agents, examiners, and other employees and agents of the Board, the Federal Savings and Loan Insurance Corporation, and the Federal home loan banks in applying regulations, standards, and other requirements of the Board or such Corporation with regard to particular situations or particular thrift institutions.

''(b) PARTICULAR GUIDELINES REQUIRED.—The guidelines issued under subsection (a) shall contain the following provisions:

''(1) FLEXIBLE APPROVAL PROCESS FOR RENEGOTIATED LOANS.—A provision establishing a flexible procedure for obtaining supervisory approval of the terms of loans renegotiated by thrift institutions if a supervisory agreement is in effect between such institution and the principal supervisory agent of the Federal home loan bank district where such institution is located.

''(2) RECOGNITION OF ADDITIONAL FINANCIAL CAPABILITY OF A BORROWER.—A provision permitting examiners and other employees and agents of the Board, the Federal Savings and Loan Insurance Corporation, and the Federal home loan banks to take into account, to the extent consistent with the practices of the Federal banking agencies, other financial resources of a borrower (in addition to the financial assets of the borrower which are pledged to secure a loan) in classifying the assets of the thrift institution which holds a loan made to such borrower or with recourse to the borrower.

''(3) APPRAISAL REVIEW.—A provision establishing an appraisal review system to avoid overly optimistic or conservative appraisals with the goal of achieving appraisals that are more consistent in reflecting underlying values.

''(4) 1-TO-4 FAMILY RESIDENCES.—A provision eliminating the scheduled item system except as such system relates to 1-to-4 family residences.

''(c) DEFINITIONS.—For purposes of subsections (a) and (b)—

''(1) THRIFT INSTITUTION.—The term 'thrift institution' means—

''(A) any association (within the meaning given to such term in section 2(d) of the Home Owners' Loan Act of 1933 [12 U.S.C. 1462(d)]);

''(B) any insured institution (within the meaning given to such term in section 401(a) of the National Housing Act [12 U.S.C. 1724(a)]); and

''(C) any member (within the meaning given to such term in section 2(4) [now 2(3)] of the Federal Home Loan Bank Act [12 U.S.C. 1422(3)]).

''(2) BOARD.—The term 'Board' means the Federal Home Loan Bank Board.

''(3) FEDERAL BANKING AGENCY.—The term 'Federal banking agency' means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.''

GUIDELINES RESPECTING ACTION ON APPLICATIONS TO BANK BOARD OR FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Pub. L. 100–86, title IV, §410(a), (c), (d), Aug. 10, 1987, 101 Stat. 620, provided that:

''(a) IN GENERAL.—The Federal Home Loan Bank Board shall promulgate guidelines which provide that with respect to each type of completed application (other than an application under section 408(g) of the National Housing Act [12 U.S.C. 1730a(g)]) by any person for approval by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation, the application shall be deemed to be approved as of the end of the period prescribed under such guidelines unless the Board or the Federal Savings and Loan Insurance Corporation, as the case may be, approves or disapproves such application before the end of such period.

''(c) REPORT TO CONGRESS.—Before the end of the 60-day period beginning on the date of the enactment of this Act [Aug. 10, 1987], the Federal Home Loan Bank Board shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing the guidelines required to be promulgated under subsection (a).

''(d) EFFECTIVE DATE.—The guidelines required to be promulgated under subsection (a) shall take effect at the end of the 60-day period referred to in subsection (c).''

GUIDELINES FOR ASSET DISPOSITION

Pub. L. 100–86, title IV, §411, Aug. 10, 1987, 101 Stat. 620, which directed Federal Home Loan Bank Board to submit, not later than 6 months after Aug. 10, 1987, to congressional committees a report containing appropriate new guidelines to prevent dumping of assets over which it had direct or indirect control and which the Board was to promulgate at end of such period, ceased to be effective on date that notice of completion of all net new borrowing by Financing Corporation is published in Federal Register (Mar. 30, 1992). See section 416 of Pub. L. 100–86, set out as a Sunset and Savings Provision note under section 1441 of this title.

EXPANSION OF USE OF UNDERUTILIZED MINORITY THRIFT INSTITUTIONS

Pub. L. 100–86, title IV, §412, Aug. 10, 1987, 101 Stat. 620, provided that:

''(a) CONSULTATION ON EXPANDED USE.—The Secretary of the Treasury shall consult with the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation on methods for increasing the use of underutilized minority thrift institutions as depositaries or financial agents of Federal agencies.

''(b) DESIGNATION OF MINORITY THRIFT INSTITUTIONS INVOLVED IN CAPITAL RECOVERY PROGRAM AS UNDERUTILIZED THRIFT.—If the Federal Home Loan Bank Board approves any plan submitted under regulations prescribed under section 10 of the Home Owners' Loan Act of 1933 [12 U.S.C. 1467a] (as added by section 404(a) of this title) or section 416 of the National Housing Act [12 U.S.C. 1730i] (as added by section 404(c) [404(b)] of this title) by any minority institution (as defined in each such section), such minority institution shall be designated by the Board as an underutilized thrift institution for purposes of increasing the use of such association as a depositary or financial agent of other Federal agencies.

''(c) REPORT TO CONGRESS.—Before the end of the 6-month period beginning on the date of the enactment of this Act [Aug. 10, 1987], the Secretary of the Treasury, the Federal Home Loan Bank Board, and the Federal Savings and Loan Insurance Corporation shall each submit a report to the Congress on actions taken by such Secretary or agency pursuant to subsection (a) or (b).

''(d) THRIFT INSTITUTION DEFINED.—For purposes of this section, the term 'thrift institution' has the meaning given to such term in section 407(c)(1) [section 407(c)(1) of Pub. L. 100–86, set out as a note above].''

CONGRESSIONAL OVERSIGHT

Pub. L. 100–86, title IV, §415, Aug. 10, 1987, 101 Stat. 622, provided that:

''(a) BANKING COMMITTEE REVIEW OF PANEL ACTIONS.—The Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate shall monitor and review the actions taken by each review panel established pursuant to the amendment made by section 407(d) of this Act [enacting former section 1442a of this title].

''(b) OTHER CONGRESSIONAL OVERSIGHT.—The Federal Home Loan Bank Board shall submit a report to the Committee on Banking, Finance and Urban Affairs [now Committee on Financial Services] of the House of Representatives, at the end of the 6-month period beginning on the date of the enactment of this title [Aug. 10, 1987], at the end of the 1-year period beginning on such date, and on an annual basis after the end of such 1-year period, containing—

''(1) a description of the Board's existing manpower and talent;

''(2) an estimate of the Board's projected manpower and talent needs for the year, including the cost of such projected needs;

''(3) a description and explanation of the goals and objectives, of the Board and all its related entities (including the Federal Asset Disposition Association), for the coming year and the management strategies to be employed by such entities in accomplishing such goals and objectives;

''(4) a summary of the operations, receipts, expenses, and expenditures, of the Board and all its related entities (including the Federal Asset Disposition Association), during the preceding year; and

''(5) a summary of the operations and the aggregate receipts, expenses, and expenditures of any other person not referred to in paragraph (4), including receivers, conservators, accountants, attorneys, and consultants, who is engaged in any activity on behalf of the Board or any other entity which is referred to in such paragraph, to the extent such operations, receipts, expenses, and expenditures are in connection with such activity.

''(c) APPEARANCE.—The Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation shall, before the beginning of each fiscal year, appear before the Committee on Banking, Finance and Urban Affairs [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate to describe and explain each such agency's plans and proposals with respect to administrative expenses for such fiscal year.

''(d) GUIDELINES FOR EMPLOYMENT OF OUTSIDE ACCOUNTANTS, ATTORNEYS, CONSERVATORS, AND OTHER CONSULTANTS.—Before the end of the 6-month period beginning on the date of the enactment of this Act [Aug. 10, 1987], the Federal Home Loan Bank Board shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing guidelines to improve the management of and control over all outside accountants, attorneys, conservators, consultants, and other persons whose services are employed by the Board, the Federal Savings and Loan Insurance Corporation, the Federal Asset Disposition Association, the principal supervisory agent for any Federal home loan bank district, or any other entity created, owned, or controlled by the Board in connection with any function for which the Board has direct or indirect regulatory or supervisory responsibility.''

STUDY AND REPORTS CONCERNING DIRECT INVESTMENTS

Pub. L. 100–86, title XII, §1203, Aug. 10, 1987, 101 Stat. 661, provided that:

''(a) STUDY REQUIRED.—The Federal Home Loan Bank Board shall conduct a study of the effect of direct investment activities on insured institutions, including comparative analyses of the effect of direct investment activities on—

''(1) different sized insured institutions;

''(2) State chartered insured institutions;

''(3) federally chartered insured institutions; and

''(4) insured institutions in each of the Supervisory Examinations Rating Classifications.

''(b) REPORT REQUIRED.—Not later than 18 months after the date of enactment of this Act [Aug. 10, 1987], the Federal Home Loan Bank Board shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report containing the findings and conclusions of the Board with respect to the study required under subsection (a), including—

''(1) the findings and conclusions of the Board concerning the losses to the insurance fund and the degree to which such losses were the result of direct investment activities with respect to each of the classes of institutions described in subsection (a); and

''(2) a comparison of the effects of direct investment activities prior to April 16, 1987, and the effect of such activities on or after April 16, 1987, for each of the classes of institutions described in subsection (a) and the losses to the insurance fund as a result of such activities.

''(c) PRIOR REPORTS TO CONGRESS ON CHANGES TO DIRECT INVESTMENT REGULATIONS.—

''(1) IN GENERAL.—Not less than 90 days before final approval is given by the Federal Home Loan Bank Board to any regulation which repeals or modifies (or has the effect of repealing or modifying) any regulation limiting direct investment activities, the Board shall submit to the Committee on Banking, Finance and Urban Affairs [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the proposed regulation and the reasons for the proposed regulation, including the effect of such regulation on the insurance fund.

''(2) PROSPECTIVE APPLICATION OF RULE.—Paragraph (1) shall not apply with respect to Board Resolution Numbered 87–215 and Board Resolution Numbered 87–215A.

''(d) DIRECT INVESTMENT ACTIVITY DEFINED.—For purposes of this section, the term 'direct investment activities' means activities which are limited under Board Resolution Numbered 87–215 and Board Resolution Numbered 87–215A.''

§ 1438. Administrative expenses

(a) Repealed. Pub. L. 101–73, title VII, § 712, Aug. 9, 1989, 103 Stat. 419

(b) Repealed. Pub. L. 110–289, div. A, title II, § 1204(2), July 30, 2008, 122 Stat. 2786

(c) Quarters and facilities; advances of funds; obligations of United States; legal investments; approval of plans and designs; custody, management, and control; receipts; expense exclusions; property defined; budget preparation program; audit; zoning regulations; delegation of functions; limitation on obligations

(1) The Director of the Office of Thrift Supervision, utilizing the services of the Administrator of General Services (hereinafter referred to as the ''Administrator''), and subject to any limitation hereon which may hereafter be imposed in appropriation Acts, is hereby authorized—

(A) to acquire, in the name of the United States, real property in the District of Columbia, for the purposes set forth in this subsection;

(B) to construct, develop, furnish, and equip such buildings thereon and such facilities as in

its judgment may be appropriate to provide, to such extent as the Director of the Office of Thrift Supervision may deem advisable, suitable and adequate quarters and facilities for the Director of the Office of Thrift Supervision and the agencies under its administration or supervision;

(C) to enlarge, remodel, or reconstruct any of the same; and

(D) to make or enter into contracts for any of the foregoing.

(2) The Director of the Office of Thrift Supervision may require of the respective banks, and they shall make to the Director of the Office of Thrift Supervision, such advances of funds for the purposes set out in paragraph (1) as in the sole judgment of the Director of the Office of Thrift Supervision may from time to time be advisable. Such advances shall be in addition to the assessments authorized in subsection (b) of this section and shall be apportioned by the Director of the Office of Thrift Supervision among the banks in proportion to the total assets of the respective banks, determined in such manner and as of such times as the Director of the Office of Thrift Supervision may prescribe. Each such advance shall bear interest at the rate of 4½ per centum per annum from the date of the advance and shall be repaid by the Director of the Office of Thrift Supervision in such installments and over such period, not longer than twenty-five years from the making of the advance, as the Director of the Office of Thrift Supervision may determine. Payments of interest and principal upon such advances shall be made from receipts of the Director of the Office of Thrift Supervision or from other sources which may from time to time be available to the Director of the Office of Thrift Supervision. The obligation of the Director of the Office of Thrift Supervision to make any such payment shall not be regarded as an obligation of the United States. To such extent as the Director of the Office of Thrift Supervision may prescribe any such obligation shall be regarded as a legal investment for the purposes of subsections (g) and (h) of section 1431 of this title and for the purposes of section 1436 of this title.

(3) The plans and designs for such buildings and facilities and for any such enlargement, remodeling, or reconstruction shall, to such extent as the chairperson of[1] the Director of the Office of Thrift Supervision may request, be subject to his approval.

(4) Upon the making of arrangements mutually agreeable to the Director of the Office of Thrift Supervision and the Administrator, which arrangements may be modified from time to time by mutual agreement between them and may include but shall not be limited to the making of payments by the Director of the Office of Thrift Supervision and such agencies to the Administrator and by the Administrator to the Director of the Office of Thrift Supervision, the custody, management, and control of such buildings and facilities and of such real property shall be vested in the Administrator in accordance therewith. Until the making of such arrangements such custody, management, and control, including the assignment and allotment and the reassignment and reallotment of building and other space, shall be vested in the Director of the Office of Thrift Supervision.

(5) Any proceeds (including advances) received by the Director of the Office of Thrift Supervision in connection with this subsection, and any proceeds from the sale or other disposition of real or other property acquired by the Director of the Office of Thrift Supervision under this subsection, shall be considered as receipts of the Director of the Office of Thrift Supervision, and obligations and expenditures of the Director of the Office of Thrift Supervision and such agencies in connection with this subsection shall not be considered as administrative expenses. As used in this subsection, the term ''property'' shall include interests in property.

(6) With respect to its functions under this subsection the Director of the Office of Thrift Supervision shall (A) annually prepare and submit a budget program as provided in chapter 91 of title 31 with regard to wholly owned Government corporations, and for purposes of this sentence, the terms ''wholly owned Government corporations'' and ''Government corporations'', wherever used in such chapter, shall include the Director of the Office of Thrift Supervision, and (B) maintain an integral set of accounts which shall be audited by the Government Accountability Office in accordance with the principles and procedures applicable to commercial corporate transactions as provided in such title, and no other settlement or adjustment shall be required with respect to transactions under this subsection or with respect to claims, demands, or accounts by or against any person arising thereunder. The first budget program shall be for the first full fiscal year beginning on or after the date of the enactment of this subsection. Except as otherwise provided in this subsection or by the Director of the Office of Thrift Supervision, the provisions of this subsection and the functions thereby or thereunder subsisting shall be applicable and exercisable notwithstanding and without regard to the Act of June 20, 1938, except that the proviso of section 16 thereof shall apply to any building constructed under this subsection, and section 306 of the Act of July 30, 1947 (61 Stat. 584), or any other provision of law relating to the construction, alteration, repair, or furnishing of public or other buildings or structures or the obtaining of sites therefor, but any person or body in whom any such function is vested may provide for delegation or redelegation of the exercise of such function.

(7) No obligation shall be incurred and no expenditure, except in liquidation of obligation, shall be made pursuant to the first two subparagraphs of paragraph (1) of this subsection if the total amount of all obligations incurred pursuant thereto would thereupon exceed $13,200,000, or such greater amount as may be provided in an appropriation Act or other law.

(July 22, 1932, ch. 522, § 18, 47 Stat. 737; Pub. L. 89–754, title X, § 1016(b), Nov. 3, 1966, 80 Stat. 1293; Pub. L. 101–73, title VII, §§ 701(b)(2), (b)(3)(B), 711, 712, Aug. 9, 1989, 103 Stat. 412, 419; Pub. L. 104–66, title II, § 2191, Dec. 21, 1995, 109 Stat. 732; Pub. L. 106–102, title VI, § 606(h), Nov. 12, 1999, 113 Stat.

[1] So in original. Words ''the chairperson of'' probably should not appear.

1455; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–289, div. A, title II, §1204(2), July 30, 2008, 122 Stat. 2786.)

REPEAL OF SUBSECTION (c)

Pub. L. 111–203, title III, §364(a), July 21, 2010, 124 Stat. 1555, provided that, effective 90 days after the transfer date, subsection (c) of this section is repealed. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Date of the enactment of this subsection and fiscal year in which this subsection is enacted, referred to in subsec. (c)(6), mean Nov. 3, 1966, the date of enactment of Pub. L. 89–754, and fiscal year 1967, respectively.

Act of June 20, 1938, referred to in subsec. (c)(6), is act June 20, 1938, ch. 534, 52 Stat. 797, as amended, which is not classified to the Code.

Section 306 of the Act of July 30, 1947, referred to in subsec. (c)(6), is section 306 of act July 30, 1947, ch. 358, 61 Stat. 584, which is set out, in part, as a note under section 585 of Title 40, Public Buildings, Property, and Works. The remainder of section 306 of act of July 30, 1947, was set out as a note under section 19 of former Title 40, Public Buildings, Property, and Works, and has been omitted from the Code.

CODIFICATION

In subsec. (c)(6), ''chapter 91 of title 31'' and ''such chapter'' substituted for ''title I of the Government Corporation Control Act [31 U.S.C. 846 et seq.]'' and ''such title'', respectively, on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–289 struck out subsec. (b) which related to assessments for administrative expenses.

2004—Subsec. (c)(6). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1999—Subsec. (b)(4). Pub. L. 106–102 struck out heading and text of par. (4). Text read as follows: ''On or after the effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board may levy a one-time special assessment on the Banks pursuant to this subsection for the Board's estimated expenses for the transitional period following enactment of such Act, if such assessment is made before the Board's first semiannual assessment under paragraph (1).''

1995—Subsec. (c)(6)(B). Pub. L. 104–66 struck out ''annually'' after ''shall be audited'', substituted ''no other settlement'' for ''no other audit, settlement,'', and struck out '', and the first audit shall be for the remainder of the fiscal year in which this subsection is enacted'' after ''enactment of this subsection''.

1989—Subsec. (a). Pub. L. 101–73, §712, struck out subsec. (a) which authorized appropriation of $300,000 for all necessary expenses of the board, together with expenses preliminary to organization and establishment of the banks created hereunder, until the end of the fiscal year 1933.

Subsec. (b). Pub. L. 101–73, §711, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The board shall have power to levy semiannually upon the Federal Home Loan Banks, and they shall pay, on such equitable basis as the board shall determine, an assessment sufficient in its judgment to provide for the payment of its estimated expenses for the half year succeeding the levying of each such assessment, beginning with the second half of the calendar year 1933. All expenses of the board incurred in carrying out the provisions of this chapter, as determined by it, beginning July 1, 1933, shall be paid from the proceeds of such assessments, and if any deficiency shall occur in such fund at any time between such semiannual assessments the board shall have power to make an immediate assessment against the banks to cover such deficiency on the same basis as the original assessment. If any surplus shall remain from any assessment after the expiration of the semiannual period for which it was levied, such surplus may be deducted from the next following assessment. Such assessments may include such amounts as the board may deem advisable for carrying out the provisions of subsection (c) of this section.''

Subsec. (c). Pub. L. 101–73, §701(b)(3)(B), which directed the amendment of subsec. (c) by striking out ''Federal Home Loan Bank Board'' and ''board'' each place such terms appear and inserting ''Director of the Office of Thrift Supervision'', was executed by substituting ''Director of the Office of Thrift Supervision'' for ''board'' wherever such term appeared. The term ''Federal Home Loan Bank Board'' did not appear in subsec. (c).

Subsec. (c)(3). Pub. L. 101–73, §701(b)(2), substituted ''chairperson'' for ''chairman''.

1966—Subsec. (b). Pub. L. 89–754, §1016(b)(1), provided that assessments may include such amounts as the board may deem advisable for carrying out provisions of subsec. (c).

Subsec. (c). Pub. L. 89–754, §1016(b)(2), added subsec. (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title III, §364(a), July 21, 2010, 124 Stat. 1555, provided that, effective 90 days after the transfer date, subsection (c) of this section is repealed. For definition of ''transfer date'', see section 5301 of this title.

§ 1438a. Nonadministrative expenses; expenses of studies and investigations

On and after July 12, 1960, expenses of the Board in making studies or investigations specifically directed by law, or requested by the Congress or either House thereof or by a committee of either House, including services authorized by section 3109 of title 5, shall be considered as nonadministrative expenses.

(Pub. L. 86–626, title II, §201, July 12, 1960, 74 Stat. 441.)

CODIFICATION

''Section 3109 of title 5'' substituted in text for ''section 15 of the Act of August 2, 1946 (5 U.S.C. 55a)'' on authority of section 7(b) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

§§ 1439, 1439–1. Repealed. Pub. L. 101–73, title VII, §§ 708, 712, Aug. 9, 1989, 103 Stat. 418, 419

Section 1439, acts July 22, 1932, ch. 522, §19, 47 Stat. 737; May 28, 1935, ch. 150, §9, 49 Stat. 295; July 3, 1948, ch. 825, §2, 62 Stat. 1240, related to appointment, compensation, etc., of officers and employees of Board.

Section 1439–1, act July 22, 1932, ch. 522, §19A, as added Aug. 10, 1987, Pub. L. 100–86, title V, §505(d), 101 Stat. 633, related to apportionment of monies received by Board.

§ 1439a. Deposits in special fund; availability for all purposes of Federal Home Loan Bank Board and Federal Home Loan Bank Administration

All moneys and funds heretofore deposited in the Treasury of the United States under the last sentence of section 1439[1] of this title (including

[1] See References in Text note below.

unexpended balances of moneys appropriated therefrom for administrative expenses), and hereafter all moneys and funds which would, except for this provision, be so depositable thereunder, shall be deposited with the Treasurer of the United States in a special deposit account and shall be available, retroactively as well as prospectively, for expenditure for all purposes of the Federal Home Loan Bank Board and the Federal Home Loan Bank Administration, subject to subsections (a) and (b) of section 712a of title 15.

(June 26, 1943, ch. 145, title I, § 101, 57 Stat. 186; 1947 Reorg. Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Aug. 11, 1955, ch. 783, title I, § 109(a)(3), 69 Stat. 640.)

REFERENCES IN TEXT

Section 1439 of this title, referred to in text, was repealed by Pub. L. 101–73, title VII, § 708, Aug. 9, 1989, 103 Stat. 418.

CODIFICATION

Section was enacted as part of the Independent Offices Appropriation Act, 1944, and not as part of the Federal Home Loan Bank Act which comprises this chapter.

CHANGE OF NAME

''Home Loan Bank Board'' changed to ''Federal Home Loan Bank Board'' by act Aug. 11, 1955, ch. 783, § 109(a)(3), which was classified to section 1437(b) of this title prior to the repeal of section 1437 by Pub. L. 101–73, title VII, § 703(a), Aug. 9, 1989, 103 Stat. 415. Previously, ''Home Loan Bank Board'' had been substituted for ''Federal Home Loan Bank Board'' by Reorg. Plan No. 3 of 1947.

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

For transfer of functions to Secretary of the Treasury, see note set out under section 55 of this title.

§ 1440. Examinations and audits

The Director shall from time to time, at least annually, require examinations and reports of condition of all Federal Home Loan Banks in such form as the Director shall prescribe and shall furnish periodically statements based upon the reports of the banks to the Director. For the purposes of this chapter, examiners appointed by the Director shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act [12 U.S.C. 21 et seq.] and the Federal Reserve Act [12 U.S.C. 221 et seq.], and shall have, in the exercise of functions under this chapter, the same powers and privileges as are vested in such examiners by law. In addition to such examinations, the Comptroller General may audit or examine the Director and the Banks, to determine the extent to which the Director and the Banks are fairly and effectively fulfilling the purposes of this chapter.

(July 22, 1932, ch. 522, § 20, 47 Stat. 738; June 27, 1950, ch. 369, § 10, 64 Stat. 259; Aug. 2, 1954, ch. 649, title VIII, § 802(f), 68 Stat. 643; Pub. L. 101–73, title VII, §§ 701(b)(1), (3)(A), 702(b), Aug. 9, 1989, 103 Stat. 412, 415; Pub. L. 110–289, div. A, title II, § 1204(8), (9), July 30, 2008, 122 Stat. 2786.)

REFERENCES IN TEXT

The National Bank Act, referred to in text, is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified principally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

The Federal Reserve Act, referred to in text, is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289 substituted ''The Director'' for ''The Board'' and ''the Director'' for ''the Board'' wherever appearing.

1989—Pub. L. 101–73, § 702(b), inserted provisions relating to audit or examination by the Comptroller General.

Pub. L. 101–73, § 701(b)(1), (3)(A), substituted ''Board'' for ''board'' wherever appearing.

1954—Act Aug. 2, 1954, struck out second sentence relating to annual report of the board to Congress. See section 1437(b) of this title.

1950—Act June 27, 1950, struck out ''twice'' before ''annually''.

§ 1440a. Sharing of information among Federal Home Loan Banks

(a) Information on financial condition

In order to enable each Federal Home Loan Bank to evaluate the financial condition of one or more of the other Federal Home Loan Banks individually and the Federal Home Loan Bank System (including any risks associated with the issuance or repayment of consolidated Federal Home Loan Bank bonds and debentures or other borrowings and the joint and several liabilities of the Banks incurred due to such borrowings), as well as to comply with any of its obligations under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Director shall make available to the Banks such reports, records, or other information as may be available, relating to the condition of any Federal Home Loan Bank.

(b) Sharing of information

(1) In general

The Director shall promulgate regulations to facilitate the sharing of information made available under subsection (a) directly among the Federal Home Loan Banks.

(2) Limitation

Notwithstanding paragraph (1), a Federal Home Loan Bank responding to a request from another Bank or from the Director for information pursuant to this section may request that the Director determine that such information is proprietary and that the public interest requires that such information not be shared.

(c) Limitation

Nothing in this section shall affect the obligations of any Federal Home Loan Bank under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the regulations issued by the Securities and Exchange Commission thereunder.

(d) No waiver of privilege

The Director shall not be deemed to have waived any privilege applicable to any informa-

tion concerning a Federal Home Loan Bank by transferring, or permitting the transfer of, that information to any other Federal Home Loan Bank for the purposes set out in subsection (a).

(July 22, 1932, ch. 522, § 20A, as added Pub. L. 110–289, div. A, title II, § 1207, July 30, 2008, 122 Stat. 2787.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsecs. (a) and (c), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

§ 1441. Financing Corporation

(a) Establishment

Notwithstanding any other provision of law, the Director shall charter a corporation to be known as the Financing Corporation.

(b) Management of Financing Corporation

(1) Directorate

The Financing Corporation shall be under the management of a directorate composed of 3 members as follows:

(A) The Director of the Office of Finance of the Federal Home Loan Banks (or the head of any successor to such office).

(B) 2 members selected by the Director from among the presidents of the Federal Home Loan Banks.

(2) Terms

Each member appointed under paragraph (1)(B) shall be appointed for a term of 1 year.

(3) Vacancy

If any member leaves the office in which such member was serving when appointed to the Directorate—

(A) such member's service on the Directorate shall terminate on the date such member leaves such office; and

(B) the successor to the office of such member shall serve the remainder of such member's term.

(4) Equal representation of banks

No president of a Federal Home Loan Bank may be appointed to serve an additional term on the Directorate until such time as the presidents of each of the other Federal Home Loan Banks have served as many terms on the Directorate as the president of such bank (before the appointment of such president to such additional term).

(5) Chairperson

The Director shall select the chairperson of the Directorate from among the 3 members of the Directorate.

(6) Staff

(A) No paid employees

The Financing Corporation shall have no paid employees.

(B) Powers

The Directorate may, with the approval of the Director, authorize the officers, employees, or agents of the Federal Home Loan Banks to act for and on behalf of the Financing Corporation in such manner as may be necessary to carry out the functions of the Financing Corporation.

(7) Administrative expenses

(A) In general

All administrative expenses of the Financing Corporation shall be paid by the Federal Home Loan Banks.

(B) Pro rata distribution

The amount each Federal Home Loan Bank shall pay shall be determined by the Director by multiplying the total administrative expenses for any period by the percentage arrived at by dividing—

(i) the aggregate amount the Director required such bank to invest in the Financing Corporation (as of the time of such determination) under paragraphs (4) and (5) of subsection (d) of this section (as computed without regard to paragraph (3) or (6) of such subsection); by

(ii) the aggregate amount the Director required all Federal Home Loan Banks to invest (as of the time of such determination) under such paragraphs.

(C) Administrative expenses defined

For purposes of this paragraph, the term ''administrative expenses'' does not include—

(i) issuance costs (as such term is defined in subsection (g)(5)(A) of this section);

(ii) any interest on (and any redemption premium with respect to) any obligation of the Financing Corporation; or

(iii) custodian fees (as such term is defined in subsection (g)(5)(B) of this section).

(8) Regulation by Director

The Directorate shall be subject to such regulations, orders, and directions as the Director may prescribe.

(9) No compensation from Financing Corporation

Members of the Directorate shall receive no pay, allowances, or benefits from the Financing Corporation by reason of their service on the Directorate.

(c) Powers of Financing Corporation

The Financing Corporation shall have only the following powers, subject to the other provisions of this section and such regulations, orders, and directions as the Director may prescribe:

(1) To issue nonvoting capital stock to the Federal Home Loan Banks.

(2) To invest in any security issued by the Federal Savings and Loan Insurance Corporation under section 1725(b) of this title prior to August 9, 1989, and thereafter to transfer the proceeds of any obligation issued by the Financing Corporation to the FSLIC Resolution Fund.

(3) To issue debentures, bonds, or other obligations and to borrow, to give security for any amount borrowed, and to pay interest on (and any redemption premium with respect to) any such obligation or amount.

(4) To impose assessments in accordance with subsection (f) of this section.

(5) To adopt, alter, and use a corporate seal.

(6) To have succession until dissolved.

(7) To enter into contracts.

(8) To sue and be sued in its corporate capacity, and to complain and defend in any action brought by or against the Financing Corporation in any State or Federal court of competent jurisdiction.

(9) To exercise such incidental powers not inconsistent with the provisions of this section as are necessary or appropriate to carry out the provisions of this section.

(d) Capitalization of Financing Corporation

(1) Purchase of capital stock by Federal Home Loan Banks

(A) In general

Each Federal Home Loan Bank shall invest in nonvoting capital stock of the Financing Corporation at such times and in such amounts as the Director may prescribe under this subsection.

(B) Par value; transferability

Each share of stock issued by the Financing Corporation to a Federal Home Loan Bank shall have par value in an amount determined by the Director and shall be transferable only among the Federal Home Loan Banks in the manner and to the extent prescribed by the Director at not less than par value.

(2) Aggregate dollar amount limitation on all investments

The aggregate amount of funds invested by all Federal Home Loan Banks in nonvoting capital stock of the Financing Corporation shall not exceed $3,000,000,000.

(3) Maximum investment amount limitation for each Federal Home Loan Bank

The cumulative amount of funds invested in nonvoting capital stock of the Financing Corporation by each Federal Home Loan Bank shall not exceed the aggregate amount of—

(A) the sum of—

(i) the reserves maintained by such bank on December 31, 1985, pursuant to the requirement contained in the first 2 sentences of section 1436 of this title; and

(ii) the undivided profits (as defined in paragraph (7)) of such bank on such date; and

(B) the sum of—

(i) the amounts added to reserves after December 31, 1985, pursuant to the requirement contained in the first 2 sentences of section 1436 of this title; and

(ii) the undivided profits of such bank accruing after such date.

(4) Pro rata distribution of 1st $1,000,000,000 invested in Financing Corporation by Home Loan Banks

Of the first $1,000,000,000 in the aggregate which the Thrift Depositor Protection Oversight Board pursuant to section 1441b of this title or the Director under this section (as the case may be) may require the Federal Home Loan Banks collectively to invest in the stock of the Funding Corporation or invest in the capital stock of the Financing Corporation, respectively, the amount which each Federal Home Loan Bank (or any successor to such Bank) shall invest shall be determined by the Thrift Depositor Protection Oversight Board or the Director (as the case may be) by multiplying the aggregate amount of such payment or investment by all Banks by the percentage appearing in the following table for each such Bank:

Bank	Percentage
Federal Home Loan Bank of Boston	1.8629
Federal Home Loan Bank of New York	9.1006
Federal Home Loan Bank of Pittsburgh ...	4.2702
Federal Home Loan Bank of Atlanta	14.4007
Federal Home Loan Bank of Cincinnati ...	8.2653
Federal Home Loan Bank of Indianapolis	5.2863
Federal Home Loan Bank of Chicago	9.6886
Federal Home Loan Bank of Des Moines ..	6.9301
Federal Home Loan Bank of Dallas	8.8181
Federal Home Loan Bank of Topeka	5.2706
Federal Home Loan Bank of San Francisco	19.9644
Federal Home Loan Bank of Seattle	6.1422

(5) Pro rata distribution of amounts required to be invested in excess of $1,000,000,000

With respect to any amount in excess of the $1,000,000,000 amount referred to in paragraph (4) which the Director may require the Federal Home Loan Banks to invest in capital stock of the Financing Corporation under this subsection, the amount which each Federal Home Loan Bank (or any successor to such bank) shall invest shall be determined by the Director by multiplying such excess amount by the percentage arrived at by dividing—

(A) the sum of the total assets (as of the most recent December 31) held by all Savings Association Insurance Fund members which are members of such bank; by

(B) the sum of the total assets (as of such date) held by all Savings Association Insurance Fund members which are members of any Federal Home Loan Bank.

(6) Special provisions relating to maximum amount limitations

(A) In general

If the amount any Federal Home Loan Bank is required to invest in capital stock of the Financing Corporation pursuant to a determination by the Director under paragraph (5) (or under subparagraph (B) of this paragraph) exceeds the maximum investment amount applicable with respect to such bank under paragraph (3) at the time of such determination (hereinafter in this paragraph referred to as the ''excess amount'')—

(i) the Director shall require each remaining Federal Home Loan Bank to invest (in addition to the amount determined under paragraph (5) for such remaining bank and subject to the maximum investment amount applicable with respect to such remaining bank under paragraph (3) at the time of such determination) in such capital stock on behalf of the bank in the amount determined under subparagraph (B);

(ii) the Director shall require the bank to subsequently purchase the excess amount of capital stock from the remaining banks in the manner described in subparagraph (C); and

(iii) the requirements contained in subparagraphs (D) and (E) relating to the use of net earnings shall apply to such bank until the bank has purchased all of the excess amount of capital stock.

(B) Allocation of excess amount among remaining Home Loan Banks

The amount each remaining Federal Home Loan Bank shall be required to invest under subparagraph (A)(i) is the amount determined by the Director by multiplying the excess amount by the percentage arrived at by dividing—

(i) the amount of capital stock of the Financing Corporation held by such remaining bank at the time of such determination; by

(ii) the aggregate amount of such stock held by all remaining banks at such time.

(C) Purchase procedure

The bank on whose behalf an investment in capital stock is made under subparagraph (A)(i) shall purchase, annually and at the issuance price, from each remaining bank an amount of such stock determined by the Director by multiplying the amount available for such purchases (at the time of such determination) by the percentage determined under subparagraph (B) with respect to such remaining bank until the aggregate amount of such capital stock has been purchased by the bank.

(D) Limitation on dividends

The amount of dividends which may be paid for any year by a bank on whose behalf an investment is made under subparagraph (A)(i) shall not exceed an amount equal to ½ of the net earnings of the bank for the year.

(E) Transfer to account for purchase of stock required

Of the net earnings for any year of a bank on whose behalf an investment is made under subparagraph (A)(i), such amount as is necessary to make the purchases of stock required under subparagraph (A)(ii) shall be placed in a reserve account (established in such manner as the Director shall prescribe by regulations) the balance in which shall be available only for such purchases.

(7) Undivided profits defined

For purposes of paragraph (3), the term ''undivided profits'' means retained earnings minus the sum of—

(A) that portion required to be added to reserves maintained pursuant to the first two sentences of section 1436 of this title; and

(B) the dollar amounts held by the respective Federal Home Loan Banks in special dividend stabilization reserves on December 31, 1985, as determined under the following table:

Bank	Dollar amount
Federal Home Loan Bank of Boston	$3.2 million
Federal Home Loan Bank of New York	7.7 million
Federal Home Loan Bank of Pittsburgh	5.2 million
Federal Home Loan Bank of Atlanta	12.3 million
Federal Home Loan Bank of Cincinnati	5.9 million
Federal Home Loan Bank of Indianapolis	37.4 million
Federal Home Loan Bank of Chicago	6.0 million
Federal Home Loan Bank of Des Moines	32.7 million
Federal Home Loan Bank of Dallas	45.0 million
Federal Home Loan Bank of Topeka	13.7 million
Federal Home Loan Bank of San Francisco	21.9 million
Federal Home Loan Bank of Seattle	33.6 million

(e) Obligations of Financing Corporation

(1) Limitation on amount of outstanding obligations

The aggregate amount of obligations of the Financing Corporation which may be outstanding at any time (as determined by the Director) shall not exceed the lesser of—

(A) an amount equal to the greater of—

(i) 5 times the amount of the nonvoting capital stock of the Financing Corporation which is outstanding at such time; or

(ii) the sum of the face amounts (the amount of principal payable at maturity) of securities described in subsection (g)(2) of this section which are held at such time in the segregated account established pursuant to such subsection; or

(B) $10,825,000,000.

(2) Termination of borrowing authority

No obligation of the Financing Corporation shall be issued after December 12, 1991.

(3) Limitation on term of obligations

No obligation of the Financing Corporation may be issued which matures—

(A) more than 30 years after the date of issue; or

(B) after December 31, 2026.

(4) Investment of United States funds in obligations

Obligations issued under this section by the Financing Corporation with the approval of the Director shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer of the United States.

(5) Market for obligations

All persons having the power to invest in, sell, underwrite, purchase for their own accounts, accept as security, or otherwise deal in obligations of the Federal Home Loan Banks shall also have the power to do so with respect to obligations of the Financing Corporation.

(6) No full faith and credit of the United States

Obligations of the Financing Corporation and the interest payable on such obligations shall not be obligations of, or guaranteed as to principal or interest by, the Federal Home Loan Banks, the United States, or the FSLIC Resolution Fund and the obligations shall so plainly state.

(7) Tax exempt status

(A) In general

Except as provided in subparagraph (B), obligations of the Financing Corporation shall be exempt from tax both as to principal and interest to the same extent as any obligation of a Federal Home Loan Bank is exempt from tax under section 1433 of this title.

(B) Exception

The Financing Corporation, like the Federal Home Loan Banks, shall be treated as an agency of the United States for purposes of the first sentence of section 3124(b) of title 31 (relating to determination of tax status of interest on obligations).

(8) Obligations are exempt securities

Notwithstanding paragraph (7),[1] obligations of the Financing Corporation shall be deemed to be exempt securities (within the meaning of laws administered by the Securities and Exchange Commission) to the same extent as securities which are direct obligations of the United States or are guaranteed as to principal or interest by the United States.

(9) Minority participation in public offerings

The Chairperson of the Director[2] and the Directorate shall ensure that minority owned or controlled commercial banks, investment banking firms, underwriters, and bond counsels throughout the United States have an opportunity to participate to a significant degree in any public offering of obligations issued under this section.

(f) Sources of funds for interest payments; Financing Corporation assessment authority

The Financing Corporation shall obtain funds for anticipated interest payments, issuance costs, and custodial fees on obligations issued hereunder from the following sources:

(1) Preenactment assessments

The Financing Corporation assessments which were assessed on insured institutions pursuant to this section as in effect prior to August 9, 1989.

(2) New assessment authority

In addition to the amounts obtained pursuant to paragraph (1), the Financing Corporation, with the approval of the Board[3] of Directors of the Federal Deposit Insurance Corporation, shall assess against each insured depository institution an assessment (in the same manner as assessments are assessed against such institutions by the Federal Deposit Insurance Corporation under section 1817 of this title).

(3) Receivership proceeds

To the extent the amounts available pursuant to paragraphs (1) and (2) are insufficient to cover the amount of interest payments, issuance costs, and custodial fees, and if the funds are not required by the Resolution Funding Corporation to provide funds for the Funding Corporation Principal Fund under section 1441b of this title, the Federal Deposit Insurance Corporation shall transfer to the Financing Corporation, from the liquidating dividends and payments made on claims received by the FSLIC Resolution Fund (established under section 1821a of this title) from receiverships, the remaining amount of funds necessary for the Financing Corporation to make interest payments.

(g) Use and disposition of assets of Financing Corporation not invested in FSLIC

(1) In general

Subject to such regulations, restrictions, and limitations as may be prescribed by the Director, assets of the Financing Corporation, which are not invested in capital certificates or capital stock issued by the Federal Savings and Loan Insurance Corporation under section 1725(b)(1)(A) of this title before August 9, 1989, and after August 9, 1989, in capital certificates issued by the FSLIC Resolution Fund, shall be invested in—

(A) direct obligations of the United States;

(B) obligations, participations, or other instruments of, or issued by, the Federal National Mortgage Association or the Government National Mortgage Association;

(C) mortgages, obligations, or other securities for sale by, or which have been disposed of by, the Federal Home Loan Mortgage Corporation under section 1454 or 1455 of this title; or

(D) any other security in which it is lawful for fiduciary and trust funds to be invested under the laws of any State.

(2) Segregated account for zero coupon instruments held to assure payment of principal

The Financing Corporation shall invest in, and hold in a segregated account, noninterest bearing instruments—

(A) which are securities described in paragraph (1); and

(B) the total of the face amounts (the amount of principal payable at maturity) of which is approximately equal to the aggregate amount of principal on the obligations of the Financing Corporation,

to assure the repayment of principal on obligations of the Financing Corporation. For purposes of the foregoing, the Financing Corporation shall be deemed to hold noninterest bearing instruments that it lends temporarily to primary United States Treasury dealers in order to enhance market liquidity and facilitate deliveries, provided that United States Treasury securities of equal or greater value have been delivered as collateral.

(3) Dollar amount limitation on investment in zero coupon instruments for segregated account

The aggregate amount invested by the Financing Corporation under paragraph (2) shall not exceed $2,200,000,000 (as determined on the basis of the purchase price).

[1] So in original. Probably should refer to paragraph (6) in view of the renumbering of paragraph (7) as (6) by Pub. L. 101–73.

[2] So in original. See 2008 Amendment note below.

[3] See 2008 Amendment note below.

(4) Exception for payment of issuance costs, interest, and custodian fees

Notwithstanding the requirements of paragraph (1), the assets of the Financing Corporation referred to in paragraph (1) which are not invested under paragraph (2) may be used to pay—

(A) issuance costs;

(B) any interest on (and any redemption premium with respect to) any obligation of the Financing Corporation; and

(C) custodian fees.

(5) Definitions

For purposes of this subsection—

(A) Issuance costs

The term ''issuance costs''—

(i) means issuance fees and commissions incurred by the Financing Corporation in connection with the issuance or servicing of any obligation of the Financing Corporation; and

(ii) includes legal and accounting expenses, trustee and fiscal and paying agent charges, costs incurred in connection with preparing and printing offering materials, and advertising expenses, to the extent that any such cost or expense is incurred by the Financing Corporation in connection with issuing any obligation.

(B) Custodian fees

The term ''custodian fee'' means—

(i) any fee incurred by the Financing Corporation in connection with the transfer of any security to, or the maintenance of any security in, the segregated account established under paragraph (2); and

(ii) any other expense incurred by the Financing Corporation in connection with the establishment or maintenance of such account.

(h) Miscellaneous provisions relating to Financing Corporation

(1) Treatment for certain purposes

Except as provided in subsection (e)(8)(B) of this section, the Financing Corporation shall be treated as a Federal Home Loan Bank for purposes of sections 1433 and 1443 of this title.

(2) Federal Reserve banks as depositaries and fiscal agents

The Federal Reserve banks are authorized to act as depositaries for or fiscal agents or custodians of the Financing Corporation.

(3) Applicability of certain provisions relating to Government corporation

Notwithstanding the fact that no Government funds may be invested in the Financing Corporation, the Financing Corporation shall be treated, for purposes of sections 9105,[4] 9107, and 9108 of title 31, as a mixed-ownership Government corporation which has capital of the Government.

(i) Termination of Financing Corporation

(1) In general

The Financing Corporation shall be dissolved, as soon as practicable, after the earlier of—

(A) the maturity and full payment of all obligations issued by the Financing Corporation pursuant to this section; or

(B) December 31, 2026.

(2) Director authority to conclude the affairs of Financing Corporation

Effective on the date of the dissolution of the Financing Corporation under paragraph (1), the Director may exercise, on behalf of the Financing Corporation, any power of the Financing Corporation which the Director determines to be necessary to settle and conclude the affairs of the Financing Corporation.

(j) Regulations

The Director may prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations defining terms used in this section.

(k) Definitions

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

(1) Directorate

The term ''Directorate'' means the directorate established in the manner provided in subsection (b)(1) of this section to manage the Financing Corporation.

(2) Net earnings

The term ''net earnings'' means net earnings without reduction for any chargeoffs or expenses incurred by a Bank in connection with the purchase of capital stock of the Financing Corporation or the purchase of stock of the Funding Corporation required by the Thrift Depositor Protection Oversight Board under subsections (e) and (f) of section 1441b of this title.

(3) Insured depository institution

The term ''insured depository institution'' has the same meaning as in section 1813 of this title[5]

(July 22, 1932, ch. 522, §21, as added Pub. L. 100–86, title III, §302, Aug. 10, 1987, 101 Stat. 585; amended Pub. L. 101–73, title V, §512, title VII, §§701(b)(2), 713, Aug. 9, 1989, 103 Stat. 406, 412, 419; Pub. L. 102–233, title I, §104, title III, §302(b), Dec. 12, 1991, 105 Stat. 1762, 1767; Pub. L. 102–550, title XVI, §1611(c), Oct. 28, 1992, 106 Stat. 4090; Pub. L. 104–208, div. A, title II, §2703(a), Sept. 30, 1996, 110 Stat. 3009–485; Pub. L. 109–173, §9(d)(2), Feb. 15, 2006, 119 Stat. 3616; Pub. L. 110–289, div. A, title II, §1204(6), (8), (12), July 30, 2008, 122 Stat. 2786.)

REFERENCES IN TEXT

Section 1725 of this title, referred to in subsecs. (c)(2), (e)(2)(A), and (g)(1), was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

Section 9105 of title 31, referred to in subsec. (h)(3), was amended generally by Pub. L. 101–576, title III, §305, Nov. 15, 1990, 104 Stat. 2853, and, as so amended, no longer contains provisions relating to mixed-ownership Government corporations having capital of the Government.

PRIOR PROVISIONS

A prior section 1441, act July 22, 1932, ch. 522, §21, 47 Stat. 738, related to unlawful acts and penalties, prior

[4] See References in Text note below.

[5] So in original. Probably should be followed by a period.

to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See sections 433, 493, 657, 659, 660, 709, 1006, 1014, and 2117 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

2008—Pub. L. 110–289, § 1204(12), substituted ''Director'' for ''Federal Housing Finance Board'' wherever appearing in subsecs. (a), (b)(1)(B), (6)(B), (7)(B), (8), (c), (d), (e)(1), (4), (9), (g), (i), and (j).

Subsec. (b)(5). Pub. L. 110–289, § 1204(6), substituted ''Director'' for ''Chairperson of the Federal Housing Finance Board''.

Subsec. (f)(2). Pub. L. 110–289, § 1204(8), which directed amendment of the Federal Home Loan Bank Act (this chapter) by substituting ''the Director'' for ''the Board'' wherever appearing, was not executed to subsec. (f)(2) to reflect the probable intent of Congress.

2006—Subsec. (f)(2). Pub. L. 109–173, § 9(d)(2)(A), struck out before period at end '', except that—

''(A) the assessments imposed on insured depository institutions with respect to any BIF-assessable deposit shall be assessed at a rate equal to ⅕ of the rate of the assessments imposed on insured depository institutions with respect to any SAIF-assessable deposit; and

''(B) no limitation under clause (i) or (iii) of section 7(b)(2)(A) of the Federal Deposit Insurance Act shall apply for purposes of this paragraph.''

Subsec. (k)(4). Pub. L. 109–173, § 9(d)(2)(B), struck out heading and text of par. (4). Text read as follows:

''(A) BIF-ASSESSABLE DEPOSITS.—The term 'BIF-assessable deposit' means a deposit that is subject to assessment for purposes of the Bank Insurance Fund under the Federal Deposit Insurance Act (including a deposit that is treated as a deposit insured by the Bank Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act).

''(B) SAIF-ASSESSABLE DEPOSIT.—The term 'SAIF-assessable deposit' has the meaning given to such term in section 2710 of the Deposit Insurance Funds Act of 1996.''

1996—Subsec. (f)(2). Pub. L. 104–208, § 2703(a)(1)(A), in introductory provisions, substituted ''In addition to the amounts obtained pursuant to paragraph (1),'' for ''To the extent the amounts available pursuant to paragraph (1) are insufficient to cover the amount of interest payments, issuance costs, and custodial fees,'', ''insured depository institution'' for ''Savings Association Insurance Fund member'', and ''against such institutions'' for ''against such members''.

Subsec. (f)(2)(A) to (C). Pub. L. 104–208, § 2703(a)(1)(B), added subpars. (A) and (B) and struck out former subpars. (A) to (C) which read as follows:

''(A) the sum of—

''(i) the amount assessed under this paragraph; and

''(ii) the amount assessed by the Funding Corporation under section 1441b of this title;

shall not exceed the amount authorized to be assessed against Savings Association Insurance Fund members pursuant to section 1817 of this title;

''(B) the Financing Corporation shall have first priority to make the assessment; and

''(C) the amount of the applicable assessment determined under such section 1817 of this title shall be reduced by the sum described in subparagraph (A) of this paragraph.''

Subsec. (k). Pub. L. 104–208, § 2703(a)(2)(A), substituted ''section, the following definitions shall apply:'' for ''section—'' in introductory provisions.

Subsec. (k)(1). Pub. L. 104–208, § 2703(a)(2)(B), (C), redesignated par. (2) as (1) and struck out heading and text of former par. (1). Text read as follows: ''The term 'Savings Association Insurance Fund member' means a savings association which is a Savings Association Insurance Fund member as defined by section 7(*l*) of the Federal Deposit Insurance Act.''

Subsec. (k)(2) to (4). Pub. L. 104–208, § 2703(a)(2)(C), (D), added pars. (3) and (4) and redesignated former pars. (2) and (3) as (1) and (2), respectively.

1992—Subsec. (e)(2). Pub. L. 102–550 made technical amendment to reference to December 12, 1991, to correct reference to corresponding provisions of original act.

1991—Subsec. (d)(4). Pub. L. 102–233, § 302(b), substituted ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board'' in two places.

Subsec. (e)(2). Pub. L. 102–233, § 104, amended par. (2) generally, substituting provisions setting forth termination date of Financing Corporation borrowing authority for provisions relating to investment of proceeds of obligations of such Corporation.

Subsec. (k)(3). Pub. L. 102–233, § 302(b), substituted ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board''.

1989—Subsec. (a). Pub. L. 101–73, § 512(2), substituted ''Federal Housing Finance Board'' for ''Board''.

Subsec. (b)(1)(B). Pub. L. 101–73, § 512(2), substituted ''Federal Housing Finance Board'' for ''Federal Home Loan Bank Board''.

Subsec. (b)(5). Pub. L. 101–73, § 701(b)(2), substituted ''Chairperson'' for ''Chairman''.

Pub. L. 101–73, § 512(2), substituted ''Federal Housing Finance Board'' for ''Federal Home Loan Bank Board''.

Subsecs. (b)(6)(B), (7)(B), (8), (c). Pub. L. 101–73, § 512(2), substituted ''Federal Housing Finance Board'' for ''Board'' wherever appearing.

Subsec. (c)(2). Pub. L. 101–73, § 512(3), inserted ''prior to August 9, 1989, and thereafter to transfer the proceeds of any obligation issued by the Financing Corporation to the FSLIC Resolution Fund''.

Subsec. (c)(9). Pub. L. 101–73, § 512(4), struck out ''or section 1725(b) of this title'' after ''with the provisions of this section''.

Subsec. (d)(1). Pub. L. 101–73, § 512(2), substituted ''Federal Housing Finance Board'' for ''Board'' wherever appearing.

Subsec. (d)(4). Pub. L. 101–73, § 512(5), amended generally the portion of par. (4) appearing before the table. Prior to amendment, such portion read as follows: ''With respect to the first $1,000,000,000 which the Board may require the Federal Home Loan Banks to invest in capital stock of the Financing Corporation under this subsection, the amount which each Federal Home Loan Bank (or any successor to such bank) shall invest shall be determined by the Board by applying to the total amount of such investment by all such banks the percentage appearing in the following table for each such bank:''.

Subsec. (d)(5). Pub. L. 101–73, § 512(6), substituted ''the $1,000,000,000 amount referred to in paragraph (4) which the Federal Housing Finance Board'' for ''$1,000,000,000 which the Board''.

Pub. L. 101–73, § 512(2), substituted ''by the Federal Housing Finance Board'' for ''by the Board''.

Subsec. (d)(5)(A), (B). Pub. L. 101–73, § 512(1), which directed the amendment of this section by substituting ''Savings Association Insurance Fund member'' for ''insured institution'' wherever appearing, was executed by substituting ''Savings Association Insurance Fund members'' for ''insured institutions'', as the probable intent of Congress.

Subsec. (d)(6)(A). Pub. L. 101–73, § 512(2), substituted ''Federal Housing Finance Board'' for ''Board'' in introductory provisions and in cls. (i) and (ii).

Subsec. (d)(6)(A)(iii). Pub. L. 101–73, § 512(7), struck out ''available for dividends'' after ''use of net earnings''.

Subsec. (d)(6)(B), (C). Pub. L. 101–73, § 512(2), substituted ''Federal Housing Finance Board'' for ''Board''.

Subsec. (d)(6)(D). Pub. L. 101–73, § 512(8), struck out ''available for dividends'' after ''net earnings''.

Subsec. (d)(6)(E). Pub. L. 101–73, § 512(9), struck out ''available for dividends'' after ''Of the net earnings''.

Pub. L. 101–73, § 512(2), substituted ''Federal Housing Finance Board'' for ''Board''.

Subsec. (d)(6)(F). Pub. L. 101–73, § 512(10), struck out subpar. (F) which defined ''net earnings available for dividends''.

Subsec. (e)(1). Pub. L. 101–73, § 512(2), substituted ''Federal Housing Finance Board'' for ''Board''.

Subsec. (e)(2). Pub. L. 101–73, § 512(12)(A), redesignated par. (3) as (2) and struck out former par. (2) which set

an annual limit on net new borrowing by the Financing Corporation.

Pub. L. 101–73, §512(11), which directed amendment of par. (2)(A), was executed, as the probable intent of Congress, to the introductory text of par. (2), to par. (2)(A), and to par. (2)(B), as follows: striking out ''used to'' after ''issued by the Financing Corporation'' in the introductory text, inserting ''used to'' before ''purchase'' and inserting ''prior to August 9, 1989, and thereafter transferred to the FSLIC Resolution Fund'' before ''; or'' in subpar. (A), and by inserting ''used to'' before ''refund'' in subpar. (B).

Pub. L. 101–73, §512(2), substituted ''Federal Housing Finance Board'' for ''Board''.

Subsec. (e)(3). Pub. L. 101–73, §512(12)(A), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (e)(4). Pub. L. 101–73, §512(2), (12)(A), redesignated par. (5) as (4) and substituted ''Federal Housing Finance Board'' for ''Board''. Former par. (4) redesignated (3).

Subsec. (e)(5). Pub. L. 101–73, §512(12)(A), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (e)(6). Pub. L. 101–73, §512(12), redesignated par. (7) as (6) and substituted ''FSLIC Resolution Fund'' for ''Federal Savings and Loan Insurance Corporation''. Former par. (6) redesignated (5).

Subsec. (e)(7), (8). Pub. L. 101–73, §512(12)(A), redesignated pars. (8) and (9) as (7) and (8), respectively. Former par. (7) redesignated (6).

Subsec. (e)(9), (10). Pub. L. 101–73, §§512(2), (12)(A), 701(b)(2), redesignated par. (10) as (9) and substituted ''Chairperson'' for ''Chairman'' and ''Federal Housing Finance Board'' for ''Board''. Former par. (9) redesignated (8).

Subsec. (f). Pub. L. 101–73, §512(13), amended subsec. (f) generally, substituting provisions enumerating various sources from which Financing Corporation shall obtain funds for anticipated interest payments, issuance costs, and custodial fees on obligations issued from preenactment assessments, new assessment authority, and receivership proceeds, for former provisions which had outlined assessment authority of Financing Corporation, setting up supplementary assessment authority, setting limits on total amount assessed, and providing for termination assessments.

Subsec. (g)(1). Pub. L. 101–73, §512(14), inserted reference to before August 9, 1989, and after August 9, 1989, in capital certificates issued by the FSLIC Resolution Fund.

Pub. L. 101–73, §512(2), substituted ''Federal Housing Finance Board'' for ''Board''.

Subsec. (g)(2). Pub. L. 101–73, §512(15), inserted at end ''For purposes of the foregoing, the Financing Corporation shall be deemed to hold noninterest bearing instruments that it lends temporarily to primary United States Treasury dealers in order to enhance market liquidity and facilitate deliveries, provided that United States Treasury securities of equal or greater value have been delivered as collateral.''

Subsec. (i). Pub. L. 101–73, §713, redesignated subsec. (j) as (i) and struck out former subsec. (i) which related to Federal Savings and Loan Insurance Corporation Industry Advisory Committee.

Subsec. (i)(1)(A). Pub. L. 101–73, §512(16), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the date by which all stock purchased by the Financing Corporation in the Federal Savings and Loan Insurance Corporation has been retired; or''.

Subsec. (i)(2). Pub. L. 101–73, §512(2), substituted ''Federal Housing Finance Board'' for ''Board'' wherever appearing.

Subsec. (j). Pub. L. 101–73, §713, redesignated subsec. (k) as (j). Former subsec. (j) redesignated (i).

Pub. L. 101–73, §512(2), substituted ''Federal Housing Finance Board'' for ''Board''.

Subsec. (k). Pub. L. 101–73, §713, redesignated subsec. (*l*) as (k). Former subsec. (k) redesignated (j).

Subsec. (k)(1). Pub. L. 101–73, §512(17)(A), substituted definition of ''Savings Association Insurance Fund member'' for definition of ''insured institution''.

Subsec. (k)(2). Pub. L. 101–73, §512(17)(B), redesignated par. (3) as (2) and struck out former par. (2) which defined ''insured member''.

Subsec. (k)(3), (4). Pub. L. 101–73, §512(10), (17)(B), added par. (4) and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (*l*). Pub. L. 101–73, §713, redesignated subsec. (*l*) as (k).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENT

Section 2703(c) of Pub. L. 104–208 provided that:

''(1) IN GENERAL.—Subsections (a) [amending this section] and (c) [probably should be (b), amending section 1817 of this title] and the amendments made by such subsections shall apply with respect to semiannual periods which begin after December 31, 1996.

''(2) TERMINATION OF CERTAIN ASSESSMENT RATES.—Subparagraph (A) of section 21(f)(2) of the Federal Home Loan Bank Act [subsec. (f)(2) of this section] (as amended by subsection (a)) shall not apply after the earlier of—

''(A) December 31, 1999; or

''(B) the date as of which the last savings association ceases to exist.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1618 of Pub. L. 102–550 provided that: ''Except as otherwise provided by a specific provision of this subtitle [subtitle B (§§1611–1618) of title XVI of Pub. L. 102–550, amending this section, sections 1441a, 1441b, 1821, 3345, and 3348 of this title and provisions set out as a note under section 1441a of this title], the amendments made by this subtitle to the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 [Pub. L. 102–233; see Short Title of 1991 Amendment note set out under section 1421 of this title] and the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.] shall take effect as if such amendments had been included in the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 [Pub. L. 102–233] as of the date of the enactment of such Act [Dec. 12, 1991].''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 318 of Pub. L. 102–233 provided that: ''The effective date of the Resolution Trust Corporation Thrift Depositor Protection Reform Act of 1991 [title III of Pub. L. 102–233, amending this section, sections 1441a, 1441b, 1786, 1818, 1821, 1833b, and 1833e of this title, sections 5313 and 5314 of Title 5, Government Organization and Employees, and section 11 of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, enacting provisions set out as notes under section 1441a of this title, and amending provisions set out as notes under sections 1437 and 1441a of this title] shall be February 1, 1992.''

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

ABOLITION OF THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Thrift Depositor Protection Oversight Board abolished, see section 14(a)–(d) of Pub. L. 105–216, set out as a note under section 1441a of this title.

PROHIBITION ON DEPOSIT SHIFTING

Section 2703(d) of Pub. L. 104–208 provided that:

''(1) IN GENERAL.—Effective as of the date of the enactment of this Act [Sept. 30, 1996] and ending on the

date provided in subsection (c)(2) of this section [set out as a note above], the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision shall take appropriate actions, including enforcement actions, denial of applications, or imposition of entrance and exit fees as if such transactions qualified as conversion transactions pursuant to section 5(d) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)], to prevent insured depository institutions and depository institution holding companies from facilitating or encouraging the shifting of deposits from SAIF-assessable deposits to BIF-assessable deposits (as defined in section 21(k) of the Federal Home Loan Bank Act [12 U.S.C. 1441(k)]) for the purpose of evading the assessments imposed on insured depository institutions with respect to SAIF-assessable deposits under section 7(b) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)] and section 21(f)(2) of the Federal Home Loan Bank Act [12 U.S.C. 1441(f)(2)].

''(2) REGULATIONS.—The Board of Directors of the Federal Deposit Insurance Corporation may issue regulations, including regulations defining terms used in paragraph (1), to prevent the shifting of deposits described in such paragraph.

''(3) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as prohibiting conduct or activity of any insured depository institution which—

''(A) is undertaken in the ordinary course of business of such depository institution; and

''(B) is not directed towards the depositors of an insured depository institution affiliate (as defined in section 2(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1841(k)]) of such depository institution.''

STATE COOPERATIVE BANKS DEEMED INSURED INSTITUTIONS UNDER SUBSECTION (f)(4)(F)

Pub. L. 100–202, § 101(f) [title III, § 301], Dec. 22, 1987, 101 Stat. 1329–187, 1329–211, provided that any cooperative bank established under the law of any State which was directed by the State banking authority to obtain Federal deposit insurance between Jan. 1, 1985, and Jan. 1, 1987, would be deemed to be an insured institution described in 12 U.S.C. 1441(f)(4)(F).

SUNSET AND SAVINGS PROVISION

Section 416 of Pub. L. 100–86 provided that:

''(a) IN GENERAL.—The following provisions shall cease to be effective on the date that a notice is published in the Federal Register by the Financing Corporation pursuant to subsection (b):

''(1) Paragraphs (2), (3), and (5) of—

''(A) section 9(a) of the Home Owners' Loan Act of 1933 [12 U.S.C. 1467(a)(2), (3), (5)]; and

''(B) section 415(a) of the National Housing Act [12 U.S.C. 1730h(a)(2), (3), (5)],

(as added by subsections (a) and (b), respectively, of section 402 of this title).

''(2) Section 10 of the Home Owners' Loan Act of 1933 [12 U.S.C. 1467a] and section 416 of the National Housing Act [12 U.S.C. 1730i] (as added by subsections (a) and (b), respectively, of section 404 of this title).

''(3) Paragraph (6) of section 406(f) of the National Housing Act [12 U.S.C. 1729(f)(6)] (as added by section 405 of this title).

''(4) Section 22A of the Federal Home Loan Bank Act [12 U.S.C. 1442a] (as added by section 407(d) of this title).

''(5) Section 411 of this title [12 U.S.C. 1437 note].

''(b) NOTICE OF COMPLETION OF NET NEW BORROWING BY FINANCING CORPORATION.—When the Financing Corporation established pursuant to section 21 of the Federal Home Loan Bank Act [12 U.S.C. 1441] has completed all net new borrowing under such section, the Financing Corporation shall publish a notice of such fact in the Federal Register. [Notice that the Financing Corporation had completed all net new borrowings and would issue no additional obligations after Dec. 12, 1991, was published Mar. 30, 1992, 57 F.R. 10763.]

''(c) SAVINGS PROVISION.—The termination by subsection (a) of the effectiveness of any provision described in such subsection shall not be construed to affect or limit any authority of the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation to prescribe any regulation or engage in any activity with respect to any association or insured institution under any other provision of law.''

§ 1441a. Thrift Depositor Protection Oversight Board and Resolution Trust Corporation

(a) Thrift Depositor Protection Oversight Board established

(1) In general

There is hereby established the Thrift Depositor Protection Oversight Board as an instrumentality of the United States with the powers and authorities herein provided.

(2) Status

The Thrift Depositor Protection Oversight Board shall oversee and monitor the operations of the Resolution Trust Corporation (hereinafter referred to in this section as the ''Corporation'') and shall be accountable for the duties assigned to the Thrift Depositor Protection Oversight Board by this chapter. The Thrift Depositor Protection Oversight Board shall be an ''agency'' of the United States for purposes of subchapter II of chapter 5 and chapter 7 of title 5.

(3) Membership

(A) In general

The Thrift Depositor Protection Oversight Board shall consist of 7 members—

(i) the Secretary of the Treasury;

(ii) the Chairman of the Board[1] of Governors of the Federal Reserve System;

(iii) the Director of the Office of Thrift Supervision;

(iv) the Chairperson of the Board[1] of Directors of the Federal Deposit Insurance Corporation;

(v) the chief executive officer of the Corporation; and

(vi) two independent members appointed by the President, with the advice and consent of the Senate. Such nominations shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) Political affiliation

The independent members shall not be members of the same political party. No independent member of the Thrift Depositor Protection Oversight Board shall hold any other appointed office during his or her term as a member.

(C) Chairperson

The Chairperson of the Thrift Depositor Protection Oversight Board shall be the Secretary of the Treasury.

(D) Term of office

The term of each member (other than the independent members) of the Thrift Depositor Protection Oversight Board shall expire when such member has fulfilled all of his or

[1] See 2008 Amendment note below.

her responsibilities under this section and section 1441b of this title. The term of each independent member shall be 3 years.

(E) Quorum required

A quorum shall consist of 4 members of the Thrift Depositor Protection Oversight Board and all decisions of the Board[1] shall require an affirmative vote of at least a majority of the members voting.

(4) Compensation and expenses

(A) Expenses

Members of the Thrift Depositor Protection Oversight Board shall receive allowances in accordance with subchapter I of chapter 57 of title 5 for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Thrift Depositor Protection Oversight Board, as set forth in the bylaws issued by the Thrift Depositor Protection Oversight Board.

(B) No additional compensation for United States officers or employees

Members of the Thrift Depositor Protection Oversight Board (other than independent members) shall receive no additional pay by reason of service on such Board.

(C) Compensation for independent members

The independent members of the Thrift Depositor Protection Oversight Board shall be paid at a rate equal to the daily equivalent of the rate of basic pay for level II of the Executive Schedule for each day (including travel time) during which such member is engaged in the actual performance of duties of the Thrift Depositor Protection Oversight Board.

(5) Powers

The Thrift Depositor Protection Oversight Board shall be a body corporate that shall have the power to—

(A) adopt, alter, and use a corporate seal;

(B) provide for a principal or executive officer and such other officers and employees as may be necessary to perform the functions of the Thrift Depositor Protection Oversight Board, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

(C) fix the compensation and number of, and appoint, employees for any position established by the Thrift Depositor Protection Oversight Board;

(D) set and adjust rates of basic pay for employees of the Thrift Depositor Protection Oversight Board without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5;

(E) provide additional compensation and benefits to employees of the Thrift Depositor Protection Oversight Board if the same type of compensation or benefits are then being provided by any other Federal bank regulatory agency or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation; in setting and adjusting the total amount of compensation and benefits for employees of the Thrift Depositor Protection Oversight Board, the Thrift Depositor Protection Oversight Board shall consult with and seek to maintain comparability with the other Federal bank regulatory agencies, except that the Thrift Depositor Protection Oversight Board shall not in any event exceed the compensation and benefits provided by the Federal Deposit Insurance Corporation with respect to any comparable position;

(F) with the consent of any executive agency, department, or independent agency utilize the information, services, staff, and facilities of such department or agency, on a reimbursable (or other) basis, in carrying out this section;

(G) prescribe bylaws that are consistent with law to provide for the manner in which—

(i) its officers and employees are selected, and

(ii) its general operations are to be conducted;

(H) enter into contracts and modify or consent to the modification of any contract or agreement;

(I) indemnify, from funds made available to it by the Corporation, the members, officers, and employees of the Thrift Depositor Protection Oversight Board on such terms as the Thrift Depositor Protection Oversight Board deems proper against any liability under any civil suit pursuant to any statute or pursuant to common law with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction entered into involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the Corporation, and the indemnification authorized by this provision shall be in addition to and not in lieu of any immunities or other protections that may be available to such person under applicable law, and this provision does not affect any such immunities or other protections;

(J) sue and be sued in courts of competent jurisdiction; and

(K) exercise any and all powers established under this section and such incidental powers as are necessary to carry out its powers, duties, and functions under this chapter.

(6) Thrift Depositor Protection Oversight Board duties and authorities

The Thrift Depositor Protection Oversight Board shall have the following duties and authorities with respect to the Corporation:

(A) To review overall strategies, policies, and goals established by the Corporation for its activities, which shall include such items as the Thrift Depositor Protection Oversight Board deems likely to have a material effect upon the financial condition of the Corporation, the results of its operations, or its cash flows, and such items as the Thrift Depositor

Protection Oversight Board deems to involve substantial issues of public policy. After consultation with the Corporation, the Thrift Depositor Protection Oversight Board may require the modification of any such overall strategies, policies, and goals and their implementation. Overall strategies, policies, and goals shall include such items as—

(i) overall strategies, policies, and goals for case resolutions, the management and disposition of assets, the use of private contractors;

(ii) the use of notes, guarantees, or other obligations by the Corporation;

(iii) financial goals, plans, and budgets; and

(iv) restructuring agreements described in subsection (b)(10)(B) of this section.

(B) To approve prior to implementation financial plans, budgets, and periodic financing requests developed by the Corporation.

(C) To review all rules, regulations, standards, principles, procedures, guidelines, and statements that may be adopted or announced by the Corporation. The provisions of this subparagraph shall not apply to internal administrative policies and procedures (including such matters as personnel practices, divisions and organization of staffing, delegations of authority, and practices respecting day-to-day administration of the Corporation's affairs) and determinations or actions described in paragraph (8)[2]

(D) To review the overall performance of the Corporation on a periodic basis, including its work, management activities, and internal controls, and the performance of the Corporation relative to approved budget plans.

(E) To require from the Corporation any reports, documents, and records it deems necessary to carry out its oversight responsibilities.

(F) To establish a national advisory board and regional advisory boards.

(G) To authorize the use of proceeds from any funds provided by the Treasury to the Corporation and from any financing by the Resolution Funding Corporation established pursuant to section 1441b of this title consistent with the approved budget and financial plans of the Corporation and to oversee the collection of funds by the Resolution Funding Corporation.

(H) To evaluate audits by the Inspector General and other congressionally required audits.

(I) To have general oversight over the Resolution Funding Corporation as provided under section 1441b of this title.

(J) To authorize, as appropriate, the Corporation's sale of capital certificates to the Resolution Funding Corporation.

(K) To establish the rate of basic pay, benefits, and other compensation for the chief executive officer of the Corporation.

(7) Transition policies

Until such time as the Thrift Depositor Protection Oversight Board and the Corporation (consistent with paragraph (6) and subsection (b)(11) of this section) adopt strategies, policies, goals, regulations, rules, operating principles, procedures, or guidelines, the Corporation may carry out its duties in accordance with the strategies, policies, goals, regulations, rules, operating principles, procedures, or guidelines of the Federal Deposit Insurance Corporation, notwithstanding the provisions of section 553 of title 5.

(8) Limitation on authority

The Corporation shall have the authority, without any prior review, approval, or disapproval by the Thrift Depositor Protection Oversight Board, to make such determinations and take such actions as it deems appropriate with respect to case-specific matters involving (i) individual case resolutions, (ii) asset liquidations, or (iii) day-to-day operations of the Corporation. The preceding sentence in no way limits the authority of the Thrift Depositor Protection Oversight Board to review overall strategies, policies, and goals established by the Corporation.

(9) Delegation

Except with respect to the meetings required by paragraph (10), nothing in this section shall preclude a member of the Thrift Depositor Protection Oversight Board who is a public official from delegating his or her authority to an employee or officer of such member's agency or organization, if such employee or officer has been appointed by the President with the advice and consent of the Senate. For purposes of the preceding sentence, the Chairman of the Board[1] of Governors of the Federal Reserve System may delegate his or her authority to another member of the Board[1] of Governors.

(10) Open meetings

Not less than 6 times each year, the Thrift Depositor Protection Oversight Board shall conduct open meetings to review overall strategies, policies, and goals established by the Corporation and to consider such other matters as pertain to its functions under this chapter. The Thrift Depositor Protection Oversight Board shall maintain a transcript of the board's open meetings.

(11) Power to remove; jurisdiction

Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Thrift Depositor Protection Oversight Board is a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction. The Thrift Depositor Protection Oversight Board may, without bond or security, remove any such action, suit, or proceeding from a State court to a United States district court or to the United States District Court for the District of Columbia.

(12) Administrative expenses

The administrative expenses of the Thrift Depositor Protection Oversight Board shall be paid by the Corporation, upon request of the Thrift Depositor Protection Oversight Board.

[2] So in original. Probably should be followed by a period.

(13) Standards, policies, procedures, guidelines, and statements

The Thrift Depositor Protection Oversight Board may issue rules, regulations, standards, policies, procedures, guidelines, and statements as the Thrift Depositor Protection Oversight Board considers necessary or appropriate to carry out its authorities and duties under this chapter which shall be promulgated pursuant to subchapter II of chapter 5 of title 5.

(14) Strategic plan for Corporation operations

(A) In general

The chief executive officer of the Corporation is authorized to implement the strategic plan for conducting the Corporation's functions and activities submitted by the former Oversight Board to the Congress, dated December 31, 1989.

(B) Provisions of plan

The strategic plan and implementing policies and procedures required under this paragraph shall at a minimum contain the following:

(i) Factors the Corporation shall consider in deciding the order in which failed institutions or categories of failed institutions will be resolved.

(ii) Standards the Corporation shall use to select the appropriate resolution action for a failed institution.

(iii) With respect to assisted acquisitions, factors the Corporation shall consider in deciding whether non-performing assets of the failed institution will be transferred to the acquiring institution rather than retained by the Corporation for management and disposal.

(iv) Plans for the disposition of assets.

(v) Management objectives by which the Corporation's progress in carrying out its duties under this section can be measured.

(vi) A plan for the organizational structure and staffing of the Corporation, including an assessment of the extent to which the Corporation will perform asset management functions and other duties through contracts with public and private entities.

(vii) Consideration of whether incentives should be included in asset management contracts to promote active and efficient asset management.

(viii) Standards for adequate competition and fair and consistent treatment of offerors.

(ix) Standards that prohibit discrimination on the basis of race, sex, or ethnic group in the solicitation and consideration of offers.

(x) Procedures for the active solicitation of offers from minorities and women.

(xi) Procedures requiring that unsuccessful offerors be notified in writing of the decision within 30 days after the offer has been rejected.

(xii) Procedures for establishing the market value of assets based upon standard market analysis, valuation, and appraisal practices.

(xiii) Procedures requiring the timely evaluation of purchase offers for an institution.

(xiv) Procedures for bulk sales and auction marketing of assets.

(xv) Guidelines for determining if the value of an asset has decreased so that no reasonable recovery is anticipated. In such cases, the Corporation may consider potential public uses of such asset including providing housing for lower income families (including the homeless), day care centers for the children of low- and moderate-income families, or such other public purpose designated by the Secretary of Housing and Urban Development.

(xvi) Guidelines for the conveyance of assets to units of general local government, States, and public agencies designated by a unit of general local government or a State, for use in connection with urban homesteading programs approved by the Secretary of Housing and Urban Development under section 1706e of this title.

(xvii) Policies and procedures for avoiding political favoritism and undue influence in contracts and decisions made by the Thrift Depositor Protection Oversight Board and the Corporation.

(15) Reports on any modification to any strategy, policy, or goal

If, pursuant to paragraph (6)(A), the Thrift Depositor Protection Oversight Board requires the Corporation to modify any overall strategy, policy, or goal, such board shall submit, before the end of the 30-day period beginning on the date on which the board first notifies the Corporation of such requirement, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives an explanation of the grounds which the board determined justified the review and the reasons why the modification is necessary to satisfy any such ground.

(16) Termination

The Thrift Depositor Protection Oversight Board shall terminate not later than 60 days after the Thrift Depositor Protection Oversight Board fulfills all of its responsibilities under this chapter.

(b) Resolution Trust Corporation established

(1) Establishment

(A) In general

There is hereby established a Corporation to be known as the Resolution Trust Corporation which shall be an instrumentality of the United States.

(B) Status

The Corporation shall be deemed to be an agency of the United States for purposes of subchapter II of chapter 5 and chapter 7 of title 5 when it is acting as a corporation. The Corporation, when it is acting as a conservator or receiver of an insured depository institution, shall be deemed to be an agency of the United States to the same extent as

the Federal Deposit Insurance Corporation when it is acting as a conservator or receiver of an insured depository institution.

(C) Management by chief executive officer

The Corporation shall be managed by or under the direction of its chief executive officer.

(2) Government corporation

Notwithstanding the fact that no Government funds may be invested in the Corporation, the Corporation shall be treated, for purposes of sections 9105,[3] 9107, and 9108 of title 31, as a mixed-ownership Government corporation which has capital of the Government.

(3) Duties

The duties of the Corporation shall be to carry out a program, under the general oversight of the Thrift Depositor Protection Oversight Board, including:

(A) To manage and resolve all cases involving depository institutions—

(i) the accounts of which were insured by the Federal Savings and Loan Insurance Corporation before August 9, 1989; and

(ii) for which a conservator or receiver is appointed after December 31, 1988, and before such date as is determined by the Chairperson of the Thrift Depositor Protection Oversight Board, but not earlier than January 1, 1995, and not later than July 1, 1995 (including any institution described in paragraph (6)).

(B) To develop and establish overall strategies, policies, and goals for the Corporation, subject to review by the Thrift Depositor Protection Oversight Board pursuant to subsection (a)(6)(A) of this section.

(C) To conduct the operations of the Corporation in a manner which—

(i) maximizes the net present value return from the sale or other disposition of institutions described in subparagraph (A) or the assets of such institutions;

(ii) minimizes the impact of such transactions on local real estate and financial markets;

(iii) makes efficient use of funds obtained from the Funding Corporation or from the Treasury;

(iv) minimizes the amount of any loss realized in the resolution of cases; and

(v) maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals.

(D) To perform any other function authorized under this section.

(4) Conservatorship, receivership, and assistance powers

(A) In general

Except as provided in paragraph (5) and in addition to any other provision of this section, the Corporation shall have the same powers and rights to carry out its duties with respect to institutions described in paragraph (3)(A) as the Federal Deposit Insurance Corporation has under sections 1821, 1822, and 1823 of this title with respect to insured depository institutions (as defined in section 1813 of this title).

(B) Manner of application of least-cost resolution

For purposes of applying section 1823(c)(4) of this title to the Corporation under subparagraph (A), the Corporation shall be treated as the Deposit Insurance Fund.

(C) Appeals

The Corporation shall implement and maintain a program, in a manner acceptable to the Thrift Depositor Protection Oversight Board, to provide an appeals process for business and commercial borrowers to appeal decisions by the Corporation (when acting as a conservator) which would have the effect of terminating or otherwise adversely affecting credit or loan agreements, lines of credit, and similar arrangements with such borrowers who have not defaulted on their obligations.

(5) Limitation on paragraph (4) powers

The Corporation—

(A) may not obligate the Federal Deposit Insurance Corporation or any funds of the Federal Deposit Insurance Corporation; and

(B) in connection with providing assistance to an institution under this subsection, shall be subject to the limitations contained in section 1823(c)(4) of this title.

(6) Continuation of RTC receivership or conservatorship

(A) In general

If the Corporation is appointed as conservator or receiver for any insured depository institution described in paragraph (3)(A) before such date as is determined by the Chairperson of the Thrift Depositor Protection Oversight Board under paragraph (3)(A)(ii), and a conservator or receiver is appointed for such institution on or after such date, the Corporation may be appointed as conservator or receiver for such institution on or after such date as is determined by the Chairperson of the Thrift Depositor Protection Oversight Board under paragraph (3)(A)(ii).

(B) Charter conversions

Notwithstanding any other provision of Federal or State law, if the Federal Deposit Insurance Corporation is appointed as conservator or receiver for any savings association that has converted to a bank charter and otherwise meets the criteria in paragraph (3)(A) or (6)(A), the Federal Deposit Insurance Corporation may tender such appointment to the Corporation, and the Corporation shall accept such appointment, if the Corporation is authorized to accept such appointment under this section.

(7) Obligations and guarantees

The Corporation's authority to issue obligations and guarantees shall be subject to general supervision by the Thrift Depositor Pro-

[3] See References in Text note below.

tection Oversight Board under subsection (a) of this section and shall be consistent with subsection (j) of this section.

(8) Staff

(A) In general

Except for the chief executive officer of the Corporation, the Corporation itself shall have no employees.

(B) Utilization of personnel of other agencies

(i) FDIC

The Corporation shall use employees (selected by the Corporation) of the Federal Deposit Insurance Corporation and the Federal Deposit Insurance Corporation shall provide such personnel to the Corporation for its use. Notwithstanding the foregoing, the Federal Deposit Insurance Corporation need not provide to the Corporation any employee of the Federal Deposit Insurance Corporation who was employed by the Federal Deposit Insurance Corporation on December 12, 1991, and who had not theretofore been provided to the Corporation by the Federal Deposit Insurance Corporation. In addition to persons otherwise employed by the Federal Deposit Insurance Corporation, the Federal Deposit Insurance Corporation shall employ, and shall provide to the Corporation, such persons as the Corporation may request from time to time. Federal Deposit Insurance Corporation employees provided to the Corporation shall be subject to the direction and control of the Corporation and any of them may be returned to the Federal Deposit Insurance Corporation at any time by the Corporation in the discretion of the Corporation. The Corporation shall reimburse the Federal Deposit Insurance Corporation for the actual costs incurred in providing such employees. Any permanent employee of the Federal Deposit Insurance Corporation who was performing services on behalf of the Corporation immediately prior to December 12, 1991, shall continue to be provided to the Corporation after December 12, 1991, unless the Corporation determines the services of any such employee to be unnecessary, in which case such employee shall be returned to a similar position performing services on behalf of the Federal Deposit Insurance Corporation. In any ensuing reduction-in-force or reorganization within the Federal Deposit Insurance Corporation, any such employee shall compete with the same rights as any other Federal Deposit Insurance Corporation employee. The Corporation may use administrative services of the Federal Deposit Insurance Corporation and, if it does so, shall reimburse the Federal Deposit Insurance Corporation for the actual costs of providing such services.

(ii) Other agencies

With the agreement of any executive department or agency, the Corporation may utilize the personnel of any such executive department or agency on a reimbursable basis to cover actual and reasonable expenses.

(C) Chief executive officer

There is established the office of chief executive officer of the Corporation. The chief executive officer of the Corporation shall be appointed by the President, by and with the advice and consent of the Senate, and shall serve at the pleasure of the President.

(D) Powers of the chief executive officer

The chief executive officer may exercise all of the powers of the Corporation and act for and on behalf of the Corporation, and may delegate such authority, as deemed appropriate by the chief executive officer, including the power to subdelegate authority, to persons designated by the chief executive officer who are employees of the Federal Deposit Insurance Corporation utilized by the Corporation or who provide services for the Corporation.

(E) Deputy chief executive officer

(i) In general

There is hereby established the position of deputy chief executive officer of the Corporation.

(ii) Appointment

The deputy chief executive officer of the Corporation shall—

(I) be appointed by the Chairperson of the Thrift Depositor Protection Oversight Board, with the recommendation of the chief executive officer; and

(II) be an employee of the Federal Deposit Insurance Corporation in accordance with subparagraph (B)(i).

(iii) Duties

The deputy chief executive officer shall perform such duties as the chief executive officer may require.

(F) Acting chief executive officer

In the event of a vacancy in the position of chief executive officer or during the absence or disability of the chief executive officer, the deputy chief executive officer shall perform the duties of the position as the acting chief executive officer.

(G) General counsel

There is established the Office of General Counsel of the Corporation. The chief executive officer, with the concurrence of the Chairperson of the Thrift Depositor Protection Oversight Board, may appoint the general counsel, who shall be an employee of the Federal Deposit Insurance Corporation, in accordance with subparagraph (B)(i). The general counsel shall perform such duties as the chief executive officer may require.

(9) Corporate powers

The Corporation shall have the following powers:

(A) To adopt, alter, and use a corporate seal.

(B) To enter into contracts and modify, or consent to the modification of, any contract

or agreement to which the Corporation is a party or in which the Corporation has an interest under this section.

(C) To make advance, progress, or other payments.

(D) To acquire, hold, lease, mortgage, maintain, or dispose of, at public or private sale, real and personal property, using any legally available private sector methods including without limitation, securitization of debt or equity, limited partnerships, mortgage investment conduits, and real estate investment trusts, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to the operations of the Corporation.

(E) To sue and be sued in its corporate capacity in any court of competent jurisdiction.

(F) To deposit any securities or funds held by the Corporation in any facility or depositary described in section 1823(b) of this title under the terms and conditions applicable to the Federal Deposit Insurance Corporation under such section 1823(b) and pay fees thereof and receive interest thereon.

(G) To take warrants, voting and nonvoting equity, or other participation interests in institutions or assets or properties of institutions described in paragraph (3)(A) and paragraph (10)(A)(iv).

(H) To use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(I) To prescribe bylaws that shall be consistent with law.

(J) To make loans and, with respect to eligible residential properties, develop risk sharing structures and other credit enhancements to assist in the provision of property ownership, rental, and cooperative housing opportunities for lower- and moderate-income families.

(K) To prepare reports and provide such reports, documents, and records to the Thrift Depositor Protection Oversight Board as required by this section.

(L) To issue capital certificates to the Resolution Funding Corporation consistent with the provisions of section 1441b of this title in the following manner:

(i) Authorization to issue

The Corporation is hereby authorized to issue to the Resolution Funding Corporation nonvoting capital certificates.

(ii) Requirement relating to the amount of certificates

The amount of certificates issued by the Corporation under clause (i) shall be equal to the aggregate amount of funds provided by the Resolution Funding Corporation to the Corporation under section 1441b of this title.

(iii) Certificates may be issued only to the Resolution Funding Corporation

Capital certificates issued under clause (i) may be issued only to the Resolution Funding Corporation in the manner and to the extent provided in section 1441b of this title and this section.

(iv) No dividends

The Corporation shall not pay dividends on any capital certificates issued under this section.

(M) To exercise any other power established under this section and such incidental powers as are necessary to carry out its duties and functions under this section. The Corporation may indemnify the directors, officers and employees of the Corporation on such terms as the Corporation deems proper against any liability under any civil suit pursuant to any statute or pursuant to common law with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction entered into involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the Corporation. For purposes of this subparagraph, the terms ''officers'' and ''employees'' include officers and employees of the Federal Deposit Insurance Corporation or of other agencies who perform services for the Corporation. The indemnification authorized by this subparagraph shall be in addition to and not in lieu of any immunities or other protections that may be available to such person under applicable law, and this provision does not affect any such immunities or other protections.

(10) Special powers

(A) In general

In addition to the powers of the Corporation described in paragraph (9), the Corporation shall have the following powers:

(i) Contracts

The Corporation may enter into contracts with any person, corporation, or entity, including State housing finance authorities (as such term is defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [12 U.S.C. 1441a–1]) and insured depository institutions, which the Corporation determines to be necessary or appropriate to carry out its responsibilities under this section. Such contracts shall be subject to the procedures adopted pursuant to paragraph (11).

(ii) Utilization of private sector

In carrying out the Corporation's duties under this section, the Corporation and the Federal Deposit Insurance Corporation shall utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, and brokerage services, if such services are available in the private sector and the Corporation determines utilization of such services are practicable and efficient.

(iii) Mergers and consolidations

The Corporation may require a merger or consolidation of an institution or insti-

tutions over which the Corporation has jurisdiction, if such merger or consolidation is consistent with section 1823(c)(4) of this title.

(iv) Organization of savings associations

The Corporation may organize 1 or more Federal savings associations—

(I) which shall be chartered by the Director of the Office of Thrift Supervision,

(II) the deposits of which, if any, shall be insured by the Federal Deposit Insurance Corporation through the Deposit Insurance Fund, and

(III) which shall operate in accordance with subsection (e) of this section.

(v) Organization of bridge banks

The Corporation may organize 1 or more bridge banks pursuant to subsection (i)[4] of section 1821 of this title with respect to any institution described in paragraph (3)(A) which becomes a bank. Such bridge bank shall be subject to subsection (e) of this section.

(B) Review of prior cases

The Corporation shall—

(i) review and analyze all insolvent institution cases resolved by the Federal Savings and Loan Insurance Corporation between January 1, 1988, and August 9, 1989, and actively review all means by which it can reduce costs under existing Federal Savings and Loan Insurance Corporation agreements relating to such cases, including restructuring such agreements;

(ii) evaluate the costs under existing Federal Savings and Loan Insurance Corporation agreements with regard to the following—

(I) capital loss coverage,

(II) yield maintenance guarantees,

(III) forbearances,

(IV) tax consequences, and

(V) any other relevant cost consideration;

(iii) review the bidding procedures used in resolving such cases in order to determine whether the bidding and negotiating processes were sufficiently competitive; and

(iv) report to the Thrift Depositor Protection Oversight Board and the Congress pursuant to subsection (k) of this section.

(C) Provisions applicable to review of prior cases

(i) In general

The Corporation shall exercise any and all legal rights to modify, renegotiate, or restructure such agreements where savings would be realized by such actions. The cost or income of any modification shall be a liability or an asset of the Corporation or the FSLIC Resolution Fund as determined by the Thrift Depositor Protection Oversight Board. Nothing in this paragraph shall be construed as granting the Corporation any legal rights to modify, renegotiate, or restructure agreements between the Federal Savings and Loan Insurance Corporation and any other party, which did not exist prior to August 9, 1989.

(ii) Additional provisions

The Corporation, in modifying, renegotiating, or restructuring the insolvent institution cases resolved by the Federal Savings and Loan Insurance Corporation between January 1, 1988, and August 9, 1989, shall carry out its responsibilities under section 519(a) of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991 (104 Stat. 1386) and shall, consistent with achieving the greatest overall financial savings to the Federal Government, pursue all legal means by which the Corporation can reduce both the direct outlays and the tax benefits associated with such cases, including, but not limited to, restructuring to eliminate tax-free interest payments and renegotiating to capture a larger portion of the tax benefits for the Corporation.

(11) Regulations, policies, and procedures

(A) Strategies, policies, and goals

The Corporation shall adopt the rules, regulations, standards, procedures, guidelines, and statements necessary to implement the strategic plan submitted by the former Oversight Board to Congress dated December 31, 1989. The Corporation may establish overall strategies, policies, and goals for its activities and may issue such rules, regulations, standards, principles, procedures, guidelines, and statements as the Corporation considers necessary or appropriate to carry out its duties.

(B) Review, etc.

Such overall strategies, policies, and goals, and such rules, regulations, standards, principles, procedures, guidelines, and statements—

(i) shall be provided by the Corporation to the Thrift Depositor Protection Oversight Board promptly or prior to publication or announcement to the extent practicable;

(ii) shall be subject to the review of the Thrift Depositor Protection Oversight Board as provided in subsection (a)(6)(A) of this section (with respect to overall strategies, policies, and goals); and

(iii) shall be promulgated pursuant to subchapter II of chapter 5 of title 5.

(C) Preparation and maintenance of records relating to solicitation and acceptance of offers

The Corporation shall—

(i) document decisions made in the solicitation and selection process and the reasons for the decisions; and

(ii) maintain such documentation in the offices of the Corporation, as well as any

[4] So in original. Probably should be subsection ''(n)''.

other documentation relating to the solicitation and selection process.

(D) Distressed areas

(i) In general

In developing its implementing policies, the Corporation shall take the action described in clause (ii) to avoid adverse economic impact for those real estate markets that are distressed.

(ii) Valuation and disposition

The Corporation shall establish an appraisal or other valuation method for determining the market value of real property. With respect to a real property asset with a market value in excess of a certain dollar limit (such limit to be determined by the chief executive officer of the Corporation), consideration shall be given to the volume of assets above such limit and the potential impact of sales in such distressed areas. The Corporation shall not sell a real property asset located in a distressed area without obtaining at least the minimum disposition price, unless a determination has been made that such a transaction furthers the objectives set forth in paragraph (3)(C).

(iii) Exception

The provisions of this subparagraph shall not apply to any property as long as such property is subject to the requirements of subsection (c) of this section.

(E) Definitions

For the purposes of this subsection—

(i) The term ''minimum disposition price'' means 95 percent of the market value established by the Corporation. The chief executive officer, in the chief executive officer's discretion, may change the percentage set forth in this definition from time to time if the chief executive officer determines that such change does not adversely impact the objectives set forth in paragraph (3)(C).

(ii) The term ''sell a real property asset'' means to convey all title and interest in a piece of tangible real property in which the Corporation has a fee simple or equivalent interest. The term ''real property'' does not include loans secured by real property, joint ventures, participation interests, options, or other similar interests. In addition, the term ''sell'' does not include hypothecation of assets, issuance of asset backed securities, issuance of joint ventures, or participation interests, or other similar activities.

(iii) The term ''distressed area'' means the geographic areas in those political subdivisions designated from time to time by the chief executive officer as having depressed real estate markets. Until the chief executive officer designates otherwise, such distressed areas shall be the States of Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, and Texas.

(iv) The term ''market value'' means the most probable price which a property should bring in a competitive and open market if—

(I) all conditions requisite to a fair sale are present,

(II) the buyer and seller are acting prudently and are knowledgeable, and

(III) the price is not affected by any undue stimulus.

(F) Real Estate Asset Division

The Corporation shall establish a Real Estate Asset Division to assist and advise the Corporation with respect to the management, sale, or other disposition of real property assets of institutions described in paragraph (3)(A). The Real Estate Asset Division shall have such duties as the Corporation establishes, including the publication of an inventory of real property assets of institutions subject to the jurisdiction of the Corporation. Such inventory shall be published before January 1, 1990 and updated semiannually thereafter and shall identify properties with natural, cultural, recreational, or scientific values of special significance.

(G) Advisory personnel

The Corporation shall maintain an executive-level position and dedicated staff to assist and advise the Corporation and other agencies in pursuing cases, civil claims, and administrative enforcement actions against institution-affiliated parties of insured depository institutions under the jurisdiction of the Corporation. These personnel shall have such duties as the Corporation establishes, including the duty to compile and publish a report to the Congress on the coordinated pursuit of claims by all Federal financial institution regulatory agencies, including the Department of Justice and the Securities and Exchange Commission. The report shall be published before December 31, 1990 and updated semiannually after such date.

(12) Periodic financing requests

The Corporation shall provide the Thrift Depositor Protection Oversight Board with periodic financing requests which shall detail—

(A) anticipated funding requirements for operations, case resolution, and asset liquidation,

(B) anticipated payments on previously issued notes, guarantees, other obligations, and related activities, and

(C) any proposed use of notes, guarantees or other obligations.

Such financing requests shall be submitted on a quarterly basis or such other period as the Thrift Depositor Protection Oversight Board determines necessary. Following approval by the Thrift Depositor Protection Oversight Board, such requests shall form the basis for expending funds provided by the Treasury, for transferring funds from the Resolution Funding Corporation to the Corporation and the issuance of capital certificates by the Corporation in exchange therefor.

(13) Goal for participation of small business concerns

The Corporation shall have an annual goal that presents the maximum practicable oppor-

tunity for small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and qualified HUBZone small business concerns (as defined in section 632(p) of title 15) to participate in the performance of contracts awarded by the Corporation.

(14) Extension of statute of limitations

(A) Tort actions for which the prior limitation has run

(i) In general

In the case of any tort claim—

(I) which is described in clause (ii); and

(II) for which the applicable statute of limitations under section 1821(d)(14)(A)(ii) of this title has expired before December 17, 1993;

the statute of limitations which shall apply to an action brought on such claim by the Corporation in the Corporation's capacity as conservator or receiver of an institution described in paragraph (3)(A) shall be the period determined under subparagraph (C).

(ii) Claims described

A tort claim referred to in clause (i)(I) with respect to an institution described in paragraph (3)(A) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the institution.

(B) Tort actions for which the prior limitation has not run

(i) In general

Notwithstanding section 1821(d)(14)(A) of this title, in the case of any tort claim—

(I) which is described in clause (ii); and

(II) for which the applicable statute of limitations under section 1821(d)(14)(A)(ii) of this title has not expired as of December 17, 1993;

the statute of limitations which shall apply to an action brought on such claim by the Corporation in the Corporation's capacity as conservator or receiver of an institution described in paragraph (3)(A) shall be the period determined under subparagraph (C).

(ii) Claims described

A tort claim referred to in clause (i)(I) with respect to an institution described in paragraph (3)(A) is a claim arising from gross negligence or conduct that demonstrates a greater disregard of a duty of care than gross negligence, including intentional tortious conduct relating to the institution.

(C) Determination of period

The period determined under this subparagraph for any claim to which subparagraph (A) or (B) applies shall be the longer of—

(i) the period beginning on the date the claim accrues (as determined pursuant to section 1821(d)(14)(B) of this title) and ending on December 31, 1995 or ending on the date of the termination of the Corporation pursuant to subsection (m)(1) of this section, whichever is later; or

(ii) the period applicable under State law for such claim.

(D) Scope of application

Subparagraphs (A) and (B) shall not apply to any action which is brought after the date of the termination of the Corporation under subsection (m)(1) of this section.

(E) Revival of expired State causes of action

In the case of any tort claim described in subparagraph (A)(ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Corporation as conservator or receiver, the Corporation may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(15) Purchase rights of tenants

(A) Notice

Except as provided in subparagraph (C), the Corporation may make available for sale a 1- to 4-family residence (including a manufactured home) to which the Corporation acquires title only after the Corporation has provided the household residing in the property notice (in writing and mailed to the property) of the availability of such property and the preference afforded such household under subparagraph (B).

(B) Preference

In selling such a property, the Corporation shall give preference to any bona fide offer made by the household residing in the property, if—

(i) such offer is substantially similar in amount to other offers made within such period (or expected by the Corporation to be made within such period);

(ii) such offer is made during the period beginning upon the Corporation making such property available and of a reasonable duration, as determined by the Corporation based on the normal period for sale of such properties; and

(iii) the household making the offer complies with any other requirements applicable to purchasers of such property, including any downpayment and credit requirements.

(C) Exceptions

Subparagraphs (A) and (B) shall not apply to—

(i) any residence transferred in connection with the transfer of substantially all of the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver;

(ii) any eligible single family property (as such term is defined in subsection (c)(9) of this section); or

(iii) any residence for which the household occupying the residence was the mortgagor under a mortgage on such resi-

dence and to which the Corporation acquired title pursuant to default on such mortgage.

(16) Preference for sales for homeless families

Subject to paragraph (15), in selling any real property (other than eligible residential property and eligible condominium property, as such terms are defined in subsection (c)(9) of this section) to which the Corporation acquires title, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer that would provide for the property to be used, during the remaining useful life of the property, to provide housing or shelter for homeless persons (as such term is defined in section 103 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11302]) or homeless families.

(17) Preferences for sales of certain commercial real properties

(A) Authority

In selling any eligible commercial real properties of the Corporation, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer—

(i) that is made by a public agency or nonprofit organization; and

(ii) under which the purchaser agrees that the property shall be used, during the remaining useful life of the property, for offices and administrative purposes of the purchaser to carry out a program to acquire residential properties to provide (I) homeownership and rental housing opportunities for very-low-, low-, and moderate-income families, or (II) housing or shelter for homeless persons (as such term is defined in section 103 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11302]) or homeless families.

(B) Definitions

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

(i) Eligible commercial real property

The term ''eligible commercial real property'' means any property (I) to which the Corporation acquires title, and (II) that the Corporation, in the discretion of the Corporation, determines is suitable for use for the location of offices or other administrative functions involved with carrying out a program referred to in subparagraph (A)(ii).

(ii) Nonprofit organization and public agency

The terms ''nonprofit organization'' and ''public agency'' have the same meanings as in subsection (c)(9) of this section.

(c) Disposition of eligible residential properties

(1) Purpose

The purpose of this subsection is to provide homeownership and rental housing opportunities for very low-income, lower-income, and moderate-income families.

(2) Rules governing disposition of eligible single family properties

(A) Notice to clearinghouses

Within a reasonable period of time after acquiring title to an eligible single family property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, condition, and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to other public agencies, other nonprofit organizations, and qualifying households. The Corporation shall allow public agencies, nonprofit organizations, and qualifying households reasonable access to eligible single family property for purposes of inspection.

(B) Offers to sell single family properties to nonprofit organizations, public agencies, and qualifying households

Except as provided in the last sentence of this subparagraph[5] for the 3-month and one week period following the date on which the Corporation makes an eligible single family property available for sale, the Corporation shall offer to sell the property to (i) qualifying households (including qualifying households with members who are veterans), or (ii) public agencies or nonprofit organizations that agree to (I) make the property available for occupancy by and maintain it as affordable for lower-income families (including lower-income families with members who are veterans) for the remaining useful life of such property, or (II) make the property available for purchase by any such family who, except as provided in subparagraph (D), agrees to occupy the property as a principal residence for at least 12 months and who certifies in writing that the family intends to occupy the property for at least 12 months. The restrictions described in subclause (I) of the preceding sentence shall be contained in the deed or other recorded instrument. If upon the expiration of such 3-month and one week period, no qualifying household, public agency, or nonprofit organization has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any purchaser. The Corporation shall actively market eligible single family properties for sale to lower-income families and to lower-income families with members who are veterans. To the extent or in such amounts as are provided in appropriations Acts for additional costs and losses to the Corporation resulting from this sentence taking effect, for purposes of this subsection the period referred to in the first and third sentences shall be considered to be the 180-day period following the date on which the Corporation first makes an eligible single family property available for sale.

(C) Recapture of profits from resale

Except as provided in subparagraph (D), if any eligible single family property sold (i) to

[5] So in original. Probably should be followed by a comma.

a qualifying household, or (ii) to a lower-income family pursuant to subparagraph (B)(ii)(II), paragraph (12)(C)(i), or paragraph (13)(B), is resold by the qualifying household or lower-income family during the 1-year period beginning upon initial acquisition by the household or lower-income family, the Corporation shall recapture 75 percent of the amount of any proceeds from the resale that exceed the sum of (I) the original sale price for the acquisition of the property by the qualifying household or lower-income family; (II) the costs of any improvements to the property made after the date of the acquisition, and (III) any closing costs in connection with the acquisition.

(D) Exceptions to recapture requirement

(i) Relocation

The Corporation (or its successor) may in its discretion waive the applicability (I) to any qualifying household of the requirement under subparagraph (C) and the requirements relating to residency of a qualifying household under paragraphs (9)(L)(ii) and (iii), and (II) to any lower-income family of the requirement under subparagraph (C) and the residency requirements under subparagraph (B)(ii)(II). The Corporation may grant any such a waiver only for good cause shown, including any necessary relocation of the qualifying household or lower-income family.

(ii) Other recapture provisions

The requirement under subparagraph (C) shall not apply to any eligible single family property for which, upon resale by the qualifying household or lower-income family during the 1-year period beginning upon initial acquisition by the household or family, a portion of the sale proceeds or any subsidy provided in connection with the acquisition of the property by the household or family is required to be recaptured or repaid under any other Federal, State, or local law (including section 143(m) of title 26) or regulation or under any sale agreement.

(E) Exception to avoid displacement of existing residents

Notwithstanding the first sentence of subparagraph (B), during the 180-day period following the date on which the Corporation makes an eligible single family property available for sale, the Corporation may sell the property to the household residing in the property, but only if (i) such household was residing in the property at the time notice regarding the property was provided to clearinghouses under subparagraph (A), (ii) such sale is necessary to avoid the displacement of, and unnecessary hardship to, the resident household, (iii) the resident household intends to occupy the property as a principal residence for at least 12 months, and (iv) and the resident household certifies in writing that the household intends to occupy the property for at least 12 months.

(3) Rules governing disposition of eligible multifamily housing properties

Except as provided under paragraph (6)(D), the Corporation shall dispose of eligible multifamily housing property as follows:

(A) Notice to clearinghouses

Within a reasonable period of time after acquiring title to an eligible multifamily housing property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, number of units (identified by number of bedrooms), and information relating to the estimated fair market value of the property. The clearinghouses shall make such information available, upon request, to qualifying multifamily purchasers. The Corporation shall allow qualifying multifamily purchasers reasonable access to an eligible multifamily housing property for purposes of inspection.

(B) Expression of serious interest

Qualifying multifamily purchasers may give written notice of serious interest in a property during a period ending 90 days after the time the Corporation provides notice under subparagraph (A). Such notice of serious interest shall be in such form and include such information as the Corporation may prescribe.

(C) Notice of readiness for sale

Upon the expiration of the period referred to in subparagraph (B) for a property, the Corporation shall provide written notice to any qualifying multifamily purchaser that has expressed serious interest in the property. Such notice shall specify the minimum terms and conditions for sale of the property.

(D) Offers to purchase

A qualifying multifamily purchaser receiving notice in accordance with subparagraph (C) shall have 45 days (from the date notice is received) to make a bona fide offer to purchase a property. The Corporation shall accept an offer that complies with the terms and conditions established by the Corporation. If, before the expiration of such 45-day period, any offer to purchase a property initially accepted by the Corporation is subsequently rejected or fails (for any reason), the Corporation shall accept another offer to purchase the property made during such period that complies with the terms and conditions established by the Corporation (if such another offer is made). The preceding sentence may not be construed to require a qualifying multifamily purchaser whose offer is accepted during the 45-day period to purchase the property before the expiration of the period.

(E) Lower-income occupancy requirements

(i) Single property purchases

With respect to any purchase of a single eligible multifamily housing property by a qualifying multifamily purchaser under subparagraph (D)—

(I) not less than 35 percent of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for lower-income and very low-income families during the remaining useful life of the property in which the units are located; and

(II) not less than 20 percent of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for very low-income families (including very low-income families taken into account for purposes of subclause (I)) during the remaining useful life of the property in which the units are located.

(ii) Aggregation requirements for multiproperty purchases

With respect to any purchase under subparagraph (D) by a qualifying multifamily purchaser involving more than one eligible multifamily housing property as a part of the same negotiation—

(I) the provisions of clause (i) shall apply in the aggregate to the properties so purchased; except that

(II) to the extent or in such amounts as are provided in appropriations Acts for additional costs and losses to the Corporation resulting from this subclause taking effect, not less than (a) 40 percent of the aggregate number of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for lower-income and very low-income families during the remaining useful life of the property in which the units are located, (b) 20 percent of the aggregate number of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for very low-income families (including very low-income families taken into account for purposes of subdivision (a) of this subclause) during the remaining useful life of the property in which the units are located, and (c) not less than 10 percent of the dwelling units in each separate property purchased shall be made available for occupancy by and maintained as affordable for lower-income families during the remaining useful life of the property in which the units are located.

The requirements of this subparagraph shall be contained in the deed or other recorded instrument.

(F) Sale of multifamily properties to other purchasers

(i) If, upon the expiration of the period referred to in subparagraph (B), no qualifying multifamily purchaser has expressed serious interest in a property, the Corporation may offer to sell the property, individually or in combination with other properties, to any purchaser.

(ii) The Corporation may not sell in combination with other properties any property which a qualifying multifamily purchaser has expressed serious interest in purchasing individually.

(iii) If, upon the expiration of the period referred to in subparagraph (D), no qualifying multifamily purchaser has made an offer to purchase the property, the Corporation may sell the property, individually or in combination with other properties, to any purchaser.

(G) Extension of restricted offer periods

Notwithstanding subparagraph (F), the Corporation may provide notice to clearinghouses regarding, and offer for sale under the provisions of subparagraphs (A) through (D), any eligible multifamily housing property—

(i) in which no qualifying multifamily purchaser has expressed serious interest during the period referred to in subparagraph (B), or

(ii) for which no qualifying multifamily purchaser has made a bona fide offer before the expiration of the period referred to in subparagraph (D),

except that the Corporation may, in the discretion of the Corporation, alter the duration of the periods referred to in subparagraphs (B) and (D) in offering any property for sale under this subparagraph.

(H) Exemptions

(i) Continued occupancy of current residents

No purchaser of an eligible multifamily housing property may terminate the occupancy of any person residing in the property on the date of purchase for purposes of meeting the lower-income occupancy requirement applicable to the property under subparagraph (E). The purchaser shall be in compliance with this paragraph if each newly vacant dwelling unit is reserved for lower-income occupancy until the lower-income occupancy requirement is met.

(ii) Financial infeasibility

The Secretary of Housing and Urban Development or the State housing finance agency for the State in which the property is located may temporarily reduce the lower-income occupancy requirements applicable to any property under subparagraph (E), if the Secretary or the applicable State housing finance agency determines that an owner's compliance with such requirements is no longer financially feasible. The owner of the property shall make a good-faith effort to return lower-income occupancy to the level required by subparagraph (E), and the Secretary of Housing and Urban Development or the State housing finance agency, as appropriate, shall review the reduction annually to determine whether financial infeasibility continues to exist.

(4) Rent limitations

(A) In general

With respect to properties under subparagraph (B), rents charged to tenants for units

made available for occupancy by very-low income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the median income for the area, as determined by the Secretary, with adjustment for family size. Rents charged to tenants for units made available for occupancy by lower-income families other than very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(B) Applicability

The rent limitations under this paragraph shall apply to any eligible single-family property sold pursuant to paragraph (2)(B)(ii)(I) and to any multifamily housing property sold pursuant to paragraph (3).

(5) Preference for sales

When selling any eligible multifamily housing property or combinations of eligible residential properties, the Corporation shall give preference, among substantially similar offers, to the offer that would reserve the highest percentage of dwelling units for occupancy or purchase by very low-income families and lower-income families and would retain such affordability for the longest term.

(6) Financing of sale

(A) Assistance by Corporation

(i) Sale price

The Corporation shall establish a market value for each eligible multifamily housing property. The Corporation shall sell eligible multifamily housing property at the net realizable market value. The Corporation may agree to sell eligible multifamily housing property at a price below the net realizable market value to the extent necessary to facilitate an expedited sale of such property and enable a public agency or nonprofit organization to comply with the lower-income occupancy requirements applicable to such property under paragraph (3). The Corporation may sell eligible single family property or eligible condominium property to qualifying households, nonprofit organizations, and public agencies without regard to any minimum sale price.

(ii) Purchase loan

The Corporation may provide a loan at market interest rates to the purchaser of eligible residential property for all or a portion of the purchase price, which loan shall be secured by a first or second mortgage on the property. The Corporation may provide such a loan at below market interest rates to the extent necessary to facilitate an expedited sale of eligible residential property and permit (I) a lower-income family to purchase an eligible single family property under paragraph (2); or (II) a public agency or nonprofit organization to comply with the lower-income occupancy requirements applicable to the purchase of an eligible residential property under paragraph (2) or (3). The Corporation shall provide such loan in a form which would permit its sale or transfer to a subsequent holder. In providing financing for combinations of eligible multifamily housing properties under this subsection, the Corporation may hold a participating share, including a subordinate participation. The Corporation shall periodically provide, to a wide range of minority- and women-owned businesses engaged in providing affordable housing and to nonprofit organizations, more than 50 percent of the control of which is held by 1 or more minority individuals, that are engaged in providing affordable housing, information that is sufficient to inform such businesses and organizations of the availability and terms of financing under this clause; such information may be provided directly, by notices published in periodicals and other publications that regularly provide information to such businesses or organizations, and through persons and organizations that regularly provide information or services to such businesses or organizations. For purposes of this clause, the terms ''women-owned business'' and ''minority-owned business'' have the meanings given such terms in subsection (r) of this section, and the term ''minority'' has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(B) Assistance by HUD

The Secretary shall take such action as may be necessary to expedite the processing of applications for assistance under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11360 et seq.], section 810[3] of the Housing and Community Development Act of 1974 [12 U.S.C. 1706e], and the National Housing Act [12 U.S.C. 1701 et seq.] to enable any organization or individual to purchase eligible residential property.

(C) Assistance by FmHA

The Secretary of Agriculture shall take such actions as may be necessary to expedite the processing of applications for assistance under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.] to enable any organization or individual to purchase eligible residential property.

(D) Exception to disposition rules

Notwithstanding the requirements under subparagraphs (A), (B), (C), (D), (F), and (G) of paragraph (3), the Corporation may provide for the disposition of eligible multifamily housing properties as necessary to facilitate purchase of such properties for use in connection with the section 202 of the Housing Act of 1959 [12 U.S.C. 1701q].

(E) Urban homesteading acquisition

(i) In providing for bulk acquisition of eligible single family properties by the Sec-

retary under section 810(*l*)[3] of the Housing and Community Development Act of 1974 [12 U.S.C. 1706e(*l*)] and by participating jurisdictions for inclusion in affordable housing activities assisted under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], the Corporation shall agree to an amount to be paid for acquisition of such properties. The acquisition price shall include discounts for bulk purchase and for holding of the property such that the acquisition price for each property shall not exceed 50 percent of the fair market value of the property, as valued individually.

(ii) To the extent necessary to facilitate sale of properties to the Secretary and participating jurisdictions, the requirements of paragraphs (2), (5), and (6)(A) of this subsection shall not apply to such transactions and property involved in such transactions.

(iii) To facilitate acquisitions by the Secretary and participating jurisdictions, the Corporation shall provide the Secretary and participating jurisdictions with an inventory of eligible single family properties, not less than 4 times each year.

(7) Contracting rules

Contracts entered into under this subsection shall not be subject to the requirements of subsection (b)(10)(A) of this section.

(8) Use of secondary market agencies

(A) In general

In the disposition of eligible residential properties, the Corporation shall, in consultation with the Secretary, explore opportunities to work with secondary market entities to provide housing for lower- and moderate-income families.

(B) Credit enhancement

(i) In general

With respect to such Corporation properties, the Secretary may, consistent with statutory authorities, work through the Federal Housing Administration, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and other secondary market entities to develop risk sharing structures, mortgage insurance, and other credit enhancements to assist in the provision of property ownership, rental, and cooperative housing opportunities for lower- and moderate-income families.

(ii) Certain tax-exempt bonds

The Corporation may provide credit enhancements with respect to tax-exempt bonds issued on behalf of nonprofit organizations pursuant to section 103, and subpart A of part IV of subchapter B of chapter 1, of title 26, with respect to the disposition of eligible residential properties for the purposes described in clause (i).

(C) Report

In the annual report submitted by the Secretary to the Congress, the Secretary shall include a detailed description of his activities under this paragraph, including recommendations for such additional authorization as he deems necessary to implement the provisions of this subsection.

(9) Definitions

For purposes of this subsection—

(A) Adjusted income and income

The terms ''adjusted income'' and ''income'' shall have the meaning given such terms in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)].

(B) Clearinghouses

The term ''clearinghouses'' means—

(i) the State housing finance agency for the State in which an eligible residential property is located,

(ii) the Office of Community Investment (or other comparable division) within the Director, and

(iii) any national nonprofit organizations[6] (including any nonprofit entity established by the corporation established under title IX of the Housing and Community Development Act of 1968 [42 U.S.C. 3931 et seq.]) that the Corporation determines has the capacity to act as a clearinghouse for information.

(C) Corporation

The term ''Corporation'' means the Resolution Trust Corporation.

(D) Eligible condominium property

The term ''eligible condominium property'' means a condominium unit, as such term is defined in section 3603 of title 15—

(i) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(ii) that has an appraised value that does not exceed—

(I) $67,500 in the case of a 1-family residence, $76,000 in the case of a 2-family residence, $92,000 in the case of a 3-family residence, and $107,000 in the case of a 4-family residence; or

(II) only to the extent or in such amounts as are provided in appropriation Acts for additional costs and losses to the Corporation resulting from this subclause taking effect, the amount provided in section 203(b)(2)(A) of the National Housing Act [12 U.S.C. 1709(b)(2)(A)], except that such amount shall not exceed $101,250 in the case of a 1-family residence, $114,000 in the case of a 2-family residence, $138,000 in the case of a 3-family residence, and $160,500 in the case of a 4-family residence.

[6] So in original. Probably should be ''organization''.

(E) Eligible multifamily housing property

(i) Basic definition

The term ''eligible multifamily housing property'' means a property consisting of more than 4 dwelling units—

(I) to which the Corporation acquires title either in its corporate capacity or as receiver (including its capacity as the sole owner of a subsidiary corporation of a depository institution under receivership, which subsidiary has as its principal business the ownership of real property), but not in its capacity as an operating conservator; and

(II) that has an appraised value that does not exceed, for such part of the property as may be attributable to dwelling use (excluding exterior land improvements), $29,500 per family unit without a bedroom, $33,816 per family unit with 1 bedroom, $41,120 per family unit with 2 bedrooms, $53,195 per family unit with 3 bedrooms, and $58,392 per family unit with 4 or more bedrooms.

(ii) Expanded definition

Notwithstanding clause (i), to the extent or in such amounts as are provided in appropriations Acts for additional costs and losses to the Corporation resulting from this clause taking effect, the term ''eligible multifamily housing property'' shall mean a property consisting of more than 4 dwelling units—

(I) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(II) that has an appraised value that does not exceed, for such part of the property as may be attributable to dwelling use (excluding exterior land improvements), $29,500 per family unit without a bedroom, $33,816 per family unit with 1 bedroom, $41,120 per family unit with 2 bedrooms, $53,195 per family unit with 3 bedrooms, and $58,392 per family unit with 4 or more bedrooms.

(F) Eligible residential property

The term ''eligible residential property'' includes eligible single family properties and eligible multifamily housing properties.

(G) Eligible single family property

The term ''eligible single family property'' means a 1- to 4-family residence (including a manufactured home)—

(i) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(ii) that has an appraised value that does not exceed—

(I) $67,500 in the case of a 1-family residence, $76,000 in the case of a 2-family residence, $92,000 in the case of a 3-family residence, and $107,000 in the case of a 4-family residence; or

(II) only to the extent or in such amounts as are provided in appropriation Acts for additional costs and losses to the Corporation resulting from this subclause taking effect, the amount provided in section 203(b)(2)(A) of the National Housing Act [12 U.S.C. 1709(b)(2)(A)], except that such amount shall not exceed $101,250 in the case of a 1-family residence, $114,000 in the case of a 2-family residence, $138,000 in the case of a 3-family residence, and $160,500 in the case of a 4-family residence.

(H) Lower-income families

The term ''lower-income families'' means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

(I) Net realizable market value

The term ''net realizable market value'' means a price below the market value that takes into account (i) any reductions in holding costs resulting from the expedited sale of a property, including but not limited to foregone real estate taxes, insurance, maintenance costs, security costs, and loss of use of funds, and (ii) the avoidance, where applicable, of fees paid to real estate brokers, auctioneers, or other individuals or organizations involved in the sale of property owned by the Corporation.

(J) Nonprofit organization

The term ''nonprofit organization'' means a private organization (including a limited equity cooperative)—

(i) no part of the net earnings of which inures to the benefit of any member, shareholder, founder, contributor, or individual; and

(ii) that is approved by the Corporation as to financial responsibility.

(K) Public agency

The term ''public agency''—

(i) means any Federal, State, local, or other governmental entity; and

(ii) includes any public housing agency.

(L) Qualifying household

The term ''qualifying household'' means a household (i) who intends to occupy eligible single family property as a principle[7] residence; and (ii) who agrees to occupy the property as a principal residence for at least 12 months (except as provided in paragraph (2)(D)); (iii) who certifies in writing that the household intends to occupy the property as a principal residence for at least 12 months (except as provided in paragraph (2)(D)); and (iv) whose income does not exceed 115 per-

[7] So in original. Probably should be ''principal''.

cent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(M) Qualifying multifamily purchaser

The term ''qualifying multifamily purchaser'' means (i) a public agency, (ii) a nonprofit organization, or (iii) a for-profit entity which makes a commitment (for itself or any related entity) to satisfy the lower-income occupancy requirements specified under paragraph (3)(E) for any eligible multifamily property for which an offer to purchase is made during or after the periods specified under paragraph (3).

(N) Rural area

The term ''rural area'' has the meaning given such term in section 520 of the Housing Act of 1949 [42 U.S.C. 1490].

(O) Secretary

The term ''Secretary'' means the Secretary of the[8] Housing and Urban Development.

(P) State housing finance agency

The term ''State housing finance agency'' means the public agency, authority, corporation, or other instrumentality of a State that has the authority to provide residential mortgage loan financing throughout such State.

(Q) Very low-income families

The term ''very-low income families'' means families and individuals whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

(10) Exemption for certain transactions with insured depository institutions

The provisions of this subsection shall not apply with respect to any eligible residential property after the date the Corporation enters into a contract to sell such property to an insured depository institution (as defined in section 1813 of this title), including any sale in connection with a transfer of all or substantially all of the assets of a closed savings association (including such property) to an insured depository institution.

(11) Third party rights

(A) In general

The provisions of this subsection, or any failure by the Corporation to comply with such provisions, may not be used by any person to attack or defeat any title to property once it is conveyed by the Corporation.

(B) Lower-income occupancy

The lower-income occupancy requirements applicable under paragraphs (2), (3), (12)(C), (13)(B), and (14)(C) shall be judicially enforceable against purchasers of property under this subsection or their successors in interest by affected very low- and lower-income families, State housing finance agencies, and any agency, corporation, or authority of the United States Government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

(C) Clearinghouse

A clearinghouse shall not be subject to suit for its failure to comply with the requirements of this subsection.

(D) Corporation

The Corporation shall not be liable to any depositor, creditor, or shareholder of any insured depository institution for which the Corporation has been appointed receiver or conservator, or of any subsidiary corporation of a depository institution under conservatorship or receivership, or any claimant against such an institution or subsidiary, because the disposition of assets of the institution or the subsidiary under this subsection affects the amount of return from the assets.

(12) Transfer of certain eligible residential properties to State housing agencies for disposition

Notwithstanding paragraphs (2), (3), (5), and (6), the Corporation may transfer eligible residential properties to the State housing finance agency or any other State housing agency for the State in which the property is located, or to any local housing agency in whose jurisdiction the property is located. Transfers of eligible residential properties under this paragraph may be conducted by direct sale, consignment sale, or any other method the Corporation considers appropriate and shall be subject to the following requirements:

(A) Individual or bulk transfer

The Corporation may transfer such properties individually or in bulk, as agreed to by the Corporation and the State housing finance agency or State or local housing agency.

(B) Acquisition price and discount

The acquisition price paid by the State housing finance agency or State or local housing agency to the Corporation for properties transferred under this paragraph shall be an amount agreed to by the Corporation and the transferee agency.

(C) Lower-income use

Any State housing finance agency or State or local housing agency acquiring properties under this paragraph shall offer to sell or transfer the properties only as follows:

(i) Eligible single family properties

For eligible single family properties—

(I) to purchasers described under clauses (i) and (ii) of paragraph (2)(B);

(II) if the purchaser is a purchaser described under paragraph (2)(B)(ii)(I), subject to the rent limitations under paragraph (4)(A);

(III) subject to the requirement in the second sentence of paragraph (2)(B); and

(IV) subject to recapture by the Corporation of excess proceeds from resale

[8] So in original. The word ''the'' probably should not appear.

of the properties under subparagraphs (C) and (D) of paragraph (2).

(ii) Eligible multifamily housing properties

For eligible multifamily housing properties—

(I) to qualifying multifamily purchasers;

(II) subject to the lower-income occupancy requirements under paragraph (3)(E);

(III) subject to the provisions of paragraph (3)(H);

(IV) subject to a preference, among financially acceptable offers, to the offer that would reserve the highest percentage of dwelling units for occupancy or purchase by very low-income families and lower-income families and would retain such affordability for the longest term; and

(V) subject to the rent limitations under paragraph (4)(A).

(D) Affordability

The State housing finance agency or State or local housing agency shall endeavor to make the properties transferred under this paragraph more affordable to lower-income families based upon the extent to which the acquisition price of a property under subparagraph (B) is less than the market value of the property.

(13) Exception for sales to nonprofit organizations and public agencies

(A) Suspension of offer periods

With respect to any eligible residential property, the Corporation may (in the discretion of the Corporation) suspend any of the requirements of subparagraphs (A) and (B) of paragraph (2) and subparagraphs (A) through (D) of paragraph (3), as applicable, but only to the extent that for the duration of the suspension the Corporation negotiates the sale of the property to a nonprofit organization or public agency. If the property is not sold pursuant to such negotiations, the requirements of any provisions suspended shall apply upon the termination of the suspension. Any time period referred to in such paragraphs shall toll for the duration of any suspension under this subparagraph.

(B) Use restrictions

(i) Eligible single family property

Any eligible single family property sold under this paragraph shall be (I) made available for occupancy by and maintained as affordable for lower-income families for the remaining useful life of the property, or made available for purchase by such families, (II) subject to the rent limitations under paragraph (4)(A), (III) subject to the requirements relating to residency of a qualifying household under paragraph (9)(L) and to residency of a lower-income family under paragraph (2)(B)(ii), and (IV) subject to recapture by the Corporation of excess proceeds from resale of the property under subparagraphs (C) and (D) of paragraph (2).

(ii) Eligible multifamily housing property

Any eligible multifamily housing property sold under this paragraph shall comply with the lower-income occupancy requirements under paragraph (3)(E) and shall be subject to the rent limitations under paragraph (4)(A).

(14) Rules governing disposition of eligible condominium property

(A) Notice to clearinghouses

Within a reasonable period of time after acquiring title to an eligible condominium property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property. Each clearinghouse shall make such information available, upon request, to purchasers described in clauses (i) through (iv) of subparagraph (B). The Corporation shall allow such purchasers reasonable access to an eligible condominium property for purposes of inspection.

(B) Offers to sell

For the 180-day period following the date on which the Corporation makes an eligible condominium property available for sale, the Corporation may offer to sell the property, at the discretion of the Corporation, to 1 or more of the following purchasers:

(i) Qualifying households.

(ii) Nonprofit organizations.

(iii) Public agencies.

(iv) For-profit entities.

(C) Lower-income occupancy requirements

(i) In general

Except as provided in clause (ii), any nonprofit organization, public agency, or for-profit entity that purchases an eligible condominium property shall (I) make the property available for occupancy by and maintain it as affordable for lower-income families for the remaining useful life of the property, or (II) make the property available for purchase by any such family who, except as provided in subparagraph (E), agrees to occupy the property as a principal residence for at least 12 months and who certifies in writing that the family intends to occupy the property for at least 12 months. The restriction described in subclause (I) of the preceding sentence shall be contained in the deed or other recorded instrument.

(ii) Multiple-unit purchases

If any nonprofit organization, public agency, or for-profit entity purchases more than 1 eligible condominium property as a part of the same negotiation or purchase, the Corporation may (in the discretion of the Corporation) waive the requirement under clause (i) and provide instead that not less than 35 percent of all eligible condominium properties purchased shall be (I) made available for occupancy by and maintained as affordable for lower-income families for the remaining useful life of the property, or (II) made available

for purchase by any such family who, except as provided in subparagraph (E), agrees to occupy the property as a principal residence for at least 12 months and who certifies in writing that the family intends to occupy the property for at least 12 months. The restriction described[9] subclause (I) of the preceding sentence shall be contained in the deed or other recorded instrument.

(iii) Sale to other purchasers

If, upon the expiration of the 180-day period referred to in subparagraph (B), no purchaser described in clauses (i) through (iv) of subparagraph (B) has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any other purchaser.

(D) Recapture of profits from resale

Except as provided in subparagraph (E), if any eligible condominium property sold (i) to a qualifying household, or (ii) to a lower-income family pursuant to subparagraph (C)(i)(II) or (C)(ii)(II), is resold by the qualifying household or lower-income family during the 1-year period beginning upon initial acquisition by the household or family, the Corporation shall recapture 75 percent of the amount of any proceeds from the resale that exceed the sum of (I) the original sale price for the acquisition of the property by the qualifying household or lower-income family, (II) the costs of any improvements to the property made after the date of the acquisition, and (III) any closing costs in connection with the acquisition.

(E) Exception to recapture requirement

The Corporation (or its successor) may in its discretion waive the applicability to any qualifying household or lower-income family of the requirement under subparagraph (D) and the requirements relating to residency of a qualifying household or lower-income family (under paragraph (9)(L) and subparagraph (C) of this paragraph, respectively). The Corporation may grant any such a[10] waiver only for good cause shown, including any necessary relocation of the qualifying household or lower-income family.

(F) Limitations on multiple unit purchases

The Corporation may not sell or offer to sell as part of the same negotiation or purchase any eligible condominium properties that are not located in the same condominium project (as such term is defined in section 3603 of title 15). The preceding sentence may not be construed to require all eligible condominium properties offered or sold as part of the same negotiation or purchase to be located in the same structure.

(G) Rent limitations

Rents charged to tenants of eligible condominium properties made available for occupancy by very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the median income for the area, as determined by the Secretary, with adjustment for family size. Rents charged to tenants of eligible condominium properties made available for occupancy by lower-income families other than very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(15) Reports to Congress

(A) In general

The Corporation shall submit to the Congress semiannual reports under this paragraph regarding the disposition of eligible residential properties under this subsection during the most recently concluded reporting period. The first report under this paragraph shall be submitted not later than the expiration of the 4-month period beginning upon the conclusion of the first reporting period under subparagraph (B). Subsequent reports shall be submitted not less than every 6 months after such expiration.

(B) Reporting periods

For purposes of this paragraph, the term ''reporting period'' means the 6-month period for which a report under this paragraph is made, except that the first reporting period shall be the period beginning on August 9, 1989, and ending on December 12, 1991. Each successive reporting period shall begin upon the conclusion of the preceding reporting period.

(C) Information regarding properties sold

Each report under this paragraph shall contain information regarding each eligible residential property sold by the Corporation during the applicable reporting period, as follows:

(i) A description of the property, the location of the property, and the number of dwelling units in the property.

(ii) The appraised value of the property.

(iii) The sale price of the property.

(iv) For eligible single family properties—

(I) the income and race of the purchaser of the property, if the property is sold to an occupying household or is sold for resale to an occupying household; and

(II) whether the property is reserved for residency by very low- or lower-income families, if the property is sold for use as rental property.

(v) For eligible multifamily housing properties, the number and percentage of dwelling units in the property reserved for occupancy by very low- and lower-income families.

(vi) The number of eligible single family properties sold after the expiration of the offer period for such properties referred to in paragraph (2)(B).

(vii) The number of eligible multifamily housing properties sold after the expira-

[9] So in original. Probably should be ''described in''.

[10] So in original. The word ''a'' probably should not appear.

tion of the periods for such properties referred to in subparagraphs (B) and (D) of paragraph (3).

(D) Number of properties within windows

Each report under this paragraph shall contain the following information:

(i) The number of eligible single family properties for which the offer period referred to in paragraph (2)(B) had not expired before the conclusion of the applicable reporting period (or had not yet commenced).

(ii) The number of eligible multifamily housing properties for which the 90-day period referred to in paragraph (3)(B) had not expired before the conclusion of the applicable reporting period (or had not yet commenced).

(16) Notice to clearinghouses regarding ineligible properties

(A) In general

Within a reasonable period of time after acquiring title to an ineligible residential property, the Corporation shall, to the extent practicable, provide written notice to clearinghouses.

(B) Content

For ineligible single family properties, such notice shall contain the same information about such properties that the notice required under paragraph (2)(A) contains with respect to eligible single family properties. For ineligible multifamily housing properties, such notice shall contain the same information about such properties that the notice required under paragraph (3)(A) contains with respect to eligible multifamily housing properties. For ineligible condominium properties, such notice shall contain the same information about such properties that the notice required under paragraph (14)(A) contains with respect to eligible condominium properties.

(C) Availability

The clearinghouses shall make such information available, upon request, to other public agencies, other nonprofit organizations, qualifying households, qualifying multifamily purchasers, and other purchasers, as appropriate.

(D) Definitions

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

(i) Ineligible condominium property

The term ''ineligible condominium property'' means a condominium unit, as such term is defined in section 3603 of title 15—

(I) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary corporation has as its principal business the ownership of real property);

(II) that has an appraised value that does not exceed the applicable dollar amount limitation for the property under paragraph (9)(D)(ii)(II); and

(III) that is not an eligible condominium property.

(ii) Ineligible multifamily housing property

The term ''ineligible multifamily housing property'' means a property consisting of more than 4 dwelling units—

(I) to which the Corporation acquires title in its capacity as conservator (including its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship, which subsidiary corporation has as its principal business the ownership of real property);

(II) that has an appraised value that does not exceed, for such part of the property as may be attributable to dwelling use (excluding exterior land improvements), the dollar amount limitations under paragraph (9)(E)(i)(II); and

(III) that is not an eligible multifamily housing property.

(iii) Ineligible single family property

The term ''ineligible single family property'' means a 1- to 4-family residence (including a manufactured home)—

(I) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary corporation has as its principal business the ownership of real property);

(II) that has an appraised value that does not exceed the applicable dollar amount limitation for the property under paragraph (9)(G)(ii)(II); and

(III) that is not an eligible single family property.

(iv) Ineligible residential property

The term ''ineligible residential property'' includes ineligible single family properties, ineligible multifamily housing properties, and ineligible condominium properties.

(17) Unified affordable housing program

(A) In general

Not later than 4 months after December 17, 1993, the Corporation shall enter into an agreement, as described in section 1831q(n)(3) of this title, with the Federal Deposit Insurance Corporation that sets out a plan for the orderly unification of the Corporation's activities, authorities, and responsibilities under this subsection with the authorities, activities, and responsibilities of the Federal Deposit Insurance Corporation pursuant to section 1831q of this title in a manner that best achieves an effective and comprehensive affordable housing program management structure. The agreement shall be entered into after consultation with the Affordable Housing Advisory Board under section 14(b) of the Resolution Trust Corporation Completion Act.

(B) Authority and implementation

The Corporation shall have the authority to carry out the provisions of the agreement entered into pursuant to subparagraph (A) and shall implement such agreement as soon as practicable, but in no event later than 8 months after December 17, 1993.

(C) Transfer of authority

Effective upon October 1, 1995, any remaining authority and responsibilities of the Corporation under this subsection shall be carried out by the Federal Deposit Insurance Corporation.

(d) National and regional advisory boards

(1) National advisory board

(A) Establishment

The Thrift Depositor Protection Oversight Board shall establish a national advisory board to provide information to the Thrift Depositor Protection Oversight Board, and to advise that Board on policies and programs for the sale or other disposition of real property assets of institutions which are described in subsection (b)(3)(A) of this section.

(B) Membership

The national advisory board shall consist of—

(i) a chairperson appointed by the Thrift Depositor Protection Oversight Board; and

(ii) the chairpersons of any regional advisory boards established pursuant to paragraph (3).

(C) Meetings

The national advisory board shall meet 4 times a year, or more frequently if requested by the Corporation.

(2) [Reserved]

(3) Regional advisory boards

(A) Establishment

The Thrift Depositor Protection Oversight Board shall establish not less than 6 regional advisory boards to advise the Corporation on the policies and programs for the sale or other disposition of real property assets of institutions described in subsection (b)(3)(A) of this section. Such regional advisory boards shall be established in any region where the Thrift Depositor Protection Oversight Board determines that there exists a significant portfolio of real property assets of institutions which are described in subsection (b)(3)(A) of this section.

(B) Membership

(i) Appointment

Each regional advisory board shall consist of 5 members. Each member shall be appointed by the Thrift Depositor Protection Oversight Board and shall serve at the pleasure of the Thrift Depositor Protection Oversight Board. The members shall be selected from those residents of the region who will represent the views of low- and moderate-income consumers and small businesses, or who have knowledge and experience regarding business, financial, and real estate matters.

(ii) Terms

Each member of a regional advisory board shall serve a term not to exceed 2 years, except that the Thrift Depositor Protection Oversight Board may provide for classes of members so that the terms of not more than 3 members of any such board shall expire in any 1 year.

(C) Meetings

Each regional advisory board shall meet 4 times a year, or more frequently if requested by the Corporation. A regional advisory board shall conduct its meetings in its region.

(4) Prohibition on compensation

Members of the national and regional advisory boards shall serve without compensation, except that such members shall be entitled to receive allowances in accordance with subchapter I of chapter 57 of title 5 for necessary expenses of travel, lodging, and subsistence incurred in attending official meetings and other activities of the boards.

(5) Treatment as advisory committee and termination of national and regional advisory boards

(A) Federal Advisory Committee Act

The national and regional advisory boards shall be subject to the provisions of the Federal Advisory Committee Act.

(B) Termination

Notwithstanding the provisions of the Federal Advisory Committee Act, the national advisory board and any regional advisory board established pursuant to this subsection which is in existence on the date on which the Corporation terminates shall also terminate on such date.

(e) Institutions organized by Corporation

(1) Limitations on certain activities

All insured depository institutions (as defined in section 1813 of this title) organized by the Corporation under this section shall, during the period such institutions are within the control of the Corporation, be subject to such limitations, restrictions, and conditions as determined by the Corporation with respect to the following activities:

(A) Growth of assets.
(B) Lending and borrowing activities.
(C) Asset acquisitions.
(D) Use of brokered deposits.
(E) Payment of deposit rates.
(F) Setting policy or credit standards.
(G) Capital standards.

(2) Applicability of other provisions of law

Except as otherwise provided, all insured depository institutions (defined in section 1813 of this title) organized by the Corporation shall—

(A) be subject to all laws and rules otherwise applicable to them as insured depository institutions, and

(B) shall[11] be subject to the supervision of the appropriate Federal banking agency (as

[11] So in original. The word ''shall'' probably should not appear.

that term is defined in section 1813 of this title).

(f) Limitation on certain Corporation activities

(1) Certain sales prohibited

The Corporation shall prescribe regulations to prohibit the sale of assets of a failed institution by the Corporation to any person who—

(A)(i) has defaulted, or was a member of a partnership or an officer or director of a corporation which has defaulted, on 1 or more obligations the aggregate amount of which exceed $1,000,000 to such failed institution;

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any institution subject to the jurisdiction of the Corporation pursuant to paragraph (3)(A);

(B) participated, as an officer or director of such failed institution or of any affiliate of such institution, in a material way in transactions that resulted in a substantial loss to such failed institution;

(C) has been removed from, or prohibited from participating in the affairs of, such failed institution pursuant to any final enforcement action by an appropriate Federal banking agency; or

(D) has demonstrated a pattern or practice of defalcation regarding obligations to such failed institution.

(2) Settlement of claims; definitions

(A) Settlement of claims

Nothing in this subsection shall prohibit the Corporation from selling or otherwise transferring any asset to any person if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of obligations owed by the person to the failed institution or the Corporation.

(B) Definitions

For purposes of paragraph (1)—

(i) Default

The term ''default'' means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

(ii) Affiliate

The term ''affiliate'' has the meaning given to such term in section 1841(k) of this title.

(g) Exemption from State and local taxation

The Corporation and the Thrift Depositor Protection Oversight Board, the capital, reserves, surpluses, and assets of the Corporation and the Thrift Depositor Protection Oversight Board, and the income derived from such capital, reserves, surpluses, or assets shall be exempt from State, municipal, and local taxation except taxes on real estate held by the Corporation, according to its value as other similar property held by other persons is taxed.

(h) Guarantees of FSLIC

(1) Assumption by Corporation

On August 9, 1989, the Corporation shall, by operation of law (and without further action by the Corporation, the Thrift Depositor Protection Oversight Board, the Federal Housing Finance Board,[1] the Federal Savings and Loan Insurance Corporation, or any court), assume all rights and obligations of the Federal Savings and Loan Insurance Corporation with respect to any guarantee issued by the Federal Savings and Loan Insurance Corporation during the period beginning on January 1, 1989, and ending on August 9, 1989, in connection with any loan to any savings association by any Federal Reserve bank or Federal Home Loan Bank (hereinafter in this subsection referred to as a ''lender'').

(2) Payment by Corporation

Any obligation assumed by the Corporation for any guarantee described in paragraph (1) to any lender shall be paid by the Corporation before the end of the 1-year period beginning on August 9, 1989. Payment shall be made from funds or assets available to the Corporation.

(3) Priority of claims of lenders

Any claim by a lender with respect to any obligation assumed by the Corporation for a guarantee described in paragraph (1) shall have priority over all other secured or unsecured obligations of the Corporation.

(4) Treasury backup

If the resources of the Corporation are insufficient to pay all the obligations assumed by the Corporation under paragraph (1) within the 1-year period, the Secretary of the Treasury shall pay the amount of any such deficiency. There are hereby appropriated to the Secretary for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to pay such deficiency.

(i) Funding

(1) Borrowing

(A) In general

The Corporation, upon approval of the Thrift Depositor Protection Oversight Board, is authorized to borrow from the Treasury. The Secretary of the Treasury is authorized and directed to loan to the Corporation, on such terms as may be fixed by the Secretary of the Treasury, an amount not exceeding in the aggregate $5,000,000,000 outstanding at any one time.

(B) Interest rate

Each such loan shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(2) Interim funding

The Secretary of the Treasury shall provide the sum of $30,000,000,000 to the Corporation to carry out the purposes of this section.

(3) Additional interim funding

In addition to amounts provided under paragraph (2), the Secretary of the Treasury shall

provide to the Corporation such sums as may be necessary, not to exceed $25 billion, to carry out the purposes of this section.

(4) Conditions on availability of final funding in excess of $10,000,000,000

(A) Certification required

Of the funds appropriated under paragraph (3) which are provided after April 1, 1993, any amount in excess of $10,000,000,000 shall not be available to the Corporation before the date on which the Secretary of the Treasury certifies to the Congress that, since December 17, 1993, the Corporation has taken such action as may be necessary to comply with the requirements of subsection (w) of this section or that, as of the date of the certification, the Corporation is continuing to make adequate progress toward full compliance with such requirements.

(B) Appearance upon request

The Secretary of the Treasury shall appear before the Committee on Banking, Finance and Urban Affairs of the House of Representatives or the Committee on Banking, Housing, and Urban Affairs of the Senate, upon the request of the chairman of the committee, to report on any certification made to the Congress under subparagraph (A).

(5) Return to Treasury

If the aggregate amount of funds transferred to the Corporation pursuant to this subsection exceeds the amount needed to carry out the purposes of this section or to meet the requirements of section 1821(a)(6)(F)[3] of this title, such excess amount shall be deposited in the general fund of the Treasury.

(6) Funds only for depositors

Notwithstanding any provision of law other than section 1823(c)(4)(G) of this title, funds appropriated under this section shall not be used in any manner to benefit any shareholder of—

(A) any insured depository institution for which the Corporation has been appointed conservator or receiver, in connection with any type of resolution by the Corporation;

(B) any other insured depository institution in default or in danger of default, in connection with any type of resolution by the Corporation; or

(C) any insured depository institution, in connection with the provision of assistance under section 1821 or 1823 of this title with respect to such institution, except that this subparagraph shall not prohibit assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquiring (as defined in section 1823(f)(8)(B) of this title) another insured depository institution.

(j) Maximum amount limitations on outstanding obligations

(1) In general

Notwithstanding any other provision of this section, the amount which is equal to—

(A) the sum of—

(i) the total amount of contributions received from the Resolution Funding Corporation; and

(ii) the total amount of outstanding obligations of the Corporation; minus

(B) the sum of—

(i) the amount of cash held by the Corporation; and

(ii) the amount which is equal to 85 percent of the Corporation's estimate of the fair market value of other assets held by the Corporation,

may not exceed $50,000,000,000.

(2) "Outstanding obligation" defined

For purposes of this subsection (other than paragraph (3)), the term ''outstanding obligation'' includes—

(A) any obligation or other liability assumed by the Corporation from the Federal Savings and Loan Insurance Corporation under this section or pursuant to any provision of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

(B) any guarantee issued by the Corporation;

(C) the total of the outstanding amounts borrowed from the Secretary of the Treasury pursuant to subsection (i) of this section; and

(D) any other obligation for which the Corporation has a direct or contingent liability to pay any amount.

(3) Full faith and credit

The full faith and credit of the United States is pledged to the payment of any obligation issued by the Corporation, with respect to both principal and interest, if—

(A) the principal amount of such obligation is stated in the obligation; and

(B) the term to maturity or the date of maturity of such obligation is stated in the obligation.

(4) Estimates of costs of contingent liabilities required

(A) In general

The Corporation shall—

(i) estimate the cost to such Corporation of any contingent liability of the Corporation; and

(ii) at least once each calendar quarter, make such adjustment as is appropriate in the estimate of such cost.

(B) Inclusion in financial statements and outstanding obligations

The estimated amount of the cost to the Corporation of any contingent liability of the Corporation (taking into account the most recent adjustment to such estimate pursuant to paragraph (A)(ii)) shall be—

(i) treated as an outstanding obligation of the Corporation for purposes of this subsection; and

(ii) included in any financial statement of the Corporation.

(k) Reporting and disclosure obligations

(1) Audits

(A) Annual audit

Notwithstanding section 9105 of title 31, the Comptroller General shall audit annu-

ally the financial statements of the Corporation in accordance with generally accepted Government auditing standards. The audited statements shall be transmitted to the Congress by the Thrift Depositor Protection Oversight Board not later than 180 days after the end of the Corporation's fiscal year to which those statements apply.

(B) Access to books and records

All books, records, accounts, reports, files, and property belonging to or used by the Corporation, or the Thrift Depositor Protection Oversight Board shall be made available to the Comptroller General.

(2) Public disclosure of transactions

(A) Disclosure required

Except as otherwise provided in this subsection, the Corporation shall make available to the public—

(i) any agreement entered into by the Corporation relating to a transaction for which the Corporation provides assistance pursuant to section 1823(c) of this title, not later than 30 days after the first meeting of the Thrift Depositor Protection Oversight Board after such agreement is entered into; and

(ii) all agreements relating to cases reviewed by the Corporation pursuant to subsection (b)(11)(B) of this section.

(B) Exception for disclosures against the public interest

(i) In general

The Thrift Depositor Protection Oversight Board may withhold from public disclosure any document or part of a document if the Thrift Depositor Protection Oversight Board determines, by a unanimous affirmative vote of the members of the Board,[1] that disclosure would be contrary to the public interest.

(ii) Report of determination

A written report shall be made of any determination by the Thrift Depositor Protection Oversight Board to withhold any part of a document from public disclosure pursuant to clause (i). Such report shall contain a full explanation of the specific reasons for such determination.

(iii) Publication and submission of report

The report prepared pursuant to clause (ii) shall be—

(I) published in the Federal Register; and

(II) transmitted to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(C) "Agreement" defined

For purposes of this subsection, the term ''agreement'' includes—

(i) all documents which effectuate the terms and conditions of the assisted transaction;

(ii) a comparison, which the Corporation shall prepare of—

(I) the estimated cost of the transaction, with

(II) the estimated cost of liquidating the insured institution; and

(iii) a description of any economic or statistical assumptions on which such estimates are based.

(3) Disclosure to Congress of transactions

(A) Prospective transactions

The Corporation shall make available to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate any agreement entered into by the Corporation relating to a transaction for which the Corporation provides assistance pursuant to section 1823(c) of this title not later than 25 days after the first meeting of the Thrift Depositor Protection Oversight Board after such agreement is entered into. The foregoing requirement is in addition to the Corporation's obligation to make such agreements publicly available pursuant to paragraph (2).

(B) Prior transactions

The Corporation shall submit a report to the Thrift Depositor Protection Oversight Board and the Congress containing the results and conclusions of the review of the 1988 transactions conducted pursuant to subsection (b)(10)(B) of this section and such recommendations for legislative action as the Corporation may determine to be appropriate.

(4) Annual reports

(A) In general

The Thrift Depositor Protection Oversight Board and the Corporation shall annually submit a full report of their respective operations, activities, budgets, receipts, and expenditures for the preceding 12-month period.

(B) Contents

The report required under subparagraph (A) shall include—

(i) audited statements and such information as is necessary to make known the financial condition and operations of the Corporation in accordance with generally accepted accounting principles;

(ii) the Corporation's financial operating plans and forecasts (including budgets, estimates of actual and future spending, and estimates of actual and future cash obligations) taking into account the Corporation's financial commitments, guarantees, and other contingent liabilities;

(iii) the number of minority and women investors participating in the bidding process for assisted acquisitions and the disposition of assets and the number of successful bids by such investors;

(iv) a list of the properties sold to State housing finance authorities (as such term is defined in section 1301 of the Financial Institutions Reform, Recovery, and En-

forcement Act of 1989 [12 U.S.C. 1441a–1]), the individual purchase prices of such properties, and an estimate of the premium paid by such authorities for such properties; and

(v) descriptions of the operations and activities of the national and regional advisory boards established under subsection (d) of this section and financial statements detailing the expenses of such boards.

(C) Submission to Congress and the President

The Corporation shall submit each annual report required under this subsection to the Congress and the President as soon as practicable after the end of the calendar year for which such report is made but not later than June 30 of the year following such calendar year.

(5) Additional reports

(A) Reports required

In addition to the annual report required under paragraph (4), the Thrift Depositor Protection Oversight Board and the Corporation shall submit to Congress not later than April 30 and October 31 of each calendar year, a semiannual report on the activities and efforts of the Corporation, the Federal Deposit Insurance Corporation, and the Thrift Depositor Protection Oversight Board for the 6-month period ending on the last day of the month prior to the month in which such report is required to be submitted.

(B) Contents of report

Each semiannual report required under subparagraph (A) shall include the following information with respect to the Corporation's assets and liabilities and to the assets and liabilities of institutions described in subsection (b)(3)(A) of this section:

(i) A statement of the total book value of all assets held or managed by the Corporation at the beginning and end of the reporting period.

(ii) A statement of the total book value of such assets which are under contract to be managed by private persons and entities at the beginning and end of the reporting period.

(iii) The number of employees of the Corporation, the Federal Deposit Insurance Corporation, and the Thrift Depositor Protection Oversight Board at the beginning and end of the reporting period.

(iv) The total amounts expended on employee wages, salaries, and overhead, during such period which are attributable to—

(I) contracting with, supervising, or reviewing the performance of private contractors, or

(II) managing or disposing of such assets.

(v) A statement of the total amount expended on private contractors for the management of such assets.

(vi) A statement of the efforts of the Corporation to maximize the efficient utilization of the resources of the private sector during the reporting period and in future reporting periods and a description of the policies and procedures adopted to ensure adequate competition and fair and consistent treatment of qualified third parties seeking to provide services to the Corporation or the Federal Deposit Insurance Corporation.

(vii) The total book value and total proceeds from such assets disposed of during the reporting period.

(viii) Summary data on discounts from book value at which such assets were sold or otherwise disposed of during the reporting period.

(ix) A list of all of the areas that carried a distressed area designation during the reporting period (including a justification for removal of areas from or addition of areas to the list of distressed areas).

(x) An evaluation of market conditions in distressed areas and a description of any changes in conditions during the reporting period.

(xi) Any change adopted by the Thrift Depositor Protection Oversight Board in a minimum disposition price and the reasons for such change.

(xii) The valuation method or methods adopted by the Thrift Depositor Protection Oversight Board or the Corporation to value assets and the reasons for selecting such methods.

(xiii) A complete description of all actions taken by the Corporation pursuant to subsections (a), (b), and (c) of section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [12 U.S.C. 1833e(a), (b), (c)] with respect to the employment of and contracting with minorities, women, and businesses owned or controlled by minorities or women and any other activity of the Corporation pursuant to the outreach program of the Corporation for minorities and women. Such description shall specify the steps taken by the Corporation, in its corporate capacity and its capacity as conservator or receiver, to implement the minority and women outreach programs required by section 1216(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [12 U.S.C. 1833e(c)] and shall set forth information and data showing—

(I) the extent to which and means by which contract solicitations have been directed to minorities, women, and businesses owned or controlled by minorities or women by the Corporation and by the Federal Deposit Insurance Corporation on behalf of the Corporation;

(II) the extent to which prime contracts and subcontracts have been awarded to minorities, women, and businesses owned or controlled by minorities or women, including data with respect to the number of such contracts, the dollar amounts thereof, and the percentage of Corporation contracting activity represented thereby (including contracting

activity by the Federal Deposit Insurance Corporation on behalf of the Corporation);

(III) contracting and outreach activity with respect to joint ventures and other business arrangements in which minorities, women, or businesses owned or controlled by minorities or women have a participation or interest; and

(IV) the extent to which the Corporation's minority and women contracting outreach programs have been successful in maximizing opportunities through the outreach policies established by the Corporation for participation of minorities, women, and businesses owned or controlled by minorities or women in the Corporation's contracting activities.

(C) Supplemental unaudited financial statements

In addition to the annual report required under paragraph (4), the Thrift Depositor Protection Oversight Board and the Corporation shall submit to the Congress, not later than September 30 of each calendar year, an unaudited financial statement for the 6-month period ending on June 30 of such year.

(6) Appearances before Congressional committees

(A)[12] Semiannual appearance required

Not later than 30 days after submission of the semiannual reports required by paragraph (5), the Thrift Depositor Protection Oversight Board shall appear before the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate to—

(i) report on the progress made during such period in resolving cases involving institutions described in subsection (b)(3)(A) of this section;

(ii) provide an estimate of the short-term and long-term cost to the United States Government of obligations issued or incurred during such period;

(iii) report on the progress made during such period in selling assets of institutions described in subsection (b)(3)(A) of this section and the impact such sales are having on the local markets in which such assets are located;

(iv) describe the costs incurred by the Corporation in issuing obligations, managing and selling assets acquired by the Corporation;

(v) provide an estimate of the income of the Corporation from assets acquired by the Corporation;

(vi) provide an assessment of any potential source of additional funds for the Corporation; and

(vii) provide an estimate of the remaining exposure of the United States Government in connection with institutions described in subsection (b)(3)(A) of this section which, in the Thrift Depositor Protection Oversight Board's estimation, will require assistance or liquidation after the end of such period.

(7) Quarterly reports

Not later than May 31, August 31, November 30, and the last day of February of each year, the Corporation shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing the following information for the preceding calendar quarter:

(A) Asset sales

The report shall contain the following information with respect to assets of institutions described in subsection (b)(3)(A) of this section which were disposed of by the Corporation during the quarter covered by the report:

(i) The total amount of the actual sales of assets during the quarter.

(ii) The value of the assets as determined on the basis of the amount at which each such asset was accounted for on the books of the institution.

(iii) The fair market value of the assets as estimated by the Corporation for purposes of securing amounts borrowed from the Federal Financing Bank by the Corporation.

(iv) The net recovery on asset sales during the quarter.

(v) A subtotal of the value of the assets disposed of during the quarter in each of the following categories:

(I) Cash and securities.

(II) Mortgage loans for 1- to 4-family dwellings.

(III) Construction and land loans.

(IV) Other mortgage loans.

(V) Consumer loans.

(VI) Commercial loans.

(VII) Real estate owned assets.

(VIII) Other assets.

(B) Auction sales

The report shall contain information regarding auction sales of RTC assets, including the following information:

(i) The date and location of each auction sale during the quarter.

(ii) The total value of the sales of assets sold during an auction during the quarter.

(iii) The total value of assets sold at each auction, as determined on the basis of the amount at which each such asset was accounted for on the books of the institution.

(iv) The total fair market value of assets sold at each auction, as estimated by the Corporation.

(v) The total actual selling price of assets sold during each auction held during the quarter.

(vi) The net recovery or loss on assets sold during an auction during the quarter, by category listed in subclauses (I) through (VII) of clause (vii).

(vii) A subtotal of the value of the assets sold during an auction during the quarter in each of the following categories:

[12] So in original. No subpar. (B) has been enacted.

(I) Cash and securities.

(II) Mortgage loans for 1- to 4-family dwellings.

(III) Construction and land loans.

(IV) Other mortgage loans.

(V) Consumer loans.

(VI) Commercial loans.

(VII) Real estate owned assets.

(VIII) Other assets.

(C) Federal Financing Bank loan status

The report shall contain the following information with respect to loans from the Federal Financing Bank to the Corporation:

(i) The total amount of loans outstanding at the beginning of the quarter.

(ii) The total amount of loans originated during the quarter.

(iii) The total amount of loans repaid during the quarter.

(iv) The total amount of loans outstanding at the end of the quarter.

(D) Seller financing

The report shall contain information regarding the Corporation's use of seller financing to encourage the sales of assets during the quarter, including the following:

(i) A total of the amount of funds used for seller financing purposes during the quarter.

(ii) The number of applications received by the Corporation which requested seller financing.

(iii) A breakdown of the type of assets sold, according to the categories listed in subclauses (I) through (VIII) of subparagraph (B)(vii).

(iv) Projections of the total amount of seller financing which will be needed during the succeeding 2 quarters.

(8) Operating plans

(A) In general

Before the beginning of each calendar quarter, the Thrift Depositor Protection Oversight Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a detailed financial operating plan covering the remaining quarters of the Corporation's fiscal year in which that quarter occurs.

(B) Contents

At a minimum, a detailed financial operating plan shall include—

(i) estimates of the aggregate assets of institutions that are projected to be resolved in each quarter,

(ii) the estimated aggregate cost of resolutions in each quarter,

(iii) the estimated aggregate asset sales and principal collections in each quarter, and

(iv) the Corporation's summary pro forma financial statement at the end of each quarter.

(9) Reports on severely troubled institutions

The Director of the Office of Thrift Supervision shall deliver on a quarterly basis to the Thrift Depositor Protection Oversight Board a list of savings associations for which the Director has determined grounds exist, or are likely to exist in the current fiscal year of the Corporation and in the next following fiscal year of the Corporation, for the appointment of a conservator or receiver under the Home Owners' Loan Act [12 U.S.C. 1461 et seq.]. The Thrift Depositor Protection Oversight Board shall report the aggregate number and assets of such savings associations to Congress within 60 days after June 30 and December 31 of each calendar year.

(10) Budget reports

(A) In general

Before the end of each calendar quarter, the Thrift Depositor Protection Oversight Board and the Corporation shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing the complete annual budget, as approved by the Thrift Depositor Protection Oversight Board.

(B) Activities relating to phasing out RTC operations

Beginning with the report due in the 1st quarter of 1994, the report shall include information on the Corporation's activities to phase down its operations and reduce the number of employees and the amount of office space and other overhead as the Corporation completes its duties under this section and approaches termination.

(11) Employee reports

The Corporation shall submit semiannual reports to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing the following information:

(A) The total number of employees of the Thrift Depositor Protection Oversight Board and the total number of individuals performing services directly on behalf of the Corporation.

(B) The total number of individuals performing services for the Corporation as employees of the Federal Deposit Insurance Corporation or any other agency, including the Government Accountability Office and the number from each such agency.

(C) The total number of individuals employed in each job classification and employment status, including employment on a temporary basis or for an agreed upon period of time.

(*l*) Power to remove; jurisdiction

(1) In general

Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Corporation is a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction over such action, suit, or proceeding.

(2) Corporation as party

The Corporation shall be substituted as a party in any civil action, suit, or proceeding to which its predecessor in interest was a party with respect to institutions which are subject to the management agreement dated February 7, 1989, among the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Bank Board and the Federal Deposit Insurance Corporation.

(3) Removal and remand

(A) In general

The Corporation, in any capacity and without bond or security, may remove any action, suit, or proceeding from a State court to the United States district court with jurisdiction over the place where the action, suit, or proceeding is pending, to the United States district court[13] for the District of Columbia, or to the United States district court with jurisdiction over the principal place of business of any institution for which the Corporation has been appointed conservator or receiver if the action, suit, or proceeding is brought against the institution or the Corporation as conservator or receiver of such institution. The removal of any such suit or proceeding shall be instituted—

(i) not later than 90 days after the date the Corporation is substituted as a party, or

(ii) not later than 30 days after service on the Corporation, if the Corporation is named as a party in any capacity and if such suit is filed after August 9, 1989.

(B) Substitution

The Corporation shall be deemed substituted in any action, suit, or proceeding for a party upon the filing of a copy of the order appointing the Corporation as conservator or receiver for that party or the filing of such other pleading informing the court that the Corporation has been appointed conservator or receiver for such party.

(C) Appeal

The Corporation may appeal any order of remand entered by a United States district court.

(m) Termination

(1) In general

The Corporation shall terminate not later than December 31, 1995. If at the time of its termination, the Corporation is acting as a conservator or receiver, the Federal Deposit Insurance Corporation shall succeed the Corporation as conservator or receiver.

(2) Case resolutions transferred

Simultaneous with the termination of the Corporation as provided in paragraph (1), all assets and liabilities of the Corporation shall be transferred to the FSLIC Resolution Fund. Thereafter, if there are no liabilities of the Corporation outstanding, the FSLIC Resolution Fund shall transfer any net proceeds from the sale of assets to the Resolution Funding Corporation.

(3) Transfer of personnel and systems

In connection with the assumption by the Federal Deposit Insurance Corporation of conservatorship and receivership functions with respect to institutions described in subsection (b)(3)(A) of this section and the termination of the Corporation pursuant to paragraph (1)—

(A) any management, resolution, or asset-disposition system of the Corporation which the Secretary of the Treasury determines, after considering the recommendations of the interagency transition task force under section 6(c) of the Resolution Trust Corporation Completion Act, has been of benefit to the operations of the Corporation (including any personal property of the Corporation which is used in operating any such system) shall, notwithstanding paragraph (2), be transferred to and used by the Federal Deposit Insurance Corporation in a manner which preserves the integrity of the system for so long as such system is efficient and cost-effective; and

(B) any personnel of the Corporation involved with any such system who are otherwise eligible to be transferred to the Federal Deposit Insurance Corporation shall be transferred to the Federal Deposit Insurance Corporation for continued employment, subject to section 404(9) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and other applicable provisions of this section, with respect to such system.

(n) Conflict of interest

(1) In general

(A) The Thrift Depositor Protection Oversight Board and the Corporation shall each be an ''agency'' for purposes of title 18. Any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Thrift Depositor Protection Oversight Board or the Corporation, under the direct supervision of an officer or employee of the Thrift Depositor Protection Oversight Board or the Corporation, shall be deemed to be an employee of the Thrift Depositor Protection Oversight Board or the Corporation for the purposes of title 18 and this chapter.

(B) Any individual who, pursuant to a contract or any other agreement, acts for or on behalf of the Corporation shall be deemed to be a public official for the purposes of section 201 of title 18.

(2) Establishment of rules

The Thrift Depositor Protection Oversight Board and the Corporation shall, not later than 180 days after August 9, 1989, promulgate rules and regulations governing conflict of interest, ethical responsibilities, and post-employment restrictions applicable to members, officers, and employees of the Thrift Depositor Protection Oversight Board and the Corporation that shall be no less stringent than those applicable to the Federal Deposit Insurance Corporation.

[13] So in original. Probably should be ''District Court''.

(3) Use of confidential information

The Thrift Depositor Protection Oversight Board and the Corporation shall, not later than 180 days after August 9, 1989, promulgate rules and regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities, and the use of confidential information consistent with the goals and purposes of titles 18 and 41.

(4) Post employment

The chief executive officer of the Corporation shall be prohibited for a period of 1 year after leaving the Corporation from holding any office, position, or employment with, or receiving remuneration from, a company (other than the Corporation) which, during the time the chief executive was employed by the Corporation, participated in any case resolution or contract with the Corporation for which such person was either responsible or in which such person was personally and substantially involved except that the chief executive officer may hold any office, position, or employment so long as the chief executive officer does not, during the 1-year period, provide advice with respect to, participate in decisions relating to, or otherwise provide assistance to such entity on the enumerated matters or receive remuneration with respect thereto from such company.

(5) Other agency employees

Officers and employees of the Thrift Depositor Protection Oversight Board and the Corporation who are also subject to the ethical rules of another agency or Government Corporation[14] shall file with the Corporation a copy of any financial disclosure statement required by such other agency or corporation.

(6) Disapproval of contractors

(A) In general

The Thrift Depositor Protection Oversight Board shall prescribe regulations establishing procedures for ensuring that any individual who is performing, directly or indirectly, any function or service on behalf of the Corporation meets minimum standards of competence, experience, integrity, and fitness.

(B) Prohibition from service on behalf of Corporation

The procedures established under subparagraph (A) shall provide that the Corporation shall prohibit any person who does not meet the minimum standards of competence, experience, integrity, and fitness from—

(i) entering into any contract with the Corporation; or

(ii) being employed by the Corporation or any person performing any service for or on behalf of the Corporation.

(C) Information required to be submitted

The procedures established under subparagraph (A) shall require that any offer submitted to the Corporation by any person under this section and any employment application submitted to the Corporation by any person shall include—

(i) a list and description of any instance during the preceding 5 years in which the person or company under such person's control defaulted on a material obligation to an insured depository institution; and

(ii) such other information as the Board[1] may prescribe by regulation.

(D) Subsequent submissions

No offer submitted to the Corporation may be accepted unless the offeror agrees that no person will be employed, directly or indirectly, by the offeror under any contract with the Corporation unless all applicable information described in subparagraph (C) with respect to any such person is submitted to the Corporation and the Corporation does not disapprove of the direct or indirect employment of such person. Any decision made by the Corporation pursuant to this paragraph shall be in its sole discretion and shall not be subject to review.

(E) Prohibition required in certain cases

The standards established under subparagraph (A) shall require the Corporation to prohibit any person who has—

(i) been convicted of any felony,

(ii) been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency,

(iii) demonstrated a pattern or practice of defalcation regarding obligations to insure depository institutions, or

(iv) caused a substantial loss to the Deposit Insurance Fund,

from service on behalf of the Corporation.

(7) Abrogation of contracts

The Thrift Depositor Protection Oversight Board or the Corporation may rescind any contract with a person who—

(A) fails to disclose a material fact to the Thrift Depositor Protection Oversight Board or the Corporation,

(B) would be prohibited under paragraph (6) from providing services to, receiving fees from, or contracting with the Corporation or the Thrift Depositor Protection Oversight Board, or

(C) has been subject to a final enforcement action by any Federal bank regulatory agency.

(8) Priority of Thrift Depositor Protection Oversight Board rules

To the extent that the rules established under this subsection conflict with rules of other agencies or Government corporations, officers, directors, employees, and independent contractors of the Corporation or the Thrift Depositor Protection Oversight Board, who are also subject to the conflict of interest or ethical rules of another agency or Government corporation, shall be governed by the rules and regulations established by the Thrift Depositor Protection Oversight Board under this subsection when acting for or on behalf of the Corporation.

(9) Definitions

For the purposes of this subsection—

[14] So in original. Probably should not be capitalized.

(A) The term ''company'' has the same meaning as in section 1841(b) of this title.

(B) The term ''control'' has the same meaning given such term under regulations promulgated by the Federal Home Loan Bank Board with respect to savings and loan holding companies as in effect on the day before August 9, 1989.

(C) The term ''Corporation'' includes the Resolution Trust Corporation, the national advisory board, and the regional advisory boards.

(*o*) Status of employees

(1) Liability

A member, officer, or employee of the Corporation or of the Thrift Depositor Protection Oversight Board has no liability under the Securities Act of 1933 [15 U.S.C. 77a et seq.] with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the Corporation. This subsection shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other acts or omissions outside the scope of such person's employment.

(2) Definition

For purposes of this subsection, the term ''employee of the Corporation or of the Thrift Depositor Protection Oversight Board'' includes any officer or employee of the Federal Deposit Insurance Corporation who performs services for the Corporation.

(3) Effect on other law

This subsection does not affect—

(A) any other immunities and protections that may be available under applicable law with respect to such transactions, or

(B) any other right or remedy against the Corporation, against the United States under applicable law, or against any person other than a person described in paragraph (1) participating in such transactions.

This subsection shall not be construed to limit or alter in any way the immunities that are available under applicable law for Federal officials and employees not described in this subsection.

(p) Management enhancement goals

(1) Action to achieve specific goals

The Corporation, upon March 23, 1991, shall take action to assure achievement of the management goals specified in this paragraph, as follows:

(A) Managing conservatorships

The Corporation shall standardize procedures with respect to its (i) auditing of conservatorships, (ii) ensuring and monitoring of compliance with Corporation policies and procedures by conservatorship managing agents, and (iii) ensuring and monitoring of conservatorship managing agent performance. These procedures shall be developed and implemented not later than September 30, 1991.

(B) Pace of resolutions

The Corporation shall take all reasonable and necessary steps to reduce the length of time institutions remain in conservatorship, with the goal that no institution shall be in conservatorship for more than 9 months.

(C) Information resources management program

The Corporation shall develop and incorporate within its strategic plan for information resources management, (i) a translation of program goals into the communication and computer hardware and software, and staff needed to accomplish such goals, (ii) a systems architecture to ensure that all systems will work together, and (iii) an identification of Corporation information and systems needs at all operational levels.

(D) Securities portfolio management system

The Corporation shall develop within its information architecture framework, a centralized system for the management of its portfolio of securities. This system shall be developed and implemented not later than September 30, 1991.

(E) Tracking REO assets

The Corporation shall develop, within its information architecture, an effective system to track and inventory real-estate-owned assets. This system shall be developed and implemented not later than September 30, 1991.

(F) Asset valuation

The Corporation shall develop a process for the quarterly valuation or updating of valuations of the assets it holds in its capacity as receiver (or as a result of such capacity). Such process shall incorporate, to the extent practical, Corporation disposition experience. In addition, the necessary information systems shall be developed to track and manage these valuations.

(G) Standardization of due diligence and market format

The Corporation shall develop a program for performing due diligence on one- to four-family mortgages and for marketing such loans on a pooled basis.

(H) Contracting

The Corporation, in order to identify the need for any changes in its contracting process which would enhance the independence, integrity, consistency and effectiveness of that process, shall consult on a regular basis with other agencies and organizations that have large scale contracting and procurement systems, and shall review on a regular basis its organizational structure and relationships. The Corporation shall develop and have in widespread use the following:

(i) A manual setting forth comprehensive policies and procedures.

(ii) A revised and expanded directive that clearly and definitively describes the

roles and responsibilities of all those involved in the contracting process.

(iii) A revised and expanded directive that sets forth in detail the standard procedures to be followed in evaluating contractor proposals.

(iv) A set of standardized solicitation and contract documents for use by all Corporation officers.

(v) A series of standardized contracting training modules for use by Corporation personnel and private contractors.

(2) Report

The Corporation shall, not later than September 30, 1991, file with the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, a report on the progress being made toward full compliance by the agency with this subsection, as well as a timetable for completing those items not yet completed.

(q) RTC, Thrift Depositor Protection Oversight Board, and RTC contractor employee protection remedy

(1) Prohibition against discrimination

The Corporation, the Thrift Depositor Protection Oversight Board, and any person who is performing, directly or indirectly, any function or service on behalf of the Corporation or the Thrift Depositor Protection Oversight Board may not discharge or otherwise discriminate against any employee (including any employee of the Federal Deposit Insurance Corporation on assignment to the Corporation under this section or any personnel referred to in subparagraphs (C) and (F) of subsection (a)(5) of this section) with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Corporation, the Thrift Depositor Protection Oversight Board, the Attorney General, or any appropriate Federal banking agency (as defined in section 1813(q) of this title) regarding—

(A) a possible violation of any law or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

by the Corporation, the Thrift Depositor Protection Oversight Board, or such person or any director, officer, or employee of the Corporation, the Thrift Depositor Protection Oversight Board, or the person.

(2) Enforcement

Any employee or former employee who believes that such employee has been discharged or discriminated against in violation of paragraph (1) may file a civil action in the appropriate United States district court before the end of the 2-year period beginning on the date of such discharge or discrimination.

(3) Remedies

If the district court determines that a violation has occurred, the court may order the Corporation or the person which committed the violation to—

(A) reinstate the employee to the employee's former position;

(B) pay compensatory damages; or

(C) take other appropriate actions to remedy any past discrimination.

(4) Limitation

The protections of this section shall not apply to any employee who—

(A) deliberately causes or participates in the alleged violation of law or regulation; or

(B) knowingly or recklessly provides substantially false information to the Corporation, the Attorney General, or any appropriate Federal banking agency.

(5) Burdens of proof

The legal burdens of proof that prevail under subchapter III of chapter 12 of title 5 shall govern adjudication of protected activities under this subsection.

(r) Review and evaluation procedure for contracts

(1) In general

In the review and evaluation of proposals, the Corporation shall provide additional incentives to minority- or women-owned businesses by awarding any such business an additional 10 percent of the total technical points and an additional 5 percent of the total cost preference points achievable in the technical and cost rating process applicable with respect to such proposals.

(2) Certain joint ventures included

Paragraph (1) shall apply to any proposal submitted by a joint venture in which a minority- or woman-owned business has participation of not less than 25 percent.

(3) Authority to adjust technical and cost preference points

The Corporation may adjust the technical and cost preference points applicable in evaluating proposals to the extent necessary to ensure the maximum participation level possible for minority- or women-owned businesses.

(4) Definitions

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

(A) Minority-owned business

The term ''minority-owned business'' means a business—

(i) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

(ii) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

(B) Women-owned business

The term ''women's business'' means a business—

(i) more than 50 percent of the ownership or control of which is held by 1 or more women;

(ii) more than 50 percent of the net profit or loss of which accrues to 1 or more women; and

(iii) a significant percentage of senior management positions of which are held by women.

(s) Acquisition of branch facilities in minority neighborhoods

(1) In general

In the case of any savings association for which the Corporation has been appointed conservator or receiver, the Corporation may make available any branch of such association which is located in any predominantly minority neighborhood to any minority depository institution or women's depository institution on the following terms:

(A) The branch may be made available on a rent-free lease basis for not less than 5 years.

(B) Of all expenses incurred in maintaining the operation of the facilities in which such branch is located, the institution shall be liable only for the payment of applicable real property taxes, real property insurance, and utilities.

(C) The lease may provide an option to purchase the branch during the term of the lease.

(2) Definitions

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

(A) Minority depository institution

The term ''minority[15] institution'' means a depository institution (as defined in section 1813(c) of this title)—

(i) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

(ii) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

(B) Women's depository institution

The term ''women's depository institution'' means a depository institution (as defined in section 1813(c) of this title)—

(i) more than 50 percent of the ownership or control of which is held by 1 or more women;

(ii) more than 50 percent of the net profit or loss of which accrues to 1 or more women; and

(iii) a significant percentage of senior management positions of which are held by women.

(C) Minority

The term ''minority'' has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery[5] and Enforcement Act of 1989.

(t) Assistance under circumstances for acquisition of majority-owned institutions

(1) In general

In addition to the assistance provided pursuant to the the[16] minority capital assistance program established under subsection (u)(1) of this section, the Corporation may provide assistance for minority-owned depository institutions and minority investors for the acquisition of any savings association for which the Corporation has been appointed conservator or receiver and which, before such appointment, was not a minority-owned association, if the Corporation has not received acceptable bids for the acquisition of such association without offering such assistance.

(2) Additional assets

In connection with the acquisition of any savings association for which the Corporation provides assistance under paragraph (1), the Corporation may transfer assets of other savings associations for which the Corporation has been appointed conservator or receiver.

(3) Definitions

For purposes of this subsection—

(A) Minority

The term ''minority'' has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery[5] and Enforcement Act of 1989.

(B) Acquisition

The term ''acquisition'' means any transaction in which a savings association is acquired (as defined in section 1823(f)(8)(B) of this title).

(u) Minority interim capital assistance program

(1) In general

The minority interim capital assistance program administered by the Corporation pursuant to the policy statement entitled the ''Interim Statement of Policy Regarding Resolutions of Minority-Owned Depository Institutions'' adopted by the Corporation on January 30, 1990[5] is hereby established by law.

(2) Assistance under circumstances for acquisition of majority-owned institutions

In addition to the assistance provided pursuant to the program established under paragraph (1), the Corporation shall provide assistance under such program for minority-owned depository institutions and minority investors for the acquisition of any savings association for which the Corporation has been appointed conservator or receiver and which, before such appointment, was not a minority-owned association, if the Corporation has not received acceptable bids for the acquisition of such association without offering such assistance.

(3) Extension of interim financing period

The period for repayment of capital assistance provided under the minority interim capital assistance program shall be not less than 2 years.

(4) Interest rate

The rate of interest imposed by the Corporation in connection with any interim financing provided under the minority interim capital assistance program may not exceed the average cost of funds to the Corporation as of the time such rate is established.

(5) Definitions

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

[15] So in original. Probably should be followed by ''depository''.

[16] So in original.

(A) Minority

The term ''minority'' has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery [5] and Enforcement Act of 1989.

(B) Acquisition

The term ''acquisition'' means any transaction in which a savings association is acquired (as defined in section 1823(f)(8)(B) of this title).

(v) Continuation of obligation to provide services

No person obligated to provide services to an insured depository institution at the time the Resolution Trust Corporation is appointed conservator or receiver for the institution shall fail to provide those services to any person to whom the right to receive those services was transferred by the Resolution Trust Corporation after August 9, 1989, unless the refusal is based on the transferee's failure to comply with any material term or condition of the original obligation. This subsection does not limit any authority of the Resolution Trust Corporation as conservator or receiver under section 1821(e) of this title.

(w) RTC management reforms

(1) Comprehensive business plan

The Corporation shall establish and maintain a comprehensive business plan covering the operations of the Corporation, including the disposition of assets, for the remainder of the Corporation's existence.

(2) Marketing real property on an individual basis

The Corporation shall—

(A) market any undivided or controlling interest in real property, whether held directly or indirectly by an institution described in subsection (b)(3)(A) of this section, on an individual basis, including sales by auction, for no fewer than 120 days before such assets may be made available for sale or other disposition on a portfolio basis or otherwise included in a multiasset sales initiative, except that this subparagraph does not apply to assets that are—

(i) sold simultaneously with a resolution in which a buyer purchases a significant proportion of the assets and assumes a significant proportion of the liabilities, or acts as agent of the Corporation for purposes of paying insured deposits, of an institution described in subsection (b)(3)(A) of this section; or

(ii) transferred to a new institution organized pursuant to section 1821(d)(2)(F) of this title; and

(B) prescribe regulations—

(i) to require that the sale or other disposition of any asset consisting of real property on a portfolio basis or in connection with any multiasset sales initiative after the end of the 120-day period described in subparagraph (A) be justified in writing; and

(ii) to carry out the requirements of subparagraph (A).

(3) Disposition of real estate related assets

(A) Procedures for disposition of real estate related assets

The Corporation shall not sell real property or any nonperforming real estate loan which the Corporation has acquired as receiver or conservator, unless—

(i) the Corporation has assigned responsibility for the management and disposition of such asset to a qualified person or entity to—

(I) analyze each asset on an asset-by-asset basis and consider alternative disposition strategies for such asset;

(II) develop a written management and disposition plan; and

(III) implement that plan for a reasonable period of time; or

(ii) the Corporation has made a determination in writing that a bulk transaction would maximize net recovery to the Corporation, while providing opportunity for broad participation by qualified bidders, including minority- and women-owned businesses.

(B) Definitions

In defining any term for purposes of subparagraph (A), the Corporation may, by regulation, define—

(i) the term ''asset'' so as to include properties or loans which are legally separate and distinct properties or loans, but which have sufficiently common characteristics such that they may be logically treated as a single asset; and

(ii) the term ''qualified person or entity'' so as to include any employee of the Thrift Depositor Protection Oversight Board or any employee assigned to the Corporation under subsection (b)(8) of this section.

(C) Exceptions

This paragraph shall not apply to—

(i) assets that are—

(I) sold simultaneously with a resolution in which a buyer purchases a significant proportion of the assets and assumes a significant proportion of the liabilities (or acts as agent of the Corporation for purposes of paying insured deposits) of an institution described in subsection (b)(3)(A) of this section; or

(II) transferred to a new institution organized pursuant to section 1821(d)(2)(F) of this title;

(ii) nonperforming real estate loans with a book value of not more than $1,000,000;

(iii) real property with a book value of not more than $400,000; or

(iv) real property with a book value of more than $400,000 or nonperforming real estate loans with a book value of more than $1,000,000 for which the Corporation determines, in writing, that a disposition not in conformity with the requirements of subparagraph (A) will bring a greater return to the Corporation.

(D) Coordination with paragraph (2)

No provision of this paragraph shall supersede the requirements of paragraph (2).

(4) Division of minorities and women programs

(A) In general

The Corporation shall maintain a division of minorities and women programs.

(B) Vice president

The head of the division shall be a vice president of the Corporation and a member of the executive committee of the Corporation.

(5) Chief financial officer

(A) In general

The chief executive officer of the Corporation shall appoint a chief financial officer for the Corporation.

(B) Authority

The chief financial officer of the Corporation shall—

(i) have no operating responsibilities with respect to the Corporation other than as chief financial officer;

(ii) report directly to the chief executive officer of the Corporation; and

(iii) have such authority and duties of chief financial officers of agencies under section 902 of title 31 as the Thrift Depositor Protection Oversight Board determines to be appropriate with respect to the Corporation.

(6) Basic ordering agreements

(A) Revision of procedures

The Corporation shall revise the procedure for reviewing and qualifying applicants for eligibility for future contracts in a specified service area (commonly referred to as ''basic ordering agreements'' or ''task ordering agreements'') in such manner as may be necessary to ensure that small businesses, minorities, and women are not inadvertently excluded from eligibility for such contracts.

(B) Review of lists

To ensure the maximum participation level possible of minority- and women-owned businesses, the Corporation shall—

(i) review all lists of contractors determined to be eligible for future contracts in a specified service area and other contracting mechanisms; and

(ii) prescribe appropriate regulations and procedures.

(7) Improvement of contracting systems and contractor oversight

The Corporation shall—

(A) maintain such procedures and uniform standards for—

(i) entering into contracts between the Corporation and private contractors; and

(ii) overseeing the performance of contractors and subcontractors under such contracts and compliance by contractors and subcontractors with the terms of contracts and applicable regulations, orders, policies, and guidelines of the Corporation,

as may be appropriate in carrying out the Corporation's operations in as efficient and economical a manner as may be practicable;

(B) commit sufficient resources, including personnel, to contract oversight and the enforcement of all laws, regulations, orders, policies, and standards applicable to contracts with the Corporation; and

(C) maintain uniform procurement guidelines for basic goods and administrative services to prevent the acquisition of such goods and services at widely different prices.

(8) Audit committee

(A) Establishment

The Thrift Depositor Protection Oversight Board shall establish and maintain an audit committee.

(B) Duties

The audit committee shall have the following duties:

(i) Monitor the internal controls of the Corporation.

(ii) Monitor the audit findings and recommendations of the inspector general of the Corporation and the Comptroller General of the United States and the Corporation's response to the findings and recommendations.

(iii) Maintain a close working relationship with the inspector general of the Corporation and the Comptroller General of the United States.

(iv) Regularly report the findings and any recommendation of the audit committee to the Corporation and the Thrift Depositor Protection Oversight Board.

(v) Monitor the financial operations of the Corporation and report any incipient problem identified by the audit committee to the Corporation and the Thrift Depositor Protection Oversight Board.

(C) Federal Advisory Committee Act not applicable

The audit committee is not an advisory committee within the meaning of section 3(2) of the Federal Advisory Committee Act.

(9) Corrective responses to audit problems

The Corporation shall—

(A) respond to problems identified by auditors of the Corporation's financial and asset-disposition operations, including problems identified in audit reports by the inspector general of the Corporation, the Comptroller General of the United States, and the audit committee; or

(B) certify to the Thrift Depositor Protection Oversight Board that no action is necessary or appropriate.

(10) Assistant general counsel for professional liability

(A) Appointment

The Corporation shall appoint, within the division of legal services of the Corporation, an assistant general counsel for professional liability.

(B) Duties

The assistant general counsel for professional liability shall—

(i) direct the investigation, evaluation, and prosecution of all professional liability claims involving the Corporation; and

(ii) supervise all legal, investigative, and other personnel and contractors involved in the litigation of such claims.

(C) Semiannual reports to the Congress

The assistant general counsel for professional liability shall submit to the Congress a comprehensive litigation report, not later than—

(i) April 30 of each year for the 6-month period ending on March 31 of that year; and

(ii) October 31 of each year for the 6-month period ending on September 30 of that year.

(D) Contents of reports

The semiannual reports required under subparagraph (C) shall each address the activities of the counsel for professional liability under subparagraph (B) and all civil actions—

(i) in which the Corporation is a party, which are filed against—

(I) directors or officers of depository institutions described in subsection (b)(3)(A) of this section; or

(II) attorneys, accountants, appraisers, or other licensed professionals who performed professional services for such depository institutions; and

(ii) which are initiated or pending during the period covered by the report.

(11) Management information system

The Corporation shall maintain an effective management information system capable of providing complete and current information to the extent the provision of such information is appropriate and cost-effective.

(12) Internal controls against fraud, waste, and abuse

The Corporation shall maintain effective internal controls designed to prevent fraud, waste, and abuse, identify any such activity should it occur, and promptly correct any such activity.

(13) Failure to appoint certain officers of the Corporation

The failure to fill any position established under this section or any vacancy in any such position, shall be treated as a failure to comply with the requirements of this subsection for purposes of subsection (i)(4) of this section.

(14) Reports

(A) Disclosure of expenditures

The Corporation shall include in the annual report submitted pursuant to subsection (k)(4) of this section an itemization of the expenditures of the Corporation during the year for which funds provided pursuant to subsection (i)(3) of this section were used.

(B) Public disclosure of salaries

The Corporation shall include in the annual report submitted pursuant to subsection (k)(4) of this section a disclosure of the salaries and other compensation paid during the year covered by the report to directors and senior executive officers at any depository institution for which the Corporation has been appointed conservator or receiver.

(15) Minority- and women-owned businesses contract parity guidelines

The Corporation shall establish guidelines for achieving the goal of a reasonably even distribution of contracts awarded to the various subgroups of the class of minority- and women-owned businesses and minority- and women-owned law firms whose total number of certified contractors comprise not less than 5 percent of all minority- and women-owned certified contractors. The guidelines may reflect the regional and local geographic distributions of minority subgroups. The distribution of contracts should not be accomplished at the expense of any eligible minority- or women-owned business or law firm in any subgroup that falls below the 5 percent threshold in any region or locality.

(16) Contract sanctions for failure to comply with subcontract and joint venture requirements

The Corporation shall prescribe regulations which provide sanctions, including contract penalties and suspensions, for violations by contractors of requirements relating to subcontractors and joint ventures.

(17) Minority preference in acquisition of institutions in predominantly minority neighborhoods

(A) In general

In considering offers to acquire any insured depository institution, or any branch of an insured depository institution, located in a predominantly minority neighborhood (as defined in regulations prescribed under subsection (s) of this section), the Corporation shall give preference to an offer from any minority individual, minority-owned business, or a minority depository institution, over any other offer that results in the same cost to the Corporation, as determined under section 1823(c)(4) of this title.

(B) Capital assistance

(i) Eligibility

In order to effectuate the purposes of this paragraph, any minority individual, minority-owned business, or a minority depository institution shall be eligible for capital assistance under the minority interim capital assistance program established under subsection (u)(1) of this section and subject to the provisions of subsection (u)(3) of this section, to the extent that such assistance is consistent with the application of section 1823(c)(4) of this title.

(ii) Terms and conditions

Subsection (u)(4) of this section shall not apply to capital assistance provided under this subparagraph.

(C) Performing assets

In the case of an acquisition of any depository institution or branch described in sub-

paragraph (A) by any minority individual, minority-owned business, or a minority depository institution, the Corporation may provide, in connection with such acquisition and in addition to performing assets of the depository institution or branch, other performing assets under the control of the Corporation in an amount (as determined on the basis of the Corporation's estimate of the fair market value of the assets) not greater than the amount of net liabilities carried on the books of the institution or branch, including deposits, which are assumed in connection with the acquisition.

(D) First priority for disposition of assets

In the case of an acquisition of any depository institution or branch described in subparagraph (A) by any minority individual, minority-owned business, or a minority depository institution, the disposition of the performing assets of the depository institution or branch to such individual, business, or minority depository institution shall have a first priority over the disposition by the Corporation of such assets for any other purpose.

(E) Definitions

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

(i) Acquire

The term ''acquire'' has the same meaning as in section 1823(f)(8)(B) of this title.

(ii) Minority

The term ''minority'' has the same meaning as in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(iii) Minority depository institution

The term ''minority depository institution'' has the same meaning as in subsection (s)(2) of this section.

(iv) Minority-owned business

The term ''minority-owned business'' has the same meaning as in subsection (r)(4) of this section.

(18) Subcontracts with minority- and women-owned businesses

(A) Goals and procedures

(i) Reasonable goals

The Corporation shall establish reasonable goals for contractors for services with the Corporation to subcontract with minority- and women-owned businesses and law firms.

(ii) Procedures

The Corporation may not enter into any contract for the provision of services to the Corporation, including legal services, under which the contractor would receive fees or other compensation in an amount equal to or greater than $500,000, unless the Corporation requires the contractor to subcontract with minority- or women-owned businesses, including law firms, and to pay fees or other compensation to such businesses in an amount commensurate with the percentage of services provided by the business.

(iii) Exceptions

The Corporation may exclude a contract from the requirements of clause (ii) if the Chief Executive Officer of the Corporation determines in writing that imposing such a subcontracting requirement would—

(I) substantially increase the cost of contract performance; or

(II) undermine the ability of the contractor to perform its obligations under the contract.

(B) Limited waiver authority

(i) In general

The Corporation may grant a waiver from the application of this paragraph to any contractor with respect to a contract described in subparagraph (A)(ii), if the contractor certifies to the Corporation that it has determined that no eligible minority- or women-owned business is available to enter into a subcontract (with respect to such contract) and provides an explanation of the basis for such determination.

(ii) Waiver procedures

Any determination to grant a waiver under clause (i) shall be made in writing by the Chief Executive Officer of the Corporation.

(C) Report

Each quarterly report submitted by the Corporation pursuant to subsection (k)(7) of this section shall contain a description of each exception granted under subparagraph (A)(iii) and each waiver granted under subparagraph (B) during the quarter covered by the report.

(D) Definitions

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

(i) Minority

The term ''minority'' has the same meaning as in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(ii) Minority- and women-owned business

The terms ''minority-owned business'' and ''women-owned business'' have the same meanings as in subsection (r)(4) of this section.

(19) Contracting procedures

(A) Procedures

In awarding any contract subject to the competitive bidding process, the Corporation shall apply competitive bidding procedures that are no less stringent than those in effect on December 17, 1993.

(B) Cost to taxpayer

Nothing in this chapter, or any other provision of law, shall supersede the Corporation's primary duty of minimizing costs to

the taxpayer and maximizing the total return to the Government.

(20) Management of legal services

To improve the management of legal services, the Corporation—

(A) shall utilize staff counsel when such utilization would provide the same level of quality in legal services as the use of outside counsel at the same or a lower estimated cost; and

(B) may only employ outside counsel—

(i) if the use of outside counsel would provide the most practicable, efficient, and cost-effective resolution to the action; and

(ii) under a negotiated fee, contingent fee, or competitively bid fee agreement.

(21) Client responsiveness units

The Corporation shall ensure that every regional office of the Corporation contains a client responsiveness unit responsible to the Corporation's ombudsman.

(x) Limitation on excessive compensation and cash awards

(1) Establishment of performance appraisal system required

The Corporation shall be treated as an agency for purposes of sections 4302 and 4304 of title 5.

(2) Procedures for payment of cash awards

(A) In general

Sections 4502, 4503, and 4505a of title 5 shall apply with respect to the Corporation.

(B) Limitation on amount of cash awards

For purposes of determining the amount of any performance-based cash award payable to any employee of the Corporation under section 4505a of title 5, the amount of basic pay of the employee which may be taken into account under such section shall not exceed the amount which is equal to the annual rate of basic pay payable for level I of the Executive Schedule.

(3) All other cash awards and bonuses prohibited

Except as provided in paragraph (2), no cash award or bonus may be made to any employee of the Corporation.

(4) Limitations on cash awards and bonuses

No employee shall receive any cash award or bonus if such employee has given notice of an intent to resign to take a position in the private sector before the payment of such cash award or bonus or accepts employment in the private sector not later than 60 days after receipt of such award or bonus.

(5) Limitation on excessive compensation

Except as provided in paragraphs (6) and (7), no employee may receive a total amount of allowances, benefits, basic pay, and other compensation, including bonuses and other awards, in excess of the total amount of allowances, benefits, basic pay, and other compensation, including bonuses and other awards, which are provided to the chief executive officer of the Corporation.

(6) No reduction in rate of pay

The annual rate of basic pay and benefits, including any regional pay differential, payable to any employee who was an employee as of December 17, 1993, for any year ending after December 17, 1993, shall not be reduced, by reason of paragraph (5), below the annual rate of basic pay and benefits, including any regional pay differential, paid to such employee, by reason of such employment, as of December 17, 1993.

(7) Employees serving in acting or temporary capacity

In the case of any employee who, as of December 17, 1993, is serving in an acting capacity or is otherwise temporarily employed at a higher grade than such employee's regular grade or position of employment—

(A) the annual rate of basic pay and benefits, including any regional pay differential, payable to such employee in such capacity or at such higher grade shall not be reduced by reason of paragraph (5) so long as such employee continues to serve in such capacity or at such higher grade; and

(B) after such employee ceases to serve in such capacity or at such higher grade, paragraph (6) shall be applied with respect to such employee by taking into account only the annual rate of basic pay and benefits, including any regional pay differential, payable to such employee in such employee's regular grade or position of employment.

(8) Definitions

(A) Allowances

For purposes of paragraph (5), the term ''allowances'' does not include any allowance for travel and subsistence expenses incurred by an employee while away from home or designated post of duty on official business.

(B) Employee

For purposes of this subsection and sections 4302, 4502, 4503, and 4505a of title 5 (as applicable with respect to this subsection), the term ''employee'' includes any officer or employee assigned to the Corporation under subsection (b)(8) of this section and any officer or employee of the Thrift Depositor Protection Oversight Board.

(y) Authority to execute contracts

(1) Authorized persons

A person may execute a contract on behalf of the Corporation for the provision of goods or services only if—

(A) that person—

(i) is a warranted contracting officer appointed by the Corporation, or is a managing agent of a savings association under the conservatorship of the Corporation; and

(ii) provides appropriate certification or other identification, as required by the Corporation in accordance with paragraph (2);

(B) the notice described in paragraph (4) is included in the written contract; and

(C) that person has appropriate authority to execute the contract on behalf of the Corporation in accordance with the notice published by the Corporation in accordance with paragraph (5).

(2) Presentation of identification

Prior to executing any contract described in paragraph (1) with any person, a warranted contracting officer or managing agent shall present to that person—

(A) a valid certificate of appointment (or such other identification as may be required by the Corporation) that is signed by the appropriate officer of the Corporation; or

(B) a copy of such certificate, authenticated by the Corporation.

(3) Treatment of unauthorized contracts

A contract described in paragraph (1) that fails to meet the requirements of this section—

(A) shall be null and void; and

(B) shall not be enforced against the Corporation or its agents by any court.

(4) Inclusion of notice in contract terms

Each written contract described in paragraph (1) shall contain a clear and conspicuous statement (in boldface type) in immediate proximity to the space reserved for the signatures of the contracting parties as follows:

''Only warranted contracting officers appointed by the Resolution Trust Corporation or managing agents of associations under the conservatorship of the Resolution Trust Corporation have the authority to execute contracts on behalf of the Resolution Trust Corporation. Such persons have certain limits on their contracting authority. The nature and extent of their contracting authority levels are published in the Federal Register.

''A warranted contracting officer or a managing agent must present identification in the form of a signed certificate of appointment (or an authenticated copy of such certificate) or other identification, as required by the Corporation, prior to executing any contract on behalf of the Resolution Trust Corporation.

''Any contract that is not executed by a warranted contracting officer or the managing agent of a savings association under the conservatorship of the Resolution Trust Corporation, acting in conformity with his or her contracting authority, shall be null and void, and will not be enforceable by any court.''

(5) Notice of requirements

Not later than 30 days after December 17, 1993, the Corporation shall publish notice in the Federal Register of—

(A) the requirements for appointment by the Corporation as a warranted contracting officer; and

(B) the nature and extent of the contracting authority to be exercised by any warranted contracting officer or managing agent.

(6) Exception

This section does not apply to—

(A) any contract between the Corporation and any other person governing the purchase or assumption by that person of—

(i) the ownership of a savings association under the conservatorship of the Corporation; or

(ii) the assets or liabilities of a savings association under the conservatorship or receivership of the Corporation; or

(B) any contract executed by the Inspector General of the Corporation (or any designee thereof) for the provision of goods or services to the Office of the Inspector General of the Corporation.

(7) Execution of contracts

For purposes of this subsection, the execution of a contract includes all modifications to such contract.

(8) Effective date

The requirements of this subsection shall apply to all contracts described in paragraph (1) executed on or after the date which is 45 days after December 17, 1993.

(z) Additional contracting requirements

(1) In general

No person shall execute, on behalf of the Corporation, any contract, or modification to a contract, for goods or services exceeding $100,000 in value unless the person executing the contract or modification states in writing that—

(A) the contract or modification is for a fixed price, the person has received a written cost estimate for the contract or modification, or a cost estimate cannot be obtained as a practical matter with an explanation of why such a cost estimate cannot be obtained as a practical matter;

(B) the person has received the written statement described in paragraph (2); and

(C) the person is satisfied that the contract or modification to be executed has been approved by a person legally authorized to do so pursuant to a written delegation of authority.

(2) Written delegation of authority

A person who authorizes a contract, or a modification to a contract, involving the Corporation for goods or services exceeding $100,000 in value shall state, in writing, that he or she has been delegated the authority, pursuant to a written delegation of authority, to authorize that contract or modification.

(3) Effect of failure to comply

The failure of any person executing a contract, or a modification of a contract, on behalf of the Corporation, or authorizing such a contract or modification of a contract, to comply with the requirements of this subsection shall not void, or serve as grounds to void or rescind, any otherwise properly executed contract.

(July 22, 1932, ch. 522, § 21A, as added Pub. L. 101–73, title V, § 501(a), Aug. 9, 1989, 103 Stat. 363; amended Pub. L. 101–625, title VIII, § 804(d), title IX, § 914(c), Nov. 28, 1990, 104 Stat. 4323, 4395; Pub. L. 101–647, title XXV, §§ 2526(c), 2540, Nov. 29, 1990, 104 Stat. 4876, 4885; Pub. L. 102–18, title I, §§ 101, 102(a), 103(a), 104, 105, title II, §§ 201, 202,

title III, § 301, title IV, § 401, Mar. 23, 1991, 105 Stat. 58, 60–63, 65; Pub. L. 102–139, title V, § 523(a), Oct. 28, 1991, 105 Stat. 781; Pub. L. 102–233, title I, §§ 101, 103, 105, 106(a)–(e)(1), title II, § 201, title III, §§ 302(b), (c), 303–312, 314, 316, title IV, §§ 401, 402(a), 403–405, title V, § 501, title VI, §§ 601–611, 613–617, Dec. 12, 1991, 105 Stat. 1761–1765, 1767–1770, 1772–1774, 1776–1789; Pub. L. 102–242, title I, § 141(a)(3), title II, § 251(c)(1), title IV, § 471, Dec. 19, 1991, 105 Stat. 2276, 2333, 2385; Pub. L. 102–378, § 5(e), Oct. 2, 1992, 106 Stat. 1358; Pub. L. 102–550, title V, §§ 503(c)(3), 509(i), title XVI, §§ 1611(a), (d)(1)–(3), 1612, 1613(a)(1)–(6), (8), (b)–(h), 1614(a)(1)–(5), (7), (b), 1615(a)(2), 1616, Oct. 28, 1992, 106 Stat. 3780, 3783, 4090–4096; Pub. L. 103–204, §§ 2–3(b), 4(a), 5(a), (b)(2), 7, 12, 14(a)(1), (c)(2), (d)(1), (e)(1), (f)(1), 15(a), 16(a), 17(a), 21(b), 24, 27(a), 29–31, 36, Dec. 17, 1993, 107 Stat. 2370–2380, 2382, 2383, 2390, 2391, 2395–2400, 2406, 2408, 2410–2413, 2415; Pub. L. 103–211, title IV, § 406, Feb. 12, 1994, 108 Stat. 41; Pub. L. 103–325, title VI, § 602(b), Sept. 23, 1994, 108 Stat. 2291; Pub. L. 103–328, title II, § 201(b), Sept. 29, 1994, 108 Stat. 2368; Pub. L. 104–66, title II, § 2231, Dec. 21, 1995, 109 Stat. 733; Pub. L. 104–208, div. A, title II, § 2704(d)(11)(B)–(D), Sept. 30, 1996, 110 Stat. 3009–489; Pub. L. 105–135, title VI, § 604(b), Dec. 2, 1997, 111 Stat. 2633; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–171, title II, § 2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, § 9(d)(3)–(6), Feb. 15, 2006, 119 Stat. 3616, 3617; Pub. L. 110–289, div. A, title II, § 1204(8), (12), July 30, 2008, 122 Stat. 2786.)

REPEAL OF SECTION

Pub. L. 111–203, title III, §§ 351, 364(b), July 21, 2010, 124 Stat. 1546, 1555, provided that, effective on the transfer date, this section is repealed. See Effective Date of Repeal note below.

REFERENCES IN TEXT

Level II of the Executive Schedule, referred to in subsec. (a)(4)(C), is set out in section 5313 of Title 5, Government Organization and Employees.

Section 9105 of title 31, referred to in subsec. (b)(2), was amended generally by Pub. L. 101–576, title III, § 305, Nov. 15, 1990, 104 Stat. 2853, and, as so amended, no longer contains provisions relating to mixed-ownership Government corporations having capital of the Government.

August 9, 1989, referred to in subsec. (b)(10)(C)(ii), was in the original ''the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989'', and was translated as meaning the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73, to reflect the probable intent of Congress.

Section 519(a) of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991, referred to in subsec. (b)(10)(C)(ii), is section 519(a) of Pub. L. 101–507, 104 Stat. 1386, which is not classified to the Code.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsecs. (c)(6)(A)(ii), (j)(2)(A), (m)(3)(B), (s)(2)(C), (t)(3)(A), (u)(5)(A), and (w)(17)(E)(ii), (18)(D)(i), is Pub. L. 101–73, Aug. 9, 1989, 103 Stat. 183. Section 404(9) of the Act is set out in a note under section 1437 of this title. Section 1204(c)(3) of the Act is set out as a note under section 1811 of this title. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1811 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (c)(6)(B) is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (c)(6)(B), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482. Title IV of the Act is classified principally to subchapter IV (§ 11360 et seq.) of chapter 119 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

Section 810 of the Housing and Community Development Act of 1974, referred to in subsec. (c)(6)(B), (E)(i), is section 810 of Pub. L. 93–383, which was classified to section 1706e of this title, and was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

The National Housing Act, referred to in subsec. (c)(6)(B), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (c)(6)(C), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (c)(6)(E)(i), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, known as the HOME Investment Partnerships Act, is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

The Housing and Community Development Act of 1968, referred to in subsec. (c)(9)(B)(iii), probably means the Housing and Urban Development Act of 1968, Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IX of the Act is classified principally to chapter 49 (§ 3931 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title of 1968 Amendments note set out under section 1701 of this title and Tables.

Section 14(b) of the Resolution Trust Corporation Completion Act, referred to in subsec. (c)(17)(A), is section 14(b) of Pub. L. 103–204, which is set out as a note under section 1831q of this title.

The Federal Advisory Committee Act, referred to in subsecs. (d)(5) and (w)(8)(C), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Section 1821(a)(6)(F) of this title, referred to in subsec. (i)(5), was repealed by Pub. L. 109–173, § 8(a)(11)(C), Feb. 15, 2006, 119 Stat. 3612.

The Home Owners' Loan Act, referred to in subsec. (k)(9), is act June 13, 1933, ch. 64, 48 Stat. 128, as amended, which is classified generally to chapter 12 (§ 1461 et seq.) of this title. For complete classification of this Act to the Code, see section 1461 of this title and Tables.

Section 6(c) of the Resolution Trust Corporation Completion Act, referred to in subsec. (m)(3)(A), is section 6(c) of Pub. L. 103–204, which is set out below.

The Securities Act of 1933, referred to in subsec. (*o*)(1), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

Level I of the Executive Schedule, referred to in subsec. (x)(2)(B), is set out in section 5312 of Title 5, Government Organization and Employees.

AMENDMENTS

2008—Subsec. (a)(3)(A)(ii), (iv), (E), (9). Pub. L. 110–289, § 1204(8), which directed amendment of the Federal Home Loan Bank Act (this chapter) by substituting ''the Director'' for ''the Board'' wherever appearing, was not executed to subsec. (a)(3)(A)(ii), (iv), (E), (9), to reflect the probable intent of Congress.

Subsec. (c)(9)(B)(ii). Pub. L. 110–289, § 1204(12), substituted ''Director'' for ''Federal Housing Finance Board''.

Subsec. (h)(1). Pub. L. 110–289, § 1204(12), which directed amendment of the Federal Home Loan Bank Act (this chapter) by substituting ''the Director'' for ''Federal Housing Finance Board'' wherever appearing, was not executed to subsec. (h)(1) to reflect the probable intent of Congress.

Subsecs. (k)(2)(B)(i), (n)(6)(C)(ii). Pub. L. 110–289, § 1204(8), which directed amendment of the Federal Home Loan Bank Act (this chapter) by substituting ''the Director'' for ''the Board'' wherever appearing, was not executed to subsecs. (k)(2)(B)(i) and (n)(6)(C)(ii) to reflect the probable intent of Congress.

2006—Subsec. (b)(4)(B). Pub. L. 109–173, § 9(d)(3), substituted ''Deposit Insurance Fund'' for ''affected deposit insurance fund''.

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(11)(B). See 1996 Amendment note below.

Subsec. (b)(6)(B). Pub. L. 109–173, § 9(d)(4), substituted ''Charter conversions'' for ''SAIF-insured banks'' in heading and ''savings association'' for ''Savings Association Insurance Fund member'' in text.

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(11)(C). See 1996 Amendment note below.

Subsec. (b)(10)(A)(iv)(II). Pub. L. 109–173, § 9(d)(5), substituted ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund''.

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(11)(D). See 1996 Amendment note below.

Subsec. (n)(6)(E)(iv). Pub. L. 109–173, § 9(d)(6), substituted ''the Deposit Insurance Fund'' for ''Federal deposit insurance funds''.

2004—Subsec. (k)(11)(B). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2000—Subsecs. (b)(16), (17)(A)(ii), (c)(6)(B). Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

1997—Subsec. (b)(13). Pub. L. 105–135 substituted ''small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and qualified HUBZone small business concerns (as defined in section 632(p) of title 15)'' for ''small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals''.

1996—Subsec. (b)(4)(B). Pub. L. 104–208, § 2704(d)(11)(B), which directed the amendment of subpar. (B) by substituting ''Deposit Insurance Fund'' for ''affected deposit insurance fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (b)(6)(B). Pub. L. 104–208, § 2704(d)(11)(C), which directed the amendment of subpar. (B) by substituting ''Charter conversions'' for ''SAIF-insured banks'' in heading and ''savings association'' for ''Savings Association Insurance Fund member'' in text, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (b)(10)(A)(iv)(II). Pub. L. 104–208, § 2704(d)(11)(D), which directed the amendment of subcl. (II) by substituting ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1995—Subsec. (k)(9). Pub. L. 104–66 substituted ''June 30 and December 31 of each calendar year'' for ''the end of each calendar quarter''.

1994—Subsec. (a)(11). Pub. L. 103–325, § 602(b)(1), substituted ''a United States district court'' for ''a United States District Court''.

Subsec. (b)(11)(B)(iii). Pub. L. 103–325, § 602(b)(2), struck out comma after ''chapter 5''.

Subsec. (b)(11)(E)(iv)(II). Pub. L. 103–325, § 602(b)(3), substituted ''knowledgeable'' for ''knowledgable''.

Subsec. (b)(11)(G). Pub. L. 103–325, § 602(b)(4), inserted heading.

Subsec. (b)(14)(C)(i). Pub. L. 103–211 added cl. (i) and struck out former cl. (i) which read as follows: ''the 5-year period beginning on the date the claim accrues (as determined pursuant to section 1821(d)(14)(B) of this title); or''.

Subsec. (b)(14)(E). Pub. L. 103–328 added subpar. (E).

Subsec. (r)(4). Pub. L. 103–325, § 602(b)(5), substituted ''subsection, the following definitions shall apply:'' for ''subsection—''.

Subsec. (s)(2). Pub. L. 103–325, § 602(b)(6), substituted ''subsection, the following definitions shall apply:'' for ''subsection—''.

Subsec. (u)(5). Pub. L. 103–325, § 602(b)(7), substituted ''subsection, the following definitions shall apply:'' for ''subsection—''.

1993—Subsec. (a)(6)(K). Pub. L. 103–204, § 5(b)(2), added subpar. (K).

Subsec. (b)(3)(A)(ii). Pub. L. 103–204, § 27(a)(1), substituted ''such date as is determined by the Chairperson of the Thrift Depositor Protection Oversight Board, but not earlier than January 1, 1995, and not later than July 1, 1995'' for ''October 1, 1993''.

Subsec. (b)(4)(C). Pub. L. 103–204, § 3(b), added subpar. (C).

Subsec. (b)(6). Pub. L. 103–204, §§ 27(a)(2), 36, substituted ''such date as is determined by the Chairperson of the Thrift Depositor Protection Oversight Board under paragraph (3)(A)(ii)'' for ''October 1, 1993'' in two places, designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (b)(8)(E), (F). Pub. L. 103–204, § 24, added subpars. (E) and (F).

Subsec. (b)(8)(G). Pub. L. 103–204, § 29, added subpar. (G).

Subsec. (b)(14) to (17). Pub. L. 103–204, §§ 4(a), 15(a), 16(a), 17(a), added pars. (14) to (17).

Subsec. (c)(6)(A)(ii). Pub. L. 103–204, § 14(d)(1), inserted at end ''The Corporation shall periodically provide, to a wide range of minority- and women-owned businesses engaged in providing affordable housing and to nonprofit organizations, more than 50 percent of the control of which is held by 1 or more minority individuals, that are engaged in providing affordable housing, information that is sufficient to inform such businesses and organizations of the availability and terms of financing under this clause; such information may be provided directly, by notices published in periodicals and other publications that regularly provide information to such businesses or organizations, and through persons and organizations that regularly provide information or services to such businesses or organizations. For purposes of this clause, the terms 'women-owned business' and 'minority-owned business' have the meanings given such terms in subsection (r) of this section, and the term 'minority' has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.''

Subsec. (c)(9)(D)(ii). Pub. L. 103–204, § 12(1), added cl. (ii) and struck out former cl. (ii) which read as follows: ''that has an appraised value that does not exceed $67,500 in the case of a 1-family residence, $76,000 in the case of a 2-family residence, $92,000 in the case of a 3-family residence, and $107,000 in the case of a 4-family residence.''

Subsec. (c)(9)(G). Pub. L. 103–204, § 12(2), realigned margin of subcl. (I) and redesignated it as cl. (i) and substituted cl. (ii) for subcl. (II) which read as follows: ''that has an appraised value that does not exceed $67,500 in the case of a 1-family residence, $76,000 in the case of a 2-family residence, $92,000 in the case of a 3-family residence, and $107,000 in the case of a 4-family residence.''

Subsec. (c)(11)(D). Pub. L. 103–204, §14(f)(1), added subpar. (D).

Subsec. (c)(16), (17). Pub. L. 103–204, §14(a)(1), (e)(1), added pars. (16) and (17).

Subsec. (d)(2). Pub. L. 103–204, §14(c)(2), amended par. (2) generally, substituting ''(2) [Reserved]'' for former par. (2) which read as follows: ''NATIONAL HOUSING ADVISORY BOARD.—

''(A) ESTABLISHMENT.—The Thrift Depositor Protection Oversight Board shall establish a National Housing Advisory Board to advise the Thrift Depositor Protection Oversight Board on policies and programs related to the provision of affordable housing.

''(B) MEMBERSHIP.—The National Housing Advisory Board shall consist of—

''(i) the Secretary of Housing and Urban Development; and

''(ii) the chairpersons of any regional advisory boards established pursuant to paragraph (3).

''(C) MEETINGS.—The National Housing Advisory Board shall meet 4 times a year, or more frequently if requested by the Thrift Depositor Protection Oversight Board.''

Subsec. (i)(3) to (6). Pub. L. 103–204, §2, struck out ''until April 1, 1992'' after ''this section'' in par. (3) and added pars. (4) to (6).

Subsec. (m)(1). Pub. L. 103–204, §7(b), substituted ''December 31, 1995'' for ''December 31, 1996''.

Subsec. (m)(3). Pub. L. 103–204, §7(a), added par. (3).

Subsec. (q)(1). Pub. L. 103–204, §21(b)(1), substituted ''regarding—

''(A) a possible violation of any law or regulation; or

''(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

by the Corporation, the Thrift Depositor Protection Oversight Board, or such person or any director, officer, or employee of the Corporation, the Thrift Depositor Protection Oversight Board, or the person.'' for ''regarding any possible violation of any law or regulation by the Corporation, the Thrift Depositor Protection Oversight Board, or such person or any director, officer, or employee of the Corporation, the Thrift Depositor Protection Oversight Board, or the person.''

Subsec. (q)(5). Pub. L. 103–204, §21(b)(2), added par. (5).

Subsec. (w). Pub. L. 103–204, §3(a), added subsec. (w).

Subsec. (x). Pub. L. 103–204, §5(a), added subsec. (x).

Subsec. (y). Pub. L. 103–204, §30, added subsec. (y).

Subsec. (z). Pub. L. 103–204, §31, added subsec. (z).

1992—Pub. L. 102–550, §1613(a)(6), inserted ''Thrift Depositor Protection'' before ''Oversight Board'' in section catchline.

Subsec. (a)(2). Pub. L. 102–550, §1613(b)(2), struck out second period after ''by this chapter.''

Pub. L. 102–550, §1613(b)(1), made technical amendment to directory language of Pub. L. 102–233, §303(2). See 1991 Amendment note below.

Subsec. (a)(6). Pub. L. 102–550, §1613(a)(4), substituted ''Thrift Depositor Protection Oversight'' for ''Oversight'' in heading.

Subsec. (a)(6)(C). Pub. L. 102–550, §1613(c)(1), substituted ''paragraph (8)'' for ''paragraph (8) of this subsection:

''*Provided*, That if the Thrift Depositor Protection Oversight Board requires the modification of any overall strategies, policies and goals, it shall, within 30 days of the date at which it directs the RTC make such modification, provide the House and Senate Banking Committees with an explanation that identifies which ground justifies the review and giving reasons why the modification is necessary to satisfy these grounds.''

Subsec. (a)(8). Pub. L. 102–550, §1613(f)(1), struck out ''In general'' before ''The Corporation shall''.

Subsec. (a)(10). Pub. L. 102–550, §1613(d)(1), substituted ''Open'' for ''Quarterly'' in heading, ''6'' for ''4'' in text, and inserted at end: ''The Thrift Depositor Protection Oversight Board shall maintain a transcript of the board's open meetings.''

Subsec. (a)(15), (16). Pub. L. 102–550, §1613(c)(2), added par. (15) and redesignated former par. (15) as (16).

Subsec. (b)(8)(A). Pub. L. 102–550, §1613(e), substituted ''Except for the chief executive officer of the Corporation,'' for ''Except for its chief executive officer,''.

Subsec. (b)(8)(B)(i). Pub. L. 102–550, §1612, made technical amendment to first reference to December 12, 1991, to correct reference to corresponding provisions of original act.

Pub. L. 102–378, which directed that subsec. (b)(9)(B)(i) of this section, as amended by section 201 of Pub. L. 102–233, be amended by striking out the last three sentences, was executed to subsec. (b)(8)(B)(i) of this section, to reflect the probable intent of Congress and the intervening redesignation of par. (9) as (8) by section 310 of Pub. L. 102–233 (see 1991 Amendment note below). Prior to amendment, last three sentences read as follows: ''Any employee or officer in the executive service of the Federal Deposit Insurance Corporation who was performing services on behalf of the Corporation at level E–4 or above immediately prior to December 12, 1991, shall continue to be assigned to perform substantially similar services on behalf of the Corporation after December 12, 1991, unless the Corporation—

''(I) determines that the services of any such employees are unnecessary, or

''(II) reassigns or substantially alters the responsibilities or duties of any such employees.

If an action described in subclause (I) or (II) occurs, any such employee with at least 20 years of service, as defined by chapter 83 or chapter 84 of title 5, shall be entitled to an annuity under section 8336(d) or section 8414(b)(1) of title 5, notwithstanding the fact that such employee has not attained the age of 50 years or has declined another position with the Federal Deposit Insurance Corporation, and the annuity of such employee shall not be reduced because of the age of such employee. The Federal Deposit Insurance Corporation shall reimburse the appropriate retirement insurance fund for any increased costs it incurs as a result of the annuities authorized pursuant to this clause.''

Subsec. (b)(9)(G). Pub. L. 102–550, §1613(h)(1)(A), substituted ''(10)(A)(iv)'' for ''(11)(A)(iv)''.

Subsec. (b)(9)(I). Pub. L. 102–550, §1613(h)(1)(B), struck out ''through its Board of Directors'' after ''prescribe''.

Subsec. (b)(10)(A). Pub. L. 102–550, §1613(h)(2), substituted ''(9)'' for ''(10)'' in introductory provisions and ''(11)'' for ''(12)'' in cl. (i).

Subsec. (b)(11)(E)(i). Pub. L. 102–550, §1613(h)(3), substituted ''the chief executive officer's'' for ''its''.

Subsec. (c)(3)(E). Pub. L. 102–550, §1616(a), in cl. (i)(I), substituted ''property in which the units are located; and'' for ''building property structure in which the units are located: *Provided*, That'', in cl. (i)(II), struck out ''shall be made available for occupancy'' after ''units purchased'', inserted ''(including very low-income families taken into account for purposes of subclause (I))'' after ''very low-income families'', and substituted ''property'' for ''building or structure'', and in cl. (ii)(II), substituted ''property'' for ''building property structure'' after ''useful life of the'' in two places, and inserted ''(including very low-income families taken into account for purposes of subdivision (a) of this subclause)'' after ''very low-income families'' in subdiv. (b).

Subsec. (c)(7). Pub. L. 102–550, §1613(h)(4), substituted ''(b)(10)(A)'' for ''(b)(11)(A)''.

Subsec. (c)(8)(B). Pub. L. 102–550, §1616(b), repealed Pub. L. 102–233, §611. See 1991 Amendment note below.

Subsec. (c)(8)(B)(ii). Pub. L. 102–550, §1615(a)(2), substituted ''subchapter B'' for ''subchapter A''.

Subsec. (c)(9)(D)(ii). Pub. L. 102–550, §503(c)(3), substituted ''$67,500 in the case of a 1-family residence, $76,000 in the case of a 2-family residence, $92,000 in the case of a 3-family residence, and $107,000 in the case of a 4-family residence'' for ''the applicable dollar amount set forth in the first sentence of section 203(b)(2) of the National Housing Act (without regard to any increase of such amount for high cost areas)''.

Subsec. (c)(9)(E)(i)(II), (ii)(II). Pub. L. 102–550, §509(i), substituted '', for such part of the property as may be

attributable to dwelling use (excluding exterior land improvements), $29,500 per family unit without a bedroom, $33,816 per family unit with 1 bedroom, $41,120 per family unit with 2 bedrooms, $53,195 per family unit with 3 bedrooms, and $58,392 per family unit with 4 or more bedrooms'' for ''the applicable dollar amount set forth in section 221(d)(3)(ii) of the National Housing Act for elevator-type structures (without regard to any increase of such amount for high-cost areas)''.

Subsec. (c)(9)(G)(ii). Pub. L. 102–550, §503(c)(3), substituted ''$67,500 in the case of a 1-family residence, $76,000 in the case of a 2-family residence, $92,000 in the case of a 3-family residence, and $107,000 in the case of a 4-family residence'' for ''the applicable dollar amount set forth in the first sentence of section 203(b)(2) of the National Housing Act (without regard to any increase of such amount for high-cost areas)''.

Subsec. (c)(10). Pub. L. 102–550, §1613(d)(2), struck out at end ''The Thrift Depositor Protection Oversight Board shall maintain a transcript of its open meetings.'' See note for subsec. (a)(10) above and 1991 Amendment note below.

Subsec. (d)(1)(B)(ii). Pub. L. 102–550, §1613(h)(5), substituted ''paragraph (3)'' for ''paragraph (2)''.

Subsec. (i)(3). Pub. L. 102–550, §1611(a), inserted comma after ''necessary'' and after ''billion''.

Subsec. (k). Pub. L. 102–550, §1613(a)(1), repealed Pub. L. 102–233, §302(c). See 1991 Amendment note below.

Subsec. (k)(3)(B). Pub. L. 102–550, §1613(h)(6), substituted ''subsection (b)(10)(B)'' for ''subsection (b)(11)(B)''.

Subsec. (k)(6)(A)(vii). Pub. L. 102–550, §1613(a)(2), inserted ''Thrift Depositor Protection'' before ''Oversight Board's''.

Subsec. (k)(7). Pub. L. 102–550, §1611(d)(1), substituted ''preceding calendar quarter'' for ''quarter ending on the last day of the month ending before the month in which such report is required to be submitted''.

Subsec. (k)(10)(A). Pub. L. 102–550, §1611(d)(2), which directed amendment of section ''21A(k)(10) of the Federal Home Loan Bank Board'', by inserting ''Thrift Depositor Protection'' before ''Oversight Board'' wherever appearing, was probably intended as an amendment to subsec. (k)(10) of this section, which is section 21A of the Federal Home Loan Bank Act, but was not executed in view of similar amendment by Pub. L. 102–233, §302(b). See 1991 Amendment note below for subsec. (k).

Subsec. (k)(11)(A). Pub. L. 102–550, §1611(d)(3)(A), which directed amendment by inserting ''Thrift Depositor Protection'' before ''Oversight Board'', as not executed in view of similar amendment by Pub. L. 102–233, §302(b). See 1991 Amendment note below for subsec. (k).

Subsec. (k)(11)(B). Pub. L. 102–550, §1611(d)(3)(B), substituted ''employees'' for ''an employee'' and ''General'' for ''Government''.

Subsec. (*l*)(3)(B). Pub. L. 102–550, §1613(g), substituted ''for that party or the filing'' for ''for that party of the filing''.

Subsec. (n)(8). Pub. L. 102–550, §1613(a)(5), inserted ''Thrift Depositor Protection'' before ''Oversight Board'' in heading.

Subsec. (*o*)(2). Pub. L. 102–550, §1613(f)(2), substituted ''includes any officer or employee of the Federal Deposit'' for ''includes—any officer or employee of the Federal Deposit''.

Subsec. (q). Pub. L. 102–550, §1614(a)(7)(B), redesignated subsec. (q), relating to continuation of obligation to provide services, as (v).

Pub. L. 102–550, §1614(a)(7)(A), amended directory language of Pub. L. 102–242, §471. See 1991 Amendment note below.

Pub. L. 102–550, §1614(a)(5)(E), transferred and inserted subsec. (q), relating to employee protection remedies, after subsec. (p), effective Dec. 19, 1991.

Pub. L. 102–550, §1613(a)(8), inserted ''Thrift Depositor Protection'' before ''Oversight Board'' in heading of subsec. (q) relating to employee protection remedies.

Pub. L. 102–550, §§1613(a)(3), 1614(b)(4), which directed identical amendment of subsec. (q), relating to employee protection remedies, by inserting ''Thrift Depositor Protection'' before ''Oversight Board'', was not executed in view of similar amendment by Pub. L. 102–233, §302(b). See 1991 Amendment note below.

Subsec. (r). Pub. L. 102–550, §1614(a)(5)(A), redesignated subsec. (t) as (r).

Pub. L. 102–550, §1614(a)(1), amended Pub. L. 102–233, §401, transferring and inserting subsec. (r) [formerly (t)] after subsec. (p) effective Dec. 12, 1991. See 1991 Amendment note below.

Subsec. (s). Pub. L. 102–550, §1614(a)(5)(B), redesignated subsec. (u) as (s).

Subsec. (t). Pub. L. 102–550, §1614(a)(5)(C), redesignated subsec. (v) as (t). Former subsec. (t) redesignated (r).

Pub. L. 102–550, §1614(a)(1), amended directory language of Pub. L. 102–233, §401. See 1991 Amendment note below.

Subsec. (t)(1). Pub. L. 102–550, §1614(b)(1), substituted ''the minority capital assistance program established under subsection (u)(1) of this section'' for ''minority interim capital assistance program established by the Oversight Board by regulation pursuant to the strategic plan under subsection (a) of this section''.

Subsec. (t)(3)(B). Pub. L. 102–550, §1614(b)(3), substituted ''section 1823(f)(8)(B)'' for ''section 1823(c)(8)''.

Subsec. (u). Pub. L. 102–550, §1614(a)(5)(D), redesignated subsec. (w) as (u). Former subsec. (u) redesignated (s).

Pub. L. 102–550, §1614(a)(2), made technical correction to directory language of Pub. L. 102–233, §402(a). See 1991 Amendment note below.

Subsec. (u)(1). Pub. L. 102–550, §1614(b)(2), substituted ''administered by the Corporation pursuant to the policy statement entitled the 'Interim Statement of Policy Regarding Resolutions of Minority-Owned Depository Institutions' adopted by the Corporation on January 30, 1990'' for ''established by the Oversight Board by regulation pursuant to the strategic plan under subsection (a) of this section''.

Subsec. (u)(5)(B). Pub. L. 102–550, §1614(b)(3), substituted ''section 1823(f)(8)(B)'' for ''section 1823(c)(8)''.

Subsec. (v). Pub. L. 102–550, §1614(a)(7)(B), redesignated subsec. (q), relating to continuation of obligation to provide services, as (v). Former subsec. (v) redesignated (t).

Pub. L. 102–550, §1614(a)(3), made technical correction to directory language of Pub. L. 102–233, §403. See 1991 Amendment note below.

Subsec. (w). Pub. L. 102–550, §1614(a)(5)(D), redesignated subsec. (w) as (u).

Pub. L. 102–550, §1614(a)(4), made technical correction to directory language of Pub. L. 102–233, §404. See 1991 Amendment note below.

1991—Subsec. (a). Pub. L. 102–233, §302(b), substituted ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board'' wherever appearing.

Subsec. (a)(2). Pub. L. 102–233, §303(2), as amended by Pub. L. 102–550, §1613(b)(1), inserted before period at end of first sentence ''and shall be accountable for the duties assigned to the Thrift Depositor Protection Oversight Board by this chapter.''

Pub. L. 102–233, §303(1), substituted ''monitor the operations of'' for ''be accountable for'' in first sentence.

Subsec. (a)(3)(A). Pub. L. 102–233, §304(1), in introductory provisions, substituted ''7'' for ''5'', added cls. (iii) through (v), redesignated former cl. (iv) as (vi), and struck out former cl. (iii) which directed that Secretary of Housing and Urban Development be member of Board.

Subsec. (a)(3)(E). Pub. L. 102–233, §304(2), substituted ''4'' for ''3''.

Subsec. (a)(5)(I) to (K). Pub. L. 102–18, §104(b), added subpar. (I) and redesignated former subpars. (I) and (J) as (J) and (K), respectively.

Subsec. (a)(6)(A). Pub. L. 102–233, §305(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''To develop and establish overall strategies, policies, and goals for the Corporation's activities in consultation with the Corporation, including such items as—

''(i) general policies and procedures for case resolutions, the management and disposition of assets, the use of private contractors, and the use of notes, guarantees or other obligations by the Corporation;

''(ii) overall financial goals, plans, and budgets; and

''(iii) restructuring agreements described in subsection (b)(11)(B) of this section.''

Subsec. (a)(6)(B). Pub. L. 102–233, § 305(2), inserted ''financial plans, budgets, and'' after ''implementation''.

Subsec. (a)(6)(C). Pub. L. 102–233, § 305(3), amended subpar. (C) generally and inserted closing provision relating to explanation to Congress of review and modification. Prior to amendment, subpar. (C) read as follows: ''To review all rules, regulations, principles, procedures, and guidelines that may be adopted or announced by the Corporation. After consultation with the Corporation, the Oversight Board may require the modification of any such rules, regulations, principles, procedures, or guidelines except that the rules, regulations, principles, procedures, and guidelines relating to the Corporation's powers and activities as a conservator or receiver shall be consistent with the Federal Deposit Insurance Act. The provisions of this subparagraph shall not apply to internal administrative policies and procedures, and determinations or actions described in paragraph (8) of this subsection.''

Subsec. (a)(7). Pub. L. 102–233, § 314(1)(A), substituted ''(b)(11)'' for ''(b)(12)''.

Subsec. (a)(8). Pub. L. 102–233, § 314(1)(B), struck out designation ''(A)'' and subpar. (B) which set forth limitation on authority of Oversight Board over activities, powers, or functions of Federal Deposit Insurance Corporation.

Subsec. (a)(8)(A). Pub. L. 102–233, § 306, substituted ''involving (i)'' for ''(i) involving'' and ''review overall strategies, policies, and goals established by the Corporation'' for ''provide general policies and procedures''.

Subsec. (a)(10). Pub. L. 102–233, § 314(1)(C), substituted ''review overall strategies, policies, and goals established by'' for ''establish and review the general policy of'' and ''matters as pertain to'' for ''standards, policies, and procedures necessary to carry out''.

Subsec. (a)(14)(A). Pub. L. 102–233, § 308, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The Oversight Board shall, subject to paragraph (6), develop a strategic plan for conducting the Corporation's functions and activities. The Oversight Board shall submit the strategic plan to the Congress not later than December 31, 1989.''

Subsec. (b). Pub. L. 102–233, § 302(b), substituted ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board'' wherever appearing.

Subsec. (b)(1)(C). Pub. L. 102–233, § 309(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''Immediately upon August 9, 1989, the Federal Deposit Insurance Corporation shall be authorized to and shall perform all responsibilities of the Corporation, and shall continue to do so unless removed pursuant to subsection (m) of this section.''

Subsec. (b)(3). Pub. L. 102–233, § 314(2)(A), struck out ''and through the Federal Deposit Insurance Corporation (or any replacement authorized pursuant to subsection (m) of this section)'' before '', including:''.

Subsec. (b)(3)(A)(ii). Pub. L. 102–233, § 103(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''for which a conservator or receiver—

''(I) had been appointed at any time during the period beginning on January 1, 1989, and ending on August 9, 1989 (including any institution described in paragraph (6)); or

''(II) is appointed within the 3-year period beginning on August 9, 1989.''

Subsec. (b)(3)(B). Pub. L. 102–233, § 309(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''To manage the Federal Asset Disposition Association, subject to the provisions of subsection (f) of this section.''

Subsec. (b)(4). Pub. L. 102–242, § 141(a)(3), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (b)(6). Pub. L. 102–233, § 103(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''As of August 9, 1989, the Corporation shall succeed the Federal Savings and Loan Insurance Corporation as conservator or receiver with respect to any institution for which the Federal Savings and Loan Insurance Corporation was appointed conservator or receiver during the period beginning on January 1, 1989 and ending on August 9, 1989.''

Subsec. (b)(8). Pub. L. 102–233, § 310, redesignated par. (9) as (8) and struck out former par. (8) which related to Board of Directors of Corporation.

Subsec. (b)(8)(A). Pub. L. 102–233, § 311(1), substituted provision directing that Corporation have no employees except for its chief executive officer for provision directing that Corporation have no employees unless Oversight Board exercises subsec. (m) authority.

Subsec. (b)(8)(B)(i). Pub. L. 102–233, § 201(1), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''The Federal Deposit Insurance Corporation, when acting as the exclusive manager of the Corporation, shall (subject to subsection (a)(6) of this section) receive reimbursement from the Corporation for all services performed for the Corporation. Such reimbursement may not exceed the actual and reasonable cost incurred by the Federal Deposit Insurance Corporation in performing such services.''

Subsec. (b)(8)(C). Pub. L. 102–233, § 201(2), added subpar. (C).

Subsec. (b)(8)(D). Pub. L. 102–233, § 311(2), added subpar. (D).

Subsec. (b)(9). Pub. L. 102–233, § 310, redesignated par. (10) as (9). Former par. (9) redesignated (8).

Subsec. (b)(9)(B), (C). Pub. L. 102–233, § 314(2)(B)(i), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which related to Corporation's power to provide for certain officers and employees, define their duties, and require surety bonds against losses occasioned by their acts.

Subsec. (b)(9)(D). Pub. L. 102–233, § 314(2)(B)(i), redesignated subpar. (E) as (D). Former subpar. (D) redesignated (C).

Pub. L. 102–233, § 309(c), inserted ''using any legally available private sector methods including without limitation, securitization of debt or equity, limited partnerships, mortgage investment conduits, and real estate investment trusts,'' after ''real and personal property,''.

Subsec. (b)(9)(E) to (I). Pub. L. 102–233, § 314(2)(B)(i), redesignated subpars. (F) to (J) as (E) to (I), respectively. Former subpar. (E) redesignated (D).

Subsec. (b)(9)(J). Pub. L. 102–233, § 314(2)(B)(i), redesignated subpar. (K) as (J). Former subpar. (J) redesignated (I).

Pub. L. 102–233, § 501(a)(1), amended generally subpar (J) [par. (10)(K) prior to redesignation, see above]. Prior to amendment, subpar. read as follows: ''To make loans.''

Subsec. (b)(9)(K), (L). Pub. L. 102–233, § 314(2)(B)(i), redesignated subpars. (L) and (M) as (K) and (L), respectively. Former subpars. (K) and (L) redesignated (J) and (K), respectively.

Subsec. (b)(9)(M). Pub. L. 102–233, § 314(2)(B), redesignated subpar. (N) as (M) and struck out ''on behalf of the Federal Deposit Insurance Corporation, acting as exclusive manager'' before period at end of penultimate sentence. Former subpar. (M) redesignated (L).

Subsec. (b)(9)(N). Pub. L. 102–233, § 314(2)(B)(i), redesignated subpar. (N) as (M).

Subsec. (b)(10). Pub. L. 102–233, § 310, redesignated par. (11) as (10). Former par. (10) redesignated (9).

Subsec. (b)(10)(N). Pub. L. 102–18, § 104(a), inserted at end ''The Corporation may indemnify the directors, officers and employees of the Corporation on such terms as the Corporation deems proper against any liability under any civil suit pursuant to any statute or pursuant to common law with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction entered into involving

the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the Corporation. For purposes of this subparagraph, the terms 'officers' and 'employees' include officers and employees of the Federal Deposit Insurance Corporation or of other agencies who perform services for the Corporation on behalf of the Federal Deposit Insurance Corporation, acting as exclusive manager. The indemnification authorized by this subparagraph shall be in addition to and not in lieu of any immunities or other protections that may be available to such person under applicable law, and this provision does not affect any such immunities or other protections.''

Subsec. (b)(11). Pub. L. 102–233, §310, redesignated par. (12) as (11). Former par. (11) redesignated (10).

Subsec. (b)(11)(A). Pub. L. 102–233, §314(2)(C)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Subject to the review of the Oversight Board, the Corporation shall adopt the rules, regulations, standards, policies, procedures, guidelines, and statements necessary to implement the strategic plan established by the Oversight Board under subsection (a)(14) of this section. The Corporation may issue such rules, regulations, standards, policies, procedures, guidelines, and statements as the Corporation considers necessary or appropriate to carry out this section.''

Subsec. (b)(11)(B). Pub. L. 102–233, §314(2)(C)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Such rules, regulations, standards, policies, procedures, guidelines, and statements—

''(i) shall be provided by the Corporation to the Oversight Board promptly or prior to publication or announcement to the extent practicable;

''(ii) shall be subject to the review of the Oversight Board as provided in subsection (a)(6)(C) of this section; and

''(iii) shall be promulgated pursuant to subchapter II of chapter 5 of title 5.''

Pub. L. 102–18, §105, designated subpar. (B) concluding provisions as subpar. (C)(i).

Subsec. (b)(11)(C). Pub. L. 102–18, §105, designated subpar. (B) concluding provisions as subpar. (C)(i), added headings for subpar. (C) and cl. (i), and added cl. (ii).

Subsec. (b)(11)(D), (E). Pub. L. 102–233, §314(2)(C)(iii), substituted ''chief executive officer'' for ''Board of Directors'' wherever appearing.

Subsec. (b)(12). Pub. L. 102–233, §310, redesignated par. (13) as (12). Former par. (12) redesignated (11).

Subsec. (b)(13). Pub. L. 102–233, §310, redesignated par. (14) as (13). Former par. (13) redesignated (12).

Subsec. (b)(14). Pub. L. 102–233, §405, amended par. (14) generally, substituting present provisions for provisions which related to fiscal year 1989 funding.

Pub. L. 102–233, §310, redesignated par. (14) as (13).

Subsec. (c)(2)(B). Pub. L. 102–233, §604(a)(2), substituted ''by any such family who, except as provided in subparagraph (D), agrees to occupy the property as a principal residence for at least 12 months and who certifies in writing that the family intends to occupy the property for at least 12 months'' for ''by such families'' at end of first sentence.

Pub. L. 102–233, §603, inserted reference to qualifying households with members who are veterans and inserted references to lower-income families with members who are veterans in two places.

Pub. L. 102–233, §602, substituted ''Except as provided in the last sentence of this subparagraph for'' for ''For'' in first sentence and inserted sentence at end.

Pub. L. 102–139 substituted ''3-month and one week'' for ''3-month'' wherever appearing.

Subsec. (c)(2)(C), (D). Pub. L. 102–233, §604(b), added subpars. (C) and (D).

Subsec. (c)(2)(E). Pub. L. 102–233, §605, added subpar. (E).

Subsec. (c)(3)(B). Pub. L. 102–233, §606(1), struck out before period at end of first sentence '', or until the Corporation determines that a property is ready for sale, whichever occurs first''.

Subsec. (c)(3)(C). Pub. L. 102–233, §606(2), substituted ''the expiration of the period referred to in subparagraph (B) for a property,'' for ''determining that a property is ready for sale''.

Subsec. (c)(3)(D). Pub. L. 102–233, §606(3), inserted two sentences at end relating to rejection or failure of offer which had been initially accepted by Corporation and construction of provision requiring acceptance of another offer under such circumstances.

Subsec. (c)(3)(E). Pub. L. 102–233, §607, amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''Not less than 35 percent of all dwelling units purchased by a qualifying multifamily purchaser under subparagraph (D) shall be made available for occupancy by and maintained as affordable for lower-income families during the remaining useful life of the property in which the units are located, provided that not less than 20 percent of all units shall be made available for occupancy by and maintained as affordable for very low-income families during the remaining useful life of such property. If a single entity purchases more than 1 eligible property as part of the same negotiation, the requirements of this subparagraph shall apply in the aggregate to the properties so purchased. The requirements of this subparagraph shall be contained in the deed or other recorded instrument.''

Subsec. (c)(3)(G), (H). Pub. L. 102–233, §608, added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (c)(6)(A)(i). Pub. L. 102–233, §609, amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''The Corporation shall establish a market value for each eligible residential property. The Corporation shall sell eligible residential property at the net realizable market value. The Corporation may agree to sell an eligible single family property at a price below the net realizable market value to the extent necessary to facilitate an expedited sale of the property and enable a lower-income family to purchase the property. The Corporation may agree to sell eligible residential property at a price below the net realizable market value to the extent necessary to facilitate an expedited sale of such property and enable a public agency or nonprofit organization to comply with the lower-income occupancy requirements applicable to such property under paragraphs (2) and (3).''

Pub. L. 102–18, §§202, 203, temporarily amended cl. (i) to read as follows: ''The Corporation may sell eligible single family property to qualifying households, nonprofit organizations, and public agencies without regard to any minimum purchase price.'' See Effective and Termination Dates of 1991 Amendments note below.

Subsec. (c)(6)(A)(ii). Pub. L. 102–233, §610, inserted sentence at end which authorized Corporation to hold participating share in providing financing for combinations of multifamily housing properties.

Subsec. (c)(8)(B). Pub. L. 102–233, §611, which made an amendment identical to Pub. L. 102–233, §501(a)(2) [see below], was repealed by Pub. L. 102–550, §1616(b).

Pub. L. 102–233, §501(a)(2), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Subsec. (c)(9)(A). Pub. L. 102–233, §617(1), added subpar. (A) and struck out former subpar. (A) which defined ''adjusted income''.

Subsec. (c)(9)(C). Pub. L. 102–233, §601(1), added subpar. (C) and struck out former subpar. (C) which defined ''Corporation'' as Resolution Trust Corporation, with certain qualifications.

Pub. L. 102–18, §§201(a), 203, temporarily amended subpar. (C) by striking period at end and inserting '', except that for purposes of subsection (c)(2) of this section only, the term means the Resolution Trust Corporation acting in any capacity.'' See Effective and Termination Dates of 1991 Amendments note below.

Subsec. (c)(9)(D). Pub. L. 102–233, §617(2), (3), added subpar. (D) and redesignated former subpar. (D), as added by Pub. L. 102–233, §601(1), as (E).

Pub. L. 102–233, §601(1), added subpar. (D) and struck out former subpar. (D) which defined ''eligible multifamily housing property'' as property consisting of more than 4 units to which Corporation acquires title

and that has appraised value not exceeding amount set forth in section 221(d)(3)(ii) of National Housing Act.

Subsec. (c)(9)(E). Pub. L. 102–233, § 617(2), redesignated subpar. (D), as added by Pub. L. 102–233, § 601(1), as (E). Former subpar. (E) redesignated (F).

Subsec. (c)(9)(F). Pub. L. 102–233, § 617(2), redesignated subpar. (E) as (F). Former subpar. (F), as added by Pub. L. 102–233, § 601(2), redesignated (G).

Pub. L. 102–233, § 601(2), added subpar. (F) and struck out former subpar. (F) which defined ''eligible single family property'' as 1- to 4-family residence to which Corporation acquires title and that has appraised value not exceeding amount set forth in first sentence of section 203(b)(2) of National Housing Act.

Subsec. (c)(9)(G). Pub. L. 102–233, § 617(2), redesignated subpar. (F), as added by Pub. L. 102–233, § 601(2), as (G). Former subpar. (G) redesignated (H).

Subsec. (c)(9)(H) to (K). Pub. L. 102–233, § 617(2), redesignated subpars. (G) to (J) as (H) to (K), respectively. Former subpar. (K) redesignated (L).

Subsec. (c)(9)(L). Pub. L. 102–233, § 617(2), redesignated subpar. (K) as (L). Former subpar. (L) redesignated (M).

Pub. L. 102–233, § 604(a)(1), added cls. (ii) and (iii), redesignated former cl. (ii) as (iv), and substituted ''whose income'' for ''whose adjusted income''.

Subsec. (c)(9)(M) to (Q). Pub. L. 102–233, § 617(2), redesignated subpars. (L) to (P) as (M) to (Q), respectively.

Subsec. (c)(10). Pub. L. 102–233, § 307(2), inserted at end ''The Thrift Depositor Protection Oversight Board shall maintain a transcript of its open meetings.''

Pub. L. 102–233, § 307(1), which directed substitution of ''6'' for ''4'', could not be executed because ''4'' does not appear.

Pub. L. 102–18, §§ 201(b), 203, as affected by Pub. L. 102–233, § 612, amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''The provisions of this subsection shall not apply whenever the Corporation as receiver contracts to sell all or substantially all of the assets of a closed savings association to an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act).'' See Effective and Termination Dates of 1991 Amendments note below.

Subsec. (c)(11)(B). Pub. L. 102–233, § 615(b), substituted ''applicable under paragraphs (2), (3), (12)(C), (13)(B), and (14)(C)'' for ''specified under paragraphs (2) and (3)''.

Subsec. (c)(12) to (15). Pub. L. 102–233, §§ 613–615(a), 616, added pars. (12) to (15).

Subsec. (d). Pub. L. 102–233, § 302(b), substituted ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board'' wherever appearing.

Subsec. (d)(2) to (5). Pub. L. 102–233, § 312, added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively.

Subsecs. (g), (h). Pub. L. 102–233, § 302(b), substituted ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board'' wherever appearing.

Subsec. (i). Pub. L. 102–233, § 302(b), substituted ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board'' in par. (1)(A).

Pub. L. 102–233, § 101, added par. (3).

Pub. L. 102–18, § 101, substituted ''Funding'' for ''Borrowing'' in heading, designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsec. (k). Pub. L. 102–233, § 302(c), which excepted par. (7) from general amendment substituting ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board'' wherever appearing, was repealed by Pub. L. 102–550, § 1613(a)(1).

Pub. L. 102–233, § 302(b), substituted ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board'' wherever appearing.

Subsec. (k)(1)(A). Pub. L. 102–18, § 102(a)(1), substituted ''Notwithstanding section 9105 of title 31, the'' for ''The'' and ''. The audited statements shall be transmitted to the Congress by the Oversight Board not later than 180 days after the end of the Corporation's fiscal year to which those statements apply.'' for ''unless the Comptroller General notifies the Oversight Board not later than 180 days before the close of a fiscal year that the Comptroller General will not perform such audit for that fiscal year. In the event of such notification, the Oversight Board shall contract with an independent certified public accountant to perform the annual audit of the Corporation's financial statement in accordance with generally accepted Government auditing standards.''

Subsec. (k)(1)(B). Pub. L. 102–18, § 102(a)(2), struck out '', or by an independent certified public accountant retained to audit the Corporations financial statement,'' after ''Board''.

Subsec. (k)(4)(B)(v). Pub. L. 102–233, § 106(b), added cl. (v).

Subsec. (k)(5)(B)(xiii). Pub. L. 102–18, § 401, added cl. (xiii).

Subsec. (k)(5)(C). Pub. L. 102–233, § 106(e)(1), added subpar. (C).

Subsec. (k)(7). Pub. L. 102–233, § 106(a), amended par. (7) generally, substituting provisions requiring Corporation to submit quarterly reports to congressional committees for provisions requiring that Oversight Board and Corporation appear before congressional committees before Jan. 31, 1990.

Subsec. (k)(8), (9). Pub. L. 102–18, § 102(a)(3), added pars. (8) and (9).

Subsec. (k)(10), (11). Pub. L. 102–233, § 106(c), (d), added pars. (10) and (11).

Subsec. (*l*)(3). Pub. L. 102–233, § 316, amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the District of Columbia, or if the action, suit, or proceeding arises out of the actions of the Corporation with respect to an institution for which a conservator or a receiver has been appointed, the United States district court for the district where the institution's principal business is located. The removal of any action, suit, or proceeding shall be instituted—

''(A) not later than 90 days after the date the Corporation is substituted as a party, or

''(B) not later than 30 days after the date suit is filed against the Corporation, if such suit is filed after August 9, 1989.

The Corporation may appeal any order of remand entered by a United States district court.''

Subsec. (m). Pub. L. 102–233, § 314(3), redesignated subsec. (*o*) as (m) and struck out former subsec. (m) which authorized removal of Federal Deposit Insurance Corporation as manager of Corporation in extraordinary circumstances.

Subsec. (n). Pub. L. 102–233, §§ 302(b), 314(3), redesignated subsec. (p) as (n), substituted ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board'' wherever appearing, and struck out former subsec. (n) which related to operation of Corporation after exercise of powers under subsec. (m).

Subsec. (n)(5). Pub. L. 102–233, § 314(4), substituted ''Officers'' for ''Directors, officers,''.

Subsec. (*o*). Pub. L. 102–233, § 314(5)(B), amended par. (2) by striking ''.—'', which appeared before ''For purposes of this subsection'' in the original, striking out subpar. (A) which read ''any employee of the Office of the Comptroller of the Currency or of the Office of Thrift Supervision who serves as a deputy or assistant to a member of the Board of Directors of the Corporation; and'', striking out subpar. (B) designation before ''any officer or employee of the Federal Deposit'', and striking out ''on behalf of the Federal Deposit Insurance Corporation, acting as exclusive manager'' after ''performs services for the Corporation''.

Pub. L. 102–233, § 314(5)(A), struck out ''director,'' before ''member, officer'' in par. (1).

Pub. L. 102–233, § 314(3), redesignated subsec. (q) as (*o*). Former subsec. (*o*) redesignated (m).

Pub. L. 102–233, § 302(b), substituted ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board'' wherever appearing.

Pub. L. 102–233, § 105, inserted '', if there are no liabilities of the Corporation outstanding,'' after ''Thereafter'' in par. (2).

Subsec. (p). Pub. L. 102–233, § 314(3), redesignated subsec. (r) as (p). Former subsec. (p) redesignated (n).

Subsec. (q). Pub. L. 102–242, § 471, as amended by Pub. L. 102–550, § 1614(a)(7)(A), added subsec. (q) relating to continuation of obligation to provide services.

Pub. L. 102–242, § 251(c)(1), added subsec. (q) relating to employee protection remedies.

Pub. L. 102–233, § 302(b), substituted ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board'' wherever appearing in subsec. (q), as added by Pub. L. 102–242, § 251(c)(1). See Effective and Termination Dates of 1991 Amendments note below.

Pub. L. 102–233, § 314(3), redesignated subsec. (q) relating to status of employees as (*o*).

Pub. L. 102–18, § 103(a), added subsec. (q) relating to status of employees.

Subsec. (r). Pub. L. 102–233, § 314(3), redesignated subsec. (r) as (p).

Pub. L. 102–18, § 301, added subsec. (r).

Subsec. (t). Pub. L. 102–233, § 401, as amended by Pub. L. 102–550, § 1614(a)(1), added subsec. (t).

Subsec. (u). Pub. L. 102–233, § 402(a), as amended by Pub. L. 102–550, § 1614(a)(2), added subsec. (u).

Subsec. (v). Pub. L. 102–233, § 403, as amended by Pub. L. 102–550, § 1614(a)(3), added subsec. (v).

Pub. L. 102–233, § 302(b), substituted ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board''.

Subsec. (w). Pub. L. 102–233, § 404, as amended by Pub. L. 102–550, § 1614(a)(4), added subsec. (w).

Pub. L. 102–233, § 302(b), substituted ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board''.

1990—Subsec. (b)(12)(G). Pub. L. 101–647, § 2540, added subpar. (G).

Subsec. (c)(3). Pub. L. 101–625, § 804(d)(2), inserted introductory provisions.

Subsec. (c)(6)(D). Pub. L. 101–625, § 804(d)(1), added subpar. (D).

Subsec. (c)(6)(E). Pub. L. 101–625, § 914(c), added subpar. (E).

Subsec. (f). Pub. L. 101–647, § 2526(c), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''Before the end of the 180-day period beginning on August 9, 1989, the Corporation shall liquidate the Federal Asset Disposition Association.''

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Section 302(a) of Pub. L. 102–233 provided that: ''The Oversight Board, as established by section 21A(a)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(1)), is redesignated the Thrift Depositor Protection Oversight Board.''

[Section 302(a) of Pub. L. 102–233, set out above, effective Feb. 1, 1992, see section 318 of Pub. L. 102–233, set out as an Effective Date of 1991 Amendment note under section 1441 of this title.]

EFFECTIVE DATE OF REPEAL

Repeal effective on the transfer date, see section 351 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135 set out as a note under section 631 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 14(c)(2) of Pub. L. 103–204 provided that the amendment made by that section is effective upon expiration of 90-day period beginning on December 17, 1993.

EFFECTIVE DATE OF 1992 AMENDMENTS

Section 1614(a)(5)(E) of Pub. L. 102–550 provided that the amendment made by that section is effective as of Dec. 19, 1991.

Section 1614(a)(7) of Pub. L. 102–550 provided that the amendments made by that section are effective as of Dec. 19, 1991.

Amendments by sections 1611 to 1616 of Pub. L. 102–550 effective, except as otherwise specifically provided (see above), as if included in the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, Pub. L. 102–233, as of Dec. 12, 1991, see section 1618 of Pub. L. 102–550, set out as a note under section 1441 of this title.

Amendment by Pub. L. 102–378 applicable with respect to any action described in former subsec. (b)(8)(B)(i)(I) or (II) of this section occurring on or after Oct. 2, 1992, see section 9(b)(12) of Pub. L. 102–378, set out as a note under section 6303 of Title 5, Government Organization and Employees.

EFFECTIVE AND TERMINATION DATES OF 1991 AMENDMENTS

Section 251(c)(2) of Pub. L. 102–242 provided that: ''Subsection (q) of section 21A of the Federal Home Loan Bank Act [12 U.S.C. 1441a(q), relating to employee protection remedies] (as added under the amendment made by paragraph (1)) shall be treated as having taken effect on August 9, 1989, and for purposes of any cause of action arising under such subsection (as so effective) before the date of the enactment of this Act [Dec. 19, 1991], the 2-year period referred to in section 21A(q)(2) of such Act shall be deemed to begin on such date of enactment.''

Section 106(e)(2) of Pub. L. 102–233, as amended by Pub. L. 102–550, title XVI, § 1611(d)(4), Oct. 28, 1992, 106 Stat. 4091, provided that: ''The amendment made by this subsection [amending this section] shall apply with respect to supplemental unaudited financial statements required to be submitted after the end of the 90-day period beginning on the date of the enactment of this Act [Dec. 12, 1991].''

Amendment by sections 302(b), (c), 303 to 312, 314, and 316 of Pub. L. 102–233 effective Feb. 1, 1992, see section 318 of Pub. L. 102–233, set out as an Effective Date of 1991 Amendment note under section 1441 of this title.

Section 612 of Pub. L. 102–233 provided that: ''Notwithstanding section 203 of the Resolution Trust Corporation Funding Act of 1991 [Pub. L. 102–18, set out below], the amendment made by section 201(b) of such Act [amending this section] shall apply on and after the date of the enactment of this Act [Dec. 12, 1991].''

Section 619 of title VI of Pub. L. 102–233 provided that: ''The amendments made by this title [amending this section and enacting provisions set out above and

as a note under section 1831n of this title] shall not apply to any eligible residential property or eligible condominium property of the Resolution Trust Corporation, that is subject to an agreement for sale entered into by the Corporation before the date of the enactment of this Act [Dec. 12, 1991].''

Section 523(b) of Pub. L. 102–139 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to eligible single family properties acquired by the Resolution Trust Corporation on or after the date of enactment of this Act [Oct. 28, 1991].''

Section 203 of Pub. L. 102–18 provided that: ''The amendments made by sections 201 and 202 of this Act to section 21A of the Federal Home Loan Bank Act [this section] shall be effective only during the period beginning on the date of the enactment of this Act [Mar. 23, 1991] and ending at the end of fiscal year 1991, and section 21A shall apply after the end of such period as if such amendments had not been made.'' [See, however, section 612 of Pub. L. 102–233, above.]

SAVINGS PROVISION

Section 317 of title III of Pub. L. 102–233 provided that:

''(a) SAVINGS PROVISIONS.—

''(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—This title [see Short Title of 1991 Amendment note set out under section 1421 of this title] shall not affect the validity of any right, duty, or obligation of the United States, the Corporation, the Oversight Board, or any other person, that—

''(A) arises under or pursuant to the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.], or any other provision of law applicable with respect to the Oversight Board; and

''(B) existed on the day before the effective date of the Resolution Trust Corporation Thrift Depositor Protection Reform Act of 1991 [Feb. 1, 1992].

''(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Oversight Board, with respect to any function of the Oversight Board, shall abate by reason of the enactment of this Act [see Short Title of 1991 Amendment note set out under section 1421 of this title], except that the Thrift Depositor Protection Oversight Board shall continue as party to any such action or proceeding, notwithstanding the change of name of the Oversight Board.

''(b) CONTINUATION OF ORDERS, RESOLUTIONS, DETERMINATIONS, AND REGULATIONS.—All orders, resolutions, determinations, and regulations that—

''(1) have been issued, made, prescribed, or allowed to become effective by the Oversight Board (including orders, resolutions, determinations, and regulations which relate to the conduct of conservatorships and receiverships), or by a court of competent jurisdiction, in the performance of functions under the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.]; and

''(2) are in effect on the effective date of the Resolution Trust Corporation Thrift Depositor Protection Reform Act of 1991 [Feb. 1, 1992],

shall continue in effect according to the terms of such orders, resolutions, determinations, and regulations, and shall be enforceable by or against the Thrift Depositor Protection Oversight Board, or the Resolution Trust Corporation, by any court of competent jurisdiction, or by operation of law, notwithstanding the change of name of the Oversight Board.''

CONSTRUCTION OF 1991 AMENDMENT

Section 1614(a)(6) of Pub. L. 102–550 provided that: ''For purposes of applying paragraph (13) of section 21A(b) of the Federal Home Loan Bank Act [12 U.S.C. 1441a(b)(13)], the amendment made by section 405 of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 [Pub. L. 102–233, amending this section], shall be considered to have been executed before the redesignation of such paragraph by section 310 of such Act.''

Section 1615(a)(1) of Pub. L. 102–550 provided that: ''For purposes of applying paragraph (9) of section 21A(b) of the Federal Home Loan Bank Act [12 U.S.C. 1441a(b)(9)], the amendment made by section 501(a)(1) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 [Pub. L. 102–233, amending this section] shall be considered to have been executed before the redesignation of subparagraph (K) of such paragraph by section 314(2)(B) of such Act and the redesignation of such paragraph by section 310 of such Act.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsections (b)(11)(G) and (c)(15) are listed on page 190, a report required under subsection (k)(4) is listed on pages 188 and 190, and a report required under subsection (k)(5) is listed on page 147), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

ABOLITION OF THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Pub. L. 105–216, § 14(a)–(d), July 29, 1998, 112 Stat. 908–910, provided that:

''(a) IN GENERAL.—Effective at the end of the 3-month period beginning on the date of enactment of this Act [July 29, 1998], the Thrift Depositor Protection Oversight Board established under section 21A of the Federal Home Loan Bank Act [12 U.S.C. 1441a] (hereafter in this section referred to as the 'Oversight Board') is hereby abolished.

''(b) DISPOSITION OF AFFAIRS.—

''(1) POWER OF CHAIRPERSON.—Effective on the date of enactment of this Act [July 29, 1998], the Chairperson of the Oversight Board (or the designee of the Chairperson) may exercise on behalf of the Oversight Board any power of the Oversight Board necessary to settle and conclude the affairs of the Oversight Board.

''(2) AVAILABILITY OF FUNDS.—Funds available to the Oversight Board shall be available to the Chairperson of the Oversight Board to pay expenses incurred in carrying out paragraph (1).

''(c) SAVINGS PROVISION.—

''(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—No provision of this section shall be construed as affecting the validity of any right, duty, or obligation of the United States, the Oversight Board, the Resolution Trust Corporation, or any other person that—

''(A) arises under or pursuant to the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.], or any other provision of law applicable with respect to the Oversight Board; and

''(B) existed on the day before the abolishment of the Oversight Board in accordance with subsection (a).

''(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Oversight Board with respect to any function of the Oversight Board shall abate by reason of the enactment of this section.

''(3) LIABILITIES.—

''(A) IN GENERAL.—All liabilities arising out of the operation of the Oversight Board during the period beginning on August 9, 1989, and the date that is 3 months after the date of enactment of this Act [July 29, 1998] shall remain the direct liabilities of the United States.

''(B) NO SUBSTITUTION.—The Secretary of the Treasury shall not be substituted for the Oversight Board as a party to any action or proceeding referred to in subparagraph (A).

''(4) CONTINUATIONS OF ORDERS, RESOLUTIONS, DETERMINATIONS, AND REGULATIONS PERTAINING TO THE RESOLUTION FUNDING CORPORATION.—

''(A) IN GENERAL.—All orders, resolutions, determinations, and regulations regarding the Resolution Funding Corporation shall continue in effect according to the terms of such orders, resolutions, determinations, and regulations until modified, terminated, set aside, or superseded in accordance with applicable law if such orders, resolutions, determinations, or regulations—

''(i) have been issued, made, and prescribed, or allowed to become effective by the Oversight Board, or by a court of competent jurisdiction, in the performance of functions transferred by this section; and

''(ii) are in effect at the end of the 3-month period beginning on the date of enactment of this section [July 29, 1998].

''(B) ENFORCEABILITY OF ORDERS, RESOLUTIONS, DETERMINATIONS, AND REGULATIONS BEFORE TRANSFER.—Before the effective date of the transfer of the authority and duties of the Resolution Funding Corporation to the Secretary of the Treasury under subsection (d), all orders, resolutions, determinations, and regulations pertaining to the Resolution Funding Corporation shall be enforceable by and against the United States.

''(C) ENFORCEABILITY OF ORDERS, RESOLUTIONS, DETERMINATIONS, AND REGULATIONS AFTER TRANSFER.—On and after the effective date of the transfer of the authority and duties of the Resolution Funding Corporation to the Secretary of the Treasury under subsection (d), all orders, resolutions, determinations, and regulations pertaining to the Resolution Funding Corporation shall be enforceable by and against the Secretary of the Treasury.

''(d) TRANSFER OF THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD AUTHORITY AND DUTIES OF RESOLUTION FUNDING CORPORATION TO SECRETARY OF THE TREASURY.—Effective at the end of the 3-month period beginning on the date of enactment of this Act [July 29, 1998], the authority and duties of the Oversight Board under sections 21A(a)(6)(I) and 21B of the Federal Home Loan Bank Act [12 U.S.C. 1441a(a)(6)(I), 1441b] are transferred to the Secretary of the Treasury (or the designee of the Secretary).''

ELECTION OF APPLICATION OF LAWS BY EMPLOYEES OF RESOLUTION TRUST CORPORATION AND THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Pub. L. 103–424, §11, Oct. 29, 1994, 108 Stat. 4366, provided that:

''(a) ELECTION OF PROVISIONS OF TITLE 5, UNITED STATES CODE.—If an individual who believes he has been discharged or discriminated against in violation of section 21a(q)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(q)(1)) seeks an administrative corrective action or judicial remedy for such violation under the provisions of chapters 12 and 23 of title 5, United States Code, the provisions of section 21a(q) of such Act shall not apply to such alleged violation.

''(b) ELECTION OF PROVISIONS OF FEDERAL HOME LOAN BANK ACT.—If an individual files a civil action under section 21a(q)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(q)(2)), the provisions of chapters 12 and 23 of title 5, United States Code, shall not apply to any alleged violation of section 21a(q)(1) of such Act.''

GAO STUDY OF PROGRESS OF IMPLEMENTATION OF REFORMS

Section 3(c) of Pub. L. 103–204 provided that:

''(1) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study of the manner in which the reforms required pursuant to the amendment made by subsection (a) [amending this section] are being implemented by the Resolution Trust Corporation and the progress being made by the Corporation toward the achievement of full compliance with such requirements.

''(2) INTERIM REPORT TO CONGRESS.—Not later than 6 months after the date of enactment of this Act [Dec. 17, 1993], the Comptroller General of the United States shall submit an interim report to the Congress containing the preliminary findings of the Comptroller General in connection with the study required under paragraph (1).

''(3) FINAL REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress containing—

''(A) the findings of the Comptroller General in connection with the study required under paragraph (1); and

''(B) such recommendations for legislative and administrative action as the Comptroller General may determine to be appropriate.

''(4) DISCLOSURE OF PERFORMING ASSET TRANSFERS.—

''(A) REPORT REQUIRED.—The Comptroller General of the United States shall submit an annual report to the Congress on transfers of performing assets by the Corporation, categorized by institution, to any acquirer during the year covered by the report.

''(B) CONTENTS.—Each report submitted under subparagraph (A) shall contain—

''(i) the number and a description of asset transfers during the year covered by the report;

''(ii) the number of assets provided in connection with each transaction during such year; and

''(iii) a report of an audit by the Comptroller General of the determination of the Corporation of the fair market value of transferred assets at the time of transfer.''

RTC NOTICE TO GSA

Section 3(e) of Pub. L. 103–204 provided that:

''(1) IN GENERAL.—Within a reasonable period of time after acquiring an undivided or controlling interest in any commercial office property in its capacity as conservator or receiver, the Corporation shall notify the Administrator of General Services of such acquisition.

''(2) CONTENTS OF NOTICE.—The notice required under paragraph (1) shall contain basic information about the property, including—

''(A) the location and condition of the property;

''(B) information relating to the estimated fair market value of the property; and

''(C) the Corporation's schedule, or estimate of the schedule, for marketing and disposing of the property.

''(3) COMPETITIVE BIDDING.—The Administrator of General Services, in compliance with regulations of the Resolution Trust Corporation, may bid on property described in the notice required under paragraph (1) that is otherwise subject to competitive bidding.''

FDIC–RTC TRANSITION TASK FORCE

Section 6 of Pub. L. 103–204 provided that:

''(a) ESTABLISHMENT REQUIRED.—The Federal Deposit Insurance Corporation and the Resolution Trust Corporation shall establish an interagency transition task force. The task force shall facilitate the transfer of the assets, personnel, and operations of the Resolution Trust Corporation to the Federal Deposit Insurance Corporation or the FSLIC Resolution Fund, as the case may be, in a coordinated manner.

''(b) MEMBERS.—

''(1) IN GENERAL.—The transition task force shall consist of such number of officers and employees of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation as the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation and the chief executive officer of the Resolution Trust Corporation may jointly determine to be appropriate.

''(2) APPOINTMENT.—The Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation and the chief executive officer of the Resolution Trust Corporation shall appoint the members of the transition task force.

''(3) NO ADDITIONAL PAY.—Members of the transition task force shall receive no additional pay, allow-

ances, or benefits by reason of their service on the task force.

''(c) DUTIES.—The transition task force shall have the following duties:

''(1) Examine the operations of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation to identify, evaluate, and resolve differences in the operations of the corporations to facilitate an orderly merger of such operations.

''(2) Recommend which of the management, resolution, or asset disposition systems of the Resolution Trust Corporation should be preserved for use by the Federal Deposit Insurance Corporation.

''(3) Recommend procedures to be followed by the Federal Deposit Insurance Corporation and the Resolution Trust Corporation in connection with the transition which will promote—

''(A) coordination between the corporations before the termination of the Resolution Trust Corporation; and

''(B) an orderly transfer of assets, personnel, and operations.

''(4) Evaluate the management enhancement goals applicable to the Resolution Trust Corporation under section 21A(p) of the Federal Home Loan Bank Act [12 U.S.C. 1441a(p)] and recommend which of such goals should apply to the Federal Deposit Insurance Corporation.

''(5) Evaluate the management reforms applicable to the Resolution Trust Corporation under section 21A(w) of the Federal Home Loan Bank Act and recommend which of such reforms should apply to the Federal Deposit Insurance Corporation.

''(d) REPORTS TO BANKING COMMITTEES.—

''(1) REPORTS REQUIRED.—The transition task force shall submit a report to the Committee on Banking, Finance and Urban Affairs [now Committee on Banking and Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than January 1, 1995, and a second report not later than July 1, 1995, on the progress made by the transition task force in meeting the requirements of this section.

''(2) CONTENTS OF REPORT.—The reports required to be submitted under paragraph (1) shall contain the findings and recommendations made by the transition task force in carrying out the duties of the task force under subsection (c) and such recommendations for legislative and administrative action as the task force may determine to be appropriate.

''(e) FOLLOWUP REPORT BY FDIC.—Not later than January 1, 1996, the Federal Deposit Insurance Corporation shall submit a report to the Committee on Banking, Finance and Urban Affairs [now Committee on Banking and Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing—

''(1) a description of the recommendations of the transition task force which have been adopted by the Corporation;

''(2) a description of the recommendations of the transition task force which have not been adopted by the Corporation;

''(3) a detailed explanation of the reasons why the Corporation did not adopt each recommendation described in paragraph (2); and

''(4) a description of the actions taken by the Corporation to comply with section 21A(m)(3) of the Federal Home Loan Bank Act [12 U.S.C. 1441a(m)(3)].''

TERMINATION OF NATIONAL HOUSING ADVISORY BOARD

Section 14(c)(1) of Pub. L. 103–204 provided that: ''The National Housing Advisory Board under section 21A(d)(2) of the Federal Home Loan Bank Act [12 U.S.C. 1441a(d)(2)] shall terminate upon the expiration of the 90-day period beginning on the date of the enactment of this Act [Dec. 17, 1993].''

REPORTING REQUIREMENTS

Section 35 of Pub. L. 103–204 provided that: ''The Resolution Trust Corporation shall provide semi-annual reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs [now Committee on Banking and Financial Services] of the House of Representatives. Such reports shall—

''(1) detail procedures for expediting the registration and contracting for selecting auctioneers for asset sales with anticipated gross proceeds of not more than $1,500,000;

''(2) list by name and geographic area the number of auction contractors which have been registered and qualified to perform services for the Resolution Trust Corporation; and

''(3) list by name, address of home office, location of assets disposed, and gross proceeds realized, the number of auction contractors which have been awarded contracts.''

FIRST REQUIRED PLAN

Section 102(b) of Pub. L. 102–18 provided that: ''The first plan described in section 21A(k)(8) of the Federal Home Loan Bank Act [12 U.S.C. 1441a(k)(8)], as amended by subsection (a), is due not later than 30 days after the date of enactment of this Act [Mar. 23, 1991].''

TIMELINESS OF REPORTS

Pub. L. 102–18, title I, § 102(c), Mar. 23, 1991, 105 Stat. 59, as amended by Pub. L. 102–233, title III, §§ 302(a), 315(d), Dec. 12, 1991, 105 Stat. 1767, 1772; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814, provided that:

''(1) IN GENERAL.—At any time when an agency is delinquent in providing information to Congress or any of its committees as required by paragraph (1), (4), (5), (6), (8), or (9) of section 21A(k) of the Federal Home Loan Bank Act [12 U.S.C. 1441a(k)] or by subsection (b) of this section [set out above], the President of the Thrift Depositor Protection Oversight Board, and the head of any agency responsible for such delinquency shall, within 15 days of such delinquency, in testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs [now Committee on Banking and Financial Services] of the House of Representatives—

''(A) explain the causes of such delinquency; and

''(B) describe what steps are being taken to correct it and prevent its recurrence.

Testimony shall not be required pursuant to the preceding sentence before either Committee if the Chairman and Ranking Member of such Committee agree that such testimony is not necessary. For purposes of this paragraph, the term 'head of an agency' means the chief executive officer of the Resolution Trust Corporation with respect to reports to be filed by such Corporation, the Director of the Office of Thrift Supervision with respect to reports to be filed by such Office, and the Comptroller General with respect to audits to be conducted by the Government Accountability Office.

''(2) TRANSITION RULE.—Any information described in paragraph (1) of this subsection that is delinquent on the date of enactment of this Act [Mar. 23, 1991] shall be provided to the appropriate committees of Congress not later than 30 days following enactment of this Act. Failure to provide such information as required by this paragraph shall be considered as a delinquency under the provisions of paragraph (1).''

GAO EXAMINATION OF CERTAIN FSLIC RESOLUTIONS

Section 501(f) of Pub. L. 101–73 provided that: ''Notwithstanding any other provision of this Act [see Tables for classification], the Comptroller General of the United States shall examine and monitor all insolvent institution cases resolved by the Federal Savings and Loan Insurance Corporation from January 1, 1988, through the date of the enactment of this Act [Aug. 9, 1989], and not later than April 30, 1990, shall report to Congress with an estimate of the costs of the agreements entered into by the Corporation pursuant to such resolutions. Not less than annually thereafter, the last report being due on April 30, 1992, the Comptroller

General shall provide Congress with revisions to such estimates, to take into account any new information that he obtains with regard to such agreements.''

§ 1441a–1. Definitions

For purposes of section 1441a–2 of this title:

(1) State housing finance authority

The term ''State housing finance authority'' means any public agency, authority, or corporation which—

(A) serves as an instrumentality of any State or any political subdivision of any State; and

(B) functions as a source of residential mortgage loan financing in that State.

(2) Nonprofit entity

The term ''nonprofit entity'' means any not-for-profit corporation chartered under State law that is exempt from Federal taxation under section 501(c) of title 26 and no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual (including any nonprofit entity established by the corporation established under title IX of the Housing and Urban Development Act of 1968 [42 U.S.C. 3931 et seq.]).

(3) Mortgage-related assets

The term ''mortgage-related assets'' means—

(A) residential mortgage loans secured by 1- to 4-family or multifamily dwellings; and

(B) real property improved with 1- to 4-family or multifamily residential dwellings,

which are located within the jurisdiction of the applicable State housing finance authority or within the geographical area served by the nonprofit entity.

(4) Net income

The term ''net income'' means income after deduction of all associated expenses calculated in accordance with generally accepted accounting principles.

(Pub. L. 101–73, title XIII, § 1301, Aug. 9, 1989, 103 Stat. 547.)

REFERENCES IN TEXT

The Housing and Urban Development Act of 1968, referred to in par. (2), is Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IX of the Housing and Urban Development Act of 1968 is classified principally to chapter 49 (§ 3931 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and not as part of the Federal Home Loan Bank Act which comprises this chapter.

§ 1441a–2. Authorization for State housing finance agencies and nonprofit entities to purchase mortgage-related assets

(a) Authorization

Notwithstanding any other provision of Federal or State law, a State housing finance authority or nonprofit entity may purchase mortgage-related assets from the Resolution Trust Corporation or from financial institutions with respect to which the Federal Deposit Insurance Corporation is acting as a conservator or receiver (including assets associated with any trust business), and any contract for such purchase shall be effective in accordance with its terms without any further approval, assignment, or consent with respect to that contract.

(b) Investment requirement

Any State housing finance authority or nonprofit entity which purchases mortgage-related assets pursuant to subsection (a) of this section shall invest any net income attributable to the ownership of those assets in financing, refinancing, or rehabilitating low- and moderate-income housing within the jurisdiction of the State housing finance authority or within the geographical area served by the nonprofit entity.

(Pub. L. 101–73, title XIII, § 1302, Aug. 9, 1989, 103 Stat. 548.)

CODIFICATION

Section was enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and not as part of the Federal Home Loan Bank Act which comprises this chapter.

DEFINITIONS

The definitions in section 1441a–1 of this title apply to this section.

§ 1441a–3. RTC and FDIC properties

(a) Reports

(1) Submission

The Resolution Trust Corporation and the Federal Deposit Insurance Corporation shall each submit to the Congress for each year a report identifying and describing any property that is covered property of the corporation concerned as of September 30 of such year. The report shall be submitted on or before March 30 of the following year.

(2) Consultation

In preparing the reports required under this subsection, each corporation concerned may consult with the Secretary of the Interior for purposes of identifying the properties described in paragraph (1).

(b) Limitation on transfer

(1) Notice

The Resolution Trust Corporation and the Federal Deposit Insurance Corporation may not sell or otherwise transfer any covered property unless the corporation concerned causes to be published in the Federal Register a notice of the availability of the property for purchase or other transfer that identifies the property and describes the location, characteristics, and size of the property.

(2) Expression of serious interest

During the 90-day period beginning on the date that notice under paragraph (1) concerning a covered property is first published, any governmental agency or qualified organization may submit to the corporation concerned a written notice of serious interest for the pur-

chase or other transfer of a particular covered property for which notice has been published. The notice of serious interest shall be in such form and include such information as the corporation concerned may prescribe.

(3) Prohibition of transfer

During the period under paragraph (2), a corporation concerned may not sell or otherwise transfer any covered property for which notice has been published under paragraph (1). Upon the expiration of such period, the corporation concerned may sell or otherwise transfer any covered property for which notice under paragraph (1) has been published if a notice of serious interest under paragraph (2) concerning the property has not been timely submitted.

(4) Offers and permitted transfer

If a notice of serious interest in a covered property is timely submitted pursuant to paragraph (2), the corporation concerned may not sell or otherwise transfer such covered property during the 90-day period beginning upon the expiration of the period under paragraph (2) except to a governmental agency or qualified organization for use primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes, unless all notices of serious interest under paragraph (2) have been withdrawn.

(c) Definitions

For purposes of this section:

(1) Corporation concerned

The term ''corporation concerned'' means—

(A) the Federal Deposit Insurance Corporation, with respect to matters relating to the Federal Deposit Insurance Corporation; and

(B) the Resolution Trust Corporation, with respect to matters relating to the Resolution Trust Corporation.

(2) Covered property

The term ''covered property'' means any property—

(A) to which—

(i) the Resolution Trust Corporation has acquired title in its corporate or receivership capacity; or

(ii) the Federal Deposit Insurance Corporation has acquired title in its corporate capacity or which was acquired by the former Federal Savings and Loan Insurance Corporation in its corporate capacity; and

(B) that—

(i) is located within the John H. Chafee Coastal Barrier Resources System; or

(ii) is undeveloped, greater than 50 acres in size, and adjacent to or contiguous with any lands managed by a governmental agency primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

(3) Governmental agency

The term ''governmental agency'' means any agency or entity of the Federal Government or a State or local government.

(4) Undeveloped

The term ''undeveloped'' means—

(A) containing few manmade structures and having geomorphic and ecological processes that are not significantly impeded by any such structures or human activity; and

(B) having natural, cultural, recreational, or scientific value of special significance.

(Pub. L. 101–591, § 10, Nov. 16, 1990, 104 Stat. 2939; Pub. L. 106–167, § 3(c)(5), Dec. 9, 1999, 113 Stat. 1804.)

CODIFICATION

Section was enacted as part of the Coastal Barrier Improvement Act of 1990, and not as part of the Federal Home Loan Bank Act which comprises this chapter.

AMENDMENTS

1999—Subsec. (c)(2)(B)(i). Pub. L. 106–167 substituted ''John H. Chafee Coastal Barrier Resources System'' for ''Coastal Barrier Resources System''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a)(1) of this section requiring submittal of an annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and pages 168 and 190 of House Document No. 103–7.

§ 1441b. Resolution Funding Corporation established

(a) Purpose

The purpose of the Resolution Funding Corporation is to provide funds to the Resolution Trust Corporation to enable the Resolution Trust Corporation to carry out the provisions of this chapter.

(b) Establishment

There is established a corporation to be known as the Resolution Funding Corporation.

(c) Management of Funding Corporation

(1) Directorate

The Funding Corporation shall be under the management of a Directorate composed of 3 members as follows:

(A) The director of the Office of Finance of the Federal Home Loan Banks (or the head of any successor office).

(B) 2 members selected by the Thrift Depositor Protection Oversight Board from among the presidents of the Federal Home Loan Banks.

(2) Terms

Of the 2 members appointed under paragraph (1)(B), 1 shall be appointed for an initial term of 2 years and 1 shall be appointed for an initial term of 3 years. Thereafter, such members shall be appointed for a term of 3 years.

(3) Vacancy

If any member leaves the office in which such member was serving when appointed to the Directorate—

(A) such member's service on the Directorate shall terminate on the date such member leaves such office; and

(B) the successor to the office of such member shall serve the remainder of such member's term.

(4) Equal representation of banks

No president of a Federal Home Loan Bank may be appointed to serve an additional term on the Directorate until such time as the presidents of each of the other Federal Home Loan Banks have served as many terms as the president of such bank.

(5) Chairperson

The Thrift Depositor Protection Oversight Board shall select the chairperson of the Directorate from among the 3 members of the Directorate.

(6) Staff

(A) No paid employees

The Funding Corporation shall have no paid employees.

(B) Powers

The Directorate may, with the approval of the Director authorize the officers, employees, or agents of the Federal Home Loan Banks to act for and on behalf of the Funding Corporation in such manner as may be necessary to carry out the functions of the Funding Corporation.

(7) Administrative expenses

(A) In general

All administrative expenses of the Funding Corporation, including custodian fees, shall be paid by the Federal Home Loan Banks.

(B) Pro rata distribution

The amount each Federal Home Loan Bank shall pay under subparagraph (A) shall be determined by the Thrift Depositor Protection Oversight Board by multiplying the total administrative expenses for any period by the percentage arrived at by dividing—

(i) the aggregate amount the Thrift Depositor Protection Oversight Board required such bank to invest in the Funding Corporation (as of the time of such determination) under paragraphs (4) and (5) of subsection (e) of this section (computed without regard to paragraphs (3) or (6) of such subsection); by

(ii) the aggregate amount the Thrift Depositor Protection Oversight Board required all Federal Home Loan Banks to invest (as of the time of such determination) under such paragraphs.

(8) Regulation by Thrift Depositor Protection Oversight Board

The Directorate of the Funding Corporation shall be subject to such regulations, orders, and directions as the Thrift Depositor Protection Oversight Board may prescribe.

(9) No compensation from Funding Corporation

Members of the Directorate of the Funding Corporation shall receive no pay, allowance, or benefit from the Funding Corporation for serving on the Directorate.

(d) Powers of Funding Corporation

The Funding Corporation shall have only the powers described in paragraphs (1) through (9), subject to the other provisions of this section and such regulations, orders, and directions as the Thrift Depositor Protection Oversight Board may prescribe:

(1) Issue stock

To issue nonvoting capital stock to the Federal Home Loan Banks.

(2) Purchase capital stock; transfer amounts

To purchase capital certificates issued by the Resolution Trust Corporation under section 1441a of this title, and to transfer amounts to the Resolution Trust Corporation pursuant to subsection (e)(8) of this section.

(3) Issue obligations

To issue debentures, bonds, or other obligations, and to borrow, to give security for any amount borrowed, and to pay interest on (and any redemption premium with respect to) any such obligation or amount.

(4) Impose assessments

To impose assessments in accordance with subsection (e)(7) of this section.

(5) Corporate seal

To adopt, alter, and use a corporate seal.

(6) Succession

To have succession until dissolved.

(7) Contracts

To enter into contracts.

(8) Authority to sue

To sue and be sued in its corporate capacity, and to complain and defend in any action brought by or against the Funding Corporation in any State or Federal court of competent jurisdiction.

(9) Incidental powers

To exercise such incidental powers not inconsistent with the provisions of this section and section 1441a of this title as are necessary and appropriate to carry out the provisions of this section.

(e) Capitalization of Funding Corporation, etc.

(1) In general

(A) Amount required

The Thrift Depositor Protection Oversight Board shall ensure that the aggregate of the amounts obtained under this subsection shall be sufficient so that—

(i) the Funding Corporation may transfer the amounts required under paragraph (8); and

(ii) the total of the face amounts (the amount of principal payable at maturity) of noninterest bearing instruments in the Funding Corporation Principal Fund are equal to the aggregate amount of principal on the obligations of the Funding Corporation.

(B) Purchases of stock by Federal Home Loan Banks

Each Federal Home Loan Bank shall purchase stock in the Funding Corporation at times and in amounts prescribed by the Thrift Depositor Protection Oversight Board.

(2) Par value; transferability

Each share of stock issued by the Funding Corporation to a Federal Home Loan Bank shall have a par value in an amount determined by the Thrift Depositor Protection Oversight Board and shall be transferable at not less than par value only among the Federal Home Loan Banks in the manner and to the extent prescribed by the Thrift Depositor Protection Oversight Board.

(3) Maximum investment amount limitation for each Federal Home Loan Bank

The cumulative amount of funds invested in nonvoting capital stock of the Funding Corporation by each Federal Home Loan Bank under paragraph (1) shall not at any time exceed the sum of the amounts calculated under subparagraphs (A) and (B), as adjusted in subparagraph (C), as follows:

(A) Reserves and undivided profits on December 31, 1988

The sum on December 31, 1988, of—

(i) the reserves maintained by such Bank pursuant to the reserve requirement contained in the first 2 sentences of section 1436 of this title (as in effect on December 31, 1988); and

(ii) the undivided profits of such Bank, minus the amounts invested in the capital stock of the Financing Corporation pursuant to section 1441 of this title.

(B) Subsequent additions to reserves and undivided profits

The amount, calculated until the date on which the Funding Corporation Principal Fund is fully funded, equal to—

(i) the sum of—

(I) the amounts added to reserves by such Bank after December 31, 1988, pursuant to the reserve requirement contained in the first 2 sentences of section 1436 of this title (as in effect on December 31, 1988); and

(II) the quarterly additions to undivided profits of the Bank after December 31, 1988; minus

(ii) the amounts invested by such Bank in the capital stock of the Financing Corporation after December 31, 1988, pursuant to the requirement contained in section 1441 of this title.

(C) Annual adjustment

The amounts in subparagraph (B) shall be adjusted as follows:

(i) Increase in limit

If the aggregate amount for all Federal Home Loan Banks determined under subparagraph (B)(i) is less than $300,000,000 per year, the limit for each Bank shall be increased by an amount determined by the Thrift Depositor Protection Oversight Board by multiplying the aggregate deficiency by the percentage applicable to such Bank arrived at in the manner described in paragraph (5).

(ii) Decrease in limit

If the aggregate amount for all Federal Home Loan Banks determined under subparagraph (B)(i) is more than $300,000,000 per year, the limit for each Bank shall be decreased by an amount determined by the Thrift Depositor Protection Oversight Board by multiplying the aggregate excess by the percentage applicable to such Bank arrived at in the manner described in paragraph (5).

(4) Pro rata distribution of first $1,000,000,000 invested in Funding Corporation by Federal Home Loan Banks

Of the first $1,000,000,000 of the aggregate that the Director (pursuant to section 1441 of this title) or the Thrift Depositor Protection Oversight Board (under this section) may require the Federal Home Loan Banks collectively to invest in the capital stock of the Financing Corporation or invest in the capital stock of the Funding Corporation, respectively, the amount which each Federal Home Loan Bank (or any successor to the Bank) shall invest shall be determined by the Director or the Thrift Depositor Protection Oversight Board (as the case may be) by multiplying the aggregate amount of such investment by all Banks by the percentage appearing in the following table for each such Bank:

Bank	Percentage
Federal Home Loan Bank of Boston	1.8629
Federal Home Loan Bank of New York	9.1006
Federal Home Loan Bank of Pittsburgh	4.2702
Federal Home Loan Bank of Atlanta	14.4007
Federal Home Loan Bank of Cincinnati	8.2653
Federal Home Loan Bank of Indianapolis	5.2863
Federal Home Loan Bank of Chicago	9.6886
Federal Home Loan Bank of Des Moines	6.9301
Federal Home Loan Bank of Dallas	8.8181
Federal Home Loan Bank of Topeka	5.2706
Federal Home Loan Bank of San Francisco	19.9644
Federal Home Loan Bank of Seattle	6.1422

(5) Pro rata distribution of amounts required to be invested in excess of $1,000,000,000

Of any amount which the Thrift Depositor Protection Oversight Board may require the Federal Home Loan Banks to invest in capital stock of the Funding Corporation under this subsection in excess of the $1,000,000,000 amount referred to in paragraph (4), the amount which each Federal Home Loan Bank (or any successor to such Bank) shall invest shall be determined by the Thrift Depositor Protection Oversight Board by multiplying the excess amount by the percentage arrived at by dividing—

(A) the sum of the total assets (as of the most recent December 31) held by all Savings Association Insurance Fund members as of the date of funding which are members of such Bank; by

(B) the sum of the total assets (as of such date) held by all Savings Association Insurance Fund members as of the date of funding which are members of a Federal Home Loan Bank.

(6) Special provisions relating to maximum amount limitations

(A) In general

If the amount of any Federal Home Loan Bank's allocation under paragraph (5) exceeds the maximum amount applicable with

respect to such Bank (in this paragraph referred to as a ''deficient Bank'') under paragraph (3) at the time of such determination (in this paragraph referred to as the ''excess amount'')—

(i) the Thrift Depositor Protection Oversight Board shall require each Federal Home Loan Bank that is not allocated an amount under paragraph (5) that exceeds its maximum under paragraph (3) (in this paragraph referred to as a ''remaining Bank'') to purchase stock in the Funding Corporation (in addition to the amount determined under paragraph (5) for such remaining Bank and subject to the maximum amount applicable with respect to such remaining Bank under paragraph (3) at the time of such determination) on behalf of the deficient Bank the amount determined under subparagraph (B);

(ii) the Thrift Depositor Protection Oversight Board shall require the deficient Bank to subsequently reimburse the remaining Banks out of its net earnings (or reimbursements received from other Banks) in the manner described in subparagraphs (C) and (D); and

(iii) the requirements contained in subparagraph (D) relating to the use of net earnings shall apply to the deficient Bank until such Bank has reimbursed the remaining Banks for all of the excess amount.

(B) Allocation of excess amount among remaining Federal Home Loan Banks

(i) In general

The amount of stock each remaining Federal Home Loan Bank shall be required to purchase under subparagraph (A)(i) is the amount determined by the Thrift Depositor Protection Oversight Board by multiplying the excess amount by the percentage arrived at by dividing—

(I) the cumulative amount of stock in the Funding Corporation purchased under this subsection by such remaining Bank at the time of such determination; by

(II) the aggregate of the cumulative amounts invested under this subsection by all remaining Banks at such time.

(ii) Reallocation

If the allocation under this subparagraph results in a remaining Bank exceeding its maximum amount under paragraph (3), such excess amount shall be reallocated to the other remaining Bank in accordance with this subparagraph.

(C) Reimbursement procedure

(i) In general

A Bank on whose behalf stock is purchased under subparagraph (A)(i) shall make payments annually from amounts, if any, in its reserve account (as described in subparagraph (D)) to each Bank that made payments on its behalf until a full reimbursement has been completed. A full reimbursement shall require repayment of the excess amounts invested by other Banks plus interest which shall accrue at a rate equal to the annual average cost of funds in the most recent year to all Federal Home Loan Banks and which shall begin to accrue 2 years after the investments under subparagraph (A)(i) are made.

(ii) Determination of amounts

The Thrift Depositor Protection Oversight Board shall annually determine the dollar amounts of such reimbursements by distributing the amount available for such reimbursements (at the time of such determination) from the reimbursing Bank to the Banks that made purchases on its behalf according to the shares of the reimbursing Bank's excess amount that the other Banks invested.

(D) Transfer to account for reimbursements required

(i) In general

Of the net earnings for any year of a Bank on whose behalf a purchase is made under subparagraph (A)(i) and any reimbursements received from other Banks, the amount necessary to make the reimbursements required under subparagraph (A)(ii) shall be placed in a reserve account (established in the manner prescribed by the Thrift Depositor Protection Oversight Board), which shall be available only for such reimbursements.

(ii) Limitation

The total amount placed in such reserve account in any year by any Bank shall not exceed an amount equal to 20 percent of the net earnings of such Bank for such year.

(f) Obligations of Funding Corporation

(1) Issuance

The Funding Corporation may issue bonds, notes, debentures, and similar obligations in an aggregate amount not to exceed $30,000,000,000. No obligation may be issued under this paragraph unless, at the time of issuance, the face amounts (the amount of principal payable at maturity) of noninterest bearing instruments in the Funding Corporation Principal Fund are equal to the aggregate amount of principal on the obligations of the Funding Corporation that will be outstanding following such issuance.

(2) Interest payments

The Funding Corporation shall pay the interest due on such obligations from funds obtained for such interest payments from the following sources:

(A) Earnings on certain assets

Earnings on assets of the Funding Corporation which are not invested in the Funding Corporation Principal Fund shall be used for interest payments on outstanding debt of the Funding Corporation.

(B) Proceeds from Resolution Trust Corporation

To the extent the amounts available pursuant to subparagraph (A) are insufficient to

cover the amount of interest payments, the Resolution Trust Corporation shall pay to the Funding Corporation—

(i) the liquidating dividends and payments made on claims received by the Resolution Trust Corporation from receiverships to the extent such proceeds are determined by the Thrift Depositor Protection Oversight Board to be in excess of funds presently necessary for resolution costs; and

(ii) any proceeds from warrants and participations acquired by the Resolution Trust Corporation.

(C) Payments by Federal home loan banks

(i) In general

To the extent that the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation in each calendar year, 20.0 percent of the net earnings of that Bank (after deducting expenses relating to section 1430(j) of this title and operating expenses).

(ii) Annual determination

The Director annually shall determine the extent to which the value of the aggregate amounts paid by the Federal home loan banks exceeds or falls short of the value of an annuity of $300,000,000 per year that commences on the issuance date and ends on the final scheduled maturity date of the obligations, and shall select appropriate present value factors for making such determinations, in consultation with the Secretary of the Treasury.

(iii) Payment term alterations

The Director shall extend or shorten the term of the payment obligations of a Federal home loan bank under this subparagraph as necessary to ensure that the value of all payments made by the Banks is equivalent to the value of an annuity referred to in clause (ii).

(iv) Term beyond maturity

If the Director extends the term of payment obligations beyond the final scheduled maturity date for the obligations, each Federal home loan bank shall continue to pay 20.0 percent of its net earnings (after deducting expenses relating to section 1430(j) of this title and operating expenses) to the Treasury of the United States until the value of all such payments by the Federal home loan banks is equivalent to the value of an annuity referred to in clause (ii). In the final year in which the Federal home loan banks are required to make any payment to the Treasury under this subparagraph, if the dollar amount represented by 20.0 percent of the net earnings of the Federal home loan banks exceeds the remaining obligation of the Banks to the Treasury, the Director shall reduce the percentage pro rata to a level sufficient to pay the remaining obligation.

(v) Semiannual reports

The Director shall report semiannually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the projected date for the completion of contributions required by this section.

(D) Proceeds from sale of assets

To the extent the amounts available pursuant to subparagraphs (A), (B), and (C) are insufficient to cover the amount of interest payments, the FSLIC Resolution Fund shall transfer to the Funding Corporation any net proceeds from the sale of assets received from the Resolution Trust Corporation, which shall be used by the Funding Corporation to pay such interest.

(E) Treasury backup

(i) In general

To the extent the amounts available pursuant to subparagraphs (A), (B), (C), and (D) are insufficient to cover the amount of interest payments, the Secretary of the Treasury shall pay to the Funding Corporation the additional amount due, which shall be used by the Funding Corporation to pay such interest.

(ii) Liability of Funding Corporation

In each instance where the Secretary is required to make a payment under this subparagraph to the Funding Corporation, the amount of the payment shall become a liability of the Funding Corporation to be repaid to the Secretary upon dissolution of the Funding Corporation (to the extent the Funding Corporation may have any remaining assets).

(iii) Appropriation of funds

There are hereby appropriated to the Secretary, for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to carry out clause (i).

(3) Principal payments

On maturity of an obligation issued under this subsection, the obligation shall be repaid by the Funding Corporation from the liquidation of noninterest bearing instruments held in the Funding Corporation Principal Fund.

(4) Proceeds to be transferred to Resolution Trust Corporation

Subject to terms and conditions approved by the Thrift Depositor Protection Oversight Board, the proceeds (less any discount, plus any premium, net of issuance costs) of any obligation issued by the Funding Corporation shall be used to—

(A) purchase the capital certificates issued by the Resolution Trust Corporation under section 1441a of this title; or

(B) refund any previously issued obligation the proceeds of which were transferred in the manner described in subparagraph (A).

(5) Investment of United States funds in obligations

Obligations issued under this section by the Funding Corporation, at the direction of the

Thrift Depositor Protection Oversight Board shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer of the United States.

(6) Market for obligations

All persons having the power to invest in, sell, underwrite, purchase for their own accounts, accept as security, or otherwise deal in obligations of the Federal Home Loan Banks shall also have the power to do so with respect to obligations of the Funding Corporation.

(7) Tax exempt status

(A) In general

Except as provided in subparagraph (B), obligations of the Funding Corporation shall be exempt from tax both as to principal and interest to the same extent as any obligation of a Federal Home Loan Bank is exempt from tax under section 1433 of this title.

(B) Exception

The Funding Corporation, like the Federal Home Loan Banks, shall be treated as an agency of the United States for purposes of the first sentence of section 3124(b) of title 31 (relating to determination of tax status of interest on obligations).

(8) Obligations not exempt securities

(A) In general

For purposes of the laws administered by the Securities and Exchange Commission, obligations of the Funding Corporation—

(i) shall not be considered to be securities issued or guaranteed by a person controlled or supervised by, or acting as an instrumentality of, the Government of the United States; and

(ii) shall not be considered to be ''exempted securities'' within the meaning of section 78c(a)(12)(A)(i) of title 15, except that such obligations shall be considered to be exempted securities for purposes of section 78*o* of title 15.

(B) Authority of Commission

Notwithstanding subparagraph (A), the Securities and Exchange Commission may, by rule or order, consistent with the public interest and the protection of investors, exempt securities issued by the Funding Corporation from the registration requirements of the Securities Act of 1933 [15 U.S.C. 77a et seq.], subject to such terms and conditions as the Commission may prescribe.

(9) Minority participation in public or negotiated offerings

The Thrift Depositor Protection Oversight Board and the Directorate shall ensure that minority owned or controlled commercial banks, investment banking firms, underwriters, and bond counsels throughout the United States have an opportunity to participate to a significant degree in any public or negotiated offering of obligations issued under this section.

(10) No full faith and credit of the United States

Obligations of the Funding Corporation shall not be obligations of, or guaranteed as to principal by, the Federal Home Loan Bank System, the Federal Home Loan Banks, the United States, or the Resolution Trust Corporation and the obligations shall so plainly state. The Secretary shall pay interest on such obligations as required pursuant to this subsection.

(g) Use and disposition of assets of Funding Corporation not transferred to Resolution Trust Corporation

(1) In general

Subject to regulations, restrictions, and limitations prescribed by the Thrift Depositor Protection Oversight Board, assets of the Funding Corporation which are not required to be invested in capital certificates issued by the Resolution Trust Corporation under section 1441a of this title and are not needed for current interest payments shall be invested in direct obligations of the United States issued by the Secretary.

(2) Separate account for zero coupon instruments held to ensure payment of principal

Except as provided in subsection (e)(8) of this section, the Funding Corporation shall invest amounts received pursuant to subsection (e) of this section in, and hold in a separate account to be known as the Funding Corporation Principal Fund, noninterest bearing instruments—

(A) which are direct obligations of the United States issued by the Secretary; and

(B) the total of the face amounts (the amount of principal payable at maturity) of which is approximately equal to the aggregate amount of principal on the obligations of the Funding Corporation.

(h) Miscellaneous provisions

(1) Treatment for certain purposes

Except as provided in subsection (f)(7)(B) of this section, the Funding Corporation shall be treated as a Federal Home Loan Bank for purposes of section 1433 of this title (to the extent such section relates to State, municipal, and local taxation) and section 1443 of this title.

(2) Federal Reserve banks as depositaries and fiscal agents

The Federal Reserve banks are authorized to act as depositaries for or fiscal agents or custodians of the Funding Corporation.

(3) Applicability of certain provisions relating to Government corporations

The Funding Corporation shall be treated, for purposes of sections 9105,[1] 9107, and 9108 of title 31, as a mixed-ownership Government corporation which has capital of the Government.

(4) Jurisdiction and power to remove

(A) Federal court jurisdiction

Notwithstanding any other provision of law, any civil action, suit, or proceeding to

[1] See References in Text note below.

which the Funding Corporation is a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction over such action, suit, or proceeding.

(B) Removal

The Funding Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the District of Columbia.

(i) Annual report

(1) In general

The Thrift Depositor Protection Oversight Board shall annually submit a full report of the operations, activities, budget, receipts, and expenditures of the Funding Corporation for the preceding 12-month period.

(2) Contents

The report required under paragraph (1) shall include—

(A) audited statements and any information necessary to make known the financial condition and operations of the Funding Corporation in accordance with generally accepted accounting principles;

(B) the financial operating plans and forecasts (including estimates of actual and future spending, and estimates of actual and future cash obligations) of the Funding Corporation taking into account its financial commitments, guarantees, and other contingent liabilities; and

(C) the results of the annual audit of the financial transactions of the Funding Corporation conducted by the Comptroller General pursuant to section 9105(a) of title 31.

(3) Submission to Congress and President

The Thrift Depositor Protection Oversight Board shall submit each annual report required under this subsection to the Congress and the President as soon as practicable after the end of the calendar year for which the report is made, but not later than June 30 of the year following such calendar year.

(j) Termination of Funding Corporation

(1) In general

The Funding Corporation shall be dissolved, as soon as practicable, after the maturity and full payment of all obligations issued by the Funding Corporation under this section.

(2) Authority of Thrift Depositor Protection Oversight Board to conclude affairs of Funding Corporation

Effective on the date of the dissolution of the Funding Corporation under paragraph (1), the Thrift Depositor Protection Oversight Board may exercise on behalf of the Funding Corporation any power of the Funding Corporation which the Thrift Depositor Protection Oversight Board determines to be necessary to settle and conclude the affairs of the Funding Corporation.

(k) Definitions

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

(1) Administrative expenses

The term ''administrative expenses'' does not include—

(A) any interest on, or any redemption premium with respect to, any obligation of the Funding Corporation; or

(B) issuance costs.

(2) Custodian fee

The term ''custodian fee'' means—

(A) any fee incurred by the Funding Corporation in connection with the transfer of any security to, or the maintenance of any security in, the segregated account established under subsection (g) of this section; and

(B) any other expense incurred by the Funding Corporation in connection with the establishment or maintenance of such account.

(3) Funding Corporation

The term ''Funding Corporation'' means the Resolution Funding Corporation established in subsection (b) of this section.

(4) Funding Corporation Principal Fund

The term ''Funding Corporation Principal Fund'' means the separate account established under subsection (g)(2) of this section.

(5) Issuance costs

The term ''issuance costs''—

(A) means issuance fees and commissions incurred by the Funding Corporation in connection with the issuance or servicing of any obligation of the Funding Corporation; and

(B) includes legal and accounting expenses, trustee and fiscal and paying agent charges, costs incurred in connection with preparing and printing offering materials, and advertising expenses, to the extent that any such cost or expense is incurred by the Funding Corporation in connection with issuing any obligation.

(6) Net earnings

The term ''net earnings'' means net earnings without reduction for chargeoffs or expenses incurred by a Federal Home Loan Bank for the purchase of capital stock of the Financing Corporation or payments relating to the Funding Corporation required by the Thrift Depositor Protection Oversight Board under subsections (e) and (f) of this section.

(7) Thrift Depositor Protection Oversight Board

The term ''Thrift Depositor Protection Oversight Board'' means—

(A) the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation under section 1441a of this title; and

(B) after the termination of the Resolution Trust Corporation—

(i) the Secretary of the Treasury;

(ii) the Chairman of the Board[2] of Governors of the Federal Reserve System; and

(iii) the Secretary of Housing and Urban Development.

(8) Secretary

The term ''Secretary'' means the Secretary of the Treasury.

[2] See 2008 Amendment note below.

(9) Undivided profits

The term ''undivided profits'' means earnings retained after dividends have been paid minus the sum of—

(A) that portion required to be added to reserves maintained pursuant to the first 2 sentences of section 1436 of this title; and

(B) the dollar amounts held by the respective Federal Home Loan Banks in special dividend stabilization reserves on December 31, 1985, as determined by the table set forth in section 1441(d)(7) of this title.

(*l*) Regulations

The Thrift Depositor Protection Oversight Board may prescribe any regulations necessary to carry out this section.

(July 22, 1932, ch. 522, §21B, as added Pub. L. 101–73, title V, §511(a), Aug. 9, 1989, 103 Stat. 394; amended Pub. L. 102–233, title III, §302(b), Dec. 12, 1991, 105 Stat. 1767; Pub. L. 102–550, title XVI, §1613(a)(7), (9), Oct. 28, 1992, 106 Stat. 4092; Pub. L. 104–208, div. A, title II, §2704(d)(5), (11)(E), (F), Sept. 30, 1996, 110 Stat. 3009–488, 3009–489; Pub. L. 106–102, title VI, §607(a), Nov. 12, 1999, 113 Stat. 1455; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §9(d)(7), (8), Feb. 15, 2006, 119 Stat. 3617; Pub. L. 110–289, div. A, title II, §§1204(8)–(10), (12), 1213, July 30, 2008, 122 Stat. 2786, 2791.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (f)(8)(B), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

Section 9105 of title 31, referred to in subsec. (h)(3), was amended generally by Pub. L. 101–576, title III, §305, Nov. 15, 1990, 104 Stat. 2853, and, as so amended, no longer contains provisions relating to mixed-ownership Government corporations having capital of the Government.

AMENDMENTS

2008—Subsecs. (c)(6)(B), (e)(4). Pub. L. 110–289, §1204(12), substituted ''Director'' for ''Federal Housing Finance Board'' wherever appearing.

Subsec. (f)(2)(C)(ii) to (iv). Pub. L. 110–289, §1204(8)–(10), substituted, in cls. (ii) and (iii), ''The Director'' for ''The Board'' and, in cl. (iv), ''the Director'' for ''the Board'' before ''extends'' and ''the Director'' for ''the Finance Board'' before ''shall reduce''.

Subsec. (f)(2)(C)(v). Pub. L. 110–289, §1213, added cl. (v).

Subsec. (k)(7)(B)(ii). Pub. L. 110–289, §1204(8), which directed amendment of the Federal Home Loan Bank Act (this chapter) by substituting ''the Director'' for ''the Board'' wherever appearing, was not executed to subsec. (k)(7)(B)(ii), to reflect the probable intent of Congress.

2006—Subsec. (e). Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(11)(E). See 1996 Amendment note below.

Subsec. (e)(5). Pub. L. 109–173, §9(d)(7)(A), inserted ''as of the date of funding'' after ''Savings Association Insurance Fund members'' in subpars. (A) and (B).

Subsec. (e)(7), (8). Pub. L. 109–173, §9(d)(7)(B), struck out pars. (7) and (8) which related to additional sources to fund the Funding Corporation Principal Fund and a transfer of funds to the Resolution Trust Corporation in fiscal year 1989, respectively.

Subsec. (f)(2)(C)(ii)(I), (II). Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(5). See 1996 Amendment note below.

Subsec. (k). Pub. L. 109–173, §9(d)(8)(A), in introductory provisions, inserted before colon '', the following definitions shall apply''.

Subsec. (k)(8) to (10). Pub. L. 109–173, §9(d)(8)(B), (C), redesignated pars. (9) and (10) as (8) and (9), respectively, and struck out heading and text of former par. (8). Text read as follows: ''The term 'Savings Association Insurance Fund member' means a Savings Association Insurance member as such term is defined by section 1817(*l*) of this title.''

Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(11)(F). See 1996 Amendment note below.

1999—Subsec. (f)(2)(C). Pub. L. 106–102 amended subpar. (C) generally, substituting present provisions for provisions requiring Federal Home Loan Banks to pay to the Funding Corporation each calendar year an amount sufficient to cover amount of interest payments made by the Corporation in that year, and provisions relating to determination of each Bank's individual share of such annual amount.

1996—Subsec. (e). Pub. L. 104–208, §2704(d)(11)(E), which directed the amendment of subsec. (e) by inserting, in par. (5), ''as of the date of funding'' after ''Savings Association Insurance Fund members'' in two places and by striking par. (7) and redesignating par. (8) as (7), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (f)(2)(C)(ii)(I), (II). Pub. L. 104–208, §2704(d)(5), which directed the amendment of subcls. (I) and (II) by substituting ''to insured depository institutions, and their successors, which were Savings Association Insurance Fund members on September 1, 1995'' for ''to Savings Associations Insurance Fund members'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below.

Subsec. (k)(8) to (10). Pub. L. 104–208, §2704(d)(11)(F), which directed the amendment of subsec. (k) by striking par. (8) and redesignating pars. (9) and (10) as (8) and (9), respectively, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1992—Subsecs. (c)(8), (j)(2). Pub. L. 102–550, §1613(a)(7), inserted ''Thrift Depositor Protection'' before ''Oversight'' in headings.

Subsec. (k)(7). Pub. L. 102–550, §1613(a)(9), substituted ''Thrift Depositor Protection Oversight'' for ''Oversight'' in heading.

1991—Pub. L. 102–233 substituted ''Thrift Depositor Protection Oversight Board'' for ''Oversight Board'' wherever appearing in text.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–102, title VI, §607(b), Nov. 12, 1999, 113 Stat. 1456, provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on January 1, 2000. Payments made by a Federal home loan bank before that effective date shall be counted toward the total obligation of that Bank under section 21B(f)(2)(C) of the Federal Home Loan Bank Act [12 U.S.C. 1441b(f)(2)(C)], as amended by this section.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Resolution Trust Corporation Refinancing, Re-

structuring, and Improvement Act of 1991, Pub. L. 102–233, as of Dec. 12, 1991, see section 1618 of Pub. L. 102–550, set out as a note under section 1441 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–233 effective Feb. 1, 1992, see section 318 of Pub. L. 102–233, set out as a note under section 1441 of this title.

ABOLITION OF THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Thrift Depositor Protection Oversight Board abolished, see section 14(a)–(d) of Pub. L. 105–216, set out as a note under section 1441a of this title.

§ 1442. Member financial information

(a) In general

In order to enable the Federal Home Loan Banks to carry out the provisions of this chapter, the Secretary of the Treasury, the Comptroller of the Currency, the Chairman of the Board[1] of Governors of the Federal Reserve System, the Chairperson of the Federal Deposit Insurance Corporation, the Chairperson of the National Credit Union Administration, and the Director of the Office of Thrift Supervision, upon request by any Federal Home Loan Bank—

(1) shall make available in confidence to any Federal Home Loan Bank, such reports, records, or other information as may be available, relating to the condition of any member of any Federal Home Loan Bank or any institution with respect to which any such Bank has had or contemplates having transactions under this chapter; and

(2) may perform through their examiners or other employees or agents, for the confidential use of the Federal Home Loan Bank, examinations of institutions for which such agency is the appropriate Federal banking regulatory agency.

In addition, the Comptroller of the Currency, the Chairman of the Board[1] of Governors of the Federal Reserve System, the Chairperson of the National Credit Union Administration, and the Director of the Office of Thrift Supervision shall make available to the Director or any Federal Home Loan Bank the financial reports filed by members of any Bank to enable the Director or a Bank to compile and publish cost of funds indices or other financial or statistical reports.

(b) Consent by members

Every member of a Federal Home Loan Bank shall, as a condition precedent thereto, be deemed—

(1) to consent to such examinations as the Bank or the Director may require for the purposes of this chapter;

(2) to agree that reports of examinations by local, State, or Federal agencies or institutions may be furnished by such authorities to the Bank or the Director upon request; and

(3) to agree to give the Bank or the Federal agency, upon request, such information as they may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of Bank members.

(July 22, 1932, ch. 522, § 22, 47 Stat. 739; Pub. L. 101–73, title VII, § 719, Aug. 9, 1989, 103 Stat. 422; Pub. L. 110–289, div. A, title II, § 1204(8), July 30, 2008, 122 Stat. 2786.)

AMENDMENTS

2008—Pub. L. 110–289 substituted ''the Director'' for ''the Board'' wherever appearing, except in two places in subsec. (a). See note below.

Subsec. (a). Pub. L. 110–289, which directed amendment of the Federal Home Loan Bank Act (this chapter) by substituting ''the Director'' for ''the Board'' wherever appearing, was not executed to subsec. (a) in two places where ''the Board'' appeared before ''of Governors of the Federal Reserve System'', to reflect the probable intent of Congress.

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows:

''(a) In order to enable the board to carry out the provisions of this chapter, the Treasury Department, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal reserve banks are authorized, under such conditions as they may prescribe, to make available to the board in confidence for its use and the use of any Federal Home Loan Bank such reports, records, or other information as may be available, relating to the condition of institutions with respect to which any such Federal Home Loan Bank has had or contemplates having transactions under this chapter or relating to persons whose obligations are offered to or held by any Federal Home Loan Bank, and to make through their examiners or other employees, for the confidential use of the board or any Federal Home Loan Bank, examinations of such institutions.

''(b) Every institution which shall apply for advances under this chapter shall, as a condition precedent thereto, consent to such examination as the bank or the board may require for the purposes of this chapter and/or that reports of examinations by constituted authorities may be furnished by such authorities to the bank or the board upon request therefor.''

§ 1442a. Repealed. Pub. L. 106–102, title VI, § 606(c), Nov. 12, 1999, 113 Stat. 1454

Section, act July 22, 1932, ch. 522, § 22A, as added Aug. 10, 1987, Pub. L. 100–86, title IV, § 407(d), 101 Stat. 617, related to informal review of certain supervisory decisions.

§ 1443. Forms of bank stock and obligations

Any stock, debentures, bonds, notes, or other obligations issued under the authority of this chapter may be issued in uncertificated form, utilizing a book entry method, or in certificated form under such rules, regulations, or guidelines as the Director[1] may provide.

(July 22, 1932, ch. 522, § 23, 47 Stat. 739; Pub. L. 101–73, title VII, § 717, Aug. 9, 1989, 103 Stat. 422; Pub. L. 110–289, div. A, title II, § 1204(8), (12), July 30, 2008, 122 Stat. 2786.)

AMENDMENTS

2008—Pub. L. 110–289, which directed amendment of the Federal Home Loan Bank Act (this chapter) by substituting ''the Director'' for ''the Board'' and ''Director'' for ''Federal Housing Finance Board'' wherever appearing, was executed to this section by substituting ''the Director'' for ''the Board of Directors of the Federal Housing Finance Board'', to reflect the probable intent of Congress.

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows: ''In order that

[1] See 2008 Amendment note below.

[1] See 2008 Amendment note below.

the Federal Home Loan Banks may be supplied with such forms of stock, debentures, and bonds as may be necessary under this chapter, the Secretary of the Treasury is authorized to prepare such forms thereof as shall be suitable and approved by the board, which shall be held in the Treasury subject to delivery, upon order of the board. The engraved plates, dies, and bed pieces executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The board shall reimburse the Secretary of the Treasury for any expense incurred in the preparation, custody, and delivery of such stock, debentures, and bonds.''

§ 1444. Eligibility to membership in banks

(a) Any organization organized under the laws of any State and subject to inspection and regulation under the banking or similar laws of such State shall be eligible to become a member under this chapter if—

(1) it is organized solely for the purpose of supplying credit to its members;

(2) its membership (A) is confined exclusively to building and loan associations, savings and loan associations, cooperative banks, and homestead associations; or (B) is confined exclusively to savings banks; and

(3) of the institutions to which its membership is confined which are organized within the State, its membership includes a majority of such institutions.

(b) In all respects, but subject to such additional rules and regulations as the Director may provide, any such organization shall be a member for the purposes of this chapter.

(July 22, 1932, ch. 522, § 24, 47 Stat. 739; Pub. L. 101–73, title VII, § 701(b)(1), (3)(A), Aug. 9, 1989, 103 Stat. 412; Pub. L. 110–289, div. A, title II, § 1204(8), July 30, 2008, 122 Stat. 2786.)

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–289 substituted ''the Director'' for ''the Board''.

1989—Subsec. (b). Pub. L. 101–73 substituted ''Board'' for ''board''.

§ 1445. Succession of Federal Home Loan Banks

Each Federal Home Loan Bank shall have succession until dissolved by the Director under this chapter or by further act of Congress.

(July 22, 1932, ch. 522, § 25, 47 Stat. 740; Pub. L. 101–73, title VII, § 701(b)(1), (3)(A), Aug. 9, 1989, 103 Stat. 412; Pub. L. 110–289, div. A, title II, § 1204(8), July 30, 2008, 122 Stat. 2786.)

AMENDMENTS

2008—Pub. L. 110–289 substituted ''the Director'' for ''the Board''.

1989—Pub. L. 101–73 substituted ''Board'' for ''board''.

§ 1446. Liquidation or reorganization; acquisition of assets by other banks; assumption of liabilities

(a) In general

Whenever the Director finds that the efficient and economical accomplishment of the purposes of this chapter will be aided by such action, and in accordance with such rules, regulations, and orders as the Director may prescribe, any Federal Home Loan Bank may be liquidated or reorganized, and its stock paid off and retired in whole or in part in connection therewith after paying or making provision for the payment of its liabilities. In the case of any such liquidation or reorganization, any other Federal Home Loan Bank may, with the approval of the Director, acquire assets of any such liquidated or reorganized bank and assume liabilities thereof, in whole or in part. At least 30 days prior to liquidating or reorganizing any Bank under this section, the Director shall notify the Bank of its determination and the facts and circumstances upon which such determination is based. The Bank may contest that determination in a hearing before the Director, in which all issues shall be determined on the record pursuant to section 554 of title 5.

(b) Voluntary mergers authorized

(1) In general

Any Federal Home Loan Bank may, with the approval of the Director and of the boards of directors of the Banks involved, merge with another Bank.

(2) Regulations required

The Director shall promulgate regulations establishing the conditions and procedures for the consideration and approval of any voluntary merger described in paragraph (1), including the procedures for Bank member approval.

(July 22, 1932, ch. 522, § 26, 47 Stat. 740; Pub. L. 101–73, title VII, § 701(b)(1), (3)(A), Aug. 9, 1989, 103 Stat. 412; Pub. L. 110–289, div. A, title II, §§ 1204(8), 1209, 1214, July 30, 2008, 122 Stat. 2786, 2789, 2791.)

AMENDMENTS

2008—Pub. L. 110–289, § 1209, designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 110–289, § 1204(8), substituted ''the Director'' for ''the Board'' wherever appearing.

Subsec. (a). Pub. L. 110–289, § 1214, which directed insertion of ''At least 30 days prior to liquidating or reorganizing any Bank under this section, the Director shall notify the Bank of its determination and the facts and circumstances upon which such determination is based. The Bank may contest that determination in a hearing before the Director, in which all issues shall be determined on the record pursuant to section 554 of title 5.'' at the end of this section, was executed by making the insertion at the end of subsec. (a), to reflect the probable intent of Congress and the amendment by Pub. L. 110–289, § 1209. See above.

1989—Pub. L. 101–73 substituted ''Board'' for ''board'' wherever appearing.

§ 1447. Repealed. Pub. L. 106–102, title VI, § 606(c), Nov. 12, 1999, 113 Stat. 1454

Section, act July 22, 1932, ch. 522, § 27, as added Pub. L. 103–204, § 18, Dec. 17, 1993, 107 Stat. 2401, related to Housing Opportunity Hotline program.

A prior section 1447, act July 22, 1932, ch. 522, § 27, 47 Stat. 740, related to institutions authorized to subscribe for stock of banks, prior to repeal by Pub. L. 101–73, title VII, § 704(c), Aug. 9, 1989, 103 Stat. 416.

§ 1448. Effect of partial invalidity of chapter

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other per-

sons or circumstances, shall not be affected thereby.

(July 22, 1932, ch. 522, § 28, 47 Stat. 740.)

§ 1449. Reservation of right to amend or repeal chapter

The right to alter, amend, or repeal this chapter is expressly reserved.

(July 22, 1932, ch. 522, § 30, 47 Stat. 741.)

CHAPTER 11A—FEDERAL HOME LOAN MORTGAGE CORPORATION

Sec.
1451. Definitions.
1452. Federal Home Loan Mortgage Corporation.
1453. Capitalization of Federal Home Loan Mortgage Corporation.
1454. Purchase and sale of mortgages; residential mortgages; conventional mortgages; terms and conditions of sale or other disposition; authority to enter into, perform, and carry out transactions.
1455. Obligations and securities of the Corporation.
1456. Immunity of Corporation; audits and reporting requirements; data collection; Housing Advisory Council.
1457. Prohibited activities; penalties for violations by organizations, officers and members of organizations, and individuals.
1458. Territorial applicability.
1459. Separability.

§ 1451. Definitions

As used in this chapter—

(a) The term ''Board of Directors'' means the Board of Directors of the Corporation.

(b) The term ''Corporation'' means the Federal Home Loan Mortgage Corporation created by this chapter.

(c) The term ''law'' includes any law of the United States or of any State (including any rule of law or of equity).

(d) The term ''mortgage'' includes such classes of liens as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located or a manufactured home that is personal property under the laws of the State in which the manufactured home is located together with the credit instruments, if any, secured thereby, and includes interests in mortgages.

(e) The term ''organization'' means any corporation, partnership, association, business trust, or business entity.

(f) The term ''prescribe'' means to prescribe by regulations or otherwise.

(g) The term ''property'' includes any property, whether real, personal, mixed, or otherwise, including without limitation on the generality of the foregoing choses in action and mortgages, and includes any interest in any of the foregoing.

(h) The term ''residential mortgage'' means a mortgage which (1) is a mortgage on real estate, in fee simple or under a leasehold having such term as may be prescribed by the Corporation, upon which there is located a structure or structures designed in whole or in part for residential use, or which comprises or includes one or more condominium units or dwelling units (as defined by the Corporation) and (2) has such characteristics and meets such requirements as to amount, term, repayment provisions, number of families, status as a lien on such real estate, and otherwise, as may be prescribed by the Corporation. The term ''residential mortgage'' also includes a loan or advance of credit insured under title I of the National Housing Act [12 U.S.C. 1702 et seq.] whose original proceeds are applied for in order to finance energy conserving improvements, or the addition of a solar energy system, to residential real estate. The term ''residential mortgage'' also includes a loan or advance of credit for such purposes, or purchased from any public utility carrying out activities in accordance with the requirements of title II of the National Energy Conservation Policy Act [42 U.S.C. 8211 et seq.] if the residential mortgage to be purchased is a loan or advance of credit the original proceeds of which are applied for in order to finance the purchase and installation of residential energy conservation measures (as defined in section 210(11)[1] of the National Energy Conservation Policy Act) in residential real estate, not having the benefit of such insurance and includes loans made where the lender relies for purposes of repayment primarily on the borrower's general credit standing and forecast of income, with or without other security. The term ''residential mortgage'' is also deemed to include a secured loan or advance of credit the proceeds of which are intended to finance the rehabilitation, renovation, modernization, refurbishment, or improvement of properties as to which the Corporation may purchase a ''residential mortgage'' as defined under the first sentence of this subsection. Such term shall also include other secured loans that are secured by a subordinate lien against a property as to which the Corporation may purchase a residential mortgage as defined under the first sentence of this subsection. A ''secured loan or advance of credit'' is one in which a security interest is taken in the rehabilitated, renovated, modernized, refurbished, or improved property. Such term shall also include a mortgage, lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of title 26, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation. The term ''residential mortgage'' also includes a loan or advance of credit secured by a mortgage or other lien on a manufactured home that is the principal residence of the borrower, without regard to whether the security property is real, personal, or mixed.

(i) The term ''conventional mortgage'' means a mortgage other than a mortgage as to which the Corporation has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

(j) The term ''security'' has the meaning ascribed to it by section 77b of title 15.

(k) The term ''State'', whether used as a noun or otherwise, includes the several States, the

[1] See References in Text note below.

District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(*l*) The term ''mortgage insurance program'' includes, in the case of a residential mortgage secured by a manufactured home, any manufactured home lending program under title I of the National Housing Act [12 U.S.C. 1702 et seq.].

(Pub. L. 91–351, title III, §302, July 24, 1970, 84 Stat. 451; Pub. L. 95–619, title II, §245, Nov. 9, 1978, 92 Stat. 3233; Pub. L. 95–630, title XVII, §1702, Nov. 10, 1978, 92 Stat. 3718; Pub. L. 96–153, title III, §316(c), Dec. 21, 1979, 93 Stat. 1118; Pub. L. 96–294, title V, §534(a)(2), June 30, 1980, 94 Stat. 741; Pub. L. 98–440, title II, §§202, 203(b)(1), 204, Oct. 3, 1984, 98 Stat. 1693–1695; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–550, title XIII, §1382(b), Oct. 28, 1992, 106 Stat. 4002.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsecs. (h) and (*l*), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title I of the National Housing Act is classified generally to subchapter I (§1702 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The National Energy Conservation Policy Act, referred to in subsec. (h), is Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3208, as amended. Title II of the Act is classified principally to subchapter II (§8211 et seq.) of chapter 91 of Title 42, The Public Health and Welfare. Section 210 of the Act (42 U.S.C. 8211) was omitted from the Code pursuant to section 8229 of Title 42 which terminated authority under that section June 30, 1989. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of Title 42 and Tables.

AMENDMENTS

1992—Subsec. (h). Pub. L. 102–550 substituted ''purchased from any public utility carrying out activities in accordance with the requirements of title II of the National Energy Conservation Policy Act if the residential mortgage to be purchased is a loan or advance of credit the original proceeds of which are applied for in order to finance the purchase and installation of residential energy conservation measures (as defined in section 210(11) of the National Energy Conservation Policy Act) in residential real estate'' for ''made by a public utility and purchased by the Corporation pursuant to the first sentence of section 1454(a)(1) of this title''.

1986—Subsec. (h). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1984—Subsec. (d). Pub. L. 98–440, §202(a), inserted reference to a manufactured home that is personal property under the laws of the State in which the manufactured home is located.

Subsec. (h). Pub. L. 98–440, §203(b)(1), substituted ''status as a lien'' for ''status as a first lien'' and ''Such term shall also include other secured loans that are secured by a subordinate lien against a property as to which the Corporation may purchase a residential mortgage as defined under the first sentence of this subsection'' for ''The maximum principal obligation of loans purchased by virtue of the preceding sentence shall not exceed the dollar limits prescribed by the Federal Home Loan Bank Board with respect to similar types of loans made by Federal savings and loan associations''.

Pub. L. 98–440, §202(b), inserted provision that term ''residential mortgage'' also includes a loan or advance of credit secured by a mortgage or other lien on a manufactured home that is the principal residence of the borrower, without regard to whether the security property is real, personal, or mixed.

Subsec. (i). Pub. L. 98–440, §204, substituted ''any of its agencies or instrumentalities'' for ''a State or an agency or instrumentality of either''.

Subsec. (*l*). Pub. L. 98–440, §202(c), added subsec. (*l*).

1980—Subsec. (h). Pub. L. 96–294 inserted provision relating to loans or advances of credit made by a public utility and purchased by the Corporation pursuant to section 1454(a)(1) of this title.

1979—Subsec. (h). Pub. L. 96–153 expanded definition of residential mortgage to include a mortgage, lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

1978—Subsec. (h). Pub. L. 95–630 inserted provisions expanding definition of ''residential mortgage'' to include a secured loan or advance of credit the proceeds of which are intended to finance the rehabilitation, renovation, modernization, refurbishment, or improvement of properties as to which the Corporation may purchase a ''residential mortgage'' as defined under first sentence of this subsection, provisions relating to the maximum principal obligation of loans, and provisions defining ''secured loan or advance of credit''.

Pub. L. 95–619 inserted provisions relating to loans or advances of credit insured under title I of the National Housing Act whose original proceeds were applied for to finance energy conserving improvements or solar energy systems and provisions relating to certain loans or advances of credit for such purposes not so insured.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1703 of Pub. L. 95–630 provided that: ''This title [amending sections 1451 and 1464 of this title] shall take effect upon enactment [Nov. 10, 1978].''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–110, title II, §201, Dec. 26, 1981, 95 Stat. 1514, provided that: ''This title [amending sections 1454 and 1717 of this title and enacting provisions set out as a note under section 1454 of this title] may be cited as the 'Mortgage Purchase Amendments of 1981'.''

SHORT TITLE AND STATEMENT OF PURPOSE

Section 301 of title III of Pub. L. 91–351, as amended by Pub. L. 101–73, title VII, §731(a), Aug. 9, 1989, 103 Stat. 429; Pub. L. 102–550, title XIII, §1382(a), Oct. 28, 1992, 106 Stat. 4002, provided that:

''(a) This title [enacting this chapter] may be cited as the 'Federal Home Loan Mortgage Corporation Act'.

''(b) It is the purpose of the Federal Home Loan Mortgage Corporation—

''(1) to provide stability in the secondary market for residential mortgages;

''(2) to respond appropriately to the private capital market;

''(3) to provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and

''(4) to promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.''

REGULATIONS

Pub. L. 102–550, title XIII, §1383, Oct. 28, 1992, 106 Stat. 4008, directed the Secretary of Housing and Urban Development and the Director to issue final regulations

to implement amendments by subtitle D (§§ 1381–1383) of title XIII of Pub. L. 102–550 not later than the expiration of the 18-month period beginning on Oct. 28, 1992, prior to repeal by Pub. L. 110–289, div. A, title I, § 1161(a)(4), July 30, 2008, 122 Stat. 2779.

§ 1452. Federal Home Loan Mortgage Corporation

(a) Creation; Board of Directors; policies; principal office; membership; term; vacancies

(1) There is hereby created the Federal Home Loan Mortgage Corporation, which shall be a body corporate under the direction of a Board of Directors. Within the limitations of law and regulation, the Board of Directors shall determine the general policies that govern the operations of the Corporation. The principal office of the Corporation shall be in the District of Columbia or at any other place determined by the Corporation.

(2)(A) The Board of Directors of the Corporation shall consist of 13 persons, or such other number as the Director determines appropriate, who shall be elected annually by the voting common stockholders. Except to the extent action under section 4636a of this title temporarily results in a lesser number, the Board of Directors shall at all times have as members at least 1 person from the homebuilding industry, at least 1 person from the mortgage lending industry, at least 1 person from the real estate industry, and at least 1 person from an organization that has represented consumer or community interests for not less than 2 years or 1 person who has demonstrated a career commitment to the provision of housing for low-income households.

(B) Each member of the Board of Directors shall be elected for a term ending on the date of the next annual meeting of the voting common stockholders.

(C) Any seat on the Board of Directors that becomes vacant after the annual election of the directors shall be filled by the Board of Directors, but only for the unexpired portion of the term.

(D) Any member of the Board of Directors who is a full-time officer or employee of the Federal Government shall not, as such member, receive compensation for services as such a member.

(b) Capital distributions; limitation

(1) Except as provided in paragraph (2), the Corporation may make such capital distributions (as such term is defined in section 4502 of this title) as may be declared by the Board of Directors.

(2) The Corporation may not make any capital distribution that would decrease the total capital of the Corporation (as such term is defined in section 4502 of this title) to an amount less than the risk-based capital level for the Corporation established under section 4611 of this title or that would decrease the core capital of the Corporation (as such term is defined in section 4502 of this title) to an amount less than the minimum capital level for the Corporation established under section 4612 of this title, without prior written approval of the distribution by the Director of the Federal Housing Finance Agency.

(c) Powers of the Corporation

The Corporation shall have power (1) to adopt, alter, and use a corporate seal; (2) to have succession until dissolved by Act of Congress; (3) to make and enforce such bylaws, rules, and regulations as may be necessary or appropriate to carry out the purposes or provisions of this chapter; (4) to make and perform contracts, agreements, and commitments; (5) to prescribe and impose fees and charges for services by the Corporation; (6) to settle, adjust, and compromise, and with or without consideration or benefit to the Corporation to release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the Corporation; (7) to sue and be sued, complain and defend, in any State, Federal, or other court; (8) to acquire, take, hold, and own, and to deal with and dispose of any property; and (9) to determine its necessary expenditures and the manner in which the same shall be incurred, allowed, and paid, and appoint, employ, and fix and provide for the compensation and benefits of officers, employees, attorneys, and agents as the Board of Directors determines reasonable and comparable with compensation for employment in other similar businesses (including publicly held financial institutions or other major financial services companies) involving similar duties and responsibilities, except that a significant portion of potential compensation of all executive officers (as such term is defined in subsection (h)(3) of this section) of the Corporation shall be based on the performance of the Corporation, all without regard to any other law except as may be provided by the Corporation or by laws hereafter enacted by the Congress expressly in limitation of this sentence. The Corporation, with the consent of any such department, establishment, or instrumentality, including any field services thereof, may utilize and act through any such department, establishment, or instrumentality and may avail itself of the use of information, services, facilities, and personnel thereof, and may pay compensation therefor, and all of the foregoing are hereby authorized to provide the same to the Corporation as it may request.

(d) Investment of funds; designation as depositary, custodian, or agent for Corporation of any Federal Reserve bank, Federal home loan bank, or any bank designated as depositary of public money

Funds of the Corporation may be invested in such investments as the Board of Directors may prescribe. Any Federal Reserve bank or Federal home loan bank, or any bank as to which at the time of its designation by the Corporation there is outstanding a designation by the Secretary of the Treasury as a general or other depositary of public money, may be designated by the Corporation as a depositary or custodian or as a fiscal or other agent of the Corporation, and is hereby authorized to act as such depositary, custodian, or agent. When designated for that purpose by the Secretary of the Treasury, the Corporation shall be a depositary of public money, under such regulations as may be prescribed by the Secretary of the Treasury, and may also be employed as fiscal or other agent of the United

States, and it shall perform all such reasonable duties as such depositary or agent as may be required of it.

(e) Exemption from Federal, State, and local taxation; exception; applicability of other provisions

The Corporation, including its franchise, activities, capital, reserves, surplus, and income, shall be exempt from all taxation now or hereafter imposed by any territory, dependency, or possession of the United States or by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(f) Actions by and against the Corporation; jurisdiction; removal of actions; attachment or execution issued against the Corporation

Notwithstanding section 1349 of title 28 or any other provision of law, (1) the Corporation shall be deemed to be an agency included in sections 1345 and 1442 of such title 28; (2) all civil actions to which the Corporation is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value; and (3) any civil or other action, case or controversy in a court of a State, or in any court other than a district court of the United States, to which the Corporation is a party may at any time before the trial thereof be removed by the Corporation, without the giving of any bond or security, to the district court of the United States for the district and division embracing the place where the same is pending, or, if there is no such district court, to the district court of the United States for the district in which the principal office of the Corporation is located, by following any procedure for removal of causes in effect at the time of such removal.

(g) Mortgages, obligations, or other securities sold by Corporation deemed lawful investments for security purposes

All mortgages, obligations, or other securities which are or have been sold by the Corporation pursuant to section 1454 or section 1455 of this title shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposits of which shall be under the authority and control of the United States or any officers thereof.

(h) Report on comparability of compensation policies and financial performance of Corporation and payments earned by executive officers; prohibition on payments to terminated executive officers

(1) Not later than June 30, 1993, and annually thereafter, the Corporation shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on (A) the comparability of the compensation policies of the Corporation with the compensation policies of other similar businesses, (B) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the Corporation's proxy statement for the annual meeting of shareholders for the preceding year) earned by executive officers of the Corporation during the preceding year that was based on the Corporation's performance, and (C) the comparability of the Corporation's financial performance with the performance of other similar businesses. The report shall include a copy of the Corporation's proxy statement for the annual meeting of shareholders for the preceding year.

(2) Notwithstanding the first sentence of subsection (c) of this section, after October 28, 1992, the Corporation may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of any executive officer of the Corporation, unless such agreement or contract is approved in advance by the Director of the Federal Housing Finance Agency. The Director may not approve any such agreement or contract unless the Director determines that the benefits provided under the agreement or contract are comparable to benefits under such agreements for officers of other public and private entities involved in financial services and housing interests who have comparable duties and responsibilities. For purposes of this paragraph, any renegotiation, amendment, or change after October 28, 1992, to any such agreement or contract entered into on or before October 28, 1992, shall be considered entering into an agreement or contract.

(3) For purposes of this subsection, the term ''executive officer'' has the meaning given the term in section 4502 of this title.

(4) Notwithstanding any other provision of this section, the Corporation shall not transfer, disburse, or pay compensation to any executive officer, or enter into an agreement with such executive officer, without the approval of the Director, for matters being reviewed under section 4518 of this title.

(Pub. L. 91–351, title III, § 303, July 24, 1970, 84 Stat. 452; Pub. L. 96–153, title III, § 316(b), Dec. 21, 1979, 93 Stat. 1118; Pub. L. 98–369, div. A, title I, § 177(a), July 18, 1984, 98 Stat. 709; Pub. L. 101–73, title VII, § 731(b)(1), (c), Aug. 9, 1989, 103 Stat. 429, 431; Pub. L. 102–550, title XIII, § 1382(c)(1), (d)–(h), Oct. 28, 1992, 106 Stat. 4002–4004; Pub. L. 110–289, div. A, title I, §§ 1113(b)(2), 1153(b)(3), 1161(c)(1), 1162(b)(1), July 30, 2008, 122 Stat. 2678, 2775, 2780, 2781.)

AMENDMENTS

2008—Subsec. (a)(2)(A). Pub. L. 110–289, § 1162(b)(1)(A), substituted ''13 persons, or such other number as the Director determines appropriate, who'' for ''18 persons, 5 of whom shall be appointed annually by the President of the United States and the remainder of whom'' in first sentence and struck out ''appointed by the President of the United States'' after ''as members'' in second sentence.

Pub. L. 110–289, § 1153(b)(3), substituted ''Except to the extent action under section 4636a of this title temporarily results in a lesser number, the'' for ''The'' in second sentence.

Subsec. (a)(2)(B). Pub. L. 110–289, § 1162(b)(1)(B), struck out ''such or'' before ''elected'' and '', except that any

appointed member may be removed from office by the President for good cause'' before period at end.

Subsec. (a)(2)(C). Pub. L. 110–289, §1162(b)(1)(C), struck out ''elective'' after ''Any'' in second sentence and struck out first sentence which read as follows: ''Any appointive seat on the Board of Directors that becomes vacant shall be filled by appointment by the President of the United States, but only for the unexpired portion of the term.''

Subsecs. (b)(2), (h)(2). Pub. L. 110–289, §1161(c)(1), substituted ''Director of the Federal Housing Finance Agency'' for ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development''.

Subsec. (h)(4). Pub. L. 110–289, §1113(b)(2), added par. (4).

1992—Subsec. (a)(2)(A). Pub. L. 102–550, §1382(c)(1), in second sentence, struck out ''and'' after ''mortgage lending industry,'' and inserted before period '', and at least 1 person from an organization that has represented consumer or community interests for not less than 2 years or 1 person who has demonstrated a career commitment to the provision of housing for low-income households''.

Subsec. (a)(2)(B). Pub. L. 102–550, §1382(d), inserted before period at end '', except that any appointed member may be removed from office by the President for good cause''.

Subsec. (b). Pub. L. 102–550, §1382(e), amended subsec. (b) generally, substituting present provisions for provisions which outlined general regulatory authority of the Secretary of Housing and Urban Development over Corporation in such areas as mortgage purchases, dividends, examinations and audits, outstanding obligations, conversion of stock and debt obligations, residential mortgage transactions, and approval or disapproval of requests.

Subsec. (c). Pub. L. 102–550, §1382(f)(1), (g), in cl. (9) of first sentence, inserted ''as the Board of Directors determines reasonable and comparable with compensation for employment in other similar businesses (including publicly held financial institutions or other major financial services companies) involving similar duties and responsibilities, except that a significant portion of potential compensation of all executive officers (as such term is defined in subsection (h)(3) of this section) of the Corporation shall be based on the performance of the Corporation'' and struck out after first sentence ''Nothing in this chapter or any other law shall be construed to prevent the appointment, employment, and provision for compensation and benefits, as an officer, employee, attorney, or agent of the Corporation, of any officer, employee, attorney, or agent of any department, establishment, or corporate or other instrumentality of the Government, including any Federal home loan bank or member thereof.''

Subsec. (f). Pub. L. 102–550, §1382(h), struck out at end ''No attachment or execution shall be issued against the Corporation or any of its property before final judgment in any State, Federal, or other court.''

Subsec. (h). Pub. L. 102–550, §1382(f)(2), added subsec. (h).

1989—Subsec. (a). Pub. L. 101–73, §731(b)(1), amended subsec. (a) generally, reorganizing provisions into pars. (1) and (2), and substituting provisions setting forth general policies as governing Board, membership requirements and vacancies, for provisions setting forth status of members, liabilities, and conditions and limitations.

Subsecs. (b) to (g). Pub. L. 101–73, §731(c), added subsec. (b) and redesignated former subsecs. (b) to (f) as (c) to (g), respectively.

1984—Subsec. (d). Pub. L. 98–369 struck out ''by the United States,'' before ''by any territory'', substituted ''possession of the United States'' for ''possession thereof,'' and struck out ''The provisions of this subsection shall be applicable without regard to any other law, including without limitation on the generality of the foregoing section 3301 of title 26, except laws hereafter enacted by Congress expressly in limitation of this subsection.''

1979—Subsec. (f). Pub. L. 96–153 added subsec. (f).

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1382(c)(2) of Pub. L. 102–550 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to the first annual appointment by the President of members to the Board of Directors of the Federal Home Loan Mortgage Corporation that occurs after the date of the enactment of this Act [Oct. 28, 1992].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369, effective Jan. 1, 1985, see section 177(d) of Pub. L. 98–369, set out as a note under section 172 of Title 26, Internal Revenue Code.

TRANSITIONAL PROVISIONS

Pub. L. 110–289, div. A, title I, §1162(b)(2), July 30, 2008, 122 Stat. 2782, provided that: ''The amendments made by paragraph (1) [amending this section] shall not apply to any appointed position of the board of directors of the Federal Home Loan Mortgage Corporation until the expiration of the annual term for such position during which the effective date under section 1163 [set out as an Effective Date of 2008 Amendment note under section 3132 of Title 5, Government Organization and Employees] occurs.''

Section 731(b)(2) of Pub. L. 101–73 provided that:

''(A) INTERIM BOARD.—

''(i) ESTABLISHMENT.—There shall be an interim Board of Directors of the Federal Home Loan Mortgage Corporation, which shall serve from the date of the enactment of this Act [Aug. 9, 1989] until the date of the 1st meeting of the voting common shareholders of the Corporation at which the first election of the directors elected by the shareholders occurs.

''(ii) MEMBERS.—The interim Board of Directors of the Federal Home Loan Mortgage Corporation shall consist of—

''(I) the President of the Corporation; and

''(II) the persons who were (on the day before the date of the enactment of this Act) the Chairman of the Federal Home Loan Bank Board and the Secretary of Housing and Urban Development (or their designees).

''(iii) QUORUM.—A quorum of the interim Board of Directors of the Federal Home Loan Mortgage Corporation shall consist of a majority of the directors duly serving from time to time.

''(B) ELECTION OF PERMANENT DIRECTORS.—The first meeting of the voting common shareholders of the Federal Home Loan Mortgage Corporation for election of directors shall occur, under procedures established by the Corporation, within 6 months after the date of the enactment of this Act.''

§ 1453. Capitalization of Federal Home Loan Mortgage Corporation

(a) Common stock; issuance

The common stock of the Corporation shall consist of voting common stock, which shall be issued to such holders in the manner and

amount, and subject to any limitations on concentration of ownership, as may be established by the Corporation.

(b) Par value

The voting common stock shall have such par value and other characteristics as the Corporation provides. The voting common stock shall be vested with all voting rights, each share being entitled to 1 vote. The free transferability of the voting common stock at all times to any person, firm, corporation or other entity shall not be restricted except that, as to the Corporation, it shall be transferable only on the books of the Corporation.

(Pub. L. 91–351, title III, § 304, July 24, 1970, 84 Stat. 454; Pub. L. 101–73, title VII, § 731(d)(1), (3), Aug. 9, 1989, 103 Stat. 432; Pub. L. 102–550, title XIII, § 1382(i), Oct. 28, 1992, 106 Stat. 4004.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550, § 1382(i)(2), (3)(C), redesignated par. (1) as subsec. (a), struck out provisions of par. (1)(A) which related to common stock of Corporation consisting in part of nonvoting common stock issued only to Federal home loan banks, restate provisions of par. (1)(B) as text of subsec. (a), and redesignated par. (2) as subsec. (b).

Subsec. (b). Pub. L. 102–550, § 1382(i)(1), (3), redesignated subsec. (a)(2) as (b), struck out ''nonvoting common stock and the'' before ''voting common stock shall have such'', struck out at end ''Nonvoting common stock of the Corporation shall be evidenced in the manner and shall be transferable only to the extent, to the transferees, and in the manner, provided by the Corporation.'', and struck out former subsec. (b) which read as follows: ''The Federal home loan banks shall from time to time subscribe, at such price not less than par as the Corporation shall from time to time fix, for such amounts of nonvoting common stock as the Corporation prescribes, and such banks shall pay therefor at such time or times and in such amount or amounts as may from time to time be fixed by call of the Corporation. The amount of the payments for which such banks may be obligated under such subscriptions shall not exceed a cumulative total of $100,000,000.''

Subsec. (c). Pub. L. 102–550, § 1382(i)(1), struck out subsec. (c) which read as follows: ''Subscriptions of the respective Federal home loan banks to nonvoting common stock shall be allocated by the Corporation.''

Subsec. (d). Pub. L. 102–550, § 1382(i)(1), struck out subsec. (d) which read as follows: ''The Corporation may retire at any time all or any part of the nonvoting common stock of the Corporation, or may call for retirement all or any part of the nonvoting common stock of the Corporation by (1) publishing a notice of the call in the Federal Register or providing such notice in such other manner as the Corporation may determine to be appropriate, and (2) depositing with the Treasurer of the United States, for the purpose of such retirement, funds sufficient to effect such retirement. No call for the retirement of any nonvoting common stock shall be made, and no nonvoting common stock shall be retired without call, if immediately after such action, the total of the nonvoting common stock not called for retirement and of the reserves and surplus of the Corporation would be less than $100,000,000. The retirement of nonvoting common stock shall be at the par value thereof, or at the price at which such nonvoting common stock was issued if such price is greater than par value. No declaration of any dividend on nonvoting common stock of the Corporation shall be effective with respect to nonvoting common stock which at the time of such declaration is the subject of an outstanding retirement call the effective date of which has arrived.''

1989—Subsec. (a). Pub. L. 101–73, § 731(d)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The capital stock of the Corporation shall consist of nonvoting common stock which shall be issued only to Federal home loan banks and shall have such par value and such other characteristics as the Corporation prescribes. Stock of the Corporation shall be evidenced in such manner and shall be transferable only to such extent, to such transferees, and in such manner as the Corporation prescribes.''

Subsec. (b). Pub. L. 101–73, § 731(d)(3)(A), substituted ''nonvoting common stock'' for ''common stock''.

Subsec. (c). Pub. L. 101–73, § 731(d)(3)(B), substituted ''nonvoting common stock'' for ''such stock''.

Subsec. (d). Pub. L. 101–73, § 731(d)(3)(C), inserted ''nonvoting common'' before ''stock'' wherever appearing.

CONVERSION OF STOCK

Section 731(d)(2) of Pub. L. 101–73 provided that: ''On the date of the enactment of this Act [Aug. 9, 1989], each share of outstanding senior participating preferred stock of the Federal Home Loan Mortgage Corporation, with a par value of $2.50 per share, shall be changed into and shall become 1 share of voting common stock of the Corporation. Such voting common stock shall, with respect to the nonvoting common stock of the Corporation, retain all of the rights, priorities and privileges of the senior participating preferred stock. The transformation of the senior participating preferred stock into voting common stock under this paragraph shall be deemed to satisfy the obligation of the Corporation to redeem senior participating preferred stock for non-callable common stock.''

§ 1454. Purchase and sale of mortgages; residential mortgages; conventional mortgages; terms and conditions of sale or other disposition; authority to enter into, perform, and carry out transactions

(a) Authority for purchase and sale; residential mortgages; conventional mortgages; terms and conditions of sale or other disposition; lending activities

(1) The Corporation is authorized to purchase, and make commitments to purchase, residential mortgages. The Corporation may hold and deal with, and sell or otherwise dispose of, pursuant to commitments or otherwise, any such mortgage or interest therein. The operations of the Corporation under this section shall be confined so far as practicable to residential mortgages which are deemed by the Corporation to be of such quality, type, and class as to meet generally the purchase standards imposed by private institutional mortgage investors. The Corporation may establish requirements, and impose charges or fees, which may be regarded as elements of pricing, for different classes of sellers or servicers, and for such purposes the Corporation is authorized to classify sellers or servicers according to type, size, location, assets, or, without limitation on the generality of the foregoing, on such other basis or bases of differentiation as the Corporation may consider necessary or appropriate to effectuate the purposes or provisions of this chapter. The Corporation may specify requirements concerning among other things, (A) minimum net worth; (B) supervisory mechanisms; (C) warranty compensation mechanisms; (D) prior approval of facilities; (E) prior origination and servicing experience with respect to different types of mortgages; (F) capital contributions and substitutes; (G) mortgage purchase volume limits; and (H) reduction of mortgage purchases during periods of borrowing.

With respect to any particular type of seller, the Corporation shall not be required to make available programs involving prior approval of mortgages, optional delivery of mortgages, and purchase of other than conventional mortgages to an extent greater than the Corporation elects to make such programs available to other types of eligible sellers. Any requirements specified by the Corporation pursuant to the preceding three sentences must bear a rational relationship to the purposes or provisions of this chapter, but will not be considered discriminatory solely on the grounds of differential effects on types of eligible sellers. Insofar as is practicable, the Corporation shall make reasonable efforts to encourage participation in its programs by each type of eligible seller. Nothing in this section authorizes the Corporation to impose any charge or fee upon any mortgagee approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act [12 U.S.C. 1701 et seq.] solely because of such status.

(2) No conventional mortgage secured by a property comprising one- to four-family dwelling units shall be purchased under this section if the outstanding principal balance of the mortgage at the time of purchase exceeds 80 per centum of the value of the property securing the mortgage, unless (A) the seller retains a participation of not less than 10 per centum in the mortgage; (B) for such period and under such circumstances as the Corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the Corporation in the event that the mortgage is in default; or (C) that portion of the unpaid principal balance of the mortgage which is in excess of such 80 per centum is guaranteed or insured by a qualified insurer as determined by the Corporation. The Corporation shall not issue a commitment to purchase a conventional mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (A) of such sentence. The Corporation may purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration, or any other seller currently engaged in mortgage lending or investing activities. With respect to any transaction in which a seller contemporaneously sells mortgages originated more than one year old prior to the date of sale to the Corporation and receives in payment for such mortgages securities representing undivided interests only in those mortgages, the Corporation shall not impose any fee or charge upon an eligible seller which is not a member of a Federal Home Loan Bank which differs from that imposed upon an eligible seller which is such a member. The Corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the Corporation. Such limitations shall not exceed $417,000 for a mortgage secured by a single-family residence, $533,850 for a mortgage secured by a 2-family residence, $645,300 for a mortgage secured by a 3-family residence, and $801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning after the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, subject to the limitations in this paragraph. Each adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase, during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 4542 of this title). If the change in such house price index during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment is a decrease, then no adjustment shall be made for the next year, and the next adjustment shall take into account prior declines in the house price index, so that any adjustment shall reflect the net change in the house price index since the last adjustment. Declines in the house price index shall be accumulated and then reduce increases until subsequent increases exceed prior declines. The foregoing limitations may be increased by not to exceed 50 per centum with respect to properties located in Alaska, Guam, Hawaii, and the Virgin Islands. Such foregoing limitations shall also be increased, with respect to properties of a particular size located in any area for which 115 percent of the median house price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such limitation for such size residence or the amount that is equal to 115 percent of the median house price in such area for such size residence.

(3) The sale or other disposition by the Corporation of a mortgage under this section may be with or without recourse, and shall be upon such terms and conditions relating to resale, repurchase, guaranty, substitution, replacement, or otherwise as the Corporation may prescribe.

(4)(A) The Corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in (i) residential mortgages that are secured by a subordinate lien against a one- to four-family residence that is the principal residence of the mortgagor; and (ii) residential mortgages that are secured by a subordinate lien against a property comprising five or more family dwelling units. If the Corporation shall have purchased, serviced, sold, or otherwise dealt with any other outstanding mortgage secured by the same residence, the aggregate original amount of such other mortgage and the mortgage authorized to be purchased, serviced, sold, or otherwise dealt with under this paragraph shall not exceed the applicable limitation determined under paragraph (2).

(B) The Corporation shall establish limitations governing the maximum original principal

obligation of such mortgages. In any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of such mortgage secured by a subordinate lien and not merely with respect to the interest purchased by the Corporation. Such limitations shall not exceed (i) with respect to mortgages described in subparagraph (A)(i), 50 per centum of the single-family residence mortgage limitation determined under paragraph (2); and (ii) with respect to mortgages described in subparagraph (A)(ii), the applicable limitation determined under paragraph (2).

(C) No subordinate mortgage against a one- to four-family residence shall be purchased by the Corporation if the total outstanding indebtedness secured by the property as a result of such mortgage exceeds 80 per centum of the value of such property unless (i) that portion of such total outstanding indebtedness that exceeds such 80 per centum is guaranteed or insured by a qualified insurer as determined by the Corporation; (ii) the seller retains a participation of not less than 10 per centum in the mortgage; or (iii) for such period and under such circumstances as the Corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the Corporation in the event that the mortgage is in default. The Corporation shall not issue a commitment to purchase a subordinate mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (iii) of such sentence.

(5) The Corporation is authorized to lend on the security of, and to make commitments to lend on the security of, any mortgage that the Corporation is authorized to purchase under this section. The volume of the Corporation's lending activities and the establishment of its loan ratios, interest rates, maturities, and charges or fees in its secondary market operations under this paragraph, shall be determined by the Corporation from time to time; and such determinations shall be consistent with the objectives that the lending activities shall be conducted on such terms as will reasonably prevent excessive use of the Corporation's facilities, and that the operations of the Corporation under this paragraph shall be within its income derived from such operations and that such operations shall be fully self-supporting. The Corporation shall not be permitted to use its lending authority under this paragraph (A) to advance funds to a mortgage seller on an interim basis, using mortgage loans as collateral, pending the sale of the mortgages in the secondary market; or (B) to originate mortgage loans. Notwithstanding any Federal, State, or other law to the contrary, the Corporation is hereby empowered, in connection with any loan under this paragraph, whether before or after any default, to provide by contract with the borrower for the settlement or extinguishment, upon default, of any redemption, equitable, legal, or other right, title, or interest of the borrower in any mortgage or mortgages that constitute the security for the loan; and with respect to any such loan, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such security shall become the absolute property of the Corporation.

(b) Authority of other institutions to enter into, perform, and carry out transactions

Notwithstanding any other law, authority to enter into and to perform and carry out any transactions or matter referred to in this section is conferred on any Federal home loan bank, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the National Credit Union Administration, any Federal savings and loan association, any Federal home loan bank member, and any other financial institution the deposits or accounts of which are insured by an agency of the United States to the extent that Congress has the power to confer such authority.

(c) Prior approval of Secretary for new programs

The Corporation may not implement any new program (as such term is defined in section 4502 of this title) before obtaining the approval of the Secretary under section 4542[1] of this title.

(Pub. L. 91–351, title III, §305, July 24, 1970, 84 Stat. 454; Pub. L. 93–383, title VIII, §805(a), (b), Aug. 22, 1974, 88 Stat. 726; Pub. L. 93–495, title I, §113, Oct. 28, 1974, 88 Stat. 1506; Pub. L. 95–128, title IV, §408(b), Oct. 12, 1977, 91 Stat. 1138; Pub. L. 95–557, title III, §321(a), (b), Oct. 31, 1978, 92 Stat. 2101; Pub. L. 96–294, title V, §534(a)(1), June 30, 1980, 94 Stat. 740; Pub. L. 96–399, title III, §313(b), Oct. 8, 1980, 94 Stat. 1644; Pub. L. 97–110, title II, §§202(a), (b)(1), 203, Dec. 26, 1981, 95 Stat. 1514, 1515; Pub. L. 98–440, title II, §§201(b), 203(b)(2), 205(b), 206(b), Oct. 3, 1984, 98 Stat. 1693–1696; Pub. L. 100–122, §2(b)(2), Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title IV, §§443(b), 445, Feb. 5, 1988, 101 Stat. 1922; Pub. L. 100–628, title X, §1068(b), Nov. 7, 1988, 102 Stat. 3726; Pub. L. 101–73, title VII, §731(e), (f)(2), Aug. 9, 1989, 103 Stat. 433; Pub. L. 102–550, title XIII, §1382(j)–(m), Oct. 28, 1992, 106 Stat. 4004; Pub. L. 105–276, title II, §202(a), title V, §582(a)(14), Oct. 21, 1998, 112 Stat. 2483, 2644; Pub. L. 105–277, div. A, §122, Oct. 21, 1998, 112 Stat. 2681–546; Pub. L. 110–289, div. A, title I, §1124(b)(1), (2), July 30, 2008, 122 Stat. 2692.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

This chapter, referred to in subsec. (a)(1), was in the original ''this Act'' and has been translated as reading ''this title'', meaning title III of Pub. L. 91–351, to reflect the probable intent of Congress.

The effective date of the Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (a)(2), probably means the date of enactment of div. A of Pub. L. 110–289, which was approved July 30, 2008.

Section 4542 of this title, referred to in subsec. (c), was repealed and a new section 4542 was added by Pub. L. 110–289, div. A, title I, §§1121(2), 1124(d), July 30, 2008,

[1] See References in Text note below.

122 Stat. 2689, 2693. The new section 4542 does not relate to obtaining the approval of the Secretary.

AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110–289 substituted ''Such limitations shall not exceed $417,000 for a mortgage secured by a single-family residence, $533,850 for a mortgage secured by a 2-family residence, $645,300 for a mortgage secured by a 3-family residence, and $801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning after the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, subject to the limitations in this paragraph. Each adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase, during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 4542 of this title). If the change in such house price index during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment is a decrease, then no adjustment shall be made for the next year, and the next adjustment shall take into account prior declines in the house price index, so that any adjustment shall reflect the net change in the house price index since the last adjustment. Declines in the house price index shall be accumulated and then reduce increases until subsequent increases exceed prior declines.'' for ''Such limitations shall not exceed $93,750 for a mortgage secured by a single-family residence, $120,000 for a mortgage secured by a two-family residence, $145,000 for a mortgage secured by a three-family residence, and $180,000 for a mortgage secured by a four-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 1981. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the national average one-family house price in the monthly survey of all major lenders conducted by the Federal Housing Finance Board.'' and inserted last sentence.

1998—Subsec. (a)(2). Pub. L. 105–276, § 582(a)(14), struck out penultimate sentence which read as follows: ''With respect to mortgages secured by property comprising five or more family dwelling units, such limitations shall not exceed 125 per centum of the dollar amounts set forth in section 207(c)(3) of the National Housing Act, except that such limitations may be increased by the Corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels require any increase in the dollar amount limitations under such section.''

Pub. L. 105–276, § 202(a), which directed the amendment of the first sentence of par. (2) by striking out ''or'' at end of cl. (B) and substituting ''; or (D) the mortgage is subject to default loss protection that the Corporation determines is financially equal or superior, on an individual or pooled basis, to the protection provided by clause (C) of this sentence: *Provided*, That if the Director of the Office of Federal Housing Enterprise Oversight subsequently finds that such default loss protection determined by the Corporation does not provide such equal or superior protection, the Corporation shall provide such additional default loss protection for such mortgage, as approved by the Director of the Office of Federal Housing Enterprise Oversight, necessary to provide such equal or superior protection.'' for the period at end, was repealed by Pub. L. 105–277, effective upon enactment of Pub. L. 105–276.

1992—Subsec. (a)(1). Pub. L. 102–550, § 1382(j), in first sentence, substituted a period for ''from any Federal home loan bank, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the National Credit Union Administration, any member of a Federal home loan bank, or any other financial institution the deposits or accounts of which are insured by an agency of the United States, or from any financial institution the deposits or accounts of which are insured under the laws of any State if the total amount of time and savings deposits held in all such institutions in that State is more than 20 per centum of the total amount of such deposits in all banks, building and loan, savings and loan, and homestead associations (including cooperative banks) in that State or from any mortgagee approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act or from any public utility carrying out activities in accordance with the requirements of title II of the National Energy Conservation Policy Act if the residential mortgage to be purchased is a loan or advance of credit the original proceeds of which are applied for in order to finance the purchase and installation of residential energy conservation measures (as defined in section 210(11) of the National Energy Conservation Policy Act) in residential real estate.'' and in second sentence, substituted a period for '', and the servicing on any such mortgage may be performed by the seller or by a financial institution qualified as a seller under the provisions of the preceding sentence, or by a mortgagee approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act, with which institution or mortgagee the seller may contract.''

Subsec. (a)(2). Pub. L. 102–550, § 1382(k), substituted ''Hawaii, and the Virgin Islands'' for ''and Hawaii'' in last sentence.

Subsec. (c). Pub. L. 102–550, § 1382(*l*), (m), added subsec. (c) and struck out former subsec. (c) which read as follows: ''The Board of Directors may not impose any annual limitation on the maximum aggregate principal amount of mortgages purchased by the Corporation.''

1989—Subsec. (a)(1). Pub. L. 101–73, § 731(e)(1), (f)(2)(A), substituted ''Resolution Trust Corporation'' for ''Federal Savings and Loan Insurance Corporation'' and inserted at end ''Nothing in this section authorizes the Corporation to impose any charge or fee upon any mortgagee approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act solely because of such status.''

Subsec. (a)(2). Pub. L. 101–73, § 731(f)(2), substituted ''Resolution Trust Corporation'' for ''Federal Savings and Loan Insurance Corporation'' and ''Federal Housing Finance Board'' for ''Federal Home Loan Bank Board''.

Subsec. (a)(5). Pub. L. 101–73, § 731(e)(2), added par. (5).

Subsec. (b). Pub. L. 101–73, § 731(f)(2)(A), substituted ''Resolution Trust Corporation'' for ''Federal Savings and Loan Insurance Corporation''.

1988—Subsec. (a)(4)(A)(i). Pub. L. 100–242, § 443(b), struck out ''through March 15, 1988,'' before ''residential mortgages''.

Subsec. (a)(4)(A)(ii). Pub. L. 100–628 struck out ''until October 1, 1985,'' before ''residential mortgages''.

Subsec. (c). Pub. L. 100–242, § 445, added subsec. (c).

1987—Subsec. (a)(4)(A)(i). Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''through October 31, 1987'' for ''until October 1, 1987''.

1984—Subsec. (a)(2). Pub. L. 98–440, § 205(b), which directed insertion of ''secured by a property comprising one- to four-family dwelling units'' after ''mortgages'' where first appearing in first sentence was executed by inserting that phrase after ''No conventional mortgage'' as the probable intent of Congress.

Pub. L. 98–440, § 201(b), substituted ''The Corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the Corporation'' for ''The Corporation shall establish limitations governing the maximum principal obligation of conventional mortgages purchased by it''.

Pub. L. 98–440, § 206(b), inserted provision that the limitations set forth in section 1713(c)(3) of this title may be increased by the Corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels required any increase in the dollar amount limitations under such section.

Subsec. (a)(4). Pub. L. 98–440, § 203(b)(2), added par. (4).

1981—Subsec. (a)(1). Pub. L. 97–110, § 203, added the Federal Deposit Insurance Corporation and the National Credit Union Administration to the enumeration of agencies from which the Federal Home Loan Mortgage Corporation is authorized to purchase residential mortgages.

Subsec. (a)(2). Pub. L. 97–110, § 202(a), substituted provisions authorizing the Corporation to purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or any other seller currently engaged in mortgage lending or investing activities for provisions which had authorized the Corporation to purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller was currently engaged in mortgage lending or investing activities and if, as a result thereof, the cumulative aggregate of the principal balances of all conventional mortgages purchased by the Corporation which were originated more than one year prior to the date of purchases did not exceed 20 per centum of the cumulative aggregate of the principal balances of all conventional mortgages purchased by the Corporation.

Pub. L. 97–110, § 202(b)(1), inserted provision that, with respect to any transaction in which a seller contemporaneously sells mortgages originated more than one year old prior to the date of sale to the Corporation and receives in payment for such mortgages securities representing undivided interests only in those mortgages, the Corporation shall not impose any fee or charge upon an eligible seller which is not a member of a Federal Home Loan Bank which differs from that imposed upon an eligible seller which is such a member.

Subsec. (b). Pub. L. 97–110, § 203, added the Federal Deposit Insurance Corporation and the National Credit Union Administration to the enumeration of agencies having the authority to enter into and to perform and carry out transactions and matters referred to in this section.

1980—Subsec. (a)(1). Pub. L. 96–294 inserted provisions relating to public utilities carrying out activities in accordance with the requirements of title II of the National Energy Conservation Policy Act.

Subsec. (a)(2). Pub. L. 96–399 inserted provisions setting forth limitations respecting mortgages secured by a single-family residence, etc., and struck out provisions making the limitations set forth in first proviso of first sentence of section 1464(c) of this title.

1978—Subsec. (a)(1). Pub. L. 95–557 inserted reference to any mortgagee approved by the Secretary of Housing and Urban Development at end of first sentence, and inserted last five sentences relating to imposition of charges or fees for different classes of sellers or servicers, etc.

1977—Subsec. (a)(2). Pub. L. 95–128 inserted ''by more than 25 per centum'' after ''exceed'' in last sentence.

1974—Subsec. (a)(1). Pub. L. 93–495 inserted provisions relating to State insurance of deposits or accounts in financial institutions.

Pub. L. 93–383, § 805(a), substituted ''. The Corporation may hold'' for '', and to hold'' and inserted provisions relating to the servicing of any such mortgage by the seller or qualified financial institution.

Subsec. (a)(2). Pub. L. 93–383, § 805(b), substituted ''80'' for ''75'' in two places and ''not exceed 20'' for ''not exceed 10'', struck out ''private'' before ''insurer'' in cl. (C), and substituted provisions relating to limitations contained in first proviso of first sentence of section 1464(c) of this title, for provisions relating to limitations applicable if the mortgage were insured by the Secretary under section 1709(b) or 1713 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. A, title I, § 1124(b)(3), July 30, 2008, 122 Stat. 2693, provided that: ''The amendments made by paragraphs (1) and (2) of this subsection [amending this section] shall take effect upon the expiration of the date described in section 201(a) of the Economic Stimulus Act of 2008 (Public Law 110–185) [122 Stat. 619; probably means Dec. 31, 2008].''

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. A, § 122, Oct. 21, 1998, 112 Stat. 2681–546, provided that the amendment made by section 122 is effective upon enactment of Pub. L. 105–276 (Oct. 21, 1998).

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 202(b)(2) of Pub. L. 97–110 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1982, and shall apply to commitments entered into on or after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 321(c) of Pub. L. 95–557 provided: ''The amendments made by this section [amending this section] shall become effective at the end of the two hundred and ten calendar days after enactment of this Act [Oct. 31, 1978], but not before January 31, 1979, or on such earlier date as the Federal Home Loan Mortgage Corporation may prescribe.''

SAVINGS PROVISION

Pub. L. 105–276, title V, § 582(b), Oct. 21, 1998, 112 Stat. 2644, provided that: ''Except to the extent otherwise provided in this Act [see Tables for classification], the repeals made by subsection (a) [amending this section and section 1717 of this title, repealing sections 1437a–1, 1437j–1, 1438, and 11903a of Title 42, The Public Health and Welfare, amending provisions set out as a note under section 1437f of Title 42, and repealing provisions set out as notes under section 1701z–6 of this title and sections 1437f, 1437g, and 1437t of Title 42] shall not affect any legally binding obligations entered into before the effective date under section 503(a) of this Act [set out as a note under section 1437 of Title 42].''

§ 1455. Obligations and securities of the Corporation

(a) Authority to issue; terms and conditions; validity

The Corporation is authorized, upon such terms and conditions as it may prescribe, to borrow, to give security, to pay interest or other re-

turn, and to issue notes, debentures, bonds, or other obligations, or other securities, including without limitation mortgage-backed securities guaranteed by the Government National Mortgage Association in the manner provided in section 1721(g) of this title. Any obligation or security of the Corporation shall be valid and binding notwithstanding that a person or persons purporting to have executed or attested the same may have died, become under disability, or ceased to hold office or employment before the issuance thereof.

(b) Prohibitions and restrictions; creation of liens and charges; rank and priority; causes of action to enforce; jurisdiction; service of process

The Corporation may, by regulation or by writing executed by the Corporation, establish prohibitions or restrictions upon the creation of indebtedness or obligations of the Corporation or of liens or charges upon property of the Corporation, including after-acquired property, and create liens and charges, which may be floating liens or charges, upon all or any part or parts of the property of the Corporation, including after-acquired property. Such prohibitions, restrictions, liens, and charges shall have such effect, including without limitation on the generality of the foregoing such rank and priority, as may be provided by regulations of the Corporation or by writings executed by the Corporation, and shall create causes of action which may be enforced by action in the United States District Court for the District of Columbia or in the United States district court for any judicial district in which any of the property affected is located. Process in any such action may run to and be served in any judicial district or any place subject to the jurisdiction of the United States.

(c) Purchase of obligations; funds, maximum amount of purchases, etc.

(1) The Secretary of the Treasury may purchase any obligations issued under subsection (a) of this section. For such purpose, the Secretary may use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include such purpose.

(2) The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if the purchase would increase the aggregate principal amount of the outstanding holdings of obligations under this subsection by the Secretary to an amount greater than $2,250,000,000.

(3) Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon terms and conditions established to yield a rate of return determined by the Secretary to be appropriate, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the making of the purchase.

(4) The Secretary of the Treasury may at any time sell, upon terms and conditions and at prices determined by the Secretary, any of the obligations acquired by the Secretary under this subsection.

(5) All redemptions, purchases and sales by the Secretary of the Treasury of obligations under this subsection shall be treated as public debt transactions of the United States.

(d) Validity of provisions; validity of restrictions, prohibitions, liens, or charges

The provisions of this section and of any restriction, prohibition, lien, or charge referred to in subsection (b) of this section shall be fully effective notwithstanding any other law, including without limitation on the generality of the foregoing any law of or relating to sovereign immunity or priority.

(e) Authority to purchase, hold, or invest by person, trust, or organization

(1) Any person, trust, or organization created pursuant to or existing under the laws of the United States or any State shall be authorized to purchase, hold, and invest in mortgages, obligations, or other securities which are or have been sold by the Corporation pursuant to this section or pursuant to section 1454 of this title to the same extent that such person, trust, or organization is authorized under any applicable law to purchase, hold, or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. Where State law limits the purchase, holding, or investment in obligations issued by the United States by such a person, trust, or organization, such Corporation mortgages, obligations, and other securities shall be considered to be obligations issued by the United States for purposes of the limitation.

(2) The provisions of paragraph (1) shall not apply with respect to a particular person, trust, or organization or class thereof in any State which, after December 21, 1979, enacts a statute which specifically names the Corporation and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by such person, trust, or organization or class thereof than is provided in paragraph (1). The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest which was made prior thereto.

(3) Any authority granted by paragraph (1) and not granted by any other Federal statute shall expire as of the end of June 30, 1985. Such expiration shall not affect the validity of any contractual commitment to purchase, hold, or invest which was made prior thereto pursuant to paragraph (1), and shall not affect the validity of any contractual commitment or other action to purchase, hold, or invest pursuant to any other authorization.

(f) Preferred stock

The Corporation may have preferred stock on such terms and conditions as the Board of Directors shall prescribe. Any preferred stock shall not be entitled to vote with respect to the election of any member of the Board of Directors.

(g) Securities exempt from regulation

All securities issued or guaranteed by the Corporation (other than securities guaranteed by the Corporation that are backed by mortgages

not purchased by the Corporation) shall, to the same extent as securities that are direct obligations of or obligations guaranteed as to principal or interest by the United States, be deemed to be exempt securities within the meaning of the laws administered by the Securities and Exchange Commission.

(h) Securities backed by mortgages not purchased by Corporation

(1) The Corporation may not guarantee mortgage-backed securities or mortgage related payment securities backed by mortgages not purchased by the Corporation.

(2) The Corporation shall insert appropriate language in all of the obligations and securities of the Corporation issued under this section and section 1454 of this title clearly indicating that such obligations and securities, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the Corporation.

(i) Prohibition on assessment or collection of fee or charge by United States

Except for fees paid pursuant to sections 1452(c)[1] and 1455(c) of this title and assessments pursuant to section 4516 of this title, no fee or charge may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to the purchase, acquisition, sale, pledge, issuance, guarantee, or redemption of any mortgage, asset, obligation, or other security by the Corporation. No provision of this subsection shall affect the purchase of any obligation by any Federal home loan bank pursuant to section 1452(a) of this title.

(j) Notes, debentures, or substantially identical types of unsecured obligations; issuance, maturities, interest rates, etc.

(1) Any notes, debentures, or substantially identical types of unsecured obligations of the Corporation evidencing money borrowed, whether general or subordinated, shall be issued upon the approval of the Secretary of the Treasury and shall have such maturities and bear such rate or rates of interest as may be determined by the Corporation with the approval of the Secretary of the Treasury.

(2) Any notes, debentures, or substantially identical types of unsecured obligations of the Corporation having maturities of 1 year or less that the Corporation has issued or is issuing as of August 9, 1989, shall be deemed to have been approved by the Secretary of the Treasury as required by this subsection. Such deemed approval shall expire 365 days after August 9, 1989.

(3) Any notes, debentures, or substantially identical types of unsecured obligations of the Corporation having maturities of more than 1 year that the Corporation has issued or is issuing as of August 9, 1989, shall be deemed to have been approved by the Secretary of the Treasury as required by this subsection. Such deemed approval shall expire 60 days after August 9, 1989.

[1] See References in Text note below.

(k) Securities in form of debt obligations or trust certificates of beneficial interest; issuance, maturities, interest rates, etc.

(1) Any securities in the form of debt obligations or trust certificates of beneficial interest, or both, and based upon mortgages held and set aside by the Corporation, shall be issued upon the approval of the Secretary of the Treasury and shall have such maturities and shall bear such rate or rates of interest as may be determined by the Corporation with the approval of the Secretary of the Treasury.

(2) Any securities in the form of debt obligations or trust certificates of beneficial interest, or both, and based upon mortgages held and set aside by the Corporation, that the Corporation has issued or is issuing as of August 9, 1989, shall be deemed to have been approved by the Secretary of the Treasury as required by this subsection.

***(l)* Temporary authority of Treasury to purchase obligations and securities; conditions**

(1) Authority to purchase

(A) General authority

In addition to the authority under subsection (c) of this section, the Secretary of the Treasury is authorized to purchase any obligations and other securities issued by the Corporation under any section of this chapter, on such terms and conditions as the Secretary may determine and in such amounts as the Secretary may determine. Nothing in this subsection requires the Corporation to issue obligations or securities to the Secretary without mutual agreement between the Secretary and the Corporation. Nothing in this subsection permits or authorizes the Secretary, without the agreement of the Corporation, to engage in open market purchases of the common securities of the Corporation.

(B) Emergency determination required

In connection with any use of this authority, the Secretary must determine that such actions are necessary to—

(i) provide stability to the financial markets;

(ii) prevent disruptions in the availability of mortgage finance; and

(iii) protect the taxpayer.

(C) Considerations

To protect the taxpayers, the Secretary of the Treasury shall take into consideration the following in connection with exercising the authority contained in this paragraph:

(i) The need for preferences or priorities regarding payments to the Government.

(ii) Limits on maturity or disposition of obligations or securities to be purchased.

(iii) The Corporation's plan for the orderly resumption of private market funding or capital market access.

(iv) The probability of the Corporation fulfilling the terms of any such obligation or other security, including repayment.

(v) The need to maintain the Corporation's status as a private shareholder-owned company.

(vi) Restrictions on the use of Corporation resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes.

(D) Reports to Congress

Upon exercise of this authority, the Secretary shall report to the Committees on the Budget, Financial Services, and Ways and Means of the House of Representatives and the Committees on the Budget, Finance, and Banking, Housing, and Urban Affairs of the Senate as to the necessity for the purchase and the determinations made by the Secretary under subparagraph (B) and with respect to the considerations required under subparagraph (C), and the size, terms, and probability of repayment or fulfillment of other terms of such purchase.

(2) Rights; sale of obligations and securities

(A) Exercise of rights

The Secretary of the Treasury may, at any time, exercise any rights received in connection with such purchases.

(B) Sale of obligation and securities

The Secretary of the Treasury may, at any time, subject to the terms of the security or otherwise upon terms and conditions and at prices determined by the Secretary, sell any obligation or security acquired by the Secretary under this subsection.

(C) Deficit reduction

The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

(i) dedicated for the sole purpose of deficit reduction; and

(ii) prohibited from use as an offset for other spending increases or revenue reductions.

(D) Application of sunset to purchased obligations or securities

The authority of the Secretary of the Treasury to hold, exercise any rights received in connection with, or sell, any obligations or securities purchased is not subject to the provisions of paragraph (4).

(3) Funding

For the purpose of the authorities granted in this subsection, the Secretary of the Treasury may use the proceeds of the sale of any securities issued under chapter 31 of Title 31, and the purposes for which securities may be issued under chapter 31 of Title 31 are extended to include such purchases and the exercise of any rights in connection with such purchases. Any funds expended for the purchase of, or modifications to, obligations and securities, or the exercise of any rights received in connection with such purchases under this subsection shall be deemed appropriated at the time of such purchase, modification, or exercise.

(4) Termination of authority

The authority under this subsection (*l*), with the exception of paragraphs (2) and (3) of this subsection, shall expire December 31, 2009.

(5) Authority of the Director with respect to executive compensation

The Director shall have the power to approve, disapprove, or modify the executive compensation of the Corporation, as defined under Regulation S-K, 17 C.F.R. 229.

(Pub. L. 91–351, title III, § 306, July 24, 1970, 84 Stat. 455; Pub. L. 96–153, title III, § 316(a), Dec. 21, 1979, 93 Stat. 1118; Pub. L. 97–289, § 6, Oct. 6, 1982, 96 Stat. 1232; Pub. L. 98–35, § 5, May 26, 1983, 97 Stat. 198; Pub. L. 98–440, title II, §§ 210, 211, Oct. 3, 1984, 98 Stat. 1697; Pub. L. 100–242, title IV, § 441(b), Feb. 5, 1988, 101 Stat. 1921; Pub. L. 101–73, title VII, § 731(g)–(i), Aug. 9, 1989, 103 Stat. 434; Pub. L. 102–550, title XIII, § 1382(n), Oct. 28, 1992, 106 Stat. 4005; Pub. L. 110–289, div. A, title I, §§ 1117(b), 1161(c)(2), July 30, 2008, 122 Stat. 2684, 2780; Pub. L. 111–203, title XIII, § 1304(b), July 21, 2010, 124 Stat. 2134.)

REFERENCES IN TEXT

Section 1452(c) of this title, referred to in subsec. (i), was redesignated section 1452(d) of this title by Pub. L. 101–73, title VII, § 731(c)(1), Aug. 9, 1989, 103 Stat. 431.

This chapter, referred to in subsec. (*l*)(1)(A), was in the original ''this Act'' and has been translated as reading ''this title'', meaning title III of Pub. L. 91–351, to reflect the probable intent of Congress.

AMENDMENTS

2010—Subsec. (*l*)(2)(C), (D). Pub. L. 111–203 added subpar. (C) and redesignated former subpar. (C) as (D).

2008—Subsec. (c)(2). Pub. L. 110–289, § 1161(c)(2)(A), inserted ''the'' after ''Secretary of''.

Subsec. (i). Pub. L. 110–289, § 1161(c)(2)(B)(ii), made technical amendment to reference in original act which appears in text as reference to section 4516 of this title.

Pub. L. 110–289, § 1161(c)(2)(B)(i), made technical amendment to reference in original act which appears in text as reference to section 1455(c) of this title. Amendment was given effect, notwithstanding error in directory language which directed substitution of ''section 306(c)'' for ''section 1316(c)'' in the original.

Subsec. (j)(2). Pub. L. 110–289, § 1161(c)(2)(C), substituted ''or substantially'' for ''of substantially''.

Subsec. (*l*). Pub. L. 110–289, § 1117(b), added subsec. (*l*).

1992—Subsec. (h). Pub. L. 102–550, § 1382(n)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (i). Pub. L. 102–550, § 1382(n)(2), substituted ''sections 1452(c) and 1455(c) of this title and assessments pursuant to section 4516 of this title'' for ''section 1452(c) or 1455(c) of this title''.

1989—Subsec. (c). Pub. L. 101–73, § 731(g), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Federal home loan banks shall, to such extent as the Board of Directors may prescribe, guarantee the faithful and timely performance by the Corporation of any obligation or undertaking of the Corporation on or with respect to any security (which term as used in this sentence shall not include the capital stock referred to in section 1453 of this title).''

Subsec. (f). Pub. L. 101–73, § 731(h), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''The Corporation may have preferred stock on such terms and conditions as the Board of Directors shall prescribe. Any preferred stock shall not affect the status of the capital stock issued under section 1453 of this title as nonvoting common stock, and shall not be entitled to vote with respect to the election of any member of the Board of Directors. Such preferred

stock, or any class thereof, may have such terms as would be required for listing of preferred stock on the New York Stock Exchange, except that this sentence does not apply to any preferred stock, or class thereof, the initial sale of which is made directly or indirectly by the Corporation exclusively to any Federal Home Loan Bank or Banks.''

Subsecs. (j), (k). Pub. L. 101–73, § 731(i), added subsecs. (j) and (k).

1988—Subsec. (i). Pub. L. 100–242 added subsec. (i).

1984—Subsec. (f). Pub. L. 98–440, § 211, inserted provisions that preferred stock shall not be entitled to vote with respect to the election of any member of the Board of Directors and that such preferred stock, or any class thereof, may have such terms as would be required for listing of preferred stock on the New York Stock Exchange, except for any preferred stock, or class thereof, the initial sale of which is made directly or indirectly by the Corporation exclusively to any Federal Home Loan Bank or Banks.

Subsec. (h). Pub. L. 98–440, § 210, added subsec. (h).

1983—Subsec. (g). Pub. L. 98–35 added subsec. (g).

1982—Subsec. (f). Pub. L. 97–289 added subsec. (f).

1979—Subsec. (e). Pub. L. 96–153 added subsec. (e).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

REPAYMENT OF FEES

Pub. L. 111–203, title XIII, § 1304(d), July 21, 2010, 124 Stat. 2134, provided that: ''Any periodic commitment fee or any other fee or assessment paid by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation to the Secretary of the Treasury as a result of any preferred stock purchase agreement, mortgage-backed security purchase program, or any other program or activity authorized or carried out pursuant to the authorities granted to the Secretary of the Treasury under section 1117 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289; 122 Stat. 2683) [amending this section and sections 1431 and 1719 of this title], including any fee agreed to by contract between the Secretary and the Association or Corporation, shall be deposited in the General Fund of the Treasury where such amounts shall be—

''(1) dedicated for the sole purpose of deficit reduction; and

''(2) prohibited from use as an offset for other spending increases or revenue reductions.''

[For definitions of terms used in section 1304(d) of Pub. L. 111–203, set out above, see section 5301 of this title.]

§ 1456. Immunity of Corporation; audits and reporting requirements; data collection; Housing Advisory Council

(a) Rights and remedies of Corporation; State qualifications or similar statutes

All rights and remedies of the Corporation, including without limitation on the generality of the foregoing any rights and remedies of the Corporation on, under, or with respect to any mortgage or any obligation secured thereby, shall be immune from impairment, limitation, or restriction by or under (1) any law (except laws enacted by the Congress expressly in limitation of this sentence) which becomes effective after the acquisition by the Corporation of the subject or property on, under, or with respect to which such right or remedy arises or exists or would so arise or exist in the absence of such law, or (2) any administrative or other action which becomes effective after such acquisition. The Corporation is authorized to conduct its business without regard to any qualification or similar statute in any State.

(b) Government audits; procedure; access to records, etc.; reimbursement of costs

(1) The programs, activities, receipts, expenditures, and financial transactions of the Corporation shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General. The representatives of the Government Accountability Office shall have access to all books, accounts, financial records, reports, files and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. A report on each such audit shall be made by the Comptroller General to the Congress. The Corporation shall reimburse the Government Accountability Office for the full cost of any such audit as billed therefor by the Comptroller General.

(2) To carry out this subsection, the representatives of the Government Accountability Office shall have access, upon request to the Corporation or any auditor for an audit of the Corporation under subsection (d) of this section, to any books, accounts, financial records, reports, files, or other papers, things, or property belonging to or in use by the Corporation and used in any such audit and to any papers, records, files, and reports of the auditor used in such an audit.

(c) Financial reports; submission to Director; contents

(1) The Corporation shall submit to the Director of the Federal Housing Finance Agency annual and quarterly reports of the financial condition and operations of the Corporation which shall be in such form, contain such information, and be submitted on such dates as the Director shall require.

(2) Each such annual report shall include—

(A) financial statements prepared in accordance with generally accepted accounting principles;

(B) any supplemental information or alternative presentation that the Director may require; and

(C) an assessment (as of the end of the Corporation's most recent fiscal year), signed by the chief executive officer and chief accounting or financial officer of the Corporation, of—

(i) the effectiveness of the internal control structure and procedures of the Corporation; and

(ii) the compliance of the Corporation with designated safety and soundness laws.

(3) The Corporation shall also submit to the Director any other reports required by the Director pursuant to section 1314 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4514].

(4) Each report of financial condition shall contain a declaration by the president, vice president, treasurer, or any other officer designated by the Board of Directors of the Cor-

poration to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief.

(d) Independent audits of financial statements

(1) The Corporation shall have an annual independent audit made of its financial statements by an independent public accountant in accordance with generally accepted auditing standards.

(2) In conducting an audit under this subsection, the independent public accountant shall determine and report on whether the financial statements of the Corporation (A) are presented fairly in accordance with generally accepted accounting principles, and (B) to the extent determined necessary by the Director, comply with any disclosure requirements imposed under subsection (c)(2)(B) of this section.

(e) Mortgage data collection and reporting requirements

(1) The Corporation shall collect, maintain, and provide to the Director of the Federal Housing Finance Agency, in a form determined by the Director, data relating to its mortgages on housing consisting of 1 to 4 dwelling units. Such data shall include—

(A) the income, census tract location, race, and gender of mortgagors under such mortgages;

(B) the loan-to-value ratios of purchased mortgages at the time of origination;

(C) whether a particular mortgage purchased is newly originated or seasoned;

(D) the number of units in the housing subject to the mortgage and whether the units are owner-occupied; and

(E) any other characteristics that the Secretary considers appropriate, to the extent practicable.

(2) The Corporation shall collect, maintain, and provide to the Director of the Federal Housing Finance Agency, in a form determined by the Director, data relating to its mortgages on housing consisting of more than 4 dwelling units. Such data shall include—

(A) census tract location of the housing;

(B) income levels and characteristics of tenants of the housing (to the extent practicable);

(C) rent levels for units in the housing;

(D) mortgage characteristics (such as the number of units financed per mortgage and the amount of loans);

(E) mortgagor characteristics (such as nonprofit, for-profit, limited equity cooperatives);

(F) use of funds (such as new construction, rehabilitation, refinancing);

(G) type of originating institution; and

(H) any other information that the Secretary considers appropriate, to the extent practicable.

(3)(A) Except as provided in subparagraph (B), this subsection shall apply only to mortgages purchased by the Corporation after December 31, 1992.

(B) This subsection shall apply to any mortgage purchased by the Corporation after the date determined under subparagraph (A) if the mortgage was originated before such date, but only to the extent that the data referred in paragraph (1) or (2), as applicable, is available to the Corporation.

(f) Report on housing activities; contents; public disclosure

(1) The Corporation shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Director of the Federal Housing Finance Agency a report on its activities under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4561 et seq.].

(2) The report under this subsection shall—

(A) include, in aggregate form and by appropriate category, statements of the dollar volume and number of mortgages on owner-occupied and rental properties purchased which relate to each of the annual housing goals established under such subpart;

(B) include, in aggregate form and by appropriate category, statements of the number of families served by the Corporation, the income class, race, and gender of homebuyers served, the income class of tenants of rental housing (to the extent such information is available), the characteristics of the census tracts, and the geographic distribution of the housing financed;

(C) include a statement of the extent to which the mortgages purchased by the Corporation have been used in conjunction with public subsidy programs under Federal law;

(D) include statements of the proportion of mortgages on housing consisting of 1 to 4 dwelling units purchased by the Corporation that have been made to first-time homebuyers, as soon as providing such data is practicable, and identifying any special programs (or revisions to conventional practices) facilitating homeownership opportunities for first-time homebuyers;

(E) include, in aggregate form and by appropriate category, the data provided to the Director of the Federal Housing Finance Agency under subsection (e)(1)(B) of this section;

(F) compare the level of securitization versus portfolio activity;

(G) assess underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures, that affect the purchase of mortgages for low- and moderate-income families, or that may yield disparate results based on the race of the borrower, including revisions thereto to promote affordable housing or fair lending;

(H) describe trends in both the primary and secondary multifamily housing mortgage markets, including a description of the progress made, and any factors impeding progress, toward standardization and securitization of mortgage products for multifamily housing;

(I) describe trends in the delinquency and default rates of mortgages secured by housing for low- and moderate-income families that have been purchased by the Corporation, including a comparison of such trends with delinquency and default information for mortgage products serving households with incomes above the median level that have been

purchased by the Corporation, and evaluate the impact of such trends on the standards and levels of risk of mortgage products serving low- and moderate-income families;

(J) describe in the aggregate the seller and servicer network of the Corporation, including the volume of mortgages purchased from minority-owned, women-owned, and community-oriented lenders, and any efforts to facilitate relationships with such lenders;

(K) describe the activities undertaken by the Corporation with nonprofit and for-profit organizations and with State and local governments and housing finance agencies, including how the Corporation's activities support the objectives of comprehensive housing affordability strategies under section 12705 of title 42; and

(L) include any other information that the Director of the Federal Housing Finance Agency considers appropriate.

(3)(A) The Corporation shall make each report under this subsection available to the public at the principal and regional offices of the Corporation.

(B) Before making a report under this subsection available to the public, the Corporation may exclude from the report information that the Director of the Federal Housing Finance Agency has determined is proprietary information under section 1326 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4546].

(g) Affordable Housing Advisory Council

(1) Not later than 4 months after October 28, 1992, the Corporation shall appoint an Affordable Housing Advisory Council to advise the Corporation regarding possible methods for promoting affordable housing for low- and moderate-income families.

(2) The Affordable Housing Advisory Council shall consist of 15 individuals, who shall include representatives of community-based and other nonprofit and for-profit organizations and State and local government agencies actively engaged in the promotion, development, or financing of housing for low- and moderate-income families.

(Pub. L. 91–351, title III, §307, July 24, 1970, 84 Stat. 456; Pub. L. 101–73, title VII, §731(j)(1), Aug. 9, 1989, 103 Stat. 435; Pub. L. 102–550, title XIII, §1382(*o*)–(t), Oct. 28, 1992, 106 Stat. 4005–4008; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–289, div. A, title I, §1161(c)(1), (3), July 30, 2008, 122 Stat. 2780.)

REFERENCES IN TEXT

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, referred to in subsec. (f)(1), is title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941. Subpart B of part 2 of subtitle A of the Act is classified generally to subpart 2 (§4561 et seq.) of part B of subchapter I of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsec. (c)(1). Pub. L. 110–289, §1161(c)(1), substituted ''Director of the Federal Housing Finance Agency'' for ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development''.

Subsec. (e)(1), (2). Pub. L. 110–289, §1161(c)(3)(A), substituted ''to the Director of the Federal Housing Finance Agency, in a form determined by the Director'' for ''to the Secretary, in a form determined by the Secretary'' in introductory provisions.

Subsec. (f)(1). Pub. L. 110–289, §1161(c)(3)(B)(i), substituted ''and the Director of the Federal Housing Finance Agency'' for ''and the Secretary''.

Subsec. (f)(2)(E), (L). Pub. L. 110–289, §1161(c)(3)(B)(ii), substituted ''the Director of the Federal Housing Finance Agency'' for ''the Secretary''.

Subsec. (f)(3)(B). Pub. L. 110–289, §1161(c)(3)(B)(iii), substituted ''Director of the Federal Housing Finance Agency'' for ''Secretary''.

2004—Subsec. (b). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' wherever appearing.

1992—Subsec. (b). Pub. L. 102–550, §1382(*o*), designated existing provisions as par. (1), substituted ''The programs, activities, receipts, expenditures, and financial transactions of the Corporation shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General.'' for ''The financial transactions of the Corporation shall be subject to audit by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions under such rules and regulations as may be prescribed by the Comptroller General of the United States.'', and added par. (2).

Subsecs. (c) to (g). Pub. L. 102–550, §1382(p)–(t), added subsecs. (c) to (g).

1989—Subsec. (a). Pub. L. 101–73 substituted ''The Corporation is authorized to conduct its business without regard to any qualification or similar statute in any State.'' for ''The Corporation shall be entitled to all immunities and priorities, including without limitation on the generality of the foregoing all immunities and priorities under any such law or action, to which it would be entitled if it were the United States or if it were an unincorporated agency of the United States.''

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 731(j)(2) of Pub. L. 101–73 provided that: ''The amendment made by this subsection [amending this section] shall not apply to any assertion of priority by the Federal Home Loan Mortgage Corporation with respect to any cause of action or claim filed before the date of the enactment of this Act [Aug. 9, 1989].''

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1457. Prohibited activities; penalties for violations by organizations, officers and members of organizations, and individuals

Except as expressly authorized by statute of the United States, no individual or organization (except the Corporation) shall use the term ''Federal Home Loan Mortgage Corporation'', or any combination of words including the words ''Federal'', and ''Home Loan'', and ''Mortgage'', as a name or part thereof under which any individual or organization does any business, but this sentence shall not make unlawful the use of any name under which business is being done on July 24, 1970. No individual or organization shall use or display (1) any sign, device, or insigne prescribed or approved by the Corporation for use or display by the Corporation or by members of the Federal home loan banks, (2) any copy, reproduction, or colorable imitation of any such sign, device, or insigne, or (3) any sign, device, or insigne reasonably calculated to convey the impression that it is a sign, device, or insigne used by the Corporation or prescribed or approved by the Corporation, contrary to regulations of the Corporation prohibiting, or limiting or restricting, such use or display by such individual or organization. An organization violating this subsection shall for each violation be punished by a fine of not more than $10,000. An officer or member of an organization participating or knowingly acquiescing in any violation of this subsection shall be punished by a fine of not more than $5,000 or imprisonment for not more than one year, or both. An individual violating this subsection shall for each violation be punished as set forth in the sentence next preceding this sentence.

(Pub. L. 91–351, title III, § 308, July 24, 1970, 84 Stat. 456; Pub. L. 98–479, title II, § 204(h), Oct. 17, 1984, 98 Stat. 2233; Pub. L. 101–73, title VII, § 731(k), Aug. 9, 1989, 103 Stat. 435.)

AMENDMENTS

1989—Pub. L. 101–73 struck out subsection (a) designation before ''Except as expressly'', and struck out subsecs. (b) to (f) relating to applicability of criminal provisions of title 18, and defining terms construing such applicability.

1984—Subsec. (f). Pub. L. 98–479 substituted ''United States'' for ''United States Code'' before '', except in a territorial sense''.

§ 1458. Territorial applicability

Notwithstanding any other law, this chapter shall be applicable to the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(Pub. L. 91–351, title III, § 309, July 24, 1970, 84 Stat. 457.)

§ 1459. Separability

Notwithstanding any other evidences of the intention of Congress, it is hereby declared to be the controlling intent of Congress that if any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Pub. L. 91–351, title III, § 310, July 24, 1970, 84 Stat. 457; Pub. L. 101–73, title VII, § 731(*l*), Aug. 9, 1989, 103 Stat. 435.)

AMENDMENTS

1989—Pub. L. 101–73 amended section catchline and struck out first sentence which read as follows: ''Except as otherwise provided in this chapter, or as otherwise provided by the Corporation or by laws hereafter enacted by the Congress expressly in limitation of provisions of this chapter, the powers and functions of the Corporation and of the Board of Directors shall be exercisable, and the provisions of this chapter shall be applicable and effective, without regard to any other law.''

CHAPTER 12—SAVINGS ASSOCIATIONS

Sec.
1461. Short title.
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1463. Supervision of savings associations.
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1470. Federal supervision of insured institutions, State member and nonmember banks; access to information; definitions.

§ 1461. Short title

This chapter may be cited as the ''Home Owners' Loan Act.''

(June 13, 1933, ch. 64, § 1 (part), 48 Stat. 128; Pub. L. 101–73, title III, § 301, Aug. 9, 1989, 103 Stat. 277.)

CODIFICATION

Section is comprised of the first sentence of section 1 of act June 13, 1933. The remainder of section 1 of the Act included a table of contents for the Act.

AMENDMENTS

1989—Pub. L. 101–73 amended section generally, striking out ''of 1933'' after ''Act''.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 305(c) of Pub. L. 101–73 provided that: ''The amendments made by section 301 [amending this chapter] relating to civil penalties shall apply with respect to violations committed and activities engaged in after the date of the enactment of this Act [Aug. 9, 1989], except that the increased maximum civil penalties of $5,000 and $25,000 per violation or per day may apply to such violations or activities committed or engaged in before such date with respect to an institution if such violations or activities—

''(1) are not already subject to a notice issued by the appropriate Federal banking agency or the Board (initiating an administrative proceeding); and

''(2) occurred after the completion of the last report of examination of the institution by the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) occurring before the date of the enactment of this Act.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–164, § 1, Mar. 20, 1998, 112 Stat. 32, provided that: ''This Act [enacting section 1786a of this title, amending sections 1464 and 1818 of this title, and enacting provisions set out as a note under section 1811 of this title] may be cited as the 'Examination Parity and Year 2000 Readiness for Financial Institutions Act'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–242, title IV, § 436, Dec. 19, 1991, 105 Stat. 2381, provided that: ''This subtitle [subtitle G (§§ 436–441) of title IV of Pub. L. 102–242, amending sections 1464 and 1467a of this title] may be cited as the 'Qualified Thrift Lender Reform Act of 1991'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–320, title III, § 301, Oct. 15, 1982, 96 Stat. 1496, provided that: ''This title [enacting section 1701j–3 of this title, amending sections 1425a, 1426, 1428a, 1430, 1464, 1725, 1730a, 1841, and 3503 of this title, enacting provisions set out as a note under section 3503 of this title, and repealing provisions set out as a note under section 461 of this title] may be cited as the 'Thrift Institutions Restructuring Act'.''

§ 1462. Definitions

For purposes of this chapter—

(1) Director

The term ''Director'' means the Director of the Office of Thrift Supervision.

(2) Corporation

The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(3) Office

The term ''Office'' means the Office of Thrift Supervision.

(4) Savings association

The term ''savings association'' means a savings association, as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], the deposits of which are insured by the Corporation.

(5) Federal savings association

The term ''Federal savings association'' means a Federal savings association or a Federal savings bank chartered under section 1464 of this title.

(6) National bank

The term ''national bank'' has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

(7) Federal banking agencies

The term ''Federal banking agencies'' means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

(8) State

The term ''State'' has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

(9) Affiliate

The term ''affiliate'' means any person that controls, is controlled by, or is under common control with, a savings association, except as provided in section 1467a of this title.

(June 13, 1933, ch. 64, § 2, 48 Stat. 128; June 27, 1934, ch. 847, title V, § 508(a), 48 Stat. 1264; May 28, 1935, ch. 150, § 10, 49 Stat. 296; 1947 Reorg. Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Aug. 11, 1955, ch. 783, title I, § 109(a)(3), 69 Stat. 640; Pub. L. 95–630, title XII, § 1201, Nov. 10, 1978, 92 Stat. 3710; Pub. L. 97–320, title I, § 114(a), Oct. 15, 1982, 96 Stat. 1475; Pub. L. 101–73, title III, § 301, Aug. 9, 1989, 103 Stat. 277; Pub. L. 111–203, title III, § 369(2), title VI, § 604(h)(1), July 21, 2010, 124 Stat. 1557, 1602.)

AMENDMENT OF SECTION

Pub. L. 111–203, title VI, § 604(h)(1), (j), July 21, 2010, 124 Stat. 1602, 1604, provided that, effective on the transfer date, this section is amended by adding at the end the following:

(10) Appropriate Federal banking agency

The term ''appropriate Federal banking agency'' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(11) Functionally regulated subsidiary

The term ''functionally regulated subsidiary'' has the same meaning as in section 5(c)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(5)).

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title III, §§ 351, 369(2), July 21, 2010, 124 Stat. 1546, 1557, provided that, effective on the transfer date, this section is amended:

(1) by striking out paragraphs (1) and (3);

(2) by redesignating paragraph (2) as (1);

(3) by redesignating paragraphs (4) to (9) as (2) to (7), respectively; and

(4) by adding at the end the following:

(8) Board

The term ''Board'', other than in the context of the Board of Directors of the Corporation, means the Board of Governors of the Federal Reserve System.

(9) Comptroller

The term ''Comptroller'' means the Comptroller of the Currency.

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1989—Pub. L. 101–73 amended section generally, substituting definition of ''Director'', ''Corporation'', ''Office'', ''savings association'', ''Federal savings association'', ''national bank'', ''Federal banking agencies'', ''State'', and ''affiliate'', designated as pars. (1) to (9), for definition of ''Board'', ''Corporation'', ''home mortgage'', ''first mortgage'', and ''association'', designated as subsecs. (a) to (d).

1982—Subsec. (d). Pub. L. 97–320 substituted reference to Federal savings bank or Federal savings banks for reference to Federal mutual savings bank wherever appearing.

1978—Subsec. (d). Pub. L. 95–630 included a Federal mutual savings bank chartered by the Board within definition of ''association'', and inserted provisions that a reference to a Federal savings and loan association shall be deemed also a reference to a Federal mutual savings bank.

1935—Subsec. (c). Act May 28, 1935, inserted ''or dwellings'' and ''in whole or in part'' in cl. (2).

1934—Subsec. (c). Act June 27, 1934, substituted ''(1) under a lease for not less than ninety-nine years which

is renewable, or (2) under a lease having a period of not less than fifty years to run from the date the mortgage was executed'' for ''under a lease renewable for not less than ninety nine years''.

CHANGE OF NAME

''Home Loan Bank Board'' changed to ''Federal Home Loan Bank Board'' by act Aug. 11, 1955, ch. 783, § 109(a)(3), which was classified to section 1437(b) of this title prior to the repeal of section 1437 by Pub. L. 101–73, title VII, § 703(a), Aug. 9, 1989, 103 Stat. 415.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 369(2) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Pub. L. 111–203, title VI, § 604(j), July 21, 2010, 124 Stat. 1604, provided that: ''The amendments made by this section [amending this section and sections 1467a, 1828, and 1842 to 1844 of this title and repealing section 1848a of this title] shall take effect on the transfer date.''

[For definition of ''transfer date'' as used in section 604(j) of Pub. L. 111–203, set out above, see section 5411 of this title.]

EFFECTIVE DATE OF 1978 AMENDMENT

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

TRANSFER OF FUNCTIONS

Reorg. Plan No. 3 of 1947, set out in the Appendix to Title 5, Government Organization and Employees, abolished Federal Home Loan Bank Board and transferred its functions to Home Loan Bank Board created by the Plan.

§ 1462a. Director of Office of Thrift Supervision

(a) Establishment of Office

There is established the Office of Thrift Supervision, which shall be an office in the Department of the Treasury.

(b) Establishment of position of Director

(1) In general

There is established the position of the Director of the Office of Thrift Supervision, who shall be the head of the Office of Thrift Supervision and shall be subject to the general oversight of the Secretary of the Treasury.

(2) Authority to prescribe regulations

The Director may prescribe such regulations and issue such orders as the Director may determine to be necessary for carrying out this chapter and all other laws within the Director's jurisdiction.

(3) Autonomy of Director

The Secretary of the Treasury may not intervene in any matter or proceeding before the Director (including agency enforcement actions) unless otherwise specifically provided by law.

(4) Banking agency rulemaking

The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Director.

(c) Appointment; term

(1) Appointment

The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

(2) Term

The Director shall be appointed for a term of 5 years.

(3) Vacancy

(A) In general

A vacancy in the position of Director which occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established in paragraph (1) and the Director appointed to fill such vacancy shall be appointed only for the remainder of such term.

(B) Acting Director

(i) In general

In the event of a vacancy in the position of Director or during the absence or disability of the Director, the Deputy Director shall serve as Acting Director.

(ii) Succession in case of 2 or more Deputy Directors

If there are 2 or more Deputy Directors serving at the time a vacancy in the position of Director occurs or the absence or disability of the Director commences, the First Deputy Director shall serve as Acting Director under clause (i) followed by such other Deputy Directors under any order of succession the Director may establish.

(iii) Authority of Acting Director

Any Deputy Director, while serving as Acting Director under this subparagraph, shall be vested with all authority, duties, and privileges of the Director under this chapter and any other provision of Federal law.

(4) Service after end of term

An individual may serve as Director after the expiration of the term for which appointed until a successor Director has been appointed.

(5) Deputy Director

(A) In general

The Secretary of the Treasury shall appoint a Deputy Director, and may appoint not more than 3 additional Deputy Directors of the Office.

(B) First Deputy Director

If the Secretary of the Treasury appoints more than 1 Deputy Director of the Office, the Secretary shall designate one such appointee as the First Deputy Director.

(C) Duties

Each Deputy Director appointed under this paragraph shall take an oath of office and perform such duties as the Director shall direct.

(D) Compensation and benefits

The Director shall fix the compensation and benefits for each Deputy Director in accordance with this chapter.

(d) Prohibition on financial interests

The Director shall not have a direct or indirect financial interest in any insured depository

institution, as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

(e) Powers of Director

The Director shall have all powers which—

(1) were vested in the Federal Home Loan Bank Board (in the Board's capacity as such) or the Chairman of such Board on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Aug. 9, 1989]; and

(2) were not—

(A) transferred to the Federal Deposit Insurance Corporation, the Federal Housing Finance Board, the Resolution Trust Corporation, or the Federal Home Loan Mortgage Corporation pursuant to any amendment made by such Act; or

(B) established under any provision of law repealed by such Act.

(f) State homestead provisions

No provision of this chapter or any other provision of law administered by the Director shall be construed as superseding any homestead provision of any State constitution, including any implementing State statute, in effect on September 29, 1994, or any subsequent amendment to such a State constitutional or statutory provision in effect on September 29, 1994, that exempts the homestead of any person from foreclosure, or forced sale, for the payment of all debts, other than a purchase money obligation relating to the homestead, taxes due on the homestead, or an obligation arising from work and material used in constructing improvements on the homestead.

(g) Annual report required

The Director shall make an annual report to the Congress. Such report shall include—

(1) a description of any changes the Director has made or is considering making in the district offices of the Office, including a description of the geographic allocation of the Office's resources and personnel used to carry out examination and supervision functions; and

(2) a description of actions taken to carry out section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(h) Staff

(1) Appointment and compensation

The Director shall fix the compensation and number of, and appoint and direct, all employees of the Office of Thrift Supervision notwithstanding section 301(f)(1) of title 31. Such compensation shall be paid without regard to the provisions of other laws applicable to officers or employees of the United States.

(2) Rates of basic pay

Rates of basic pay for employees of the Office may be set and adjusted by the Director without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5.

(3) Additional compensation and benefits

The Director may provide additional compensation and benefits to employees of the Office if the same type of compensation or benefits are then being provided by any Federal banking agency or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees of the Office, the Director shall consult, and seek to maintain comparability with, the Federal banking agencies.

(4) Delegation authority

(A) In general

The Director may—

(i) designate who shall act as Director in the Director's absence; and

(ii) delegate to any employee, representative, or agent any power of the Director.

(B) Limitations

Notwithstanding subparagraph (A)(ii), the Director shall not, directly or indirectly—

(i) after October 10, 1989, delegate to any Federal home loan bank or to any officer, director, or employee of a Federal home loan bank, any power involving examining, supervising, taking enforcement action with respect to, or otherwise regulating any savings association, savings and loan holding company, or other person subject to regulation by the Director; or

(ii) delegate the Director's authority to serve as a member of the Corporation's Board of Directors.

(i) Funding through assessments

The compensation of the Director and other employees of the Office and all other expenses thereof may be paid from assessments levied under this chapter.

(j) GAO audit

The Director shall make available to the Comptroller General of the United States all books and records necessary to audit all of the activities of the Office of Thrift Supervision.

(June 13, 1933, ch. 64, §3, as added Pub. L. 101–73, title III, §301, Aug. 9, 1989, 103 Stat. 278; amended Pub. L. 103–325, title III, §331(c), Sept. 23, 1994, 108 Stat. 2232; Pub. L. 103–328, title I, §102(b)(5), Sept. 29, 1994, 108 Stat. 2352; Pub. L. 109–351, title VII, §712, Oct. 13, 2006, 120 Stat. 1994; Pub. L. 111–203, title III, §369(3), July 21, 2010, 124 Stat. 1558.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§351, 369(3), July 21, 2010, 124 Stat. 1546, 1558, provided that, effective on the transfer date, this section is amended:

(1) by substituting ''Administrative provisions'' for section catchline;

(2) by striking out subsections (a), (b), (c), (d), (g), (h), (i), and (j), and redesignating subsections (e) and (f) as (a) and (b), respectively;

(3) in subsection (a), as so redesignated, by striking out ''of the Director'' in heading and substituting ''In accordance with subtitle A of title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the appropriate Federal banking agency'' for ''The Director'' in the matter preceding paragraph (1); and

(4) in subsection (b), by substituting ''appropriate Federal banking agency'' for ''Director''.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsecs. (e) and (g)(2), is Pub. L. 101–73, Aug. 9, 1989, 103 Stat. 183. Section 308 of the Act is set out as a note under section 1463 of this title. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 3 of act June 13, 1933, amended section 1424 of this title prior to the general revision of this chapter by Pub. L. 101–73, § 301.

AMENDMENTS

2006—Subsec. (c)(3). Pub. L. 109–351, § 712(b), designated existing provisions as subpar. (A), inserted subpar. heading, and added subpar. (B).

Subsec. (c)(5). Pub. L. 109–351, § 712(a), amended heading and text of par. (5) generally. Prior to amendment, text read as follows: ''Notwithstanding paragraphs (1) and (2), the Chairman of the Federal Home Loan Bank Board on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, shall be the Director until the date on which that individual's term as Chairman of the Federal Home Loan Bank Board would have expired.''

1994—Subsec. (b)(3). Pub. L. 103–325, § 331(c)(1), substituted ''(including agency enforcement actions) unless otherwise specifically provided by law'' for ''unless otherwise provided by law''.

Subsec. (b)(4). Pub. L. 103–325, § 331(c)(2), added par. (4).

Subsecs. (f) to (j). Pub. L. 103–328 added subsec. (f) and redesignated former subsecs. (f) to (i) as (g) to (j), respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

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

DELEGATION OF AUTHORITY TO RATIFY OFFICE OF THRIFT SUPERVISION ACTIONS

Memorandum of the President of the United States, Apr. 18, 1990, 55 F.R. 15207, provided:

Memorandum for the Director of the Office of Thrift Supervision

By the authority vested in me as President of the United States by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code, I hereby delegate to the Director of the Office of Thrift Supervision my authority to ratify actions taken on behalf of, or in the name of, the Office of Thrift Supervision or its Director before April 9, 1990.

This memorandum shall be published in the Federal Register.

GEORGE BUSH.

§ 1463. Supervision of savings associations

(a) Federal savings associations

(1) In general

The Director shall provide for the examination, safe and sound operation, and regulation of savings associations.

(2) Regulations

The Director may issue such regulations as the Director determines to be appropriate to carry out the responsibilities of the Director or the Office.

(3) Safe and sound housing credit to be encouraged

The Director shall exercise all powers granted to the Director under this chapter so as to encourage savings associations to provide credit for housing safely and soundly.

(b) Accounting and disclosure

(1) In general

The Director shall, by regulation, prescribe uniform accounting and disclosure standards for savings associations, to be used in determining savings associations' compliance with all applicable regulations.

(2) Specific requirements for accounting standards

Subject to section 1464(t) of this title, the uniform accounting standards prescribed under paragraph (1) shall—

(A) incorporate generally accepted accounting principles to the same degree that such principles are used to determine compliance with regulations prescribed by the Federal banking agencies;

(B) allow for no deviation from full compliance with such standards as are in effect after December 31, 1993; and

(C) prior to January 1, 1994, require full compliance by savings associations with accounting standards in effect at any time before such date not later than provided under the schedule in section 563.23–3 of title 12, Code of Federal Regulations (as in effect on May 1, 1989).

(3) Authority to prescribe more stringent accounting standards

The Director may at any time prescribe accounting standards more stringent than required under paragraph (2) if the Director determines that the more stringent standards are necessary to ensure the safe and sound operation of savings associations.

(c) Stringency of standards

All regulations and policies of the Director governing the safe and sound operation of savings associations, including regulations and policies governing asset classification and appraisals, shall be no less stringent than those established by the Comptroller of the Currency for national banks.

(d) Investment of certain funds in accounts of savings associations

The savings accounts and share accounts of savings associations insured by the Corporation shall be lawful investments and may be accepted as security for all public funds of the United States, fiduciary and trust funds under the authority or control of the United States or any officer thereof, and for the funds of all corporations organized under the laws of the United States (subject to any regulatory authority otherwise applicable), regardless of any limitation of law upon the investment of any such funds or upon the acceptance of security for the investment or deposit of any of such funds.

(e) Participation by savings associations in lotteries and related activities

(1) Participation prohibited

No savings association may—

(A) deal in lottery tickets;

(B) deal in bets used as a means or substitute for participation in a lottery;

(C) announce, advertise, or publicize the existence of any lottery; or

(D) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

(2) Use of facilities prohibited

No savings association may permit—

(A) the use of any part of any of its own offices by any person for any purpose forbidden to the institution under paragraph (1); or

(B) direct access by the public from any of its own offices to any premises used by any person for any purpose forbidden to the institution under paragraph (1).

(3) Definitions

For purposes of this subsection—

(A) Deal in

The term ''deal in'' includes making, taking, buying, selling, redeeming, or collecting.

(B) Lottery

The term ''lottery'' includes any arrangement under which—

(i) 3 or more persons (hereafter in this subparagraph referred to as the ''participants'') advance money or credit to another in exchange for the possibility or expectation that 1 or more but not all of the participants (hereafter in this paragraph referred to as the ''winners'') will receive by reason of those participants' advances more than the amounts those participants have advanced; and

(ii) the identity of the winners is determined by any means which includes—

(I) a random selection;

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

(III) any record or tabulation of the result of 1 or more events in which any participant has no interest except for the bearing that event has on the possibility that the participant may become a winner.

(C) Lottery ticket

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

(4) Exception for State lotteries

Paragraphs (1) and (2) shall not apply with respect to any savings association accepting funds from, or performing any lawful services for, any State operating a lottery, or any officer or employee of such a State who is charged with administering the lottery.

(5) Regulations

The Director shall prescribe such regulations as may be necessary to provide for enforcement of this subsection and to prevent any evasion of any provision of this subsection.

(f) Federally related mortgage loan disclosures

A savings association may not make a federally related mortgage loan to an agent, trustee, nominee, or other person acting in a fiduciary capacity without requiring that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the savings association. At the request of the Director, the savings association shall report to the Director the identity of such person and the nature and amount of the loan.

(g) Preemption of State usury laws

(1) Notwithstanding any State law, a savings association may charge interest on any extension of credit at a rate of not more than 1 percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district in which such savings association is located or at the rate allowed by the laws of the State in which such savings association is located, whichever is greater.

(2) If the rate prescribed in paragraph (1) exceeds the rate such savings association would be permitted to charge in the absence of this subsection, the receiving or charging a greater rate of interest than that prescribed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the extension of credit carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than 2 years after the date of such payment, an amount equal to twice the amount of the interest paid from the savings association taking or receiving such interest.

(h) Form and maturity of securities

No savings association shall—

(1) issue securities which guarantee a definite maturity except with the specific approval of the Director, or

(2) issue any securities the form of which has not been approved by the Director.

(June 13, 1933, ch. 64, § 4, as added Pub. L. 101–73, title III, § 301, Aug. 9, 1989, 103 Stat. 280; amended Pub. L. 111–203, title III, § 369(4), July 21, 2010, 124 Stat. 1558.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 369(4), July 21, 2010, 124 Stat. 1546, 1558, provided that, effective on the transfer date, this section is amended:

(1) in subsection (a)—

(A) by striking out ''Federal'' in heading and striking out paragraphs (1) and (2) and adding the following:

''(1) Examination and safe and sound operation

''(A) Federal savings associations

''The Comptroller shall provide for the examination and safe and sound operation of Federal savings associations.

''(B) State savings associations

''The Corporation shall provide for the examination and safe and sound operation of State savings associations.

''(2) Regulations for savings associations

''The Comptroller may prescribe regulations with respect to savings associations, as the Comp-

troller determines to be appropriate to carry out the purposes of this chapter.''; and

(B) in paragraph (3), by substituting ''Comptroller and the Corporation'' for ''Director'' wherever appearing;

(2) in subsection (b)—

(A) by substituting ''Comptroller'' for ''Director'' wherever appearing; and

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting ''and'' at the end;

(ii) in subparagraph (B), by substituting a period for ''; and''; and

(iii) by striking out subparagraph (C);

(3) in subsection (c)—

(A) by substituting ''The regulations of the Comptroller and the policies of the Comptroller and the Corporation'' for ''All regulations and policies of the Director''; and

(B) by striking out ''of the Currency'';

(4) in subsection (e)(5), by substituting ''Comptroller'' for ''Director''; and

(5) in subsections (f) and (h), by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing.

See Effective Date of 2010 Amendment note below.

PRIOR PROVISIONS

A prior section 1463, acts June 13, 1933, ch. 64, §4, 48 Stat. 129; Apr. 27, 1934, ch. 168, §§1(a), 2–4, 13, 48 Stat. 643–645, 647; June 27, 1934, ch. 847, title V, §§506, 508(b), 48 Stat. 1263, 1264; May 28, 1935, ch. 150, §§10–17(a), 49 Stat. 296, 297; Aug. 11, 1939, ch. 684, 53 Stat. 1403; Oct. 24, 1942, ch. 621, 56 Stat. 986; June 30, 1947, ch. 166, title II, §206(f), 61 Stat. 206, related to creation of Home Owners' Loan Corporation, for appointment and compensation of its board of directors, for appointment and compensation of its employees, and for other powers, prior to repeal by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 648.

A prior section 1463a, act Apr. 27, 1934, ch. 168, §1(b), 48 Stat. 644, provided that amendments made to subsec. (c) of former section 1463 of this title, except with respect to refunding, by act Apr. 27, 1934, should not apply to any bonds prior to Apr. 27, 1934, issued under subsec. (c), or to any bonds thereafter issued in compliance with commitments of the Corporation outstanding on Apr. 27, 1934.

A prior section 1463b, act Apr. 27, 1934, ch. 168, §9, 48 Stat. 646, related to purchase of obligations of, and loans to, Federal Home Loan Banks, prior to repeal by act May 28, 1935, ch. 150, §17(b), 49 Stat. 297.

EFFECTIVE DATE OF 2010 AMENDMENT

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

PRESERVING MINORITY OWNERSHIP OF MINORITY FINANCIAL INSTITUTIONS

Pub. L. 101–73, title III, §308, Aug. 9, 1989, 103 Stat. 353, as amended by Pub. L. 111–203, title III, §367(4), July 21, 2010, 124 Stat. 1556, provided that:

''(a) CONSULTATION ON METHODS.—The Secretary of the Treasury shall consult with the Director of the Office of Thrift Supervision and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation on methods for best achieving the following goals:

''(1) Preserving the present number of minority depository institutions.

''(2) Preserving their minority character in cases involving mergers or acquisition of a minority depository institution by using general preference guidelines in the following order:

''(A) Same type of minority depository institution in the same city.

''(B) Same type of minority depository institution in the same State.

''(C) Same type of minority depository institution nationwide.

''(D) Any type of minority depository institution in the same city.

''(E) Any type of minority depository institution in the same State.

''(F) Any type of minority depository institution nationwide.

''(G) Any other bidders.

''(3) Providing technical assistance to prevent insolvency of institutions not now insolvent.

''(4) Promoting and encouraging creation of new minority depository institutions.

''(5) Providing for training, technical assistance, and educational programs.

''(b) DEFINITIONS.—For purposes of this section—

''(1) MINORITY FINANCIAL INSTITUTION.—The term 'minority depository institution' means any depository institution that—

''(A) if a privately owned institution, 51 percent is owned by one or more socially and economically disadvantaged individuals;

''(B) if publicly owned, 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; and

''(C) in the case of a mutual institution where the majority of the Board of Directors, account holders, and the community which it services is predominantly minority.

''(2) MINORITY.—The term 'minority' means any black American, Native American, Hispanic American, or Asian American.''

[Pub. L. 111–203, title III, §§351, 367(4), July 21, 2010, 124 Stat. 1546, 1556, provided that, effective on the transfer date (defined in section 5301 of this title), section 308 of Pub. L. 101–73, set out above, is amended—

[(A) in subsection (a), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Chairman of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Chairman of the National Credit Union Administration,''; and

[(B) by adding at the end the following new subsection:

''(c) REPORTS.—The Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Chairman of the National Credit Union Administration, and the Chairperson of Board of Directors of the Federal Deposit Insurance Corporation shall each submit an annual report to the Congress containing a description of actions taken to carry out this section.'']

ABOLITION OF HOME OWNERS' LOAN CORPORATION

Act June 30, 1953, ch. 170, §21, 67 Stat. 126, provided for dissolution and abolition of Home Owners' Loan Corporation established by former section 1463 of this title.

§ 1464. Federal savings associations

(a) In general

In order to provide thrift institutions for the deposit of funds and for the extension of credit for homes and other goods and services, the Director is authorized, under such regulations as the Director may prescribe—

(1) to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings associations (including Federal savings banks), and

(2) to issue charters therefor,

giving primary consideration of the best practices of thrift institutions in the United States.

The lending and investment powers conferred by this section are intended to encourage such institutions to provide credit for housing safely and soundly.

(b) Deposits and related powers

(1) Deposit accounts

(A) Subject to the terms of its charter and regulations of the Director, a Federal savings association may—

(i) raise funds through such deposit, share, or other accounts, including demand deposit accounts (hereafter in this section referred to as ''accounts''); and

(ii) issue passbooks, certificates, or other evidence of accounts.

(B) A Federal savings association may not—

(i) pay interest on a demand account; or

(ii) permit any overdraft (including an intraday overdraft) on behalf of an affiliate, or incur any such overdraft in such savings association's account at a Federal reserve bank or Federal home loan bank on behalf of an affiliate.

All savings accounts and demand accounts shall have the same priority upon liquidation. Holders of accounts and obligors of a Federal savings association shall, to such extent as may be provided by its charter or by regulations of the Director, be members of the savings association, and shall have such voting rights and such other rights as are thereby provided.

(C) A Federal savings association may require not less than 14 days notice prior to payment of savings accounts if the charter of the savings association or the regulations of the Director so provide.

(D) If a Federal savings association does not pay all withdrawals in full (subject to the right of the association, where applicable, to require notice), the payment of withdrawals from accounts shall be subject to such rules and procedures as may be prescribed by the savings association's charter or by regulation of the Director. Except as authorized in writing by the Director, any Federal savings association that fails to make full payment of any withdrawal when due shall be deemed to be in an unsafe or unsound condition.

(E) Accounts may be subject to check or to withdrawal or transfer on negotiable or transferable or other order or authorization to the Federal savings association, as the Director may by regulation provide.

(F) A Federal savings association may establish remote service units for the purpose of crediting savings or demand accounts, debiting such accounts, crediting payments on loans, and the disposition of related financial transactions, as provided in regulations prescribed by the Director.

(2) Other liabilities

To such extent as the Director may authorize in writing, a Federal savings association may borrow, may give security, may be surety as defined by the Director and may issue such notes, bonds, debentures, or other obligations, or other securities, including capital stock.

(3) Loans from State housing finance agencies

(A) In general

Subject to regulation by the Director but without regard to any other provision of this subsection, any Federal savings association that is in compliance with the capital standards in effect under subsection (t) of this section may borrow funds from a State mortgage finance agency of the State in which the head office of such savings association is situated to the same extent as State law authorizes a savings association organized under the laws of such State to borrow from the State mortgage finance agency.

(B) Interest rate

A Federal savings association may not make any loan of funds borrowed under subparagraph (A) at an interest rate which exceeds by more than 1¾ percent per annum the interest rate paid to the State mortgage finance agency on the obligations issued to obtain the funds so borrowed.

(4) Mutual capital certificates

In accordance with regulations issued by the Director, mutual capital certificates may be issued and sold directly to subscribers or through underwriters. Such certificates may be included in calculating capital for the purpose of subsection (t) of this section to the extent permitted by the Director. The issuance of certificates under this paragraph does not constitute a change of control or ownership under this chapter or any other law unless there is in fact a change in control or reorganization. Regulations relating to the issuance and sale of mutual capital certificates shall provide that such certificates—

(A) are subordinate to all savings accounts, savings certificates, and debt obligations;

(B) constitute a claim in liquidation on the general reserves, surplus, and undivided profits of the Federal savings association remaining after the payment in full of all savings accounts, savings certificates, and debt obligations;

(C) are entitled to the payment of dividends; and

(D) may have a fixed or variable dividend rate.

(c) Loans and investments

To the extent specified in regulations of the Director, a Federal savings association may invest in, sell, or otherwise deal in the following loans and other investments:

(1) Loans or investments without percentage of assets limitation

Without limitation as a percentage of assets, the following are permitted:

(A) Account loans

Loans on the security of its savings accounts and loans specifically related to transaction accounts.

(B) Residential real property loans

Loans on the security of liens upon residential real property.

(C) United States Government securities

Investments in obligations of, or fully guaranteed as to principal and interest by, the United States.

(D) Federal home loan bank and Federal National Mortgage Association securities

Investments in the stock or bonds of a Federal home loan bank or in the stock of the Federal National Mortgage Association.

(E) Federal Home Loan Mortgage Corporation instruments

Investments in mortgages, obligations, or other securities which are or have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1454 or 1455].

(F) Other Government securities

Investments in obligations, participations, securities, or other instruments issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, or any agency of the United States. A savings association may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act [12 U.S.C. 1721(g)].

(G) Deposits

Investments in accounts of any insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

(H) State securities

Investments in obligations issued by any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision). A Federal savings association may not invest more than 10 percent of its capital in obligations of any one issuer, exclusive of investments in general obligations of any issuer.

(I) Purchase of insured loans

Purchase of loans secured by liens on improved real estate which are insured or guaranteed under the National Housing Act [12 U.S.C. 1701 et seq.], the Servicemen's Readjustment Act of 1944, or chapter 37 of title 38.

(J) Home improvement and manufactured home loans

Loans made to repair, equip, alter, or improve any residential real property, and loans made for manufactured home financing.

(K) Insured loans to finance the purchase of fee simple

Loans insured under section 240 of the National Housing Act [12 U.S.C. 1715z–5].

(L) Loans to financial institutions, brokers, and dealers

Loans to—

(i) financial institutions with respect to which the United States or an agency or instrumentality thereof has any function of examination or supervision, or

(ii) any broker or dealer registered with the Securities and Exchange Commission,

which are secured by loans, obligations, or investments in which the Federal savings association has the statutory authority to invest directly.

(M) Liquidity investments

Investments (other than equity investments), identified by the Director, for liquidity purposes, including cash, funds on deposit at a Federal reserve bank or a Federal home loan bank, or bankers' acceptances.

(N) Investment in the national housing partnership corporation, partnerships, and joint ventures

Investments in shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968 [42 U.S.C. 3931 et seq.], and investments in any partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of such Act [42 U.S.C. 3937(a) or (c)].

(O) Certain HUD insured or guaranteed investments

Loans that are secured by mortgages—

(i) insured under title X of the National Housing Act [12 U.S.C. 1749aa et seq.],[1] or

(ii) guaranteed under title IV of the Housing and Urban Development Act of 1968, under part B of the National Urban Policy and New Community Development Act of 1970 [42 U.S.C. 4511 et seq.], or under section 802 of the Housing and Community Development Act of 1974 [42 U.S.C. 1440].

(P) State housing corporation investments

Obligations of and loans to any State housing corporation, if—

(i) such obligations or loans are secured directly, or indirectly through an agent or fiduciary, by a first lien on improved real estate which is insured under the provisions of the National Housing Act [12 U.S.C. 1701 et seq.], and

(ii) in the event of default, the holder of the obligations or loans has the right directly, or indirectly through an agent or fiduciary, to cause to be subject to the satisfaction of such obligations or loans the real estate described in the first lien or the insurance proceeds under the National Housing Act.

(Q) Investment companies

A Federal savings association may invest in, redeem, or hold shares or certificates issued by any open-end management investment company which—

(i) is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], and

(ii) the portfolio of which is restricted by such management company's investment

[1] See References in Text note below.

policy (changeable only if authorized by shareholder vote) solely to investments that a Federal savings association by law or regulation may, without limitation as to percentage of assets, invest in, sell, redeem, hold, or otherwise deal in.

(R) Mortgage-backed securities

Investments in securities that—

(i) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 [15 U.S.C. 77d(5)]; or

(ii) are mortgage related securities (as defined in section 3(a)(41) of the Securities Exchange Act of 1934) [15 U.S.C. 78c(a)(41)],

subject to such regulations as the Director may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales price, or both.

(S) Small business related securities

Investments in small business related securities (as defined in section 78c(a)(53) of title 15), subject to such regulations as the Director may prescribe, including regulations concerning the minimum size of the issue (at the time of the initial distribution), the minimum aggregate sales price, or both.

(T) Credit card loans

Loans made through credit cards or credit card accounts.

(U) Educational loans

Loans made for the payment of educational expenses.

(2) Loans or investments limited to a percentage of assets or capital

The following loans or investments are permitted, but only to the extent specified:

(A) Commercial and other loans

Secured or unsecured loans for commercial, corporate, business, or agricultural purposes. The aggregate amount of loans made under this subparagraph may not exceed 20 percent of the total assets of the Federal savings association, and amounts in excess of 10 percent of such total assets may be used under this subparagraph only for small business loans, as that term is defined by the Director.

(B) Nonresidential real property loans

(i) In general

Loans on the security of liens upon nonresidential real property. Except as provided in clause (ii), the aggregate amount of such loans shall not exceed 400 percent of the Federal savings association's capital, as determined under subsection (t) of this section.

(ii) Exception

The Director may permit a savings association to exceed the limitation set forth in clause (i) if the Director determines that the increased authority—

(I) poses no significant risk to the safe and sound operation of the association, and

(II) is consistent with prudent operating practices.

(iii) Monitoring

If the Director permits any increased authority pursuant to clause (ii), the Director shall closely monitor the Federal savings association's condition and lending activities to ensure that the savings association carries out all authority under this paragraph in a safe and sound manner and complies with this subparagraph and all relevant laws and regulations.

(C) Investments in personal property

Investments in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture, for rental or sale. Investments under this subparagraph may not exceed 10 percent of the assets of the Federal savings association.

(D) Consumer loans and certain securities

A Federal savings association may make loans for personal, family, or household purposes, including loans reasonably incident to providing such credit, and may invest in, sell, or hold commercial paper and corporate debt securities, as defined and approved by the Director. Loans and other investments under this subparagraph may not exceed 35 percent of the assets of the Federal savings association, except that amounts in excess of 30 percent of the assets may be invested only in loans which are made by the association directly to the original obligor and with respect to which the association does not pay any finder, referral, or other fee, directly or indirectly, to any third party.

(3) Loans or investments limited to 5 percent of assets

The following loans or investments are permitted, but not to exceed 5 percent of assets of a Federal savings association for each subparagraph:

(A) Community development investments

Investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.]. No investment under this subparagraph in such real property may exceed an aggregate of 2 percent of the assets of the Federal savings association.

(B) Nonconforming loans

Loans upon the security of or respecting real property or interests therein used for primarily residential or farm purposes that do not comply with the limitations of this subsection.

(C) Construction loans without security

Loans—

(i) the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate; and

(ii) with respect to which the association—

(I) relies substantially on the borrower's general credit standing and projected future income for repayment, without other security; or

(II) relies on other assurances for repayment, including a guarantee or similar obligation of a third party.

The aggregate amount of such investments shall not exceed the greater of the Federal savings association's capital or 5 percent of its assets.

(4) Other loans and investments

The following additional loans and other investments to the extent authorized below:

(A) Business development credit corporations

A Federal savings association that is in compliance with the capital standards prescribed under subsection (t) of this section may invest in, lend to, or to[2] commit itself to lend to, any business development credit corporation incorporated in the State in which the home office of the association is located in the same manner and to the same extent as savings associations chartered by such State are authorized. The aggregate amount of such investments, loans, and commitments of any such Federal savings association shall not exceed one-half of 1 percent of the association's total outstanding loans or $250,000, whichever is less.

(B) Service corporations

Investments in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the Federal savings association's home office is located, if such corporation's entire capital stock is available for purchase only by savings associations of such State and by Federal associations having their home offices in such State. No Federal savings association may make any investment under this subparagraph if the association's aggregate outstanding investment under this subparagraph would exceed 3 percent of the association's assets. Not less than one-half of the investment permitted under this subparagraph which exceeds 1 percent of the association's assets shall be used primarily for community, inner-city, and community development purposes.

(C) Foreign assistance investments

Investments in housing project loans having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961 [22 U.S.C. 2181] or loans having the benefit of any guarantee under section 224 of such Act [22 U.S.C. 2184],[3] or any commitment or agreement with respect to such loans made pursuant to either of such sections and in the share capital and capital reserve of the Inter-American Savings and Loan Bank. This authority extends to the acquisition, holding, and disposition of loans guaranteed under section 221 or 222 of such Act [22 U.S.C. 2181 or 2182]. Investments under this subparagraph shall not exceed 1 percent of the Federal savings association's assets.

(D) Small business investment companies

A Federal savings association may invest in stock, obligations, or other securities of any small business investment company formed pursuant to section 301(d) of the Small Business Investment Act of 1958 [15 U.S.C. 681(d)][3] for the purpose of aiding members of a Federal home loan bank. A Federal savings association may not make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 1 percent of the assets of such savings association.

(E) Bankers' banks

A Federal savings association may purchase for its own account shares of stock of a bankers' bank, described in Paragraph Seventh of section 24 of this title or in section 27(b) of this title, on the same terms and conditions as a national bank may purchase such shares.

(F) New Markets Venture Capital companies

A Federal savings association may invest in stock, obligations, or other securities of any New Markets Venture Capital company as defined in section 689 of title 15, except that a Federal savings association may not make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 5 percent of the capital and surplus of such savings association.

(5) Transition rule for savings associations acquiring banks

(A) In general

If, under section 5(d)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(3)],[3] a savings association acquires all or substantially all of the assets of a bank, the Director may permit the savings association to retain any such asset during the 2-year period beginning on the date of the acquisition.

(B) Extension

The Director may extend the 2-year period described in subparagraph (A) for not more than 1 year at a time and not more than 2 years in the aggregate, if the Director determines that the extension is consistent with the purposes of this chapter.

(6) Definitions

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

(A) Residential property

The terms ''residential real property'' or ''residential real estate'' mean leaseholds, homes (including condominiums and cooperatives, except that in connection with loans on individual cooperative units, such loans shall be adequately secured as defined by the Director) and, combinations of homes

[2] So in original.

[3] See References in Text note below.

or dwelling units and business property, involving only minor or incidental business use, or property to be improved by construction of such structures.

(B) Loans

The term ''loans'' includes obligations and extensions or advances of credit; and any reference to a loan or investment includes an interest in such a loan or investment.

(d) Regulatory authority

(1) In general

(A) Enforcement

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

(B) Ancillary provisions

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

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

(iii) Upon request made in the course of supervision or oversight of any savings association, for the purpose of acting on any application or determining the condition of any savings association, including whether operations are being conducted safely, soundly, or in compliance with charters, laws, regulations, directives, written agreements, or conditions imposed in writing in connection with the granting of an application or other request, the Director shall be given prompt and complete access to all savings association officers, directors, employees, and agents, and to all relevant books, records, or documents of any type.

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

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

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

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

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

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

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

[4] So in original.

savings association, or a director or officer thereof, may allow to any such party reasonable expenses and attorneys' fees. Such expenses and fees shall be paid by the savings association.

(2) Conservatorships and receiverships

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

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

(B) Power of appointment; judicial review

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

(C) Replacement

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

(D) Court action

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

(E) Powers

(i) In general

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

(ii) FDIC or RTC as conservator or receiver

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

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

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

(3) Regulations

(A) In general

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

(B) FDIC or RTC as conservator or receiver

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

(4) Refusal to comply with demand

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

(5) "Savings association" defined

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

(6) Compliance with monetary transaction recordkeeping and report requirements

(A) Compliance procedures required

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

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

(i) In general

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

(ii) Exam report requirement

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

(C) Order to comply with requirements

If the Director determines that a savings association—

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

(ii) has failed to correct any problem with the procedures maintained by such association which was previously reported to the association by the Director,

the Director shall issue an order under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] requiring such association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.

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

(A) General examination and regulatory authority

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

(B) Examination by other banking agencies

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

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

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

(D) Service performed by contract or otherwise

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

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

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

(I) the date on which the contract is entered into; or

(II) the date on which the performance of the service is initiated.

(E) Administration by the Director

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

(8) Definitions

For purposes of this section—

(A) the term ''service company'' means—

(i) any corporation—

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

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

(ii) any limited liability company—

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

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

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

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

(e) Character and responsibility

A charter may be granted only—

(1) to persons of good character and responsibility,

(2) if in the judgment of the Director a necessity exists for such an institution in the community to be served,

(3) if there is a reasonable probability of its usefulness and success, and

(4) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.

(f) Federal home loan bank membership

After the end of the 6-month period beginning on November 12, 1999, a Federal savings association may become a member of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.].

(g) Preferred shares

[Repealed.]

(h) Discriminatory State and local taxation prohibited

No State, county, municipal, or local taxing authority may impose any tax on Federal savings associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.

(i) Conversions

(1) In general

Any savings association which is, or is eligible to become, a member of a Federal home loan bank may convert into a Federal savings association (and in so doing may change directly from the mutual form to the stock form, or from the stock form to the mutual form). Such conversion shall be subject to such regulations as the Director shall prescribe. Thereafter such Federal savings association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this chapter.

(2) Authority of Director

(A) No savings association may convert from the mutual to the stock form, or from the stock form to the mutual form, except in accordance with the regulations of the Director.

(B) Any aggrieved person may obtain review of a final action of the Director which approves or disapproves a plan of conversion pursuant to this subsection only by complying with the provisions of section 1467a(j) of this title within the time limit and in the manner therein prescribed, which provisions shall apply in all respects as if such final action were an order the review of which is therein provided for, except that such time limit shall commence upon publication of notice of such final action in the Federal Register or upon the giving of such general notice of such final action as is required by or approved under regulations of the Director, whichever is later.

(C) Any Federal savings association may change its designation from a Federal savings association to a Federal savings bank, or the reverse.

(3) Conversion to State association

(A) Any Federal savings association may convert itself into a savings association or savings bank organized pursuant to the laws of the State in which the principal office of such Federal savings association is located if—

(i) the State permits the conversion of any savings association or savings bank of such State into a Federal savings association;

(ii) such conversion of a Federal savings association into such a State savings association is determined—

(I) upon the vote in favor of such conversion cast in person or by proxy at a special meeting of members or stockholders called to consider such action, specified by the law of the State in which the home office of the Federal savings association is located, as required by such law for a State-chartered institution to convert itself into a Federal savings association, but in no event upon a vote of less than 51 percent of all the votes cast at such meeting, and

(II) upon compliance with other requirements reciprocally equivalent to the requirements of such State law for the conversion of a State-chartered institution into a Federal savings association;

(iii) notice of the meeting to vote on conversion shall be given as herein provided and no other notice thereof shall be necessary; the notice shall expressly state that such meeting is called to vote thereon, as well as the time and place thereof; and such notice shall be mailed, postage prepaid, at least 30 and not more than 60 days prior to the date of the meeting, to the Director and to each member or stockholder of record of the Federal savings association at the member's or stockholder's last address as shown on the books of the Federal savings association;

(iv) when a mutual savings association is dissolved after conversion, the members or shareholders of the savings association will share on a mutual basis in the assets of the association in exact proportion to their relative share or account credits;

(v) when a stock savings association is dissolved after conversion, the stockholders

will share on an equitable basis in the assets of the association; and

(vi) such conversion shall be effective upon the date that all the provisions of this chapter shall have been fully complied with and upon the issuance of a new charter by the State wherein the savings association is located.

(B)(i) The act of conversion constitutes consent by the institution to be bound by all the requirements that the Director may impose under this chapter.

(ii) The savings association shall upon conversion and thereafter be authorized to issue securities in any form currently approved at the time of issue by the Director for issuance by similar savings associations in such State.

(iii) If the insurance of accounts is terminated in connection with such conversion, the notice and other action shall be taken as provided by law and regulations for the termination of insurance of accounts.

(4) Savings bank activities

(A) To the extent authorized by the Director, but subject to section 18(m)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1828(m)(3)]—

(i) any Federal savings bank chartered as such prior to October 15, 1982, may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was permitted to do so as a Federal savings bank prior to October 15, 1982; and

(ii) any Federal savings bank in existence on August 9, 1989, and formerly organized as a mutual savings bank under State law may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was authorized to do so as a mutual savings bank under State law.

(B) The authority conferred by this paragraph may be utilized by any Federal savings association that acquires, by merger or consolidation, a Federal savings bank enjoying grandfather rights hereunder.

(5) Conversion to national or State bank

(A) In general

Any Federal savings association chartered and in operation before November 12, 1999, with branches in operation before November 12, 1999, in 1 or more States, may convert, at its option, with the approval of the Comptroller of the Currency for each national bank, and with the approval of the appropriate State bank supervisor and the appropriate Federal banking agency for each State bank, into 1 or more national or State banks, each of which may encompass 1 or more of the branches of the Federal savings association in operation before November 12, 1999, in 1 or more States subject to subparagraph (B).

(B) Conditions of conversion

The authority in subparagraph (A) shall apply only if each resulting national or State bank—

(i) will meet all financial, management, and capital requirements applicable to the resulting national or State bank; and

(ii) if more than 1 national or State bank results from a conversion under this subparagraph, has received approval from the Federal Deposit Insurance Corporation under section 5(a) of the Federal Deposit Insurance Act [12 U.S.C. 1815(a)].

(C) No merger application under FDIA required

No application under section 18(c) of the Federal Deposit Insurance Act [12 U.S.C. 1828(c)] shall be required for a conversion under this paragraph.

(D) Definitions

For purposes of this paragraph, the terms ''State bank'' and ''State bank supervisor'' have the same meanings as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

(6) Limitation on certain conversions by Federal savings associations

A Federal savings association may not convert to a State bank or State savings association during any period in which the Federal savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the Office of Thrift Supervision or the Comptroller of the Currency with respect to a significant supervisory matter.

(j) Subscription for shares

[Repealed.]

(k) Depository of public money

When designated for that purpose by the Secretary of the Treasury, a savings association the deposits of which are insured by the Corporation shall be a depository of public money and may be employed as fiscal agent of the Government under such regulations as may be prescribed by the Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. A savings association the deposits of which are insured by the Corporation may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality, including services in connection with the collection of taxes and other obligations owed the United States, and the Secretary of the Treasury may deposit public money in any such savings association, and shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(*l*) Retirement accounts

A Federal savings association is authorized to act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan which qualifies or qualified for specific tax treatment under section 401(d) of the Internal Revenue Code of 1986 [26 U.S.C. 401(d)] and to act as trustee or custodian of an individual retirement account within the meaning of section 408 of such Code [26 U.S.C. 408] if the funds of such trust or

account are invested only in savings accounts or deposits in such Federal savings association or in obligations or securities issued by such Federal savings association. All funds held in such fiduciary capacity by any Federal savings association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under this paragraph.

(m) Branching

(1) In general

(A) No savings association incorporated under the laws of the District of Columbia or organized in the District or doing business in the District shall establish any branch or move its principal office or any branch without the Director's prior written approval.

(B) No savings association shall establish any branch in the District of Columbia or move its principal office or any branch in the District without the Director's prior written approval.

(2) "Branch" defined

For purposes of this subsection the term ''branch'' means any office, place of business, or facility, other than the principal office as defined by the Director, of a savings association at which accounts are opened or payments are received or withdrawals are made, or any other office, place of business, or facility of a savings association defined by the Director as a branch within the meaning of such sentence.

(n) Trusts

(1) Permits

The Director may grant by special permit to a Federal savings association applying therefor the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which compete with Federal savings associations are permitted to act under the laws of the State in which the Federal savings association is located. Subject to the regulations of the Director, service corporations may invest in State or federally chartered corporations which are located in the State in which the home office of the Federal savings association is located and which are engaged in trust activities.

(2) Segregation of assets

A Federal savings association exercising any or all of the powers enumerated in this section shall segregate all assets held in any fiduciary capacity from the general assets of the association and shall keep a separate set of books and records showing in proper detail all transactions engaged in under this subsection. The State banking authority involved may have access to reports of examination made by the Director insofar as such reports relate to the trust department of such association but nothing in this subsection shall be construed as authorizing such State banking authority to examine the books, records, and assets of such associations.

(3) Prohibitions

No Federal savings association shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the association awaiting investment shall be carried in a separate account and shall not be used by the association in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Director.

(4) Separate lien

In the event of the failure of a Federal savings association, the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the estate of the association.

(5) Deposits

Whenever the laws of a State require corporations acting in a fiduciary capacity to deposit securities with the State authorities for the protection of private or court trusts, Federal savings associations so acting shall be required to make similar deposits. Securities so deposited shall be held for the protection of private or court trusts, as provided by the State law. Federal savings associations in such cases shall not be required to execute the bond usually required of individuals if State corporations under similar circumstances are exempt from this requirement. Federal savings associations shall have power to execute such bond when so required by the laws of the State involved.

(6) Oaths and affidavits

In any case in which the laws of a State require that a corporation acting as trustee, executor, administrator, or in any capacity specified in this section, shall take an oath or make an affidavit, the president, vice president, cashier, or trust officer of such association may take the necessary oath or execute the necessary affidavit.

(7) Certain loans prohibited

It shall be unlawful for any Federal savings association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than $50,000 or twice the amount of that person's gain from the loan, whichever is greater, or may be imprisoned not more than 5 years, or may be both fined and imprisoned, in the discretion of the court.

(8) Factors to be considered

In reviewing applications for permission to exercise the powers enumerated in this section, the Director may consider—

(A) the amount of capital of the applying Federal savings association,

(B) whether or not such capital is sufficient under the circumstances of the case,

(C) the needs of the community to be served, and

(D) any other facts and circumstances that seem to it proper.

The Director may grant or refuse the application accordingly, except that no permit shall be issued to any association having capital less than the capital required by State law of State banks, trust companies, and corporations exercising such powers.

(9) Surrender of charter

(A) Any Federal savings association may surrender its right to exercise the powers granted under this subsection, and have returned to it any securities which it may have deposited with the State authorities, by filing with the Director a certified copy of a resolution of its board of directors indicating its intention to surrender its right.

(B) Upon receipt of such resolution, the Director, if satisfied that such Federal savings association has been relieved in accordance with State law of all duties as trustee, executor, administrator, guardian or other fiduciary, may in the Director's discretion, issue to such association a certificate that such association is no longer authorized to exercise the powers granted by this subsection.

(C) Upon the issuance of such a certificate by the Director, such Federal savings association (i) shall no longer be subject to the provisions of this section or the regulations of the Director made pursuant thereto, (ii) shall be entitled to have returned to it any securities which it may have deposited with State authorities, and (iii) shall not exercise thereafter any of the powers granted by this section without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this section.

(D) The Director may prescribe regulations necessary to enforce compliance with the provisions of this subsection.

(10) Revocation

(A) In addition to the authority conferred by other law, if, in the opinion of the Director, a Federal savings association is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of 5 consecutive years to exercise, the powers granted by this subsection or otherwise fails or has failed to comply with the requirements of this subsection, the Director may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this subsection. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the association.

(B) Such hearing shall be conducted in accordance with the provisions of subsection (d)(1)(B) of this section, and subject to judicial review as therein provided, and shall be fixed for a date not earlier than 30 days and not later than 60 days after service of such notice unless the Director sets an earlier or later date at the request of any Federal savings association so served.

(C) Unless the Federal savings association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent, or if upon the record made at any such hearing, the Director shall find that any allegation specified in the notice of charges has been established, the Director may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this subsection, except that such order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

(D) A revocation order shall become effective not earlier than the expiration of 30 days after service of such order upon the association so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

***(o)* Conversion of State savings banks**

(1) Subject to the provisions of this subsection and under regulations of the Director, the Director may authorize the conversion of a State-chartered savings bank into a Federal savings bank, if such conversion is not in contravention of State law, and provide for the organization, incorporation, operation, examination, and regulation of such institution.

(2)(A) Any Federal savings bank chartered pursuant to this subsection shall continue to be insured by the Deposit Insurance Fund.

(B) The Director shall notify the Corporation of any application under this chapter for conversion to a Federal charter by an institution insured by the Corporation, shall consult with the Corporation before disposing of the application, and shall notify the Corporation of the Director's determination with respect to such application.

(C) Notwithstanding any other provision of law, if the Corporation determines that conversion into a Federal stock savings bank or the chartering of a Federal stock savings bank is necessary to prevent the default of a savings bank it insures or to reopen a savings bank in default that it insured, or if the Corporation determines, with the concurrence of the Director, that severe financial conditions exist that threaten the stability of a savings bank insured by the Corporation and that such a conversion or charter is likely to improve the financial condition of such savings bank, the Corporation shall provide the Director with a certificate of such determination, the reasons therefor in conformance with the requirements of this chapter, and the bank shall be converted or chartered by the Director, pursuant to the regulations thereof, from the time the Corporation issues the certificate.

(D) A bank may be converted under subparagraph (C) only if the board of trustees of the bank—

(i) has specified in writing that the bank is in danger of closing or is closed, or that severe financial conditions exist that threaten the stability of the bank and a conversion is likely to improve the financial condition of the bank; and

(ii) has requested in writing that the Corporation use the authority of subparagraph (C).

(E)(i) Before making a determination under subparagraph (D), the Corporation shall consult the State bank supervisor of the State in which the bank in danger of closing is chartered. The State bank supervisor shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of subparagraph (D).

(ii) If the State supervisor objects during such period, the Corporation may use the authority of subparagraph (D) only by an affirmative vote of three-fourths of the Board of Directors. The Board of Directors shall provide the State supervisor, as soon as practicable, with a written certification of its determination.

(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, operations, and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would apply to it if it were chartered as a Federal savings bank under any other provision of this chapter.

(p) Conversions

(1) Notwithstanding any other provision of law, and consistent with the purposes of this chapter, the Director may authorize (or in the case of a Federal savings association, require) the conversion of any mutual savings association or Federal mutual savings bank that is insured by the Corporation into a Federal stock savings association or Federal stock savings bank, or charter a Federal stock savings association or Federal stock savings bank to acquire the assets of, or merge with such a mutual institution under the regulations of the Director.

(2) Authorizations under this subsection may be made only—

(A) if the Director has determined that severe financial conditions exist which threaten the stability of an association and that such authorization is likely to improve the financial condition of the association,

(B) when the Corporation has contracted to provide assistance to such association under section 13 of the Federal Deposit Insurance Act [12 U.S.C. 1823], or

(C) to assist an institution in receivership.

(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, operations and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would apply to it if it were chartered as a Federal savings bank under any other provision of this chapter, and may engage in any investment, activity, or operation that the institution it acquired was engaged in if that institution was a Federal savings bank, or would have been authorized to engage in had that institution converted to a Federal charter.

(q) Tying arrangements

(1) A savings association may not in any manner extend credit, lease, or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain additional credit, property, or service from such savings association, or from any service corporation or affiliate of such association, other than a loan, discount, deposit, or trust service;

(B) that the customer provide additional credit, property, or service to such association, or to any service corporation or affiliate of such association, other than those related to and usually provided in connection with a similar loan, discount, deposit, or trust service; and

(C) that the customer shall not obtain some other credit, property, or service from a competitor of such association, or from a competitor of any service corporation or affiliate of such association, other than a condition or requirement that such association shall reasonably impose in connection with credit transactions to assure the soundness of credit.

(2)(A) Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of a violation of paragraph (1), under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings.

(B) Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

(3) Any person injured by a violation of paragraph (1) may bring an action in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, or in any other court of competent jurisdiction, and shall be entitled to recover three times the amount of the damages sustained, and the cost of suit, including a reasonable attorney's fee. Any such action shall be brought within 4 years from the date of the occurrence of the violation.

(4) Nothing contained in this subsection affects in any manner the right of the United States or any other party to bring an action under any other law of the United States or of any State, including any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this subsection. No regulation or order issued by the Director under this subsection shall in any manner constitute a defense to such action.

(5) For purposes of this subsection, the term ''loan'' includes obligations and extensions or advances of credit.

(6) EXCEPTIONS.—The Director may, by regulation or order, permit such exceptions to the prohibitions of this subsection as the Director considers will not be contrary to the purposes of this subsection and which conform to exceptions

granted by the Board of Governors of the Federal Reserve System pursuant to section 1972 of this title.

(r) Out-of-State branches

(1) No Federal savings association may establish, retain, or operate a branch outside the State in which the Federal savings association has its home office, unless the association qualifies as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 [26 U.S.C. 7701(a)(19)] or meets the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify, or qualifies as a qualified thrift lender, as determined under section 1467a(m) of this title. No out-of-State branch so established shall be retained or operated unless the total assets of the Federal savings association attributable to all branches of the Federal savings association in that State would qualify the branches as a whole, were they otherwise eligible, for treatment as a domestic building and loan association under section 7701(a)(19) or as a qualified thrift lender, as determined under section 1467a(m) of this title, as applicable.

(2) The limitations of paragraph (1) shall not apply if—

(A) the branch results from a transaction authorized under section 13(k) of the Federal Deposit Insurance Act [12 U.S.C. 1823(k)];

(B) the branch was authorized for the Federal savings association prior to October 15, 1982;

(C) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the association was a savings association or savings bank chartered by the State in which its home office is located; or

(D) the branch was operated lawfully as a branch under State law prior to the association's conversion to a Federal charter.

(3) The Director, for good cause shown, may allow Federal savings associations up to 2 years to comply with the requirements of this subsection.

(s) Minimum capital requirements

(1) In general

Consistent with the purposes of section 908 of the International Lending Supervision Act of 1983 [12 U.S.C. 3907] and the capital requirements established pursuant to such section by the appropriate Federal banking agencies (as defined in section 903(1) of such Act [12 U.S.C. 3902(1)]), the Director shall require all savings associations to achieve and maintain adequate capital by—

(A) establishing minimum levels of capital for savings associations; and

(B) using such other methods as the Director determines to be appropriate.

(2) Minimum capital levels may be determined by Director case-by-case

The Director may, consistent with subsection (t) of this section, establish the minimum level of capital for a savings association at such amount or at such ratio of capital-to-assets as the Director determines to be necessary or appropriate for such association in light of the particular circumstances of the association.

(3) Unsafe or unsound practice

In the Director's discretion, the Director may treat the failure of any savings association to maintain capital at or above the minimum level required by the Director under this subsection or subsection (t) of this section as an unsafe or unsound practice.

(4) Directive to increase capital

(A) Plan may be required

In addition to any other action authorized by law, including paragraph (3), the Director may issue a directive requiring any savings association which fails to maintain capital at or above the minimum level required by the Director to submit and adhere to a plan for increasing capital which is acceptable to the Director.

(B) Enforcement of plan

Any directive issued and plan approved under subparagraph (A) shall be enforceable under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] to the same extent and in the same manner as an outstanding order which was issued under section 8 of the Federal Deposit Insurance Act and has become final.

(5) Plan taken into account in other proceedings

The Director may—

(A) consider a savings association's progress in adhering to any plan required under paragraph (4) whenever such association or any affiliate of such association (including any company which controls such association) seeks the Director's approval for any proposal which would have the effect of diverting earnings, diminishing capital, or otherwise impeding such association's progress in meeting the minimum level of capital required by the Director; and

(B) disapprove any proposal referred to in subparagraph (A) if the Director determines that the proposal would adversely affect the ability of the association to comply with such plan.

(t) Capital standards

(1) In general

(A) Requirement for standards to be prescribed

The Director shall, by regulation, prescribe and maintain uniformly applicable capital standards for savings associations. Those standards shall include—

(i) a leverage limit;

(ii) a tangible capital requirement; and

(iii) a risk-based capital requirement.

(B) Compliance

A savings association is not in compliance with capital standards for purposes of this subsection unless it complies with all capital standards prescribed under this paragraph.

(C) Stringency

The standards prescribed under this paragraph shall be no less stringent than the

capital standards applicable to national banks.

(D) Deadline for regulations

The Director shall promulgate final regulations under this paragraph not later than 90 days after August 9, 1989, and those regulations shall become effective not later than 120 days after August 9, 1989.

(2) Content of standards

(A) Leverage limit

The leverage limit prescribed under paragraph (1) shall require a savings association to maintain core capital in an amount not less than 3 percent of the savings association's total assets.

(B) Tangible capital requirement

The tangible capital requirement prescribed under paragraph (1) shall require a savings association to maintain tangible capital in an amount not less than 1.5 percent of the savings association's total assets.

(C) Risk-based capital requirement

Notwithstanding paragraph (1)(C), the risk-based capital requirement prescribed under paragraph (1) may deviate from the risk-based capital standards applicable to national banks to reflect interest-rate risk or other risks, but such deviations shall not, in the aggregate, result in materially lower levels of capital being required of savings associations under the risk-based capital requirement than would be required under the risk-based capital standards applicable to national banks.

(3) Transition rule

(A) Certain qualifying supervisory goodwill included in calculating core capital

Notwithstanding paragraph (9)(A), an eligible savings association may include qualifying supervisory goodwill in calculating core capital. The amount of qualifying supervisory goodwill that may be included may not exceed the applicable percentage of total assets set forth in the following table:

For the following period:	The applicable percentage is:
Prior to January 1, 1992	1.500 percent
January 1, 1992–December 31, 1992	1.000 percent
January 1, 1993–December 31, 1993	0.750 percent
January 1, 1994–December 31, 1994	0.375 percent
Thereafter	0 percent

(B) Eligible savings associations

For purposes of subparagraph (A), a savings association is an eligible savings association so long as the Director determines that—

(i) the savings association's management is competent;

(ii) the savings association is in substantial compliance with all applicable statutes, regulations, orders, and supervisory agreements and directives; and

(iii) the savings association's management has not engaged in insider dealing, speculative practices, or any other activities that have jeopardized the association's safety and soundness or contributed to impairing the association's capital.

(4) [Repealed].

(5) Separate capitalization required for certain subsidiaries

(A) In general

In determining compliance with capital standards prescribed under paragraph (1), all of a savings association's investments in and extensions of credit to any subsidiary engaged in activities not permissible for a national bank shall be deducted from the savings association's capital.

(B) Exception for agency activities

Subparagraph (A) shall not apply with respect to a subsidiary engaged, solely as agent for its customers, in activities not permissible for a national bank unless the Corporation, in its sole discretion, determines that, in the interests of safety and soundness, this subparagraph should cease to apply to that subsidiary.

(C) Other exceptions

Subparagraph (A) shall not apply with respect to any of the following:

(i) Mortgage banking subsidiaries

A savings association's investments in and extensions of credit to a subsidiary engaged solely in mortgage-banking activities.

(ii) Subsidiary insured depository institutions

A savings association's investments in and extensions of credit to a subsidiary—

(I) that is itself an insured depository institution or a company the sole investment of which is an insured depository institution, and

(II) that was acquired by the parent insured depository institution prior to May 1, 1989.

(iii) Certain Federal savings banks

Any Federal savings association existing as a Federal savings association on August 9, 1989—

(I) that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law; or

(II) that acquired its principal assets from an association that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law.

(D) Transition rule

(i) Inclusion in capital

Notwithstanding subparagraph (A), if a savings association's subsidiary was, as of April 12, 1989, engaged in activities not permissible for a national bank, the savings association may include in calculating capital the applicable percentage (set forth in clause (ii)) of the lesser of—

(I) the savings association's investments in and extensions of credit to the subsidiary on April 12, 1989; or

(II) the savings association's investments in and extensions of credit to the

subsidiary on the date as of which the savings association's capital is being determined.

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is as follows:

For the following period:	The applicable percentage is:
Prior to July 1, 1990	100 percent
July 1, 1990–June 30, 1991	90 percent
July 1, 1991–October 31, 1992	75 percent
November 1, 1992–June 30, 1993	60 percent
July 1, 1993–June 30, 1994	40 percent
Thereafter	0 percent

(iii) Agency discretion to prescribe greater percentage

Subject to clauses (iv), (v), and (vi), the Director may prescribe by order, with respect to a particular qualified savings association, an applicable percentage greater than that provided in clause (ii) if the Director determines, in the Director's sole discretion, that the use of the greater percentage, under the circumstances—

(I) would not constitute an unsafe or unsound practice;

(II) would not increase the risk to the Deposit Insurance Fund; and

(III) would not be likely to result in the association's being in an unsafe or unsound condition.

(iv) Substantial compliance with approved capital plan

In the case of a savings association which is subject to a plan submitted under paragraph (7)(D) of this subsection or an order issued under this subsection, a directive issued or plan approved under subsection (s) of this section, or a capital restoration plan approved or order issued under section 38 or 39 of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*, 1831p–1], an order issued under clause (iii) with respect to the association shall be effective only so long as the association is in substantial compliance with such plan, directive, or order.

(v) Limitation on investments taken into account

In prescribing the amount by which an applicable percentage under clause (iii) may exceed the applicable percentage under clause (ii) with respect to a particular qualified savings association, the Director may take into account only the sum of—

(I) the association's investments in, and extensions of credit to, the subsidiary that were made on or before April 12, 1989; and

(II) the association's investments in, and extensions of credit to, the subsidiary that were made after April 12, 1989, and were necessary to complete projects initiated before April 12, 1989.

(vi) Limit

The applicable percentage limit allowed by the Director in an order under clause (iii) shall not exceed the following limits:

For the following period:	The limit is:
Prior to July 1, 1994	75 percent
July 1, 1994 through June 30, 1995	60 percent
July 1, 1995 through June 30, 1996	40 percent
After June 30, 1996	0 percent

(vii) Critically undercapitalized institution

In the case of a savings association that becomes critically undercapitalized (as defined in section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*]) as determined under this subparagraph without applying clause (iii), clauses (iii) through (v) shall be applied by substituting ''Corporation'' for ''Director'' each place such term appears.

(viii) "Qualified savings association" defined

For purposes of clause (iii), the term ''qualified savings association'' means an eligible savings association (as defined in paragraph (3)(B)) which is subject to this paragraph solely because of the real estate investments or other real estate activities of the association's subsidiary, and—

(I) is adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*]); or

(II) is in compliance with an approved capital restoration plan meeting the requirements of section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*], and is not critically undercapitalized (as defined in such section).

(ix) FDIC's discretion to prescribe lesser percentage

The Corporation may prescribe by order, with respect to a particular savings association, an applicable percentage less than that provided in clause (ii) or prescribed under clause (iii) if the Corporation determines, in its sole discretion, that the use of a greater percentage would, under the circumstances, constitute an unsafe or unsound practice or be likely to result in the association's being in an unsafe or unsound condition.

(E) Consolidation of subsidiaries not separately capitalized

In determining compliance with capital standards prescribed under paragraph (1), the assets and liabilities of each of a savings association's subsidiaries (other than any subsidiary described in subparagraph (C)(ii)) shall be consolidated with the savings association's assets and liabilities, unless all of the savings association's investments in and extensions of credit to the subsidiary are deducted from the savings association's capital pursuant to subparagraph (A).

(6) Consequences of failing to comply with capital standards

(A) Prior to January 1, 1991

Prior to January 1, 1991, the Director—

(i) may restrict the asset growth of any savings association not in compliance with capital standards; and

(ii) shall, beginning 60 days following the promulgation of final regulations under

this subsection, require any savings association not in compliance with capital standards to submit a plan under subsection (s)(4)(A) of this section that—

(I) addresses the savings association's need for increased capital;

(II) describes the manner in which the savings association will increase its capital so as to achieve compliance with capital standards;

(III) specifies the types and levels of activities in which the savings association will engage;

(IV) requires any increase in assets to be accompanied by an increase in tangible capital not less in percentage amount than the leverage limit then applicable;

(V) requires any increase in assets to be accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standard then applicable; and

(VI) is acceptable to the Director.

(B) On or after January 1, 1991

On or after January 1, 1991, the Director—

(i) shall prohibit any asset growth by any savings association not in compliance with capital standards, except as provided in subparagraph (C); and

(ii) shall require any savings association not in compliance with capital standards to comply with a capital directive issued by the Director (which may include such restrictions, including restrictions on the payment of dividends and on compensation, as the Director determines to be appropriate).

(C) Limited growth exception

The Director may permit any savings association that is subject to subparagraph (B) to increase its assets in an amount not exceeding the amount of net interest credited to the savings association's deposit liabilities if—

(i) the savings association obtains the Director's prior approval;

(ii) any increase in assets is accompanied by an increase in tangible capital in an amount not less than 6 percent of the increase in assets (or, in the Director's discretion if the leverage limit then applicable is less than 6 percent, in an amount equal to the increase in assets multiplied by the percentage amount of the leverage limit);

(iii) any increase in assets is accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standard then applicable;

(iv) any increase in assets is invested in low-risk assets, such as first mortgage loans secured by 1- to 4-family residences and fully secured consumer loans; and

(v) the savings association's ratio of core capital to total assets is not less than the ratio existing on January 1, 1991.

(D) Additional restrictions in case of excessive risks or rates

The Director may restrict the asset growth of any savings association that the Director determines is taking excessive risks or paying excessive rates for deposits.

(E) Failure to comply with plan, regulation, or order

The Director shall treat as an unsafe and unsound practice any material failure by a savings association to comply with any plan, regulation, or order under this paragraph.

(F) Effect on other regulatory authority

This paragraph does not limit any authority of the Director under other provisions of law.

(7) Exemption from certain sanctions

(A) Application for exemption

Any savings association not in compliance with the capital standards prescribed under paragraph (1) may apply to the Director for an exemption from any applicable sanction or penalty for noncompliance which the Director may impose under this chapter.

(B) Effect of grant of exemption

If the Director approves any savings association's application under subparagraph (A), the only sanction or penalty to be imposed by the Director under this chapter for the savings association's failure to comply with the capital standards prescribed under paragraph (1) is the growth limitation contained in paragraph (6)(B) or paragraph (6)(C), whichever is applicable.

(C) Standards for approval or disapproval

(i) Approval

The Director may approve an application for an exemption if the Director determines that—

(I) such exemption would pose no significant risk to the Deposit Insurance Fund;

(II) the savings association's management is competent;

(III) the savings association is in substantial compliance with all applicable statutes, regulations, orders, and supervisory agreements and directives; and

(IV) the savings association's management has not engaged in insider dealing, speculative practices, or any other activities that have jeopardized the association's safety and soundness or contributed to impairing the association's capital.

(ii) Denial or revocation of approval

The Director shall deny any application submitted under clause (i) and revoke any prior approval granted with respect to any such application if the Director determines that the association's failure to meet any capital standards prescribed under paragraph (1) is accompanied by—

(I) a pattern of consistent losses;

(II) substantial dissipation of assets;

(III) evidence of imprudent management or business behavior;

(IV) a material violation of any Federal law, any law of any State to which such association is subject, or any applicable regulation; or

(V) any other unsafe or unsound condition or activity, other than the failure to meet such capital standards.

(D) Submission of plan required

Any application submitted under subparagraph (A) shall be accompanied by a plan which—

(i) meets the requirements of paragraph (6)(A)(ii); and

(ii) is acceptable to the Director.

(E) Failure to comply with plan

The Director shall treat as an unsafe and unsound practice any material failure by any savings association which has been granted an exemption under this paragraph to comply with the provisions of any plan submitted by such association under subparagraph (D).

(F) Exemption not available with respect to unsafe or unsound practices

This paragraph does not limit any authority of the Director under any other provision of law, including section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], to take any appropriate action with respect to any unsafe or unsound practice or condition of any savings association, other than the failure of such savings association to comply with the capital standards prescribed under paragraph (1).

(8) Temporary authority to make exceptions for eligible savings associations

(A) In general

Notwithstanding paragraph (1)(C), the Director may, by order, make exceptions to the capital standards prescribed under paragraph (1) for eligible savings associations. No exception under this paragraph shall be effective after January 1, 1991.

(B) Standards for approval or disapproval

In determining whether to grant an exception under subparagraph (A), the Director shall apply the same standards as apply to determinations under paragraph (7)(C).

(9) Definitions

For purposes of this subsection—

(A) Core capital

Unless the Director prescribes a more stringent definition, the term ''core capital'' means core capital as defined by the Comptroller of the Currency for national banks, less any unidentifiable intangible assets.

(B) Qualifying supervisory goodwill

The term ''qualifying supervisory goodwill'' means supervisory goodwill existing on April 12, 1989, amortized on a straightline basis over the shorter of—

(i) 20 years, or

(ii) the remaining period for amortization in effect on April 12, 1989.

(C) Tangible capital

The term ''tangible capital'' means core capital minus any intangible assets (as intangible assets are defined by the Comptroller of the Currency for national banks).

(D) Total assets

The term ''total assets'' means total assets (as total assets are defined by the Comptroller of the Currency for national banks) adjusted in the same manner as total assets would be adjusted in determining compliance with the leverage limit applicable to national banks if the savings association were a national bank.

(10) Use of Comptroller's definitions

(A) In general

The standards prescribed under paragraph (1) shall include all relevant substantive definitions established by the Comptroller of the Currency for national banks.

(B) Special rule

If the Comptroller of the Currency has not made effective regulations defining core capital or establishing a risk-based capital standard, the Director shall use the definition and standard contained in the Comptroller's most recently published final regulations.

(u) Limits on loans to one borrower

(1) In general

Section 5200 of the Revised Statutes [12 U.S.C. 84] shall apply to savings associations in the same manner and to the same extent as it applies to national banks.

(2) Special rules

(A) Notwithstanding paragraph (1), a savings association may make loans to one borrower under one of the following clauses:

(i) For any purpose, not to exceed $500,000.

(ii) To develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, if—

(I) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under subsection (t) of this section;

(II) the Director, by order, permits the savings association to avail itself of the higher limit provided by this clause;

(III) loans made under this clause to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; and

(IV) such loans comply with all applicable loan-to-value requirements.

(B) A savings association's loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted in good faith shall not exceed 50 percent of the savings association's unimpaired capital and unimpaired surplus.

(3) Authority to impose more stringent restrictions

The Director may impose more stringent restrictions on a savings association's loans to one borrower if the Director determines that such restrictions are necessary to protect the

safety and soundness of the savings association.

(v) Reports of condition

(1) In general

Each association shall make reports of conditions to the Director which shall be in a form prescribed by the Director and shall contain—

(A) information sufficient to allow the identification of potential interest rate and credit risk;

(B) a description of any assistance being received by the association, including the type and monetary value of such assistance;

(C) the identity of all subsidiaries and affiliates of the association;

(D) the identity, value, type, and sector of investment of all equity investments of the associations and subsidiaries; and

(E) other information that the Director may prescribe.

(2) Public disclosure

(A) Reports required under paragraph (1) and all information contained therein shall be available to the public upon request, unless the Director determines—

(i) that a particular item or classification of information should not be made public in order to protect the safety or soundness of the institution concerned or institutions concerned, or the Deposit Insurance Fund; or

(ii) that public disclosure would not otherwise be in the public interest.

(B) Any determination made by the Director under subparagraph (A) not to permit the public disclosure of information shall be made in writing, and if the Director restricts any item of information for savings institutions generally, the Director shall disclose the reason in detail in the Federal Register.

(C) The Director's determinations under subparagraph (A) shall not be subject to judicial review.

(3) Access by certain parties

(A) Notwithstanding paragraph (2), the persons described in subparagraph (B) shall not be denied access to any information contained in a report of condition, subject to reasonable requirements of confidentiality. Those requirements shall not prevent such information from being transmitted to the Comptroller General of the United States for analysis.

(B) The following persons are described in this subparagraph for purposes of subparagraph (A):

(i) the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and their designees; and

(ii) the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives and their designees.

(4) First tier penalties

Any savings association which—

(A) maintains procedures reasonably adapted to avoid any inadvertent and unintentional error and, as a result of such an error—

(i) fails to submit or publish any report or information required by the Director under paragraph (1) or (2), within the period of time specified by the Director; or

(ii) submits or publishes any false or misleading report or information; or

(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The savings association shall have the burden of proving by a preponderence[5] of the evidence that an error was inadvertent and unintentional and that a report was inadvertently transmitted or published late.

(5) Second tier penalties

Any savings association which—

(A) fails to submit or publish any report or information required by the Director under paragraph (1) or (2), within the period of time specified by the Director; or

(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (4) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(6) Third tier penalties

If any savings association knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (5) submits or publishes any false or misleading report or information, the Director may assess a penalty of not more than $1,000,000 or 1 percent of total assets, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(7) Assessment

Any penalty imposed under paragraph (4), (5), or (6) shall be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1818(i)(2)(E), (F), (G), (I)] (for penalties imposed under such section), and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(8) Hearing

Any savings association against which any penalty is assessed under this subsection shall be afforded a hearing if such savings association submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act [12 U.S.C. 1818(h)] shall apply to any proceeding under this subsection.

[5] So in original. Probably should be ''preponderance''.

(w) Forfeiture of franchise for money laundering or cash transaction reporting offenses

(1) In general

(A) Conviction of title 18 offense

(I) Duty to notify

If a Federal savings association has been convicted of any criminal offense under section 1956 or 1957 of title 18, the Attorney General shall provide to the Director a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

(II) Notice of termination; pretermination hearing

After receiving written notification from the Attorney General of such a conviction, the Director shall issue to the savings association a notice of the Director's intention to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

(B) Conviction of title 31 offenses

If a Federal savings association is convicted of any criminal offense under section 5322 or 5324 of title 31 after receiving written notification from the Attorney General, the Director may issue to the savings association a notice of the Director's intention to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

(C) Judicial review

Subsection (d)(1)(B)(vii) of this section shall apply to any proceeding under this subsection.

(2) Factors to be considered

In determining whether a franchise shall be forfeited under paragraph (1), the Director shall take into account the following factors:

(A) The extent to which directors or senior executive officers of the savings association knew of, were[6] involved in, the commission of the money laundering offense of which the association was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the savings association which were designed to prevent the occurrence of any such offense.

(C) The extent to which the savings association has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the association was found guilty.

(D) The extent to which the savings association has implemented additional internal controls (since the commission of the offense of which the savings association was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the forfeiture of the franchise.

[6] So in original. Probably should be ''or were''.

(3) Successor liability

This subsection shall not apply to a successor to the interests of, or a person who acquires, a savings association that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

(4) "Senior executive officer" defined

The term ''senior executive officer'' has the same meaning as in regulations prescribed under section 32(f) of the Federal Deposit Insurance Act [12 U.S.C. 1831i(f)].

(x) Home State citizenship

In determining whether a Federal court has diversity jurisdiction over a case in which a Federal savings association is a party, the Federal savings association shall be considered to be a citizen only of the State in which such savings association has its home office.

(June 13, 1933, ch. 64, §5, 48 Stat. 132; Apr. 27, 1934, ch. 168, §§5, 6, 48 Stat. 645, 646; May 28, 1935, ch. 150, §18, 49 Stat. 297; Aug. 10, 1939, ch. 666, title IX, §909, 53 Stat. 1402; Aug. 6, 1947, ch. 503, 61 Stat. 786; July 3, 1948, ch. 825, §1, 62 Stat. 1239; Oct. 20, 1951, ch. 521, title III, §313(d), 65 Stat. 490; July 14, 1952, ch. 723, §12, 66 Stat. 604; Aug. 2, 1954, ch. 649, title II, §204(b), title V, §503, 68 Stat. 622, 634; Aug. 11, 1955, ch. 783, title I, §110, 69 Stat. 641; Aug. 7, 1956, ch. 1029, title VI, §604, 70 Stat. 1114; Pub. L. 85–857, §13(f), Sept. 2, 1958, 72 Stat. 1264; Pub. L. 86–372, title VIII, §805, Sept. 23, 1959, 73 Stat. 687; Pub. L. 86–507, §1(11), June 11, 1960, 74 Stat. 200; Pub. L. 87–70, title IX, §901, June 30, 1961, 75 Stat. 189; Pub. L. 87–779, §1, Oct. 9, 1962, 76 Stat. 778; Pub. L. 87–834, §6(e)(1), Oct. 16, 1962, 76 Stat. 984; Pub. L. 88–560, title IX, §§901(a), 902–905, 907, 908, 910, Sept. 2, 1964, 78 Stat. 804–806; Pub. L. 89–117, title II, §201(b)(3), title XI, §1110(a)–(c), Aug. 10, 1965, 79 Stat. 465, 507; Pub. L. 89–695, title I, §101(a), Oct. 16, 1966, 80 Stat. 1028; Pub. L. 90–448, title III, §304(b), title IV, §416(c), title VIII, §§804(e), 807(m), title XVII, §1716, Aug. 1, 1968, 82 Stat. 508, 518, 543, 545, 608; Pub. L. 90–505, §5, Sept. 21, 1968, 82 Stat. 858; Pub. L. 90–575, title I, §118(b), Oct. 16, 1968, 82 Stat. 1026; Pub. L. 91–152, title IV, §416(b), Dec. 24, 1969, 83 Stat. 401; Pub. L. 91–351, title VII, §§706, 708, 709, July 24, 1970, 84 Stat. 462, 463; Pub. L. 91–609, title VII, §727(d), title IX, §907(b), (c), Dec. 31, 1970, 84 Stat. 1803, 1811; Pub. L. 92–318, title I, §133(c)(3), June 23, 1972, 86 Stat. 270; Pub. L. 93–100, §5(b), Aug. 16, 1973, 87 Stat. 343; Pub. L. 93–383, title VII, §§702–706, title VIII, §§802(i)(2), 805(c)(4), Aug. 22, 1974, 88 Stat. 715, 716, 725, 727; Pub. L. 93–449, §4(d), Oct. 18, 1974, 88 Stat. 1367; Pub. L. 93–495, title I, §101(e), Oct. 28, 1974, 88 Stat. 1502; Pub. L. 94–60, July 25, 1975, 89 Stat. 301; Pub. L. 94–375, §22, Aug. 3, 1976, 90 Stat. 1078; Pub. L. 95–128, title IV, §§401–405, Oct. 12, 1977, 91 Stat. 1136, 1137; Pub. L. 95–147, §2(a), Oct. 28, 1977, 91 Stat. 1227; Pub. L. 95–630, title I, §§107(a)(3), (c)(3), (d)(3), (e)(3), 111(c), title II, §208(b), title XII, §§1202, 1204, title XVII, §1701, Nov. 10, 1978, 92 Stat. 3651, 3655, 3659, 3662, 3668, 3675, 3710, 3711, 3714; Pub. L. 96–153, title III, §§325, 326, Dec. 21, 1979, 93 Stat. 1121; Pub. L. 96–161, title I, §102,

Dec. 28, 1979, 93 Stat. 1233; Pub. L. 96–221, title III, §§304, 307, title IV, §§401–404, 407(a), 408, Mar. 31, 1980, 94 Stat. 146, 147, 151, 155, 156, 158–160; Pub. L. 97–320, title I, §§112, 114(b), (c), 121, 141(a)(2), (5), title II, §202(b), title III, §§311–313, 321–325, 328–331, 334, 351, title IV, §§424(a), (d)(8), (e), 427(a), Oct. 15, 1982, 96 Stat. 1471, 1475, 1479, 1489, 1492, 1496, 1497, 1499–1504, 1507, 1522–1524; Pub. L. 97–457, §§2, 12, 14(a)(1), (b), Jan. 12, 1983, 96 Stat. 2507, 2508; Pub. L. 98–440, title I, §105(a), Oct. 3, 1984, 98 Stat. 1691; Pub. L. 98–620, title IV, §402(9), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–570, title I, §1359(b), Oct. 27, 1986, 100 Stat. 3207–27; Pub. L. 100–86, title IV, §§406(a), 413(a), title V, §509(a), Aug. 10, 1987, 101 Stat. 614, 621, 635; Pub. L. 101–73, title III, §301, Aug. 9, 1989, 103 Stat. 282; Pub. L. 102–242, title I, §§131(d), 133(d), title IV, §441, title V, §501(c), Dec. 19, 1991, 105 Stat. 2267, 2271, 2381, 2391; Pub. L. 102–310, July 1, 1992, 106 Stat. 276; Pub. L. 102–550, title IX, §953, title XV, §1502(b), title XVI, §§1603(d)(8), 1606(f)(1)–(3), Oct. 28, 1992, 106 Stat. 3893, 4046, 4080, 4088; Pub. L. 103–325, title II, §206(a), title III, §322(b), title IV, §411(c)(2)(D), Sept. 23, 1994, 108 Stat. 2199, 2227, 2253; Pub. L. 104–208, div. A, title II, §§2216(b), 2303(a)–(d), (f), 2704(d)(12)(A), Sept. 30, 1996, 110 Stat. 3009–413, 3009–424, 3009–490; Pub. L. 105–164, §3(a)(1), Mar. 20, 1998, 112 Stat. 33; Pub. L. 106–102, title VI, §603, title VII, §739, Nov. 12, 1999, 113 Stat. 1450, 1480; Pub. L. 106–554, §1(a)(8) [§1(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–665; Pub. L. 106–569, title XII, §1201(b)(1), Dec. 27, 2000, 114 Stat. 3032; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §9(e)(1), Feb. 15, 2006, 119 Stat. 3617; Pub. L. 109–351, title IV, §§402–404, title VI, §608(a), Oct. 13, 2006, 120 Stat. 1974, 1983; Pub. L. 111–203, title III, §369(5), title VI, §§610(b), 612(c), 627(a)(2), July 21, 2010, 124 Stat. 1559, 1612, 1613, 1640.)

AMENDMENT OF SECTION

Pub. L. 111–203, title VI, §627(a)(2), (b), July 21, 2010, 124 Stat. 1640, provided that, effective 1 year after July 21, 2010, the first sentence of subsection (b)(1)(B) of this section is amended by substituting ''savings association may not permit any'' for ''savings association may not— '' and all that follows through ''(ii) permit any''. See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title VI, §610(b), (c), July 21, 2010, 124 Stat. 1612, provided that, effective 1 year after the transfer date, subsection (u)(3) of this section is amended by substituting ''Comptroller of the Currency'' for ''Director'' wherever appearing. See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title III, §§351, 369(5), July 21, 2010, 124 Stat. 1546, 1559, provided that, effective on the transfer date, this section is amended:

(1) in subsections (a) and (b), by substituting ''Comptroller of the Currency'' for ''Director'' wherever appearing;

(2) in subsection (c)(5)—

(A) in subparagraph (A), by substituting ''appropriate Federal banking agency'' for ''Director''; and

(B) in subparagraph (B), by substituting ''The appropriate Federal banking agency'' for ''The Director'' and ''the appropriate Federal banking agency'' for ''the Director'';

(3) in subsection (d)—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) in the first sentence, by substituting ''appropriate Federal banking agency'' for ''Director'';

(II) in the second sentence—

(aa) by substituting ''name of the appropriate Federal banking agency and through the attorneys of the appropriate Federal banking agency'' for ''Director's own name and through the Director's own attorneys''; and

(bb) by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing; and

(III) in the third sentence, by substituting ''Comptroller'' for ''Director'' wherever appearing;

(ii) in subparagraph (B)—

(I) in clauses (i) to (iv), by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing;

(II) in clause (v)—

(aa) in the matter preceding subclause (I), by substituting ''appropriate Federal banking agency'' for ''Director'';

(bb) in subclause (II), by substituting ''subpoenas'' for ''subpenas''; and

(cc) in the matter following subclause (II), by substituting ''subpoena'' for ''subpena'';

(III) in clause (vi)—

(aa) in the first sentence, by substituting ''appropriate Federal banking agency'' for ''Director''; and

(bb) in the second sentence, by substituting ''Comptroller'' for ''Director''; and

(IV) in clause (vii)—

(aa) in the first sentence, by substituting ''subpoena'' for ''subpena'';

(bb) in the second sentence, by substituting ''subpoenaed'' for ''subpenaed''; and

(cc) in the third sentence, by substituting ''appropriate Federal banking agency'' for ''Director'';

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) by substituting ''appropriate Federal banking agency'' for ''Director of the Office of Thrift Supervision'';

(II) by substituting ''an insured savings association'' for ''any insured savings association''; and

(III) by substituting ''appropriate Federal banking agency determines, in the discretion of the appropriate Federal banking agency'' for ''Director determines, in the Director's discretion'';

(ii) in subparagraph (B), by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing;

(iii) in subparagraphs (C) and (D), by substituting ''appropriate Federal banking agency'' for ''Director''; and

(iv) in subparagraph (E)—

(I) in clause (ii)—

(aa) in the heading, by striking out ''or RTC''; and

(bb) by striking out ''or the Resolution Trust Corporation, as appropriate,'' wherever appearing; and

(II) by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing;

(C) in paragraph (3)—

(i) in subparagraph (A), by substituting ''Comptroller'' for ''Director'' wherever appearing; and

(ii) in subparagraph (B)—

(I) in the heading, by striking out ''or RTC'';

(II) by striking out ''Corporation or the Resolution Trust''; and

(III) by substituting ''Comptroller'' for ''Director'';

(D) in paragraph (4), by substituting ''appropriate Federal banking agency'' for ''Director'';

(E) in paragraph (6)—

(i) in subparagraph (A), by substituting ''Comptroller'' for ''Director''; and

(ii) in subparagraphs (B) and (C), by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing; and

(F) in paragraph (7)—

(i) in subparagraphs (A), (B), and (D), by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing;

(ii) in subparagraph (C), by substituting ''Federal Deposit Insurance Corporation or the Comptroller, as appropriate,'' for ''Director''; and

(iii) striking out subparagraph (E) and adding the following:

''(E) Administration by the Comptroller and the Corporation

''The Comptroller may issue such regulations, and the appropriate Federal banking agency may issue such orders, including those issued pursuant to section 8 of the Federal Deposit Insurance Act, as may be necessary to administer and carry out this paragraph and to prevent evasion of this paragraph.'';

(4) in subsection (e)(2), by substituting ''Comptroller'' for ''Director'';

(5) in subsection (i)—

(A) by substituting ''Comptroller'' for ''Director'' wherever appearing;

(B) in paragraph (2), in the heading, by substituting ''Comptroller'' for ''Director'';

(C) in paragraph (5)(A), by striking out ''of the Currency''; and

(D) except as provided in subparagraphs (A) to (C), by substituting ''Comptroller'' for ''Director'' wherever appearing;

(6) in subsections (m), (n), (o), and (p), by substituting ''Comptroller'' for ''Director'' wherever appearing;

(7) in subsection (o)—

(A) in paragraph (1), by substituting ''Comptroller'' for ''Director''; and

(B) in paragraph (2)(B), by substituting ''determination of the Comptroller'' for ''Director's determination'';

(8) in subsection (q)—

(A) in paragraph (6), by striking out ''of Governors of the Federal Reserve System'';

(B) by substituting ''Board'' for ''Director'' wherever appearing; and

(C) by inserting ''in consultation with the Comptroller and the Corporation,'' before ''considers'';

(9) in subsection (r)(3), by substituting ''Comptroller of the Currency'' for ''Director'';

(10) in subsection (s)—

(A) in paragraphs (1) and (2), by substituting ''Comptroller of the Currency'' for ''Director'';

(B) in paragraph (3), by substituting ''discretion of the appropriate Federal banking agency, the appropriate Federal banking agency,'' for ''Director's discretion, the Director'';

(C) in paragraph (4), by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing; and

(D) in paragraph (5)—

(i) by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing; and

(ii) by substituting ''approval of the appropriate Federal banking agency'' for ''Director's approval'';

(11) in subsection (t)—

(A) in paragraph (1), by striking out subparagraph (D);

(B) by striking out paragraph (3) and adding the following:

''(3) [Repealed].'';

(C) in paragraph (5)—

(i) in subparagraph (B), by substituting ''appropriate Federal banking agency, in the sole discretion of the appropriate Federal banking agency'' for ''Corporation, in its sole discretion''; and

(ii) by striking out subparagraph (D);

(D) in paragraph (6)—

(i) by striking out subparagraph (A) and adding the following:

''(A) [Reserved].'';

(ii) in subparagraph (B), by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing;

(iii) in subparagraph (C)—

(I) in clause (i), by substituting ''prior approval of the appropriate Federal banking agency'' for ''Director's prior approval'';

(II) in clause (ii), by substituting ''discretion of the appropriate Federal banking agency'' for ''Director's discretion''; and

(III) by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing;

(iv) in subparagraph (E), by substituting ''appropriate Federal banking agency may'' for ''Director shall''; and

(v) in subparagraph (F), by substituting ''appropriate Federal banking agency under this chapter or any other provision of law.'' for ''Director'' and all that follows through the end;

(E) in paragraph (7), by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing;

(F) by striking out paragraph (8) and adding the following:

''(8) [Repealed].'';

(G) in paragraph (9)—

(i) in subparagraph (A), by substituting ''Comptroller'' for ''Director'';

(ii) in subparagraph (C), by striking out ''of the Currency''; and

(iii) by striking out subparagraph (B) and redesignating subparagraphs (C) and (D) as (B) and (C), respectively; and

(H) except as provided in subparagraphs (A) to (G), by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing;

(12) in subsection (u)—

(A) by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing; and

(B) in paragraph (3), by substituting ''Comptroller of the Currency'' for ''Director'' wherever appearing;

(13) in subsection (v)—

(A) in paragraph (2), by substituting ''determinations of the appropriate Federal banking agency'' for ''Director's determinations''; and

(B) by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing;

(14) in subsection (w), in subparagraphs (A)(II) and (B), by substituting ''intention of the Comptroller'' for ''Director's intention''; and

(15) except as provided in paragraphs (1) to (9), by substituting ''Comptroller'' for ''Director'' wherever appearing.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (c)(1)(I), (O)(i), (P), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of this title. Title X of the National Housing Act is title X of act June 27, 1934, ch. 847, as added by act Aug. 10, 1965, Pub. L. 89–117, title II, § 201(a), 79 Stat. 461, which was classified generally to subchapter IX–A (§ 1749aa et seq.) of chapter 13 of this title, and was repealed by Pub. L. 101–235, title I, § 133(a), Dec. 15, 1989, 103 Stat. 2027. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Servicemen's Readjustment Act of 1944, referred to in subsec. (c)(1)(I), is act June 22, 1944, ch. 268, 58 Stat. 284, as amended, which was classified generally to chapter 11C (§§ 693 to 697g) of former Title 38, Pensions, Bonuses, and Veterans' Relief, and which was repealed by section 14(87) of Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1273, the first section of which enacted Title 38, Veterans' Benefits. For distribution of sections 693 to 697g of former Title 38 to Title 38, Veterans' Benefits, see Table preceding section 101 of Title 38, Veterans' Benefits.

The Housing and Urban Development Act of 1968, referred to in subsec. (c)(1)(N), (O)(ii), is Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IX of the Act is classified principally to chapter 49 (§ 3931 et seq.) of Title 42, The Public Health and Welfare. Title IV of the Housing and Urban Development Act, which was classified to chapter 48 (§ 3901 et seq.) of Title 42, was repealed, with certain exceptions which were omitted from the Code, by Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1701 of this title and Tables.

The National Urban Policy and New Community Development Act of 1970, referred to in subsec. (c)(1)(O)(ii), is title VII of Pub. L. 91–609, Dec. 31, 1970, 84 Stat. 1791, as amended. Part B of the Act is classified generally to part B (§ 4511 et seq.) of chapter 59 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 4501 of Title 42 and Tables.

Section 802 of the Housing and Community Development Act of 1974, referred to in subsec. (c)(1)(O)(ii), enacted section 1440 of Title 42, and amended sections 371 and 1464 of this title.

The Investment Company Act of 1940, referred to in subsec. (c)(1)(Q)(i), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (c)(3)(A), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Act is classified principally to chapter 69 (§ 5301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.

Section 224 of such Act [22 U.S.C. 2184], referred to in subsec. (c)(4)(C), means section 224 of the Foreign Assistance Act of 1961, which related to housing projects in Latin American countries and was eliminated in the general amendment made by section 105 of the Foreign Assistance Act of 1969 (Pub. L. 91–175). See section 222 of such Act [22 U.S.C. 2182].

Section 301(d) of the Small Business Investment Act of 1958, referred to in subsec. (c)(4)(D), which was classified to section 681(d) of Title 15, Commerce and Trade, was repealed by Pub. L. 104–208, div. D, title II, § 208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

Section 5(d)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(3)], referred to in subsec. (c)(5)(A), which related to optional conversions by insured depository institutions subject to special rules on deposit insurance payments, was repealed and section 5(d)(1)(C) was redesignated section 5(d)(3) by Pub. L. 109–173, § 8(a)(4), (5)(D), Feb. 15, 2006, 119 Stat. 3610, 3611.

The Federal Rules of Civil Procedure, referred to in subsec. (d)(1)(A), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Deposit Insurance Act, referred to in subsec. (d)(2)(E)(ii), (3)(B), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

The Federal Home Loan Bank Act, referred to in subsec. (f), is act July 22, 1932, ch. 522, 47 Stat. 725, as amended, which is classified generally to chapter 11 (§ 1421 et seq.) of this title. For complete classification of this Act to the Code, see section 1421 of this title and Tables.

AMENDMENTS

2010—Subsec. (i)(6). Pub. L. 111–203, § 612(c), added par. (6).

2006—Subsec. (c)(5)(A). Pub. L. 109–173, § 9(e)(1)(A), struck out ''that is a member of the Bank Insurance Fund'' after ''assets of a bank''.

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(12)(A)(i). See 1996 Amendment note below.

Subsec. (c)(6). Pub. L. 109–173, § 9(e)(1)(B), substituted ''For purposes of this subsection, the following definitions shall apply:'' for ''As used in this subsection—'' in introductory provisions.

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(12)(A)(ii). See 1996 Amendment note below.

Subsec. (i)(5). Pub. L. 109–351, § 608(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Any Federal savings association chartered and in operation before November 12, 1999, with branches in operation before November 12, 1999, in 1 or more States, may convert, at its option, with the approval of the Comptroller of the Currency or the appropriate State bank supervisor, into 1 or more national or State banks, each of which may encompass 1 or more of the branches of the Federal savings association in operation before November 12, 1999, in 1 or more States, but only if each resulting national or State bank will meet all financial, management, and capital requirements applicable to the resulting national or State bank.

''(B) DEFINITIONS.—For purposes of this paragraph, the terms 'State bank' and 'State bank supervisor' have the meanings given those terms in section 3 of the Federal Deposit Insurance Act.''

Subsec. (*o*)(1). Pub. L. 109–173, §9(e)(1)(C), struck out ''that is a Bank Insurance Fund member'' after ''State-chartered savings bank''.

Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(12)(A)(iii). See 1996 Amendment note below.

Subsec. (*o*)(2)(A). Pub. L. 109–173, §9(e)(1)(D), substituted ''insured by the Deposit Insurance Fund'' for ''a Bank Insurance Fund member until such time as it changes its status to a Savings Association Insurance Fund member''.

Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(12)(A)(iv). See 1996 Amendment note below.

Subsec. (t)(4). Pub. L. 109–351, §402(1), substituted ''(4) [Repealed].'' for provisions relating to special rules for purchased mortgage servicing rights.

Subsec. (t)(5)(D)(iii)(II), (7)(C)(i)(I). Pub. L. 109–173, §9(e)(1)(E), (F), substituted ''Deposit Insurance Fund'' for ''affected deposit insurance fund''.

Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(12)(A)(v), (vi). See 1996 Amendment note below.

Subsec. (t)(9)(A). Pub. L. 109–351, §402(2), substituted ''intangible assets.'' for ''intangible assets, plus any purchased mortgage servicing rights excluded from the Comptroller's definition of capital but included in calculating the core capital of savings associations pursuant to paragraph (4).''

Subsec. (u)(2)(A)(i). Pub. L. 109–351, §404(1), substituted ''For any'' for ''for any'' and a period for ''; or'' at end.

Subsec. (u)(2)(A)(ii). Pub. L. 109–351, §404(2), substituted ''To develop domestic'' for ''to develop domestic'' in introductory provisions, redesignated subcls. (II) to (V) as (I) to (IV), respectively, and struck out former subcl. (I) which read as follows: ''the purchase price of each single family dwelling unit the development of which is financed under this clause does not exceed $500,000;''.

Subsec. (v)(2)(A)(i). Pub. L. 109–173, §9(e)(1)(G), substituted ''or the Deposit Insurance Fund'' for ''the Savings Association Insurance Fund''.

Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(12)(A)(vii). See 1996 Amendment note below.

Subsec. (x). Pub. L. 109–351, §403, added subsec. (x).

2000—Subsec. (c)(1)(M). Pub. L. 106–569 amended heading and text generally. Prior to amendment, text read as follows: ''Investments which, when made, are of a type that may be used to satisfy any liquidity requirement imposed by the Director pursuant to section 1465 of this title.''

Subsec. (c)(4)(F). Pub. L. 106–554 added subpar. (F).

1999—Subsec. (f). Pub. L. 106–102, §603, amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: ''Each Federal savings association, upon receiving its charter, shall become automatically a member of the Federal home loan bank of the district in which it is located, or if convenience requires and the Director approves, shall become a member of a Federal home loan bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members.''

Subsec. (i)(5). Pub. L. 106–102, §739, added par. (5).

1998—Subsec. (d)(7), (8). Pub. L. 105–164 added pars. (7) and (8).

1996—Subsec. (b)(4), (5). Pub. L. 104–208, §2303(a), redesignated par. (5) as (4) and struck out heading and text of former par. (4). Text read as follows: ''Subject to regulations of the Director, a Federal savings association may issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations.''

Subsec. (c)(1)(T), (U). Pub. L. 104–208, §2303(b), added subpars. (T) and (U).

Subsec. (c)(2)(A). Pub. L. 104–208, §2303(c), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''Secured or unsecured loans for commercial, corporate, business, or agricultural purposes. The aggregate amount of loans under this paragraph shall not exceed 10 percent of the assets of the Federal savings association.''

Subsec. (c)(3). Pub. L. 104–208, §2303(d), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out heading and text of former subpar. (A). Text read as follows: ''Loans made for the payment of educational expenses.''

Subsec. (c)(5)(A). Pub. L. 104–208, §2704(d)(12)(A)(i), which directed the amendment of subpar. (A) by striking ''that is a member of the Bank Insurance Fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (c)(6). Pub. L. 104–208, §2704(d)(12)(A)(ii), which directed the amendment of par. (6) by substituting ''For purposes of this subsection, the following definitions shall apply:'' for ''As used in this subsection—'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (*o*)(1). Pub. L. 104–208, §2704(d)(12)(A)(iii), which directed the amendment of par. (1) by striking ''that is a Bank Insurance Fund member'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (*o*)(2)(A). Pub. L. 104–208, §2704(d)(12)(A)(iv), which directed the amendment of subpar. (A) by substituting ''insured by the Deposit Insurance Fund'' for ''a Bank Insurance Fund member until such time as it changes its status to a Savings Association Insurance Fund member'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (q)(6). Pub. L. 104–208, §2216(b), added par. (6).

Subsec. (r)(1). Pub. L. 104–208, §2303(f)(1), in first sentence, substituted ''subparagraph (C) of that section'' for ''subparagraph (c) of that section'' and inserted before period at end '', or qualifies as a qualified thrift lender, as determined under section 1467a(m) of this title'' and, in second sentence, inserted before period at end ''or as a qualified thrift lender, as determined under section 1467a(m) of this title, as applicable''.

Subsec. (r)(2)(C). Pub. L. 104–208, §2303(f)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''the law of the State where the branch would be located would permit the branch to be established if the branch were a Federal savings association chartered by the State in which its home office is located; or''.

Subsec. (t)(5)(D)(iii)(II), (7)(C)(i)(I). Pub. L. 104–208, §2704(d)(12)(A)(v), (vi), which directed the substitution of ''Deposit Insurance Fund'' for ''affected deposit insurance fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (v)(2)(A)(i). Pub. L. 104–208, §2704(d)(12)(A)(vii), which directed the amendment of cl. (i) by substituting ''or the Deposit Insurance Fund'' for '', the Savings Association Insurance Fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Subsec. (c)(1)(S). Pub. L. 103–325, §206(a), added subpar. (S).

Subsec. (c)(4)(E). Pub. L. 103–325, §322(b), added subpar. (E).

Subsec. (w)(1)(B). Pub. L. 103–325, §411(c)(2)(D), substituted ''section 5322 or 5324 of title 31'' for ''section 5322 of title 31''.

1992—Subsec. (c)(2)(B)(iii). Pub. L. 102–550, §1606(f)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''If the Director permits any increased authority pursuant to clause (ii), the Director shall closely monitor the Federal savings association's condition and lending activities to ensure that the savings association carries out all authority under this paragraph in a safe and sound manner and complies with this subparagraph and all relevant laws and regulations''.

Subsec. (c)(2)(C). Pub. L. 102–550, § 1606(f)(2), struck out comma after ''including''.

Subsec. (c)(2)(D). Pub. L. 102–550, § 1606(f)(3), inserted before period at end of last sentence '', except that amounts in excess of 30 percent of the assets may be invested only in loans which are made by the association directly to the original obligor and with respect to which the association does not pay any finder, referral, or other fee, directly or indirectly, to any third party''.

Subsec. (d)(2)(A). Pub. L. 102–550, § 1603(d)(8), inserted period at end.

Subsec. (t)(5)(D)(ii). Pub. L. 102–310 substituted ''October 31, 1992'' for ''June 30, 1992'' and ''November 1, 1992'' for ''July 1, 1992''.

Subsec. (t)(5)(D)(iii) to (ix). Pub. L. 102–550, § 953, added cls. (iii) to (viii), redesignated former cl. (iii) as (ix), and inserted ''or prescribed under clause (iii)'' after ''clause (ii)''.

Subsec. (w). Pub. L. 102–550, § 1502(b), added subsec. (w).

1991—Subsec. (c)(2)(B). Pub. L. 102–242, § 441(b), which directed amendment of subpar. (B) by inserting before period at end the following: '', provided however, that no amount in excess of 30 percent of the assets may be invested in loans made directly by the association to the original obligor, and the association does not pay finder, referral, or other fees, directly or indirectly, to a third party.'', could not be executed because subpar. (B) did not contain a period at end thereof. The new language probably was intended to be inserted before period at end of subpar. (D).

Subsec. (c)(2)(D). Pub. L. 102–242, § 441(a), substituted ''35 percent'' for ''30 percent''.

Subsec. (c)(5), (6). Pub. L. 102–242, § 501(c), added par. (5) and redesignated former par. (5) as (6).

Subsec. (d)(2). Pub. L. 102–242, § 133(d), added subpar. (A), redesignated subpars. (E) to (I) as (B) to (F), respectively, and struck out former subpars. (A) to (D) which related to grounds for appointment of conservator or receiver for Federal savings associations, additional grounds for appointment of such conservator or receiver, grounds for appointment of conservator or receiver for State savings associations, and approval of State officials, respectively.

Subsec. (t)(7)(A), (B). Pub. L. 102–242, § 131(d), inserted ''under this chapter'' before period at end of subpar. (A) and after ''imposed by the Director'' in subpar. (B).

1989—Pub. L. 101–73 amended section generally, substituting subsecs. (a) to (f), (h), (i), and (k) to (v) relating to Federal savings associations for former subsecs. (a) to (s) relating to thrift institutions, and repealing subsecs. (g) and (j).

1987—Pub. L. 100–86, § 509(a), repealed Pub. L. 97–320, § 141. See 1982 Amendment note below.

Subsec. (d)(6)(E). Pub. L. 100–86, § 413(a), added subpar. (E).

Subsec. (s). Pub. L. 100–86, § 406(a), added subsec. (s).

1986—Subsec. (d)(8)(B)(i). Pub. L. 99–570, § 1359(b)(2), inserted reference to par. (16) of this subsection.

Subsec. (d)(16). Pub. L. 99–570, § 1359(b)(1), added par. (16).

Subsecs. (*l*), (r)(1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (c)(1)(S). Pub. L. 98–440 added subpar. (S).

Subsec. (d)(6)(A). Pub. L. 98–620 struck out provision that such proceedings had to be given precedence over other cases pending in such courts, and had to be in every way expedited.

1983—Subsec. (b)(1)(B). Pub. L. 97–457, § 12, inserted ''may accept a demand account from itself and'' after ''An association''.

Subsec. (c)(3)(D). Pub. L. 97–457, § 14(a)(1), added subpar. (D).

Subsec. (*o*)(1). Pub. L. 97–457, § 2, inserted ''examination,'' after ''operation,''.

Subsec. (r)(2)(B). Pub. L. 97–457, § 14(b), substituted ''prior to the enactment of the Garn-St Germain Depository Institutions Act'' for ''prior to the enactment of the Depository Institutions Amendments''. Because the phrase had been translated as ''prior to October 15, 1982'' the amendment resulted in no change in text.

1982—Subsec. (a). Pub. L. 97–320, § 311, substituted provisions that in order to provide thrift institutions for the deposit or investment of funds and for the extension of credit for homes and other goods and services, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings and loan associations, or Federal savings banks, and to issue charters therefor, giving primary consideration to the best practices of thrift institutions in the United States and that the lending and investment authorities are conferred by this section to provide such institutions the flexibility necessary to maintain their role of providing credit for housing for provisions which authorized the Board to provide for organization, etc. of Federal Savings and Loan Associations or Federal Mutual Savings Banks, and detailed the requirements as to associations which were State mutual savings banks or other associations which were formerly organized as savings banks under State law.

Subsec. (b)(1)(A). Pub. L. 97–320, § 312, designated existing first sentence as subpar. (A), struck out from parenthetical phrase ''and all of which shall have the same priority upon liquidation'' after ''savings accounts'', authorized the raising of capital in the form of demand accounts of persons or organizations that have a business, corporate, commercial, or agricultural relationship with the association, and substituted ''evidence of accounts'' for ''evidence of savings accounts''.

Subsec. (b)(1)(B). Pub. L. 97–320, § 312, designated existing second sentence as subpar. (B); authorized an association to accept demand accounts from a commercial, corporate, business, or agricultural entity for the sole purpose of effectuating payments thereto by a nonbusiness customer; barred an association from payment of interest on a demand account; inserted requirement that ''All savings accounts and demand accounts shall have the same priority upon liquidation'', incorporating such requirement for savings accounts from existing first sentence; and substituted ''Holder of accounts'' for ''Holder of savings accounts''.

Subsec. (b)(1)(C). Pub. L. 97–320, § 312, designated existing third sentence as subpar. (C) and substituted ''an association's charter'' for ''the association's charter'' and ''fourteen'' days for ''thirty'' days in two places.

Subsec. (b)(1)(D). Pub. L. 97–320, § 312, designated existing fourth sentence as subpar. (D), substituted ''accounts'' for ''savings accounts'', and inserted in parenthetical phrase '', where applicable,''.

Subsec. (b)(1)(E). Pub. L. 97–320, § 312, designated existing fifth sentence as subpar. (E) and substituted ''Accounts may be subject'' for ''Savings accounts shall not be subject'' and ''transferable or other order or authorization to the association, as the Board may by regulation provide'' for ''transferable order or authorization to the association, but the Board may by regulation provide for withdrawal or transfer of savings accounts upon nontransferable order or authorization''.

Subsec. (b)(1)(F). Pub. L. 97–320, § 312, designated existing sixth sentence as subpar. (F) and substituted ''Notwithstanding any limitation of this section, associations may establish remote service units'' for ''This section does not prohibit the establishment of remote service units by associations'' and ''crediting savings or demand accounts'' for ''crediting existing savings accounts''.

Subsec. (b)(2). Pub. L. 97–320, § 312, substituted '', including capital stock,'' for ''(except capital stock)''.

Subsec. (b)(5)(B). Pub. L. 97–320, § 202(b)(1), added subpar. (B). Provisions of former subpar. (B) were moved to subpar. (C) and amended.

Subsec. (b)(5)(C). Pub. L. 97–320, § 202(b)(2), added subpar. (C) which consisted of the provisions of former subpar. (B) but with the addition of a reference to net worth certificates issued pursuant to section 1729(f) of this title.

Subsec. (c)(1)(A). Pub. L. 97–320, §321, substituted ''transaction accounts'' for ''negotiable order-of-withdrawal accounts''.

Subsec. (c)(1)(B). Pub. L. 97–320, §322, substituted ''Loans on the security of liens upon residential or nonresidential real property, except that the loans and investments of an association on nonresidential real property may not exceed 40 per centum of its assets'' for ''Loans on the security of liens upon residential real property in an amount which, when added to the amount unpaid upon prior mortgages, liens or encumbrances, if any, upon such real estate does not exceed the appraised value thereof, except that the amount of any such loan hereafter made shall not exceed 66⅔ per centum of the appraised value if such real estate is unimproved, 75 per centum of the appraised value if such real estate is improved by offsite improvements such as street, water, sewers, or other utilities, 75 per centum of the appraised value if such real estate is in the process of being improved by a building or buildings to be constructed or in the process of construction, or 90 per centum of the appraised value if such real estate is improved by a building or buildings. Notwithstanding the above loan-to-value ratios, the Board may permit a loan-to-value ratio in excess of 90 per centum if such real estate is improved by a building or buildings and that portion of the unpaid balance of such loan which is in excess of an amount equal to 90 per centum of such value is guaranteed or insured by a public or private mortgage insurer or in the case of any loan for the purpose of providing housing for persons of low income, as described in regulations of the Board.

Subsec. (c)(1)(G). Pub. L. 97–320, §323, inserted '', or in the savings accounts, certificates, or other accounts of any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation'' after ''Federal Deposit Insurance Corporation''.

Subsec. (c)(1)(H). Pub. L. 97–320, §324, substituted ''Investments in obligations of, or issued by, any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision), except that an association may not invest more than 10 per centum of its capital and surplus in obligations of any one issuer, exclusive of investments in general obligations of any issuer'' for ''Investments in general obligations of any State or any political subdivision thereof''.

Subsec. (c)(1)(O). Pub. L. 97–320, §328, inserted reference to loans secured by mortgages as to which the association has the benefit of insurance under title X of the National Housing Act or of a commitment or agreement for such insurance.

Subsec. (c)(1)(R). Pub. L. 97–320, §325, added subpar. (R).

Subsec. (c)(2). Pub. L. 97–320, §330(1), substituted ''the following percentages'' for ''20 per centum'' in provisions preceding subpar. (A).

Subsec. (c)(2)(A). Pub. L. 97–320, §330(3), substituted ''Investments in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for rental or sale, but such investment may not exceed 10 per centum of the assets of the association'' for ''Loans on security of first liens upon other improved real estate''.

Subsec. (c)(2)(B). Pub. L. 97–320, §329, inserted '', including loans reasonably incident to the provision of such credit,'' after ''household purposes'' and '', except that loans of an association under this subparagraph may not exceed 30 per centum of the assets of the association'' after ''as defined and approved by the Board''.

Subsec. (c)(3)(A). Pub. L. 97–320, §330(4)(B), substituted ''educational expenses'' for ''expenses of college, university, or vocational education''.

Subsec. (c)(3)(D). Pub. L. 97–320, §330(4)(A), struck out subpar. (D). See 1983 Amendment note reenacting subpar. (D).

Subsec. (c)(4)(C). Pub. L. 97–320, §330(5)(A), struck out cl. (i) which permitted loans secured by mortgages as to which the association had the benefit of insurance under title X of the National Housing Act [12 U.S.C. 1749aa et seq.] or of a commitment or agreement for such insurance, struck out designations of former cls. (ii) and (iii), substituted ''guarantee'' for ''guaranty'' in first sentence, inserted ''as hereafter amended or extended'' after ''section 221 or 222 of such Act [22 U.S.C. 2181 or 2182]'', and struck out ''Investments under clause (i) of this subparagraph shall not be included in any percentage of assets or other percentage referred to in this subsection.''

Subsec. (c)(4)(D). Pub. L. 97–320, §330(5)(B), substituted provisions authorizing investments in small business investment companies for provisions that authorized investments in State and local government obligations.

Subsec. (c)(5), (6). Pub. L. 97–320, §330(2), redesignated par. (6) as (5).

Subsec. (d)(4)(C). Pub. L. 97–320, §427(a)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(4)(D). Pub. L. 97–320, §427(a)(1)–(3), redesignated former subpar. (C) as (D), and in subpar. (D) as so redesignated, substituted ''(A), (B), or (C)'' for ''(A) or (B)'' wherever appearing, and ''subparagraph (F)'' for ''subparagraph (E)''. Former subpar. (D) redesignated (E).

Subsec. (d)(4)(E). Pub. L. 97–320, §427(a)(1), redesignated former subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (d)(4)(F). Pub. L. 97–320, §427(a)(1), (2), (4), redesignated former subpar. (E) as (F), and in subpar. (F) as so redesignated, substituted ''(A), (B), or (C)'' for ''(A) or (B)'', and ''subparagraph (D)'' for ''subparagraph (C)''.

Subsec. (d)(5)(A). Pub. L. 97–320, §427(a)(5), substituted ''(C), or (D)'' for ''or (C)''.

Subsec. (d)(6)(B). Pub. L. 97–320, §114(b)(1), inserted ''or the Federal Deposit Insurance Corporation'' after ''Federal Savings and Loan Corporation''.

Subsec. (d)(6)(D). Pub. L. 97–320, §114(b)(2), inserted '', except as hereafter provided,'' after ''shall appoint''.

Pub. L. 97–320, §114(b)(3), inserted provision relating to appointment as receiver and powers of Federal Deposit Insurance Corporation in the case of a Federal savings bank chartered pursuant to subsec. (*o*) of this section.

Subsec. (d)(8)(A). Pub. L. 97–320, §351, inserted in last sentence '', which prevails,'' after ''party''.

Subsec. (d)(8)(B)(i). Pub. L. 97–320, §424(a), (d)(8), inserted proviso giving Board discretionary authority to compromise, etc., any civil money penalty imposed under this subsection, and substituted ''may be assessed'' for ''shall be assessed''.

Subsec. (d)(8)(B)(iv). Pub. L. 97–320, §424(e), substituted ''twenty days from the service'' for ''ten days from the date''.

Subsec. (d)(11). Pub. L. 97–320, §114(c), substituted ''with associations or any'' for ''with other'' after ''merger of associations''.

Subsec. (d)(12)(A). Pub. L. 97–320, §427(a)(6), substituted ''(4)(D), (4)(E)'' for ''(4)(C), (4)(D)''.

Subsec. (i). Pub. L. 97–320, §313, amended subsec. (i) generally, substituting expanded provisions relating to conversions by banks to Federal charters, for provisions relating to conversion of member of Federal Home Loan Bank into Federal Savings and Loan Association, conversion of State stock savings and loan type institution charters into Federal stock charters, and conversion of Federal Savings and Loan Associations into State-chartered institutions.

Subsec. (*o*). Pub. L. 97–320, §112, added subsec. (*o*).

Subsec. (*o*)(2)(F), (G). Pub. L. 97–320, §141(a)(2), which directed the repeal of subpars. (F) and (G) effective Oct. 13, 1986, was repealed by Pub. L. 100–86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out below.

Subsec. (p). Pub. L. 97–320, §141(a)(5), which directed the repeal of subsec. (p) effective Oct. 13, 1986, was repealed by Pub. L. 100–86, §509(a). See Effective and Ter-

mination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out below.

Pub. L. 97–320, § 121, added subsec. (p).

Subsecs. (q), (r). Pub. L. 97–320, §§ 331, 334, added subsecs. (q) and (r).

1980—Subsec. (a). Pub. L. 96–221, § 408, redesignated existing provisions as par. (1), denominated cls. (1) and (2) as (A) and (B), respectively, wherever appearing, and added pars. (2) and (3).

Subsec. (b)(1). Pub. L. 96–221, §§ 304, 307, inserted provision identical to provision added by Pub. L. 96–161 relating to establishment of remote service units, and repealed the amendment made by Pub. L. 96–161. See Repeals and Effective Date of 1980 Amendment notes below.

Subsec. (b)(4). Pub. L. 96–221, § 402, added par. (4).

Subsec. (b)(5). Pub. L. 96–221, § 407(a), added par. (5).

Subsec. (c). Pub. L. 96–221, § 401, generally revised investment authority of an association, with emphasis on provisions respecting loans or investments without percentage of assets limitations, loans or investments limited to 20 per centum of assets, and loans or investments limited to 5 per centum of assets.

Subsec. (i). Pub. L. 96–221, § 404, inserted provisions relating to conversion of State stock savings and loan type charter into Federal stock charter.

Subsec. (n). Pub. L. 96–221, § 403, added subsec. (n).

1979—Subsec. (b)(1). Pub. L. 96–161 provided that this section does not prohibit the establishment of remote service units by associations for the purpose of crediting existing savings accounts, debiting such accounts, crediting payments on loans, and the disposition of related financial transactions as provided in regulations prescribed by the Board.

Subsec. (c)(1)(B). Pub. L. 96–153, § 326, substituted ''$75,000'' for ''$60,000''.

Subsec. (c)(4)(E). Pub. L. 96–153, § 325, added subpar. (E).

1978—Subsec. (a). Pub. L. 95–630, § 1202, inserted provisions relating to the authority of the Federal Home Loan Bank Board to allow a State-chartered mutual savings bank to convert to a Federal charter and be known as a Federal mutual savings bank.

Subsec. (b)(3). Pub. L. 95–630, § 1701(b), redesignated as subpar. (3), provisions which were formerly contained in undesignated par. 23 of subsec. (c).

Subsec. (c). Pub. L. 95–630, § 1701, simplified the investment authority for Federal savings and loan associations and provided such associations with more authority to invest in urban areas and transferred provisions of formerly undesignated paragraphs 15, 17, and 23 of this section to subsecs. (m), (*l*), and (b)(3) of this section, respectively.

Subsec. (d)(2). Pub. L. 95–630, § 107(a)(3), in subpar. (A) extended coverage of provisions to include directors, officers, employees, agents, or other persons participating in the conduct of the affairs of any association and added subpar. (C).

Subsec. (d)(3). Pub. L. 95–630, § 107(c)(3), in subpars. (A) and (B) inserted references to any director, officer, employee, agent, or other person participating in the conduct of the affairs of the association and in subpar. (A) inserted ''prior to the completion of the proceedings conducted pursuant to paragraph (2)(A) of this subsection'' after ''savings account holders'' and ''and to take affirmative action to prevent such insolvency, dissipation, condition or prejudice pending completion of such proceedings'' after ''violation or practice''.

Subsec. (d)(4)(A). Pub. L. 95–630, § 107(d)(3), inserted ''or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty'' before '', and that such violation'', '', or a willful or continuing disregard for the safety or soundness of the association'' after ''the part of such director or officer'', and ''or to prohibit his further participation in any manner in the conduct of the affairs of the association'' after ''remove him from office''.

Subsec. (d)(4)(B). Pub. L. 95–630, § 107(d)(3), inserted references to a willful or continuing disregard for its safety and soundness in two places.

Subsec. (d)(5). Pub. L. 95–630, § 111(c)(1), among other changes, in subpar. (A) substituted ''crime'' for ''felony'' in two places and ''subparagraph (A), (B), or (C)'' for ''subparagraph (A) or (B)'', inserted ''which is punishable by imprisonment for a term exceeding one year under State or Federal law'' after ''or breach of trust'' and '', if continued service or participation by the individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association'' after ''the Board may'' in two places, and inserted provision that any notice of suspension or order of removal issued under this subparagraph remain effective and outstanding until the completion of any hearing or appeal authorized under subparagraph (C) hereof unless terminated by the Board, and added subpar. (C).

Subsec. (d)(7)(A). Pub. L. 95–630, § 111(c)(2), inserted ''(other than the hearing provided for in paragraph (5)(C) of this subsection'' after ''provided for in this subsection (d)''.

Subsec. (d)(8). Pub. L. 95–630, § 107(e)(3), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(12)(A). Pub. L. 95–630, § 111(c)(3), substituted ''(5)(A), or (5)(C)'' for ''or (5)(A)''.

Subsec. (d)(13)(A)(1). Pub. L. 95–630, § 111(c)(4), inserted ''or (C)'' after ''paragraph (5)(A)''.

Subsec. (d)(15). Pub. L. 95–630, § 208(b), added par. (15).

Subsec. (i). Pub. L. 95–630, § 1204, inserted ''(including a savings bank)'' after ''member of a Federal Home Loan Bank'' in first par.

Subsec. (*l*). Pub. L. 95–630, § 1701(b), redesignated as subsec. (*l*) the provisions which were formerly contained in undesignated par. 17 of subsec. (c).

Subsec. (m). Pub. L. 95–630, § 1701(b), redesignated as subsec. (m) provisions which were formerly contained in undesignated par. 15 of subsec. (c).

1977—Subsec. (c), first par. Pub. L. 95–128, §§ 402, 405, in first proviso, increased limitation on loans for single family dwellings to $60,000 from $55,000 and inserted ''but of said 20 per centum the amount deemed to be loaned in transactions which, except for excess in amount, would be eligible for such association under provisions of this sentence (other than this exception) or under the next following sentence shall be only the outstanding amount of such excess,'' after ''improved real estate without regard to the foregoing limitations,''; and struck out '', and the Board shall by regulation limit to not more than 20 per centum of the assets of the association the aggregate amount or amounts of the investments which may be made by an association under the foregoing provisions of this sentence on the security of property which comprises or includes more than four dwelling units or does not constitute homes or combinations of homes and business property'' before ''; except''.

Subsec. (c), second and third pars. Pub. L. 95–128, § 404, increased limitation on loans to $15,000 from $10,000.

Subsec. (c), twenty-first par. Pub. L. 95–128, § 401, increased the rate to 5 from 3 per centum.

Subsec. (c), twenty-second par. Pub. L. 95–128, § 403, authorized use of real property or interests for farm purposes.

Subsec. (k). Pub. L. 95–147 inserted ''shall be a depositary of public money and'' after ''Federal Home Loan Bank'' and '', including services in connection with the collection of taxes and other obligations owed the United States, and the Secretary of the Treasury is hereby authorized to deposit public money in any such Federal savings and loan association or member of a Federal home loan bank, and shall prescribe such regulations as may be necessary to carry out the purposes of this subsection'' after ''instrumentality of the United States''.

1976—Subsec. (c). Pub. L. 94–375 inserted, in cl. (2) of twelfth par., ''and in the share capital and capital reserve of the Inter-American Savings and Loan Bank'' after ''made pursuant to either of such sections''.

1975—Subsec. (c). Pub. L. 94–60 in seventeenth par. struck out ''or section 408(a)'' after ''under section 401(d)'', and inserted ''and to act as trustee or custodian

of an individual retirement account within the meaning of section 408 of such Code'' after ''Code of 1954'', and ''or account'' after ''funds of such trust''.

1974—Subsec. (b)(2). Pub. L. 93–495 inserted ''may be surety as defined by the Board'' after ''security,''.

Subsec. (c). Pub. L. 93–383, §§703, 805(c)(4), in first par. increased limitation from $45,000 for each single-family dwelling to $55,000, except that with respect to Alaska, Guam, and Hawaii the limitation may be increased by not more than 50 per centum by regulation of the Board, and inserted reference to mortgages, obligations, or other securities sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act.

Pub. L. 93–383, §705, in second and third pars. substituted ''$10,000'' for ''$5,000''.

Pub. L. 93–383, §802(i)(2), in twelfth par. inserted reference to section 802 of the Housing and Community Development Act of 1974.

Pub. L. 93–449 in seventeenth par. inserted reference to section 408(a) of title 26. As enacted section 4(d) of Pub. L. 93–449 amended nineteenth par.; however the amendment was executed to seventeenth par. editorially since this would appear to be the probable intent of Congress.

Pub. L. 93–383, §702, added par. authorizing associations to invest an amount not exceeding the greater of (A) the sum of its surplus, undivided profits, and reserves or (B) 3 per centum of its assets, in loans or in interests therein.

Pub. L. 93–383, §704, added par. authorizing associations to invest in loans and advances of credit and interests therein upon the security of or respecting real property or interests therein.

Pub. L. 93–383, §706, added par. authorizing association to borrow funds from a State mortgage finance agency of the State in which the head office of such association is situated.

1973—Subsec. (c). Pub. L. 93–100 added par. authorizing associations with general reserves, surplus, and undivided profits aggregating in excess of 5% of their withdrawable accounts to invest in, to lend to, or to commit themselves to lend to State housing corporations incorporated in the state in which the head office of the association is located with certain limitations.

1972—Subsec. (c). Pub. L. 92–318 authorized in second proviso investments in obligations or other instruments or securities of the Student Loan Marketing Association.

1970—Subsec. (c), first par. Pub. L. 91–609, §907(c), increased aggregate amount of authorized investments from 15 to 20 per centum of assets of the association.

Pub. L. 91–351, §§706, 709, in first par., inserted ''or within the State in which such home office is located'' after ''their home office'', and substituted ''$45,000'' for ''$40,000'' in first proviso, and ''section'' for ''proviso'' in second proviso.

Pub. L. 91–351, §708, added par. authorizing any association to act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan qualifying for specific tax treatment under section 401(d) of title 26.

Pub. L. 91–609, §§727(d), 907(b), in twelfth par., authorized associations to invest in loans or obligations guaranteed under part B of the Urban Growth and New Community Development Act of 1970, and extended authority to make certain investments to acquisition, holding, and disposition of loans, or interests therein, having benefit of any guaranty under section 2181 or 2182 of title 22 or such sections as hereafter amended or extended, or of any commitment or agreement for any such guaranty, respectively.

1969—Subsec. (c). Pub. L. 91–152 inserted provision authorizing any association to invest in stock issued by a corporation created pursuant to title IX of the Housing and Urban Development Act of 1968, and to invest in any partnership, etc., formed pursuant to section 907(a) or 907(c) of the Housing and Urban Development Act of 1968.

1968—Subsec. (b). Pub. L. 90–448, §1716(a), struck out provisions which permitted associations to raise their capital only in the form of payments on shares and which prohibited acceptance of deposits or issuance of certificates of indebtedness except for borrowed money, and inserted provisions permitting an association to raise capital in the form of savings deposits, shares, or other accounts and to issue passbooks, time certificates of deposit, or other evidence of savings accounts, requiring holders of savings accounts and obligors to be members of the association, providing for notice for payment of any savings account, and for payment of withdrawals, prohibiting negotiable or transferable orders or authorization for checks or withdrawals or transfers, and empowering the associations to borrow, give security, and issue such notes, bonds, debentures, or other obligations or other securities (except capital stock) as the Board may authorize.

Subsec. (c). Pub. L. 90–505 allowed an association to invest in any investment which, at the time of the making of the investment, was an asset eligible for inclusion toward satisfaction of any liquidity requirement imposed on the association by section 1425a of this title but only to the extent that the investment was permitted to be so included under regulations issued by the Board or otherwise authorized.

Pub. L. 90–575 amended third par. (as designated prior to amendment by Pub. L. 90–448) to add vocational education expenses to the list of expenses for the payment of which associations are authorized to invest in loan, obligations and advances of credit.

Pub. L. 90–448, §304(b), inserted paragraph permitting an association to invest in loans or obligations, or interests therein, as to which the association has the benefit of insurance under section 1715z–5 of this title, or of a commitment or agreement therefor.

Pub. L. 90–448, §416(c), inserted sentence permitting an association to invest in loans or obligations, or interests therein, as to which the association has the benefit of any guaranty under title IV of the Housing and Urban Development Act of 1968, as now or hereafter in effect, or of a commitment or agreement therefor.

Pub. L. 90–448, §804(e), inserted paragraph authorizing any such association to issue and sell securities which are guaranteed pursuant to section 1721(g) of this title.

Pub. L. 90–448, §807(m), amended first par. to authorize investments in obligations, participations, or other instruments of or issued by, or guaranteed as to principal and interest by, the Government National Mortgage Association, and in stock of the Federal National Mortgage Association.

Pub. L. 90–448, §1716(b), in first par., substituted ''security of their savings accounts'' for ''security of their shares'', and inserted provisions authorizing investment in time deposits, certificates, or accounts of any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

Pub. L. 90–448, §1716(c), inserted provisions in second par. permitting loans for the construction of new structures related to residential use of the property.

Pub. L. 90–448, §1716(d), inserted third par. authorizing loans, or investment in loans, not exceeding $5,000 for repair, equipping, alteration, or improvement of real property, or for mobile home financing.

Pub. L. 90–448, §1716(e), amended par. relating to loans secured by mortgages insured under Title X of the National Housing Act, to permit an association to acquire and hold investments in housing project loans, or interests therein, having the benefit of any guaranty under section 2181 of title 22, to include commitments or agreements with respect to loans, or interests therein, made pursuant to either section 2181 or 2184 of title 22, and to eliminate provisions which stated that investments in loans secured by mortgages insured under Title X of the National Housing Act shall not be included in any percentage of assets or other percentage referred to in this subsection, and that investments in loans guaranteed under section 2184 of title 22 shall not be more than 1 per centum of the assets of the association.

Pub. L. 90–448, § 1716(f), inserted par. permitting an association to invest in loans, or interests in loans, to financial institutions with respect to which the United States or any agency or instrumentality thereof has any function of examination or supervision, or to any broker or dealer registered with the Securities and Exchange Commission, secured by loans, obligations, or investments in which it has any statutory authority to invest directly.

1966—Subsec. (d). Pub. L. 89–695 amended provisions generally, substituting pars. (1) to (14) for former pars. (1) (consisting of thirteen sentences) and (2) (consisting of eleven sentences), such pars. (2) to (5), (7) to (10), (12)(A)(B), (13), and (14) being new provisions.

1965—Subsec. (c). Pub. L. 89–117 added par. which permitted an association to invest in loans (1) secured by mortgages as to which the association has the benefit of insurance under title X of the National Housing Act or of a commitment or agreement for such insurance, or (2) guaranteed by the President under section 2184 of title 22, and prohibited investments under cl. (2) to exceed 1 per centum of the assets of such association, provided that, for purposes of this subsection, ''other dwelling units'' would include living accommodations for students, employees, or staff members of a college, or university, or hospital, reduced from 15 to 10 years the time by which a lease period must extend beyond the maturity date of the debt in order that a leasehold interest qualify as ''real property'' or ''real estate'' within this section, and added par. which prohibited any District of Columbia building and loan associations from establishing a branch or moving its principal office without the prior written approval of the Federal Home Loan Bank Board and forbade any other building and loan associations from establishing a branch office in the District or moving its principal office in the District without such approval.

1964—Subsec. (c). Pub. L. 88–560, §§ 901(a), 902–905, 907, 908, 910, amended provisions as follows:

Section 901(a) substituted ''one hundred miles'' for ''fifty miles'' in first sentence.

Section 902 substituted ''$40,000'' for ''$35,000'' in first proviso of first par. and deleted from end of such first proviso '', except that the aggregate sums invested pursuant to the two exceptions in this proviso shall not exceed 30 per centum of the assets of such association''.

Section 903 substituted provisions which authorized the association to invest not more than 5 per centum of its assets in, or in interests in, real property located within urban renewal areas and obligations secured by first liens on real property so located but limited the aggregate of such investments to 2 per centum of the assets of the association for former provisions which authorized the association to invest not more than 5 per centum of its assets in certificates of beneficial interest issued by any urban renewal investment trust, defined an ''urban renewal investment trust'', and provided for rules and regulations to be prescribed by the Federal Home Loan Bank Board for the establishment, operation, etc. of such urban renewal investment trusts.

Section 904 added par. which defined ''real property'' and ''real estate''.

Section 905 added par. which authorized an association to invest its assets in a corporation organized in the State where the association's home office is located, if the entire capital stock of such corporation is available for purchase only by savings and loan associations chartered in that State and Federal associations having their home offices therein but limited the aggregate of such investments to 1 per centum of its assets.

Section 907 inserted in second proviso of first par. '', or fully guaranteed as to principal and interest by,'', authorized an association to invest in participations or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or any other agency of the United States, and defined term ''State''.

Section 908 substituted in first sentence of second par. ''20 per centum'' and ''$5,000'' for ''15 per centum'' and ''$3,500'', respectively.

Section 910 inserted after second par. the paragraph which authorized the association to invest in loans, obligations, and advances of credit made for the payment of expenses of college or university education but limited such investments to 5 per centum of the assets of the association.

1962—Subsec. (c). Pub. L. 87–779, in first par., substituted provisions authorizing loans on the security of first liens upon real property within fifty miles of their home office which constitute first liens upon homes, combinations of homes and business property, other dwelling units, or combinations of dwelling units, including homes, and business property involving only minor or incidental business use, for provisions which permitted loans on the security of first liens upon homes or combination of homes and business property within fifty miles of their home office, and provisions limiting the amount of loan on the security of first liens to not more than $35,000 for each single-family dwelling, and not more than such amount per room as the Board may determine within the limits allowable in section 1713(c)(3) of this title for any other dwelling unit, for provisions which limited the amount of the loan to not more than $35,000 on the security of a first lien upon a home or combination of home and business property, inserted provisions requiring the Board to limit by regulation to not more than 15 per centum of the assets of the association the aggregate amount or amounts of the investments which may be made by an association on the security of property which comprises or includes more than four dwelling units or does not constitute homes or combinations of homes and business property, changed provisions which permitted use of additional sums not exceeding 20 per centum of the assets of the association without regard to area restriction for the making or purchase of participating interests in first liens on one- to four-family homes to permit use of such sums for the making or purchase of participating interests in real property of the type described in the opening provisions of this subsection, and substituted ''dollar amount limitation'' for ''$35,000 limitation'' in fourth par.

Subsec. (h). Pub. L. 87–834 struck out provisions which exempted such associations, including their franchises, capital, reserves, and surplus, and their loans and income, and all shares of such associations both as to their value and the income therefrom, from all taxation imposed by the United States.

1961—Pub. L. 87–70 inserted provisions in second par. authorizing investments in home improvement loans insured under subchapter II of chapter 13 of this title, and added former fourth, fifth, sixth and seventh par. (now sixth, seventh, eighth, and ninth) authorizing investments in non-amortized loans which are made on the security of first liens upon homes or combinations of homes and business property, in amortized loans or participating interests therein which are secured by first liens upon improved real estate used to provide housing facilities for the aging, in certificates of beneficial interest issued by any urban renewal investment trust, and permitting associations to invest in, to lend to, or to commit themselves to lend to any business development credit corporation incorporated in the State in which the head office of the association is situated.

1960—Subsec. (d)(1). Pub. L. 86–507 inserted ''or by certified mail,'' after ''registered mail,''.

1959—Subsec. (c). Pub. L. 86–372 permitted the use of additional sums not exceeding 20 per centum of the assets of an association without regard to the area restriction for the making or purchase of participating interests in first liens on one- to four-family homes, limited the aggregate sums invested pursuant to the two exceptions to not more than 30 per centum of the assets of the association, provided that participating interests in loans secured by mortgages which have the benefit of insurance or guaranty (or a commitment therefor) under the National Housing Act, the Servicemen's Readjustment Act of 1944, or chapter 37 of title 38, shall not be taken into account in determining the amount of loans which an association may make within

any of the percentage limitations contained in the first proviso, and authorized any association whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts to invest an amount not exceeding at any one time 5 per centum of such withdrawable accounts in loans to finance the acquisition and development of land for primarily residential usage.

1958—Subsec. (c). Pub. L. 85–857 inserted '', or chapter 37 of Title 38'' after ''Servicemen's Readjustment Act of 1944, as amended'' in two places.

1956—Subsec. (c). Act Aug. 7, 1956, substituted ''20 per centum'' for ''15 per centum'' in first sentence, and ''$3,500'' for ''$2,500'' in proviso at end of second par.

1955—Subsec. (c). Act Aug. 11, 1955, removed the limitation of $2,500 from insured or guaranteed loans.

1954—Subsec. (c). Act Aug. 2, 1954, §§ 204(b), 503(1), (3), amended provisions as follows: section 204(b) inserted the reference to obligations of the Federal National Mortgage Association in second proviso of first par.; section 503(1), (3), substituted ''$35,000'' for ''$20,000'' in two places in first par. and increased from $1,500 to $2,500 the maximum amount of an unsecured loan in which a Federal savings and loan association may invest in second par.

Subsec. (d). Act Aug. 2, 1954, § 503(2), amended provisions generally to provide a means by administrative and court proceedings whereby the Board may enforce compliance with law and regulations by Federal savings and loan associations in cases where the Board felt that the appointment of a conservator or receiver was not necessary or desirable; and to set out the grounds, and provide the procedure, for the appointment of conservators, receivers, and supervisory representatives.

1952—Subsec. (c). Act July 14, 1952, inserted penultimate sentence to first par.

1951—Subsec. (h). Act Oct. 20, 1951, inserted ''date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes''.

1948—Subsec. (i). Act July 3, 1948, permitted any Federal savings and loan association to convert into a savings and loan type of organization or a mutual savings bank pursuant to the law of the State in which the principal office of the association is located.

1947—Subsec. (c). Act Aug. 6, 1947, liberalized provisions with respect to loans made by Federal savings and loan associations.

1939—Subsec. (h). Act Aug. 10, 1939, inserted exception contained within first parenthetical.

1935—Subsec. (c). Act May 28, 1935, inserted last proviso.

1934—Subsecs. (i) to (k). Act Apr. 27, 1934, amended subsec. (i) and added subsecs. (j) and (k).

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 369(5) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 610(b) of Pub. L. 111–203 effective 1 year after the transfer date, see section 610(c) of Pub. L. 111–203, set out as a note under section 84 of this title.

Amendment by section 612(c) Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

Amendment by section 627(a)(2) of Pub. L. 111–203 effective 1 year after July 21, 2010, see section 627(b) of Pub. L. 111–203, set out as an Effective Date of Repeal note under section 371a of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(12)(A) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1603(d)(8) of Pub. L. 102–550 provided that the amendment made by that section is effective on the effective date of the amendment made by section 133(d)(1) of Pub. L. 102–242. See Effective Date of 1991 Amendment note below.

Amendment by section 1606(f) of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 131(f) of Pub. L. 102–242 provided that: ''The amendments made by this section [enacting section 1831*o* of this title and amending this section and sections 1813 and 1818 of this title] shall become effective 1 year after the date of enactment of this Act [Dec. 19, 1991].''

Amendment by section 133(d) of Pub. L. 102–242 effective 1 year after Dec. 19, 1991, see section 133(g) of Pub. L. 102–242, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 14(a)(2) of Pub. L. 97–457 provided that: ''The amendment made by paragraph (1) [amending this section] shall be deemed to have taken effect upon the enactment of Public Law 97–320 [Oct. 15, 1982].''

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENT

Prior to its repeal by section 509(a) of Pub. L. 100–86, section 141 of Pub. L. 97–320, as amended by Pub. L. 99–120, § 6(a), Oct. 8, 1985, 99 Stat. 504; Pub. L. 99–278, § 1(a), Apr. 24, 1986, 100 Stat. 397; Pub. L. 99–400, § 1(a), Aug. 27, 1986, 100 Stat. 902; Pub. L. 99–452, § 1(a), Oct. 8, 1986, 100 Stat. 1140, provided that:

''(a) Effective on October 13, 1986—

''(1) section 13(c)(5) of the Federal Deposit Insurance Act [section 1823(c)(5) of this title], as added by section 111 of this Act, shall be repealed;

''(2) subparagraphs (F) and (G) of section 5(*o*)(2) of the Home Owners' Loan Act of 1933 [section 1464(*o*)(2) of this title], as added by section 112 of this Act, shall be repealed;

''(3) the provision of law amended by section 116 of this Act [section 1823(f) of this title] shall be amended to read as it would without such amendment;

''(4) the provisions of law amended by subsections (a) [section 1843(c)(8) of this title] and (c) [section 1842(d) of this title] of section 118 shall be amended to read as they would without such amendments;

''(5) the provision of law amended by section 121 of this Act [section 1464(p) of this title] shall be amended to read as it would without such amendment;

''(6) the provisions of law amended by subsections (d) through (g) of section 122 of this Act [section 1729(c), (d) of this title] shall be amended to read as they would without such amendments;

''(7) the provisions of law amended by section 123 of this Act [section 1730a(e)(2), (m) of this title] shall be amended to read as they would without such amendments; and

''(8) the provisions of law amended by sections 131 [section 1785(h), (i) of this title] and 132 [section 1786(b)(2), (h)–(p) of this title] shall be amended to read as they would without such amendments.

''(b) The repeal or termination by subsection (a) of any amendment made by this Act shall have no effect on any action taken or authorized while such amendment was in effect.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 304 of Pub. L. 96–221 effective at close of Mar. 31, 1980, see section 306 of Pub. L. 96–221, set out as a note under section 371a of this title.

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENT

Amendment by Pub. L. 96–161 effective Dec. 31, 1979, with that amendment to remain in effect until close of Mar. 31, 1980, see section 104 of Pub. L. 96–161, formerly set out as a note under section 371a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 107(e)(3) of Pub. L. 95–630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95–630, set out as a note under section 93 of this title.

Amendment by section 1701 of Pub. L. 95–630 effective Nov. 10, 1978, see section 1703 of Pub. L. 95–630, set out as a note under section 1451 of this title.

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

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective on thirtieth day beginning after Oct. 28, 1974, see section 101(g) of Pub. L. 93–495, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

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

EFFECTIVE DATE OF 1968 AMENDMENT

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

EFFECTIVE DATE OF 1966 AMENDMENT

Section 101(b) of Pub. L. 89–695 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be effective only with respect to proceedings commenced on or after the date of enactment of this Act [Oct. 16, 1966]. Section 5(d) of the Home Owners' Loan Act of 1933 [this section] as in effect immediately prior to the date of enactment of this Act shall continue in effect with respect to any proceedings commenced prior to such date.''

EXPIRATION OF 1966 AMENDMENT

Pub. L. 91–609, title IX, § 908, Dec. 31, 1970, 84 Stat. 1811, repealed section 401 of Pub. L. 89–695 which had provided that: ''The provisions of titles I and II of this Act [amending this section and sections 1730, 1813, 1817 to 1820 of this title, repealing section 77 of this title, and enacting provisions set out as notes under this section and sections 1730 and 1813 of this title] and any provisions of law enacted by said titles shall be effective only during the period ending at the close of June 30, 1972. Effective upon the expiration of such period, each provision of law amended by either of such titles is further amended to read as it did immediately prior to the enactment of this Act [Oct. 16, 1966] and each provision of law repealed by either of such titles is reenacted.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 6(g)(4) of Pub. L. 87–834, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Subsection (e) of this section [amending this section and section 4382 of Title 26, Internal Revenue Code] shall become effective on January 1, 1963, except that—

''(A) in the case of the tax imposed by section 4251 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, section 4251 of title 26], such subsection shall apply only with respect to amounts paid pursuant to bills rendered after December 31, 1962; and

''(B) in the case of the tax imposed by section 4261 of such Code [section 4261 of title 26], such subsection shall apply only with respect to transportation beginning after December 31, 1962.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding Part 1 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment by act Oct. 20, 1951, applicable only with respect to taxable years beginning after Dec. 31, 1951, see section 313(j) of act Oct. 20, 1951.

Section 615 of act Oct. 20, 1951, provided that: ''No amendment made by this Act [see Tables for classification] shall apply in any case where its application would be contrary to any treaty obligation of the United States.''

SHORT TITLE OF 1974 AMENDMENT

Section 701 of title VII of Pub. L. 93–383 provided that: ''This title [amending this section and sections 371, 1757, 1759, 1761b, 1761d, 1763, 1772, 1782, 1786, and 1788 of this title] may be cited as the 'Consumer Home Mortgage Assistance Act of 1974'.''

SHORT TITLE OF 1966 AMENDMENT

Section 1 of Pub. L. 89–695 provided: ''That this Act [amending this section and sections 1724, 1728, 1730, 1730a, 1813, and 1817 to 1821 of this title, repealing section 77 of this title, and enacting provisions set out as notes under this section and sections 1724, 1730, and 1813 of this title] may be cited as the 'Financial Institutions Supervisory Act of 1966'.''

EFFECTIVE DATE OF REGULATIONS PRESCRIBED UNDER 1986 AMENDMENT

Section 1364(e) of Pub. L. 99–570 provided that: ''The regulations required to be prescribed under the amendments made by section 1359 [amending this section and sections 1730, 1786, and 1818 of this title] shall take effect at the end of the 3-month period beginning on the date of the enactment of this Act [Oct. 27, 1986].''

TRANSITIONAL RULES REGARDING CERTAIN LOANS

Pub. L. 101–73, title III, §305(a), (b), Aug. 9, 1989, 103 Stat. 351, as amended by Pub. L. 111–203, title III, §367(3), July 21, 2010, 124 Stat. 1556, provided that:

''(a) DIVESTITURE OF CERTAIN LOANS AND INVESTMENTS NOT REQUIRED.—The limitations on loans and investments contained in section 5(c) of the Home Owners' Loan Act [12 U.S.C. 1464(c)], as amended by section 301, do not require the divestiture of any loan or investment that was lawful when made under the provisions of such section as those provisions were in effect at the time such loan or investment was made.

''(b) LOANS SECURED BY NONRESIDENTIAL REAL PROPERTY.—

''(1) IN GENERAL.—The Director of the Office of Thrift Supervision may, by order, permit a Federal savings association to exceed the limitation set forth in section 5(c)(2)(B)(i) of the Home Owners' Loan Act [12 U.S.C. 1464(c)(2)(B)(i)] during the period beginning on the date of enactment of this Act [Aug. 9, 1989] and ending on June 1, 1991, if the Director determines that—

''(A) there is a reasonable prospect that the savings association can be in compliance, not later than June 1, 1991, with the capital standards prescribed under section 5(t) of the Home Owners' Loan Act; and

''(B) the increased authority—

''(i) is consistent with prudent operating practices, and

''(ii) is in accordance with a plan submitted by the savings association for—

''(I) an orderly transition to compliance with section 5(c)(2)(B)(i), or

''(II) an orderly conversion to a bank charter.

''(2) OTHER EXEMPTIVE AUTHORITY NOT AFFECTED.—The authority granted by paragraph (1) is in addition to any authority of the Director under section 5(c)(2)(B)(ii) of the Home Owners' Loan Act.''

[Pub. L. 111–203, title III, §§351, 367(3), July 21, 2010, 124 Stat. 1546, 1556, provided that, effective on the transfer date (defined in section 5301 of this title), section 305(a), (b) of Pub. L. 101–73, set out above, is amended by striking out subsection (b).]

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97–320

Section 509(c) of Pub. L. 100–86 provided that: ''No amendment made by part D [section 141, formerly set out as an Effective and Termination Dates of 1982 Amendment note above] of title I or section 206 [set out as an Effective and Termination Dates of 1982 Amendment note under section 1729 of this title] of the Garn-St Germain Depository Institutions Act of 1982 [Pub. L. 97–320], as in effect before the date of the enactment of this Act [Aug. 10, 1987], to any other provision of law shall be deemed to have taken effect before the date of the enactment of this Act and any such provision of law shall be in effect as if no such amendment had been made before such date of enactment.''

Pub. L. 99–452, §1(c), Oct. 8, 1986, 100 Stat. 1140, provided that: ''No amendment made by section 141(a) or section 206(a) of the Garn-St Germain Depository Institutions Act of 1982 [set out as Effective and Termination Dates of 1982 Amendment notes under sections 1464 and 1729 of this title], as in effect on the day before the date of the enactment of this Act [Oct. 8, 1986], to any other provision of law shall be deemed to have taken effect before such date of enactment and any such provision of law shall be in effect as if no such amendment had taken effect before such date of enactment.''

Pub. L. 99–400, §1(c), Aug. 27, 1986, 100 Stat. 902, provided that: ''Sections 141(a) and 206(a) of the Garn-St Germain Depository Institutions Act of 1982 [set out as Effective and Termination Dates of 1982 Amendment notes under sections 1464 and 1729 of this title], as such sections are in effect on the day after the date of enactment of this Act [Aug. 27, 1986], shall apply as if such sections had been included in the Garn-St Germain Depository Institutions Act of 1982 on the date of the enactment of such Act [Oct. 15, 1982], no amendment made by any such section to any other provision of law shall be deemed to have taken effect before the date of the enactment of this Act, and any such provision of law shall be in effect as if no such amendment had taken effect before the date of the enactment of this Act.''

REPEALS

Amendment of this section by section 102 of Pub. L. 96–161, cited as a credit to this section, was repealed at the close of Mar. 31, 1980, by section 307 of Pub. L. 96–221, and substantially identical provisions were enacted by section 304 of Pub. L. 96–221, such amendments to take effect at the close of Mar. 31, 1980.

§1465. State law preemption standards for Federal savings associations clarified

(a) In general

Any determination by a court or by the Director or any successor officer or agency regarding the relation of State law to a provision of this chapter or any regulation or order prescribed under this chapter shall be made in accordance with the laws and legal standards applicable to national banks regarding the preemption of State law.

(b) Principles of conflict preemption applicable

Notwithstanding the authorities granted under sections 1463 and 1464 of this title, this chapter does not occupy the field in any area of State law.

(c) Visitorial powers

The provisions of sections[1] 25b(i) of this title shall apply to Federal savings associations, and any subsidiary thereof, to the same extent and in the same manner as if such savings associations, or subsidiaries thereof, were national banks or subsidiaries of national banks, respectively.

(d) Enforcement actions

The ability of the Comptroller of the Currency to bring an enforcement action under this chapter or section 45 of title 15 does not preclude any private party from enforcing rights granted under Federal or State law in the courts.

(June 13, 1933, ch. 64, §6, as added and amended Pub. L. 111–203, title X, §§1046(a), 1047(b), July 21, 2010, 124 Stat. 2017, 2018.)

PRIOR PROVISIONS

A prior section 1465, acts June 13, 1933, ch. 64, §6, 48 Stat. 134; Apr. 27, 1934, ch. 168, §11, 48 Stat. 647; May 28, 1935, ch. 150, §19, 49 Stat. 297; Pub. L. 101–73, title III, §301, Aug. 9, 1989, 103 Stat. 313, which related to liquid asset requirements, was repealed by Pub. L. 106–569, title XII, §1201(a), Dec. 27, 2000, 114 Stat. 3032.

AMENDMENTS

2010—Subsecs. (c), (d). Pub. L. 111–203, §1047(b), added subsecs. (c) and (d).

EFFECTIVE DATE

Enactment and amendment of section by Pub. L. 111–203 effective on the designated transfer date, see section 1048 of Pub. L. 111–203, set out as a note under section 5551 of this title.

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

§ 1466. Applicability

The provisions of this chapter shall apply to the United States and to Puerto Rico, Guam, and the Virgin Islands.

(June 13, 1933, ch. 64, § 7, 48 Stat. 134; July 14, 1952, ch. 723, § 10(b), 66 Stat. 604; Pub. L. 86–70, § 9(b), June 25, 1959, 73 Stat. 142; Pub. L. 86–624, § 5(b), July 12, 1960, 74 Stat. 411; Pub. L. 101–73, title III, § 301, Aug. 9, 1989, 103 Stat. 315.)

AMENDMENTS

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows: ''The provisions of this chapter shall apply to the continental United States (including Alaska), to the State of Hawaii, and to Puerto Rico, Guam and the Virgin Islands.''

1960—Pub. L. 86–624 substituted ''State of Hawaii'' for ''Territory of Hawaii''.

1959—Pub. L. 86–70 substituted ''continental United States (including Alaska), to the Territory of Hawaii'' for ''continental United States, to the Territories of Alaska and Hawaii''.

1952—Act July 14, 1952, inserted ''Guam''.

§ 1466a. District associations

(a) In general

The Director shall, with respect to all incorporated or unincorporated building, building or loan, building and loan, or homestead associations, and similar institutions, of or transacting or doing business in the District of Columbia, or maintaining any office in the District of Columbia (other than Federal savings associations), have the same powers and functions as to examination, operation, and regulation as the Director has with respect to Federal savings associations.

(b) Additional powers

Any such association or institution incorporated under the laws of, or organized in, the District of Columbia shall have in addition to any existing statutory authority such statutory authority as is vested in Federal savings associations.

(c) Charter amendments

Charters, certificates of incorporation, articles of incorporation, constitutions, bylaws, or other organic documents of associations or institutions referred to in subsection (b) of this section may, without regard to anything contained therein or otherwise, be amended in such manner and to such extent and upon such votes if any as the Director may by regulation or otherwise provide.

(d) Limitation

Nothing in this section shall cause, or permit the Director to cause, District of Columbia associations to be or become Federal savings associations, or require the Director to impose on District of Columbia associations the same regulations as are imposed on Federal savings associations.

(June 13, 1933, ch. 64, § 8, as added Pub. L. 91–609, title IX, § 913, Dec. 31, 1970, 84 Stat. 1815; amended Pub. L. 101–73, title III, § 301, Aug. 9, 1989, 103 Stat. 315; Pub. L. 111–203, title III, § 369(6), July 21, 2010, 124 Stat. 1563.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 369(6), July 21, 2010, 124 Stat. 1546, 1563, provided that, effective on the transfer date, this section is amended by substituting ''Comptroller'' for ''Director'' wherever appearing. See Effective Date of 2010 Amendment note below.

PRIOR PROVISIONS

A prior section 8 of act June 13, 1933, ch. 64, 48 Stat. 134, was classified to section 1467 of this title, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

AMENDMENTS

1989—Pub. L. 101–73 amended section generally, substituting provisions relating to Director and Federal savings associations for former provisions relating to Federal Home Loan Bank Board and Federal savings and loan associations.

EFFECTIVE DATE OF 2010 AMENDMENT

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

§ 1467. Examination fees

(a) Examination of savings associations

The cost of conducting examinations of savings associations pursuant to section 1464(d) of this title shall be assessed by the Director against each such savings association as the Director deems necessary or appropriate.

(b) Examination of affiliates

The cost of conducting examinations of affiliates of savings associations pursuant to this chapter may be assessed by the Director against each affiliate that is examined as the Director deems necessary or appropriate.

(c) Assessment against association in case of affiliate's refusal to pay

(1) In general

Subject to paragraph (2), if any affiliate of any savings association—

(A) refuses to pay any assessment under subsection (b) of this section; or

(B) fails to pay any such assessment before the end of the 60-day period beginning on the date of the assessment,

the Director may assess such cost against, and collect such cost from, such savings association.

(2) Affiliate of more than 1 savings association

If any affiliate referred to in paragraph (1) is an affiliate of more than 1 savings association, the assessment with respect to the affiliate against, and collected from, any affiliated savings association in such proportions as the Director may prescribe.

(d) Civil money penalty for affiliate's refusal to cooperate

(1) Penalty imposed

If any affiliate of any savings association—

(A) refuses to permit any examiner appointed by the Director to make an examination; or

(B) refuses to provide any information required to be disclosed in the course of any examination,

the savings association shall forfeit and pay a civil penalty of not more than $5,000 for each day that any such refusal continues.

(2) Assessment and collection

Any penalty imposed under paragraph (1) shall be assessed and collected by the Director, in the manner provided in section 8(i)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1818(i)(2)].

(e) Regulations

Only the Director may prescribe regulations with respect to—

(1) the computation of, and the assessment for, the cost of conducting examinations pursuant to this section; and

(2) the collection and use of such assessments and any fees under this section.

Such regulations may establish formulas to determine a fee or schedule of fees to cover the costs of examinations and also to cover the cost of processing applications, filings, notices, and requests for approvals by the Director or the Director's designee.

(f) Collection through FDIC or Federal home loan banks

The Corporation or the Federal home loan banks shall, upon request of and by agreement with the Director, collect fees and assessments on behalf of the Director and be reimbursed for the actual cost of collection.

(g) Costs of other examinations

(1) Examination of fiduciary activities

In addition to any assessment imposed pursuant to subsection (a) of this section, the cost of conducting examinations of fiduciary activities of savings associations which exercise fiduciary powers (including savings associations or similar institutions in the District of Columbia) shall be assessed by the Director against such savings associations (or similar institutions).

(2) Examinations in excess of 2 per calendar year

If any savings association or affiliate of a savings association is examined by the Director, or the Corporation, as the case may be, more than 2 times in any calendar year, the cost of conducting such additional examinations shall be assessed, in addition to any assessment imposed pursuant to subsection (a) of this section, by the Director or the Corporation, as the case may be, against such savings association or affiliate.

(h) Additional information

Any savings association and any affiliate of any savings association shall provide the Director with access to any information or report with respect to any examination made by any public regulatory authority and furnish any additional information with respect thereto as the Director may require.

(i) Treatment of examination assessments

(1) Deposits

Amounts received by the Director from assessments under this section (other than an assessment under subsection (d)(2) of this section) or section 1467a(b)(4) of this title may be deposited in the manner provided in section 5234 of the Revised Statutes [12 U.S.C. 192] with respect to assessments by the Comptroller of the Currency.

(2) Assessments are not Government funds

The amounts received by the Director from any assessment under this section shall not be construed to be Government or public funds or appropriated money.

(3) Assessments are not subject to apportionment of funds

Notwithstanding any other provision of law, the amounts received by the Director from any assessment under this section shall not be subject to apportionment for the purpose of chapter 15 of title 31 or under any other authority.

(j) Processing fee

The Director may, in the Director's sole discretion, assess against any person that submits to the Director an application, filing, notice, or request a fee to cover the cost of processing such submission.

(k) Fees for examinations and supervisory activities

The Director may assess against institutions for which the Director is the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], fees to fund the direct and indirect expenses of the Office as the Director deems necessary or appropriate. The fees may be imposed more frequently than annually at the discretion of the Director.

***(l)* Working capital**

The Director is authorized to impose fees and assessments pursuant to subsections (a), (b), (e), and (k) of this section, in excess of actual expenses for any given year, to permit the Director to maintain a working capital fund. The Director shall remit to the payors of such fees and assessments any funds collected in excess of what he deems necessary to maintain such working capital fund.

(m) Use of funds

The Director is authorized to use the combined resources retained through fees and assessments imposed pursuant to this section to pay all direct and indirect salary and administrative expenses of the Office, including contracts and purchases of property and services, and the direct and indirect expenses of the examinations and supervisory activities of the Office.

(June 13, 1933, ch. 64, §9, as added Pub. L. 100–86, title IV, §402(a), Aug. 10, 1987, 101 Stat. 605; amended Pub. L. 101–73, title III, §301, Aug. 9, 1989, 103 Stat. 316; Pub. L. 102–242, title I, §114(c), Dec. 19, 1991, 105 Stat. 2248; Pub. L. 111–203, title III, §369(7), July 21, 2010, 124 Stat. 1563.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§351, 369(7), July 21, 2010, 124 Stat. 1546, 1563, provided that, effective on the transfer date, this section is amended:

(1) in subsection (a), by striking ''assessed by the Director'' and all that follows through the end and inserting the following: ''assessed by—

''(1) the Comptroller, against each such Federal savings association, as the Comptroller deems necessary or appropriate; and

''(2) the Corporation, against each such State savings association, as the Corporation deems necessary or appropriate.'';

(2) in subsection (b), by substituting ''Comptroller or Corporation, as appropriate'' for ''Director'' wherever appearing;

(3) in subsection (e)—

(A) by substituting ''The Comptroller'' for ''Only the Director''; and

(B) by substituting ''designee of the Comptroller'' for ''Director's designee'';

(4) by striking subsection (f) and inserting the following: ''(f) [Reserved].'';

(5) in subsection (g)—

(A) in paragraph (1), by substituting ''appropriate Federal banking agency'' for ''Director''; and

(B) in paragraph (2), by substituting ''appropriate Federal banking agency for the savings association'' for ''Director, or the Corporation, as the case may be,'';

(6) in subsection (i), by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing;

(7) in subsection (j), by substituting ''sole discretion of the appropriate Federal banking agency'' for ''Director's sole discretion'';

(8) in subsection (k), by substituting ''appropriate Federal banking agency may assess against an institution'' for ''Director may assess against institutions for which the Director is the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act,''; and

(9) except as provided in paragraphs (1) to (7), by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing.

See Effective Date of 2010 Amendment note below.

PRIOR PROVISIONS

A prior section 1467, acts June 13, 1933, ch. 64, §8, 48 Stat. 134; Apr. 27, 1934, ch. 168, §12, 48 Stat. 647; May 28, 1935, ch. 150, §§20, 21, 49 Stat. 298, related to penalties, prior to repeal by act June 25, 1948, ch. 645, §21, 62 Stat. 862, eff. Sept. 1, 1948. See sections 223, 433, 493, 657, 1006, and 1014 of Title 18, Crimes and Criminal Procedure.

A prior section 9 of act June 13, 1933, was renumbered section 11 and is classified to section 1468 of this title.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–242, §114(c)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''The cost of conducting examinations of savings associations pursuant to section 1464(d) of this title shall be assessed by the Director against each such savings association in proportion to the assets or resources of the savings association.''

Subsec. (b). Pub. L. 102–242, §114(c)(1), added subsec. (b) and struck out former subsec. (b) which read as follows: ''The cost of conducting examinations of affiliates of savings associations pursuant to this chapter may be assessed by the Director against each affiliate which is examined in proportion to the assets or resources held by the affiliate on the date of any such examination.''

Subsec. (k). Pub. L. 102–242, §114(c)(2), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: ''The Director may assess against institutions for which the Director is the appropriate Federal banking agency, within the meaning of section 3 of the Federal Deposit Insurance Act, fees to fund the direct and indirect expenses of the Office. Such fees shall be imposed in proportion of the assets or resources of the institutions. The fees may be imposed more frequently than annually at the discretion of the Director. The annual rate of such fees shall be the same for all institutions subject to such fees.''

1989—Pub. L. 101–73 amended section generally, substituting subsecs. (a) to (m) relating to examination fees for former subsecs. (a) to (f) relating to accounting principles and other standards and requirements.

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–73 relating to civil penalties applicable with respect to violations committed and activities engaged in after Aug. 9, 1989, except that the increased maximum civil penalties of $5,000 and $25,000 per violation or per day may apply to such violations or activities committed or engaged in before such date with respect to an institution if such violations or activities (1) are not already subject to a notice issued by the appropriate Federal banking agency or the Board (initiating an administrative proceeding); and (2) occurred after the completion of the last report of examination of the institution by the appropriate Federal banking agency (as defined in section 1813 of this title) occurring before Aug. 9, 1989, see section 305(c) of Pub. L. 101–73, set out as a note under section 1461 of this title.

SUBMISSION OF PROPOSED REGULATIONS TO CONGRESS

Section 402(c) of Pub. L. 100–86 provided that: ''Not later than the end of the 90-day period beginning on the date of the enactment of this Act [Aug. 10, 1987]—

''(1) the Federal Home Loan Bank Board shall submit a copy of the proposed regulations required to be prescribed under the amendment made by subsection (a) [enacting this section] to the Congress; and

''(2) the Federal Savings and Loan Insurance Corporation shall submit a copy of the proposed regulations required to be prescribed under the amendment made by subsection (b) [enacting section 1730h of this title] to the Congress.''

EFFECTIVE DATE OF REGULATIONS

Section 402(d) of Pub. L. 100–86 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), any regulation required to be prescribed under the amendment made by subsections (a) and (b) [enacting sections 1467 and 1730h of this title] shall be implemented not later than the end of the 150-day period beginning on the date of the enactment of this Act [Aug. 10, 1987].

''(2) UNIFORM GAAP ACCOUNTING STANDARDS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the regulations required to be prescribed pursuant to subsection (b) of the amendments made by subsections (a) and (b) of this section shall take effect on December 31, 1987.

''(B) COMPLIANCE AT A LATER DATE.—If any association or insured institution demonstrates to the satisfaction of the Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation, as the case may be, that it is not feasible for such association or institution to achieve compliance with the regulations referred to in subparagraph (A) by the date contained in such subparagraph, the Board or Corporation may approve a plan submitted by an association or insured institution which allows such association or institution to comply with such regulations at a later date to the extent such later date is the earlier of—

''(i) the date by which, in the determination of the Board or Corporation, it is feasible for such as-

sociation or insured institution to achieve compliance with such regulations; or

''(ii) December 31, 1993.''

SUNSET AND SAVINGS PROVISION

Subsec. (a)(2), (3), (5) ceases to be effective on date that notice of completion of all net new borrowing by Financing Corporation is published in Federal Register [Mar. 30, 1992, 57 F.R. 10763], with such termination not to be construed to affect or limit any authority of Federal Home Loan Bank Board or Federal Savings and Loan Insurance Corporation to prescribe any regulation or engage in any activity with respect to any association or insured institution under any other provision of law, see section 416 of Pub. L. 100–86, set out as a note under section 1441 of this title.

§ 1467a. Regulation of holding companies

(a) Definitions

(1) In general

As used in this section, unless the context otherwise requires—

(A) Savings association

The term ''savings association'' includes a savings bank or cooperative bank which is deemed by the Director to be a savings association under subsection (*l*) of this section.

(B) Uninsured institution

The term ''uninsured institution'' means any depository institution the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(C) Company

The term ''company'' means any corporation, partnership, trust, joint-stock company, or similar organization, but does not include the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, any Federal home loan bank, or any company the majority of the shares of which is owned by the United States or any State, or by an instrumentality of the United States or any State.

(D) Savings and loan holding company

(i) In general

Except as provided in clause (ii), the term ''savings and loan holding company'' means any company that directly or indirectly controls a savings association or that controls any other company that is a savings and loan holding company.

(ii) Exclusion

The term ''savings and loan holding company'' does not include a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], or to any company directly or indirectly controlled by such company (other than a savings association).

(E) Multiple savings and loan holding company

The term ''multiple savings and loan holding company'' means any savings and loan holding company which directly or indirectly controls 2 or more savings associations.

(F) Diversified savings and loan holding company

The term ''diversified savings and loan holding company'' means any savings and loan holding company whose subsidiary savings association and related activities as permitted under paragraph (2) of subsection (c) of this section represented, on either an actual or a pro forma basis, less than 50 percent of its consolidated net worth at the close of its preceding fiscal year and of its consolidated net earnings for such fiscal year, as determined in accordance with regulations issued by the Director.

(G) Subsidiary

The term ''subsidiary'' has the same meaning as in section 1813 of this title.

(H) Affiliate

The term ''affiliate'' of a savings association means any person which controls, is controlled by, or is under common control with, such savings association.

(I) Bank holding company

The terms ''bank holding company'' and ''bank'' have the meanings given to such terms in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841].

(J) Acquire

The term ''acquire'' has the meaning given to such term in section 1823(f)(8) of this title.

(2) Control

For purposes of this section, a person shall be deemed to have control of—

(A) a savings association if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of such savings association, or controls in any manner the election of a majority of the directors of such association;

(B) any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares or rights of such other company, or controls in any manner the election or appointment of a majority of the directors or trustees of such other company, or is a general partner in or has contributed more than 25 percent of the capital of such other company;

(C) a trust if the person is a trustee thereof; or

(D) a savings association or any other company if the Director determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company.

(3) Exclusions

Notwithstanding any other provision of this subsection, the term ''savings and loan holding company'' does not include—

(A) any company by virtue of its ownership or control of voting shares of a savings association or a savings and loan holding company acquired in connection with the underwriting of securities if such shares are held only for such period of time (not exceeding 120 days unless extended by the Director) as will permit the sale thereof on a reasonable basis; and

(B) any trust (other than a pension, profit-sharing, shareholders', voting, or business trust) which controls a savings association or a savings and loan holding company if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and is (i) in existence on June 26, 1967, or (ii) a testamentary trust created on or after June 26, 1967.

(4) Special rule relating to qualified stock issuance

No savings and loan holding company shall be deemed to control a savings association solely by reason of the purchase by such savings and loan holding company of shares issued by such savings association, or issued by any savings and loan holding company (other than a bank holding company) which controls such savings association, in connection with a qualified stock issuance if such purchase is approved by the Director under subsection (q)(1)(D) of this section, unless the acquiring savings and loan holding company, directly or indirectly, or acting in concert with 1 or more other persons, or through 1 or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 15 percent of the voting shares of such savings association or holding company.

(b) Registration and examination

(1) In general

Within 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the Director on forms prescribed by the Director, which shall include such information, under oath or otherwise, with respect to the financial condition, ownership, operations, management, and intercompany relationships of such holding company and its subsidiaries, and related matters, as the Director may deem necessary or appropriate to carry out the purposes of this section. Upon application, the Director may extend the time within which a savings and loan holding company shall register and file the requisite information.

(2) Reports

Each savings and loan holding company and each subsidiary thereof, other than a savings association, shall file with the Director, and the regional office of the Director of the district in which its principal office is located, such reports as may be required by the Director. Such reports shall be made under oath or otherwise, and shall be in such form and for such periods, as the Director may prescribe. Each report shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Director may require.

(3) Books and records

Each savings and loan holding company shall maintain such books and records as may be prescribed by the Director.

(4) Examinations

Each savings and loan holding company and each subsidiary thereof (other than a bank) shall be subject to such examinations as the Director may prescribe. The cost of such examinations shall be assessed against and paid by such holding company. Examination and other reports may be furnished by the Director to the appropriate State supervisory authority. The Director shall, to the extent deemed feasible, use for the purposes of this subsection reports filed with or examinations made by other Federal agencies or the appropriate State supervisory authority.

(5) Agent for service of process

The Director may require any savings and loan holding company, or persons connected therewith if it is not a corporation, to execute and file a prescribed form of irrevocable appointment of agent for service of process.

(6) Release from registration

The Director may at any time, upon the Director's own motion or upon application, release a registered savings and loan holding company from any registration theretofore made by such company, if the Director determines that such company no longer has control of any savings association.

(c) Holding company activities

(1) Prohibited activities

Except as otherwise provided in this subsection, no savings and loan holding company and no subsidiary which is not a savings association shall—

(A) engage in any activity or render any service for or on behalf of a savings association subsidiary for the purpose or with the effect of evading any law or regulation applicable to such savings association;

(B) commence any business activity, other than the activities described in paragraph (2); or

(C) continue any business activity, other than the activities described in paragraph (2), after the end of the 2-year period beginning on the date on which such company received approval under subsection (e) of this section to become a savings and loan holding company subject to the limitations contained in this subparagraph.

(2) Exempt activities

The prohibitions of subparagraphs (B) and (C) of paragraph (1) shall not apply to the following business activities of any savings and loan holding company or any subsidiary (of such company) which is not a savings association:

(A) Furnishing or performing management services for a savings association subsidiary of such company.

(B) Conducting an insurance agency or escrow business.

(C) Holding, managing, or liquidating assets owned or acquired from a savings association subsidiary of such company.

(D) Holding or managing properties used or occupied by a savings association subsidiary of such company.

(E) Acting as trustee under deed of trust.

(F) Any other activity—

(i) which the Board of Governors of the Federal Reserve System, by regulation, has determined to be permissible for bank holding companies under section 4(c) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(c)], unless the Director, by regulation, prohibits or limits any such activity for savings and loan holding companies; or

(ii) in which multiple savings and loan holding companies were authorized (by regulation) to directly engage on March 5, 1987.

(G) In the case of a savings and loan holding company, purchasing, holding, or disposing of stock acquired in connection with a qualified stock issuance if the purchase of such stock by such savings and loan holding company is approved by the Director pursuant to subsection (q)(1)(D) of this section.

(3) Certain limitations on activities not applicable to certain holding companies

Notwithstanding paragraphs (4) and (6) of this subsection, the limitations contained in subparagraphs (B) and (C) of paragraph (1) shall not apply to any savings and loan holding company (or any subsidiary of such company) which controls—

(A) only 1 savings association, if the savings association subsidiary of such company is a qualified thrift lender (as determined under subsection (m) of this section); or

(B) more than 1 savings association, if—

(i) all, or all but 1, of the savings association subsidiaries of such company were initially acquired by the company or by an individual who would be deemed to control such company if such individual were a company—

(I) pursuant to an acquisition under section 1823(c) or 1823(k) of this title or section 408(m)[1] of the National Housing Act [12 U.S.C. 1730a(m)]; or

(II) pursuant to an acquisition in which assistance was continued to a savings association under section 1823(i) of this title; and

(ii) all of the savings association subsidiaries of such company are qualified thrift lenders (as determined under subsection (m) of this section).

(4) Prior approval of certain new activities required

(A) In general

No savings and loan holding company and no subsidiary which is not a savings association shall commence, either de novo or by an acquisition (in whole or in part) of a going concern, any activity described in paragraph (2)(F)(i) of this subsection without the prior approval of the Director.

(B) Factors to be considered by Director

In considering any application under subparagraph (A) by any savings and loan holding company or any subsidiary of any such company which is not a savings association, the Director shall consider—

(i) whether the performance of the activity described in such application by the company or the subsidiary can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects of such activity (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices);

(ii) the managerial resources of the companies involved; and

(iii) the adequacy of the financial resources, including capital, of the companies involved.

(C) Director may differentiate between new and ongoing activities

In prescribing any regulation or considering any application under this paragraph, the Director may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern.

(D) Approval or disapproval by order

The approval or disapproval of any application under this paragraph by the Director shall be made in an order issued by the Director containing the reasons for such approval or disapproval.

(5) Grace period to achieve compliance

If any savings association referred to in paragraph (3) fails to maintain the status of such association as a qualified thrift lender, the Director may allow, for good cause shown, any company that controls such association (or any subsidiary of such company which is not a savings association) up to 3 years to comply with the limitations contained in paragraph (1)(C).

(6) Special provisions relating to certain companies affected by 1987 amendments

(A) Exception to 2-year grace period for achieving compliance

Notwithstanding paragraph (1)(C), any company which received approval under subsection (e) of this section to acquire control of a savings association between March 5, 1987, and August 10, 1987, shall not continue any business activity other than an activity described in paragraph (2) after August 10, 1987.

(B) Exemption for activities lawfully engaged in before March 5, 1987

Notwithstanding paragraph (1)(C) and subject to subparagraphs (C) and (D), any savings and loan holding company which received approval, before March 5, 1987, under

[1] See References in Text note below.

subsection (e) of this section to acquire control of a savings association may engage, directly or through any subsidiary (other than a savings association subsidiary of such company), in any activity in which such company or such subsidiary was lawfully engaged on such date.

(C) Termination of subparagraph (B) exemption

The exemption provided under subparagraph (B) for activities engaged in by any savings and loan holding company or a subsidiary of such company (which is not a savings association) which would otherwise be prohibited under paragraph (1)(C) shall terminate with respect to such activities of such company or subsidiary upon the occurrence (after August 10, 1987) of any of the following:

(i) The savings and loan holding company acquires control of a bank or an additional savings association (other than a savings association acquired pursuant to section 1823(c) or 1823(k) of this title or section 406(f) or 408(m)[1] of the National Housing Act [12 U.S.C. 1729(f) or 1730a(m)]).

(ii) Any savings association subsidiary of the savings and loan holding company fails to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 [26 U.S.C. 7701(a)(19)].

(iii) The savings and loan holding company engages in any business activity—

(I) which is not described in paragraph (2); and

(II) in which it was not engaged on March 5, 1987.

(iv) Any savings association subsidiary of the savings and loan holding company increases the number of locations from which such savings association conducts business after March 5, 1987 (other than an increase which occurs in connection with a transaction under section 1823(c) or (k) of this title or section 408(m)[1] of the National Housing Act.

(v) Any savings association subsidiary of the savings and loan holding company permits any overdraft (including an intraday overdraft), or incurs any such overdraft in its account at a Federal Reserve bank, on behalf of an affiliate, unless such overdraft is the result of an inadvertent computer or accounting error that is beyond the control of both the savings association subsidiary and the affiliate.

(D) Order by Director to terminate subparagraph (B) activity

Any activity described in subparagraph (B) may also be terminated by the Director, after opportunity for hearing, if the Director determines, having due regard for the purposes of this chapter, that such action is necessary to prevent conflicts of interest or unsound practices or is in the public interest.

(7) Foreign savings and loan holding company

Notwithstanding any other provision of this section, any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof which is not a savings association), which controls a single savings association on August 10, 1987, shall not be subject to this subsection with respect to any activities of such holding company which are conducted exclusively in a foreign country.

(8) Exemption for bank holding companies

Except for paragraph (1)(A), this subsection shall not apply to any company that is treated as a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956 [12 U.S.C. 1843], or any of its subsidiaries.

(9) Prevention of new affiliations between S&L holding companies and commercial firms

(A) In general

Notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after May 4, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted—

(i) under paragraph (1)(C) or (2) of this subsection; or

(ii) for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)].

(B) Prevention of new commercial affiliations

Notwithstanding paragraph (3), no savings and loan holding company may engage directly or indirectly (including through a subsidiary other than a savings association) in any activity other than as described in clauses (i) and (ii) of subparagraph (A).

(C) Preservation of authority of existing unitary S&L holding companies

Subparagraphs (A) and (B) do not apply with respect to any company that was a savings and loan holding company on May 4, 1999, or that becomes a savings and loan holding company pursuant to an application pending before the Office on or before that date, and that—

(i) meets and continues to meet the requirements of paragraph (3); and

(ii) continues to control not fewer than 1 savings association that it controlled on May 4, 1999, or that it acquired pursuant to an application pending before the Office on or before that date, or the successor to such savings association.

(D) Corporate reorganizations permitted

This paragraph does not prevent a transaction that—

(i) involves solely a company under common control with a savings and loan holding company from acquiring, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company; or

(ii) involves solely a merger, consolidation, or other type of business combination

as a result of which a company under common control with the savings and loan holding company acquires, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company.

(E) Authority to prevent evasions

The Director may issue interpretations, regulations, or orders that the Director determines necessary to administer and carry out the purpose and prevent evasions of this paragraph, including a determination that, notwithstanding the form of a transaction, the transaction would in substance result in a company acquiring control of a savings association.

(F) Preservation of authority for family trusts

Subparagraphs (A) and (B) do not apply with respect to any trust that becomes a savings and loan holding company with respect to a savings association, if—

(i) not less than 85 percent of the beneficial ownership interests in the trust are continuously owned, directly or indirectly, by or for the benefit of members of the same family, or their spouses, who are lineal descendants of common ancestors who controlled, directly or indirectly, such savings association on May 4, 1999, or a subsequent date, pursuant to an application pending before the Office on or before May 4, 1999; and

(ii) at the time at which such trust becomes a savings and loan holding company, such ancestors or lineal descendants, or spouses of such descendants, have directly or indirectly controlled the savings association continuously since May 4, 1999, or a subsequent date, pursuant to an application pending before the Office on or before May 4, 1999.

(d) Transactions with affiliates

Transactions between any subsidiary savings association of a savings and loan holding company and any affiliate (of such savings association subsidiary) shall be subject to the limitations and prohibitions specified in section 1468 of this title.

(e) Acquisitions

(1) In general

It shall be unlawful for—

(A) any savings and loan holding company directly or indirectly, or through one or more subsidiaries or through one or more transactions—

(i) to acquire, except with the prior written approval of the Director, the control of a savings association or a savings and loan holding company, or to retain the control of such an association or holding company acquired or retained in violation of this section as heretofore or hereafter in effect;

(ii) to acquire, except with the prior written approval of the Director, by the process of merger, consolidation, or purchase of assets, another savings association or a savings and loan holding company, or all or substantially all of the assets of any such association or holding company;

(iii) to acquire, by purchase or otherwise, or to retain, except with the prior written approval of the Director, more than 5 percent of the voting shares of a savings association not a subsidiary, or of a savings and loan holding company not a subsidiary, or in the case of a multiple savings and loan holding company (other than a company described in subsection (c)(8) of this section), to acquire or retain, and the Director may not authorize acquisition or retention of, more than 5 percent of the voting shares of any company not a subsidiary which is engaged in any business activity other than the activities specified in subsection (c)(2) of this section. This clause shall not apply to shares of a savings association or of a savings and loan holding company—

(I) held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

(II) held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(III) held in an account solely for trading purposes;

(IV) over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(V) acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Director may permit if the Director determines that such an extension will not be detrimental to the public interest;

(VI) acquired under section 408(m)[1] of the National Housing Act [12 U.S.C. 1730a(m)] or section 1823(k) of this title;

(VII) held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(17)], except as provided in paragraph (6); or

(VIII) acquired pursuant to a qualified stock issuance if such purchase is approved by the Director under subsection (q)(1)(D) of this section;

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), and (VI)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association or savings and loan holding company; or

(iv) to acquire the control of an uninsured institution, or to retain for more than one year after February 14, 1968, or from the date on which such control was acquired, whichever is later, except that the Director may upon application by such company extend such one-year period from year to year, for an additional period not

exceeding 3 years, if the Director finds such extension is warranted and is not detrimental to the public interest; and

(B) any other company, without the prior written approval of the Director, directly or indirectly, or through one or more subsidiaries or through one or more transactions, to acquire the control of one or more savings associations, except that such approval shall not be required in connection with the control of a savings association, (i) acquired by devise under the terms of a will creating a trust which is excluded from the definition of ''savings and loan holding company'' under subsection (a) of this section, (ii) acquired in connection with a reorganization in which a person or group of persons, having had control of a savings association for more than 3 years, vests control of that association in a newly formed holding company subject to the control of the same person or group of persons, or (iii) acquired by a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], or any company controlled by such bank holding company. The Director shall approve an acquisition of a savings association under this subparagraph unless the Director finds the financial and managerial resources and future prospects of the company and association involved to be such that the acquisition would be detrimental to the association or the insurance risk of the Deposit Insurance Fund, and shall render a decision within 90 days after submission to the Director of the complete record on the application.

Consideration of the managerial resources of a company or savings association under subparagraph (B) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association.

(2) Factors to be considered

The Director shall not approve any acquisition under subparagraph (A)(i) or (A)(ii), or of more than one savings association under subparagraph (B) of paragraph (1) of this subsection, any acquisition of stock in connection with a qualified stock issuance, any acquisition under paragraph (4)(A), or any transaction under section 1823(k) of this title, except in accordance with this paragraph. In every case, the Director shall take into consideration the financial and managerial resources and future prospects of the company and association involved, the effect of the acquisition on the association, the insurance risk to the Deposit Insurance Fund, and the convenience and needs of the community to be served, and shall render a decision within 90 days after submission to the Director of the complete record on the application. Consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association. Before approving any such acquisition, except a transaction under section 1823(k) of this title, the Director shall request from the Attorney General and consider any report rendered within 30 days on the competitive factors involved. The Director shall not approve any proposed acquisition—

(A) which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States,

(B) the effect of which in any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served,

(C) if the company fails to provide adequate assurances to the Director that the company will make available to the Director such information on the operations or activities of the company, and any affiliate of the company, as the Director determines to be appropriate to determine and enforce compliance with this chapter,

(D) in the case of an application involving a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country, or

(E) in the case of an application by a savings and loan holding company to acquire an insured depository institution, if—

(i) the home State of the insured depository institution is a State other than the home State of the savings and loan holding company;

(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States; and

(iii) the acquisition does not involve an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section 1823 of this title.

(3) Interstate acquisitions

No acquisition shall be approved by the Director under this subsection which will result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling savings associations in more than one State, unless—

(A) such company, or a savings association subsidiary of such company, is authorized to acquire control of a savings association subsidiary, or to operate a home or branch office, in the additional State or States pursuant to section 1823(k) of this title;

(B) such company controls a savings association subsidiary which operated a home or branch office in the additional State or States as of March 5, 1987; or

(C) the statutes of the State in which the savings association to be acquired is located permit a savings association chartered by such State to be acquired by a savings association chartered by the State where the acquiring savings association or savings and loan holding company is located or by a holding company that controls such a State chartered savings association, and such statutes specifically authorize such an acquisition by language to that effect and not merely by implication.

(4) Acquisitions by certain individuals

(A) In general

Notwithstanding subsection (h)(2) of this section, any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of such holding company, may acquire control of any savings association not a subsidiary of such savings and loan holding company with the prior written approval of the Director.

(B) Treatment of certain holding companies

If any individual referred to in subparagraph (A) controls more than 1 savings and loan holding company or more than 1 savings association, any savings and loan holding company controlled by such individual shall be subject to the activities limitations contained in subsection (c) of this section to the same extent such limitations apply to multiple savings and loan holding companies, unless all or all but 1 of the savings associations (including any institution deemed to be a savings association under subsection (*l*) of this section) controlled directly or indirectly by such individual was acquired pursuant to an acquisition described in subclause (I) or (II) of subsection (c)(3)(B)(i) of this section.

(5) Acquisitions pursuant to certain security interests

This subsection and subsection (c)(2) of this section do not apply to any savings and loan holding company which acquired the control of a savings association or of a savings and loan holding company pursuant to a pledge or hypothecation to secure a loan, or in connection with the liquidation of a loan, made in the ordinary course of business. It shall be unlawful for any such company to retain such control for more than one year after February 14, 1968, or from the date on which such control was acquired, whichever is later, except that the Director may upon application by such company extend such one-year period from year to year, for an additional period not exceeding 3 years, if the Director finds such extension is warranted and would not be detrimental to the public interest.

(6) Shares held by insurance affiliates

Shares described in clause (iii)(VII) of paragraph (1)(A) shall not be excluded for purposes of clause (iii) of such paragraph if—

(A) all shares held under such clause (iii)(VII) by all insurance company affiliates of such savings association or savings and loan holding company in the aggregate exceed 5 percent of all outstanding shares or of the voting power of the savings association or savings and loan holding company; or

(B) such shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company.

(7) Definitions

For purposes of paragraph (2)(E)—

(A) the terms ''default'', ''in danger of default'', and ''insured depository institution'' have the same meanings as in section 1813 of this title; and

(B) the term ''home State'' means—

(i) with respect to a national bank, the State in which the main office of the bank is located;

(ii) with respect to a State bank or State savings association, the State by which the savings association is chartered;

(iii) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date,[1] the Comptroller of the Currency) of the Federal savings association is located; and

(iv) with respect to a savings and loan holding company, the State in which the amount of total deposits of all insured depository institution subsidiaries of such company was the greatest on the date on which the company became a savings and loan holding company.

(f) Declaration of dividend

Every subsidiary savings association of a savings and loan holding company shall give the Director not less than 30 days' advance notice of the proposed declaration by its directors of any dividend on its guaranty, permanent, or other nonwithdrawable stock. Such notice period shall commence to run from the date of receipt of such notice by the Director. Any such dividend declared within such period, or without the giving of such notice to the Director, shall be invalid and shall confer no rights or benefits upon the holder of any such stock.

(g) Administration and enforcement

(1) In general

The Director is authorized to issue such regulations and orders as the Director deems necessary or appropriate to enable the Director to administer and carry out the purposes of this section, and to require compliance therewith and prevent evasions thereof.

(2) Investigations

The Director may make such investigations as the Director deems necessary or appropriate to determine whether the provisions of this section, and regulations and orders thereunder, are being and have been complied with by savings and loan holding companies and subsidiaries and affiliates thereof. For the purpose of any investigation under this section,

the Director may administer oaths and affirmations, issue subpenas, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which may be relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in any State. The Director may apply to the United States district court for the judicial district (or the United States court in any territory) in which any witness or company subpenaed resides or carries on business, for enforcement of any subpena issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance.

(3) Proceedings

(A) In any proceeding under subsection (a)(2)(D) of this section or under paragraph (5) of this subsection, the Director may administer oaths and affirmations, take or cause to be taken depositions, and issue subpenas. The Director may make regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this paragraph may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to such proceedings may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

(B) Any hearing provided for in subsection (a)(2)(D) of this section or under paragraph (5) of this section[2] shall be held in the Federal judicial district or in the territory in which the principal office of the association or other company is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5.

(4) Injunctions

Whenever it appears to the Director that any person is engaged or has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this section or of any regulation or order thereunder, the Director may bring an action in the proper United States district court, or the United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, to enforce compliance with this section or any regulation or order, or to require the divestiture of any acquisition in violation of this section, or for any combination of the foregoing, and such courts shall have jurisdiction of such actions. Upon a proper showing an injunction, decree, restraining order, order of divestiture, or other appropriate order shall be granted without bond.

(5) Cease and desist orders

(A) Notwithstanding any other provision of this section, the Director may, whenever the Director has reasonable cause to believe that the continuation by a savings and loan holding company of any activity or of ownership or control of any of its noninsured subsidiaries constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary savings association and is inconsistent with the sound operation of a savings association or with the purposes of this section or section 1818 of this title, order the savings and loan holding company or any of its subsidiaries, after due notice and opportunity for hearing, to terminate such activities or to terminate (within 120 days or such longer period as the Director directs in unusual circumstances) its ownership or control of any such noninsured subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the savings and loan holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing savings and loan holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(B) The Director may in the Director's discretion apply to the United States district court within the jurisdiction of which the principal office of the company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith. Except as provided in subsection (j) of this section, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(h) Prohibited acts

It shall be unlawful for—

(1) any savings and loan holding company or subsidiary thereof, or any director, officer, employee, or person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 percent of the voting shares, of such holding company or subsidiary, to hold, solicit, or exercise any proxies in respect of any voting rights in a savings association which is a mutual association;

(2) any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of such holding company, to acquire control of any savings association not a subsidiary of such savings and loan holding company, unless such acquisition is approved by the Director pursuant to subsection (e)(4) of this section; or

(3) any individual, except with the prior approval of the Director, to serve or act as a director, officer, or trustee of, or become a part-

[2] So in original. Probably should be ''subsection''.

ner in, any savings and loan holding company after having been convicted of any criminal offense involving dishonesty or breach of trust.

(i) Penalties

(1) Criminal penalty

(A) Whoever knowingly violates any provision of this section or being a company, violates any regulation or order issued by the Director under this section, shall be imprisoned not more than 1 year, fined not more than $100,000 per day for each day during which the violation continues, or both.

(B) Whoever, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this section shall be fined not more than $1,000,000 per day for each day during which the violation continues, imprisoned not more than 5 years, or both.

(2)[3] Civil money penalty

(A) Penalty

Any company which violates, and any person who participates in a violation of, any provision of this section, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

(B) Assessment

Any penalty imposed under subparagraph (A) may be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(C) Hearing

The company or other person against whom any civil penalty is assessed under this paragraph shall be afforded a hearing if such company or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this paragraph.

(D) Disbursement

All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(E) "Violate" defined

For purposes of this section, the term ''violate'' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(F) Regulations

The Director shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(3)[3] Civil money penalty

(A) Penalty

Any company which violates, and any person who participates in a violation of, any provision of this section, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

(B) Assessment; etc.

Any penalty imposed under subparagraph (A) may be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(C) Hearing

The company or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such company or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this paragraph.

(D) Disbursement

All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(E) "Violate" defined

For purposes of this section, the term ''violate'' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(F) Regulations

The Director shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(4) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to a savings and loan holding company or subsidiary thereof (including a separation caused by the deregistration of such a company or such a subsidiary) shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such holding company or its subsidiary (whether such date occurs before, on, or after August 9, 1989).

(j) Judicial review

Any party aggrieved by an order of the Director under this section may obtain a review of such order by filing in the court of appeals of the United States for the circuit in which the principal office of such party is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. A copy of the

[3] See Codification note below.

petition shall be forthwith transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director. Review of such proceedings shall be had as provided in chapter 7 of title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28.

(k) Savings clause

Nothing contained in this section, other than any transaction approved under subsection (e)(2) of this section or section 1823 of this title, shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any act, action, or conduct in violation of the antitrust laws.

(*l*) Treatment of FDIC insured State savings banks and cooperative banks as savings associations

(1) In general

Notwithstanding any other provision of law, a savings bank (as defined in section 1813(g) of this title) and a cooperative bank that is an insured bank (as defined in section 1813(h) of this title) upon application shall be deemed to be a savings association for the purpose of this section, if the Director determines that such bank is a qualified thrift lender (as determined under subsection (m) of this section).

(2) Failure to maintain qualified thrift lender status

If any savings bank which is deemed to be a savings association under paragraph (1) subsequently fails to maintain its status as a qualified thrift lender, as determined by the Director, such bank may not thereafter be a qualified thrift lender for a period of 5 years.

(m) Qualified thrift lender test

(1) In general

Except as provided in paragraphs (2) and (7), any savings association is a qualified thrift lender if—

(A) the savings association qualifies as a domestic building and loan association, as such term is defined in section 7701(a)(19) of title 26; or

(B)(i) the savings association's qualified thrift investments equal or exceed 65 percent of the savings association's portfolio assets; and

(ii) the savings association's qualified thrift investments continue to equal or exceed 65 percent of the savings association's portfolio assets on a monthly average basis in 9 out of every 12 months.

(2) Exceptions granted by Director

Notwithstanding paragraph (1), the Director may grant such temporary and limited exceptions from the minimum actual thrift investment percentage requirement contained in such paragraph as the Director deems necessary if—

(A) the Director determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for a savings association to meet such investment requirements; or

(B) the Director determines that—

(i) the grant of any such exception will significantly facilitate an acquisition under section 1823(c) or 1823(k) of this title;

(ii) the acquired association will comply with the transition requirements of paragraph (7)(B), as if the date of the exemption were the starting date for the transition period described in that paragraph; and

(iii) the Director determines that the exemption will not have an undue adverse effect on competing savings associations in the relevant market and will further the purposes of this subsection.

(3) Failure to become and remain a qualified thrift lender

(A) In general

A savings association that fails to become or remain a qualified thrift lender shall immediately be subject to the restrictions under subparagraph (B).

(B) Restrictions applicable to savings associations that are not qualified thrift lenders

(i) Restrictions effective immediately

The following restrictions shall apply to a savings association beginning on the date on which the savings association should have become or ceases to be a qualified thrift lender:

(I) Activities

The savings association shall not make any new investment (including an investment in a subsidiary) or engage, directly or indirectly, in any other new activity unless that investment or activity would be permissible for the savings association if it were a national bank, and is also permissible for the savings association as a savings association.

(II) Branching

The savings association shall not establish any new branch office at any location at which a national bank located in the savings association's home State may not establish a branch office. For purposes of this subclause, a savings association's home State is the State in which the savings association's total deposits were largest on the date on which the savings association should have become or ceased to be a qualified thrift lender.

(III) Dividends

The savings association may not pay dividends, except for dividends that—

(aa) would be permissible for a national bank;

(bb) are necessary to meet obligations of a company that controls such savings association; and

(cc) are specifically approved by the Comptroller of the Currency and the Board after a written request submitted to the Comptroller of the Currency and the Board by the savings association not later than 30 days before the date of the proposed payment.

(IV) Regulatory authority

A savings association that fails to become or remain a qualified thrift lender shall be deemed to have violated section 1464 of this title and subject to actions authorized by section 1464(d) of this title.

(ii) Additional restrictions effective after 3 years

Beginning 3 years after the date on which a savings association should have become a qualified thrift lender, or the date on which the savings association ceases to be a qualified thrift lender, as applicable, the savings association shall not retain any investment (including an investment in any subsidiary) or engage, directly or indirectly, in any activity, unless that investment or activity—

(I) would be permissible for the savings association if it were a national bank; and

(II) is permissible for the savings association as a savings association.

(C) Holding company regulation

Any company that controls a savings association that is subject to any provision of subparagraph (B) shall, within one year after the date on which the savings association should have become or ceases to be a qualified thrift lender, register as and be deemed to be a bank holding company subject to all of the provisions of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], section 1818 of this title, and other statutes applicable to bank holding companies, in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act of 1956.

(D) Requalification

A savings association that should have become or ceases to be a qualified thrift lender shall not be subject to subparagraph (B) or (C) if the savings association becomes a qualified thrift lender by meeting the qualified thrift lender requirement in paragraph (1) on a monthly average basis in 9 out of the preceding 12 months and remains a qualified thrift lender. If the savings association (or any savings association that acquired all or substantially all of its assets from that savings association) at any time thereafter ceases to be a qualified thrift lender, it shall immediately be subject to all provisions of subparagraphs (B) and (C) as if all the periods described in subparagraphs (B)(ii) and (C) had expired.

(E) Exemption for specialized savings associations serving certain military personnel

Subparagraph (A) shall not apply to a savings association subsidiary of a savings and loan holding company if at least 90 percent of the customers of the savings and loan holding company and its subsidiaries and affiliates are active or former members in the United States military services or the widows, widowers, divorced spouses, or current or former dependents of such members.

(F) Exemption for certain Federal savings associations

This paragraph shall not apply to any Federal savings association in existence as a Federal savings association on August 9, 1989—

(i) that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law; or

(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law.

(G) No circumvention of exit moratorium

Subparagraph (A) of this paragraph shall not be construed as permitting any insured depository institution to engage in any conversion transaction prohibited under section 1815(d)[1] of this title.

(4) Definitions

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

(A) Actual thrift investment percentage

The term ''actual thrift investment percentage'' means the percentage determined by dividing—

(i) the amount of a savings association's qualified thrift investments, by

(ii) the amount of the savings association's portfolio assets.

(B) Portfolio assets

The term ''portfolio assets'' means, with respect to any savings association, the total assets of the savings association, minus the sum of—

(i) goodwill and other intangible assets;

(ii) the value of property used by the savings association to conduct its business; and

(iii) liquid assets of the type required to be maintained under section 1465 of this title, as in effect on the day before December 27, 2000, in an amount not exceeding the amount equal to 20 percent of the savings association's total assets.

(C) Qualified thrift investments

(i) In general

The term ''qualified thrift investments'' means, with respect to any savings association, the assets of the savings association that are described in clauses (ii) and (iii).

(ii) Assets includible without limit

The following assets are described in this clause for purposes of clause (i):

(I) The aggregate amount of loans held by the savings association that were made to purchase, refinance, construct, improve, or repair domestic residential housing or manufactured housing.

(II) Home-equity loans.

(III) Securities backed by or representing an interest in mortgages on domestic residential housing or manufactured housing.

(IV) Existing obligations of deposit insurance agencies.—Direct or indirect obligations of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation issued in accordance with the terms of agreements entered into prior to July 1, 1989, for the 10-year period beginning on the date of issuance of such obligations.

(V) New obligations of deposit insurance agencies.—Obligations of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the FSLIC Resolution Fund, and the Resolution Trust Corporation issued in accordance with the terms of agreements entered into on or after July 1, 1989, for the 5-year period beginning on the date of issuance of such obligations.

(VI) Shares of stock issued by any Federal home loan bank.

(VII) Loans for educational purposes, loans to small businesses, and loans made through credit cards or credit card accounts.

(iii) Assets includible subject to percentage restriction

The following assets are described in this clause for purposes of clause (i):

(I) 50 percent of the dollar amount of the residential mortgage loans originated by such savings association and sold within 90 days of origination.

(II) Investments in the capital stock or obligations of, and any other security issued by, any service corporation if such service corporation derives at least 80 percent of its annual gross revenues from activities directly related to purchasing, refinancing, constructing, improving, or repairing domestic residential real estate or manufactured housing.

(III) 200 percent of the dollar amount of loans and investments made to acquire, develop, and construct 1- to 4-family residences the purchase price of which is or is guaranteed to be not greater than 60 percent of the median value of comparable newly constructed 1- to 4-family residences within the local community in which such real estate is located, except that not more than 25 percent of the amount included under this subclause may consist of commercial properties related to the development if those properties are directly related to providing services to residents of the development.

(IV) 200 percent of the dollar amount of loans for the acquisition or improvement of residential real property, churches, schools, and nursing homes located within, and loans for any other purpose to any small businesses located within any area which has been identified by the Director, in connection with any review or examination of community reinvestment practices, as a geographic area or neighborhood in which the credit needs of the low- and moderate-income residents of such area or neighborhood are not being adequately met.

(V) Loans for the purchase or construction of churches, schools, nursing homes, and hospitals, other than those qualifying under clause (IV), and loans for the improvement and upkeep of such properties.

(VI) Loans for personal, family, or household purposes (other than loans for personal, family, or household purposes described in clause (ii)(VII)).

(VII) Shares of stock issued by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(iv) Percentage restriction applicable to certain assets

The aggregate amount of the assets described in clause (iii) which may be taken into account in determining the amount of the qualified thrift investments of any savings association shall not exceed the amount which is equal to 20 percent of a savings association's portfolio assets.

(v) Qualified thrift investments

The term ''qualified thrift investments'' excludes—

(I) except for home equity loans, that portion of any loan or investment that is used for any purpose other than those expressly qualifying under any subparagraph of clause (ii) or (iii); or

(II) goodwill or any other intangible asset.

(D) Credit card

The Director shall issue such regulations as may be necessary to define the term ''credit card''.

(E) Small business

The Director shall issue such regulations as may be necessary to define the term ''small business''.

(5) Consistent accounting required

(A) In determining the amount of a savings association's portfolio assets, the assets of any subsidiary of the savings association shall be consolidated with the assets of the savings association if—

(i) Assets of the subsidiary are consolidated with the assets of the savings association in determining the savings association's qualified thrift investments; or

(ii) Residential mortgage loans originated by the subsidiary are included pursuant to paragraph (4)(C)(iii)(I) in determining the

savings association's qualified thrift investments.

(B) In determining the amount of a savings association's portfolio assets and qualified thrift investments, consistent accounting principles shall be applied.

(6) Special rules for Puerto Rico and Virgin Islands savings associations

(A) Puerto Rico savings associations

With respect to any savings association headquartered and operating primarily in Puerto Rico—

(i) the term ''qualified thrift investments'' includes, in addition to the items specified in paragraph (4)—

(I) the aggregate amount of loans for personal, family, educational, or household purposes made to persons residing or domiciled in the Commonwealth of Puerto Rico; and

(II) the aggregate amount of loans for the acquisition or improvement of churches, schools, or nursing homes, and of loans to small businesses, located within the Commonwealth of Puerto Rico; and

(ii) the aggregate amount of loans related to the purchase, acquisition, development and construction of 1- to 4-family residential real estate—

(I) which is located within the Commonwealth of Puerto Rico; and

(II) the value of which (at the time of acquisition or upon completion of the development and construction) is below the median value of newly constructed 1- to 4-family residences in the Commonwealth of Puerto Rico, which may be taken into account in determining the amount of the qualified thrift investments and of such savings association shall be doubled.

(B) Virgin Islands savings associations

With respect to any savings association headquartered and operating primarily in the Virgin Islands—

(i) the term ''qualified thrift investments'' includes, in addition to the items specified in paragraph (4)—

(I) the aggregate amount of loans for personal, family, educational, or household purposes made to persons residing or domiciled in the Virgin Islands; and

(II) the aggregate amount of loans for the acquisition or improvement of churches, schools, or nursing homes, and of loans to small businesses, located within the Virgin Islands; and

(ii) the aggregate amount of loans related to the purchase, acquisition, development and construction of 1- to 4-family residential real estate—

(I) which is located within the Virgin Islands; and

(II) the value of which (at the time of acquisition or upon completion of the development and construction) is below the median value of newly constructed 1- to 4-family residences in the Virgin Islands, which may be taken into account in determining the amount of the qualified thrift investments and of such savings association shall be doubled.

(7) Transitional rule for certain savings associations

(A) In general

If any Federal savings association in existence as a Federal savings association on August 9, 1989—

(i) that was chartered as a savings bank or a cooperative bank under State law before October 15, 1982; or

(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law,

meets the requirements of subparagraph (B), such savings association shall be treated as a qualified thrift lender during the period ending on September 30, 1995.

(B) Subparagraph (B) requirements

A savings association meets the requirements of this subparagraph if, in the determination of the Director—

(i) the actual thrift investment percentage of such association does not, after August 9, 1989, decrease below the actual thrift investment percentage of such association on July 15, 1989; and

(ii) the amount by which—

(I) the actual thrift investment percentage of such association at the end of each period described in the following table, exceeds

(II) the actual thrift investment percentage of such association on July 15, 1989,

is equal to or greater than the applicable percentage (as determined under the following table) of the amount by which 70 percent exceeds the actual thrift investment percentage of such association on August 9, 1989:

For the following period:	The applicable percentage is:
July 1, 1991–September 30, 1992	25 percent
October 1, 1992–March 31, 1994	50 percent
April 1, 1994–September 30, 1995	75 percent
Thereafter	100 percent

(C) Actual thrift investment percentage

For purposes of this paragraph, the actual thrift investment percentage of an association on July 15, 1989, shall be determined by applying the definition of ''actual thrift investment percentage'' that takes effect on July 1, 1991.

(n) Tying restrictions

A savings and loan holding company and any of its affiliates shall be subject to section 1464(q) of this title and regulations prescribed under such section, in connection with transactions involving the products or services of such company or affiliate and those of an affiliated savings association as if such company or affiliate were a savings association.

(*o*) Mutual holding companies

(1) In general

A savings association operating in mutual form may reorganize so as to become a holding company by—

(A) chartering an interim savings association, the stock of which is to be wholly owned, except as otherwise provided in this section, by the mutual association; and

(B) transferring the substantial part of its assets and liabilities, including all of its insured liabilities, to the interim savings association.

(2) Directors and certain account holders' approval of plan required

A reorganization is not authorized under this subsection unless—

(A) a plan providing for such reorganization has been approved by a majority of the board of directors of the mutual savings association; and

(B) in the case of an association in which holders of accounts and obligors exercise voting rights, such plan has been submitted to and approved by a majority of such individuals at a meeting held at the call of the directors in accordance with the procedures prescribed by the association's charter and bylaws.

(3) Notice to the Director; disapproval period

(A) Notice required

At least 60 days prior to taking any action described in paragraph (1), a savings association seeking to establish a mutual holding company shall provide written notice to the Director. The notice shall contain such relevant information as the Director shall require by regulation or by specific request in connection with any particular notice.

(B) Transaction allowed if not disapproved

Unless the Director within such 60-day notice period disapproves the proposed holding company formation, or extends for another 30 days the period during which such disapproval may be issued, the savings association providing such notice may proceed with the transaction, if the requirements of paragraph (2) have been met.

(C) Grounds for disapproval

The Director may disapprove any proposed holding company formation only if—

(i) such disapproval is necessary to prevent unsafe or unsound practices;

(ii) the financial or management resources of the savings association involved warrant disapproval;

(iii) the savings association fails to furnish the information required under subparagraph (A); or

(iv) the savings association fails to comply with the requirement of paragraph (2).

(D) Retention of capital assets

In connection with the transaction described in paragraph (1), a savings association may, subject to the approval of the Director, retain capital assets at the holding company level to the extent that such capital exceeds the association's capital requirement established by the Director pursuant to subsections (s) and (t) of section 1464 of this title.

(4) Ownership

(A) In general

Persons having ownership rights in the mutual association pursuant to section 1464(b)(1)(B) of this title or State law shall have the same ownership rights with respect to the mutual holding company.

(B) Holders of certain accounts

Holders of savings, demand or other accounts of—

(i) a savings association chartered as part of a transaction described in paragraph (1); or

(ii) a mutual savings association acquired pursuant to paragraph (5)(B),

shall have the same ownership rights with respect to the mutual holding company as persons described in subparagraph (A) of this paragraph.

(5) Permitted activities

A mutual holding company may engage only in the following activities:

(A) Investing in the stock of a savings association.

(B) Acquiring a mutual association through the merger of such association into a savings association subsidiary of such holding company or an interim savings association subsidiary of such holding company.

(C) Subject to paragraph (6), merging with or acquiring another holding company, one of whose subsidiaries is a savings association.

(D) Investing in a corporation the capital stock of which is available for purchase by a savings association under Federal law or under the law of any State where the subsidiary savings association or associations have their home offices.

(E) Engaging in the activities described in subsection (c)(2) or (c)(9)(A)(ii) of this section.

(6) Limitations on certain activities of acquired holding companies

(A) New activities

If a mutual holding company acquires or merges with another holding company under paragraph (5)(C), the holding company acquired or the holding company resulting from such merger or acquisition may only invest in assets and engage in activities which are authorized under paragraph (5).

(B) Grace period for divesting prohibited assets or discontinuing prohibited activities

Not later than 2 years following a merger or acquisition described in paragraph (5)(C), the acquired holding company or the holding company resulting from such merger or acquisition shall—

(i) dispose of any asset which is an asset in which a mutual holding company may not invest under paragraph (5); and

(ii) cease any activity which is an activity in which a mutual holding company may not engage under paragraph (5).

(7) Regulation

A mutual holding company shall be chartered by the Director and shall be subject to such regulations as the Director may prescribe. Unless the context otherwise requires, a mutual holding company shall be subject to the other requirements of this section regarding regulation of holding companies.

(8) Capital improvement

(A) Pledge of stock of savings association subsidiary

This section shall not prohibit a mutual holding company from pledging all or a portion of the stock of a savings association chartered as part of a transaction described in paragraph (1) to raise capital for such savings association.

(B) Issuance of nonvoting shares

This section shall not prohibit a savings association chartered as part of a transaction described in paragraph (1) from issuing any nonvoting shares or less than 50 percent of the voting shares of such association to any person other than the mutual holding company.

(9) Insolvency and liquidation

(A) In general

Notwithstanding any provision of law, upon—

(i) the default of any savings association—

(I) the stock of which is owned by any mutual holding company; and

(II) which was chartered in a transaction described in paragraph (1);

(ii) the default of a mutual holding company; or

(iii) a foreclosure on a pledge by a mutual holding company described in paragraph (8)(A),

a trustee shall be appointed receiver of such mutual holding company and such trustee shall have the authority to liquidate the assets of, and satisfy the liabilities of, such mutual holding company pursuant to title 11.

(B) Distribution of net proceeds

Except as provided in subparagraph (C), the net proceeds of any liquidation of any mutual holding company pursuant to subparagraph (A) shall be transferred to persons who hold ownership interests in such mutual holding company.

(C) Recovery by Corporation

If the Corporation incurs a loss as a result of the default of any savings association subsidiary of a mutual holding company which is liquidated pursuant to subparagraph (A), the Corporation shall succeed to the ownership interests of the depositors of such savings association in the mutual holding company, to the extent of the Corporation's loss.

(10) Definitions

For purposes of this subsection—

(A) Mutual holding company

The term ''mutual holding company'' means a corporation organized as a holding company under this subsection.

(B) Mutual association

The term ''mutual association'' means a savings association which is operating in mutual form.

(C) Default

The term ''default'' means an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed.

(p) Holding company activities constituting serious risk to subsidiary savings association

(1) Determination and imposition of restrictions

If the Director determines that there is reasonable cause to believe that the continuation by a savings and loan holding company of any activity constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary savings association, the Director may impose such restrictions as the Director determines to be necessary to address such risk. Such restrictions shall be issued in the form of a directive to the holding company and any of its subsidiaries, limiting—

(A) the payment of dividends by the savings association;

(B) transactions between the savings association, the holding company, and the subsidiaries or affiliates of either; and

(C) any activities of the savings association that might create a serious risk that the liabilities of the holding company and its other affiliates may be imposed on the savings association.

Such directive shall be effective as a cease and desist order that has become final.

(2) Review of directive

(A) Administrative review

After a directive referred to in paragraph (1) is issued, the savings and loan holding company, or any subsidiary of such holding company subject to the directive, may object and present in writing its reasons why the directive should be modified or rescinded. Unless within 10 days after receipt of such response the Director affirms, modifies, or rescinds the directive, such directive shall automatically lapse.

(B) Judicial review

If the Director affirms or modifies a directive pursuant to subparagraph (A), any affected party may immediately thereafter petition the United States district court for the district in which the savings and loan holding company has its main office or in the United States District Court for the District of Columbia to stay, modify, terminate or set aside the directive. Upon a showing of

extraordinary cause, the savings and loan holding company, or any subsidiary of such holding company subject to a directive, may petition a United States district court for relief without first pursuing or exhausting the administrative remedies set forth in this paragraph.

(q) Qualified stock issuance by undercapitalized savings associations or holding companies

(1) In general

For purposes of this section, any issue of shares of stock shall be treated as a qualified stock issuance if the following conditions are met:

(A) The shares of stock are issued by—

(i) an undercapitalized savings association; or

(ii) a savings and loan holding company which is not a bank holding company but which controls an undercapitalized savings association if, at the time of issuance, the savings and loan holding company is legally obligated to contribute the net proceeds from the issuance of such stock to the capital of an undercapitalized savings association subsidiary of such holding company.

(B) All shares of stock issued consist of previously unissued stock or treasury shares.

(C) All shares of stock issued are purchased by a savings and loan holding company that is registered, as of the date of purchase, with the Director in accordance with the provisions of subsection (b)(1) of this section.

(D) Subject to paragraph (2), the Director approved the purchase of the shares of stock by the acquiring savings and loan holding company.

(E) The entire consideration for the stock issued is paid in cash by the acquiring savings and loan holding company.

(F) At the time of the stock issuance, each savings association subsidiary of the acquiring savings and loan holding company (other than an association acquired in a transaction pursuant to subsection (c) or (k) of section 1823 of this title or section 408(m)[1] of the National Housing Act [12 U.S.C. 1730a(m)]) has capital (after deducting any subordinated debt, intangible assets, and deferred, unamortized gains or losses) of not less than 6½ percent of the total assets of such savings association.

(G) Immediately after the stock issuance, the acquiring savings and loan holding company holds not more than 15 percent of the outstanding voting stock of the issuing undercapitalized savings association or savings and loan holding company.

(H) Not more than one of the directors of the issuing association or company is an officer, director, employee, or other representative of the acquiring company or any of its affiliates.

(I) Transactions between the savings association or savings and loan holding company that issues the shares pursuant to this section and the acquiring company and any of its affiliates shall be subject to the provisions of section 1468 of this title.

(2) Approval of acquisitions

(A) Additional capital commitments not required

The Director shall not disapprove any application for the purchase of stock in connection with a qualified stock issuance on the grounds that the acquiring savings and loan holding company has failed to undertake to make subsequent additional capital contributions to maintain the capital of the undercapitalized savings association at or above the minimum level required by the Director or any other Federal agency having jurisdiction.

(B) Other conditions

Notwithstanding subsection (a)(4) of this section, the Director may impose such conditions on any approval of an application for the purchase of stock in connection with a qualified stock issuance as the Director determines to be appropriate, including—

(i) a requirement that any savings association subsidiary of the acquiring savings and loan holding company limit dividends paid to such holding company for such period of time as the Director may require; and

(ii) such other conditions as the Director deems necessary or appropriate to prevent evasions of this section.

(C) Application deemed approved if not disapproved within 90 days

An application for approval of a purchase of stock in connection with a qualified stock issuance shall be deemed to have been approved by the Director if such application has not been disapproved by the Director before the end of the 90-day period beginning on the date such application has been deemed sufficient under regulations issued by the Director.

(3) No limitation on class of stock issued

The shares of stock issued in connection with a qualified stock issuance may be shares of any class.

(4) "Undercapitalized savings association" defined

For purposes of this subsection, the term ''undercapitalized savings association'' means any savings association—

(A) the assets of which exceed the liabilities of such association; and

(B) which does not comply with one or more of the capital standards in effect under section 1464(t) of this title.

(r) Penalty for failure to provide timely and accurate reports

(1) First tier

Any savings and loan holding company, and any subsidiary of such holding company, which—

(A) maintains procedures reasonably adapted to avoid any inadvertent and unintentional error and, as a result of such an error—

(i) fails to submit or publish any report or information required under this section or regulations prescribed by the Director, within the period of time specified by the Director; or

(ii) submits or publishes any false or misleading report or information; or

(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such holding company or subsidiary shall have the burden of proving by a preponderence[4] of the evidence that an error was inadvertent and unintentional and that a report was inadvertently transmitted or published late.

(2) Second tier

Any savings and loan holding company, and any subsidiary of such holding company, which—

(A) fails to submit or publish any report or information required under this section or under regulations prescribed by the Director, within the period of time specified by the Director; or

(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(3) Third tier

If any savings and loan holding company or any subsidiary of such a holding company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Director may assess a penalty of not more than $1,000,000 or 1 percent of total assets of such company or subsidiary, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) Assessment

Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(5) Hearing

Any savings and loan holding company or any subsidiary of such a holding company against which any penalty is assessed under this subsection shall be afforded a hearing if such savings and loan holding company or such subsidiary, as the case may be, submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this subsection.

(s) Mergers, consolidations, and other acquisitions authorized

(1) In general

Subject to sections 1815(d)(3)[1] and 1828(c) of this title and all other applicable laws, any Federal savings association may acquire or be acquired by any insured depository institution.

(2) Expedited approval of acquisitions

(A) In general

Any application by a savings association to acquire or be acquired by another insured depository institution which is required to be filed with the Director under any applicable law or regulation shall be approved or disapproved in writing by the Director before the end of the 60-day period beginning on the date such application is filed with the agency.

(B) Extension of period

The period for approval or disapproval referred to in subparagraph (A) may be extended for an additional 30-day period if the Director determines that—

(i) an applicant has not furnished all of the information required to be submitted; or

(ii) in the Director's judgment, any material information submitted is substantially inaccurate or incomplete.

(3) "Acquire" defined

For purposes of this subsection, the term ''acquire'' means to acquire, directly or indirectly, ownership or control through a merger or consolidation or an acquisition of assets or assumption of liabilities, provided that following such merger, consolidation, or acquisition, an acquiring insured depository institution may not own the shares of the acquired insured depository institution.

(4) Regulations

(A) Required

The Director shall prescribe such regulations as may be necessary to carry out paragraph (1).

(B) Effective date

The regulations required under subparagraph (A) shall—

(i) be prescribed in final form before the end of the 90-day period beginning on December 19, 1991; and

(ii) take effect before the end of the 120-day period beginning on December 19, 1991.

(5) Limitation

No provision of this section shall be construed to authorize a national bank or any subsidiary thereof to engage in any activity not otherwise authorized under the National Bank Act [12 U.S.C. 21 et seq.] or any other law governing the powers of a national bank.

(t) Exemption for bank holding companies

This section shall not apply to a bank holding company that is subject to the Bank Holding

[4] So in original. Probably should be ''preponderance''.

Company Act of 1956 [12 U.S.C. 1841 et seq.], or any company controlled by such bank holding company.

(June 13, 1933, ch. 64, § 10, as added Pub. L. 100–86, title IV, § 404(a), Aug. 10, 1987, 101 Stat. 609; amended Pub. L. 101–73, title III, §§ 301, 303(a), title IX, §§ 905(j), 907(k), Aug. 9, 1989, 103 Stat. 318, 343, 462, 475; Pub. L. 102–242, title II, § 211, title IV, §§ 437–440, title V, § 502(a), Dec. 19, 1991, 105 Stat. 2298, 2381, 2392; Pub. L. 102–550, title XVI, §§ 1606(f)(4), 1607(b), Oct. 28, 1992, 106 Stat. 4088, 4089; Pub. L. 104–201, div. A, title X, § 1077, Sept. 23, 1996, 110 Stat. 2664; Pub. L. 104–208, div. A, title II, §§ 2201(b)(2), 2203(a)–(c), 2303(e), (g), 2704(d)(12)(B), Sept. 30, 1996, 110 Stat. 3009–403, 3009–404, 3009–424, 3009–425, 3009–490; Pub. L. 106–102, title IV, § 401(a), (b), title VI, § 604(d), Nov. 12, 1999, 113 Stat. 1434, 1436, 1452; Pub. L. 106–569, title XII, §§ 1201(b)(2), 1202, Dec. 27, 2000, 114 Stat. 3032; Pub. L. 109–171, title II, § 2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, § 9(e)(2), Feb. 15, 2006, 119 Stat. 3617; Pub. L. 111–203, title III, § 369(8), title VI, §§ 604(g), (h)(2), (i), 606(b), 616(b), 623(c)–625(a), July 21, 2010, 124 Stat. 1564, 1602–1604, 1607, 1615, 1635, 1636.)

AMENDMENT OF SECTION

Pub. L. 111–203, title VI, § 625, July 21, 2010, 124 Stat. 1636, provided that, effective on the transfer date, this section is amended in subsection (o) by adding at the end the following:

''(11) Dividends

''(A) Declaration of dividends

''(i) Advance notice required

''Each subsidiary of a mutual holding company that is a savings association shall give the appropriate Federal banking agency and the Board notice not later than 30 days before the date of a proposed declaration by the board of directors of the savings association of any dividend on the guaranty, permanent, or other nonwithdrawable stock of the savings association.

''(ii) Invalid dividends

''Any dividend described in clause (i) that is declared without giving notice to the appropriate Federal banking agency and the Board under clause (i), or that is declared during the 30-day period preceding the date of a proposed declaration for which notice is given to the appropriate Federal banking agency and the Board under clause (i), shall be invalid and shall confer no rights or benefits upon the holder of any such stock.

''(B) Waiver of dividends

''A mutual holding company may waive the right to receive any dividend declared by a subsidiary of the mutual holding company, if—

''(i) no insider of the mutual holding company, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company holds any share of the stock in the class of stock to which the waiver would apply; or

''(ii) the mutual holding company gives written notice to the Board of the intent of the mutual holding company to waive the right to receive dividends, not later than 30 days before the date of the proposed date of payment of the dividend, and the Board does not object to the waiver.

''(C) Resolution included in waiver notice

''A notice of a waiver under subparagraph (B) shall include a copy of the resolution of the board of directors of the mutual holding company, in such form and substance as the Board may determine, together with any supporting materials relied upon by the board of directors of the mutual holding company, concluding that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company.

''(D) Standards for waiver of dividend

''The Board may not object to a waiver of dividends under subparagraph (B) if—

''(i) the waiver would not be detrimental to the safe and sound operation of the savings association;

''(ii) the board of directors of the mutual holding company expressly determines that a waiver of the dividend by the mutual holding company is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company; and

''(iii) the mutual holding company has, prior to December 1, 2009—

''(I) reorganized into a mutual holding company under subsection (o);

''(II) issued minority stock either from its mid-tier stock holding company or its subsidiary stock savings association; and

''(III) waived dividends it had a right to receive from the subsidiary stock savings association.

''(E) Valuation

''(i) In general

''The appropriate Federal banking agency shall consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

''(ii) Exception

''In the case of a savings association that has reorganized into a mutual holding company, has issued minority stock from a mid-tier stock holding company or a subsidiary stock savings association of the mutual holding company, and has waived dividends it had a right to receive from a subsidiary savings association before December 1, 2009, the appropriate Federal banking agency shall not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.''

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title VI, § 616(b), (e), July 21, 2010, 124 Stat. 1615, 1616, provided that, effective on the transfer date, this section is amended in subsection (g)(1):

(1) by inserting after ''orders'' the following: '', including regulations and orders relating to capital requirements for savings and loan holding companies,''; and

(2) by inserting at the end the following: ''In establishing capital regulations pursuant to this

subsection, the appropriate Federal banking agency shall seek to make such requirements countercyclical so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the company.''

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title VI, § 606(b), (c), July 21, 2010, 124 Stat. 1607, provided that, effective on the transfer date, this section is amended in subsection (c)(2) by adding at the end the following:

''(H) Any activity that is permissible for a financial holding company (as such term is defined under section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)) to conduct under section 4(k) of the Bank Holding Company Act of 1956 if—

''(i) the savings and loan holding company meets all of the criteria to qualify as a financial holding company, and complies with all of the requirements applicable to a financial holding company, under sections 4(l) and 4(m) of the Bank Holding Company Act and section 2903(c) of this title as if the savings and loan holding company was a bank holding company; and

''(ii) the savings and loan holding company conducts the activity in accordance with the same terms, conditions, and requirements that apply to the conduct of such activity by a bank holding company under the Bank Holding Company Act of 1956 and the Board's regulations and interpretations under such Act.''

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title VI, § 604(g), (h)(2)–(j), July 21, 2010, 124 Stat. 1602–1604, provided that, effective on the transfer date, this section is amended:

(1) by amending subsection (a)(1)(D)(ii) to read as follows:

''(ii) Exclusion

''The term 'savings and loan holding company' does not include—

''(I) a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or to any company directly or indirectly controlled by such company (other than a savings association);

''(II) a company that controls a savings association that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)); or

''(III) a company described in subsection (c)(9)(C) solely by virtue of such company's control of an intermediate holding company established pursuant to section 1467b of this title.''; and

(2) in subsection (b)—

(A) in paragraph (2)—

(i) by striking ''Each savings'' and inserting the following:

''(A) In general

''Each savings''; and

(ii) by adding at the end the following:

''(B) Use of existing reports and other supervisory information

''The Board shall, to the fullest extent possible, use—

''(i) reports and other supervisory information that the savings and loan holding company or any subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

''(ii) externally audited financial statements of the savings and loan holding company or subsidiary;

''(iii) information that is otherwise available from Federal or State regulatory agencies; and

''(iv) information that is otherwise required to be reported publicly.

''(C) Availability

''Upon the request of the Board, a savings and loan holding company or a subsidiary of a savings and loan holding company shall promptly provide to the Board any information described in clauses (i) through (iii) of subparagraph (B).''; and

(B) by striking out paragraph (4) and adding the following:

''(4) Examinations

''(A) In general

''Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Board may make examinations of a savings and loan holding company and each subsidiary of a savings and loan holding company system, in order to—

''(i) inform the Board of—

''(I) the nature of the operations and financial condition of the savings and loan holding company and the subsidiary;

''(II) the financial, operational, and other risks within the savings and loan holding company system that may pose a threat to—

''(aa) the safety and soundness of the savings and loan holding company or of any depository institution subsidiary of the savings and loan holding company; or

''(bb) the stability of the financial system of the United States; and

''(III) the systems of the savings and loan holding company for monitoring and controlling the risks described in subclause (II); and

''(ii) monitor the compliance of the savings and loan holding company and the subsidiary with—

''(I) this chapter;

''(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

''(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provisions of Federal law.

''(B) Use of reports to reduce examinations

''For purposes of this subsection, the Board shall, to the fullest extent possible, rely on—

''(i) the examination reports made by other Federal or State regulatory agencies relating

to a savings and loan holding company and any subsidiary; and

''(ii) the reports and other information required under paragraph (2).

''(C) Coordination with other regulators

''The Board shall—

''(i) provide reasonable notice to, and consult with, the appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or State regulatory agency, as appropriate, for a subsidiary that is a depository institution or a functionally regulated subsidiary of a savings and loan holding company before commencing an examination of the subsidiary under this section; and

''(ii) to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information.''

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title III, §§ 351, 369(8), July 21, 2010, 124 Stat. 1546, 1564, provided that, effective on the transfer date, this section is amended:

(1) in subsection (a)(1), by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing;

(2) in subsection (b)—

(A) in paragraph (2), by striking out ''and the regional office of the Director of the district in which its principal office is located,''; and

(B) in paragraph (6), by substituting ''motion or application of the Board'' for ''Director's own motion or application'';

(3) in subsection (c)—

(A) in paragraph (2)(F), by striking out ''of Governors of the Federal Reserve System'';

(B) in paragraph (4)(B), in the heading, by striking out ''by Director'';

(C) in paragraph (6)(D), in the heading, by striking out ''by Director''; and

(D) in paragraph (9)(E), by inserting ''(in consultation with the appropriate Federal banking agency)'' after ''including a determination'';

(4) in subsection (g)(5)(B), by substituting ''the discretion of the Board'' for ''the Director's discretion'';

(5) in subsection (l), by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing;

(6) in subsection (m), by substituting ''appropriate Federal banking agency'' for ''Director'';

(7) in subsection (p)—

(A) in paragraph (1)—

(i) by substituting ''Board or the appropriate Federal banking agency for the savings association determines'' for ''Director determines'' the 1st place such term appears;

(ii) by substituting ''Board may'' for ''Director may''; and

(iii) by substituting ''Board, in consultation with the appropriate Federal banking agency for the savings association determines'' for ''Director determines'' the 2nd place such term appears; and

(B) in paragraph (2), by substituting ''Board'' for ''Director'' wherever appearing;

(8) in subsection (q), by substituting ''Board'' for ''Director'' wherever appearing;

(9) in subsection (r), by substituting ''Board or appropriate Federal banking agency'' for ''Director'' wherever appearing;

(10) in subsection (s)—

(A) in paragraph (2)—

(i) in subparagraph (B)(ii), by substituting ''judgment of the appropriate Federal banking agency for the savings association'' for ''Director's judgment''; and

(ii) by substituting ''appropriate Federal banking agency for the savings association'' for ''Director'' wherever appearing; and

(B) in paragraph (4), by substituting ''Comptroller'' for ''Director''; and

(11) except as provided in paragraphs (1) to (10), by substituting ''Board'' for ''Director'' wherever appearing.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Sections 406 and 408 of the National Housing Act, referred to in subsecs. (c)(3)(B)(i)(I), (6)(C)(i), (iv), (e)(1)(A)(iii)(VI), and (q)(1)(F), which were classified to sections 1729 and 1730a of this title, respectively, were repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

The Bank Holding Company Act of 1956, referred to in subsecs. (a)(1)(D)(ii), (e)(1)(B)(iii), (m)(3)(C), and (t), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

The transfer date, referred to in subsec. (e)(7)(B)(iii), probably means the transfer date defined in section 5301 of this title.

Section 1815(d) of this title, referred to in subsecs. (m)(3)(G) and (s)(1), was amended by Pub. L. 109–173, § 8(a)(4), (5)(D), Feb. 15, 2006, 119 Stat. 3610, 3611, and no longer contains provisions relating to conversion transactions. Section 1815(d)(3), which related to optional conversions by insured depository institutions, was struck out and section 1815(d)(1)(C) was redesignated section 1815(d)(3).

Section 1465 of this title, referred to in subsec. (m)(4)(B)(iii), was repealed by Pub. L. 106–569, title XII, § 1201(a), Dec. 27, 2000, 114 Stat. 3032.

The National Bank Act, referred to in subsec. (s)(5), is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified principally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

CODIFICATION

The directory language of sections 905(j) and 907(k) of Pub. L. 101–73 amending subsec. (i) of this section resulted in the enactment of two virtually identical pars. (2) and (3) both relating to civil money penalties and a par. (5) identical to former par. (4). See 1989 Amendment notes below.

AMENDMENTS

2010—Subsec. (e)(2)(E). Pub. L. 111–203, § 623(c)(1), added subpar. (E).

Subsec. (e)(7). Pub. L. 111–203, § 623(c)(2), added par. (7).

Subsec. (m)(3)(A). Pub. L. 111–203, § 624(1), added subpar. (A) and struck out former subpar. (A). Prior to amendment, text read as follows: ''A savings association that fails to become or remain a qualified thrift lender shall either become one or more banks (other than a savings bank) or be subject to subparagraph (B), except as provided in subparagraph (D).''

Subsec. (m)(3)(B)(i)(III), (IV). Pub. L. 111–203, § 624(2), added subcls. (III) and (IV) and struck out former subcl.

(III). Prior to amendment, text of subcl. (III) read as follows: ''The savings association shall be subject to all statutes and regulations governing the payment of dividends by a national bank in the same manner and to the same extent as if the savings association were a national bank.''

2006—Subsec. (c)(6)(D). Pub. L. 109–173, §9(e)(2)(A), substituted ''this chapter'' for ''this title''.

Subsec. (e)(1)(A)(iii)(VII). Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(12)(B)(i). See 1996 Amendment note below.

Subsec. (e)(1)(A)(iv). Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(12)(B)(ii). See 1996 Amendment note below.

Subsec. (e)(1)(B). Pub. L. 109–173, §9(e)(2)(B), substituted ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund or Bank Insurance Fund''.

Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(12)(B)(iii). See 1996 Amendment note below.

Subsec. (e)(2). Pub. L. 109–173, §9(e)(2)(C), substituted ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund or the Bank Insurance Fund'' in introductory provisions.

Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(12)(B)(iv). See 1996 Amendment note below.

Subsec. (e)(4)(B). Pub. L. 109–173, §9(e)(2)(D), substituted ''subsection (*l*)'' for ''subsection (1)''.

Subsec. (g)(3)(A). Pub. L. 109–173, §9(e)(2)(E), substituted ''(5) of this subsection'' for ''(5) of this section''.

Subsec. (i)(4), (5). Pub. L. 109–173, §9(e)(2)(F), redesignated par. (5) as (4).

Subsec. (m)(3)(E) to (H). Pub. L. 109–173, §9(e)(2)(G), redesignated subpars. (F) to (H) as (E) to (G), respectively, and struck out heading and text of former subpar. (E). Text read as follows: ''Any bank chartered as a result of the requirements of this section shall be obligated until December 31, 1993, to pay to the Savings Association Insurance Fund the assessments assessed on savings associations under the Federal Deposit Insurance Act. Such association shall also be assessed, on the date of its change of status from a Savings Association Insurance Fund member, the exit fee and entrance fee provided in section 5(d) of the Federal Deposit Insurance Act. Such institution shall not be obligated to pay the assessments assessed on banks under the Federal Deposit Insurance Act until—

''(i) December 31, 1993, or

''(ii) the institution's change of status from a Savings Association Insurance Fund member to a Bank Insurance Fund member,

whichever is later.''

Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(12)(B)(v). See 1996 Amendment notes below.

Subsec. (m)(7)(A). Pub. L. 109–173, §9(e)(2)(H), substituted ''during the period'' for ''during period'' in concluding provisions.

Subsec. (*o*)(3)(D). Pub. L. 109–173, §9(e)(2)(I), substituted ''subsections (s) and (t) of section 1464 of this title'' for ''sections 1464(s) and (t) of this title''.

2000—Subsec. (e)(1)(A)(iii). Pub. L. 106–569, §1202, in introductory provisions, inserted '', except with the prior written approval of the Director,'' after ''to acquire, by purchase or otherwise, or to retain'' and substituted ''acquire or retain, and the Director may not authorize acquisition or retention of,'' for ''so acquire or retain''.

Subsec. (m)(4)(B)(iii). Pub. L. 106–569, §1201(b)(2), inserted ''as in effect on the day before December 27, 2000,'' after ''section 1465 of this title,''.

1999—Subsec. (c)(9). Pub. L. 106–102, §401(a), added par. (9).

Subsec. (m)(3)(B)(i)(III), (IV). Pub. L. 106–102, §604(d)(1), redesignated subcl. (IV) as (III) and struck out heading and text of former subcl. (III). Text read as follows: ''The savings association shall not be eligible to obtain new advances from any Federal home loan bank.''

Subsec. (m)(3)(B)(ii). Pub. L. 106–102, §604(d)(2), added cl. (ii) and struck out heading and text of former cl. (ii). Text read as follows: ''The following additional restrictions shall apply to a savings association beginning 3 years after the date on which the savings association should have become or ceases to be a qualified thrift lender:

''(I) ACTIVITIES.—The savings association shall not retain any investment (including an investment in any subsidiary) or engage, directly or indirectly, in any activity unless that investment or activity would be permissible for the savings association if it were a national bank, and is also permissible for the savings association as a savings association.

''(II) ADVANCES.—The savings association shall repay any outstanding advances from any Federal home loan bank as promptly as can be prudently done consistent with the safe and sound operation of the savings association.''

Subsec. (*o*)(5)(E). Pub. L. 106–102, §401(b), substituted ''subsection (c)(2) or (c)(9)(A)(ii) of this section'' for ''subsection (c)(2) of this section, except subparagraph (B)''.

1996—Subsec. (a)(1)(D). Pub. L. 104–208, §2203(b), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: ''The term 'savings and loan holding company' means any company which directly or indirectly controls a savings association or controls any other company which is a savings and loan holding company.''

Subsec. (e)(1)(A)(iii)(VII). Pub. L. 104–208, §2704(d)(12)(B)(i), which directed insertion of ''or'' at end, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below.

Pub. L. 104–208, §2203(c)(1), inserted ''or'' at end.

Subsec. (e)(1)(A)(iv). Pub. L. 104–208, §2704(d)(12)(B)(ii), which directed insertion of ''and'' at end, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below.

Pub. L. 104–208, §2203(c)(2), inserted ''and'' at end.

Subsec. (e)(1)(B). Pub. L. 104–208, §2704(d)(12)(B)(iii), which directed substitution of ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund or Bank Insurance Fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (e)(1)(B)(iii). Pub. L. 104–208, §2203(c)(3), added cl. (iii).

Subsec. (e)(2). Pub. L. 104–208, §2704(d)(12)(B)(iv), which directed substitution of ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund or the Bank Insurance Fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (m)(1). Pub. L. 104–208, §2203(e)(3), added subpar. (A), redesignated existing provisions as subpar. (B), and redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (B).

Subsec. (m)(3)(E). Pub. L. 104–208, §2704(d)(12)(B)(v), which directed the amendment of par. (3) by striking subpar. (E) and redesignating subpar. (F) as (E), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (m)(3)(F). Pub. L. 104–208, §2704(d)(12)(B)(v), which directed the amendment of par. (3) by redesignating subpar. (F) as (E), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Pub. L. 104–201 substituted ''associations serving certain'' for ''association serving transient'' in heading, substituted ''company if'' for ''company if—'' and cl. (i), struck out cl. (ii) designation before ''at least 90'', and substituted ''members'' for ''officers'' in two places. Prior to amendment, cl. (i) read as follows: ''the savings and loan holding company is a reciprocal interinsurance exchange that acquired control of the insured institution before January 1, 1984; and''.

Subsec. (m)(3)(G), (H). Pub. L. 104–208, §2704(d)(12)(B)(v), which directed the amendment of par. (3) by redesignating subpars. (G) and (H) as (F) and (G), respectively, was repealed by Pub. L. 109–171. See Effec-

tive Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (m)(4). Pub. L. 104–208, § 2303(g)(1), substituted ''subsection, the following definitions apply:'' for ''subsection—'' in introductory provisions.

Subsec. (m)(4)(C)(ii)(VII). Pub. L. 104–208, § 2303(g)(2)(A), added subcl. (VII).

Subsec. (m)(4)(C)(iii)(VI). Pub. L. 104–208, § 2303(g)(2)(B), added cl. (VI) and struck out former cl. (VI) which read as follows: ''Loans for personal, family, household, or educational purposes, but the dollar amount treated as qualified thrift investments under this subclause may not exceed the amount which is equal to 10 percent of the savings association's portfolio assets.''

Subsec. (m)(4)(D), (E). Pub. L. 104–208, § 2303(g)(3), added subpars. (D) and (E).

Subsec. (s)(2)(A). Pub. L. 104–208, § 2201(b)(2), substituted ''under any'' for ''under section 5(d)(3) of the Federal Deposit Insurance Act or any other''.

Subsec. (t). Pub. L. 104–208, § 2203(a), added subsec. (t).

1992—Subsec. (m)(1), (3)(D). Pub. L. 102–550, § 1606(f)(4), amended Pub. L. 102–242, § 437. See 1991 Amendment note below.

Subsecs. (s), (t). Pub. L. 102–550, § 1607(b), redesignated subsec. (t) as (s).

1991—Subsec. (e)(1). Pub. L. 102–242, § 211(1), inserted after subpar. (B) ''Consideration of the managerial resources of a company or savings association under subparagraph (B) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association.''

Subsec. (e)(2). Pub. L. 102–242, § 211(2)(A), inserted after second sentence ''Consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association.''

Subsec. (e)(2)(C), (D). Pub. L. 102–242, § 211(2)(B)–(D), added subpars. (C) and (D).

Subsec. (m)(1)(A). Pub. L. 102–242, § 437(b)(1), as added by Pub. L. 102–550, § 1606(f)(4)(B), substituted ''65 percent'' for ''70 percent''.

Subsec. (m)(1)(B). Pub. L. 102–242, § 437(a), as amended by Pub. L. 102–550, § 1606(f)(4)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the savings association's qualified thrift investments continue to equal or exceed 70 percent of the savings association's portfolio assets, as measured by a daily or weekly average of such qualified thrift investments and such portfolio assets, for the 2-year period beginning on July 1, 1991, and for each 2-year period thereafter.''

Subsec. (m)(3)(D). Pub. L. 102–242, § 437(b)(2), as added by Pub. L. 102–550, § 1606(f)(4)(B), substituted ''on a monthly average basis in 9 out of the preceding 12 months'' for ''for the preceding 2-year period''.

Subsec. (m)(4)(B)(iii). Pub. L. 102–242, § 438, substituted ''20 percent'' for ''10 percent''.

Subsec. (m)(4)(C)(ii). Pub. L. 102–242, § 439(1), added subcl. (VI).

Subsec. (m)(4)(C)(iii)(VI). Pub. L. 102–242, § 440(a), substituted ''10 percent'' for ''5 percent''.

Subsec. (m)(4)(C)(iii)(VII). Pub. L. 102–242, § 439(2), added subcl. (VII).

Subsec. (m)(4)(C)(iv). Pub. L. 102–242, § 440(b), substituted ''20 percent'' for ''15 percent''.

Subsec. (t). Pub. L. 102–242, § 502(a), added subsec. (t).

1989—Pub. L. 101–73, § 301, amended section generally, substituting subsecs. (a) to (r) relating to regulation of holding companies for former subsecs. (a) to (d) relating to thrift industry recovery regulations.

Subsec. (i)(1). Pub. L. 101–73, § 907(k)(1), added par. (1) and struck out former par. (1) which related to criminal penalties.

Subsec. (i)(2). Pub. L. 101–73, § 907(k)(1), (2), redesignated par. (3) as (2) and struck out former par. (2) which related to penalties for making false entries.

Subsec. (i)(3), (4). Pub. L. 101–73, § 907(k)(2), (3), redesignated par. (4), relating to notice after separation from service, as (3) and amended par. (3) generally, substituting provisions relating to and penalties for provisions relating to notice after separation from service. Former par. (3) redesignated (2). See Codification note above.

Subsec. (i)(5). Pub. L. 101–73, § 905(j), added par. (5).

Subsec. (m). Pub. L. 101–73, § 303(a), amended subsec. (m) generally, revising and restating as pars. (1) to (7) provisions of former pars. (1) to (6).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 369(8) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 604(g), (h)(2), (i) of Pub. L. 111–203 effective on the transfer date, see section 604(j) of Pub. L. 111–203, set out as a note under section 1462 of this title.

Pub. L. 111–203, title VI, § 606(c), July 21, 2010, 124 Stat. 1607, provided that: ''The amendments made by this section [amending this section and section 1843 of this title] shall take effect on the transfer date.''

[For definition of ''transfer date'' as used in section 606(c) of Pub. L. 111–203, set out above, see section 5301 of this title.]

Pub. L. 111–203, title VI, § 616(e), July 21, 2010, 124 Stat. 1616, provided that: ''The amendments made by this section [enacting section 1831*o*–1 of this title and amending this section and sections 1844 and 3907 of this title] shall take effect on the transfer date.''

[For definition of ''transfer date'' as used in section 616(e) of Pub. L. 111–203, set out above, see section 5301 of this title.]

Amendment by sections 623(c), 624 of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

Pub. L. 111–203, title VI, § 625(b), July 21, 2010, 124 Stat. 1638, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the transfer date.''

[For definition of ''transfer date'' as used in section 625(b) of Pub. L. 111–203, set out above, see section 5301 of this title.]

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(12)(B) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 303(b) of Pub. L. 101–73 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on July 1, 1991.''

Amendment by section 301 of Pub. L. 101–73 relating to civil penalties applicable with respect to violations committed and activities engaged in after Aug. 9, 1989, except that the increased maximum civil penalties of $5,000 and $25,000 per violation or per day may apply to

such violations or activities committed or engaged in before such date with respect to an institution if such violations or activities (1) are not already subject to a notice issued by the appropriate Federal banking agency or the Board (initiating an administrative proceeding); and (2) occurred after the completion of the last report of examination of the institution by the appropriate Federal banking agency (as defined in section 1813 of this title) occurring before Aug. 9, 1989, see section 305(c) of Pub. L. 101–73, set out as a note under section 1461 of this title.

Amendment by section 907(k) of Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of $5,000 and $25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(*l*) of Pub. L. 101–73, set out as a note under section 93 of this title.

SAVINGS PROVISION

Pub. L. 101–73, title III, § 302, Aug. 9, 1989, 103 Stat. 343, as amended by Pub. L. 111–203, title III, § 367(2), July 21, 2010, 124 Stat. 1556, provided that: ''Notwithstanding the amendment made by this title to section 10 of the Home Owners' Loan Act [12 U.S.C. 1467a] and the repeal of section 416 of the National Housing Act [12 U.S.C. 1730i]—

''(1) any plan approved by the Federal Home Loan Bank Board under such section 10 for any Federal savings association shall continue in effect as long as such association adheres to the plan and continues to submit to the Director of the Office of Thrift Supervision regular and complete reports on the association's progress in meeting the association's goals under the plan; and

''(2) any plan approved by the Federal Savings and Loan Insurance Corporation under such section 416 for any State savings association shall continue in effect as long as such association adheres to the plan and continues to submit to the Federal Deposit Insurance Corporation regular and complete reports on the association's progress in meeting the savings association's goals under the plan.''

[Pub. L. 111–203, title III, §§ 351, 367(2), July 21, 2010, 124 Stat. 1546, 1556, provided that, effective on the transfer date (defined in section 5301 of this title), section 302(1) of Pub. L. 101–73, set out above, is amended by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.]

RULE OF CONSTRUCTION FOR CERTAIN APPLICATIONS

Pub. L. 106–102, title IV, § 401(c), Nov. 12, 1999, 113 Stat. 1436, provided that:

''(1) IN GENERAL.—In the case of a company that—

''(A) submits an application with the Director of the Office of Thrift Supervision before the date of the enactment of this Act [Nov. 12, 1999] to convert a State-chartered trust company controlled by such company on May 4, 1999, to a savings association; and

''(B) controlled a subsidiary on May 4, 1999, that had submitted an application to the Director on September 2, 1998;

the company (including any subsidiary controlled by such company as of such date of enactment [Nov. 12, 1999]) shall be treated as having filed such conversion application with the Director before May 4, 1999, for purposes of section 10(c)(9)(C) of the Home Owners' Loan Act [12 U.S.C. 1467a(c)(9)(C)] (as added by subsection (a)).

''(2) DEFINITIONS.—For purposes of paragraph (1), the terms 'company', 'control', 'savings association', and 'subsidiary' have the meanings given those terms in section 10 of the Home Owners' Loan Act.''

ASSOCIATIONS THAT HAVE PREVIOUSLY FAILED TO REMAIN QUALIFIED THRIFT LENDERS

Section 303(c) of Pub. L. 101–73 provided that: ''If, as of June 30, 1991, any savings association is subject to any provision of section 10(m)(3) of the Home Owners' Loan Act [12 U.S.C. 1467a(m)(3)] as in effect on that date, the amendment to this subsection made by section 303 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101–73], shall not be construed as reducing the period specified in section 10(m)(3) of such Act.''

CAPITAL RECOVERY; SUBMISSION OF PROPOSED REGULATIONS TO CONGRESS; EFFECTIVE DATE; STUDY, REPORT, AND CONGRESSIONAL REVIEW

Section 404(c)–(e) of Pub. L. 100–86 required the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation to each submit a report to Congress containing the proposed regulations required to be prescribed under 12 U.S.C. 1467a and 1730i of this title not later than the end of the 90-day period beginning on Aug. 10, 1987; required the regulations to be implemented not later than the end of the 150-day period beginning on Aug. 10, 1987; and required, not later than Jan. 31, 1989, a detailed evaluation of, and report the effectiveness of, the regulations in achieving an increased level of capitalization for thrift institutions.

SUNSET AND SAVINGS PROVISION

Section ceases to be effective on date that notice of completion of all net new borrowing by Financing Corporation is published in Federal Register [Mar. 30, 1992, 57 F.R. 10763], with such termination not to be construed to affect or limit any authority of Federal Home Loan Bank Board or Federal Savings and Loan Insurance Corporation to prescribe any regulation or engage in any activity with respect to any association or insured institution under any other provision of law, see section 416 of Pub. L. 100–86, set out as a note under section 1441 of this title.

§ 1467b. Intermediate holding companies

(a) Definition

For purposes of this section:

(1) Financial activities

The term ''financial activities'' means activities described in clauses (i) and (ii) of section 1467a(c)(9)(A) of this title.

(2) Grandfathered unitary savings and loan holding company

The term ''grandfathered unitary savings and loan holding company'' means a company described in section 1467a(c)(9)(C) of this title.

(3) Internal financial activities

The term ''internal financial activities'' includes—

(A) internal financial activities conducted by a grandfathered savings and loan holding company or any affiliate; and

(B) internal treasury, investment, and employee benefit functions.

(b) Requirement

(1) In general

(A) Activities other than financial activities

If a grandfathered unitary savings and loan holding company conducts activities other than financial activities, the Board may require such company to establish and conduct all or a portion of such financial activities in or through an intermediate holding company, which shall be a savings and loan holding company, established pursuant to regulations of the Board, not later than 90

days (or such longer period as the Board may deem appropriate) after the transfer date.[1]

(B) Other activities

Notwithstanding subparagraph (A), the Board shall require a grandfathered unitary savings and loan holding company to establish an intermediate holding company if the Board makes a determination that the establishment of such intermediate holding company is necessary—

(i) to appropriately supervise activities that are determined to be financial activities; or

(ii) to ensure that supervision by the Board does not extend to the activities of such company that are not financial activities.

(2) Internal financial activities

(A) Treatment of internal financial activities

For purposes of this subsection, the internal financial activities of a grandfathered unitary savings and loan holding company shall not be required to be placed in an intermediate holding company.

(B) Grandfathered activities

A grandfathered unitary savings and loan holding company may continue to engage in an internal financial activity, subject to review by the Board to determine whether engaging in such activity presents undue risk to the grandfathered unitary savings and loan holding company or to the financial stability of the United States, if—

(i) the grandfathered unitary savings and loan holding company engaged in the activity during the year before July 21, 2010; and

(ii) at least ⅔ of the assets or ⅔ of the revenues generated from the activity are from or attributable to the grandfathered unitary savings and loan holding company.

(3) Source of strength

A grandfathered unitary savings and loan holding company that directly or indirectly controls an intermediate holding company established under this section shall serve as a source of strength to its subsidiary intermediate holding company.

(4) Parent company reports

The Board, may from time to time, examine and require reports under oath from a grandfathered unitary savings and loan holding company that controls an intermediate holding company, and from the appropriate officers or directors of such company, solely for purposes of ensuring compliance with the provisions of this section, including assessing the ability of the company to serve as a source of strength to its subsidiary intermediate holding company as required under paragraph (3) and enforcing compliance with such requirement.

(5) Limited parent company enforcement

(A) In general

In addition to any other authority of the Board, the Board may enforce compliance with the provisions of this subsection that are applicable to any company described in paragraph (1)(A) that controls an intermediate holding company under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], and a company described in paragraph (1)(A) shall be subject to such section (solely for purposes of this subparagraph) in the same manner and to the same extent as if the company described in paragraph (1)(A) were a savings and loan holding company.

(B) Application of other Act

Any violation of this subsection by a grandfathered unitary savings and loan holding company that controls an intermediate holding company may also be treated as a violation of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] for purposes of subparagraph (A).

(C) No effect on other authority

No provision of this paragraph shall be construed as limiting any authority of the Board or any other Federal agency under any other provision of law.

(c) Regulations

The Board—

(1) shall promulgate regulations to establish the criteria for determining whether to require a grandfathered unitary savings and loan holding company to establish an intermediate holding company under subsection (b); and

(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a parent of such company and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between the intermediate holding company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of the intermediate holding company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

(d) Rules of construction

(1) Activities

Nothing in this section shall be construed to require a grandfathered unitary savings and loan holding company to conform its activities to permissible activities.

(2) Permissible corporate reorganization

The formation of an intermediate holding company as required in subsection (b) shall be presumed to be a permissible corporate reorganization as described in section 1467a(c)(9)(D) of this title.

(June 13, 1933, ch. 64, § 10A, as added Pub. L. 111–203, title VI, § 626, July 21, 2010, 124 Stat. 1638.)

REFERENCES IN TEXT

The transfer date, referred to in subsec. (b)(1)(A), probably means the transfer date defined in section 5301 of this title.

The Federal Deposit Insurance Act, referred to in subsec. (b)(5)(B), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat.

[1] See References in Text note below.

873, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

§ 1468. Transactions with affiliates; extensions of credit to executive officers, directors, and principal shareholders

(a) Affiliate transactions

(1) In general

Sections 23A and 23B of the Federal Reserve Act [12 U.S.C. 371c and 371c–1] shall apply to every savings association in the same manner and to the same extent as if the savings association were a member bank (as defined in such Act [12 U.S.C. 221 et seq.]), except that—

(A) no loan or other extension of credit may be made to any affiliate unless that affiliate is engaged only in activities described in section 1467a(c)(2)(F)(i) of this title; and

(B) no savings association may enter into any transaction described in section 23A(b)(7)(B) of the Federal Reserve Act with any affiliate other than with respect to shares of a subsidiary.

(2) Sister bank exemption made available to savings associations

(A) Savings associations controlled by bank holding companies

Every savings association more than 80 percent of the voting stock of which is owned by a company described in section 1467a(c)(8) of this title shall be treated as a bank for purposes of section 23A(d)(1) and section 23B of the Federal Reserve Act, if every savings association and bank controlled by such company complies with all applicable capital requirements on a fully phased-in basis and without reliance on goodwill.

(B) Savings associations generally

Effective on and after January 1, 1995, every savings association shall be treated as a bank for purposes of section 23A(d)(1) and section 23B of the Federal Reserve Act.

(3) Affiliates described

Any company that would be an affiliate (as defined in sections 23A and 23B of the Federal Reserve Act) of any savings association if such savings association were a member bank (as such term is defined in such Act) shall be deemed to be an affiliate of such savings association for purposes of paragraph (1).

(4) Additional restrictions authorized

The Director may impose such additional restrictions on any transaction between any savings association and any affiliate of such savings association as the Director determines to be necessary to protect the safety and soundness of the savings association.

(b) Extensions of credit to executive officers, directors, and principal shareholders

(1) In general

Subsections (g) and (h) of section 22 of the Federal Reserve Act [12 U.S.C. 375a, 375b] shall apply to every savings association in the same manner and to the same extent as if the savings association were a member bank (as defined in such Act).

(2) Additional restrictions authorized

The Director may impose such additional restrictions on loans or extensions of credit to any director or executive officer of any savings association, or any person who directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a savings association, as the Director determines to be necessary to protect the safety and soundness of the savings association.

(c) Administrative enforcement

The Director may take enforcement action with respect to violations of this section pursuant to section 8 or 18(j) of the Federal Deposit Insurance Act [12 U.S.C. 1818 or 1828(j)], as appropriate.

(June 13, 1933, ch. 64, § 11, formerly § 9, 48 Stat. 135; Apr. 27, 1934, ch. 168, § 15, 48 Stat. 647; renumbered § 11, Pub. L. 100–86, title IV, § 402(a), Aug. 10, 1987, 101 Stat. 605; Pub. L. 101–73, title III, § 301, Aug. 9, 1989, 103 Stat. 342; Pub. L. 102–242, title III, § 306(i), Dec. 19, 1991, 105 Stat. 2359; Pub. L. 103–325, title III, § 316, Sept. 23, 1994, 108 Stat. 2223; Pub. L. 111–203, title III, § 369(9), title VI, § 608(c), July 21, 2010, 124 Stat. 1565, 1610.)

AMENDMENT OF SECTION

Pub. L. 111–203, title IV, § 608(c), (d), July 21, 2010, 124 Stat. 1610, 1611, provided that, effective 1 year after the transfer date, this section is amended by adding at the end the following:

(d) Exemptions

(1) Federal savings associations

The Comptroller of the Currency may, by order, exempt a transaction of a Federal savings association from the requirements of this section if—

(A) the Board and the Office of the Comptroller of the Currency jointly find the exemption to be in the public interest and consistent with the purposes of this section and notify the Federal Deposit Insurance Corporation of such finding; and

(B) before the end of the 60-day period beginning on the date on which the Federal Deposit Insurance Corporation receives notice of the finding under subparagraph (A), the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

(2) State savings association

The Federal Deposit Insurance Corporation may, by order, exempt a transaction of a State savings association from the requirements of this section if the Board and the Federal Deposit Insurance Corporation jointly find that—

(A) the exemption is in the public interest and consistent with the purposes of this section; and

(B) the exemption does not present an unacceptable risk to the Deposit Insurance Fund.

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title III, §§ 351, 369(9), July 21, 2010, 124 Stat. 1546, 1565, provided that, effective on the transfer date, this section is amended by substituting ''appropriate Federal banking agency'' for ''Director'' wherever appearing. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Federal Reserve Act, referred to in subsecs. (a)(1), (3) and (b)(1), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

AMENDMENTS

1994—Subsec. (a)(2)(C). Pub. L. 103–325, § 316(b), struck out heading and text of subpar. (C) which read as follows:

''(C) TRANSITION RULE FOR WELL CAPITALIZED SAVINGS ASSOCIATIONS.—

''(i) IN GENERAL.—A savings association that is well capitalized (as defined in section 1831*o* of this title), as determined without including goodwill in calculating core capital, shall be treated as a bank for purposes of section 371c(d)(1) of this title and section 371c–1 of this title.

''(ii) LIABILITY OF COMMONLY CONTROLLED DEPOSITORY INSTITUTIONS.—Any savings association that engages under clause (i) in a transaction that would not otherwise be permissible under this subsection, and any affiliated insured bank that is commonly controlled (as defined in section 1815(e)(9) of this title), shall be subject to subsection (e) of section 1815 of this title as if paragraph (6) of that subsection did not apply.''

Pub. L. 103–325, § 316(a), added subpar. (C).

1991—Subsec. (b)(1). Pub. L. 102–242 substituted ''Subsections (g) and (h) of section 22'' for ''Section 22(h)''.

1989—Pub. L. 101–73 amended section generally, substituting subsecs. (a) to (c) relating to affiliate transactions, extensions of credit, and administrative enforcement, for former undesignated paragraph relating to separability of provisions.

1934—Act Apr. 27, 1934, reenacted section without change.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 369(9) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 608(c) of Pub. L. 111–203 effective 1 year after the transfer date, see section 608(d) of Pub. L. 111–203, set out as a note under section 371c of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 316(b) of Pub. L. 103–325 provided that amendment made by that section is effective Jan. 1, 1995.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–242 effective upon the earlier of the date on which final regulations under section 306(m)(1) of Pub. L. 102–242 become effective or 150 days after Dec. 19, 1991, see section 306(*l*) of Pub. L. 102–242, set out as a note under section 375b of this title.

TRANSITIONAL RULE FOR CERTAIN TRANSACTIONS WITH AFFILIATES

Section 304 of Pub. L. 101–73 provided that:

''(a) CONSISTENCY OF CERTAIN REGULATIONS WITH SECTION 23A OF THE FEDERAL RESERVE ACT [12 U.S.C. 371c].—Not later than 6 months after the date of enactment of this Act [Aug. 9, 1989], the Director of the Office of Thrift Supervision shall revise the Director's conflicts regulations so as not to prohibit a thrift institution from purchasing mortgages from a mortgage-banking affiliate to the same extent as a member bank may do so under section 250.250 of title 12, Code of Federal Regulations.

''(b) TRANSITIONAL PERIOD.—Notwithstanding section 11(a) of the Home Owners' Loan Act [12 U.S.C. 1468(a)] (as added by section 301 of this Act), a thrift institution that, before May 1, 1989, had received approval from the Federal Savings and Loan Insurance Corporation pursuant to section 408(d)(6) of the National Housing Act [former 12 U.S.C. 1730a(d)(6)] as then in effect to purchase mortgages from a mortgage-banking affiliate may, during the 6-month period following the date on which final regulations are prescribed pursuant to subsection (a), continue to engage in transactions for which it had received such approval. Any savings association that engages in such transactions pursuant to this subsection shall comply with the standards that were applicable under section 408(d)(6) as in effect on May 1, 1989.

''(c) AUTHORITY TO EXTEND REGULATORY APPROVALS THAT WOULD OTHERWISE LAPSE DURING THE TRANSITIONAL PERIOD.—The Director of the Office of Thrift Supervision may extend until the expiration of the 6-month period described in subsection (b) any approval granted by the Federal Savings and Loan Insurance Corporation that expires or would expire before the expiration of that 6-month period. In determining whether to grant such exemptions, the Director shall apply the standards that were applicable under section 408(d)(6) of the National Housing Act [former 12 U.S.C. 1730a(d)(6)] as in effect on May 1, 1989.''

§ 1468a. Advertising

No savings association shall carry on any sale, plan, or practices, or any advertising, in violation of regulations promulgated by the Director.

(June 13, 1933, ch. 64, § 12, as added Pub. L. 101–73, title III, § 301, Aug. 9, 1989, 103 Stat. 343; amended Pub. L. 111–203, title III, § 369(10), July 21, 2010, 124 Stat. 1565.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 369(10), July 21, 2010, 124 Stat. 1546, 1565, provided that, effective on the transfer date, this section is amended by substituting ''a Federal banking agency'' for ''the Director''. See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

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

§ 1468b. Powers of examiners

For the purposes of this chapter, examiners appointed by the Director shall—

(1) be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the Federal Reserve Act [12 U.S.C. 221 et seq.] and title LXII of the Revised Statutes; and

(2) have, in the exercise of functions under this chapter, the same powers and privileges as are vested in such examiners by law.

(June 13, 1933, ch. 64, § 13, as added Pub. L. 101–73, title III, § 301, Aug. 9, 1989, 103 Stat. 343; amended Pub. L. 111–203, title III, § 369(11), July 21, 2010, 124 Stat. 1565.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 369(11), July 21, 2010, 124 Stat. 1546, 1565, provided that, ef-

fective on the transfer date, this section is amended by substituting ''a Federal banking agency'' for ''Director''. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Federal Reserve Act, referred to in par. (1), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

Title LXII of the Revised Statutes, referred to in par. (1), consists of R.S. §§ 5133 to 5244, which are classified to sections 16, 21, 22 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

EFFECTIVE DATE OF 2010 AMENDMENT

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

§ 1468c. Separability

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(June 13, 1933, ch. 64, § 14, as added Pub. L. 101–73, title III, § 301, Aug. 9, 1989, 103 Stat. 343.)

§ 1469. Authority to invest in State housing corporations

The Congress finds that Federal savings and loan associations and national banks should have the authority to assist in financing the organization and operation of any State housing corporation established under the laws of the State in which the corporation will carry on its operation. It is the purpose of this section to provide a means whereby private financial institutions can assist in providing housing, particularly for families of low- or moderate-income, by purchasing stock of and investing in loans to any such State housing corporation situated in the particular State in which the Federal savings and loan association or national bank involved is located.

(Pub. L. 93–100, § 5(a), Aug. 16, 1973, 87 Stat. 343.)

REFERENCES IN TEXT

This section, referred to in text, means section 5 of Pub. L. 93–100, which enacted this section and section 1470 of this title and amended sections 24 and 1464 of this title.

CODIFICATION

Section was not enacted as part of the Home Owners' Loan Act of 1933 which comprises this chapter.

EFFECTIVE DATE

Section 8 of Pub. L. 93–100 provided that: ''The provisions of this Act [enacting this section and sections 1470 and 1832 of this title, amending sections 24, 461 note, 1464, 1725, 1727 and 1828 of this title, and enacting provisions set out as notes under section 548 of this title] shall take effect on the thirtieth day after the date of its enactment [Aug. 16, 1973], except that the amendments made by sections 1 and 5 [enacting this section and section 1470 of this title and amending sections 24, 461 note, and 1464 of this title] shall take effect on the date of enactment of this Act [Aug. 16, 1973].''

§ 1470. Federal supervision of insured institutions, State member and nonmember banks; access to information; definitions

(a)(1) The Federal Savings and Loan Insurance Corporation with respect to insured institutions, the Board of Governors of the Federal Reserve System with respect to State member insured banks, and the Federal Deposit Insurance Corporation with respect to State nonmember insured banks shall by appropriate rule, regulation, order, or otherwise regulate investment in State housing corporations.

(2) A State housing corporation in which financial institutions invest under the authority of this section shall make available to the appropriate Federal supervisory agency referred to in paragraph (1) such information as may be necessary to insure that investments are properly made in accordance with this section.

(b) For the purposes of this section and any Act amended by this section—

(1) The term ''insured institution'' has the same meaning as in section 401(a) of the National Housing Act [12 U.S.C. 1724(a)].[1]

(2) The terms ''State member insured banks'' and ''State nonmember insured banks'' have the same meaning as when used in the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

(3) The term ''State housing corporation'' means a corporation established by a State for the limited purpose of providing housing and incidental services, particularly for families of low or moderate income.

(4) The term ''State'' means any State, the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

(Pub. L. 93–100, § 5(d), (e), Aug. 16, 1973, 87 Stat. 344; Pub. L. 111–203, title III, § 375, July 21, 2010, 124 Stat. 1566.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 111–203, title III, §§ 351, 375, July 21, 2010, 124 Stat. 1546, 1566, provided that, effective on the transfer date, subsection (a) of this section is amended:

(1) in paragraph (1), by substituting ''appropriate Federal banking agency, with respect to the institutions subject to the jurisdiction of each such agency,'' for ''Federal Savings and Loan Insurance Corporation with respect to insured institutions, the Board of Governors of the Federal Reserve System with respect to State member insured banks, and the Federal Deposit Insurance Corporation with respect to State nonmember insured banks''; and

(2) in paragraph (2), by substituting ''banking'' for ''supervisory''.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This section, referred to in subsec. (a)(2), refers to section 5 of Pub. L. 93–100, which enacted this section

[1] See References in Text note below.

and section 1469 of this title and amended sections 24 and 1464 of this title.

This section and any Act amended by this section, referred to in subsec. (b), are this section and sections 24 par. Seventh, 1464(c), and 1469 of this title.

Section 401(a) of the National Housing Act, referred to in subsec. (b)(1), which was classified to section 1724 of this title, was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

The Federal Deposit Insurance Act, referred to in subsec. (b)(2), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Home Owners' Loan Act of 1933, which comprises this chapter.

Subsecs. (d) and (e) of section 5 of Pub. L. 93–100 have been designated subsecs. (a) and (b) for purposes of codification.

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE

Section effective Aug. 16, 1973, see section 8 of Pub. L. 93–100, set out as a note under section 1469 of this title.

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

CHAPTER 13—NATIONAL HOUSING

Sec.

1701. Short title.

1701a. Short title of amendment of 1938.

1701b. Short title of amendment of 1942.

1701c. Secretary of Housing and Urban Development.

1701c–1 to 1701d–3. Omitted or Repealed.

1701d–4. Exchange and assembly of housing and urban planning and development data; payment of expenses; acceptance of funds, services, facilities, materials, and other donations; approval of Secretary of State for international programs and activities.

1701e to 1701g–4. Repealed or Omitted.

1701g–5. Revolving fund in connection with liquidating programs.

1701g–5a. Transfer of New Communities Fund assets and liabilities.

1701g–5b. Liquidation of New Communities Program; cancellation of debt.

1701g–5c. Transfer of rehabilitation loan fund assets and liabilities.

1701h. Advisory committees; payment of transportation and other expenses.

1701h–1. Housing for elderly persons advisory committee.

1701i, 1701i–1, 1701j. Omitted or Repealed.

1701j–1. Builder's certification as to construction.

1701j–2. National Institute of Building Sciences.

1701j–3. Preemption of due-on-sale prohibitions.

1701k. Right to redeem property on which United States has lien.

1701*l*. Limitation on interest rates of insured mortgages; terms of sales.

1701*l*–1. Mortgage proceeds fraudulently misappropriated by mortgagor; recovery of deficiency after foreclosure.

Sec.

1701m. Credit and cancellation of notes transferred from Reconstruction Finance Corporation; net loss computation.

1701n. Reduction of vulnerability of congested urban areas to enemy attack.

1701*o*. Annual report of Secretary.

1701p. Contents of report to President and Congress.

1701p–1. Periodic report on residential mortgage delinquencies and foreclosures.

1701p–2. Default and foreclosure database.

1701q. Supportive housing for the elderly.

1701q–1. Civil money penalties against mortgagors under section 1701q of this title.

1701q–2. Grants for conversion of elderly housing to assisted living facilities and other purposes.

1701q–3. Funds for housing for elderly and persons with disabilities available for cost of maintenance and disposal of such properties.

1701r. Congressional findings respecting housing for senior citizens.

1701r–1. Pet ownership in assisted rental housing for the elderly or handicapped.

1701s. Rent supplement payments for qualified lower income families.

1701t. Congressional affirmation of national goal of decent homes and suitable living environment for American families.

1701u. Economic opportunities for low- and very low-income persons.

1701v. Congressional findings and declaration for improved architectural design in Government housing programs.

1701w. Budget, debt management, and related counseling services for mortgagors; authorization of appropriations.

1701x. Assistance with respect to housing for low- and moderate-income families.

1701x–1. Home inspection counseling.

1701x–2. Legal assistance for foreclosure-related issues.

1701y. National Homeownership Foundation.

1701z. New technologies in the development of housing for lower income families.

1701z–1. Research and demonstrations; authorization of appropriations; continuing availability of funds.

1701z–2. Advanced technologies, methods, and materials for housing construction, rehabilitation, and maintenance.

1701z–3. Experimental housing allowance payment program.

1701z–4. Abandoned properties demonstration project.

1701z–5. Demonstrations of heating or cooling residential housing utilizing solar energy.

1701z–6. Special housing need research and demonstration authority.

1701z–7. Studies to determine extent of need for counseling to mortgagors; report to Congress.

1701z–8. Energy conservation and renewable-resource demonstration.

1701z–9. Expansion of home ownership opportunities in urban areas.

1701z–10. Model rehabilitation guidelines in inspection and approval of rehabilitated properties; report to Congress.

1701z–10a. Biennial survey of economic and housing market conditions.

1701z–11. Management and disposition of multifamily housing projects.

1701z–12. Housing access.

1701z–13. Solar energy for single-family and multifamily housing units.

Sec.
1701z–14. Lower cost technology demonstration program.
1701z–15. Approval of individual residential water purification or treatment units.
1701z–16. Energy efficient mortgages pilot program.
1701z–17. Increasing access and understanding of energy efficient mortgages.

SUBCHAPTER I—HOUSING RENOVATION AND MODERNIZATION

1702. Administrative provisions.
1702a. Repealed.
1703. Insurance of financial institutions.
1704. Repealed.
1705. Allocation of funds.
1706, 1706a. Repealed.
1706b. Taxation of real property held by Secretary.
1706c. Insurance of mortgages.
1706d. Applicability.
1706e. Repealed.
1706f. Prohibition against kickbacks and unearned fees.

SUBCHAPTER II—MORTGAGE INSURANCE

1707. Definitions.
1708. Federal Housing Administration operations.
1709. Insurance of mortgages.
1709–1. Repealed.
1709–1a. State constitutional and legal limits upon interest chargeable on loans, mortgages, or other interim financing arrangements; applicability; covered arrangements.
1709–2. Equity skimming; penalty; persons liable; one dwelling exemption.
1709a. Determination of loan-to-value ratios.
1709b. Repealed.
1710. Payment of insurance.
1711. General Surplus and Participating Reserve Accounts.
1712. Investment of funds.
1712a. Indexing of FHA multifamily housing loan limits.
1713. Rental housing insurance.
1714. Taxation.
1715. Statistical and economic surveys.
1715a. Repealed.
1715b. Rules and regulations.
1715c. Labor standards.
1715d. Insurance of mortgages on property in Alaska, Guam, Hawaii, and Virgin Islands.
1715e. Cooperative housing insurance.
1715f. Process of applications and issuance of commitments.
1715g. Insurance of mortgage where mortgagor is not occupant of property.
1715h to 1715j. Repealed.
1715k. Rehabilitation and neighborhood conservation housing insurance.
1715*l*. Housing for moderate income and displaced families.
1715m. Repealed.
1715n. Miscellaneous mortgage insurance.
1715*o*. Interest rate on debentures; method of establishment.
1715p. Insurance of advances under open-end mortgages; payment of charges; eligibility and conditions.
1715q. Delivery of statement of appraisal or estimates to home buyers.
1715r. Requirement of builder's cost certification; definitions.
1715s. Treatment of mortgages covering tax credit projects.
1715t. Voluntary termination of insurance.
Sec.
1715u. Authority to assist mortgagors in default.
1715v. Insurance of mortgages for housing for elderly persons.
1715w. Mortgage insurance for nursing homes, intermediate care facilities, and board and care homes.
1715x. Experimental housing insurance.
1715y. Mortgage insurance for condominiums.
1715z. Homeownership or membership in cooperative association for lower income families.
1715z–1. Rental and cooperative housing for lower income families.
1715z–1a. Assistance for troubled multifamily housing projects.
1715z–1b. Tenant participation in multifamily housing projects.
1715z–1c. Regulation of rents in insured projects.
1715z–2. Repealed.
1715z–3. Special Risk Insurance Fund.
1715z–4. Modifications in terms of mortgages covering multifamily projects; requests for extensions to cure defaults or for modification of mortgage terms; regulations.
1715z–4a. Double damages remedy for unauthorized use of multifamily housing project assets and income.
1715z–5. Purchase of fee simple title from lessors.
1715z–6. Supplemental loans for multifamily projects.
1715z–7. Mortgage insurance for hospitals.
1715z–8. Mortgage assistance payments for middle-income families.
1715z–9. Co-insurance of eligible mortgage, advance, or loan.
1715z–10. Repealed.
1715z–11. Sale to cooperatives of multifamily housing projects acquired by Secretary; acceptance of purchase money mortgage for sale or insurance of mortgage; principal amount of mortgage; expenditures for repairs, etc., prior to sale.
1715z–11a. Disposition of HUD-owned properties.
1715z–12. Single-family mortgage insurance on Hawaiian home lands.
1715z–13. Single family mortgage insurance on Indian reservations.
1715z–13a. Loan guarantees for Indian housing.
1715z–13b. Loan guarantees for Native Hawaiian housing.
1715z–14. Risk-sharing demonstration.
1715z–15. Limitation on prepayment of mortgages on multifamily rental housing.
1715z–16. Adjustable rate single family mortgages.
1715z–17. Shared appreciation mortgages for single family housing.
1715z–18. Shared appreciation mortgages for multifamily housing.
1715z–19. Equity skimming penalty.
1715z–20. Insurance of home equity conversion mortgages for elderly homeowners.
1715z–21. Delegation of insuring authority to direct endorsement mortgagees.
1715z–22. Multifamily mortgage credit programs.
1715z–22a. Definitions.
1715z–23. HOPE for Homeowners Program.
1715z–24. Pilot program for automated process for borrowers without sufficient credit history.
1715z–25. Mortgage modification data collecting and reporting.

SUBCHAPTER III—NATIONAL MORTGAGE ASSOCIATIONS

1716. Declaration of purposes of subchapter.
1716–1, 1716a. Repealed.

Sec.
1716b. Partition of Federal National Mortgage Association into Federal National Mortgage Association and Government National Mortgage Association; assets and liabilities; operations.
1717. Federal National Mortgage Association and Government National Mortgage Association.
1717a. Prohibition against sale of obligations by Federal departments and agencies after June 30, 1966, without compliance with requirements of section 1717(c) of this title or without approval by Secretary of the Treasury; exemption.
1718. Capitalization of Federal National Mortgage Association.
1719. Secondary market operations.
1720. Repealed.
1721. Management and liquidation functions of Government National Mortgage Association.
1722. Benefits and burdens incident to administration of functions and operations under sections 1720 and 1721.
1723. Management.
1723a. General powers of Government National Mortgage Association and Federal National Mortgage Association.
1723b. Investment of funds.
1723c. Obligations, participations, or other instruments as lawful investments; acceptance as security; exempt securities.
1723d. Transfer of certain functions to Association.
1723e to 1723h. Repealed.
1723i. Civil money penalties against issuers.

SUBCHAPTER IV—INSURANCE OF SAVINGS AND LOAN ACCOUNTS

1724 to 1730i. Repealed.

SUBCHAPTER V—MISCELLANEOUS

1731. Repealed.
1731a. Penalties.
1731b. Prohibition against transient housing.
1732. Separability.
1733. Application of other laws.
1734. Amendment, extension, or increase of commitment amounts.
1735. Payment of certain funds to Treasury.
1735a. Prepayment of mortgages by nonprofit educational institutions; refunds.
1735b. Expenditures to correct or reimburse for structural or other major defects in mortgaged homes.
1735c. General Insurance Fund.
1735d. Payment of insurance benefits in cash or debentures; borrowing money from Treasury to make payments.
1735e. Acceptance of materials or products used in structures.
1735e–1. Use of American materials and products.
1735f. Water and sewerage facilities.
1735f–1. Waiver of deduction on assignment of property to Secretary in lieu of foreclosure.
1735f–2. Uniform rehabilitation standards for housing within and without urban renewal areas.
1735f–3. Insurance of mortgage proceeds advanced during construction or rehabilitation or prior to final endorsement of project mortgage.
1735f–4. Minimum property standards.
1735f–5. Prohibition against discrimination on account of sex in extension of mortgage assistance; consideration of combined income of husband and wife for purpose of extending mortgage credit; definitions.
1735f–6. Secondary mortgages held by State or local governmental agency on insured properties.
1735f–7. Exemption from State usury laws; applicability.
1735f–7a. State constitution or laws limiting mortgage interest, discount points, and finance or other charges; exemption for obligations made after March 31, 1980.
1735f–8. Time of payment of premium charges.
1735f–9. Limitation on commitments to insure loans and mortgages.
1735f–10. Change of mortgagee status.
1735f–11. Review of mortgagee performance and authority to terminate.
1735f–12. Assurance of adequate processing of applications for loan and mortgage insurance.
1735f–13. Prohibition of requirement of minimum principal loan amount.
1735f–14. Civil money penalties against mortgagees, lenders, and other participants in FHA programs.
1735f–15. Civil money penalties against multifamily mortgagors.
1735f–16. Annual audited financial statements.
1735f–17. Examinations and sanctions for certain violations.
1735f–18. Information regarding early defaults and foreclosures on insured mortgages.
1735f–19. Partial payment of claims on defaulted mortgages and in connection with mortgage restructuring.
1735f–20. Authorization of appropriations for General and Special Risk Insurance Funds.
1735g. Mortgage relief for homeowners who are unemployed as result of closing of Federal installation.
1735h. Repealed.

SUBCHAPTER VI—WAR HOUSING INSURANCE

1736. Definitions.
1737. Repealed.
1738. Insurance of mortgages.
1739. Mortgage insurance benefits.
1740. Repealed.
1741. State taxation of realty held by Secretary.
1742. Rules and regulations.
1743. Insurance of mortgages.
1744. Insurance of loans for manufacture of houses.
1745. Insurance of mortgages on sales of Government housing; limits and conditions; Greenbelt towns; State housing.
1746. Insurance on mortgages on large-scale housing projects.
1746a. Termination of commitment authority under this subchapter.

SUBCHAPTER VII—INSURANCE FOR INVESTMENTS IN RENTAL HOUSING FOR FAMILIES OF MODERATE INCOME

1747. Purpose of subchapter; authorization; terms and conditions; expiration of insurance contract.
1747a. Eligibility for insurance.
1747b. Premium charges; fees for examination and inspection.
1747c. Rent schedules.
1747d. Excess earnings used for amortization of original investment.
1747e. Financial statements by Secretary.
1747f. Payment of claims; assignment of benefits by investors.
1747g. Debentures.
1747h. Termination of insurance contract by investor.

Sec.
1747i. Repealed.
1747j. Taxation of real property.
1747k. Rules and regulations.
1747*l*. Definitions.

SUBCHAPTER VIII—ARMED SERVICES HOUSING MORTGAGE INSURANCE

1748. Definitions.
1748a. Repealed.
1748b. Insurance of mortgages.
1748c. Repealed.
1748d. Lease of property; terms and conditions.
1748e. Mortgages on property in Alaska.
1748f. Rules and regulations.
1748g. Cost certification.
1748g–1, 1748h. Omitted.
1748h–1. Civilian employees of Armed Forces.
1748h–2. Insurance of mortgages for defense housing for impacted areas.
1748h–3. Payments in lieu of taxes; limitations; exemption from taxation.
1748i. Omitted.

SUBCHAPTER IX—HOUSING FOR EDUCATIONAL INSTITUTIONS

1749 to 1749c. Repealed.
1749d. Cost of inspections and of providing representatives.

SUBCHAPTER IX–A—MORTGAGE INSURANCE FOR LAND DEVELOPMENT AND NEW COMMUNITIES

1749aa to 1749*ll*. Repealed.

SUBCHAPTER IX–B—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES AND MEDICAL PRACTICE FACILITIES

1749aaa. Insurance of mortgages.
1749aaa–1. Premiums and other charges.
1749aaa–2. Payment of insurance benefits.
1749aaa–3. Regulations.
1749aaa–4. Administration.
1749aaa–5. Definitions.

SUBCHAPTER IX–C—NATIONAL INSURANCE DEVELOPMENT PROGRAM

1749bbb to 1749bbb–2. Omitted.

PART A—STATEWIDE PLANS TO ASSURE FAIR ACCESS TO INSURANCE REQUIREMENTS

1749bbb–3 to 1749bbb–6a. Omitted.

PART B—REINSURANCE COVERAGE

1749bbb–7 to 1749bbb–10. Omitted.

PART C—FEDERAL INSURANCE AGAINST BURGLARY AND THEFT

1749bbb–10a to 1749bbb–10d. Omitted.

PART D—GENERAL PROVISIONS

1749bbb–11 to 1749bbb–21. Omitted.

SUBCHAPTER X—NATIONAL DEFENSE HOUSING INSURANCE

1750. Definitions.
1750a, 1750a–1. Repealed or Omitted.
1750b. Insurance in critical areas.
1750c. Mortgage insurance benefits.
1750d. Repealed.
1750e. Taxation.
1750f. Rules and regulations.
1750g. Insurance of additional mortgages.

SUBCHAPTER XI—VOLUNTARY HOME MORTGAGE CREDIT

1750aa to 1750jj. Omitted.

§ 1701. Short title

This chapter may be cited as the ''National Housing Act.''

(June 27, 1934, ch. 847, 48 Stat. 1246.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 111–372, § 1(a), Jan. 4, 2011, 124 Stat. 4077, provided that: ''This Act [amending sections 1701q and 1701q–2 of this title and section 1437f of Title 42, The Public Health and Welfare, and amending provisions set out as notes under section 1701q of this title] may be cited as the 'Section 202 Supportive Housing for the Elderly Act of 2010'.''

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–203, title XIV, § 1441, July 21, 2010, 124 Stat. 2163, provided that: ''This subtitle [subtitle D (§§ 1441–1452) of title XIV of Pub. L. 111–203, enacting sections 1701p–2 and 1701x–1 of this title and section 8108 of Title 42, The Public Health and Welfare, and amending sections 1701x and 2604 of this title and section 3533 of Title 42] may be cited as the 'Expand and Preserve Home Ownership Through Counseling Act'.''

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–289, div. A, title IV, § 1401, July 30, 2008, 122 Stat. 2800, provided that: ''This title [enacting section 1715z–23 of this title and section 1639a of Title 15, Commerce and Trade, and amending section 1708 of this title] may be cited as the 'HOPE for Homeowners Act of 2008'.''

Pub. L. 110–289, div. B, § 2001, July 30, 2008, 122 Stat. 2830, provided that: ''This division [see Tables for classification] may be cited as the 'Foreclosure Prevention Act of 2008'.''

Pub. L. 110–289, div. B, title I, § 2101, July 30, 2008, 122 Stat. 2830, provided that: ''This title [enacting sections 1706f and 1715z–24 of this title, amending sections 1701x, 1703, 1707 to 1709, 1711, 1715y, 1715z–12, 1715z–13, 1715z–20, and 1735c of this title and section 1014 of Title 18, Crimes and Criminal Procedure, repealing sections 1715m, 1715z–2, and 1715z–10 of this title, enacting provisions set out as notes under this section and sections 1701x, 1703, 1709, and 1710 of this title, and amending provisions set out as a note under section 12712 of Title 42, The Public Health and Welfare] may be cited as the 'FHA Modernization Act of 2008'.''

Pub. L. 110–289, div. B, title I, § 2111, July 30, 2008, 122 Stat. 2830, provided that: ''This subtitle [subtitle A (§§ 2111–2133) of title I of div. B of Pub. L. 110–289, enacting section 1715z–24 of this title, amending sections 1701x, 1707 to 1709, 1711, 1715y, 1715z–12, 1715z–13, 1715z–20, and 1735c of this title and section 1014 of Title 18, Crimes and Criminal Procedure, repealing sections 1715m, 1715z–2, and 1715z–10 of this title, enacting provisions set out as notes under this section and sections 1701x, 1709, and 1710 of this title, and amending provisions set out as a note under section 12712 of Title 42, The Public Health and Welfare] may be cited as the 'Building American Homeownership Act of 2008'.''

Pub. L. 110–289, div. B, title I, § 2141, July 30, 2008, 122 Stat. 2844, provided that: ''This subtitle [subtitle B (§§ 2141–2150) of title I of div. B of Pub. L. 110–289, enacting section 1706f of this title, amending section 1703 of this title, and enacting provisions set out as notes under section 1703 of this title] may be cited as the 'FHA Manufactured Housing Loan Modernization Act of 2008'.''

Pub. L. 110–289, div. B, title VIII, § 2831, July 30, 2008, 122 Stat. 2867, provided that: ''This subtitle [subtitle B (§§ 2831–2835) of title VIII of div. B of Pub. L. 110–289, enacting section 1715s of this title and sections 1437z–8 and 11403f–1 of Title 42, The Public Health and Welfare, amending sections 1701q and 1715r of this title and sections 1437f, 1485, 3545, 11403g, 11403h, 11404, 11405, 11405b,

11406, 11407, and 11407b of Title 42, and enacting provisions set out as a note under section 1715s of this title] may be cited as the 'Housing Tax Credit Coordination Act of 2008'.''

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–37, §1, June 18, 2007, 121 Stat. 229, provided that: ''This Act [amending section 1715z–13a of this title] may be cited as the 'Native American Home Ownership Opportunity Act of 2007'.''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–240, §1, July 10, 2006, 120 Stat. 515, provided that: ''This Act [amending section 1715z–7 of this title] may be cited as the 'Rural Health Care Capital Access Act of 2006'.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–213, §1, Apr. 1, 2004, 118 Stat. 571, provided that: ''This Act [amending section 1715k of this title] may be cited as the 'Energy Efficient Housing Technical Correction Act'.''

SHORT TITLE OF 2003 AMENDMENTS

Pub. L. 108–186, title III, §302(a), Dec. 16, 2003, 117 Stat. 2692, provided that: ''This section [amending sections 1713, 1715e, 1715k, 1715*l*, 1715v, and 1715y of this title] may be cited as the 'FHA Multifamily Loan Limit Adjustment Act of 2003'.''

Pub. L. 108–91, §1, Oct. 3, 2003, 117 Stat. 1158, provided that: ''This Act [amending section 1715z–7 of this title and enacting provisions set out as a note under section 1715z–7 of this title] may be cited as the 'Hospital Mortgage Insurance Act of 2003'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–326, §1, Dec. 4, 2002, 116 Stat. 2792, provided that: ''This Act [enacting section 1712a of this title, amending sections 1709, 1713, 1715e, 1715k, 1715*l*, 1715v, 1715y, 1715z–10, and 1721 of this title, and repealing provisions set out as a note under section 1721 of this title] may be cited as the 'FHA Downpayment Simplification Act of 2002'.''

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–569, §1(a), Dec. 27, 2000, 114 Stat. 2944, provided that: ''This Act [see Tables for classification] may be cited as the 'American Homeownership and Economic Opportunity Act of 2000'.''

Pub. L. 106–569, title VIII, §801, Dec. 27, 2000, 114 Stat. 3018, provided that: ''This title [amending sections 1701q and 1715z–1 of this title and sections 8013, 13631, and 13632 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and sections 1701q and 1715z–1 of this title] may be cited as the 'Affordable Housing for Seniors and Families Act'.''

Pub. L. 106–281, §1, Oct. 6, 2000, 114 Stat. 865, provided that: ''This Act [amending section 1709 of this title] may be cited as the 'FHA Downpayment Simplification Extension Act of 2000'.''

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–74, title V, §501(a), Oct. 20, 1999, 113 Stat. 1100, provided that: ''This title [enacting section 1701q–2 of this title, amending sections 1701q, 1701q–2, 1715z–1, 1715z–1a, 1715z–11a, and 4113 of this title and sections 1437f and 8013 of Title 42, The Public Health and Welfare, enacting provisions set out as notes in sections 1701q and 1715z–1 of this title and section 12701 of Title 42, and amending provisions set out as a note under section 1437f of Title 42] may be cited as the 'Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act'.''

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–65, title V, §510, Oct. 27, 1997, 111 Stat. 1385, provided that: ''This title [enacting section 1437z–1 of Title 42, The Public Health and Welfare, amending sections 1708, 1715z–1, 1715z–4a, 1715z–19, 1735f–14, 1735f–15, 1735f–19, and 4565 of this title, section 1516 of Title 18, Crimes and Criminal Procedure, section 6103 of Title 26, Internal Revenue Code, and sections 503, 1437f, and 1437z of Title 42, enacting provisions set out as notes under sections 1735f–14 and 1735f–15 of this title and sections 503, 1437f, and 1437z–1 of Title 42, and amending provisions set out as notes under section 1437f of Title 42] may be cited as the 'Multifamily Assisted Housing Reform and Affordability Act of 1997'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–120, §1, Mar. 28, 1996, 110 Stat. 834, provided that: ''This Act [enacting section 1490p–2 of Title 42, The Public Health and Welfare, amending sections 1715z–20, 1715z–22, and 1721 of this title and sections 1437d, 1437e, 1437n, 1479, 1485, 1490p–2, and 5308 of Title 42, and enacting provisions set out as notes under section 4101 of this title and sections 1437d, 1437f, 5305, and 12805 of Title 42] may be cited as the 'Housing Opportunity Program Extension Act of 1996'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–233, §1(a), Apr. 11, 1994, 108 Stat. 342, provided that: ''This Act [enacting sections 1735f–19 and 1735f–20 of this title and sections 1437x, 3547, 5321, and 12840 of Title 42, The Public Health and Welfare, amending sections 1701z–11, 1713, 1715e, 1715k, 1715y, 1715z–1a, 1715z–3, and 1735c of this title and sections 1437a, 1437d, 1437f, 1437g, 1437*l*, 3535, 4852, 5301, 5304, 5305, 5308, 5318, 12704, 12744, 12745, 12750, 12833, 12838, and 12893 of Title 42, enacting provisions set out as notes under sections 1701z–11, 1715n, and 1715z–1a of this title and sections 5301 and 5318 of Title 42, amending provisions set out as notes under sections 1707 and 1715z–1a of this title and section 3545 of Title 42, and repealing provisions set out as a note under section 1701z–11 of this title] may be cited as the 'Multifamily Housing Property Disposition Reform Act of 1994'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–550, title V, §541, Oct. 28, 1992, 106 Stat. 3794, provided that: ''This subtitle [subtitle C (§§541–544) of title V of Pub. L. 102–550, enacting sections 1715z–22 and 1715z–22a of this title] may be cited as the 'Multifamily Housing Finance Improvement Act'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–440, §1, Oct. 3, 1984, 98 Stat. 1689, provided: ''That this Act [enacting section 77r–1 of Title 15, Commerce and Trade, and amending sections 24, 1451, 1454, 1455, 1464, 1717, 1723, 1723a, 1723c, and 1757 of this title and sections 78c, 78g, 78h, and 78k of Title 15] may be cited as the 'Secondary Mortgage Market Enhancement Act of 1984'.''

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98–181, §1(a), Nov. 30, 1983, 97 Stat. 1155, provided that: ''Titles I through XI of this Act [enacting sections 635i–1, 635i–2, 635*o* to 635t, 1701g–5b, 1701p–1, 1701r–1, 1701z–10a, 1715z–12 to 1715z–18, and 3901 to 3912 of this title, section 1671g of Title 19, Customs Duties, sections 276c–3, 283z–3, 285x, 285y, 286b–2, 286e–1i, 286y, 286z, 286aa to 286gg, and 290g–12 of Title 22, Foreign Relations and Intercourse, and sections 1437*o* to 1437q, 1490k to 1490*o*, and 3542 of Title 42, The Public Health and Welfare, amending sections 635, 635a, 635a–2, 635a–3, 635a–4, 635b, 635e, 635f, 635g, 1437, 1701j–2, 1701j–3, 1701q, 1701s, 1701x, 1701z–1, 1703, 1706d, 1706e, 1707, 1709, 1710, 1713, 1715e, 1715h, 1715k, 1715*l*, 1715n, 1715u, 1715v, 1715w, 1715y, 1715z, 1715z–1, 1715z–1a, 1715z–5, 1715z–6, 1715z–7, 1715z–9, 1715z–10, 1721, 1735, 1735b, 1735c, 1735f–4, 1735f–8, 1735f–9, 1748h–1, 1748h–2, 1749bb, 1749aaa, 1749bbb to 1749bbb–2, 1749bbb–5 to 1749bbb–20, 1812, 2602, 2607, 2614, 2617, 2803, 2807, 2809, 2810, 3202, 3602, 3606, 3609, 3612, 3618, 3620, 3703, and 3804 of this title, sections 1671a and 1671b of Title 19, sections 262d, 286b, 286c, 286e–2, and 286q of Title 22, sections 1437a, 1437c, 1437d, 1437f, 1437g, 1437n, 1437*l*, 1439,

1452, 1452b, 1456, 1471, 1472, 1474, 1476, 1479 to 1481, 1483 to 1487, 1490, 1490a, 1490c, 1490e, 1490f, 1490j, 1500c–2, 2414, 3103, 3936, 4003, 4011 to 4020, 4022 to 4025, 4026, 4027, 4041, 4051 to 4054, 4055, 4056, 4071, 4072, 4081 to 4084, 4101 to 4107, 4121 to 4123, 4127, 4128, 5301, 5302 to 5308, 5312, 5316, 5318, 6872, 8007, 8010, and 8107 of Title 42, and section 2166 of the Appendix to Title 50, War and National Defense, repealing sections 1709–1, 1720, and 1723e of this title, section 484b of former Title 40, Public Buildings, Property, and Works, and sections 1482, 1490g, 1490i, 1500c, 3901, 3902 to 3906, 3908, 3909, 3911, 3914, 4511 to 4524, and 4528 to 4532 of Title 42, enacting provisions set out as notes under sections 635, 635a, 635*o*, 1701q, 1701z–6, 1709, 1713, 1715z–14, 1720, 2602, 3620, and 3901 of this title, section 484b of former Title 40, and sections 602, 1436a, 1437a, 1437f, 1441, 1472, 1490a, 3901, 4015, 4122, 4518, 5316, and 5318 of Title 42, amending provisions set out as notes under section 5301 of Title 42, and repealing provisions set out as notes under sections 1709–1 and 1723 of this title and sections 1437a and 3901 of Title 42] may be cited as the 'Domestic Housing and International Recovery and Financial Stability Act'.''

Pub. L. 98–181, §1(b), Nov. 30, 1983, 97 Stat. 1155, provided that: ''Titles I through V of this Act [enacting sections 1701g–5b, 1701p–1, 1701r–1, 1701z–10a, and 1715z–12 to 1715z–18 of this title and sections 1437*o* to 1437q, 1490k to 1490*o*, and 3542 of Title 42, The Public Health and Welfare, amending sections 1701j–2, 1701j–3, 1701q, 1701s, 1701x, 1701z–1, 1703, 1706d, 1706e, 1707, 1709, 1710, 1713, 1715e, 1715h, 1715k, 1715*l*, 1715n, 1715u, 1715v, 1715w, 1715y, 1715z, 1715z–1, 1715z–1a, 1715z–5, 1715z–6, 1715z–7, 1715z–9, 1715z–10, 1721, 1735, 1735b, 1735c, 1735f–4, 1735f–8, 1735f–9, 1748h–1, 1748h–2, 1749bb, 1749aaa, 1749bbb to 1749bbb–2, 1749bbb–5 to 1749bbb–20, 2602, 2607, 2614, 2617, 3602, 3606, 3609, 3612, 3618, 3620, 3703, and 3804 of this title, and sections 1437a, 1437c, 1437d, 1437f, 1437g, 1437n, 1437*l*, 1439, 1452, 1452b, 1456, 1471, 1472, 1474, 1476, 1479 to 1481, 1483 to 1487, 1490, 1490a, 1490c, 1490e, 1490f, 1490j, 1500c–2, 2414, 3103, 3936, 4003, 4011 to 4020, 4022 to 4025, 4026, 4027, 4041, 4051 to 4054, 4055, 4056, 4071, 4072, 4081 to 4084, 4101 to 4107, 4121 to 4123, 4127, 4128, 5301, 5302 to 5308, 5312, 5316, 5318, 6872, 8007, 8010, and 8107 of Title 42, repealing sections 1709–1, 1720, and 1723e of this title, section 484b of former Title 40, Public Buildings, Property, and Works, and sections 1482, 1490g, 1490i, 1500c, 3901, 3902 to 3906, 3908, 3909, 3911, 3914, 4511 to 4524, and 4528 to 4532 of Title 42, enacting provisions set out as notes under sections 1701q, 1701z–6, 1709, 1713, 1715z–14, 1720, 2602, and 3620 of this title, section 484b of former Title 40, and sections 602, 1436a, 1437a, 1437f, 1441, 1472, 1490a, 3901, 4015, 4122, 4518, 5316, and 5318 of Title 42, amending provisions set out as notes under section 5301 of Title 42, and repealing provisions set out as notes under sections 1709–1 and 1723 of this title and sections 1437a and 3901 of Title 42] may be cited as the 'Housing and Urban-Rural Recovery Act of 1983'.''

SHORT TITLE OF 1979 AMENDMENT

Pub. L. 96–153, title III, §311(a), Dec. 21, 1979, 93 Stat. 1115, provided that: ''This section [amending section 1715z–10 of this title] may be cited as the 'Homeownership Opportunity Act of 1979'.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–630, title VII, §701, Nov. 10, 1978, 92 Stat. 3687, provided that: ''This title [amending section 1730 of this title] may be cited as the 'Change in Savings and Loan Control Act of 1978'.''

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–24, §1, Apr. 30, 1977, 91 Stat. 55, provided: ''That this Act [amending sections 1706e, 1715k, 1715*l*, 1735c, 1749bbb, and 1749bbb–8 of this title and sections 1437c, 1437f, 1437g, and 1451 of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under section 1441 of Title 42] may be cited as the 'Supplemental Housing Authorization Act of 1977'.''

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–375, §1, Aug. 3, 1976, 90 Stat. 1067, provided that: ''This Act [enacting section 1701z–7 of this title, amending sections 1464, 1701j–2, 1701q, 1701z–1 to 1701z–3, 1706e, 1713, 1715e, 1715k, 1715*l*, 1715v, 1715y, 1715z, 1715z–1, 1715z–6, 1715z–9, 1715z–10, 1723, 1723a, 1723e, 1735b, 1735c, 2708, 2709, and 2710 of this title, section 5315 of Title 5, Government Organization and Employees, section 461 of former Title 40, Public Buildings, Property, and Works, sections 1437a, 1437c, 1437f, 1437g, 1452b, 1480, 1490, 1490a, 3535, 4056, 4106, 4127, 4521, 5303, 5305, 5307, and 5316 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 1437c and 1723e of this title, section 461 of former Title 40, and section 1382 of Title 42, and amending provisions set out as notes under sections 1715e and 1723e of this title] may be cited as the 'Housing Authorization Act of 1976'.''

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94–13, prec. §1, Apr. 8, 1975, 89 Stat. 68, provided: ''That this Act [amending section 1749bbb of this title and enacting provisions set out as a note under section 1749bbb of this title] may be cited as the 'National Insurance Development Act of 1975'.''

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93–449, §1, Oct. 18, 1974, 88 Stat. 1364, provided that: ''This Act [enacting section 1723e of this title, amending sections 347b, 1430, 1464, 1703, and 1709 of this title, enacting provisions set out as notes under section 1723e of this title, and amending provisions set out as a note under section 1904 of this title] may be cited as the 'Emergency Home Purchase Assistance Act of 1974'.''

SHORT TITLE OF 1970 AMENDMENTS

Pub. L. 91–609, §1, Dec. 31, 1970, 84 Stat. 1770, provided: ''That this Act [enacting sections 1466a, 1701z–1 to 1701z–4, 1709–2, 1735f–2, 1749bbb–6a, and 1749bbb–10a to 1749bbb–10d of this title; sections 694a and 694b of Title 15, Commerce and Trade; and chapter 59 (§§4501 et seq. and 4511 et seq.) of Title 42, The Public Health and Welfare; amending sections 371, 1431, 1432, 1464, 1701s, 1701x, 1703, 1712, 1715c, 1715e, 1715h, 1715*l*, 1715z, 1715z–1, 1715z–3, 1715z–6, 1715z–7, 1717, 1718, 1730a, 1735b to 1735d, 1748h–1, 1748h–2, 1749, 1749bb, 1749cc, 1749aaa, 1749bbb, 1749bbb–2, 1749bbb–7, 1749bbb–8, 1749bbb–11 to 1749bbb–15, 1813, and 1817 of this title; sections 692 to 694 and 1705 of title 15; section 617 of Title 16, Conservation; section 1014 of Title 18, Crimes and Criminal Procedure; section 803 of Title 20, Education; sections 461 and 484b of former Title 40, Public Buildings, Property, and Works; and sections 1401, 1402, 1410, 1415, 1421b, 1453, 1456, 1458, 1460, 1465, 1471, 1474, 1478, 1484 to 1487, 1490, 1492, 1500 to 1500d–1, 3108, 3311, 3356, 3533, 3535, 3906, 3907, and 3911 of Title 42; repealing sections 1701d–3 1701e, and 1701f of this title and sections 1436, 1452a, 3372, and 3373 of Title 42; enacting provisions set out as notes under section 694a of Title 15, and sections 1402, 1415, 1436, 1453, 1500 and 4501 of Title 42; amending provisions set out as notes under sections 1701c, 1716b, and 1749bbb of this title; and repealing provisions set out as notes under sections 1464 and 1701e of this title and section 1456 of Title 42] may be cited as the 'Housing and Urban Development Act of 1970'.''

Pub. L. 91–351, §1, July 24, 1970, 84 Stat. 450, provided: ''That this Act [enacting sections 1451 to 1459 and 1715z–8 of this title, and section 3941 of Title 42, The Public Health and Welfare, amending sections 82, 371, 1464, 1709–1, 1715z–3, 1717, 1719, 1720, 1726, 1730a, and 1749 of this title, and section 3906 of Title 42, and enacting provisions set out as notes under sections 1430, 1451, 1710, and 1715z–8 of this title, and section 1452 of Title 42] may be cited as the 'Emergency Home Finance Act of 1970'.''

SHORT TITLE OF 1969 AMENDMENT

Pub. L. 91–152, §1, Dec. 24, 1969, 83 Stat. 379, provided: ''That this Act [enacting sections 806 and 807 of Title 20, Education, section 484b of former Title 40, Public Buildings, Property, and Works, and sections 1490d and

4056 of Title 42, The Public Health and Welfare, amending sections 1425, 1464, 1701q, 1701s, 1701u, 1703, 1706d, 1707, 1709, 1709–1, 1713, 1715d, 1715e, 1715h, 1715k, 1715*l*, 1715m, 1715n, 1715v, 1715w, 1715y, 1715z, 1715z–1, 1715z–2, 1715z–3, 1717, 1720, 1727, 1748h–1, 1748h–2, 1749, 1749bb, 1749aaa, 1749bbb–8, 1749bbb–9, and 1749bbb–15 of this title, section 1702 of Title 15, Commerce and Trade, sections 801 to 805, and 811 of Title 20, section 461 of former Title 40, sections 1402, 1409, 1410, 1414, 1415, 1421b, 1441c, 1451, 1452, 1452b, 1453, 1455, 1460, 1463, 1466, 1467, 1468, 1468a, 1469b, 1483, 1485, 1487, 1489, 1496, 1500a, 3102, 3108, 3311, 3356, 3371, 3372, 3911, 4001, 4012, 4022, 4102, and 4121, of Title 42, and sections 1603 and 1604 of Title 49, Transportation, repealing section 1488 of Title 42, and enacting provisions set out as notes under section 1727 of this title, and section 1402 of Title 42] may be cited as the 'Housing and Urban Development Act of 1969'.''

SHORT TITLE OF 1968 AMENDMENTS

Pub. L. 90–448, §1, Aug. 1, 1968, 82 Stat. 476, provided: ''That this Act [enacting sections 1701t to 1701z, 1715z to 1715z–7, 1716b and 1749bbb to 1749bbb–21 of this title, sections 1701 to 1720 of Title 15, Commerce and Trade, and sections 1417a, 1441a to 1441c, 1468a, 1469 to 1469c, 1490a to 1490c, 3533a, 3901 to 3914, 3931 to 3940, 4001, 4011 to 4027, 4041, 4051 to 4055, 4071, 4072, 4081 to 4084, 4101 to 4103, and 4121 to 4127 of Title 42, The Public Health and Welfare, amending sections 24, 371, 378, 1431, 1432, 1436, 1464, 1701d–4, 1701q, 1701s, 1703, 1709, 1709–1, 1715c, 1715e, 1715k to 1715*o*, 1715q, 1715r, 1715w to 1715y, 1716, 1717 to 1723a, 1723c, 1735c, 1735d, 1748h–2, 1749, 1749b, 1749c, 1749aaa and 1757 of this title, sections 5315 of Title 5, Government Organization and Employees, sections 633 and 636 of Title 15, section 709 of Title 18, Crimes and Criminal Procedure, sections 801, 802 and 805 of Title 20, Education, section 846 of former Title 31, Money and Finance, section 1820 [now 3720] of Title 38, Veterans' Benefits, sections 461, 462 and 612 of former Title 40, Public Buildings, Property and Works, section 207 of former Title 40, Appendix, sections 1401, 1402, 1403, 1410, 1415, 1420, 1421b, 1436, 1451, 1452 to 1453, 1455, 1456, 1457, 1460, 1462, 1465 to 1468, 1483, 1484, 1492, 1500a, 1500d, 2414, 3101, 3102, 3104, 3108, 3311, 3331, 3332, 3335, 3336, 3338, 3356, 3372, 3534 and 3535 of Title 42, and sections 1603 to 1605 and 1608 of Title 49, Transportation, repealing sections 1417, 2401 to 2413 and 2415 to 2421 of Title 42, and note set out under section 2401 of Title 42, and enacting provisions set out as notes under this section and sections 1701c, 1709, 1709–1, 1715z, 1715z–1, 1716b, 1717, 1721 and 1749bbb of this title, section 7313 of Title 5, section 1701 of Title 15, and sections 1417, 1436, 1452, 1469, 3901 and 4001 of Title 42] may be cited as the 'Housing and Urban Development Act of 1968'.''

Pub. L. 90–448, title XI, §1101, Aug. 1, 1968, 82 Stat. 555, provided that: ''This title [enacting subchapter IX–C of chapter 13 of this title and section 3533a of Title 42, The Public Health and Welfare, amending sections 1701s(c)(2)(E), 1709(h) and 1735d(b) of this title, section 5315 of Title 5, Government Organization and Employees, section 636 of Title 15, and section 1462 of Title 42, and enacting provisions set out as a note under section 7313 of Title 5] may be cited as the 'Urban Property Protection and Reinsurance Act of 1968'.''

Pub. L. 90–255, §1, Feb. 14, 1968, 82 Stat. 5, provided: ''That this Act [amending section 1730a of this title] may be cited as the 'Savings and Loan Holding Company Amendments of 1967'.''

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–429, §1, May 24, 1966, 80 Stat. 164, provided: ''That this act [enacting section 745 of Title 20, Education, amending sections 1717, 1720(c), 1749(d), and 1757(7) of this title, section 1988(c) of Title 7, Agriculture, and section 743(c) of Title 20, and enacting provisions set out as a note under section 1717 of this title and section 262 of former Title 5, Executive Departments and Government Officers and Employees] may be cited as the 'Participation Sales Act of 1966'.''

SHORT TITLE OF 1965 AMENDMENT

Pub. L. 89–117, §1, Aug. 10, 1965, 79 Stat. 451, provided: ''That this Act [enacting sections 1701s and 1735c to 1735h, and subchapter IX–A of chapter 13 of this title, subchapter IV–A of chapter 14B of Title 15, Commerce and Trade, and sections 1421b, 1466 to 1468, 1500c–1, 1500c–2, 1500c–3, and 1487 to 1490, and chapters 36 and 37 of Title 42, The Public Health and Welfare, and provisions set out as notes under sections 1701d–3, 1701q, and 1749 of this title, section 462 of former Title 40, Public Buildings, Property, and Works, and sections 1451, 1453, 1455, 1460, 1465, 1466, and 3074 of Title 42, amending sections 371, 1464, 1701q, 1701*o*, 1701h, 1702, 1703, 1706c, 1709, 1710, 1713, 1715, 1715c, 1715e, 1715h, 1715k, 1715*l*, 1715m, 1715n, 1715t, 1715v, 1715w, 1715x, 1715y, 1717, 1718, 1720, 1721, 1727, 1739, 1743, 1744, 1747f, 1747g, 1748b, 1748h, 1748h–1, 1748h–2, 1749, 1749c, 1750, 1750c, and 1750g of this title, sections 633 and 671 of Title 15, sections 802 and 803 of Title 20, Education, sections 1804 [now 3704] and 1816 [now 3732] of Title 38, Veterans' Benefits, sections 461 and 462 of former Title 40, sections 1402, 1410, 1412, 1415, 1421a, 1422, 1451, 1452, 1452b, 1453, 1455, 1456, 1460, 1463, 1465, 1471, 1472, 1476, 1481, 1482, 1483, 1485, 1492, 1500, 1500a, 1500b, 1500c, 1500d, and 1500e of Title 42, and sections 1605 and 1608 of Title 49, Transportation, and repealing sections 1715j, 1737, 1740, 1747i, 1748a, 1748c, 1750a and 1750d of this title] may be cited as the 'Housing and Urban Development Act of 1965'.''

SHORT TITLE OF 1964 AMENDMENT

Pub. L. 88–560, §1, Sept. 2, 1964, 78 Stat. 769, provided: ''That this act [enacting sections 1730b, 1735a, and 1735b of this title, sections 801 to 805 and 811 of Title 20, Education, and sections 1452b, 1465, and 1486 of Title 42, The Public Health and Welfare, amending sections 24, 371, 1430, 1431, 1436, 1464, 1701q, 1703, 1709, 1710, 1713, 1715c, 1715e, 1715k to 1715n, 1715r, 1715u to 1715y, 1717, 1719 to 1721, 1723b, 1723c, 1726, 1739, 1748h–2, 1749c, and 1750c of this title, sections 636 and 637 of Title 15, Commerce and Trade, sections 1820 and 1823 of Title 38, Veterans' Benefits, sections 461 and 462 of former Title 40, Public Buildings, Property and Works, and sections 1402, 1410, 1415, 1436, 1451, 1452, 1452a, 1453, 1455, 1456, 1457, 1460, 1476, 1481 to 1483, 1485, 1492, 1500a, and 1504a of Title 42, and enacting provisions set out as notes under section 1713 of this title, section 461 of former Title 40, and sections 1415, 1451, 1455, 1460, and 1465 of Title 42] may be cited as the 'Housing Act of 1964'.''

SHORT TITLE OF 1962 AMENDMENT

Pub. L. 87–723, §1, Sept. 28, 1962, 76 Stat. 670, provided: ''That this Act [enacting section 1701r of this title and section 1485 of Title 42, The Public Health and Welfare, and amending sections 84 and 1701q of this title and sections 1471, 1472, 1474, 1476 and 1481 of Title 42] may be cited as the 'Senior Citizens Housing Act of 1962.' ''

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87–70, §1, June 30, 1961, 75 Stat. 149, provided: ''That this Act [enacting sections 1715x and 1715y of this title and sections 1436, 1484, 1497 and 1500 to 1500e of Title 42, The Public Health and Welfare, amending sections 371, 1464, 1701c, 1701q, 1703, 1709, 1710, 1713, 1715, 1715c, 1715e, 1715h, 1715j, 1715k, 1715*l*, 1715n, 1715*o*, 1715q, 1715r, 1715t, 1715v, 1715w, 1717, 1718, 1719, 1720, 1721, 1723a, 1723b, 1748b, 1748h–2, 1749, 1749b, 1749c, and 1750jj of this title, section 631, 633 and 636 of Title 15, Commerce and Trade, sections 461 and 462 of former Title 40, Public Buildings, Property, and Works, and sections 1402, 1410, 1415, 1421, 1421a, 1434, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1460, 1463, 1471, 1472, 1476, 1477, 1478, 1481, 1482, 1483, 1491, 1492, 1493, and 1594i of Title 42, and amending provisions set out as a note under section 1592c of Title 42] may be cited as the 'Housing Act of 1961'.''

SHORT TITLE OF 1959 AMENDMENT

Pub. L. 86–372, §1, Sept. 23, 1959, 73 Stat. 654, provided: ''That this Act [enacting sections 1701q, 1715t to 1715w,

and 1748–2 of this title, and section 1463 of Title 42, The Public Health and Welfare, amending sections 24, 1464, 1703, 1706c, 1709, 1710, 1713, 1715c to 1715e, 1715h, 1715k–1715m, 1715r, 1717, 1719 to 1721, 1723b, 1731a, 1747, 1748b, 1748g, 1748h–1, 1749, 1749a, 1749c, and 1750jj of this title, sections 461 and 462 of former Title 40, Public Buildings, Property and Works, and sections 1401, 1402, 1410, 1415, 1450, 1451, 1452, 1453, 1455, 1456, 1457, 1460, 1586, 1594a and 1594j of Title 42, repealing section 1715i of this title, and enacting provisions set out as notes under sections 1720 and 1721 of this title and under sections 1456, 1460, 1476 and 1592c of Title 42] may be cited as the 'Housing Act of 1959'.''

SHORT TITLE OF 1956 AMENDMENT

Act Aug. 7, 1956, ch. 1029, §1, 70 Stat. 1091, provided: ''That this Act [enacting sections 1701d–3 and 1701h–1, of this title and sections 1462, 1496, 1589d, and 1594f of Title 42, The Public Health and Welfare; amending sections 1464, 1703, 1709, 1713, 1715e, 1715h, 1715k, 1715*l*, 1715r, 1717 to 1721, 1748, 1748b and 1749 of this title; section 694*l* of former Title 38, Pensions, Bonuses, and Veterans' Relief; section 461 of former Title 40, Public Buildings, Property, and Works; and sections 1402, 1410, 1412, 1415, 1421, 1451, 1452, 1454, 1455, 1456, 1460, 1481 to 1483, 1594, 1594a, 1594b, 1594c of Title 42; repealing section 1411b of Title 42; and enacting provisions set out as notes under section 1703 of this title and under sections 1481, 1592c and 1594 of Title 42] may be cited as the 'Housing Act of 1956'.''

SHORT TITLE OF 1955 AMENDMENT

Act Aug. 11, 1955, ch. 783, §1, 69 Stat. 635, provided: ''That this Act [enacting section 1701d–2 of this title and sections 1491 to 1495 and 1594 to 1594e of Title 42, The Public Health and Welfare; amending sections 1426, 1427, 1437, 1464, 1703, 1710, 1713, 1715e, 1715h, 1715k, 1715*l*, 1715n, 1715r, 1720, 1726, 1729, 1739, 1748 to 1748g, 1749, 1749c of this title; section 462 of former Title 40, Public Buildings, Property, and Works; sections 1410, 1451, 1453, 1456, 1460, 1481 to 1483, 1585 and 1591c of Title 42; and sections 480, 480a, 721, 721a, 910, 910a, 1408, 1408b, and 1408c of Title 48, Territories and Insular Possessions; repealing sections 1748g–1 and 1748h of this title; and enacting provisions set out as notes under sections 1426, 1715e, and 1749 of this title; section 1594 of Title 42; and under sections 480 and 1408 of Title 48] may be cited as the 'Housing Amendments of 1955'.''

Act Aug. 11, 1955, ch. 783, title III, §304, 69 Stat. 646, provided that the amendments to sections 1749 and 1749c of this title by act Aug. 11, 1955, may be cited as the ''College Housing Amendments of 1955''.

SHORT TITLE OF 1954 AMENDMENT

Act Aug. 2, 1954, ch. 649, §1, 68 Stat. 590, provided: ''That this Act [enacting sections 1701j–1, 1701n to 1701p, 1702a, 1715k to 1715s, 1722 to 1723d, 1731a, 1731b, 1746a and 1750aa to 1750jj of this title; sections 460 to 462 of former Title 40, Public Buildings, Property, and Works; and sections 1411d, 1434, 1435, 1446, 1450, 1452a, 1455a, and 1589c of Title 42, The Public Health and Welfare; amending sections 24, 1430, 1431, 1436, 1464, 1701, 1703, 1706c, 1709, 1710, 1711, 1713, 1715c, 1715e, 1715h, 1715j, 1716, 1717 to 1721, 1725, 1728, 1729, 1730, 1748b, 1749, 1750b, 1750c and 1750g of this title; section 709 of Title 18, Crimes and Criminal Procedure; section 272 of Title 20, Education; section 694a of former Title 38, Pensions, Bonuses, and Veterans' Relief; section 459 of former Title 40; and sections 1407, 1410, 1415, 1416, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1459, 1460, 1481 to 1483, 1585, 1587, 1591c and 1592a of Title 42; repealing sections 1701j, 1706, 1716–1 and 1716a of this title; section 456 of former Title 40; sections 1451a, 1461 and 1551 of Title 42; and sections 484e, 724, and 1426 of Title 48, Territories and Insular Possessions; and enacting provisions set out as notes under sections 1703, 1710, 1715n, 1715s, and 1716 of this title; section 846 of former Title 31, Money and Finance; and under sections 1434, 1446, and 1450 of Title 42] may be cited as the 'Housing Act of 1954'.''

Section 201 of act Aug. 2, 1954, which generally amended subchapter III of this chapter, provided by section 312 of act June 27, 1934, as added to that act by section 201, that subchapter III of this chapter, may be referred to as the ''Federal National Mortgage Association Charter Act''.

SHORT TITLE OF 1953 AMENDMENT

Act June 30, 1953, ch. 170, §1, 67 Stat. 121, provided: ''This Act [enacting sections 1715j and 1735 of this title, and sections 723 and 1425 of Title 48, Territories and Insular Possessions; amending sections 1701j, 1706c(b), 1709, 1711(c)(i), 1715d, 1715e(d), 1715h, 1716(a), 1716–1, 1717, 1748b(a), (b), 1749(a), 1750b(a), and 1750g(b) of this title, sections 1402(10), 1456(e), 1460(g), 1591(a), 1591c, 1592d(c), and 1592n(e) of Title 42, The Public Health and Welfare, and section 2166(c) of the Appendix to Title 50, War and National Defense; and enacting provisions set out as a note under section 1463 of this title, relating to dissolution and abolishment of the Home Owners' Loan Corporation] may be cited as the 'Housing Amendments of 1953'.''

SHORT TITLE OF 1952 AMENDMENT

Act July 14, 1952, ch. 723, §1, 66 Stat. 601, provided that: ''This Act [enacting sections 1701m, 1706d, and 1715i of this title and amending sections 1422, 1423, 1464, 1466, 1701g–2, 1707, 1713, 1715d, 1715h, 1716, 1717, 1726, 1736, 1745, 1747*l*, 1748, and 1750b of this title; sections 1481 to 1483, 1589a, 1592a, 1592*l*, and 1593 of Title 42, The Public Health and Welfare; and sections 484 and 484d of Title 48, Territories and Insular Possessions] may be cited as the 'Housing Act of 1952'.''

SHORT TITLE OF 1950 AMENDMENT

Act Apr. 20, 1950, ch. 94, §1, 64 Stat. 48, provided that ''This Act [enacting sections 1701j to 1701*l*, 1715e, 1715f, and 1749 to 1749c of this title and sections 1581 to 1589 and 1590 of Title 42, The Public Health and Welfare; amending sections 371, 1430, 1701c, 1703, 1705, 1706, 1706b, 1706c, 1707 to 1709, 1710 to 1715, 1715b, 1715c, 1716, 1717, 1720, 1721, 1736 to 1746, 1747 to 1747c, and 1747e to 1747*l* of this title, section 1017 of Title 7, Agriculture, section 604 of Title 15, Commerce and Trade, and sections 1412, 1521 to 1524, 1532, 1533, 1542 to 1548, 1552, 1553, 1561, 1571, 1572, and 1575 of Title 42; and enacting provisions set out as notes under sections 1701, 1701k, 1703, and 1709 of this title, section 1017 of Title 7, and section 1412 of Title 42] may be cited as the 'Housing Act of 1950'.''

SHORT TITLE OF 1948 AMENDMENT

Act Aug. 10, 1948, ch. 832, §1, 62 Stat. 1268, provided that: ''This Act [enacting sections 1701c, 1701e to 1701g–3, 1702, 1703, 1709, 1710, 1713, 1716, 1738, 1743 to 1746, and 1747 to 1747*l* of this title; section 846 of former Title 31, Money and Finance; section 694 of former Title 38, Pensions, Bonuses, and Veterans' Relief; and section 1404a of Title 42, The Public Health and Welfare] may be cited as the 'Housing Act of 1948'.''

REGULATIONS

Pub. L. 106–569, title VIII, §802, Dec. 27, 2000, 114 Stat. 3018, provided that: ''The Secretary of Housing and Urban Development (referred to in this title as the 'Secretary') shall issue any regulations to carry out this title [see section 801 of Pub. L. 106–569, set out as a Short Title of 2000 Amendment note above] and the amendments made by this title that the Secretary determines may or will affect tenants of federally assisted housing only after notice and opportunity for public comment in accordance with the procedure under section 553 of title 5, United States Code, applicable to substantive rules (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). Notice of such proposed rulemaking shall be provided by publication in the Federal Register. In issuing such regulations, the Secretary shall take such actions as may be necessary to ensure that such tenants are notified of, and provided an opportunity to participate in, the rulemaking, as required by such section 553.''

SAVINGS PROVISION

Pub. L. 110–289, div. B, title I, § 2131, July 30, 2008, 122 Stat. 2843, provided that: ''Any mortgage insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.] before the date of enactment of this subtitle [July 30, 2008] shall continue to be governed by the laws, regulations, orders, and terms and conditions to which it was subject on the day before the date of the enactment of this subtitle.''

IMPLEMENTATION

Pub. L. 110–289, div. B, title I, § 2132, July 30, 2008, 122 Stat. 2843, provided that: ''The Secretary of Housing and Urban Development shall by notice establish any additional requirements that may be necessary to immediately carry out the provisions of this subtitle [subtitle A (§§ 2111–2133) of title I of div. B of Pub. L. 110–289, see Short Title of 2008 Amendment note above]. The notice shall take effect upon issuance.''

PREFERENCES FOR NATIVE HAWAIIANS ON HAWAIIAN HOME LANDS UNDER HUD PROGRAMS

Secretary of Housing and Urban Development to provide a preference to native Hawaiians for housing assistance programs under this chapter for housing located on Hawaiian home lands, see section 958 of Pub. L. 101–625, set out as a note under section 1437f of Title 42, The Public Health and Welfare.

LIMITATION ON WITHHOLDING OR CONDITIONING OF ASSISTANCE

Assistance provided for in Housing and Community Development Act of 1974, National Housing Act, United States Housing Act of 1937, Housing Act of 1949, Demonstration Cities and Metropolitan Development Act of 1966, and Housing and Urban Development Acts of 1965, 1968, 1969, and 1970 not to be withheld or made subject to conditions by reason of tax-exempt status of obligations issued or to be issued for financing of assistance, except as otherwise provided by law, see section 817 of Pub. L. 93–383, set out as a note under section 5301 of Title 42, The Public Health and Welfare.

§ 1701a. Short title of amendment of 1938

The Act of February 3, 1938, ch. 13, 52 Stat. 8, may be cited as the ''National Housing Act Amendments of 1938.''

(Feb. 3, 1938, ch. 13, § 1, 52 Stat. 8.)

REFERENCES IN TEXT

The National Housing Act Amendments of 1938, referred to in text, enacted sections 1715a, 1715b, and 1733 of this title and amended sections 24, 1703, 1707 to 1709, 1710 to 1715, 1716, 1717, 1718, and section 1731 [see sections 433, 493, 657, 1006, and 1008 to 1010 of Title 18, Crimes and Criminal Procedure] of this title.

CODIFICATION

Section was enacted as part of the National Housing Act Amendments of 1938, and not as part of the National Housing Act which comprises this chapter.

§ 1701b. Short title of amendment of 1942

The Act of May 26, 1942, ch. 319, 56 Stat. 301, may be cited as the ''National Housing Act Amendments of 1942''.

(May 26, 1942, ch. 319, § 15, 56 Stat. 305.)

REFERENCES IN TEXT

The National Housing Act Amendments of 1942, referred to in text, enacted section 1743 of this title, amended heading of subchapter VI of this chapter [preceding section 1736 of this title], amended sections 1703, 1715c, 1737, 1738, 1739, and 1740 of this title, and enacted provisions set out as a note under section 1743 of this title.

CODIFICATION

Section was enacted as part of the National Housing Act Amendments of 1942, and not as part of the National Housing Act which comprises this chapter.

§ 1701c. Secretary of Housing and Urban Development

In carrying out his functions, powers, and duties—

(a) Employment of personnel; delegation of functions

The Secretary of Housing and Urban Development may appoint such officers and employees as he may find necessary, which appointments shall be subject to the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5. The Secretary may make such expenditures as may be necessary to carry out his functions, powers, and duties, and there are authorized to be appropriated to the Secretary, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out such functions, powers, and duties and for administrative expenses in connection therewith. The Secretary, without in any way relieving himself from final responsibility, may delegate any of his functions and powers to such officers, agents, or employees as he may designate, may authorize such successive redelegations of such functions and powers, as he may deem desirable, and may make such rules and regulations as may be necessary to carry out his functions, powers, and duties.

(b) Omitted

(c) Additional powers and duties of Secretary and Federal Home Loan Bank Board

The Secretary of Housing and Urban Development and the Director of the Office of Thrift Supervision, respectively, may, in addition to and not in derogation of any powers and authorities conferred elsewhere in this Act.

(1) with the consent of the agency or organization concerned, accept and utilize equipment, facilities, or the services of employees of any Federal, State, or local public agency or instrumentality, educational institution, or nonprofit agency or organization and, in connection with the utilization of such services, may make payments for transportation while away from their homes or regular places of business and per diem in lieu of subsistence en route and at place of such service, in accordance with the provisions of section 5703 of title 5;

(2) utilize, contract with and act through, without regard to section 6101 of title 41, any Federal, State, or local public agency or instrumentality, educational institution, or non-profit agency or organization with the consent of the agency or organization concerned, and any funds available to said officers for carrying out their respective functions, powers, and duties shall be available to reimburse or pay any such agency or organization; and, whenever in the judgment of any such officer necessary, he may make advance, progress, or other payments with respect to such contracts without regard to the provisions of subsections (a) and (b) of section 3324 of title 31; and

(3) make expenditures for all necessary expenses, including preparation, mounting, shipping, and installation of exhibits; purchase and exchange of technical apparatus; and such other expenses as may, from time to time, be found necessary in carrying out their respective functions, powers, and duties: *Provided*, That funds made available for administrative expenses in carrying out the functions, powers, and duties imposed upon the Secretary of Housing and Urban Development and the Federal Home Loan Bank Board,[1] respectively, by or pursuant to law may at their option be consolidated into a single administrative expense fund accounts of such officer or agency for expenditure by them, respectively, in accordance with the provisions hereof.

(d) Use of funds for library memberships

The Secretary of Housing and Urban Development may utilize funds made available to him for salaries and expenses for payment in advance for dues or fees for library memberships in organizations (or for membership of the individual librarians in organizations which will not accept library membership) whose publications are available to members only, or to members at a price lower than to the general public, and for payment in advance for publications available only upon that basis or available at a reduced price on prepublication order.

(Aug. 10, 1948, ch. 832, title V, §502, 62 Stat. 1283; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Apr. 20, 1950, ch. 94, title V, §503, 64 Stat. 80; Pub. L. 87–70, title IX, §909, June 30, 1961, 75 Stat. 192; Pub. L. 90–19, §5(d)(1)–(3), (8)–(13), May 25, 1967, 81 Stat. 21; Pub. L. 98–479, title II, §§202(b), 203(c), Oct. 17, 1984, 98 Stat. 2228, 2229; Pub. L. 100–242, title V, §570(a)(1), (3), Feb. 5, 1988, 101 Stat. 1949, 1950; Pub. L. 101–73, title III, §306, Aug. 9, 1989, 103 Stat. 352; Pub. L. 111–203, title III, §370, July 21, 2010, 124 Stat. 1565.)

AMENDMENT OF SUBSECTION (c)

Pub. L. 111–203, title III, §§351, 370, July 21, 2010, 124 Stat. 1546, 1565, provided that, effective on the transfer date, subsection (c) of this section is amended:

(1) in introductory provisions, by substituting '', the Comptroller of the Currency, and the Federal Deposit Insurance Corporation'' for ''and the Director of the Office of Thrift Supervision''; and

(2) in paragraph (3), by substituting ''Agency'' for ''Board''.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is act Aug. 10, 1948, ch. 832, 62 Stat. 1268, as amended, known as the Housing Act of 1948. For complete classification of this Act to the Code, see Short Title of 1948 Amendments note set out under section 1701 of this title and Tables.

CODIFICATION

In subsec. (c)(2), ''section 6101 of title 41'' substituted for ''section 3709 of the Revised Statutes'' on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

[1] So in original. Probably should refer to the Director of the Office of Thrift Supervision.

Subsec. (b) of section 502 of act Aug. 10, 1948, is set out as section 1404a of Title 42, The Public Health and Welfare.

Section was enacted as part of the Housing Act of 1948, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–73, §306(a), which directed the substitution of ''Director of the Office of Thrift Supervision'' for ''Federal Home Loan Bank Board (which term as used in this section shall also include and refer to the Federal Savings and Loan Insurance Corporation, the Home Owners Loan Corporation, and the Chairman of the Federal Home Loan Bank Board)'', was executed as directed, except that ''Home Owners' '' rather than ''Home Owners'' appeared in the original in the language struck out.

Subsec. (c)(1). Pub. L. 101–73, §306(b), substituted ''of any Federal, State, or local'' for ''of any State or local''.

1988—Subsec. (a). Pub. L. 100–242, §570(a)(1), struck out ''The Secretary of Commerce or his designee shall hereafter be included in the membership of the National Housing Council.''

Subsec. (c)(2). Pub. L. 100–242, §570(a)(3), inserted ''and'' at end.

1984—Subsec. (a). Pub. L. 98–479, §202(b)(1), substituted ''chapter 51 and subchapter III of chapter 53 of title 5'' for ''the Classification Act of 1949, as amended''.

Subsec. (c)(1). Pub. L. 98–479, §202(b)(2), substituted ''section 5703 of title 5'' for ''5 U.S.C. 73b–2''.

Subsec. (c)(2). Pub. L. 98–479, §203(c), substituted ''subsections (a) and (b) of section 3324 of title 31'' for ''section 3648 of the Revised Statutes [31 U.S.C. 529]''.

1967—Subsec. (a). Pub. L. 90–19, §5(d)(1)–(3), substituted ''Secretary of Housing and Urban Development'' for ''Housing and Home Finance Administrator'' and ''Secretary'' for ''Administrator'' wherever appearing, and struck out provision for preparation of official seal and judicial notice thereof.

Subsec. (c). Pub. L. 90–19, §5(d)(8), (9), substituted ''Secretary of Housing and Urban Development and the Federal Home Loan Bank Board'' for ''Housing and Home Finance Administrator, the Home Loan Bank Board'' where it first appears and ''Federal Home Loan Bank Board'' for ''Home Loan Bank Board, the Federal Housing Commissioner, and the Public Housing Commissioner''.

Subsec. (c)(3). Pub. L. 90–19, §5(d)(10), (11), substituted ''Secretary of Housing and Urban Development and the Federal Home Loan Bank Board'' and ''such officer or agency'' for ''Housing and Home Finance Administrator, the Home Loan Bank Board, the Federal Housing Commissioner, and the Public Housing Commissioner'' and ''said officers or agencies''.

Subsec. (d). Pub. L. 90–19, §5(d)(12), (13), substituted ''Secretary of Housing and Urban Development may utilize funds made available to him'' for ''Housing and Home Finance Administrator, the Federal Housing Commissioner and the Public Housing Commissioner, respectively, may utilize funds made available to them'' and struck out ''of the respective agencies'' after ''librarians''.

1961—Subsec. (c)(3). Pub. L. 87–70, §909(1), struck out provisions which made section 5 of title 41 inapplicable to any purchase or contract by officers (or their agencies) for services or supplies if the amount thereof does not exceed $300.

Subsec. (d). Pub. L. 87–70, §909(2), added subsec. (d).

1950—Act Apr. 20, 1950, amended third sentence of subsec. (a) to authorize the Administrator to permit redelegation of functions and powers which he had delegated previously to officers, agents, and employees but this does not relieve him of any final responsibility, and inserted ''or pay'' after ''reimburse'' in subsec. (c)(2).

1949—Subsec. (a). Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923''.

EFFECTIVE DATE OF 2010 AMENDMENT

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

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to Secretary of Housing and Urban Development, see Parts 1, 2, and 9 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

ANNUAL REPORT ON AREAS OF PROGRAM ADMINISTRATION AND MANAGEMENT WHICH REQUIRE IMPROVEMENT

Pub. L. 90–448, § 5, Aug. 1, 1968, 82 Stat. 477, as amended by Pub. L. 91–609, title IX, § 918, Dec. 31, 1970, 84 Stat. 1816, directed Secretary to report annually to Committees on Banking and Currency of House and Senate, identifying specific areas of program administration and management which require improvement, describing actions taken and proposed, and recommendations for legislation, prior to repeal by Pub. L. 93–608, § 1(9), Jan. 2, 1975, 88 Stat. 1968.

EXECUTIVE ORDER NO. 11196

Ex. Ord. No. 11196, Feb. 2, 1965, 30 F.R. 1171, which delegated functions to Housing and Home Finance Administrator, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 1701c–1. Omitted

CODIFICATION

Section, act June 24, 1954, ch. 359, title I, § 101, 68 Stat. 283, provided for promotion of economy, efficiency and fidelity in operations of Housing and Home Finance Agency by its Administrator, on and after June 24, 1954, under Reorg. Plan No. 3 of 1947, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954, set out in the Appendix to Title 5, Government Organization and Employees, through assignment and reassignment of functions, reorganizations, and reallocation and transfers of administrative expense funds and authority. Functions, powers, and duties of such agency, its head and other officers were transferred to and vested in the Secretary of Housing and Urban Development by Pub. L. 89–174, § 5, Sept. 9, 1965, 79 Stat. 669, classified to section 3534 of Title 42, The Public Health and Welfare.

§ 1701d. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 655

Section, acts Aug. 10, 1948, ch. 832, title V, § 501(a), 62 Stat. 1283; Oct. 15, 1949, ch. 695, § 3, 63 Stat. 880, provided for compensation of Housing and Home Finance Administrator.

§§ 1701d–1, 1701d–2. Repealed. Pub. L. 90–19, §§ 6(i), 12(a), May 25, 1967, 81 Stat. 22, 23

Section 1701d–1, act July 15, 1949, ch. 338, title VI, § 605, 63 Stat. 440, provided for appointment and duties of a Deputy Housing and Home Finance Administrator, including status of acting Administrator during absence, disability, or vacancy in office.

Section 1701d–2, act Aug. 11, 1955, ch. 783, title I, § 113, 69 Stat. 642, prescribed compensation of Community Facilities Commissioner at same rate established for heads of constituent agencies of the Housing and Home Finance Agency. See section 5315 of Title 5, Government Organization and Employees. Section was previously repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 658.

§ 1701d–3. Repealed. Pub. L. 91–609, title V, § 503(3), Dec. 31, 1970, 84 Stat. 1785

Section, acts Aug. 7, 1956, ch. 1029, title VI, § 602, 70 Stat. 1113; May 25, 1967, Pub. L. 90–19, § 13(b), 81 Stat. 24; Aug. 12, 1970, Pub. L. 91–375, § 6(e), 84 Stat. 776, related to research and provided for: authorization for specific programs; contracts and working agreements, amount of authorization, appropriations, duration of contract, and unexpended balances of appropriations; dissemination of data; acquisition and use of data; and authority of Secretary. See sections 1701z–1 to 1701z–4 of this title.

§ 1701d–4. Exchange and assembly of housing and urban planning and development data; payment of expenses; acceptance of funds, services, facilities, materials, and other donations; approval of Secretary of State for international programs and activities

(a) The Secretary of Housing and Urban Development may exchange data relating to housing and urban planning and development with other nations and assemble such data from other nations, through participation in international conferences and other means, where such exchange or assembly is deemed by him to be beneficial in carrying out his responsibilities under the Department of Housing and Urban Development Act [42 U.S.C. 3531 et seq.] or other legislation. In carrying out his responsibilities under this subsection the Secretary may—

(1) pay the expenses of participation in activities conducted under authority of this section including, but not limited to, the compensation, travel expenses, and per diem in lieu of subsistence of persons serving in an advisory capacity while away from their homes or regular places of business in connection with attendance at international meetings and conferences, or other travel for the purpose of exchange or assembly of data relating to housing and urban planning and development; but such travel expenses shall not exceed those authorized for regular officers and employees traveling in connection with said activities; and

(2) accept from international organizations, foreign countries, and private nonprofit foundations, funds, services, facilities, materials, and other donations to be utilized jointly in carrying out activities under this section.

(b) International programs and activities carried out by the Secretary under the authority provided in subsection (a) of this section shall be subject to the approval of the Secretary of State for the purpose of assuring that such authority shall be exercised in a manner consistent with the foreign policy of the United States.

(Pub. L. 85–104, title VI, § 604, July 12, 1957, 71 Stat. 305; Pub. L. 90–19, § 14(b), May 25, 1967, 81 Stat. 24; Pub. L. 90–448, title XVII, § 1709, Aug. 1, 1968, 82 Stat. 606.)

REFERENCES IN TEXT

The Department of Housing and Urban Development Act, referred to in subsec. (a), is Pub. L. 89–174, Sept. 9,

1965, 79 Stat. 667, as amended, which is classified generally to chapter 44 (§ 3531 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3531 of Title 42 and Tables.

CODIFICATION

Introductory provisions of subsec. (a) are set out in this supplement to correct an error in the main edition.

Section was enacted as part of the Housing Act of 1957, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1968—Pub. L. 90–448 designated existing provisions as subsec. (a), inserted reference to assembly of data from other nations, and authorized payment of expenses of participation in activities conducted under authority of this section, and acceptance from international organizations, foreign countries, and private nonprofit foundations of funds, services, facilities, materials and other donations to be utilized jointly, and added subsec. (b).

1967—Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' and ''Department of Housing and Urban Development'' for ''Housing and Home Finance Administrator'' and ''Housing and Home Finance Agency'', respectively.

§§ 1701e, 1701f. Repealed. Pub. L. 91–609, title V, § 503(1), Dec. 31, 1970, 84 Stat. 1785

Section 1701e, acts Aug. 10, 1948, ch. 832, title III, § 301, 62 Stat. 1276; July 15, 1949, ch. 338, title IV, § 401, 63 Stat. 431; May 25, 1967, Pub. L. 90–19, § 5(a), 81 Stat. 20; Aug. 12, 1970, Pub. L. 91–375, § 6(f), 84 Stat. 776, related to development and promotion by Secretary of new housing construction techniques, materials, and methods, and provided for: improvement and standardization of building codes, contracts for research and studies, publications, and consolidation of functions and activities; reports to President and Congress on urban and rural nonfarm needs; and surveys and plans by local communities and cooperation by Federal agencies. See sections 1701z–1 to 1701z–4 of this title.

Section 1701f, acts Aug. 10, 1948, ch. 832, title III, § 302, 62 Stat. 1276; July 15, 1949, ch. 338, title IV, § 401, 63 Stat. 431; May 25, 1967, Pub. L. 90–19, § 5(b), 81 Stat. 21, provided for utilization of other Federal agencies; cooperative studies with industry, labor, etc.; and exercise of powers by Secretary. See sections 1701z–1 to 1701z–4 of this title.

§ 1701f–1. Repealed. Pub. L. 90–19, § 5(c), May 25, 1967, 81 Stat. 21

Section, act Aug. 10, 1948, ch. 832, title III, § 304, as added July 15, 1949, ch. 338, title IV, § 401, 63 Stat. 431, provided for appointment, powers, and compensation of a Director. Section was previously repealed by Pub. L. 89–534, § 8(a), Sept. 6, 1966, 80 Stat. 655.

§§ 1701g to 1701g–3. Omitted

CODIFICATION

Sections 1701g to 1701g–3 were from sections 102 to 102c of the Housing Act of 1948, and provided for loans to aid production and distribution of prefabricated housing; provided for loans to assure maintenance of industrial capacity for production of such homes for national defense; provided for the powers of the Housing and Home Finance Administrator; and included mobile or portable houses within the term ''prefabricated houses''. Authority for issuance of section 1701g obligations under section 1(4) of Reorg. Plan No. 23 of 1950 as terminating June 30, 1954, see section 1701g–5 of this title. Authority to make or purchase section 1701g–1 loans or obligations as terminating July 31, 1954, see section 1591c of Title 42, The Public Health and Welfare.

Section 1701g, act Aug. 10, 1948, ch. 832, title I, § 102, 62 Stat. 1275, amended Sept. 1, 1951, ch. 378, title V, § 501, 65 Stat. 311.

Section 1701g–1, act Aug. 10, 1948, ch. 832, title I, § 102a, added Sept. 1, 1951, ch. 378, title V, § 502, 65 Stat. 312.

Section 1701g–2, act Aug. 10, 1948, ch. 832, title I, § 102b, added Sept. 1, 1951, ch. 378, title V, § 502, 65 Stat. 312; amended July 14, 1952, ch. 723, § 10(e), 66 Stat. 604.

Section 1701g–3, act Aug. 10, 1948, ch. 832, title I, § 102c, added Sept. 1, 1951, ch. 378, title V, § 502, 65 Stat. 312.

§ 1701g–4. Omitted

CODIFICATION

Section, which placed restrictions on loans, was from the Independent Offices Appropriation Act, 1953, act July 5, 1952, ch. 578, title III, § 301, 66 Stat. 415, and was not repeated in subsequent appropriation acts.

SIMILAR PROVISIONS

Similar provisions were contained in Aug. 31, 1951, ch. 376, title IV, § 401, 65 Stat. 287.

§ 1701g–5. Revolving fund in connection with liquidating programs

There is established as of June 30, 1954, a revolving fund, and the Secretary of Housing and Urban Development is authorized to credit said fund with all moneys hereafter obtained or now held by him or by any constituent agency of the Department of Housing and Urban Development or any other official thereof, and to account under said fund for all assets and liabilities, in connection with (1) community facilities provided or assisted under title II of the Lanham Act, as amended [42 U.S.C. 1531 et seq.], or under title III of the Defense Housing and Community Facilities and Services Act of 1951, as amended [42 U.S.C. 1592 et seq.]; (2) loans or advances made pursuant to title V of the War Mobilization and Reconversion Act of 1944 (58 Stat. 791), or the Act of October 13, 1949; (3) functions transferred under Reorganization Plan No. 23 of 1950, or authorized under sections 102, 102a, 102b, and 102c of the Housing Act of 1948, as amended [12 U.S.C. 1701g to 1701g–3]; (4) notes or other obligations purchased pursuant to the Alaska Housing Act, as amended (48 U.S.C. 484(a)); (5) subsistence homesteads and greentowns (Acts of June 29, 1936, 49 Stat. 2035, and May 19, 1949, 63 Stat. 68); (6) public war housing under title I of the Lanham Act, as amended [42 U.S.C. 1521 et seq.], and defense housing under title III of the Defense Housing and Community Facilities and Services Act of 1951, as amended [42 U.S.C. 1592 et seq.]; and (7) veterans' re-use housing under title V of the Lanham Act, as amended [42 U.S.C. 1571 et seq.]: *Provided*, That said fund shall be available for all necessary expenses (including administrative expenses) in connection with the liquidation of the programs carried out pursuant to the foregoing provisions of law, including operation, maintenance, improvement, or disposition of facilities, and for disbursements pursuant to outstanding commitments against moneys herein authorized to be credited to said fund, repayment of obligations to the Treasury, and refinancing and refunding operations on existing loans: *Provided further*, That any amount in said fund which is determined to be in excess of requirements for the purposes

hereof shall be declared and paid as liquidating dividends to the Treasury not less often than annually: *Provided further*, That after June 24, 1954, no additional notes or obligations shall be purchased from funds appropriated pursuant to the Alaska Housing Act, as amended (48 U.S.C. 484(d)), except for the furtherance or refinancing of an existing loan: *Provided further*, That except for extensions, or refinancing, of existing obligations the authority to issue obligations to the Secretary of the Treasury under section 1(4) of Reorganization Plan No. 23 of 1950, shall terminate on June 30, 1954.

(June 24, 1954, ch. 359, title II, § 201, 68 Stat. 295.)

REFERENCES IN TEXT

The Lanham Act, as amended, referred to in cls. (1), (6), and (7), is act Oct. 14, 1940, ch. 862, 54 Stat. 1125, as amended, known as the Lanham Public War Housing Act. Title I of the Lanham Act is classified generally to subchapter II (§ 1521 et seq.) of chapter 9 of Title 42, The Public Health and Welfare. Titles II and V of the Lanham Act were classified to subchapters III (§ 1531 et seq.) and VI (§ 1571 et seq.), respectively, of chapter 9 of Title 42, and were omitted from the Code. For further details, see References in Text note set out under section 1522 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 42 and Tables.

The Defense Housing and Community Facilities and Services Act, as amended, referred to in cls. (1) and (6), is act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended. Title III of the Act is classified generally to subchapter IX (§ 1592 et seq.) of chapter 9 of Title 42. For complete classification of this Act to the Code, see Short Title of 1951 Amendment note set out under section 1501 of Title 42 and Tables.

The War Mobilization and Reconversion Act of 1944, referred to in cl. (2), is act Oct. 3, 1944, ch. 480, 58 Stat. 785, as amended, which was classified to section 1651 et seq. of Title 50, Appendix, War and National Defense, and which has been omitted from the Code. Title V of the War Mobilization and Reconversion Act of 1944 was classified to section 1671 of Title 50, Appendix. For complete classification of this Act to the Code, see Tables.

Act of October 13, 1949, referred to in cl. (2), is act Oct. 13, 1949, ch. 685, 63 Stat. 841, as amended, which was classified generally to subchapter I (§ 451 et seq.) of chapter 9 of former Title 40, Public Buildings, Property, and Works. Sections 1–5, 7, and 8 of the Act were repealed by Pub. L. 107–217, § 6(b), Aug. 21, 2002, 116 Stat. 1304. Section 6 of the Act was repealed by act Aug. 2, 1954, ch. 649, title VIII, § 802(b), 68 Stat. 642. See section 1701*o* of this title.

Reorganization Plan No. 23 of 1950, referred to in cl. (3) and in the last proviso, is set out in the Appendix to Title 5, Government Organization and Employees.

The Alaska Housing Act, as amended, referred to in cl. (3) and in the third proviso, is act Apr. 23, 1949, ch. 89, 63 Stat. 57, as amended, which was classified principally to sections 484 to 484d of Title 48, Territories and Insular Possessions and was omitted from the Code, except for section 2(a) of the Act, which added section 214 to the National Housing Act and which is classified to section 1715d of this title. For complete classification of this Act to the Code, see Tables.

Act June 29, 1936, 49 Stat. 2035, referred to in cl. (5), which related to resettlement or rural rehabilitation projects, and which was classified to sections 431 to 434 of former Title 40, Public Buildings, Property, and Works, was repealed by act Aug. 14, 1946, ch. 964, § 2(a)(1), 60 Stat. 1062. See chapter 50 (§ 1921 et seq.) of Title 7, Agriculture.

Act May 19, 1949, 63 Stat. 68, referred to in cl. (5), authorized the sale, without competitive bidding, of certain resettlement projects in Maryland, Wisconsin, and Ohio, and was not classified to the Code.

CODIFICATION

Section was enacted as a part of title II of the Independent Offices Appropriation Act, 1955, and not as part of the National Housing Act which comprises this chapter.

The third and last provisos contained in the original have been omitted from this section. Those provisos contained limitations on amounts available during fiscal year 1955 for certain administrative and other expenses. Similar or related limitations were contained in the following prior appropriation acts:

Oct. 17, 1975, Pub. L. 94–116, title I, 89 Stat. 583.
Sept. 6, 1974, Pub. L. 93–414, title I, 88 Stat. 1096.
Oct. 26, 1973, Pub. L. 93–137, title I, 87 Stat. 492.
Aug. 14, 1972, Pub. L. 92–383, title I, 86 Stat. 541.
Aug. 10, 1971, Pub. L. 92–78, title I, 85 Stat. 273.
Dec. 17, 1970, Pub. L. 91–556, title IV, 84 Stat. 1462.
Nov. 16, 1969, Pub. L. 91–126, title III, 83 Stat. 241.
Oct. 4, 1968, Pub. L. 90–550, title III, 82 Stat. 955.
Nov. 3, 1967, Pub. L. 90–121, title II, 81 Stat. 359.
Sept. 6, 1966, Pub. L. 89–555, title II, 80 Stat. 686.
Aug. 16, 1965, Pub. L. 89–128, title II, 79 Stat. 541.
Aug. 30, 1964, Pub. L. 88–507, title II, 78 Stat. 664.
Dec. 19, 1963, Pub. L. 88–215, title II, 77 Stat. 446.
Oct. 3, 1962, Pub. L. 87–741, title II, 76 Stat. 738.
Aug. 17, 1961, Pub. L. 87–141, title II, 75 Stat. 362.
July 12, 1960, Pub. L. 86–626, title II, 74 Stat. 443.
Sept. 14, 1959, Pub. L. 86–255, title II, 73 Stat. 516.
Aug. 28, 1958, Pub. L. 85–844, title II, 72 Stat. 1080.
June 29, 1957, Pub. L. 85–69, title II, 71 Stat. 240.
June 27, 1956, ch. 452, title II, 70 Stat. 354.
May 19, 1956, ch. 313, Ch. V, 70 Stat. 166.
June 30, 1955, ch. 244, title II, 69 Stat. 213.

TRANSFER OF FUNCTIONS

Functions of Housing and Home Finance Agency and Administrator thereof transferred to Secretary of Housing and Urban Development by section 5(a) of Department of Housing and Urban Development Act (Pub. L. 89–174, Sept. 9, 1965, 79 Stat. 669) which is classified to section 3534(a) of Title 42, The Public Health and Welfare.

§ 1701g–5a. Transfer of New Communities Fund assets and liabilities

The Secretary shall transfer all assets and liabilities of the fund established pursuant to section 717 of the Housing and Urban Development Act of 1970, as amended (42 U.S.C. 4518), to the Revolving fund (liquidating programs) established pursuant to title II of the Independent Offices Appropriation Act, 1955, as amended (12 U.S.C. 1701g–5).

(Pub. L. 98–45, title I, § 101, July 12, 1983, 97 Stat. 223.)

REFERENCES IN TEXT

Section 717 of the Housing and Urban Development Act of 1970, as amended (42 U.S.C. 4518), referred to in text, was repealed by Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239, but remaining in effect until completion of the transfer required in title I of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984.

The Independent Offices Appropriation Act, 1955, as amended, referred to in text, is act June 24, 1954, ch. 359, 68 Stat. 272, as amended. Provisions of title II of this Act relating to the establishment of the revolving fund (liquidating programs) are classified to section 1701g–5 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984, and not as part of the National Housing Act which comprises this chapter.

§ 1701g–5b. Liquidation of New Communities Program; cancellation of debt

(a) Law applicable

In order to provide for the management and orderly liquidation of the assets, and discharge the liabilities, acquired or incurred in connection with the new communities program authorized pursuant to title IV of the Housing and Urban Development Act of 1968 [42 U.S.C. 3901 et seq.] and title VII of the Housing and Urban Development Act of 1970 [42 U.S.C. 4501 et seq.] (hereafter referred to in this section as ''title IV'' and ''title VII'', respectively), the liquidation of the new communities program shall be carried out pursuant to the provisions of law applicable to the revolving fund (liquidating programs) established pursuant to title II of the Independent Offices Appropriations Act, 1955 [12 U.S.C. 1701g–5], upon the transfer by the Secretary of Housing and Urban Development (hereafter in this section referred to as the ''Secretary'') of the assets and liabilities of the fund authorized under section 717 of title VII [42 U.S.C. 4518] to such revolving fund, as required in title I of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984 [12 U.S.C. 1701g–5a]. The Secretary shall report to the Congress not less than sixty days prior to taking any action with respect to the disposition of real property (other than a purchase money mortgage) which involves any further potential liability of or assistance from the Department of Housing and Urban Development with respect to any property so transferred.

(b) Availability of revolving fund moneys for administrative and other expenses

In carrying out the purposes of subsection (a) of this section, all moneys in the revolving fund (liquidating programs) shall be available for necessary administrative and other expenses of servicing and liquidating obligations guaranteed pursuant to section 403 and section 713 of title IV and title VII, respectively [42 U.S.C. 3902, 4514], including costs of services (including legal services) performed on a contract or fee basis, and to discharge any other liability acquired or incurred in connection with the new communities program. Notwithstanding any other provision of law relating to the acquisition, handling, improvement, or disposal of real and other property by the United States, the Secretary of Housing and Urban Development shall also have power, for the protection of the interests of the revolving fund (liquidating programs), to pay out of any moneys in such fund all expenses or charges in connection with the acquisition, handling, improvement, or disposal of any property, real or personal, acquired by the Secretary either prior or subsequent to November 30, 1983, as a result of recoveries under security, subrogation, or other rights in connection with the new communities program.

(c) Issuance of obligations to Secretary of the Treasury

After making the transfer required in title I of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984 [12 U.S.C. 1701g–5a], the Secretary of Housing and Urban Development may issue obligations to the Secretary of the Treasury in an amount sufficient to enable the Secretary of Housing and Urban Development to satisfy any guarantee made pursuant to section 403 or 713 of title IV or title VII, respectively [42 U.S.C. 3902, 4514], and otherwise carry out the functions authorized by this section. The obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations so issued, and for that purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include purchases of obligations issued under this subsection.

(d) Cancellation of obligations

Upon the transfer required in title I of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984 [12 U.S.C. 1701g–5a], each obligation issued by the Secretary of Housing and Urban Development to the Secretary of the Treasury pursuant to section 407(a) or 717(b) of title IV or title VII, respectively [42 U.S.C. 3906(a), 4518(b)], together with any promise to repay the principal and unpaid interest which has accrued on each obligation, and any other term or condition specified by each such obligation, is canceled.

(Pub. L. 98–181, title IV, § 474(a)–(d), Nov. 30, 1983, 97 Stat. 1238, 1239.)

REFERENCES IN TEXT

The Housing and Urban Development Act of 1968, referred to in subsec. (a), is Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IV of the Housing and Urban Development Act, which was classified to chapter 48 (§ 3901 et seq.) of Title 42, The Public Health and Welfare, was repealed, with certain exceptions which were omitted from the Code, by Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239. Sections 403 and 407 of the Housing and Urban Development Act of 1968 were classified to sections 3902 and 3906, respectively, of Title 42, and were repealed by section 474(e) of Pub. L. 98–181. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1701 of this title and Tables.

The Housing and Urban Development Act of 1970, referred to in subsec. (a), is Pub. L. 91–609, Dec. 31, 1970, 84 Stat. 1770, as amended. Title VII of the Housing and Urban Development Act of 1970, known as the Urban Growth and New Community Development Act of 1970, is classified principally to chapter 59 (§ 4501 et seq.) of Title 42. Sections 713 and 717 of the Housing and Urban Development Act of 1970 were classified to sections 4514 and 4518, respectively, of Title 42, and were repealed by Pub. L. 98–181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 1701 of this title and Tables.

The Independent Offices Appropriation Act, 1955, as amended, referred to in subsec. (a), is act June 24, 1954, ch. 359, 68 Stat. 272, as amended. Provisions of title II of this Act relating to the establishment of the revolving fund (liquidating programs) are classified to section 1701g–5 of this title. For complete classification of this Act to the Code, see Tables.

The Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984, referred

to in subsecs. (a), (c), and (d), is Pub. L. 98–45, July 12, 1983, 97 Stat. 219. Provisions of title I of this Act requiring the transfer of assets and liabilities to the revolving fund (liquidating programs) are classified to section 1701g–5a of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Housing and Urban-Rural Recovery Act of 1983 and also as part of the Domestic Housing and International Recovery and Financial Stability Act, and not as part of the National Housing Act which comprises this chapter.

§ 1701g–5c. Transfer of rehabilitation loan fund assets and liabilities

Notwithstanding section 289(c) of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101–625), the assets and liabilities of the revolving fund established by section 1452b[1] of title 42, and any collections, including repayments or recaptured amounts, of such fund shall be transferred to and merged with the Revolving Fund (liquidating programs), established pursuant to title II of the Independent Offices Appropriation Act, 1955, as amended (12 U.S.C. 1701g–5), effective October 1, 1991.

(Pub. L. 102–139, title II, Oct. 28, 1991, 105 Stat. 752.)

REFERENCES IN TEXT

Section 289(c) of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625), referred to in text, is not classified to the Code.

Section 1452b of title 42, referred to in text, was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

The Independent Offices Appropriation Act, 1955, as amended, referred to in text, is act June 24, 1954, ch. 359, 68 Stat. 272, as amended. Provisions of title II of this Act relating to the establishment of the revolving fund (liquidating programs) are classified to section 1701g–5 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, and not as part of the National Housing Act which comprises this chapter.

§ 1701h. Advisory committees; payment of transportation and other expenses

The Secretary of Housing and Urban Development is authorized to establish such advisory committee or committees as he may deem necessary in carrying out any of his functions, powers, and duties under this or any other Act or authorization. Persons serving without compensation as members of any such committee may be paid transportation expenses and not to exceed $25 per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(July 15, 1949, ch. 338, title VI, § 601, 63 Stat. 439; Aug. 2, 1954, ch. 649, title VIII, § 807, 68 Stat. 645; Pub. L. 89–117, title XI, § 1106, Aug. 10, 1965, 79 Stat. 503; Pub. L. 90–19, § 6(h), May 25, 1967, 81 Stat. 22; Pub. L. 98–479, title II, § 202(c), Oct. 17, 1984, 98 Stat. 2228.)

[1] See References in Text note below.

REFERENCES IN TEXT

This Act, referred to in text, is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, known as the Housing Act of 1949, which is classified principally to chapter 8A (§ 1441 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Housing Act of 1949, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1984—Pub. L. 98–479 substituted ''section 5703 of title 5'' for ''section 5 of the Act of August 2, 1946 (5 U.S.C. 73b–2)''.

1967—Pub. L. 90–19 substituted ''The Secretary of Housing and Urban Development'' and ''he'' for ''The Housing and Home Finance Administrator and the head of each constituent agency of the Housing and Home Finance Agency'' and ''each'', respectively.

1965—Pub. L. 89–117 struck out provision that declared inapplicable the conflict-of-interest statutes in the case of members of advisory committees.

1954—Act Aug. 2, 1954, permitted heads of constituent agencies of the Housing and Home Finance Agency to establish advisory committees, inserted provisions relating to inapplicability of the conflict-of-interest statutes with respect to committee members serving without compensation, and inserted provisions relating to payment of expenses.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 10486. ADVISORY COMMITTEE ON GOVERNMENT HOUSING POLICIES AND PROGRAMS

Ex. Ord. No. 10486, Sept. 12, 1953, 18 F.R. 5561, provided:

1. There shall be established the Advisory Committee on Government Housing Policies and Programs.

2. The Committee shall make, or cause to be made, studies and surveys of the housing policies and programs of the Government and the organization within the Executive Branch for the administration of such policies and programs, and shall advise the Housing and Home Finance Administrator and the President with respect thereto.

3. The Housing and Home Finance Administrator shall serve as the Chairman of the Committee, and the other members of the Committee shall be appointed pursuant to the provisions of this Executive Order and Section 601 of the Housing Act of 1949 (63 Stat. 439) [this section].

4. To work directly with the Housing and Home Finance Administrator in the task of directing specific studies and surveys and developing concrete recommendations, there shall be in the Committee an Executive Committee, consisting of members of the Committee designated for such purpose, and the Housing and Home Finance Administrator shall serve as the Chairman of such Executive Committee.

5. Administrative expenses in connection with the work of the Committee, including expenses of advisers and consultants appointed by the Chairman in connection therewith, shall, upon authorization therefor by

the Chairman or his delegate, be paid pursuant to the authority therefor under the heading, ''Housing and Home Finance Agency, Office of the Administrator'' in the Supplemental Appropriation Act, 1954 (Public Law 207, Eighty-third Congress, approved August 7, 1953).

DWIGHT D. EISENHOWER.

§ 1701h–1. Housing for elderly persons advisory committee

The Secretary of Housing and Urban Development shall establish, in accordance with the provisions of section 1701h of this title, an advisory committee on matters relating to housing for elderly persons.

(Aug. 7, 1956, ch. 1029, title I, § 104(d), 70 Stat. 1093; Pub. L. 90–19, § 13(a), May 25, 1967, 81 Stat. 24.)

CODIFICATION

Section was enacted as part of the Housing Act of 1956, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' for ''Housing and Home Finance Administrator''.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§§ 1701i, 1701i–1. Omitted

Section 1701i, act July 15, 1949, ch. 338, title VI, § 603, 63 Stat. 440; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, included the Secretary of Labor and the Secretary of Health, Education, and Welfare or their designees in the membership of the National Housing Council of the Housing and Home Finance Agency.

Section 1701i–1, act Sept. 1, 1951, ch. 378, title VI, § 615, 65 Stat. 317, included the Secretary of Defense or his designee and excluded the Chairman of Board of Directors of Reconstruction Finance Corporation or his designee from National Housing Council membership.

§ 1701j. Repealed. Aug. 2, 1954, ch. 649, title VIII, § 813, 68 Stat. 647

Section, acts Apr. 20, 1950, ch. 94, title V, § 504, 64 Stat. 81; Sept. 1, 1951, ch. 378, title VI, § 613(a), 65 Stat. 316; June 30, 1953, ch. 170, § 23, 67 Stat. 127, related to control of charges and fees, imposed by lenders upon builders and purchasers in connection with home loans, by the Federal Housing Commissioner and the Administrator of Veterans' Affairs.

Sections 1, 509, and 510 of act Apr. 20, 1950, were formerly set out as notes under this section. See notes under section 1701k of this title.

§ 1701j–1. Builder's certification as to construction

(a) Warranty requirements

The Secretary of Housing and Urban Development is authorized and directed to require that, in connection with any property upon which there is located a dwelling designed principally for not more than a four-family residence and which is approved for mortgage insurance prior to the beginning of construction, the seller or builder, and such other person as may be required by the said Secretary to become warrantor, shall deliver to the purchaser or owner of such property a warranty that the dwelling is constructed in substantial conformity with the plans and specifications (including any amendments thereof, or changes and variations therein, which have been approved in writing by the Secretary of Housing and Urban Development) on which the Secretary of Housing and Urban Development based his valuation of the dwelling: *Provided*, That the Secretary of Housing and Urban Development shall deliver to the builder, seller, or other warrantor his written approval (which shall be conclusive evidence of such approval) of any amendment of, or change or variation in, such plans and specifications which the Secretary deems to be a substantial amendment thereof, or change or variation therein, and shall file a copy of such written approval with such plans and specifications: *Provided further*, That such warranty shall apply only with respect to such instances of substantial nonconformity to such approved plans and specifications (including any amendments thereof, or changes or variations therein, which have been approved in writing, as provided herein, by the Secretary of Housing and Urban Development) as to which the purchaser or homeowner has given written notice to the warrantor within one year from the date of conveyance of title to, or initial occupancy of, the dwelling, whichever first occurs: *Provided further*, That such warranty shall be in addition to, and not in derogation of, all other rights and privileges which such purchaser or owner may have under any other law or instrument: *And provided further*, That the provisions of this section shall apply to any such property covered by a mortgage insured by the Secretary of Housing and Urban Development on and after October 1, 1954, unless such mortgage is insured pursuant to a commitment therefor made prior to October 1, 1954.

(b) Availability of plans and specifications

The Secretary of Housing and Urban Development is further directed to permit copies of the plans and specifications (including written approvals of any amendments thereof, or changes or variations therein, as provided herein) for dwellings in connection with which warranties are required by subsection (a) of this section to be made available in their appropriate local offices for inspection or for copying by any purchaser, homeowner, or warrantor during such hours or periods of time as the said Secretary may determine to be reasonable.

(Aug. 2, 1954, ch. 649, title VIII, § 801, 68 Stat. 642; Pub. L. 85–857, § 13(s)(2), Sept. 2, 1958, 72 Stat. 1266; Pub. L. 90–19, § 10(e), May 25, 1967, 81 Stat. 22.)

CODIFICATION

Section was enacted as part of the Housing Act of 1954, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1967—Subsecs. (a), (b). Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' and ''Secretary'' for ''Federal Housing Commissioner'' and ''Commissioner'', respectively.

1958—Subsec. (a). Pub. L. 85–857 struck out provisions that related to Administrator of Veterans' Affairs and to mortgages guaranteed by him.

Subsec. (b). Pub. L. 85–857 struck out provisions that related to Administrator of Veterans' Affairs.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding part 1 of Title 38, Veterans' Benefits.

STUDY REGARDING HOME WARRANTY PLANS

Pub. L. 102–550, title V, § 514, Oct. 28, 1992, 106 Stat. 3789, directed Secretary of Housing and Urban Development to conduct a study of home and builder's warranties and protection plans regarding construction of, and materials used in, 1- to 4-family dwellings subject to mortgages insured under title II of the National Housing Act (12 U.S.C. 1707 et seq.), and submit a report to Congress regarding findings of the study and any recommendations of the Secretary resulting from the study, not later than the expiration of the 12-month period beginning on Oct. 28, 1992.

§ 1701j–2. National Institute of Building Sciences

(a) Congressional findings and declaration of purpose

(1) The Congress finds (A) that the lack of an authoritative national source to make findings and to advise both the public and private sectors of the economy with respect to the use of building science and technology in achieving nationally acceptable standards and other technical provision for use in Federal, State, and local housing and building regulations is an obstacle to efforts by and imposes severe burdens upon all those who procure, design, construct, use, operate, maintain, and retire physical facilities, and frequently results in the failure to take full advantage of new and useful developments in technology which could improve our living environment; (B) that the establishment of model buildings codes or of a single national building code will not completely resolve the problem because of the difficulty at all levels of government in updating their housing and building regulations to reflect new developments in technology, as well as the irregularities and inconsistencies which arise in applying such requirements to particular localities or special local conditions; (C) that the lack of uniform housing and building regulatory provisions increases the costs of construction and thereby reduces the amount of housing and other community facilities which can be provided; and (D) that the existence of a single authoritative nationally recognized institution to provide for the evaluation of new technology could facilitate introduction of such innovations and their acceptance at the Federal, State, and local levels.

(2) The Congress further finds, however, that while an authoritative source of technical findings is needed, various private organizations and institutions, private industry, labor, and Federal and other governmental agencies and entities are presently engaged in building research, technology development, testing, and evaluation, standards and model code development and promulgation, and information dissemination. These existing activities should be encouraged and these capabilities effectively utilized wherever possible and appropriate to the purposes of this section.

(3) The Congress declares that an authoritative nongovernmental instrument needs to be created to address the problems and issues described in paragraph (1), that the creation of such an instrument should be initiated by the Government, with the advice and assistance of the National Academy of Sciences-National Academy of Engineering-National Research Council (hereinafter referred to as the ''Academies-Research Council'') and of the various sectors of the building community, including labor and management, technical experts in building science and technology, and the various levels of government.

(b) Establishment; advice and assistance of Academies-Research Council and other agencies and organizations knowledgeable in building technology

(1) There is authorized to be established, for the purposes described in subsection (a)(3) of this section, an appropriate nonprofit, nongovernmental instrument to be known as the National Institute of Building Sciences (hereinafter referred to as the ''Institute''), which shall not be an agency or establishment of the United States Government. The Institute shall be subject to the provisions of this section and, to the extent consistent with this section, to a charter of the Congress if such a charter is requested and issued or to the District of Columbia Nonprofit Corporation Act if that is deemed preferable.

(2) The Academies-Research Council, along with other agencies and organizations which are knowledgeable in the field of building technology, shall advise and assist in (A) the establishment of the Institute; (B) the development of an organizational framework to encourage and provide for the maximum feasible participation of public and private scientific, technical, and financial organizations, institutions, and agencies now engaged in activities pertinent to the development, promulgation, and maintenance of performance criteria, standards, and other technical provisions for building codes and other regulations; and (C) the promulgation of appropriate organizational rules and procedures including those for the selection and operation of a technical staff, such rules and procedures to be based upon the primary object of promoting the public interest and insuring that the widest possible variety of interests and experience essential to the functions of the Institute are represented in the Institute's operations. Recommendations of the Academies-Research Council shall be based upon consultations with and recommendations from various private organizations and institutions, labor, private industry, and governmental agencies entities operating in the field, and the Consultative Council as provided for under subsection (c)(8) of this section.

(3) Nothing in this section shall be construed as expressing the intent of the Congress that the Academies-Research Council itself be required

to assume any function or operation vested in the Institute by or under this section.

(c) Board of Directors; number; appointment; membership; terms of office; vacancies; appointment, etc., of Chairman and Vice Chairman; employees of United States; travel and subsistence expenses; appointment and compensation of president and other executive officers and employees; establishment, membership, and functions of Consultative Council

(1) The Institute shall have a Board of Directors (hereinafter referred to as the ''Board'') consisting of not less than fifteen nor more than twenty-one members, appointed by the President of the United States by and with the advice and consent of the Senate. The Board shall be representative of the various segments of the building community, of the various regions of the country, and of the consumers who are or would be affected by actions taken in the exercise of the functions and responsibilities of the Institute, and shall include (A) representatives of the construction industry, including representatives of construction labor organizations, product manufacturers, and builders, housing management experts, and experts in building standards, codes, and fire safety, and (B) members representative of the public interest in such numbers as may be necessary to assure that a majority of the members of the Board represent the public interest and that there is adequate consideration by the Institute of consumer interests in the exercise of its functions and responsibilities. Those representing the public interest on the Board shall include architects, professional engineers, officials of Federal, State, and local agencies, and representatives of consumer organizations. Such members of the Board shall hold no financial interest or membership in, nor be employed by, or receive other compensation from, any company, association, or other group associated with the manufacture, distribution, installation, or maintenance of specialized building products, equipment, systems, subsystems, or other construction materials and techniques for which there are available substitutes.

(2) The members of the initial Board shall serve as incorporators and shall take whatever actions are necessary to establish the Institute as provided for under subsection (b)(1) of this section.

(3) The term of office of each member of the initial and succeeding Boards shall be three years; except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (B) the terms of office of members first taking office shall begin on the date of incorporation and shall expire, as designated at the time of their appointment, one-third at the end of one year, one-third at the end of two years, and one-third at the end of three years. No member shall be eligible to serve in excess of three consecutive terms of three years each. Notwithstanding the preceding provisions of this subsection, a member whose term has expired may serve until his successor has qualified.

(4) Any vacancy in the initial and succeeding Boards shall not affect its power, but shall be filled in the manner in which the original appointments were made, or, after the first five years of operation, as provided for by the organizational rules and procedures of the Institute; except that, notwithstanding any such rules and procedures as may be adopted by the Institute, the President of the United States, by and with the advice and consent of the Senate, shall appoint, as representative of the public interest, two of the members of the Board of Directors selected each year for terms commencing in that year.

(5) The President shall designate one of the members appointed to the initial Board as Chairman; thereafter, the members of the initial and succeeding Boards shall annually elect one of their number as Chairman. The members of the Board shall also elect one or more of their Members as Vice Chairman. Terms of the Chairman and Vice Chairman shall be for one year and no individual shall serve as Chairman or Vice Chairman for more than two consecutive terms.

(6) The members of the initial or succeeding Boards shall not, by reason of such membership, be deemed to be employees of the United States Government. They shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Board pursuant to this section, be entitled to receive compensation at the rate of $100 per day including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, equal to that authorized under section 5703 of title 5, for persons in the Government service employed intermittently.

(7) The Institute shall have a president and such other executive officers and employees as may be appointed by the Board at rates of compensation fixed by the Board. No such executive officer or employee may receive any salary or other compensation from any source other than the Institute during the period of his employment by the Institute.

(8) The Institute shall establish, with the advice and assistance of the Academies-Research Council and other agencies and organizations which are knowledgeable in the field of building technology, a Consultative Council, membership in which shall be available to representatives of all appropriate private trade, professional, and labor organizations, private and public standards, code, and testing bodies, public regulatory agencies, and consumer groups, so as to insure a direct line of communication between such groups and the Institute and a vehicle for representative hearings on matters before the Institute.

(d) Financial restrictions and prohibitions

(1) The Institute shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Institute shall inure to the benefit of any director, officer, employee, or other individual except as salary or reasonable compensation for services.

(3) The Institute shall not contribute to or otherwise support any political party or candidate for elective public office.

(e) Exercise of functions and responsibilities

(1) The Institute shall exercise its functions and responsibilities in four general areas, relating to building regulations, as follows:

(A) Development, promulgation, and maintenance of nationally recognized performance criteria, standards, and other technical provisions for maintenance of life, safety, health, and public welfare suitable for adoption by building regulating jurisdictions and agencies, including test methods and other evaluative techniques relating to building systems, subsystems, components, products, and materials with due regard for consumer problems.

(B) Evaluation and prequalification of existing and new building technology in accordance with subparagraph (A).

(C) Conduct of needed investigations in direct support of subparagraphs (A) and (B).

(D) Assembly, storage, and dissemination of technical data and other information directly related to subparagraphs (A), (B), and (C).

(2) The Institute in exercising its functions and responsibilities described in paragraph (1) shall assign and delegate, to the maximum extent possible, responsibility for conducting each of the needed activities described in paragraph (1) to one or more of the private organizations, institutions, agencies, and Federal and other governmental entities with a capacity to exercise or contribute to the exercise of such responsibility, monitor the performance achieved through assignment and delegation, and, when deemed necessary, reassign and delegate such responsibility.

(3) The Institute in exercising its functions and responsibilities under paragraphs (1) and (2) shall (A) give particular attention to the development of methods for encouraging all sectors of the economy to cooperate with the Institute and to accept and use its technical findings, and to accept and use the nationally recognized performance criteria, standards, and other technical provisions developed for use in Federal, State, and local building codes and other regulations which result from the program of the Institute; (B) seek to assure that its actions are coordinated with related requirements which are imposed in connection with community and environmental development generally; and (C) consult with the Department of Justice and other agencies of government to the extent necessary to insure that the national interest is protected and promoted in the exercise of its functions and responsibilities.

(f) Contract and grant authorization; donations; fees; amounts received in addition to amounts appropriated

(1) The Institute is authorized to accept contracts and grants from Federal, State, and local governmental agencies and other entities, and grants and donations from private organizations, institutions, and individuals.

(2) The Institute may, in accordance with rates and schedules established with guidance as provided under subsection (b)(2) of this section, establish fees and other charges for services provided by the Institute or under its authorization.

(3) Amounts received by the Institute under this section shall be in addition to any amounts which may be appropriated to provide its initial operating capital under subsection (h) of this section.

(g) Technical findings and performance criteria and standards; applicability and use by Federal departments, agencies, and establishments, and State and local governments; supporting grants and contracts

(1) Every department, agency, and establishment of the Federal Government, in carrying out any building or construction, or any building- or construction-related programs, which involves direct expenditures, and in developing technical requirements for any such building or construction, shall be encouraged to accept the technical findings of the Institute, or any nationally recognized performance criteria, standards, and other technical provisions for building regulations brought about by the Institute, which may be applicable.

(2) All projects and programs involving Federal assistance in the form of loans, grants, guarantees, insurance, or technical aid, or in any other form, shall be encouraged to accept, use, and comply with any of the technical findings of the Institute, or any nationally recognized performance criteria, standards, and other technical provisions for building codes and other regulations brought about by the Institute, which may be applicable to the purposes for which the assistance is to be used.

(3) Every department, agency, and establishment of the Federal Government having responsibility for building or construction, or for building- or construction-related programs, is authorized and encouraged to request authorization and appropriations for grants to the Institute for its general support, and is authorized to contract with and accept contracts from the Institute for specific services where deemed appropriate by the responsible Federal official involved.

(4) The Institute shall establish and carry on a specific and continuing program of cooperation with the States and their political subdivisions designed to encourage their acceptance of its technical findings and of nationally recognized performance criteria, standards, and other technical provisions for building regulations brought about by the Institute. Such program shall include (A) efforts to encourage any changes in existing State and local law to utilize or embody such findings and regulatory provisions; and (B) assistance to States in the development of in-service training programs for building officials, and in the establishment of fully staffed and qualified State technical agencies to advise local officials on questions of technical interpretation.

(h) Advanced Building Technology Program

(1) Establishment of Advanced Building Technology Council

There is established within the Institute, the Advanced Building Technology Council (hereafter referred to as the ''Council'').

(2) Purposes

The Council shall carry out an Advanced Building Technology Program for the purposes of—

(A) identifying, selecting, and evaluating existing and new building technologies, including energy cost savings technologies, that conform to recognized performance criteria and meet applicable test standards for maintenance of life, safety, health, and public welfare when used in occupied buildings;

(B) to the extent necessary, developing criteria for the use of such technology;

(C) conducting economic analyses of proposed new technologies when produced and installed in buildings at volumes associated with comparable conventional technologies;

(D) in cooperation with the appropriate Federal agencies, advising building designers, installers, subcontractors, contractors and supervisory officials on the appropriate design and use of new building technology incorporated in federally owned or operated buildings;

(E) in cooperation with the appropriate Federal agencies, monitoring and evaluating the performance of new building technologies for at least 1 year after installation and building occupancy; and

(F) disseminating resulting data to affected parties through automated information management systems.

(3) Council membership

The Council shall be comprised of not less than 6 and not more than 11 members selected by the Secretary of Housing and Urban Development from among representatives of the various segments of the nationwide building community that have extensive experience in building industries, including, but not limited to—

(A) product manufacturers;

(B) experts in the fields of health, fire hazards, and safety; and

(C) independent representatives of the public interest such as architects, professional engineers, and representatives of consumer organizations,

except that serving members of the National Institute of Building Sciences Advisory Council shall not be eligible to serve simultaneously on the Council.

(4) Federal participation

(A) In general

Any agency of the Federal Government involved in any building or construction may participate in the Advanced Building Technology Program with the Council to develop and implement programs to incorporate one or more of the recommended new technologies in a new or existing building within the agency.

(B) Required assurances

Upon agreement between a participating Federal agency and the Council, with respect to the selection of the appropriate technology and the schedule of necessary work, the Council shall—

(i) provide the Federal agency with a 5-year guarantee from the technology manufacturer that—

(I) all necessary corrections to the technology will be made in the design, installation, and maintenance of the technology;

(II) all malfunctions will be repaired without delay; and

(III) the technology manufacturer will be responsible for removal of the technology in the event of its failure to perform as required;

(ii) provide the Federal agency and its officials responsible for constructing or renovating buildings utilizing the new technology, as well as the designers, installers, subcontractors, and contractors responsible for the design, construction, or renovation of the buildings utilizing such technology with the technical information necessary to ensure its most appropriate use,

(iii) in cooperation with the Federal agency, monitor and evaluate the performance of the new technology, and

(iv) prepare reports to be made available to public agencies at all levels of government, the industry, and the public on the performance of the new technology.

(5) Report to the Institute

The Council shall submit to the Institute annually a description of its activities under the Advanced Building Technology Program for inclusion in the Institute's annual report to the Congress under subsection (j) of this section.

(i) Authorization of appropriations

There is authorized to be appropriated to the Institute not to exceed $5,000,000 for the fiscal year 1975, and $5,000,000 for the fiscal year 1976, and $5,000,000 for each of the fiscal years 1977 and 1978, and any amounts not appropriated in fiscal years 1977 and 1978 may be appropriated in any fiscal year through 1984 (with not more than $500,000 to be appropriated for each of the fiscal years 1982, 1983, and 1984 and with each appropriation to be available until expended), to provide the Institute with initial capital adequate for the exercise of its functions and responsibilities during such years; and thereafter the Institute shall be financially self-sustaining through the means described in subsection (f) of this section. In addition to the amounts authorized to be appropriated under the first sentence of this section, there are authorized to be appropriated to the Institute to carry out the provisions of this section not to exceed $512,000 for fiscal year 1991 and $534,000 for fiscal year 1992. Any amount appropriated under the preceding sentence shall be made available for expenditure or obligation by the Institute only to the extent of an equal amount received by the Institute after November 30, 1983, from persons or entities other than the Federal Government.

(j) Annual report to President for transmittal to Congress; contents

The Institute shall submit an annual report for the preceding fiscal year to the President for

transmittal to the Congress within sixty days of its receipt. The report shall include a comprehensive and detailed report of the Institute's operations, activities, financial condition, and accomplishments under this section and may include such recommendations as the Institute deems appropriate.

(Pub. L. 93–383, title VIII, § 809, Aug. 22, 1974, 88 Stat. 729; Pub. L. 94–375, § 24, Aug. 3, 1976, 90 Stat. 1078; Pub. L. 95–557, title III, § 319, Oct. 31, 1978, 92 Stat. 2101; Pub. L. 97–35, title III, § 339E, Aug. 13, 1981, 95 Stat. 417; Pub. L. 98–181, title IV, § 462, Nov. 30, 1983, 97 Stat. 1232; Pub. L. 100–242, title V, § 570(f), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 101–625, title IX, § 952(a), Nov. 28, 1990, 104 Stat. 4418; Pub. L. 102–550, title IX, § 904(a), Oct. 28, 1992, 106 Stat. 3868.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b)(1), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1974, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1992—Subsecs. (h) to (j). Pub. L. 102–550 added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

1990—Subsec. (h). Pub. L. 101–625 amended second sentence generally. Prior to amendment, second sentence read as follows: ''In addition to the amounts authorized to be appropriated under the first sentence of this section, there is authorized to be appropriated to the Institute to carry out the provisions of this section not to exceed $250,000 for fiscal year 1984.''

1988—Subsec. (g)(4). Pub. L. 100–242, § 570(f)(1), substituted ''of its'' for ''and its''.

Subsec. (h). Pub. L. 100–242, § 570(f)(2), substituted ''preceding'' for ''preceeding''.

1983—Subsec. (h). Pub. L. 98–181 inserted provisions relating to the appropriation of not to exceed $250,000 for fiscal 1984, such amount to be made available for expenditure only to the extent of an equal amount received from persons or entities other than the Federal Government.

1981—Subsec. (c)(4). Pub. L. 97–35, § 339E(b), inserted provisions respecting Presidential appointment powers to the Board.

Subsec. (h). Pub. L. 97–35, § 339E(a), inserted provisions which extended authorization from 1982 to 1984, and enumerated amount for fiscal years 1982, 1983, and 1984.

1978—Subsec. (h). Pub. L. 95–557 inserted '', and any amounts not appropriated in fiscal years 1977 and 1978 may be appropriated in any fiscal year through 1982'' after ''1978''.

1976—Subsec. (h). Pub. L. 94–375 inserted '', and $5,000,000 for each of the fiscal years 1977 and 1978'' after ''fiscal year 1976''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

NATIONAL INSTITUTE OF BUILDING SCIENCES TRUST FUND; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 98–396, title I, Aug. 22, 1984, 98 Stat. 1384, provided that: ''There is appropriated out of funds not otherwise appropriated, the sum of $5,000,000 to a 'National Institute of Building Sciences Trust Fund' which is hereby established in the Treasury of the United States: *Provided*, That the Secretary shall invest such funds in U.S. Treasury special issue securities at a fixed rate of ten per centum per annum, that such interest shall be credited to the Trust Fund on a quarterly basis, and that the Secretary shall make quarterly disbursements from such interest to the National Institute of Building Sciences: *Provided further*, That the total amount of such payment during any fiscal year may not exceed $500,000 or the amount equivalent to non-Federal funds received by the Institute during the preceding fiscal year, whichever is less: *Provided further*, That any amount of interest not used for any such annual payment shall be paid into the general fund of the Treasury: *Provided further*, That the appropriation of $5,000,000 made in this paragraph shall revert to the Treasury, on October 1, 1989, and the National Institute of Building Sciences Trust Fund shall terminate following the final quarterly disbursement of interest provided for in this paragraph.''

§ 1701j–3. Preemption of due-on-sale prohibitions

(a) Definitions

For the purpose of this section—

(1) the term ''due-on-sale clause'' means a contract provision which authorizes a lender, at its option, to declare due and payable sums secured by the lender's security instrument if all or any part of the property, or an interest therein, securing the real property loan is sold or transferred without the lender's prior written consent;

(2) the term ''lender'' means a person or government agency making a real property loan or any assignee or transferee, in whole or in part, of such a person or agency;

(3) the term ''real property loan'' means a loan, mortgage, advance, or credit sale secured by a lien on real property, the stock allocated to a dwelling unit in a cooperative housing corporation, or a residential manufactured home, whether real or personal property; and

(4) the term ''residential manufactured home'' means a manufactured home as defined in section 5402(6) of title 42 which is used as a residence; and

(5) the term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(b) Loan contract and terms governing execution or enforcement of due-on-sale options and rights and remedies of lenders and borrowers; assumptions of loan rates

(1) Notwithstanding any provision of the constitution or laws (including the judicial decisions) of any State to the contrary, a lender may, subject to subsection (c) of this section, enter into or enforce a contract containing a due-on-sale clause with respect to a real property loan.

(2) Except as otherwise provided in subsection (d) of this section, the exercise by the lender of its option pursuant to such a clause shall be exclusively governed by the terms of the loan contract, and all rights and remedies of the lender and the borrower shall be fixed and governed by the contract.

(3) In the exercise of its option under a due-on-sale clause, a lender is encouraged to permit an

assumption of a real property loan at the existing contract rate or at a rate which is at or below the average between the contract and market rates, and nothing in this section shall be interpreted to prohibit any such assumption.

(c) State prohibitions applicable for prescribed period; subsection (b) provisions applicable upon expiration of such period; loans subject to State and Federal regulation or subsection (b) provisions when authorized by State laws or Federal regulations

(1) In the case of a contract involving a real property loan which was made or assumed, including a transfer of the liened property subject to the real property loan, during the period beginning on the date a State adopted a constitutional provision or statute prohibiting the exercise of due-on-sale clauses, or the date on which the highest court of such State has rendered a decision (or if the highest court has not so decided, the date on which the next highest appellate court has rendered a decision resulting in a final judgment if such decision applies Statewide) prohibiting such exercise, and ending on October 15, 1982, the provisions of subsection (b) of this section shall apply only in the case of a transfer which occurs on or after the expiration of 3 years after October 15, 1982, except that—

(A) a State, by a State law enacted by the State legislature prior to the close of such 3-year period, with respect to real property loans originated in the State by lenders other than national banks, Federal savings and loan associations, Federal savings banks, and Federal credit unions, may otherwise regulate such contracts, in which case subsection (b) of this section shall apply only if such State law so provides; and

(B) the Comptroller of the Currency with respect to real property loans originated by national banks or the National Credit Union Administration Board with respect to real property loans originated by Federal credit unions may, by regulation prescribed prior to the close of such period, otherwise regulate such contracts, in which case subsection (b) of this section shall apply only if such regulation so provides.

(2)(A) For any contract to which subsection (b) of this section does not apply pursuant to this subsection, a lender may require any successor or transferee of the borrower to meet customary credit standards applied to loans secured by similar property, and the lender may declare the loan due and payable pursuant to the terms of the contract upon transfer to any successor or transferee of the borrower who fails to meet such customary credit standards.

(B) A lender may not exercise its option pursuant to a due-on-sale clause in the case of a transfer of a real property loan which is subject to this subsection where the transfer occurred prior to October 15, 1982.

(C) This subsection does not apply to a loan which was originated by a Federal savings and loan association or Federal savings bank.

(d) Exemption of specified transfers or dispositions

With respect to a real property loan secured by a lien on residential real property containing less than five dwelling units, including a lien on the stock allocated to a dwelling unit in a cooperative housing corporation, or on a residential manufactured home, a lender may not exercise its option pursuant to a due-on-sale clause upon—

(1) the creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

(2) the creation of a purchase money security interest for household appliances;

(3) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(4) the granting of a leasehold interest of three years or less not containing an option to purchase;

(5) a transfer to a relative resulting from the death of a borrower;

(6) a transfer where the spouse or children of the borrower become an owner of the property;

(7) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property;

(8) a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property; or

(9) any other transfer or disposition described in regulations prescribed by the Federal Home Loan Bank Board.

(e) Rules, regulations, and interpretations; future income bearing loans subject to due-on-sale options

(1) The Federal Home Loan Bank Board, in consultation with the Comptroller of the Currency and the National Credit Union Administration Board, is authorized to issue rules and regulations and to publish interpretations governing the implementation of this section.

(2) Notwithstanding the provisions of subsection (d) of this section, the rules and regulations prescribed under this section may permit a lender to exercise its option pursuant to a due-on-sale clause with respect to a real property loan and any related agreement pursuant to which a borrower obtains the right to receive future income.

(f) Effective date for enforcement of Corporation-owned loans with due-on-sale options

The Federal Home Loan Mortgage Corporation (hereinafter referred to as the ''Corporation'') shall not, prior to July 1, 1983, implement the change in its policy announced on July 2, 1982, with respect to enforcement of due-on-sale clauses in real property loans which are owned in whole or in part by the Corporation.

(g) Balloon payments

Federal Home Loan Bank Board regulations restricting the use of a balloon payment shall not apply to a loan, mortgage, advance, or credit sale to which this section applies.

(Pub. L. 97–320, title III, § 341, Oct. 15, 1982, 96 Stat. 1505; Pub. L. 98–181, title IV, § 473, Nov. 30, 1983, 97 Stat. 1237.)

CODIFICATION

Section was enacted as part of the Thrift Institutions Restructuring Act and also as part of the Garn-St Germain Depository Institutions Act of 1982, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1983—Subsec. (d). Pub. L. 98–181 substituted ''With respect to a real property loan secured by a lien on residential real property containing less than five dwelling units, including a lien on the stock allocated to a dwelling unit in a cooperative housing corporation, or on a residential manufactured home, a lender'' for ''A lender''.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

§ 1701k. Right to redeem property on which United States has lien

The right to redeem provided for by section 2410(c) of title 28, shall not arise in any case in which the subordinate lien or interest of the United States derives from the issuance of insurance under the National Housing Act, as amended [12 U.S.C. 1701 et seq.].

(Apr. 20, 1950, ch. 94, title V, § 505, 64 Stat. 81; Pub. L. 85–857, § 13(q), Sept. 2, 1958, 72 Stat. 1266.)

REFERENCES IN TEXT

The National Housing Act, as amended, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Housing Act of 1950, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1958—Pub. L. 85–857 struck out provisions which related to the right to redeem in cases in which the subordinate lien or interest derives from the issuance of guaranties of insurance under the Serviceman's Readjustment Act of 1944, as amended.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding part 1 of Title 38, Veterans' Benefits.

ACT APRIL 20, 1950, AS CONTROLLING LAW; HOUSING AND HOME FINANCE ADMINISTRATOR UNAFFECTED

Section 509 of act Apr. 20, 1950, provided that: ''Insofar as the provisions of any other law are inconsistent with the provisions of this Act [see Tables for classification] the provisions of this Act shall be controlling: *Provided*, That nothing contained in this Act shall affect the authority of the Housing and Home Finance Administrator under title II of Public Law 266, Eighty-first Congress [Act Aug. 24, 1949, ch. 506, title II, 63 Stat. 657].''

POWERS AND AUTHORITIES OF ACT APRIL 20, 1950, AS CUMULATIVE; SEPARABILITY

Section 510 of act Apr. 20, 1950, provided that: ''Except as may be otherwise expressly provided in this Act [see Tables for classification] all powers and authorities conferred by this Act shall be cumulative and additional to and not in derogation of any powers and authorities otherwise existing. Notwithstanding any other evidences of the intention of Congress, it is hereby declared to be the controlling intent of Congress that if any provisions of this Act, or the application thereof to any persons or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its applications to other persons and circumstances, but shall be confined in its operation to the provisions of this Act, or the application thereof to the persons and circumstances, directly involved in the controversy in which such judgment shall have been rendered.''

§ 1701*l*. Limitation on interest rates of insured mortgages; terms of sales

It is the intent of Congress that no sale of a dwelling on which a mortgage is insured under the National Housing Act, as amended [12 U.S.C. 1701 et seq.], shall be financed, while such mortgage is so insured, at an interest rate higher than that prescribed by the Secretary of Housing and Urban Development. It is the further intent of Congress that no such sale shall be made, while such mortgage is so insured, on terms less favorable to the purchaser as to amortization, retirement, foreclosure, or forfeiture than those contained in such mortgage.

(Apr. 20, 1950, ch. 94, title V, § 508, 64 Stat. 81; Pub. L. 90–19, § 8(e), May 25, 1967, 81 Stat. 22.)

REFERENCES IN TEXT

The National Housing Act, as amended, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Housing Act of 1950, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' for ''Federal Housing Commissioner''.

§ 1701*l*–1. Mortgage proceeds fraudulently misappropriated by mortgagor; recovery of deficiency after foreclosure

The Secretary of Housing and Urban Development shall take action to secure the payment of any deficiency after foreclosure on a mortgage insured or assisted under Federal law where the Secretary has reason to believe that the mortgage proceeds have been fraudulently misappropriated by the mortgagor.

(Pub. L. 93–383, title VIII, § 819, Aug. 22, 1974, 88 Stat. 740.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1974, and not as part of the National Housing Act which comprises this chapter.

§ 1701m. Credit and cancellation of notes transferred from Reconstruction Finance Corporation; net loss computation

The Secretary of the Treasury is authorized and directed from time to time to credit and cancel the note or notes of the Housing and Home Finance Administrator executed and delivered in connection with loans transferred from the Reconstruction Finance Corporation to the Housing and Home Finance Agency pursuant to Reorganization Plan Numbered 23 of 1950 (64 Stat. 1279), to the extent of the net loss, as determined by the Secretary of the Treasury, sustained by said Agency in the liquidation of defaulted loans. The net loss shall be the sum of the unpaid principal and advances for care and preservation of collateral, together with accrued and unpaid interest on said principal and advances, and all expenses and costs (other than those subject to administrative expense limitations) in connection with the liquidation of defaulted loans, less the amount actually realized by the Housing and Home Finance Agency on account of such defaulted loans.

(July 14, 1952, ch. 723, § 9, 66 Stat. 603.)

REFERENCES IN TEXT

Reorganization Plan Numbered 23 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was enacted as part of the Housing Act of 1952, and not as part of the National Housing Act which comprises this chapter.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Housing and Home Finance Agency and its Administrator transferred to and vested in Secretary of Housing and Urban Development by Pub. L. 89–174, § 5, Sept. 9, 1965, 79 Stat. 669, classified to section 3534 of Title 42, The Public Health and Welfare.

TERMINATION, LIQUIDATION, AND ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, abolished Reconstruction Finance Corporation.

Termination on June 30, 1954, of Reconstruction Finance Corporation and liquidation thereof, see sections 608 and 609 of Title 15, Commerce and Trade, and notes thereunder.

§ 1701n. Reduction of vulnerability of congested urban areas to enemy attack

The Department of Housing and Urban Development, and any other departments or agencies of the Federal Government having powers, functions, or duties with respect to housing under any law shall exercise such powers, functions, or duties in such manner as, consistent with the requirements thereof, will facilitate progress in the reduction of the vulnerability of congested urban areas to enemy attack.

(Aug. 2, 1954, ch. 649, title VIII, § 811, 68 Stat. 646; Pub. L. 90–19, § 10(g), May 25, 1967, 81 Stat. 23.)

CODIFICATION

Section was enacted as part of the Housing Act of 1954, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Department of Housing and Urban Development'' for ''Housing and Home Finance Agency, including its constituent agencies''.

§ 1701*o*. Annual report of Secretary

The Secretary of Housing and Urban Development shall, as soon as practicable during each calendar year, make a report to the President for submission to the Congress on all operations and programs (including but not limited to the insurance, urban renewal, public housing, and rent supplement programs) under the jurisdiction of the Department of Housing and Urban Development during the previous calendar year. Such report shall contain recommendations for strengthening or improving such programs, or, when necessary to implement more effectively Congressional policies and purposes, for establishing new or alternative programs.

(Aug. 2, 1954, ch. 649, title VIII, § 802(a), 68 Stat. 642; Pub. L. 89–117, title XI, § 1101, Aug. 10, 1965, 79 Stat. 502; Pub. L. 90–19, § 10(f), May 25, 1967, 81 Stat. 23; Pub. L. 100–242, title V, § 570(b), Feb. 5, 1988, 101 Stat. 1950.)

CODIFICATION

Section was enacted as part of the Housing Act of 1954, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1988—Pub. L. 100–242 inserted section catchline ''Annual report of Secretary''.

1967—Pub. L. 90–19 struck out ''FHA'' before ''insurance'' and substituted ''Secretary of Housing and Urban Development'' and ''Department of Housing and Urban Development'' for ''Housing and Home Finance Administrator'' and ''Housing and Home Finance Agency'', respectively.

1965—Pub. L. 89–117 specifically included FHA insurance, urban renewal, public housing, and rent supplement programs within the operation and programs of the Housing and Home Finance Agency which the report shall cover and inserted requirement that the report contain recommendations for improving programs and for new or alternative programs.

§ 1701p. Contents of report to President and Congress

The annual report made by the Secretary of Housing and Urban Development to the President for submission to the Congress on all operations provided for by section 1701*o* of this title shall contain pertinent information with respect to all projects for which any loan, contribution, or grant has been made by the Department of Housing and Urban Development, including the amount of loans, contributions and grants contracted for.

(Aug. 2, 1954, ch. 649, title VIII, § 817, 68 Stat. 648; Pub. L. 90–19, § 10(j), May 25, 1967, 81 Stat. 23; Pub. L. 97–375, title II, § 207(a), Dec. 21, 1982, 96 Stat. 1824.)

CODIFICATION

Section was enacted as part of the Housing Act of 1954, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1982—Pub. L. 97–375 struck out requirement for the inclusion of pertinent information respecting all build-

ers' cost certifications required by section 1715r of this title, including amounts paid by mortgagors to mortgagees for application to the reduction of the principal obligations of the mortgages pursuant to that section.

1967—Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' and ''Department of Housing and Urban Development'' for ''Housing and Home Finance Administrator'' and ''Housing and Home Finance Agency'', respectively.

§ 1701p–1. Periodic report on residential mortgage delinquencies and foreclosures

As soon as practicable following November 30, 1983, the Secretary of Housing and Urban Development, with the cooperation of the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Comptroller of the Currency, shall develop a method of accurately reporting to the Congress on a periodic basis with respect to residential mortgage delinquencies and foreclosures. Each such report shall include information with respect to the number of residential mortgage foreclosures, and the number of sixty- and ninety-day residential mortgage delinquencies, in the Nation and in each State.

(Pub. L. 98–181, title IV, § 469, Nov. 30, 1983, 97 Stat. 1237; Pub. L. 111–203, title III, § 372, July 21, 2010, 124 Stat. 1566.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 372, July 21, 2010, 124 Stat. 1546, 1566, provided that, effective on the transfer date, this section is amended by substituting ''Federal Housing Finance Agency'' for ''Federal Home Loan Bank Board'' in the first sentence. See Effective Date of 2010 Amendment note below.

CODIFICATION

Section was enacted as part of the Housing and Urban–Rural Recovery Act of 1983 and also as part of the Domestic Housing and International Recovery and Financial Stability Act, and not as part of the National Housing Act which comprises this chapter.

EFFECTIVE DATE OF 2010 AMENDMENT

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

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under this section is listed on page 105), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

§ 1701p–2. Default and foreclosure database

(a) Establishment

The Secretary of Housing and Urban Development and the Director of the Bureau, in consultation with the Federal agencies responsible for regulation of banking and financial institutions involved in residential mortgage lending and servicing, shall establish and maintain a database of information on foreclosures and defaults on mortgage loans for one- to four-unit residential properties and shall make such information publicly available, subject to subsection (e).

(b) Census tract data

Information in the database may be collected, aggregated, and made available on a census tract basis.

(c) Requirements

Information collected and made available through the database shall include—

(1) the number and percentage of such mortgage loans that are delinquent by more than 30 days;

(2) the number and percentage of such mortgage loans that are delinquent by more than 90 days;

(3) the number and percentage of such properties that are real estate-owned;

(4) number and percentage of such mortgage loans that are in the foreclosure process;

(5) the number and percentage of such mortgage loans that have an outstanding principal obligation amount that is greater than the value of the property for which the loan was made; and

(6) such other information as the Secretary of Housing and Urban Development and the Director of the Bureau consider appropriate.

(d) Rule of construction

Nothing in this section shall be construed to encourage discriminatory or unsound allocation of credit or lending policies or practices.

(e) Privacy and confidentiality

In establishing and maintaining the database described in subsection (a), the Secretary of Housing and Urban Development and the Director of the Bureau shall—

(1) be subject to the standards applicable to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity;

(2) implement the necessary measures to conform to the standards for data integrity and security described in paragraph (1); and

(3) collect and make available information under this section, in accordance with paragraphs (5) and (6) of section 5512(c) of this title and the rules prescribed under such paragraphs, in order to protect privacy and confidentiality.

(Pub. L. 111–203, title XIV, § 1447, July 21, 2010, 124 Stat. 2172.)

CODIFICATION

Section was enacted as part of the Expand and Preserve Home Ownership Through Counseling Act and also as part of the Mortgage Reform and Anti-Predatory Lending Act and as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the National Housing Act which comprises this chapter.

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer

date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

DEFINITION OF ''BUREAU''

''Bureau'' as meaning the Bureau of Consumer Financial Protection established under title X of Pub. L. 111–203, see section 5301 of this title.

§ 1701q. Supportive housing for the elderly

(a) Purpose

The purpose of this section is to enable elderly persons to live with dignity and independence by expanding the supply of supportive housing that—

(1) is designed to accommodate the special needs of elderly persons; and

(2) provides a range of services that are tailored to the needs of elderly persons occupying such housing.

(b) General authority

The Secretary is authorized to provide assistance to private nonprofit organizations and consumer cooperatives to expand the supply of supportive housing for the elderly. Such assistance shall be provided as (1) capital advances in accordance with subsection (c)(1) of this section, and (2) contracts for project rental assistance in accordance with subsection (c)(2) of this section. Such assistance may be used to finance the construction, reconstruction, or moderate or substantial rehabilitation of a structure or a portion of a structure, or the acquisition of a structure, to be used as supportive housing for the elderly in accordance with this section. Assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for the elderly.

(c) Forms of assistance

(1) Capital advances

A capital advance provided under this section shall bear no interest and its repayment shall not be required so long as the housing remains available for very low-income elderly persons in accordance with this section. Such advance shall be in an amount calculated in accordance with the development cost limitation established in subsection (h) of this section.

(2) Project rental assistance

Contracts for project rental assistance shall obligate the Secretary to make monthly payments to cover any part of the costs attributed to units occupied (or, as approved by the Secretary, held for occupancy) by very low-income elderly persons that is not met from project income. The annual contract amount for any project shall not exceed the sum of the initial annual project rentals for all units so occupied and any initial utility allowances for such units, as approved by the Secretary. Any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract. The Secretary may adjust the annual contract amount if the sum of the project income and the amount of assistance payments available under this paragraph are inadequate to provide for reasonable project costs.

(3) Tenant rent contribution

A very low-income person shall pay as rent for a dwelling unit assisted under this section the highest of the following amounts, rounded to the nearest dollar: (A) 30 percent of the person's adjusted monthly income, (B) 10 percent of the person's monthly income, or (C) if the person is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the person's actual housing costs, is specifically designated by such agency to meet the person's housing costs, the portion of such payments which is so designated.

(d) Term of commitment

(1) Use limitations

All units in housing assisted under this section shall be made available for occupancy by very low-income elderly persons for not less than 40 years.

(2) Contract terms

The initial term of a contract entered into under subsection (c)(2) of this section shall be 240 months. The Secretary shall, to the extent approved in appropriation Acts, extend any expiring contract for a term of not less than 60 months. In order to facilitate the orderly extension of expiring contracts, the Secretary is authorized to make commitments to extend expiring contracts during the year prior to the date of expiration.

(e) Applications

Funds made available under this section shall be allocated by the Secretary among approvable applications submitted by private nonprofit organizations. Applications for assistance under this section shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish. Such applications shall contain—

(1) a description of the proposed housing;

(2) a description of the assistance the applicant seeks under this section;

(3) a description of the resources that are expected to be made available in compliance with subsection (h) of this section;

(4) a description of (A) the category or categories of elderly persons the housing is intended to serve; (B) the supportive services, if any, to be provided to the persons occupying such housing; (C) the manner in which such services will be provided to such persons, including, in the case of frail elderly persons, evidence of such residential supervision as the Secretary determines is necessary to facilitate the adequate provision of such services; and (D) the public or private sources of assistance that can reasonably be expected to fund or provide such services;

(5) a certification from the public official responsible for submitting a housing strategy for the jurisdiction to be served in accordance with section 12705 of title 42 that the proposed project is consistent with the approved housing strategy; and

(6) such other information or certifications that the Secretary determines to be necessary or appropriate to achieve the purposes of this section.

The Secretary shall not reject an application on technical grounds without giving notice of that rejection and the basis therefor to the applicant and affording the applicant an opportunity to respond.

(f) Initial selection criteria and processing

(1) Selection criteria

The Secretary shall establish selection criteria for assistance under this section, which shall include—

(A) the ability of the applicant to develop and operate the proposed housing;

(B) the need for supportive housing for the elderly in the area to be served, taking into consideration the availability of public housing for the elderly and vacancy rates in such facilities;

(C) the extent to which the proposed size and unit mix of the housing will enable the applicant to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion;

(D) the extent to which the proposed design of the housing will meet the special physical needs of elderly persons;

(E) the extent to which the applicant has demonstrated that the supportive services identified in subsection (e)(4) of this section will be provided on a consistent, long-term basis;

(F) the extent to which the applicant has ensured that a service coordinator will be employed or otherwise retained for the housing, who has the managerial capacity and responsibility for carrying out the actions described in subparagraphs (A) and (B) of subsection (g)(2);

(G) the extent to which the proposed design of the housing will accommodate the provision of supportive services that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve; and

(H) such other factors as the Secretary determines to be appropriate to ensure that funds made available under this section are used effectively.

(2) Delegated processing

(A) In issuing a capital advance under this subsection for any project for which financing for the purposes described in the last two sentences of subsection (b) is provided by a combination of a capital advance under subsection (c)(1) and sources other than this section, within 30 days of award of the capital advance, the Secretary shall delegate review and processing of such projects to a State or local housing agency that—

(i) is in geographic proximity to the property;

(ii) has demonstrated experience in and capacity for underwriting multifamily housing loans that provide housing and supportive services;

(iii) may or may not be providing low-income housing tax credits in combination with the capital advance under this section,[1] and

(iv) agrees to issue a firm commitment within 12 months of delegation.

(B) The Secretary shall retain the authority to process capital advances in cases in which no State or local housing agency has applied to provide delegated processing pursuant to this paragraph or no such agency has entered into an agreement with the Secretary to serve as a delegated processing agency.

(C) An agency to which review and processing is delegated pursuant to subparagraph (A) may assess a reasonable fee which shall be included in the capital advance amounts and may recommend project rental assistance amounts in excess of those initially awarded by the Secretary. The Secretary shall develop a schedule for reasonable fees under this subparagraph to be paid to delegated processing agencies, which shall take into consideration any other fees to be paid to the agency for other funding provided to the project by the agency, including bonds, tax credits, and other gap funding.

(D) Under such delegated system, the Secretary shall retain the authority to approve rents and development costs and to execute a capital advance within 60 days of receipt of the commitment from the State or local agency. The Secretary shall provide to such agency and the project sponsor, in writing, the reasons for any reduction in capital advance amounts or project rental assistance and such reductions shall be subject to appeal.

(g) Provisions of services

(1) In general

In carrying out the provisions of this section, the Secretary shall ensure that housing assisted under this section provides a range of services tailored to the needs of the category or categories of elderly persons (including frail elderly persons) occupying such housing. Such services may include (A) meal service adequate to meet nutritional need; (B) housekeeping aid; (C) personal assistance; (D) transportation services; (E) health-related services; (F) providing education and outreach regarding telemarketing fraud, in accordance with the standards issued under section 671(f) of the Housing and Community Development Act of 1992 (42 U.S.C. 13631(f)); and (G) such other services as the Secretary deems essential for maintaining independent living. The Secretary may permit the provision of services to elderly persons who are not residents if the participation of such persons will not adversely affect the cost-effectiveness or operation of the program or add significantly to the need for assistance under this Act.

(2) Local coordination of services

The Secretary shall ensure that owners have the managerial capacity to—

(A) assess on an ongoing basis the service needs of residents;

[1] So in original. The comma probably should be a semicolon.

(B) coordinate the provision of supportive services and tailor such services to the individual needs of residents; and

(C) seek on a continuous basis new sources of assistance to ensure the long-term provision of supportive services.

Any cost associated with this subsection shall be an eligible cost under subsection (c)(2) of this section.

(3) Service coordinators

Any cost associated with employing or otherwise retaining a service coordinator in housing assisted under this section shall be considered an eligible cost under subsection (c)(2) of this section. If a project is receiving congregate housing services assistance under section 8011 of title 42, the amount of costs provided under subsection (c)(2) of this section for the project service coordinator may not exceed the additional amount necessary to cover the costs of providing for the coordination of services for residents of the project who are not eligible residents under such section 8011 of title 42. To the extent that amounts are available pursuant to subsection (c)(2) of this section for the costs of carrying out this paragraph within a project, an owner of housing assisted under this section shall provide a service coordinator for the housing to coordinate the provision of services under this subsection within the housing.

(h) Development cost limitations

(1) In general

The Secretary shall periodically establish reasonable development cost limitations by market area for various types and sizes of supportive housing for the elderly by publishing a notice of the cost limitations in the Federal Register. The cost limitations shall reflect—

(A) the cost of construction, reconstruction, or rehabilitation of supportive housing for the elderly that meets applicable State and local housing and building codes;

(B) the cost of movables necessary to the basic operation of the housing, as determined by the Secretary;

(C) the cost of special design features necessary to make the housing accessible to elderly persons;

(D) the cost of special design features necessary to make individual dwelling units meet the physical needs of elderly project residents;

(E) the cost of congregate space necessary to accommodate the provision of supportive services to elderly project residents;

(F) if the housing is newly constructed, the cost of meeting the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of title 42; and

(G) the cost of land, including necessary site improvement.

In establishing development cost limitations for a given market area under this subsection, the Secretary shall use data that reflect currently prevailing costs of construction, reconstruction, or rehabilitation, and land acquisition in the area. For purposes of this paragraph, the term ''congregate space'' shall include space for cafeterias or dining halls, community rooms or buildings, workshops, adult day health facilities, or other outpatient health facilities, or other essential service facilities. Neither this section nor any other provision of law may be construed as prohibiting or preventing the location and operation, in a project assisted under this section, of commercial facilities for the benefit of residents of the project and the community in which the project is located, except that assistance made available under this section may not be used to subsidize any such commercial facility.

(2) Acquisition

In the case of existing housing and related facilities to be acquired, the cost limitations shall include—

(A) the cost of acquiring such housing,

(B) the cost of rehabilitation, alteration, conversion, or improvement, including the moderate rehabilitation thereof, and

(C) the cost of the land on which the housing and related facilities are located.

(3) Annual adjustments

The Secretary shall adjust the cost limitation not less than once annually to reflect changes in the general level of construction, reconstruction, or rehabilitation costs.

(4) Incentives for savings

(A) Special housing account

The Secretary shall use the development cost limitations established under paragraph (1) or (2) to calculate the amount of financing to be made available to individual owners. Owners which incur actual development costs that are less than the amount of financing shall be entitled to retain 50 percent of the savings in a special housing account. Such percentage shall be increased to 75 percent for owners which add energy efficiency features which—

(i) exceed the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of title 42;

(ii) substantially reduce the life-cycle cost of the housing;

(iii) reduce gross rent requirements; and

(iv) enhance tenant comfort and convenience.

(B) Uses

The special housing account established under subparagraph (A) may be used (i) to supplement services provided to residents of the housing or funds set aside for replacement reserves, or (ii) for such other purposes as determined by the Secretary.

(5) Design flexibility

The Secretary shall, to the extent practicable, give owners the flexibility to design housing appropriate to their location and proposed resident population within broadly defined parameters.

(6) Use of funds from other sources

An owner shall be permitted voluntarily to provide funds from sources other than this sec-

tion for amenities and other features of appropriate design and construction suitable for supportive housing for the elderly if the cost of such amenities is (A) not financed with the advance, and (B) is not taken into account in determining the amount of Federal assistance or of the rent contribution of tenants. Notwithstanding any other provision of law, assistance amounts provided under this section may be treated as amounts not derived from a Federal grant.

(i) Tenant selection

(1) In general

An owner shall adopt written tenant selection procedures that are satisfactory to the Secretary as (A) consistent with the purpose of improving housing opportunities for very low-income elderly persons; and (B) reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. Such tenant selection procedures shall comply with subtitle C of title VI of the Housing and Community Development Act of 1992 [42 U.S.C. 13601 et seq.] and any regulations issued under such subtitle. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(2) Information regarding housing under this section

The Secretary shall provide to an appropriate agency in each area (which may be the applicable Area Agency on the Aging) information regarding the availability of housing assisted under this section.

(j) Miscellaneous provisions

(1) Technical assistance

The Secretary shall make available appropriate technical assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the program carried out under this section.

(2) Civil rights compliance

Each owner shall certify, to the satisfaction of the Secretary, that assistance made available under this section will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Fair Housing Act [42 U.S.C. 3601 et seq.], and other Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

(3) Owner deposit

(A) In general

The Secretary shall require an owner to deposit an amount not to exceed $25,000 in a special escrow account to assure the owner's commitment to the housing. Such amount shall be used only to cover operating deficits during the first 3 years of operations and shall not be used to cover construction shortfalls or inadequate initial project rental assistance amounts.

(B) Reduction of requirement

The Secretary may reduce or waive the owner deposit specified under paragraph (1) for individual applicants if the Secretary finds that such waiver or reduction is necessary to achieve the purposes of this section and the applicant demonstrates to the satisfaction of the Secretary that it has the capacity to manage and maintain the housing in accordance with this section. The Secretary shall reduce or waive the requirement of the owner deposit under paragraph (1) in the case of a nonprofit applicant that is not affiliated with a national sponsor, as determined by the Secretary.

(4) Notice of appeal

The Secretary shall notify an owner not less than 30 days prior to canceling any reservation of assistance provided under this section. During the 30-day period following the receipt of a notice under the preceding sentence, an owner may appeal the proposed cancellation of loan authority. Such appeal, including review by the Secretary, shall be completed not later than 45 days after the appeal is filed.

(5) Labor

(A) In general

The Secretary shall take such action as may be necessary to ensure that all laborers and mechanics employed by contractors and subcontractors in the construction of housing with 12 or more units assisted under this section shall be paid wages at rates not less than the rates prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40.

(B) Exemption

Subparagraph (A) shall not apply to any individual who—

(i) performs services for which the individual volunteered;

(ii)(I) does not receive compensation for such services; or

(II) is paid expenses, reasonable benefits, or a nominal fee for such services; and

(iii) is not otherwise employed at any time in the construction work.

(6) Access to residual receipts

The Secretary shall authorize the owner of a project assisted under this section to use any residual receipts held for the project in excess of $500 per unit (or in excess of such other amount prescribed by the Secretary based on the needs of the project) for activities to retrofit and renovate the project described under section 8011(d)(3) of title 42, to provide a service coordinator for the project as described in section 8011(d)(4) of title 42, or to provide supportive services (as such term is defined in section 8011(k) of title 42) to residents of the project. Any owner that uses residual receipts under this paragraph shall submit to the Secretary a report, not less than annually, describing the uses of the residual receipts. In determining the amount of project rental assistance to be provided to a project under subsection (c)(2) of this section, the Secretary may take into consideration the residual re-

ceipts held for the project only if, and to the extent that, excess residual receipts are not used under this paragraph.

(7) Compliance with Housing and Community Development Act of 1992

Each owner shall operate housing assisted under this section in compliance with subtitle C of title VI of the Housing and Community Development Act of 1992 [42 U.S.C. 13601 et seq.] and any regulations issued under such subtitle.

(8) Use of project reserves

Amounts for project reserves for a project assisted under this section may be used for costs, subject to reasonable limitations as the Secretary determines appropriate, for reducing the number of dwelling units in the project. Such use shall be subject to the approval of the Secretary to ensure that the use is designed to retrofit units that are currently obsolete or unmarketable.

(k) Definitions

(1) The term ''elderly person'' means a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.

(2) The term ''frail elderly'' means an elderly person who is unable to perform at least 3 activities of daily living adopted by the Secretary for purposes of this program. Owners may establish additional eligibility requirements (acceptable to the Secretary) based on the standards in local supportive services programs.

(3) The term ''owner'' means a private nonprofit organization that receives assistance under this section to develop and operate supportive housing for the elderly.

(4) The term ''private nonprofit organization'' means—

(A) any incorporated private institution or foundation—

(i) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(ii) which has a governing board—

(I) the membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located; and

(II) which is responsible for the operation of the housing assisted under this section, except that, in the case of a nonprofit organization that is the sponsoring organization of multiple housing projects assisted under this section, the Secretary may determine the criteria or conditions under which financial, compliance and other administrative responsibilities exercised by a single-entity private nonprofit organization that is the owner corporation responsible for the operation of an individual housing project may be shared or transferred to the governing board of such sponsoring organization; and

(iii) which is approved by the Secretary as to financial responsibility; and

(B) a for-profit limited partnership the sole general partner of which is—

(i) an organization meeting the requirements under subparagraph (A);

(ii) a for-profit corporation wholly owned and controlled by one or more organizations meeting the requirements under subparagraph (A); or

(iii) a limited liability company wholly owned and controlled by one or more organizations meeting the requirements under subparagraph (A).

(5) The term ''State'' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

(6) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(7) The term ''supportive housing for the elderly'' means housing that is designed (A) to meet the special physical needs of elderly persons and (B) to accommodate the provision of supportive services that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of elderly persons that the housing is intended to serve.

(8) The term ''very low-income'' has the same meaning as given the term ''very low-income families'' under section 1437a(b)(2) of title 42.

***(l)* Allocation of funds**

(1) Capital advances

Of any amounts made available for assistance under this section, such sums as may be necessary shall be available for funding capital advances in accordance with subsection (c)(1) of this section. Such amounts, the repayments from such advances, and the proceeds from notes or obligations issued under this section prior to November 28, 1990, shall constitute a revolving fund to be used by the Secretary in carrying out this section.

(2) Project rental assistance

Of any amounts made available for assistance under this section, such sums as may be necessary shall be available for funding project rental assistance in accordance with subsection (c)(2) of this section.

(3) Nonmetropolitan allocation

Not less than 15 percent of the funds made available for assistance under this section shall be allocated by the Secretary on a national basis for nonmetropolitan areas. In complying with this paragraph, the Secretary shall either operate a national competition for the nonmetropolitan funds or make allocations to regional offices of the Department of Housing and Urban Development.

(m) Authorization of appropriations

There is authorized to be appropriated for providing assistance under this section $710,000,000 for fiscal year 2000.

(m)[2] Authorization of appropriations

There are authorized to be appropriated for providing assistance under this section such sums as may be necessary for each of fiscal years 2001, 2002, and 2003.

(Pub. L. 86–372, title II, §202, Sept. 23, 1959, 73 Stat. 667; Pub. L. 87–70, title II, §201, June 30,

[2] So in original. Probably should be ''(n)''.

1961, 75 Stat. 162; Pub. L. 87–723, § 3, Sept. 28, 1962, 76 Stat. 670; Pub. L. 88–158, Oct. 24, 1963, 77 Stat. 278; Pub. L. 88–560, title II, §§ 201, 203(a)(2), Sept. 2, 1964, 78 Stat. 783; Pub. L. 89–117, title I, § 105(a), (b)(1), formerly § 105, Aug. 10, 1965, 79 Stat. 457, renumbered Pub. L. 89–754, title X, § 1001(1), (2), Nov. 3, 1966, 80 Stat. 1284; Pub. L. 90–19, § 16(a), May 25, 1967, 81 Stat. 25; Pub. L. 90–448, title XVII, § 1706, Aug. 1, 1968, 82 Stat. 605; Pub. L. 91–152, title II, § 218, Dec. 24, 1969, 83 Stat. 390; Pub. L. 93–383, title II, § 210(a)–(f), Aug. 22, 1974, 88 Stat. 669–671; Pub. L. 94–375, § 11, Aug. 3, 1976, 90 Stat. 1074; Pub. L. 95–128, title II, § 202, Oct. 12, 1977, 91 Stat. 1129; Pub. L. 95–557, title II, § 205, Oct. 31, 1978, 92 Stat. 2090; Pub. L. 96–153, title III, § 306(a)–(d), Dec. 21, 1979, 93 Stat. 1112, 1113; Pub. L. 96–399, title III, § 319, Oct. 8, 1980, 94 Stat. 1646; Pub. L. 97–35, title III, § 336, Aug. 13, 1981, 95 Stat. 414; Pub. L. 98–181, title II, § 223(a)(1), (b)–(e), Nov. 30, 1983, 97 Stat. 1189, 1190; Pub. L. 98–479, title I, § 102(c), title II, §§ 201(e), 203(h), Oct. 17, 1984, 98 Stat. 2222, 2228, 2230; Pub. L. 100–242, title I, §§ 161(a)–(c)(1), (d)–(f), 162(b), (c), 170(g), Feb. 5, 1988, 101 Stat. 1855–1857, 1859, 1867; Pub. L. 101–625, title VIII, §§ 801(a), (e), 804(a)–(c), 805, 807, 808, title IX, § 955(c), Nov. 28, 1990, 104 Stat. 4297, 4304, 4322–4324, 4421; Pub. L. 102–139, title II, Oct. 28, 1991, 105 Stat. 756; Pub. L. 102–242, title II, § 241(c)(2), Dec. 19, 1991, 105 Stat. 2331; Pub. L. 102–550, title VI, §§ 601(c), 602(a)–(c), (e)–(g), 677(a), 682(c), title IX, § 913(a), title XVI, § 1604(c)(3), Oct. 28, 1992, 106 Stat. 3802–3805, 3829, 3831, 3876, 4083; Pub. L. 106–74, title V, § 511, Oct. 20, 1999, 113 Stat. 1101; Pub. L. 106–569, title VIII, §§ 821, 831–835, 851(c)(1), Dec. 27, 2000, 114 Stat. 3020–3022, 3024; Pub. L. 110–289, div. B, title VIII, § 2835(b), July 30, 2008, 122 Stat. 2873; Pub. L. 111–372, title I, §§ 101–105, Jan. 4, 2011, 124 Stat. 4077–4079.)

References in Text

This Act, referred to in subsec. (g)(1), is Pub. L. 86–372, Sept. 23, 1959, 73 Stat. 654, as amended, known as the Housing Act of 1959. For complete classification of this Act to the Code, see Short Title of 1959 Amendment note set out under section 1701 of this title and Tables.

The Housing and Community Development Act of 1992, referred to in subsecs. (i)(1) and (j)(7), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672. Subtitle C of title VI of the Act is classified generally to subchapter I (§ 13601 et seq.) of chapter 135 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42 and Tables.

The Civil Rights Act of 1964, referred to in subsec. (j)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

The Fair Housing Act, referred to in subsec. (j)(2), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

Codification

''Sections 3141–3144, 3146, and 3147 of title 40'' substituted in subsec. (j)(5)(A) for ''the Act of March 3, 1931 (commonly known as the Davis-Bacon Act)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Section was enacted as part of the Housing Act of 1959, and not as part of the National Housing Act which comprises this chapter.

Amendments

2011—Subsec. (f)(1)(F) to (H). Pub. L. 111–372, § 101, added subpar. (F) and redesignated former subpars. (F) and (G) as (G) and (H), respectively.

Subsec. (h)(1). Pub. L. 111–372, § 102, inserted ''reasonable'' before ''development cost limitations'' in introductory provisions.

Subsec. (j)(3)(A). Pub. L. 111–372, § 103, inserted after period at end ''Such amount shall be used only to cover operating deficits during the first 3 years of operations and shall not be used to cover construction shortfalls or inadequate initial project rental assistance amounts.''

Subsec. (k)(4). Pub. L. 111–372, § 104, amended par. (4) generally. Prior to amendment, par. (4) defined ''private nonprofit organization''.

Subsec. (*l*)(3). Pub. L. 111–372, § 105, inserted after period at end ''In complying with this paragraph, the Secretary shall either operate a national competition for the nonmetropolitan funds or make allocations to regional offices of the Department of Housing and Urban Development.''

2008—Subsec. (f). Pub. L. 110–289 substituted ''Initial selection criteria and processing'' for ''Selection criteria'' in heading, designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) to (7) as subpars. (A) to (G), respectively, of par. (1), and added par. (2).

2000—Subsec. (b). Pub. L. 106–569, § 833(1), struck out ''from the Resolution Trust Corporation'' after ''or the acquisition of a structure''.

Subsec. (g)(1)(F), (G). Pub. L. 106–569, § 851(c)(1), added cl. (F) and redesignated former cl. (F) as (G).

Subsec. (h)(1). Pub. L. 106–569, § 835, inserted at end of concluding provisions ''Neither this section nor any other provision of law may be construed as prohibiting or preventing the location and operation, in a project assisted under this section, of commercial facilities for the benefit of residents of the project and the community in which the project is located, except that assistance made available under this section may not be used to subsidize any such commercial facility.''

Subsec. (h)(2). Pub. L. 106–569, § 833(2), substituted ''Acquisition'' for ''RTC properties'' in heading and struck out ''from the Resolution Trust Corporation under section 1441a(c) of this title or from the Federal Deposit Insurance Corporation under section 1831q of this title'' after ''related facilities to be acquired'' in introductory provisions.

Subsec. (h)(6). Pub. L. 106–569, § 832, substituted ''sources other than this section'' for ''non-Federal sources'' and inserted at end ''Notwithstanding any other provision of law, assistance amounts provided under this section may be treated as amounts not derived from a Federal grant.''

Subsec. (j)(8). Pub. L. 106–569, § 834, added par. (8).

Subsec. (k)(4). Pub. L. 106–569, § 831, inserted concluding provisions.

Subsec. (m). Pub. L. 106–569, § 821, added subsec. (m) relating to authorization of appropriations for fiscal years 2001 to 2003.

1999—Subsec. (m). Pub. L. 106–74 added subsec. (m) relating to authorization of appropriations for fiscal year 2000.

1992—Subsec. (e)(5) to (7). Pub. L. 102–550, § 602(b), redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out former par. (5) which read as follows: ''a certification from the appropriate State or local agency (as determined by the Secretary) that the provision of services identified in paragraph (4) is well designed to serve the special needs of the category or categories of elderly persons the housing is intended to serve;''.

Subsec. (f)(2). Pub. L. 102–550, § 602(c), which directed insertion of '', taking into consideration the availabil-

ity of public housing for the elderly and vacancy rates in such facilities'' at end, was executed by making insertion before semicolon at end.

Subsec. (g)(1). Pub. L. 102–550, § 602(a)(1), struck out ''and persons with disabilities'' after ''elderly persons'' in last sentence.

Subsec. (g)(2). Pub. L. 102–550, § 677(a)(A), struck out at end ''Any cost associated with the employment of a service coordinator shall also be an eligible cost except where the project is receiving congregate housing services assistance under section 8011 of title 42.''

Subsec. (g)(3). Pub. L. 102–550, § 677(a)(B), added par. (3).

Subsec. (h)(2). Pub. L. 102–550, § 1604(c)(3), made technical amendment to reference to section 1831q of this title to correct reference to corresponding provision of original act.

Subsec. (i)(1). Pub. L. 102–550, § 682(c)(1), inserted after first sentence ''Such tenant selection procedures shall comply with subtitle C of title VI of the Housing and Community Development Act of 1992 and any regulations issued under such subtitle.''

Subsec. (i)(1)(A). Pub. L. 102–550, § 602(a)(2), substituted ''elderly persons'' for ''persons with disabilities''.

Subsec. (j)(3)(B). Pub. L. 102–550, § 602(f), inserted at end ''The Secretary shall reduce or waive the requirement of the owner deposit under paragraph (1) in the case of a nonprofit applicant that is not affiliated with a national sponsor, as determined by the Secretary.''

Subsec. (j)(5). Pub. L. 102–550, § 913(a), amended par. (5) generally. Prior to amendment, par. (5) read as follows:

''(A) IN GENERAL.—Any contract for the construction of affordable housing with 12 or more units assisted with funds made available under this subtitle shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a–5), shall be paid to all laborers and mechanics employed in the development of affordable housing involved, and participating jurisdictions shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.

''(B) WAIVER.—Subparagraph (A) shall not apply if the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and such persons are not otherwise employed at any time in the construction work.''

Subsec. (j)(6). Pub. L. 102–550, § 602(e), added par. (6).

Subsec. (j)(7). Pub. L. 102–550, § 682(c)(2), added par. (7).

Subsec. (*l*). Pub. L. 102–550, § 601(c)(1), substituted ''Allocation of funds'' for ''Authorizations'' in heading.

Subsec. (*l*)(1). Pub. L. 102–550, § 601(c)(2), inserted sentence at beginning, substituted ''Such amounts'' for ''Amounts so appropriated'' in second sentence, and struck out former first sentence which read as follows: ''There are authorized to be appropriated for the purpose of funding capital advances in accordance with subsection (c)(1) of this section $659,000,000 for fiscal year 1992.''

Subsec. (*l*)(2). Pub. L. 102–550, § 601(c)(3), added par. (2) and struck out former par. (2) which read as follows: ''For the purpose of funding contracts for project rental assistance in accordance with subsection (c)(2) of this section the Secretary may, to the extent approved in an appropriations Act, reserve authority to enter into obligations aggregating $363,000,000 for fiscal year 1992.''

Subsec. (*l*)(3). Pub. L. 102–550, § 602(g), which directed substitution of ''15 percent'' for ''20 percent'' in par. (4) was executed to par. (3) to reflect the probable intent of Congress.

Pub. L. 102–550, § 601(c)(4), substituted ''for assistance under this section'' for ''under this subtitle''.

1991—Subsec. (g)(2). Pub. L. 102–139, amending Pub. L. 101–625, § 801(a), struck out ''in housing principally serving frail elderly persons'' after ''coordinator''.

Pub. L. 102–139 struck out ''or a project where the tenants are not principally frail elderly'' before period at end of subsec. (g)(2) as it existed prior to the general amendment of this section by section 801(a) of Pub. L. 101–625.

Subsec. (h)(2). Pub. L. 102–242 inserted ''or from the Federal Deposit Insurance Corporation under section 1831q of this title'' after ''section 1441a(c) of this title''.

1990—Pub. L. 101–625, § 801(a), amended section generally, substituting present provisions for provisions authorizing loans for housing and related facilities for elderly or handicapped families.

Subsec. (a)(4)(C). Pub. L. 101–625, § 801(e), struck out before period at end '', and not more than $666,400,000 may be approved in appropriation Acts for such loans with respect to fiscal year 1984. For fiscal years 1988 and 1989, not more than $621,701,000 and $630,000,000, respectively, may be approved in appropriation Acts for such loans'' and inserted at end ''For fiscal year 1991, not more than $714,200,000 may be approved in appropriation Acts for such loans.''

Subsec. (a)(9). Pub. L. 101–625, § 804(b), added par. (9).

Subsec. (c)(3). Pub. L. 101–625, § 955(c), designated existing provisions as subpar. (A), struck out before period at end ''; but the Secretary may waive the application of this paragraph in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction of such housing, voluntarily donate their services without full compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts saved thereby are fully credited to the corporation, cooperative, or public body or agency undertaking the construction'', and added subpar. (B).

Subsec. (d)(3). Pub. L. 101–625, § 804(a), inserted at end ''The term also means the cost of acquiring existing housing and related facilities from the Resolution Trust Corporation under section 1441a(c) of this title, the cost of rehabilitation, alteration, conversion, or improvement, including the moderate rehabilitation thereof, and the cost of the land on which the housing and related facilities are located.''

Subsec. (g). Pub. L. 101–625, § 808, designated existing provisions as par. (1) and added par. (2).

Pub. L. 101–625, § 804(c), inserted at end ''In the case of existing housing and related facilities acquired from the Resolution Trust Corporation under section 1441a(c) of this title, the term of the contract pursuant to such section 8 shall be 240 months.''

Subsec. (k)(3). Pub. L. 101–625, § 807, added par. (3).

Subsec. (p). Pub. L. 101–625, § 805, added subsec. (p).

1988—Subsec. (a)(3). Pub. L. 100–242, § 161(c)(1), designated existing provisions as subpar. (A), substituted ''taking into consideration the average yield, during the 3-month period immediately preceding the fiscal year in which the loan is made, on the most recently issued 30-year marketable obligations of the United States'' for ''of the Treasury taking into consideration the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end of the fiscal year next preceding the date on which the loan is made'', and added subpar. (B).

Subsec. (a)(4)(B)(i). Pub. L. 100–242, § 161(a), inserted provisions relating to such sums as may be approved for fiscal years 1988 and 1989, and substituted ''October 1, 1983, to such sum'' for ''October 1, 1983, and to such sum''.

Pub. L. 100–242, § 161(d), substituted ''Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the average yield, during the 3-month period immediately preceding the fiscal year in which the loan is made, on the most recently issued 30-year marketable obligations of the United States.'' for ''Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end

of the fiscal year next preceding the date on which the loan is made.''

Subsec. (a)(4)(C). Pub. L. 100–242, §161(b), inserted provisions relating to loan authority for fiscal years 1988 and 1989.

Subsec. (a)(8). Pub. L. 100–242, §161(f), added par. (8).

Subsec. (c)(3). Pub. L. 100–242, §162(b)(3), inserted reference to construction designed for dwelling use by 12 or more elderly or handicapped families.

Subsec. (d)(4). Pub. L. 100–242, §170(g)(1), substituted reference to a handicapped person if such person has a developmental disability as defined in section 6001(7) of title 42, for reference to a handicapped person if such person is a developmentally disabled individual as defined in section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1950.

Subsec. (d)(9), (10). Pub. L. 100–242, §162(b)(2), added pars. (9), (10).

Subsec. (f). Pub. L. 100–242, §162(c), designated existing provisions as par. (1) and added par. (2).

Pub. L. 100–242, §170(g)(2), substituted ''section 133'' for ''section 134''.

Subsec. (h). Pub. L. 100–242, §162(b)(1), amended subsec. (h) generally, changing structure of subsection from one consisting of introductory provisions and two numbered paragraphs to one consisting of four numbered paragraphs.

Subsec. (*l*). Pub. L. 100–242, §170(g)(3), substituted ''different'' for ''difference''.

Subsec. (n). Pub. L. 100–242, §161(e), added subsec. (n).

1984—Subsec. (a)(4)(B)(i). Pub. L. 98–479, §203(h), substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act'' and ''such chapter'' for ''that Act''.

Pub. L. 98–479, §102(c)(1), substituted ''October 1, 1984'' for ''October 1, 1985''.

Subsec. (f). Pub. L. 98–479, §201(e), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (h)(1). Pub. L. 98–479, §102(c)(2)(A), inserted ''and'' at end.

Subsec. (h)(2). Pub. L. 98–479, §102(c)(2)(B), substituted a period for ''; and'' at end.

Subsec. (*l*). Pub. L. 98–479, §102(c)(3), inserted ''The Secretary shall not impose difference requirements or standards with respect to construction change orders, increases in loan amount to cover change orders, errors in plans and specifications, and use of contingency funds, because of the method of contractor selection used by the sponsor or borrower.''

1983—Subsec. (a)(3). Pub. L. 98–181, §223(a)(1), inserted '', except that such interest rate plus such allowance shall not exceed 9.25 per centum per annum''.

Subsec. (a)(4)(B)(i). Pub. L. 98–181, §223(b), struck out ''and'' after ''1980'' and inserted '', to $6,400,000,000 on October 1, 1983, and to such sum as may be approved in an appropriation Act on October 1, 1985,''.

Subsec. (a)(4)(C). Pub. L. 98–181, §223(c), substituted ''$666,400,000'' and ''1984'' for ''$850,848,000'' and ''1982'', respectively.

Subsec. (h). Pub. L. 98–181, §223(d)(1), (2), in provisions preceding par. (1), substituted ''1983'' for ''1978'', and inserted '', and persons described in subparagraphs (B) and (C) of subsection (d)(4) of this section who have been released from residential health treatment facilities''.

Subsec. (h)(1). Pub. L. 98–181, §223(d)(3), (5), substituted ''persons described in the first sentence of this subsection'' for ''handicapped persons'', and struck out ''and'' at end.

Subsec. (h)(2). Pub. L. 98–181, §223(d)(4), (6), substituted ''persons described in the first sentence of this subsection who are'' for ''handicapped persons'', and substituted ''such community; and'' for ''such community''.

Subsecs. (i) to (m). Pub. L. 98–181, §223(e), added subsecs. (i) to (m).

1981—Subsec. (a)(4)(C). Pub. L. 97–35 inserted provisions relating to fiscal year 1982.

1980—Subsec. (d)(3). Pub. L. 96–399 inserted last sentence relating to housing to meet the needs of handicapped (primarily nonelderly) persons.

1979—Subsec. (a)(4)(B)(i). Pub. L. 96–153, §306(a), provided for increase of notes or other obligations to $3,827,500,000 on October 1, 1979, to $4,777,500,000 on October 1, 1980, and to $5,752,500,000 on October 1, 1981.

Subsec. (a)(6), (7). Pub. L. 96–153, §306(b), added pars. (6) and (7).

Subsec. (d)(8)(A). Pub. L. 96–153, §306(c)(1), substituted ''adult day health facilities, or other'' for ''or infirmaries or other inpatient or''.

Subsec. (f). Pub. L. 96–153, §306(c)(2), inserted reference to adult day health services.

Subsec. (g). Pub. L. 96–153, §306(d), inserted provisions that at the time of settlement on permanent financing, the Secretary make appropriate adjustment in the amount of assistance to be provided under a contract for annual contributions pursuant to section 8 of the United States Housing Act of 1937 reflecting the difference between interest rate which will actually be charged in connection with such permanent financing and the interest rate which was in effect at the time of the reservation of assistance in connection with the project.

1978—Subsec. (a)(4)(C). Pub. L. 95–557, §205(b), struck out ''in any fiscal year'' after ''The aggregate loans made under this section'', and ''for such year'' after ''lending authority established''.

Subsec. (d)(2). Pub. L. 95–557, §205(d), designated provisions beginning ''no part of'' as par. (A), substituted ''member, founder, contributor, or individual'' for ''private shareholder, contributor, or individual, if such institution or foundation is approved by the Secretary as to financial responsibility'', and added pars. (B) and (C).

Subsec. (d)(3). Pub. L. 95–557, §205(c), inserted ''the cost of movables necessary to the basic operation of the project as determined by the Secretary,'' after ''related facilities''.

Subsec. (h). Pub. L. 95–557, §205(a), added subsec. (h).

1977—Subsec. (d)(3). Pub. L. 95–128, §202(a), provided for determination of ''development cost'' without regard to mortgage limits applicable to housing projects subject to mortgages insured under section 1715v of this title.

Subsec. (g). Pub. L. 95–128, §202(b), added subsec. (g).

1976—Subsec. (a)(3). Pub. L. 94–375, §11(c)(1), substituted ''average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end of the fiscal year next preceding the date on which the loan is made'' for ''current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans''.

Subsec. (a)(4)(B)(i). Pub. L. 94–375, §11(a), (c)(2), substituted ''$1,475,000,000, which amount shall be increased to $2,387,500,000 on October 1, 1977, and to $3,300,000,000 on October 1, 1978'' for ''$800,000,000'' and ''the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end of the fiscal year next preceding the date on which the loan is made'' for ''the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations'', and inserted provision restricting the amount of notes or obligations issued to the Secretary of the Treasury to not more than $800,000,000.

Subsec. (d)(4). Pub. L. 94–375, §11(b), included in definition of ''elderly or handicapped families'' two or more elderly or handicapped persons living together, one such person and another providing care for the first, or a surviving member of the family who was living in the unit at the time another member died.

1974—Subsec. (a)(3). Pub. L. 93–383, §210(a), substituted provisions authorizing the Secretary of the Treasury to determine the interest rate, for provisions authorizing the Secretary of Housing and Urban Development to determine the interest rate.

Subsec. (a)(4). Pub. L. 93–383, §210(d), redesignated existing provision as subsec. (a)(4)(A), inserted '', and the

proceeds from notes or other obligations issued under subparagraph (B),'' after ''Amounts so appropriated'', and added subsec. (a)(4)(B), (C).

Subsec. (a)(5). Pub. L. 93–383, §210(e), added par. (5).

Subsec. (d)(4). Pub. L. 93–383, §210(b), substituted ''an impairment'' for ''a physical impairment'' and inserted provisions relating to developmentally disabled individuals.

Subsec. (d)(8). Pub. L. 93–383, §210(f), inserted ''residing in the project or in the area'' after ''families''.

Subsec. (f). Pub. L. 93–383, §210(c), added subsec. (f).

1969—Subsec. (a)(4). Pub. L. 91–152 increased by $150,000,000 on July 1, 1969 the amount authorized to be appropriated for the purposes of this section.

1968—Subsec. (a)(1). Pub. L. 90–448, §1706(1), authorized assistance to limited profit sponsors.

Subsec. (a)(2). Pub. L. 90–448, §1706(2), authorized loans to any limited profit sponsor approved by the Secretary.

Subsec. (a)(3). Pub. L. 90–448, §1706(3), limited the amount of the loan to not more than 90 per centum of the development cost in the case of other than a corporation, consumer cooperative, or public body or agency.

1967—Pub. L. 90–19, §16(a)(1), substituted ''Secretary'' for ''Administrator'' wherever appearing in subsecs. (a)(2) to (4), (b), (c)(2), (3), (d)(2), (4), and (e) of this section.

Subsec. (c)(2). Pub. L. 90–19, §16(a)(2), struck out at end '', except that for purposes of this subsection the Administrator shall perform the functions vested in the Commissioner by such section 513''.

Subsec. (d)(6). Pub. L. 90–19, §16(a)(3), substituted definition of ''Secretary'' meaning the Secretary of Housing and Urban Development for ''Administrator'' meaning the Housing and Home Finance Administrator.

1965—Subsec. (a)(3). Pub. L. 89–117, §105(b)(1), substituted ''the lower of (A) 3 per centum per annum, or'' for ''the higher of (A) 2¾ per centum per annum, or''.

Subsec. (a)(4). Pub. L. 89–117, §105(a), increased amount authorized to be appropriated from $350,000,000 to $500,000,000.

1964—Subsec. (a)(1), (2). Pub. L. 88–560, §203(a)(2)(A), substituted ''elderly or handicapped families'' for ''elderly families and elderly persons''.

Subsec. (a)(4). Pub. L. 88–560, §201, increased amount authorized to be appropriated from $275,000,000 to $350,000,000.

Subsec. (d)(1). Pub. L. 88–560, §203(a)(2)(B), included in definition of ''housing'' structures suitable for dwelling use by handicapped families, designated existing provisions as subpar. (A), and added subpar. (B).

Subsec. (d)(4). Pub. L. 88–560, §203(a)(2)(C), substituted definitions of ''elderly or handicapped families'' and when ''a person shall be considered handicapped'' for former provisions defining ''elderly families'' as ''families the head of which (or his spouse) is sixty-two years of age or over'' and ''elderly persons'' as ''persons who are sixty-two years of age or over''.

Subsec. (d)(7). Pub. L. 88–560, §203(a)(2)(D), redefined ''construction'' to include rehabilitation, alteration, conversion, or improvement of existing structures.

Subsec. (d)(8). Pub. L. 88–560, §203 (a)(2)(E), redefined ''existing facilities'' by designating existing provisions as cl. (A), inserting in cl. (A) ''by elderly or handicapped families'' and ''workshops'', and adding cl. (B).

Subsec. (e). Pub. L. 88–560, §203(a)(2)(A), substituted ''elderly or handicapped families'' for ''elderly families and elderly persons'' in two places.

1963—Subsec. (a)(4). Pub. L. 88–158 increased amount authorized to be appropriated from $225,000,000 to $275,000,000.

1962—Subsec. (a)(4). Pub. L. 87–723, §3(a), increased amount authorized to be appropriated from $125,000,000 to $225,000,000.

Subsec. (d)(1). Pub. L. 87–723, §3(b)(1), redesignated subsec. (d)(1)(A) as entire subsec. (d)(1) and struck out subsec. (d)(1)(B) which included in definition of ''housing'' dwelling facilities provided by rehabilitation, alteration, conversion, or improvement of existing structures which were otherwise inadequate for proposed dwellings used by elderly families and persons.

Subsec. (d)(7). Pub. L. 87–723, §3(b)(2), struck out '', or rehabilitation, alteration, conversion, or improvement of existing structures'' after ''new structures''.

Subsec. (d)(8). Pub. L. 87–723, §3(b)(3), redesignated subsec. (d)(8)(A) as entire subsec. (d)(8) and struck out subsec. (d)(8)(B) which included in definition of ''related facilities'' structures suitable for essential service facilities provided by rehabilitation, alteration, conversion, or improvement of existing structures which were otherwise inadequate for essential service facilities.

1961—Subsec. (a)(1). Pub. L. 87–70, §201(a)(1), authorized assistance for consumer cooperatives and public bodies and agencies.

Subsec. (a)(2). Pub. L. 87–70, §201(a)(2), authorized loans to consumer cooperatives and to public bodies or agencies, and prohibited loans to public bodies or agencies unless they certify that they are not receiving financial assistance exclusively pursuant to the United States Housing Act of 1937.

Subsec. (a)(3). Pub. L. 87–70, §201(a)(3), (b), substituted ''loan under this section'' for ''loan to a corporation under this section'', and ''may be in an amount not exceeding the total development cost'' for ''may be in an amount not exceeding 98 per centum of the total development cost''.

Subsec. (a)(4). Pub. L. 87–70, §201(c), increased amount authorized to be appropriated from $50,000,000 to $125,000,000, and struck out provisions which limited the amount outstanding at any one time for related facilities to not more than $5,000,000.

Subsec. (c)(3). Pub. L. 87–70, §201(a)(4), substituted ''credited to the corporation, cooperative, or public body or agency undertaking'' for ''credited to the corporation undertaking''.

Subsec. (e). Pub. L. 87–70, §201(d), added subsec. (e).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–569, title VIII, §803, Dec. 27, 2000, 114 Stat. 3019, provided that:

''(a) IN GENERAL.—The provisions of this title [see section 801 of Pub. L. 106–569, set out as a Short Title of 2000 Amendment note under section 1701 of this title] and the amendments made by this title are effective as of the date of the enactment of this Act [Dec. 27, 2000], unless such provisions or amendments specifically provide for effectiveness or applicability upon another date certain.

''(b) EFFECT OF REGULATORY AUTHORITY.—Any authority in this title or the amendments made by this title to issue regulations, and any specific requirement to issue regulations by a date certain, may not be construed to affect the effectiveness or applicability of the provisions of this title or the amendments made by this title under such provisions and amendments and subsection (a) of this section.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–74, title V, §503, Oct. 20, 1999, 113 Stat. 1101, provided that:

''(a) IN GENERAL.—The provisions of this title [see Short Title of 1999 Amendment note set out under section 1701 of this title] and the amendments made by this title are effective as of the date of the enactment of this Act [Oct. 20, 1999], unless such provisions or amendments specifically provide for effectiveness or applicability upon another date certain.

''(b) EFFECT OF REGULATORY AUTHORITY.—Any authority in this title or the amendments made by this title to issue regulations, and any specific requirement to issue regulations by a date certain, may not be construed to affect the effectiveness or applicability of the provisions of this title or the amendments made by this title under such provisions and amendments and subsection (a) of this section.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by sections 677(a) and 682(c) of Pub. L. 102–550 applicable on expiration of 6-month period be-

ginning Oct. 28, 1992, see section 13642 of Title 42, The Public Health and Welfare.

Amendment by section 1604(c)(3) of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 801(c) of Pub. L. 101–625 provided that: ''The amendments made by this section [amending this section and section 1439 of Title 42, The Public Health and Welfare] shall take effect on October 1, 1991, with respect to projects approved on or after such date. The Secretary shall issue regulations for such purpose after notice and an opportunity for public comment in accordance with section 553 of title 5, United States Code. Regulations shall be issued for comment not later than 180 days after the date of enactment of this Act [Nov. 28, 1990].''

Amendment by section 955(c) of Pub. L. 101–625 applicable to any volunteer services provided before, on, or after Nov. 28, 1990, except that such amendment may not be construed to require repayment of any wages paid before Nov. 28, 1990, for services provided before such date, see section 955(d) of Pub. L. 101–625, set out as a note under section 1437j of Title 42.

Pub. L. 101–507, title II, Nov. 5, 1990, 104 Stat. 1358, provided that sections 801, 802, and 811 of Pub. L. 101–625 [enacting sections 8011 and 8013 of Title 42, amending this section and sections 1437g and 1439 of Title 42, and enacting provisions set out as notes under this section] are deemed enacted as of the date of enactment of Pub. L. 101–507, which was approved Nov. 5, 1990.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 162(f) of Pub. L. 100–242 provided that:

''(1) Except as otherwise provided in this section, the provisions of, and amendments made by, this section [amending this section and enacting and repealing provisions set out as notes below] shall not apply with respect to projects with loans or loan reservations made under section 202 of the Housing Act of 1959 [this section] before the implementation date under subsection (e) [section 162(e) of Pub. L. 100–242 set out below].

''(2) Notwithstanding paragraph (1), the Secretary shall apply the provisions of, and amendments made by, this section to any project if needed to facilitate the development of such project in a timely manner.''

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Section 223(a)(2) of Pub. L. 98–181, as amended by Pub. L. 99–120, § 5(b), Oct. 8, 1985, 99 Stat. 504; Pub. L. 99–156, § 5(b), Nov. 15, 1985, 99 Stat. 817; Pub. L. 99–219, § 5(b), Dec. 26, 1985, 99 Stat. 1732; Pub. L. 99–267, § 5(b), Mar. 27, 1986, 100 Stat. 75; Pub. L. 99–272, title III, § 3011(b), Apr. 7, 1986, 100 Stat. 106; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327, which provided that the amendment made by paragraph (1), amending this section, shall apply only with respect to loan agreements entered into after September 30, 1982, and not later than March 15, 1988, was repealed by Pub. L. 100–242, title I, § 161(c)(2), Feb. 5, 1988, 101 Stat. 1856.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 105(b)(2) of Pub. L. 89–117, as added by Pub. L. 89–754, title X, § 1001(3), Nov. 3, 1966, 80 Stat. 1284, provided that: ''The interest rate provided by the amendment made in paragraph (1) [amending this section] shall be applicable (A) with respect to any loan made on or after August 10, 1965, and (B) with respect to any loan made prior to such date if construction of the housing or related facilities to be assisted by such loan was not commenced prior to such date, and not completed prior to the filing of an application for the benefits of such interest rate.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3(b) of Pub. L. 87–723 provided that the amendments made by that section are effective with respect to applications for loans made under this section after Sept. 28, 1962.

REGULATIONS

Pub. L. 106–74, title V, § 502, Oct. 20, 1999, 113 Stat. 1101, provided that: ''The Secretary of Housing and Urban Development shall issue any regulations to carry out this title [see Short Title of 1999 Amendment note set out under section 1701 of this title] and the amendments made by this title that the Secretary determines may or will affect tenants of federally assisted housing only after notice and opportunity for public comment in accordance with the procedure under section 553 of title 5, United States Code, applicable to substantive rules (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). Notice of such proposed rulemaking shall be provided by publication in the Federal Register. In issuing such regulations, the Secretary shall take such actions as may be necessary to ensure that such tenants are notified of, and provided an opportunity to participate in, the rulemaking, as required by such section 553.''

INTERGENERATIONAL HOUSING ASSISTANCE

Pub. L. 108–186, title II, Dec. 16, 2003, 117 Stat. 2688, provided that:

''SEC. 201. SHORT TITLE.

''This title may be cited as the 'Living Equitably: Grandparents Aiding Children and Youth Act of 2003' or the 'LEGACY Act of 2003'.

''SEC. 202. DEFINITIONS.

''In this title:

''(1) CHILD.—The term 'child' means an individual who—

''(A) is not attending school and is not more than 18 years of age; or

''(B) is attending school and is not more than 19 years of age.

''(2) COVERED FAMILY.—The term 'covered family' means a family that—

''(A) includes a child; and

''(B) has a head of household who is—

''(i) a grandparent of the child who is raising the child; or

''(ii) a relative of the child who is raising the child.

''(3) ELDERLY PERSON.—The term 'elderly person' has the same meaning as in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)).

''(4) GRANDPARENT.—

''(A) IN GENERAL.—The term 'grandparent' means, with respect to a child, an individual who is a grandparent or stepgrandparent of the child by blood or marriage, regardless of the age of such individual.

''(B) CASE OF ADOPTION.—In the case of a child who was adopted, the term includes an individual who, by blood or marriage, is a grandparent or stepgrandparent of the child as adopted.

''(5) INTERGENERATIONAL DWELLING UNIT.—The term 'intergenerational dwelling unit' means a qualified dwelling unit that is reserved for occupancy only by an intergenerational family.

''(6) INTERGENERATIONAL FAMILY.—The term 'intergenerational family' means a covered family that has a head of household who is an elderly person.

''(7) PRIVATE NONPROFIT ORGANIZATION.—The term 'private nonprofit organization' has the same meaning as in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)).

''(8) QUALIFIED DWELLING UNIT.—The term 'qualified dwelling unit' means a dwelling unit that—

''(A) has not fewer than 2 separate bedrooms;

''(B) is equipped with design features appropriate to meet the special physical needs of elderly persons, as needed; and

''(C) is equipped with design features appropriate to meet the special physical needs of young children, as needed.

''(9) RAISING A CHILD.—The term 'raising a child' means, with respect to an individual, that the individual—

''(A) resides with the child; and

''(B) is the primary caregiver for the child—

''(i) because the biological or adoptive parents of the child do not reside with the child or are unable or unwilling to serve as the primary caregiver for the child; and

''(ii) regardless of whether the individual has a legal relationship to the child (such as guardianship or legal custody) or is caring for the child informally and has no such legal relationship with the child.

''(10) RELATIVE.—

''(A) IN GENERAL.—The term 'relative' means, with respect to a child, an individual who—

''(i) is not a parent of the child by blood or marriage; and

''(ii) is a relative of the child by blood or marriage, regardless of the age of the individual.

''(B) CASE OF ADOPTION.—In the case of a child who was adopted, the term 'relative' includes an individual who, by blood or marriage, is a relative of the family who adopted the child.

''(11) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

''SEC. 203. DEMONSTRATION PROGRAM FOR ELDERLY HOUSING FOR INTERGENERATIONAL FAMILIES.

''(a) DEMONSTRATION PROGRAM.—The Secretary shall carry out a demonstration program (referred to in this section as the 'demonstration program') to provide assistance for intergenerational dwelling units for intergenerational families in connection with the supportive housing program under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q).

''(b) INTERGENERATIONAL DWELLING UNITS.—The Secretary shall provide assistance under this section only to private nonprofit organizations selected under subsection (d) for use only for expanding the supply of intergenerational dwelling units, which units shall be provided—

''(1) by designating and retrofitting, for use as intergenerational dwelling units, existing dwelling units that are located within a project assisted under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

''(2) through development of buildings or projects comprised solely of intergenerational dwelling units; or

''(3) through the development of an annex or addition to an existing project assisted under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), that contains intergenerational dwelling units, including through the development of elder cottage housing opportunity units that are small, freestanding, barrier free, energy efficient, removable dwelling units located adjacent to a larger project or dwelling.

''(c) PROGRAM TERMS.—Assistance provided pursuant to this section shall be subject to the provisions of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), except that—

''(1) notwithstanding subsection (d)(1) of that section 202 or any provision of that section restricting occupancy to elderly persons, any intergenerational dwelling unit assisted under the demonstration program may be occupied by an intergenerational family;

''(2) subsections (e) and (f) of that section 202 shall not apply;

''(3) in addition to the requirements under subsection (g) of that section 202, the Secretary shall—

''(A) ensure that occupants of intergenerational dwelling units assisted under the demonstration program are provided a range of services that are tailored to meet the needs of elderly persons, children, and intergenerational families; and

''(B) coordinate with the heads of other Federal agencies as may be appropriate to ensure the provision of such services; and

''(4) the Secretary may waive or alter any other provision of that section 202 necessary to provide for assistance under the demonstration program.

''(d) SELECTION.—The Secretary shall—

''(1) establish application procedures for private nonprofit organizations to apply for assistance under this section; and

''(2) to the extent that amounts are made available pursuant to subsection (f), select not less than 2 and not more than 4 projects that are assisted under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) for assistance under this section, based on the ability of the applicant to develop and operate intergenerational dwelling units and national geographical diversity among those projects funded.

''(e) REPORT.—Not later than 36 months after the date of enactment of this Act [Dec. 16, 2003], the Secretary shall submit a report to Congress that—

''(1) describes the demonstration program; and

''(2) analyzes the effectiveness of the demonstration program.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 to carry out this section.

''(g) SUNSET.—The demonstration program carried out under this section shall terminate 5 years after the date of enactment of this Act.

''SEC. 204. TRAINING FOR HUD PERSONNEL REGARDING GRANDPARENT-HEADED AND RELATIVE-HEADED FAMILIES ISSUES.

[Amended section 3535 of Title 42, The Public Health and Welfare.]

''SEC. 205. STUDY OF HOUSING NEEDS OF GRANDPARENT-HEADED AND RELATIVE-HEADED FAMILIES.

''(a) IN GENERAL.—The Secretary and the Director of the Bureau of the Census jointly shall—

''(1) conduct a study to determine an estimate of the number of covered families in the United States and their affordable housing needs; and

''(2) submit a report to Congress regarding the results of the study conducted under paragraph (1).

''(b) REPORT AND RECOMMENDATIONS.—The report required under subsection (a) shall—

''(1) be submitted to Congress not later than 12 months after the date of enactment of this Act [Dec. 16, 2003]; and

''(2) include recommendations by the Secretary and the Director of the Bureau of the Census regarding how the major assisted housing programs of the Department of Housing and Urban Development, including the supportive housing for the elderly program under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) can be used and, if appropriate, amended or altered, to meet the affordable housing needs of covered families.''

PREPAYMENT AND REFINANCING

Pub. L. 106–569, title VIII, §811, Dec. 27, 2000, 114 Stat. 3019, as amended by Pub. L. 107–116, title VI, §633(a), Jan. 10, 2002, 115 Stat. 2228; Pub. L. 111–372, title II, §§201–204, Jan. 4, 2011, 124 Stat. 4079–4081, provided that:

''(a) APPROVAL OF PREPAYMENT OF DEBT.—Upon request of the project sponsor of a project assisted with

a loan under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q](as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, which was approved Nov. 28, 1990]), for which the Secretary's consent to prepayment is required,, [sic] the Secretary shall approve the prepayment of any indebtedness to the Secretary relating to any remaining principal and interest under the loan as part of a prepayment plan under which—

''(1) the project sponsor agrees to operate the project until at least 20 years following the maturity date of the original loan under terms at least as advantageous to existing and future tenants as the terms required by the original loan agreement or any project-based rental assistance payments contract under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] (or any other project-based rental housing assistance programs of the Department of Housing and Urban Development, including the rent supplement program under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s)), or any successor project-based rental assistance program, relating to the project; and

''(2) the prepayment may involve refinancing of the loan if such refinancing results in—

''(A) a lower interest rate on the principal of the loan for the project and in reductions in debt service related to such loan; or

''(B) a transaction in which the project owner will address the physical needs of the project, but only if, as a result of the refinancing—

''(i) the rent charges for unassisted families residing in the project do not increase or such families are provided rental assistance under a senior preservation rental assistance contract for the project pursuant to subsection (e); and

''(ii) the overall cost for providing rental assistance under section 8 for the project (if any) is not increased, except, upon approval by the Secretary to—

''(I) mark-up-to-market contracts pursuant to section 524(a)(3) of the Multifamily Assisted Housing Reform and Affordability Act [of 1997] [Pub. L. 105–65] (42 U.S.C. 1437f note), as such section is carried out by the Secretary for properties owned by nonprofit organizations; or

''(II) mark-up-to-budget contracts pursuant to section 524(a)(4) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note), as such section is carried out by the Secretary for properties owned by eligible owners (as such term is defined in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)); and

''(3) notwithstanding paragraph (2)(A), the prepayment and refinancing authorized pursuant to paragraph (2)(B) involves an increase in debt service only in the case of a refinancing of a project assisted with a loan under such section 202 carrying an interest rate of 6 percent or lower.

''(b) SOURCES OF REFINANCING.—In the case of prepayment under this section involving refinancing, the project sponsor may refinance the project through any third party source, including financing by State and local housing finance agencies, use of tax-exempt bonds, multi-family mortgage insurance under the National Housing Act [12 U.S.C. 1701 et seq.], reinsurance, or other credit enhancements, including risk sharing as provided under section 542 of the Housing and Community Development Act of 1992 [12 U.S.C. 1715z–22]([former] 12 U.S.C. 1707 note). For purposes of underwriting a loan insured under the National Housing Act, the Secretary may assume that any section 8 rental assistance contract relating to a project will be renewed for the term of such loan.

''(c) USE OF PROCEEDS.—Upon execution of the refinancing for a project pursuant to this section, the Secretary shall ensure that proceeds are used in a manner advantageous to tenants of the project, or are used in the provision of affordable rental housing and related social services for elderly persons that are tenants of the project or are tenants of other HUD-assisted senior housing by the private nonprofit organization project owner, private nonprofit organization project sponsor, or private nonprofit organization project developer, including—

''(1) not more than 15 percent of the cost of increasing the availability or provision of supportive services, which may include the financing of service coordinators and congregate services, except that upon the request of the non-profit owner, sponsor, or organization and determination of the Secretary, such 15 percent limitation may be waived to ensure that the use of unexpended amounts better enables seniors to age in place;

''(2) rehabilitation, modernization, or retrofitting of structures, common areas, or individual dwelling units, including reducing the number of units by reconfiguring units that are functionally obsolete, unmarketable, or not economically viable;

''(3) construction of an addition or other facility in the project, including assisted living facilities (or, upon the approval of the Secretary, facilities located in the community where the project sponsor refinances a project under this section, or pools shared resources from more than one such project);

''(4) rent reduction of unassisted tenants residing in the project;

''(5) rehabilitation of the project to ensure long-term viability; and

''(6) the payment to the project owner, sponsor, or third party developer of a developer's fee in an amount not to exceed or duplicate—

''(A) in the case of a project refinanced through a State low income housing tax credit program, the fee permitted by the low income housing tax credit program as calculated by the State program as a percentage of acceptable development cost as defined by that State program; or

''(B) in the case of a project refinanced through any other source of refinancing, 15 percent of the acceptable development cost.

''For purposes of paragraph (6)(B), the term 'acceptable development cost' shall include, as applicable, the cost of acquisition, rehabilitation, loan prepayment, initial reserve deposits, and transaction costs.

''(d) USE OF CERTAIN PROJECT FUNDS.—The Secretary shall allow a project sponsor that is prepaying and refinancing a project under this section—

''(1) to use any residual receipts held for that project in excess of $500 per individual dwelling unit for the cost of activities designed to increase the availability or provision of supportive services or other purposes approved by the Secretary; and

''(2) to use any reserves for replacement in excess of $1,000 per individual dwelling unit for activities described in paragraphs (2) and (3) of subsection (c).

''(e) SENIOR PRESERVATION RENTAL ASSISTANCE CONTRACTS.—Notwithstanding any other provision of law, in connection with a prepayment plan for a project approved under subsection (a) by the Secretary or as otherwise approved by the Secretary to prevent displacement of elderly residents of the project in the case of refinancing or recapitalization and to further preservation and affordability of such project, the Secretary shall provide project-based rental assistance for the project under a senior preservation rental assistance contract, as follows:

''(1) Assistance under the contract shall be made available to the private nonprofit organization owner—

''(A) for a term of at least 20 years, subject to annual appropriations; and

''(B) under the same rules governing project-based rental assistance made available under section 8 of the Housing Act of 1937 [42 U.S.C. 1437f] or under the rules of such assistance as may be made available for the project.

''(2) Any projects for which a senior preservation rental assistance contract is provided shall be subject

to a use agreement to ensure continued project affordability having a term of the longer of (A) the term of the senior preservation rental assistance contract, or (B) such term as is required by the new financing.

''(f) SUBORDINATION OR ASSUMPTION OF EXISTING DEBT.—In lieu of prepayment under this section of the indebtedness with respect to a project, the Secretary may approve—

''(1) in connection with new financing for the project, the subordination of the loan for the project under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q] (as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, which was approved Nov. 28, 1990]) and the continued subordination of any other existing subordinate debt previously approved by the Secretary to facilitate preservation of the project as affordable housing; or

''(2) the assumption (which may include the subordination described in paragraph (1)) of the loan for the project under such section 202 in connection with the transfer of the project with such a loan to a private nonprofit organization.

''(g) FLEXIBLE SUBSIDY DEBT.—The Secretary shall waive the requirement that debt for a project pursuant to the flexible subsidy program under section 201 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a) be prepaid in connection with a prepayment, refinancing, or transfer under this section of a project if the financial transaction or refinancing cannot be completed without the waiver.

''(h) TENANT INVOLVEMENT IN PREPAYMENT AND REFINANCING.—The Secretary shall not accept an offer to prepay the loan for any project under section 202 of the Housing Act of 1959 unless the Secretary—

''(1) has determined that the owner of the project has notified the tenants of the owner's request for approval of a prepayment; and

''(2) has determined that the owner of the project has provided the tenants with an opportunity to comment on the owner's request for approval of a prepayment, including on the description of any anticipated rehabilitation or other use of the proceeds from the transaction, and its impacts on project rents, tenant contributions, or the affordability restrictions for the project, and that the owner has responded to such comments in writing.

''(i) DEFINITION OF PRIVATE NONPROFIT ORGANIZATION.—For purposes of this section, the term 'private nonprofit organization' has the meaning given such term in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)).''

[Pub. L. 111–372, title II, §203(2), Jan. 4, 2011, 124 Stat. 4081, which directed amendment of section 811(d)(1) of Pub. L. 106–569, set out above, by inserting before the period at the end ''or other purposes approved by the Secretary'', was executed by making the insertion before ''; and'' to reflect the probable intent of Congress.]

[Pub. L. 107–116, title VI, §633(b), Jan. 10, 2002, 115 Stat. 2228, provided that: ''The amendment made by subsection (a) of this section [amending section 811 of Pub. L. 106–569, set out above] shall take effect upon the date of the enactment of this Act [Jan. 10, 2002] and the provisions of section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note), as amended by subsection (a) of this section, shall apply as so amended upon such date of enactment, notwithstanding—

[''(1) any authority of the Secretary of Housing and Urban Development to issue regulations to implement or carry out the amendments made by subsection (a) of this section or the provisions of section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note); or

[''(2) any failure of the Secretary of Housing and Urban Development to issue any such regulations authorized.'']

CONSIDERATION OF COSTS OF PROVIDING SERVICE COORDINATORS IN DETERMINING AMOUNT OF HOUSING ASSISTANCE

Section 677(b) of Pub. L. 102–550 provided that:

''(1) AVAILABILITY OF SECTION 8 ASSISTANCE.—Subject to the availability of appropriations for contract amendments for the purpose of this paragraph, in determining the amount of assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] to be provided for a project assisted under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], as in effect before the effectiveness of the amendments made by section 801 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, see Effective Date of 1990 Amendment note above], the Secretary shall consider (and annually adjust for) the costs of—

''(A) employing or otherwise retaining the services of one or more service coordinators under section 661 [671] of this Act [42 U.S.C. 13631] to coordinate the provision of any services within the project for residents of the project who are elderly families and disabled families; and

''(B) expenses for the provision of such services.

Not more than 15 percent of the cost of the provision of services under subparagraph (B) may be considered under this paragraph for purposes of determining the amount of assistance provided.

''(2) INAPPLICABILITY OF HUD REFORM ACT PROVISIONS.—Notwithstanding section 102 of the Department of Housing and Urban Development Reform Act of 1989 [42 U.S.C. 3545], the provisions of paragraphs (1), (2), and (3) of subsection (a) of such section shall not apply to amendments to contracts under section 8 of the United States Housing Act of 1937 made to carry out the purposes of paragraph (1) of this subsection.

''(3) LIMITATION.—If a project is receiving congregate housing services assistance under the Congregate Housing Services Act of 1978 [42 U.S.C. 8001 et seq.] or section 802 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 8011], the amount of costs provided pursuant to paragraph (1) for the project may not exceed the additional amount necessary to cover the costs of providing for the coordination of services for residents of the project who are not eligible residents under such section 802 or eligible project residents under the Congregate Housing Services Act of 1978, as applicable.''

EXPEDITED FINANCING AND CONSTRUCTION

Section 801(d) of Pub. L. 101–625 provided that:

''(1) IN GENERAL.—The Secretary may, subject to the availability of appropriations for contract amendments for the purposes of this subsection—

''(A) provide such adjustments and waivers to the cost limitations specified under 24 CFR 885.410(a)(1); and

''(B) make such adjustments to the relevant fair market rent limitations established under section 8(c)(1) of the United States Housing Act of 1937 [42 U.S.C. 1437f(c)(1)] in providing assistance under such Act,

as are necessary to ensure the expedited financing and construction of qualified supportive housing for the elderly provided that the Secretary finds that any applicable cost containment rules and regulations have been satisfied.

''(2) DEFINITION.—For purposes of this subsection, the term 'supportive housing for the elderly' means housing—

''(A) located in a high-cost jurisdiction; and

''(B) for which a loan reservation was made under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], 3 years before the date of enactment of this Act [Nov. 28, 1990] but for which no loan has been executed and recorded.''

FEASIBILITY OF INCLUDING ELDER COTTAGE HOUSING OPPORTUNITY UNITS AS ELIGIBLE DEVELOPMENT COSTS

Section 806(b) of Pub. L. 101–625, as amended by Pub. L. 102–550, title VI, § 602(d), Oct. 28, 1992, 106 Stat. 3804, provided that:

''(1) IN GENERAL.—The Secretary of Housing and Urban Development shall carry out a program to determine the feasibility of including, as an eligible development cost under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], the cost of purchasing and installing elder cottage housing opportunity units that are small, freestanding, barrier-free, energy efficient, removable, and designed to be installed adjacent to existing 1- to 4-family dwellings. In conducting the demonstration, the Secretary shall determine whether the durability of such units is appropriate for making such units generally eligible for assistance under the programs under such sections.

''(2) ALLOCATION.—Notwithstanding any other law, the Secretary shall reserve from any amounts available for capital advances and project rental assistance under section 202 of the Housing Act of 1959, amounts sufficient in each of fiscal years 1993 and 1994 to provide not less than 100 units under the demonstration under this subsection in connection with each such section. Any amounts reserved under this paragraph shall be available only for carrying out the demonstration under this subsection and, for purposes of the demonstration, the cost of purchasing and installing an elder cottage housing opportunity unit shall be considered an eligible development cost under sections [sic] 202 of the Housing Act of 1959.

''(3) REPORT.—Not later than January 1, 1994, the Secretary shall submit a report to the Congress on the results of the demonstration under this subsection, which shall be based on actual experience in implementing this subsection.

''(4) IMPLEMENTATION.—The Secretary shall issue regulations to carry out the demonstration under this subsection not later than the expiration of the 6-month period beginning on the date of the enactment of the Housing and Community Development Act of 1992 [Oct. 28, 1992].''

PREFERENCES FOR NATIVE HAWAIIANS ON HAWAIIAN HOME LANDS UNDER HUD PROGRAMS

Secretary of Housing and Urban Development to provide a preference to native Hawaiians for housing assistance programs under this section for housing located on Hawaiian home lands, see section 958 of Pub. L. 101–625, set out as a note under section 1437f of Title 42, The Public Health and Welfare.

FINDINGS AND PURPOSE OF 1988 AMENDMENT

Section 162(a) of Pub. L. 100–242 provided that:

''(1) The Congress finds that—

''(A) housing for nonelderly handicapped families is assisted under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q] and section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

''(B) the housing programs under such sections are designed and implemented primarily to assist rental housing for elderly and nonelderly families and are often inappropriate for dealing with the specialized needs of the physically impaired, the developmentally disabled, and the chronically mentally ill;

''(C) the development of housing for nonelderly handicapped families under such programs is often more expensive than necessary, thereby reducing the number of such families that can be assisted with available funds;

''(D) the program under section 202 of the Housing Act of 1959 can continue to provide direct loans to finance group residences and independent apartments for nonelderly handicapped families, but can be made more efficient and less costly by the adoption of standards and procedures applicable only to housing for such families;

''(E) the cost containment policies currently being implemented in the development of small group homes (i) do not adequately reflect the necessity for building designs to meet the needs of the designated residents; and (ii) do not recognize necessary State and local standards for the operation of such homes;

''(F) the use of the program under section 8 of the United States Housing Act of 1937 to assist rentals for housing for nonelderly handicapped families is time consuming and unnecessarily costly and, in some areas of the Nation, prevents the development of such housing;

''(G) the use of the program under section 8 of the United States Housing Act of 1937 to assist rentals for housing for nonelderly handicapped families should be replaced by a more appropriate subsidy mechanism;

''(H) both elderly and handicapped housing projects assisted under section 202 of the Housing Act of 1959 will benefit from an increased emphasis on supportive services and a greater use of State and local funds; and

''(I) an improved program for nonelderly handicapped families will assist in providing shelter and supportive services for mentally ill persons who might otherwise be homeless.

''(2) The purpose of this section is to improve the direct loan program under section 202 of the Housing Act of 1959 to ensure that such program meets the special housing and related needs of nonelderly handicapped families.''

TERMINATION OF SECTION 8 ASSISTANCE

Section 162(d) of Pub. L. 100–242 provided that: ''On and after the first date that amounts approved in an appropriation Act for any fiscal year become available for contracts under section 202(h)(4)(A) of the Housing Act of 1959 [12 U.S.C. 1701q(h)(4)(A)], as amended by subsection (b) of this section, no project for handicapped (primarily nonelderly) families approved for such fiscal year pursuant to section 202 of such Act shall be provided assistance payments under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], except pursuant to a reservation for a contract to make such assistance payments that was made before the first date that amounts for contracts under such section 202(h)(4)(A) became available.''

IMPLEMENTATION OF 1988 AMENDMENT

Section 162(e) of Pub. L. 100–242 provided that: ''Not later than the expiration of the 120-day period following the date of the enactment of this Act [Feb. 5, 1988], the Secretary of Housing and Urban Development shall, to the extent amounts are approved in an appropriation Act for use under section 202(h)(4)(A) of the Housing Act of 1959 [12 U.S.C. 1701q(h)(4)(A)] for fiscal year 1988, publish in the Federal Register a notice of fund availability to implement the provisions of, and amendments made by, this section [amending this section and enacting and repealing provisions set out above]. The Secretary shall issue such rules as may be necessary to carry out such provisions and amendments for fiscal year 1989 and thereafter.''

HOUSING FOR THE ELDERLY OR HANDICAPPED FUND

Pub. L. 101–507, title II, Nov. 5, 1990, 104 Stat. 1361, provided: ''That, notwithstanding section 202(a)(3) of the Housing Act of 1959 [12 U.S.C. 1701q(a)(3)], any such obligations [direct loan obligations made in fiscal year 1991] shall bear an interest rate which does not exceed 9.25 per centum, including the allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses under the program.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 101–144, title II, Nov. 9, 1989, 103 Stat. 847.

Pub. L. 100–404, title I, Aug. 19, 1988, 102 Stat. 1016.

Pub. L. 100–202, § 101(f) [title I], Dec. 22, 1987, 101 Stat. 1329–187, 1329–190.

Pub. L. 99–500, § 101(g) [H.R. 5313, title I], Oct. 18, 1986, 100 Stat. 1783–242, and Pub. L. 99–591, § 101(g), Oct. 30, 1986, 100 Stat. 3341–242.

Pub. L. 99–160, title I, Nov. 25, 1985, 99 Stat. 911.
Pub. L. 98–371, title I, July 18, 1984, 98 Stat. 1216.
Pub. L. 98–45, title I, as added Pub. L. 98–181, title I, Nov. 30, 1983, 97 Stat. 1153.

REPORTS RESPECTING ELDERLY AND HANDICAPPED HOUSING PROGRAMS IN RURAL AREAS, ETC.

Section 306(e), (f) of Pub. L. 96–153 required Secretary of Housing and Urban Development, not later than six months after Dec. 21, 1979, to report to Congress on housing needs of elderly and handicapped in rural areas and recommend to Congress on means to reduce costs of program carried out under this section.

FEASIBILITY AND MARKETABILITY OF PROJECTS; ASSISTANCE FOR PROJECTS SERVICING LOW- AND MODERATE-INCOME FAMILIES

Section 210(g) of Pub. L. 93–383 provided that:
''(1) In determining the feasibility and marketability of a project under section 202 of the Housing Act of 1959 [this section], the Secretary shall consider the availability of monthly assistance payments pursuant to section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] with respect to such a project.
''(2) The Secretary shall insure that with the original approval of a project authorized pursuant to section 202 of the Housing Act of 1959, and thereafter at each annual revision of the assistance contract under section 8 of the United States Housing Act of 1937 with respect to units in such project, the project will serve both low- and moderate-income families in a mix which he determines to be appropriate for the area and for viable operation of the project; except that the Secretary shall not permit maintenance of vacancies to await tenants of one income level where tenants of another income level are available.''

§ 1701q–1. Civil money penalties against mortgagors under section 1701q of this title

(a) In general

The penalties set forth in this section shall be in addition to any other available civil remedy or criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions. The Secretary may not impose penalties under this section for violations a material cause of which are the failure of the Department, an agent of the Department, or a public housing agency to comply with existing agreements.

(b) Penalty for violation of agreement as condition of transfer of physical assets, flexible subsidy loan, capital improvement loan, modification of mortgage terms, or workout agreement

(1) In general

Whenever a mortgagor of property that includes 5 or more living units and that has a mortgage held pursuant to section 1701q of this title, who has agreed in writing, as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a workout agreement, to use nonproject income to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical condition, or to pay other project liabilities, knowingly and materially fails to comply with any of these commitments, the Secretary may impose a civil money penalty on the mortgagor in accordance with the provisions of this section.

(2) Amount

The amount of the penalty, as determined by the Secretary, for a violation of this subsection may not exceed the amount of the loss the Secretary would incur at a foreclosure sale, or sale after foreclosure, with respect to the property involved.

(c) Violations of regulatory agreement

(1) In general

The Secretary may also impose a civil money penalty on a mortgagor or property that includes 5 or more living units and that has a mortgage held pursuant to section 1701q of this title for any knowing and material violation of the regulatory agreement executed by the mortgagor, as follows:

(A) Conveyance, transfer, or encumbrance of any of the mortgaged property, or permitting the conveyance, transfer, or encumbrance of such property, without the prior written approval of the Secretary.

(B) Assignment, transfer, disposition, or encumbrance of any personal property of the project, including rents, or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary.

(C) Conveyance, assignment, or transfer of any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property, without the prior written approval of the Secretary.

(D) Remodeling, adding to, reconstructing, or demolishing any part of the mortgaged property or subtracting from any real or personal property of the project, without the prior written approval of the Secretary.

(E) Requiring, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent, plus a security deposit in an amount not in excess of 1 month's rent, to guarantee the performance of the covenants of the lease.

(F) Not holding any funds collected as security deposits separate and apart from all other funds of the project in a trust account, the amount of which at all times equals or exceeds the aggregate of all outstanding obligations under the account.

(G) Payment for services, supplies, or materials which exceeds $500 and substantially exceeds the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

(H) Failure to maintain at any time the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers (including failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or any duly authorized agents of the Secretary.

(I) Failure to maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary.

(J) Failure to furnish the Secretary, by the expiration of the 60-day period beginning on the 1st day after the completion of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared in accordance with requirements prescribed by the Secretary, and prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing. The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this subparagraph is due to events beyond the control of the mortgagor.

(K) At the request of the Secretary, the agents of the Secretary, the employees of the Secretary, or the attorneys of the Secretary, failure to furnish monthly occupancy reports or failure to provide specific answers to questions upon which information is sought relative to income, assets, liabilities, contracts, the operation and condition of the property, or the status of the mortgage.

(L) Failure to make promptly all payments due under the note and mortgage, including tax and insurance escrow payments, and payments to the reserve for replacements when there is adequate project income available to make such payments.

(M) Amending the articles of incorporation or bylaws, other than as permitted under the terms of the articles of incorporation as approved by the Secretary, without the prior written approval of the Secretary.

(2) Amount of penalty

A penalty imposed for a violation under this subsection, as determined by the Secretary, may not exceed $25,000 for a violation of any of the subparagraphs of paragraph (1).

(d) Agency procedures

(1) Establishment

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsections (b) and (c) of this section. These standards and procedures—

(A) shall provide for the Secretary or other department official (such as the Assistant Secretary for Housing) to make the determination to impose a penalty;

(B) shall provide for the imposition of a penalty only after the mortgagor has been given an opportunity for a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Final orders

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (b) or (c) of this section, consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before December 15, 1989), ability to pay the penalty, injury to the tenants, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

(4) Reviewability of imposition of penalty

The Secretary's determination or order imposing a penalty under subsection (b) or (c) of this section shall not be subject to review, except as provided in subsection (e) of this section.

(e) Judicial review of agency determination

(1) In general

After exhausting all administrative remedies established by the Secretary under subsection (d)(1) of this section, a mortgagor against whom the Secretary has imposed a civil money penalty under subsection (b) or (c) of this section may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under subsection (d)(1)(A) of this section in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

(2) Objections not raised in hearing

The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (d)(1) of this section unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

(3) Scope of review

The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5.

(4) Order to pay penalty

Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

(f) Action to collect penalty

If a mortgagor fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (b) or (c) of this section, after the determination or order is no longer subject to review as provided by subsections (d)(1) and (e) of this section, the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the mortgagor and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(g) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(h) "Knowingly" defined

The term ''knowingly'' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(i) Regulations

The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(j) Deposit of penalties in insurance funds

Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the fund established under section 1715z–1a(j) of this title.

(Pub. L. 86–372, title II, §202a, as added Pub. L. 101–235, title I, §109(a), Dec. 15, 1989, 103 Stat. 2007.)

CODIFICATION

Section was enacted as part of the Housing Act of 1959, and not as part of the National Housing Act which comprises this chapter.

EFFECTIVE DATE

Section 109(b) of Pub. L. 101–235 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply only with respect to violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989].''

§ 1701q–2. Grants for conversion of elderly housing to assisted living facilities and other purposes

(a) Grant authority

The Secretary of Housing and Urban Development may make grants in accordance with this section to owners of eligible projects described in subsection (b) of this section for one or both of the following activities:

(1) Repairs

Substantial capital repairs to projects that are needed to rehabilitate, modernize, or retrofit aging structures, common areas, or individual dwelling units.

(2) Conversion

(A) Assisted living facilities

Activities designed to convert dwelling units in the eligible project to assisted living facilities for elderly persons.

(B) Service-enriched housing

Activities designed to convert dwelling units in the eligible project to service-enriched housing for elderly persons.

(b) Eligible projects

An eligible project described in this subsection is a multifamily housing project that is—

(1)(A) described in subparagraph (B), (C), (D), (E), (F), or (G) of section 13641(2) of title 42, or (B) only to the extent amounts of the Department of Agriculture are made available to the Secretary of Housing and Urban Development for such grants under this section for such projects, subject to a loan made or insured under section 1485 of title 42;

(2) owned by a private nonprofit organization (as such term is defined in section 1701q of this title); and

(3) designated primarily for occupancy by elderly persons.

Notwithstanding any other provision of this subsection or this section, an unused or underutilized commercial property may be considered an eligible project under this subsection, except that the Secretary may not provide grants under this section for more than three such properties. For any such projects, any reference under this section to dwelling units shall be considered to refer to the premises of such properties.

(c) Applications

Applications for grants under this section shall be submitted to the Secretary in accordance with such procedures as the Secretary shall establish. Such applications shall contain—

(1) a description of the substantial capital repairs or the proposed conversion activities for either an assisted living facility or service-enriched housing for which a grant under this section is requested;

(2) the amount of the grant requested to complete the substantial capital repairs or conversion activities;

(3) a description of the resources that are expected to be made available, if any, in conjunction with the grant under this section; and

(4) such other information or certifications that the Secretary determines to be necessary or appropriate.

(d) Requirements for services

(1) Sufficient evidence of firm funding commitments

The Secretary may not make a grant under this section for conversion activities unless an application for a grant submitted pursuant to subsection (c) contains sufficient evidence, in the determination of the Secretary, of firm commitments for the funding of services to be provided in the assisted living facility or service-enriched housing, which may be provided by third parties.

(2) Required evidence

The Secretary shall require evidence that each recipient of a grant for service-enriched housing under this section provides relevant and timely disclosure of information to residents or potential residents of such housing relating to—

(A) the services that will be available at the property to each resident, including—

(i) the right to accept, decline, or choose such services and to have the choice of provider;

(ii) the services made available by or contracted through the grantee;

(iii) the identity of, and relevant information for, all agencies or organizations providing any services to residents, which agencies or organizations shall provide information regarding all procedures and requirements to obtain services, any charges or rates for the services, and the rights and responsibilities of the residents related to those services;

(B) the availability, identity, contact information, and role of the service coordinator; and

(C) such other information as the Secretary determines to be appropriate to ensure that residents are adequately informed of the services options available to promote resident independence and quality of life.

(e) Selection criteria

The Secretary shall select applications for grants under this section based upon selection criteria, which shall be established by the Secretary and shall include—

(1) in the case of a grant for substantial capital repairs, the extent to which the project to be repaired is in need of such repair, including such factors as the age of improvements to be repaired, and the impact on the health and safety of residents of failure to make such repairs;

(2) in the case of a grant for conversion activities, the extent to which the conversion is likely to provide assisted living facilities or service-enriched housing that are needed or are expected to be needed by the categories of elderly persons that the assisted living facility[1] service-enriched housing is intended to serve, with a special emphasis on very low-income elderly persons who need assistance with activities of daily living;

(3) the inability of the applicant to fund the repairs or conversion activities from existing financial resources, as evidenced by the applicant's financial records, including assets in the applicant's residual receipts account and reserves for replacement account;

(4) the extent to which the applicant has evidenced community support for the repairs or conversion, by such indicators as letters of support from the local community for the repairs or conversion and financial contributions from public and private sources;

(5) in the case of a grant for conversion activities, the extent to which the applicant demonstrates a strong commitment to promoting the autonomy and independence of the elderly persons that the assisted living facility or service-enriched housing is intended to serve;

(6) in the case of a grant for conversion activities, the quality, completeness, and managerial capability of providing the services which the assisted living facility or service-enriched housing intends to provide to elderly residents, especially in such areas as meals, 24-hour staffing, and on-site health care; and

(7) such other criteria as the Secretary determines to be appropriate to ensure that funds made available under this section are used effectively.

(f) Section 8 project-based assistance

(1) Eligibility

Notwithstanding any other provision of law, a multifamily project which includes one or more dwelling units that have been converted to assisted living facilities or service-enriched housing using grants made under this section shall be eligible for project-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], in the same manner in which the project would be eligible for such assistance but for the assisted living facilities or service-enriched housing in the project.

(2) Calculation of rent

For assistance pursuant to this subsection, the maximum monthly rent of a dwelling unit that is an assisted living facility or service-enriched housing with respect to which assistance payments are made shall not include charges attributable to services relating to assisted living.

(g) Definitions

For purposes of this section—

(1) the term ''assisted living facility'' has the meaning given such term in section 1715w(b) of this title;

(2) the term ''service-enriched housing'' means housing that—

(A) makes available through licensed or certified third party service providers supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy;

(B) includes the position of service coordinator, which may be funded as an operating expense of the property;

(C) provides separate dwelling units for residents, each of which contains a full kitchen and bathroom and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the housing; and

(D) provides residents with control over health care and supportive services deci-

[1] So in original. Probably should be followed by ''or''.

sions, including the right to accept, decline, or choose such services, and to have the choice of provider; and

(3) the definitions in section 1701(q)(k)[2] of this title shall apply.

(h) Authorization of appropriations

There is authorized to be appropriated for providing grants under this section such sums as may be necessary for fiscal year 2000.

(Pub. L. 86–372, title II, § 202b, as added and amended Pub. L. 106–74, title V, §§ 522, 523(b), Oct. 20, 1999, 113 Stat. 1103, 1105; Pub. L. 111–372, title III, § 301, Jan. 4, 2011, 124 Stat. 4082.)

REFERENCES IN TEXT

Section 1701(q)(k) of this title, referred to in subsec. (g)(3), probably should be a reference to section 202(k) of this Act, which is classified to section 1701q(k) of this title.

CODIFICATION

Section was enacted as part of the Housing Act of 1959, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

2011—Pub. L. 111–372, § 301(a), inserted ''and other purposes'' after ''assisted living facilities'' in section catchline.

Subsec. (a)(2). Pub. L. 111–372, § 301(b), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c)(1). Pub. L. 111–372, § 301(c), inserted ''for either an assisted living facility or service-enriched housing'' after ''activities''.

Subsec. (d). Pub. L. 111–372, § 301(d), amended subsec. (d) generally. Prior to amendment, text read as follows: ''The Secretary may not make a grant under this section for conversion activities unless the application contains sufficient evidence, in the determination of the Secretary, of firm commitments for the funding of services to be provided in the assisted living facility, which may be provided by third parties.''

Subsec. (e)(2). Pub. L. 111–372, § 301(e)(1), inserted ''or service-enriched housing'' after ''facilities'' and ''service-enriched housing'' after ''facility''.

Subsec. (e)(5). Pub. L. 111–372, § 301(e)(2), inserted ''or service-enriched housing'' after ''facility''.

Subsec. (e)(6). Pub. L. 111–372, § 301(e)(3), inserted ''or service-enriched housing'' after ''facility''.

Subsec. (f)(1). Pub. L. 111–372, § 301(f)(1), inserted ''or service-enriched housing'' after ''facilities'' in two places.

Subsec. (f)(2). Pub. L. 111–372, § 301(f)(2), inserted ''or service-enriched housing'' after ''facility''.

Subsec. (g). Pub. L. 111–372, § 301(g), amended subsec. (g) generally. Prior to amendment, subsec. (g) related to definitions for purposes of this section.

1999—Subsecs. (f) to (h). Pub. L. 106–74 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

§ 1701q–3. Funds for housing for elderly and persons with disabilities available for cost of maintenance and disposal of such properties

Notwithstanding any other provision of law, for this fiscal year and every fiscal year thereafter, funds appropriated for housing for the elderly, as authorized by section 1701q of this title, as amended, and for supportive housing for persons with disabilities, as authorized by section 8013 of title 42, shall be available for the cost of maintaining and disposing of such properties that are acquired or otherwise become the responsibility of the Department.

(Pub. L. 109–115, div. A, title III, § 313, Nov. 30, 2005, 119 Stat. 2463.)

CODIFICATION

Section was enacted as part of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, and also as part of the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006, and the Department of Housing and Urban Development Appropriations Act, 2006, and not as part of the National Housing Act which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to this section were contained in the following prior appropriations acts:

Pub. L. 108–447, div. I, title II, § 213, Dec. 8, 2004, 118 Stat. 3318.

Pub. L. 108–199, div. G, title II, § 221, Jan. 23, 2004, 118 Stat. 398.

§ 1701r. Congressional findings respecting housing for senior citizens

The Congress finds that there is a large and growing need for suitable housing for older people both in urban and rural areas. Our older citizens face special problems in meeting their housing needs because of the prevalence of modest and limited incomes among the elderly, their difficulty in obtaining liberal long-term home mortgage credit, and their need for housing planned and designed to include features necessary to the safety and convenience of the occupants in a suitable neighborhood environment. The Congress further finds that the present programs for housing the elderly under the Department of Housing and Urban Development have proven the value of Federal credit assistance in this field and at the same time demonstrated the urgent need for an expanded and more comprehensive effort to meet our responsibilities to our senior citizens.

(Pub. L. 87–723, § 2, Sept. 28, 1962, 76 Stat. 670; Pub. L. 90–19, § 19, May 25, 1967, 81 Stat. 25.)

CODIFICATION

Section was enacted as part of the Senior Citizens Housing Act of 1962, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Department of Housing and Urban Development'' for ''Housing and Home Finance Agency'' in second sentence.

§ 1701r–1. Pet ownership in assisted rental housing for the elderly or handicapped

(a) Restrictions on ownership

No owner or manager of any federally assisted rental housing for the elderly or handicapped may—

(1) as a condition of tenancy or otherwise, prohibit or prevent any tenant in such housing from owning common household pets or having common household pets living in the dwelling accommodations of such tenant in such housing; or

[2] See References in Text note below.

(2) restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of the ownership of such pets by, or the presence of such pets in the dwelling accommodations of, such person.

(b) Rules and regulations

(1) Not later than the expiration of the twelve-month period following November 30, 1983, the Secretary of Housing and Urban Development and the Secretary of Agriculture shall each issue such regulations as may be necessary to ensure (A) compliance with the provisions of subsection (a) of this section with respect to any program of assistance referred to in subsection (d) of this section that is administered by such Secretary; and (B) attaining the goal of providing decent, safe, and sanitary housing for the elderly or handicapped.

(2) Such regulations shall establish guidelines under which the owner or manager of any federally assisted rental housing for the elderly or handicapped (A) may prescribe reasonable rules for the keeping of pets by tenants in such housing; and (B) shall consult with the tenants of such housing in prescribing such rules. Such rules may consider factors such as density of tenants, pet size, types of pets, potential financial obligations of tenants, and standards of pet care.

(c) Removal of pets constituting a nuisance

Nothing in this section may be construed to prohibit any owner or manager of federally assisted rental housing for the elderly or handicapped, or any local housing authority or other appropriate authority of the community where such housing is located, from requiring the removal from any such housing of any pet whose conduct or condition is duly determined to constitute a nuisance or a threat to the health or safety of the other occupants of such housing or of other persons in the community where such housing is located.

(d) "Federally assisted rental housing for the elderly or handicapped" defined

For purposes of this section, the term ''federally assisted rental housing for the elderly or handicapped'' means any rental housing project that—

(1) is assisted under section 1701q of this title; or

(2) is assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], and is designated for occupancy by elderly or handicapped families, as such term is defined in section 1701q(d)(4)[1] of this title.

(Pub. L. 98–181, title II, § 227, Nov. 30, 1983, 97 Stat. 1195.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (d)(2), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The National Housing Act, referred to in subsec. (d)(2), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (d)(2), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

Section 1701q of this title, referred to in subsec. (d)(2), was amended generally by Pub. L. 101–625, title VIII, § 801(a), Nov. 28, 1990, 104 Stat. 4297, and, as so amended, no longer contains a subsec. (d)(4) or a definition of the term ''elderly or handicapped families''.

CODIFICATION

Section was enacted as part of the Housing and Urban–Rural Recovery Act of 1983 and also as part of the Domestic Housing and International Recovery and Financial Stability Act, and not as part of the National Housing Act which comprises this chapter.

§ 1701s. Rent supplement payments for qualified lower income families

(a) Authorization; maximum term; maximum aggregate amount

The Secretary of Housing and Urban Development (hereinafter referred to as the ''Secretary'') is authorized to make, and contract to make, annual payments to a ''housing owner'' on behalf of ''qualified tenants'', as those terms are defined herein, in such amounts and under such circumstances as are prescribed in or pursuant to this section. In no case shall a contract provide for such payments with respect to any housing for a period exceeding forty years. The aggregate amount of the contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contracts shall not exceed $150,000,000 per annum prior to July 1, 1969, which maximum dollar amount shall be increased by $40,000,000, on July 1, 1969, by $100,000,000 on July 1, 1970, and by $40,000,000 on July 1, 1971.

(b) "Housing owner" defined; limitation on payments to housing owner

As used in this section, the term ''housing owner'' means a private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, which is a mortgagor under section 221(d)(3) of the National Housing Act [12 U.S.C. 1715*l*(d)(3)] and which, after August 10, 1965, has been approved for mortgage insurance thereunder and has been approved for receiving the benefits of this section: *Provided*, That, except as provided in subsection (j) of this section, no payments under this section may be made with respect to any property financed with a mortgage receiving the benefits of the interest rate provided for in the proviso in section 221(d)(5) of that Act [12 U.S.C. 1715*l*(d)(5)]. Such term also includes a private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend

[1] See References in Text note below.

legal entity, or a cooperative housing corporation, which is the owner of a rental or cooperative housing project financed under a State or local program providing assistance through loans, loan insurance, or tax abatement and which may involve either new or existing construction and which is approved for receiving the benefits of this section. Subject to the limitations provided in subsection (j) of this section, the term ''housing owner'' also has the meaning prescribed in such subsection. Nothing in this section shall be construed as preventing payments to a housing owner with respect to projects in which all or part of the dwelling units do not contain kitchen facilities; but of the total amount of contracts to make annual payments approved in appropriation Acts pursuant to subsection (a) of this section after December 31, 1970, not more than 10 per centum in the aggregate shall be made with respect to such projects.

(c) Definitions

As used in this section, the term—

(1) ''qualified tenant'' means any individual or family having an income which would qualify such individual or family for assistance under section 1437f of title 42, except that such term shall also include any individual or family who was receiving assistance under this section on the day preceding December 21, 1979, so long as such individual or family continues to meet the conditions for such assistance which were in effect on such day; and

(2) ''income'' means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary. In determining amounts to be excluded from income, the Secretary may, in the Secretary's discretion, take into account the number of minor children in the household and such other factors as the Secretary may determine are appropriate.

The terms ''qualified tenant'' and ''tenant'' include a member of a cooperative who satisfies the foregoing requirements and who, upon resale of his membership to the cooperative, will not be reimbursed for any equity increment accumulated through payments under this section. With respect to members of a cooperative, the terms ''rental'' and ''rental charges'' mean the charges under the occupancy agreements between such members and the cooperative.

(d) Annual payment amount

The amount of the annual payment with respect to any dwelling unit shall be the lesser of (1) 70 per centum of the fair market rent, or (2) the amount by which the fair market rental for such unit exceeds 30 per centum of the tenant's adjusted income.

(e) Criteria and procedure for determining eligibility and rental charges; recertification of income; agreements for services required in selection of tenants; delegation of authority to issue certificates

(1) For purposes of carrying out the provisions of this section, the Secretary shall establish criteria and procedures for determining the eligibility of occupants and rental charges, including criteria and procedures with respect to periodic review of tenant incomes and periodic adjustment of rental charges.

(2) Procedures adopted by the Secretary hereunder shall provide for recertifications of the incomes of occupants no less frequently than annually for the purpose of adjusting rental charges and annual payments on the basis of occupants' incomes, but in no event shall rental charges adjusted under this section for any dwelling exceed the fair market rental of the dwelling.

(3) The Secretary may enter into agreements, or authorize housing owners to enter into agreements, with public or private agencies for services required in the selection of qualified tenants, including those who may be approved, on the basis of the probability of future increases in their incomes, as lessees under an option to purchase (which will give such approved qualified tenants an exclusive right to purchase at a price established or determined as provided in the option) dwellings, and in the establishment of rentals. The Secretary is authorized (without limiting his authority under any other provision of law) to delegate to any such public or private agency his authority to issue certificates pursuant to this subsection.

(4) No payments under this section may be made with respect to any property for which the costs of operation (including wages and salaries) are determined by the Secretary to be greater than similar costs of operation of similar housing in the community where the property is situated.

(f) Omitted

(g) Authority of Secretary

The Secretary is authorized to make such rules and regulations, to enter into such agreements, and to adopt such procedures as he may deem necessary or desirable to carry out the provisions of this section. Nothing contained in this section shall affect the authority of the Secretary of Housing and Urban Development with respect to any housing assisted under this section, section 221(d)(3), section 231(c)(3), or section 236 of the National Housing Act [12 U.S.C. 1715*l*(d)(3), 1715v(c)(3), 1715z–1], or section 1701q of this title, including the authority to prescribe occupancy requirements under other provisions of law or to determine the portion of such housing which may be occupied by qualified tenants. To ensure that qualified tenants occupying that number of units with respect to which assistance was being provided under this section immediately prior to November 30, 1983, receive the benefit of assistance contracted for under this section, the Secretary shall offer annually to amend contracts entered into with owners of projects assisted under this section but not subject to mortgages insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.] to provide sufficient payments to cover 100 percent of the necessary rent increases and changes in the incomes of qualified tenants, subject to the availability of authority for such purpose under section 1437c(c) of title 42. The Secretary shall take such actions as may be necessary to ensure that payments, including payments that reflect necessary rent increases and changes in the incomes of tenants, are made on a timely basis for

all units covered by contracts entered into under this section.

(h) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, including, but not limited to, such sums as may be necessary to make annual payments as prescribed in this section, pay for services provided under (or pursuant to agreements entered into under) subsection (e) of this section, and provide administrative expenses.

(i) Omitted

(j) Additional definition of housing owner; restrictions on payments

(1) For the purpose of assisting housing under this section on an experimental basis, subject to the limitations of this subsection, the term ''housing owner'' (in addition to the meaning prescribed in subsection (b) of this section) includes—

(A) a private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, which is a mortgagor under a mortgage which receives the benefits of the interest rate provided for in the proviso in section 221(d)(5) of the National Housing Act [12 U.S.C. 1715*l*(d)(5)] and which, after August 10, 1965, has been approved for mortgage insurance under section 221(d)(3) of the National Housing Act and has been approved for receiving the benefits of this section;

(B) a private nonprofit corporation or other private nonprofit legal entity which is a mortgagor under a mortgage insured under section 231(c)(3) of the National Housing Act [12 U.S.C. 1715v(c)(3)] and which, after August 10, 1965, has obtained final endorsement of such mortgage for mortgage insurance and has been approved for receiving the benefits of this section;

(C) a private nonprofit corporation, a public body or agency, or a cooperative housing corporation, which is a borrower under section 1701q of this title and has been approved for receiving the benefits of this section: *Provided*, That, with respect to properties financed with loans under such section made on or before August 10, 1965, payments shall not be made with respect to more than 20 per centum of the dwelling units in any property so financed; and

(D) a private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, which is assisted under section 236 of the National Housing Act [12 U.S.C. 1715z–1] and which has been approved for receiving the benefits of this section: *Provided*, That payments shall not be made with respect to more than 20 per centum of the dwelling units in any property so financed, except that the foregoing limitation may be increased to 40 per centum of the dwelling units in any such property if the Secretary determines that such increase is necessary and desirable in order to provide additional housing for individuals and families meeting the requirements of subsection (c) of this section.

(2) Of the amounts approved in appropriation Acts pursuant to subsection (a) of this section for payments under this section in any year, not more than 5 per centum in the aggregate shall be paid with respect to properties of housing owners as defined in paragraph (1)(A) of this subsection, and not more than 5 per centum in the aggregate shall be paid with respect to properties of housing owners as defined in paragraphs (1)(B) and (1)(C) of this subsection.

(k) Repealed. Pub. L. 105–276, title V, § 514(d), Oct. 21, 1998, 112 Stat. 2548

(*l*) Additional available assistance authority

Notwithstanding the provisions of subsection (a) of this section and any other provision of law, the Secretary may utilize additional authority under section 1437c(c) of title 42 made available by appropriation Acts on or after October 1, 1979, to supplement assistance authority available under this section. The Secretary shall utilize, to the extent necessary after September 30, 1984, any authority under this section that is recaptured either as the result of the conversion of housing projects covered by assistance under this section to contracts for assistance under section 1437f of title 42 or otherwise (1) for the purpose of making assistance payments, including amendments as provided in subsection (g) of this section, with respect to housing projects assisted under this section, but not subject to mortgages insured under the National Housing Act [12 U.S.C. 1701 et seq.], that remain covered by assistance under this section; and (2) if not required to provide assistance under this section, and notwithstanding any other provision of law, for the purpose of contracting for assistance payments under section 236(f)(2) of the National Housing Act [12 U.S.C. 1715z–1(f)(2)].

(m) Payments for benefit of certain projects having mortgages made by State or local housing finance or government agencies

The Secretary shall, not later than 45 days after receipt of an application by the mortgagee, provide interest reduction and rental assistance payments for the benefit of projects assisted under this section whose mortgages were made by State or local housing finance agencies or State or local government agencies for a term equal to the remaining mortgage term to maturity on projects assisted under this section to the extent of—

(1) unexpended balances of amounts of authority as set forth in certain letter agreements between the Department of Housing and Urban Development and such State or local housing finance agencies or State or local government agencies, and

(2) existing allocation under section 236 contracts on projects whose mortgages were made by State or local housing finance agencies or State or local government agencies which are not being funded, to the extent of such excess allocation, for any purposes permitted under the provisions of this section.

An application shall be eligible for assistance under the previous sentence only if the mortga-

gee submits the application within 548 days after February 5, 1988, along with a certification of the mortgagee that amounts are to be utilized hereunder for the purpose of either (A) reducing rents or rent increases to tenants, or (B) making repairs or otherwise increasing the economic viability of a related project. Unexpended balances referred to in the first sentence of this subsection which remain after disposition of all such applications is favorably concluded shall be rescinded. The authority conferred by this subsection to provide interest reduction and rental assistance payments shall be available only to the extent approved in appropriation Acts.

(Pub. L. 89–117, title I, §101, Aug. 10, 1965, 79 Stat. 451; Pub. L. 90–19, §22(a), (c), May 25, 1967, 81 Stat. 26; Pub. L. 90–448, title II, §§201(e), 202, title XI, §1106(b), Aug. 1, 1968, 82 Stat. 502, 503, 567; Pub. L. 91–152, title I, §112, Dec. 24, 1969, 83 Stat. 383; Pub. L. 91–609, title I, §§103, 114[115](c), 118(b), 120(a), (b), Dec. 31, 1970, 84 Stat. 1771, 1774, 1775; Pub. L. 96–153, title II, §203(a), Dec. 21, 1979, 93 Stat. 1106; Pub. L. 96–399, Oct. 8, 1980, title II, §205, 94 Stat. 1630; Pub. L. 97–35, title III, §§322(g), 327, Aug. 13, 1981, 95 Stat. 403, 407; Pub. L. 98–181, title II, §§203(b)(3), 219, Nov. 30, 1983, 97 Stat. 1178, 1187; Pub. L. 98–479, title I, §102(d), title II, §204(e), Oct. 17, 1984, 98 Stat. 2222, 2233; Pub. L. 100–242, title I, §§167(a)(2), 168, 170(h), title IV, §430(b), Feb. 5, 1988, 101 Stat. 1864, 1867, 1920; Pub. L. 104–99, title IV, §402(d)(5), Jan. 26, 1996, 110 Stat. 42; Pub. L. 105–276, title V, §514(d), Oct. 21, 1998, 112 Stat. 2548.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsecs. (g) and (*l*), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended which is classified principally to this chapter (§1701 et seq.). Title II of the National Housing Act is classified generally to subchapter II (§1707 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 236 contracts, referred to in subsec. (m)(2), refer to contracts under section 1715z–1 of this title.

CODIFICATION

Subsecs. (f) and (i) of this section amended sections 1451(c) and 1465(c)(2) of Title 42, The Public Health and Welfare.

Section was enacted as part of the Housing and Urban Development Act of 1965, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (k). Pub. L. 105–276, which directed the repeal of subsec. (k) of section 1010 of Pub. L. 89–117, was executed by striking out subsec. (k) of this section, to reflect the probable intent of Congress. For text, see 1996 Amendment note below.

1996—Subsec. (k). Pub. L. 104–99 temporarily substituted ''[Reserved.]'' for the text of subsec. (k), which read as follows: ''In selecting individuals or families to be assisted under this section in accordance with the eligibility criteria and procedures established under subsection (e)(1) of this section, the project owner shall give preference to individuals or families who are occupying substandard housing, are paying more than 50 percent of family income for rent, or are involuntarily displaced at the time they are seeking housing assistance under this section.'' See Effective and Termination Dates of 1996 Amendment note below.

1988—Subsec. (e)(1). Pub. L. 100–242, §168(1), struck out provisions authorizing the Secretary to issue, upon the request of a housing owner, certificates of facts concerning individuals and families applying for admission to, or residing in, dwellings of such owner.

Subsec. (g). Pub. L. 100–242, §167(a)(2), substituted ''100 percent'' for ''90 per centum''.

Subsec. (j)(1)(D). Pub. L. 100–242, §170(h), made amendment identical to Pub. L. 98–479, §204(e). See 1984 Amendment note below.

Subsec. (k). Pub. L. 100–242, §168(2), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: ''In making assistance available under this section, the Secretary shall give priority to individuals or families who are occupying substandard housing or are involuntarily displaced at the time they are seeking housing assistance under this section.''

Subsec. (m). Pub. L. 100–242, §430(b), added subsec. (m).

1984—Subsec. (g). Pub. L. 98–479, §102(d), struck out ''up to'' before ''90 per centum'' in next to last sentence.

Subsec. (j)(1)(D). Pub. L. 98–479, §204(e), substituted ''dividend'' for ''divided'' before ''legal entity''.

1983—Subsec. (e)(1)(B). Pub. L. 98–181, §203(b)(3), inserted '', was paying more than 50 per centum of family income for rent,''.

Subsec. (g). Pub. L. 98–181, §219(a), inserted provision relating to the offer annually to amend contracts to ensure that qualified tenants receive the benefit of assistance contracted for under this section.

Subsec. (*l*). Pub. L. 98–181, §219(b), inserted provision relating to the utilization by the Secretary of any authority under this section that is recaptured.

1981—Subsec. (c)(2). Pub. L. 97–35, §322(g)(1), substituted provisions defining ''income'' as income from all sources of each member and criteria for exclusions, for provisions defining ''income'' as determined under section 1437f of title 42.

Subsec. (d). Pub. L. 97–35, §§322(g)(2), 327(b), substituted provisions relating to determination of annual payment amount, for provisions relating to determination of maximum amount of annual payment.

Subsec. (e)(2). Pub. L. 97–35, §322(g)(3), substituted provisions relating to annual recertifications, for provisions relating to the elderly and recertifications at intervals of two years or shorter.

Subsec. (*l*). Pub. L. 97–35, §327(a), substituted provisions relating to additional available assistance authority, for provisions relating to amendment of contracts.

1980—Subsec. (*l*). Pub. L. 96–399 substituted ''shall, not later than 4 years after October 8, 1980,'' for ''may'' in first sentence; inserted second sentence relating to amending of contracts; and substituted ''the first sentence of this paragraph'' for ''preceding'' in last sentence.

1979—Subsec. (c). Pub. L. 96–153, §203(a)(1), revised definition of ''qualified tenant'' and inserted definition of ''income''.

Subsec. (d). Pub. L. 96–153, §203(a)(2), struck out provisions that in determining the income of tenants, an amount equal to $300 for each minor person shall be deducted and that the earnings of minor persons shall not be included in the income of the tenant, and inserted provisions relating to the determination of amount of payments under contracts amended pursuant to subsec. (j) of this section by reference to section 1437f of title 42.

Subsec. (e)(1)(B). Pub. L. 96–153, §203(a)(3), substituted ''occupying substandard housing or was involuntarily displaced at the time it was seeking assistance under this section'' for ''displaced by governmental action, is elderly, is physically handicapped, or is (or was) occupying substandard housing or housing extensively damaged or destroyed as the result of a natural disaster''.

Subsecs. (k), (*l*). Pub. L. 96–153, §203(a)(4), added subsecs. (k) and (*l*).

1970—Subsec. (a). Pub. L. 91–609, §103, increased maximum amount of payments by $40,000,000 on July 1, 1971.

Subsec. (b). Pub. L. 91–609, §§114[115](c), 118(b), authorized payments to housing owners with respect to projects with dwelling units without kitchen facilities

and provided for percentage limitation on payments to housing owner, and substituted ''which may involve either new or existing construction and which'' for ''which prior to completion of construction or rehabilitation'' before ''is approved'', respectively.

Subsec. (c)(2)(F). Pub. L. 91–609, § 120(a), added par. (F).

Subsec. (e)(1)(B). Pub. L. 91–609, § 120(b), provided for issuance of certificates with respect to whether the individual or family is a member of the Armed Forces of the United States serving on active duty.

1969—Subsec. (j)(1)(D). Pub. L. 91–152 inserted exception which authorized the Secretary to increase payments to 40 per centum of the dwelling units under the specified conditions.

1968—Subsec. (a). Pub. L. 90–448, § 202(a), increased maximum amount of payments by $40,000,000 on July 1, 1969, and by $100,000,000 on July 1, 1970.

Subsec. (b). Pub. L. 90–448, § 202(b), included within definition of ''housing owner'' a private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividended legal entity, or a cooperative housing corporation, which is the owner of a rental or cooperative housing project financed under a State or local program.

Subsec. (c)(2)(E). Pub. L. 90–448, § 1106(b), substituted ''affected by a disaster'' for ''affected by a natural disaster''.

Subsec. (d). Pub. L. 90–448, § 201(e)(1), inserted provisions authorizing, in determining the income of any tenant, a deduction of an amount equal to $300 for each minor person who is a member of the immediate family of the tenant and living with the tenant, and directing that the earnings of any such minor shall not be included in the income of such tenant.

Subsec. (g). Pub. L. 90–448, § 201(e)(2), inserted reference to section 1715z–1 of this title.

Subsec. (j)(1)(D). Pub. L. 90–448, § 201(e)(3), inserted subpar. (D).

1967—Pub. L. 90–19, § 22(a), substituted ''Secretary'' for ''Administrator'' wherever appearing in subsecs. (c), (d), (e), and (g).

Subsec. (a). Pub. L. 90–19, § 22(c)(1), substituted ''Secretary of Housing and Urban Development (hereinafter referred to as the 'Secretary')'' for ''Housing and Home Finance Administrator (hereinafter referred to as the 'Administrator')''.

Subsec. (g). Pub. L. 90–19, § 22(c)(2), consolidated in the Secretary of Housing and Urban Development the authorities of the Federal Housing Commissioner and the Housing and Home Finance Administrator with respect to housing assisted under sections 1715*l*(d)(3) and 1715v(c)(3), and section 1701q of this title, respectively.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 514(g), Oct. 21, 1998, 112 Stat. 2549, provided that: ''This section [amending this section, sections 1701z–11 and 4116 of this title, and sections 1437d, 1437f, 12899d, and 13615 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 1437a and 1437f of Title 42, and repealing provisions set out as notes under sections 1437d and 1437f of Title 42] shall take effect on, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENT

Amendment by Pub. L. 104–99 effective Jan. 26, 1996, and only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104–99, as amended, and section 514(f) of Pub. L. 105–276, set out as notes under section 1437a of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 203(c) of Pub. L. 96–153 providing for the effective date of amendment of this section and section 1715z–1 of this title as Dec. 21, 1979, and setting forth maximum applicable tenant contribution, was repealed by Pub. L. 97–35, title III, §§ 322(h)(2), 371, Aug. 13, 1981, 95 Stat. 404, 431, eff. Oct. 1, 1981.

AMENDMENTS TO CONTRACTS

Pub. L. 109–115, div. A, title III, Nov. 30, 2005, 119 Stat. 2453, provided in part: ''That amendments to such contracts [under this section and section 1715z–1(f)(2) of this title in State-aided, non-insured rental housing projects] hereafter may be for a period less than the term of the respective contracts.''

LIMITATION ON WITHHOLDING OR CONDITIONING OF ASSISTANCE

Assistance provided for in Housing and Community Development Act of 1974, National Housing Act, United States Housing Act of 1937, Housing Act of 1949, Demonstration Cities and Metropolitan Development Act of 1966, and Housing and Urban Development Acts of 1965, 1968, 1969, and 1970 [see Short Title note set out under section 1701 of this title], not to be withheld or made subject to conditions by reason of tax-exempt status of obligations issued or to be issued for financing of assistance, except as otherwise provided by law, see section 817 of Pub. L. 93–383, set out as a note under section 5301 of Title 42, The Public Health and Welfare.

§ 1701t. Congressional affirmation of national goal of decent homes and suitable living environment for American families

The Congress affirms the national goal, as set forth in section 1441 of title 42, of ''a decent home and a suitable living environment for every American family''.

The Congress finds that this goal has not been fully realized for many of the Nation's lower income families; that this is a matter of grave national concern; and that there exist in the public and private sectors of the economy the resources and capabilities necessary to the full realization of this goal.

The Congress declares that in the administration of those housing programs authorized by this Act which are designed to assist families with incomes so low that they could not otherwise decently house themselves, and of other Government programs designed to assist in the provision of housing for such families, the highest priority and emphasis should be given to meeting the housing needs of those families for which the national goal has not become a reality; and in the carrying out of such programs there should be the fullest practicable utilization of the resources and capabilities of private enterprise and of individual self-help techniques.

(Pub. L. 90–448, § 2, Aug. 1, 1968, 82 Stat. 476.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476, as amended, known as the Housing and Urban Development Act of 1968. For complete classification of this Act to the Code, see Short Title of 1968 Amendments note set out under section 1701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1968, and not as part of the National Housing Act which comprises this chapter.

LIMITATION ON WITHHOLDING OR CONDITIONING OF ASSISTANCE

Assistance provided for in Housing and Community Development Act of 1974, National Housing Act, United States Housing Act of 1937, Housing Act of 1949, Demonstration Cities and Metropolitan Development Act of 1966, and Housing and Urban Development Acts of 1965, 1968, [see Short Title notes set out under section 1701 of this title], 1969, and 1970 not to be withheld or made subject to conditions by reason of tax-exempt status of obligations issued or to be issued for financing of assistance, except as otherwise provided by law, see section 817 of Pub. L. 93–383, set out as a note under section 5301 of Title 42, The Public Health and Welfare.

NATIONAL ADVISORY COMMISSION ON LOW INCOME HOUSING

Section 110 of Pub. L. 90–448 established the National Advisory Commission on Low Income Housing; provided for the appointment of members and the filling of vacancies; fixed the quorum number and the number necessary to conduct hearings; provided that the Commission study ways of bringing safe and sanitary housing to low income families, utilize services of private research organizations, and coordinate its investigation with the Banking and Currency Committees of the Senate and House; required that an interim report be submitted by July 1, 1969 and a final report by July 1, 1970; authorized the Commission or a subcommittee to hold hearings and to administer oaths and affirmations; directed executive branch departments, agencies, and instrumentalities to furnish information requested by the Commission; empowered the chairman, without regard to the provisions of Title 5, Government Organization and Employees, governing appointments in the competitive service and relating to classification and General Schedule pay rates, to appoint and pay personnel as he deemed necessary and to procure temporary services, as is authorized by section 3109 of title 5, at rates up to $50 a day for individuals; provided that members appointed from the executive or legislative branch serve without compensation in addition to that received in their regular employment but be reimbursed for travel, subsistence, and necessary expenses incurred while performing duties for the Commission and that members other than those appointed from the executive or legislative branches be paid $75 a day plus travel, subsistence, and other necessary expenses while acting as members of the Commission; and directed that the Commission cease to exist 30 days after its final report.

§ 1701u. Economic opportunities for low- and very low-income persons

(a) Findings

The Congress finds that—

(1) Federal housing and community development programs provide State and local governments and other recipients of Federal financial assistance with substantial funds for projects and activities that produce significant employment and other economic opportunities;

(2) low- and very low-income persons, especially recipients of government assistance for housing, often have restricted access to employment and other economic opportunities;

(3) the employment and other economic opportunities generated by projects and activities that receive Federal housing and community development assistance offer an effective means of empowering low- and very low-income persons, particularly persons who are recipients of government assistance for housing; and

(4) prior Federal efforts to direct employment and other economic opportunities generated by Federal housing and community development programs to low- and very low-income persons have not been fully effective and should be intensified.

(b) Policy

It is the policy of the Congress and the purpose of this section to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.

(c) Employment

(1) Public and Indian housing program

(A) In general

The Secretary shall require that public and Indian housing agencies, and their contractors and subcontractors, make their best efforts, consistent with existing Federal, State, and local laws and regulations, to give to low- and very low-income persons the training and employment opportunities generated by development assistance provided pursuant to section 1437c of title 42, operating assistance provided pursuant to section 1437g of title 42, and modernization grants provided pursuant to section 1437*l* of title 42.[1]

(B) Priority

The efforts required under subparagraph (A) shall be directed in the following order of priority:

(i) To residents of the housing developments for which the assistance is expended.

(ii) To residents of other developments managed by the public or Indian housing agency that is expending the assistance.

(iii) To participants in YouthBuild programs receiving assistance under section 2918a of title 29.

(iv) To other low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(2) Other programs

(A) In general

In other programs that provide housing and community development assistance, the Secretary shall ensure that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

[1] See References in Text note below.

(B) Priority

Where feasible, priority should be given to low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located and to participants in YouthBuild programs receiving assistance under section 2918a of title 29.

(d) Contracting

(1) Public and Indian housing program

(A) In general

The Secretary shall require that public and Indian housing agencies, and their contractors and subcontractors, make their best efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with development assistance provided pursuant to section 1437c of title 42, operating assistance provided pursuant to section 1437g of title 42, and modernization grants provided pursuant to section 1437*l* of title 42,[1] to business concerns that provide economic opportunities for low- and very low-income persons.

(B) Priority

The efforts required under subparagraph (A) shall be directed in the following order of priority:

(i) To business concerns that provide economic opportunities for residents of the housing development for which the assistance is provided.

(ii) To business concerns that provide economic opportunities for residents of other housing developments operated by the public and Indian housing agency that is providing the assistance.

(iii) To YouthBuild programs receiving assistance under section 2918a of title 29.

(iv) To business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

(2) Other programs

(A) In general

In providing housing and community development assistance pursuant to other programs, the Secretary shall ensure that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, contracts awarded for work to be performed in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(B) Priority

Where feasible, priority should be given to business concerns which provide economic opportunities for low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located and to YouthBuild programs receiving assistance under section 2918a of title 29.

(e) Definitions

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

(1) Low- and very low-income persons

The terms ''low-income persons'' and ''very low-income persons'' have the same meanings given the terms ''low-income families'' and ''very low-income families'', respectively, in section 1437a(b)(2) of title 42.

(2) Business concern that provides economic opportunities

The term ''a business concern that provides economic opportunities'' means a business concern that—

(A) provides economic opportunities for a class of persons that has a majority controlling interest in the business;

(B) employs a substantial number of such persons; or

(C) meets such other criteria as the Secretary may establish.

(f) Coordination with other Federal agencies

The Secretary shall consult with the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Commerce, the Administrator of the Small Business Administration, and such other Federal agencies as the Secretary determines are necessary to carry out this section.

(g) Regulations

Not later than 180 days after October 28, 1992, the Secretary shall promulgate regulations to implement this section.

(Pub. L. 90–448, § 3, Aug. 1, 1968, 82 Stat. 476; Pub. L. 91–152, title IV, § 404, Dec. 24, 1969, 83 Stat. 395; Pub. L. 93–383, title I, § 118, Aug. 22, 1974, 88 Stat. 653; Pub. L. 96–399, title III, § 329, Oct. 8, 1980, 94 Stat. 1651; Pub. L. 102–550, title IX, § 915, Oct. 28, 1992, 106 Stat. 3878; Pub. L. 109–281, § 2(d)(1), Sept. 22, 2006, 120 Stat. 1181.)

REFERENCES IN TEXT

Section 1437*l* of title 42, referred to in subsecs. (c)(1)(A) and (d)(1)(A), was repealed by Pub. L. 105–276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564.

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1968, and not as part of the National Housing Act which comprises this chapter.

October 28, 1992, referred to in subsec. (g), was in the original ''the date of enactment of the National Affordable Housing Act Amendments of 1992'', and was translated as meaning the date of enactment of the Housing and Community Development Act of 1992, Pub. L. 102–550, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2006—Subsecs. (c)(1)(B)(iii), (2)(B), (d)(1)(B)(iii), (2)(B). Pub. L. 109–281 substituted ''YouthBuild programs receiving assistance under section 2918a of title 29'' for ''Youthbuild programs receiving assistance under sub-

title D of title IV of the Cranston-Gonzalez National Affordable Housing Act''.

1992—Pub. L. 102–550 amended section generally. Prior to amendment, section read as follows: ''In the administration by the Secretary of Housing and Urban Development of programs providing direct financial assistance, including community development block grants under title I of the Housing and Community Development Act of 1974, in aid of housing, urban planning, development, redevelopment, or renewal, public or community facilities, and new community development, the Secretary shall—

''(1) require, in consultation with the Secretary of Labor, that to the greatest extent feasible opportunities for training and employment arising in connection with the planning and carrying out of any project assisted under any such program be given to lower income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county), as determined by the Secretary, in which the project is located; and

''(2) require, in consultation with the Administrator of the Small Business Administration, that to the greatest extent feasible contracts for work to be performed in connection with any such project be awarded to business concerns, including but not limited to individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance or repair, which are located in or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project.''

1980—Par. (1). Pub. L. 96–399, § 329(1), substituted ''residing within the unit of local government or the metropolitan area (or nonmetropolitan county), as determined by the Secretary, in which the project is located'' for ''residing in the area of such project''.

Par. (2). Pub. L. 96–399, § 329(2), substituted ''residing in the same metropolitan area (or nonmetropolitan county) as the project'' for ''residing in the area of such project''.

1974—Pub. L. 93–383 inserted reference to community development block grants under title I of the Housing and Community Development Act of 1974.

1969—Pub. L. 91–152 substituted provisions making applicable programs providing direct financial assistance in aid of housing, urban planning, development, redevelopment, or renewal, public or community facilities, and new community development, for provisions making applicable programs authorized by sections 1715*l*(d)(3), 1715z, and 1715z–1 of this title, the low-rent public housing program under the United States Housing Act of 1937, and the rent supplement program under section 101 of the Housing and Urban Development Act of 1965.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–281, § 2(f), Sept. 22, 2006, 120 Stat. 1182, provided that: ''This section [enacting section 2918a of Title 29, Labor, amending this section, section 4183 of Title 25, Indians, section 2939 of Title 29, and section 12870 of Title 42, The Public Health and Welfare, and repealing sections 12899 to 12899i of Title 42] and the amendments made by this section take effect on the earlier of—

''(1) the date of enactment of this Act [Sept. 22, 2006]; and

''(2) September 30, 2006.''

EFFECTIVENESS STUDY

Section 916 of Pub. L. 102–550 provided that:

''(a) IN GENERAL.—The Secretary of Housing and Urban Development shall submit to the Congress, not later than 1 year after the date of the enactment of this Act [Oct. 28, 1992], a report describing—

''(1) the Secretary's efforts to enforce section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u];

''(2) the barriers to full implementation of section 3 of the Housing and Urban Development Act of 1968;

''(3) the anticipated costs and benefits of full implementation of section 3 of the Housing and Urban Development Act of 1968; and

''(4) recommendations for legislative changes to enhance the effectiveness of section 3 of the Housing and Urban Development Act of 1968.

''(b) CONTENTS.—

''(1) ENFORCEMENT.—The description under subsection (a)(1) of the Secretary's enforcement efforts shall include, at a minimum—

''(A) a discussion of how responsibility for implementing section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u] is allocated within the Department of Housing and Urban Development;

''(B) a discussion of the status of existing regulations implementing such section 3;

''(C) a discussion of ongoing efforts to enforce current regulations;

''(D) a list of the programs under the responsibility of the Secretary with respect to which the Secretary is enforcing section 3; and

''(E) a separate description of the activities carried out under section 3 with respect to each of these programs.

''(2) IMPEDIMENTS.—The discussion under subsection (a)(2) of the external impediments to effective enforcement of section 3 of the Housing and Urban Development Act of 1968 shall include, at a minimum, a discussion of—

''(A) any lack of necessary training for targeted employees and technical assistance to targeted businesses;

''(B) any barriers created by Federal, State, or local procurement regulations or other laws;

''(C) any difficulties in coordination with labor unions;

''(D) any difficulties in coordination with other implicated Federal agencies; and

''(E) any lack of resources on the part of recipients of assistance who are responsible for carrying out section 3 of the Housing and Urban Development Act of 1968.

''(c) CONSULTATION.—In preparing the report under this subsection, the Secretary shall consult with the Secretary of Labor, the Secretary of Commerce, the Secretary of Health and Human Services, the Administrator of the Small Business Administration, other appropriate Federal officials, and recipients of Federal housing and community development assistance who are responsible for executing section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u].''

§ 1701v. Congressional findings and declaration for improved architectural design in Government housing programs

The Congress finds that Federal aids to housing have not contributed fully to improvement in architectural standards. This objective has been contemplated in Federal housing legislation since the establishment of mortgage insurance through the Federal Housing Administration.

The Congress commends the Department of Housing and Urban Development for its recent efforts to improve architectural standards through competitive design awards and in other ways but at the same time recognizes that this important objective requires high priority if Federal aid is to make its full communitywide contribution toward improving our urban environment.

The Congress further finds that even within the necessary budget limitations on housing for low and moderate income families architectural design could be improved not only to make the

housing more attractive, but to make it better suited to the needs of occupants.

The Congress declares that in the administration of housing programs which assist in the provision of housing for low and moderate income families, emphasis should be given to encouraging good design as an essential component of such housing and to developing housing which will be of such quality as to reflect its important relationship to the architectural standards of the neighborhood and community in which it is situated, consistent with prudent budgeting.

(Pub. L. 90–448, § 4, Aug. 1, 1968, 82 Stat. 477.)

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1968, and not as part of the National Housing Act which comprises this chapter.

§ 1701w. Budget, debt management, and related counseling services for mortgagors; authorization of appropriations

The Secretary of Housing and Urban Development is authorized to provide, or contract with public or private organizations to provide, such budget, debt management, and related counseling services to mortgagors whose mortgages are insured under section 1715z(i) or (j)(4) of this title as he determines to be necessary to assist such mortgagors in meeting the responsibilities of homeownership. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 90–448, title I, § 101(e), Aug. 1, 1968, 82 Stat. 484.)

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1968, and not as part of the National Housing Act which comprises this chapter.

§ 1701x. Assistance with respect to housing for low- and moderate-income families

(a) Authorization to provide information, advice, and technical assistance; scope of assistance; authorization of appropriations

(1) The Secretary is authorized to provide, or contract with public or private organizations to provide, information, advice, and technical assistance, including but not limited to—

(i) the assembly, correlation, publication, and dissemination of information with respect to the construction, rehabilitation, and operation of low- and moderate-income housing;

(ii) the provision of advice and technical assistance to public bodies or to nonprofit or cooperative organizations with respect to the construction, rehabilitation, and operation of low- and moderate-income housing, including assistance with respect to self-help and mutual self-help programs;

(iii) counseling and advice to tenants and homeowners with respect to property maintenance, financial management, and such other matters as may be appropriate to assist them in improving their housing conditions and in meeting the responsibilities of tenancy or homeownership; and

(iv) the provision of technical assistance to communities, particularly smaller communities, to assist such communities in planning, developing, and administering Community Development Programs pursuant to title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(2) The Secretary (A) shall provide the services described in clause (iii) of paragraph (1) for homeowners assisted under section 235 of the National Housing Act [12 U.S.C. 1715z]; (B) shall, in consultation with the Secretary of Agriculture, provide such services for borrowers who are first-time homebuyers with guaranteed loans under section 502(h) of the Housing Act of 1949 [42 U.S.C. 1472(h)]; and (C) may provide such services for other owners of single family dwelling units insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.] or guaranteed or insured under chapter 37 of title 38. For purposes of this paragraph and clause (iii) of paragraph (1), the Secretary may provide the services described in such clause directly or may enter into contracts with, make grants to, and provide other types of assistance to private or public organizations with special competence and knowledge in counseling low- and moderate-income families to provide such services.

(3) There is authorized to be appropriated for the purposes of this subsection, without fiscal year limitation, such sums as may be necessary; except that for such purposes there are authorized to be appropriated $6,025,000 for fiscal year 1993 and $6,278,050 for fiscal year 1994. Of the amounts appropriated for each of fiscal years 1993 and 1994, up to $500,000 shall be available for use for counseling and other activities in connection with the demonstration program under section 152 of the Housing and Community Development Act of 1992. Any amounts so appropriated shall remain available until expended.

(b) Loans to nonprofit organizations or public housing agencies; purpose and terms; repayment; authorization of appropriations; deposit of appropriations in Low and Moderate Income Sponsor Fund

(1) The Secretary is authorized to make loans to nonprofit organizations or public housing agencies for the necessary expenses, prior to construction, in planning, and obtaining financing for, the rehabilitation or construction of housing for low or moderate income families under section 235 of the National Housing Act [12 U.S.C. 1715z] or any other federally assisted program. Such loans shall be made without interest and shall not exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing prior to the availability of financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering and architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. The Secretary shall require repayment of loans made under this subsection, under such terms and conditions as he may require, upon completion of the project or sooner, and may cancel any part or all of a loan if he determines that it cannot be recovered from the proceeds of any permanent loan made to finance the rehabilitation or construction of the housing.

(2) The Secretary shall determine prior to the making of any loan that the nonprofit organization or public housing agency meets such requirements with respect to financial responsibility and stability as he may prescribe.

(3) There are authorized to be appropriated for the purposes of this subsection not to exceed $7,500,000 for the fiscal year ending June 30, 1969, and not to exceed $10,000,000 for the fiscal year ending June 30, 1970. Any amounts so appropriated shall remain available until expended, and any amounts authorized for any fiscal year under this paragraph but not appropriated may be appropriated for any succeeding fiscal year.

(4) All funds appropriated for the purposes of this subsection shall be deposited in a fund which shall be known as the Low and Moderate Income Sponsor Fund, and which shall be available without fiscal year limitation and be administered by the Secretary as a revolving fund for carrying out the purposes of this subsection. Sums received in repayment of loans made under this subsection shall be deposited in such fund.

(c) Grants for homeownership counseling organizations

(1) In general

The Secretary of Housing and Urban Development may make grants—

(A) to nonprofit organizations experienced in the provision of homeownership counseling to enable the organizations to provide homeownership counseling to eligible homeowners; and

(B) to assist in the establishment of nonprofit homeownership counseling organizations.

(2) Program requirements

(A) Applications for grants under this subsection shall be submitted in the form, and in accordance with the procedures, that the Secretary requires.

(B) The homeownership counseling organizations receiving assistance under this subsection shall use the assistance only to provide homeownership counseling to eligible homeowners.

(C) The homeownership counseling provided by homeownership counseling organizations receiving assistance under this subsection shall include counseling with respect to—

(i) financial management;

(ii) available community resources, including public assistance programs, mortgage assistance programs, home repair assistance programs, utility assistance programs, food programs, and social services; and

(iii) employment training and placement.

(3) Availability of homeownership counseling

The Secretary shall take any action that is necessary—

(A) to ensure the availability throughout the United States of homeownership counseling from homeownership counseling organizations receiving assistance under this subsection, with priority to areas that—

(i) are experiencing high rates of home foreclosure and any other indicators of homeowner distress determined by the Secretary to be appropriate;

(ii) are not already adequately served by homeownership counseling organizations; and

(iii) have a high incidence of mortgages involving principal obligations (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in excess of 97 percent of the appraised value of the properties that are insured pursuant to section 203 of the National Housing Act [12 U.S.C. 1709]; and

(B) to inform the public of the availability of the homeownership counseling.

(4) Eligibility for counseling

A homeowner shall be eligible for homeownership counseling under this subsection if—

(A) the home loan is secured by property that is the principal residence (as defined by the Secretary) of the homeowner;

(B) the home loan is not assisted under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.]; and

(C) the homeowner is, or is expected to be, unable to make payments, correct a home loan delinquency within a reasonable time, or resume full home loan payments due to a reduction in the income of the homeowner because of—

(i) an involuntary loss of, or reduction in, the employment of the homeowner, the self-employment of the homeowner, or income from the pursuit of the occupation of the homeowner;

(ii) any similar loss or reduction experienced by any person who contributes to the income of the homeowner;

(iii) a significant reduction in the income of the household due to divorce or death; or

(iv) a significant increase in basic expenses of the homeowner or an immediate family member of the homeowner (including the spouse, child, or parent for whom the homeowner provides substantial care or financial assistance) due to—

(I) an unexpected or significant increase in medical expenses;

(II) a divorce;

(III) unexpected and significant damage to the property, the repair of which will not be covered by private or public insurance; or

(IV) a large property-tax increase; or

(D) the Secretary of Housing and Urban Development determines that the annual income of the homeowner is no greater than the annual income established by the Secretary as being of low- or moderate-income.

(5) Notification of availability of homeownership counseling

(A) Notification of availability of homeownership counseling

(i) Requirement

Except as provided in subparagraph (C), the creditor of a loan (or proposed creditor) shall provide notice under clause (ii) to (I) any eligible homeowner who fails to

pay any amount by the date the amount is due under a home loan, and (II) any applicant for a mortgage described in paragraph (4).

(ii) Content

Notification under this subparagraph shall—

(I) notify the homeowner or mortgage applicant of the availability of any homeownership counseling offered by the creditor (or proposed creditor);

(II) if provided to an eligible mortgage applicant, state that completion of a counseling program is required for insurance pursuant to section 203 of the National Housing Act [12 U.S.C. 1709];

(III) notify the homeowner or mortgage applicant of the availability of homeownership counseling provided by nonprofit organizations approved by the Secretary and experienced in the provision of homeownership counseling, or provide the toll-free telephone number described in subparagraph (D)(i); and

(IV) notify the homeowner by a statement or notice, written in plain English by the Secretary of Housing and Urban Development, in consultation with the Secretary of Defense and the Secretary of the Treasury, explaining the mortgage and foreclosure rights of servicemembers, and the dependents of such servicemembers, under the Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.), including the toll-free military one source number to call if servicemembers, or the dependents of such servicemembers, require further assistance.

(B) Deadline for notification

The notification required in subparagraph (A) shall be made—

(i) in a manner approved by the Secretary; and

(ii) before the expiration of the 45-day period beginning on the date on which the failure referred to in such subparagraph occurs.

(C) Notification

Notification under subparagraph (A) shall not be required with respect to any loan for which the eligible homeowner pays the amount overdue before the expiration of the 45-day period under subparagraph (B)(ii).

(D) Administration and compliance

The Secretary shall, to the extent of amounts approved in appropriation Acts, enter into an agreement with an appropriate private entity under which the entity will—

(i) operate a toll-free telephone number through which any eligible homeowner can obtain a list of nonprofit organizations, which shall be updated annually, that—

(I) are approved by the Secretary and experienced in the provision of homeownership counseling; and

(II) serve the area in which the residential property of the homeowner is located;

(ii) monitor the compliance of creditors with the requirements of subparagraphs (A) and (B); and

(iii) report to the Secretary not less than annually regarding the extent of compliance of creditors with the requirements of subparagraphs (A) and (B).

(E) Report

The Secretary shall submit a report to the Congress not less than annually regarding the extent of compliance of creditors with the requirements of subparagraphs (A) and (B) and the effectiveness of the entity monitoring such compliance. The Secretary shall also include in the report any recommendations for legislative action to increase the authority of the Secretary to penalize creditors who do not comply with such requirements.

(6) Definitions

For purposes of this subsection:

(A) The term ''creditor'' means a person or entity that is servicing a home loan on behalf of itself or another person or entity.

(B) The term ''eligible homeowner'' means a homeowner eligible for counseling under paragraph (4).

(C) The term ''home loan'' means a loan secured by a mortgage or lien on residential property.

(D) The term ''homeowner'' means a person who is obligated under a home loan.

(E) The term ''residential property'' means a 1-family residence, including a 1-family unit in a condominium project, a membership interest and occupancy agreement in a cooperative housing project, and a manufactured home and the lot on which the home is situated.

(7) Regulations

The Secretary shall issue any regulations that are necessary to carry out this subsection.

(8) Authorization of appropriations

There are authorized to be appropriated to carry out this section $7,000,000 for fiscal year 1993 and $7,294,000 for fiscal year 1994, of which amounts $1,000,000 shall be available in each such fiscal year to carry out paragraph (5)(D). Any amount appropriated under this subsection shall remain available until expended.

(d) Prepurchase and foreclosure-prevention counseling demonstration

(1) Purposes

The purpose of this subsection is—

(A) to reduce defaults and foreclosures on mortgage loans insured under the Federal Housing Administration single family mortgage insurance program;

(B) to encourage responsible and prudent use of such federally insured home mortgages;

(C) to assist homeowners with such federally insured mortgages to retain the homes they have purchased pursuant to such mortgages; and

(D) to encourage the availability and expansion of housing opportunities in connec-

tion with such federally insured home mortgages.

(2) Authority

The Secretary of Housing and Urban Development shall carry out a program to demonstrate the effectiveness of providing coordinated prepurchase counseling and foreclosure-prevention counseling to first-time homebuyers and homeowners in avoiding defaults and foreclosures on mortgages insured under the Federal Housing Administration single family home mortgage insurance program.

(3) Grants

Under the demonstration program under this subsection, the Secretary shall make grants to qualified nonprofit organizations under paragraph (4) to enable the organizations to provide prepurchase counseling services to eligible homebuyers and foreclosure-prevention counseling services to eligible homeowners, in counseling target areas.

(4) Qualified nonprofit organizations

The Secretary shall select nonprofit organizations to receive assistance under the demonstration program under this subsection based on the experience and ability of the organizations in providing homeownership counseling and their ability to provide community-based prepurchase and foreclosure-prevention counseling under paragraphs (5) and (6) in a counseling target area. To be eligible for selection under this paragraph, a nonprofit organization shall submit an application containing a proposal for providing counseling services in the form and manner required by the Secretary.

(5) Prepurchase counseling

(A) Mandatory participation

Under the demonstration program, the Secretary shall require any eligible homebuyer who intends to purchase a home located in a counseling target area and who has applied for (as determined by the Secretary) a qualified mortgage (as such term is defined in paragraph (9)) on such home that involves a downpayment of less than 10 percent of the principal obligation of the mortgage, to receive counseling prior to signing of a contract to purchase the home. The counseling shall include counseling with respect to—

(i) financial management and the responsibilities involved in homeownership;

(ii) fair housing laws and requirements;

(iii) the maximum mortgage amount that the homebuyer can afford; and

(iv) options, programs, and actions available to the homebuyer in the event of actual or potential delinquency or default.

(B) Eligibility for counseling

A homebuyer shall be eligible for prepurchase counseling under this paragraph if—

(i) the homebuyer has applied for a qualified mortgage;

(ii) the homebuyer is a first-time homebuyer; and

(iii) the home to be purchased under the qualified mortgage is located in a counseling target area.

(6) Foreclosure-prevention counseling

(A) Availability

Under the demonstration program, the Secretary shall make counseling available for eligible homeowners who are 60 or more days delinquent with respect to a payment under a qualified mortgage on a home located within a counseling target area. The counseling shall include counseling with respect to options, programs, and actions available to the homeowner for resolving the delinquency or default.

(B) Notification of delinquency

Under the demonstration program, the Secretary shall require the creditor of any eligible homeowner who is delinquent (as described in subparagraph (A)) to send written notice by registered or certified mail within 5 days (excluding Saturdays, Sundays, and legal public holidays) after the occurrence of such delinquency—

(i) notifying the homeowner of the delinquency and the name, address, and phone number of the counseling organization for the counseling target area; and

(ii) notifying any counseling organization for the counseling target area of the delinquency and the name, address, and phone number of the delinquent homeowner.

(C) Coordination with emergency homeownership counseling program

The Secretary may coordinate the provision of assistance under subsection (c) of this section with the demonstration program under this subsection.

(D) Eligibility for counseling

A homeowner shall be eligible for foreclosure-prevention counseling under this paragraph if—

(i) the home owned by the homeowner is subject to a qualified mortgage; and

(ii) such home is located in a counseling target area.

(7) Scope of demonstration program

(A) Designation of counseling target areas

The Secretary shall designate 3 counseling target areas (as provided in subparagraph (B)), which shall be located in not less than 2 separate metropolitan areas. The Secretary shall provide for counseling under the demonstration program under this subsection with respect to only such counseling target areas.

(B) Counseling target areas

Each counseling target area shall consist of a group of contiguous census tracts—

(i) the population of which is greater than 50,000;

(ii) which together constitute an identifiable neighborhood, area, borough, district, or region within a metropolitan area (except that this clause may not be con-

strued to exclude a group of census tracts containing areas not wholly contained within a single town, city, or other political subdivision of a State);

(iii) in which the average age of existing housing is greater than 20 years; and

(iv) for which (I) the percentage of qualified mortgages on homes within the area that are foreclosed exceeds 5 percent for the calendar year preceding the year in which the area is selected as a counseling target area, or (II) the number of qualified mortgages originated on homes in such area in the calendar year preceding the calendar year in which the area is selected as a counseling target area exceeds 20 percent of the total number of mortgages originated on residences in the area during such year.

(C) Mortgage characteristics

In designating counseling target areas under subparagraph (A), the Secretary shall designate at least 1 such area that meets the requirements of subparagraph (B)(iv)(I) and at least 1 such area that meets the requirements of subparagraph (B)(iv)(II).

(D) Expansion of target areas

The Secretary may expand any counseling target area during the term of the demonstration program, if the Secretary determines that counseling can be adequately provided within such expanded area and the purposes of this subsection will be furthered by such expansion. Any such expansion shall include only groups of census tracts that are contiguous to the counseling target area expanded and such census tract groups shall not be subject to the provisions of subparagraph (B).

(E) Designation of control areas

For purposes of determining the effectiveness of counseling under the demonstration program, the Secretary shall designate 3 control areas, each of which shall correspond to 1 of the counseling target areas designated under subparagraph (A). Each control area shall be located in the metropolitan area in which the corresponding counseling target area is located, shall meet the requirements of subparagraph (B), and shall be similar to such area with respect to size, age of housing stock, median income, and racial makeup of the population. Each control area shall also comply with the requirements of subclause (I) or (II) of subparagraph (B)(iv), according to the subclause with which the corresponding counseling target area complies.

(8) Evaluation

Each organization providing counseling under the demonstration program under this subsection shall maintain records with respect to each eligible homebuyer and eligible homeowner counseled and shall provide information with respect to such counseling as the Secretary or the Comptroller General may require.

(9) Definitions

For purposes of this subsection:

(A) The term ''control area'' means an area designated by the Secretary under paragraph (7)(E).

(B) The term ''counseling target area'' means an area designated by the Secretary under paragraph (7)(A).

(C) The term ''creditor'' means a person or entity that is servicing a loan secured by a qualified mortgage on behalf of itself or another person or entity.

(D) The term ''displaced homemaker'' means an individual who—

(i) is an adult;

(ii) has not worked full-time, full-year in the labor force for a number of years, but has during such years, worked primarily without remuneration to care for the home and family; and

(iii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(E) The term ''downpayment'' means the amount of purchase price of home required to be paid at or before the time of purchase.

(F) The term ''eligible homebuyer'' means a homebuyer that meets the requirements under paragraph (5)(B).

(G) The term ''eligible homeowner'' means a homeowner that meets the requirements under paragraph (6)(D).

(H) The term ''first-time homebuyer'' means an individual who—

(i) (and whose spouse) has had no ownership in a principal residence during the 3-year period ending on the date of purchase of the home pursuant to which counseling is provided under this subsection;

(ii) is a displaced homemaker who, except for owning a residence with his or her spouse or residing in a residence owned by the spouse, meets the requirements of clause (i); or

(iii) is a single parent who, except for owning a residence with his or her spouse or residing in a residence owned by the spouse while married, meets the requirements of clause (i).

(I) The term ''home'' includes any dwelling or dwelling unit eligible for a qualified mortgage, and includes a unit in a condominium project, a membership interest and occupancy agreement in a cooperative housing project, and a manufactured home and the lot on which the home is situated.

(J) The term ''metropolitan area'' means a standard metropolitan statistical area as designated by the Director of the Office of Management and Budget.

(K) The term ''qualified mortgage'' means a mortgage on a 1- to 4-family home that is insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

(L) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(M) The term ''single parent'' means an individual who—

(i) is unmarried or legally separated from a spouse; and

(ii)(I) has 1 or more minor children for whom the individual has custody or joint custody; or

(II) is pregnant.

(10) Regulations

The Secretary may issue any regulations necessary to carry out this subsection.

(11) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection $365,000 for fiscal year 1993 and $380,330 for fiscal year 1994.

(12) Termination

The demonstration program under this subsection shall terminate at the end of fiscal year 1994.

(e) Certification

(1) Requirement for assistance

An organization may not receive assistance for counseling activities under subsection (a)(1)(iii), (a)(2), (c), or (d) of this section, unless the organization provides such counseling, to the extent practicable, by individuals who have been certified by the Secretary under this subsection as competent to provide such counseling.

(2) Standards and examination

The Secretary shall, by regulation, establish standards and procedures for testing and certifying counselors. Such standards and procedures shall require for certification that the individual shall demonstrate, by written examination (as provided under subsection (f)(4) of this section), competence to provide counseling in each of the following areas:

(A) Financial management.

(B) Property maintenance.

(C) Responsibilities of homeownership and tenancy.

(D) Fair housing laws and requirements.

(E) Housing affordability.

(F) Avoidance of, and responses to, rental and mortgage delinquency and avoidance of eviction and mortgage default.

(3) Encouragement

The Secretary shall encourage organizations engaged in providing homeownership and rental counseling that do not receive assistance under this section to employ individuals to provide such counseling who are certified under this subsection or meet the certification standards established under this subsection.

(f) Homeownership and rental counselor training and certification programs

(1) Establishment

To the extent amounts are provided in appropriations Acts under paragraph (7), the Secretary shall contract with an appropriate entity (which may be a nonprofit organization) to carry out a program under this subsection to train individuals to provide homeownership and rental counseling and to administer the examination under subsection (e)(2) of this section and certify individuals under such subsection.

(2) Eligibility and selection

(A) Eligibility

To be eligible to provide the training and certification program under this subsection, an entity shall have demonstrated experience in training homeownership and rental counselors.

(B) Selection

The Secretary shall provide for entities meeting the requirements of subparagraph (A) to submit applications to provide the training and certification program under this subsection. The Secretary shall select an application based on the ability of the entity to—

(i) establish the program as soon as possible on a national basis, but not later than the date under paragraph (6);

(ii) minimize the costs involved in establishing the program; and

(iii) effectively and efficiently carry out the program.

(3) Training

The Secretary shall require that training of counselors under the program under this subsection be designed and coordinated to prepare individuals for successful completion of the examination for certification under subsection (e)(2) of this section. The Secretary, in consultation with the entity selected under paragraph (2)(B), shall establish the curriculum and standards for training counselors under the program.

(4) Certification

The entity selected under paragraph (2)(B) shall administer the examination under subsection (e)(2) of this section and, on behalf of the Secretary, certify individuals successfully completing the examination. The Secretary, in consultation with such entity, shall establish the content and format of the examination.

(5) Fees

Subject to the approval of the Secretary, the entity selected under paragraph (2)(B) may establish and impose reasonable fees for participation in the training provided under the program and for examination and certification under subsection (e)(2) of this section, in an amount sufficient to cover any costs of such activities not covered with amounts provided under paragraph (7).

(6) Timing

The entity selected under paragraph (2)(B) to carry out the training and certification program shall establish the program as soon as possible after such selection, and shall make training and certification available under the program on a national basis not later than the expiration of the 1-year period beginning upon such selection.

(7) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection $2,000,000 for fiscal year 1993 and $2,084,000 for 1994.

(Pub. L. 90–448, title I, §106, Aug. 1, 1968, 82 Stat. 490; Pub. L. 91–609, title IX, §903(a), (b), Dec. 31, 1970, 84 Stat. 1808; Pub. L. 93–383, title VIII, §811, Aug. 22, 1974, 88 Stat. 735; Pub. L. 95–128, title IX, §903, Oct. 12, 1977, 91 Stat. 1149; Pub. L. 97–35, title III, §339A, Aug. 13, 1982, 95 Stat. 417; Pub. L.

98–181, title IV, § 465, Nov. 30, 1983, 97 Stat. 1236; Pub. L. 98–479, title II, § 204(f), Oct. 17, 1984, 98 Stat. 2233; Pub. L. 100–242, title I, § 169, Feb. 5, 1988, 101 Stat. 1865; Pub. L. 100–628, title X, § 1009, Nov. 7, 1988, 102 Stat. 3266; Pub. L. 101–137, § 8, Nov. 3, 1989, 103 Stat. 826; Pub. L. 101–625, title V, § 577, title VII, § 706(c), Nov. 28, 1990, 104 Stat. 4238, 4286; Pub. L. 102–550, title I, § 162(a)–(d), Oct. 28, 1992, 106 Stat. 3719–3721; Pub. L. 104–316, title I, § 106(a), Oct. 19, 1996, 110 Stat. 3830; Pub. L. 105–276, title V, § 594(a), (b), Oct. 21, 1998, 112 Stat. 2655; Pub. L. 107–73, title II, § 205, Nov. 26, 2001, 115 Stat. 674; Pub. L. 109–163, div. A, title VI, § 688(a), Jan. 6, 2006, 119 Stat. 3336; Pub. L. 110–289, div. B, title I, § 2127, July 30, 2008, 122 Stat. 2841; Pub. L. 111–203, title XIV, §§ 1443–1445, 1448, 1449, July 21, 2010, 124 Stat. 2165–2171, 2173, 2174.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§ 1400(c), 1443–1445, 1448, 1449, July 21, 2010, 124 Stat. 2136, 2165–2171, 2173, 2174, provided that this section is amended, effective on the date on which final regulations implementing such amendments take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) in subsection (a), by adding at the end the following:

''(4) Homeownership and Rental Counseling Assistance.—

''(A) In general.—The Secretary shall make financial assistance available under this paragraph to HUD-approved housing counseling agencies and State housing finance agencies.

''(B) Qualified entities.—The Secretary shall establish standards and guidelines for eligibility of organizations (including governmental and nonprofit organizations) to receive assistance under this paragraph, in accordance with subparagraph (D).

''(C) Distribution.—Assistance made available under this paragraph shall be distributed in a manner that encourages efficient and successful counseling programs and that ensures adequate distribution of amounts for rural areas having traditionally low levels of access to such counseling services, including areas with insufficient access to the Internet. In distributing such assistance, the Secretary may give priority consideration to entities serving areas with the highest home foreclosure rates.

''(D) Limitation on distribution of assistance.—

''(i) In general.—None of the amounts made available under this paragraph shall be distributed to—

''(I) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

''(II) any organization which employs applicable individuals.

''(ii) Definition of applicable individuals.—In this subparagraph, the term 'applicable individual' means an individual who—

''(I) is—

''(aa) employed by the organization in a permanent or temporary capacity;

''(bb) contracted or retained by the organization; or

''(cc) acting on behalf of, or with the express or apparent authority of, the organization; and

''(II) has been convicted for a violation under Federal law relating to an election for Federal office.

''(E) Grantmaking process.—In making assistance available under this paragraph, the Secretary shall consider appropriate ways of streamlining and improving the processes for grant application, review, approval, and award.

''(F) Authorization of appropriations.—There are authorized to be appropriated $45,000,000 for each of fiscal years 2009 through 2012 for—

''(i) the operations of the Office of Housing Counseling of the Department of Housing and Urban Development;

''(ii) the responsibilities of the Director of Housing Counseling under paragraphs (2) through (5) of subsection (g); and

''(iii) assistance pursuant to this paragraph for entities providing homeownership and rental counseling.'';

(2) in subsection (c)(5)(A)(ii)—

(A) in subclause (III), by striking ''and'' at the end;

(B) in subclause (IV), by substituting ''; and'' for the period at the end; and

(C) by inserting after subclause (IV) the following:

''(V) notify the housing or mortgage applicant of the availability of mortgage software systems provided pursuant to subsection (g)(3).'';

(3) in subsection (e)—

(A) by striking paragraph (1) and inserting the following:

''(1) Requirement for assistance

''An organization may not receive assistance for counseling activities under subsection (a)(1)(iii), (a)(2), (a)(4), (c), or (d) of this section, or under section 1701w of this title, unless the organization, or the individuals through which the organization provides such counseling, has been certified by the Secretary under this subsection as competent to provide such counseling.'';

(B) in paragraph (2), by inserting ''and for certifying organizations'' before the period at the end of the first sentence and substituting '', for certification of an organization, that each individual through which the organization provides counseling shall demonstrate, and, for certification of an individual,'' for ''for certification'' in the second sentence;

(C) in paragraph (3), by inserting ''organizations and'' before ''individuals'';

(D) by redesignating paragraph (3) as (5); and

(E) by inserting after paragraph (2) the following:

''(3) Requirement under HUD programs

''Any homeownership counseling or rental housing counseling (as such terms are defined in subsection (g)(1)) required under, or provided in connection with, any program administered by the Department of Housing and Urban Development shall be provided only by organizations or counselors certified by the Secretary under this

subsection as competent to provide such counseling.

''(4) Outreach

''The Secretary shall take such actions as the Secretary considers appropriate to ensure that individuals and organizations providing homeownership or rental housing counseling are aware of the certification requirements and standards of this subsection and of the training and certification programs under subsection (f).''; and

(4) by adding at the end the following:

''(g) Procedures and activities

''(1) Counseling procedures

''(A) In general

''The Secretary shall establish, coordinate, and monitor the administration by the Department of Housing and Urban Development of the counseling procedures for homeownership counseling and rental housing counseling provided in connection with any program of the Department, including all requirements, standards, and performance measures that relate to homeownership and rental housing counseling.

''(B) Homeownership counseling

''For purposes of this subsection and as used in the provisions referred to in this subparagraph, the term 'homeownership counseling' means counseling related to homeownership and residential mortgage loans. Such term includes counseling related to homeownership and residential mortgage loans that is provided pursuant to—

''(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

''(ii) in the United States Housing Act of 1937—

''(I) section 9(e) (42 U.S.C. 1437g(e));

''(II) section 8(y)(1)(D) (42 U.S.C. 1437f(y)(1)(D));

''(III) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

''(IV) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

''(V) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));

''(VI) section 33(d)(2)(B) (42 U.S.C. 1437z–5(d)(2)(B));

''(VII) sections 302(b)(6) and 303(b)(7) (42 U.S.C. 1437aaa–1(b)(6), 1437aaa–2(b)(7)); and

''(VIII) section 304(c)(4) (42 U.S.C. 1437aaa–3(c)(4));

''(iii) section 302(a)(4) of the American Homeownership and Economic Opportunity Act of 2000 (42 U.S.C. 1437f note);

''(iv) sections 12773(b)(2) and 12808(b) of title 42;

''(v) this section and section 1701w of this title;

''(vi) section 4110(d)(2)(G) of this title;

''(vii) sections 12872(b)(6), 12873(b)(7), 12874(c)(4), 12892(b)(6), and 12893(b)(6) of title 42;

''(viii) section 11408(b)(1)(F)(iii) of title 42;

''(ix) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

''(x) in the National Housing Act—

''(I) in section 203 (12 U.S.C. 1709), the penultimate undesignated paragraph of paragraph (2) of subsection (b), subsection (c)(2)(A), and subsection (r)(4);

''(II) subsections (a) and (c)(3) of section 237; and

''(III) subsections (d)(2)(B) and (m)(1) of section 255 (12 U.S.C. 1715z–20);

''(xi) section 502(h)(4)(B) of the Housing Act of 1949 (42 U.S.C. 1472(h)(4)(B));

''(xii) section 1701z–7 of this title; and

''(xiii) section 1701z–16 of this title.

''(C) Rental housing counseling

''For purposes of this subsection, the term 'rental housing counseling' means counseling related to rental of residential property, which may include counseling regarding future homeownership opportunities and providing referrals for renters and prospective renters to entities providing counseling and shall include counseling related to such topics that is provided pursuant to—

''(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

''(ii) in the United States Housing Act of 1937—

''(I) section 9(e) (42 U.S.C. 1437g(e));

''(II) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

''(III) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

''(IV) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));

''(V) section 33(d)(2)(B) (42 U.S.C. 1437z–5(d)(2)(B)); and

''(VI) section 302(b)(6) (42 U.S.C. 1437aaa–1(b)(6));

''(iii) section 12773(b)(2) of title 42;

''(iv) this section;

''(v) section 12872(b)(6) of title 42;

''(vi) section 11408(b)(1)(F)(iii) of title 42;

''(vii) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A)); and

''(viii) the rental assistance program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

''(2) Standards for materials

''The Secretary, in consultation with the advisory committee established under subsection (g)(4) of the Department of Housing and Urban Development Act, shall establish standards for materials and forms to be used, as appropriate, by organizations providing homeownership counseling services, including any recipients of assistance pursuant to subsection (a)(4).

''(3) Mortgage software systems

''(A) Certification

''The Secretary shall provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals. The Secretary shall require, for such certification, that the mortgage software systems take into account—

''(i) the consumer's financial situation and the cost of maintaining a home, including insurance, taxes, and utilities;

''(ii) the amount of time the consumer expects to remain in the home or expected time to maturity of the loan; and

''(iii) such other factors as the Secretary considers appropriate to assist the consumer in evaluating whether to pay points, to lock in an interest rate, to select an adjustable or fixed rate loan, to select a conventional or government-insured or guaranteed loan and to make other choices during the loan application process.

If the Secretary determines that available existing software is inadequate to assist consumers during the residential mortgage loan application process, the Secretary shall arrange for the development by private sector software companies of new mortgage software systems that meet the Secretary's specifications.

''(B) Use and initial availability

''Such certified computer software programs shall be used to supplement, not replace, housing counseling. The Secretary shall provide that such programs are initially used only in connection with the assistance of housing counselors certified pursuant to subsection (e).

''(C) Availability

''After a period of initial availability under subparagraph (B) as the Secretary considers appropriate, the Secretary shall take reasonable steps to make mortgage software systems certified pursuant to this paragraph widely available through the Internet and at public locations, including public libraries, senior-citizen centers, public housing sites, offices of public housing agencies that administer rental housing assistance vouchers, and housing counseling centers.

''(D) Budget compliance

''This paragraph shall be effective only to the extent that amounts to carry out this paragraph are made available in advance in appropriations Acts.

''(4) National public service multimedia campaigns to promote housing counseling

''(A) In general

''The Director of Housing Counseling shall develop, implement, and conduct national public service multimedia campaigns designed to make persons facing mortgage foreclosure, persons considering a subprime mortgage loan to purchase a home, elderly persons, persons who face language barriers, low-income persons, minorities, and other potentially vulnerable consumers aware that it is advisable, before seeking or maintaining a residential mortgage loan, to obtain homeownership counseling from an unbiased and reliable sources and that such homeownership counseling is available, including through programs sponsored by the Secretary of Housing and Urban Development.

''(B) Contact information

''Each segment of the multimedia campaign under subparagraph (A) shall publicize the toll-free telephone number and website of the Department of Housing and Urban Development through which persons seeking housing counseling can locate a housing counseling agency in their State that is certified by the Secretary of Housing and Urban Development and can provide advice on buying a home, renting, defaults, foreclosures, credit issues, and reverse mortgages.

''(C) Authorization of appropriations

''There are authorized to be appropriated to the Secretary, not to exceed $3,000,000 for fiscal years 2009, 2010, and 2011, for the development, implementation, and conduct of national public service multimedia campaigns under this paragraph.

''(D) Foreclosure rescue education programs

''(i) In general

''Ten percent of any funds appropriated pursuant to the authorization under subparagraph (C) shall be used by the Director of Housing Counseling to conduct an education program in areas that have a high density of foreclosure. Such program shall involve direct mailings to persons living in such areas describing—

''(I) tips on avoiding foreclosure rescue scams;

''(II) tips on avoiding predatory lending mortgage agreements;

''(III) tips on avoiding for-profit foreclosure counseling services; and

''(IV) local counseling resources that are approved by the Department of Housing and Urban Development.

''(ii) Program emphasis

''In conducting the education program described under clause (i), the Director of Housing Counseling shall also place an emphasis on serving communities that have a high percentage of retirement communities or a high percentage of low-income minority communities.

''(iii) Terms defined

''For purposes of this subparagraph:

''(I) High density of foreclosures

''An area has a 'high density of foreclosures' if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

''(II) High percentage of retirement communities

''An area has a 'high percentage of retirement communities' if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest percentage of residents aged 65 or older.

''(III) High percentage of low-income minority communities

''An area has a 'high percentage of low-income minority communities' if such area contains a higher-than-normal percentage of residents who are both minorities and low-income, as defined by the Director of Housing Counseling.

''(5) Education programs

''The Secretary shall provide advice and technical assistance to States, units of general local government, and nonprofit organizations regarding the establishment and operation of, including assistance with the development of content and materials for, educational programs to inform and educate consumers, particularly those most vulnerable with respect to residential mortgage loans (such as elderly persons, persons facing language barriers, low-income persons, minorities, and other potentially vulnerable consumers), regarding home mortgages, mortgage refinancing, home equity loans, home repair loans, and where appropriate by region, any requirements and costs associated with obtaining flood or other disaster-specific insurance coverage.

''(h) Definitions

''For purposes of this section:

''(1) Nonprofit organization

''The term 'nonprofit organization' has the meaning given such term in section 12704(5) of title 42, except that subparagraph (D) of such section shall not apply for purposes of this section.

''(2) State

''The term 'State' means each of the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific, or any other possession of the United States.

''(3) Unit of general local government

''The term 'unit of general local government' means any city, county, parish, town, township, borough, village, or other general purpose political subdivision of a State.

''(4) HUD-approved counseling agency

''The term 'HUD-approved counseling agency' means a private or public nonprofit organization that is—

''(A) exempt from taxation under section 501(c) of title 26; and

''(B) certified by the Secretary to provide housing counseling services.

''(5) State housing finance agency

''The term 'State housing finance agency' means any public body, agency, or instrumentality specifically created under State statute that is authorised to finance activities designed to provide housing and related facilities throughout an entire State through land acquisition, construction, or rehabilitation.

''(i) Accountability for recipients of covered assistance

''(1) Tracking of funds

''The Secretary shall—

''(A) develop and maintain a system to ensure that any organization or entity that receives any covered assistance uses all amounts of covered assistance in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

''(B) require any organization or entity, as a condition of receipt of any covered assistance, to agree to comply with such requirements regarding covered assistance as the Secretary shall establish, which shall include—

''(i) appropriate periodic financial and grant activity reporting, record retention, and audit requirements for the duration of the covered assistance to the organization or entity to ensure compliance with the limitations and requirements of this section, the regulations under this section, and any requirements or conditions under which such amounts were provided; and

''(ii) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

''(2) Misuse of funds

''If any organization or entity that receives any covered assistance is determined by the Secretary to have used any covered assistance in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such assistance was provided—

''(A) the Secretary shall require that, within 12 months after the determination of such misuse, the organization or entity shall reimburse the Secretary for such misused amounts and return to the Secretary any such amounts that remain unused or uncommitted for use; and

''(B) such organization or entity shall be ineligible, at any time after such determination, to apply for or receive any further covered assistance.

''The remedies under this paragraph are in addition to any other remedies that may be available under law.

''(3) Covered assistance

''For purposes of this subsection, the term 'covered assistance' means any grant or other financial assistance provided under this section.''

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (a)(1)(iv), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.

The National Housing Act, referred to in subsecs. (a)(2) and (d)(9)(K), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified generally to subchapter II (§ 1707 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 152 of the Housing and Community Development Act of 1992, referred to in subsec. (a)(3), is section 152 of Pub. L. 102–550, which was set out as a note under section 1437f of Title 42, The Public Health and Welfare, prior to repeal by Pub. L. 105–276, title V, § 550(f), Oct. 21, 1998, 112 Stat. 2610.

The Housing Act of 1949, referred to in subsec. (c)(4)(B), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42, The Public Health and Welfare, and Tables.

The Servicemembers Civil Relief Act, referred to in subsec. (c)(5)(A)(ii)(IV), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 501 of Title 50, Appendix, and Tables.

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1968, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

2008—Subsec. (c)(4). Pub. L. 110–289, § 2127(2), struck out concluding provisions which read as follows: ''An applicant for a mortgage shall be eligible for homeownership counseling under this subsection if the applicant is a first-time homebuyer who meets the requirements of section 12852(b)(1) of title 42 and the mortgage involves a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in excess of 97 percent of the appraised value of the property and is to be insured pursuant to section 203 of the National Housing Act.''

Subsec. (c)(4)(C)(iii), (iv). Pub. L. 110–289, § 2127(1), added cls. (iii) and (iv).

Subsec. (c)(4)(D). Pub. L. 110–289, § 2127(3), added subpar. (D).

2006—Subsec. (c)(5)(A)(ii)(IV). Pub. L. 109–163 added subcl. (IV).

2001—Subsec. (c)(9). Pub. L. 107–73 struck out heading and text of par. (9). Text read as follows: ''The provisions of this subsection shall not be effective after September 30, 2000.''

1998—Subsec. (c)(5)(C). Pub. L. 105–276, § 594(b), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''Notification under subparagraph (A) shall not be required with respect to any loan—

''(i) insured or guaranteed under chapter 37 of title 38; or

''(ii) for which the eligible homeowner pays the amount overdue before the expiration of the 45-day period under subparagraph (B)(ii).''

Subsec. (c)(9). Pub. L. 105–276, § 594(a), substituted ''2000'' for ''1994''.

1996—Subsec. (d)(5)(A). Pub. L. 104–316, § 106(a)(2), substituted ''(9)'' for ''(10)(K)'' in introductory provisions.

Subsec. (d)(8). Pub. L. 104–316, § 106(a)(3), struck out ''(for purposes of the study and report under paragraph (9))'' before ''may require''.

Subsec. (d)(9) to (13). Pub. L. 104–316, § 106(a)(1), (4), redesignated pars. (10) to (13) as (9) to (12), respectively, and struck out former par. (9) which related to GAO study and report on demonstration program.

1992—Subsec. (a)(3). Pub. L. 102–550, § 162(a), substituted ''except that for such purposes there are authorized to be appropriated $6,025,000 for fiscal year 1993 and $6,278,050 for fiscal year 1994. Of the amounts appropriated for each of fiscal years 1993 and 1994, up to $500,000 shall be available for use for counseling and other activities in connection with the demonstration program under section 152 of the Housing and Community Development Act of 1992.'' for ''except that for such purposes there are authorized to be appropriated $3,600,000 for fiscal year 1991 and $3,700,000 for fiscal year 1992.''

Subsec. (c)(3)(A)(iii). Pub. L. 102–550, § 162(b)(3), added cl. (iii).

Subsec. (c)(4). Pub. L. 102–550, § 162(b)(4), inserted flush sentence at end.

Subsec. (c)(5)(A). Pub. L. 102–550, § 162(b)(5), added subpar. (A) and struck out former subpar. (A) which read as follows: ''(A) IN GENERAL.—Except as provided in subparagraph (C), if any eligible homeowner fails to pay any amount by the date the amount is due under a home loan, the creditor of the loan shall notify the homeowner of the availability of any homeownership counseling offered by the creditor and, as a supplement to counseling provided by the creditor, shall notify the homeowner of 1 of the following:

''(i) The availability of homeownership counseling provided by nonprofit organizations approved by the Secretary and experienced in the provision of homeownership counseling.

''(ii) The toll-free telephone number described in subparagraph (D)(i).''

Subsec. (c)(5)(D)(i). Pub. L. 102–550, § 162(b)(6), inserted '', which shall be updated annually,'' after ''organizations''.

Subsec. (c)(8). Pub. L. 102–550, § 162(b)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''There is authorized to be appropriated to carry out this section $6,700,000 for fiscal year 1991 and $7,000,000 for fiscal year 1992, of which amounts $2,000,000 shall be available in each such fiscal year to carry out paragraph (5)(D).''

Subsec. (c)(9). Pub. L. 102–550, § 162(b)(2), substituted ''1994'' for ''1992''.

Subsec. (d)(12). Pub. L. 102–550, § 162(c), amended par. (12) generally. Prior to amendment, par. (12) read as follows: ''There are authorized to be appropriated to carry out this subsection $350,000 for fiscal year 1991 and $365,000 for fiscal year 1992.''

Subsecs. (e), (f). Pub. L. 102–550, § 162(d), added subsecs. (e) and (f).

1990—Subsec. (a)(2)(A) to (C). Pub. L. 101–625, § 706(c), designated portions of existing text as cls. (A) and (C), and added cl. (B).

Subsec. (a)(3). Pub. L. 101–625, § 577(a), substituted provisions authorizing appropriations of $3,600,000 for fiscal year 1991 and $3,700,000 for fiscal year 1992, for provisions authorizing appropriations of $3,500,000 for each of the fiscal years 1988 and 1989.

Subsec. (c)(5). Pub. L. 101–625, § 577(b)(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The creditor of a delinquent home loan shall notify an eligible homeowner of the availability of any homeownership counseling offered by the creditor. As a supplement to the counseling provided by the creditor, the creditor shall notify the homeowner of the availability of 1 of the following:

''(A) Homeownership counseling provided by nonprofit organizations approved by the Secretary and experienced in the provision of homeownership counseling.

''(B) A list of the nonprofit organizations, approved by the Secretary and experienced in the provision of homeownership counseling, that can be obtained by calling a toll-free telephone number at the Department of Housing and Urban Development.

''(C) Homeownership counseling provided by the Administrator of Veterans' Affairs for loans insured or guaranteed under chapter 37 of title 38.''

Subsec. (c)(8). Pub. L. 101–625, § 577(b)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''There are authorized to be appropriated to carry out this subsection $3,500,000 for each of the fiscal years 1988 and 1989.''

Subsec. (c)(9). Pub. L. 101–625, § 577(b)(2), substituted ''September 30, 1992'' for ''September 30, 1990''.

Subsec. (d). Pub. L. 101–625, § 577(c), added subsec. (d).

1989—Subsec. (c)(9). Pub. L. 101–137 substituted ''September 30, 1990'' for ''September 30, 1989''.

1988—Subsec. (a)(2). Pub. L. 100–628 inserted before period at end of first sentence ''or guaranteed or insured under chapter 37 of title 38''.

Subsec. (a)(3). Pub. L. 100–242, § 169(a), substituted ''except that for each of the fiscal years 1988 and 1989 there are authorized to be appropriated $3,500,000 for such purposes'' for ''except that for the fiscal year 1984, there are authorized to be appropriated not to exceed $3,500,000 for such purposes''.

Subsec. (c). Pub. L. 100–242, § 169(b), added subsec. (c).

1984—Subsec. (b)(1). Pub. L. 98–479 substituted ''architectural'' for ''architechtual''.

1983—Subsec. (a)(3). Pub. L. 98–181 substituted ''1984'' for ''1982'', and ''$3,500,000'' for ''$4,000,000''.

1981—Subsec. (a)(3). Pub. L. 97–35 inserted provisions authorizing appropriations for fiscal year 1982.

1977—Subsec. (a)(2). Pub. L. 95–128 authorized the Secretary to provide the services for other owners of single family dwelling units insured under subchapter II of this chapter.

1974—Subsec. (a)(1). Pub. L. 93–383, § 811(b)(1), (c), in cl. (iii) substituted provisions authorizing counseling and advice to tenants and homeowners with respect to property maintenance, etc., for provisions authorizing counseling on household management, self-help, etc., for families receiving assistance under this chapter or the United States Housing Act of 1937, and added cl. (iv).

Subsec. (a)(2). Pub. L. 93–383, § 811(b)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 93–383, § 811(b)(2), (d), redesignated former par. (2) as (3) and substituted ''such sums as may be necessary'' for ''not to exceed $5,000,000''.

Subsec. (b)(1), (2). Pub. L. 93–383, § 811(e), (f), inserted reference to public housing agencies.

1970—Subsec. (a). Pub. L. 91–609, § 903(a), designated existing provisions as par. (1), inserted provision respecting specific authorities without limitation to such authorities, redesignated former par. (1) as cl. (i), struck out introductory text relating to assistance with respect to construction, rehabilitation, and operation by nonprofit organizations of housing for low or moderate income families now incorporated in cl. (i), redesignated former par. (2) as cl. (ii), inserting therein provision for assistance to public bodies or to nonprofit or cooperative organizations, including assistance with respect to self-help and mutual self-help programs, and added cl. (iii) and par. (2).

Subsec. (b)(1). Pub. L. 91–609, § 903(b), substituted ''section 1715z of this title or any other federally assisted program'' for ''any federally assisted program'' in first sentence.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title VI, § 688(d), Jan. 6, 2006, 119 Stat. 3337, provided that: ''The amendments made under subsection (a) [amending this section] shall take effect 150 days after the date of the enactment of this Act [Jan. 6, 2006].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 594(c), Oct. 21, 1998, 112 Stat. 2656, provided that: ''The amendments made by this section [amending this section] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

REGULATIONS

Section 162(e) of Pub. L. 102–550 provided that: ''The Secretary of Housing and Urban Development shall issue any regulations necessary to carry out the amendments made by subsection (d) [amending this section], not later than the expiration of the 6-month period beginning on the date of the enactment of this Act [Oct. 28, 1992].''

CONSTRUCTION OF AMENDMENTS BY PUB. L. 109–163

Pub. L. 109–163, div. A, title VI, § 688(b), Jan. 6, 2006, 119 Stat. 3337, provided that: ''Nothing in this section [amending this section and enacting provisions set out as notes under this section] shall relieve any person of any obligation imposed by any other Federal, State, or local law.''

FINANCIAL EDUCATION AND COUNSELING

Pub. L. 110–289, div. A, title I, § 1132, July 30, 2008, 122 Stat. 2727, as amended by Pub. L. 111–203, title X, § 1072(a), July 21, 2010, 124 Stat. 2059, provided that:

''(a) GOALS.—Financial education and counseling under this section shall have the goal of—

''(1) increasing the financial knowledge and decision making capabilities of prospective homebuyers or economically vulnerable individuals and families;

''(2) assisting prospective homebuyers or economically vulnerable individuals and families to develop monthly budgets, build personal savings, finance or plan for major purchases, reduce their debt, improve their financial stability, and set and reach their financial goals;

''(3) helping prospective homebuyers or economically vulnerable individuals and families to improve their credit scores by understanding the relationship between their credit histories and their credit scores; and

''(4) educating prospective homebuyers or economically vulnerable individuals and families about the options available to build savings for short- and long-term goals.

''(b) GRANTS.—

''(1) IN GENERAL.—The Secretary of the Treasury (in this section referred to as the 'Secretary') shall make grants to eligible organizations to enable such organizations to provide a range of financial education and counseling services to prospective homebuyers or economically vulnerable individuals and families.

''(2) SELECTION.—The Secretary shall select eligible organizations to receive assistance under this section based on their experience and ability to provide financial education and counseling services that result in documented positive behavioral changes.

''(c) ELIGIBLE ORGANIZATIONS.—

''(1) IN GENERAL.—For purposes of this section, the term 'eligible organization' means an organization that is—

''(A) certified in accordance with section 106(e)(1) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)[1]);

''(B) certified by the Office of Financial Education of the Department of the Treasury for purposes of this section, in accordance with paragraph (2); or

''(C) a nonprofit corporation that—

''(i) is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)]; and

''(ii) specializes or has expertise in working with economically vulnerable individuals and families, but whose primary purpose is not provision of credit counseling services.

''(2) OFE CERTIFICATION.—To be certified by the Office of Financial Education for purposes of this section, an eligible organization shall be—

''(A) a housing counseling agency certified by the Secretary of Housing and Urban Development under section 106(e) of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701x(e)];

''(B) a State, local, or tribal government agency;

''(C) a community development financial institution (as defined in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)) or a credit union; or

''(D) any collaborative effort of entities described in any of subparagraphs (A) through (C).

''(d) AUTHORITY FOR PILOT PROJECTS.—

''(1) IN GENERAL.—The Secretary of the Treasury shall authorize pilot project grants to eligible organizations under subsection (c) in order to—

''(A) carry out the services under this section; and

''(B) provide such other services that will improve the financial stability and economic condition of

low- and moderate-income and low-wealth individuals.

''(2) GOAL.—The goal of the pilot project grants under this subsection is to—

''(A) identify successful methods resulting in positive behavioral change for financial empowerment; and

''(B) establish program models for organizations to carry out effective counseling services.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out this section and for the provision of additional financial educational services.

''(f) STUDY AND REPORT ON EFFECTIVENESS AND IMPACT.—

''(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the effectiveness and impact of the grant program established under this section. Not later than 3 years after the date of enactment of this Act [July 30, 2008], the Comptroller General shall submit a report on the results of such study to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

''(2) CONTENT OF STUDY.—The study required under paragraph (1) shall include an evaluation of the following:

''(A) The effectiveness of the grant program established under this section in improving the financial situation of homeowners and prospective homebuyers served by the grant program.

''(B) The extent to which financial education and counseling services have resulted in positive behavioral changes.

''(C) The effectiveness and quality of the eligible organizations providing financial education and counseling services under the grant program.

''(g) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be necessary to implement and administer the grant program authorized by this section.''

[Pub. L. 111–203, title X, §1072(b), July 21, 2010, 124 Stat. 2060, provided that: ''Amendments made by subsection (a) [amending section 1132 of Pub. L. 110–289, set out above] shall not apply to programs authorized by section 1132 of the Housing and Economic Recovery Act of 2008 [Pub. L. 110–289] (12 U.S.C. 1701x note) that are funded with appropriations prior to fiscal year 2011.'']

PRE-PURCHASE HOMEOWNERSHIP COUNSELING DEMONSTRATION

Pub. L. 110–289, div. B, title I, §2128, July 30, 2008, 122 Stat. 2841, provided that:

''(a) ESTABLISHMENT OF PROGRAM.—For the period beginning on the date of enactment of this title [July 30, 2008] and ending on the date that is 3 years after such date of enactment, the Secretary of Housing and Urban Development shall establish and conduct a demonstration program to test the effectiveness of alternative forms of pre-purchase homeownership counseling for eligible homebuyers.

''(b) FORMS OF COUNSELING.—The Secretary of Housing and Urban Development shall provide to eligible homebuyers pre-purchase homeownership counseling under this section in the form of—

''(1) telephone counseling;

''(2) individualized in-person counseling;

''(3) web-based counseling;

''(4) counseling classes; or

''(5) any other form or type of counseling that the Secretary may, in his discretion, determine appropriate.

''(c) SIZE OF PROGRAM.—The Secretary shall make available the pre-purchase homeownership counseling described in subsection (b) to not more than 3,000 eligible homebuyers in any given year.

''(d) INCENTIVE TO PARTICIPATE.—The Secretary of Housing and Urban Development may provide incentives to eligible homebuyers to participate in the demonstration program established under subsection (a). Such incentives may include the reduction of any insurance premium charges owed by the eligible homebuyer to the Secretary.

''(e) ELIGIBLE HOMEBUYER DEFINED.—For purposes of this section an 'eligible homebuyer' means a first-time homebuyer who has been approved for a home loan with a loan-to-value ratio between 97 percent and 98.5 percent.

''(f) REPORT TO CONGRESS.—The Secretary of Housing and Urban Development shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representative—[sic]

''(1) on an annual basis, on the progress and results of the demonstration program established under subsection (a); and

''(2) for the period beginning on the date of enactment of this title [July 30, 2008] and ending on the date that is 5 years after such date of enactment, on the payment history and delinquency rates of eligible homebuyers who participated in the demonstration program.''

DISCLOSURE FORM

Pub. L. 109–163, div. A, title VI, §688(c), Jan. 6, 2006, 119 Stat. 3337, provided that: ''Not later than 150 days after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Housing and Urban Development shall issue a final disclosure form to fulfill the requirement of subclause (IV) of section 106(c)(5)(A)(ii) of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701x(c)(5)(A)(ii)(IV)], as added by subsection (a).''

§ 1701x–1. Home inspection counseling

(a) Public outreach

(1) In general

The Secretary of Housing and Urban Development (in this section referred to as the ''Secretary'') shall take such actions as may be necessary to inform potential homebuyers of the availability and importance of obtaining an independent home inspection. Such actions shall include—

(A) publication of the HUD/FHA form HUD 92564–CN entitled ''For Your Protection: Get a Home Inspection'', in both English and Spanish languages;

(B) publication of the HUD/FHA booklet entitled ''For Your Protection: Get a Home Inspection'', in both English and Spanish languages;

(C) development and publication of a HUD booklet entitled ''For Your Protection—Get a Home Inspection'' that does not reference FHA-insured homes, in both English and Spanish languages; and

(D) publication of the HUD document entitled ''Ten Important Questions To Ask Your Home Inspector'', in both English and Spanish languages.

(2) Availability

The Secretary shall make the materials specified in paragraph (1) available for electronic access and, where appropriate, inform potential homebuyers of such availability through home purchase counseling public service announcements and toll-free telephone hotlines of the Department of Housing and Urban Development. The Secretary shall give special emphasis to reaching first-time and low-income homebuyers with these materials and efforts.

(3) Updating

The Secretary may periodically update and revise such materials, as the Secretary determines to be appropriate.

(b) Requirement for FHA-approved lenders

Each mortgagee approved for participation in the mortgage insurance programs under title II of the National Housing Act [12 U.S.C. 1707 et seq.] shall provide prospective homebuyers, at first contact, whether upon pre-qualification, pre-approval, or initial application, the materials specified in subparagraphs (A), (B), and (D) of subsection (a)(1).

(c) Requirements for HUD-approved counseling agencies

Each counseling agency certified pursuant by[1] the Secretary to provide housing counseling services shall provide each of their clients, as part of the home purchase counseling process, the materials specified in subparagraphs (C) and (D) of subsection (a)(1).

(d) Training

Training provided the Department of Housing and Urban Development for housing counseling agencies, whether such training is provided directly by the Department or otherwise, shall include—

(1) providing information on counseling potential homebuyers of the availability and importance of getting an independent home inspection;

(2) providing information about the home inspection process, including the reasons for specific inspections such as radon and lead-based paint testing;

(3) providing information about advising potential homebuyers on how to locate and select a qualified home inspector; and

(4) review of home inspection public outreach materials of the Department.

(Pub. L. 111–203, title XIV, §1451, July 21, 2010, 124 Stat. 2176.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b), is act June 27, 1934, ch. 847, 48 Stat. 1246. Title II of the Act is classified generally to subchapter II (§1707 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Expand and Preserve Home Ownership Through Counseling Act and also as part of the Mortgage Reform and Anti-Predatory Lending Act and as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the National Housing Act which comprises this chapter.

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

[1] So in original.

§1701x–2. Legal assistance for foreclosure-related issues

(a) Establishment

The Secretary of Housing and Urban Development (hereafter in this section referred to as the ''Secretary'') shall establish a program for making grants for providing a full range of foreclosure legal assistance to low- and moderate-income homeowners and tenants related to home ownership preservation, home foreclosure prevention, and tenancy associated with home foreclosure.

(b) Competitive allocation

The Secretary shall allocate amounts made available for grants under this section to State and local legal organizations on the basis of a competitive process. For purposes of this subsection ''State and local legal organizations'' are those State and local organizations whose primary business or mission is to provide legal assistance.

(c) Priority to certain areas

In allocating amounts in accordance with subsection (b), the Secretary shall give priority consideration to State and local legal organizations that are operating in the 125 metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

(d) Legal assistance

(1) In general

Any State or local legal organization that receives financial assistance pursuant to this section may use such amounts only to assist—

(A) homeowners of owner-occupied homes with mortgages in default, in danger of default, or subject to or at risk of foreclosure; and

(B) tenants at risk of or subject to eviction as a result of foreclosure of the property in which such tenant resides.

(2) Commence use within 90 days

Any State or local legal organization that receives financial assistance pursuant to this section shall begin using any financial assistance received under this section within 90 days after receipt of the assistance.

(3) Prohibition on class actions

No funds provided to a State or local legal organization under this section may be used to support any class action litigation.

(4) Limitation on legal assistance

Legal assistance funded with amounts provided under this section shall be limited to mortgage-related default, eviction, or foreclosure proceedings, without regard to whether such foreclosure is judicial or nonjudicial.

(5) Effective date

Notwithstanding any other provision of this Act, this subsection shall take effect on July 21, 2010.

(e) Limitation on distribution of assistance

(1) In general

None of the amounts made available under this section shall be distributed to—

(A) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

(B) any organization which employs applicable individuals.

(2) Definition of applicable individuals

In this subsection, the term ''applicable individual'' means an individual who—

(A) is—

(i) employed by the organization in a permanent or temporary capacity;

(ii) contracted or retained by the organization; or

(iii) acting on behalf of, or with the express or apparent authority of, the organization; and

(B) has been convicted for a violation under Federal law relating to an election for Federal office.

(f) Authorization of appropriations

There are authorized to be appropriated to the Secretary $35,000,000 for each of fiscal years 2011 through 2012 for grants under this section.

(Pub. L. 111–203, title XIV, § 1498, July 21, 2010, 124 Stat. 2211.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(5), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted chapter 53 (§ 5301 et seq.) of this title and chapters 108 (§ 8201 et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was enacted as part of the Mortgage Reform and Anti-Predatory Lending Act and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the National Housing Act which comprises this chapter.

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

DEFINITION OF ''STATE''

For definition of ''State'', see section 5301 of this title.

§ 1701y. National Homeownership Foundation

(a) Creation; purpose; articles of incorporation and charter; reservation of right to alter or amend charter; term; principal office; administration as charitable and educational foundation; compensation of officers and employees; contract authority; donations and grants; payment of principal and interest on borrowings

(1) There is hereby created a body corporate to be known as the ''National Homeownership Foundation'' (hereinafter referred to as the ''Foundation'') to carry out a continuing program of encouraging private and public organizations at the national, community, and neighborhood levels to provide increased homeownership and housing opportunities in urban and rural areas for lower income families through such means as—

(A) encouraging the investment in, and sponsoring of, housing for lower income families;

(B) encouraging the establishment of programs of assistance and counseling to lower income families to enable them better to achieve and afford adequate housing;

(C) providing a broad range of technical assistance through publications and advisory services to public and private organizations which are carrying out, or are desirous of carrying out, programs to expand homeownership and housing opportunities for lower income families; and

(D) providing grants and loans to public and private organizations carrying out homeownership and housing opportunity programs for lower income families to help cover some of the expenses of such programs.

(2) The Foundation shall be deemed to be a corporation without members organized and established under the provisions of the District of Columbia Nonprofit Corporation Act, with all the rights, powers, and responsibilities thereof except as limited by this section and any amendments thereto. This section shall constitute the articles of incorporation and charter of the Foundation, which shall not be an agency or instrumentality of the United States Government. The Congress expressly reserves the exclusive right to alter or amend this charter. The Foundation shall have succession until dissolved by Act of Congress. The Foundation shall maintain its principal office in the District of Columbia.

(3) No part of the net earnings of the Foundation shall inure to the benefit of any private person, and no substantial part of its activities shall be devoted to attempting to influence legislation. The Foundation shall not participate or intervene in any political campaign on behalf of any candidate for public office. The Foundation shall be operated and administered at all times as a charitable and educational foundation.

(4) No employee or officer of the Foundation shall receive compensation in excess of that received by or hereafter prescribed by law for heads of executive departments.

(5) The Foundation shall make maximum use of existing public and private agencies and programs, and in carrying out its functions the Foundation is authorized to contract with individuals, private corporations, organizations, and associations, and with agencies of the Federal, State, and local governments.

(6) The Foundation is authorized to receive donations and grants from individuals and from public and private organizations, foundations, and agencies.

(7) The Foundation may use only donated funds, or funds derived from payment of interest on loans made by it, for the principal and interest payments on any borrowings.

(b) Board of Directors; appointment of members; Chairman; terms of office; reappointment; compensation and travel expenses; Executive Director and other officers; vacancies; bylaws

(1) The Foundation shall have a Board of Directors consisting of eighteen members, fifteen of whom shall be appointed by the President of the United States, with the advice and consent of the Senate. The other three members shall be, ex officio, the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Director of the Office of Economic Opportunity. The President shall appoint one of the fifteen appointed members to serve as Chairman of the Board during his term of office as a member.

(2) Within thirty days after August 1, 1968, the President shall appoint the fifteen appointed members of the Board. Not more than five of such members shall, at the time of their appointment, be serving full time as officers or employees of the Federal Government, or as officers or employees of any State or local government. Each appointed member of the Board shall hold office for a term of three years, except that (A) any member appointed to fill a vacancy prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (B) the terms of the members first taking office shall expire, as designated by the President at the time of appointment, five at the end of the first year, five at the end of the second year, and five at the end of the third year after the date of appointment. Members of the Board, however appointed, shall be eligible for reappointment, but at no time shall there be more than five members of the Board who at the time of their appointment or reappointment were full-time officers or employees of the Federal Government or of any State or local government.

(3) Appointed members of the Board who are not employees of the Federal Government, while attending meetings or conferences of the Board or otherwise serving on business of the Board, shall be entitled to receive compensation at rates fixed by the President, but not exceeding $100 per day, including travel time, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(4) The Board shall appoint an Executive Director of the Foundation. The Executive Director shall be the chief executive officer of the Foundation and shall serve at the pleasure of the Board, and all other executive officers and employees of the Board shall be responsible to him. The Board shall also cause to be appointed a secretary, a treasurer, and such other officers as may be necessary to conduct properly the business of the Foundation, and shall provide for filling vacancies in such offices.

(5) The Board shall adopt bylaws for the Foundation which shall be made available for public inspection upon request.

(c) Functions; programs to expand homeownership and housing opportunities for lower income families; fees for assistance or services

(1) The Foundation shall assist public and private organizations, at their request, in initiating, developing, and conducting programs to expand homeownership and housing opportunities for lower income families. To provide such assistance and to carry out the purposes of this section, the Foundation is authorized to—

(A) carry out a continuing program of encouraging private and public organizations at the national, community, and neighborhood levels in the establishment of such programs;

(B) assist in the formation of organizations the purpose of which is the development and carrying out of such programs, including the establishment of local development funds for financing housing for lower income families through the pooling of moneys from private sources;

(C) identify and arrange for the technical and managerial assistance and personnel needed for the successful operation of such programs by public and private organizations;

(D) assist public and private organizations in obtaining the mortgage financing, insurance, and other requirements or aids necessary for conducting programs of housing construction, rehabilitation, or improvement for lower income families;

(E) arrange for, or provide on a limited basis, training for persons in the skills needed in administering programs of homeownership and housing opportunity for lower income families;

(F) encourage research and innovation, and collect and make available such information as may be desirable to further the purposes of this section, including but not limited to such activities as the sponsoring of seminars, conferences, and meetings and the establishment of a continuing information program to acquaint lower income families with the means they can use to improve the quality of their housing and the homeownership and housing opportunities available to them;

(G) assist private and public organizations in establishing, in connection with their homeownership and housing opportunity programs for lower income families, counseling and similar activities designed to advise lower income families of the means available to better themselves economically through job training and manpower development programs; and

(H) perform other similar services in order to further the purposes of this section.

(2) The Foundation may, if it deems it appropriate, charge a reasonable fee for any assistance or service provided under this subsection.

(d) Grants and loans to public or private organizations; eligibility; encouragement of cooperation between organizations and neighborhoods and communities

(1) In order to assist public and private organizations which are carrying out homeownership and housing opportunity programs for lower income families to fill unmet needs, initiate exceptional programs, and experiment with new approaches and programs, the Foundation is au-

thorized, subject to such terms and conditions as it may prescribe, to make grants and loans to such organizations to help defray the following expenses:

(A) organizational and administrative expenses incurred in commencing the operation of a program, or in expanding an existing program, to the extent that the activities are related to providing homeownership and housing opportunities for lower income families;

(B) necessary preconstruction costs incurred for architectural assistance, land options, application fees, and similar items; and

(C) the cost of carrying out programs providing counseling or similar services to lower income families for whom housing is being provided, in order to enable those families better to achieve and afford adequate housing, in such matters as home management, budget management, and home maintenance.

(2) In order to be eligible for a grant or loan under this subsection, the organization seeking such assistance shall demonstrate to the satisfaction of the Foundation that the funds requested are not otherwise available from Federal sources: *Provided*, That a grant or loan under this subsection may be provided to help cover that portion of the cost of an eligible activity not covered by Federal funds.

(3) The Foundation shall encourage cooperation between public and private organizations carrying out programs of homeownership and housing opportunity for lower income families and the neighborhoods and communities affected by such programs. To help assure such cooperation and in order to coordinate, to the maximum extent feasible, any construction or rehabilitation activities with the development goals of the neighborhood or community affected, no application for a loan or grant under this subsection shall be considered unless such application has been submitted to the governing body of the community affected, or to such other entity of local government as may be designated by the governing body, for such recommendations as the local governing body or its designee may desire to make. Any recommendations so made shall be given careful consideration by the Foundation before taking final action on any such application. If, upon the expiration of thirty days after any such application has been submitted to such governing body or its designee, such body or designee fails to provide such recommendations, the application may be considered without the benefit of such recommendations.

(e) Coordination of activities and consultation with Department of Housing and Urban Development and other Federal departments and agencies

The Foundation shall coordinate its activities and consult with the Department of Housing and Urban Development and other Federal departments and agencies engaged in providing homeownership and housing opportunities for lower income families.

(f) Annual report to the President and the Congress; contents

(1) Not later than one hundred and twenty days after the close of each fiscal year, the Foundation shall prepare and submit to the President and to the Congress a full report of its activities during such year. Such report shall include an account of the Foundation's experiences with the efforts of private and public organizations to expand homeownership and housing opportunities for lower income families, together with such recommendations as it deems appropriate.

(2) Whenever in its judgement the general unavailability of mortgage funds is sufficiently serious to deter the Foundation from carrying out its objective of expanding homeownership and housing opportunities for lower income families, the Foundation shall, in its annual report or in a separate report to the President and the Congress, state its findings and make such recommendations for alternate means of financing housing for such families as it deems appropriate.

(g) Audit of financial transaction; access to records; report of audit; contents of report

(1) The financial transactions of the Foundation shall be audited by the Government Accountability Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the Government Accountability Office shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Foundation and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. The audit shall cover the fiscal year corresponding to that of the United States Government.

(2) A report of each such audit shall be made by the Comptroller General to the Congress not later than six and one-half months following the close of the last year covered by such audit. The report shall set forth the scope of the audit and shall include a statement of assets and liabilities, capital, and surplus or deficit; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep the Congress informed of the operations and financial condition of the Foundation, together with such recommendations with respect thereto as the Comptroller General may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking, observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President and to the Foundation at the time submitted to the Congress.

(h) Deposit of funds of Foundation

Funds of the Foundation shall be deposited, to the extent practicable, in accounts with financial institutions which are actively engaged in making loans or are otherwise carrying on activities in furtherance of homeownership and housing opportunities for lower income families.

(i) Authorization of appropriations

There is authorized to be appropriated to the Foundation not to exceed $10,000,000 to carry out the purposes of this section. Appropriations made hereunder shall remain available until expended.

(Pub. L. 90–448, title I, § 107, Aug. 1, 1968, 82 Stat. 491; Pub. L. 93–604, title VI, § 604, Jan. 2, 1975, 88 Stat. 1963; Pub. L. 104–66, title I, § 1072(b), Dec. 21, 1995, 109 Stat. 721; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a)(2), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1968, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

2004—Subsec. (g)(1). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in two places.

1995—Subsec. (g)(1). Pub. L. 104–66 struck out at end ''Such audit shall be made at least once in every three years.''

1975—Subsec. (g)(1). Pub. L. 93–604, § 604(1), inserted provision that the audit under this subsection shall be made at least once in every three years.

Subsec. (g)(2). Pub. L. 93–604, § 604(2), substituted ''six and one-half months following the close of the last year covered by such audit'' for ''January 15 following the close of the fiscal year for which the audit was made''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (f)(1) of this section relating to submittal of an annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 203 of House Document No. 103–7.

OFFICE OF ECONOMIC OPPORTUNITY

Pub. L. 93–644, § 9(a), Jan. 4, 1975, 88 Stat. 2310 [42 U.S.C. 2941], amended the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] to create the Community Services Administration, an independent agency in the executive branch, as the successor authority to the Office of Economic Opportunity, and provided that references to the Office of Economic Opportunity or to its Director were deemed to refer to the Community Services Administration or its Director. The Community Services Administration was terminated when the Economic Opportunity Act of 1964, except for titles VIII and X, was repealed, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97–35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub. L. 97–35, which is classified to 42 U.S.C. 9905.

§ 1701z. New technologies in the development of housing for lower income families

(a) Institution of program; assistance to mobile home buyers

In order to encourage the use of new housing technologies in providing decent, safe, and sanitary housing for lower income families; to encourage large-scale experimentation in the use of such technologies; to provide a basis for comparison of such technologies with existing housing technologies in providing such housing; and to evaluate the effect of local housing codes and zoning regulations on the large-scale use of new housing technologies in the provision of such housing, the Secretary of Housing and Urban Development (hereinafter referred to as the ''Secretary'') shall institute a program under which qualified organizations, public and private, will submit plans for the development of housing for lower income families, using new and advanced technologies, on Federal land which has been made available by the Secretary for the purposes of this section, or on other land where (1) local building regulations permit the construction of experimental housing, or (2) State or local law permits variances from building regulations in the construction of experimental housing for the purpose of testing and developing new building technologies.

(b) Approval of plans utilizing new housing technologies; considerations

The Secretary shall approve not more than five plans utilizing new housing technologies which are submitted to him pursuant to the program referred to in subsection (a) of this section and which he determines are most promising in furtherance of the purposes of this section. In making such determination the Secretary shall consider—

(1) the potential of the technology employed for producing housing for lower income families on a large scale at a moderate cost;

(2) the extent to which the plan envisages environmental quality;

(3) the possibility of mass production of the technology; and

(4) the financial soundness of the organization submitting the plan, and the ability of such organization, alone or in combination with other organizations, to produce at least one thousand dwelling units a year utilizing the technology proposed.

(c) Number of dwelling units to be constructed for each type of technology; evaluation of projects

In approving projects for mortgage insurance under section 1715x(a)(2) of this title, the Secretary shall seek to achieve the construction of at least one thousand dwelling units a year over a five-year period for each of the various types of technologies proposed in approved plans under subsection (b) of this section. The Secretary shall evaluate each project with respect to which assistance is extended pursuant to this section with a view to determining (1) the detailed cost breakdown per dwelling unit, (2) the environmental quality achieved in each unit, and (3) the effect which local housing codes and zoning regulations have, or would have if applicable, on the cost per dwelling unit.

(d) Transfer of surplus property

Notwithstanding the provisions of chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, any land which is excess property within the meaning of chapters 1 to 11 of title 40 and division C (except sections 3302,

3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 and which is determined by the Secretary to be suitable in furtherance of the purposes of this section may be transferred to the Secretary upon his request.

(e) Report of findings; legislative recommendations

The Secretary shall, at the earliest practicable date, report his findings with respect to projects assisted pursuant to this section (including evaluations of each such project in accordance with subsection (c) of this section), together with such recommendations for additional legislation as he determines to be necessary or desirable to expand the available supply of decent, safe, and sanitary housing for lower income families through the use of technologies the efficacy of which has been demonstrated under this section.

(Pub. L. 90–448, title I, §108(a)–(e), Aug. 1, 1968, 82 Stat. 495, 496.)

CODIFICATION

In subsec. (d), ''chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, any land which is excess property within the meaning of chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' substituted for ''the Federal Property and Administrative Services Act of 1949, any land which is excess property within the meaning of such Act'' on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Section was enacted as part of the Housing and Urban Development Act of 1968, and not as part of the National Housing Act which comprises this chapter.

§1701z–1. Research and demonstrations; authorization of appropriations; continuing availability of funds

The Secretary of Housing and Urban Development is authorized and directed to undertake such programs of research, studies, testing, and demonstration relating to the mission and programs of the Department as he determines to be necessary and appropriate. There is[1] authorized to be appropriated to carry out this title [12 U.S.C. 1701z–1 et seq.] $35,000,000 for fiscal year 1993 and $36,470,000 for fiscal year 1994.

(Pub. L. 91–609, title V, §501, Dec. 31, 1970, 84 Stat. 1784; Pub. L. 94–375, §23(a), Aug. 3, 1976, 90 Stat. 1078; Pub. L. 95–128, title II, §204, Oct. 12, 1977, 91 Stat. 1129; Pub. L. 95–557, title III, §305(a), Oct. 31, 1978, 92 Stat. 2097; Pub. L. 96–153, title III, §304, Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96–399, title III, §303, Oct. 8, 1980, 94 Stat. 1639; Pub. L. 97–35, title III, §337, Aug. 13, 1981, 95 Stat. 414; Pub. L. 98–181, title IV, §466(a), Nov. 30, 1983, 97 Stat. 1236; Pub. L. 100–242, title V, §564, Feb. 5, 1988, 101 Stat. 1945; Pub. L. 101–625, title IX, §951(a), Nov. 28, 1990, 104 Stat. 4417; Pub. L. 102–550, title IX, §901, Oct. 28, 1992, 106 Stat. 3866.)

REFERENCES IN TEXT

This title, referred to in text, is title V of the Housing and Urban Development Act of 1970, Pub. L. 91–609, Dec. 31, 1970, 84 Stat. 1784, as amended, which is classified generally to section 1701z–1 et seq. of this title. For complete classification of this Act to the Code, see Short Title of 1970 Amendments note set out under section 1701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1992—Pub. L. 102–550 substituted ''There is authorized to be appropriated to carry out this title $35,000,000 for fiscal year 1993 and $36,470,000 for fiscal year 1994.'' for ''There are authorized to be appropriated to carry out this title $21,200,000 for fiscal year 1991 and $22,100,000 for fiscal year 1992. From any amounts appropriated under this section for fiscal year 1991, the Secretary shall use not more than $500,000 to carry out a demonstration project to test affordable housing technologies, and shall include in the annual report under section 3536 of title 42 (for the appropriate year) a statement of the activities under the demonstration program and findings resulting from the program. The statement shall set forth the amount and use of funds expended by the Secretary under the program for the year relating to the report and the Secretary shall include such a statement in each such annual report for each year that amounts appropriated under this section are used under the demonstration. All funds so appropriated shall remain available until expended unless specifically limited.''

1990—Pub. L. 101–625 substituted provisions authorizing appropriations of $21,200,000 for 1991 and $22,100,000 for 1992, for provisions authorizing $17,000,000 for 1988 and $18,000,000 for 1989, and added provisions limiting amount to be used for demonstration project in 1991 and requiring that annual report include statement relating to such project.

1988—Pub. L. 100–242 substituted ''There are authorized to be appropriated to carry out this title $17,000,000 for fiscal year 1988, and $18,000,000 for fiscal year 1989.'' for ''There are authorized to be appropriated for activities under this title not to exceed $19,000,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985. Of the amount appropriated under the preceding sentence for fiscal year 1984, not less than $2,000,000 shall be provided for implementation of a research program to be developed in consultation with public housing agencies, which program shall identify current problems of public housing management, specific solutions to such problems, and incentives to encourage implementation of such solutions.''

1983—Pub. L. 98–181 substituted provisions relating to appropriations for fiscal years 1984 and 1985 and the expenditure of not less than $2,000,000 for a public housing management research program for provisions authorizing appropriations of $65,000,000 for fiscal 1977, $60,000,000 for fiscal 1978, $62,000,000 for fiscal 1979, $50,300,000 for fiscal 1980, $51,000,000 for fiscal 1981 and $35,000,000 for fiscal 1982.

1981—Pub. L. 97–35 inserted provisions authorizing appropriations for fiscal year 1982.

1980—Pub. L. 96–399 authorized appropriation of $51,000,000 for fiscal year 1981.

1979—Pub. L. 96–153 authorized appropriation of $50,300,000 for fiscal year 1980.

1978—Pub. L. 95–557 substituted ''not to exceed $60,000,000 for the fiscal year 1978, and not to exceed $62,000,000 for the fiscal year 1979'' for ''and not to exceed $60,000,000 for the fiscal year 1978''.

1977—Pub. L. 95–128 authorized appropriation of $60,000,000 for fiscal year 1978.

1976—Pub. L. 94–375 substituted provision authorizing appropriations for fiscal year 1977 in an amount not exceeding $65,000,000 for provision which authorized sums to be appropriated as may have been necessary.

[1] So in original. Probably should be ''are''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

REHABILITATION DEMONSTRATION GRANT PROGRAM

Pub. L. 105–276, title V, § 599G, Oct. 21, 1998, 112 Stat. 2666, provided that:

''(a) IN GENERAL.—The Secretary of Housing and Urban Development shall, to the extent amounts are provided in appropriation Acts to carry out this section, carry out a program to demonstrate the effectiveness of making grants for rehabilitation of single family housing located within 10 demonstration areas designated by the Secretary. Of the areas designated by the Secretary under this section—

''(1) 6 shall be areas that have primarily urban characteristics;

''(2) 3 shall be areas that are outside of a metropolitan statistical area; and

''(3) 1 shall be an area that has primarily rural characteristics.

In selecting areas, the Secretary shall provide for national geographic and demographic diversity.

''(b) GRANTEES.—Grants under the program under this section may be made only to agencies of State and local governments and non-profit organizations operating within the demonstration areas.

''(c) SELECTION CRITERIA.—In selecting among applications for designation of demonstration areas and grants under this section, the Secretary shall consider—

''(1) the extent of single family residences located in the proposed area that have rehabilitation needs;

''(2) the ability and expertise of the applicant in carrying out the purposes of the demonstration program, including the availability of qualified housing counselors and contractors in the proposed area willing and able to participate in rehabilitation activities funded with grant amounts;

''(3) the extent to which the designation of such area and the grant award would promote affordable housing opportunities;

''(4) the extent to which selection of the proposed area would have a beneficial effect on the neighborhood or community in the area and on surrounding areas;

''(5) the extent to which the applicant has demonstrated that grant amounts will be used to leverage additional public or private funds to carry out the purposes of the demonstration program;

''(6) the extent to which lenders (including local lenders and lenders outside the proposed area) are willing and able to make loans for rehabilitation activities assisted with grant funds; and

''(7) the extent to which the application provides for the involvement of local residents in the planning of rehabilitation activities in the demonstration area.

''(d) USE OF GRANT FUNDS.—Funds from grants made under this section may be used by grantees—

''(1) to subsidize interest on loans, over a period of not more than 5 years from the origination date of the loan, made after the date of the enactment of this Act [Oct. 21, 1998] for rehabilitation of any owner-occupied 1- to 4-family residence, including the payment of interest during any period in which a residence is uninhabitable because of rehabilitation activities;

''(2) to facilitate loans for rehabilitation of 1- to 4-family properties previously subject to a mortgage insured under the National Housing Act [12 U.S.C. 1701 et seq.] that has been foreclosed or for which insurance benefits have been paid, including to establish revolving loan funds, loan loss reserves, and other financial structures; and

''(3) to provide technical assistance in conjunction with the rehabilitation of owner-occupied 1- to 4-family residences, including counseling, selection contractors, monitoring of work, approval of contractor payments, and final inspection of work.

''(e) DEFINITION OF REHABILITATION.—For purposes of this section, the term 'rehabilitation' has the meaning given such term in section 203(k)(2)(B) of the National Housing Act (12 U.S.C. 1709(k)(2)(B)).

''(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section such sums as may be necessary for each of fiscal years 1999 through 2003.

''(g) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

REPORT REGARDING RESEARCH ACTIVITIES

Section 951(b) of Pub. L. 101–625 directed Secretary of Housing and Urban Development, not later than the expiration of the 1-year period beginning on Nov. 28, 1990, to submit to Congress a report listing and describing various research activities, studies, testing, and demonstration programs relating to mission and programs of Department of Housing and Urban Development that are being conducted, have concluded, or will conclude during such period, pursuant to section 501 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1), title V of such Act (12 U.S.C. 1701z–1 et seq.), or any other authority, such report to include a statement identifying the individual or entity that is conducting each such activity, study, test, and demonstration program.

§ 1701z–2. Advanced technologies, methods, and materials for housing construction, rehabilitation, and maintenance

(a) General acceptance; costs, reduction; health and safety restrictions on expanded housing production

The Secretary shall require, to the greatest extent feasible, the employment of new and improved technologies, methods, and materials in housing construction, rehabilitation, and maintenance under programs administered by him with a view to reducing costs, and shall encourage and promote the acceptance and application of such advanced technology, methods, and materials by all segments of the housing industry, communities, industries engaged in urban development activities, and the general public. To the extent feasible, in connection with the construction, major rehabilitation, or maintenance of any housing assisted under section 1701z–1 of this title, the Secretary shall assure that there is no restraint by contract, building code, zoning ordinance, or practice against the employment of new or improved technologies, techniques, materials, and methods or of preassembled products which may reduce the cost or improve the quality of such construction, rehabilitation, and maintenance, and therefore stimulate expanded production of housing, except where such restraint is necessary to insure safe and healthful working and living conditions.

(b) Experimental construction under approved housing plans on Federal or other lands with view toward ultimate mass housing production; use of section 1701z–1 funds and authority

To encourage large-scale experimentation in the use of new technologies, methods, and materials, with a view toward the ultimate mass production of housing and related facilities, the Secretary shall wherever feasible conduct programs under section 1701z–1 of this title in which qualified organizations, public and private, will

submit plans for development and production of housing and related facilities using such new advances on Federal land which has been made available or acquired by the Secretary for the purpose of this subsection or on other land where (1) local building regulations permit such experimental construction, or (2) necessary variances from building regulations can be granted. The Secretary may utilize the funds and authority available to him under the provisions of section 1701z–1 of this title to assist in the implementation of plans which he approves.

(c) Acquisition, use, and disposal of property; transfer of excess property

Notwithstanding any other provision of law, the Secretary is authorized, in connection with projects under this title [12 U.S.C. 1701z–1 et seq.], to acquire, use and dispose of any land and other property required for the project as he deems necessary. Notwithstanding the provisions of chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, any land which is excess property within the meaning of chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 and which is determined by the Secretary to be suitable in furtherance of the purposes of subsection (b) of this section may be transferred to the Secretary upon his request.

(d) Technical assistance; reports; general dissemination and form of reports, data, and information

In order to effectively carry out his activities under section 1701z–1 of this title, the Secretary is authorized to provide such advice and technical assistance as may be required and to pay for the cost of writing and publishing reports on activities and undertakings financed under section 1701z–1 of this title, as well as reports on similar activities and undertakings, not so financed, which are of significant value in furthering the purposes of that section. He may disseminate (without regard to the provisions of section 3204 of title 39 or section 4154 of such title with respect to any period before the effective date of such section 3204 as provided in section 15(a) of the Postal Reorganization Act) any reports, data, or information acquired or held under this title [12 U.S.C. 1701z–1 et seq.], including related data and information otherwise available to the Secretary through the operation of the programs and activities of the Department of Housing and Urban Development, in such form as he determines to be most useful to departments, establishments, and agencies of Federal, State, and local governments, to industry, and to the general public.

(e) Contracts or grants; authority; advance and progress payments; work limitation

The Secretary is authorized to carry out the functions authorized in section 1701z–1 of this title either directly or, without regard to section 6101 of title 41, by contract or by grant. Advance and progress payments may be made under such contracts or grants without regard to the provisions of subsections (a) and (b) of section 3324 of title 31 and such contracts or grants may be made for work to continue for not more than four years from the date thereof.

(f) Utilization of facilities of other agencies; working agreements, cooperative agreements, contract authority, receipt of funds, and exercise of section 1701c(c) powers

In carrying out activities under section 1701z–1 of this title, the Secretary shall utilize to the fullest extent feasible the available facilities of other Federal departments and agencies, and shall consult with, and make recommendations to, such departments and agencies. The Secretary may enter into working agreements with such departments and agencies and contract or make grants on their behalf or have such departments and agencies contract or make grants on his behalf and such departments and agencies are hereby authorized to execute such contracts and grants. The Secretary is authorized to make or accept reimbursement for the cost of such activities. The Secretary is further authorized to undertake activities under this title [12 U.S.C. 1701z–1 et seq.] under cooperative agreements with industry and labor, agencies of State or local governments, educational institutions, and other organizations. He may enter into contracts with and receive funds from such agencies, institutions, and organizations, and may exercise any of the other powers vested in him by section 1701c(c) of this title.

(g) Information and data; restriction on use or identification

The Secretary is authorized to request and receive such information or data as he deems appropriate from private individuals and organizations, and from public agencies. Any such information or data shall be used only for the purposes for which it is supplied, and no publication shall be made by the Secretary whereby the information or data furnished by any particular person or establishment can be identified, except with the consent of such person or establishment.

(Pub. L. 91–609, title V, § 502, Dec. 31, 1970, 84 Stat. 1784; Pub. L. 94–375, § 23(c), Aug. 3, 1976, 90 Stat. 1078; Pub. L. 98–479, title II, § 203(k), Oct. 17, 1984, 98 Stat. 2231.)

REFERENCES IN TEXT

This title, referred to in subsecs. (c), (d), and (f) following ''under'', is title V of the Housing and Urban Development Act of 1970, Pub. L. 91–609, Dec. 31, 1970, 84 Stat. 1784, as amended, which is classified generally to section 1701z–1 et seq., of this title. For complete classification of this Act to the Code, see Short Title of 1970 Amendments note set out under section 1701 of this title and Tables.

For effective date of section 3204 of title 39 as provided in section 15(a) of the Postal Reorganization Act, referred to in subsec. (d), see notes preceding section 101 and under section 3204 of Title 39, Postal Service.

CODIFICATION

In subsec. (c), ''chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, any land which is excess property within the meaning of chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' substituted for ''the Federal Property and Administrative Services Act of 1949, any land which is excess prop-

erty within the meaning of such Act'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (e), ''section 6101 of title 41'' substituted for ''section 3709 of the Revised Statutes'' on authority of Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98–479 substituted ''subsections (a) and (b) of section 3324 of title 31'' for ''section 3648 of the Revised Statutes [31 U.S.C. 529]''.

1976—Subsec. (f). Pub. L. 94–375 inserted ''and such departments and agencies are hereby authorized to execute such contracts and grants.'' after ''make grants on his behalf''.

§ 1701z–3. Experimental housing allowance payment program

(a) Purpose of payments

The Secretary is authorized to undertake on an experimental basis programs to demonstrate the feasibility of providing housing allowance payments to assist families in meeting rental or homeownership expenses.

(b) Termination date of payments; termination date for contracts; contracts for performance of administrative functions

(1) No housing allowance payments shall be made after July 1, 1985. After January 1, 1975, the Secretary shall not enter into contracts under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] to carry out the purposes of this section. The Secretary may contract with public or private agencies for the performance of administrative functions in connection with the programs authorized by this section.

(2) Notwithstanding the provisions of paragraph (1), the Secretary shall, to the extent approved in appropriation Acts, extend the annual contributions contracts for the experimental housing allowance supply program through September 30, 1989, on the same terms and conditions as the original contracts, for the sole purpose of providing assistance for homeowners participating in such program on June 1, 1983. In extending such contracts, the Secretary may, to the extent approved in appropriation Acts, use authority available under section 5(c) of the United States Housing Act of 1937 [42 U.S.C. 1437c(c)].

(c) Report to Congress

The Secretary shall report to the Congress on his findings pursuant to this section not later than eighteen months after August 22, 1974.

(Pub. L. 91–609, title V, § 504, Dec. 31, 1970, 84 Stat. 1786; Pub. L. 93–383, title VIII, § 804, Aug. 22, 1974, 88 Stat. 725; Pub. L. 94–375, § 23(b), Aug. 3, 1976, 90 Stat. 1078; Pub. L. 98–35, § 6(a), May 26, 1983, 97 Stat. 198.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (b)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, Aug. 22, 1974, 88 Stat. 653, which is classified to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1983—Subsec. (b). Pub. L. 98–35 designated existing provisions as par. (1) and added par. (2).

1976—Subsec. (b). Pub. L. 94–375 struck out provisions which authorized the Secretary to make or contract to make housing allowance payments, authorized sums to be appropriated as necessary, including sums for contract payments and administrative costs, and limited the aggregate amount of contracts for making housing allowance payments.

1974—Subsec. (a). Pub. L. 93–383 substituted provisions authorizing the Secretary to undertake programs on an experimental basis of housing allowance payments to assist families in meeting rental or homeownership expenses, for provisions authorizing the Secretary in carrying out activities under section 1701z–1 of this title to undertake programs on an experimental basis of housing allowances to assist families of low income to obtain rental housing of their choice in existing units.

Subsec. (b). Pub. L. 93–383 substituted provisions relating to the authority of the Secretary to make or contract to make payments to or on behalf of participating families, authorizing appropriations, and setting forth limits on the contracting power of the Secretary, for provisions setting forth limitations on the amount of family allowances and conditioning payment of such allowances.

Subsec. (c). Pub. L. 93–383 substituted provisions requiring the Secretary to report to Congress not later than 18 months after Aug. 22, 1974, for provisions setting forth the contracting authority of the Secretary for services.

Subsec. (d). Pub. L. 93–383 struck out subsec. (d) which set forth limits on aggregate family allowances and authorizing appropriations to make payments.

Subsec. (e). Pub. L. 93–383 struck out subsec. (e) which required a report to Congress by the Secretary as soon as practicable in calendar years 1972 and 1973.

Subsec. (f). Pub. L. 93–383 struck out subsec. (f) which defined ''families of low income'' and ''existing standard housing''.

Subsec. (g). Pub. L. 93–383 struck out subsec. (g) which prohibited payments after June 30, 1973.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 6(b) of Pub. L. 98–35 provided that: ''The amendments made by this section [amending this section] shall become effective on October 1, 1983.''

§ 1701z–4. Abandoned properties demonstration project

(a) Grants for arrest of incipient abandonment and revitalization of blighted areas

In carrying out activities under section 1701z–1 of this title, the Secretary may undertake programs to demonstrate the most feasible means of providing assistance to localities in which a substantial number of structures are abandoned or are threatened with abandonment for the purpose of arresting the process of housing abandonment in its incipiency or in restoring viability to blighted areas in which abandonment is pervasive. For this purpose, the Secretary is authorized to make grants, subject to the limitations of this section, to assist local public bodies in planning and implementing demonstration

projects for prompt and effective action in alleviating and preventing such abandonment in designated demonstration areas.

(b) Preferred projects; scope of projects

In administering this section, the Secretary shall give preference to those demonstration projects which in his judgment can reasonably be expected to arrest the process of abandonment in the demonstration area within a period of two years and which provide for innovative approaches to combating the problem of housing abandonment. Such projects may include, but shall not be limited to (1) acquisition by negotiated purchase, lease, receivership, tax lien proceedings, or other means authorized by law and satisfactory to the Secretary, of real property within the demonstration area or areas which is abandoned, deteriorated, or in violation of applicable code standards; (2) the repair of streets, sidewalks, parks, playgrounds, publicly owned utilities, public buildings to meet needs consistent with the revitalization and continued use of the area; (3) the demolition of structures determined to be structurally unsound or unfit for human habitation or which contribute adversely to the physical or social environment of the locality involved; (4) the establishment of recreational or community facilities including public playgrounds; (5) the improvement of garbage and trash collection, street cleaning and other essential services necessary to the revitalization and maintenance of the area; (6) the rehabilitation of privately and publicly owned real property by the locality; and (7) the establishment and operation of locally controlled, nonprofit housing management corporations and municipal repair programs.

(c) Purchase or lease of project real estate at fair market value for new or rehabilitated housing use; conditions

Subject to such conditions as the Secretary may prescribe, real property held as part of a project assisted under this section may be made available to (1) a limited dividend corporation, nonprofit corporation, or association, cooperative or public body or agency, or other approved purchaser or lessee, or (2) a purchaser who would be eligible for a mortgage insured under section 1715*l*(d)(3) or (d)(4), section 1715*l*(h)(1), section 1715z(i) or (j)(1), or section 1715z–1 of this title, for purchase or lease at fair market value for use by such purchaser or lessee, as, or in the provision of, new or rehabilitated housing for occupancy by families or individuals of low or moderate income.

(d) Amount of grants; authorization of appropriations; continuing availability of funds; locality limitation

Grants under this section shall be in amounts which do not exceed 90 per centum of the net project cost as determined by the Secretary. There are authorized to be appropriated for demonstration grants under this section not to exceed $20,000,000 for the fiscal year ending June 30, 1971. Any amounts appropriated shall remain available until expended and any amount authorized but not appropriated may be appropriated for any succeeding fiscal year commencing prior to July 1, 1972. Not more than one-third of the aggregate amount of grants made in any fiscal year under this section shall be made with respect to projects undertaken by one locality.

(e) Projects as part of urban renewal projects for purpose of application of urban renewal provisions

The provisions of sections 1456, 1465, and 1466[1] of title 42, and section 1452b[1] of title 42, may apply to projects assisted under this Act as if such projects were being carried out in urban renewal areas as part of urban renewal projects within the meaning of section 1460[1] of title 42.

(Pub. L. 91–609, title V, § 505, Dec. 31, 1970, 84 Stat. 1787; Pub. L. 99–386, title I, § 105(a), Aug. 22, 1986, 100 Stat. 822.)

REFERENCES IN TEXT

Sections 1456, 1460, and 1466 of title 42, referred to in subsec. (e), were omitted from the Code pursuant to section 5316 of Title 42, The Public Health and Welfare, which terminated authority to make grants or loans under those sections after Jan. 1, 1975.

Section 1465 of title 42, referred to in subsec. (e), was repealed by Pub. L. 91–646, title II, § 220(a)(5), Jan. 2, 1971, 84 Stat. 1903. See section 4601 et seq. of Title 42.

Section 1452b of title 42, referred to in subsec. (e), was repealed by Pub. L. 101–625, title II, § 289(b)(1), Nov. 28, 1990, 104 Stat. 4128.

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1986—Subsec. (f). Pub. L. 99–386 struck out subsec. (f) which related to annual reports to Congress by Secretary with respect to status of demonstration projects.

§ 1701z–5. Demonstrations of heating or cooling residential housing utilizing solar energy

(a) Consultation by Secretary with National Science Foundation; scope of demonstrations; powers of Secretary

In carrying out activities under section 1701z–1 of this title, the Secretary may, after consultation with the National Science Foundation, undertake demonstrations to determine the economic and technical feasibility of utilizing solar energy for heating or cooling residential housing (including demonstrations of new housing design or structure involving the use of solar energy). Demonstrations carried out under this section should involve both single family and multifamily housing located in areas having distinguishable climatic characteristics in urban as well as rural environments. To carry out the purpose of this section the Secretary is authorized—

(1) to enter into contracts with, to make grants to, and to provide other types of assistance to individuals and entities with special competence and knowledge to contribute to the planning, design, development, and operation of such housing;

(2) to utilize the contract, loan, or mortgage insurance authority of any federally assisted

[1] See References in Text note below.

housing program in the actual planning, development, and occupancy of such housing; and

(3) to set aside any development, construction, design, or occupancy requirements for the purpose of any demonstration under this section if he determines that such requirements inhibit such demonstration.

(b) Evaluation by Secretary

The Secretary shall include in any demonstration under this section an evaluation of the demonstration to cover the full experience involved in all stages of the demonstration.

(Pub. L. 91–609, title V, § 506, as added Pub. L. 93–383, title VIII, § 814, Aug. 22, 1974, 88 Stat. 738; amended Pub. L. 99–386, title I, § 105(b), Aug. 22, 1986, 100 Stat. 822.)

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–386 struck out subsec. (c) which related to reports to Congress by Secretary not later than 6 months following close of year in which the Secretary carried out demonstration under this section.

§ 1701z–6. Special housing need research and demonstration authority

(a) Special demonstrations of housing design, structure, facilities, and amenities to meet needs of elderly, handicapped, etc.; contracts, grants, and assistance by Secretary

In carrying out activities under section 1701z–1 of this title, the Secretary may undertake special demonstrations to determine the housing design, the housing structure, and the housing-related facilities, and amenities most effective or appropriate to meet the needs of groups with special housing needs including the elderly, the handicapped, the displaced, single individuals, broken families, and large households. For this purpose, the Secretary is authorized to enter into contracts with, to make grants to, and to provide other types of assistance to individuals and entities with special competence and knowledge to contribute to the planning, development, design, and management of such housing.

(b) Areas of preferential attention

In carrying out his functions under this section, the Secretary shall give preferential attention to demonstrations which in his judgment involve areas of housing user needs most neglected in past and current research and demonstration efforts.

(c) Utilization of contract and loan authority of federally assisted housing programs; setting aside of development, etc., requirements during testing

The Secretary is authorized to undertake demonstrations involving the actual planning, development, and occupancy of housing utilizing the contract and loan authority of any federally assisted housing program. He is also authorized to set aside any development, construction, design, and occupancy requirements, for the purposes of these demonstrations, if in his judgment they inhibit the testing of housing designed to meet the special housing needs.

(d) Evaluation of demonstration

In carrying out this section, the Secretary shall include, as part of any demonstration, an evaluation of the demonstration to cover the full experience involved in planning, development, and occupancy.

(e) Limitation on amounts available for research

In addition to any other contract or loan authority which the Secretary may utilize under subsection (c) of this section, not more than $10,000,000 from amounts approved in appropriation Acts shall be available for research under this section.

(Pub. L. 91–609, title V, § 507, as added Pub. L. 93–383, title VIII, § 815, Aug. 22, 1974, 88 Stat. 738.)

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

INDIAN PUBLIC HOUSING EARLY CHILDHOOD DEVELOPMENT DEMONSTRATION PROGRAM

Pub. L. 101–625, title V, § 518, Nov. 28, 1990, 104 Stat. 4201, as amended by Pub. L. 102–550, title I, § 124, Oct. 28, 1992, 106 Stat. 3709; Pub. L. 104–330, title V, § 501(d)(1), Oct. 26, 1996, 110 Stat. 4042, authorized Secretary of Housing and Urban Development to carry out demonstration program in low-income housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority in the same manner as the demonstration program under section 222 of Pub. L. 98–181 was carried out, and further provided for funding for demonstration program, limitations, and report to Congress, prior to repeal by Pub. L. 105–276, title V, § 582(a)(7), Oct. 21, 1998, 112 Stat. 2643.

DEMONSTRATION PROJECT FOR ASSISTANCE TO UNITS OF GENERAL LOCAL GOVERNMENT TO ENCOURAGE UPGRADING OF LOWER INCOME FAMILY HOUSING

Pub. L. 98–181, title II, § 225, Nov. 30, 1983, 97 Stat. 1191, provided that:

''(a) The Congress finds that—

''(1) the Department of Health and Human Services spends in excess of $5,000,000,000 annually for housing in the form of allowances for shelter for public assistance recipients;

''(2) States administering the Department of Health and Human Services public assistance program often specify shelter allowances that have little relationship to the cost or the quality of the housing in which public assistance recipients live;

''(3) at least 30 per centum of public assistance recipients live in substandard housing;

''(4) the older rental buildings in which many public assistance recipients live are in those neighborhoods that need the assistance of the programs of the Department of Housing and Urban Development for preservation and rehabilitation; and

''(5) there is the potential for improving housing for many lower income families by coordinating State and local government efforts in order to assure that families receiving public assistance payments from the Department of Health and Human Services are able to live in decent, safe, and sanitary housing.

''(b) The purpose of this section, therefore, is to provide assistance to units of general local government and their designated agencies in order to develop a program that will—

''(1) encourage the upgrading of housing occupied primarily by lower income families, including families receiving assistance under the aid for families with dependent children program established under

title IV of the Social Security Act [42 U.S.C. 601 et seq.]; and

''(2) provide for better coordination at the local level of the efforts to assist families receiving public assistance from the Department of Health and Human Services so that these families will be able to occupy affordable housing that is decent, safe, and sanitary and that, if necessary, is rehabilitated with funds provided by the Department of Housing and Urban Development.

''(c) The Secretary of Housing and Urban Development (hereafter referred to in this section as the 'Secretary') shall, to the extent approved in appropriation Acts, establish and maintain a demonstration project to carry out the purpose described in subsection (b).

''(d) In carrying out such project, the Secretary shall make grants to units of general local government, or designated agencies thereof, to carry out administrative plans approved by the Secretary in accordance with subsection (e), and the Secretary may make grants to States to provide technical assistance for the purpose of assisting such units of general local government to develop and carry out such plans.

''(e)(1) Grants may be made to States and units of general local government and agencies thereof that apply for them in a manner and at a time determined by the Secretary and that, in the case of units of general local government and their agencies, are selected on the basis of an administrative plan described in such application.

''(2) No such administrative plan shall be selected by the Secretary unless it sets forth a plan for local government activities that are designed to—

''(A) require or encourage owners of rental housing occupied by lower income families to bring such housing into compliance with local housing codes;

''(B) provide technical assistance, loans, or grants to assist owners described in subparagraph (A) to undertake cost-effective improvements of such housing;

''(C) work with the State to establish and implement a schedule of local shelter allowances for recipients of assistance under title IV of the Social Security Act [42 U.S.C. 601 et seq.] based on building quality that will be applicable to buildings involved in this program; and

''(D) coordinate local housing inspection, housing rehabilitation loan or grant assistance, rental assistance, and social service programs for the purpose of improving the quality and affordability of housing for lower income families.

''(3) Funds received from any grant made by the Secretary to a unit of general local government shall be made available for use according to the administrative plans and may be used for—

''(A) technical assistance or financial assistance to property owners to upgrade housing projects described in paragraph (2)(A) of this subsection;

''(B) temporary rental assistance to families who live in buildings assisted under this program and who are eligible for, but are not receiving, assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], except that such families shall not include families receiving assistance under title IV of the Social Security Act [42 U.S.C. 601 et seq.], and the amount of such rental assistance may not exceed 20 per centum of each grant received under this section;

''(C) housing counseling and referral and other housing related services;

''(D) expenses incurred in administering the program carried out with funds received under this section, except that such expenses may not exceed 10 per centum of the grant received under this section; and

''(E) other appropriate activities that are consistent with the purposes of this section and that are approved by the Secretary.

''(f) Any recipient of a grant from the Secretary under this section shall agree to—

''(1) contribute to the program an amount equal to 15 per centum of the funds received from the Secretary under this section, and the Secretary shall permit the recipient to meet this requirement by the contribution of the value of services carried out specifically in connection with the program assisted under this section;

''(2) permit the Secretary and the General Accounting Office [now Government Accountability Office] to audit its books in order to assure that the funds received under this section are used in accordance with the section; and

''(3) other terms and conditions prescribed by the Secretary for the purpose of carrying out this section in an effective and efficient manner.

''(g) In making grants available under this section, the Secretary shall select as recipients at least 20 units of general local government (or their designated agencies). The selection of proposals for funding shall be based on criteria that result in a selection of projects that will enable the Secretary to carry out the purpose of this section in an effective and efficient manner and provide a sufficient amount of data necessary to make an evaluation of the demonstration project carried out under this section.

''(h)(1) Not later than June 1, 1984, the Secretary shall transmit to the Congress an interim report on the implementation of the demonstration under this section.

''(2) The Secretary shall transmit, not later than October 1, 1985, to both Houses of the Congress a detailed report concerning the findings and conclusions that have been reached by the Secretary as a result of carrying out this section, along with any legislative recommendations that the Secretary determines are necessary.

''(i) To carry out this section, there are authorized to be appropriated not to exceed $10,000,000 during fiscal year 1984, and not to exceed $15,000,000 during fiscal year 1985, to remain available until expended.''

PUBLIC HOUSING EARLY CHILDHOOD DEVELOPMENT PROGRAM

Pub. L. 98–181, title II, §222, Nov. 30, 1983, 97 Stat. 1188, as amended by Pub. L. 100–242, title I, §117, Feb. 5, 1988, 101 Stat. 1826; Pub. L. 100–628, title X, §1002, Nov. 7, 1988, 102 Stat. 3263; Pub. L. 101–625, title V, §517, Nov. 28, 1990, 104 Stat. 4200; Pub. L. 102–550, title I, §123, Oct. 28, 1992, 106 Stat. 3709, which authorized Secretary of Housing and Urban Development to carry out demonstration program of making grants to nonprofit organizations to assist in providing early childhood development services in or near lower income housing projects, and required report to Congress setting forth findings and conclusions not later than three years after Feb. 5, 1988, was repealed by Pub. L. 105–276, title V, §582(a)(6), Oct. 21, 1998, 112 Stat. 2643.

PUBLIC HOUSING SECURITY

Pub. L. 96–399, title II, §209, Oct. 8, 1980, 94 Stat. 1635, provided that:

''(a) This section may be cited as the 'Public Housing Anti-Crime Amendments of 1980'.

''(b) The Congress finds that—

''(1) public housing and surrounding neighborhoods continue to suffer substantially from rising crime and the fear of crime;

''(2) funding to provide more security for public housing can be used to leverage funding from other sources and thereby produce more successful anti-crime efforts;

''(3) the effects of inflation and the need for reductions in the budget of the Federal Government result in a need for more co-targeting of Federal and local anti-crime resources;

''(4) as authorized by the Public Housing Security Demonstration Act of 1978 [set out below], the Urban Initiatives Anti-Crime Program has performed in a promising manner; and

''(5) the First Annual Report to Congress of the Urban Initiatives Anti-Crime Program and the two General Accounting Office [now Government Ac-

countability Office] reports to Congress on such Program have provided useful suggestions which can now be implemented.

''(c) It is, therefore, the purpose of this section to continue the efforts of the Urban Initiatives Anti-Crime Program so that more progress can be made in providing secure, decent, safe, and sanitary dwelling units for low-income and elderly tenants in public housing projects.

''(d) [This subsection amended section 207 of Pub. L. 95–557, set out below.].''

Pub. L. 95–557, title II, § 207, Oct. 31, 1978, 92 Stat. 2093, as amended by Pub. L. 96–399, title II, § 209(d), Oct. 8, 1980, 94 Stat. 1635; Pub. L. 98–479, title II, § 201(i), Oct. 17, 1984, 98 Stat. 2228; Pub. L. 103–82, title IV, § 405(c), Sept. 21, 1993, 107 Stat. 921, provided that:

''(a) This section may be cited as the 'Public Housing Security Demonstration Act of 1978'.

''(b)(1) The Congress finds that—

''(A) low-income and elderly public housing residents of the Nation have suffered substantially from rising crime and violence, and are being threatened as a result of inadequate security arrangements for the prevention of physical violence, theft, burglary, and other crimes;

''(B) older persons generally regard the fear of crime as the most serious problem in their lives, to the extent that one-fourth of all Americans over 65 voluntarily restrict their mobility because of it;

''(C) crime and the fear of crime have led some residents to move from public housing projects;

''(D) an integral part of successfully providing decent, safe, and sanitary dwellings for low-income persons is to insure that the housing is secure;

''(E) local public housing authorities may have inadequate security arrangements for the prevention of crime and vandalism; and

''(F) action is needed to provide for the security of public housing residents and to preserve the Nation's investment in its public housing stock.

''(2) It is, therefore, declared to be the policy of the United States to provide for a demonstration and evaluation of effective means of mitigating crime and vandalism in public housing projects, in order to provide a safe living environment for the residents, particularly the elderly residents, of such projects.

''(c)(1) The Secretary of Housing and Urban Development shall promptly initiate and carry out during the fiscal year beginning on October 1, 1978, to the extent approved in appropriation Acts, a program for the development, demonstration, and evaluation of improved, innovative community anticrime and security methods, concepts and techniques which will mitigate the level of crime in public housing projects and their surrounding neighborhoods.

''(2) In selecting public housing projects to receive assistance under this section, the Secretary shall assure that a broad spectrum of project types, locations and tenant populations are represented and shall consider at least the following: the extent of crime and vandalism currently existing in the projects; the extent, nature and quality of community anticrime efforts in the projects and surrounding areas; the extent, nature and quality of police and other protective services available to the projects and their tenants; the demand for public housing units in the locality, the vacancy rate, and extent of abandonment of such units; and the characteristics and needs of the public housing tenants.

''(3) In selecting the anticrime and security methods, concepts and techniques to be demonstrated under this section, the Secretary shall consider the improvement of physical security equipment or dwelling units in those projects, social and environmental design improvements, tenant awareness and volunteer programs, tenant participation and employment in providing security services, and such other measures as deemed necessary or appropriate by the Secretary. Particular attention shall be given to comprehensive community anticrime and security plans submitted by public housing authorities which (i) provide for coordination between public housing management and local law enforcement officials, or (ii) coordinate resources available to the community through programs funded by the Law Enforcement Assistance Administration, the Department of Health and Human Services, the Department of Labor, the Community Services Administration, and the Corporation for National and Community Service, or other Federal or State agencies.

''(4) In carrying out the provisions of this section, the Secretary shall coordinate and jointly target resources with other agencies, particularly the Law Enforcement Assistance Administration, the Department of Health and Human Services, the Department of Labor, the Department of Justice, the Department of the Interior, the Department of Commerce, the Department of Education, the Corporation for National and Community Service, the Community Services Administration, and State and local agencies.

''(5) In order to assess the impact of crime and vandalism in public housing projects, the Secretary may, as part of the Annual Housing Survey conducted by the Department of Housing and Urban Development or by other means, collect data on crime and vandalism and integrate the data collection with the victimization surveys undertaken by the Department of Justice and the Department of Commerce.

''(6) The Secretary shall, to the maximum extent practicable, utilize information derived from the program authorized by this section for assisting in establishing (A) guidelines to be used by public housing authorities in determining strategies to meet the security needs of tenants of public housing projects assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] other than under section 8 of such Act [42 U.S.C. 1437f], and (B) guidelines for improvements relating to the security of projects (and the tenants living in such projects) assisted under section 14 of such Act [42 U.S.C. 1437*l*].

''(d) The Secretary shall initiate and carry out a survey of crime and vandalism existing in the Nation's public housing projects. The survey shall include the nature, extent and impact of crime and vandalism and the nature and extent of resources currently available and employed to alleviate crime and vandalism in public housing.

''(e) The Secretary shall report to the Congress not later than eighteen months after the date of enactment of the Housing and Community Development Act of 1980 [Oct. 8, 1980]. Such report shall include the results of the survey on crime and vandalism in public housing; findings from the demonstration and evaluation of various methods of reducing the level of crime; and legislative recommendations, if appropriate for (A) a comprehensive program to increase security in public housing projects and (B) increasing the coordination between anticrime programs of other State and Federal agencies that may be used by public housing authorities. Any recommendations shall include estimated costs of such programs.

''(f) Of the additional authority approved in appropriation Acts with respect to entering into annual contributions contracts under section 5(c) of the United States Housing Act of 1937 [42 U.S.C. 1437c(c)] for the fiscal year beginning on October 1, 1978, the Secretary may utilize up to $12,000,000 of such authority in the fiscal year beginning on October 1, 1978, for the establishment of the public housing security demonstration program authorized by this section. Of the authority approved in appropriation Acts for the purpose of entering into annual contributions contracts under section 5(c) of the United States Housing Act of 1937 with respect to the fiscal year beginning on October 1, 1980, the Secretary may enter into contracts to carry out this section, except that the aggregate amount obligated over the duration of such contracts may not exceed $10,000,000.''

§ 1701z–7. Studies to determine extent of need for counseling to mortgagors; report to Congress

(a) In carrying out activities under section 1701z–1 of this title, the Secretary is directed to

undertake programs of studies and demonstrations within at least three standard metropolitan statistical areas to determine the extent of need for and cost effectiveness of providing prepurchase, default and delinquency counseling and related services to owners and purchasers of single-family dwellings insured or to be insured under the unsubsidized mortgage insurance programs of the National Housing Act [12 U.S.C. 1701 et seq.].

(b) Within one year from August 3, 1976, the Secretary shall submit an interim report to the Congress with respect to the progress made under such studies and demonstrations, including an estimate as to the date when a final report on the results of such demonstrations will be made available to the Congress.

(Pub. L. 91–609, title V, § 508, as added Pub. L. 94–375, § 26, Aug. 3, 1976, 90 Stat. 1078.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

§ 1701z–8. Energy conservation and renewable-resource demonstration

(a) National demonstration program; purpose

The Secretary shall undertake a national demonstration program designed to test the feasibility and effectiveness of various forms of financial assistance for encouraging the installation or implementation of approved energy conservation measures and approved renewable-resource energy measures in existing dwelling units. The Secretary shall carry out such demonstration program with a view toward recommending a national program or programs designed to reduce significantly the consumption of energy in existing dwelling units.

(b) Financial assistance to owners and tenants of dwelling units; authorization of Secretary

The Secretary is authorized to make financial assistance available pursuant to this section in the form of grants, low-interest-rate loans, interest subsidies, loan guarantees, and such other forms of assistance as the Secretary deems appropriate to carry out the purposes of this section. Assistance may be made available to both owners of dwelling units and tenants occupying such units.

(c) Duties of Secretary

In carrying out the demonstration program required by this section, the Secretary shall—

(1) provide assistance in a wide variety of geographic areas to reflect differences in climate, types of dwelling units, and income levels of recipients in order to provide a national profile for use in designing a program which is to be operational and effective nationwide;

(2) evaluate the appropriateness of various financial incentives for different income levels of owners and occupants of existing dwelling units;

(3) take into account and evaluate any other financial assistance which may be available for the installation or implementation of energy conservation and renewable-resource energy measures;

(4) make use of such State and local instrumentalities or other public or private entities as may be appropriate in carrying out the purposes of this section in coordination with the provisions of part C of title III of the Energy Policy and Conservation Act [42 U.S.C. 6321 et seq.];

(5) consider, with respect to various forms of assistance and procedures for their application, (A) the extent to which energy conservation measures and renewable-resource energy measures are encouraged which would otherwise not have been undertaken, (B) the minimum amount of Federal subsidy necessary to achieve the objectives of a national program, (C) the costs of administering the assistance, (D) the extent to which the assistance may be encumbered by delays, redtape, and uncertainty as to its availability with respect to any particular applicant, (E) the factors which may prevent the assistance from being available in certain areas or for certain classes of persons, and (F) the extent to which fraudulent practices can be prevented; and

(6) consult with the Administrator, the Secretary of Housing and Urban Development, and the heads of such other Federal agencies as may be appropriate.

(d) Limitations on grants; modification and exceptions to limitation; eligibility

(1) The amount of any grant made pursuant to this section shall not exceed the lesser of—

(A) with respect to an approved energy conservation measure, (i) $400, or (ii) 20 per centum of the cost of installing or otherwise implementing such measure; and

(B) with respect to an approved renewable-resource energy measure, (i) $2,000, or (ii) 25 per centum of the cost of installing or otherwise implementing such measure.

The Secretary may, by rule, increase such percentages and amounts in the case of an applicant whose annual gross family income for the preceding taxable year is less than the median family income for the housing market area in which the dwelling unit which is to be modified by such measure is located, as determined by the Secretary. The Secretary may also modify the limitations specified in this paragraph if necessary in order to achieve the purposes of this section.

(2) No person shall be eligible for both financial assistance under this section and a credit against income tax for the same energy conservation measure or renewable-resource energy measure.

(e) Conditions upon availability of financial assistance

The Secretary may condition the availability of financial assistance with respect to the installation and implementation of any renewable-resource energy measure on such measure's

meeting performance standards for reliability and efficiency and such certification procedures as the Secretary may, in consultation with the Administrator, the Secretary of Housing and Urban Development, and other appropriate Federal agencies, prescribe for the purpose of protecting consumers.

(f) Implementation of program

In carrying out the demonstration program required by this section, the Secretary is authorized to delegate responsibilities to, or to contract with, other Federal agencies or with such State or local instrumentalities or other public or private bodies as the Secretary may deem desirable. Such demonstration program shall be coordinated, to the extent practicable, with the State energy conservation plans as described in, and implemented pursuant to, part C of title III of the Energy Policy and Conservation Act [42 U.S.C. 6321 et seq.].

(g) Interim and final reports on program progress, findings, and legislative recommendations; criteria for evaluation of projects

The Secretary shall submit an interim report to the Congress not later than 6 months after August 14, 1976, (and every 6 months thereafter until the final report is made under this subsection) indicating the progress made in carrying out the demonstration program required by this section and shall submit a final report to the Congress, containing findings and legislative recommendations, not later than 2 years after August 14, 1976. As part of each report made under this subsection, the Secretary shall include an evaluation, based on the criteria described in subsection (h) of this section, of each demonstration project conducted under this section.

(h) Report on evaluation criteria to be used and results sought prior to funding of projects

Prior to undertaking any demonstration project under this section, the Secretary shall specify and report to the Congress the criteria by which the Secretary will evaluate the effectiveness of the project and the results to be sought.

(i) Definitions

As used in this section:

(1) The term ''Administrator'' means the Administrator of the Federal Energy Administration; except that after such Administration ceases to exist, such term means any officer of the United States designated by the President for purposes of this section.

(2) The term ''approved'', with respect to an energy conservation measure or a renewable-resource energy measure, means any such measure which is included on a list of such measures which is published by the Administrator of the Federal Energy Administration pursuant to section 365(e)(1) of the Energy Policy and Conservation Act [42 U.S.C. 6325(e)(1)]. The Administrator may, by rule, require that an energy audit be conducted as a condition of obtaining assistance under this section for a renewable-resource energy measure.

(3) The terms ''energy audit'', ''energy conservation measure'', and ''renewable-resource energy measure'' have the meanings prescribed for such terms in section 366 of the Energy Policy and Conservation Act [42 U.S.C. 6326].

(j) Authorization of appropriations

There is authorized to be appropriated, for purposes of this section, not to exceed $200,000,000. Any amount appropriated pursuant to this subsection shall remain available until expended.

(Pub. L. 91–609, title V, § 509, as added Pub. L. 94–385, title IV, § 441, Aug. 14, 1976, 90 Stat. 1162; amended Pub. L. 95–91, title VII, § 709(d), Aug. 4, 1977, 91 Stat. 608.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in subsecs. (c)(4) and (f), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended. Part C of title III of such act is classified generally to part B (§ 6321 et seq.) of subchapter III of chapter 77 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1977—Subsecs. (c)(6), (e). Pub. L. 95–91 inserted '', the Secretary of Housing and Urban Development,'' after ''the Administrator''.

TRANSFER OF FUNCTIONS

Functions vested in Secretary of Housing and Urban Development under this section transferred to Secretary of Energy by section 7154(b) of Title 42, The Public Health and Welfare.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

§ 1701z–9. Expansion of home ownership opportunities in urban areas

In carrying out activities under section 1701z–1 of this title, the Secretary is authorized to conduct demonstrations to determine the feasibility of expanding homeownership opportunities in urban areas and encouraging the creation and maintenance of decent, safe, and sanitary housing in such areas by utilizing techniques including, but not limited to, the conversion of multifamily housing properties to condominium or cooperative ownership by individuals and families.

(Pub. L. 91–609, title V, § 510, as added Pub. L. 95–557, title III, § 305(b), Oct. 31, 1978, 92 Stat. 2097.)

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

STUDY TO DETERMINE FEASIBILITY OF UNDERGROUND CONSTRUCTION OF RESIDENTIAL HOUSING

Section 305(c) of Pub. L. 95–557 required the Secretary to study the feasibility of underground construction of residential housing and necessary changes in housing

codes and financing, and report to Congress no later than one year after Oct. 31, 1978 as to the findings and recommendations of legislative enactments as a result of the study.

§ 1701z–10. Model rehabilitation guidelines in inspection and approval of rehabilitated properties; report to Congress

(a)(1) The Secretary shall develop model rehabilitation guidelines for the voluntary adoption by States and communities to be used in conjunction with existing building codes by State and local officials in the inspection and approval of rehabilitated properties.

(2) Such guidelines shall be developed in consultation with the National Institute of Building Sciences, appropriate national organizations of agencies and officials of State and local governments, representatives of the building industry, and consumer groups, and other interested parties.

(3) The Secretary shall publish such guidelines for public comment not later than one year after October 31, 1978, and promulgate them no later than eighteen months after such date.

(4) The Secretary may furnish technical assistance to State and local governments to facilitate the use and implementation of such guidelines.

(b) The Secretary shall report to Congress not later than thirty-six months after October 31, 1978, regarding (1) actions taken by State and local governments to adopt guidelines or their equivalents, and (2) recommendations for further action.

(Pub. L. 91–609, title V, § 511, as added Pub. L. 95–557, title IX, § 903, Oct. 31, 1978, 92 Stat. 2125.)

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

§ 1701z–10a. Biennial survey of economic and housing market conditions

The Secretary shall, not less than biennially, survey national, regional, and local economic and housing market conditions in a manner that provides data comparable to the data collected in such survey conducted in 1981.

(Pub. L. 91–609, title V, § 512, as added Pub. L. 98–181, title IV, § 466(b), Nov. 30, 1983, 97 Stat. 1236.)

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

§ 1701z–11. Management and disposition of multifamily housing projects

(a) Goals

The Secretary of Housing and Urban Development shall manage or dispose of multifamily housing projects that are owned by the Secretary or that are subject to a mortgage held by the Secretary in a manner that—

(1) is consistent with the National Housing Act [12 U.S.C. 1701 et seq.] and this section;

(2) will protect the financial interests of the Federal Government; and

(3) will, in the least costly fashion among reasonable available alternatives, address the goals of—

(A) preserving certain housing so that it can remain available to and affordable by low-income persons;

(B) preserving and revitalizing residential neighborhoods;

(C) maintaining existing housing stock in a decent, safe, and sanitary condition;

(D) minimizing the involuntary displacement of tenants;

(E) maintaining housing for the purpose of providing rental housing, cooperative housing, and homeownership opportunities for low-income persons;

(F) minimizing the need to demolish multifamily housing projects;

(G) supporting fair housing strategies; and

(H) disposing of such projects in a manner consistent with local housing market conditions.

In determining the manner in which a project is to be managed or disposed of, the Secretary may balance competing goals relating to individual projects in a manner that will further the purposes of this section.

(b) Definitions

For purposes of this section:

(1) Multifamily housing project

The term ''multifamily housing project'' means any multifamily rental housing project which is, or prior to acquisition by the Secretary was, assisted or insured under the National Housing Act [12 U.S.C. 1701 et seq.], or was subject to a loan under section 1701q of this title.

(2) Subsidized project

The term ''subsidized project'' means a multifamily housing project that, immediately prior to the assignment of the mortgage on such project to, or the acquisition of such mortgage by, the Secretary, was receiving any of the following types of assistance:

(A) Below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act [12 U.S.C. 1715*l*(d)(5)].

(B) Interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act [12 U.S.C. 1715z–1].

(C) Direct loans made under section 1701q of this title.

(D) Assistance in the form of—

(i) rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s],

(ii) additional assistance payments under section 236(f)(2) of the National Housing Act [12 U.S.C. 1715z–1(f)(2)],

(iii) housing assistance payments made under section 23 of the United States Housing Act of 1937 [42 U.S.C. 1421b] (as in effect before January 1, 1975), or

(iv) housing assistance payments made under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] (excluding payments made for tenant-based assistance under section 8),

if (except for purposes of section 183(c) of the Housing and Community Development Act of 1987) such assistance payments are made to more than 50 percent of the units in the project.

(3) Formerly subsidized project

The term ''formerly subsidized project'' means a multifamily housing project owned by the Secretary that was a subsidized project immediately prior to its acquisition by the Secretary.

(4) Unsubsidized project

The term ''unsubsidized project'' means a multifamily housing project owned by the Secretary that is not a subsidized project or a formerly subsidized project.

(5) Affordable

A unit shall be considered affordable if—

(A) for units occupied—

(i) by very low-income families, the rent does not exceed 30 percent of 50 percent of the area median income, as determined by the Secretary, with adjustments for smaller and larger families; and

(ii) by low-income families other than very low-income families, the rent does not exceed 30 percent of 80 percent of the area median income, as determined by the Secretary, with adjustments for smaller and larger families; or

(B) the unit, or the family residing in the unit, is receiving assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f].

(6) Low-income families and very low-income families

The terms ''low-income families'' and ''very low-income families'' shall have the meanings given the terms in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)].

(7) Preexisting tenant

The term ''preexisting tenant'' means, with respect to a multifamily housing project acquired pursuant to this section by a purchaser other than the Secretary at foreclosure or after sale by the Secretary, a family that resides in a unit in the project immediately before the acquisition of the project by the purchaser.

(8) Market area

The term ''market area'' means a market area determined by the Secretary.

(9) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development.

(c) Disposition of property

(1) Disposition to purchasers

In carrying out this section, the Secretary may dispose of a multifamily housing project owned by the Secretary on a negotiated, competitive bid, or other basis, on such terms as the Secretary deems appropriate considering the low-income character of the project and consistent with the goals in subsection (a) of this section, only to a purchaser determined by the Secretary to be capable of—

(A) satisfying the conditions of the disposition plan developed under paragraph (2) for the project;

(B) implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Secretary;

(C) responding to the needs of the tenants and working cooperatively with tenant organizations;

(D) providing adequate organizational, staff, and financial resources to the project; and

(E) meeting such other requirements as the Secretary may determine.

(2) Disposition plan

(A) In general

Prior to the sale of a multifamily housing project that is owned by the Secretary, the Secretary shall develop an initial disposition plan for the project that specifies the minimum terms and conditions of the Secretary for disposition of the project, the initial sales price that is acceptable to the Secretary, and the assistance that the Secretary plans to make available to a prospective purchaser in accordance with this section.

(B) Market-wide plans

In developing the initial disposition plan under this subsection for a multifamily housing project located in a market area in which at least 1 other multifamily housing project owned by the Secretary is located, the Secretary may coordinate the disposition of all such multifamily housing projects located within the same market area to the extent and in such manner as the Secretary determines appropriate to carry out the goals under subsection (a) of this section.

(C) Sales price

The initial sales price shall be reasonably related to the intended use of the project after sale, any rehabilitation requirements for the project, the rents for units in the project that can be supported by the market, the amount of rental assistance available for the project under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], the occupancy profile of the project (including family size and income levels for tenant families), and any other factors that the Secretary considers appropriate.

(D) Community and tenant input

In carrying out this section, the Secretary shall develop procedures—

(i) to obtain appropriate and timely input into disposition plans from officials of the unit of general local government affected, the community in which the project is situated, and the tenants of the project; and

(ii) to facilitate, where feasible and appropriate, the sale of multifamily housing projects to existing tenant organizations with demonstrated capacity, to public or nonprofit entities that represent or are affiliated with existing tenant organizations, or to other public or nonprofit entities.

(E) Technical assistance

To carry out the procedures developed under subparagraph (D), the Secretary may provide technical assistance, directly or indirectly, and may use amounts available for technical assistance under the Emergency Low Income Housing Preservation Act of 1987, subtitle C of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4141 et seq.], subtitle B of title IV of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12871 et seq.], or this section, for the provision of technical assistance under this paragraph. Recipients of technical assistance funding under the provisions referred to in this subparagraph shall be permitted to provide technical assistance to the extent of such funding under any of such provisions or under this subparagraph, notwithstanding the source of the funding.

(3) Foreclosure sale

In carrying out this section, the Secretary shall—

(A) prior to foreclosing on any mortgage held by the Secretary on any multifamily housing project, notify both the unit of general local government in which the property is located and the tenants of the property of the proposed foreclosure sale; and

(B) dispose of a multifamily housing project through a foreclosure sale only to a purchaser that the Secretary determines is capable of implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Secretary.

(d) Management and maintenance of properties

(1) Contracting for management services

In carrying out this section, the Secretary may—

(A) contract for management services for a multifamily housing project that is owned by the Secretary (or for which the Secretary is mortgagee in possession) with for-profit and nonprofit entities and public agencies (including public housing authorities) on a negotiated, competitive bid, or other basis at a price determined by the Secretary to be reasonable, with a manager the Secretary has determined is capable of—

(i) implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and maintenance expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the project and any such standards established by the Secretary;

(ii) responding to the needs of the tenants and working cooperatively with tenant organizations;

(iii) providing adequate organizational, staff, and financial resources to the project; and

(iv) meeting such other requirements as the Secretary may determine; and

(B) require the owner of a multifamily housing project that is subject to a mortgage held by the Secretary to contract for management services for the project in the manner described in subparagraph (A).

(2) Maintenance of projects owned by Secretary

In the case of multifamily housing projects that are owned by the Secretary (or for which the Secretary is mortgagee in possession), the Secretary shall—

(A) to the greatest extent possible, maintain all such occupied projects in a decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Secretary;

(B) to the greatest extent possible, maintain full occupancy in all such projects; and

(C) maintain all such projects for purposes of providing rental or cooperative housing.

(3) Projects subject to a mortgage held by Secretary

In the case of any multifamily housing project that is subject to a mortgage held by the Secretary, the Secretary shall require the owner of the project to carry out the requirements of paragraph (2).

(e) Required assistance

In disposing of multifamily housing property under this section, consistent with the goal of subsection (a)(3)(A) of this section, the Secretary shall take, separately or in combination with other actions under this subsection or subsection (f) of this section, one or more of the following actions:

(1) Contract with owner for project-based assistance

In the case of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure or after sale by the Secretary, the Secretary may enter into contracts under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] (to the extent budget authority is available) with owners of the projects, subject to the following requirements:

(A) Subsidized or formerly subsidized projects receiving mortgage-related assistance

In the case of a subsidized or formerly subsidized project referred to in subparagraphs (A) through (C) of subsection (b)(2) of this section—

(i) the contract shall be sufficient to assist at least all units covered by an assistance contract under any of the authorities referred to in subsection (b)(2)(D) of this section before acquisition or foreclosure, unless the Secretary acts pursuant to the provisions of subparagraph (C);

(ii) the contract shall provide that, when a vacancy occurs in any unit in the project requiring project-based rental assistance pursuant to this subparagraph that is occupied by a family who is not eligible for assistance under such section 8 [42 U.S.C. 1437f], the owner shall lease the available unit to a family eligible for assistance under such section 8; and

(iii) the Secretary shall take actions to ensure that any unit in any such project that does not otherwise receive project-based assistance under this subparagraph remains available and affordable for the remaining useful life of the project, as defined by the Secretary; to carry out this clause, the Secretary may require purchasers to establish use or rent restrictions maintaining the affordability of such units.

(B) Subsidized or formerly subsidized projects receiving rental assistance

In the case of a subsidized or formerly subsidized project referred to in subsection (b)(2)(D) of this section that is not subject to subparagraph (A)—

(i) the contract shall be sufficient to assist at least all units in the project that are covered, or were covered immediately before foreclosure on or acquisition of the project by the Secretary, by an assistance contract under any of the provisions referred to in such subsection, unless the Secretary acts pursuant to provisions of subparagraph (C); and

(ii) the contract shall provide that, when a vacancy occurs in any unit in the project requiring project-based rental assistance pursuant to this subparagraph that is occupied by a family who is not eligible for assistance under such section 8 [42 U.S.C. 1437f], the owner shall lease the available unit to a family eligible for assistance under such section 8.

(C) Exceptions

(i) Authority

In lieu of providing project-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] in accordance with subparagraph (A)(i) or (B)(i) for a project, the Secretary may, for certain units in unsubsidized projects located within the same market area as the project otherwise required to be assisted with such project-based assistance—

(I) require use and rent restrictions providing that such units shall be available to and affordable by very low-income families for the remaining useful life of the project (as defined by the Secretary), or

(II) provide project-based assistance under section 8 for such units to be occupied by only very low-income persons,

but only if the requirements under clause (ii) are met.

(ii) Requirements

The requirements under this clause are that—

(I) upon the disposition of the project otherwise required to be assisted with project-based assistance under subparagraph (A)(i) or (B)(i), the Secretary shall make available tenant-based assistance under section 8 [42 U.S.C. 1437f] to low-income families residing in units otherwise required to be assisted with such project-based assistance; and

(II) the number of units subject to use restrictions or provided assistance under clause (i) shall be at least equivalent to the number of units otherwise required to be assisted with project-based assistance under section 8 in accordance with subparagraph (A)(i) or (B)(i).

(D) Unsubsidized projects

Notwithstanding actions taken pursuant to subparagraph (C), in the case of unsubsidized projects, the contract shall be sufficient to provide—

(i) project-based rental assistance for all units that are covered, or were covered immediately before foreclosure or acquisition, by an assistance contract under—

(I) the new construction and substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(2)] (as in effect before October 1, 1983);

(II) the property disposition program under section 8(b) of such Act;

(III) the project-based certificate program under section 8 of such Act;

(IV) the moderate rehabilitation program under section 8(e)(2) of such Act;

(V) section 23 of such Act [42 U.S.C. 1421b] (as in effect before January 1, 1975);

(VI) the rent supplement program under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s]; or

(VII) section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965; and

(ii) tenant-based assistance under section 8 of the United States Housing Act of 1937 for families that are preexisting tenants of the project in units that, immediately before foreclosure or acquisition of the project by the Secretary, were covered by an assistance contract under the loan

management set-aside program under section 8(b) of the United States Housing Act of 1937.

(2) Annual contribution contracts for tenant-based assistance

In the case of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure or after sale by the Secretary, the Secretary may enter into annual contribution contracts with public housing agencies to provide tenant-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] on behalf of all low-income families who are otherwise eligible for assistance in accordance with subparagraph (A), (B), or (D) of paragraph (1) on the date that the project is acquired by the purchaser, subject to the following requirements:

(A) Requirement of sufficient affordable housing in area

The Secretary may not take action under this paragraph unless the Secretary determines that there is available in the area an adequate supply of habitable, affordable housing for very low-income families and other low-income families using tenant-based assistance.

(B) Limitation for subsidized and formerly subsidized projects

The Secretary may not take actions under this paragraph in connection with units in subsidized or formerly subsidized projects for more than 10 percent of the aggregate number of units in such projects disposed of by the Secretary in any fiscal year.

(3) Other assistance

(A) In general

In accordance with the authority provided under the National Housing Act [12 U.S.C. 1701 et seq.], the Secretary may provide other assistance pursuant to subsection (f) of this section to the owners of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure, or after sale by the Secretary, on terms that ensure that—

(i) at least the units in the project otherwise required to receive project-based assistance pursuant to subparagraphs (A), (B), or (D) of paragraph (1) are available to and affordable by low-income persons; and

(ii) for the remaining useful life of the project, as defined by the Secretary, there shall be in force such use or rent restrictions as the Secretary may prescribe.

(B) Very low-income tenants

If, as a result of actions taken pursuant to this paragraph, the rents charged to any very low-income families residing in the project who are otherwise required (pursuant to subparagraph (A), (B), or (D) of paragraph (1)) to receive project-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] exceed the amount payable as rent under section 3(a) of the United States Housing Act of 1937 [42 U.S.C. 1437a(a)], the Secretary shall provide tenant-based assistance under section 8 of such Act to such families.

(f) Discretionary assistance

In addition to the actions required under subsection (e) of this section for a subsidized, formerly subsidized, or unsubsidized multifamily housing project, the Secretary may, pursuant to the disposition plan and the goals in subsection (a) of this section, take one or more of the following actions:

(1) Discounted sales price

In accordance with the authority provided under the National Housing Act [12 U.S.C. 1701 et seq.], the Secretary may reduce the selling price of the project. Such reduced sales price shall be reasonably related to the intended use of the property after sale, any rehabilitation requirements for the project, the rents for units in the project that can be supported by the market, the amount of rental assistance available for the project under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], the occupancy profile of the project (including family size and income levels for tenant families), and any other factors that the Secretary considers appropriate.

(2) Use and rent restrictions

The Secretary may require certain units in a project to be subject to use or rent restrictions providing that such units will be available to and affordable by low- and very low-income persons for the remaining useful life of the property, as defined by the Secretary.

(3) Short-term loans

The Secretary may provide short-term loans to facilitate the sale of a multifamily housing project if—

(A) authority for such loans is provided in advance in an appropriation Act;

(B) such loan has a term of not more than 5 years;

(C) the Secretary determines, based upon documentation provided to the Secretary, that the borrower has obtained a commitment of permanent financing to replace the short-term loan from a lender who meets standards established by the Secretary; and

(D) the terms of such loan are consistent with prevailing practices in the marketplace or the provision of such loan results in no cost to the Government, as defined in section 661a of title 2.

(4) Up-front grants

If the Secretary determines that action under this paragraph is more cost-effective than establishing rents pursuant to subsection (h)(2) of this section, the Secretary may utilize the budget authority provided for contracts issued under this section for project-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] to (in addition to providing project-based section 8 rental assistance) provide up-front grants for the necessary cost of rehabilitation and other related development costs. This paragraph shall be effective during fiscal years 2006 through 2010 only to the extent that such

budget authority is made available for use under this paragraph in advance in appropriation Acts.

(5) Tenant-based assistance

The Secretary may make available tenant-based assistance under section 8 of the United States Housing Act of 1937 to families residing in a multifamily housing project that do not otherwise qualify for project-based assistance.

(6) Alternative uses

(A) In general

Notwithstanding any other provision of law, after providing notice to and an opportunity for comment by preexisting tenants, the Secretary may allow not more than—

(i) 10 percent of the total number of units in multifamily housing projects that are disposed of by the Secretary during any fiscal year to be made available for uses other than rental or cooperative uses, including low-income homeownership opportunities, or in any particular project, community space, office space for tenant or housing-related service providers or security programs, or small business uses, if such uses benefit the tenants of the project; and

(ii) 5 percent of the total number of units in multifamily housing projects that are disposed of by the Secretary during any fiscal year to be used in any manner, if the Secretary and the unit of general local government or area-wide governing body determine that such use will further fair housing, community development, or neighborhood revitalization goals.

(B) Displacement protection

The Secretary may take actions under subparagraph (A) only if—

(i) tenant-based rental assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] is made available to each eligible family residing in the project that is displaced as a result of such actions; and

(ii) the Secretary determines that sufficient habitable, affordable rental housing is available in the market area in which the project is located to ensure use of such assistance.

(7) Transfer for use under other programs of Secretary

(A) In general

Notwithstanding the provisions of subsection (e) of this section, the Secretary may, pursuant to an agreement under subparagraph (B), transfer a multifamily housing project—

(i) to a public housing agency for use of the project as public housing; or

(ii) to an entity eligible to own or operate housing assisted under section 1701q of this title or under section 811 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 8013] for use as supportive housing under either of such sections.

(B) Requirements for agreement

An agreement providing for the transfer of a project described in subparagraph (A) shall—

(i) contain such terms, conditions, and limitations as the Secretary determines appropriate, including requirements to ensure use of the project as public housing, supportive housing under section 1701q of this title, or supportive housing under section 811 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 8013], as applicable; and

(ii) ensure that no tenant of the project will be displaced as a result of actions taken under this paragraph.

(8) Rebuilding

Notwithstanding any provision of section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], the Secretary may provide project-based assistance in accordance with subsection (e) of this section to support the rebuilding of a multifamily housing project rebuilt or to be rebuilt (in whole or in part and on-site, off-site, or in a combination of both) in connection with disposition under this section, if the Secretary determines that—

(A) the project is not being maintained in a decent, safe, and sanitary condition;

(B) rebuilding the project would be less expensive than substantial rehabilitation;

(C) the unit of general local government in which the project is located approves the rebuilding and makes a financial contribution or other commitment to the project; and

(D) the rebuilding is a part of a local neighborhood revitalization plan approved by the unit of general local government.

The provisions of subsection (j)(2) of this section shall apply to any tenants of the project who are displaced.

(9) Emergency assistance funds

The Secretary may make arrangements with State agencies and units of general local government of States receiving emergency assistance under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] for the provision of assistance under such Act [42 U.S.C. 301 et seq.] on behalf of eligible families who would reside in any multifamily housing projects.

(g) Protection for unassisted very low-income tenants

For each multifamily housing project disposed of under this section, the Secretary shall require that, for any very low-income family who is a preexisting tenant of the project who (upon disposition) would be required to pay rent in an amount in excess of 30 percent of the adjusted income (as such term is defined in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)]) of the family—

(1) for a period of 2 years beginning upon the date of the acquisition of the project by the purchaser under such disposition, the rent for the unit occupied by the family may not be increased above the rent charged immediately before acquisition;

(2) such family shall be considered displaced for purposes of any system of preferences established pursuant to section 6(c)(4)(A),[1] 8(d)(1)(A), or 8(*o*)(6)(A) of the United States Housing Act of 1937 [42 U.S.C. 1437d(c)(4)(A), 1437f(d)(1)(A), and 1437f(*o*)(6)(A)]; and

(3) notice shall be provided to such family, not later than the date of the acquisition of the project by the purchaser—

(A) of the requirements under paragraphs (1) and (2); and

(B) that, after the expiration of the period under paragraph (1), the rent for the unit occupied by the family may be increased.

(h) Contract requirements

Contracts for project-based rental assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] provided pursuant to this section shall be subject to the following requirements:

(1) Contract term

The contract shall have a term of 15 years, except that the term may be less than 15 years—

(A) to the extent that the Secretary finds that, based on the rental charges and financing for the multifamily housing project to which the contract relates, the financial viability of the project can be maintained under a contract having such a term; except that the Secretary shall require that the amount of rent payable by tenants of the project for units assisted under such contract shall not exceed the amount payable for rent under section 3(a) of the United States Housing Act of 1937 [42 U.S.C. 1437a(a)] for a period of at least 15 years; or

(B) if such assistance is provided—

(i) under a contract authorized under section 6 of the HUD Demonstration Act of 1993; and

(ii) pursuant to a disposition plan under this section for a project that is determined by the Secretary to be otherwise in compliance with this section.

(2) Contract rent

The Secretary shall establish the contract rents under such contracts at levels that, together with other resources available to the purchasers, provide sufficient amounts for the necessary costs of rehabilitating and operating the multifamily housing project and do not exceed the percentage of the existing housing fair market rentals for the market area in which the project assisted under the contract is located as determined by the Secretary under section 8(c) of the United States Housing Act of 1937 [42 U.S.C. 1437f(c)].

(i) Right of first refusal for local and State government agencies

(1) Notification

Not later than 30 days after the Secretary acquires title to a multifamily housing project, the Secretary shall notify the appropriate unit of general local government (including public housing agencies) and State agency or agencies designated by the chief executive officer of the State in which the project is located of such acquisition of title and that, for a period beginning upon such notification that does not exceed 90 days, such unit of general local government and agency or agencies shall have the exclusive right under this subsection to make bona fide offers to purchase the project.

(2) Right of first refusal

During the 90-day period, the Secretary may not sell or offer to sell the multifamily housing project other than to a party notified under paragraph (1), unless the unit of general local government and the designated State agency or agencies notify the Secretary that they will not make an offer to purchase the project. The Secretary shall accept a bona fide offer to purchase the project made during such period if it complies with the terms and conditions of the disposition plan for the project or is otherwise acceptable to the Secretary.

(3) Procedure

The Secretary shall establish any procedures necessary to carry out this subsection.

(j) Displacement of tenants and relocation assistance

(1) In general

Whenever tenants will be displaced as a result of the demolition of, repairs to, or conversion in the use of, a multifamily housing project that is owned by the Secretary (or for which the Secretary is mortgagee in possession), the Secretary shall identify tenants who will be displaced, and shall notify all such tenants of their pending displacement and of any relocation assistance that may be available. In the case of a multifamily housing project that is subject to a mortgage held by the Secretary, the Secretary shall require the owner of the project to carry out the requirements of this paragraph, if the Secretary has authorized the demolition of, repairs to, or conversion in the use of such multifamily housing project.

(2) Rights of displaced tenants

The Secretary shall ensure for any such tenant (who continues to meet applicable qualification standards) the right—

(A) to return, whenever possible, to a repaired or rebuilt unit;

(B) to occupy a unit in another multifamily housing project owned by the Secretary;

(C) to obtain housing assistance under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.]; or

(D) to receive any other available similar relocation assistance as the Secretary determines to be appropriate.

(k) Mortgage and project sales

(1) In general

The Secretary may not approve the sale of any loan or mortgage held by the Secretary (including any loan or mortgage owned by the Government National Mortgage Association) on any subsidized project or formerly subsidized project, unless such sale is made as part of a transaction that will ensure that

[1] See References in Text note below.

such project will continue to operate at least until the maturity date of such loan or mortgage, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the loan or mortgage was made or insured prior to the assignment of the loan or mortgage on such project to the Secretary.

(2) Sale of certain projects

The Secretary may not approve the sale of any subsidized project—

(A) that is subject to a mortgage held by the Secretary, or

(B) if the sale transaction involves the provision of any additional subsidy funds by the Secretary or a recasting of the mortgage,

unless such sale is made as part of a transaction that will ensure that the project will continue to operate, at least until the maturity date of the loan or mortgage, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the loan or mortgage was made or insured prior to the proposed sale of the project.

(3) Mortgage sales to State and local governments

Notwithstanding any provision of law that requires competitive sales or bidding, the Secretary may carry out negotiated sales of mortgages held by the Secretary, without the competitive selection of purchasers or intermediaries, to units of general local government or State agencies, or groups of investors that include at least one such unit of general local government or State agency, if the negotiations are conducted with such agencies, except that—

(A) the terms of any such sale shall include the agreement of the purchasing agency or unit of local government or State agency to act as mortgagee or owner of a beneficial interest in such mortgages, in a manner consistent with maintaining the projects that are subject to such mortgages for occupancy by the general tenant group intended to be served by the applicable mortgage insurance program, including, to the extent the Secretary determines appropriate, authorizing such unit of local government or State agency to enforce the provisions of any regulatory agreement or other program requirements applicable to the related projects; and

(B) the sales prices for such mortgages shall be, in the determination of the Secretary, the best prices that may be obtained for such mortgages from a unit of general local government or State agency, consistent with the expectation and intention that the projects financed will be retained for use under the applicable mortgage insurance program for the life of the initial mortgage insurance contract.

(4) Sale of mortgages covering unsubsidized projects

Notwithstanding any other provision of law, the Secretary may sell mortgages held on projects that are not subsidized or formerly subsidized projects on such terms and conditions as the Secretary may prescribe.

(5) Mortgage sale demonstration

The Secretary may carry out a demonstration to test the feasibility of restructuring and disposing of troubled multifamily mortgages held by the Secretary through the establishment of partnerships with public, private, and nonprofit entities.

(6) Project sale demonstration

The Secretary may carry out a demonstration to test the feasibility of disposing of troubled multifamily housing projects that are owned by the Secretary through the establishment of partnerships with public, private, and nonprofit entities.

***(l)* Report to Congress**

Not later than June 1 of each year, the Secretary shall submit to the Congress a report describing the status of multifamily housing projects owned by or subject to mortgages held by the Secretary, on an aggregate basis, which highlights the differences, if any, between the subsidized and the unsubsidized inventory. The report shall include—

(1) the average and median size of the projects;

(2) the geographic locations of the projects, by State and region;

(3) the years during which projects were assigned to the Department, and the average and median length of time that projects remain in the HUD-held inventory;

(4) the status of HUD-held mortgages;

(5) the physical condition of the HUD-held and HUD-owned inventory;

(6) the occupancy profile of the projects, including the income, family size, race, and ethnic origin of current tenants, and the rents paid by such tenants;

(7) the proportion of units that are vacant;

(8) the number of projects for which the Secretary is mortgagee in possession;

(9) the number of projects sold in foreclosure sales;

(10) the number of HUD-owned projects sold;

(11) a description of actions undertaken pursuant to this section, including a description of the effectiveness of such actions and any impediments to the disposition or management of multifamily housing projects;

(12) a description of the extent to which the provisions of this section and actions taken under this section have displaced tenants of multifamily housing projects;

(13) a description of any of the functions performed in connection with this section that are contracted out to public or private entities or to States; and

(14) a description of the activities carried out under subsection (i) of this section during the preceding year.

(Pub. L. 95–557, title II, § 203, Oct. 31, 1978, 92 Stat. 2088; Pub. L. 96–153, title II, § 208, Dec. 21, 1979, 93 Stat. 1109; Pub. L. 96–399, title II, § 213, Oct. 8, 1980, 94 Stat. 1636; Pub. L. 100–242, title I, § 181, Feb. 5, 1988, 101 Stat. 1868; Pub. L. 100–628, title X, § 1010, Nov. 7, 1988, 102 Stat. 3266; Pub. L.

101–235, title II, § 204(a), Dec. 15, 1989, 103 Stat. 2039; Pub. L. 101–625, title V, § 579, Nov. 28, 1990, 104 Stat. 4245; Pub. L. 103–120, § 6(c)(2), Oct. 27, 1993, 107 Stat. 1149; Pub. L. 103–233, title I, § 101(b), Apr. 11, 1994, 108 Stat. 343; Pub. L. 105–276, title V, § 514(b)(2)(C), Oct. 21, 1998, 112 Stat. 2548; Pub. L. 109–171, title II, § 2003(b), Feb. 8, 2006, 120 Stat. 9.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsecs. (a)(1), (b)(1), (e)(3)(A), and (f)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 183(c) of the Housing and Community Development Act of 1987, referred to in subsec. (b)(2)(D), is section 183(c) of Pub. L. 100–242, which was set out as a note under section 1437f of Title 42, The Public Health and Welfare, prior to repeal by Pub. L. 105–276, title V, § 582(a)(2), Oct. 21, 1998, 112 Stat. 2643.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsecs. (b)(2)(D)(i) and (e)(1)(D)(i)(VI), (VII), is section 101 of Pub. L. 89–117, title I, Aug. 10, 1965, 79 Stat. 451, as amended, which enacted section 1701s of this title and amended sections 1451 and 1465 of Title 42.

Section 23 of the United States Housing Act of 1937, referred to in subsecs. (b)(2)(D)(iii) and (e)(1)(D)(i)(V), was classified to section 1421b of Title 42 and was omitted from the Code following the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (c)(2)(E), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101–625, is known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, and is classified principally to subchapter I (§ 4101 et seq.) of chapter 42 of this title. Subtitle C of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, probably means subtitle C of title II of Pub. L. 100–242, as added by Pub. L. 102–550, which is classified generally to subchapter II (§ 4141 et seq.) of chapter 42 of this title. Another subtitle C of title II of Pub. L. 100–242 amended sections 1472, 1485, and 1487 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (c)(2)(E), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Subtitle B of title IV of the Act is classified principally to part A (§ 12871 et seq.) of subchapter IV of chapter 130 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

The Social Security Act, referred to in subsec. (f)(9), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 6(c)(4)(A) of the United States Housing Act of 1937, referred to in subsec. (g)(2), was redesignated section 6(c)(5)(A) of the Act by Pub. L. 109–162, title VI, § 607(1), Jan. 5, 2006, 119 Stat. 3048.

Section 6 of the HUD Demonstration Act of 1993, referred to in subsec. (h)(1)(B)(i), is section 6 of Pub. L. 103–120, which is set out as a note under section 1437f of Title 42.

The United States Housing Act of 1937, as amended, referred to in subsec. (j)(2)(C), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Amendments of 1978, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

2006—Subsec. (f)(4). Pub. L. 109–171 inserted at end ''This paragraph shall be effective during fiscal years 2006 through 2010 only to the extent that such budget authority is made available for use under this paragraph in advance in appropriation Acts.''

1998—Subsec. (g)(2). Pub. L. 105–276 substituted ''any system of preferences established pursuant to section 6(c)(4)(A), 8(d)(1)(A), or 8(*o*)(6)(A)'' for ''the preferences for assistance under sections 6(c)(4)(A)(i), 8(d)(1)(A)(i), and 8(*o*)(3)(B)''.

1994—Pub. L. 103–233 amended section generally, substituting present provisions for former provisions which related, in subsec. (a) to goals, in subsec. (b) to management or disposal of property by negotiated competitive bids, in subsec. (c) to maintenance of housing projects, in subsec. (d) to financial assistance to owner, in subsec. (e) to right of first refusal, in subsec. (f) to displacement of tenants and relocation assistance, in subsec. (g) to assignment or partial payment of mortgages, in subsec. (h) to limitations on certain project, loan, and mortgage sales, in subsec. (i) to definition of multifamily housing project, in subsec. (j) to rules and regulations, in subsec. (k) to annual report describing status of projects, and in subsec. (*l*) to project-based assistance.

1993—Subsec. (*l*). Pub. L. 103–120 added subsec. (*l*).

1990—Subsec. (a)(1)(B). Pub. L. 101–625, § 579(a), struck out ''or vacant'' after ''moderate-income persons''.

Subsec. (d)(1). Pub. L. 101–625, § 579(b)(1), struck out ''or are vacant (which units shall be made available for such families as soon as possible)'' before semicolon at end of cl. (B).

Subsec. (d)(2), (3). Pub. L. 101–625, § 579(b)(2), (3), added par. (2) and redesignated former par. (2) as (3).

1989—Subsec. (k). Pub. L. 101–235 amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: ''The Secretary shall annually submit to the Congress a report describing the activities carried out under subsection (e) of this section during the preceding year.''

1988—Subsec. (a). Pub. L. 100–628, § 1010(a), substituted ''occupied by low- and moderate-income persons on the date of assignment or foreclosure (whichever is greater)'' for '', on the date of assignment, occupied by low- and moderate-income persons'' in par. (1)(C).

Pub. L. 100–242, § 181(a), substituted introductory provisions and par. (1) for former introductory provisions and par. (1) which read as follows: ''It is the policy of the United States that the Secretary of Housing and Urban Development (hereinafter referred to as the 'Secretary') shall manage and dispose of multifamily housing projects which are owned by the Secretary in a manner consistent with the National Housing Act and this section. The purpose of the property management and disposition program of the Department of Housing and Urban Development shall be to manage and dispose of projects in a manner which will protect the financial interests of the Federal Government and be less costly to the Federal Government than other reasonable alternatives by which the Secretary can further the goals of—

''(1) preserving the housing units so that at least those units which are occupied by low- and moderate-income persons or which are vacant, at the time of acquisition, are available to and affordable by such persons;''.

Subsec. (b)(2). Pub. L. 100–242, § 181(b), designated existing provisions as subpar. (A) and redesignated former cls. (A) to (D) as cls. (i) to (iv), substituted ''subject to subsection (a) of this section that is owned by the Secretary (or for which the Secretary is mortgagee in possession)'' for '', owned by the Secretary'', substituted

''may determine; and'' for ''may determine.'', and added subpar. (B).

Subsec. (c). Pub. L. 100–242, §181(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Except where the Secretary has determined on a case-by-case basis that it would be clearly inappropriate, given the manner by which an individual project is to be managed or disposed of pursuant to subsection (a) of this section, the Secretary shall seek to—

''(1) maintain all occupied multifamily housing projects owned by the Secretary in a decent, safe, and sanitary condition;

''(2) to the greatest extent possible, maintain full occupancy in all multifamily housing projects owned by the Secretary; and

''(3) maintain the project for purposes of providing rental or cooperative housing for the longest feasible period.''

Subsec. (d). Pub. L. 100–628, §1010(b), amended third sentence of par. (1) generally. Prior to amendment, third sentence read as follows: ''Such contracts shall be sufficient to assist all units in subsidized or formerly subsidized projects, and all units in other projects that are occupied by lower income families eligible for assistance under such section 8 at the time of foreclosure or sale, as the case may be, and all units that are vacant at such time (which units shall be made available for such families as soon as possible).''

Pub. L. 100–242, §181(d), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 100–628, §1010(c), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Upon receipt of a bona fide offer to purchase a project subject to subsection (a) of this section, the Secretary shall notify the local government and the State housing finance agency (or other agency or agencies designated by the Governor) of the proposed terms and conditions of the offer, including the assistance that the Secretary plans to make available to the prospective purchaser. The local government and the designated State agency shall have 90 days to match the offer and purchase the project. In administering the right of first refusal provided in this subsection, the Secretary shall offer assistance to the local government or designated State agency on terms and conditions at least as favorable as made available to the prospective purchaser. Notwithstanding any other provision of law to the contrary, a local government (including a public housing agency) or designated State agency may purchase a subsidized project or formerly subsidized project in accordance with this subsection.''

Pub. L. 100–242, §181(d)(1), (e), added subsec. (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 100–242, §181(d)(1), (e)(1), (g)(1), redesignated former subsec. (d) as (f). Former subsec. (f) redesignated (i).

Subsec. (f)(1). Pub. L. 100–242, §181(f), substituted ''subject to subsection (a) of this section that is owned by the Secretary (or for which the Secretary is mortgagee in possession)'' for ''owned by the Secretary'', and inserted at end ''In the case of a multifamily housing project subject to subsection (a) of this section that is not owned by the Secretary (and for which the Secretary is not mortgagee in possession), the Secretary shall require the owner of the project to carry out the requirements of this paragraph.''

Subsec. (g). Pub. L. 100–242, §181(d)(1), (e)(1), redesignated former subsec. (e) as (g). Former subsec. (g) redesignated (j).

Subsec. (h). Pub. L. 100–242, §181(d)(1), (e)(1), (g), added subsec. (h).

Subsec. (i). Pub. L. 100–628, §1010(d), (e), substituted ''(excluding payments made for certificates under subsection (b)(1) or vouchers under subsection (*o*) of this section), if (except for purposes of paragraphs (1) and (2) of subsection (h) of this section), and section 183(c) of the Housing and Community Development Act of 1987) such housing assistance payments are made to more than 50 percent of the units in the project'' for ''(other than subsection (b)(1) of such section), without regard to whether such payments are made to all or a portion of the units in the project'' in par. (2) (E) and added par. (4).

Pub. L. 100–242, §181(e)(1), (g)(1), (h), redesignated former subsec. (f) as (i), designated existing provisions as par. (1), and added pars. (2) and (3).

Subsec. (j). Pub. L. 100–242, §181(g)(1), redesignated former subsec. (g) as (j).

Subsec. (k). Pub. L. 100–628, §1010(f), added subsec. (k).

1980—Subsec. (a). Pub. L. 96–399, §213(a), in par. (1) inserted provisions respecting occupation of units by low- and moderate-income persons or units vacant at the time of acquisition, and added par. (6).

Subsec. (b)(1). Pub. L. 96–399, §213(b), inserted provisions relating to the number of project units occupied by low- and moderate-income persons.

Subsec. (c)(3). Pub. L. 96–399, §213(c), added par. (3).

Subsec. (d)(2)(B), (C). Pub. L. 96–399, §213(d), inserted exception for tenants of above-moderate income.

Subsec. (f). Pub. L. 96–399, §213(e), substituted provisions respecting applicability to projects assisted or insured under this chapter, or subject to loans under section 1701q of this title or section 1452b of title 42, or projects acquired by the Secretary pursuant to any other provision of law, for provisions respecting applicability to assistance under section 1715z-1 of this title, the proviso of section 1715*l*(d)(5) of this title, or section 101 of the Housing and Urban Development Act of 1965, and projects insured under this chapter.

1979—Subsec. (d)(2). Pub. L. 96–153 substituted ''assure for any such tenant (who continues to meet applicable qualification standards) the right'' for ''seek to assure the maximum opportunity for any such tenant''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title II, §2003(c), Feb. 8, 2006, 120 Stat. 9, provided that: ''The amendments made by this section [amending this section and section 1715z–11a of this title] shall not apply to any transaction that formally commences within one year prior to the enactment of this section [Feb. 8, 2006].''

REGULATIONS

Section 101(f) of Pub. L. 103–233 provided that: ''The Secretary shall issue interim regulations necessary to implement the amendments made by subsections (b) through (d) [amending this section and sections 1437d and 1437f of Title 42, The Public Health and Welfare] not later than 90 days after the date of the enactment of this Act [Apr. 11, 1994]. Such interim regulations shall take effect upon issuance and invite public comment on the interim regulations. The Secretary shall issue final regulations to implement such amendments after opportunity for such public comment, but not later than 12 months after the date of issuance of such interim regulations.''

APPROPRIATED FUNDS REQUIREMENT FOR BELOW-MARKET SALES

Pub. L. 109–171, title II, §§2001, 2002, Feb. 8, 2006, 120 Stat. 7, 8, provided that:

''SEC. 2001. DEFINITIONS.

''For purposes of this subtitle [subtitle A (§§2001–2003) of title II of Pub. L. 109–171, amending this section and section 1715z–11a of this title and enacting provisions set out as notes under this section], the following definitions shall apply:

''(1) The term 'affordability requirements' means any requirements or restrictions imposed by the Secretary, at the time of sale, on a multifamily real property or a multifamily loan, such as use restrictions, rent restrictions, and rehabilitation requirements.

''(2) The term 'discount sale' means the sale of a multifamily real property in a transaction, such as a negotiated sale, in which the sale price is lower than the property market value and is set outside of a competitive bidding process that has no affordability requirements.

''(3) The term 'discount loan sale' means the sale of a multifamily loan in a transaction, such as a negotiated sale, in which the sale price is lower than the loan market value and is set outside of a competitive bidding process that has no affordability requirements.

''(4) The term 'loan market value' means the value of a multifamily loan, without taking into account any affordability requirements.

''(5) The term 'multifamily real property' means any rental or cooperative housing project of 5 or more units owned by the Secretary that prior to acquisition by the Secretary was security for a loan or loans insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

''(6) The term 'multifamily loan' means a loan held by the Secretary and secured by a multifamily rental or cooperative housing project of 5 or more units that was formerly insured under title II of the National Housing Act.

''(7) The term 'property market value' means the value of a multifamily real property for its current use, without taking into account any affordability requirements.

''(8) The term 'Secretary' means the Secretary of Housing and Urban Development.

''SEC. 2002. APPROPRIATED FUNDS REQUIREMENT FOR BELOW-MARKET SALES.

''(a) DISCOUNT SALES.—Notwithstanding any other provision of law, except for affordability requirements for the elderly and disabled required by statute, disposition by the Secretary of a multifamily real property during fiscal years 2006 through 2010 through a discount sale under sections 207(*l*) or 246 of the National Housing Act (12 U.S.C. 1713(*l*), 1715z–11), section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11), or section 204 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (12 U.S.C. 1715z–11a), shall be subject to the availability of appropriations to the extent that the property market value exceeds the sale proceeds. If the multifamily real property is sold, during such fiscal years, for an amount equal to or greater than the property market value then the transaction is not subject to the availability of appropriations.

''(b) DISCOUNT LOAN SALES.—Notwithstanding any other provision of law and in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), a discount loan sale during fiscal years 2006 through 2010 under section 207(k) of the National Housing Act (12 U.S.C. 1713(k)), section 203(k) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(k)), or section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (12 U.S.C. 1715z–11a(a)), shall be subject to the availability of appropriations to the extent that the loan market value exceeds the sale proceeds. If the multifamily loan is sold, during such fiscal years, for an amount equal to or greater than the loan market value then the transaction is not subject to the availability of appropriations.

''(c) APPLICABILITY.—This section shall not apply to any transaction that formally commences within one year prior to the enactment of this section [Feb. 8, 2006].''

MULTIFAMILY HOUSING DISPOSITION

Section 101(a) of Pub. L. 103–233 provided that: ''The Congress finds that—

''(1) the portfolio of multifamily housing project mortgages insured by the FHA is severely troubled and at risk of default, requiring the Secretary to increase loss reserves from $5,500,000,000 in 1991 to $11,900,000,000 in 1992 to cover estimated future losses;

''(2) the inventory of multifamily housing projects owned by the Secretary has more than quadrupled since 1989, and, by the end of 1994, may exceed 69,000 units;

''(3) the cost to the Federal Government of owning and maintaining multifamily housing projects escalated to $288,000,000 in fiscal year 1993;

''(4) the inventory of multifamily housing projects subject to mortgages held by the Secretary has increased dramatically, to more than 2,400 mortgages, and approximately half of these mortgages, with approximately 219,000 units, are delinquent;

''(5) the inventory of insured and formerly insured multifamily housing projects is deteriorating, potentially endangering tenants and neighborhoods; and

''(6) the current statutory framework governing the disposition of multifamily housing projects effectively impedes the Government's ability to dispose of properties, protect tenants, and ensure that projects are maintained over time.''

Section 184 of Pub. L. 100–242, as amended by Pub. L. 101–625, title V, § 580, Nov. 28, 1990, 104 Stat. 4245, provided for establishment of demonstration program for multifamily housing disposition partnerships, together with requirements relating to participation by State housing finance agencies in sale of such housing and cooperation between Secretary of Housing and Urban Development and such agencies, as well as termination of such program at end of Sept. 30, 1991, with certain exceptions, with report to Congress required to be submitted by Secretary not later than 6 months after Sept. 30, 1991, prior to repeal by Pub. L. 103–233, title I, § 102, Apr. 11, 1994, 108 Stat. 358.

§ 1701z–12. Housing access

The Secretary shall require any purchaser of a multifamily housing project owned by the Secretary which is sold on or after October 1, 1978, to agree not to refuse unreasonably to lease a vacant dwelling unit in the project which rents for an amount not greater than the fair market rent for a comparable unit in the area as determined by the Secretary under section 1437f of title 42 to a holder of a certificate of eligibility under that section solely because of such prospective tenant's status as a certificate holder.

(Pub. L. 95–557, title II, § 204, Oct. 31, 1978, 92 Stat. 2090.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Amendments of 1978, and not as part of the National Housing Act which comprises this chapter.

§ 1701z–13. Solar energy for single-family and multifamily housing units

(a) Purpose

It is the purpose of this section to promote and extend the application of viable solar energy systems as a desirable source of energy for residential single-family and multifamily housing units.

(b) Cost-effective and economically feasible solar energy systems; "solar energy system" defined

(1) The Secretary, in carrying out programs and activities under section 1452b[1] of title 42, section 1701q of this title, and section 1437f of title 42, shall permit the installation of solar energy systems which are cost-effective and economically feasible.

(2) For the purpose of this Act, the term ''solar energy system'' means any addition, alteration,

[1] See References in Text note below.

or improvement to an existing or new structure which is designed to utilize wind energy or solar energy either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types to reduce the energy requirements of that structure from other energy sources, and which is in conformity with such criteria and standards as shall be prescribed by the Secretary in consultation with the Secretary of Energy.

(c) Matters considered

In carrying out subsection (b) of this section, the Secretary shall take such steps as may be necessary to encourage the installation of cost-effective and economically feasible solar energy systems in housing assisted under the programs and activities referred to in such subsection taking into account the interests of low-income homeowners and renters, including the implementation of a plan of action to publicize the availability and feasibility of solar energy systems to current or potential recipients of assistance under such programs and activities.

(d) Report to Congress

The Secretary shall, in conjunction with the Secretary of Energy, transmit to the Congress, within eighteen months after October 31, 1978, a report setting forth—

(1) the number of solar units which were contracted for or installed or which are on order under the provisions of subsection (b)(1) of this section during the first twelve full calendar months after October 31, 1978; and

(2) an analysis of any problems and benefits related to encouraging the use of solar energy systems in the programs and activities referred to in subsection (b) of this section.

(Pub. L. 95–557, title II, § 209, Oct. 31, 1978, 92 Stat. 2095; Pub. L. 98–479, title II, § 204(n)(3), Oct. 17, 1984, 98 Stat. 2234.)

REFERENCES IN TEXT

Section 1452b of title 42, referred to in subsec. (b)(1), was repealed by Pub. L. 101–625, title II, § 289(b)(1), Nov. 28, 1990, 104 Stat. 4128.

This Act, referred to in subsec. (b)(2), is Pub. L. 95–557, Oct. 31, 1978, 92 Stat. 2080, known as the Housing and Community Development Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendments note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Amendments of 1978, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1984—Subsec. (d). Pub. L. 98–479 substituted ''conjunction'' for ''conjuction'' in provisions preceding par. (1).

§ 1701z–14. Lower cost technology demonstration program

The Secretary of Housing and Urban Development is authorized to develop and implement a demonstration program utilizing lower cost building technology for projects located on inner-city vacant land.

(Pub. L. 97–35, title III, § 339C, Aug. 13, 1981, 95 Stat. 417.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Amendments of 1981 and also as part of the Omnibus Budget Reconciliation Act of 1981, and not as part of the National Housing Act which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as a note under section 3701 of this title.

§ 1701z–15. Approval of individual residential water purification or treatment units

(a) In general

When the existing water supply does not meet the minimum property standards established by the Department of Housing and Urban Development and a permanent alternative acceptable water supply is not available, a continuous supply of water may be provided through the use of approved residential water treatment equipment or a water purification unit that provides bacterially and chemically safe drinking water.

(b) Approval process

A performance-based approval of the equipment or unit and the maintenance, monitoring, and replacement plan for such equipment or unit shall be certified by field offices of the Department of Housing and Urban Development based upon general standards recognized by the Department as modified for local or regional conditions. As a part of such approved plan, a separate monthly escrow account may be required to be established through the lender to cover the cost of the approved yearly maintenance and monitoring schedule and projected replacement of the equipment or unit.

(Pub. L. 100–242, title IV, § 424, Feb. 5, 1988, 101 Stat. 1915.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1987, and not as part of the National Housing Act which comprises this chapter.

§ 1701z–16. Energy efficient mortgages pilot program

(a) Establishment of pilot program

(1) In general

Not later than 6 months after October 24, 1992, the Secretary of Housing and Urban Development (hereafter referred to as the ''Secretary'') shall establish an energy efficient mortgage pilot program in 5 States, to promote the purchase of existing energy efficient residential buildings and the installation of cost-effective improvements in existing residential buildings.

(2) Pilot program

The pilot program established under this subsection shall include the following criteria, where applicable:

(A) Origination

The lender shall originate a housing loan that is insured under title II of the National

Housing Act [12 U.S.C. 1707 et seq.] in accordance with the applicable requirements.

(B) Approval

The mortgagor's base loan application shall be approved if the mortgagor's income and credit record is found to be satisfactory.

(C) Costs of improvements

The cost of cost-effective energy efficiency improvements shall not exceed the greater of—

(i) 5 percent of the property value (not to exceed 5 percent of the limit established under section 203(b)(2)(A)) of the National Housing Act (12 U.S.C. 1709(b)(2)(A);[1] or

(ii) 2 percent of the limit established under section 203(b)(2)(B) of such Act [12 U.S.C. 1709(b)(2)(B)].

(D) Limitation

In any fiscal year, the aggregate number of mortgages insured pursuant to this section may not exceed 5 percent of the aggregate number of mortgages for 1- to 4-family residences insured by the Secretary of Housing and Urban Development under title II of the National Housing Act (12 U.S.C. 1707 et seq.) during the preceding fiscal year.

(3) Authority for mortgagees

In granting mortgages under the pilot program established pursuant to this subsection, the Secretary shall grant mortgagees the authority—

(A) to permit the final loan amount to exceed the loan limits established under title II of the National Housing Act [12 U.S.C. 1707 et seq.] by an amount not to exceed 100 percent of the cost of the cost-effective energy efficiency improvements, if the mortgagor's request to add the cost of such improvements is received by the mortgagee prior to funding of the base loan;

(B) to hold in escrow all funds provided to the mortgagor to undertake the energy efficiency improvements until the efficiency improvements are actually installed; and

(C) to transfer or sell the energy efficient mortgage to the appropriate secondary market agency, after the mortgage is issued, but before the energy efficiency improvements are actually installed.

(4) Promotion of pilot program

The Secretary shall encourage participation in the energy efficient mortgage pilot program by—

(A) making available information to lending agencies and other appropriate authorities regarding the availability and benefits of energy efficient mortgages;

(B) requiring mortgagees and designated lending authorities to provide written notice of the availability and benefits of the pilot program to mortgagors applying for financing in those States designated by the Secretary as participating under the pilot program; and

(C) requiring each applicant for a mortgage insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.] in those States participating under the pilot program to sign a statement that such applicant has been informed of the program requirements and understands the benefits of energy efficient mortgages.

(5) Training program

Not later than 9 months after October 24, 1992, the Secretary, in consultation with the Secretary of Energy, shall establish and implement a program for training personnel at relevant lending agencies, real estate companies, and other appropriate organizations regarding the benefits of energy efficient mortgages and the operation of the pilot program under this subsection.

(6) Report

Not later than 18 months after October 24, 1992, the Secretary shall prepare and submit a report to the Congress describing the effectiveness and implementation of the energy efficient mortgage pilot program as described under this subsection, and assessing the potential for expanding the pilot program nationwide.

(b) Expansion of program

Not later than the expiration of the 2-year period beginning on the date of the implementation of the energy efficient mortgage pilot program under this section, the Secretary of Housing and Urban Development shall expand the pilot program on a nationwide basis and shall expand the program to include new residential housing, unless the Secretary determines that either such expansion would not be practicable in which case the Secretary shall submit to the Congress, before the expiration of such period, a report explaining why either expansion would not be practicable.

(c) Definitions

For purposes of this section:

(1) The term ''base loan'' means any mortgage loan for a residential building eligible for insurance under title II of the National Housing Act [12 U.S.C. 1707 et seq.] or title 38 that does not include the cost of cost-effective energy improvements.

(2) The term ''cost-effective'' means, with respect to energy efficiency improvements to a residential building, improvements that result in the total present value cost of the improvements (including any maintenance and repair expenses) being less than the total present value of the energy saved over the useful life of the improvement, when 100 percent of the cost of improvements is added to the base loan. For purposes of this paragraph, savings and cost-effectiveness shall be determined pursuant to a home energy rating report sufficient for purposes of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or by other technically accurate methods.

(3) The term ''energy efficient mortgage'' means a mortgage on a residential building that recognizes the energy savings of a home that has cost-effective energy saving construction or improvements (including solar water

[1] So in original. There probably should be an additional closing parenthesis.

heaters, solar-assisted air conditioners and ventilators, super-insulation, and insulating glass and film) and that has the effect of not disqualifying a borrower who, but for the expenditures on energy saving construction or improvements, would otherwise have qualified for a base loan.

(4) The term ''residential building'' means any attached or unattached single family residence.

(d) Rule of construction

This section may not be construed to affect any other programs of the Secretary of Housing and Urban Development for energy-efficient mortgages. The pilot program carried out under this section shall not replace or result in the termination of such other programs.

(e) Regulations

The Secretary shall issue any regulations necessary to carry out this section not later than the expiration of the 180-day period beginning on October 24, 1992. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5 (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).

(f) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 102–486, title I, §106, Oct. 24, 1992, 106 Stat. 2792; Pub. L. 110–289, div. B, title I, §2123, July 30, 2008, 122 Stat. 2839.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsecs. (a)(2)(A), (D), (3)(A), (4)(C), and (c)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246. Title II of the Act is classified generally to subchapter II (§1707 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Housing Act which comprises this chapter.

Section was formerly classified as a note under section 12712 of Title 42, The Public Health and Welfare.

AMENDMENTS

2008—Subsec. (a)(2)(C). Pub. L. 110–289, §2123(1), amended subpar. (C) generally. Prior to amendment, text read as follows: ''The cost of cost-effective energy efficiency improvements shall not exceed the greater of—

''(i) 5 percent of the property value (not to exceed $8,000); or

''(ii) $4,000.''

Subsec. (a)(2)(D). Pub. L. 110–289, §2123(2), added subpar. (D).

SIMILAR PROVISIONS

Similar provisions were contained in Pub. L. 102–550, title V, §513, Oct. 28, 1992, 106 Stat. 3786.

§1701z–17. Increasing access and understanding of energy efficient mortgages

(a) Definition

As used in this section, the term ''energy efficient mortgage'' has the same meaning as given that term in paragraph (24) of section 12704 of title 42.

(b) Recommendations to eliminate barriers to use of energy efficient mortgages

(1) In general

Not later than 180 days after July 30, 2008, the Secretary of Housing and Urban Development, in conjunction with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall consult with the residential mortgage industry and States to develop recommendations to eliminate the barriers that exist to increasing the availability, use, and purchase of energy efficient mortgages, including such barriers as—

(A) the lack of reliable and accessible information on such mortgages, including estimated energy savings and other benefits of energy efficient housing;

(B) the confusion regarding underwriting requirements and differences among various energy efficient mortgage programs;

(C) the complex and time consuming process of securing such mortgages;

(D) the lack of publicly available research on the default risk of such mortgages; and

(E) the availability of certified or accredited home energy rating services.

(2) Report to Congress

The Secretary of Housing and Urban Development shall submit a report to Congress that—

(A) summarizes the recommendations developed under paragraph (1); and

(B) includes any recommendations for statutory, regulatory, or administrative changes that the Secretary deems necessary to institute such recommendations.

(c) Energy efficient mortgages outreach campaign

(1) In general

The Secretary of Housing and Urban Development, in consultation and coordination with the Secretary of Energy, the Administrator of the Environmental Protection Agency, and State Energy and Housing Finance Directors, shall carry out an education and outreach campaign to inform and educate consumers, home builders, residential lenders, and other real estate professionals on the availability, benefits, and advantages of—

(A) improved energy efficiency in housing; and

(B) energy efficient mortgages.

(2) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out the education and outreach campaign described under paragraph (1).

(Pub. L. 110–289, div. B, title IX, §2902, July 30, 2008, 122 Stat. 2876.)

CODIFICATION

Section was enacted as part of the Foreclosure Prevention Act of 2008, and also as part of the Housing and Economic Recovery Act of 2008, and not as part of the National Housing Act which comprises this chapter.

SUBCHAPTER I—HOUSING RENOVATION AND MODERNIZATION

§ 1702. Administrative provisions

The powers conferred by this chapter shall be exercised by the Secretary of Housing and Urban Development (hereinafter referred to as the ''Secretary''). In order to carry out the provisions of this subchapter and subchapters II, III, V, VI, VII, VIII, IX–B, and X, the Secretary may establish such agencies, accept and utilize such voluntary and uncompensated services, utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, and appoint such other officers and employees as he may find necessary, and may prescribe their authorities, duties, responsibilities, and tenure and fix their compensation. The Secretary may delegate any of the functions and powers conferred upon him under this subchapter and subchapters II, III, V, VI, VII, VIII, IX–B, and X to such officers, agents, and employees as he may designate or appoint, and may make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books and books of reference, and for paper, printing, and binding) as are necessary to carry out the provisions of this subchapter and subchapters II, III, V, VI, VII, VIII, IX–B, and X, without regard to any other provisions of law governing the expenditure of public funds. All such compensation, expenses, and allowances shall be paid out of funds made available by this chapter: *Provided*, That notwithstanding any other provisions of law except provisions of law hereafter enacted expressly in limitation hereof, all expenses of the Department of Housing and Urban Development in connection with the examination and insurance of loans or investments under any subchapter of this chapter all properly capitalized expenditures, and other necessary expenses not attributable to general overhead in accordance with generally accepted accounting principles shall be considered nonadministrative and payable from funds made available by this chapter, except that, unless made pursuant to specific authorization by the Congress therefor, expenditures made in any fiscal year pursuant to this proviso, other than the payment of insurance claims and other than expenditures (including services on a contract or fee basis, but not including other personal services) in connection with the acquisition, protection, completion, operation, maintenance, improvement, or disposition of real or personal property of the Department acquired under authority of this chapter, shall not exceed 35 per centum of the income received by the Department of Housing and Urban Development from premiums and fees during the preceding fiscal year. Except with respect to subchapter III, for the purposes of this section, the term ''nonadministrative'' shall not include contract expenses that are not capitalized or routinely deducted from the proceeds of sales, and such expenses shall not be payable from funds made available by this chapter. The Secretary shall, in carrying out the provisions of this subchapter and subchapters II, III, V, VI, VII, VIII, IX–B, and X, be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal.

(June 27, 1934, ch. 847, title I, §1, 48 Stat. 1246; Aug. 23, 1935, ch. 614, title III, §344(a), 49 Stat. 722; Mar. 28, 1941, ch. 31, §2, 55 Stat. 61; June 28, 1941, ch. 261, §6, 55 Stat. 365; Aug. 10, 1948, ch. 832, title IV, §402, 62 Stat. 1283; Aug. 8, 1949, ch. 403, §2, 63 Stat. 576; Oct. 25, 1949, ch. 729, §2, 63 Stat. 905; Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Sept. 1, 1951, ch. 378, title II, §202, 65 Stat. 303; Pub. L. 89–117, title XI, §1108(bb), Aug. 10, 1965, 79 Stat. 507; Pub. L. 89–754, title X, §1020(g), Nov. 3, 1966, 80 Stat. 1296; Pub. L. 90–19, §1(a)(1), (3), (c), May 25, 1967, 81 Stat. 17, 18; Pub. L. 98–479, title II, §202(a)(1), Oct. 17, 1984, 98 Stat. 2228; Pub. L. 100–242, title IV, §429(a), Feb. 5, 1988, 101 Stat. 1918; Pub. L. 101–235, title I, §133(d)(1), Dec. 15, 1989, 103 Stat. 2027; Pub. L. 106–74, title II, §212, Oct. 20, 1999, 113 Stat. 1073.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1999—Pub. L. 106–74 inserted before last sentence ''Except with respect to subchapter III, for the purposes of this section, the term ''nonadministrative'' shall not include contract expenses that are not capitalized or routinely deducted from the proceeds of sales, and such expenses shall not be payable from funds made available by this chapter.''

1989—Pub. L. 101–235 struck out ''IX–A,'' after ''VIII,'' wherever appearing.

1988—Pub. L. 100–242 struck out comma before period at end of second sentence.

1984—Pub. L. 98–479 struck out ''without regard to the provisions of other laws applicable to the employment or compensation of other officers or employees of the United States'' at end of second sentence.

1967—Pub. L. 90–19 substituted ''Department of Housing and Urban Development'' and ''Secretary'' for ''Federal Housing Administration'' and ''Commissioner'', respectively, wherever appearing, substituted provision for exercise of national housing powers by the Secretary of Housing and Urban Development for former authorization for creation of a Federal Housing Administration under a Federal Housing Commissioner appointed by the President with the consent of the Senate, and substituted ''Department'' for ''Administration'' in penultimate sentence.

1966—Pub. L. 89–754 inserted references to subchapter IX–B.

1965—Pub. L. 89–117 inserted references to subchapters V and IX–A.

1951—Act Sept. 1, 1951, inserted references to subchapter X.

1950—Act Apr. 20, 1950, made technical amendments to section to reflect change in title of Administrator to Commissioner and to omit provisions relating to tenure and compensation of Commissioner.

1949—Joint Res. Oct. 25, 1949, inserted proviso at end of fourth sentence.

Act Aug. 8, 1949, made provisions applicable to subchapter VIII.

1948—Act Aug. 10, 1948, substituted ''subchapters II, III, VI, and VII'' for ''subchapters II, III, and VI''.

1941—Act June 28, 1941, substituted ''$12,000'' for ''$10,000''.

Act Mar. 28, 1941, substituted ''subchapters II, III, and VI'' for ''subchapters II and III''.

1935—Act Aug. 23, 1935, inserted sentence at end.

EFFECTIVE DATE OF 1941 AMENDMENT

Amendment by act June 28, 1941, effective July 1, 1941, see section 6 of act June 28, 1941.

REPEALS

Act Aug. 10, 1948, ch. 832, title V, § 501(a), 62 Stat. 1283, formerly cited as a credit to this section, was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 655.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Federal Housing Administration and Housing and Home Finance Agency transferred to Secretary of Housing and Urban Development who was authorized to delegate such functions, powers, and duties to such officers and employees of Department of Housing and Urban Development as Secretary may designate, see sections 3534 and 3535 of Title 42, The Public Health and Welfare.

Reorg. Plan No. 3 of 1947, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954, set out in the Appendix to Title 5, Government Organization and Employees, abolished office of Federal Housing Administrator and transferred functions to Federal Housing Commissioner. It also consolidated Federal Housing Administration with other agencies into Housing and Home Finance Agency and transferred functions of Federal Loan Administrator with respect to Federal Housing Administration and its functions to Housing and Home Finance Administrator. Federal Housing Administration continued as a constituent agency within Housing and Home Finance Agency. For provisions concerning appointment and compensation of Federal Housing Commissioner, see section 3 of Reorganization Plan.

Functions, powers, and duties of National Housing Agency with respect to property, funds, and other assets which were formerly under administration of Farm Security Administration and were transferred to National Housing Agency by Ex. Ord. No. 9070, Feb. 24, 1942, 7 F.R. 1529, as amended, were abolished by section 2(a)(3) of act Aug. 14, 1946, ch. 964, 60 Stat. 1063, as amended, set out as a note under sections 1001 to 1005d of Title 7, Agriculture, except with respect of housing projects and such other properties and assets in process of liquidation.

Federal Housing Administration consolidated with other agencies into National Housing Agency during World War II, see Ex. Ord. No. 9070.

Functions of National Housing Agency with respect to non-farm-housing projects and other properties remaining under its jurisdiction pursuant to section 2(a)(3) of act Aug. 14, 1946, transferred to Public Housing Commissioner by Reorg. Plan No. 3 of 1947, § 4(b), eff. July 27, 1947, 12 F.R. 4983, 61 Stat. 955, set out in the Appendix to Title 5.

Federal Housing Administration to be administered by Federal Loan Administrator within Federal Loan Agency, see Reorg. Plan No. I of 1939, § 402, eff. July 1, 1939, 4 F.R. 2730, 53 Stat. 1429 set out in the Appendix to Title 5.

EXECUTIVE ORDER NO. 7058

Ex. Ord. No. 7058, May 29, 1935, authorized Federal Housing Administrator to adopt a seal for Federal Housing Administration, provided that copies of any books, records, papers, documents, agreements, orders, rules, or regulations of Administration were admissible in evidence equally with originals thereof, and empowered Administrator or his designee to certify or exemplify copies of any books, records, papers, or documents of Administration.

EXECUTIVE ORDER NO. 7280

Ex. Ord. No. 7280, Jan. 28, 1936, was issued as evidence of creation of Federal Housing Administration and validated and confirmed creation thereof.

§ 1702a. Repealed. June 28, 1955, ch. 189, § 12(c)(14), 69 Stat. 182

Section, act June 27, 1934, ch. 847, title II, § 228, as added Aug. 2, 1954, ch. 649, title I, § 126, 68 Stat. 809, authorized Commissioner to establish one position in GS–18, four in GS–17, and eight in GS–16 in Federal Housing Administration.

§ 1703. Insurance of financial institutions

(a) Authority to insure financial institutions

The Secretary is authorized and empowered upon such terms and conditions as he may prescribe, to insure banks, trust companies, personal finance companies, mortgage companies, building and loan associations, installment lending companies and other such financial institutions, which the Secretary finds to be qualified by experience or facilities and approves as eligible for credit insurance, against losses which they may sustain as a result of loans and advances of credit, and purchases of obligations representing loans and advances of credit, made by them for the purpose of (i) financing alterations, repairs, and improvements upon or in connection with existing structures or manufactured homes, and the building of new structures, upon urban, suburban, or rural real property (including the restoration, rehabilitation, rebuilding, and replacement of such improvements which have been damaged or destroyed by earthquake, conflagration, tornado, hurricane, cyclone, flood, or other catastrophe), by the owners thereof or by lessees of such real property under a lease expiring not less than six months after the maturity of the loan or advance of credit; and for the purpose of (ii) financing the purchase of a manufactured home to be used by the owner as his principal residence or financing the purchase of a lot on which to place such home and paying expenses reasonably necessary for the appropriate preparation of such lot, including the installation of utility connections, sanitary facilities, and paving, and the construction of a suitable pad, or financing only the acquisition of such a lot either with or without such preparation by an owner of a manufactured home; and for the purpose of financing the preservation of historic structures, and, as used in this section, the term ''historic structures'' means residential structures which are registered in the National Register of Historic Places or which are certified by the Secretary of the Interior to conform to National Register criteria; and the term ''preservation'' means restoration or rehabilitation undertaken for such purposes as are approved by the Secretary in regulations issued by him, after consulting with the Secretary of the Interior. Other than in connection with a manufactured home or a lot on which to place such a home (or both), in no case shall the insurance granted by the Secretary under this section to any such financial institution on loans, advances of credit, and purchases made by such financial institution for such purposes exceed 10 per centum of the total amount of such loans, advances of credit, and purchases. With respect to any loan, advance of credit, or purchase, the amount of any claim for loss on any such individual loan, advance of credit or purchase paid by the Secretary under the provisions of this section to a lending institution shall not exceed 90 per centum of such loss.

After August 2, 1954, (i) the Secretary shall not enter into contracts for insurance pursuant to this section except with lending institutions which are subject to the inspection and supervision of a governmental agency required by law to make periodic examinations of their books

and accounts, and which the Secretary finds to be qualified by experience or facilities to make and service such loans, advances or purchases, and with such other lending institutions which the Secretary approves as eligible for insurance pursuant to this section on the basis of their credit and their experience or facilities to make and service such loans, advances or purchases; (ii) only such items as substantially protect or improve the basic livability or utility of properties shall be eligible for financing under this section, and therefore the Secretary shall from time to time declare ineligible for financing under this section any item, product, alteration, repair, improvement, or class thereof which he determines would not substantially protect or improve the basic livability or utility of such properties, and he may also declare ineligible for financing under this section any item which he determines is especially subject to selling abuses; and (iii) the Secretary is authorized and directed, by such regulations or procedures as he shall deem advisable, to prevent the use of any financial assistance under this section (1) with respect to new residential structures (other than manufactured homes) that have not been completed and occupied for at least six months, or (2) which would, through multiple loans, result in an outstanding aggregate loan balance with respect to the same structure exceeding the dollar amount limitation prescribed in this subsection for the type of loan involved: *Provided*, That this clause (iii) may in the discretion of the Secretary be waived with respect to the period of occupancy or completion of any such new residential structures. The Secretary is hereby authorized and directed, with respect to manufactured homes to be financed under this section, to (i) prescribe minimum property standards to assure the livability and durability of the manufactured home and the suitability of the site on which the manufactured home is to be located; and (ii) obtain assurances from the borrower that the manufactured home will be placed on a site which complies with the standards prescribed by the Secretary and with local zoning and other applicable local requirements.

The insurance authority provided under this section may be made available with respect to any existing manufactured home that has not been insured under this section if such home was constructed in accordance with the standards issued under the National Manufactured Housing Construction and Safety Standards Act of 1974 [42 U.S.C. 5401 et seq.] and it meets standards similar to the minimum property standards applicable to existing homes insured under subchapter II of this chapter.

Alterations, repairs, and improvements upon or in connection with existing structures may include the provision of fire safety equipment, energy conserving improvements, or the installation of solar energy systems. Alterations, repairs, and improvements upon or in connection with existing structures may also include the evaluation and reduction of lead-based paint hazards. As used in this section—

(1) the term ''fire safety equipment'' means any device or facility which is designed to reduce the risk of personal injury or property damage resulting from fire and is in conformity with such criteria and standards as shall be prescribed by the Secretary;

(2) the term ''energy conserving improvements'' means the purchase and installation of weatherization materials as defined in section 6862(9) of title 42; and [1]

(3) the term ''solar energy system'' means any addition, alteration, or improvement to an existing or new structure which is designed to utilize wind energy or solar energy either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types to reduce the energy requirements of that structure from other energy sources, and which is in conformity with such criteria and standards as shall be prescribed by the Secretary in consultation with the Secretary of Energy.[2]

(4) the terms ''evaluation'', ''reduction'', and ''lead-based paint hazard'' have the same meanings given those terms in section 4851b of title 42.

(b) Conditions for denial of insurance

(1) Except as provided in the last sentence of this paragraph, no insurance shall be granted under this section to any such financial institution with respect to any obligation representing any such loan, advance of credit, or purchase by it if the amount of such loan, advance of credit, or purchase exceeds—

(A)(i) $25,000 if made for the purpose of financing alterations, repairs and improvements upon or in connection with existing single-family structures; and

(ii) $25,090 if made for the purpose of financing alterations, repairs and improvements upon or in connection with existing manufactured homes;

(B) $60,000 or an average amount of $12,000 per family unit if made for the purpose of financing the alteration, repair, improvement, or conversion of an existing structure used or to be used as an apartment house or a dwelling for two or more families;

(C) $69,678 if made for the purpose of financing the purchase of a manufactured home;

(D) $92,904 if made for the purpose of financing the purchase of a manufactured home and a suitably developed lot on which to place the home; and [1]

(E) $23,226 if made for the purpose of financing the purchase, by an owner of a manufactured home which is the principal residence of that owner, of a suitably developed lot on which to place that manufactured home, and if the owner certifies that he or she will place the manufactured home on the lot acquired with such loan within 6 months after the date of such loan.[3]

(F) $15,000 per family unit if made for the purpose of financing the preservation of an historic structure; and

(G) such principal amount as the Secretary may prescribe if made for the purpose of financing fire safety equipment for a nursing

[1] So in original. The word ''and'' probably should not appear.
[2] So in original. The period probably should be ''; and''.
[3] So in original. The period probably should be a semicolon.

home, extended health care facility, intermediate health care facility, or other comparable health care facility.

The Secretary shall, by regulation, annually increase the dollar amount limitations in subparagraphs (A)(ii), (C), (D), and (E) (as such limitations may have been previously adjusted under this sentence) in accordance with the index established pursuant to paragraph (9).

(2) Because of prevailing higher costs, the Secretary may, by regulation, in Alaska, Guam, or Hawaii, increase any dollar amount limitation on manufactured homes or manufactured home lot loans contained in this subsection by not to exceed 40 per centum. In other areas, the maximum dollar amounts specified in subsections (b)(1)(D) and (b)(1)(E) of this section may be increased on an area-by-area basis to the extent the Secretary deems necessary, but in no case may such limits, as so increased, exceed the lesser of (A) 185 percent of the dollar amount specified, or (B) the dollar amount specified as increased by the same percentage by which 95 percent of the median one-family house price in the area (as determined by the Secretary) exceeds $67,500.

(3) No insurance shall be granted under this section to any such financial institution with respect to any obligation representing any such loan, advance of credit, or purchase by it if the term to maturity of such loan, advance of credit or purchase exceeds—

(A)(i) twenty years and thirty-two days if made for the purpose of financing alterations, repairs, and improvements upon or in connection with an existing single-family structure; and

(ii) fifteen years and thirty-two days if made for the purpose of financing alterations, repairs, and improvements upon or in connection with an existing manufactured home;

(B) twenty years and thirty-two days if made for the purpose of financing the alteration, repair, improvement or conversion of an existing structure used or to be used as an apartment house or a dwelling for two or more families;

(C) twenty years and thirty-two days (twenty-three years and thirty-two days in the case of a manufactured home composed of two or more modules) if made for the purpose of financing the purchase of a manufactured home;

(D) twenty years and thirty-two days (twenty-five years and thirty-two days in the case of a manufactured home composed of two or more modules) if made for the purpose of financing the purchase of a manufactured home and a suitably developed lot on which to place the home;

(E) twenty years and thirty-two days if made for the purpose of financing the purchase, by the owner of a manufactured home which is the principal residence of that owner, of a suitably developed lot on which to place that manufactured home;

(F) fifteen years and thirty-two days if made for the purpose of financing the preservation of an historic structure;

(G) such term to maturity as the Secretary may prescribe if made for the purpose of financing the construction of a new structure for use in whole or in part for agricultural purposes; and

(H) such term to maturity as the Secretary may prescribe if made for the purpose of financing fire safety equipment for a nursing home, extended health care facility, intermediate health care facility, or other comparable health care facility.

(4) For the purpose of this subsection—

(A) the term ''developed lot'' includes an interest in a condominium project (including any interest in the common areas) or a share in a cooperative association;

(B) a loan to finance the purchase of a manufactured home or a manufactured home and lot may also finance the purchase of a garage, patio, carport, or other comparable appurtenance; and

(C) a loan to finance the purchase of a manufactured home or a manufactured home and lot shall be secured by a first lien upon such home or home and lot, its furnishings, equipment, accessories, and appurtenances.

(5) No insurance shall be granted under this section to any such financial institution with respect to any obligation representing any such loan, advance of credit, or purchase by it unless the obligation has such maturity, bears such insurance premium charges, and contains such other terms, conditions, and restrictions as the Secretary shall prescribe, in order to make credit available for the purpose of this subchapter. Any such obligation with respect to which insurance is granted under this section shall bear interest at such rate as may be agreed upon by the borrower and the financial institution.

(6)(A) Any obligation with respect to which insurance is granted under this section may be refinanced and extended in accordance with such terms and conditions as the Secretary may prescribe, but in no event for an additional amount or term in excess of any applicable maximum provided for in this subsection.

(B) The owner of a manufactured home lot purchased without assistance under this section but otherwise meeting the requirements of this section may refinance such lot under this section in connection with the purchase of a manufactured home if the borrower certifies that the home and lot is or will be his or her principal residence within six months after the date of the loan.

(C) The owner-occupant of a manufactured home or a home and lot which was purchased without assistance under this section but which otherwise meets the requirements of this section may refinance such home or home and lot under this section if the home was constructed in accordance with standards established under section 604 of the National Manufactured Housing Construction and Safety Standards Act of 1974 [42 U.S.C. 5403].

(7) With respect to the financing of alterations, repairs, and improvements to existing structures or the building of new structures as authorized under clause (i) of the first sentence of subsection (a) of this section, any loan broker (as defined by the Secretary) or any other party having a financial interest in the making of such a loan or advance of credit or in providing

assistance to the borrower in preparing the loan application or otherwise assisting the borrower in obtaining the loan or advance of credit who knowingly (as defined in section 1735f–14(g) of this title) submits to any such financial institution or to the Secretary false information shall be subject to a civil money penalty in the amount and manner provided under section 1735f–14 of this title with respect to mortgagees and lenders under this chapter.

(8) INSURANCE BENEFITS FOR MANUFACTURED HOUSING LOANS.—Any contract of insurance with respect to loans, advances of credit, or purchases in connection with a manufactured home or a lot on which to place a manufactured home (or both) for a financial institution that is executed under this subchapter after July 30, 2008, by the Secretary shall be conclusive evidence of the eligibility of such financial institution for insurance, and the validity of any contract of insurance so executed shall be incontestable in the hands of the bearer from the date of the execution of such contract, except for fraud or misrepresentation on the part of such institution.

(9) ANNUAL INDEXING OF MANUFACTURED HOUSING LOANS.—The Secretary shall develop a method of indexing in order to annually adjust the loan limits established in subparagraphs (A)(ii), (C), (D), and (E) of this subsection. Such index shall be based on the manufactured housing price data collected by the United States Census Bureau. The Secretary shall establish such index no later than 1 year after July 30, 2008.

(10) FINANCIAL SOUNDNESS OF MANUFACTURED HOUSING PROGRAM.—The Secretary shall establish such underwriting criteria for loans and advances of credit in connection with a manufactured home or a lot on which to place a manufactured home (or both), including such loans and advances represented by obligations purchased by financial institutions, as may be necessary to ensure that the program under this subchapter for insurance for financial institutions against losses from such loans, advances of credit, and purchases is financially sound.

(11) LEASEHOLD REQUIREMENTS.—No insurance shall be granted under this section to any such financial institution with respect to any obligation representing any such loan, advance of credit, or purchase by it, made for the purposes of financing a manufactured home which is intended to be situated in a manufactured home community pursuant to a lease, unless such lease—

(A) expires not less than 3 years after the origination date of the obligation;

(B) is renewable upon the expiration of the original 3 year term by successive 1 year terms; and

(C) requires the lessor to provide the lessee written notice of termination of the lease not less than 180 days prior to the expiration of the current lease term in the event the lessee is required to move due to the closing of the manufactured home community, and further provides that failure to provide such notice to the mortgagor in a timely manner will cause the lease term, at its expiration, to automatically renew for an additional 1 year term.

(c) Handling and disposal of property

(1) Authority of Secretary

Notwithstanding any other provision of law, the Secretary may—

(A) deal with, complete, rent, renovate, modernize, insure, or assign or sell at public or private sale, or otherwise dispose of, for cash or credit in the Secretary's discretion, and upon such terms and conditions and for such consideration as the Secretary shall determine to be reasonable, any real or personal property conveyed to or otherwise acquired by the Secretary, in connection with the payment of insurance heretofore or hereafter granted under this subchapter, including any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of insurance heretofore or hereafter granted under this section; and

(B) pursue to final collection, by way of compromise or otherwise, all claims assigned to or held by the Secretary and all legal or equitable rights accruing to the Secretary in connection with the payment of such insurance, including unpaid insurance premiums owed in connection with insurance made available by this subchapter.

(2) Advertisements for proposals

Section 6101 of title 41 shall not be construed to apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of such property if the amount thereof does not exceed $25,000.

(3) Delegation of authority

The power to convey and to execute in the name of the Secretary, deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real or personal property or any interest therein heretofore or hereafter acquired by the Secretary pursuant to the provisions of this subchapter may be exercised by an officer appointed by the Secretary without the execution of any express delegation of power or power of attorney. Nothing in this subsection shall be construed to prevent the Secretary from delegating such power by order or by power of attorney, in the Secretary's discretion, to any officer or agent the Secretary may appoint.

(d) Authority to transfer insurance

The Secretary is authorized and empowered, under such regulations as he may prescribe, to transfer to any such approved financial institution any insurance in connection with any loans and advances of credit which may be sold to it by another approved financial institution.

(e) Authority to waive compliance with regulations

The Secretary is authorized to waive compliance with regulations heretofore or hereafter prescribed by him with respect to the interest and maturity of and the terms, conditions, and restrictions under which loans, advances of credit, and purchases may be insured under this section and section 1706a[4] of this title, if in his

[4] See References in Text note below.

judgment the enforcement of such regulations would impose an injustice upon an insured institution which has substantially complied with such regulations in good faith and refunded or credited any excess charge made, and where such waiver does not involve an increase of the obligation of the Secretary beyond the obligation which would have been involved if the regulations had been fully complied with.

(f) Premium charges; manufactured home loans

(1) Premium charges

The Secretary shall fix a premium charge for the insurance hereafter granted under this section, but in the case of any obligation representing any loan, advance of credit, or purchase, such premium charge shall not exceed an amount equivalent to 1 per centum per annum of the net proceeds of such loan, advance of credit, or purchase, for the term of such obligation, and such premium charge shall be payable in advance by the financial institution and shall be paid at such time and in such manner as may be prescribed by the Secretary.

(2) Manufactured home loans

Notwithstanding paragraph (1), in the case of a loan, advance of credit, or purchase in connection with a manufactured home or a lot on which to place such a home (or both), the premium charge for the insurance granted under this section shall be paid by the borrower under the loan or advance of credit, as follows:

(A) At the time of the making of the loan, advance of credit, or purchase, a single premium payment in an amount not to exceed 2.25 percent of the amount of the original insured principal obligation.

(B) In addition to the premium under subparagraph (A), annual premium payments during the term of the loan, advance, or obligation purchased in an amount not exceeding 1.0 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments).

(C) Premium charges under this paragraph shall be established in amounts that are sufficient, but do not exceed the minimum amounts necessary, to maintain a negative credit subsidy for the program under this section for insurance of loans, advances of credit, or purchases in connection with a manufactured home or a lot on which to place such a home (or both), as determined based upon risk to the Federal Government under existing underwriting requirements.

(D) The Secretary may increase the limitations on premium payments to percentages above those set forth in subparagraphs (A) and (B), but only if necessary, and not in excess of the minimum increase necessary, to maintain a negative credit subsidy as described in subparagraph (C).

(g) Finality of payment for loss

Any payment for loss made to an approved financial institution under this section shall be final and incontestable after two years from the date the claim was certified for payment by the Secretary, in the absence of fraud or misrepresentation on the part of such institution, unless a demand for repurchase of the obligation shall have been made on behalf of the United States prior to the expiration of such two-year period.

(h) Authority to regulate

The Secretary is authorized and directed to make such rules and regulations as may be necessary to carry out the provisions of this subchapter.

(i) "Manufactured home" defined

For purposes of this section, the term ''manufactured home'' includes any elder cottage housing opportunity unit that is small, freestanding, barrier-free, energy efficient, removable, and designed to be installed adjacent to an existing 1- to 4-family dwelling.

(June 27, 1934, ch. 847, title I, §2, 48 Stat. 1246; May 28, 1935, ch. 150, §28, 49 Stat. 299; Aug. 23, 1935, ch. 614, title III, §344(b), 49 Stat. 722; Apr. 3, 1936, ch. 165, §1, 49 Stat. 1187; Apr. 17, 1936, ch. 234, §4, 49 Stat. 1234; Apr. 22, 1937, ch. 121, §2, 50 Stat. 71; Feb. 3, 1938, ch. 13, §2, 52 Stat. 9; June 3, 1939, ch. 175, §§1, 2, 53 Stat. 804, 805; June 28, 1941, ch. 261, §§1–5, 55 Stat. 364, 365; May 26, 1942, ch. 319, §13, 56 Stat. 305; Mar. 23, 1943, ch. 21, §2, 57 Stat. 43; Oct. 15, 1943, ch. 259, §§3, 4, 57 Stat. 571; June 26, 1947, ch. 152, 61 Stat. 182; Aug. 10, 1948, ch. 832, title I, §101(s), 62 Stat. 1275; July 15, 1949, ch. 338, title II, §201(1), 63 Stat. 421; Aug. 30, 1949, ch. 524, 63 Stat. 681; Oct. 25, 1949, ch. 729, §1(1), 63 Stat. 905; Apr. 20, 1950, ch. 94, title I, §§101(a), 122, 64 Stat. 48, 59; Mar. 10, 1953, ch. 5, §1, 67 Stat. 4; Aug. 2, 1954, ch. 649, title I, §§101(a), 102, 68 Stat. 590; June 30, 1955, ch. 251, §1(1), 69 Stat. 225; Aug. 11, 1955, ch. 783, title I, §101, 69 Stat. 635; Feb. 10, 1956, ch. 33, 70 Stat. 11; Aug. 7, 1956, ch. 1029, title I, §101, 70 Stat. 1091; Pub. L. 85–104, title I, §105, July 12, 1957, 71 Stat. 297; Pub. L. 86–372, title I, §101, Sept. 23, 1959, 73 Stat. 654; Pub. L. 86–788, §2(a), Sept. 14, 1960, 74 Stat. 1028; Pub. L. 87–70, title VI, §604(a), June 30, 1961, 75 Stat. 177; Pub. L. 88–560, title I, §101, Sept. 2, 1964, 78 Stat. 769; Pub. L. 89–117, title II, §202(a), title XI, §1108(a), Aug. 10, 1965, 79 Stat. 465, 504; Pub. L. 90–19, §1(a)(3), (d), May 25, 1967, 81 Stat. 17, 18; Pub. L. 90–448, title III, §308, Aug. 1, 1968, 82 Stat. 509; Pub. L. 91–78, §2(a), Sept. 30, 1969, 83 Stat. 125; Pub. L. 91–152, title I, §§101(a), 103(c), Dec. 24, 1969, 83 Stat. 379, 380; Pub. L. 91–432, §1(a), Oct. 2, 1970, 84 Stat. 886; Pub. L. 91–473, §1(a), Oct. 21, 1970, 84 Stat. 1064; Pub. L. 91–525, §1(a), Dec. 1, 1970, 84 Stat. 1384; Pub. L. 91–609, title I, §§101(a), 113, Dec. 31, 1970, 84 Stat. 1770, 1773; Pub. L. 92–503, §1(a), Oct. 18, 1972, 86 Stat. 906; Pub. L. 93–85, §1(a), Aug. 10, 1973, 87 Stat. 220; Pub. L. 93–117, §1(a), Oct. 2, 1973, 87 Stat. 421; Pub. L. 93–383, title III, §§309(a)–(d), 316(a), Aug. 22, 1974, 88 Stat. 680, 681, 685; Pub. L. 93–449, §4(a), Oct. 18, 1974, 88 Stat. 1366; Pub. L. 94–173, §1, Dec. 23, 1975, 89 Stat. 1027; Pub. L. 95–60, §1(a), June 30, 1977, 91 Stat. 257; Pub. L. 95–80, §1(a), July 31, 1977, 91 Stat. 339; Pub. L. 95–128, title II, §§301(a), 306, Oct. 12, 1977, 91 Stat. 1131, 1134; Pub. L. 95–406, §1(a), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95–557, title III, §§301(a), 320, Oct. 31, 1978, 92 Stat. 2095, 2101; Pub. L. 95–619,

title II, § 241, Nov. 9, 1978, 92 Stat. 3228; Pub. L. 96–71, § 1(a), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96–105, § 1(a), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96–153, title III, §§ 301(a), 313(a), Dec. 21, 1979, 93 Stat. 1111, 1116; Pub. L. 96–372, § 1(a), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96–399, title III, §§ 301(a), 308(a)–(c)(1), Oct. 8, 1980, 94 Stat. 1638, 1640; Pub. L. 97–35, title III, §§ 331(a), 338(a), 339B(c), Aug. 13, 1981, 95 Stat. 412, 414, 417; Pub. L. 97–289, § 1(a), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98–35, § 1(a), May 26, 1983, 97 Stat. 197; Pub. L. 98–109, § 1(a), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98–181, title IV, §§ 401(a), 404(b)(1), 415–417, Nov. 30, 1983, 97 Stat. 1207, 1208, 1212; Pub. L. 99–120, § 1(a), Oct. 8, 1985, 99 Stat. 502; Pub. L. 99–156, § 1(a), Nov. 15, 1985, 99 Stat. 815; Pub. L. 99–219, § 1(a), Dec. 26, 1985, 99 Stat. 1730; Pub. L. 99–267, § 1(a), Mar. 27, 1986, 100 Stat. 73; Pub. L. 99–272, title III, § 3007(a), Apr. 7, 1986, 100 Stat. 104; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title IV, § 401(b), Feb. 5, 1988, 101 Stat. 1898; Pub. L. 101–235, title I, § 134(a), Dec. 15, 1989, 103 Stat. 2027; Pub. L. 101–625, title III, § 340(b)(1), (c), title VIII, § 806(a), Nov. 28, 1990, 104 Stat. 4147, 4323; Pub. L. 102–389, title II, Oct. 6, 1992, 106 Stat. 1592, 1593; Pub. L. 102–550, title V, § 503(c)(1), title X, § 1012(k)(1), Oct. 28, 1992, 106 Stat. 3779, 3906; Pub. L. 106–569, title IX, § 901, Dec. 27, 2000, 114 Stat. 3026; Pub. L. 110–289, div. B, title I, §§ 2143, 2144(a), 2145–2148(a), 2150, July 30, 2008, 122 Stat. 2844–2848.)

REFERENCES IN TEXT

The National Manufactured Housing Construction and Safety Standards Act of 1974, referred to in subsec. (a), is title VI of Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 700, as amended, which is classified generally to chapter 70 (§ 5401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5401 of Title 42 and Tables.

This chapter, referred to in subsec. (b)(7), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

Section 1706a of this title, referred to in subsec. (e), was repealed by act June 3, 1939, ch. 175, § 3, 53 Stat. 805, eff. July 1, 1939.

CODIFICATION

In subsec. (c)(2), ''Section 6101 of title 41'' substituted for ''Section 3709 of the Revised Statutes'' on authority of Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

References to ''mobile homes'', wherever appearing in text, were changed to ''manufactured homes'' in view of the amendment of the National Housing Act by section 308(c)(1) of Pub. L. 96–399 requiring the substitution of ''manufactured home'' for ''mobile home'' wherever appearing in the National Housing Act, and section 339B(c) of Pub. L. 97–35 (set out below) providing that the terms ''mobile home'' and ''manufactured home'' shall be deemed to include the terms ''mobile homes'' and ''manufactured homes'', respectively.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, § 2147(a), in first undesignated par., struck out ''on and after July 1, 1939,'' after ''made by them'' and after ''institution for such purposes'' and struck out ''made after August 2, 1954'' after ''credit, or purchase''.

Pub. L. 110–289, § 2143, in first undesignated par., substituted ''Other than in connection with a manufactured home or a lot on which to place such a home (or both), in no case'' for ''In no case'' and ''. With'' for '': *Provided*, That with''.

Subsec. (b)(1). Pub. L. 110–289, § 2145(c), substituted ''Except as provided in the last sentence of this paragraph, no'' for ''No'' in introductory provisions and inserted concluding provisions.

Subsec. (b)(1)(A)(ii). Pub. L. 110–289, § 2145(a)(1), substituted ''$25,090'' for ''$17,500''.

Subsec. (b)(1)(C) to (E). Pub. L. 110–289, § 2145(a)(2)–(5), realigned margins and substituted ''$69,678'' for ''$48,600'' in subpar. (C), ''$92,904'' for ''$64,800'' in subpar. (D), and ''$23,226'' for ''$16,200'' in subpar. (E).

Subsec. (b)(8). Pub. L. 110–289, § 2144(a), added par. (8).

Subsec. (b)(9). Pub. L. 110–289, § 2145(b), added par. (9).

Subsec. (b)(10). Pub. L. 110–289, § 2148(a), added par. (10).

Subsec. (b)(11). Pub. L. 110–289, § 2150, added par. (11).

Subsec. (c). Pub. L. 110–289, § 2147(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to the Secretary's powers with respect to any debt, contract, claim, personal property, or security assigned or held in connection with the payment of insurance.

Subsec. (f). Pub. L. 110–289, § 2146, designated existing provisions as par. (1), inserted heading, and added par. (2).

2000—Subsec. (b)(3)(E). Pub. L. 106–569 substituted ''twenty years'' for ''fifteen years''.

1992—Subsec. (a). Pub. L. 102–550, § 1012(k)(1), which directed amendment of fifth undesignated par. by inserting ''Alterations, repairs, and improvements upon or in connection with existing structures may also include the evaluation and reduction of lead-based paint hazards.'', and by adding par. (4), was executed to fourth undesignated par. to reflect the probable intent of Congress.

Subsec. (b)(1)(C) to (E). Pub. L. 102–550, § 503(c)(1), added subpars. (C) to (E) and struck out former subpars. (C) to (E) which read as follows:

''(C) 70 percent of the median 1-family house price in the area, as determined by the Secretary under section 1709(b)(2) of this title, if made for the purpose of financing the purchase of a manufactured home;

''(D) 80 percent of the median 1-family house price in the area, as determined by the Secretary under section 1709(b)(2) of this title, if made for the purpose of financing the purchase of a manufactured home and a suitably developed lot on which to place the home;

''(E) the greater of (i) 20 percent of the median 1-family house price in the area, as determined by the Secretary under section 1709(b)(2) of this title, or (ii) $13,500, if made for the purpose of financing the purchase, by an owner of a manufactured home which is the principal residence of the owner, of a suitably developed lot on which to place that manufactured home, and if the owner certifies that the owner will place the manufactured home on the lot acquired with such loan within 6 months after the date of such loan;''.

Pub. L. 102–389 added subpars. (C) to (E) and struck out former subpars. (C) to (E) which read as follows:

''(C) $40,500 if made for the purpose of financing the purchase of a manufactured home;

''(D) $54,000 if made for the purpose of financing the purchase of a manufactured home and a suitably developed lot on which to place the home;

''(E) $13,500, if made for the purpose of financing the purchase, by an owner of a manufactured home which is the principal residence of that owner, of a suitably developed lot on which to place that manufactured home, and if the owner certifies that he or she will place the manufactured home on the lot acquired with such loan within six months after the date of such loan;''.

Subsec. (b)(2). Pub. L. 102–389 substituted ''but in no case may such limits, as so increased, exceed the lesser

of (A) 185 percent of the dollar amount specified, or (B) the dollar amount specified as increased by the same percentage by which 95 percent of the median one-family house price in the area (as determined by the Secretary) exceeds $67,500'' for ''but not to exceed the percentage by which the maximum mortgage amount of a one-family residence in the area is increased by the Secretary under section 1709(b)(2) of this title''.

1990—Subsec. (b)(1)(A). Pub. L. 101–625, § 340(b)(1)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: ''$17,500 ($20,000 where financing the installation of a solar energy system is involved) if made for the purpose of financing alterations, repairs and improvements upon or in connection with existing single-family structures or manufactured homes;''.

Subsec. (b)(1)(B). Pub. L. 101–625, § 340(b)(1)(B), substituted ''$60,000 or an average amount of $12,000 per family unit'' for ''$43,750 or an average amount of $8,750 per family unit ($50,000 and $10,000, respectively, where financing the installation of a solar energy system is involved)''.

Subsec. (b)(3)(A). Pub. L. 101–625, § 340(c)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: ''fifteen years and thirty-two days if made for the purpose of financing alterations, repairs, and improvements upon or in connection with an existing single-family structure or manufactured home;''.

Subsec. (b)(3)(B). Pub. L. 101–625, § 340(c)(2), substituted ''twenty years'' for ''fifteen years''.

Subsec. (i). Pub. L. 101–625, § 806(a), added subsec. (i).

1989—Subsec. (b)(7). Pub. L. 101–235 added par. (7).

1988—Subsec. (a). Pub. L. 100–242 struck out ''and not later than March 15, 1988,'' after ''made by them on or after July 1, 1939,''.

1987—Subsec. (a). Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

1986—Subsec. (a). Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272 made amendment identical to Pub. L. 99–219. See 1985 Amendment note below.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

1985—Subsec. (a). Pub. L. 99–219 substituted ''not later than March 17, 1986'' for ''prior to December 16, 1985''.

Pub. L. 99–156 substituted ''December 16, 1985'' for ''November 15, 1985''.

Pub. L. 99–120 substituted ''November 15, 1985'' for ''October 1, 1985''.

1983—Subsec. (a). Pub. L. 98–181, § 415, inserted new undesignated par. authorizing insurance be made available to existing manufactured homes not insured under this section if such homes were constructed in accordance with the standards issued under the National Manufactured Housing Construction and Safety Standards Act of 1974 and meet standards similar to the minimum property standards applicable to existing homes issued under subchapter II of this chapter.

Pub. L. 98–181, § 401(a), substituted ''October 1, 1985'' for ''December 1, 1983''.

Pub. L. 98–109 substituted ''December 1, 1983'' for ''October 1, 1983''.

Pub. L. 98–35 substituted ''October 1, 1983'' for ''May 21, 1983''.

Subsec. (b)(1)(C). Pub. L. 98–181, § 416(a)(1), substituted ''$40,500'' for ''$22,500 ($35,000 in the case of a manufactured home composed of two or more modules)''.

Subsec. (b)(1)(D). Pub. L. 98–181, § 416(a)(2), substituted ''$54,000'' for ''$35,000 ($47,500 in the case of a manufactured home composed of two or more modules)''.

Subsec. (b)(1)(E). Pub. L. 98–181, § 416(a)(3), substituted ''$13,500'' for ''such an amount as may be necessary, but not exceeding $12,500,''.

Subsec. (b)(2). Pub. L. 98–181, § 416(b), substituted provision authorizing the Secretary, in other areas, to increase the maximum dollar amounts specified in subsec. (b)(1)(D) and (E) on an area-by-area basis as deemed necessary, but not to exceed the percentage by which the maximum mortgage amount of a one-family residence in the area is increased by the Secretary under section 1709(b)(2) of this title for provision which authorized the Secretary, by regulation, in other areas where needed to meet the higher costs of land acquisition, etc., in connection with the purchase of a manufactured home or lot, to increase any dollar amount limitation otherwise applicable by an additional $7,500.

Subsec. (b)(5). Pub. L. 98–181, § 404(b)(1), amended par. (5) generally, substituting provision that any obligation with respect to which insurance is granted under this section bear interest at such rate as agreed upon by the borrower and the financial institution for provision that any such obligation bear interest and insurance premium charges as do not exceed an amount determined by a specified formula.

Subsec. (b)(6)(C). Pub. L. 98–181, § 417, added subpar. (C).

1982—Subsec. (a). Pub. L. 97–289 substituted ''May 21, 1983'' for ''October 1, 1982''.

1981—Subsec. (a). Pub. L. 97–35, § 331(a), substituted ''1982'' for ''1981''.

Subsec. (b). Pub. L. 97–35, § 338(a), completely revised and reorganized provisions respecting computations, adjustments, applicability, etc., for granting of insurance to financial institutions for obligations representing loans, advances of credit, or purchases.

1980—Subsec. (a). Pub. L. 96–399, §§ 301(a), 308(c)(1), substituted ''October 1, 1981'' for ''October 16, 1980'', and substituted ''manufactured home'' for ''mobile home'' wherever appearing.

Pub. L. 96–372 substituted ''October 16, 1980'' for ''October 1, 1980''.

Subsec. (b). Pub. L. 96–399, § 308(a)–(c)(1), inserted provisions respecting areas of high land costs or high setup costs, substituted ''manufactured home'' for ''mobile home'' wherever appearing, and increased amounts with respect to financing purchases of such homes from $18,000 to $20,000 (from $27,000 to $30,000 where there are two or more modules), where an undeveloped lot is concerned from $24,000 to $26,675 (from $33,000 to $36,675 where there are two or more modules), where a suitably developed lot is concerned from $27,500 to $30,550 (from $36,500 to $40,550 where there are two or more modules), and where a principal place of residence of the owner is concerned from $6,250 to $6,950 and $9,375 to $10,425, respectively, for undeveloped and developed lots.

1979—Subsec. (a). Pub. L. 96–153, § 301(a), substituted ''October 1, 1980'' for ''December 1, 1979''.

Pub. L. 96–105 substituted ''December 1, 1979'' for ''November 1, 1979''.

Pub. L. 96–71 substituted ''November 1, 1979'' for ''October 1, 1979''.

Subsec. (b). Pub. L. 96–153, § 313(a), substituted: in cl. (1) of first sentence of first unlettered paragraph ''$18,000 ($27,000 in the case of a mobile home containing'' for ''$16,000 ($24,000 in the case of a mobile home composing'', in subpar. (A) of second unlettered paragraph ''such an amount not exceeding $24,000 ($33,000 in the case of a mobile home composed of two or more modules)'' for ''an amount not exceeding (i) the maximum amount under clause (1) of the first paragraph of this subsection, and (ii) such amount not to exceed $5,000 as may be necessary to cover the cost of purchasing the lot'', in subpar. (B) of second unlettered paragraph ''twenty years and thirty-two days (twenty-five'' for ''fifteen years and thirty-two days (twenty-three'', in subpar. (A) of third unlettered paragraph ''such an amount not exceeding $27,500 ($36,500 in the case of a mobile home composed of two or more modules)'' for

''an amount not exceeding (i) the maximum amount under clause (1) of the first paragraph of this subsection, and (ii) such amount not to exceed $7,500 as may be necessary to cover the cost of purchasing the lot'', in subpar. (B) of such unlettered paragraph ''twenty years and thirty-two days (twenty-five'' for ''fifteen years and thirty-two days (twenty-three'', in subpar. (A) of the fourth unlettered paragraph ''$6,250 in the case of an undeveloped lot, or (ii) $9,375'' for ''$5,000 in the case of an undeveloped lot, or (ii) $7,500'', and in subpar. (B) of such paragraph ''fifteen years and thirty-two days'' for ''ten years and thirty-two days''.

1978—Subsec. (a). Pub. L. 95–557, § 301(a), substituted ''October 1, 1979'' for ''November 1, 1978''.

Pub. L. 95–406 substituted ''November 1, 1978'' for ''October 1, 1978''.

Subsec. (a)(2). Pub. L. 95–619 defined ''energy conserving improvements'' in terms of purchase and installation of weatherization materials as defined in section 6862(9) of title 42 rather than additions, alterations, or improvements of an existing or new structure, designed to reduce the total energy requirements of a structure in conformity with standards prescribed by the Secretary.

Subsec. (a)(3). Pub. L. 95–619 expanded definition of ''solar energy system'' to include the utilization of wind energy and added the distinction between active and passive types of energy systems.

Subsec. (b). Pub. L. 95–557, § 320, substituted ''not in excess of $37,500 nor an average amount of $7,500 per family unit and having a maturity not in excess of fifteen years'' for ''not in excess of $25,000 nor an average amount of $5,000 per family unit and having a maturity not in excess of twelve years''.

1977—Subsec. (a). Pub. L. 95–128, § 301(a), substituted ''October 1, 1978'' for ''October 1, 1977''.

Pub. L. 95–80 substituted ''October 1, 1977'' for ''August 1, 1977''.

Pub. L. 95–60 substituted ''August 1, 1977'' for ''June 30, 1977''.

Subsec. (b). Pub. L. 95–128, § 306, substituted: in cl. (1) of first sentence ''$15,000'' for ''$10,000'' and ''$16,000 ($24,000'' for ''$12,500 ($20,000'', and in cl. (2) ''fifteen years'' for ''twelve years''; inserted at end of proviso in cl. (2) ''(twenty-three years and thirty-two days in the case of a mobile home composed of two or more modules)''; substituted in subpar. (B) of the second and third paragraphs ''twenty-three years'' for ''twenty years''; and inserted paragraph at end of subsec. (b) which authorized the Secretary to increase by regulation any dollar amount limitation on mobile homes or mobile home lot loans contained in this subsection by not to exceed 40 per centum.

1975—Subsec. (b). Pub. L. 94–173 substituted ''$12,500 ($20,000'' for ''$10,000 ($15,000'' in cl. 1.

1974—Subsec. (a). Pub. L. 93–449, § 4(a)(1), inserted provisions relating to financing preservation of historic structures and defining ''historic structures'' and ''preservation''.

Pub. L. 93–383, §§ 309(b)(1), (2), (c), 316(a), substituted ''June 30, 1977'' for ''October 1, 1974'' in provisions preceding initially designated cl. (i), inserted ''or mobile homes'' after ''in connection with existing structures'' in initial cl. (i), provisions relating to the financing of the purchase of a lot on which a mobile home is to be placed and payment of reasonable expenses for the appropriate preparation of such lot, and paragraph relating to alteration, repair, and improvement upon or in connection with existing structures with respect to inclusion of fire safety equipment, etc.

Subsec. (b). Pub. L. 93–449, § 4(a)(2), added par. relating to loans financing preservation of historic structures.

Pub. L. 93–383, § 309(a), (b)(3), (d), in cl. (1) substituted ''exceeds $10,000'' for ''exceeds $5,000'', in cl. (2) substituted provisions relating to maturity of obligation in excess of twelve years and thirty-two days for provisions relating to maturity of obligation in excess of three years and thirty-two days and authorization of increase to seven years and thirty-two days under conditions determined by the Secretary and substituted ''fifteen years and thirty-two days'' for ''twelve years and thirty-two days (fifteen years and thirty-two days in the case of a mobile home composed of two or more modules)'', in cl. (3) substituted ''$25,000'' for ''$15,000'', ''$5,000'' for ''$2,500'', and ''twelve years'' for ''seven years'', inserted provision relating to loans to finance fire safety equipment for a nursing home, etc., and inserted paragraphs relating to financing the purchase of a mobile home and an undeveloped lot on which the mobile home is to be placed, financing the purchase of a mobile home and a suitably developed lot on which the mobile home is to be placed, and financing the purchase by the owner of a mobile home of a lot on which the mobile home is to be placed.

1973—Subsec. (a). Pub. L. 93–117 substituted ''October 1, 1974'' for ''October 1, 1973''.

Pub. L. 93–85 substituted ''October 1, 1973'' for ''June 30, 1973''.

1972—Subsec. (a). Pub. L. 92–503 substituted ''June 30, 1973'' for ''October 1, 1972''.

1970—Subsec. (a). Pub. L. 91–609, § 101(a), substituted ''October 1, 1972'' for ''January 1, 1971''.

Pub. L. 91–525 substituted ''January 1, 1971'' for ''December 1, 1970''.

Pub. L. 91–473 substituted ''December 1, 1970'' for ''November 1, 1970''.

Pub. L. 91–432 substituted ''November 1, 1970'' for ''October 1, 1970''.

Subsec. (b). Pub. L. 91–609, § 113(1), (2), in cl. (1) prohibited insurance with respect to obligations representing a loan where loan exceeds ''($15,000 in the case of a mobile home composed of two or more modules)'', and in cl. (2) prescribed maturity date for obligation financing purchase of a mobile home of ''(fifteen years and thirty-two days in the case of a mobile home composed of two or more modules)''.

1969—Subsec. (a). Pub. L. 91–152, §§ 101(a), 103(c)(1)(4), substituted ''October 1, 1970'' for ''January 1, 1970'', designated as ''(i)'' provisions authorizing and empowering the Secretary to insure institutions financing alterations, repairs, and improvements, etc., inserted provisions designated as ''(ii)'' dealing with institutions which finance the purchase of mobile homes used by the owner as his principal residence, inserted ''(other than mobile homes)'' after ''(1) with respect to new residential structures'', and inserted provisions authorizing and directing the Secretary to prescribe minimum property standards and conformance to local zoning requirements with respect to mobile homes financed by insured institutions.

Pub. L. 91–78 substituted ''January 1, 1970'' for ''October 1, 1969''.

Subsec. (b). Pub. L. 91–152, § 103(c)(5), (6), in cl. (1) inserted provision excepting obligations financing the purchase of mobile homes in an amount not exceeding $10,000, and in cl. (2) inserted proviso limiting obligations financing the purchase of mobile homes to a maturity date not in excess of twelve years and thirty-two days.

Subsec. (c)(2). Pub. L. 91–152, § 103(c)(7), substituted ''real or personal property'' for ''real property'' wherever appearing.

1968—Subsec. (b). Pub. L. 90–448 substituted ''$5,000'' for ''$3,500'', ''seven years'' for ''five years'', ''$5.50 discount'' for ''$5 discount'', and ''$4.50 discount'' for ''$4 discount''.

1967—Pub. L. 90–19, § 1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a), (b), (c)(1), (2), and (d) to (h).

Subsec. (c)(2). Pub. L. 90–19, § 1(d), substituted ''an officer'' for ''the Commissioner or by any Assistant Commissioner''.

1965—Subsec. (a). Pub. L. 89–117, § 202(a), substituted ''October 1, 1969'' for ''October 1, 1965''.

Subsec. (f). Pub. L. 89–117, § 1108(a), struck out provisions directing the deposit of premium charges and fees and property held with respect to insurance into a United States Treasury account to be used to defray Federal Housing Administration expenses and to pay

insurance claims and making allowance for transfer and merger of funds and disposition of surplus funds.

1964—Subsec. (g). Pub. L. 88–560 struck out ''after December 31, 1957,'' after ''Any payment for loss made''.

1961—Subsec. (a). Pub. L. 87–70 substituted ''October 1, 1965'' for ''October 1, 1961''.

1960—Subsec. (a). Pub. L. 86–788 substituted ''October 1, 1961'' for ''October 1, 1960'', and struck out provisions limiting the aggregate amount of all loans, advances of credit, and obligations purchased, with respect to which insurance could be granted under the section, at $1,750,000,000.

1959—Subsec. (a). Pub. L. 86–372 substituted ''October 1, 1960'' for ''September 30, 1959''.

1957—Subsecs. (g), (h). Pub. L. 85–104 added subsec. (g) and redesignated former subsec. (g) as (h).

1956—Subsec. (a). Act Aug. 7, 1956, §101(a), substituted ''September 30, 1959'' for ''September 30, 1956'' and proviso of second par. authorizing waiver of clause (iii) in discretion of Commissioner with respect to occupancy of completion of new residential structures, for former proviso providing that the clause (iii) occupancy requirement should not be mandatory with respect to new residences damaged by a major disaster.

Act Feb. 10, 1956, removed the six months' occupancy requirement with respect to new residences damaged by a major disaster.

Subsec. (b). Act Aug. 7, 1956, §101(b), (c), increased amount of loans which can be insured to $3,500 in lieu of former provisions providing $2,500 for improvement of existing structures and $3,000 for construction of new structures, increased maximum term of loans which can be insured from 3 years and thirty-two days to 5 years and thirty-two days, inserted proviso limiting interest and premium charges equivalent to $5 discount per $100 for proceeds of loan up to $2,500 and $4 discount per $100 for proceeds in excess of $2,500, and substituted ''$15,000 nor an average amount of $2,500 per family unit'' for ''$10,000''.

1955—Subsec. (a). Act Aug. 11, 1955, substituted ''September 30, 1956'' for ''August 1, 1955''.

Act June 30, 1955, substituted ''August 1, 1955'' for ''July 1, 1955''.

1954—Subsec. (a). Act Aug. 2, 1954, §101(a), in second sentence, inserted proviso restricting claims for losses on individual loans, advances of credit, and purchases to 90 per centum of loss in each such case, and added second par.

Subsec. (f). Act Aug. 2, 1954, §102, inserted last two sentences with respect to termination of the Title I Claims Account as of August 1, 1954.

1953—Subsec. (a). Act Mar. 10, 1953, increased the Subchapter I loan insurance authorization from $1,250,000,000 to $1,750,000,000.

1950—Act Apr. 20, 1950, §122, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

Subsec. (a). Act Apr. 20, 1950, §101(a)(1), (2), substituted ''July 1, 1955'' for ''Mar. 1, 1950'', and limited the total amount of outstanding loans with respect to which insurance is granted under this section to $1,250,000,000 outstanding at any one time.

Subsec. (b)(1). Act Apr. 20, 1950, §101(a)(3), substituted ''$3,000'' for ''$4,500''.

Subsec. (b)(2). Act Apr. 20, 1950, §101(a)(4), struck out ''residential or'' before ''agricultural purposes''.

Subsec. (f). Act Apr. 20, 1950, §101(a)(5), substituted ''section'' for ''subchapter'' wherever appearing.

1949—Subsec. (a). Joint Res. Oct. 25, 1949, substituted ''March 1, 1950'' for ''November 1, 1949'' in first sentence and ''$225,000,000'' for ''$200,000,000'' in last sentence.

Act Aug. 30, 1949, substituted ''November 1, 1949'' for ''September 1, 1949''.

Act July 15, 1949, substituted ''September 1, 1949'' for ''July 1, 1949''.

1948—Subsec. (a). Act Aug. 10, 1948, §101(s)(1), substituted ''$200,000,000'' for ''$165,000,000''.

Subsec. (b). Act Aug. 10, 1948, §101(s)(2)–(4), substituted ''$4,500'' for ''$3,000'', struck out first proviso and inserted in lieu a new proviso, and struck out last sentence.

1947—Subsec. (a). Act June 26, 1947, extended provisions of section for two years from 1947 to 1949.

1943—Subsec. (a). Act Oct. 15, 1943, substituted ''1947'' for ''1944'' in first sentence.

Act Mar. 23, 1943, substituted ''1944'' for ''1943'' in first sentence.

Subsec. (f). Act Oct. 15, 1943, §4, struck out ''three-fourths of'' before ''1 per centum'' in first sentence.

1942—Subsec. (b). Act May 26, 1942, amended provisions generally.

1941—Subsec. (a). Act June 28, 1941, §§1, 2, substituted ''July 1, 1943'' for ''July 1, 1941'' in first sentence; inserted ''and other sources'' after ''premiums''; and substituted ''$165,000,000'' for ''$100,000,000''.

Subsec. (b). Act June 28, 1941, §3, substituted ''made for the purpose of financing the alteration, repair, or improvement of existing structures exceeds $2,500 (or in the case of the alteration, repair, or improvement of an existing dwelling designed or to be designed for more than one family, exceeds $5,000), or for the purpose of financing the construction of new structures exceeds $3,000'' for ''exceeds $2,500''; substituted in cl. (2) ''where the loan, advance of credit, or purchase does not exceed $2,500, or has a maturity in excess of five years and thirty-two days, where the loan, advance of credit, or purchase exceeds $2,500 but does not exceed $5,000; except that such maturity limitations shall not apply if'' for ''unless''; and inserted proviso at end.

Subsec. (c). Act June 28, 1941, §4, designated existing provisions as par. (1), inserted ''personal'' before ''property'', and added par. (2).

Subsec. (f). Act June 28, 1941, §5, inserted ''and all moneys collected by the Administrator as fees of any kind in connection with the granting of insurance as provided in this section, and all moneys derived from the sale, collection, disposition, or compromise of any evidence of debt, contract, claim, property, or security assigned to or held by the Administrator as provided in subsection (c) of this section with respect to insurance collected on and after July 1, 1939'' in last sentence.

1939—Subsecs. (a), (b). Act June 3, 1939, §1, amended provisions generally.

Subsecs. (f), (g). Act June 3, 1939, §2, added subsecs. (f) and (g).

1938—Subsecs. (a), (b). Act Feb. 3, 1938, amended provisions generally.

1937—Subsec. (a). Act Apr. 22, 1937, in third sentence, limited the total liability for all insurance under this section and former section 1026a of this title, not to exceed in the aggregate $100,000,000.

1936—Subsecs. (a) to (d). Act Apr. 3, 1936, amended provisions generally.

Subsec. (e). Act Apr. 17, 1936, added subsec. (e).

1935—Subsec. (a). Act Aug. 23, 1935, substituted ''and the purchase and installation of equipment and machinery on real property'' for ''including the installation of equipment and machinery'' in first sentence.

Act May 28, 1935, substituted ''April'' for ''January'' in first sentence and inserted ''including the installation of equipment and machinery'', and amended generally the last sentence.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. B, title I, §2144(b), July 30, 2008, 122 Stat. 2844, provided that: ''The amendment made by subsection (a) [amending this section] shall only apply to loans that are registered or endorsed for insurance after the date of the enactment of this title [July 30, 2008].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 340(b)(2) of Pub. L. 101–625 provided that: ''The amendments made by this subsection [amending this section] shall apply to loans executed on or after June 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 134(b) of Pub. L. 101–235 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to—

''(1) violations referred to in the amendment that occur on or after the date of the enactment of this Act [Dec. 15, 1989]; and

''(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation referred to in the amendment that occurs on or after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 101(b) of act Aug. 2, 1954, provided that, as used in the amendments made by such act (see 1954 Amendments note above), the words ''effective date of the Housing Act of 1954 [Act Aug. 2, 1954]'' mean the first day after the first full calendar month following the date of approval of such act (Aug. 2, 1954).

EFFECTIVE DATE OF 1950 AMENDMENT

Section 101(b) of act Apr. 20, 1950, provided that ''This section [amending this section] shall take effect as of March 1, 1950.''

EFFECTIVE DATE OF 1949 AMENDMENT

Section 202 of title II of act July 15, 1949, provided that: ''This title [amending this section and sections 1709 and 1738 of this title] shall take effect as of June 30, 1949.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 4 of act June 3, 1939, provided that: ''The provisions of sections 1, 2, and 3 of this Act [amending this section and repealing section 1706a of this title] shall take effect on July 1, 1939.''

EFFECTIVE DATE OF 1936 AMENDMENT

Section 1 of act Apr. 3, 1936, provided that the amendment made by that section is effective Apr. 1, 1936.

INCONSISTENT LAWS

Section 818 of act Aug. 2, 1954, provided that: ''Insofar as the provisions of any other law are inconsistent with the provisions of this Act [see 1954 Short Title note set out under section 1701 of this title], the provisions of this Act shall be controlling.''

POWERS AND AUTHORITIES OF ACT AUGUST 2, 1954 AS CUMULATIVE; SEPARABILITY

Section 819 of act Aug. 2, 1954, provided that: ''Except as may be otherwise expressly provided in this Act [see Short Title of 1954 Amendments note set out under section 1701 of this title], all powers and authorities conferred by this Act shall be cumulative and additional to and not in derogation of any powers and authorities otherwise existing. Notwithstanding any other evidences of the intention of Congress, it is hereby declared to be the controlling intent of Congress that if any provisions of this Act, or the application thereof to any persons or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its application to other persons and circumstances.''

PURPOSES

Pub. L. 110–289, div. B, title I, § 2142, July 30, 2008, 122 Stat. 2844, provided that: ''The purposes of this subtitle [subtitle B (§§ 2141–2150) of title I of div. B of Pub. L. 110–289, see Short Title of 2008 Amendment note set out under section 1701 of this title] are—

''(1) to provide adequate funding for FHA-insured manufactured housing loans for low- and moderate-income homebuyers during all economic cycles in the manufactured housing industry;

''(2) to modernize the FHA title I insurance program for manufactured housing loans to enhance participation by Ginnie Mae and the private lending markets; and

''(3) to adjust the low loan limits for title I manufactured home loan insurance to reflect the increase in costs since such limits were last increased in 1992 and to index the limits to inflation.''

TIMING

Pub. L. 110–289, div. B, title I, § 2148(b), July 30, 2008, 122 Stat. 2847, provided that: ''Not later than the expiration of the 6-month period beginning on the date of the enactment of this title [July 30, 2008], the Secretary of Housing and Urban Development shall revise the existing underwriting criteria for the program referred to in paragraph (10) of section 2(b) of the National Housing Act [12 U.S.C. 1703(b)(10)] (as added by subsection (a) of this section) in accordance with the requirements of such paragraph.''

''MOBILE HOME'' AND ''MANUFACTURED HOME'' TO INCLUDE ''MOBILE HOMES'' AND ''MANUFACTURED HOMES''

Section 339B(c) of Pub. L. 97–35 provided that: ''For purposes of paragraphs (1) and (4) of section 308(c) of the Housing and Community Development Act of 1980 [amending sections 1703 and 1713 of this title, and section 5401 et seq. of Title 42, The Public Health and Welfare], the term 'mobile home' and the term 'manufactured home' shall be deemed to include the term 'mobile homes' and the term 'manufactured homes', respectively.''

DATA COLLECTION AND REPORTING PROCEDURES RESPECTING MEAN AND MEDIAN SALES PRICES ON MANUFACTURED HOMES AND LOTS; DEVELOPMENT, CONTENTS, ETC.

Section 308(e) of Pub. L. 96–399 provided that: ''Not later than January 1, 1982, the Secretary of Housing and Urban Development shall develop a procedure for collecting and regularly reporting data on the mean and median sales price for new manufactured homes, and, where available, data on the mean and median sales price for manufactured home lots and combination new manufactured home and lot packages. Such reports shall contain, to the maximum extent feasible, sales price information for the Nation, each census region, each State on an annual basis, and selected standard metropolitan statistical areas having sufficient activity on an annual basis.''

REPORT RESPECTING OWNERSHIP OF MOBILE HOME SITES

Section 321 of Pub. L. 96–153, required the Secretary of Housing and Urban Development to submit a report to Congress by Mar. 31, 1980, containing recommendations for programs and policies which encourage individual ownership of mobile home lots through several methods.

REPAYMENT TO TREASURY ON CAPITAL ACCOUNT OF SUBCHAPTER I INSURANCE FUND

Section 2 of act Mar. 10, 1953, authorized the Federal Housing Commissioner to pay out of the capital account of the Title I Insurance Fund to the Secretary of the Treasury, prior to June 30, 1954, the sum of $8,333,313.65 either in one lump sum or in installments and that the first payment be made on July 1, 1953.

§ 1704. Repealed. Apr. 3, 1936, ch. 165, § 2, 49 Stat. 1188

Section, act June 27, 1934, ch. 847, title I, § 3, 48 Stat. 1247, related to loans to financial institutions.

§ 1705. Allocation of funds

For the purposes of carrying out the provisions of this subchapter and subchapters II and III of this chapter the President, in his discre-

tion, is authorized to provide such funds or any portion thereof by allotment to the Secretary from any funds that are available, or may hereafter be made available, to the President for emergency purposes.

(June 27, 1934, ch. 847, title I, §4, 48 Stat. 1247; June 30, 1947, ch. 166, title II, §206(*l*), 61 Stat. 208; Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 98–479, title II, §204(a)(1), Oct. 17, 1984, 98 Stat. 2231.)

AMENDMENTS

1984—Pub. L. 98–479 substituted ''such'' for ''suuch''.

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner''.

1950—Act Apr. 20, 1950, §122, substituted ''Commissioner'' for ''Administrator''.

1947—Act June 30, 1947, struck out references to Reconstruction Finance Corporation.

§ 1706. Repealed. Aug. 2, 1954, ch. 649, title VIII, § 802(b), 68 Stat. 642

Section, acts June 27, 1934, ch. 847, title I, §5, 48 Stat. 1247; Mar. 28, 1941, ch. 31, §3, 55 Stat. 61; Aug. 10, 1948, ch. 832, title IV, §402 (part), 62 Stat. 1283; Aug. 8, 1949, ch. 403, §2 (part), 63 Stat. 576; Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Sept. 1, 1951, ch. 378, title II, §202 (part), 65 Stat. 303, related to reports to Congress. See section 1701*o* of this title.

§ 1706a. Repealed. June 3, 1939, ch. 175, § 3, 53 Stat. 805

Section, act June 27, 1934, ch. 847, title I, §6, as added act Apr. 17, 1936, ch. 234, §3, 49 Stat. 1233; amended act Apr. 22, 1937, ch. 121, §1, 50 Stat. 70, related to insurance of financial institutions financing rehabilitation of property damaged by fires, floods, storms, etc.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1939, see section 4 of act June 3, 1939, set out as an Effective Date of 1939 Amendment note under section 1703 of this title.

§ 1706b. Taxation of real property held by Secretary

Nothing in this subchapter shall be construed to exempt any real property acquired and held by the Secretary in connection with the payment of insurance heretofore or hereafter granted under this subchapter from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed.

(June 27, 1934, ch. 847, title I, §7, as added June 28, 1941, ch. 261, §7, 55 Stat. 365; amended Apr. 20, 1950, ch. 94 title I, §122, 64 Stat. 59; Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner''.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator''.

§ 1706c. Insurance of mortgages

(a) Supplemental system; limitation on amount; termination of authority

To assist in providing adequate housing for families of low and moderate income, particularly in suburban and outlying areas, this section is designed to supplement systems of mortgage insurance under other provisions of this chapter by making feasible the insurance of mortgages covering properties in areas where it is not practicable to obtain conformity with many of the requirements essential to the insurance of mortgages on housing in built-up urban areas. The Secretary is authorized, upon application by the mortgagee, to insure, as hereinafter provided, any mortgage (as defined in section 1707 of this title) offered to him which is eligible for insurance as hereinafter provided, and, upon such terms as the Secretary may prescribe, to make commitments for the insuring of such mortgages prior to the date of their execution or disbursement thereon: *Provided*, That the aggregate amount of principal obligations of all mortgages insured under this section and outstanding at any one time shall not exceed $100,000,000, except that with the approval of the President such aggregate amount may be increased at any time or times by additional amounts aggregating not more than $150,000,000 upon a determination by the President, taking into account the general effect of any such increase upon conditions in the building industry and upon the national economy, that such increase is in the public interest: *And provided further*, That no mortgage shall be insured under this section after August 2, 1954, except pursuant to a commitment to insure issued on or before such date.

(b) Eligibility conditions

To be eligible for insurance under this section, a mortgage shall—

(1) have been made to, and be held by, a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;

(2) involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed $5,700, and not to exceed 95 per centum of the appraised value, as of the date the mortgage is accepted for insurance, of a property upon which there is located a dwelling designed principally for a single-family residence, and which is approved for mortgage insurance prior to the beginning of construction: *Provided*, That the mortgagor shall be the owner and occupant of the property at the time of insurance and shall have paid on account of the property at least 5 per centum of the Secretary's estimate of the cost of acquisition in cash or its equivalent, or shall be the builder constructing the dwelling, in which case the principal obligation shall not exceed 85 per centum of the appraised value of the property or $5,100: *Provided further*, That the Secretary finds that the project with respect to which the mortgage is executed is an acceptable risk, giving consideration to the need for providing adequate housing for families of low and moderate income particularly in suburban and outlying areas: *And provided further*, That, where the mortgagor is the owner and occupant of the property and establishes (to the satisfaction of the Secretary) that his home, which he occupied as an owner or as a tenant, was destroyed or damaged to such an extent that reconstruction is

required as a result of a flood, fire, hurricane, earthquake, storm or other catastrophe, which the President, pursuant to sections 5122(2) and 5170 of title 42, has determined to be a major disaster, such maximum dollar limitation may be increased by the Secretary from $5,700 to $7,000, and the percentage limitation may be increased by the Secretary from 95 per centum to 100 per centum of the appraised value;

(3) have a maturity satisfactory to the Secretary but not to exceed thirty years from the date of insurance of the mortgage;

(4) contain complete amortization provisions satisfactory to the Secretary requiring periodic payments by the mortgagor not in excess of his reasonable ability to pay as determined by the Secretary;

(5) bear interest (exclusive of premium charges for insurance and service charges, if any) at not to exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time;

(6) provide, in a manner satisfactory to the Secretary, for the application of the mortgagor's periodic payments (exclusive of the amount allocated to interest and to the premium charge which is required for mortgage insurance as hereinafter provided and to the service charge, if any) to amortization of the principal of the mortgage; and

(7) contain such terms and provisions with respect to insurance, repairs, alterations, payment of taxes, service charges, default reserves, delinquency charges, foreclosure proceedings, anticipation of maturity, and other matters as the Secretary may in his discretion prescribe.

(c) Premium charge

The Secretary is authorized to fix a premium charge for the insurance of mortgages under this section, but in the case of any mortgage, such charge shall not be less than an amount equivalent to one-half of 1 per centum per annum nor more than an amount equivalent to 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time, without taking into account delinquent payments or prepayments. Such premium charges shall be payable by the mortgagee, either in cash or in debentures issued by the Secretary under this section at par plus accrued interest, in such manner as may be prescribed by the Secretary: *Provided*, That the Secretary may require the payment of one or more such premium charges at the time the mortgage is insured, at such discount rate as he may prescribe not in excess of the interest rate specified in the mortgage. If the Secretary finds, upon the presentation of a mortgage for insurance and the tender of the initial premium charge or charges so required, that the mortgage complies with the provisions of this section, such mortgage may be accepted for insurance by endorsement or otherwise as the Secretary may prescribe. In the event that the principal obligation of any mortgage accepted for insurance under this section is paid in full prior to the maturity date, the Secretary is further authorized, in his discretion, to require the payment by the mortgagee of an adjusted premium charge in such amount as the Secretary determines to be equitable, but not in excess of the aggregate amount of the premium charges that the mortgagee would otherwise have been required to pay if the mortgage had continued to be insured until such maturity date; and in the event that the principal obligation is paid in full as herein set forth, the Secretary is authorized to refund to the mortgagee for the account of the mortgagor all, or such portion as he shall determine to be equitable, of the current unearned premium charges theretofore paid.

(d) Release of mortgagor

The Secretary may, at any time under such terms and conditions as he may prescribe, consent to the release of the mortgagor from his liability under the mortgage or the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage.

(e) Conclusiveness of insurance contract as to eligibility

Any contract of insurance executed by the Secretary under this section shall be conclusive evidence of the eligibility of the mortgage for insurance, and the validity of any contract of insurance so executed shall be incontestable in the hands of an approved mortgagee from the date of the execution of such contract, except for fraud or misrepresentation on the part of such approved mortgagee.

(f) Rights of mortgagee upon foreclosure

In any case in which the mortgagee under a mortgage insured under this section shall have foreclosed and taken possession of the mortgaged property in accordance with the regulations of, and within a period to be determined by, the Secretary or shall, with the consent of the Secretary, have otherwise acquired such property from the mortgagor after default, the mortgagee shall be entitled to receive the benefits of the insurance as provided in section 1710(a) of this title with respect to mortgages insured under section 203(b)(2)(D) of this Act.

(g) Applicability of other sections

Subsections (c), (d), (e), (f), (g), (h),[1] (j), and (k)[1] of section 1710 of this title shall be applicable to mortgages insured under this section except that all references therein to the Mutual Mortgage Insurance Funds or the Fund shall be construed to refer to the General Insurance Fund, and all references therein to section 1709 of this title shall be construed to refer to this section: *Provided*, That debentures issued in connection with mortgages insured under this section shall have the same tax exemption as debentures issued in connection with mortgages insured under section 1709 of this title.

(June 27, 1934, ch. 847, title I, §8, as added Apr. 20, 1950, ch. 94, title I, §102, 64 Stat. 48; amended Aug. 3, 1951, ch. 293, §1, 65 Stat. 173; June 30, 1953, ch. 170, §2, 67 Stat. 121; Aug. 2, 1954, ch. 649, title I, §103, 68 Stat. 591; Pub. L. 86–372, title I, §116(a), Sept. 23, 1959, 73 Stat. 664; Pub. L. 89–117, title XI, §1108(b), Aug. 10, 1965, 79 Stat. 504; Pub. L. 90–19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub.

[1] See References in Text note below.

L. 91–606, title III, § 301(b), Dec. 31, 1970, 84 Stat. 1758; Pub. L. 93–288, title VII, § 702(b), formerly title VI, § 602(b), May 22, 1974, 88 Stat. 163, renumbered title VII, § 702(b), Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100; Pub. L. 100–707, title I, § 109(e)(1), Nov. 23, 1988, 102 Stat. 4708.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

Section 203(b)(2)(D) of this Act, referred to in subsec. (f), which was formerly classified to section 1709(b)(2)(D) of this title, was repealed by act Aug. 2, 1954, ch. 649, title I, § 104, 68 Stat. 591.

Subsection (h) of section 1710 of this title, referred to in subsec. (g), was redesignated subsec. (i) by Pub. L. 105–276, title VI, § 602(1), Oct. 21, 1998, 112 Stat. 2674.

Subsection (k) of section 1710 of this title, referred to in subsec. (g), was repealed by Pub. L. 105–276, title VI, § 601(c), Oct. 21, 1998, 112 Stat. 2673.

The General Insurance Fund, referred to in subsec. (g), was established by section 1735c of this title.

AMENDMENTS

1988—Subsec. (b)(2). Pub. L. 100–707 substituted ''5170 of title 42'' for ''5141 of title 42''.

1974—Subsec. (b)(2). Pub. L. 93–288 substituted ''sections 5122(2) and 5141 of title 42'' for ''section 4402(1) of title 42''.

1970—Subsec. (b)(2). Pub. L. 91–606 substituted reference to section ''4402(1)'' for ''1855a(a)'' of title 42.

1967—Pub. L. 90–19, § 1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a), (b)(1) to (4), (6), (7), and (c) to (f).

Subsec. (b)(2). Pub. L. 90–19, § 1(a)(4), substituted ''Secretary's'' for ''Commissioner's''.

1965—Subsec. (g). Pub. L. 89–117, § 1108(b)(1), substituted ''General Insurance Fund'' for ''Title I Housing Insurance Fund''.

Subsec. (h). Pub. L. 89–117, § 1108(b)(2), repealed subsec. (h) which created the Title I Housing Insurance Fund.

Subsec. (i). Pub. L. 89–117, § 1108(b)(2), repealed subsec. (i) which dealt with the disposition of surplus funds of the Title I Housing Insurance Fund, purchase of debentures, and credits and charges to fund.

1959—Subsec. (g). Pub. L. 86–372 inserted reference to subsecs. (j) and (k) of section 1710 of this title.

1954—Subsec. (a). Act Aug. 2, 1954, inserted proviso prohibiting the insurance of mortgages under this section after Aug. 2, 1954, except pursuant to commitments to insure issued on or before such date.

1953—Subsec. (b)(2). Act June 30, 1953, raised the maximum mortgage, where the mortgagor is the owner-occupant, from $4,750, not exceeding 95 per centum of value, to $5,700, not exceeding 95 per centum of value; and raised the maximum mortgage, where the builder is the mortgagor, from $4,250, not exceeding 85 per centum of value, to $5,100, not exceeding 85 per centum of value.

1951—Subsec. (b)(2). Act Aug. 3, 1951, permitted more liberal mortgage insurance for those building low-cost homes to replace their homes lost in a flood or other major disaster.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–288 effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–606 effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as a note under section 165 of Title 26, Internal Revenue Code.

REPAYMENT TO TREASURY ON CAPITAL ACCOUNT OF TITLE I INSURANCE FUND

Section 2 of act Mar. 10, 1953, ch. 5, 67 Stat. 5, required Federal Housing Commissioner prior to June 30, 1954, to pay out of capital account of Title I Insurance Fund to Secretary of the Treasury amount of $8,333,313.65 which constituted Government investment in capital account of Title I Insurance Fund.

§ 1706d. Applicability

The provisions of sections 1703 and 1706c of this title shall be applicable in the several States and Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

(June 27, 1934, ch. 847, title I, § 9, as added July 14, 1952, ch. 723, § 10(a)(1), 66 Stat. 603; amended Pub. L. 86–70, § 10(a), June 25, 1959, 73 Stat. 142; Pub. L. 86–654, § 6, July 12, 1960, 74 Stat. 411; Pub. L. 91–152, title IV, § 403(c)(3), Dec. 24, 1969, 83 Stat. 395; Pub. L. 98–181, title IV, § 407(a), Nov. 30, 1983, 97 Stat. 1211; Pub. L. 100–242, title IV, § 429(b), Feb. 5, 1988, 101 Stat. 1918.)

AMENDMENTS

1988—Pub. L. 100–242 inserted ''Applicability'' as section catchline.

1983—Pub. L. 98–181 inserted ''American Samoa,'' after ''Pacific Islands,''.

1969—Pub. L. 91–152 inserted ''the Trust Territory of the Pacific Islands,'' after ''Guam,''.

1960—Pub. L. 86–624 struck out ''Hawaii,'' before ''Puerto Rico''.

1959—Pub. L. 86–70 struck out ''Alaska,'' before ''Hawaii''.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1706e. Repealed. Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128

Section, Pub. L. 93–383, title VIII, § 810, Aug. 22, 1974, 88 Stat. 734; Pub. L. 94–375, § 20, Aug. 3, 1976, 90 Stat. 1077; Pub. L. 95–24, title I, § 103, Apr. 30, 1977, 91 Stat. 55; Pub. L. 95–128, title II, § 203, Oct. 12, 1977, 91 Stat. 1129; Pub. L. 95–557, title I, § 102, Oct. 31, 1978, 92 Stat. 2083; Pub. L. 96–153, title I, § 106, Dec. 21, 1979, 93 Stat. 1104; Pub. L. 96–399, title I, § 116, Oct. 8, 1980, 94 Stat. 1623; Pub. L. 97–35, title III, § 312, Aug. 13, 1981, 95 Stat. 397; Pub. L. 98–181, title I, § 122, Nov. 30, 1983, 97 Stat. 1170; Pub. L. 98–479, title I, § 101(a)(14), Oct. 17, 1984, 98 Stat. 2220; Pub. L. 100–242, title V, § 517(a), (c)–(e), Feb. 5, 1988, 101 Stat. 1936, 1937; Pub. L. 101–73, title V, § 501(e)(1), Aug. 9, 1989, 103 Stat. 394; Pub. L. 101–235, title I, § 126(a), (b), Dec. 15, 1989, 103 Stat. 2025; Pub. L. 101–625, title IX, § 914(a), (b), Nov. 28, 1990, 104 Stat. 4394, 4395, related to urban homestead program of unit of general local government, State, or designated public agency.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1991, and except with respect to projects and programs for which binding commitments have been entered into prior to Oct. 1, 1991, no new grants or loans to be made after Oct. 1, 1991, under this section, see section 12839(a)(5), (b)(1) of Title 42, The Public Health and Welfare.

§ 1706f. Prohibition against kickbacks and unearned fees

(a) In general

Except as provided in subsection (b), the provisions of sections 2602, 2607, 2614, 2615, 2616, and

2617 of this title shall apply to each sale of a manufactured home financed with an FHA-insured loan or extension of credit, as well as to services rendered in connection with such transactions.

(b) Authority of the Secretary

The Secretary is authorized to determine the manner and extent to which the provisions of sections 2602, 2607, 2614, 2615, 2616, and 2617 of this title may reasonably be applied to the transactions described in subsection (a), and to grant such exemptions as may be necessary to achieve the purposes of this section.

(c) Definitions

For purposes of this section—

(1) the term ''federally related mortgage loan'' as used in sections 2602, 2607, 2614, 2615, 2616, and 2617 of this title shall include an FHA-insured loan or extension of credit made to a borrower for the purpose of purchasing a manufactured home that the borrower intends to occupy as a personal residence; and

(2) the term ''real estate settlement service'' as used in sections 2602, 2607, 2614, 2615, 2616, and 2617 of this title shall include any service rendered in connection with a loan or extension of credit insured by the Federal Housing Administration for the purchase of a manufactured home.

(d) Unfair and deceptive practices

In connection with the purchase of a manufactured home financed with a loan or extension of credit insured by the Federal Housing Administration under this subchapter, the Secretary shall prohibit acts or practices in connection with loans or extensions of credit that the Secretary finds to be unfair, deceptive, or otherwise not in the interests of the borrower.

(June 27, 1934, ch. 847, title I, § 10, as added Pub. L. 110–289, div. B, title I, § 2149, July 30, 2008, 122 Stat. 2847.)

SUBCHAPTER II—MORTGAGE INSURANCE

§ 1707. Definitions

As used in section 1709 of this title—

(a) The term ''mortgage'' means (A) a first mortgage on real estate, in fee simple, (B) a first mortgage on a leasehold on real estate (i) under a lease for not less than ninety-nine years which is renewable, or (ii) under a lease having a period of not less than ten years to run beyond the maturity date of the mortgage, or (C) a first mortgage given to secure the unpaid purchase price of a fee interest in, or long-term leasehold interest in, real estate consisting of a one-family unit in a multifamily project, including a project in which the dwelling units are attached, or are manufactured housing units, semi-detached, or detached, and an undivided interest in the common areas and facilities which serve the project; and the term ''first mortgage'' means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State, in which the real estate is located, together with the credit instruments, if any, secured thereby.

(b) The term ''mortgagee'' includes the original lender under a mortgage, and his successors and assigns approved by the Secretary; and the term ''mortgagor'' includes the original borrower under a mortgage and his successors and assigns.

(c) The term ''maturity date'' means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(d) The term ''State'' includes the several States, and Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Virgin Islands.

(e) The term ''family member'' means, with respect to a mortgagor under such section, a child, parent, or grandparent of the mortgagor (or the mortgagor's spouse). In determining whether any of the relationships referred to in the preceding sentence exist, a legally adopted son or daughter of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), and a foster child of an individual, shall be treated as a child of such individual by blood.

(f) The term ''child'' means, with respect to a mortgagor under such section, a son, stepson, daughter, or stepdaughter of such mortgagor.

(g) The term ''real estate'' means land and all natural resources and structures permanently affixed to the land, including residential buildings and stationary manufactured housing. The Secretary may not require, for treatment of any land or other property as real estate for purposes of this subchapter, that such land or property be treated as real estate for purposes of State taxation.

(June 27, 1934, ch. 847, title II, § 201, 48 Stat. 1247; Feb. 3, 1938, ch. 13, § 3, 52 Stat. 9; Mar. 28, 1941, ch. 31, § 4(a), 55 Stat. 61; Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; July 14, 1952, ch. 723, § 10(a)(2), 66 Stat. 603; Pub. L. 86–70, § 10(a), June 25, 1959, 73 Stat. 142; Pub. L. 86–624, § 6, July 12, 1960, 74 Stat. 411; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 91–152, title IV, § 403(c)(1), Dec. 24, 1969, 83 Stat. 395; Pub. L. 96–399, title III, § 306, Oct. 8, 1980, 94 Stat. 1640; Pub. L. 98–181, title IV, § 407(b), Nov. 30, 1983, 97 Stat. 1211; Pub. L. 104–204, title IV, § 425(b), Sept. 26, 1996, 110 Stat. 2928; Pub. L. 110–289, div. B, title I, §§ 2117(b), (c), 2120(c), July 30, 2008, 122 Stat. 2833, 2835.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, § 2117(b), inserted ''(A)'' before ''a first mortgage'', substituted ''(B) a first mortgage on a leasehold on real estate (i)'' for ''or on a leasehold (1)'' and '', or (ii)'' for ''or (2)'', and inserted '', or (C) a first mortgage given to secure the unpaid purchase price of a fee interest in, or long-term leasehold interest in, real estate consisting of a one-family unit in a multifamily project, including a project in which the dwelling units are attached, or are manufactured housing units, semi-detached, or detached, and an undivided interest in the common areas and facilities which serve the project'' before semicolon.

Subsec. (d). Pub. L. 110–289, § 2120(c), substituted ''the Commonwealth of the Northern Mariana Islands'' for ''the Trust Territory of the Pacific Islands''.

Subsec. (g). Pub. L. 110–289, § 2117(c), added subsec. (g).

1996—Subsecs. (e), (f). Pub. L. 104–204 added subsecs. (e) and (f).

1983—Subsec. (d). Pub. L. 98–181 inserted ''American Samoa,'' after ''Pacific Islands,''.

1980—Subsec. (a). Pub. L. 96–399 substituted ''ten years to run beyond the maturity date of the mortgage'' for ''fifty years to run from the date the mortgage was executed''.

1969—Subsec. (d). Pub. L. 91–152 inserted ''the Trust Territory of the Pacific Islands'' after ''Guam''.

1967—Subsec. (b). Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner''.

1960—Subsec. (d). Pub. L. 86–624 struck out ''Hawaii,'' before ''Puerto Rico''.

1959—Subsec. (d). Pub. L. 86–70 struck out ''Alaska,'' before ''Hawaii''.

1952—Subsec. (d). Act July 14, 1952, inserted ''Guam,'' after ''District of Columbia''.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator''.

1941—Subsec. (a). Act Mar. 28, 1941, § 4(a)(1), struck out ''district, or Territory''.

Subsec. (d). Act Mar. 28, 1941, § 4(a)(2), added subsec. (d).

1938—Subsec. (a)(2). Act Feb. 3, 1938, struck out ''upon which there is located a dwelling for not more than four families which is used in whole or in part for residential purposes, irrespective of whether such dwelling has a party wall or is otherwise physically connected with another dwelling'' after ''executed''.

Subsec. (c). Act Feb. 3, 1938, added subsec. (c).

IMPROVEMENT OF FINANCING FOR MULTIFAMILY HOUSING

Pub. L. 102–550, title V, subtitle C, Oct. 28, 1992, 106 Stat. 3794, which related to improvement of financing for multifamily housing and was formerly set out as a note under this section, was transferred or omitted as follows:

Section 541 of Pub. L. 102–550 was transferred and is set out as a note under section 1701 of this title;

Section 542 of Pub. L. 102–550 was transferred to section 1715z–22 of this title;

Section 543 of Pub. L. 102–550, as amended by Pub. L. 111–203, title III, § 371, July 21, 2010, 124 Stat. 1565, was omitted from the Code;

Section 544 of Pub. L. 102–550 was transferred to section 1715z–22a of this title.

§ 1708. Federal Housing Administration operations

(a) Mutual Mortgage Insurance Fund

(1) Establishment

Subject to the provisions of the Federal Credit Reform Act of 1990 [2 U.S.C. 661 et seq.], there is hereby created a Mutual Mortgage Insurance Fund (in this subchapter referred to as the ''Fund''), which shall be used by the Secretary to carry out the provisions of this subchapter with respect to mortgages insured under section 1709 of this title. The Secretary may enter into commitments to guarantee, and may guarantee, such insured mortgages.

(2) Limit on loan guarantees

The authority of the Secretary to enter into commitments to guarantee such insured mortgages shall be effective for any fiscal year only to the extent that the aggregate original principal loan amount under such mortgages, any part of which is guaranteed, does not exceed the amount specified in appropriations Acts for such fiscal year.

(3) Fiduciary responsibility

The Secretary has a responsibility to ensure that the Mutual Mortgage Insurance Fund remains financially sound.

(4) Annual independent actuarial study

The Secretary shall provide for an independent actuarial study of the Fund to be conducted annually, which shall analyze the financial position of the Fund. The Secretary shall submit a report annually to the Congress describing the results of such study and assessing the financial status of the Fund. The report shall recommend adjustments to underwriting standards, program participation, or premiums, if necessary, to ensure that the Fund remains financially sound. The report shall also include an evaluation of the quality control procedures and accuracy of information utilized in the process of underwriting loans guaranteed by the Fund. Such evaluation shall include a review of the risk characteristics of loans based not only on borrower information and performance, but on risks associated with loans originated or funded by various entities or financial institutions.

(5) Quarterly reports

During each fiscal year, the Secretary shall submit a report to the Congress for each calendar quarter, which shall specify for mortgages that are obligations of the Fund—

(A) the cumulative volume of loan guarantee commitments that have been made during such fiscal year through the end of the quarter for which the report is submitted;

(B) the types of loans insured, categorized by risk;

(C) any significant changes between actual and projected claim and prepayment activity;

(D) projected versus actual loss rates; and

(E) updated projections of the annual subsidy rates to ensure that increases in risk to the Fund are identified and mitigated by adjustments to underwriting standards, program participation, or premiums, and the financial soundness of the Fund is maintained.

The first quarterly report under this paragraph shall be submitted on the last day of the first quarter of fiscal year 2008, or on the last day of the first full calendar quarter following July 30, 2008, whichever is later.

(6) Adjustment of premiums

If, pursuant to the independent actuarial study of the Fund required under paragraph (4), the Secretary determines that the Fund is not meeting the operational goals established under paragraph (7) or there is a substantial probability that the Fund will not maintain its established target subsidy rate, the Secretary may either make programmatic adjustments under this subchapter as necessary to reduce the risk to the Fund, or make appropriate premium adjustments.

(7) Operational goals

The operational goals for the Fund are—

(A) to minimize the default risk to the Fund and to homeowners by among other actions instituting fraud prevention quality control screening not later than 18 months after July 30, 2008; and

(B) to meet the housing needs of the borrowers that the single family mortgage in-

surance program under this subchapter is designed to serve.

(b) Advisory Board

There is created a Federal Housing Administration Advisory Board (''Board'') that shall review operation of the Federal Housing Administration, including the activities of the Mortgagee Review Board, and shall provide advice to the Federal Housing Commissioner with respect to the formulation of general policies of the Federal Housing Administration and such other matters as the Federal Housing Commissioner may deem appropriate. The Advisory Board shall, in all other respects, be subject to the provisions of the Federal Advisory Committee Act.

(1) The Advisory Board shall be composed of 15 members to be appointed from among individuals who have substantial expertise and broad experience in housing and mortgage lending of whom—

(A) 9 shall be appointed by the Secretary;

(B) 3 shall be appointed by the Chairman and Ranking Minority Member of the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(C) 3 shall be appointed by the Chairman and Ranking Minority Member of the Subcommittee on Housing and Community Development of the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

(2) Membership on the Advisory Board shall include—

(A) not less than 4 persons with distinguished private sector careers in housing finance, lending, management, development or insurance;

(B) not less than 4 persons with outstanding reputations as licensed actuaries, experts in actuarial science, or economics related to housing;

(C) not less than 4 persons with backgrounds of leadership in representing the interests of housing consumers;

(D) not less than 1 person with significant experience and a distinguished reputation for work in the enforcement, advocacy, or development of fair housing or civil rights legislation; and

(E) not less than 1 person with a background of leadership representing rural housing interests.

(3) Members of the Advisory Board shall be selected to ensure, to the greatest extent practicable, geographical representation or every region of the country.

(4) Not more than 8 members of the Advisory Board may be from any one political party.

(5) Membership of the Advisory Board shall not include any person who, during the previous 24-month period, was required to register with the Secretary under section 3537b(c)[1] of title 42 or employed a person for purposes that required such person to so register.

(6) Of the members of the Advisory Board first appointed, 5 shall have terms of 1 year, and 5 shall have terms of 2 years. Their successors and all other appointees shall have terms of 3 years.

(7) The Advisory Board is empowered to confer with, request information of, and make recommendations to the Federal Housing Commissioner. The Commissioner shall promptly provide the Advisory Board with such information as the Board determines to be necessary to carry out its review of the activities and policies of the Federal Housing Administration.

(8) The Board shall, not later than December 31 of each year, submit to the Secretary and the Congress a report of its assessment of the activities of the Federal Housing Administration, including the soundness of underwriting procedures, the adequacy of information systems, the appropriateness of staffing patterns, the effectiveness of the Mortgagee Review Board, and other matters related to the Federal Housing Administration's ability to serve the nation's homebuyers and renters. Such report shall contain the Board's recommendations for improvement and include any minority views.

(9) The Board shall meet in Washington, D.C., not less than twice annually, or more frequently if requested by the Federal Housing Commissioner or a majority of the members. The Board shall elect a chair, vice-chair and secretary and adopt methods of procedure. The Board may establish committees and subcommittees as needed.

(10) Subject to the provisions of Section 7 of the Federal Advisory Committee Act, all members of the Board may be compensated and shall be entitled to reimbursement from the Department for traveling expenses incurred in attendance at meetings of the Board.

(11) The Board shall terminate on January 1, 1995.

(c) Mortgagee Review Board

(1) Establishment

There is established within the Federal Housing Administration the Mortgagee Review Board (''Board''). The Board is empowered to initiate the issuance of a letter of reprimand, the probation, suspension or withdrawal of any mortgagee found to be engaging in activities in violation of Federal Housing Administration requirements or the nondiscrimination requirements of the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.], the Fair Housing Act [42 U.S.C. 3601 et seq.], or Executive Order 11063.

(2) Composition

The Board shall consist of—

(A) the Assistant Secretary of Housing/Federal Housing Commissioner;

(B) the General Counsel of the Department;

(C) the President of the Government National Mortgage Association;

(D) the Assistant Secretary for Administration;

(E) the Assistant Secretary for Fair Housing Enforcement (in cases involving violations of nondiscrimination requirements); and

[1] See References in Text note below.

(F) the Chief Financial Officer of the Department or their designees.

(3) Actions authorized

When any report, audit, investigation, or other information before the Board discloses that a basis for an administrative action against a mortgagee exists, the Board shall take one of the following administrative actions:

(A) Letter of reprimand

The Board may issue a letter of reprimand only once to a mortgagee without taking action under subparagraphs[2] (B), (C), or (D) of this section. A letter of reprimand shall explain the violation and describe actions the mortgagee should take to correct the violation.

(B) Probation

The Board may place a mortgagee on probation for a specified period of time not to exceed 6 months for the purpose of evaluating the mortgagee's compliance with Federal Housing Administration requirements, the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.], the Fair Housing Act [42 U.S.C. 3601 et seq.], Executive Order 11063, or orders of the Board. During the probation period, the Board may impose reasonable additional requirements on a mortgagee including supervision of the mortgagee's activities by the Federal Housing Administration, periodic reporting to the Federal Housing Commissioner, or submission to Federal Housing Administration audits of internal financial statements, audits by an independent certified public accountant or other audits.

(C) Suspension

The Board may issue an order temporarily suspending a mortgagee's approval for doing business with the Federal Housing Administration if (i) there exists adequate evidence of a violation or violations and (ii) continuation of the mortgagee's approval, pending or at the completion of any audit, investigation, or other review, or such administrative or other legal proceedings as may ensue, would not be in the public interest or in the best interests of the Department. Notwithstanding paragraph (4)(A), a suspension shall be effective upon issuance by the Board if the Board determines that there exists adequate evidence that immediate action is required to protect the financial interests of the Department or the public. A suspension shall last for not less than 6 months, and for not longer than 1 year. The Board may extend the suspension for an additional 6 months if it determines the extension is in the public interest. If the Board and the mortgagee agree, these time limits may be extended. During the period of suspension, the Federal Housing Administration shall not commit to insure any mortgage originated by the suspended mortgagee.

(D) Withdrawal

The Board may issue an order withdrawing a mortgagee if the Board has made a determination of a serious violation or repeated violations by the mortgagee. The Board shall determine the terms of such withdrawal, but the term shall be not less than 1 year. Where the Board has determined that the violation is egregious or willful, the withdrawal shall be permanent.

(E) Settlements

The Board may at any time enter into a settlement agreement with a mortgagee to resolve any outstanding grounds for an action. Agreements may include provisions such as—

(i) cessation of any violation;

(ii) correction or mitigation of the effects of any violation;

(iii) repayment of any sums of money wrongfully or incorrectly paid to the mortgagee by a mortgagor, by a seller or by the Federal Housing Administration;

(iv) actions to collect sums of money wrongfully or incorrectly paid by the mortgagee to a third party;

(v) indemnification of the Federal Housing Administration for mortgage insurance claims on mortgages originated in violation of Federal Housing Administration requirements;

(vi) modification of the length of the penalty imposed; or

(vii) implementation of other corrective measures acceptable to the Secretary.

Material failure to comply with the provisions of a settlement agreement shall be sufficient cause for suspension or withdrawal.

(4) Notice and hearing

(A) The Board shall issue a written notice to the mortgagee at least 30 days prior to taking any action against the mortgagee under subparagraph (B), (C), or (D) of paragraph (3). The notice shall state the specific violations which have been alleged, and shall direct the mortgagee to reply in writing to the Board within 30 days. If the mortgagee fails to reply during such period, the Board may make a determination without considering any comments of the mortgagee.

(B) If the Board takes action against a mortgagee under subparagraph (B), (C), or (D) of paragraph (3), the Board shall promptly notify the mortgagee in writing of the nature, duration, and specific reasons for the action. If, within 30 days of receiving the notice, the mortgagee requests a hearing, the Board shall hold a hearing on the record regarding the violations within 30 days of receiving the request. If a mortgagee fails to request a hearing within such 30-day period, the right of the mortgagee to a hearing shall be considered waived.

(C) In any case in which the notification of the Board does not result in a hearing (including any settlement by the Board and a mortgagee), any information regarding the nature of the violation and the resolution of the action shall be available to the public.

(5) Publication

The Secretary shall establish and publish in the Federal Register a description of and the cause for administrative action against a mortgagee.

[2] So in original. Probably should be ''subparagraph''.

(6) Cease-and-desist orders

(A) Whenever the Secretary, upon request of the Mortgagee Review Board, determines that there is reasonable cause to believe that a mortgagee is violating, has violated, or is about to violate, a law, rule or regulation or any condition imposed in writing by the Secretary or the Board, and that such violation could result in significant cost to the Federal Government or the public, the Secretary may issue a temporary order requiring the mortgagee to cease and desist from any such violation and to take affirmative action to prevent such violation or a continuation of such violation pending completion of proceedings of the Board with respect to such violation. Such order shall include a notice of charges in respect thereof and shall become effective upon service to the mortgagee. Such order shall remain effective and enforceable for a period not to exceed 30 days pending the completion of proceedings of the Board with respect to such violation, unless such order is set aside, limited, or suspended by a court in proceedings authorized by subparagraph (B) of this paragraph. The Board shall provide the mortgagee an opportunity for a hearing on the record, as soon as practicable but not later than 20 days after the temporary cease-and-desist order has been served.

(B) Within 10 days after the mortgagee has been served with a temporary cease-and-desist order, the mortgagee may apply to the United States district court for the judicial district in which the home office of the mortgagee is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting of suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the mortgagee, and such court shall have jurisdiction to issue such injunction.

(C) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to this paragraph, the Secretary may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the mortgagee is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(7) "Mortgagee" defined

For purposes of this subsection, the term ''mortgagee'' means—

(A) a mortgagee approved under this chapter;

(B) a lender or a loan correspondent approved under subchapter I of this chapter;

(C) a branch office or subsidiary of the mortgagee, lender, or loan correspondent; or

(D) a director, officer, employee, agent, or other person participating in the conduct of the affairs of the mortgagee, lender, or loan correspondent.

(8) Report required

The Board, in consultation with the Federal Housing Administration Advisory Board, shall annually recommend to the Secretary such amendments to statute or regulation as the Board determines to be appropriate to ensure the long term financial strength of the Federal Housing Administration fund and the adequate support for home mortgage credit.

(9) Prohibition against limitations on Mortgagee Review Board's power to take action against mortgagees

No State or local law, and no Federal law (except a Federal law enacted expressly in limitation of this subsection after the effective date of this sentence), shall preclude or limit the exercise by the Board of its power to take any action authorized under paragraphs (3) and (6) of this subsection against any mortgagee.

(d) Limitations on participation in origination and mortgagee approval

(1) Requirement

Any person or entity that is not approved by the Secretary to serve as a mortgagee, as such term is defined in subsection (c)(7), shall not participate in the origination of an FHA-insured loan except as authorized by the Secretary.

(2) Eligibility for approval

In order to be eligible for approval by the Secretary, an applicant mortgagee shall not be, and shall not have any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the applicant mortgagee who is—

(A) currently suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under part 25 of title 24 of the Code of Federal Regulations, 2 Code of Federal Regulations, part 180 as implemented by part 2424, or any successor regulations to such parts, or under similar provisions of any other Federal agency;

(B) under indictment for, or has been convicted of, an offense that reflects adversely upon the applicant's integrity, competence or fitness to meet the responsibilities of an approved mortgagee;

(C) subject to unresolved findings contained in a Department of Housing and Urban Development or other governmental audit, investigation, or review;

(D) engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility;

(E) convicted of, or who has pled guilty or nolo contendre[3] to, a felony related to participation in the real estate or mortgage loan industry—

(i) during the 7-year period preceding the date of the application for licensing and registration; or

(ii) at any time preceding such date of application, if such felony involved an act

[3] So in original. Probably should be ''contendere''.

of fraud, dishonesty, or a breach of trust, or money laundering;

(F) in violation of provisions of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) or any applicable provision of State law; or

(G) in violation of any other requirement as established by the Secretary.

(3) Rulemaking and implementation

The Secretary shall conduct a rulemaking to carry out this subsection. The Secretary shall implement this subsection not later than the expiration of the 60-day period beginning upon May 20, 2009, by notice, mortgagee letter, or interim final regulations, which shall take effect upon issuance.

(e) Coordination of GNMA and FHA withdrawal action

(1) Whenever the Federal Housing Administration or Government National Mortgage Association initiates proceedings that could lead to withdrawing the mortgagee from participating in the program, the initiating agency shall—

(A) within 24 hours notify the other agency in writing of the action taken;

(B) provide to the other agency the factual basis for the action taken; and

(C) if a mortgagee is withdrawn, publish its decision in the Federal Register.

(2) Within 60 days of receipt of a notification of action that could lead to withdrawal under subsection[4] (1), the Federal Housing Administration or the Government National Mortgage Association shall—

(A) conduct and complete its own investigation;

(B) provide written notification to the other agency of its decision, including the factual basis for its decision; and

(C) if a mortgagee is withdrawn, publish its decision in the Federal Register.

(f) Suspension or revocation of approval of mortgagee; notice and statement of reasons

Whenever the Secretary has taken any discretionary action to suspend or revoke the approval of any mortgagee to participate in any mortgage insurance program under this subchapter, the Secretary shall provide prompt notice of the action and a statement of the reasons for the action to—

(1) the Secretary of Veterans Affairs;

(2) the chief executive officer of the Federal National Mortgage Association;

(3) the chief executive officer of the Federal Home Loan Mortgage Corporation;

(4) the Secretary of Agriculture;

(5) if the mortgagee is a national bank, or a subsidiary or affiliate of such a bank, the Comptroller of the Currency;

(6) if the mortgagee is a State bank that is a member of the Federal Reserve System or a subsidiary or affiliate of such a bank, or a bank holding company or a subsidiary or affiliate of such a company, the Board of Governors of the Federal Reserve System;

(7) if the mortgagee is a State bank that is not a member of the Federal Reserve System or is a subsidiary or affiliate of such a bank, the Board of Directors of the Federal Deposit Insurance Corporation; and

(8) if the mortgagee is a Federal or State savings association or a subsidiary or affiliate of a savings association, the Director of the Office of Thrift Supervision.

(g) Appraisal standards

(1) The Secretary shall prescribe standards for the appraisal of all property to be insured by the Federal Housing Administration. Such appraisals shall be performed in accordance with uniform standards, by individuals who have demonstrated competence and whose professional conduct is subject to effective supervision. These standards shall require at a minimum—

(A) that the appraisals of properties to be insured by the Federal Housing Administration shall be performed in accordance with generally accepted appraisal standards, such as the appraisal standards promulgated by the Appraisal Foundation a not-for-profit corporation established on November 30, 1987 under the laws of Illinois; and

(B) that each appraisal be a written statement used in connection with a real estate transaction that is independently an[5] impartially prepared by a licensed or certified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information.

(2) The Appraisal Subcommittee of the Federal Financial Institutions Examination Council shall include the Secretary or his designee.

(3) DIRECT ENDORSEMENT PROGRAM.—

(A) Any mortgagee that is authorized by the Secretary to process mortgages as a direct endorsement mortgagee (pursuant to the single-family home mortgage direct endorsement program established by the Secretary) may contract with an appraiser chosen at the discretion of the mortgagee for the performance of appraisals in connection with such mortgages. Such appraisers may include appraisal companies organized as corporations, partnerships, or sole proprietorships.

(B) Any appraisal conducted pursuant to subparagraph (A) shall be conducted by an individual who complies with the qualifications or standards for appraisers established by the Secretary pursuant to this subsection.

(C) In conducting an appraisal, such individual may utilize the assistance of others, who shall be under the direct supervision of the individual responsible for the appraisal. The individual responsible for the appraisal shall personally approve and sign any appraisal report.

(4) FEE PANEL APPRAISERS.—

(A) Any individual who is an employee of an appraisal company (including any company organized as a corporation, partnership, or sole proprietorship) and who meets the qualifications or standards for appraisers and inclusion on appraiser fee panels established by the Secretary, shall be eligible for assignment to con-

[4] So in original. Probably should be ''paragraph''.

[5] So in original. Probably should be ''and''.

duct appraisals for mortgages under this subchapter in the same manner and on the same basis as other approved appraisers.

(B) With respect to any employee of an appraisal company described in subparagraph (A) who is offered an appraisal assignment in connection with a mortgage under this subchapter, the person utilizing the appraiser may contract directly with the appraisal company employing the appraiser for the furnishing of the appraisal services.

(5) ADDITIONAL APPRAISER STANDARDS.—Beginning on July 30, 2008, any appraiser chosen or approved to conduct appraisals for mortgages under this subchapter shall—

(A) be certified—

(i) by the State in which the property to be appraised is located; or

(ii) by a nationally recognized professional appraisal organization; and

(B) have demonstrated verifiable education in the appraisal requirements established by the Federal Housing Administration under this subsection.

(h) Use of name

The Secretary shall, by regulation, require each mortgagee approved by the Secretary for participation in the FHA mortgage insurance programs of the Secretary—

(1) to use the business name of the mortgagee that is registered with the Secretary in connection with such approval in all advertisements and promotional materials, as such terms are defined by the Secretary, relating to the business of such mortgagee in such mortgage insurance programs; and

(2) to maintain copies of all such advertisements and promotional materials, in such form and for such period as the Secretary requires.

(June 27, 1934, ch. 847, title II, § 202, 48 Stat. 1248; Feb. 3, 1938, ch. 13, § 3, 52 Stat. 10; June 3, 1939, ch. 175, § 5, 53 Stat. 805; Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 101–235, title I, § 142, Dec. 15, 1989, 103 Stat. 2030; Pub. L. 101–625, title III, § 322, Nov. 28, 1990, 104 Stat. 4134; Pub. L. 102–550, title V, §§ 502, 518, 519, Oct. 28, 1992, 106 Stat. 3778, 3792; Pub. L. 105–65, title V, § 551, Oct. 27, 1997, 111 Stat. 1412; Pub. L. 106–377, § 1(a)(1) [title II, § 209(c)], Oct. 27, 2000, 114 Stat. 1441, 1441A–25; Pub. L. 110–289, div. A, title IV, § 1404, div. B, title I, §§ 2116(1), (3), 2118(a), July 30, 2008, 122 Stat. 2810, 2832, 2833; Pub. L. 111–22, div. A, title II, § 203(a), (b), May 20, 2009, 123 Stat. 1643; Pub. L. 111–203, title III, § 373, July 21, 2010, 124 Stat. 1566.)

AMENDMENT OF SUBSECTION (f)

Pub. L. 111–203, title III, §§ 351, 373, July 21, 2010, 124 Stat. 1546, 1566, provided that, effective on the transfer date, subsection (f) of this section is amended:

(1) by striking out paragraph (5) and adding the following:

''(5) if the mortgagee is a national bank, a subsidiary or affiliate of such bank, a Federal savings association or a subsidiary or affiliate of a savings association, the Comptroller of the Currency;'';

(2) in paragraph (6), by inserting ''and'' at the end;

(3) in paragraph (7)—

(A) by inserting ''or State savings association'' after ''State bank''; and

(B) by substituting a period for ''; and''; and

(4) by striking out paragraph (8).

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (a)(1), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, § 13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§ 661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Section 3537b(c) of title 42, referred to in subsec. (b)(5), was in the original ''section 112(c) of the Department of Housing and Urban Development Reform Act of 1989'', meaning section 112 of Pub. L. 101–235, which does not contain a subsec. (c), but enacted section 13 of the Department of Housing and Urban Development Act, which was classified to section 3537b of title 42 prior to repeal by Pub. L. 104–65, § 11(b)(1), Dec. 19, 1995, 109 Stat. 701, and which contained a subsec. (c) relating to registration with the Secretary.

The Equal Credit Opportunity Act, referred to in subsec. (c)(1), (3)(B), is title VII of Pub. L. 90–321, as added by Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1521, as amended, which is classified generally to subchapter IV (§ 1691 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Fair Housing Act, referred to in subsec. (c)(1), (3)(B), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

Executive Order 11063, referred to in subsec. (c)(1), (3)(B), is set out as a note under section 1982 of Title 42.

This chapter, referred to in subsec. (c)(7)(A), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

The effective date of this sentence, referred to in subsec. (c)(9), is the date of enactment of Pub. L. 111–22, which enacted par. (9) and was approved May 20, 2009.

The S.A.F.E. Mortgage Licensing Act of 2008, referred to in subsec. (d)(2)(F), is title V of div. A of Pub. L. 110–289, July 30, 2008, 122 Stat. 2810, also known as the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, which is classified generally to chapter 51 (§ 5101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of this title and Tables.

CODIFICATION

Section 1709(s) of this title, which was transferred and redesignated as subsec. (e) of this section by Pub. L. 110–289, div. B, title I, § 2116(3), July 30, 2008, 122 Stat. 2832, was based on act June 27, 1934, ch. 847, title II, § 203(s), as added Pub. L. 101–235, title I, § 135, Dec. 15, 1989, 103 Stat. 2028; amended Pub. L. 108–386, § 8(b), Oct. 30, 2004, 118 Stat. 2231; Pub. L. 110–289, div. B, title I, § 2116(2), July 30, 2008, 122 Stat. 2832.

AMENDMENTS

2009—Subsec. (c)(2)(E). Pub. L. 111–22, § 203(a)(1)(A), inserted ''and'' after semicolon at end.

Subsec. (c)(2)(F). Pub. L. 111–22, §203(a)(1)(B), substituted ''or their designees.'' for ''; and''.

Subsec. (c)(2)(G). Pub. L. 111–22, §203(a)(1)(C), struck out subpar. (G), which read as follows: ''the Director of the Enforcement Center; or their designees.''

Subsec. (c)(9). Pub. L. 111–22, §203(a)(2), added par. (9).

Subsecs. (d) to (g). Pub. L. 111–22, §203(b)(1), (2), added subsec. (d) and redesignated former subsecs. (d) to (f) as (e) to (g), respectively.

Subsec. (h). Pub. L. 111–22, §203(b)(3), added subsec. (h).

2008—Subsec. (a). Pub. L. 110–289, §2118(a), amended subsec. (a) generally. Prior to amendment, text read as follows: ''There is created a Mutual Mortgage Insurance Fund (hereinafter referred to as the 'Fund'), which shall be used by the Secretary as a revolving fund for carrying out the provisions of this subchapter with respect to mortgages insured under section 1709 of this title as hereinafter provided, and there shall be allocated immediately to such Fund the sum of $10,000,000 out of funds made available to the Secretary for the purposes of this subchapter.''

Subsec. (e). Pub. L. 110–289, §2116(3), transferred subsec. (s) of section 1709 of this title and redesignated it as subsec. (e) of this section. See Codification note above. Former subsec. (e) redesignated (f).

Subsec. (e)(3)(B). Pub. L. 110–289, §2116(1)(A), made technical amendment to reference in original act which appears in text as reference to ''this subsection''.

Subsec. (e)(5). Pub. L. 110–289, §1404, added par. (5).

Subsec. (f). Pub. L. 110–289, §2116(1)(B), redesignated subsec. (e) as (f).

2000—Subsec. (c)(2)(E). Pub. L. 106–377, §1(a)(1) [title II, §209(c)(1)], struck out ''and'' at end.

Subsec. (c)(2)(F). Pub. L. 106–377, §1(a)(1) [title II, §209(c)(2)], which directed substitution of ''and'' for ''or their designees.'', was executed by inserting ''and'' after semicolon to reflect the probable intent of Congress, because the phrase ''or their designees.'' appeared at end of par. (2) and did not appear in subpar. (F).

Subsec. (c)(2)(G). Pub. L. 106–377, §1(a)(1) [title II, §209(c)(3)], added subpar. (G).

1997—Subsec. (c)(3)(C). Pub. L. 105–65 inserted after first sentence ''Notwithstanding paragraph (4)(A), a suspension shall be effective upon issuance by the Board if the Board determines that there exists adequate evidence that immediate action is required to protect the financial interests of the Department or the public.''

1992—Subsec. (b)(11). Pub. L. 102–550, §502, added par. (11).

Subsec. (c)(3)(C). Pub. L. 102–550, §518, inserted ''temporarily'' after ''order'', ''(i)'' after ''Administration if'', ''(ii)'' after ''violations and'', and '', and for not longer than 1 year. The Board may extend the suspension for an additional 6 months if it determines the extension is in the public interest. If the Board and the mortgagee agree, these time limits may be extended'' after ''6 months''.

Subsec. (c)(6)(D). Pub. L. 102–550, §519(1), struck out subpar. (D) which read as follows: ''For purposes of this paragraph, the term 'mortgagee' means a mortgagee, a branch office or subsidiary of a mortgagee, or a director, officer, employee, agent, or other person participating in the conduct of the affairs of such mortgagee.''

Subsec. (c)(7), (8). Pub. L. 102–550, §519(2), added par. (7) and redesignated former par. (7) as (8).

1990—Subsec. (e)(3), (4). Pub. L. 101–625 added pars. (3) and (4).

1989—Pub. L. 101–235 substituted ''Federal Housing Administration operations'' for ''Mutual Mortgage Insurance Fund'' in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsecs. (b) to (e).

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

1939—Act June 3, 1939, substituted ''created'' for ''create''.

1938—Act Feb. 3, 1938, inserted ''with respect to mortgages insured under section 1709 of this title''.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

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

EXPANDED REVIEW OF FHA MORTGAGEE APPLICANTS AND NEWLY APPROVED MORTGAGEES

Pub. L. 111–22, div. A, title II, §203(g), May 20, 2009, 123 Stat. 1648, provided that: ''Not later than the expiration of the 3-month period beginning upon the date of the enactment of this Act [May 20, 2009], the Secretary of Housing and Urban Development shall—

''(1) expand the existing process for reviewing new applicants for approval for participation in the mortgage insurance programs of the Secretary for mortgages on 1- to 4-family residences for the purpose of identifying applicants who represent a high risk to the Mutual Mortgage Insurance Fund; and

''(2) implement procedures that, for mortgagees approved during the 12-month period ending upon such date of enactment—

''(A) expand the number of mortgages originated by such mortgagees that are reviewed for compliance with applicable laws, regulations, and policies; and

''(B) include a process for random reviews of such mortgagees and a process for reviews that is based on volume of mortgages originated by such mortgagees.''

§ 1709. Insurance of mortgages

(a) Authorization

The Secretary is authorized, upon application by the mortgagee, to insure as hereinafter provided any mortgage offered to him which is eligible for insurance as hereinafter provided, and, upon such terms as the Secretary may prescribe, to make commitments for the insuring of such mortgages prior to the date of their execution or disbursement thereon.

(b) Eligibility for insurance; mortgage limits

To be eligible for insurance under this section a mortgage shall comply with the following:

(1) Have been made to, and be held by, a mortgagee approved by the Secretary as responsible and able to service the mortgage properly.

(2) Involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount—

(A) not to exceed the lesser of—

(i) in the case of a 1-family residence, 115 percent of the median 1-family house price in the area, as determined by the Secretary; and in the case of a 2-, 3-, or 4-fam-

ily residence, the percentage of such median price that bears the same ratio to such median price as the dollar amount limitation determined under the sixth sentence of section 1454(a)(2) of this title for a 2-, 3-, or 4-family residence, respectively, bears to the dollar amount limitation determined under such section for a 1-family residence; or

(ii) 150 percent of the dollar amount limitation determined under the sixth sentence of such section 1454(a)(2) for a residence of applicable size;

except that the dollar amount limitation in effect under this subparagraph for any size residence for any area may not be less than the greater of: (I) the dollar amount limitation in effect under this section for the area on October 21, 1998; or (II) 65 percent of the dollar amount limitation determined under the sixth sentence of such section 1454(a)(2) for a residence of the applicable size; and

(B) not to exceed 100 percent of the appraised value of the property.

For purposes of the preceding sentence, the term ''area'' means a metropolitan statistical area as established by the Office of Management and Budget; and the median 1-family house price for an area shall be equal to the median 1-family house price of the county within the area that has the highest such median price. Notwithstanding any other provision of this paragraph, the amount which may be insured under this section may be increased by up to 20 percent if such increase is necessary to account for the increased cost of the residence due to the installation of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) therein.

Notwithstanding any other provision of this paragraph, the Secretary may not insure, or enter into a commitment to insure, a mortgage under this section that is executed by a first-time homebuyer and that involves a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in excess of 97 percent of the appraised value of the property unless the mortgagor has completed a program of counseling with respect to the responsibilities and financial management involved in homeownership that is approved by the Secretary; except that the Secretary may, in the discretion of the Secretary, waive the applicability of this requirement.

(3) Have a maturity satisfactory to the Secretary, but not to exceed, in any event, thirty-five years (or thirty years if such mortgage is not approved for insurance prior to construction) from the date of the beginning of amortization of the mortgage.

(4) Contain complete amortization provisions satisfactory to the Secretary requiring periodic payments by the mortgagor not in excess of his reasonable ability to pay as determined by the Secretary.

(5) Bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee.

(6) Provide, in a manner satisfactory to the Secretary, for the application of the mortgagor's periodic payments (exclusive of the amount allocated to interest and to the premium charge which is required for mortgage insurance as hereinafter provided) to amortization of the principal of the mortgage.

(7) Contain such terms and provisions with respect to insurance, repairs, alterations, payment of taxes, default, reserves, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters as the Secretary may in his discretion prescribe.

(8) Repealed. Pub. L. 100–242, title IV, § 406(b)(2), Feb. 5, 1988, 101 Stat. 1900.

(9) CASH INVESTMENT REQUIREMENT.—

(A) IN GENERAL.—A mortgage insured under this section shall be executed by a mortgagor who shall have paid, in cash or its equivalent, on account of the property an amount equal to not less than 3.5 percent of the appraised value of the property or such larger amount as the Secretary may determine.

(B) FAMILY MEMBERS.—For purposes of this paragraph, the Secretary shall consider as cash or its equivalent any amounts borrowed from a family member (as such term is defined in section 1707 of this title), subject only to the requirements that, in any case in which the repayment of such borrowed amounts is secured by a lien against the property, that—

(i) such lien shall be subordinate to the mortgage; and

(ii) the sum of the principal obligation of the mortgage and the obligation secured by such lien may not exceed 100 percent of the appraised value of the property plus any initial service charges, appraisal, inspection, and other fees in connection with the mortgage.

(C) PROHIBITED SOURCES.—In no case shall the funds required by subparagraph (A) consist, in whole or in part, of funds provided by any of the following parties before, during, or after closing of the property sale:

(i) The seller or any other person or entity that financially benefits from the transaction.

(ii) Any third party or entity that is reimbursed, directly or indirectly, by any of the parties described in clause (i).

This subparagraph shall apply only to mortgages for which the mortgagee has issued credit approval for the borrower on or after October 1, 2008.

(c) Premium charges

(1) The Secretary is authorized to fix premium charges for the insurance of mortgages under the separate sections of this subchapter but in the case of any mortgage such charge shall be not less than an amount equivalent to one-fourth of 1 per centum per annum nor more than an amount equivalent to 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time, without taking into account delinquent payments or

prepayments: *Provided*, That premium charges fixed for insurance (1) under section 1715z–10,[1] 1715z–12, 1715z–16, 1715z–17, or 1715z–18 of this title, or any other financing mechanism providing alternative methods for repayment of a mortgage that is determined by the Secretary to involve additional risk, or (2) under subsection (n) of this section are not required to be the same as the premium charges for mortgages insured under the other provisions of this section, but in no case shall premium charges under subsection (n) of this section exceed 1 per centum per annum: *Provided*, That any reduced premium charge so fixed and computed may, in the discretion of the Secretary, also be made applicable in such manner as the Secretary shall prescribe to each insured mortgage outstanding under the section or sections involved at the time the reduced premium charge is fixed. Such premium charges shall be payable by the mortgagee, either in cash, or in debentures issued by the Secretary under this subchapter at par plus accrued interest, in such manner as may be prescribed by the Secretary: *Provided*, That debentures presented in payment of premium charges shall represent obligations of the particular insurance fund or account to which such premium charges are to be credited: *Provided further*, That the Secretary may require the payment of one or more such premium charges at the time the mortgage is insured, at such discount rate as he may prescribe not in excess of the interest rate specified in the mortgage. If the Secretary finds upon the presentation of a mortgage for insurance and the tender of the initial premium charge or charges so required that the mortgage complies with the provisions of this section, such mortgage may be accepted for insurance by endorsement or otherwise as the Secretary may prescribe; but no mortgage shall be accepted for insurance under this section unless the Secretary finds that the project with respect to which the mortgage is executed is economically sound. In the event that the principal obligation of any mortgage accepted for insurance is paid in full prior to the maturity date, the Secretary is further authorized in his discretion to require the payment by the mortgagee of an adjusted premium charge in such amount as the Secretary determines to be equitable, but not in excess of the aggregate amount of the premium charges that the mortgagee would otherwise have been required to pay if the mortgage had continued to be insured under this section until such maturity date; and in the event that the principal obligation is paid in full as herein set forth the Secretary is authorized to refund to the mortgagee for the account of the mortgagor all, or such portion as he shall determine to be equitable, of the current unearned premium charges theretofore paid: *Provided*, That with respect to mortgages (1) for which the Secretary requires, at the time the mortgage is insured, the payment of a single premium charge to cover the total premium obligation for the insurance of the mortgage, and (2) on which the principal obligation is paid before the number of years on which the premium with respect to a particular mortgage was based, or the property is sold subject to the mortgage or is sold and the mortgage is assumed prior to such time, the Secretary shall provide for refunds, where appropriate, of a portion of the premium paid and shall provide for appropriate allocation of the premium cost among the mortgagors over the term of the mortgage, in accordance with procedures established by the Secretary which take into account sound financial and actuarial considerations.

(2) Notwithstanding any other provision of this section, each mortgage secured by a 1- to 4-family dwelling that is an obligation of the Mutual Mortgage Insurance Fund shall be subject to the following requirements:

(A) The Secretary shall establish and collect, at the time of insurance, a single premium payment in an amount not exceeding 3 percent of the amount of the original insured principal obligation of the mortgage. In the case of a mortgage for which the mortgagor is a first-time homebuyer who completes a program of counseling with respect to the responsibilities and financial management involved in homeownership that is approved by the Secretary, the premium payment under this subparagraph shall not exceed 2.75 percent of the amount of the original insured principal obligation of the mortgage. Upon payment in full of the principal obligation of a mortgage prior to the maturity date of the mortgage, the Secretary shall refund all of the unearned premium charges paid on the mortgage pursuant to this subparagraph, provided that the mortgagor refinances the unpaid principal obligation under this subchapter.

(B) In addition to the premium under subparagraph (A), the Secretary may establish and collect annual premium payments in an amount not exceeding 1.5 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments) for the following periods:

(i) For any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 11 years of the mortgage term.

(ii) For any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is greater than or equal to 90 percent of such value, for the first 30 years of the mortgage term; except that notwithstanding the matter preceding clause (i), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is greater than 95 percent of such value, the annual premium collected during the 30-year period under this clause may be in an amount not exceeding 1.55 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments).

[1] See References in Text note below.

(d) Increase in maximum amount of mortgage

(1) Except as provided in paragraph (2) of this subsection, notwithstanding[2] provision of this subchapter governing maximum mortgage amounts for insuring a mortgage secured by a one- to four-family dwelling, the maximum amount of the mortgage determined under any such provision may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

(2) The maximum amount of a mortgage determined under subsection (b)(2)(B) of this section may not be increased as provided in paragraph (1).

(e) Contract of insurance as evidence of eligibility

Any contract of insurance heretofore or hereafter executed by the Secretary under this subchapter shall be conclusive evidence of the eligibility of the loan or mortgage for insurance, and the validity of any contract of insurance so executed shall be incontestable in the hands of an approved financial institution or approved mortgagee from the date of the execution of such contract, except for fraud or misrepresentation on the part of such approved financial institution or approved mortgagee.

(f) Disclosure of other mortgage products

(1) In general

In conjunction with any loan insured under this section, an original lender shall provide to each prospective borrower a disclosure notice that provides a 1-page analysis of mortgage products offered by that lender and for which the borrower would qualify.

(2) Notice

The notice required under paragraph (1) shall include—

(A) a generic analysis comparing the note rate (and associated interest payments), insurance premiums, and other costs and fees that would be due over the life of the loan for a loan insured by the Secretary under subsection (b) of this section with the note rates, insurance premiums (if applicable), and other costs and fees that would be expected to be due if the mortgagor obtained instead other mortgage products offered by the lender and for which the borrower would qualify with a similar loan-to-value ratio in connection with a conventional mortgage (as that term is used in section 1454(a)(2) of this title or section 1717(b)(2) of this title, as applicable), assuming prevailing interest rates; and

(B) a statement regarding when the requirement of the mortgagor to pay the mortgage insurance premiums for a mortgage insured under this section would terminate, or a statement that the requirement shall terminate only if the mortgage is refinanced, paid off, or otherwise terminated.

(g) Limitation on use of single family mortgage insurance by investors

(1) The Secretary may insure a mortgage under this subchapter that is secured by a 1- to 4-family dwelling, or approve a substitute mortgagor with respect to any such mortgage, only if the mortgagor is to occupy the dwelling as his or her principal residence or as a secondary residence, as determined by the Secretary. In making this determination with respect to the occupancy of secondary residences, the Secretary may not insure mortgages with respect to such residences unless the Secretary determines that it is necessary to avoid undue hardship to the mortgagor. In no event may a secondary residence under this subsection include a vacation home, as determined by the Secretary.

(2) The occupancy requirement established in paragraph (1) shall not apply to any mortgagor (or co-mortgagor, as appropriate) that is—

(A) a public entity, as provided in section 1715d or 1715z–12 of this title, or any other State or local government or an agency thereof;

(B) a private nonprofit or public entity, as provided in section 1715*l*(h) or 1715z(j) of this title, or other private nonprofit organization that is exempt from taxation under section 501(c)(3) of title 26 and intends to sell or lease the mortgaged property to low or moderate-income persons, as determined by the Secretary;

(C) an Indian tribe, as provided in section 1715z–13 of this title;

(D) a serviceperson who is unable to meet such requirement because of his or her duty assignment, as provided in section 1715g of this title or subsection (b)(4) or (f) of section 1715m[1] of this title;

(E) a mortgagor or co-mortgagor under subsection (k) of this section; or

(F) a mortgagor that, pursuant to section 1715n(a)(7) of this title, is refinancing an existing mortgage insured under this chapter for not more than the outstanding balance of the existing mortgage, if the amount of the monthly payment due under the refinancing mortgage is less than the amount due under the existing mortgage for the month in which the refinancing mortgage is executed.

(3) For purposes of this subsection, the term ''substitute mortgagor'' means a person who, upon the release by a mortgagee of a previous mortgagor from personal liability on the mortgage note, assumes such liability and agrees to pay the mortgage debt.

(h) Disaster housing

Notwithstanding any other provision of this section, the Secretary is authorized to insure any mortgage which involves a principal obligation not in excess of the applicable maximum dollar limit under subsection (b) of this section and not in excess of 100 per centum of the appraised value of a property upon which there is located a dwelling designed principally for a single-family residence, where the mortgagor establishes (to the satisfaction of the Secretary) that his home which he occupied as an owner or as a tenant was destroyed or damaged to such an extent that reconstruction is required as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe which the President, pursuant to sections 5122(2) and 5170 of title 42, has determined to be a major disaster.

[2] So in original.

(i) Repealed. Pub. L. 110–289, div. B, title I, § 2120(a)(1), July 30, 2008, 122 Stat. 2835

(j) Real estate loans by national banks

Loans secured by mortgages insured under this section shall not be taken into account in determining the amount of real estate loans which a national bank may make in relation to its capital and surplus or its time and savings deposits.

(k) Rehabilitation of one- to four-family structures; definitions; eligibility; refinancing and extension; General Insurance Fund

(1) The Secretary may, in order to assist in the rehabilitation of one- to four-family structures used primarily for residential purposes, insure and make commitments to insure rehabilitation loans (including advances made during rehabilitation) made by financial institutions. Such commitments to insure and such insurance shall be made upon such terms and conditions which the Secretary may prescribe and which are consistent with the provisions of subsections (b), (c), (e), (i),[1] and (j) of this section, except as modified by the provisions of this subsection.

(2) For the purpose of this subsection—

(A) the term ''rehabilitation loan'' means a loan, advance of credit, or purchase of an obligation representing a loan or advance of credit, made for the purpose of financing—

(i) the rehabilitation of an existing one- to four-unit structure which will be used primarily for residential purposes;

(ii) the rehabilitation of such a structure and the refinancing of the outstanding indebtedness on such structure and the real property on which the structure is located; or

(iii) the rehabilitation of such a structure and the purchase of the structure and the real property on which it is located; and

(B) the term ''rehabilitation'' means the improvement (including improvements designed to meet cost-effective energy conservation standards prescribed by the Secretary) or repair of a structure, or facilities in connection with a structure, and may include the provision of such sanitary or other facilities as are required by applicable codes, a community development plan, or a statewide property insurance plan to be provided by the owner or tenant of the project. The term ''rehabilitation'' may also include measures to evaluate and reduce lead-based paint hazards, as such terms are defined in section 4851b of title 42.

(3) To be eligible for insurance under this subsection, a rehabilitation loan shall—

(A) involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount which does not exceed, when added to any outstanding indebtedness of the borrower which is secured by the structure and the property on which it is located, the amount specified in subsection (b)(2) of this section; except that, in determining the amount of the principal obligation for purposes of this subsection, the Secretary shall establish as the appraised value of the property an amount not to exceed the sum of the estimated cost of rehabilitation and the Secretary's estimate of the value of the property before rehabilitation;

(B) bear interest at such rate as may be agreed upon by the borrower and the financial institution;

(C) be an acceptable risk, as determined by the Secretary; and

(D) comply with such other terms, conditions, and restrictions as the Secretary may prescribe.

(4) Any rehabilitation loan insured under this subsection may be refinanced and extended in accordance with such terms and conditions as the Secretary may prescribe, but in no event for an additional amount or term which exceeds the maximum provided for in this subsection.

(5) All funds received and all disbursements made pursuant to the authority established by this subsection shall be credited or charged, as appropriate, to the Mutual Mortgage Insurance Fund, and insurance benefits shall be paid in cash out of such Fund or in debentures executed in the name of such Fund. Insurance benefits paid with respect to loans secured by a first mortgage and insured under this subsection shall be paid in accordance with section 1710 of this title. Insurance benefits paid with respect to loans secured by a mortgage other than a first mortgage and insured under this subsection shall be paid in accordance with paragraphs (6) and (7) of section 1715k(h) of this title, except that reference to ''this subsection'' in such paragraphs shall be construed as referring to this subsection.

***(l)* Repealed. Pub. L. 90–448, title I, § 103(b), Aug. 1, 1968, 82 Stat. 486**

(m) Repealed. Pub. L. 100–242, title IV, § 406(c), Feb. 5, 1988, 101 Stat. 1902

(n) Cooperative housing projects; definitions

(1) The Secretary is authorized to insure under this section any mortgage meeting the requirements of subsection (b) of this section, except as modified by this subsection. To be eligible, the mortgage shall involve a dwelling unit in a cooperative housing project which is covered by a blanket mortgage insured under this chapter or the construction of which was completed more than a year prior to the application for the mortgage insurance. The mortgage amount as determined under the other provisions of subsection (b) of this section shall be reduced by an amount equal to the portion of the unpaid balance of the blanket mortgage covering the project which is attributable (as of the date the mortgage is accepted for insurance) to such unit.

(2) For the purposes of this subsection—

(A) The terms ''home mortgage'' and ''mortgage'' include a first or subordinate mortgage or lien given (in accordance with the laws of the State where the property is located and accompanied by such security and other undertakings as may be required under regulations of the Secretary) to secure a loan made to finance the purchase of stock or membership in a cooperative ownership housing cor-

poration the permanent occupancy of the dwelling units of which is restricted to members of such corporation, where the purchase of such stock or membership will entitle the purchaser to the permanent occupancy of one of such units.

(B) The terms ''appraised value of the property'', ''value of the property'', and ''value'' include the appraised value of a dwelling unit in a cooperative housing project of the type described in subparagraph (A) where the purchase of the stock or membership involved will entitle the purchaser to the permanent occupancy of that unit; and the term ''property'' includes a dwelling unit in such a cooperative project.

(C) The term ''mortgagor'' includes a person or persons giving a first or subordinate mortgage or lien (of the type described in subparagraph (A)) to secure a loan to finance the purchase of stock or membership in a cooperative housing corporation.

(*o*) Repealed. Pub. L. 110–289, div. B, title I, § 2120(a)(2), July 30, 2008, 122 Stat. 2835

(p) Repealed. Pub. L. 110–289, div. B, title I, § 2120(a)(3), July 30, 2008, 122 Stat. 2835

(q) Repealed. Pub. L. 110–289, div. B, title I, § 2120(a)(4), July 30, 2008, 122 Stat. 2835

(r) Actions to reduce losses under single family mortgage insurance program

The Secretary shall take appropriate actions to reduce losses under the single-family mortgage insurance programs carried out under this subchapter. Such actions shall include—

(1) an annual review by the Secretary of the rate of early serious defaults and claims, in accordance with section 1735f–11 of this title;

(2) requiring that at least one person acquiring ownership of a one- to four-family residential property encumbered by a mortgage insured under this subchapter be determined to be creditworthy under standards prescribed by the Secretary, whether or not such person assumes personal liability under the mortgage (except that acquisitions by devise or descent shall not be subject to this requirement);

(3) in any case where personal liability under a mortgage is assumed, requiring that the original mortgagor be advised of the procedures by which he or she may be released from liability; and

(4) providing counseling, either directly or through third parties, to delinquent mortgagors whose mortgages are insured under this section, using the Fund to pay for such counseling.

In any case where the homeowner does not request a release from liability, the purchaser and the homeowner shall have joint and several liability for any default for a period of 5 years following the date of the assumption. After the close of such 5-year period, only the purchaser shall be liable for any default on the mortgage unless the mortgage is in default at the time of the expiration of the 5-year period.

(s) Transferred

(t) Disclosure regarding interest due upon mortgage prepayment

(1) Each mortgagee (or servicer) with respect to a mortgage under this section shall provide each mortgagor of such mortgagee (or servicer) written notice, not less than annually, containing a statement of the amount outstanding for prepayment of the principal amount of the mortgage and describing any requirements the mortgagor must fulfill to prevent the accrual of any interest on such principal amount after the date of any prepayment. This paragraph shall apply to any insured mortgage outstanding on or after the expiration of the 90-day period beginning on the date of effectiveness of final regulations implementing this paragraph.

(2) Each mortgagee (or servicer) with respect to a mortgage under this section shall, at or before closing with respect to any such mortgage, provide the mortgagor with written notice (in such form as the Secretary shall prescribe, by regulation, before the expiration of the 90-day period beginning upon November 28, 1990) describing any requirements the mortgagor must fulfill upon prepayment of the principal amount of the mortgage to prevent the accrual of any interest on the principal amount after the date of such prepayment. This paragraph shall apply to any mortgage executed after the expiration of the period under paragraph (1).

(u) Accountability of mortgage lenders

(1) No mortgagee may make or hold mortgages insured under this section if the customary lending practices of the mortgagee, as determined by the Secretary pursuant to section 1735f–17 of this title, provide for a variation in mortgage charge rates that exceeds 2 percent for insured mortgages made by the mortgagee on dwellings located within an area. The Secretary shall ensure that any permissible variations in the mortgage charge rates of any mortgagee are based only on actual variations in fees or costs to the mortgagee to make the loan.

(2) For purposes of this subsection—

(A) the term ''area'' means a metropolitan statistical area as established by the Office of Management and Budget;

(B) the term ''mortgage charges'' includes the interest rate, discount points, loan origination fee, and any other amount charged to a mortgagor with respect to an insured mortgage; and

(C) the term ''mortgage charge rate'' means the amount of mortgage charges for an insured mortgage expressed as a percentage of the initial principal amount of the mortgage.

(v) Use of FHA insurance with assistance under 42 U.S.C. 1437f

The insurance of a mortgage under this section in connection with the assistance provided under section 1437f(y) of title 42 shall be the obligation of the Mutual Mortgage Insurance Fund.

(w) Annual report

The Secretary of Housing and Urban Development shall submit to the Congress an annual report on the single family mortgage insurance

program under this section. Each report shall set forth—

(1) an analysis of the income groups served by the single family insurance program, including—

(A) the percentage of borrowers whose incomes do not exceed 100 percent of the median income for the area;

(B) the percentage of borrowers whose incomes do not exceed 80 percent of the median income for the area; and

(C) the percentage of borrowers whose incomes do not exceed 60 percent of the median income for the area;

(2) an analysis of the percentage of minority borrowers annually assisted by the program; the percentage of central city borrowers assisted and the percentage of rural borrowers assisted by the program;

(3) the extent to which the Secretary in carrying out the program has employed methods to ensure that needs of low and moderate income families, underserved areas, and historically disadvantaged groups are served by the program; and

(4) the current impediments to having the program serve low and moderate income borrowers; borrowers from central city areas; borrowers from rural areas; and minority borrowers.

The report required under this subsection shall include the report required under section 1735f–18(c) of this title and the report required under section 1711(g)[1] of this title.

(x) Management deficiencies report

(1) In general

Not later than 60 days after October 21, 1998, and annually thereafter, the Secretary shall submit to Congress a report on the plan of the Secretary to address each material weakness, reportable condition, and noncompliance with an applicable law or regulation (as defined by the Director of the Office of Management and Budget) identified in the most recent audited financial statement of the Federal Housing Administration submitted under section 3515 of title 31.

(2) Contents of annual report

Each report submitted under paragraph (1) shall include—

(A) an estimate of the resources, including staff, information systems, and contract assistance, required to address each material weakness, reportable condition, and noncompliance with an applicable law or regulation described in paragraph (1), and the costs associated with those resources;

(B) an estimated timetable for addressing each material weakness, reportable condition, and noncompliance with an applicable law or regulation described in paragraph (1); and

(C) the progress of the Secretary in implementing the plan of the Secretary included in the report submitted under paragraph (1) for the preceding year, except that this subparagraph does not apply to the initial report submitted under paragraph (1).

(June 27, 1934, ch. 847, title II, §203, 48 Stat. 1248; May 28, 1935, ch. 150, §29(a), 49 Stat. 299; Aug. 23, 1935, ch. 614, title III, §344(c), 49 Stat. 722; Feb. 3, 1938, ch. 13, §3, 52 Stat. 10; June 3, 1939, ch. 175, §§6–8, 53 Stat. 805, 806; June 28, 1941, ch. 261, §8, 55 Stat. 365; Oct. 15, 1943, ch. 259, §2, 57 Stat. 571; July 1, 1946, ch. 531, 60 Stat. 408; Aug. 10, 1948, ch. 832, title I, §101(g)–(k), 62 Stat. 1272; July 15, 1949, ch. 338, title II, §201(2), 63 Stat. 421; Aug. 30, 1949, ch. 524, 63 Stat. 681; Oct. 25, 1949, ch. 729, §1(2), 63 Stat. 905; Apr. 20, 1950, ch. 94, title I, §§103, 104(a), 122, 64 Stat. 51, 59; June 30, 1953, ch. 170, §3, 67 Stat. 121; Aug. 2, 1954, ch. 649, title I, §§104–110, 68 Stat. 591, 592; Aug. 7, 1956, ch. 1029, title I, §§102, 104(a), 70 Stat. 1091, 1092; Pub. L. 85–104, title I, §§101, 106, July 12, 1957, 71 Stat. 294, 297; Pub. L. 85–364, §1(a), Apr. 1, 1958, 72 Stat. 73; Pub. L. 86–372, title I, §§102, 103, title VIII, §809, Sept. 23, 1959, 73 Stat. 654, 688; Pub. L. 87–70, title I, §102(b), title VI, §§604(b), 605, 606, 612(a), June 30, 1961, 75 Stat. 157, 177, 178, 180; Pub. L. 88–560, title I, §§102, 103, 105(c)(1), Sept. 2, 1964, 78 Stat. 769, 772; Pub. L. 89–117, title II, §§203–206, title XI, §1108(c), Aug. 10, 1965, 79 Stat. 466, 504; Pub. L. 89–754, title III, §§301, 302, Nov. 3, 1966, 80 Stat. 1266; Pub. L. 90–19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title I, §103(b), title III, §§317, 318, title XI, §1106(d), Aug. 1, 1968, 82 Stat. 486, 512, 567; Pub. L. 91–152, title I, §§102(a), 113(a), Dec. 24, 1969, 83 Stat. 379, 383; Pub. L. 91–606, title III, §301(c), Dec. 31, 1970, 84 Stat. 1758; Pub. L. 93–288, title VII, §702(c), formerly title VI, §602(c), May 22, 1974, 88 Stat. 163, renumbered title VII, §702(c), Pub. L. 103–337, div. C, title XXXIV, §3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100; Pub. L. 93–383, title III, §§302(a), 310(a), Aug. 22, 1974, 88 Stat. 676, 682; Pub. L. 93–449, §4(b), Oct. 18, 1974, 88 Stat. 1367; Pub. L. 95–128, title III, §§303(a), (g), 304(a), 305, 307, Oct. 12, 1977, 91 Stat. 1132, 1133, 1134; Pub. L. 95–557, title I, §101(c)(1), (2), Oct. 31, 1978, 92 Stat. 2082, 2083; Pub. L. 95–619, title II, §248(a), Nov. 9, 1978, 92 Stat. 3235; Pub. L. 96–153, title III, §§310, 312(a), 318, Dec. 21, 1979, 93 Stat. 1114, 1116, 1119; Pub. L. 96–399, title III, §§321, 328, 333(a), 336(a), Oct. 8, 1980, 94 Stat. 1646, 1651, 1653, 1654; Pub. L. 97–253, title II, §201(a), (b), Sept. 8, 1982, 96 Stat. 789; Pub. L. 98–63, title I, §101, July 30, 1983, 97 Stat. 321; Pub. L. 98–181, title IV, §§404(b)(2), (3), 419, 423(a), (b)(1), 424(a), 425, 447, Nov. 30, 1983, 97 Stat. 1209, 1212, 1216–1218, 1228; Pub. L. 98–479, title II, §204(a)(2), Oct. 17, 1984, 98 Stat. 2232; Pub. L. 99–601, Nov. 5, 1986, 100 Stat. 3357; Pub. L. 100–242, title IV, §§403–405(1), 406(a)–(b)(6), (c), 407(a)(1), 422(b), 423, 429(c), Feb. 5, 1988, 101 Stat. 1899–1902, 1914, 1918; Pub. L. 100–628, title X, §§1061–1063(a), Nov. 7, 1988, 102 Stat. 3274; Pub. L. 100–707, title I, §109(e)(2), Nov. 23, 1988, 102 Stat. 4708; Pub. L. 101–144, title II, Nov. 9, 1989, 103 Stat. 852; Pub. L. 101–235, title I, §§132(a), 135, 143(a), (b), Dec. 15, 1989, 103 Stat. 2026, 2028, 2036; Pub. L. 101–402, §3, Oct. 1, 1990, 104 Stat. 866; Pub. L. 101–507, title II, Nov. 5, 1990, 104 Stat. 1369; Pub. L. 101–508, title II, §§2101–2103(a), Nov. 5, 1990, 104 Stat. 1388–17; Pub. L. 101–625, title III, §§326(a), 327, 329, 330(a), title IV, §429, Nov. 28, 1990, 104 Stat. 4137, 4138, 4171; Pub. L. 102–40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–389, title II, Oct. 6, 1992, 106 Stat. 1591, 1593; Pub. L. 102–550, title I, §185(c)(1), title V, §§503(a), 504–506(a), 507(a), title X, §1012(k)(2),

Oct. 28, 1992, 106 Stat. 3747, 3779–3782, 3907; Pub. L. 103–211, title I, Feb. 12, 1994, 108 Stat. 12; Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2314; Pub. L. 104–204, title IV, §§ 424, 425(a), 426, Sept. 26, 1996, 110 Stat. 2927, 2928; Pub. L. 105–65, title II, § 211, Oct. 27, 1997, 111 Stat. 1366; Pub. L. 105–276, title II, §§ 212, 224, 225(a), 228, Oct. 21, 1998, 112 Stat. 2486, 2489–2491; Pub. L. 106–74, title II, § 207, Oct. 20, 1999, 113 Stat. 1072; Pub. L. 106–281, § 2, Oct. 6, 2000, 114 Stat. 865; Pub. L. 106–377, § 1(a)(1) [title II, §§ 209(a), 225], Oct. 27, 2000, 114 Stat. 1441, 1441A–25, 1441A–30; Pub. L. 106–569, title XI, § 1103(f), Dec. 27, 2000, 114 Stat. 3031; Pub. L. 107–73, title II, § 207(a), Nov. 26, 2001, 115 Stat. 674; Pub. L. 107–326, § 2, Dec. 4, 2002, 116 Stat. 2792; Pub. L. 108–386, § 8(b), Oct. 30, 2004, 118 Stat. 2231; Pub. L. 108–447, div. I, title II, §§ 222, 223, Dec. 8, 2004, 118 Stat. 3321; Pub. L. 109–13, div. A, title VI, § 6073, May 11, 2005, 119 Stat. 300; Pub. L. 110–289, div. B, title I, §§ 2112(a), (b), 2113–2115, 2116(2), (3), 2118(b)(1), 2120(a)(1)–(4), (b), 2121, July 30, 2008, 122 Stat. 2830–2832, 2834, 2835; Pub. L. 111–229, § 1(a), Aug. 11, 2010, 124 Stat. 2483.)

REFERENCES IN TEXT

Section 1715z–10 of this title, referred to in subsec. (c)(1), was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(7), July 30, 2008, 122 Stat. 2835.

Section 1715m of this title, referred to in subsec. (g)(2)(D), was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(5), July 30, 2008, 122 Stat. 2835.

This chapter, referred to in subsecs. (g)(2)(F) and (n)(1), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

Subsection (i) of this section, referred to in subsec. (k)(1), was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(1), July 30, 2008, 122 Stat. 2835.

Section 1711(g) of this title, referred to in subsec. (w), was repealed by Pub. L. 110–289, div. B, title I, § 2118(c)(1), July 30, 2008, 122 Stat. 2835.

AMENDMENTS

2010—Subsec. (c)(2)(B). Pub. L. 111–229, § 1(a)(1), in introductory provisions, substituted ''may'' for ''shall'' and ''1.5 percent'' for ''0.50 percent''.

Subsec. (c)(2)(B)(ii). Pub. L. 111–229, § 1(a)(2), substituted ''may be in an amount not exceeding 1.55 percent'' for ''shall be in an amount not exceeding 0.55 percent''.

2008—Subsec. (b)(2). Pub. L. 110–289, § 2112(a)(2), which directed striking out second sentence in matter following subpar. (B) and all that followed through ''section 3103A(d) of title 38'', was executed in first undesignated par. after subpar. (B) by striking out ''For purposes of this paragraph, the term 'average closing cost' means, with respect to a State, the average, for mortgages executed for properties that are located within the State, of the total amounts (as determined by the Secretary) of initial service charges, appraisal, inspection, and other fees (as the Secretary shall approve) that are paid in connection with such mortgages. Notwithstanding any other provision of this section, in any case where the dwelling is not approved for mortgage insurance prior to the beginning of construction, such mortgage shall not exceed 90 per centum of the entire appraised value of the property as of the date the mortgage is accepted for insurance, unless (i) the dwelling was completed more than one year prior to the application for mortgage insurance, or (ii) the dwelling was approved for guaranty, insurance, or a direct loan under chapter 37 of title 38 prior to the beginning of construction, or (iii) the dwelling is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance prior to the beginning of construction. As used herein, the term 'veteran' means any person who served on active duty in the armed forces of the United States for a period of not less than ninety days (or is certified by the Secretary of Defense as having performed extra-hazardous service), and who was discharged or released therefrom under conditions other than dishonorable, except that persons enlisting in the armed forces after September 7, 1980, or entering active duty after October 16, 1981, shall have their eligibility determined in accordance with section 5303A(d) of title 38.'', to reflect the probable intent of Congress and amendment by Pub. L. 102–40. See 1991 Amendment note below.

Subsec. (b)(2)(A), (B). Pub. L. 110–289, § 2112(a)(1), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which related to maximum limits for principal loan obligation.

Subsec. (b)(9). Pub. L. 110–289, § 2113, amended par. (9) generally. Prior to amendment, par. (9) related to requirement that mortgagors other than veterans pay on account of the property at least 3 per centum, or such larger amount as the Secretary may determine, of the Secretary's estimate of the cost of acquisition, excluding the mortgage insurance premium paid at the time the mortgage is insured, in cash or its equivalent.

Subsec. (c)(2). Pub. L. 110–289, § 2114(1), in introductory provisions, struck out ''or of the General Insurance Fund pursuant to subsection (v) of this section and each mortgage that is insured under subsection (k) of this section or section 1715y(c) of this title,,'' after ''Mutual Mortgage Insurance Fund''.

Subsec. (c)(2)(A). Pub. L. 110–289, § 2114(2), substituted ''3 percent'' for ''2.25 percent'' and ''2.75 percent'' for ''2.0 percent''.

Subsec. (d). Pub. L. 110–289, § 2112(b), substituted ''Except as provided in paragraph (2) of this subsection, notwithstanding'' for ''Notwithstanding any'', designated existing provisions as par. (1), and added par. (2).

Subsec. (i). Pub. L. 110–289, § 2120(a)(1), struck out subsec. (i) which related to Secretary's authority to insure mortgages for single-family residences in suburban and outlying areas or small communities and certain farm homes.

Subsec. (k)(1). Pub. L. 110–289, § 2115(1), struck out ''on and after 180 days following October 31, 1978'' after ''financial institutions''.

Subsec. (k)(5). Pub. L. 110–289, § 2115(2), substituted ''Mutual Mortgage Insurance Fund'' for ''General Insurance Fund'' and struck out '', except that all references in section 1710 of this title to the Mutual Mortgage Insurance Fund shall be construed as referring to the General Insurance Fund'' after ''section 1710 of this title''.

Subsec. (n)(2)(A), (C). Pub. L. 110–289, § 2121, inserted ''or subordinate mortgage or'' before ''lien''.

Subsec. (*o*). Pub. L. 110–289, § 2120(a)(2), struck out subsec. (*o*) which related to insurance of mortgages on owner occupied homes in communities subject to adverse economic conditions resulting from Indian claims to ownership of land and obligation of Special Risk Insurance Fund.

Subsec. (p). Pub. L. 110–289, § 2120(a)(3), struck out subsec. (p) which related to insurance of mortgages in communities subject to temporary adverse economic conditions as a result of claims to ownership of land in the community by an American Indian Tribe, band, or nation.

Subsec. (q). Pub. L. 110–289, § 2120(a)(4), struck out subsec. (q) which related to insurance of mortgages secured by property on certain lands leased by Seneca Nation of New York Indians.

Subsec. (s). Pub. L. 110–289, § 2116(3), redesignated and transferred subsec. (s) of this section to subsec. (e) of section 1708 of this title.

Subsec. (s)(4). Pub. L. 110–289, § 2116(2), added par. (4) and struck out former par. (4) which read as follows: ''the Administrator of the Farmers Home Administration;''.

Subsec. (u)(2)(A). Pub. L. 110–289, §2120(b), substituted ''means a metropolitan statistical area as established by the Office of Management and Budget;'' for ''shall have the meaning given the term under subsection (b)(2) of this section;''.

Subsec. (v). Pub. L. 110–289, §2118(b)(1), substituted ''The'' for ''Notwithstanding section 1708 of this title, the'' and ''Mutual Mortgage Insurance Fund.'' for ''General Insurance Fund created pursuant to section 1735c of this title. The provisions of subsections (a) through (h), (j), and (k) of section 1710 of this title shall apply to such mortgages, except that (1) all references in section 1710 of this title to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund, and (2) any excess amounts described in section 1710(f)(1) of this title shall be retained by the Secretary and credited to the General Insurance Fund.''

2005—Subsec. (c)(1). Pub. L. 109–13, §6073(b)(2), struck out ''or (k)'' after ''(2) under subsection (n)'' and ''charges under subsection (n)''.

Pub. L. 109–13, §6073(b)(1), substituted ''(2) under subsection (n)'' for ''(2) under subsections (n)''.

Pub. L. 109–13, §6073(a), repealed Pub. L. 108–447, §222. See note below.

2004–Subsec. (c)(1). Pub. L. 108–447, §222, which directed the substitution of ''subsection (n)'' for ''subsections (n) and (k)'' and the striking out of ''or (k)'', was repealed by Pub. L. 109–13, §6073(a).

Subsec. (c)(2)(A). Pub. L. 108–447, §223, inserted '', provided that the mortgagor refinances the unpaid principal obligation under this subchapter'' before period at end.

Subsec. (s)(5). Pub. L. 108–386 struck out ''or District bank'' after ''national bank''.

2002—Subsec. (b). Pub. L. 107–326, §2(1)(A), substituted ''shall comply with the following:'' for ''shall—'' in introductory provisions.

Subsec. (b)(2). Pub. L. 107–326, §2(1)(C), transferred text of subsec. (b)(10)(B) so as to appear as second sentence of concluding provisions in par. (2).

Pub. L. 107–326, §2(1)(B)(ii)(III), in concluding provisions, struck out the eleventh sentence through the end which read as follows: ''In conjunction with any loan insured under this section, an original lender shall provide to each prospective borrower a disclosure notice that provides a one page analysis of mortgage products offered by that lender and for which the borrower would qualify. This notice shall include: (i) a generic analysis comparing the note rate (and associated interest payments), insurance premiums, and other costs and fees that would be due over the life of the loan for a loan insured by the Secretary under this subsection with the note rates, insurance premiums (if applicable), and other costs and fees that would be expected to be due if the mortgagor obtained instead other mortgage products offered by the lender and for which the borrower would qualify with a similar loan-to-value ratio in connection with a conventional mortgage (as that term is used in section 1454(a)(2) of this title or section 1717(b)(2) of this title, as applicable), assuming prevailing interest rates; and (ii) a statement regarding when the mortgagor's requirement to pay the mortgage insurance premiums for a mortgage insured under this section would terminate or a statement that the requirement will terminate only if the mortgage is refinanced, paid off, or otherwise terminated.''

Pub. L. 107–326, §2(1)(B)(ii)(II), in concluding provisions, struck out seventh through ninth sentences which read as follows: ''Except with respect to mortgages executed by mortgagors who are veterans, a mortgage may not involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured. For purposes of the preceding sentence, the term 'appraised value' means the amount set forth in the written statement required under section 1715q of this title, or a similar amount determined by the Secretary if section 1715q of this title does not apply. Notwithstanding the authority of the Secretary to establish the terms of insurance under this section and approve the initial service charges, appraisal, inspection, and other fees (and subject to any other limitations under this section on the amount of a principal obligation), the Secretary may not (by regulation or otherwise) limit the percentage or amount of any such approved charges and fees that may be included in the principal obligation of a mortgage.''

Pub. L. 107–326, §2(1)(B)(ii)(I), in concluding provisions, struck out second and third sentences which read as follows: ''If the mortgage to be insured under this section covers property on which there is located a one-to four-family residence, and the appraised value of the property, as of the date the mortgage is accepted for insurance, does not exceed $50,000, the principal obligation may be in an amount not to exceed 97 percent of such appraised value. If the mortgagor is a veteran, and the mortgage to be insured under this section covers property upon which there is located a dwelling designed principally for a one-family residence, the principal obligation may be in an amount equal to the sum of (i) 100 per centum of $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance, and (ii) 95 per centum of such value in excess of $25,000.''

Subsec. (b)(2)(A). Pub. L. 107–326, §2(1)(B)(i), realigned margins of matter that precedes cl. (ii).

Subsec. (b)(2)(B). Pub. L. 107–326, §2(1)(B)(iii), added subpar. (B) and struck out former subpar. (B) which read as follows: ''except as otherwise provided in this paragraph (2), not to exceed an amount equal to the sum of—

''(i) 97 percent of $25,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance;

''(ii) 95 percent of such value in excess of $25,000 but not in excess of $125,000; and

''(iii) 90 percent of such value in excess of $125,000.''

Subsec. (b)(10). Pub. L. 107–326, §2(1)(C), (D), transferred text of subpar. (B) so as to appear as second sentence of concluding provisions in subsec. (b)(2) and struck out headings and text of remainder of par. (10) which related to calculation of downpayment.

Subsec. (f). Pub. L. 107–326, §2(2), added subsec. (f).

2001—Subsec. (c)(1). Pub. L. 107–73, §207(a)(1), substituted ''subsections (n) or (k) of this section'' for ''subsections (n) and (k) of this section'' in cl. (2) of first proviso.

Subsec. (c)(2). Pub. L. 107–73, §207(a)(2), in introductory provisions, struck out ''and executed on or after October 1, 1994,'' after ''1- to 4-family dwelling'' and inserted ''and each mortgage that is insured under subsection (k) of this section or section 1715y(c) of this title,'' after ''subsection (v) of this section''.

2000—Subsec. (b)(10)(A). Pub. L. 106–377, §1(a)(1) [title II, §225], substituted ''mortgage closed on or before December 31, 2002, involving'' for ''mortgage closed on or before October 30, 2000 involving'' in introductory provisions.

Pub. L. 106–281 substituted ''closed on or before October 30, 2000'' for ''executed for insurance in fiscal years 1998, 1999, and 2000'' in introductory provisions.

Subsec. (s). Pub. L. 106–377, §1(a)(1) [title II, §209(a)(2)], redesignated subsec. (s), relating to disclosure regarding interest due upon mortgage prepayment, as (t).

Subsec. (t). Pub. L. 106–377, §1(a)(1) [title II, §209(a)(2)], redesignated subsec. (s), relating to disclosure regarding interest due upon mortgage prepayment, as (t).

Pub. L. 106–377, §1(a)(1) [title II, §209(a)(1)], redesignated subsec. (t) as (u).

Subsec. (u). Pub. L. 106–377, §1(a)(1) [title II, §209(a)(1)], redesignated subsec. (t) as (u).

Subsec. (v). Pub. L. 106–377, §1(a)(1) [title II, §209(a)(3)], redesignated subsec. (v), relating to annual report, as (w).

Subsec. (w). Pub. L. 106–569, which directed the amendment of subsec. (v) relating to annual report by inserting concluding provisions, was executed by making the insertion in subsec. (w) to reflect the probable intent of Congress and the intervening redesignation of that subsec. (v) as (w) by Pub. L. 106–377, § 1(a)(1) [title II, § 209(a)(3)]. See below.

Pub. L. 106–377, § 1(a)(1) [title II, § 209(a)(3)], redesignated subsec. (v), relating to annual report, as (w).

1999—Subsec. (b)(2)(A)(ii). Pub. L. 106–74 inserted ''the greater of the dollar amount limitation in effect under this section for the area on October 21, 1998, or'' before ''48 percent''.

1998—Subsec. (b)(2). Pub. L. 105–276, § 225(a), inserted at end undesignated par. relating to disclosure notice furnished by original lender.

Subsec. (b)(2)(A). Pub. L. 105–276, § 228(a), added cl. (ii) and struck out former cl. (ii) and concluding provisions which read as follows:

''(ii) 75 percent of the dollar amount limitation determined under section 1454(a)(2) of this title for a residence of the applicable size;

except that the applicable dollar amount limitation in effect for any area under this subparagraph may not be less than the greater of the dollar amount limitation in effect under this section for the area on September 28, 1994, or 38 percent of the dollar amount limitation determined under section 1454(a)(2) of this title for a residence of the applicable size; and''.

Subsec. (b)(2)(B). Pub. L. 105–276, § 228(b), amended first sentence of concluding provisions generally. Prior to amendment, sentence read as follows: ''For purposes of the preceding sentence, the term 'area' means a county, or a metropolitan statistical area as established by the Office of Management and Budget, whichever results in the higher dollar amount.''

Subsec. (b)(10). Pub. L. 105–276, § 212(1), substituted ''CALCULATION OF DOWNPAYMENT'' for ''ALASKA AND HAWAII'' in heading.

Subsec. (b)(10)(A). Pub. L. 105–276, § 212(2), substituted ''executed for insurance in fiscal years 1998, 1999, and 2000'' for ''originated in the State of Alaska or the State of Hawaii and endorsed for insurance in fiscal years 1997 and 1998,''.

Subsec. (x). Pub. L. 105–276, § 224, added subsec. (x).

1997—Subsec. (b)(10)(A). Pub. L. 105–65 substituted ''fiscal years 1997 and 1998'' for ''fiscal year 1997''.

1996—Subsec. (b)(9). Pub. L. 104–204, § 425(a), inserted before period at end '': *Provided further*, That for purposes of this paragraph, the Secretary shall consider as cash or its equivalent any amounts borrowed from a family member (as such term is defined in section 1707 of this title), subject only to the requirements that, in any case in which the repayment of such borrowed amounts is secured by a lien against the property, such lien shall be subordinate to the mortgage and the sum of the principal obligation of the mortgage and the obligation secured by such lien may not exceed 100 percent of the appraised value of the property plus any initial service charges, appraisal, inspection, and other fees in connection with the mortgage''.

Subsec. (b)(10). Pub. L. 104–204, § 426, added par. (10).

Subsec. (c)(2)(A). Pub. L. 104–204, § 424, inserted after first sentence ''In the case of a mortgage for which the mortgagor is a first-time homebuyer who completes a program of counseling with respect to the responsibilities and financial management involved in homeownership that is approved by the Secretary, the premium payment under this subparagraph shall not exceed 2.0 percent of the amount of the original insured principal obligation of the mortgage.''

1994—Subsec. (b)(2)(A). Pub. L. 103–327 substituted cl. (ii) and concluding provisions for former cl. (ii) and concluding provisions which read as follows:

''(ii) 75 percent of the dollar amount limitation determined under section 1454(a)(2) of this title (as in effect on September 30, 1992) for a residence of the applicable size;

except that the applicable dollar amount limitation in effect for any area under this subparagraph (A) may not be less than the dollar amount limitation in effect under this section for the area on May 12, 1992;''.

Subsec. (h). Pub. L. 103–211, effective for 18-month period following Feb. 12, 1994, for eligible persons, substituted ''Robert T. Stafford Disaster Relief and Emergency Assistance Act'' for ''section 5122(2) and 5170 of title 42'' and inserted at end ''In any case in which the single family residence to be insured under this subsection is within a jurisdiction in which the President has declared a major disaster to have occurred, the Secretary is authorized, for a temporary period not to exceed 18 months from the date of such Presidential declaration, to enter into agreements to insure a mortgage which involves a principal obligation of up to 100 percent of the dollar limitation determined under section 1454(a)(2) of this title for single family residence, and not in excess of 100 percent of the appraised value.'' See Applicability of 1994 Amendment note below.

Subsec. (k)(6). Pub. L. 103–211, effective for 18-month period following Feb. 12, 1994, for eligible persons, added par. (6) which read as follows: ''The Secretary is authorized, for a temporary period not to exceed 18 months from the date on which the President has declared a major disaster to have occurred, to enter into agreements to insure a rehabilitation loan under this subsection which involves a principal obligation of up to 100 percent of the dollar limitation determined under section 1454(a)(2) of this title for a residence of the applicable size, if such loan is secured by a structure and property that are within a jurisdiction in which the President has declared such disaster, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.], and if such loan otherwise conforms to the loan-to-value ratio and other requirements of this subsection.'' See Applicability of 1994 Amendment note below.

1992—Subsec. (b)(2). Pub. L. 102–550, § 506(a), added undesignated par. prohibiting Secretary from insuring mortgage executed by first-time homebuyer involving principal obligation in excess of 97 percent of value of property, unless mortgagor completes approved counseling program or Secretary waives requirement.

Pub. L. 102–550, § 505(a), substituted ''Except with respect to mortgages executed by mortgagors who are veterans'' for ''Notwithstanding any other provision of this paragraph'' in second undesignated par.

Pub. L. 102–550, § 503(a), amended first sentence generally. Prior to amendment, first sentence read as follows: ''Involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount—

''(A) not to exceed the lesser of—

''(i) in the case of the 1-family residence, 95 percent of the median 1-family house price in the area (as determined by the Secretary); in the case of a 2-family residence, 107 percent of such median price; in the case of a 3-family residence, 130 percent of such median price; or in the case of a 4-family residence, 150 percent of such median price; or

''(ii) 75 percent of the dollar amount limitation determined under section 1454(a)(2) of this title (as adjusted annually under such section) for a residence of the applicable size;

except that the applicable dollar amount limitation in effect for any area under this subparagraph (A) may not be less than the dollar amount limitation in effect under this section for the area on May 12, 1992; and

''(B) except as otherwise provided in this paragraph (2), not to exceed an amount equal to the sum of—

''(i) 97 percent of $25,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance;

''(ii) 95 percent of such value in excess of $25,000 but not in excess of $125,000; and

''(iii) 90 percent of such value in excess of $125,000.''

Pub. L. 102–389 amended first sentence generally. Prior to amendment, first sentence read as follows: ''Involve a principal obligation (including such initial

service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed $67,500 in the case of property upon which there is located a dwelling designed principally for a one-family residence; or $76,000 in the case of a two-family residence; or $92,000 in the case of a three-family residence, or $107,000 in the case of a four-family residence; except that the Secretary may increase the preceding maximum dollar amounts on an area-by-area basis to the extent the Secretary deems necessary, after taking into consideration the extent to which moderate and middle income persons have limited housing opportunities in the area due to high prevailing housing sales prices, but in no case may such limits, as so increased, exceed the lesser of (A) 185 percent of the dollar amount specified, or (B) in the case of a one-family residence, 95 per centum of the median one-family house price in the area, as determined by the Secretary; in the case of a two-family residence, 107 per centum of such median price; in the case of a three-family residence, 130 per centum of such median price; or in the case of a four-family residence, 150 per centum of such median price; and (except as otherwise provided in this paragraph) not to exceed an amount equal to the sum of (i) 97 per centum of $25,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance, and (ii) 95 per centum of such value in excess of $25,000.''

Pub. L. 102–389 inserted at end of second undesignated par. ''Notwithstanding the authority of the Secretary to establish the terms of insurance under this section and approve the initial service charges, appraisal, inspection, and other fees (and subject to any other limitations under this section on the amount of a principal obligation), the Secretary may not (by regulation or otherwise) limit the percentage or amount of any such approved charges and fees that may be included in the principal obligation of a mortgage.''

Subsec. (b)(9). Pub. L. 102–550, §505(b), substituted ''(except with respect to a mortgage executed by a mortgagor who is a veteran)'' for ''(except in a case to which the next to the last sentence of paragraph (2) applies)''.

Subsec. (c)(2). Pub. L. 102–550, §185(c)(1)(A), inserted ''or of the General Insurance Fund pursuant to subsection (v) of this section'' after ''Fund'' in introductory provisions.

Subsec. (c)(2)(A), (B). Pub. L. 102–550, §507(a)(1), (2)(A), substituted ''not exceeding'' for ''equal to''.

Subsec. (c)(2)(B)(ii). Pub. L. 102–550, §507(a)(2)(B), substituted ''not exceeding 0.55 percent'' for ''equal to 0.55 percent''.

Subsec. (k)(2)(B). Pub. L. 102–550, §1012(k)(2), inserted at end ''The term 'rehabilitation' may also include measures to evaluate and reduce lead-based paint hazards, as such terms are defined in section 4851b of title 42.''

Subsec. (v). Pub. L. 102–550, §504, added subsec. (v) relating to annual reports.

Pub. L. 102–550, §185(c)(1)(B), added subsec. (v) relating to use of FHA insurance with assistance under 42 U.S.C. 1437f.

1991—Subsec. (b)(2). Pub. L. 102–40 substituted ''section 5303A(d) of title 38'' for ''section 3103A(d) of title 38''.

1990—Subsec. (b)(2). Pub. L. 101–508, §2102, inserted at end ''Notwithstanding any other provision of this paragraph, a mortgage may not involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured. For purposes of the preceding sentence, the term 'appraised value' means the amount set forth in the written statement required under section 1715q of this title, or a similar amount determined by the Secretary if section 1715q of this title does not apply.''

Pub. L. 101–508, §2101, substituted ''185 percent of the dollar amount specified'' for ''150 percent (185 percent until October 31, 1990) of the dollar amount specified'' after ''exceed the lesser of (A)''.

Pub. L. 101–507 which directed the substitution of ''(185 percent during fiscal year 1991)'' for ''(185 percent during fiscal year 1990)'' could not be executed because ''during fiscal year 1990'' did not appear in text after amendment by Pub. L. 101–402. See below.

Pub. L. 101–402 substituted ''until October 31, 1990'' for ''during fiscal year 1990''.

Subsec. (b)(9). Pub. L. 101–625, §429, inserted ''or with respect to a mortgage covering a housing unit in connection with a homeownership program under the Homeownership and Opportunity Through HOPE Act,'' before ''the mortgagor's payment''.

Subsec. (c). Pub. L. 101–508, §2103(a), designated existing provisions as par. (1), added par. (2), and struck out at end of par. (1) ''In the case of any mortgage secured by a 1- to 4-family dwelling, the total premium charge shall not exceed an amount equal to 3.8 percent of the original principal obligation of the mortgage if the Secretary requires (1) a single premium charge to cover the total premium obligation of the insurance of the mortgage; or (2) a periodic premium charge over less than the term of the mortgage.''

Subsec. (g)(1). Pub. L. 101–625, §326(a), inserted at end ''In making this determination with respect to the occupancy of secondary residences, the Secretary may not insure mortgages with respect to such residences unless the Secretary determines that it is necessary to avoid undue hardship to the mortgagor. In no event may a secondary residence under this subsection include a vacation home, as determined by the Secretary.''

Subsec. (r)(4). Pub. L. 101–625, §327, added par. (4).

Subsec. (s). Pub. L. 101–625, §329, added subsec. (s) relating to disclosure regarding interest due upon mortgage prepayment.

Subsec. (t). Pub. L. 101–625, §330, added subsec. (t).

1989—Subsec. (b)(2). Pub. L. 101–144 inserted ''(185 percent during fiscal year 1990)'' after ''(A) 150 percent''.

Subsec. (g)(2). Pub. L. 101–235, §143(b), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''The occupancy requirement established in paragraph (1) shall apply only if the mortgage involves a principal obligation that exceeds, as appropriate, 75 percent of—

''(A) the appraised value of the dwelling;

''(B) the estimate of the Secretary of the replacement cost of the property;

''(C) the sum of the estimates of the Secretary of the cost of repair and rehabilitation and the value of the property before repair and rehabilitation; or

''(D) the sum of the estimates of the Secretary of the cost of repair and rehabilitation and the amount (as determined by the Secretary) required to refinance existing indebtedness secured by the property, and, in the case of a property refinanced under section 1715k(d)(3)(A) of this title, any existing indebtedness incurred in connection with improving, repairing, or rehabilitating the property.''

Subsec. (g)(2)(A). Pub. L. 101–235, §143(a)(1), inserted '', or any other State or local government or an agency thereof'' before semicolon at end.

Subsec. (g)(2)(B). Pub. L. 101–235, §143(a)(2), inserted '', or other private nonprofit organization that is exempt from taxation under section 501(c)(3) of title 26 and intends to sell or lease the mortgaged property to low or moderate-income persons, as determined by the Secretary'' before semicolon at end.

Subsec. (g)(3), (4). Pub. L. 101–235, §143(b)(2), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (r). Pub. L. 101–235, §132(a)(1), amended first sentence generally, substituting ''the single-family mortgage insurance programs carried out under this subchapter'' for ''the mortgage insurance program carried out under this section''.

Subsec. (r)(2), (3). Pub. L. 101–235, §132(a)(2), amended pars. (2) and (3) generally. Prior to amendment, pars. (2) and (3) read as follows:

''(2) requiring reviews of the credit standing of each person seeking to assume a mortgage insured under this section (A) during the 12-month period following the date on which the mortgage is executed, or (B) during the 24-month period following the date on which the mortgage is executed in the case of an investor originated mortgage; and

''(3) in any case where a mortgage is assumed after the period specified in paragraph (2), requiring that the original mortgagor be advised of the procedures by which he or she may be released from liability.''

Subsec. (s). Pub. L. 101–235, § 135, added subsec. (s).

1988—Subsec. (b)(2). Pub. L. 100–628, §§ 1061, 1062(b), clarified amendments by Pub. L. 100–242, §§ 405(1), 406(b)(1)(B).

Pub. L. 100–242, § 406(b)(1)(A), struck out ''(whether or not such one- or two-family residence may be intended to be rented temporarily for school purposes)'' after ''in the case of a two-family residence'' in first sentence.

Pub. L. 100–242, § 404, substituted ''150 percent'' for ''133⅓ per centum'' in cl. (A) of first sentence.

Pub. L. 100–242, § 423, inserted definition of ''area''.

Pub. L. 100–242, § 406(b)(1)(B), struck out ''to be occupied as the principal residence of the owner'' after ''residence''.

Pub. L. 100–242, § 405(1), which directed insertion of '', except that persons enlisting in the armed forces after September 7, 1980, or entering active duty after October 16, 1981, shall have their eligibility determined in accordance with section 3103A(d) of title 38'' before period at end of first undesignated paragraph, was executed by making the insertion after ''other than dishonorable'' at end of sentence defining ''veteran'', to reflect the probable intent of Congress.

Subsec. (b)(8). Pub. L. 100–242, § 406(b)(2), struck out par. (8) which related to eligibility for insurance of a mortgage in the case of a mortgagor who is not occupant of the property.

Subsec. (c). Pub. L. 100–242, § 403, inserted provisions at end relating to total premium charge to be fixed by Secretary in case of any mortgage secured by 1- to 4-family dwelling.

Subsec. (g). Pub. L. 100–242, § 406(a), added subsec. (g).

Subsec. (g)(3)(F). Pub. L. 100–628, § 1062(a), added subpar. (F).

Subsec. (h). Pub. L. 100–707, § 109(e)(2), struck out ''riot or civil disorder'' after ''hurricane, earthquake, storm,'' and substituted ''5170'' for ''5141''.

Pub. L. 100–242, § 406(b)(3), struck out ''is the owner and occupant and'' after ''where the mortgagor''.

Subsec. (i). Pub. L. 100–242, § 406(b)(4), struck out ''*Provided*, That if the mortgagor is not the occupant of the property at the time of insurance, the principal obligation of the mortgage shall not exceed 85 per centum of the appraised value of the property:'' after ''for a single-family residence:'' and substituted ''*Provided*, That the Secretary'' for ''*Provided further*, That the Secretary''.

Subsec. (k)(3)(B). Pub. L. 100–242, § 429(c), substituted ''borrower and the financial institution'' for ''mortgagor and the mortgagee''.

Subsec. (m). Pub. L. 100–242, § 406(c), struck out subsec. (m) which related to insurance of mortgages on dwellings that need not be designed for year-round occupancy.

Subsec. (*o*)(2). Pub. L. 100–242, § 406(b)(5), substituted ''owner'' for ''owner occupant'' in first sentence.

Subsec. (p)(2). Pub. L. 100–242, § 406(b)(6), substituted ''owner'' for ''owner-occupant'' in first sentence.

Subsec. (q)(1). Pub. L. 100–242, § 422(b), substituted ''Secretary shall'' for ''Secretary may''.

Subsec. (r). Pub. L. 100–242, § 407(a)(1), added subsec. (r).

Subsec. (r)(2)(A), (B). Pub. L. 100–628, § 1063(a), substituted ''date on which the mortgage is executed'' for ''date on which the mortgage is endorsed for insurance''.

1986—Subsec. (q). Pub. L. 99–601 added subsec. (q).

1984—Subsec. (n)(2)(A). Pub. L. 98–479 substituted ''a'' for ''an'' before ''cooperative ownership''.

1983—Subsec. (b)(2). Pub. L. 98–181, § 424(a), struck out ''(except as provided in the next to the last sentence of this paragraph)'' and inserted ''(except as otherwise provided in this paragraph)'' and inserted after first sentence ''If the mortgage to be insured under this section covers property on which there is located a one- to four-family residence to be occupied as the principal residence of the owner, and the appraised value of the property, as of the date the mortgage is accepted for insurance, does not exceed $50,000, the principal obligation may be in an amount not to exceed 97 percent of such appraised value.''

Pub. L. 98–181, § 423(b)(1), struck out '': *Provided*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured'' after ''150 per centum of such median price''.

Subsec. (b)(5). Pub. L. 98–181, § 404(b)(2), substituted provision that the interest rate be at such rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate, exclusive of premium charges for insurance and service charges if any, not exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market.

Subsec. (b)(8). Pub. L. 98–181, § 425, substituted ''the lesser of (A) the otherwise applicable maximum dollar amount prescribed under paragraph (2), or (B) 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance'' for ''85 per centum of the amount computed under the provisions of paragraph (2) of this subsection''.

Subsec. (c). Pub. L. 98–181, § 447, inserted ''(1) under section 1715z–10, 1715z–12, 1715z–16, 1715z–17, or 1715z–18 of this title, or any other financing mechanism providing alternative methods for repayment of a mortgage that is determined by the Secretary to involve additional risk, or (2)'' after ''fixed for insurance''.

Subsec. (d). Pub. L. 98–181, § 423(a), added subsec. (d).

Subsec. (h). Pub. L. 98–63 substituted ''the applicable maximum dollar limit under subsection (b) of this section'' for ''$14,400''.

Subsec. (k)(3)(B). Pub. L. 98–181, § 404(b)(3), substituted provision that interest be at such a rate as agreed upon by the mortgagor and mortgagee for provision that interest be at a rate permitted by the Secretary for mortgages insured under this section, except that the Secretary could permit a higher rate with respect to the period beginning with the making of the loan and ending with the completion of the rehabilitation or such earlier time as determined by the Secretary.

Subsec. (n)(1). Pub. L. 98–181, § 419(1), inserted ''or the construction of which was completed more than a year prior to the application for the mortgage insurance'' after ''under this chapter''.

Subsec. (n)(2)(A). Pub. L. 98–181, § 419(2), struck out ''nonprofit'' before ''cooperative''.

1982—Subsec. (b)(2). Pub. L. 97–253, § 201(a)(1), inserted provision that the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

Subsec. (b)(9). Pub. L. 97–253, § 201(a)(2), inserted ''(excluding the mortgage insurance premium paid at the time the mortgage is insured)'' after ''cost of acquisition''.

Subsec. (c). Pub. L. 97–253, § 201(b), inserted provision that with respect to mortgages for which the Secretary requires, at the time the mortgage is insured, the payment of a single premium charge to cover the total premium obligation for the insurance of the mortgage, and on which the principal obligation is paid before the number of years on which the premium with respect to a particular mortgage was based, or the property is sold subject to the mortgage or is sold and the mortgage is assumed prior to such time, the Secretary shall provide for refunds, where appropriate, of a portion of

the premium paid and shall provide for appropriate allocation of the premium cost among the mortgagors over the term of the mortgage, in accordance with procedures established by the Secretary which take into account sound financial and actuarial considerations.

1980—Subsec. (b)(2). Pub. L. 96–399, §336(a), inserted provisions authorizing the Secretary to increase maximum dollar amounts with respect to four-family residences.

Subsec. (b)(3). Pub. L. 96–399, §333(a), struck out provisions relating to applicability to criteria of three-quarters of the Secretary's estimate of the remaining economic life of the building improvements.

Subsec. (k)(5). Pub. L. 96–399, §321, substituted provisions relating to insurance benefits paid with respect to loans secured by a first mortgage, and insured under this subsection, and those secured by a mortgage other than a first mortgage, and insured under this subsection, for provisions relating to insurance benefits paid with respect to loans insured under this subsection.

Subsec. (p). Pub. L. 96–399, §328, added subsec. (p).

1979—Subsec. (b)(2). Pub. L. 96–153, §§310, 312(a), excepted dwellings covered by a consumer protection or warranty plan acceptable to the Secretary and satisfying all requirements which would have been applicable if such dwellings had been approved for mortgage insurance prior to the beginning of construction from the limit on the maximum amount of mortgage on dwellings not approved for mortgage insurance prior to the beginning of construction, and substituted ''$67,500'' for ''$60,000'', ''$76,000'' for ''$65,000'' where it first appeared, ''$92,000'' for ''$65,000'' where it appeared the second time, and ''$107,000'' for ''$75,000''.

Subsec. (i). Pub. L. 96–153, §318, substituted ''two and one-half or more acres in size adjacent to an all-weather public road'' for ''five or more acres in size adjacent to a public highway'' in last proviso.

1978—Subsec. (b)(2). Pub. L. 95–619 inserted provision that the amount insurable under this section could be increased by up to 20 per centum if such increase were necessary to account for the increased cost of a residence due to the installation of a solar energy system.

Subsec. (c). Pub. L. 95–557, §101(c)(2), substituted ''subsections (n) and (k) of this section are not required'' for ''subsection (n) of this section are not required'' and ''subsection (n) or (k) of this section exceed 1 per centum'' for ''subsection (n) of this section exceed 1 per centum''.

Subsec. (k). Pub. L. 95–557, §101(c)(1), generally revised subsec. (k) to meet the credit needs of owners of from one-to-four family properties who can afford market rate borrowing by insuring one hundred percent of the loan amount and covering the cost of rehabilitation, rehabilitation and refinancing existing debt, or the purchase and rehabilitation of properties.

1977—Subsec. (b)(2). Pub. L. 95–128, §§303(a), 304(a), substituted ''$60,000'' for ''$45,000'', ''$65,000'' for ''$48,750'' wherever appearing, and ''$75,000'' for ''$56,000'' in provisions preceding cl. (i); struck out in cl. (i) following ''97 per centum'' parenthetical text ''(but, in any case where the dwelling is not approved for mortgage insurance prior to the beginning of construction, unless the construction of the dwelling was completed more than one year prior to the application for mortgage insurance, or the dwelling was approved for guaranty, insurance, or direct loan under chapter 37 of title 38 prior to the beginning of construction, 90 per centum)''; substituted in first sentence ''and (ii) 95 per centum of such value in excess of $25,000'' for ''(ii) 90 per centum of such value in excess of $25,000 but not in excess of $35,000, and (iii) 80 per centum of such value in excess of $35,000'' and in second sentence ''and (ii) 95 per centum of such value in excess of $25,000'' for ''(ii) 90 per centum of such value in excess of $25,000 but not in excess of $35,000, and (iii) 85 per centum of such value in excess of $35,000''; and inserted following the second sentence provision limiting the mortgage to 90 per centum of the entire appraised value of the property as of the date the mortgage is accepted for insurance where the dwelling is not approved for mortgage insurance prior to the beginning of construction.

Subsec. (c). Pub. L. 95–128, §305, inserted proviso respecting premium charges for insurance under subsec. (n) of this section.

Subsec. (i). Pub. L. 95–128, §303(g), substituted provision which authorizes the Secretary to insure a mortgage hereunder which involves a principal obligation not in excess of 75 per centum of the limit on the principal obligation applicable to a one-family residence under subsec. (b) of this section for prior limitation of such insurance on a mortgage which involved a principal obligation not in excess of $16,200.

Subsec. (*o*). Pub. L. 95–128, §307, added subsec. (*o*).

1974—Subsec. (b)(2). Pub. L. 93–383, §302(a), substituted ''$45,000'' for ''$33,000'', ''$48,750'' for ''$35,750'' wherever appearing therein, and ''$56,000'' for ''$41,250'' in provisions preceding cl. (i).

Subsec. (b)(2)(i). Pub. L. 93–383, §310(a)(1), substituted ''$25,000'' for ''$15,000'' in first and second sentences.

Subsec. (b)(2)(ii). Pub. L. 93–383, §310(a)(2), substituted ''$25,000'' for ''$15,000'' and ''$35,000'' for ''$25,000'' in first and second sentences.

Subsec. (b)(2)(iii). Pub. L. 93–383, §310(a)(3), substituted ''$35,000'' for ''$25,000'' in first and second sentences.

Subsec. (h). Pub. L. 93–288 substituted ''sections 5122(2) and 5141 of title 42'' for ''section 4402(1) of title 42''.

Subsec. (n). Pub. L. 93–449 added subsec. (n).

1970—Subsec. (h). Pub. L. 91–606 substituted reference to section ''4402(1)'' for ''1855a(a)'' of title 42.

1969—Subsec. (b)(2). Pub. L. 91–152, §§102(a), 113(a)(1), substituted ''$25,000'' for ''$20,000'' wherever appearing, ''$33,000'' for ''$30,000'', ''$35,750'' for ''$32,500'' wherever appearing, and ''$41,250'' for ''$37,500''.

Subsec. (h). Pub. L. 91–152, §113(a)(2), substituted ''$14,400'' for ''$12,000''.

Subsec. (i). Pub. L. 91–152, §113(a)(3), substituted ''$16,200'' for ''$13,500''.

Subsec. (m). Pub. L. 91–152, §113(a)(4), substituted ''$18,000'' for ''$15,000''.

1968—Subsec. (h). Pub. L. 90–448, §1106(d), authorized insurance of mortgages for reconstruction of homes destroyed or damaged as a result of riot or civil disorder.

Subsec. (i). Pub. L. 90–448, §317, substituted ''$13,500'' for ''$12,500''.

Subsec. (*l*). Pub. L. 90–448, §103(b), repealed subsec. (*l*) which authorized insurance of mortgages in areas affected by civil disorders. See section 1715n(e) of this title.

Subsec. (m). Pub. L. 90–448, §318, added subsec. (m).

1967—Pub. L. 90—19, §1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a), (b)(1) to (9), (c), (e), (h), (i), and (k).

Subsec. (b)(3), (9). Pub. L. 90—19, §1(a)(4), substituted ''Secretary's'' for ''Commissioner's''.

1966—Subsec. (b)(2). Pub. L. 89–754, §301, substituted ''If the mortgagor is a veteran,'' for ''If the mortgagor is a veteran who has not received any direct, guaranteed, or insured loan under laws administered by the Veterans' Administration for the purchase, construction, or repair of a dwelling (including a farm dwelling) which was to be owned and occupied by him as his home,''.

Subsec. (*l*). Pub. L. 89–754, §302, added subsec. (*l*).

1965—Subsec. (b)(2). Pub. L. 89–117, §§203, 206(a), substituted ''and (except as provided in the next to the last sentence of this paragraph) not to exceed'' for ''and not to exceed'', and ''80 per centum'' for ''75 per centum'', and inserted provisions prescribing the amount of the principal obligation for veterans and defining ''veteran''.

Subsec. (b)(9). Pub. L. 89–117, §§204, 206(b), inserted ''(except in a case to which the next to the last sentence of paragraph (2) applies)'' and ''or with respect to a mortgage covering a single-family home being purchased under the low-income housing demonstration project assisted pursuant to section 1436 of title 42''.

Subsec. (i). Pub. L. 89–117, §205, substituted ''$12,500'' for ''$11,000''.

Subsec. (k). Pub. L. 89–117, § 1108(c), substituted ''the General Insurance Fund'' for ''a separate section 203 Home Improvement Account to be maintained as hereinafter provided under the Mutual Mortgage Insurance Fund'' in cl. (3) of the first sentence and ''the General Insurance Fund or in debentures executed in the name of such Fund'' for ''the section 203 Home Improvement Account or in debentures executed in the name of such Account'' in cl. (4), and removed references to section 220 Housing Insurance Fund and section 203 Home Improvement Account elsewhere in the subsec., including provisions for the funding of a special revolving fund for carrying out the provisions of the subsec.

1964—Subsec. (b)(2). Pub. L. 88–560, § 102(a), increased maximum amount of the principal obligation for one-family residences from $25,000 to $30,000, for two-family residences from $27,500 to $32,500, for three-family residences from $27,500 to $32,500, and for four-family residences from $35,000 to $37,500.

Subsec. (i). Pub. L. 88–560, § 102(b), increased maximum amount of the principal obligation from $9,000 to $11,000.

Subsec. (k). Pub. L. 88–560, §§ 103, 105(c)(1), substituted in cl. (2) ''an acceptable risk'' for ''economically sound'', in cl. (4) provision for payment of insurance benefits ''in cash out of the Section 203 Home Improvement Account or in debentures executed in the name of such Account'' for provision for such payment ''in debentures executed in the name of the Section 203 Home Improvement Account'', and in the third sentence ''Insurance benefits paid with respect to loans insured under this subsection shall be paid'' for ''Debentures issued with respect to loans insured under this subsection shall be issued''; and inserted the provision that ''If the insurance payment is made in cash, there shall be added to such payment an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Commissioner.'', respectively.

1961—Subsec. (a). Pub. L. 87–70, § 604(b), struck out proviso which limited the aggregate amount of principal obligations of all mortgages insured under this chapter to not more than $7,750,000,000, and which permitted additional increases in such sum by not more than $1,250,000,000 in the aggregate.

Subsec. (b)(2). Pub. L. 87–70, § 605(a), (b), increased maximum amount of the principal obligation for one-family residences from $22,500 to $25,000, and for two-family residences from $25,000 to $27,500, and substituted ''$15,000'' for ''$13,500'' in two places, ''$20,000'' for ''$18,000'' in two places, and ''75 per centum'' for ''70 per centum''.

Subsec. (b)(3). Pub. L. 87–70, §§ 605(c), 612(a)(1), substituted ''thirty-five years (or thirty years if such mortgage is not approved for insurance prior to construction) from the date of the beginning of amortization of the mortgage'' for ''thirty years from the date of the insurance of the mortgage''.

Subsec. (c). Pub. L. 87–70, §§ 606, 612(a)(2), reduced minimum premium charge from an amount equivalent to one-half of 1 per centum per annum to an amount equivalent to one-fourth of 1 per centum per annum, permitted the Commissioner to make the reduced premium charge applicable to each insured mortgage outstanding under the section or sections involved at the time the reduced charge is fixed, struck out provisos which related to premium charges for mortgages insured prior to Feb. 3, 1938, and for mortgages described in section 203(b)(2)(B) of the National Housing Act accepted for insurance prior to July 1, 1939, and substituted ''particular insurance fund or account'' for ''particular insurance fund'' in the first proviso of the second sentence.

Subsec. (e). Pub. L. 87–70, § 102(b)(1), (2), substituted ''eligibility of the loan or mortgage'' for ''eligibility of the mortgage'', and ''approved financial institution or approved mortgagee'' for ''approved mortgagee'' in two places.

Subsec. (k). Pub. L. 87–70 § 102(b)(3), added subsec. (k).

1959—Subsec. (b)(2). Pub. L. 86–372, § 102(a), increased maximum amount of the principal obligation for one-family residences from $20,000 to $22,500, and for two-family residences from $20,000 to $25,000, increased the maximum amount of loans over $13,500 from 85 per centum of the value in excess of $13,500 but not in excess of $16,000 to 90 per centum of the value in excess of $13,500 but not in excess of $18,000, and inserted provisions relating to dwellings approved for guaranty, insurance, or direct loan under chapter 37 of title 38 prior to the beginning of construction.

Subsec. (b)(8). Pub. L. 86–372, § 102(b), inserted proviso making the 85 per centum limitation inapplicable if the mortgagor and mortgagee assume responsibility for the reduction of the mortgage by an amount not less than 15 per centum of the outstanding principal amount thereof in the event the mortgaged property is not, prior to the due date of the 18th amortization payment of the mortgage, sold to a purchaser acceptable to the Commissioner who is the occupant of the property and who assumes and agrees to pay the mortgage indebtedness.

Subsec. (i). Pub. L. 86–372, § 103, increased maximum amount of the principal obligation from $8,000 to $9,000, inserted parenthetical clause, and struck out provisions that limited the total amount of insurance outstanding at any one time for farm homes to not more than $100,000,000.

Subsec. (j). Pub. L. 86–372, § 809, added subsec. (j).

1958—Subsec. (b)(2). Pub. L. 85–364 substituted ''$13,500'' for ''$10,000'' in two places.

1957—Subsec. (b)(2). Pub. L. 85–104, § 101(a), increased maximum amount of loan from 95 per centum of the first $9,000 plus 75 per centum of excess above $9,000, to 97 per centum of the first $10,000 plus 85 per centum of the next $6,000 and 70 per centum of the remainder, and struck out provisions authorizing President to increase former $9,000 figure to $10,000, eliminated provision that principal of mortgage shall not exceed 85 per centum if mortgagor is not occupant of property, and eliminated provision that mortgagor shall have paid at least 5 per centum cash payment. See subsec. (b)(8), (9).

Subsec. (b)(8), (9). Pub. L. 85–104, § 101(b), added pars. (8) and (9).

Subsec. (d). Pub. L. 85–104, § 106, repealed provisions which related to insurance of mortgages on farm properties.

Subsec. (i). Pub. L. 85–104, § 101(c), amended provisions generally, and, among other changes, increased maximum loan from $6,650 to $8,000, and from 95 per centum to 97 per centum of value, and substituted provisions that mortgage obligation shall not exceed 85 per centum of value if mortgagor is not occupant, for provisions that (1) mortgagor be the owner and occupant and had paid at least 5 per centum cash, or (2) mortgagor be owner and occupant with whom a person or corporation having satisfactory credit standing had contracted to pay on his behalf all or part of downpayment, taking as security a note at not more than 4 per centum interest, and to guarantee payment of insured mortgage, or (3) to be the builder constructing the dwelling in which case principal should not exceed 85 per centum of value or $5,950.

1956—Subsec. (b)(2). Act Aug. 7, 1956, §§ 102(a), 104(a), inserted ''unless the construction of the dwelling was completed more than one year prior to the application for mortgage insurance'' before ''90 per centum'' in parenthetical clause, and inserted provision that in cases where mortgagor is a person 60 years of age or older, the downpayment required could be paid by a person other than the mortgagor under conditions prescribed by the Commissioner.

Subsec. (h). Act Aug. 7, 1956, § 102(b), substituted ''$12,000'' for ''$7,000''.

1954—Subsec. (b)(2). Act Aug. 2, 1954, § 104, generally amended provisions to provide, among others, for an increase in, and equalization of, maximum mortgage amounts, with respect to new housing, substitution of a loan to value ratio of 95 per centum of the $9,000 of value plus 75 per centum of the balance in excess of $9,000, with Presidential authority to increase the $9,000 figure to $10,000 under certain conditions, and with re-

spect to existing housing, substitution of a loan to value ratio of 90 per centum of the first $9,000 of value plus 75 per centum of the balance in excess of $9,000, with Presidential authority to increase the $9,000 figure to $10,000, and inserted a provision limiting the maximum loan to value ratio where the builder becomes the mortgagor, not to exceed 85 per centum of the mortgage loan which an owner-occupant could obtain.

Subsec. (b)(3). Act Aug. 2, 1954, §105, substituted a provision for a maximum maturity of 30 years or three-quarters of the Commissioner's estimate of the remaining economic life of the building improvements, whichever is the lesser, for former provision carrying varying limits ranging from twenty to thirty years.

Subsec. (b)(5). Act Aug. 2, 1954, §106, fixed maximum statutory interest rate on mortgages at 5 per centum with authority in the Commissioner to increase the rate to not to exceed 6 per centum as he finds it necessary to meet the mortgage market; and permitted the allowance of service charges.

Subsec. (c). Act Aug. 2, 1954, §107, provided that debentures presented in payment of premium charges shall represent obligations of the particular insurance fund to which such premium charges are to be credited.

Subsec. (d). Act Aug. 2, 1954, §108, prohibited insurance of mortgages pursuant to this subsection after Aug. 2, 1954, except pursuant to commitments to insure issued on or before such date.

Subsecs. (f), (g). Act Aug. 2, 1954, §109, repealed subsec. (f) which related to refinance mortgages and subsec. (g) which related to higher loan to value ratio and longer maturity for single-family residences. See subsecs. (b)(2) and (b)(3) of this section.

Subsecs. (h), (i). Act Aug. 2, 1954, §110, added subsecs. (h) and (i).

1953—Subsec. (g). Act June 30, 1953, added subsec. (g).

1950—Act Apr. 20, 1950, §122, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

Subsec. (a). Act Apr. 20, 1950, §103, increased statutory amount of insurance authority from $6,750,000,000 to $7,500,000,000 and provided that an additional $1,250,000,000 in insurance authority could be made available with the authority of the President.

Subsec. (b)(2). Act Apr. 20, 1950, §104(a), inserted proviso to clause (A) to allow the Commissioner to increase the dollar limitation by not exceeding $4,500 for each additional family dwelling unit, in excess of two located on such property, repealed clause (B), changed ''$9,500'' to read ''$9,450'', ''90'' to ''95'' in clause (C), and changed clause (D) to provide that an insured mortgage could not exceed $6,650 in amount and not exceed 95 per centum of the appraised value, except that the Commissioner is given discretionary authority to increase such dollar amount limitation by not exceeding $950 for each additional bedroom in excess of two, and also to give Commissioner authority to increase the insurance limitation in any geographical area where he finds that cost levels so require.

1949—Subsec. (a). Joint Res. Oct. 25, 1949, substituted ''$6,000,000,000'' for ''$5,500,000,000'', and ''$6,750,000,000'' for ''$6,000,000,000''.

Act Aug. 30, 1949 substituted ''$5,500,000,000'' for ''$5,300,000,000'' and ''$6,000,000,000'' for ''$5,500,000,000''.

Act July 15, 1949, substituted ''$5,300,000,000'' for ''$4,000,000,000'' and ''$5,500,000,000'' for ''$5,000,000,000''.

1948—Subsec. (b)(2). Act Aug. 10, 1948, §101(g), (h)(1)–(3), (j)(1), substituted ''$6,300'' for ''$5,400'' in subpar. (B), substituted ''$9,500'' for ''$8,600'', ''$7,000'' for ''$6,000'', and ''$11,000'' for ''$10,000'' in subpar. (C), and added subpar. (D).

Subsec. (b)(3). Act Aug. 10, 1948, §101(i), (j)(2), substituted ''on property approved for insurance prior to the beginning of construction'' for ''of the character described in paragraph (2)(B) of this subsection'' and inserted ''or not to exceed thirty years in the case of a mortgage insured under paragraph (2)(D) of this subsection'', at the end thereof.

Subsec. (b)(5). Act Aug. 10, 1948, §101(j)(3), inserted ''or not to exceed 4 per centum per annum in the case of a mortgage insured under paragraph (2)(D) of this subsection, or not to exceed such percentum per annum, not in excess of 5 per centum, as the Administrator finds necessary to meet the mortgage market'' at the end thereof.

Subsec. (c). Act Aug. 10, 1948, §101(k)(1), (2), struck out of last sentence ''under this section or section 1715a of this title'' after ''accepted for insurance'' and ''and a mortgage on the same property is accepted for insurance at the time of such payment'' after ''herein set forth''.

1946—Subsec. (a). Act July 1, 1946, struck out second and third provisos providing for a limitation on the aggregate amount of mortgages outstanding, and limiting insuring of mortgages after July 1, 1946, respectively.

1943—Subsec. (a). Act Oct. 15, 1943, substituted ''1946'' for ''1944'' in third proviso.

1941—Subsec. (a). Act June 28, 1941, substituted ''$4,000,000,000'' for ''$3,000,000,000'', ''$5,000,000,000'' for ''$4,000,000,000''; and affected second and third provisos.

1939—Subsec. (a). Act June 3, 1939, §6, substituted ''$3,000,000'' for ''$2,000,000'', ''$4,000,000'' for ''$3,000,000'', generally revised second proviso and inserted third proviso.

Subsec. (b)(3). Act June 3, 1939, §7, struck out ''until July 1, 1939''.

Subsecs. (e), (f). Act June 3, 1939, §8, added subsecs. (e) and (f).

1938—Subsecs. (a) to (d). Act Feb. 3, 1938, amended provisions generally.

1935—Subsec. (a)(1). Act Aug. 23, 1935, inserted ''property and'' before ''project''.

Subsec. (c). Act May 28, 1935, inserted part of last sentence before the semicolon.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. B, title I, §2112(c), July 30, 2008, 122 Stat. 2831, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect upon the expiration of the date described in section 202(a) of the Economic Stimulus Act of 2008 (Public Law 110–185; 122 Stat. 620) [Dec. 31, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–447, div. I, title II, §223, Dec. 8, 2004, 118 Stat. 3321, provided in part that: ''This provision [amending this section] shall apply to loans that become insured on or after date of enactment of this Act [Dec. 8, 2004].''

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–73, title II, §207(b), Nov. 26, 2001, 115 Stat. 675, provided that: ''The amendments made by subsection (a) [amending this section] shall—

''(1) apply only to mortgages that are executed on or after the date of enactment of this Act [Nov. 26, 2001]; and

''(2) be implemented in advance of any necessary conforming changes to regulations.''

APPLICABILITY OF 1994 AMENDMENT

Title I of Pub. L. 103–211, Feb. 12, 1994, 108 Stat. 12, provided in part that: ''For higher mortgage limits and improved access to mortgage insurance for victims of the January 1994 earthquake in Southern California, title II of the National Housing Act, as amended [12 U.S.C. 1707 et seq.], is further amended, as follows:

''(1) [Amended this section.]

''(2) [Amended this section.]

''(3) [Amended section 1715y of this title.]

''Eligibility for loans made under the authority granted by the preceding paragraph [amending this section and section 1715y of this title] shall be limited to persons whose principal residence was damaged or destroyed as a result of the January 1994 earthquake in

Southern California: *Provided*, That the provisions under this heading [amending this section and section 1715y of this title] shall be effective only for the 18-month period following the date of enactment of this Act [Feb. 12, 1994].''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 503(b) of Pub. L. 102–550 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to mortgages executed on or after January 1, 1993.''

Section 506(b) of Pub. L. 102–550 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to mortgages for which commitments for insurance are issued after the expiration of the 12-month period beginning on the date of the enactment of this Act [Oct. 28, 1992].''

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 326(b) of Pub. L. 101–625 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only with respect to—

''(1) mortgages insured—

''(A) pursuant to a conditional commitment issued after the expiration of the 60-day period beginning on the date of the enactment of this Act [Nov. 28, 1990]; or

''(B) in accordance with the direct endorsement program, if the approved underwriter of the mortgages signs the appraisal report for the property after the expiration of the 60-day period beginning on the date of the enactment of this Act; and

''(2) the approval of substitute mortgagors, if the original mortgagor was subject to such amendments.''

Amendment by Pub. L. 101–402 deemed to have taken effect as if enacted September 29, 1990, see section 1(a) of Pub. L. 101–494, set out as an Effective Date of Temporary Extension of Emergency Low Income Housing Preservation Act of 1987 and Correction of Any Repeal note under section 1715*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 132(b) of Pub. L. 101–235 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only with respect to—

''(1) mortgages insured—

''(A) pursuant to a conditional commitment issued on or after the date of the enactment of this Act [Dec. 15, 1989]; or

''(B) in accordance with the direct endorsement program (24 C.F.R. 200.163), if the approved underwriter of the mortgage signs the appraisal report for the property on or after the date of the enactment of this Act; and

''(2) the approval of substitute mortgagors, if the original mortgagor was subject to such amendments.''

Section 143(c) of Pub. L. 101–235 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to—

''(1) mortgages insured—

''(A) pursuant to a conditional commitment issued on or after the date of the enactment of this Act [Dec. 15, 1989]; or

''(B) in accordance with the direct endorsement program, if the approved underwriter of the mortgagee signs the appraisal report for the property on or after the date of the enactment of this Act; and

''(2) the approval of substitute mortgagors, if the original mortgagor was subject to such amendments.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 406(d) of Pub. L. 100–242 provided that: ''The amendments made by this section [amending this section and sections 1715d, 1715g, 1715k, 1715*l*, 1715m, 1715n, 1715y, and 1715z of this title] shall apply only with respect to—

''(1) mortgages insured—

''(A) pursuant to a conditional commitment issued on or after the date of the enactment of this Act [Feb. 5, 1988]; or

''(B) in accordance with the direct endorsement program (24 CFR 200.163), if the approved underwriter of the mortgagee signs the appraisal report for the property on or after the date of the enactment of this Act; and

''(2) the approval of substitute mortgagors, referred to in the amendment made by subsection (a) [amending this section], if the original mortgagor was subject to such amendment.''

Section 407(a)(2) of Pub. L. 100–242, as amended by Pub. L. 100–628, title X, § 1063(b), Nov. 7, 1988, 102 Stat. 3274, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to each mortgage originated pursuant to an application for commitment for insurance signed by the applicant on or after December 1, 1986.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 424(b) of Pub. L. 98–181 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect only if the Secretary finds and reports to the Congress that such amendment, taking into account the higher loan-to-value ratio resulting from the advance payment of mortgage insurance premiums, will not adversely affect the actuarial soundness of the Federal Housing Administration mortgage insurance program.'' [For finding and report by Secretary and rule implementing the amendments effective June 24, 1985, see 49 F.R. 39686 and 50 F.R. 19924.]

Section 423(c) of Pub. L. 98–181 provided that: ''The amendments made by this section [amending this section and sections 1715e, 1715*l*, 1715y, and 1715z of this title] shall take effect only if the Secretary of Housing and Urban Development determines that the program of advance payment of insurance premiums, with specific regard to the effect of the provisions authorized by the amendments made by such sections, is actuarially sound.'' [For determination by Secretary and rule implementing the amendments effective May 10, 1984, see 49 F.R. 12693.]

EFFECTIVE DATE OF 1978 AMENDMENT

Section 104 of Pub. L. 95–557 provided that: ''The amendments made by this title [enacting section 5319 of Title 42, The Public Health and Welfare, and amending this section, sections 1706e and 1717 of this title, and sections 1452b, 5304, 5305, 5307, and 5318 of Title 42] shall become effective October 1, 1978.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–288 effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–606 effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as a note under section 165 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act July 15, 1949, effective June 30, 1949, see section 202 of that act, set out as a note under section 1703 of this title.

REGULATIONS

Pub. L. 105–276, title II, § 225(b), Oct. 21, 1998, 112 Stat. 2490, provided that: ''The Secretary of Housing and Urban Development shall develop the disclosure notice under subsection (a) [amending this section] within 150 days of the enactment [Oct. 21, 1998] through notice and comment rulemaking.''

IMPLEMENTATION

Pub. L. 111–229, § 1(b), Aug. 11, 2010, 124 Stat. 2483, provided that: ''The Secretary may adjust the amount of

any initial or annual premium charged pursuant to subsection (a) [amending this section] through notice published in the Federal Register or mortgagee letter. Such notice or mortgagee letter shall establish the effective date of any premium adjustment therein.''

TEMPORARY EXTENSION OF FHA MORTGAGE LIMIT

Pub. L. 101–494, §4, Oct. 31, 1990, 104 Stat. 1185, provided that:

''(a) EXTENSION.—If upon enactment of this Act [see Effective Date of 1990 Amendments note above], section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) provides for an increase in the maximum dollar amount limitations on the principal obligations of mortgages insured under such section until October 31, 1990, then notwithstanding such section, such maximum dollar amount limitations may be increased (to the percent specified in such section) until November 30, 1990.

''(b) LIMITATIONS.—If upon enactment of this Act such section 203(b)(2) [12 U.S.C. 1709(b)(2)] provides for an increase in the maximum dollar amount limitations (referred to in subsection (a)) until a date other than October 31, 1990, this section shall not apply. This section shall not apply with respect to any amendment to section 203(b)(2) of the National Housing Act made after the date of the enactment of this Act [Oct. 31, 1990].''

TRANSITION PROVISIONS OF 1990 AMENDMENTS

Section 326(c) of Pub. L. 101–625 provided that: ''Any mortgage insurance provided under title II of the National Housing Act [this subchapter] before the expiration of the 60-day period beginning on the date of the enactment of this Act [Nov. 28, 1990], shall continue to be governed (to the extent applicable) by the provisions of section 203(g)(1) of the National Housing Act [12 U.S.C. 1709(g)(1)], as such provisions existed before the date of the enactment of this Act.''

Section 2103(b), (c) of Pub. L. 101–508, as amended by Pub. L. 102–550, title I, §185(c)(3), title V, §507(b), Oct. 28, 1992, 106 Stat. 3748, 3782, provided that:

''(b) TRANSITION PROVISIONS.—Notwithstanding section 203(c) of the National Housing Act [12 U.S.C. 1709(c)] (as amended by subsection (a)), mortgage insurance premiums on mortgages executed during fiscal years 1991 through 1994 and that are obligations of the Mutual Mortgage Insurance Fund or of the General Insurance Fund pursuant to section 203(v) of the National Housing Act shall be subject to the following requirements:

''(1) 1991 AND 1992.—For mortgages executed during fiscal years 1991 and 1992 (but after the date of the effectiveness of regulations issued under subsection (c)), the Secretary shall establish and collect the following premiums:

''(A) UP-FRONT.—At the time of insurance, a single premium payment in an amount not exceeding 3.80 percent of the amount of the original insured principal obligation of the mortgage.

''(B) ANNUAL.—In addition to the premium under subparagraph (A), annual premium payments in an amount not exceeding 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is—

''(i) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 5 years of the mortgage term;

''(ii) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 8 years of the mortgage term; and

''(iii) greater than 95 percent of such value, for the first 10 years of the mortgage term.

''(2) 1993 AND 1994.—For mortgages executed during fiscal years 1993 and 1994, the Secretary shall establish and collect the following premiums:

''(A) UP-FRONT.—At the time of insurance, a single premium payment in an amount not exceeding 3.00 percent of the amount of the original insured principal obligation of the mortgage.

''(B) ANNUAL.—In addition to the premium under subparagraph (A), annual premium payments in an amount not exceeding 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is—

''(i) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 7 years of the mortgage term;

''(ii) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 12 years of the mortgage term; and

''(iii) greater than 95 percent of such value, for the first 30 years of the mortgage term.

''(3) REFUNDS.—With respect to any mortgage subject to premiums under this subsection, the Secretary shall refund all of the unearned premium charges paid on a mortgage pursuant to paragraph (1)(A) or (2)(A) upon payment in full of the principal obligation of the mortgage prior to the maturity date.

''(c) REGULATIONS.—The Secretary shall issue regulations to carry out this section and the amendments made by this section [amending this section] not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Nov. 5, 1990].''

TRANSITION PROVISIONS OF 1989 AMENDMENT

Section 132(c) of Pub. L. 101–235 provided that: ''Any mortgage insurance provided under title II of the National Housing Act [this subchapter] as it existed immediately before the date of the enactment of this Act [Dec. 15, 1989], shall continue to be governed (to the extent applicable) by the provisions of section 203(r) of the National Housing Act [12 U.S.C. 1709(r)], as such section existed immediately before such date.''

Section 143(d) of Pub. L. 101–235 provided that: ''Any mortgage insurance provided under title II of the National Housing Act [this subchapter], as it existed immediately before the date of the enactment of this Act [Dec. 15, 1989], shall continue to be governed (to the extent applicable) by the provisions amended by subsections (a) and (b) [amending this section] as such provisions existed immediately before such date.''

TRANSITION PROVISIONS OF 1988 AMENDMENT

Section 406(e) of Pub. L. 100–242 provided that: ''Any mortgage insurance provided under title II of the National Housing Act [this subchapter], as it existed immediately before the date of the enactment of this Act [Feb. 5, 1988], shall continue to be governed (to the extent applicable) by the provisions specified in subsections (a) through (c) [this section and sections 1715d, 1715g, 1715k, 1715*l*, 1715m, 1715n, 1715y, 1715z of this title], as such provisions existed immediately before such date.''

IMPLEMENTATION OF 1982 AMENDMENT

Section 201(g) of Pub. L. 97–253 provided that: ''The amendments made by this section [amending this section and sections 1715e, 1715*l*, 1715y, and 1715z of this title], other than by subsection (b) [amending subsec. (c) of this section], may be implemented only if the Secretary determines that the program of advance payment of insurance premiums, with specific regard to the effect of the provisions authorized by the amendments made by this section, is actuarially sound.''

EFFECT OF REPEAL OF SUBSEC. (b)(2)(B) OF THIS SECTION

Section 104(b) of act Apr. 20, 1950, provided that: ''The repeal of section 203(b)(2)(B) of said Act [former subsection (b)(2)(B) of this section], as provided by subsection (a) of this section, shall not affect the right of the Commissioner to insure under said section any mortgage (1) for the insurance of which application has been filed prior to the effective date of this Act [Apr. 20, 1950], or (2) with respect to a property covered by a mortgage insured under any section of the National Housing Act, as amended [this chapter].''

LIMITATION ON MORTGAGE INSURANCE PREMIUM INCREASES

Pub. L. 110–289, div. B, title I, § 2130, July 30, 2008, 122 Stat. 2842, provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, including any provision of this title [see Short Title of 2008 Amendment note set out under section 1701 of this title] and any amendment made by this title—

''(1) for the period beginning on the date of the enactment of this title [July 30, 2008] and ending on October 1, 2009, the premiums charged for mortgage insurance under multifamily housing programs under the National Housing Act [12 U.S.C. 1701 et seq.] may not be increased above the premium amounts in effect under such program on October 1, 2006, unless the Secretary of Housing and Urban Development determines that, absent such increase, insurance of additional mortgages under such program would, under the Federal Credit Reform Act of 1990 [2 U.S.C. 661 et seq.], require the appropriation of new budget authority to cover the costs (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)[)] of such insurance; and

''(2) a premium increase pursuant to paragraph (1) may be made only if not less than 30 days prior to such increase taking effect, the Secretary of Housing and Urban Development—

''(A) notifies the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of such increase; and

''(B) publishes notice of such increase in the Federal Register.

''(b) WAIVER.—The Secretary of Housing and Urban Development may waive the 30-day notice requirement under subsection (a)(2), if the Secretary determines that waiting 30-days before increasing premiums would cause substantial damage to the solvency of multifamily housing programs under the National Housing Act [12 U.S.C. 1701 et seq.].''

MUTUAL MORTGAGE INSURANCE FUND PREMIUMS

Pub. L. 103–66, title III, § 3005, Aug. 10, 1993, 107 Stat. 340, provided that: ''To improve the actuarial soundness of the Mutual Mortgage Insurance Fund under the National Housing Act [12 U.S.C. 1701 et seq.], the Secretary of Housing and Urban Development shall increase the rate at which the Secretary earns the single premium payment collected at the time of insurance of a mortgage that is an obligation of such Fund (with respect to the rate in effect on the date of the enactment of this Act [Aug. 10, 1993]). In establishing such increased rate, the Secretary shall consider any current audit findings and reserve analyses and information regarding the expected average duration of mortgages that are obligations of such Fund and may consider any other information that the Secretary determines to be appropriate.''

REPORT ON HOME EQUITY CONVERSION MORTGAGES FOR THE ELDERLY

Section 448 of Pub. L. 98–181 directed Secretary of Housing and Urban Development to evaluate existing use of home equity conversion mortgages for the elderly and, not later than the expiration of the 1-year period following Nov. 30, 1983, submit to Congress a report setting forth the results of such evaluation. Such report to include an evaluation of whether use of such mortgages improves financial situation, or otherwise meets special needs, of elderly homeowners; an evaluation of any risks incurred by mortgagors as a result of use of such mortgages, and any recommendations of Secretary for appropriate safeguards to be included in such mortgages to minimize such risks; an evaluation of the potential for acceptance of such mortgages in the private market; and any recommendations of Secretary for establishment of a Federal program of insuring such mortgages.

STUDIES OF MORTGAGE INSURANCE PREMIUMS AND ALTERNATIVES TO STATUTORY MORTGAGE AMOUNTS

Section 309 of Pub. L. 96–153 directed Secretary of Housing and Urban Development to (a) conduct a study of the relative risks of loss for various classes of mortgages which may be insured under sections 1709(b) and 213 of this title, for the purpose of making recommendations on the advisability of reducing mortgage insurance premiums, and transmit the recommendations to Congress within 18 months from Dec. 21, 1979, and (b) conduct a study of alternatives to the present system of fixed statutory maximum amounts for mortgages insured under subchapters I and II of this chapter and report to Congress on the results of the study together with recommendations for legislative, by Mar. 1, 1980.

INSURANCE PROGRAM OR HOMEOWNERS TO MEET MORTGAGE PAYMENTS IN TIMES OF PERSONAL ECONOMIC ADVERSITY

Pub. L. 90–448, § 109, authorized Secretary of Housing and Urban Development to develop a plan of insurance to help homeowners meet mortgage payments in times of personal economic adversity, i.e., death, disability, illness, and unemployment; required the program to be actuarially sound through the use of premiums, fees, extended or increased payment schedules, or other similar methods in conjunction with federal participation as necessary; directed the Secretary to report to Congress within 6 months of Aug. 1, 1968 and to recommend legislation, authorizing him to contract with companies, corporations, or joint enterprises formed to provide home mortgage insurance protection for the purpose of reinsuring insurance reserve funds, subsidizing premium payments for lower income mortgagors, or otherwise making possible insurance protection of homeowners; and authorized the Secretary, in preparing his recommendations, to consult with other agencies or instrumentalities of the United States which insure or guarantee home mortgages in order that any recommended legislation afford equal benefits to mortgagors participating in their programs.

§ 1709–1. Repealed. Pub. L. 98–181, title IV, § 404(a), Nov. 30, 1983, 97 Stat. 1208

Section, Pub. L. 90–301, § 3(a), May 7, 1968, 82 Stat. 113; Pub. L. 90–448, title III, § 315, Aug. 1, 1968, 82 Stat. 512; Pub. L. 91–78, § 3, Sept. 30, 1969, 83 Stat. 125; Pub. L. 91–152, title IV, § 401, Dec. 24, 1969, 83 Stat. 394; Pub. L. 91–351, title VI, § 601, July 24, 1970, 84 Stat. 461; Pub. L. 92–213, § 1, Dec. 22, 1971, 85 Stat. 775; Pub. L. 92–335, § 1, July 1, 1972, 86 Stat. 405; Pub. L. 93–85, § 2, Aug. 10, 1973, 87 Stat. 220; Pub. L. 93–117, § 3, Oct. 2, 1973, 87 Stat. 422; Pub. L. 93–234, title II, § 208, Dec. 31, 1973, 87 Stat. 984; Pub. L. 93–383, title III, §§ 309(e), 317, Aug. 22, 1974, 88 Stat. 682, 685; Pub. L. 95–60, § 2, June 30, 1977, 91 Stat. 257; Pub. L. 95–80, § 2, July 31, 1977, 91 Stat. 339; Pub. L. 95–128, title III, § 302, Oct. 12, 1977, 91 Stat. 1131; Pub. L. 95–406, § 2, Sept. 30, 1978, 92 Stat. 880; Pub. L. 95–557, title III, § 302, Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96–71, § 2, Sept. 28, 1979, 93 Stat. 501; Pub. L. 96–105, § 2, Nov. 8, 1979, 93 Stat. 794; Pub. L. 96–153, title III, § 302, Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96–372, § 3, Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96–399, title III, §§ 302, 332, Oct. 8, 1980,

94 Stat. 1639, 1652; Pub. L. 97–35, title III, § 332, Aug. 13, 1981, 95 Stat. 413; Pub. L. 97–289, § 2, Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98–35, § 2, May 26, 1983, 97 Stat. 197; Pub. L. 98–109, § 2, Oct. 1, 1983, 97 Stat. 746, authorized the Secretary, until Dec. 1, 1983, to set the maximum interest rates for certain mortgage insurance programs, notwithstanding the authority of the Secretary of Housing and Urban Development to establish such rates, specified the criteria to be considered in establishing such rates, authorized the Secretary to provide that the interest rate applicable under section 1709(b) of this title be the negotiated interest rate specified in the commitment agreement, limited the amount of mortgages with such negotiated interest rates which may be insured and prohibited such negotiated interest rates with respect to mortgages subject to section 1715z–10 of this title.

MORTGAGE CREDIT INTEREST RATES

Section 4 of Pub. L. 90–301, as amended by Pub. L. 90–565, Oct. 12, 1968, 82 Stat. 1001; Pub. L. 91–9, Apr. 11, 1969, 83 Stat. 7; Pub. L. 91–38, July 1, 1969, 83 Stat. 43, which established a Commission to study mortgage interest rates and to make recommendations to assure the availability of an adequate supply of mortgage credit at a reasonable cost to the consumer, directed the Commission to make an interim report not later than July 1, 1969, and a final report of its study and recommendations not later than August 1, 1969, to enable the President, Congress, and the Secretary of Housing and Urban Development to take necessary action before October 1, 1969, when the authorization for the increase in interest rates above present statutory ceilings will expire, and provided that the Commission cease to exist sixty days after the submission of its final report, was repealed by Pub. L. 98–181, title IV, § 404(a), Nov. 30, 1983, 97 Stat. 1208.

§ 1709–1a. State constitutional and legal limits upon interest chargeable on loans, mortgages, or other interim financing arrangements; applicability; covered arrangements

(a) The provisions of the constitution of any State expressly limiting the amount of interest which may be charged, taken, received, or reserved by certain classes of lenders and the provisions of any law of that State expressly limiting the amount of interest which may be charged, taken, received, or reserved shall not apply to—

(1) any loan or mortgage which is secured by a one- to four-family dwelling and which is (A) insured under title I or II [12 U.S.C. 1702 et seq. or 1707 et seq.] of the National Housing Act, or (B) insured, guaranteed, or made under chapter 37 of title 38; or

(2) any temporary construction loan or other interim financing if at the time such loan is made or financing is arranged, the intention to obtain permanent financing substantially by means of loans or mortgages so insured, guaranteed, or made is declared.

(b) The provisions of this section shall apply to such loans, mortgages, or other interim financing made or executed in any State until the effective date (after June 30, 1976) of a provision of law of that State limiting the amount of interest which may be charged, taken, received, or reserved on such loans, mortgages, or financing.

(Pub. L. 94–324, § 8, June 30, 1976, 90 Stat. 722.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Titles I and II of the National Housing Act are classified generally to subchapters I (§ 1702 et seq.) and II (§ 1707 et seq.), respectively, of this chapter. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Veterans Housing Amendments Act of 1976, and not as part of the National Housing Act which comprises this chapter.

EFFECTIVE DATE

Section effective June 30, 1976, see section 9(a) of Pub. L. 94–324, set out as a note under section 3701 of Title 38, Veterans' Benefits.

§ 1709–2. Equity skimming; penalty; persons liable; one dwelling exemption

Whoever, with intent to defraud, willfully engages in a pattern or practice of—

(1) purchasing one- to four-family dwellings (including condominiums and cooperatives) which are subject to a loan in default at time of purchase or in default within one year subsequent to the purchase and the loan is secured by a mortgage or deed of trust insured or held by the Secretary of Housing and Urban Development or guaranteed by the Department of Veterans Affairs, or the loan is made by the Department of Veterans Affairs,

(2) failing to make payments under the mortgage or deed of trust as the payments become due, regardless of whether the purchaser is obligated on the loan, and

(3) applying or authorizing the application of rents from such dwellings for his own use,

shall be fined not more than $250,000 or imprisoned not more than 5 years, or both. This section shall apply to a purchaser of such a dwelling, or a beneficial owner under any business organization or trust purchasing such dwelling, or to an officer, director, or agent of any such purchaser. Nothing in this section shall apply to the purchaser of only one such dwelling.

(Pub. L. 91–609, title IX, § 912, Dec. 31, 1970, 84 Stat. 1814; Pub. L. 100–242, title IV, § 416(a), Feb. 5, 1988, 101 Stat. 1907; Pub. L. 102–54, § 13(d)(1), June 13, 1991, 105 Stat. 274.)

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1991—Par. (1). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in two places.

1988—Pub. L. 100–242 inserted parenthetical reference to condominiums and cooperatives in par. (1), substituted ''due, regardless of whether the purchaser is obligated on the loan'' for ''due'' in par. (2), and substituted ''$250,000'' for ''$5,000'' and ''5'' for ''three'' in closing provisions.

§ 1709a. Determination of loan-to-value ratios

The Secretary of Housing and Urban Development, in establishing maximum loan-to-value ratios for mortgages insured by him under the National Housing Act [12 U.S.C. 1701 et seq.], as amended by sections 101, 102, and 103 of this Act, shall determine that such ratios are in the pub-

lic interest after taking into consideration (1) the effect of such ratios on the national economy and on conditions in the building industry, and (2) the availability or unavailability of residential mortgage credit assisted under the Servicemen's Readjustment Act of 1944, as amended.

(Pub. L. 85–104, title I, § 104, July 12, 1957, 71 Stat. 296; Pub. L. 90–19, § 14(a), May 25, 1967, 81 Stat. 24.)

REFERENCES IN TEXT

The National Housing Act, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Amendments by sections 101, 102, and 103 of this act, referred to in text, refers to amendment of sections 1709(b), (i), 1715k(d)(3), and 1715m(b) of this title by Pub. L. 85–104. Section 1709(i) of this title was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(1), July 30, 2008, 122 Stat. 2835. Section 1715m of this title was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(5), July 30, 2008, 122 Stat. 2835.

The Servicemen's Readjustment Act of 1944, as amended, referred to in text, is act June 22, 1944, ch. 268, 58 Stat. 284, as amended, which was classified generally to chapter 11C (§§ 693 to 697g) of former Title 38, Pensions, Bonuses, and Veterans' Relief, and which was repealed by section 14(87) of Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1273, the first section of which enacted Title 38, Veterans' Benefits. For distribution of sections 693 to 697g of former Title 38 to Title 38, Veterans' Benefits, see Table preceding section 101 of Title 38, Veterans' Benefits.

CODIFICATION

Section was enacted as part of the Housing Act of 1957, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' for ''Federal Housing Commissioner''.

§ 1709b. Repealed. Pub. L. 85–364, § 6, Apr. 1, 1958, 72 Stat. 77

Section, Pub. L. 85–104, title VI, § 605, July 12, 1957, 71 Stat. 305, authorized Federal Housing Commissioner and Administrator of Veterans' Affairs to fix reasonable limits on charges, fees, and discounts imposed upon builders, sellers, or purchasers.

§ 1710. Payment of insurance

(a) In general

(1) Authorized claims procedures

The Secretary may, in accordance with this subsection and terms and conditions prescribed by the Secretary, pay insurance benefits to a mortgagee for any mortgage insured under section 1709 of this title through any of the following methods:

(A) Assignment of mortgage

The Secretary may pay insurance benefits whenever a mortgage has been in a monetary default for not less than 3 full monthly installments or whenever the mortgagee is entitled to foreclosure for a nonmonetary default. Insurance benefits shall be paid pursuant to this subparagraph only upon the assignment, transfer, and delivery to the Secretary of—

(i) all rights and interests arising under the mortgage;

(ii) all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction;

(iii) title evidence satisfactory to the Secretary; and

(iv) such records relating to the mortgage transaction as the Secretary may require.

(B) Conveyance of title to property

The Secretary may pay insurance benefits if the mortgagee has acquired title to the mortgaged property through foreclosure or has otherwise acquired such property from the mortgagor after a default upon—

(i) the prompt conveyance to the Secretary of title to the property which meets the standards of the Secretary in force at the time the mortgage was insured and which is evidenced in the manner provided by such standards; and

(ii) the assignment to the Secretary of all claims of the mortgagee against the mortgagor or others, arising out of mortgage transaction or foreclosure proceedings, except such claims as may have been released with the consent of the Secretary.

The Secretary may permit the mortgagee to tender to the Secretary a satisfactory conveyance of title and transfer of possession directly from the mortgagor or other appropriate grantor, and may pay to the mortgagee the insurance benefits to which it would otherwise be entitled if such conveyance had been made to the mortgagee and from the mortgagee to the Secretary.

(C) Claim without conveyance of title

The Secretary may pay insurance benefits upon sale of the mortgaged property at foreclosure where such sale is for at least the fair market value of the property (with appropriate adjustments), as determined by the Secretary, and upon assignment to the Secretary of all claims referred to in clause (ii) of subparagraph (B).

(D) Preforeclosure sale

The Secretary may pay insurance benefits upon the sale of the mortgaged property by the mortgagor after default and the assignment to the Secretary of all claims referred to in clause (ii) of subparagraph (B), if—

(i) the sale of the mortgaged property has been approved by the Secretary;

(ii) the mortgagee receives an amount at least equal to the fair market value of the property (with appropriate adjustments), as determined by the Secretary; and

(iii) the mortgagor has received an appropriate disclosure, as determined by the Secretary.

(2) Payment for loss mitigation

The Secretary may pay insurance benefits to the mortgagee to recompense the mortgagee for all or part of any costs of the mortgagee for taking loss mitigation actions that provide an alternative to foreclosure of a mortgage that is in default or faces imminent default, as

defined by the Secretary (including but not limited to actions such as special forbearance, loan modification, support for borrower housing counseling, partial claims, borrower incentives, preforeclosure sale, and deeds in lieu of foreclosure, but not including assignment of mortgages to the Secretary under section subsection[1] (a)(1)(A) or section 1715u(c) of this title). No actions taken under this paragraph, nor any failure to act under this paragraph, by the Secretary or by a mortgagee shall be subject to judicial review.

(3) Determination of claims procedure

The Secretary shall publish guidelines for determining which of the procedures for payment of insurance under paragraph (1) are available to a mortgagee when it claims insurance benefits. At least one of the procedures for payment of insurance benefits specified in paragraph (1)(A) or (1)(B) shall be available to a mortgagee with respect to a mortgage, but the same procedure shall not be required to be available for all of the mortgages held by a mortgagee.

(4) Servicing of assigned mortgages

If a mortgage is assigned to the Secretary under paragraph (1)(A), the Secretary may permit the assigning mortgagee or its servicer to continue to service the mortgage for reasonable compensation and on terms and conditions determined by the Secretary. Neither the Secretary nor any servicer of the mortgage shall be required to forbear from collection of amounts due under the mortgage or otherwise pursue loss mitigation measures.

(5) Calculation of insurance benefits

Insurance benefits shall be paid in accordance with section 1735d of this title and shall be equal to the original principal obligation of the mortgage (with such additions and deductions as the Secretary determines are appropriate) which was unpaid upon the date of—

(A) assignment of the mortgage to the Secretary;

(B) the institution of foreclosure proceedings;

(C) the acquisition of the property after default other than by foreclosure; or

(D) sale of the mortgaged property by the mortgagor.

(6) Forbearance and recasting after default

The mortgagee may, upon such terms and conditions as the Secretary may prescribe—

(A) extend the time for the curing of the default and the time for commencing foreclosure proceedings or for otherwise acquiring title to the mortgaged property, to such time as the mortgagee determines is necessary and desirable to enable the mortgagor to complete the mortgage payments, including an extension of time beyond the stated maturity of the mortgage, and in the event of a subsequent foreclosure or acquisition of the property by other means the Secretary may include in the amount of insurance benefits an amount equal to any unpaid mortgage interest; or

(B) provide for a modification of the terms of the mortgage for the purpose of recasting, over the remaining term of the mortgage or over such longer period pursuant to guidelines as may be prescribed by the Secretary, the total unpaid amount then due, with the modification to become effective currently or to become effective upon the termination of an agreed-upon extension of the period for curing the default; and the principal amount of the mortgage, as modified, shall be considered the ''original principal obligation of the mortgage'' for purposes of paragraph (5).

(7) Termination of premium obligation

The obligation of the mortgagee to pay the premium charges for insurance shall cease upon fulfillment of the appropriate requirements under which the Secretary may pay insurance benefits, as described in paragraph (1). The Secretary may also terminate the mortgagee's obligation to pay mortgage insurance premiums upon receipt of an application filed by the mortgagee for insurance benefits under paragraph (1), or in the event the contract of insurance is terminated pursuant to section 1715t of this title.

(8) Effect on payment of insurance benefits under section 1715u

Nothing in this section shall limit the authority of the Secretary to pay insurance benefits under section 1715u of this title.

(9) Treatment of mortgage assignment program

Notwithstanding any other provision of law, or the Amended Stipulation entered as a consent decree on November 8, 1979, in Ferrell v. Cuomo, No. 73 C 334 (N.D. Ill.), or any other order intended to require the Secretary to operate the program of mortgage assignment and forbearance that was operated by the Secretary pursuant to the Amended Stipulation and under the authority of section 1715u of this title, prior to its amendment by section 407(b) of The Balanced Budget Downpayment Act, I (Public Law 104–99; 110 Stat. 45), no mortgage assigned under this section may be included in any mortgage foreclosure avoidance program that is the same or substantially equivalent to such a program of mortgage assignment and forbearance.

(b) Consent to release of mortgagor or property

The Secretary may at any time, under such terms and conditions as he may prescribe, consent to the release of the mortgagor from his liability under the mortgage or the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage.

(c) Debentures; form and amounts

Debentures issued under this section—

(1) shall be in such form and amounts;

(2) shall be subject to such terms and conditions;

(3) shall include such provisions for redemption, if any, as may be prescribed by the Secretary of Housing and Urban Development, with the approval of the Secretary of the Treasury; and

(4) may be in book entry or certificated registered form, or such other form as the Sec-

[1] So in original.

retary of Housing and Urban Development may prescribe in regulations.

(d) Debentures; issuance; negotiability; terms; tax exemptions

The debentures issued under this section to any mortagee[2] with respect to mortgages insured under section 1709 of this title shall be issued in the name of the Mutual Mortgage Insurance Fund as obligor and shall be negotiable, and, if in book entry form, transferable, in the manner described by the Secretary in regulations. All such debentures shall be dated as of the date foreclosure proceedings were instituted, or the property was otherwise acquired by the mortgagee after default: *Provided*, That debentures issued pursuant to claims for insurance filed on or after September 2, 1964 shall be dated as of the date of default or as of such later date as the Secretary, in his discretion, may establish by regulation. The debentures shall bear interest from such date at a rate established by the Secretary pursuant to section 1715*o* of this title, payable semiannually on the 1st day of January and the 1st day of July of each year, and shall mature twenty years after the date thereof. Such debentures as are issued in exchange for property covered by mortgages insured under section 1709 or section 1713 of this title prior to February 3, 1938 shall be subject only to such Federal, State, and local taxes as the mortgages in exchange for which they are issued would be subject to in the hands of the holder of the debentures and shall be a liability of the Mutual Mortgage Insurance Fund, but such debentures shall be fully and unconditionally guaranteed as to principal and interest by the United States; but any mortgagee entitled to receive any such debentures may elect to receive in lieu thereof a cash adjustment and debentures issued as hereinafter provided and bearing the current rate of interest. Such debentures as are issued in exchange for property covered by the mortgages insured after February 3, 1938, shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; and such debentures shall be paid out of the Mutual Mortgage Insurance Fund, which shall be primarily liable therefor, and they shall be fully and unconditionally guaranteed as to principal and interest by the United States, and, in the case of debentures issued in certificated registered form, such guaranty shall be expressed on the face of the debentures. In the event that the Mutual Mortgage Insurance Fund fails to pay upon demand, when due, the principal of or interest on any debentures issued under this section, the Secretary of the Treasury shall pay to the holders the amount thereof which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures.

(e) Certificate of claim

(1) Subject to paragraph (2), the certificate of claim issued by the Secretary to any mortgagee shall be for an amount which the Secretary determines to be sufficient, when added to the face value of the debentures issued and the cash adjustment paid to the mortgagee, to equal the amount which the mortgagee would have received if, at the time of the conveyance to the Secretary of the property covered by the mortgage, the mortgagor had redeemed the property and paid in full all obligations under the mortgage and a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings, or the acquisition of the mortgaged property otherwise, and the conveyance thereof to the Secretary. Each such certificate of claim shall provide that there shall accrue to the holder of such certificate with respect to the face amount of such certificate, an increment at the rate of 3 per centum per annum which shall not be compounded. The amount to which the holder of any such certificate shall be entitled shall be determined as provided in subsection (f) of this section.

(2) A certificate of claim shall not be issued and the provisions of paragraph (1) of this subsection shall not be applicable in the case of a mortgage accepted for insurance pursuant to a commitment issued on or after September 2, 1964.

(f) Division of excess proceeds; settlement of certificates of claims and refunds to mortgagors

(1) If, after deducting (in such manner and amount as the Secretary shall determine to be equitable and in accordance with sound accounting practice) the expenses incurred by the Secretary, the net amount realized from any property conveyed to the Secretary under this section and the claims assigned therewith exceed the face value of the debentures issued and the cash paid in exchange for such property plus all interest paid on such debentures, such excess shall be divided as follows:

(i) If such excess is greater than the total amount payable under the certificate of claim issued in connection with such property, the Secretary shall pay to the holder of such certificate the full amount so payable, and any excess remaining thereafter shall be paid to the mortgagor of such property if the mortgage was insured under section 1709 of this title: *Provided*, That on and after September 2, 1964, any excess remaining after payment to the holder of the full amount of the certificate of claim, together with the accrued interest increment thereon, shall be retained by the Secretary and credited to the applicable insurance fund; and

(ii) If such excess is equal to or less than the total amount payable under such certificate of claim, the Secretary shall pay to the holder of such certificate the full amount of such excess.

(2) Notwithstanding any other provisions of this section, the Secretary is authorized, with respect to mortgages insured pursuant to com-

[2] So in original. Probably should be ''mortgagee''.

mitments for insurance issued after August 11, 1955, and, with the consent of the mortgagee or mortgagor, as the case may be, with respect to mortgages insured pursuant to commitments issued prior to such date, to effect the settlement of certificates of claim and refunds to mortgagors at any time after the sale or transfer of title to the property conveyed to the Secretary under this section and without awaiting the final liquidation of such property for the purpose of determining the net amount to be realized therefrom: *Provided*, That the settlement authority created by the Housing Amendments of 1955 shall be terminated with respect to any certificates of claim outstanding as of September 2, 1964.

(3) With the consent of the holder thereof, the Secretary is authorized, without awaiting the final liquidation of the Secretary's interest in the property, to settle any certificate of claim issued pursuant to subsection (e) of this section, with respect to which settlement had not been effected prior to September 2, 1964, by making payment in cash to the holder thereof of such amount not exceeding the face amount of the certificate of claim, together with the accrued interest thereon, as the Secretary may consider appropriate: *Provided*, That in any case where the certificate of claim is settled in accordance with the provisions of this paragraph, any amounts realized after September 2, 1964, in the liquidation of the Secretary's interest in the property, shall be retained by the Secretary and credited to the applicable insurance fund.

(g) Handling and disposal of property; settlement of claims

Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, the Secretary shall have power to deal with, complete, rent, renovate, modernize, insure, or sell for cash or credit, in his discretion, any properties conveyed to him in exchange for debentures and certificates of claim as provided in this section; and notwithstanding any other provision of law, the Secretary shall also have power to pursue to final collection, by way of compromise or otherwise, all claims against mortgagors assigned by mortgagees to the Secretary as provided in this section: *Provided*, That section 6101 of title 41 shall not be construed to apply to any contract for hazard insurance, or to any purchase or contract for services or supplies on account of such property if the amount thereof does not exceed $1,000. The Secretary shall, by regulation, carry out a program of sales of such properties and shall develop and implement appropriate credit terms and standards to be used in carrying out the program. The power to convey and to execute in the name of the Secretary deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real or personal property or any interest therein heretofore or hereafter acquired by the Secretary pursuant to the provisions of this chapter, may be exercised by an officer appointed by him, without the execution of any express delegation of power or power of attorney: *Provided*, That nothing in this subsection shall be construed to prevent the Secretary from delegating such power by order or by power of attorney, in his discretion, to any officer, agent, or employee he may appoint: *And provided further*, That a conveyance or transfer of title to real or personal property or an interest therein to the Secretary of Housing and Urban Development, his successors and assigns, without identifying the Secretary therein, shall be deemed a proper conveyance or transfer to the same extent and of like effect as if the Secretary were personally named in such conveyance or transfer. The Secretary may sell real and personal property acquired by the Secretary pursuant to the provisions of this chapter on such terms and conditions as the Secretary may prescribe.

(h) Disposition of assets in revitalization areas

(1) In general

The purpose of this subsection is to require the Secretary to carry out a program under which eligible assets (as such term is defined in paragraph (2)) shall be made available for sale in a manner that promotes the revitalization, through expanded homeownership opportunities, of revitalization areas. Notwithstanding the authority under the last sentence of subsection (g) of this section, the Secretary shall dispose of all eligible assets under the program and shall establish the program in accordance with the requirements under this subsection.

(2) Eligible assets

For purposes of this subsection, the term ''eligible asset'' means any of the following categories of assets of the Secretary, unless the Secretary determines at any time that the asset property is economically or otherwise infeasible to rehabilitate or that the best use of the asset property is as open space (including park land):

(A) Properties

Any property that—

(i) is designed as a dwelling for occupancy by 1 to 4 families;

(ii) is located in a revitalization area;

(iii) was previously subject to a mortgage insured under the provisions of this chapter; and

(iv) is owned by the Secretary pursuant to the payment of insurance benefits under this chapter.

(B) Mortgages

Any mortgage that—

(i) is an interest in a property that meets the requirements of clauses (i) and (ii) of subparagraph (A);

(ii) was previously insured under the provisions of this chapter except for mortgages insured under or made pursuant to sections 1715z, 1715z–12, or 1715z–20 of this title; and

(iii) is held by the Secretary pursuant to the payment of insurance benefits under this chapter.

For purposes of this subsection, an asset under this subparagraph shall be considered to be located in a revitalization area, or in the asset control area of a preferred pur-

chaser, if the property described in clause (i) is located in such area.

(3) Revitalization areas

The Secretary shall designate areas as revitalization areas for purposes of this subsection. Before designation of an area as a revitalization area, the Secretary shall consult with affected units of general local government, States, and Indian tribes and interested nonprofit organizations. The Secretary may designate as revitalization areas only areas that meet one of the following requirements:

(A) Very-low income area

The median household income for the area is less than 60 percent of the median household income for—

(i) in the case of any area located within a metropolitan area, such metropolitan area; or

(ii) in the case of any area not located within a metropolitan area, the State in which the area is located.

(B) High concentration of eligible assets

A high rate of default or foreclosure for single family mortgages insured under this chapter has resulted, or may result, in the area—

(i) having a disproportionately high concentration of eligible assets, in comparison with the concentration of such assets in surrounding areas; or

(ii) being detrimentally impacted by eligible assets in the vicinity of the area.

(C) Low home ownership rate

The rate for home ownership of single family homes in the area is substantially below the rate for homeownership in the metropolitan area.

(4) Preference for sale to preferred purchasers

The Secretary shall provide a preference, among prospective purchasers of eligible assets, for sale of such assets to any purchaser who—

(A) is—

(i) the unit of general local government, State, or Indian tribe having jurisdiction with respect to the area in which are located the eligible assets to be sold; or

(ii) a nonprofit organization;

(B) in making a purchase under the program under this subsection—

(i) establishes an asset control area, which shall be an area that consists of part or all of a revitalization area; and

(ii) purchases all assets of the Secretary in the category or categories of eligible assets set forth in the sale agreement required under paragraph (7) that, at any time during the period which shall be set forth in the sale agreement—

(I) are or become eligible for purchase under this subsection; and

(II) are located in the asset control area of the purchaser; and

(C) has the capacity to carry out the purchase of the category or categories of eligible assets set forth in the sale agreement under the program under this subsection and under the provisions of this paragraph.

(5) Agreements required for purchase

(A) Preferred purchasers

Under the program under this subsection, the Secretary may sell an eligible asset as provided in paragraph (4) to a preferred purchaser only pursuant to a binding agreement by the preferred purchaser that the eligible asset will be used in conjunction with a home ownership plan that provides as follows:

(i) The plan has as its primary purpose the expansion of home ownership in, and the revitalization of, the asset control area, established pursuant to paragraph (4)(B)(i) by the purchaser, in which the eligible asset is located.

(ii) Under the plan, the preferred purchaser has established, and agreed to meet, specific performance goals for increasing the rate of home ownership for eligible assets in the asset control area that are under the purchaser's control. The plan shall provide that the Secretary may waive or modify such goals or deadlines only upon a determination by the Secretary that a good faith effort has been made in complying with the goals through the homeownership plan and that exceptional neighborhood conditions prevented attainment of the goal.

(iii) Under the plan, the preferred purchaser has established rehabilitation standards that meet or exceed the standards for housing quality established under subparagraph (B)(iii) by the Secretary, and has agreed that each asset property for an eligible asset purchased will be rehabilitated in accordance with such standards.

(B) Non-preferred purchasers

Under the program under this subsection, the Secretary may sell an eligible asset to a purchaser who is not a preferred purchaser only pursuant to a binding agreement by the purchaser that complies with the following requirements:

(i) The purchaser has agreed to meet specific performance goals established by the Secretary for home ownership of the asset properties for the eligible assets purchased by the purchaser, except that the Secretary may, by including a provision in the sale agreement required under paragraph (7), provide for a lower rate of home ownership in sales involving exceptional circumstances.

(ii) The purchaser has agreed that each asset property for an eligible asset purchased will be rehabilitated to comply with minimum standards for housing quality established by the Secretary for purposes of the program under this subsection.

(6) Discount for preferred purchasers

(A) In general

For the purpose of providing a public purpose discount for the bulk sales of eligible

assets made under the program under this subsection by preferred purchasers, each eligible asset sold through the program under this subsection to a preferred purchaser shall be sold at a price that is discounted from the value of the asset, as based on the appraised value of the asset property (as such term is defined in paragraph (8)).

(B) Appraisals

The Secretary shall require that each appraisal of an eligible asset under this paragraph is based upon—

(i) the market value of the asset property in its ''as is'' physical condition, which shall take into consideration age and condition of major mechanical and structural systems; and

(ii) the value of the property appraised for home ownership.

(C) Discounts

The Secretary, in the sole discretion of the Secretary, shall establish the discount under this paragraph for an eligible asset. In determining the discount, the Secretary may consider the condition of the asset property, the extent of resources available to the preferred purchaser, the comprehensive revitalization plan undertaken by such purchaser, the financial safety and soundness of the Mutual Mortgage Insurance Fund, and any other circumstances the Secretary considers appropriate[3]

(7) Sale agreement

The Secretary may sell an eligible asset under this subsection only pursuant to a sale agreement entered into under this paragraph with the purchaser, which shall include the following provisions:

(A) Assets

The sale agreement shall identify the category or categories of eligible assets to be purchased and, based on the purchaser's capacity to manage and dispose of assets, the maximum number of assets owned by the Secretary at the time the sale agreement is executed that shall be sold to the purchaser.

(B) Revitalization area and asset control area

The sale agreement shall identify—

(i) the boundaries of the specific revitalization areas (or portions thereof) in which are located the eligible assets that are covered by the agreement; and

(ii) in the case of a preferred purchaser, the asset control area established pursuant to paragraph (4)(B)(i) that is covered by the agreement.

(C) Financing

The sale agreement shall identify the sources of financing for the purchase of the eligible assets.

(D) Binding agreements

The sale agreement shall contain binding agreements by the purchaser sufficient to comply with—

(i) in the case of a preferred purchaser, the requirements under paragraph (5)(A), which agreements shall provide that the eligible assets purchased will be used in conjunction with a home ownership plan meeting the requirements of such paragraph, and shall set forth the terms of the homeownership plan, including—

(I) the goals of the plan for the eligible assets purchased and for the asset control area subject to the plan;

(II) the revitalization areas (or portions thereof) in which the homeownership plan is operating or will operate;

(III) the specific use or disposition of the eligible assets under the plan; and

(IV) any activities to be conducted and services to be provided under the plan; or

(ii) in the case of a purchaser who is not a preferred purchaser, the requirements under paragraph (5)(B).

(E) Purchase price and discount

The sale agreement shall establish the purchase price of the eligible assets, which in the case of a preferred purchaser shall provide for a discount in accordance with paragraph (6).

(F) Housing quality

The sale agreement shall provide for compliance of the eligible assets purchased with the rehabilitation standards established under paragraph (5)(A)(iii) or the minimum standards for housing quality established under paragraph (5)(B)(ii), as applicable, and shall specify such standards.

(G) Performance goals and sanctions

The sale agreement shall set forth the specific performance goals applicable to the purchaser, in accordance with paragraph (5), shall set forth any sanctions for failure to meet such goals and deadlines, and shall require the purchaser to certify compliance with such goals.

(H) Period covered

The sale agreement shall establish—

(i) in the case of a preferred purchaser, the time period referred to in paragraph (4)(B)(ii); and

(ii) in the case of a purchaser who is not a preferred purchaser, the time period for purchase of eligible assets that may be covered by the purchase.

(I) Other terms

The agreement shall contain such other terms and conditions as may be necessary to require that eligible assets purchased under the agreement are used in accordance with the program under this subsection.

(8) Definitions

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

(A) Asset control area

The term ''asset control area'' means the area established by a preferred purchaser pursuant to paragraph (4)(B)(i).

(B) Asset property

The term ''asset property'' means—

[3] So in original. There probably should be a period.

(i) with respect to an eligible asset that is a property, such property; and

(ii) with respect to an eligible asset that is a mortgage, the property that is subject to the mortgage.

(C) Eligible asset

The term ''eligible asset'' means an asset described in paragraph (2).

(D) Nonprofit organization

The term ''nonprofit organization'' means a private organization that—

(i) is organized under State or local laws;

(ii) has no part of its net earnings inuring to the benefit of any member, shareholder, founder, contributor, or individual; and

(iii) complies with standards of financial responsibility that the Secretary may require.

(E) Preferred purchaser

The term ''preferred purchaser'' means a purchaser described in paragraph (4).

(F) Unit of general local government

The term ''unit of general local government'' means any city, town, township, county, parish, village, or other general purpose political subdivision of a State, and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the jurisdiction with regard to the provisions of this subsection.

(G) State

The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to provisions of this subjection.[4]

(H) Indian tribe

The term ''Indian tribe'' has the same meaning as in section 1715z–13(i)(I)[5] of this title.

(9) Secretary's discretion

The Secretary shall have the authority to implement and administer the program under this subsection in such manner as the Secretary may determine. The Secretary may, in the sole discretion of the Secretary, enter into contracts to provide for the proper administration of the program with such public or nonprofit entities as the Secretary determines are qualified.

(10) Regulations

The Secretary shall issue regulations to implement the program under this subsection through rulemaking in accordance with the procedures established under section 553 of title 5 regarding substantive rules. Such regulations shall take effect not later than the expiration of the 2-year period beginning on October 21, 1998.

(i) Mortgagor's or mortgagee's interest in property or claim conveyed

No mortgagee or mortgagor shall have, and no certificate of claim shall be construed to give to any mortgagee or mortgagor, any right or interest in any property conveyed to the Secretary or in any claim assigned to him; nor shall the Secretary owe any duty to any mortgagee or mortgagor with respect to the handling or disposal of any such property or the collection of any such claim.

(j) Foreclosure; payment and cessation of obligation

In the event that any mortgagee under a mortgage insured under section 1709 of this title (other than a mortgagee receiving insurance benefits under clause (1)(A) of the second sentence of subsection (a) of this section) forecloses on the mortgaged property but does not convey such property to the Secretary in accordance with this section, and the Secretary is given written notice thereof, or in the event that the mortgagor pays the obligation under the mortgage in full prior to the maturity thereof, and the mortgagee pays any adjusted premium charge required under the provisions of section 1709(c) of this title, and the Secretary is given written notice by the mortgagee of the payment of such obligation, the obligation to pay any subsequent premium charge for insurance shall cease, and all rights of the mortgagee and the mortgagor under this section shall terminate as of the date of such notice.

(k) Repealed. Pub. L. 105–276, title VI, § 601(c), Oct. 21, 1998, 112 Stat. 2673

***(l)* Nullification of right of redemption of single family mortgagors**

(1) Whenever the Secretary or a contract mortgagee (pursuant to its contract with the Secretary) forecloses on a Secretary-held single family mortgage in any Federal or State court or pursuant to a power of sale in a mortgage, the purchaser at the foreclosure sale shall be entitled to receive a conveyance of title to, and possession of, the property, subject to the interests senior to the interests of the Secretary or the contract mortgagee, as the case may be. Notwithstanding any State law to the contrary, there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale in connection with a Secretary-held single family mortgage. The appropriate State official or the trustee, as the case may be, shall execute and deliver a deed or other appropriate instrument conveying title to the purchaser at the foreclosure sale, consistent with applicable procedures in the jurisdiction and without regard to any such right of redemption.

(2) The following actions shall be taken in order to verify title in the purchaser at the foreclosure sale:

(A) In the case of a judicial foreclosure in any Federal or State court, there shall be in-

[4] So in original. Probably should be ''subsection.''

[5] So in original. Probably should be section ''1715z–13(i)(1)''.

cluded in the petition and in the judgment of foreclosure a statement that the foreclosure is in accordance with this subsection and that there is no right of redemption in the mortgagor or any other person.

(B) In the case of a foreclosure pursuant to a power of sale provision in the mortgage, the statement required in subparagraph (A) shall be included in the advertisement of the sale and either in the recitals of the deed or other appropriate instrument conveying title to the purchaser at the foreclosure sale or in an affidavit or addendum to the deed.

(3) For purposes of this subsection:

(A) The term ''contract mortgagee'' means a person or entity under a contract with the Secretary that provides for the assignment of a single-family mortgage from the Secretary to the person or entity for the purpose of pursuing foreclosure.

(B) the[6] term ''mortgage'' means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any interest in property, real, personal, or mixed, or any interest in property, including leaseholds, life estates, reversionary interests, and any other estates under applicable State law, is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien, for the purpose of securing the payment of money or the performance of an obligation.

(C) The term ''Secretary-held single family mortgage'' means a single-family mortgage held by the Secretary or by a contract mortgagee at the time of initiation of foreclosure that—

(i) was formerly insured by the Secretary under any section of this subchapter; or

(ii) was taken by the Secretary as a purchase money mortgage in connection with the sale or other transfer of Secretary-owned property under any section of this subchapter.

(D) the term ''single-family mortgage'' means a mortgage that covers property on which is located a 1-to-4 family residence.

(June 27, 1934, ch. 847, title II, §204, 48 Stat. 1249; May 28, 1935, ch. 150, §29(c), 49 Stat. 300; Feb. 19, 1937, ch. 12, 50 Stat. 20; Feb. 3, 1938, ch. 13, §3, 52 Stat. 12; June 3, 1939, ch. 175, §§9, 10, 53 Stat. 806; June 28, 1941, ch. 261, §9, 55 Stat. 365; Oct. 14, 1943, ch. 258, §1, 57 Stat. 570; Aug. 10, 1948, ch. 832, title I, §101(*l*), (q), 62 Stat. 1273, 1274; Apr. 20, 1950, ch. 94, title I, §§105, 122, 64 Stat. 52, 59; Sept. 1, 1951, ch. 378, title VI, §604(a), 65 Stat. 314; Aug. 2, 1954, ch. 649, title I, §§111, 112(a), 113, 68 Stat. 593, 594; Aug. 11, 1955, ch. 783, title I, §102(a), 69 Stat. 635; Pub. L. 85–104, title I, §§107, 108(a), July 12, 1957, 71 Stat. 297; Pub. L. 86–372, title I, §§114(b), 117, Sept. 23, 1959, 73 Stat. 662, 664; Pub. L. 87–70, title VI, §612(b), (c), June 30, 1961, 75 Stat. 180; Pub. L. 88–560, title I, §§104(a), 105(a), Sept. 2, 1964, 78 Stat. 769, 770; Pub. L. 89–117, title XI, §1108(d), Aug. 10, 1965, 79 Stat. 504; Pub. L. 90–19, §1(a)(2), (3), (4), (d), May 25, 1967, 81 Stat. 17, 18; Pub. L. 98–181, title IV, §426, Nov. 30, 1983, 97 Stat. 1218; Pub. L. 100–242, title V, §569, Feb. 5, 1988, 101 Stat. 1948; Pub. L. 100–628, title X, §1064(a), (b), Nov. 7, 1988, 102 Stat. 3275; Pub. L. 101–235, title I, §136, Dec. 15, 1989, 103 Stat. 2028; Pub. L. 102–550, title V, §516(a), Oct. 28, 1992, 106 Stat. 3790; Pub. L. 104–99, title IV, §407(a), Jan. 26, 1996, 110 Stat. 45; Pub. L. 104–134, title I, §101(e) [title II, §221(a)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–290; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–276, title VI, §§601(a), (c), (d), 602, Oct. 21, 1998, 112 Stat. 2670, 2673, 2674; Pub. L. 108–447, div. I, title II, §221, Dec. 8, 2004, 118 Stat. 3320; Pub. L. 111–22, div. A, title II, §203(c), May 20, 2009, 123 Stat. 1644.)

[6] So in original. Probably should be capitalized.

REFERENCES IN TEXT

The Housing Amendments of 1955, referred to in subsec. (f)(2), is act Aug. 11, 1955, ch. 783, 69 Stat. 635, as amended. For complete classification of this Act to the Code, see Short Title of 1955 Amendments note set out under section 1701 of this title and Tables.

This chapter, referred to in subsecs. (g) and (h), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (g), ''section 6101 of title 41'' substituted for ''section 3709 of the Revised Statutes'' on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2009—Subsec. (a)(2). Pub. L. 111–22, §203(c)(3), substituted ''subsection (a)(1)(A) or section 1715u(c) of this title'' for ''paragraph (1)(A)''.

Pub. L. 111–22, §203(c)(1), (2), inserted ''or faces imminent default, as defined by the Secretary'' after ''default'' and ''support for borrower housing counseling, partial claims, borrower incentives, preforeclosure sale,'' after ''loan modification,''.

2004—Subsec. (h)(2). Pub. L. 108–447, §221(1)(A), substituted ''following categories of assets of the Secretary, unless the Secretary determines at any time that the asset property is economically or otherwise infeasible to rehabilitate or that the best use of the asset property is as open space (including park land)'' for ''following assets of the Secretary'' in introductory provisions.

Subsec. (h)(2)(B)(ii). Pub. L. 108–447, §221(1)(B), inserted ''except for mortgages insured under or made pursuant to sections 1715z, 1715z–12, or 1715z–20 of this title'' after ''chapter''.

Subsec. (h)(2)(C). Pub. L. 108–447, §221(1)(C), struck out heading and text of subpar. (C). Text read as follows: ''Any contingent future interest of the Secretary in an asset described in subparagraph (A) or (B).''

Subsec. (h)(3). Pub. L. 108–447, §221(2), inserted '', States, and Indian tribes'' after ''government'' in second sentence.

Subsec. (h)(4)(A)(i). Pub. L. 108–447, §221(3)(A), inserted '', State, or Indian tribe'' after ''government''.

Subsec. (h)(4)(B)(ii). Pub. L. 108–447, §221(3)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''purchases all interests of the Secretary in all assets of the Secretary that, at any time during the period which shall be set forth in the sale agreement required under paragraph (7)—

''(I) are or become eligible assets; and

''(II) are located in the asset control area of the purchaser; and''.

Subsec. (h)(4)(C). Pub. L. 108–447, §221(3)(C), substituted ''purchase of the category or categories of eligible assets set forth in the sale agreement under'' for ''purchase of eligible assets under''.

Subsec. (h)(6)(C). Pub. L. 108–447, §221(4)(A), amended heading and text of subpar. (C) generally. Prior to

amendment, subpar. (C) set out discount classes, including standard, deep, and minimal discounts.

Subsec. (h)(6)(D). Pub. L. 108–447, § 221(4)(B), struck out heading and text of subpar. (D). Text read as follows: ''The Secretary shall, in the sole discretion of the Secretary, establish a method for determining which discount under clause (i) or (ii) subparagraph (C) shall be provided for an eligible asset that is described in such clause (i) and sold to a preferred purchaser. The method may result in the assignment of discounts on any basis consistent with subparagraph (C) that the Secretary considers appropriate to carry out the purposes of this subsection.''

Subsec. (h)(7)(A). Pub. L. 108–447, § 221(5), substituted ''category or categories of eligible assets to be purchased and, based on the purchaser's capacity to manage and dispose of assets, the maximum number of assets owned by the Secretary at the time the sale agreement is executed that shall be sold to the purchaser'' for ''eligible assets to be purchased and the interests sold''.

Subsec. (h)(8)(F). Pub. L. 108–447, § 221(6)(A), inserted '', and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the jurisdiction with regard to the provisions of this subsection'' after ''State''.

Subsec. (h)(8)(G), (H). Pub. L. 108–447, § 221(6)(B), added subpars. (G) and (H).

1998—Subsec. (a). Pub. L. 105–276, § 601(a), inserted heading and amended text generally, substituting present provisions for provisions which authorized mortgagee of foreclosed property to receive insurance benefit upon conveyance to Secretary of title and assignment of claims, or upon foreclosure sale or approved sale after default where at least fair market value was received, set maintenance of property as condition of receipt of benefit, provided that obligation to pay premium would cease upon conveyance and assignment and debentures would issue having par value equal to value of mortgage, and set forth provisions detailing amounts to be included in debentures or cash payment and provisions authorizing extension or modification of mortgage where default was due to circumstances beyond control of mortgagor.

Subsec. (g). Pub. L. 105–276, § 601(d), inserted at end ''The Secretary may sell real and personal property acquired by the Secretary pursuant to the provisions of this chapter on such terms and conditions as the Secretary may prescribe.''

Subsecs. (h), (i). Pub. L. 105–276, § 602, added subsec. (h) and redesignated former subsec. (h) as (i).

Subsec. (k). Pub. L. 105–276, § 601(c), struck out subsec. (k) which read as follows: ''Notwithstanding any other provision of this section or of section 1739 or 1750c of this title and with respect to any debentures issued in exchange for properties conveyed to and accepted by the Secretary after September 23, 1959 in accordance with such sections, the Secretary may (1) include in debentures reasonable payments made by the mortgagee with the approval of the Secretary for the purpose of protecting, operating, or preserving the property, and taxes imposed upon any deed or any other instrument by which the property was acquired by the mortgagee and transferred or conveyed to the Secretary; (2) include in debentures as a portion of foreclosure costs (to the extent that foreclosure costs may be included in such debentures by any other provision of this chapter) payments made by the mortgagee for the cost of acquiring the property and conveying and evidencing title to the property to the Secretary; and (3) terminate the mortgagee's obligation to pay mortgage insurance premiums upon receipt of an application for debentures filed by the mortgagee, or in the event the contract of insurance is terminated pursuant to section 1715t of this title.''

1996—Subsec. (a). Pub. L. 104–134, in penultimate proviso of last sentence, substituted ''special forebearance'' for ''special foreclosure''.

Pub. L. 104–99 inserted '': *And provided further*, That the Secretary may pay insurance benefits to the mortgagee to recompense the mortgagee for its actions to provide an alternative to the foreclosure of a mortgage that is in default, which actions may include special foreclosure, loan modification, and deeds in lieu of foreclosure, all upon terms and conditions as the mortgagee shall determine in the mortgagee's sole discretion, within guidelines provided by the Secretary, but which may not include assignment of a mortgage to the Secretary: *And provided further*, That for purposes of the preceding proviso, no action authorized by the Secretary and no action taken, nor any failure to act, by the Secretary or the mortgagee shall be subject to judicial review.'' before period at end of last sentence.

1992—Subsec. (a). Pub. L. 102–550, § 516(a)(1), in fifth sentence, substituted ''issue to the mortgagee debentures having a par value'' for '', subject to the cash adjustment hereinafter provided, issue to the mortgagee debentures having a total face value''.

Subsec. (c). Pub. L. 102–550, § 516(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: ''Debentures issued under this section shall be in such form and denominations in multiples of $50, shall be subject to such terms and conditions, and shall include such provisions for redemption, if any, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, and may be in coupon or registered form. Any difference between the value of the mortgage determined as herein provided and the aggregate face value of the debentures issued, not to exceed $350, shall be adjusted by the payment of cash by the Secretary to the mortgagee from the Mutual Mortgage Insurance Fund.''

Subsec. (d). Pub. L. 102–550, § 516(a)(3), (4), in first sentence, substituted ''issued in the name of'' for ''executed in the name of'' and ''and shall be negotiable, and, if in book entry form, transferable, in the manner described by the Secretary in regulations'' for '', shall be signed by the Secretary by either his written or engraved signature, and shall be negotiable'' and in fifth sentence, substituted ''and, in the case of debentures issued in certificated registered form, such guaranty'' for ''and such guaranty''.

1989—Subsec. (a). Pub. L. 101–235, § 136(a), inserted after third sentence ''As a condition of the receipt of such benefits, the mortgagee shall maintain or assure the maintenance of the mortgaged property (in such manner as the Secretary shall by regulation provide) during the period beginning on the taking of the possession or other acquisition of the mortgaged property by the mortgagee and ending on conveyance to the Secretary or other disposition of the mortgaged property in accordance with this section, and funds expended by the mortgagee in meeting such obligation shall be included, to the extent provided in this subsection or in subsection (k) of this section, in debentures or other insurance payment pursuant to this section.''

Subsec. (g). Pub. L. 101–235, § 136(b), inserted after first sentence ''The Secretary shall, by regulation, carry out a program of sales of such properties and shall develop and implement appropriate credit terms and standards to be used in carrying out the program.''

1988—Subsec. (a). Pub. L. 100–628, § 1064(a)(1), (2), in second sentence, substituted ''(1)(A) upon sale'' for ''(1) upon sale'', inserted cl. (B), and substituted ''; and (2)'' for '', and (2)''.

Pub. L. 100–628, § 1064(b)(1), in third sentence, substituted ''November 30, 1983 (on or after November 7, 1988, with respect to the payment of benefits under clause (1)(B) of the preceding sentence),'' for ''the effective date of this sentence''.

Pub. L. 100–628, § 1064(b)(2)(A), in fifth sentence, struck out ''foreclosure'' before ''sale of the property: *Provided*''.

Subsec. (j). Pub. L. 100–628, § 1064(b)(2)(B), inserted ''clause (1)(A) of'' before ''the second sentence''.

Subsec. (*l*). Pub. L. 100–242 added subsec. (*l*).

1983—Subsec. (a). Pub. L. 98–181, § 426(a), inserted provision authorizing the Secretary to make the benefit of the insurance available to the mortgagee upon sale of the insured property at foreclosure and assignment of

all claims to the Secretary and provision relating to payment of benefits pursuant to a commitment to insure issued on or after the effective date of this sentence [Nov. 30, 1983], and substituted ''any amount received as rent or other income from the property, less reasonable expenses incurred in handling the property, after either of such dates, and, in the case of insurance benefits paid in accordance with the second sentence of this section, any amount received upon the foreclosure sale of the property'' for ''and any amount received as rent or other income from the property, less reasonable expenses incurred in handling the property, after either of such dates''.

Subsec. (j). Pub. L. 98–181, §426(b), inserted ''(other than a mortgagee receiving insurance benefits under the second sentence of subsection (a) of this section)'' after ''section 1709 of this title''.

1967—Pub. L. 90–19, §1(a)(2), substituted ''Secretary of Housing and Urban Development'' for ''Federal Housing Commissioner'' in subsec. (g).

Pub. L. 90–19, §1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a) to (d), (e)(1), (f)(1), (f)(1)(i), (ii), (f)(2), (3), (g), (h), (j), and (k).

Subsec. (f)(3). Pub. L. 90–19, §1(a)(4), substituted ''Secretary's'' for ''Commissioner's'' wherever appearing.

Subsec. (g). Pub. L. 90–19, §1(d), substituted ''an officer'' for ''the Commissioner or by any Assistant Commissioner''.

1965—Subsec. (a). Pub. L. 89–117, §1108(d)(1), struck out reference to section 1715a of this title after reference to section 1709 of this title in first sentence.

Subsec. (c). Pub. L. 89–117, §1108(d)(2), substituted ''Mutual Mortgage Insurance Fund'' for ''Fund as to mortgages insured under section 1709 of this title and from the Housing Fund as to mortgages insured under section 1715a of this title''.

Subsec. (d). Pub. L. 89–117, §1108(d)(3)–(6), removed all references to debentures issued with respect to mortgages insured under section 1715a of this title and to the Housing Insurance Fund and substituted Mutual Mortgage Insurance Fund for Fund wherever appearing.

Subsec. (f). Pub. L. 89–117, §1108(d)(7), struck out provision of subpar. (1)(i) calling for retention of excess by Commissioner and credit to the Housing Insurance Fund in the case of mortgages insured under section 1713 of this title.

1964—Subsec. (a). Pub. L. 88–560, §§104(a), 105(a)(1)–(3), (6)(B), amended provisions as follows; section 104(a), in proviso reading ''*And provided further*, That with respect to any mortgage covering a one-, two-, three-, or four-family residence'', struck out ''and it is probable that the mortgage will be restored to good standing within a reasonable period of time'' after ''control of the mortgagor'', substituted ''upon such terms and conditions'' for ''under such regulations and conditions'', incorporated authority of Commissioner to ''extend the time for curing default and enter into an agreement with the mortgage providing that if the mortgage is subsequently foreclosed, any interest accruing after the date of the agreement which is not paid by the mortgagor may be included in the debentures'' in cl. (1), and provided for remainder of cl. (1), cl. (2) and consideration of the principal amount of the mortgage, as modified, as the ''original principal obligation of the mortgage'' for purpose of computing total face value of debentures to be issued or cash payment to be made by Commissioner to a mortgagee; section 105(a)(1) substituted in third sentence ''charges for the administration, operation, maintenance and repair of community-owned property or the maintenance and repair of the mortgaged property, the obligation for which arises out of a covenant filed for record and approved by the Commissioner prior to the insurance of the mortgage, insurance on the mortgaged property, and any mortgage insurance premiums'' for ''insurance on the mortgaged property, and any mortgage insurance premiums paid after either of such dates''; section 105(a)(2) inserted provisos reading ''*And provided further*, That with respect to a mortgage accepted for insurance pursuant to a commitment issued on or after September 2, 1964, the Commissioner may include in debentures or in the cash payment on amount not to exceed the foreclosure, acquisition, and conveyance costs actually paid by the mortgagee and approved by the Commissioner'' and ''*And provided further*, That with respect to a mortgage accepted for insurance pursuant to a commitment issued prior to September 2, 1964, the Commissioner may, with the consent of the mortgagee (in lieu of issuing a certificate of claim as provided in subsection (e)), included in debentures or in the cash payment, in addition to amounts otherwise allowed for such costs, an amount not to exceed one-third of the total foreclosure, acquisition, and conveyance costs actually paid by the mortgagee and approved by the Commissioner, but in no event may the total allowance for such costs exceed the amount actually paid by the mortgagee:''; section 105(a)(3) struck out from proviso reading ''*And provided further*, That with respect to mortgages to which the provisions of sections 532 and 536 of Appendix To Title 50 apply'' the words ''and the payment of insurance premiums'' after ''on account of interest on debentures'' and inserted after such proviso ''*And provided further*, That where the claim is paid in cash there shall be included in the cash payment an amount equivalent to the compensation for loss of debenture interest that would be included in computing debentures if such claim were being paid in debentures''; and section 105(a)(6)(B) substituted ''and (subject to subsection (e)(2) of this section) a certificate of claim'' for ''and a certificate of claim'' in second sentence.

Subsec. (c). Pub. L. 88–560, §105(a)(4), increased limitation on the difference between the value of the mortgage and the aggregate face value of the debentures issued from $50 to $350.

Subsec. (d). Pub. L. 88–560, §105(a)(5), substituted '': *Provided*, That debentures issued pursuant to claims for insurance filed on or after September 2, 1964 shall be dated as of the date of default or as of such later date as the Commissioner, in his discretion, may establish by regulation. The debentures'' for '', except that debentures issued pursuant to the provisions of section 1715k(f), 1715*l*(g), and 1715x of this title may be dated as of the date the mortgage is assigned (or the property is conveyed) to the Commissioner, and'' in second sentence.

Subsec. (e). Pub. L. 88–560, §105(a)(6)(A), designated existing provisions as par. (1), substituted ''Subject to paragraph (2), the certificate'' for ''The certificate'', and added par. (2).

Subsec. (f). Pub. L. 88–560, §105(a)(7)–(11), designated introductory par. as par. (1) and substituted ''If, after deducting (in such manner and amount as the Commissioner shall determine to be equitable and in accordance with sound accounting practice) the expenses incurred by the Commissioner, the net amount realized from any property conveyed to the Commissioner under this section and the claims assigned therewith exceed the face value'' for ''If the net amount realized from any property conveyed to the Commissioner under this section and the claims assigned therewith, after deducting all expenses incurred by the Commissioner in handling, dealing with, and disposing of such property and in collecting such claims, exceeds the face value''; redesignated former par. (1) as (i) and inserted proviso; redesignated former par. (2) as (ii); designated concluding par. as par. (2) and inserted proviso; and added par. (3), respectively.

1961—Subsec. (d). Pub. L. 87–70, §612(b), permitted debentures issued pursuant to provisions of section 1715k(f), 1715*l*(g), and 1715x of this title to be dated as of the date the mortgage is assigned (or the property is conveyed) to the Commissioner.

Subsec. (g). Pub. L. 87–70, §612(c), included instruments relating to personal property, and inserted proviso requiring that a conveyance or transfer of title to real or personal property or an interest therein to the Federal Housing Commissioner, his successors and assigns, without identifying the Commissioner therein, shall be deemed a proper conveyance or transfer.

1959—Subsec. (a). Pub. L. 86–372, §114(b), authorized the Commissioner, with respect to any mortgage covering a one-, two-, three-, or four-family residence insured under this chapter, if he finds after notice of default, that the default was due to circumstances beyond the control of the mortgagor and it is probable that the mortgage will be restored to good standing within a reasonable period of time, to extend the time for curing default and to enter into an agreement with the mortgagee providing that if the mortgage is subsequently foreclosed, any interest accruing after the date of the agreement which is not paid by the mortgagor may be included in the debentures.

Subsec. (k). Pub. L. 86–372, §117, substituted ''and with respect to any debentures issued in exchange for properties conveyed to and accepted by the Commissioner after September 23, 1959 in accordance with such section'' for ''with respect to any debentures issued pursuant to this section or section 1739 or 1750c of this title'', and inserted provisions authorizing inclusion as a portion of the foreclosure costs payments made by the mortgagee for the cost of acquiring the property and conveying the evidencing title to the property to the Commissioner, and permitting the termination of the mortgagee's obligation to pay mortgage insurance premiums in the event the contract of insurance is terminated pursuant to section 1715t of this title.

1957—Subsec. (d). Pub. L. 85–104, §108(a), substituted ''established by the Commissioner pursuant to section 1715*o* of this title'' for ''determined by the Commissioner, with the approval of the Secretary of the Treasury, at the time the mortgage was offered for insurance, but not to exceed 3 per centum per annum'' in second sentence.

Subsec. (k). Pub. L. 85–104, §107, added subsec. (k).

1955—Subsec. (f). Act Aug. 11, 1955, authorized the Commissioner to effect the settlement of certificates of claim and refunds to mortgagors.

1954—Subsec. (a). Act Aug. 2, 1954, §111(*l*), permitted a mortgagee to receive in debentures amounts paid by it for Federal taxes imposed on a deed to it and on a deed to the Commissioner; (2) substituted, in second proviso, ''or under section 1715e of this title, or with respect to any mortgage accepted for insurance under section 1709 of this title on or after August 2, 1954,'' for ''or under section 1715e of this title''; and (3) inserted proviso permitting direct conveyances to the Commissioner.

Subsec. (d). Act Aug. 2, 1954, §112(a), substituted provision for a straight 20-year maturity on debentures for former provision that the debentures should mature ''three years after the 1st day of July following the maturity date of the mortgage on the property in exchange for which the debentures were issued, except that debentures issued with respect to mortgages insured under section 1715e of this title shall mature twenty years after the date of such debentures'' in second sentence.

Subsec. (j). Act Aug. 2, 1954, §113, added subsec. (j).

1951—Subsec. (d). Sept. 1, 1951, inserted in second sentence the provision that debentures issued with respect to mortgages insured under section 1715e of this title shall mature twenty years after the date of such debentures.

1950—Act Apr. 20, 1950, §122, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

Subsec. (a). Act Apr. 20, 1950, §105, inserted ''or under section 1715e of this title'' in second proviso.

1948—Subsec. (a). Act Aug. 10, 1948, §101(*l*)(1), (2), struck out ''prior to July 1, 1944'' in first proviso and inserted second proviso.

Subsec. (f). Act Aug. 10, 1948, §101(q), inserted ''if the mortgage was insured under section 1709 of this title and shall be retained by the Administrator and credited to the Housing Insurance Fund if the mortgage was insured under section 1713 of this title'' before the colon in par. (1).

1943—Subsec. (a). Act Oct. 14, 1943, inserted proviso.

1941—Subsec. (a). Act June 28, 1941, substituted ''July 1, 1944'' for ''July 1, 1941'' in last sentence.

1939—Subsec. (a). Act June 3, 1939, §9, amended last sentence generally.

Subsec. (g). Act June 3, 1939, §10, inserted last sentence.

1938—Subsecs. (a) to (f). Act Feb. 3, 1938, amended provisions generally.

Subsecs. (g), (h). Act Feb. 3, 1938, added subsecs. (g) and (h).

1937—Subsec. (b). Act Joint Res. Feb. 19, 1937, substituted ''July 1, 1939'' for ''July 1, 1937''.

1935—Subsec. (a). Act May 28, 1935, amended last sentence generally.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title VI, §601(b), Oct. 21, 1998, 112 Stat. 2673, provided that: ''The Secretary shall publish a notice in the Federal Register stating the effective date of the terms and conditions prescribed by the Secretary under section 204(a)(1) of the National Housing Act [12 U.S.C. 1710(a)(1)], as amended by subsection (a) of this section. Subsections (a) and (k) of section 204 of the National Housing Act [12 U.S.C. 1710(a), (k)], as in effect immediately before such effective date, shall continue to apply to any mortgage insured under section 203 of the National Housing Act [12 U.S.C. 1709] before such effective date, except that the Secretary may, at the request of the mortgagee, pay insurance benefits as provided in subparagraphs (A) and (D) of section 204(a)(1) of such Act [12 U.S.C. 1710(a)(1)(A), (D)] to calculate insurance benefits in accordance with section 204(a)(5) of such Act [12 U.S.C. 1710(a)(5)].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 407(c) of Pub. L. 104–99, as amended by Pub. L. 104–134, title I, §101(e) [title II, §221(d)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–291; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–204, title II, §203, Sept. 26, 1996, 110 Stat. 2894; Pub. L. 105–33, title II, §2002(1), Aug. 5, 1997, 111 Stat. 257, provided that: ''Except as provided in subsection (e) [110 Stat. 46, repealed by Pub. L. 105–33, §2002(2)], the amendments made by subsections (a) and (b) [amending this section and section 1715u of this title] shall apply with respect to mortgages insured under the National Housing Act [12 U.S.C. 1701 et seq.] that are executed before, on, or after October 1, 1997.''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 112(e) of act Aug. 2, 1954, provided that: ''This section [amending this section and sections 1713, 1748b, and 1750c of this title] shall not apply in any case where the mortgage involved was insured or the commitment for such insurance was issued prior to the effective date of the Housing Act of 1954 [Aug. 2, 1954].''

REGULATIONS

Section 101(e) [title II, §221(c)(1)] of Pub. L. 104–134 provided that: ''Not later than 30 days after the date of enactment of this Act [Apr. 26, 1996], the Secretary of Housing and Urban Development shall issue interim regulations to implement section 407 of the Balanced Budget Downpayment Act, I [Pub. L. 104–99, amending this section and section 1715u of this title and enacting provisions set out as a note above], and the amendments to the National Housing Act made by that section.''

Section 407(d) of Pub. L. 104–99, which directed the Secretary of Housing and Urban Development to issue interim regulations to implement section 407 of Pub. L. 104–99 and amendments made by that section (amending this section and section 1715u of this title and enacting provisions set out as a note above) not later than 60 days after Jan. 26, 1996, was repealed by Pub. L. 104–134, title I, §101(e) [title II, §221(c)(2)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–291; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.

Section 1064(c) of Pub. L. 100–628 provided that: ''In developing regulations to carry out the amendments made by this section [amending this section], the Secretary of Housing and Urban Development may delegate to mortgagees the authority to make determina-

tions on behalf of the Secretary, and the Secretary shall rely on certifications and post audit reviews to the greatest extent possible.''

HOMEOWNERSHIP PRESERVATION

Pub. L. 110–289, div. B, title I, §2125, July 30, 2008, 122 Stat. 2840, provided that: ''The Secretary of Housing and Urban Development and the Commissioner of the Federal Housing Administration, in consultation with industry, the Neighborhood Reinvestment Corporation, and other entities involved in foreclosure prevention activities, shall—

''(1) develop and implement a plan to improve the Federal Housing Administration's loss mitigation process; and

''(2) report such plan to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.''

ASSET CONTROL AREA DEMONSTRATION PROGRAM AGREEMENTS, CONTRACTS, AND REGULATIONS

Pub. L. 107–206, title I, §1303, Aug. 2, 2002, 116 Stat. 897, provided that: ''The Secretary of Housing and Urban Development shall begin to enter into new agreements and contracts pursuant to the Asset Control Area Demonstration Program as provided in section 602 of Public Law 105–276 [amending this section] not later than September 15, 2002: *Provided*, That any agreement or contract entered into pursuant to such program shall be consistent with the requirements of such section 602: *Provided further*, That the Department shall develop proposed regulations for this program not later than September 15, 2002.''

TRANSFER OF HUD ASSETS IN REVITALIZATION AREAS

Pub. L. 106–554, §1(a)(7) [title I, §142], Dec. 21, 2000, 114 Stat. 2763, 2763A–618, provided that: ''In carrying out the program under section 204(h) of the National Housing Act (12 U.S.C. 1710(h)), upon the request of the chief executive officer of a county or the government of appropriate jurisdiction and not later than 60 days after such request is made, the Secretary of Housing and Urban Development shall designate as a revitalization area all portions of such county that meet the criteria for such designation under paragraph (3) of such section.''

SETTLEMENT COSTS IN THE FINANCING OF FEDERAL HOUSING ADMINISTRATION AND VETERANS' ADMINISTRATION ASSISTED HOUSING; STUDY AND RECOMMENDATIONS TO CONGRESS ON REDUCTION AND STANDARDIZATION OF COSTS

Pub. L. 91–351, title VII, §701, July 24, 1970, 84 Stat. 461, provided that:

''(a) With respect to housing built, rehabilitated, or sold with assistance provided under the National Housing Act [this chapter] or under chapter 37 of title 38, United States Code, the Secretary of Housing and Urban Development and the Administrator of Veterans' Affairs are respectively authorized and directed to prescribe standards governing the amounts of settlement costs allowable in connection with the financing of such housing in any such area. Such standards shall—

''(1) be established after consultation between the Secretary and the Administrator;

''(2) be consistent in any area for housing assisted under the National Housing Act and housing assisted under chapter 37 of title 38, United States Code; and

''(3) be based on the Secretary's and the Administrator's estimates of the reasonable charge for necessary services involved in settlements for particular classes of mortgages and loans.

''(b) The Secretary and the Administrator shall undertake a joint study and make recommendations to the Congress not later than one year after the date of enactment of this Act [July 24, 1970] with respect to legislative and administrative actions which should be taken to reduce mortgage settlement costs and to standardize these costs for all geographic areas.''

§ 1711. General Surplus and Participating Reserve Accounts

(a) Establishment; abolishment of General Reinsurance Account

The Secretary shall establish as of July 1, 1954, in the Mutual Mortgage Insurance Fund a General Surplus Account and a Participating Reserve Account. All of the assets of the General Reinsurance Account shall be transferred to the General Surplus Account whereupon the General Reinsurance Account shall be abolished. There shall be transferred from the various group accounts to the Participating Reserve Account as of July 1, 1954, an amount equal to the aggregate amount which would have been distributed under the provisions of this section in effect on June 30, 1954, if all outstanding mortgages in such group accounts had been paid in full on said date. All of the remaining balances of said group accounts shall as of said date be transferred to the General Surplus Account whereupon all of said group accounts shall be abolished.

(b) Credits and charges

The aggregate net income thereafter received or any net loss thereafter sustained by the Mutual Mortgage Insurance Fund in any semiannual period shall be credited or charged to the General Surplus Account and/or the Participating Reserve Account in such manner and amounts as the Secretary may determine to be in accord with sound actuarial and accounting practice.

(c) Distribution of funds to terminating mortgagors

Upon termination of the insurance obligation of the Mutual Mortgage Insurance Fund by payment of any mortgage insured thereunder, the Secretary is authorized to distribute to the mortgagor a share of the Participating Reserve Account in such manner and amount as the Secretary shall determine to be equitable and in accordance with sound actuarial and accounting practice: *Provided*, That, in no event, shall any such distributable share exceed the aggregate scheduled annual premiums of the mortgagor to the year of termination of the insurance. The Secretary shall not distribute any share to an eligible mortgagor under this subsection beginning on the date which is 6 years after the date the Secretary first transmitted written notification of eligibility to the last known address of the mortgagor, unless the mortgagor has applied in accordance with procedures prescribed by the Secretary for payment of the share within the 6-year period. The Secretary shall transfer any amounts no longer eligible for distribution under the previous sentence from the Participating Reserve Account to the General Surplus Account.

(d) Rights and liabilities

No mortgagor or mortgagee of any mortgage insured under section 1709 of this title shall have any vested right in a credit balance in any such account or be subject to any liability arising out of the mutuality of the Fund and the determination of the Secretary as to the amount to be paid by him to any mortgagor shall be final and conclusive.

(e) Actuarial status of entire Fund

In determining whether there is a surplus for distribution to mortgagors under this section, the Secretary shall take into account the actuarial status of the entire Fund.

(f) Capital ratio for Mutual Mortgage Insurance Fund

(1) The Secretary shall ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 1.25 percent within 24 months after November 5, 1990, and maintains such ratio thereafter, subject to paragraph (2).

(2) The Secretary shall endeavor to ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 2.0 percent within 10 years after November 5, 1990, and shall ensure that the Fund maintains at least such capital ratio at all times thereafter.

(3) Upon the expiration of the 24-month period beginning on November 5, 1990, the Secretary shall submit to the Congress a report describing the actions the Secretary will take to ensure that the Mutual Mortgage Insurance Fund attains the capital ratio required under paragraph (2).

(4) For purposes of this subsection:

(A) The term ''capital'' means the economic net worth of the Mutual Mortgage Insurance Fund, as determined by the Secretary under the annual audit required under section 1735f–16 of this title.

(B) The term ''capital ratio'' means the ratio of capital to unamortized insurance-in-force.

(C) The term ''economic net worth'' means the current cash available to the Fund, plus the net present value of all future cash inflows and outflows expected to result from the outstanding mortgages in the Fund.

(D) The term ''unamortized insurance-in-force'' means the remaining obligation on outstanding mortgages which are obligations of the Mutual Mortgage Insurance Fund, as estimated by the Secretary.

(June 27, 1934, ch. 847, title II, § 205, 48 Stat. 1250; May 28, 1935, ch. 150, § 29(b), 49 Stat. 300; Feb. 3, 1938, ch. 13, § 3, 52 Stat. 15; June 3, 1939, ch. 175, § 11, 53 Stat. 807; Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; June 30, 1953, ch. 170, § 4, 67 Stat. 122; Aug. 2, 1954, ch. 649, title I, § 114, 68 Stat. 594; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 101–508, title II, §§ 2104, 2105, Nov. 5, 1990, 104 Stat. 1388–19; Pub. L. 102–550, title V, § 508(a), Oct. 28, 1992, 106 Stat. 3782; Pub. L. 110–289, div. B, title I, § 2118(c)(1), July 30, 2008, 122 Stat. 2835.)

AMENDMENTS

2008—Subsecs. (g), (h). Pub. L. 110–289 struck out subsecs. (g) and (h) which related to annual independent audit of Mutual Mortgage Insurance Fund and adjustment of premiums, respectively.

1992—Subsec. (c). Pub. L. 102–550 inserted at end ''The Secretary shall not distribute any share to an eligible mortgagor under this subsection beginning on the date which is 6 years after the date the Secretary first transmitted written notification of eligibility to the last known address of the mortgagor, unless the mortgagor has applied in accordance with procedures prescribed by the Secretary for payment of the share within the 6-year period. The Secretary shall transfer any amounts no longer eligible for distribution under the previous sentence from the Participating Reserve Account to the General Surplus Account.''

1990—Subsec. (e). Pub. L. 101–508, § 2104, added subsec. (e).

Subsecs. (f) to (h). Pub. L. 101–508, § 2105, added subsecs. (f) to (h).

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a) to (d) of this section.

1954—Act Aug. 2, 1954, amended section generally to eliminate the former group accounts and substitute therefor a general surplus account and participating reserve account.

1953—Subsec. (c). Act June 30, 1953, inserted sentence relating to semi-annual transfer of group accounts, and, in remainder of section, changed the provisions relating to settlement of accounts.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

1939—Subsec. (b). Act June 3, 1939, inserted ''prior to July 1, 1939''.

1938—Subsecs. (a) to (f). Act Feb. 3, 1938, amended provisions generally, and among other changes, struck out subsec. (f).

1935—Subsec. (f). Act May 28, 1935, substituted ''annual premium charge'' for ''premium charge'' in first sentence.

EXCEPTION TO STATUTE OF LIMITATIONS

Section 508(b) of Pub. L. 102–550 provided that: ''Notwithstanding the 6-year limitation on distribution of shares of the Participating Reserve Account under section 205(c) of the National Housing Act [12 U.S.C. 1711(c)], the Secretary shall distribute a share to an otherwise eligible mortgagor in accordance with section 205(c), if the mortgagor applies for payment of the share within 1 year after the date of enactment of this Act [Oct. 28, 1992] in accordance with procedures in effect on such date.''

§ 1712. Investment of funds

Moneys in the Fund not needed for the current operations of the Department of Housing and Urban Development related to insurance under section 1709 of this title shall be deposited with the Treasurer of the United States to the credit of the Fund, or invested in bonds or other obligations of, or in bonds or other obligations guaranteed as to principal and interest by, the United States or any agency of the United States: *Provided*, That such moneys shall to the maximum extent feasible be invested in such bonds or other obligations the proceeds of which will be used to directly support the residential mortgage market. The Secretary may, with the approval of the Secretary of the Treasury, purchase in the open market debentures issued under the provisions of section 1710 of this title. Such purchases shall be made at a price which will provide an investment yield of not less than the yield obtainable from other investments authorized by this section. Debentures so purchased shall be canceled and not reissued, and the several group accounts to which such debentures have been charged shall be charged with the amounts used in making such purchases.

(June 27, 1934, ch. 847, title II, § 206, 48 Stat. 1252; Feb. 3, 1938, ch. 13, § 3, 52 Stat. 16; Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Pub. L. 90–19, § 1(a)(1), (3), (e), May 25, 1967, 81 Stat. 17, 18; Pub. L. 91–609, title I, § 117(a), Dec. 31, 1970, 84 Stat. 1774.)

AMENDMENTS

1970—Pub. L. 91–609 provided for guarantee as to principal and interest by any agency of the United States

and for investment of monies in bonds or other obligations the proceeds of which will be used to directly support the residential mortgage market.

1967—Pub. L. 90–19 substituted ''Department of Housing and Urban Development'' and ''Secretary'' for ''Federal Housing Administration'' and ''Commissioner'', respectively, and inserted ''related to insurance under section 1709 of this title'' before ''shall be deposited''.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator''.

1938—Act Feb. 3, 1938, among other changes, inserted ''or in bonds or other obligations guaranteed as to principal and interest by'' in first sentence, and inserted third sentence.

§ 1712a. Indexing of FHA multifamily housing loan limits

(a) Method of indexing

The dollar amounts set forth in—

(1) section 1713(c)(3)(A) of this title;
(2) section 1715e(b)(2)(A) of this title;
(3) section 1715k(d)(3)(B)(iii)(I) of this title;
(4) section 1715*l*(d)(3)(ii)(I) of this title;
(5) section 1715*l*(d)(4)(ii)(I) of this title;
(6) section 1715v(c)(2)(A) of this title; and
(7) section 1715y(e)(3)(A) of this title;

(collectively hereinafter referred to as the ''Dollar Amounts'') shall be adjusted annually (commencing in 2004) on the effective date of the Federal Reserve Board's adjustment of the $400 figure in the Home Ownership and Equity Protection Act of 1994 (HOEPA). The adjustment of the Dollar Amounts shall be calculated using the percentage change in the Consumer Price Index for All Urban Consumers (CPI–U) as applied by the Federal Reserve Board for purposes of the above-described HOEPA adjustment.

(b) Notification

The Federal Reserve Board on a timely basis shall notify the Secretary, or his designee, in writing of the adjustment described in subsection (a) of this section and of the effective date of such adjustment in order to permit the Secretary to undertake publication in the Federal Register of corresponding adjustments to the Dollar Amounts. The dollar amount of any adjustment shall be rounded to the next lower dollar.

(June 27, 1934, ch. 847, title II, § 206A, as added Pub. L. 107–326, § 5(a), Dec. 4, 2002, 116 Stat. 2794.)

REFERENCES IN TEXT

The Home Ownership and Equity Protection Act of 1994, referred to in subsec. (a), is subtitle B (§§ 151–158) of title I of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2190, which enacted sections 1639 and 1648 of Title 15, Commerce and Trade, amended sections 1602, 1604, 1610, 1640, 1641, and 1647 of Title 15, and enacted provisions set out as notes under sections 1601 and 1602 of Title 15. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 1601 of Title 15 and Tables.

§ 1713. Rental housing insurance

(a) Definitions

As used in this section—

(1) The term ''mortgage'' means a first mortgage on real estate in fee simple, or on the interest of either the lessor or lessee thereof (A) under a lease for not less than ninety-nine years which is renewable or (B) under a lease having a period of not less than fifty years to run from the date the mortgage was executed, upon which there is located or upon which there is to be constructed a building or buildings designed principally for residential use, or upon which there is located or to be constructed facilities for manufactured homes, and the term ''first mortgage'' means such classes of first liens as are commonly given to secure advances (including but not being limited to advances during construction) on, or the unpaid purchase price of, real estate under the laws of the State, in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby, and may be in the form of trust mortgages or mortgage indentures or deeds of trust securing notes, bonds, or other credit instruments.

(2) The term ''mortgagee'' means the original lender under a mortgage, and its successors and assigns, and includes the holders of credit instruments issued under a trust mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

(3) The term ''mortgagor'' means the original borrower under a mortgage and its successors and assigns.

(4) The term ''maturity date'' means the date on which the mortgage indebtedness would be extinguished if paid in accordance with the periodic payments provided for in the mortgage.

(5) The term ''slum or blighted area'' means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals.

(6) The term ''rental housing'' means housing, the occupancy of which is permitted by the owner thereof in consideration of the payment of agreed charges, whether or not, by the terms of the agreement, such payment over a period of time will entitle the occupant to the ownership of the premises or space in a manufactured home court or park properly arranged and equipped to accommodate manufactured homes.

(7) The term ''State'' includes the several States, and Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

(b) Insurance of additional mortgages

In addition to mortgages insured under section 1709 of this title, the Secretary is authorized to insure mortgages as defined in this section (including advances on such mortgages during construction) which cover property held by—

(1) Federal or State instrumentalities, municipal corporate instrumentalities of one or more States, or limited dividend or redevelopment or housing corporations restricted by Federal or State laws or regulations of State banking or insurance departments as to rents, charges, capital structure, rate of return, or methods of operation; or

(2) any other mortgagor approved by the Secretary. The Secretary may, in the Secretary's discretion, require any such mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation so as to provide reasonable rentals to tenants and a reasonable return on the investment. Any such regulations or restrictions shall continue for such period or periods as the Secretary, in the Secretary's discretion, may require, including until the termination of all obligations of the Secretary under the insurance and during such further period of time as the Secretary shall be the owner, holder, or reinsurer of the mortgage. The Secretary may make such contracts with and acquire, for not to exceed $100, such stock or interest in the mortgagor as he may deem necessary to render effective any such regulations or restrictions. The stock or interest acquired by the Secretary shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

The insurance of mortgages under this section is intended to facilitate particularly the production of rental accommodations, at reasonable rents, of design and size suitable for family living. The Secretary is, therefore, authorized in the administration of this section to take action, by regulation or otherwise, which will direct the benefits of mortgage insurance hereunder primarily to those projects which make adequate provision for families with children, and in which every effort has been made to achieve moderate rental charges.

Notwithstanding any other provisions of this section, the Secretary may not insure any mortgage under this section (except a mortgage with respect to a manufactured home park designed exclusively for occupancy by elderly persons) unless the mortgagor certifies under oath that in selecting tenants for the property covered by the mortgage he will not discriminate against any family by reason of the fact that there are children in the family, and that he will not sell the property while the insurance is in effect unless the purchaser so certifies, such certification to be filed with the Secretary. Violation of any such certification shall be a misdemeanor punishable by a fine of not to exceed $500.

(c) Eligibility for insurance; mortgage limits

To be eligible for insurance under this section a mortgage on any property or project shall involve a principal obligation in an amount—

(1) Repealed. Pub. L. 93–383, title III, § 304(a)(1), Aug. 22, 1974, 88 Stat. 677.

(2) Not to exceed 90 per centum of the estimated value of the property or project (when the proposed improvements are completed): *Provided*, That this limitation shall not apply to mortgages on housing in Alaska or in Guam, but such a mortgage may involve a principal obligation in an amount not to exceed 90 per centum of the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed improvements are completed (the value of the property or project as such term is used in this paragraph may include the land, the proposed physical improvements, utilities within the boundaries of the property or project, architect's fees, taxes, and interest accruing during construction, and other miscellaneous charges incident to construction and approved by the Secretary): *And provided further*, That nothing contained in this section shall preclude the insurance of mortgages covering existing construction located in slum or blighted areas, as defined in paragraph (5) of subsection (a) of this section, and the Secretary may require such repair or rehabilitation work to be completed as is, in his discretion, necessary to remove conditions detrimental to safety, health, or morals; and

(3)(A) Not to exceed, for such part of the property or project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary), $38,025 per family unit without a bedroom, $42,120 per family unit with one bedroom, $50,310 per family unit with two bedrooms, $62,010 per family unit with three bedrooms, and $70,200 per family unit with four or more bedrooms, or not to exceed $17,460 per space; except that as to projects to consist of elevator type structures the Secretary may in his discretion, increase the dollar amount limitations per family unit to not to exceed $43,875 per family unit without a bedroom, $49,140 per family unit with one bedroom, $60,255 per family unit with two bedrooms, $75,465 per family unit with three bedrooms, and $85,328 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design;

(B) the Secretary may, by regulation, increase any of the dollar amount limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title) by not to exceed 170 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 170 percent, or 215 percent in high cost areas, where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720[1] of this title (as such section existed immediately before November 30, 1983) is involved. Notwithstanding any other provision of this paragraph, the amount which may be insured under this section may be increased by up to 20 percent if such increase is necessary to account for the increased cost of the project due to the installation therein of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42)[1] in cases where the Secretary determines that such measures are in addition to those required under the minimum property standards

[1] See References in Text note below.

and will be cost-effective over the life of the measure.

The mortgage shall provide for complete amortization by periodic payments (unless otherwise approved by the Secretary) within such term as the Secretary shall prescribe, and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release. No mortgage shall be accepted for insurance under this section or section 1715a[1] of this title unless the Secretary finds that the property or project, with respect to which the mortgage is executed, is economically sound. Such property or project may include five or more family units and may include such commercial and community facilities as the Secretary deems adequate to serve the occupants.

(d) Premium, appraisal, and inspection charges

The Secretary shall collect a premium charge for the insurance of mortgages under this section which shall be payable annually in advance by the mortgagee, either in cash or in debentures issued by the Secretary under any subchapter and section of this chapter, except debentures of the Mutual Mortgage Insurance Fund, or of the Cooperative Management Housing Insurance Fund at par plus accrued interest. In addition to the premium charge herein provided for the Secretary is authorized to charge and collect such amounts as he may deem reasonable for the appraisal of a property or project offered for insurance and for the inspection of such property or project during construction: *Provided*, That such charges for appraisal and inspection shall not aggregate more than 1 per centum of the original principal face amount of the mortgage.

(e) Adjusted premium charge on payment of mortgage

In the event that the principal obligation of any mortgage accepted for insurance under this section is paid in full prior to the maturity date, the Secretary is authorized in his discretion to require the payment by the mortgagee of an adjusted premium charge in such amount as the Secretary determines to be equitable, but not in excess of the aggregate amount of the premium charges that the mortgagee would otherwise have been required to pay if the mortgage had continued to be insured until such maturity date.

(f) Repealed. Pub. L. 89–117, title XI, § 1108(e)(3), Aug. 10, 1965, 79 Stat. 504

(g) Payment of insurance after default

The failure of the mortgagor to make any payment due under or provided to be paid by the terms of a mortgage insured under this section shall be considered a default under such mortgage and, if such default continues for a period of thirty days, the mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided, upon assignment, transfer, and delivery to the Secretary, within a period and in accordance with rules and regulations to be prescribed by the Secretary of (1) all rights and interests arising under the mortgage so in default; (2) all claims of the mortgagee against the mortgagor or others, arising out of the mortgage transactions; (3) all policies of title or other insurance or surety bonds or other guaranties and any and all claims thereunder; (4) any balance of the mortgage loans not advanced to the mortgagor; (5) any cash or property held by the mortgagee, or to which it is entitled, as deposits made for the account of the mortgagor and which have not been applied in reduction of the principal of the mortgage indebtedness; and (6) all records, documents, books, papers, and accounts relating to the mortgage transactions. Upon such assignment, transfer, and delivery the obligation of the mortgagee to pay the premium charges for mortgage insurance shall cease, and the Secretary shall issue to the mortgagee a certificate of claim as provided in subsection (h) of this section, and debentures having a par value equal to the original principal face amount of the mortgage plus such amount as the mortgagee may have paid for (A) taxes, special assessments, and water rates, which are liens prior to the mortgage; (B) insurance on the property; and (C) reasonable expenses for the completion and preservation of the property and any mortgage insurance premiums paid after default, less the sum of (i) that part of the amount of the principal obligation that has been repaid by the mortgagor, (ii) an amount equivalent to 1 per centum of the unpaid amount of such principal obligation, and (iii) any net income received by the mortgagee from the property: *Provided*, That the mortgagee in the event of a default under the mortgage may, at its option and in accordance with regulations of, and in a period to be determined by, the Secretary, proceed to foreclose on and obtain possession of or otherwise acquire such property from the mortgagor after default, and receive the benefits of the insurance as herein provided, upon (1) the prompt conveyance to the Secretary of title to the property which meets the requirements of the rules and regulations of the Secretary in force at the time the mortgage was insured and which is evidenced in the manner prescribed by such rules and regulations, and (2) the assignment to him of all claims of the mortgagee against the mortgagor or others, arising out of the mortgage transaction or foreclosure proceedings, except such claims that may have been released with the consent of the Secretary. Upon such conveyance and assignment, the obligation of the mortgagee to pay the premium charges for insurance shall cease and the mortgagee shall be entitled to receive the benefits of the insurance as provided in this subsection, except that in such event the 1 per centum deduction, set out in (ii) hereof, shall not apply. Notwithstanding any other provision of this chapter, upon receipt, after September 2, 1964, of an application for insurance benefits on a mortgage insured under this chapter, the Secretary may terminate the mortgagee's obligation to pay premium charges on the mortgage.

(h) Certificate of claim; division of excess proceeds

The certificate of claim issued under this section shall be for an amount which the Secretary

determines to be sufficient, when added to the face value of the debentures issued and the cash adjustment paid to the mortgagee, to equal the amount which the mortgagee would have received if, on the date of the assignment, transfer and delivery to the Secretary provided for in subsection (g) of this section, the mortgagor had extinguished the mortgage indebtedness by payment in full of all obligations under the mortgage and a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings, or the acquisition of the mortgaged property otherwise, and the conveyance thereof to the Secretary. Each such certificate of claim shall provide that there shall accrue to the holder of such certificate with respect to the face amount of such certificate, an increment at the rate of 3 per centum per annum which shall not be compounded. If the net amount realized from the mortgage, and all claims in connection therewith, so assigned, transferred, and delivered, and from the property covered by such mortgage and all claims in connection with such property, after deducting all expenses incurred by the Secretary in handling, dealing with, acquiring title to, and disposing of such mortgage and property and in collecting such claims, exceeds the face value of the debentures issued and the cash adjustment paid to the mortgagee plus all interest paid on such debentures, such excess shall be divided as follows:

(1) If such excess is greater than the total amount payable under the certificate of claim issued in connection with such property, the Secretary shall pay to the holder of such certificate the full amount so payable, and any excess remaining thereafter shall be retained by the Secretary and credited to the General Insurance Fund; and

(2) If such excess is equal to or less than the total amount payable under such certificate of claim, the Secretary shall pay to the holder of such certificate the full amount of such excess.

(i) Debentures; execution; negotiability; terms; tax exemptions

Debentures issued under this section shall be executed in the name of the General Insurance Fund as obligor, shall be negotiable, and, if in book entry form, transferable, in the manner described by the Secretary in regulations, and shall be dated as of the date of default as determined in subsection (g) of this section, except that debentures issued pursuant to the provisions of section 1715k(f), section 1715*l*(g), and section 1715x of this title may be dated as of the date the mortgage is assigned (or the property is conveyed) to the Secretary and shall bear interest from such date. They shall bear interest at a rate established by the Secretary pursuant to section 1715*o* of this title payable semiannually on the 1st day of January and the 1st day of July of each year, and shall mature twenty years after the date thereof. Such debentures as are issued in exchange for mortgages insured after February 3, 1938, shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. They shall be paid out of the General Insurance Fund which shall be primarily liable therefor, and they shall be fully and unconditionally guaranteed as to principal and interest by the United States, and, in the case of debentures issued in certificated registered form, such guaranty shall be expressed on the face of the debentures. In the event the General Insurance Fund fails to pay upon demand, when due, the principal of or interest on any debentures so guaranteed, the Secretary of the Treasury shall pay to the holders the amount thereof which is authorized to be appropriated out of any money in the Treasury not otherwise appropriated, and thereupon, to the extent of the amount so paid, the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures.

(j) Debentures; form and amounts

Debentures issued under this section—

(1) shall be in such form and amounts;

(2) shall be subject to such terms and conditions;

(3) shall include such provisions for redemption, if any, as may be prescribed by the Secretary of Housing and Urban Development, with the approval of the Secretary of the Treasury; and

(4) may be in book entry or certificated registered form, or such other form as the Secretary of Housing and Urban Development may prescribe in regulations.

(k) Acquisition of property by conveyance or foreclosure

The Secretary is authorized either to (1) acquire possession of and title to any property, covered by a mortgage insured under this section and assigned to him, by voluntary conveyance in extinguishment of the mortgage indebtedness, or (2) institute proceedings for foreclosure on the property covered by any such insured mortgage and prosecute such proceedings to conclusion. The Secretary at any sale under foreclosure may, in his discretion, for the protection of the General Insurance Fund, bid any sum up to but not in excess of the total unpaid indebtedness secured by the mortgage, plus taxes, insurance, foreclosure costs, fees, and other expenses, and may become the purchaser of the property at such sale. In determining the amount to be bid, the Secretary shall act consistently with the goal established in section 1701z–11(a)(1) of this title. The Secretary is authorized to pay from the General Insurance Fund such sums as may be necessary to defray such taxes, insurance, costs, fees, and other expenses in connection with the acquisition or foreclosure of property under this section. Pending such acquisition by voluntary conveyance or by foreclosure, the Secretary is authorized, with respect to any mortgage assigned to him under the provisions of subsection (g) of this section, to exercise all the rights of a mortgagee under such mortgage, including the right to sell such mortgage, and to take such action and advance such sums as may be necessary to preserve or protect the lien of such mortgage.

(*l*) Handling and disposal of property; settlement of claims

Notwithstanding any other provisions of law relating to the acquisition, handling, or disposal of real and other property by the United States, the Secretary shall also have power, for the protection of the interests of the General Insurance Fund, to pay out of the General Insurance Fund all expenses or charges in connection with, and to deal with, complete, reconstruct, rent, renovate, modernize, insure, make contracts for the management of, or establish suitable agencies for the management of, or sell for cash or credit or lease in his discretion, any property acquired by him under this section, and notwithstanding any other provision of law, the Secretary shall also have power to pursue to final collection by way of compromise or otherwise all claims assigned and transferred to him in connection with the assignment, transfer, and delivery provided for in this section, and at any time, upon default, to foreclose on any property secured by any mortgage assigned and transferred to or held by him: *Provided*, That section 6101 of title 41 shall not be construed to apply to any contract for hazard insurance, or to any purchase or contract for services or supplies on account of such property if the amount thereof does not exceed $1,000.

(m) Repealed. Pub. L. 89–117, title XI, § 1108(e)(3), Aug. 10, 1965, 79 Stat. 504

(n) Default or payment; rights of parties

In the event that a mortgage insured under this section becomes in default through failure of the mortgagor to make any payment due under or provided to be paid by the terms of the mortgage and such mortgage continues in default for a period of thirty days, but the mortgagee does not foreclose on or otherwise acquire the property, or does not assign and transfer such mortgage and the credit instrument secured thereby to the Secretary, in accordance with subsection (g) of this section, and the Secretary is given written notice thereof, or in the event that the mortgagor pays the obligation under the mortgage in full prior to the maturity thereof, and the mortgagee pays any adjusted premium charge required under the provisions of subsection (e) of this section, and the Secretary is given written notice by the mortgagee of the payment of such obligation, the obligation to pay the annual premium charge for insurance shall cease, and all rights of the mortgagee and the mortgagor under this section shall terminate as of the date of such notice.

(*o*) Reissue of prior insurance

The Secretary, with the consent of the mortgagee and the mortgagor of a mortgage insured under this section prior to February 3, 1938, shall be empowered to reissue such mortgage insurance in accordance with the provisions of this section as amended by the National Housing Act Amendments of 1938, and any such insurance not so reissued shall not be affected by the enactment of such Act.

(p) Repealed. Pub. L. 89–117, title XI, § 1108(e)(3), Aug. 10, 1965, 79 Stat. 504

(q) Repealed. Pub. L. 85–104, title I, § 111, July 12, 1957, 71 Stat. 297

(r) Service charge for mortgages assigned to and held by the Secretary

Notwithstanding any other provision of this chapter, the Secretary is authorized to include in any mortgage insured under any subchapter of this chapter after September 23, 1959, a provision requiring the mortgagor to pay a service charge to the Secretary in the event such mortgage is assigned to and held by the Secretary. Such service charge shall not exceed the amount prescribed by the Secretary for mortgage insurance premiums applicable to such mortgage.

(June 27, 1934, ch. 847, title II, § 207, 48 Stat. 1252; Aug. 23, 1935, ch. 614, title III, § 344(d), 49 Stat. 722; Feb. 3, 1938, ch. 13, § 3, 52 Stat. 16; June 3, 1939, ch. 175, § 12, 53 Stat. 807; Mar. 28, 1941, ch. 31, § 4(b), 55 Stat. 62; July 1, 1948, ch. 784, § 6, 62 Stat. 1209; Aug. 10, 1948, ch. 832, title I, § 101 (m–p, r), 62 Stat. 1273, 1274; Apr. 20, 1950, ch. 94, title I, §§ 106–112, 122, 64 Stat. 52–54, 59; Sept. 1, 1951, ch. 378, title VI, §§ 604(b), 605, 65 Stat. 314; July 14, 1952, ch. 723, § 10(a)(2), 66 Stat. 603; June 30, 1953, ch. 170, § 5, 67 Stat. 122; Aug. 2, 1954, ch. 649, title I, §§ 112(b), 115–117, 68 Stat. 593–595; Aug. 11, 1955, ch. 783, title I, § 102(b), (c), 69 Stat. 635; Aug. 7, 1956, ch. 1029, title I, §§ 103, 104(b), (c), 70 Stat. 1092; Pub. L. 85–104, title I, §§ 108(b), 109–111, July 12, 1957, 71 Stat. 297; Pub. L. 86–70, § 10(a), (b), June 25, 1959, 73 Stat. 142; Pub. L. 86–372, title I, § 104, Sept. 23, 1959, 73 Stat. 655; Pub. L. 86–624, § 6, July 12, 1960, 74 Stat. 411; Pub. L. 87–70, title VI, § 607, June 30, 1961, 75 Stat. 178; Pub. L. 88–560, title I, §§ 105(b), 106, 107(a), 108, Sept. 2, 1964, 78 Stat. 772, 774, 776; Pub. L. 89–117, title II, § 207(a), title XI, § 1108(e), Aug. 10, 1965, 79 Stat. 467, 504; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 90–301, § 3(b), May 7, 1968, 82 Stat. 114; Pub. L. 91–152, title I, §§ 103(a), (b), 113(b), title IV, § 403(c)(2), Dec. 24, 1969, 83 Stat. 380, 383, 395; Pub. L. 93–383, title III, §§ 303(a), 304(a), Aug. 22, 1974, 88 Stat. 676, 677; Pub. L. 94–173, § 3, Dec. 23, 1975, 89 Stat. 1027; Pub. L. 94–375, § 8(a), (b)(1), Aug. 3, 1976, 90 Stat. 1071; Pub. L. 95–557, title III, § 311(a), Oct. 31, 1978, 92 Stat. 2098; Pub. L. 95–619, title II, § 248(b), Nov. 9, 1978, 92 Stat. 3235; Pub. L. 96–153, title III, §§ 313(b), 314, Dec. 21, 1979, 93 Stat. 1117; Pub. L. 96–399, title III, §§ 308(c)(1), 310(a), Oct. 8, 1980, 94 Stat. 1640, 1641; Pub. L. 97–35, title III, §§ 338(b), 339B(a), (c), Aug. 13, 1981, 95 Stat. 416, 417; Pub. L. 97–377, title I, § 101(g), Dec. 21, 1982, 96 Stat. 1908; Pub. L. 98–181, title IV, §§ 404(b)(4), 407(c), 431(a), 435, 446(a), Nov. 30, 1983, 97 Stat. 1209, 1211, 1220, 1222, 1228; Pub. L. 98–479, title II, § 204(a)(3), Oct. 17, 1984, 98 Stat. 2232; Pub. L. 100–242, title I, § 182, title IV, § 426(a), (h), Feb. 5, 1988, 101 Stat. 1871, 1915, 1916; Pub. L. 102–550, title V, §§ 509(a), 516(b), Oct. 28, 1992, 106 Stat. 3782, 3790; Pub. L. 103–233, title III, § 306, Apr. 11, 1994, 108 Stat. 373; Pub. L. 107–73, title II, § 213(a), Nov. 26, 2001, 115 Stat. 676; Pub. L. 107–326, § 5(b)(1), Dec. 4, 2002, 116 Stat. 2794; Pub. L. 108–186, title III, § 302(b),(c)(1), Dec. 16, 2003, 117 Stat. 2692; Pub. L. 110–161, div. K, title II, § 221(1), Dec. 26, 2007, 121 Stat. 2436.)

REFERENCES IN TEXT

Section 1715a of this title, referred to in subsec. (c), which related to additional housing insurance, was repealed by act June 3, 1939, ch. 175, § 13, 53 Stat. 807.

Section 1720 of this title, referred to in subsec. (c)(3)(B), was repealed by Pub. L. 98–181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

Section 8211 of title 42, referred to in subsec. (c)(3)(B), was omitted from the Code pursuant to section 8229 of Title 42, The Public Health and Welfare, which terminated authority under that section on June 30, 1989.

The National Housing Act Amendments of 1938, referred to in subsec. (*o*), is act Feb. 3, 1938, ch. 13, 42 Stat. 8, as amended, section 3 of which amended this section generally. For complete classification of this Act to the Code, see section 1701a of this title and Tables.

This chapter, referred to in subsecs. (d), (g) and (r), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (*l*), ''section 6101 of title 41'' substituted for ''section 3709 of the Revised Statutes'' on authority of Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

References to ''mobile homes'', wherever appearing in text, were changed to ''manufactured homes'' in view of the amendment of the National Housing Act by section 308(c)(1) of Pub. L. 96–399 requiring the substitution of ''manufactured home'' for ''mobile home'' wherever appearing in the National Housing Act, and section 339B(c) of Pub. L. 97–35 (set out as a note under section 1703 of this title) providing that the terms ''mobile home'' and ''manufactured home'' shall be deemed to include the terms ''mobile homes'' and ''manufactured homes'', respectively.

AMENDMENTS

2007—Subsec. (c)(3)(B). Pub. L. 110–161 substituted ''170 percent'' for ''140 percent'' after ''not to exceed'' in two places and ''215 percent in high cost areas'' for ''170 percent in high cost areas''.

2003—Subsec. (c)(3)(A). Pub. L. 108–186, § 302(c)(1), substituted ''$17,460'' for ''$11,250''.

Subsec. (c)(3)(B). Pub. L. 108–186, § 302(b), substituted ''140 percent in'' for ''110 percent in'' and inserted '', or 170 percent in high cost areas,'' after ''and by not to exceed 140 percent''.

2002—Subsec. (c)(3). Pub. L. 107–326, § 5(b)(1)(B), which directed substitution of ''(B) the Secretary may, by regulation, increase any of the dollar amount limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title)'' for ''and accept that the Secretary'' through ''in this paragraph'', was executed by making the substitution for ''and except that the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this paragraph'', to reflect the probable intent of Congress.

Pub. L. 107–326, § 5(b)(1)(A), inserted subpar. (A) designation after ''(3)''.

2001—Subsec. (c)(3). Pub. L. 107–73 substituted ''$38,025'', ''$42,120'', ''$50,310'', ''$62,010'', and ''$70,200'' for ''$30,420'', ''$33,696'', ''$40,248'', ''$49,608'', and ''$56,160'', respectively, ''$11,250'' for ''$9,000'', and ''$43,875'', ''$49,140'', ''$60,255'', ''$75,465'', and ''$85,328'' for ''$35,100'', ''$39,312'', ''$48,204'', ''$60,372'', and ''$68,262'', respectively.

1994—Subsec. (c)(3). Pub. L. 103–233 substituted ''$56,160'' for ''$59,160''.

1992—Subsec. (c)(3). Pub. L. 102–550, § 509(a), substituted ''$30,420'', ''$33,696'', ''$40,248'', ''$49,608'', and ''$59,160'' for ''$25,350'', ''$28,080'', ''$33,540'', ''$41,340'', and ''$46,800'', respectively, and ''$35,100'', ''$39,312'', ''$48,204'', ''$60,372'', and ''$68,262'' for ''$29,250'', ''$32,760'', ''$40,170'', ''$50,310'', and ''$56,885'', respectively.

Subsec. (g). Pub. L. 102–550, § 516(b)(1), in second sentence, substituted ''issue to the mortgagee a certificate of claim as provided in subsection (h) of this section, and debentures having a par value'' for '', subject to the cash adjustment provided for in subsection (j) of this section, issue to the mortgagee a certificate of claim as provided in subsection (h) of this section, and debentures having a total face value''.

Subsec. (i). Pub. L. 102–550, § 516(b)(2), (3), in first sentence, substituted ''shall be negotiable, and, if in book entry form, transferable, in the manner described by the Secretary in regulations'' for ''shall be signed by the Secretary, by either his written or engraved signature, shall be negotiable'', and in fourth sentence substituted ''and, in the case of debentures issued in certificated registered form, such guaranty'' for ''and such guaranty''.

Subsec. (j). Pub. L. 102–550, § 516(b)(4), added subsec. (j) and struck out former subsec. (j) which read as follows: ''Debentures issued under this section shall be in such form and denominations in multiples of $50, shall be subject to such terms and conditions, and shall include such provision for redemption, if any, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, and may be in coupon or registered form. Any difference between the amount of debentures to which the mortgagee is entitled under this section, and the aggregate face value of the debentures issued, not to exceed $50, shall be adjusted by the payment of cash by the Secretary to the mortgagee from the General Insurance Fund.''

1988—Subsec. (c)(3). Pub. L. 100–242, § 426(a), (h), substituted ''$25,350'', ''$28,080'', ''$33,540'', ''$41,340'', and ''$46,800'' for ''$19,500'', ''$21,600'', ''$25,800'', ''$31,800'', and ''$36,000'', respectively, and ''$29,250'', ''$32,760'', ''$40,170'', ''$50,310'', and ''$56,885'' for ''$22,500'', ''$25,200'', ''$30,900'', ''$38,700'', and ''$43,758'', respectively, and substituted ''not to exceed 110 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 140 percent where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720 of this title (as such section existed immediately before November 30, 1983) is involved'' for ''not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum (by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved) in such an area.''

Subsec. (k). Pub. L. 100–242, § 182, inserted provisions after second sentence directing the Secretary to act consistently with the goal established in section 1701z–11(a)(1) of this title in determining the amount to be bid.

1984—Subsec. (i). Pub. L. 98–479 substituted ''section 1715k(f), section 1715*l*(g), and section 1715x of this title'' for ''section 1715k(f), 1715*l*(g), and section 1715x of this title''.

1983—Subsec. (a)(7). Pub. L. 98–181, § 407(c), inserted ''American Samoa,'' after ''Pacific Islands,''.

Subsec. (b). Pub. L. 98–181, § 431(a)(3), in first undesignated par. following par. (2) struck out ''and directed'' after ''therefore, authorized''.

Pub. L. 98–181, § 435, in second undesignated par. following par. (2) substituted ''the Secretary may not insure any mortgage under this section (except a mortgage with respect to a manufactured home park designed exclusively for occupancy by elderly persons)'' for ''no mortgage shall be insured hereunder''.

Subsec. (b)(2). Pub. L. 98–181, § 431(a)(1), (2), substituted provision permitting the Secretary discre-

tionary authority to regulate rents and other charges for such period or periods as the Secretary, in his discretion, may require for provision which required the Secretary to regulate rents and other charges until the termination of all obligations of the Secretary under the insurance and during such further time as the Secretary was owner, holder, or reinsurer of the mortgage, and substituted ''any such regulations and restrictions'' for ''the regulations and restrictions''.

Subsec. (c). Pub. L. 98–181, §446(a), which directed that ''(unless otherwise approved by the Secretary)'' be inserted after ''periodic payments'' in first undesignated par. of par. (3), was executed to the undesignated par. following par. (3) to reflect the probable intent of Congress.

Pub. L. 98–181, §404(b)(4), which directed the substitution of provision that the interest rate for the mortgage be such a rate as agreed upon by the mortgagor and mortgagee for provision that the rate of interest, exclusive of premium charges for insurance, not exceed 5¼ per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum per annum as the Secretary finds necessary to meet the mortgage market in first undesignated par. of par. (3), was executed to the undesignated par. following par. (3) to reflect the probable intent of Congress.

1982—Subsec. (c)(3). Pub. L. 97–377 inserted ''(by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved)'' after ''90 per centum''.

1981—Subsec. (c)(3). Pub. L. 97–35, §§338(b), 339B(a), substituted ''$9,000'' for ''$8,000'' and made minor changes in nomenclature.

1980—Subsec. (a)(1), (6). Pub. L. 96–399, §308(c)(1), substituted ''manufactured'' for ''mobile''.

Subsec. (c)(3). Pub. L. 96–399, §310(a), inserted provisions relating to residential energy conservation measures.

1979—Subsec. (c)(3). Pub. L. 96–153, §§313(b), 314, in first sentence of first unnumbered par. substituted ''$8,000'' for ''$3,900'', ''75 per centum'' for ''50 per centum'' and inserted exception that where the Secretary determines it necessary on a project by project basis, the dollar amount limitations may be exceeded by not to exceed 90 per centum in such an area.

1978—Subsec. (c). Pub. L. 95–557 substituted ''may include five'' for ''may include eight'' in concluding par.

Subsec. (c)(3). Pub. L. 95–619 provided that the amount insurable under this section could be increased by up to 20 per centum if such increase were necessary to account for the increased cost of a residence due to the installation of a solar energy system.

1976—Subsec. (c)(3). Pub. L. 94–375 substituted ''50 per centum in any geographical area'' for ''75 per centum in any geographical area'', ''$19,500'' for ''$13,000'', ''$21,600'' for ''$18,000'', ''$25,800'' for ''$21,500'', ''$31,800'' for ''$26,500'', ''$36,000'' for ''$30,000'', ''$3,900'' for ''$3,250'', ''$22,500'' for ''$15,000'', ''$25,200'' for ''$21,000'', ''$30,900'' for ''$25,750'', ''$38,700'' for ''$32,250'', and ''$43,758'' for ''$36,465''.

1975—Subsec. (c)(3). Pub. L. 94–173 raised from 45 per centum to 75 per centum the amount by which any dollar limitation may, by regulation, be increased.

1974—Subsec. (c)(1). Pub. L. 93–383, §304(a)(1), struck out par. (1) which set forth limits on principal obligation of not to exceed $20,000,000, or not to exceed $50,000,000 if executed by a mortgagor under subsec. (b)(1) of this section.

Subsec. (c)(3). Pub. L. 93–383, §§303(a), 304(a)(2), substituted ''$3,250'' for ''$2,500'', ''$13,000'' for ''$9,900'', ''$15,000'' for ''$11,550'', ''$18,000'' for ''$13,750'', ''$21,000'' for ''$16,500'', ''$21,500'' for ''$16,500'', ''$25,750'' for ''$19,800'', ''$26,500'' for ''$20,350'', ''$30,000'' for ''$23,100'', ''$32,250'' for ''$24,750'', and ''$36,465'' for ''$28,050'', and struck out limitation of $1,000,000 per mortgage for trailer courts or parks.

1969—Subsec. (a)(1). Pub. L. 91–152, §103(a)(1)(A), substituted ''mobile homes'' for ''trailer coach mobile dwellings''.

Subsec. (a)(6). Pub. L. 91–152, §103(a)(1)(B), (C), substituted ''mobile home court'' for ''trailer court'' and ''mobile homes'' for ''trailer coach mobile dwellings''.

Subsec. (a)(7). Pub. L. 91–152, §403(c)(2), inserted ''the Trust Territory of the Pacific Islands,'' after ''Guam,''.

Subsec. (c)(3). Pub. L. 91–152, §§103(a)(2), (b), 113(b)(1), (2), substituted ''$2,500 per space or $1,000,000 per mortgage for mobile home courts or parks'' for ''$1,800 per space or $500,000 per mortgage for trailer courts or parks'', ''$9,900'' for ''$9,000'', ''$11,550'' for ''$10,500'', ''$13,750'' for ''$12,500,'' ''$16,500'' from ''$15,000'' wherever appearing therein, ''$19,800'' for ''$18,000'', ''$20,350'' for ''$18,500'', ''$23,100'' for ''$21,000'', ''$24,750'' for ''$22,500'', and ''$28,050'' for ''$25,500''.

1968—Subsec. (c)(3). Pub. L. 90–301 limited interest rate on mortgages to such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market.

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (b), (b)(2), (c)(2), (3), (d), (e), (g), (h), (h)(1), (h)(2), (h)(2)(i), (j) to (*l*), (n), (*o*), and (r).

1965—Subsec. (b). Pub. L. 89–117, §1108(e)(4), substituted ''General Insurance Fund'' for ''Housing Fund''.

Subsec. (c)(3). Pub. L. 89–117, §207(a), substituted ''$18,500 per family unit with three bedrooms, and $21,000 per family unit with four or more bedrooms'' for ''and $18,500 per family unit with three or more bedrooms'' and ''$22,500 per family unit with three bedrooms, and $25,000 per family unit with four or more bedrooms'' for ''and $22,500 per family unit with three or more bedrooms''.

Subsec. (d). Pub. L. 89–117, §1108(e)(1), (2), removed reference to collection of premium charges for the insurance of mortgages under section 1715a of this title and substituted ''debentures issued by the Commissioner under any subchapter and section of this chapter, except debentures of the Mutual Mortgage Insurance Fund, or of the Cooperative Management Housing Insurance Fund'' for ''debentures of the Housing Insurance Fund issued by the Commissioner under this subchapter''.

Subsec. (f). Pub. L. 89–117, §1108(e)(3), repealed subsec. (f) which created the Housing Insurance Fund.

Subsecs. (h) to (*l*). Pub. L. 89–117, §1108(e)(4), substituted ''General Insurance Fund'' for ''Housing Insurance Fund'' and ''Housing Fund'' wherever appearing.

Subsec. (m). Pub. L. 89–117, §1108(e)(3), repealed subsec. (m) which provided for credits and charges in the Housing Insurance Fund.

Subsec. (p). Pub. L. 89–117, §1108(e)(3), repealed subsec. (p) which provided for the disposition of surplus moneys in the Housing Insurance Fund and the investment of such moneys.

1964—Subsec. (c)(2). Pub. L. 88–560, §106, substituted ''*Provided*, That this limitation shall not apply'' for ''*Provided*, That except with respect to a mortgage executed by a mortgagor coming within the provisions of subsection (b)(1) of this section or a mortgage on a trailer court or park, such mortgage shall not exceed the amount which the Commissioner estimates will be the cost of the completed physical improvements on the property or project exclusive of public utilities and streets and organization and legal expenses: *Provided, further*, That this limitation shall not apply'' before ''to mortgages on housing in Alaska.''

Subsec. (c)(3). Pub. L. 88–560, §107(a), changed limits on mortgages for property or project attributable to dwelling use from ''$2,500 per room (or $9,000 per family unit if the number of rooms in such property or project is less than four per family unit)'' to ''$9,000 per family unit without a bedroom, $12,500 per family unit with one bedroom, $15,000 per family unit with two bedrooms, and $18,500 per family unit with three or more bedrooms'', changed such mortgage limits on project consisting of elevator-type structures from a sum ''of

$2,500 per room to not exceed $3,000 per room and the dollar amount limitation of $9,000 per family unit to not exceed $9,400 per family unit'' to dollar amount limitations ''per family unit to not to exceed $10,500 per family unit without a bedroom, $15,000 per family unit with one bedroom, $18,000 per family unit with two bedrooms, and $22,500 per family unit with three or more bedrooms'', and substituted provision authorizing an increase ''by not to exceed 45 per centum'' of any of such limits because of cost levels for former provision authorizing such an increase ''by not to exceed $1,250 per room without regard to the number of rooms being less than four, or four or more''.

Subsec. (g). Pub. L. 88–560, §105(b), inserted provision for termination of mortgagee's obligation to pay premium charges on the mortgage.

Subsec. (k). Pub. L. 88–560, §108, struck out second sentence providing for mandatory acquisition or foreclosure within one year of multifamily project in default.

1961—Subsec. (b)(2). Pub. L. 87–70, §607(1), struck out provisions from first paragraph which limited the Commissioner's authority to insure mortgages to property held by private corporations, associations, cooperative societies which are legal agents of owner-occupants, or trusts formed or created for the purpose of rehabilitating slum or blighted areas, or providing housing for rent or sale.

Subsec. (c)(3). Pub. L. 87–70, §607(2), (3), inserted ''(excluding exterior land improvements as defined by the Commissioner)'' and substituted ''$1,800 per space'' for ''$1,500 per space''.

Subsec. (i). Pub. L. 87–70, §607(4), permitted debentures issued pursuant to the provisions of section 1715k(f), 1715*l*(g), and 1715x of this title to be dated as of the date the mortgage is assigned (or the property is conveyed) to the Commissioner.

1960—Subsec. (a)(7). Pub. L. 86–624 struck out ''Hawaii,'' before ''Puerto Rico''.

1959—Subsec. (a)(7). Pub. L. 86–70, §10(a), struck out ''Alaska,'' before ''Hawaii''.

Subsec. (b). Pub. L. 86–372, §104(e)(1), struck out exceptions that related to housing for elderly persons from the two unnumbered paragraphs following par. (2).

Subsec. (c). Pub. L. 86–372, §104(c), (e)(2), struck out provisions that authorized insurance of mortgages not more than $8,100 if the entire property or project was specially designed for the use and occupancy of elderly persons and the mortgagor is a financially qualified nonprofit organization, and substituted in the unnumbered paragraph following par. (3) ''5¼ per centum per annum'' for ''4½ per centum per annum''.

Subsec. (c)(1). Pub. L. 86–372, §104(a), substituted ''$20,000,000'' for ''$12,500,000''.

Subsec. (c)(2). Pub. L. 86–70, §10(b), substituted ''Alaska'' for ''the Territory of Alaska''.

Subsec. (c)(3). Pub. L. 86–372, §104(b), substituted ''$2,500'' for ''$2,250'' in two places, ''$9,000'' for ''$8,100'' in two places, ''$3,000'' for ''$2,700'', ''$9,400'' for ''$8,400'', ''$1,250 per room'' for ''$1,000 per room'', ''$1,500 per space'' for ''$1,000 per space'', and ''$500,000'' for ''$300,000''.

Subsec. (f). Pub. L. 86–372, §104(e)(3), substituted ''sections 1715a, 1715e, 1715v, and 1715w of this title'' for ''sections 1715a and 1715e of this title'' in two places.

Subsec. (r). Pub. L. 86–372, §104(d), added subsec. (r).

1957—Subsec. (c). Pub. L. 85–104, §110, inserted in unnumbered paragraph following par. (3), ''(or $8,400 per family unit in the case of projects to consist of elevator-type structures)'' and ''and may permit single elderly persons to use and occupy such units''.

Subsec. (c)(3). Pub. L. 85–104, §109, struck out ''per room'' after ''limitations'', and inserted ''without regard to the number of rooms being less than four, or four or more,''.

Subsec. (i). Pub. L. 85–104, §108(b), substituted in second sentence, ''established by the Commissioner pursuant to section 1715*o* of this title'' for ''determined by the Commissioner, with the approval of the Secretary of the Treasury, at the time the mortgage was insured, but not to exceed 3 per centum per annum''.

Subsec. (q). Pub. L. 85–104, §111, repealed provisions which related to insurance of mortgages by Federal National Mortgage Association. See section 1715e of this title.

1956—Subsec. (b). Act Aug. 7, 1956, §104(b), inserted ''(except provisions relating to housing for elderly persons)'' before ''to take'' in paragraph following par. (2), and inserted ''(except with respect to housing designed for elderly persons, with occupancy preference therefor, as provided in the paragraph following paragraph (3) of subsection (c) of this section)'' after ''hereunder'' in second unnumbered par. following par. (2).

Subsec. (c). Act Aug. 7, 1956, §104(c), substituted provisions of unnumbered par. following par. (3) that in certain housing for elderly persons, the mortgage may involve a principal obligation of $8,100 per family unit and 90 percent of the replacement cost, for former provisions that if the number of bedrooms is equal or exceeds two per family unit, and the principal obligation does not exceed $7,200 per family unit, the mortgage may involve a principal obligation not in excess of 90 percent of the value of the property.

Subsec. (c)(2). Act Aug. 7, 1956, §103(a), substituted ''90 per centum'' for ''80 per centum''.

Subsec. (c)(3). Act Aug. 7, 1956, §103(b), increased limits on mortgages from $2,000 per room to $2,250 per room, from $7,200 to $8,100 where the number of rooms in the project is less than 4 per family unit, from $2,400 to $2,700 per room and $7,500 to $8,400 per family unit for elevator type structures, and inserted provision allowing Commissioner to increase dollar amount limitations by not to exceed $1,000 per room.

1955—Subsec. (a). Act Aug. 11, 1955, §102(b)(1), (2), inserted provisions relating to trailer coach mobile dwellings in par. (1)(B), and included space in a trailer court or park in the definition of ''rental housing'' in par. (6).

Subsec. (c). Act Aug. 11, 1955, §102(b)(5), amended last paragraph to authorize insurance of mortgages on rental properties having eight or more family units.

Subsec. (c)(1). Act Aug. 11, 1955, §102(c), increased from $5,000,000 to $12,500,000 the limitation on the maximum amount of a mortgage.

Subsec. (c)(2). Act Aug. 11, 1955, §102(b)(3), inserted ''or mortgage on a trailer court or park''.

Subsec. (c)(3). Act Aug. 11, 1955, §102(b)(4), inserted ''or not to exceed $1,000 per space or $300,000 per mortgage for trailer courts or parks''.

1954—Subsec. (c)(2). Act Aug. 2, 1954, §115(1), (2), inserted the proviso relating to mortgage insurance with respect to construction in slum or blighted areas, and inserted the reference to Guam.

Subsec. (c)(3). Act Aug. 2, 1954, §115(3), struck out the $10,000 per family-unit limitation, and inserted provisions permitting an increase in the limitations of $2,000 per room and $7,200 per family unit (less than four rooms) to $2,400, and $7,500, respectively, for elevator-type structures.

Subsec. (d). Act Aug. 2, 1954, §116, inserted in first sentence ''of the Housing Insurance Fund'' after ''debentures''.

Subsec. (h). Act Aug. 2, 1954, §117, at end of first sentence, inserted provision relating to inclusion of foreclosure costs, costs of acquisition, and costs of conveyance to the Commissioner.

Subsec. (i). Act Aug. 2, 1954, §112(b), substituted in second sentence a twenty-year period for the ten-year period, with respect to the maturity of debentures.

1953—Subsec. (c). Act June 30, 1953, §5(a), added par. following par. (3).

Subsec. (c)(2). Act June 30, 1953, §5(a), substituted ''80 per centum of the estimated value of the property or project (when the proposed improvements are completed)'' for limitation of 90 per centum of value attributable to dwelling use up to $7,000 per family unit, 60 per centum of such value over $7,000 and up to $10,000, and 90 per centum of value attributable to non-dwelling use.

Subsec. (c)(3). Act June 30, 1953, §5(a), substituted provisions for maximum mortgage amount of $2,000 per

room (or $7,200 per family unit if the number of rooms does not equal or exceed four per family unit), up to $10,000 per family unit, for provisions which fixed a limitation of $8,100 per family unit (or $7,200 if the number of rooms was less than four per family unit), provided for amortization of the mortgage and rate of interest, provided for consent to release of part of mortgaged property, prohibited acceptance of mortgages on properties not economically sound, and provided for inclusion with mortgaged properties adequate commercial and community facilities.

Subsec. (i). Act June 30, 1953, §5(b), substituted in second sentence, ''ten'' years for ''twenty'' years.

1952—Subsec. (a)(7). Act July 14, 1952, inserted ''Guam,'' after ''District of Columbia,''.

1951—Subsec. (c)(2). Act Sept. 1, 1951, §605, in cl. (i), substituted ''of the property or project attributable to dwelling use'' for ''of the property or project''; in cl. (ii), inserted ''and'' after ''unit''; and added cl. (iii).

Subsec. (c)(3). Act Sept. 1, 1951, §605, substituted ''four per family unit'' for ''four and one-half per family unit''.

Subsec. (i). Act Sept. 1, 1951, §604(b), substituted in second sentence the provision that such debentures shall mature twenty years after the date thereof, for the provision that they should mature three years after the first day of July following the maturity date of the mortgage in exchange for which the debentures were issued.

1950—Act Apr. 20, 1950, §122, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

Subsec. (b). Act Apr. 20, 1950, §106, added last two unnumbered pars.

Subsec. (c)(2). Act Apr. 20, 1950, §107(1), provided that the mortgage would not exceed 90% of the first $7,000 estimated value of the property and 60% of such estimated value in excess of $7,000 and not in excess of $10,000.

Subsec. (c)(3). Act Apr. 20, 1950, §107(2), (3), provided a dollar mortgage limitation of $8,100 per family unit or $7,200 per family unit if the number of rooms did not equal or exceed four and one-half per family unit, and struck out '', except that with respect to mortgages insured under the provisions of the second proviso of paragraph (2) of this subsection, which mortgages are authorized to have a maturity of not exceeding forty years from the date of insurance of the mortgage, such interest rate shall not exceed 4 per centum per annum'' in first sentence of last par.

Subsec. (d). Act Apr. 20, 1950, §108, struck out ''one-half of'' before ''1 per centum'' in proviso.

Subsec. (f). Act Apr. 20, 1950, §109, inserted ''and section 1715e'' before ''of this title'' wherever appearing.

Subsec. (g). Act Apr. 20, 1950, §110, inserted ''and any mortgage insurance premiums paid after default'' after ''preservation of the property'' in cl. (C) of last sentence, and substituted proviso of last sentence for the one reading ''That the mortgagee in event of a default under the mortgage, may, at its option and in accordance with rules and regulations to be prescribed by the Commissioner, proceed to foreclose on or otherwise acquire the property as provided in the case of a mortgage which is in default under section 1715a of this title and receive the benefits of the insurance as provided in such section''.

Subsec. (h). Act Apr. 20, 1950, §111, substituted ''under this section'' after ''claim issued'' in first sentence for ''by the Commissioner to any mortgagee upon the assignment of the mortgage to the Commissioner''.

Subsec. (i). Act Apr. 20, 1950, §112, struck out first sentence and substituted ''Debentures issued under this section shall be executed in the name of the Housing Insurance Fund as obligor, shall be signed by the Commissioner by either his written or engraved signature, shall be negotiable, and shall be dated as of the date of default as determined in subsection (g) of this section and shall bear interest from such date''.

1948—Subsec. (b)(1) Act Aug. 10, 1948, §101(m), substituted ''restricted by Federal or State laws or regulations of State banking or insurance departments'' for ''formed under and restricted by Federal or State housing laws''.

Subsec. (c). Act Aug. 10, 1948, §101(n)(1)–(3), amended first sentence generally, inserted ''except that with respect to mortgages insured under the provisions of the second proviso of paragraph numbered (2) of this subsection, which mortgages are hereby authorized to have a maturity of not exceeding forty years from the date of the insurance of the mortgage, such interest rate shall not exceed 4 per centum per annum'' at end of second sentence, and inserted last sentence.

Act July 1, 1948, inserted proviso.

Subsec. (g). Act Aug. 10, 1948, §101(*o*), substituted, in cl. (ii), ''(1)'' for ''(2)''.

Subsec. (h). Act Aug. 10, 1948, §101(p), substituted ''retained by the Housing Administrator and credited to the Housing Insurance Fund'' for ''paid to the mortgagor of such property''.

Subsec. (q). Act Aug. 10, 1948, §101(r), added subsec. (q).

1941—Subsec. (a)(1). Act Mar. 28, 1941, §4(b)(1), struck out ''district or territory''.

Subsec. (a)(7). Act Mar. 28, 1941, §4(b)(2), added par. (7).

1939—Subsec. (c). Act June 3, 1939, amended first sentence generally.

1938—Act of Feb. 3, 1938, amended section generally.

1935—Act Aug. 23, 1935, inserted ''property'' before ''project'' in last sentence.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 431(c) of Pub. L. 98–181 provided that: ''The amendments made in this section [amending this section and section 1715y of this title] shall not apply with respect to mortgages insured by the Secretary of Housing and Urban Development before the date of the enactment of this Act [Nov. 30, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 112(b) of act Aug. 2, 1954, as not applicable in any case where the mortgage involved was insured or the commitment for the insurance was issued prior to Aug. 2, 1954, see section 112(e) of that act, set out as a note under section 1710 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 90–301, §3(b), May 7, 1968, 82 Stat. 114, cited as a credit to this section, was repealed by Pub. L. 98–181, title IV, §404(a), Nov. 30, 1983, 97 Stat. 1208.

REGULATIONS

Section 509(h) of Pub. L. 102–550 provided that: ''The Secretary of Housing and Urban Development shall issue regulations necessary to carry out the amendments made by subsections (a) through (g) [amending this section and sections 1715e, 1715k, 1715*l*, 1715v, and 1715y of this title], which shall take effect not later than the expiration of the 1-year period beginning on the date of the enactment of this Act [Oct. 28, 1992].''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

DELEGATION OF PROCESSING OF MORTGAGE INSURANCE

Pub. L. 101–625, title III, §328, Nov. 28, 1990, 104 Stat. 4138, as amended by Pub. L. 102–242, title II, §226, Dec. 19, 1991, 105 Stat. 2307, provided that:

''(a) AUTHORITY.—Not later than the expiration of the 60-day period beginning on the date of enactment this

Act [Nov. 28, 1990], the Secretary of Housing and Urban Development shall implement a system of mortgage insurance for mortgages insured under section 207, 221, 223, 232, or 241 of the National Housing Act [12 U.S.C. 1713, 1715*l*, 1715n, 1715w, 1715z–6] that delegates processing functions to selected approved mortgagees or other individuals and entities expressly approved by the Department of Housing and Urban Development. Under such system, the Secretary shall retain the authority to approve rents, expenses, property appraisals, and mortgage amounts and to execute a firm commitment.

''(b) FULL INSURANCE PROGRAM.—Notwithstanding subsection (a), the Secretary shall maintain a viable system for full insurance programs under such Act [this chapter] under which all processing functions are performed by officers and employees of the Department of Housing and Urban Development.''

LIMITATION ON NUMBER OF DWELLING UNITS WITH MORTGAGES NOT PROVIDING FOR COMPLETE AMORTIZATION

Section 446(f) of Pub. L. 98–181 provided that: ''The aggregate number of dwelling units included in properties covered by mortgages insured pursuant to the authority granted in the amendments made by this section [amending sections 1713, 1715k, 1715*l*, and 1715v of this title] in any fiscal year may not exceed 10,000.''

AMENDMENTS TO PROVISIONS FOR FAMILY UNIT LIMITS ON RENTAL HOUSING; EQUITABLE APPLICATION OF SUCH AMENDMENTS OR PRE-AMENDMENT PROVISIONS TO PROJECTS SUBMITTED FOR CONSIDERATION PRIOR TO SEPTEMBER 2, 1964

Section 107(g) of Pub. L. 88–560, as amended by Pub. L. 90–19, § 21(a), May 25, 1967, 81 Stat. 25, provided that if the Secretary of Housing and Urban Development determined that it would be inequitable to apply the provisions of the National Housing Act as amended by section 107 [amending sections 1713, 1715e, 1715k, 1715*l*, 1715v, and 1748h–2 of this title] to a project which had been submitted for his consideration prior to Sept. 2, 1964, such provisions could be applied to such project without regard to the amendments made by section 107.

§ 1714. Taxation

Nothing in this subchapter shall be construed to exempt any real property acquired and held by the Secretary under this subchapter from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed.

(June 27, 1934, ch. 847, title II, § 208, 48 Stat. 1252; Feb. 3, 1938, ch. 13, § 3, 52 Stat. 22; Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner''.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator''.

1938—Act Feb. 3, 1938, corrected error in spelling of ''subdivision''.

§ 1715. Statistical and economic surveys

The Secretary shall cause to be made in connection with the insurance programs such statistical surveys and legal and economic studies as he shall deem useful to guide the development of housing and the creation of a sound mortgage market in the United States, and shall publish from time to time the results of such surveys and studies. Expenses of such studies and surveys, and expenses of publication and distribution of the results of such studies and surveys, shall be charged as a general expense of such insurance fund or funds, as the Secretary shall determine.

(June 27, 1934, ch. 847, title II, § 209, 48 Stat. 1252; Feb. 3, 1938, ch. 13, § 3, 52 Stat. 22; Mar. 28, 1941, ch. 31, § 4(c), 55 Stat. 62; Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Pub. L. 87–70, title VI, § 612(d), June 30, 1961, 75 Stat. 181; Pub. L. 89–117, title XI, § 1108(f), Aug. 10, 1965, 79 Stat. 504; Pub. L. 90–19, § 1(a)(3), (f), May 25, 1967, 81 Stat. 17, 18.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing and inserted ''in connection with the insurance programs'' after ''made''.

1965—Pub. L. 89–117 struck out ''or account or accounts,'' after ''fund or funds,''.

1961—Pub. L. 87–70 substituted ''shall be charged as a general expense of such insurance fund or funds, or account or accounts, as the Commissioner shall determine'' for ''shall be charged as a general expense of the Fund, the Housing Fund, and the Defense Housing Insurance Fund in such proportion as the Commissioner shall determine''.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

1941—Act Mar. 28, 1941, substituted ''Fund, the Housing Fund, and the Defense Housing Insurance Fund'' for ''Fund and the Housing Fund''.

1938—Act Feb. 3, 1938, inserted ''and the Housing Fund in such proportion as the Administrator shall determine'' after ''Fund''.

§ 1715a. Repealed. June 3, 1939, ch. 175, § 13, 53 Stat. 807

Section, act June 27, 1934, ch. 847, title II, § 210, as added by act Feb. 3, 1938, ch. 13, § 3, 52 Stat. 22, related to additional housing insurance.

APPLICATIONS PRIOR TO REPEAL

Section 13 of act June 3, 1939, which repealed this section, also provided: ''That the Administrator is authorized to insure under said section [this section] any mortgage for the insurance of which an application has been filed with him prior to the effective date of this act.''

§ 1715b. Rules and regulations

The Secretary is authorized and directed to make such rules and regulations as may be necessary to carry out the provisions of this subchapter.

(June 27, 1934, ch. 847, title II, § 211, as added Feb. 3, 1938, ch. 13, § 3, 52 Stat. 23; amended Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner''.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator''.

REGULATIONS

Pub. L. 98–479, title I, § 104(f), Oct. 17, 1984, 98 Stat. 2226, required Secretary of Housing and Urban Development, not later than Oct. 31, 1984, to issue regulations to carry out amendments made to section 1715z–7 of this title by section 436 of Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181.

§ 1715c. Labor standards

(a) The Secretary shall not insure under section 1713 or section 1715a of this title or under

section 1743 of this title pursuant to any application for insurance filed subsequent to the effective date of this section, or under section 1715e of this title, or under subchapter VII of this chapter pursuant to any application filed subsequent to sixty days after April 20, 1950, or under section 1748b or 1748h–2 of this title, or under section 1750g of this title, a mortgage or investment which covers property on which there is or is to be located a dwelling or dwellings, or a housing project, the construction of which was or is to be commenced subsequent to such date, unless the principal contractor files a certificate or certificates (at such times, in course of construction or otherwise, as the Secretary may prescribe) certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or the housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor, in accordance with sections 3141–3144, 3146, and 3147 of title 40, prior to the beginning of construction and after the date of the filing of the application for insurance. The provisions of this section shall also apply to the insurance of any loan or mortgage under section 1715k or section 1715x of this title which covers property on which there is located a dwelling or dwellings designed principally for residential use for twelve or more families. The provisions of this section shall apply to the insurance under section 1715*l* of this title of any mortgage described in subsection (d)(3) or (d)(4) and (deeming the term ''construction'' as used in the first sentence of this subsection to mean rehabilitation) of any mortgage described in subsection (h)(1) or section 1715z(j)(1) of this title which covers property on which there is located a dwelling or dwellings designed principally for residential use for more than eight families; except that compliance with such provisions may be waived by the Secretary—

(1) with respect to mortgages described in such subsection (d)(3) or (d)(4), in cases or classes of cases where laborers or mechanics (not otherwise employed at any time in the construction of the project) voluntarily donate their services without compensation for the purpose of lowering their housing costs in a cooperative housing project and the Secretary determines that any amounts saved thereby are fully credited to the cooperative undertaking the construction, and

(2) with respect to mortgages described in such subsection (h)(1) or section 1715z(j)(1) of this title, in cases or classes of cases where prospective owners of such dwellings, voluntarily donate their services without compensation, or other persons (not otherwise employed at any time in the rehabilitation of the property) voluntarily donate their services without compensation, and the Secretary determines that any amounts saved thereby are fully credited to the nonprofit organization undertaking the rehabilitation.

The provisions of this section shall also apply to the insurance of any mortgage under sections 1715v, 1715w, or 1715z–1 of this title except that compliance with such provisions may be waived by the Secretary in cases or classes of cases where laborers or mechanics, not otherwise employed at any time on the project, voluntarily donate their services without full compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts thereby saved are fully credited to the nonprofit corporation, association, or other organization undertaking the construction. The provisions of this section shall also apply to the insurance of any mortgage under section 1715y(d) of this title. The provisions of this section shall also apply to the insurance of any mortgage under section 1715z–7 of this title, except that compliance with such provisions may be waived by the Secretary in cases or classes of cases where laborers or mechanics, not otherwise employed at any time on the project, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts thereby saved are fully credited to the nonprofit corporation, association, or other organization undertaking the construction; and each laborer or mechanic employed on any facility covered by a mortgage insured under section 1715z–7 of this title shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in the workweek, as the case may be. The provisions of this section shall also apply to the insurance of any mortgage under subchapter IX–B of this chapter; and each laborer or mechanic employed on any facility covered by a mortgage insured under such subchapter IX–B shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in the workweek, as the case may be.

(b) The Secretary is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

(c) There is authorized to be appropriated for the remainder of the fiscal year ending June 30, 1939, and for each fiscal year thereafter, a sum sufficient to meet all necessary expenses of the Department of Labor in making the determinations provided for in subsection (a) of this section.

(June 27, 1934, ch. 847, title II, §212, as added June 3, 1939, ch. 175, §14, 53 Stat. 807; amended May 26, 1942, ch. 319, §10, 56 Stat. 303; Aug. 8, 1949, ch. 403, §3, 63 Stat. 576; Apr. 20, 1950, ch. 94, title I, §§113, 122, 64 Stat. 54, 59; Sept. 1, 1951, ch. 378, title II, §203, 65 Stat. 303; Aug. 2, 1954, ch. 649, title I, §118, 68 Stat. 595; Pub. L. 86–372, title I, §110(f), title II, §201(b), title VII, §704(c), Sept. 23, 1959, 73 Stat. 661, 667, 686; Pub. L. 87–70, title VI, §612(e), June 30, 1961, 75 Stat. 181; Pub. L. 88–349, §3, July 2, 1964, 78 Stat. 239; Pub. L. 88–560, title I, §119(b), Sept. 2, 1964, 78 Stat. 782; Pub. L. 89–117, title I, §102(c), title II, §201(b)(4), Aug. 10, 1965, 79 Stat. 454, 465; Pub. L. 89–754, title III, §311, title V, §503, Nov. 3, 1966, 80 Stat. 1270, 1277; Pub. L. 90–19, §1(a) (3), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title I, §101(d), title II, §201(b)(1), title XV, §1502, Aug. 1, 1968, 82 Stat.

484, 501, 600; Pub. L. 91–609, title I, §110(c), Dec. 31, 1970, 84 Stat. 1772; Pub. L. 101–235, title I, §133(d)(2), Dec. 15, 1989, 103 Stat. 2027.)

REFERENCES IN TEXT

Section 1715a of this title, referred to in subsec. (a), which related to additional housing insurance, was repealed by section 13 of act June 3, 1939, ch. 175, 53 Stat. 807.

Effective date of this section, referred to in subsec. (a), probably means June 3, 1939, the date of enactment of act June 3, 1939.

Subsections (d)(3), (d)(4), and (h)(1), referred to in subsec. (a), are references to such subsections in section 1715*l* of this title.

CODIFICATION

''Sections 3141–3144, 3146, and 3147 of title 40'' substituted in subsec. (a) for ''the Davis-Bacon Act, as amended'' on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–235 struck out seventh sentence which read as follows: ''The provisions of this section shall also apply to insurance under subchapter IX–A of this chapter with respect to laborers and mechanics employed in land development financed with the proceeds of any mortgage insured under that subchapter.''

1970—Subsec. (a). Pub. L. 91–609 inserted reference to other organization in sixth sentence.

1968—Subsec. (a). Pub. L. 90–448 inserted references to sections 1715z(j)(1) and 1715z–1 of this title, and made provisions of this section applicable to the insurance of mortgages under section 1715z–7 of this title, permitted waiver of compliance in cases or classes of cases where laborers or mechanics, not otherwise employed on the project, voluntarily donate their services without compensation for the purpose of lowering costs and savings are fully credited to the nonprofit corporation or association, and required payment of overtime to laborers or mechanics employed on facilities covered by a mortgage insured under section 1715z–7 of this title.

1967—Subsecs. (a), (b). Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1966—Subsec. (a). Pub. L. 89–754 defined ''construction'' in third sentence, made provisions of this section applicable to mortgage described in subsec. (h)(1) covering property improved with residential dwellings for use by more than eight families, provided for waiver of requirement of compliance with respect to mortgages described in subsec. (d)(3) or (d)(4) and subsec. (h)(1), made the provisions of this section applicable to insurance of mortgage under subchapter IX–B of this chapter, and provided for overtime compensation for work on group practice facilities covered by mortgage insurance under such subchapter IX–B.

1965—Subsec. (a). Pub. L. 89–117 substituted ''described in subsection (d)(3) or (d)(4)'' for ''described in subsection (d)(3) in the case of a cooperative or a limited profit mortgagor, or in subsection (d)(4) thereof'', and applied provisions of this section to insurance under subchapter IX–A of this chapter with respect to laborers and mechanics employed in land development financed with the proceeds of any mortgage insured under that subchapter.

1964—Subsec. (a). Pub. L. 88–560 inserted provision that this section shall also apply to the insurance of any mortgage under section 1715y(d) of this title.

Pub. L. 88–349 inserted ''in accordance with the Davis-Bacon Act, as amended''.

1961—Subsec. (a). Pub. L. 87–70 made section applicable to the insurance of mortgages under section 1715x of this title and to insurance under section 1715*l* of this title of mortgages described in subsec. (d)(3) thereof in the case of a cooperative or a limited profit mortgagor.

1959—Subsec. (a). Pub. L. 86–372 substituted ''or under section 1748b or 1748h–2 of this title'' for ''or under subchapter VIII of this chapter'', and inserted provisions making this section applicable to the insurance under section 1715 of this title of any mortgage described in subsection (d)(4) thereof, and to the insurance of any mortgage under section 1715v or 1715w of this title.

1954—Subsec. (a). Act Aug. 2, 1954, inserted sentence making section applicable to insurance of any mortgage under section 1715k of this title which covers property on which is located a dwelling or dwellings designed principally for residential use for twelve or more families.

1951—Subsec. (a). Act Sept. 1, 1951, inserted reference to section 1750g of this title after ''subchapter VIII of this chapter,''.

1950—Act Apr. 20, 1950, §122, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

Subsec. (a). Act Apr. 20, 1950, §113, substituted ''or under section 213 of this title, or under title VII pursuant to any application filed subsequent to sixty days after the date of enactment of the Housing Act of 1950, or under title VIII, a mortgage or investment'' for ''or under subchapter VIII of this chapter''.

1949—Subsec. (a). Act Aug. 8, 1949, inserted '', or under subchapter VIII of this chapter'' after ''effective date of this section''.

1942—Subsec. (a). Act May 26, 1942, inserted reference to section 1743 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 4 of Pub. L. 88–349 provided that: ''The amendments made by this Act [amending this section, section 276a of former Title 40, Public Buildings, Property, and Works, and section 1114 of former Title 49, Transportation] shall take effect on the ninetieth day after the date of enactment of this Act [July 2, 1964], but shall not affect any contract in existence on such effective date or made thereafter pursuant to invitations for bids outstanding on such effective date and the rate of payments specified by section 1(b)(2) of the Act of March 3, 1931, as amended by this Act [now 40 U.S.C. 3141(2)(B)], shall, during a period of two hundred and seventy days after such effective date, become effective only in those cases and reasonable classes of cases as the Secretary of Labor, acting as rapidly as practicable to make such rates of payments fully effective, shall by rule of regulation provide.''

ENFORCEMENT OF LABOR STANDARDS

Labor standards under provisions of this section to be prescribed and enforced by Secretary of Labor, see Reorg. Plan No. 14 of 1950, eff. May 24, 1950, 15 F.R. 3176, 64 Stat. 1267, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1715d. Insurance of mortgages on property in Alaska, Guam, Hawaii, and Virgin Islands

If the Secretary of Housing and Urban Development finds that, because of higher costs prevailing in Alaska, Guam, Hawaii, or the Virgin Islands, it is not feasible to construct dwellings or manufactured home courts or parks on property located in Alaska, Guam, Hawaii, or the Virgin Islands without sacrifice of sound standards of construction, design, or livability, within the limitations as to maximum or maxima mortgage amounts provided in this chapter, the Secretary may, by regulations or otherwise, prescribe, with respect to dollar amount, a higher maximum or maxima for the principal obligation of mortgages insured under this chapter covering property located in Alaska, Guam, Hawaii, or the Virgin Islands in such amounts as he shall find necessary to compensate for such higher costs but not to exceed, in any event, the maximum or maxima otherwise applicable (including increased mortgage amounts in geo-

graphical areas where cost levels so require) by more than one-half thereof. No mortgage with respect to a project or property in Alaska, Guam, Hawaii, or the Virgin Islands shall be accepted for insurance under this chapter unless the Secretary finds that the project or property is an acceptable risk giving consideration to the acute housing shortage in Alaska, Guam, Hawaii, or the Virgin Islands: *Provided*, That any such mortgage may be insured or accepted for insurance without regard to any requirement in any other section of this chapter that the Secretary find the project or property to be economically sound or an acceptable risk. Notwithstanding any of the provisions of this chapter or any other law, the Alaska Housing Authority or the Government of Guam, the Virgin Islands, or Hawaii or any agency or instrumentality thereof shall be eligible as mortgagor or mortgagee, as the case may be, for any of the purposes of mortgage insurance under the provisions of this chapter. Upon application by the mortgagee (1) where the mortgagor is regulated or restricted pursuant to the last sentence of this section or (2) where the Alaska Housing Authority or the Government of Guam, the Virgin Islands, or Hawaii or any agency or instrumentality thereof is the mortgagor or mortgagee, for the insurance of a mortgage under any provisions of this chapter, the Secretary is authorized to insure the mortgage (including advances thereon where otherwise authorized), and to make commitments for the insuring of any such mortgages prior to the date of their execution or disbursement thereon, under such provision (and this section) without regard to any requirement that the mortgagor shall have paid a prescribed amount on account of such property. Without limiting the authority of the Secretary under any other provision of law, the Secretary is authorized, with respect to any mortgagor in such case (except where the Alaska Housing Authority is the mortgagor or mortgagee), to require the mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation to such an extent and in such manner as the Secretary determines advisable to provide reasonable rentals and sales prices and a reasonable return on the investment.

(June 27, 1934, ch. 847, title II, §214, as added Apr. 23, 1949, ch. 89, §2(a), 63 Stat. 57; amended Sept. 1, 1951, ch. 378, title VI, §606, 65 Stat. 315; July 14, 1952, ch. 723, §10(a)(3), 66 Stat. 603; June 30, 1953, ch. 170, §25(a), (c), 67 Stat. 128; Pub. L. 86–70, §10(c), June 25, 1959, 73 Stat. 142; Pub. L. 86–372, title I, §106, Sept. 23, 1959, 73 Stat. 657; Pub. L. 90–19, §1(a)(2), (3), May 25, 1967, 81 Stat. 17; Pub. L. 91–152, title IV, §418(e), Dec. 24, 1969, 83 Stat. 402; Pub. L. 96–399, title III, §308(c)(1), Oct. 8, 1980, 94 Stat. 1640; Pub. L. 98–479, title II, §204(a)(4), Oct. 17, 1984, 98 Stat. 2232; Pub. L. 100–242, title IV, §406(b)(7), Feb. 5, 1988, 101 Stat. 1901; Pub. L. 101–625, title III, §333, Nov. 28, 1990, 104 Stat. 4141.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section is comprised of section 214 of act June 27, 1934, as added by section 2(a) of act Apr. 23, 1949, which insofar as Alaska, Hawaii, and Guam individually are concerned, was, formerly, also set out as sections 484d, 723, and 1425 of Title 48, Territories and Insular Possessions. Section 2(b) of act Apr. 23, 1949, which was formerly classified to sections 484e, 724 and 1426 of Title 48, was repealed by act Aug. 2, 1954, ch. 649, title II, §205, 68 Stat. 622.

AMENDMENTS

1990—Pub. L. 101–625 amended section catchline generally, inserting reference to Virgin Islands, substituted ''Alaska, Guam, Hawaii, or the Virgin Islands,'' for ''Alaska, Guam, or Hawaii,'' after ''costs prevailing in'', ''Alaska, Guam, Hawaii, or the Virgin Islands'' for ''Alaska or in Guam or Hawaii'' wherever appearing, and inserted '', the Virgin Islands,'' after ''Government of Guam'' wherever appearing.

1988—Pub. L. 100–242 struck out ''shall be the owner and occupant of the property or'' before ''shall have paid a prescribed amount'' in fourth sentence.

1984—Pub. L. 98–479 substituted ''Insurance of mortgages on property in Alaska, Guam, and Hawaii'' for ''Construction of dwellings or mobile home courts or parks in Alaska, Guam, and Hawaii; increased maximum for mortgage insurance; conditions and limitations'' in section catchline, and substituted ''Notwithstanding'' for ''Nowithstanding'' at beginning of third sentence.

1980—Pub. L. 96–399 substituted ''manufactured'' for ''mobile''.

1969—Pub. L. 91–152 extended to mobile home courts or parks the special provisions applicable to properties located in Alaska, Guam, or Hawaii.

1967—Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' for ''Federal Housing Commissioner'' and ''Secretary'' for ''Commissioner'', respectively, wherever appearing.

1959—Pub. L. 86–372 inserted ''(including increased mortgage amounts in geographical areas where cost levels so require)'' after ''maximum or maxima otherwise applicable''.

Pub. L. 86–70 substituted ''Alaska, Guam,'' for ''the Territory of Alaska or in Guam''.

1953—Act June 30, 1953, §25(a), inserted ''or Hawaii'' after ''Guam'' wherever appearing.

Act June 30, 1953, §25(c), substituted in fourth sentence ''Upon application by the mortgagee (1) where the mortgagor is regulated or restricted pursuant to the last sentence of this section or (2)'' for ''Upon application by the mortgagee,''; and inserted sentence beginning ''Without limiting the authority''.

1952—Act July 14, 1952, inserted ''or in Guam'' after ''Alaska'' wherever appearing, inserted ''or maxima'' after ''maximum,'' and inserted ''or the Government of Guam or any agency or instrumentality thereof'' after ''Alaska Housing Authority'' wherever appearing.

1951—Act Sept. 1, 1951, substituted ''one-half'' for ''one-third'' in first sentence.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–242 applicable only with respect to mortgages insured pursuant to conditional commitment issued on or after Feb. 5, 1988, or in accordance with direct endorsement program (24 CFR 200.163), if approved underwriter of mortgagee signs appraisal report for property on or after Feb. 5, 1988, see section 406(d) of Pub. L. 100–242, set out as a note under section 1709 of this title.

STUDY AND REPORT RESPECTING UTILIZATION OF FACTORY-BUILT AND OTHER APPROPRIATE TYPES OF HOUSING FOR INDIAN, ETC., HOUSING PROGRAMS

Section 323 of Pub. L. 96–399 directed Secretary of Housing and Urban Development to study feasibility of utilizing factory-built and other appropriate types of housing (other than the traditional type of site-built

housing), to the extent practicable, in carrying out housing programs for Indians and Alaskan Natives, and not later than eighteen months after Oct. 8, 1980, to transmit a report to Congress containing the findings and conclusions of such study, including a comparison of costs and benefits of utilizing the traditional type of site-built housing and of utilizing other types of housing in situations in which either type of housing could be used.

TERMINATION OF PURCHASES OF OBLIGATIONS

No additional notes or obligations to be purchased after June 24, 1954, from funds appropriated pursuant to the Alaska Housing Act, as amended, which is classified, in part, to this section, see section 1701g–5 of this title, and References in Text note thereunder.

REVOLVING FUND

Establishment of revolving fund under which to account for assets and liabilities in connection with notes and other obligations purchased pursuant to the Alaska Housing Act, as amended, which is classified, in part, to this section, see section 1701g–5 of this title, and References in Text note thereunder.

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868. 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

§ 1715e. Cooperative housing insurance

(a) Projects insurable

In addition to mortgages insured under section 1713 of this title, the Secretary is authorized to insure mortgages as defined in section 1713(a) of this title (including advances on such mortgages during construction), which cover property held by—

(1) a nonprofit cooperative ownership housing corporation or nonprofit cooperative ownership housing trust, the permanent occupancy of the dwellings of which is restricted to members of such corporation or to beneficiaries of such trust;

(2) a nonprofit corporation or nonprofit trust organized for the purpose of construction of homes for members of the corporation or for beneficiaries of the trust; or

(3) a mortgagor, approved by the Secretary which (A) has certified to the Secretary, as a condition of obtaining the insurance of a mortgage under this section, that upon completion of the property or project covered by such mortgage it intends to sell such property or project to a nonprofit corporation or nonprofit trust of the character described in paragraph (1) of this subsection at the actual cost of such property or project as certified pursuant to section 1715r of this title and will faithfully and diligently make and carry out all reasonable efforts to consummate such sale, and (B) shall be regulated or restricted by the Secretary as to rents, charges, capital structure, rate of return, and methods of operation during any period while it holds the mortgaged property or project; and for such purpose the Secretary may make such contracts with, and acquire for not to exceed $100 such stock or interest in, any such mortgagor as the Secretary may deem necessary to render effective such restriction or regulation, such stock or interest to be paid for out of the Cooperative Management Housing Insurance Fund and to be redeemed by such mortgagor at par upon the sale of such property or project to such nonprofit corporation or nonprofit trust;

which corporations or trusts referred to in paragraphs (1) and (2) of this subsection are regulated or restricted for the purposes and in the manner provided in paragraphs (1) and (2) of subsection (b) of section 1713 of this title: *Provided*, That as applied to mortgages the mortgage insurance for which is the obligation of the Management Fund, the reference to the General Insurance Fund in section 1713(b)(2) of this title shall be construed to refer to the Management Fund. Nothing in this section may be construed to prevent membership in a nonprofit housing cooperative from being held in the name of a trust, the beneficiary of which shall occupy the dwelling unit in accordance with rules and regulations prescribed by the Secretary.

(b) Eligibility conditions for projects under subsection (a)(1) of this section

To be eligible for insurance under this section a mortgage on any property or project of a corporation or trust of the character described in paragraph (1) of subsection (a) of this section shall involve a principal obligation in an amount—

(1) Repealed. Pub. L. 93–383, title III, § 304(b), Aug. 22, 1974, 88 Stat. 678.

(2)(A) not to exceed, for such part of the property or project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary), $41,207 per family unit without a bedroom, $47,511 per family unit with one bedroom, $57,300 per family unit with two bedrooms, $73,343 per family unit with three bedrooms, and $81,708 per family unit with four or more bedrooms, and not to exceed 98 per centum of the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed physical improvements are completed: *Provided*, That as to projects to consist of elevator-type structures the Secretary may, in his discretion, increase the dollar amount limitations per family unit to not to exceed $43,875 per family unit without a bedroom, $49,710 per family unit with one bedroom, $60,446 per family unit with two bedrooms, $78,197 per family unit with three bedrooms, and $85,836 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design; (B)(i) the Secretary may, by regulation, increase any of the dollar amount limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title) by not to exceed 170 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 170 percent, or 215 percent in high cost

areas, where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720[1] of this title (as such section existed immediately before November 30, 1983) is involved; and (ii) in the case of a mortgagor of the character described in paragraph (3) of subsection (a) of this section the mortgage shall involve a principal obligation in an amount not to exceed 90 per centum of the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed physical improvements are completed; and (iii) upon the sale of a property or project by a mortgagor of the character described in paragraph (3) of subsection (a) of this section to a nonprofit cooperative ownership housing corporation or trust within two years after the completion of such property or project the mortgage given to finance such sale shall involve a principal obligation in an amount not to exceed the maximum amount computed in accordance with this subparagraph (B)(i)..[2]

(c) Eligibility conditions for projects under subsection (a)(2) of this section

To be eligible for insurance under this section a mortgage on any property or project of a corporation or trust of the character described in paragraph (2) of subsection (a) of this section shall involve a principal obligation in an amount not to exceed a sum computed on the basis of a separate mortgage for each single-family dwelling (irrespective of whether such dwelling has a party wall or is otherwise physically connected with another dwelling or dwellings) comprising the property or project, equal to the total of each of the maximum principal obligations of such mortgages which would meet the requirements of section 1709(b)(2) of this title if the mortgagor were the owner and occupant who had made any required payment on account of the property prescribed in such paragraph.

(d) Amortization; release from mortgage lien; individual insurance; commercial and community facilities

Any mortgage insured under this section shall provide for complete amortization by periodic payments within such term as the Secretary may prescribe but not to exceed 40 years from the beginning of amortization of the mortgage, and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release, and a mortgage on any project of a corporation or trust of the character described in paragraph (2) of subsection (a) of this section may provide that, at any time after the completion of the construction of the project, such mortgage may be replaced, in whole or in part, by individual mortgages covering each individual dwelling in the project in amounts not to exceed the unpaid balance of the blanket mortgage allocable to the individual property. Each such individual mortgage may be insured under this section. Property covered by a mortgage, insured under this section, on a property or project of a corporation or trust of the character described in paragraph (1) of subsection (a) of this section may include five or more family units and may include such commercial and community facilities as the Secretary deems adequate to serve the occupants. Property held by a corporation or trust of the character described in paragraph numbered (2) of subsection (a) of this section which is covered by a mortgage insured under this section may include such community facilities, and property held by a mortgagor of the character described in paragraph numbered (3) of subsection (a) of this section which is covered by a mortgage insured under this section may include such commercial and community facilities, as the Secretary deems adequate to serve the occupants.

(e) Applicability of sections 1710 and 1713 of this title

The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (*l*), and (n) of section 1713 of this title shall be applicable to mortgages insured under this section except individual mortgages insured pursuant to subsection (d) of this section covering the individual dwellings in the project, and as to such individual mortgages the provisions of subsections (a), (c), (d), (e), (f), (g), (h),[1] (j), and (k)[1] of section 1710 of this title shall be applicable: *Provided*, That as applied to mortgages or loans the insurance for which is the obligation of the Management Fund (1) all references to the General Insurance Fund shall be construed to refer to the Management Fund, and (2) all references to section 1713 of this title shall be construed to refer to subsections (a)(1), (a)(3) (if the project involved is acquired by a cooperative corporation), (i), and (j) of this section.

(f) Technical advice and assistance

The Secretary is authorized, with respect to mortgages insured or to be insured under this section, to furnish technical advice and assistance in the organization of corporations or trusts of the character described in subsection (a) of this section and in the planning, development, construction, and operation of their housing projects.

(g) Housing projects designed for single person occupancy

Nothing in this chapter shall be construed to prevent the insurance of a mortgage under this section covering a housing project designed for occupancy by single persons, and dwelling units in such a project shall constitute family units within the meaning of this section.

(h) Failure to sell to a nonprofit organization

In the event that a mortgagor of the character described in paragraph (3) of subsection (a) of this section obtains an insured mortgage loan pursuant to this section and fails to sell the

[1] See References in Text note below.

[2] So in original.

property or project covered by such mortgage to a nonprofit housing corporation or nonprofit housing trust of the character described in paragraph (1) of subsection (a) of this section, the Secretary is authorized to refuse, for such period of time as he shall deem appropriate under the circumstances, to insure under this section any additional investor-sponsor type mortgage loans made to such mortgagor or to any other investor-sponsor mortgagor where, in the determination of the Secretary, any of its stockholders were identified with such mortgagor.

(i) Mortgages executed by consumer cooperatives covering existing structures

Nothing in this chapter shall be construed to prevent the insurance of a mortgage executed by a mortgagor of the character described in paragraph (1) of subsection (a) of this section covering property upon which dwelling units and related facilities have been constructed prior to the filing of the application for mortgage insurance hereunder: *Provided*, That the Secretary determines that the consumer interest is protected and that the mortgagor will be a consumer cooperative. In the case of properties other than new construction, the limitations in this section upon the amount of the mortgage shall be based upon the appraised value of the property for continued use as a cooperative rather than upon the Secretary's estimate of the replacement cost. As to any project on which construction was commenced after September 23, 1959, the mortgage on such project shall be eligible for insurance under this section only in those cases where the construction was subject to inspection by the Secretary and where there was compliance with the provisions of section 1715c of this title. As to any project on which construction was commenced prior to September 23, 1959, such inspection, and compliance with the provisions of section 1715c of this title, shall not be a prerequisite.

(j) Insurance of supplementary cooperative loans

(1) With respect to any property covered by a mortgage insured under this section (or any cooperative housing project covered by a mortgage insured under section 1713 of this title as in effect prior to April 20, 1950), the Secretary is authorized, upon such terms and conditions as he may prescribe, to make commitments to insure and to insure supplementary cooperative loans (including advances during construction or improvement) made by financial institutions approved by the Secretary. The Secretary is further authorized to make commitments to insure and to insure supplementary cooperative loans (including advances during construction or improvement) with respect to any property purchased from the Federal Government by a nonprofit corporation or trust of the character described in paragraph (1) of subsection (a) of this section, if the property is covered by an uninsured mortgage representing a part of the purchase price. As used in this subsection ''supplementary cooperative loan'' means a loan, advance of credit, or purchase of an obligation representing a loan or advance of credit made for the purpose of financing any of the following:

(A) Improvements or repairs of the property covered by such mortgage;

(B) Community facilities necessary to serve the occupants of the property; or

(C) Cooperative purchases and resales of memberships in order to provide necessary refinancing for resales of memberships which involve increases in equity; but in such resales by the cooperative the downpayments by the new members shall not be less than those made on the original sales of such memberships.

(2) To be eligible for insurance under this subsection, a supplementary cooperative loan shall—

(A) be limited to an amount which, when added to the outstanding mortgage indebtedness on the property, creates a total outstanding indebtedness which does not exceed the original principal obligation of the mortgage; except that, in the case of improvements or additional community facilities, the outstanding indebtedness may be increased by an amount equal to 97 per centum of the amount which the Secretary estimates will be the value of such improvements or facilities, and the new outstanding indebtedness may exceed the original principal obligation of the mortgage if such new outstanding indebtedness does not exceed the limitations imposed by subsection (b) of this section;

(B) have a maturity satisfactory to the Secretary but not to exceed the remaining term of the mortgage; except that, in the case of repairs or improvements to a property covered by an uninsured mortgage dated more than twenty years prior to the date of the commitment to insure, of such magnitude that the Secretary deems them to be a major rehabilitation or modernization of such property, the loan may have a maturity date up to ten years in excess of the remaining term of the uninsured mortgage;

(C) be secured in such manner as the Secretary may require;

(D) contain such other terms, conditions, and restrictions as the Secretary may prescribe; and

(E) represent the obligation of a borrower of the character described in paragraph (1) of subsection (a) of this section.

(k) Cooperative Management Housing Insurance Fund

There is hereby created a Cooperative Management Housing Insurance Fund (hereinafter referred to as the ''Management Fund''). The Management Fund shall be used by the Secretary as a revolving fund for carrying out the provisions of this section with respect to mortgages or loans insured, on or after August 10, 1965, under subsections (a)(1), (a)(3) (if the project is acquired by a cooperative corporation), (i), and (j) of this section. The Management Fund shall also be used as a revolving fund for mortgages, loans, and commitments transferred to it pursuant to subsection (m) of this section. The Secretary is directed to transfer to the Management Fund from the General Insurance Fund an amount equal to the total of the premium payments theretofore made with respect to the insurance of mortgages and loans transferred to the Management Fund pursuant to subsection (m) of this

section minus the total of any administrative expenses theretofore incurred in connection with such mortgages and loans, plus such other amounts as the Secretary determines to be necessary and appropriate. General expenses of operation of the Department of Housing and Urban Development relating to mortgages or loans which are the obligation of the Management Fund may be charged to the Management Fund.

(*l*) General Surplus Account; Participating Reserve Account

The Secretary shall establish in the Management Fund, as of August 10, 1965, a General Surplus Account and a Participating Reserve Account. The aggregate net income thereafter received or any net loss thereafter sustained by the Management Fund, in any semiannual period, shall be credited or charged to the General Surplus Account or the Participating Reserve Account or both in such manner and amounts as the Secretary may determine to be in accord with sound actuarial and accounting practice. Upon termination of the insurance obligation of the Management Fund by payment of any mortgage or loan insured under this section, and at such time or times prior to such termination as the Secretary may determine, the Secretary is authorized to distribute to the mortgagor or borrower a share of the Participating Reserve Account in such manner and amount as the Secretary shall determine to be equitable and in accordance with sound actuarial and accounting practice: *Provided*, That in no event shall the amount of the distributable share exceed the aggregate scheduled annual premiums of the mortgagor or borrower to the year of payment of the share less the total amount of any share or shares previously distributed by the Secretary to the mortgagor or borrower: *And provided further*, That in no event may a distributable share be distributed until any funds transferred from the General Insurance Fund to the Management Fund pursuant to subsection (*o*) of this section have been repaid in full to the General Insurance Fund. No mortgagor, mortgagee, borrower, or lender shall have any vested right in a credit balance in any such account or be subject to any liability arising out of the mutuality of the Management Fund. The determination of the Secretary as to the amount to be paid by him to any mortgagor or borrower shall be final and conclusive.

(m) Transfer of insurance to Management Fund

The Secretary is authorized to transfer to the Management Fund commitments for insurance issued under subsections (a)(1), (i), and (j) of this section prior to August 10, 1965, and to transfer to the Management Fund the insurance of any mortgage or loan insured prior to August 10, 1965, under subsection (a)(1), (a)(3) (if the project is acquired by a cooperative corporation), (i), or (j) of this section: *Provided*, That the insurance of any mortgage or loan shall not be transferred under the provisions of this subsection if on August 10, 1965, the mortgage or loan is in default and the mortgagee or lender has notified the Secretary in writing of its intention to file an insurance claim. Any insurance or commitment not so transferred shall continue to be an obligation of the General Insurance Fund.

(n) Payment of premium charges in debentures

Notwithstanding the limitations contained in other provisions of this chapter, premium charges for mortgages or loans the insurance of which is the obligation of either the Management Fund or the General Insurance Fund may be payable in debentures issued in connection with mortgages or loans transferred to the Management Fund or in connection with mortgages or loans insured pursuant to commitments transferred to the Management Fund, as provided in subsection (m) of this section. Premium charges on the insurance of mortgages or loans transferred to the Management Fund or insured pursuant to commitments transferred to the Management Fund may be payable in debentures which are the obligation of either the Management Fund or the General Insurance Fund.

(*o*) Transfer of funds between Management Fund and General Insurance Fund; investment of monies

Notwithstanding any other provision of this chapter the Secretary is authorized to transfer funds between the Cooperative Management Housing Insurance Fund and the General Insurance Fund in such amounts and at such times as he may determine, taking into consideration the requirements of each such Fund, to assist in carrying out effectively the insurance programs for which such Funds were respectively established. Moneys in the Cooperative Management Housing Insurance Fund not needed for current operations of the fund shall be deposited with the Treasurer of the United States to the credit of the Cooperative Management Housing Insurance Fund or invested in bonds or other obligations of, or in bonds or other obligations guaranteed as to principal and interest by, the United States or any agency of the United States: *Provided*, That such moneys shall to the maximum extent feasible be invested in such bonds or other obligations the proceeds of which will be used to directly support the residential mortgage market. The Secretary may, with the approval of the Secretary of the Treasury, purchase in the open market debentures which are the obligations of the Cooperative Management Housing Insurance Fund. Such purchases shall be made at a price which will provide an investment yield of not less than the yield obtainable from other investments authorized by this subsection. Debentures so purchased shall be canceled and not reissued.

(p) Increase in maximum mortgage amounts for solar energy systems and energy conservation measures

Notwithstanding any other provision of this section, the project mortgage amounts which may be insured under this section may be increased by up to 20 per centum if such increase is necessary to account for the increased cost of the project due to the installation therein of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42)[3] in cases where the Sec-

[3] See References in Text note below.

retary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure.

(June 27, 1934, ch. 847, title II, § 213, as added Apr. 20, 1950, ch. 94, title I, § 114, 64 Stat. 54; amended Oct. 26, 1951, ch. 577, § 4, 65 Stat. 648; June 30, 1953, ch. 170, § 6, 67 Stat. 123; Aug. 2, 1954, ch. 649, title I, §§ 119, 120, 68 Stat. 595, 596; Aug. 11, 1955, ch. 783, title I, § 102(c)–(e), 69 Stat. 635; Aug. 7, 1956, ch. 1029, title I, § 105(a)–(c), 70 Stat. 1093, 1094; Pub. L. 85–104, title I, § 112, July 12, 1957, 71 Stat. 297; Pub. L. 86–372, title I, §§ 105, 116(b), Sept. 23, 1959, 73 Stat. 655, 664; Pub. L. 87–70, title VI, § 608, June 30, 1961, 75 Stat. 179; Pub. L. 88–560, title I, §§ 107(b), 109(a), Sept. 2, 1964, 78 Stat. 774, 777; Pub. L. 89–117, title II, §§ 207(b), 208, title XI, § 1108(g), Aug. 10, 1965, 79 Stat. 467, 468, 505; Pub. L. 89–754, title III, §§ 303, 304, Nov. 3, 1966, 80 Stat. 1266, 1267; Pub. L. 90–19, § 1(a)(1), (3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 90–301, § 3(c), May 7, 1968, 82 Stat. 114; Pub. L. 90–488, title III, § 313, title XVII, § 1722(e), Aug. 1, 1968, 82 Stat. 511, 610; Pub. L. 91–152, title I, § 113(c), Dec. 24, 1969, 83 Stat. 383; Pub. L. 91–609, title I, § 117(b), Dec. 31, 1970, 84 Stat. 1774; Pub. L. 93–383, title III, §§ 303(b), 304(b), (c), 311(b), Aug. 22, 1974, 88 Stat. 677, 678, 683; Pub. L. 94–173, § 3, Dec. 23, 1975, 89 Stat. 1027; Pub. L. 94–375, § 8(a), (b)(2), Aug. 3, 1976, 90 Stat. 1071; Pub. L. 96–153, title III, § 314, Dec. 21, 1979, 93 Stat. 1117; Pub. L. 96–399, title III, § 310(b), Oct. 8, 1980, 94 Stat. 1642; Pub. L. 97–35, title III, § 339B(a), Aug. 13, 1981, 95 Stat. 417; Pub. L. 97–253, title II, § 201(c), Sept. 8, 1982, 96 Stat. 789; Pub. L. 97–377, title I, § 101(g), Dec. 21, 1982, 96 Stat. 1908; Pub. L. 98–181, title IV, §§ 404(b)(5), 423(b)(2), Nov. 30, 1983, 97 Stat. 1209, 1216; Pub. L. 100–242, title IV, § 426(b), (h), Feb. 5, 1988, 101 Stat. 1915, 1916; Pub. L. 102–550, title V, § 509(b), Oct. 28, 1992, 106 Stat. 3783; Pub. L. 103–233, title III, § 306, Apr. 11, 1994, 108 Stat. 373; Pub. L. 106–74, title II, § 221, Oct. 20, 1999, 113 Stat. 1076; Pub. L. 107–73, title II, § 213(b), Nov. 26, 2001, 115 Stat. 676; Pub. L. 107–326, § 5(b)(2), Dec. 4, 2002, 116 Stat. 2794; Pub. L. 108–186, title III, § 302(b), (c)(2), Dec. 16, 2003, 117 Stat. 2692; Pub. L. 110–161, div. K, title II, § 221(1), Dec. 26, 2007, 121 Stat. 2436.)

REFERENCES IN TEXT

Section 1720 of this title, referred to in subsec. (b)(2)(B)(i), was repealed by Pub. L. 98–181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

Subsection (h) of section 1710 of this title, referred to in subsec. (e), was redesignated subsec. (i) by Pub. L. 105–276, title VI, § 602(1), Oct. 21, 1998, 112 Stat. 2674.

Subsection (k) of section 1710 of this title, referred to in subsec. (e), was repealed by Pub. L. 105–276, title VI, § 601(c), Oct. 21, 1998, 112 Stat. 2673.

This chapter, referred to in subsecs. (g), (i), (n) and (*o*), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

Section 8211 of title 42, referred to in subsec. (p), was omitted from the Code pursuant to section 8229 of Title 42, The Public Health and Welfare, which terminated authority under that section on June 30, 1989.

AMENDMENTS

2007—Subsec. (b)(2)(B)(i). Pub. L. 110–161 substituted ''170 percent'' for ''140 percent'' after ''not to exceed'' in two places and ''215 percent in high cost areas'' for ''170 percent in high cost areas''.

2003—Subsec. (b)(2)(A). Pub. L. 108–186, § 302(c)(2), substituted ''$41,207'', ''$47,511'', ''$57,300'', ''$73,343'', ''$81,708'', ''$49,710'', ''$60,446'', ''$78,197'', and ''$85,836'' for ''$38,025'', ''$42,120'', ''$50,310'', ''$62,010'', ''$70,200'', ''$49,140'', ''$60,255'', '' $75,465'', and ''$85,328'', respectively.

Subsec. (b)(2)(B)(i). Pub. L. 108–186, § 302(b), substituted ''140 percent in'' for ''110 percent in'' and inserted '', or 170 percent in high cost areas,'' after ''and by not to exceed 140 percent''.

2002—Subsec. (b)(2). Pub. L. 107–326 inserted subpar. (A) designation after ''(2)'' and substituted ''; (B)(i) the Secretary may, by regulation, increase any of the dollar amount limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title)'' for '': *Provided further*, That the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this paragraph'', ''; and (ii) in the case of a mortgagor'' for '': *Provided further*, That in the case of a mortgagor'', ''; and (iii) upon the sale of a property'' for '': *And provided further*, That upon the sale of a property'', and ''with this subparagraph (B)(i).'' for ''with this subsection without regard to the preceding proviso''.

2001—Subsec. (b)(2). Pub. L. 107–73 substituted ''$38,025'', ''$42,120'', ''$50,310'', ''$62,010'', and ''$70,200'' for ''$30,420'', ''$33,696'', ''$40,248'', ''$49,608'', and ''$56,160'', respectively, and ''$43,875'', ''$49,140'', ''$60,255'', ''$75,465'', and ''$85,328'' for ''$35,100'', ''$39,312'', ''$48,204'', ''$60,372'', and ''$68,262'', respectively.

1999—Subsec. (a). Pub. L. 106–74 inserted at end ''Nothing in this section may be construed to prevent membership in a nonprofit housing cooperative from being held in the name of a trust, the beneficiary of which shall occupy the dwelling unit in accordance with rules and regulations prescribed by the Secretary.''.

1994—Subsec. (b)(2). Pub. L. 103–233 substituted ''$56,160'' for ''$59,160''.

1992—Subsec. (b)(2). Pub. L. 102–550 substituted ''$30,420'', ''$33,696'', ''$40,248'', ''$49,608'', and ''$59,160'' for ''$25,350'', ''$28,080'', ''$33,540'', ''$41,340'', and ''$46,800'', respectively, and ''$35,100'', ''$39,312'', ''$48,204'', ''$60,372'', and ''$68,262'' for ''$29,250'', ''$32,760'', ''$40,170'', ''$50,310'', and ''$56,885'', respectively.

1988—Subsec. (b)(2). Pub. L. 100–242 substituted ''$25,350'', ''$28,080'', ''$33,540'', ''$41,340'', and ''$46,800'' for ''$19,500'', ''$21,600'', ''$25,800'', ''$31,800'', and ''$36,000'', respectively, and ''$29,250'', ''$32,760'', ''$40,170'', ''$50,310'', and ''$56,885'' for ''$22,500'', ''$25,200'', ''$30,900'', ''$38,700'', and ''$43,758'', respectively, and substituted ''not to exceed 110 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 140 percent where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720 of this title (as such section existed immediately before November 30, 1983) is involved'' for ''not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum (by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved) in such an area''.

1983—Subsec. (b)(2). Pub. L. 98–181, § 423(b)(2), struck out '': *Provided further*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured'' after ''involved) in such area''.

Subsec. (d). Pub. L. 98–181, §404(b)(5), substituted provision that the interest rate for the mortgage be such a rate as agreed upon by the mortgagor and mortgagee for provision that the rate of interest, exclusive of premium charges for insurance, not exceed 5¼ per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum per annum as the Secretary finds necessary to meet the mortgage market.

1982—Subsec. (b)(2). Pub. L. 97–377 inserted ''(by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved)'' after ''90 per centum''.

Pub. L. 97–253 inserted provision that the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

1981—Subsec. (p). Pub. L. 97–35 inserted ''therein'' after ''installation'' and struck out ''therein'' after ''measure''.

1980—Subsec. (p). Pub. L. 96–399 added subsec. (p).

1979—Subsec. (b)(2). Pub. L. 96–153 in second proviso substituted ''75 per centum'' for ''50 per centum'', and inserted exception that the dollar amount limitations may be exceeded not to exceed 90 per centum where the Secretary determines it necessary.

1976—Subsec. (b)(2). Pub. L. 94–375 substituted ''50 per centum in any geographical area'' for ''75 per centum in any geographical area'', ''$19,500'' for ''$13,000'', ''$21,600'' for ''$18,000'', ''$25,800'' for ''$21,500'', ''$31,800'' for ''$26,500'', ''$36,000'' for ''$30,000'', ''$22,500'' for ''$15,000'', ''$25,200'' for ''$21,000'', ''$30,900'' for ''$25,750'', ''$38,700'' for ''$32,250'', and ''$43,758'' for ''$36,465''.

1975—Subsec. (b)(2). Pub. L. 94–173 raised from 45 per centum to 75 per centum the amount by which any dollar limitation may, by regulation, be increased.

1974—Subsec. (b)(1). Pub. L. 93–383, §304(b), struck out par. (1) which set forth limits on principal obligation of not to exceed $20,000,000, or not to exceed $25,000,000 if mortgage is executed by a mortgagor regulated under Federal, State, local laws.

Subsec. (b)(2), Pub. L. 93–383, §§303(b), 311(b), substituted ''$13,000'' for ''$9,900'', ''$15,000'' for ''$11,550'', ''$18,000'' for ''$13,750'', ''$21,000'' for ''$16,500'', ''$21,500'' for ''$16,500'', ''$25,750'' for ''$19,800'', ''$26,500'' for ''$20,350'', ''$30,000'' for ''$23,100'', ''$32,250'' for ''$24,750'', ''$36,465'' for ''$28,050'', and ''98 per centum'' for ''97 per centum''.

Subsec. (c). Pub. L. 93–383, §304(c), struck out ''not to exceed $12,500,000 and'' after ''an amount''.

1970—Subsec. (*o*). Pub. L. 91–609 provided for guarantee as to principal and interest by any agency of the United States and for investment of monies in bonds or other obligations the proceeds of which will be used to directly support the residential mortgage market.

1969—Subsec. (b)(2). Pub. L. 91–152 substituted ''$9,900'' for ''$9,000'', ''$11,550'' for ''$10,500'', ''$13,750'' for ''$12,500'', ''$16,500'' for ''$15,000'' wherever appearing, ''$19,800'' for ''$18,000'', ''$20,350'' for ''$18,500'', ''$23,100'' for ''$21,000'', ''$24,750'' for ''$22,500'', and ''$28,050'' for ''$25,500''.

1968—Subsec. (d). Pub. L. 90–301 substituted provisions limiting interest rate on mortgages to such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market for former provisions limiting the rate to 5¾ per centum per annum on individual mortgages covering individual dwellings in the project.

Subsec. (j)(1). Pub. L. 90–448, §313(1), authorized the Secretary to make commitments to insure and to insure supplementary cooperative loans with respect to any property purchased from the Federal Government by a nonprofit corporation or trust of the character described in subsec. (a) (1) of this section, if the property is covered by an uninsured mortgage representing a part of the purchase price.

Subsec. (j)(2)(B). Pub. L. 90–448, §313(2), permitted the loan to have a maturity date up to ten years in excess of the remaining term of the uninsured mortgage in the case of repairs or improvements to a property covered by an uninsured mortgage dated more than twenty years prior to the date of the commitment to insure, of such magnitude that the Secretary deems them to be a major rehabilitation or modernization of such property.

Subsec. (*o*). Pub. L. 90–448, §1722(e), required deposit with the Treasurer or investment in bonds or other obligations of, or in bonds or obligations guaranteed as to principal and interest by, the United States, of moneys in the Cooperative Management Housing Insurance Fund not needed for current operations of the fund, authorized purchase in the open market of debentures which are obligations of the fund, and directed that debentures so purchased be canceled and not reissued.

1967—Pub. L. 90–19, §1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a), (a)(3), (b)(2), (d), (f), (h), (i), (j)(1), (2)(B), (C), (k) to (m), and (*o*).

Subsec. (i). Pub. L. 90–19, §1(a)(4), substituted ''Secretary's'' for ''Commissioner's''.

Subsec. (k). Pub. L. 90–19, §1(a)(1), substituted ''Department of Housing and Urban Development'' for ''Federal Housing Administration''.

1966—Subsec. (j)(2)(A). Pub. L. 89–754, §304, provided that, in case of improvements or additional community facilities, the outstanding indebtedness may be increased by an amount equal to 97 per centum of the amount which the Secretary estimates will be the value of such improvements or facilities, and the new outstanding indebtedness may exceed the original principal obligation of the mortgage if such new outstanding indebtedness does not exceed the limitations imposed by subsec. (b) of this section.

Subsec. (k). Pub. L. 89–754, §303(c)(1), directed the Secretary rather than the Commissioner to transfer to the Management Fund from the General Insurance Fund an amount equal to the total of the premium payments theretofore made with respect to the insurance of mortgages and loans transferred to the Management Fund pursuant to subsec. (m) of this section minus the total of any administrative expenses theretofore incurred in connection with such mortgages and loans.

Subsec. (*l*). Pub. L. 89–754, §303(c)(2), struck out reference to subsec. (k) in second proviso.

Subsec. (m). Pub. L. 89–754, §303(a), struck out before the proviso '', but only in cases where the consent of the mortgagee or lender to the transfer is obtained or a request by the mortgagee or lender for the transfer is received by the Commissioner within such period of time after August 10, 1965, as the Commissioner shall prescribe''.

Subsec. (n). Pub. L. 89–754, §303(b), substituted ''the insurance of which is the obligation of either the Management Fund or the General Insurance Fund'' for ''insured under this section and sections 1713, 1715v and 1715w of this title'' and inserted provision for payment of premium charges on the insurance of mortgages or loans transferred to the Management Fund or insured pursuant to commitments transferred to the Management Fund in debentures which are the obligation of either the Management Fund or the General Insurance Fund.

1965—Subsec. (a). Pub. L. 89–117, §§208(b)(1), 1108(g)(1), inserted proviso construing reference to General Insurance Fund in section 1713(b)(2) of this title as a reference to Management Fund and substituted ''Cooperative Management Housing Insurance Fund'' for ''Housing Fund'' in par. (3).

Subsec. (b)(2). Pub. L. 89–117, §207(b)(1), substituted ''$18,500 per family unit with three bedrooms, and $21,000 per family unit with four or more bedrooms'' for ''and $18,500 per family unit with three or more bedrooms'' and ''$22,500 per family unit with three bedrooms, and $25,500 per family unit with four or more bedrooms'' for ''and $22,500 per family unit with three or more bedrooms''.

Subsec. (c). Pub. L. 89–117, § 207(b)(2), struck out limitation which prohibited the principal obligation from exceeding a sum equal to the maximum amount which does not exceed either of the limitations on the amount of the principal obligations of the mortgage prescribed by par. (2) of subsec. (b) of this section.

Subsec. (e). Pub. L. 89–177, §§ 208(b)(2), 1108(g)(2), inserted proviso construing all references to General Insurance Fund as references to Management Fund and all references to section 1713 of this title as references to subsecs. (a)(1), (a)(3), (i) and (j) of this section and struck out reference to subsecs. (m) and (p) of section 1713 of this title.

Subsecs. (k) to (*o*). Pub. L. 89–117, § 208(a), added subsecs. (k) to (*o*).

1964—Subsec. (b)(2). Pub. L. 88–560, § 107(b), changed limits on mortgages for property or project attributable to dwelling use from ''$2,500 per room (or $9,000 per family unit if the number of rooms in such property or project is less than four per family unit)'' to ''$9,000 per family unit without a bedroom, $12,500 per family unit with one bedroom, $15,000 per family unit with two bedrooms, and $18,500 per family unit with three or more bedrooms'', changed such mortgage limits on project consisting of elevator-type structures from a sum ''of $2,500 per room to not exceed $3,000 per room and the dollar amount limitation of $9,000 per family unit to not exceed $9,400 per family unit'' to dollar amount limitations ''per family unit to not to exceed $10,500 per family unit without a bedroom, $15,000 per family unit with one bedroom, $18,000 per family unit with two bedrooms, and $22,500 per family unit with three or more bedrooms'', and substituted provision authorizing an increase ''by not to exceed 45 per centum'' of any of such limits because of cost levels for former provision authorizing such an increase ''by not to exceed $1,250 per room without regard to the number of rooms being less than four, or four or more''.

Subsec. (j)(1)(C). Pub. L. 88–560, § 109(a), added cl. (C).

1961—Subsec. (b)(2). Pub. L. 87–70, § 608(a)(1), inserted ''(excluding exterior land improvements as defined by the Commissioner)''.

Subsec. (d). Pub. L. 87–70, § 608(a)(2), substituted ''five or more family units'' for ''eight or more family units''.

Subsec. (h). Pub. L. 87–70, § 608(a)(3), substituted ''the Commissioner is authorized to refuse, for such period of time as he shall deem appropriate under the circumstances, to insure under this section any additional investor-sponsor type mortgage loans made to such mortgagor or to any other investor-sponsor mortgagor where, in the determination of the Commissioner, any of its stockholders were identified with such mortgagor'' for ''such mortgagor shall not thereafter be eligible by reason of such paragraph (3) for insurance of any additional mortgage loans pursuant to this section''.

Subsec. (j). Pub. L. 87–70, § 608(b), added subsec. (j).

1959—Subsec. (b)(1). Pub. L. 86–372, § 105(a), substituted ''$20,000,000'' for ''$12,500,000''.

Subsec. (b)(2). Pub. L. 86–372, § 105(b), increased mortgage limits per room from $2,250 to $2,500 and per family unit from $8,100 to $9,000 for elevator type structures from $2,700 to $3,000 per room and from $8,400 to $9,400 per family unit, maximum amount of loan from 90 per centum to 97 per centum of replacement cost and in case of a mortgagor of character described in subsec. (a)(3) of this section from 85 per centum to 90 per centum of replacement cost, changed authorization of Commissioner to increase dollar amount limitation per room where cost levels so require by increasing room limit from $1,000 to $1,250, and struck out provisions which authorized a loan of 95 per centum of replacement cost if 50 per centum of membership consisted of veterans.

Subsec. (d). Pub. L. 86–372, § 105(c), (d), substituted ''5¼ per centum'' for ''4½ per centum'' and ''5¾ per centum'', for ''5 per centum'', and inserted provisions permitting property held by a corporation or trust of the character described in subsec. (a)(2) of this section which is covered by a mortgage insured under this section to include such community facilities, and property held by a mortgagor of the character described in subsec. (a)(3) of this section which is covered by a mortgage insured under this section to include such commercial and community facilities, as the Commissioner deems adequate to serve the occupants.

Subsec. (e). Pub. L. 86–372, § 116(b), inserted reference to subsec. (k) of section 1710 of this title.

Subsec. (i). Pub. L. 86–372, § 105(e), added subsec. (i).

1957—Subsec. (e). Pub. L. 85–104 substituted ''(h), and (j) of section 1710 of this title'' for ''and (h) of section 1710 of this title''.

1956—Subsec. (a). Act Aug. 7, 1956, § 105(a), struck out ''or'' at end of par. (1), inserted ''or'' at end of par. (2), added par. (3), and inserted ''referred to in paragraphs (1) and (2) of this subsection'' after ''which corporations or trusts'' in provisions following par. (3).

Subsec. (b)(2). Act Aug. 7, 1956, § 105(b), substituted ''50 per centum'' for ''65 per centum'', inserted for purposes of defining ''veteran''; service from Apr. 6, 1917, to Nov. 12, 1918, substituted service prior to Feb. 1, 1955, for former provision leaving determination of date to President, and inserted provision authorizing Commissioner to increase dollar limits per room by not to exceed $1,000 per room.

Subsec. (h). Act Aug. 7, 1956, § 105(c), added subsec. (h).

1955—Subsec. (b)(1). Act Aug. 11, 1955, § 102(c), increased from $5,000,000 to $12,500,000 the limitation on maximum amount of a mortgage.

Subsec. (b)(2). Act Aug. 11, 1955, § 102(d), provided that maximum amount of a mortgage to be insured may be determined on basis of estimated replacement cost.

Subsec. (c). Act Aug. 11, 1955, § 102(c), increased from $5,000,000 to $12,500,000 the limitation on maximum amount of a mortgage.

Subsec. (d). Act Aug. 11, 1955, § 102(e), authorized mortgage insurance for structures consisting of eight or more family units.

1954—Subsec. (b)(1). Act Aug. 2, 1954, § 119(a), permitted insured cooperative housing mortgages to be as high as $25,000,000 in amount if the mortgagor cooperative is regulated or supervised by Federal or State law as to rents, charges, and methods of operations.

Subsec. (b)(2). Act Aug. 2, 1954, amended par. (2) generally, to:

1. Change, with respect to nonveteran projects, the per family or per room mortgage amount limitations from $8,100 per family unit or $1,800 per room, to $2,250 per room and with a per family unit limitation of $8,100 applicable only if the number of rooms is less than four;

2. Provide for changing from a cost basis to a valuation basis;

3. Change the basis for allowing increases for veteran membership so that in all cases such increases would be made only if 65 per cent of members are veterans, instead of making such increases on the basis of percentage allowances for percentage of veteran membership; and

4. Authorize an increase to the per room and per family mortgage amount limitation for elevator-type structures.

Subsec. (c)(1). Act Aug. 2, 1954, § 119(b), with respect to the reference to section 1709(b)(2) of this title, struck out the reference to ''paragraph (A), paragraph (C), or paragraph (D)'' of the section, the paragraph designations having been struck out by another section of the same act.

Subsec. (f). Act Aug. 2, 1954, § 120, struck out sentence providing for the appointment of an Assistant Commissioner.

1953—Subsec. (d). Act June 30, 1953, substituted, in first sentence, ''4½ per centum per annum, except that individual mortgages insured pursuant to this subsection covering the individual dwellings in the project may bear interest at not to exceed 5 per centum per annum,'' for ''4 per centum per annum''.

1951—Subsec. (b)(2). Act Oct. 26, 1951, struck out ''of World War II'' wherever appearing and inserted proviso thus making section applicable to veterans of Korean war.

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by section 423(b)(2) of Pub. L. 98–181, see section 423(c) of Pub. L. 98–181, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

IMPLEMENTATION OF 1982 AMENDMENT

Amendment by Pub. L. 97–253 to be implemented only if the Secretary determines that the program of advance payment of insurance premiums, considering the effect of said amendment, is actuarially sound, see section 201(g) of Pub. L. 97–253, set out as a note under section 1709 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 90–301, §3(c), May 7, 1968, 82 Stat. 114, cited as a credit to this section, was repealed by Pub. L. 98–181, title IV, §404(a), Nov. 30, 1983, 97 Stat. 1208.

SPECIAL ASSISTANT FOR COOPERATIVE HOUSING

Section 102(h) of act Aug. 11, 1955, as amended by Pub. L. 89–754, title X §1020(h), Nov. 3, 1966, 80 Stat. 1296; Pub. L. 94–375, §18, Aug. 3, 1976, 90 Stat. 1077, provided that: ''In the performance of, and with respect to, the functions, powers, and duties vested in him by section 213 of the National Housing Act [this section], section 221(d)(3), section 235, section 236, section 241, section 243, section 246, and section 203(n) of the National Housing Act [sections 1715*l*(d)(3), 1715z, 1715z–1, 1715z–6, 1715z–8, 1715z–11, and 1709(n) of this title], and section 101 of the Housing and Urban Development Act of 1965 [section 1701s of this title] or section 8 of the United States Housing Act of 1937 [section 1437f of Title 42, The Public Health and Welfare] (insofar as the provisions of such sections relate to cooperative housing), the Secretary of Housing and Urban Development, notwithstanding the provisions of any other law, shall appoint a Special Assistant for Cooperative Housing, and provide the Special Assistant with adequate staff, whose sole responsibility will be to expedite operations under such sections and to eliminate obstacles to the full utilization of such sections under the direction and supervision of the Commissioner and Assistant Secretary for Housing Management. The person so appointed shall be fully sympathetic with the purposes of such sections.''

AMENDMENTS TO PROVISIONS FOR FAMILY UNIT LIMITS ON RENTAL HOUSING; EQUITABLE APPLICATION OF SUCH AMENDMENTS OR PRE-AMENDMENT PROVISIONS TO PROJECTS SUBMITTED FOR CONSIDERATION PRIOR TO SEPTEMBER 2, 1964

Equitable application of amendment to subsec. (b)(2) of this section by section 107(b) of Pub. L. 88–560 or pre-amendment provisions to projects submitted for consideration prior to Sept. 2, 1964, see section 107(g) of Pub. L. 88–560, set out as a note under section 1713 of this title.

§ 1715f. Process of applications and issuance of commitments

The Secretary is authorized to process applications and issue commitments with respect to insurance of mortgages under section 1706c of this title and subchapter II, VI, VIII, or X of this chapter, even though the permanent mortgage financing may not be insured under this chapter, and in the event the mortgage is not so insured the Secretary is authorized to charge an additional application fee determined by him to be reasonable. The Secretary is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

(June 27, 1934, ch. 847, title II, §215, as added Apr. 20, 1950, ch. 94, title I, §115, 64 Stat. 56; amended Sept. 1, 1951, ch. 378, title II, §204, 65 Stat. 303; Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1951—Act Sept. 1, 1951, inserted a reference to subchapter X of this chapter.

§ 1715g. Insurance of mortgage where mortgagor is not occupant of property

The Secretary is hereby authorized to insure any mortgage otherwise eligible for insurance under any of the provisions of this chapter without regard to any requirement with respect to the occupancy of the mortgagor of the property at the time of insurance, where the Secretary is satisfied that the inability of the mortgagor to meet such requirement is by reason of his entry on active duty in a uniformed service subsequent to the filing of an application for insurance and the mortgagor expresses an intent to meet such requirement upon his release from active duty.

(June 27, 1934, ch. 847, title II, §216, as added Sept. 1, 1951, ch. 378, title VI, §607, 65 Stat. 315; amended Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 91–621, §7(a), Dec. 31, 1970, 84 Stat. 1865; Pub. L. 100–242, title IV, §406(b)(8), Feb. 5, 1988, 101 Stat. 1901.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1988—Pub. L. 100–242 substituted ''with respect to the occupancy of the mortgagor'' for ''that the mortgagor be the occupant'' and ''meet such requirement'' for ''occupy the property'' wherever appearing.

1970—Pub. L. 91–621 substituted ''on active duty in a uniformed service'' and ''release from active duty'' for ''into military service'' and ''discharge from military service''.

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–242 applicable only with respect to mortgages insured pursuant to conditional commitment issued on or after Feb. 5, 1988, or in accordance with direct endorsement program (24 CFR 200.163), if approved underwriter of mortgagee signs appraisal report for property on or after Feb. 5, 1988, see section 406(d) of Pub. L. 100–242, set out as a note under section 1709 of this title.

§ 1715h. Repealed. Pub. L. 100–242, title IV, § 401(a)(1), Feb. 5, 1988, 101 Stat. 1898

Section, act June 27, 1934, ch. 847, title II, §217, as added Sept. 1, 1951, ch. 378, title VI, §607, 65 Stat. 315; amended July 14, 1952, ch. 723, §2, 66 Stat. 601; June 30,

1953, ch. 170, §7, 67 Stat. 123; Aug. 2, 1954, ch. 649, title I, §121, 68 Stat. 596; Mar. 11, 1955, ch. 10, 69 Stat. 11; Aug. 11, 1955, ch. 783, title I, §102(f), 69 Stat. 636; Aug. 7, 1956, ch. 1029, title I, §106, 70 Stat. 1094; June 4, 1958, Pub. L. 85–442, 72 Stat. 176; Sept. 23, 1959, Pub. L. 86–372, title I, §107, 73 Stat. 657; May 25, 1961, Pub. L. 87–38, 75 Stat. 85; June 30, 1961, Pub. L. 87–70, title VI, §604(c), 75 Stat. 177; Aug. 10, 1965, Pub. L. 89–117, title II, §202(b), 79 Stat. 465; Sept. 30, 1969, Pub. L. 91–78, §2(b), 83 Stat. 125; Dec. 24, 1969, Pub. L. 91–152, title I, §101(b), 83 Stat. 379; Oct. 2, 1970, Pub. L. 91–432, §1(b), 84 Stat. 887; Oct. 21, 1970, Pub. L. 91–473, §1(b), 84 Stat. 1064; Dec. 1, 1970, Pub. L. 91–525, §1(b), 84 Stat. 1384; Dec. 31, 1970, Pub. L. 91–609, title I, §101(b), 84 Stat. 1770; Oct. 18, 1972, Pub. L. 92–503, §1(b), 86 Stat. 906; Aug. 10, 1973, Pub. L. 93–85, §1(b), 87 Stat. 220; Oct. 2, 1973, Pub. L. 93–117, §1(b), 87 Stat. 421; Aug. 22, 1974, Pub. L. 93–383, title III, §316(b), 88 Stat. 685; June 30, 1977, Pub. L. 95–60, §1(b), 91 Stat. 257; July 31, 1977, Pub. L. 95–80, §1(b), 91 Stat. 339; Oct. 12, 1977, Pub. L. 95–128, title III, §301(b), 91 Stat. 1131; Sept. 30, 1978, Pub. L. 95–406, §1(b), 92 Stat. 879; Oct. 31, 1978, Pub. L. 95–557, title III, §301(b), 92 Stat. 2096; Sept. 28, 1979, Pub. L. 96–71, §1(b), 93 Stat. 501; Nov. 8, 1979, Pub. L. 96–105, §1(b), 93 Stat. 794; Dec. 21, 1979, Pub. L. 96–153, title III, §301(b), 93 Stat. 1111; Oct. 3, 1980, Pub. L. 96–372, §1(b), 94 Stat. 1363; Oct. 8, 1980, Pub. L. 96–399, title III, §301(b), 94 Stat. 1638; Aug. 13, 1981, Pub. L. 97–35, title III, §331(b), 95 Stat. 412; Oct. 6, 1982, Pub. L. 97–289, §1(b), 96 Stat. 1230; May 26, 1983, Pub. L. 98–35, §1(b), 97 Stat. 197; Oct. 1, 1983, Pub. L. 98–109, §1(b), 97 Stat. 745; Nov. 30, 1983, Pub. L. 98–181, title IV, §401(b), 97 Stat. 1207; Oct. 17, 1984, Pub. L. 98–479, title II, §204(a)(5), 98 Stat. 2232; Oct. 8, 1985, Pub. L. 99–120, §1(b), 99 Stat. 502; Nov. 15, 1985, Pub. L. 99–156, §1(b), 99 Stat. 815; Dec. 26, 1985, Pub. L. 99–219, §1(b), 99 Stat. 1730; Mar. 27, 1986, Pub. L. 99–267, §1(b), 100 Stat. 73; Apr. 7, 1986, Pub. L. 99–272, title III, §3007(b), 100 Stat. 104; May 2, 1986, Pub. L. 99–289, §1(b), 100 Stat. 412; June 24, 1986, Pub. L. 99–345, §1, 100 Stat. 673; Sept. 30, 1986, Pub. L. 99–430, 100 Stat. 986; Sept. 30, 1987, Pub. L. 100–122, §1, 101 Stat. 793; Nov. 5, 1987, Pub. L. 100–154, 101 Stat. 890; Nov. 17, 1987, Pub. L. 100–170, 101 Stat. 914; Dec. 3, 1987, Pub. L. 100–179, 101 Stat. 1018; Dec. 21, 1987, Pub. L. 100–200, 101 Stat. 1327, prohibited (except with respect to insurance of a loan or mortgage pursuant to section 1703, 1715*l*, 1715z, 1715z–1, 1715z–9, or 1715z–10 of this title or subchapter VIII, IX–A, or IX–B of this chapter (subject to any limitations thereunder on the time of such insurance)) the insurance of any loan or mortgage under this chapter after Mar. 15, 1988, except pursuant to a commitment to insure before such date.

§ 1715i. Repealed. Pub. L. 86–372, title I, § 108, Sept. 23, 1959, 73 Stat. 657

Section, act June 27, 1934, ch. 847, title II, §218, as added July 14, 1952, ch. 723, §8, 66 Stat. 603, authorized a credit for application fees paid in cases where an application for mortgage insurance under section 1743 of this title was received on or before March 1, 1950, and the mortgagee applied for insurance of a mortgage under section 1713 of this title with respect to the same property or project.

§ 1715j. Repealed. Pub. L. 89–117, title XI, § 1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title II, §219, as added June 30, 1953, ch. 170, §8, 67 Stat. 123; amended Aug. 2, 1954, ch. 649, title I, §122, 68 Stat. 596; July 12, 1957, Pub. L. 85–104, title I, §113, 71 Stat. 298; June 30, 1961, Pub. L. 87–70, title VI, §612(f), 75 Stat. 181, authorized the Commissioner to transfer funds from one or more to one or more of the following funds and accounts as he deems necessary to carry out programs for which such funds and accounts were established: Title I Insurance Account, Title I Housing Insurance Fund, Section 203 Home Improvement Account, Housing Insurance Fund, War Housing Insurance Fund, Housing Investment Insurance Fund, Armed Services Housing Mortgage Insurance Fund, National Defense Housing Insurance Fund, Section 220 Housing Insurance Fund, Section 220 Home Improvement Account, Section 221 Housing Insurance Fund, Experimental Housing Insurance Fund, Apartment Unit Insurance Fund, and the Servicemen's Mortgage Insurance Fund.

For establishment of the General Insurance Fund, see section 1735c of this title.

§ 1715k. Rehabilitation and neighborhood conservation housing insurance

(a) Purpose of section

The purpose of this section is to aid in the elimination of slums and blighted conditions and the prevention of the deterioration of residential property by supplementing the insurance of mortgages under sections 1709 and 1713 of this title with a system of loan and mortgage insurance designed to assist the financing required for the rehabilitation of existing dwelling accommodations and the construction of new dwelling accommodations where such dwelling accommodations are located in an area referred to in paragraph (1) of subsection (d) of this section.

(b) Authorization

The Secretary is authorized, upon application by the mortgagee, to insure, as hereinafter provided, any mortgage (including advances during construction on mortgages covering property of the character described in paragraph (3)(B) of subsection (d) of this section) which is eligible for insurance as hereinafter provided, and, upon such terms and conditions as he may prescribe, to make commitments for the insurance of such mortgages prior to the date of their execution or disbursement thereon.

(c) Definitions

As used in this section, the terms ''mortgage'', ''first mortgage'', ''mortgagee'', ''mortgagor'', ''maturity date'', and ''State'' shall have the same meaning as in section 1707 of this title.

(d) Eligibility for insurance; conditions; limits

To be eligible for insurance under this section a mortgage shall meet the following conditions:

(1) The mortgaged property shall—

(A) be located in (i) the area of a slum clearance and urban redevelopment project covered by a Federal-aid contract executed or a prior approval granted, pursuant to title I of the Housing Act of 1949 [42 U.S.C. 1450 et seq.] before August 2, 1954, or (ii) an urban renewal area (as defined in title I of the Housing Act of 1949, as amended), or (iii) the area of an urban renewal project assisted under section 111 of the Housing Act of 1949 [42 U.S.C. 1462], or (iv) an area in which a program of concentrated code enforcement activities is being carried out pursuant to section 117 of the Housing Act of 1949 [42 U.S.C. 1468], or (v) an area, designated by the Secretary, where concentrated housing, physical development, and public service activities are being or will be carried out in a coordinated manner, pursuant to a locally developed strategy for neighborhood improvement, conservation, or preservation: *Provided*, That, in the case of an area within the purview of clause (i) or (ii) of this sub-

paragraph, a redevelopment plan or an urban renewal plan (as defined in title I of the Housing Act of 1949, as amended), as the case may be, has been approved for such area by the governing body of the locality involved and by the Secretary of Housing and Urban Development, and the Secretary has determined that such plan conforms to a general plan for the locality as a whole and that there exist the necessary authority and financial capacity to assure the completion of such redevelopment or urban renewal plan: *And provided further*, That, in the case of an area within the purview of clause (iii) of this subparagraph, an urban renewal plan (as required for projects assisted under such section 111 [42 U.S.C. 1462]) has been approved for such area by such governing body and by the Secretary, and the Secretary has determined that such plan conforms to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements, and that there exist the necessary authority and financial capacity to assure the completion of such urban renewal plan, and

(B) meet such standards and conditions as the Secretary shall prescribe to establish the acceptability of such property for mortgage insurance under this section.

(2) The mortgaged property shall be held by—

(A) a mortgagor approved by the Secretary, and the Secretary may in his discretion require such mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return and methods of operation, and for such purpose the Secretary may make such contracts with and acquire for not to exceed $100 stock or interest in any such mortgagor as the Secretary may deem necessary to render effective such restriction or regulations. Such stock or interest shall be paid for out of the General Insurance Fund and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance; or

(B) by Federal or State instrumentalities, municipal corporate instrumentalities of one or more States, or limited dividend or redevelopment or housing corporations or other legal entities restricted by or under Federal or State laws or regulations of State banking or insurance departments as to rents, charges, capital structure, rate of return, or methods of operation.

(3) The mortgage shall—

(A)(i) involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed the applicable maximum principal obligation which may be insured in the area under section 1709(b) of this title; or in the case of a dwelling designed principally for residential use for more than four families (but not exceeding such additional number of family units as the Secretary may prescribe) the applicable maximum principal obligation secured by a four-family residence which may be insured in the area under section 1709(b) of this title plus not to exceed $9,165 for each additional family unit in excess of four located on such property; and not to exceed an amount equal to the sum of (1) 97 per centum (but, in any case where the dwelling is not approved for mortgage insurance prior to the beginning of construction, unless the construction of the dwelling was completed more than one year prior to the application for mortgage insurance, 90 per centum) of $25,000 of the Secretary's estimate of replacement cost of the property, as of the date the mortgage is accepted for insurance and (2) 95 per centum of such value in excess of $25,000: *Provided*, That in the case of properties other than new construction, the foregoing limitations upon the amount of the mortgage shall be based upon the sum of the estimated cost of repair and rehabilitation and the Secretary's estimate of the value of the property before repair and rehabilitation rather than upon the Secretary's estimate of the replacement cost: *Provided further*, That if the mortgagor is a veteran and the mortgage to be insured under this section covers property upon which there is located a dwelling designed principally for a one-family residence, the principal obligation may be in an amount equal to the sum of (1) 100 per centum of $25,000 of the Secretary's estimate of replacement cost of the property, as of the date the mortgage is accepted for insurance and (2) 95 per centum of such value in excess of $25,000. As used herein, the term ''veteran'' means any person who served on active duty in the Armed Forces of the United States for a period of not less than ninety days (or is certified by the Secretary of Defense as having performed extrahazardous service), and who was discharged or released therefrom under conditions other than dishonorable, except that persons enlisting in the armed forces after September 7, 1980, or entering active duty after October 16, 1981, shall have their eligibility determined in accordance with section 5303A(d) of title 38; and

(ii) in no case involving refinancing have a principal obligation in an amount exceeding the sum of the estimated cost of repair and rehabilitation and the amount (as determined by the Secretary) required to refinance existing indebtedness secured by the property or project, plus any existing indebtedness incurred in connection with improving, repairing, or rehabilitating the property; or

(B)(i) Repealed. Pub. L. 93–383, title III, § 304(d), Aug. 22, 1974, 88 Stat. 678.

(ii) not exceed 90 per centum of the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed improvements are completed (the replacement cost of the property or project may include the land, the proposed physical improvements, utilities

within the boundaries of the property or project, architect's fees, taxes, and interest during construction, and other miscellaneous charges incident to construction and approved by the Secretary, and shall include an allowance for builder's and sponsor's profit and risk of 10 per centum of all of the foregoing items except the land unless the Secretary, after certification that such allowance is unreasonable, shall by regulation prescribe a lesser percentage: *Provided*, That in the case of properties other than new construction, the foregoing limitations upon the amount of the mortgage shall be based upon the sum of the estimated cost of repair and rehabilitation and the Secretary's estimate of the value of the property before repair and rehabilitation rather than upon the Secretary's estimate of the replacement cost: *Provided further*, That the mortgage may involve the financing of the purchase of property which has been rehabilitated by a local public agency with Federal assistance pursuant to section 110(c)(8) of the Housing Act of 1949 [42 U.S.C. 1460(c)(8)], and, in such case the foregoing limitations upon the amount of the mortgage shall be based upon the appraised value of the property as of the date the mortgage is accepted for insurance;

(iii)(I) not exceed, for such part of the property or project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary), $38,025 per family unit without a bedroom, $42,120 per family unit with one bedroom, $50,310 per family unit with two bedrooms, $62,010 per family unit with three bedrooms, and $70,200 per family unit with four or more bedrooms; except that as to projects to consist of elevator-type structures the Secretary may, in his discretion, increase the dollar amount limitations per family unit to not to exceed $43,875 per family unit without a bedroom, $49,140 per family unit with one bedroom, $60,255 per family unit with two bedrooms, $75,465 per family unit with three bedrooms, and $85,328 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design; and (II) with respect to rehabilitation projects involving not more than five family units, the Secretary may by regulation increase by 25 per centum any of the dollar amount limitations in subparagraph (B)(iii)(I) (as such limitations may have been adjusted in accordance with section 1712a of this title) which are applicable to units with two, three, or four or more bedrooms; (III) the Secretary may, by regulation, increase the dollar amount limitations contained in subparagraph (B)(iii)(I) (as such limitations may have been adjusted in accordance with section 1712a of this title) by not to exceed 170 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 170 percent, or 215 percent in high cost areas, where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720[1] of this title (as such section existed immediately before November 30, 1983) is involved; (IV) That nothing contained in this[2] subparagraph (B)(iii)(I) shall preclude the insurance of mortgages covering existing multifamily dwellings to be rehabilitated or reconstructed for the purposes set forth in subsection (a) of this section; (V) the Secretary may further increase any of the dollar limitations which would otherwise apply to such projects by not to exceed 20 per centum if such increase is necessary to account for the increased cost of the project due to the installation therein of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42)[1] in cases where the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure; and

(iv) include such nondwelling facilities as the Secretary deems desirable and consistent with the urban renewal plan or, where appropriate, with the locally developed strategy for neighborhood improvement, conservation or preservation: *Provided*, That the project shall be predominantly residential and any nondwelling facility included in the mortgage shall be found by the Secretary to contribute to the economic feasibility of the project, and the Secretary shall give due consideration to the possible effect of the project on other business enterprises in the community.

(4) The mortgage shall provide for complete amortization by periodic payments (unless otherwise approved by the Secretary) within such terms as the Secretary may prescribe, but as to mortgages coming within the provisions of paragraph (3)(A) of this subsection not to exceed the maximum maturity prescribed by the provisions of section 1709(b)(3) of this title. The mortgage shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee and contain such terms and provisions with respect to the application of the mortgagor's periodic payment to amortization of the principal of the mortgage, insurance, repairs, alterations, payment of taxes, default reserves, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters as the Secretary may in the Secretary's discretion prescribe.

(e) Release of mortgagor or part of property

The Secretary may at any time, under such terms and conditions as he may prescribe, consent to the release of the mortgagor from his li-

[1] See References in Text note below.

[2] So in original. The word ''this'' probably should not appear.

ability under the mortgage or the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage.

(f) Entitlement of mortgagee to benefits; payment in cash or debentures; acquisition of mortgages; applicability of other provisions

The mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided—

(1) as to mortgages meeting the requirements of paragraph (3)(A) of subsection (d) of this section as provided in section 1710(a) of this title with respect to mortgages insured under section 1709 of this title, and the provisions of subsections (b), (c), (d), (e), (f), (g), (h),[2] (j), and (k)[1] of section 1710 of this title shall be applicable to such mortgages insured under this section, except that all references therein to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund and all references therein to section 1709 of this title shall be construed to refer to this section;

(2) as to mortgages meeting the requirements of paragraph (3)(B) of subsection (d) of this section, as provided in section 1713(g) of this title with respect to mortgages insured under said section 1713, and the provisions of subsections (h), (i), (j), (k), and (*l*) of section 1713 of this title shall be applicable to such mortgages insured under this section, and all references therein to the Housing Insurance Fund or the Housing Fund shall be construed to refer to the General Insurance Fund; or

(3) as to mortgages meeting the requirements of this section that are insured or initially endorsed for insurance on or after June 30, 1961, notwithstanding the provisions of paragraphs (1) and (2) of this subsection, the Secretary in his discretion, in accordance with such regulations as he may prescribe, may make payments pursuant to such paragraphs in cash or in debentures (as provided in the mortgage insurance contract), or may acquire a mortgage loan that is in default and the security therefor upon payment to the mortgagee in cash or in debentures (as provided in the mortgage insurance contract) of a total amount equal to the unpaid principal balance of the loan plus any accrued interest and any advances approved by the Secretary and made previously by the mortgagee under the provisions of the mortgage. After the acquisition of the mortgage by the Secretary the mortgagee shall have no further rights, liabilities, or obligations with respect to the loan or the security for the loan. The appropriate provisions of sections 1710 and 1713 of this title relating to the rights, liabilities, and obligations of a mortgagee shall apply with respect to the Secretary when he has acquired an insured mortgage under this paragraph, in accordance with and subject to regulations (modifying such provisions to the extent necessary to render their application for such purposes appropriate and effective) which shall be prescribed by the Secretary, except that as applied to mortgages so acquired (A) all references in section 1710 of this title to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund, and (B) all references in section 1710 of this title to section 1709 of this title shall be construed to refer to this section. If the insurance payment is made in cash, there shall be added to such payment an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Secretary.

(g) Repealed. Pub. L. 89–117, title XI, § 1108(h)(3), Aug. 10, 1965, 79 Stat. 505

(h) Home improvement loans; eligibility; conditions; refinancing; premium charge; defaults; debentures; exception; limitation

(1) To assist further in the conservation, improvement, repair, and rehabilitation of property located in the area of an urban renewal project or in an area in which a program of concentrated code enforcement activities is being carried out pursuant to section 117 of the Housing Act of 1949 [42 U.S.C. 1468], as provided in paragraph (1) of subsection (d) of this section, the Secretary is authorized upon such terms and conditions as he may prescribe to make commitments to insure and to insure home improvement loans (including advances during construction or improvement) made by financial institutions on and after June 30, 1961. As used in this subsection—

(A) the term ''home improvement loan'' means a loan, advance of credit, or purchase of an obligation representing a loan or advance of credit made—

(i) for the purpose of financing the improvement of an existing structure (or in connection with an existing structure) which was constructed not less than ten years prior to the making of such loan, advance of credit, or purchase, and which is used or will be used primarily for residential purposes: *Provided*, That a home improvement loan shall include a loan, advance, or purchase with respect to the improvement of a structure which was constructed less than ten years prior to the making of such loan, advance, or purchase if the proceeds are or will be used primarily for major structural improvements, or to correct defects which were not known at the time of the completion of the structure or which were caused by fire, flood, windstorm, or other casualty; or

(ii) for the purpose of enabling the borrower to pay that part of the cost of the construction or installation of sidewalks, curbs, gutters, street paving, street lights, sewers, or other public improvements, adjacent to or in the vicinity of property owned by him and used primarily for residential purposes, which is assessed against him or for which he is otherwise legally liable as the owner of such property;

(B) the term ''improvement'' means conservation, repair, restoration, rehabilitation, conversion, alteration, enlargement, or remodeling; and

(C) the term ''financial institution'' means a lender approved by the Secretary as eligible

for insurance under section 1703 of this title or a mortgagee approved under section 1709(b)(1) of this title.

(2) To be eligible for insurance under this subsection, a home improvement loan shall—

(i) not exceed the Secretary's estimate of the cost of improvement, or $12,000 per family unit, whichever is the lesser, and be limited as required by paragraph (11): *Provided*, That the Secretary may, by regulation, increase such amount by not to exceed 45 per centum in any geographical area where he finds that cost levels so require;

(ii) be limited to an amount which when added to any outstanding indebtedness related to the property (as determined by the Secretary) creates a total outstanding indebtedness which does not exceed the limits provided in subsection (d)(3) of this section for properties (of the same type) other than new construction;

(iii) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee;

(iv) have a maturity satisfactory to the Secretary, but not to exceed twenty years from the beginning of amortization of the loan;

(v) comply with such other terms, conditions, and restrictions as the Secretary may prescribe; and

(vi) represent the obligation of a borrower who is the owner of the property improved, or a lessee of the property under a lease for not less than 99 years which is renewable or under a lease having an expiration date in excess of 10 years later than the maturity date of the loan.

(3) Any home improvement loan insured under this subsection may be refinanced and extended in accordance with such terms and conditions as the Secretary may prescribe, but in no event for an additional amount or term in excess of the maximum provided for in this subsection.

(4) Repealed. Pub. L. 89–117, title XI, § 1108(h)(3), Aug. 10, 1965, 79 Stat. 505.

(5) The Secretary is authorized to fix a premium charge for the insurance of home improvement loans under this subsection but in the case of any such loan such charge shall not be less than an amount equivalent to one-half of 1 per centum per annum nor more than an amount equivalent to 1 per centum per annum of the amount of the principal obligation of the loan outstanding at any time, without taking into account delinquent payments or prepayments. Such premium charges shall be payable by the financial institution either in cash or in debentures (at par plus accrued interest) issued by the Secretary as obligations of the General Insurance Fund, in such manner as may be prescribed by the Secretary, and the Secretary may require the payment of one or more such premium charges at the time the loan is insured, at such discount rate as he may prescribe not in excess of the interest rate specified in the loan. If the Secretary finds upon presentation of a loan for insurance and the tender of the initial premium charge or charges so required that the loan complies with the provisions of this subsection, such loan may be accepted for insurance by endorsement or otherwise as the Secretary may prescribe. In the event the principal obligation of any loan accepted for insurance under this subsection is paid in full prior to the maturity date, the Secretary is authorized to refund to the financial institution for the account of the borrower all, or such portions as he shall determine to be equitable, of the current unearned premium charges theretofore paid.

(6) In cases of defaults on loans insured under this subsection, upon receiving notice of default, the Secretary, in accordance with such regulations as he may prescribe, may acquire the loan and any security therefor upon payment to the financial institution in cash or in debentures (as provided in the loan insurance contract) of a total amount equal to the unpaid principal balance of the loan, plus any accrued interest, any advances approved by the Secretary made previously by the financial institution under the provisions of the loan instruments, and reimbursement for such collection costs, court costs, and attorney fees as may be approved by the Secretary. If the insurance payment is made in cash, there shall be added to such payment an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Secretary.

(7) Debentures issued under this subsection shall be executed in the name of the General Insurance Fund as obligor, shall be negotiable, and, if in book entry form, transferable, in the manner described by the Secretary in regulations, and shall be dated as of the date the loan is assigned to the Secretary and shall bear interest from that date. They shall bear interest at a rate established by the Secretary pursuant to section 1715*o* of this title, payable semiannually on the 1st day of January and the 1st day of July of each year, and shall mature ten years after their date of issuance. They shall be exempt from taxation as provided in section 1713(i) of this title with respect to debentures issued under that section. They shall be paid out of the General Insurance Fund which shall be primarily liable therefor and they shall be fully and unconditionally guaranteed as to principal and interest by the United States, and, in the case of debentures issued in certificated registered form, the guaranty shall be expressed on the face of the debentures. In the event the General Insurance Fund fails to pay upon demand, when due, the principal of or interest on any debentures so guaranteed, the Secretary of the Treasury shall pay to the holders the amount thereof which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon, to the extent of the amounts so paid, the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures. Debentures issued under this subsection shall be in such form and amounts; shall be subject to such terms and conditions; and shall include such provisions for redemption, if any, as may be prescribed by the Secretary of Housing and Urban Development, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary of Housing and Urban Development may prescribe in regulations.

(8) The provisions of subsections (c), (d), and (h) of section 1703 of this title shall apply to home improvement loans insured under this subsection, and for the purposes of this subsection references in subsections (c), (d), and (h) of section 1703 of this title to ''this section'' or ''this subchapter'' shall be construed to refer to this subsection.

(9)(A) Notwithstanding any other provisions of this chapter, no home improvement loan executed in connection with the improvement of a structure for use as rental accommodations for five or more families shall be insured under this subsection unless the borrower has agreed (i) to certify, upon completion of the improvement and prior to final endorsement of the loan, either that the actual cost of improvement equaled or exceeded the proceeds of the home improvement loan, or the amount by which the proceeds of the loan exceed the actual cost, as the case may be, and (ii) to pay forthwith to the financial institution, for application to the reduction of the principal of the loan, the amount, if any, certified to be in excess of the actual cost of improvement. Upon the Secretary's approval of the borrower's certification as required under this paragraph, the certification shall be final and incontestable, except for fraud or material misrepresentation on the part of the borrower.

(B) As used in subparagraph (A), the term ''actual cost'' means the cost to the borrower of the improvement, including the amounts paid for labor, materials, construction contracts, off-site public utilities, streets, organization and legal expenses, such allocations of general overhead items as are acceptable to the Secretary, and other items of expense approved by the Secretary, plus a reasonable allowance for builder's profit if the borrower is also the builder, as defined by the Secretary, and excluding the amount of any kickbacks, rebates, or trade discounts received in connection with the improvement.

(10) Notwithstanding any other provision of this chapter, the Secretary is authorized and empowered (i) to make expenditures and advances out of funds made available by this chapter to preserve and protect his interest in any security for, or the lien or priority of the lien securing, any loan or other indebtedness owing to, insured by, or acquired by the Secretary or by the United States under this subsection, or section 1703 or 1709(k) of this title; and (ii) to bid for and to purchase at any foreclosure or other sale or otherwise acquire property pledged, mortgaged, conveyed, attached, or levied upon to secure the payment of any loan or other indebtedness owing to or acquired by the Secretary or by the United States under this subsection or section 1703 or 1709(k) of this title. The authority conferred by this paragraph may be exercised as provided in the last sentence of section 1710(g) of this title.

(11) Notwithstanding any other provision of this chapter, no home improvement loan made in whole or in part for the purpose specified in clause (A)(ii) of the second sentence of paragraph (1) shall be insured under this subsection if such loan (or the portion thereof which is attributable to such purpose), when added to the aggregate principal balance of any outstanding loans insured under this subsection or section 1709(k) of this title which were made to the same borrower for the purpose so specified (or the portion of such aggregate balance which is attributable to such purpose), would exceed $10,000 or such additional amount as the Secretary has by regulation prescribed in any geographical area where he finds cost levels so require pursuant to the authority vested in him by the proviso in paragraph (2)(i) of this subsection.

(June 27, 1934, ch. 847, title II, § 220, as added Aug. 2, 1954, ch. 649, title I, § 123, 68 Stat. 596; amended Aug. 11, 1955, ch. 783, title I, § 102(c), (g), 69 Stat. 635, 636; Aug. 7, 1956, ch. 1029, title I, § 107, title III, § 307(b), 70 Stat. 1094, 1102; Pub. L. 85–10, § 3, Mar. 27, 1957, 71 Stat. 8; Pub. L. 85–104, title I, §§ 102, 112, July 12, 1957, 71 Stat. 295, 297; Pub. L. 85–364, § 1(b), Apr. 1, 1958, 72 Stat. 73; Pub. L. 86–372, title I, §§ 109, 116(b), Sept. 23, 1959, 73 Stat. 657, 664; Pub. L. 87–70, title I, § 102(a), title VI, §§ 609, 612(g), June 30, 1961, 75 Stat. 154, 179, 181; Pub. L. 88–560, title I, §§ 105(c)(1), 107(c), 110–113, Sept. 2, 1964, 78 Stat. 772, 775, 777, 778; Pub. L. 89–117, title II, §§ 207(c), 209–211, title III, § 311(c), (d), title XI, § 1108(h), Aug. 10, 1965, 79 Stat. 467, 469, 470, 478, 505; Pub. L. 89–754, title III, §§ 305, 306, Nov. 3, 1966, 80 Stat. 1267; Pub. L. 90–19, § 1(a)(3), (4), (g), May 25, 1967, 81 Stat. 17, 18; Pub. L. 90–448, title III, § 311(a), title XVII, § 1722(g), Aug. 1, 1968, 82 Stat. 510, 611; Pub. L. 91–152, title I, §§ 102(b), 104, 113(d), Dec. 24, 1969, 83 Stat. 380, 381, 384; Pub. L. 93–383, title III, §§ 302(b), 303(c), 304(d), 310(b), Aug. 22, 1974, 88 Stat. 676–678, 682; Pub. L. 94–173, § 3, Dec. 23, 1975, 89 Stat. 1027; Pub. L. 94–375, § 8(a), (b)(3), Aug. 3, 1976, 90 Stat. 1071, 1072; Pub. L. 95–24, title I, § 105(b), Apr. 30, 1977, 91 Stat. 56; Pub. L. 95–128, title III, §§ 303(b), 304(b), Oct. 12, 1977, 91 Stat. 1132, 1133; Pub. L. 96–153, title III, §§ 312(b), 314, Dec. 21, 1979, 93 Stat. 1116, 1117; Pub. L. 96–399, title III, §§ 310(c), 311, 333(b), 336(b), Oct. 8, 1980, 94 Stat. 1642, 1643, 1653, 1654; Pub. L. 97–35, title III, § 339B(a), Aug. 13, 1981, 95 Stat. 417; Pub. L. 97–377, title I, § 101(g), Dec. 21, 1982, 96 Stat. 1908; Pub. L. 98–181, title IV, §§ 404(b)(6), (7), 432(a), 446(c), Nov. 30, 1983, 97 Stat. 1209, 1220, 1228; Pub. L. 100–242, title IV, §§ 405(2), 406(b)(9), 426(c), (h), Feb. 5, 1988, 101 Stat. 1899, 1901, 1916; Pub. L. 102–40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–550, title V, §§ 509(c), 516(c), Oct. 28, 1992, 106 Stat. 3783, 3791; Pub. L. 103–233, title III, § 306, Apr. 11, 1994, 108 Stat. 373; Pub. L. 107–73, title II, § 213(c), Nov. 26, 2001, 115 Stat. 676; Pub. L. 107–326, § 5(b)(3), Dec. 4, 2002, 116 Stat. 2795; Pub. L. 108–186, title III, § 302(b),(d), Dec. 16, 2003, 117 Stat. 2692; Pub. L. 108–213, § 2, Apr. 1, 2004, 118 Stat. 571; Pub. L. 110–161, div. K, title II, § 221(2), Dec. 26, 2007, 121 Stat. 2436.)

REFERENCES IN TEXT

The Housing Act of 1949, as amended, referred to in subsecs. (d)(1)(A), (B)(ii), and (h)(1), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title I of the Housing Act of 1949, which was classified generally to subchapter II (§ 1450 et seq.) of chapter 8A of Title 42, The Public Health and Welfare, including sections 110, 111, and 117 [42 U.S.C. 1460, 1462, 1468], was omitted from the Code pursuant to section 5316 of Title 42 which terminated the authority to make loans or grants under such title I after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

Section 1720 of this title, referred to in subsec. (d)(3)(B)(iii)(III), was repealed by Pub. L. 98–181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

Section 8211 of title 42, referred to in subsec. (d)(3)(B)(iii)(V), was omitted from the Code pursuant to section 8229 of Title 42, The Public Health and Welfare, which terminated authority under that section on June 30, 1989.

Subsection (h) of section 1710 of this title, referred to in subsec. (f)(1), was redesignated subsec. (i) by Pub. L. 105–276, title VI, § 602(1), Oct. 21, 1998, 112 Stat. 2674.

Subsection (k) of section 1710 of this title, referred to in subsec. (f)(1), was repealed by Pub. L. 105–276, title VI, § 601(c), Oct. 21, 1998, 112 Stat. 2673.

This chapter, referred to in subsec. (h)(9) to (11), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2007—Subsec. (d)(3)(B)(iii)(III). Pub. L. 110–161 substituted ''section 1712a of this title) by not to exceed 170 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 170 percent, or 215 percent in high cost areas, where the Secretary determines it necessary on a project-by-project basis'' for ''section 1712a of this title)) by not to exceed 140 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 140 percent, or 170 percent in high cost areas, where the Secretary determines it necessary on a project-by-project basis''.

2004—Subsec. (d)(3)(B)(iii)(V). Pub. L. 108–213 struck out ''with respect to rehabilitation projects involving not more than five family units,'' after ''(V)''.

2003—Subsec. (d)(3)(B)(iii). Pub. L. 108–186 substituted ''; (III)'' for ''with respect to dollar amount limitations applicable to rehabilitation projects described in subclause (II),'', redesignated subcls. (III) and (IV) as (IV) and (V), respectively, substituted ''140 percent in'' for ''110 percent in'', and inserted '', or 170 percent in high cost areas,'' after ''and by not to exceed 140 percent''.

2002—Subsec. (d)(3)(B)(iii). Pub. L. 107–326 inserted subcl. (I) designation after ''(iii)'' and substituted ''design; and (II)'' for ''design; and except that'', ''any of the dollar amount limitations in subparagraph (B)(iii)(I) (as such limitations may have been adjusted in accordance with section 1712a of this title)'' for ''any of the foregoing dollar amount limitations contained in this clause'', ''with respect to dollar amount limitations applicable to rehabilitation projects described in subclause (II), the Secretary may, by regulation, increase the dollar amount limitations contained in subparagraph (B)(iii)(I) (as such limitations may have been adjusted in accordance with section 1712a of this title)'' for '': *Provided*, That the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this clause (as determined after the application of the preceding proviso'', ''; (III)'' for '': *Provided further*,'', ''subparagraph (B)(iii)(I) shall preclude'' for ''subparagraph shall preclude'', and ''; (IV) with respect to rehabilitation projects involving not more than five family units, the Secretary may further increase any of the dollar limitations which would otherwise apply to such projects'' for '': *And provided further*, That the Secretary may further increase any of the dollar amount limitations which would otherwise apply for the purpose of this clause''.

2001—Subsec. (d)(3)(B)(iii). Pub. L. 107–73 substituted ''$38,025'', ''$42,120'', ''$50,310'', ''$62,010'', and ''$70,200'' for ''$30,420'', ''$33,696'', ''$40,248'', ''$49,608'', and ''$56,160'', respectively, and ''$43,875'', ''$49,140'', ''$60,255'', ''$75,465'', and ''$85,328'' for ''$35,100'', ''$39,312'', ''$48,204'', ''$60,372'', and ''$68,262'', respectively.

1994—Subsec. (d)(3)(B)(iii). Pub. L. 103–233 substituted ''$56,160'' for ''$59,160''.

1992—Subsec. (d)(3)(B)(iii). Pub. L. 102–550, § 509(c), substituted ''$30,420'', ''$33,696'', ''$40,248'', ''$49,608'', and ''$59,160'' for ''$25,350'', ''$28,080'', ''$33,540'', ''$41,340'', and ''$46,800'', respectively, and ''$35,100'', ''$39,312'', ''$48,204'', ''$60,372'', and ''$68,262'' for ''$29,250'', ''$32,760'', ''$40,170'', ''$50,310'', and ''$56,885'', respectively.

Subsec. (h)(7). Pub. L. 102–550, § 516(c), in first sentence, substituted ''shall be negotiable, and, if in book entry form, transferable, in the manner described by the Secretary in regulations'' for ''shall be signed by the Secretary, by either his written or engraved signature, shall be negotiable'', in fourth sentence, substituted ''and, in the case of debentures issued in certificated registered form, the guaranty'' for ''and the guaranty'', inserted after fifth sentence ''Debentures issued under this subsection shall be in such form and amounts; shall be subject to such terms and conditions; and shall include such provisions for redemption, if any, as may be prescribed by the Secretary of Housing and Urban Development, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary of Housing and Urban Development may prescribe in regulations.'' and struck out at end ''Debentures issued under this subsection shall be in such form and denominations in multiples of $50, shall be subject to such terms and conditions, and shall include such provisions for redemption, if any, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, and they may be in coupon or registered form. Any difference between the amount of the debentures to which the financial institution is entitled, and the aggregate face value of the debentures issued, not to exceed $50, shall be adjusted by the payment of cash by the Secretary to the financial institution from the General Insurance Fund.''

1991—Subsec. (d)(3)(A)(i). Pub. L. 102–40 substituted ''section 5303A(d) of title 38'' for ''section 3103A(d) of title 38''.

1988—Subsec. (d)(3)(A)(i). Pub. L. 100–242, § 405(2), inserted before semicolon at end '', except that persons enlisting in the armed forces after September 7, 1980, or entering active duty after October 16, 1981, shall have their eligibility determined in accordance with section 3103A(d) of title 38''.

Subsec. (d)(3)(A)(ii) to (iv). Pub. L. 100–242, § 406(b)(9), redesignated former cl. (iv) as (ii) and struck out ''(except as provided in cl. (iii))'', and struck out former cls. (ii) and (iii) which read as follows:

''(ii) in a case where the mortgagor is not the occupant of the property and intends to hold the property for rental purposes, have a principal obligation in an amount not to exceed 93 per centum of the amount computed under the provisions of clause (i);

''(iii) in a case where the mortgagor is not the occupant of the property and intends to hold the property for the purpose of sale, have a principal obligation in an amount not to exceed 85 per centum of the amount computed under the provisions of clause (i), or in the alternative, in an amount equal to the amount computed under the provisions of clause (i) if the mortgagor and mortgagee assume responsibility in a manner satisfactory to the Secretary for the reduction of the mortgage by an amount not less than 15 per centum of the outstanding principal amount thereof, or by such greater amount as may be required to meet the limitations of clause (iv), in the event the mortgaged property is not, prior to the due date of the eighteenth amortization payment of the mortgage, sold to a purchaser acceptable to the Secretary who is the occupant of the property and who assumes and agrees to pay the mortgage indebtedness; and''.

Subsec. (d)(3)(B)(iii). Pub. L. 100–242, § 426(c), (h), substituted ''$25,350'', ''$28,080'', ''$33,540'', ''$41,340'', and ''$46,800'' for ''$19,500'', ''$21,600'', ''$25,800'', ''$31,800'', and ''$36,000'', respectively, and ''$29,250'', ''$32,760'', ''$40,170'', ''$50,310'', and ''$56,885'' for ''$22,500'', ''$25,200'', ''$30,900'', ''$38,700'', and ''$43,758'', respectively, and substituted ''not to exceed 110 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 140 percent

where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720 of this title (as such section existed immediately before November 30, 1983) is involved'' for ''not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum (by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved) in such an area''.

1983—Subsec. (d)(3)(B)(ii). Pub. L. 98–181, §432(a), struck out proviso that in no case involving refinancing would the mortgage exceed the estimated cost of repair and rehabilitation and the amount, as determined by the Secretary, required to refinance existing indebtedness secured by the property or project.

Subsec. (d)(4). Pub. L. 98–181, §404(b)(6), substituted provision that the interest rate be at such rate as agreed upon by the mortgagor and mortgagee for provision that the interest rate, exclusive of premium charges for insurance and service charges if any, not exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market.

Pub. L. 98–181, §446(c), inserted ''(unless otherwise approved by the Secretary)'' after ''periodic payments''.

Subsec. (h)(2)(iii). Pub. L. 98–181, §404(b)(7), substituted provision that the rate of interest be such rate as agreed upon by the mortgagor and mortgagee for provision that the rate of interest not exceed the rate prescribed by the Secretary, but not in excess of 6 per centum per annum of the amount of the principal obligation outstanding at any time, and such other charges as approved by the Secretary.

1982—Subsec. (d)(3)(B)(iii). Pub. L. 97–377 inserted ''(by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved)'' after ''90 per centum''.

1981—Subsec. (d)(3)(B)(iii). Pub. L. 97–35 inserted ''therein'' after ''installation'' and struck out ''therein'' after ''measure''.

1980—Subsec. (d)(1)(A)(v). Pub. L. 96–399, §311(a), added cl. (v).

Subsec. (d)(3)(A)(i). Pub. L. 96–399, §336(b), substituted provisions relating to the applicable maximum principal obligation which may be insured in the area under section 1709(b) of this title, for provisions setting forth dollar amounts of $67,500 for one-family property, $76,000 for two-family, $92,000 for three-family, and $107,000 for four-family or more than four-family, and substituted ''$9,165'' for ''$8,250''.

Subsec. (d)(3)(B)(iii). Pub. L. 96–399, §310(c), inserted proviso relating to increases in dollar amount limitations.

Subsec. (d)(3)(B)(iv). Pub. L. 96–399, §311(b), inserted provisions relating to locally developed strategy for neighborhood improvement, etc.

Subsec. (h)(2)(iv). Pub. L. 96–399, §333(b), struck out ''or three-quarters of the remaining economic life of the structure, whichever is the lesser'' after ''loan''.

1979—Subsec. (d)(3)(A)(i). Pub. L. 96–153, §312(b), substituted ''$67,500'' for ''$60,000'', ''$76,000'' for ''$65,000'' where it first appeared, ''$92,000'' for ''$65,000'' where it appeared the second time, ''$107,000'' for ''$75,000'', and ''$8,250'' for ''$7,700''.

Subsec. (d)(3)(B)(iii). Pub. L. 96–153, §314, in first proviso substituted ''75 per centum'' for ''50 per centum'' and inserted exception that the dollar amount limitations may be exceeded not to exceed 90 per centum where the Secretary determines it to be necessary.

1977—Subsec. (d)(1)(A)(ii). Pub. L. 95–24 struck out ''in a community respecting which the Secretary of Housing and Urban Development has made the determination provided for by section 101(c) of the Housing Act of 1949, as amended'' after ''(as defined in title I of the Housing Act of 1949, as amended)''.

Subsec. (d)(3)(A). Pub. L. 95–128 substituted ''$60,000'' for ''$45,000'', ''$65,000'' for ''$48,750'' and ''$75,000'' for ''$56,000'' wherever appearing in provisions preceding cl. (1); substituted in text preceding first proviso ''and (2) 95 per centum of such value in excess of $25,000'' for '', (2) 90 per centum of such replacement cost in excess of $25,000 but not in excess of $35,000, (3) 80 per centum of such replacement cost in excess of $35,000'' and in second proviso ''and (2) 95 per centum of such value in excess of $25,000'' for '', (2) 90 per centum of such replacement cost in excess of $25,000 but not in excess of $35,000, and (3) 85 per centum of such replacement cost in excess of $35,000''.

1976—Subsec. (d)(3)(B)(iii). Pub. L. 94–375 substituted ''50 per centum in any geographical area'' for ''75 per centum in any geographical area'', ''$19,500'' for ''$13,000'', ''$21,600'' for ''$18,000'', ''$25,800'' for ''$21,500'', ''$31,800'' for ''$26,500'', ''$36,000'' for ''$30,000'', ''$22,500'' for ''$15,000'', ''$25,200'' for ''$21,000'', ''$30,900'' for ''$25,750'', ''$38,700'' for ''$32,250'', and ''$43,758'' for ''$36,465''.

1975—Subsec. (d)(3)(B)(iii). Pub. L. 94–173 raised from 45 per centum to 75 per centum the amount by which any dollar limitation may, by regulation, be increased.

1974—Subsec. (d)(3)(A)(i). Pub. L. 93–383, §302(b), substituted ''$45,000'' for ''$33,000'', ''$48,750'' for ''$35,750'', and ''$56,000'' for ''$41,250'' wherever appearing in provisions preceding cl. (1).

Subsec. (d)(3)(A)(i)(1). Pub. L. 93–383, §310(b)(1), substituted ''$25,000'' for ''$15,000''.

Subsec. (d)(3)(A)(i)(2). Pub. L. 93–383, §310(b)(2), substituted ''$25,000'' for ''$15,000'' and ''$35,000'' for ''$25,000''.

Subsec. (d)(3)(A)(i)(3). Pub. L. 93–383, §310(b)(3), substituted ''$35,000'' for ''$25,000''.

Subsec. (d)(3)(B)(i). Pub. L. 93–383, §304(d), struck out cl. (i) which set forth mortgage ceiling of $50,000,000.

Subsec. (d)(3)(B)(iii). Pub. L. 93–383, §303(c), substituted ''$13,000'' for ''$9,900'', ''$15,000'' for ''$11,550'', ''$18,000'' for ''$13,750'', ''$21,000'' for ''$16,500'', ''$21,500'' for ''$16,500'', ''$25,750'' for ''$19,800'', ''$26,500'' for ''$20,350'', ''$30,000'' for ''$23,100'', ''$32,250'' for ''$24,750'', and ''$36,465'' for ''$28,050''.

1969—Subsec. (d)(3)(A)(i). Pub. L. 91–152, §§102(b), 113(d)(1), substituted ''$7,700'' for ''$7,000'', ''$25,000'' for ''$20,000'' wherever appearing, ''$33,000'' for ''$30,000'', ''$35,750'' for ''$32,500'', and ''$41,250'' for ''$37,500'' wherever appearing.

Subsec. (d)(3)(B)(i). Pub. L. 91–152, §104, substituted provisions that the mortgage not exceed $50,000,000 for provisions that the mortgage not exceed $30,000,000, or, if executed by a mortgagor within subsec. (d)(2)(B) of this section, not exceed $50,000,000.

Subsec. (d)(3)(B)(iii). Pub. L. 91–152, §113(d)(2), (3), substituted ''$9,900'' for ''$9,000'', ''$11,550'' for ''$10,500'', ''$13,750'' for ''$12,500'', ''$16,500'' for ''$15,000'' wherever appearing, ''$19,800'' for ''$18,000'', ''$20,350'' for ''$18,500'', ''$23,100'' for ''$21,000'', ''$24,750'' for ''$22,500'', and ''$28,050'' for ''$25,000''.

Subsec. (h)(2)(i). Pub. L. 91–152, §113(d)(4), substituted ''$12,000'' for ''$10,000''.

1968—Subsec. (d)(2)(B). Pub. L. 90–448, §1722(g), substituted ''corporations or other legal entities restricted by or under'' for ''corporations restricted by''.

Subsec. (d)(3)(B)(ii). Pub. L. 90–448, §311(a), inserted proviso to permit the mortgage to involve the financing of the purchase of property which has been rehabilitated by a local public agency with Federal assistance pursuant to section 1460(c)(8) of Title 42.

1967—Pub. L. 90–19, §1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (b),

(d)(1)(B), (d)(2)(A), (d)(3)(A)(i), (iii), (iv), (d)(3) (B)(ii) to (iv), (d)(4), (e), (f)(3), (h) (1), (h)(1)(C), (h)(2)(i) to (v), (h)(3), (5) to (7), (h)(9)(B), and (h)(10), (11).

Pub. L. 90–19, §1(a)(4), substituted ''Secretary's'' for ''Commissioner's'' wherever appearing in subsecs. (d)(3)(A)(i)(B), (ii) and (h)(2)(i), (9)(A).

Subsec. (d)(1)(A). Pub. L. 90–19, §1(g)(1)–(4), substituted ''Secretary of Housing and Urban Development'' and ''Secretary'' for ''Housing and Home Finance Administrator'' and ''Administrator'' wherever appearing, ''determination'' for ''certification to the Commissioner'', and ''determined'' for ''certified to the Commissioner'' wherever appearing, respectively.

1966—Subsec. (d)(3)(A)(i). Pub. L. 89–754, §305, increased the rate in cl. (3) from 75 to ''80 per centum of such replacement cost in excess of $20,000'' and inserted proviso respecting mortgage limits of a mortgagor who is a veteran and the mortgage to be insured covers property upon which there is located a dwelling designed principally for a one-family residence and definition of ''veteran''.

Subsec. (d)(3)(B)(iii). Pub. L. 89–754, §306, provided that with respect to rehabilitation projects involving not more than five family units, the Secretary may by regulation increase by 25 per centum any of the dollar amount limitations contained in this clause which are applicable to units with two, three, or four or more bedrooms, inserted ''as determined after the application of the preceding proviso'' before ''by not to exceed 45 per centum'', and substituted ''*Provided further*, That nothing'' for ''*Provided*, That nothing''.

1965—Subsec. (d)(1)(A). Pub. L. 89–117, §311(c), inserted cl. (iv).

Subsec. (d)(2). Pub. L. 89–117, §1108(h)(1), substituted ''the General Insurance Fund'' for ''the section 220 Housing Insurance Fund'' wherever appearing.

Subsec. (d)(3)(A)(i). Pub. L. 89–117, §209(1), struck out a second proviso which, in a case involving refinancing, prohibited the mortgage to exceed the estimated cost of repair and rehabilitation and the amount required to refinance existing indebtedness secured by the property or project.

Subsec. (d)(3)(A)(ii). Pub. L. 89–117, §209(2), substituted provisions prohibiting the mortgage, in a case where the mortgagor is not the occupant of the property and intends to hold the property for rental purposes, to have a principal obligation in an amount in excess of 93 per centum of the amount computed under the provisions of cl. (i) for provisions which prohibited the mortgage, in a case where a mortgagor is not the occupant of the property, to have a principal obligation in excess of an amount equal to 85 per centum of the amount computed under cl. (i).

Subsec. (d)(3)(A)(iii), (iv). Pub. L. 89–117, §209(2), added cls. (iii) and (iv).

Subsec. (d)(3)(B)(iii). Pub. L. 89–117, §207(c), substituted ''$18,500 per family unit with three bedrooms, and $21,000 per family unit with four or more bedrooms'' for ''and $18,500 per family unit with three or more bedrooms'' and ''$22,500 per family unit with three bedrooms, and $25,500 per family unit with four or more bedrooms'' for ''and $22,500 per family unit with three or more bedrooms''.

Subsec. (d)(3)(B)(iv). Pub. L. 89–117, §210, substituted ''desirable and consistent with the urban renewal plan'' for ''adequate to serve the needs of the occupants of the property and of other housing in the neighborhood'', and inserted proviso.

Subsec. (f). Pub. L. 89–117, §1108(h)(1), (2), substituted ''the General Insurance Fund'' for ''the section 220 Housing Insurance Fund'' wherever appearing and, in par. (3), struck out provision that, as to mortgages acquired hereunder, all references in section 1713 of this title to the Housing Insurance Fund, the Housing Fund, or the Fund shall be construed to refer to the section 220 Housing Insurance Fund.

Subsec. (g). Pub. L. 89–117, §1108(h)(3), repealed subsec. (g) which created the section 220 Housing Insurance Fund, provided for transfer of funds thereto, and authorized purchase and cancellation of debentures and the receipt and payment of charges and fees.

Subsec. (h)(1). Pub. L. 89–117, §311(d), inserted ''or in an area in which a program of concentrated code enforcement activities is being carried out pursuant to section 1468 of title 42''.

Subsec. (h)(2)(i). Pub. L. 89–117, §211(a), inserted proviso permitting the Commissioner by regulation to increase the amount by not to exceed 45 per centum in any geographical area where he finds that cost levels so require.

Subsec. (h)(4). Pub. L. 89–117, §1108(h)(3), repealed par. which created the Home Improvement Account and provided for the transfer of funds thereto, credit and charges to such Account, and disposition of surplus moneys.

Subsec. (h)(5), (7). Pub. L. 89–117, §1108(h)(4), substituted ''General Insurance Fund'' for ''section 220 Home Improvement Account'' wherever appearing.

Subsec. (h)(11). Pub. L. 89–117, §211(b), inserted ''or such additional amount as the Commissioner has by regulation prescribed in any geographical area where he finds cost levels so require pursuant to the authority vested in him by proviso in paragraph (2)(i) of this subsection''.

1964—Subsec. (d)(3)(A)(i). Pub. L. 88–560, §110, increased the maximum amount of the principal obligation for one-family residences from $25,000 to $30,000, for two-family residences from $27,500 to $32,500, for three-family residences from $30,000 to $32,500, for four-family residences from $35,000 to $37,500, and for more-than-four-family residences from $35,000 to $37,500.

Subsec. (d)(3)(B)(i). Pub. L. 88–560, §111, substituted ''$30,000,000'' for ''$20,000,000''.

Subsec. (d)(3)(B)(iii). Pub. L. 88–560, §107(c), changed limits on mortgages for property or project attributable to dwelling use from ''$2,500 per room (or $9,000 per family unit if the number of rooms in such property or project is less than four per family unit)'' to ''$9,000 per family unit without a bedroom, $12,500 per family unit with one bedroom, $15,000 per family unit with two bedrooms, and $18,500 per family unit with three or more bedrooms'', changed such mortgage limits on project consisting of elevator-type structures from a sum ''of $2,500 per room to not exceed $3,000 per room and the dollar amount limitation of $9,000 per family unit to not exceed $9,400 per family unit'' to dollar amount limitations ''per family unit to not to exceed $10,500 per family unit without a bedroom, $15,000 per family unit with one bedroom, $18,000 per family unit with two bedrooms, and $22,500 per family unit with three or more bedrooms'', and substituted provision authorizing an increase ''by not to exceed 45 per centum'' of any of such limits because of cost levels for former provision authorizing such an increase ''by not to exceed $1,250 per room without regard to the number of rooms being less than four, or four or more''.

Subsec. (f)(3). Pub. L. 88–560, §105(c)(1), inserted ''If the insurance payment is made in cash, there shall be added to such payment an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Commissioner''.

Subsec. (h)(1). Pub. L. 88–560, §112(a), designated definitions of ''home improvement loan'', ''improvement'', and ''financial institution'' in second sentence as cls. (A)(i), (B), and (C), respectively, and added cl. (A)(ii) to definition of ''home improvement loan''.

Subsec. (h)(2)(i). Pub. L. 88–560, §112(b), inserted '', and be limited as required by paragraph (11) of this subsection''.

Subsec. (h)(2)(vi). Pub. L. 88–560, §113, substituted ''an expiration date in excess of 10 years later than the maturity date of the loan'' for ''a period of not less than 50 years to run from the date of the loan''.

Subsec. (h)(6). Pub. L. 88–560, §105(c)(1), inserted ''If the insurance payment is made in cash, there shall be added to such payment an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Commissioner''.

Subsec. (h)(11). Pub. L. 88–560, §112(c), added par. (11).

1961—Subsec. (a). Pub. L. 87–70, § 102(a)(2), substituted ''loan and mortgage insurance'' for ''mortgage insurance''.

Subsec. (d)(3)(A)(i). Pub. L. 87–70, §§ 102(a)(1), 609, increased the maximum amount of the principal obligation for one-family residences from $22,500 to $25,000, and for two-family residences from $25,000 to $27,500, substituted ''$15,000'' for ''$13,500'' in two places, ''$20,000'' for ''$18,000'' in two places, ''75 per centum'' for ''70 per centum'', and ''shall be based upon the sum of the estimated cost of repair and rehabilitation and the Commissioner's estimate of the value of the property before repair and rehabilitation rather than upon the Commissioner's estimate of the replacement cost'' for ''shall be based upon appraised value rather than upon the Commissioner's estimate of the replacement cost'' in proviso relating to limitations upon the amount of the mortgage in the case of properties other than new construction, and inserted proviso which limits, in cases involving refinancing, the amount of the mortgage to not more than the estimated cost of repair and rehabilitation and the amount (as determined by the Commissioner) required to refinance existing indebtedness secured by the property or project.

Subsec. (d)(3)(B)(ii). Pub. L. 87–70, § 102(a)(1), substituted ''shall be based upon the sum of the estimated cost of repair and rehabilitation and the Commissioner's estimate of the value of the property before repair and rehabilitation rather than upon the Commissioner's estimate of the replacement cost'' for ''shall be based upon appraised value rather than upon the Commissioner's estimate of the replacement cost'' in proviso relating to limitations upon the amount of the mortgage in the case of properties other than new construction, and inserted the proviso which limits, in cases involving refinancing, the amount of the mortgage to not more than the estimated cost of repair and rehabilitation and the amount (as determined by the Commissioner) required to refinance existing indebtedness secured by the property or project.

Subsec. (f)(3). Pub. L. 87–70, § 612(g), added par. (3).

Subsec. (h). Pub. L. 87–70, § 102(a)(3), added subsec. (h).

1959—Subsec. (d)(3)(A)(i). Pub. L. 86–372, § 109(a)(1), (2), increased the maximum amount of the principal obligation for one-family residences from $20,000 to $22,500, for two-family residences from $20,000 to $25,000, and for three-family residences from $27,500 to $30,000, and increased the maximum amount of loans over $13,500 from 85 percent of the value in excess of $13,500 but not in excess of $16,000 to 90 percent of the value in excess of $13,500 but not in excess of $18,000.

Pub. L. 86–372, § 109(a)(3), inserted proviso in subsec. (d)(3)(A)(ii) making the 85 per centum limitation inapplicable if the mortgagor and mortgagee assume responsibility for the reduction of the mortgage by an amount not less than 15 per centum of the outstanding principal amount thereof in the event the mortgaged property is not, prior to the due date of the 18th amortization payment of the mortgage, sold to a purchaser acceptable to the Commissioner who is the occupant of the property and who assumes and agrees to pay the mortgage indebtedness.

Subsec. (d)(3)(B)(i). Pub. L. 86–372, § 109(b), substituted ''$20,000,000'' for ''$12,500,000''.

Subsec. (d)(3)(B)(iii). Pub. L. 86–372, § 109(c)–(e), inserted ''(excluding exterior land improvements as defined by the Commissioner)'' after ''dwelling use'', and substituted ''$2,500'' for ''$2,250'' in two places, ''$9,000'' for ''$8,100'' in two places, ''$3,000'' for ''$2,700'', ''$9,400'' for ''$8,400'', and ''$1,250'' for ''$1,000''.

Subsec. (d)(3)(B)(iv). Pub. L. 86–372, § 109(e), added cl. (iv).

Subsec. (f)(1). Pub. L. 86–372, § 116(b), inserted reference to subsec. (k) of section 1710 of this title.

1958—Subsec. (d)(3)(A)(i). Pub. L. 85–364 substituted ''$13,500'' for ''$10,000'' in two places.

1957—Subsec. (d)(3). Pub. L. 85–104, § 102, amended provisions generally, and, among other changes, raised maximum mortgage obligation from 95 to 97 percent, inserted ''unless the construction of the dwelling was completed more than one year prior to the application for mortgage insurance'', and as to estimated replacement cost, raised figure from $9,000 to $10,000 and provided for 85 percent of such replacement cost in excess of $10,000 and 70 percent in excess of $16,000, in lieu of former provisions allowing 75 percent of such cost in excess of $9,000 with Presidential authority to increase dollar amounts to $10,000.

Subsec. (d)(3)(B)(iii). Pub. L. 85–10 substituted ''without regard to the number of rooms being less than four, or four or more'' for ''or per family unit, as the case may be'', in second proviso.

Subsec. (f)(1). Pub. L. 85–104, § 112, substituted ''(h), and (j) of section 1710 of this title'' for ''and (h) of section 1710 of this title''.

1956—Subsec. (d)(1)(A). Act Aug. 7, 1956, § 307(b), provided mortgage insurance assistance for urban renewal areas under section 1462 of this title without requiring the programs required of areas in cl. (i) or cl. (ii).

Subsec. (d)(3)(B)(ii). Act Aug. 7, 1956, § 107(a), inserted '', and shall include an allowance for builder's and sponsor's profit and risk of 10 per centum of all of the foregoing items except the land unless the Commissioner, after certification that such allowance is unreasonable, shall by regulation prescribe a lesser percentage'' after ''approved by the Secretary''.

Subsec. (d)(3)(B)(iii). Act Aug. 7, 1956, § 107(b), substituted ''*Provided further*'' for ''except'', substituted ''any of the foregoing dollar amount limitations'' for ''the foregoing limits'' and inserted ''or per family unit, as the case may be,'' after ''$1,000 per room''.

1955—Subsec. (d)(3)(A). Act Aug. 11, 1955, § 102(g)(1), provided that the maximum amount of a mortgage to be insured may be determined on the bases of estimated replacement cost, and required determination upon appraised value in case of properties other than new construction.

Subsec. (d)(3)(B). Act Aug. 11, 1955, § 102(c), (g)(2), increased from $5,000,000 to $12,500,000 the limitation on the maximum amount of a mortgage, provided that the maximum amount of a mortgage to be insured may be determined on the bases of estimated replacement cost, and required determination upon appraised value in case of properties other than new construction.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 406(b)(9) of Pub. L. 100–242 applicable only with respect to mortgages insured pursuant to conditional commitment issued on or after Feb. 5, 1988, or in accordance with direct endorsement program (24 CFR 200.163), if approved underwriter of mortgagee signs appraisal report for property on or after Feb. 5, 1988, see section 406(d) of Pub. L. 100–242, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

LIMITATION ON NUMBER OF DWELLING UNITS WITH MORTGAGES NOT PROVIDING FOR COMPLETE AMORTIZATION

For limitation on the number of dwelling units with mortgages not providing for complete amortization pursuant to authority granted by amendment to subsec. (d)(4) by section 446 of Pub. L. 98–181, see section 446(f) of Pub. L. 98–181, set out as a note under section 1713 of this title.

AMENDMENTS TO PROVISIONS FOR FAMILY UNIT LIMITS ON RENTAL HOUSING; EQUITABLE APPLICATION OF SUCH AMENDMENTS OR PRE-AMENDMENT PROVISIONS TO PROJECTS SUBMITTED FOR CONSIDERATION PRIOR TO SEPTEMBER 2, 1964

Equitable application of amendments to subsec. (d)(3)(B)(iii) of this section by section 107(c) of Pub. L. 88–560 or pre-amended provisions to projects submitted for consideration prior to Sept. 2, 1964, see section

107(g) of Pub. L. 88–560, set out as a note under section 1713 of this title.

LABOR STANDARDS

Application of section 1715c of this title, relating to labor standards, to certain mortgage insurance under this section, see subsec. (a) of section 1715c.

§ 1715*l*. Housing for moderate income and displaced families

(a) Purpose

This section is designed to assist private industry in providing housing for low and moderate income families and displaced families.

(b) Authorization

The Secretary is authorized, upon application by the mortgagee, to insure under this section as hereinafter provided any mortgage (including advances during construction on mortgages covering property of the character described in paragraphs (3) and (4) of subsection (d) of this section) which is eligible for insurance as provided herein and, upon such terms and conditions as the Secretary may prescribe, to make commitments for the insurance of such mortgages prior to the date of their execution or disbursement thereon.

(c) Definitions

As used in this section, the terms ''mortgage'', ''first mortgage'', ''mortgagee'', ''mortgagor'', ''maturity date'' and ''State'' shall have the same meaning as in section 1707 of this title.

(d) Eligibility for insurance; conditions; limits

To be eligible for insurance under this section, a mortgage shall—

(1) have been made to and be held by a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;

(2) be secured by property upon which there is located a dwelling conforming to applicable standards prescribed by the Secretary under subsection (f) of this section, and meeting the requirements of all State laws, or local ordinances or regulations, relating to the public health or safety, zoning, or otherwise, which may be applicable thereto, and shall involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount (A) not to exceed (i) $31,000 (or $36,000, if the mortgagor's family includes five or more persons) in the case of a property upon which there is located a dwelling designed principally for a single-family residence, (ii) $35,000 in the case of a property upon which there is located a dwelling designed principally for a two-family residence, (iii) $48,600 in the case of a property upon which there is located a dwelling designed principally for a three-family residence, or (iv) $59,400 in the case of a property upon which there is located a dwelling designed principally for a four-family residence, except that the Secretary may increase the foregoing amounts to not to exceed $36,000 (or $42,000 if the mortgagor's family includes five or more persons), $45,000, $57,600, and $68,400, respectively, in any geographical area where he finds that cost levels so require; and (B) not to exceed the appraised value of the property (as of the date the mortgage is accepted for insurance): *Provided*, That (i)(1) in the case of a displaced family, he shall have paid on account of the property at least $200 in the case of a single-family dwelling, $400 in the case of a two-family dwelling, $600 in the case of a three-family dwelling, and $800 in the case of a four-family dwelling, or (2) in the case of any other family, he shall have paid on account of the property at least 3 per centum of the Secretary's estimate of its acquisition cost (excluding the mortgage insurance premium paid at the time the mortgage is insured), in cash or its equivalent; which amount in either instance may include amounts to cover settlement costs and initial payments for taxes, hazard insurance, and other prepaid expenses; or (ii) in the case of repair and rehabilitation, the amount of the mortgage shall not exceed the sum of the estimated cost of repair and rehabilitation and the Secretary's estimate of the value of the property before repair and rehabilitation, except that in no case involving refinancing shall such mortgage exceed such estimated cost of repair and rehabilitation and the amount (as determined by the Secretary) required to refinance existing indebtedness secured by the property: *Provided further*, That the mortgagor shall to the maximum extent feasible be given the opportunity to contribute the value of his labor as equity in such dwelling; or

(3) if executed by a mortgagor which is a public body or agency (and, except with respect to a project assisted or to be assisted pursuant to section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], which certifies that it is not receiving financial assistance from the United States exclusively pursuant to such Act [42 U.S.C. 1437 et seq.]) a cooperative (including an investor-sponsor who meets such requirements as the Secretary may impose to assure that the consumer interest is protected), or a limited dividend corporation (as defined by the Secretary), or a private nonprofit corporation or association, or other mortgagor approved by the Secretary, and regulated or supervised under Federal or State laws or by political subdivisions of States, or agencies thereof, or by the Secretary under a regulatory agreement or otherwise, as to rents, charges, and methods of operation, in such form and in such manner as in the opinion of the Secretary will effectuate the purposes of this section—

(i) Repealed. Pub. L. 93–383, title III, § 304(e)(1), Aug. 22, 1974, 88 Stat. 678.

(ii)(I) not exceed, for such part of the property or project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary) $42,048 per family unit without a bedroom, $48,481 per family unit with one bedroom, 58,469[1] per family unit with two bedrooms, $74,840 per family unit with three bedrooms, and $83,375 per family unit with four or more bedrooms; except that as to projects to con-

[1] So in original. Probably should be preceded by a dollar sign.

sist of elevator-type structures the Secretary may, in his discretion, increase the dollar amount limitations per family unit to not to exceed $44,250 per family unit without a bedroom, $50,724 per family unit with one bedroom, $61,680 per family unit with two bedrooms, $79,793 per family unit with three bedrooms, and $87,588 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design; (II) the Secretary may, by regulation, increase any of the dollar amount limitations in subclause (I) (as such limitations may have been adjusted in accordance with section 1712a of this title) by not to exceed 170 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 170 percent, or 215 percent in high cost areas, where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720[2] of this title (as such section existed immediately before November 30, 1983) is involved; and

(iii) not exceed (1) in the case of new construction, the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed improvements are completed (the replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Secretary), or (2) in the case of repair and rehabilitation, the sum of the estimated cost of repair and rehabilitation and the Secretary's estimate of the value of the property before repair and rehabilitation: *Provided*, That the mortgage may involve the financing of the purchase of property which has been rehabilitated by a local public agency with Federal assistance pursuant to section 110(c)(8) of the Housing Act of 1949 [42 U.S.C. 1460(c)(8)], and, in such case, the amount of the mortgage shall not exceed the appraised value of the property as of the date the mortgage is accepted for insurance: *Provided further*, That in the case of any mortgagor other than a nonprofit corporation or association, cooperative (including an investor-sponsor), or public body, or a mortgagor meeting the special requirements of subsection (e)(1) of this section, the amount of the mortgage shall not exceed 90 per centum of the amount otherwise authorized under this section: *Provided further*, That such property or project, when constructed, or repaired and rehabilitated, shall be for use as a rental or cooperative project, and low and moderate income families or displaced families shall be eligible for occupancy in accordance with such regulations and procedures as may be prescribed by the Secretary and the Secretary may adopt such requirements as he determines to be desirable regarding consultation with local public officials where such consultation is appropriate by reason of the relationship of such project to projects under other local programs; or

(4) if executed by a mortgagor and which is approved by the Secretary—

(i) Repealed. Pub. L. 93–383, title III, § 304(e)(2), Aug. 22, 1974, 88 Stat. 678.

(ii)(I) not exceed, for such part of the property or project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary), $37,843 per family unit without a bedroom, $42,954 per family unit with one bedroom, $51,920 per family unit with two bedrooms, $65,169 per family unit with three bedrooms, and $73,846 per family unit with four or more bedrooms; except that as to projects to consist of elevator-type structures the Secretary may, in his discretion, increase the dollar amount limitations per family unit to not to exceed $40,876 per family unit without a bedroom, $46,859 per family unit with one bedroom, $56,979 per family unit with two bedrooms, $73,710 per family unit with three bedrooms, and $80,913 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design; (II) the Secretary may, by regulation, increase any of the dollar limitations in subclause (I) (as such limitations may have been adjusted in accordance with section 1712a of this title) by not to exceed 170 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 170 percent, or 215 percent in high cost areas, where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720[2] of this title (as such section existed immediately before November 30, 1983) is involved;

(iii) not exceed (in the case of a property or project approved for mortgage insurance prior to the beginning of construction) 90 per centum of the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed improvements are completed (the replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Secretary, and shall include an allowance for builder's and sponsor's profit and risk of 10 per centum of all of the foregoing items, except the land, unless the Secretary, after certifi-

[2] See References in Text note below.

cation that such allowance is unreasonable, shall by regulation prescribe a lesser percentage); and

(iv) not exceed 90 per centum of the sum of the estimated cost of repair and rehabilitation (including the cost of evaluating and reducing lead-based paint hazards, as such terms are defined in section 4851b of title 42) and the Secretary's estimate of the value of the property before repair and rehabilitation if the proceeds of the mortgage are to be used for the repair and rehabilitation of a property or project: *Provided*, That the Secretary may, in his discretion, require the mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation, and for such purpose the Secretary may make such contracts with and acquire for not to exceed $100 such stock or interest in any such mortgagor as the Secretary may deem necessary to render effective such restrictions or regulations, with such stock or interest being paid for out of the General Insurance Fund and being required to be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance;

(5) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee; and contain such terms and provisions with respect to the application of the mortgagor's periodic payment to amortization of the principal of the mortgage, insurance, repairs, alterations, payment of taxes, default reserves, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters as the Secretary may in his discretion prescribe: *Provided*, That a mortgage insured under the provisions of subsection (d)(3) of this section shall bear interest (exclusive of any premium charges for insurance and service charge, if any) at not less than the lower of (A) 3 per centum per annum, or (B) the annual rate of interest determined, from time to time by the Secretary of the Treasury at the request of the Secretary, by estimating the average market yield to maturity on all outstanding marketable obligations of the United States, and by adjusting such yield to the nearest one-eighth of 1 per centum, and there shall be no differentiation in the rate of interest charged under this proviso as between mortgagors under subsection (d)(3) of this section on the basis of differences in the types or classes of such mortgagors, and

(6) provide for complete amortization by periodic payments (unless otherwise approved by the Secretary) within such terms as the Secretary may prescribe, but as to mortgages coming within the provisions of subsection (d)(2) of this section not to exceed from the date of the beginning of amortization of the mortgage (i) 40 years in the case of a displaced family, (ii) 35 years in the case of any other family if the mortgage is approved for insurance prior to construction, except that the period in such case may be increased to not more than 40 years where the mortgagor is not able, as determined by the Secretary, to make the required payments under a mortgage having a shorter amortization period, and (iii) 30 years in the case of any other family where the mortgage is not approved for insurance prior to construction.

(e) "Mortgagor" defined; release of mortgagor or part of property

(1) A mortgagor which may be approved by the Secretary as provided in subsection (d)(3) of this section includes a mortgagor which, as a condition of obtaining insurance of the mortgage and prior to the submission of its application for such insurance, has entered into an agreement (in form and substance satisfactory to the Secretary) with a private nonprofit corporation eligible for an insured mortgage under the provisions of subsection (d)(3) of this section, that the mortgagor will sell the project when it is completed to the corporation at the actual cost of the project, as certified pursuant to section 1715r of this title. The mortgagor to whom the property is sold shall be regulated or supervised by the Secretary as provided in subsection (d)(3) of this section to effectuate its purposes.

(2) The Secretary may at any time, under such terms and conditions as he may prescribe, consent to the release of the mortgagor from his liability under the mortgage or the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage.

(f) Compliance with standards; nondwelling facilities in projects in urban renewal areas; number of family units; premium charges; housing for low-income purchasers; expiration of mortgage insurance authority; "family" defined; single occupants in subsection (d)(3) housing; use of certain housing facilities for classroom purposes; return of advances for capital improvements

The property or project shall comply with such standards and conditions as the Secretary may prescribe to establish the acceptability of such property for mortgage insurance and may include such commercial and community facilities as the Secretary deems adequate to serve the occupants: *Provided*, That in the case of any such property or project located in an urban renewal area, the provisions of section 1715k(d)(3)(B)(iv) of this title shall apply with respect to the nondwelling facilities which may be included in the mortgage: *Provided further*, That, in the case of a mortgage which bears interest at the below-market interest rate prescribed in the proviso of subsection (d)(5) of this section, the provisions of section 1715k(d)(3)(B)(iv) of this title shall only apply if the mortgagor waives the right to receive dividends on its equity investment in the portion thereof devoted to commercial facilities.

A property or project covered by a mortgage insured under the provisions of subsection (d)(3) or (d)(4) of this section shall include five or more family units: *Provided*, That such units, in the case of a project designed primarily for occupancy by displaced, elderly, or handicapped families, need not, with the approval of the Secretary, contain kitchen facilities, and such projects may include central dining and other shared facilities. The Secretary is authorized to

adopt such procedures and requirements as he determines are desirable to assure that the dwelling accommodations provided under this section are available to displaced families. Notwithstanding any provision of this chapter, the Secretary, in order to assist further the provision of housing for low and moderate income families, in his discretion and under such conditions as he may prescribe, may insure a mortgage which meets the requirements of subsection (d)(3) of this section as in effect after June 30, 1961, or which meets the requirements of subsection (h), (i), or (j) of this section with no premium charge, with a reduced premium charge, or with a premium charge for such period or periods during the time the insurance is in effect as the Secretary may determine, and there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to reimburse the General Insurance Fund for any net losses in connection with such insurance. Any person who is sixty-two years of age or over, or who is a handicapped person within the meaning of section 1701q[2] of this title, or who is a displaced person, shall be deemed to be a family within the meaning of the terms ''family'' and ''families'' as those terms are used in this section. Low- and moderate-income persons who are less than 62 years of age shall be eligible for occupancy of dwelling units in a project financed with a mortgage insured under subsection (d)(3) of this section. In any case in which it is determined in accordance with regulations of the Secretary that facilities in existence or under construction on December 31, 1970, which could appropriately be used for classroom purposes are available in any such property or project and that public schools in the community are overcrowded due in part to the attendance at such schools of residents of the property or project, such facilities may be used for such purposes to the extent permitted in such regulations (without being subject to any of the requirements of the proviso in section 1715k(d)(3)(B)(iv) of this title except the requirement that the project be predominantly residential).

As used in this section the terms ''displaced family'', ''displaced families'', and ''displaced person'' shall mean a family or families, or a person, displaced from an urban renewal area, or as a result of governmental action, or as a result of a major disaster as determined by the President pursuant to the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.].

In order to induce advances by owners for capital improvements (excluding any owner contributions that may be required by the Secretary as a condition for assistance under section 201 of the Housing and Community Development Amendments of 1978) to benefit projects covered by a mortgage under the provisions of subsection (d)(3) of this section that bears a below market interest rate prescribed in the proviso to subsection (d)(5) of this section, in establishing the rental charge for the project the Secretary may include an amount that would permit a return of such advances with interest to the owner out of project income, on such terms and conditions as the Secretary may determine. Any resulting increase in rent contributions shall be—

(A) to a level not exceeding the lower of 30 percent of the adjusted income of the tenant or the published existing fair market rent for comparable housing established under section 8(c) of the United States Housing Act of 1937 [42 U.S.C. 1437f(c)];

(B) phased in equally over a period of not less than 3 years, if such increase is 30 percent or more; and

(C) limited to not more than 10 percent per year if such increase is more than 10 percent but less than 30 percent.

Assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] shall be provided, to the extent available under appropriations Acts, if necessary to mitigate any adverse effects on income-eligible tenants.

(g) Entitlement of mortgagee to benefits; applicability of other provisions; debentures; "going Federal rate" defined; transfer of original credit instrument

The mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided—

(1) as to mortgages meeting the requirements of paragraph (2) of subsection (d) of this section, paragraph (5) of subsection (h) of this section, or paragraph (2) of subsection (i) of this section, as provided in section 1710(a) of this title with respect to mortgages insured under section 1709 of this title, and the provisions of subsections (b), (c), (d), (e), (f), (g), (h),[2] (j), and (k)[2] of section 1710 of this title shall be applicable to such mortgages insured under this section, except that all references therein to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund and all references therein to section 1709 of this title shall be construed to refer to this section; or

(2) as to mortgages meeting the requirements of paragraph (3) or (4) of subsection (d) of this section, paragraph (1) of subsection (h) of this section, or paragraph (2) of subsection (j) of this section as provided in section 1713(g) of this title with respect to mortgages insured under said section 1713, and the provisions of subsections (h), (i), (j), (k), and (*l*) of section 1713 of this title shall be applicable to such mortgages insured under this section; or

(3) as to mortgages meeting the requirements of this section which are insured or initially endorsed for insurance on or after June 30, 1961, notwithstanding the provisions of paragraphs (1) and (2) of this subsection, the Secretary in his discretion, in accordance with such regulations as he may prescribe, may make payments pursuant to such paragraphs in cash or in debentures (as provided in the mortgage insurance contract), or may acquire a mortgage loan that is in default and the security therefor upon payment to the mortgagee in cash or in debentures (as provided in the mortgage insurance contract) of a total amount equal to the unpaid principal balance of the loan plus any accrued interest and any advances approved by the Secretary and made previously by the mortgagee under the provi-

sions of the mortgage, and after the acquisition of any such mortgage by the Secretary the mortgagee shall have no further rights, liabilities, or obligations with respect to the loan or the security for the loan. The appropriate provisions of sections 1710 and 1713 of this title relating to the issuance of debentures shall apply with respect to debentures issued under this paragraph, and the appropriate provisions of sections 1710 and 1713 of this title relating to the rights, liabilities, and obligations of a mortgagee shall apply with respect to the Secretary when he has acquired an insured mortgage under this paragraph, in accordance with and subject to regulations (modifying such provisions to the extent necessary to render their application for such purposes appropriate and effective) which shall be prescribed by the Secretary, except that as applied to mortgages so acquired (A) all references in section 1710 of this title to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund, and (B) all references in section 1710 of this title to section 1709 of this title shall be construed to refer to this section. If the insurance is paid in cash, there shall be added to such payment an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Secretary.

(4)(A) in the event any mortgage insured under this section pursuant to a commitment to insure entered into before November 30, 1983, is not in default at the expiration of twenty years from the date the mortgage was endorsed for insurance, the mortgagee shall, within a period thereafter to be determined by the Secretary, have the option to assign, transfer, and deliver to the Secretary the original credit instrument and the mortgage securing the same and receive the benefits of the insurance as hereinafter provided in this paragraph, upon compliance with such requirements and conditions as to the validity of the mortgage as a first lien and such other matters as may be prescribed by the Secretary at the time the loan is endorsed for insurance. Upon such assignment, transfer, and delivery the obligation of the mortgagee to pay the premium charges for insurance shall cease, and the Secretary shall issue to the mortgagee debentures having a par value equal to the amount of the original principal obligation of the mortgage which was unpaid on the date of the assignment, plus accrued interest to such date. Debentures issued pursuant to this paragraph shall be issued in the same manner and subject to the same terms and conditions as debentures issued under paragraph (1) of this subsection, except that the debentures issued pursuant to this paragraph shall be dated as of the date the mortgage is assigned to the Secretary, shall mature ten years after such date, and shall bear interest from such date at the going Federal rate determined at the time of issuance. The term ''going Federal rate'' as used herein means the annual rate of interest which the Secretary of the Treasury shall specify as applicable to the six-month period (consisting of January through June or July through December) which includes the issuance date of such debentures, which applicable rate for each such six-month period shall be determined by the Secretary of the Treasury by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the month of May or the month of November, as the case may be, next preceding such six-month period, on all outstanding marketable obligations of the United States having a maturity date of eight to twelve years from the first day of such month of May or November (or, if no such obligations are outstanding, the obligation next shorter than eight years and the obligation next longer than twelve years, respectively, shall be used), and by adjusting such estimated average annual yield to the nearest one-eight of 1 per centum. The Secretary shall have the same authority with respect to mortgages assigned to him under this paragraph as contained in sections 1713(k) and 1713(*l*) of this title as to mortgages insured by the Secretary and assigned to him under section 1713 of this title.

(B) In processing a claim for insurance benefits under this paragraph, the Secretary may direct the mortgagee to assign, transfer, and deliver the original credit instrument and the mortgage securing it directly to the Government National Mortgage Association in lieu of assigning, transferring, and delivering the credit instrument and the mortgage to the Secretary. Upon the assignment, transfer, and delivery of the credit instrument and the mortgage to the Association, the mortgage insurance contract shall terminate and the mortgagee shall receive insurance benefits as provided in subparagraph (A). The Association is authorized to accept such loan documents in its own name and to hold, service, and sell such loans as agent for the Secretary. The mortgagor's obligation to pay a service charge in lieu of a mortgage insurance premium shall continue as long as the mortgage is held by the Association or by the Secretary. The Secretary shall have the same authority with respect to mortgages assigned to the Secretary or the Association under this subparagraph as provided by section 1715n(c) of this title.

(C)(i) In lieu of accepting assignment of the original credit instrument and the mortgage securing the credit instrument under subparagraph (A) in exchange for receipt of debentures, the Secretary shall arrange for the sale of the beneficial interests in the mortgage loan through an auction and sale of the (I) mortgage loans, or (II) participation certificates, or other mortgage-backed obligations in a form acceptable to the Secretary (in this subparagraph referred to as ''participation certificates''). The Secretary shall arrange the auction and sale at a price, to be paid to the mortgagee, of par plus accrued interest to the date of sale. The sale price shall also include the right to a subsidy payment described in clause (iii).

(ii)(I) The Secretary shall conduct a public auction to determine the lowest interest rate necessary to accomplish a sale of the bene-

ficial interests in the original credit instrument and mortgage securing the credit instrument.

(II) A mortgagee who elects to assign a mortgage shall provide the Secretary and persons bidding at the auction a description of the characteristics of the original credit instrument and mortgage securing the original credit instrument, which shall include the principal mortgage balance, original stated interest rate, service fees, real estate and tenant characteristics, the level and duration of applicable Federal subsidies, and any other information determined by the Secretary to be appropriate. The Secretary shall also provide information regarding the status of the property with respect to the provisions of the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act with respect to eligibility to prepay the mortgage, a statement of whether the owner has filed a notice of intent to prepay or a plan of action under the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act, and the details with respect to incentives provided under the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act in lieu of exercising prepayment rights.

(III) The Secretary shall, upon receipt of the information in subclause (II), promptly advertise for an auction and publish such mortgage descriptions in advance of the auction. The Secretary may conduct the auction at any time during the 6-month period beginning upon receipt of the information in subclause (II) but under no circumstances may the Secretary conduct an auction before 2 months after receiving the mortgagee's written notice of intent to assign its mortgage to the Secretary.

(IV) In any auction under this subparagraph, the Secretary shall accept the lowest interest rate bid for purchase that the Secretary determines to be acceptable. The Secretary shall cause the accepted bid to be published in the Federal Register. Settlement for the sale of the credit instrument and the mortgage securing the credit instrument shall occur not later than 30 business days after the date winning bidders are selected in the auction, unless the Secretary determines that extraordinary circumstances require an extension (not to exceed 60 days) of the period.

(V) If no bids are received, the bids that are received are not acceptable to the Secretary, or settlement does not occur within the period under subclause (IV), the mortgagee shall retain all rights (including the right to interest, at a rate to be determined by the Secretary, for the period covering any actions taken under this subparagraph) under this section to assign the mortgage loan to the Secretary.

(iii) As part of the auction process, the Secretary shall agree to provide a monthly interest subsidy payment from the General Insurance Fund to the purchaser under the auction of the original credit instrument or the mortgage securing the credit instrument (and any subsequent holders or assigns who are approved mortgagees). The subsidy payment shall be paid on the first day of each month in an amount equal to the difference between the stated interest due on the mortgage loan and the lowest interest rate necessary to accomplish a sale of the mortgage loan or participation certificates (less the servicing fee, if appropriate) for the then unpaid principal balance plus accrued interest at a rate determined by the Secretary. Each interest subsidy payment shall be treated by the holder of the mortgage as interest paid on the mortgage. The interest subsidy payment shall be provided until the earlier of—

(I) the maturity date of the loan;

(II) prepayment of the mortgage loan in accordance with the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act, where applicable; or

(III) default and full payment of insurance benefits on the mortgage loan by the Federal Housing Administration.

(iv) The Secretary shall require that the mortgage loans or participation certificates presented for assignment are auctioned as whole loans with servicing rights released and also are auctioned with servicing rights retained by the current servicer.

(v) To the extent practicable, the Secretary shall encourage State housing finance agencies, nonprofit organizations, and organizations representing the tenants of the property securing the mortgage, or a qualified mortgagee participating in a plan of action under the Emergency Low Income Housing Preservation Act of 1987 or subsequent Act to participate in the auction.

(vi) The Secretary shall implement the requirements imposed by this subparagraph within 30 days from November 5, 1990, and not be subject to the requirement of prior issuance of regulations in the Federal Register. The Secretary shall issue regulations implementing this section within 6 months of November 5, 1990.

(vii) Nothing in this subparagraph shall diminish or impair the low income use restrictions applicable to the project under the original regulatory agreement or the revised agreement entered into pursuant to the Emergency Low Income Housing Preservation Act of 1987 or subsequent Act, if any, or other agreements for the provision of Federal assistance to the housing or its tenants.

(viii) This subparagraph shall not apply after December 31, 2002, except that this subparagraph shall continue to apply if the Secretary receives a mortgagee's written notice of intent to assign its mortgage to the Secretary on or before such date. Not later than January 31 of each year (beginning in 1992), the Secretary shall submit to the Congress a report including statements of the number of mortgages auctioned and sold and their value, the amount of subsidies committed to the program under this subparagraph, the ability of the Secretary to coordinate the program with the incentives provided under the Emergency Low Income Housing Preservation Act of 1987 or subsequent Act, and the costs and benefits derived from the program for the Federal Government.

(ix) The authority of the Secretary to conduct multifamily auctions under this para-

graph shall be effective for any fiscal year only to the extent and in such amounts as are approved in appropriations Acts for the costs of loan guarantees (as defined in section 661a of title 2), including the cost of modifying loans.

(h) Insurance of mortgages to finance purchase and rehabilitation by nonprofit organizations of housing for resale to low-income purchasers, and insurance of mortgages executed for the purpose of financing rehabilitation or improvement of dwellings owned and occupied by mortgagors who purchased from nonprofit organizations

(1) In addition to mortgages insured under the other provisions of this section, the Secretary is authorized, upon application by the mortgagee, to insure under this subsection as hereinafter provided any mortgage (including advances under such mortgage during rehabilitation) which is executed by a nonprofit organization to finance the purchase and rehabilitation of deteriorating or substandard housing for subsequent resale to low-income home purchasers and, upon such terms and conditions as the Secretary may prescribe, to make commitments for the insurance of such mortgages prior to the date of their execution or disbursement thereon.

(2) To be eligible for insurance under paragraph (1) of this subsection, a mortgage shall—

(A) be executed by a private nonprofit corporation or association, approved by the Secretary, for financing the purchase and rehabilitation (with the intention of subsequent resale) of property comprising one or more tracts or parcels, whether or not contiguous, upon which there is located deteriorating or substandard housing consisting of (i) four or more single-family dwellings of detached, semidetached, or row construction, or (ii) four or more one-family units in a structure or structures for which a plan of family unit ownership approved by the Secretary is established;

(B) be secured by the property which is to be purchased and rehabilitated with the proceeds thereof;

(C) be in a principal amount not exceeding the appraised value of the property at the time of its purchase under the mortgage plus the estimated cost of the rehabilitation;

(D) bear interest (exclusive of premium charges for insurance and service charge, if any) at the rate in effect under the proviso in subsection (d)(5) of this section at the time of execution;

(E) provide for complete amortization (subject to paragraph (5)(E)) by periodic payments within such term as the Secretary may prescribe; and

(F) provide for the release of individual single-family dwellings from the lien of the mortgage upon the sale of the rehabilitated dwellings in accordance with paragraph (5).

(3) No mortgage shall be insured under paragraph (1) unless the mortgagor shall have demonstrated to the satisfaction of the Secretary that (A) the property to be rehabilitated is located in a neighborhood which is sufficiently stable and contains sufficient public facilities and amenities to support long-term values, or (B) the rehabilitation to be carried out by the mortgagor plus its related activities and the activities of other owners of housing in the neighborhood, together with actions to be taken by public authorities, will be of such scope and quality as to give reasonable promise that a stable environment will be created in the neighborhood.

(4) The aggregate principal balance of all mortgages insured under paragraph (1) and outstanding at any one time shall not exceed $50,000,000.

(5)(A) No mortgage shall be insured under paragraph (1) unless the mortgagor enters into an agreement (in form and substance satisfactory to the Secretary) that it will offer to sell the dwellings involved, upon completion of their rehabilitation, to individuals or families (hereinafter referred to as ''low-income purchasers'') determined by the Secretary to have incomes below the maximum amount specified (with respect to the area involved) in section 1701s(c)(1) of this title.

(B) The Secretary is authorized to insure under this paragraph mortgages executed to finance the sale of individual dwellings to low-income purchasers as provided in subparagraph (A). Any such mortgage shall—

(i) be in a principal amount equal to that portion of the unpaid balance of the principal mortgage covering the property (insured under paragraph (1)) which is allocable to the individual dwelling involved; and

(ii) bear interest at the same rate as the principal mortgage or such lower rate, not less than 1 per centum, as the Secretary may prescribe if in his judgment the purchaser's income is sufficiently low to justify the lower rate, and provide for complete amortization within a term equal to the remaining term (determined without regard to subparagraph (E)) of such principal mortgage: *Provided*, That, if the rate of interest initially prescribed is less than the rate borne by the principal mortgage and the purchaser's income (as determined on the basis of periodic review) subsequently rises, the rate of interest so prescribed shall be increased (but not above the rate borne by such principal mortgage), under regulations of the Secretary, to the extent appropriate to reflect the increase in such income, and the mortgage shall so provide.

(C) The price for which any individual dwelling is sold to a low-income purchaser under this paragraph shall be the amount of the mortgage covering the sale as determined under subparagraph (B), except that the purchaser shall in addition thereto be required to pay on account of the property at the time of purchase such amount (which shall not be less than $200, but which may be applied in whole or in part toward closing costs) as the Secretary may determine to be reasonable and appropriate in the circumstances.

(D) Upon the sale under this paragraph of any individual dwelling, such dwelling shall be released from the lien of the principal mortgage, and such mortgage shall thereupon be replaced by an individual mortgage insured under this paragraph to the extent of the portion of its un-

paid balance which is allocable to the dwelling covered by such individual mortgage. Until all of the individual dwellings in the property covered by the principal mortgage have been sold, the mortgagor shall hold and operate the dwellings remaining unsold at any given time as though they constituted rental units in a project covered by a mortgage which is insured under subsection (d)(3) (and which receives the benefits of the interest rate provided for in the proviso in subsection (d)(5) of this section).

(E) Upon the sale under this paragraph of all of the individual dwellings in the property covered by the principal mortgage, and the release of all individual dwellings from the lien of the principal mortgage, the insurance of the principal mortgage shall be terminated and no adjusted premium charge shall be charged by the Secretary upon such termination.

(F) Any mortgage insured under this paragraph shall contain a provision that if the low-income mortgagor does not continue to occupy the property the interest rate shall increase to the highest rate permissible under this section and the regulations of the Secretary effective at the time of commitment for insurance of the principal mortgage; except that the increase in interest rate shall not be applicable if the property is sold and the purchaser is (i) the nonprofit organization which executed the principal mortgage, (ii) a public housing agency having jurisdiction under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] over the area where the dwelling is located, or (iii) a low-income purchaser approved for the purposes of this paragraph by the Secretary.

(6) In addition to the mortgages that may be insured under paragraphs (1) and (5), the Secretary is authorized to insure under this subsection at any time within one year after August 1, 1968, upon such terms and conditions as he may prescribe, mortgages which are executed by individuals or families that meet the income criteria prescribed in paragraph (5)(A) and are executed for the purpose of financing the rehabilitation or improvement of single-family dwellings of detached, semidetached, or row construction that are owned in each instance by a mortgagor who has purchased the dwelling from a nonprofit organization of the type described in this subsection. To be eligible for such insurance, a mortgage shall—

(A) be in a principal amount not exceeding the lesser of $18,000 or the sum of the estimated cost of repair and rehabilitation and the Secretary's estimate of the value of the property before repair and rehabilitation, except that in no case involving refinancing shall such mortgage exceed such estimated cost of repair and rehabilitation and the amount (as determined by the Secretary) required to refinance existing indebtedness secured by the property;

(B) bear interest (exclusive of premium charges for insurance and service charge, if any) at 3 per centum per annum or such lower rate, not less than 1 per centum, as the Secretary may prescribe if in his judgment the mortgagor's income is sufficiently low to justify the lower rate: *Provided*, That, if the rate of interest initially prescribed is less than 3 per centum per annum and the mortgagor's income (as determined on the basis of periodic review) subsequently rises, the rate shall be increased (but not above 3 per centum), under regulations of the Secretary, to the extent appropriate to reflect the increase in such income, and the mortgage shall so provide;

(C) involve a mortgagor that shall have paid on account of the property at the time of the rehabilitation such amount (which shall not be less than $200 in cash or its equivalent, but which may be applied in whole or in part toward closing costs) as the Secretary may determine to be reasonable and appropriate under the circumstances; and

(D) contain a provision that, if the low-income mortgagor does not continue to occupy the property, the interest rate shall increase to the highest rate permissible under this section and the regulations of the Secretary effective at the time the commitment was issued for insurance of the mortgage; except that the increase in interest rate shall not be applicable if the property is sold and the purchaser is (i) a nonprofit organization which has been engaged in purchasing and rehabilitating deteriorating and substandard housing with financing under a mortgage insured under paragraph (1) of this subsection, (ii) a public housing agency having jurisdiction under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] over the area where the dwelling is located, or (iii) a low-income purchaser approved for the purposes of this paragraph by the Secretary.

(7) Where the Secretary has approved a plan of family unit ownership, the terms ''single-family dwelling'', ''single-family dwellings'', ''individual dwelling'', and ''individual dwellings'' shall mean a family unit or family units, together with the undivided interest (or interests) in the common areas and facilities.

(8) For purposes of this subsection, the terms ''single-family dwelling'' and ''single-family dwellings'' (except for purposes of paragraph (7)) shall include a two-family dwelling which has been approved by the Secretary.

(i) Conversion of insured project to plan of family unit ownership; sale of units; agreements for maintenance; release from lien of project mortgage; insurance of mortgages financing purchase of individual family units; eligibility for insurance; definitions

(1) The Secretary is authorized, with respect to any project involving a mortgage insured under subsection (d)(3) of this section which bears interest at the below-market interest rate prescribed in the proviso of subsection (d)(5) of this section, to permit a conversion of the ownership of such project to a plan of family unit ownership. Under such plan, each family unit shall be eligible for individual ownership and provision shall be included for the sale of the family units, together with an undivided interest in the common areas and facilities which serve the project, to low or moderate income purchasers. The Secretary shall obtain such agreements as he determines to be necessary to assure continued maintenance of the common areas and facilities. Upon such sale, the family

unit and the undivided interest in the common areas shall be released from the lien of the project mortgage.

(2)(A) The Secretary is authorized, upon application by the mortgagee, to insure under this subsection mortgages financing the purchase of individual family units under the plan prescribed in paragraph (1). Commitments may be issued by the Secretary for the insurance of such mortgages prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe. To be eligible for such insurance, the mortgage shall—

(i) be executed by a mortgagor having an income within the limits prescribed by the Secretary for occupants of projects financed with a mortgage insured under subsection (d)(3) of this section which bears interest at the below-market rate prescribed in the proviso of subsection (d)(5) of this section;

(ii) involve a principal obligation (including such initial service charges, and such appraisal, inspection, and other fees, as the Secretary shall approve) in an amount not to exceed the Secretary's estimate of the appraised value of the family unit, including the mortgagor's interest in the common areas and facilities, as of the date the mortgage is accepted for insurance;

(iii) bear interest at a rate determined by the Secretary (which may vary in accordance with the regulations of the Secretary promulgated pursuant to the last sentence of paragraph (4) of this subsection) but not less than the below-market rate in effect under the proviso of subsection (d)(5) of this section at the date of the commitment for insurance; and

(iv) provide for complete amortization by periodic payments within such term as the Secretary may prescribe, but not to exceed forty years from the beginning of amortization of the mortgage.

(B) The price for which the individual family unit is sold to the low or moderate income purchaser shall not exceed the appraised value of the property, as determined under subparagraph (A)(ii), except that the purchaser shall be required to pay on account of the property at the time of purchase at least such amount, in cash or its equivalent (which shall be not less than 3 per centum of such price, but which may be applied in whole or in part toward closing costs), as the Secretary may determine to be reasonable and appropriate.

(3) Upon the sale of all of the family units covered by the project mortgage, and the release of all of the family units (including the undivided interest allocable to each unit in the common areas and facilities) from the lien of the project mortgage, the insurance of the project mortgage shall be terminated and no adjusted premium charge shall be collected by the Secretary upon such termination.

(4) Any mortgage covering an individual family unit insured under this subsection shall contain a provision that, if the original mortgagor does not continue to occupy the property, the interest rate shall increase to the highest rate permissible under this section and the regulations of the Secretary effective at the time the commitment was issued for the insurance of the project mortgage; except that the requirement for an increase in interest rate shall not be applicable if the property is sold and the purchaser is (i) a nonprofit purchaser approved by the Secretary, or (ii) a low or moderate income purchaser who has an income within the limits prescribed by the Secretary for occupants of projects financed with a mortgage insured under subsection (d)(3) of this section which bears interest at the below-market rate prescribed in the proviso of subsection (d)(5) of this section. The mortgage shall also contain a provision that, if the Secretary determines that the annual income of the original mortgagor (or a purchaser described in clause (ii) of the preceding sentence) has increased to an amount enabling payment of a greater rate of interest, the interest rate of the individual mortgage may be increased up to the highest rate permissible under the regulations of the Secretary for mortgages insured under this section, effective at the time the commitment was issued for the insurance of the mortgage.

(5) For the purpose of this subsection—

(i) the term ''mortgage'', when used in relation to a mortgage insured under paragraph (2) of this subsection, includes a first mortgage given to secure the unpaid purchase price of a fee interest in, or a long-term lease-hold interest in, a one-family unit in a multifamily project and an undivided interest in the common areas and facilities which serve the project; and

(ii) the term ''common areas and facilities'' includes the land and such commercial, community, and other facilities as are approved by the Secretary.

(j) Conversion of insured rental projects to cooperatives; eligibility for membership; insurance of cooperative mortgages financing purchase of projects; eligibility for insurance

(1) The Secretary is authorized, with respect to any rental project involving a mortgage insured under subsection (d)(3) of this section which bears interest at the below-market interest rate prescribed in the proviso of subsection (d)(5) of this section, to permit a conversion of the ownership of such project to a cooperative approved by the Secretary. Membership in such cooperative shall be made available only to those families having an income within the limits prescribed by the Secretary for occupants of projects financed with a mortgage insured under subsection (d)(3) of this section which bears interest at such below-market rate: *Provided*, That families residing in the rental project at the time of its conversion to a cooperative who do not meet such income limits may be permitted to become members in the cooperative under such special terms and conditions as the Secretary may prescribe.

(2) The Secretary is authorized, upon application by the mortgagee, to insure under this subsection cooperative mortgages financing the purchase of projects meeting the requirements of paragraph (1). Commitments may be issued by the Secretary for the insurance of such mortgages prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe. To be eligible for such insurance, the mortgage shall—

(i) involve a principal obligation (including such initial service charges and appraisal, inspection, and other fees as the Secretary shall approve) in an amount not exceeding the appraised value of the property for continued use as a cooperative, which value shall be based upon a mortgage amount on which the debt service can be met from the income of the property when operated on a nonprofit basis, after the payment of all operating expenses, taxes, and required reserves;

(ii) bear interest at the below-market rate prescribed in the proviso of subsection (d)(5) of this section; and

(iii) provide for complete amortization within such term as the Secretary may prescribe.

(k) Increase in maximum insurance amounts for costs incurred from solar energy systems and energy conservation measures

With respect to any project insured under subsection (d)(3) or (d)(4) of this section, the Secretary may further increase the dollar amount limitations which would otherwise apply for the purpose of those subsections by up to 20 per centum if such increase is necessary to account for the increased cost of the project due to the installation therein of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42)[3] in cases where the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure.

(*l*) Rental charges; "eligible multifamily housing" defined

(1) Notwithstanding any other provision of law, tenants residing in eligible multifamily housing whose incomes exceed 80 percent of area median income shall pay as rent not more than the lower of the following amounts: (A) 30 percent of the family's adjusted monthly income; or (B) the relevant fair market rental established under section 8(b) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)] for the jurisdiction in which the housing is located. An owner shall phase in any increase in rents for current tenants resulting from this subsection.

(2) For purposes of this subsection, the term ''eligible multifamily housing'' means any housing financed by a loan or mortgage that is (A) insured or held by the Secretary under subsection (d)(3) of this section and assisted under section 1701s of this title or section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f]; or (B) insured or held by the Secretary and bears interest at a rate determined under the proviso of subsection (d)(5) of this section.

(June 27, 1934, ch. 847, title II, §221, as added Aug. 2, 1954, ch. 649, title I, §123, 68 Stat. 599; amended Aug. 11, 1955, ch. 783, title I, §102(c), (j), 69 Stat. 635; Aug. 7, 1956, ch. 1029, title I, §108, title III, §307(c), 70 Stat. 1094, 1102; Pub. L. 85–104, title I, §112, July 12, 1957, 71 Stat. 297; Pub. L. 86–372, title I, §§110(a)(1), (2), (b)–(e), 116(b), Sept. 23, 1959, 73 Stat. 658–661, 664; Pub. L. 87–70, title I, §101(a), June 30, 1961, 75 Stat. 149; Pub. L. 88–54, June 29, 1963, 77 Stat. 73; Pub. L. 88–560, title I, §§105(c)(2), 107(d), 114, title II, §§202, 203(b), Sept. 2, 1964, 78 Stat. 772, 775, 778, 783, 784; Pub. L. 89–117, title I, §102(a), (b), title II, §207(d), title XI, §1108(i), Aug. 10, 1965, 79 Stat. 454, 467, 505; Pub. L. 89–754, title III, §§307–310(c), Nov. 3, 1966, 80 Stat. 1268–1270; Pub. L. 89–769, §4, Nov. 6, 1966, 80 Stat. 1317; Pub. L. 90–19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title I, §§101(b), (c), 105, title III, §§305, 306, 311(b), 316, Aug. 1, 1968, 82 Stat. 483, 488, 508, 510, 512; Pub. L. 91–78, §2(c), Sept. 30, 1969, 83 Stat. 125; Pub. L. 91–152, title I, §§101(c), 113(e), Dec. 24, 1969, 83 Stat. 379, 384; Pub. L. 91–432, §1(c), Oct. 2, 1970, 84 Stat. 887; Pub. L. 91–473, §1(c), Oct. 21, 1970, 84 Stat. 1064; Pub. L. 91–525, §1(c), Dec. 1, 1970, 84 Stat. 1384; Pub. L. 91–606, title III, §301(d), Dec. 31, 1970, 84 Stat. 1758; Pub. L. 91–609, title I, §§101(c), 114(a), 114[115](a), Dec. 31, 1970, 84 Stat. 1770, 1773; Pub. L. 92–503, §1(c), Oct. 18, 1972, 86 Stat. 906; Pub. L. 93–85, §1(c), Aug. 10, 1973, 87 Stat. 220; Pub. L. 93–117, §1(c), Oct. 2, 1973, 87 Stat. 421; Pub. L. 93–288, title VII, §702(d), formerly title VI, §602(d), May 22, 1974, 88 Stat. 163, renumbered title VII, §702(d), Pub. L. 103–337, div. C, title XXXIV, §3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100; Pub. L. 93–383, title III, §§302(c), 303(d), (e), 304(e), 316(c), 319(a), Aug. 22, 1974, 88 Stat. 676–678, 685, 686; Pub. L. 94–173, §§3, 4(a), Dec. 23, 1975, 89 Stat. 1027; Pub. L. 94–375, §§3(d), 8(a), (b)(4), (5), Aug. 3, 1976, 90 Stat. 1069, 1071, 1072; Pub. L. 95–24, title I, §106, Apr. 30, 1977, 91 Stat. 56; Pub. L. 95–60, §1(c), June 30, 1977, 91 Stat. 257; Pub. L. 95–80, §1(c), July 31, 1977, 91 Stat. 339; Pub. L. 95–128, title III, §§301(c), 303(c), Oct. 12, 1977, 91 Stat. 1131, 1132; Pub. L. 95–406, §1(c), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95–557, title III, §§301(c), 325, Oct. 31, 1978, 92 Stat. 2096, 2104; Pub. L. 96–71, §1(c), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96–105, §1(c), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96–153, title III, §§301(c), 314, Dec. 21, 1979, 93 Stat. 1111, 1117; Pub. L. 96–372, §1(c), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96–399, title III, §§301(c), 310(d), 333(c), (d), Oct. 8, 1980, 94 Stat. 1638, 1642, 1653; Pub. L. 97–35, title III, §§331(c), 339B(a), Aug. 13, 1981, 95 Stat. 412, 417; Pub. L. 97–253, title II, §201(d), Sept. 8, 1982, 96 Stat. 789; Pub. L. 97–289, §1(c), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 97–377, title I, §101(g), Dec. 21, 1982, 96 Stat. 1908; Pub. L. 98–35, §1(c), May 26, 1983, 97 Stat. 197; Pub. L. 98–109, §1(c), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98–181, title IV, §§401(c), 404(b)(8), 408, 409, 423(b)(3), 432(b), (c), 446(d), Nov. 30, 1983, 97 Stat. 1207, 1209, 1211, 1217, 1220, 1228; Pub. L. 98–479, title II, §204(a)(6), Oct. 17, 1984, 98 Stat. 2232; Pub. L. 99–120, §1(c), Oct. 8, 1985, 99 Stat. 502; Pub. L. 99–156, §1(c), Nov. 15, 1985, 99 Stat. 815; Pub. L. 99–219, §1(c), Dec. 26, 1985, 99 Stat. 1730; Pub. L. 99–267, §1(c), Mar. 27, 1986, 100 Stat. 73; Pub. L. 99–272, title III, §3007(c), Apr. 7, 1986, 100 Stat. 104; Pub. L. 99–289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title IV, §§401(a)(2), 406(b)(10)–(13), 426(d), (e), (h), Feb. 5, 1988, 101 Stat. 1898, 1901,

[3] See References in Text note below.

1916; Pub. L. 100–707, title I, § 109(e)(3), Nov. 23, 1988, 102 Stat. 4708; Pub. L. 101–508, title II, § 2201, Nov. 5, 1990, 104 Stat. 1388–21; Pub. L. 101–625, title VI, §§ 611(b)(2), 612(b), Nov. 28, 1990, 104 Stat. 4278, 4279; Pub. L. 102–550, title V, §§ 509(d), (e), 516(d), title X, § 1012(*l*), Oct. 28, 1992, 106 Stat. 3783, 3791, 3907; Pub. L. 104–134, title I, § 101(e) [title II, § 219], Apr. 26, 1996, 110 Stat. 1321–257, 1321–290; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–276, title II, § 222, Oct. 21, 1998, 112 Stat. 2489; Pub. L. 106–377, § 1(a)(1) [title II, § 209(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A–25; Pub. L. 107–73, title II, § 213(d), (e), Nov. 26, 2001, 115 Stat. 676, 677; Pub. L. 107–326, § 5(b)(4), (5), Dec. 4, 2002, 116 Stat. 2795; Pub. L. 108–186, title III, § 302(b), Dec. 16, 2003, 117 Stat. 2692; Pub. L. 110–161, div. K, title II, § 221(1), Dec. 26, 2007, 121 Stat. 2436.)

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

Section 1720 of this title, referred to in subsec. (d)(3)(ii)(II), (4)(ii)(II) was repealed by Pub. L. 98–181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

The United States Housing Act of 1937, and ''such act'', referred to in subsecs. (d)(3), (h)(5)(F), (6)(D), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

Section 110 of the Housing Act of 1949 [42 U.S.C. 1460], referred to in subsec. (d)(3)(iii), was omitted from the Code pursuant to section 5316 of Title 42, which terminated authority to make grants or loans under title I of that Act [42 U.S.C. 1450 et seq.] after Jan. 1, 1975.

This chapter, referred to in subsec. (f), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

Section 1701q of this title, referred to in subsec. (f), was amended generally by Pub. L. 101–625, title VIII, § 801(a), Nov. 28, 1990, 104 Stat. 4297, and, as so amended, no longer contains provisions related to handicapped persons.

The Disaster Relief and Emergency Assistance Act, referred to in subsec. (f), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

Section 201 of the Housing and Community Development Amendments of 1978, referred to in subsec. (f), is section 201 of Pub. L. 95–557, title II, Oct. 31, 1978, 92 Stat. 2084, as amended, which enacted section 1715z–1a of this title and amended section 1715z–1 of this title.

Subsection (h) of section 1710 of this title, referred to in subsec. (g)(1), was redesignated subsec. (i) by Pub. L. 105–276, title VI, § 602(1), Oct. 21, 1998, 112 Stat. 2674.

Subsection (k) of section 1710 of this title, referred to in subsec. (g)(1), was repealed by Pub. L. 105–276, title VI, § 601(c), Oct. 21, 1998, 112 Stat. 2673.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (g)(4)(C), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101–625, is known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Subtitles A and B of title II, which were formerly set out as a note under this section and which amended section 1715z–6 of this title, were amended generally by Pub. L. 101–625 and are classified to subchapter I (§ 4101 et seq.) of chapter 42 of this title. Subtitles C and D of title II amended section 1715z–15 of this title and sections 1437f, 1472, 1485, and 1487 of Title 42, The Public Health and Welfare. Another subtitle C of title II of Pub. L. 100–242, as added by Pub. L. 102–550, is classified generally to subchapter II (§ 4141 et seq.) of chapter 42 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Section 8211 of title 42, referred to in subsec. (k), was omitted from the Code pursuant to section 8229 of Title 42, which terminated authority under that section on June 30, 1989.

CODIFICATION

Subsecs. (d)(3)(iii), (g)(4)(A), (i)(5), and (j)(1) are set out in this supplement to correct errors in the main edition.

In subsec. (g)(4)(A), ''November 30, 1983,'' was substituted for ''the effective date of this clause'', meaning the date of enactment of Pub. L. 98–181.

AMENDMENTS

2007—Subsec. (d)(3)(ii)(II), (4)(ii)(II). Pub. L. 110–161 substituted ''170 percent'' for ''140 percent'' after ''not to exceed'' in two places and ''215 percent in high cost areas'' for ''170 percent in high cost areas''.

2003—Subsec. (d)(3)(ii)(II), (4)(ii)(II). Pub. L. 108–186 substituted ''140 percent in'' for ''110 percent in'' and inserted '', or 170 percent in high cost areas,'' after ''and by not to exceed 140 percent''.

2002—Subsec. (d)(3)(ii). Pub. L. 107–326, § 5(b)(4), inserted ''(I)'' after ''(ii)'' and substituted ''; (II) the Secretary may, by regulation, increase any of the dollar amount limitations in subclause (I) (as such limitations may have been adjusted in accordance with section 1712a of this title)'' for ''; and except that the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this clause''.

Subsec. (d)(4)(ii). Pub. L. 107–326, § 5(b)(5), inserted ''(I)'' after ''(ii)'' and substituted ''; (II) the Secretary may, by regulation, increase any of the dollar limitations in subclause (I) (as such limitations may have been adjusted in accordance with section 1712a of this title)'' for ''; and except that the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this clause''.

2001—Subsec. (d)(3)(ii). Pub. L. 107–73, § 213(d), substituted ''$42,048'', ''$48,481'', ''58,469'', ''$74,840'', and ''$83,375'' for ''$33,638'', ''$38,785'', ''$46,775'', ''$59,872'', and ''$66,700'', respectively, and ''$44,250'', ''$50,724'', ''$61,680'', ''$79,793'', and ''$87,588'' for ''$35,400'', ''$40,579'', ''$49,344'', ''$63,834'', and ''$70,070'', respectively.

Subsec. (d)(4)(ii). Pub. L. 107–73, § 213(e), substituted ''$37,843'', ''$42,954'', ''$51,920'', ''$65,169'', and ''$73,846'' for ''$30,274'', ''$34,363'', ''$41,536'', ''$52,135'', and ''$59,077'', respectively, and ''$40,876'', ''$46,859'', ''$56,979'', ''$73,710'', and ''$80,913'' for ''$32,701'', ''$37,487'', ''$45,583'', ''$58,968'', and ''$64,730'', respectively.

2000—Subsec. (g)(4)(C)(viii). Pub. L. 106–377 inserted '', except that this subparagraph shall continue to apply if the Secretary receives a mortgagee's written notice of intent to assign its mortgage to the Secretary on or before such date'' after ''December 31, 2002''.

1998—Subsec. (g)(4)(C)(viii). Pub. L. 105–276, § 222(1), substituted ''December 31, 2002'' for ''September 30, 1996'' in first sentence.

Subsec. (g)(4)(C)(ix). Pub. L. 105–276, § 222(2), added cl. (ix).

1996—Subsec. (g)(4)(C)(viii). Pub. L. 104–134 substituted ''1996'' for ''1995'' in first sentence.

1992—Subsec. (d)(3)(ii). Pub. L. 102–550, § 509(d), substituted ''$33,638'', ''$38,785'', ''$46,775'', ''$59,872'', ''$66,700'', ''$35,400'', ''$40,579'', ''$49,344'', ''$63,834'', and ''$70,070'' for ''$28,032'', ''$32,321'', ''$38,979'', ''$49,893'', ''$55,583'', ''$29,500'', ''$33,816'', ''$41,120'', ''$53,195'', and ''$58,392'', respectively.

Subsec. (d)(4)(ii). Pub. L. 102–550, §509(e), substituted ''$30,274'', ''$34,363'', ''$41,536'', ''$52,135'', ''$59,077'', ''$32,701'', ''$37,487'', ''$45,583'', ''$58,968'', and ''$64,730'' for ''$25,228'', ''$28,636'', ''$34,613'', ''$43,446'', ''$49,231'', ''$27,251'', ''$31,239'', ''$37,986'', ''$49,140'', and ''$53,942'', respectively.

Subsec. (d)(4)(iv). Pub. L. 102–550, §1012(*l*), inserted ''(including the cost of evaluating and reducing lead-based paint hazards, as such terms are defined in section 4851b of title 42)'' after ''cost of repair and rehabilitation''.

Subsec. (g)(4)(A). Pub. L. 102–550, §516(d), which directed substitution of ''issue to the mortgagee debentures having a par value'' for '', subject to the cash adjustment provided herein, issue to the mortgagee debentures having total face value'', was executed to text which read ''having a total face value'' instead of ''having total face value'', to reflect the probable intent of Congress.

1990—Subsec. (f). Pub. L. 101–625, §611(b)(2), added fourth undesignated paragraph relating to authority of Secretary in establishing rental charges for project covered by mortgage bearing below market interest rate prescribed in proviso to subsec. (d)(3) of this section to include an amount that would permit return of advances to owner.

Subsec. (g)(4)(C). Pub. L. 101–508 added subpar. (C).

Subsec. (*l*). Pub. L. 101–625, §612(b), added subsec. (*l*).

1988—Subsec. (d)(2). Pub. L. 100–242, §406(b)(10)(A), substituted ''residence, except that the Secretary'' for ''residence: *Provided*, That a mortgage secured by property upon which there is located a dwelling designed principally for a two-, three-, or four-family residence shall not be insured under this section except in the case of a dwelling for occupancy by the mortgagor: *Provided further*, That the Secretary''.

Pub. L. 100–242, §406(b)(10)(B), which directed that par. (2) be amended by striking out ''*Provided*, That (i)'' and all that follows through ''(1) in'' and inserting ''*Provided*, That (i)(1) in'', was executed by substituting ''*Provided*, That (i)(1) in the case of a displaced family'' for ''*Provided further*, That (i) if the mortgagor is the owner and an occupant of the property at the time of insurance, (1) in the case of a displaced family'', to reflect the probable intent of Congress and the fact that the provision being struck out began with ''*Provided further*'' rather than ''*Provided*''.

Pub. L. 100–242, §406(b)(10)(C), struck out ''*Provided further*, That nothing contained herein shall preclude the Secretary from issuing a commitment to insure, and insuring a mortgage pursuant thereto, where the mortgagor is not the owner and an occupant of the property, if the property is to be built or acquired and repaired or rehabilitated for sale, and the insured mortgage financing is required to facilitate the construction, or the repair or rehabilitation, of the dwelling and to provide financing pending the subsequent sale thereof to a qualified owner who is also an occupant thereof, but in such instances the mortgage shall not exceed 85 per centum of the appraised value:''.

Pub. L. 100–242, §406(b)(10)(D), which directed that par. (2) be amended in last proviso by substituting ''That the mortgagor shall'' for ''That, if the mortgagor is the owner and an occupant of the property such mortgagor shall'', was executed by substituting ''That the mortgagor shall'' for ''That, if the mortgagor is the owner and an occupant of the property, such mortgagor shall'', to reflect the probable intent of Congress and the fact that a comma appears before ''such'' in provisions being struck out.

Subsec. (d)(3)(ii). Pub. L. 100–242, §426(d), substituted ''$28,032'', ''$38,979'', ''$49,893'', ''$55,583'', ''$29,500'', ''$33,816'', ''$41,120'', ''$53,195'', and ''$58,392'' for ''$21,563'', ''$29,984'', ''$38,379'', ''$42,756, ''$22,692'', ''$26,012'', ''$31,631'', ''$40,919'', and ''$44,917'', respectively.

Pub. L. 100–242, §426(d), which directed that cl. (ii) be amended by substituting ''$32,321'' for ''$24,862'', was executed by substituting ''$32,321'' for ''$24,662'' to reflect the probable intent of Congress.

Pub. L. 100–242, §426(h), substituted ''not to exceed 110 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 140 percent where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720 of this title (as such section existed immediately before November 30, 1983) is involved'' for ''not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum (by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved) in such an area''.

Subsec. (d)(4)(ii). Pub. L. 100–242, §426(e), (h), substituted ''$25,228'', ''$28,636'', ''$34,613'', ''$43,446'', ''$49,231'', ''$27,251'', ''$31,239'', ''$37,986'', ''$49,140'', and ''$53,942'' for ''$19,406'', ''$22,028'', ''$26,625'', ''$33,420'', ''$37,870'', ''$20,962'', ''$24,030'', ''$29,220'', ''$37,800'', and ''$41,494'', respectively, and substituted ''not to exceed 110 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 140 percent where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720 of this title (as such section existed immediately before November 30, 1983) is involved'' for ''not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum (by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved) in such an area''.

Subsec. (d)(6)(ii). Pub. L. 100–242, §406(b)(11), struck out ''is an owner-occupant of the property and'' after ''where the mortgagor''.

Subsec. (f). Pub. L. 100–707 substituted ''and Emergency Assistance Act'' for ''Act of 1974''.

Pub. L. 100–242, §401(a)(2), struck out ''No mortgage shall be insured under this section after March 15, 1988, except pursuant to a commitment to insure before that date, or except a mortgage covering property which the Secretary finds will assist in the provision of housing for displaced families.''

Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

Subsec. (h)(6). Pub. L. 100–242, §406(b)(12), struck out ''and occupied'' after ''or row construction that are owned'' in introductory provisions.

Subsec. (h)(8). Pub. L. 100–242, §406(b)(13), struck out ''if one of the units is to be occupied by the owner'' after ''approved by the Secretary''.

1986—Subsec. (f). Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272 made amendment identical to Pub. L. 99–219. See 1985 Amendment note below.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

1985—Subsec. (f). Pub. L. 99–219 substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156 substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120 substituted ''November 14, 1985'' for ''September 30, 1985''.

1984—Subsec. (d)(3)(iii). Pub. L. 98–479 substituted ''rehabilitated'' for ''rehabilited'' before ''by a local public agency''.

1983—Subsec. (d)(2)(A). Pub. L. 98–181, § 423(b)(3), struck out '': *Provided further*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured'' before ''; and (B)''.

Subsec. (d)(3)(iii). Pub. L. 98–181, § 432(b), struck out proviso that in no case involving refinancing would the mortgage exceed the estimated cost of repair and rehabilitation and the amount, as determined by the Secretary, required to refinance existing indebtedness secured by the property or project, and substituted ''*Provided*, That'' for ''*Provided further*, That''.

Subsec. (d)(4)(iv). Pub. L. 98–181, § 432(c), struck out proviso that in no case involving refinancing would the mortgage exceed the estimated cost of repair and rehabilitation and the amount, as determined by the Secretary, required to refinance existing indebtedness secured by the property or project, and substituted ''*Provided*, That'' for ''*Provided further*, That''.

Subsec. (d)(5). Pub. L. 98–181, § 404(b)(8), substituted ''at such rate as may be agreed upon by the mortgagor and the mortgagee'' for ''(exclusive of premium charges for insurance and service charge, if any) at not to exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time, or not to exceed such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market''.

Subsec. (d)(6). Pub. L. 98–181, § 446(d), inserted ''(unless otherwise approved by the Secretary)'' after ''periodic payments''.

Subsec. (f). Pub. L. 98–181, § 401(c), substituted ''September 30, 1985'' for ''November 30, 1983''.

Pub. L. 98–109 substituted ''November 30, 1983'' for ''September 30, 1983''.

Pub. L. 98–35 substituted ''September 30, 1983'' for ''May 20, 1983''.

Subsec. (g)(4)(A). Pub. L. 98–181, §§ 408, 409, designated existing provision as subpar. (A) and inserted ''pursuant to a commitment to insure entered into before November 30, 1983,'' after ''this section''.

Subsec. (g)(4)(B). Pub. L. 98–181, § 408, added subpar. (B).

1982—Subsec. (d)(2)(A). Pub. L. 97–253, § 201(d)(1), inserted provision that the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

Subsec. (d)(2)(B)(i)(2). Pub. L. 97–253, § 201(d)(2), (3), inserted ''(excluding the mortgage insurance premium paid at the time the mortgage is insured)'' after ''of its acquisition cost'' and struck out ''mortgage insurance premium,'' after ''hazard insurance,''.

Subsec. (d)(3)(ii). Pub. L. 97–377 inserted ''(by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved)'' after ''90 per centum''.

Subsec. (d)(4)(ii). Pub. L. 97–377 inserted ''(by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved)'' after ''90 per centum''.

Subsec. (f). Pub. L. 97–289 substituted ''May 20, 1983'' for ''September 30, 1982''.

1981—Subsec. (f). Pub. L. 97–35, § 331(c), substituted ''1982'' for ''1981''.

Subsec. (k). Pub. L. 97–35, § 339B(a), inserted ''therein'' after ''installation'' and struck out ''therein'' after ''measure''.

1980—Subsec. (d)(6). Pub. L. 96–399, § 333(c), struck out proviso relating to maturity of a mortgage insured under subsection (d)(2) of this section.

Subsec. (f). Pub. L. 96–399, § 301(c), substituted ''September 30, 1981'' for ''October 15, 1980''.

Pub. L. 96–372 substituted ''October 15, 1980'' for ''September 30, 1980''.

Subsec. (i)(2)(A)(iv). Pub. L. 96–399, § 333(d), struck out applicability to determinations of lesser amount, if so determined, of three-quarters of the Secretary's estimate of the remaining economic life of the building improvements.

Subsec. (k). Pub. L. 96–399, § 310(d), added subsec. (k).

1979—Subsec. (d)(3)(ii). Pub. L. 96–153, § 314, substituted ''75 per centum'' for ''50 per centum'' and inserted exception that the dollar amount limitations may be exceeded not to exceed 90 per centum where the Secretary determines it to be necessary.

Subsec. (d)(4)(ii). Pub. L. 96–153, § 314, substituted ''75 per centum'' for ''50 per centum'' and inserted exception that the dollar amount limitations may be exceeded by not to exceed 90 per centum where the Secretary determines it to be necessary.

Subsec. (f). Pub. L. 96–153 substituted ''September 30, 1980'' for ''November 30, 1979''.

Pub. L. 96–105 substituted ''November 30, 1979'' for ''October 31, 1979''.

Pub. L. 96–71 substituted ''October 31, 1979'' for ''September 30, 1979''.

1978—Subsec. (d)(3)(ii). Pub. L. 95–557, § 325(a), substituted ''$21,563'', ''$24,662'', ''$29,984'', ''$38,379'', and ''$42,756'' for ''$16,860'', ''$18,648'', ''$22,356'', ''$28,152'' and ''$31,884'', respectively, and ''$22,692'', ''$26,012'', ''$31,631'', ''$40,919'', and ''$44,917'' for ''$19,680'', ''$22,356'', ''$26,496'', ''$33,120'', and ''$38,400'', respectively.

Subsec. (d)(4)(ii). Pub. L. 95–557, § 325(b), substituted ''$19,406'', ''$22,028'', ''$26,625'', ''$33,420'', and ''$37,870'' for ''$18,450'', ''$20,625'', ''$24,630'', ''$29,640'' and ''$34,846'', respectively.

Subsec. (f). Pub. L. 95–557, § 301(c), substituted ''September 30, 1979'' for ''October 31, 1978''.

Pub. L. 95–406 substituted ''October 31, 1978'' for ''September 30, 1978''.

1977—Subsec. (d)(2)(A). Pub. L. 95–128, § 303(c), substituted ''$31,000'' for ''$25,000'', ''$36,000'' for ''$29,000'' in two places, ''$42,000'' for ''$33,000'', ''$35,000'' for ''$28,000'', ''$48,600'' for ''$38,880'', ''$59,400'' for ''$47,520'', ''$45,000'' for ''$36,000'', ''$57,600'' for ''$46,080'' and ''$68,400'' for ''$54,720''.

Subsec. (d)(4). Pub. L. 95–24 struck out ''other than a mortgagor referred to in subsection (d)(3) of this section,'' after ''if executed by a mortgagor''.

Subsec. (f). Pub. L. 95–128, § 301(c), substituted ''September 30, 1978'' for ''September 30, 1977''.

Pub. L. 95–80 substituted ''September 30, 1977'' for ''July 31, 1977''.

Pub. L. 95–60 substituted ''July 31, 1977'' for ''June 30, 1977''.

1976—Subsec. (d)(2)(A). Pub. L. 94–375, § 3(d), substituted ''$25,000'' for ''$21,600'', ''$29,000'' for ''$25,200'' in two places, and ''$33,000'' for ''$28,800''.

Subsec. (d)(3)(ii). Pub. L. 94–375, § 8(b)(4), substituted ''50 per centum in any geographical area'' for ''75 per centum in any geographical area'', ''$16,860'' for ''$11,240'', ''$18,648'' for ''$15,540'', ''$22,356'' for ''$18,630'', ''$28,152'' for ''$23,460'', ''$31,884'' for ''$26,570'', ''$19,680'' for ''$13,120'', ''$22,356'' for ''$18,630'', ''$26,496'' for ''$22,080'', ''$33,120'' for ''$27,600'', and ''$38,400'' for ''$32,000''.

Subsec. (d)(4)(ii). Pub. L. 94–375, §8(b)(5), substituted ''50 per centum in any geographical area'' for ''75 per centum in any geographical area'', ''$18,450'' for ''$12,300'', ''$20,625'' for ''$17,188'', ''$24,630'' for ''$20,525'', ''$29,640'' for ''$24,700'', ''$34,846'' for ''$29,038'', ''$20,962'' for ''$13,975'', ''$24,030'' for ''$20,025'', ''$29,220'' for ''$24,350'', ''$37,800'' for ''$31,500'', and ''$41,494'' for ''$34,578''.

1975—Subsec. (d)(3)(ii). Pub. L. 94–173, §3, raised from 45 per centum to 75 per centum the amount by which any dollar limitation may, by regulation, be increased.

Subsec. (d)(4)(ii). Pub. L. 94–173, §3, raised from 45 per centum to 75 per centum the amount by which any dollar limitation may, by regulation, be increased.

Subsec. (f). Pub. L. 94–173, §4(a), struck out a provision limiting to 10 per centum the number of dwelling units available to low and moderate income persons under the age of 62 in a project financed with a mortgage issued under subsection (d)(3) of this section.

1974—Subsec. (d)(2)(A). Pub. L. 93–383, §302(c), substituted ''$21,600'' for ''$18,000'', ''$25,200'' for ''$21,000'' wherever appearing, ''$28,000'' for ''$24,000'', ''$28,800'' for ''$24,000'', ''$36,000'' for ''$30,000'', ''$38,880'' for ''$32,400'', ''$46,080'' for ''$38,400'', ''$47,520'' for ''$39,600'', and ''$54,720'' for ''$45,600''.

Subsec. (d)(3). Pub. L. 93–383, §319(a), inserted exception for certification of projects assisted or to be assisted pursuant to section 8 of the United States Housing Act of 1937.

Subsec. (d)(3)(i). Pub. L. 93–383, §304(e)(1), struck out cl. (i) which set forth mortgage ceiling of $12,500,000.

Subsec. (d)(3)(ii). Pub. L. 93–383, §303(d), substituted ''$11,240'' for ''$9,200'', ''$13,120'' for ''$10,925'', ''$15,540'' for ''$12,937.50'', ''$16,200'' for ''$13,500'', ''$18,630'' for ''$15,525'', ''$22,080'' for ''$18,400'', ''$23,460'' for ''$19,550'' ''$26,570'' for ''$22,137.50'', ''$27,600'' for ''$23,000'', and ''$32,000'' for ''$26,162.50''.

Subsec. (d)(4)(i). Pub. L. 93–383, §304(e)(2), struck out cl. (i) which set forth mortgage ceiling of $12,500,000.

Subsec. (d)(4)(ii). Pub. L. 93–383, §303(e), substituted ''$12,300'' for ''$9,200'', ''$13,975'' for ''$10,525'', ''$17,188'' for ''$12,937.50'', ''$20,025'' for ''$15,525'', ''$20,525'' for ''$15,525'', ''$24,350'' for ''$18,400'', ''$24,700'' for ''$19,550'', ''$29,038'' for ''$22,137.50'', ''$31,500'' for ''$23,000'', and ''$34,578'' for ''$26,162.50''.

Subsec. (f). Pub. L. 93–383, §316(c), substituted ''June 30, 1977'' for ''October 1, 1974''.

Pub. L. 93–288 substituted ''the Disaster Relief Act of 1974'' for ''the Disaster Relief Act of 1970''.

1973—Subsec. (f). Pub. L. 93–117 extended the mortgage insurance authority under this section from Oct. 1, 1973, to Oct. 1, 1974.

Pub. L. 93–85 extended the mortgage insurance authority under this section from June 30, 1973, to Oct. 1, 1973.

1972—Subsec. (f). Pub. L. 92–503 extended the mortgage insurance authority under this section from October 1, 1972 to June 30, 1973.

1970—Subsec. (f). Pub. L. 91–609 in second par., substituted ''October 1, 1972'' for ''January 1, 1971''; provided for use of certain housing facilities for classroom purposes where public schools in the community are overcrowded due in part to attendance of residents of the property or project; dispensed with need for kitchen facilities in family units in projects for displaced, elderly, or handicapped families, but permitted inclusion of central dining and other shared facilities; provided that any person who is a displaced person shall be deemed to be a family; and, in third par., substituted ''the terms 'displaced family', 'displaced families', and 'displaced person' shall mean a family or families, or a person'' for ''the terms 'displaced family' and 'displaced families' shall mean a family or families'', respectively.

Pub. L. 91–606 substituted ''the Disaster Relief Act of 1970'' for ''the Act entitled 'An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes', approved September 30, 1950, as amended''.

Pub. L. 91–525 substituted ''January 1, 1971'' for ''December 1, 1970''.

Pub. L. 91–473 substituted ''December 1, 1970'' for ''November 1, 1970''.

Pub. L. 91–432 substituted ''November 1, 1970'' for ''October 1, 1970''.

1969—Subsec. (d)(2). Pub. L. 91–152, §113(e)(1), (2), substituted ''$18,000'' for ''$15,000'', ''$21,000'' for ''$17,500'', wherever appearing, ''$24,000'' for ''$20,000'' wherever appearing, ''$30,000'' for ''$25,000'', ''$32,400'' for ''$27,000'', ''$38,400'' for ''$32,000'', ''$39,600'' for ''$33,000'', and ''$45,600'' for ''$38,000''.

Subsec. (d)(3)(ii). Pub. L. 91–152, §113(e)(3), (4), substituted ''$9,200'' for ''$8,000'', ''$10,925'' for ''$9,500'', ''$12,937.50'' for ''$11,250'', ''$15,525'' for ''$13,500'' wherever appearing, ''$18,400'' for ''$16,000'', ''$19,550'' for ''$17,000'', ''$22,137.50'' for ''$19,250'', ''$23,000'' for ''$20,000'', and ''$26,162.50'' for ''$22,750''.

Subsec. (d)(4)(ii). Pub. L. 91–152, §113(e)(5), (6), substituted ''$9,200'' for ''$8,000'', ''$10,925'' for ''$9,500'', ''$12,937.50'' for ''$11,250'', ''$15,525'' for ''$13,500'' wherever appearing, ''$18,400'' for ''$16,000'', ''$19,550'' for ''$17,000'', ''$22,137.50'' for ''$19,250'', ''$23,000'' for ''$20,000'', and ''$26,162.50'' for ''$22,750''.

Subsec. (f). Pub. L. 91–152, §101(c), substituted ''October 1, 1970'' for ''January 1, 1970''.

Pub. L. 91–78 substituted ''January 1, 1970'' for ''October 1, 1969''.

Subsec. (h)(6)(A). Pub. L. 91–152, §113(e)(7), substituted ''$18,000'' for ''$15,000''.

1968—Subsec. (d)(2)(A). Pub. L. 90–448, §§101(b)(1), 305, increased maximum amount of mortgages for single-family residences from $12,500 to $15,000 (or $17,500 if mortgagor's family includes five or more persons), and in geographical areas where costs levels so require from $15,000 to $17,500 (or $20,000 if the mortgagor's family includes five or more persons), and §305(d)(2)(A) substituted ''the mortgagor'' for ''a displaced family'' in first proviso.

Subsec. (d)(2)(B). Pub. L. 90–448, §101(b)(2), inserted '', in cash or its equivalent'' in cl. (2), and inserted proviso directing that a mortgagor who is the owner and an occupant of the property be given the opportunity to contribute the value of his labor as equity in such dwelling.

Subsec. (d)(3)(iii). Pub. L. 90–448, §311(b), inserted proviso to permit the mortgage to involve the financing of the purchase of property which has been rehabilitated by a local public agency with Federal assistance pursuant to section 1460(c)(8) of title 42.

Subsec. (f). Pub. L. 90–448, §§105(d), 306, authorized the Secretary to insure mortgages meeting the requirements of subsec. (i) or (j) of this section, struck out ''if the mortgagor waives the right to receive dividends on its equity investment in the portion thereof devoted to community and shopping facilities'' from first proviso, and inserted proviso making provisions of section 1715k(d)(3)(B)(iv) applicable, in the case of a mortgage which bears interest at the below-market interest rate prescribed in subsec. (d)(5) of this section, only if the mortgagor waives the right to receive dividends on its equity investment in the portion thereof devoted to commercial facilities.

Subsec. (g)(1). Pub. L. 90–448, §105(b), included mortgages meeting requirements of par. (2) of subsec. (i) of this section.

Subsec. (g)(2). Pub. L. 90–448, §105(c), included mortgages meeting requirements of par. (2) of subsec. (j) of this section.

Subsec. (h)(2)(A). Pub. L. 90–448, §316(a), reduced number of one-family dwellings from five or more to four or more, and permitted the mortgage to cover four or more one-family units in a structure or structures for which a plan of family unit ownership approved by the Secretary is established.

Subsec. (h)(4). Pub. L. 90–448, §101(c)(2), increased aggregate principal balance of mortgages insured from $20,000,000 to $50,000,000.

Subsec. (h)(5)(B)(ii). Pub. L. 90–448, §101(c)(1), permitted mortgage to bear interest at such lower rate, not less than 1 per centum, as the Secretary may prescribe if in his judgment purchaser's income is suffi-

ciently low to justify the lower rate, and inserted proviso requiring rate of interest to be increased if purchaser's income subsequently rises.

Subsec. (h)(6). Pub. L. 90–448, §101(c)(3), added par. (6).

Subsec. (h)(7), (8). Pub. L. 90–448, §316(b), added pars. (7) and (8).

Subsecs. (i), (j). Pub. L. 90–448, §105(a), added subsecs. (i) and (j).

1967—Pub. L. 90–19, §1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (b), (d)(1) to (3), (d)(3)(ii), (iii), (d)(4), (d)(4)(ii) to (iv), (d)(5), (6), (e)(1), (2), (f), and (g)(3), (4).

Subsec. (d). Pub. L. 90–19, §1(a)(4), substituted ''Secretary's'' for ''Commissioner's'' wherever appearing in pars. (2), (3)(iii), (4)(iv), and (6).

1966—Subsec. (a). Pub. L. 89–769, §4(a), substituted ''displaced families'' for ''families displaced from urban renewal areas or as a result of governmental action''.

Subsec. (d)(2), (6). Pub. L. 89–769, §4(a), substituted ''displaced family'' for ''family displaced from an urban renewal area or as a result of governmental action'' wherever appearing.

Subsec. (d)(2)(A). Pub. L. 89–754, §307, increased maximum amount of mortgages for single-family and two-family residences from $11,000 and $18,000 to $12,500 and $20,000, respectively.

Subsec. (d)(3)(iii). Pub. L. 89–769, §4(a), substituted ''displaced families'' for ''families displaced by urban renewal or other governmental action''.

Subsec. (f). Pub. L. 89–769, §4(a), (b), substituted ''displaced families'' for ''families displaced from urban renewal areas or as a result of governmental action'', and inserted definition of ''displaced family'' and ''displaced families''.

Pub. L. 89–754, §§308, 309, 310(c), inserted in first sentence provision for nondwelling facilities in projects in urban renewal areas, inserted provision respecting single occupants in housing under subsec. (d)(3) of this section, and inserted in fourth sentence ''or which meet the requirements of subsection (h) of this section'', respectively.

Subsec. (g)(1). Pub. L. 89–754, §310(b)(1), inserted ''or paragraph (5) of subsection (h) of this section''.

Subsec. (g)(2). Pub. L. 89–754, §310(b)(2), inserted ''or paragraph (1) of subsection (h) of this section''.

Subsec. (h). Pub. L. 89–754, §310(a), added subsec. (h). A prior subsec. (h) was repealed by Pub. L. 89–117, title XI, §1108(i)(4), Aug. 10, 1965, 79 Stat. 505.

1965—Subsec. (d)(3)(ii). Pub. L. 89–117, §207(d), substituted ''$17,000 per family unit with three bedrooms, and $19,250 per family unit with four or more bedrooms'' for ''and $17,000 per family unit with three or more bedrooms'' and ''$20,000 per family unit with three bedrooms, and $22,750 per family unit with four or more bedrooms'' for ''and $20,000 per family unit with three or more bedrooms''.

Subsec. (d)(4). Pub. L. 89–117, §§207(d), 1108(i)(1), substituted ''$17,000 per family unit with three bedrooms, and $19,250 per family unit with four or more bedrooms'' for ''and $17,000 per family unit with three or more bedrooms'' and ''$20,000 per family unit with three bedrooms, and $22,750 per family unit with four or more bedrooms'' for ''and $20,000 per family unit with three or more bedrooms'' in subpar. (ii) and substituted ''General Insurance Fund'' for ''section 221 Housing Insurance Fund'' wherever appearing.

Subsec. (d)(5). Pub. L. 89–117, §102(b), substituted ''not less than the lower of (A) 3 per centum per annum, or (B) the annual rate of interest determined'' for ''not less than the annual rate of interest determined'' in proviso.

Subsec. (f). Pub. L. 89–117, §§102(a), 1108(i)(1), substituted ''this section after October 1, 1969'' for ''subsection (d)(2) or (d)(4) after September 30, 1965, or under subsection (d)(3) after September 30, 1965'' and substituted ''General Insurance Fund'' for ''section 221 Housing Insurance Fund''.

Subsec. (g)(1). Pub. L. 89–117, §1108(i)(1), substituted ''General Insurance Fund'' for ''section 221 Housing Insurance Fund''.

Subsec. (g)(2). Pub. L. 89–117, §1108(i)(2), struck out provision that all references in section 1713 to the Housing Insurance Fund or the Housing Fund shall be construed to refer to the section 221 Housing Insurance Fund.

Subsec. (g)(3). Pub. L. 89–117, §1108(i)(1), (3), substituted ''General Insurance Fund'' for ''section 221 Housing Insurance Fund'' and struck out provision that all references in section 1713 of this title to the Housing Insurance Fund, the Housing Fund, or the Fund shall be construed to refer to the section 221 Housing Insurance Fund.

Subsec. (h). Pub. L. 89–117, §1108(i)(4), repealed subsec. (h) which created the section 221 Housing Insurance Fund, provided for the transfer of funds thereto, authorized the purchase and cancellation of debentures and the credit and payment of charges and fees.

1964—Subsec. (d)(3). Pub. L. 88–560, §114(a), inserted '', or other mortgagor approved by the Commissioner, and'' after ''or association''.

Subsec. (d)(3)(ii), (4)(ii). Pub. L. 88–560, §107(d)(1), (2), changed limits on mortgages for property or project attributable to dwelling use from ''$2,250 per room (or $8,500 per family unit if the number of rooms in such property or project is less than four per family unit)'' to ''$8,000 per family unit without a bedroom, $11,250 per family unit with one bedroom, $13,500 per family unit with two bedrooms, and $17,000 per family unit with three or more bedrooms'', changed such mortgage limits on project consisting of elevator-type structures from a sum ''of $2,250 per room to not to exceed $2,750 per room, and the dollar amount limitation of $8,500 per family unit to not to exceed $9,000 per family unit'' to dollar amount limitations ''per family unit to not to exceed $9,500 per family unit without a bedroom, $13,500 per family unit with one bedroom, $16,000 per family unit with two bedrooms, and $20,000 per family unit with three or more bedrooms'', and substituted provision authorizing an increase ''by not to exceed 45 per centum'' of any of such limits because of cost levels for former provision authorizing such an increase ''by not to exceed $1,000 per room without regard to the number of rooms being less than four, or four or more''.

Subsec. (d)(3)(iii). Pub. L. 88–560, §114(c), inserted ''*Provided further*, That in the case of any mortgagor other than a nonprofit corporation or association, cooperative (including an investor-sponsor), or public body, or a mortgagor meeting the special requirements of subsection (e)(1) of this section, the amount of the mortgage shall not exceed 90 per centum of the amount otherwise authorized under this section''.

Subsec. (e). Pub. L. 88–560, §114(b), added par. (1) and designated existing provisions as par. (2).

Subsec. (f). Pub. L. 88–560, §§114(d), 202, 203(b), extended the mortgage insurance authority under subsec. (d)(2) and (4) of this section from July 1, 1965 to Sept. 30, 1965, inserted definition of ''family'', and substituted in such definition ''person who is sixty-two years of age or over, or who is a handicapped person within the meaning of section 1701q of this title,'' for ''person who is sixty-two years of age or over''.

Subsec. (g)(3). Pub. L. 88–560, §105(c)(2), substituted a period for ''; or'' and inserted ''If the insurance is paid in cash, there shall be added to such payment an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Commissioner.''

1963—Subsec. (f). Pub. L. 88–54 extended mortgage insurance authority under subsec. (d)(2) and (4) of this section from July 1, 1963, to July 1, 1965.

1961—Pub. L. 87–70, §101(a)(1), added section catchline.

Subsec. (a). Pub. L. 87–70, §101(a)(2), redefined the purpose of this section as one to assist private industry in providing housing for low and moderate income families and families displaced from urban renewal areas or as a result of governmental action, and eliminated provisions which required localities, communities or environs of communities to request the mortgage insurance, which limited the number of dwelling units to not

more than the aggregate number which the Housing Administrator certified to the Commissioner, and which authorized assistance for relocation of families to be displaced as the result of governmental action in a community to those cases in which a certification by the Housing Administrator pursuant to section 1451(c) of title 42 has been made, or there is being carried out a project covered by a Federal aid contract executed, or prior approval granted, under subchapter II of chapter 8A of title 42, or there is being carried out an urban renewal project assisted under section 1462 of title 42.

Subsec. (b). Pub. L. 87–70, §101(a)(3), empowered the Commissioner to insure advances during construction on mortgages covering property of the character described in pars. (3) and (4) of subsec. (d) of this section.

Subsec. (d)(2). Pub. L. 87–70, §101(a)(4), (5), increased the maximum amount of mortgages for single-family residences from $9,000 to $11,000, three-family residences from $25,000 to $27,000 and for four-family residences from $32,000 to $33,000, increased the maximum amount of mortgages that the Commissioner may authorize in cases where he finds the cost levels so require from $12,000 to $15,000 for single-family residences, $20,000 to $25,000 for two-family residences, $27,500 to $32,000 for three-family residences and $35,000 to $38,000 for four-family residences, required families other than those displaced from an urban renewal area or as a result of Government action to pay on account of the property at least 3 per centum of the Commissioner's estimate of its acquisition cost, prohibited insurance of mortgages for dwellings designed principally for two-, three-, or four-family residences except in the case of dwellings for occupancy by a family displaced from an urban renewal area or as a result of governmental action, and eliminated provisions which required the Commissioner to prescribe procedures relating to priorities in occupancy of the remaining units of two-, three-, and four-family dwellings after occupancy of one unit by the owner.

Subsec. (d)(3). Pub. L. 87–70, §101(a)(6), included public bodies and agencies which certify that they are not receiving financial assistance exclusively pursuant to the United States Housing Act of 1937 cooperatives, and limited dividend corporations, increased the maximum amount of mortgages from not more than $9,000 per family unit for such part of such property or project as may be attributable to dwelling use to not more than $2,250 per room (or $8,500 per family unit if the number of rooms is less than four per family unit) for such part of such property or project as may be attributable to dwelling use (excluding exterior land improvements), empowered the Commissioner to increase the maximum from $2,250 to $2,750 per room and from $8,500 to $9,000 per family unit to compensate for higher costs incident to the construction of elevator-type structures, and in geographical areas which the cost levels so require from $2,250 to $3,250 per room, increased the maximum amount of the mortgage in the case of repair and rehabilitation from not more than the Commissioner's estimate of the value of the property when the proposed repair and rehabilitation is completed to not more than the sum of the estimated cost of repair and rehabilitation and the Commissioner's estimate of the value of the property before repair and rehabilitation, limited, in cases involving refinancing, the amount of the mortgage to not more than the estimated cost of repair and rehabilitation and the amount (as determined by the Commissioner) required to refinance existing indebtedness secured by the property or project, and eliminated provisions which required the property or project to be for use as rental accommodations for ten or more families eligible for occupancy.

Subsec. (d)(4). Pub. L. 87–70, §101(a)(7)–(10), substituted ''other than a mortgagor referred to in subsection (d)(3) of this section'' for ''which is not a nonprofit organization'' in opening provisions, increased the maximum amount of mortgages from not more than $9,000 per family unit for such part of such property or project as may be attributable to dwelling use to not more than $2,250 per room (or $8,500 per family unit if the number of rooms is less than four per family unit) for such part of such property or project as may be attributable to dwelling use (excluding exterior land improvements), empowered the Commissioner to increase the maximum from $2,250 to $2,750 per room and from $8,500 to $9,000 per family unit to compensate for higher costs incident to the construction of elevator-type structures, and in geographical areas which the cost levels so require from $2,250 to $3,250 per room, increased the maximum amount of the mortgage in the case of repair and rehabilitation from not more than 90 per centum of the Commissioner's estimate of the value of the property or project when the proposed repair and rehabilitation is completed to not more than 90 per centum of the sum of the estimated cost of repair and rehabilitation and the Commissioner's estimate of the value of the property before repair and rehabilitation, limited, in cases involving refinancing, the amount of the mortgage to not more than the estimated cost of repair and rehabilitation and the amount (as determined by the Commissioner) required to refinance existing indebtedness secured by the property of project, and eliminated provisions which required the property or project to be for use as rental accommodations for ten or more families eligible for occupancy.

Subsec. (d)(5). Pub. L. 87–70, §101(a)(10), (11), struck out provisions which required the mortgage to provide for complete amortization by periodic payments within such terms as the Commissioner may prescribe, but not to exceed 40 years from the date of insurance of the mortgage or three-quarters of the Commissioner's estimate of the remaining economic life of the building improvements, whichever is the lesser, and inserted proviso requiring the mortgage to bear interest at not less than the annual rate of interest determined by estimating the average market yield to maturity on all outstanding marketable obligations of the United States, and by adjusting such yield to the nearest one-eighth of 1 per centum.

Subsec. (d)(6). Pub. L. 87–70, §101(a)(10), added par. (6).

Subsec. (f). Pub. L. 87–70, §101(a)(12), required a property or project covered by a mortgage insured under subsec. (d)(3) or (d)(4) of this section to include five or more family units, empowered the Commissioner to adopt such procedures and requirements to assure that the dwelling accommodations provided under this section are available to families displaced from urban renewal areas or as a result of governmental action, authorized the Commissioner to insure a mortgage which meets subsec. (d)(3) of this section with no premium charge, with a reduced premium charge, or with a premium charge for such period or periods during the time the insurance is in effect as he may determine, and prohibited insurance of mortgages under subsec. (d)(2) or (d)(4) of this section after July 1, 1963, or under subsec. (d)(3) of this section after July 1, 1965, except pursuant to a commitment to insure before that date or except a mortgage covering property which will assist in the provision of housing for families displaced from urban renewal areas or as a result of governmental action.

Subsec. (g)(3), (4). Pub. L. 87–70, §101(a)(13), (14), added par. (3), redesignated former par. (3) as (4), and substituted ''this paragraph'' for ''this paragraph (3)''.

Subsec. (h). Pub. L. 87–70, §101(a)(15), inserted ''cash payments,'' after ''cash adjustments,'' in last sentence.

1959—Subsec. (a). Pub. L. 86–372, §110(a)(1), (2), inserted provisions in first par. to authorize assistance in relocating families residing in the environs of a community described in cl. (2) which are to be displaced as the result of governmental action, inserted provisions in second par. making mortgage insurance available in environs of communities and substituted ''in or near any such community'' for ''in any such community'' in second proviso of second par.

Subsec. (d)(2). Pub. L. 86–372, §110(b), required a mortgage to be secured by property upon which there is located a dwelling conforming to applicable standards prescribed by the Commissioner under subsec. (f) of this section, and meeting the requirements of all State laws, or local ordinances or regulations, relating to the

public health or safety, zoning, or otherwise, which may be applicable thereto, increased the maximum amount of the mortgage on a single-family residence in a high cost area from $10,000 to $12,000, authorized insurance of mortgages for two-, three-, and four-family residences and required the Commissioner to prescribe such procedures as are necessary to secure to families, referred to in subsec. (a) of this section, priorities in occupancy of the remaining units of two-, three-, and four-family dwellings after occupancy of one unit by the owner.

Subsec. (d)(3). Pub. L. 86–372, §110(c)(1), (2), substituted ''$12,000'' for ''$10,000'', and ''not in excess of (1) in the case of new construction, the amount which the Commissioner estimates will be the replacement cost of the property or project when the proposed improvements are completed (the replacement cost may include the land, the proposed physical improvements utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner), or (2) in the case of repair and rehabilitation, the Commissioner's estimate of the value of the property when the proposed repair and rehabilitation is completed: *Provided*, That such property or project, when constructed, or repaired and rehabilitated, shall be for use as rental accommodations for ten or more families eligible for occupancy as provided in this section; or'' for ''not in excess of the Commissioner's estimate of the value of the property or project when constructed, or repaired and rehabilitated, for use as rental accommodations for ten or more families eligible for occupancy as provided in this section; and''.

Subsec. (d)(4), (5). Pub. L. 86–372, §110(c)(3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (f). Pub. L. 86–372, §110(d), authorized the property or project to include such commercial and community facilities as the Commissioner deems adequate to serve the occupants.

Subsec. (g)(1). Pub. L. 86–372, §116(b), inserted reference to subsec. (k) of section 1710 of this title.

Subsec. (g)(2). Pub. L. 86–372, §110(e), substituted ''paragraph (3) or (4)'' for ''paragraph (3)''.

1957—Subsec. (g)(1). Pub. L. 85–104 substituted ''(h), and (j) of section 1710 of this title'' for ''and (h) of section 1710 of this title''.

1956—Subsec. (a). Act Aug. 7, 1956, §307(c), inserted in first sentence '', or (3) there is being carried out an urban renewal project assisted under section 1462 of title 42'' and substituted ''clause (2) or (3)'' for ''clause (2)'' each place it appears in last proviso.

Subsec. (d). Act Aug. 7, 1956, §108, substituted ''$9,000'' for ''$7,600'' and ''$10,000'' for ''$8,600'' in pars. (2) and (3); amended par. (2) to allow mortgage insurance for appraised value and to require at least $200 initial payment, which amount could include prepaid expenses, in lieu of former provisions which allowed mortgage to be insured up to 95 percent of the appraised value and required at least a 5 percent initial payment; eliminated ''95 per centum of'' after ''not in excess of'' and inserted ''or the Federal Housing Commissioner'' after ''agencies thereof'' in par. (3) and substituted ''forty'' for ''thirty'' in par. (4).

1955—Subsec. (a). Act Aug. 11, 1955, §102(j), authorized assistance in relocating families from urban renewal areas even though such families are not required to leave the area.

Subsec. (d)(3). Act Aug. 11, 1955, §102(c), increased from $5,000,000 to $12,500,000 the limitation on the maximum amount of a mortgage.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 406(b)(10)–(13) of Pub. L. 100–242 applicable only with respect to mortgages insured pursuant to conditional commitment issued on or after Feb. 5, 1988, or in accordance with direct endorsement program (24 CFR 200.163), if approved underwriter of mortgagee signs appraisal report for property on or after Feb. 5, 1988, see section 406(d) of Pub. L. 100–242, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by section 423(b)(3) of Pub. L. 98–181, see section 423(c) of Pub. L. 98–181, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–288 effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–606 effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as a note under section 165 of Title 26, Internal Revenue Code.

IMPLEMENTATION OF 1982 AMENDMENT

Amendment by Pub. L. 97–253 to be implemented only if Secretary determines that program of advance payment of insurance premiums, considering the effect of said amendment, is actuarially sound, see section 201(g) of Pub. L. 97–253, set out as a note under section 1709 of this title.

DELEGATION OF PROCESSING OF MORTGAGE INSURANCE

Secretary of Housing and Urban Development to implement system of mortgage insurance for mortgages insured under this section that delegates processing functions to selected approved mortgagees, with Secretary to retain authority to approve rents, expenses, property appraisals, and mortgage amounts and to execute firm commitments, see section 328 of Pub. L. 101–625, set out as a note under section 1713 of this title.

EFFECTIVE DATE OF TEMPORARY EXTENSION OF EMERGENCY LOW INCOME HOUSING PRESERVATION ACT OF 1987 AND CORRECTION OF ANY REPEAL

Pub. L. 101–494, §1, Oct. 31, 1990, 104 Stat. 1185, provided that:

''(a) EFFECTIVE DATE OF EXTENDER.—Public Law 101–402 [amending section 1709 of this title and section 11319 of Title 42, The Public Health and Welfare, and amending provisions set out as a note below] shall be deemed to have taken effect as if such law were enacted on September 29, 1990.

''(b) STATUS OF ACT.—The Emergency Low Income Housing Preservation Act of 1987 [title II of Pub. L. 100–242] (12 U.S.C. 1715*l* note) shall be deemed to have been in effect on and after September 29, 1990, as if Public Law 101–402 had been enacted on September 29, 1990.

''(c) CORRECTION OF ANY REPEAL.—The provisions of the Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C. 1715*l* note), other than section 203, are amended to read as such provisions were in effect on September 29, 1990. The amendment made by this subsection shall take effect as if this Act were enacted on September 29, 1990.

''(d) EFFECTIVE DATE.—If the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, which was approved Nov. 28, 1990] is enacted before the enactment of this Act [Oct. 31, 1990], this section shall be deemed to have taken effect immediately before the enactment of the Cranston-Gonzalez National Affordable Housing Act.''

PRESERVATION OF LOW-INCOME HOUSING

The Emergency Low Income Housing Preservation Act of 1987, consisting of title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, amended the National Housing Act, the United States Housing Act of 1937, and the Housing Act of 1949, and enacted provisions formerly set out as a note under this section. The provisions set out as a note under this section consisted of subtitles

A and B [§§ 201–203, 221–230, and 231–235] of title II of Pub. L. 100–242, as amended by Pub. L. 100–628, title X, §§ 1021–1027, Nov. 7, 1988, 102 Stat. 3270, 3271; Pub. L. 101–235, title II, §§ 201, 202(a)–(c), 203(b), Dec. 15, 1989, 103 Stat. 2037, 2038; Pub. L. 101–402, § 1, Oct. 1, 1990, 104 Stat. 866; Pub. L. 101–494, §§ 1(c), 2(a), Oct. 31, 1990, 104 Stat. 1185, which set up a temporary program for the prepayment of mortgages on low income housing insured under the National Housing Act that terminated on the date of enactment of the Cranston-Gonzalez National Affordable Housing Act (Nov. 28, 1990). The Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625] amended subtitles A and B of title II of Pub. L. 100–242 generally, changing the name of title II of Pub. L. 100–242 to the ''Low-Income Housing Preservation and Resident Homeownership Act of 1990''. As amended, subtitles A and B of title II are classified generally to subchapter I (§ 4101 et seq.) of chapter 42 of this title. Prior to the general revision by Pub. L. 101–625, subtitles A and B of title II read as follows:

''SUBTITLE A—GENERAL PROVISIONS

''SEC. 201. SHORT TITLE.

''This title [amending sections 1715z–6 and 1715z–15 of this title and sections 1437f, 1472, 1485, and 1487 of Title 42, The Public Health and Welfare] may be cited as the 'Emergency Low Income Housing Preservation Act of 1987'.

''SEC. 202. FINDINGS AND PURPOSE.

''(a) FINDINGS.—The Congress finds that—

''(1) in the next 15 years, more than 330,000 low income housing units insured or assisted under sections 221(d)(3) and 236 of the National Housing Act [12 U.S.C. 1715*l*(d)(3), 1715z–1] could be lost as a result of the termination of low income affordability restrictions;

''(2) in the next decade, more than 465,000 low income housing units produced with assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] could be lost as a result of the expiration of the rental assistance contracts;

''(3) some 150,000 units of rural low income housing financed under section 515 of the Housing Act of 1949 [42 U.S.C. 1485] are threatened with loss as a result of the prepayment of mortgages by owners;

''(4) the loss of this privately owned and federally assisted housing, which would occur in a period of sharply rising rents on unassisted housing and extremely low production of additional low rent housing, would inflict unacceptable harm on current tenants and would precipitate a grave national crisis in the supply of low income housing that was neither anticipated nor intended when contracts for these units were entered into;

''(5) the loss of this affordable housing, to encourage the production of which the public has provided substantial benefits over past years, would irreparably damage hard-won progress toward such important and long-established national objectives as—

''(A) providing a more adequate supply of decent, safe, and sanitary housing that is affordable to low income Americans;

''(B) increasing the supply of housing affordable to low income Americans that is accessible to employment opportunities; and

''(C) expanding housing opportunities for all Americans, particularly members of disadvantaged minorities;

''(6) the provision of an adequate supply of low income housing has depended and will continue to depend upon a strong, long-term partnership between the public and private sectors that accommodates a fair return on investment;

''(7) recent reductions in Federal housing assistance and tax benefits related to low income housing have increased the incentives for private industry to withdraw from the production and management of low income housing;

''(8) efforts to retain this housing must take account of specific financial and market conditions that differ markedly from project to project;

''(9) a major review of alternative responses to this threatened loss of affordable housing is now being undertaken by numerous private sector task forces as well as State and local organizations; and

''(10) until the Congress can act on recommendations that will emerge from this review, interim measures are needed to avoid the irreplaceable loss of low income housing and irrevocable displacement of current tenants.

''(b) PURPOSE.—It is the purpose of this title—

''(1) to preserve and retain to the maximum extent practicable as housing affordable to low income families or persons those privately owned dwelling units that were produced for such purpose with Federal assistance;

''(2) to minimize the involuntary displacement of tenants currently residing in such housing; and

''(3) to continue the partnership between all levels of government and the private sector in the production and operation of housing that is affordable to low income Americans.

''SEC. 203. TERMINATION OF CERTAIN PROVISIONS.

''(a) IN GENERAL.—Effective on November 30, 1990, or the date of enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990], whichever is earlier—

''(1) subtitles B and D [amending sections 1715z–6 and 1715z–15 of this title and sections 1437f and 1485 of Title 42, The Public Health and Welfare and enacting provisions set out in this note] are repealed; and

''(2) each provision of law amended by subtitle B or D is amended to read as it would without such amendment.

''(b) SAVINGS PROVISION.—The repeal or amendment of any provision under subsection (a) shall have no effect on any action taken or authorized under the provision prior to such repeal or amendment.

''SUBTITLE B—PREPAYMENT OF MORTGAGES INSURED UNDER NATIONAL HOUSING ACT

''SEC. 221. GENERAL PREPAYMENT LIMITATION.

''(a) PRIOR APPROVAL OF PLAN OF ACTION.—An owner of eligible low income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such housing only in accordance with a plan of action approved by the Secretary of Housing and Urban Development under this subtitle. An insurance contract with respect to eligible low-income housing may be terminated pursuant to section 229 of the National Housing Act [12 U.S.C. 1715t] only in accordance with a plan of action approved by the Secretary under this subtitle.

''(b) ALTERNATIVE PREPAYMENT MORATORIUM.—In the event any court of the United States or any State invalidates the requirements established in this subtitle (1) an owner of eligible low income housing located in the geographic area subject to the jurisdiction of such court may not prepay, and a mortgagee may not accept prepayment of, a mortgage on such housing during the 2-year period following the date of such invalidation, and (2) an insurance contract with respect to eligible low-income housing located in the geographic area subject to the jurisdiction of such court may not be terminated pursuant to section 229 of the National Housing Act [12 U.S.C. 1715t] during the 2-year period following the date of such invalidation.

''SEC. 222. NOTICE OF INTENT.

''An owner of eligible low income housing seeking to initiate prepayment or other changes in the status or terms of the mortgage or regulatory agreement (including a request to terminate the insurance contract pursuant to section 229 of the National Housing Act [12 U.S.C. 1715t]) shall file with the Secretary a notice of the intent of the owner in such form and manner as the Secretary shall prescribe. The owner shall simultaneously file the notice of intent with any appropriate State or local government agency for the jurisdiction within which the housing is located.

''SEC. 223. PLAN OF ACTION.

''(a) PREPARATION AND SUBMISSION.—Upon receipt of a notice of intent, the Secretary shall provide the owner

with such information as the owner needs to prepare a plan of action, which information shall include a description of the Federal incentives authorized under this title, and any relevant market area and demographic information that the Secretary has custody of and that the owner may use in preparing the plan. The owner shall submit the plan of action to the Secretary in such form and manner as the Secretary shall prescribe. The owner may simultaneously submit the plan of action to any appropriate State or local government agency for the jurisdiction within which the housing is located, which agency shall, in reviewing the plan, consult with representatives of the tenants of the housing.

''(b) CONTENTS.—The plan of action shall include—

''(1) a description of any proposed changes in the status or terms of the mortgage or regulatory agreement, which may include a request for incentives to extend the low income use of the housing;

''(2) a description of any assistance that could be provided by State or local government agencies, as determined by prior consultation between the owner and any appropriate State or local agencies;

''(3) a description of any proposed changes in the low income affordability restrictions;

''(4) a description of any change in ownership that is related to prepayment;

''(5) an assessment of the effect of the proposed changes on existing tenants;

''(6) a statement of the effect of the proposed changes on the supply of housing affordable to lower and very low income families or persons in the community within which the housing is located and in the area that the housing could reasonably be expected to serve; and

''(7) any other information that the Secretary determines is necessary to achieve the purposes of this title.

''(c) REVISIONS.—The owner may from time to time revise and amend the plan of action as may be necessary to obtain approval of the plan under this subtitle.

''(d) AUTHORITY TO LIMIT CONTENTS OF PLAN.—The Secretary shall limit the amount of appraisal, market area, and demographic information required under this section in the case of a plan of action requesting incentives.

''SEC. 224. INCENTIVES TO EXTEND LOW INCOME USE.

''(a) AGREEMENTS BY SECRETARY.—After receiving a plan of action from an owner of eligible low income housing, the Secretary may enter into such agreements as are necessary to satisfy the criteria for approval under section 225.

''(b) PERMISSIBLE INCENTIVES.—Agreements entered into under subsection (a) that by modifications to the existing regulatory agreement or mortgage extend the low income affordability restrictions through the term of the mortgage or, in the case of the prepayment of a mortgage, by a recorded instrument impose low income affordability restrictions (including the obligations specified in the regulatory agreement) through a period equivalent to the term of the original mortgage may include one or more of the following incentives that the Secretary, after taking into account local market conditions, determines to be necessary to achieve the purposes of this title:

''(1) An increase in the allowable distribution or other measures to increase the rate of return on investment.

''(2) Revisions to the method of calculating equity.

''(3) Increased access to residual receipts accounts or excess replacement reserves.

''(4) Provision of insurance for a second mortgage under section 241(f) of the National Housing Act [12 U.S.C. 1715z–6(f)].

''(5) An increase in the rents permitted under an existing contract under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], or (subject to the availability of amounts provided in appropriation Acts) additional assistance under such section 8 or an extension of any project-based assistance attached to the housing.

''(6) Financing of capital improvements under section 201 of the Housing and Community Development Amendments of 1978 [12 U.S.C. 1715z–1a].

''(7) Other actions, authorized in other provisions of law, to facilitate a transfer or sale of the project to a qualified nonprofit organization, limited equity tenant cooperative, public agency, or other entity acceptable to the Secretary.

''(8) Other incentives authorized in law.

''SEC. 225. CRITERIA FOR APPROVAL OF PLAN OF ACTION.

''(a) PLAN OF ACTION INVOLVING TERMINATION OF LOW INCOME AFFORDABILITY RESTRICTIONS.—The Secretary may approve a plan of action that involves termination of the low income affordability restrictions only upon a written finding that—

''(1) implementation of the plan of action will not materially increase economic hardship for current tenants (and will not in any event result in (A) a monthly rental payment by a current tenant that exceeds 30 percent of the monthly adjusted income of the tenant or an increase in the monthly rental payment in any year that exceeds 10 percent (whichever is lower), or (B) in the case of a current tenant who already pays more than such percentage, an increase in the monthly rental payment in any year that exceeds the increase in the Consumer Price Index or 10 percent (whichever is lower)) or involuntarily displace current tenants (except for good cause) where comparable and affordable housing is not readily available, determined without regard to the availability of Federal housing assistance that would address any such hardship or involuntary displacement; and

''(2)(A) the supply of vacant, comparable housing is sufficient to ensure that such prepayment will not materially affect—

''(i) the availability of decent, safe, and sanitary housing affordable to lower income and very low-income families or persons in the area that the housing could reasonably be expected to serve;

''(ii) the ability of lower income and very low-income families or persons to find affordable, decent, safe, and sanitary housing near employment opportunities; or

''(iii) the housing opportunities of minorities in the community within which the housing is located; or

''(B) the plan has been approved by the appropriate State agency and any appropriate local government agency for the jurisdiction within which the housing is located as being in accordance with a State strategy approved by the Secretary under section 226.

''(b) PLAN OF ACTION INCLUDING INCENTIVES.—The Secretary may approve a plan of action that includes incentives only upon finding that—

''(1) the package of incentives is necessary to provide a fair return on the investment of the owner;

''(2) due diligence has been given to ensuring that the package of incentives is, for the Federal Government, the least costly alternative that is consistent with the full achievement of the purposes of this title; and

''(3) binding commitments have been made to ensure that—

''(A) the housing will be retained as housing affordable for very low-income families or persons, lower income families or persons, and moderate income families or persons for the remaining term of the mortgage;

''(B) throughout such period, adequate expenditures will be made for maintenance and operation of the housing;

''(C) current tenants shall not be involuntarily displaced (except for good cause);

''(D) any increase in rent contributions for current tenants shall be to a level that does not exceed

30 percent of the adjusted income of the tenant or the fair market rent for comparable housing under section 8(b) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)], whichever is lower;

''(E)(i) any resulting increase in rents for current tenants (except for increases made necessary by increased operating costs)—

''(I) shall be phased in equally over a period of not less than 3 years, if such increase is 30 percent or more; and

''(II) shall be limited to not more than 10 percent per year if such increase is more than 10 percent but less than 30 percent; and

''(ii) assistance under section 8 of the United States Housing Act of 1937 shall be provided if necessary to mitigate any adverse affect on current income eligible tenants; and

''(F)(i) rents for units becoming available to new tenants shall be at levels approved by the Secretary that will ensure, to the extent practicable, that the units will be available and affordable to the same proportions of very low-income families or persons, lower income families or persons, and moderate income families or persons (including families or persons whose incomes are 95 percent or more of area median income) as resided in the housing as of January 1, 1987 (based on the area median income limits established by the Secretary in February, 1987), or the date the plan of action is approved, whichever date results in the highest proportion of very low-income families, except that this limitation shall not prohibit a higher proportion of very low-income families from occupying the housing; and

''(ii) in approving rents under this paragraph, the Secretary shall take into account any additional incentives provided under this subtitle and shall make provision for such annual rent adjustments as may be made necessary by future reasonable increases in operating costs.

''(c) SECTION 8 RENTAL ASSISTANCE.—When providing rental assistance under section 8 [of the United States Housing Act of 1937, 42 U.S.C. 1437f], the Secretary may enter into a contract with an owner, contingent upon the future availability of appropriations for the purpose of renewing expiring contracts for rental assistance as provided in appropriations Acts, to extend the term of such rental assistance for such additional period or periods as is necessary to carry out an approved plan of action. The contract and the approved plan of action shall provide that, if the Secretary is unable to extend the term of such rental assistance or is unable to develop a revised package of incentives providing benefits to the owner comparable to those received under the original approved plan of action, the Secretary, upon the request of the owner, shall take the following actions (subject to the limitations under the following paragraphs):—

''(1) Modification of the binding commitments made pursuant to subsection (b) that are dependent on such rental assistance.

''(2) If action under paragraph (1) is not feasible, release of an owner from the binding commitments made pursuant to subsection (b) that are dependent on such rental assistance.

''(3) If action under paragraphs (1) and (2) would, in the determination of the Secretary, result in the default of the insured loan, approval of the revised plan of action, notwithstanding subsection (a), that involves the termination of low-income affordability restrictions.

At least 30 days prior to making a request under the preceding sentence, an owner shall notify the Secretary of the owner's intention to submit the request. The Secretary shall have a period of 90 days following receipt of such notice to take action to extend the rental assistance contract and to continue the binding commitments under subsection (b).

''(d) RELOCATION OF DISPLACED TENANTS.—Any plan of action shall specify actions that the Secretary and the owner shall take to ensure that any tenants, displaced as a result of a plan of action approved under subsection (a) or as a result of modifications taken pursuant to subsection (c), are relocated to affordable housing.

''SEC. 226. ALTERNATIVE STATE STRATEGY.

''(a) CRITERIA FOR APPROVAL.—The Secretary may approve a State strategy for purposes of section 225(a) only upon finding that it is a practicable statewide strategy that ensures at a minimum that—

''(1) current tenants will not be involuntarily displaced (except for good cause);

''(2) housing opportunities for minorities will not be adversely affected in the communities within which the housing is located;

''(3) any increase in rent for current tenants shall be to a level that does not exceed 30 percent of the adjusted income of the tenants or the fair market rent for comparable housing under section 8(b) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)], whichever is lower, except that any increase not necessitated by increased operating costs shall be phased in equally over not less than 3 years if such increase exceeds 10 percent;

''(4) housing approved under the State strategy will remain affordable to very low-income, lower income or moderate income families and persons for not less than the remaining term of the original mortgage, if the housing is to be made available for rental, or for not less than 40 years, if the housing is to be made available for homeownership;

''(5)(A) not less than 80 of all units in eligible low income housing approved under the State strategy shall be retained as affordable to families or persons meeting the income eligibility standards for initial occupancy that applies to the housing on January 1, 1987; and

''(B) not less than 60 percent of the units in any one project shall remain available and affordable to such families or persons, within which not less than 20 percent of the units shall remain available and affordable to very low income families or persons as determined by the Secretary with adjustments for smaller and larger families;

''(6) expenditures for rehabilitation, maintenance and operation shall be at a level necessary to maintain the housing as decent, safe and sanitary for the period specified in paragraph (4);

''(7) not less than 25 percent of new assistance required to maintain low income affordability in accordance with this section shall be provided through State and local actions, such as tax exempt financing, low-income tax credits, State or local tax concessions, and other incentives provided by the State or local governments; and

''(8) for each unit of eligible low income housing approved under the State strategy that is not retained as affordable to families or persons meeting the income eligibility standards for initial occupancy on January 1, 1987, the State will provide with State funds 1 additional unit of comparable housing in the same market area that is available and affordable to such families or persons, and such units or funds shall be made available before the Secretary approves the State strategy.

''(b) ADDITIONAL REQUIREMENTS.—

''(1) The Secretary may not approve a State strategy until the State has entered into all of the agreements necessary to carry out the strategy.

''(2) Each State strategy shall include any other provision that the Secretary determines to be necessary to implement an approved State strategy.

''(c) IMPLEMENTATION AGREEMENTS.—The Secretary may enter into such agreements as are necessary to implement an approved State strategy, which agreements may include incentives that are authorized in other provisions of this subtitle.

''SEC. 227. TIMETABLE FOR APPROVAL OF PLAN OF ACTION.

''(a) NOTIFICATION OF DEFICIENCIES.—Not later than 60 days after receipt of a plan of action, the Secretary

shall notify the owner in writing of any deficiencies that prevent the plan of action from being approved. If deficiencies are found, such notice shall describe alternative ways in which the plan could be revised to meet the criteria for approval.

''(b) NOTIFICATION OF APPROVAL.—

''(1) IN GENERAL.—Not later than 180 days after receipt of a plan of action, or such longer period as the owner requests, the Secretary shall notify the owner in writing whether the plan of action, including any revisions, is approved. If approval is withheld, the notice shall describe—

''(A) the reasons for withholding approval; and

''(B) the actions that could be taken to meet the criteria for approval.

''(2) OPPORTUNITY TO REVISE.—The Secretary shall subsequently give the owner a reasonable opportunity to revise the plan of action and seek approval.

''SEC. 228. MODIFICATION OF EXISTING REGULATORY AGREEMENTS.

''(a) IN GENERAL.—If a plan of action cannot be approved within 300 days after a plan of action is submitted, the Secretary may, upon the request of the owner, modify existing regulatory agreements to—

''(1) prevent involuntary displacement of current tenants (except for good cause);

''(2) ensure that adequate expenditures will be made for maintenance and operation of the housing;

''(3) extend any expiring project-based assistance on the housing for the term of the agreement;

''(4) permit an increase in the allowable distribution that could be accommodated by a rise in rents on occupied units to rise to a level no higher than 30 percent of the adjusted income of the current tenants, as determined by the Secretary, except that rents shall not exceed the fair market rent for comparable housing under section 8(b) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)] and any resulting increase in rents for current tenants shall be phased in equally over a period of no less than 3 years unless such increase is less than 10 percent; and

''(5) ensure that units becoming vacant during the term of the agreement are made available in accordance with section 225(b)(3)(F).

''(b) EXPIRATION.—Agreements entered into under this section shall expire upon the expiration of the 4-year period beginning on the date of the enactment of this Act [Feb. 5, 1988]. Upon the expiration of the agreements, the housing covered by the agreements shall be subject to any law then affecting low income affordability restrictions.

''SEC. 229. CONSULTATIONS WITH OTHER INTERESTED PARTIES.

''The Secretary shall confer with any appropriate State or local government agency to confirm any State or local assistance that is available to achieve the purposes of this title and shall give consideration to the views of any such agency when making determinations under section 225. The Secretary shall also confer with appropriate interested parties that the Secretary believes could assist in the development of a plan of action that best achieves the purposes of this title.

''SEC. 230. RIGHT OF CONVERSION TO ALTERNATIVE PREPAYMENT SYSTEM.

''Any agreement to extend low income affordability restrictions under section 225(b) shall, for 4 years from the date of the enactment of this Act [Feb. 5, 1988], provide the owner the right to convert to any system of incentives and restrictions provided in law during such period, with such adjustments as the Secretary determines are appropriate to compensate for the value of any benefits the owner had received under this title.

''SEC. 232. REPORT TO CONGRESS.

''Not later than 1 year after the date of the enactment of this Act [Feb. 5, 1988], the Secretary shall submit to the Congress a report setting forth the activities carried out under this subtitle. The report shall include a description of the plans of action approved under subsections (a) and (b) of section 225 and an analysis of the extent to which the plans retain housing affordable for very low-income families or persons, lower income families or persons, and moderate income families or persons. The report shall also include a detailed description of (1) the actions taken by the Secretary to ensure meaningful participation by affected tenants; and (2) the incentives developed by the Secretary under section 224 to ensure compliance with this subtitle.

''SEC. 233. DEFINITIONS.

''For purposes of this subtitle:

''(1) The term 'eligible low income housing' means any housing financed by a loan or mortgage—

''(A) that is—

''(i) insured or held by the Secretary under section 221(d)(3) of the National Housing Act [12 U.S.C. 1715*l*(d)(3)] and assisted under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s] or section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

''(ii) insured or held by the Secretary and bears interest at a rate determined under the proviso of section 221(d)(5) of the National Housing Act;

''(iii) insured, assisted, or held by the Secretary or a State or State agency under section 236 of the National Housing Act [12 U.S.C. 1715z–1]; or

''(iv) held by the Secretary and formerly insured under a program referred to in clause (i), (ii), or (iii); and

''(B) that, under regulation or contract in effect before the date of the enactment of this Act [Feb. 5, 1988], is or will within 1 year become eligible for prepayment without prior approval of the Secretary.

''(2) The term 'low income affordability restrictions' means limits imposed by regulation or regulatory agreement on tenant rents, rent contributions, or income eligibility in eligible low income housing.

''(3) The terms 'lower income families or persons' and 'very low-income families or persons' mean families or persons whose incomes do not exceed the respective levels established for lower income families and very low-income families under section 3(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(2)].

''(4) The term 'moderate income families or persons' means families or persons whose incomes are between 80 percent and 95 percent of median income for the area, as determined by the Secretary with adjustments for smaller and larger families.

''(5) The term 'owner' means the current or subsequent owner or owners of eligible low income housing.

''(6) The term 'Secretary' means the Secretary of Housing and Urban Development.

''(7) The term 'termination of low income affordability restrictions' means any elimination or relaxation of low income affordability restrictions (other than those permitted under an approved plan of action under section 225(b)).

''SEC. 234. REGULATIONS.

''The Secretary shall issue final regulations to carry out this subtitle not later than 60 days after the date of the enactment of this Act [Feb. 5, 1988]. The Secretary shall provide for the regulations to take effect not later than 45 days after the date on which the regulations are issued.

''SEC. 235. EFFECTIVE DATE.

''The requirements of this subtitle shall apply to any project that is eligible low income housing on or after November 1, 1987.''

[Pub. L. 101–494, § 2(b), Oct. 31, 1990, 104 Stat. 1185, provided that: ''If the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, which was approved Nov. 28, 1990] is enacted on or after October 31, 1990, this section [amending section 203(a) of Pub. L. 100–242 set out above] shall be deemed to have taken effect on October 30, 1990.''

NEHEMIAH HOUSING OPPORTUNITY GRANTS

Title VI (§§ 601–613) of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1951, as amended by Pub. L. 102–139, title II, Oct. 28, 1991, 105 Stat. 759; Pub. L. 102–550, title I, § 183, Oct. 28, 1992, 106 Stat. 3738, established the Nehemiah Housing Opportunity Fund to provide assistance in the form of grants to nonprofit organizations for the construction, rehabilitation, and financing of housing for families not otherwise able to afford homeownership. Pub. L. 101–625, title II, § 289(a)(3), (b), Nov. 28, 1990, 104 Stat. 4128, which is classified to section 12839(a)(3), (b) of Title 42, The Public Health and Welfare, provided that, except with respect to projects and programs for which binding commitments have been entered into prior to Oct. 1, 1991, no new grants or loans be made after Oct. 1, 1991, under title VI of Pub. L. 100–242, and effective Oct. 1, 1991, title VI of Pub. L. 100–242 is repealed.

LIMITATION ON NUMBER OF DWELLING UNITS WITH MORTGAGES NOT PROVIDING FOR COMPLETE AMORTIZATION

For limitation on the number of dwelling units with mortgages not providing for complete amortization pursuant to authority granted by amendment to subsec. (d)(6) by section 446 of Pub. L. 98–181, see section 446(f) of Pub. L. 98–181, set out as a note under section 1713 of this title.

AMENDMENTS TO PROVISIONS FOR FAMILY UNIT LIMITS ON RENTAL HOUSING; EQUITABLE APPLICATION OF SUCH AMENDMENTS OR PRE-AMENDMENT PROVISIONS TO PROJECTS SUBMITTED FOR CONSIDERATION PRIOR TO SEPTEMBER 2, 1964

Equitable application of amendment to subsec. (d)(3)(ii), (4)(ii) of this section by section 107(d)(1), (2) of Pub. L. 88–560 or pre-amendment provisions to projects submitted for consideration prior to Sept. 2, 1964, see section 107(g) of Pub. L. 88–560, set out as a note under section 1713 of this title.

TAXATION OF INTEREST PAID ON OBLIGATIONS SECURED BY INSURED MORTGAGE AND ISSUED BY PUBLIC AGENCY

Section 319(b) of Pub. L. 93–383, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''With respect to any obligation secured by a mortgage which is insured under section 221(d)(3) of the National Housing Acts [subsec. (d)(3) of this section] and issued by a public agency as mortgagor in connection with the financing of a project assisted under section 8 of the United States Housing Act of 1937 [section 1437f of title 42], the interest paid on such obligation shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1986 [chapter 1 of title 26].''

§ 1715m. Repealed. Pub. L. 110–289, div. B, title I, § 2120(a)(5), July 30, 2008, 122 Stat. 2835

Section, act June 27, 1934, ch. 847, title II, § 222, as added Aug. 2, 1954, ch. 649, title I, § 124, 68 Stat. 603; amended Pub. L. 85–104, title I, §§ 103, 112, July 12, 1957, 71 Stat. 296, 297; Pub. L. 86–372, title I, §§ 111, 116(b), Sept. 23, 1959, 73 Stat. 661, 664; Pub. L. 88–560, title I, § 115, Sept. 2, 1964, 78 Stat. 779; Pub. L. 89–117, title II, § 212, title XI, § 1108(j), Aug. 10, 1965, 79 Stat. 470, 505; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title III, § 301, Aug. 1, 1968, 82 Stat. 505; Pub. L. 91–152, title I, §§ 102(c), 105, 113(f), Dec. 24, 1969, 83 Stat. 380, 381, 384; Pub. L. 91–621, § 7(b), Dec. 31, 1970, 84 Stat. 1865; Pub. L. 93–383, title III, §§ 302(d), 310(c), Aug. 22, 1974, 88 Stat. 676, 682; Pub. L. 95–128, title III, §§ 303(d), 304(c), Oct. 12, 1977, 91 Stat. 1132, 1133; Pub. L. 96–153, title III, § 312(c), Dec. 21, 1979, 93 Stat. 1116; Pub. L. 96–399, title III, § 336(c), Oct. 8, 1980, 94 Stat. 1654; Pub. L. 100–242, title IV, § 406(b)(14), Feb. 5, 1988, 101 Stat. 1901; Pub. L. 109–241, title IX, § 902(f), July 11, 2006, 120 Stat. 567, related to mortgage insurance for servicemen.

§ 1715n. Miscellaneous mortgage insurance

(a) Projects covered

Notwithstanding any of the provisions of this chapter and without regard to limitations upon eligibility contained in any section or subchapter of this chapter, other than the limitation in section 1709(g) of this title, the Secretary is authorized, upon application by the mortgagee, to insure or make commitments to insure under any section or subchapter of this chapter any mortgage—

(1) executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Public Law 849, Seventy-sixth Congress, as amended; Public Law 781, Seventy-sixth Congress, as amended; or Public Laws 9, 73, or 353, Seventy-seventh Congress, as amended (including any property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof); or

(2) executed in connection with the sale by the Secretary of Housing and Urban Development, or by any public housing agency with the approval of the Secretary, of any housing (including any property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Public Law 671, Seventy-sixth Congress; or

(3) executed in connection with the sale by the Government, or any agency or official thereof, of any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, developed under the Emergency Relief Appropriation Act of 1935, or of any of the village properties or employee's housing under the jurisdiction of Tennessee Valley Authority, or of any housing under the jurisdiction of the Department of the Interior located within the town area of Coulee Dam, Washington, acquired by the United States for the construction, operation, and maintenance of Grand Coulee Dam and its appurtenant works: *Provided*, That for the purpose of the application of this subchapter to sales by the Secretary of the Interior pursuant to subsections 3(b)(1) and 3(b)(2) of the Coulee Dam Community Act of 1957, the selling price of the property involved shall be deemed to be the appraised value, of any permanent housing under the jurisdiction of the Department of the Interior constructed under the Boulder Canyon Project Act of December 21, 1928, as amended and supplemented [43 U.S.C. 617 et seq.] located within the Boulder City municipal area: *Provided*, That for purposes of the application of this subchapter to sales by the Secretary of the Interior pursuant to subsections 3(b)(1) and 3(b)(2) of the Boulder City Act of 1958, the selling price of the property involved shall be deemed to be the appraised value; or

(4) executed in connection with the sale by the Government, or any agency or official thereof, of any housing (including any property acquired, held, or constructed in connection therewith or to serve the inhabitants

thereof) pursuant to the Atomic Energy Community Act of 1955, as amended [42 U.S.C. 2301 et seq.]: *Provided*, That such insurance shall be issued without regard to any preferences or priorities except those prescribed by this chapter or the Atomic Energy Community Act of 1955, as amended; or

(5) executed in connection with the sale by a State or municipality, or an agency, instrumentality, or political subdivision of either, of a project consisting of any permanent housing (including any property acquired, held, or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality, or political subdivision, for the occupancy of veterans of World War II, or Korean veterans, their families, and others; or

(6) executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in paragraphs (1), (2), (3), and (4) above; or

(7) given to refinance an existing mortgage insured under this chapter, or an existing mortgage held by the Secretary that is subject to a mortgage restructuring and rental assistance sufficiency plan pursuant to the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), provided that—

(A) the principal amount of any such refinancing mortgage shall not exceed the original principal amount or the unexpired term of such existing mortgage and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee, except that (i) the principal amount of any such refinancing mortgage may equal the outstanding balance of an existing mortgage insured pursuant to section 1715z–10[1] of this title, if the amount of the monthly payment due under the refinancing mortgage is less than that due under the existing mortgage for the month in which the refinancing mortgage is executed; (ii) a mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage; (iii) in any case involving the refinancing of a loan in which the Secretary determines that the insurance of a mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, such refinancing mortgage may have a term not more than twelve years in excess of the unexpired term of such existing insured mortgage; and (iv) any multifamily mortgage that is refinanced under this paragraph shall be documented through amendments to the existing insurance contract and shall not be structured through the provisions of a new insurance contract; and

(B) a mortgage of the character described in paragraphs (1) through (6) of this subsection shall have a maturity and a principal obligation not in excess of the maximums prescribed under the applicable section or subchapter of this chapter, except that in no case may the principal obligation of a mortgage referred to in paragraph (5) of this subsection exceed 90 per centum of the appraised value of the mortgaged property, and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee;

(C) a mortgage that is subject to a mortgage restructuring and rental assistance sufficiency plan pursuant to the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) and is refinanced under this paragraph may have a term of not more than 30 years; or

(8) executed in connection with the sale by the Government of any housing acquired pursuant to section 3374 of title 42.

(b) Insurance of mortgages given to refinance mortgages covering existing property or projects in urban renewal areas

Notwithstanding any of the provisions of this subchapter and without regard to limitations upon eligibility contained in section 1715*l* of this title, the Secretary may in his discretion insure under section 1715*l*(d)(3) of this title any mortgage executed by a mortgagor of the character described therein where such mortgage is given to refinance a mortgage covering an existing property or project (other than a one- to four-family structure) located in an urban renewal area, if the Secretary finds that such insurance will facilitate the occupancy of dwelling units in the property or project by families of low or moderate income or families displaced from an urban renewal area or displaced as a result of governmental action.

(c) Insurance of certain assigned mortgages

The Secretary shall also have authority to insure under this chapter any mortgage assigned to the Secretary in connection with payment under a contract of mortgage insurance or executed in connection with the sale by the Secretary, including a sale through another entity acting under authority of the fourth sentence of section 1710(g) of this title, of any property acquired under any section or subchapter of this chapter without regard to any limitations or requirements contained in this chapter upon the eligibility of the mortgage, upon the payment of insurance premiums, or upon the terms and conditions of insurance settlement and the benefits of the insurance to be included in such settlement.

(d) Insurance of loans made to cover operating losses of certain projects having existing mortgages insured by Secretary

(1) Notwithstanding any other provision of this chapter, the Secretary is authorized to insure loans made to cover the operating losses of certain projects that have existing project mortgages insured by the Secretary. Insurance under this subsection shall be in the Secretary's discretion and upon such terms and conditions as the Secretary may prescribe, and shall be provided in accordance with the provisions of this subsection. For purposes of this subsection, the term ''operating loss'' means the amount by

[1] See References in Text note below.

which the sum of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project covered by the mortgage, exceeds the income of the project.

(2) To be eligible for insurance pursuant to this paragraph—

(A) the existing project mortgage (i) shall have been insured by the Secretary at any time before or after February 5, 1988; and (ii) shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling;

(B) the operating loss shall have occurred during the first 24 months after the date of completion of the project, as determined by the Secretary; and

(C) the loan shall be in an amount not exceeding the operating loss.

(3) To be eligible for insurance pursuant to this paragraph—

(A) the existing project mortgage (i) shall have been insured by the Secretary at any time before or after February 5, 1988; (ii) shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and (iii) shall not cover a subsidized project, as defined by the Secretary;

(B) the loan shall be in an amount not exceeding 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Secretary, except that in no event may the amount of the loan exceed the operating loss during such period;

(C) the loan shall be made within 10 years after the end of the period of consecutive months referred to in the preceding subparagraph; and

(D) the project shall meet all applicable underwriting and other requirements of the Secretary at the time the loan is to be made.

(4) Any loan insured pursuant to this subsection shall (A) bear interest at such rate as may be agreed upon by the mortgagor and mortgagee; (B) be secured in such manner as the Secretary shall require; (C) be limited to a term not exceeding the unexpired term of the original mortgage; and (D) be insured under the same section as the original mortgage. The Secretary may provide insurance pursuant to paragraph (2) or (3), or pursuant to both such paragraphs, in connection with an existing project mortgage, except that the Secretary may not provide insurance pursuant to both such paragraphs in connection with the same period of months referred to in paragraphs (2)(B) and (3)(B). The Secretary is authorized to collect a premium charge for insurance of loans pursuant to this subsection in an amount computed at the same premium rate as is applicable to the original mortgage. This premium shall be payable in cash or in debentures of the insurance fund under which the loan is insured at par plus accrued interest. In the event of a failure of the borrower to make any payment due under such loan or under the original mortgage, both the loan and original mortgage shall be considered in default, and if such default continues for a period of thirty days, the lender shall be entitled to insurance benefits, computed in the same manner as for the original mortgage, except that in determining the interest rate under section 1715*o* of this title for the debentures representing the portion of the claim applicable to the loan, the date of the commitment to insure the loan and the insurance date of the loan shall be taken into consideration rather than the commitment or insurance date for the original mortgage.

(5) A loan involving a project covered by a mortgage insured under section 1715e of this title that is the obligation of the Cooperative Management Housing Insurance Fund shall be the obligation of such fund, and loans involving projects covered by a mortgage insured under section 1715z–1 of this title or under any section of this subchapter pursuant to subsection (e) of this section shall be the obligation of the Special Risk Insurance Fund.

(6) In determining the amount of an operating loss loan to be insured pursuant to this subsection, the Secretary shall not reduce such amount solely to reflect any amounts placed in escrow (at the time the existing project mortgage was insured) for initial operating deficits. If an operating loss loan was insured by the Secretary pursuant to this subsection before October 28, 1992, and was reduced solely to reflect the amount placed in escrow for initial operating deficits, the Secretary shall insure, to the extent of the availability of insurance authority provided in appropriation Acts, an increase in the existing loan or a separate loan, in an amount equal to the lesser of (A) the maximum amount permitted under this subsection and the applicable underwriting requirements established by the Secretary and in effect at the time the loan is to be made, or (B) the amount of the escrow for initial operating deficits.

(e) Insurance of mortgages executed in connection with repair, rehabilitation, construction, or purchase of property in older, declining urban areas

Notwithstanding any of the provisions of this chapter except section 1715c of this title, and without regard to limitations upon eligibility contained in any section of this subchapter or subchapter IX–B, other than the limitation in section 1709(g) of this title, the Secretary is authorized, upon application by the mortgagee, to insure under any section of this subchapter or subchapter IX–B a mortgage executed in connection with the repair, rehabilitation, construction, or purchase of property located in an older, declining urban area in which the conditions are such that one or more of the eligibility requirements applicable to the section or subchapter under which insurance is sought could not be met, if the Secretary finds that (1) the area is reasonably viable, giving consideration to the need for providing adequate housing or group practice facilities for families of low and moderate income in such area, and (2) the property is an acceptable risk in view of such consideration. The insurance of a mortgage pursuant to

this subsection shall be the obligation of the Special Risk Insurance Fund.

(f) Insurance of mortgages executed in connection with purchase or refinancing of existing multifamily housing project; refinancing of existing debt of existing hospital, or purchase or refinancing of rental rehabilitated property; terms and conditions, etc.

(1) Notwithstanding any of the provisions of this chapter, the Secretary is authorized, in his discretion, to insure under any section of this subchapter a mortgage executed in connection with the purchase of[2] refinancing of an existing multifamily housing project or the purchase or refinancing of existing debt of an existing hospital (or existing nursing home, existing assisted living facility, existing intermediate care facility, existing board and care home, or any combination thereof).

(2) In the case of the purchase or refinancing under this subsection of a multifamily housing project located in an older, declining urban area, the Secretary shall make available an amount not to exceed $30,000,000 of available purchase authority pursuant to section 1720[1] of this title to reduce interest rates on low- and moderate-income rental housing in projects having 100 units or less which otherwise could not support refinancing and moderate rehabilitation without causing excessive rent burdens on current tenants due to rent increases. The Secretary shall prescribe such terms and conditions as he deems necessary to assure that—

(A) the refinancing is used to lower the monthly debt service only to the extent necessary to assure the continued economic viability of the project, taking into account any rent reductions to be implemented by the mortgagor; and

(B) during the mortgage term no rental increases shall be made except those which are necessary to offset actual and reasonable operating expense increases or other necessary expense increases and maintain reasonable profit levels approved by the Secretary.

(3) For all insurance authorized by this subsection and provided pursuant to a commitment entered into after October 8, 1980, the Secretary may not accept an offer to prepay or request refinancing of a mortgage secured by rental housing unless the Secretary takes appropriate action that will obligate the borrower (and successors in interest thereof) to utilize the property as a rental property for a period of five years from the date on which the insurance was provided (twenty years in the case of any such mortgage purchased under section 1720[1] of this title) unless the Secretary finds that—

(A) the conversion of the property to a cooperative, or condominium form of ownership is sponsored by a bona fide tenants' organization representing a majority of the households in the project;

(B) continuance of the property as rental housing is clearly unnecessary to assure adequate rental housing opportunities for low- and moderate-income people in the community; or

(C) continuance of the property as rental housing would have an undesirable and deleterious effect on the surrounding neighborhood.

(4) In the case of refinancing of an existing hospital (or existing nursing home, existing assisted living facility, existing intermediate care facility, existing board and care home, or any combination thereof) the Secretary shall prescribe such terms and conditions as the Secretary deems necessary to assure that—

(A) the refinancing is employed to lower the monthly debt service costs (taking into account any fees or charges connected with such refinancing) of such existing hospital (or existing nursing home, existing assisted living facility, existing intermediate care facility, existing board and care home, or any combination thereof);

(B) the proceeds of any refinancing will be employed only to retire the existing indebtedness and pay the necessary cost of refinancing on such existing hospital (or existing nursing home, existing assisted living facility, existing intermediate care facility, existing board and care home, or any combination thereof);

(C) such existing hospital (or existing nursing home, existing assisted living facility, existing intermediate care facility, existing board and care home, or any combination thereof) is economically viable; and

(D) the applicable requirements for certificates, studies, and statements of section 1715w of this title (for the existing nursing home, existing assisted living facility, intermediate care facility, board and care home, or any combination thereof, proposed to be refinanced) or of section 1715z–7 of this title (for the existing hospital proposed to be refinanced) have been met.

(5) In the case of any purchase or refinancing under this subsection involving property to be rehabilitated or developed under section 1437*o*[1] of title 42, the Secretary may—

(A) include rehabilitation or development costs of not to exceed $20,000 per unit, except that the Secretary may increase such amount by not to exceed 25 per centum for specific properties where cost levels so require;

(B) permit subordinated liens securing up to the full amount of mortgage financing provided by State or local governments or agencies thereof; and

(C) pay such benefits in cash unless the mortgagee submits a written request for debenture payment.

(g) Insurance of mortgages covering multifamily housing projects including units not self-contained

Notwithstanding any other provisions of this chapter, the Secretary may, in his discretion, insure a mortgage covering a multifamily housing project including units which are not self-contained.

(June 27, 1934, ch. 847, title II, § 223, as added Aug. 2, 1954, ch. 649, title I, § 125, 68 Stat. 605; amended Aug. 4, 1955, ch. 543, ch. 11, § 201, 69 Stat. 484; Aug. 11, 1955, ch. 783, title I, § 102(k), 69 Stat. 636; Pub. L. 85–104, title I, § 114, July 12, 1957, 71 Stat. 298; Pub. L. 85–240, § 4, Aug. 30, 1957,

[2] So in original. Probably should be ''or''.

71 Stat. 528; Pub. L. 85–900, § 12, Sept. 2, 1958, 72 Stat. 1735; Pub. L. 87–70, title I, § 101(d), title VI, § 612(h), June 30, 1961, 75 Stat. 154, 182; Pub. L. 88–560, title I, § 116, Sept. 2, 1964, 78 Stat. 779; Pub. L. 89–117, title I, § 108(e), title II, § 213, Aug. 10, 1965, 79 Stat. 461, 471; Pub. L. 89–754, title X, § 1013(h), Nov. 3, 1966, 80 Stat. 1292; Pub. L. 90–19, § 1(a)(3), (h), May 25, 1967, 81 Stat. 17, 18; Pub. L. 90–448, title I, § 103(a), title III, § 312, Aug. 1, 1968, 82 Stat. 486, 510; Pub. L. 91–152, title IV, § 418(c), (d), Dec. 24, 1969, 83 Stat. 402; Pub. L. 93–383, title III, § 311(a), Aug. 22, 1974, 88 Stat. 683; Pub. L. 95–557, title III, § 326, Oct. 31, 1978, 92 Stat. 2104; Pub. L. 96–399, title III, § 327, Oct. 8, 1980, 94 Stat. 1650; Pub. L. 97–35, title III, § 339B(b), Aug. 13, 1981, 95 Stat. 417; Pub. L. 98–181, title III, § 303(b), Nov. 30, 1983, 97 Stat. 1207; Pub. L. 98–479, title II, § 204(a)(7), Oct. 17, 1984, 98 Stat. 2232; Pub. L. 100–242, title IV, §§ 406(b)(15), (16), 408(a), 409(a), (b), 419(b), 427, 429(d), Feb. 5, 1988, 101 Stat. 1901, 1903, 1913, 1916, 1918; Pub. L. 102–550, title V, §§ 510, 511(f), Oct. 28, 1992, 106 Stat. 3784, 3786; Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316; Pub. L. 105–276, title VI, § 601(e), Oct. 21, 1998, 112 Stat. 2674; Pub. L. 107–116, title VI, § 615, Jan. 10, 2002, 115 Stat. 2225; Pub. L. 109–115, div. A, title III, § 323, Nov. 30, 2005, 119 Stat. 2466.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

Public Law 849, Seventy-sixth Congress, as amended, referred to in subsec. (a)(1), is act Oct. 14, 1940, ch. 862, 54 Stat. 1125, as amended, known as the ''Lanham Public War Housing Act'', which is classified generally to subchapters II to VII (§§ 1521 et seq., 1531 et seq., 1541 et seq., 1561 et seq., 1571 et seq., and 1581 et seq.) of chapter 9 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 42 and Tables.

Public Laws 9, 73, and 353, Seventy-seventh Congress, referred to in subsec. (a)(1), refer to the following acts, respectively: Public Law 9, Urgent Deficiency Appropriation Act, 1941, act Mar. 1, 1941, ch. 9, 55 Stat. 14; Public Law 73, Additional Urgent Deficiency Appropriation Act, 1941, act May 24, 1941, ch. 132, 55 Stat. 197; and Public Law 353, Third Supplemental National Defense Appropriation Act, 1942, act Dec. 17, 1941, ch. 591, 55 Stat. 810. These three acts appropriated a total of $320,000,000 to the President for the purpose of providing housing necessary because of national defense activities and conditions arising out of World War II. These provisions were not classified to the code, although all three acts are cited in a ''Prior Additional Appropriations'' note under section 1523 of Title 42.

Public Law 671, Seventy-sixth Congress, referred to in subsec. (a)(2), is act June 28, 1940, ch. 440, 54 Stat. 676, as amended. Provisions of the Act relating to housing are contained in title II, which is classified generally to subchapter I (§ 1501 et seq.) of chapter 9 of Title 42. For complete classification of this Act to the Code, see Tables.

The Emergency Relief Appropriation Act of 1935, referred to in subsec. (a)(3), is Joint Res. Apr. 8, 1935, ch. 48, 49 Stat. 115. It was temporary legislation, and was formerly set out in a note in former chapter 16 of Title 15, Commerce and Trade. See notes under former sections 721 to 728 of that title.

Subsections 3(b)(1) and 3(b)(2) of the Coulee Dam Community Act of 1957 [Pub. L. 85–240, Aug. 30, 1957, 71 Stat. 524], referred to in subsec. (a)(3), are set out in a note under section 835c of Title 16, Conservation.

The Boulder Canyon Project Act of December 21, 1928, as amended and supplemented, referred to in subsec. (a)(3), is act Dec. 21, 1928, ch. 42, 45 Stat. 1057, as amended, which is classified generally to subchapter I (§ 617 et seq.) of chapter 12A of Title 43, Public Lands. For complete classification of this Act to the Code, see section 617t of Title 43 and Tables.

Subsections 3(b)(1) and 3(b)(2) of the Boulder City Act of 1958 [Pub. L. 85–900, Sept. 2, 1958, 72 Stat. 1726], referred to in subsec. (a)(3), are not classified to the Code. Subsections (a) to (d) of section 3 read as follows:

''(a) The Secretary is authorized to sell such dwelling houses, duplex houses or units thereof, and garages, with furniture, fixtures, and appurtenances, as are owned by the United States within the Boulder City municipal area and are not needed in connection with the administration, operation, and maintenance of Federal activities located within or near the Boulder City municipal area.

''(b) Except in the case of property determined to be substandard under subsection (c) of this section, the following system of priority shall be established with respect to property authorized to be sold under subsection (a) of this section:

''(1) Persons employed by the Federal Government within or near the Boulder City municipal area (and surviving spouses of such persons who have not remarried) who are tenants in Federal housing in Boulder City shall be offered the opportunity to purchase the property in which they are tenants at the appraised value as established under subsection (d) of this section. This right of priority shall expire unless notice of intent to purchase has been received by the Secretary before the expiration of sixty days after the date on which the property has been offered for sale, and shall be deemed abandoned unless before the expiration of sixty days after the Secretary's tender of the instrument of transfer the prospective purchaser concludes the sale;

''(2) Persons employed by the Federal Government within or near the Boulder City municipal area may apply to purchase housing not purchased under subsection (b)(1) of this section. Applicants to purchase shall be placed in order of opportunity to choose pursuant to a public drawing, but spouses of such applicants shall not be entitled to apply. Sales shall be made at the appraised value as established under subsection (d) of this section and selections and purchases by successful applicants shall be concluded within limits of time to be established by the Secretary. A purchase under subsection (b)(1) or (b)(2) of this section shall render the purchaser and any spouse of such purchaser ineligible thereafter to purchase under subsection (b)(1) or (b)(2); and

''(3) Property subject to disposal under this section and not sold pursuant to subsections (b)(1) and (b)(2) of this section shall be opened to bids from the general public, and shall be sold to the highest responsible bidder.

''In the event that incorporation of the municipality shall be effected within four years after the date of this Act, persons purchasing housing under this subsection or their successors, assigns, or legal representatives, shall be entitled to a reduction in the purchase price (or rebate as appropriate) of 10 per centum: *Provided*, That no person who has purchased a house under the Act of May 25, 1948 (62 Stat. 268), shall be eligible for such reduction.

''(c) Where the Secretary determines that property authorized to be sold under subsection (a) of this section is substandard, he shall sell such property only for off-site use, such property to be opened to bids from the general public for sale to the highest responsible bidder.

''(d) The appraised value of all property to be sold under subsections (b)(1) and (b)(2) of this section, and of all lots leased or to be leased by the United States for the purpose of maintaining, locating, or erecting permanent structures thereon, shall be determined by an appraiser or appraisers to be designated by the Admin-

istrator of Housing and Home Finance Agency at the request of the Secretary. Said appraisals shall be made promptly after the date of this Act, or immediately prior to the granting of any lease of lands not previously appraised, as the case may be. The representatives of the Boulder City community, as determined by the Secretary, shall be granted an opportunity to offer advice in connection with [sic] such appraisals.''

The Atomic Energy Community Act of 1955, as amended, referred to in subsec. (a)(4), is act Aug. 4, 1955, ch. 543, 69 Stat. 472, as amended, which is classified principally to chapter 24 (§ 2301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 42 and Tables.

The Multifamily Assisted Housing Reform and Affordability Act of 1997, referred to in subsec. (a)(7), is title V of Pub. L. 105–65, Oct. 27, 1997, 111 Stat. 1384. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 1701 of this title and Tables.

Section 1715z–10 of this title, referred to in subsec. (a)(7)(A), was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(7), July 30, 2008, 122 Stat. 2835.

Section 1720 of this title, referred to in subsec. (f)(2), (3), was repealed by Pub. L. 98–181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

Section 1437*o* of title 42, referred to in subsec. (f)(5), was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

AMENDMENTS

2005—Subsec. (f)(1). Pub. L. 109–115 inserted ''purchase or'' before ''refinancing of existing debt''.

2002—Subsec. (a)(7). Pub. L. 107–116, § 615(1), substituted ''under this chapter, or an existing mortgage held by the Secretary that is subject to a mortgage restructuring and rental assistance sufficiency plan pursuant to the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), provided that—'' for ''under this chapter: *Provided*, That''.

Subsec. (a)(7)(A). Pub. L. 107–116, § 615(1)–(5), designated as subpar. (A) existing provisions beginning ''the principal amount of any such refinancing mortgage shall not exceed'' and ending ''a new insurance contract'', redesignated former cls. (A) to (D) as (i) to (iv), respectively, of subpar. (A), and inserted ''; and'' at end after ''a new insurance contract''.

Subsec. (a)(7)(B). Pub. L. 107–116, § 615(6), (7), substituted ''(B) a mortgage'' for '': *Provided further*, That a mortgage'' and struck out ''or'' after ''and the mortgagee;''. Former cl. (B) redesignated cl. (ii) of subpar. (A).

Subsec. (a)(7)(C). Pub. L. 107–116, § 615(8), added subpar. (C). Former cl. (C) redesignated cl. (iii) of subpar. (A).

Subsec. (a)(7)(D). Pub. L. 107–116, § 615(5), redesignated cl. (D) as cl. (iv) of subpar. (A).

1998—Subsec. (c). Pub. L. 105–276 substituted ''the Secretary'' for ''him'' in two places and inserted '', including a sale through another entity acting under authority of the fourth sentence of section 1710(g) of this title,'' before ''of any property acquired''.

1994—Subsec. (a)(7)(D). Pub. L. 103–327 added cl. (D).

1992—Subsec. (d)(6). Pub. L. 102–550, § 510, added par. (6).

Subsec. (f)(1), (4). Pub. L. 102–550, § 511(f), inserted ''existing assisted living facility,'' after ''existing nursing home,'' wherever appearing.

1988—Subsec. (a). Pub. L. 100–242, § 406(b)(15), inserted ''other than the limitation in section 1709(g) of this title,'' after first reference to ''this chapter,''.

Subsec. (a)(7). Pub. L. 100–242, § 429(d)(1), substituted in first proviso ''such rate as may be agreed upon by the mortgagor and the mortgagee'' for ''a rate not in excess of the maximum rate prescribed under the applicable section or subchapter of this chapter'', substituted in second proviso ''maturity and a principal obligation'' for ''maturity, a principal obligation, and an interest rate'', and inserted before semicolon at end '', and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee''.

Pub. L. 100–242, § 419(b), in first proviso, inserted cl. (B) and designated former cl. (B) as (C).

Pub. L. 100–242, § 408(a), in first proviso, inserted cl. (B) designation and added cl. (A).

Subsec. (d). Pub. L. 100–242, § 427, added pars. (1) to (3), inserted par. (4) designation and ''Any loan insured pursuant to this subsection shall (A) bear interest at such rate as may be agreed upon by the mortgagor and mortgagee; (B) be secured in such manner as the Secretary shall require; (C) be limited to a term not exceeding the unexpired term of the original mortgage; and (D) be insured under the same section as the original mortgage. The Secretary may provide insurance pursuant to paragraph (2) or (3), or pursuant to both such paragraphs, in connection with an existing project mortgage, except that the Secretary may not provide insurance pursuant to both such paragraphs in connection with the same period of months referred to in paragraphs (2)(B) and (3)(B).'', inserted par. (5) designation, and struck out former first and second sentences of subsec. (d) which read as follows: ''With respect to any mortgage, other than a mortgage covering a one- to four-family structure, heretofore or hereafter insured by the Secretary, and notwithstanding any other provision of this chapter, when the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project covered by such mortgage during the first two years following the date of completion of the project, as determined by the Secretary, exceed the project income, the Secretary may, in his discretion and upon such terms and conditions as he may prescribe, insure under the same section as the original mortgage a loan by the mortgagee in an amount not exceeding the excess of the foregoing expenses over the project income. Such loan shall (1) bear interest (exclusive of premium charges for insurance) at not to exceed the per centum per annum currently permitted for mortgages insured under the section under which it is to be insured, (2) be secured in such manner as the Secretary shall require, and (3) be limited to a term not exceeding the unexpired term of the original mortgage.''

Pub. L. 100–242, § 429(d)(2), which directed substitution of ''bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee'' for ''bear interest (exclusive of premium charges for insurance) at not to exceed the per centum per annum currently permitted for mortgages insured under the section under which it is to be insured'' in cl. (1) of sentence beginning ''Such loan shall'', could not be executed because of previous amendment by Pub. L. 100–242, § 427, see above, which directed in part the striking out of second sentence of subsec. (d)(1), which contained the language sought to be amended.

Subsec. (e). Pub. L. 100–242, § 406(b)(16), inserted reference to limitation in section 1709(g) of this title.

Subsec. (f)(1). Pub. L. 100–242, § 409(b)(1), inserted parenthetical reference to existing nursing homes, intermediate care facilities, board and care homes, or any combination thereof after ''existing hospital''.

Subsec. (f)(4)(A) to (C). Pub. L. 100–242, § 409(b)(2), inserted parenthetical reference to existing nursing homes, intermediate care facilities, board and care homes, or any combination thereof after ''existing hospital'' wherever appearing.

Subsec. (f)(4)(D). Pub. L. 100–242, § 409(a), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''such existing hospital has received such certifications from a State agency designated in accordance with section 291d(a)(1) or section 300m of title 42 for the State in which the hospital is located as the Secretary deems necessary and appropriate and comparable to the certification required for hospitals insured under section 1715z–7 of this title and that such State agency additionally certify that the services being provided by such existing hospital at the time of refinancing are appropriate as determined pursuant to section 300m–2(a)(6) title 42.''

1984—Subsec. (f)(2). Pub. L. 98–479 in provisions preceding subpar. (A) inserted ''a'' before ''multifamily''.

1983—Subsec. (f)(5). Pub. L. 98–181 added par. (5).

1981—Subsec. (f). Pub. L. 97–35 inserted ''and'' after the semicolon at end of par. (2)(A), and redesignated par. (5) as (4).

1980—Subsec. (f)(1). Pub. L. 96–399, §327(1), redesignated first sentence of subsec. (f) as par. (1).

Subsec. (f)(2). Pub. L. 96–399, §327(2)–(6), redesignated second sentence of subsec. (f) as par. (2), inserted applicability to purchases, provisions authorizing the Secretary to make not to exceed $30,000,000 available for purchase authority, and provisions authorizing rent increases to maintain reasonable profit levels, and substituted ''(A)'' and ''(B)'' for ''(1)'' and ''(2)'', respectively.

Subsec. (f)(3). Pub. L. 96–399, §327(7), added par. (3).

Subsec. (f)(5). Pub. L. 96–399, §327(8), redesignated third sentence of subsec. (f) as par. (5).

1978—Subsec. (f). Pub. L. 95–557 inserted ''or the refinancing of existing debt of an existing hospital'' after ''housing project'', substituted ''multifamily housing project'' for ''housing project'', and inserted provisions relating to the prescription of terms and conditions in the case of refinancing of an existing hospital.

1974—Subsecs. (f), (g). Pub. L. 93–383 added subsecs. (f) and (g).

1969—Subsec. (d). Pub. L. 91–152, §418(c), inserted provision that any loan involving a project covered by a mortgage insured under section 1715e, 1715z–1, or any section of this subchapter pursuant to subsec. (e) of this section be the obligation of the specified Fund.

Subsec. (e). Pub. L. 91–152, §418(d), substituted ''this chapter'' for ''this subchapter'' and inserted references to subchapter IX–B.

1968—Subsec. (a). Pub. L. 90–448, §312(a)(1), substituted ''chapter'' for ''subchapter'', ''any section or subchapter of this chapter'' for ''section 1709, 1713, 1715e, 1715k, 1715*l*, 1715m, 1715v, 1715w, or 1715x of this title'' and ''under any section or subchapter of this chapter'' for ''under either of said sections''.

Subsec. (a)(7). Pub. L. 90–448, §312(a)(2), substituted ''prescribed under the applicable section or subchapter of this chapter'' for ''applicable to loans insured under section 1709, 1713, 1715e, 1715k, 1715*l*, 1715m, 1715v, 1715w, or 1715x of this title'' in two places.

Subsec. (c). Pub. L. 90–448, §312(a)(3)–(5), substituted ''this chapter'' for ''this subchapter'' in two places, and ''any section or subchapter of this chapter'' for ''subchapters I, II, VI, VII, VIII or X of this chapter'', and struck out phrase which required payment of insurance to be in debentures.

Subsec. (d). Pub. L. 90–448, §312(b), substituted ''insure under the same section as the original mortgage a loan by a mortgagee in an amount not exceeding the excess of the foregoing expenses over the project income'' for ''permit the excess of the foregoing expenses over the project income to be added to the amount of such mortgage, and extend the coverage of the mortgage insurance thereto, and such additional amount shall be deemed to be part of the original face amount of the mortgage'', and inserted sentences requiring the loan to bear interest at not more than the per centum per annum currently permitted for mortgages insured under the section under which it is to be insured, to be secured, and to be limited to a term not more than the unexpired term of the original mortgage, authorizing collection of a premium charge for insurance of loans, directing the premium to be payable in cash or in debentures of the fund, and making the lender entitled to insurance benefits in the event of a failure of the borrower to make any payment due under the loan or under the original mortgage and the default continues for a period of thirty days.

Subsec. (e). Pub. L. 90–448, §103(a), added subsec. (e).

1967—Pub. L. 90–19, §1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a) preceding par. (1), (a)(7), and (b) to (d).

Subsec. (a)(2). Pub. L. 90–19, §1(h), substituted ''Secretary of Housing and Urban Development'' and ''Secretary'' for ''Public Housing Administration'' and ''said Administration'', respectively.

1966—Subsec. (a)(8). Pub. L. 89–754 substituted ''Government'' and ''section 3374 of title 42'' for ''Commissioner'' and ''section 1735h of this title'', respectively.

1965—Subsec. (a)(7). Pub. L. 89–117, §213, substituted ''this Act'' for ''section 608 of title VI prior to the effective date of the Housing Act of 1954 or under section 220, 221, 903, or section 908'', which for purposes of codification has been changed to ''this chapter''.

Subsec. (a)(8). Pub. L. 89–117, §108(e)(2), added par. (8).

1964—Subsec. (c). Pub. L. 88–560 substituted ''limitations or requirements contained in this subchapter upon the eligibility of the mortgage, upon the payment of insurance premiums, or upon the terms and conditions of insurance settlement and the benefits of the insurance to be included in such settlement (except that in any case the payment of insurance shall be in debentures)'' for ''limitation upon eligibility contained in this subchapter''.

1961—Subsec. (a). Pub. L. 87–70, §612(h)(1), (2), included sections 1715k, 1715*l*, 1715v, 1715w and 1715x in the opening provisions, and, in par. (7), substituted ''section 1715k, 1715*l*, 1750b, or 1750g of this title'' for ''section 1750b or 1750g of this title,'' ''1715e, 1715k, 1715*l*, 1715m, 1715v, 1715w, or 1715x of this title'' for ''1715e or 1715m of this title'' in two places, and struck out ''insured under section 1743 of section 1750g of this title'' after ''refinancing of a loan''.

Subsecs. (b), (c). Pub. L. 87–70, §101(d), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (d). Pub. L. 87–70, §612(h)(3), added subsec. (d).

1958—Subsec. (a)(3). Pub. L. 85–900 authorized insurance of mortgages executed in connection with the sale of property constructed under the Boulder Canyon Project Act and located in Boulder City.

1957—Subsec. (a). Pub. L. 85–104, §114(1), substituted ''1715e, or 1715m of this title'' for ''or 1715e of this title''.

Subsec. (a)(3). Pub. L. 85–240 authorized insurance of mortgages executed in connection with the sale of Government housing at Coulee Dam.

Subsec. (a)(4). Pub. L. 85–104, §114(2), inserted ''this chapter or'' after ''prescribed by''.

Subsec. (a)(7). Pub. L. 85–104, §114(3), substituted ''1715e, or 1715m of this title'' for ''or 1715e of this title'' in first proviso, and substituted provisions of second proviso for former provisions which required mortgages described in pars. (1), (2), (3), (4), (5), or (6) to have maturity satisfactory to Commissioner but forbade maturity of such mortgage to exceed maximum terms of loans insured under sections 1709, 1713, or 1715e of this title, forbade principal obligation to exceed 90 percent of value of property, and forbade interest rate to exceed rate of loans made under either of said sections, with the exception that where such mortgage covered property held by certain nonprofit cooperatives, principal obligation should not exceed 95 percent of appraised value.

1955—Subsec. (a). Act Aug. 11, 1955, substituted ''section 1709, 1713, or 1715e of this title'' for ''section 1709 or 1713 of this title'' wherever appearing.

Act Aug. 4, 1955, added par. (4), and redesignated pars. (4) to (6) as (5) to (7), respectively.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–116, title VI, §603, Jan. 10, 2002, 115 Stat. 2222, provided that: ''Except as provided in sections 616(a)(2), 633(b), and 634(b) [enacting provisions set out as notes under section 1701q of this title and sections 1437f and 11301 of Title 42, The Public Health and Welfare], this title [amending this section and sections 1437f and 5305 of Title 42, enacting provisions set out as notes under section 1701q of this title and sections 1437, 1437f, and 11301 of Title 42, and amending provisions set out as notes under section 1701q of this title and sections 1437f and 11301 of Title 42] and the amendments made by this title shall take effect or are deemed to have taken effect, as appropriate, on the earlier of—

''(1) the date of the enactment of this title [Jan. 10, 2002]; or

''(2) September 30, 2001.''

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENTS

Pub. L. 104–134, title I, §101(e) [title II, §209], Apr. 26, 1996, 110 Stat. 1321–257, 1321–285; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided that: ''Notwithstanding the 16th paragraph under the item relating to 'administrative provisions' in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Public Law 103–327; 108 Stat. 2316) [set out below], the amendments to section 223(a)(7) of the National Housing Act [12 U.S.C. 1715n(a)(7)] made by the 15th paragraph of such Act shall be effective during fiscal year 1996 and thereafter.''

Title II of Pub. L. 103–327, Sept. 28, 1994, 108 Stat. 2316, provided in part that: ''The amendments of the two immediately preceding paragraphs [amending this section and section 1437f of Title 42, The Public Health and Welfare] shall be effective only during fiscal year 1995.'' [For provision that amendment by Pub. L. 103–327 to subsec. (a)(7) of this section be effective during fiscal year 1996 and thereafter, see Pub. L. 104–134, title I, §101(e) [title II, §209], set out above.]

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 406(b)(15), (16) of Pub. L. 100–242 applicable only with respect to mortgages insured pursuant to conditional commitment issued on or after Feb. 5, 1988, or in accordance with direct endorsement program (24 CFR 200.163), if approved underwriter of mortgagee signs appraisal report for property on or after Feb. 5, 1988, see section 406(d) of Pub. L. 100–242, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

REGULATIONS

Section 409(c) of Pub. L. 100–242 provided that: ''The Secretary of Housing and Urban Development shall issue such regulations as may be necessary to carry out the amendment made by this section [amending this section] by not later than the expiration of the 90-day period following the date of the enactment of this Act [Feb. 5, 1988].''

STREAMLINED REFINANCING

Pub. L. 103–233, title I, §103(d), Apr. 11, 1994, 108 Stat. 361, provided that: ''As soon as practicable, the Secretary shall implement a streamlined refinancing program under the authority provided in section 223 of the National Housing Act [12 U.S.C. 1715n] to prevent the default of mortgages insured by the FHA which cover multifamily housing projects, as defined in section 203(b) of the Housing and Community Development Amendments of 1978 [12 U.S.C. 1701z–11(b)].''

DELEGATION OF PROCESSING OF MORTGAGE INSURANCE

Secretary of Housing and Urban Development to implement system of mortgage insurance for mortgages insured under this section that delegates processing functions to selected approved mortgagees, with Secretary to retain authority to approve rents, expenses, property appraisals, and mortgage amounts and to execute firm commitments, see section 328 of Pub. L. 101–625, set out as a note under section 1713 of this title.

PURPOSE OF SECTION

Section 125 of act Aug. 2, 1954, as amended by Pub. L. 90–19, §10(b), May 25, 1967, 81 Stat. 22, in enacting this section, provided in part that the purpose thereof was to transfer to title II of the National Housing Act [this subchapter] ''the mortgage insurance program in connection with the sale of certain publicly owned property as contained in section 610 of title VI [section 1745 of this title]; the insurance of mortgages to refinance existing loans insured under section 608 of title VI and sections 903 and 908 of title IX [sections 1743, 1750b and 1750g of this title]; and to authorize the insurance under title II [this subchapter] of mortgages assigned to the Secretary of Housing and Urban Development under insurance contracts and mortgages held by the Secretary of Housing and Urban Development in connection with the sale of property acquired under insurance contracts''.

§ 1715*o*. Interest rate on debentures; method of establishment

Notwithstanding any other provisions of this chapter, debentures issued under any section of this chapter with respect to a loan or mortgage accepted for insurance on or after thirty days following August 2, 1954 (except debentures issued pursuant to paragraph (4) of section 1715*l*(g) of this title) shall bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed for insurance, or (when there are two or more insurance endorsements) the date the loan or mortgage was initially endorsed for insurance, whichever rate is the highest, except that debentures issued pursuant to section 1715k(f), 1715k(h)(7), 1715*l*(g), 1715x, or 1715z–3 of this title may, at the discretion of the Secretary, bear interest at the rate in effect on the date they are issued. The Secretary shall from time to time, with the approval of the Secretary of the Treasury, establish such interest rate in an amount not in excess of the annual rate of interest determined by the Secretary of the Treasury, at the request of the Secretary, by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the calendar month next preceding the establishment of such rate of interest, on all outstanding marketable obligations of the United States having a maturity date of fifteen years or more from the first day of such next preceding month, and by adjusting such estimated average annual yield to the nearest one-eighth of 1 per centum. Notwithstanding the preceding sentence and the following paragraph,[1] if an insurance claim is paid in cash for any mortgage that is insured under section 1709 or 1715y of this title and is endorsed for mortgage insurance after January 23, 2004, the debenture interest rate for purposes of calculating such a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

(June 27, 1934, ch. 847, title II, §224, as added Aug. 2, 1954, ch. 649, title I, §126, 68 Stat. 606; amended Pub. L. 87–70, title VI, §612(i), June 30, 1961, 75 Stat. 182; Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title I, §104(b), Aug. 1, 1968, 82 Stat. 488; Pub. L. 108–199, div. G, title II, §215, Jan. 23, 2004, 118 Stat. 394.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat.

[1] So in original.

1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2004—Pub. L. 108–199, which directed amendment of section by adding sentence relating to interest rate for claim paid in cash at end of first paragraph, was executed by adding sentence at end of section to reflect the probable intent of Congress.

1968—Pub. L. 90–448 included debentures issued pursuant to section 1715z–3 of this title.

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1961—Pub. L. 87–70 changed the date for determination of the rate of interest for debentures, other than those issued pursuant to section 1715k(f), 1715k(h)(7), 1715*l*(g), 1715*l*(g)(4), or 1715x, from the rate in effect on the date the debentures are issued to the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed for insurance, or (when there are two or more insurance endorsements) the date the loan or mortgage was initially endorsed for insurance, whichever rate is highest.

§ 1715p. Insurance of advances under open-end mortgages; payment of charges; eligibility and conditions

Notwithstanding any other provisions of this chapter, in connection with any mortgage insured pursuant to any section of this chapter which covers a property upon which there is located a dwelling designed principally for residential use for not more than four families in the aggregate, the Secretary is authorized, upon such terms and conditions as he may prescribe, to insure under said section the amount of any advance for the improvement or repair of such property made to the mortgagor pursuant to an ''open-end'' provision in the mortgage, and to add the amount of such advance to the original principal obligation in determining the value of the mortgage for the purpose of computing the amounts of debentures and certificate of claim to which the mortgagee may be entitled: *Provided*, That the Secretary may require the payment of such charges, including charges in lieu of insurance premiums, as he may consider appropriate for the insurance of such ''open-end'' advances: *Provided, further*, That only advances for such improvements or repairs as substantially protect or improve the basic livability or utility of the property involved shall be eligible for insurance under this section; *Provided further*, That no such advance shall be insured under this section if the amount thereof plus the amount of the unpaid balance of the original principal obligation of the mortgage would exceed the amount of such original principal obligation unless the mortgagor certifies that the proceeds of such advance will be used to finance the construction of additional rooms or other enclosed space as a part of the dwelling: *And provided further*, That the insurance of ''open-end'' advances shall not be taken into account in determining the aggregate amount of principal obligations of mortgages which may be insured under this chapter.

(June 27, 1934, ch. 847, title II, § 225, as added Aug. 2, 1954, ch. 649, title I, § 126, 68 Stat. 607; amended Pub. L. 90–19, § 1(a) (3), May 25, 1967, 81 Stat. 17.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

§ 1715q. Delivery of statement of appraisal or estimates to home buyers

The Secretary is authorized and directed to require that in connection with any property upon which there is located a dwelling designed principally for a single-family residence or a two-family residence and which is approved for mortgage insurance under section 1709 or 1715e of this title with respect to any property or project of a corporation or trust of the character described in paragraph (2) of subsection (a) of section 1715e of this title, or sections 1715k, 1715*l*, 1715m,[1] 1715x, 1715y, 1715z(i), 1715z–2,[1] or 1750b of this title, the seller or builder or such other person as may be designated by the Secretary shall agree to deliver, prior to the sale of the property, to the person purchasing such dwelling for his own occupancy, a written statement setting forth the amount of the appraised value of the property as determined by the Secretary. This section shall not apply in any case where the mortgage involved was insured or the commitment for such insurance was issued prior to August 2, 1954. Notwithstanding the first sentence of this section, the Secretary is authorized to require, in connection with any mortgage where the mortgage amount is computed on the basis of the Secretary's estimate of the replacement cost of the property, or on the basis of any other estimates of the Secretary, that a written statement setting forth such estimate or estimates, as the case may be, be furnished under this section in lieu of a written statement setting forth the amount of the appraised value of the property.

(June 27, 1934, ch. 847, title II, § 226, as added Aug. 2, 1954, ch. 649, title I, § 126, 68 Stat. 607; amended Pub. L. 85–104, title I, § 115, July 12, 1957, 71 Stat. 298; Pub. L. 87–70, title VI, § 612(j), June 30, 1961, 75 Stat. 182; Pub. L. 90–19, § 1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title I, § 102(b), Aug. 1, 1968, 82 Stat. 486.)

REFERENCES IN TEXT

Section 1715m of this title, referred to in text, was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(5), July 30, 2008, 122 Stat. 2835.

Section 1715z–2 of this title, referred to in text, was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(6), July 30, 2008, 122 Stat. 2835.

AMENDMENTS

1968—Pub. L. 90–448 inserted references to sections 1715z(i) and 1715z–2 of this title.

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing, and ''Secretary's'' for ''Commissioner's''.

1961—Pub. L. 87–70 inserted references to sections 1715x and 1715y of this title, and substituted ''or on the

[1] See References in Text note below.

basis of any other estimates of the Commissioner, that a written statement setting forth such estimate or estimates, as the case may be,'' for ''that a written statement setting forth such estimate''.

1957—Pub. L. 85–104 inserted sentence authorizing estimate of replacement cost in lieu of an estimate of value where mortgage amount is based upon replacement cost.

§ 1715r. Requirement of builder's cost certification; definitions

(a) Requirement

Except as provided in subsection (b) and notwithstanding any other provision of this chapter, no mortgage covering new or rehabilitated multifamily housing or a property or project described in subchapter IX–B shall be insured under this chapter unless the mortgagor has agreed (A) to certify, upon completion of the physical improvements on the mortgaged property or project and prior to final endorsement of the mortgage, either (i) that the approved percentage of actual cost (as those terms are herein defined) equaled or exceeded the proceeds of the mortgage loan or (ii) the amount by which the proceeds of the mortgage loan exceeded such approved percentage of actual cost, as the case may be, and (B) to pay forthwith to the mortgagee, for application to the reduction of the principal obligation of such mortgage, the amount, if any, certified to be in excess of such approved percentage of actual cost. Upon the Secretary's approval of the mortgagor's certification as required hereunder, such certification shall be final and incontestable, except for fraud or material misrepresentation on the part of the mortgagor.

(b) Exemption for certain projects assisted with low-income housing tax credit

In the case of any mortgage insured under any provision of this subchapter that is executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which equity[1] provided through any low-income housing tax credit pursuant to section 42 of title 26, if the Secretary determines at the time of issuance of the firm commitment for insurance that the ratio of the loan proceeds to the actual cost of the project is less than 80 percent, subsection (a) of this section shall not apply.

(c) Definitions

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

(1) The term ''new or rehabilitated multifamily housing'' means a project or property approved for mortgage insurance prior to the construction or the repair and rehabilitation involved and covered by a mortgage insured or to be insured (i) under section 1713 of this title, (ii) under section 1715e of this title with respect to any property or project of a corporation or trust of the character described in paragraph (1) of subsection (a) of section 1715e of this title or with respect to any property or project of a mortgagor of the character described in paragraph (3) of subsection (a) thereof, (iii) under section 1715k of this title if the mortgage meets the requirements of paragraph (3)(B) of subsection (d) thereof, (iv) under section 1715*l* of this title if the mortgage meets the requirements of paragraph (3) or paragraph (4) of subsection (d) thereof, (v) under section 1715v of this title, (vi) under section 1715x of this title if the mortgage meets the requirements of subsection (b), (vii) under section 1748h–2 of this title if the mortgage meets the requirements of subsection (f), (viii) under section 1715y(d) of this title, or (ix) under section 1715z–1 of this title;

(2) The term ''approved percentage'' means the percentage figure which, under applicable provisions of this chapter, the Secretary is authorized to apply to his estimate of value, cost, or replacement costs, as the case may be, of the property or project in determining the maximum insurable mortgage amount; except that if the mortgage is to assist the financing of repair or rehabilitation and no part of the proceeds will be used to finance the purchase of the land or structure involved, the approved percentage shall be 100 per centum; and

(3) The term ''actual cost'' has the following meaning: (i) in case the mortgage is to assist the financing of new construction, the term means the actual cost to the mortgagor of such construction, including amounts paid for labor, materials, construction contracts, off-site public utilities, streets, organizational and legal expenses, such allocations of general overhead items as are acceptable to the Secretary, and other items of expense approved by the Secretary, plus (I) a reasonable allowance for builder's profit if the mortgagor is also the builder as defined by the Secretary, and (II) an amount equal to the Secretary's estimate of the fair market value of any land (prior to the construction of the improvements built as a part of the project) in the property or project owned by the mortgagor in fee (or, in case the land in the property or project is held by the mortgagor under a leasehold or other interest less than a fee, such amount as the mortgagor paid for the acquisition of such leasehold or other interest but, in no event, in excess of the fair market value of such leasehold or other interest exclusive of the proposed improvements), but excluding the amount of any kickbacks, rebates, or trade discounts received in connection with the construction of the improvements, or (ii) in case the mortgage is to assist the financing of repair or rehabilitation the term means the actual cost to the mortgagor of such repair or rehabilitation, including the amounts paid for labor, materials, construction contracts, off-site public utilities, streets, organization and legal expenses, such allocations of general overhead items as are acceptable to the Secretary, and other items of expense approved by the Secretary, plus (I) a reasonable allowance for builder's profit if the mortgagor is also the builder as defined by the Secretary, and (II) an additional amount equal to (A) in case the land and improvements are to be acquired by the mortgagor and the purchase price thereof is to be financed with part of the proceeds of the mortgage, the purchase price of such land and improvements prior to such repair or rehabilitation, or (B) in

[1] So in original. Probably should be followed by ''is''.

case the land and improvements are owned by the mortgagor subject to an outstanding indebtedness to be refinanced with part of the proceeds of the mortgage, the amount of such outstanding indebtedness secured by such land and improvements, but excluding (for the purposes of this clause (ii)) the amount of any kickbacks, rebates, or trade discounts received in connection with the construction of the improvements: *Provided*, That such additional amount under (A) of this clause (ii) shall in no event exceed the Secretary's estimate of the fair market value of such land and improvements prior to such repair or rehabilitation, and such additional amount under (B) of this clause (ii) shall in no event exceed the approved percentage of the Secretary's estimate of the fair market value of such land and improvements prior to such repair or rehabilitation. In the case of a mortgage insured under section 1715k, 1715*l*(d)(3), 1715*l*(d)(4), 1715v, 1715x, or 1715z–1 of this title where the mortgagor is also the builder as defined by the Secretary, there shall be included in the actual cost, in lieu of the allowance for builder's profit under clause (i) or (ii) of the preceding sentence, an allowance for builder's and sponsor's profit and risk of 10 per centum (unless the Secretary, after finding that such allowance is unreasonable, shall by regulation prescribe a lesser percentage) of all other items entering into the term ''actual cost'' except land or amounts paid for a leasehold and amounts included under either (A) or (B) of clause (ii) of the preceding sentence. In the case of a mortgage insured under section 1715k, 1715*l*(d)(3), 1715*l*(d)(4), 1715v, 1715x, or 1715z–1 of this title, where the mortgagor is not also the builder as defined by the Secretary, there shall be included in the actual cost an allowance for sponsor's profit and risk of the said 10 per centum or lesser percentage of all other items entering into the term ''actual cost'' except land or amounts paid for a leasehold, amounts included under either (A) or (B) of the said clause (ii), and amounts paid by the mortgagor under a general construction contract.

(June 27, 1934, ch. 847, title II, §227, as added Aug. 2, 1954, ch. 649, title I, §126, 68 Stat. 607; amended Aug. 11, 1955, ch. 783, title I, §102(i), 69 Stat. 636; Aug. 7, 1956, ch. 1029, title I, §§105(d), 109, 70 Stat. 1094, 1095; Pub. L. 86–372, title I, §112, Sept. 23, 1959, 73 Stat. 661; Pub. L. 87–70, title VI, §612(k), June 30, 1961, 75 Stat. 183; Pub. L. 88–560, title I, §119(c), Sept. 2, 1964, 78 Stat. 782; Pub. L. 89–754, title V, §502(b), title X, §1020(b), Nov. 3, 1966, 80 Stat. 1277, 1295; Pub. L. 90–19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title II, §201(b)(2), (3), Aug. 1, 1968, 82 Stat. 502; Pub. L. 110–289, div. B, title VIII, §2834(b), July 30, 2008, 122 Stat. 2869.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c)(2), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2008—Pub. L. 110–289 designated introductory provisions as subsec. (a) and inserted heading, in subsec. (a), as redesignated, substituted ''Except as provided in subsection (b) and notwithstanding'' for ''Notwithstanding'', redesignated cls. (a) and (b) as cls. (A) and (B), respectively, and struck out ''As used in this section—'' at end, added subsec. (b), inserted heading and introductory provisions of subsec. (c), and designated former subsecs. (a) to (c) as pars. (1) to (3), respectively, of subsec. (c) and subcls. (1) and (2) of cls. (i) and (ii) of former subsec. (c) as subcls. (I) and (II), respectively, of cls. (i) and (ii), respectively, of par. (3) of subsec. (c).

1968—Subsec. (a). Pub. L. 90–448, §201(b)(2), included mortgages insured or to be insured under section 1715z–1 of this title.

Subsec. (c). Pub. L. 90–448, §201(b)(3), substituted ''section 1715x, or 1715z–1 of this title'' for ''section 1715x(b)(2) of this title'', in two places.

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' in subsecs. (b) and (c), and ''Secretary's'' for ''Commissioner's'' in text preceding subsec. (a) and in subsec. (c).

1966—Pub. L. 89–754, §502(b), made the certification requirement applicable to mortgage covering property or project described in subchapter IX–B.

Subsec. (a). Pub. L. 89–754, §1020(b), substituted ''subsection (b)'' for ''subsection (b)(2)'' in cl. (vi).

1964—Subsec. (a). Pub. L. 88–560 included mortgages insured or to be insured under section 1715y(d) of this title.

1961—Subsec. (a). Pub. L. 87–70, §612(k)(1), included property covered by a mortgage insured or to be insured under section 1715x of this title if the mortgage meets the requirements of subsection (b)(2).

Subsec. (b). Pub. L. 87–70, §612(k)(2), substituted ''value, cost, or replacement cost'' for ''value or replacement cost''.

Subsec. (c). Pub. L. 87–70, §612(k)(3), substituted ''section 1715*l*(d)(3), 1715*l*(d)(4), 1715v, or 1715x(b)(2) of this title'' for ''section 1715*l* of this title if the mortgage meets the requirements of paragraph (4) of subsection (d) thereof, or section 1715v of this title'' in second and third sentences.

1959—Subsec. (a). Pub. L. 86–372, §112(a), included mortgages insured or to be insured under subsec. (d)(4) of section 1715*l* of this title, under section 1715v of this title, and under section 1748h–2 of this title, and struck out provisions which related to mortgages insured or to be insured under sections 1748b, 1750b and 1750g of this title.

Subsec. (c). Pub. L. 86–372, §112(b), substituted ''under section 1715k of this title, section 1715*l* of this title if the mortgage meets the requirements of paragraph (4) of subsection (d) thereof, or section 1715v of this title'' for ''under section 1715k of this title'' in two places.

1956—Act Aug. 7, 1956, §109, inserted sentence preceding subsec. (a), that upon Commissioner's approval, certification shall be final and incontestable, except for fraud or misrepresentation by mortgagor.

Subsec. (a). Act Aug. 7, 1956, §105(d), inserted ''or with respect to any property or project of a mortgagor of the character described in paragraph (3) of subsection (a) of section 1715e of this title,'' before ''(iii)''.

Subsec. (b). Act Aug. 7, 1956, §109, inserted provision that if the insured mortgage is to assist financing of repairs and no part of proceeds will be used to purchase the land or structure involved, the approved percentage shall be 100 percent.

Subsec. (c). Act Aug. 7, 1956, §109, inserted ''such allocations of general overhead items as are acceptable to the Commissioner,'' after ''legal expenses'' wherever appearing; struck out ''(without reduction by reason of the application of the approved percentage requirements of this section)'' before ''secured by such land and improvements,'' in cl. (ii)(B), amended proviso to provide that additional amount under (B) of cl. (ii) should not exceed the approved percentage of the Commissioner's estimate of the fair market value of the

land and improvements; and inserted provisions at end relating to 10 percent allowance for builder's profit in mortgages issued under section 1715k.

1955—Act Aug. 11, 1955, substituted ''under section 1715*l* of this title if the mortgage meets the requirements of paragraph (3) of subsection (d) of such section'' for ''under section 1715*l* of this title''.

§ 1715s. Treatment of mortgages covering tax credit projects

(a) Definition

For purposes of this section, the term ''insured mortgage covering a tax credit project'' means a mortgage insured under any provision of this subchapter that is executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which equity[1] provided through any low-income housing tax credit pursuant to section 42 of title 26.

(b) Acceptance of letters of credit

In the case of an insured mortgage covering a tax credit project, the Secretary may not require the escrowing of equity provided by the sale of any low-income housing tax credits for the project pursuant to section 42 of title 26, or any other form of security, such as a letter of credit.

(c) Asset management requirements

In the case of an insured mortgage covering a tax credit project for which project the applicable tax credit allocating agency is causing to be performed periodic inspections in compliance with the requirements of section 42 of title 26, such project shall be exempt from requirements imposed by the Secretary regarding periodic inspections of the property by the mortgagee. To the extent that other compliance monitoring is being performed with respect to such a project by such an allocating agency pursuant to such section 42, the Secretary shall, to the extent that the Secretary determines such monitoring is sufficient to ensure compliance with any requirements established by the Secretary, accept such agency's evidence of compliance for purposes of determining compliance with the Secretary's requirements.

(d) Streamlined processing pilot program

(1) In general

The Secretary shall establish a pilot program to demonstrate the effectiveness of streamlining the review process, which shall include all applications for mortgage insurance under any provision of this subchapter for mortgages executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which equity[1] provided through any low-income housing tax credit pursuant to section 42 of title 26. The Secretary shall issue instructions for implementing the pilot program under this subsection not later than the expiration of the 180-day period beginning upon July 30, 2008.

(2) Requirements

Such pilot program shall provide for—

(A) the Secretary to appoint designated underwriters, who shall be responsible for reviewing such mortgage insurance applications and making determinations regarding the eligibility of such applications for such mortgage insurance in lieu of the processing functions regarding such applications that are otherwise performed by other employees of the Department of Housing and Urban Development;

(B) submission of applications for such mortgage insurance by mortgagees who have previously been expressly approved by the Secretary; and

(C) determinations regarding the eligibility of such applications for such mortgage insurance to be made by the chief underwriter pursuant to requirements prescribed by the Secretary, which shall include requiring submission of reports regarding applications of proposed mortgagees by third-party entities expressly approved by the chief underwriter.

(June 27, 1934, ch. 847, title II, § 228, as added Pub. L. 110–289, div. B, title VIII, § 2834(c), July 30, 2008, 122 Stat. 2870.)

PRIOR PROVISIONS

A prior section 1715s, which was based in part on act Aug. 2, 1954, ch. 649, title VIII, § 814, 68 Stat. 647, provided for the keeping of records with respect to multifamily housing and examination and audit thereof. Section 814 of act Aug. 2, 1954, was transferred and is classified in full to section 1434 of Title 42, The Public Health and Welfare.

APPROVALS BY DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Pub. L. 110–289, div. B, title VIII, § 2832, July 30, 2008, 122 Stat. 2867, provided that:

''(a) ADMINISTRATIVE AND PROCEDURAL CHANGES.—

''(1) IN GENERAL.—The Secretary of Housing and Urban Development (in this section referred to as the 'Secretary') shall, not later than the expiration of the 6-month period beginning upon after [sic] the date of the enactment of this Act [July 30, 2008], implement administrative and procedural changes to expedite approval of multifamily housing projects under the jurisdiction of the Department of Housing and Urban Development that meet the requirements of the Secretary for such approvals.

''(2) PROJECTS.—The multifamily housing projects referred to in paragraph (1) shall include—

''(A) projects for which assistance is provided by such Department in conjunction with any low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 [26 U.S.C. 42] or tax-exempt housing bonds; and

''(B) existing public housing projects and assisted housing projects, for which approval of the Secretary is necessary for transactions, in conjunction with any such low-income housing tax credits or tax-exempt housing bonds, involving the preservation or rehabilitation of the project.

''(3) CHANGES.—The administrative and procedural changes referred to in paragraph (1) shall include all actions necessary to carry out paragraph (1), which may include—

''(A) improving the efficiency of approval procedures;

''(B) simplifying approval requirements,

''(C) establishing time deadlines or target deadlines for required approvals;

''(D) modifying division of approval authority between field and national offices;

''(E) improving outreach to project sponsors regarding information that is required to be submitted for such approvals;

[1] So in original. Probably should be followed by ''is''.

''(F) requesting additional funding for increasing staff, if necessary; and

''(G) any other actions which would expedite approvals.

Any such changes shall be made in a manner that provides for full compliance with any existing requirements under law or regulation that are designed to protect families receiving public and assisted housing assistance, including income targeting, rent, and fair housing provisions, and shall also comply with requirements regarding environmental review and protection and wages paid to laborers.

''(b) CONSULTATION.—The Secretary shall consult with the Commissioner of the Internal Revenue Service and take such actions as are appropriate in conjunction with such consultation to simplify the coordination of rules, regulations, forms, and approval requirements for multifamily housing projects projects [sic] for which assistance is provided by such Department in conjunction with any low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 [26 U.S.C. 42] or tax-exempt housing bonds.

''(c) RECOMMENDATIONS.—In implementing the changes required under this section, the Secretary shall solicit recommendations regarding such changes from project owners and sponsors, investors and stakeholders in housing tax credits, State and local housing finance agencies, public housing agencies, tenant advocates, and other stakeholders in such projects.

''(d) REPORT.—Not later than the expiration of the 9-month period beginning on the date of the enactment of this Act [July 30, 2008], the Secretary shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that—

''(1) identifies the actions taken by the Secretary to comply with this section;

''(2) includes information regarding any resulting improvements in the expedited approval for multifamily housing projects;

''(3) identifies recommendations made pursuant to subsection (c);

''(4) identifies actions taken by the Secretary to implement the provisions in the amendments made by sections 2834 and 2835 of this Act [enacting this section and sections 1437z–8 and 11403f–1 of Title 42, The Public Health and Welfare, and amending sections 1701q and 1715r of this title and sections 1437f, 3545, 11403g, 11403h, 11404, 11405, 11405b, 11406, 11407, and 11407b of Title 42]; and

''(5) makes recommendations for any legislative changes that are needed to facilitate prompt approval of assistance for such projects.''

§ 1715t. Voluntary termination of insurance

Notwithstanding any other provision of this chapter and with respect to any loan or mortgage heretofore or hereafter insured under this chapter, except under section 1703 of this title and except as specified under section 1715z–15 of this title and subtitle B of the Emergency Low Income Housing Preservation Act of 1987,,[1] the Secretary is authorized to terminate any insurance contract upon request by the borrower or mortgagor and the financial institution or mortgagee and upon payment of such termination charge as the Secretary determines to be equitable, taking into consideration the necessity of protecting the various insurance Funds. Upon such termination, borrowers and mortgagors and financial institutions and mortgagees shall be entitled to the rights, if any, to which they would be entitled under this chapter if the insurance contract were terminated by payment in full of the insured loan or mortgage.

(June 27, 1934, ch. 847, title II, § 229, as added Pub. L. 86–372, title I, § 113, Sept. 23, 1959, 73 Stat. 662; amended Pub. L. 87–70, title VI, § 612(*l*), June 30, 1961, 75 Stat. 183; Pub. L. 89–117, title XI, § 1108(k), Aug. 10, 1965, 79 Stat. 505; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 101–235, title II, § 202(d)(2), Dec. 15, 1989, 103 Stat. 2037.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

The Emergency Low Income Housing Preservation Act of 1987, referred to in text, is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101–625, is known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Subtitle B of title II, which was formerly set out as a note under section 1715*l* of this title and which amended section 1715z–6 of this title, was amended generally by Pub. L. 101–625 and is classified generally to subchapter I (§ 4101 et seq.) of chapter 42 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

1989—Pub. L. 101–235 inserted ''and except as specified under section 1715z–15 of this title and subtitle B of the Emergency Low Income Housing Preservation Act of 1987,'' after ''section 1703 of this title''.

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1965—Pub. L. 89–117 struck out ''and Accounts'' after ''various Insurance Funds''.

1961—Pub. L. 87–70 amended section generally, authorizing voluntary termination of insurance contracts with respect to loans insured under this chapter.

§ 1715u. Authority to assist mortgagors in default

(a) Loss mitigation

Upon default or imminent default, as defined by the Secretary[1] of any mortgage insured under this subchapter, mortgagees shall engage in loss mitigation actions for the purpose of providing an alternative to foreclosure (including but not limited to actions such as special forbearance, loan modification, preforeclosure sale, support for borrower housing counseling, subordinate lien resolution, borrower incentives, and deeds in lieu of foreclosure, as required, but not including assignment of mortgages to the Secretary under section 1710(a)(1)(A) of this title) or subsection (c),[2] as provided in regulations by the Secretary.

(b) Payment of partial claim

(1) Establishment of program

The Secretary may establish a program for payment of a partial claim to a mortgagee that agrees to apply the claim amount to payment of a mortgage on a 1- to 4-family residence that is in default or faces imminent default, as defined by the Secretary.

(2) Payments and exceptions

Any payment of a partial claim under the program established in paragraph (1) to a

[1] So in original.

[1] So in original. Probably should be followed by a comma.

[2] So in original. Probably should be ''section 1710(a)(1)(A) of this title or subsection (c)),''.

mortgagee shall be made in the sole discretion of the Secretary and on terms and conditions acceptable to the Secretary, except that—

(A) the amount of the payment shall be in an amount determined by the Secretary, not to exceed an amount equivalent to 30 percent of the unpaid principal balance of the mortgage and any costs that are approved by the Secretary;

(B) the amount of the partial claim payment shall first be applied to any arrearage on the mortgage, and may also be applied to achieve principal reduction;

(C) the mortgagor shall agree to repay the amount of the insurance claim to the Secretary upon terms and conditions acceptable to the Secretary;

(D) the Secretary may permit compensation to the mortgagee for lost income on monthly payments, due to a reduction in the interest rate charged on the mortgage;

(E) expenses related to the partial claim or modification may not be charged to the borrower;

(F) loans may be modified to extend the term of the mortgage to a maximum of 40 years from the date of the modification; and

(G) the Secretary may permit incentive payments to the mortgagee, on the borrower's behalf, based on successful performance of a modified mortgage, which shall be used to reduce the amount of principal indebtedness.

(3) Payments in connection with certain activities

The Secretary may pay the mortgagee, from the appropriate insurance fund, in connection with any activities that the mortgagee is required to undertake concerning repayment by the mortgagor of the amount owed to the Secretary.

(c) Assignment and loan modification

(1) Assignment

(A) Program authority

The Secretary may establish a program for assignment to the Secretary, upon request of the mortgagee, of a mortgage on a 1- to 4-family residence insured under this chapter.

(B) Program requirements

The Secretary may accept assignment of a mortgage under this paragraph only if—

(i) the mortgage was in default or facing imminent default, as defined by the Secretary;

(ii) the mortgagee has modified the mortgage to cure the default and provide for mortgage payments within the reasonable ability of the mortgagor to pay, at interest rates not exceeding current market interest rates; and

(iii) the Secretary arranges for servicing of the assigned mortgage by a mortgagee (which may include the assigning mortgagee) through procedures that the Secretary has determined to be in the best interests of the appropriate insurance fund.

(C) Payment of insurance benefits

Upon accepting assignment of a mortgage under this paragraph, the Secretary may pay insurance benefits to the mortgagee from the appropriate insurance fund, in an amount that the Secretary determines to be appropriate, not to exceed the amount necessary to compensate the mortgagee for the assignment and any losses and expenses resulting from the mortgage modification.

(2) Assignment and loan modification

(A) Authority

The Secretary may encourage loan modifications for eligible delinquent mortgages or mortgages facing imminent default, as defined by the Secretary, through the payment of insurance benefits and assignment of the mortgage to the Secretary and the subsequent modification of the terms of the mortgage according to a loan modification approved by the mortgagee.

(B) Payment of benefits and assignment

In carrying out this paragraph, the Secretary may pay insurance benefits for a mortgage, in the amount determined in accordance with section 1710(a)(5) of this title, without reduction for any amounts modified, but only upon the assignment, transfer, and delivery to the Secretary of all rights, interest, claims, evidence, and records with respect to the mortgage specified in clauses (i) through (iv) of section 1710(a)(1)(A) of this title.

(C) Disposition

After modification of a mortgage pursuant to this paragraph, the Secretary may provide insurance under this subchapter for the mortgage. The Secretary may subsequently—

(i) re-assign the mortgage to the mortgagee under terms and conditions as are agreed to by the mortgagee and the Secretary;

(ii) act as a Government National Mortgage Association issuer, or contract with an entity for such purpose, in order to pool the mortgage into a Government National Mortgage Association security; or

(iii) re-sell the mortgage in accordance with any program that has been established for purchase by the Federal Government of mortgages insured under this subchapter, and the Secretary may coordinate standards for interest rate reductions available for loan modification with interest rates established for such purchase.

(D) Loan servicing

In carrying out this paragraph, the Secretary may require the existing servicer of a mortgage assigned to the Secretary to continue servicing the mortgage as an agent of the Secretary during the period that the Secretary acquires and holds the mortgage for the purpose of modifying the terms of the mortgage, provided that the Secretary compensates the existing servicer appropriately, as such compensation is determined by the Secretary consistent, to the maximum extent possible, with section 1709(b) of this title. If the mortgage is resold pursuant to subparagraph (C)(iii), the Sec-

retary may provide for the existing servicer to continue to service the mortgage or may engage another entity to service the mortgage.

(d) Prohibition of judicial review

No decision by the Secretary to exercise or forego exercising any authority under this section shall be subject to judicial review.

(e) Repealed. Pub. L. 104–134, title I, § 101(e) [title II, § 221(b)(2)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–291; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327

(f) Applicability of other laws

No provision of this chapter, or any other law, shall be construed to require the Secretary to provide an alternative to foreclosure for mortgagees with mortgages on 1- to 4-family residences insured by the Secretary under this chapter, or to accept assignments of such mortgages.

(June 27, 1934, ch. 847, title II, § 230, as added Pub. L. 86–372, title I, § 114(a), Sept. 23, 1959, 73 Stat. 662; amended Pub. L. 88–560, title I, § 104(b), Sept. 2, 1964, 78 Stat. 770; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 96–399, title III, § 341, Oct. 8, 1980, 94 Stat. 1659; Pub. L. 98–181, title IV, § 418, Nov. 30, 1983, 97 Stat. 1212; Pub. L. 100–242, title IV, § 428, Feb. 5, 1988, 101 Stat. 1918; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–99, title IV, § 407(b), Jan. 26, 1996, 110 Stat. 45; Pub. L. 104–134, title I, § 101(e) [title II, § 221(b)(2)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–291; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–276, title VI, § 601(f), Oct. 21, 1998, 112 Stat. 2674; Pub. L. 111–22, div. A, title II, § 203(d)(1)–(3), May 20, 2009, 123 Stat. 1645, 1646.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(1)(A) and (f), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–22, § 203(d)(1)(C)–(E), inserted ''preforeclosure sale, support for borrower housing counseling, subordinate lien resolution, borrower incentives,'' after ''loan modification,'', ''as required,'' after ''deeds in lieu of foreclosure,'', and ''or subsection (c),'' before ''as provided''.

Pub. L. 111–22, § 203(d)(1)(B), which directed substitution of ''loan'' for ''loss'', was executed by making the substitution before ''modification'' to reflect the probable intent of Congress.

Pub. L. 111–22, § 203(d)(1)(A), inserted ''or imminent default, as defined by the Secretary'' after ''default''.

Subsec. (b). Pub. L. 111–22, § 203(d)(2), amended subsec. (b) generally. Prior to amendment, text read as follows: ''The Secretary may establish a program for payment of a partial claim to a mortgagee that agrees to apply the claim amount to payment of a mortgage on a 1- to 4-family residence that is in default. Any such payment under such program to the mortgagee shall be made in the sole discretion of the Secretary and on terms and conditions acceptable to the Secretary, except that—

''(1) the amount of the payment shall be in an amount determined by the Secretary, not to exceed an amount equivalent to 12 of the monthly mortgage payments and any costs related to the default that are approved by the Secretary; and

''(2) the mortgagor shall agree to repay the amount of the insurance claim to the Secretary upon terms and conditions acceptable to the Secretary. The Secretary may pay the mortgagee, from the appropriate insurance fund, in connection with any activities that the mortgagee is required to undertake concerning repayment by the mortgagor of the amount owed to the Secretary.''

Subsec. (c). Pub. L. 111–22, § 203(d)(3)(A)–(C)(i), designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (1), and redesignated subpars. (A) to (C) of former par. (2) as cls. (i) to (iii), respectively, of par. (1)(B).

Subsec. (c)(1)(B). Pub. L. 111–22, § 203(d)(3)(C)(ii), substituted ''under this paragraph'' for ''under a program under this subsection'' in introductory provisions.

Subsec. (c)(1)(B)(i). Pub. L. 111–22, § 203(d)(3)(C)(iii), inserted ''or facing imminent default, as defined by the Secretary'' after ''default''.

Subsec. (c)(1)(C). Pub. L. 111–22, § 203(d)(3)(D), which directed substitution of ''under this paragraph'' for ''under a program under this subsection'', was executed by making the substitution for ''under a program established under this subsection'' to reflect the probable intent of Congress.

Subsec. (c)(2). Pub. L. 111–22, § 203(d)(3)(E), added par. (2). Former par. (2) redesignated subpar. (B) of par. (1).

1998—Pub. L. 105–276 added subsec. (a) and redesignated former subsecs. (a) to (e) as (b) to (f), respectively.

1996—Pub. L. 104–99 amended section generally, substituting subsecs. (a) to (e) relating to authority to assist mortgagors in default for former subsecs. (a) to (d) relating to temporary mortgage assistance payments and acquisition of mortgages to avoid foreclosures.

Subsec. (d). Pub. L. 104–134 struck out heading and text of subsec. (d). Text read as follows: ''Any mortgage for which the mortgagor has applied to the Secretary, before the date of enactment of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996, for assignment pursuant to subsection (b) of this section as in effect before such date of enactment shall continue to be governed by the provisions of this section, as in effect immediately before such date of enactment.''

1991—Subsec. (a)(5). Pub. L. 102–83 substituted ''section 3703(c) of title 38'' for ''section 1803(c) of title 38''.

1988—Subsec. (a)(5). Pub. L. 100–242 substituted ''The interest rate on payments made under this subsection shall be the rate established under section 1803(c) of title 38. The interest rate to be charged shall be determined when the Secretary approves assistance under this subsection'' for ''The Secretary may establish interest charges on payments made under this subsection; except that such charges shall not exceed a rate which is more than the maximum interest rate applicable with respect to level payment mortgages insured pursuant to section 1709(b) of this title at the time assistance under this section is approved by the Secretary.''

1983—Subsec. (d). Pub. L. 98–181 struck out '', to the extent practicable,'' after ''Secretary shall''.

1980—Subsec. (a). Pub. L. 96–399 added subsec. (a). Existing undesignated provisions were designated as subsec. (b)(1).

Subsec. (b). Pub. L. 96–399 designated existing undesignated provision as par. (1), made changes in phraseology which included applicability of remedy provided by subsection (a) of this section and determinations made pursuant to such subsection, and added pars. (2) and (3).

Subsecs. (c), (d). Pub. L. 96–399 added subsecs. (c) and (d).

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1964—Pub. L. 88–560 authorized the Commissioner to acquire the loan and security notwithstanding the fact that he has previously approved a request of the mortgagee for an extension of the time for curing the default and of the time for commencing foreclosure proceedings or for otherwise acquiring title to the mortgaged property or has approved a modification of the

mortgage for the purpose of changing the amortization provisions by recasting the unpaid balance and substituted provisions for acquisition of the loan and security upon payment of the insurance benefits in an amount equal to the unpaid principal balance of the loan plus any unpaid mortgage interest plus reimbursement for such costs and attorney's fees as the Commissioner finds were properly incurred in connection with the defaulted mortgage and its assignment to the Commissioner for former provision for such acquisition upon issuance to the mortgagee of debentures having a total face value equal to the unpaid principal balance of the loan plus any accrued interest.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–99 applicable with respect to mortgages insured under this chapter that are executed before, on, or after Oct. 1, 1997, see section 407(c) of Pub. L. 104–99, as amended, set out as a note under section 1710 of this title.

SAVINGS PROVISION

Section 101(e) [title II, § 221(b)(1)] of Pub. L. 104–134 provided that: ''Any mortgage for which the mortgagor has applied to the Secretary, before the date of enactment of this Act [Apr. 26, 1996], for assignment to the Secretary pursuant to section 230(b) of the National Housing Act [12 U.S.C. 1715u(b)] shall continue to be governed by the provisions of such section, as in effect immediately before enactment of the Balanced Budget Downpayment Act, I [Pub. L. 104–99, which was approved Jan. 26, 1996].''

IMPLEMENTATION OF 2009 AMENDMENT

Pub. L. 111–22, div. A, title II, § 203(d)(4), May 20, 2009, 123 Stat. 1647, provided that: ''The Secretary of Housing and Urban Development may implement the amendments made by this subsection [amending this section] through notice or mortgagee letter.''

§ 1715v. Insurance of mortgages for housing for elderly persons

(a) Purpose; definitions

The purpose of this section is to assist in relieving the shortage of housing for elderly persons and to increase the supply of rental housing for elderly persons.

For the purposes of this section—

(1) the term ''housing'' means eight or more new or rehabilitated living units, not less than 50 per centum of which are specially designed for the use and occupancy of elderly persons;

(2) the term ''elderly person'' means any person, married or single, who is sixty-two years of age or over; and

(3) the terms ''mortgage'', ''mortgagee'', ''mortgagor'', and ''maturity date'' shall have the meanings respectively set forth in section 1713 of this title.

(b) Authorization

The Secretary is authorized to insure any mortgage (including advances on mortgages during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and to make commitments for insurance of such mortgages prior to the date of their execution or disbursement thereon.

(c) Eligibility for insurance; maximum amount of mortgage; terms and conditions

To be eligible for insurance under this section, a mortgage to provide housing for elderly persons shall—

(1) Repealed. Pub. L. 93–383, title III, § 304(f), Aug. 22, 1974, 88 Stat. 678.

(2)(A) not exceed, for such part of the property or project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary), $35,978 per family unit without a bedroom, $40,220 per family unit with one bedroom, $48,029 per family unit with two bedrooms, $57,798 per family unit with three bedrooms, and $67,950 per family unit with four or more bedrooms; except that as to projects to consist of elevator-type structures the Secretary may, in his discretion, increase the dollar amount limitations per family unit to not to exceed $40,876 per family unit without a bedroom, $46,859 per family unit with one bedroom, $56,979 per family unit with two bedrooms, $73,710 per family unit with three bedrooms, and $80,913 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design; (B) the Secretary may, by regulation, increase any of the dollar limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title) by not to exceed 170 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 170 percent, or 215 percent in high cost areas, where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720[1] of this title (as such section existed immediately before November 30, 1983) is involved; (C) the Secretary may, by regulation, increase any of the dollar limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title) by not to exceed 20 per centum if such increase is necessary to account for the increased cost of the project due to the installation therein of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42)[1] in cases where the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure;

(3) if executed by a mortgagor which is a public instrumentality or a private nonprofit corporation or association or other acceptable private nonprofit organization regulated or supervised under Federal or State laws or by political subdivisions of States, or agencies thereof, or by the Secretary under a regulatory agreement or otherwise, as to rents, charges, and methods of operation, in such form and in such manner as, in the opinion of the Secretary, will effectuate the purpose of

[1] See References in Text note below.

this section, involve a principal obligation not in excess of the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed improvements are completed (the replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Secretary): *Provided*, That in the case of properties other than new construction, the principal obligation shall not exceed the appraised value rather than the Secretary's estimate of the replacement cost;

(4) if executed by a mortgagor which is approved by the Secretary but is not a public instrumentality or a private nonprofit organization, involve a principal obligation not in excess (in the case of a property or project approved for mortgage insurance prior to the beginning of construction) of 90 per centum of the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed improvements are completed (the replacement costs may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Secretary, and shall include an allowance for builder's and sponsor's profit and risk of 10 per centum of all of the foregoing items except the land unless the Secretary, after certification that such allowance is unreasonable, shall by regulation prescribe a lesser percentage): *Provided*, That in the case of properties other than new construction the principal obligation shall not exceed 90 per centum of the Secretary's estimate of the value of the property or project: *And provided further*, That the Secretary may in his discretion require such mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operating, and for such purpose the Secretary may make contracts with and acquire for not to exceed $100 such stock or interest in any such mortgagor as the Secretary may deem necessary to render effective such restrictions or regulations; such stock or interest shall be paid for out of the General Insurance Fund and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance;

(5) provide for a complete amortization by periodic payments (unless otherwise approved by the Secretary) within such terms as the Secretary shall prescribe;

(6) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee; and

(7) cover a property or project which is approved for mortgage insurance prior to the beginning of construction or rehabilitation, with 50 per centum or more of the units therein specially designed for the use and occupancy of elderly persons in accordance with standards established by the Secretary, and which may include such commercial and special facilities as the Secretary deems adequate to serve the occupants.

(d) Release of part of mortgaged property or project from lien; preferences and priorities in rental of dwellings

The Secretary may consent to the release of a part or parts of the mortgaged property or project from the lien of any mortgage insured under this section upon such terms and conditions as he may prescribe, and shall prescribe such procedures as in his judgment are necessary to secure to elderly persons a preference or priority of opportunity to rent the dwellings included in such property or project.

(e) Applicability of other laws

The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (*l*), and (n) of section 1713 of this title shall apply to mortgages insured under this section and all references therein to section 1713 of this title shall refer to this section.

(f) Handicapped family units and facilities; rental preference or priority

Notwithstanding any of the provisions of this section, the housing provided under this section may include family units which are specially designed for the use and occupancy of any person or family qualifying as a handicapped family as defined in section 1701q[2] of this title, and such special facilities as the Secretary deems adequate to serve handicapped families (as so defined). The Secretary may also prescribe procedures to secure to such families preference or priority of opportunity to rent the living units specially designed for their use and occupancy.

(June 27, 1934, ch. 847, title II, §231, as added Pub. L. 86–372, title II, §201(a), Sept. 23, 1959, 73 Stat. 665; amended Pub. L. 87–70, title VI, §612(m), June 30, 1961, 75 Stat. 183; Pub. L. 88–560, title I, §107(e), title II, §203(c), Sept. 2, 1964, 78 Stat. 776, 784; Pub. L. 89–117, title II, §207(e), title XI, §1108(*l*), Aug. 10, 1965, 79 Stat. 467, 505; Pub. L. 90–19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 90–301, §3(d), May 7, 1968, 82 Stat. 114; Pub. L. 91–152, title I, §113(g), Dec. 24, 1969, 83 Stat. 384; Pub. L. 93–383, title III, §§303(f), 304(f), Aug. 22, 1974, 88 Stat. 677, 678; Pub. L. 94–173, §3, Dec. 23, 1975, 89 Stat. 1027; Pub. L. 94–375, §8(a), (b)(6), Aug. 3, 1976, 90 Stat. 1071, 1072; Pub. L. 96–153, title III, §314, Dec. 21, 1979, 93 Stat. 1117; Pub. L. 96–399, title III, §310(e), Oct. 8, 1980, 94 Stat. 1642; Pub. L. 97–35, title III, §339B(a), Aug. 13, 1981, 95 Stat. 417; Pub. L. 97–377, title I, §101(g), Dec. 21, 1982, 96 Stat. 1908; Pub. L. 98–181, title IV, §§404(b)(9), 446(e), Nov. 30, 1983, 97 Stat. 1209, 1228; Pub. L. 100–242, title IV, §426(f), (h), Feb. 5, 1988, 101 Stat. 1916; Pub. L. 102–550, title V, §509(f), Oct. 28, 1992, 106 Stat. 3783; Pub. L. 107–73, title II, §213(f), Nov. 26, 2001, 115 Stat. 677; Pub. L. 107–326, §5(b)(6), Dec. 4, 2002, 116 Stat. 2795; Pub. L. 108–186, title III, §302(b), Dec. 16, 2003, 117 Stat. 2692; Pub. L. 110–161, div. K, title II, §221(1), Dec. 26, 2007, 121 Stat. 2436.)

REFERENCES IN TEXT

Section 1720 of this title, referred to in subsec. (c)(2)(B), was repealed by Pub. L. 98–181, title IV, §483(a), Nov. 30, 1983, 97 Stat. 1240.

[2] See References in Text note below.

Section 8211 of title 42, referred to in subsec. (c)(2)(C), was omitted from the Code pursuant to section 8229 of Title 42, The Public Health and Welfare, which terminated authority under that section on June 30, 1989.

The General Insurance Fund, referred to in subsec. (c)(4), was established by section 1735c of this title.

Section 1701q of this title, referred to in subsec. (f), was amended generally by Pub. L. 101–625, title VIII, § 801(a), Nov. 28, 1990, 104 Stat. 4297, and, as so amended, no longer defines the term ''handicapped family''.

AMENDMENTS

2007—Subsec. (c)(2)(B). Pub. L. 110–161 substituted ''170 percent'' for ''140 percent'' after ''not to exceed'' in two places and ''215 percent in high cost areas'' for ''170 percent in high cost areas''.

2003—Subsec. (c)(2)(B). Pub. L. 108–186 substituted ''140 percent in'' for ''110 percent in'' and inserted '', or 170 percent in high cost areas,'' after ''and by not to exceed 140 percent''.

2002—Subsec. (c)(2). Pub. L. 107–326 inserted ''(A)'' after ''(2)'' and substituted ''; (B) the Secretary may, by regulation, increase any of the dollar limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title)'' for ''; and except that the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this paragraph'' and ''; (C) the Secretary may, by regulation, increase any of the dollar limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title)'' for '': *Provided*, That the Secretary may further increase the dollar amount limitations which would otherwise apply for the purpose of this section''.

2001—Subsec. (c)(2). Pub. L. 107–73 substituted ''$35,978'', ''$40,220'', ''$48,029'', ''$57,798'', and ''$67,950'' for ''$28,782'', ''$32,176'', ''$38,423'', ''$46,238'', and ''$54,360'', respectively, and ''$40,876'', ''$46,859'', ''$56,979'', ''$73,710'', and ''$80,913'' for ''$32,701'', ''$37,487'', ''$45,583'', ''$58,968'', and ''$64,730'', respectively.

1992—Subsec. (c)(2). Pub. L. 102–550 substituted ''$28,782'', ''$32,176'', ''$38,423'', ''$46,238'', and ''$54,360'' for ''$23,985'', ''$26,813'', ''$32,019'', ''$38,532'', and ''$45,300'', respectively, and ''$32,701'', ''$37,487'', ''$45,583'', ''$58,968'', and ''$64,730'' for ''$27,251'', ''$31,239'', ''$37,986'', ''$49,140'', and ''$53,942'', respectively.

1988—Subsec. (c)(2). Pub. L. 100–242 substituted ''$23,985'', ''$26,813'', ''$32,019'', ''$38,532'', and ''$45,300'' for ''$18,450'', ''$20,625'', ''$24,630'', ''$29,640'', and ''$34,846'', respectively, and ''$27,251'', ''$31,239'', ''$37,986'', ''$49,140'', and ''$53,942'' for ''$20,962'', ''$24,030'', ''$29,220'', ''$37,800'', and ''$41,494'', respectively, and substituted ''not to exceed 110 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 140 percent where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720 of this title (as such section existed immediately before November 30, 1983) is involved'' for ''not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum (by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved) in such an area''.

1983—Subsec. (c)(5). Pub. L. 98–181, § 446(e), inserted ''(unless otherwise approved by the Secretary)'' after ''periodic payments''.

Subsec. (c)(6). Pub. L. 98–181, § 404(b)(9), substituted provision that the interest rate be at such a rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate, exclusive of premium charges for insurance, not exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market.

1982—Subsec. (c)(2). Pub. L. 97–377 inserted ''(by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved)'' after ''90 per centum''.

1981—Subsec. (c)(2). Pub. L. 97–35 inserted ''therein'' after ''installation'' and struck out ''therein'' after ''measure''.

1980—Subsec. (c)(2). Pub. L. 96–399 inserted proviso relating to increase of dollar amount limitations due to installation of a solar energy system.

1979—Subsec. (c)(2). Pub. L. 96–153 substituted ''75 per centum'' for ''50 per centum'' and inserted exception that the dollar amount limitations may be exceeded by not be exceed 90 per centum where the Secretary determines it to be necessary.

1976—Subsec. (c)(2). Pub. L. 94–375 substituted ''50 per centum in any geographical area'' for ''75 per centum in any geographical area'', ''$18,450'' for ''$12,300'', ''$20,625'' for ''$17,188'', ''$24,630'' for ''$20,525'', ''$29,640'' for ''$24,700'', ''$34,846'' for ''$29,038'', ''$20,962'' for ''$13,975'', ''$24,030'' for ''$20,025'', ''$29,220'' for ''$24,350'', ''$37,800'' for ''$31,500'', and ''$41,494'' for ''$34,578''.

1975—Subsec. (c)(2). Pub. L. 94–173 raised from 45 per centum to 75 per centum the amount by which any dollar limitation may, by regulation, be increased.

1974—Subsec. (c)(1). Pub. L. 93–383, § 304(f), struck out par. (1) which set forth limits on principal obligations of mortgages.

Subsec. (c)(2). Pub. L. 93–383, § 303(f), substituted ''$12,300'' for ''$8,800'', ''$13,975'' for ''$10,450'', ''$17,188'' for ''$12,375'', ''$20,025'' for ''$14,850'', ''$20,525'' for ''$14,850'', ''$24,350'' for ''$17,600'', ''$24,700'' for ''$18,700'', ''$29,038'' for ''$21,175'', ''$31,500'' for ''$22,000'', and ''$34,578'' for ''$25,025''.

1969—Subsec. (c)(2). Pub. L. 91–152 substituted ''$8,800'' for ''$8,000'', ''$10,450'' for ''$9,500'', ''$12,375'' for ''$11,250'', ''$14,850'' for ''$13,500'' wherever appearing, ''$17,600'' for ''$16,000'', ''$18,700'' for ''$17,000'', ''$21,175'' for ''$19,250'', ''$22,000'' for ''$20,000'', and ''$25,025'' for ''$22,750''.

1968—Subsec. (c)(6). Pub. L. 90–301 increased limitation on interest rates from 5½ to 6 per centum per annum.

1967—Pub. L. 90–19, § 1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (b), (c)(2) to (7), (d), and (f).

Subsec. (c)(3), (4). Pub. L. 90–19, § 1(a)(4), substituted ''Secretary's'' for ''Commissioner's''.

1965—Subsec. (c)(2). Pub. L. 89–117, § 207(e), substituted ''$17,000 per family unit with three bedrooms, and $19,250 per family unit with four or more bedrooms'' for ''and $17,000 per family unit with three or more bedrooms'' and ''$20,000 per family unit with three bedrooms, and $22,750 per family unit with four or more bedrooms'' for ''and $20,000 per family unit with three or more bedrooms''.

Subsec. (c)(4). Pub. L. 89–117, § 1108(*l*)(1), substituted ''General Insurance Fund'' for ''section 207 Housing Insurance Fund''.

Subsec. (e). Pub. L. 89–117, § 1108(*l*)(2), struck out references to subsecs. (f), (m) and (p) of section 1713 of this title.

1964—Subsec. (c)(2). Pub. L. 88–560, § 107(e), changed limits on mortgages for property or project attributable to dwelling use from ''$2,250 per room (or $9,000 per family unit if the number of rooms in such property or project is less than four per family unit)'' to ''$8,000 per family unit without a bedroom, $11,250 per family

unit with one bedroom, $13,500 per family unit with two bedrooms, and $17,000 per family unit with three or more bedrooms'', changed such mortgage limits on project consisting of elevator-type structures from a sum ''of $2,250 per room to not to exceed $2,750 per room, and the dollar amount limitation of $9,000 per family unit to not to exceed $9,400 per family unit'' to dollar amount limitations ''per family unit to not to exceed $9,500 per family unit without a bedroom, $13,500 per family unit with one bedroom, $16,000 per family unit with two bedrooms, and $20,000 per family unit with three or more bedrooms'', and substituted provisions authorizing an increase ''by not to exceed 45 per centum'' of any of such limits because of cost levels for former provision authorizing such increase ''by not to exceed $1,250 per room, without regard to the number of rooms being less than four, or four or more''.

Subsec. (f). Pub. L. 88–560, § 203(c), added subsec. (f).

1961—Subsec. (c)(2). Pub. L. 87–70 increased the maximum amount of mortgages from not more than $9,000 per dwelling unit for such part of such property or project as may be attributable to dwelling use to not more than $2,250 per room (or $9,000 per family unit if the number of rooms in such property or project is less than four per family unit) for such part of such property or project as may be attributable to dwelling use (excluding exterior land improvements), and permitted an increase of from $2,250 per room to not more than $2,750 per room to compensate for the higher costs incident to the construction of elevator-type structures.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 90–301, § 3(d), May 7, 1968, 82 Stat. 114, cited as a credit to this section, was repealed by Pub. L. 98–181, title IV, § 404(a), Nov. 30, 1983, 97 Stat. 1208.

LIMITATION ON NUMBER OF DWELLING UNITS WITH MORTGAGES NOT PROVIDING FOR COMPLETE AMORTIZATION

For limitation on the number of dwelling units with mortgages not providing for complete amortization pursuant to authority granted by amendment to subsec. (c)(5) by section 446 of Pub. L. 98–181, see section 446(f) of Pub. L. 98–181, set out as a note under section 1713 of this title.

AMENDMENTS TO PROVISIONS FOR FAMILY UNIT LIMITS ON RENTAL HOUSING; EQUITABLE APPLICATION OF SUCH AMENDMENTS OR PRE-AMENDMENT PROVISIONS TO PROJECTS SUBMITTED FOR CONSIDERATION PRIOR TO SEPTEMBER 2, 1964

Equitable application of amendment to subsec. (c)(2) of this section by section 107(e) of Pub. L. 88–560 or pre-amendment provisions to projects submitted for consideration prior to Sept. 2, 1964, see section 107(g) of Pub. L. 88–560, set out as a note under section 1713 of this title.

§ 1715w. Mortgage insurance for nursing homes, intermediate care facilities, and board and care homes

(a) Purpose

The purpose of this section is to assist in the provision of facilities for any of the following purposes or for a combination of such purposes:

(1) The development of nursing homes for the care and treatment of convalescents and other persons who are not acutely ill and do not need hospital care but who require skilled nursing care and related medical services, including additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day.

(2) The development of intermediate care facilities and board and care homes for the care of persons who, while not in need of nursing home care and treatment, nevertheless are unable to live fully independently and who are in need of minimum but continuous care provided by licensed or trained personnel, including additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day.

(3) The development of assisted living facilities for the care of frail elderly persons.

(b) Definitions

For the purposes of this section—

(1) the term ''nursing home'' means a public facility, proprietary facility or facility of a private nonprofit corporation or association, licensed or regulated by the State (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located), for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services, in which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located;

(2) the term ''intermediate care facility'' means a proprietary facility or facility of a private nonprofit corporation or association licensed or regulated by the State (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services;

(3) the term a[1] ''nursing home'' or ''intermediate care facility'' may include such additional facilities as may be authorized by the Secretary for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day;

(4) the term ''mortgage'' means a first mortgage on real estate in fee simple, or on the interest of either the lessor or lessee thereof (A) under a lease for not less than ninety-nine years which is renewable, or (B) under a lease having a period of not less than ten years to run beyond the maturity date of the mortgage. The term ''first mortgage'' means such classes of first liens as are commonly given to secure advances (including but not limited to advances during construction) on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located,

[1] So in original. The word ''a'' probably should not appear.

together with the credit instrument or instruments, if any, secured thereby, and any mortgage may be in the form of one or more trust mortgages or mortgage indentures or deeds of trust, securing notes, bonds, or other credit instruments, and, by the same instrument or by a separate instrument, may create a security interest in initial equipment, whether or not attached to the realty. The term ''mortgagor'' shall have the meaning set forth in section 1713(a) of this title;

(5) the term ''board and care home'' means any residential facility providing room, board, and continuous protective oversight that is regulated by a State pursuant to the provisions of section 1616(e) of the Social Security Act [42 U.S.C. 1382e(e)], so long as the home is located in a State that, at the time of an application is made for insurance under this section, has demonstrated to the Secretary that it is in compliance with the provisions of such section 1616(e);

(6) the term ''assisted living facility'' means a public facility, proprietary facility, or facility of a private nonprofit corporation that—

(A) is licensed and regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located);

(B) makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy; and

(C) provides separate dwelling units for residents, each of which may contain a full kitchen and bathroom, and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility; and

(7) the term ''frail elderly person'' has the meaning given the term in section 8011(k) of title 42.

(c) Authorization

The Secretary is authorized to insure any mortgage (including advances on such mortgage during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and to make commitments for insurance of such mortgage prior to the date of its execution or disbursement thereon.

(d) Terms and conditions; limitation on maximum amount of mortgage; amortization; interest; certification from State agency

In order to carry out the purposes of this section, the Secretary is authorized to insure any mortgage which covers a new or rehabilitated nursing home,,[2] assisted living facility, or intermediate care facility, including a new addition to an existing nursing home, assisted living facility, or intermediate care facility and regardless of whether the existing home or facility is being rehabilitated, or any combination of nursing home, assisted living facility, and intermediate care facility or a board and care home, including equipment to be used in its operation, subject to the following conditions:

(1) The mortgage shall be executed by a mortgagor approved by the Secretary. The Secretary may in his discretion require any such mortgagor to be regulated or restricted as to charges and methods of financing, and, in addition thereto, if the mortgagor is a corporate entity, as to capital structure and rate of return. As an aid to the regulation or restriction of any mortgagor with respect to any of the foregoing matters, the Secretary may make such contracts with and acquire for not to exceed $100 such stock or interest in such mortgagor as he may deem necessary. Any stock or interest so purchased shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(2) The mortgage shall involve a principal obligation in an amount not to exceed 90 per centum of the estimated value of the property or project, or 95 percent of the estimated value of the property or project in the case of a mortgagor that is a private nonprofit corporation or association (under the meaning given such term for purposes of section 1715*l*(d)(3) of this title), including—

(A) equipment to be used in the operation of the home or facility or combined home and facility when the proposed improvements are completed and the equipment is installed; or

(B) a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42)[3] in cases where the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure.

(3) The mortgage shall—

(A) provide for complete amortization by periodic payments within such terms as the Secretary shall prescribe; and

(B) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee.

The Secretary shall not promulgate regulations or establish terms or conditions that interfere with the ability of the mortgagor and mortgagee to determine the interest rate; and[4]

(4)(A) With respect to nursing homes and intermediate care facilities and combined nursing home and intermediate care facilities, the Secretary shall not insure any mortgage under

[2] So in original.

[3] See References in Text note below.

[4] So in original. The ''; and'' probably should be a period.

this section unless he has received, from the State agency designated in accordance with section 604(a)(1) or section 1521[3] of the Public Health Service Act [42 U.S.C. 291d (a)(1), 300m] for the State in which is located the nursing home or intermediate care facility or combined nursing home and intermediate care facility covered by the mortgage, a certification that (i) there is a need for such home or facility or combined home and facility, and (ii) there are in force in such State or in the municipality or other political subdivision of the State in which the proposed home or facility or combined home and facility is to be located reasonable minimum standards of licensure and methods of operation governing it. No such mortgage shall be insured under this section unless the Secretary has received such assurance as he may deem satisfactory from the State agency that such standards will be applied and enforced with respect to any home or facility or combined home and facility located in the State for which mortgage insurance is provided under this section. If no such State agency exists, or if the State agency exists but is not empowered to provide a certification that there is a need for the home or facility or combined home and facility as required in clause (i) of the first sentence, the Secretary shall not insure any mortgage under this section unless (i) the State in which the home or facility or combined home and facility is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that (I) is prepared in accordance with the principles established by the American Institute of Certified Public Accountants; (II) assesses, on a marketwide basis, the impact of the proposed home or facility or combined home and facility on, and its relationship to, other health care facilities and services, the percentage of excess beds, demographic projections, alternative health care delivery systems, and the reimbursement structure of the home, facility, or combined home and facility; (III) is addressed to and is acceptable to the Secretary in form and substance; and (IV) in the event the State does not prepare the study, is prepared by a financial consultant who is selected by the State or the applicant for mortgage insurance and is approved by the Secretary; and (ii) the State complies with the other provisions of this subparagraph that would otherwise be required to be met by a State agency designated in accordance with section 604(a)(1) or section 1521[3] of the Public Health Service Act. The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required in the preceding sentence. In the case of a small intermediate care facility for the mentally retarded or developmentally disabled, or a board and care home housing less than 10 individuals, the State program agency or agencies responsible for licensing, certifying, financing, or monitoring the facility or home may, in lieu of the requirements of clause (i) of the third sentence, provide the Secretary with written support identifying the need for the facility or home.

(B) With respect to board and care homes, the Secretary shall not insure any mortgage under this section unless he has received from the appropriate State licensing agency a statement verifying that the State in which the home is or is to be located is in compliance with the provisions of section 1616(e) of the Social Security Act [42 U.S.C. 1382e(e)].

(C) With respect to assisted living facilities or any such facility combined with any other home or facility, the Secretary shall not insure any mortgage under this section unless—

(i) the Secretary determines that the level of financing acquired by the mortgagor and any other resources available for the facility will be sufficient to ensure that the facility contains dwelling units and facilities for the provision of supportive services in accordance with subsection (b)(6) of this section;

(ii) the mortgagor provides assurances satisfactory to the Secretary that each dwelling unit in the facility will not be occupied by more than 1 person without the consent of all such occupants; and

(iii) the appropriate State licensing agency for the State, municipality, or other political subdivision in which the facility is or is to be located provides such assurances as the Secretary considers necessary that the facility will comply with any applicable standards and requirements for such facilities.

(e) Release of part of mortgaged property or project from lien

The Secretary may consent to the release of a part or parts of the mortgaged property or project from the lien of any mortgage insured under this section upon such terms and conditions as he may prescribe.

(f) Applicability of other laws

The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (*l*), and (n) of section 1713 of this title shall apply to mortgages insured under this section and all references therein to section 1713 of this title shall refer to this section.

(g) Regulations covering intermediate care facilities; consultations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section relating to intermediate care facilities, after consulting with the Secretary of Health and Human Services with respect to any health or medical aspects of the program which may be involved in such regulations.

(h) Consultations concerning need for and availability of intermediate care facilities

The Secretary shall also consult with the Secretary of Health and Human Services as to the need for and the availability of intermediate care facilities in any area for which an intermediate care facility is proposed under this section.

(i) Fire safety equipment for nursing homes, assisted living facilities, intermediate care facilities, or board and care homes

(1) The Secretary is authorized upon such terms and conditions as he may prescribe to make commitments to insure and to insure loans made by financial institutions or other approved mortgagees to nursing homes, assisted living facilities, and intermediate care facilities

or to board and care homes to provide for the purchase and installation of fire safety equipment necessary for compliance with the 1967 edition of the Life Safety Code of the National Fire Protection Association (or any subsequent edition specified by the Secretary of Health and Human Services) or other such codes or requirements approved by the Secretary of Health and Human Services as conditions of participation for providers of services under title XVIII and title XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.] or as mandated by a State under the provisions of section 1616(e) of such Act [42 U.S.C. 1382e(e)].

(2) To be eligible for insurance under this subsection a loan shall—

(A) not exceed the Secretary's estimate of the reasonable cost of the equipment fully installed;

(B) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee;

(C) have a maturity satisfactory to the Secretary;

(D) be made by a financial institution or other mortgagee approved by the Secretary as eligible for insurance under section 1703 of this title or a mortgagee approved under section 1709(b)(1) of this title;

(E) comply with other such terms, conditions, and restrictions as the Secretary may prescribe; and

(F) in the case of board and care homes, be made with respect to such a home located in a State with respect to which the Secretary has received from the appropriate State licensing agency a statement verifying that the State in which the home is or is to be located is in compliance with the provisions of section 1616(e) of the Social Security Act [42 U.S.C. 1382e(e)].

(3) The provisions of paragraphs (5), (6), (7), (9), and (10) of section 1715k(h) of this title shall be applicable to loans insured under this subsection, except that all references to ''home improvement loans'' shall be construed to refer to loans under this subsection.

(4) The provisions of subsections (c), (d), and (h) of section 1703 of this title shall apply to loans insured under this subsection, and for the purpose of this subsection references in such subsections to ''this section'' or ''this title'' shall be construed to refer to this subsection.

(j) Schedules and deadlines for processing and approval of applications

The Secretary shall establish schedules and deadlines for the processing and approval (or provision of notice of disapproval) of applications for mortgage insurance under this section. The Secretary shall submit a report to the Congress annually describing such schedules and deadlines and the extent of compliance by the Department with the schedules and deadlines during the year.

(June 27, 1934, ch. 847, title II, § 232, as added Pub. L. 86–372, title I, § 115, Sept. 23, 1959, 73 Stat. 663; amended Pub. L. 87–70, title VI, § 610, June 30, 1961, 75 Stat. 180; Pub. L. 88–560, title I, § 117, Sept. 2, 1964, 78 Stat. 779; Pub. L. 89–117, title XI, § 1108(m), Aug. 10, 1965, 79 Stat. 505; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title III, § 314, Aug. 1, 1968, 82 Stat. 511; Pub. L. 91–152, title I, § 111, Dec. 24, 1969, 83 Stat. 382; Pub. L. 93–204, Dec. 28, 1973, 87 Stat. 883; Pub. L. 93–383, title III, § 304(g), Aug. 22, 1974, 88 Stat. 678; Pub. L. 95–128, title III, § 308(a), Oct. 12, 1977, 91 Stat. 1135; Pub. L. 95–557, title III, § 312, Oct. 31, 1978, 92 Stat. 2099; Pub. L. 96–399, title III, § 310(f), Oct. 8, 1980, 94 Stat. 1643; Pub. L. 98–181, title IV, §§ 404(b)(10), 437, Nov. 30, 1983, 97 Stat. 1209, 1222, 1223; Pub. L. 98–479, title I, § 104(a)(1), Oct. 17, 1984, 98 Stat. 2224; Pub. L. 100–242, title IV, §§ 410(a), (b), 429(e), Feb. 5, 1988, 101 Stat. 1904, 1918; Pub. L. 102–550, title V, § 511(a)–(e), Oct. 28, 1992, 106 Stat. 3784–3786; Pub. L. 105–65, title II, § 216, Oct. 27, 1997, 111 Stat. 1367; Pub. L. 105–276, title II, § 214(a), Oct. 21, 1998, 112 Stat. 2486.)

REFERENCES IN TEXT

The General Insurance Fund, referred to in subsec. (d)(1), was established by section 1735c of this title.

Section 8211 of title 42, referred to in subsec. (d)(2)(B), was omitted from the Code pursuant to section 8229 of Title 42, The Public Health and Welfare, which terminated authority under that section on June 30, 1989.

Section 1521 of the Public Health Service Act, referred to in subsec. (d)(4)(A), is section 1521 of act July 1, 1944, which was classified to section 300m of Title 42, The Public Health and Welfare, prior to repeal, effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

The Social Security Act, referred to in subsec. (i)(1), is act Aug. 13, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1998—Subsec. (b)(4)(B). Pub. L. 105–276 made technical correction to directory language of Pub. L. 105–65. See 1997 Amendment note below.

1997—Subsec. (b)(4)(B). Pub. L. 105–65, as amended by Pub. L. 105–276, substituted ''ten years to run beyond the maturity date of the mortgage'' for ''fifty years to run from the date the mortgage was executed''.

1992—Subsec. (a). Pub. L. 102–550, § 511(a)(1), substituted ''any'' for ''either'' in introductory provisions.

Subsec. (a)(3). Pub. L. 102–550, § 511(a)(2), added par. (3).

Subsec. (b)(6), (7). Pub. L. 102–550, § 511(b), added pars. (6) and (7).

Subsec. (d). Pub. L. 102–550, § 511(c)(1), in introductory provisions, inserted '', assisted living facility,'' after ''rehabilitated nursing home,'', substituted ''any combination of nursing home, assisted living facility, and intermediate care facility'' for ''combined nursing home and intermediate care facility'', and inserted '', including a new addition to an existing nursing home, assisted living facility, or intermediate care facility and regardless of whether the existing home or facility is being rehabilitated,'' after first reference to ''intermediate care facility''.

Subsec. (d)(2). Pub. L. 102–550, § 511(c)(2), inserted ''or 95 percent of the estimated value of the property or project in the case of a mortgagor that is a private nonprofit corporation or association (under the meaning given such term for purposes of section 1715*l*(d)(3) of this title),'' before ''including'' in introductory provisions.

Subsec. (d)(3). Pub. L. 102–550, § 511(c)(3), inserted concluding provisions.

Subsec. (d)(4)(C). Pub. L. 102–550, § 511(c)(4), added subpar. (C).

Subsec. (i)(1). Pub. L. 102–550, § 511(d), inserted '', assisted living facilities,'' after ''nursing homes''.

Subsec. (j). Pub. L. 102–550, § 511(e), added subsec. (j).

1988—Subsec. (b)(1). Pub. L. 100–242, § 410(a), inserted ''public facility,'' before ''proprietary''.

Subsec. (b)(3) to (5). Pub. L. 100–242, § 429(e)(1), indented as par. (3) former run-in cl. (3) defining ''nursing home'' and ''intermediate care facility'', inserted ''the term'', and struck out ''and'' after semicolon at end, redesignated as par. (4) former par. (3) defining ''mortgage'', and redesignated as par. (5) former par. (4).

Subsec. (d)(4)(A). Pub. L. 100–242, § 410(b), inserted ''If no such State agency exists, or if the State agency exists but is not empowered to provide a certification that there is a need for the home or facility or combined home and facility as required in clause (i) of the first sentence, the Secretary shall not insure any mortgage under this section unless (i) the State in which the home or facility or combined home and facility is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that (I) is prepared in accordance with the principles established by the American Institute of Certified Public Accountants; (II) assesses, on a marketwide basis, the impact of the proposed home or facility or combined home and facility on, and its relationship to, other health care facilities and services, the percentage of excess beds, demographic projections, alternative health care delivery systems, and the reimbursement structure of the home, facility, or combined home and facility; (III) is addressed to and is acceptable to the Secretary in form and substance; and (IV) in the event the State does not prepare the study, is prepared by a financial consultant who is selected by the State or the applicant for mortgage insurance and is approved by the Secretary; and (ii) the State complies with the other provisions of this subparagraph that would otherwise be required to be met by a State agency designated in accordance with section 291d(a)(1) or section 300m of title 42. The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required in the preceding sentence. In the case of a small intermediate care facility for the mentally retarded or developmentally disabled, or a board and care home housing less than 10 individuals, the State program agency or agencies responsible for licensing, certifying, financing, or monitoring the facility or home may, in lieu of the requirements of clause (i) of the third sentence, provide the Secretary with written support identifying the need for the facility or home.''

Subsec. (i)(2)(B). Pub. L. 100–242, § 429(e)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''bear interest at not to exceed a rate determined by the Secretary to be necessary to meet the loan market''.

1984—Pub. L. 98–479 inserted reference to board and care homes in section catchline.

1983—Subsec. (a)(2). Pub. L. 98–181, § 437(a), inserted ''and board and care homes'' after ''intermediate care facilities''.

Subsec. (b)(4). Pub. L. 98–181, § 437(b), added par. (4).

Subsec. (d). Pub. L. 98–181, § 437(c)(1), in provisions preceding par. (1) inserted ''or a board and care home'' after ''and intermediate care facility,''.

Subsec. (d)(3)(B). Pub. L. 98–181, § 404(b)(10), substituted provision that the interest rate be at such a rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate, exclusive of premium charges for insurance, not exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market.

Subsec. (d)(4). Pub. L. 98–181, § 437(c)(2), designated existing provision as subpar. (A), substituted ''With respect to nursing homes and intermediate care facilities and combined nursing home and intermediate care facilities, the'' for ''The'' and ''(i)'' and ''(ii)'' for ''(A)'' and ''(B)'', respectively, and added subpar. (B).

Subsecs. (g), (h). Pub. L. 98–181, § 437(d), (e), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (i)(1). Pub. L. 98–181, § 437(f)(1), inserted ''or to board and care homes'' after ''intermediate care facilities'', ''(or any subsequent edition specified by the Secretary of Health and Human Services)'' after ''Association'', and ''or as mandated by a State under provisions of section 1616(e) of such Act'' after ''Social Security Act'', and substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (i)(2)(F). Pub. L. 98–181, § 437(f)(2), added subpar. (F).

1980—Subsec. (d)(2). Pub. L. 96–399 revised existing provisions into introductory paragraph and subpar. (A) and added subpar. (B).

1978—Subsec. (a). Pub. L. 95–557, § 312(a), inserted '', including additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day'' after pars. (1) and (2).

Subsec. (b)(2). Pub. L. 95–557, § 312(b), inserted ''(3) a 'nursing home' or 'intermediate care facility' may include such additional facilities as may be authorized by the Secretary for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day''.

1977—Subsec. (d)(4). Pub. L. 95–128 inserted reference to section 300m of title 42.

1974—Subsec. (d)(2). Pub. L. 93–383 struck out ''not to exceed $12,500,000, and'' after ''an amount''.

1973—Subsec. (i). Pub. L. 93–204 added subsec. (i).

1969—Subsec. (a). Pub. L. 91–152, § 111(1), added to stated purpose of this section of developing nursing homes, the development of intermediate care facilities or the development of such facilities in combination with nursing home facilities.

Subsec. (b). Pub. L. 91–152, § 111(2), (3), struck out ''and'' after ''is located;'' in par. (1), redesignated par. (2) as (3), and added par. (2).

Subsec. (d). Pub. L. 91–152, § 111(4), inserted provision authorizing the Secretary to insure any mortgage which covers an intermediate care facility or combined nursing home and intermediate care facility.

Subsec. (d)(2). Pub. L. 91–152, § 111(5), substituted ''operation of the home or facility or combined home or facility'' for ''operation of the nursing home''.

Subsec. (d)(4). Pub. L. 91–152, § 111(6), substituted ''section 291d(a)(1) of title 42'' for ''section 291b(a)(1) of title 42'', and made provisions applicable to the insurance of mortgages covering intermediate care facilities or combined nursing home and intermediate care facilities.

Subsecs. (g), (h). Pub. L. 91–152, § 111(7), added subsecs. (g) and (h).

1968—Subsec. (b)(2). Pub. L. 90–448, § 314(1), redefined term ''mortgage'' to mean a first mortgage on real estate in fee simple, or on the interest of either the lessor or lessee thereof under a lease for not less than ninety-nine years which is renewable, or under a lease having a period of not less than fifty years to run from the date the mortgage was executed, and inserted definition of ''first mortgage''.

Subsec. (d). Pub. L. 90–448, § 314(2), (3), authorized the Secretary to insure a mortgage which includes equipment to be used in the operation of a nursing home, and permitted the value of the equipment to be included in the calculation of the 90 per centum of the estimated value.

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1965—Subsec. (d)(1). Pub. L. 89–117, § 1108(m)(1), substituted ''General Insurance Fund'' for ''section 207 Housing Insurance Fund''.

Subsec. (f). Pub. L. 89–117, § 1108(m)(2), struck out references to subsecs. (f), (m) and (p) of section 1713 of this title.

1964—Subsec. (b)(1). Pub. L. 88–560 inserted ''or facility of a private nonprofit corporation or association'' after ''proprietary facility''.

1961—Subsec. (d)(2). Pub. L. 87–70 substituted ''90 per centum'' for ''75 per centum''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title II, § 214(b), Oct. 21, 1998, 112 Stat. 2486, provided that: ''The amendment made by subsection (a) [amending this section] shall be construed to have taken effect on October 27, 1997.''

REGULATIONS

Section 410(c) of Pub. L. 100–242 provided that: ''The Secretary of Housing and Urban Development shall issue such regulations as may be necessary to carry out the amendments made by this section [amending this section] by not later than the expiration of the 90-day period following the date of the enactment of this Act [Feb. 5, 1988].''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (j) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 105 of House Document No. 103–7.

DELEGATION OF PROCESSING OF MORTGAGE INSURANCE

Secretary of Housing and Urban Development to implement system of mortgage insurance for mortgages insured under this section that delegates processing functions to selected approved mortgagees, with Secretary to retain authority to approve rents, expenses, property appraisals, and mortgage amounts and to execute firm commitments, see section 328 of Pub. L. 101–625, set out as a note under section 1713 of this title.

§ 1715x. Experimental housing insurance

(a) Purpose; authorization

(1) In order to assist in lowering housing costs and improving housing standards, quality, livability, or durability or neighborhood design through the utilization of advanced housing technology, or experimental property standards, the Secretary is authorized to insure and to make commitments to insure, under this section, mortgages (including home improvement loans, and including advances on mortgages during construction) secured by properties including dwellings involving the utilization and testing of advanced technology in housing design, materials, or construction, or experimental property standards for neighborhood design if the Secretary determines that (A) the property is an acceptable risk, giving consideration to the need for testing advanced housing technology or experimental property standards, (B) the utilization and testing of the advanced technology or experimental property standards involved will provide data or experience which the Secretary deems to be significant in reducing housing costs or improving housing standards, quality, livability, or durability, or improving neighborhood design, and (C) the mortgages are eligible for insurance under the provisions of this section and under any further terms and conditions which may be prescribed by the Secretary to establish the acceptability of the mortgages for insurance.

(2) The Secretary is further authorized to insure and to make commitments to insure, under this section, mortgages (including advances on mortgages during construction) secured by properties in projects to be carried out in accordance with plans approved by the Secretary under section 1701z of this title.

(b) Eligibility for insurance; conditions; limits

To be eligible for insurance under this section, a mortgage shall meet the requirements of one of the other sections or subchapters of this chapter; except that, in lieu of determining the appraised value or the replacement cost of the property in cases involving new construction or the estimated cost of repair and rehabilitation or improvement in cases involving existing properties, the Secretary shall estimate the cost of replacing the property using comparable conventional design, materials, and construction, and any limitation upon the maximum mortgage amount available to a nonoccupant owner shall not, in the discretion of the Secretary, be applicable to mortgages insured under this section.

(c) Contracts, agreements, and financial undertakings with mortgagor

The Secretary may enter into such contracts, agreements, and financial undertakings with the mortgagor and others as he deems necessary or desirable to carry out the purposes of this section, and may expend available funds for such purposes, including the correction (when he determines it necessary to protect the occupants), at any time subsequent to insurance of a mortgage, of defects or failures in the dwellings which the Secretary finds are caused by or related to the advanced housing technology utilized in their design or construction or experimental property standards. Any authority which the Secretary may exercise in connection with a mortgage, or property covered by a mortgage, insured under any other section of this subchapter (including payments to reduce rentals for, or to facilitate homeownership by, lower income families) may be exercised in connection with a mortgage, or property covered by a mortgage, meeting the requirements of such other section (except as specified in subsection (b) of this section), which is insured under this section to the same extent and in the same manner as if the mortgage insured under this section was insured under such other section.

(d) Investigations and analysis of data; publication and distribution of reports

The Secretary may make such investigations and analyses of data, and publish and distribute such reports, as he determines to be necessary or desirable to assure the most beneficial use of the data and information to be acquired as a result of this section.

(e) Entitlement to insurance benefits

Any mortgagee or lender under a mortgage insured under subsection (b) of this section shall be entitled to insurance benefits determined in the same manner as such benefits would be determined if such mortgage or loan were insured under the section or subchapter of this chapter for which it otherwise would have been eligible except for the experimental feature of the property involved.

(f) Defaults; payment in cash or debentures; acquisition of mortgage

Notwithstanding the provisions of subsection (e) of this section, in the case of default on any mortgage insured under this section, the Secretary in his discretion, in accordance with such regulations as he may prescribe, may make payments pursuant to such subsections in cash or in

debentures (as provided in the mortgage insurance contract), or may acquire the mortgage loan and the security therefor upon payment to the mortgagee in cash or in debentures (as provided in the mortgage insurance contract) of a total amount equal to the unpaid principal balance of the loan plus any accrued interest and any advances approved by the Secretary made previously by the mortgagee under the provisions of the mortgage. After the acquisition of the mortgage by the Secretary the mortgagee shall have no further rights, liabilities, or obligations with respect to the mortgage. The appropriate provisions of sections 1710 and 1713 of this title relating to the issuance of debentures shall apply with respect to debentures issued under this subsection, and the appropriate provisions of sections 1710 and 1713 of this title relating to the rights, liabilities, and obligations of a mortgagee shall apply with respect to the Secretary when he has acquired an insured mortgage under this subsection, in accordance with and subject to regulations (modifying such provisions to the extent necessary to render their application for such purposes appropriate and effective) which shall be prescribed by the Secretary, except that as applied to mortgages insured under this section (1) all references in section 1710 of this title to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund, and (2) all references in section 1710 of this title to section 1709 of this title shall be construed to refer to this section. If the insurance payment is made in cash, there shall be added to such payment an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Secretary.

(June 27, 1934, ch. 847, title II, §233, as added Pub. L. 87–70, title I, §103, June 30, 1961, 75 Stat. 158; amended Pub. L. 88–560, title I, §§105(c)(1), 118, Sept. 2, 1964, 78 Stat. 772, 779; Pub. L. 89–117, title XI, §1108(n), Aug. 10, 1965, 79 Stat. 505; Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title I, §108(f), title III, §309, Aug. 1, 1968, 82 Stat. 496, 509.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (e), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

The General Insurance Fund, referred to in subsec. (f), was established by section 1735c of this title.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–448, §108(f)(1), designated existing provision as par. (1), redesignated cls. (1), (2), and (3) as cls. (A), (B), and (C), respectively, and added par. (2).

Subsec. (b). Pub. L. 90–448, §309(1), substituted ''one of the other sections or subchapters of this chapter'' for ''one of the other sections of this subchapter''.

Subsec. (c). Pub. L. 90–448, §108(f)(2), inserted sentence providing that any authority which the Secretary may exercise in connection with a mortgage, or property covered by a mortgage, insured under any other section of this subchapter (including payments to reduce rentals for, or to facilitate homeownership by, lower income families) may be exercised in connection with a mortgage, or property covered by a mortgage, meeting the requirements of such other section (except as specified in subsec. (b)), which is insured under this section to the same extent and in the same manner as if the mortgage insured under this section was insured under such other section.

Subsec. (e). Pub. L. 90–448, §309(2), substituted ''the section or subchapter of this chapter'' for ''the section of this subchapter''.

1967—Subsecs. (a) to (d), (f). Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1965—Subsec. (f). Pub. L. 89–117, §1108(n)(1), (2), substituted ''General Insurance Fund'' for ''Experimental Housing Insurance Fund'' and struck out provision that all references in section 1713 of this title to the Housing Insurance Fund, the Housing Fund, or the Fund shall be construed to refer to the Experimental Housing Insurance Fund.

Subsec. (g). Pub. L. 89–117, §1108(n)(3), repealed subsec. (g) which created the Experimental Housing Insurance Fund, provided for transfer of funds thereto, and authorized the charging of expenses thereto.

1964—Subsec. (a). Pub. L. 88–560, §118(a), substituted ''home improvement loans, and including advances on mortgages'' for '', in the case of mortgages insured under subsection (b)(2) of this section, advances on such mortgages''.

Subsec. (b). Pub. L. 88–560, §118(b), substituted provisions which make insurance available for mortgages meeting the requirements of any other sections of subchapter II of this chapter for provisions which made insurance available for mortgages meeting the requirements of section 1709(b) or 1713(b), (c) of this title and made the Commissioner's estimate of replacement cost of the property applicable to mortgages meeting the requirements of any section of subchapter II of this chapter in lieu of determining the appraised value or the replacement cost of the property in new construction or estimated cost of repair and rehabilitation or improvement for existing properties.

Subsec. (e). Pub. L. 88–560, §118(c), substituted provision for entitlement to insurance benefits determined in the same manner as such benefits would be determined if such mortgage or loan were insured under the section of this subchapter for which it otherwise would have been eligible except for the experimental feature of the property involved for former provision for entitlement to insurance benefits provided in section 1710(a) of this title.

Subsec. (f). Pub. L. 88–560, §§105(c)(1), 118(c), (d), added to subsec. (g), redesignated (f), provision that ''If the insurance payment is made in cash, there shall be added to such payment an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Commissioner'', deleted former provisions of subsec. (f) which related to entitlement to insurance benefits provided in section 1713(g) of this title, now covered by subsec. (e) of this section, and redesignated former subsec. (g) as (f), substituting in first sentence ''subsection (e)'' for ''subsections (e) and (f)'', respectively.

Subsecs. (g), (h). Pub. L. 88–560, §118(d), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

§ 1715y. Mortgage insurance for condominiums

(a) Purpose

The purpose of this section is to provide an additional means of increasing the supply of privately owned dwelling units where, under the laws of the State in which the property is located, real property title and ownership are established with respect to a one-family unit which is part of a multifamily project.

(b) Definitions

The terms ''mortgage'', ''mortgagee'', ''mortgagor'', ''maturity date'', and ''State'' shall have the meanings respectively set forth in sec-

tion 1707 of this title, except that the term ''mortgage'' for the purposes of subsection (c) of this section may include a first mortgage given to secure the unpaid purchase price of a fee interest in, or a long-term leasehold interest in, a one-family unit in a multifamily project, including a project in which the dwelling units are attached, semi-attached, or detached, and an undivided interest in the common areas and facilities which serve the project where the mortgage is determined by the Secretary to be eligible for insurance under this section. The term ''common areas and facilities'' as used in this section shall be deemed to include the land and such commercial, community, and other facilities as are approved by the Secretary.

(c) Authorization; eligibility for insurance; conditions; limits

The Secretary is authorized, in his discretion and under such terms and conditions as he may prescribe (including the minimum number of family units in the project which shall be offered for sale and provisions for the protection of the consumer and the public interest), to insure any mortgage covering a one-family unit in a multifamily project and an undivided interest in the common areas and facilities which serve the project, if (1) the mortgage meets the requirements of this subsection and of section 1709(b) of this title, except as that section is modified by this subsection, (2) at least 80 percent of the units in the project covered by mortgages insured under this subchapter are occupied by the mortgagors or comortgagors, and (3) the project has a blanket mortgage insured by the Secretary under subsection (d). Any project proposed to be constructed or rehabilitated after June 30, 1961, with the assistance of mortgage insurance under this chapter, where the sale of family units is to be assisted with mortgage insurance under this subsection, shall be subject to such requirements as the Secretary may prescribe. To be eligible for insurance pursuant to this subsection, a mortgage shall (A) involve a principal obligation in an amount not to exceed the maximum principal obligation of a mortgage which may be insured in the area pursuant to section 1709(b)(2) of this title or pursuant to section 1709(h) of this title under the conditions described in section 1709(h) of this title, and (B) have a maturity satisfactory to the Secretary, but not to exceed, in any event, thirty-five years from the date of the beginning of amortization of the mortgage. The mortgage shall contain such provisions as the Secretary determines to be necessary for the maintenance of common areas and facilities and the multifamily project. The mortgagor shall have exclusive right to the use of the one-family unit covered by the mortgage and, together with the owners of other units in the multifamily project, shall have the right to the use of the common areas and facilities serving the project and the obligation of maintaining all such common areas and facilities. The Secretary may require that the rights and obligations of the mortgagor and the owners of other dwelling units in the project shall be subject to such controls as he determines to be necessary and feasible to promote and protect individual owners, the multifamily project, and its occupants. For the purposes of this subsection, the Secretary is authorized in his discretion and under such terms and conditions as he may prescribe to permit one-family units and interests in common areas and facilities in multifamily projects covered by mortgages insured under any section of this chapter (other than section 1715e(a)(1) and (2) of this title) to be released from the liens of those mortgages.

(d) Blanket mortgages of multifamily projects; plan of family unit ownership; regulations; stock purchase and redemption

In addition to individual mortgages insured under subsection (c) of this section, the Secretary is authorized, in his discretion and under such terms and conditions as he may prescribe, to insure blanket mortgages (including advances on such mortgages during construction) which cover multifamily projects to be constructed or rehabilitated in cases where the mortgage is held by a mortgagor, approved by the Secretary, which—

(1) has certified to the Secretary, as a condition of obtaining the insurance of a blanket mortgage under this subsection, that upon completion of the multifamily project covered by such mortgage it intends to commit the ownership of the multifamily project to a plan of family unit ownership under which each family unit would be eligible for individual mortgage insurance under subsection (c) of this section and will faithfully and diligently make and carry out all reasonable efforts to establish such plan of family unit ownership and to sell such family units to purchasers approved by the Secretary; and

(2) may, in the Secretary's discretion, be regulated or restricted as to rents, charges, capital structure, rate of return, and methods of operation until the termination of all obligations of the Secretary under the insurance and during such further period of time as the Secretary shall be the owner, holder or reinsurer of the mortgage. The Secretary may make such contracts with and acquire for not to exceed $100 such stock or interest in such mortgagor as he may deem necessary to render effective any such regulation or restriction of such mortgagor. The stock or interest acquired by the Secretary shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par at any time upon the request of the Secretary after the termination of all obligations of the Secretary under the insurance.

(e) Eligibility for insurance of blanket mortgages of multifamily projects

To be eligible for insurance, a blanket mortgage on any multifamily project of a mortgagor of the character described in subsection (d) of this section shall involve a principal obligation in an amount—

(1) Repealed. Pub. L. 93–383, title III, § 304(h), Aug. 22, 1974, 88 Stat. 678;

(2) not to exceed 90 per centum of the amount which the Secretary estimates will be the replacement cost of the project when the proposed physical improvements are completed;

(3)(A) not to exceed, for such part of the project as may be attributable to dwelling use

(excluding exterior land improvements as defined by the Secretary), $42,048 per family unit without a bedroom, $48,481 per family unit with one bedroom, $58,469 per family unit with two bedrooms, $74,840 per family unit with three bedrooms, and $83,375 per family unit with four or more bedrooms; except that as to projects to consist of elevator-type structures the Secretary may, in his discretion, increase the dollar amount limitations per family unit to not to exceed $44,250 per family unit without a bedroom, $50,724 per family unit with one bedroom, $61,680 per family unit with two bedrooms, $79,793 per family unit with three bedrooms, and $87,588 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design; (B) the Secretary may, by regulation, increase any of the dollar limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title) by not to exceed 170 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 170 percent, or 215 percent in high cost areas, where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720[1] of this title (as such section existed immediately before November 30, 1983) is involved; and

(4) not to exceed an amount equal to the sum of the unit mortgage amounts determined under the provisions of subsection (c) of this section assuming the mortgagor to be the owner and occupant of each family unit.

(f) Amortization of blanket mortgages of multifamily projects; interest; releases; extent of project

Any blanket mortgage insured under subsection (d) of this section shall provide for complete amortization by periodic payments within such terms as the Secretary may prescribe but not to exceed 40 years from the beginning of amortization of the mortgage, and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the blanket mortgage upon such terms and conditions as he may prescribe and the blanket mortgage may provide for such release. The project covered by the blanket mortgage may include four or more family units and such commercial and community facilities as the Secretary deems adequate to serve the occupants.

(g) Entitlement to insurance benefits as provided in section 1710(a) of this title

Any mortgagee under a mortgage insured under subsection (c) of this section is entitled to receive the benefits of the insurance as provided in section 1710(a) of this title with respect to mortgages insured under section 1709 of this title, and the provisions of subsections (b), (c), (d), (e), (f), (g), (h),[1] (j), and (k)[1] of section 1710 of this title shall be applicable to the mortgages insured under subsection (c) of this section.

(h) Applicability of other provisions

The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (*l*), and (n) of section 1713 of this title shall be applicable to mortgages insured under subsection (d) of this section.

(i) Applicability of other provisions

The provisions of sections 1715p and 1715u of this title shall be applicable to the mortgages insured under subsection (c) of this section.

(j) Increase in maximum insurance amounts for costs incurred from solar energy systems and energy conservation measures

The Secretary may further increase the dollar amount limitations which would otherwise apply under subsection (e) of this section by not to exceed 20 per centum if such increase is necessary to account for the increased cost of a project due to the installation therein of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42)[1] in cases where the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure.

(k) Rental housing conversion

With respect to a unit in any project which was converted from rental housing, no insurance may be provided under this section unless (1) the conversion occurred more than one year prior to the application for insurance, (2) the mortgagor or comortgagor was a tenant of that rental housing, (3) the conversion of the property is sponsored by a bona fide tenants organization representing a majority of the households in the project, or (4) before April 20, 1984 (A) application was made to the Secretary for a commitment to insure a mortgage covering any unit in the project, (B) in the case of direct endorsement, the mortgagee received the case number assigned by the Secretary for any unit in the project, or (C) application was made for approval of the project for guarantee, insurance, or direct loan under chapter 37 of title 38.

(June 27, 1934, ch. 847, title II, §234, as added Pub. L. 87–70, title I, §104, June 30, 1961, 75 Stat. 160; amended Pub. L. 88–560, title I, §119(a), Sept. 2, 1964, 78 Stat. 780; Pub. L. 89–117, title II, §207(f), title XI, §1108(*o*), Aug. 10, 1965, 79 Stat. 468, 506; Pub. L. 90–19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 90–301, §3(e), May 7, 1968, 82 Stat. 114; Pub. L. 90–448, title III, §303, Aug. 1, 1968, 82 Stat. 507; Pub. L. 91–152, title I, §§102(d), 113(h), Dec. 24, 1969, 83 Stat. 380, 384; Pub. L. 93–383, title III, §§302(e), 303(g), 304(h), 310(d), Aug. 22, 1974, 88 Stat. 676–678, 683; Pub. L. 94–173, §3, Dec. 23, 1975, 89 Stat. 1027; Pub. L. 94–375, §8(a), (b)(7), Aug. 3, 1976, 90 Stat. 1071, 1072; Pub. L. 95–128, title III, §§303(e), 304(d), Oct. 12, 1977, 91 Stat. 1132, 1133; Pub. L. 95–557, title III, §313, Oct. 31, 1978, 92 Stat. 2099; Pub. L. 96–153, title III,

[1] See References in Text note below.

§§ 312(c), 314, Dec. 21, 1979, 93 Stat. 1116, 1117; Pub. L. 96–399, title III, §§ 310(g), 318, 333(e), 336(d), Oct. 8, 1980, 94 Stat. 1643, 1646, 1653, 1654; Pub. L. 97–35, title III, §§ 339(a), 339B(a), (d), Aug. 13, 1981, 95 Stat. 416, 417; Pub. L. 97–253, title II, § 201(e), Sept. 8, 1982, 96 Stat. 789; Pub. L. 97–377, title I, § 101(g), Dec. 21, 1982, 96 Stat. 1908; Pub. L. 98–181, title IV, §§ 404(b)(11), 420, 423(b)(4), 431(b), Nov. 30, 1983, 97 Stat. 1209, 1213, 1217, 1220; Pub. L. 98–479, title I, § 104(a)(2), Oct. 17, 1984, 98 Stat. 2224; Pub. L. 100–242, title IV, §§ 406(b)(17), 422(a), 426(g), (h), Feb. 5, 1988, 101 Stat. 1901, 1914, 1916; Pub. L. 102–550, title V, § 509(g), Oct. 28, 1992, 106 Stat. 3783; Pub. L. 103–211, title I, Feb. 12, 1994, 108 Stat. 12; Pub. L. 103–233, title III, § 306, Apr. 11, 1994, 108 Stat. 373; Pub. L. 105–18, title II, § 10005, June 12, 1997, 111 Stat. 201; Pub. L. 107–73, title II, § 213(g), Nov. 26, 2001, 115 Stat. 677; Pub. L. 107–326, § 5(b)(7), Dec. 4, 2002, 116 Stat. 2796; Pub. L. 108–186, title III, § 302(b), Dec. 16, 2003, 117 Stat. 2692; Pub. L. 110–161, div. K, title II, § 221(1), Dec. 26, 2007, 121 Stat. 2436; Pub. L. 110–289, div. B, title I, § 2117(a), July 30, 2008, 122 Stat. 2832.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

The General Insurance Fund, referred to in subsec. (d)(2), was established by section 1735c of this title.

Section 1720 of this title, referred to in subsec. (e)(3)(B), was repealed by Pub. L. 98–181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

Subsection (h) of section 1710 of this title, referred to in subsec. (g), was redesignated subsec. (i) by Pub. L. 105–276, title VI, § 602(1), Oct. 21, 1998, 112 Stat. 2674.

Subsection (k) of section 1710 of this title, referred to in subsec. (g), was repealed by Pub. L. 105–276, title VI, § 601(c), Oct. 21, 1998, 112 Stat. 2673.

Section 8211 of title 42, referred to in subsec. (j), was omitted from the Code pursuant to section 8229 of Title 42, The Public Health and Welfare, which terminated authority under that section on June 30, 1989.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–289, § 2117(a)(1), in first sentence, struck out ''and'' before ''(2)'' and inserted '', and (3) the project has a blanket mortgage insured by the Secretary under subsection (d)'' before period at end.

Subsec. (g). Pub. L. 110–289, § 2117(a)(2), struck out '', except that (1) all references in section 1710 of this title to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund, (2) all references therein to section 1709 of this title shall be construed to refer to subsection (c) of this section, and (3) the excess remaining, referred to in section 1710(f)(1) of this title, shall be retained by the Secretary and credited to the General Insurance Fund'' before period at end.

2007—Subsec. (e)(3)(B). Pub. L. 110–161 substituted ''170 percent'' for ''140 percent'' after ''not to exceed'' in two places and ''215 percent in high cost areas'' for ''170 percent in high cost areas''.

2003—Subsec. (e)(3)(B). Pub. L. 108–186 substituted ''140 percent in'' for ''110 percent in'' and inserted '', or 170 percent in high cost areas,'' after ''and by not to exceed 140 percent''.

2002—Subsec. (e)(3). Pub. L. 107–326 inserted ''(A)'' after ''(3)'' and substituted ''$42,048'' for ''$38,025'', ''$48,481'' for ''$42,120'', ''$58,469'' for ''$50,310'', ''$74,840'' for '$62,010'', ''$83,375'' for ''$70,200'', ''$44,250'' for ''$43,875'', ''$50,724'' for ''$49,140'', ''$61,680'' for ''$60,255'', ''$79,793'' for ''$75,465'', ''$87,588'' for ''$85,328'', and ''; (B) the Secretary may, by regulation, increase any of the dollar limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title)'' for ''; except that each of the foregoing dollar amounts is increased to the amount established for a comparable unit in section 1715*l*(d)(3)(ii) of this title; and except that the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this paragraph''.

2001—Subsec. (e)(3). Pub. L. 107–73 substituted ''$38,025'', ''$42,120'', ''$50,310'', ''$62,010'', and ''$70,200'' for ''$30,420'', ''$33,696'', ''$40,248'', ''$49,608'', and ''$56,160'', respectively, and ''$43,875'', ''$49,140'', ''$60,255'', ''$75,465'', and ''$85,328'' for ''$35,100'', ''$39,312'', ''$48,204'', ''$60,372'', and ''$68,262'', respectively.

1997—Subsec. (c). Pub. L. 105–18 inserted ''or pursuant to section 1709(h) of this title under the conditions described in section 1709(h) of this title'' after ''section 1709(b)(2) of this title''.

1994—Subsec. (c). Pub. L. 103–211, effective for 18-month period following Feb. 12, 1994, for eligible persons, inserted ''or pursuant to section 1709(h) of this title under the conditions described in section 1709(h) of this title'' after ''section 1709(b)(2) of this title''. See Applicability of 1994 Amendment note below.

Subsec. (e)(3). Pub. L. 103–233 substituted ''$56,160'' for ''$59,160''.

1992—Subsec. (e)(3). Pub. L. 102–550 substituted ''$30,420'', ''$33,696'', ''$40,248'', ''$49,608'', and ''$59,160'' for ''$25,350'', ''$28,080'', ''$33,540'', ''$41,340'', and ''$46,800'', respectively, and ''$35,100'', ''$39,312'', ''$48,204'', ''$60,372'', and ''$68,262'' for ''$29,250'', ''$32,760'', ''$40,170'', ''$50,310'', and ''$56,885'', respectively.

1988—Subsec. (c). Pub. L. 100–242, § 406(b)(17), struck out fourth sentence which read as follows: ''In determining the amount of a mortgage in the case of a non-occupant mortgagor the reference to paragraph (2) of section 1709(b) of this title in section 1709(b)(8) of this title shall be construed to refer to the preceding sentence in this subsection.''

Subsec. (e)(3). Pub. L. 100–242, § 426(g), substituted ''$25,350'', ''$28,080'', ''$33,540'', ''$41,340'', and ''$46,800'' for ''$19,500'', ''$21,600'', ''$25,800'', ''$31,800'', and ''$36,000'', respectively, and ''$29,250'', ''$32,760'', ''$40,170'', ''$50,310'', and ''$56,885'' for ''$22,500'', ''$25,200'', ''$30,900'', ''$38,700'', and ''$43,758'', respectively.

Pub. L. 100–242, § 422(a), inserted ''except that each of the foregoing dollar amounts is increased to the amount established for a comparable unit in section 1715*l*(d)(3)(ii) of this title;'' after ''design;''.

Pub. L. 100–242, § 426(h), substituted ''not to exceed 110 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 140 percent where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720 of this title (as such section existed immediately before November 30, 1983) is involved'' for ''not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum (by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved) in such an area''.

1984—Subsec. (k)(4). Pub. L. 98–479 added cl. (4).

1983—Subsec. (c). Pub. L. 98–181, § 423(b)(4), purported to amend cl. (A) of third sentence of subsec. (c) by striking out '': *Provided*, That the foregoing maximum

mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured'', but this provision had been previously struck out by section 420(b) of Pub. L. 98–181. See second par. below and Effective Date of 1983 Amendment note below.

Pub. L. 98–181, § 420(a), in cl. (2) substituted provision that at least 80 percent of the units in the project covered by mortgages insured under this subchapter be occupied by mortgagors or comortgagors for provision that the project be covered by a mortgage insured under any section of this chapter, except section 1715e(a)(1) and (2) of this title, notwithstanding any requirements in such section that the project be constructed or rehabilitated for providing rental housing and providing that a one-family unit in a multifamily project involving eleven or less units, or twelve or more in the case of a multifamily project the construction of which was completed more than a year prior to application for mortgage insurance, be eligible for insurance without having been covered by a project mortgage, and struck out cl. (3), which provided that the mortgagor is acquiring, or has acquired, a family unit covered by a mortgage insured under this subsection for his own use and occupancy and will not own more than four one-family units covered by mortgages insured under this subsection.

Pub. L. 98–181, § 420(b), substituted in third sentence ''(A) involve a principal obligation in an amount not to exceed the maximum principal obligation of a mortgage which may be insured in the area pursuant to section 1709(b)(2) of this title'' for ''(A) involve a principal obligation in an amount not to exceed $67,500, except that the Secretary may increase such maximum dollar amount on an area-by-area basis to the extent the Secretary deems necessary, after taking into consideration the extent to which moderate and middle income persons have limited housing opportunities in the area due to high prevailing housing sales prices, but in no case may such limit, as so increased, exceed the lesser of 111 per centum of such amount or 95 per centum of the median one-family house price in the area, as determined by the Secretary: *Provided*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured; and not to exceed the sum of (i) 97 per centum (100 per centum if the mortgagor is a veteran as defined under section 1709(b)(2) of this title) of $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and (ii) 95 per centum of such value in excess of $25,000''.

Subsec. (d)(2). Pub. L. 98–181, § 431(b), substituted ''may, in the Secretary's discretion, be regulated or restricted'' for ''shall be regulated or restricted by the Secretary'', and substituted ''any such regulation or restriction'' for ''the regulation and restriction''.

Subsec. (f). Pub. L. 98–181, § 404(b)(11), substituted provision that the interest rate for the mortgage be such a rate as agreed upon by the mortgagor and mortgagee for provision that the rate of interest, exclusive of premium charges for insurance, not exceed 5¼ per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum per annum as the Secretary finds necessary to meet the mortgage market.

Subsec. (k). Pub. L. 98–181, § 420(c), added subsec. (k).

1982—Subsec. (c)(A). Pub. L. 97–253 inserted provision that the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

Subsec. (e)(3). Pub. L. 97–377 inserted ''(by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved)'' after ''90 per centum''.

1981—Subsec. (b). Pub. L. 97–35, § 339(a), inserted reference to projects in which the dwelling units are attached, semi-attached, or detached.

Subsec. (c)(2). Pub. L. 97–35, § 339B(d)(1), reenacted provisions relating to covered projects in material preceding proviso in cl. (2). Section 339B(d)(2) of Pub. L. 97–35 repealed section 318 of the Housing and Community Development Act of 1980, which previously enacted these provisions. See Repeals note set out below.

Subsec. (j). Pub. L. 97–35, § 339B(a), inserted ''therein'' after ''installation'' and struck out ''therein'' after ''measure''.

1980—Subsec. (c). Pub. L. 96–399, §§ 318, 333(e), 336(d), inserted provisions relating to projects approved under chapter 37 of title 38, and provisions relating to increases in the maximum dollar amounts on an area-by-area basis, and struck out applicability to determinations of three-quarters of the Secretary's estimate of the remaining economic life of the building improvements, if so determined as the lesser amount in the computations.

Subsec. (j). Pub. L. 96–399, § 310(g), added subsec. (j).

1979—Subsec. (c). Pub. L. 96–153, § 312(c), substituted ''$67,500'' for ''$60,000''.

Subsec. (e)(3). Pub. L. 96–153, § 314, substituted ''75 per centum'' for ''50 per centum'' and inserted exception that the dollar amount limitations may be exceeded not to exceed 90 per centum where the Secretary determines it to be necessary.

1978—Subsec. (c). Pub. L. 95–557 inserted ''or twelve or more units in the case of a multifamily project the construction of which was completed more than a year prior to the application for mortgage insurance'' after ''less units'' in cl. (2) and ''(100 per centum if the mortgagor is a veteran as defined under section 1709(b)(2) of this title)'' after ''97 per centum'' in cl. (A)(i).

1977—Subsec. (c). Pub. L. 95–128 substituted in cl. (A) ''$60,000'' for ''$45,000'' and ''and (ii) 95 per centum of such value in excess of $25,000,'' for ''(ii) 90 per centum of such value in excess of $25,000 but not in excess of $35,000, (iii) 80 per centum of such value in excess of $35,000''.

1976—Subsec. (e) (3). Pub. L. 94–375 substituted ''50 per centum in any geographical area'' for ''75 per centum in any geographical area'', ''$19,500'' for ''$13,000'', ''$21,600'' for ''$18,000'', ''$25,800'' for ''$21,500'', ''$31,800'' for ''$26,500'', ''$36,000'' for ''$30,000'', ''$22,500'' for ''$15,000'', ''$25,200'' for ''$21,000'', ''$30,900'' for ''$25,750'', ''$38,700'' for ''$32,250'', and ''$43,758'' for ''$36,465''.

1975—Subsec. (e)(3). Pub. L. 94–173 raised from 45 per centum to 75 per centum the amount by which any dollar limitation may, by regulation, be increased.

1974—Subsec. (c). Pub. L. 93–383, §§ 302(e), 310(d), substituted ''$45,000'' for ''$33,000'' in cl. (A), ''$25,000'' for ''$15,000'' in cl. (A)(i), ''$25,000'' for ''$15,000'' and ''$35,000'' for ''$25,000'' in cl. (A)(ii), and ''$35,000'' for ''$25,000'' and ''80'' for ''75'' in cl. (A)(iii).

Subsec. (e)(1). Pub. L. 93–383, § 304(h), struck out par. (1) which set forth limitations on principal obligations of mortgages.

Subsec. (e)(3). Pub. L. 93–383, § 303(g), substituted ''$13,000'' for ''$9,900'', ''$15,000'' for ''$11,550'', ''$18,000'' for ''$13,750'', ''$21,000'' for ''$16,500'', ''$21,500'' for ''$16,500'', ''$25,750'' for ''$19,800, ''$26,500'' for ''$20,350'', ''$30,000'' for ''$23,100'', ''$32,250'' for ''$25,750'', and ''$36,465'' for ''$28,050''.

1969—Subsec. (c). Pub. L. 91–152, §§ 102(d), 113(h)(1), substituted ''$25,000'' for ''$20,000'' wherever appearing, and ''$33,000'' for ''$30,000''.

Subsec. (e)(3). Pub. L. 91–152, § 113(h)(2), (3), substituted ''$9,900'' for ''$9,000'', ''$11,550'' for ''$10,500'', ''$13,750'' for ''$12,500'', ''$16,500'' for ''$15,000'' wherever appearing, ''$19,800'' for ''$18,000'', ''$20,350'' for ''$18,500'', ''$23,100'' for ''$21,000'', ''$24,750'' for ''$22,500'', and ''$28,050'' for ''$25,500''.

1968—Subsec. (c). Pub. L. 90–448, § 303(a), (b), made one-family units in multifamily projects involving eleven or less units eligible for insurance without having been covered by a project mortgage, and increased the maximum mortgage limits from 75 to 80 per centum of the appraised value of the property in excess of $20,000.

Subsec. (f). Pub. L. 90–448, § 303(c), permitted blanket mortgages to cover four or more family units instead of five or more family units.

Pub. L. 90–301 limited the interest rate on mortgages to such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market.

1967—Pub. L. 90–19, §1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (b) to (d), (d)(1), (2), (e)(2), (3), (f), and (g).

Subsec. (c). Pub. L. 90–19, §1(a)(4), substituted ''Secretary's'' for ''Commissioner's''.

1965—Subsec. (d)(2). Pub. L. 89–117, §1108(*o*)(1), substituted ''General Insurance Fund'' for ''Apartment Unit Insurance Fund''.

Subsec. (e)(3). Pub. L. 89–117, §207(f), substituted ''$18,500 per family unit with three bedrooms, and $21,000 per family unit with four or more bedrooms'' for ''and $18,500 per family unit with three or more bedrooms'' and ''22,500 per family unit with three bedrooms, and $25,500 per family unit with four or more bedrooms'' for ''and $22,500 per family unit with three or more bedrooms''.

Subsec. (g). Pub. L. 89–117, §1108(*o*)(1), (2), substituted ''General Insurance Fund'' for ''Apartment Unit Insurance Fund''.

Subsec. (h). Pub. L. 89–117, §1108(*o*)(2), struck out reference to subsec. (m) and (p) of section 1713 of this title and provision that references therein to the Housing Insurance Fund or Housing Fund shall be construed to refer to the Apartment Unit Insurance Fund.

Subsecs. (i), (j). Pub. L. 89–117, §1108(*o*)(3), redesignated subsec. (j) as (i) and repealed former subsec. (i), which created the Apartment Unit Insurance Fund, authorized transfer of funds thereto, and provided for the charging of expenses thereto.

1964—Pub. L. 88–560, §119(a)(1), substituted ''Mortgage insurance for condominiums'' for ''Mortgage insurance for individually owned units in multifamily structures'' in section catchline.

Subsec. (a). Pub. L. 88–560, §119(a)(2), substituted ''project'' for ''structure''.

Subsec. (b). Pub. L. 88–560, §119(a)(2), (3), substituted ''project'' for ''structure'' in two places and ''the term 'mortgage' for the purposes of subsection (c) of this section'' for ''the term 'mortgage' for the purposes of this section'', respectively.

Subsec. (c). Pub. L. 88–560, §119(a)(2), (4) to (6), amended provisions as follows.

Section 119(a)(2) substituted ''project'' for ''structure'', wherever appearing, and ''projects'' for ''structures'' in last sentence;

Section 119(a)(4) substituted ''this subsection'' for ''this section'', wherever appearing, and ''under any section'' for ''under another section'' in first sentence;

Section 119(a)(5) substituted ''section 1715e(a)(1) and (2)'' for ''section 1715e'', in two places; and

Section 119(a)(6) substituted in third sentence: in cl. (A), ''amount not to exceed $30,000'' for ''amount not to exceed the limits per room and per family dwelling unit provided by section 1713(c)(3) of this title''; in cl. (A)(i), ''$15,000'' for ''$13,500''; in cl. (A)(ii), ''$15,000'' and ''$20,000'' for ''$13,500'' and ''$18,000'', respectively; in cl. (A)(iii), ''75 per centum'' and ''$20,000'' for ''70 per centum'' and ''$18,000'', respectively; and in cl. (B), ''thirty-five'' for ''thirty'' years.

Subsecs. (d) to (f). Pub. L. 88–560, §119(a)(7), added subsecs. (d) to (f). Former subsecs. (d) to (f) renumbered subsecs. (g), (i), (j).

Subsec. (g). Pub. L. 88–560, §119(a)(7), (8), redesignated former subsec. (d) as (g) and substituted ''subsection (c) of this section'' for ''this section'' in three places, respectively.

Subsec. (h). Pub. L. 88–560, §119(a)(9), added subsec. (h).

Subsec. (i). Pub. L. 88–560, §119(a)(7), redesignated former subsec. (e) as (i).

Subsec. (j). Pub. L. 88–560, §119(a)(7), (10), redesignated former subsec. (f) as (j), struck out reference to section 1715t of this title, and substituted ''subsection (c) of this section'' for ''this section''.

APPLICABILITY OF 1994 AMENDMENT

Eligibility for loans made under authority granted by amendment by Pub. L. 103–211 limited to persons whose principal residence was damaged or destroyed as a result of the January 1994 earthquake in Southern California, with such amendment effective only for 18-month period following Feb. 12, 1994, see provision of title I of Pub. L. 103–211, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 406(b)(17) of Pub. L. 100–242 applicable only with respect to mortgages insured pursuant to conditional commitment issued on or after Feb. 5, 1988, or in accordance with direct endorsement program (24 CFR 200.163), if approved underwriter of mortgagee signs appraisal report for property on or after Feb. 5, 1988, see section 406(d) of Pub. L. 100–242, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 431(b) of Pub. L. 98–181 not to apply with respect to mortgages insured by the Secretary of Housing and Urban Development before Nov. 30, 1983, see section 431(c) of Pub. L. 98–181, set out as a note under section 1713 of this title.

For effective date of amendment by section 423(b)(4) of Pub. L. 98–181, see section 423(c) of Pub. L. 98–181, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 90–301, §3(e), May 7, 1968, 82 Stat. 114, cited as a credit to this section, was repealed by Pub. L. 98–181, title IV, §404(a), Nov. 30, 1983, 97 Stat. 1208.

Section 318 of Pub. L. 96–399, cited as a credit to this section, was repealed by Pub. L. 97–35, title III, §339B(d)(2), Aug. 13, 1981, 95 Stat. 417. See 1981 Amendments note for subsec. (c)(2) set out above.

IMPLEMENTATION OF 1982 AMENDMENT

Amendment by Pub. L. 97–253 to be implemented only if Secretary determines that program of advance payment of insurance premiums, considering effect of said amendment, is actuarially sound, see section 201(g) of Pub. L. 97–253, set out as a note under section 1709 of this title.

§ 1715z. Homeownership or membership in cooperative association for lower income families

(a) Authorization for periodic assistance payments to mortgagees; assistance to manufactured home buyers

(1) For the purpose of assisting lower income families in acquiring homeownership or in acquiring membership in a cooperative association operating a housing project, the Secretary is authorized to make, and to contract to make, periodic assistance payments on behalf of such homeowners and cooperative members. The assistance shall be accomplished through payments to mortgagees holding mortgages meeting the special requirements specified in this section or which mortgages are assisted under a State or local program providing assistance through loans, loan insurance or tax abatement. In making such assistance available, the Secretary shall give preference to low-income families who, without such assistance, would be likely to be involuntarily displaced (including those who would be likely to be displaced from rental units which are to be converted into a condominium project or a cooperative project).

Such assistance may include the acquisition of a condominium or a membership in a cooperative association.

(2)(A) Notwithstanding any other provision of this section, the Secretary is authorized to make periodic assistance payments under this section on behalf of families whose incomes do not exceed the maximum income limits prescribed pursuant to subsection (h)(2) of this section for the purpose of assisting such families in acquiring ownership of a manufactured home consisting of two or more modules and a lot on which such manufactured home is or will be situated, except that periodic assistance payments pursuant to this paragraph shall not be made with respect to more than 20 per centum of the total number of units with respect to which assistance is approved under this section after January 1, 1976. Assistance payments under this section pursuant to this paragraph shall be accomplished through payments on behalf of an owner of lower-income of a manufactured home as described in the preceding sentence to the financial institution which makes the loan, advance of credit, or purchase of an obligation representing the loan or advance of credit to finance the purchase of the manufactured home and the lot on which such manufactured home is or will be situated, but only if insurance under section 1703 of this title covering such loan, advance of credit, or obligation has been granted to such institution.

(B) Notwithstanding the provisions of subsection (c) of this section, assistance payments provided pursuant to this paragraph shall be in an amount not exceeding the lesser of—

(i) the balance of the monthly payment for principal, interest, real and personal property taxes, insurance, and insurance premium chargeable under section 1703 of this title due under the loan or advance of credit remaining unpaid after applying 20 per centum of the manufactured homeowner's income; or

(ii) the difference between the amount of the monthly payment for principal, interest, and insurance premium chargeable under section 1703 of this title which the manufactured homeowner is obligated to pay under the loan or advance of credit and the monthly payment of principal and interest which the owner would be obligated to pay if the loan or advance of credit were to bear interest at a rate derived by subtracting from the interest rate applicable to such loan or advance of credit the interest rate differential between the maximum interest rate plus mortgage insurance premium applicable to mortgages insured under subsection (i) of this section at the time such loan or advance of credit is made and the interest rate which such mortgages are presumed, under regulations prescribed by the Secretary, to bear for purposes of subsection (c)(2) of this section.

(b) Qualifications and eligibility requirements for assistance payments

To qualify for assistance payments, the homeowner or the cooperative member shall be of lower income and satisfy eligibility requirements prescribed by the Secretary, and—

(1) the homeowner shall be a mortgagor under a mortgage which meets the requirements of and is insured under subsection (i) or (j)(4) of this section: *Provided*, That a mortgage meeting the requirements of subsection (i)(3)(A) of this section but insured under section 1715z–2 of this title may qualify for assistance payments if such mortgage was executed by a mortgagor who is determined not to be an acceptable credit risk for mortgage insurance purposes (but otherwise eligible) under subsection (j)(4) of this section or under section 1715*l*(d)(2) or 1715y(c) of this title and accepted as a reasonably satisfactory credit risk under section 1715z–2[1] of this title; or

(2) the cooperative association of which the family is a member shall operate (A) a housing project the construction or substantial rehabilitation of which has been financed with a mortgage insured under section 1715e or section 1715*l*(d)(3) of this title and which has been completed within two years prior to the filing of the application for assistance payments and the dwelling unit has had no previous occupant other than the family: *Provided*, That if any cooperative member who has received assistance payments transfers his membership and occupancy rights to another person who satisfies the eligibility requirements prescribed by the Secretary and undertakes the obligation to pay occupancy charges, the new cooperative member may qualify for assistance payments upon the filing of an application with respect to the dwelling unit involved to be occupied by him: *Provided further*, That assistance payments may be made with respect to a dwelling unit in an existing cooperative project which meets such standards as the Secretary may prescribe, if the family qualifies as a displaced family as defined in section 1715*l*(f) of this title, or a family which includes five or more minor persons, or a family occupying low-rent public housing: *Provided further*, That the amount of the mortgage attributable to the dwelling unit shall involve a principal obligation not in excess of $40,000 ($47,500 in any geographical area where the Secretary authorizes an increase on the basis of a finding that costs levels so require), except that with respect to any family with five or more persons the foregoing limits shall be $47,500 and $55,000, respectively; or (B) a housing project which is financed under a State or local program providing assistance through loans, loan insurance, or tax abatements, and which prior to completion of construction or rehabilitation is approved for receiving the benefits of this section.

(c) Limitation on payments on behalf of mortgagor; occupancy of property; maximum amount of payment; recapture of amounts; determination, applicability, etc.

(1) Subject to the second sentence of this paragraph, the assistance payments to a mortgagee by the Secretary on behalf of a mortgagor shall be made during such time as the mortgagor shall continue to occupy the property which secures the mortgage: *Provided*, That assistance payments may be made on behalf of a homeowner who assumes a mortgage insured under

[1] See References in Text note below.

subsection (i) or (j)(4) of this section with respect to which assistance payments have been made on behalf of the previous owner, if the homeowner is approved by the Secretary as eligible for receiving such assistance: *Provided further*, That the Secretary is authorized to continue making such assistance payments where the mortgage has been assigned to the Secretary. Assistance payments pursuant to any new contract, other than a contract in connection with a refinancing under subsection (r) of this section, entered into after September 30, 1983, that utilizes authority approved in appropriation Acts for any fiscal year beginning after such date may not be made for more than a 10-year period. The payment shall be in an amount not exceeding the lesser of—

(A) the balance of the monthly payment for principal, interest, taxes, insurance, and mortgage insurance premium due under the mortgage remaining unpaid after applying 20 per centum of the mortgagor's income; or

(B) the difference between the amount of the monthly payment for principal, interest and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage and the monthly payment for principal and interest which the mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 per centum per annum (4 per centum per annum in the case of a mortgage described in subsection (*o*) of this section).

(2)(A) Upon disposition by the homeowner of any property assisted pursuant to this section or where the homeowner rents such a property (or the owner's unit in the case of a two- to four-family property) for a period longer than one year, the Secretary shall provide for the recapture of an amount equal to the lesser of (i) the amount of assistance actually received under this section, other than any amount provided under subsection (e) of this section, or (ii) an amount equal to at least 50 per centum of the net appreciation of the property, as determined by the Secretary. For the purpose of this paragraph, the term ''net appreciation of the property'' means any increase in the value of the property over the original purchase price, less the reasonable costs of sale, the reasonable costs of improvements made to the property, and any increase in the mortgage amount as of the time of sale over the original mortgage balance due to the mortgage being insured pursuant to section 1715z–10[1] of this title. Notwithstanding any other provision of law, any such assistance shall constitute a debt secured by the property to the extent that the Secretary may provide for such recapture.

(B) Subparagraph (A) does not apply to any property with respect to which there is assumption in accordance with paragraph (1) of this subsection or to any property which is subject to a mortgage, loan, or other advance of credit insured pursuant to subsection (q) of this section.

(3)(A) There hereby is established in the Treasury of the United States a fund, which, to the extent approved in appropriation Acts, may be used by the Secretary for purposes of carrying out subparagraph (B). There shall be deposited into such fund (i) any amount recaptured under paragraph (2); (ii) any authority to make assistance payments under subsection (a) of this section that is committed for use in a contract but is unused because the mortgage, loan, or advance of credit involved is refinanced (except to the extent provided in subsection (r) of this section for mortgages insured under such subsection) or because such assistance payments are terminated or suspended for other reasons before the original termination date of such contract; and (iii) any amount received under subparagraph (C).

(B) In the case of any homeowner whose assistance payments are terminated by reason of the 10-year limitation referred to in paragraph (1), and who is determined by the Secretary to be unable to assume the full payments due under the mortgage, loan, or advance of credit involved, the Secretary shall, to the extent of the availability of amounts in the fund established in subparagraph (A), contract to make, and make, continued assistance payments on behalf of such homeowner. Such continued assistance payments shall be made in an amount determined in accordance with the applicable provisions of paragraph (1) or subsection (a)(2)(B) of this section and for such period as the Secretary determines to be appropriate.

(C) Any amounts in such fund determined by the Secretary to be in excess of the amounts currently required to carry out the provisions of subparagraph (B) shall be invested by the Secretary in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States. Notwithstanding the preceding sentence, any amounts of budget authority or contract authority recaptured from assistance payments contracts relating to mortgages that are being refinanced that are not required for assistance payments contracts relating to mortgages insured under this subsection, shall be rescinded.

(d) Limitation on payments on behalf of family holding membership in cooperative association; occupancy; maximum amount of payment

Assistance payments to a mortgagee by the Secretary on behalf of a family holding membership in a cooperative association operating a housing project shall be made only during such time as the family is an occupant of such project and shall be in amounts computed on the basis of the formula set forth in subsection (c) of this section applying the cooperative member's proportionate share of the obligations under the project mortgage to the items specified in the formula.

(e) Reimbursement for expenses in handling the mortgage

The Secretary may include in the payment to the mortgagee such amount, in addition to the amount computed under subsection (a)(2)(B), (c), (d), (j)(7), or (r) of this section, as he deems appropriate to reimburse the mortgagee for its expenses in handling the mortgage.

(f) Adoption of procedures for recertifications of mortgagor's or cooperative member's income

Procedures shall be adopted by the Secretary for recertifications of the mortgagor's (or coop-

erative member's) income at intervals of two years (or at shorter intervals where the Secretary deems it desirable) for the purpose of adjusting the amount of such assistance payments within the limits of the formula described in subsection (c) of this section.

(g) Regulations to assure that sales price or other consideration paid is not increased above appraised value

The Secretary shall prescribe such regulations as he deems necessary to assure that the sales price of, or other consideration paid in connection with, the purchase by a homeowner of the property with respect to which assistance payments are to be made is not increased above the appraised value on which the maximum mortgage which the Secretary will insure is computed.

(h) Authorization of appropriations; aggregate amount of assistance payment contracts; maximum income limits of families; limitation on payments with respect to existing dwellings or dwelling units in existing projects and for approved substantial rehabilitation of dwellings or dwelling units in projects

(1) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, including such sums as may be necessary to make the assistance payments under contracts entered into under this section. The aggregate amount of outstanding contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contracts shall not exceed $75,000,000 per annum prior to July 1, 1969, which maximum dollar amount shall be increased by $125,000,000 on July 1, 1969, by $150,000,000 on July 1, 1970, by $200,000,000 on July 1, 1971, by such sums as may be approved in appropriation Acts after June 30, 1974, and prior to July 1, 1976, and by such sums as may be approved in an appropriation Act on or after October 1, 1983 (from the additional authority to enter into contracts made available on such date under the first sentence of section 1437c(c)(1) of title 42). The aggregate amount that may be obligated over the duration of the contracts entered into with the authority provided on or after October 1, 1983 (other than obligations in connection with mortgages insured under subsection (r) of this section), may not exceed such sums of new budget authority as may be appropriated after November 30, 1983. The Secretary shall begin issuing new commitments and reservations to provide mortgage insurance and assistance payments under this section before the expiration of the 30-day period following the approval in any appropriation Act of budget authority for this section after November 30, 1983. Upon the expiration of one year following August 22, 1974, the Secretary shall not enter into new contracts for assistance payments under this section utilizing authority approved in appropriation Acts prior to July 1, 1974. The Secretary shall not enter into new contracts for assistance payments under this section (except under subsection (r) of this section) after May 20, 1983, utilizing amounts approved in appropriation Acts before November 30, 1983, except (i) pursuant to a firm commitment issued on or before May 20, 1983, (ii) pursuant to other commitments issued by the Secretary prior to June 30, 1981, reserving funds for housing to be assisted under this section where such housing is included in a project pursuant to section 119 of the Housing and Community Development Act of 1974 [42 U.S.C. 5318], or (iii) pursuant to other commitments issued on or before September 30, 1981, where housing under this section is to be developed on land which was municipally owned on September 30, 1981, and where a local government contributes at least $1,000 per unit of funds obtained under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] and at least $2,000 per unit of additional funds to assist housing under this section. In no event may the Secretary enter into any new contract for assistance payments under this section (other than a contract in connection with a mortgage insured under subsection (r) of this section) after September 30, 1989.

(2) Assistance payments under this section may be made only with respect to a family whose income at the time of initial occupancy does not exceed 95 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 95 per centum of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low median family incomes, or other factors.

(3) Notwithstanding the provisions of subsections (b)(2) and (i)(3)(A) of this section with respect to the prior construction or rehabilitation of a dwelling, or of the project in which there is a dwelling unit, for which assistance payments may be made, and notwithstanding the provisions of subsection (j)(1) of this section authorizing the purchase of housing which is neither deteriorating nor substandard, not more than—

(A) 25 per centum of the total amount of contracts for assistance payments authorized by appropriation Acts to be made prior to July 1, 1969, and

(B) 30 per centum of the total additional amount of contracts for assistance payments authorized by appropriation Acts to be made on or after July 1, 1969,

may be made with respect to existing dwellings, or dwelling units in existing projects. The preceding sentence shall not apply to contracts in connection with mortgages insured under subsection (r) of this section.

(4) At least 10 per centum of the total amount of contracts for assistance payments authorized by appropriation Acts to be made after June 30, 1971, shall be available for use only with respect to dwellings, or dwelling units in projects, which are approved by the Secretary prior to substantial rehabilitation.

(i) Insurance of mortgages executed by mortgagors meeting eligibility requirements for assistance payments; issuance of commitment; eligibility requirements for insurance

(1) The Secretary is authorized, upon application by the mortgagee, to insure a mortgage (in-

cluding advances with respect to property construction or rehabilitation pursuant to a self-help program) executed by a mortgagor who meets the eligibility requirements for assistance payments prescribed by the Secretary under subsection (b) of this section. Commitments for the insurance of such mortgages may be issued by the Secretary prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe.

(2) To be eligible for insurance under this subsection, a mortgage shall meet the requirements of section 1715*l*(d)(2) or 1715y(c) of this title, except as such requirements are modified by this subsection.

(3) A mortgage to be insured under this subsection shall—

(A) involve a single-family or a two-family dwelling which has been approved by the Secretary prior to the beginning of construction or substantial rehabilitation, or a three-family dwelling which is approved by the Secretary prior to the beginning of substantial rehabilitation, or a one-family unit in a condominium project (together with an undivided interest in the common areas and facilities serving the project) which is released from a multi-family project, the construction or substantial rehabilitation of which has been completed within two years prior to the filing of the application for assistance payments with respect to such family unit and the unit has had no previous occupant other than the mortgagor: *Provided*, That the mortgage may involve an existing dwelling or a family unit in an existing condominium project which meets such standards as the Secretary may prescribe: *Provided further*, That the mortgage may involve an existing dwelling or a family unit in an existing condominium project if assistance payments have been made on behalf of the previous owner of the dwelling or family unit with respect to a mortgage insured under subsection (j)(4) of this section: *Provided further*, That the mortgage may involve a dwelling unit in an existing project covered by a mortgage insured under section 1715z–1 of this title or in an existing project receiving the benefits of financial assistance under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s];

(B) where it is to cover a one-family unit in a condominium project, have a principal obligation not exceeding $40,000 ($47,500 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require), except that with respect to any family with five or more persons the foregoing limits shall be $47,500 and $55,000, respectively;

(C) involve, in the case of a dwelling unit other than a condominium or cooperative unit, a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed $40,000 ($47,500 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require), except that with respect to any family with five or more persons the foregoing limits shall be $47,500 and $55,000, respectively;

(D) involve, in the case of a two-family or three-family dwelling, a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed $60,000 ($66,250 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require);

(E) be executed by a mortgagor who shall have paid in cash or its equivalent, on account of the property, at least an amount equal to 3 per centum of the Secretary's estimate of the cost of acquisition (excluding the mortgage insurance premium paid at the time the mortgage is insured); and

(F) bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary finds necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets.

(4) In insuring eligible mortgages under this subsection, the Secretary may not deny insurance on the basis that a mortgage involves a two- to three-family dwelling or is to be used to finance substantial rehabilitation rather than new construction.

(5) As a condition of insuring a mortgage on a two- to three-family dwelling, the Secretary shall require the mortgagor (A) not to discriminate against prospective tenants on the basis of their receipt of or eligibility for housing assistance under any Federal, State or local housing assistance program and (B) to agree that during the term of the mortgage each of the rental units shall be occupied by, or available for occupancy by, persons and families whose incomes do not exceed 100 per centum of the area median income.

(j) Insurance of mortgages executed by nonprofit organizations or public bodies or agencies; issuance of commitment; eligibility requirements for insurance; insurance of mortgages executed to finance sale of individual dwellings to lower income individuals or families; definitions; assistance payments to mortgagees on behalf of nonprofit organizations or public bodies and agencies

(1) In addition to mortgages insured under the provisions of subsection (i) of this section, the Secretary is authorized, upon application by the mortgagee, to insure a mortgage (including advances under such mortgage during rehabilitation) which is executed by a nonprofit organization or public body or agency to finance the purchase of housing, and the rehabilitation of such housing if it is deteriorating or substandard, for subsequent resale to lower income home purchasers who meet the eligibility requirements for assistance payments prescribed by the Secretary under subsection (b) of this section. Commitments for the insurance of such mortgages may be issued by the Secretary prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe.

(2) To be eligible for insurance under paragraph (1) of this subsection, a mortgage shall—

(A) be executed by a private nonprofit organization or public body or agency, approved by the Secretary, for the purpose of financing the purchase (with the intention of subsequent resale), and rehabilitation where the housing involved is deteriorating or substandard, of property comprising one or more tracts or parcels, whether or not contiguous, consisting of (i) four or more single-family dwellings of detached, semidetached, or row construction, or (ii) four or more one-family units in a structure or structures for which a plan of family unit ownership approved by the Secretary is established; except that in a case not involving the rehabilitation of deteriorating or substandard housing the property purchased may consist of one or more such dwellings or units;

(B) be in a principal amount not exceeding the appraised value of the property at the time of its purchase under the mortgage plus the estimated cost of any rehabilitation;

(C) bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary determines is necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets;

(D) provide for complete amortization (subject to paragraph (4)(E)) by periodic payments within such term as the Secretary may prescribe; and

(E) provide for the release of individual single-family dwellings from the lien of the mortgage upon their sale in accordance with paragraph (4).

(3) No mortgage shall be insured under paragraph (1) unless the mortgagor shall have demonstrated to the satisfaction of the Secretary that (A) the property involved is located in a neighborhood which is sufficiently stable and contains sufficient public facilities and amenities to support long-term values, or (B) the purchase or rehabilitation of such property plus the mortgagor's related activities and the activities of other owners of housing in the neighborhood, together with actions to be taken by public authorities, will be of such scope and quality as to give reasonable promise that a stable environment will be created in the neighborhood.

(4)(A) No mortgage shall be insured under paragraph (1) unless the mortgagor enters into an agreement, satisfactory to the Secretary, that it will offer to sell the dwellings involved, after purchase and upon completion of any rehabilitation, to lower income individuals or families meeting the eligibility requirements established by the Secretary under subsection (b) of this section.

(B) The Secretary is authorized to insure under this paragraph mortgages executed to finance the sale of individual dwellings to lower income purchasers as provided in subparagraph (A). Any such mortgage shall—

(i) be in a principal amount not in excess of that portion of the unpaid principal balance of the blanket mortgage covering the property which is allocable to the individual dwelling involved;

(ii) bear interest at the same rate as the blanket mortgage; and

(iii) provide for complete amortization by periodic payments within a term equal to the remaining term (determined without regard to subparagraph (E)) of such blanket mortgage.

(C) The price for which any individual dwelling is sold under this paragraph shall be in an amount equal to that portion of the unpaid principal balance of the blanket mortgage covering the property which is allocable to the dwelling plus such additional amount, not less than $200 (which may be applied in whole or in part toward closing costs and may be paid in cash or its equivalent), as the Secretary may determine to be reasonable.

(D) Upon the sale under this paragraph of any individual dwelling, such dwelling shall be released from the lien of the blanket mortgage. Until all of the individual dwellings in the property covered by the blanket mortgage have been sold, the mortgagor shall hold and operate the dwellings remaining unsold at any given time, in such manner and under such terms as the Secretary may prescribe, as though they constituted rental units.

(E) Upon the sale under this paragraph of all the individual dwellings in the property covered by the blanket mortgage and the release of all individual dwellings from the lien of the blanket mortgage, the insurance of the blanket mortgage shall be terminated and no adjusted premium charge shall be charged by the Secretary upon such termination.

(5) Where the Secretary has approved a plan of family unit ownership the terms ''single-family dwelling'', ''single-family dwellings'', ''individual dwelling'', and ''individual dwellings'' shall mean a family unit or family units, together with the undivided interest (or interests) in the common areas and facilities.

(6) For purposes of this subsection, the terms ''single-family dwelling'' and ''single-family dwellings'' (except for purposes of paragraph (5)) shall include a two- to three-family dwelling which has been approved by the Secretary.

(7) In addition to the assistance payments authorized under subsection (b) of this section, the Secretary may make such payments to a mortgagee on behalf of a nonprofit organization or public body or agency which is a mortgagor under the provisions of paragraph (1) in an amount not exceeding the difference between the monthly payment for principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage and the monthly payment for principal and interest such mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 per centum per annum.

(8) A mortgage covering property which is not deteriorating or substandard may be insured under this subsection only if it is situated in an area in which mortgages may be insured under section 1715*l*(h) of this title.

(9) In insuring eligible mortgages under this subsection, the Secretary may not deny insurance on the basis that a mortgage involves a two- to three-family dwelling or is to be used to finance substantial rehabilitation rather than new construction.

(k) Allocation and transfer of reasonable portion of total authority to contract to make assistance payments to Secretary of Agriculture for use in rural areas and small towns

The Secretary shall from time to time allocate and transfer to the Secretary of Agriculture, for use (in accordance with the terms and conditions of this section) in rural areas and small towns, a reasonable portion of the total authority to contract to make assistance payments as approved in appropriation Acts under subsection (h)(1) of this section.

(*l*) Deductions for minors in determining income limits; exclusion of earnings of minors

In determining the income of any person for the purposes of this section, there shall be deducted an amount equal to $300 for each minor person who is a member of the immediate family of such person and living with such family, and the earnings of any such minor person shall not be included in the income of such person or his family.

(m) Termination date for insurance of mortgages

No mortgage (except a mortgage insured under subsection (r) of this section) shall be insured under this section after September 30, 1989, except pursuant to a commitment to insure before that date.

(n) Percentage limitation of mortgage insurance on subdivision units; exceptions

No mortgage may be insured under this section on a unit in a subdivision, after October 12, 1977, which, when added to any other mortgages insured under this section in that subdivision after such date, represents more than 40 per centum of the total number of units in the subdivision, except that the preceding limitation shall not apply with regard to any rehabilitated unit, or to any unit or subdivision located or to be located in an established urban neighborhood or area, where a sound proposal is involved and where an aggregation of subsidized units is essential to a community sponsored overall redevelopment plan, as determined by the Secretary or to a mortgage insured under subsection (r) of this section.

(*o*) Mortgage insurance over maximum limits involving dwellings of community sponsored programs of concentrated redevelopment or revitalization

The Secretary may insure a mortgage under this section involving a principal obligation which exceeds, by not more than 20 per centum, the maximum limits specified under subsection (b)(2) or (i)(3) of this section if the mortgage relates to a dwelling in an urban neighborhood where the Secretary determines that a community sponsored program of concentrated redevelopment or revitalization is being undertaken and the Secretary determines that such action is necessary to enable eligible families residing in the area who occupy substandard housing or are being involuntarily displaced to remain in the area in decent, safe, and sanitary housing.

(p) Mortgage insurance over maximum limits involving dwellings to be occupied by physically handicapped persons; applicability, etc.

The Secretary may insure a mortgage under this section involving a principal obligation which exceeds, by not more than 10 per centum, the maximum limits specified under subsection (b)(2) or (i)(3) of this section, or, if applicable, the maximum principal obligation insurable pursuant to subsection (*o*) of this section, if the mortgage relates to a dwelling to be occupied by a physically handicapped person and the Secretary determines that such action is necessary to reflect the cost of making such dwelling accessible to and usable by such person.

(q) Periodic assistance payments for emergency stimulation of housing market; contracts, terms and conditions, eligibility, etc., for payments

(1) Notwithstanding any other provision of this section, except subsection (n), if the Secretary determines that there is a substantial need for emergency stimulation of the housing market, the Secretary is authorized to make and enter into contracts to make periodic assistance payments, to the extent of not to exceed 75 per centum of the authority available pursuant to subsection (h)(1) of this section, on behalf of homeowners, including owners of manufactured homes, to mortgagees or other lenders holding mortgages, loans, or advances of credit which meet the requirements of this subsection. The Secretary may establish such criteria, terms, and conditions relating to homeowners and mortgages, loans, or advances of credit assisted under this subsection as the Secretary deems appropriate, consistent with the provisions of this subsection. The Secretary is authorized to insure a mortgage which meets the requirements of and is to be assisted under this subsection. The authority to enter into contracts to provide assistance payments and to insure mortgages under this subsection shall terminate on September 30, 1989, or at such earlier date as the Secretary may deem appropriate, upon a determination by the Secretary that the conditions which gave rise to the exercise of authority under this subsection are no longer present, except pursuant to a commitment entered into prior to such date.

(2) Payments under this subsection may be made only on behalf of a homeowner who satisfies such eligibility requirements as may be prescribed by the Secretary and who—

(A)(i) is a mortgagor under a mortgage which meets the requirements of and is insured under this subsection, or (ii) is the original owner of a new manufactured home consisting of two or more modules and a lot on which the manufactured home is situated, where insurance under section 1703 of this title covering the loan, advance of credit, or purchase of an obligation representing such loan or advance of credit to finance the purchase of such manufactured home and lot has been granted to the lender making such loan, advance of credit, or purchase of an obligation; and

(B) has a family income, at the time of initial occupancy, which does not exceed 130 per

centum of the area median income for the area (with adjustments for smaller and larger families, unusually high or low median family income, or other factors), as determined by the Secretary.

(3) Assistance payments to a mortgagee or other lender by the Secretary on behalf of a homeowner shall be made only during such time as the homeowner shall continue to occupy the property which secures the mortgage, loan, or advance of credit. The Secretary may, where a mortgage insured under this subsection has been assigned to the Secretary, continue making such assistance payments.

(4) The amount of the assistance payments in the case of a mortgage shall not at any time exceed the lesser of—

(A) the balance of the monthly payment for principal, interest, taxes, insurance, and any mortgage insurance premium due under the mortgage remaining unpaid after applying a minimum of 25 per centum of the mortgagor's income, except that the Secretary may reduce such per centum of income to the extent he deems necessary, but not lower than 20 per centum of the mortgagor's income; or

(B) the difference between the amount of the monthly payment for principal, interest, and any mortgage insurance premium which would be required if the mortgage were a level payment mortgage bearing interest at a rate equal to the maximum interest rate which is applicable to level payment mortgages insured under section 1709(b) of this title, other than mortgages subject to section 1709–1(2)[1] of this title, and the monthly payment for principal and interest which the mortgagor would be obligated to pay if the mortgage were a level payment mortgage bearing interest at the rate of at least 9½ per centum per annum.

(5) Assistance payments on behalf of the owner of a manufactured home shall not at any time exceed the lesser of—

(A) the balance of the monthly payment for principal, interest, real and personal property taxes, insurance, and insurance premium chargeable under section 1703 of this title due under the loan or advance of credit remaining unpaid after applying a minimum of 25 per centum of the manufactured homeowner's income, except that the Secretary may reduce such per centum of income to the extent he deems necessary, but not lower than 20 per centum of the mortgagor's income; or

(B) the difference between the amount of the monthly payment for principal, interest, and insurance premium chargeable under section 1703 of this title which the manufactured homeowner is obligated to pay under the loan or advance of credit and the monthly payment of principal and interest which the owner would be obligated to pay if the loan or advance of credit were to bear an interest rate determined by the Secretary which shall not be less than 12 per centum per annum.

(6) The Secretary may include in the payment to the mortgagee or other lender such amount, in addition to the amount computed under paragraph (4) or (5), as the Secretary deems appropriate to reimburse the mortgagee or other lender for its reasonable and necessary expenses in handling the mortgage, loan, or advance of credit.

(7) The Secretary shall prescribe such regulations as the Secretary deems necessary to assure that the sales price of, or other consideration paid in connection with, the purchase by a homeowner of the property with respect to which assistance payments are to be made is not greater than the appraised value as determined by the Secretary.

(8) Assistance payments pursuant to paragraph (5) shall not be made with respect to more than 20 per centum of the total number of units with respect to which assistance is approved under this subsection.

(9) The Secretary may, in addition to mortgages insured under subsection (i) or (j) of this section, insure, upon application by the mortgagee, a mortgage executed by a mortgagor who meets the eligibility requirements for assistance payments prescribed by the Secretary under paragraph (2). Commitments for the insurance of such mortgages may be issued by the Secretary prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe.

(10) To be eligible for insurance under this subsection, a mortgage shall—

(A) be a first lien on real estate held in fee simple, or on a leasehold under a lease which meets terms and conditions established by the Secretary;

(B) have been made to, and be held by, a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;

(C) involve a one- to four-family dwelling which has been approved by the Secretary prior to the beginning of construction, or if not so approved, has been completed within one year prior to the filing of the application for insurance and which has never been sold other than to the mortgagor;

(D) involve a principal residence the sales price of which does not exceed 82 per centum of the applicable maximum principal obligation of a mortgage which may be insured in the area pursuant to section 1709(b)(2) of this title, determined without regard to the last sentence of such section;

(E) have maturity and amortization provisions satisfactory to the Secretary;

(F) bear interest (exclusive of premium charges for insurance, and service charges if any) at not to exceed the applicable maximum rate for mortgages insured pursuant to section 1709(b) of this title;

(G) be executed by a mortgagor who shall have paid in cash or its equivalent, on account of the property, at least an amount equal to 3 per centum of the Secretary's estimate of the cost of acquisition; and

(H) contain such other terms and conditions as the Secretary may prescribe.

(11) The Secretary shall, to the extent practicable, insure mortgages under this subsection which are secured by properties which contribute to the conservation of land and energy resources.

(12) A mortgage to be assisted under this subsection shall, where the Secretary deems it ap-

propriate, provide for graduated payments pursuant to section 1715z–10[1] of this title.

(13) The Secretary shall develop and utilize a system to allocate assistance under this subsection in a manner which assures a reasonable distribution of such assistance among the various regions of the country and which takes into consideration such factors as population, relative decline in building permits, the need for increased housing production, and other factors he deems appropriate. Assistance provided under this subsection shall not be subject to section 1439 of title 42.

(14) Upon the disposition by the homeowner of any property assisted pursuant to this subsection, or where the homeowner rents the property (or the owner's unit in the case of a two- to four-family residence) for a period longer than one year, the Secretary shall provide for the recapture of an amount equal to the lesser of (A) the amount of assistance actually received under this subsection, other than any amount provided under paragraph (6), or (B) an amount at least equal to 50 per centum of the net appreciation of the property, as determined by the Secretary. For the purpose of this paragraph, the term ''net appreciation of the property'' means any increase in the value of the property over the original purchase price, less the reasonable costs of sale, the reasonable costs of improvements made to the property, and any increase in the mortgage balance as of the time of sale over the original mortgage balance due to the mortgage being insured pursuant to section 1715z–10[1] of this title. In providing for such recapture, the Secretary shall include incentives for the homeowner to maintain the property in a marketable condition. Notwithstanding any other provision of law, any such assistance shall constitute a debt secured by the property to the extent that the Secretary may provide for such recapture.

(15) Procedures shall be adopted by the Secretary for recertification of the homeowner's income at intervals of two years (or at shorter intervals where the Secretary deems it desirable) for the purpose of adjusting the amount of such assistance payments within the limits of the formula described in paragraph (4) or (5).

(r) Refinancing

(1) The Secretary is authorized, upon application of a mortgagee, to insure under this subsection a mortgage the proceeds of which are used to refinance a mortgage insured under this section.

(2) To be eligible for insurance under this subsection, a mortgage must be executed by a mortgagor meeting the requirements of paragraph (3) and shall—

(A) be a first lien on real estate held in fee simple, or on a leasehold under a lease—

(i) for not less than 99 years which is renewable; or

(ii) having a period of not less than 10 years to run beyond the maturity date of the mortgage;

(B) have been made to, and held by, a mortgagee approved by the Secretary;

(C) be in an amount not exceeding the outstanding principal balance, including any unpaid interest, due on the mortgage being refinanced;

(D) have a maturity not exceeding the unexpired term of the mortgage being refinanced;

(E) bear an interest rate not exceeding such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary finds necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets; to the extent that the amounts described in paragraphs (4)(A) and (B) are not otherwise paid by the Secretary, the foregoing interest rate may be increased, in the discretion of the Secretary, to compensate the mortgagee for its payment to, or on behalf of, the mortgagor of such amounts; and

(F) meet the criteria for refinancing as determined by the Secretary.

(3) Notwithstanding the provisions of subsection (h)(2) of this section, assistance payments in connection with mortgages insured under paragraph (2) shall be made only with respect to a family who is eligible for, and receiving assistance payments with respect to, the insured mortgage being refinanced.

(4) The Secretary is authorized and, to the extent provided in appropriation Acts, may pay to the mortgagor (directly, through the mortgagee, or otherwise)—

(A) an amount, as approved by the Secretary, as an incentive to the mortgagor to refinance a mortgage insured under this section; and

(B) an amount as approved by the Secretary for costs incurred in connection with the refinancing, including but not limited to discounts, loan origination fees, and closing costs.

(5) Amounts of budget authority required for assistance payments contracts with respect to mortgages insured under this subsection shall be derived from amounts recaptured from assistance payments contracts relating to mortgages that are being refinanced. For purposes of subsection (c)(3)(A) of this section, the amount of recaptured budget authority that the Secretary commits for assistance payments contracts relating to mortgages insured under this subsection shall not be construed as ''unused''.

(6) The Secretary is authorized to take any actions to identify and communicate with any mortgagor of a mortgage insured under this section to implement the refinancing of such mortgages with insurance under this subsection. The Secretary may take such actions directly, or under contract. Notwithstanding the restriction of section 552a(b) of title 5, upon the request of an approved mortgagee, the Secretary may disclose to such mortgagee the name and address of any mortgagor of a mortgage insured under this section that meets the criteria for refinancing, pursuant to paragraph (2)(F), and the unpaid principal balance and interest rate on such mortgage.

(7) The Secretary shall implement the provisions of this subsection by a notice published in the Federal Register.

(June 27, 1934, ch. 847, title II, § 235, as added Pub. L. 90–448, title I, § 101(a), Aug. 1, 1968, 82

Stat. 477; amended Pub. L. 91–152, title I, §§ 101(d), 106, 107(a), 109, 113(i), title IV, §§ 412(b), 418(a), Dec. 24, 1969, 83 Stat. 379, 381, 385, 398, 402; Pub. L. 91–609, title I, §§ 101(d), 102(a), 105–107, Dec. 31, 1970, 84 Stat. 1770, 1771; Pub. L. 92–503, § 1(d), Oct. 18, 1972, 86 Stat. 906; Pub. L. 93–85, § 1(d), Aug. 10, 1973, 87 Stat. 220; Pub. L. 93–117, § 1(d), Oct. 2, 1973, 87 Stat. 421; Pub. L. 93–383, title II, § 211, Aug. 22, 1974, 88 Stat. 671; Pub. L. 94–375, § 3(a)–(c), (e), (f), Aug. 3, 1976, 90 Stat. 1068, 1069; Pub. L. 95–128, title II, § 205, title III, §§ 301(d), 303(f), Oct. 12, 1977, 91 Stat. 1130, 1131, 1132; Pub. L. 95–406, § 1(d), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95–557, title III, § 301(d), Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96–71, § 1(d), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96–105, § 1(d), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96–153, title II, § 213, title III, § 301(d), Dec. 21, 1979, 93 Stat. 1111; Pub. L. 96–372, § 1(d), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96–399, title II, §§ 206(a), (b)(1), 207, title III, §§ 301(d), 308(c)(1), (2), Oct. 8, 1980, 94 Stat. 1630, 1631, 1638, 1640; Pub. L. 97–35, title III, §§ 328, 331(d), Aug. 13, 1981, 95 Stat. 407, 412; Pub. L. 97–110, title III, § 304, Dec. 26, 1981, 95 Stat. 1515; Pub. L. 97–185, May 24, 1982, 96 Stat. 100; Pub. L. 97–253, title II, § 201(f), Sept. 8, 1982, 96 Stat. 790; Pub. L. 97–289, § 1(d), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98–35, § 1(d), May 26, 1983, 97 Stat. 197; Pub. L. 98–109, § 1(d), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98–181, title II, § 226, title IV, §§ 401(d), 404(b)(12), 423(b)(5), Nov. 30, 1983, 97 Stat. 1194, 1207, 1209, 1217; Pub. L. 98–479, title I, §§ 102(a)(1), 104(a)(3), title II, § 204(a)(8), Oct. 17, 1984, 98 Stat. 2221, 2224, 2232; Pub. L. 99–120, § 1(d), Oct. 8, 1985, 99 Stat. 502; Pub. L. 99–156, § 1(d), Nov. 15, 1985, 99 Stat. 815; Pub. L. 99–219, § 1(d), Dec. 26, 1985, 99 Stat. 1730; Pub. L. 99–267, § 1(d), Mar. 27, 1986, 100 Stat. 73; Pub. L. 99–272, title III, § 3007(d), Apr. 7, 1986, 100 Stat. 104; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, §§ 170(a), 401(c), 406(b)(18), (19), Feb. 5, 1988, 101 Stat. 1867, 1898, 1901; Pub. L. 101–144, title II, Nov. 9, 1989, 103 Stat. 852; Pub. L. 101–235, title I, § 125(a)–(c), Dec. 15, 1989, 103 Stat. 2022–2024.)

REFERENCES IN TEXT

Section 1715z–2 of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(6), July 30, 2008, 122 Stat. 2835.

Section 1715z–10 of this title, referred to in subsecs. (c)(2)(A) and (q)(12), (14), was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(7), July 30, 2008, 122 Stat. 2835.

The Housing and Community Development Act of 1974, referred to in subsec. (h)(1), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (i)(3)(A), is section 101 of Pub. L. 89–117, title I, Aug. 10, 1965, 79 Stat. 451, as amended, which enacted section 1701s of this title and amended sections 1451 and 1465 of Title 42.

Section 1709–1 of this title, referred to in subsec. (q)(4)(B), was repealed by Pub. L. 98–181, title IV, § 404(a), Nov. 30, 1983, 97 Stat. 1208.

AMENDMENTS

1989—Subsec. (c)(1). Pub. L. 101–235, § 125(c)(1), inserted ", other than a contract in connection with a refinancing under subsection (r) of this section," after "any new contract" in second sentence.

Subsec. (c)(3)(A). Pub. L. 101–235, § 125(c)(2), which directed the insertion of "(except to the extent provided in subsection (r) of this section for mortgages insured under such subsection)" after "refinanced," in second sentence, was executed by making the insertion after "refinanced" as the probable intent of Congress.

Subsec. (c)(3)(C). Pub. L. 101–235, § 125(b), inserted at end "Notwithstanding the preceding sentence, any amounts of budget authority or contract authority recaptured from assistance payments contracts relating to mortgages that are being refinanced that are not required for assistance payments contracts relating to mortgages insured under this subsection, shall be rescinded."

Subsec. (e). Pub. L. 101–235, § 125(c)(3), inserted reference to subsec. (r).

Subsec. (h)(1). Pub. L. 101–235, § 125(c)(4), inserted "(other than obligations in connection with mortgages insured under subsection (r) of this section)" in third sentence, "(except under subsection (r) of this section)" in sixth sentence, and "(other than a contract in connection with a mortgage insured under subsection (r) of this section)" in seventh sentence.

Subsec. (h)(3). Pub. L. 101–235, § 125(c)(5), inserted sentence at end providing that the preceding sentence shall not apply to contracts in connection with mortgages insured under subsec. (r).

Subsec. (m). Pub. L. 101–235, § 125(c)(6), inserted "(except a mortgage insured under subsection (r) of this section)" after "No mortgage".

Subsec. (n). Pub. L. 101–235, § 125(c)(7), inserted "or to a mortgage insured under subsection (r) of this section" before period at end.

Subsec. (r). Pub. L. 101–235, § 125(a), amended subsec. (r) generally. Prior to amendment, subsec. (r) read as follows:

"(1) REVIEW OF ASSISTANCE PAYMENTS CONTRACTS.—

"(A) The Secretary shall periodically review each contract under which the Secretary is making assistance payments under this section to determine if a refinancing of the mortgage, loan, or advance of credit involved will result in a sufficient reduction in assistance payments to warrant such refinancing.

"(B) In the case of assistance payments contracts in effect on November 9, 1989, the Secretary shall complete such review within 60 days in order to permit the refinancing to be completed during fiscal year 1990.

"(2) REFINANCING ASSISTANCE.—In any case in which the Secretary determines that refinancing is warranted, the Secretary shall offer financial assistance appropriate to encourage the refinancing. The assistance may include the following:

"(A) For lenders and mortgagees providing refinancing, the payment of reasonable mortgage or loan origination fees, discount points, and other expenses required to refinance; and

"(B) For the homeowner or cooperative member involved, the payment of an amount that does not exceed 1 percent of the principal amount refinanced.

"(3) METHOD OF PAYMENT OF REFINANCING ASSISTANCE.—In any case in which the Secretary determines that refinancing is warranted, the Secretary shall provide incentives in a manner that does not increase total expenditures in fiscal year 1990. The Secretary shall structure refinancings as follows:

"(A) Lenders and mortgagees providing refinancings under this subsection may charge an interest rate for refinancing that is not greater than 0.5 percent higher than the prevailing market rate for refinancing.

''(B) Payments to the homeowner or cooperative member to encourage refinancing shall be paid through a reduction in the monthly payment of the homeowner or cooperative member under the mortgage, loan, or advance of credit.

''(4) REVISION OF CONTRACTS AND RESCISSION OF EXCESS AMOUNTS.—

''(A) The Secretary shall make such revisions in any assistance payments contract (including the amount of assistance payments made under the contract) as are necessary to reflect a refinancing obtained pursuant to this subsection. A revised assistance payments contract under this paragraph shall not be considered to be a new contract under this section.

''(B) Any contract authority that becomes available as a result of the revision of an assistance payments contract under this paragraph shall be rescinded.''

Pub. L. 101–144 added subsec. (r).

1988—Subsec. (h)(1). Pub. L. 100–242, §401(c), substituted ''September 30, 1989'' for ''March 15, 1988''.

Subsec. (i)(3)(A). Pub. L. 100–242, §406(b)(18), struck out ''one of the units of which is to be occupied by the owner and'' after ''three-family dwelling''.

Subsec. (i)(3)(C). Pub. L. 100–242, §170(a), substituted ''(including'' for ''including''.

Subsec. (j)(6). Pub. L. 100–242, §406(b)(19), struck out ''if one of the units is to be occupied by the owner'' after ''Secretary''.

Subsecs. (m), (q)(1). Pub. L. 100–242, §401(c), substituted ''September 30, 1989'' for ''March 15, 1988''.

1987—Subsecs. (h)(1), (m), (q)(1). Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

1986—Subsecs. (h)(1), (m), (q)(1). Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272 made amendment identical to Pub. L. 99–219. See 1985 Amendment note below.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

1985—Subsecs. (h)(1), (m), (q)(1). Pub. L. 99–219 substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156 substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120 substituted ''November 14, 1985'' for ''September 30, 1985''.

1984—Subsec. (h)(1). Pub. L. 98–479, §102(a)(1), inserted ''utilizing amounts approved in appropriation Acts before November 30, 1983,'' before ''except (i)'' and substituted ''September 30, 1985'' for ''November 30, 1983'' in last sentence.

Subsec. (i)(3)(C). Pub. L. 98–479, §204(a)(8), substituted ''Secretary'' for ''Seretary'' before ''authorizes an increase''.

Subsec. (j)(2)(C). Pub. L. 98–479, §104(a)(3), substituted ''bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary determines is necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets'' for ''bear interest (exclusive of premium charges for insurance and service charge, if any) at not to exceed such per centum per annum (not in excess of 6 per centum), on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet the mortgage market''.

1983—Subsec. (c)(1). Pub. L. 98–181, §226(a), substituted ''Subject to the second sentence of this paragraph, the'' for ''The'', and inserted provision limiting to a 10-year period assistance payments pursuant to any new contract entered into after Sept. 30, 1983, utilizing authority approved in appropriation Acts for any fiscal year beginning after such date.

Subsec. (c)(3). Pub. L. 98–181, §226(b), added par. (3).

Subsec. (h)(1). Pub. L. 98–181, §226(c), struck out ''and'' after ''on July 1, 1971'', and inserted '', and by such sums as may be approved in an appropriation Act on or after October 1, 1983 (from the additional authority to enter into contracts made available on such date under the first sentence of section 1437c(c)(1) of title 42). The aggregate amount that may be obligated over the duration of the contracts entered into with the authority provided on or after October 1, 1983, may not exceed such sums of new budget authority as may be appropriated after November 30, 1983. The Secretary shall begin issuing new commitments and reservations to provide mortgage insurance and assistance payments under this section before the expiration of the 30-day period following the approval in any appropriation Act of budget authority for this section after November 30, 1983.''

Pub. L. 98–109, §1(d)(1), substituted ''November 30, 1983'' for ''September 30, 1983''.

Subsec. (i)(3)(A). Pub. L. 98–181, §226(d)(1), substituted ''three-family'' for ''two-family'', and ''involve a single-family or a two-family'' for ''involve a single-family''.

Subsec. (i)(3)(B), (C). Pub. L. 98–181, §423(b)(5)(A), (B), struck out '': *Provided*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured'' after ''$55,000, respectively''.

Subsec. (i)(3)(D). Pub. L. 98–181, §423(b)(5)(C), struck out '': *Provided*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured'' after ''cost levels so require)''.

Pub. L. 98–181, §226(d)(2), inserted ''or three-family'' and substituted ''$60,000'' for ''$55,000'' and ''$66,250'' for ''$61,250''.

Subsec. (i)(3)(F). Pub. L. 98–181, §404(b)(12), added subpar. (F).

Subsec. (i)(4), (5). Pub. L. 98–181, §226(d)(3), added pars. (4) and (5).

Subsec. (j)(6). Pub. L. 98–181, §226(e)(1), substituted ''two- to three-family'' for ''two-family''.

Subsec. (j)(9). Pub. L. 98–181, §226(e)(2), added par. (9).

Subsec. (m). Pub. L. 98–181, §401(d)(1), substituted ''September 30, 1985'' for ''November 30, 1983''.

Pub. L. 98–109, §1(d)(2), substituted ''November 30, 1983'' for ''September 30, 1983''.

Pub. L. 98–35, §1(d)(1), substituted ''September 30, 1983'' for ''May 20, 1983''.

Subsec. (q)(1). Pub. L. 98–181, §401(d)(2), substituted ''September 30, 1985'' for ''November 30, 1983''.

Pub. L. 98–109, §1(d)(3), substituted ''November 30, 1983'' for ''September 30, 1983''.

Pub. L. 98–35, §1(d)(2), substituted ''September 30, 1983'' for ''May 20, 1983''.

1982—Subsec. (h)(1). Pub. L. 97–289, §1(d)(1), substituted ''May 20, 1983'' for ''September 30, 1982'' in two places.

Subsec. (i)(3)(B). Pub. L. 97–253, §201(f)(1), inserted provision that the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

Subsec. (i)(3)(C). Pub. L. 97–253, §201(f)(2), inserted provision that the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

Subsec. (i)(3)(D). Pub. L. 97–253, §201(f)(3), inserted provision that the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

Subsec. (i)(3)(E). Pub. L. 97–253, §201(f)(4), inserted ''(excluding the mortgage insurance premium paid at the time the mortgage is insured)'' after ''cost of acquisition''.

Subsec. (m). Pub. L. 97–289, §1(d)(2), substituted ''May 20, 1983'' for ''September 30, 1982''.

Subsec. (q)(1). Pub. L. 97–289, §1(d)(3), substituted ''May 20, 1983'' for ''September 30, 1982''.

1981—Subsec. (c)(2)(A). Pub. L. 97–35, §328(a), struck out provisions relating to homeowner ceasing to make payments for a period of 90 continuous days or more under the mortgage, etc.

Subsec. (h)(1). Pub. L. 97–110 expanded enumeration of exceptions to provision that the Secretary not enter into new contracts for assistance payments under this section after March 31, 1982, by designating the two existing exceptions as cls. (i) and (ii) and by adding cl. (iii).

Pub. L. 97–35, §328(b), inserted provisions prohibiting new contracts for assistance under this section after Mar. 1, 1982, except pursuant to specified exceptions.

Subsec. (m). Pub. L. 97–35, §331(d)(1), substituted ''1982'' for ''1981''.

Subsec. (q)(1). Pub. L. 97–35, §331(d)(2), substituted ''September 30, 1982'' for ''June 1, 1981''.

Subsec. (q)(14). Pub. L. 97–35, §328(c), struck out provisions relating to homeowner ceasing to make payments for a period of 90 continuous days or more under the mortgage, etc.

1980—Subsec. (a)(2)(A). Pub. L. 96–399, §308(c)(1), substituted ''manufactured home'' for ''mobile home'' wherever appearing.

Subsec. (a)(2)(B). Pub. L. 96–399, §308(c)(2), substituted ''manufactured homeowner'' and ''manufactured homeowner's'' for ''mobile homeowner'' and ''mobile homeowner's'', respectively.

Subsec. (b)(2). Pub. L. 96–399, §206(a)(1), substituted in last proviso ''$40,000'' for ''$32,000'', ''$47,500'' for ''$38,000'' in two places, and ''$55,000'' for ''$44,000''.

Subsec. (c). Pub. L. 96–399, §206(b)(1), designated existing provisions as par. (1), redesignated existing pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (i)(3)(B) to (D). Pub. L. 96–399, §206(a)(2), (3), substituted ''$40,000'' for ''$32,000'', ''$47,500'' for ''$38,000'', ''$55,000'' for ''$44,000'', and ''$61,250'' for ''$49,000''.

Subsec. (m). Pub. L. 96–399, §301(d), substituted ''September 30, 1981'' for ''October 15, 1980''.

Pub. L. 96–372 substituted ''October 15, 1980'' for ''September 30, 1980''.

Subsec. (p). Pub. L. 96–399, §206(a)(4), added subsec. (p).

Subsec. (q). Pub. L. 96–399, §207, added subsec. (q).

1979—Subsec. (a)(1). Pub. L. 96–153, §213(a), inserted provision that the Secretary give preference to low-income families who are likely to be displaced without assistance and that the assistance may include the acquisition of a condominium or membership in a cooperative association.

Subsec. (c)(2). Pub. L. 96–153, §213(c)(2), inserted parenthetical reference to 4 per centum per annum rate in the case of a mortgage described in subsec. (*o*) of this section.

Subsec. (i)(3)(A). Pub. L. 96–153, §213(b), substituted ''standards as the Secretary may prescribe:'' for ''standards as the Secretary may prescribe, if the mortgagor qualifies as a displaced family as defined in section 1715*l*(f) of this title, or a family which includes five or more minor persons, or a family occupying low-rent public housing:''.

Subsec. (m). Pub. L. 96–153, §301(d), substituted ''September 30, 1980'' for ''November 30, 1979''.

Pub. L. 96–105 substituted ''November 30, 1979'' for ''October 31, 1979''.

Pub. L. 96–71 substituted ''October 31, 1979'' for ''September 30, 1979''.

Subsec. (*o*). Pub. L. 96–153, §213(c)(1), added subsec. (*o*).

1978—Subsec. (m). Pub. L. 95–557 substituted ''September 30, 1979'' for ''October 31, 1978''.

Pub. L. 95–406 substituted ''October 31, 1978'' for ''September 30, 1978''.

1977—Subsec. (b)(2). Pub. L. 95–128, §§205, 303(f)(1), inserted reference to section 1715*l*(d)(3) of this title and substituted in last proviso ''$32,000'' for ''$25,000'', ''$38,000'' for ''$29,000'' in two places, and ''$44,000'' for ''$33,000''.

Subsec. (i)(3)(B) to (E). Pub. L. 95–128, §303(f)(2)–(4), substituted in subpar. (B) ''$32,000'' for ''$25,000'', ''$38,000'' for ''$29,000'' in two places, and ''$44,000'' for ''$33,000'', added subpars. (C) and (D), and redesignated former subpar. (C) as (E).

Subsec. (m). Pub. L. 95–128, §301(d), substituted ''September 30, 1978'' for ''September 30, 1977''.

Subsec. (n). Pub. L. 95–128, §303(f)(5), added subsec. (n).

1976—Subsec. (a). Pub. L. 94–375, §3(f)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(2). Pub. L. 94–375, §3(b), substituted ''$25,000'' for ''$21,600'', ''$29,000'' for ''$25,200'' in two places, and ''$33,000'' for ''$28,800''.

Subsec. (e). Pub. L. 94–375, §3(f)(2), inserted ''(a)(2)(B),'' after ''computed under subsection''.

Subsec. (h)(2). Pub. L. 94–375, §3(e), substituted ''95 per centum'' for ''80 per centum'' wherever appearing.

Subsec. (i)(3)(B). Pub. L. 94–375, §3(c), substituted ''$25,000'' for ''$21,600'', ''$29,000'' for ''$25,200'' in two places, and ''$33,000'' for ''$28,800''.

Subsec. (m). Pub. L. 94–375 §3(a), substituted ''September 30, 1977'' for ''June 30, 1976''.

1974—Subsec. (a). Pub. L. 93–383, §211(b), inserted provisions relating to mortgages assisted under a State or local program providing assistance through loans, etc.

Subsec. (b)(2). Pub. L. 93–383, §211(c)(1), substituted ''$21,600'' for ''$18,000'', ''$25,200'' for ''$21,000'' in two places, and ''$28,800'' for ''$24,000''.

Subsec. (h)(1). Pub. L. 93–383, §211(a)(1), (2), inserted provisions relating to increases by such sums as may be approved in appropriations Acts after June 30, 1974, and prior to July 1, 1976, and provisions prohibiting new contracts for assistance payments upon the expiration of one year following Aug. 22, 1974.

Subsec. (h)(2). Pub. L. 93–383, §211(a)(3), substituted provisions setting forth requirements for assistance payments for families for provisions setting forth maximum income limits of families receiving assistance payments under contracts and provisions relating to annual report to Congressional Committees with respect to income levels of families.

Subsec. (h)(3)(B). Pub. L. 93–383, §211(a)(4), substituted ''on or after July 1, 1969'' for ''prior to July 1, 1972''.

Subsec. (i)(1). Pub. L. 93–383, §211(a)(5), inserted provisions authorizing insurance of advances for property construction or rehabilitation pursuant to self-help programs.

Subsec. (i)(3)(B). Pub. L. 93–383, §211(c)(2), substituted ''$21,600'' for ''$18,000'', ''$25,200'' for ''$21,000'' in two places, and ''$28,800'' for ''$24,000''.

Subsec. (i)(3)(C). Pub. L. 93–383, §211(a)(6), struck out provisions relating to execution by a mortgagor in the case of a family whose income is not in excess of 135 per centum of the maximum income limits established in the area pursuant to specified limitations or any other family.

Subsec. (m). Pub. L. 93–383, §211(a)(7), substituted ''June 30, 1976'' for ''October 1, 1974''.

1973—Subsec. (m). Pub. L. 93–117 substituted ''October 1, 1974'' for ''October 1, 1973''.

Pub. L. 93–85 substituted ''October 1, 1973'' for ''June 30, 1973''.

1972—Subsec. (m). Pub. L. 92–503 substituted ''June 30, 1973'' for ''October 1, 1972''.

1970—Subsec. (b)(2). Pub. L. 91–609, §107, designated existing provisions as cl. (A) and added cl. (B).

Subsec. (h)(1). Pub. L. 91–609, §102(a), in second sentence, inserted ''outstanding'' before ''contracts'' where first appearing and substituted ''$150,000,000 on July 1, 1970'' and ''$200,000,000 on July 1, 1971'' for ''$125,000,000 on July 1, 1970'' and ''$170,000,000 on July 1, 1971''.

Subsec. (h)(3)(B). Pub. L. 91–609, §105(1), substituted ''July 1, 1972'' for ''July 1, 1971''.

Subsec. (h)(4). Pub. L. 91–609, §105(2), added par. (4).

Subsec. (i)(3)(A). Pub. L. 91–609, §106, substituted ''and which is approved by the Secretary'' for ''if the dwell-

ing is purchased with the assistance of a nonprofit organization and is approved by the Secretary''.

Subsec. (m). Pub. L. 91–609, § 101(d), substituted ''October 1, 1972'' for ''October 1, 1971''.

1969—Subsec. (b)(2). Pub. L. 91–152, §§ 106(b), 113(i), substituted provisions qualifying for assistance payments the transferee of any cooperative member who has received assistance payments, provided that such transferee undertakes the obligation to pay occupancy charges, for provisions qualifying for assistance payments the transferee of the initial cooperative member receiving assistance payments, and substituted ''$18,000'' for ''$15,000'', ''$21,000'' for ''$17,500'' wherever appearing, and ''$24,000'' for ''$20,000''.

Subsec. (c). Pub. L. 91–152, §§ 106(a), 418(a), inserted reference to subsection (i) of this section, and inserted the further proviso authorizing the Secretary to continue making assistance payments.

Subsec. (h)(1). Pub. L. 91–152, § 107(a), substituted ''$125,000,000 on July 1, 1969, by ''$125,000,000 on July 1, 1970, and by $170,000,000 on July 1, 1971'' for ''$100,000,000 on July 1, 1969, and by $125,000,000 on July 1, 1970''.

Subsec. (h)(2). Pub. L. 91–152, § 412(b), required the Secretary to report semiannually instead of annually to the respective Committees on Banking and Currency of the Senate and House of Representatives.

Subsec. (h)(3)(A). Pub. L. 91–152, § 109(1), inserted ''and'' after ''July 1, 1969''.

Subsec. (h)(3)(B). Pub. L. 91–152, § 109(2), substituted ''30 per centum'' for ''15 per centum'' and ''July 1, 1971,'' for ''July 1, 1970, and''.

Subsec. (h)(3)(C). Pub. L. 91–152, § 109(2), struck out subsec. (h)(3)(C) which limited the amount available for home-ownership assistance payments to 10 per centum of the total additional amount of contracts for assistance payments authorized by appropriation Acts made prior to July 1, 1971.

Subsec. (i)(3)(B). Pub. L. 91–152, § 113(i), substituted ''$18,000'' for ''$15,000'', ''$21,000'' for ''$17,500'' wherever appearing, and ''$24,000'' for ''$20,000''.

Subsec. (m). Pub. L. 91–152, § 101(d), added subsec. (m).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 406(b)(18), (19) of Pub. L. 100–242 applicable only with respect to mortgages insured pursuant to conditional commitment issued on or after Feb. 5, 1988, or in accordance with direct endorsement program (24 CFR 200.163), if approved underwriter of mortgagee signs appraisal report for property on or after Feb. 5, 1988, see section 406(d) of Pub. L. 100–242, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by section 423(b)(5) of Pub. L. 98–181, see section 423(c) of Pub. L. 98–181, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 206(b)(2) of Pub. L. 96–399 provided: ''The amendment made by paragraph (1) [amending this section] does not apply to any assistance contract under section 235 of the National Housing Act [this section] entered into pursuant to a commitment issued within 6 months following the date of enactment of this Act [Oct. 8, 1980].''

TERMINATION OF PROGRAM; SAVINGS PROVISION

Section 125(d) of Pub. L. 101–235 provided that: ''Notwithstanding the termination of the program under section 235 [this section] pursuant to section 401(d) of the Housing and Community Development Act of 1987 [Pub. L. 100–242, set out below], the Secretary of Housing and Urban Development shall have authority to insure mortgages under section 235(r), to make assistance payments with respect to such insured mortgages, and to make any other payment or take any other action related to the refinancing of mortgages insured under section 235.''

Section 401(d) of Pub. L. 100–242 provided that:

''(1) IN GENERAL.—Effective on October 1, 1989, the program under section 235 of the National Housing Act [this section] shall terminate.

''(2) SAVINGS PROVISION.—The provisions of paragraph (1) shall not affect—

''(A) any mortgage insurance commitment issued; or

''(B) any assistance pursuant to a reservation of funds made;

under section 235 of the National Housing Act prior to October 1, 1989.''

IMPLEMENTATION OF 1982 AMENDMENT

Amendment by Pub. L. 97–253 to be implemented only if the Secretary determines that the program of advance payment of insurance premiums, considering the effect of said amendment, is actuarially sound, see section 201(g) of Pub. L. 97–253, set out as a note under section 1709 of this title.

STUDY AND REPORT RESPECTING APPLICATION OF SUBSECTION (n) TO SUBSECTIONS (a) AND (q) PROGRAMS

Section 206(c) of Pub. L. 96–399 directed Secretary of Housing and Urban Development to conduct a study of effects which application of subsec. (n) of this section has had or is likely to have on program established by subsec. (a). If program established by subsec. (q) was implemented, Secretary was to include in study an analysis of effects on subsec. (q) program of application of subsec. (n) to such program. Secretary to transmit to Congress, not later than Jan. 1, 1982, a report containing findings and conclusions of study.

FINANCING PURCHASE OF DWELLING FROM NONPROFIT ORGANIZATION AFTER AUGUST 1, 1968

Section 101(c)(4) of Pub. L. 90–448 provided that: ''The purchase of any individual dwelling, sold by a nonprofit organization pursuant to the provisions of section 221(h)(5) of the National Housing Act [12 U.S.C. 1715*l*(h)(5)] after the date of enactment of this section [Aug. 1, 1968], may be financed with a mortgage insured under the provisions of section 235(j)(4) of such Act [12 U.S.C. 1715z(j)(4)], but such mortgage shall bear interest at the rate provided in section 235(j)(2)(C) of such Act.''

CEILING ON TOTAL HOMEOWNERSHIP ASSISTANCE PAYMENTS IN ANY FISCAL YEAR

Pub. L. 90–608, ch. IV, § 401, Oct. 21, 1968, 82 Stat. 1193, provided in part that the total payments that may be required in any fiscal year by all contracts entered into under section 235 of the National Housing Act [this section] shall not exceed $25,000,000.

Pub. L. 91–47, title II, § 201, July 22, 1969, 83 Stat. 53, increased by $45,000,000 the limitation on total payments that may be required in any fiscal year by all contracts entered into under section 235 of the National Housing Act, as amended (82 Stat. 477) [this section].

§ 1715z–1. Rental and cooperative housing for lower income families

(a) Authorization for periodic interest reduction payments on behalf of owner of rental housing project

For the purpose of reducing rentals for lower income families, the Secretary is authorized to make, and to contract to make, periodic interest reduction payments on behalf of the owner of a rental housing project designed for occupancy by lower income families, which shall be accomplished through payments to morgagees[1]

[1] So in original. Probably should be ''mortgagees''.

holding mortgages meeting the special requirements specified in this section.

(b) Restrictions on payments; payments with respect to projects financed under State or local programs; mortgage insurance premium

Interest reduction payments with respect to a project shall only be made during such time as the project is operated as a rental housing project and is subject to a mortgage which meets the requirements of, and is insured under, subsection (j) of this section: *Provided*, That the Secretary is authorized to continue making such interest reduction payments where the mortgage has been assigned to the Secretary: *Provided further*, That interest reduction payments may be made with respect to a mortgage or part thereof on a rental or cooperative housing project owned by a private nonprofit corporation or other private nonprofit entity, a limited dividend corporation or other limited dividend entity, public[2] entity, or a cooperative housing corporation, which is financed under a State or local program providing assistance through loans, loan insurance, or tax abatements, and which may involve either new or existing construction and which is approved for receiving the benefits of this section. The term ''mortgage insurance premium'', when used in this section in relation to a project financed by a loan under a State or local program, means such fees and charges, approved by the Secretary, as are payable by the mortgagor to the State or local agency mortgagee to meet reserve requirements and administrative expenses of such agency.

(c) Amount of payments

The interest reduction payments to a mortgagee by the Secretary on behalf of a project owner shall be in an amount not exceeding the difference between the monthly payment for principal, interest, and mortgage insurance premium which the project owner as a mortgagor is obligated to pay under the mortgage and the monthly payment for principal and interest such project owner would be obligated to pay if the mortgage were to bear interest at the rate of 1 per centum per annum.

(d) Mortgage handling expenses

The Secretary may include in the payment to the mortgagee such amount, in addition to the amount computed under subsection (c) of this section, as he deems appropriate to reimburse the mortgagee for its expenses in handling the mortgage.

(e) Operation of project in accordance with requirements respecting tenant eligibility and rents prescribed by Secretary

(1) As a condition for receiving the benefits of interest reduction payments, the project owner shall operate the project in accordance with such requirements with respect to tenant eligibility and rents as the Secretary may prescribe. Procedures shall be adopted by the Secretary for review of tenant incomes at intervals of one year (or at shorter intervals where the Secretary deems it desirable).

(2) A project for which interest reduction payments are made under this section and for which the mortgage on the project has been refinanced shall continue to receive the interest reduction payments under this section under the terms of the contract for such payments, but only if the project owner enters into such binding commitments as the Secretary may require (which shall be applicable to any subsequent owner) to ensure that the owner will continue to operate the project in accordance with all low-income affordability restrictions for the project in connection with the Federal assistance for the project for a period having a duration that is not less than the term for which such interest reduction payments are made plus an additional 5 years.

(f) Establishment of basic and fair market rental charges; rental for dwelling units; separate utility metering; additional assistance payments for low-income tenants; limitations; amounts; approval of payments

(1)(A)(i) For each dwelling unit there shall be established, with the approval of the Secretary, a basic rental charge and fair market rental charge.

(ii) The basic rental charge shall be—

(I) the amount needed to operate the project with payments of principal and interest due under a mortgage bearing interest at the rate of 1 percent per annum; or

(II) an amount greater than that determined under clause (ii)(I), but not greater than the market rent for a comparable unassisted unit, reduced by the value of the interest reduction payments subsidy.

(iii) The fair market rental charge shall be—

(I) the amount needed to operate the project with payments of principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage covering the project; or

(II) an amount greater than that determined under clause (iii)(I), but not greater than the market rent for a comparable unassisted unit.

(iv) The Secretary may approve a basic rental charge and fair market rental charge for a unit that exceeds the minimum amounts permitted by this subparagraph for such charges only if—

(I) the approved basic rental charge and fair market rental charges each exceed the applicable minimum charge by the same amount; and

(II) the project owner agrees to restrictions on project use or mortgage prepayment that are acceptable to the Secretary.

(v) The Secretary may approve a basic rental charge and fair market rental charge under this paragraph for a unit with assistance under section 1437f of title 42 that differs from the basic rental charge and fair market rental charge for a unit in the same project that is similar in size and amenities but without such assistance, as needed to ensure equitable treatment of tenants in units without such assistance.

(B)(i) The rental charge for each dwelling unit shall be at the basic rental charge or such greater amount, not exceeding the fair market rental charge determined pursuant to subparagraph

[2] So in original. Probably should be preceded by ''a''.

(A), as represents 30 percent of the tenant's adjusted income, except as otherwise provided in this subparagraph.

(ii) In the case of a project which contains more than 5000 units, is subject to an interest reduction payments contract, and is financed under a State or local project, the Secretary may reduce the rental charge ceiling, but in no case shall the rental charge be below the basic rental charge set forth in subparagraph (A)(ii)(I).

(iii) For plans of action approved for capital grants under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.] or the Emergency Low Income Housing Preservation Act of 1987, the rental charge for each dwelling unit shall be at the minimum basic rental charge set forth in subparagraph (A)(ii)(I) or such greater amount, not exceeding the lower of: (I) the fair market rental charge set forth in subparagraph (A)(iii)(I); or (II) the actual rent paid for a comparable unit in comparable unassisted housing in the market area in which the housing assisted under this section is located, as represents 30 percent of the tenant's adjusted income.

(C) With respect to those projects which the Secretary determines have separate utility metering paid by the tenants for some or all dwelling units, the Secretary may—

(i) permit the basic rental charge and the fair market rental charge to be determined on the basis of operating the project without the payment of the cost of utility services used by such dwelling units; and

(ii) permit the charging of a rental for such dwelling units at such an amount less than 30 percent of a tenant's adjusted income as the Secretary determines represents a proportionate decrease for the utility charges to be paid by such tenant, but in no case shall rental be lower than 25 percent of a tenant's adjusted income.

(2) With respect to 20 per centum of the dwelling units in any project made subject to a contract under this section after August 22, 1974, the Secretary shall make, and contract to make, additional assistance payments to the project owner on behalf of tenants whose incomes are too low for them to afford the basic rentals (including the amount allowed for utilities in the case of a project with separate utility metering) with 30 per centum of their adjusted income. The additional assistance payments authorized by this paragraph with respect to any dwelling unit shall be the amount required to reduce the rental payment (including the amount allowed for utilities in the case of a project with separate utility metering) by the tenant to the highest of the following amounts, rounded to the nearest dollar:

(A) 30 per centum of the tenant's monthly adjusted income;

(B) 10 per centum of the tenant's monthly income; or

(C) if the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated.

Notwithstanding the foregoing provisions of this paragraph, the Secretary may—

(A) reduce such 20 per centum requirement in the case of any project if he determines that such action is necessary to assure the economic viability of the project; or

(B) increase such 20 per centum requirement in the case of any project if he determines that such action is necessary and feasible in order to assure, insofar as is practicable, that there is in the project a reasonable range in the income levels of tenants, or that such action is to be taken to meet the housing needs of elderly or handicapped families.

(3) The Secretary shall utilize amounts credited to the fund described in subsection (g) of this section for the sole purpose of carrying out the purposes of section 201 of the Housing and Community Development Amendments of 1978. No payments may be made from such fund unless approved in an appropriation Act. No amount may be so approved for any fiscal year beginning after September 30, 1994.

(4) To ensure that eligible tenants occupying that number of units with respect to which assistance was being provided under this subsection immediately prior to November 30, 1983, receive the benefit of assistance contracted for under paragraph (2), the Secretary shall offer annually to amend contracts entered into under this subsection with owners of projects assisted but not subject to mortgages insured under this section to provide sufficient payments to cover 100 percent of the necessary rent increases and changes in the incomes of eligible tenants, subject to the availability of authority for such purpose under section 1437c(c) of title 42. The Secretary shall take such actions as may be necessary to ensure that payments, including payments that reflect necessary rent increases and changes in the incomes of tenants, are made on a timely basis for all units covered by contracts entered into under paragraph (2).

(5)(A) In order to induce advances by owners for capital improvements (excluding any owner contributions that may be required by the Secretary as a condition for assistance under section 201 of the Housing and Community Development Amendments of 1978) to benefit projects assisted under this section, in establishing basic rental charges and fair market rental charges under paragraph (1) the Secretary may include an amount that would permit a return of such advances with interest to the owner out of project income, on such terms and conditions as the Secretary may determine. Any resulting increase in rent contributions shall be—

(i) to a level not exceeding the lower of 30 percent of the adjusted income of the tenant or the published existing fair market rent for comparable housing established under section 1437f(c) of title 42;

(ii) phased in equally over a period of not less than 3 years, if such increase is 30 percent or more; and

(iii) limited to not more than 10 percent per year if such increase is more than 10 percent but less than 30 percent.

(B) Assistance under section 1437f of title 42 shall be provided, to the extent available under

appropriations Acts, if necessary to mitigate any adverse effects on income-eligible tenants.

(6) Repealed. Pub. L. 104–99, title IV, § 405(d)(2), Jan. 26, 1996, 110 Stat. 45.

(7) The Secretary shall determine whether and under what conditions the provisions of this subsection shall apply to mortgages sold by the Secretary on a negotiated basis.

(g) Collection of excess rental charges; credit to reserve for additional assistance payments; retention by project owner

(1) The project owner shall, as required by the Secretary, accumulate, safeguard, and periodically pay the Secretary or such other entity as determined by the Secretary and upon such terms and conditions as the Secretary deems appropriate, all rental charges collected on a unit-by-unit basis in excess of the basic rental charges. Unless otherwise directed by the Secretary, such excess charges shall be credited to a reserve used by the Secretary to make additional assistance payments as provided in paragraph (3) of subsection (f) of this section.

(2) Notwithstanding any other requirements of this subsection, a project owner may retain some or all of such excess charges for project use if authorized by the Secretary. Such excess charges shall be used for the project and upon terms and conditions established by the Secretary, unless the Secretary permits the owner to retain funds for non-project use after a determination that the project is well-maintained housing in good condition and that the owner has not engaged in material adverse financial or managerial actions or omissions as described in section 516 of the Multifamily Assisted Housing Reform and Affordability Act of 1997. In connection with the retention of funds for non-project use, the Secretary may require the project owner to enter into a binding commitment (which shall be applicable to any subsequent owner) to ensure that the owner will continue to operate the project in accordance with all low-income affordability restrictions for the project in connection with the Federal assistance for the project for a period having a duration of not less than the term of the existing affordability restrictions plus an additional 5 years.

(3) The Secretary shall not withhold approval of the retention by the owner of such excess charges because of the existence of unpaid excess charges if such unpaid amount is being remitted to the Secretary over a period of time in accordance with a workout agreement with the Secretary, unless the Secretary determines that the owner is in violation of the workout agreement.

(h) Rules and regulations

In addition to establishing the requirements specified in subsection (e) of this section, the Secretary is authorized to make such rules and regulations, to enter into such agreements, and to adopt such procedures as he may deem necessary or desirable to carry out the provisions of this section.

(i) Authorization of appropriations; aggregate amount of contracts; contracts for assistance payments; income limitations; availability of amounts for projects approved prior to rehabilitation and projects for occupancy by elderly or handicapped families; definitions

(1) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, including such sums as may be necessary to make interest reduction payments under contracts entered into by the Secretary under this section. The aggregate amount of outstanding contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contracts shall not exceed $75,000,000 per annum prior to July 1, 1969, which maximum dollar amount shall be increased by $125,000,000 on July 1, 1969, by $150,000,000 on July 1, 1970, by $200,000,000 on July 1, 1971 and by $75,000,000 on July 1, 1974. The Secretary shall utilize, to the extent necessary after September 30, 1984, any authority under this section that is recaptured either as the result of the conversion of housing projects covered by assistance under subsection (f)(2) of this section to contracts for assistance under section 1437f of title 42 or otherwise for the purpose of making assistance payments, including amendments as provided in subsection (f)(4) of this section, with respect to housing projects assisted, but not subject to mortgages insured, under this section that remain covered by assistance under subsection (f)(2) of this section.

(2) Contracts for assistance payments under this section may be entered into only with respect to tenants whose incomes do not exceed 80 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low family incomes, or other factors.

(3) Not less than 10 per centum of the total amount of contracts for assistance payments authorized by appropriation Acts to be made after June 30, 1974, shall be available for use only with respect to dwellings, or dwelling units in projects, which are approved by the Secretary prior to rehabilitation.

(4) At least 20 per centum of the total amount of contracts for assistance payments authorized in appropriation Acts to be made after June 30, 1974, shall be available for use only with respect to projects which are planned in whole or in part for occupancy by elderly or handicapped families. As used in this paragraph, the term ''elderly families'' means families which consist of two or more persons the head of which (or his spouse) is sixty-two years of age or over or is handicapped. Such term also means a single person who is sixty-two years of age or over or is handicapped. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substan-

tially impedes his ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions.

(j) Insurance of mortgages; definitions; eligibility for insurance; mortgage requirements; property or project requirements; sale of individual dwelling units; release of mortgagor from liability or release of property from lien of mortgage

(1) The Secretary is authorized, upon application by the mortgagee, to insure a mortgage (including advances on such mortgage during construction) which meets the requirements of this subsection. Commitments for the insurance of such mortgages may be issued by the Secretary prior to the date of their execution or disbursement thereon, upon such terms and conditions as he may prescribe.

(2) As used in this subsection—

(A) the terms ''family'' and ''families'' shall have the same meaning as in section 1715*l* of this title;

(B) the term ''elderly or handicapped families'' shall have the same meaning as in section 1701q[3] of this title; and

(C) the terms ''mortgage'', ''mortgagee'', and ''mortgagor'' shall have the same meaning as in section 1707 of this title.

(3) To be eligible for insurance under this subsection, a mortgage shall meet the requirements specified in subsections (d)(1) and (d)(3) of section 1715*l* of this title, except as such requirements are modified by this subsection. In the case of a project financed with a mortgage insured under this subsection which involves a mortgagor other than a cooperative or a private nonprofit corporation or association and which is sold to a cooperative or a nonprofit corporation or association, the Secretary is further authorized to insure under this subsection a mortgage given by such purchaser in an amount not exceeding the appraised value of the property at the time of purchase, which value shall be based upon a mortgage amount on which the debt service can be met from the income of the property when operated on a nonprofit basis, after payment of all operating expenses, taxes, and required reserves.

(4) A mortgage to be insured under this subsection shall—

(A) be executed by a mortgagor eligible under subsection (d)(3) or (e) of section 1715*l* of this title;

(B) bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary determines is necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets; and

(C) provide for complete amortization by periodic payments within such term as the Secretary may prescribe.

(5) The property or project shall—

(A) comply with such standards and conditions as the Secretary may prescribe to establish the acceptability of the property for mortgage insurance and may include such nondwelling facilities as the Secretary deems adequate and appropriate to serve the occupants and the surrounding neighborhood: *Provided*, That the project shall be predominantly residential and any nondwelling facility included in the mortgage shall be found by the Secretary to contribute to the economic feasibility of the project, and the Secretary shall give due consideration to the possible effect of the project on other business enterprises in the community: *Provided further*, That, in the case of a project designed primarily for occupancy by elderly or handicapped families, the project may include related facilities for use by elderly or handicapped families, including cafeterias or dining halls, community rooms, workshops, infirmaries, or other inpatient or outpatient health facilities, and other essential service facilities;

(B) include five or more dwelling units, but such units, in the case of a project designed primarily for occupancy by displaced, elderly, or handicapped families, need not, with the approval of the Secretary, contain kitchen facilities; and

(C) be designed primarily for use as a rental project to be occupied by lower income families or by elderly or handicapped families: *Provided*, That lower income persons who are less than sixty-two years of age shall be eligible for occupancy in such a project.

In any case in which it is determined in accordance with regulations of the Secretary that facilities in existence or under construction on December 31, 1970, which could appropriately be used for classroom purposes are available in any such property or project and that public schools in the community are overcrowded due in part to the attendance at such schools of residents of the property or project, such facilities may be used for such purposes to the extent permitted in such regulations (without being subject to any of the requirements of the first proviso in subparagraph (A) except the requirement that the project be predominantly residential).

(6) With the approval of the Secretary, the mortgagor may sell the individual dwelling units to lower income or elderly or handicapped purchasers. The Secretary may consent to the release of the mortgagor from his liability under the mortgage and the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage, upon such terms and conditions as he may prescribe, and the mortgage may provide for such release.

(k) Definitions

As used in this section the term ''tenant'' includes a member of a cooperative; the term ''rental housing project'' includes a cooperative housing project; and the terms ''rental'' and ''rental charge'' mean, with respect to members of a cooperative, the charges under the occupancy agreements between such members and the cooperative.

[3] See References in Text note below.

(*l*) Allocation and transfer of reasonable portion of total authority to contract to make payments to Secretary of Agriculture for use in rural areas and small towns

The Secretary shall from time to time allocate and transfer to the Secretary of Agriculture, for use (in accordance with the terms and conditions of this section) in rural areas and small towns, a reasonable portion of the total authority to contract to make periodic interest reduction payments as approved in appropriation Acts under subsection (i) of this section.

(m) "Income" defined

For the purpose of this section the term ''income'' means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, except that any amounts not actually received by the family may not be considered as income under this subsection. In determining amounts to be excluded from income, the Secretary may, in the Secretary's discretion, take into account the number of minor children in the household and such other factors as the Secretary may determine are appropriate.

(n) Termination date for insurance of mortgages; exception

No mortgage shall be insured under this section after November 30, 1983, except pursuant to a commitment to insure before that date. A mortgage may be insured under this section after the date in the preceding sentence in order to refinance a mortgage insured under this section or to finance pursuant to subsection (j)(3) of this section the purchase, by a cooperative or nonprofit corporation or association, of a project assisted under this section.

(*o*) State funding of interest reduction payments

The Secretary is authorized to enter into agreements with any State or agency thereof under which such State or agency thereof contracts to make interest reduction payments, subject to all the terms and conditions specified in this section and in rules, regulations and procedures adopted by the Secretary under this section, with respect to all or a part of a project covered by a mortgage insured under this section. Any funds provided by a State or agency thereof for the purpose of making interest reduction payments shall be administered, disbursed and accounted for by the Secretary in accordance with the agreements entered into by the Secretary with the State or agency thereof and for such fees as shall be specified therein. Before entering into any agreements pursuant to this subsection the Secretary shall require assurances satisfactory to him that the State or agency thereof is able to provide sufficient funds for the making of interest reduction payments for the full period specified in the interest reduction contract.

(p) Contracts with State or local agencies for monitoring and supervision of management by private sponsors of assisted projects

The Secretary is authorized to enter into contracts with State or local agencies approved by him to provide for the monitoring and supervision by such agencies of the management by private sponsors of projects assisted under this section. Such contracts shall require that such agencies promptly report to the Secretary any deficiencies in the management of such projects in order to enable the Secretary to take corrective action at the earliest practicable time.

(q) Assistance to residents of covered projects; contracting authority; applicability

The Secretary may provide assistance under section 1437f of title 42 with respect to residents of units in a project assisted under this section. In entering into contracts under section 1437c(c) of title 42 with respect to the additional authority provided on October 1, 1980, the Secretary shall not utilize more than $20,000,000 of such additional authority to provide assistance for elderly or handicapped families which, at the time of applying for assistance under such section 1437f of title 42, are residents of a project assisted under this section and are expending more than 50 percent of their income on rental payments.

(r) Payments for benefit of certain projects having mortgages made by State or local housing finance or government agencies

The Secretary shall, not later than 45 days after receipt of an application by the mortgagee, provide interest reduction and rental assistance payments for the benefit of projects assisted under this section whose mortgages were made by State or local housing finance agencies or State or local government agencies for a term equal to the remaining mortgage term to maturity on projects assisted under this section to the extent of—

(1) unexpended balances of amounts of authority as set forth in certain letter agreements between the Department of Housing and Urban Development and such State or local housing finance agencies or State or local government agencies, and

(2) existing allocation under section 236 contracts on projects whose mortgages were made by State or local housing finance agencies or State or local government agencies which are not being funded, to the extent of such excess allocation, for any purposes permitted under the provisions of this section, including without limitation rent supplement and rental assistance payment unit increases and mortgage increases for any eligible purpose under this section, including without limitation operating deficit loans.

An application shall be eligible for assistance under the previous sentence only if the mortgagee submits the application within 548 days after February 5, 1988, along with a certification of the mortgagee that amounts hereunder are to be utilized only for the purpose of either (A) reducing rents or rent increases to tenants, or (B) making repairs or otherwise increasing the economic viability of a related project. Unexpended balances referred to in the first sentence of this subsection which remain after disposition of all such applications is favorably concluded shall be rescinded. The calculation of the amount of assistance to be provided under an interest reduction contract pursuant to this subsection shall be made on the basis of an assumed mortgage

term equal to the lesser of a 40-year amortization period or the term of that part of the mortgage which relates to the additional assistance provided under this subsection, even though the additional assistance may be provided for a shorter period. The authority conferred by this subsection to provide interest reduction and rental assistance payments shall be available only to the extent approved in appropriation Acts.

(s) Grants and loans for rehabilitation of multifamily projects

(1) In general

The Secretary may make grants and loans for the capital costs of rehabilitation to owners of projects that meet the eligibility and other criteria set forth in, and in accordance with, this subsection.

(2) Project eligibility

A project may be eligible for capital assistance under this subsection under a grant or loan only—

(A) if—

(i) the project is or was insured under any provision of subchapter II of this chapter;

(ii) the project was assisted under section 1437f of title 42 on October 27, 1997; and

(iii) the project mortgage was not held by a State agency as of October 27, 1997;

(B) if the project owner agrees to maintain the housing quality standards as required by the Secretary;

(C) the project owner enters into such binding commitments as the Secretary may require (which shall be applicable to any subsequent owner) to ensure that the owner will continue to operate the project in accordance with all low-income affordability restrictions for the project in connection with the Federal assistance for the project for a period having a duration that is not less than the period referred to in paragraph (5)(C);

(D)(i) if the Secretary determines that the owner or purchaser of the project has not engaged in material adverse financial or managerial actions or omissions with regard to such project; or

(ii) if the Secretary elects to make such determination, that the owner or purchaser of the project has not engaged in material adverse financial or managerial actions or omissions with regard to other projects of such owner or purchaser that are federally assisted or financed with a loan from, or mortgage insured or guaranteed by, an agency of the Federal Government;

(iii) material adverse financial or managerial actions or omissions, as the terms are used in this subparagraph, include—

(I) materially violating any Federal, State, or local law or regulation with regard to this project or any other federally assisted project, after receipt of notice and an opportunity to cure;

(II) materially breaching a contract for assistance under section 1437f of title 42, after receipt of notice and an opportunity to cure;

(III) materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity, after receipt of notice and an opportunity to cure;

(IV) repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the property;

(V) materially failing to maintain the property according to housing quality standards after receipt of notice and a reasonable opportunity to cure; or

(VI) committing any act or omission that would warrant suspension or debarment by the Secretary; and

(iv) the term ''owner'' as used in this subparagraph, in addition to it having the same meaning as in section 1437f(f) of title 42, also means an affiliate of the owner; the term ''purchaser'' as used in this subsection means any private person or entity, including a cooperative, an agency of the Federal Government, or a public housing agency, that, upon purchase of the project, would have the legal right to lease or sublease dwelling units in the project, and also means an affiliate of the purchaser; the terms ''affiliate of the owner'' and ''affiliate of the purchaser'' means any person or entity (including, but not limited to, a general partner or managing member, or an officer of either) that controls an owner or purchaser, is controlled by an owner or purchaser, or is under common control with the owner or purchaser; the term ''control'' means the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of the owner or purchaser; and

(E) if the project owner demonstrates to the satisfaction of the Secretary—

(i) using information in a comprehensive needs assessment, that capital assistance under this subsection from a grant or loan (as appropriate) is needed for rehabilitation of the project; and

(ii) that project income is not sufficient to support such rehabilitation.

(3) Eligible uses

Amounts from a grant or loan under this subsection may be used only for projects eligible under paragraph (2) for the purposes of—

(A) payment into project replacement reserves;

(B) debt service payments on non-Federal rehabilitation loans; and

(C) payment of nonrecurring maintenance and capital improvements, under such terms and conditions as are determined by the Secretary.

(4) Grant and loan agreements

(A) In general

The Secretary shall provide in any grant or loan agreement under this subsection that the grant or loan shall be terminated if

the project fails to meet housing quality standards, as applicable on October 27, 1997, or any successor standards for the physical conditions of projects, as are determined by the Secretary.

(B) Affordability and use clauses

The Secretary shall include in a grant or loan agreement under this subsection a requirement for the project owners to maintain such affordability and use restrictions as the Secretary determines to be appropriate and consistent with paragraph (2)(C).

(C) Other terms

The Secretary may include in a grant or loan agreement under this subsection such other terms and conditions as the Secretary determines to be necessary.

(5) Loan terms

A loan under this subsection—

(A) shall provide amounts for the eligible uses under paragraph (3) in a single loan disbursement of loan principal;

(B) shall be repaid, as to principal and interest, on behalf of the borrower using amounts recaptured from contracts for interest reduction payments pursuant to clause (i) or (ii) of paragraph (7)(A);

(C) shall have a term to maturity of a duration not shorter than the remaining period for which the interest reduction payments for the insured mortgage or mortgages that fund repayment of the loan would have continued after extinguishment or writedown of the mortgage (in accordance with the terms of such mortgage in effect immediately before such extinguishment or writedown);

(D) shall bear interest at a rate, as determined by the Secretary of the Treasury, that is based upon the current market yields on outstanding marketable obligations of the United States having comparable maturities; and

(E) shall involve a principal obligation of an amount not exceeding the amount that can be repaid using amounts described in subparagraph (B) over the term determined in accordance with subparagraph (C), with interest at the rate determined under subparagraph (D).

(6) Delegation

(A) In general

In addition to the authorities set forth in subsection (p) of this section, the Secretary may delegate to State and local governments the responsibility for the administration of grants under this subsection. Any such government may carry out such delegated responsibilities directly or under contracts.

(B) Administration costs

In addition to other eligible purposes, amounts of grants under this subsection may be made available for costs of administration under subparagraph (A).

(7) Funding

(A) In general

For purposes of carrying out this subsection, the Secretary may make available amounts that are unobligated amounts for contracts for interest reduction payments—

(i) that were previously obligated for contracts for interest reduction payments under this section until the insured mortgage under this section was extinguished;

(ii) that become available as a result of the outstanding principal balance of a mortgage having been written down;

(iii) that are uncommitted balances within the limitation on maximum payments that may have been, before October 27, 1997, permitted in any fiscal year; or

(iv) that become available from any other source.

(B) Liquidation authority

The Secretary may liquidate obligations entered into under this subsection under section 1305(10) of title 31.

(C) Capital grants

In making capital grants under the terms of this subsection, using the amounts that the Secretary has recaptured from contracts for interest reduction payments, the Secretary shall ensure that the rates and amounts of outlays do not at any time exceed the rates and amounts of outlays that would have been experienced if the insured mortgage had not been extinguished or the principal amount had not been written down, and the interest reduction payments that the Secretary has recaptured had continued in accordance with the terms in effect immediately prior to such extinguishment or write-down.

(D) Loans

In making loans under this subsection using the amounts that the Secretary has recaptured from contracts for interest reduction payments pursuant to clause (i) or (ii) of paragraph (7)(A)—

(i) the Secretary may use such recaptured amounts for costs (as such term is defined in section 661a of title 2) of such loans; and

(ii) the Secretary may make loans in any fiscal year only to the extent or in such amounts that amounts are used under clause (i) to cover costs of such loans.

(June 27, 1934, ch. 847, title II, §236, as added Pub. L. 90–448, title II, §201(a), Aug. 1, 1968, 82 Stat. 498; amended Pub. L. 91–152, title I, §§101(e), 107(b), 108, title IV, §§412(c), 418(b), Dec. 24, 1969, 83 Stat. 379, 381, 398, 402; Pub. L. 91–609, title I, §§101(e), 102(b), 108, 114(b), 114[115](b), 117(c), 118(a), 121, Dec. 31, 1970, 84 Stat. 1770, 1772–1776; Pub. L. 92–503, §1(e), Oct. 18, 1972, 86 Stat. 906; Pub. L. 93–85, §1(e), Aug. 10, 1973, 87 Stat. 220; Pub. L. 93–117, §1(e), Oct. 2, 1973, 87 Stat. 421; Pub. L. 93–383, title II, §212, Aug. 22, 1974, 88 Stat. 672; Pub. L. 94–173, §4(b), Dec. 23, 1975, 89 Stat. 1027; Pub. L. 94–375, §4, Aug. 3, 1976, 90 Stat. 1070; Pub. L. 95–128, title II, §206(a)–(c), title III, §301(e), Oct. 12, 1977, 91 Stat. 1130, 1131; Pub. L. 95–406, §1(e), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95–557, title II, §201(k), formerly (i), title III, §301(e), Oct. 31, 1978, 92 Stat. 2087, 2096, as renumbered Pub. L. 97–35, title III, §321(f)(2)(A), Aug. 13, 1981, 95 Stat. 400; Pub. L. 96–71, §1(e),

Sept. 28, 1979, 93 Stat. 501; Pub. L. 96–105, §1(e), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96–153, title II, §§203(b), 205(b), title III, §301(e), Dec. 21, 1979, 93 Stat. 1107, 1108, 1111; Pub. L. 96–372, §§1(e), 2, Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96–399, title II, §204(b), 211, title III, §301(e), Oct. 8, 1980, 94 Stat. 1629, 1636, 1638; Pub. L. 97–35, title III, §§321(f)(3), 322(f), 331(e), Aug. 13, 1981, 95 Stat. 400, 403, 413; Pub. L. 97–289, §1(e), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98–35, §1(e), May 26, 1983, 97 Stat. 197; Pub. L. 98–109, §1(e), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98–181, title II, §§217(c), 218, Nov. 30, 1983, 97 Stat. 1186, 1187; Pub. L. 98–479, title I, §§102(a)(2), 104(a)(4), title II, §204(a)(9), Oct. 17, 1984, 98 Stat. 2221, 2225, 2232; Pub. L. 100–242, title I, §§167(a)(1), (b), 170(b), 186(a), title IV, §§429(f), 430(a), Feb. 5, 1988, 101 Stat. 1864, 1867, 1877, 1919; Pub. L. 101–235, title II, §203(a)(1), title III, §301, Dec. 15, 1989, 103 Stat. 2037, 2043; Pub. L. 101–625, title V, §578(a), title VI, §§611(a), (b)(1), 612(a), Nov. 28, 1990, 104 Stat. 4244, 4278, 4279; Pub. L. 102–550, title III, §331, title IV, §408(b), Oct. 28, 1992, 106 Stat. 3773, 3778; Pub. L. 104–99, title IV, §405(d), Jan. 26, 1996, 110 Stat. 44; Pub. L. 104–134, title I, §101(e) [title II, §228], Apr. 26, 1996, 110 Stat. 1321–257, 1321–292; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–204, title II, §221, Sept. 26, 1996, 110 Stat. 2906; Pub. L. 105–65, title V, §531, Oct. 27, 1997, 111 Stat. 1409; Pub. L. 105–276, title II, §227, Oct. 21, 1998, 112 Stat. 2490; Pub. L. 106–74, title V, §§532(a)–(d), 533, Oct. 20, 1999, 113 Stat. 1116, 1117, 1119; Pub. L. 106–377, §1(a)(1) [title II, §216], Oct. 27, 2000, 114 Stat. 1441, 1441A–28; Pub. L. 106–569, title VIII, §861(a), Dec. 27, 2000, 114 Stat. 3025.)

REFERENCES IN TEXT

The Low-Income Housing Preservation and Resident Homeownership Act of 1990, referred to in subsec. (f)(1)(B)(iii), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, as amended, which is classified principally to chapter 42 (§4101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (f)(1)(B)(iii), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101–625, is known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Subtitles A and B of title II, which were formerly set out as a note under section 1715*l* of this title and which amended section 1715z–6 of this title, were amended generally by Pub. L. 101–625 and are classified to subchapter I (§4101 et seq.) of chapter 42 of this title. Subtitles C and D of title II amended section 1715z–15 of this title and sections 1437f, 1472, 1485, and 1487 of Title 42, The Public Health and Welfare. Another subtitle C of title II of Pub. L. 100–242, as added by Pub. L. 102–550, is classified generally to subchapter II (§4141 et seq.) of chapter 42 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Section 201 of the Housing and Community Development Amendments of 1978, referred to in subsec. (f)(3), (5)(A), is section 201 of Pub. L. 95–557, title II, Oct. 31, 1978, 92 Stat. 2084, which enacted section 1715z–1a of this title and amended this section.

Section 516 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, referred to in subsec. (g)(2), is section 516 of Pub. L. 105–65, which is set out as a note under section 1437f of Title 42, The Public Health and Welfare.

Section 1701q of this title, referred to in subsec. (j)(2)(B), was amended generally by Pub. L. 101–625, title VIII, §801(a), Nov. 28, 1990, 104 Stat. 4297, and, as so amended, no longer defines the term ''elderly or handicapped families''.

Section 236 contracts, referred to in subsec. (r)(2), refer to contracts under this section.

CODIFICATION

Subsec. (*o*), added as subsec. (n) by Pub. L. 91–609, §121(a), designated subsec. (*o*) in the Code as a prior subsec. (n) was added by Pub. L. 91–152, and amended by Pub. L. 91–609, §101(e).

AMENDMENTS

2000—Subsec. (g)(2). Pub. L. 106–569, §861(a)(1), substituted ''Notwithstanding'' for ''Subject to paragraph (3) and notwithstanding''.

Subsec. (g)(3). Pub. L. 106–569, §861(a)(2), redesignated par. (4) as (3) and struck out former par. (3) which related to authority under par. (2) to retain and use excess charges.

Subsec. (g)(3)(A). Pub. L. 106–377 substituted ''fiscal years 2000 and 2001'' for ''fiscal year 2000''.

Subsec. (g)(4). Pub. L. 106–569, §861(a)(2), redesignated par. (4) as (3).

1999—Subsec. (e). Pub. L. 106–74, §532(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (f)(1). Pub. L. 106–74, §532(d), added par. (1) and struck out former par. (1) which required that basic and fair market rental charges be established with the approval of the Secretary and that the rental charge for each dwelling unit be within the basic and fair market charges, subject to certain exceptions and refinements.

Subsec. (g). Pub. L. 106–74, §532(b), (c), designated existing provisions as par. (1), struck out at end ''Notwithstanding any other requirements of this subsection, an owner of a project with a mortgage insured under this section, or a project previously assisted under subsection (b) of this section but without a mortgage insured under this section if the project mortgage was insured under section 1713 of this title before July 30, 1998 pursuant to section 1715n(f) of this title and assisted under subsection (b) of this section, may retain some or all of such excess charges for project use if authorized by the Secretary and upon such terms and conditions as established by the Secretary.'', and added pars. (2) to (4).

Subsec. (s). Pub. L. 106–74, §533(a)(1), substituted ''Grants and loans for rehabilitation of multifamily projects'' for ''Grant authority'' in heading.

Subsec. (s)(1). Pub. L. 106–74, §533(a)(2), inserted ''and loans'' after ''grants''.

Subsec. (s)(2). Pub. L. 106–74, §533(a)(3)(A), substituted ''capital assistance under this subsection under a grant or loan only'' for ''capital grant assistance under this subsection'' in introductory provisions.

Subsec. (s)(2)(C). Pub. L. 106–74, §533(b)(1)(B), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (s)(2)(D). Pub. L. 106–74, §533(b)(1)(A), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (s)(2)(D)(i). Pub. L. 106–74, §533(a)(3)(B), substituted ''capital assistance under this subsection from a grant or loan (as appropriate)'' for ''capital grant assistance''.

Subsec. (s)(2)(E). Pub. L. 106–74, §533(b)(1)(A), redesignated subpar. (D) as (E).

Subsec. (s)(3). Pub. L. 106–74, §533(a)(4), in par. heading, substituted ''Eligible uses'' for ''Eligible purposes'' and in introductory provisions, substituted ''Amounts from a grant or loan under this subsection may be used only for projects eligible under paragraph (2) for the purposes of—'' for ''The Secretary may make grants to the owners of eligible projects for the purposes of—''.

Subsec. (s)(4). Pub. L. 106–74, §533(a)(5)(A), substituted ''Grant and loan agreements'' for ''Grant agreement'' in heading.

Subsec. (s)(4)(A). Pub. L. 106–74, §533(a)(5)(B), inserted ''or loan'' after ''grant'' in two places.

Subsec. (s)(4)(B). Pub. L. 106–74, § 533(a)(5)(B), (b)(2), inserted ''or loan'' after ''grant'' and ''and consistent with paragraph (2)(C)'' before period at end.

Subsec. (s)(4)(C). Pub. L. 106–74, § 533(a)(5)(B), inserted ''or loan'' after ''grant''.

Subsec. (s)(5). Pub. L. 106–74, § 533(a)(9), added par. (5). Former par. (5) redesignated (6).

Pub. L. 106–74, § 533(a)(6), which directed the insertion of ''or loan'' after ''grant'' each place it appeared, could not be executed because the word ''grant'' did not appear.

Subsec. (s)(6). Pub. L. 106–74, § 533(a)(8), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (s)(6)(D). Pub. L. 106–74, § 533(a)(7), added subpar. (D).

Subsec. (s)(7). Pub. L. 106–74, § 533(a)(8), redesignated par. (6) as (7).

1998—Subsec. (g). Pub. L. 105–276 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''The project owner shall, as required by the Secretary, accumulate, safeguard, and periodically pay the Secretary or such other entity as determined by the Secretary and upon such terms and conditions as the Secretary deems appropriate, all rental charges collected on a unit-by-unit basis in excess of the basic rental charges. Unless otherwise directed by the Secretary, such excess charges shall be credited to a reserve fund to be used by the Secretary to make additional assistance payments as provided in paragraph (3) of subsection (f) of this section. However, a project owner with a mortgage insured under this section may retain some or all of such excess charges for project use if authorized by the Secretary and upon such terms and conditions as established by the Secretary.''

1997—Subsec. (s). Pub. L. 105–65 added subsec. (s).

1996—Subsec. (f)(1). Pub. L. 104–204, § 221(a)(2), which directed the amendment of second sentence by striking ''or (ii) the fair market rental established under section 1437f(c) of title 42 for the market area in which the housing is located, or (iii) the actual rent (as determined by the Secretary) paid for a comparable unit in comparable unassisted housing in the market area in which the housing assisted under this section is located,'' after ''pursuant to this paragraph,'', was executed by striking language which did not include word ''or'' before ''(ii)'' to reflect the probable intent of Congress and the amendment by Pub. L. 104–134, § 101(e) [title II, § 228(a)]. See below.

Pub. L. 104–204, § 221(a)(1), (3), struck out ''the lower of (i)'' after ''amount, not exceeding'', and inserted after second sentence ''However, in the case of a project which contains more than 5,000 units, is subject to an interest reduction payments contract, and is financed under a State or local program, the Secretary may reduce the rental charge ceiling, but in no case shall the rent be below basic rent. For plans of action approved for Capital Grants under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) or the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA), the rental charge for each dwelling unit shall be at the basic rental charge or such greater amount, not exceeding the lower of (i) the fair market rental charge determined pursuant to this paragraph, or (ii) the actual rent paid for a comparable unit in comparable unassisted housing in the market area in which the housing assisted under this section is located, as represents 30 percent of the tenant's adjusted income, but in no case shall the rent be below basic rent.''

Pub. L. 104–134, § 101(e) [title II, § 228(a)], in second sentence, struck out ''or'' before ''(ii)'' and substituted ''located, or (iii) the actual rent (as determined by the Secretary) paid for a comparable unit in comparable unassisted housing in the market area in which the housing assisted under this section is located,'' for ''located,''.

Pub. L. 104–99, § 405(d)(1), substituted ''The rental charge for each dwelling unit shall be at the basic rental charge or such greater amount, not exceeding the lower of (i) the fair market rental charge determined pursuant to this paragraph, or (ii) the fair market rental established under section 1437f(c) of title 42 for the market area in which the housing is located, as represents 30 per centum of the tenant's adjusted income.'' for ''The rental for each dwelling unit shall be at the basic rental charge or such greater amount, not exceeding the fair market rental charge, as represents 30 per centum of the tenant's adjusted income.''

Subsec. (f)(6). Pub. L. 104–99, § 405(d)(2), struck out par. (6) which read as follows:

''(6)(A) Notwithstanding paragraph (1), tenants whose incomes exceed 80 percent of area median income shall pay as rent the lower of the following amounts: (A) 30 percent of the family's adjusted monthly income; or (B) the relevant fair market rental established under section 1437f(b) of title 42 for the jurisdiction in which the housing is located.

''(B) An owner shall phase in any increase in rents for current tenants resulting from subparagraph (A). Rental charges collected in excess of the basic rental charges shall continue to be credited to the reserve fund described in subsection (g)(1) of this section.''

Subsec. (f)(7). Pub. L. 104–204, § 221(b), added par. (7).

Subsec. (g). Pub. L. 104–204, § 221(c), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''The project owner shall, as required by the Secretary, accumulate, safeguard, and periodically pay to the Secretary all rental charges collected on a unit-by-unit basis in excess of the basic rental charges. Such excess charges shall be credited to a reserve fund to be used by the Secretary to make additional assistance payments as provided in paragraph (3) of subsection (f) of this section.''

Pub. L. 104–134, § 101(e) [title II, § 228(b)], inserted ''on a unit-by-unit basis'' after ''collected''.

1992—Subsec. (f)(3). Pub. L. 102–550, § 408(b), substituted ''September 30, 1994'' for ''September 30, 1992''.

Subsec. (j)(4)(A). Pub. L. 102–550, § 331, struck out ''private'' before ''mortgagor''.

1990—Subsec. (f)(3). Pub. L. 101–625, § 578(a), substituted ''September 30, 1992'' for ''September 30, 1991''.

Subsec. (f)(5). Pub. L. 101–625, § 611(b)(1), added par. (5).

Subsec. (f)(6). Pub. L. 101–625, § 612(a), added par. (6).

Subsec. (m). Pub. L. 101–625, § 611(a), inserted before period at end of first sentence '', except that any amounts not actually received by the family may not be considered as income under this subsection''.

1989—Subsec. (b). Pub. L. 101–235, § 203(a)(1), inserted ''public entity,'' after ''dividend entity,''.

Subsec. (f)(3). Pub. L. 101–235, § 301, substituted ''September 30, 1991'' for ''September 30, 1989''.

1988—Subsec. (f)(3). Pub. L. 100–242, § 186(a), substituted ''September 30, 1989'' for ''September 30, 1985''.

Subsec. (f)(4). Pub. L. 100–242, § 167(a)(1), substituted ''100 percent'' for ''90 per centum''.

Subsec. (i)(1). Pub. L. 100–242, §§ 170(b), 429(f), amended par. (1) identically, substituting ''subsection (f)(4) of this section'' for ''subsection (h) of this section''.

Subsec. (n). Pub. L. 100–242, § 167(b), inserted at end ''A mortgage may be insured under this section after the date in the preceding sentence in order to refinance a mortgage insured under this section or to finance pursuant to subsection (j)(3) of this section the purchase, by a cooperative or nonprofit corporation or association, of a project assisted under this section.''

Subsec. (r). Pub. L. 100–242, § 430(a), added subsec. (r).

1984—Subsec. (f)(4). Pub. L. 98–479, § 102(a)(2), struck out ''up to'' before ''90 per centum''.

Subsec. (j)(4)(B). Pub. L. 98–479, § 104(a)(4), substituted ''bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary determines is necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets'' for ''bear interest (exclusive of premium charges for insurance and service charges, if any) at not to exceed such per centum per annum (not in excess of 6 per centum), on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet the mortgage market''.

Subsec. (j)(5). Pub. L. 98–479, § 204(a)(9), substituted ''of residents'' for ''or residents'' in provision following subpar. (C).

1983—Subsec. (f)(3). Pub. L. 98–181, § 217(c), substituted ''September 30, 1985'' for ''September 30, 1982''.

Subsec. (f)(4). Pub. L. 98–181, § 218(a), added par. (4).

Subsec. (i)(1). Pub. L. 98–181, § 218(b), inserted provision relating to utilization by the Secretary of any authority under this section that it recaptured.

Subsec. (n). Pub. L. 98–109 substituted ''November 30, 1983'' for ''September 30, 1983''.

Pub. L. 98–35 substituted ''September 30, 1983'' for ''May 20, 1983''.

1982—Subsec. (n). Pub. L. 97–289 substituted ''May 20, 1983'' for ''September 30, 1982''.

1981—Subsec. (e). Pub. L. 97–35, § 322(f)(1), substituted ''one year'' for ''two years''.

Subsec. (f)(1). Pub. L. 97–35, § 322(f)(2), (3), substituted provisions respecting applicability of specific percentage of tenant's adjusted income, for provisions respecting applicability of specific percentage of tenant's income.

Subsec. (f)(2). Pub. L. 97–35, § 322(f)(4)–(6), substituted provisions respecting applicability of specific percentage of tenant's adjusted income, for provisions respecting applicability of specific percentage of tenant's income, and struck out provisions relating to reduction of rental payment.

Subsec. (f)(3). Pub. L. 97–35, §§ 321(f)(3), 322(f)(7), struck out subpar. (A) which related to establishment of an initial operating expense level, redesignated subpar. (B) as entire provision and substituted ''1982'' for ''1981''.

Subsec. (m). Pub. L. 97–35, § 322(f)(8), substituted provisions defining ''income'' as income from all sources of each member of the household, subject to certain exclusions, for provisions defining term ''income'' as income determined under section 1437f of title 42.

Subsec. (n). Pub. L. 97–35, § 331(e), substituted ''1982'' for ''1981''.

1980—Subsec. (f)(3)(B). Pub. L. 96–399, § 204(b), substituted ''September 30, 1981'' for ''October 15, 1980'' in third sentence, and struck out ''on or after October 1, 1978, or credited to such fund prior to October 1, 1978, but remaining unobligation on October 31, 1978,'' in first sentence.

Pub. L. 96–372, § 2, substituted ''October 15, 1980'' for ''September 30, 1980''.

Subsec. (n). Pub. L. 96–399, § 301(e), substituted ''September 30, 1981'' for ''October 15, 1980''.

Pub. L. 96–372, § 1(e), substituted ''October 15, 1980'' for ''September 30, 1980''.

Subsec. (q). Pub. L. 96–399, § 211, added subsec. (q).

1979—Subsec. (f)(3)(B). Pub. L. 96–153, § 205(b), substituted ''after October 1, 1978, or credited to such fund prior to October 1, 1978, but remaining unobligated on October 31, 1978,'' for ''after October 1, 1978,'', and in provision relating to the restriction on approval of funds, substituted ''September 30, 1980'' for ''September 30, 1979''.

Subsec. (m). Pub. L. 96–153, § 203(b), substituted definition of ''income'' by reference to section 1437f of title 42 for provisions requiring deduction of $300 for each minor member of the family in determining the income and further providing that the earnings of a minor not be included in the income of person or family.

Subsec. (n). Pub. L. 96–153, § 301(e), substituted ''September 30, 1980'' for ''November 30, 1979''.

Pub. L. 96–105 substituted ''November 30, 1979'' for ''October 31, 1979''.

Pub. L. 96–71 substituted ''October 31, 1979'' for ''September 30, 1979.''

1978—Subsec. (f)(3). Pub. L. 95–557, § 201(k)(1), formerly § 201(i)(1), designated existing provisions as par. (A), substituted ''For each fiscal year prior to the fiscal year 1979, the'' for ''The'', and added par. (B).

Subsec. (g). Pub. L. 95–557, § 201(k)(2), formerly § 201(i)(2), struck out provisions authorizing, that if during any period the balance in reserve fund was adequate to meet additional assistance payments, such excess charges be credited to the appropriation authorized by subsec. (i), and be available until the end of the next fiscal year for purpose of making assistance payments with respect to rental housing projects, and that for purpose of this subsection and par. (3) of subsec. (f), initial operating expense level for any project assisted under a contract entered into prior to Oct. 12, 1977, be established by the Secretary not later than 180 days after Oct. 12, 1977.

Subsec. (n). Pub. L. 95–557, § 301(e), substituted ''September 30, 1979'' for ''October 31, 1978''.

Pub. L. 95–406 substituted ''October 31, 1978'' for ''September 30, 1978''.

1977—Subsec. (f)(3). Pub. L. 95–128, § 206(a), (b), substituted ''The Secretary is authorized to make, and shall contract to make to the extent of the moneys in the reserve fund established under subsection (g) of this section and to the further extent of funds authorized in appropriation Acts, an additional monthly assistance payment to the project owner up to the amount by which the sum of the cost of utilities and local property taxes exceeds the initial operating expense level.'' for ''At any time subsequent to the establishment of an initial operating expense level, the Secretary is authorized to make, and contract to make, additional assistance payments to the project owner in an amount up to the amount by which the sum of the cost of utilities and local property taxes exceeds the initial operating expense level, but not to exceed the amount required to maintain the basic rentals of any units at levels not in excess of 30 per centum or such lower per centum not less than 25 per centum as shall reflect the reduction permitted in clause (ii) of the last sentence of paragraph (1), of the income of tenants occupying such units.'', inserted sentence ''Such payment shall be used by the project owner solely to effect, and there shall be, a reduction in the basic rental charges established for the project.'', and substituted ''Any contract to make additional monthly assistance payments shall be for a one-year period and shall be adjusted periodically to provide, to the extent approved in appropriation Acts, for continuation of the payments and for an appropriate adjustment in the amount of the assistance payments.'' for ''Any contract to make additional assistance payments may be amended periodically to provide for appropriate adjustments in the amount of the assistance payments.''; and substituted in last sentence ''unless the Secretary finds that the increase in the cost of utilities or local property taxes is not reasonable or not'' for ''only if the Secretary finds that the increase in the cost of utilities or local property taxes, is reasonable and is''.

Subsec. (g). Pub. L. 95–128, § 206(c), substituted date of enactment of Pub. L. 95–128, which is October 12, 1977, for date of enactment of Pub. L. 93–383, which was August 22, 1974.

Subsec. (n). Pub. L. 95–128, § 301(e), substituted ''September 30, 1978'' for ''September 30, 1977''.

1976—Subsec. (f)(2). Pub. L. 94–375, § 4(b), inserted ''(including the amount allowed for utilities in the case of a project with separate utility metering)'' after ''basic rentals'' and ''reduce the rental payment'', and struck out ''or such lower per centum as may be established pursuant to the provisions of clause (ii) of the last sentence of paragraph (1)'' after ''25 per centum of their income'' and ''25 per centum of the tenant's income''.

Subsec. (n). Pub. L. 94–375, § 4(a), substituted ''September 30, 1977'' for ''June 30, 1976''.

1975—Subsec. (j)(5)(C). Pub. L. 94–173 struck out provision limiting to 10 per centum the number of dwelling units available to lower income persons under the age of 62.

1974—Subsec. (f). Pub. L. 93–383, § 212(1), (2), redesignated existing subsec. (f) as (f)(1) and cls. (1) and (2) as (A) and (B), respectively, and inserted provisions relating to separate utility metering and pars. (2) and (3).

Subsec. (g). Pub. L. 93–383, § 212(3), substituted provisions authorizing the creation of a reserve fund of excess rental charges and providing for use of such fund for making additional assistance payments, for provi-

sions authorizing the Secretary to deposit excess charges in a revolving fund used for making interest reduction payments to any housing project receiving assistance, and authorizing investment of monies in United States obligations.

Subsec. (i)(1). Pub. L. 93–383, § 212(4), inserted authorization for increase by $75,000,000 on July 1, 1974.

Subsec. (i)(2). Pub. L. 93–383, § 212(5), substituted provisions relating to contracts for assistance payments and income limitations with respect to families involved in such contracts, for provisions relating to contracts for interest reduction payments, income limitations with respect to families involved in such contracts, and semiannual reports to Congressional Committees on income levels of families living in assisted projects.

Subsec. (i)(3). Pub. L. 93–383, § 212(5), substituted provisions relating to availability of not less than 10 per centum of the total amount of contracts for assistance payments, for provisions relating to contracts for not more than 10 per centum of the total amount of interest reduction payments.

Subsec. (i)(4). Pub. L. 93–383, § 212(5), added par. (4).

Subsec. (n). Pub. L. 93–383, § 212(6), substituted ''June 30, 1976'' for ''October 1, 1974''.

Subsec. (p). Pub. L. 93–383, § 212(7), added subsec. (p).

1973—Subsec. (n). Pub. L. 93–117 substituted ''October 1, 1974'' for ''October 1, 1973''.

Pub. L. 93–85 substituted ''October 1, 1973'' for ''June 30, 1973''.

1972—Subsec. (n). Pub. L. 92–503 substituted ''June 30, 1973'' for ''October 1, 1972''.

1970—Subsec. (b). Pub. L. 91–609, §§ 108, 118(a), inserted definition of ''mortgage insurance premium'' and substituted ''which may involve either new or existing construction and which'' for ''which prior to completion of construction or rehabilitation'' before ''is approved'', respectively.

Subsec. (g). Pub. L. 91–609, § 117(c), provided for guarantee as to principal and interest by any agency of the United States and for investment of moneys in bonds or other obligations the proceeds of which will be used to directly support the residential mortgage market.

Subsec. (i)(1). Pub. L. 91–609, §§ 102(b), 121(b), in second sentence inserted ''outstanding'' before ''contracts'' where first appearing and substituted ''$150,000,000 on July 1, 1970'' and ''$200,000,000 on July 1, 1971'' for ''$125,000,000 on July 1, 1970'' and ''$170,000,000 on July 1, 1971'', respectively, and in first sentence inserted ''by the Secretary'' after ''entered into''.

Subsec. (i)(3). Pub. L. 91–609, § 114[115](b)(2), added par. (3).

Subsec. (j)(5). Pub. L. 91–609, §§ 114(b), 114[115](b)(1), provided for use of certain housing facilities for classroom purposes where public schools in the community are overcrowded due in part to attendance of residents of the property or project, but dispensed with need for kitchen facilities in dwelling units in projects for displaced, elderly, or handicapped families.

Subsec. (n). Pub. L. 91–609, § 101(e), substituted ''October 1, 1972'' for ''October 1, 1971''.

Subsec. (*o*). Pub. L. 91–609, § 121(a), added subsec. (*o*). See Codification note above.

1969—Subsec. (b). Pub. L. 91–152, §§ 108, 418(b), inserted proviso authorizing the Secretary to continue making interest reduction payments where the mortgage has been assigned to him, and inserted ''mortgage or part thereof on a'' after ''with respect to a''.

Subsec. (i)(1). Pub. L. 91–152, § 107(b), substituted ''$125,000,000 on July 1, 1969, by $125,000,000 on July 1, 1970, and by $170,000,000 on July 1, 1971'' for ''$100,000,000 on July 1, 1969, and by $125,000,000 on July 1, 1970''.

Subsec. (i)(2). Pub. L. 91–152, § 412(c), required the Secretary to report semiannually instead of annually to the respective Committees on Banking and Currency of the Senate and House of Representatives.

Subsec. (n). Pub. L. 91–152, § 101(e), added subsec. (n).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective Dec. 27, 2000, unless effectiveness or applicability upon another date certain is specifically provided for, with provisions relating to effect of regulatory authority, see section 803 of Pub. L. 106–569, set out as a note under section 1701q of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–74, title V, § 532(f), Oct. 20, 1999, 113 Stat. 1119, provided that: ''This section [amending this section and enacting provisions set out as a note below] shall take effect, and the amendments made by this section are made and shall apply, on the date of the enactment of this Act [Oct. 20, 1999].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 106–74, title V, § 532(e), Oct. 20, 1999, 113 Stat. 1118, provided that: ''Section 236(g) of the National Housing Act (12 U.S.C. 1715z–1(g)), as amended by section 227 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105–276; 112 Stat. 2490) shall be effective on the date of the enactment of such Public Law 105–276 [Oct. 21, 1998], and any excess rental charges referred to in such section that have been collected since such date of the enactment with respect to projects with mortgages insured under section 207 of the National Housing Act (12 U.S.C. 1713) may be retained by the project owner unless the Secretary of Housing and Urban Development specifically provides otherwise. The Secretary may return any excess charges remitted to the Secretary since such date of the enactment.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by section 203(b) of Pub. L. 96–153 effective Dec. 21, 1979, and maximum amount of tenant contribution applicable, see section 203(c) of Pub. L. 96–153, set out as a note under section 1701s of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 201(k), formerly (i), of Pub. L. 95–557, as redesignated by Pub. L. 97–35, title III, § 321(f)(2)(A), Aug. 13, 1981, 95 Stat. 400, provided that the amendment made by that section is effective Oct. 1, 1978.

EFFECTIVE DATE OF 1977 AMENDMENT; APPLICABILITY

Section 206(d) of Pub. L. 95–128 provided that: ''The amendments made by this section [amending this section] shall become effective on October 1, 1977, and shall apply to assistance payments pursuant to section 236(f)(3) of the National Housing Act [subsec. (f)(3) of this section] with respect only to periods commencing on or after such date.''

UNCOMMITTED BALANCES OF EXCESS RENTAL CHARGES

Pub. L. 110–161, div. K, title II, Dec. 26, 2007, 121 Stat. 2425, provided in part that: ''From the Rental Housing Assistance Fund, all uncommitted balances of excess rental charges as of September 30, 2007, and any collections made during fiscal year 2008 and all subsequent fiscal years, shall be transferred to the Flexible Subsidy Fund, as authorized by section 236(g) of the National Housing Act [12 U.S.C. 1715z–1(g)].''

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 109–115, div. A, title III, Nov. 30, 2005, 119 Stat. 2453.

Pub. L. 108–447, div. I, title II, Dec. 8, 2004, 118 Stat. 3308.

Pub. L. 108–199, div. G, title II, Jan. 23, 2004, 118 Stat. 385.

Pub. L. 108–7, div. K, title II, Feb. 20, 2003, 117 Stat. 494.

Pub. L. 107–73, title II, Nov. 26, 2001, 115 Stat. 669.

Pub. L. 106–377, § 1(a)(1) [title II], Oct. 27, 2000, 114 Stat. 1441, 1441A–19.
Pub. L. 106–74, title II, Oct. 20, 1999, 113 Stat. 1064.
Pub. L. 105–276, title II, Oct. 21, 1998, 112 Stat. 2480.
Pub. L. 105–65, title II, Oct. 27, 1997, 111 Stat. 1361.
Pub. L. 104–134, title I, § 101(e) [title II], Apr. 26, 1996, 110 Stat. 1321–257, 1321–270.

SUBMISSION OF ELECTRONIC INVOICES

Pub. L. 109–115, div. A, title III, § 325, Nov. 30, 2005, 119 Stat. 2466, provided that: ''Notwithstanding any other provision of law, for fiscal year 2006 and thereafter, all mortgagees receiving interest reduction payments under section 236 of the National Housing Act (12 U.S.C. 1715z–1) shall submit only electronic invoices to the Department of Housing and Development in order to receive such payments. The mortgagees shall comply with this requirement no later than 90 days from the date of enactment of this provision [Nov. 30, 2005].''

TREATMENT OF EXCESS CHARGES PREVIOUSLY COLLECTED

Pub. L. 106–569, title VIII, § 861(b), Dec. 27, 2000, 114 Stat. 3025, provided that: ''Any excess charges that a project owner may retain pursuant to the amendments made by subsections (b) and (c) of section 532 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Public Law 106–74; 113 Stat. 1116) [amending this section] that have been collected by such owner since the date of the enactment of such appropriations Act [Oct. 20, 1999] and that such owner has not remitted to the Secretary of Housing and Urban Development may be retained by such owner unless such Secretary otherwise provides. To the extent that a project owner has remitted such excess charges to the Secretary since such date of the enactment, the Secretary may return to the relevant project owner any such excess charges remitted. Notwithstanding any other provision of law, amounts in the Rental Housing Assistance Fund, or heretofore or subsequently transferred from the Rental Housing Assistance Fund to the Flexible Subsidy Fund, shall be available to make such return of excess charges previously remitted to the Secretary, including the return of excess charges referred to in section 532(e) of such appropriations Act [see Effective Date of 1998 Amendment note above].''

RENTAL HOUSING ASSISTANCE; EXTENSION OF TIME WITHIN WHICH TO SUBMIT APPLICATION

Pub. L. 101–45, title II, June 30, 1989, 103 Stat. 127, provided: ''That notwithstanding the second sentence of such section 236(r) [12 U.S.C. 1715z–1(r)], an application shall be eligible for assistance under such section if the mortgagee submits an application within five hundred and forty-eight days after the effective date of this Act [June 30, 1989].''

DIRECT FINANCING STUDY BY SECRETARY OF HOUSING AND URBAN DEVELOPMENT AND SECRETARY OF THE TREASURY; REPORT TO CONGRESS; TRANSMITTAL NOT LATER THAN ONE YEAR AFTER AUGUST 22, 1974

Section 822 of Pub. L. 93–383 directed Secretary of Housing and Urban Development and Secretary of the Treasury to study feasibility of financing programs authorized under section 236 of the National Housing Act [this section] and section 802 of this Act [42 U.S.C. 1440] through various financing methods, including direct loans from Federal Financing Bank, with a view to determining whether there was any method that would result in net savings to Federal Government (after taking into account direct and indirect effects of such method) and to transmit to Congress a report on study not later than one year after Aug. 22, 1974.

TRANSFER OF INSURANCE OF MORTGAGES NOT FINALLY ENDORSED FOR INSURANCE UNDER SECTION 1715*l*(d)(3) OF THIS TITLE

Section 201(c) of Pub. L. 90–448 provided that: ''The Secretary of Housing and Urban Development is authorized, upon such terms and conditions as he may prescribe, to transfer to section 236(j) of the National Housing Act [subsec. (j) of this section] the insurance of a mortgage which has not be [sic] finally endorsed for insurance under section 221(d)(3) of such Act [section 1715*l*(d)(3) of this title] and which has been approved for the below-market interest rate prescribed in the proviso of section 221(d)(5) of such Act [section 1715*l*(d)(5) of this title].''

INSURANCE OF MORTGAGES GIVEN TO REFINANCE MORTGAGE LOANS MADE UNDER SECTION 1701q OF THIS TITLE

Section 201(d) of Pub. L. 90–448 provided that: ''The Secretary of Housing and Urban Development is authorized, upon such terms and conditions as he may prescribe, to insure under section 236(j) of the National Housing Act [subsec. (j) of this section] a mortgage meeting the requirements of such section which is given to refinance a mortgage loan made under section 202 of the Housing Act of 1959 [section 1701q of this title]: *Provided*, That the application for such insurance is filed with the Secretary on or before the date of project completion, or within such reasonable time thereafter as the Secretary may permit.''

CEILING ON TOTAL INTEREST REDUCTION PAYMENTS IN ANY FISCAL YEAR

Pub. L. 90–608, ch. IV, § 401, Oct. 21, 1968, 82 Stat. 1193, provided in part that the total payments that may be required in any fiscal year by all contracts entered into under section 236 of the National Housing Act [this section] shall not exceed $25,000,000.

Pub. L. 91–47, title II, § 201, July 22, 1969, 83 Stat. 53, increased by $45,000,000 the limitation on total payments that may be required in any fiscal year by all contracts entered into under section 236 of the National Housing Act (82 Stat. 498) [this section].

§ 1715z–1a. Assistance for troubled multifamily housing projects

(a) Purpose

The purposes of this section are to provide assistance to restore or maintain the financial soundness, to assist in the improvement of the management, to permit capital improvements to be made to maintain certain projects as decent, safe, and sanitary housing, and to maintain the low- to moderate-income character of certain projects assisted or approved for assistance under the National Housing Act [12 U.S.C. 1701 et seq.], the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the Housing Act of 1959, or the Housing and Urban Development Act of 1965, without regard to whether such projects are insured under the National Housing Act.

(b) Availability of financial assistance

The Secretary of Housing and Urban Development (hereinafter referred to in this section as the ''Secretary'') may make available, and contract to make available, to such extent and in such amounts as may be approved in appropriation Acts, financial assistance to owners of rental or cooperative housing projects meeting the requirements of this section. Such assistance shall be made on an annual basis and in accordance with the provisions of this section, without regard to whether such projects are insured under the National Housing Act [12 U.S.C. 1701 et seq.].

(c) Eligibility for financial assistance

A rental or cooperative housing project is eligible for assistance under this section only if such project—

(1)(A) is assisted under section 236 [12 U.S.C. 1715z–1] or the proviso of section 221(d)(5) of the National Housing Act [12 U.S.C. 1715*l*(d)(5)], or under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], or received a loan under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q] more than 15 years before the date on which assistance is made available under this section;

(B) is assisted under section 23 of the United States Housing Act of 1937 [42 U.S.C. 1421b], as in effect immediately before January 1, 1975, section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] following conversion to such assistance from assistance under section 236 of the National Housing Act [12 U.S.C. 1715z–1] or section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s]; or

(C) met the criteria specified in subparagraph (A) of this paragraph before the acquisition of such project by the Secretary and has been sold by the Secretary, subject to a mortgage insured or held by the Secretary and subject to an agreement (in effect during the period of assistance under this section) which provides that the low- and moderate-income character of the project will be maintained; except that, with respect to projects sold after October 1, 1978, assistance shall be available for a period not to exceed three years; and

(2) meets such other requirements consistent with the purposes of this section as the Secretary may prescribe.

(d) Criteria for granting financial assistance

No assistance may be made available under this section unless the Secretary has determined that—

(1) such assistance, when considered with other resources available to the project, is necessary and, in the determination of the Secretary, will restore or maintain the financial or physical soundness of the project and maintain the low- and moderate-income character of the project, and the owner has agreed to maintain the low- and moderate-income character of such project for a period at least equal to the remaining term of the project mortgage;

(2) the assistance which could reasonably be expected to be provided over the useful life of the project will be less costly to the Federal Government than other reasonable alternatives by which the Secretary could maintain the low- and moderate-income character of the project;

(3) the owner of the project, together with the mortgagee in the case of a project not insured under the National Housing Act [12 U.S.C. 1701 et seq.], has provided or has agreed to provide assistance to the project in such manner as the Secretary may determine;

(4) the project is or can reasonably be made structurally sound, as determined on the basis of information obtained as a result of an on-site inspection of the project;

(5) the management of the project is being conducted by persons who meet minimum levels of competency and experience prescribed by the Secretary;

(6) the project is being operated and managed in accordance with a management-improvement-and-operating plan which is designed to reduce the operating costs of the project, which has been approved by the Secretary, and which includes the following: (A) a detailed maintenance schedule; (B) a schedule for correcting past deficiencies in maintenance, repairs, and replacements; (C) a plan to upgrade the project to meet cost-effective energy efficiency standards prescribed by the Secretary; (D) a plan to improve financial and management control systems; (E) a detailed annual operating budget taking into account such standards for operating costs in the area as may be determined by the Secretary; and (F) such other requirements as the Secretary may determine; except that the Secretary may excuse an owner from compliance with the plan requirement set forth in this paragraph in any case in which such owner seeks only assistance for capital improvements under this section; and except that the Secretary shall review and approve or disapprove each plan not later than the expiration of the 30-day period beginning upon the date of submission of the plan to the Secretary by the owner, but if the Secretary fails to inform the owner of approval or disapproval of the plan within such period the plan shall be considered to have been approved;

(7) all reasonable attempts have been made to take all appropriate actions and provide suitable housing for project residents;

(8) the project has a feasible plan to involve the residents in project decisions;

(9) the affirmative fair housing marketing plan meets applicable requirements; and

(10) the owner certifies that it will comply with various equal opportunity statutes.

(e) Consultation with local officials

Prior to making assistance available to a project, the Secretary shall consult with the appropriate officials of the unit of local government in which such project is located and seek assurances that—

(1) the community in which the project is located is or will provide essential services to the project in keeping with the community's general level of such services;

(2) the real estate taxes on the project are or will be no greater than would be the case if the property were assessed in a manner consistent with normal property assessment procedures for the community; and

(3) assistance to the project under this section would not be inconsistent with local plans and priorities.

(f) Amount of financial assistance

(1) The Secretary may, with respect to any year, provide assistance under this section, and make commitments to provide such assistance, with respect to any project (except a project assisted only for capital improvements) in any amount which the Secretary determines is consistent with the project's management-improvement-and-operating plan described in subsection (d)(6) of this section and which does not exceed the sum of—

(A) an amount determined by the Secretary to be necessary to correct deficiencies in the

project which exist at the beginning of the first year with respect to which assistance is made available for the project under this section, which were caused by the deferral of regularly scheduled maintenance and repairs or the failure to make necessary and timely replacements of equipment and other components of the project, and for which payment has not previously been made;

(B) an amount determined by the Secretary to be necessary to maintain the low- and moderate-income character of the project by reducing deficiencies, which exist at the beginning of the first year with respect to which assistance is made available for the project under this section and for which payment has not previously been made, in the reserve funds established by the project owner for the purpose of replacing capital items;

(C) an amount not greater than the amount by which the estimated operating expenses (as described in paragraph (2) of this subsection) for the year with respect to which such assistance is made available exceeds the estimated revenues to be received (as described in paragraph (2) of this subsection) by the project during such year; and

(D) an amount determined by the Secretary to be necessary to carry out a plan to upgrade the project to meet cost-effective energy efficiency standards prescribed by the Secretary.

(2) The estimated revenues for any project under paragraph (1)(C) of this subsection with respect to any year shall be equal to the sum of—

(A) the estimated amount of rent which is to be expended by the tenants of such project during such year, as determined by the Secretary without regard to section 236(f)(1) of the National Housing Act [12 U.S.C. 1715z–1(f)(1)];

(B) the estimated amount of rental assistance payments to be made on behalf of such tenants during such year, other than assistance made under this section;

(C) the estimated amount of assistance payments to be made on behalf of the owner of such project under section 221(d)(5) or section 236 of the National Housing Act [12 U.S.C. 1715*l*(d)(5) or 1715z–1] during such year; and

(D) other income attributable to the project as determined by the Secretary;

except that—

(E) in computing the estimated amount of rent to be expended by tenants, the Secretary shall provide that (i) at least 25 percent (or such lesser percentage as is provided for under any other Federal housing assistance program in which such tenant is participating) of the income of each such tenant is included, or (ii) in the case of a tenant paying his or her own utilities, a percentage of income which is less than 25 percent and which takes into account the reasonable costs of such utilities; except that no amount shall be provided for any tenant under clause (i) or (ii) which exceeds the fair market rental charge as determined pursuant to section 236(f)(1) of the National Housing Act [12 U.S.C. 1715z–1(f)(1)] for such tenant; and

(F) in computing the estimated amount of rent to be expended by tenants and the estimated amount of rental assistance payments to be made on behalf of such tenants, the Secretary may permit a delinquency-and-vacancy allowance of not more than 6 per centum of the estimated amount of such rent and payments computed without regard to such allowance; except that, with respect to the first three years in which assistance is provided to a project under this section, the Secretary may permit such allowance for such project to exceed such 6 percent by an amount which the Secretary determines is appropriate to carry out the purposes of this section.

For purposes of computing estimated operating expenses of any such project with respect to any year, the Secretary shall include all estimated operating costs which the Secretary determines to be necessary and consistent with the management-improvement-and-operating plan for the project for such year, including, but not limited to, taxes, utilities, maintenance and repairs (except for maintenance and repairs which should have been performed in previous years), management, insurance, debt service, and payments made by the owner for the purpose of establishing or maintaining a reserve fund for replacement costs. The Secretary may not include in such estimated operating expenses any return on the equity investment of the owner in such project.

(3) In order to carry out the purposes of this section, the Secretary may, notwithstanding the provisions of section 236(f)(1) of the National Housing Act [12 U.S.C. 1715z–1(f)(1)], provide that, for purposes of establishing a rental charge under such section, there may be excluded from the computation of the cost of operating a project an amount equivalent to the amount of assistance payments made for the project under this section.

(4) Any assistance payments made pursuant to this section with respect to any project shall be made on an annual basis, payable at such intervals, but at least quarterly, as the Secretary may determine, and may be in any amount (which the Secretary determines to be consistent with the purpose of this section), except that the sum of such assistance payments for any year for a project (other than a project receiving assistance only for capital improvements) may not exceed the amount computed pursuant to paragraph (1) of this subsection. The Secretary shall review the operations of the project at the time of such payments to determine that such operations are consistent with the management-improvement-and-operating plan.

(g) Rules and regulations

The Secretary is authorized to issue such rules and regulations as may be necessary to carry out the provisions and purposes of this section, including regulations requiring the establishment of a project reserve or such other safeguards as the Secretary determines to be necessary for the financial soundness of any project for which assistance payments are provided, to the extent applicable.

(h) Limitation on use of financial assistance

The Secretary may not use any of the assistance available under this section during any fis-

cal year beginning on or after October 1, 1981, to supplement any contract to make rental assistance payments which was made pursuant to section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s].

(i) Repealed. Pub. L. 103–233, title I, § 103(b)(1), Apr. 11, 1994, 108 Stat. 359

(j) Flexible Subsidy Fund

(1) For purposes of carrying out the provisions of this section, there is hereby established in the Treasury of the United States a revolving fund, to be known as the Flexible Subsidy Fund. The Fund shall, to the extent approved in appropriation Acts, be available to the Secretary to provide assistance under this section (including assistance for capital improvements) and shall not (except as provided in Public Law 100–4–4[1] (102 Stat. 1018), as in effect on October 1, 1988) be available for any other purpose.

(2) The Fund shall consist of (A) any amount appropriated to carry out the purposes of this section; (B) any amount repaid on any assistance provided under this section; (C) any amounts credited to the reserve fund described in section 236(g) of the National Housing Act [12 U.S.C. 1715z–1(g)]; (D) any other amount received by the Secretary under this section (including any amount realized under paragraph (3)),[2] and (E) any amount received by the Secretary pursuant to section 537 of the National Housing Act [12 U.S.C. 1735f–15] and section 202a of the Housing Act of 1959 [12 U.S.C. 1701q–1].

(3) Any amounts in the Fund determined by the Secretary to be in excess of the amounts currently required to carry out the provisions of this section shall be invested by the Secretary in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States.

(4) The Secretary shall, to the extent of approvable applications and subject to paragraph (1), use not less than $30,000,000 or 40 percent (whichever is less) of the amounts available from the Fund in any fiscal year for purposes of providing assistance for capital improvements in accordance with this section. Any amount reserved under this paragraph for assistance for capital improvements that is not used before the last 60 days of a fiscal year shall become available for other assistance under this section.

(5) There is authorized to be appropriated for assistance under the flexible subsidy fund not to exceed $52,200,000 for fiscal year 1993 and $54,392,400 for fiscal year 1994.

(k) Assistance for capital improvements; loans as medium of assistance; owner contributions; priority of projects

(1) Assistance for capital improvements under this section shall include assistance for any major repair or replacement of a capital item in a multifamily housing project, including any such repair or replacement required as a result of deferred or inadequate maintenance. Capital improvements do not include maintenance of any such item. Assistance for capital improvements under this section shall be in the form of a loan.

(2) The owner of a project receiving assistance for capital improvements shall agree to contribute assistance to such project in such amounts, from such sources, and in such manner as the Secretary determines to be appropriate.

(3) The Secretary may provide assistance for capital improvements under this section if the Secretary finds that the reserve funds established by the owner of a project for the purpose of making capital improvements are insufficient to finance both the capital improvements for which such assistance is to be used and other capital improvements that are reasonably expected to be required in the near future, and such insufficiency is not the result of the failure of such owner to comply with any standard established by the Secretary for management of such reserve funds.

***(l)* Amount of assistance for capital improvements; term of loan; rate of interest; allowance for administrative costs and probable program losses; nondischargeable liability; other forms for loans**

(1) The principal amount of any assistance for capital improvements under this section that is provided to the owner of a project shall not exceed the difference between the contribution made by the owner in accordance with subsection (k)(2) of this section and the sum of—

(A) the amount determined by the Secretary to be necessary for such owner to make capital improvements with respect to capital items that have failed, or are likely to deteriorate seriously or fail in the near future, in such projects;

(B) the amount determined by the Secretary to be necessary to carry out a plan to upgrade the capital items being improved, and any other capital items determined by the Secretary to be associated with such capital items being improved and to require upgrading, to meet cost-effective energy efficiency standards prescribed by the Secretary; and

(C) the amount determined by the Secretary to be necessary to comply with the requirements of section 794 of title 29.

(2)(A) The term of any assistance for capital improvements in the form of a loan under this section shall not exceed the remaining term of the mortgage of the project with respect to which such loan is provided.

(B) Each loan for capital improvements provided under this section shall bear interest at a rate determined by the Secretary to be appropriate, except that—

(i) such rate shall not be more than 3 percentage points below a rate determined by the Secretary of the Treasury taking into consideration the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end of the fiscal year next preceding date on which the loan is made, adjusted to the nearest 1/8 of 1 percent, plus an allowance adequate in the judgment of the Secretary of Housing and Urban Development to cover administrative costs and probable losses under the program; and

(ii) such interest rate plus such allowance shall not exceed 6 percent per annum nor be less than 3 percent per annum.

[1] See References in Text note below.

[2] So in original. The comma probably should be a semicolon.

(C) Each loan for capital improvements provided under this section shall be considered to be a liability of the project involved, and shall not be dischargeable in any bankruptcy proceeding under section 727, 1141, or 1328(b) of title 11.

(D) The Secretary may establish such additional conditions on loans provided under this section as the Secretary determines to be appropriate. The Secretary may require owners receiving assistance for capital improvements under this section to retain the housing as housing affordable for very low-income families or persons, low-income families or persons and moderate-income families or persons for the remaining useful life of the housing. For purposes of this section, the term ''remaining useful life'' means, with respect to housing assisted under this section, the period during which the physical characteristics of the housing remain in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced as becomes necessary.

(E) The Secretary may provide more than one loan or assistance in any other form to any project under this section, if each loan or other assistance complies with the provisions of this section.

(m) Rental payment increases; minimization of increases

(1) Increases in rental payments that may occur as a result of the debt service and other expenses of a loan for capital improvements provided under this section for a project subject to a plan of action approved under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 shall be governed by the rent agreements entered into under such subtitle.

(2) In order to minimize any increases in rental payments that may occur as a result of the debt service and other expenses of a loan for capital improvements provided under this section for a project and that would be incurred by lower income residents of the project involved whose rental payments are, or would as a result of such expenses be, in excess of the amount allowable if section 3(a) of the United States Housing Act of 1937 [42 U.S.C. 1437a(a)] were applicable to such residents, or where appropriate to implement a plan of action under subtitle B of the Emergency Low Income Housing Preservation Act of 1987, the Secretary may take any or all of the following actions:

(A) Provide assistance with respect to such project under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], to the extent amounts are available for such assistance and without regard to section 16 of such Act [42 U.S.C. 1437n].

(B) Notwithstanding subsection (*l*)(2)(B) of this section, reduce the rate of interest charged on such loan to a rate of not less than 1 percent.

(C) Increase the term of such loan to a term that does not exceed the remaining term of the mortgage on such project.

(D) Increase the amount of assistance to be provided by the owner of such project under subsection (k)(2) of this section, if applicable, to an amount not to exceed 30 percent of the total estimated cost of the capital improvements involved.

(E) Permit repayment of the debt service to be deferred as long as the low and moderate income character of the project is maintained in accordance with subsection (d) of this section.

(n) Allocation of assistance

(1) Set-aside

In providing, and contracting to provide, assistance for capital improvements under this section, in each fiscal year the Secretary shall set aside an amount, as determined by the Secretary, for projects that are eligible for incentives under section 224(b) of the Emergency Low Income Housing Preservation Act of 1987, as such section existed before November 28, 1990. The Secretary may make such assistance available on a noncompetitive basis.

(2) General rules for allocation

Except as provided in paragraph (3), with respect to assistance under this section not set aside for projects under paragraph (1), the Secretary—

(A) may award assistance on a noncompetitive basis; and

(B) shall award assistance to eligible projects on the basis of—

(i) the extent to which the project is physically or financially troubled, as evidenced by the comprehensive needs assessment submitted in accordance with title IV of the Housing and Community Development Act of 1992; and

(ii) the extent to which such assistance is necessary and reasonable to prevent the default of federally insured mortgages.

(3) Exceptions

The Secretary may make exceptions to selection criteria set forth in paragraph (2)(B) to permit the provision of assistance to eligible projects based upon—

(A) the extent to which such assistance is necessary to prevent the imminent foreclosure or default of a project whose owner has not submitted a comprehensive needs assessment pursuant to title IV of the Housing and Community Development Act of 1992;

(B) the extent to which the project presents an imminent threat to the life, health, and safety of project residents; or

(C) such other criteria as the Secretary may specify by regulation or by notice printed in the Federal Register.

(4) Considerations

In providing assistance under this section, the Secretary shall take into consideration—

(A) the extent to which there is evidence that there will be significant opportunities for residents (including a resident council or resident management corporation, as appropriate) to be involved in the management of the project (except that this paragraph shall have no application to projects that are owned as cooperatives); and

(B) the extent to which there is evidence that the project owner has provided competent management and complied with all regulatory and administrative requirements.

(*o*) Coordination of assistance

The Secretary shall coordinate the allocation of assistance under this section with assistance made available under section 8(v) of the United States Housing Act of 1937 [42 U.S.C. 1437f(v)] and section 1701z–11 of this title to enhance the cost effectiveness of the Federal response to troubled multifamily housing.

(p) Enhanced voucher eligibility

Notwithstanding any other provision of law, any project that receives or has received assistance under this section and which is the subject of a transaction under which the project is preserved as affordable housing, as determined by the Secretary, shall be considered eligible low-income housing under section 229 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4119) for purposes of eligibility of residents of such project for enhanced voucher assistance provided under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)) (pursuant to section 223(f) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4113(f))).

(Pub. L. 95–557, title II, §201, Oct. 31, 1978, 92 Stat. 2084; Pub. L. 96–153, title II, §§205(a), 211(c), Dec. 21, 1979, 93 Stat. 1108, 1110; Pub. L. 96–399, title II, §204(a), Oct. 8, 1980, 94 Stat. 1629; Pub. L. 97–35, title III, §§321(f)(1), (2), 329C, Aug. 13, 1981, 95 Stat. 399, 400, 409; Pub. L. 98–181, title II, §217(a), (b), Nov. 30, 1983, 97 Stat. 1186; Pub. L. 98–479, title II, §204(n)(1), (2), Oct. 17, 1984, 98 Stat. 2234; Pub. L. 100–242, title I, §§185, 186(b), Feb. 5, 1988, 101 Stat. 1873, 1877; Pub. L. 100–628, title X, §1011(a), Nov. 7, 1988, 102 Stat. 3268; Pub. L. 101–235, title I, §109(c), title II, §203(a)(2), Dec. 15, 1989, 103 Stat. 2011, 2037; Pub. L. 101–625, title V, §578(b), (c), Nov. 28, 1990, 104 Stat. 4244, 4245; Pub. L. 102–550, title IV, §§405, 406, 408(a), Oct. 28, 1992, 106 Stat. 3776, 3778; Pub. L. 103–233, title I, §103(b), Apr. 11, 1994, 108 Stat. 359; Pub. L. 105–276, title V, §550(g), Oct. 21, 1998, 112 Stat. 2610; Pub. L. 106–74, title V, §536, Oct. 20, 1999, 113 Stat. 1121.)

REFERENCES IN TEXT

The National Housing Act, as amended, referred to in subsecs. (a), (b), (c)(1)(A), and (d)(3), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (a), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Housing Act of 1959, referred to in subsec. (a), is Pub. L. 86–372, Sept. 23, 1959, 73 Stat. 654, as amended. For complete classification of this Act to the Code, see Short Title of 1959 Amendment note set out under section 1701 of this title and Tables.

The Housing and Urban Development Act of 1965, as amended, referred to in subsecs. (a), (c)(1)(A), (B), and (h), is Pub. L. 89–117, Aug. 10, 1965, 79 Stat. 451, as amended. Section 101 of the Act enacted section 1701s of this title and amended sections 1451 and 1465 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1965 Amendment note set out under section 1701 of this title and Tables.

Section 23 of the United States Housing Act of 1937, referred to in subsec. (c)(1)(B), was classified to section 1421b of Title 42 and was omitted in the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653.

Public Law 100–4–4 (102 Stat. 1018), referred to in subsec. (j)(1), probably means Pub. L. 100–404, Aug. 19, 1988, 102 Stat. 1014, known as the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989. Provisions appearing on 102 Stat. 1018 of Pub. L. 100–404 relating to transfer of funds from the ''Flexible subsidy fund'' for carrying out community development grants programs are not classified to the Code.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsecs. (m) and (n)(1), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101–625, is known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, and is classified principally to chapter 42 (§4101 et seq.) of this title. Section 224(b) and subtitle B of title II, which were formerly set out as a note under section 1715*l* of this title and which amended section 1715z–6 of this title, were amended generally by Pub. L. 101–625 on Nov. 28, 1990, and are classified generally to subchapter I (§4101 et seq.) of chapter 42 of this title. For provisions similar to those contained in former section 224(b), see section 4109(b) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Housing and Community Development Act of 1992, referred to in subsec. (n)(2)(B)(i), (3)(A), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672. Title IV of the Act amended this section, section 1715z–1 of this title, and section 12710 of Title 42, The Public Health and Welfare, and enacted provisions set out as a note below. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42 and Tables.

CODIFICATION

Another subsec. (k) of section 201 of Pub. L. 95–557 amended section 1715z–1 of this title.

Section was enacted as part of the Housing and Community Development Amendments of 1978, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1999—Subsec. (p). Pub. L. 106–74 added subsec. (p).

1998—Subsec. (m)(2)(A). Pub. L. 105–276 substituted ''section 8'' for ''section 8(b)(1)''.

1994—Subsec. (i). Pub. L. 103–233, §103(b)(1), struck out subsec. (i) which read as follows: ''Notwithstanding any other provision of law, in exercising any authority relating to the approval or disapproval of rentals charged tenants residing in projects which are eligible for assistance under this section, the Secretary—

''(1) shall consider whether the mortgagor could control increases in utility costs by securing more favorable utility rates, by undertaking energy conservation measures which are financially feasible and cost effective, or by taking other financially feasible and cost-effective actions to increase energy efficiency or to reduce energy consumption; and

''(2) may, in his discretion, adjust the amount of a proposed rental increase where he finds the mortgagor could exercise such control.''

Subsec. (k)(2). Pub. L. 103–233, §103(b)(2), substituted a period for '', except that—

''(A) such contribution shall not be less than 20 percent of the total estimated cost of the capital improvements involved, unless the Secretary, upon application of the owner, determines that such contribution is financially infeasible and waives or reduces such contribution to the extent necessary;

''(B) the Secretary may not require an amount to be contributed, from the reserve funds established by the owner of such projects for the purpose of making capital improvements, in excess of 50 percent of the amount of such reserve funds on the date of such loan;

''(C) The Secretary shall waive the requirements of this paragraph if such owner is a private nonprofit corporation or an association; and

''(D) the Secretary shall give owners credit for advances made to the project during a 3-year period prior to the application for assistance.''

Subsec. (n). Pub. L. 103–233, §103(b)(3), amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows:

''(n)(1) The Secretary shall award assistance under this section to eligible projects on the basis of the following selection criteria:

''(A) The extent to which the project presents an imminent threat to the life, health, and safety of project residents.

''(B) The extent to which the project is financially troubled.

''(C) The extent of physical improvements needed by the project as evidenced by the comprehensive needs assessment submitted in accordance with title IV of the Housing and Community Development Act of 1992.

''(D) The extent to which there is evidence that there will be significant opportunities for residents (including a resident council or resident management corporation, as appropriate) to be involved in management of the project (except that this paragraph shall have no application to projects that are owned as cooperatives).

''(E) The extent to which there is evidence that the project owner has provided competent management and complied with all regulatory and administrative instructions (including such instructions with respect to the comprehensive servicing of multifamily projects as the Secretary may issue).

''(F) Such other criteria as the Secretary may specify by regulation or in a Federal Register notice of fund availability.

''(2) Eligible projects that have federally insured mortgages in force are to be selected for award of assistance under this section before any other eligible project.''

Subsecs. (*o*), (p). Pub. L. 103–233, §103(b)(4) redesignated subsec. (p) as (*o*) and struck out former subsec. (*o*) which read as follows: ''Projects receiving assistance under this section are not eligible for prepayment incentives under the Emergency Low-Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Projects receiving financial assistance under such Acts are not eligible for assistance under this section.''

1992—Subsec. (d)(5). Pub. L. 102–550, §405(a)(1), struck out ''and'' at end.

Subsec. (d)(6). Pub. L. 102–550, §406, which directed insertion, before period at end, of ''; and except that the Secretary shall review and approve or disapprove each plan not later than the expiration of the 30-day period beginning upon the date of submission of the plan to the Secretary by the owner, but if the Secretary fails to inform the owner of approval or disapproval of the plan within such period the plan shall be considered to have been approved'', was executed by making the insertion before the concluding semicolon to reflect the probable intent of Congress and the intervening amendment by Pub. L. 102–550, §405(a)(2). See below.

Pub. L. 102–550, §405(a)(2), substituted semicolon for period at end.

Subsec. (d)(7) to (10). Pub. L. 102–550, §405(a)(3), added pars. (7) to (10).

Subsec. (j)(5). Pub. L. 102–550, §408(a), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''There are authorized to be appropriated for assistance under the flexible subsidy fund not to exceed $50,000,000 for fiscal year 1991 and $52,200,000 for fiscal year 1992.''

Subsec. (k)(2)(D). Pub. L. 102–550, §405(e), added subpar. (D).

Subsec. (k)(4). Pub. L. 102–550, §405(b)(1), struck out par. (4) which read as follows: ''In providing, and contracting to provide, assistance for capital improvements under this section, the Secretary shall—

''(A) give priority to projects that are eligible for incentives under section 224(b) of the Emergency Low Income Housing Preservation Act of 1987; and

''(B) with respect to any amounts not required for projects under subparagraph (A), give priority among other projects based on the extent to which—

''(i) the capital improvements for which such assistance is requested are immediately required;

''(ii) the projects serve as the residences of lower income families, and the extent which other suitable housing is unavailable for such families in the areas in which such projects are located;

''(iii) the capital improvements for which such assistance is requested involve the life, safety, or health of the residents of the project or involve major capital improvements in the projects; and

''(iv) the projects demonstrate the greatest financial distress, while continuing to meet the requirements of subsection (d)(1) of this section.''

Subsec. (*l*)(2)(D). Pub. L. 102–550, §405(c), inserted at end ''The Secretary may require owners receiving assistance for capital improvements under this section to retain the housing as housing affordable for very low-income families or persons, low-income families or persons and moderate-income families or persons for the remaining useful life of the housing. For purposes of this section, the term 'remaining useful life' means, with respect to housing assisted under this section, the period during which the physical characteristics of the housing remain in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced as becomes necessary.''

Subsec. (n). Pub. L. 102–550, §405(b)(2), added subsec. (n).

Subsec. (*o*). Pub. L. 102–550, §405(d), added subsec. (*o*).

Subsec. (p). Pub. L. 102–550, §405(f), added subsec. (p).

1990—Subsec. (j)(1). Pub. L. 101–625, §578(c), inserted before period at end ''and shall not (except as provided in Public Law 100–4–4 (102 Stat. 1018), as in effect on October 1, 1988) be made available for any other purpose''.

Subsec. (j)(5). Pub. L. 101–625, §578(b), added par. (5).

1989—Subsec. (j)(2). Pub. L. 101–235, §109(c), added cl. (E).

Subsec. (m)(2). Pub. L. 101–235, §203(a)(2)(B)(i), (ii), struck out ''not subject to paragraph (1)'' after ''for a project'' and inserted '', or where appropriate to implement a plan of action under subtitle B of the Emergency Low Income Housing Preservation Act of 1987'' after second reference to ''residents''.

Subsec. (m)(2)(B). Pub. L. 101–235, §203(a)(2)(A), substituted ''Notwithstanding subsection (*l*)(2)(B) of this section, reduce'' for ''Reduce''.

Subsec. (m)(2)(E). Pub. L. 101–235, §203(a)(2)(B)(iii), added subpar. (E).

1988—Pub. L. 100–242, §185(h), struck out ''Operating'' before ''assistance'' in section catchline.

Subsec. (a). Pub. L. 100–242, §185(a), inserted ''to permit capital improvements to be made to maintain certain projects as decent, safe, and sanitary housing,'' after ''management,''.

Pub. L. 100–242, §186(b)(1), inserted reference to Housing Act of 1959.

Subsec. (c)(1)(A). Pub. L. 100–242, §186(b)(2), inserted before semicolon at end '', or received a loan under section 202 of the Housing Act of 1959 more than 15 years before the date on which assistance is made available under this section''.

Subsec. (c)(1)(B). Pub. L. 100–242, §185(b), inserted ''section 23 of the United States Housing Act of 1937, as in effect immediately before January 1, 1975,'' after ''is assisted under''.

Subsec. (d)(1). Pub. L. 100–242, §185(c)(1), inserted ''or physical'' after ''maintain the financial''.

Subsec. (d)(6). Pub. L. 100–242, §185(c)(2), inserted at end ''; except that the Secretary may excuse an owner from compliance with the plan requirement set forth in this paragraph in any case in which such owner seeks only assistance for capital improvements under this section''.

Subsec. (f)(1). Pub. L. 100–242, §185(d)(1), inserted parenthetical exception relating to projects assisted only for capital improvements.

Subsec. (f)(4). Pub. L. 100–242, §185(d)(2), substituted ''payments for any year for a project (other than a project receiving assistance only for capital improvements) may not exceed'' for ''payments for any year may not exceed''.

Subsec. (g). Pub. L. 100–242, §185(e), inserted '', to the extent applicable'' after ''provided''.

Subsec. (j). Pub. L. 100–242, §185(f), in amending subsec. (j) generally, substituted provisions relating to the establishment, contents, and use of a revolving fund to be known as the Flexible Subsidy Fund, for provisions authorizing appropriations under this section for fiscal years 1979 through 1982.

Subsec. (j)(4). Pub. L. 100–628 substituted ''shall, to the extent of approvable applications and subject to paragraph (1), use not less than $30,000,000 or 40 percent (whichever is less) of the amounts available'' for ''may use not more than $50,000,000''; and inserted at end ''Any amount reserved under this paragraph for assistance for capital improvements that is not used before the last 60 days of a fiscal year shall become available for other assistance under this section.''

Subsecs. (k) to (m). Pub. L. 100–242, §185(g), added subsecs. (k) to (m).

1984—Subsec. (c). Pub. L. 98–479, §204(n)(1), substituted ''A'' for ''a'' in provisions before subpar. (A).

Subsec. (j). Pub. L. 98–479, §204(n)(2), substituted ''section 236(f)(3)'' for ''section 236(f)(3)(B)''.

1983—Subsec. (a). Pub. L. 98–181, §217(a)(1), (b)(1), inserted ''without regard to whether such projects are insured under the National Housing Act'', and substituted '', the United States Housing Act of 1937, or'' for ''or under''.

Subsec. (b). Pub. L. 98–181, §217(a)(2), inserted '', without regard to whether such projects are insured under the National Housing Act''.

Subsec. (c)(1)(A). Pub. L. 98–181, §217(a)(3), struck out ''; except that, in the case of any such project which is not insured under the National Housing Act such assistance may not be provided before October 1, 1979'' after ''Act of 1965''.

Subsec. (c)(1)(B), (C). Pub. L. 98–181, §217(b)(2), added subpar. (B) and redesignated former subpar. (B) as (C).

1981—Subsec. (f)(1)(D). Pub. L. 97–35, §329C(1), added subpar. (D).

Subsec. (h). Pub. L. 97–35, §321(f)(2), added subsec. (h). Former subsec. (h) redesignated (j).

Subsec. (i). Pub. L. 97–35, §329C(2), added subsec. (i).

Subsec. (j). Pub. L. 97–35, §321(f)(1), (2)(A), redesignated former subsec. (h) as (j) and authorized appropriation for fiscal year 1982.

1980—Subsec. (h). Pub. L. 96–399 authorized appropriations for fiscal year 1981.

1979—Subsec. (d)(1). Pub. L. 96–153, §211(c), inserted requirement that the owner agree to maintain the low- and moderate-income character of such project for a period at least equal to the remaining term of the project mortgage.

Subsec. (h). Pub. L. 96–153, §205(a), authorized appropriations for fiscal year 1980.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 103(c) of Pub. L. 103–233 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending this section and provisions set out below] shall apply with respect to amounts made available for fiscal year 1994 and fiscal years thereafter.

''(2) EXCEPTION.—Section 201(n)(1) of the Housing and Community Development Amendments of 1978 [subsec. (n)(1) of this section] (as added by the amendment made by subsection (b)(3) of this section) shall take effect on the date of enactment of this Act [Apr. 11, 1994].

''(3) NOTICE.—The Secretary shall, by notice published in the Federal Register, establish any requirements necessary to implement the amendments made by subsections (a) and (b). The notice shall invite public comments and, not later than 12 months after the date on which the notice is published, the Secretary shall issue final regulations based on the initial notice, taking into consideration any public comments received.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

ALTERNATIVE USES FOR PREVENTION OF DEFAULT

Section 103(h) of Pub. L. 103–233 provided that:

''(1) IN GENERAL.—Subject to notice to and comment by existing tenants, to prevent the imminent default of a multifamily housing project subject to a mortgage insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.], the Secretary may authorize the mortgagor to use the project for purposes not contemplated by or permitted under the regulatory agreement, if—

''(A) such other uses are acceptable to the Secretary;

''(B) such other uses would be otherwise insurable under title II of the National Housing Act;

''(C) the outstanding principal balance on the mortgage covering such project is not increased;

''(D) any financial benefit accruing to the mortgagor shall, subject to the discretion of the Secretary, be applied to project reserves or project rehabilitation; and

''(E) such other use serves a public purpose.

''(2) DISPLACEMENT PROTECTION.—The Secretary may take actions under paragraph (1) only if—

''(A) tenant-based rental assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] is made available to each eligible family residing in the project that is displaced as a result of such actions; and

''(B) the Secretary determines that sufficient habitable, affordable (as such term is defined in section 203(b) of the Housing and Community Development Amendments of 1978 [12 U.S.C. 1701z–11(b)]) rental housing is available in the market area in which the project is located to ensure use of such assistance.

''(3) IMPLEMENTATION.—The Secretary shall, by notice published in the Federal Register, which shall take effect upon publication, establish such requirements as may be necessary to implement the amendments made by this subsection. The notice shall invite public comments and, not later than 12 months after the date on which the notice is published, the Secretary shall issue final regulations based on the initial notice, taking into account any public comments received.''

MULTIFAMILY HOUSING PLANNING AND INVESTMENT STRATEGIES

Pub. L. 102–550, title IV, §§401–404, Oct. 28, 1992, 106 Stat. 3773–3775, as amended by Pub. L. 103–233, title I, §103(a)(1)–(5), Apr. 11, 1994, 108 Stat. 358, 359, provided that:

''SEC. 401. DEFINITIONS.

''For purposes of this title [amending this section, section 1715z–1 of this title and section 12710 of Title 42, The Public Health and Welfare]:

''(1) COVERED MULTIFAMILY HOUSING PROPERTY.—The term 'covered multifamily housing property' means any housing—

''(A) that is—

''(i) reserved for occupancy by very low-income elderly persons pursuant to section 202(d)(1) of the Housing Act of 1959 [12 U.S.C. 1701q(d)(1)];

''(ii) assisted under the provisions of section 202 of the Housing Act of 1959 (as such section existed before the effectiveness of the amendment made by section 801(a) of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625]);

''(iii) financed by a loan or mortgage insured, assisted, or held by the Secretary or a State or State agency under section 236 of the National Housing Act [12 U.S.C. 1715z–1]; or

''(iv) financed by a loan or mortgage insured or held by the Secretary pursuant to section 221(d)(3) of the National Housing Act [12 U.S.C. 1715*l*(d)(3)]; and

''(B) that is not eligible for assistance under—

''(i) the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.];

''(ii) the provisions of the Emergency Low Income Housing Preservation Act of 1987 [see References in Text note above] (as in effect immediately before the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990]); or

''(iii) the HOME Investment Partnerships Act [42 U.S.C. 12721 et seq.].

''(2) COVERED MULTIFAMILY HOUSING PROPERTY FOR THE ELDERLY.—The term 'covered multifamily housing property for the elderly' means any multifamily housing project that was designed or designated to serve, or is serving, elderly persons or families and is assisted under a program administered by the Secretary.

''(3) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

''SEC. 402. REQUIRED SUBMISSION.

''(a) IN GENERAL.—The owner of each covered multifamily housing property, and the owner of each covered multifamily housing property for the elderly, shall submit to the Secretary of Housing and Urban Development a comprehensive needs assessment of the property under this title. The assessment shall be prepared by an entity that does not have an identity of interest with the owner.

''(b) TIMING.—To ensure that assessments for all covered multifamily housing properties will be submitted on or before the conclusion of fiscal year 1997, the Secretary shall require the owners of such properties, including covered multifamily housing properties for the elderly, to submit the assessments for the properties in accordance with the following schedule:

''(1) For fiscal year 1994, 10 percent of the aggregate number of such properties.

''(2) For each of fiscal years 1995, 1996, and 1997, an additional 30 percent of the aggregate number of such properties.

''SEC. 403. CONTENTS.

''(a) IN GENERAL.—Each comprehensive needs assessment submitted under this title for a covered multifamily housing property or a covered multifamily housing property for the elderly shall contain the following information with respect to the property:

''(1) A description of any financial or other assistance currently needed for the property to ensure that the property is maintained in a livable condition and to ensure the financial viability of the project.

''(2) A description of any financial or other assistance for the property that, at the time of the assessment, is reasonably foreseeable as necessary to ensure that the property is maintained in a livable condition and to ensure the financial viability of the project, during the remaining useful life of the property.

''(3) A description of any resources available for meeting the current and future needs of the property described under paragraphs (1) and (2) and the likelihood of obtaining such resources.

''(4) A description of any assistance needed for the property under programs administered by the Secretary.

''(b) PROJECTS FOR THE ELDERLY.—Each comprehensive needs assessment for a covered multifamily housing property for the elderly shall include, in addition to the information required under subsection (a), the following information with respect to the property:

''(1) A description of the supportive service needs of such residents and any supportive services provided to elderly residents of the property.

''(2) A description of any modernization needs and activities for the property.

''(3) A description of any personnel needs for the property.

''SEC. 404. SUBMISSION AND REVIEW.

''(a) FORM.—The Secretary shall establish the form and manner of submission of the comprehensive needs assessments under this title.

''(b) RESIDENT REVIEW.—The Secretary shall require each owner of a covered multifamily housing property and each owner of a covered multifamily housing property for the elderly to make available to the residents of the property the comprehensive needs assessment that is to be submitted to the Secretary. The Secretary shall require each owner to provide for such residents to submit comments and opinions regarding the assessment to the owner before the submission of the assessment.

''(c) STATE HOUSING FINANCE AGENCY REVIEW.—To the extent that a covered multifamily housing property or a covered multifamily housing property for the elderly is financed or assisted by a State housing finance agency (as such term is defined in section 802 of the Housing and Community Development Act of 1974 [42 U.S.C. 1440]), the Secretary shall require the owner of the property to submit the comprehensive needs assessment for the property to the State housing finance agency upon submitting the assessment to the Secretary.

''(d) REVIEW.—

''(1) IN GENERAL.—The Secretary shall review each comprehensive needs assessment for completeness and adequacy before the expiration of the 90-day period beginning on the receipt of the assessment and shall notify the owner of the property for which the assessment was submitted of the findings of such review.

''(2) INCOMPLETE OR INADEQUATE ASSESSMENTS.—If the Secretary determines that the assessment is substantially incomplete or inadequate, the Secretary shall—

''(A) notify the owner of the portion or portions of the assessment requiring completion or other revision; and

''(B) require the owner to submit an amended assessment to the Secretary not later than 30 days after such notification.

''(e) COST OF PREPARATION OF STRATEGY.—The Secretary shall consider any costs relating to preparing a comprehensive needs assessment under this title for a covered multifamily housing property that do not exceed $5,000 for the property as an eligible project expense for the property. The Secretary shall provide that an owner may not increase the rental charge for any unit in a covered multifamily housing property to provide for the cost of preparing a comprehensive needs assessment.

''(f) PUBLICATION OF METHOD FOR RECEIVING CAPITAL NEEDS ASSESSMENT.—The Secretary shall cause to be published in the Federal Register the method by which the Secretary determines which capital needs assessments will be received each year in accordance with section 402(b) and subsection (d) of this section.

''(g) ANNUAL REVIEW AND REPORT OF FUNDING AND TARGETING FOR COVERED MULTIFAMILY PROPERTIES FOR THE ELDERLY.—

''(1) REVIEW.—The Secretary shall annually conduct a comprehensive review of—

''(A) the funding levels required to fully address the needs of covered multifamily housing properties for the elderly identified in the comprehensive needs assessments under section 403(b), specifically identifying any expenses necessary to make substantial repairs and add features (such as congregate dining facilities and commercial kitchens) resulting from development of a property in compliance with cost-containment requirements established by the Secretary;

''(B) the adequacy of the geographic targeting of resources provided under programs of the Department with respect to covered multifamily housing properties for the elderly, based on information acquired pursuant to section 403(b); and

''(C) local housing markets throughout the United States, with respect to the need, availability, and cost of housing for elderly persons and families, which shall include review of any information and plans relating to housing for elderly persons and families included in comprehensive housing affordability strategies submitted by jurisdictions pursuant to section 105 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12705].

''(2) REPORT.—The Secretary of Housing and Urban Development shall submit a report to the Congress annually describing the results of the annual comprehensive needs assessments under section 402 for covered multifamily housing properties for the elderly and the annual review conducted under paragraph (1) of this subsection, which shall contain a description of the methods used by project owners and by the Secretary to acquire the information described in section 402(b) and any findings and recommendations of the Secretary pursuant to the review.''

[For termination, effective May 15, 2000, of reporting provisions in section 404(g)(2) of Pub. L. 102–550, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 104 of House Document No. 103–7.]

FUNDING OF MULTIFAMILY HOUSING PROJECTS; OPERATING, CAPITAL IMPROVEMENT AND LOAN MANAGEMENT ASSISTANCE; AMOUNTS

Pub. L. 102–550, title IV, §409, as added by Pub. L. 103–233, title I, §103(a)(6), Apr. 11, 1994, 108 Stat. 359, provided that:

''(a) ALLOCATION OF ASSISTANCE.—Based upon needs identified in comprehensive needs assessments, and subject to otherwise applicable program requirements, including selection criteria, the Secretary may allocate the following assistance to owners of covered multifamily housing projects and may provide such assistance on a noncompetitive basis:

''(1) Operating assistance and capital improvement assistance for troubled multifamily housing projects pursuant to section 201 of the Housing and Community Development Amendments of 1978 [Pub. L. 95–557, enacting this section, amending section 1715z–1 of this title, and enacting provisions set out as a note under section 1715z–1 of this title], except for assistance set aside under section 201(n)(1) [subsec. (n)(1) of this section].

''(2) Loan management assistance available pursuant to section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f].

''(b) OPERATING ASSISTANCE AND CAPITAL IMPROVEMENT ASSISTANCE.—In providing assistance under subsection (a) the Secretary shall use the selection criteria set forth in section 201(n) of the Housing and Community Development Amendments of 1978.

''(c) AMOUNT OF ASSISTANCE.—The Secretary may fund all or only a portion of the needs identified in the capital needs assessment of an owner selected to receive assistance under this section.''

CAPITAL ASSESSMENT STUDY

Section 204(c) of Pub. L. 101–235, as amended by Pub. L. 101–625, title V, §583, Nov. 28, 1990, 104 Stat. 4249, directed Secretary of Housing and Urban Development to conduct a study to determine physical renovation needs of Nation's federally-assisted multifamily housing inventory that is distressed, to estimate cost of correcting deficiencies and subsequently maintaining that inventory in adequate physical condition, and to establish criteria to determine what housing qualifies as distressed, with such criteria to include factors such as serious deficiencies in original design, deferred maintenance, physical deterioration or obsolescence of major systems and other serious deficiencies in physical plant of a project, such study to examine and assess adequacy of existing tools that are available to the Secretary for modernization efforts including mortgage insurance for rehabilitation loans, operating assistance and capital improvement loans under the Flexible Subsidy Program, with a detailed examination and assessment of Flexible Subsidy Program required, and rental assistance, and not later than Mar. 1, 1992, to submit to Congress a detailed report setting forth findings as a result of the study.

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Title V of Pub. L. 101–235, as amended by Pub. L. 102–550, title I, §127(a), Oct. 28, 1992, 106 Stat. 3710, established a National Commission on Severely Distressed Public Housing to identify those public housing projects in the Nation that are in a severe state of distress, to assess most promising strategies to improve condition of severely distressed public housing projects that have been implemented by public housing authorities, other Government agencies at Federal, State and local level, public housing tenants, and private sector, and to develop national action plan to eliminate by year 2000 unfit living conditions in public housing projects determined by Commission to be most severely distressed, provided for membership, functions, and powers of the Commission, directed that, not later than 12 months after Commission is established, Commission submit a final report to Secretary and to Congress containing information, evaluations, and recommendations, authorized appropriations for Commission of not to exceed $2,000,000 for fiscal year 1990 and $1,000,000 for fiscal year 1991, and terminated Commission at the end of Sept. 30, 1992.

MULTIFAMILY HOUSING CAPITAL IMPROVEMENTS ASSISTANCE; REGULATIONS FOR IMPLEMENTATION OF PROGRAM

Section 1011(b) of Pub. L. 100–628 provided that: ''To implement the amendments made by section 185 of the Housing and Community Development Act of 1987 [Pub. L. 100–242, amending this section], the Secretary of Housing and Urban Development shall issue regulations that become effective not later than February 5, 1989.''

§ 1715z–1b. Tenant participation in multifamily housing projects

(a) Purpose; definitions

The purpose of this section is to recognize the importance and benefits of cooperation and participation of tenants in creating a suitable living environment in multifamily housing projects and in contributing to the successful operation of such projects, including their good physical condition, proper maintenance, security, energy efficiency, and control of operating costs. For the purpose of this section, the term ''multifamily housing project'' means a project which is eligible for assistance as described in section 1715z–1a(c) of this title or section 1701q of this title, or a project which receives project-based assistance under section 1437f of title 42 or enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership

Act of 1990 [12 U.S.C. 4101 et seq.], the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997.

(b) Rights of tenants

The Secretary shall assure that—

(1) where the Secretary's written approval is required with respect to an owner's request for rent increase, conversion of residential rental units to any other use (including commercial use or use as a unit in any condominium or cooperative project), partial release of security, or major physical alterations or where the Secretary proposes to sell a mortgage secured by a multifamily housing project, tenants have adequate notice of, reasonable access to relevant information about, and an opportunity to comment on such actions (and in the case of a project owned by the Secretary, any proposed disposition of the project) and that such comments are taken into consideration by the Secretary;

(2) project owners not interfere with the efforts of tenants to obtain rent subsidies or other public assistance;

(3) leases approved by the Secretary provide that tenants may not be evicted without good cause or without adequate notice of the reasons therefor and do not contain unreasonable terms and conditions; and

(4) project owners do not impede the reasonable efforts of resident tenant organizations to represent their members or the reasonable efforts of tenants to organize.

(c) Regulations

The Secretary shall promulgate regulations to carry out the provisions of this section not later than 90 days after October 31, 1978.

(Pub. L. 95–557, title II, § 202, Oct. 31, 1978, 92 Stat. 2088; Pub. L. 97–35, title III, § 329F, Aug. 13, 1981, 95 Stat. 410; Pub. L. 100–242, title I, § 183(a), (b), Feb. 5, 1988, 101 Stat. 1872; Pub. L. 105–276, title V, § 599(a), Oct. 21, 1998, 112 Stat. 2660.)

REFERENCES IN TEXT

The Low-Income Housing Preservation and Resident Homeownership Act of 1990, referred to in subsec. (a), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, as amended, which is classified principally to chapter 42 (§ 4101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (a), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101–625, is known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Subtitles A and B of title II, which were formerly set out as a note under section 1715*l* of this title and which amended section 1715z–6 of this title, were amended generally by Pub. L. 101–625 and are classified to subchapter I (§ 4101 et seq.) of chapter 42 of this title. Subtitles C and D of title II amended section 1715z–15 of this title and sections 1437f, 1472, 1485, and 1487 of Title 42, The Public Health and Welfare. Another subtitle C of title II of Pub. L. 100–242, as added by Pub. L. 102–550, is classified generally to subchapter II (§ 4141 et seq.) of chapter 42 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Multifamily Assisted Housing Reform and Affordability Act of 1997, referred to in subsec. (a), is title V of Pub. L. 105–65, Oct. 27, 1997, 111 Stat. 1384. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 1701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Housing and Community Development Amendments of 1978, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–276 inserted before period at end ", or a project which receives project-based assistance under section 1437f of title 42 or enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997".

1988—Subsec. (a). Pub. L. 100–242, § 183(a), inserted reference to section 1701q of this title.

Subsec. (b)(1). Pub. L. 100–242, § 183(b), substituted "or where the Secretary proposes to sell a mortgage secured by a multifamily housing project" for "and the Secretary deems it appropriate".

1981—Subsec. (b)(1). Pub. L. 97–35 substituted provisions relating to request by the owner for rent increases, etc., for provisions relating to action by the owner.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 599(b), Oct. 21, 1998, 112 Stat. 2660, provided that: "The amendment made by this section [amending this section] is made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

§ 1715z–1c. Regulation of rents in insured projects

After December 1, 1987, the Secretary of Housing and Urban Development shall control rents and charges as they were controlled prior to April 19, 1983, for any multifamily housing project insured under the National Housing Act [12 U.S.C. 1701 et seq.] if—

(1) during the period of April 19, 1983, through December 1, 1987, the project owner and the Secretary have not executed, and the project owner has not filed a written request with the Secretary to enter into, an amendment to the regulatory agreement pursuant to regulations published by the Secretary on April 19, 1983, or June 4, 1986, electing to deregulate rents or utilize an alternative formula for determining the maximum allowable rents pursuant to regulations published by the Secretary on April 19, 1983, or June 4, 1986; and

(2)(A) the project was, as of December 1, 1987, receiving a housing assistance payment under a contract pursuant to section 1437f of title 42 (other than under the existing housing certificate program of section 1437f(b)(1) of title 42); or

(B) not less than 50 percent of the units in the project are occupied by lower income families (as defined in section 1437a(a)(2)[1] of title 42).

[1] Probably should be a reference to section 1437a(b)(2).

(Pub. L. 100–242, title IV, § 425, Feb. 5, 1988, 101 Stat. 1915.)

REFERENCES IN TEXT

The National Housing Act, as amended, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1987, and not as part of the National Housing Act which comprises this chapter.

§ 1715z–2. Repealed. Pub. L. 110–289, div. B, title I, § 2120(a)(6), July 30, 2008, 122 Stat. 2835

Section, act June 27, 1934, ch. 847, title II, § 237, as added Pub. L. 90–448, title I, § 102(a), Aug. 1, 1968, 82 Stat. 485; amended Pub. L. 91–152, title I, §§ 110, 113(j), Dec. 24, 1969, 83 Stat. 382, 385; Pub. L. 105–276, title V, § 599F(a), Oct. 21, 1998, 112 Stat. 2665, related to special mortgage insurance assistance.

§ 1715z–3. Special Risk Insurance Fund

(a) Entitlement to benefits; computation and payment of benefits to mortgagee

(1) Any mortgagee under a mortgage insured under section 1715z(i), (j)(4), 1715z–2, or 1715z–8 of this title shall be entitled to receive the benefits of the insurance as provided in section 1710(a) of this title with respect to mortgages insured under section 1709 of this title. The provisions of subsections (b), (c), (d), (g), (j), and (k)[1] of section 1710 of this title shall be applicable to mortgages insured under section 1715z(i), (j)(4), 1715z–2,[1] or 1715z–8 of this title, except that all references therein to the ''Mutual Mortgage Insurance Fund'' shall be construed to refer to the ''Special Risk Insurance Fund'', and all references therein to section 1709 of this title shall be construed to refer to section 1715z(i), (j)(4), 1715z–2, or 1715z–8 of this title, as may be appropriate.

(2) Any mortgagee under a mortgage insured under section 1715z(j)(1) or 1715z–1 of this title shall be entitled to receive the benefits of insurance as provided in section 1713(g) of this title with respect to mortgages insured under section 1713 of this title. The provisions of subsections (d), (e), (h), (i), (j), (k), (*l*), and (n) of section 1713 of this title shall be applicable to mortgages insured under section 1715z(j)(1) or 1715z–1 of this title, except that all references therein to the ''General Insurance Fund'' shall be construed to refer to the ''Special Risk Insurance Fund'' and the premium charge provided in section 1713(d) of this title shall be payable only in cash or debentures of the Special Risk Insurance Fund.

(3) In lieu of the amount of insurance benefits computed pursuant to paragraph (1) or (2) of this subsection the Secretary, in his discretion and in accordance with such regulations as he may prescribe, may (with respect to any mortgage loan acquired by him) compute and pay insurance benefits to the mortgagee in a total amount equal to the unpaid principal balance of the loan plus any accrued interest and any advances approved by the Secretary and made previously by the mortgagee under the provisions of the mortgage.

(b) Creation of fund; authorization for advancements; repayment; crediting of charges and fees; payments from fund; authorization of appropriations for losses; deposits to fund; open-market purchases of debentures which are obligations of fund

There is hereby created a Special Risk Insurance Fund (hereinafter referred to as the ''fund'') which shall be used by the Secretary as a revolving fund for carrying out the mortgage insurance obligations of sections 1715n(e), 1715x(a)(2), 1715z, 1715z–1, 1715z–2,[1] and 1715z–8 of this title, and the Secretary is hereby authorized to advance to the fund, at such times and in such amounts as he may determine to be necessary, a total sum of $20,000,000 from the General Insurance Fund established pursuant to the provisions of section 1735c of this title. Such advance shall be repayable at such times and at such rates of interest as the Secretary deems appropriate. Premium charges, adjusted premium charges, inspection and other fees, service charges, and any other income received by the Secretary under sections 1715n(e), 1715x(a)(2), 1715z, 1715z–1, 1715z–2, and 1715z–8 of this title, together with all earnings on the assets of the fund, shall be credited to the fund. All payments made pursuant to claims of mortgagees with respect to mortgages insured under sections 1715x(a)(2), 1715z, 1715z–1, 1715z–2, and 1715z–8 of this title or pursuant to section 1715n(e) of this title, cash adjustments, the principal of and interest paid on debentures which are the obligation of the fund, expenses incurred in connection with or as a consequence of the acquisition and disposal of property acquired under such sections, and all administrative expenses in connection with the mortgage insurance operations under such sections shall be paid out of the fund. Moneys in the fund not needed for current operations of the fund shall be deposited with the Treasurer of the United States to the credit of the fund or invested in bonds or other obligations of, or in bonds or other obligations guaranteed by, the United States or any agency of the United States: *Provided*, That such moneys shall to the maximum extent feasible be invested in such bonds or other obligations the proceeds of which will be used to directly support the residential mortgage market. The Secretary, with the approval of the Secretary of the Treasury, may purchase in the open market debentures which are the obligation of the fund. Such purchases shall be made at a price which will provide an investment yield of not less than the yield obtained from other investments authorized by this section. Debentures so purchased shall be canceled and not reissued.

(c) Mortgage insurance for military impacted areas; criteria; obligation of Special Risk Insurance Fund; establishment of premiums and other charges

(1) Notwithstanding the provisions of this chapter or any other Act, and without regard to limitations upon eligibility contained in any section of this subchapter, the Secretary is authorized, upon application by the mortgagee, to insure under any section of this subchapter a

[1] See References in Text note below.

mortgage executed in connection with the construction, repair, rehabilitation, or purchase of property located near any installation of the Armed Forces of the United States in federally impacted areas in which the conditions are such that one or more of the eligibility requirements applicable to the section under which insurance is sought could not be met, if (A) the Secretary finds that the benefits to be derived from such use outweigh the risk of probable cost to the Government, and (B) the Secretary of Defense certifies that there is no intention insofar as can reasonably be foreseen to curtail substantially the personnel assigned or to be assigned to such installation. The insurance of a mortgage pursuant to this subsection shall be the obligation of the Special Risk Insurance Fund.

(2) The Secretary is authorized (A) to establish such premiums and other charges as may be necessary to assure that the mortgage insurance program pursuant to this subsection is made available on a basis which, in the Secretary's judgment, is designed to be actuarially sound and likely to maintain the fiscal integrity of such program, and (B) to prescribe such terms and conditions relating to insurance pursuant to this subsection as may be found by the Secretary to be necessary and appropriate, and which are to the maximum extent possible, consistent with provisions otherwise applicable to mortgage insurance and payment of insurance benefits.

(3) The Secretary shall undertake an annual assessment of the risks associated with each of the insurance programs comprising the Special Risk Insurance Fund, and shall present findings from such review to the Congress in the FHA Annual Management Report.

(June 27, 1934, ch. 847, title II, § 238, as added Pub. L. 90–448, title I, § 104(a), Aug. 1, 1968, 82 Stat. 486; amended Pub. L. 91–152, title IV, § 415, Dec. 24, 1969, 83 Stat. 401; Pub. L. 91–351, title V, § 503, July 24, 1970, 84 Stat. 461; Pub. L. 91–609, title I, § 117(d), Dec. 31, 1970, 84 Stat. 1775; Pub. L. 93–383, title III, § 318, Aug. 22, 1974, 88 Stat. 685; Pub. L. 95–128, title III, § 309, Oct. 12, 1977, 91 Stat. 1135; Pub. L. 103–233, title I, §§ 103(g)(1), 105(a), Apr. 11, 1994, 108 Stat. 362, 363.)

REFERENCES IN TEXT

Subsection (k) of section 1710 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 105–276, title VI, § 601(c), Oct. 21, 1998, 112 Stat. 2673.

Section 1715z–2 of this title, referred to in subsecs. (a)(1) and (b), was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(6), July 30, 2008, 122 Stat. 2835.

This chapter, referred to in subsec. (c)(1), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–233, § 105(a), struck out after fourth sentence ''There is authorized to be appropriated such sums as may be needed from time to time to cover losses sustained by the fund in carrying out the mortgage insurance obligations of sections 1715n(e), 1715x(a)(2), 1715z, 1715z–1, 1715z–2, and 1715z–8 of this title.''

Subsec. (c)(3). Pub. L. 103–233, § 103(g)(1), added par. (3).

1977—Subsec. (c). Pub. L. 95–128 substituted provisions of pars. (1) and (2) respecting mortgage insurance for military impacted areas, criteria therefore, and establishment of premiums and other charges for prior subsec. (c), which had authorized use of the Special Risk Insurance Fund to carry out mortgage insurance obligations of sections 1709 and 1713 of this title to provide housing for military personnel, Federal civilian employees, and Federal contractor employees assigned to duty or employed at or in connection with any installation of the Armed Forces in federally impacted areas where in the judgment of the Secretary (1) the residual housing requirements for persons not associated with such installations were insufficient to sustain the housing market in the event of substantial curtailment of employment of personnel assigned to such installations, and (2) the benefits to be derived from such use outweighed the risk of possible cost to the Government.

1974—Subsec. (c). Pub. L. 93–383 added subsec. (c).

1970—Subsec. (a)(1). Pub. L. 91–351, § 503(1), inserted references to section 1715z–8 of this title wherever appearing.

Subsec. (b). Pub. L. 91–609 provided for guarantee as to principal and interest by any agency of the United States and for investment of moneys in bonds or other obligations the proceeds of which will be used to directly support the residential mortgage market.

Pub. L. 91–351, § 503(2), inserted references to section 1715z–8 of this title wherever appearing.

1969—Subsec. (b). Pub. L. 91–152 increased from $5,000,000 to a total sum of $20,000,000, at such times and in such amounts as he may determine to be necessary, the amount authorized to be advanced by the Secretary to the Fund.

§ 1715z–4. Modifications in terms of mortgages covering multifamily projects; requests for extensions to cure defaults or for modification of mortgage terms; regulations

The Secretary shall not consent to any request for an extension of the time for curing a default under any mortgage covering multifamily housing, as defined in the regulations of the Secretary, or for a modification of the terms of such mortgage, except in conformity with regulations prescribed by the Secretary in accordance with the provisions of this section. Such regulations shall require, as a condition to the granting of any such request, that, during the period of such extension or modification, any part of the rents or other funds derived by the mortgagor from the property covered by the mortgage which is not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges under the mortgage, be held in trust by the mortgagor and distributed only with the consent of the Secretary; except that the Secretary may provide for the granting of consent to any request for an extension of the time for curing a default under any mortgage covering multifamily housing, or for a modification of the term of such mortgage, without regard to the foregoing requirement, in any case or class of cases in which an exemption from such requirement does not (as determined by the Secretary) jeopardize the interests of the United States.

(June 27, 1934, ch. 847, title II, § 239, as added Pub. L. 90–448, title III, § 302, Aug. 1, 1968, 82 Stat. 506; amended Pub. L. 100–242, title IV, § 416(c), Feb. 5, 1988, 101 Stat. 1908.)

AMENDMENTS

1988—Pub. L. 100–242 struck out ''insured'' before ''mortgages'' in section catchline, and struck out sub-

sec. (a) designation and subsec. (b) which related to violations and penalties imposed for violations of the provisions of former subsec. (a).

§ 1715z–4a. Double damages remedy for unauthorized use of multifamily housing project assets and income

(a) Action to recover assets or income

(1) The Secretary of Housing and Urban Development (referred to in this section as the ''Secretary'') may request the Attorney General to bring an action in a United States district court to recover any assets or income used by any person in violation of (A) a regulatory agreement that applies to a multifamily project, nursing home, intermediate care facility, board and care home, assisted living facility, or hospital whose mortgage is or, at the time of the violations, was insured or held by the Secretary under title II of the National Housing Act [12 U.S.C. 1707 et seq.]; (B) a regulatory agreement that applies to a multifamily project whose mortgage is or, at the time of the violations, was insured or held by the Secretary under section 1701q of this title (including property subject to section 1701q of this title as it existed before November 28, 1990); (C) a regulatory agreement or such other form of regulatory control as may be imposed by the Secretary that applies to mortgages insured or held or, at the time of the violations, was[1] insured or held by the Secretary under section 1715z–22 of this title, but not reinsured under section 1715z–22 of this title; or (D) any applicable regulation. For purposes of this section, a use of assets or income in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, or any applicable regulation shall include any use for which the documentation in the books and accounts does not establish that the use was made for a reasonable operating expense or necessary repair of the property and has not been maintained in accordance with the requirements of the Secretary and in reasonable condition for proper audit.

(2) For purposes of a mortgage insured or held by the Secretary under title II of the National Housing Act [12 U.S.C. 1707 et seq.], under section 1701q of this title (including section 1701q of this title as it existed before November 28, 1990) and under section 1715z–22 of this title, the term ''any person'' shall mean any person or entity that owns or operates a property, as identified in the regulatory agreement, including but not limited to—

(A) any stockholder holding 25 percent or more interest of a corporation that owns that property;

(B) any beneficial owner of the property under any business or trust;

(C) any officer, director, or partner of an entity owning or controlling the property;

(D) any nursing home lessee or operator;

(E) any hospital lessee or operator;

(F) any other person or entity that controls the property regardless of that person or entity's official relationship to the property; and

(G) any heir, assignee, successor in interest, or agent of any person or entity described in the preceding subparagraphs.

[1] So in original.

(b) Initiation of proceedings and temporary relief

The Attorney General, upon request of the Secretary, shall have the exclusive authority to authorize the initiation of proceedings under this section. Pending final resolution of any action under this section, the court may grant appropriate temporary or preliminary relief, including restraining orders, injunctions, and acceptance of satisfactory performance bonds, to protect the interests of the Secretary and to prevent use of assets or income in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, and any applicable regulation and to prevent loss of value of the realty and personalty involved.

(c) Amount recoverable

In any judgment favorable to the United States entered under this section, the Attorney General may recover double the value of the assets and income of the property that the court determines to have been used in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, or any applicable regulation, plus all costs relating to the action, including but not limited to reasonable attorney and auditing fees. Notwithstanding any other provision of law, the Secretary may apply the recovery, or any portion of the recovery, to the property or to the applicable insurance fund under the National Housing Act [12 U.S.C. 1701 et seq.] or, in the case of any project for which the mortgage is held by the Secretary under section 1701q of this title (including property subject to section 1701q of this title as it existed before November 28, 1990), to the project or to the Department for use by the appropriate office within the Department for administrative costs related to enforcement of the requirements of the various programs administered by the Secretary, as appropriate.

(d) Time limitation

Notwithstanding any other statute of limitations, the Secretary may request the Attorney General to bring an action under this section at any time up to and including 6 years after the latest date that the Secretary discovers any use of a property's assets and income in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, or any applicable regulation.

(e) Continued availability of other remedies

The remedy provided by this section is in addition to any other remedies available to the Secretary or the United States.

(Pub. L. 100–242, title IV, § 421, Feb. 5, 1988, 101 Stat. 1913; Pub. L. 105–65, title V, § 563, Oct. 27, 1997, 111 Stat. 1419; Pub. L. 108–447, div. I, title II, § 220, Dec. 8, 2004, 118 Stat. 3319; Pub. L. 109–115, div. A, title III, § 324, Nov. 30, 2005, 119 Stat. 2466.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsecs. (a) and (c), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). Title II of the National Housing Act is classified generally to this subchapter (§ 1707 et seq.).

For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1987, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

2005—Subsec. (a)(1)(A). Pub. L. 109–115, § 324(1), inserted ''or, at the time of the violations, was'' after ''is''.

Subsec. (a)(1)(C). Pub. L. 109–115, § 324(2), inserted ''or, at the time of the violations, was insured or held'' after ''held''.

2004—Subsec. (a)(1). Pub. L. 108–447, § 220(3), substituted ''property'' for ''project'' in second sentence.

Subsec. (a)(1)(A). Pub. L. 108–447, § 220(1), inserted '', nursing home, intermediate care facility, board and care home, assisted living facility, or hospital'' after ''project''.

Subsec. (a)(1)(B). Pub. L. 108–447, § 220(2), inserted ''or, at the time of the violations, was'' after ''whose mortgage is''.

Subsec. (a)(2). Pub. L. 108–447, § 220(4), substituted ''that owns or operates a property, as identified in the regulatory agreement, including but not limited to—'' and subpars. (A) to (G) for ''which owns a project, as identified in the regulatory agreement, including but not limited to any stockholder holding 25 percent or more interest of a corporation that owns the project; any beneficial owner under any business or trust; any officer, director, or partner of an entity owning the project; and any heir, assignee, successor in interest, or agent of any owner.''

Subsec. (c). Pub. L. 108–447, § 220(5), substituted ''property that the court determines'' for ''project that the court determines'' and ''property or to the applicable insurance fund'' for ''project or to the applicable insurance fund''.

Subsec. (d). Pub. L. 108–447, § 220(6), substituted ''a property's'' for ''project''.

1997—Subsec. (a)(1). Pub. L. 105–65, § 563(1), substituted ''(B) a regulatory agreement that applies to a multifamily project whose mortgage is insured or held by the Secretary under section 1701q of this title (including property subject to section 1701q of this title as it existed before November 28, 1990); (C) a regulatory agreement or such other form of regulatory control as may be imposed by the Secretary that applies to mortgages insured or held by the Secretary under section 542 of the Housing and Community Development Act of 1992, but not reinsured under section 542 of the Housing and Community Development Act of 1992; or (D)'' for ''or (B)'' in first sentence and inserted '', or such other form of regulatory control as may be imposed by the Secretary,'' after ''regulatory agreement'' in second sentence.

Subsec. (a)(2). Pub. L. 105–65, § 563(2), inserted ''under section 1701q of this title (including section 1701q of this title as it existed before November 28, 1990) and under section 542 of the Housing and Community Development Act of 1992,'' after ''title II of National Housing Act,''.

Subsec. (b). Pub. L. 105–65, § 563(3), inserted '', or such other form of regulatory control as may be imposed by the Secretary,'' after ''regulatory agreement''.

Subsec. (c). Pub. L. 105–65, § 563(4), in first sentence, inserted '', or such other form of regulatory control as may be imposed by the Secretary,'' after ''regulatory agreement'' and inserted before period at end of second sentence ''or, in the case of any project for which the mortgage is held by the Secretary under section 1701q of this title (including property subject to section 1701q of this title as it existed before November 28, 1990), to the project or to the Department for use by the appropriate office within the Department for administrative costs related to enforcement of the requirements of the various programs administered by the Secretary, as appropriate''.

Subsec. (d). Pub. L. 105–65, § 563(5), inserted '', or such other form of regulatory control as may be imposed by the Secretary,'' after ''regulatory agreement''.

§ 1715z–5. Purchase of fee simple title from lessors

(a) Authorization to insure loans for purpose of financing purchases

The Secretary is authorized, upon such terms and conditions as he may prescribe, to make commitments to insure and to insure loans made by financial institutions for the purpose of financing purchases by homeowners of the fee simple title to property on which their homes are located.

(b) Definitions

As used in this section—

(1) the term ''financial institution'' means a lender approved by the Secretary as eligible for insurance under section 1703 of this title or a mortgagee approved under section 1709(b)(1) of this title; and

(2) the term ''homeowner'' means a lessee under a long-term ground lease.

(c) Eligibility for insurance

To be eligible for insurance under this section, a loan shall—

(1) relate to property on which there is located a dwelling designed principally for a one-, two-, three-, or four-family residence;

(2) not exceed the cost of purchasing the fee simple title, or $10,000 ($30,000, if the property is located in Hawaii) per family unit, whichever is the lesser;

(3) be limited to an amount which when added to any outstanding indebtedness related to the property (as determined by the Secretary) creates a total outstanding indebtedness which does not exceed the applicable mortgage limit prescribed in section 1709(b) of this title;

(4) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee;

(5) have a maturity satisfactory to the Secretary, but not to exceed twenty years from the beginning of amortization of the loan; and

(6) comply with such other terms, conditions, and restrictions as the Secretary may prescribe.

(d) Applicability of other provisions of law

The provisions of paragraphs (3), (5), (6), (7), (8), and (10) of section 1715k(h) of this title shall be applicable to loans insured under this section and, as applied to loans insured under this section, references in those paragraphs to ''home improvement loans'' and ''this subsection'' shall be construed to refer to loans under this section.

(June 27, 1934, ch. 847, title II, § 240, as added Pub. L. 90–448, title III, § 304(a), Aug. 1, 1968, 82 Stat. 507; amended Pub. L. 95–557, title III, § 314, Oct. 31, 1978, 92 Stat. 2099; Pub. L. 96–399, title III, § 333(f), Oct. 8, 1980, 94 Stat. 1653; Pub. L. 98–181, title IV, § 404(b)(13), Nov. 30, 1983, 97 Stat. 1210; Pub. L. 98–479, title II, § 204(a)(10), Oct. 17, 1984, 98 Stat. 2232.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–479 substituted ''purchases'' for ''purchasers''.

1983—Subsec. (c)(4). Pub. L. 98–181 substituted provision that the interest rate be such rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate not exceed such per centum per annum, not in excess of 6 per centum, on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet market conditions, and such other charges as approved by the Secretary.

1980—Subsec. (c)(5). Pub. L. 96–399 struck out ''or three-quarters of the remaining economic life of the home, whichever is the lesser'' after ''loan''.

1978—Subsec. (c)(2). Pub. L. 95–557 inserted ''($30,000, if the property is located in Hawaii)'' after ''$10,000''.

§ 1715z–6. Supplemental loans for multifamily projects

(a) Authorization to insure; "supplemental loan" defined

With respect to a multifamily project, hospital, or group practice facility covered by a mortgage insured under any section or subchapter of this chapter or covered by a mortgage held by the Secretary, the Secretary is authorized, upon such terms and conditions as he may prescribe, to make commitments to insure, and to insure, supplemental loans (including advances during construction or improvement) made by financial institutions approved by the Secretary. As used in this section, ''supplemental loan'' means a loan, advance of credit, or purchase of an obligation representing a loan or advance of credit made for the purpose of financing improvements or additions to such project, hospital, or facility: *Provided*, That a loan involving a nursing home, hospital, or a group practice facility may also be made for the purpose of financing equipment to be used in the operation of such nursing home, hospital, or facility.

(b) Eligibility for insurance

To be eligible for insurance under this section, a supplemental loan shall—

(1) be limited to 90 per centum of the amount which the Secretary estimates will be the value of such improvements, additions, and equipment, except that such amount when added to the outstanding balance of the mortgage covering the project or facility, shall not exceed the maximum mortgage amount insurable under the section or subchapter pursuant to which the mortgage covering such project or facility is insured or an amount acceptable to the Secretary;

(2) have a maturity satisfactory to the Secretary;

(3) bear interest at such rate as may be agreed upon by the borrower and the financial institution;

(4) be secured in such manner as the Secretary may require;

(5) be governed by the labor standards provisions of section 1715c of this title that are applicable to the section or subchapter pursuant to which the mortgage covering the project or facility is insured or pursuant to which the original mortgage covering the project or facility was insured; and

(6) contain such other terms, conditions, and restrictions as the Secretary may prescribe.

(c) Applicability of other provisions of law

The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (*l*), and (n) of section 1713 of this title shall be applicable to loans insured under this section, except that (1) all references to the term ''mortgage'' shall be construed to refer to the term ''loan'' as used in this section, (2) loans involving projects covered by a mortgage insured under section 1715e of this title that is the obligation of the Cooperative Management Housing Insurance Fund shall be insured under and shall be the obligation of such fund, and (3) loans involving projects covered by a mortgage insured under section 1715z–1 of this title shall be insured under and shall be the obligation of the Special Risk Insurance Fund.

(d) Authorization to insure loans for improvements or additions; terms and conditions; limitation on amount

Notwithstanding the foregoing, the Secretary may insure a loan for improvements or additions to a multifamily housing project, or a group practice or medical practice facility or hospital or other health facility approved by the Secretary, which is not covered by a mortgage insured under this chapter, if he finds that such a loan would assist in preserving, expanding, or improving housing opportunities, or in providing protection against fire or other hazards. Such loans shall have a maturity satisfactory to the Secretary and shall meet such other conditions as the Secretary may prescribe. In no event shall such a loan be insured if it is for an amount in excess of the maximum amount which could be approved if the outstanding indebtedness, if any, covering the property were a mortgage insured under this chapter. At any sale under foreclosure of a mortgage on a project or facility which is not insured under this chapter but which is senior to a loan assigned to the Secretary pursuant to subsection (c) of this section, the Secretary is authorized to bid, in addition to amounts authorized under section 1713(k) of this title, any sum up to but not in excess of the total unpaid indebtedness secured by such senior mortgage, plus taxes, insurance, foreclosure costs, fees, and other expenses. In the event that, pursuant to subsection (c) of this section, the Secretary acquires title to, or is assigned, a loan covering a project or facility which is subject to a mortgage which is not insured under this chapter, the Secretary is authorized to make payments from the General Insurance Fund on the debt secured by such mortgage, and to take such other steps as the Secretary may deem appropriate to preserve or protect the Secretary's interest in the project or facility.

(e) Loan insurance for energy conserving improvements and solar energy systems

(1) Notwithstanding any other provision of this section, the Secretary may insure a loan for purchasing and installing energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 1703(a) of this title), for purchasing and installing a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title), and for purchasing or installing (or both) individual utility meters in a multifamily housing project if such meters are purchased or installed in connection with other energy conserving improvements or with a solar energy system

or the project meets minimum standards of energy conservation established by the Secretary, without regard to whether the project is covered by a mortgage under this chapter.

(2) Notwithstanding the provisions of subsection (b) of this section, a loan insured under this subsection shall—

(A) not exceed an amount which the Secretary determines is necessary for the purchase and installation of individual utility meters plus an amount which the Secretary deems appropriate taking into account amounts which will be saved in operation costs over the period of repayment of the loan by reducing the energy requirements of the project as a result of the installation of energy conserving improvements or a solar energy system therein;

(B) be insured for 90 percent of any loss incurred by the person holding the note for the loan; except that, for cooperative multifamily projects receiving assistance under section 1715z–1 of this title or financed with a below market interest rate mortgage insured under section 1715*l*(d)(3) of this title, 100 percent of any such loss may be insured;

(C) bear an interest rate not to exceed an amount which the Secretary determines, after consulting with the Secretary of Energy, to be necessary to meet market demands;

(D) have a maturity satisfactory to the Secretary;

(E) be insured pursuant to a premium rate established on a sound actuarial basis to the extent practicable;

(F) be secured in such manner as the Secretary may require;

(G) be an acceptable risk in that energy conservation or solar energy benefits to be derived outweigh the risks of possible loss to the Federal Government; and

(H) contain such other terms, conditions, and restrictions as the Secretary may prescribe.

(3) The provisions of subsection (c) of this section shall apply to loans insured under this subsection.

(4) The Secretary shall provide that any person obligated on the note for any loan insured under this section be regulated or restricted, until the termination of all obligations of the Secretary under the insurance, by the Secretary as to rents or sales, charges, capital structure, rate of return, and methods of operations of the multifamily project to such an extent and in such manner as to provide reasonable rentals to tenants and a reasonable return on the investment.

(f) Repealed. Pub. L. 104–204, title II, Sept. 26, 1996, 110 Stat. 2885

(g) Extension of rental assistance for term of loan

(1) When underwriting a rehabilitation loan under this section in connection with eligible multifamily housing, the Secretary may assume that any rental assistance provided for purposes of servicing the additional debt will be extended for the term of the rehabilitation loan. The Secretary shall exercise prudent underwriting practices in insuring rehabilitation loans under this section. For purposes of this subsection, the term ''eligible multifamily housing'' means any housing financed by a loan or mortgage that is—

(A) insured or held by the Secretary under section 1715*l*(d)(3) of this title and assisted under section 1701s of this title or section 1437f of title 42;

(B) insured or held by the Secretary and bears interest at a rate determined under the proviso of section 1715*l*(d)(5) of this title; or

(C) insured, assisted or held by the Secretary under section 1715z–1 of this title.

(2) A mortgagee approved by the Secretary may not withhold consent to a rehabilitation loan insured in connection with eligible multifamily housing on which that mortgagee holds a mortgage.

(June 27, 1934, ch. 847, title II, § 241, as added Pub. L. 90–448, title III, § 307, Aug. 1, 1968, 82 Stat. 508; amended Pub. L. 91–609, title I, § 111, Dec. 31, 1970, 84 Stat. 1772; Pub. L. 93–383, title III, § 313, Aug. 22, 1974, 88 Stat. 684; Pub. L. 94–375, § 5, Aug. 3, 1976, 90 Stat. 1070; Pub. L. 95–557, title III, § 311(b), Oct. 31, 1978, 92 Stat. 2098; Pub. L. 95–619, title II, § 247, Nov. 9, 1978, 92 Stat. 3234; Pub. L. 96–153, title III, § 319, Dec. 21, 1979, 93 Stat. 1119; Pub. L. 96–399, title III, § 314, Oct. 8, 1980, 94 Stat. 1645; Pub. L. 98–181, title IV, § 404(b)(14), Nov. 30, 1983, 97 Stat. 1210; Pub. L. 98–479, title II, § 204(a)(11), (12), Oct. 17, 1984, 98 Stat. 2232; Pub. L. 100–242, title II, § 231, title IV, § 429(c), Feb. 5, 1988, 101 Stat. 1884, 1918; Pub. L. 101–235, title II, §§ 203(c), (d), 204(b), Dec. 15, 1989, 103 Stat. 2038, 2039; Pub. L. 101–625, title VI, § 602(a), Nov. 28, 1990, 104 Stat. 4275; Pub. L. 102–550, title III, §§ 316(a), (b), 317(c), Oct. 28, 1992, 106 Stat. 3771, 3772; Pub. L. 104–204, title II, Sept. 26, 1996, 110 Stat. 2885.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (d), and (e)(1), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–204 struck out subsec. (f), which related to insurance for second mortgage financing.

1992—Subsec. (f)(2)(B)(i). Pub. L. 102–550, § 316(a)(1), inserted ''the amount of rehabilitation costs required by the plan of action and related charges and'' after ''equal to''.

Subsec. (f)(2)(B)(ii). Pub. L. 102–550, § 317(c)(1), struck out ''and'' at end.

Subsec. (f)(3)(B). Pub. L. 102–550, § 316(a)(2), inserted ''and the amount of rehabilitation costs required by the plan of action and related charges and'' after ''1990''.

Subsec. (f)(5)(A). Pub. L. 102–550, § 316(a)(3)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: ''have a maturity and provisions for amortization satisfactory to the Secretary, bear interest at such rate as may be agreed upon by the mortgagor and mortgagee, and be secured in such manner as the Secretary may require; and''.

Subsec. (f)(5)(B), (C). Pub. L. 102–550, § 316(a)(3), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(6). Pub. L. 102–550, § 317(c)(2), which directed the substitution of ''acquisition loan'' for ''acquisiton loan'' in par. (7), was executed by making the substitution in par. (6) to reflect the probable in-

tent of Congress and the intervening redesignation of par. (7) as (6) by Pub. L. 102–550, §316(a)(5). See below.

Pub. L. 102–550, §316(a)(4), (5), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: ''The Secretary may provide for combination of loans insured under subsection (d) of this section with equity and acquisition loans insured under this subsection.''

Subsec. (f)(7) to (9). Pub. L. 102–550, §316(a)(5), redesignated pars. (7) to (9) as (6) to (8), respectively.

Subsec. (f)(10). Pub. L. 102–550, §316(b), added par. (10).

1990—Subsec. (f). Pub. L. 101–625 amended subsec. (f) generally, substituting present provisions for provisions relating to insurance of ''equity loans'' under the Emergency Low Income Housing Preservation Act of 1987, providing for eligibility for such insurance, providing that a qualified nonprofit organization or limited equity tenant cooperative corporation may constitute an owner of housing for purposes of receiving an insured loan, providing for applicability of certain provisions of section 1713 of this title, and providing that an approved mortgagee may not withhold consent to an equity loan on property on which mortgagee holds a mortgage.

1989—Subsec. (f)(2). Pub. L. 101–235, §203(c)(1), inserted at end ''When underwriting an equity loan under this subsection, the Secretary may assume that the rental assistance provided in accordance with an approved plan of action under section 225(b) of the Emergency Low Income Housing Preservation Act of 1987 will be extended for the full term of the contract entered into under section 225(c) of that Act. The Secretary may accelerate repayment of a loan under this section in the event rental assistance is not extended under section 225(c) of that Act or the Secretary is unable to develop a revised package of incentives to the owner comparable to those received under the original approved plan of action.''

Subsec. (f)(3). Pub. L. 101–235, §203(c)(2), inserted ''public entity,'' after ''A''.

Subsec. (f)(6). Pub. L. 101–235, §203(d), added par. (6).

Subsec. (g). Pub. L. 101–235, §204(b), added subsec. (g).

1988—Subsec. (b)(3). Pub. L. 100–242, §429(c), substituted ''borrower and the financial institution'' for ''mortgagor and the mortgagee''.

Subsec. (f). Pub. L. 100–242, §231, added subsec. (f).

1984—Subsec. (a). Pub. L. 98–479, §204(a)(11), substituted ''to make'' for ''to made''.

Subsec. (b)(1). Pub. L. 98–479, §204(a)(12), substituted ''or facility'' for ''of facility'' before ''is insured''.

1983—Subsec. (b)(3). Pub. L. 98–181 substituted provision that the interest rate be such a rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate, exclusive of premium charges for insurance and service charges, not exceed such per centum per annum, not in excess of 6 per centum, on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet market conditions.

1980—Subsec. (e)(1). Pub. L. 96–399 inserted provisions respecting requirements for purchase or installation in connection with other energy conserving improvements, etc.

1979—Subsec. (b)(2). Pub. L. 96–153 struck out ''but not to exceed the remaining term of the mortgage'' after ''the Secretary''.

1978—Subsec. (d). Pub. L. 95–557 inserted provision relating to the amounts the Secretary is authorized to bid at any sale under foreclosure of a mortgage on a project or facility which is not insured under this chapter but which is senior to a loan assigned to the Secretary pursuant to subsection (c), and such other steps the Secretary is authorized to take to preserve or protect his interest in the project or facility.

Subsec. (e). Pub. L. 95–619 added subsec. (e).

1976—Subsec. (a). Pub. L. 94–375 inserted '', hospital,'' after ''multifamily project'', ''additions to such project'', ''involving a nursing home'', and ''of such nursing home''.

1974—Subsec. (d). Pub. L. 93–383 added subsec. (d).

1970—Subsec. (a). Pub. L. 91–609, §111(1), (2), inserted in first sentence ''or covered by a mortgage held by the Secretary'' after ''this chapter'' and substituted in proviso ''a nursing home or a group practice facility'' for ''a nursing home covered by a mortgage insured under section 1715w of this title or a loan involving a group practice facility covered by a mortgage insured under subchapter IX–B of this chapter'', respectively.

Subsec. (b)(1). Pub. L. 91–609, §111(3), inserted ''or an amount acceptable to the Secretary'' before semicolon at end.

Subsec. (b)(5). Pub. L. 91–609, §111(4), inserted ''or pursuant to which the original mortgage covering the project or facility was insured'' before semicolon at end.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 231 of Pub. L. 100–242 applicable to any project that is eligible low income housing on or after Nov. 1, 1987, see section 235 of Pub. L. 100–242.

REGULATIONS

Section 316(c) of Pub. L. 102–550 directed Secretary, not later than the expiration of 45-day period beginning on Oct. 28, 1992, to issue regulations implementing subsec. (f)(1) of this section and provided that such regulations are not subject to requirements of 5 U.S.C. 553.

INSURANCE FOR SECOND MORTGAGE FINANCING NOT TO BE OFFERED AS INCENTIVE UNDER LIHPRHA AND ELIHPA

Insurance for second mortgage financing provided under former subsec. (f) of this section not to be offered as incentive under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4101 et seq.) and the Emergency Low Income Housing Preservation Act of 1987 (Pub. L. 100–242, title II, Feb. 5, 1988, 101 Stat. 1877, as amended), see title II in part of Pub. L. 104–204, set out as a Low-Income Housing Preservation note under section 4101 of this title.

DELEGATION OF PROCESSING OF MORTGAGE INSURANCE

Secretary of Housing and Urban Development to implement system of mortgage insurance for mortgages insured under this section that delegates processing functions to selected approved mortgagees, with Secretary to retain authority to approve rents, expenses, property appraisals, and mortgage amounts and to execute firm commitments, see section 328 of Pub. L. 101–625, set out as a note under section 1713 of this title.

§ 1715z–7. Mortgage insurance for hospitals

(a) Purpose

The purpose of this section is to assist the provision of urgently needed hospitals for the care and treatment of persons who are acutely ill or who otherwise require medical care and related services of the kind customarily furnished only (or most effectively) by hospitals. Such assistance shall be provided regardless of the amount of public financial or other support a hospital may receive, and the Secretary shall neither require additional security or collateral to guarantee such support, nor impose more stringent eligibility or other requirements on publicly owned or supported hospitals.

(b) Definitions

For the purposes of this section—

(1) the term ''hospital'' means a facility—

(A) which provides community service for inpatient medical care of the sick or injured (including obstetrical care);

(B) not more than 50 per centum of the total patient days of which during any year are customarily assignable to the categories

of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis, unless the facility is a critical access hospital (as that term is defined in section 1861(mm)(1) of the Social Security Act (42 U.S.C. 1395x(mm)(1))); and

(C) which is a public facility, proprietary facility, or facility of a private nonprofit corporation or association, licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located); and

(2) the terms ''mortgage'' and ''mortgagor'' shall have the meanings respectfully set forth in section 1713(a) of this title.

(c) Authorization to insure; prohibition of premiums on guarantees of principal and interest under title VII of the Public Health Service Act

The Secretary is authorized to insure any mortgage (including advances on such mortgage during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and to make commitments for insurance of such mortgage prior to the date of its execution or disbursement thereon. No mortgage insurance premium shall be charged with respect to the amount of principal and interest guaranteed by the Department of Health and Human Services under title VII of the Public Health Service Act [42 U.S.C. 292 et seq.].

(d) Insurance of mortgages covering new or rehabilitated hospitals, including equipment; terms and conditions

In order to carry out the purpose of this section, the Secretary is authorized to insure any mortgage which covers a new or rehabilitated hospital, including equipment to be used in its operation, subject to the following conditions:

(1) The mortgage shall be executed by a mortgagor approved by the Secretary. The Secretary may in his discretion require any such mortgagor to be regulated or restricted as to charges and methods of financing, and, in addition thereto, if the mortgagor is a corporate entity, as to capital structure and rate of return. As an aid to the regulation or restriction of any mortgagor with respect to any of the foregoing matters, the Secretary may make such contracts with and acquire for not to exceed $100 such stock or interest in such mortgagor as he may deem necessary. Any stock or interest so purchased shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(2) The mortgage shall involve a principal obligation in the amount requested by the mortgagor if such amount does not exceed 90 percent of the estimated replacement cost of the property or project including—

(A) equipment to be used in the operation of the hospital, when the proposed improvements are completed and the equipment is installed; and

(B) a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42)[1] in cases where the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure.

(3) The mortgage shall—

(A) provide for complete amortization by periodic payments within such term as the Secretary shall prescribe; and

(B) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee.

(4)(A) The Secretary shall require satisfactory evidence that the hospital will be located in a State or political subdivision of a State with reasonable minimum standards of licensure and methods of operation for hospitals and satisfactory assurance that such standards will be applied and enforced with respect to the hospital.

(B) The Secretary shall establish the means for determining need and feasibility for the hospital, if the State does not have an official procedure for determining need for hospitals. If the State has an official procedure for determining need for hospitals, the Secretary shall require that such procedure be followed before the application for insurance is submitted, and the application shall document that need has also been established under that procedure.

(5) The Secretary shall not insure any mortgage or approve any modification of an existing mortgage insured pursuant to this section or section 1715n(f) of this title if such insurance or modification is to be made in connection with a guarantee, as authorized pursuant to section 1721 of this title, of a trust certificate or other security which is exempt from Federal taxation or which is to be used to collateralize obligations which are so exempt, except that the Secretary shall not refuse to insure such a mortgage or approve such a modification solely on the basis that such insurance or modification is to be made in connection with a guarantee, as authorized pursuant to section 1721 of this title, of a trust certificate or other security which is exempt from Federal taxation or which is to be used to collateralize obligations which are so exempt if—

(A) a written application for such insurance or modification submitted at the express direction of the hospital has been submitted to the appropriate office of the Department of Health and Human Services prior to March 29, 1979; or

(B) in the case of a nonprofit mortgagor which is seeking refinancing or modification of an existing mortgage insured pursuant to this section or section 1715n(f) of this title, the mortgagor (i) had engaged an investment banker for the purpose of obtaining such refinancing or modification, or had

[1] See References in Text note below.

undertaken or arranged for the undertaking of a market or feasibility study with respect to the advisability of obtaining such refinancing or modification, and had made written notification of its interest in such refinancing or modification to the Department of Health and Human Services or the Department of Housing and Urban Development prior to June 7, 1979; and (ii) receives from the programs established under titles XVIII [42 U.S.C. 1395 et seq.] and XIX [42 U.S.C. 1396 et seq.] of the Social Security Act a percentage of its total revenue which is greater than 125 per centum of the national average for hospitals which derive revenue from such titles.

This paragraph shall not limit the authority of the Secretary to approve a mortgage increase on any mortgage eligible for insurance under this paragraph at any time prior to final endorsement of the loan for insurance; except that such mortgage increase may not be approved for the cost of constructing any improvements not included in the original plans and specifications approved by the Department of Health and Human Services unless approved by the Secretary of Housing and Urban Development and by the Secretary of Health and Human Services.

(6) To the extent that a private nonprofit or public facility mortgagor is required by the Secretary to provide cash equity in excess of the amount of the mortgage to complete the project, the mortgagor shall be entitled, at the option of the mortgagee, to fund the excess with a letter of credit. In such event, mortgage proceeds may be advanced to the mortgagor prior to any demand being made on the letter of credit.

(e) Release of part of property or project from lien

The Secretary may consent to the release of a part or parts of the mortgaged property or project from the lien of any mortgage insured under this section upon such terms and conditions as he may prescribe.

(f) Encouragement of programs undertaking responsibility to provide comprehensive health care; immediate processing of applications for public hospitals

The activities and functions provided for in this section shall be carried out by the agencies involved so as to encourage programs that undertake responsibility to provide comprehensive health care, including outpatient and preventive care, as well as hospitalization, to a defined population, and, in the case of public hospitals, to encourage programs that are undertaken to provide essential health care services to all residents of a community regardless of ability to pay. The Secretary shall begin immediately to process applications of public facilities for mortgage insurance under this section in accordance with regulations, guidelines, and procedures applicable to facilities of private nonprofit corporations and associations.

(g) Insurance of mortgages providing permanent financing or refinancing of existing mortgage indebtedness; aggregate principal balance of mortgages

(1) Notwithstanding any of the other provisions of this subchapter, the Secretary may insure under this section a mortgage which provides permanent financing or refinancing of existing mortgage indebtedness in the case of a hospital whose permanent financing is presently lacking, if the construction of such hospital was completed between January 1, 1966, and August 1, 1968.

(2) The aggregate principal balance of all mortgages insured under paragraph (1) and outstanding at any one time shall not exceed $20,000,000.

(h) Applicability of other laws

The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (*l*), and (n) of section 1713 of this title shall apply to mortgages insured under this section and all references therein to section 1713 of this title shall be deemed to refer to this section.

(i) Termination of exemption for critical access hospitals

(1) In general

The exemption for critical access hospitals under subsection (b)(1)(B) of this section shall have no effect after July 31, 2011.

(2) Report to Congress

Not later than 3 years after July 31, 2003, the Secretary shall submit a report to Congress detailing the effects of the exemption of critical access hospitals from the provisions of subsection (b)(1)(B) of this section on—

(A) the provision of mortgage insurance to hospitals under this section; and

(B) the General Insurance Fund established under section 1735c of this title.

(June 27, 1934, ch. 847, title II, §242, as added Pub. L. 90–448, title XV, §1501, Aug. 1, 1968, 82 Stat. 599; amended Pub. L. 91–609, title I, §§109, 110(a), Dec. 31, 1970, 84 Stat. 1772; Pub. L. 93–383, title III, §304(i), Aug. 22, 1974, 88 Stat. 678; Pub. L. 95–128, title III, §308, Oct. 12, 1977, 91 Stat. 1135; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 96–153, title III, §315, Dec. 21, 1979, 93 Stat. 1117; Pub. L. 96–399, title III, §310(h), Oct. 8, 1980, 94 Stat. 1643; Pub. L. 97–35, title III, §339H, Aug. 13, 1981, 95 Stat. 418; Pub. L. 98–181, title IV, §§404(b)(15), 436, Nov. 30, 1983, 97 Stat. 1210, 1222; Pub. L. 98–479, title II, §§201(a)(1), 204(a)(13), Oct. 17, 1984, 98 Stat. 2227, 2232; Pub. L. 100–242, title IV, §§411(a), 412(a)–(d), Feb. 5, 1988, 101 Stat. 1905, 1906; Pub. L. 108–91, §§2(a), 3(a), Oct. 3, 2003, 117 Stat. 1158; Pub. L. 109–240, §2, July 10, 2006, 120 Stat. 515.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (c), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title VII of the Act was added by act July 30, 1956, ch. 779, §2, 70 Stat. 717, and is classified generally to subchapter V (§292 et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

Section 8211 of title 42, referred to in subsec. (d)(2)(B), was omitted from the Code pursuant to section 8229 of

Title 42, The Public Health and Welfare, which terminated authority under that section on June 30, 1989.

The Social Security Act, referred to in subsec. (d)(5)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (i)(1). Pub. L. 109–240 substituted ''July 31, 2011'' for ''July 31, 2006''.

2003—Subsec. (b)(1)(B). Pub. L. 108–91, § 3(a)(1), inserted '', unless the facility is a critical access hospital (as that term is defined in section 1861(mm)(1) of the Social Security Act (42 U.S.C. 1395x(mm)(1)))'' after ''tuberculosis''.

Subsec. (d)(4). Pub. L. 108–91, § 2(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The Secretary shall not insure any mortgage under this section unless he has received, from the State agency designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act for the State in which is located the hospital covered by the mortgage, a certification that (A) there is a need for such hospital, and (B) there are in force in such State or the political subdivision of the State in which the proposed hospital would be located reasonable minimum standards of licensure and methods of operation for hospitals. No such mortgage shall be insured under this section unless the Secretary has received such assurance as he may deem satisfactory from the State agency that such standards will be applied and enforced with respect to any hospital located in the State for which mortgage insurance is provided under this section. If no such State agency exists, or if the State agency exists but is not empowered to provide a certification that there is a need for the hospital as set forth in clause (A) of the first sentence, the Secretary shall not insure any mortgage under this section unless (A) the State in which the hospital is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that (i) is prepared in accordance with the principles established by the American Institute of Certified Public Accountants; (ii) assesses, on a marketwide basis, the impact of the proposed hospital on, and its relationship to, other health care facilities and services, the percentage of excess beds, demographic projections, alternative health care delivery systems, and the reimbursement structure of the hospital; (iii) is addressed to and is acceptable to the Secretary in form and substance; and (iv) in the event the State does not prepare the study, is prepared by a financial consultant selected by the State and approved by the Secretary; and (B) the State complies with the other provisions of this paragraph that would otherwise be required to be met by a State agency designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act. The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required in the preceding sentence.''

Subsec. (i). Pub. L. 108–91, § 3(a)(2), added subsec. (i).

1988—Subsec. (a). Pub. L. 100–242, § 412(a), inserted at end ''Such assistance shall be provided regardless of the amount of public financial or other support a hospital may receive, and the Secretary shall neither require additional security or collateral to guarantee such support, nor impose more stringent eligibility or other requirements on publicly owned or supported hospitals.''

Subsec. (d)(2). Pub. L. 100–242, § 412(b), substituted ''The mortgage shall involve a principal obligation in the amount requested by the mortgagor if such amount does not exceed 90 percent of the estimated replacement cost of the property or project including'' for ''The mortgage shall involve a principal obligation in an amount not to exceed 90 per centum of the estimated replacement cost of the property or project including''.

Subsec. (d)(4). Pub. L. 100–242, § 411(a), inserted provisions at end relating to authority of Secretary to insure a mortgage under this section covering new or rehabilitated hospitals, including equipment, in cases where no State agency exists, or where such agency does exist but is not empowered to provide a certification for the need of such hospital as required under this section.

Subsec. (d)(6). Pub. L. 100–242, § 412(c), added par. (6).

Subsec. (f). Pub. L. 100–242, § 412(d), inserted at end ''The Secretary shall begin immediately to process applications of public facilities for mortgage insurance under this section in accordance with regulations, guidelines, and procedures applicable to facilities of private nonprofit corporations and associations.''

1984—Subsec. (c). Pub. L. 98–479, § 201(a)(1), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d)(3)(A). Pub. L. 98–479, § 204(a)(13), substituted a semicolon for the comma at end.

1983—Subsec. (b)(1)(C). Pub. L. 98–181, § 436(1), inserted ''public facility,'' after ''which is a''.

Subsec. (d)(3)(B). Pub. L. 98–181, § 404(b)(15), substituted provision that the interest rate be such a rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate, exclusive of premium charges for insurance and service charges, not exceed such per centum per annum, not in excess of 6 per centum, on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet the mortgage market.

Subsec. (f). Pub. L. 98–181, § 436(2), inserted '', and in the case of public hospitals, to encourage programs that are undertaken to provide essential health care services to all residents of a community regardless of ability to pay'' after ''defined population''.

1981—Subsec. (d)(5). Pub. L. 97–35 inserted provisions respecting limitation on authority of the Secretary to approve mortgage increases on eligible mortgages.

1980—Subsec. (d)(2). Pub. L. 96–399 revised existing provisions into introductory paragraph and subpar. (A) and added subpar. (B).

1979—Subsec. (d)(5). Pub. L. 96–153 added par. (5).

1977—Subsec. (c). Pub. L. 95–128, § 308(b), prohibited charging any mortgage insurance premium with respect to the amount of principal and interest guaranteed by the Department of Health, Education, and Welfare under title VII of the Public Health Service Act.

Subsec. (d)(4). Pub. L. 95–128, § 308(a), inserted reference to section 1521.

1974—Subsec. (d)(2). Pub. L. 93–383 struck out ''not to exceed $50,000,000, and'' after ''an amount''.

1970—Subsec. (b)(1)(C). Pub. L. 91–609, § 110(a), substituted as definition of ''hospital'' a facility ''which is a proprietary facility, or facility of a private nonprofit corporation or association, licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located)'' for ''prior definition as a facility which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual''.

Subsec. (d)(2). Pub. L. 91–609, § 109, increased limitation on amount of mortgage from $25,000,000 to $50,000,000.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–91, § 2(b), Oct. 3, 2003, 117 Stat. 1158, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect and apply as of the date of the enactment of this Act [Oct. 3, 2003].

''(2) EFFECT OF REGULATORY AUTHORITY.—Any authority of the Secretary of Housing and Urban Development to issue regulations to carry out the amendment made by subsection (a) may not be construed to affect the effectiveness or applicability of such amendment under paragraph (1) of this subsection.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

CHANGE OF NAME

''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (d)(5)(A), (B) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

REGULATIONS

Section 411(b) of Pub. L. 100–242 directed Secretary of Housing and Urban Development to issue regulations to carry out amendment of this section by not later than expiration of 90-day period following Feb. 5, 1988.

Secretary of Housing and Urban Development directed to issue regulations implementing amendments to this section by section 436 of Pub. L. 98–181, not later than Oct. 31, 1984, see section 104(f) of Pub. L. 98–479, set out as a note under section 1715b of this title.

§ 1715z–8. Mortgage assistance payments for middle-income families

(a) Determination by Secretary of necessity; interest subsidy payments; effective date

Whenever he determines such action to be necessary in furtherance of the purposes set forth in section 501 of the Emergency Home Finance Act of 1970, the Secretary is authorized to make, and to contract to make, periodic assistance payments on behalf of families of middle income. The assistance shall be accomplished through interest subsidy payments to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation (hereinafter referred to as ''the investor'') with respect to mortgages meeting the special requirements specified in this section and made after July 24, 1970.

(b) Qualifications of mortgagor for assistance payments

To qualify for assistance payments a middle-income family shall be a mortgagor under a mortgage which is (1) insured under subsection (j) of this section, (2) guaranteed under chapter 37 of title 38, or (3) a conventional mortgage meeting the requirements of subsection (j)(3) of this section. In addition to the foregoing requirement, the Secretary may require that the mortgagor have an income, at the time of acquisition of the property, of not more than the median income for the area in which the property is located, as determined by the Secretary, with appropriate adjustments for smaller and larger families.

(c) Termination of interest subsidy payments

The interest subsidy payments authorized by this section shall cease when (1) the mortgagor no longer occupies the property which secures the mortgage, (2) the mortgages are no longer held by the investor, or (3) the rate of interest paid by the mortgagor reaches the rate of interest specified on the mortgage.

(d) Monthly mortgage payments as determining eligibility for interest subsidy payments; mortgage assistance payments for middle-income cooperative members; interest subsidy payments; applicability of provisions to cooperative mortgagors

(1) Interest subsidy payments shall be on mortgages on which the mortgagor makes monthly payments towards principal and interest equal to an amount which would be required if the mortgage bore an effective interest rate of 7 per centum per annum including any discounts or charges in the nature of points or otherwise (but not including premiums, if any, for mortgage insurance) or such higher rate (not to exceed the rate specified in the mortgage), which the mortgagor could pay by applying at least 20 per centum of his income towards homeownership expenses. As used in this subsection, the term ''monthly homeownership expense'' includes the monthly payment for principal, interest, mortgage insurance premium, insurance, and taxes due under the mortgage.

(2) In addition to the mortgages eligible for assistance under paragraph (1) of this subsection, the Secretary is authorized to make periodic assistance payments on behalf of cooperative members of middle income. Such assistance payments shall be accomplished through interest subsidy payments to the investor with respect to mortgages insured (subsequent to July 24, 1970) under section 1715e of this title which are executed by cooperatives, the membership in which is limited to middle-income families. For purposes of this paragraph—

(A) the term ''mortgagor'', when used in subsection (b) of this section in the case of a mortgage covering a cooperative housing project, means a member of the cooperative;

(B) the term ''acquisition of the property'', when used in subsection (b) of this section, means the family's application for a dwelling unit; and

(C) in the case of a cooperative mortgagor, subsection (c) of this section shall not apply and the interest subsidy payments shall cease when the mortgage is no longer held by the investor or the cooperative fails to limit membership to families whose incomes at the time of their application for a dwelling unit meets such requirements as are laid down by the Secretary pursuant to subsection (b) of this section.

(e) Amount of interest subsidy payments

The interest subsidy payments shall be in an amount equal to the difference, as determined by the Secretary, between the total amount of interest per calendar quarter received by the investor on mortgages assisted under this section and purchased by it and the total amount of interest which the investor would have received if the yield on such mortgages was equal to the sum of (1) the average costs (expressed as an annual percentage rate) to it of all borrowed funds outstanding in the immediately preceding calendar quarter, and (2) such per centum per annum as will provide for administrative and other expenses of the investor and a reasonable economic return, as determined by the Secretary to be necessary and appropriate taking

into account the purpose of this section to provide additional mortgage credit at reasonable rates of interest to middle-income families.

(f) Adoption of procedures for recertifications of mortgagor's income

Procedures shall be adopted by the Secretary for recertifications of the mortgagor's income at intervals of two years (or at shorter intervals where the Secretary deems it desirable) for the purpose of adjusting the amount of the mortgagor's payments pursuant to subsection (d) of this section.

(g) Regulations to assure that sales price or other consideration paid is not increased above appraised value

The Secretary shall prescribe such regulations as he deems necessary to assure that the sales price of, or other consideration paid in connection with, the purchase by a homeowner of the property with respect to which assistance payments are to be made is not increased above the appraised value on which the maximum mortgage which the Secretary will insure is computed.

(h) Authorization of appropriations; aggregate amount of assistance payment contracts; termination date

(1) There are authorized to be appropriated such sums as may be necessary to enable the Secretary to make interest subsidy payments under contracts entered into under this section. The aggregate amount of contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contracts shall not exceed $105,000,000 during the first year of such contracts prior to July 1, 1971, which amount shall be increased by an additional $105,000,000 during the first year of an additional number of such contracts on July 1 of each of the years 1971 and 1972.

(2) No interest subsidy payments under this section shall be made after June 30, 1973, except pursuant to contracts entered into on or before such date.

(i) Determination of family income; exclusion of income of minors

In determining the income of any family for the purposes of this section, income from all sources of each member of the family in the household shall be included, except that the Secretary shall exclude income earned by any minor person.

(j) Insurance of mortgages executed by mortgagors meeting eligibility requirements for assistance payments; issuance of commitment; eligibility requirements for insurance

(1) The Secretary is authorized, upon application by the mortgagee, to insure a mortgage executed by a mortgagor who meets the eligibility requirements for assistance payments prescribed by the Secretary under subsection (b) of this section. Commitments for the insurance of such mortgages may be issued by the Secretary prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe.

(2) To be eligible for insurance under this subsection, a mortgage shall meet the requirements of section 1715*l*(d)(2) or 1715y(c) of this title, except as such requirements are modified by this subsection: *Provided, however*, That in the discretion of the Secretary 25 per centum of the authority conferred by this section and subject to all the terms thereof may be used for mortgages on existing housing.

(3) A mortgage to be insured under this section shall—

(i) involve a single-family dwelling which has been approved by the Secretary prior to the beginning of construction, or a one-family unit in a condominium project (together with an undivided interest in the common areas and facilities serving the project) which is released from a multifamily project, the construction of which has been completed within two years prior to the filing of the application for assistance payments with respect to such family unit and the unit shall have had no previous occupant other than the mortgagor;

(ii) involve a single-family dwelling whose appraised value, as determined by the Secretary, is not in excess of $20,000 (which amount may be increased by not more than 50 per centum in any geographical area where the Secretary authorizes an increase on the basis of a finding that the cost level so requires); and

(iii) be executed by a mortgagor who shall have paid in cash or its equivalent on account of the property (A) 3 per centum of the first $15,000 of the appraised value of the property, (B) 10 per centum of such value in excess of $15,000 but not in excess of $25,000, and (C) 20 per centum of such value in excess of $25,000.

(June 27, 1934, ch. 847, title II, § 243, as added Pub. L. 91–351, title V, § 502, July 24, 1970, 84 Stat. 458; amended Pub. L. 98–479, title II, § 204(a)(14), (15), Oct. 17, 1984, 98 Stat. 2232.)

REFERENCES IN TEXT

Section 501 of the Emergency Home Finance Act of 1970, referred to in subsec. (a), is section 501 of Pub. L. 91–351, which is set out as a note below.

AMENDMENTS

1984—Subsec. (d)(2). Pub. L. 98–479, § 204(a)(14), redesignated subpars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively.

Subsec. (j)(3)(ii). Pub. L. 98–479, § 204(a)(15), substituted ''; and'' for period at end.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 501 of Pub. L. 91–351 provided that: ''The Congress finds that—

''(1) periodic episodes of monetary stringency and high interest rates make it extremely difficult for families of middle income to obtain mortgage credit at rates which they can afford to pay;

''(2) periods of monetary stringency and high interest rates are directly related to the Government's monetary and fiscal policies;

''(3) a disproportionate share of the burden of sustaining these anti-inflationary policies of the Government falls on families of middle income who are buyers or prospective buyers of homes; and

''(4) the Government has a responsibility to lessen the disproportionate burden which such families bear as a result of such policies.

It is the purpose of this title [enacting this section, and amending sections 1715z–3 and 1719 of this title] to provide, during periods of high mortgage interest rates, a

source of mortgage credit for such families which is within their financial means.''

§ 1715z–9. Co-insurance of eligible mortgage, advance, or loan

(a) Authority of Secretary; request of mortgagee; premium charges; provisions of contract of co-insurance; non-applicability of state insurance laws

In addition to providing insurance as otherwise authorized under this chapter, and notwithstanding any other provision of this chapter inconsistent with this section, the Secretary, upon request of any mortgagee and for such mortgage insurance premium as he may prescribe (which premium, or other charges to be paid by the mortgagor, shall not exceed the premium, or other charges, that would otherwise be applicable), may insure and make a commitment to insure under any provision of this subchapter any mortgage, advance, or loan otherwise eligible under such provision, pursuant to a co-insurance contract providing that the mortgagee will—

(1) assume a percentage of any loss on the insured mortgage, advance, or loan in direct proportion to the amount of the co-insurance, which co-insurance shall not be less than 10 per centum, subject to any reasonable limit or limits on the liability of the mortgagee that may be specified in the event of unusual or catastrophic losses that may be incurred by any one mortgagee; and

(2) carry out (under a delegation or otherwise and with or without compensation but subject to audit, exception, or review requirements) such credit approval, appraisal, inspection, commitment, property disposition, or other functions as the Secretary, pursuant to regulations, shall approve as consistent with the purposes of this chapter.

Any contract of co-insurance under this section shall contain such provisions relating to the sharing of premiums on a sound actuarial basis, establishment of mortgage reserves, manner of calculating insurance benefits, conditions with respect to foreclosure, handling and disposition of property prior to claim or settlement, rights of assignees (which may elect not to be subject to the loss sharing provisions), and other similar matters as the Secretary may prescribe pursuant to regulations. A mortgagee which enters into a contract of co-insurance under this section shall not by reason of such contract, or its adherence to such contract or applicable regulations of the Secretary, including provisions relating to the retention of risks in the event of sale or assignment of a mortgage, be made subject to any State law regulating the business of insurance.

(b) Inspection of construction of dwellings or projects as prerequisite; minimum standards or criteria applicable

No insurance shall be granted pursuant to this section with respect to dwellings or projects approved for insurance prior to the beginning of construction unless the inspection of such construction is conducted in accordance with at least the minimum standards and criteria used with respect to dwellings or projects approved for mortgage insurance pursuant to other provisions of this subchapter.

(c) Repealed. Pub. L. 100–242, title IV, § 414(a), Feb. 5, 1988, 101 Stat. 1907

(d) Repealed. Pub. L. 100–242, title IV, § 401(a)(3), Feb. 5, 1988, 101 Stat. 1898

(e) Availability unaffecting insurance otherwise authorized; criteria for exercise of authority by Secretary

The Secretary shall not withdraw, deny, or delay insurance otherwise authorized under any other provision of this chapter by reason of the availability of insurance pursuant to this section. The Secretary shall exercise his authority under this section only to the extent that he finds that the continued exercise of such authority will not adversely affect the flow of mortgage credit to older and declining neighborhoods and to the purchasers of older and lower cost housing.

(f) Multifamily housing project; contract provisions; aggregate principal amount of all mortgages insured; loans on defaulted mortgages; insurance for state assisted projects and projects under construction; definitions; amount of reserves

(1) Where the mortgage covers a multifamily housing project, the co-insurance contract may provide that the mortgagee assume (i) the full amount of any loss on the insured mortgage up to an amount equal to a fixed percentage of the outstanding principal balance of the mortgage at the time of claim for insurance benefits, or (ii) the full amount of any losses on insured mortgages in a portfolio of mortgages approved by the Secretary up to an amount equal to a fixed percentage of the outstanding principal balance of all mortgages in such portfolio at the time of claim for insurance benefits on a mortgage in the portfolio, plus a share of any loss in excess of the amount under clause (i) or (ii), whichever is applicable.

(2) The Secretary may make loans, from the applicable insurance fund, to public housing agencies in connection with mortgages which have been insured pursuant to this subsection and which are in default.

(3) The Secretary may insure and make a commitment to insure in connection with a co-insurance contract pursuant to this subsection (A) a mortgage on a project assisted under the second proviso in the first sentence of section 1715z–1(b) of this title, and (B) a mortgage or advance on a mortgage made to a public housing agency on a project under construction which is not approved for insurance prior to construction.

(4) As used in this subsection, the term ''public housing agency'' has the meaning given such term in section 1437a(b)(6) of title 42.

(5) Notwithstanding any other provision of this chapter, the Secretary may include in the determination of replacement cost of a project to be covered by a mortgage made to a public housing agency and insured pursuant to this subsection, such reserves and development costs, not to exceed 5 per centum of the amount otherwise allowable, as may be established or

authorized by the public housing agency consistent with such agency's procedures and underwriting standards.

(g) Redesignated (f)

(h) Acceptable co-insurance provisions for rental rehabilitation; termination date

Notwithstanding any other provision of this section, in the case of a mortgage insured under section 1715n(f) of this title secured by property which is to be rehabilitated or developed under section 1437*o*[1] of title 42, such co-insurance may include provisions that—

(1) insurance benefits shall equal the sum of (A) 90 per centum of the mortgage on the date of institution of foreclosure proceedings (or on the date of acquisition of the property otherwise after default), and (B) 90 per centum of interest arrears on the date benefits are paid;

(2) the mortgagee shall remit to the Secretary, for credit to the General Insurance Fund, 90 per centum of any proceeds of the property, including sale proceeds, net of the mortgagee's actual and reasonable costs related to the property and the enforcement of security;

(3) payment of such benefits shall be made in cash unless the mortgagee submits a written request for debenture payment; and

(4) the underwriter of co-insurance may reinsure 10 per centum of the mortgage amount with a private mortgage insurance company or with a State mortgage insurance agency.

(i)[2] Authority of mortgagee to assign its interest in any note or mortgage subject to a contract of co-insurance; terms and conditions respecting retention of co-insurance risk of such note or mortgage

Any mortgagee which enters into a contract of co-insurance under this section shall have the authority to assign its interest in any note or mortgage subject to a contract of co-insurance to a warehouse bank or other financial institution which provides interim funding for a loan co-insured under this section, and to retain the co-insurance risk of such note or mortgage, upon such terms and conditions as the Secretary shall prescribe.

(i)[2] Annual review of, and assessment of compliance with, requirements; report; adjustment of requirements

The Secretary shall, by January 15 and July 15 of each year (1) review the adequacy of capital and other requirements for mortgagees under this section, (2) assess the compliance by mortgagees with such requirements, and (3) make such adjustment to such requirements as the Secretary, after providing opportunity for hearing, determines to be appropriate to improve the long-term financial soundness of the Federal Housing Administration funds. Such requirements shall include the minimum capital or net worth of mortgagees; the ratio that mortgagees shall maintain between the mortgagee's capital and the volume of mortgages co-insured by such mortgagee; and such other requirements as the Secretary determines to be appropriate to ensure the long-term financial soundness of the Federal Housing Administration funds. The Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report on the review and assessment under the previous sentence, and an explanation of the Secretary's reasons for making any adjustment in requirements authorized under this section.

(June 27, 1934, ch. 847, title II, §244, as added Pub. L. 93–383, title III, §307, Aug. 22, 1974, 88 Stat. 679; amended Pub. L. 94–375, §6, Aug. 3, 1976, 90 Stat. 1070; Pub. L. 95–60, §1(d), June 30, 1977, 91 Stat. 257; Pub. L. 95–80, §1(d), July 31, 1977, 91 Stat. 339; Pub. L. 95–128, title III, §301(f), Oct. 12, 1977, 91 Stat. 1131; Pub. L. 95–406, §1(f), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95–557, title III, §301(f), Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96–71, §1(f), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96–105, §1(f), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96–153, title III, §301(f), Dec. 21, 1979, 93 Stat. 1111; Pub. L. 96–372, §1(f), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96–399, title III, §301(f), Oct. 8, 1980, 94 Stat. 1638; Pub. L. 96–470, title I, §107(a), Oct. 19, 1980, 94 Stat. 2238; Pub. L. 97–35, title III, §331(f), Aug. 13, 1981, 95 Stat. 413; Pub. L. 97–289, §1(f), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98–35, §1(f), May 26, 1983, 97 Stat. 197; Pub. L. 98–109, §1(f), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98–181, title III, §303(a), title IV, §§401(e), 434, Nov. 30, 1983, 97 Stat. 1206, 1207, 1222; Pub. L. 98–479, title I, §104(a)(5), Oct. 17, 1984, 98 Stat. 2225; Pub. L. 99–120, §1(e), Oct. 8, 1985, 99 Stat. 502; Pub. L. 99–156, §1(e), Nov. 15, 1985, 99 Stat. 815; Pub. L. 99–219, §1(e), Dec. 26, 1985, 99 Stat. 1730; Pub. L. 99–267, §1(e), Mar. 27, 1986, 100 Stat. 73; Pub. L. 99–272, title III, §3007(e), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99–289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title IV, §§401(a)(3), 414, 429(g), Feb. 5, 1988, 101 Stat. 1898, 1907, 1919; Pub. L. 101–235, title I, §139(a), Dec. 15, 1989, 103 Stat. 2029.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (e), and (f)(5), was in the original ''this Act'', meaning act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

Section 1437*o* of title 42, referred to in subsec. (h), was repealed by Pub. L. 101–625, title II, §289(b), Nov. 28, 1990, 104 Stat. 4128.

AMENDMENTS

1989—Subsec. (i). Pub. L. 101–235 added subsec. (i) relating to annual review of, and assessment of compliance with, requirements.

1988—Subsec. (c). Pub. L. 100–242, §414(a), struck out subsec. (c) which read as follows: ''No insurance shall be granted pursuant to this section unless the Secretary has, after due consultation with the mortgage lending industry, determined that the demonstration program of co-insurance authorized by this section will not disrupt the mortgage market or reduce the availability of mortgage credit to borrowers who depend upon mortgage insurance provided under this chapter.''

[1] See References in Text note below.

[2] So in original. Two subsecs. (i) have been enacted.

Subsec. (d). Pub. L. 100–242, § 401(a)(3), struck out subsec. (d) which read as follows: ''No mortgage, advance, or loan shall be insured pursuant to this section after March 15, 1988, except pursuant to a commitment to insure made before that date.''

Subsec. (f). Pub. L. 100–242, § 429(g)(1), which directed that subsec. (g) be amended by striking out par. (2) which read: ''The second sentence of subsection (d) of this section shall not apply to mortgages made to public housing agencies, but for purposes of such second sentence such mortgages shall not be counted in the aggregate principal amount of all mortgages insured under this subchapter.'', and by redesignating former pars. (3) to (6) as (2) to (5), was executed to subsec. (f) to reflect the probable intent of Congress, because of the prior redesignation of subsec. (g) as (f) by Pub. L. 96–470, § 107(a).

Subsec. (h). Pub. L. 100–242, §§ 414(b)(1), 429(g)(2), made identical amendments, substituting ''co-insurance'' for ''coinsurance'' in introductory provision and par. (4).

Pub. L. 100–242, § 401(a)(3), struck out at end ''No commitment for insurance pursuant to this subsection may be issued after March 15, 1988.''

Subsec. (i). Pub. L. 100–242, § 414(b)(2), added subsec. (i).

1987—Subsecs. (d), (h). Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

1986—Subsecs. (d), (h). Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272 made amendment identical to Pub. L. 99–219. See 1985 Amendment note below.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

1985—Subsec. (d). Pub. L. 99–219, § 1(e)(1), substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156, § 1(e)(1), substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120, § 1(e)(1), substituted ''November 14, 1985'' for ''September 30, 1985''.

Subsec. (h). Pub. L. 99–219, § 1(e)(2), substituted ''after March 17, 1986'' for ''on or after December 16, 1985''.

Pub. L. 99–156, § 1(e)(2), substituted ''December 16, 1985'' for ''November 15, 1985''.

Pub. L. 99–120, § 1(e)(2), substituted ''November 15, 1985'' for ''October 1, 1985''.

1984—Subsec. (d). Pub. L. 98–479 amended subsec. (d) generally, thereby striking out last sentence which provided: ''The aggregate principal amount of mortgages and loans insured pursuant to this section in any fiscal year beginning on or after July 1, 1974, and ending prior to October 1, 1985, shall not exceed 20 per centum of the aggregate principal amount of all mortgages and loans insured under this subchapter during such fiscal year.''

1983—Subsec. (d). Pub. L. 98–181, § 401(e)(3), which directed that last two sentences of subsec. (d) be struck out was executed by striking out last sentence which provided that the overall percentage limitation specified in the preceding sentence also apply separately within each of the categories of mortgages and loans covering one- to four-family dwellings and mortgages and loans covering projects with five or more dwelling units, as the probable intent of Congress, in view of the amendment to the next to last sentence by section 401(e)(2) of Pub. L. 98–181.

Pub. L. 98–181, § 401(e)(1), (2), substituted ''September 30, 1985'' for ''November 30, 1983'' and ''October 1, 1985'' for ''December 1, 1983''.

Pub. L. 98–109 substituted ''November 30, 1983'' for ''September 30, 1983'' and ''December 1, 1983'' for ''October 1, 1983''.

Pub. L. 98–35 substituted ''September 30, 1983'' for ''May 20, 1983'' and ''October 1, 1983'' for ''May 21, 1983''.

Subsec. (f)(1). Pub. L. 98–181, § 434(1), struck out ''the mortgagee is a public housing agency or an insured depository institution and'' after ''Where''. Notwithstanding the directory language that amendment be made to subsec. (g)(1), the amendment was executed to subsec. (f)(1) to reflect the probable intent of Congress and the intervening redesignation of subsec. (g) as (f) by Pub. L. 96–470.

Subsec. (f)(5). Pub. L. 98–181, § 434(2), substituted reference to section 1437a(b)(6) of title 42 for reference to section 1437a(6) of title 42 and struck out provision which defined the term ''insured depository institution'' as any savings bank, savings and loan association, commercial bank or other such depository institution whose deposits are insured by the Federal Deposit Insurance Corporation, by the Federal Savings and Loan Insurance Corporation, or by an agency or instrumentality of a State. Notwithstanding the directory language that amendment be made to subsec. (g)(5), the amendment was executed to subsec. (f)(5) to reflect the probable intent of Congress and the intervening redesignation of subsec. (g) as (f) by Pub. L. 96–470.

Subsec. (h). Pub. L. 98–181, § 303(a), added subsec. (h).

1982—Subsec. (d). Pub. L. 97–289 substituted ''May 20, 1983'' and ''May 21, 1983'' for ''September 30, 1982'' and ''October 1, 1982'', respectively.

1981—Subsec. (d). Pub. L. 97–35 substituted ''1982'' for ''1981'' in two places.

1980—Subsec. (d). Pub. L. 96–399 substituted ''September 30, 1981'' and ''October 1, 1981'' for ''October 15, 1980'' and ''October 16, 1980'', respectively.

Pub. L. 96–372 substituted ''October 15, 1980'' and ''October 16, 1980'' for ''September 30, 1980'' and ''October 1, 1980'', respectively.

Subsecs. (f), (g). Pub. L. 96–470 struck out subsec. (f) and redesignated subsec. (g) as (f).

1979—Subsec. (d). Pub. L. 96–153 substituted ''September 30, 1980'' for ''November 30, 1979'' and ''October 1, 1980'' for ''December 1, 1979''.

Pub. L. 96–105 substituted ''November 30, 1979'' and ''December 1, 1979'' for ''October 31, 1979'' and ''November 1, 1979'', respectively.

Pub. L. 96–71 substituted ''October 31, 1979'' and ''November 1, 1979'' for ''September 30, 1979'' and ''October 1, 1979'', respectively.

1978—Subsec. (d). Pub. L. 95–557 substituted ''September 30, 1979'' for ''October 31, 1978'' and ''October 1, 1979'' for ''November 1, 1978''.

Pub. L. 95–406 substituted ''October 31, 1978'' for ''September 30, 1978'' and ''November 1, 1978'' for ''October 1, 1978''.

1977—Subsec. (d). Pub. L. 95–128 substituted ''September 30, 1978'' for ''September 30, 1977'' and ''October 1, 1978'' for ''October 1, 1977''.

Pub. L. 95–80 substituted ''September 30, 1977'' for ''July 31, 1977''.

Pub. L. 95–60 substituted ''July 31, 1977'' for ''June 30, 1977''.

1976—Subsec. (a). Pub. L. 94–375, § 6(b), inserted, in text following par. (2), a provision excluding a mortgagee which enters into a contract under this section from regulation by state insurance laws.

Subsec. (g). Pub. L. 94–375, § 6(a), added subsec. (g).

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to

securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

§ 1715z–10. Repealed. Pub. L. 110–289, div. B, title I, § 2120(a)(7), July 30, 2008, 122 Stat. 2835

Section, act June 27, 1934, ch. 847, title II, § 245, as added Pub. L. 93–383, title III, § 308, Aug. 22, 1974, 88 Stat. 680; amended Pub. L. 94–375, § 7, Aug. 3, 1976, 90 Stat. 1071; Pub. L. 95–128, title III, §§ 301(g), 310, Oct. 12, 1977, 91 Stat. 1131, 1136; Pub. L. 95–406, § 1(g), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95–557, title III, § 301(g), Oct. 31, 1978, 92 Stat. 2096; Pub. L. 95–630, title XV, § 1503, Nov. 10, 1978, 92 Stat. 3713; Pub. L. 96–71, § 1(g), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96–105, § 1(g), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96–153, title III, §§ 301(g), 311(b), Dec. 21, 1979, 93 Stat. 1112, 1115; Pub. L. 96–372, § 1(g), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96–399, title III, § 301(g), Oct. 8, 1980, 94 Stat. 1638; Pub. L. 97–35, title III, § 331(g) Aug. 13, 1981, 95 Stat. 413; Pub. L. 97–289, § 1(g), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98–35, § 1(g), May 26, 1983, 97 Stat. 197; Pub. L. 98–109, § 1(g), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98–181, title IV, §§ 401(f), 441, 442, Nov. 30, 1983, 97 Stat. 1208, 1223, 1224; Pub. L. 99–120, § 1(f), Oct. 8, 1985, 99 Stat. 502; Pub. L. 99–156, § 1(f), Nov. 15, 1985, 99 Stat. 815; Pub. L. 99–219, § 1(f), Dec. 26, 1985, 99 Stat. 1730; Pub. L. 99–267, § 1(f), Mar. 27, 1986, 100 Stat. 73; Pub. L. 99–272, title III, § 3007(f), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title IV, §§ 401(a)(4), 408(b), 415(b)(1), Feb. 5, 1988, 101 Stat. 1898, 1903, 1907; Pub. L. 107–326, § 3, Dec. 4, 2002, 116 Stat. 2793, related to graduated payment and indexed mortgages.

§ 1715z–11. Sale to cooperatives of multifamily housing projects acquired by Secretary; acceptance of purchase money mortgage for sale or insurance of mortgage; principal amount of mortgage; expenditures for repairs, etc., prior to sale

In any case which the Secretary sells a multifamily housing project acquired as the result of a default on a mortgage which was insured under this chapter to a cooperative which will operate it on a nonprofit basis and restrict permanent occupancy of its dwellings to members, or to a nonprofit corporation which operates as a consumer cooperative as defined by the Secretary, the Secretary may accept a purchase money mortgage, or upon application of the mortgagee, insure a mortgage under this section upon such terms and conditions as the Secretary determines are reasonable and appropriate, in a principal amount equal to the value of the property at the time of purchase, which value shall be based upon a mortgage amount on which the debt service can be met from the income of property when operated on a nonprofit basis after payment of all operating expenses, taxes, and required reserves; except that the Secretary may add to the mortgage amount an amount not greater than the amount of prepaid expenses and costs involved in achieving cooperative ownership, or make such other provisions for payment of such expenses and costs as the Secretary deems reasonable and appropriate. Prior to such disposition of a project, funds may be expended by the Secretary for necessary repairs and improvements.

(June 27, 1934, ch. 847, title II, § 246, as added Pub. L. 93–383, title III, § 315, Aug. 22, 1974, 88 Stat. 684; amended Pub. L. 95–557, title III, § 322, Oct. 31, 1978, 92 Stat. 2102.)

AMENDMENTS

1978—Pub. L. 95–557 inserted ''or to a nonprofit corporation which operates as a consumer cooperative as defined by the Secretary'' after ''dwellings to members'' and ''or upon application of the mortgagee, insure a mortgage under this section upon such terms and conditions as the Secretary determines are reasonable and appropriate'' after ''purchase money mortgage'' and substituted ''the value of the property at the time of purchase, which value shall be based upon a mortgage amount on which the debt service can be met from the income of property when operated on a nonprofit basis after payment of all operating expenses, taxes, and required reserves; except that the Secretary may add to the mortgage amount an amount not greater than the amount of prepaid expenses and costs involved in achieving cooperative ownership, or make such other provision for payment of such expenses and costs as the Secretary deems reasonable and appropriate'' for ''the sum of (1) the appraised value of the property at the time of purchase, which value shall be based upon a mortgage amount on which the debt service can be met from the income of the property when operated on a nonprofit basis and after payment of all operating expenses, taxes and required reserves, and (2) the amount of prepaid expenses and costs involved in achieving cooperative ownership''.

§ 1715z–11a. Disposition of HUD-owned properties

(a) Flexible authority for multifamily projects

During fiscal year 1997 and fiscal years thereafter, the Secretary may manage and dispose of multifamily properties owned by the Secretary, including, for fiscal years 1997, 1998, 1999, 2000, and thereafter, the provision of grants and loans from the General Insurance Fund (12 U.S.C. 1735c) for the necessary costs of rehabilitation, demolition, or construction on the properties (which shall be eligible whether vacant or occupied), and multifamily mortgages held by the Secretary on such terms and conditions as the Secretary may determine, notwithstanding any other provision of law. A grant provided under this subsection during fiscal years 2006 through 2010 shall be available only to the extent that appropriations are made in advance for such purposes and shall not be derived from the General Insurance Fund.

(b) Transfer of unoccupied and substandard housing to local governments and community development corporations

(1) Transfer authority

Notwithstanding the authority under subsection (a) of this section and the last sentence of section 1710(g) of this title, the Secretary of Housing and Urban Development shall transfer ownership of any qualified HUD property, subject to the requirements of this section, to a unit of general local government having jurisdiction for the area in which the property is located or to a community devel-

opment corporation which operates within such a unit of general local government in accordance with this subsection, but only to the extent that units of general local government and community development corporations consent to transfer and the Secretary determines that such transfer is practicable.

(2) Qualified HUD properties

For purposes of this subsection, the term ''qualified HUD property'' means any property for which, as of the date that notification of the property is first made under paragraph (3)(B), not less than 6 months have elapsed since the later of the date that the property was acquired by the Secretary or the date that the property was determined to be unoccupied or substandard, that is owned by the Secretary and is—

(A) an unoccupied multifamily housing project;

(B) a substandard multifamily housing project; or

(C) an unoccupied single family property that—

(i) has been determined by the Secretary not to be an eligible asset under section 1710(h) of this title; or

(ii) is an eligible asset under such section 1710(h) of this title, but—

(I) is not subject to a specific sale agreement under such section; and

(II) has been determined by the Secretary to be inappropriate for continued inclusion in the program under such section 1710(h) of this title pursuant to paragraph (10) of such section.

(3) Timing

The Secretary shall establish procedures that provide for—

(A) time deadlines for transfers under this subsection;

(B) notification to units of general local government and community development corporations of qualified HUD properties in their jurisdictions;

(C) such units and corporations to express interest in the transfer under this subsection of such properties;

(D) a right of first refusal for transfer of qualified HUD properties to units of general local government and community development corporations, under which—

(i) the Secretary shall establish a period during which the Secretary may not transfer such properties except to such units and corporations;

(ii) the Secretary shall offer qualified HUD properties that are single family properties for purchase by units of general local government at a cost of $1 for each property, but only to the extent that the costs to the Federal Government of disposal at such price do not exceed the costs to the Federal Government of disposing of property subject to the procedures for single family property established by the Secretary pursuant to the authority under the last sentence of section 1710(g) of this title;

(iii) the Secretary may accept an offer to purchase a property made by a community development corporation only if the offer provides for purchase on a cost recovery basis; and

(iv) the Secretary shall accept an offer to purchase such a property that is made during such period by such a unit or corporation and that complies with the requirements of this paragraph; and

(E) a written explanation, to any unit of general local government or community development corporation making an offer to purchase a qualified HUD property under this subsection that is not accepted, of the reason that such offer was not acceptable.

(4) Other disposition

With respect to any qualified HUD property, if the Secretary does not receive an acceptable offer to purchase the property pursuant to the procedure established under paragraph (3), the Secretary shall dispose of the property to the unit of general local government in which property is located or to community development corporations located in such unit of general local government on a negotiated, competitive bid, or other basis, on such terms as the Secretary deems appropriate.

(5) Satisfaction of indebtedness

Before transferring ownership of any qualified HUD property pursuant to this subsection, the Secretary shall satisfy any indebtedness incurred in connection with the property to be transferred, by canceling the indebtedness.

(6) Determination of status of properties

To ensure compliance with the requirements of this subsection, the Secretary shall take the following actions:

(A) Upon enactment

Upon the enactment of this subsection [December 21, 2000], the Secretary shall promptly assess each residential property owned by the Secretary to determine whether such property is a qualified HUD property.

(B) Upon acquisition

Upon acquiring any residential property, the Secretary shall promptly determine whether the property is a qualified HUD property.

(C) Updates

The Secretary shall periodically reassess the residential properties owned by the Secretary to determine whether any such properties have become qualified HUD properties.

(7) Tenant leases

This subsection shall not affect the terms or the enforceability of any contract or lease entered into with respect to any residential property before the date that such property becomes a qualified HUD property.

(8) Use of property

Property transferred under this subsection shall be used only for appropriate neighborhood revitalization efforts, including homeownership, rental units, commercial space,

and parks, consistent with local zoning regulations, local building codes, and subdivision regulations and restrictions of record.

(9) Inapplicability to properties made available for homeless

Notwithstanding any other provision of this subsection, this subsection shall not apply to any properties that the Secretary determines are to be made available for use by the homeless pursuant to subpart E of part 291 of title 24, Code of Federal Regulations, during the period that the properties are so available.

(10) Protection of existing contracts

This subsection may not be construed to alter, affect, or annul any legally binding obligations entered into with respect to a qualified HUD property before the property becomes a qualified HUD property.

(11) Definitions

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

(A) Community development corporation

The term ''community development corporation'' means a nonprofit organization whose primary purpose is to promote community development by providing housing opportunities for low-income families.

(B) Cost recovery basis

The term ''cost recovery basis'' means, with respect to any sale of a residential property by the Secretary, that the purchase price paid by the purchaser is equal to or greater than the sum of: (i) the appraised value of the property, as determined in accordance with such requirements as the Secretary shall establish; and (ii) the costs incurred by the Secretary in connection with such property during the period beginning on the date on which the Secretary acquires title to the property and ending on the date on which the sale is consummated.

(C) Multifamily housing project

The term ''multifamily housing project'' has the meaning given the term in section 1701z–11 of this title.

(D) Residential property

The term ''residential property'' means a property that is a multifamily housing project or a single family property.

(E) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development.

(F) Severe physical problems

The term ''severe physical problems'' means, with respect to a dwelling unit, that the unit—

(i) lacks hot or cold piped water, a flush toilet, or both a bathtub and a shower in the unit, for the exclusive use of that unit;

(ii) on not less than three separate occasions during the preceding winter months, was uncomfortably cold for a period of more than 6 consecutive hours due to a malfunction of the heating system for the unit;

(iii) has no functioning electrical service, exposed wiring, any room in which there is not a functioning electrical outlet, or has experienced three or more blown fuses or tripped circuit breakers during the preceding 90-day period;

(iv) is accessible through a public hallway in which there are no working light fixtures, loose or missing steps or railings, and no elevator; or

(v) has severe maintenance problems, including water leaks involving the roof, windows, doors, basement, or pipes or plumbing fixtures, holes or open cracks in walls or ceilings, severe paint peeling or broken plaster, and signs of rodent infestation.

(G) Single family property

The term ''single family property'' means a 1- to 4-family residence.

(H) Substandard

The term ''substandard'' means, with respect to a multifamily housing project, that 25 percent or more of the dwelling units in the project have severe physical problems.

(I) Unit of general local government

The term ''unit of general local government'' has the meaning given such term in section 5302(a) of title 42.

(J) Unoccupied

The term ''unoccupied'' means, with respect to a residential property, that the unit of general local government having jurisdiction over the area in which the project is located has certified in writing that the property is not inhabited.

(12) Regulations

(A) Interim

Not later than 30 days after December 21, 2000, the Secretary shall issue such interim regulations as are necessary to carry out this subsection.

(B) Final

Not later than 60 days after December 21, 2000, the Secretary shall issue such final regulations as are necessary to carry out this subsection.

(Pub. L. 104–204, title II, § 204, Sept. 26, 1996, 110 Stat. 2894; Pub. L. 105–65, title II, § 213, Oct. 27, 1997, 111 Stat. 1366; Pub. L. 105–276, title II, § 206, Oct. 21, 1998, 112 Stat. 2484; Pub. L. 106–74, title V, § 537, Oct. 20, 1999, 113 Stat. 1122; Pub. L. 106–377, § 1(a)(1) [title II, § 204], Oct. 27, 2000, 114 Stat. 1441, 1441A–24; Pub. L. 106–554, § 1(a)(7) [title I, § 141], Dec. 21, 2000, 114 Stat. 2763, 2763A–614; Pub. L. 109–171, title II, § 2003(a), Feb. 8, 2006, 120 Stat. 9.)

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–171 inserted at end ''A grant provided under this subsection during fiscal years

2006 through 2010 shall be available only to the extent that appropriations are made in advance for such purposes and shall not be derived from the General Insurance Fund.''

2000—Pub. L. 106–554 substituted ''Disposition of HUD-owned properties'' for ''Flexible authority'' in section catchline, designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 106–377 substituted ''2000, and thereafter'' for ''and 2000''.

1999—Pub. L. 106–74 substituted ''1999, and 2000'' for ''and 1999'' and '', demolition, or construction on the properties (which shall be eligible whether vacant or occupied)'' for ''or demolition''.

1998—Pub. L. 105–276 substituted ''fiscal years 1997, 1998, and 1999'' for ''fiscal years 1997 and 1998''.

1997—Pub. L. 105–65 inserted '', including, for fiscal years 1997 and 1998, the provision of grants and loans from the General Insurance Fund (12 U.S.C. 1735c) for the necessary costs of rehabilitation or demolition,'' after ''owned by the Secretary''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 not applicable to any transaction that formally commences within one year prior to Feb. 8, 2006, see section 2003(c) of Pub. L. 109–171, set out as a note under section 1701z–11 of this title.

§ 1715z–12. Single-family mortgage insurance on Hawaiian home lands

(a) One- to four-family residence; eligibility

The Secretary, subject to such conditions as the Secretary may prescribe, may insure under any provision of this subchapter that authorizes such insurance, a mortgage covering a property upon which there is located a one- to four-family residence, without regard to any limitation in this chapter relating to marketability of title or any other limitation in this chapter that the Secretary determines is contrary to promoting the availability of such insurance on Hawaiian home lands, if—

(1) the mortgage is executed by a native Hawaiian on property located within Hawaiian home lands covered under a homestead lease issued under section 207(a) of the Hawaiian Homes Commission Act, 1920, or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (73 Stat. 5);

(2) the property will be used as the principal residence of the mortgagor; and

(3) the Department of Hawaiian Home Lands of the State of Hawaii (A) is a comortgagor; (B) guarantees to reimburse the Secretary for any mortgage insurance claim paid in connection with a property on Hawaiian home lands; or (C) offers other security acceptable to the Secretary.

(b) Construction advances

Notwithstanding any other provision of this chapter, the Secretary may, with respect to mortgages eligible for insurance under subsection (a) of this section, insure and make commitments to insure advances made during construction if the Secretary determines that the proposed construction is otherwise acceptable and that no feasible financing alternative is available.

(c) Insurance of mortgage as obligation of General Insurance Fund

Notwithstanding any other provision of this chapter, the insurance of a mortgage using the authority contained in this section shall be the obligation of the Mutual Mortgage Insurance Fund. The mortgagee shall be eligible to receive the benefits of insurance as provided in section 1710 of this title with respect to mortgages insured pursuant to this section, except that all references in section 1710 of this title to section 1709 of this title shall be construed to refer to the section under which the mortgage is insured.

(d) "Native Hawaiian" and "Hawaiian home lands" defined

For purposes of this section:

(1) Native Hawaiian

The term ''native Hawaiian'' means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands before January 1, 1778, or, in the case of an individual who is awarded an interest in a lease of Hawaiian home lands through transfer or succession, such lower percentage as may be established for such transfer or succession under section 208 or 209 of the Hawaiian Homes Commission Act of 1920 (42 Stat. 111), or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (73 Stat. 5).

(2) Hawaiian home lands

The term ''Hawaiian home lands'' means all lands given the status of Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act of 1920 (42 Stat. 110), or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (73 Stat. 5).

(e) Certification of eligibility for existing lessees

Possession of a lease of Hawaiian home lands issued under section 207(a) of the Hawaiian Homes Commission Act of 1920 (42 Stat. 110), shall be sufficient to certify eligibility to receive a mortgage under this section.

(June 27, 1934, ch. 847, title II, § 247, as added Pub. L. 98–181, title IV, § 421, Nov. 30, 1983, 97 Stat. 1213; amended Pub. L. 100–202, § 101(f) [title I, § 101], Dec. 22, 1987, 101 Stat. 1329–187, 1329–191; Pub. L. 100–242, title IV, §§ 413(a), (b), 429(h), Feb. 5, 1988, 101 Stat. 1906, 1919; Pub. L. 100–628, title X, § 1065, Nov. 7, 1988, 102 Stat. 3275; Pub. L. 107–73, title II, § 215, Nov. 26, 2001, 115 Stat. 677; Pub. L. 110–289, div. B, title I, § 2119(a), July 30, 2008, 122 Stat. 2835.)

REFERENCES IN TEXT

The Hawaiian Homes Commission Act, 1920, referred to in subsec. (a)(1), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended. The Hawaiian Homes Commission Act of 1920, referred to in subsecs. (d) and (e), probably means the Hawaiian Homes Commission Act, 1920. Sections 204, 207, 208, and 209 of that Act were classified to sections 698, 701, 702, and 703 of Title 48, Territories and Insular Possessions, and were omitted from the Code.

Section 4 of the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved Mar. 18, 1959 (73 Stat. 5), referred to in subsecs. (a)(1) and (d), is section 4 of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 5, which is set out as a note preceding section 491 of Title 48.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–289 substituted ''Mutual Mortgage Insurance Fund'' for ''General Insurance Fund established in section 1735c of this title'' and struck out ''(1) all references in section 1710 of this title to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund; and (2)'' after ''except that''.

2001—Subsec. (d)(1), (2). Pub. L. 107–73, § 215(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) The term 'native Hawaiian' means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands before January 1, 1778 (or, in the case of an individual who succeeds a spouse or parent in an interest in a lease of Hawaiian home lands, such lower percentage as may be established for such succession under section 209 of the Hawaiian Homes Commission Act, 1920, or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled 'An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (73 Stat. 5)).

''(2) The term 'Hawaiian home lands' means all lands given the status of Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act, 1920, or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled 'An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (73 Stat. 5).''

Subsec. (e). Pub. L. 107–73, § 215(2), added subsec. (e).

1988—Subsec. (a)(2). Pub. L. 100–242, § 429(h), substituted ''mortgagor'' for ''Mortgagor''.

Subsecs. (c), (d). Pub. L. 100–628 clarified amendment by Pub. L. 100–242, § 413(a), (b).

Pub. L. 100–242, § 413(a), (b), made amendment identical to Pub. L. 100–202. See 1987 Amendment note below.

1987—Subsec. (c). Pub. L. 100–202 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–202 extended subsec. (c)(1) term ''native Hawaiian'' to include in the case of succession in an interest in a lease of Hawaiian homelands any descendant of a percentage less than one-half of the blood of the races inhabiting the Hawaiian Islands before Jan. 1, 1778, as may be established under statute or constitution for succession; and redesignated subsec. (c), including such par. (1), as subsec. (d).

§ 1715z–13. Single family mortgage insurance on Indian reservations

(a) One- to four-family residence; eligibility

The Secretary, subject to such special conditions as the Secretary may prescribe, may insure under any provision of this subchapter that authorizes such insurance, a mortgage covering a property upon which there is located a one- to four-family residence, without regard to any limitation in this chapter relating to marketability of title or any other limitation in this chapter that the Secretary determines is contrary to promoting the availability of such insurance on Indian reservations if the mortgage (1) is executed by an Indian tribe and the property is located on trust or otherwise restricted land; or (2) is executed by a member of an Indian tribe who will use the property as a principal residence and the property is on trust or otherwise restricted land.

(b) Construction advances; percentage limitation on amount of principal obligation; pledge of income from tribal resources or assets

Notwithstanding any other provision of this chapter, with respect to mortgages covering a property upon which there is located a one- to four-family residence—

(1) the Secretary may insure and make commitments to insure under this subchapter pursuant to this section advances made during construction where the Secretary determines that the proposed construction is otherwise acceptable and meets an applicable tribal or national model building code, and that no feasible financing alternative is available;

(2) the applicable percentage limitation on the amount of the principal obligation of a mortgage based on the appraised value or replacement cost, as appropriate, of a one- to four-family owner-occupied residence contained in this subchapter shall apply in the case of all mortgages insured pursuant to this section without regard to whether the residences are owner-occupied where the residences are owned by the tribe; and

(3)(A) the Secretary may require an Indian tribe, only as a condition of insurance made under this subchapter pursuant to this section, to pledge income from tribal resources or income from tribal assets not subject to a restriction by the Secretary of the Interior or pledge grants under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] or any other Federal grant program administered by the Secretary of Housing and Urban Development to be used to reimburse the Secretary for any mortgage insurance claims paid in connection with residences insured pursuant to this section; or

(B) in the case of an individual Indian mortgagor, the Secretary may require a pledge of his or her share of distributed income from tribal resources or income from tribal assets, excluding any Federal grants received by the tribe.

(c) Lack of tribal or trust fund income

The Secretary may not refuse to insure a mortgage under this section to an individual home purchaser because there is no distributed tribal or trust fund income attributable to that purchaser.

(d) Availability of tribal eviction procedures

Before making any commitment to insure a mortgage under this section with respect to property located on trust or otherwise restricted land, the Secretary shall require a showing by the tribe that it has adopted eviction procedures to be used in the event of a default.

(e) Assumption of mortgage

A mortgage insured under this section may be assumed, subject to credit approval by the lender and the consent of the tribe to an assumption of the existing lease or the grant of a new lease, without an adjustment of the interest rate. Any other sale of a property subject to a mortgage insured under this section may be made only if a new lease is granted, except that a sale following a foreclosure may be accompanied by an assumption of the lease with the consent of the tribe.

(f) Insurance of mortgage as obligation of General Insurance Fund

Notwithstanding any other provision of this chapter, the insurance of a mortgage using the authority contained in this section shall be the obligation of the Mutual Mortgage Insurance Fund. The mortgagee shall be eligible to receive the benefits of insurance as provided in section 1710 of this title with respect to mortgages insured pursuant to this section, except that all references in section 1710 of this title to section 1709 of this title shall be construed to refer to the section under which the mortgage is insured.

(g) Availability of status and payment history of loans; entitlement to benefit of insurance; reinstatement of loan upon cure of default; garnishment proceedings; foreclosure proceedings

(1) The Secretary shall make information regarding the status and payment history of loans insured under this section available to local credit bureaus and prospective creditors. Prior to accepting assignment of a mortgage, the Secretary shall require mortgagees to submit documentation that mortgagors have been counseled in a face-to-face interview, informed of the provisions of this subsection or other available assistance, and provided with the names and addresses of officials of the Department of Housing and Urban Development to whom further communications shall be addressed.

(2) Notwithstanding the requirement for conveyance of title under section 1710 of this title, a mortgagee under this section shall be entitled to receive the benefit of insurance under this section in the case of a mortgage which is more than 90 days in default upon conveyance of the lease agreement and the mortgage documents.

(3) In the event that any default is cured, the Secretary shall seek to reinstate the loan with the mortgagee or another mortgagee. For purposes of this paragraph, the Secretary may provide appropriate financial incentives to reinstate the loan commensurate with sound management of the General Insurance Fund.

(4) If the Secretary determines that a mortgagor is not making a good-faith effort to cure a default, and that trust fund or tribal income is available under subsection (b)(3)(B) of this section, the Secretary shall commence proceedings for the garnishment of the mortgagor's distributed share of tribal or trust fund income in order to collect loan payments that are past due. Proceedings under this paragraph may be instituted in a tribal court, court of competent jurisdiction designated by the tribe, or Federal district court.

(5) If the Secretary determines such action is necessary to protect the General Insurance Fund from undue loss, the Secretary may initiate foreclosure proceedings with respect to any mortgage acquired under this subsection. Such proceeding may take place in a tribal court, a court of competent jurisdiction, or Federal district court. Any such court shall have jurisdiction to convey to the Secretary the remaining life of a lease on the real property and to order eviction of the delinquent mortgagor.

(h) Premium charge for insurance; report to Congress

In the administration of this section, the Secretary shall establish a premium charge for insurance that will be sufficient to cover the full costs of the mortgage insurance program under this section, except that such charge may not exceed 3 percent per annum of the principal amount of the mortgage outstanding at any time. Not later than September 30, 1984, the Secretary shall determine and report to the Congress on the feasibility of eliminating any excess amount of the premium under this section over the premium under section 1709 of this title. In the event such premiums are not sufficient to cover the full costs of the mortgage insurance program under this section, the Secretary shall make recommendations to the Congress about changes to the program.

(i) "Indian tribe" and "trust or otherwise restricted land" defined

For purposes of this section:

(1) The term ''Indian tribe'' means any Indian or Alaska native tribe, band, nation, or other organized group or community of Indians or Alaska natives recognized as eligible for the services provided to Indians or Alaska natives by the Secretary of the Interior because of its status as such an entity, or that was an eligible recipient under chapter 67 of title 31, prior to the repeal of such chapter.

(2) The term ''trust or otherwise restricted land'' means (A) that area of land, as defined by the Secretary of the Interior, over which an Indian tribe is recognized by the United States as having governmental jurisdiction; (B) land held in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation; or (C) land acquired by Alaska natives under the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] or any other land acquired by Alaska natives pursuant to statute by virtue of their unique status as Alaska natives.

(June 27, 1934, ch. 847, title II, §248, as added Pub. L. 98–181, title IV, §422, Nov. 30, 1983, 97 Stat. 1214; amended Pub. L. 99–272, title XIV, §14001(b)(7), Apr. 7, 1986, 100 Stat. 329; Pub. L. 100–242, title IV, §§413(c), 429(i), Feb. 5, 1988, 101 Stat. 1906, 1919; Pub. L. 110–289, div. B, title I, §2119(b), July 30, 2008, 122 Stat. 2835.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (b)(3)(A), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§5301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.

Chapter 67 of title 31, referred to in subsec. (i)(1), was repealed by Pub. L. 99–272, title XIV, §14001(a)(1), Apr. 7, 1986, 100 Stat. 327. A new chapter 67 of Title 31, Money and Finance, was added by Pub. L. 103–322, title III, §31001(a), Sept. 13, 1994, 108 Stat. 1859.

The Alaska Native Claims Settlement Act, referred to in subsec. (i)(2), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For

complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

2008—Subsec. (f). Pub. L. 110–289 substituted ''Mutual Mortgage Insurance Fund'' for ''General Insurance Fund established in section 1735c of this title'' and struck out ''(1) all references in section 1710 of this title to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund; and (2)'' after ''except that''.

1988—Subsec. (a)(1). Pub. L. 100–242, § 429(i)(1), substituted ''land'' for ''lands''.

Subsec. (a)(2). Pub. L. 100–242, § 429(i)(2), substituted ''on trust or otherwise restricted land'' for ''on trust lands or otherwise restricted land''.

Subsec. (d). Pub. L. 100–242, § 429(i)(3), substituted ''trust or otherwise restricted land'' for ''tribal or trust land''.

Subsec. (f). Pub. L. 100–242, § 413(c)(3), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100–242, § 413(c)(1), (2), redesignated former subsec. (f) as (g) and substituted ''General Insurance Fund'' for ''insurance fund'' in pars. (3) and (5). Former subsec. (g) redesignated (h).

Subsecs. (h), (i). Pub. L. 100–242, § 413(c)(2), redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

1986—Subsec. (h)(1). Pub. L. 99–272 substituted ''was an eligible recipient under chapter 67 of title 31, prior to the repeal of such chapter'' for ''is an eligible recipient under chapter 67 of title 31''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99–272.

§ 1715z–13a. Loan guarantees for Indian housing

(a) Authority

To provide access to sources of private financing to Indian families, Indian housing authorities, and Indian tribes, who otherwise could not acquire housing financing because of the unique legal status of Indian lands, the Secretary may guarantee not to exceed 100 percent of the unpaid principal and interest due on any loan eligible under subsection (b) of this section made to an Indian family, Indian housing authority, or Indian tribe.

(b) Eligible loans

Loans guaranteed pursuant to this section shall meet the following requirements:

(1) Eligible borrowers

The loans shall be made only to borrowers who are Indian families, Indian housing authorities, or Indian tribes.

(2) Eligible housing

The loan shall be used to construct, acquire, refinance, or rehabilitate 1- to 4-family dwellings that are standard housing and are located on trust land or land located in an Indian or Alaska Native area.

(3) Security

The loan may be secured by any collateral authorized under existing Federal law or applicable State or tribal law.

(4) Lenders

The loan shall be made only by a lender approved by and meeting qualifications established by the Secretary, except that loans otherwise insured or guaranteed by an agency of the Federal Government or made by an organization of Indians from amounts borrowed from the United States shall not be eligible for guarantee under this section. The following lenders are deemed to be approved under this paragraph:

(A) Any mortgagee approved by the Secretary of Housing and Urban Development for participation in the single family mortgage insurance program under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

(B) Any lender whose housing loans under chapter 37 of title 38 are automatically guaranteed pursuant to section 1802(d)[1] of such title.

(C) Any lender approved by the Secretary of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949 [42 U.S.C. 1441 et seq.].

(D) Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal Government.

(5) Terms

The loan shall—

(A) be made for a term not exceeding 30 years;

(B) bear interest (exclusive of the guarantee fee under section 404[2] and service charges, if any) at a rate agreed upon by the borrower and the lender and determined by the Secretary to be reasonable, which may not exceed the rate generally charged in the area (as determined by the Secretary) for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government;

(C) involve a principal obligation not exceeding—

(i) 97.75 percent of the appraised value of the property as of the date the loan is accepted for guarantee (or 98.75 percent if the value of the property is $50,000 or less); and

(ii) the amount approved by the Secretary under this section; and

(D) involve a payment on account of the property (i) in cash or its equivalent, or (ii) through the value of any improvements to the property made through the skilled or unskilled labor of the borrower, as the Secretary shall provide.

(c) Certificate of guarantee

(1) Approval process

Before the Secretary approves any loan for guarantee under this section, the lender shall submit the application for the loan to the Secretary for examination. If the Secretary approves the loan for guarantee, the Secretary shall issue a certificate under this paragraph as evidence of the guarantee.

(2) Standard for approval

The Secretary may approve a loan for guarantee under this section and issue a certificate under this paragraph only if the Secretary de-

[1] So in original. Probably should be section ''3702(d)''.

[2] So in original. Probably should be ''subsection (d) of this section''.

termines there is a reasonable prospect of repayment of the loan.

(3) Effect

A certificate of guarantee issued under this paragraph by the Secretary shall be conclusive evidence of the eligibility of the loan for guarantee under the provisions of this section and the amount of such guarantee. Such evidence shall be incontestable in the hands of the bearer and the full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Secretary as security for such obligations.

(4) Fraud and misrepresentation

This subsection may not be construed to preclude the Secretary from establishing defenses against the original lender based on fraud or material misrepresentation or to bar the Secretary from establishing by regulations in effect on the date of issuance or disbursement, whichever is earlier, partial defenses to the amount payable on the guarantee.

(d) Guarantee fee

The Secretary shall fix and collect a guarantee fee for the guarantee of loans under this section, which may not exceed the amount equal to 1 percent of the principal obligation of the loan. The fee shall be paid by the lender at time of issuance of the guarantee and shall be adequate, in the determination of the Secretary, to cover expenses and probable losses. The Secretary shall deposit any fees collected under this subsection in the Indian Housing Loan Guarantee Fund established under subsection (i) of this section.

(e) Liability under guarantee

The liability under a guarantee provided under this section shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement.

(f) Transfer and assumption

Notwithstanding any other provision of law, any loan guaranteed under this section, including the security given for the loan, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

(g) Disqualification of lenders and civil money penalties

(1) In general

If the Secretary determines that any lender or holder of a guarantee certificate under subsection (c) of this section has failed to maintain adequate accounting records, to adequately service loans guaranteed under this section, to exercise proper credit or underwriting judgment, or has engaged in practices otherwise detrimental to the interest of a borrower or the United States, the Secretary may—

(A) refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;

(B) bar such lender or holder from acquiring additional loans guaranteed under this section; and

(C) require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under this section.

(2) Civil money penalties for intentional violations

If the Secretary determines that any lender or holder of a guarantee certificate under subsection (c) of this section has intentionally failed to maintain adequate accounting records, to adequately service loans guaranteed under this section, or to exercise proper credit or underwriting judgment, the Secretary may impose a civil money penalty on such lender or holder in the manner and amount provided under section 536 of the National Housing Act [12 U.S.C. 1735f–14] with respect to mortgagees and lenders under such Act.

(3) Payment on loans made in good faith

Notwithstanding paragraphs (1) and (2), the Secretary may not refuse to pay pursuant to a valid guarantee on loans of a lender or holder barred under this subsection if the loans were previously made in good faith.

(h) Payment under guarantee

(1) Lender options

(A) In general

In the event of default by the borrower on a loan guaranteed under this section, the holder of the guarantee certificate shall provide written notice of the default to the Secretary. Upon providing such notice, the holder of the guarantee certificate shall be entitled to payment under the guarantee (subject to the provisions of this section) and may proceed to obtain payment in one of the following manners:

(i) Foreclosure

The holder of the certificate may initiate foreclosure proceedings (after providing written notice of such action to the Secretary) and upon a final order by the court authorizing foreclosure and submission to the Secretary of a claim for payment under the guarantee, the Secretary shall pay to the holder of the certificate the pro rata portion of the amount guaranteed (as determined pursuant to subsection (e) of this section) plus reasonable fees and expenses as approved by the Secretary. The Secretary shall be subrogated to the rights of the holder of the guarantee and the lender holder shall assign the obligation and security to the Secretary.

(ii) No foreclosure

Without seeking foreclosure (or in any case in which a foreclosure proceeding initiated under clause (i) continues for a period in excess of 1 year), the holder of the guarantee may submit to the Secretary a request to assign the obligation and security interest to the Secretary in return for payment of the claim under the guarantee. The Secretary may accept assignment of the loan if the Secretary determines that

the assignment is in the best interests of the United States. Upon assignment, the Secretary shall pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under subsection (e) of this section). The Secretary shall be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Secretary.

(B) Requirements

Before any payment under a guarantee is made under subparagraph (A), the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States. The Secretary shall then take such action to collect as the Secretary determines appropriate.

(2) Limitations on liquidation

In the event of a default by the borrower on a loan guaranteed under this section involving a security interest in restricted Indian land, the mortgagee or the Secretary shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe or tribes. If the mortgagee or the Secretary subsequently proceeds to liquidate the account, the mortgagee or the Secretary shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

(i) Indian Housing Loan Guarantee Fund

(1) Establishment

There is established in the Treasury of the United States the Indian Housing Loan Guarantee Fund for the purpose of providing loan guarantees under this section.

(2) Credits

The Guarantee Fund shall be credited with—

(A) any amounts, claims, notes, mortgages, contracts, and property acquired by the Secretary under this section, and any collections and proceeds therefrom;

(B) any amounts appropriated under paragraph (7);

(C) any guarantee fees collected under subsection (d) of this section; and

(D) any interest or earnings on amounts invested under paragraph (4).

(3) Use

Amounts in the Guarantee Fund shall be available, to the extent provided in appropriation Acts, for—

(A) fulfilling any obligations of the Secretary with respect to loans guaranteed under this section, including the costs (as such term is defined in section 661a of title 2) of such loans;

(B) paying taxes, insurance, prior liens, expenses necessary to make fiscal adjustment in connection with the application and transmittal of collections, and other expenses and advances to protect the Secretary for loans which are guaranteed under this section or held by the Secretary;

(C) acquiring such security property at foreclosure sales or otherwise;

(D) paying administrative expenses in connection with this section; and

(E) reasonable and necessary costs of rehabilitation and repair to properties that the Secretary holds or owns pursuant to this section.

(4) Investment

Any amounts in the Guarantee Fund determined by the Secretary to be in excess of amounts currently required to carry out this section may be invested in obligations of the United States.

(5) Limitation on commitments to guarantee loans and mortgages

(A) Requirement of appropriations

The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year to the extent or in such amounts as are or have been provided in appropriations Acts, without regard to the fiscal year for which such amounts were appropriated.

(B) Limitations on costs of guarantees

The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year only to the extent that amounts in the Guarantee Fund are or have been made available in appropriation Acts to cover the costs (as such term is defined in section 661a of title 2) of such loan guarantees for such fiscal year. Any amounts appropriated pursuant to this subparagraph shall remain available until expended.

(C) Limitation on outstanding aggregate principal amount

Subject to the limitations in subparagraphs (A) and (B), the Secretary may enter into commitments to guarantee loans under this section in each of fiscal years 2008 through 2012 with an aggregate outstanding principal amount not exceeding such amount as may be provided in appropriation Acts for such fiscal year.

(6) Liabilities

All liabilities and obligations of the assets credited to the Guarantee Fund under paragraph (2)(A) shall be liabilities and obligations of the Guarantee Fund.

(7) Authorization of appropriations

There are authorized to be appropriated to the Guarantee Fund to carry out this section such sums as may be necessary for each of fiscal years 2008 through 2012.

(j) Requirements for standard housing

The Secretary shall, by regulation, establish housing safety and quality standards for use under this section. Such standards shall provide sufficient flexibility to permit the use of various designs and materials in housing acquired with loans guaranteed under this section. The stand-

ards shall require each dwelling unit in any housing so acquired to—

(1) be decent, safe, sanitary, and modest in size and design;

(2) conform with applicable general construction standards for the region;

(3) contain a heating system that—

(A) has the capacity to maintain a minimum temperature in the dwelling of 65 degrees Fahrenheit during the coldest weather in the area;

(B) is safe to operate and maintain;

(C) delivers a uniform distribution of heat; and

(D) conforms to any applicable tribal heating code or, if there is no applicable tribal code, an appropriate county, State, or National code;

(4) contain a plumbing system that—

(A) uses a properly installed system of piping;

(B) includes a kitchen sink and a partitional bathroom with lavatory, toilet, and bath or shower; and

(C) uses water supply, plumbing, and sewage disposal systems that conform to any applicable tribal code or, if there is no applicable tribal code, the minimum standards established by the applicable county or State;

(5) contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any applicable tribal code or, if there is no applicable tribal code, an appropriate county, State, or National code;

(6) be not less than—

(A)(i) 570 square feet in size, if designed for a family of not more than 4 persons;

(ii) 850 square feet in size, if designed for a family of not less than 5 and not more than 7 persons; and

(iii) 1020 square feet in size, if designed for a family of not less than 8 persons, or

(B) the size provided under the applicable locally adopted standards for size of dwelling units;

except that the Secretary, upon the request of a tribe or Indian housing authority, may waive the size requirements under this paragraph; and

(7) conform with the energy performance requirements for new construction established by the Secretary under section 526(a) of the National Housing Act [12 U.S.C. 1735f–4(a)].

(k) Environmental review

For purposes of environmental,[3] review, decisionmaking, and action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any other law that furthers the purposes of that Act, a loan guarantee under this section shall—

(1) be treated as a grant under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.); and

(2) be subject to the regulations promulgated by the Secretary to carry out section 105 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4115).

(*l*) Definitions

For purposes of this section:

(1) The term ''family'' means 1 or more persons maintaining a household, as the Secretary shall by regulation provide.

(2) The term ''Guarantee Fund'' means the Indian Housing Loan Guarantee Fund established under subsection (i) of this section.

(3) The term ''Indian'' means person recognized as being Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

(4) The term ''Indian area'' means the area within which an Indian housing authority or Indian tribe is authorized to provide housing.

(5) The term ''Indian housing authority'' means any entity that—

(A) is authorized to engage in or assist in the development or operation of—

(i) low-income housing for Indians; or

(ii) housing subject to the provisions of this section; and

(B) is established—

(i) by exercise of the power of self-government of an Indian tribe independent of State law; or

(ii) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

The term includes tribally designated housing entities under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.].

(6) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(7) The term ''standard housing'' means a dwelling unit or housing that complies with the requirements established under subsection (j) of this section.

(8) TRIBE; INDIAN TRIBE.—The term ''tribe'' or ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975 [25 U.S.C. 450 et seq.].

(9) The term ''trust land'' means land title to which is held by the United States for the benefit of an Indian or Indian tribe or title to which is held by an Indian tribe subject to a restriction against alienation imposed by the United States.

(Pub. L. 102–550, title I, §184, Oct. 28, 1992, 106 Stat. 3739; Pub. L. 104–330, title VII, §701(a)–(j), Oct. 26, 1996, 110 Stat. 4048–4050; Pub. L. 105–276, title V, §595(e)(11)–(13), Oct. 21, 1998, 112 Stat. 2658; Pub. L. 106–377, §1(a)(1) [title II, §227], Oct. 27, 2000, 114 Stat. 1441, 1441A–30; Pub. L. 106–568,

[3] So in original. The comma probably should not appear.

title X, § 1002, Dec. 27, 2000, 114 Stat. 2925; Pub. L. 106–569, title V, § 502, Dec. 27, 2000, 114 Stat. 2961; Pub. L. 107–292, § 2(d), Nov. 13, 2002, 116 Stat. 2053; Pub. L. 110–37, § 2, June 18, 2007, 121 Stat. 229.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b)(4)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified generally to subchapter II (§ 1707 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (b)(4)(C), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to chapter 8A (§ 1441 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (k), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsecs. (k)(1) and (*l*)(5), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (*l*)(8), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (*l*)(8), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1992, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

2007—Subsec. (i)(5)(C),(7). Pub. L. 110–37 substituted ''fiscal years 2008 through 2012'' for ''fiscal years 1997 through 2007''.

2002—Subsec. (i)(5)(C), (7). Pub. L. 107–292 substituted ''each of fiscal years 1997 through 2007'' for ''each fiscal year''.

2000—Subsec. (a). Pub. L. 106–377, § 1(a)(1) [title II, § 227(1)], struck out ''or as a result of a lack of access to private financial markets'' after ''legal status of Indian lands''.

Subsec. (b)(2). Pub. L. 106–377, § 1(a)(1) [title II, § 227(2)], inserted ''refinance,'' after ''acquire,''.

Subsec. (i)(5)(C). Pub. L. 106–568, § 1002(1), and Pub. L. 106–569, § 502(1), amended par. (5) identically, adding subpar. (C) and striking out heading and text of former subpar. (C). Text read as follows: ''Subject to the limitations in subparagraphs (A) and (B), the Secretary may enter into commitments to guarantee loans under this section in each of fiscal years 1997, 1998, 1999, 2000, and 2001 with an aggregate outstanding principal amount not exceeding $400,000,000 for each such fiscal year.''

Subsec. (i)(7). Pub. L. 106–568, § 1002(2), and Pub. L. 106–569, § 502(2), amended par. (7) identically, substituting ''each fiscal year'' for ''each of fiscal years 1997, 1998, 1999, 2000, and 2001''.

1998—Subsec. (b)(2). Pub. L. 105–276, § 595(e)(11), struck out before period at end ''that is under the jurisdiction of an Indian tribe for which an Indian housing plan has been submitted and approved pursuant to sections 102 and 103 of the Native American Housing Assistance and Self-Determination Act of 1996 that provides for the use of loan guarantees under this section to provide affordable homeownership housing in such areas.''

Subsec. (i)(5)(C). Pub. L. 105–276, § 595(e)(12), substituted ''not'' for ''note''.

Subsecs. (k), (*l*). Pub. L. 105–276, § 595(e)(13), added subsec. (k) and redesignated former subsec. (k) as (*l*).

1996—Subsec. (a). Pub. L. 104–330, § 701(a)(1), (b), substituted '', Indian housing authorities, and Indian tribes,'' for ''and Indian housing authorities'', ''lands or as a result of a lack of access to private financial markets'' for ''trust land'', and '', Indian housing authority, or Indian tribe'' for ''or Indian housing authority''.

Subsec. (b)(1). Pub. L. 104–330, § 701(a)(2), substituted '', Indian housing authorities, or Indian tribes'' for ''or Indian housing authorities''.

Subsec. (b)(2). Pub. L. 104–330, § 701(c), inserted before period at end ''that is under the jurisdiction of an Indian tribe for which an Indian housing plan has been submitted and approved pursuant to sections 102 and 103 of the Native American Housing Assistance and Self-Determination Act of 1996 that provides for the use of loan guarantees under this section to provide affordable homeownership housing in such areas''.

Subsec. (b)(5)(C)(i). Pub. L. 104–330, § 701(i), added cl. (i) and struck out former cl. (i) which read as follows: ''an amount equal to the sum of (I) 97 percent of $25,000 of the appraised value of the property, as of the date the loan is accepted for guarantee, and (II) 95 percent of such value in excess of $25,000; and''.

Subsec. (h)(1)(A)(i). Pub. L. 104–330, § 701(d)(1)(A), struck out ''in a court of competent jurisdiction'' after ''foreclosure proceedings'' in first sentence.

Subsec. (h)(1)(A)(ii). Pub. L. 104–330, § 701(d)(1)(B), added cl. (ii) and struck out heading and text of former cl. (ii). Text read as follows: ''Without seeking a judicial foreclosure (or in any case in which a foreclosure proceeding initiated under clause (i) continues for a period in excess of 1 year), the holder of the guarantee may submit to the Secretary a claim for payment under the guarantee and the Secretary shall only pay to such holder for a loss on any single loan an amount equal to 90 percent of the pro rata portion of the amount guaranteed (as determined under subsection (e) of this section). The Secretary shall be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Secretary.''

Subsec. (h)(2), (3). Pub. L. 104–330, § 701(d)(2), (3), (e), redesignated par. (3) as (2), in first sentence substituted ''restricted Indian land, the mortgagee or'' for ''tribal allotted or trust land,'', in second sentence substituted ''mortgagee or the Secretary'' for ''Secretary'' in two places, and struck out heading and text of former par. (2). Text read as follows: ''Notwithstanding paragraph (1), upon receiving notice of default on a loan guaranteed under this section from the holder of the guarantee, the Secretary may accept assignment of the loan if the Secretary determines that the assignment is in the best interests of the United States. Upon assignment the Secretary shall pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under subsection (e) of this section). The Secretary shall be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Secretary.''

Subsec. (i)(5)(A). Pub. L. 104–330, § 701(j)(1), added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: ''The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year only to the extent or in such amounts as are or have been provided in appropriations Acts for such fiscal year.''

Subsec. (i)(5)(B). Pub. L. 104–330, § 701(j)(2), inserted at end ''Any amounts appropriated pursuant to this subparagraph shall remain available until expended.''

Subsec. (i)(5)(C). Pub. L. 104–330, § 701(f), substituted ''1997, 1998, 1999, 2000, and 2001 with an aggregate outstanding principal amount note exceeding $400,000,000 for each such fiscal year'' for ''1993 and 1994 with an aggregate outstanding principal amount not exceeding such amount as may be provided in appropriation Acts for each such year''.

Subsec. (i)(7). Pub. L. 104–330, § 701(g), substituted ''such sums as may be necessary for each of fiscal years 1997, 1998, 1999, 2000, and 2001'' for ''such sums as may be necessary for fiscal year 1993 and $50,000,000 for fiscal year 1994''.

Subsec. (k)(4). Pub. L. 104–330, § 701(h)(1), inserted ''or Indian tribe'' after ''authority''.

Subsec. (k)(5). Pub. L. 104–330, § 701(h)(2), inserted concluding provisions, added subpar. (A), and struck out former subpar. (A) which read as follows: ''is authorized to engage in or assist in the development or operation of low-income housing for Indians; and''.

Subsec. (k)(8). Pub. L. 104–330, § 701(h)(3), added par. (8) and struck out former par. (8) which read as follows: ''The term 'tribe' means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 595(f), Oct. 21, 1998, 112 Stat. 2659, provided that: ''The amendments made by this section [enacting section 4168 of Title 25, Indians, amending this section, sections 4103, 4111 to 4113, 4131, 4135 to 4139 of Title 25, and sections 1437e and 12899h–1 of Title 42, The Public Health and Welfare, and repealing provisions set out as a note under section 1437 of Title 42] are made and shall apply beginning upon the date of the enactment of this Act [Oct. 21, 1998].''

§ 1715z–13b. Loan guarantees for Native Hawaiian housing

(a) Definitions

In this section:

(1) Department of Hawaiian Home Lands

The term ''Department of Hawaiian Home Lands'' means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.).

(2) Eligible entity

The term ''eligible entity'' means a Native Hawaiian family, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and private nonprofit or private for-profit organizations experienced in the planning and development of affordable housing for Native Hawaiians.

(3) Family

The term ''family'' means one or more persons maintaining a household, as the Secretary shall by regulation provide.

(4) Guarantee Fund

The term ''Guarantee Fund'' means the Native Hawaiian Housing Loan Guarantee Fund established under subsection (j) of this section.

(5) Hawaiian Home Lands

The term ''Hawaiian Home Lands'' means lands that—

(A) have the status of Hawaiian Home Lands under section 204 of the Hawaiian Homes Commission Act (42 Stat. 110); or

(B) are acquired pursuant to that Act.

(6) Native Hawaiian

The term ''Native Hawaiian'' means any individual who is—

(A) a citizen of the United States; and

(B) a descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by—

(i) genealogical records;

(ii) verification by kupuna (elders) or kama'aina (long-term community residents); or

(iii) birth records of the State of Hawaii.

(7) Office of Hawaiian Affairs

The term ''Office of Hawaiian Affairs'' means the entity of that name established under the constitution of the State of Hawaii.

(b) Authority

To provide access to sources of private financing to Native Hawaiian families who otherwise could not acquire housing financing because of the unique legal status of the Hawaiian Home Lands or as a result of a lack of access to private financial markets, the Secretary may guarantee an amount not to exceed 100 percent of the unpaid principal and interest that is due on an eligible loan under subsection (c) of this section.

(c) Eligible loans

Under this section, a loan is an eligible loan if that loan meets the following requirements:

(1) Eligible borrowers

The loan is made only to a borrower who is—

(A) a Native Hawaiian family;

(B) the Department of Hawaiian Home Lands;

(C) the Office of Hawaiian Affairs; or

(D) a private nonprofit organization experienced in the planning and development of affordable housing for Native Hawaiians.

(2) Eligible housing

(A) In general

The loan will be used to construct, acquire, or rehabilitate not more than 4-family dwellings that are standard housing and are located on Hawaiian Home Lands for which a housing plan described in subparagraph (B) applies.

(B) Housing plan

A housing plan described in this subparagraph is a housing plan that—

(i) has been submitted and approved by the Secretary under section 4223 of title 25; and

(ii) provides for the use of loan guarantees under this section to provide affordable homeownership housing on Hawaiian Home Lands.

(3) Security

The loan may be secured by any collateral authorized under applicable Federal or State law.

(4) Lenders

(A) In general

The loan shall be made only by a lender approved by, and meeting qualifications established by, the Secretary, including any lender described in subparagraph (B), except

that a loan otherwise insured or guaranteed by an agency of the Federal Government or made by the Department of Hawaiian Home Lands from amounts borrowed from the United States shall not be eligible for a guarantee under this section.

(B) Approval

The following lenders shall be considered to be lenders that have been approved by the Secretary:

(i) Any mortgagee approved by the Secretary for participation in the single family mortgage insurance program under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

(ii) Any lender that makes housing loans under chapter 37 of title 38 that are automatically guaranteed under section 3702(d) of title 38.

(iii) Any lender approved by the Secretary of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949 [42 U.S.C. 1441 et seq.].

(iv) Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal Government.

(5) Terms

The loan shall—

(A) be made for a term not exceeding 30 years;

(B) bear interest (exclusive of the guarantee fee under subsection (e) of this section and service charges, if any) at a rate agreed upon by the borrower and the lender and determined by the Secretary to be reasonable, but not to exceed the rate generally charged in the area (as determined by the Secretary) for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government;

(C) involve a principal obligation not exceeding—

(i) 97.75 percent of the appraised value of the property as of the date the loan is accepted for guarantee (or 98.75 percent if the value of the property is $50,000 or less); or

(ii) the amount approved by the Secretary under this section; and

(D) involve a payment on account of the property—

(i) in cash or its equivalent; or

(ii) through the value of any improvements to the property made through the skilled or unskilled labor of the borrower, as the Secretary shall provide.

(d) Certificate of guarantee

(1) Approval process

(A) In general

Before the Secretary approves any loan for guarantee under this section, the lender shall submit the application for the loan to the Secretary for examination.

(B) Approval

If the Secretary approves the application submitted under subparagraph (A), the Secretary shall issue a certificate under this subsection as evidence of the loan guarantee approved.

(2) Standard for approval

The Secretary may approve a loan for guarantee under this section and issue a certificate under this subsection only if the Secretary determines that there is a reasonable prospect of repayment of the loan.

(3) Effect

(A) In general

A certificate of guarantee issued under this subsection by the Secretary shall be conclusive evidence of the eligibility of the loan for guarantee under this section and the amount of that guarantee.

(B) Evidence

The evidence referred to in subparagraph (A) shall be incontestable in the hands of the bearer.

(C) Full faith and credit

The full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Secretary as security for the obligations made by the Secretary under this section.

(4) Fraud and misrepresentation

This subsection may not be construed—

(A) to preclude the Secretary from establishing defenses against the original lender based on fraud or material misrepresentation; or

(B) to bar the Secretary from establishing by regulations that are on the date of issuance or disbursement, whichever is earlier, partial defenses to the amount payable on the guarantee.

(e) Guarantee fee

(1) In general

The Secretary shall fix and collect a guarantee fee for the guarantee of a loan under this section, which may not exceed the amount equal to 1 percent of the principal obligation of the loan.

(2) Payment

The fee under this subsection shall—

(A) be paid by the lender at time of issuance of the guarantee; and

(B) be adequate, in the determination of the Secretary, to cover expenses and probable losses.

(3) Deposit

The Secretary shall deposit any fees collected under this subsection in the Native Hawaiian Housing Loan Guarantee Fund established under subsection (j) of this section.

(f) Liability under guarantee

The liability under a guarantee provided under this section shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement involved.

(g) Transfer and assumption

Notwithstanding any other provision of law, any loan guaranteed under this section, including the security given for the loan, may be sold or assigned by the lender to any financial insti-

tution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

(h) Disqualification of lenders and civil money penalties

(1) In general

(A) Grounds for action

The Secretary may take action under subparagraph (B) if the Secretary determines that any lender or holder of a guarantee certificate under subsection (d) of this section—

(i) has failed—

(I) to maintain adequate accounting records;

(II) to service adequately loans guaranteed under this section; or

(III) to exercise proper credit or underwriting judgment; or

(ii) has engaged in practices otherwise detrimental to the interest of a borrower or the United States.

(B) Actions

Upon a determination by the Secretary that a holder of a guarantee certificate under subsection (d) of this section has failed to carry out an activity described in subparagraph (A)(i) or has engaged in practices described in subparagraph (A)(ii), the Secretary may—

(i) refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;

(ii) bar such lender or holder from acquiring additional loans guaranteed under this section; and

(iii) require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under this section.

(2) Civil money penalties for intentional violations

(A) In general

The Secretary may impose a civil monetary penalty on a lender or holder of a guarantee certificate under subsection (d) of this section if the Secretary determines that the holder or lender has intentionally failed—

(i) to maintain adequate accounting records;

(ii) to adequately service loans guaranteed under this section; or

(iii) to exercise proper credit or underwriting judgment.

(B) Penalties

A civil monetary penalty imposed under this paragraph shall be imposed in the manner and be in an amount provided under section 536 of the National Housing Act [12 U.S.C. 1735f–14] with respect to mortgagees and lenders under that Act.

(3) Payment on loans made in good faith

Notwithstanding paragraphs (1) and (2), if a loan was made in good faith, the Secretary may not refuse to pay a lender or holder of a valid guarantee on that loan, without regard to whether the lender or holder is barred under this subsection.

(i) Payment under guarantee

(1) Lender options

(A) In general

(i) Notification

If a borrower on a loan guaranteed under this section defaults on the loan, the holder of the guarantee certificate shall provide written notice of the default to the Secretary.

(ii) Payment

Upon providing the notice required under clause (i), the holder of the guarantee certificate shall be entitled to payment under the guarantee (subject to the provisions of this section) and may proceed to obtain payment in one of the following manners:

(I) Foreclosure

(aa) In general

The holder of the certificate may initiate foreclosure proceedings (after providing written notice of that action to the Secretary).

(bb) Payment

Upon a final order by the court authorizing foreclosure and submission to the Secretary of a claim for payment under the guarantee, the Secretary shall pay to the holder of the certificate the pro rata portion of the amount guaranteed (as determined pursuant to subsection (f) of this section) plus reasonable fees and expenses as approved by the Secretary.

(cc) Subrogation

The rights of the Secretary shall be subrogated to the rights of the holder of the guarantee. The holder shall assign the obligation and security to the Secretary.

(II) No foreclosure

(aa) In general

Without seeking foreclosure (or in any case in which a foreclosure proceeding initiated under clause (i) continues for a period in excess of 1 year), the holder of the guarantee may submit to the Secretary a request to assign the obligation and security interest to the Secretary in return for payment of the claim under the guarantee. The Secretary may accept assignment of the loan if the Secretary determines that the assignment is in the best interest of the United States.

(bb) Payment

Upon assignment, the Secretary shall pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under subsection (f) of this section).

(cc) Subrogation

The rights of the Secretary shall be subrogated to the rights of the holder

of the guarantee. The holder shall assign the obligation and security to the Secretary.

(B) Requirements

Before any payment under a guarantee is made under subparagraph (A), the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States. The Secretary shall then take such action to collect as the Secretary determines to be appropriate.

(2) Limitations on liquidation

(A) In general

If a borrower defaults on a loan guaranteed under this section that involves a security interest in restricted Hawaiian Home Land property, the mortgagee or the Secretary shall only pursue liquidation after offering to transfer the account to another eligible Hawaiian family or the Department of Hawaiian Home Lands.

(B) Limitation

If, after action is taken under subparagraph (A), the mortgagee or the Secretary subsequently proceeds to liquidate the account, the mortgagee or the Secretary shall not sell, transfer, or otherwise dispose of or alienate the property described in subparagraph (A) except to another eligible Hawaiian family or to the Department of Hawaiian Home Lands.

(j) Hawaiian Housing Loan Guarantee Fund

(1) Establishment

There is established in the Treasury of the United States the Hawaiian Housing Loan Guarantee Fund for the purpose of providing loan guarantees under this section.

(2) Credits

The Guarantee Fund shall be credited with—

(A) any amount, claims, notes, mortgages, contracts, and property acquired by the Secretary under this section, and any collections and proceeds therefrom;

(B) any amounts appropriated pursuant to paragraph (7);

(C) any guarantee fees collected under subsection (e) of this section; and

(D) any interest or earnings on amounts invested under paragraph (4).

(3) Use

Amounts in the Guarantee Fund shall be available, to the extent provided in appropriations Acts, for—

(A) fulfilling any obligations of the Secretary with respect to loans guaranteed under this section, including the costs (as that term is defined in section 661a of title 2) of such loans;

(B) paying taxes, insurance, prior liens, expenses necessary to make fiscal adjustment in connection with the application and transmittal of collections, and other expenses and advances to protect the Secretary for loans which are guaranteed under this section or held by the Secretary;

(C) acquiring such security property at foreclosure sales or otherwise;

(D) paying administrative expenses in connection with this section; and

(E) reasonable and necessary costs of rehabilitation and repair to properties that the Secretary holds or owns pursuant to this section.

(4) Investment

Any amounts in the Guarantee Fund determined by the Secretary to be in excess of amounts currently required at the time of the determination to carry out this section may be invested in obligations of the United States.

(5) Limitation on commitments to guarantee loans and mortgages

(A) Requirement of appropriations

The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year to the extent, or in such amounts as are, or have been, provided in appropriations Acts, without regard to the fiscal year for which such amounts were appropriated.

(B) Limitations on costs of guarantees

The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year only to the extent that amounts in the Guarantee Fund are or have been made available in appropriations Acts to cover the costs (as that term is defined in section 661a of title 2) of such loan guarantees for such fiscal year. Any amounts appropriated pursuant to this subparagraph shall remain available until expended.

(C) Limitation on outstanding aggregate principal amount

Subject to the limitations in subparagraphs (A) and (B), the Secretary may enter into commitments to guarantee loans under this section for each of fiscal years 2001, 2002, 2003, 2004, and 2005 with an aggregate outstanding principal amount not exceeding $100,000,000 for each such fiscal year.

(6) Liabilities

All liabilities and obligations of the assets credited to the Guarantee Fund under paragraph (2)(A) shall be liabilities and obligations of the Guarantee Fund.

(7) Authorization of appropriations

There are authorized to be appropriated to the Guarantee Fund to carry out this section such sums as may be necessary for each of fiscal years 2001, 2002, 2003, 2004, and 2005.

(k) Requirements for standard housing

(1) In general

The Secretary shall, by regulation, establish housing safety and quality standards to be applied for use under this section.

(2) Standards

The standards referred to in paragraph (1) shall—

(A) provide sufficient flexibility to permit the use of various designs and materials in housing acquired with loans guaranteed under this section; and

(B) require each dwelling unit in any housing acquired in the manner described in subparagraph (A) to—

(i) be decent, safe, sanitary, and modest in size and design;

(ii) conform with applicable general construction standards for the region in which the housing is located;

(iii) contain a plumbing system that—

(I) uses a properly installed system of piping;

(II) includes a kitchen sink and a partitional bathroom with lavatory, toilet, and bath or shower; and

(III) uses water supply, plumbing, and sewage disposal systems that conform to any minimum standards established by the applicable county or State;

(iv) contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any appropriate county, State, or national code;

(v) be not less than the size provided under the applicable locally adopted standards for size of dwelling units, except that the Secretary, upon request of the Department of Hawaiian Home Lands may waive the size requirements under this paragraph; and

(vi) conform with the energy performance requirements for new construction established by the Secretary under section 526(a) of the National Housing Act [12 U.S.C. 1735f–4(a)], unless the Secretary determines that the requirements are not applicable.

(*l*) Applicability of civil rights statutes

To the extent that the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) or of the Fair Housing Act [42 U.S.C. 3601 et seq.] apply to a guarantee provided under this subsection, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of the guarantee to an eligible entity on the basis that the entity serves Native Hawaiian families or is a Native Hawaiian family.

(Pub. L. 102–550, title I, §184A, as added Pub. L. 106–568, title II, §204, Dec. 27, 2000, 114 Stat. 2895, and Pub. L. 106–569, title V, §514, Dec. 27, 2000, 114 Stat. 2989.)

REFERENCES IN TEXT

The Hawaiian Homes Commission Act, 1920, referred to in subsec. (a)(1), (5), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code. Section 204 of the Act was classified to section 698 of Title 48.

The National Housing Act, referred to in subsecs. (c)(4)(B)(i) and (h)(2)(B), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§1701 et seq.). Title II of the Act is classified generally to this subchapter (§1707 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (c)(4)(B)(iii), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to chapter 8A (§1441 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Civil Rights Act of 1964, referred to in subsec. (*l*), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

The Fair Housing Act, referred to in subsec. (*l*), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1992, and not as part of the National Housing Act which comprises this chapter.

Pub. L. 106–568, §204, and Pub. L. 106–569, §514, enacted substantially identical sections 184A to Pub. L. 102–550. This section is based on the text of section 184A of Pub. L. 102–550, as added by Pub. L. 106–569.

§ 1715z–14. Risk-sharing demonstration

(a) Demonstration mortgage risk-sharing program; areas; number of mortgages

The purpose of this section is to authorize a demonstration mortgage risk-sharing program designed to test the feasibility of entering into risk-sharing contracts with private mortgage insurers and with insured community development financial institutions in order to reduce Government risk and administrative costs, and to speed mortgage processing. The Secretary shall limit the demonstration under this section to not more than four administrative regions of the Department of Housing and Urban Development, and shall assure that the program is in the financial interest of the Government and will not result in loss of employment by any employees of the Department of Housing and Urban Development before the expiration of the 5-year period beginning on December 21, 2000. The aggregate number of mortgages for which risk of nonpayment is shared under this section in any administrative region of the Department of Housing and Urban Development in any fiscal year may not exceed 20 percent of the aggregate number of mortgages and loans insured by the Secretary under this subchapter in such region during the preceding fiscal year.

(b) One- to four-family dwellings; requirements for private mortgage insurance companies

Notwithstanding any other provision of this chapter inconsistent with this section, the Secretary is authorized, in providing mortgage insurance with respect to one- to four-family dwellings under sections 1709(b), 1715y, and 1715z–10[1] of this title, to enter into risk-sharing contracts with private mortgage insurance companies which have been determined to be qualified insurers under section 1717(b)(2)(C) of this title and with insured community development

[1] See References in Text note below.

financial institutions. Such contracts shall require private mortgage insurance companies and insured community development financial institutions to—

(1) assume a secondary percentage of loss on any mortgage insured pursuant to section 1709(b), 1715y, or 1715z–10 of this title covering a one- to four-family dwelling, which percentage of loss shall be set forth in the risk-sharing contract, with the first percentage of loss to be borne by the Secretary; [2]

(2) perform or delegate underwriting, credit approval, appraisal, inspection, commitment, claims processing, property disposition, or other functions as the Secretary shall approve as consistent with the purposes of this section and shall set forth in the risk-sharing contract.

(c) Required contract provisions

Any contract for risk-sharing under this section shall contain such provisions relating to the sharing of premiums received by the Secretary with a private mortgage insurer or insured community development financial institution on a sound actuarial basis, establishment of loss reserves, manner of calculating claims on such risk-sharing contract, conditions with respect to foreclosure, handling and disposition of property prior to claim or settlement, rights of assignees, and other similar matters as the Secretary may prescribe pursuant to regulations. Pursuant to a contract under this section, a private mortgage insurance company or insured community development financial institution shall endorse loans for risk-sharing and take such other actions on behalf of the Secretary and in the Secretary's name as the Secretary may authorize.

(d) Mortgages offered for inclusion by Secretary

The Secretary shall require any private mortgage insurance company or insured community development financial institution participating in the program under this section to provide risk-sharing for those mortgages offered by the Secretary for inclusion in the program.

(e) Insured community development financial institution

For purposes of this section, the term ''insured community development financial institution'' means a community development financial institution, as such term is defined in section 4702 of this title that is an insured depository institution (as such term is defined in section 1813 of this title) or an insured credit union (as such term is defined in section 1752 of this title).

(June 27, 1934, ch. 847, title II, §249, as added Pub. L. 98–181, title IV, §428(a), Nov. 30, 1983, 97 Stat. 1219; amended Pub. L. 99–120, §1(g), Oct. 8, 1985, 99 Stat. 502; Pub. L. 99–156, §1(g), Nov. 15, 1985, 99 Stat. 815; Pub. L. 99–219, §1(g), Dec. 26, 1985, 99 Stat. 1730; Pub. L. 99–267, §1(g), Mar. 27, 1986, 100 Stat. 73; Pub. L. 99–272, title III, §3007(g), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99–289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 106–554, §1(a)(7) [title I, §143], Dec. 21, 2000, 114 Stat. 2763, 2763A–618.)

[2] So in original. Probably should be followed by ''and''.

REFERENCES IN TEXT

Section 1715z–10 of this title, referred to in subsec. (b), was repealed by Pub. L. 110–289, div. B, title I, §2120(a)(7), July 30, 2008, 122 Stat. 2835.

AMENDMENTS

2000—Pub. L. 106–554, §1(a)(7) [title I, §143(1)], substituted ''Risk-sharing demonstration'' for ''Reinsurance contracts'' in section catchline.

Subsec. (a). Pub. L. 106–554, §1(a)(7) [title I, §143(2), (3)], in heading and first sentence substituted ''risk-sharing'' for ''reinsurance'' wherever appearing, in first sentence inserted ''and with insured community development financial institutions'' after ''private mortgage insurers'', in second sentence substituted ''four administrative regions'' for ''two administrative regions'' and ''the expiration of the 5-year period beginning on December 21, 2000'' for ''March 15, 1988'', and in last sentence substituted ''mortgages for which risk of nonpayment is shared'' for ''mortgages insured'' and ''20 percent'' for ''10 percent''.

Subsec. (b). Pub. L. 106–554, §1(a)(7) [title I, §143(2), (4)(A), (B)], in first sentence of introductory provisions, substituted '', in providing'' for ''to provide'', '', to enter into'' for ''through'' and ''risk-sharing'' for ''reinsurance'' and inserted ''and with insured community development financial institutions'' before period at end and, in second sentence of introductory provisions, inserted ''and insured community development financial institutions'' after ''private mortgage insurance companies''.

Subsec. (b)(1). Pub. L. 106–554, §1(a)(7) [title I, §143(4)(C)], added par. (1) and struck out former par. (1) which read as follows: ''assume a percentage of loss on any mortgage insured pursuant to section 1709(b), 1715y, or 1715z–10 of this title covering a one- to four-family dwelling, which percentage of loss shall be set forth in the risk-sharing contract; and''.

Pub. L. 106–554, §1(a)(7) [title I, §143(2)], substituted ''risk-sharing'' for ''reinsurance''.

Subsec. (b)(2). Pub. L. 106–554, §1(a)(7) [title I, §143(4)(D)], substituted ''perform or delegate underwriting,'' for ''carry out (under appropriate delegation) such'' and ''functions as the Secretary'' for ''function as the Secretary pursuant to regulations,'' and inserted before period at end ''and shall set forth in the risk-sharing contract''.

Subsec. (c). Pub. L. 106–554, §1(a)(7) [title I, §143(2), (5)], in first sentence, substituted ''contract for'' for ''contract of'' and ''risk-sharing'' for ''reinsurance'', inserted ''received by the Secretary with a private mortgage insurer or insured community development financial institution'' after ''sharing of premiums'', substituted ''loss reserves'' for ''insurance reserves'', ''such risk-sharing contract'' for ''such insurance'', and ''rights of assignees'' for ''right of assignees'' and, in second sentence, inserted ''or insured community development financial institution'' after ''private mortgage insurance company'' and substituted ''loans for risk-sharing'' for ''loans for insurance''.

Subsec. (d). Pub. L. 106–554, §1(a)(7) [title I, §143(2), (6)], inserted ''or insured community development financial institution'' after ''private mortgage insurance company'' and substituted ''risk-sharing'' for ''reinsurance''.

Subsec. (e). Pub. L. 106–554, §1(a)(7) [title I, §143(7)], added subsec. (e).

1987—Subsec. (a). Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

1986—Subsec. (a). Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272 made amendment identical to Pub. L. 99–219. See 1985 Amendment note below.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

1985—Subsec. (a). Pub. L. 99–219 substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156 substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120 substituted ''November 14, 1985'' for ''September 30, 1985''.

EVALUATION OF REINSURANCE PROGRAM; REPORT TO CONGRESS

Section 428(b) of Pub. L. 98–181 provided that: ''The Secretary of Housing and Urban Development shall evaluate the reinsurance program under section 249 of the National Housing Act [this section] and, not later than March 1, 1985, submit to the Congress a report setting forth the results of such evaluation. Such report shall include an evaluation of the possible effect of a reinsurance program on the characteristics of the pool of mortgages remaining wholly under the applicable insurance funds and the actuarial soundness of such funds under such conditions.''

§ 1715z–15. Limitation on prepayment of mortgages on multifamily rental housing

(a) Acceptance of offer to prepay; qualifications

During any period in which an owner of a multifamily rental housing project is required to obtain the approval of the Secretary for prepayment of the mortgage, the Secretary shall not accept an offer to prepay the mortgage on such project or permit a termination of an insurance contract pursuant to section 1715t of this title unless—

(1) the Secretary has determined that such project is no longer meeting a need for rental housing for lower income families in the area;

(2) the Secretary (A) has determined that the tenants have been notified of the owner's request for approval of a prepayment; (B) has provided the tenants with an opportunity to comment on the owner's request; and (C) has taken such comments into consideration; and

(3) the Secretary has ensured that there is a plan for providing relocation assistance for adequate, comparable housing for any lower income tenant who will be displaced as a result of the prepayment and withdrawal of the project from the program.

(b) Approval prior to foreclosure

A mortgagee may foreclose the mortgage on, or acquire by deed in lieu of foreclosure, any eligible low-income housing project (as such term is defined in section 4119 of this title) only if the mortgagee also conveys title to the project to the Secretary in connection with a claim for insurance benefits.

(c) "Lower income families" defined

For purposes of this section, the term ''lower income families'' has the meaning given such term in section 1437a(b)(2) of title 42.

(June 27, 1934, ch. 847, title II, § 250, as added Pub. L. 98–181, title IV, § 433, Nov. 30, 1983, 97 Stat. 1221; amended Pub. L. 100–242, title II, § 261, Feb. 5, 1988, 101 Stat. 1890; Pub. L. 101–235, title II, § 202(d)(1), Dec. 15, 1989, 103 Stat. 2037; Pub. L. 101–625, title VI, § 602(b), (c), Nov. 28, 1990, 104 Stat. 4277.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–625, § 602(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In the case of a project assisted under section 1715z–1 of this title or the proviso to section 1715*l*(d)(5) of this title, section 101 of the Housing and Urban Development Act of 1965, or section 1701q of this title where the owner has the right to prepay the mortgage covering the assisted project without the Secretary's approval, the Secretary shall give a priority for additional assistance under section 1437f of title 42 and section 201 of the Housing and Community Development Amendments of 1978 to tenants and applicants to become tenants of the project, if—

''(1) funds to provide such additional assistance are available; and

''(2) the Secretary determines that making such additional assistance available to the project is necessary to prevent the owner from prepaying the mortgage.''

Subsecs. (c), (d). Pub. L. 101–625, § 602(c), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''Any owner of a multifamily rental housing project referred to in subsection (b) of this section who receives additional assistance under section 1437f of title 42 under the priority established in subsection (b) of this section shall—

''(1) fully utilize the assistance which is available;

''(2) grant a priority to applicants to become tenants who have the lowest incomes; and

''(3) maintain the low-income character of the project for a period at least equal to the remaining term of the project mortgage to the extent that assistance is provided.''

1989—Subsec. (a). Pub. L. 101–235 inserted ''or permit a termination of an insurance contract pursuant to section 1715t of this title'' after second reference to ''project''.

1988—Subsec. (a)(1). Pub. L. 100–242 struck out ''or that the needs of lower income families in such project can more efficiently and effectively be met through other Federal housing assistance taking into account the remaining time the project could meet such needs'' after ''families in the area''.

§ 1715z–16. Adjustable rate single family mortgages

(a) One- to four-family dwellings; maximum term of mortgage; adjustments in effective rate of interest

The Secretary may insure under any provision of this subchapter a mortgage involving property upon which there is located a dwelling designed principally for occupancy by one to four families, where the mortgage provides for periodic adjustments by the mortgagee in the effective rate of interest charged. Such interest rate adjustments may be accomplished through adjustments in the monthly payment amount, the outstanding principal balance, or the mortgage term, or a combination of these factors, except that in no case may any extension of a mortgage term result in a total term in excess of 40 years. Adjustments in the effective rate of interest shall correspond to a specified national interest rate index approved in regulations by the Secretary, information on which is readily acces-

sible to mortgagors from generally available published sources. Adjustments in the effective rate of interest shall (1) be made on an annual basis; (2) be limited, with respect to any single interest rate increase, to no more than 1 percent on the outstanding loan balance; and (3) be limited to a maximum increase of 5 percentage points above the initial contract interest rate over the term of the mortgage.

(b) Written explanation of mortgage features

The Secretary shall require that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of an adjustable rate mortgage consistent with the disclosure requirements applicable to variable rate mortgages secured by a principal dwelling under the Truth in Lending Act [15 U.S.C. 1601 et seq.].

(c) Number of mortgages and loans

The aggregate number of mortgages and loans insured under this section in any fiscal year may not exceed 30 percent of the aggregate number of mortgages and loans insured by the Secretary under this subchapter during the preceding fiscal year.

(d) Adjustable rate mortgage with initial fixed rate of interest

(1) The Secretary may insure under this subsection a mortgage that meets the requirements of subsection (a) of this section, except that the effective rate of interest—

(A) shall be fixed for a period of not less than the first 3 years of the mortgage term;

(B) shall be adjusted by the mortgagee initially upon the expiration of such period and annually thereafter; and

(C) in the case of the initial interest rate adjustment, is subject to the 1 percent limitation only if the interest rate remained fixed for 3 or fewer years.

(2) The disclosure required under subsection (b) of this section shall be required for a mortgage insured under this subsection.

(June 27, 1934, ch. 847, title II, § 251, as added Pub. L. 98–181, title IV, § 443, Nov. 30, 1983, 97 Stat. 1225; amended Pub. L. 100–242, title IV, § 415(a), Feb. 5, 1988, 101 Stat. 1907; Pub. L. 107–73, title II, § 206, Nov. 26, 2001, 115 Stat. 674; Pub. L. 108–186, title III, § 301(a), Dec. 16, 2003, 117 Stat. 2692.)

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (b), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, as amended, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

AMENDMENTS

2003—Subsec. (d)(1)(C). Pub. L. 108–186 substituted ''3'' for ''five''

2001—Subsec. (b). Pub. L. 107–73, § 206(1), substituted ''require that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of an adjustable rate mortgage consistent with the disclosure requirements applicable to variable rate mortgages secured by a principal dwelling under the Truth in Lending Act'' for ''issue regulations requiring that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of the adjustable rate mortgage, including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first 5 years of the mortgage term''.

Subsec. (d). Pub. L. 107–73, § 206(2), added subsec. (d).

1988—Subsec. (c). Pub. L. 100–242 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The aggregate number of mortgages and loans insured under this section, section 1715z–10(c) of this title, and section 1715z–17 of this title in any fiscal year may not exceed 10 percent of the aggregate number of mortgages and loans insured by the Secretary under this subchapter during the preceding fiscal year.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–186, title III, § 301(b), Dec. 16, 2003, 117 Stat. 2692, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to mortgages executed on or after the date of the enactment of this title [Dec. 16, 2003].''

§ 1715z–17. Shared appreciation mortgages for single family housing

(a) One- to four-family dwellings; requirements

Notwithstanding any provision of this subchapter that is inconsistent with this section, the Secretary may insure, under any provision of this subchapter providing for insurance of mortgages on properties upon which there is located a dwelling designed principally for occupancy by one to four families, a mortgage secured by a first lien on such a property or on the stock allocated to a dwelling unit in a residential cooperative housing corporation, which—

(1) provides for the mortgagee to share in a predetermined percentage of the property's or stock's net appreciated value;

(2) bears interest at a rate which meets criteria prescribed by the Secretary;

(3) provides for amortization over a period of not to exceed 30 years, but the actual term of the mortgage (excluding any refinancing) may be not less than 10 nor more than 30 years, and contains such provisions relating to refinancing of the principal balance of the mortgage and any contingent deferred interest as the Secretary may provide; and

(4) meets such other conditions as the Secretary may require by regulation.

(b) Payment of mortgagee's share of net appreciated value; "net appreciated value" defined

The mortgagee's share of a property's or stock's net appreciated value shall be payable upon sale or transfer (as defined by the Secretary) of the property or stock or payment in full of the mortgage, whichever occurs first. For purposes of this section, the term ''net appreciated value'' means the amount by which the sales price of the property or stock (less the mortgagor's selling costs) exceeds the value of the property or stock at the time the commitment to insure is issued (with adjustments for capital improvements stipulated in the loan contract). If there has been no sale or transfer at the time the mortgagee's share of net appreciated value becomes payable, the sales price for purposes of this section shall be determined by means of an appraisal conducted in accordance with procedures approved by the Secretary and provided for in the mortgage.

(c) Entitlement of mortgagee upon default

In the event of a default, the mortgagee shall be entitled to receive the benefits of insurance in accordance with section 1710(a) of this title, but such insurance benefits shall not include the mortgagee's share of net appreciated value. The term ''original principal obligation of the mortgage'' as used in section 1710 of this title shall not include the mortgagee's share of net appreciated value.

(d) Inapplicability of State constitution, statute, etc., limiting or prohibiting increases in outstanding loan balance

Mortgages insured pursuant to this section which contain provisions for sharing appreciation or which otherwise require or permit increases in the outstanding loan balance which are authorized under this section or under applicable regulations shall not be subject to any State constitution, statute, court decree, common law, rule, or public policy limiting or prohibiting increases in the outstanding loan balance after execution of the mortgage.

(e) Encouraged use of insurance by low and moderate income families

In carrying out the provisions of this section, the Secretary shall encourage the use of insurance under this section by low and moderate income tenants who would otherwise be displaced by the conversion of their rental housing to condominium or cooperative ownership.

(f) Consumer protections and disclosure requirements

The Secretary shall prescribe adequate consumer protections and disclosure requirements with respect to mortgages insured under this section, and may prescribe such other terms and conditions as may be appropriate to carry out the provisions of this section.

(g) Number of mortgages and loans

The aggregate number of mortgages and loans insured under this section and section 1715z–10(c)[1] of this title in any fiscal year may not exceed 10 percent of the aggregate number of mortgages and loans insured by the Secretary under this subchapter during the preceding fiscal year.

(June 27, 1934, ch. 847, title II, § 252, as added Pub. L. 98–181, title IV, § 444, Nov. 30, 1983, 97 Stat. 1225; amended Pub. L. 100–242, title IV, § 415(b)(2), Feb. 5, 1988, 101 Stat. 1907.)

REFERENCES IN TEXT

Section 1715z–10(c) of this title, referred to in subsec. (g), was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(7), July 30, 2008, 122 Stat. 2835.

AMENDMENTS

1988—Subsec. (g). Pub. L. 100–242 struck out reference to section 1715z–16 of this title.

§ 1715z–18. Shared appreciation mortgages for multifamily housing

(a) Five or more family units; requirements

Notwithstanding any provision of this subchapter that is inconsistent with this section, the Secretary may insure, under any provision of this subchapter providing for insurance of mortgages on properties including 5 or more family units, a mortgage secured by a first lien on the property that (1) provides for the mortgagee to share in a predetermined percentage of the property's net appreciated value; and (2) meets such other conditions, including limitations on the rate of interest which may be charged, as the Secretary may require by regulation.

(b) Payment of mortgagee's share of net appreciated value; term of mortgage; repayment; "net appreciated value" defined

The mortgagee's share of a property's net appreciated value shall be payable upon maturity or upon payment in full of the loan or sale or transfer (as defined by the Secretary) of the property, whichever occurs first. The term of the mortgage shall not be less than 15 years, and shall be repayable in equal monthly installments of principal and fixed interest during the mortgage term in an amount which would be sufficient to retire a debt with the same principal and fixed interest rate over a period not exceeding 30 years. In the case of a mortgage which will not be completely amortized during the mortgage term, the principal obligation of the mortgage may not exceed 85 percent of the estimated value of the property or project. For purposes of this section, the term ''net appreciated value'' means the amount by which the sales price of the property (less the mortgagor's selling costs) exceeds the actual project cost after completion, as approved by the Secretary. If there has been no sale or transfer at the time the mortgagee's share of net appreciated value becomes payable, the sales price for purposes of this section shall be determined by means of an appraisal conducted in accordance with procedures approved by the Secretary and provided for in the mortgage.

(c) Entitlement of mortgagee upon default

In the event of a default, the mortgagee shall be entitled to receive the benefits of insurance in accordance with section 1713 of this title, but such insurance benefits shall not include the mortgagee's share of net appreciated value. The term ''original principal face amount of the mortgage'' as used in section 1713 of this title shall not include the mortgagee's share of net appreciated value.

(d) Maximum percentage of net appreciated value; disclosure requirements

The Secretary shall establish by regulation the maximum percentage of net appreciated value which may be payable to a mortgagee as the mortgagee's share. The Secretary shall also establish disclosure requirements applicable to mortgagees making mortgage loans pursuant to this section, to assure that mortgagors are informed of the characteristics of such mortgages.

(e) Inapplicability of State constitution, statute, etc., limiting or prohibiting increases in outstanding loan balance

Mortgages insured pursuant to this section which contain provisions for sharing appreciation or which otherwise require or permit in-

[1] See References in Text note below.

creases in the outstanding loan balance which are authorized under this section or under applicable regulations shall not be subject to any State constitution, statute, court decree, common law, rule, or public policy limiting or prohibiting increases in the outstanding loan balance after execution of the mortgage.

(f) Number of dwelling units

The number of dwelling units included in properties covered by mortgages insured pursuant to this section in any fiscal year may not exceed 5,000.

(June 27, 1934, ch. 847, title II, § 253, as added Pub. L. 98–181, title IV, § 445, Nov. 30, 1983, 97 Stat. 1226; amended Pub. L. 100–242, title IV, § 429(j), Feb. 5, 1988, 101 Stat. 1919.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–242, § 429(j)(1), substituted ''For purposes of this section, the term 'net appreciated value' means the amount by which the sales price of the property (less the mortgagor's selling costs) exceeds the actual project cost after completion, as approved by the Secretary'' for ''For purposes of this section, the term 'net appreciated value' means the amount by which the sales price of the property (less the mortgagor's selling costs) exceeds the value (or replacement cost, as appropriate) of the property at the time the commitment to insure is issued (with adjustments for capital improvements stipulated in the loan contract)''.

Subsec. (c). Pub. L. 100–242, § 429(j)(2), (3), substituted ''in accordance with section 1713 of this title'' for ''in accordance with section 1710 of this title'' and ''The term 'original principal face amount of the mortgage' as used in section 1713 of this title shall not include the mortgagee's share of net appreciated value'' for ''The term 'original principal obligation of the mortgage' as used in section 1710(a) of this title shall not include the mortgagee's share of net appreciated value''.

§ 1715z–19. Equity skimming penalty

(a) In general

Whoever, as an owner, agent, or manager, or who is otherwise in custody, control, or possession of a multifamily project or a 1- to 4-family residence that is security for a mortgage note that is described in subsection (b) of this section, willfully uses or authorizes the use of any part of the rents, assets, proceeds, income, or other funds derived from property covered by that mortgage note for any purpose other than to meet reasonable and necessary expenses that include expenses approved by the Secretary if such approval is required, in a period during which the mortgage note is in default or the project is in a nonsurplus cash position, as defined by the regulatory agreement covering the property, or the mortgagor has failed to comply with the provisions of such other form of regulatory control imposed by the Secretary, shall be fined not more than $500,000, imprisoned not more than 5 years, or both.

(b) Mortgage notes described

For purposes of subsection (a) of this section, a mortgage note is described in this subsection if it—

(1) is insured, acquired, or held by the Secretary pursuant to this chapter;

(2) is made pursuant to section 1701q of this title (including property still subject to section 1701q program requirements that existed before November 28, 1990); or

(3) is insured or held pursuant to section 1715z–22 of this title, but is not reinsured under section 1715z–22 of this title.

(June 27, 1934, ch. 847, title II, § 254, as added Pub. L. 100–242, title IV, § 416(b), Feb. 5, 1988, 101 Stat. 1908; amended Pub. L. 105–65, title V, § 552, Oct. 27, 1997, 111 Stat. 1412.)

AMENDMENTS

1997—Pub. L. 105–65 amended section generally. Prior to amendment, section read as follows: ''Whoever, as an owner, agent, or manager, or who is otherwise in custody, control, or possession of property that is security for a mortgage note that is insured, acquired, or held by the Secretary pursuant to section 1709, 1713, 1715e, 1715k, 1715*l*(d)(3), 1715*l*(d)(4), 1715n(f), 1715v, 1715w, 1715y, 1715z–1, 1715z–3(c), 1715z–6, 1715z–7, 1715z–9, 1743, or 1748h–2 of this title, or subchapter IX–B of this chapter, or is made pursuant to section 1701q of this title, willfully uses or authorizes the use of any part of the rents, assets, proceeds, income or other funds derived from property covered by such mortgage note during a period when the mortgage note is in default or the project is in a nonsurplus cash position as defined by the regulatory agreement covering such property, for any purpose other than to meet actual or necessary expenses that include expenses approved by the Secretary if such approval is required under the terms of the regulatory agreement, shall be fined not more than $250,000 or imprisoned not more than 5 years, or both.''

§ 1715z–20. Insurance of home equity conversion mortgages for elderly homeowners

(a) Purpose

The purpose of this section is to authorize the Secretary to carry out a program of mortgage insurance designed—

(1) to meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing, and subsistence needs at a time of reduced income, through the insurance of home equity conversion mortgages to permit the conversion of a portion of accumulated home equity into liquid assets; and

(2) to encourage and increase the involvement of mortgagees and participants in the mortgage markets in the making and servicing of home equity conversion mortgages for elderly homeowners.

(b) Definitions

For purposes of this section:

(1) The terms ''elderly homeowner'' and ''homeowner'' mean any homeowner who is, or whose spouse is, at least 62 years of age or such higher age as the Secretary may prescribe.

(2) The terms ''mortgagee'', ''mortgagor'', ''real estate,''[1] and ''State'' have the meanings given such terms in section 1707 of this title.

(3) The term ''home equity conversion mortgage'' means a first mortgage which provides for future payments to the homeowner based on accumulated equity and which a housing creditor (as defined in section 3802(2) of this title) is authorized to make (A) under any law

[1] So in original. The comma probably should follow the closed quotes.

of the United States (other than section 3803 of this title) or applicable agency regulations thereunder; (B) in accordance with section 3803 of this title, notwithstanding any State constitution, law, or regulation; or (C) under any State constitution, law, or regulation.

(4) MORTGAGE.—The term ''mortgage'' means a first mortgage or first lien on real estate, in fee simple, a first or subordinate mortgage or lien on all stock allocated to a dwelling unit in a residential cooperative housing corporation, or a first mortgage or first lien on a leasehold—

(A) under a lease for not less than 99 years that is renewable; or

(B) under a lease that has a term that ends no earlier than the minimum number of years, as specified by the Secretary, beyond the actuarial life expectancy of the mortgagor or comortgagor, whichever is the later date.

(5) FIRST MORTGAGE.—The term ''first mortgage'' means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate or a first or subordinate lien on all stock allocated to a dwelling unit in a residential cooperative housing corporation, under the laws of the State in which the real estate or dwelling unit is located, together with the credit instruments, if any, secured thereby.

(c) Insurance authority

The Secretary may, upon application by a mortgagee, insure any home equity conversion mortgage eligible for insurance under this section and, upon such terms and conditions as the Secretary may prescribe, make commitments for the insurance of such mortgages prior to the date of their execution or disbursement to the extent that the Secretary determines such mortgages—

(1) have promise for improving the financial situation or otherwise meeting the special needs of elderly homeowners;

(2) will include appropriate safeguards for mortgagors to offset the special risks of such mortgages; and

(3) have a potential for acceptance in the mortgage market.

(d) Eligibility requirements

To be eligible for insurance under this section, a mortgage shall—

(1) have been originated by a mortgagee approved by the Secretary;

(2) have been executed by a mortgagor who—

(A) qualifies as an elderly homeowner;

(B) has received adequate counseling, as provided in subsection (f), by an independent third party that is not, either directly or indirectly, associated with or compensated by a party involved in—

(i) originating or servicing the mortgage;

(ii) funding the loan underlying the mortgage; or

(iii) the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product;

(C) has received full disclosure, as prescribed by the Secretary, of all costs charged to the mortgagor, including costs of estate planning, financial advice, and other services that are related to the mortgage but are not required to obtain the mortgage, which disclosure shall clearly state which charges are required to obtain the mortgage and which are not required to obtain the mortgage; and

(D) meets any additional requirements prescribed by the Secretary;

(3) be secured by a dwelling that is designed principally for a 1- to 4-family residence in which the mortgagor occupies 1 of the units;

(4) provide that prepayment, in whole or in part, may be made without penalty at any time during the period of the mortgage;

(5) provide for a fixed or variable interest rate or future sharing between the mortgagor and the mortgagee of the appreciation in the value of the property, as agreed upon by the mortgagor and the mortgagee;

(6) contain provisions for satisfaction of the obligation satisfactory to the Secretary;

(7) provide that the homeowner shall not be liable for any difference between the net amount of the remaining indebtedness of the homeowner under the mortgage and the amount recovered by the mortgagee from—

(A) the net sales proceeds from the dwelling that are subject to the mortgage (based upon the amount of the accumulated equity selected by the mortgagor to be subject to the mortgage, as agreed upon by the mortgagor and mortgagee); or

(B) the insurance benefits paid pursuant to subsection (i)(1)(C) of this section;

(8) contain such terms and provisions with respect to insurance, repairs, alterations, payment of taxes, default reserve, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters as the Secretary may prescribe;

(9) provide for future payments to the mortgagor based on accumulated equity (minus any applicable fees and charges), according to the method that the mortgagor shall select from among the methods under this paragraph, by payment of the amount—

(A) based upon a line of credit;

(B) on a monthly basis over a term specified by the mortgagor;

(C) on a monthly basis over a term specified by the mortgagor and based upon a line of credit;

(D) on a monthly basis over the tenure of the mortgagor;

(E) on a monthly basis over the tenure of the mortgagor and based upon a line of credit; or

(F) on any other basis that the Secretary considers appropriate;

(10) provide that the mortgagor may convert the method of payment under paragraph (9) to any other method during the term of the mortgage, except that in the case of a fixed rate mortgage, the Secretary may, by regulation, limit such convertibility; and

(11) have been made with such restrictions as the Secretary determines to be appropriate to

ensure that the mortgagor does not fund any unnecessary or excessive costs for obtaining the mortgage, including any costs of estate planning, financial advice, or other related services.

(e) Disclosures by mortgagee

The Secretary shall require each mortgagee of a mortgage insured under this section to make available to the homeowner—

(1) at the time of the loan application, a written list of the names and addresses of third-party information sources who are approved by the Secretary as responsible and able to provide the information required by subsection (f) of this section;

(2) at least 10 days prior to loan closing, a statement informing the homeowner that the liability of the homeowner under the mortgage is limited and explaining the homeowner's rights, obligations, and remedies with respect to temporary absences from the home, late payments, and payment default by the lender, all conditions requiring satisfaction of the loan obligation, and any other information that the Secretary may require;

(3) on an annual basis (but not later than January 31 of each year), a statement summarizing the total principal amount paid to the homeowner under the loan secured by the mortgage, the total amount of deferred interest added to the principal, and the outstanding loan balance at the end of the preceding year; and

(4) prior to loan closing, a statement of the projected total cost of the mortgage to the homeowner based on the projected total future loan balance (such cost expressed as a single average annual interest rate for at least 2 different appreciation rates for the term of the mortgage) for not less than 2 projected loan terms, as the Secretary shall determine, which shall include—

(A) the cost for a short-term mortgage; and

(B) the cost for a loan term equaling the actuarial life expectancy of the mortgagor.

(f) Counseling services and information for mortgagors

The Secretary shall provide or cause to be provided adequate counseling for the mortgagor, as described in subsection (d)(2)(B). Such counseling shall be provided by counselors that meet qualification standards and follow uniform counseling protocols. The qualification standards and counseling protocols shall be established by the Secretary within 12 months of July 30, 2008. The protocols shall require a qualified counselor to discuss with each mortgagor information which shall include—

(1) options other than a home equity conversion mortgage that are available to the homeowner, including other housing, social service, health, and financial options;

(2) other home equity conversion options that are or may become available to the homeowner, such as sale-leaseback financing, deferred payment loans, and property tax deferral;

(3) the financial implications of entering into a home equity conversion mortgage;

(4) a disclosure that a home equity conversion mortgage may have tax consequences, affect eligibility for assistance under Federal and State programs, and have an impact on the estate and heirs of the homeowner; and

(5) any other information that the Secretary may require.

The Secretary shall consult with consumer groups, industry representatives, representatives of counseling organizations, and other interested parties to identify alternative approaches to providing consumer information required by this subsection that may be feasible and desirable for home equity conversion mortgages insured under this section and other types of reverse mortgages. The Secretary may, in lieu of providing the consumer education required by this subsection, adopt alternative approaches to consumer education that may be developed as a result of such consultations, but only if the alternative approaches provide all of the information specified in this subsection.

(g) Limitation on insurance authority

The aggregate number of mortgages insured under this section may not exceed 275,000. In no case may the benefits of insurance under this section exceed the maximum dollar amount limitation established under section 1454(a)(2) of this title for a 1-family residence.

(h) Administrative authority

The Secretary may—

(1) enter into such contracts and agreements with Federal, State, and local agencies, public and private entities, and such other persons as the Secretary determines to be necessary or desirable to carry out the purposes of this section; and

(2) make such investigations and studies of data, and publish and distribute such reports, as the Secretary determines to be appropriate.

(i) Protection of homeowner and lender

(1) Notwithstanding any other provision of law, and in order to further the purposes of the program authorized in this section, the Secretary shall take any action necessary—

(A) to provide any mortgagor under this section with funds to which the mortgagor is entitled under the insured mortgage or ancillary contracts but that the mortgagor has not received because of the default of the party responsible for payment;

(B) to obtain repayment of disbursements provided under subparagraph (A) from any source; and

(C) to provide any mortgagee under this section with funds not to exceed the limitations in subsection (g) of this section to which the mortgagee is entitled under the terms of the insured mortgage or ancillary contracts authorized in this section.

(2) Actions under paragraph (1) may include—

(A) disbursing funds to the mortgagor or mortgagee from the Mutual Mortgage Insurance Fund;

(B) accepting an assignment of the insured mortgage notwithstanding that the mortgagor is not in default under its terms, and calculating the amount and making the payment of

the insurance claim on such assigned mortgage;

(C) requiring a subordinate mortgage from the mortgagor at any time in order to secure repayments of any funds advanced or to be advanced to the mortgagor;

(D) requiring a subrogation to the Secretary of the rights of any parties to the transaction against any defaulting parties; and

(E) imposing premium charges.

(j) Safeguard to prevent displacement of homeowner

The Secretary may not insure a home equity conversion mortgage under this section unless such mortgage provides that the homeowner's obligation to satisfy the loan obligation is deferred until the homeowner's death, the sale of the home, or the occurrence of other events specified in regulations of the Secretary. For purposes of this subsection, the term ''homeowner'' includes the spouse of a homeowner. Section 1647(b) of title 15 and any implementing regulations issued by the Board of Governors of the Federal Reserve System shall not apply to a mortgage insured under this section.

(k) Insurance authority for refinancings

(1) In general

The Secretary may, upon application by a mortgagee, insure under this subsection any mortgage given to refinance an existing home equity conversion mortgage insured under this section.

(2) Anti-churning disclosure

The Secretary shall, by regulation, require that the mortgagee of a mortgage insured under this subsection, provide to the mortgagor, within an appropriate time period and in a manner established in such regulations, a good faith estimate of: (A) the total cost of the refinancing; and (B) the increase in the mortgagor's principal limit as measured by the estimated initial principal limit on the mortgage to be insured under this subsection less the current principal limit on the home equity conversion mortgage that is being refinanced and insured under this subsection.

(3) Waiver of counseling requirement

The mortgagor under a mortgage insured under this subsection may waive the applicability, with respect to such mortgage, of the requirements under subsection (d)(2)(B) of this section (relating to third party counseling), but only if—

(A) the mortgagor has received the disclosure required under paragraph (2);

(B) the increase in the principal limit described in paragraph (2) exceeds the amount of the total cost of refinancing (as described in such paragraph) by an amount to be determined by the Secretary; and

(C) the time between the closing of the original home equity conversion mortgage that is refinanced through the mortgage insured under this subsection and the application for a refinancing mortgage insured under this subsection does not exceed 5 years.

(4) Credit for premiums paid

Notwithstanding section 1709(c)(2)(A) of this title, the Secretary may reduce the amount of the single premium payment otherwise collected under such section at the time of the insurance of a mortgage refinanced and insured under this subsection. The amount of the single premium for mortgages refinanced under this subsection shall be determined by the Secretary based on the actuarial study required under paragraph (5).

(5) Actuarial study

Not later than 180 days after December 27, 2000, the Secretary shall conduct an actuarial analysis to determine the adequacy of the insurance premiums collected under the program under this subsection with respect to—

(A) a reduction in the single premium payment collected at the time of the insurance of a mortgage refinanced and insured under this subsection;

(B) the establishment of a single national limit on the benefits of insurance under subsection (g) of this section (relating to limitation on insurance authority); and

(C) the combined effect of reduced insurance premiums and a single national limitation on insurance authority.

(6) Fees

The Secretary may establish a limit on the origination fee that may be charged to a mortgagor under a mortgage insured under this subsection, except that such limitation shall provide that the origination fee may be fully financed with the mortgage and shall include any fees paid to correspondent mortgagees approved by the Secretary.

(*l*) Funding for counseling

The Secretary may use a portion of the mortgage insurance premiums collected under the program under this section to adequately fund the counseling and disclosure activities required under subsection (f), including counseling for those homeowners who elect not to take out a home equity conversion mortgage, provided that the use of such funds is based upon accepted actuarial principles.

(m) Authority to insure home purchase mortgage

(1) In general

Notwithstanding any other provision of this section, the Secretary may insure, upon application by a mortgagee, a home equity conversion mortgage upon such terms and conditions as the Secretary may prescribe, when the home equity conversion mortgage will be used to purchase a 1- to 4-family dwelling unit, one unit of which the mortgagor will occupy as a primary residence, and to provide for any future payments to the mortgagor, based on available equity, as authorized under subsection (d)(9).

(2) Limitation on principal obligation

A home equity conversion mortgage insured pursuant to paragraph (1) shall involve a principal obligation that does not exceed the dollar amount limitation determined under section 1454(a)(2) of this title for a 1-family residence.

(n) Requirements on mortgage originators

(1) In general

The mortgagee and any other party that participates in the origination of a mortgage to be insured under this section shall—

(A) not participate in, be associated with, or employ any party that participates in or is associated with any other financial or insurance activity; or

(B) demonstrate to the Secretary that the mortgagee or other party maintains, or will maintain, firewalls and other safeguards designed to ensure that—

(i) individuals participating in the origination of the mortgage shall have no involvement with, or incentive to provide the mortgagor with, any other financial or insurance product; and

(ii) the mortgagor shall not be required, directly or indirectly, as a condition of obtaining a mortgage under this section, to purchase any other financial or insurance product.

(2) Approval of other parties

All parties that participate in the origination of a mortgage to be insured under this section shall be approved by the Secretary.

(*o*) Prohibition against requirements to purchase additional products

The mortgagor or any other party shall not be required by the mortgagee or any other party to purchase an insurance, annuity, or other similar product as a requirement or condition of eligibility for insurance under subsection (c), except for title insurance, hazard, flood, or other peril insurance, or other such products that are customary and normal under subsection (c), as determined by the Secretary.

(p) Study to determine consumer protections and underwriting standards

The Secretary shall conduct a study to examine and determine appropriate consumer protections and underwriting standards to ensure that the purchase of products referred to in subsection (*o*) is appropriate for the consumer. In conducting such study, the Secretary shall consult with consumer advocates (including recognized experts in consumer protection), industry representatives, representatives of counseling organizations, and other interested parties.

(r)[2] Limitation on origination fees

The Secretary shall establish limits on the origination fee that may be charged to a mortgagor under a mortgage insured under this section, which limitations shall—

(1) be equal to 2.0 percent of the maximum claim amount of the mortgage, up to a maximum claim amount of $200,000 plus 1 percent of any portion of the maximum claim amount that is greater than $200,000, unless adjusted thereafter on the basis of an analysis of—

(A) the costs to mortgagors; and

(B) the impact on the reverse mortgage market;

(2) be subject to a minimum allowable amount;

(3) provide that the origination fee may be fully financed with the mortgage;

(4) include any fees paid to correspondent mortgagees approved by the Secretary;

(5) have the same effective date as subsection (m)(2) regarding the limitation on principal obligation; and

(6) be subject to a maximum origination fee of $6,000, except that such maximum limit shall be adjusted in accordance with the annual percentage increase in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor in increments of $500 only when the percentage increase in such index, when applied to the maximum origination fee, produces dollar increases that exceed $500.

(June 27, 1934, ch. 847, title II, § 255, as added Pub. L. 100–242, title IV, § 417(a), Feb. 5, 1988, 101 Stat. 1908; amended Pub. L. 100–628, title X, § 1066, Nov. 7, 1988, 102 Stat. 3275; Pub. L. 101–508, title II, § 2106, Nov. 5, 1990, 104 Stat. 1388–20; Pub. L. 101–625, title III, § 334(b)–(d), Nov. 28, 1990, 104 Stat. 4141, 4142; Pub. L. 102–389, title II, Oct. 6, 1992, 106 Stat. 1592; Pub. L. 102–550, title V, §§ 503(c)(2), 520, Oct. 28, 1992, 106 Stat. 3779, 3793; Pub. L. 104–99, title IV, § 406, Jan. 26, 1996, 110 Stat. 45; Pub. L. 104–120, § 6, Mar. 28, 1996, 110 Stat. 835; Pub. L. 105–276, title V, § 593(a)–(e)(1), Oct. 21, 1998, 112 Stat. 2654, 2655; Pub. L. 106–569, title II, § 201(a)(1), (b), (c)(1), Dec. 27, 2000, 114 Stat. 2948, 2950; Pub. L. 109–13, div. A, title VI, § 6074, May 11, 2005, 119 Stat. 300; Pub. L. 109–289, div. B, § 131, Sept. 29, 2006, 120 Stat. 1316; Pub. L. 110–289, div. B, title I, §§ 2118(b)(2), 2122(a)–(c), July 30, 2008, 122 Stat. 2835–2838; Pub. L. 111–22, div. A, title II, § 206, May 20, 2009, 123 Stat. 1654.)

AMENDMENTS

2009—Subsec. (b)(4)(B). Pub. L. 111–22 added subpar. (B) and struck out former subpar. (B), which read as follows: ''under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.''

2008—Subsec. (b)(2). Pub. L. 110–289, § 2122(a)(1), inserted '' 'real estate,' '' after '' 'mortgagor', ''.

Subsec. (b)(4). Pub. L. 110–289, § 2122(b)(1), in introductory provisions, inserted ''a first or subordinate mortgage or lien'' before ''on all stock'', ''unit'' before ''in a residential'', and ''a first mortgage or first lien'' before ''on a leasehold''.

Subsec. (b)(5). Pub. L. 110–289, § 2122(b)(2), inserted ''a first or subordinate lien on'' before ''all stock''.

Subsec. (d)(1). Pub. L. 110–289, § 2122(a)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''have been made to a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;''.

Subsec. (d)(2)(B). Pub. L. 110–289, § 2122(a)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''has received adequate counseling by a third party (other than the lender) as provided in subsection (f) of this section;''.

Subsec. (f). Pub. L. 110–289, § 2122(a)(4), substituted ''Counseling services and information for mortgagors'' for ''Information services for mortgagors'' in heading and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The Secretary shall provide or cause to be provided by entities other than the lender the information required in subsection (d)(2)(B) of this section. Such information shall be discussed with the mortgagor and shall include—''.

Subsec. (g). Pub. L. 110–289, § 2122(a)(5), substituted ''limitation established under section 1454(a)(2) of this

[2] So in original. No subsec. (q) has been enacted.

title for a 1-family residence'' for ''established under section 1709(b)(2) of this title for 1-family residences in the area in which the dwelling subject to the mortgage under this section is located''.

Subsec. (i)(2)(A). Pub. L. 110–289, §2118(b)(2), substituted ''Mutual Mortgage Insurance Fund'' for ''General Insurance Fund''.

Subsec. (*l*). Pub. L. 110–289, §2122(a)(8), amended subsec. (*l*) generally. Prior to amendment, subsec. (*l*) related to funding for counseling and consumer education and outreach.

Pub. L. 110–289, §2122(a)(6), (7), redesignated subsec. (m) as (*l*) and struck out former subsec. (*l*) which related to waiver of up-front premiums for mortgages to fund long-term care insurance.

Subsecs. (m) to (p). Pub. L. 110–289, §2122(a)(9), added subsecs. (m) to (p). Former subsec. (m) redesignated (*l*).

Subsec. (r). Pub. L. 110–289, §2122(c), added subsec. (r).

2006—Subsec. (g). Pub. L. 109–289 substituted ''275,000'' for ''250,000''.

2005—Subsec. (g). Pub. L. 109–13 substituted ''250,000'' for ''150,000''.

2000—Subsec. (b)(2). Pub. L. 106–569, §201(b)(1), struck out '' 'mortgage','' before '' 'mortgagee',''.

Subsec. (b)(4), (5). Pub. L. 106–569, §201(b)(2), added pars. (4) and (5).

Subsecs. (k) to (m). Pub. L. 106–569, §201(a)(1), (c)(1), added subsecs. (k) and (*l*) and redesignated former subsec. (k) as (m).

1998—Pub. L. 105–276, §593(d)(1), struck out ''Demonstration program of'' before ''Insurance'' in section catchline.

Subsec. (a). Pub. L. 105–276, §593(d)(2), (3), struck out ''demonstration'' before ''program'' in introductory provisions, inserted ''and'' at end of par. (1), substituted a period for ''; and'' at end of par. (2), and struck out par. (3) which read as follows: ''to require the evaluation of data to determine—

''(A) the extent of the need and demand among elderly homeowners for insured and uninsured home equity conversion mortgages;

''(B) the types of home equity conversion mortgages that best serve the needs and interests of elderly homeowners, the Federal Government, and lenders; and

''(C) the appropriate scope and nature of participation by the Secretary in connection with home equity conversion mortgages for elderly homeowners.''

Subsec. (d)(2)(C), (D). Pub. L. 105–276, §593(e)(1)(A), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (d)(11). Pub. L. 105–276, §593(e)(1)(B)–(D), added par. (11).

Subsec. (f). Pub. L. 105–276, §593(b), inserted concluding provisions.

Subsec. (g). Pub. L. 105–276, §593(a), substituted ''The aggregate number of mortgages insured under this section may not exceed 150,000.'' for ''No mortgage may be insured under this section after September 30, 2000, except pursuant to a commitment to insure issued on or before such date. The total number of mortgages insured under this section may not exceed 50,000.''

Subsec. (i)(1). Pub. L. 105–276, §593(d)(2), struck out ''demonstration'' before ''program'' in introductory provisions.

Subsec. (k). Pub. L. 105–276, §593(d)(4), (5), redesignated subsec. (*l*) as (k) and struck out heading and text of former subsec. (k), which had required interim report not later than Sept. 30, 1989, on design and implementation of demonstration program of insurance of home equity conversion mortgages for elderly homeowners, preliminary evaluation of program incorporating comments and recommendations not later than Mar. 30, 1992, and updated report and evaluation biennially thereafter, including analysis of repayment of home equity conversion mortgages during report period.

Subsec. (*l*). Pub. L. 105–276, §593(d)(5), redesignated subsec. (*l*) as (k).

Pub. L. 105–276, §593(c), added subsec. (*l*).

1996—Subsec. (d)(3). Pub. L. 104–120, §6(c), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''be secured by a dwelling that is designed principally for a 1-family residence and is occupied by the mortgagor;''.

Subsec. (g). Pub. L. 104–120, §6(a), (b), substituted ''2000'' for ''1996'' and ''50,000'' for ''30,000''.

Pub. L. 104–99 substituted ''1996'' for ''1995'' and ''30,000'' for ''25,000''.

1992—Subsec. (g). Pub. L. 102–389 and Pub. L. 102–550, §503(c)(2), amended subsec. (g) identically, substituting ''for 1-family residences in the area in which the dwelling subject to the mortgage under this section is located'' for ''for a 1-family residence''.

Subsec. (j). Pub. L. 102–550, §520, inserted at end ''Section 1647(b) of title 15 and any implementing regulations issued by the Board of Governors of the Federal Reserve System shall not apply to a mortgage insured under this section.''

1990—Subsec. (d)(7)(A). Pub. L. 101–625, §334(c), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the foreclosure sale; or''.

Subsec. (d)(9), (10). Pub. L. 101–625, §334(b), added pars. (9) and (10).

Subsec. (e)(2). Pub. L. 101–625, §334(d)(1), substituted ''statement informing the homeowner that the liability of the homeowner under the mortgage is limited and'' for ''statement'' and struck out ''and'' at end.

Subsec. (e)(4). Pub. L. 101–625, §334(d)(2), (3), added par. (4).

Subsec. (g). Pub. L. 101–508, §2106, substituted ''September 30, 1995'' for ''September 30, 1991'' and ''may not exceed 25,000'' for ''may not exceed 2,500''.

1988—Subsec. (b)(3). Pub. L. 100–628, §1066(a), made technical amendment to reference to section 3802(2) of this title to correct reference to corresponding provision of original act.

Subsec. (d)(3). Pub. L. 100–628, §1066(b), struck out ''and that has a value not to exceed the maximum dollar amount established by the Secretary under section 1709(b)(2) of this title for a 1-family residence'' after ''by the mortgagor''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–569, title II, §201(c)(2), Dec. 27, 2000, 114 Stat. 2951, provided that: ''The provisions of section 255(*l*) of the National Housing Act [former 12 U.S.C. 1715z–20(*l*)] (as added by paragraph (1) of this subsection) shall apply only to mortgages closed on or after April 1, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, §593(f), Oct. 21, 1998, 112 Stat. 2655, provided that: ''This section [amending this section and enacting provisions set out as a note below] shall take effect on, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–120 to be construed to have become effective Oct. 1, 1995, see section 13(a) of Pub. L. 104–120, set out as an Effective and Termination Dates of 1996 Amendments note under section 1437d of Title 42, The Public Health and Welfare.

REGULATIONS

Pub. L. 106–569, title II, §201(a)(2), Dec. 27, 2000, 114 Stat. 2949, provided that: ''The Secretary shall issue any final regulations necessary to implement the amendments made by paragraph (1) of this subsection [amending this section], which shall take effect not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Dec. 27, 2000]. The regulations shall be issued after notice and opportunity for public comment in accordance with the procedure under section 553 of title 5, United States Code, applicable to substantive rules (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).''

Section 417(b) of Pub. L. 100–242 directed Secretary of Housing and Urban Development, not later than 6

months after Feb. 5, 1988, to consult with lenders, insurers, and organizations and individuals with expertise in home equity conversion in developing proposed regulations implementing this section and not later than 9 months after Feb. 5, 1988, to issue proposed regulations implementing this section.

IMPLEMENTATION OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 593(e)(2), Oct. 21, 1998, 112 Stat. 2655, provided that:

''(A) NOTICE.—The Secretary of Housing and Urban Development shall, by interim notice, implement the amendments made by paragraph (1) [amending this section] in an expeditious manner, as determined by the Secretary. Such notice shall not be effective after the date of the effectiveness of the final regulations issued under subparagraph (B) of this paragraph.

''(B) REGULATIONS.—The Secretary shall, not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 21, 1998], issue final regulations to implement the amendments made by paragraph (1). Such regulations shall be issued only after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2) and (b)(3)(B) of such section).''

§ 1715z–21. Delegation of insuring authority to direct endorsement mortgagees

(a) Authority

The Secretary may delegate, to one or more mortgagees approved by the Secretary under the direct endorsement program, the authority of the Secretary under this chapter to insure mortgages involving property upon which there is located a dwelling designed principally for occupancy by 1 to 4 families.

(b) Considerations

In determining whether to delegate authority to a mortgagee under this section, the Secretary shall consider the experience and performance of the mortgagee compared to the default rate of all insured mortgages in comparable markets, and such other factors as the Secretary determines appropriate to minimize risk of loss to the insurance funds under this chapter.

(c) Enforcement of insurance requirements

(1) In general

If the Secretary determines that a mortgage insured by a mortgagee pursuant to delegation of authority under this section was not originated in accordance with the requirements established by the Secretary, and the Secretary pays an insurance claim with respect to the mortgage within a reasonable period specified by the Secretary, the Secretary may require the mortgagee approved under this section to indemnify the Secretary for the loss.

(2) Fraud or misrepresentation

If fraud or misrepresentation was involved in connection with the origination, the Secretary may require the mortgagee approved under this section to indemnify the Secretary for the loss regardless of when an insurance claim is paid.

(d) Termination of mortgagee's authority

If a mortgagee to which the Secretary has made a delegation under this section violates the requirements and procedures established by the Secretary or the Secretary determines that other good cause exists, the Secretary may cancel a delegation of authority under this section to the mortgagee by giving notice to the mortgagee. Such a cancellation shall be effective upon receipt of the notice by the mortgagee or at a later date specified by the Secretary. A decision by the Secretary to cancel a delegation shall be final and conclusive and shall not be subject to judicial review.

(e) Requirements and procedures

Before approving a delegation under this section, the Secretary shall issue regulations establishing appropriate requirements and procedures, including requirements and procedures governing the indemnification of the Secretary by the mortgagee.

(June 27, 1934, ch. 847, title II, § 256, as added Pub. L. 104–204, title IV, § 427, Sept. 26, 1996, 110 Stat. 2928.)

§ 1715z–22. Multifamily mortgage credit programs

(a) In general

The Secretary of Housing and Urban Development (hereinafter referred to as the ''Secretary'') shall carry out programs through the Federal Housing Administration to provide new forms of Federal credit enhancement for multifamily loans. In carrying out the programs, the Secretary shall include an evaluation of the effectiveness of entering into partnerships or other contractual arrangements including reinsurance and risk-sharing agreements with State or local housing finance agencies, the Federal Housing Finance Board, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, qualified financial institutions, and other State or local mortgage insurance companies or bank lending consortia.

(b) Risk-sharing program

(1) In general

The Secretary shall carry out a program in conjunction with qualified participating entities to provide Federal credit enhancement for loans for affordable multifamily housing through a system of risk-sharing agreements with such entities.

(2) Program requirements

(A) In general

In carrying out the program under this subsection, the Secretary shall enter into risk-sharing agreements with qualified participating entities.

(B) Mortgage insurance and reinsurance

Agreements under subparagraph (A) may provide for (i) mortgage insurance through the Federal Housing Administration of loans for affordable multifamily housing originated by or through, or purchased by, qualified participating entities, and (ii) reinsurance, including reinsurance of pools of loans, on affordable multifamily housing. In entering into risk-sharing agreements under this subsection covering mortgages, the Secretary may give preference to mortgages that are not already in the portfolios of qualified participating entities.

(C) Risk apportionment

Agreements entered into under this subsection between the Secretary and a qualified participating entity shall specify the percentage of loss that each of the parties to the agreement will assume in the event of default of the insured or reinsured multifamily mortgage. Such agreements shall specify that the qualified participating entity and the Secretary shall share any loss in accordance with the risk-sharing agreement.

(D) Reimbursement capacity

Agreements entered into under this subsection between the Secretary and a qualified participating entity shall provide evidence acceptable to the Secretary of the capacity of such entity to fulfill any reimbursement obligations made pursuant to this subsection. Evidence of such capacity which may be considered by the Secretary may include—

(i) a pledge of the full faith and credit of a qualified participating entity to fulfill any obligations entered into by the entity;

(ii) reserves pledged or otherwise restricted by the qualified participating entity in an amount equal to an agreed upon percentage of the loss assumed by the entity under subparagraph (C);

(iii) funds pledged through a State or local guarantee fund; or

(iv) any other form of evidence mutually agreed upon by the Secretary and the qualified participating entity.

(E) Underwriting standards

The Secretary shall allow any qualified participating entity to use its own underwriting standards and loan terms and conditions for purposes of underwriting loans to be insured under this subsection, except as provided in this section, without further review by the Secretary, except that the Secretary may impose additional underwriting criteria and loan terms and conditions for contractual agreements where the Secretary retains more than 50 percent of the risk of loss. Any financing permitted on property insured under this subsection other than the first mortgage shall be expressly subordinate to the insured mortgage.

(F) Authority of Secretary

The Secretary, upon request of a qualified participating entity, may insure or reinsure and make commitments to insure or reinsure under this section any mortgage, advance, loan, or pool of mortgages otherwise eligible under this section, pursuant to a risk-sharing agreement providing that the qualified participating entity will carry out (under a delegation or otherwise, and with or without compensation, but subject to audit, exception, or review requirements) such credit approval, appraisal, inspection, issuance of commitments, approval of insurance of advances, cost certification, servicing, property disposition, or other functions as the Secretary shall approve as consistent with the purpose of this section. All appraisals of property for mortgage insurance under this section shall be completed by a Certified General Appraiser in accordance with the Uniform Standards of Professional Appraisal Practice.

(G) Disclosure of records

Qualified participating entities shall make available to the Secretary or the Secretary's designee, at the Secretary's request, such financial and other records as the Secretary deems necessary for purposes of review and monitoring for the program under this section.

(3) Development of alternatives

The Secretary shall develop and assess a variety of risk-sharing alternatives, including arrangements under which the Secretary assumes an appropriate share of the risk related to long-term mortgage loans on newly constructed or acquired multifamily rental housing, mortgage refinancings, bridge financing for construction, and other forms of multifamily housing mortgage lending that the Secretary deems appropriate to carry out the purposes of this subsection. Such alternatives shall be designed—

(A) to ensure that other parties bear a share of the risk, in percentage amount and in position of exposure, that is sufficient to create strong, market-oriented incentives for other participating parties to maintain sound underwriting and loan management practices;

(B) to develop credit mechanisms, including sound underwriting criteria, processing methods, and credit enhancements, through which resources of the Federal Housing Administration can assist in increasing multifamily housing lending as needed to meet the expected need in the United States;

(C) to provide a more adequate supply of mortgage credit for sound multifamily rental housing projects in underserved urban and rural markets;

(D) to encourage major financial institutions to expand their participation in mortgage lending for sound multifamily housing, through means such as mitigating uncertainties regarding actions of the Federal Government (including the possible failure to renew short-term subsidy contracts);

(E) to increase the efficiency, and lower the costs to the Federal Government, of processing and servicing multifamily housing mortgage loans insured by the Federal Housing Administration; and

(F) to improve the quality and expertise of Federal Housing Administration staff and other resources, as required for sound management of reinsurance and other market-oriented forms of credit enhancement.

(4) Eligibility standards

The Secretary shall establish and enforce standards for eligibility under this subsection of qualified participating entities under this subsection, as the Secretary determines to be appropriate.

(5) Insurance authority

Using any authority provided in appropriation Acts to insure mortgages under the Na-

tional Housing Act [12 U.S.C. 1701 et seq.], the Secretary may enter into commitments under this subsection for risk-sharing units.

(6) Fees

The Secretary shall establish and collect premiums and fees under this subsection as the Secretary determines appropriate to (A) achieve the purpose of this subsection, and (B) compensate the Federal Housing Administration for the risks assumed and related administrative costs.

(7) Non-Federal participation

The Secretary shall carry out this subsection, to the maximum extent practicable, with the participation of well-established residential mortgage originators, financial institutions that invest in multifamily housing mortgages, multifamily housing sponsors, and such other private sector experts in multifamily housing finance as the Secretary determines to be appropriate.

(8) Prohibition on Ginnie Mae securitization

The Government National Mortgage Association shall not securitize any multifamily loans insured or reinsured under this subsection.

(9) Qualification as affordable housing

Multifamily housing securing loans insured or reinsured under this subsection shall qualify as affordable only if the housing is occupied by families and bears rents not greater than the gross rent for rent-restricted residential units as determined under section 42(g) of title 26.

(10) Certification of subsidy layering compliance

The requirements of section 3545(d) of title 42 may be satisfied in connection with a commitment to insure a mortgage under this subsection by a certification by a housing credit agency (including an entity established by a State that provides mortgage insurance) to the Secretary that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which a mortgage is to be insured shall not be any greater than is necessary to provide affordable housing.

(11) Implementation

The Secretary shall take any administrative actions necessary to initiate the program under this subsection.

(c) Housing finance agency program

(1) In general

The Secretary shall carry out a specific program in conjunction with qualified housing finance agencies (including entities established by States that provide mortgage insurance) to provide Federal credit enhancement for loans for affordable multifamily housing through a system of risk-sharing agreements with such agencies.

(2) Program requirements

(A) In general

In carrying out the program authorized under this subsection, the Secretary shall enter into risk-sharing agreements with qualified housing finance agencies.

(B) Mortgage insurance

Agreements under subparagraph (A) shall provide for full mortgage insurance through the Federal Housing Administration of the loans for affordable multifamily housing originated by or through qualified housing finance agencies and for reimbursement to the Secretary by such agencies for either all or a portion of the losses incurred on the loans insured.

(C) Risk apportionment

Agreements entered into under this subsection between the Secretary and a qualified housing finance agency shall specify the percentage of loss that each of the parties to the agreement will assume in the event of default of the insured multifamily mortgage. Such agreements shall specify that the qualified housing finance agency and the Secretary shall share any loss in accordance with the risk-sharing agreement.

(D) Reimbursement capacity

Agreements entered into under this subsection between the Secretary and a qualified housing finance agency shall provide evidence of the capacity of such agency to fulfill any reimbursement obligations made pursuant to this subsection. Evidence of such capacity may include—

(i) a pledge of the full faith and credit of a qualified State or local agency to fulfill any obligations entered into by the qualified housing finance agency;

(ii) reserves pledged or otherwise restricted by the qualified housing finance agency in an amount equal to an agreed upon percentage of the loss assumed by the housing finance agency under subparagraph (C);

(iii) funds pledged through a State or local guarantee fund; or

(iv) any other form of evidence mutually agreed upon by the Secretary and the qualified housing finance agency.

(E) Underwriting standards

The Secretary shall allow any qualified housing finance agency to use its own underwriting standards and loan terms and conditions for purposes of underwriting loans to be insured under this subsection without further review by the Secretary, except that the Secretary may impose additional underwriting criteria and loan terms and conditions for contractual agreements where the Secretary retains more than 50 percent of the risk of loss.

(F) Disclosure of records

Qualified housing finance agencies shall make available to the Secretary such financial and other records as the Secretary deems necessary for program review and monitoring purposes.

(3) Mortgage insurance premiums

The Secretary shall establish a schedule of insurance premium payments for mortgages

insured under this subsection based on the percentage of loss the Secretary may assume. Such schedule shall reflect lower or nominal premiums for qualified housing finance agencies that assume a greater share of the risk apportioned according to paragraph (2)(C).

(4) Insurance authority

Using any authority provided in appropriation Acts to insure mortgages under the National Housing Act [12 U.S.C. 1701 et seq.], the Secretary may enter into commitments under this subsection for risk-sharing units.

(5) Identity of interest

Notwithstanding any other provision of law, the Secretary shall not apply identity of interest provisions to agreements entered into with qualified State housing finance agencies under this subsection.

(6) Prohibition on Ginnie Mae securitization

The Government National Mortgage Association shall not securitize any multifamily loans insured under this subsection.

(7) Qualification as affordable housing

Multifamily housing securing loans insured under this subsection shall qualify as affordable only if the housing is occupied by families and bears rents not greater than the gross rent for rent-restricted residential units as determined under section 42(g) of title 26.

(8) Regulations

Not later than 90 days after October 28, 1992, the Secretary shall issue such regulations as may be necessary to carry out this subsection.

(9) Environmental and other reviews

(A) Environmental reviews

(i) In general

(I) In order to assure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the insurance of mortgages under subsection (c)(2) of this section, and to assure to the public undiminished protection of the environment, the Secretary may, under such regulations, in lieu of the environmental protection procedures otherwise applicable, provide for agreements to endorse for insurance mortgages under subsection (c)(2) of this section upon the request of qualified housing finance agencies under this subsection, if the State or unit of general local government, as designated by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary may specify, that would otherwise apply to the Secretary with respect to the insurance of mortgages on particular properties.

(II) The Secretary shall issue regulations to carry out this subparagraph only after consultation with the Council on Environmental Quality. Such regulations shall, among other matters, provide—

(aa) for the monitoring of the performance of environmental reviews under this subparagraph;

(bb) subject to the discretion of the Secretary, for the provision or facilitation of training for such performance; and

(cc) subject to the discretion of the Secretary, for the suspension or termination by the Secretary of the qualified housing finance agency's responsibilities under subclause (I).

(III) The Secretary's duty under subclause (II) shall not be construed to limit any responsibility assumed by a State or unit of general local government with respect to any particular property under subclause (I).

(ii) Procedure

The Secretary shall approve a mortgage for the provision of mortgage insurance subject to the procedures authorized by this paragraph only if, not less than 15 days prior to such approval, prior to any approval, commitment, or endorsement of mortgage insurance on the property on behalf of the Secretary, and prior to any commitment by the qualified housing finance agency to provide financing under the risk-sharing agreement with respect to the property, the qualified housing finance agency submits to the Secretary a request for such approval, accompanied by a certification of the State or unit of general local government that meets the requirements of clause (iii). The Secretary's approval of any such certification shall be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the provision of mortgage insurance on the property that is covered by such certification.

(iii) Certification

A certification under the procedures authorized by this paragraph shall—

(I) be in a form acceptable to the Secretary;

(II) be executed by the chief executive officer or other officer of the State or unit of general local government who qualifies under regulations of the Secretary;

(III) specify that the State or unit of general local government under this section has fully carried out its responsibilities as described under clause (i); and

(IV) specify that the certifying officer consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and under each provision of law specified in regulations

issued by the Secretary insofar as the provisions of such Act or such other provisions of law apply pursuant to clause (i), and is authorized and consents on behalf of the State or unit of general local government and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities as such an official.

(iv) Approval by States

In cases in which a unit of general local government carries out the responsibilities described in clause (i), the Secretary may permit the State to perform those actions of the Secretary described in clause (ii) and the performance of such actions by the State, where permitted by the Secretary, shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of clause (ii).

(B) Lead-based paint poisoning prevention

In carrying out the requirements of section 302 of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4822], the Secretary may provide by regulation for the assumption of all or part of the Secretary's duties under such Act [42 U.S.C. 4801 et seq.] by qualified housing finance agencies, for purposes of this section.

(C) Certification of subsidy layering compliance

The requirements of section 3545(d) of title 42 may be satisfied in connection with a commitment to insure a mortgage under this subsection by a certification by a housing credit agency (including an entity established by a State that provides mortgage insurance) to the Secretary that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which a mortgage is to be insured shall not be any greater than is necessary to provide affordable housing.

(10) Definitions

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

(A) Mortgage

The term ''mortgage'' means a first mortgage on real estate that is—

(i) owned in fee simple; or

(ii) subject to a leasehold interest that—

(I) has a term of not less than 99 years and is renewable; or

(II) has a remaining term that extends beyond the maturity of the mortgage for a period of not less than 10 years.

(B) First mortgage

The term ''first mortgage'' means a single first lien given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instrument, if any, secured thereby. Any other financing permitted on property insured under this section must be expressly subordinate to the insured mortgage.

(C) Unit of general local government; State

The terms ''unit of general local government'' and ''State'' have the same meanings as in section 5302(a) of title 42.

(Pub. L. 102–550, title V, § 542, Oct. 28, 1992, 106 Stat. 3794; Pub. L. 103–233, title III, § 307(a), (b), Apr. 11, 1994, 108 Stat. 373, 376; Pub. L. 104–120, § 8, Mar. 28, 1996, 110 Stat. 836; Pub. L. 104–134, title I, § 101(e) [title II, § 205], Apr. 26, 1996, 110 Stat. 1321–257, 1321–284; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–18, title II, § 10003, June 12, 1997, 111 Stat. 201; Pub. L. 105–276, title II, § 211, Oct. 21, 1998, 112 Stat. 2486; Pub. L. 106–74, title II, § 226, as added Pub. L. 106–113, div. A, title I, § 175(d), Nov. 29, 1999, 113 Stat. 1534; Pub. L. 106–377, § 1(a)(1) [title II, § 235], Oct. 27, 2000, 114 Stat. 1441, 1441A–35.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsecs. (b)(5) and (c)(4), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c)(9)(A)(i)(I), (ii), (iii)(IV), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Lead-Based Paint Poisoning Prevention Act, referred to in subsec. (c)(9)(B), is Pub. L. 91–695, Jan. 13, 1971, 84 Stat. 2078, as amended, which is classified generally to chapter 63 (§ 4801 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4801 of Title 42 and Tables.

CODIFICATION

Section was formerly set out as a note under section 1707 of this title.

Section was enacted as part of the Multifamily Housing Finance Improvement Act and also as part of the Housing and Community Development Act of 1992, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

2000—Pub. L. 106–377, § 1(a)(1) [title II, § 235(6)], substituted ''programs'' for ''demonstrations'' in section catchline.

Subsec. (a). Pub. L. 106–377, § 1(a)(1) [title II, § 235(1)], substituted ''provide'' for ''demonstrate the effectiveness of providing'' in first sentence and ''the programs'' for ''demonstration programs'' in second sentence.

Subsec. (b). Pub. L. 106–377, § 1(a)(1) [title II, § 235(5)], struck out ''pilot'' after ''Risk-sharing'' in heading.

Subsec. (b)(1). Pub. L. 106–377, § 1(a)(1) [title II, § 235(2)(A)], substituted ''provide'' for ''determine the effectiveness of''.

Subsec. (b)(2)(A). Pub. L. 106–377, § 1(a)(1) [title II, § 235(5)], struck out ''pilot'' before ''program''.

Subsec. (b)(5). Pub. L. 106–377, § 1(a)(1) [title II, § 235(2)(B)], added par. (5) and struck out heading and text of former par. (5). Text read as follows: ''Using any authority provided in appropriation Acts to insure loans under the National Housing Act, the Secretary may enter into commitments under this subsection for risk sharing with respect to mortgages on not more than 7,500 units during fiscal year 1996. The demonstration authorized under this subsection shall not be expanded until the reports required under subsection (d) are submitted to Congress, and not more than an additional 25,000 units in each of the fiscal years 1999 and 2000.''

Subsec. (c). Pub. L. 106–377, §1(a)(1) [title II, §235(5)], struck out ''pilot'' after ''finance agency'' in heading.

Subsec. (c)(1). Pub. L. 106–377, §1(a)(1) [title II, §235(3)(A), (5)], struck out ''pilot'' before ''program'' and substituted ''provide Federal credit enhancement'' for ''test the effectiveness of Federal credit enhancement''.

Subsec. (c)(2). Pub. L. 106–377, §1(a)(1) [title II, §235(5)], struck out ''pilot'' after ''Program requirements'' in heading.

Subsec. (c)(2)(A). Pub. L. 106–377, §1(a)(1) [title II, §235(5)], struck out ''pilot'' before ''program''.

Subsec. (c)(4). Pub. L. 106–377, §1(a)(1) [title II, §235(3)(B)], added par. (4) and struck out heading and text of former par. (4). Text read as follows: ''Using any authority provided by appropriations Acts to insure mortgages under the National Housing Act, the Secretary may enter into commitments under this subsection with respect to mortgages on not more than 12,000 units during fiscal year 1996, not more than an additional 7,500 units during fiscal year 1997 and not more than an additional 25,000 units in each of fiscal years 1999 and 2000. The demonstration authorized under this subsection shall not be expanded until the reports required under subsection (d) of this section are submitted to the Congress.''

Subsec (d). Pub. L. 106–377, §1(a)(1) [title II, §235(4)], struck out heading and text of subsec. (d) which related to independent studies and reports.

1999—Subsec. (b)(5). Pub. L. 106–74, §226(1), as added by 106–113, §175(d), substituted ''in each of the fiscal years 1999 and 2000'' for ''during fiscal year 1999''.

Subsec. (c)(4). Pub. L. 106–74, §226(2), as added by Pub. L. 106–113, §175(d), substituted ''in each of fiscal years 1999 and 2000'' for ''during fiscal year 1999''.

1998—Subsec. (b)(5). Pub. L. 105–276, §211(1), inserted before period at end '', and not more than an additional 25,000 units during fiscal year 1999''.

Subsec. (c)(4). Pub. L. 105–276, §211(2), substituted ''1996,'' for ''1996 and'' and inserted ''and not more than an additional 25,000 units during fiscal year 1999'' after ''fiscal year 1997''.

1997—Subsec. (c)(4). Pub. L. 105–18 substituted ''on not more than 12,000 units during fiscal year 1996 and not more than an additional 7,500 units during fiscal year 1997'' for ''on not more than 12,000 units during fiscal year 1996''.

1996—Subsec. (b)(5). Pub. L. 104–120, §8(a), and Pub. L. 104–134, §101(e) [title II, §205(a)], amended par. (5) identically, substituting ''on not more than 7,500 units during fiscal year 1996'' for ''on not more than 15,000 units over fiscal years 1993 and 1994''.

Subsec. (c)(4). Pub. L. 104–120, §8(b), and Pub. L. 104–134, §101(e) [title II, §205(b)], amended par. (4) identically, substituting ''on not more than 12,000 units during fiscal year 1996'' for ''on not to exceed 30,000 units over fiscal years 1993, 1994, and 1995''.

1994—Subsec. (b)(1), (2). Pub. L. 103–233, §307(a)(1), added pars. (1) and (2) and struck out headings and text of former pars. (1) and (2) relating to authority of Secretary for carrying out risk-sharing pilot program and authority of Secretary for reinsurance agreements, respectively.

Subsec. (b)(4). Pub. L. 103–233, §307(a)(2), substituted ''eligibility under this subsection of qualified participating entities'' for ''financial institutions and entities to be eligible to enter into reinsurance agreements''.

Subsec. (b)(8). Pub. L. 103–233, §307(a)(3), (4), added par. (8) and struck out heading and text of former par. (8). Text read as follows: ''The Secretary shall take any administrative actions necessary to initiate the pilot program under this subsection not later than the expiration of the 8-month period beginning on October 28, 1992.''

Subsec. (b)(9), (10). Pub. L. 103–233, §307(a)(4), added pars. (9) and (10).

Subsec. (b)(11). Pub. L. 103–233, §307(a)(3), added par. (11).

Subsec. (c)(1). Pub. L. 103–233, §307(b)(1), inserted ''(including entities established by States that provide mortgage insurance)'' after ''qualified housing finance agencies''.

Subsec. (c)(2)(C). Pub. L. 103–233, §307(b)(2)(A), substituted ''Such agreements shall specify that the qualified housing finance agency and the Secretary shall share any loss in accordance with the risk-sharing agreement.'' for ''Such agreements shall specify that the qualified housing finance agency and the Secretary shall share equally the full amount of any loss on the insured mortgage.''

Subsec. (c)(2)(F). Pub. L. 103–233, §307(b)(2)(B), added subpar. (F).

Subsec. (c)(7). Pub. L. 103–233, §307(b)(3), struck out ''very low-income'' before ''families'' and ''(2)'' after ''section 42(g)''.

Subsec. (c)(9), (10). Pub. L. 103–233, §307(b)(4), added pars. (9) and (10).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–120 to be construed to have become effective Oct. 1, 1995, see section 13(a) of Pub. L. 104–120, set out as a note under section 1437d of Title 42, The Public Health and Welfare.

§ 1715z–22a. Definitions

For purposes of this subtitle:

(1) The term ''multifamily housing'' means housing accommodations on the mortgaged property that are designed principally for residential use, conform to standards satisfactory to the Secretary, and consist of not less than 5 rental units on 1 site. These units may be detached, semidetached, row house, or multifamily structures.

(2) The term ''qualified housing finance agency'' means any State or local housing finance agency that—

(A) carries the designation of ''top tier'' or its equivalent, as evaluated by Standard and Poors or any other nationally recognized rating agency;

(B) receives a rating of ''A'' for its general obligation bonds from a nationally recognized rating agency; or

(C) otherwise demonstrates its capacity as a sound and experienced agency based on, but not limited to, its experience in financing multifamily housing, fund balances, administrative capabilities, investment policy, internal controls and financial management, portfolio quality, and State or local support.

(3) The term ''reinsurance agreement'' means a contractual obligation under which the Secretary, in exchange for appropriate compensation, agrees to assume a specified portion of the risk of loss that a lender or other party has previously assumed with respect to a mortgage on a multifamily housing property.

(4) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(5) The term ''qualified participating entity'' means an entity approved by the Secretary for participation in the pilot program under this subsection, which may include—

(A) the Federal National Mortgage Association;

(B) the Federal Home Loan Mortgage Corporation;

(C) State housing finance and mortgage insurance agencies; and

(D) the Federal Housing Finance Board.

(Pub. L. 102–550, title V, § 544, Oct. 28, 1992, 106 Stat. 3801; Pub. L. 103–233, title III, § 307(c), Apr. 11, 1994, 108 Stat. 378.)

REFERENCES IN TEXT

This subtitle, referred to in text, means subtitle C (§§ 541–544) of Pub. L. 102–550, title V, Oct. 28, 1992, 106 Stat. 3794, as amended, known as the Multifamily Housing Finance Improvement Act, which enacted this section and section 1715z–22 of this title and provisions set out as a note under section 1701 of this title. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 1701 of this title and Tables.

CODIFICATION

Section was formerly set out as a note under section 1707 of this title.

Section was enacted as part of the Multifamily Housing Finance Improvement Act and also as part of the Housing and Community Development Act of 1992, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1994—Par. (1). Pub. L. 103–233, § 307(c)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''The term 'multifamily housing' means a property consisting of more than 4 dwelling units.''

Par. (5). Pub. L. 103–233, § 307(c)(2), added par. (5).

§ 1715z–23. HOPE for Homeowners Program

(a) Establishment

There is established in the Federal Housing Administration a HOPE for Homeowners Program.

(b) Purpose

The purpose of the HOPE for Homeowners Program is—

(1) to create an FHA program, participation in which is voluntary on the part of homeowners and existing loan holders to insure refinanced loans for distressed borrowers to support long-term, sustainable homeownership;

(2) to allow homeowners to avoid foreclosure by reducing the principle[1] balance outstanding, and interest rate charged, on their mortgages;

(3) to help stabilize and provide confidence in mortgage markets by bringing transparency to the value of assets based on mortgage assets;

(4) to target mortgage assistance under this section to homeowners for their principal residence;

(5) to enhance the administrative capacity of the FHA to carry out its expanded role under the HOPE for Homeowners Program;

(6) to ensure the HOPE for Homeowners Program remains in effect only for as long as is necessary to provide stability to the housing market; and

(7) to provide servicers of delinquent mortgages with additional methods and approaches to avoid foreclosure.

(c) Establishment and implementation of program requirements

(1) Duties of Secretary

In order to carry out the purposes of the HOPE for Homeowners Program, the Secretary, after consultation with the Board, shall—

(A) establish requirements and standards for the program consistent with section 1709(b) of this title to the maximum extent possible; and

(B) prescribe such regulations and provide such guidance as may be necessary or appropriate to implement such requirements and standards.

(2) Duties of the Secretary

In carrying out any of the program requirements or standards established under paragraph (1), the Secretary may issue such interim guidance and mortgagee letters as the Secretary determines necessary or appropriate.

(3) Duties of Board

The Board shall advise the Secretary regarding the establishment and implementation of the HOPE for Homeowners Program.

(d) Insurance of mortgages

The Secretary is authorized upon application of a mortgagee to make commitments to insure or to insure any eligible mortgage that has been refinanced in a manner meeting the requirements under subsection (e).

(e) Requirements of insured mortgages

To be eligible for insurance under this section, a refinanced eligible mortgage shall comply with all of the following requirements:

(1) Borrower certification

(A) No intentional default or false information

The mortgagor shall provide a certification to the Secretary that the mortgagor has not intentionally defaulted on the existing mortgage or mortgages or any other substantial debt within the last 5 years and has not knowingly, or willfully and with actual knowledge, furnished material information known to be false for the purpose of obtaining the eligible mortgage to be insured and has not been convicted under Federal or State law for fraud during the 10-year period ending upon the insurance of the mortgage under this section.

(B) Liability for repayment

The mortgagor shall agree in writing that the mortgagor shall be liable to repay to the Secretary any direct financial benefit achieved from the reduction of indebtedness on the existing mortgage or mortgages on the residence refinanced under this section derived from misrepresentations made by the mortgagor in the certifications and documentation required under this paragraph, subject to the discretion of the Secretary.

(C) Current borrower debt-to-income ratio

As of the date of application for a commitment to insure or insurance under this section, the mortgagor shall have had, or thereafter is likely to have, due to the terms of the mortgage being reset, a ratio of mortgage debt to income, taking into consideration all existing mortgages of that mortga-

[1] So in original. Probably should be ''principal''.

gor at such time, greater than 31 percent (or such higher amount as the Secretary determines appropriate).

(2) Determination of principal obligation amount

The principal obligation amount of the refinanced eligible mortgage to be insured shall—

(A) be determined by the reasonable ability of the mortgagor to make his or her mortgage payments, as such ability is determined by the Secretary pursuant to section 1709(b)(4) of this title or by any other underwriting standards established by the Secretary; and

(B) not exceed 90 percent of the appraised value of the property to which such mortgage relates (or such higher percentage as the Secretary determines, in the discretion of the Secretary).

(3) Required waiver of prepayment penalties and fees

All penalties for prepayment or refinancing of the eligible mortgage, and all fees and penalties related to default or delinquency on the eligible mortgage, shall be waived or forgiven.

(4) Extinguishment of subordinate liens

(A) Required agreement

All holders of outstanding mortgage liens on the property to which the eligible mortgage relates shall agree to accept the proceeds of the insured loan and any payments made under this paragraph, as payment in full of all indebtedness under the eligible mortgage, and all encumbrances related to such eligible mortgage shall be removed. The Secretary may take such actions as may be necessary and appropriate to facilitate coordination and agreement between the holders of the existing senior mortgage and any existing subordinate mortgages, taking into consideration the subordinate lien status of such subordinate mortgages. Such actions may include making payments, which shall be accepted as payment in full of all indebtedness under the eligible mortgage, to any holder of an existing subordinate mortgage, in lieu of any future appreciation payments authorized under subparagraph (B).

(B) Shared appreciation

(i) In general

The Secretary may establish standards and policies that will allow for the payment to the holder of any existing subordinate mortgage of a portion of any future appreciation in the property secured by such eligible mortgage that is owed to the Secretary pursuant to subsection (k).

(ii) Factors

In establishing the standards and policies required under clause (i), the Secretary shall take into consideration—

(I) the status of any subordinate mortgage;

(II) the outstanding principal balance of and accrued interest on the existing senior mortgage and any outstanding subordinate mortgages;

(III) the extent to which the current appraised value of the property securing a subordinate mortgage is less than the outstanding principal balance and accrued interest on any other liens that are senior to such subordinate mortgage; and

(IV) such other factors as the Secretary determines to be appropriate.

(C) Voluntary program

This paragraph may not be construed to require any holder of any existing mortgage to participate in the program under this section generally, or with respect to any particular loan.

(5) Term of mortgage

The refinanced eligible mortgage to be insured shall—

(A) bear interest at a single rate that is fixed for the entire term of the mortgage; and

(B) have a maturity of not less than 30 years from the date of the beginning of amortization of such refinanced eligible mortgage.

(6) Maximum loan amount

The principal obligation amount of the eligible mortgage to be insured shall not exceed 132 percent of the dollar amount limitation in effect for 2007 under section 1454(a)(2) of this title for a property of the applicable size.

(7) Prohibition on second liens

A mortgagor may not grant a new second lien on the mortgaged property during the first 5 years of the term of the mortgage insured under this section, except as the Secretary determines to be necessary to ensure the maintenance of property standards.

(8) Appraisals

Any appraisal conducted in connection with a mortgage insured under this section shall—

(A) be based on the current value of the property;

(B) be conducted in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.);

(C) be completed by an appraiser who meets the competency requirements of the Uniform Standards of Professional Appraisal Practice;

(D) be wholly consistent with the appraisal standards, practices, and procedures under section 1708(e)[2] of this title that apply to all loans insured under this chapter; and

(E) comply with the requirements of subsection (g) of this section (relating to appraisal independence).

(9) Documentation and verification of income

In complying with the FHA underwriting requirements under the HOPE for Homeowners Program under this section, the mortgagee shall document and verify the income of the mortgagor or non-filing status in accordance with procedures and standards that the Sec-

[2] See References in Text note below.

retary shall establish (provided that such procedures and standards are consistent with section 1709(b) of this title to the maximum extent possible) which may include requiring the mortgagee to procure a copy of the income tax returns from the Internal Revenue Service, for the two most recent years for which the filing deadline for such years has passed.

(10) Mortgage fraud

(A) Prohibition

The mortgagor shall not have been convicted under Federal or State law for fraud during the 10-year period ending upon the insurance of the mortgage under this section.

(B) Duty of mortgagee

The duty of the mortgagee to ensure that the mortgagor is in compliance with the prohibition under subparagraph (A) shall be satisfied if the mortgagee makes a good faith effort to determine that the mortgagor has not been convicted under Federal or State law for fraud during the period described in subparagraph (A).

(11) Primary residence

The mortgagor shall provide documentation satisfactory in the determination of the Secretary to prove that the residence covered by the mortgage to be insured under this section is occupied by the mortgagor as the primary residence of the mortgagor, and that such residence is the only residence in which the mortgagor has any present ownership interest, except that the Secretary may provide exceptions to such latter requirement (relating to present ownership interest) for any mortgagor who has inherited a property.

(12) Ban on millionaires

The mortgagor shall not have a net worth, as of the date the mortgagor first applies for a mortgage to be insured under the Program under this section, that exceeds $1,000,000.

(f) Study of auction or bulk refinance program

(1) Study

The Board shall conduct a study of the need for and efficacy of an auction or bulk refinancing mechanism to facilitate refinancing of existing residential mortgages that are at risk for foreclosure into mortgages insured under this section. The study shall identify and examine various options for mechanisms under which lenders and servicers of such mortgages may make bids for forward commitments for such insurance in an expedited manner.

(2) Content

(A) Analysis

The study required under paragraph (1) shall analyze—

(i) the feasibility of establishing a mechanism that would facilitate the more rapid refinancing of borrowers at risk of foreclosure into performing mortgages insured under this section;

(ii) whether such a mechanism would provide an effective and efficient mechanism to reduce foreclosures on qualified existing mortgages;

(iii) whether the use of an auction or bulk refinance program is necessary to stabilize the housing market and reduce the impact of turmoil in that market on the economy of the United States;

(iv) whether there are other mechanisms or authority that would be useful to reduce foreclosure; and

(v) and any other factors that the Board considers relevant.

(B) Determinations

To the extent that the Board finds that a facility of the type described in subparagraph (A) is feasible and useful, the study shall—

(i) determine and identify any additional authority or resources needed to establish and operate such a mechanism;

(ii) determine whether there is a need for additional authority with respect to the loan underwriting criteria established in this section or with respect to eligibility of participating borrowers, lenders, or holders of liens;

(iii) determine whether such underwriting criteria should be established on the basis of individual loans, in the aggregate, or otherwise to facilitate the goal of refinancing borrowers at risk of foreclosure into viable loans insured under this section.

(3) Report

Not later than the expiration of the 60-day period beginning on July 30, 2008, the Board shall submit a report regarding the results of the study conducted under this subsection to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report shall include a detailed description of the analysis required under paragraph (2)(A) and of the determinations made pursuant to paragraph (2)(B), and shall include any other findings and recommendations of the Board pursuant to the study, including identifying various options for mechanisms described in paragraph (1).

(g) Appraisal independence

(1) Prohibitions on interested parties in a real estate transaction

No mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, nor any other person with an interest in a real estate transaction involving an appraisal in connection with a mortgage insured under this section shall improperly influence, or attempt to improperly influence, through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, nonpayment for services rendered, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with the mortgage.

(2) Civil monetary penalties

The Secretary may impose a civil money penalty for any knowing and material viola-

tion of paragraph (1) under the same terms and conditions as are authorized in section 1735f–14(a) of this title.

(h) Standards to protect against adverse selection

(1) In general

The Secretary shall, by rule or order, establish standards and policies to require the underwriter of the insured loan to provide such representations and warranties as the Secretary considers necessary or appropriate to enforce compliance with all underwriting and appraisal standards of the HOPE for Homeowners Program.

(2) Exclusion for violations

The Secretary shall not pay insurance benefits to a mortgagee who violates the representations and warranties, as established under paragraph (1), or in any case in which a mortgagor fails to make the first payment on a refinanced eligible mortgage.

(3) Other authority

The Secretary may establish such other standards or policies as necessary to protect against adverse selection, including requiring loans identified by the Secretary as higher risk loans to demonstrate payment performance for a reasonable period of time prior to being insured under the program.

(i) Premiums

(1) Premiums

For each refinanced eligible mortgage insured under this section, the Secretary shall establish and collect—

(A) at the time of insurance, a single premium payment in an amount not more than 3 percent of the amount of the original insured principal obligation of the refinanced eligible mortgage, which shall be paid from the proceeds of the mortgage being insured under this section, through the reduction of the amount of indebtedness that existed on the eligible mortgage prior to refinancing; and

(B) in addition to the premium required under paragraph (1), an annual premium in an amount not more than 1.5 percent of the amount of the remaining insured principal balance of the mortgage.

(2) Considerations

In setting the premium under this subsection, the Secretary shall consider—

(A) the financial integrity of the HOPE for Homeowners Program; and

(B) the purposes of the HOPE for Homeowners Program described in subsection (b).

(j) Origination fees and interest rate

The Secretary shall establish—

(1) a reasonable limitation on origination fees for refinanced eligible mortgages insured under this section; and

(2) procedures to ensure that interest rates on such mortgages shall be commensurate with market rate interest rates on such types of loans.

(k) Exit fee

(1) Five-year phase-in for equity as a result of sale or refinancing

For each eligible mortgage insured under this section, the Secretary and the mortgagor of such mortgage shall, upon any sale or disposition of the property to which such mortgage relates, or upon the subsequent refinancing of such mortgage, be entitled to the following with respect to any equity created as a direct result of the mortgage being insured under this section:

(A) If such sale or refinancing occurs during the period that begins on the date that such mortgage is insured and ends 1 year after such date of insurance, the Secretary shall be entitled to 100 percent of such equity.

(B) If such sale or refinancing occurs during the period that begins 1 year after such date of insurance and ends 2 years after such date of insurance, the Secretary shall be entitled to 90 percent of such equity and the mortgagor shall be entitled to 10 percent of such equity.

(C) If such sale or refinancing occurs during the period that begins 2 years after such date of insurance and ends 3 years after such date of insurance, the Secretary shall be entitled to 80 percent of such equity and the mortgagor shall be entitled to 20 percent of such equity.

(D) If such sale or refinancing occurs during the period that begins 3 years after such date of insurance and ends 4 years after such date of insurance, the Secretary shall be entitled to 70 percent of such equity and the mortgagor shall be entitled to 30 percent of such equity.

(E) If such sale or refinancing occurs during the period that begins 4 years after such date of insurance and ends 5 years after such date of insurance, the Secretary shall be entitled to 60 percent of such equity and the mortgagor shall be entitled to 40 percent of such equity.

(F) If such sale or refinancing occurs during any period that begins 5 years after such date of insurance, the Secretary shall be entitled to 50 percent of such equity and the mortgagor shall be entitled to 50 percent of such equity.

(2) Appreciation in value

For each eligible mortgage insured under this section, the Secretary may, upon any sale or disposition of the property to which the mortgage relates, be entitled to up to 50 percent of appreciation, up to the appraised value of the home at the time when the mortgage being refinanced under this section was originally made. The Secretary may share any amounts received under this paragraph with or assign the rights of any amounts due to the Secretary to the holder of the existing senior mortgage on the eligible mortgage, the holder of any existing subordinate mortgage on the eligible mortgage, or both.

***(l)* Establishment of HOPE Fund**

(1) In general

There is established in the Federal Housing Administration a revolving fund to be known

as the Home Ownership Preservation Entity Fund, which shall be used by the Secretary for carrying out the mortgage insurance obligations under this section.

(2) Management of Fund

The HOPE Fund shall be administered and managed by the Secretary, who shall establish reasonable and prudent criteria for the management and operation of any amounts in the HOPE Fund.

(m) Limitation on aggregate insurance authority

The aggregate original principal obligation of all mortgages insured under this section may not exceed $300,000,000,000.

(n) Reports by the Secretary

The Secretary shall submit monthly reports to the Congress identifying the progress of the HOPE for Homeowners Program, which shall contain the following information for each month:

(1) The number of new mortgages insured under this section, including the location of the properties subject to such mortgages by census tract.

(2) The aggregate principal obligation of new mortgages insured under this section.

(3) The average amount by which the principle[1] balance outstanding on mortgages insured this section was reduced.

(4) The amount of premiums collected for insurance of mortgages under this section.

(5) The claim and loss rates for mortgages insured under this section.

(6) Any other information that the Secretary considers appropriate.

***(o)* Required outreach efforts**

The Secretary shall carry out outreach efforts to ensure that homeowners, lenders, and the general public are aware of the opportunities for assistance available under this section.

(p) Enhancement of FHA capacity

The Secretary shall take such actions as may be necessary to—

(1) contract for the establishment of underwriting criteria, automated underwriting systems, pricing standards, and other factors relating to eligibility for mortgages insured under this section;

(2) contract for independent quality reviews of underwriting, including appraisal reviews and fraud detection, of mortgages insured under this section or pools of such mortgages; and

(3) increase personnel of the Department as necessary to process or monitor the processing of mortgages insured under this section.

(q) GNMA commitment authority

(1) Guarantees

The Secretary shall take such actions as may be necessary to ensure that securities based on and backed by a trust or pool composed of mortgages insured under this section are available to be guaranteed by the Government National Mortgage Association as to the timely payment of principal and interest.

(2) Guarantee authority

To carry out the purposes of section 1721 of this title, the Government National Mortgage Association may enter into new commitments to issue guarantees of securities based on or backed by mortgages insured under this section, not exceeding $300,000,000,000. The amount of authority provided under the preceding sentence to enter into new commitments to issue guarantees is in addition to any amount of authority to make new commitments to issue guarantees that is provided to the Association under any other provision of law.

(r) Sunset

The Secretary may not enter into any new commitment to insure any refinanced eligible mortgage, or newly insure any refinanced eligible mortgage pursuant to this section before October 1, 2008 or after September 30, 2011.

(s) Definitions

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

(1) Approved financial institution or mortgagee

The term ''approved financial institution or mortgagee'' means a financial institution or mortgagee approved by the Secretary under section 1709 of this title as responsible and able to service mortgages responsibly.

(2) Board

The term ''Board'' means the Advisory Board for the HOPE for Homeowners Program. The Board shall be composed of the Secretary, the Secretary of the Treasury, the Chairperson of the Board of Governors of the Federal Reserve System, and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, or their designees.

(3) Eligible mortgage

The term ''eligible mortgage'' means a mortgage—

(A) the mortgagor of which—

(i) occupies such property as his or her principal residence; and

(ii) cannot, subject to such standards established by the Secretary, afford his or her mortgage payments; and

(B) originated on or before January 1, 2008.

(4) Existing senior mortgage

The term ''existing senior mortgage'' means, with respect to a mortgage insured under this section, the existing mortgage that has superior priority.

(5) Existing subordinate mortgage

The term ''existing subordinate mortgage'' means, with respect to a mortgage insured under this section, an existing mortgage that has subordinate priority to the existing senior mortgage.

(6) HOPE for Homeowners Program

The term ''HOPE for Homeowners Program'' means the program established under this section.

(7) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development, except where specifically provided otherwise.

(t) Requirements related to the Board

(1) Compensation, actual, necessary, and transportation expenses

(A) Federal employees

A member of the Board who is an officer or employee of the Federal Government shall serve without additional pay (or benefits in the nature of compensation) for service as a member of the Board.

(B) Travel expenses

Members of the Board shall be entitled to receive travel expenses, including per diem in lieu of subsistence, equivalent to those set forth in subchapter I of chapter 57 of title 5.

(2) Bylaws

The Board may prescribe, amend, and repeal such bylaws as may be necessary for carrying out the functions of the Board.

(3) Quorum

A majority of the Board shall constitute a quorum.

(4) Staff; experts and consultants

(A) Detail of Government employees

Upon request of the Board, any Federal Government employee may be detailed to the Board without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(B) Experts and consultants

The Board shall procure the services of experts and consultants as the Board considers appropriate.

(u) Rule of construction related to voluntary nature of the program

This section shall not be construed to require that any approved financial institution or mortgagee participate in any activity authorized under this section, including any activity related to the refinancing of an eligible mortgage.

(v) Rule of construction related to insurance of mortgages

Except as otherwise provided for in this section or by action of the Secretary, the provisions and requirements of section 1709(b) of this title shall apply with respect to the insurance of any eligible mortgage under this section. The Secretary shall conform documents, forms, and procedures for mortgages insured under this section to those in place for mortgages insured under section 1709(b) of this title to the maximum extent possible consistent with the requirements of this section.

(w) HOPE Bonds

(1) Issuance and repayment of bonds

Notwithstanding section 504(b) of the Federal Credit Reform Act of 1990 [2 U.S.C. 661c(b)], the Secretary of the Treasury shall—

(A) subject to such terms and conditions as the Secretary of the Treasury deems necessary, issue Federal credit instruments, to be known as ''HOPE Bonds'', that are callable at the discretion of the Secretary of the Treasury and do not, in the aggregate, exceed the amount specified in subsection (m);

(B) provide the subsidy amounts necessary for loan guarantees under the HOPE for Homeowners Program, not to exceed the amount specified in subsection (m), in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), except as provided in this paragraph; and

(C) use the proceeds from HOPE Bonds only to pay for the net costs to the Federal Government of the HOPE for Homeowners Program, including administrative costs and payments pursuant to subsection (e)(4)(A).

(2) Reimbursements to Treasury

Funds received pursuant to section 4568(b) of this title shall be used to reimburse the Secretary of the Treasury for amounts borrowed under paragraph (1).

(3) Use of reserve fund

If the net cost to the Federal Government for the HOPE for Homeowners Program exceeds the amount of funds received under paragraph (2), remaining debts of the HOPE for Homeowners Program shall be paid from amounts deposited into the fund established by the Secretary under section 4567(e) of this title, remaining amounts in such fund to be used to reduce the National debt.

(4) Reduction of National debt

Amounts collected under the HOPE for Homeowners Program in accordance with subsections (i) and (k) in excess of the net cost to the Federal Government for such Program shall be used to reduce the National debt.

(x) Payments to servicers and originators

The Secretary may establish a payment to the—

(1) servicer of the existing senior mortgage or existing subordinate mortgage for every loan insured under the HOPE for Homeowners Program; and

(2) originator of each new loan insured under the HOPE for Homeowners Program.

(y) Auctions

The Secretary, with the concurrence of the Board, shall, if feasible, establish a structure and organize procedures for an auction to refinance eligible mortgages on a wholesale or bulk basis.

(June 27, 1934, ch. 847, title II, §257, as added Pub. L. 110–289, div. A, title IV, §1402(a), July 30, 2008, 122 Stat. 2800; amended Pub. L. 110–343, div. A, title I, §124, Oct. 3, 2008, 122 Stat. 3791; Pub. L. 111–22, div. A, title II, §202(a), May 20, 2009, 123 Stat. 1640.)

REFERENCES IN TEXT

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (e)(8)(B), is Pub. L. 101–73, Aug. 9, 1989, 103 Stat. 183. Title XI of the Act is classified principally to chapter 34A (§3331 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1811 of this title and Tables.

Section 1708(e) of this title, referred to in subsec. (e)(8)(D), was redesignated section 1708(f) and then 1708(g) of this title by Pub. L. 110–289, div. B, title I, §2116(1)(B), July 30, 2008, 122 Stat. 2832, and Pub. L.

111–22, div. A, title II, § 203(b)(1), May 20, 2009, 123 Stat. 1643.

The Federal Credit Reform Act of 1990, referred to in subsec. (w)(1)(B), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, § 13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§ 661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

Section 4568(b) of this title, referred to in subsec. (w)(2), was in the original ''section 1338(b) of the Federal Housing Enterprises Regulatory Reform Act of 1992'', and was translated as meaning section 1338(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, which is classified to section 4568(b) of this title, to reflect the probable intent of Congress.

CODIFICATION

Pub. L. 111–22, § 202(a)(2), which directed amendment of subsecs. (e), (h)(1), (h)(3), (j), (*l*), (n), (s)(3), and (v) by substituting ''Secretary'' for ''Board'' each place such term appeared, was not executed to subsec. (e)(4)(A), (9), or the heading for subsec. (n), to reflect the probable intent of Congress and the amendments by Pub. L. 111–22, § 202(a)(3)(B)(i), (D)(ii), (7). See 2010 Amendment notes below.

Another section 257 of act June 27, 1934, was renumbered section 258 and is classified to section 1715z–24 of this title.

AMENDMENTS

2009—Subsec. (c)(1). Pub. L. 111–22, § 202(a)(1)(A), (B), substituted ''Secretary'' for ''the Board'' in heading and ''Secretary, after consultation with the Board,'' for ''Board'' in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 111–22, § 202(a)(1)(C), inserted ''consistent with section 1709(b) of this title to the maximum extent possible'' before semicolon.

Subsec. (c)(3). Pub. L. 111–22, § 202(a)(1)(D), added par. (3).

Subsec. (e)(1). Pub. L. 111–22, § 202(a)(3)(A), added par. (1) and struck out former par. (1) which related to lack of capacity to pay existing mortgage.

Subsec. (e)(2). Pub. L. 111–22, § 202(a)(2), substituted ''established by the Secretary'' for ''established by the Board'' in subpar. (A) and ''Secretary'' for ''Board'' in two places in subpar. (B).

Subsec. (e)(4)(A). Pub. L. 111–22, § 202(a)(3)(B)(i), struck out '', subject to standards established by the Board under subparagraph (B),'' after ''may take such actions''. See Codification note above.

Subsec. (e)(4)(B)(i). Pub. L. 111–22, § 202(a)(3)(B)(ii), substituted ''may'' for ''shall''.

Pub. L. 111–22, § 202(a)(2), substituted ''The Secretary'' for ''The Board''.

Subsec. (e)(4)(B)(ii). Pub. L. 111–22, § 202(a)(2), substituted ''Secretary'' for ''Board'' in introductory provisions and in subcl. (IV).

Subsec. (e)(7). Pub. L. 111–22, § 202(a)(3)(C), struck out ''; and provided that such new outstanding liens (A) do not reduce the value of the Government's equity in the borrower's home; and (B) when combined with the mortgagor's existing mortgage indebtedness, do not exceed 95 percent of the home's appraised value at the time of the new second lien'' after ''property standards''.

Pub. L. 111–22, § 202(a)(2), substituted ''Secretary'' for ''Board''.

Subsec. (e)(9). Pub. L. 111–22, § 202(a)(3)(D), substituted ''in accordance with procedures and standards that the Secretary shall establish (provided that such procedures and standards are consistent with section 1709(b) of this title to the maximum extent possible) which may include requiring the mortgagee to procure'' for ''by procuring (A) an income tax return transcript of the income tax returns of the mortgagor, or (B)'' and struck out ''and by any other method, in accordance with procedures and standards that the Board shall establish'' before period at end. See Codification note above.

Subsec. (e)(10). Pub. L. 111–22, § 202(a)(3)(E), designated existing provisions as subpar. (A), inserted subpar. (A) heading, and added subpar. (B).

Subsec. (e)(11). Pub. L. 111–22, § 202(a)(3)(F), inserted '', except that the Secretary may provide exceptions to such latter requirement (relating to present ownership interest) for any mortgagor who has inherited a property'' before period at end.

Subsec. (e)(12). Pub. L. 111–22, § 202(a)(3)(G), added par. (12).

Subsec. (h)(1). Pub. L. 111–22, § 202(a)(2), substituted ''Secretary'' for ''Board'' in two places.

Subsec. (h)(2). Pub. L. 111–22, § 202(a)(4), substituted ''The Secretary shall not pay'' for ''The Board shall prohibit the Secretary from paying''.

Subsec. (h)(3). Pub. L. 111–22, § 202(a)(2), substituted ''The Secretary'' for ''The Board''.

Subsec. (i). Pub. L. 111–22, § 202(a)(5), designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B) of par. (1), respectively, and adjusted margins, substituted ''not more than 3 percent'' for ''equal to 3 percent'' in par. (1)(A) and ''not more than 1.5 percent'' for ''equal to 1.5 percent'' in par. (1)(B), and added par. (2).

Subsec. (j). Pub. L. 111–22, § 202(a)(2), substituted ''Secretary'' for ''Board'' in introductory provisions.

Subsec. (k). Pub. L. 111–22, § 202(a)(6)(A), substituted ''Exit fee'' for ''Equity and appreciation'' in heading.

Subsec. (k)(1). Pub. L. 111–22, § 202(a)(6)(B), substituted ''the mortgage being insured under this section'' for ''such sale or refinancing'' in introductory provisions.

Subsec. (k)(2). Pub. L. 111–22, § 202(a)(6)(C), substituted ''may, upon any sale or disposition of the property to which the mortgage relates, be entitled to up to 50 percent of appreciation, up to the appraised value of the home at the time when the mortgage being refinanced under this section was originally made. The Secretary may share any amounts received under this paragraph with or assign the rights of any amounts due to the Secretary to the holder of the existing senior mortgage on the eligible mortgage, the holder of any existing subordinate mortgage on the eligible mortgage, or both.'' for ''and the mortgagor of such mortgage shall, upon any sale or disposition of the property to which such mortgage relates, each be entitled to 50 percent of any appreciation in value of the appraised value of such property that has occurred since the date that such mortgage was insured under this section.''

Subsec. (*l*)(1). Pub. L. 111–22, § 202(a)(2), substituted ''Secretary'' for ''Board''.

Subsec. (n). Pub. L. 111–22, § 202(a)(2), (7), substituted ''Secretary'' for ''the Board'' in heading and ''Secretary'' for ''Board'' in introductory provisions and in par. (6). See Codification note above.

Subsec. (p). Pub. L. 111–22, § 202(a)(8), substituted ''The'' for ''Under the direction of the Board, the'' in introductory provisions.

Subsec. (s)(2). Pub. L. 111–22, § 202(a)(9)(A), substituted ''Advisory Board for'' for ''Board of Directors of''.

Subsec. (s)(3)(A)(ii). Pub. L. 111–22, § 202(a)(9)(B), substituted ''such'' for ''subsection (e)(1)(B) and such other''.

Pub. L. 111–22, § 202(a)(2), substituted ''Secretary'' for ''Board''.

Subsec. (v). Pub. L. 111–22, § 202(a)(2), (10), substituted ''action of the Secretary'' for ''action of the Board'' and inserted at end ''The Secretary shall conform documents, forms, and procedures for mortgages insured under this section to those in place for mortgages insured under section 1709(b) of this title to the maximum extent possible consistent with the requirements of this section.''

Subsecs. (x), (y). Pub. L. 111–22, § 202(a)(11), added subsecs. (x) and (y).

2008—Subsec. (e)(1)(B). Pub. L. 110–343, § 124(1)(A), inserted '', or thereafter is likely to have, due to the terms of the mortgage being reset,'' before ''a ratio''.

Subsec. (e)(2)(B). Pub. L. 110–343, §124(1)(B), inserted ''(or such higher percentage as the Board determines, in the discretion of the Board)'' before period at end.

Subsec. (e)(4)(A). Pub. L. 110–343, §124(1)(C), inserted ''and any payments made under this paragraph,'' after ''insured loan'' and inserted ''Such actions may include making payments, which shall be accepted as payment in full of all indebtedness under the eligible mortgage, to any holder of an existing subordinate mortgage, in lieu of any future appreciation payments authorized under subparagraph (B).'' at end.

Subsec. (w)(1)(C). Pub. L. 110–343, §124(2), inserted ''and payments pursuant to subsection (e)(4)(A)'' before period at end.

§ 1715z–24. Pilot program for automated process for borrowers without sufficient credit history

(a) Establishment

The Secretary shall carry out a pilot program to establish, and make available to mortgagees, an automated process for providing alternative credit rating information for mortgagors and prospective mortgagors under mortgages on 1- to 4-family residences to be insured under this subchapter who have insufficient credit histories for determining their creditworthiness. Such alternative credit rating information may include rent, utilities, and insurance payment histories, and such other information as the Secretary considers appropriate.

(b) Scope

The Secretary may carry out the pilot program under this section on a limited basis or scope, and may consider limiting the program to first-time homebuyers.

(c) Limitation

In any fiscal year, the aggregate number of mortgages insured pursuant to the automated process established under this section may not exceed 5 percent of the aggregate number of mortgages for 1- to 4-family residences insured by the Secretary under this subchapter during the preceding fiscal year.

(d) Sunset

After the expiration of the 5-year period beginning on July 30, 2008, the Secretary may not enter into any new commitment to insure any mortgage, or newly insure any mortgage, pursuant to the automated process established under this section.

(June 27, 1934, ch. 847, title II, §258, formerly §257, as added Pub. L. 110–289, div. B, title I, §2124(a), July 30, 2008, 122 Stat. 2839; renumbered §258, Pub. L. 111–22, div. A, title II, §202(c), May 20, 2009, 123 Stat. 1643.)

§ 1715z–25. Mortgage modification data collecting and reporting

(a) Reporting requirements

Not later than 120 days after May 20, 2009, and quarterly thereafter, the Comptroller of the Currency and the Director of the Office of Thrift Supervision,[1] shall jointly submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate,[2] the Committee on Financial Services of the House of Representatives on the volume of mortgage modifications reported to the Office of the Comptroller of the Currency and the Office of Thrift Supervision, under the mortgage metrics program of each such Office, during the previous quarter, including the following:

(1) A copy of the data collection instrument currently used by the Office of the Comptroller of the Currency and the Office of Thrift Supervision to collect data on loan modifications.

(2) The total number of mortgage modifications resulting in each of the following:

(A) Additions of delinquent payments and fees to loan balances.

(B) Interest rate reductions and freezes.

(C) Term extensions.

(D) Reductions of principal.

(E) Deferrals of principal.

(F) Combinations of modifications described in subparagraph (A), (B), (C), (D), or (E).

(3) The total number of mortgage modifications in which the total monthly principal and interest payment resulted in the following:

(A) An increase.

(B) Remained the same.

(C) Decreased less than 10 percent.

(D) Decreased between 10 percent and 20 percent.

(E) Decreased 20 percent or more.

(4) The total number of loans that have been modified and then entered into default, where the loan modification resulted in—

(A) higher monthly payments by the homeowner;

(B) equivalent monthly payments by the homeowner;

(C) lower monthly payments by the homeowner of up to 10 percent;

(D) lower monthly payments by the homeowner of between 10 percent to 20 percent; or

(E) lower monthly payments by the homeowner of more than 20 percent.

(b) Data collection

(1) Required

(A) In general

Not later than 60 days after May 20, 2009, the Comptroller of the Currency and the Director of the Office of Thrift Supervision,[1] shall issue mortgage modification data collection and reporting requirements to institutions covered under the reporting requirement of the mortgage metrics program of the Comptroller or the Director.

(B) Inclusiveness of collections

The requirements under subparagraph (A) shall provide for the collection of all mortgage modification data needed by the Comptroller of the Currency and the Director of the Office of Thrift Supervision to fulfill the reporting requirements under subsection (a).

(2) Report

The Comptroller of the Currency shall report all requirements established under paragraph (1) to each committee receiving the report required under subsection (a).

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[1] So in original. The comma probably should not appear.

[2] So in original. The word ''and'' probably should appear instead of the comma.

(Pub. L. 111–22, div. A, title I, § 104, May 20, 2009, 123 Stat. 1636; Pub. L. 111–203, title XIV, § 1493, July 21, 2010, 124 Stat. 2206.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§ 1400(c), 1493, July 21, 2010, 124 Stat. 2136, 2206, provided that this section is amended, effective on the date on which final regulations implementing such amendments take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) in subsection (a)—

(A) in paragraph (2), by substituting ''in each State that result'' for ''resulting'';

(B) in paragraph (3), by inserting ''each State for'' after ''modifications in''; and

(C) in paragraph (4), by inserting ''in each State'' after ''total number of loans''; and

(2) in subsection (b)(1)(A), by inserting at the end the following: ''Not later than 60 days after the date of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall update such requirements to reflect amendments made to this section by such Act.''

See Effective Date of 2010 Amendment note below.

CODIFICATION

Section was enacted as part of the Helping Families Save Their Homes Act of 2009, and not as part of the National Housing Act which comprises this chapter.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

SUBCHAPTER III—NATIONAL MORTGAGE ASSOCIATIONS

§ 1716. Declaration of purposes of subchapter

The Congress declares that the purposes of this subchapter are to establish secondary market facilities for residential mortgages, to provide that the operations thereof shall be financed by private capital to the maximum extent feasible, and to authorize such facilities to—

(1) provide stability in the secondary market for residential mortgages;

(2) respond appropriately to the private capital market;

(3) provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing;

(4) promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and

(5) manage and liquidate federally owned mortgage portfolios in an orderly manner, with a minimum of adverse effect upon the residential mortgage market and minimum loss to the Federal Government.

(June 27, 1934, ch. 847, title III, § 301, 48 Stat. 1252; May 28, 1935, ch. 150, § 30, 49 Stat. 300; Feb. 3, 1938, ch. 13, §§ 4, 5, 52 Stat. 23; June 3, 1939, ch. 175, §§ 15, 16, 53 Stat. 808; Mar. 28, 1941, ch. 31, § 5, 55 Stat. 62; July 1, 1948, ch. 784, § 1, 62 Stat. 1206; Aug. 10, 1948, ch. 832, title II, §§ 201, 202, 62 Stat. 1275; Aug. 8, 1949, ch. 403, § 4, 63 Stat. 576; Oct. 25, 1949, ch. 729, § 7, 63 Stat. 906; Apr. 20, 1950, ch. 94, title I, §§ 116, 122, 64 Stat. 57, 59; Sept. 1, 1951, ch. 378, title II, § 205, title VI, § 608(b), 65 Stat. 303, 315; Apr. 9, 1952, ch. 173, 66 Stat. 51; July 14, 1952, ch. 723, §§ 3(a), 10(a)(2), 66 Stat. 602, 603; June 30, 1953, ch. 170, §§ 12, 13(a), 67 Stat. 125; June 29, 1954, ch. 410, § 1(1), 68 Stat. 320; Aug. 2, 1954, ch. 649, title II, § 201, 68 Stat. 612; Pub. L. 90–448, title VIII, § 802(b), Aug. 1, 1968, 82 Stat. 536; Pub. L. 101–73, title VII, § 731(m)(1), Aug. 9, 1989, 103 Stat. 435; Pub. L. 102–550, title XIII, § 1381(a), Oct. 28, 1992, 106 Stat. 3994.)

AMENDMENTS

1992—Pub. L. 102–550, § 1381(a)(1), substituted ''residential'' for ''home'' in introductory provisions.

Par. (1). Pub. L. 102–550, § 1381(a)(1), substituted ''residential'' for ''home''.

Par. (3). Pub. L. 102–550, § 1381(a)(1), (2), substituted ''residential'' for ''home'' in two places, substituted ''(including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities)'' for ''(including mortgages securing housing for low- and moderate-income families involving a reasonable economic return)'', and struck out ''and'' at end.

Par. (4). Pub. L. 102–550, § 1381(a)(3), (4), added par. (4) and redesignated former par. (4) as (5).

Par. (5). Pub. L. 102–550, § 1381(a)(1), (3), redesignated par. (4) as (5) and substituted ''residential'' for ''home''.

1989—Pub. L. 101–73 added pars. (1) to (3), struck out subsecs. (a) and (b), and redesignated subsec. (c) as par. (4). Prior to amendment, subsecs. (a) and (b) related to supplementary assistance to the secondary market and to provision of special assistance, respectively.

1968—Pub. L. 90–448 struck out provisions which established in the Federal Government a secondary market facility for home mortgages in view of section 1716b of this title which created two separate and distinct corporations.

1954—Act Aug. 2, 1954, amended section generally, substituting entirely new provisions for provisions now covered by section 1717 of this title and other sections in this subchapter.

Subsec. (a)(1)(G). Act June 29, 1954, substituted in first sentence ''August 1, 1954'' for ''July 1, 1954''.

1953—Subsec. (a)(1)(E). Act June 30, 1953, § 12, in cl. (2), substituted ''principal amount to be paid therefor'' for ''unpaid principal balance thereof'', and ''aggregate principal amount'' for ''aggregate amount''; and substituted three provisos for former proviso which made such cl. (2) and any terms therein inapplicable to any defense or disaster mortgages as defined in subpar. (G) of par. (1).

Subsec. (a)(1)(G). Act June 30, 1953, § 13(a), substituted in first sentence ''July 1, 1954'' for ''July 1, 1953''.

1952—Subsec. (a)(1). Act July 14, 1952, § 3(a)(1), authorized the FNMA to purchase Government-insured or

guaranteed home mortgages other than defense or disaster mortgages if they are insured after Feb. 29, 1952.

Subsec. (a)(1)(E). Act July 14, 1952, §3(a)(2), (3), changed the base date from Apr. 30, 1948 to Feb. 29, 1952, and exempted defense or disaster mortgages from the limitation of this subparagraph.

Subsec. (a)(1)(G). Act July 14, 1952, §3(a)(4), increased the FNMA commitment powers from $252,000,000 to $1,152,000,000 outstanding at any one time if the commitments relate to defense or disaster mortgages.

S.J. Res. Apr. 9, 1952, increased the $200,000,000 authorization to $252,000,000 and struck out Dec. 31, 1951, deadline, (1) with respect to programed defense housing for which applications were received prior to Dec. 28, 1951, and (2) with respect to subchapter VIII military housing if the commitment to insure the mortgage was issued after Dec. 27 and before Dec. 31, 1951.

Subsec. (c)(4). Act July 14, 1952, inserted ''Guam,'' after ''District of Columbia''.

1951—Subsec. (a)(1). Act Sept. 1, 1951, §205, inserted reference to subchapter X of this chapter.

Subsec. (a)(1)(G). Act Sept. 1, 1951, §608(b), inserted proviso.

1950—Act Apr. 20, 1950, §122, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

Subsec. (a)(1). Act Apr. 20, 1950, §116(1), (2), inserted ''or section 1706c of this title'' and first proviso.

Subsec. (a)(1)(E). Act Apr. 20, 1950, §116(3), substituted new proviso for former proviso.

Subsec. (a)(1)(F). Act Apr. 20, 1950, §116(4), substituted provision that no loan made to finance the purchase price or construction cost of a dwelling was to be purchased by the Federal National Mortgage Association unless the Administrator of Veterans' Affairs certifies that such dwelling conforms with minimum construction requirements prescribed by the Administrator for former provision that such certification was to be given by the mortgagee and that minimum construction standards were to be determined by the provisions within the National Housing Act.

Subsec. (a)(1)(G). Act Apr. 20, 1950, §116(5), added par. (1)(G).

1949—Subsec. (a). Act Aug. 8, 1949, inserted reference to subchapter VIII in par. (1), and inserted proviso at end of par. (1)(E).

Subsec. (a)(1)(E). Joint Res. Oct. 25, 1949, struck out proviso and inserted new proviso.

1948—Act July 1, 1948, amended section generally to create a Federal National Mortgage Association with power to purchase, service, or sell insured or guaranteed mortgage, provide for the powers and succession of the Association, and to eliminate the former national mortgage association.

Subsec. (a)(1). Act Aug. 10, 1948, §§201, 202, substituted ''subchapter II or VI of this chapter'' for ''section 1709 or 1738 of this title'', inserted ''after April 30, 1948'', after ''or guaranteed'', and substituted ''50'' for ''25'' in cl. (2) of par. (1) (E).

1941—Subsec. (a)(2). Act Mar. 28, 1941, substituted ''subchapters II and VI'' for ''subchapter II''.

1939—Subsec. (b). Act June 3, 1939, amended last sentence.

Subsec. (c)(4). Act June 3, 1939, inserted ''Alaska, Hawaii or Puerto Rico''.

1938—Subsec. (a). Act Feb. 3, 1938, amended provisions generally, and among other changes, substituted ''60 per centum'' in subsec. (a)(3), for ''80 per centum''.

Subsec. (d). Act Feb. 3, 1938, substituted ''$2,000,000'' for ''$5,000,000,'' and ''that at least 25 per centum thereof has been paid in cash,'' for ''paid in full in cash'', and inserted ''or in first mortgages or such other first liens as are described in section 301 (a) hereof, which mortgages or liens shall be taken at such value as the Administrator may determine, not exceeding (except as to mortgages insured under title II of this Act) 60 per centum of the appraised value of the property as of the date of subscription, and that the remainder of the subscription to such capital stock is payable in the same manner and at such time as may be determined by the Administrator: *Provided*, That no association shall issue notes, bonds, debentures, or other such obligations until such time as such subscriptions are paid in full in cash or Government securities at their par value or in mortgages or other liens as hereinbefore set forth''.

1935—Subsec. (d). Act May 28, 1935, substituted ''$5,000,000'' for ''$2,000,000''.

EFFECTIVE DATE OF 1968 AMENDMENT

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

EFFECTIVE DATE OF 1949 AMENDMENT

Section 7 of Joint Res. Oct. 25, 1949, provided in part: ''That the amendment made by this section 7 with respect to mortgages guaranteed under section 501 of the Servicemen's Readjustment Act of 1944, as amended [this section], shall apply only to such mortgages guaranteed after the date of enactment of this Act [Oct. 25, 1949].''

SHORT TITLE

Section 312 of title III of act June 27, 1934, as added Aug. 2, 1954, ch. 649, §201, 68 Stat. 622, provided: ''This title III [this subchapter] may be referred to as the 'Federal National Mortgage Association Charter Act'.''

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Housing and Urban Development, see Ex. Ord. No. 11732, July 30, 1973, 38 F.R. 20429, set out as a note under section 301 of Title 3, The President.

SERVICE OR SALE OF MORTGAGES PURCHASED PRIOR TO JULY 1, 1948; FULFILLMENT OF PRIOR COMMITMENTS

Section 2 of act July 1, 1948, provided that: ''Nothing in the amendment made by the first section of this Act [amending sections 1716, 1717 to 1721 of this title] shall limit the authority of the Federal National Mortgage Association to service or sell any mortgage purchased prior to the date of the enactment of this Act [July 1, 1948], or to purchase, service, or sell any mortgage with respect to which a commitment to purchase was made prior to the date of the enactment of this Act [July 1, 1948].''

§§ 1716–1, 1716a. Repealed. Aug. 2, 1954, ch. 649, title II, § 206, 68 Stat. 622

Section 1716–1, acts Oct. 30, 1951, ch. 642, 65 Stat. 599; June 30, 1953, ch. 170, §14, 67 Stat. 125, related to special authority of the Federal National Mortgage Association to make advance commitments, under certain conditions, with respect to insured cooperative-housing mortgages under section 1715e of this title.

Section 1716a, act Sept. 1, 1951, ch. 378, title VI, §608(a), 65 Stat. 315, required that one of the persons constituting the Board of Directors of the Federal National Mortgage Association be appointed by the Administrator of Veterans' Affairs from among personnel of the Veterans' Administration.

§ 1716b. Partition of Federal National Mortgage Association into Federal National Mortgage Association and Government National Mortgage Association; assets and liabilities; operations

The purposes of this title include the partition of the Federal National Mortgage Association as heretofore existing into two separate and distinct corporations, each of which shall have continuity and corporate succession as a separated portion of the previously existing corporation. One of such corporations, to be known as Federal National Mortgage Association, will be a Government-sponsored private corporation, will

retain the assets and liabilities of the previously existing corporation accounted for under section 1719 of this title, and will continue to operate the secondary market operations authorized by such section 1719. The other, to be known as Government National Mortgage Association, will remain in the Government, will retain the assets and liabilities of the previously existing corporation accounted for under sections 1720[1] and 1721 of this title, and will continue to operate the special assistance functions and management and liquidating functions authorized by such sections 1720[1] and 1721.

(Pub. L. 90–448, title VIII, § 801, Aug. 1, 1968, 82 Stat. 536.)

REFERENCES IN TEXT

This title, referred to in text, means title VIII of Pub. L. 90–448, which enacted this section, amended sections 24, 378, 1431, 1436, 1464, 1716, 1717 to 1723a, 1723c and 1757 of this title, section 709 of Title 18, Crimes and Criminal Procedure, section 846 of former Title 31, Money and Finance, section 1820 [now 3720] of Title 38, Veterans' Benefits, section 612 of former Title 40, Public Buildings, Property, and Works, and sections 1452b, 3534 and 3535 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under this section and section 1721 of this title.

Section 1720 of this title, referred to in text, was repealed by Pub. L. 98–181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1968, and not as part of the National Housing Act which comprises this chapter or the Federal National Mortgage Association Charter Act which comprises this subchapter.

EFFECTIVE DATE

Section 808 of title VIII of Pub. L. 90–448 provided that: ''The amendments made by this title [enacting this section and amending sections 24, 378, 1431, 1436, 1464, 1716, 1717 to 1723a, 1723c and 1757 of this title, section 709 of Title 18, Crimes and Criminal Procedure, section 846 of former Title 31, Money and Finance, section 1820 [now 3720] of Title 38, Veterans' Benefits, section 612 of former Title 40, Public Buildings, Property, and Works, sections 1452b, 3534 and 3535 of Title 42, The Public Health and Welfare, and notes under this section and section 1721 of this title] shall be effective from and after a date, no more than one hundred and twenty days following the date of enactment of this Act [Aug. 1, 1968], as established by the Secretary of Housing and Urban Development. Notice of the establishment of such effective date shall be published in the Federal Register at least thirty days prior thereto.''

SAVINGS PROVISION

Section 809 of Pub. L. 90–448 provided that:

''(a) No cause of action by or against the Federal National Mortgage Association existing prior to the effective date established pursuant to section 808 [set out above] shall abate by reason of the enactment of this title. Any such cause of action may thereafter be asserted by or against the appropriate corporate body named in section 302(a)(2) of the National Housing Act [section 1717(a)(2) of this title].

''(b) No suit, action, or other proceeding commenced by or against the Federal National Mortgage Association, or any officer thereof in his official capacity, prior to the effective date established pursuant to section 808 shall abate by reason of the enactment of this title. A court may at any time thereafter during the pendency of any such litigation, on its own motion or that of any party, order that the litigation may be maintained by or against the appropriate corporate body named in section 302(a)(2) of the National Housing Act [section 1717(a)(2) of this title] or the appropriate corresponding officer thereof.''

TRANSITIONAL PROVISIONS

Section 810 of Pub. L. 90–448, as amended by Pub. L. 91–609, title IX, § 901(e), Dec. 31, 1970, 84 Stat. 1807; Pub. L. 93–383, title VIII, § 806(*l*), Aug. 22, 1974, 88 Stat. 728; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) On the effective date established pursuant to section 808 of this Act [set out above], each share of outstanding nonvoting common stock, with a par value of $100 per share, of the Federal National Mortgage Association shall be changed into and shall become one share of voting common stock, without par value, of such corporation. For the purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, Title 26], no gain or loss is recognized by the holders of such stock on such change, and the basis and holding period of such stock in the hands of the stockholders immediately after such change are the same as the basis and holding period of such stock in their hands immediately prior to such change.

''(b), (c). [Repealed. Pub. L. 93–383, title VIII, § 806(*l*), Aug. 22, 1974, 88 Stat. 728].

''(d) Those persons who are the officers and employees of the Federal National Mortgage Association immediately prior to the effective date established pursuant to section 808 [set out as a note above] shall become the officers and employees of the Government National Mortgage Association on such date. The Federal National Mortgage Association and the Government National Mortgage Association shall provide by contract for the conditions and methods under which and by which the Federal National Mortgage Association during the transitional period may employ those individuals who are employees of the Government National Mortgage Association on such effective date; and may provide by contract for the operation by either of such corporations of any of the functions of the other. The Secretary of Housing and Urban Development shall make every reasonable effort to place in other comparable Federal positions any individuals who are career or career-conditional employees of the Government National Mortgage Association on such effective date and who are subsequently during the transitional period neither employed by the Federal National Mortgage Association nor retained by the Government National Mortgage Association.''

§ 1717. Federal National Mortgage Association and Government National Mortgage Association

(a) Creation; succession; principal and other offices

(1) There is created a body corporate to be known as the ''Federal National Mortgage Association'', which shall be in the Department of Housing and Urban Development. The Association shall have succession until dissolved by Act of Congress. It shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. Agencies or offices may be established by the Association in such other place or places as it may deem necessary or appropriate in the conduct of its business.

(2) On September 1, 1968, the body corporate described in the foregoing paragraph shall cease to exist in that form and is hereby partitioned into two separate and distinct bodies corporate, each of which shall have continuity and cor-

[1] See References in Text note below.

porate succession as a separated portion of the previously existing body corporate, as follows:

(A) One of such separated portions shall be a body corporate without capital stock to be known as Government National Mortgage Association (hereinafter referred to as the ''Association''), which shall be in the Department of Housing and Urban Development and which shall retain the assets and liabilities acquired and incurred under sections 1720[1] and 1721 of this title prior to such date, including any and all liabilities incurred pursuant to subsection (c) of this section. The Association shall have succession until dissolved by Act of Congress. It shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. Agencies or offices may be established by the Association in such other place or places as it may deem necessary or appropriate in the conduct of its business.

(B) The other such separated portion shall be a body corporate to be known as Federal National Mortgage Association (hereinafter referred to as the ''corporation''), which shall retain the assets and liabilities acquired and incurred under sections 1718 and 1719 of this title prior to such date. The corporation shall have succession until dissolved by Act of Congress. It shall maintain its principal office in the District of Columbia or the metropolitan area thereof and shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation.

(3) The partition transaction effected pursuant to the foregoing paragraph constitutes a reorganization within the meaning of section 368(a)(1)(E) of title 26; and for the purposes of such title 26, no gain or loss is recognized by the previously existing body corporate by reason of the partition, and the basis and holding period of the assets of the corporation immediately following such partition are the same as the basis and holding period of such assets immediately prior to such partition.

(b) Purchase and sale of insured and conventional mortgages; transactions in loans and advances of credit

(1) For the purposes set forth in section 1716 of this title and subject to the limitations and restrictions of this subchapter, each of the bodies corporate named in subsection (a)(2) of this section is authorized pursuant to commitments or otherwise, to purchase, service, sell, or otherwise deal in any mortgages which are insured under this chapter or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or which are insured or guaranteed under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38; and to purchase, service, sell, or otherwise deal in any loans made or guaranteed under part B of title VI of the Public Health Service Act [42 U.S.C. 291j–1 et seq.]; and the corporation is authorized to lend on the security of any such mortgages and to purchase, sell, or otherwise deal in any securities guaranteed by the Association under section 1721(g) of this title: *Provided*, That (1) the Association may not purchase any mortgage at a price exceeding 100 per centum of the unpaid principal amount thereof at the time of purchase, with adjustments for interest and any comparable items; (2) the Association may not purchase any mortgage, except a mortgage insured under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], if it is offered by, or covers property held by, a State, territorial, or municipal instrumentality; and (3) the Association may not purchase any mortgage under section 1720[1] of this title, except a mortgage insured under section 1715k of this title or subchapter VIII of this chapter or section 1709(k) of this title, or under subchapter IX–A[1] of this chapter with respect to a new community approved under section 1749cc–1[1] of this title, or insured under section 1715e of this title and covering property located in an urban renewal area, or a mortgage covering property located in Alaska, Guam, or Hawaii, if the original principal obligation thereof exceeds or exceeded $55,000 in the case of property upon which is located a dwelling designed principally for a one-family residence; or $60,000 in the case of a two- or three-family residence; or $68,750 in the case of a four-family residence; or, in the case of a property containing more than four dwelling units, $38,000 per dwelling unit (or such higher amount not in excess of $45,000 per dwelling unit as the Secretary may by regulation specify in any geographical area where the Secretary finds that cost levels so require) for that part of the property attributable to dwelling use. Notwithstanding the provisions of clause (3) of the preceding sentence, the Association may purchase a mortgage under section 1720[1] of this title with an original principal obligation which exceeds the otherwise applicable maximum amount per dwelling unit if the mortgage is insured under section 1713(c)(3), 1715e(b)(2), 1715k(d)(3)(B)(iii), 1715*l*(d)(3)(ii), 1715*l*(d)(4)(ii), 1715v(c)(2), 1715y(e)(3), or 1715z–1 of this title. For the purposes of this subchapter, the terms ''mortgages'' and ''home mortgages'' shall be inclusive of any mortgages or other loans insured under any of the provisions of this chapter or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

(2) For the purposes set forth in section 1716(a) of this title, the corporation is authorized, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in mortgages which are not insured or guaranteed as provided in paragraph (1) (such mortgages referred to hereinafter as ''conventional mortgages''). No such purchase of a conventional mortgage secured by a property comprising one- to four-family dwelling units shall be made if the outstanding principal balance of the mortgage at the time of purchase exceeds 80 per centum of the value of the property securing the mortgage, unless (A) the seller retains a participation of not less than 10 per centum in the mortgage; (B) for such period and under such circumstances as the corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the corporation in the event that the mortgage is in default; or (C) that portion of the unpaid principal balance of the mortgage which is in excess of such 80 per centum is guaranteed or insured by a qualified insurer as determined by the cor-

[1] See References in Text note below.

poration. The corporation shall not issue a commitment to purchase a conventional mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (A) of such sentence. The corporation may purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration, or any other seller currently engaged in mortgage lending or investing activities. For the purpose of this section, the term ''conventional mortgages'' shall include a mortgage, lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member of a cooperative housing corporation, as defined in section 216 of title 26, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation. The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the corporation. Such limitations shall not exceed $417,000 for a mortgage secured by a single-family residence, $533,850 for a mortgage secured by a 2-family residence, $645,300 for a mortgage secured by a 3-family residence, and $801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning after the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, subject to the limitations in this paragraph. Each adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase, during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 4542 of this title). If the change in such house price index during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment is a decrease, then no adjustment shall be made for the next year, and the next adjustment shall take into account prior declines in the house price index, so that any adjustment shall reflect the net change in the house price index since the last adjustment. Declines in the house price index shall be accumulated and then reduce increases until subsequent increases exceed prior declines. The foregoing limitations may be increased by not to exceed 50 per centum with respect to properties located in Alaska, Guam, Hawaii, and the Virgin Islands. Such foregoing limitations shall also be increased, with respect to properties of a particular size located in any area for which 115 percent of the median house price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such limitation for such size residence or the amount that is equal to 115 percent of the median house price in such area for such size residence.

(3) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in loans or advances of credit for the purchase and installation of home improvements, including energy conserving improvements or solar energy systems described in the last paragraph of section 1703(a) of this title and residential energy conservation measures as described in section 210(11) of the National Energy Conservation Policy Act [42 U.S.C. 8211(11)][1] and financed by a public utility in accordance with the requirements of title II of such Act [42 U.S.C. 8211 et seq.]. To be eligible for purchase, any such loan or advance of credit (other than a loan or advance made with respect to energy conserving improvements or solar energy systems or residential energy conservation measures) not insured under subchapter I of this chapter shall be secured by a lien against the property to be improved.

(4) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in loans or advances of credit secured by mortgages or other liens against manufactured homes.

(5)(A) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in (i) conventional mortgages that are secured by a subordinate lien against a one- to four-family residence that is the principal residence of the mortgagor; and (ii) conventional mortgages that are secured by a subordinate lien against a property comprising five or more family dwelling units. If the corporation, pursuant to paragraphs (1) through (4), shall have purchased, serviced, sold, or otherwise dealt with any other outstanding mortgage secured by the same residence, the aggregate original amount of such other mortgage and the mortgage authorized to be purchased, serviced, sold, or otherwise dealt with under this paragraph shall not exceed the applicable limitation determined under paragraph (2).

(B) The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages described in subparagraph (A). In any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of such mortgage described in subparagraph (A) and not merely with respect to the interest purchased by the corporation. Such limitations shall not exceed (i) with respect to mortgages described in subparagraph (A)(i), 50 per centum of the single-family residence mortgage limitation determined under paragraph (2); and (ii) with respect to mortgages described in subparagraph (A)(ii), the applicable limitation determined under paragraph (2).

(C) No subordinate mortgage against a one- to four-family residence shall be purchased by the corporation if the total outstanding indebtedness secured by the property as a result of such mortgage exceeds 80 per centum of the value of such property unless (i) that portion of such

total outstanding indebtedness that exceeds such 80 per centum is guaranteed or insured by a qualified insurer as determined by the corporation; (ii) the seller retains a participation of not less than 10 per centum in the mortgage; or (iii) for such period and under such circumstances as the corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the corporation in the event that the mortgage is in default. The corporation shall not issue a commitment to purchase a subordinate mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (ii) of such sentence.

(6) The corporation may not implement any new program (as such term is defined in section 4502 of this title) before obtaining the approval of the Secretary under section 4542[1] of this title.

(c) Administration of trusts; obligations of departments and agencies of the United States; exemption of interest income from taxation; authorization of appropriations for differential reimbursements

(1) Notwithstanding any other provision of this chapter or of any other law, the Association is authorized under section 1721 of this title to create, accept, execute, and otherwise administer in all respects such trusts, receiverships, conservatorships, liquidating or other agencies, or other fiduciary and representative undertakings and activities, hereinafter in this subsection called ''trusts'', as might be appropriate for financing purposes; and in relation thereto the Association may acquire, hold and manage, dispose of, and otherwise deal in any mortgages or other types of obligations in which any department or agency of the United States listed in paragraph (2) of this subsection may have a financial interest. The Association may join in any such undertakings and activities, hereinafter in this subsection called ''trusts''; notwithstanding that it is also serving in a fiduciary or representative capacity; and is authorized to guarantee any participations or other instruments, whether evidence of property rights or debt, issued for such financing purposes. Participations or other instruments issued by the Association pursuant to this subsection shall to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission. The amounts of any mortgages and their obligations acquired by the Association under section 1721 of this title, pursuant to this subsection, shall not be included in the total amounts set forth in section 1721(c) of this title.

(2) Subject to the limitations provided in paragraph (4) of this subsection, one or more trusts may be established as provided in this subsection by each of the following departments or agencies:

(A) The Farmers Home Administration of the Department of Agriculture, but only with respect to operating loans, direct farm ownership loans, direct housing loans, and direct soil and water loans. Such trusts may not be established with respect to loans for housing for the elderly under sections 502 and 515(a) of the Housing Act of 1949 [42 U.S.C. 1472 and 1485(a)], nor with respect to loans for nonfarm recreational development.

(B) The Department of Education, but only with respect to loans made by the Secretary of Education for construction of academic facilities, and loans to help finance student loan programs.

(C) The Department of Housing and Urban Development.

(D) The Department of Veterans Affairs.

(E) The Export-Import Bank.

(F) The Small Business Administration.

The head of each such department or agency, hereinafter in this subsection called the ''trustor,'' is authorized to set aside a part or all of any obligations held by the trustor and subject them to a trust or trusts and, incident thereto, shall guarantee to the trustee timely payment thereof. The trust instrument may provide for the issuance and sale of beneficial interests or participations, by the trustee, in such obligations or in the right to receive interest and principal collections therefrom; and may provide for the substitution or withdrawal of such obligations, or for the substitution of cash for obligations. The trust or trusts shall be exempt from all taxation. The trust instrument may also contain other appropriate provisions in keeping with the purposes of this subsection. The Association shall be named and shall act as trustee of any such trusts and, for the purposes thereof, the title to such obligations shall be deemed to have passed to the Association in trust. The trust instrument shall provide that custody, control, and administration of the obligations shall remain in the trustor subjecting the obligations to the trust, subject to transfer to the trustee in event of default or probable default, as determined by the trustee, in the payment of principal and interest of the beneficial interests or participations. Collections from obligations subject to the trust shall be dealt with as provided in the instrument creating the trust. The trust instrument shall provide that the trustee will promptly pay to the trustor the full net proceeds of any sale of beneficial interests or participations to the extent they are based upon such obligations or collections. Such proceeds shall be dealt with as otherwise provided by law for sales or repayment of such obligations. The effect of both past and future sales of any issue of beneficial interests or participations shall be the same, to the extent of the principal of such issue, as the direct sale with recourse of the obligations subject to the trust. Any trustor creating a trust or trusts hereunder is authorized to purchase, through the facilities of the trustee, outstanding beneficial interests or participations to the extent of the amount of the trustor's responsibility to the trustee on beneficial interests or participations outstanding, and to pay the trustor's proper share of the costs and expenses incurred by the Association as trustee pursuant to the trust instrument.

(3) When any trustor guarantees to the trustee the timely payment of obligations the trustor subjects to a trust pursuant to this subsection,

and it becomes necessary for such trustor to meet his responsibilities under such guaranty, the trustor is authorized to fulfill such guaranty.

(4) Beneficial interests or participations shall not be issued for the account of any trustor in an aggregate principal amount greater than is authorized with respect to such trustor in an appropriation Act. Any such authorization shall remain available only for the fiscal year for which it is granted and for the succeeding fiscal year.

(5) The Association, as trustee, is authorized to issue and sell beneficial interests or participations under this subsection, notwithstanding that there may be an insufficiency in aggregate receipts from obligations subject to the related trust to provide for the payment by the trustee (on a timely basis out of current receipts or otherwise) of all interest or principal on such interests or participations (after provision for all costs and expenses incurred by the trustee, fairly prorated among trustors). There are authorized to be appropriated without fiscal year limitation such sums as may be necessary to enable any trustor to pay the trustee such insufficiency as the trustee may require on account of outstanding beneficial interests or participations authorized to be issued pursuant to paragraph (4) of this subsection. Such trustor shall make timely payments to the trustee from such appropriations, subject to and in accord with the trust instrument. In the event that the insufficiency required by the trustee is on account of principal maturities of outstanding beneficial interests or participations authorized to be issued pursuant to paragraph (4) of this subsection, or pursuant hereto, the trustee is authorized to elect to issue additional beneficial interests or participations for refinancing purposes in lieu of requiring any trustor or trustors to make payments to the trustee from appropriated funds or other sources. Each such issue of beneficial interests or participations shall be in an amount determined by the trustee but not in excess of the aggregate amount which the trustee would otherwise require the trustor or trustors to pay from appropriated funds or other sources, and may be issued without regard to the provisions of paragraph (4) of this subsection. All refinancing issues of beneficial interests or participations shall be deemed to have been issued pursuant to the authority contained in the appropriation Act or Acts under which the beneficial interests or participations were originally issued.

(June 27, 1934, ch. 847, title III, § 302, 48 Stat. 1254; May 28, 1935, ch. 150, § 31, 49 Stat. 300; Feb. 3, 1938, ch. 13, § 6, 52 Stat. 24; Mar. 28, 1941, ch. 31, § 6, 55 Stat. 62; July 1, 1948, ch. 784, § 1, 62 Stat. 1208; July 19, 1949, ch. 351, § 1, 63 Stat. 446; Oct. 25, 1949, ch. 729, § 1(3), 63 Stat. 905; Apr. 20, 1950, ch. 94, title I, § 117, 64 Stat. 57; July 14, 1952, ch. 723, § 3(b), 66 Stat. 602; June 30, 1953, ch. 170, § 13(b), 67 Stat. 125; Aug. 2, 1954, ch. 649, title II, § 201, 68 Stat. 613; Aug. 7, 1956, ch. 1029, title II, § 201, 70 Stat. 1096; Pub. L. 85–857, § 13(g), Sept. 2, 1958, 72 Stat. 1265; Pub. L. 86–372, title III, § 301, Sept. 23, 1959, 73 Stat. 669; Pub. L. 87–70, title I, § 102(c), title VI, §§ 602, 603(a), June 30, 1961, 75 Stat. 158, 176; Pub. L. 88–560, title VII, §§ 701(a), 702, Sept. 2, 1964, 78 Stat. 800, 802; Pub. L. 89–117, title I, § 102(d), title II, § 201(b)(1), title VIII, §§ 802(a), 803, 804, title X, § 1004(a), Aug. 10, 1965, 79 Stat. 454, 465, 493, 494, 501; Pub. L. 89–429, § 2, May 24, 1966, 80 Stat. 164; Pub. L. 89–751, § 7, Nov. 3, 1966, 80 Stat. 1236; Pub. L. 89–754, title IV, § 405, Nov. 3, 1966, 80 Stat. 1273; Pub. L. 90–19, § 1(a)(2), (3), (j)(1), May 25, 1967, 81 Stat. 17, 18; Pub. L. 90–448, title VIII, §§ 802(c)–(g), 803, Aug. 1, 1968, 82 Stat. 536, 537, 542; Pub. L. 91–152, title I, § 114, Dec. 24, 1969, 83 Stat. 385; Pub. L. 91–296, title II, § 202, June 30, 1970, 84 Stat. 350; Pub. L. 91–351, title II, § 201(a), title IV, § 402, July 24, 1970, 84 Stat. 450, 458; Pub. L. 91–609, title IX, § 901(d), Dec. 31, 1970, 84 Stat. 1807; Pub. L. 93–383, title VIII, §§ 806(a)–(f), 807, Aug. 22, 1974, 88 Stat. 727, 728; Pub. L. 93–541, § 2, Dec. 26, 1974, 88 Stat. 1739; Pub. L. 95–128, title IV, § 408(a), Oct. 12, 1977, 91 Stat. 1138; Pub. L. 95–557, title I, § 101(c)(3), title III, § 318(a), Oct. 31, 1978, 92 Stat. 2083, 2100; Pub. L. 95–619, title II, § 246, Nov. 9, 1978, 92 Stat. 3233; Pub. L. 96–153, title III, § 317, Dec. 21, 1979, 93 Stat. 1119; Pub. L. 96–294, title V, § 534(b), June 30, 1980, 94 Stat. 741; Pub. L. 96–399, title III, §§ 309, 313(a), 339(a)(1), (b)(1), Oct. 8, 1980, 94 Stat. 1641, 1644, 1657; Pub. L. 97–110, title II, § 202(c), Dec. 26, 1981, 95 Stat. 1514; Pub. L. 98–440, title II, §§ 201(a), 203(a), 205(a), 206(a), Oct. 3, 1984, 98 Stat. 1692, 1693, 1695; Pub. L. 98–479, title II, §§ 201(b), 204(a)(16), Oct. 17, 1984, 98 Stat. 2227, 2232; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–122, § 2(b)(1), Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title IV, § 443(a), Feb. 5, 1988, 101 Stat. 1922; Pub. L. 100–628, title X, § 1068(a), Nov. 7, 1988, 102 Stat. 3276; Pub. L. 101–73, title VII, § 731(f)(1), Aug. 9, 1989, 103 Stat. 433; Pub. L. 102–54, § 13(d)(2)(A), June 13, 1991, 105 Stat. 274; Pub. L. 102–550, title XIII, § 1381(b), (c), (s)(1), Oct. 28, 1992, 106 Stat. 3995, 4001; Pub. L. 105–276, title V, § 582(a)(14), Oct. 21, 1998, 112 Stat. 2644; Pub. L. 110–289, div. A, title I, § 1124(a)(1), (2), July 30, 2008, 122 Stat. 2691, 2692.)

REFERENCES IN TEXT

Section 1720 of this title, referred to in subsecs. (a)(2)(A) and (b)(1), was repealed by Pub. L. 98–181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

The Housing Act of 1949, referred to in subsec. (b)(1), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Servicemen's Readjustment Act of 1944, referred to in subsec. (b)(1), is act June 22, 1944, ch. 268, 58 Stat. 284, as amended, which was classified generally to chapter 11C (§§ 693 to 697g) of former Title 38, Pensions, Bonuses, and Veterans' Relief, and which was repealed by section 14(87) of Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1273, the first section of which enacted Title 38, Veterans' Benefits. For distribution of sections 693 to 697g of former Title 38 to Title 38, Veterans' Benefits, see Table preceding section 101 of Title 38, Veterans' Benefits.

The Public Health Service Act, referred to in subsec. (b)(1), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part B of title VI of the Public Health Service Act is classified generally to part B (§ 291j–1 et seq.) of subchapter IV of chapter 6A of Title 42, The Public Health

and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

Subchapter IX–A of this chapter and section 1749cc–1 of this title, referred to in subsec. (b)(1), were repealed by Pub. L. 101–235, title I, §133(a), Dec. 15, 1989, 103 Stat. 2027.

The effective date of the Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (b)(2), probably means the date of enactment of div. A of Pub. L. 110–289, which was approved July 30, 2008.

The National Energy Conservation Policy Act, referred to in subsec. (b)(3), is Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3208, as amended. Title II of the National Energy Conservation Policy Act is classified principally to subchapter II (§8211 et seq.) of chapter 91 of Title 42, The Public Health and Welfare. Section 210 of the Act [42 U.S.C. 8211] was omitted from the Code pursuant to section 8229 of Title 42 which terminated authority under that section on June 30, 1989. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of Title 42 and Tables.

Section 4542 of this title, referred to in subsec. (b)(6), was repealed and a new section 4542 was added by Pub. L. 110–289, div. A, title I, §§1122, 1124(d), July 30, 2008, 122 Stat. 2693. The new section 4542 does not relate to obtaining the approval of the Secretary.

AMENDMENTS

2008—Subsec. (b)(2). Pub. L. 110–289 inserted last sentence and substituted seventh through ninth sentences for former seventh and eighth sentences which read as follows: ''Such limitations shall not exceed $93,750 for a mortgage secured by a single-family residence, $120,000 for a mortgage secured by a two-family residence, $145,000 for a mortgage secured by a three-family residence, and $180,000 for a mortgage secured by a four-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 1981. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the national average one-family house price in the monthly survey of all major lenders conducted by the Federal Housing Finance Board.''

1998—Subsec. (b)(2). Pub. L. 105–276 struck out penultimate sentence which read as follows: ''With respect to mortgages secured by property comprising five or more family dwelling units, such limitations shall not exceed 125 per centum of the dollar amounts set forth in section 1713(c)(3) of this title, except that such limitations may be increased by the corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels require any increase in the dollar amount limitations under such section.''

1992—Subsec. (b)(2). Pub. L. 102–550, §1381(b), (c)(1), in first sentence, struck out ''and with the approval of the Secretary of Housing and Urban Development,'' before ''the corporation'' and in last sentence, substituted ''Hawaii, and the Virgin Islands'' for ''and Hawaii''.

Subsec. (b)(3), (4). Pub. L. 102–550, §1381(c)(2), (3), struck out '', with the approval of the Secretary of Housing and Urban Development,'' after ''corporation is authorized''.

Subsec. (b)(6). Pub. L. 102–550, §1381(c)(4), added par. (6).

Subsec. (c)(2). Pub. L. 102–550, §1381(s)(1)(A), in first sentence of concluding provisions, substituted ''the trustor'' for ''him'' after ''obligations held by'' and in last sentence, substituted ''the trustor's'' for ''his'' in two places.

Subsec. (c)(3). Pub. L. 102–550, §1381(s)(1)(B), substituted ''the trustor'' for ''he'' after ''obligations'' and ''guaranty,''.

1991—Subsec. (c)(2)(D). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1989—Subsec. (b)(2). Pub. L. 101–73 substituted ''Resolution Trust Corporation'' for ''Federal Savings and Loan Insurance Corporation'' and ''Federal Housing Finance Board'' for ''Federal Home Loan Bank Board''.

1988—Subsec. (b)(5)(A)(i). Pub. L. 100–242 struck out ''through March 15, 1988,'' before ''conventional mortgages''.

Subsec. (b)(5)(A)(ii). Pub. L. 100–628 struck out ''until October 1, 1985,'' before ''conventional mortgages''.

1987—Subsec. (b)(5)(A)(i). Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''through October 31, 1987'' for ''until October 1, 1987''.

1986—Subsecs. (a)(3), (b)(2). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1984—Subsec. (b)(2). Pub. L. 98–479, §204(a)(16), substituted ''corporation'' for ''Corporation'' in fourth sentence after ''The''.

Subsec. (b)(2). Pub. L. 98–440, §§201(a), 205(a), 206(a), in second sentence substituted ''No such purchase of a conventional mortgage secured by a property comprising one- to four-family dwelling units'' for ''No such purchase of a conventional mortgage'', in sixth sentence substituted ''The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the corporation'' for ''The corporation shall establish limitations governing the maximum principal obligation of conventional mortgages purchased by it'', and in penultimate sentence inserted provision that the limitations set forth in section 1713(c)(3) of this title may be increased by the corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels require any increase in the dollar amount limitations under such section.

Subsec. (b)(5). Pub. L. 98–440, §203(a), added par. (5).

Subsec. (c)(2)(B). Pub. L. 98–479, §201(b), substituted ''Department of Education'' for ''Department of Health, Education, and Welfare'' and ''Secretary of Education'' for ''Commissioner of Education''.

1981—Subsec. (b)(2). Pub. L. 97–110 substituted provisions empowering the Corporation to purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or any other seller currently engaged in mortgage lending or investing activities for provisions which had empowered the Corporation to purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller was currently engaged in mortgage lending or investing activities and if, as a result thereof, the cumulative aggregate of the principal balances of all conventional mortgages purchased by the Corporation which were originated more than one year prior to the date of purchase did not exceed 20 per centum of the cumulative aggregate of the principal balances of all conventional mortgages purchased by the Corporation.

1980—Subsec. (b)(1). Pub. L. 96–399, §309, struck out ''(1)'' before ''the mortgage'' and cl. (2) relating to requirement respecting assistance under contracts au-

thorized by section 1437f of title 42 for at least 20 per centum of covered units.

Subsec. (b)(2). Pub. L. 96–399, § 313(a), substituted provisions defining term ''conventional mortgages'', and limitations respecting amounts, adjustments, etc., for such mortgages, for provisions establishing limitations for the maximum principal obligation of conventional mortgages purchased by the corporation and maximum amount of such limitations.

Subsec. (b)(3). Pub. L. 96–399, § 339(a)(1), substituted provisions relating to authority, with the approval of the Secretary of Housing and Urban Development, to deal in loans or advances of credit for the purchase and installation of home improvements, and provisions respecting eligibility for purchases of loans or advances of credit, for provisions relating to authority to deal in loans or advances of credit made for energy conserving improvements and solar energy systems, etc., and provisions respecting eligibility for purchases of loans.

Pub. L. 96–294 inserted provisions relating to loans or advances of credit by public utilities for purpose of financing residential energy conservation measures in a residential building.

Subsec. (b)(4). Pub. L. 96–399, § 339(b)(1), added par. (4).

1979—Subsec. (b)(1). Pub. L. 96–153 substituted ''(1) if the mortgage is insured under section 1713(c)(3), 1715e(b)(2), 1715k(d)(3)(B)(iii), 1715*l*(d)(3)(ii), 1715*l*(d)(4)(ii), 1715v(c)(2), 1715y(e)(3), or 1715z–1 of this title, and (2) at least 20 per centum of the units covered by such mortgage are assisted under contracts authorized by section 1437f of title 42'' for ''if the mortgage (1) is insured under section 1715z–1 of this title or is a below-market interest rate mortgage insured under section 1715*l*(d)(3) of this title, and (2) covers property which has the benefit of local tax abatement in an amount determined by the Secretary of Housing and Urban Development to be sufficient to make possible rentals not in excess of those that could be approved by the Secretary if the mortgage amount did not exceed the otherwise applicable maximum amount per dwelling unit and if local tax abatement were not provided''.

1978—Subsec. (b)(3). Pub. L. 95–619 added par. (3).

Subsec. (b)(1). Pub. L. 95–557 substituted ''or subchapter VIII of this chapter or section 1709(k) of this title'' for ''or subchapter VIII of this chapter'' and ''if the original principal obligation thereof exceeds or exceeded $55,000 in the case of property upon which is located a dwelling designed principally for a one-family residence; or $60,000 in the case of a two- or three-family residence; or $68,750 in the case of a four-family residence; or, in the case of a property containing more than four dwelling units, $38,000 per dwelling unit (or such higher amount not in excess of $45,000 per dwelling unit as the Secretary may by regulation specify in any geographical area where the Secretary finds that cost levels so require) for that part of the property attributable to dwelling use'' for ''if the original principal obligation thereof exceeds or exceeded $33,000 (or such higher amount not in excess of $38,000 as the Secretary may by regulation specify in any geographical area where he finds that cost levels so require), for each family residence or dwelling unit covered by the mortgage (plus an additional $2,500 for each such family residence or dwelling unit which has four or more bedrooms)''.

1977—Subsec. (b)(2). Pub. L. 95–128 inserted ''by more than 25 per centum'' after ''exceed'' in last sentence.

1974—Subsec. (a)(2). Pub. L. 93–383, § 806(a)(1), substituted ''September 1, 1968'' for ''the effective date established pursuant to section 808 of the Housing and Urban Development Act of 1968''.

Subsec. (a)(2)(A). Pub. L. 93–383, § 806(a)(2), struck out ''effective'' before ''date''.

Subsec. (a)(2)(B). Pub. L. 93–383, § 806(a)(2), (b), struck out ''effective'' before ''date'', inserted ''or metropolitan area thereof'' before ''and shall'' and ''jurisdiction'' before ''venue'', and substituted ''District of Columbia corporation'' for ''resident thereof''.

Subsec. (b)(1). Pub. L. 93–541 substituted ''or guaranteed under part B of title VI of the Public Health Service Act'' for ''to a public agency under part B of title VI of the Public Health Service Act''.

Pub. L. 93–383, § 807, substituted ''$33,000 (or such higher amount not in excess of $38,000 as the Secretary may by regulation specify in any geographical area where he finds that cost levels so require)'' for ''$22,000''.

Subsec. (b)(2). Pub. L. 93–383, § 806(c)–(f), substituted ''80'' for ''75'' and ''exceed 20'' for ''exceed 10'', struck out ''private'' before ''insurer'' in cl. (C), and substituted provisions relating to limitations contained in first proviso of first sentence of section 1464(c) of this title, for provisions relating to limitations applicable to mortgages insured under sections 1709(b) or 1713 of this title.

1970—Subsec. (a)(3). Pub. L. 91–609 added par. (3).

Subsec. (b). Pub. L. 91–351, §§ 201(a), 402, designated existing provisions as par. (1), inserted ''is insured under section 1715z–1 of this title or'' before ''is a below-market interest rate mortgage insured under section 1715*l*(d)(3) of this title'', and added par. (2).

Pub. L. 91–296 inserted provisions authorizing the purchase, service, sale, or other dealing in loans made to a public agency under part B of title VI of the Public Health Service Act.

1969—Subsec. (b). Pub. L. 91–152 substituted ''$22,000'' or ''the otherwise applicable maximum amount'' for ''$17,500'' wherever appearing.

1968—Subsec. (a)(1). Pub. L. 90–448, § 802(c)(1), (2), designated existing provisions as par. (1), and struck out ''(hereinafter referred to as the 'Association')''.

Subsec. (a)(2). Pub. L. 90–448, § 802(c)(3), added par. (2).

Subsec. (b). Pub. L. 90–448, § 802(d), substituted ''each of the bodies corporate named in subsection (a) (2) of this section is authorized'' for ''the Association is authorized'', and inserted provisions empowering the corporation to purchase, sell, or otherwise deal in any securities guaranteed by the Association under section 1721(g) of this title.

Subsec. (c)(1). Pub. L. 90–448, § 802(e), struck out '', consistent with section 1722 of this title,'' before ''to guarantee any participations''.

Subsec. (c)(2). Pub. L. 90–448, § 802(f), (g), struck out provisions from par. (C) which prohibited the Department of Housing and Urban Development from exercising the authority with respect to secondary market operations of the Federal National Mortgage Association, and in last sentence substituted ''incurred by the Association'' for ''incurred by the Federal National Mortgage Association''.

Subsec. (c)(5). Pub. L. 90–448, § 803, inserted provisions authorizing the trustee, in the event that the insufficiency required by the trustee is on account of principal maturities of outstanding beneficial interests or participations to be issued pursuant to paragraph (4) of this subsection, or pursuant hereto, to elect to issue additional beneficial interests or participations for refinancing purposes in lieu of requiring any trustor or trustors to make payments to the trustee from appropriated funds or other sources, limiting each such issue of beneficial interests or participations, and directing that all refinancing issues be deemed to have been issued pursuant to the authority contained in the appropriation Act or Acts under which the beneficial interests or participations were originally issued.

1967—Subsec. (a). Pub. L. 90–19, § 1(j)(1), substituted ''in the Department of Housing and Urban Development'' for ''a constituent agency of the Housing and Home Finance Agency''.

Subsec. (b). Pub. L. 90–19, § 1(a)(2), (3), substituted ''Secretary of Housing and Urban Development'' and ''Secretary'' for ''Federal Housing Commissioner'' and ''Commissioner'', respectively.

1966—Subsec. (b). Pub. L. 89–754 inserted ''or under subchapter IX–A of this chapter with respect to a new community approved under section 1749cc–1 of this title''.

Subsec. (c). Pub. L. 89–429 designated existing provisions as par. (1), gave the name ''trusts'', for the purpose of the entire subsection, to trusts, receiverships,

conservatorships, liquidating or other agencies, or other fiduciary and representative undertakings which the Association is authorized to administer, expanded the types of securities in which the Association is authorized to deal so as to include an expanded array of obligations in which any department or agency of the United States listed in par. (2) of the subsection might have a financial interest, exempted participation certificates or other instruments issued pursuant to this subsection from all regulation by the Securities and Exchange Commission, repealed existing authority for issuance of participations based on below-market interest rate mortgages insured under section 1715*l*(d)(3) of this title, and added pars. (2) to (5).

Subsec. (c)(2)(B). Pub. L. 89–751 substituted ''The Department of Health, Education, and Welfare, but only with respect to loans made by the Commissioner of Education for construction of academic facilities, and loans to help finance student loan programs'' for ''The Office of Education of the Department of Health, Education, and Welfare, but only with respect to loans for construction of academic facilities''.

1965—Subsec. (b). Pub. L. 89–117, §§201(b)(1), 802(a)(1), 803, 804, and 1004(a), defined ''home mortgages'', removed mortgages offered by or covering property held by a federal instrumentality from the list of prohibited purchases, inserted parenthetical material which, in the case of family dwelling units having four or more bedrooms, placed an additional amount of $2,500 to the $17,500 per unit limit on purchasable mortgages, inserted provision excepting below-market mortgages from the $17,500 per unit limit on purchasable mortgages if local tax abatement were granted sufficient to keep rentals at the level where they would be if the mortgage amount did not exceed $17,500 per dwelling unit, and authorized the Association to purchase loans insured under subchapter III of chapter 8A of Title 42 in its secondary market operations.

Subsec. (c). Pub. L. 89–117, §§102(d), 802(a)(2), (3), authorized appropriations to reimburse the Association for differential amounts resulting when mortgages bearing a below-market interest rate and insured under section 1715*l*(d)(3) of this title after August 10, 1965, are included within one or more of the trusts or other agencies created under this section authorized the Association to deal, in addition to first mortgages, in obligations offered to it by the Housing and Home Finance Agency or its Administrator, or by such Agency's constituent units or agencies or the heads thereof, and inserted ''and other obligations'' after ''mortgages'' in last sentence.

1964—Subsec. (b). Pub. L. 88–560, §702, substituted ''any mortgage under section 1720 of this title'' for ''any mortgage'' and deleted proviso reading ''*Provided*, That with respect to mortgages purchased under section 1719 of this title the principal obligation shall not exceed $20,000''.

Subsec. (c). Pub. L. 88–560, §701(a), added subsec. (c).

1961—Subsec. (b). Pub. L. 87–70 substituted ''authorized, pursuant to commitments or otherwise, to purchase, lend (under section 1719 of this title) on the security of, service, sell, or otherwise deal in any mortgages which are insured'' for ''authorized to make commitments to purchase and to purchase, service, or sell, any residential or home mortgages (or participations therein) which are insured'', and ''section 1715k of this title or subchapter VIII of this chapter for ''section 1715k or 1748b of this title'', permitted the purchase of mortgages insured under section 1715e of this title and covering property located in an urban renewal area, and defined term ''mortgage''.

1959—Subsec. (b). Pub. L. 86–372 included within cl. (3) mortgages insured under section 1715k of this title, increased the limitation on the original principal obligation from $15,000 to $17,500, and established a limitation of not more than $20,000 with respect to mortgages purchased under section 1719 of this title.

1958—Subsec. (b). Pub. L. 85–857 inserted '', chapter 37 of title 38'' after ''Servicemen's Readjustment Act of 1944, as amended''.

1956—Subsec. (b). Act Aug. 7, 1956, substituted ''(2)'' for ''and (2)'', ''if'' for ''if (i)''; and ''(3) the Association may not purchase any mortgage, except a mortgage insured under section 1748b of this title or a mortgage covering property located in Alaska, Guam, or Hawaii, if'' for ''or (ii)''.

1954—Act Aug. 2, 1954, amended section generally to recharter the Association, substituting provisions formerly covered in section 1716 of this title for provisions now covered by sections 1719 to 1721 of this title.

1953—Act June 30, 1953, struck out proviso at end of first sentence, which limited purchase of mortgages other than defense or disaster mortgages to $2,750,000,000.

1952—Act July 14, 1952, increased purchasing power of the Association from $2,750,000,000 to $3,650,000,000 but limited purchases of mortgages other than defense or disaster mortgages to $2,750,000,000.

1950—Act Apr. 20, 1950, substituted ''$2,750,000,000'' for ''$2,500,000,000''.

1949—Joint Res. Oct. 25, 1949, substituted ''$2,500,000,000'' for ''$1,500,000,000'' in first sentence.

Act July 19, 1949, increased authorization to $1,500,000,000 which would be based on the outstanding amount of mortgage purchases and commitments in place of the former complicated formula.

1948—Act July 1, 1948, amended section generally to make it applicable to the Association instead of to the former national mortgage associations, and increased the borrowing capacity from twenty times to forty times the capital and surplus.

1941—Act Mar. 28, 1941, inserted ''and VI'' in cl. (2).

1938—Act Feb. 3, 1938, among other changes, substituted ''twenty times the amount of its paid-up capital and surplus'' for ''twelve times the aggregate par value of its outstanding capital stock'', and inserted last sentence and proviso.

1935—Act May 28, 1935, substituted ''twelve times'' for ''ten times'' in cl. (1).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. A, title I, §1124(a)(3), July 30, 2008, 122 Stat. 2692, provided that: ''The amendments made by paragraphs (1) and (2) of this subsection [amending this section] shall take effect upon the expiration of the date described in section 201(a) of the Economic Stimulus Act of 2008 (Public Law 110–185) [122 Stat. 619; probably means Dec. 31, 2008].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 101(c)(3) of Pub. L. 95–557 effective Oct. 1, 1978, see section 104 of Pub. L. 95–557, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

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

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–857, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding Part I of Title 38, Veterans' Benefits.

TRANSFER OF FUNCTIONS

For retransfer of functions described in section 2 of Reorg. Plan No. 22 of 1950, set out below, from Housing

and Home Finance Administrator to Federal National Mortgage Association, see section 1723d of this title.

PROPOSAL BY FEDERAL NATIONAL MORTGAGE ASSOCIATION RESPECTING AUTHORITY TO IMPLEMENT SECTION 339(a)(1), (b)(1) OF PUB. L. 96–399; APPROVAL, ETC.

Section 339(a)(2), (b)(2) of Pub. L. 96–399 provided that when Federal National Mortgage Association submits its proposal to Secretary of Housing and Urban Development to implement authority granted by amendment of this section, Secretary of Housing and Urban Development shall, within 75 days, approve such proposal or transmit to Congress a report explaining why such proposal has not been approved.

WAIVER OF CERTAIN LIMITATIONS APPLICABLE TO THE PURCHASE OF MORTGAGES BY THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION UNTIL OCTOBER 1, 1974

Pub. L. 92–213, § 3, Dec. 22, 1971, 85 Stat. 775, as amended by Pub. L. 92–335, § 6, July 1, 1972, 86 Stat. 405; Pub. L. 92–503, § 2, Oct. 18, 1972, 86 Stat. 906; Pub. L. 93–85, § 3, Aug. 10, 1973, 87 Stat. 221; Pub. L. 93–117, § 4, Oct. 2, 1973, 87 Stat. 422, provided that when the Secretary of Housing and Urban Development determined that such action was necessary to avoid excessive discounts on federally insured or guaranteed mortgages, the Government National Mortgage Association could, until Oct. 1, 1974, issue commitments to purchase mortgages with original principal obligations not more than 50 per centum in excess of the limitations imposed by clause (3) of the proviso to the first sentence of section 302(b)(1) of the National Housing Act [subsec. (b)(1) of this section], and it could purchase the mortgages so committed to be purchased.

EXCEPTION TO LIMITATION ON PRINCIPAL AMOUNT OF PARTICIPATIONS IN GOVERNMENT MORTGAGE LIQUIDATION TRUST AND SMALL BUSINESS ADMINISTRATION TRUST SOLD DURING FISCAL 1966

Section 9 of Pub. L. 89–429 authorized Federal National Mortgage Association during fiscal year 1966 to sell (1) additional participations in Government Mortgage Liquidation Trust, and (2) participations in a trust to be established by Small Business Administration, each without regard to the provisions of subsec. (c)(4) of this section.

TRUST AGREEMENTS WITH ADMINISTRATOR OF VETERANS' AFFAIRS

Section 6(a) of Pub. L. 89–429 provided that: ''Nothing in this Act [enacting section 1717a of this title and section 745 of Title 20, Education, amending this section and sections 1720, 1749, and 1757 of this title, section 1988 of Title 7, Agriculture, and section 743 of Title 20, and enacting material set out as notes under this section] shall be construed to repeal or modify the provisions of section 1820(e) [now 3720(e)] of title 38, United States Code, respecting the authority of the Administrator of Veterans' Affairs [now Secretary of Veterans Affairs].''

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. *c*16, and Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. *c*74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

REORGANIZATION PLAN NO. 22 OF 1950

Eff. July 9, 1950, 15 F.R. 4365, 64 Stat. 1277

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 9, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].

FEDERAL NATIONAL MORTGAGE ASSOCIATION

SECTION 1. TRANSFER OF ASSOCIATION AND ITS FUNCTIONS

The Federal National Mortgage Association, together with its functions, is hereby transferred from the Reconstruction Finance Corporation to the Housing and Home Finance Agency and shall be administered subject to the direction and control of the Housing and Home Finance Administrator.

SEC. 2. TRANSFERS TO THE HOUSING ADMINISTRATOR

There are hereby transferred from the Reconstruction Finance Corporation to the Housing and Home Finance Administrator—

(1) the notes of the Federal National Mortgage Association payable to the Reconstruction Finance Corporation;

(2) the capital stock of the Federal National Mortgage Association;

(3) the function of the Reconstruction Finance Corporation of making payments on its notes issued to the Secretary of the Treasury in an amount equal to (a) the unpaid principal of, and accrued interest on, the notes of the Federal National Mortgage Association transferred under (1) above, (b) any funds of the Reconstruction Finance Corporation transferred under the provisions of section 5 hereof, (c) the book value of any office furniture and equipment of the Reconstruction Finance Corporation transferred under the provisions of section 5 hereof, and (d) the par value of the capital stock of the Federal National Mortgage Association plus the amount of its surplus paid in by the Reconstruction Finance Corporation;

(4) the function of issuing notes or other obligations to the Secretary of the Treasury, which may be purchased by the Secretary, under section 7 of the Reconstruction Finance Corporation Act, as amended [15 U.S.C. 606], in an amount not in excess of that necessary to finance at any one time the outstanding balances of the investments, loans, and purchases held by the Federal National Mortgage Association, taking into consideration other balance-sheet items;

(5) except as otherwise provided in this reorganization plan, all other functions of the Reconstruction Finance Corporation (including functions of the Board of Directors of such Corporation and functions of the Chairman of the Board of Directors of such Corporation) with respect to the Federal National Mortgage Association; and

(6) all functions of the Federal Housing Commissioner with respect to the Federal National Mortgage Association.

SEC. 3. BOARD OF DIRECTORS AND OFFICERS

Functions with respect to serving, including eligibility to serve, as members of the Board of Directors of the Federal National Mortgage Association and as officers of such Association are hereby transferred from the members of the Board of Directors of, and from the officers and employees of, the Reconstruction Finance Corporation to the officers and employees of the Housing and Home Finance Agency (including those of the constituent agencies of the Housing and Home Finance Agency.)

SEC. 4. PERFORMANCE OF FUNCTIONS OF ADMINISTRATOR

The Housing and Home Finance Administrator may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Housing and Home Finance Agency of any function transferred to such Administrator by the provisions of this reorganization plan.

SEC. 5. TRANSFER OF RECORDS, PROPERTY, PERSONNEL, AND FUNDS

There are hereby transferred with the functions transferred by this reorganization plan, respectively, all of the assets, liabilities, contracts, property, records, and unexpended balances of authorizations, allocations and other funds, available or to be made available, of the Federal National Mortgage Association, and so much of the assets, liabilities, contracts, property, records, personnel, and unexpended balances of authorizations, allocations, and other funds, available or to be made available, of the Reconstruction Finance Corporation and relating to functions transferred by the provisions of this reorganization plan, as the Director of the Bureau of the Budget shall determine to be necessary for the administration of such functions, excluding, however, (1) the members of the Board of Directors of the Federal National Mortgage Association in office immediately prior to the taking effect of the provisions of this reorganization plan, and (2) the officers of the Association then in office. Such further measures and dispositions as the Director of the Bureau of the Budget shall determine to be necessary in order to effectuate the transfers provided for in this section shall be carried out in such manner as the Director shall direct and by such agencies as he shall designate.

SEC. 6. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect 60 days after they would take effect under section 6(a) of the Reorganization Act of 1949 in the absence of this section [Eff. date July 9, 1950, in operation Sept. 7, 1950].

[Housing and Home Finance Agency lapsed and functions were transferred to Secretary of Housing and Urban Development, see section 9(c) of Pub. L. 89–174, Sept. 9, 1965, 79 Stat. 670, set out as a note under 42 U.S.C. 3531.]

§ 1717a. Prohibition against sale of obligations by Federal departments and agencies after June 30, 1966, without compliance with requirements of section 1717(c) of this title or without approval by Secretary of the Treasury; exemption

After June 30, 1966, no department or agency listed in section 1717(c)(2) of this title may sell any obligation held by it except as provided in section 1717(c) of this title, or as approved by the Secretary of the Treasury, except that this prohibition shall not apply to the Government National Mortgage Association.

(Pub. L. 89–429, § 6(b), May 24, 1966, 80 Stat. 167; Pub. L. 90–448, title VIII, § 807(g), Aug. 1, 1968, 82 Stat. 545.)

CODIFICATION

Section was enacted as a part of the Participation Sales Act of 1966, and not as a part of the National Housing Act, which comprises this chapter or the Federal National Mortgage Association Charter Act which comprises this subchapter.

AMENDMENTS

1968—Pub. L. 90–448 substituted ''the Government National Mortgage Association'' for ''secondary market operations carried on by the Federal National Mortgage Association''.

EFFECTIVE DATE OF 1968 AMENDMENT

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

§ 1718. Capitalization of Federal National Mortgage Association

(a) Common stock; preferred stock; transferability of shares

The corporation shall have common stock, without par value, which shall be vested with all voting rights, each share being entitled to one vote with rights of cumulative voting at all elections of directors. The corporation may eliminate such rights of cumulative voting by a resolution adopted by its board of directors and approved by the holders of a majority of the shares of common stock voting in person or by proxy at the annual meeting, or other special meeting, at which such resolution is considered. The corporation may have preferred stock on such terms and conditions as the board of directors shall prescribe. The free transferability of the stock at all times to any person, firm, corporation, or other entity shall not be restricted except that, as to the corporation, it shall be transferable only on the books of the corporation. The corporation may issue shares of common stock in return for appropriate payments into capital or capital and surplus.

(b) Fees and charges; annual transfer of earnings to general surplus account

(1) The corporation may impose charges or fees, which may be regarded as elements of pricing, with the objective that all costs and expenses of the operations of the corporation should be within its income derived from such operations and that such operations should be fully self-supporting.

(2) All earnings from the operations of the corporation shall annually be transferred to the general surplus account of the corporation. At any time, funds of the general surplus account may, in the discretion of the board of directors, be transferred to reserves.

(c) Capital distributions from general surplus account; minimum capitalization levels

(1) Except as provided in paragraph (2), the corporation may make such capital distributions (as such term is defined in section 4502 of this title) as may be declared by the board of directors. All capital distributions shall be charged against the general surplus account of the corporation.

(2) The corporation may not make any capital distribution that would decrease the total capital of the corporation (as such term is defined in section 4502 of this title) to an amount less than the risk-based capital level for the corporation established under section 4611 of this title or that would decrease the core capital of the corporation (as such term is defined in section 4502 of this title) to an amount less than the minimum capital level for the corporation established under section 4612 of this title, without prior written approval of the distribution by the Director of the Federal Housing Finance Agency.

(d) Institutions eligible to purchase stock

Notwithstanding any other provision of law, any institution, including a national bank or State member bank of the Federal Reserve System or any member of the Federal Deposit In-

surance Corporation, trust company, or other banking organization, organized under any law of the United States, including the laws relating to the District of Columbia, shall be authorized to purchase shares of common stock of the corporation and to hold or dispose of such stock, subject to the provisions of this subchapter.

(June 27, 1934, ch. 847, title III, §303, 48 Stat. 1254; Feb. 3, 1938, ch. 13, §7, 52 Stat. 24; July 1, 1948, ch. 784, §1, 62 Stat. 1206; Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 613; Aug. 7, 1956, ch. 1029, title II, §202, 70 Stat. 1096; Pub. L. 85–10, §1(a), (b), Mar. 27, 1957, 71 Stat. 7; Pub. L. 85–104, title II, §§201, 202, July 12, 1957, 71 Stat. 298; Pub. L. 87–70, title VI, §603(b), (c), June 30, 1961, 75 Stat. 176; Pub. L. 89–117, title X, §1004(b), Aug. 10, 1965, 79 Stat. 501; Pub. L. 89–566, §2, Sept. 10, 1966, 80 Stat. 738; Pub. L. 90–19, §1(j)(2), (*l*), May 25, 1967, 81 Stat. 18; Pub. L. 90–448, title VIII, §802 (i)–(n), (s), Aug. 1, 1968, 82 Stat. 537, 538; Pub. L. 91–609, title IX, §902, Dec. 31, 1970, 84 Stat. 1808; Pub. L. 93–383, title VIII, §806(g)–(i), Aug. 22, 1974, 88 Stat. 727, 728; Pub. L. 97–320, title VII, §707(a), Oct. 15, 1982, 96 Stat. 1540; Pub. L. 100–242, title IV, §442, Feb. 5, 1988, 101 Stat. 1921; Pub. L. 102–550, title XIII, §1381(d), Oct. 28, 1992, 106 Stat. 3995; Pub. L. 110–289, div. A, title I, §1161(b)(1), July 30, 2008, 122 Stat. 2779.)

AMENDMENTS

2008—Subsec. (c)(2). Pub. L. 110–289 substituted ''Director of the Federal Housing Finance Agency'' for ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development''.

1992—Subsec. (a). Pub. L. 102–550, §1381(d)(1), inserted at end ''The corporation may issue shares of common stock in return for appropriate payments into capital or capital and surplus.''

Subsecs. (b), (c). Pub. L. 102–550, §1381(d)(2), added subsecs. (b) and (c) and struck out former subsec. (b) which related to accumulation of surplus, fees and charges, and transfer of surplus funds to reserves and former subsec. (c) which related to issuance of common stock for capital contributions and payment of dividends.

Subsecs. (d), (f). Pub. L. 102–550, §1381(d)(3), (4), redesignated subsec. (f) as (d), struck out ''to make payments to the corporation of the nonrefundable capital contributions referred to in subsection (b) of this section, to receive stock of the corporation evidencing such capital contributions,'' after ''shall be authorized'', and substituted ''shares of common stock of the corporation'' for ''additional shares of such stock,''.

1988—Subsec. (a). Pub. L. 100–242 inserted after first sentence ''The corporation may eliminate such rights of cumulative voting by a resolution adopted by its board of directors and approved by the holders of a majority of the shares of common stock voting in person or by proxy at the annual meeting, or other special meeting, at which such resolution is considered.''

1982—Subsec. (a). Pub. L. 97–320, §707(a)(1), inserted provision that the corporation may have preferred stock on such terms and conditions as the board of directors shall prescribe.

Pub. L. 97–320, §707(a)(2), struck out ''common'' before ''stock at all times''.

1974—Subsec. (a). Pub. L. 93–383, §806(g), struck out provisions relating to issuance, par value, retirement, etc., of nonvoting preferred stock.

Subsec. (c). Pub. L. 93–383, §806(h), substituted provisions relating to purchases subsequent to Sept. 1, 1968, for provisions relating to purchases subsequent to the effective date established under section 808 of the Housing and Urban Development Act of 1968, and struck out provisions relating to retirement of all outstanding preferred stock.

Subsec. (d). Pub. L. 93–383, §806(i), struck out subsec. (d) authorizing issuance of preferred stock to Secretary of the Treasury.

Subsec. (e). Pub. L. 93–383, §806(i), struck out subsec. (e) relating to exchange of preferred stock delivered to Secretary of the Treasury pursuant to subsec. (d) of this section.

1970—Subsec. (b). Pub. L. 91–609 substituted ''may accumulate'' and ''private sources'' for ''shall accumulate'' and ''private and other sources'', respectively, struck out ''nor less than 1 per centum'' after ''2 per centum'', and inserted ''with the approval of the Secretary of Housing and Urban Development'' after ''as determined from time to time by the corporation''.

1968—Subsec. (a). Pub. L. 90–448, §802(i), (s)(1), changed common stock of the Association from nonvoting common stock with a par value of $100 to common stock, without par value, vested with all voting rights and each share entitled to one vote with rights of cumulative voting at all elections of directors, provided that the free transferability of the common stock shall not be restricted except that, as to the corporation, it shall be transferable only on the books of the corporation, struck out provisions which permitted retirement of the preferred stock only out of funds of the capital surplus and the general surplus accounts of the Association, and which prohibited retirements of common stock if, as a consequence, the amount thereof remaining outstanding would be less than $100,000,000, and substituted provisions requiring retirement of preferred stock to be made as rapidly as possible subsequent to the effective date of section 808 of the Housing and Urban Development Act of 1968, for provisions which required retirement as rapidly as the Association shall deem feasible, and ''corporation'' for ''Association'' in six places.

Subsec. (b). Pub. L. 90–448, §802(j), (s)(1), substituted ''corporation'' for ''Association'' in six places, and ''fees, which may be regarded as elements of pricing, with'' for ''fees for its services with'', and struck out sentence which stated this subsection shall be subject to the exceptions set forth in section 1722 of this title.

Subsec. (c). Pub. L. 90–448, §802(k), (s)(1), substituted ''corporation'' for ''Association'' in five places, and ''the aggregate amount of cash dividends paid on account of any share of such stock shall not exceed any rate which may be determined from time to time by the Secretary of Housing and Urban Development to be a fair rate of return after consideration of the current earnings and capital condition of the corporation'' for ''the general surplus account of the Association shall not be reduced through the payment of dividends applicable to such common stock which exceed in the aggregate 5 per centum of the par value of the outstanding common stock of the Association'', inserted provisions authorizing the corporation to issue additional shares in return for appropriate payments into capital or capital and surplus, directing the corporation to require each services of its mortgages to own a minimum amount of common stock of the corporation, and prescribing the minimum amount, and struck out provisions which related to issuance of common stock only in denominations of $100 or multiples thereof.

Subsec. (d). Pub. L. 90–448, §802(*l*), (s), substituted ''corporation'' for ''Association'' in six places, and ''corporation's'' for ''Association's'', and inserted provisions prohibiting issuance of preferred stock subsequent to the effective date established pursuant to section 808 of the Housing and Urban Development Act of 1968.

Subsec. (e). Pub. L. 90–448, §802(s), substituted ''corporation'' for ''Association'' in four places, and ''corporation's'' for ''Association's''.

Subsec. (f). Pub. L. 90–448, §802(m), (s)(1), substituted ''corporation'' for ''Association'' in two places and inserted provisions authorizing purchase of additional shares of stock of the corporation.

Subsec. (g). Pub. L. 90–448, §802(n), repealed subsec. (g) which directed Secretary of Housing and Urban Development to transmit recommendations for eventual transfer of operations to private shareholders.

1967—Subsec. (a). Pub. L. 90–19, §1(j)(2), substituted ''Secretary of the Treasury's'' for ''Secretary's'' in last sentence.

Subsec. (g). Pub. L. 90–19, §1(*l*), substituted ''Secretary of Housing and Urban Development'' for ''Housing and Home Finance Administrator''.

1966—Subsec. (d). Pub. L. 89–566, §2(a), raised from $115,000,000 to $225,000,000 the amount of the par value of the preferred stock of the Association which the Secretary of the Treasury is authorized and directed to accept in addition to the original $21,000,000.

Subsec. (e). Pub. L. 89–566, §2(b), substituted ''$225,000,000'' for ''$115,000,000'' in second sentence.

1965—Subsec. (b). Pub. L. 89–117 inserted ''other'' sources to private sources as the areas from which the Association shall accumulate funds for its capital surplus account.

1961—Subsec. (b). Pub. L. 87–70, §603(b), directed the Association to require each borrower to make payments, equal to not more than one-half of one per centum of the amount lent to the borrower under section 1719 of this title.

Subsec. (c). Pub. L. 87–70, §603(c), required issuance of stock to borrowers and inserted ''(adjusted by reason of any payments into surplus required by the Association)''.

1957—Subsec. (b). Pub. L. 85–104, §201, substituted provisions which fixed capital contributions payments at maximum of 2 percent and minimum of 1 percent of unpaid principal amounts of mortgages purchased or to be purchased under section 1719 of this title, for former provisions which provided for capital contributions payments equal to 2 percent of the unpaid principal amounts of mortgages purchased by the Association or equal to such greater or lesser percentage but not less than 1 percent, as the Association might determine.

Subsec. (d). Pub. L. 85–104, §202(a), substituted ''$115,000,000'' for ''$50,000,000'' in second sentence.

Pub. L. 85–10, §1(a), inserted sentence directing Secretary of the Treasury to accept additional $50,000,000 of preferred stock issued by Association.

Subsec. (e). Pub. L. 85–104, §202(b), substituted ''$115,000,000'' for ''$50,000,000'' in second sentence.

Pub. L. 85–10, §1(b), inserted ''the first sentence of'' before ''subsection (d)'' in first sentence, and inserted sentence providing that Association stock delivered to Treasury pursuant to second sentence of subsec. (d) of this section be in exchange for Association notes of $50,000,000.

1956—Subsec. (b). Act Aug. 7, 1956, substituted provisions which required mortgage sellers to make contributions equal to not more than 2 percent of the unpaid principal amount of mortgages or greater or lesser percentage as the Association may determine, but not less than 1 percent, for former provisions that contributions equal 3 percent of the unpaid amount of the mortgages or such greater percentage as from time to time the Association may determine.

1954—Act Aug. 2, 1954, amended section generally to substitute provisions relating to capitalization (formerly covered in section 1716 of this title) and to general financial arrangements and operations for provisions relating merely to use and investment of moneys not invested in mortgages or in operating facilities (such provisions now being covered by section 1723b of this title), and the maintenance of necessary reserves.

1948—Act July 1, 1948, made section applicable to the Association instead of to any of the national mortgage associations.

1938—Act Feb. 3, 1938, inserted ''or in bonds or other obligations'' and inserted ''and may purchase in the open market notes, bonds, debentures, or such other obligations issued under section 1717 of this title''.

EFFECTIVE DATE OF 1968 AMENDMENT

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

SPECIAL ASSISTANCE FUNDS OF ASSOCIATION FOR FINANCING LOW-COST HOMES

Section 1006 of Pub. L. 89–754, title X, Nov. 3, 1966, 80 Stat. 1285, provided that the Congress found that the sharp decline in new home construction over the past year threatened to undercut the present high level of prosperity and employment as such declines had in the past; that the substantial reduction which had taken place had its greatest impact on families of modest income who were seeking to achieve the goal of homeownership; that this decline in homebuilding was due primarily to the shortage of mortgage financing on terms which moderate income families could afford; and that national policy objectives in the field of housing and community development were thereby being thwarted. The Congress therefore expressed its intent that the special assistance funds made available to the Federal National Mortgage Association for the financing of new low-cost homes by the Act of September 10, 1966 (Public Law 89–556) [amending sections 1718, 1719, and 1720 of this title], should be released immediately to halt the continuing decline in the construction of new homes for families of moderate incomes.

§ 1719. Secondary market operations

(a) Purchase and sale of mortgages; secondary market operations; advance of funds or origination of loans; settlement or extinguishment of borrower's rights

(1) To carry out the purposes set forth in paragraph (a)[1] of section 1716 of this title, the operations of the corporation under this section shall be confined, so far as practicable, to mortgages which are deemed by the corporation to be of such quality, type, and class as to meet, generally, the purchase standards imposed by private institutional mortgage investors. In the interest of assuring sound operation, the prices to be paid by the corporation for mortgages purchased in its secondary market operations under this section, should be established, from time to time, within the range of market prices for the particular class of mortgages involved, as determined by the corporation. The volume of the corporation's purchases and sales, and the establishment of the purchase prices, sale prices, and charges or fees, in its secondary market operations under this section, should be determined by the corporation from time to time, and such determinations should be consistent with the objectives that such purchases and sales should be effected only at such prices and on such terms as will reasonably prevent excessive use of the corporation's facilities, and that the operations of the corporation under this section should be within its income derived from such operations and that such operations should be fully self-supporting. Nothing in this subchapter shall prohibit the corporation from purchasing, and making commitments to purchase, any mortgage with respect to which the Secretary of Housing and Urban Development has entered into a contract with the corporation to make interest subsidy payments under section 1715z–8 of this title.

(2) The volume of the corporation's lending activities and the establishment of its loan ratios, interest rates, maturities, and charges or fees, in its secondary market operations under this section, should be determined by the corpora-

[1] See References in Text note below.

tion from time to time; and such determinations, in conjunction with determinations made under paragraph (1), should be consistent with the objectives that the lending activities should be conducted on such terms as will reasonably prevent excessive use of the corporation's facilities, and that the operations of the corporation under this section should be within its income derived from such operations and that such operations should be fully self-supporting. The corporation shall not be permitted to use its lending authority (A) to advance funds to a mortgage seller on an interim basis, using mortgage loans as collateral, pending the sale of the mortgages in the secondary market; or (B) to originate mortgage loans. Notwithstanding any Federal, State, or other law to the contrary, the corporation is empowered, in connection with any loan under this section, whether before or after any default, to provide by contract with the borrower for the settlement or extinguishment, upon default, of any redemption, equitable, legal, or other right, title, or interest of the borrower in any mortgage or mortgages that constitute the security for the loan; and with respect to any such loan, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such security shall become the absolute property of the corporation.

(b) Obligations of the Corporation

For the purposes of this section, the corporation is authorized to issue, upon the approval of the Secretary of the Treasury, and have outstanding at any one time obligations having such maturities and bearing such rate or rates of interest as may be determined by the corporation with the approval of the Secretary of the Treasury, to be redeemable at the option of the corporation before maturity in such manner as may be stipulated in such obligations. The corporation shall insert appropriate language in all of its obligations issued under this subsection clearly indicating that such obligations, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the corporation. The corporation is authorized to purchase in the open market any of its obligations outstanding under this subsection at any time and at any price.

(c) Purchase of obligations by Treasury; conditions and restrictions

The Secretary of the Treasury is authorized in the Secretary's discretion to purchase any obligations issued pursuant to subsection (b) of this section, as now or hereafter in force, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include such purchases. The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of the Secretary's then outstanding holdings of such obligations under this subsection to an amount greater than $2,250,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as the Secretary shall determine, any of the obligations acquired by the Secretary under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

(d) Mortgage-backed securities; issuance; maturities; rates of interest; exempt securities; adequacy of mortgages to permit principal and interest payments; statement in securities

To provide a greater degree of liquidity to the mortgage investment market and an additional means of financing its operations under this section, the corporation is authorized to set aside any mortgages held by it under this section, and, upon approval of the Secretary of the Treasury, to issue and sell securities based upon the mortgages so set aside. Securities issued under this subsection may be in the form of debt obligations or trust certificates of beneficial interest, or both. Securities issued under this subsection shall have such maturities and bear such rate or rates of interest as may be determined by the corporation with the approval of the Secretary of the Treasury. Securities issued by the corporation under this subsection shall, to the same extent as securities which are direct obligations of or obligations guaranteed as to principal and interest by the United States, be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission. Mortgages set aside pursuant to this subsection shall at all times be adequate to enable the corporation to make timely principal and interest payments on the securities issued and sold pursuant to this subsection. The corporation shall insert appropriate language in all of the securities issued under this subsection clearly indicating that such securities, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the corporation.

(e) Subordinated or convertible obligations; issuance; maturities; rate of interest; redemption; exempt securities; debt or obligation of United States; purchases in open market

For the purposes of this section, the corporation is authorized to issue, upon the approval of the Secretary of the Treasury, obligations which are subordinated to any or all other obligations of the corporation, including subsequent obligations. The obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as may be determined by the corporation with the approval of the Sec-

retary of the Treasury and may be made redeemable at the option of the corporation before maturity in such manner as may be stipulated in such obligations. Any of such obligations may be made convertible into shares of common stock in such manner, at such price or prices, and at such time or times as may be stipulated therein. Obligations issued by the corporation under this subsection shall, to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission. The corporation shall insert appropriate language in all of its obligations issued under this subsection clearly indicating that such obligations, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than the corporation. The corporation is authorized to purchase in the open market any of its obligations outstanding under this subsection at any time and at any price.

(f) Prohibition on assessment or collection of fee or charge by United States

Except for fees paid pursuant to section 1723a(g) of this title and assessments pursuant to section 4516 of this title, no fee or charge may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to the purchase, acquisition, sale, pledge, issuance, guarantee, or redemption of any mortgage, asset, obligation, trust certificate of beneficial interest, or other security by the corporation. No provision of this subsection shall affect the purchase of any obligation by the Secretary of the Treasury pursuant to subsection (c) of this section.

(g) Temporary authority of Treasury to purchase obligations and securities; conditions

(1) Authority to purchase

(A) General authority

In addition to the authority under subsection (c) of this section, the Secretary of the Treasury is authorized to purchase any obligations and other securities issued by the corporation under any section of this chapter, on such terms and conditions as the Secretary may determine and in such amounts as the Secretary may determine. Nothing in this subsection requires the corporation to issue obligations or securities to the Secretary without mutual agreement between the Secretary and the corporation. Nothing in this subsection permits or authorizes the Secretary, without the agreement of the corporation, to engage in open market purchases of the common securities of the corporation.

(B) Emergency determination required

In connection with any use of this authority, the Secretary must determine that such actions are necessary to—

(i) provide stability to the financial markets;

(ii) prevent disruptions in the availability of mortgage finance; and

(iii) protect the taxpayer.

(C) Considerations

To protect the taxpayers, the Secretary of the Treasury shall take into consideration the following in connection with exercising the authority contained in this paragraph:

(i) The need for preferences or priorities regarding payments to the Government.

(ii) Limits on maturity or disposition of obligations or securities to be purchased.

(iii) The corporation's plan for the orderly resumption of private market funding or capital market access.

(iv) The probability of the corporation fulfilling the terms of any such obligation or other security, including repayment.

(v) The need to maintain the corporation's status as a private shareholder-owned company.

(vi) Restrictions on the use of corporation resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes.

(D) Reports to Congress

Upon exercise of this authority, the Secretary shall report to the Committees on the Budget, Financial Services, and Ways and Means of the House of Representatives and the Committees on the Budget, Finance, and Banking, Housing, and Urban Affairs of the Senate as to the necessity for the purchase and the determinations made by the Secretary under subparagraph (B) and with respect to the considerations required under subparagraph (C), and the size, terms, and probability of repayment or fulfillment of other terms of such purchase.

(2) Rights; sale of obligations and securities

(A) Exercise of rights

The Secretary of the Treasury may, at any time, exercise any rights received in connection with such purchases.

(B) Sale of obligation and securities

The Secretary of the Treasury may, at any time, subject to the terms of the security or otherwise upon terms and conditions and at prices determined by the Secretary, sell any obligation or security acquired by the Secretary under this subsection.

(C) Deficit reduction

The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

(i) dedicated for the sole purpose of deficit reduction; and

(ii) prohibited from use as an offset for other spending increases or revenue reductions.

(D) Application of sunset to purchased obligations or securities

The authority of the Secretary of the Treasury to hold, exercise any rights re-

ceived in connection with, or sell, any obligations or securities purchased is not subject to the provisions of paragraph (4).

(3) Funding

For the purpose of the authorities granted in this subsection, the Secretary of the Treasury may use the proceeds of the sale of any securities issued under chapter 31 of Title 31, and the purposes for which securities may be issued under chapter 31 of Title 31 are extended to include such purchases and the exercise of any rights in connection with such purchases. Any funds expended for the purchase of, or modifications to, obligations and securities, or the exercise of any rights received in connection with such purchases under this subsection shall be deemed appropriated at the time of such purchase, modification, or exercise.

(4) Termination of authority

The authority under this subsection (g), with the exception of paragraphs (2) and (3) of this subsection, shall expire December 31, 2009.

(5) Authority of the Director with respect to executive compensation

The Director shall have the power to approve, disapprove, or modify the executive compensation of the corporation, as defined under Regulation S-K, 17 C.F.R. 229.

(June 27, 1934, ch. 847, title III, § 304, 48 Stat. 1254; July 1, 1948, ch. 784, § 1, 62 Stat. 1206; Aug. 2, 1954, ch. 649, title II, § 201, 68 Stat. 615; Aug. 7, 1956, ch. 1029, title II, §§ 203, 204, 70 Stat. 1096; Pub. L. 85–10, § 1(c), Mar. 27, 1957, 71 Stat. 7; Pub. L. 85–104, title II, § 203, July 12, 1957, 71 Stat. 298; Pub. L. 86–372, title III, §§ 302, 305(a), Sept. 23, 1959, 73 Stat. 669, 670; Pub. L. 87–70, title VI, § 603(d), (e), June 30, 1961, 75 Stat. 176, 177; Pub. L. 88–560, title VII, §§ 701(b)(2), 703, 704, Sept. 2, 1964, 78 Stat. 800, 802; Pub. L. 89–566, § 1, Sept. 10, 1966, 80 Stat. 738; Pub. L. 89–754, title X, § 1007, Nov. 3, 1966, 80 Stat. 1285; Pub. L. 90–448, title VIII, §§ 802(p)–(s), 804(a), 805, Aug. 1, 1968, 82 Stat. 538, 542, 543; Pub. L. 91–351, title V, § 504, July 24, 1970, 84 Stat. 461; Pub. L. 93–383, title VIII, § 806(j), Aug. 22, 1974, 88 Stat. 728; Pub. L. 97–320, title VII, § 707(b), Oct. 15, 1982, 96 Stat. 1540; Pub. L. 98–479, title II, § 203(a)(1), Oct. 17, 1984, 98 Stat. 2229; Pub. L. 100–242, title IV, § 441(a), Feb. 5, 1988, 101 Stat. 1921; Pub. L. 101–73, title VII, § 731(m)(2), Aug. 9, 1989, 103 Stat. 436; Pub. L. 102–550, title XIII, § 1381(e)–(g), (s)(2), Oct. 28, 1992, 106 Stat. 3996, 4001; Pub. L. 110–289, div. A, title I, § 1117(a), July 30, 2008, 122 Stat. 2683; Pub. L. 111–203, title XIII, § 1304(a), July 21, 2010, 124 Stat. 2134.)

REFERENCES IN TEXT

Paragraph (a) of section 1716 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 101–73, title VII, § 731(m)(1)(A), Aug. 9, 1989, 103 Stat. 435. See section 1716(3) of this title.

AMENDMENTS

2010—Subsec. (g)(2)(C), (D). Pub. L. 111–203 added subpar. (C) and redesignated former subpar. (C) as (D).

2008—Subsec. (g). Pub. L. 110–289 added subsec. (g).

1992—Subsec. (b). Pub. L. 102–550, § 1381(e)(1), substituted a period for ''; but the aggregate amount of obligations of the corporation under this subsection outstanding at any one time shall not exceed fifteen times the sum of its capital, capital surplus, general surplus, reserves, and undistributed earnings unless a greater ratio shall be fixed at any time or from time to time by the Secretary of Housing and Urban Development. In no event shall any such obligations be issued if, at the time of such proposed issuance, and as a consequence thereof, the resulting aggregate amount of its outstanding obligations under this subsection would exceed the amount of the corporation's ownership pursuant to this section, free from any liens or encumbrances, of cash, mortgages or other security holdings, and obligations of the United States or guaranteed thereby, or obligations, participations, or other instruments which are lawful investments for fiduciary, trust, or public funds.'' after ''in such obligations''.

Subsec. (c). Pub. L. 102–550, § 1381(s)(2), substituted ''the Secretary's'' for ''his'' in two places, ''the Secretary'' for ''he'' after ''such price or prices as'', and ''the Secretary'' for ''him'' after ''the obligations acquired by''.

Subsec. (d). Pub. L. 102–550, § 1381(f), inserted at end ''The corporation shall insert appropriate language in all of the securities issued under this subsection clearly indicating that such securities, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the corporation.''

Subsec. (e). Pub. L. 102–550, § 1381(e)(2), struck out after third sentence ''The outstanding total principal amount of such obligations, which are entirely subordinated to the obligations of the corporation issued or to be issued under subsection (b) of this section, shall be deemed to be capital of the corporation for the purpose of determining the aggregate amount of obligations issued under subsection (b) of this section which may be outstanding at any one time.''

Subsec. (f). Pub. L. 102–550, § 1381(g), inserted ''of this title and assessments pursuant to section 4516 of this title'' in first sentence.

1989—Subsec. (a)(2). Pub. L. 101–73 inserted after third sentence ''The corporation shall not be permitted to use its lending authority (A) to advance funds to a mortgage seller on an interim basis, using mortgage loans as collateral, pending the sale of the mortgages in the secondary market; or (B) to originate mortgage loans.'' and struck out first two sentences which read as follows: ''In the further interest of assuring sound operation, any loan made by the corporation in its secondary market operations under this section, and any extension or renewal thereof, shall not exceed 90 per centum of the unpaid principal balances of the mortgages securing the loan, and shall bear interest at a rate consistent with general loan policies established from time to time by the corporation's board of directors. Any such loan shall mature in not more than twelve months and the term of any extension or renewal shall not exceed twelve months.''

1988—Subsec. (f). Pub. L. 100–242 added subsec. (f).

1984—Subsec. (c). Pub. L. 98–479 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as now or hereafter in force'' in two places.

1982—Subsec. (e). Pub. L. 97–320 struck out provision that the total principal amount of subordinated obligations which could be outstanding at any one time could not exceed two times the sum of (1) the capital of the corporation represented by its outstanding common stock and (2) its surplus and undistributed earnings at such time.

1974—Subsec. (a)(1). Pub. L. 93–383 substituted ''section 243 of the National Housing Act'', classified to section 1715z–8 of this title, for ''section 502 of the Emergency Home Finance Act of 1970'', which enacted such section 1715z–8. For purposes of amendment of subsec. (a)(1) of this section no change in text was required.

1970—Subsec. (a)(1). Pub. L. 91–351 inserted provision that nothing in this subchapter shall prohibit the corporation from purchasing, and making commitments to purchase, any mortgage with respect to which the Secretary of Housing and Urban Development has entered

into a contract with the corporation to make interest subsidy payments pursuant to section 1715z–8 of this title.

1968—Subsec. (a)(1). Pub. L. 90–448, §802(p), (s), substituted ''corporation'' for ''Association'' in six places, and ''corporation's'' for ''Association's'' in two places, and struck out provisions which prohibited the Association from purchasing any mortgage insured or guaranteed prior to Aug. 2, 1954.

Subsec. (a)(2). Pub. L. 90–448, §802(s), substituted ''corporation'' for ''Association'' in five places, and ''corporation's'' for ''Association's'', in three places.

Subsec. (b). Pub. L. 90–448, §802(q), (s), substituted ''corporation'' for ''Association'' in seven places, and ''corporation's'' for ''Association's'', and inserted provisions permitting the Secretary to establish a greater ratio than fifteen times for the aggregate amount of obligations outstanding.

Subsec. (c). Pub. L. 90–448, §802(r), struck out provisions which prohibited the Secretary of the Treasury from purchasing obligations under this subsection if all of the preferred stock of the Association held by him has been retired.

Subsec. (d). Pub. L. 90–448, §804(a), added subsec. (d). A prior subsec. (d) was repealed by Pub. L. 88–560.

Subsec. (e). Pub. L. 90–448, §805, added subsec. (e).

1966—Subsec. (a)(1). Pub. L. 89–754 struck out requirement that Association's advance commitments to purchase mortgages in its secondary market operations be issued at prices which are sufficient to facilitate home financing, but which are sufficiently below the price then offered by the Association for immediate purchase to prevent excessive sales to the Association pursuant to such commitments.

Subsec. (b). Pub. L. 89–566 raised limit on maximum amount of obligations outstanding under the subsection from ten times the sum of capital, capital surplus, general surplus, reserves, and undistributed earnings to fifteen times that sum.

1964—Subsec. (a)(2). Pub. L. 88–560, §703, substituted ''90 per centum'' for ''80 per centum''.

Subsec. (b). Pub. L. 88–560, §701(b)(2), substituted ''or obligations, participations, or other instruments which are lawful investments'' for ''or obligations which are lawful investments''.

Subsec. (d). Pub. L. 88–560, §704, repealed provisions which prohibited the Association from purchasing participations in its operations under this section.

1961—Subsec. (a). Pub. L. 87–70, §603(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 87–70, §603(e), inserted ''or other security holdings'' after ''mortgages''.

1959—Subsec. (a). Pub. L. 86–372, §302, substituted ''home financing'' for ''advance planning of home construction'' after ''sufficient to facilitate''.

Subsec. (b). Pub. L. 86–372, §305(a), substituted ''and obligations of the United States or guaranteed thereby, or obligations which are lawful investments for fiduciary, trust, or public funds'' for ''and bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States''.

1957—Subsec. (c). Pub. L. 85–104 substituted ''$2,250,000,000'' for ''$1,350,000,000''.

Pub. L. 85–10 substituted ''$1,350,000,000'' for ''$500,000,000'' plus an amount equal to the total of such reductions in the maximum dollar amount prescribed by section 1721(c) of this title as have theretofore been effected pursuant to that section: *Provided*, That such aggregate principal amount under this subsection shall in no event exceed $1,000,000,000''.

1956—Subsec. (a). Act Aug. 7, 1956, §§203, 204(a), substituted in second sentence ''within the range of market prices'' for ''at the market prices''; and inserted sentence that advance commitments to purchase mortgages in secondary market operations shall be issued only at prices which are sufficient to facilitate advance planning of home construction but sufficiently below price then offered by Association for immediate purchase to prevent excessive sales to the Association pursuant to such commitments.

Subsec. (d). Act Aug. 7, 1956, §204(b), struck out provisions prohibiting Association from making advance contracts or commitments to purchase mortgages but allowed Association to issue a purchase contract in an amount not exceeding the amount of the sale of mortgages purchased from the Association, entitling the holder to sell to the Association mortgages in the amount of the contract, upon terms prescribed by the Association.

1954—Act Aug. 2, 1954, amended section generally to substitute new provisions (formerly covered in sections 1716 and 1717 of this title) for provisions which related to exemption from taxation. See section 1723a(c) of this title.

1948—Act July 1, 1948, amended section generally to provide for exemption from taxation for the Association.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

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

§ 1720. Repealed. Pub. L. 98–181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240

Section, acts June 27, 1934, ch. 847, title III, §305, 48 Stat. 1254; July 1, 1948, ch. 784, §1, 62 Stat. 1206; Apr. 20, 1950, ch. 94, title I, §118, 64 Stat. 57; Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 616; Aug. 11, 1955, ch. 783, title I, §103, title IV, §402, 69 Stat. 636, 651; Aug. 7, 1956, ch. 1029, title II, §§205–208, 70 Stat. 1096; Pub. L. 85–10, §2, Mar. 27, 1957, 71 Stat. 8; Pub. L. 85–104, title II, §§204–207, July 12, 1957, 71 Stat. 298; Pub. L. 85–364, §§2, 3(a), 4, Apr. 1, 1958, 72 Stat. 73, 74; Pub. L. 86–372, title III, §§303(a), 304, Sept. 23, 1959, 73 Stat. 669; Pub. L. 87–70, title I, §101(c), title VI, §601(a), (b), June 30, 1961, 75 Stat. 153, 175, 176; Pub. L. 88–560, title I, §109(b), Sept. 2, 1964, 78 Stat. 777; Pub. L. 89–117, title VIII, §801, Aug. 10, 1965, 79 Stat. 493; Pub. L. 89–429, §3(a), May 24, 1966, 80 Stat. 166; Pub. L. 89–566, §3, Sept. 10, 1966, 80 Stat. 738; Pub. L. 89–754, title III, §310(d), title X, §§1005, 1020(c), Nov. 3, 1966, 80 Stat. 1270, 1285, 1296; Pub. L. 90–19, §1(a)(2), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title II, §201(g), title VIII, §806, Aug. 1, 1968, 82 Stat. 503, 544; Pub. L. 91–152, §2, title I, §115, Dec. 24, 1969, 83 Stat. 379, 385; Pub. L. 91–351, title IV, §401, July 24, 1970, 84 Stat. 458; Pub. L. 95–557, title III, §318(b), Oct. 31, 1978, 92 Stat. 2101; Pub. L. 96–399, title III, §338, Oct. 8, 1980, 94 Stat. 1657; Pub. L. 97–35, title III, §333(a)(1), (2), Aug. 13, 1981, 95 Stat. 413, related to the special assistance functions of the Government National Mortgage Association.

SAVINGS PROVISION

Section 483(b) of Pub. L. 98–181 provided that: ''Any purchase or commitment to purchase any mortgage pursuant to section 305 or 313 of the Federal National Mortgage Association Charter Act [former sections 1720 and 1723e of this title] made before the date of the enactment of this Act [Nov. 30, 1983], and the servicing and disposition of any such mortgage, shall continue to be governed by the provisions of such sections as they existed immediately before the effective date of this section [Nov. 30, 1983].''

§ 1721. Management and liquidation functions of Government National Mortgage Association

(a) Separate accountability of assets and liabilities

To carry out the purposes set forth in paragraph (c)[1] of section 1716 of this title, the Asso-

[1] See References in Text note below.

ciation is authorized and directed, as of the close of the cutoff date determined by the Association pursuant to section 1718(d)[1] of this title, to establish separate accountability for all of its assets and liabilities (exclusive of capital, surplus, surplus reserves, and undistributed earnings to be evidenced by preferred stock as provided in section 1718(d)[1] of this title, but inclusive of all rights and obligations under any outstanding contracts), and to maintain such separate accountability for the management and orderly liquidation of such assets and liabilities as provided in this section.

(b) Issuance of obligations to expedite substitution of private financing

For the purposes of this section and to assure that, to the maximum extent, and as rapidly as possible, private financing will be substituted for Treasury borrowings otherwise required to carry mortgages held under the aforesaid separate accountability, the Association is authorized to issue, upon the approval of the Secretary of the Treasury, and have outstanding at any one time obligations having such maturities and bearing such rate or rates of interest as may be determined by the Association with the approval of the Secretary of the Treasury, to be redeemable at the option of the Association before maturity in such manner as may be stipulated in such obligations; but in no event shall any such obligations be issued if, at the time of such proposed issuance, and as a consequence thereof, the resulting aggregate amount of its outstanding obligations under this subsection would exceed the amount of the Association's ownership under the aforesaid separate accountability, free from any liens or encumbrances, of cash, mortgages, and obligations of the United States or guaranteed thereby, or obligations, participations, or other instruments which are lawful investments for fiduciary, trust or public funds. The proceeds of any private financing effected under this subsection shall be paid to the Secretary of the Treasury in reduction of the indebtedness of the Association to the Secretary of the Treasury under the aforesaid separate accountability. The Association shall insert appropriate language in all of its obligations issued under this subsection clearly indicating that such obligations, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than the Association. The Association is authorized to purchase in the open market any of its obligations outstanding under this subsection at any time and at any price.

(c) Cutoff date as controlling purchases; total amount of mortgages and commitments

No mortgage shall be purchased by the Association in its operations under this section except pursuant to and in accordance with the terms of a contract or commitment to purchase the same made prior to the cutoff date provided for in section 1718(d)[1] of this title, which contract or commitment became a part of the aforesaid separate accountability, and the total amount of mortgages and commitments held by the Association under this section shall not, in any event, exceed $3,350,000,000: *Provided*, That such maximum amount shall be progressively reduced by the amount of cash realizations on account of principal of mortgages held under the aforesaid separate accountability and by cancellation of any commitments to purchase mortgages thereunder, as reflected by the books of the Association, with the objective that the entire aforesaid maximum amount shall be eliminated with the orderly liquidation of all mortgages held under the aforesaid separate accountability: *And provided further*, That nothing in this subsection shall preclude the Association from granting such usual and customary increases in the amounts of outstanding commitments (resulting from increased costs or otherwise) as have theretofore been covered by like increases in commitments granted by the agencies of the Federal Government insuring or guaranteeing the mortgages. There shall be excluded from the total amounts set forth in this subsection the amounts of any mortgages which, subsequent to May 31, 1954, are transferred by law to the Association and held under the aforesaid separate accountability.

(d) Issuance of obligations sufficient to carry out functions; character; purchase

The Association may issue to the Secretary of the Treasury its obligations in an amount outstanding at any one time sufficient to enable the Association to carry out its functions under this section, such obligations to mature not more than five years from their respective dates of issue, to be redeemable at the option of the Association before maturity in such manner as may be stipulated in such obligations. Each such obligation shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of the obligation of the Association. The Secretary of the Treasury is authorized to purchase any obligations of the Association to be issued under this section, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include any purchases of the Association's obligations hereunder.

(e) Acquisition of mortgages offered by Secretary of Housing and Urban Development

Notwithstanding any other provision of law, the Association is authorized, under the aforesaid separate accountability, to make commitments to purchase, and to purchase, service, or sell any obligations offered to it by the Secretary of Housing and Urban Development, or any mortgages covering residential property offered to it by any Federal instrumentality, or the head thereof. These shall be excluded from the total amounts set forth in subsection (c) of this section the amounts of any obligations or mortgages purchased by the Association pursuant to this subsection.

(f) Transfer of funds

Notwithstanding any of the provisions of this chapter or of any other law, an amount equal to the net decrease for the preceding fiscal year in the aggregate principal amount of all mortgages owned by the Association under this section shall, as of July 1 of each of the years 1961 through 1964, be transferred to and merged with the authority provided under section 1720(a)[2] of this title, and the amount of such authority as specified in section 1720(c)[2] of this title shall be increased by any amounts so transferred.

(g) Guarantee of principal and interest on trust certificates and other securities; fees and charges; subrogation; contract for extinguishment of right, title, or interest in mortgages; protection of interests; full faith and credit; commitments limited; limitation on fees or charges

(1) The Association is authorized, upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on such trust certificates or other securities as shall (i) be issued by the corporation under section 1719(d) of this title, or by any other issuer approved for the purposes of this subsection by the Association, and (ii) be based on and backed by a trust or pool composed of mortgages which are insured under this chapter, or which are insured or guaranteed under the Servicemen's Readjustment Act of 1944, title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or chapter 37 of title 38, or which are guaranteed under title XIII of the Public Health Service Act [42 U.S.C. 300e et seq.];[3] or guaranteed under section 1715z–13a of this title. The Association shall collect from the issuer a reasonable fee for any guaranty under this subsection and shall make such charges as it may determine to be reasonable for the analysis of any trust or other security arrangement proposed by the issuer. In the event the issuer is unable to make any payment of principal of or interest on any security guaranteed under this subsection, the Association shall make such payment as and when due in cash, and thereupon shall be subrogated fully to the rights satisfied by such payment. In any case in which (I) Federal law requires the reduction of the interest rate on any mortgage backing a security guaranteed under this subsection, (II) the mortgagor under the mortgage is a person in the military service, and (III) the issuer of such security fails to receive from the mortgagor the full amount of interest payment due, the Association may make payments of interest on the security in amounts not exceeding the difference between the amount payable under the interest rate on the mortgage and the amount of interest actually paid by the mortgagor. The Association is hereby empowered, in connection with any guaranty under this subsection, whether before or after any default, to provide by contract with the issuer for the extinguishment, upon default by the issuer, of any redemption, equitable, legal, or other right, title, or interest of the issuer in any mortgage or mortgages constituting the trust or pool against which the guaranteed securities are issued; and with respect to any issue of guaranteed securities, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such trust or pool shall become the absolute property of the Association subject only to the unsatisfied rights of the holders of the securities based on and backed by such trust or pool. No State or local law, and no Federal law (except Federal law enacted expressly in limitation of this subsection after October 8, 1980), shall preclude or limit the exercise by the Association of (A) its power to contract with the issuer on the terms stated in the preceding sentence, (B) its rights to enforce any such contract with the issuer, or (C) its ownership rights, as provided in the preceding sentence, in the mortgages constituting the trust or pool against which the guaranteed securities are issued. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guaranty under this subsection. There shall be excluded from the total amounts set forth in subsection (c) of this section the amounts of any mortgages acquired by the Association as a result of its operations under this subsection.

(2) Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to the extent of or in such amounts as any funding limitation approved in appropriation Acts, the Association shall enter into commitments to issue guarantees under this subsection in an aggregate amount of $110,000,000,000 during fiscal year 1996. There are authorized to be appropriated to cover the costs (as such term is defined in section 661a of title 2) of guarantees issued under this chapter by the Association such sums as may be necessary for fiscal year 1996.

(3)(A) No fee or charge in excess of 6 basis points may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to any guaranty of the timely payment of principal or interest on securities or notes based on or backed by mortgages that are secured by 1- to 4-family dwellings and (i) insured by the Federal Housing Administration under subchapter II of this chapter; or (ii) insured or guaranteed under the Serviceman's Readjustment Act of 1944, chapter 37 of title 38, or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

(B) The fees charged for the guaranty of securities or on notes based on or backed by mortgages not referred to in subparagraph (A), as authorized by other provisions of law, shall be set by the Association at a level not more than necessary to create reserves sufficient to meet anticipated claims based upon actuarial analysis, and for no other purpose.

(C) Fees or charges for the issuance of commitments or miscellaneous administrative fees of the Association shall not be on a competitive auction basis and shall remain at the level set for such fees or charges as of September 1, 1985, except that such fees or charges may be increased if reasonably related to the cost of administering the program, and for no other purpose.

[2] See References in Text note below.

[3] So in original. The semicolon probably should be a comma.

(D) Not less than 90 days before increasing any fee or charge under subparagraph (B) or (C), the Secretary shall submit to the Congress a certification that such increase is solely for the purpose specified in such subparagraph.

(E)(i) Notwithstanding subparagraphs (A) through (D), fees charged for the guarantee of, or commitment to guarantee, multiclass securities backed by a trust or pool of securities or notes guaranteed by the Association under this subsection, and other related fees shall be charged by the Association in an amount the Association deems appropriate. The Association shall take such action as may be necessary to reasonably assure that such portion of the benefit, resulting from the Association's multiclass securities program, as the Association determines is appropriate accrues to mortgagors who execute eligible mortgages after August 10, 1993.

(ii) The Association shall provide for the initial implementation of the program for which fees are charged under the first sentence of clause (i) by notice published in the Federal Register. The notice shall be effective upon publication and shall provide an opportunity for public comment. Not later than 12 months after publication of the notice, the Association shall issue regulations for such program based on the notice, comments received, and the experience of the Association in carrying out the program during such period.

(iii) The Association shall consult with persons or entities in such manner as the Association deems appropriate to ensure the efficient commencement and operation of the multiclass securities program.

(iv) No State or local law, and no Federal law (except Federal law enacted expressly in limitation of this clause after August 10, 1993) shall preclude or limit the exercise by the Association of its power to contract with persons or entities, and its rights to enforce such contracts, for the purpose of ensuring the efficient commencement and continued operation of the multiclass securities program.

(June 27, 1934, ch. 847, title III, § 306, 48 Stat. 1255; July 1, 1948, ch. 784, § 1, 62 Stat. 1209; Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Aug. 2, 1954, ch. 649, title II, § 201, 68 Stat. 618; Aug. 7, 1956, ch. 1029, title II, § 209, 70 Stat. 1097; Pub. L. 86–372, title III, §§ 305(a), 306(a), Sept. 23, 1959, 73 Stat. 670; Pub. L. 87–70, title VI, § 601(c), June 30, 1961, 75 Stat. 176; Pub. L. 88–560, title VII, § 701(b)(2), Sept. 2, 1964, 78 Stat. 800; Pub. L. 89–117, title VIII, § 802(b), Aug. 10, 1965, 79 Stat. 494; Pub. L. 90–19, § 1(k), May 25, 1967, 81 Stat. 18; Pub. L. 90–448, title VIII, § 804(b), Aug. 1, 1968, 82 Stat. 542; Pub. L. 93–222, § 7(c), Dec. 29, 1973, 87 Stat. 936; Pub. L. 96–399, title III, § 335, Oct. 8, 1980, 94 Stat. 1654; Pub. L. 97–35, title III, § 333(a)(3), Aug. 13, 1981, 95 Stat. 413; Pub. L. 98–181, title IV, § 481, Nov. 30, 1983, 97 Stat. 1239; Pub. L. 98–479, title II, § 203(a)(2), Oct. 17, 1984, 98 Stat. 2229; Pub. L. 100–14, Mar. 24, 1987, 101 Stat. 128; Pub. L. 100–242, title IV, § 446, Feb. 5, 1988, 101 Stat. 1922; Pub. L. 101–625, title III, § 339, Nov. 28, 1990, 104 Stat. 4147; Pub. L. 102–550, title V, §§ 531, 532, Oct. 28, 1992, 106 Stat. 3793; Pub. L. 103–66, title III, § 3004, Aug. 10, 1993, 107 Stat. 339; Pub. L. 103–120, § 10, Oct. 27, 1993, 107 Stat. 1151; Pub. L. 104–120, § 7, Mar. 28, 1996, 110 Stat. 836; Pub. L. 104–330, title VII, § 701(k), Oct. 26, 1996, 110 Stat. 4050; Pub. L. 105–244, title IX, § 972(a), Oct. 7, 1998, 112 Stat. 1837; Pub. L. 107–326, § 4, Dec. 4, 2002, 116 Stat. 2793; Pub. L. 108–199, div. A, title VII, § 774, Jan. 23, 2004, 118 Stat. 40.)

REFERENCES IN TEXT

Paragraph (c) of section 1716 of this title, referred to in subsec. (a), was redesignated par. (4) of section 1716 by Pub. L. 101–73, title VII, § 731(m)(1)(B), Aug. 9, 1989, 103 Stat. 435. Par. (4) of section 1716 was redesignated par. (5) by Pub. L. 102–550, title XIII, § 1381(a)(3), Oct. 28, 1992, 106 Stat. 3994.

Section 1718(d) of this title, referred to in subsecs. (a) and (c), authorizing the issuance of preferred stock to the Secretary of the Treasury, was repealed by Pub. L. 93–383, title VIII, § 806(i), Aug. 22, 1974, 88 Stat. 728.

Section 1720 of this title, referred to in subsec. (f), was repealed by Pub. L. 98–181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

The Housing Act of 1949, referred to in subsec. (g)(1), (3)(A), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Servicemen's Readjustment Act of 1944, referred to in subsec. (g)(1), (3)(A), is act June 22, 1944, ch. 268, 58 Stat. 284, as amended, which was classified generally to chapter 11C (§§ 693 to 697g) of former Title 38, Pensions, Bonuses, and Veterans' Relief, and which was repealed by section 14(87) of Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1273, the first section of which enacted Title 38, Veterans' Benefits. For distribution of sections 693 to 697g of former Title 38 to Title 38, Veterans' Benefits, see Table preceding section 101 of Title 38.

The Public Health Service Act, referred to in subsec. (g)(1), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title XIII of the Public Health Service Act, is title XIII of act July 1, 1944, ch. 373, as added by act Dec. 29, 1973, Pub. L. 93–222, § 2, 87 Stat. 914, which is classified generally to subchapter XI (§ 300e et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (g)(1). Pub. L. 108–199, in first sentence, struck out ''or title V of the Housing Act of 1949'' after ''mortgages which are insured under this chapter'' and inserted '', title V of the Housing Act of 1949,'' after ''1944''.

2002—Subsec. (g)(3)(A). Pub. L. 107–326 repealed Pub. L. 105–244, § 972(a). See 1998 Amendment note below.

1998—Subsec. (g)(3)(A). Pub. L. 105–244, § 972(a), which directed amendment of subpar. (A), effective Oct. 1, 2004, by substituting ''The Association shall assess and collect a fee in an amount equal to nine basis points'' for ''No fee or charge in excess of 6 basis points may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States)'', was repealed by Pub. L. 107–326. See 2002 Amendment note above and Effective Date of 1998 Amendment note below.

1996—Subsec. (g)(1). Pub. L. 104–330 inserted before period at end of first sentence ''; or guaranteed under section 1715z–13a of this title''.

Subsec. (g)(2). Pub. L. 104–120 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to the extent of or in such amounts as any funding limitation approved in appropriation Acts, the Association shall enter into commitments to issue guarantees under this subsection in an aggregate amount of

$107,700,000,000 during fiscal year 1993 and $91,696,000,000 during fiscal year 1994. There is authorized to be appropriated such sums as may be necessary to cover the costs (as such term is defined in section 661a of title 2) of guarantees issued under this chapter by the Association.''

1993—Subsec. (g)(2). Pub. L. 103–120 substituted ''$107,700,000,000'' for ''$88,000,000,000''.

Subsec. (g)(3)(E). Pub. L. 103–66 added subpar. (E).

1992—Subsec. (g)(1). Pub. L. 102–550, §532, inserted after third sentence ''In any case in which (I) Federal law requires the reduction of the interest rate on any mortgage backing a security guaranteed under this subsection, (II) the mortgagor under the mortgage is a person in the military service, and (III) the issuer of such security fails to receive from the mortgagor the full amount of interest payment due, the Association may make payments of interest on the security in amounts not exceeding the difference between the amount payable under the interest rate on the mortgage and the amount of interest actually paid by the mortgagor.''

Subsec. (g)(2). Pub. L. 102–550, §531, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to the extent of or in such amounts as any funding limitation approved in appropriation Acts, the Association shall enter into commitments to issue guarantees under this subsection in an aggregate amount of $84,982,000,000 during fiscal year 1991 and $88,296,000,000 during fiscal year 1992.''

1990—Subsec. (g)(2). Pub. L. 101–625 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to any funding limitation approved in appropriation Acts, the Association shall enter into commitments to issue guarantees under this subsection in an aggregate amount of $150,000,000,000 for fiscal year 1988, and $156,000,000,000 for fiscal year 1989.''

1988—Subsec. (g)(2). Pub. L. 100–242 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to any funding limitation approved in appropriation Acts, the Association shall enter into commitments for each of the fiscal years 1984 and 1985 to issue guarantees under this subsection for each such fiscal year in an aggregate amount of $68,250,000,000.''

1987—Subsec. (g)(3). Pub. L. 100–14 added par. (3).

1984—Subsec. (d). Pub. L. 98–479 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as now or hereafter in force'' in two places.

1983—Subsec. (g)(2). Pub. L. 98–181 substituted ''Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to any funding limitation approved in appropriation Acts, the Association shall enter into commitments for each of the fiscal years 1984 and 1985 to issue guarantees under this subsection for each such fiscal year in an aggregate amount of $68,250,000,000'' for ''During fiscal year 1982, the Association may not enter into commitments to issue guarantees under this subsection in an aggregate amount in excess of $69,542,000,000''.

1981—Subsec. (g). Pub. L. 97–35 redesignated existing provisions as par. (1), substituted ''(i)'' for ''(1)'' and ''(ii)'' for ''(2)'', and added par. (2).

1980—Subsec. (g). Pub. L. 96–399 inserted provisions relating to Federal, State, or local law, and substituted ''The Association is hereby'' for ''Any Federal, State, or other law to the contrary notwithstanding, the Association is hereby''.

1973—Subsec. (g). Pub. L. 93–222 included mortgages which are guaranteed under title XIII of the Public Health Service Act.

1968—Subsec. (g). Pub. L. 90–448 added subsec. (g).

1967—Subsec. (e). Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' for ''Housing and Home Finance Agency or its Administrator, or by such Agency's constituent units or agencies or the heads thereof''.

1965—Subsec. (e). Pub. L. 89–117 authorized Association to deal in any obligations offered to it by Housing and Home Finance Agency or its Administrator or by such Agency's units or agencies or by heads thereof as well as residential mortgages offered to it by any Federal instrumentality, or head thereof.

1964—Subsec. (b). Pub. L. 88–560 substituted ''or obligations, participations, or other instruments which are lawful investments'' for ''or obligations which are lawful investments''.

1961—Subsec. (f). Pub. L. 87–70 added subsec. (f).

1959—Subsec. (b). Pub. L. 86–372, §305(a), substituted ''and obligations of the United States or guaranteed thereby, or obligations which are lawful investments for fiduciary, trust, or public funds'' for ''and bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States''.

Subsec. (e). Pub. L. 86–372, §306(a), added subsec. (e).

1956—Subsec. (c). Act Aug. 7, 1956, §209(a), struck out ''and subsection (e) of this section'' after ''set forth in this subsection'' in last sentence.

Subsec. (e). Act Aug. 7, 1956, §209(b), repealed provisions which related to applicability of prior authorized total amount of investments, etc., to functions under this section and section 1720 of this title.

1954—Act Aug. 2, 1954, amended section generally by substituting new provisions and subdividing section into subsecs. (a) to (e).

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

1948—Act July 1, 1948, amended section generally to provide for liquidation of Association.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–244, title IX, §972(b), Oct. 7, 1998, 112 Stat. 1837, which provided that the amendment made by section 972 was effective Oct. 1, 2004, was repealed by Pub. L. 107–326, §4, Dec. 4, 2002, 116 Stat. 2793.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–120 to be construed to have become effective Oct. 1, 1995, see section 13(a) of Pub. L. 104–120, set out as an Effective and Termination Dates of 1996 Amendments note under section 1437d of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

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

AUTHORIZATION TO ENTER INTO ADDITIONAL COMMITMENTS TO INSURE LOANS AND GUARANTEE MORTGAGE-BACKED SECURITIES DURING SPECIFIC FISCAL YEARS; TEMPORARY EXTENSION OF CERTAIN PROGRAMS RELATING TO HOUSING AND COMMUNITY DEVELOPMENT

Fiscal year 1988—Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327, provided: ''That each provision of law amended by Public Law 100–179 [set out below] is amended by striking 'December 16, 1987' each place it appears and inserting 'March 15, 1988'.''

Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018, provided: ''That each provision of law amended by Public Law 100–170 [set out below] is amended by striking 'December 2, 1987' each place it appears and inserting 'December 16, 1987'.''

Pub. L. 100–170, Nov. 17, 1987, 100 Stat. 914, provided: ''That each provision of law amended by Public Law 100–154 [set out below] is amended by striking 'November 15, 1987' and inserting 'December 2, 1987'.''

Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890, provided: ''That each provision of law amended by Public Law 100–122 [set out below], including those provisions amended by section 2 of such Public Law, is amended by striking out 'October 31, 1987' wherever it appears and inserting in lieu thereof 'November 15, 1987'.''

Pub. L. 100–122, §1, Sept. 30, 1987, 101 Stat. 793, provided that: ''Each provision of law amended by Public Law 99–430 [set out below] is amended by striking out 'September 30, 1987' wherever it appears and inserting in lieu thereof 'October 31, 1987'.''

Fiscal year 1987—Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986, provided: ''That each provision of law amended by Public Law 99–345 [set out below] is amended by striking out 'September 30, 1986' wherever it appears and inserting in lieu thereof 'September 30, 1987'.''

Fiscal year 1986—Pub. L. 99–349, title I, July 2, 1986, 100 Stat. 728, provided that: ''The applicable limitation on additional commitments to insure mortgages and loans to carry out the purposes of the National Housing Act [12 U.S.C. 1701 et seq.] during fiscal year 1986 is increased by an additional $57,580,000,000 of mortgage and loan principal.'' and

''The applicable limitation on new commitments to issue guarantees to carry out the purposes of section 306 of the National Housing Act [12 U.S.C. 1721] during fiscal year 1986 is increased by an additional $49,000,000,000 of principal.''

Pub. L. 99–345, June 24, 1986, 100 Stat. 673, provided that:

''SECTION 1. Each provision of law amended by Public Law 99–289 [set out below], is amended by striking out 'June 6, 1986' wherever it appears and inserting in lieu thereof 'September 30, 1986'.

''SEC. 2. The applicable limitation on additional commitments to insure mortgages and loans to carry out the purposes of the National Housing Act [12 U.S.C. 1701 et seq.] during fiscal year 1986 is increased by an additional $9,500,000,000 of mortgage and loan principal.''

Pub. L. 99–289, May 2, 1986, 100 Stat. 412, provided that:

''SECTION 1. FEDERAL HOUSING ADMINISTRATION FUND.

''(a) The applicable limitation on additional commitments to insure mortgages and loans to carry out the purposes of the National Housing Act [12 U.S.C. 1701 et seq.] during fiscal year 1986 is increased by an additional $17,000,000,000 of mortgage and loan principal.

''(b) Each provision of law amended by Public Law 99–267 [amending sections 1703, 1715h, 1715*l*, 1715z, 1715z–9, 1715z–10, 1715z–14, 1748h–1, 1748h–2, 1749bb, 1749aaa, 1749bbb, and 2811 of this title and sections 1452b, 1485, 1490, 1490c, 4026, 4056, 4101, and 5302 of Title 42, The Public Health and Welfare, and provisions set out as a note under section 1701q of this title] is amended by striking out 'April 30, 1986' wherever it appears and inserting in lieu thereof 'June 6, 1986'.

''SEC. 2. GOVERNMENT NATIONAL MORTGAGE ASSOCIATION GUARANTEES OF MORTGAGE-BACKED SECURITIES.

''The applicable limitation on new commitments to issue guarantees to carry out the purposes of section 306 of the National Housing Act [12 U.S.C. 1721] during fiscal year 1986 is increased by an additional $60,684,750,000 of principal.

''SEC. 3. ADMINISTRATIVE PROVISION.

''(a) The Secretary of Housing and Urban Development (hereinafter referred to as the 'Secretary') shall estimate the rates at which the authority to make commitments to insure mortgages and loans under the National Housing Act [12 U.S.C. 1701 et seq.], and the authority to make commitments to issue guarantees under section 306(g) of that Act [12 U.S.C. 1721(g)], are likely to be used for the remainder of any fiscal year. The Secretary shall make these estimates at such times as the Secretary deems appropriate, but not less frequently than monthly.

''(b) If an estimate under subsection (a) indicates that either limitation on authority to make commitments for a fiscal year referred to in subsection (a) will be reached before the end of that fiscal year, or in any event whenever 75 per centum of either authority to make commitments has been utilized, the Secretary shall promptly so notify the Committee on Appropriations and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Appropriations and the Committee on Banking, Finance and Urban Affairs [now Committee on Financial Services] of the House of Representatives.''

SPECIAL ASSISTANCE FUNCTIONS FUND; TRANSFER OF FUNDS

Pub. L. 98–371, title I, July 18, 1984, 98 Stat. 1218, directed Secretary to transfer all assets acquired and liabilities incurred pursuant to section 1720 of this title to management and liquidating functions fund established pursuant to this section, and that on Oct. 1, 1984, each outstanding obligation issued by Secretary of Housing and Urban Development to Secretary of the Treasury pursuant to section 1720(d) of this title, together with any promise to repay principal and unpaid interest which had accrued on each obligation, and any other term or condition specified by each such obligation, was canceled.

EMERGENCY MORTGAGE PURCHASE ASSISTANCE; TRANSFER OF FUNDS

For transfer of all assets acquired and liabilities incurred pursuant to section 1723e of this title to management and liquidating functions fund established by this section, with provision for cancellation of obligations, see title I [part] of Pub. L. 98–371, set out as a note under section 1723e of this title.

ADMINISTRATIVE EXPENSES IN CONNECTION WITH THE SALE OF CERTAIN MORTGAGES TO THE FEDERAL NATIONAL MORTGAGE ASSOCIATION

Section 306(b) of Pub. L. 86–372, as amended by Pub. L. 90–19, §16(b), May 25, 1967, 81 Stat. 25; Pub. L. 90–448, title VIII, §807(a), Aug. 1, 1968, 82 Stat. 544, provided that: ''In connection with the sale of any mortgages to the Government National Mortgage Association pursuant to section 306(e) of the Federal National Mortgage Association Charter Act [subsection (e) of this section], the Secretary of Housing and Urban Development is authorized, and any other official, unit, or agency selling such mortgages thereunder is directed, to transfer to the Association from time to time, from authorizations, limitations, and funds available for administrative expenses of such official, unit, or agency in connection with the same mortgages, such amounts thereof as said Secretary determines to be required for administrative expenses of the Association in connection with the purchase, servicing, and sale of such mortgages: *Provided*, That no such transfer shall be made after a budget estimate of the Association with respect to the same mortgages has been submitted to and finally acted upon by the Congress.''

§ 1722. Benefits and burdens incident to administration of functions and operations under sections 1720 and 1721

All of the benefits and burdens incident to the administration of the functions and operations of the Association under sections 1720 and 1721, respectively, of this title, after allowance for related obligations of the Association, its prorated expenses, and the like, including amounts required for the establishment of such reserves as the Secretary of Housing and Urban Development shall deem appropriate, shall inure solely

to the Secretary of the Treasury, and such related earnings or other amounts as become available shall be paid annually by the Association to the Secretary of the Treasury for covering into miscellaneous receipts.

(June 27, 1934, ch. 847, title III, §307, as added Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 619; amended Pub. L. 90–448, title VIII, §802(v), (w), Aug. 1, 1968, 82 Stat. 539.)

REFERENCES IN TEXT

Section 1720 of this title, referred to in text, was repealed by Pub. L. 98–181, title IV, §483(a), Nov. 30, 1983, 97 Stat. 1240.

PRIOR PROVISIONS

A prior section 307 of act June 27, 1934, ch. 847, title III, 48 Stat. 1255; amended Feb. 3, 1938, ch. 13, §8, 52 Stat. 24, related to exemption from taxation, prior to the general amendment of this subchapter by act July 1, 1948, ch. 784, §1, 62 Stat. 1206, and was subsequently covered by section 1719 of this title until the general amendment of this subchapter by act Aug. 2, 1954. See section 1723a(c) of this title.

AMENDMENTS

1968—Pub. L. 90–448 repealed subsecs. (a) and (b) which related to separate accountability and to functions of the Association under sections 1720 and 1721 of this title, redesignated subsec. (c) as the entire section, and substituted ''Secretary of Housing and Urban Development'' for ''board of directors of the Association''.

EFFECTIVE DATE OF 1968 AMENDMENT

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

§ 1723. Management

(a) Government National Mortgage Association

All the powers and duties of the Government National Mortgage Association shall be vested in the Secretary of Housing and Urban Development and the Association shall be administered under the direction of the Secretary. Within the limitations of law, the Secretary shall determine the general policies which shall govern the operations of the Association, and shall have power to adopt, amend, and repeal bylaws governing the performance of the powers and duties granted to or imposed upon it by law. There is hereby established in the Department of Housing and Urban Development the position of President, Government National Mortgage Association, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary shall select and effect the appointment of qualified persons to fill the offices of vice president, and such other offices as may be provided for in the bylaws. Persons appointed under the preceding sentence shall perform such executive functions, powers, and duties as may be prescribed by the bylaws or by the Secretary, and such persons shall be executive officers of the Association and shall discharge all such executive functions, powers, and duties.

(b) Federal National Mortgage Association

The Federal National Mortgage Association shall have a board of directors, which shall consist of 13 persons, or such other number that the Director determines appropriate, who shall be elected annually by the common stockholders. Except to the extent that action under section 4636a of this title temporarily results in a lesser number, the board shall at all times have as members at least one person from the homebuilding industry, at least one person from the mortgage lending industry, at least one person from the real estate industry, and at least one person from an organization that has represented consumer or community interests for not less than 2 years or one person who has demonstrated a career commitment to the provision of housing for low-income households. Each member of the board of directors shall be elected for a term ending on the date of the next annual meeting of the stockholders. Any seat on the board which becomes vacant after the annual election of the directors shall be filled by the board, but only for the unexpired portion of the term. Within the limitations of law and regulation, the board shall determine the general policies which shall govern the operations of the corporation, and shall have power to adopt, amend, and repeal bylaws governing the performance of the powers and duties granted to or imposed upon it by law. The board of directors shall select and effect the appointment of qualified persons to fill the offices of president and vice president, and such other offices as may be provided for in the bylaws. Any member of the board who is a full-time officer or employee of the Federal Government shall not, as such member, receive compensation for his services.

(June 27, 1934, ch. 847, title III, §308, as added Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 620; amended Pub. L. 89–174, §5(b), Sept. 9, 1965, 79 Stat. 669; Pub. L. 89–754, title X, §1020(d), Nov. 3, 1966, 80 Stat. 1296; Pub. L. 90–19, §1(*l*), (m), May 25, 1967, 81 Stat. 18, 19; Pub. L. 90–448, title VIII, §802(y), Aug. 1, 1968, 82 Stat. 539; Pub. L. 94–375, §17(a), Aug. 3, 1976, 90 Stat. 1076; Pub. L. 98–440, title II, §207, Oct. 3, 1984, 98 Stat. 1696; Pub. L. 102–550, title XIII, §1381(h)(1), (i), Oct. 28, 1992, 106 Stat. 3996; Pub. L. 110–289, div. A, title I, §§1153(b)(2), 1162(a)(1), July 30, 2008, 122 Stat. 2775, 2781.)

PRIOR PROVISIONS

A prior section 308 of act June 27, 1934, ch. 847, title III, 48 Stat. 1255, related to depositories of public moneys, prior to the general amendment of this subchapter by act July 1, 1948, ch. 784, §1, 62 Stat. 1206.

Prior provisions on the subject of this section were contained in section 1716 of this title.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–289, §1162(a)(1), in first sentence, substituted ''13 persons, or such other number that the Director determines appropriate, who'' for ''eighteen persons, five of whom shall be appointed annually by the President of the United States, and the remainder of whom'', in second sentence, struck out ''appointed by the President'' after ''as members'', in third sentence, struck out ''appointed or'' after ''directors shall be'' and '', except that any such appointed member may be removed from office by the President for good cause'' after ''the stockholders'', in fourth sentence, struck out ''elective'' after ''Any'', and struck out fifth sentence which read as follows: ''Any appointive seat which becomes vacant shall be filled by appointment of the President, but only for the unexpired portion of the term.''

Pub. L. 110–289, § 1153(b)(2), in second sentence, substituted ''Except to the extent that action under section 4636a of this title temporarily results in a lesser number, the'' for ''The''.

1992—Subsec. (b). Pub. L. 102–550, in second sentence, struck out ''and'' after ''mortgage lending industry,'' and inserted '', and at least one person from an organization that has represented consumer or community interests for not less than 2 years or one person who has demonstrated a career commitment to the provision of housing for low-income households'' and in third sentence, substituted ''any such appointed member'' for ''any such member''.

1984—Subsec. (b). Pub. L. 98–440 substituted '', which shall consist of eighteen persons, five of whom'' for ''which shall consist of fifteen persons, one-third of whom''.

1976—Subsec. (a). Pub. L. 94–375 substituted provision establishing, in the Department of Housing and Urban Development, the position of president of the Government National Mortgage Association, to be filled by the President, by and with the consent of the Senate, for provision that the Secretary appoint the president of the Association.

1968—Subsec. (a). Pub. L. 90–448, § 802(y)(1)–(6), designated existing provisions as subsec. (a), inserted provisions directing that the powers and duties of the Government National Mortgage Association shall be vested in the Secretary of Housing and Urban Development and that the Association shall be administered under the direction of the Secretary, and empowering the Secretary to adopt, amend, and repeal bylaws, and struck out provisions which related to the Board of Directors of the Federal National Mortgage Association.

Subsec. (b). Pub. L. 90–448, § 802(y)(7), added subsec. (b).

1967—Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' for ''Housing and Home Finance Administrator'', and ''the Secretary'' for ''said Administrator'', wherever appearing.

1966—Pub. L. 89–754 struck out subsec. (a) designation.

1965—Pub. L. 89–174 struck out next to last sentence which provided that the basic rate of compensation of the position of president of the Association shall be the same as the basic rate of compensation established for the heads of the constituent agencies of the Housing and Home Finance Agency.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1381(h)(2) of Pub. L. 102–550 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to the first annual appointment by the President of members to the board of directors of the Federal National Mortgage Association that occurs after the date of the enactment of this Act [Oct. 28, 1992].''

EFFECTIVE DATE OF 1968 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date of amendment by Pub. L. 89–174, see section 11(a) of Pub. L. 89–174, set out as an Effective Date note under section 3531 of Title 42, The Public Health and Welfare.

TRANSITIONAL PROVISION

Pub. L. 110–289, div. A , title I, § 1162(a)(2), July 30, 2008, 122 Stat. 2781, provided that: ''The amendments made by paragraph (1) [amending this section] shall not apply to any appointed position of the board of directors of the Federal National Mortgage Association until the expiration of the annual term for such position during which the effective date under section 1163 [set out as an Effective Date of 2008 Amendment note under section 3132 of Title 5, Government Organization and Employees] occurs.''

POWERS AND DUTIES OF POSITION OF GNMA PRESIDENT TO REMAIN IN EFFECT UNTIL POSITION FILLED

Section 17(e) of Pub. L. 94–375 provided that notwithstanding the amendment of subsec. (a) of this section, rights, powers, and duties of position of President, Government National Mortgage Association, as in effect on Aug. 2, 1976, remain in effect until the newly established position has been filled in accordance with the terms of this Act.

§ 1723a. General powers of Government National Mortgage Association and Federal National Mortgage Association

(a) Seal, and other matters incident to operation

Each of the bodies corporate named in section 1717(a)(2) of this title shall have power to adopt, alter, and use a corporate seal, which shall be judicially noticed; to enter into and perform contracts, leases, cooperative agreements, or other transactions, on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, Territory, or possession, or the Commonwealth of Puerto Rico, or with any political subdivision thereof, or with any person, firm, association, or corporation; to execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers; in its corporate name, to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal, but no attachment, injunction, or other similar process, mesne or final, shall be issued against the property of the Association or against the Association with respect to its property; to conduct its business without regard to any qualification or similar statute in any State of the United States, including the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States; to lease, purchase, or acquire any property, real, personal, or mixed, or any interest therein, to hold, rent, maintain, modernize, renovate, improve, use, and operate such property, and to sell, for cash or credit, lease, or otherwise dispose of the same, at such time and in such manner as and to the extent that it may deem necessary or appropriate; to prescribe, repeal, and amend or modify, rules, regulations, or requirements governing the manner in which its general business may be conducted; to accept gifts or donations of services, or of property, real, personal, or mixed, tangible, or intangible, in aid of any of its purposes; and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

(b) Determination with respect to obligations and expenditures

Except as may be otherwise provided in this subchapter, in chapter 91 of title 31, or in other laws specifically applicable to Government corporations, the Association shall determine the necessity for and the character and amount of its obligations and expenditures and the manner in which they shall be incurred, allowed, paid, and accounted for.

(c) Exemption from taxation

(1) The Association, including its franchise, capital, reserves, surplus, mortgages or other se-

curity holdings, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the Association shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(2) The corporation, including its franchise, capital, reserves, surplus, mortgages or other security holdings, and income, shall be exempt from all taxation now or hereafter imposed by any State, territory, possession, Commonwealth, or dependency of the United States, or by the District of Columbia, or by any county, municipality, or local taxing authority, except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent as other real property is taxed.

(d) Appointment and compensation of personnel; use of services of other agencies

(1) Subject to the provisions of section 1723(a) of this title, the Secretary of Housing and Urban Development shall have power to select and appoint or employ such officers, attorneys, employees, and agents of the Association, to vest them with such powers and duties, and to fix and to cause the Association to pay such compensation to them for their services, as he may determine, subject to the civil service and classification laws. With the consent of any Government corporation or Federal Reserve bank, or of any board, commission, independent establishment, or executive department of the Government, the Association may avail itself on a reimbursable basis of the use of information, services, facilities, officers, and employees thereof, including any field service thereof, in carrying out the provisions of the subchapter.

(2) The board of directors of the corporation shall have the power to select and appoint or employ such officers, attorneys, employees, and agents, to vest them with such powers and duties, and to fix and to cause the corporation to pay such compensation to them for their services, as the board of directors determines reasonable and comparable with compensation for employment in other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities, except that a significant portion of potential compensation of all executive officers (as such term is defined in paragraph (3)(C)) of the corporation shall be based on the performance of the corporation; and any such action shall be without regard to the Federal civil service and classification laws. Appointments, promotions, and separations so made shall be based on merit and efficiency, and no political tests or qualifications shall be permitted or given consideration. Each officer and employee of the corporation who is employed by the corporation prior to January 31, 1972, and who on the day previous to the beginning of such employment will have been subject to the civil service retirement law (subch. III of ch. 83 of title 5) shall, so long as the employment of such officer or employee by the corporation continues without a break in continuity of service, continue to be subject to such law; and for the purpose of such law the employment of such officer or employee by the corporation without a break in continuity of service shall be deemed to be employment by the Government of the United States. The corporation shall contribute to the Civil Service Retirement and Disability Fund a sum as provided by section 8334(a) of title 5, except that such sum shall be determined by applying to the total basic pay (as defined in section 8331(3) of title 5 and except as hereinafter provided) paid to the employees of the corporation who are covered by the civil service retirement law, the per centum rate determined annually by the Director of the Office of Personnel Management to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in section 8334(a) of title 5. The corporation shall also pay into the Civil Service Retirement and Disability Fund such portion of the cost of administration of the fund as is determined by the Director of the Office of Personnel Management to be attributable to its employees. Notwithstanding the foregoing provisions, there shall not be considered for the purposes of the civil service retirement law that portion of the basic pay in any one year of any officer or employee of the corporation which exceeds the basic pay provided for positions listed in section 5312 of title 5 on the last day of such year: *Provided*, That with respect to any person whose employment is made subject to the civil service retirement law by section 806 of the Housing and Community Development Act of 1974, there shall not be considered for the purposes of such law that portion of the basic pay of such person in any one year which exceeds the basic pay provided for positions listed in section 5316 of such title 5 on the last day of such year. Except as provided in this subsection, the corporation shall not be subject to the provisions of title 5.

(3)(A) Not later than June 30, 1993, and annually thereafter, the corporation shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on (i) the comparability of the compensation policies of the corporation with the compensation policies of other similar businesses, (ii) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the corporation's proxy statement for the annual meeting of shareholders for the preceding year) earned by executive officers of the corporation during the preceding year that was based on the corporation's performance, and (iii) the comparability of the corporation's financial performance with the performance of other similar businesses. The report shall include a copy of the corporation's proxy statement for the annual meeting of shareholders for the preceding year.

(B) Notwithstanding the first sentence of paragraph (2), after October 28, 1992, the corporation may not enter into any agreement or contract to provide any payment of money or other thing

of current or potential value in connection with the termination of employment of any executive officer of the corporation, unless such agreement or contract is approved in advance by the Director of the Federal Housing Finance Agency. The Director may not approve any such agreement or contract unless the Director determines that the benefits provided under the agreement or contract are comparable to benefits under such agreements for officers of other public and private entities involved in financial services and housing interests who have comparable duties and responsibilities. For purposes of this subparagraph, any renegotiation, amendment, or change after October 28, 1992, to any such agreement or contract entered into on or before October 28, 1992, shall be considered entering into an agreement or contract.

(C) For purposes of this paragraph, the term ''executive officer'' has the meaning given the term in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4502].

(4) Notwithstanding any other provision of this section, the corporation shall not transfer, disburse, or pay compensation to any executive officer, or enter into an agreement with such executive officer, without the approval of the Director, for matters being reviewed under section 1318 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4518).

(e) Prohibition against use of names; injunction; damages

No individual, association, partnership, or corporation, except the bodies corporate named in section 1717(a)(2) of this title, shall hereafter use the words ''Federal National Mortgage Association,'' ''Government National Mortgage Association,'' or any combination of such words, as the name or a part thereof under which the individual, association, partnership, or corporation shall do business. Violations of the foregoing sentence may be enjoined by any court of general jurisdiction at the suit of the proper body corporate. In any such suit, the plaintiff may recover any actual damages flowing from such violation, and, in addition, shall be entitled to punitive damages (regardless of the existence or nonexistence of actual damages) of not exceeding $100 for each day during which such violation is committed or repeated.

(f) Preparation of forms of obligations and certificates

In order that the Association may be supplied with such forms of obligations or certificates as it may need for issuance under this subchapter, the Secretary of the Treasury is authorized, upon request of the Association, to prepare such forms as shall be suitable and approved by the Association, to be held in the Treasury subject to delivery, upon order of the Association. The engraved plates, dies, bed pieces, and other material executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Association shall reimburse the Secretary of the Treasury for any expenses incurred in the preparation, custody, and delivery of such forms.

(g) Depositaries, custodians, and fiscal agents

The Federal Reserve banks are authorized and directed to act as depositaries, custodians, and fiscal agents for each of the bodies corporate named in section 1717(a)(2) of this title, for its own account or as fiduciary, and such banks shall be reimbursed for such services in such manner as may be agreed upon; and each of such bodies corporate may itself act in such capacities, for its own account or as fiduciary, and for the account of others.

(h), (i) Repealed. Pub. L. 102–550, title XIII, § 1381(k), Oct. 28, 1992, 106 Stat. 3997

(j) Audit; access to books, etc.; report of audit

(1) The programs, activities, receipts, expenditures, and financial transactions of the corporation shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General. The representatives of the Government Accountability Office shall have access to such books, accounts, financial records, reports, files, and such other papers, things, or property belonging to or in use by the corporation and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. A report on each such audit shall be made by the Comptroller General to the Congress. The corporation shall reimburse the Government Accountability Office for the full cost of any such audit as billed therefor by the Comptroller General.

(2) To carry out this subsection, the representatives of the Government Accountability Office shall have access, upon request to the corporation or any auditor for an audit of the corporation under subsection (*l*) of this section, to any books, accounts, financial records, reports, files, or other papers, things, or property belonging to or in use by the corporation and used in any such audit and to any papers, records, files, and reports of the auditor used in such an audit.

(k) Financial reports; submission to Director; contents

(1) The corporation shall submit to the Director of the Federal Housing Finance Agency annual and quarterly reports of the financial condition and operations of the corporation which shall be in such form, contain such information, and be submitted on such dates as the Director shall require.

(2) Each such annual report shall include—

(A) financial statements prepared in accordance with generally accepted accounting principles;

(B) any supplemental information or alternative presentation that the Director may require; and

(C) an assessment (as of the end of the corporation's most recent fiscal year), signed by the chief executive officer and chief accounting or financial officer of the corporation, of—

(i) the effectiveness of the internal control structure and procedures of the corporation; and

(ii) the compliance of the corporation with designated safety and soundness laws.

(3) The corporation shall also submit to the Director any other reports required by the Director pursuant to section 1314 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4514].

(4) Each report of financial condition shall contain a declaration by the president, vice president, treasurer, or any other officer designated by the board of directors of the corporation to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief.

(*l*) Independent audits of financial statements

(1) The corporation shall have an annual independent audit made of its financial statements by an independent public accountant in accordance with generally accepted auditing standards.

(2) In conducting an audit under this subsection, the independent public accountant shall determine and report on whether the financial statements of the corporation (A) are presented fairly in accordance with generally accepted accounting principles, and (B) to the extent determined necessary by the Director, comply with any disclosure requirements imposed under subsection (k)(2)(B) of this section.

(m) Mortgage data collection and reporting requirements

(1) The corporation shall collect, maintain, and provide to the Director of the Federal Housing Finance Agency, in a form determined by the Director, data relating to its mortgages on housing consisting of 1 to 4 dwelling units. Such data shall include—

(A) the income, census tract location, race, and gender of mortgagors under such mortgages;

(B) the loan-to-value ratios of purchased mortgages at the time of origination;

(C) whether a particular mortgage purchased is newly originated or seasoned;

(D) the number of units in the housing subject to the mortgage and whether the units are owner-occupied; and

(E) any other characteristics that the Secretary considers appropriate, to the extent practicable.

(2) The corporation shall collect, maintain, and provide to the Director of the Federal Housing Finance Agency, in a form determined by the Director, data relating to its mortgages on housing consisting of more than 4 dwelling units. Such data shall include—

(A) census tract location of the housing;

(B) income levels and characteristics of tenants of the housing (to the extent practicable);

(C) rent levels for units in the housing;

(D) mortgage characteristics (such as the number of units financed per mortgage and the amount of loans);

(E) mortgagor characteristics (such as nonprofit, for-profit, limited equity cooperatives);

(F) use of funds (such as new construction, rehabilitation, refinancing);

(G) type of originating institution; and

(H) any other information that the Secretary considers appropriate, to the extent practicable.

(3)(A) Except as provided in subparagraph (B), this subsection shall apply only to mortgages purchased by the corporation after December 31, 1992.

(B) This subsection shall apply to any mortgage purchased by the corporation after the date determined under subparagraph (A) if the mortgage was originated before such date, but only to the extent that the data referred in paragraph (1) or (2), as applicable, is available to the corporation.

(n) Report on housing activities; contents; public disclosure

(1) The corporation shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Director of the Federal Housing Finance Agency a report on its activities under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4561 et seq.].

(2) The report under this subsection shall—

(A) include, in aggregate form and by appropriate category, statements of the dollar volume and number of mortgages on owner-occupied and rental properties purchased which relate to each of the annual housing goals established under such subpart;

(B) include, in aggregate form and by appropriate category, statements of the number of families served by the corporation, the income class, race, and gender of homebuyers served, the income class of tenants of rental housing (to the extent such information is available), the characteristics of the census tracts, and the geographic distribution of the housing financed;

(C) include a statement of the extent to which the mortgages purchased by the corporation have been used in conjunction with public subsidy programs under Federal law;

(D) include statements of the proportion of mortgages on housing consisting of 1 to 4 dwelling units purchased by the corporation that have been made to first-time homebuyers, as soon as providing such data is practicable, and identifying any special programs (or revisions to conventional practices) facilitating homeownership opportunities for first-time homebuyers;

(E) include, in aggregate form and by appropriate category, the data provided to the Director of the Federal Housing Finance Agency under subsection (m)(1)(B) of this section;

(F) compare the level of securitization versus portfolio activity;

(G) assess underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures, that affect the purchase of mortgages for low- and moderate-income families, or that may yield disparate results based on the race of the borrower, including revisions thereto to promote affordable housing or fair lending;

(H) describe trends in both the primary and secondary multifamily housing mortgage markets, including a description of the progress made, and any factors impeding progress toward standardization and securitization of mortgage products for multifamily housing;

(I) describe trends in the delinquency and default rates of mortgages secured by housing for low- and moderate-income families that have been purchased by the corporation, including a comparison of such trends with delinquency and default information for mortgage products serving households with incomes above the median level that have been purchased by the corporation, and evaluate the impact of such trends on the standards and levels of risk of mortgage products serving low- and moderate-income families;

(J) describe in the aggregate the seller and servicer network of the corporation, including the volume of mortgages purchased from minority-owned, women-owned, and community-oriented lenders, and any efforts to facilitate relationships with such lenders;

(K) describe the activities undertaken by the corporation with nonprofit and for-profit organizations and with State and local governments and housing finance agencies, including how the corporation's activities support the objectives of comprehensive housing affordability strategies under section 12705 of title 42; and

(L) include any other information that the Director of the Federal Housing Finance Agency considers appropriate.

(3)(A) The corporation shall make each report under this subsection available to the public at the principal and regional offices of the corporation.

(B) Before making a report under this subsection available to the public, the corporation may exclude from the report information that the Director of the Federal Housing Finance Agency has determined is proprietary information under section 1326 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4546].

(*o*) Affordable Housing Advisory Council

(1) Not later than 4 months after October 28, 1992, the corporation shall appoint an Affordable Housing Advisory Council to advise the corporation regarding possible methods for promoting affordable housing for low- and moderate-income families.

(2) The Affordable Housing Advisory Council shall consist of 15 individuals, who shall include representatives of community-based and other nonprofit and for-profit organizations and State and local government agencies actively engaged in the promotion, development, or financing of housing for low- and moderate-income families.

(June 27, 1934, ch. 847, title III, § 309, as added Aug. 2, 1954, ch. 649, title II, § 201, 68 Stat. 620; amended Pub. L. 87–70, title VI, § 603(e), June 30, 1961, 75 Stat. 177; Pub. L. 90–448, title VIII, § 802(z)–(ee), Aug. 1, 1968, 82 Stat. 540, 541; Pub. L. 92–310, title II, § 223(c), June 6, 1972, 86 Stat. 206; Pub. L. 93–383, title VIII, § 806(k), Aug. 22, 1974, 88 Stat. 728; Pub. L. 94–375, § 17(b), Aug. 3, 1976, 90 Stat. 1076; Pub. L. 95–128, title IV, § 408(c), Oct. 12, 1977, 91 Stat. 1138; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 98–440, title II, §§ 208, 209, 213(a), Oct. 3, 1984, 98 Stat. 1696, 1698; Pub. L. 98–479, title II, § 203(a)(3), Oct. 17, 1984, 98 Stat. 2229; Pub. L. 100–242, title IV, § 444, Feb. 5, 1988, 101 Stat. 1922; Pub. L. 101–73, title VII, § 731(m)(3), Aug. 9, 1989, 103 Stat. 436; Pub. L. 102–550, title XIII, § 1381(j)–(q), (s)(3), Oct. 28, 1992, 106 Stat. 3996–4001; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–289, div. A, title I, §§ 1113(b)(1), 1161(b), July 30, 2008, 122 Stat. 2678, 2779.)

REFERENCES IN TEXT

Section 806 of the Housing and Community Development Act of 1974, referred to in subsec. (d)(2), is section 806 of Pub. L. 93–383, title VIII, Aug. 22, 1974, 88 Stat. 727. Subsection (k) of section 806 amended this subsec. (d)(2) relative to employment subject to the civil service retirement law. For complete classification of section 806 to the Code, see Tables.

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, referred to in subsec. (n)(1), (2)(A), is title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941. Subpart B of part 2 of subtitle A of the Act is classified generally to subpart 2 (§ 4561 et seq.) of part B of subchapter I of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note under section 4501 of this title and Tables.

CODIFICATION

Pub. L. 110–289, § 1161(b)(2)(C), which directed amendment of par. (3)(B) of this section, was executed to par. (3)(B) of subsec. (n) of this section, to reflect the probable intent of Congress. See 2008 Amendment note below.

PRIOR PROVISIONS

Prior provisions on the subject of subsecs. (a) and (c) to (e) of this section were contained in sections 1716, 1719, and 1721 of this title.

AMENDMENTS

2008—Subsec. (d)(3)(B). Pub. L. 110–289, § 1161(b)(1), substituted ''Director of the Federal Housing Finance Agency'' for ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development''.

Subsec. (d)(4). Pub. L. 110–289, § 1113(b)(1), added par. (4).

Subsec. (k)(1). Pub. L. 110–289, § 1161(b)(1), substituted ''Director of the Federal Housing Finance Agency'' for ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development''.

Subsec. (m)(1), (2). Pub. L. 110–289, § 1161(b)(2)(A), substituted ''to the Director of the Federal Housing Finance Agency, in a form determined by the Director'' for ''to the Secretary, in a form determined by the Secretary'' in introductory provisions.

Subsec. (n)(1). Pub. L. 110–289, § 1161(b)(2)(B)(i), substituted ''and the Director of the Federal Housing Finance Agency'' for ''and the Secretary''.

Subsec. (n)(2)(E), (L). Pub. L. 110–289, § 1161(b)(2)(B)(ii), substituted ''Director of the Federal Housing Finance Agency'' for ''Secretary''.

Subsec. (n)(3)(B). Pub. L. 110–289, § 1161(b)(2)(C), substituted ''Director of the Federal Housing Finance Agency'' for ''Secretary''. See Codification note above.

2004—Subsec. (j). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' wherever appearing.

1992—Subsec. (d)(2). Pub. L. 102–550, § 1381(s)(3)(A)(ii), which directed the substitution, in last sentence, of ''the basic pay of such persons'' for ''his basic pay'', was executed by making the substitution in penultimate sentence to reflect the probable intent of Congress, because the words ''his basic pay'' do not appear in last sentence.

Pub. L. 102–550, § 1381(j)(1), (s)(3)(A)(i), in first sentence, substituted ''as the board of directors determines reasonable and comparable with compensation

for employment in other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities, except that a significant portion of potential compensation of all executive officers (as such term is defined in paragraph (3)(C)) of the corporation shall be based on the performance of the corporation'' for ''as it may determine'' and in third sentence ''the employment of such officer or employee'' for ''his employment'' in two places.

Subsec. (d)(3). Pub. L. 102–550, §1381(j)(2), added par. (3).

Subsec. (e). Pub. L. 102–550, §1381(s)(3)(B), substituted ''the individual, association, partnership, or corporation'' for ''he or it''.

Subsecs. (h), (i). Pub. L. 102–550, §1381(k), struck out subsec. (h) which related to regulatory power over Federal National Mortgage Association, approval for issuance of stock and other instruments, relation of mortgage purchases to national goal, audits, and a report to Congress and subsec. (i) which related to requests for approval submitted by Federal National Mortgage Association to Secretary, report to Congress, extension of approval period, and effect of inaction by Secretary.

Subsec. (j). Pub. L. 102–550, §1381(*l*), designated existing provisions as par. (1), inserted first sentence and struck out former first sentence which read as follows: ''The mortgage transactions of the corporation may be subject to audit by the Comptroller General of the United States in accordance with the principles and procedures applicable to commercial corporation transactions under such rules and regulations as may be prescribed by the Comptroller General.'', and added par. (2).

Subsecs. (k) to (*o*). Pub. L. 102–550, §1381(m)–(q), added subsecs. (k) to (*o*), respectively.

1989—Subsec. (j). Pub. L. 101–73 added subsec. (j).

1988—Subsec. (i). Pub. L. 100–242 inserted at end of second sentence '', but such 45-day period may not be extended for any other reason or for any period in addition to or other than such 15-day period''.

1984—Subsec. (b). Pub. L. 98–479 substituted ''chapter 91 of title 31'' for ''the Government Corporation Control Act''.

Subsec. (h). Pub. L. 98–440, §§208, 213(a), substituted ''issued by the corporation before October 1, 1985,'' for ''issued by the Corporation'' and substituted ''shall, not later than June 30 of each year, report to the Congress on the activities of the corporation under this subchapter'' for ''shall conduct a review of the financial operations of the corporation and undertake a study of the extent to which the activities of the corporation meet the purposes of this subchapter. Such review and study shall be completed and transmitted to the Congress on or before July 1, 1978.''

Subsec. (i). Pub. L. 98–440, §209, added subsec. (i).

1977—Subsec. (h). Pub. L. 95–128 inserted provision for review of the financial operations of the corporation and a study respecting how the activities of the corporation meet the purposes of this subchapter and transmittal of the review and study to the Congress.

1976—Subsec. (d)(1). Pub. L. 94–375 substituted ''Subject to the provisions of section 1723(a) of this title, the Secretary'' for ''The Secretary''.

1974—Subsec. (d)(2). Pub. L. 93–383 inserted ''positions listed'' before ''in section 5312'' and proviso relating to persons whose employment is subject to the civil service law by section 806 of the Housing and Community Development Act of 1974, and substituted reference to Jan. 31, 1972, for reference to termination of transitional period referred to in section 810(b) of the Housing and Urban Development Act of 1968.

1972—Subsec. (d)(1). Pub. L. 92–310 struck out provisions which related to bonds of officers, attorneys, employees, and agents of the Association and which permitted the Association to pay the premiums therefor.

1968—Subsec. (a). Pub. L. 90–448, §802(z), among other changes, expanded scope to include both the Government National Mortgage Association and the Federal National Mortgage Association, substituted ''conduct its business without regard to any qualification or similar statute'' for ''conduct its business'', and struck out provisions which empowered the Federal National Mortgage Association, by its board of directors, to adopt, amend, and repeal bylaws.

Subsec. (c). Pub. L. 90–448, §802(aa), designated existing provisions as par. (1), and struck out provisions which required the Association, with respect to its secondary market operations under section 1719 of this title, to pay annually to the Secretary of the Treasury an amount equivalent to the amount of Federal income taxes for which it would be subject if it were not exempt from such taxes with respect to such secondary market operations, and added par. (2).

Subsec. (d). Pub. L. 90–448, §802(bb), designated existing provisions as par. (1), substituted ''Secretary of Housing and Urban Development'' for ''Chairman of the Board'', and ''agents of the Association'' for ''agents'', and added par. (2).

Subsec. (e). Pub. L. 90–448, §802(cc), prohibited the use of the name Government National Mortgage Association, authorized injunctions, and permitted recovery of actual damages and punitive damages, and eliminated provisions which made violations of this subsection a misdemeanor punishable by a fine of not more than $100 or imprisonment for not more than 30 days, or both, for each day during which the violation is committed or repeated.

Subsec. (g). Pub. L. 90–448, §802(dd), authorized and directed the Federal Reserve Banks to act for the Government National Mortgage Association, and empowered each of the bodies corporate to act as depositary, custodian, and fiscal agent, for its own account or as fiduciary, and for the account of others.

Subsec. (h). Pub. L. 90–448, §802(ee), added subsec. (h).

1961—Subsec. (c). Pub. L. 87–70 inserted ''or other security holdings'' after ''mortgages''.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 806(k) of Pub. L. 93–383 provided that the amendment made by that section does not apply with respect to any person receiving an annuity on the date of the enactment of Pub. L. 93–383, which was approved Aug. 22, 1974.

EFFECTIVE DATE OF 1968 AMENDMENT

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

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''United States Civil Service Commission'' pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year

period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

PROPOSAL BY FEDERAL NATIONAL MORTGAGE ASSOCIATION RESPECTING MORTGAGE-BACKED SECURITIES PROGRAM; APPROVAL, ETC.

Pub. L. 96–399, title III, § 330, Oct. 8, 1980, 94 Stat. 1652, provided that: ''If the Federal National Mortgage Association submits to the Secretary of Housing and Urban Development or the Secretary of the Treasury, after the date of enactment of this section [Oct. 8, 1980], a proposal with respect to undertaking a mortgage-backed securities program, the Secretary of Housing and Urban Development or the Secretary of the Treasury, as the case may be, shall, within 90 days after submission of such proposal, approve the proposal or transmit to the Congress a report explaining why the proposal has not been approved.''

§ 1723b. Investment of funds

Moneys of the Association not invested in mortgages or other security holdings or in operating facilities shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed thereby, or in obligations, participations, or other instruments which are lawful investments for fiduciary, trust, or public funds.

(June 27, 1934, ch. 847, title III, § 310, as added Aug. 2, 1954, ch. 649, title II, § 201, 68 Stat. 621; amended Pub. L. 86–372, title III, § 305(b), Sept. 23, 1959, 73 Stat. 670; Pub. L. 87–70, title VI, § 603(e), June 30, 1961, 75 Stat. 177; Pub. L. 88–560, title VII, § 701(b)(3), Sept. 2, 1964, 78 Stat. 800.)

PRIOR PROVISIONS

Prior provisions on the subject of this section were formerly contained in section 1718 of this title.

AMENDMENTS

1964—Pub. L. 88–560 authorized investment of funds in participations and other instruments which are lawful investments.

1961—Pub. L. 87–70 inserted ''or other security holdings'' after ''mortgages''.

1959—Pub. L. 86–372 substituted ''in obligations of the United States or guaranteed thereby, or in obligations which are lawful investments for fiduciary, trust, or public funds'' for ''in bonds or other obligations of, or in bonds or other obligations guaranteed as to principal and interest by, the United States''.

§ 1723c. Obligations, participations, or other instruments as lawful investments; acceptance as security; exempt securities

All obligations, participations, or other instruments issued by either of the bodies corporate named in section 1717(a)(2) of this title shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority and control of the United States or any officer or officers thereof. All stock, obligations, securities, participations, or other instruments issued pursuant to this subchapter shall, to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission.

(June 27, 1934, ch. 847, title III, § 311, as added Aug. 2, 1954, ch. 649, title II, § 201, 68 Stat. 622; amended Pub. L. 88–560, title VII, § 701(b)(1), Sept. 2, 1964, 78 Stat. 800; Pub. L. 90–448, title VIII, § 802(ff), Aug. 1, 1968, 82 Stat. 542; Pub. L. 98–440, title II, § 213(b), Oct. 3, 1984, 98 Stat. 1698; Pub. L. 102–550, title XIII, § 1381(r), Oct. 28, 1992, 106 Stat. 4001.)

AMENDMENTS

1992—Pub. L. 102–550 struck out before period at end ''; but all such issuances by the Association and all issuances of stock, and debt obligations convertible into stock, by the corporation shall be made only with the approval of the Secretary of Housing and Urban Development''.

1984—Pub. L. 98–440 inserted ''by the Association and all issuances of stock, and debt obligations convertible into stock, by the corporation''.

1968—Pub. L. 90–448 substituted ''either of the bodies corporate named in section 1717(a)(2) of this title'' for ''the Association,'' and inserted provisions directing that all stock, obligations, securities, participations, or other instruments issued pursuant to this subchapter be deemed to be exempt securities, and requiring approval of the Secretary for all issuances.

1964—Pub. L. 88–560 inserted '', participations, or other instruments'' after ''obligations''.

EFFECTIVE DATE OF 1968 AMENDMENT

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

§ 1723d. Transfer of certain functions to Association

The functions of the Housing and Home Finance Administrator (including the function of making payments to the Secretary of the Treasury) under section 2 of Reorganization Plan Numbered 22 of 1950, together with the notes and capital stock of the Federal National Mortgage Association held by said Administrator thereunder, are transferred to the Federal National Mortgage Association.

(Aug. 2, 1954, ch. 649, title II, § 207, 68 Stat. 622.)

REFERENCES IN TEXT

Reorganization Plan Numbered 22 of 1950, referred to in text, is set out as a note under section 1717 of this title.

CODIFICATION

Section was enacted as part of the Housing Act of 1954, and not as part of the National Housing Act which comprises this chapter or of the Federal National Mortgage Charter Association Act which comprises this subchapter.

§ 1723e. Repealed. Pub. L. 98–181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240

Section, act June 27, 1934, ch. 847, title III, § 313, as added Oct. 18, 1974, Pub. L. 93–449, § 3(a), 88 Stat. 1364; amended July 2, 1975, Pub. L. 94–50, title II §§ 201–206, 89 Stat. 254, 255; Aug. 3, 1976, Pub. L. 94–375, § 13(e)(1), 90 Stat. 1075; Oct. 12, 1977, Pub. L. 95–128, title IV, § 407(a)–(d), 91 Stat. 1137, 1138; Oct. 8, 1980, Pub. L. 96–399, title III, § 337(b), 94 Stat. 1655, related to the interim

mortgage and security purchasing authority of the Association.

SAVINGS PROVISION

For continued application of former sections 1720 and 1723e of this title to any purchase or commitment to purchase any mortgage made pursuant to those sections before Nov. 30, 1983, and the servicing and disposition of any such mortgage, see section 483(b) of Pub. L. 98–181, set out as a note under section 1720 of this title.

EFFECTIVE DATE

Section 3(b) of Pub. L. 93–449, as amended by Pub. L. 94–50, title II, §207, July 2, 1975, 89 Stat. 256; Pub. L. 94–375, §13(d), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 95–128, title IV, §407(e), Oct. 12, 1977, 91 Stat. 1138; Pub. L. 95–406, §3, Sept. 30, 1978, 92 Stat. 880; Pub. L. 95–557, title III, §303, Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96–71, §3, Sept. 28, 1979, 93 Stat. 502; Pub. L. 96–105, §3, Nov. 8, 1979, 93 Stat. 795; Pub. L. 96–153, title III, §303, Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96–372, §4, Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96–399, title III, §337(a), Oct. 8, 1980, 94 Stat. 1655, which related to the effective date of former section 1723e of this title, was repealed by Pub. L. 98–181, title IV, §483(a), Nov. 30, 1983, 97 Stat. 1240.

EMERGENCY MORTGAGE PURCHASE ASSISTANCE; TRANSFER OF FUNDS

Pub. L. 98–371, title I, July 18, 1984, 98 Stat. 1218, in part directed Secretary to transfer all assets acquired and liabilities incurred pursuant to this section to management and liquidating functions fund established pursuant to section 1721 of this title, and that on Oct. 1, 1984, each outstanding obligation issued by Secretary of Housing and Urban Development to Secretary of the Treasury pursuant to subsec. (c) of this section, together with any promise to repay principal and unpaid interest which had accrued on each obligation, and any other term or condition specified by each such obligation, was canceled.

§ 1723f. Repealed. Pub. L. 96–294, title V, § 533, June 30, 1980, 94 Stat. 740

Section, act June 27, 1934, ch. 847, title III, §314, as added Nov. 9, 1978, Pub. L. 95–619, title II, §242, 92 Stat. 3228, related to the purchase of energy conserving home improvement loans and advances of credit by the Association under the direction of the Secretary.

§§ 1723g, 1723h. Repealed. Pub. L. 102–550, title IX, § 912(i)(2), Oct. 28, 1992, 106 Stat. 3876

Section 1723g, act June 27, 1934, ch. 847, title III, §315, as added Nov. 9, 1978, Pub. L. 95–619, title II, §243, 92 Stat. 3230; amended June 30, 1980, Pub. L. 96–294, title V, §531, 94 Stat. 737; Oct. 17, 1984, Pub. L. 98–479, title II, §203(a)(4), 98 Stat. 2229, set out authority of Solar Energy and Energy Conservation Bank to purchase loans and advances of credit for energy conservation improvements or solar energy systems.

Section 1723h, act June 27, 1934, ch. 847, title III, §316, as added Nov. 9, 1978, Pub. L. 95–619, title II, §244, 92 Stat. 3231; amended June 30, 1980, Pub. L. 96–294, title V, §532, 94 Stat. 739; Oct. 17, 1984, Pub. L. 98–479, title II, §203(a)(5), 98 Stat. 2229, set out authority of Solar Energy and Energy Conservation Bank to purchase mortgages secured by newly constructed homes with solar energy systems.

§ 1723i. Civil money penalties against issuers

(a) In general

(1) Authority

Whenever an issuer or custodian approved under section 1721(g) of this title knowingly and materially violates any provisions of subsection (b) of this section, the Secretary of Housing and Urban Development may impose a civil money penalty on the issuer or the custodian in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty and may be imposed whether or not the Secretary imposes other administrative sanctions.

(2) Amount of penalty

The amount of the penalty, as determined by the Secretary, may not exceed $5,000 for each violation, except that the maximum penalty for all violations by a particular issuer or custodian during any one-year period shall not exceed $1,000,000. Each violation of a provision of subsection (b)(1) of this section shall constitute a separate violation with respect to each pool of mortgages. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

(b) Violations for which penalty may be imposed

(1) Violations

The violations by an issuer or a custodian for which the Secretary may impose a civil money penalty under subsection (a) of this section are the following:

(A) Failure to make timely payments of principal and interest to holders of securities guaranteed under section 1721(g) of this title.

(B) Failure to segregate cash flow from pooled mortgages or to deposit either principal and interest funds or escrow funds into special accounts with a depository institution whose accounts are insured by the National Credit Union Administration or by the Federal Deposit Insurance Corporation through the Deposit Insurance Fund.

(C) Use of escrow funds for any purpose other than that for which they were received.

(D) Transfer of servicing for a pool of mortgages to an issuer not approved under this subchapter, unless expressly permitted by statute, regulation, or contract approved by the Secretary.

(E) Failure to maintain a minimum net worth in accordance with requirements prescribed by the Association;

(F) Failure to promptly notify the Association in writing of any changes that materially affect the business status of an issuer.

(G) Submission to the Association of false information in connection with any securities guaranteed, or mortgages pooled, under section 1721(g) of this title.

(H) Hiring, or retaining in employment, an officer, director, principal, or employee whose duties involve, directly or indirectly, programs administered by the Association while such person was under suspension or debarment by the Secretary.

(I) Submission to the Association of a false certification either on its own behalf or on behalf of another person or entity.

(J) Failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to, the application for

approval as an issuer of securities under section 1721(g) of this title.

(K) Violation of any provisions of this subchapter or any implementing regulation, handbook, or participant letter issued under authority of this subchapter.

(2) Notification to Attorney General

Before taking action to impose a civil money penalty for a violation under paragraph (1)(G) or paragraph (1)(I), the Secretary shall inform the Attorney General of the United States.

(c) Agency procedures

(1) Establishment

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a) of this section. The standards and procedures—

(A) shall provide for the Secretary to make the determination to impose the penalty;

(B) shall provide for the imposition of a penalty only after an issuer or a custodian has been given notice of, and opportunity for, a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Final orders

If no hearing is requested within 15 days of receipt of a notice of opportunity for hearing, the imposition of a penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (a) of this section, consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before December 15, 1989), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine by regulations.

(4) Reviewability of imposition of penalty

The Secretary's determination or order imposing a penalty under subsection (a) of this section shall not be subject to review, except as provided in subsection (d) of this section.

(d) Judicial review of agency determination

(1) In general

After exhausting all administrative remedies established by the Secretary under subsection (c)(1) of this section, an issuer or a custodian against which the Secretary has imposed a civil money penalty under subsection (a) of this section may obtain a review of the penalty and such ancillary issues as may be addressed in the notice provided under subsection (c)(1)(A) of this section in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

(2) Objections not raised in hearing

A court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (c)(1) of this section unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence, which was not presented at such hearing, is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

(3) Scope of review

The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5.

(4) Order to pay penalty

Notwithstanding any other provision of law, the court shall have the power in any such review to order payment of the penalty imposed by the Secretary.

(e) Action to collect penalty

If any issuer or custodian fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (a) of this section, after the determination or order is no longer subject to review as provided by subsections (c)(1) and (d) of this section, the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the issuer or custodian and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(f) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(g) "Knowingly" defined

The term ''knowingly'' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(h) Regulations

The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(i) Deposit of penalties

The Secretary shall deposit all civil money penalties collected under this section into moneys of the Association pursuant to section 1722 of this title.

(June 27, 1934, ch. 847, title III, §317, as added Pub. L. 101–235, title I, §110(a), Dec. 15, 1989, 103 Stat. 2011; amended Pub. L. 104–208, div. A, title II, §2704(d)(13)(A), Sept. 30, 1996, 110 Stat. 3009–490; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §9(f)(1), Feb. 15, 2006, 119 Stat. 3618.)

AMENDMENTS

2006—Subsec. (b)(1)(B). Pub. L. 109–173 substituted ''Deposit Insurance Fund'' for ''Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations''.

Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(13)(A). See 1996 Amendment note below.

1996—Subsec. (b)(1)(B). Pub. L. 104–208, §2704(d)(13)(A), which directed substitution of ''Deposit Insurance Fund'' for ''Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE

Section 110(b) of Pub. L. 101–235 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply only with respect to—

''(1) violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989]; and

''(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation referred to in the amendment that occurs on or after such date.''

SUBCHAPTER IV—INSURANCE OF SAVINGS AND LOAN ACCOUNTS

§§ 1724 to 1730d. Repealed. Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363

Section 1724, acts June 27, 1934, ch. 847, title IV, §401, 48 Stat. 1255; July 16, 1952, ch. 883, 66 Stat. 727; July 28, 1959, Pub. L. 86–112, 73 Stat. 262; Oct. 16, 1966, Pub. L. 89–695, title III, §302(a), 80 Stat. 1055; Dec. 23, 1969, Pub. L. 91–151, title I, §8(a)(1), 83 Stat. 375; Oct. 28, 1974, Pub. L. 93–495, title I, §§101(b)(1), 103(a)(1), 88 Stat. 1501, 1503; Mar. 31, 1980, Pub. L. 96–221, title III, §308(b)(1)(A), 94 Stat. 147, defined terms used in this subchapter.

Section 1725, acts June 27, 1934, ch. 847, title IV, §402, 48 Stat. 1256; May 28, 1935, ch. 150, §22, 49 Stat. 298; 1947 Reorg. Plan No. 3, eff. July 29, 1947, 12 F.R. 4981, 61 Stat. 954; July 3, 1948, ch. 825, §2, 62 Stat. 1240; June 27, 1950, ch. 369, §§5, 6, 64 Stat. 258; Aug. 2, 1954, ch. 649, title V, §501(1), title VIII, §802(b), 68 Stat. 633, 642; June 11, 1960, Pub. L. 86–507, §1(12), 74 Stat. 200; Aug. 16, 1973, Pub. L. 93–100, §4, 87 Stat. 343; Oct. 28, 1974, Pub. L. 93–495, title I, §105(d), 88 Stat. 1504; Oct. 28, 1977, Pub. L. 95–147, §2(b), 91 Stat. 1227; Oct. 15, 1982, Pub. L. 97–320, title I, §125(a), (b), title III, §314, 96 Stat. 1485, 1499; Aug. 10, 1987, Pub. L. 100–86, title III, §§304, 306(b), (i), 101 Stat. 597, 601, 603, related to creation of Federal Savings and Loan Insurance Corporation.

Section 1726, acts June 27, 1934, ch. 847, title IV, §403, 48 Stat. 1257; May 28, 1935, ch. 150, §§23, 24, 49 Stat. 298; July 14, 1952, ch. 723, §10(a)(5), 66 Stat. 604; Aug. 11, 1955, ch. 783, title I, §111, 69 Stat. 641; Sept. 2, 1964, Pub. L. 88–560, title IX, §901(b), 78 Stat. 804; July 24, 1970, Pub. L. 91–351, title VII, §707, 84 Stat. 463; Oct. 28, 1974, Pub. L. 93–495, title I, §105(a), 88 Stat. 1503; Nov. 10, 1978, Pub. L. 95–630, title XII, §1203, 92 Stat. 3711; Mar. 31, 1980, Pub. L. 96–221 title IV, §§407(b), 409, 94 Stat. 160; Oct. 15, 1982, Pub. L. 97–320, title I, §115(a), title II, §202(c), (d), 96 Stat. 1475, 1492; Aug. 10, 1987, Pub. L. 100–86, title V, §504(a), 101 Stat. 632, related to insurance of accounts and eligibility provisions.

Section 1727, acts June 27, 1934, ch. 847, title IV, §404, 48 Stat. 1258; May 28, 1935, ch. 150, §25, 49 Stat. 298; June 27, 1950, ch. 369, §§7, 8, 64 Stat. 259; Sept. 8, 1961, Pub. L. 87–210, §§3–6, 75 Stat. 483; Aug. 10, 1965, Pub. L. 89–117, title XI, §1110(d), 79 Stat. 508; Sept. 21, 1968, Pub. L. 90–505, §6(a), 82 Stat. 858; Dec. 23, 1969, Pub. L. 91–151, title I, §6(a), 83 Stat. 375; Dec. 24, 1969, Pub. L. 91–152, title IV, §416(c)(1), 83 Stat. 401; Dec. 22, 1971, Pub. L. 92–213, §5, 85 Stat. 776; Aug. 16, 1973, Pub. L. 93–100, §6, 87 Stat. 344; Oct. 28, 1974, Pub. L. 93–495, title I, §115, 88 Stat. 1507; Oct. 15, 1982, Pub. L. 97–320, title I, §126, 96 Stat. 1485; Aug. 10, 1987, Pub. L. 100–86, title III, §§305, 306(c), (f), (g), 307, title V, §505(c), 101 Stat. 600–603, 633, related to primary and secondary services.

Section 1728, acts June 27, 1934, ch. 847, title IV, §405, 48 Stat. 1259; June 27, 1950, ch. 369, §9, 64 Stat. 259; Sept. 21, 1950, ch. 967, §5, 64 Stat. 894; Aug. 2, 1954, ch. 649, title V, §501(2), 68 Stat. 633; Oct. 16, 1966, Pub. L. 89–695, title III, §§302(b), 303(b), 80 Stat. 1055, 1056; Dec. 23, 1969, Pub. L. 91–151, title I, §8(a)(2), 83 Stat. 375; Oct. 28, 1974, Pub. L. 93–495, title I, §§101(b)(2), (3), 103(a)(2), 88 Stat. 1501, 1503; Dec. 26, 1974, Pub. L. 93–541, §1, 88 Stat. 1739; Nov. 10, 1978, Pub. L. 95–630, title XIV, §1401(b), 92 Stat. 3712; Dec. 21, 1979, Pub. L. 96–153, title III, §323(b), 93 Stat. 1120; Mar. 31, 1980, Pub. L. 96–221, title III, §308(b)(1)(B), 94 Stat. 147; Oct. 15, 1982, Pub. L. 97–320, title I, §128, 96 Stat. 1486; Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095, related to payment of insurance, statute of limitations with respect to claims, and insurance of public funds.

Section 1729, acts June 27, 1934, ch. 847, title IV, §406, 48 Stat. 1259; May 28, 1935, ch. 150, §§26, 27, 49 Stat. 299; 1947 Reorg. Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Aug. 2, 1954, ch. 649, title VIII, §802(c)(2), 68 Stat. 643; Aug. 11, 1955, ch. 783, title I, §109(a)(3), (b), 69 Stat. 640, 641; July 7, 1968, Pub. L. 90–389, §6, 82 Stat. 295; Nov. 10, 1978, Pub. L. 95–630, title I, §105(b)(2), 92 Stat. 3647; Oct. 15, 1982, Pub. L. 97–320, title I, §§122, 141(a)(6), title II, §§202(a), 206, 96 Stat. 1480, 1489, 1496; Jan. 12, 1983, Pub. L. 97–457, §§5, 9(a), (b)(1), 96 Stat. 2507, 2508; Aug. 10, 1987, Pub. L. 100–86, title IV, §405, title V, §509(a), 101 Stat. 613, 635, related to liquidation of insured institutions.

Section 1730, acts June 27, 1934, ch. 847, title IV, §407, 48 Stat. 1260; June 27, 1950, ch. 369, §11, 64 Stat. 259; Aug. 2, 1954, ch. 649, title V, §501(3), 68 Stat. 633; Aug. 11, 1955, ch. 783, title I, §109(a)(3), 69 Stat. 640; Oct. 16, 1966, Pub. L. 89–695, title I, §102(a), 80 Stat. 1036; Oct. 28, 1974, Pub. L. 93–495, title I, §105(c), 88 Stat. 1504; Nov. 10, 1978, Pub. L. 95–630, title I, §§107(a)(2), (c)(2), (d)(2), (e)(2), 111(b), title II, §208(c), title VII, §§702, 703, 92 Stat. 3650, 3654, 3658, 3661, 3667, 3675, 3687; Oct. 15, 1982, Pub. L. 97–320, title I, §115(c)–(e), title IV, §§424(b), (d)(7), (e), 425(a), 427(b), 96 Stat. 1476, 1522, 1523, 1525; Oct. 27, 1986, Pub. L. 99–570, title I, §§1359(c), 1361, 100 Stat. 3207–28, 3207–31; Aug. 10, 1987, Pub. L. 100–86, title I, §111(b), title III, §306(e), title IV, §§406(b), 413(b), 101 Stat. 581, 602, 615, 621, related to termination of insurance and enforcement provisions.

Section 1730a, act June 27, 1934, ch. 847, title IV, §408, as added Sept. 23, 1959, Pub. L. 86–374, 73 Stat. 691; amended Sept. 13, 1960, Pub. L. 86–746, 74 Stat. 883; Oct. 16, 1966, Pub. L. 89–695, title I, §103, 80 Stat. 1046; Feb. 14, 1968, Pub. L. 90–255, §2, 82 Stat. 5; Oct. 21, 1968, Pub. L. 90–608, ch. IV, §403, 82 Stat. 1194; July 24, 1970, Pub.

L. 91–351, title VII, § 705, 84 Stat. 462; Dec. 31, 1970, Pub. L. 91–609, title IX, § 920, 84 Stat. 1816; Nov. 10, 1978, Pub. L. 95–630, title I, §§ 105(b)(1), 106(c), 92 Stat. 3646, 3649; Oct. 15, 1982, Pub. L. 97–320, title I, §§ 115(b), 123, 141(a)(7), title III, § 335, title IV, § 424(b), (d)(5), 96 Stat. 1475, 1483, 1489, 1505, 1522, 1523; Jan. 12, 1983, Pub. L. 97–457, §§ 6, 7, 96 Stat. 2507; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095; Aug. 10, 1987, Pub. L. 100–86, title I, §§ 104(a)–(c)(1), (d)–(h), 106(a), 107(a), 110, 111(a), title IV, §§ 410(b), 414, title V, § 509(a), 101 Stat. 567–571, 573–577, 579, 580, 620, 621, 635, related to regulation of holding companies.

Section 1730b, act June 27, 1934, ch. 847, title IV, § 409, as added Sept. 2, 1964, Pub. L. 88–560, title IX, § 909, 78 Stat. 805, related to investment of certain funds in accounts of insured institutions.

Section 1730c, act June 27, 1934, ch. 847, title IV, § 410, as added Dec. 15, 1967, Pub. L. 90–203, § 4, 81 Stat. 611, related to participation by insured institutions in lotteries and related activities.

Section 1730d, act June 27, 1934, ch. 847, title IV, § 411, as added Oct. 26, 1970, Pub. L. 91–508, title I, § 102, 84 Stat. 1116; amended Nov. 18, 1988, Pub. L. 100–690, title VI, § 6185(d)(2), 102 Stat. 4356, related to retention of records by insured institutions.

TRANSFER OF FUNCTIONS

For provisions relating to abolition of Federal Savings and Loan Insurance Corporation and transfer of functions, personnel and property, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

§ 1730e. Repealed. Pub. L. 96–221, title V, § 529, Mar. 31, 1980, 94 Stat. 168

Section, act June 27, 1934, ch. 847, title IV, § 412, as added Dec. 28, 1979, Pub. L. 96–161, title II, § 203, 93 Stat. 1236, provided that if the applicable rate prescribed in this section exceeded the rate an insured institution would be permitted to charge in the absence of this section, then such institution could, for a business or agricultural loan of $25,000 or more, notwithstanding State law, take or charge on any evidence of debt, interest of not more than 5 per centum in excess of the discount rate in effect at the Federal Reserve bank in the district in which the institution was located, that the taking or charging of interest at a greater rate than that prescribed by this section, if knowingly done, would be deemed a forfeit of the entire interest on that particular evidence of debt, and that if such greater rate of interest had already been paid, the payor could recover twice the amount of such payment in a civil action commenced within two years of such payment. See section 1730g of this title.

A prior section 1730e, act June 27, 1934, ch. 847, § 412, as added Nov. 5, 1979, Pub. L. 96–104, title I, § 103, 93 Stat. 790, identical to this section as added by Pub. L. 96–161, was repealed by section 212 of Pub. L. 96–161, effective at the close of Dec. 27, 1979, except that its provisions would continue to apply to any loan made in any State on or after Nov. 5, 1979, but prior to such repeal.

A prior section 1730e, act June 27, 1934, ch. 847, § 412, as added Oct. 29, 1974, Pub. L. 93–501, title II, § 203, 88 Stat. 1559, identical to this section as added by Pub. L. 96–104, was repealed by section 1 of Pub. L. 96–104 except that its provisions shall continue to apply to any loan made in any State during the period specified in section 206 of Pub. L. 93–501.

EFFECTIVE DATE OF REPEAL

Section 529 of Pub. L. 96–221 provided that the repeal of this section is effective at close of Mar. 31, 1980.

SAVINGS PROVISION

Section 529 of Pub. L. 96–221 provided that, notwithstanding the repeal of Pub. L. 96–104 and title II of Pub. L. 96–161, this section [which had been enacted by those laws] shall continue to apply to any loan made, any deposit made, or any obligation issued in any State during any period when this section was in effect in such State.

§§ 1730f to 1730i. Repealed. Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363

Section 1730f, act June 27, 1934, ch. 847, title IV, § 413, as added Dec. 22, 1974, Pub. L. 93–533, § 11(b), 88 Stat. 1729, related to disclosures with respect to certain federally related mortgage loans, identity of beneficiary interest as condition for loan, and report to Board.

Section 1730g, act June 27, 1934, ch. 847, title IV, § 414, as added Mar. 31, 1980, Pub. L. 96–221, title V, § 522, 94 Stat. 165; amended Jan. 12, 1983, Pub. L. 97–457, § 33, 96 Stat. 2511, related to insured savings and loan associations.

Section 1730h, act June 27, 1934, ch. 847, title IV, § 415, as added Aug. 10, 1987, Pub. L. 100–86, title IV, § 402(b), 101 Stat. 606, related to accounting principles and other standards and requirements.

Section 1730i, act June 27, 1934, ch. 847, title IV, § 416, as added Aug. 10, 1987, Pub. L. 100–86, title IV, § 404(b), 101 Stat. 611, related to thrift industry recovery regulations.

SAVINGS PROVISION

Any plan approved by the Federal Savings and Loan Insurance Corporation under former section 1730i of this title for any State savings association to continue in effect as long as such association adheres to the plan and continues to submit to the Federal Deposit Insurance Corporation regular and complete reports on the progress in meeting the association's goals under the plan, notwithstanding the repeal of that section, see section 302 of Pub. L. 101–73, set out as a Savings Provision note under section 1467a of this title.

TRANSFER OF FUNCTIONS

For provisions relating to abolition of Federal Savings and Loan Insurance Corporation and Federal Home Loan Bank Board and transfer of functions, personnel, and property of such agencies, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

SUBCHAPTER V—MISCELLANEOUS

§ 1731. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, acts June 27, 1934, ch. 847, title V, § 512, 48 Stat. 1265; Feb. 3, 1938, ch. 13, §§ 9, 10, 52 Stat. 24, 25; June 28, 1941, ch. 261, § 10, 55 Stat. 365, related to penalties. See sections 493, 657, 709, 1006, and 1008 to 1010 of Title 18, Crimes and Criminal Procedure.

§ 1731a. Penalties

Notwithstanding any other provision of law, the Secretary is authorized to refuse the benefits of participation (either directly as an insured lender or as a borrower, or indirectly as a builder, contractor, or dealer, or salesman or sales agent for a builder, contractor or dealer) under subchapter I, II, VI, VII, VIII, IX–B, or X of this chapter to any person or firm (including but not limited to any individual, partnership, association, trust, or corporation) if the Secretary has determined that such person or firm (1) has knowingly or willfully violated any provision of this chapter or of title III of the Servicemen's Readjustment Act of 1944, as amended, or of chapter 37 of title 38, or of any regulation issued by the Secretary under this chapter or by the Secretary of Veterans Affairs under said title III, or chapter 37, or (2) has, in connection

with any construction, alteration, repair or improvement work financed with assistance under this chapter or under said title III, or chapter 37, or in connection with contracts or financing relating to such work, violated any Federal or State penal statute, or (3) has failed materially to properly carry out contractual obligations with respect to the completion of construction, alteration, repair, or improvement work financed with assistance under this chapter or under title III of the Servicemen's Readjustment Act of 1944, as amended, or of chapter 37 of title 38. Before any such determination is made any person or firm with respect to whom such a determination is proposed shall be notified in writing by the Secretary and shall be entitled, upon making a written request to the Secretary, to a written notice specifying charges in reasonable detail and an opportunity to be heard and to be represented by counsel. Determinations made by the Secretary under this section shall be based on the preponderance of the evidence. For the purposes of compliance with this section the Secretary's notice of a proposed determination under this section shall be considered to have been received by the interested person or firm if the notice is properly mailed to the last known address of such person or firm.

(June 27, 1934, ch. 847, title V, § 512, as added Aug. 2, 1954, ch. 649, title I, § 132, 68 Stat. 610; amended Pub. L. 85–857, § 13(h), Sept. 2, 1958, 72 Stat. 1265; Pub. L. 86–372, title I, § 119, Sept. 23, 1959, 73 Stat. 665; Pub. L. 89–754, title X, § 1020(e), Nov. 3, 1966, 80 Stat. 1296; Pub. L. 90–19, § 1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 98–479, title II, § 204(a)(17), Oct. 17, 1984, 98 Stat. 2232; Pub. L. 101–235, title I, § 133(d)(3), Dec. 15, 1989, 103 Stat. 2027; Pub. L. 102–54, § 13(d)(2)(B), June 13, 1991, 105 Stat. 274.)

REFERENCES IN TEXT

The Servicemen's Readjustment Act of 1944, as amended, referred to in text, is act June 22, 1944, ch. 268, 58 Stat. 284, as amended. Title III of the Servicemen's Readjustment Act of 1944 was classified generally to subchapter II (§ 694 et seq.) of chapter 11C of former Title 38, Pensions, Bonuses, and Veterans' Relief, and was repealed by section 14(87) of Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1273, the first section of which reenacted title III of such Act as chapter 37 (§ 1801 [now 3701] et seq.) of Title 38, Veterans' Benefits.

PRIOR PROVISIONS

A prior section 512 of act of June 27, 1934, related to offenses and penalties, and was classified to section 1731 of this title, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See note under section 1731.

AMENDMENTS

1991—Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1989—Pub. L. 101–235 struck out reference to subchapter IX–A after reference to subchapter VIII.

1984—Pub. L. 98–479 substituted ''Penalties'' for ''Denial of benefits in cases of abuses; determination by Secretary; notice and hearing'' in section catchline.

1967—Pub. L. 90–16 substituted ''Secretary'' for ''Commissioner'' wherever appearing, and ''Secretary's'' for ''Commissioner's''.

1966—Pub. L. 89–754 inserted references to subchapters IX–A and IX–B of this chapter.

1959—Pub. L. 86–372 provided that for purposes of compliance with this section the Commissioner's notice of a proposed determination under this section shall be considered to have been received by the interested person or firm if the notice is properly mailed to the last known address of such person or firm.

1958—Pub. L. 85–857 inserted references to chapter 37 of title 38.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding part I of Title 38, Veterans' Benefits.

§ 1731b. Prohibition against transient housing

(a) Intent of Congress

The Congress declares that it has been its intent since the enactment of this chapter that housing built with the aid of mortgages insured under this chapter is to be used principally for residential use; and that this intent excludes the use of such housing for transient or hotel purposes while such insurance on the mortgage remains outstanding.

(b) Exceptions to prohibition

Notwithstanding any other provisions of this chapter, no new, existing, or rehabilitated multifamily housing with respect to which a mortgage is insured under this chapter shall be operated for transient or hotel purposes unless (1) on or before May 28, 1954, the Secretary has agreed in writing to the rental of all or a portion of the accommodations in the project for transient or hotel purposes (in which case no accommodations in excess of the number so agreed to by the Secretary shall be rented on such basis), or (2) the project covered by the insured mortgage is located in an area which the Secretary determines to be a resort area, and the Secretary finds that prior to May 28, 1954, a portion of the accommodations in the project had been made available for rent for transient or hotel purposes (in which case no accommodations in excess of the number which had been made available for such use shall be rented on such basis).

(c) Certification as to use as requisite for insurance; exceptions to prohibition against insuring

Notwithstanding any other provisions of this chapter, no mortgage with respect to multifamily housing shall be insured under this chapter (except pursuant to a commitment to insure issued prior to August 2, 1954), and (except as to housing coming within the provisions of clause (1) or clause (2) of subsection (b) of this section) no mortgage with respect to multifamily housing shall be insured for an additional term, unless (1) the mortgagor certifies under oath that while such insurance remains outstanding he will not rent, or permit the rental of, such housing or any part thereof for transient or hotel purposes, and (2) the Secretary has entered into such contract with, or purchased such stock of, the mortgagor as the Secretary deems necessary to enable him to prevent or terminate any use of such property or project for transient or hotel purposes while the mortgage insurance remains outstanding.

(d) Enforcement by Secretary

The Secretary is authorized and directed to enforce the provisions of this section by all ap-

propriate means at his disposal, as to all existing multifamily housing with respect to which a mortgage was insured under this chapter prior to August 2, 1954, as well as to all multifamily housing with respect to which a mortgage is hereafter insured under this chapter: *Provided*, That no criminal penalty shall, by reason of enactment of this section, be applicable to the rental or operation of any such existing multifamily housing in violation of any provision of subsection (b) of this section at any time prior to August 2, 1954.

(e) Definitions

As used in this section, (1) the term ''rental for transient or hotel purposes'' shall have such meaning as prescribed by the Secretary but rental for any period less than thirty days shall in any event constitute rental for such purposes, and (2) the term ''multifamily housing'' shall mean (i) a property held by a mortgagor upon which there are located five or more single family dwellings, or upon which there is located a two-, three-, or four-family dwelling, or (ii) a property or project covered by mortgage insured or to be insured under section 1713 of this title, under section 1715e of this title with respect to any property or project of a corporation or trust of the character described in paragraph (1) of subsection (a) thereof, under section 1715k of this title if the mortgage is within the provisions of paragraph (3) (B) of subsection (d) thereof, under section 1715*l* of this title if the mortgage is within the provisions of paragraph (3) of subsection (d) thereof, under section 1743, 1748b, or 1750g of this title, or (iii) a project with respect to which an insurance contract pursuant to subchapter VII of this chapter is outstanding.

(f) Investigation after notice of violation; cease order

Promptly after receipt of written notice that any portion of any building is being rented or operated in violation of any provision of this section or of any rule or regulation lawfully issued thereunder, the Secretary shall investigate the existence of the facts alleged in the written notice and shall order such violation, if found to exist, to cease forthwith.

(g) Prosecution by Attorney General for continued violation

If such violation does not cease in accordance with such order, the Secretary shall forward the complaint to the Attorney General of the United States for prosecution of such civil or criminal action, if any, which the Attorney General may find to be involved in such violation.

(h) Judicial procedure for injunction or other order

Whenever he finds a violation of any provision of this section has occurred or is about to occur, the Attorney General shall petition the district court of the United States or the district court of any Territory or other place subject to United States jurisdiction within whose jurisdictional limits the person doing or committing the acts or practices constituting the alleged violation of this section shall be found, for an order enjoining such acts or practices, and upon a showing by the Attorney General that such acts or practices constituting such violation have been engaged in or are about to be engaged in, a permanent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted without bond.

(i) Injunctive relief for hotel owners

Any person owning or operating a hotel within a radius of fifty miles of a place where a violation of any provision of this section has occurred or is about to occur, or any group or association of hotel owners or operators within said fifty-mile radius, at his or their sole charge or cost, may petition any district court of the United States or the district court or any Territory or other place subject to United States jurisdiction within whose jurisdictional limits the person doing or committing the acts or practices constituting the alleged violation of this section shall be found, for an order enjoining such acts or practices, and, upon a showing that such acts or practices constituting such violation have been engaged in or are about to be engaged in, a permanent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted.

(j) Jurisdiction of district courts

The several district courts of the United States and the several district courts of the Territories of the United States or other place subject to United States jurisdiction, within whose jurisdictional limits the person doing or committing the acts or practices constituting the alleged violation shall be found, shall, wheresoever such acts or practices may have been done or committed, have full power and jurisdiction to hear, try, and determine such matter under subsections (h) and (i) of this section.

(June 27, 1934, ch. 847, title V, § 513, as added Aug. 2, 1954, ch. 649, title I, § 132, 68 Stat. 610; amended Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 98–479, title II, § 204(a)(18), Oct. 17, 1984, 98 Stat. 2232.)

PRIOR PROVISIONS

A prior section 513 of act June 27, 1934, was renumbered section 513A of act June 27, 1934, and is classified to section 1732 of this title.

AMENDMENTS

1984—Pub. L. 98–479 substituted ''Prohibition against transient housing'' for ''Prohibition against use of insured multifamily housing for transient or hotel purposes'' in section catchline.

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (b) to (d), (e)(1), (f), and (g).

§ 1732. Separability

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(June 27, 1934, ch. 847, title V, § 513A, formerly § 513, 48 Stat. 1265; renumbered Pub. L. 98–479, title II, § 204(a)(19), Oct. 17, 1984, 98 Stat. 2232.)

REFERENCES IN OTHER LAWS

Pub. L. 98–479, title II, §204(a)(19), Oct. 17, 1984, 98 Stat. 2232, provided in part that: ''Any reference in any law, regulation, order, document, record, or other paper of the United States to the section redesignated in this paragraph [this section] hereby is deemed to refer to section 513A of the National Housing Act [this section].''

§ 1733. Application of other laws

The provisions of section 1430(a)(1)[1] and 1430b of this title; the seventh paragraph of section 24 of this title; section 371 of this title; subsection (n) of section 77B of the Bankruptcy Act, as amended (49 Stat. 664); section 606i of title 15, continuing and extending the functions of the Reconstruction Finance Corporation; and all other provisions of law establishing rights under mortgages insured in accordance with the provisions of this chapter, shall be held to apply to such chapter, as amended.

(June 27, 1934, ch. 847, title V, §514, as added Feb. 3, 1938, ch. 13, §11, 52 Stat. 26.)

REFERENCES IN TEXT

Section 1430(a) of this title, referred to in text, was amended by Pub. L. 106–102, title VI, §604(a), Nov. 12, 1999, 113 Stat. 1451, and, as so amended, the provisions formerly appearing in section 1430(a)(1) now appear in section 1430(a)(3)(A).

Section 77B of the Bankruptcy Act, referred to in text, was classified to section 207 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended), which was classified generally to former Title 11, was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted Revised Title 11. See table preceding section 101 of Revised Title 11.

Section 606i of title 15, referred to in text, was omitted from the Code. See note under section 606i of Title 15, Commerce and Trade.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

See section 6(a) of Reorg. Plan No. 1 of 1957, effective June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1734. Amendment, extension, or increase of commitment amounts

At any time prior to final endorsement for insurance, the Secretary, in his discretion, may amend, extend, or increase the amount of any commitment, provided the mortgage, as finally endorsed for insurance is eligible for insurance under the provisions of this chapter and the rules and regulations thereunder, in effect at the time the original commitment to insure was issued.

(June 27, 1934, ch. 847, title V, §515 as added Oct. 25, 1949, ch. 729, §3, 63 Stat. 906; amended Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 98–479, title II, §204(a)(20), Oct. 17, 1984, 98 Stat. 2232.)

AMENDMENTS

1984—Pub. L. 98–479 struck out ''; mortgage conditions'' after ''amounts'' in section catchline.

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner''.

[1] See References in Text note below.

§ 1735. Payment of certain funds to Treasury

The following funds shall be deemed an indebtedness to the United States of the particular insurance fund involved, and the Secretary is authorized and directed to pay the amount of such indebtedness to the Secretary of the Treasury, with simple interest thereon from the date the funds were advanced to the date of final payment at a rate determined by the Secretary of the Treasury, taking into consideration the average rate on outstanding marketable obligations of the United States from the date the funds were advanced until the date of final payment—

(1) funds made available to the Secretary pursuant to the provisions of sections 1705 and 1708 of this title, exclusive of amounts heretofore refunded, (a) for carrying out this subchapter and section 484d of title 48 with respect to mortgages insured under section 1709 of this title where such funds were credited to the general reinsurance account in the Mutual Mortgage Insurance Fund, and (b) for the payment of salaries and expenses with respect to mortgage insurance under sections 1713 and 1715a of this title where such funds were credited to the Housing Insurance Fund;

(2) funds made available to the Secretary pursuant to sections 1737 and 1748a[1] of this title; and

(3) funds made available to the Secretary by the Secretary of the Treasury pursuant to section 1747i[1] of this title.

Payments to the Secretary of the Treasury under this section shall be made in such amounts and at such times as the Secretary determines, after consultations with the Secretary of the Treasury, that funds are available for that purpose, taking into consideration the continued solvency of the funds involved. All payments made pursuant to this section shall be covered into the Treasury as miscellaneous receipts.

(June 27, 1934, ch. 847, title V, §516, as added June 30, 1953, ch. 170, §9, 67 Stat. 123; amended Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 98–479, title II, §204(a)(21), Oct. 17, 1984, 98 Stat. 2232.)

REFERENCES IN TEXT

Section 1715a of this title, referred to in par. (1), in the original was a reference to section 210 of the National Housing Act (June 27, 1934, ch. 847, §210, as added Feb. 3, 1938, ch. 13, §3, 52 Stat. 22), which was repealed by act June 3, 1939, ch. 175, §13, 53 Stat. 807. See note set out under section 1715a.

Section 484d of title 48, referred to in text, which authorized the Federal Housing Commissioner to prescribe a higher maximum for the principal obligation of mortgages, was omitted from the Code.

Sections 1737, 1747i, and 1748a of this title, referred to in text, were repealed by Pub. L. 89–117, title II, §1108(aa), Aug. 10, 1965, 79 Stat. 507.

AMENDMENTS

1984—Pub. L. 98–479 inserted ''Payment of certain funds to Treasury'' as section catchline.

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

[1] See References in Text note below.

§ 1735a. Prepayment of mortgages by nonprofit educational institutions; refunds

(a) Notwithstanding any other provision of this chapter, no adjusted premium charge shall be collected in connection with the payment in full, prior to maturity, of any mortgage insured under this chapter, if the mortgagor certifies to the Secretary that the loan was paid in full by or on behalf of a nonprofit educational institution which intends to use the property for educational purposes.

(b) The Secretary shall refund any adjusted premium charge collected subsequent to July 1, 1962, and prior to September 2, 1964, in connection with the payment in full, prior to maturity, of any mortgage insured under this chapter, if the mortgagor under such mortgage makes the certification prescribed by subsection (a) of this section.

(June 27, 1934, ch. 847, title V, § 517, as added Pub. L. 88–560, title I, § 120, Sept. 2, 1964, 78 Stat. 782; amended Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Subsecs. (a), (b). Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

§ 1735b. Expenditures to correct or reimburse for structural or other major defects in mortgaged homes

(a) Prior to beginning of construction

(1) The Secretary is authorized to make expenditures under this subsection with respect to any property that—

(A) is a condominium unit (including common areas) or is improved by a one-to-four family dwelling;

(B) was approved, before the beginning of construction, for mortgage insurance under this chapter or for guaranty, insurance, or direct loan under chapter 37 of title 38 or was less than a year old at the time of insurance of the mortgage and was covered by a consumer protection or warranty plan acceptable to the Secretary; and

(C) the Secretary finds to have structural defects.

(2) Expenditures under this subsection may be made for (A) correcting such defects, (B) paying the claims of the owner of the property arising from such defects, or (C) acquiring title to the property: *Provided*, That such authority of the Secretary shall exist only (A) if the owner has requested assistance from the Secretary not later than four years (or such shorter time as the Secretary may prescribe) after insurance of the mortgage, and (B) if the property is encumbered by a mortgage which is insured under this chapter after September 2, 1964.

(b) Mortgages insured on or after August 1, 1968, but prior to January 1, 1973; requirements; reimbursement from seller; insurance fund chargeable

The Secretary is authorized to make expenditures to correct, or to reimburse the owner for the correction of, structural or other major defects which so seriously affect use and livability as to create a serious danger to the life or safety of inhabitants of any one, two, three, or four family dwelling which is covered by a mortgage insured under section 1715z of this title or which is located in an older, declining urban area and is covered by a mortgage insured under section 1709 or 1715*l* of this title on or after August 1, 1968, but prior to January 1, 1973, and which is more than one year old on the date of the issuance of the insurance commitment, if (1) the owner requests assistance from the Secretary not later than one year after the insurance of the mortgage, or, in the case of a dwelling covered by a mortgage insured under section 1709 or 1715*l* of this title the insurance commitment for which was issued on or after August 1, 1968, but prior to January 1, 1973, not more than four months after August 3, 1976, and (2) the defect is one that existed on the date of the issuance of the insurance commitment and is one that a proper inspection could reasonably be expected to disclose. The Secretary may require from the seller of any such dwelling an agreement to reimburse him for any payments made pursuant to this subsection with respect to such dwelling. Expenditures pursuant to this subsection shall be made from the insurance fund chargeable for insurance benefits on the mortgage covering the structure to which the expenditures relate. There are hereby authorized to be appropriated such sums as may be necessary to cover the costs of such expenditures not otherwise provided for.

(c) Regulations; finality of decision

The Secretary shall by regulations prescribe the terms and conditions under which expenditures and payments may be made under the provisions of this section, and his decisions regarding such expenditures or payments, and the terms and conditions under which the same are approved or disapproved, shall be final and conclusive and shall not be subject to judicial review.

(d) Mortgages insured on or after January 1, 1973, but prior to August 1, 1976; requirements; reimbursement from seller; insurance fund chargeable

The Secretary is authorized to make expenditures to correct or to reimburse the owner for the correction of structural or other major defects which so seriously affect use and liveability as to create a serious danger to the life or safety of inhabitants of any one-, two-, three-, or four-family dwelling which is more than one year old on the date of issuance of the insurance commitment, is located in an older, declining urban area, and is covered by a mortgage insured under section 1709 or 1715*l* of this title on or after January 1, 1973, but prior to August 3, 1976, if (1) the owner requests assistance from the Secretary not more than one year after August 3, 1976, and (2) the defect is one that existed on the date of the issuance of the insurance commitment and is one that a proper inspection could reasonably have been expected to have disclosed. The Secretary may require from the seller of any such dwelling an agreement to reimburse him for any payments made pursuant to this subsection with respect to such dwelling. Expenditures pursuant to this subsection shall

be made from the insurance fund chargeable for insurance benefits on the mortgage covering the structure to which the expenditures relate. There are hereby authorized to be appropriated such sums as may be necessary to cover the costs of such expenditures not otherwise provided for.

(e) Report to Congress on effective program for protecting home buyers

The Secretary of Housing and Urban Development is authorized and directed to conduct a full and complete investigation and study and report to Congress, with recommendations, not later than March 1, 1977, with respect to an effective program for protecting home buyers from hidden or undisclosed defects seriously affecting the use and livability of the home, which would be applicable to existing homes financed with mortgages insured under this chapter. In the study and report the Secretary shall particularly investigate the need for, cost and feasible structure of, a national home inspection and warranty program, with respect to such homes, to be operated by the Federal Government out of fees assessed on the home buyer and amortized over a period of two years. The Secretary's report shall also present an analysis of alternative Federal programs to meet these needs, and the cost and means of financing such programs. In the report the Secretary shall also outline administrative steps which can be taken to provide disclosure to purchasers of existing homes financed with mortgages insured under this chapter of the actual condition of the home and the types of repairs or replacements likely to be needed within a period of two years, such as repairs or replacement of furnace, roof or major appliances, based on age and useful life expectancy of such appurtenances.

(June 27, 1934, ch. 847, title V, §518, as added Pub. L. 88–560, title I, §121, Sept. 2, 1964, 78 Stat. 783; amended Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 91–609, title I, §104, Dec. 31, 1970, 84 Stat. 1771; Pub. L. 93–383, title III, §306, Aug. 22, 1974, 88 Stat. 678; Pub. L. 94–50, title III, §302, July 2, 1975, 89 Stat. 256; Pub. L. 94–375, §9, Aug. 3, 1976, 90 Stat. 1072; Pub. L. 98–181, title IV, §427, Nov. 30, 1983, 97 Stat. 1218; Pub. L. 102–550, title V, §515, Oct. 28, 1992, 106 Stat. 3789.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550 substituted par. (1) and ''(2) Expenditures under this subsection may be made for'' for ''The Secretary is authorized, with respect to any property improved by a one- to four-family dwelling that, before the beginning of construction, was approved for mortgage insurance under this chapter or for guaranty, insurance, or a direct loan under chapter 37 of title 38 and that the Secretary finds to have structural defects, to make expenditures for'' and redesignated former cls. (1) to (3) appearing before proviso as cls. (A) to (C), respectively, of par. (2).

1983—Subsec. (a). Pub. L. 98–181 substituted ''that, before the beginning of construction, was approved for mortgage insurance under this chapter or for guaranty, insurance, or a direct loan under chapter 37 of title 38 and that the Secretary finds'' for ''approved for mortgage insurance prior to the beginning of construction which he finds''.

1976—Subsec. (b). Pub. L. 94–375, §9(a), substituted ''not more than four months after August 3, 1976'' for ''not more than 19 months after August 22, 1974'', and provision requiring expenditures be made from the insurance fund chargeable for insurance benefits on the mortgage covering the structure and appropriating sums for expenditures not otherwise covered for provision requiring expenditures be made from the Special Risk Insurance Fund.

Subsecs. (d), (e). Pub. L. 94–375, §9(b), added subsecs. (d) and (e).

1975—Subsec. (b). Pub. L. 94–50 substituted ''one, two, three, or four'' for ''one or two'', and ''not more than 19 months'' for ''not more than one year''.

1974—Subsec. (b). Pub. L. 93–383 substituted provisions relating to authorization of the Secretary to make expenditures to correct, or to reimburse the owner for the correction of structural or other major defects of covered one or two family dwellings, for provisions relating to the authorization of the Secretary to make expenditures to correct, or to compensate the owner for, structural or other defects of covered single-family dwellings.

1970—Subsecs. (b), (c). Pub. L. 91–609 added subsec. (b) and redesignated former subsec. (b) as (c).

1967—Subsecs. (a), (b). Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

§ 1735c. General Insurance Fund

(a) Establishment; purpose; mortgages or loans insurable; transfers to

There is hereby created a General Insurance Fund which shall be used by the Secretary, on and after August 10, 1965, as a revolving fund for carrying out all the insurance provisions of this chapter with the exception of those specified in subsection (e) of this section. All mortgages or loans insured under this chapter pursuant to commitments issued on or after August 10, 1965, except those specified in subsection (e) of this section, and all loans reported for insurance under section 1703 of this title on or after August 10, 1965, shall be insured under the General Insurance Fund. The Secretary shall transfer to the General Insurance Fund—

(1) the assets and liabilities of all insurance accounts and funds, except the Mutual Mortgage Insurance Fund, existing under this chapter immediately prior to August 10, 1965;

(2) all outstanding commitments for insurance issued prior to August 10, 1965, except those specified in subsection (e) of this section;

(3) the insurance on all mortgages and loans insured prior to August 10, 1965, except insurance specified in subsection (e) of this section; and

(4) the insurance of all loans made by approved financial institutions pursuant to section 1703 of this title prior to August 10, 1965.

(b) Expenses chargeable to Fund

The general expenses of the operations of the Department of Housing and Urban Development relating to mortgages and loans which are the obligation of the General Insurance Fund may be charged to the General Insurance Fund.

(c) Deposit or investment of moneys; purchase of debentures

Moneys in the General Insurance Fund not needed for the current operations of the Department of Housing and Urban Development with respect to mortgages and loans which are the obligation of the General Insurance Fund shall be deposited with the Treasurer of the United States to the credit of such Fund, or invested in

bonds or other obligations of, or in bonds or other obligations guaranteed as to principal and interest by, the United States or any agency of the United States: *Provided*, That such moneys shall to the maximum extent feasible be invested in such bonds or other obligations the proceeds of which will be used to directly support the residential mortgage market. The Secretary may, with the approval of the Secretary of the Treasury, purchase in the open market debentures issued as obligations of the General Insurance Fund or issued prior to August 10, 1965, under other provisions of this chapter, except debentures issued under the Mutual Mortgage Insurance Fund. Such purchases shall be made at a price which will provide an investment yield of not less than the yield obtainable from other investments authorized by this section. Debentures so purchased shall be canceled and not reissued.

(d) Credits and charges to Fund

Premium charges, adjusted premium charges, and appraisal and other fees received on account of the insurance of any mortgage or loan which is the obligation of the General Insurance Fund, the receipts derived from the property covered by such mortgages and loans and from the claims, debts, contracts, property, and security assigned to the Secretary in connection therewith, and all earnings on the assets of the Fund shall be credited to the General Insurance Fund. The principal of, and interest paid and to be paid on, debentures which are the obligation of such Fund, cash insurance payments and adjustments, and expenses incurred in the handling, management, renovation, and disposal of properties acquired, in connection with mortgages and loans which are the obligation of such Fund, shall be charged to such Fund.

(e) Restrictions on use of Fund

The General Insurance Fund shall not be used for carrying out the provisions of section 1709 of this title, except as determined by the Secretary, or the provisions of section 1715e of this title to the extent that they involve mortgages the insurance for which is the obligation of the Cooperative Management Housing Insurance Fund created by section 1715e(k) of this title, or the provisions of sections 1715n(e), 1715x(a)(2), 1715z, 1715z–1 and 1715z–2[1] of this title; and nothing in this section shall apply to or affect any mortgages, loans, commitments, or insurance under such provisions.

(f) Risk assessment

The Secretary shall undertake an annual assessment of the risks associated with each of the insurance programs comprising the General Insurance Fund, and shall present findings from such review to the Congress in the FHA Annual Management Report.

(June 27, 1934, ch. 847, title V, § 519, as added Pub. L. 89–117, title II, § 214, Aug. 10, 1965, 79 Stat. 471; amended Pub. L. 90–19, § 1(a)(1), (3), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title I, § 104(c), Aug. 1, 1968, 82 Stat. 488; Pub. L. 91–609, title I, § 117(e), Dec. 31, 1970, 84 Stat. 1775; Pub. L. 94–375, § 10, Aug. 3, 1976, 90 Stat. 1073; Pub. L. 95–24, title I, § 102, Apr. 30, 1977, 91 Stat. 55; Pub. L. 95–557, title III, § 310, Oct. 31, 1978, 92 Stat. 2098; Pub. L. 96–153, title III, § 305, Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96–399, title III, § 305, Oct. 8, 1980, 94 Stat. 1639; Pub. L. 97–35, title III, § 334, Aug. 13, 1981, 95 Stat. 414; Pub. L. 98–181, title IV, § 403, Nov. 30, 1983, 97 Stat. 1208; Pub. L. 102–550, title I, § 185(c)(2), Oct. 28, 1992, 106 Stat. 3748; Pub. L. 103–233, title I, §§ 103(g)(2), 105(b), Apr. 11, 1994, 108 Stat. 362, 363; Pub. L. 110–289, div. B, title I, § 2118(c)(2), July 30, 2008, 122 Stat. 2835.)

REFERENCES IN TEXT

Section 1715z–2 of this title, referred to in subsec. (e), was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(6), July 30, 2008, 122 Stat. 2835.

AMENDMENTS

2008—Subsec. (e). Pub. L. 110–289 substituted ''1709 of this title, except as determined by the Secretary'' for ''1709(b) (except as provided in section 1709(v)), (h), and (i) of this title''.

1994—Subsec. (f). Pub. L. 103–233, § 105(b), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ''There are authorized to be appropriated such sums as may be necessary to cover losses sustained by the General Insurance Fund.''

Subsec. (g). Pub. L. 103–233, § 105(b)(2), redesignated subsec. (g) as (f).

Pub. L. 103–233, § 103(g)(2), added subsec. (g).

1992—Subsec. (e). Pub. L. 102–550 inserted ''(except as provided in section 1709(v))'' after ''1709(b)''.

1983—Subsec. (f). Pub. L. 98–181 inserted ''such sums as may be necessary'' after ''appropriated'', and struck out ''not to exceed $1,738,000,000, which amount shall be increased by $126,673,000 on October 1, 1981'' after ''Insurance Fund''.

1981—Subsec. (f). Pub. L. 97–35 inserted provision increasing authorization on Oct. 1, 1981.

1980—Subsec. (f). Pub. L. 96–399 substituted ''$1,738,000,000'' for ''$1,341,000,000, which amount shall be increased by $165,000,000 on October 1, 1978, which shall be increased by not to exceed $93,000,000 on October 1, 1979''.

1979—Subsec. (f). Pub. L. 96–153 provided for an increase of $93,000,000 on October 1, 1979.

1978—Subsec. (f). Pub. L. 95–557 inserted ''which amount shall be increased by $165,000,000 on October 1, 1978''.

1977—Subsec. (f). Pub. L. 95–24 substituted ''$1,341,000,000'' for ''$500,000,000''.

1976—Subsec. (f). Pub. L. 94–375 added subsec. (f).

1970—Subsec. (c). Pub. L. 91–609 provided for guarantee as to principal and interest by any agency of the United States and for investment of moneys in bonds or other obligations the proceeds of which will be used to directly support the residential mortgage market.

1968—Subsec. (e). Pub. L. 90–448 prohibited use of Fund for carrying out provisions of sections 1715n(e), 1715x(a)(2), 1715z, 1715z–1 and 1715z–2 of this title.

1967—Pub. L. 90–19 substituted ''Department of Housing and Urban Development'' for ''Federal Housing Administration'' wherever appearing in subsecs. (b) and (c) of this section and ''Secretary'' for ''Commissioner'' in subsecs. (a), (c), and (d) of this section, respectively.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

§ 1735d. Payment of insurance benefits in cash or debentures; borrowing money from Treasury to make payments

(a) Notwithstanding any other provisions of this chapter with respect to the payment of in-

[1] See References in Text note below.

surance benefits, the Secretary is authorized, in his discretion, to pay in cash or in debentures any insurance claim or part thereof which is paid on or after August 10, 1965, on a mortgage or a loan which was insured under any section of this chapter either before or after such date. If payment is made in cash, it shall be in an amount equivalent to the face amount of the debentures that would otherwise be issued plus an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Secretary.

(b) The Secretary is authorized to borrow from the Treasury from time to time such amounts as the Secretary shall determine are necessary (1) to make payments in cash (in lieu of issuing debentures guaranteed by the United States, as provided in this chapter) pursuant to the provisions of this section, and (2) to make payments for reinsured and directly insured losses under subchapter IX–C[1] of this chapter: *Provided, however*, That borrowings to make payments for reinsured and directly insured losses under subchapter IX–C[1] of this chapter shall be limited to $250,000,000 or such further sum as the Congress, by joint resolution, may from time to time determine. Notes or other obligations issued by the Secretary in borrowing under this subsection shall be subject to such terms and conditions as the secretary of the Treasury may prescribe. Each sum borrowed pursuant to this subsection shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations.

(June 27, 1934, ch. 847, title V, § 520, as added Pub. L. 89–117, title II, § 215, Aug. 10, 1965, 79 Stat. 472; amended Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title XI, § 1104, Aug. 1, 1968, 82 Stat. 566; Pub. L. 91–609, title VI, § 604, Dec. 31, 1970, 84 Stat. 1791.)

REFERENCES IN TEXT

Subchapter IX–C of this chapter, referred to in subsec. (b), was classified to section 1749bbb et seq. of this title and was omitted from the Code.

AMENDMENTS

1970—Subsec. (b)(2). Pub. L. 91–609 provided for making payments for directly insured losses and made limitation provision applicable to such payments.

1968—Subsec. (b). Pub. L. 90–448 empowered the Secretary to borrow to make payments for reinsured losses under subchapter IX–C of this chapter, and limited such borrowing to $250,000,000 or such further sum as Congress may determine.

1967—Subsecs. (a), (b). Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

§ 1735e. Acceptance of materials or products used in structures

The Secretary shall adopt a uniform procedure for the acceptance of materials and products to be used in structures approved for mortgages or loans insured under this chapter. Under such procedure any material or product which the Secretary finds is technically suitable for the use proposed shall be accepted. Acceptance of a material or product as technically suitable shall not be deemed to restrict the discretion of the Secretary to determine that a structure, with respect to which a mortgage is executed, is economically sound or an acceptable risk.

(June 27, 1934, ch. 847, title V, § 521, as added Pub. L. 89–117, title II, § 216, Aug. 10, 1965, 79 Stat. 473; amended Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

§ 1735e–1. Use of American materials and products

In the administration of housing assistance programs, the Secretary of Housing and Urban Development shall encourage the use of materials and products mined and produced in the United States.

(Pub. L. 100–242, title V, § 571, Feb. 5, 1988, 101 Stat. 1950.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1987, and not as part of the National Housing Act which comprises this chapter.

§ 1735f. Water and sewerage facilities

Notwithstanding any other provision of this chapter, no mortgage which covers new construction shall be approved for insurance under this chapter (except pursuant to a commitment made prior to August 10, 1965) if the mortgaged property includes housing which is not served by a public or adequate community water and sewerage system: *Provided*, That this limitation shall be applicable only to property which is not served by a system approved by the Secretary pursuant to subchapter IX–A of this chapter, as such subchapter existed immediately before December 15, 1989, and which is situated in an area certified by appropriate local officials to be an area where the establishment of public or adequate community water and sewerage systems is economically feasible: *Provided further*, That for purposes of this section the economic feasibility of establishing such public or adequate community water and sewerage systems shall be determined without regard to whether such establishment is authorized by law or is subject to approval by one or more local governments or public bodies.

(June 27, 1934, ch. 847, title V, § 522, as added Pub. L. 89–117, title II, § 217(a), Aug. 10, 1965, 79 Stat. 473; amended Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 101–235, title I, § 133(d)(4), Dec. 15, 1989, 103 Stat. 2027.)

REFERENCES IN TEXT

Subchapter IX–A of this chapter, referred to in text, was repealed by Pub. L. 101–235, title I, § 133(a), Dec. 15, 1989, 103 Stat. 2027.

AMENDMENTS

1989—Pub. L. 101–235 inserted '', as such subchapter existed immediately before December 15, 1989,'' after ''subchapter IX–A of this chapter''.

[1] See References in Text note below.

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner''.

§ 1735f–1. Waiver of deduction on assignment of property to Secretary in lieu of foreclosure

Notwithstanding any other provision of this chapter, from and after November 3, 1966, the Secretary, under such terms and conditions as he may approve, may waive all or a part of the 1 per centum deduction otherwise made from insurance benefits with respect to multifamily housing or land development mortgages assigned to him, where the assignment is made at his request in lieu of foreclosure of the mortgage.

(June 27, 1934, ch. 847, title V, § 523, as added Pub. L. 89–754, title III, § 312, Nov. 3, 1966, 80 Stat. 1271.)

§ 1735f–2. Uniform rehabilitation standards for housing within and without urban renewal areas

In determining whether properties should be approved by the Secretary prior to rehabilitation and covered by mortgages insured under subchapter II of this chapter, the Secretary shall apply uniform property standards as between properties located outside urban renewal areas and those located within urban renewal areas.

(June 27, 1934, ch. 847, title V, § 524, as added Pub. L. 91–609, title I, § 116, Dec. 31, 1970, 84 Stat. 1774.)

§ 1735f–3. Insurance of mortgage proceeds advanced during construction or rehabilitation or prior to final endorsement of project mortgage

The Secretary is authorized to insure mortgage proceeds advanced during construction or rehabilitation or otherwise prior to final endorsement of a project mortgage for the purpose of (1) financing improvements to the property and the purchase of materials and building components delivered to the property, and (2) providing funds to cover the cost of building components where such components have been assembled and specifically identified for incorporation into the property but are located at a site other than the mortgaged property, with such security as the Secretary may require.

(June 27, 1934, ch. 847, title V, § 525, as added Pub. L. 93–383, title III, § 301, Aug. 22, 1974, 88 Stat. 676.)

§ 1735f–4. Minimum property standards

(a) To the maximum extent feasible, the Secretary of Housing and Urban Development shall promote the use of energy saving techniques through minimum property standards established by him for newly constructed residential housing, other than manufactured homes, subject to mortgages insured under this chapter. Such standards shall establish energy performance requirements that will achieve a significant increase in the energy efficiency of new construction. Such requirements shall be implemented as soon as practicable after November 9, 1978. Following November 30, 1983, the energy performance requirements developed and established by the Secretary under this subsection for newly constructed residential housing, other than manufactured homes, shall be at least as effective in performance as the energy performance requirements incorporated in the minimum property standards that were in effect under this subsection on September 30, 1982.

(b) The Secretary may require that each property, other than a manufactured home, subject to a mortgage insured under this chapter shall, with respect to health and safety, comply with one of the nationally recognized model building codes, or with a State or local building code based on one of the nationally recognized model building codes or their equivalent. The Secretary shall be responsible for determining the comparability of the State and local codes to such model codes and for selecting for compliance purposes an appropriate nationally recognized model building code where no such model code has been duly adopted or where the Secretary determines the adopted code is not comparable.

(June 27, 1934, ch. 847, title V, § 526, as added Pub. L. 93–383, title III, § 305, Aug. 22, 1974, 88 Stat. 678; amended Pub. L. 95–619, title II, § 252(a), Nov. 9, 1978, 92 Stat. 3236; Pub. L. 96–399, title III, § 326(e), Oct. 8, 1980, 94 Stat. 1650; Pub. L. 98–181, title IV, § 405, Nov. 30, 1983, 97 Stat. 1210; Pub. L. 98–479, title I, § 104(a)(6), Oct. 17, 1984, 98 Stat. 2225.)

AMENDMENTS

1984—Pub. L. 98–479 substituted ''Minimum property standards'' for ''Promotion of energy saving techniques by Secretary of Housing and Urban Development of insured housing'' in section catchline.

1983—Subsec. (a). Pub. L. 98–181 designated existing provision as subsec. (a), inserted '', other than manufactured homes,'' after ''housing'', inserted provision that the energy performance requirements developed for newly constructed residential housing, other than manufactured homes, be at least as effective in performance as the energy performance requirements incorporated in the minimum property standards in effect Sept. 30, 1982, and added subsec. (b).

1980—Pub. L. 96–399 struck out '', until such time as the energy conservation performance standards required under the Energy Conservation Standards for New Buildings Act of 1976 become effective'' in second sentence.

1978—Pub. L. 95–619 inserted provision requiring that the minimum property standards established by the Secretary under this section were to contain energy performance requirements to achieve a significant increase in the energy efficiency of new construction.

§ 1735f–5. Prohibition against discrimination on account of sex in extension of mortgage assistance; consideration of combined income of husband and wife for purpose of extending mortgage credit; definitions

(a) No federally related mortgage loan, or Federal insurance, guaranty, or other assistance in connection therewith (under this chapter or any other Act), shall be denied to any person on account of sex; and every person engaged in making mortgage loans secured by residential real property shall consider without prejudice the combined income of both husband and wife for the purpose of extending mortgage credit in the form of a federally related mortgage loan to a married couple or either member thereof.

(b) For purposes of subsection (a) of this section, the term ''federally related mortgage loan'' means any loan which—

(1) is secured by residential real property designed principally for the occupancy of from one to four families; and

(2)(A) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is itself regulated by any agency of the Federal Government; or

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary of Housing and Urban Development or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency; or

(C) is eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or from any financial institution from which it could be purchased by the Federal Home Loan Mortgage Corporation; or

(D) is made in whole or in part by any ''creditor'', as defined in section 1602(f) of title 15, who makes or invests in residential real estate loans aggregating more than $1,000,000 per year.

(June 27, 1934, ch. 847, title V, § 527, as added Pub. L. 93–383, title VIII, § 808(a), Aug. 22, 1974, 88 Stat. 728; amended Pub. L. 98–479, title II, § 204(a)(22), Oct. 17, 1984, 98 Stat. 2233.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–479 designated first par. as subsec. (a).

§ 1735f–6. Secondary mortgages held by State or local governmental agency on insured properties

In carrying out the provisions of subchapter II of this chapter with respect to insuring mortgages secured by a one- to four-family dwelling unit, the Secretary may not deny such insurance for any such mortgage solely because the dwelling unit which secures such mortgage will be subject to a secondary mortgage or loan made or insured, or other secondary lien held, by any State or local governmental agency or instrumentality under terms and conditions approved by the Secretary.

(June 27, 1934, ch. 847, title V, § 528, as added Pub. L. 95–557, title III, § 323, Oct. 31, 1978, 92 Stat. 2102.)

§ 1735f–7. Exemption from State usury laws; applicability

(a) The provisions of the constitution of any State expressly limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved by lenders and the provisions of any State law expressly limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, or advance which is insured under subchapter I or II of this chapter.

(b) The provisions of subsection (a) of this section shall apply to loans, mortgages, or advances made or executed in any State until the effective date (after December 21, 1979) of a provision of law of that State limiting the rate or amount of interest, discount points, or other charges on any such loan, mortgage, or advance.

(June 27, 1934, ch. 847, title V, § 529, as added Pub. L. 96–153, title III, § 308, Dec. 21, 1979, 93 Stat. 1113.)

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

In any case in which one or more provisions of, or amendments made by, title V of Pub. L. 96–221 [enacting sections 86a, 1730g, 1735f–7a, 1785(g), and 1831d of this title and section 687(i) of Title 15, Commerce and Trade, and enacting provisions set out as notes under sections 86a, 1730g, and 1735f–7 of this title], this section, or any other provisions of law, including section 85 of this title, apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate, see section 528 of Pub. L. 96–221, set out as a note under section 1735f–7a of this title.

STATE CONSTITUTIONS OR LAWS LIMITING INTEREST, DISCOUNT POINTS, OR OTHER CHARGES; EXEMPTION UNTIL CLOSE OF MARCH 31, 1980

Pub. L. 96–161, title I, § 105, Dec. 28, 1979, 93 Stat. 1234, as amended by Pub. L. 96–221, title V, § 529, Mar. 31, 1980, 94 Stat. 168, provided that (a)(1) the provisions of the constitution or law of any State expressly limiting the rate or amount of interest, discount points, or other charges which could be charged, taken, received, or reserved were not to apply to any loan, mortgage, or advance which was secured by a first lien on residential real property or by a first lien on stock in a residential cooperative housing corporation where the loan, mortgage, or advance was used to finance the acquisition of such stock; made after Dec. 28, 1979; and described in section 1735f–5(b) of this title, except that the limitation described in section 1735f–5(b)(1) of this title that the property must be designed principally for the occupancy of from one to four families was not to apply, the requirement contained in section 1735f(5)(b)(1) of this title that the loan be secured by residential real property was not to apply to a loan secured by stock in a residential cooperative housing corporation, and for the purpose of this section, the term ''lender'' in section 1735f–5(b)(2)(A) of this title was also to be deemed to include any lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under this chapter; (2) [Repealed by Pub. L. 96–221, title V, § 529, Mar. 31, 1980, 94 Stat. 168, eff. at the close of Mar. 31, 1980.]; that (b) the provisions of subsection (a)(1) were to apply to loans, mortgages, and advances made in any State unless and until the State adopted a provision of law (prior to the close of March 31, 1980) limiting the rate or amount of interest, discount points, or other charges on any such loan, mortgage, or advance, except that at any time after Dec. 28, 1979, any State could adopt a provision of law placing limitations on discount points or such other charges on any such loan, mortgage, or advance; that (c) the Federal Home Loan Bank Board was authorized to issue rules and regulations and to publish interpretations governing the implementation of this section; that (d) the provisions of subsection (a)(1) expired at the close of March 31, 1980, except that such provisions were to continue to apply to any loan, mortgage, or advance described in subsection (a)(1) for the duration of such loan, mortgage, or advance if made prior to such expiration or if made during the

two-year period beginning on Dec. 28, 1979, pursuant to a commitment issued prior to such expiration, and that (e) for the purpose of this Act [Pub. L. 96–161] and any amendment made by this Act [see Tables for classification of Pub. L. 96–161], the term ''State'' included the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, and the Virgin Islands.

§ 1735f–7a. State constitution or laws limiting mortgage interest, discount points, and finance or other charges; exemption for obligations made after March 31, 1980

(a) Applicability to loan, mortgage, credit sale, or advance; applicability to deposit, account, or obligation

(1) The provisions of the constitution or the laws of any State expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, credit sale, or advance which is—

(A) secured by a first lien on residential real property, by a first lien on all stock allocated to a dwelling unit in a residential cooperative housing corporation, or by a first lien on a residential manufactured home;

(B) made after March 31, 1980; and

(C) described in section 527(b) of the National Housing Act (12 U.S.C. 1735f–5(b)), except that for the purpose of this section—

(i) the limitation described in section 527(b)(1) of such Act that the property must be designed principally for the occupancy of from one to four families shall not apply;

(ii) the requirement contained in section 527(b)(1) of such Act that the loan be secured by residential real property shall not apply to a loan secured by stock in a residential cooperative housing corporation or to a loan or credit sale secured by a first lien on a residential manufactured home;

(iii) the term ''federally related mortgage loan'' in section 527(b) of such Act shall include a credit sale which is secured by a first lien on a residential manufactured home and which otherwise meets the definitional requirements of section 527(b) of such Act, as those requirements are modified by this section;

(iv) the term ''residential loans'' in section 527(b)(2)(D) of such Act shall also include loans or credit sales secured by a first lien on a residential manufactured home;

(v) the requirement contained in section 527(b)(2)(D) of such Act that a creditor make or invest in loans aggregating more than $1,000,000 per year shall not apply to a creditor selling residential manufactured homes financed by loans or credit sales secured by first liens on residential manufactured homes if the creditor has an arrangement to sell such loans or credit sales in whole or in part, or if such loans or credit sales are sold in whole or in part to a lender, institution, or creditor described in section 527(b) of such Act or in this section or a creditor, as defined in section 103(f) of the Truth in Lending Act [15 U.S.C. 1602(f)], as such section was in effect on the day preceding March 31, 1980, if such creditor makes or invests in residential real estate loans or loans or credit sales secured by first liens on residential manufactured homes aggregating more than $1,000,000 per year; and

(vi) the term ''lender'' in section 527(b)(2)(A) of such Act shall also be deemed to include any lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act [12 U.S.C. 1701 et seq.], and any individual who finances the sale or exchange of residential real property or a residential manufactured home which such individual owns and which such individual occupies or has occupied as his principal residence.

(2) The provisions of the constitution or law of any State expressly limiting the rate or amount of interest which may be charged, taken, received, or reserved shall not apply to any deposit or account held by, or other obligation of a depository institution. For purposes of this paragraph, the term ''depository institution'' means—

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(ii) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(iii) any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(iv) any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(v) any member as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422); and

(vi) any insured institution as defined in section 408[1] of the National Housing Act (12 U.S.C. 1730a).

(b) Applicability to loan, mortgage, credit sale, or advance made in any State after April 1, 1980

(1) Except as provided in paragraphs (2) and (3), the provisions of subsection (a)(1) of this section shall apply to any loan, mortgage, credit sale, or advance made in any State on or after April 1, 1980.

(2) Except as provided in paragraph (3), the provisions of subsection (a)(1) of this section shall not apply to any loan, mortgage, credit sale, or advance made in any State after the date (on or after April 1, 1980, and before April 1, 1983) on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of subsection (a)(1) of this section to apply with respect to loans, mortgages, credit sales, and advances made in such State.

(3) In any case in which a State takes an action described in paragraph (2), the provisions of subsection (a)(1) of this section shall continue to apply to—

(A) any loan, mortgage, credit sale, or advance which is made after the date such action

[1] See References in Text note below.

was taken pursuant to a commitment therefor which was entered during the period beginning on April 1, 1980, and ending on the date on which such State takes such action; and

(B) any loan, mortgage, or advance which is a rollover of a loan, mortgage, or advance, as described in regulations of the Federal Home Loan Bank Board, which was made or committed to be made during the period beginning on April 1, 1980, and ending on the date on which such State takes any action described in paragraph (2).

(4) At any time after March 31, 1980, any State may adopt a provision of law placing limitations on discount points or such other charges on any loan, mortgage, credit sale, or advance described in subsection (a)(1) of this section.

(c) Applicability to loan, mortgage, credit sale, or advance secured by first lien on residential manufactured home

The provisions of subsection (a)(1) of this section shall not apply to a loan, mortgage, credit sale, or advance which is secured by a first lien on a residential manufactured home unless the terms and conditions relating to such loan, mortgage, credit sale, or advance comply with consumer protection provisions specified in regulations prescribed by the Federal Home Loan Bank Board. Such regulations shall—

(1) include consumer protection provisions with respect to balloon payments, prepayment penalties, late charges, and deferral fees;

(2) require a 30-day notice prior to instituting any action leading to repossession or foreclosure (except in the case of abandonment or other extreme circumstances);

(3) require that upon prepayment in full, the debtor shall be entitled to a refund of the unearned portion of the precomputed finance charge in an amount not less than the amount which would be calculated by the actuarial method, except that the debtor shall not be entitled to a refund which is less than $1; and

(4) include such other provisions as the Federal Home Loan Bank Board may prescribe after a finding that additional protections are required.

(d) Implementation of provisions applicable to residential manufactured home

The provisions of subsection (c) of this section shall not apply to a loan, mortgage, credit sale, or advance secured by a first lien on a residential manufactured home until regulations required to be issued pursuant to paragraphs (1), (2), and (3) of subsection (c) of this section take effect, except that the provisions of subsection (c) of this section shall apply in the case of such a loan, mortgage, credit sale, or advance made prior to the date on which such regulations take effect if the loan, mortgage, credit sale, or advance includes a precomputed finance charge and does not provide that, upon prepayment in full, the refund of the unearned portion of the precomputed finance charge is in an amount not less the amount which would be calculated by the actuarial method, except that the debtor shall not be entitled to a refund which is less than $1. The Federal Home Loan Bank Board shall issue regulations pursuant to the provisions of paragraphs (1), (2), and (3) of subsection (c) of this section that shall take effect prospectively not less than 30 days after publication in the Federal Register and not later than 120 days from March 31, 1980.

(e) Definitions

For the purpose of this section—

(1) a ''prepayment'' occurs upon—

(A) the refinancing or consolidation of the indebtedness;

(B) the actual prepayment of the indebtedness by the consumer whether voluntarily or following acceleration of the payment obligation by the creditor; or

(C) the entry of a judgment for the indebtedness in favor of the creditor;

(2) the term ''actuarial method'' means the method of allocating payments made on a debt between the outstanding balance of the obligation and the precomputed finance charge pursuant to which a payment is applied first to the accrued precomputed finance charge and any remainder is subtracted from, or any deficiency is added to, the outstanding balance of the obligation;

(3) the term ''precomputed finance charge'' means interest or a time price differential within the meaning of sections 106(a)(1) and (2) of the Truth in Lending Act (15 U.S.C. 1605(a)(1) and (2)) as computed by an add-on or discount method; and

(4) the term ''residential manufactured home'' means a manufactured home as defined in section 603(6) of the National Mobile Home Construction and Safety Standards Act of 1974 [42 U.S.C. 5402(6)] which is used as a residence.

(f) Rules, regulations, and interpretations

The Federal Home Loan Bank Board is authorized to issue rules and regulations and to publish interpretations governing the implementation of this section.

(g) Effective date

This section takes effect on April 1, 1980.

(Pub. L. 96–221, title V, §501, Mar. 31, 1980, 94 Stat. 161; Pub. L. 96–221, title II, §207(b)(11), Mar. 31, 1980, 94 Stat. 144; Pub. L. 96–399, title III, §§308(c)(6), 324(a), (e), Oct. 8, 1980, 94 Stat. 1641, 1647, 1648; Pub. L. 97–35, title III, §384, Aug. 13, 1981, 95 Stat. 432.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§1701 et seq.). Section 408 of the National Housing Act, which was classified to section 1730a of this title, was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Depository Institutions Deregulation and Monetary Control Act of 1980, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1981—Subsec. (a)(1)(C)(vi). Pub. L. 97–35 inserted reference to a residential manufactured home.

1980—Subsec. (a)(1)(A). Pub. L. 96–399, §324(a), substituted ''all stock allocated to a dwelling unit'' for

first reference to ''stock'' and struck out ''where the loan, mortgage, or advance is used to finance the acquisition of such stock'' after ''housing corporation''.

Subsec. (a)(1)(C)(vi). Pub. L. 96–399, § 324(e), inserted reference to any person who finances the sale or exchange of residential real property which such individual owns and which such individual occupies or has occupied as his principal residence.

Subsec. (a)(2). Pub. L. 96–221, § 207(b)(11), struck out ''(A)'' after ''(2)'' and struck out subpar. (B) which provided that this paragraph shall not apply to any such deposit, account, or obligation which is payable only at an office of an insured bank, as defined in section 3 of the Federal Deposit Insurance Act, located in the Commonwealth of Puerto Rico.

Subsec. (e)(4). Pub. L. 96–399, § 308(c)(6), substituted ''manufactured'' for ''mobile''.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 207(b) of Pub. L. 96–221 provided in part that the amendment made by that section is effective 6 years after Mar. 31, 1980.

SEVERABILITY

Section 526 of Pub. L. 96–221 provided that: ''If any provision of this Act [for classification of Act to the Code, see Short Title of 1980 Amendment note set out under section 226 of this title and Tables] or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Act and the application of such provision to any person or circumstance other than that as to which it is held invalid shall not be affected thereby.''

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

Pub. L. 96–221, title V, § 528, Mar. 31, 1980, 94 Stat. 168, provided that: ''In any case in which one or more provisions of, or amendments made by, this title [enacting sections 86a, 1730g, 1735f–7a, and 1831d of this title, amending section 1785 of this title and section 687 of Title 15, Commerce and Trade, and enacting provisions set out as notes under sections 86a, 1730g, and 1735f–7 of this title], section 529 of the National Housing Act [section 1735f–7 of this title], or any other provision of law, including section 5197 of the Revised Statutes (12 U.S.C. 85), apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate.''

DEFINITION OF ''STATE''

Section 527 of title V of Pub. L. 96–221, as amended by Pub. L. 96–221, title II, § 207(b)(12), Mar. 31, 1980, 94 Stat. 144, provided that: ''For purposes of this title [enacting sections 86a, 1730g, 1735f–7a, and 1831d of this title, amending section 1785 of this title and section 687 of Title 15, Commerce and Trade, and enacting provisions set out as notes under sections 86a, 1730g, 1735f–7, and 1735f–7a of this title] the term 'State' includes the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands.''

[Section 207(b) of Pub. L. 96–221 provided that the amendment of above note made by that section is effective 6 years after Mar. 31, 1980.]

[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

§ 1735f–8. Time of payment of premium charges

In carrying out the provisions of subchapters I, II, IV,[1] VII, VIII, IX–B, and X of this chapter pertaining to the payment of loan or mortgage insurance premium charges by a financial institution, other mortgagees, or agent thereof to the Federal Government in connection with a loan or mortgage insurance program established pursuant to any of these subchapters, the Secretary shall require that payment of such premiums be made (1) in the case of loans or mortgages respecting one- to four-family residences, promptly upon their receipt from the borrower, and (2) in any other case, promptly when due to the Secretary; except that the Secretary may approve payment of such premiums within twenty-four months of such receipt or due date, as appropriate, if the financial institution, mortgagee, or agent thereof pays interest, at a rate specified by the Secretary, to the insurance fund for the period beginning twenty days after receipt from the borrower or after the due date, as appropriate, and ending upon payment of the premiums to the Federal Government.

(June 27, 1934, ch. 847, title V, § 530, as added Pub. L. 96–399, title III, § 320, Oct. 8, 1980, 94 Stat. 1646; amended Pub. L. 98–181, title IV, § 406, Nov. 30, 1983, 97 Stat. 1210; Pub. L. 101–235, title I, § 133(d)(5), Dec. 15, 1989, 103 Stat. 2027.)

REFERENCES IN TEXT

Subchapter IV of this chapter, referred to in text, was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

AMENDMENTS

1989—Pub. L. 101–235 struck out reference to subchapter IX–A after reference to subchapter VIII.

1983—Pub. L. 98–181 substituted ''(1) in the case of loans or mortgages respecting one- to four-family residences, promptly upon their receipt from the borrower, and (2) in any other case, promptly when due to the Secretary'' for ''promptly upon their receipt from the borrower'', inserted ''or due date, as appropriate,'' after ''such receipt'', and inserted ''or after the due date, as appropriate,'' before ''and ending''.

§ 1735f–9. Limitation on commitments to insure loans and mortgages

(a) The authority of the Secretary to enter into commitments to insure loans and mortgages under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are or have been provided in appropriation Acts for such fiscal year.

(b) Notwithstanding any other provision of law and subject only to the absence of qualified requests for insurance, to the authority provided in this chapter, and to the limitation in subsection (a) of this section, the Secretary shall enter into commitments to insure mortgages under this chapter with an aggregate principal amount of $110,165,000,000 during fiscal year 1993 and $68,673,868,600 during fiscal year 1994.

(June 27, 1934, ch. 847, title V, § 531, as added Pub. L. 97–35, title III, § 335, Aug. 13, 1981, 95 Stat. 414; amended Pub. L. 98–181, title IV, § 402, Nov. 30, 1983, 97 Stat. 1208; Pub. L. 98–479, title I, § 104(a)(7), Oct. 17, 1984, 98 Stat. 2225; Pub. L. 99–267, § 1(h), Mar. 27, 1986, 100 Stat. 73; Pub. L. 100–122, § 2(c), Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–242, title IV, § 402, Feb. 5, 1988, 101 Stat. 1899; Pub. L. 101–625, title III, § 321, Nov. 28, 1990, 104 Stat. 4134; Pub. L. 102–550, title V, § 501, Oct. 28,

[1] See References in Text note below.

1992, 106 Stat. 3778; Pub. L. 103–120, § 9, Oct. 27, 1993, 107 Stat. 1151.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–120 substituted ''$110,165,000,000'' for ''$65,905,824,960''.

1992—Subsec. (b). Pub. L. 102–550 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Notwithstanding any other provision of law and subject only to the absence of qualified requests for insurance, to the authority provided in this chapter, and to the limitation in subsection (a) of this section, the Secretary shall enter into commitments to insure mortgages under this chapter with an aggregate principal amount of $76,791,000,000 during fiscal year 1991 and $79,818,000,000 during fiscal year 1992.''

1990—Subsec. (b). Pub. L. 101–625 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Notwithstanding any other provision of law and subject only to the absence of qualified requests for insurance, to the authority provided in this chapter, and to the limitation in subsection (a) of this section, the Secretary shall enter into commitments to insure mortgages under this chapter with an aggregate principal amount of $100,000,000,000 during fiscal year 1988, and $104,000,000,000 during fiscal year 1989.''

1988—Pub. L. 100–242 designated existing provisions as subsec. (a) and added subsec. (b).

1987—Pub. L. 100–122 substituted ''for any fiscal year'' for ''for fiscal year 1986''.

1986—Pub. L. 99–267 amended section generally. Prior to amendment, section read as follows: ''Notwithstanding any other provision of law and subject only to the absence of qualified requests for insurance, to the authority provided in this chapter, and to any funding limitation approved in appropriation Acts, the Secretary shall enter into commitments during each of the fiscal years 1984 and 1985 to insure mortgages under this chapter with an aggregate principal amount of $50,900,000,000.''

1984—Pub. L. 98–479 substituted ''this chapter'' for ''subchapter II of this chapter'' in two places.

1983—Pub. L. 98–181 substituted provision authorizing the Secretary, subject to certain qualifications, to enter into commitments during fiscal years 1984 and 1985 to insure mortgages under subchapter II of this chapter with an aggregate principal amount of $50,900,000,000 for provision which directed the Secretary, during fiscal year 1982, not to enter into commitments under this chapter to insure loans and mortgages with an aggregate principal amount in excess of $41,000,000,000.

EFFECTIVE DATE

Section effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as a note under section 3701 of this title.

AUTHORIZATION TO ENTER INTO ADDITIONAL COMMITMENTS TO INSURE LOANS AND MORTGAGES DURING FISCAL YEAR 1986

For increase in the applicable limitation on additional commitments to insure mortgages and loans to carry out this chapter during fiscal year 1986, see Pub. L. 99–349, title I, July 2, 1986, 100 Stat. 728; Pub. L. 99–345, § 2, June 24, 1986, 100 Stat. 673; and Pub. L. 99–289, May 2, 1986, 100 Stat. 412, set out as notes under section 1721 of this title.

§ 1735f–10. Change of mortgagee status

(a) Notification

Upon the occurrence of any action described in subsection (b), an approved mortgagee shall immediately submit to the Secretary, in writing, notification of such occurrence.

(b) Actions

The actions described in this subsection are as follows:

(1) The debarment, suspension or a Limited Denial of Participation (LDP), or application of other sanctions, other exclusions, fines, or penalties applied to the mortgagee or to any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the mortgagee pursuant to applicable provisions of State or Federal law.

(2) The revocation of a State-issued mortgage loan originator license issued pursuant to the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) or any other similar declaration of ineligibility pursuant to State law.

(June 27, 1934, ch. 847, title V, § 532, as added Pub. L. 111–22, div. A, title II, § 203(e), May 20, 2009, 123 Stat. 1647.)

REFERENCES IN TEXT

The S.A.F.E. Mortgage Licensing Act of 2008, referred to in subsec. (b)(2), is title V of div. A of Pub. L. 110–289, July 30, 2008, 122 Stat. 2810, also known as the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, which is classified generally to chapter 51 (§ 5101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of this title and Tables.

PRIOR PROVISIONS

A prior section 1735f–10, act June 27, 1934, ch. 847, title V, § 532, as added Pub. L. 97–35, title III, § 339G, Aug. 13, 1981, 95 Stat. 418, which related to purchaser-broker arrangement payments for insurance purposes, was repealed by section 203(e) of Pub. L. 111–22.

§ 1735f–11. Review of mortgagee performance and authority to terminate

(a) Periodic review of mortgagee performance

To reduce losses in connection with single family mortgage insurance programs under this chapter, at least once a year the Secretary shall review the rate of early defaults and claims for insured single family mortgages originated or underwritten by each mortgagee.

(b) Comparison with other mortgagees

For each mortgagee, the Secretary shall compare the rate of early defaults and claims for insured single family mortgage loans originated or underwritten by the mortgagee in an area with the rate of early defaults and claims for other mortgagees originating or underwriting insured single family mortgage loans in the area. For purposes of this section, the term ''area'' means each geographic area in which the mortgagee is authorized by the Secretary to originate insured single family mortgages.

(c) Termination of mortgagee origination approval

(1) Notwithstanding section 1708(c) of this title, the Secretary may terminate the approval of a mortgagee to originate or underwrite single family mortgages if the Secretary determines that the mortgage loans originated or underwritten by the mortgagee present an unacceptable risk to the insurance funds. The determination shall be based on the comparison required under subsection (b) of this section and shall be made in accordance with regulations of the Secretary. The Secretary may rely on existing reg-

ulations published before this section takes effect.

(2) The Secretary shall give a mortgagee at least 60 days prior written notice of any termination under this subsection. The termination shall take effect at the end of the notice period, unless the Secretary withdraws the termination notice or extends the notice period. If requested in writing by the mortgagee within 30 days of the date of the notice, the mortgagee shall be entitled to an informal conference with the official authorized to issue termination notices on behalf of the Secretary (or a designee of that official). At the informal conference, the mortgagee may present for consideration specific factors that it believes were beyond its control and that caused the excessive default and claim rate.

(June 27, 1934, ch. 847, title V, § 533, as added Pub. L. 100–242, title IV, § 407(b), Feb. 5, 1988, 101 Stat. 1902; amended Pub. L. 107–73, title II, § 209, Nov. 26, 2001, 115 Stat. 675.)

AMENDMENTS

2001—Pub. L. 107–73 amended section catchline and text generally. Prior to amendment, text read as follows:

''(a) To reduce losses in connection with mortgage insurance programs under this chapter, the Secretary shall review, at least once a year, the rate of early serious defaults and claims involving mortgagees approved under this chapter. On the basis of this review, the Secretary shall notify each mortgagee which, as determined by the Secretary, had a rate of early serious defaults and claims during the preceding year which was higher than the normal rate for the geographic area or areas in which that mortgagee does business. In the notification, the Secretary shall require each mortgagee to submit a report, within a time determined by the Secretary, containing the mortgagee's (1) explanation for the above normal rate of early serious defaults and claims; (2) plan for corrective action, if applicable, both with regard to (A) mortgages in default; and (B) its mortgage-processing system in general; and (3) a timeframe within which this corrective action will be begun and completed. If the Secretary does not agree with this timeframe or plan, a mutually agreeable timeframe and plan will be determined.

''(b) Failure of the mortgagee to submit a report required under subsection (a) of this section within the time determined by the Secretary or to commence or complete the plan for corrective action within the timeframe agreed upon by the Secretary may be cause for suspension of the mortgagee from participation in programs under this chapter.''

§ 1735f–12. Assurance of adequate processing of applications for loan and mortgage insurance

(a) State offices

In order to ensure the adequate processing of applications for insurance of loans and mortgages under this chapter, the Secretary shall maintain not less than one office in each State to carry out the provisions of this chapter.

(b) Expedited procedure for RTC properties

To assist the Resolution Trust Corporation in disposing of the property to which it acquires title and to ensure the timely processing of applications for insurance of loans and mortgages under this chapter that will be used to purchase multifamily residential property from the Resolution Trust Corporation, the Secretary shall establish an expedited procedure for considering such applications.

(June 27, 1934, ch. 847, title V, § 534, as added Pub. L. 100–242, title IV, § 418, Feb. 5, 1988, 101 Stat. 1912; amended Pub. L. 102–550, title V, § 512(a), Oct. 28, 1992, 106 Stat. 3786.)

AMENDMENTS

1992—Pub. L. 102–550 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

REGULATIONS

Section 512(b) of Pub. L. 102–550 provided that: ''The procedure referred to in the amendment made by subsection (a) [amending this section] shall be established through interim and final regulations issued by the Secretary. The Secretary shall issue interim regulations implementing the procedure not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], which shall be effective upon issuance. The Secretary shall issue final regulations after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).''

§ 1735f–13. Prohibition of requirement of minimum principal loan amount

A mortgagee or lender may not require, as a condition of providing a loan insured under this chapter or secured by a mortgage insured under this chapter, that the principal amount of the loan exceed a minimum amount established by the mortgagee or lender.

(June 27, 1934, ch. 847, title V, § 535, as added Pub. L. 100–242, title IV, § 419(a), Feb. 5, 1988, 101 Stat. 1913.)

§ 1735f–14. Civil money penalties against mortgagees, lenders, and other participants in FHA programs

(a) In general

(1) Authority

If a mortgagee approved under the[1] chapter, a lender holding a contract of insurance under subchapter I of this chapter, or a principal, officer, or employee of such mortgagee or lender, or other person or entity participating in either an insured mortgage or subchapter I loan transaction under this chapter or providing assistance to the borrower in connection with any such loan, including sellers of the real estate involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents and dealers, knowingly and materially violates any applicable provision of subsection (b) of this section, the Secretary may impose a civil money penalty on the mortgagee or lender, or such other person or entity, in accordance with this section. The penalty under this paragraph shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

[1] So in original. Probably should be ''this''.

(2) Amount of penalty

The amount of the penalty, as determined by the Secretary, may not exceed $5,000 for each violation, except that the maximum penalty for all violations by any particular mortgagee or lender or such other person or entity during any 1-year period shall not exceed $1,000,000. Each violation of a[2] the provisions of subsection (b)(1) of this section shall constitute a separate violation with respect to each mortgage or loan application. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

In the case of the mortgagee's failure to engage in loss mitigation activities, as provided in subsection (b)(1)(I) of this section, the penalty shall be in the amount of three times the amount of any insurance benefits claimed by the mortgagee with respect to any mortgage for which the mortgagee failed to engage in such loss mitigation actions.

(b) Violations for which a penalty may be imposed

(1) Violations

The Secretary may impose a civil money penalty under subsection (a) of this section for any knowing and material violation by a mortgagee or lender or any of its owners, officers, or directors, as follows:

(A) Except where expressly permitted by statute, regulation, or contract approved by the Secretary, transfer of a mortgage insured under this chapter to a mortgagee not approved by the Secretary, or transfer of a loan to a transferee that is not holding a contract of insurance under subchapter I of this chapter.

(B) Failure of a nonsupervised mortgagee, as defined by the Secretary—

(i) to segregate all escrow funds received from a mortgagor for ground rents, taxes, assessments, and insurance premiums; or

(ii) to deposit these funds in a special account with a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation through the Deposit Insurance Fund, or by the National Credit Union Administration.

(C) Use of escrow funds for any purpose other than that for which they were received.

(D) Submission to the Secretary of information that was false, in connection with any mortgage insured under this chapter, or any loan that is covered by a contract of insurance under subchapter I of this chapter.

(E) With respect to an officer, director, principal, or employee—

(i) hiring such an individual whose duties will involve, directly or indirectly, programs administered by the Secretary, while that person was under suspension or withdrawal by the Secretary; or

(ii) retaining in employment such an individual who continues to be involved, directly or indirectly, in programs administered by the Secretary, while that person was under suspension or withdrawal by the Secretary.

(F) Falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity.

(G) Failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to—

(i) the application of a mortgagee or lender for approval by the Secretary; or

(ii) the notification by a mortgagee or lender to the Secretary concerning establishment of a branch office.

(H) Violation of any provisions of subchapter I or II of this chapter, or any implementing regulation, handbook, or mortgagee letter that is issued under this chapter.

(I) Failure to engage in loss mitigation actions as provided in section 1715u(a) of this title.

(J) Failure to perform a required physical inspection of the mortgaged property.

(K) Violation of section 1708(d) of this title.

(L) Use of ''Federal Housing Administration'', ''Department of Housing and Urban Development'', ''Government National Mortgage Association'', ''Ginnie Mae'', the acronyms ''HUD'', ''FHA'', or ''GNMA'', or any official seal or logo of the Department of Housing and Urban Development, except as authorized by the Secretary.

(2) Additional violations

The Secretary may impose a civil money penalty under subsection (a) of this section for any knowing and material violation by a principal, officer, or employee of a mortgagee or lender, or other participants in either an insured mortgage or subchapter I loan transaction under this chapter or provision of assistance to the borrower in connection with any such loan, including sellers of the real estate involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, and dealers for—

(A) submission to the Secretary of information that was false, in connection with any mortgage insured under this chapter, or any loan that is covered by a contract of insurance under subchapter I of this chapter;

(B) falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity;

(C) failure by a loan correspondent or dealer to submit to the Secretary information which is required by regulations or directives in connection with any loan that is covered by a contract of insurance under subchapter I of this chapter; or

(D) causing or participating in any of the violations set forth in paragraph (1) of this subsection.

(3) Prohibition against misleading use of Federal entity designation

The Secretary may impose a civil money penalty, as adjusted from time to time, under subsection (a) for any use of ''Federal Housing

[2] So in original. The word ''a'' probably should not appear.

Administration'', ''Department of Housing and Urban Development'', ''Government National Mortgage Association'', ''Ginnie Mae'', the acronyms ''HUD'', ''FHA'', or ''GNMA'', or any official seal or logo of the Department of Housing and Urban Development, by any person, party, company, firm, partnership, or business, including sellers of real estate, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, and dealers, except as authorized by the Secretary.

(c) Agency procedures

(1) Establishment

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a) of this section. These standards and procedures—

(A) shall provide for the Secretary to make the determination to impose the penalty or to use an administrative entity (such as the Mortgagee Review Board, established pursuant to section 1708(c) of this title) to make the determination;

(B) shall provide for the imposition of a penalty only after the mortgagee or lender or such other person or entity has been given an opportunity for a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Final orders

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (a) of this section, consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including those before December 15, 1989), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

(4) Reviewability of imposition of penalty

The Secretary's determination or order imposing a penalty under subsection (a) of this section shall not be subject to review, except as provided in subsection (d) of this section.

(d) Judicial review of agency determination

(1) In general

After exhausting all administrative remedies established by the Secretary under subsection (c)(1) of this section, a mortgagee or lender or such other person or entity against whom the Secretary has imposed a civil money penalty under subsection (a) of this section may obtain a review of the penalty and such ancillary issues (such as any administrative sanctions under 24 C.F.R. parts 24 and 25) as may be addressed in the notice of determination to impose a penalty under subsection (c)(1)(A) of this section in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's determination or order be modified or be set aside in whole or in part.

(2) Objections not raised in hearing

The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (c)(1) of this section unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of the additional evidence.

(3) Scope of review

The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5.

(4) Order to pay penalty

Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

(e) Action to collect penalty

If any mortgagee or lender or such other person or entity fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (a) of this section, after the determination or order is no longer subject to review as provided by subsections (c)(1) and (d) of this section, the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the mortgagee or lender or such other person or entity and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(f) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(g) "Knowingly" defined

For purposes of this section, a person acts knowingly when a person has actual knowledge of acts or should have known of the acts.

(h) Regulations

The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(i) Deposit of penalties in insurance funds

Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the appropriate insurance fund or funds established under this chapter, as determined by the Secretary.

(June 27, 1934, ch. 847, title V, § 536, as added Pub. L. 101–235, title I, § 107(a), Dec. 15, 1989, 103 Stat. 2000; amended Pub. L. 104–208, div. A, title II, § 2704(d)(13)(B), Sept. 30, 1996, 110 Stat. 3009–490; Pub. L. 105–65, title V, § 553, Oct. 27, 1997, 111 Stat. 1413; Pub. L. 105–276, title VI, § 601(g), (h), Oct. 21, 1998, 112 Stat. 2674; Pub. L. 108–447, div. I, title II, § 219(a), Dec. 8, 2004, 118 Stat. 3319; Pub. L. 109–171, title II, § 2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, § 9(f)(2), Feb. 15, 2006, 119 Stat. 3618; Pub. L. 111–22, div. A, title II, § 203(f), May 20, 2009, 123 Stat. 1647.)

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111–22, § 203(f)(1)(A)(i), inserted ''or any of its owners, officers, or directors'' after ''mortgagee or lender'' in introductory provisions.

Subsec. (b)(1)(H). Pub. L. 111–22, § 203(f)(1)(A)(ii), substituted ''subchapter I or II of this chapter, or any implementing regulation, handbook, or mortgagee letter that is issued under this chapter.'' for ''subchapter I, II, or IX–A (as such subchapter existed immediately before December 15, 1989) of this chapter or any implementing regulation or handbook that is issued under this chapter.''

Subsec. (b)(1)(K), (L). Pub. L. 111–22, § 203(f)(1)(A)(iii), added subpars. (K) and (L).

Subsec. (b)(2)(D). Pub. L. 111–22, § 203(f)(1)(B), added subpar. (D).

Subsec. (b)(3). Pub. L. 111–22, § 203(f)(1)(C), amended par. (3) generally. Prior to amendment, text read as follows: ''Before taking action to impose a civil money penalty for a violation under paragraph (1)(D) or (F), or paragraph (2)(A), (B), or (C), the Secretary shall inform the Attorney General of the United States.''

Subsec. (g). Pub. L. 111–22, § 203(f)(2), substituted ''For purposes of this section, a person acts knowingly when a person has actual knowledge of acts or should have known of the acts.'' for ''The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.''

2006—Subsec. (b)(1)(B)(ii). Pub. L. 109–173 substituted ''Deposit Insurance Fund'' for ''Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations''.

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(13)(B). See 1996 Amendment note below.

2004—Subsec. (b)(1)(J). Pub. L. 108–447 added subpar. (J).

1998—Subsec. (a)(2). Pub. L. 105–276, § 601(g), inserted second paragraph.

Subsec. (b)(1)(I). Pub. L. 105–276, § 601(h), which directed the addition of subpar. (I) after subpar. ''(h)'', was executed by adding subpar. (I) after subpar. (H), to reflect the probable intent of Congress.

1997—Pub. L. 105–65, § 553(a), amended section catchline generally, substituting ''mortgagees, lenders, and other participants in FHA programs'' for ''mortgagees and lenders''.

Subsec. (a)(1). Pub. L. 105–65, § 553(b)(1), substituted ''If a mortgagee approved under the chapter, a lender holding a contract of insurance under subchapter I of this chapter, or a principal, officer, or employee of such mortgagee or lender, or other person or entity participating in either an insured mortgage or subchapter I loan transaction under this chapter or providing assistance to the borrower in connection with any such loan, including sellers of the real estate involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents and dealers, knowingly and materially violates any applicable provision of subsection (b) of this section, the Secretary may impose a civil money penalty on the mortgagee or lender, or such other person or entity, in accordance with this section. The penalty under this paragraph shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.'' for ''Whenever a mortgagee approved under this chapter, or a lender holding a contract of insurance under subchapter I of this chapter, knowingly and materially violates any of the provisions of subsection (b) of this section, the Secretary may impose a civil money penalty on the mortgagee or lender in accordance with the provisions of this section.''

Subsec. (a)(2). Pub. L. 105–65, § 553(b)(2), inserted ''or such other person or entity'' after ''lender'' in first sentence and substituted ''the provisions of subsection (b)(1)'' for ''provision of subsection (b)(1)'' in second sentence.

Subsec. (b)(2). Pub. L. 105–65, § 553(c)(1), (2), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b)(3). Pub. L. 105–65, § 553(c)(1), (3), redesignated par. (2) as (3) and substituted ''or (F), or paragraph (2)(A), (B), or (C)'' for ''or paragraph (1)(F)''.

Subsec. (c)(1)(B). Pub. L. 105–65, § 553(d)(1), inserted ''or such other person or entity'' after ''lender''.

Subsec. (d)(1). Pub. L. 105–65, § 553(d)(2), inserted ''or such other person or entity'' after ''lender'' and substituted ''parts 24 and 25'' for ''part 25''.

Subsec. (e). Pub. L. 105–65, § 553(d)(3), inserted ''or such other person or entity'' after ''lender'' in two places.

1996—Subsec. (b)(1)(B)(ii). Pub. L. 104–208, § 2704(d)(13)(B), which directed the amendment of section 526(b)(1)(B)(ii) of the National Housing Act by substituting ''Deposit Insurance Fund'' for ''Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations'' and which substitution was probably intended by Congress to be made in subsec. (b)(1)(B)(ii) of this section, section 536 of the National Housing Act, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE

Section 107(b) of Pub. L. 101–235 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply only with respect to—

''(1) violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989]; and

''(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation referred to in the amendment that occurs on or after such date.''

REGULATIONS

Section 541 of title V of Pub. L. 105–65 provided that:

''(a) ISSUANCE OF NECESSARY REGULATIONS.—Notwithstanding section 7(*o*) of the Department of Housing and Urban Development Act [42 U.S.C. 3535(*o*)] or part 10 of title 24, Code of Federal Regulations (as in existence on the date of enactment of this Act [Oct. 27, 1997]), the Secretary shall issue such regulations as the Secretary determines to be necessary to implement this subtitle [subtitle C (§§ 541–564) of title V of Pub. L. 105–65, enacting section 1437z–1 of Title 42, The Public Health and Welfare, amending this section, sections 1708, 1715z–4a, 1715z–19, and 1735f–15 of this title, section 1516 of Title 18, Crimes and Criminal Procedure, section 6103 of Title 26, Internal Revenue Code, and sections 503 and 1437z of Title 42, and enacting provisions set out as notes under section 1735f–15 of this title and sections 503 and 1437z–1 of Title 42] and the amendments made by this subtitle in accordance with section 552 or 553 of title 5, United States Code, as determined by the Secretary.

''(b) USE OF EXISTING REGULATIONS.—In implementing any provision of this subtitle, the Secretary may, in the discretion of the Secretary, provide for the use of existing regulations to the extent appropriate, without rulemaking.''

§ 1735f–15. Civil money penalties against multifamily mortgagors

(a) In general

The penalties set forth in this section shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions. The Secretary may not impose penalties under this section for violations a material cause of which are the failure of the Department, an agent of the Department, or a public housing agency to comply with existing agreements.

(b) Penalty for violation of agreement as condition of transfer of physical assets, flexible subsidy loan, capital improvement loan, modification of mortgage terms, or workout agreement

(1) Authority

Whenever a mortgagor of property that includes 5 or more living units and that has a mortgage insured, co-insured, or held pursuant to this chapter, who has agreed in writing, as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a workout agreement, to use nonproject income to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical condition, or to pay other project liabilities, knowingly and materially fails to comply with any of these commitments, the Secretary may impose a civil money penalty on that mortgagor, on a general partner of a partnership mortgagor, or on any officer or director of a corporate mortgagor in accordance with the provisions of this section.

(2) Amount of penalty

The amount of the penalty, as determined by the Secretary, for a violation of this subsection may not exceed the amount of the loss the Secretary would experience at a foreclosure sale, or a sale after foreclosure, of the property involved.

(c) Other violations

(1)(A) Liable parties

The Secretary may also impose a civil money penalty under this section on—

(i) any mortgagor of a property that includes 5 or more living units and that has a mortgage insured, coinsured, or held pursuant to this chapter;

(ii) any general partner of a partnership mortgagor of such property;

(iii) any officer or director of a corporate mortgagor;

(iv) any agent employed to manage the property that has an identity of interest with the mortgagor, with the general partner of a partnership mortgagor, or with any officer or director of a corporate mortgagor of such property; or

(v) any member of a limited liability company that is the mortgagor of such property or is the general partner of a limited partnership mortgagor or is a partner of a general partnership mortgagor.

(B) Violations

A penalty may be imposed under this section upon any liable party under subparagraph (A) that knowingly and materially takes any of the following actions:

(i) Conveyance, transfer, or encumbrance of any of the mortgaged property, or permitting the conveyance, transfer, or encumbrance of such property, without the prior written approval of the Secretary.

(ii) Assignment, transfer, disposition, or encumbrance of any personal property of the project, including rents, other revenues, or contract rights, or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary.

(iii) Conveyance, assignment, or transfer of any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property, without the prior written approval of the Secretary.

(iv) Remodeling, adding to, reconstructing, or demolishing any part of the mortgaged property or subtracting from any real or personal property of the project, without the prior written approval of the Secretary.

(v) Requiring, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent, plus a security deposit in an amount not in excess of 1 month's rent, to guarantee the performance of the covenants of the lease.

(vi) Not holding any funds collected as security deposits separate and apart from all other funds of the project in a trust account, the amount of which at all times equals or exceeds the aggregate of all outstanding obligations under the account.

(vii) Payment for services, supplies, or materials which exceeds $500 and substantially exceeds the amount ordinarily paid for such services, supplies, or materials in the area

where the services are rendered or the supplies or materials furnished.

(viii) Failure to maintain at any time the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers (including failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or any duly authorized agents of the Secretary.

(ix) Failure to maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary.

(x) Failure to furnish the Secretary, by the expiration of the 90-day period beginning on the first day after the completion of each fiscal year (unless the Secretary has approved an extension of the 90-day period in writing), with a complete annual financial report, in accordance with requirements prescribed by the Secretary, including requirements that the report be—

(I) based upon an examination of the books and records of the mortgagor;

(II) prepared and certified to by an independent public accountant or a certified public accountant (unless the Secretary has waived this requirement in writing); and

(III) certified to by the mortgagor or an authorized representative of the mortgagor.

The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this clause is due to events beyond the control of the mortgagor.

(xi) At the request of the Secretary, the agents of the Secretary, the employees of the Secretary, or the attorneys of the Secretary, failure to furnish monthly occupancy reports or failure to provide specific answers to questions upon which information is sought relative to income, assets, liabilities, contracts, the operation and condition of the property, or the status of the mortgage.

(xii) Failure to make promptly all payments due under the note and mortgage, including mortgage insurance premiums, tax and insurance escrow payments, and payments to the reserve for replacements when there is adequate project income available to make such payments.

(xiii) Failure to maintain the premises, accommodations, any living unit in the project, and the grounds and equipment appurtenant thereto in good repair and condition in accordance with regulations and requirements of the Secretary, except that nothing in this clause shall have the effect of altering the provisions of an existing regulatory agreement or federally insured mortgage on the property.

(xiv) Failure, by a mortgagor, a general partner of a partnership mortgagor, or an officer or director of a corporate mortgagor, to provide management for the project that is acceptable to the Secretary pursuant to regulations and requirements of the Secretary.

(xv) Failure to provide access to the books, records, and accounts related to the operations of the mortgaged property and of the project.

The pay out of surplus cash, as defined by and provided for in the regulatory agreement, shall not constitute a violation of this subsection.

(2) Amount of penalty

A penalty imposed for a violation under this subsection, as determined by the Secretary, may not exceed $25,000.

(d) Agency procedures

(1) Establishment

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsections (b) and (c) of this section. These standards and procedures—

(A) shall provide for the Secretary or other department official (such as the Assistant Secretary for Housing) to make the determination to impose a penalty;

(B) shall provide for the imposition of a penalty only after the mortgagor, general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property has been given an opportunity for a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Final orders

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (b) or (c) of this section, consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before December 15, 1989), ability to pay the penalty, injury to the tenants, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

(4) Reviewability of imposition of penalty

The Secretary's determination or order imposing a penalty under subsection (b) or (c) of this section shall not be subject to review, except as provided in subsection (e) of this section.

(5) Payment of penalty

No payment of a civil money penalty levied under this section shall be payable out of project income.

(e) Judicial review of agency determination

(1) In general

After exhausting all administrative remedies established by the Secretary under subsection (d)(1) of this section, an entity or person against whom the Secretary has imposed a civil money penalty under subsection (b) or (c) of this section may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under subsection (d)(1)(A) of this section in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

(2) Objections not raised in hearing

The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (d)(1) of this section unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

(3) Scope of review

The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5.

(4) Order to pay penalty

Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

(f) Civil money penalties against multifamily mortgagors, general partners of partnership mortgagors, officers and directors of corporate mortgagors, and certain managing agents

If a mortgagor, general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (b) or (c) of this section, after the determination or order is no longer subject to review as provided by subsections (d)(1) and (e) of this section, the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the mortgagor, general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(g) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(h) "Knowingly" defined

The term ''knowingly'' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(i) Regulations

The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(j) Deposit of penalties in insurance funds

Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the fund established under section 1715z–1a(j) of this title.

(k) Identity of interest managing agent

In this section, the terms ''agent employed to manage the property that has an identity of interest'' and ''identity of interest agent'' mean an entity—

(1) that has management responsibility for a project;

(2) in which the ownership entity, including its general partner or partners (if applicable) and its officers or directors (if applicable), has an ownership interest; and

(3) over which the ownership entity exerts effective control.

(June 27, 1934, ch. 847, title V, § 537, as added Pub. L. 101–235, title I, § 108(a), Dec. 15, 1989, 103 Stat. 2003; amended Pub. L. 105–65, title V, § 561(a), Oct. 27, 1997, 111 Stat. 1414; Pub. L. 108–447, div. I, title II, § 219(b), (c), Dec. 8, 2004, 118 Stat. 3319.)

AMENDMENTS

2004—Subsec. (c)(1)(B)(ii). Pub. L. 108–447, § 219(b), inserted ''other revenues, or contract rights,'' after ''rents,''.

Subsec. (c)(1)(B)(x). Pub. L. 108–447, § 219(c), amended cl. (x) generally. Prior to amendment, cl. (x) read as follows: ''Failure to furnish the Secretary, by the expiration of the 60-day period beginning on the 1st day after the completion of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing. The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this subparagraph is due to events beyond the control of the mortgagor.''

1997—Subsec. (b)(1). Pub. L. 105–65, § 561(a)(1), substituted ''on that mortgagor, on a general partner of a partnership mortgagor, or on any officer or director of a corporate mortgagor'' for ''on that mortgagor''.

Subsec. (c). Pub. L. 105–65, § 561(a)(2)(A), substituted ''Other violations'' for ''Violations of regulatory agreement for which penalty may be imposed'' in heading.

Subsec. (c)(1). Pub. L. 105–65, § 561(a)(2)(B)(i), (iv), substituted ''violation of this subsection'' for ''violation of such agreement'' before period at end of closing provisions and struck out heading and introductory provi-

sions. Introductory provisions read as follows: ''The Secretary may also impose a civil money penalty under this section on any mortgagor of property that includes 5 or more living units and that has a mortgage insured, co-insured, or held pursuant to this chapter for any knowing and material violation of the regulatory agreement executed by the mortgagor, as follows:''.

Subsec. (c)(1)(A). Pub. L. 105–65, §561(a)(2)(B)(i), (ii), added subpar. (A) and redesignated former subpar. (A) as cl. (i) of subpar. (B).

Subsec. (c)(1)(B) to (L). Pub. L. 105–65, §561(a)(2)(B)(i)–(iii), inserted heading and introductory provisions of subpar. (B), redesignated former subpars. (A) to (L) as cls. (i) to (xii) of subpar. (B), respectively, and added cls. (xiii) to (xv).

Subsec. (d)(1)(B). Pub. L. 105–65, §561(a)(3)(A), inserted '', general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property'' after ''mortgagor''.

Subsec. (d)(5). Pub. L. 105–65, §561(a)(3)(B), added par. (5).

Subsec. (e)(1). Pub. L. 105–65, §561(a)(4), substituted ''an entity or person'' for ''a mortgagor''.

Subsec. (f). Pub. L. 105–65, §561(a)(5), (6), substituted ''Civil money penalties against multifamily mortgagors, general partners of partnership mortgagors, officers and directors of corporate mortgagors, and certain managing agents'' for ''Action to collect penalty'' in heading and inserted '', general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property'' after ''mortgagor'' in two places in text.

Subsec. (k). Pub. L. 105–65, §561(a)(7), added subsec. (k).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 561(c) of Pub. L. 105–65 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only with respect to—

''(1) violations that occur on or after the effective date of the final regulations implementing the amendments made by this section; and

''(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation that occurs on or after that date.''

EFFECTIVE DATE

Section 108(b) of Pub. L. 101–235 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply only with respect to violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989].''

IMPLEMENTATION

Section 561(b) of Pub. L. 105–65 provided that:

''(1) PUBLIC COMMENT.—The Secretary shall implement the amendments made by this section [amending this section and enacting provisions set out as a note under this section] by regulation issued after notice and opportunity for public comment. The notice shall seek comments primarily as to the definitions of the terms 'ownership interest in' and 'effective control', as those terms are used in the definition of the terms 'agent employed to manage the property that has an identity of interest' and 'identity of interest agent'.

''(2) TIMING.—A proposed rule implementing the amendments made by this section shall be published not later than 1 year after the date of enactment of this Act [Oct. 27, 1997].''

§ 1735f–16. Annual audited financial statements

With respect to fiscal year 1989 and for every fiscal year thereafter, the Secretary shall make available to the public a financial statement of the insurance funds established under this chapter that will present their financial condition on a cash and accrual basis, consistent with generally accepted accounting principles. Each financial statement shall be audited by an independent accounting firm selected by the Secretary and the results of such audit shall be made available to the public.

(June 27, 1934, ch. 847, title V, §538, as added Pub. L. 101–235, title I, §131, Dec. 15, 1989, 103 Stat. 2026.)

§ 1735f–17. Examinations and sanctions for certain violations

(a) Examinations and sanctions

(1) In connection with any examination of a mortgagee approved by the Secretary pursuant to this chapter, the Secretary shall assess the performance of the mortgagee in meeting the requirements of sections 1709(t),[1] 1715n(a)(7)(B),[1] and 1735f–13 of this title. Where the Secretary determines that a mortgagee is not in compliance with these requirements, the Secretary shall refer the matter to the Mortgagee Review Board for investigation and appropriate action.

(2) Not later than 180 days after November 28, 1990, the Secretary shall by notice establish a procedure under which (A) any person may file a request that the Secretary determine whether a mortgagee is in compliance with sections 1709(t),[1] 1715n(a)(7)(B),[1] and 1735f–13 of this title, (B) the Secretary shall inform the person of the disposition of the request, and (C) the Secretary shall publish in the Federal Register the disposition of any case referred by the Secretary to the Mortgagee Review Board. Such procedures shall be established by regulation under section 553 of title 5. The Secretary shall issue regulations based on the initial notice before the expiration of the 8-month period beginning on the date of the notice.

(3) Omitted.

(b) Monitoring and review

The Secretary shall continually monitor and undertake a thorough review of the implementation of this section to assess the impact of the section on the lending practices of mortgagees and the availability of mortgages insured under this chapter. The Secretary shall monitor the availability of credit, the number and type of lenders participating in the program, whether there is any change in the composition or practices of such lenders and any other factors the Secretary considers appropriate. The Secretary shall submit to the Congress findings detailing the results of such monitoring and review not later than 18 months after November 28, 1990.

(June 27, 1934, ch. 847, title V, §539, as added Pub. L. 101–625, title III, §330(b), Nov. 28, 1990, 104 Stat. 4139.)

REFERENCES IN TEXT

Section 1709(t) of this title, referred to in subsec. (a)(1), (2), was redesignated section 1709(u) of this title by Pub. L. 106–377, §1(a)(1) [title II, §209(a)(1)], Oct. 27, 2000, 114 Stat. 1441, 1441A–25.

Section 1715n(a)(7)(B) of this title, referred to in subsec. (a)(1), (2), was redesignated section

[1] See References in Text note below.

1715n(a)(7)(A)(ii) of this title by Pub. L. 107–116, title VI, § 615(3), Jan. 10, 2002, 115 Stat. 2225.

CODIFICATION

Paragraph (3) of subsection (a), which required the Secretary to submit to Congress, not less than annually, a report on actions taken to carry out this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 103 of House Document No. 103–7.

§ 1735f–18. Information regarding early defaults and foreclosures on insured mortgages

(a) In general

The Secretary of Housing and Urban Development shall collect and maintain information regarding early defaults on mortgages as provided under this section. The Secretary shall make such information available for public inspection upon request. Information shall be collected quarterly with respect to each applicable collection period (as such term is defined in subsection (c) of this section) and shall be available for inspection not more than 30 days after the conclusion of the calendar quarter relating to each such period. Information shall first be made available under this section for the applicable collection period relating to the first calendar quarter ending more than 180 days after November 28, 1990.

(b) Contents

(1) Mortgage lender analysis

Information collected under this section shall include, for each lender originating mortgages during the applicable collection period that are insured pursuant to section 1709 of this title and secured by property in a designated census tract, the following information with respect to such mortgages:

(A) The name of the lender and the number of each designated census tract in which the lender originated 1 or more such mortgages during the applicable collection period.

(B) The total number of such mortgages originated by such lender during the applicable collection period in each designated census tract and the number of mortgages originated each year in each designated census tract.

(C) The total number of defaults and foreclosures on such mortgages during the applicable collection period in each designated census tract and the number of defaults and foreclosures in each designated census tract in each year of the period.

(D) For each designated census tract, the percentage of such lender's total insured mortgages originated during each year of the applicable collection period (with respect to properties within such census tract) on which defaults or foreclosures have occurred during the applicable collection period.

(E) The total of all such originations, defaults, and foreclosures on insured mortgages originated by such lender during the applicable collection period for all designated census tracts and the percentage of the total number of such lender's insured mortgage originations on which defaults or foreclosures have occurred during the applicable collection period.

(2) Other information

Information collected under this section shall also include the following:

(A) For each lender referred to under paragraph (1), the total number of insured mortgages originated by the lender secured by properties not located in a designated census tract, the total number of defaults and foreclosures on such mortgages, and the percentage of such mortgages originated on which defaults or foreclosures occurred during the applicable collection period.

(B) For each designated census tract, the total number of mortgages originated during the applicable collection period that are insured pursuant to section 1709 of this title, the number of defaults and foreclosures occurring on such mortgages during such period, and the percentage of the total insured mortgage originations during the period on which defaults or foreclosures occurred.

(c) Annual reports

The Secretary shall submit to the Congress annually a report containing the information collected and maintained under subsection (b) of this section for the relevant year.

(d) Definitions

For purposes of this section:

(1) Applicable collection period

The term ''applicable collection period'' means the 5-year period ending on the last day of the calendar quarter for which information under this section is collected.

(2) Designated census tract

The term ''designated census tract'' means a census tract located within a metropolitan statistical area, as defined pursuant to regulations issued by the Secretary of Commerce.

(June 27, 1934, ch. 847, title V, § 540, as added Pub. L. 101–625, title III, § 335(a), Nov. 28, 1990, 104 Stat. 4142.)

AVAILABILITY OF INFORMATION REGARDING DEFAULT/CLAIM RATES DURING TRANSITION

Section 335(b) of Pub. L. 101–625 provided that: ''During the period beginning on the date of the enactment of this Act [Nov. 28, 1990] and ending on the date of the initial availability of information under section 540 of the National Housing Act [12 U.S.C. 1735f–18] (as added by subsection (a)), the Secretary of Housing and Urban Development shall make publicly available all reports regarding Default/Claim Rates per Regional Office for Fiscal Year 1990 Endorsements that are produced by the Department of Housing and Urban Development during such period.''

§ 1735f–19. Partial payment of claims on defaulted mortgages and in connection with mortgage restructuring

(a) Defaulted mortgages

Notwithstanding any other provision of law, if the Secretary is requested to accept assignment of a mortgage insured by the Secretary that covers a multifamily housing project (as such term is defined in section 1701z–11(b) of this

title) or a health care facility (including a nursing home, intermediate care facility, or board and care home (as those terms are defined in section 1715w of this title), a hospital (as that term is defined in section 1715z–7 of this title), or a group practice facility (as that term is defined in section 1749aaa–5 of this title)) and the Secretary determines that partial payment would be less costly to the Federal Government than other reasonable alternatives for maintaining the low-income character of the project, or for keeping the health care facility operational to serve community needs, the Secretary may request the mortgagee, in lieu of assignment, to—

(1) accept partial payment of the claim under the mortgage insurance contract; and

(2) recast the mortgage, under such terms and conditions as the Secretary may determine.

(b) Existing mortgages

Notwithstanding any other provision of law, the Secretary, in connection with a mortgage restructuring under section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, may make a one time, nondefault partial or full payment of claim under one or more mortgage insurance contracts, which shall include a determination by the Secretary or the participating administrative entity, in accordance with the Multifamily Assisted Housing Reform and Affordability Act of 1997, of the market value of the project and a restructuring of the mortgage, under such terms and conditions as are permitted by section 517(a) of such Act.

(c) Repayment

As a condition to a partial claim payment under this section, the mortgagor shall agree to repay to the Secretary the amount of such payment and such obligation shall be secured by a second mortgage on the property on such terms and conditions as the Secretary may determine.

(June 27, 1934, ch. 847, title V, § 541, as added Pub. L. 103–233, title I, § 101(e), Apr. 11, 1994, 108 Stat. 357; amended Pub. L. 105–65, title II, § 210, title V, § 523(b), Oct. 27, 1997, 111 Stat. 1366, 1406; Pub. L. 106–74, title II, § 213(a), Oct. 20, 1999, 113 Stat. 1073.)

REFERENCES IN TEXT

The Multifamily Assisted Housing Reform and Affordability Act of 1997, referred to in subsec. (b), is title V of Pub. L. 105–65, Oct. 27, 1997, 111 Stat. 1384. Sections 514 and 517(a) of the Act are set out as a note under section 1437f of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 1701 of this title and Tables.

AMENDMENTS

1999—Pub. L. 106–74, § 213(a)(1), substituted ''defaulted mortgages and in connection with mortgage restructuring'' for ''multifamily housing projects and health care facilities'' in section catchline.

Subsec. (b). Pub. L. 106–74, § 213(a)(2), substituted ''partial or full payment of claim under one or more mortgage insurance contracts'' for ''partial payment of the claim under the mortgage insurance contract''.

1997—Pub. L. 105–65, § 210(1), inserted ''and health care facilities'' after ''housing projects'' in section catchline.

Subsec. (a). Pub. L. 105–65, § 523(b)(1), substituted ''Defaulted mortgages'' for ''Authority'' in heading.

Pub. L. 105–65, § 210(2)(B), inserted ''or for keeping the health care facility operational to serve community needs,'' after ''character of the project,'' in introductory provisions.

Pub. L. 105–65, § 210(2)(A), which directed the insertion, in introductory provisions, of ''or a health care facility (including a nursing home, intermediate care facility, or board and care home (as those terms are defined in section 1715w of this title), a hospital (as that term is defined in section 1715z–7 of this title), or a group practice facility (as that term is defined in section 1749aaa–5 of this title))'' after ''section 1701z–11(b) of this title'', was executed by inserting the language after ''section 1701z–11(b) of this title)'' to reflect the probable intent of Congress.

Subsecs. (b), (c). Pub. L. 105–65, § 523(b)(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

§ 1735f–20. Authorization of appropriations for General and Special Risk Insurance Funds

There are authorized to be appropriated such sums as may be necessary for each of fiscal years 1994 and 1995, to be allocated in any manner that the Secretary determines appropriate, for the following costs incurred in conjunction with programs authorized under the General Insurance Fund, as provided by section 1735c of this title, and the Special Risk Insurance Fund, as provided by section 1715z–3 of this title:

(1) The cost to the Government, as defined in section 661a[1] of title 2, of new insurance commitments.

(2) The cost to the Government, as defined in section 661a[1] of title 2, of modifications to existing loans, loan guarantees, or insurance commitments.

(3) The cost to the Government, as defined in section 661a[1] of title 2, of loans provided under section 1701z–11(f) of this title.

(4) The costs of the rehabilitation of multifamily housing projects (as defined in section 1701z–11(b) of this title) upon disposition by the Secretary.

(June 27, 1934, ch. 847, title V, § 542, as added Pub. L. 103–233, title I, § 105(c), Apr. 11, 1994, 108 Stat. 363.)

REFERENCES IN TEXT

Section 661a of title 2, referred to in pars. (1) to (3), was in the original ''section 502 of the Congressional Budget Act'', which was translated as meaning ''section 502 of the Congressional Budget Act of 1974'' to reflect the probable intent of Congress.

§ 1735g. Mortgage relief for homeowners who are unemployed as result of closing of Federal installation

(a) Definitions

For the purposes of this section—

(1) The term ''mortgage'' means a mortgage which (A) is insured under the National Housing Act [12 U.S.C. 1701 et seq.], or (B) secures a home loan guaranteed or insured under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38.

(2) The term ''Federal mortgage agency'' means—

(A) The Secretary of Housing and Urban Development when used in connection with

[1] See References in Text note below.

mortgages insured under the National Housing Act, and

(B) the Secretary of Veterans Affairs when used in connection with mortgages securing home loans guaranteed or insured under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38.

(3) The term ''distressed mortgagor'' means an individual who—

(A) was employed by the Federal Government at, or was assigned as a serviceman to, a military base or other Federal installation and whose employment or service at such base or installation was terminated subsequent to November 1, 1964, as the result of the closing (in whole or in part) of such base or installation; and

(B) is the owner-occupant of a dwelling situated at or near such base or installation and upon which there is a mortgage securing a loan which is in default because of the inability of such individual to make payments due under such mortgage.

(b) Application for, issuance and expiration of certificate of moratorium

(1) Any distressed mortgagor, for the purpose of avoiding foreclosure of his mortgage, may apply to the appropriate Federal mortgage agency for a determination that suspension of his obligation to make payments due under such mortgage during a temporary period is necessary in order to avoid such foreclosure.

(2) Upon receipt of an application made under this subsection by a distressed mortgagor, the Federal mortgage agency shall issue to such mortgagor a certificate of moratorium if it determines, after consultation with the interested mortgagee, that such action is necessary to avoid foreclosure.

(3) Prior to the issuance to any distressed mortgagor of a certificate of moratorium under paragraph (2), the Federal mortgage agency, the mortgagor, and the mortgagee shall enter into a binding agreement under which—

(A) the mortgagor will be required to make payments to such agency, after the expiration of such certificate, in an aggregate amount equal to the amount paid by such agency on behalf of such mortgagor as provided in subsection (c) of this section, together with interest thereon at a rate not to exceed the rate provided in the mortgage; the manner and time in which such payments shall be made to be determined by the Federal mortgage agency having due regard for the purposes sought to be achieved by this section; and

(B) the Federal mortgage agency will be subrogated to the rights of the mortgagee to the extent of payments made pursuant to such certificate, which rights, however, shall be subject to the prior right of the mortgagee to receive the full amount payable under the mortgage.

(4) Any certificate of moratorium issued under this subsection shall expire on whichever of the following dates is the earliest—

(A) two years from the date on which such certificate was issued;

(B) thirty days after the date on which the mortgagor gives notice in writing to the Federal mortgage agency that he is able to resume his obligation to make payments due under his mortgage; or

(C) thirty days after the date on which the Federal mortgage agency determines that the mortgagor to whom such certificate was issued has ceased to be a distressed mortgagor as defined in subsection (a)(3) of this section.

(c) Notice to mortgagee of assumption of mortgagor's obligation by agency; amount of payments; suspension of payments by mortgagor; prohibition against further action to enforce or collect payments; liability of mortgagor upon expiration of certificate; notice of expiration of certificate

(1) Whenever a Federal mortgage agency issues a certificate of moratorium to any distressed mortgagor with respect to any mortgage, it shall transmit to the mortgagee a copy of such certificate, together with a notice stating that, while such certificate is in effect, such agency will assume the obligation of such mortgagor to make payments due under the mortgage.

(2) Payments made by any Federal mortgage agency pursuant to a certificate of moratorium issued under this section with respect to the mortgage of any distressed mortgagor may include, in addition to the payments referred to in paragraph (1), an amount equal to the unpaid payments under such mortgage prior to the issuance of such certificate, plus a reasonable allowance for foreclosure costs actually paid by the mortgagee if a foreclosure action was dismissed as a result of the issuance of a moratorium certificate. Payments by the Federal mortgage agency may also include payments of taxes and insurance premiums on the mortgaged property as deemed necessary when these items are not provided for through payments to a tax and insurance account held by the interested mortgagee.

(3) While any certificate of moratorium issued under this section is in effect with respect to the mortgage of any distressed mortgagor, no further payments due under the mortgage shall be required of such mortgagor, and no action (legal or otherwise) shall be taken or maintained by the mortgagee to enforce or collect such payments. Upon the expiration of such certificate, the mortgagor shall again be liable for the payment of all amounts due under the mortgage in accordance with its terms.

(4) Each Federal mortgage agency shall give prompt notice in writing to the interested mortgagor and mortgagee of the expiration of any certificate of moratorium issued by it under this section.

(d) Regulations

The Federal mortgage agencies are authorized to issue such individual and joint regulations as may be necessary to carry out this section and to insure the uniform administration thereof.

(e) Fund for extending financial assistance to distressed mortgagors

There shall be in the Treasury (1) a fund which shall be available to the Secretary of Housing and Urban Development for the purpose of extending financial assistance in behalf of dis-

tressed mortgagors as provided in subsection (c) of this section, and for paying administrative expenses incurred in connection with such assistance, and (2) a fund which shall be available to the Secretary of Veterans Affairs for the same purpose, except administrative expenses. The capital of each such fund shall consist of such sums as may, from time to time, be appropriated thereto, and any sums so appropriated shall remain available until expended. Receipts arising from the programs of assistance under subsection (c) of this section shall be credited to the funds from which such assistance was extended. Moneys in either of such funds not needed for current operations, as determined by the Secretary of Housing and Urban Development, or the Secretary of Veterans Affairs, as the case may be, shall be invested in bonds or other obligations of the United States, or paid into the Treasury as miscellaneous receipts.

(Pub. L. 89–117, title I, §107(a)–(e), Aug. 10, 1965, 79 Stat. 458, 459; Pub. L. 89–754, title X, §1012, Nov. 3, 1966, 80 Stat. 1288; Pub. L. 102–54, §13(d)(3), June 13, 1991, 105 Stat. 275.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Servicemen's Readjustment Act of 1944, referred to in subsec. (a), is act June 22, 1944, ch. 268, 58 Stat. 284, as amended, which was classified generally to chapter 11C (§693 to 697g) of former Title 38, Pensions, Bonuses, and Veterans' Relief, and was repealed by section 14(87) of Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1273, the first section of which enacted Title 38, Veterans' Benefits. For distribution of sections 693 to 697g of former Title 38 to Title 38, Veterans' Benefits, see Table preceding section 101 of Title 38, Veterans' Benefits.

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1965, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1991—Subsecs. (a)(2)(B), (e). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' wherever appearing.

1966—Subsec. (a)(2)(A). Pub. L. 89–754 substituted ''Secretary of Housing and Urban Development'' for ''Federal Housing Commissioner''.

Subsec. (a)(3). Pub. L. 89–754 redefined as distressed mortgagor, describing in subpar. (A) such a person as an individual whose employment or military service at a military base or other Federal installation was terminated subsequent to Nov. 1, 1964, as the result of closing of such base or installation, formerly defined as an individual who was unemployed, although willing to work, as the result of the closing of a Federal installation, and providing in subpar. (B) for dwelling situated at or near the base or installation and substituting ''payments due under such mortgage'' for ''payments of principal and/or interest under such mortgage''.

Subsec. (b)(1). Pub. L. 89–754 substituted ''payments due under such mortgage'' for ''payments of principal and/or interest under such mortgage''.

Subsec. (b)(2). Pub. L. 89–754 struck out subpar. (A) providing for determination that mortgagor is not in default with respect to any condition or covenant of the mortgage other than requiring the payment of installments of principal and/or interest under the mortgage and incorporated without subpar. designation provision for determination that such action is necessary to avoid foreclosure, formerly providing in subpar. (B) that such action was the only available means of avoiding foreclosure of such mortgage.

Subsec. (b)(3). Pub. L. 89–754 substituted in introductory text ''the Federal mortgage agency, the mortgagor, and the mortgagee shall enter into a binding agreement'' for ''the Federal mortgage agency shall require such mortgagor to enter into a binding agreement'', designated existing provisions as subpar. (A), provided for payment of interest at rate not to exceed the rate provided in the mortgage, and added subpar. (B).

Subsec. (b)(4). Pub. L. 89–754 increased the period from one to two years in subpar. (A), substituted subpar. (B) provision for expiration date as thirty days after date on which mortgagor gives notice in writing to Federal mortgage agency of ability to resume obligation to make payments due under his mortgage for former provision as the date thirty days after date on which mortgagor to whom certificate was issued ceased to be a distressed mortgagor, now incorporated in subpar. (C), redesignated former subpar. (B) as (C), providing for a determination by the Federal mortgage agency, and struck out former subpar. (C) provision for date on which mortgagor becomes in default with respect to any condition or covenant in his mortgage other than that requiring the payment by him of installments of principal and/or interest under the mortgage.

Subsec. (c)(1). Pub. L. 89–754 substituted ''payments due under the mortgage'' for ''payments of principal, and, if so specified in the certificate, of interest, under the mortgage''.

Subsec. (c)(2). Pub. L. 89–754 substituted ''may include'' for ''shall include'' and ''unpaid payments under such mortgage'' for ''unpaid principal and interest charges which had accrued and subsequent to the date on which such mortgagor became a distressed mortgagor as defined in subsection (a) of this section'', and authorized payments of reasonable allowance for foreclosure costs actually paid by the mortgagee if a foreclosure action was dismissed as result of issuance of moratorium certificate and taxes and insurance premiums on mortgaged property as deemed necessary when not provided for through payments to a tax and insurance account held by the interested mortgagee.

Subsec. (c)(3). Pub. L. 89–754 substituted ''payments due under the mortgage'' for ''payments of principal, and, if so specified in the certificate, of interest, under the mortgage''.

Subsec. (d). Pub. L. 89–754 reenacted subsec. (d) without change.

Subsec. (e). Pub. L. 89–754 substituted ''Secretary of Housing and Urban Development'' for ''Federal Housing Commissioner'' in two places and made fund available for payment of administrative expenses incurred in connection with assistance to distressed mortgagors and unavailable for payment of administrative expenses of the Administrator of Veterans' Affairs.

§ 1735h. Repealed. Pub. L. 89–754, title X, § 1013(j), Nov. 3, 1966, 80 Stat. 1292

Section, Pub. L. 89–117, title I, §108(a)–(d), (f), Aug. 10, 1965, 79 Stat. 460, 461, provided for acquisition of property at or near military bases which have been ordered to be closed. See section 3374 of Title 42, The Public Health and Welfare.

SUBCHAPTER VI—WAR HOUSING INSURANCE

AMENDMENTS

1942—Act May 26, 1942, ch. 319, §14(a), 56 Stat. 305, amended subchapter heading, substituting ''WAR'' for ''DEFENSE''.

§ 1736. Definitions

As used in this subchapter—

(a) The term ''mortgage'' means a first mortgage on real estate, in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable; or (2) under a lease having a period of not less than fifty years to run from the date the mortgage was executed; and the term ''first mortgage'' means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(b) The term ''mortgagee'' includes the original lender under a mortgage, and his successors and assigns approved by the Secretary; and the term ''mortgagor'' includes the original borrower under a mortgage and his successors and assigns.

(c) The term ''maturity date'' means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(d) The term ''State'' includes the several States, and Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

(June 27, 1934, ch. 847, title VI, § 601, as added Mar. 28, 1941, ch. 31, § 1, 55 Stat. 55; amended Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; July 14, 1952, ch. 723, § 10(a)(2), 66 Stat. 603; Pub. L. 86–70, § 10(a), June 25, 1959, 73 Stat. 142; Pub. L. 86–624, § 6, July 12, 1960, 74 Stat. 411; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner''.

1960—Subsec. (d). Pub. L. 88–624 struck out ''Hawaii,'' before ''Puerto Rico''.

1959—Subsec. (d). Pub. L. 86–70 struck out ''Alaska,'' before ''Hawaii''.

1952—Subsec. (d). Act July 14, 1952, inserted ''Guam,'' after ''District of Columbia,''.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

SEPARABILITY

Section 9 of act Mar. 28, 1941 provided that: ''If any provision of this Act [enacting sections 1736 to 1742 of this title, and section 609k of Title 15, Commerce and Trade, and amending sections 371, 1430, 1702, 1706, 1707, 1713, and 1715, 1716, 1717 of this title] or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.''

§ 1737. Repealed. Pub. L. 89–117, title XI, § 1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title VI, § 602, as added Mar. 28, 1941, ch. 31, § 1, 55 Stat. 55; amended May 26, 1942, ch. 319, § 14(b) 56 Stat. 305; June 30, 1947, ch. 166, title II, § 206(*l*), 61 Stat. 208; 1947 Reorg. Plan No. 3, § 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59, created the War Housing Insurance Fund.

For establishment of the General Insurance Fund, see section 1735c of this title.

§ 1738. Insurance of mortgages

(a) Relief of housing shortage; eligibility; limitations on time and amount

In order to assist in relieving the acute shortage of housing which now exists and to increase the supply of housing accommodations available to veterans of World War II at prices within their reasonable ability to pay, the Secretary is authorized, upon application by the mortgagee, to insure as hereinafter provided any mortgage which is eligible for insurance as hereinafter provided, and, upon such terms as the Secretary may prescribe, to make commitments for the insuring of such mortgages prior to the date of their execution or disbursement thereon: *Provided*, That the aggregate amount of principal obligations of all mortgages insured under this subchapter shall not exceed $6,150,000,000 except that with the approval of the President such aggregate amount may be increased to not to exceed $6,650,000,000: *Provided further*, That no mortgage shall be insured under this section after April 30, 1948, except (A) pursuant to a commitment to insure issued on or before April 30, 1948, or (B) a mortgage given to refinance an existing mortgage insured under this section and which does not exceed the original principal amount and unexpired term of such existing mortgage, and no mortgage shall be insured under section 1743 of this title after March 1, 1950, except (i) pursuant to a commitment to insure issued on or before March 1, 1950, or (ii) a mortgage given to refinance an existing mortgage insured under section 1743 of this title and which does not exceed the original principal amount and unexpired term of such existing mortgage: *Provided further*, That no mortgage shall be insured under section 1743 of this title unless the mortgagor certifies under oath that in selecting tenants for the property covered by the mortgage he will not discriminate against any family by reason of the fact that there are children in the family, and that he will not sell the property while the insurance is in effect unless the purchaser so certifies, such certifications to be filed with the Secretary; and violation of any such certification shall be a misdemeanor punishable by a fine of not to exceed $500: *And provided further*, That the Secretary shall, in his discretion, have power to require the availability for rental purposes of properties covered by mortgages insured under this subchapter, in such instances and for such periods of time as he may prescribe.

Notwithstanding the first proviso of this subsection, mortgages may be insured under sections 1744 and 1746 of this title if the aggregate amounts of principal obligations of mortgages insured under said sections plus the aggregate amount of principal obligations of mortgages insured under section 1745 of this title do not exceed the limitation contained in said section 1745 upon the aggregate amount of principal obligations of mortgages insured pursuant to said section.

Notwithstanding the second proviso of this subsection, mortgages otherwise eligible for insurance under section 1743 of this title may be hereafter insured thereunder if the application for such insurance was received by the Department of Housing and Urban Development on or before March 1, 1950, and for such purpose the aggregate amount of principal obligations authorized to be insured under section 1743 of this title is increased by not to exceed $500,000,000.

(b) Eligibility requirements

To be eligible for insurance under this section a mortgage shall—

(1) have been made to, and be held by, a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;

(2) involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed 90 per centum of the Secretary's estimate of the value (as of the date the mortgage is accepted for insurance), except that as to applications received by the Secretary on or before March 31, 1948, the mortgage may involve a principal obligation in an amount not to exceed 90 per centum of the Secretary's estimate of the necessary current cost (including the land and such initial service charges and such appraisal, inspection, and other fees as the Secretary shall approve); of a property, urban, suburban, or rural, upon which there is located a dwelling designed principally for residential use for not more than four families in the aggregate, which is approved for mortgage insurance prior to the beginning of construction. The principal obligation of such mortgage shall in no event, however, exceed—

(A) $5,400 if such dwelling is designed for a single-family residence, or

(B) $7,500 if such dwelling is designed for a two-family residence, or

(C) $9,500 if such dwelling is designed for a three-family residence, or

(D) $12,000 if such dwelling is designed for a four-family residence:

Provided, That the Secretary may, if he finds that at any time or in any particular geographical area it is not feasible, within such limitations of maximum mortgage amounts, to construct dwellings without sacrifice of sound standards of construction, design, or livability, prescribe by regulation or otherwise higher maximum mortgage amounts not to exceed—

(A) $8,100 if such dwelling is designed for a single-family residence, or

(B) $12,500 if such dwelling is designed for a two-family residence, or

(C) $15,750 if such dwelling is designed for a three-family residence, or

(D) $18,000 if such dwelling is designed for a four-family residence.

(3) have a maturity satisfactory to the Secretary but not to exceed twenty-five years from the date of the insurance of the mortgage;

(4) contain complete amortization provisions satisfactory to the Secretary;

(5) bear interest (exclusive of premium charges for insurance) at not to exceed 4 per centum per annum on the amount of the principal obligation outstanding at any time;

(6) provide, in a manner satisfactory to the Secretary, for the application of the mortgagor's periodic payments (exclusive of the amount allocated to interest and to the premium charge which is required for mortgage insurance as herein provided) to amortization of the principal of the mortgage; and

(7) contain such terms and provisions with respect to insurance, repairs, alterations, payment of taxes, default reserves, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters as the Secretary may in his discretion prescribe.

(c) Premium charges; payments; acceptance for insurance; preferences; adjustments and refunds

The Secretary is authorized to fix a premium charge for the insurance of mortgages under this subchapter but in the case of any mortgage such charge shall not be less than an amount equivalent to one-half of 1 per centum per annum nor more than an amount equivalent to 1½ per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time, without taking into account delinquent payments or prepayments. Such premium charges shall be payable by the mortgagee, either in cash, or in debentures issued by the Secretary under this subchapter at par plus accrued interest, in such manner as may be prescribed by the Secretary: *Provided*, That the Secretary may require the payment of one or more such premium charges at the time the mortgage is insured, at such discount rate as he may prescribe not in excess of the interest rate specified in the mortgage. If the Secretary finds, upon the presentation of a mortgage for insurance and the tender of the initial premium charge and such other charges as the Secretary may require, that the mortgage complies with the provisions of this subchapter, such mortgage may be accepted for insurance by endorsement or otherwise as the Secretary may prescribe; but no mortgage shall be accepted for insurance under this subchapter unless the Secretary finds that the project with respect to which the mortgage is executed is an acceptable risk in view of the shortage of housing referred to in this section. In the event that the principal obligation of any mortgage accepted for insurance under this subchapter is paid in full prior to the maturity date, the Secretary is further authorized in his discretion to require the payment by the mortgagee of an adjusted premium charge in such amount as the Secretary determines to be equitable, but not in excess of the aggregate amount of the premium charges that the mortgagee would otherwise have been required to pay if the mortgage had continued to be insured under this subchapter until such maturity date; and in the event that the principal obligation is paid in full as herein set forth, the Secretary is authorized to refund to the mortgagee for the account of the mortgagor all, or such portion as he shall determine to be equitable, of the current unearned premium charges theretofore paid. The Secretary shall prescribe such procedures as in his judgment are necessary to secure to veterans of World War II, and their immediate families, and to hardship cases as defined by the Secretary, preference or priority of opportunity to purchase or rent properties covered by mortgages insured under this subchapter.

(d) Conclusiveness of insurance contract as to eligibility

Any contract of insurance heretofore or hereafter executed by the Secretary under this sub-

chapter shall be conclusive evidence of the eligibility of the mortgage for insurance, and the validity of any contract of insurance so executed shall be incontestable in the hands of an approved mortgagee from the date of the execution of such contract, except for fraud or misrepresentation on the part of such approved mortgagee.

(June 27, 1934, ch. 847, title VI, § 603, as added Mar. 28, 1941, ch. 31, § 1, 55 Stat. 56; amended Sept. 2, 1941, ch. 410, 55, Stat. 686; May 26, 1942, ch. 319, §§ 1–4, 14(b), 56 Stat. 301, 305; Mar. 23, 1943, ch. 21, § 1, 57 Stat. 42; Oct. 15, 1943, ch. 259, § 1, 57 Stat. 571; June 30, 1944, ch. 334, 58 Stat. 648; Mar. 31, 1945, ch. 48, § 1, 59 Stat. 47; May 22, 1946, ch. 268, § 10(a)–(d), 60 Stat. 212, 213; June 30, 1947, ch. 163, title I, § 2, 61 Stat. 193; Aug. 5, 1947, ch. 495, § 1, 61 Stat. 777; Dec. 27, 1947, ch. 525, § 1, 61 Stat. 945; Mar. 31, 1948, ch. 165, § 1(a)–(c), 62 Stat. 101; Aug. 10, 1948, ch. 832, title I, § 101(a), (k)(2), 62 Stat. 1268, 1273; Mar. 30, 1949, ch. 42, title III, § 304, 63 Stat. 29; July 15, 1949, ch. 338, title II, § 201(3), 63 Stat. 421; Aug. 30, 1949, ch. 524, 63 Stat. 681; Oct. 25, 1949, ch. 729, § 1(4), 63 Stat. 905; Apr. 20, 1950, ch. 94, title I, §§ 119, 122, 64 Stat. 57, 59; Pub. L. 90–19, § 1(a)(1), (3), (4), (n), May 25, 1967, 81 Stat. 17, 19.)

AMENDMENTS

1967—Pub. L. 90–19, § 1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a), (b)(1), (2), (b)(2)(D), (b)(3), (4), (6), (7), (c), and (d).

Subsec. (a). Pub. L. 90–19, § 1(a)(1), (n), substituted ''Department of Housing and Urban Development'' for ''Federal Housing Administration'' and ''by'' for ''in any field office of'' after ''received'', in third par., respectively.

Subsec. (b)(2). Pub. L. 90–19, § 1(a)(4), substituted ''Secretary's'' for ''Commissioner's'' wherever appearing.

1950—Act Apr. 20, 1950, § 122, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

Subsec. (a). Act Apr. 20, 1950, § 119, added last two pars.

1949—Subsec. (a). Joint Res. Oct. 25, 1949, substituted ''$6,150,000,000'' for ''$5,750,000,000'' and ''$6,650,000,000'' for ''$6,150,000,000'' in first proviso, and extended section to ''March 1, 1950'' by substituting the same for ''October 31, 1949'' in second proviso.

Act Aug. 30, 1949, extended section from ''August 31, 1949'' to ''October 31, 1949''.

Act July 15, 1949, extended section from ''June 30, 1949'' to ''August 31, 1949''.

Act Mar. 30, 1949, extended section from ''March 30, 1949'' to ''June 30, 1949''.

1948—Subsec. (a). Act Aug. 10, 1948, struck out ''$5,350,000,000'' and inserted in lieu thereof ''$5,750,000,000 except that with the approval of the President such aggregate amount may be increased to not to exceed $6,150,000,000'', and struck out the second proviso and inserted in lieu thereof the present second proviso.

Act Mar. 31, 1948, increased the insurance authorization from $4,950,000,000 to $5,350,000,000, and provided for an extension from Mar. 31, 1948, to Apr. 30, 1948.

Subsec. (b)(2). Act Mar. 31, 1948, changed the emergency necessary current-cost formula to the appraised-value formula.

Subsec. (c). Act Aug. 10, 1948, struck out of next to last sentence ''and a mortgage on the same property is accepted for insurance at the time of such payment''.

1947—Subsec. (a). Act Dec. 27, 1947, increased the mortgage obligation from $4,000,000,000 to $4,450,000,000, and increased the amount of obligation from $4,200,000,000 to $4,950,000,000 with the President's approval.

Act Aug. 5, 1947, increased mortgage obligation from $2,800,000,000 to $4,000,000,000 and the amount of obligation from $3,800,000,000 to $4,200,000,000 with the President's approval.

Act June 30, 1947, extended limitation dates in second proviso from June 30, 1947, to Mar. 31, 1948.

1946—Subsec. (a). Act May 22, 1946, amended provisions generally, and among other changes, increased the mortgage obligation from $1,800,000,000 to $2,800,000,000, and extended the limitation date from July 1, 1946, to June 30, 1947.

Subsec. (b)(2). Act May 22, 1946, amended provisions generally, and among other changes, inserted proviso.

Subsec. (b)(5). Act May 22, 1946, lowered interest rate from 5 to 4 per centum and struck out provision allowing Administrator to increase the rate in certain cases.

Subsec. (c). Act May 22, 1946, substituted ''shortage of housing'' for ''emergency'' in third sentence and amended last sentence.

1945—Subsec. (a). Act Mar. 31, 1945, increased the limit of obligations from $1,700,000,000 to $1,800,000,000 and extended the limitation date from 1945 to 1946.

1944—Subsec. (a). Act June 30, 1944, substituted ''$1,700,000,000'' for ''$1,600,000,000'' and inserted the provision contained in cl. (B).

1943—Subsec. (a). Act Oct. 15, 1943, substituted ''$1,600,000,000'' for ''$1,200,000,000'' and ''July 1, 1945'' for ''July 1, 1944''.

Act Mar. 23, 1943, substituted ''$1,200,000,000'' for ''$800,000,000'' and ''July 1, 1944'' for ''July 1, 1943''.

1942—Act May 21, 1942, § 14(b), substituted ''War'' and ''war'' for ''Defense'' and ''defense'' wherever occurring.

Subsec. (a). Act May 26, 1942, § 1, substituted ''$800,000,000'' for ''$300,000,000'', among other changes.

Subsec. (b)(2). Act May 26, 1942, § 2, increased limitations on amount of obligations.

Subsec. (b)(3). Act May 26, 1942, § 3, substituted ''twenty-five'' for ''twenty''.

Subsec. (c). Act May 26, 1942, § 4, amended subsec. (c).

1941—Subsec. (a). Act Sept. 2, 1941, substituted ''$300,000,000'' for ''$100,000,000''.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act July 15, 1949, effective June 30, 1949, see section 202 of that act, set out as a note under section 1703 of this title.

INFLATION SAFEGUARDS

Section 2 of act Dec. 27, 1947, provided: ''Title VI of the National Housing Act, as amended [this subchapter], shall be employed to assist in maintaining a high volume of new residential construction without supporting unnecessary or artificial costs. In estimating necessary current cost for the purposes of said title, the Federal Housing Commissioner shall therefore use every feasible means to assure that such estimates will approximate as closely as possible the actual costs of efficient building operations.''

§ 1739. Mortgage insurance benefits

(a) Conveyance and assignment by mortgagee after foreclosure; debentures and certificates of claim; cost of foreclosure

In any case in which the mortgagee under a mortgage insured under section 1738 of this title shall have foreclosed and taken possession of the mortgaged property, in accordance with regulations of, and within a period to be determined by, the Secretary, or shall, with the consent of the Secretary, have otherwise acquired such property from the mortgagor after default, the mortgagee shall be entitled to receive the benefit of the insurance as hereinafter provided, upon (1) the prompt conveyance to the Secretary of title to the property which meets the requirements of rules and regulations of the

Secretary in force at the time the mortgage was insured, and which is evidenced in the manner prescribed by such rules and regulations; and (2) the assignment to him of all claims of the mortgagee against the mortgagor or others, arising out of the mortgage transaction or foreclosure proceedings, except such claims as may have been released with the consent of the Secretary. Upon such conveyance and assignment the obligation of the mortgagee to pay the premium charges for insurance shall cease and the Secretary shall, subject to the cash adjustment hereinafter provided, issue to the mortgagee debentures having a total face value equal to the value of the mortgage and a certificate of claim, as hereinafter provided. For the purposes of this subsection, the value of the mortgage shall be determined, in accordance with rules and regulations prescribed by the Secretary, by adding to the amount of the original principal obligation of the mortgage which was unpaid on the date of the institution of foreclosure proceedings, or on the date of the acquisition of the property after default other than by foreclosure, the amount of all payments which have been made by the mortgagee for taxes, ground rents, and water rates, which are liens prior to the mortgage, special assessments which are noted on the application for insurance or which become liens after the insurance of the mortgage, insurance of the mortgaged property, and any mortgage insurance premiums and by deducting from such total amount any amount received on account of the mortgage after either of such dates, and any amount received as rent or other income from the property, less reasonable expenses incurred in handling the property, after either of such dates: *Provided*, That with respect to mortgages which are foreclosed before there shall have been paid on account of the principal obligation of the mortgage a sum equal to 10 per centum of the appraised value of the property as of the date the mortgage was accepted for insurance, there may be included in the debentures issued by the Secretary, on account of the cost of foreclosure (or of acquiring the property by other means) actually paid by the mortgagee and approved by the Secretary an amount—

(1) not in excess of 2 per centum of the unpaid principal of the mortgage as of the date of the institution of foreclosure proceedings and not in excess of $75; or

(2) not in excess of two-thirds of such cost, whichever is the greater: *Provided further*, That with respect to any debentures issued on or after September 2, 1964, the Secretary may, with the consent of the mortgagee (in lieu of issuing a certificate of claim as provided in subsection (e) of this section), include in debentures, in addition to amounts otherwise allowed for such costs, an amount not to exceed one-third of the total foreclosure, acquisition, and conveyance costs actually paid by the mortgagee and approved by the Secretary, but in no event may the total allowance for such costs exceed the amount actually paid by the mortgagee: *And provided further*, That with respect to mortgages to which the provisions of sections 532 and 536 of the Appendix to title 50[1] apply and which are insured under section 1738 of this title and subject to such regulations and conditions as the Secretary may prescribe, there shall be included in the debentures an amount which the Secretary finds to be sufficient to compensate the mortgagee for any loss which it may have sustained on account of interest on debentures and the payment of insurance premiums by reason of its having postponed the institution of foreclosure proceedings or the acquisition of the property by other means during any part or all of the period of such military service and three months thereafter.

(b) Consent to release of mortgagee or property

The Secretary may at any time, under such terms and conditions as he may prescribe, consent to the release of the mortgagor from his liability under the mortgage or the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage: *Provided*, That the mortgagor shall not be released from such liability in any case until the Secretary is satisfied that the mortgaged property has been sold to a purchaser satisfactory to the Secretary, and that such purchaser has paid on account of the purchase price, in cash or its equivalent, at least 10 per centum of the Secretary's estimate of the value as of the date the mortgage is accepted for insurance.

(c) Debentures; form and denomination

Debentures issued under this subchapter shall be in such form and denominations in multiples of $50, shall be subject to such terms and conditions, and shall include such provisions for redemption, if any, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, and may be in coupon or registered form. Any difference between the value of the mortgage determined as herein provided and the aggregate face value of the debentures issued, not to exceed $350, shall be adjusted by the payment of cash by the Secretary to the mortgagee from the General Insurance Fund.

(d) Debentures; execution; negotiability; terms; tax exemptions

The debenture issued under this section to any mortgagee shall be executed in the name of the General Insurance Fund as obligor, shall be signed by the Secretary by either his written or engraved signature, and shall be negotiable. All such debentures shall be dated as of the date foreclosure proceedings were instituted, or the property was otherwise acquired by the mortgagee after default, except that debentures issued pursuant to claims for insurance filed on or after September 2, 1964, shall be dated as of the date of default or as of such later date as the Secretary, in his discretion, may establish by regulation. The debentures shall bear interest from such date at a rate determined by the Secretary, with the approval of the Secretary of the Treasury, at the time the mortgage was accepted for insurance, but not to exceed 3 per centum per annum, payable semiannually on the 1st day of January and the 1st day of July of each year. Such debentures as are issued in exchange for property covered by mortgages accepted for in-

[1] See References in Text note below.

surance under this section on or after May 26, 1942, shall mature ten years after the date thereof. Such debentures as are issued in exchange for property covered by mortgages accepted for insurance under this section prior to May 26, 1942, shall mature three years after the 1st day of July following the maturity date of the mortgage on the property in exchange for which the debentures were issued: *Provided*, That any mortgagee entitled to receive such debentures may elect to receive in lieu thereof debentures which shall mature ten years after the date thereof. Such debentures shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by any Territory, dependency, or possession of the United States, or by the District of Columbia, or by any State, county, municipality, or local taxing authority, and shall be paid out of the General Insurance Fund, which shall be primarily liable therefor, and they shall be fully and unconditionally guaranteed as to principal and interest by the United States, and such guaranty shall be expressed on the face of the debentures. In the event that the General Insurance Fund fails to pay upon demand, when due, the principal of or interest on any debentures issued under this subchapter, the Secretary of the Treasury shall pay to the holders the amount thereof which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures.

(e) Certificate of claim

The certificate of claim issued by the Secretary to any mortgagee shall be for an amount which the Secretary determines to be sufficient, when added to the face value of the debentures issued and the cash adjustment paid to the mortgagee, to equal the amount which the mortgagee would have received if, at the time of the conveyance to the Secretary of the property covered by the mortgage, the mortgagor had redeemed the property and paid in full all obligations under the mortgage and a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings, or the acquisition of the mortgaged property otherwise, and the conveyance thereof to the Secretary. Each such certificate of claim shall provide that there shall accrue to the holder of such certificate with respect to the face amount of such certificate, an increment at the rate of 3 per centum per annum which shall not be compounded. The amount to which the holder of any such certificate shall be entitled shall be determined as provided in subsection (f) of this section.

(f) Division of excess proceeds

(1) If, after deducting (in such manner and amount as the Secretary shall determine to be equitable and in accordance with sound accounting practice) the expenses incurred by the Secretary, the net amount realized from any property conveyed to the Secretary under this section and the claims assigned therewith exceed the face value of the debentures issued and the cash paid in exchange for such property plus all interest paid on such debentures, such excess shall be divided as follows:

(i) If such excess is greater than the total amount payable under the certificate of claim issued in connection with such property, the Secretary shall pay to the holder of such certificate the full amount so payable, and any excess remaining thereafter shall be paid to the mortgagor of such property: *Provided*, That on and after September 2, 1964, any excess remaining after payment to the holder of the full amount of the certificate of claim shall be retained by the Secretary and credited to the General Insurance Fund; and

(ii) If such excess is equal to or less than the total amount payable under such certificate of claim, the Secretary shall pay to the holder of such certificate the full amount of such excess.

(2) Notwithstanding any other provisions of this section, the Secretary is authorized, with the consent of the mortgagee or mortgagor, as the case may be, to effect the settlement of certificates of claim and refunds at any time after the sale or transfer of title to the property conveyed to the Secretary under this section and without awaiting the final liquidation of such property for the purpose of determining the net amount to be realized therefrom: *Provided*, That the settlement authority created by the Housing Amendments of 1955 shall be terminated with respect to any certificate of claim outstanding as of September 2, 1964.

(3) With the consent of the holder thereof, the Secretary is authorized to settle, without awaiting the final liquidation of the Secretary's interest in the property, any certificate of claim issued pursuant to subsection (e) of this section, with respect to which a settlement had not been effected prior to September 2, 1964, by making payment in cash to the holder thereof of such amount, not exceeding the face amount of the certificate of claim, together with the accrued interest increment thereon, as the Secretary may consider appropriate: *Provided*, That in any case where the certificate of claim is settled in accordance with the provisions of this paragraph, any amounts realized after September 2, 1964, in the liquidation of the Secretary's interest in the property, shall be retained by the Secretary and credited to the applicable insurance fund.

(g) Handling and disposal of property; settlement of claims

Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, the Secretary shall have power to deal with, complete, rent, renovate, modernize, insure, make contracts or establish suitable agencies for the management of, or sell for cash or credit, in his discretion, any properties conveyed to him in exchange for debentures and certificates of claim as provided in this subchapter; and notwithstanding any other provision of law, the Secretary shall also have power to pursue to final collection, by way of compromise or otherwise, all claims against mortgagors assigned by mortgagees to the Secretary as provided in this subchapter, except that no suit or action shall

be commenced by the Secretary against any such mortgagor on account of any claim so assigned with respect to mortgages insured under section 1738 of this title unless such suit or action is commenced within six months after the assignment of such claim to the Secretary, or within six months after the last payment was made to the Secretary with respect to the claim so assigned, whichever is later: *Provided*, That section 6101 of title 41 shall not be construed to apply to any contract for hazard insurance, or to any purchase or contract for services or supplies on account of such property if the amount thereof does not exceed $1,000. The power to convey and to execute in the name of the Secretary deeds of conveyances, deeds of release, assignments, and satisfactions of mortgages, and any other written instrument relating to real property or any interest therein heretofore or hereafter acquired by the Secretary pursuant to the provisions of this chapter, may be exercised by an officer appointed by him, without the execution of any express delegation of power or power of attorney: *Provided*, That nothing in this subsection shall be construed to prevent the Secretary from delegating such power by order or by power of attorney in his discretion, to any officer, agent, or employee he may appoint.

(h) Mortgagor's or mortgagee's interest in property or claim conveyed

No mortgagee or mortgagor shall have and no certificate of claim shall be construed to give to any mortgagee or mortgagor, any right or interest in any property conveyed to the Secretary or in any claim assigned to him; nor shall the Secretary owe any duty to any mortgagee or mortgagor with respect to the handling or disposal of any such property or the collection of any such claim.

(June 27, 1934, ch. 847, title VI, §604, as added Mar. 28, 1941, ch. 31, §1, 55 Stat. 58; amended May 26, 1942, ch. 319, §§5–8, 14(b), 56 Stat. 302, 305; Oct. 14, 1943, ch. 258, §2, 57 Stat. 570; May 22, 1946, ch. 268, §10(e), 60 Stat. 213; Mar. 31, 1948, ch. 165, §1(d), 62 Stat. 101; Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Aug. 11, 1955, ch. 783, title I, §104, 69 Stat. 637; Pub. L. 88–560, title I, §105(d), (f), Sept. 2, 1964, 78 Stat. 772, 774; Pub. L. 89–117, title XI, §1108(p), Aug. 10, 1965, 79 Stat. 506; Pub. L. 90–19, §1(a)(3), (4), (d), May 25, 1967, 81 Stat. 17, 18.)

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

Sections 532 and 536 of the Appendix to title 50, referred to in subsec. (a)(2), was in the original a reference to sections 302 and 306, respectively, of the Soldiers' and Sailors' Civil Relief Act of 1940, Oct. 17, 1940, ch. 888, 54 Stat. 1178. That Act was amended generally and renamed the ''Servicemembers Civil Relief Act'' by Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2835. As so amended, provisions of the Servicemembers Civil Relief Act that are similar to those contained in former sections 532 and 536 of the Appendix to title 50 are now contained in sections 533 and 538 of the Appendix to Title 50.

The Housing Amendments of 1955, referred to in subsec. (f)(2), is act Aug. 11, 1955, ch. 783, 69 Stat. 635, as amended. For complete classification of this Act to the Code, see Short Title of 1955 Amendments note set out under section 1701 of this title and Tables.

CODIFICATION

In subsec. (g), ''section 6101 of title 41'' substituted for ''section 3709 of the Revised Statutes'' on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1967—Pub. L. 90–19, §1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a), (a)(2), (b) to (e), (f)(1), (f)(1)(i), (ii), (f)(2), (3), (g), and (h).

Pub. L. 90–19, §1(a)(4), substituted ''Secretary's'' for ''Commissioner's'' wherever appearing in subsecs. (b) and (f)(3) of this section.

Subsec. (g). Pub. L. 90–19, §1(d), substituted ''an officer'' for ''the Commissioner or by any Assistant Commissioner''.

1965—Subsecs. (c), (d), (f)(1)(i). Pub. L. 89–117 substituted ''General Insurance Fund'' for ''War Housing Insurance Fund''.

1964—Subsec. (a). Pub. L. 88–560, §105(d)(1), (f), inserted ''*Provided further*, That with respect to any debentures issued on or after September 2, 1964, the Commissioner may, with the consent of the mortgagee (in lieu of issuing a certificate of claim as provided in subsection (e)), include in debentures, in addition to amounts otherwise allowed for such costs, an amount not to exceed one-third of the total foreclosure, acquisition, and conveyance costs actually paid by the mortgagee and approved by the Commissioner, but in no event may the total allowance for such costs exceed the amount actually paid by the mortgagee:'' and struck out of third sentence ''paid after either of such dates'' after ''mortgage insurance premiums'', respectively.

Subsec. (c). Pub. L. 88–560, §105(d)(2), increased limitation on difference between value of mortgage and aggregate face value of debentures issued from $50 to $350.

Subsec. (d). Pub. L. 88–560, §105(d)(3), substituted in second sentence ''default, except that debentures issued pursuant to claims for insurance filed on or after September 2, 1964, shall be dated as of the date of default or as of such later date as the Commissioner, in his discretion, may establish by regulation. The debentures'' for ''default, and''.

Subsec. (f). Pub. L. 88–560, §105(d)(4)–(8), designated introductory par. as par. (1) and substituted ''If, after deducting (in such manner and amount as the Commissioner shall determine to be equitable and in accordance with sound accounting practice) the expenses incurred by the Commissioner, the net amount realized from any property conveyed to the Commissioner under this section and the claims assigned therewith exceed the face value'' for ''If the net amount realized from any property conveyed to the Commissioner under this section and the claims assigned therewith, after deducting all expenses incurred by the Commissioner in handling, dealing with, and disposing of such property and in collecting such claims, exceeds the face value''; redesignated former par. (1) as (i) and substituted ''property: *Provided*, That on and after September 2, 1964, any excess remaining after payment to the holder of the full amount of the certificate of claim shall be retained by the Commissioner and credited to the War Housing Insurance Fund; and'' for ''property; and''; redesignated former par. (2) as (ii); designated concluding par. as par. (2) and inserted proviso; and added par. (3), respectively.

1955—Subsec. (f). Act Aug. 11, 1955, authorized the Commissioner to effect the settlement of certificates of claim and refunds at any time after the sale or transfer of title to the property.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

1948—Subsec. (b). Act Mar. 31, 1948, substituted ''value'' for ''necessary current cost''.

1946—Subsec. (b). Act May 22, 1946, substituted ''Administrator's estimate of the necessary current cost'' after ''10 per centum of the'' for ''appraised value of such property as determined by the Administrator''.

1943—Subsec. (a). Act Oct. 14, 1943, inserted proviso dealing with losses due to nonforeclosure of mortgages to last sentence.

1942—Act May 26, 1942, §14(b), substituted ''War'' and ''war'' for ''Defense'' and ''defense'' wherever occurring.
Subsec. (a). Act May 26, 1942, §5, substituted ''section 1738 of this title'' for ''this subchapter''.
Subsec. (c). Act May 26, 1942, §6, substituted ''subchapter'' for ''section''.
Subsec. (d). Act May 26, 1942, §7, amended subsec. (d).
Subsec. (g). Act May 26, 1942, §8, substituted ''subchapter'' for ''section'' and inserted ''with respect to mortgages insured under section 1738 of this title''.

§ 1740. Repealed. Pub. L. 89–117, title XI, § 1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title VI, §605, as added Mar. 28, 1941, ch. 31, §1, 55 Stat. 61; amended May 26, 1942, ch. 319, §§9, 14(b), 56 Stat. 303, 305; 1947 Reorg. Plan No. 3, §3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59, provided for disposition and investment of surplus money in the War Housing Insurance Fund and for credit and payment of charges and fees.

§ 1741. State taxation of realty held by Secretary

Nothing in this subchapter shall be construed to exempt any real property acquired and held by the Secretary under this subchapter from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed.

(June 27, 1934, ch. 847, title VI, §606, as added Mar. 28, 1941, ch. 31, §1, 55 Stat. 61; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner''.
1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator''.

§ 1742. Rules and regulations

The Secretary is authorized and directed to make such rules and regulations as may be necessary to carry out the provisions of this subchapter.

(June 27, 1934, ch. 847, title VI, §607, as added Mar. 28, 1941, ch. 31, §1, 55 Stat. 61; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner''.
1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator''.

§ 1743. Insurance of mortgages

(a) Additional authorization; advances during construction

In addition to mortgages insured under section 1738 of this title, the Secretary is authorized to insure mortgages as defined in section 1736 of this title (including advances on such mortgages during construction) which are eligible for insurance as hereinafter provided.

(b) Eligibility requirements

To be eligible for insurance under this section a mortgage shall meet the following conditions:

(1) The mortgaged property shall be held by a mortgagor approved by the Secretary. The Secretary may, in his discretion, require such mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation. The Secretary may make such contracts with, and acquire for not to exceed $100 stock or interest in any such mortgagor, as the Secretary may deem necessary to render effective such restriction or regulation. Such stock or interest shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(2) Preference or priority of opportunity in the occupancy of the mortgaged property for veterans of World War II and their immediate families, and for hardship cases as defined by the Secretary, shall be provided under such regulations and procedures as may be prescribed by the Secretary.

(3) The mortgage shall involve a principal obligation in an amount—

(A) not to exceed $5,000,000; and

(B) not to exceed 90 per centum of the amount which the Secretary estimates will be the necessary current cost of the completed property or project, including the land; the proposed physical improvements; utilities within the boundaries of the property or project; architects' fees; taxes and interest accruing during construction; and other miscellaneous charges incidental to construction and approved by the Secretary: *Provided*, That such mortgage shall not in any event exceed the amount which the Secretary estimates will be the cost of the completed physical improvements on the property or project, exclusive of off-site public utilities and streets, and organization and legal expenses: *And provided further*, That the principal obligation of the mortgage shall not, in any event, exceed 90 per centum of the Secretary's estimate of the replacement cost of the property or project on the basis of the costs prevailing on December 31, 1947, for properties or projects of comparable quality in the locality where such property or project is to be located; and

(C) not to exceed $8,100 per family unit for such part of such property or project as may be attributable to dwelling use.

The mortgage shall provide for complete amortization by periodic payment within such term as the Secretary shall prescribe, and shall bear interest (exclusive of premium charges for insurance) at not to exceed 4½ per centum per annum on the amount of the principal obligation outstanding at any time. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release.

(c) Payments; default; insurance benefits for mortgagee; value of mortgage; foreclosure of mortgage

The failure of the mortgagor to make any payment due under or provided to be paid by the terms of a mortgage insured under this section shall be considered a default under such mortgage, and if such default continues for a period

of thirty days, the mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided, upon assignment, transfer, and delivery to the Secretary, within a period and in accordance with rules and regulations to be prescribed by the Secretary of (1) all rights and interests arising under the mortgage so in default; (2) all claims of the mortgagee against the mortgagors or others, arising out of the mortgage transaction; (3) all policies of title or other insurance or surety bonds or other guaranties and any and all claims thereunder; (4) any balance of the mortgage loan not advanced to the mortgagor; (5) any cash or property held by the mortgagee, or to which it is entitled, as deposits made for the account of the mortgagor and which have not been applied in reduction of the principal of the mortgage indebtedness; and (6) all records, documents, books, papers, and accounts relating to the mortgage transaction. Upon such assignment, transfer, and delivery the obligation of the mortgagee to pay the premium charges for mortgage insurance shall cease, and the Secretary shall, subject to the cash adjustment provided for in section 1739(c) of this title, issue to the mortgagee debentures having a total face value equal to the value of the mortgage, and a certificate of claim as hereinafter provided. For the purposes of this subsection, the value of the mortgage shall be determined in accordance with rules and regulations prescribed by the Secretary, by adding to the amount of the original principal obligation of the mortgage which was unpaid on the date of default, the amount the mortgagee may have paid for (A) taxes, special assessments, and water rates, which are liens prior to the mortgage; (B) insurance on the property; and (C) reasonable expenses for the completion and preservation of the property and any mortgage insurance premiums paid after default; less the sum of (i) an amount equivalent to 1 per centum of the unpaid amount of such principal obligation on the date of default; (ii) any amount received on account of the mortgage after such date; and (iii) any net income received by the mortgagee from the property after such date: *Provided*, That the mortgagee in the event of a default under the mortgage may, at its option and in accordance with regulations of, and in a period to be determined by the Secretary, proceed to foreclose on and obtain possession of or otherwise acquire such property from the mortgagor after default, and receive the benefits of the insurance as herein provided, upon (1) the prompt conveyance to the Secretary of title to the property which meets the requirements of the rules and regulations of the Secretary in force at the time the mortgage was insured, and which is evidenced in the manner prescribed by such rules and regulations; and (2) the assignment to him of all claims of the mortgagee against the mortgagor or others, arising out of the mortgage transaction or foreclosure proceedings, except such claims that may have been released with the consent of the Secretary. Upon such conveyance and assignment, the obligation of the mortgagee to pay the premium charges for insurance shall cease and the mortgagee shall be entitled to receive the benefits of the insurance as provided in this subsection, except that in such event the 1 per centum deduction, set out in (i) hereof, shall not apply.

(d) Certificates of claim; amount

The certificate of claim issued by the Secretary to any mortgagee in connection with the insurance of mortgages under this section shall be for an amount determined in accordance with subsections (e) and (f) of section 1739 of this title, except that any amount remaining after the payment of the full amount under the certificate of claim shall be retained by the Secretary and credited to the General Insurance Fund.

(e) Debentures; date of issuance; interest

Debentures issued under this section shall be issued in accordance with the provisions of section 1739 (d) of this title except that such debentures shall be dated as of the date of default as determined in subsection (c) of this section, and shall bear interest from such date.

(f) Applicability of other provisions

The provisions of section 1713(k) of this title shall be applicable to mortgages insured under this section, except that, as applied to such mortgages, the reference therein to subsection (g) shall be construed to refer to subsection (c) of this section.

(g) Mortgages in connection with sale of property under subchapter I, II, VIII, or X of this chapter

The Secretary shall also have power to insure under this subchapter or subchapter I, II, VIII, or X of this chapter any mortgage executed in connection with the sale by him of any property acquired under any of such subchapters without regard to limitations upon eligibility, time, or aggregate amount contained therein.

(June 27, 1934, ch. 847, title VI, §608, as added May 26, 1942, ch. 319, §11, 56 Stat. 303; amended Mar. 31, 1945, ch. 48, §2, 59 Stat. 47; May 22, 1946, ch. 268, §10(f), (g), 60 Stat. 214; Aug. 10, 1948, ch. 832, title I, §101(b), (c), 62 Stat. 1269; Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Sept. 1, 1951, ch. 378, title II, §206, 65 Stat. 303; Pub. L. 89–117, title XI, §1108(q), Aug. 10, 1965, 79 Stat. 506; Pub. L. 90–19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17.)

REFERENCES IN TEXT

The General Insurance Fund, referred to in subsecs. (b) and (d), was established by section 1735c of this title.

AMENDMENTS

1967—Pub. L. 90–19, §1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a), (b)(1), (2), (3)(B), following (C), (c), (d), and (g).

Subsec. (b)(3)(B). Pub. L. 90–19, §1(a)(4), substituted ''Secretary's'' for ''Commissioner's''.

1965—Subsecs. (b)(1), (d). Pub. L. 89–117, §1108(q)(1), substituted ''General Insurance Fund'' for ''War Housing Insurance Fund''.

Subsec. (f). Pub. L. 89–117, §1108(q)(2), struck out provisions that, as applied to mortgages insured under this section, all references in section 1713(k) of this title to the ''Housing Fund'' shall be construed to refer to the ''War Housing Insurance Fund''.

1951—Subsec. (g). Act Sept. 1, 1951, inserted references to subchapters I, VIII and X of this chapter.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

1948—Subsec. (b). Act Aug. 10, 1948, inserted second proviso in par. (3)(B), substituted ''$8,100 per family unit'' for ''$1,500 per room'' and struck out proviso re-

lating to authority to increase ''$1,500'' to ''$1,800'' per room.

1946—Subsec. (b)(2). Act May 22, 1946, substituted ''Preference or priority of opportunity in the occupancy of the mortgaged property for veterans of World War II and their immediate families, and for hardship cases as defined by the Administrator, shall be provided under such regulations and procedures as may be prescribed by the Administrator'' for ''The mortgaged property shall be designed for rent for residential use by warworkers''.

Subsec. (b)(3). Act May 22, 1946, substituted ''necessary current cost'' after ''estimates will be the'' for ''reasonable replacement cost'' in par. (B), and increased mortgage per room from $1,350 to $1,500 and inserted proviso in par. (C).

Subsec. (c). Act May 22, 1946, inserted ''and any mortgage insurance premiums paid after default'' before semicolon in cl. (C) of third sentence.

1945—Subsec. (g). Act Mar. 31, 1945, inserted provisions empowering Commissioner to insure mortgages without regard to any limitations upon time or aggregate amount contained in this subchapter.

CONSTRUCTION OF ACT MAY 26, 1942, WITH EX. ORD. NO. 9070, CONSOLIDATING NATIONAL HOUSING AGENCY

Section 12 of act May 26, 1942, provided that nothing contained in act May 26, 1942 [amending this subchapter] shall be construed to supersede or be inconsistent with the provisions of Ex. Ord. No. 9070, Feb. 24, 1942.

§ 1744. Insurance of loans for manufacture of houses

(a) Relief of housing shortage; advances

In order to assist in relieving the acute shortage of housing which now exists and to promote the production of housing for veterans of World War II at moderate prices or rentals within their reasonable ability to pay, through the application of modern industrial processes, the Secretary is authorized to insure loans to finance the manufacture of housing (including advances on such loans) when such loans are eligible for insurance as hereinafter provided.

(b) Eligibility requirements

Loans for the manufacture of houses shall be eligible for insurance under this section if at the time of such insurance, the Secretary determines they meet the following conditions:

(1) The manufacturer shall establish that binding purchase contracts have been executed satisfactory to the Secretary providing for the purchase and delivery of the houses to be manufactured, which contracts shall provide for the payment of the purchase price at such time as may be agreed to by the parties thereto, but, in no event, shall the purchase price be payable on a date in excess of thirty days after the date of delivery of such houses, unless not less than 20 per centum of such purchase price is paid on or before the date of delivery and the lender has accepted and discounted or has agreed to accept and discount, pursuant to subsection (i) of this section a promissory note or notes, executed by the purchaser, representing the unpaid portion of such purchase price, in which event such unpaid portion of the purchase price may be payable on a date not in excess of one hundred and eighty days from the date of delivery of such houses;

(2) Such houses to be manufactured shall meet such requirements of sound quality, durability, livability, and safety as may be prescribed by the Secretary;

(3) The borrower shall establish to the satisfaction of the Secretary that he has or will have adequate plant facilities, sufficient capital funds, taking into account the loan applied for, and the experience necessary, to achieve the required production schedule;

(4) The loan shall involve a principal obligation in an amount not to exceed 90 per centum of the amount which the Secretary estimates will be the necessary current cost, exclusive of profit, of manufacturing the houses, which are the subject of such purchase contracts assigned to secure the loan, less any sums paid by the purchaser under said purchase contracts prior to the assignment thereof. The loan shall be secured by an assignment of the aforesaid purchase contracts and of all sums payable thereunder on or after the date of such assignment, with the right in the assignee to proceed against such security in case of default as provided in the assignment, which assignment shall be in such form and contain such terms and conditions, as may be prescribed by the Secretary; and the Secretary may require such other agreements and undertakings to further secure the loan as he may determine, including the right, in case of default or at any time necessary to protect the lender, to compel delivery to the lender of any houses then owned and in the possession of the borrower. The loan shall have a maturity not in excess of one year from the date of the note, except that any such loan may be refinanced and extended in accordance with such terms and conditions as the Secretary may prescribe for an additional term not to exceed one year, and shall bear interest (exclusive of premium charges for insurance) at not to exceed 4 per centum per annum on the amount of the principal obligation outstanding at any time.

(c) Release of security

The Secretary may consent to the release of a part or parts of the property assigned or delivered as security for the loan, upon such terms and conditions as he may prescribe and the security documents may provide for such release.

(d) Payments; default; insurance benefits for mortgagee; prerequisites; value of mortgage

The failure of the borrower to make any payment due under or provided to be paid by the terms of a loan under this section, or the failure to perform any other covenant or obligation contained in any assignment, agreement, or undertaking executed by the borrower in connection with such loan, shall be considered as a default under this section, and if such default continues for a period of thirty days, the lender shall be entitled to receive the benefits of the insurance hereinafter provided upon assignment, transfer, and delivery to the Secretary within a period and in accordance with the rules and regulations prescribed by the Secretary of (1) all rights and interest arising with respect to the loan so in default; (2) all claims of the lender against the borrower or others arising out of the loan transaction; (3) any cash or property held by the lender, or to which it is entitled, as deposits made for the account of the borrower and

which have not been applied in reduction of the principal of the loan; and (4) all records, documents, books, papers, and accounts relating to the loan transaction. Upon such assignment, transfer, and delivery, the Secretary shall, subject to the cash adjustment provided for in section 1739(c) of this title, issue to the lender debentures having a face value equal to the unpaid principal balance of the loan.

(e) Debentures; date of issuance; interest

Debentures issued under this section shall be issued in accordance with the provisions of section 1739(d) of this title except that such debentures shall be dated as of the date of default as determined in subsection (d) of this section and shall bear interest from such date.

(f) Applicability of other provisions

The provisions of sections 1713(k) and 1738(a) of this title shall be applicable to loans insured under this section, except that as applied to such loans (1) the reference in section 1713(k) of this title to ''subsection (g)'' shall be construed to refer to ''subsection (d)'' of this section; (2) the references in section 1713(k) of this title to insured mortgages shall be construed to refer to the assignment or other security for loans insured under this section; and (3) the references in section 1738(a) of this title to a mortgage or mortgages shall be construed to include a loan or loans under this section. The provisions of section 1738(d) of this title shall also be applicable to loans insured under this section and the reference in section 1738(d) of this title to a mortgage shall be construed to include a loan or loans with respect to which a contract of insurance is issued pursuant to this section.

(g) Disposal of evidence of debt, contract, claim, personal property, or security; collection or compromise of obligations and rights

Notwithstanding any other provision of law, the Secretary shall have the power to assign or sell at public or private sale, or otherwise dispose of, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of insurance heretofore or hereafter granted under this section, and to collect or compromise all obligations assigned to or held by him and all legal or equitable rights accruing to him in connection with the payment of such insurance until such time as such obligations may be referred to the Attorney General for suit or collection.

(h) Premium charges; amount; manner of payment; application fees

The Secretary shall fix a premium charge for the insurance granted under this section, but such premium charge shall not exceed an amount equivalent to 1 per centum of the original principal of such loan, and such premium charge shall be payable in advance by the financial institution and shall be paid at such time and in such manner as may be prescribed by the Secretary. In addition to the premium charge herein provided for, the Secretary is authorized to charge and collect such amounts as he may deem reasonable for examining and processing applications for the insurance of loans under this section, including such additional inspections as the Secretary may deem necessary.

(i) Insurance for accepting and discounting promissory notes; contract provisions; default in payments; remedies; debentures; interest; premium charges

(1) In addition to the insurance of the principal loan to finance the manufacture of housing, as provided in this section, and in order to provide short-term financing in the sale of houses to be delivered pursuant to the purchase contract or contracts assigned as security for such principal loan, the Secretary is authorized, under such terms and conditions and subject to such limitations as he may prescribe, to insure the lender against any losses it may sustain resulting from the acceptance and discount of a promissory note or notes executed by a purchaser of any such houses representing an unpaid portion of the purchase price of any such houses. No such promissory note or notes accepted and discounted by the lender pursuant to this subsection shall involve a principal obligation in excess of 80 per centum of the purchase price of the manufactured house or houses; have a maturity in excess of one hundred and eighty days from the date of the note or bear interest in excess of 4 per centum per annum; nor may the principal amount of such promissory notes, with respect to any individual principal loan, outstanding and unpaid at any one time, exceed in the aggregate an amount prescribed by the Secretary.

(2) The Secretary is authorized to include in any contract of insurance executed by him with respect to the insurance of a loan to finance the manufacture of houses, provisions to effectuate the insurance against any such losses under this subsection.

(3) The failure of the purchaser to make any payment due under or provided to be paid by the terms of any note or notes executed by the purchaser and accepted and discounted by the lender under the provisions of this subsection, shall be considered as a default under this subsection, and if such default continues for a period of thirty days, the lender shall be entitled to receive the benefits of the insurance, as provided in subsection (d) of this section except that debentures issued pursuant to this subsection shall have a face value equal to the unpaid principal balance of the loan plus interest at the rate of 4 per centum per annum from the date of default to the date the application is filed for the insurance benefits.

(4) Debentures issued with respect to the insurance granted under this subsection shall be issued in accordance with the provisions of section 1739(d) of this title except that such debentures shall be dated as of the date application is filed for the insurance benefits and shall bear interest from such date.

(5) The Secretary is authorized to fix a premium charge for the insurance granted under this subsection, in addition to the premium charge authorized under subsection (h) of this section. Such premium charge shall not exceed an amount equivalent to 1 per centum of the original principal of such promissory note or notes and shall be paid at such time and in such manner as may be prescribed by the Secretary.

(June 27, 1934, ch. 847, title VI, § 609, as added June 30, 1947, ch. 163, title I, § 3, 61 Stat. 193; amended Aug. 10, 1948, ch. 832, title I, § 101(d), 62 Stat. 1269; Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Pub. L. 89–117, title XI, § 1108(r), Aug. 10, 1965, 79 Stat. 506; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a), (b), (b)(1) to (4), (c), (d), (g), (h), and (i)(1), (2), (5).

1965—Subsec. (f). Pub. L. 89–117, struck out cl. (1) of the first sentence which provided that all references in section 1713(k) of this title to the ''Housing Fund'' shall be construed to refer to the ''War Housing Insurance Fund'' and redesignated cls. (2), (3), and (4) thereof as cls. (1), (2), and (3), respectively.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

1948—Subsec. (b). Act Aug. 10, 1948, § 101(d)(1), (2), struck out par. (1) and inserted new par. (1), and struck out first two sentences of par. (4) and inserted two new sentences.

Subsec. (f). Act Aug. 10, 1948, § 101(d)(3), inserted last sentence.

Subsec. (i). Act Aug. 10, 1948, § 101(d)(4), added subsec. (i).

§ 1745. Insurance of mortgages on sales of Government housing; limits and conditions; Greenbelt towns; State housing

Notwithstanding any of the provisions of this subchapter, the Secretary is authorized, upon application by the mortgagee, to insure or to make commitments to insure under section 1738 or section 1743 of this title any mortgage executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Public Law 849, Seventy-sixth Congress, as amended; Public Law 781, Seventy-sixth Congress, as amended; or Public Laws 9, 73, or 353, Seventy-seventh Congress, as amended (including any property acquired, held or constructed in connection with such housing or to serve the inhabitants thereof), without regard to—

(1) any limit as to the time when any mortgage may be insured under this subchapter;

(2) any limit as to the aggregate amount of principal obligations of all mortgages insured under this subchapter, but the aggregate amount of principal obligations of all mortgages insured pursuant to this section shall not exceed $750,000,000;

(3) any requirement that the obligation be approved for mortgage insurance prior to the beginning of construction or that the construction be new construction;

(4) any of the provisions of subsections (b)(2) or (b)(5) of section 1738 of this title or paragraphs (B) and (C) of the first sentence of section 1743(b)(3) of this title:

Provided, That such mortgage shall (1) otherwise be eligible for insurance under section 1738 or section 1743 of this title as the case may be, (2) have a maturity not exceeding twenty-five years from the date of insurance, (3) involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not exceeding 90 per centum of the appraised value of the mortgage property as determined by the Secretary, and (4) bear interest (exclusive of premium charges) at not to exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time if such mortgage covers property on which there is located a dwelling designed principally for residential use for not more than four families in the aggregate, irrespective of whether such dwelling or dwellings have a party wall or are otherwise physically connected with another dwelling or dwellings, or bear interest at not to exceed 4½ per centum per annum on the amount of the principal obligation outstanding at any time if such mortgage covers property upon which there is located a dwelling or dwellings designed principally for residential use for more than four families.

The Secretary is further authorized to insure or to make commitments to insure in accordance with the provisions of this section any mortgage executed in connection with the sale by the Secretary, or by any public housing agency with the approval of the Secretary, of any housing (including any property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Public Law 671, Seventy-sixth Congress.

The Secretary is further authorized to insure or to make commitments to insure in accordance with the provisions of this section any mortgage executed in connection with the sale by the Government, or any agency or official thereof, of any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, developed under the Emergency Relief Appropriation Act of 1935, or of any of the village properties under the jurisdiction of the Tennessee Valley Authority, and any mortgage executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in this section.

The Secretary is further authorized to insure or to make commitments to insure under section 1743 of this title in accordance with the provisions of this section any mortgage executed in connection with the sale by a State or municipality, or an agency, instrumentality, or body politic of either, of any permanent housing (including any property acquired, held, or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality or body politic, for the occupancy of veterans of World War II, their families, and others: *Provided*, That the principal obligation of any such mortgage does not exceed either 85 per centum of the appraised value of the mortgage property as determined by the Secretary or $8,100 per family unit for such part of such property as may be attributable to dwelling use.

(June 27, 1934, ch. 847, title VI, § 610, as added Aug. 5, 1947, ch. 495, § 2, 61 Stat. 777; amended Aug. 10, 1948, ch. 832, title I, § 101(e), 62 Stat. 1270; Apr. 20, 1950, ch. 94, title I, §§ 120, 122, 64 Stat. 58, 59; July 14, 1952, ch. 723, § 14, 66 Stat. 605; Pub. L. 90–19, § 1(a)(3), (*o*), May 25, 1967, 81 Stat. 17, 19.)

REFERENCES IN TEXT

Public Law 849, Seventy-sixth Congress, as amended, referred to in text, is act Oct. 14, 1940, ch. 862, 54 Stat. 1125, as amended, known as the ''Lanham Public War Housing Act'', which is classified generally to subchapters II to VII (§§1521 et seq., 1531 et seq., 1541 et seq., 1561 et seq., 1571 et seq., and 1581 et seq.) of chapter 9 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 42 and Tables.

Public Law 781, Seventy-sixth Congress, as amended, referred to in text, is the Second Supplemental National Defense Appropriation Act, 1941, act Sept. 9, 1940, ch. 717, 54 Stat. 872. Section 201 thereof appropriated $100,000,000 to the President for allocation to the former ''War'' Department, and to the Navy Department, for the construction of housing necessary to the national defense program. This provision was not classified to the code.

Public Laws 9, 73, or 353, Seventy-seventh Congress, as amended, referred to in text, refer to the following acts, respectively: Public Law 9, Urgent Deficiency Appropriation Act, 1941, act Mar. 1, 1941, ch. 9, 55 Stat. 14; Public Law 73, Additional Urgent Deficiency Appropriation Act, 1941, act May 24, 1941, ch. 132, 55 Stat. 197; and Public Law 353, Third Supplemental National Defense Appropriation Act, 1942, act Dec. 17, 1941, ch. 591, 55 Stat. 810. These three acts appropriated a total of $320,000,000 to the President for the purpose of providing housing necessary because of national defense activities and conditions arising out of World War II. These provisions were not classified to the code, although all three acts are cited in a ''Prior Additional Appropriations'' note under section 1523 of Title 42, The Public Health and Welfare.

Public Law 671, Seventy-sixth Congress, referred to in text, is act June 28, 1940, ch. 440, 54 Stat. 676, as amended. Provisions of the Act relating to housing are contained in title II, which is classified generally to subchapter I (§1501 et seq.) of chapter 9 of Title 42. For complete classification of this Act to the Code, see Tables.

The Emergency Relief Appropriation Act of 1935, referred to in text, is Joint Res. Apr. 8, 1935, ch. 48, 49 Stat. 115. It was a temporary legislation, and was formerly set out in a note in former chapter 16 of Title 15, Commerce and Trade. See notes under sections 721 to 728 of that title.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing, and ''Secretary'' for ''Public Housing Administration'' and ''said Administration'' in second par., respectively.

1952—Act July 14, 1952, inserted last par.

1950—Act Apr. 20, 1950, §120, made the insurance authority of this section applicable to sale by the Public Housing Administration, or any public housing agency, of any housing owned or financially assisted pursuant to the provisions of sections 1501 to 1505 of Title 42. The Public Health and Welfare, which provided for the construction of war housing out of prior authorizations for low-rent public housing on the condition that such housing would be converted to low-rent use after termination of its use for war housing.

Act Apr. 20, 1950, §122, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

1948—Act Aug. 10, 1948, inserted last par. relating to the Greenbelt towns.

§ 1746. Insurance on mortgages on large-scale housing projects

(a) Additional authorization; encouragement of cost-reduction techniques; advances

In addition to mortgages insured under other sections of this subchapter, and in order to assist and encourage the application of cost-reduction techniques through large-scale modernized site construction of housing and the erection of houses produced by modern industrial processes, the Secretary is authorized to insure mortgages (including advances on such mortgages during construction) which are eligible for insurance as hereinafter provided.

(b) Eligibility requirements

To be eligible for insurance under this section, a mortgage shall—

(1) have been made to and be held by a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;

(2) cover property, held by a mortgagor approved by the Secretary, upon which there is to be constructed or erected dwelling units for not less than twenty-five families consisting of a group of single-family dwellings approved by the Secretary for mortgage insurance prior to the beginning of construction: *Provided*, That during the course of construction there may be located upon the mortgaged property a plant for the fabrication or storage of such dwellings or sections or parts thereof, and the Secretary may consent to the removal or release of such plant from the lien of the mortgage upon such terms and conditions as he may approve;

(3) involve a principal obligation in an amount—

(A) not to exceed 85 per centum of the amount which the Secretary estimates will be the value of the completed property or project, exclusive of any plant of the character described in paragraph (2) of this subsection located thereon, and

(B) not to exceed a sum computed on the individual dwellings comprising the total project as follows: $5,950 or 85 per centum of the valuation, whichever is the lower amount, with respect to each single-family dwelling: *Provided*, That if the Secretary finds that it is not feasible, within the dollar amount limitation in this clause on the principal obligation of the mortgage, to construct dwellings containing three or four bedrooms without sacrifice of sound standards of construction, design, and livability, he may increase such dollar amount limitation by not exceeding $850 for each additional bedroom (as defined by the Secretary) in excess of two contained in each such dwelling if he finds that such dwelling meets sound standards of design and livability as a three-bedroom unit or a four-bedroom unit, as the case may be, but the amount computed under this clause for each such dwelling shall not exceed, in any event, $7,650.

With respect to the insurance of advances during construction, the Secretary is authorized to approve advances by the mortgagee to cover the cost of materials delivered upon the mortgaged property and labor performed in the fabrication or erection thereof;

(4) provide for complete amortization by periodic payments within such term as the Secretary shall prescribe and shall bear interest (exclusive of premium charges for insur-

ance) as not to exceed 4 per centum per annum on the amount of the principal obligation outstanding at any time: *Provided*, That the Secretary with the approval of the Secretary of the Treasury, may prescribe by regulation a higher maximum rate of interest, not exceeding 4½ per centum per annum on the amount of the principal obligation outstanding at any time, if he finds that the mortgage market demands it. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release, and the mortgage may provide that, upon the completion of the construction of the project, such mortgage may be replaced by individual mortgages covering each individual dwelling in the project. Each such individual mortgage may be insured under this section with the mortgagor being either the builder who constructed the dwellings or the owner and occupant of the dwelling at the time, and where the mortgagor is the owner and occupant, may involve a principal obligation in such amount and have such maturity and interest rate as a mortgage eligible for insurance under section 1709(b)(2)(D) of this title.

(c) Preferences in occupancy for veterans and hardship cases

Preference or priority of opportunity in the occupancy of the mortgaged property for veterans of World War II and their immediate families and for hardship cases as defined by the Secretary shall be provided under such regulations and procedures as may be prescribed by the Secretary.

(d) Applicability of other provisions

The provisions of subsections (c), (d), (e), and (f) of section 1743 of this title shall be applicable to mortgages insured under this section covering a project described in subsection (b) of this section, and the provisions of subsections (a) to (f), and (h) of section 1739 of this title shall be applicable to the individual mortgages insured pursuant to subsection (b)(4) of this section covering individual dwellings in the project.

(June 27, 1934, ch. 847, title VI, § 611, as added Aug. 10, 1948, ch. 832, title I, § 101(f), 62 Stat. 1271; amended Apr. 20, 1950, ch. 94, title I, §§ 121, 122, 64 Stat. 58, 59; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

REFERENCES IN TEXT

Section 1709(b)(2)(D) of this title, referred to in subsec. (b)(4), is a reference to subsec. (b)(2)(D) of section 1709 prior to amendment by section 104 of act Aug. 2, 1954, ch. 649, 68 Stat. 590.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a), (b), and (c).

1950—Act Apr. 20, 1950, § 122, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

Subsec. (b)(3). Act Apr. 20, 1950, § 121(1), (2), substituted ''85'' for ''80'' in cl. (A), and inserted entirely new material in cl. (B).

Subsec. (b)(4). Act Apr. 20, 1950, § 121(2), inserted '', and the mortgage may provide that, upon the completion of the construction of the project, such mortgage may be replaced by individual mortgages covering each individual dwelling in the project. Each such individual mortgage may be insured under this section with the mortgagor being either the builder who constructed the dwellings or the owner and occupant of the dwelling at the time, and where the mortgagor is the owner and occupant, may involve a principal obligation in such amount and have such maturity and interest rate as a mortgage eligible for insurance under section 1709(b)(2)(D) of this title''.

Subsec. (d). Act Apr. 20, 1950, § 121(3), inserted ''covering a project described in subsection (b) of this section, and the provisions of subsections (a) to (f), and (h) of section 1739 of this title shall be applicable to the individual mortgages insured pursuant to subsection (b)(4) of this section covering individual dwellings in the project''.

§ 1746a. Termination of commitment authority under this subchapter

Notwithstanding any other provision of this subchapter, no mortgage or loan shall be insured under any section of this subchapter after August 2, 1954 except pursuant to a commitment to insure issued on or before such date.

(June 27, 1934, ch. 847, title VI, § 612, as added Aug. 2, 1954, ch. 649, title I, § 127, 68 Stat. 609.)

SUBCHAPTER VII—INSURANCE FOR INVESTMENTS IN RENTAL HOUSING FOR FAMILIES OF MODERATE INCOME

§ 1747. Purpose of subchapter; authorization; terms and conditions; expiration of insurance contract

The purpose of this subchapter is to supplement the existing systems of mortgage insurance for rental housing under this chapter by a special system of insurance designed to encourage equity investment in rental housing at rents within the capacity of families of moderate income. To effectuate this purpose, the Secretary is authorized, upon application by the investor, to insure as hereinafter provided, and, prior to the execution of insurance contracts and upon such terms as the Secretary shall prescribe, to make commitments to insure, the minimum annual amortization charge and an annual return on the outstanding investment of such investor in any project which is eligible for insurance as hereinafter provided in an amount (herein called the ''insured annual return'') equal to such rate of return, not exceeding 2¾ per centum per annum, on such outstanding investment as shall, after consultation with the Secretary of the Treasury, be fixed in the insurance contract or in the commitment to insure: *Provided*, That any insurance contract made pursuant to this subchapter shall expire as of the first day of the operating year for which the outstanding investment amounts to not more than 10 per centum of the established investment.

(June 27, 1934, ch. 847, title VII, § 701, as added Aug. 10, 1948, ch. 832, title IV, § 401, 62 Stat. 1276; amended Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Pub. L. 86–372, title I, § 118, Sept. 23, 1959, 73 Stat. 664; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1959—Pub. L. 86–372 struck out provisions which limited the aggregate amount of contingent liabilities outstanding at any one time under insurance contracts and commitments to insure made pursuant to this subchapter to not more than $1,000,000,000.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

SEPARABILITY

Section 505 of act Aug. 10, 1948, provided that: ''Except as may be otherwise expressly provided in this Act [sections 1701c, 1701e to 1701g–3, 1702, 1703, 1709, 1710, 1713, 1716, 1738, 1743 to 1746 and 1747 to 1747*l* of this title, section 846 of former Title 31, Money and Finance, section 694 of former Title 38, Pensions, Bonuses, and Veterans' Relief, and section 1404a of Title 42, The Public Health and Welfare], all powers and authorities conferred by this Act shall be cumulative and additional to and not in derogation of any powers and authorities otherwise existing. Notwithstanding any other evidences of the intention of Congress, it is hereby declared to be the controlling intent of Congress that if any provisions of this Act, or the application thereof to any person or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its application to other persons and circumstances, but shall be confined in its operation to the provisions of this Act, or the application thereof to the persons and circumstances, directly involved in the controversy in which such judgment shall have been rendered.''

INCONSISTENT PROVISIONS

Section 504 of act Aug. 10, 1948, provided that: ''Insofar as the provisions of any other law are inconsistent with the provisions of this Act [sections 1701c, 1701e to 1701g–3, 1702, 1703, 1709, 1710, 1713, 1716, 1738, 1743 to 1746 and 1747 to 1747*l* of this title, section 846 of former Title 31, Money and Finance, section 694 of former Title 38, Pensions, Bonuses, and Veterans' Relief, and section 1404a of Title 42, The Public Health and Welfare], the provisions of this Act shall be controlling.''

§ 1747a. Eligibility for insurance

(a) To be eligible for insurance under this subchapter, a project shall meet the following conditions:

(1) The Secretary shall be satisfied that there is, in the locality or metropolitan area of such project, a need for new rental dwellings at rents comparable to the rents proposed to be charged for the dwellings in such project.

(2) Such project shall be economically sound, and the dwellings in such project shall be acceptable to the Secretary as to quality, design, size, and type.

(b) Any insurance contract executed by the Secretary under this subchapter shall be conclusive evidence of the eligibility of the project and the investor for such insurance, and the validity of any insurance contract so executed shall be incontestable in the hands of an investor from the date of the execution of such contract, except for fraud or misrepresentation on the part of such investor.

(c) After completion of the project the investor must establish in a manner satisfactory to the Secretary that the project is free and clear of liens and that there are no other outstanding unpaid obligations contracted in connection with the construction of the project, except taxes and such other liens and obligations as may be approved or prescribed by the Secretary. Debentures issued by the investor which are payable out of net income from the project and from the benefits of the insurance contract shall not be construed as ''unpaid obligations'' as such term is used in this subsection.

(June 27, 1934, ch. 847, title VII, § 702, as added Aug. 10, 1948, ch. 832, title IV, § 401, 62 Stat. 1276; amended Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Sept. 1, 1951, ch. 378, title VI, § 609(a), 65 Stat. 316; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a)(1), (2), (b), and (c).

1951—Subsec. (c). Act Sept. 1, 1951, added subsec. (c).

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

§ 1747b. Premium charges; fees for examination and inspection

(a) For insurance granted pursuant to this subchapter the Secretary shall fix and collect a premium charge in an amount not exceeding one-half of 1 per centum of the outstanding investment for the operating year for which such premium charge is payable without taking into account the excess earnings, if any, applied, in addition to the minimum annual amortization charge, to amortization of the outstanding investment. Such premium charge shall be payable annually in advance by the investor, either in cash or in debentures issued by the Secretary under this subchapter at par plus accrued interest: *Provided*, That, if in any operating year the gross income shall be less than the operating expenses, the premium charge payable during such operating year shall be waived, but only to the extent of the amount of the difference between such expenses and such income and subject to subsequent payment out of any excess earnings as hereinafter provided.

(b) With respect to any project offered for insurance under this subchapter, the Secretary is authorized to charge and collect reasonable fees for examination, and for inspection during the construction of the project: *Provided*, That such fees shall not aggregate more than one-half of 1 per centum of the estimated investment.

(June 27, 1934, ch. 847, title VII, § 703, as added Aug. 10, 1948, ch. 832, title IV, § 401, 62 Stat. 1277; amended Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a) and (b).

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

§ 1747c. Rent schedules

The Secretary shall require that the rents for the dwellings in any project insured under this subchapter shall be established in accordance with a rent schedule approved by the Secretary, and that the investor shall not charge or collect rents for any dwellings in the project in excess of the appropriate rents therefor as shown in the latest rent schedule approved pursuant to this section. Prior to approving the initial or any

subsequent rent schedule pursuant to this section, the Secretary shall find that such schedule affords reasonable assurance that the rents to be established thereunder are (1) not lower than necessary, together with all other income to be derived from or in connection with the project, to produce reasonably stable revenues sufficient to provide for the payment of the operating expenses, the minimum annual amortization charge, and the minimum annual return; and (2) not higher than necessary to meet the need for dwellings for families of moderate income.

(June 27, 1934, ch. 847, title VII, § 704, as added Aug. 10, 1948, ch. 832, title IV, § 401, 62 Stat. 1277; amended Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

§ 1747d. Excess earnings used for amortization of original investment

For all of the purposes of any insurance contract made pursuant to this subchapter, 50 per centum of the excess earnings, if any, for any operating year may be applied, in addition to the minimum annual return, to return on the outstanding investment but only to the extent that such application thereof does not result in an annual return of more than 5 per centum of the outstanding investment for such operating year, and the balance of any such excess earnings shall be applied, in addition to the minimum annual amortization charge, to amortization of the outstanding investment: *Provided*, That if in any preceding operating years the gross income shall have been less than the operating expenses, such excess earnings shall be applied to the extent necessary in whole or in part, first, to the reimbursement of the amount of the difference between such expenses (exclusive of any premium charges previously waived hereunder) and such income, and, second, to the payment of any premium charges previously waived hereunder.

(June 27, 1934, ch. 847, title VII, § 705, as added Aug. 10, 1948, ch. 832, title IV, § 401, 62 Stat. 1277.)

§ 1747e. Financial statements by Secretary

With respect to each project insured under this subchapter, the Secretary shall provide that, after the close of each operating year, the investor shall submit to him for approval a financial and operating statement covering such operating year. If any such financial and operating statement shall not have been submitted or, for proper cause, shall not have been approved by the Secretary, payment of any claim submitted by the investor may, at the option of the Secretary, be withheld, in whole or in part, until such statement shall have been submitted and approved.

(June 27, 1934, ch. 847, title VII, § 706, as added Aug. 10, 1948, ch. 832, title IV, § 401, 62 Stat. 1278; amended Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

§ 1747f. Payment of claims; assignment of benefits by investors

If in any operating year the net income of a project insured under this subchapter is less than the aggregate of the minimum annual amortization charge and the insured annual return, the Secretary, upon submission by the investor of a claim for the payment of the amount of the difference between such net income and the aggregate of the minimum annual amortization charge and the insured annual return and after proof of the validity of such claim, shall pay to the investor, in cash from the General Insurance Fund, the amount of such difference, as determined by the Secretary, but not exceeding, in any event, an amount equal to the aggregate of the minimum annual amortization charge and the insured annual return. Nothing contained in this subchapter or any other provision of law shall be construed as preventing or restricting an investor from assigning, pledging, or otherwise transferring or disposing of, subject to rules and regulations of the Secretary, any or all rights, claims, or other benefits under any insurance contract made pursuant to this subchapter to an assignee, pledgee, or other transferee, including the holders (or the trustee for such holders) of any debentures issued by the investor in connection with the project to which such insurance contract relates, and the Secretary is authorized to pay claims or issue debentures in accordance with the provisions of this section and section 1747g of this title to any such assignee, pledgee, or other transferee.

(June 27, 1934, ch. 847, title VII, § 707, as added Aug. 10, 1948, ch. 832, title IV, § 401, 62 Stat. 1278; amended Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Sept. 1, 1951, ch. 378, title VI, § 609(b), 65 Stat. 316; Pub. L. 89–117, title XI, § 1108(s), Aug. 10, 1965, 79 Stat. 506; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1965—Pub. L. 89–117 substituted ''General Insurance Fund'' for ''Housing Investment Insurance Fund''.

1951—Act Sept. 1, 1951, inserted second sentence.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

§ 1747g. Debentures

(a) Acquisition of project by Secretary; issuance of debentures

If the aggregate of the amounts paid to the investor pursuant to section 1747f of this title with respect to a project insured under this subchapter shall at any time equal or exceed 15 per

centum of the established investment, the Secretary thereafter shall have the right, after written notice to the investor of his intentions so to do, to acquire, as of the first day of any operating year, such project in consideration of the issuance and delivery to the investor of debentures having a total face value equal to 90 per centum of the outstanding investment for such operating year. In any such case the investor shall be obligated to convey to said Secretary title to the project which meets the requirements of the rules and regulations of the Secretary in force at the time the insurance contract was executed and which is evidenced in the manner prescribed by such rules and regulations, and, in the event that the investor fails so to do, said Secretary may, at his option, terminate the insurance contract.

(b) Relinquishment of project by investor

If in any operating year the aggregate of the differences between the operating expenses (exclusive of any premium charges previously waived hereunder) and the gross income for the preceding operating years, less the aggregate of any deficits in such operating expenses reimbursed from excess earnings as hereinbefore provided, shall at any time equal or exceed 5 per centum of the established investment, the investor shall thereafter have the right, after written notice to the Secretary of his intention so to do, to convey to the Secretary, as of the first day of any operating year, title to the project which meets the requirements of the rules and regulations of the Secretary in force at the time the insurance contract was executed and which is evidenced in the manner prescribed by such rules and regulations, and to receive from the Secretary debentures having a total face value equal to 90 per centum of the outstanding investment for such operating year.

(c) Adjustment of difference between outstanding investment and total face value of debentures

Any difference, not exceeding $50, between 90 per centum of the outstanding investment for the operating year in which a project is acquired by the Secretary pursuant to this section and the total face value of the debentures to be issued and delivered to the investment pursuant to this section shall be adjusted by the payment of cash by the Secretary to the investor from the General Insurance Fund.

(d) Termination of insurance contract by Secretary

Upon the acquisition of a project by the Secretary pursuant to this section, the insurance contract shall terminate.

(e) Issuance and execution of debentures

Debentures issued under this subchapter to any investor shall be executed in the name of the General Insurance Fund as obligor, shall be signed by the Secretary, by either his written or engraved signature, and shall be negotiable. Such debentures shall be dated as of the first day of the operating year in which the project for which such debentures were issued was acquired by the Secretary, shall bear interest at a rate to be determined by the Secretary, with the approval of the Secretary of the Treasury, at the time the insurance contract was executed, but not to exceed 2¾ per centum per annum, payable semiannually on the 1st day of January and the 1st day of July of each year, and shall mature on the 1st day of July in such calendar year or years, not later than the fortieth following the date of the issuance thereof, as shall be determined by the Secretary and stated on the face of such debentures.

(f) Terms and conditions of debentures

Such debentures shall be in such form and in such denominations in multiples of $50, shall be subject to such terms and conditions, and may include such provisions of redemption as shall be prescribed by the Secretary, with the approval of the Secretary of the Treasury, and may be issued in either coupon or registered form.

(g) Exemption from taxation; exceptions; guaranty

Such debentures shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by any Territory, dependency, or possession of the United States, or by the District of Columbia, or by any State, county, municipality, or local taxing authority, shall be payable out of the General Insurance Fund, which shall be primarily liable therefor, and shall be fully and unconditionally guaranteed, as to both the principal thereof and the interest thereon, by the United States, and such guaranty shall be expressed on the face thereof. In the event that the General Insurance Fund fails to pay upon demand, when due, the principal of or the interest on any debentures so guaranteed, the Secretary of the Treasury shall pay to the holders the amount thereof, which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon, to the extent of the amount so paid, the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures.

(h) Payment of expenses and charges; collection of claims

Notwithstanding any other provisions of law relating to the acquisition, handling, or disposal of real and other property by the United States, the Secretary shall have power, for the protection of the General Insurance Fund, to pay out of said Fund all expenses or charges in connection with, and to deal with, complete, reconstruct, rent, renovate, modernize, insure, make contracts for the management of, or establish suitable agencies for the management of, or sell for cash or credit or lease in his discretion, in whole or in part, any project acquired pursuant to this subchapter; and, notwithstanding any other provisions of law, the Secretary shall also have power to pursue to final collection by way of compromise or otherwise all claims acquired by, or assigned or transferred to, him in connection with the acquisition or disposal of any project pursuant to this subchapter: *Provided*, That section 6101 of title 41 shall not be construed to apply to any contract for hazard insurance, or to any purchase or contract for services or supplies on account of any project acquired

pursuant to this subchapter if the amount of such purchase or contract does not exceed $1,000.

(June 27, 1934, ch. 847, title VII, § 708, as added Aug. 10, 1948, ch. 832, title IV, § 401, 62 Stat. 1278; amended Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Pub. L. 89–117, title XI, § 1108(t), Aug. 10, 1965, 79 Stat. 506; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

CODIFICATION

In subsec. (h), ''section 6101 of title 41'' substituted for ''section 3709 of the Revised Statutes'' on authority of Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1967—Subsecs. (a) to (f), (h). Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1965—Subsecs. (c), (e), (g), (h). Pub. L. 89–117 substituted ''General Insurance Fund'' for ''Housing Investment Insurance Fund'' wherever appearing.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

§ 1747h. Termination of insurance contract by investor

The investor, after written notice to the Secretary of his intention so to do, may terminate, as of the close of any operating year, any insurance contract made pursuant to this subchapter. The Secretary shall prescribe the events and conditions under which said Secretary shall have the option to terminate any insurance contract made pursuant to this subchapter, and the events and conditions under which said Secretary may reinstate any insurance contract terminated pursuant to this section or section 1747g(a) of this title. If any insurance contract is terminated pursuant to this section, the Secretary may require the investor to pay an adjusted premium charge in such amount as the Secretary determines to be equitable, but not in excess of the aggregate amount of the premium charges which such investor otherwise would have been required to pay if such insurance contract had not been so terminated.

(June 27, 1934, ch. 847, title VII, § 709, as added Aug. 10, 1948, ch. 832, title IV, § 401, 62 Stat. 1280; amended Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

§ 1747i. Repealed. Pub. L. 89–117, title XI, § 1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title VII, § 710, as added Aug. 10, 1948, ch. 832, title IV, § 401, 62 Stat. 1280; amended Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59, created the Housing Investment Insurance Fund, provided for the transfer of funds thereto, and authorized the payment of claims and the issue and cancellation of debentures.

For establishment of the General Insurance Fund, see section 1735c of this title.

§ 1747j. Taxation of real property

Nothing in this subchapter shall be construed to exempt any real property acquired and held by the Secretary under this subchapter from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed.

(June 27, 1934, ch. 847, title VII, § 711, as added Aug. 10, 1948, ch. 832, title IV, § 401, 62 Stat. 1281; amended Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner''.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

§ 1747k. Rules and regulations

The Secretary may make such rules and regulations as may be necessary or desirable to carry out the provisions of this subchapter, including, without limiting the foregoing, rules and regulations relating to the maintenance by the investor of books, records, and accounts with respect to the project and the examination of such books, records, and accounts by representatives of the Secretary; the submission of financial and operating statements and the approval thereof; the submission of claims for payments under insurance contracts, the proof of the validity of such claims, and the payment or disallowance thereof; the increase of the established investment if the investor shall make capital improvements or additions to the project; the decrease of the established investment if the investor shall sell part of the project; and the reduction of the outstanding investment for the appropriate operating year or operating years pending the restoration of dwelling or nondwelling facilities damaged by fire or other casualty. With respect to any investor which is subject to supervision or regulation by a State banking, insurance, or other State department or agency, the Secretary may, in carrying out any of his supervisory and regulatory functions with respect to projects insured under this subchapter, utilize, contract with, and act through, such department or agency and without regard to section 6101 of title 41.

(June 27, 1934, ch. 847, title VII, § 712, as added Aug. 10, 1948, ch. 832, title IV, § 401, 62 Stat. 1281; amended Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

CODIFICATION

In text, ''section 6101 of title 41'' substituted for ''section 3709 of the Revised Statutes'' on authority of Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

§ 1747*l*. Definitions

The following terms shall have the meanings, respectively, ascribed to them below, and, unless

the context clearly indicates otherwise, shall include the plural as well as the singular number:

(a) ''Investor'' shall mean (1) any natural person; (2) any group of not more than ten natural persons; (3) any corporation, company, association, trust, or other legal entity; or (4) any combination of two or more corporations, companies, associations, trusts, or other legal entities, having all the powers necessary to comply with the requirements of this subchapter, which the Secretary (i) shall find to be qualified by business experience and facilities, to afford assurance of the necessary continuity of long-term investment, and to have available the necessary capital required for long-term investment in the project, and (ii) shall approve as eligible for insurance under this subchapter.

(b) ''Project'' shall mean a project (including all property, real and personal, contracts, rights, and choses in action acquired, owned, or held by the investor in connection therewith) of an investor designed and used primarily for the purpose of providing dwellings the occupancy of which is permitted by the investor in consideration of agreed charges: *Provided*, That nothing in this subchapter shall be construed as prohibiting the inclusion in a project of such stores, offices, or other commercial facilities, recreational or community facilities, or other nondwelling facilities as the Secretary shall determine to be necessary or desirable appurtenances to such project.

(c) ''Estimated investment'' shall mean the estimated cost of the development of the project, as stated in the application submitted to the Secretary for insurance under this subchapter.

(d) ''Established investment'' shall mean the amount of the reasonable costs, as approved by the Secretary, incurred by the investor in, and necessary for, carrying out all works and undertakings for the development of a project and shall include the premium charge for the first operating year and the cost of all necessary surveys, plans and specifications, architectural, engineering, or other special services, land acquisition, site preparation, construction, and equipment; a reasonable return on the funds of the investor paid out in the course of the development of the project, up to and including the initial occupancy date; necessary expenses in connection with the initial occupancy of the project; and the cost of such other items as the Secretary shall determine to be necessary for the development of the project, (1) less the amount by which the rents and revenues derived from the project up to and including the initial occupancy date exceeded the reasonable and proper expenses, as approved by the Secretary, incurred by the investor in, and necessary for, operating and maintaining said project up to and including the initial occupancy date, or (2) plus the amount by which such expenses exceeded such rents and revenues, as the case may be.

(e) ''Physical completion date'' shall mean the last day of the calendar month in which the Secretary determines that the construction of the project is substantially completed and substantially all of the dwellings therein are available for occupancy.

(f) ''Initial occupancy date'' shall mean the last day of the calendar month in which 90 per centum in number of the dwellings in the project on the physical completion date shall have been occupied, but shall in no event be later than the last day of the sixth calendar month next following the physical completion date.

(g) ''Operating year'' shall mean the period of twelve consecutive calendar months next following the initial occupancy date and each succeeding period of twelve consecutive calendar months, and the period of the first twelve consecutive calendar months next following the initial occupancy date shall be the first operating year.

(h) ''Gross income'' for any operating year shall mean the total rents and revenues and other income derived from, or in connection with, the project during such operating year.

(i) ''Operating expenses'' for any operating year shall mean the amounts, as approved by the Secretary, necessary to meet the reasonable and proper costs of, and to provide for, operating and maintaining the project, and to establish and maintain reasonable and proper reserves for repairs, maintenance, and replacements, and other necessary reserves during such operating year, and shall include necessary expenses for real estate taxes, special assessments, premium charges made pursuant to this subchapter, administrative expenses, the annual rental under any lease pursuant to which the real property comprising the site of the project is held by the investor, and insurance charges, together with such other expenses as the Secretary shall determine to be necessary for the proper operation and maintenance of the project, but shall not include income taxes.

(j) ''Net income'' for any operating year shall mean gross income remaining after the payment of the operating expenses.

(k) ''Minimum annual amortization charge'' shall mean an amount equal to 2 per centum of the established investment, except that, in the case of a project where the real property comprising the site thereof is held by the investor under a lease, if (notwithstanding the proviso of section 1747b(a) of this title) the gross income for any operating year shall be less than the amount required to pay the operating expenses (including the annual rental under such lease), the minimum annual amortization charge for such operating year shall mean an amount equal to 2 per centum of the established investment plus the amount of the annual rental under such lease to the extent that the same is not paid from the gross income.

(*l*) ''Annual return'' for any operating year shall mean the net income remaining after the payment of the minimum annual amortization charge.

(m) ''Insured annual return'' shall have the meaning ascribed to it in section 1747 of this title.

(n) ''Minimum annual return'' for any operating year shall mean an amount equal to 3½ per centum of the outstanding investment for such operating year or such lesser amount as shall be agreed upon by the investor and the Secretary.

(*o*) ''Excess earnings'' for any operating year shall mean the net income derived from a project in excess of the minimum annual amortization charge and the minimum annual return and income taxes.

(p) ''Outstanding investment'' for any operating year shall mean the established investment, less an amount equal to (1) the aggregate of the minimum annual amortization charge for each preceding operating year, plus (2) the aggregate of the excess earnings, if any, during each preceding operating year applied, in addition to the minimum annual amortization charge, to amortization in accordance with the provisions of section 1747d of this title.

(q) ''State'' shall include the several States and Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

(June 27, 1934, ch. 847, title VII, § 713, as added Aug. 10, 1948, ch. 832, title IV, § 401, 62 Stat. 1281; amended Apr. 20, 1950, ch. 94, title I, § 122, 64 Stat. 59; Sept. 1, 1951, ch. 378, title VI, §§ 610, 612, 65 Stat. 316; July 14, 1952, ch. 723, § 10(a)(4), 66 Stat. 603; Pub. L. 86–70, § 10(a), June 25, 1959, 73 Stat. 142; Pub. L. 86–624, § 6, July 12, 1960, 74 Stat. 411; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a) to (e), (i), and (n).

1960—Subsec. (q). Pub. L. 86–624 struck out ''Hawaii,'' before ''Puerto Rico''.

1959—Subsec. (q). Pub. L. 86–70 struck out ''Alaska,'' before ''Hawaii''.

1952—Subsec. (q). Act July 14, 1952, added subsec. (q).

1951—Subsec. (n). Act Sept. 1, 1951, § 610, inserted ''or such lesser amount as shall be agreed upon by the investor and the Commissioner''.

Subsec. (*o*). Act Sept. 1, 1951, § 612, inserted ''and income taxes''.

1950—Act Apr. 20, 1950, substituted ''Commissioner'' for ''Administrator'' wherever appearing.

SUBCHAPTER VIII—ARMED SERVICES HOUSING MORTGAGE INSURANCE

AMENDMENTS

1955—Act Aug. 11, 1955, ch. 783, title IV, § 401, 69 Stat. 646, substituted ''ARMED SERVICES'' for ''MILITARY'' and inserted ''MORTGAGE'' in subchapter heading.

§ 1748. Definitions

As used in this subchapter—

(a) The term ''mortgage'' means a first mortgage on real estate, in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable; or (2) under a lease for a period of not less than fifty years to run from the date the mortgage was executed; and the term ''first mortgage'' means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(b) The term ''mortgagee'' includes the original lender under a mortgage, and his successors and assigns approved by the Secretary; and the term ''mortgagor'' includes the original borrower under a mortgage, his successors and assigns.

(c) The term ''maturity date'' means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(d) The term ''housing accommodations'' means housing designed for occupancy by military personnel and their dependents, assigned to duty at or near the military installation where such housing units are constructed.

(e) The term ''personnel'' shall include military and civilian personnel approved by the Secretary of Defense, or his designee, and the dependents of all such personnel.

(f) The term ''military'' includes Army, Navy, Marine Corps, Air Force, and Coast Guard.

(g) The term ''State'' includes the several States, and Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Canal Zone, and Midway Island.

(June 27, 1934, ch. 847, title VIII, § 801, as added Aug. 8, 1949, ch. 403, § 1, 63 Stat. 570; amended July 14, 1952, ch. 723, § 10(a)(2), 66 Stat. 603; Aug. 11, 1955, ch. 783, title IV, § 401, 69 Stat. 646; Aug. 7, 1956, ch. 1029, title V, § 501, 70 Stat. 1109; Pub. L. 86–70, § 10(a), June 25, 1959, 73 Stat. 142; Pub. L. 86–624, § 6, July 12, 1960, 74 Stat. 411; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (g), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner''.

1960—Subsec. (g). Pub. L. 86–624 struck out ''Hawaii,'' before ''Puerto Rico''.

1959—Subsec. (g). Pub. L. 86–70 struck out ''Alaska,'' before ''Hawaii''.

1956—Subsec. (g). Act Aug. 7, 1956, inserted reference to Canal Zone and Midway Island.

1955—Act Aug. 11, 1955, inserted definitions of ''housing accommodations'' and ''personnel'' and included the Coast Guard in definition of ''military''.

1952—Subsec. (f). Act July 14, 1952, inserted ''Guam,'' after ''District of Columbia,''.

SAVINGS PROVISION

Section 408 of act Aug. 11, 1955, as amended by act Aug. 7, 1956, § 511, provided that: ''Notwithstanding the provisions of section 401 of this Act [amending this subchapter], the provisions of title VIII of the National Housing Act [this subchapter] in effect prior to the enactment of the Housing Amendments of 1955 [August 11, 1955] shall continue in full force and effect with respect to all mortgages insured pursuant to a certification by the Secretary of Defense or his designee made on or before June 30, 1955, and a commitment to insure issued on or before June 30, 1956 or pursuant to a certification by the Atomic Energy Commission or its designee made on or before June 30, 1956, except that the maximum dollar amount for each such mortgage shall be $12,500,000.] Nothing contained in the provisions of title VIII of the National Housing Act [this subchapter] in effect prior to August 11, 1955 or any related provision of law, shall be construed to exempt from State or local taxes or assessments the interest of a lessee from the Federal Government in or with respect to any property covered by a mortgage insured under such provisions of title VIII: *Provided*, That, no such taxes or assessments (not paid or encumbering such property or interest prior to June 15, 1956) on the interest of such lessee shall exceed the amount of taxes or assessments on other similar property of similar value, less such amount as the Secretary of Defense or his designee determines to be equal to (1) any payments made by the Federal Government to the local taxing or other public agencies involved with respect to such property, plus (2) such amount as may be appropriate for any expendi-

tures made by the Federal Government or the lessee for the provision or maintenance of streets, sidewalks, curbs, gutters, sewers, lighting, snow removal or any other services or facilities which are customarily provided by the State, county, city, or other local taxing authority with respect to such other similar property: *And provided further*, That the provisions of this section shall not apply to properties leased pursuant to the provisions of section 805 of the National Housing Act [12 U.S.C. 1748d] as amended on or after August 11, 1955, which properties shall be exempt from State or local taxes or assessments.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

COAST GUARD

Subchapter as applicable to Coast Guard, see section 1594e of Title 42, The Public Health and Welfare.

§ 1748a. Repealed. Pub. L. 89–117, title XI, § 1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title VIII, § 802, as added Aug. 8, 1949, ch. 403, § 1, 63 Stat. 571; amended Aug. 11, 1955, ch. 783, title IV, § 401, 69 Stat. 646, created the Armed Services Housing Insurance Fund.

For establishment of the General Insurance Fund, see section 1735c of this title.

§ 1748b. Insurance of mortgages

(a) Aggregate amount of insurance; termination date

In order to assist in relieving the acute shortage and urgent need for family housing which now exists at or in areas adjacent to military installations because of uncertainty as to the permanency of such installations and to increase the supply of necessary family housing accommodations for personnel at such installations, the Secretary is authorized, upon application of the mortgagee, to insure mortgages (including advances on such mortgages during construction) which are eligible for insurance as hereinafter provided, and, upon such terms as the Secretary may prescribe, to make commitments for so insuring such mortgages prior to the date of their execution or disbursement thereon: *Provided*, That the aggregate amount of principal obligations of all mortgages insured under this subchapter (except mortgages insured pursuant to the provisions of this subchapter in effect prior to August 11, 1955) shall not exceed $2,300,000,000: *And provided further*, That the limitation in section 1715h of this title shall not apply to this subchapter: *And provided further*, That no more mortgages shall be insured under this section after October 1, 1962, except pursuant to a commitment to insure before such date, and not more than twenty-eight thousand family housing units shall be contracted for after June 30, 1959, pursuant to any mortgage insured under this section after such date.

(b) Eligibility for insurance

To be eligible for insurance under this subchapter a mortgage shall meet the following conditions:

(1) The mortgaged property shall be held by a mortgagor approved by the Secretary. The Secretary may, in his discretion, require such mortgagor to be regulated or restricted as to capital structure, and methods of operation. The Secretary may make such contracts with, and acquire for not to exceed $100 stock or interest in, any such mortgagor, as the Secretary may deem necessary to render effective such restriction or regulation. Such stock or interest shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(2) The mortgaged property shall be designed for use for residential purposes by personnel of the armed services and situated at or near a military installation, and the Secretary of Defense or his designee shall have certified that there is no intention, so far as can reasonably be foreseen, to substantially curtail the personnel assigned or to be assigned to such installation, and (i) shall have determined that for reasons of safety, security, or other essential military requirements, it is necessary that the personnel involved reside in public quarters: *Provided, however*, That for the purposes of this subsection housing covered by a mortgage insured, or for which a commitment to insure has been issued, under this section prior to August 11, 1955, may be considered the same as available quarters, and (ii) with the approval of the Secretary, shall have determined that adequate housing is not available for such personnel at reasonable rentals within reasonable commuting distance of the installation and that the mortgaged property will not, so far as can reasonably be foreseen, substantially curtail occupancy in existing housing covered by mortgages insured under this chapter. The housing accommodations shall comply with such standards and conditions as the Secretary may prescribe to establish the acceptability of such property for mortgage insurance, except that the certification of the Secretary of Defense or his designee shall (for purposes of mortgage insurance under this subchapter) be conclusive evidence to the Secretary of the existence of the need for such housing. However, if the Secretary does not concur in the housing needs as certified by the Secretary of Defense, the Secretary may require the Secretary of Defense to guarantee the General Insurance Fund against loss with respect to the mortgage covering such housing. There are authorized to be appropriated such sums as may be necessary to provide for payment to meet losses arising from such guaranty.

(3) The mortgage shall involve a principal obligation in an amount—

(A) not to exceed the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed improvements are completed (the cost of the property or project as such term is used in this paragraph may include the cost of the land, the physical improvements, and utilities within the boundaries of the property or project);

(B) not to exceed an average of $16,500 per family unit for such part of such property or project (including ranges, refrigerators, shades, screens, and fixtures) as may be attributable to dwelling use: *Provided*, That the replacement cost of the property or project as determined by the Secretary, including the estimated value of any usable utilities within the boundaries of the property or project where owned by the United States and not provided for out of the proceeds of the mortgage, shall not exceed an average of $16,500 per family unit: *Provided further*, That should the financing of housing to be constructed pursuant to a single invitation for bids be accomplished by two or more mortgages, the principal obligation of any single mortgage may exceed an average of $16,500 per family unit if the sum of the principal obligations of all mortgages for such housing does not exceed an average of $16,500 per family unit: *And provided further*, That subject to the limitations of this paragraph no family unit included in any mortgaged property shall be contracted for after June 8, 1960 if the cost of such unit exceeds $19,800; and

(C) not to exceed the bid of the eligible bidder with respect to the property or project under section 1594 of title 42.

The mortgage shall provide for complete amortization by periodic payments within such terms as the Secretary shall prescribe, but not to exceed thirty years from the beginning of amortization of the mortgage, and shall bear interest (exclusive of premium charges for insurance) as not to exceed 4½ per centum per annum of the amount of the principal obligation outstanding at any time. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release. The property or project may include such nondwelling facilities as the Secretary deems adequate to serve the occupants.

(c) Premium charges

The Secretary is authorized to fix a premium charge for the insurance of mortgages under this subchapter but in the case of any mortgage such charge shall not be less than an amount equivalent to one-half of 1 per centum per annum nor more than an amount equivalent to 1½ per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time, without taking into account delinquent payments or prepayments. Such premium charges shall be payable by the mortgagee, either in cash, or in debentures issued by the Secretary under this subchapter at par plus accrued interest, in such manner as may be prescribed by the Secretary: *Provided*, That the Secretary may require the payment of one or more such premium charges at the time the mortgage is insured, at such discount rate as he may prescribe not in excess of the interest rate specified in the mortgage. If the Secretary finds, upon the presentation of a mortgage for insurance and the tender of the initial premium charge and such other charges as the Secretary may require, that the mortgage complies with the provisions of this subchapter, such mortgage may be accepted for insurance by endorsement or otherwise as the Secretary may prescribe. In the event that the principal obligation of any mortgage accepted for insurance under this subchapter is paid in full prior to the maturity date, the Secretary is authorized to refund to the mortgagee for the account of the mortgagor all, or such portion as he shall determine to be equitable, of the current unearned premium charges theretofore paid. The Secretary may reduce the payment of premiums provided for herein. The Secretary is further authorized to reduce the amount of the premium charge below one-half of 1 per centum per annum with respect to any mortgage on property acquired by the Secretary of Defense or his designee if the mortgage is insured pursuant to the provisions of this subchapter as in effect prior to August 11, 1955.

(d) Default by mortgagor; rights of mortgagee

The failure of the mortgagor to make any payment due under or provided to be paid by the terms of a mortgage insured under this subchapter shall be considered a default under such mortgage, and, if such default continues for a period of thirty days, the mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided, upon assignment, transfer, and delivery to the Secretary, within a period and in accordance with rules and regulations to be prescribed by the Secretary of (1) all rights and interest arising under the mortgage so in default; (2) all claims of the mortgagee against the mortgagor or others, arising out of the mortgage transactions; (3) all policies of title or other insurance or surety bonds or other guaranties and any and all claims thereunder; (4) any balance of the mortgage loan not advanced to the mortgagor; (5) any cash or property held by the mortgagee, or to which it is entitled, as deposits made for the account of the mortgagor and which have not been applied in reduction of the principal of the mortgage indebtedness; and (6) all records, documents, books, papers, and accounts relating to the mortgage transaction. Upon such assignment, transfer, and delivery, the obligation of the mortgagee to pay the premium charges for mortgage insurance shall cease, and the Secretary shall, subject to the cash adjustment provided for in subsection (e) of this section, issue to the mortgagee debentures having a total face value equal to the value of the mortgage, and a certificate of claim as hereinafter provided. For the purposes of this subsection, the value of the mortgage shall be determined in accordance with rules and regulations prescribed by the Secretary, by adding to the amount of the original principal obligation of the mortgage which was unpaid on the date of default, the amount the mortgagee may have paid for (A) taxes, special assessments, and water rates, which are liens prior to the mortgage; (B) insurance on the property; and (C) reasonable expenses for the completion and preservation of the property and any mortgage insurance premiums paid after default; less the sum of (i) any amount received on account of the mortgage after such date; and (ii) any net in-

come received by the mortgagee from the property after such date.

(e) Debentures; issuance; form and denomination

Debentures issued under this subchapter shall be in such form and denominations in multiples of $50, shall be subject to such terms and conditions, and shall include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury, and may be in coupon or registered form. Any difference between the value of the mortgage determined as herein provided and the aggregate face value of the debentures issued, not to exceed $50, shall be adjusted by the payment of cash by the Secretary to the mortgagee from the General Insurance Fund.

(f) Debentures; execution; signature; negotiability; interest rate; tax exemption; guarantee

Debentures issued under this subchapter shall be executed in the name of the General Insurance Fund as obligor, shall be signed by the Secretary, by either his written or engraved signature, and shall be negotiable. All such debentures shall be dated as of the date of default as determined in accordance with subsection (d) of this section, and shall bear interest from such date at a rate established by the Secretary pursuant to section 1715*o* of this title, payable semiannually on the 1st day of January and the 1st day of July of each year, and shall mature twenty years after the date thereof. Such debentures shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by any Territory, dependency, or possession of the United States or by the District of Columbia, or by any State, county, municipality, or local taxing authority. They shall be paid out of the General Insurance Fund, which shall be primarily liable therefor, and they shall be fully and unconditionally guaranteed as to principal and interest by the United States, and such guaranty shall be expressed on the face of the debentures. In the event the General Insurance Fund fails to pay upon demand, when due, the principal of or interest on any debentures so guaranteed, the Secretary of the Treasury shall pay to the holders the amount thereof which is authorized to be appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures.

(g) Claim certificates

The certificate of claim issued by the Secretary to any mortgagee in connection with the insurance of mortgages under this subchapter shall be for an amount determined in accordance with subsections (e) and (f) of section 1739 of this title, except that any amount remaining after the payment of the full amount under the certificate of claim shall be retained by the Secretary and credited to the General Insurance Fund.

(h) Laws applicable

The provisions of section 1713(k) and (*l*) of this title shall be applicable to mortgages insured under this subchapter and to property acquired by the Secretary hereunder, except that as applied to such mortgages and property, the reference in section 1713(k) of this title to subsection (g) shall be construed to refer to subsection (d) of this section.

(i) Secretary's additional powers to insure certain mortgages

The Secretary shall also have power to insure under this subchapter or subchapter II of this chapter any mortgage executed in connection with the sale by him of any property acquired under this subchapter without regard to any limit as to eligibility, time or aggregate amount contained in this subchapter or subchapter II of this chapter.

(j) Conclusiveness and validity of insurance contract

Any contract of insurance executed by the Secretary under this subchapter shall be conclusive evidence of the eligibility of the mortgage for insurance and the validity of any contract of insurance so executed shall be incontestable in the hands of an approved mortgagee from the date of the execution of such contract, except for fraud or misrepresentation on the part of such approved mortgagee.

(k) Certification as to overtime wages paid to laborers and mechanics

The Secretary shall not insure any mortgage under this section unless the principal contractor or contractors engaged in the construction of the project involved file a certificate or certificates (at such times, in the course of construction or otherwise, as the Secretary may prescribe) certifying that the laborers and mechanics employed in the construction of such project have been paid not less than one and one-half times the regular rate of pay for employment in excess of eight hours in any one day or in excess of forty hours in any one week.

(June 27, 1934, ch. 847, title VIII, §803, as added Aug. 8, 1949, ch. 403, §1, 63 Stat. 571; amended Sept. 1, 1951, ch. 378, title VI, §601(a)–(c), 65 Stat. 312; June 30, 1953, ch. 170, §10, 67 Stat. 124; June 29, 1954, ch. 410, §1(2), 68 Stat. 320; Aug. 2, 1954, ch. 649, title I, §§112(c), 128(a), 130, 68 Stat. 593, 609; June 30, 1955, ch. 251, §1(2), 69 Stat. 225; Aug. 11, 1955, ch. 783, title IV, §401, 69 Stat. 647; Aug. 7, 1956, ch. 1029, title V, §§502–506(a), 70 Stat. 1109, 1110; Pub. L. 85–104, title I, §108(c), title V, §§501, 502, July 12, 1957, 71 Stat. 297, 303; Pub. L. 85–364, §3(b), Apr. 1, 1958, 72 Stat. 73; Pub. L. 86–149, title IV, §414(a), Aug. 10, 1959, 73 Stat. 322; Pub. L. 86–372, title VII, §701, Sept. 23, 1959, 73 Stat. 682; Pub. L. 86–500, title V, §507(a), (c), June 8, 1960, 74 Stat. 185, 186; Pub. L. 87–57, title VI, §607(a), June 27, 1961, 75 Stat. 111; Pub. L. 87–70, title VI, §604(d), June 30, 1961, 75 Stat. 177; Pub. L. 87–623, §1, Aug. 31, 1962, 76 Stat. 418; Pub. L. 89–117, title XI, §1108(u), Aug. 10, 1965, 79 Stat. 506; Pub. L. 90–19, §1(a)(3), (p), May 25, 1967, 81 Stat. 17, 19; Pub. L. 96–470, title I, §107(b), Oct. 19, 1980, 94 Stat. 2238.)

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

AMENDMENTS

1980—Subsec. (b)(2). Pub. L. 96–470 struck out provision requiring the Secretary to report to the Commit-

tees on Banking and Currency of the Senate and the House of Representatives each instance in which he has required the Secretary of Defense to guarantee the General Insurance Fund and the reasons therefor.

1967—Pub. L. 90–19, §1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a), (b)(1), (2), (3)(A), (B), following (C), and (c) to (k).

Subsec. (b)(2). Pub. L. 90–19, §1(p)(1)–(4), substituted ''Secretary of Defense'' for ''Secretary'' in first, third, and fourth sentences.

1965—Subsecs. (b)(1), (b)(2), (e), (f), (g). Pub. L. 89–117, §1108(u)(1), substituted ''General Insurance Fund'' for ''Armed Services Housing Mortgage Insurance Fund'' wherever appearing.

Subsec. (h). Pub. L. 89–117, §1108(u)(2), struck out provision that, as applied to mortgages insured under this subchapter and to property acquired by the Commissioner hereunder, reference in subsecs. (k) and (*l*) of section 1713 of this title to the ''Housing Fund'' shall be construed to refer to the ''Armed Services Housing Mortgage Insurance Fund''.

1962—Subsec. (a). Pub. L. 87–623 substituted ''mortgages shall be insured under this section after October 1, 1962'' for ''mortgages shall be insured under this subchapter after October 1, 1962''.

1961—Subsec. (a). Pub. L. 87–70 made amendment identical to that made by Pub. L. 87–57.

Pub. L. 87–57 substituted ''October 1, 1962'' for ''October 1, 1961'', and ''twenty-eight thousand family units'' for ''twenty-five thousand family housing units''.

1960—Subsec. (a). Pub. L. 86–500, §507(a), substituted ''twenty-five thousand family housing units'' for ''twenty thousand family housing units''.

Subsec. (b)(3). Pub. L. 86–500, §507(c), inserted proviso prohibiting, subject to the limitations of par. (B), the contracting for any family unit included in any mortgaged property after June 8, 1960, if the cost of the unit exceeds $19,800.

1959—Subsec. (a). Pub. L. 86–372, §701(a), substituted ''October 1, 1961'' for ''September 30, 1960''.

Pub. L. 86–149 inserted provisions in subsec. (a) to prohibit insurance of mortgages under this subchapter after Sept. 30, 1960, and to limit the number of housing units which may be contracted for after June 30, 1959 to not more than 20,000.

Subsec. (b)(3). Pub. L. 86–372, §701(b), (c), substituted ''but not to exceed thirty years from the beginning of amortization of the mortgage'' for ''have a maturity of not to exceed twenty-five years'', and inserted provisions authorizing the property or project to include such nondwelling facilities as the Commission deems adequate to serve the occupants.

Subsec. (c). Pub. L. 86–372, §701(d), authorized the Commissioner to reduce the amount of the premium charge below one-half of 1 per centum per annum with respect to any mortgage on property acquired by the Secretary of Defense or his designee if the mortgage is insured pursuant to the provisions of this subchapter as in effect prior to August 11, 1955.

Subsec. (k). Pub. L. 86–372, §701(e), added subsec. (k).

1958—Subsec. (b). Pub. L. 85–364 increased the maximum amount of interest from 4 to 4½ per centum per annum.

1957—Subsec. (a). Pub. L. 85–104, §501, substituted ''June 30, 1959'' for ''June 30, 1958''.

Subsec. (b)(3)(B). Pub. L. 85–104, §502, inserted proviso that should financing of housing to be constructed pursuant to a single invitation for bids be accomplished by two or more mortgages, any single mortgage may exceed an average of $16,500 if sum of all mortgages for such housing does not exceed average of $16,500.

Subsec. (f). Pub. L. 85–104, §108(c), substituted, in second sentence, ''established by the Commissioner pursuant to section 1715*o* of this title'' for ''determined by the Commissioner with the approval of the Secretary of the Treasury, at the time the mortgage was accepted for insurance, but not to exceed 3 per centum per annum''.

1956—Subsec. (a). Act Aug. 7, 1956, §§502, 503, inserted ''(except mortgages insured pursuant to the provisions of this subchapter in effect prior to August 11, 1955)'' and substituted ''$2,300,000'' for ''$1,363,500,000'' in first proviso and ''June 30, 1958'' for ''September 30, 1956'' in third proviso.

Subsec. (b)(2). Act Aug. 7, 1956, §504, required approval of Commissioner, with determination of Secretary, that new units will not substantially curtail occupancy in existing houses covered by mortgages insured under this chapter, and provided that if Commissioner requires Secretary to guarantee the armed services housing mortgages insurance fund from loss, he shall report to the Committees on Banking and Currency of the Senate and House of Representatives each instance in which he required such a guarantee.

Subsec. (b)(3)(B). Act Aug. 7, 1956, §505, substituted ''$16,500'' for ''$13,500'' in two places, and inserted ''(including ranges, refrigerators, shades, screens, and fixtures)''.

Subsec. (b)(3)(C). Act Aug. 7, 1956, §506(a), substituted ''eligible bidder with respect to'' for ''eligible builder of''.

1955—Subsec. (a). Act Aug. 11, 1955, increased authorization from $500,000,000 to $1,363,500,000, and extended from June 30, 1955, to September 30, 1956, period within which mortgages can be insured.

Act June 30, 1955, extended termination date, with respect to authority to insure, from June 30, 1955, to July 31, 1955.

Subsec. (b). Act Aug. 11, 1955, authorized issuance of insurance for units necessary for reasons of safety, security, or other essential military requirements, or where adequate housing is not available at reasonable rentals within reasonable commuting distance, limited the amount of the mortgage to not more than the replacement cost of the property or project, restricted the amount of the mortgage to not more than an average of $13,500 for a family unit, and required the mortgage to mature in not more than 25 years.

Subsec. (c). Act Aug. 11, 1955, struck out authorization of Commissioner to require payment by mortgagee of an adjusted premium charge in event that principal obligation of mortgage is paid in full prior to maturity date.

Subsec. (d). Act Aug. 11, 1955, struck out provisions which authorized mortgagee to proceed to foreclose mortgage in event of a default, and which granted mortgagee right to elect benefits of insurance when the United States acquires, or commences condemnation proceedings to acquire, all or a substantial part, of mortgaged property.

Subsecs. (e) to (h). Act Aug. 11, 1955, substituted ''Armed Services Housing Mortgage Insurance Fund'' for ''Military Housing Insurance Fund,'' wherever appearing.

Subsec. (i). Act Aug. 11, 1955, struck out the power of the Commissioner to insure under subchapter VI of this chapter.

Subsec. (j). Act Aug. 11, 1955, reenacted provisions without change.

Subsec. (k). Act Aug. 11, 1955, struck out provisions which authorized utilization of the powers of the Federal National Mortgage Association and of any other Federal corporation or other Federal agency to purchase, service, or sell any mortgages, or partial interest therein.

1954—Subsec. (a). Acts Aug. 2, 1954, §128(a), and June 29, 1954, extended termination date, with respect to authority to insure, from July 31, 1954, to June 30, 1955, and from July 1, 1954, to July 31, 1954, respectively.

Subsec. (b). Act Aug. 2, 1954, §130, in par. immediately following subpar. (C) of par. (3) of the subsection, substituted the requirement that the mortgagor shall enter into the agreement required by section 1715r of this title for former provisions relating to certification of builders' costs, the certifications now being prescribed into section 1715r.

Subsec. (f). Act Aug. 2, 1954, §112(c), in second sentence, substituted a twenty-year period for ten-year period, with respect to the maturity of debentures.

1953—Subsec. (a). Act June 30, 1953, §10(a), in second proviso substituted ''July 1, 1954'' for ''July 1, 1953''.

Subsec. (b). Act June 30, 1953, § 10(b), (c), inserted par. commencing ''The mortgagor shall agree''; and, in first sentence of par. commencing ''The mortgage shall provide'', substituted ''4½ per centum'' for ''4 per centum''.

1951—Subsec. (a). Act Sept. 1, 1951, § 601(a), substituted ''July 1, 1953'' for ''July 1, 1951'' in second proviso.

Subsec. (b)(3)(C). Act Sept. 1, 1951, § 601(b), inserted proviso.

Subsec. (d). Act Sept. 1, 1951, § 601(c), inserted reference to the Atomic Energy Commission in last sentence.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 112(c) of act Aug. 2, 1954, as not applicable in any case where the mortgage involved was insured or the commitment for such insurance was issued prior to Aug. 2, 1954, see section 112(e) of that act, set out as a note under section 1710 of this title.

EFFECTIVE DATE OF 1951 AMENDMENT

Act Sept. 1, 1951, § 601(a), provided that the amendment made by that section is effective July 1, 1951.

§ 1748c. Repealed. Pub. L. 89–117, title XI, § 1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title VIII, § 804, as added Aug. 8, 1949, ch. 403, § 1, 63 Stat. 575; amended Aug. 11, 1955, ch. 783, title IV, § 401, 69 Stat. 650, provided for disposition and use of excess moneys in Armed Services Housing Mortgage Insurance Fund, issue and cancellation of debentures, and receipt and payment of credits and charges.

§ 1748d. Lease of property; terms and conditions

Whenever the Secretary of the Army, Navy, or Air Force determines that it is necessary to lease any land held by the United States on or near a military installation to effectuate the purposes of this subchapter, he may lease such land upon such terms and conditions as will, in his opinion, best serve the national interest. The authority conferred by this section shall be in addition to and not in derogation of any other power or authority of the Secretary of the Army, Navy, or Air Force.

(June 27, 1934, ch. 847, title VIII, § 805, as added Aug. 8, 1949, ch. 403, § 1, 63 Stat. 576; amended Aug. 11, 1955, ch. 783, title IV, § 401, 69 Stat. 651.)

AMENDMENTS

1955—Act Aug. 11, 1955, struck out specific references to sections authorizing leases of property, and struck out the power to sell, transfer, and convey real property.

§ 1748e. Mortgages on property in Alaska

The second sentence of section 1715d of this title, as amended, relating to housing in the State of Alaska, shall not apply to mortgages insured under this subchapter on property in said State.

(June 27, 1934, ch. 847, title VIII, § 806, as added Aug. 8, 1949, ch. 403, § 1, 63 Stat. 576; amended Aug. 11, 1955, ch. 783, title IV, § 401, 69 Stat. 651; Pub. L. 86–70, § 10(d), June 25, 1959, 73 Stat. 143.)

REFERENCES IN TEXT

Section 1715d of this title, referred to in text, was in the original ''section 214 of the National Housing Act, as amended''. Section 214 of that Act was classified originally to section 1715d of this title and to section 484d of Title 48, Territories and Insular Possessions. Section 484d of Title 48 has been omitted from the Code.

AMENDMENTS

1959—Pub. L. 86–70 substituted ''State'' for ''Territory'' in two places.

1955—Act Aug. 11, 1955, reenacted section without change.

§ 1748f. Rules and regulations

The Secretary is authorized and directed to make such rules and regulations as may be necessary to carry out the provisions of this subchapter.

(June 27, 1934, ch. 847, title VIII, § 807, as added Aug. 8, 1949, ch. 403, § 1, 63 Stat. 576; amended Aug. 11, 1955, ch. 783, title IV, § 401, 69 Stat. 651; Pub. L. 90–19, § 1(a)(3), (q), May 25, 1967, 81 Stat. 17, 19.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' and struck out authorization for appointment by the Commissioner of a Special Assistant for Armed Services Housing for Mortgage Insurance with an adequate staff to expedite operations and eliminate administrative obstacles to this subchapter, respectively.

1955—Act Aug. 11, 1955, amended section generally, striking out provisions which stated that nothing should be construed as exempting property from taxation, and inserting provisions authorizing the Commissioner to make rules and regulations and to appoint a Special Assistant.

§ 1748g. Cost certification

Except in the case of mortgages on multifamily rental housing projects insured under section 1748h–2 of this title, the cost certification required under section 1715r of this title shall not be required with respect to mortgages insured under the provisions of this subchapter.

(June 27, 1934, ch. 847, title VIII, § 808, as added Aug. 8, 1949, ch. 403, § 1, 63 Stat. 576; amended Aug. 11, 1955, ch. 783, title IV, § 401, 69 Stat. 651; Pub. L. 86–372, title VII, § 704(b), Sept. 23, 1959, 73 Stat. 686.)

AMENDMENTS

1959—Pub. L. 86–372 substituted ''Except in the case of mortgages on multifamily rental housing projects insured under section 1748h–2 of this title, the'' for ''The''.

1955—Act Aug. 11, 1955, struck out provisions requiring cost certifications.

§§ 1748g–1, 1748h. Omitted

CODIFICATION

Section 1748g–1, act June 27, 1934, ch. 847, title VIII, § 810, as added Sept. 1, 1951, ch. 378, title VI, § 601(d), 65 Stat. 313, which related to mortgages on housing constructed for personnel of the Atomic Energy Commission, was omitted from the amendments to title VIII of act June 27, 1934, this subchapter, by act Aug. 11, 1955, ch. 783, title IV, § 401, 69 Stat. 646.

Section 1748h, act June 27, 1934, ch. 847, title VIII, § 809, as added May 2, 1950, ch. 151, 64 Stat. 97, which related to the procurement of services of architects and engineers by the Secretaries of the Army, Navy and Air Force to effectuate the purposes of this subchapter, was omitted from the amendment to title VIII of act June 27, 1934, this subchapter, by act Aug. 11, 1955, ch. 783, title IV, § 401, 69 Stat. 646.

§ 1748h–1. Civilian employees of Armed Forces

(a) Requirements; certificate of need for housing and employment status

Notwithstanding any other provisions of this subchapter and in addition to mortgages insured under section 1748b of this title, the Secretary may insure any mortgage under this section which meets the eligibility requirements set forth in section 1709(b) of this title: *Provided*, That a mortgage insured under this section shall have been executed by a mortgagor who at the time of insurance is the owner of the property and either occupies the property or certifies that his failure to do so is the result of a change in his employment by the Armed Forces or a contractor thereof and to whom the Secretary of Defense or his designee has issued a certificate indicating that such person requires housing and is at the date of the certificate a civilian employee at a research or development installation of one of the military departments of the United States or a contractor thereof and is considered by such military department to be an essential, nontemporary employee at such date. Such certificate shall be conclusive evidence to the Secretary of the employment status of the mortgagor and of the mortgagor's need for housing.

(b) Certification of housing need to Secretary; guaranty from loss; authorization of appropriations

No mortgage shall be insured under this section unless the Secretary of Defense or his designee shall have certified to the Secretary that the housing is necessary to provide adequate housing for such civilians employed in connection with such a research or development installation and that there is no present intention to substantially curtail the number of such civilian personnel assigned or to be assigned to such installation. Such certification shall be conclusive evidence to the Secretary of the need for such housing but if the Secretary determines that insurance of mortgages on such housing is not an acceptable risk, he may require the Secretary of Defense to guarantee the General Insurance Fund from loss with respect to mortgages insured pursuant to this section: *Provided*, That the Secretary shall relieve the Secretary of Defense from any obligation to guarantee the General Insurance Fund from loss with respect to a mortgage assumed by a person ineligible to receive a certificate under subsection (a) of this section, if the original mortgagor is issued another certificate with respect to a mortgage insured under this section on property which the Secretary determines is not an acceptable risk. There are authorized to be appropriated such sums as may be necessary to provide for payment to meet losses arising from such guaranty.

(c) Economic soundness of property

The Secretary may accept any mortgage for insurance under this section without regard to any requirement in any other section of this chapter, that the project or property be economically sound or an acceptable risk.

(d) Insurance benefits to which mortgagee entitled

Any mortgagee under a mortgage insured under this section is entitled to the benefits of insurance as provided in section 1710(a) of this title with respect to mortgages insured under section 1709 of this title.

(e) Payment of insurance; meaning of terms

The provisions of subsections (b), (c), (d), (e), (f), (g), (h),[1] (j), and (k)[1] of section 1710 of this title shall apply to mortgages insured under this section except that as applicable to those mortgages: (1) all references to the ''Fund'' or ''Mutual Mortgage Insurance Fund'' shall refer to the ''General Insurance Fund'' and (2) all references to section 1709 of this title shall refer to this section.

(f) Provisions of subchapter applicable; termination date

The provisions of sections 1748, 1748a,[1] 1748b(c), 1748b(i), 1748b(j), 1748c(a),[1] 1748c(b),[1] and 1748f of this title and the provisions of section 1748b(a) of this title relating to the aggregate amount of all mortgages insured under this subchapter, shall be applicable to mortgages insured under this section.

(g) Housing for persons employed by National Aeronautics and Space Administration or Atomic Energy Commission; guaranty from loss; definitions

(1) A mortgage secured by property which is intended to provide housing for a person (i) employed or assigned to duty at or in connection with any research or development installation of the National Aeronautics and Space Administration and which is located at or near such installation, or (ii) employed at any research or development installation of the Atomic Energy Commission and which is located at or near such installation, may (if the mortgage otherwise meets the requirements of this section) be insured by the Secretary under the provisions of this section. The Administrator of the National Aeronautics and Space Administration (or his designee), in the case of any mortgage secured by property intended to provide housing for any person employed or assigned to duty at any such installation of the National Aeronautics and Space Administration, or the Chairman of the Atomic Energy Commission (or his designee), in the case of any mortgage secured by property intended to provide housing for any person employed at such installation of the Atomic Energy Commission, is authorized to guarantee and indemnify the General Insurance Fund against loss to the extent required by the Secretary, in accordance with the provisions of subsection (b) of this section.

(2) For purposes of this subsection—

(i) The terms ''Armed Forces'', ''one of the military departments of the United States'', ''military department'', ''Secretary of Defense or his designee'', and ''Secretary of Defense'', when used in subsections (a) and (b) of this section, shall be deemed to refer to the National Aeronautics and Space Administration (or the Administrator thereof), or the Atomic Energy Commission (or the Chairman thereof), as may be appropriate;

(ii) The term ''Secretary of the Army, Navy, or Air Force'', when used in section 1748d of

[1] See References in Text note below.

this title, shall be deemed to refer to the National Aeronautics and Space Administration or the Administrator thereof, as may be appropriate;

(iii) The terms ''civilian employee'', ''civilians'', and ''civilian personnel'', as used in this section, shall be deemed to refer to (A) employees of the National Aeronautics and Space Administration or a contractor thereof or to military personnel assigned to duty at an installation of the National Aeronautics and Space Administration, or (B) persons employed at or in connection with any research or development installation of the Atomic Energy Commission, as the case may be; and

(iv) The term ''military installation'' when used in section 1748d of this title shall be deemed to refer to an installation of the National Aeronautics and Space Administration.

(June 27, 1934, ch. 847, title VIII, §809, as added June 13, 1956, ch. 381, 70 Stat. 273; amended Pub. L. 86–372, title I, §116(b), Sept. 23, 1959, 73 Stat. 664; Pub. L. 86–578, July 5, 1960, 74 Stat. 314; Pub. L. 86–774, §3, Sept. 13, 1960, 74 Stat. 915; Pub. L. 87–623, §2, Aug. 31, 1962, 76 Stat. 418; Pub. L. 88–127, §1, Sept. 23, 1963, 77 Stat. 163; Pub. L. 89–117, title II, §202(c), title XI, §1108(v), Aug. 10, 1965, 79 Stat. 466, 506; Pub. L. 90–19, §1(a)(3), (r), May 25, 1967, 81 Stat. 17, 19; Pub. L. 91–78, §2(d), Sept. 30, 1969, 83 Stat. 125; Pub. L. 91–152, title I, §101(f), Dec. 24, 1969, 83 Stat. 379; Pub. L. 91–432, §1(d), Oct. 2, 1970, 84 Stat. 887; Pub. L. 91–473, §1(d), Oct. 21, 1970, 84 Stat. 1065; Pub. L. 91–525, §1(d), Dec. 1, 1970, 84 Stat. 1384; Pub. L. 91–609, title I, §§101(f), 112, Dec. 31, 1970, 84 Stat. 1770, 1772; Pub. L. 92–503, §1(f), Oct. 18, 1972, 86 Stat. 906; Pub. L. 93–85, §1(f), Aug. 10, 1973, 87 Stat. 220; Pub. L. 93–117, §1(f), Oct. 2, 1973, 87 Stat. 421; Pub. L. 93–383, title III, §316(d), Aug. 22, 1974, 88 Stat. 685; Pub. L. 95–60, §1(e), June 30, 1977, 91 Stat. 257; Pub. L. 95–80, §1(e), July 31, 1977, 91 Stat. 339; Pub. L. 95–128, title III, §301(h), Oct. 12, 1977, 91 Stat. 1131; Pub. L. 95–406, §1(h), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95–557, title III, §301(h), Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96–71, §1(h), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96–105, §1(h), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96–153, title III, §301(h), Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96–372, §1(h), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96–399, title III, §301(h), Oct. 8, 1980, 94 Stat. 1638; Pub. L. 97–35, title III, §331(h)(1), Aug. 13, 1981, 95 Stat. 413; Pub. L. 97–289, §1(h), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98–35, §1(h), May 26, 1983, 97 Stat. 197; Pub. L. 98–109, §1(h), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98–181, title IV, §401(g), Nov. 30, 1983, 97 Stat. 1208; Pub. L. 99–120, §1(h)(1), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, §1(h)(1), Nov. 15, 1985, 99 Stat. 815; Pub. L. 99–219, §1(h)(1), Dec. 26, 1985, 99 Stat. 1730; Pub. L. 99–267, §1(i)(1), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, §3007(h)(1), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99–289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title IV, §401(a)(5), Feb. 5, 1988, 101 Stat. 1898; Pub. L. 101–625, title IX, §952(b), Nov. 28, 1990, 104 Stat. 4418; Pub. L. 102–550, title IX, §904(b), Oct. 28, 1992, 106 Stat. 3868.)

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

Subsection (h) of section 1710 of this title, referred to in subsec. (e), was redesignated subsec. (i) by Pub. L. 105–276, title VI, §602(1), Oct. 21, 1998, 112 Stat. 2674.

Subsection (k) of section 1710 of this title, referred to in subsec. (e), was repealed by Pub. L. 105–276, title VI, §601(c), Oct. 21, 1998, 112 Stat. 2673.

Sections 1748a and 1748c of this title, referred to in subsec. (f), were repealed by Pub. L. 89–117, title XI, §1108(aa), Aug. 10, 1965, 79 Stat. 507.

PRIOR PROVISIONS

A prior section 809 of title VIII of act June 27, 1934, as added May 2, 1950, ch. 151, 64 Stat. 97, which related to the procurement of services of architects and engineers by the armed services to effectuate purposes of this subchapter, was classified to section 1748h of this title.

AMENDMENTS

1992—Subsec. (h). Pub. L. 102–550 struck out subsec. (h) which related to an Advanced Building Technology Program. See section 1701j–2(h) of this title.

1990—Subsecs. (h) to (j). Pub. L. 101–625, §952(b), which directed the addition of subsec. (h) relating to an Advanced Building Technology Program and the redesignation of subsecs. (h) and (i) as (i) and (j), respectively, was executed by adding subsec. (h) because this section did not contain subsec. (h) or (i).

1988—Subsec. (f). Pub. L. 100–242 struck out ''No more mortgages shall be insured under this section after March 15, 1988, except pursuant to a commitment to insure before such date.''

1987—Subsec. (f). Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

1986—Subsec. (f). Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272 made amendment identical to Pub. L. 99–219. See 1985 Amendment note below.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

1985—Subsec. (f). Pub. L. 99–219 substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156 substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120 substituted ''November 14, 1985'' for ''September 30, 1985''.

1983—Subsec. (f). Pub. L. 98–181 substituted ''September 30, 1985'' for ''November 30, 1983''.

Pub. L. 98–109 substituted ''November 30, 1983'' for ''September 30, 1983''.

Pub. L. 98–35 substituted ''September 30, 1983'' for ''May 20, 1983''.

1982—Subsec. (f). Pub. L. 97–289 substituted ''May 20, 1983'' for ''September 30, 1982''.

1981—Subsec. (f). Pub. L. 97–35 substituted ''1982'' for ''1981''.

1980—Subsec. (f). Pub. L. 96–399 substituted ''September 30, 1981'' for ''October 15, 1980''.

Pub. L. 96–372 substituted ''October 15, 1980'' for ''September 30, 1980''.

1979—Subsec. (f). Pub. L. 96–153 substituted ''September 30, 1980'' for ''November 30, 1979''.

Pub. L. 96–105 substituted ''November 30, 1979'' for ''October 31, 1979''.

Pub. L. 96–71 substituted ''October 31, 1979'' for ''September 30, 1979''.

1978—Subsec. (f). Pub. L. 95–557 substituted ''September 30, 1979'' for ''October 31, 1978''.

Pub. L. 95–406 substituted ''October 31, 1978'' for ''September 30, 1978''.

1977—Subsec. (f). Pub. L. 95–128 substituted ''September 30, 1978'' for ''September 30, 1977''.

Pub. L. 95–80 substituted ''September 30, 1977'' for ''July 31, 1977''.

Pub. L. 95–60 substituted ''July 31, 1977'' for ''June 30, 1977''.

1974—Subsec. (f). Pub. L. 93–383 substituted ''June 30, 1977'' for ''October 1, 1974''.

1973—Subsec. (f). Pub. L. 93–117 substituted ''October 1, 1974'' for ''October 1, 1973''.

Pub. L. 93–85 substituted ''October 1, 1973'' for ''June 30, 1973''.

1972—Subsec. (f). Pub. L. 92–503 substituted ''June 30, 1973'' for ''October 1, 1972''.

1970—Subsec. (b). Pub. L. 91–609, § 112, inserted the proviso.

Subsec. (f). Pub. L. 91–609, § 101(f), substituted ''October 1, 1972'' for ''January 1, 1971''.

Pub. L. 91–525 substituted ''January 1, 1971'' for ''December 1, 1970''.

Pub. L. 91–473 substituted ''December 1, 1970'' for ''November 1, 1970''.

Pub. L. 91–432 substituted ''November 1, 1970'' for ''October 1, 1970''.

1969—Subsec. (f). Pub. L. 91–152 substituted ''October 1, 1970'' for ''January 1, 1970''.

Pub. L. 91–78 substituted ''January 1, 1970'' for ''October 1, 1969''.

1967—Pub. L. 90–19, § 1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a) to (c) and (g)(1).

Subsec. (a). Pub. L. 90–19, § 1(r)(1), substituted ''Secretary of Defense'' for ''Secretary''.

Subsec. (b). Pub. L. 90–19, § 1(r)(1), (2), substituted ''Secretary of Defense'' for ''Secretary'' wherever appearing.

Subsec. (g)(2). Pub. L. 90–19, § 1(r)(3), (4), substituted ''Secretary of Defense'' for ''Secretary'' in cl. (i) and ''the National Aeronautics and Space Administration'' for ''such Administration'', wherever appearing, respectively.

1965—Subsecs. (b), (e). Pub. L. 89–117, § 1108(v), substituted ''General Insurance Fund'' for ''Armed Services Housing Mortgage Insurance Fund'' wherever appearing.

Subsec. (f). Pub. L. 89–117, § 202(c), substituted ''October 1, 1969'' for ''October 1, 1965''.

Subsec. (g). Pub. L. 89–117, § 1108(v), substituted ''General Insurance Fund'' for ''Armed Services Housing Mortgage Insurance Fund'' wherever appearing.

1963—Subsec. (f). Pub. L. 88–127, § 1(1), substituted ''October 1, 1965'' for ''October 1, 1963''.

Subsec. (g)(1). Pub. L. 88–127, § 1(2), substituted ''or in connection with any'' for ''a'', struck out requirement that such installation belong to a military department of the United States on or after June 13, 1956, before its transfer to the Administration, in cl. (i), and extended cl. (ii) to include persons at any installation of the Atomic Energy Commission instead of only the one in Los Alamos County, N. Mex.

Subsec. (g)(2)(iii). Pub. L. 88–127, § 1(3), extended cl. (B) to include persons at any installation of the Atomic Energy Commission instead of only the one in Los Alamos, N. Mex.

1962—Subsec. (f). Pub. L. 87–623 provided that no mortgages shall be insured under this section after October 1, 1963, except pursuant to a commitment before such date, and struck out ''and the expiration date of the Commissioner's authority to insure'' after ''amount of all mortgages insured''.

1960—Subsec. (g). Pub. L. 86–774 designated part of existing provisions as par. (1), inserting cl. (ii) and ''in the case of any mortgage secured by property intended to provide housing for any person employed or assigned to duty at any such installation of the National Aeronautics and Space Administration, or the Chairman of the Atomic Energy Commission (or his designee), in the case of any mortgage secured by property intended to provide housing for any person employed at such installation of the Atomic Energy Commission'' and striking out ''in the case of mortgages referred to in this subsection'' after ''subsection (b) of this section'', and designated cl. (1) as par. (2)(i) and (ii), cl. (2) as par. (2)(iii), adding subpar. (B), and cl. (3) as par. (2)(iv).

Subsec. (g). Pub. L. 86–578 added subsec. (g).

1959—Subsec. (e). Pub. L. 86–372 inserted reference to subsec. (k) to section 1710 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See also Transfer of Functions notes set out under those sections.

§ 1748h–2. Insurance of mortgages for defense housing for impacted areas

(a) Authorization

Notwithstanding any other provision of this subchapter, the Secretary may insure and make commitments to insure any mortgage under this section which meets the eligibility requirements hereinafter set forth.

(b) Eligibility requirements

No mortgage shall be insured under this section unless (1) the housing which is covered by the insured mortgage is necessary in the interest of national security in order to provide adequate housing for (A) military personnel and essential civilian personnel serving or employed in connection with any installation of one of the armed services of the United States, or (B) essential personnel employed or assigned to duty at or in connection with any research or development installation of the National Aeronautics and Space Administration or of the Atomic Energy Commission, (2) there is no present intention to curtail substantially the number of such personnel assigned or to be assigned to the installation, (3) adequate housing is not available for such personnel at reasonable rentals within reasonable commuting distances of such installation, and (4) the mortgaged property will not so far as can be reasonably foreseen substantially curtail occupancy in any existing housing in the vicinity of the installation which is covered by mortgages insured under this chapter.

(c) Economical soundness of property or project

The Secretary may accept any mortgage for insurance under this section without regard to any requirement in any other section of this chapter that the property or project be economically sound.

(d) Rental conditions; preferences and priorities in the sale or rental of dwellings

The Secretary shall require each project covered by a mortgage insured under this section to be held for rental for a period of not less than five years after the project or dwelling is made

available for initial occupancy or until he finds that the housing may be released from such rental condition. The Secretary shall prescribe such procedures as in his judgment are necessary to secure reasonable preference or priority in the sale or rental of dwellings covered by a mortgage insured under this section for military personnel and essential civilian employees of the armed services, employees of contractors for the armed services, and persons described in clause (1)(B) of subsection (b) of this section.

(e) Property held by mortgagor approved by Secretary; acquisition of stock or interest; redemption

For the purpose of providing multifamily rental housing projects or housing projects consisting of individual single-family dwellings for sale, the Secretary is authorized to insure mortgages (including advances on such mortgages during construction) which cover property held by a mortgagor approved by the Secretary. Any such mortgagor shall possess powers necessary therefor and incidental thereto and shall until the termination of all obligations of the Secretary under such insurance be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation to such extent and in such manner as to provide reasonable rentals to tenants and a reasonable return on the investment. The Secretary may make such contracts with, and acquire for not to exceed $100 such stock or interest in, any such mortgagor as he may deem necessary to render effective such restriction or regulation. Such stock or interest shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(f) Mortgage limitations for multifamily rental property or project

To be eligible for insurance under this section, a mortgage on any multifamily rental property or project shall involve a principal obligation in an amount not to exceed, for such part of such property or project as may be attributable to dwelling use, $9,000 per family unit without a bedroom, $12,500 per family unit with one bedroom, $15,000 per family unit with two bedrooms, and $18,500 per family unit with three or more bedrooms, and not to exceed 90 per centum of the estimated value of the property or project when the proposed physical improvements are completed. The Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this paragraph by not to exceed 45 per centum in any geographical area where he finds that cost levels so require.

(g) Mortgage limitation for property or project constructed for eventual sale of single-family dwellings

To be eligible for insurance under this section a mortgage on any property or project constructed for eventual sale of single-family dwellings shall involve a principal obligation in an amount not to exceed a sum computed on the basis of a separate mortgage for each single-family dwelling (irrespective of whether such dwelling has a party wall or is otherwise physically connected with another dwelling or dwellings) comprising the property or project equal to the total of each of the maximum principal obligations of such mortgages which would meet the requirements of section 1709(b)(2) of this title if the mortgagor were the owner and occupant who had made the required payment on account of the property prescribed in such paragraph.

(h) Amortization; interest; release of part of mortgaged property from lien; replacement of certain mortgages by individual mortgages; commercial and community facilities

Any mortgage insured under this section shall provide for complete amortization by periodic payments within such terms as the Secretary may prescribe but not to exceed the maximum term applicable to mortgages under section 1713 of this title and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee, except that individual mortgages of the character described in subsection (g) of this section covering the individual dwellings in the project may have a term not in excess of the maximum term applicable to mortgages insured under section 1709 of this title or the unexpired term of the project mortgage at the time of the release of the mortgaged property from such project mortgage, whichever is the greater, and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release, and a mortgage of the character described in subsection (g) of this section may provide that, at any time after the release of the project from the rental period prescribed by subsection (d) of this section, such mortgage may be replaced, in whole or in part, by individual mortgages covering each individual dwelling in the project in amounts not to exceed the unpaid balance of the blanket mortgage allocable to the individual property. Each such individual mortgage may be insured under this section. Property covered by a mortgage insured under this section may include eight or more family units and may include such commercial and community facilities as the Secretary deems adequate to serve the occupants.

(i) Limitation on aggregate number of dwelling units

The aggregate number of dwelling units (including all units in multifamily projects or individual dwellings) covered by outstanding commitments to insure and mortgages insured under this section shall at no time exceed five thousand dwelling units.

(j) Applicability of other laws

The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (*l*), and (n) of section 1713 of this title shall be applicable to mortgages insured under this section except individual mortgages of the character described in subsection (g) of this section covering the individual dwellings in the project, and as to such individual mortgages the provisions of subsections (a), (c), (d), (e), (f), (g),

(h),[1] (j), and (k)[1] of section 1710 of this title shall be applicable: *Provided*, That wherever the words ''Fund'' or ''Mutual Mortgage Insurance Fund'' appear in section 1710 of this title, such reference shall refer to the General Insurance Fund with respect to mortgages insured under this section.

(k) Aggregate amount of mortgages insured; termination date

The provisions of sections 1748, 1748a,[1] 1748b(c), 1748b(i), 1748b(j), 1748c(a), 1748c(b),[1] and 1748f of this title and the provisions of section 1748b(a) of this title relating to the aggregate amount of all mortgages insured under this subchapter shall be applicable to mortgages insured under this section.

(June 27, 1934, ch. 847, title VIII, § 810, as added Pub. L. 86–372, title VII, § 704(a), Sept. 23, 1959, 73 Stat. 683; amended Pub. L. 87–70, title VI, § 611(a), June 30, 1961, 75 Stat. 180; Pub. L. 87–623, § 3, Aug. 31, 1962, 76 Stat. 418; Pub. L. 88–127, § 2, Sept. 23, 1963, 77 Stat. 163; Pub. L. 88–560, title I, § 107(f), Sept. 2, 1964, 78 Stat. 776; Pub. L. 89–117, title II, § 202(c), title XI, § 1108(w), Aug. 10, 1965, 79 Stat. 466, 506; Pub. L. 90–19, § 1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title XVII, § 1722(f), Aug. 1, 1968, 82 Stat. 611; Pub. L. 91–78, § 2(e), Sept. 30, 1969, 83 Stat. 125; Pub. L. 91–152, title I, § 101(g), Dec. 24, 1969, 83 Stat. 379; Pub. L. 91–432, § 1(e), Oct. 2, 1970, 84 Stat. 887; Pub. L. 91–473, § 1(e), Oct. 21, 1970, 84 Stat. 1065; Pub. L. 91–525, § 1(e), Dec. 1, 1970, 84 Stat. 1384; Pub. L. 91–609, title I, § 101(g), Dec. 31, 1970, 84 Stat. 1770; Pub. L. 92–503, § 1(g), Oct. 18, 1972, 86 Stat. 906; Pub. L. 93–85, § 1(g), Aug. 10, 1973, 87 Stat. 220; Pub. L. 93–117, § 1(g), Oct. 2, 1973, 87 Stat. 421; Pub. L. 93–383, title III, §§ 304(j), 316(e), Aug. 22, 1974, 88 Stat. 678, 685; Pub. L. 95–60, § 1(f), June 30, 1977, 91 Stat. 257; Pub. L. 95–80, § 1(f), July 31, 1977, 91 Stat. 339; Pub. L. 95–128, title III, § 301(i), Oct. 12, 1977, 91 Stat. 1131; Pub. L. 95–406, § 1(i), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95–557, title III, § 301(i), Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96–71, § 1(i), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96–105, § 1(i), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96–153, title III, § 301(i), Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96–372, § 1(i), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96–399, title III, § 301(i), Oct. 8, 1980, 94 Stat. 1639; Pub. L. 97–35, title III, § 331(h)(2), Aug. 13, 1981, 95 Stat. 413; Pub. L. 97–289, § 1(i), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98–35, § 1(i), May 26, 1983, 97 Stat. 197; Pub. L. 98–109, § 1(i), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98–181, title IV, § 401(h), Nov. 30, 1983, 97 Stat. 1208; Pub. L. 99–120, § 1(h)(2), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, § 1(h)(2), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, § 1(h)(2), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, § 1(i)(2), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, § 3007(h)(2), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title IV, §§ 401(a)(6), 429(k), Feb. 5, 1988, 101 Stat. 1898, 1919.)

[1] See References in Text note below.

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

Subsection (h) of section 1710 of this title, referred to in subsec. (j), was redesignated subsec. (i) by Pub. L. 105–276, title VI, § 602(1), Oct. 21, 1998, 112 Stat. 2674.

Subsection (k) of section 1710 of this title, referred to in subsec. (j), was repealed by Pub. L. 105–276, title VI, § 601(c), Oct. 21, 1998, 112 Stat. 2673.

Sections 1748a and 1748c of this title, referred to in subsec. (k), were repealed by Pub. L. 89–117, title XI, § 1108 (aa), Aug. 10, 1965, 79 Stat. 507.

PRIOR PROVISIONS

A prior section 810 of title VIII of act June 27, 1934, ch. 847, as added Sept. 1, 1951, ch. 378, title VI, § 601(d), 65 Stat. 313, which related to mortgage on housing constructed for personnel of the Atomic Energy Commission, was classified to section 1748g–1 of this title.

AMENDMENTS

1988—Subsec. (h). Pub. L. 100–242, § 429(k), substituted ''at such rate as may be agreed upon by the mortgagor and the mortgagee'' for ''(exclusive of premium charges for insurance) at not to exceed the rate applicable to mortgages insured under section 1713 of this title'' and ''such rate as may be agreed upon by the mortgagor and the mortgagee'' for ''not to exceed the rate applicable to mortgages insured under section 1709 of this title''.

Subsec. (k). Pub. L. 100–242, § 401(a)(6), struck out ''No more mortgages shall be insured under this section after March 15, 1988, except pursuant to a commitment to insure before such date.''

1987—Subsec. (k). Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

1986—Subsec. (k). Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272 made amendment identical to Pub. L. 99–219. See 1985 Amendment note below.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

1985—Subsec. (k). Pub. L. 99–219 substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156 substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120 substituted ''November 14, 1985'' for ''September 30, 1985''.

1983—Subsec. (k). Pub. L. 98–181 substituted ''September 30, 1985'' for ''November 30, 1983''.

Pub. L. 98–109 substituted ''November 30, 1983'' for ''September 30, 1983''.

Pub. L. 98–35 substituted ''September 30, 1983'' for ''May 20, 1983''.

1982—Subsec. (k). Pub. L. 97–289 substituted ''May 20, 1983'' for ''September 30, 1982''.

1981—Subsec. (k). Pub. L. 97–35 substituted ''1982'' for ''1981''.

1980—Subsec. (k). Pub. L. 96–399 substituted ''September 30, 1981'' for ''October 15, 1980''.

Pub. L. 96–372 substituted ''October 15, 1980'' for ''September 30, 1980''.

1979—Subsec. (k). Pub. L. 96–153 substituted ''September 30, 1980'' for ''November 30, 1979''.

Pub. L. 96–105 substituted ''November 30, 1979'' for ''October 31, 1979''.

Pub. L. 96–71 substituted ''October 31, 1979'' for ''September 30, 1979''.

1978—Subsec. (k). Pub. L. 95–557 substituted ''September 30, 1979'' for ''October 31, 1978''.

Pub. L. 95–406 substituted ''October 31, 1978'' for ''September 30, 1978''.

1977—Subsec. (k). Pub. L. 95–128 substituted ''September 30, 1978'' for ''September 30, 1977''.

Pub. L. 95–80 substituted ''September 30, 1977'' for ''July 31, 1977''.

Pub. L. 95–60 substituted ''July 31, 1977'' for ''June 30, 1977''.

1974—Subsec. (f). Pub. L. 93–383, §304(j)(1), struck out ''(1) not to exceed $5,000,000 or (2)'' after ''in an amount''.

Subsec. (g). Pub. L. 93–383, §304(j)(2), struck out ''not to exceed $5,000,000 and'' after ''in an amount''.

Subsec. (k). Pub. L. 93–383, §316(e), substituted ''June 30, 1977'' for ''October 1, 1974''.

1973—Subsec. (k). Pub. L. 93–117 substituted ''October 1, 1974'' for ''October 1, 1973''.

Pub. L. 93–85 substituted ''October 1, 1973'' for ''June 30, 1973''.

1972—Subsec. (k). Pub. L. 92–503 substituted ''June 30, 1973'' for ''October 1, 1972''.

1970—Subsec. (k). Pub. L. 91–609 substituted ''October 1, 1972'' for ''January 1, 1971''.

Pub. L. 91–525 substituted ''January 1, 1971'' for ''December 1, 1970''.

Pub. L. 91–473 substituted ''December 1, 1970'' for ''November 1, 1970''.

Pub. L. 91–432 substituted ''November 1, 1970'' for ''October 1, 1970''.

1969—Subsec. (k). Pub. L. 91–152 substituted ''October 1, 1970'' for ''January 1, 1970''.

Pub. L. 91–78 substituted ''January 1, 1970'' for ''October 1, 1969''.

1968—Subsec. (e). Pub. L. 90–448 substituted ''mortgagor approved by the Secretary'' for ''private corporation, association, cooperative society, or trust'' in first sentence, and ''mortgagor'' for ''corporation, association, cooperative society, or trust'' in third and fourth sentences.

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a), (c) to (f), and (h).

1965—Subsec. (e). Pub. L. 89–117, §1108(w)(1), substituted ''General Insurance Fund'' for ''Armed Services Housing Mortgage Insurance Fund''.

Subsec. (j). Pub. L. 89–117, §1108(w)(2), (3), struck out reference to subsecs. (m) and (p) of section 1713 of this title and, in proviso, substituted ''General Insurance Fund'' for ''Armed Services Housing Mortgage Insurance Fund'' and struck out reference to the appearance of ''Housing Insurance Fund'' in sections 1710 and 1713 of this title and the appearance of ''Fund'' or ''Mutual Mortgage Insurance Fund'' in section 1713 of this title.

Subsec. (k). Pub. L. 89–117, §202(c), substituted ''October 1, 1969'' for ''October 1, 1965''.

1964—Subsec. (f). Pub. L. 88–560 changed limits on mortgages for multifamily rental property or project, in cl. (2) of the first sentence from ''$2,500 per room (or $9,000 per family unit if the number of rooms in such property or project is less than four per family unit)'' to ''$9,000 per family unit without a bedroom, $12,500 per family unit with one bedroom, $15,000 per family unit with two bedrooms, and $18,500 per family unit with three or more bedrooms''; and, in the second sentence, inserted '', by regulation,'' and substituted provisions authorizing an increase ''by not to exceed 45 per centum'' of any of such limits because of cost levels for former provision authorizing such an increase ''by not to exceed $1,000 per room'', respectively.

1963—Subsec. (b)(1). Pub. L. 88–127, §2(1), included essential personnel employed or assigned to duty at or in connection with any research or development installation of the National Aeronautics and Space Administration or of the Atomic Energy Commission.

Subsec. (d). Pub. L. 88–127, §2(2), included persons described in cl. (1)(B) of subsec. (b) of this section.

Subsec. (k). Pub. L. 88–127, §2(3), substituted ''October 1, 1965'' for ''October 1, 1963''.

1962—Subsec. (k). Pub. L. 87–623 provided that no mortgages shall be insured under this section after October 1, 1963, except pursuant to a commitment before such date, and struck out ''and the expiration date of the Commissioner's authority to insure'' after ''amount of all mortgages insured''.

1961—Subsec. (b). Pub. L. 87–70, §611(a)(1), struck out provisions which required certification by Secretary of Defense or his designee.

Subsec. (d). Pub. L. 87–70, §611(a)(2), struck out provisions which related to certification and advice of Secretary of Defense or his designee.

Subsec. (*l*). Pub. L. 87–70, §611(a)(3), repealed subsec. (*l*) which required Secretary of Defense to guarantee Armed Services Housing Mortgage Insurance Fund from loss.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

AMENDMENTS TO PROVISIONS FOR FAMILY UNIT LIMITS ON RENTAL HOUSING; EQUITABLE APPLICATION OF SUCH AMENDMENTS OR PRE-AMENDMENT PROVISIONS TO PROJECTS SUBMITTED FOR CONSIDERATION PRIOR TO SEPTEMBER 2, 1964

Equitable application of amendment to subsec. (f) of this section by section 107(f) of Pub. L. 88–560 or pre-amendment provisions to projects submitted for consideration prior to Sept. 2, 1964, see section 107(g) of Pub. L. 88–560, set out as a note under section 1713 of this title.

§ 1748h–3. Payments in lieu of taxes; limitations; exemption from taxation

(a) The Secretary is authorized to make payments in lieu of taxes on any real property to which title has been or is hereafter acquired by him in fee under section 1748b of this title as effective prior to August 11, 1955, and on which taxes or payments in lieu of such taxes were payable or paid prior to acquisition by the Secretary. Such payments may be made in connection with tax years occurring prior to or subsequent to October 5, 1962. The amount of any such payments shall not exceed taxes on similar property and shall not include interest or penalties. If the Secretary has acquired or hereafter acquires title in fee to real property by foreclosure or by transfer from some other department or agency of the Government or otherwise during a tax year, he may make a payment in lieu of taxes prorated for that portion of the year remaining after his acquisition of title. This subsection shall not authorize any lien against property held by the Secretary, nor the payment of any tax, nor any payment in lieu of any tax, on any interest of the Secretary as lessee or mortgagee.

(b) Nothing in this subchapter shall be construed to exempt any real property which has been or is hereafter acquired and held by the Secretary under section 1748h–1 or 1748h–2 of this title from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed.

(June 27, 1934, ch. 847, title VIII, §811, as added Pub. L. 87–756, Oct. 5, 1962, 76 Stat. 751; amended Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Subsecs. (a), (b). Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing.

§ 1748i. Omitted

CODIFICATION

Section, act Sept. 28, 1951, ch. 434, title V, § 505, 65 Stat. 365, related to appropriation and expenditure of funds for acquisition of land, installation of outside utilities, and site preparation for housing projects constructed under this subchapter.

SUBCHAPTER IX—HOUSING FOR EDUCATIONAL INSTITUTIONS

§§ 1749 to 1749c. Repealed. Pub. L. 99–498, title VII, § 702, Oct. 17, 1986, 100 Stat. 1545

Section 1749, acts Apr. 20, 1950, ch. 94, title IV, § 401, 64 Stat. 77; June 30, 1953, ch. 170, § 24(b), 67 Stat. 128; Aug. 2, 1954, ch. 649, title VIII, § 808(b), 68 Stat. 646; Aug. 11, 1955, ch. 783, title III, § 301, 69 Stat. 644; Aug. 7, 1956, ch. 1029, title VI, § 601, 70 Stat. 1113; July 12, 1957, Pub. L. 85–104, title VI, § 601(a), 71 Stat. 303; Sept. 23, 1959, Pub. L. 86–372, title VI, §§ 601, 603(b), 73 Stat. 681, 682; Sept. 14, 1960, Pub. L. 86–788, § 2(b), 74 Stat. 1028; June 30, 1961, Pub. L. 87–70, title IV, § 401, 75 Stat. 172; Aug. 10, 1965, Pub. L. 89–117, title VI, §§ 601, 602, 604(b), 79 Stat. 489; May 24, 1966, Pub. L. 89–429, § 3(b), 80 Stat. 166; Nov. 3, 1966, Pub. L. 89–754, title X, § 1014(b), 80 Stat. 1292; May 25, 1967, Pub. L. 90–19, § 8(a), 81 Stat. 22; Aug. 1, 1968, Pub. L. 90–448, title XVII, § 1705(b)–(e), (g)(1), 82 Stat. 604, 605; Dec. 24, 1969, Pub. L. 91–152, title II, § 219, 83 Stat. 390; July 24, 1970, Pub. L. 91–351, title VII, § 710, 84 Stat. 463; Dec. 31, 1970, Pub. L. 91–609, title II, § 205, 84 Stat. 1777; Oct. 17, 1984, Pub. L. 98–479, title II, § 203(e)(1), 98 Stat. 2230, authorized Federal loans and grants to assist educational institutions in providing housing and other educational facilities for students and faculties.

Section 1749a, acts Apr. 20, 1950, ch. 94, title IV, § 402, 64 Stat. 78; Sept. 23, 1959, Pub. L. 86–372, title VI, § 602, 73 Stat. 681; May 25, 1967, Pub. L. 90–19, § 8(a), (b), 81 Stat. 22; Jan. 2, 1975, Pub. L. 93–604, title VII, § 705(b), 88 Stat. 1964; Oct. 31, 1983, Pub. L. 98–139, title III, § 308, 97 Stat. 895; Oct. 17, 1984, Pub. L. 98–479, title II, §§ 201(d)(1), 203(e)(2)–(4), 204(d), 98 Stat. 2228, 2230, 2233; Nov. 8, 1984, Pub. L. 98–619, title III, § 308, 98 Stat. 3329; Dec. 12, 1985, Pub. L. 99–178, title III, § 307, 99 Stat. 1128; Oct. 18, 1986, Pub. L. 99–500, § 101(i) [H.R. 5233, title III, § 307], 100 Stat. 1783–287, and Oct. 30, 1986, Pub. L. 99–591, § 101(i) [H.R. 5233, title III, § 307], 100 Stat. 3341–287; Dec. 22, 1987, Pub. L. 100–202, § 106, 101 Stat. 1329–433, related to powers and duties of Secretary in carrying out subchapter.

Section 1749b, acts Apr. 20, 1950, ch. 94, title IV, § 403, 64 Stat. 80; June 30, 1961, Pub. L. 87–70, title IV, § 402, 75 Stat. 173; Aug. 1, 1968, Pub. L. 90–448, title XVII, § 1705(f), 82 Stat. 604, related to apportionment of funds.

Section 1749c, acts Apr. 20, 1950, ch. 94, title IV, § 404, 64 Stat. 80; Aug. 11, 1955, ch. 783, title III, §§ 302, 303, 69 Stat. 645; July 12, 1957, Pub. L. 85–104, title VI, § 601(b), 71 Stat. 304; Sept. 23, 1959, Pub. L. 86–372, title VI, § 603(a), 73 Stat. 682; June 30, 1961, Pub. L. 87–70, title IV, § 403, 75 Stat. 173; Sept. 2, 1964, Pub. L. 88–560, title X, § 1002, 78 Stat. 806; Aug. 10, 1965, Pub. L. 89–117, title VI, §§ 603, 604(a), 79 Stat. 489; Nov. 3, 1966, Pub. L. 89–754, title X, § 1014(a), 80 Stat. 1292; May 25, 1967, Pub. L. 90–19, § 8(a), (c), 81 Stat. 22; Aug. 1, 1968, Pub. L. 90–448, title XVII, § 1705(g)(2)–(7), 82 Stat. 605; Oct. 17, 1984, Pub. L. 98–479, title II, § 201(d)(2), 98 Stat. 2228, defined terms used in subchapter.

§ 1749d. Cost of inspections and of providing representatives

On and after December 19, 1963, necessary expenses of inspections and of providing representatives at the site of projects being planned or undertaken by local public agencies pursuant to title I of the Housing Act of 1949, as amended [42 U.S.C. 1450 et seq.], projects financed through loans to educational institutions authorized by this subchapter, projects and facilities financed by loans to public agencies pursuant to title II of the Housing Amendments of 1955, as amended [42 U.S.C. 1491 et seq.], urban planning financed through grants to State and local government agencies pursuant to chapter 35 of title 40, and reserves of planned public works financed through advances to municipalities and other public agencies pursuant to chapter 35 of title 40, as amended, shall be compensated by such agencies or institutions by the payment of fixed fees which in the aggregate will cover the costs of rendering such services, and expenses for such purpose shall be considered nonadministrative; and for the purpose of providing such inspections, the Secretary of Housing and Urban Development may utilize any agency and such agency may accept reimbursement or payment for such services from such institutions, or the Secretary, and shall credit such amounts to the appropriations or funds against which such charges have been made.

(Pub. L. 88–215, title I, Dec. 19, 1963, 77 Stat. 437; Pub. L. 89–174, § 5, Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The Housing Act of 1949, as amended, referred to in text, is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title I of the Housing Act of 1949 which was classified generally to subchapter II (§ 1450 et seq.) of chapter 8A of Title 42, The Public Health and Welfare, was omitted from the Code pursuant to section 5316 of Title 42 which terminated the authority to make grants or loans under such chapter after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Housing Amendments of 1955, referred to in text, is act Aug. 11, 1955, ch. 783, 69 Stat. 645, as amended. Title II of the Act was classified generally to chapter 8B (§ 1491 et seq.) of Title 42, The Public Health and Welfare, and was omitted from the Code pursuant to section 5316 of Title 42 which terminated authority to make grants or loans under such title II after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

CODIFICATION

''Chapter 35 of title 40'' substituted in text for ''title VII of the Housing Act of 1954, as amended'' and for ''title VII of the Housing Act of 1954'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Section was enacted as part of the Independent Offices Appropriation Act, 1964, Pub. L. 88–215, and not as part of the National Housing Act which comprises this chapter. Similar provisions were contained in the following prior appropriation acts:

Oct. 3, 1962, Pub. L. 87–741, title I, 76 Stat. 728.
Aug. 17, 1961, Pub. L. 87–141, title I, 75 Stat. 353.
July 12, 1960, Pub. L. 86–626, title I, 74 Stat. 434.
Sept. 14, 1959, Pub. L. 86–255, title I, 73 Stat. 508.
Aug. 28, 1958, Pub. L. 85–844, title I, 72 Stat. 1070.
June 29, 1957, Pub. L. 85–69, title I, 71 Stat. 233.
June 27, 1956, ch. 452, title I, 70 Stat. 345.
June 30, 1955, ch. 244, title I, 69 Stat. 206.
June 24, 1954, ch. 359, title I, 68 Stat. 283.
July 31, 1953, ch. 302, title I, 67 Stat. 305.

July 5, 1952, ch. 578, title I, 66 Stat. 402.
Aug. 31, 1951, ch. 376, title I, 65 Stat. 276.
Sept. 6, 1950, ch. 896, Ch. VIII, title I, 64 Stat. 709.

TRANSFER OF FUNCTIONS

''Secretary'' substituted for ''Administrator'' pursuant to section 5 of Pub. L. 89–174, Sept. 9, 1965, 79 Stat. 669, which transferred functions, powers, and duties of Housing and Home Finance Agency and its Administrator to Secretary of Housing and Urban Development, and which is classified to section 3534 of Title 42, The Public Health and Welfare.

LIMITATION ON EXPENSE

Section 101 of Pub. L. 89–555, title I, Sept. 6, 1966, 80 Stat. 684, limited nonadministrative expenses to $5,535,000 for fiscal year 1966. Similar provisions for prior fiscal years were contained in acts Aug. 31, 1951, ch. 376, title I, §101, 65 Stat. 276; July 5, 1952, ch. 578, title I, §101, 66 Stat. 402; July 31, 1953, ch. 302, title I, §101, 67 Stat. 305; June 24, 1954, ch. 359, title I, §101, 68 Stat. 283; June 30, 1955, ch. 244, title I, §101, 69 Stat. 206; May 19, 1956, ch. 313, Ch. V, §501, 70 Stat. 166; June 27, 1956, ch. 452, title I, §101, 70 Stat. 346; June 29, 1957, Pub. L. 85–69, title I, §101, 71 Stat. 233; Aug. 28, 1958, Pub. L. 85–844, title I, §101, 72 Stat. 1070; Sept. 14, 1959, Pub. L. 86–255, title I, §101, 73 Stat. 508; July 12, 1960, Pub. L. 86–626, title I, §101, 74 Stat. 435; Aug. 17, 1961, Pub. L. 87–141, title I, §101, 75 Stat. 353; Oct. 3, 1962, Pub. L. 87–741, title I, §101, 76 Stat. 729; Dec. 19, 1963, Pub. L. 88–215, title I, §101, 77 Stat. 437; Aug. 30, 1964, Pub. L. 88–507, title I, §101, 78 Stat. 655; Aug. 16, 1965, Pub. L. 89–128, title I, §101, 79 Stat. 531.

SUBCHAPTER IX–A—MORTGAGE INSURANCE FOR LAND DEVELOPMENT AND NEW COMMUNITIES

§§ 1749aa to 1749*ll*. Repealed. Pub. L. 101–235, title I, § 133(a), Dec. 15, 1989, 103 Stat. 2027

Section 1749aa, act June 27, 1934, ch. 847, title X, §1001, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 461; amended Nov. 3, 1966, Pub. L. 89–754, title X, §§1019, 1020(f), 80 Stat. 1295, 1296; May 25, 1967, Pub. L. 90–19, §1(a)(3), 81 Stat. 17, defined terms for this subchapter.

Section 1749bb, act June 27, 1934, ch. 847, title X, §1002, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 462; amended Nov. 3, 1966, Pub. L. 89–754, title IV, §402, 80 Stat. 1272; May 25, 1967, Pub. L. 90–19, §1(a)(3), (4), 81 Stat. 17; Aug. 1, 1968, Pub. L. 90–448, title III, §310, 82 Stat. 509; Sept. 30, 1969, Pub. L. 91–78, §2(f), 83 Stat. 125; Dec. 24, 1969, Pub. L. 91–152, title I, §101(h), 83 Stat. 379; Oct. 2, 1970, Pub. L. 91–432, §1(f), 84 Stat. 887; Oct. 21, 1970, Pub. L. 91–473, §1(f), 84 Stat. 1065; Dec. 1, 1970, Pub. L. 91–525, §1(f), 84 Stat. 1384; Dec. 31, 1970, Pub. L. 91–609, title I, §101(h), 84 Stat. 1770; Oct. 18, 1972, Pub. L. 92–503, §1(h), 86 Stat. 906; Aug. 10, 1973, Pub. L. 93–85, §1(h), 87 Stat. 220; Oct. 2, 1973, Pub. L. 93–117, §1(h), 87 Stat. 422; Aug. 22, 1974, Pub. L. 93–383, title III, §§304(k), 314, 316(f), 88 Stat. 678, 684, 685; June 30, 1977, Pub. L. 95–60, §1(g), 91 Stat. 257; July 31, 1977, Pub. L. 95–80, §1(g), 91 Stat. 339; Oct. 12, 1977, Pub. L. 95–128, title III, §301(j), 91 Stat. 1131; Sept. 30, 1978, Pub. L. 95–406, §1(j), 92 Stat. 879; Oct. 31, 1978, Pub. L. 95–557, title III, §301(j), 92 Stat. 2096; Sept. 28, 1979, Pub. L. 96–71, §1(j), 93 Stat. 501; Nov. 8, 1979, Pub. L. 96–105, §1(j), 93 Stat. 794; Dec. 21, 1979, Pub. L. 96–153, title III, §301(j), 93 Stat. 1112; Oct. 3, 1980, Pub. L. 96–372, §1(j), 94 Stat. 1363; Oct. 8, 1980, Pub. L. 96–399, title III, §301(j), 94 Stat. 1639; Aug. 13, 1981, Pub. L. 97–35, title III, §331(i), 95 Stat. 413; Oct. 6, 1982, Pub. L. 97–289, §1(j), 96 Stat. 1230; May 26, 1983, Pub. L. 98–35, §1(j), 97 Stat. 197; Oct. 1, 1983, Pub. L. 98–109, §1(j), 97 Stat. 745; Nov. 30, 1983, Pub. L. 98–181, title IV, §§401(i), 404(b)(16), 97 Stat. 1208, 1210; Oct. 8, 1985, Pub. L. 99–120, §1(i), 99 Stat. 503; Nov. 15, 1985, Pub. L. 99–156, §1(i), 99 Stat. 816; Dec. 26, 1985, Pub. L. 99–219, §1(i), 99 Stat. 1731; Mar. 27, 1986, Pub. L. 99–267, §1(j), 100 Stat. 74; Apr. 7, 1986, Pub. L. 99–272, title III, §3007(i), 100 Stat. 105; May 2, 1986, Pub. L. 99–289, §1(b), 100 Stat. 412; June 24, 1986, Pub. L. 99–345, §1, 100 Stat. 673; Sept. 30, 1986, Pub. L. 99–430, 100 Stat. 986; Sept. 30, 1987, Pub. L. 100–122, §1, 101 Stat. 793; Nov. 5, 1987, Pub. L. 100–154, 101 Stat. 890; Nov. 17, 1987, Pub. L. 100–170, 101 Stat. 914; Dec. 3, 1987, Pub. L. 100–179, 101 Stat. 1018; Dec. 21, 1987, Pub. L. 100–200, 101 Stat. 1327; Feb. 5, 1988, Pub. L. 100–242, title IV, §401(a)(7), 101 Stat. 1898, authorized Secretary to insure mortgages in accordance with provisions of this subchapter.

Section 1749cc, act June 27, 1934, ch. 847, title X, §1003, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 463; amended May 25, 1967, Pub. L. 90–19, §1(a)(3), (u), 81 Stat. 17, 19; Dec. 31, 1970, Pub. L. 91–609, title I, §119, 84 Stat. 1775, directed that land development covered by mortgage insured under this subchapter be undertaken pursuant to a schedule and in accordance with an overall development plan.

Section 1749cc–1, act June 27, 1934, ch. 847, title X, §1004, as added Nov. 3, 1966, Pub. L. 89–754, title IV, §401(a), 80 Stat. 1271, related to approval of new communities for mortgage insurance.

Section 1749dd, act June 27, 1934, ch. 847, title X, §1005, formerly §1004, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 463; renumbered §1005 and amended Nov. 3, 1966, Pub. L. 89–754, title IV, §§401(a), 403, 80 Stat. 1271, 1272; May 25, 1967, Pub. L. 90–19, §1(a)(3), 81 Stat. 17, directed adoption of requirements to encourage homebuilding industry and proper balance of housing for moderate and low income families.

Section 1749ee, act June 27, 1934, ch. 847, title X, §1006, formerly §1005, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 463; renumbered §1006 and amended Nov. 3, 1966, Pub. L. 89–754, title IV, §§401(a), 404, 80 Stat. 1271, 1272, related to service of land by public water and sewerage systems after development.

Section 1749ff, act June 27, 1934, ch. 847, title X, §1007, formerly §1006, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 464; renumbered §1007, Nov. 3, 1966, Pub. L. 89–754, title IV, §401(a), 80 Stat. 1271; amended May 25, 1967, Pub. L. 90–19, §1(a)(3), 81 Stat. 17, related to release or subordination of mortgaged property.

Section 1749gg, act June 27, 1934, ch. 847, title X, §1008, formerly §1007, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 464; renumbered §1008, Nov. 3, 1966, Pub. L. 89–754, title IV, §401(a), 80 Stat. 1271; amended May 25, 1967, Pub. L. 90–19, §1(a)(3), 81 Stat. 17, related to premium rates and other charges for mortgage insurance and report to Congress thereon.

Section 1749hh, act June 27, 1934, ch. 847, title X, §1009, formerly §1008, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 464; renumbered §1009, Nov. 3, 1966, Pub. L. 89–754, title IV, §401(a), 80 Stat. 1271; amended May 25, 1967, Pub. L. 90–19, §1(a)(3), 81 Stat. 17, related to applicability of other provisions of law to this subchapter.

Section 1749ii, act June 27, 1934, ch. 847, title X, §1010, formerly §1009, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 464; renumbered §1010, Nov. 3, 1966, Pub. L. 89–754, title IV, §401(a), 80 Stat. 1271; amended May 25, 1967, Pub. L. 90–19, §1(a)(3), 81 Stat. 17, provided that insurance contract under this subchapter was conclusive evidence of eligibility for insurance and that the validity of such contract was incontestable.

Section 1749jj, act June 27, 1934, ch. 847, title X, §1011, formerly §1010, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 464; renumbered §1011, Nov. 3, 1966, Pub. L. 89–754, title IV, §401(a), 80 Stat. 1271; amended May 25, 1967, Pub. L. 90–19, §1(a)(3), 81 Stat. 17, authorized making rules and regulations to carry out provisions of subchapter.

Section 1749kk, act June 27, 1934, ch. 847, title X, §1012, formerly §1011, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 464; renumbered §1012, Nov. 3, 1966, Pub. L. 89–754, title IV, §401(a), 80 Stat. 1271; amended May 25, 1967, Pub. L. 90–19, §1(a)(3), 81

Stat. 17, related to taxation of real property acquired by Secretary.

Section 1749*ll*, act June 27, 1934, ch. 847, title X, § 1013, formerly § 1012, as added Aug. 10, 1965, Pub. L. 89–117, title II, § 201(a), 79 Stat. 464; renumbered § 1013, Nov. 3, 1966, Pub. L. 89–754, title IV, § 401(a), 80 Stat. 1271; amended May 25, 1967, Pub. L. 90–19, § 1(a)(3), (4), 81 Stat. 17, related to requirements to assure that amount of mortgage was not excessive and to requirement that mortgagor certify costs of land development.

SAVINGS PROVISION

Section 133(c) of Pub. L. 101–235 provided that: ''Any contract of insurance entered into under title X [this subchapter, §§ 1749aa to 1749*ll*] before the date of enactment of this Act [Dec. 15, 1989] shall be governed by the provisions of such title as such title existed immediately before such date.''

APPLICABILITY OF REPEAL

Section 133(b) of Pub. L. 101–235 provided that: ''On or after the date of enactment of this Act [Dec. 15, 1989], no mortgage may be insured under title X [this subchapter, §§ 1749aa to 1749*ll*], as such title existed immediately before such date, except pursuant to a commitment to insure made before such date.''

SUBCHAPTER IX–B—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES AND MEDICAL PRACTICE FACILITIES

§ 1749aaa. Insurance of mortgages

(a) Authority of Secretary; termination date

The Secretary is authorized (1) to insure mortgages (including advances on such mortgages during construction), upon such terms and conditions as he may prescribe, in accordance with the provisions of this subchapter, and (2) to make commitments for the insuring of such mortgages prior to the date of their execution or disbursement thereon.

(b) Eligibility for insurance

To be eligible for insurance under this subchapter, the mortgage shall (1) be executed by a mortgagor that is a group practice unit or organization or other mortgagor approved by the Secretary, (2) be made to and held by a mortgagee approved by the Secretary as responsible and able to service the mortgage properly, and (3) cover a property or project which is approved for mortgage insurance prior to the beginning of construction or rehabilitation and is designed for use as a group practice facility or medical practice facility which the Secretary finds will be constructed in an economical manner, will not be of elaborate or extravagant design or materials, and will be adequate and suitable for carrying out the purposes of this subchapter. No mortgage shall be insured under this subchapter unless it is shown to the satisfaction of the Secretary that the applicant would be unable to obtain the mortgage loan without such insurance on terms comparable to those specified in subsection (c) of this section.

(c) Replacement cost of property; maturity; amortization; interest rate

The mortgage shall—

(1) Repealed. Pub. L. 93–383, title III, § 304(*l*), Aug. 22, 1974, 88 Stat. 678;

(2) not exceed 90 per centum of the amount which the Secretary estimates will be the replacement cost of the property or project when construction or rehabilitation is completed. The replacement cost of the property may include the land and the proposed physical improvements, equipment, utilities within the boundaries of the property, a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42)[1] in cases where the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure, architects' fees, taxes, and interest accruing during construction or rehabilitation, and other miscellaneous charges incident to construction or rehabilitation and approved by the Secretary;

(3) have a maturity satisfactory to the Secretary but not to exceed twenty-five years from the beginning of the amortization of the mortgage, and provide for complete amortization of the principal obligation by periodic payments within such term as the Secretary shall prescribe; and

(4) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee.

(d) Conclusiveness of insurance contract as to eligibility; validity of contract incontestable

Any contract of insurance executed by the Secretary under this subchapter shall be conclusive evidence of the eligibility of the mortgage for insurance, and the validity of any contract for insurance so executed shall be incontestable in the hands of an approved mortgagee from the date of the execution of such contract, except for fraud or misrepresentation on the part of such approved mortgagee.

(e) Undertaking

Each mortgage insured under this subchapter shall contain an undertaking (in accordance with regulations prescribed under this subchapter and in force at the time the mortgage is approved for insurance) to the effect that, except as authorized by the Secretary and the mortgagee, the property will be used as a group practice facility or medical practice facility until the mortgage has been paid in full or the contract of insurance otherwise terminated.

(f) Recordkeeping; reports; examination and audit

No mortgage shall be insured under this subchapter unless the mortgagor and the mortgagee certify (1) that they will keep such records relating to the mortgage transaction and indebtedness, to the construction of the facility covered by the mortgage, and to the use of such facility as a group practice facility or medical practice facility as are prescribed by the Secretary at the time of such certification, (2) that they will make such reports as may from time to time be required by the Secretary pertaining to such matters, and (3) that the Secretary shall have access to and the right to examine and audit such records.

(June 27, 1934, ch. 847, title XI, § 1101, as added Pub. L. 89–754, title V, § 502(a), Nov. 3, 1966, 80

[1] See References in Text note below.

Stat. 1274; amended Pub. L. 90–448, title XVII, § 1722(d), Aug. 1, 1968, 82 Stat. 610; Pub. L. 91–78, § 2(g), Sept. 30, 1969, 83 Stat. 125; Pub. L. 91–152, title I, § 101(i), title IV, § 418(f), Dec. 24, 1969, 83 Stat. 379, 402; Pub. L. 91–432, § 1(g), Oct. 2, 1970, 84 Stat. 887; Pub. L. 91–473, § 1(g), Oct. 21, 1970, 84 Stat. 1065; Pub. L. 91–525, § 1(g), Dec. 1, 1970, 84 Stat. 1384; Pub. L. 91–609, title I, § 101(i), Dec. 31, 1970, 84 Stat. 1770; Pub. L. 92–503, § 1(i), Oct. 18, 1972, 86 Stat. 906; Pub. L. 93–85, § 1(i), Aug. 10, 1973, 87 Stat. 220; Pub. L. 93–117, § 1(i), Oct. 2, 1973, 87 Stat. 422; Pub. L. 93–383, title III, §§ 304(*l*), 312(a)(1)–(4), 316(g), Aug. 22, 1974, 88 Stat. 678, 683, 685; Pub. L. 95–60, § 1(h), June 30, 1977, 91 Stat. 257; Pub. L. 95–80, § 1(h), July 31, 1977, 91 Stat. 339; Pub. L. 95–128, title III, § 301(k), Oct. 12, 1977, 91 Stat. 1131; Pub. L. 95–406, § 1(k), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95–557, title III, § 301(k), Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96–71, § 1(k), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96–105, § 1(k), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96–153, title III, § 301(k), Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96–372, § 1(k), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96–399, title III, §§ 301(k), 310(i), Oct. 8, 1980, 94 Stat. 1639, 1643; Pub. L. 97–35, title III, § 331(j), Aug. 13, 1981, 95 Stat. 413; Pub. L. 97–289, § 1(k), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98–35, § 1(k), May 26, 1983, 97 Stat. 197; Pub. L. 98–109, § 1(k), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98–181, title IV, § 401(j), Nov. 30, 1983, 97 Stat. 1208; Pub. L. 98–479, title I, § 104(a)(8), Oct. 17, 1984, 98 Stat. 2225; Pub. L. 99–120, § 1(j), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, § 1(j), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, § 1(j), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, § 1(k), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, § 3007(j), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title IV, § 401(a)(8), Feb. 5, 1988, 101 Stat. 1898.)

REFERENCES IN TEXT

Section 8211 of title 42, referred to in subsec. (c)(2), was omitted from the Code pursuant to section 8229 of Title 42, The Public Health and Welfare, which terminated authority under that section on June 30, 1989.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–242 struck out at end ''No mortgage shall be insured under this subchapter after March 15, 1988, except pursuant to a commitment to insure issued before that date.''

1987—Subsec. (a). Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

1986—Subsec. (a). Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272 made amendment identical to Pub. L. 99–219. See 1985 Amendment note below.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

1985—Subsec. (a). Pub. L. 99–219 substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156 substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120 substituted ''November 14, 1985'' for ''September 30, 1985''.

1984—Subsec. (c)(4). Pub. L. 98–479 substituted ''at such rate as may be agreed upon by the mortgagor and the mortgagee,'' for ''(exclusive of premium charges for insurance, and service charges if any) at a rate of not to exceed 5 per centum per annum of the amount of the principal obligation outstanding at any time, or not to exceed such rate (not in excess of 6 per centum per annum) as the Secretary finds necessary to meet the mortgage market.''

1983—Subsec. (a). Pub. L. 98–181 substituted ''September 30, 1985'' for ''November 30, 1983''.

Pub. L. 98–109 substituted ''November 30, 1983'' for ''September 30, 1983''.

Pub. L. 98–35 substituted ''September 30, 1983'' for ''May 20, 1983''.

1982—Subsec. (a). Pub. L. 97–289 substituted ''May 20, 1983'' for ''September 30, 1982''.

1981—Subsec. (a). Pub. L. 97–35 substituted ''1982'' for ''1981''.

1980—Subsec. (a). Pub. L. 96–399, § 301(k), substituted ''September 30, 1981'' for ''October 15, 1980''.

Pub. L. 96–372 substituted ''October 15, 1980'' for ''September 30, 1980''.

Subsec. (c)(2). Pub. L. 96–399, § 310(i), inserted provisions relating to solar energy systems and residential energy conservation measures.

1979—Subsec. (a). Pub. L. 96–153 substituted ''September 30, 1980'' for ''November 30, 1979''.

Pub. L. 96–105 substituted ''November 30, 1979'' for ''October 31, 1979''.

Pub. L. 96–71 substituted ''October 31, 1979'' for ''September 30, 1979''.

1978—Subsec. (a). Pub. L. 95–557 substituted ''September 30, 1979'' for ''October 31, 1978''.

Pub. L. 95–406 substituted ''October 31, 1978'' for ''September 30, 1978''.

1977—Subsec. (a). Pub. L. 95–128 substituted ''September 30, 1978'' for ''September 30, 1977''.

Pub. L. 95–80 substituted ''September 30, 1977'' for ''July 31, 1977''.

Pub. L. 95–60 substituted ''July 31, 1977'' for ''June 30, 1977''.

1974—Subsec. (a). Pub. L. 93–383, § 316(g), substituted ''June 30, 1977'' for ''October 1, 1974''.

Subsec. (b). Pub. L. 93–383, § 312(a)(1), (2), in cl. (1) inserted ''or other mortgagor'' after ''or organization'', and in cl. (3) inserted ''or medical practice facility'' after ''group practice facility''.

Subsec. (c)(1). Pub. L. 93–383, § 304(*l*), struck out par. (1) which set forth limitation on amount of mortgage.

Subsecs. (e), (f). Pub. L. 93–383, § 312(a)(3), (4), inserted ''or medical practice facility'' after ''group practice facility''.

1973—Subsec. (a). Pub. L. 93–117 substituted ''October 1, 1974'' for ''October 1, 1973''.

Pub. L. 93–85 substituted ''October 1, 1973'' for ''June 30, 1973''.

1972—Subsec. (a). Pub. L. 92–503 substituted ''June 30, 1973'' for ''October 1, 1972''.

1970—Subsec. (a). Pub. L. 91–609 substituted ''October 1, 1972'' for ''January 1, 1971''.

Pub. L. 91–525 substituted ''January 1, 1971'' for ''December 1, 1970''.

Pub. L. 91–473 substituted ''December 1, 1970'' for ''November 1, 1970''.

Pub. L. 91–432 substituted ''November 1, 1970'' for ''October 1, 1970''.

1969—Subsec. (a). Pub. L. 91–152, § 101(i), substituted ''October 1, 1970'' for ''January 1, 1970''.

Pub. L. 91–78 substituted ''January 1, 1970'' for ''October 1, 1969''.

Subsec. (c)(2). Pub. L. 91–152, § 418(f), substituted ''replacement cost'' for ''value'' wherever appearing.

1968—Subsec. (c)(3). Pub. L. 90–448 limited term of mortgage to not more than twenty-five years from beginning of amortization of mortgage.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

DECLARATION OF PURPOSE

Section 501 of title V of Pub. L. 89–754 provided that: ''It is the purpose of this title [enacting this subchapter and amending sections 24, 371, 1715c, and 1715r of this title, section 663 of former Title 11, Bankruptcy, and section 77ddd of Title 15, Commerce and Trade] to assure the availability of credit on reasonable terms to units or organizations engaged in the group practice of medicine, optometry, or dentistry, particularly those in smaller communities and those sponsored by cooperative or other nonprofit organizations, to assist in financing the construction and equipment of group practice facilities.''

§ 1749aaa–1. Premiums and other charges

The Secretary shall fix premium charges for the insurance of mortgages under this subchapter, but such charges shall not be more than 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time, without taking into account delinquent payments or prepayments. In addition to the premium charge, the Secretary is authorized to charge and collect such amounts as he may deem reasonable for the analysis of a proposed project and the appraisal and inspection of the property and improvements. Where the principal obligation of any mortgage accepted for insurance under this subchapter is paid in full prior to the maturity date, the Secretary is authorized to require the payment by the mortgagee of an adjusted premium charge. This charge shall be in such amount as the Secretary determines to be equitable, but not in excess of the aggregate amount of the premium charges that the mortgagee would otherwise have been required to pay if the mortgage had continued to be insured until the maturity date. Where such prepayment occurs, the Secretary is authorized to refund to the mortgagee for the account of the mortgagor all, or such portion as he shall determine to be equitable, of the current unearned premium charges theretofore paid. Premium charges fixed under this section shall be payable by the mortgagee either in cash, or in debentures which are the obligation of the General Insurance Fund at par plus accrued interest, at such times and in such manner as may be prescribed by the Secretary.

(June 27, 1934, ch. 847, title XI, § 1102, as added Pub. L. 89–754, title V, § 502(a), Nov. 3, 1966, 80 Stat. 1275.)

§ 1749aaa–2. Payment of insurance benefits

The mortgagee shall be entitled to receive the benefits of the insurance under this subchapter in the manner provided in subsection (g) of section 1713 of this title with respect to mortgages insured under that section. For such purpose the provisions of subsections (g), (h), (i), (j), (k), (*l*), and (n) of such section 1713 shall apply to mortgages insured under this subchapter and all references in such subsections to such section 1713 shall be deemed to refer to this subchapter.

(June 27, 1934, ch. 847, title XI, § 1103, as added Pub. L. 89–754, title V, § 502(a), Nov. 3, 1966, 80 Stat. 1275.)

§ 1749aaa–3. Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out this subchapter, after consulting with the Secretary of Health and Human Services with respect to any health or medical aspects of the program under this subchapter which may be involved in such regulations.

(June 27, 1934, ch. 847, title XI, § 1104, as added Pub. L. 89–754, title V, § 502(a), Nov. 3, 1966, 80 Stat. 1275; amended Pub. L. 98–479, title II, § 201(a)(2), Oct. 17, 1984, 98 Stat. 2227.)

AMENDMENTS

1984—Pub. L. 98–479 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

§ 1749aaa–4. Administration

(a) Technical assistance

At the request of individuals or organizations operating or contemplating the operation of group practice facilities or medical practice facility (as defined in section 1749aaa–5 of this title), the Secretary may provide or obtain technical assistance in the planning for and construction of such facilities.

(b) Utilization of services and facilities of Federal agencies; payment; advances or reimbursement

With a view to avoiding unnecessary duplication of existing staffs and facilities of the Federal Government, the Secretary is authorized to utilize available services and facilities of any agency of the Federal Government in carrying out the provisions of this subchapter, and to pay for such services and facilities, either in advance or by way of reimbursement, in accordance with an agreement between the Secretary and the head of such agency.

(June 27, 1934, ch. 847, title XI, § 1105, as added Pub. L. 89–754, title V, § 502(a), Nov. 3, 1966, 80 Stat. 1276; amended Pub. L. 93–383, title III, § 312(a)(5), Aug. 22, 1974, 88 Stat. 683.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–383 substituted ''or medical practice facility (as defined in section 1749aaa–5 of this title)'' for ''(as defined in section 1749aaa–5(1) of this title)''.

§ 1749aaa–5. Definitions

For the purposes of this subchapter—

(1) The term ''group practice facility'' means a facility in a State for the provision of preventive, diagnostic, and treatment services to ambulatory patients (in which patient care is under the professional supervision of persons licensed to practice medicine or osteopathy in the State or, in the case of optometric care or treatment, is under the professional supervision of persons licensed to practice optometry in the State, or, in the case of dental diagnosis or treatment, is under the professional supervision of persons licensed to practice dentistry in the State, or, in the case of podi-

atric care or treatment, is under the professional supervision of persons licensed to practice podiatry in the State) and which is primarily for the provision of such health services by a medical or dental group.

(2) The term ''medical practice facility'' means an adequately equipped facility in which not more than four persons licensed to practice medicine in the State where the facility is located can provide, as may be appropriate, preventive, diagnostic, and treatment services, and which is situated in a rural area or small town, or in a low-income section of an urban area, in which there exists, as determined by the Secretary, a critical shortage of physicians. As used in this paragraph—

(A) the term ''small town'' means any town, village, or city having a population of not more than 10,000 inhabitants according to the most recent available data compiled by the Bureau of the Census; and

(B) the term ''low-income section of an urban area'' means a section of a larger urban area in which the median family income is substantially lower, as determined by the Secretary, than the median family income for the area as a whole.

(3) The term ''medical or dental group'' means a partnership or other association or group of persons licensed to practice medicine, osteopathy, or surgery in the State, or of persons licensed to practice optometry in the State, or of persons licensed to practice dentistry in the State, or of persons licensed to practice podiatry in the State, or of any combination of such persons, who, as their principal professional activity and as a group responsibility, engage or undertake to engage in the coordinated practice of their profession primarily in one or more group practice facilities, and who (in this connection) share common overhead expenses (if and to the extent such expenses are paid by members of the group), medical and other records, and substantial portions of the equipment and the professional, technical, and administrative staffs, and which partnership or association or group is composed of at least such professional personnel and make available at least such health services as may be provided in regulations prescribed under this subchapter.

(4) The term ''group practice unit or organization'' means—

(A) a private nonprofit agency or organization undertaking to provide, directly or through arrangements with a medical or dental group, comprehensive medical care, osteopathic care, optometric care, dental care, or podiatric care, or any combination thereof, which may include hospitalization, to members or subscribers primarily on a group practice prepayments basis; or

(B) a private nonprofit agency or organization, established for the purpose of improving the availability of medical, osteopathic, optometric, dental or podiatric care in the community or having some function or functions related to the provision of such care, which will, through lease or other arrangement, make the group practice facility with respect to which assistance has been requested under this subchapter available to a medical or dental group for use by it.

(5) The term ''nonprofit organization'' means a corporation, association, foundation, trust, or other organization no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual except, in the case of an organization the purposes of which include the provision of personal health services to its members or subscribers or their dependents under a plan of such organization for the provision of such services to them (which plan may include the provision of other services or insurance benefits to them), through the provision of such health services (or such other services or insurance benefits) to such members or subscribers or dependents under such plan.

(6) The term ''State'' includes the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the District of Columbia.

(7) The term ''mortgage'' means a first mortgage on real estate in fee simple, or on the interest of either the lessor or lessee thereof (A) under a lease for not less than ninety-nine years which is renewable, or (B) under a lease having a period of not less than fifty years to run from the date the mortgage was executed. The term ''first mortgage'' means such classes of first liens as are commonly given to secure advances (including but not limited to advances during construction) on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby, and any mortgage may be in the form of one or more trust mortgages or mortgage indentures or deeds of trust, securing notes, bonds, or other credit instruments, and, by the same instrument or by a separate instrument, may create a security interest in initial equipment, whether or not attached to the realty.

(8) The term ''mortgagee'' means the original lender under a mortgage, and his or its successors and assigns, and includes the holders of credit instruments issued under a trust mortgage or deed of trust pursuant to which such holders act by and through a trustee named therein.

(9) The term ''mortgagor'' means the original borrower under a mortgage and his or its successors and assigns.

(June 27, 1934, ch. 847, title XI, §1106, as added Pub. L. 89–754, title V, §502(a), Nov. 3, 1966, 80 Stat. 1276; amended Pub. L. 93–383, title III, §312(a)(6), (b), Aug. 22, 1974, 88 Stat. 683, 684.)

AMENDMENTS

1974—Par. (1). Pub. L. 93–383, §312(b)(1), inserted references to practice of osteopathy and authorized inclusion of podiatric care or treatment under the professional supervision of persons licensed to practice podiatry in the State.

Par. (2). Pub. L. 93–383, §312(a)(6), added par. (2). Former par. (2) redesignated (3).

Par. (3). Pub. L. 93–383, §312(a)(6), (b)(2), redesignated former par. (2) as par. (3) and inserted references to persons licensed to practice osteopathy and persons li-

censed to practice podiatry. Former par. (3) redesignated (4).

Par. (4). Pub. L. 93–383, §312(a)(6), (b)(3), (4), redesignated former par. (3) as par. (4) and in cls. (A) and (B) inserted references to osteopathic care and podiatric care wherever appearing. Former par. (4) redesignated (5).

Pars. (5) to (9). Pub. L. 93–383, §312(a)(6), redesignated former pars. (4) to (8) as pars. (5) to (9), respectively.

SUBCHAPTER IX–C—NATIONAL INSURANCE DEVELOPMENT PROGRAM

§§ 1749bbb to 1749bbb–2. Omitted

CODIFICATION

Sections 1749bbb to 1749bbb–2 were omitted in view of the termination of parts A to D of this subchapter by former section 1749bbb of this title.

Section 1749bbb, act June 27, 1934, ch. 847, title XII, §1201, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 556; amended Pub. L. 91–609, title VI, §602(a), Dec. 31, 1970, 84 Stat. 1788; Pub. L. 94–13, §2, Apr. 8, 1975, 89 Stat. 69; Pub. L. 95–24, title I, §104(a), Apr. 30, 1977, 91 Stat. 55; Pub. L. 95–406, §5, Sept. 30, 1978, 92 Stat. 880; Pub. L. 95–557, title III, §307(a), Oct. 31, 1978, 92 Stat. 2097; Pub. L. 96–153, title VI, §601, Dec. 21, 1979, 93 Stat. 1137; Pub. L. 97–35, title III, §342(a), Aug. 13, 1981, 95 Stat. 420; Pub. L. 97–289, §4(c), Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98–35, §4(c), May 26, 1983, 97 Stat. 198; Pub. L. 98–109, §5(c), Oct. 1, 1983, 97 Stat. 746; Pub. L. 98–181, title IV, §452(a), (b)(1), Nov. 30, 1983, 97 Stat. 1230; Pub. L. 98–473, title I, §113, Oct. 12, 1984, 98 Stat. 1964; Pub. L. 99–120, §4(b), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, §4(b), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, §4(b), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, §4(b), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, §3010(b), Apr. 7, 1986, 100 Stat. 106; Pub. L. 99–289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title V, §§542(a), (b), 545(a), Feb. 5, 1988, 101 Stat. 1940, 1942; Pub. L. 101–137, §6(a), (b), Nov. 3, 1989, 103 Stat. 825; Pub. L. 101–508, title II, §2301(a), (b), Nov. 5, 1990, 104 Stat. 1388–23, read as follows:

''(a) The Director is authorized to establish and carry out the programs provided for in parts A, B, C, and D of this subchapter.

''(b) The powers of the Director under part B shall terminate on November 30, 1983, and part A shall terminate on September 30, 1985, and parts C and D shall terminate on September 30, 1995, except to the extent necessary—

''(1) to continue reinsurance and direct insurance in accordance with the provisions of sections 1749bbb–9(b) and 1749bbb–10a(c) of this title until September 30, 1985, and September 30, 1996, respectively;

''(2) to process, verify, and pay claims for reinsured losses and directly insured losses and perform other necessary functions in connection therewith; and

''(3) to complete the liquidation and termination of the reinsurance and direct insurance programs.''

Section 1749bbb–1, act June 27, 1934, ch. 847, title XII, §1202, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 556; amended Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, established an Advisory Board.

Section 1749bbb–2, act June 27, 1934, ch. 847, title XII, §1203, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 557; amended Pub. L. 91–609, title VI, §602(b), Dec. 31, 1970, 84 Stat. 1788; Pub. L. 98–181, title IV, §452(b)(1), (2), Nov. 30, 1983, 97 Stat. 1230, defined terms for this subchapter.

PART A—STATEWIDE PLANS TO ASSURE FAIR ACCESS TO INSURANCE REQUIREMENTS

§§ 1749bbb–3 to 1749bbb–6a. Omitted

CODIFICATION

Sections 1749bbb–3 to 1749bbb–6a, comprising part A of this subchapter, terminated on Sept. 30, 1985, pursuant to former section 1749bbb(b) of this title.

Section 1749bbb–3, act June 27, 1934, ch. 847, title XII, §1211, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 558; amended Pub. L. 95–557, title III, §307(b), (c), Oct. 31, 1978, 92 Stat. 2097, 2098; Pub. L. 97–35, title III, §342(b), Aug. 13, 1981, 95 Stat. 420; Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to fair access to insurance requirements (FAIR plans).

Section 1749bbb–4, act June 27, 1934, ch. 847, title XII, §1212, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 560, related to all-industry placement facility.

Section 1749bbb–5, act June 27, 1934, ch. 847, title XII, §1213, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 560; amended Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to cooperation within insurance industry.

Section 1749bbb–6, act June 27, 1934, ch. 847, title XII, §1214, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 560; amended Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to plan evaluation and modification or waiver of plan criteria.

Section 1749bbb–6a, act June 27, 1934, ch. 847, title XII, §1215, as added Pub. L. 91–609, title VI, §603, Dec. 31, 1970, 84 Stat. 1791; amended Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to periodic review of plans through an Office of Review and Compliance.

PART B—REINSURANCE COVERAGE

§§ 1749bbb–7 to 1749bbb–10. Omitted

CODIFICATION

Sections 1749bbb–7 to 1749bbb–10, comprising part B of this subchapter, were omitted in view of termination of powers of Director under this part on Nov. 30, 1983, pursuant to former section 1749bbb(b) of this title.

Section 1749bbb–7, act June 27, 1934, ch. 847, title XII, §1221, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 560; amended Pub. L. 91–609, title VI, §602(c), Dec. 31, 1970, 84 Stat. 1789; Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to reinsurance of losses from riots or civil disorders.

Section 1749bbb–8, act June 27, 1934, ch. 847, title XII, §1222, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 561; amended Pub. L. 91–152, title IV, §405, Dec. 24, 1969, 83 Stat. 396; Pub. L. 91–609, title VI, §602(e), Dec. 31, 1970, 84 Stat. 1790; Pub. L. 95–24, title I, §104(b), Apr. 30, 1977, 91 Stat. 56; Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230; Pub. L. 98–479, title II, §203(i)(1), Oct. 17, 1984, 98 Stat. 2230; Pub. L. 100–242, title V, §545(b), Feb. 5, 1988, 101 Stat. 1942, related to reinsurance agreements and premiums.

Section 1749bbb–9, act June 27, 1934, ch. 847, title XII, §1223, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 562; amended Pub. L. 91–152, title IV, §406, Dec. 24, 1969, 83 Stat. 396; Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to conditions of reinsurance.

Section 1749bbb–10, act June 27, 1934, ch. 847, title XII, §1224, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 563; amended Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to recovery of premiums, jurisdiction, and statute of limitations.

PART C—FEDERAL INSURANCE AGAINST BURGLARY AND THEFT

§§ 1749bbb–10a to 1749bbb–10d. Omitted

CODIFICATION

Sections 1749bbb–10a to 1749bbb–10d, comprising part C of this subchapter, terminated on Sept. 30, 1995, with certain exceptions, pursuant to former section 1749bbb(b) of this title.

Section 1749bbb–10a, act June 27, 1934, ch. 847, title XII, §1231, as added Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to review of market availability, Government crime insurance, and termination of insurance.

Section 1749bbb–10b, act June 27, 1934, ch. 847, title XII, §1232, as added Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title IV, §452(b)(1), (3), Nov. 30, 1983, 97 Stat. 1230, related to use of existing facilities and services.

Section 1749bbb–10c, act June 27, 1934, ch. 847, title XII, §1233, as added Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1790; amended Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to establishment of affordable rates, factors considered, uniform national rates, and periodic modification.

Section 1749bbb–10d, act June 27, 1934, ch. 847, title XII, §1234, as added Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1790; amended Pub. L. 96–470, title II, §205(a), Oct. 19, 1980, 94 Stat. 2244; Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230; Pub. L. 101–137, §6(d), Nov. 3, 1989, 103 Stat. 825, related to reports to Congress on operations.

PART D—GENERAL PROVISIONS

§§ 1749bbb–11 to 1749bbb–21. Omitted

CODIFICATION

Sections 1749bbb–11 to 1749bbb–21, comprising part D of this subchapter, terminated on Sept. 30, 1995, with certain exceptions, pursuant to former section 1749bbb(b) of this title.

Section 1749bbb–11, act June 27, 1934, ch. 847, title XII, §1241, formerly §1231, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 563; renumbered §1241 and amended Pub. L. 91–609, title VI, §602(d), (g), (h), Dec. 31, 1970, 84 Stat. 1789, 1790; Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to submission of claims, judicial review, jurisdiction, and statute of limitations.

Section 1749bbb–12, act June 27, 1934, ch. 847, title XII, §1242, formerly §1232, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 563; renumbered §1242 and amended Pub. L. 91–609, title VI, §602(d), (i), Dec. 31, 1970, 84 Stat. 1789, 1790; Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to fiscal intermediaries and servicing agents.

Section 1749bbb–13, act June 27, 1934, ch. 847, title XII, §1243, formerly §1233, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 564; renumbered §1243 and amended Pub. L. 91–609, title VI, §602(d), (j), Dec. 31, 1970, 84 Stat. 1789, 1790; Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230; Pub. L. 98–479, title II, §203(i)(2), Oct. 17, 1984, 98 Stat. 2231; Pub. L. 100–242, title V, §545(c), Feb. 5, 1988, 101 Stat. 1942, related to National Insurance Development Fund.

Section 1749bbb–14, act June 27, 1934, ch. 847, title XII, §1244, formerly §1234, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 565; renumbered §1244 and amended Pub. L. 91–609, title VI, §602(d), (f), (k), (*l*), Dec. 31, 1970, 84 Stat. 1789–1791; Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to records, annual statement, and audits.

Section 1749bbb–15, act June 27, 1934, ch. 847, title XII, §1245, formerly §1235, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 565; amended Pub. L. 91–152, title IV, §407, Dec. 24, 1969, 83 Stat. 396; renumbered §1245, Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to study of reinsurance and other programs, and report to the President and Congress.

Section 1749bbb–16, act June 27, 1934, ch. 847, title XII, §1246, formerly §1236, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 565; renumbered §1246, Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to other studies and cooperation with State insurance authorities and private insurance industry.

Section 1749bbb–17, act June 27, 1934, ch. 847, title XII, §1247, formerly §1237, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 566; renumbered §1247, Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title IV, §452(b)(1), (4), Nov. 30, 1983, 97 Stat. 1230; Pub. L. 98–479, title II, §202(a)(2), Oct. 17, 1984, 98 Stat. 2228, related to general powers of Director.

Section 1749bbb–18, act June 27, 1934, ch. 847, title XII, §1248, formerly §1238, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 566; renumbered §1248, Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to utilization of services and facilities of other agencies.

Section 1749bbb–19, act June 27, 1934, ch. 847, title XII, §1249, formerly §1239, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 566; renumbered §1249, Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to advance payments.

Section 1749bbb–20, act June 27, 1934, ch. 847, title XII, §1250, formerly §1240, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 566; renumbered §1250, Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title IV, §452(b)(1), Nov. 30, 1983, 97 Stat. 1230, related to tax issues.

Section 1749bbb–21, act June 27, 1934, ch. 847, title XII, §1251, formerly §1241, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 566; renumbered §1251, Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789, related to authorization of appropriations for subchapter.

SUBCHAPTER X—NATIONAL DEFENSE HOUSING INSURANCE

EXPIRATION DATE

Insurance of mortgages under this subchapter prohibited, with certain exceptions, after July 31, 1954, see section 1591c of Title 42, The Public Health and Welfare.

§1750. Definitions

As used in this subchapter, the terms ''mortgage'', ''first mortgage'', ''mortgagee'', ''mortgagor'', ''maturity date'', and ''State'' shall have the same meaning as in section 1707 of this title.

(June 27, 1934, ch. 847, title IX, §901, as added Sept. 1, 1951, ch. 378, title II, §201, 65 Stat. 295.)

§1750a. Repealed. Pub. L. 89–117, title XI, §1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title IX, §902, as added Sept. 1, 1951, ch. 378, title II, §201, 65 Stat. 296, created the National Defense Housing Insurance Fund.

For establishment of the General Insurance Fund, see section 1735c of this title.

§1750a–1. Omitted

CODIFICATION

Section, act Nov. 1, 1951, ch. 665, Ch. V, 65 Stat. 763, authorized the National Defense Housing Insurance

Fund to be available for administrative expenses of the Federal Housing Administration. Pub. L. 89–117, title XI, § 1108(aa), Aug. 10, 1965, 79 Stat. 507, eliminated the Fund, and all functions, powers, and duties of the Federal Housing Administration and its Administrator were transferred to and vested in the Secretary of Housing and Urban Development by Pub. L. 89–174, § 5, Sept. 9, 1965, 79 Stat. 669, classified to section 3534 of Title 42, The Public Health and Welfare. Act June 27, 1934, ch. 847, title V, § 519, as added Aug. 10, 1965, Pub. L. 89–117, title II, § 214, 79 Stat. 471, classified to section 1735c of this title, created the General Insurance Fund, which authorized the general expenses of the operations of the Department of Housing and Urban Development relating to mortgages and loans which are obligations of the General Insurance Fund to be charged to the General Insurance Fund.

§ 1750b. Insurance in critical areas

(a) Limitations; termination of certain commitments; requirements; discrimination against children

This subchapter is designed to supplement systems of mortgage insurance under other provisions of this chapter in order to assist in providing adequate housing in areas which the President, pursuant to section 1591 of title 42, shall have determined to be critical defense housing areas. The Secretary is authorized, upon application by the mortgagee, to insure under this section or section 1750g of this title as hereinafter provided any mortgage which is eligible for insurance as hereinafter provided and upon such terms as the Secretary may prescribe to make commitments for the insuring of such mortgages prior to the date of their execution or disbursement thereon: *Provided*, That the property covered by the mortgage is in an area which the President, pursuant to section 1591 of title 42, shall have determined to be a critical defense housing area, and that the total number of dwelling units in properties covered by mortgages insured under this subchapter in any such area does not exceed the number authorized by the Secretary of Housing and Urban Development from time to time as needed in such area for defense purposes and to be insured pursuant to this subchapter: *Provided further*, That in the event the Secretary has issued a commitment to insure a mortgage under this section, which commitment was in force and effect on June 1, 1953, and the Secretary determines that, because of changes in defense requirements, there is reasonable doubt that such housing is needed for defense purposes and that it is probable that the mortgage would become immediately in default and claim made for payment under the mortgage insurance contract if the unit or units are completed and the mortgage insured, the Secretary is authorized, in the interest of conserving the General Insurance Fund, to pay (in cash from the General Insurance Fund) to the mortgagee for the account of the mortgagor such amount as the Secretary shall determine to be necessary to reimburse the mortgagor the amounts paid or to be paid by the mortgagor on account of labor performed and materials in place, less the Secretary's estimate of the reasonable salvage value of such materials, plus an allowance for development costs equal to 4 per centum of the principal amount of the mortgage specified in such commitment, and no payments shall be made pursuant to this proviso unless a claim therefor is filed not later than six months from date of the determination of lack of need and the claim is in such form and contains such supporting information, documents, and data as the Secretary may require: *Provided further*, That the aggregate amount of principal obligations of all mortgages insured under this subchapter shall not exceed such sum as may be authorized by the President from time to time for the purposes of this subchapter pursuant to his authority under section 1715h[1] of this title: *Provided further*, That the Secretary shall have power to require properties covered by mortgages insured under this subchapter to be held for rental for such periods of time and at such rentals or other charges as he may prescribe; and, with respect to such properties being held for rental, (1) to require that the property be held by a mortgagor approved by him, and (2) to prescribe such requirements as he deems to be reasonable governing the method of operation and prohibiting or restricting sales of such properties or interests therein or agreements relating to such sales: *Provided further*, That the Secretary shall require each dwelling covered by a mortgage insured under this section, for which a commitment to insure is issued after August 2, 1954, to be held for rental for a period of not less than three years after the dwelling is made available for initial occupancy: *And provided further*, That no mortgage shall be insured under this subchapter unless the mortgagor certifies under oath that in selecting tenants for any property covered by the mortgage he will not discriminate against any family by reason of the fact that there are children in the family, and that he will not sell the property while the insurance is in effect unless the purchaser so certifies, such certification to be filed with the Secretary. Violation of any such certification shall be a misdemeanor punishable by a fine of not to exceed $500.

(b) Eligibility requirements

To be eligible for insurance under this section a mortgage shall—

(1) have been made to, and be held by, a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;

(2) involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed 90 per centum of the appraised value (as of the date the mortgage is accepted for insurance) of a property, urban, suburban, or rural, upon which there is located a dwelling designed principally for residential use for not more than two families in the aggregate, which is approved for mortgage insurance prior to the beginning of construction, the construction of which is begun after September 1, 1951. The principal obligation of such mortgage shall not, however, exceed $8,100 if such dwelling is designed for a single-family residence, or $15,000 if such dwelling is designed for a two-family residence except that the Secretary

[1] See References in Text note below.

may by regulation increase these amounts to not to exceed $9,000 and $16,000, respectively, in any geographical area where he finds that cost levels so require: *Provided*, That if the Secretary finds that it is not feasible within the aforesaid dollar amount limitations to construct dwellings containing three or four bedrooms per family unit without sacrifice of sound standards of construction, design, and livability, he may increase such dollar amount limitations by not exceeding $1,080 for each additional bedroom (as defined by the Secretary) in excess of two contained in such family unit if he finds that such unit meets sound standards of livability as a three-bedroom or a four-bedroom unit as the case may be;

(3) have a maturity satisfactory to the Secretary but not to exceed thirty years from the date of the insurance of the mortgage;

(4) contain complete amortization provisions satisfactory to the Secretary;

(5) bear interest (exclusive of premium charges for insurance) at not to exceed 4½ per centum per annum on the amount of the principal obligation outstanding at any time;

(6) provide, in a manner satisfactory to the Secretary, for the application of the mortgagor's periodic payments (exclusive of the amount allocated to interest and to the premium charge which is required for mortgage insurance as herein provided) to amortization of the principal of the mortgage; and

(7) contain such terms and provisions with respect to insurance, repairs, alterations, payment of taxes, default reserves, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters as the Secretary may in his discretion prescribe.

(c) Premium charges; payments; needs of national defense as prerequisite; adjustments and refunds

The Secretary is authorized to fix a premium charge for the insurance of mortgages under this subchapter but in the case of any mortgage such charge shall not be less than an amount equivalent to one-half of 1 per centum per annum nor more than an amount equivalent to 1½ per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time, without taking into account delinquent payments or prepayments. Such premium charges shall be payable by the mortgagee, either in cash or in debentures issued by the Secretary under this subchapter at par plus accrued interest, in such manner as may be prescribed by the Secretary: *Provided*, That the Secretary may require the payment of one or more such premium charges at the time the mortgage is insured, at such discount rate as he may prescribe not in excess of the interest rate specified in the mortgage. If the Secretary finds upon the presentation of a mortgage for insurance and the tender of the initial premium charge or charges so required that the mortgage complies with the provisions of this subchapter, such mortgage may be accepted for insurance by endorsement or otherwise as the Secretary may prescribe; but no mortgage shall be accepted for insurance under this subchapter unless the Secretary finds that the project with respect to which the mortgage is executed is an acceptable risk in view of the needs of national defense. In the event that the principal obligation of any mortgage accepted for insurance under this subchapter is paid in full prior to the maturity date, the Secretary is further authorized in his discretion to require the payment by the mortgagee of an adjusted premium charge in such amount as the Secretary determines to be equitable, but not in excess of the aggregate amount of the premium charges that the mortgagee would otherwise have been required to pay if the mortgage has continued to be insured under this subchapter until such maturity date; and in the event that the principal obligation is paid in full as herein set forth the Secretary is authorized to refund to the mortgagee for the account of the mortgagor all, or such portion as he shall determine to be equitable, of the current unearned premium charges theretofore paid. Upon application of the mortgagee with the consent of the mortgagor of a mortgage for which a commitment to insure has been issued pursuant to section 1709 of this title covering property on which the construction of the dwellings thereon was begun prior to the enactment of this subchapter and the determination of prevailing wages in the locality in accordance with section 1715c of this title, the Secretary is authorized, notwithstanding such beginning of construction, to convert such commitment to a commitment under section 1750g of this title; any charges or fees paid to the Secretary with respect to such insurance under section 1709 of this title shall be credited to charges or fees due the Secretary with respect to such insurance under section 1750g of this title; and the determination of prevailing wages in the locality for purposes of section 1715c of this title may be made by the Secretary of Labor at any time prior to the insurance under section 1750g of this title: *Provided*, That such mortgage, or the mortgage covering the same property executed in substitution therefor, is otherwise eligible for insurance under section 1750g of this title.

(d) Preference or priority in purchasing or renting properties

Notwithstanding any other provisions of this chapter or any other Act, except provisions of law enacted hereafter expressly referring to this subsection (d), the Secretary is further authorized to prescribe such procedures as are necessary to secure to persons engaged or to be engaged in national defense activities preference or priority of opportunity to purchase or rent properties, or interests therein, covered by mortgages insured under this subchapter.

(e) Conclusiveness of insurance contract as to eligibility

Any contract of insurance heretofore or hereafter executed by the Secretary under this subchapter shall be conclusive evidence of the eligibility of the mortgage for insurance, and the validity of any contract of insurance so executed shall be incontestable in the hands of an approved mortgagee from the date of the execution of such contract, except for fraud or misrepresentation on the part of such approved mortgagee.

(June 27, 1934, ch. 847, title IX, § 903, as added Sept. 1, 1951, ch. 378, title II, § 201, 65 Stat. 296; amended July 14, 1952, ch. 723, § 13, 66 Stat. 604; June 30, 1953, ch. 170, § 11, 67 Stat. 124; Aug. 2, 1954, ch. 649, title I, § 128(b), 68 Stat. 609; Pub. L. 89–117, title XI, § 1108(x), Aug. 10, 1965, 79 Stat. 507; Pub. L. 90–19, § 1(a)(3), (4), (s), (t), May 25, 1967, 81 Stat. 17, 19.)

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

Section 1715h of this title, referred to in subsec. (a), was repealed by Pub. L. 100–242, title IV, § 401(a)(1), Feb. 5, 1988, 101 Stat. 1898.

AMENDMENTS

1967—Pub. L. 90–19, § 1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a), (b)(1) to (4), (6), (7), and (c) to (e).

Subsec. (a). Pub. L. 90–19, § 1(a)(4), (s), substituted ''Secretary's'' and ''Secretary of Housing and Home Development'' for ''Commissioner's'' and ''Housing and Home Finance Administrator'', respectively.

Subsec. (d). Pub. L. 90–19, § 1(t), struck out '', with the approval of the Housing and Home Finance Administrator,'' before ''is further authorized''.

1965—Subsec. (a). Pub. L. 89–117 substituted ''General Insurance Fund'' for ''National Defense Housing Insurance Fund''.

1954—Subsec. (a). Act Aug. 2, 1954, inserted proviso relating to requirement for rental for a period of not less than three years after dwelling is made available for initial occupancy.

1953—Subsec. (a). Act June 30, 1953, inserted proviso commencing ''*Provided further*, That in the event''.

1952—Subsec. (c). Act July 14, 1952, inserted last sentence.

§ 1750c. Mortgage insurance benefits

(a) Conveyance and assignment by mortgagee after foreclosure; debentures and certificates of claim; cost of foreclosure

In any case in which the mortgagee under a mortgage insured under section 1750b of this title shall have foreclosed and taken possession of the mortgaged property, in accordance with regulations of, and within a period to be determined by, the Secretary, or shall, with the consent of the Secretary, have otherwise acquired such property from the mortgagor after default, the mortgagee shall be entitled to receive the benefit of the insurance as hereinafter provided, upon (1) the prompt conveyance to the Secretary of title to the property which meets the requirements of rules and regulations of the Secretary in force at the time the mortgage was insured, and which is evidenced in the manner prescribed by such rules and regulations; and (2) the assignment to him of all claims of the mortgagee against the mortgagor or others, arising out of the mortgage transaction or foreclosure proceedings, except such claims as may have been released with the consent of the Secretary. Upon such conveyance and assignment the obligation of the mortgagee to pay the premium charges for insurance shall cease and the Secretary shall, subject to the cash adjustment hereinafter provided, issue to the mortgagee debentures having a total face value equal to the value of the mortgage and a certificate of claim, as hereinafter provided. For the purposes of this subsection, the value of the mortgage shall be determined, in accordance with rules and regulations prescribed by the Secretary, by adding to the amount of the original principal obligation of the mortgage which was unpaid on the date of the institution of foreclosure proceedings, or on the date of the acquisition of the property after default other than by foreclosure, the amount of all payments which have been made by the mortgagee for taxes, ground rents, and water rates, which are liens prior to the mortgage, special assessments which are noted on the application for insurance or which become liens after the insurance of the mortgage, insurance of the mortgaged property, and any mortgage insurance premiums and by deducting from such total amount any amount received on account of the mortgage after either of such dates and any amount received as rent or other income from the property, less reasonable expenses incurred in handling the property, after either of such dates: *Provided*, That with respect to mortgages which are foreclosed before there shall have been paid on account of the principal obligation of the mortgage a sum equal to 10 per centum of the appraised value of the property as of the date the mortgage was accepted for insurance, there may be included in the debentures issued by the Secretary, on account of the cost of foreclosure (or of acquiring the property by other means) actually paid by the mortgagee and approved by the Secretary an amount—

(1) not in excess of 2 per centum of the unpaid principal of the mortgage as of the date of the institution of foreclosure proceedings and not in excess of $75; or

(2) not in excess of two-thirds of such cost, whichever is the greater: *Provided further*, That with respect to any debentures issued on or after September 2, 1964, the Secretary may, with the consent of the mortgagee (in lieu of issuing a certificate of claim as provided in subsection (e) of this section), include in debentures, in addition to amounts otherwise allowed for such costs, an amount not to exceed one-third of the total foreclosure, acquisition, and conveyance costs actually paid by the mortgagee and approved by the Secretary, but in no event may the total allowance for such costs exceed the amount actually paid by the mortgagee: *And provided further*, That with respect to mortgages to which the provisions of sections 532 and 536 of the Appendix to title 50,[1] apply and which are insured under section 1750b of this title, and subject to such regulations and conditions as the Secretary may prescribe, there shall be included in the debentures an amount which the Secretary finds to be sufficient to compensate the mortgagee for any loss which it may have sustained on account of interest on debentures and the payment of insurance premiums by reason of its having postponed the institution of foreclosure proceedings or the acquisition of the property by other means during any part or all of the period of such military service and three months thereafter.

(b) Consent to release of mortgagee or property

The Secretary may at any time, under such terms and conditions as he may prescribe, con-

[1] See References in Text note below.

sent to the release of the mortgagor from his liability under the mortgage or the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage.

(c) Debentures; form and denomination

Debentures issued under this subchapter shall be in such form and denominations in multiples of $50, shall be subject to such terms and conditions, and shall include such provisions for redemption, if any, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, and may be in coupon or registered form. Any difference between the amount of debentures to which the mortgagee is entitled under this section or section 1750g of this title and the aggregate face value of the debentures issued, not to exceed $350, shall be adjusted by the payment of cash by the Secretary to the mortgagee from the General Insurance Fund.

(d) Debentures; execution; negotiability; terms; tax exemptions

The debentures issued under this section to any mortgagee shall be executed in the name of the General Insurance Fund as obligor, shall be signed by the Secretary by either his written or engraved signature, and shall be negotiable. All such debentures shall be dated as of the date foreclosure proceedings were instituted, or the property was otherwise acquired by the mortgagee after default, except that debentures issued pursuant to claims for insurance filed on or after September 2, 1964 shall be dated as of the date of default or as of such later date as the Secretary, in his discretion, may establish by regulation. The debentures shall bear interest from such date at a rate determined by the Secretary, with the approval of the Secretary of the Treasury, at the time the mortgage was accepted for insurance, but not to exceed 3 per centum per annum, payable semiannually on the 1st day of January and the 1st day of July of each year. Such debentures shall mature twenty years after the date thereof. Such debentures shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, or gift taxes) now or hereafter imposed by any Territory, dependency, or possession of the United States, or by the District of Columbia, or by any State, county, municipality, or local taxing authority, and shall be paid out of the General Insurance Fund, which shall be primarily liable therefor, and they shall be fully and unconditionally guaranteed as to principal and interest by the United States, and such guaranty shall be expressed on the face of the debentures. In the event that the General Insurance Fund fails to pay upon demand, when due, the principal of or interest on any debentures issued under this subchapter, the Secretary of the Treasury shall pay to the holders the amount thereof which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures.

(e) Certificate of claim; division of excess proceeds

The certificate of claim issued by the Secretary to any mortgagee under this section shall be for an amount determined in accordance with, and shall contain provisions and shall be paid in accordance with, the provisions of section 1710(e) and section 1710(f) of this title.

(f) Handling and disposal of property; settlement of claims

Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, the Secretary shall have power to deal with, complete, rent, renovate, modernize, insure, make contracts or establish suitable agencies for the management of, or sell for cash or credit, in his discretion, any properties conveyed to him in exchange for debentures and certificates of claim as provided in this section; and, notwithstanding any other provision of law, the Secretary shall also have power to pursue to final collection, by way of compromise or otherwise, all claims against mortgagors assigned by mortgagees to the Secretary as provided in this subchapter: *Provided*, That section 6101 of title 41 shall not be construed to apply to any purchase or contract for services or supplies on account of such property if the amount thereof does not exceed $1,000. The power to convey and to execute in the name of the Secretary deeds of conveyances, deeds of release, assignments, and satisfactions of mortgages, and any other written instrument relating to real property or any interest therein heretofore or hereafter acquired by the Secretary pursuant to the provisions of this chapter, may be exercised by an officer appointed by him, without the execution of any express delegation of power or power of attorney: *Provided*, That nothing in this subsection shall be construed to prevent the Secretary from delegating such power by order or by power of attorney in his discretion, to any officer, agent, or employee he may appoint.

(g) Mortgagor's or mortgagee's interest in property or claim conveyed

No mortgagee or mortgagor shall have, and no certification of claim shall be construed to give to any mortgagee or mortgagor, any right or interest in any property conveyed to the Secretary or in any claim assigned to him; nor shall the Secretary owe any duty to any mortgagee or mortgagor with respect to the handling or disposal of any such property or the collection of any such claim.

(June 27, 1934, ch. 847, title IX, § 904, as added Sept. 1, 1951, ch. 378, title II, § 201, 65 Stat. 298; amended Aug. 2, 1954, ch. 649, title I, § 112(d), 68 Stat. 593; Pub. L. 88–560, title I, § 105(e), (f), Sept. 2, 1964, 78 Stat. 773, 774; Pub. L. 89–117, title XI, § 1108(y), Aug. 10, 1965, 79 Stat. 507; Pub. L. 90–19, § 1(a)(3), (d), May 25, 1967, 81 Stat. 17, 18; Pub. L. 98–479, title II, § 204(a)(23), Oct. 17, 1984, 98 Stat. 2233.)

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

Sections 532 and 536 of the Appendix to title 50, referred to in subsec. (a)(2), was in the original a ref-

erence to sections 302 and 306, respectively, of the Soldiers' and Sailors' Civil Relief Act of 1940, Oct. 17, 1940, ch. 888, 54 Stat. 1178. That Act was amended generally and renamed the ''Servicemembers Civil Relief Act'' by Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2835. As so amended, provisions of the Servicemembers Civil Relief Act that are similar to those contained in former sections 532 and 536 of the Appendix to title 50 are now contained in sections 533 and 538 of the Appendix to Title 50.

CODIFICATION

In subsec. (f), ''section 6101 of title 41'' substituted for ''section 3709 of the Revised Statutes'' on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1984—Subsec. (d). Pub. L. 98–479 substituted ''authorized'' for ''auhorized'' in last sentence.

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a), (a)(2), and (b) to (g).

Subsec. (f). Pub. L. 90–19, §1(d), substituted ''an officer'' for ''the Commissioner or by any Assistant Commissioner''.

1965—Subsecs. (c), (d). Pub. L. 89–117, §1108(y)(1), substituted ''General Insurance Fund'' for ''National Defense Housing Insurance Fund''.

Subsec. (e). Pub. L. 89–117, §1108(y)(2), removed limitation which had rendered applicable to certificates of claim only those provisions of sections 1710(e) and 1710(f) of this title which were applicable to mortgages insured under section 1713 of this title and struck out provision that reference in section 1710(f) of this title to the ''Housing Insurance Fund'' shall be deemed for the purpose of this section to be reference to the ''National Defense Housing Insurance Fund''.

1964—Subsec. (a). Pub. L. 88–560, §105(e)(1), (f), inserted ''*Provided further*, That with respect to any debentures issued on or after September 2, 1964, the Commissioner may, with the consent of the mortgagee (in lieu of issuing a certificate of claim as provided in subsection (e)), include in debentures, in addition to amounts otherwise allowed for such costs, an amount not to exceed one-third of the total foreclosure, acquisition, and conveyance costs actually paid by the mortgagee and approved by the Commissioner, but in no event may the total allowance for such costs exceed the amount actually paid by the mortgagee:'' and struck out ''paid after either of such dates'' after ''mortgage insurance premiums'' in third sentence, respectively.

Subsec. (c). Pub. L. 88–560, §105(e)(2), increased limitation on difference between amount of debentures to which the mortgagee is entitled under this section or section 1750g of this title and aggregate face value of debentures issued from $50 to $350.

Subsec. (d). Pub. L. 88–560, §105(e)(3), substituted in second sentence ''default, except that debentures issued pursuant to claims for insurance filed on or after September 2, 1964 shall be dated as of the date of default or as of such later date as the Commissioner, in his discretion, may establish by regulation. The debentures'' for ''default, and''.

1954—Subsec. (d). Act Aug. 2, 1954, in third sentence, substituted a twenty-year period for the ten-year period, with respect to the maturity of debentures.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 2, 1954, as not applicable in any case where the mortgage involved was insured or the commitment for such insurance was issued prior to Aug. 2, 1954, see section 112(e) of that act, set out as a note under section 1710 of this title.

§ 1750d. Repealed. Pub. L. 89–117, title XI, § 1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title IX, §905, as added Sept. 1, 1951, ch. 378, title II, §201, 65 Stat. 301, provided for management of National Defense Housing Insurance Fund, issue and cancellation of debentures, and receipt and payment of charges and fees.

§ 1750e. Taxation

Nothing in this subchapter shall be construed to exempt any real property acquired and held by the Secretary under this subchapter from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed.

(June 27, 1934, ch. 847, title IX, §906, as added Sept. 1, 1951, ch. 378, title II, §201, 65 Stat. 301; amended Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner''.

§ 1750f. Rules and regulations

The Secretary is authorized and directed to make such rules and regulations as may be necessary to carry out the provisions of this subchapter.

(June 27, 1934, ch. 847, title IX, §907, as added Sept. 1, 1951, ch. 378, title II, §201, 65 Stat. 301; amended Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary'' for ''Commissioner''.

§ 1750g. Insurance of additional mortgages

(a) Authorization

In addition to mortgages insured under section 1750b of this title, the Secretary is authorized to insure mortgages as defined in section 1750 of this title (including advances on such mortgages during construction) which are eligible for insurance as hereinafter provided.

(b) Eligibility requirements; release of part of property

To be eligible for insurance under this section a mortgage shall meet the following conditions:

(1) The mortgaged property shall be held by a mortgagor approved by the Secretary. The Secretary may, in his discretion, require such mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation. The Secretary may make such contracts with, and acquire for not to exceed $100 stock or interest in any such mortgagor, as the Secretary may deem necessary to render effective such restriction or regulation. Such stock or interest shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(2) The mortgage shall involve a principal obligation in an amount—

(A) not to exceed $5,000,000; and

(B) not to exceed 90 per centum of the amount which the Secretary estimates will be the value of the property or project when the proposed improvements are completed: *Provided*, That such mortgage shall not in

any event exceed the amount which the Secretary estimates will be the cost of the completed physical improvements on the property or project exclusive of off-site public utilities and streets and organization and legal expenses; and

(C) not to exceed $8,100 per family unit (or $7,200 per family unit if the number of rooms in such property or project does not equal or exceed four per family unit) for such part of such property or project as may be attributable to dwelling use: *Provided*, That the Secretary may by regulation increase such dollar amount limitations by not exceeding $900 in any geographical area where he finds that cost levels so require.

(3) The mortgagor shall enter into the agreement required by section 1715r of this title.

The mortgage shall provide for complete amortization by periodic payments within such term as the Secretary shall prescribe, and shall bear interest (exclusive of premium charges for insurance) at not to exceed 4½ per centum per annum on the amount of the principal obligation outstanding at any time. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release.

(c) Default; debentures; cash adjustment; certificate of claim

The mortgagee shall be entitled to receive debentures in connection with mortgages insured under this section in the amount and under the conditions specified in subsection (g) of section 1713 of this title, and the references in said subsection (g) to the cash adjustment provided for in subsection (j) of section 1713 and to the certificate of claim provided for in subsection (h) of section 1713 shall be deemed to refer respectively to the cash adjustment provided for in subsection (c) of section 1750c of this title and to the certificate of claim provided for in subsection (d) of this section.

(d) Certificate of claim; contents and payment

The certificate of claim issued by the Secretary to any mortgagee under this section shall be for an amount determined in accordance with, and shall contain provisions and shall be paid in accordance with, the provisions of section 1713(h) of this title.

(e) Debentures; issuance and payment in accordance with section 1750c(c), (d) of this title

Debentures issued under this section shall be issued in accordance with the provisions of section 1750c(c) and (d) of this title except that such debentures shall be dated as of the date of default as determined in subsection (c) of this section, and shall bear interest from such date.

(f) Applicability of section 1713(k), (*l*) of this title

The provisions of section 1713(k) and (*l*) of this title shall be applicable to mortgages insured under this section and to property acquired by the Secretary hereunder, except that, as applied to such mortgages and property, the reference therein to subsection (g) shall be construed to refer to subsection (c) of this section.

(g) Applications under section 1743; credit for fees upon reapplication under this section

In any case where an application for insurance under section 1743 of this title was received by the Secretary of Housing and Urban Development on or before March 1, 1950, and has not been rejected or committed upon, the mortgagee upon reapplication for insurance of a mortgage under this section with respect to the same property shall receive credit for any application fees paid in connection with the prior application: *Provided*, That this subsection shall not constitute a waiver of any requirements otherwise applicable to the insurance of mortgages under this section.

(h) Preferences

The Secretary shall grant preference to applications for insurance under this subchapter to mortgages covering housing of lower rents.

(June 27, 1934, ch. 847, title IX, §908, as added Sept. 1, 1951, ch. 378, title II, §201, 65 Stat. 301; amended June 30, 1953, ch. 170, §10(c), 67 Stat. 124; Aug. 2, 1954, ch. 649, title I, §130, 68 Stat. 609; Pub. L. 89–117, title XI, §1108(z), Aug. 10, 1965, 79 Stat. 507; Pub. L. 90–19, §1(a)(2), (3), May 25, 1967, 81 Stat. 17.)

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

AMENDMENTS

1967—Pub. L. 90–19, §1(a)(3), substituted ''Secretary'' for ''Commissioner'' wherever appearing in subsecs. (a), (b)(1), (2)(B), (C), last par. following (C), (d), (f), and (h).

Subsec. (g). Pub. L. 90–19, §1(a)(2), substituted ''Secretary of Housing and Urban Development'' for ''Federal Housing Commissioner''.

1965—Subsec. (b)(1). Pub. L. 89–117, §1108(z)(1), substituted ''General Insurance Fund'' for ''National Defense Housing Insurance Fund''.

Subsec. (d). Pub. L. 89–117, §1108(z)(2), struck out provision that reference in section 1713(h) of this title to ''the Housing Insurance Fund'' shall be deemed for the purposes of this section to be a reference to the National Defense Housing Insurance Fund.

Subsec. (f). Pub. L. 89–117, §1108(z)(3), struck out provision that references in subsections (k) and (*l*) of section 1713 of this title ''Housing Fund'' shall be construed to refer to the ''National Defense Housing Insurance Fund''.

1954—Subsec. (b)(3). Act Aug. 2, 1954, substituted requirement that mortgagor shall enter into the agreement required by section 1715r of this title for former provisions relating to certification of builders' costs, such certifications now being prescribed in said section 1715r.

1953—Subsec. (b). Act June 30, 1953, in paragraph commencing ''The mortgage shall provide'', substituted ''4½ per centum'' for ''4 per centum''.

SUBCHAPTER XI—VOLUNTARY HOME MORTGAGE CREDIT

CODIFICATION

This subchapter was enacted as part of the Housing Act of 1954, and not as part of the National Housing Act which comprises this chapter.

§§ 1750aa to 1750jj. Omitted

CODIFICATION

Section 1750aa, act Aug. 2, 1954, ch. 649, title VI, §601, 68 Stat. 637, contained a declaration of policy for voluntary home mortgage credit.

Section 1750bb, acts Aug. 2, 1954, ch. 649, title VI, § 602, 68 Stat. 637; Sept. 2, 1958, Pub. L. 85–857, § 13(s)(1), 72 Stat. 1266, defined ''Insured or guaranteed mortgage loan'', ''Private financing institutions'', ''Administrator'', and ''State''.

Section 1750cc, acts Aug. 2, 1954, ch. 649, title VI, § 603, 68 Stat. 637; Aug. 11, 1955, ch. 783, title I, § 109(a)(3), 69 Stat. 640, provided for establishment and composition of National Voluntary Mortgage Credit Extension Committee.

Section 1750dd, act Aug. 2, 1954, ch. 649, title VI, § 604, 68 Stat. 638, provided for establishment, composition, and organization of regional subcommittees of National Voluntary Mortgage Credit Extension Committee.

Section 1750ee, act Aug. 2, 1954, ch. 649, title VI, § 605, 68 Stat. 638, set forth general functions of National Committee and regional subcommittees.

Section 1750ff, act Aug. 2, 1954, ch. 649, title VI, § 606, 68 Stat. 638, authorized National Committee to study and review demand and supply of funds for residential mortgage loans, to receive reports from and correlate the activities of regional subcommittees to report periodically to Commissioner of Federal Housing Administration and Administrator of Veterans' Affairs, to maintain liaison with State and local government housing officials, and to submit reports to Congress.

Section 1750gg, acts Aug. 2, 1954, ch. 649, title VI, § 607, 68 Stat. 639; Sept. 2, 1958, Pub. L. 85–857, § 13(s)(1), 72 Stat. 1266, set forth the functions, powers, and duties of regional subcommittees.

Section 1750hh, act Aug. 2, 1954, ch. 649, title VI, § 608, 68 Stat. 640, authorized Administrator, after consultation with National Committee, to issue general rules and procedures for implementation of this subchapter and functioning of regional subcommittees.

Section 1750ii, act Aug. 2, 1954, ch. 649, title VI, § 609, 68 Stat. 640, exempted laws promulgated pursuant to this subchapter from prohibitions of antitrust laws or Federal Trade Commission Act of United States, provided for status of members of National Committee or any of regional subcommittees, and provided for an office, staff assistance and expenses of members.

Section 1750jj, acts Aug. 2, 1954, ch. 649, title VI, § 610, 68 Stat. 640; June 29, 1957, Pub. L. 85–66, 71 Stat. 209; July 12, 1957, Pub. L. 85–104, title VI, § 602, 71 Stat. 304; July 31, 1959, Pub. L. 86–119, 73 Stat. 266; Sept. 23, 1959, Pub. L. 86–372, title VIII, § 806, 73 Stat. 687; June 30, 1961, Pub. L. 87–70, title IX, § 903, 75 Stat. 191, provided that, unless Congress authorized for an earlier termination, this subchapter and all authority conferred hereunder was to terminate at close of Oct. 1, 1965.

CHAPTER 14—FEDERAL CREDIT UNIONS

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1795k. State and local tax exemption.

§ 1751. Short title

This chapter may be cited as the ''Federal Credit Union Act''.

(June 26, 1934, ch. 750, § 1, 48 Stat. 1216; Pub. L. 86–354, § 1, Sept. 22, 1959, 73 Stat. 628.)

AMENDMENTS

1959—Pub. L. 86–354 reenacted section without change.

TRANSFER OF FUNCTIONS

Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

Transfer of functions of Farm Credit Administration and Governor thereof to Bureau of Farm Credit Unions and Director thereof under jurisdiction of Federal Security Agency by act June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091, and abolishment of Agency and transfer of its functions to Department of Health, Education, and Welfare by Reorg. Plan No. 1 of 1953, §5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 632, see section 1752a of this title, and notes thereunder.

Functions of Farm Credit Administration and Governor thereof under this chapter, together with functions of Secretary of Agriculture with respect thereto, transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952, set out in the Appendix to Title 5, Government Organization and Employees. A similar transfer of functions for duration of World War II was effected by Ex. Ord. No. 9148, Apr. 27, 1942, 7 F.R. 3145.

Farm Credit Administration transferred to Department of Agriculture by Reorg. Plan No. I of 1939, §401, eff. July 1, 1939, 4 F.R. 2730, 53 Stat. 1429, set out in the Appendix to Title 5.

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–219, §1(a), Aug. 7, 1998, 112 Stat. 913, provided that: ''This Act [enacting sections 1757a and 1790d of this title, amending sections 1752a, 1759, 1782, and 1784 to 1787 of this title, repealing section 1762 of this title, and enacting provisions set out as notes under this section and sections 1752a, 1757a, 1759, 1790d, 4801, and 4803 of this title] may be cited as the 'Credit Union Membership Access Act'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–86, title VII, §701, Aug. 10, 1987, 101 Stat. 652, provided that: ''This title [enacting section 1772c of this title and amending sections 1757, 1761a, 1761b, 1764, 1766, 1767, and 1786 to 1788 of this title and sections 45, 46, and 57a of Title 15, Commerce and Trade] may be cited as the 'Credit Union Amendments of 1987'.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–630, title XVIII, §1801, Nov. 10, 1978, 92 Stat. 3719, provided that: ''This title [enacting subchapter III of this chapter and amending section 1757 of this title, section 709 of Title 18, Crimes and Criminal Procedure, and section 856 of former Title 31, Money and Finance] may be cited as the 'National Credit Union Central Liquidity Facility Act'.''

CONGRESSIONAL FINDINGS

Pub. L. 105–219, §2, Aug. 7, 1998, 112 Stat. 913, provided that: ''The Congress finds the following:

''(1) The American credit union movement began as a cooperative effort to serve the productive and provident credit needs of individuals of modest means.

''(2) Credit unions continue to fulfill this public purpose, and current members and membership groups should not face divestiture from the financial services institution of their choice as a result of recent court action.

''(3) To promote thrift and credit extension, a meaningful affinity and bond among members, manifested by a commonality of routine interaction, shared and related work experiences, interests, or activities, or the maintenance of an otherwise well-understood sense of cohesion or identity is essential to the fulfillment of the public mission of credit unions.

''(4) Credit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes because they are member-owned, democratically operated, not-for-profit organizations generally managed by volunteer boards of directors and because they have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means.

''(5) Improved credit union safety and soundness provisions will enhance the public benefit that citizens receive from these cooperative financial services institutions.''

§ 1751a. Omitted

CODIFICATION

Section, act June 29, 1948, ch. 711, §2, 62 Stat. 1091, related to establishment of Bureau of Federal Credit Unions. See section 1752a of this title.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1752. Definitions

As used in this chapter—

(1) the term ''Federal credit union'' means a cooperative association organized in accordance with the provisions of this chapter for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes;

(2) the term ''Chairman'' means the Chairman of the National Credit Union Administration Board;

(3) the term ''Administration'' means the National Credit Union Administration;

(4) the term ''Board'' means the National Credit Union Administration Board;

(5) The terms ''member account'' and ''account'' mean a share, share certificate, or share draft account of a member of a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member, and, in the case of a credit union serving predominantly low-income members (as defined by the Board), such terms (when referring to the account of a nonmember served by such credit union) mean a share, share certificate, or share draft account of such nonmember which is of a type approved by the Board and evidences money or its equivalent received or held by such credit union in the usual course of business and for which it has given or is obligated to give credit to the account of such nonmember, and such terms mean share, share certificate, or share draft account of nonmember credit unions and nonmember units of Federal, State, or local governments and political subdivisions thereof enumerated in section 1787 of this title, and such terms mean custodial accounts established for loans sold in whole or in part pursuant to section 1757(13) of this title: *Provided*, That for purposes of insured State credit unions, reference in this paragraph to ''share'', ''share certificate'', or ''share draft'', accounts includes, as determined by the Board, the equivalent of such accounts under State law;

(6) The terms ''State credit union'' and ''State-chartered credit union'' mean a credit union organized and operated according to the

laws of any State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, which laws provide for the organization of credit unions similar in principle and objectives to Federal credit unions;

(7) The term ''insured credit union'' means any credit union the member accounts of which are insured in accordance with the provisions of subchapter II of this chapter, and the term ''noninsured credit union'' means any credit union the member accounts of which are not so insured;

(8) The term ''Fund'' means the National Credit Union Share Insurance Fund; and

(9) The term ''branch'' includes any branch credit union, branch office, branch agency, additional office, or any branch place of business located in any State of the United States, the District of Columbia, the several territories, including the trust territories, and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, at which member accounts are established or money lent. The term ''branch'' also includes a suboffice, operated by a Federal credit union or by a credit union authorized by the Department of Defense, located on an American military installation in a foreign country or in the trust territories of the United States.

(June 26, 1934, ch. 750, title I, § 101, formerly § 2, 48 Stat. 1216; 1947 Reorg. Plan No. 1, § 401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§ 1, 2, 62 Stat. 1091; Pub. L. 86–354, § 1, Sept. 22, 1959, 73 Stat. 628; Pub. L. 91–206, § 1, Mar. 10, 1970, 84 Stat. 49, renumbered title I, § 101, and amended Pub. L. 91–468, §§ 1(2), 2, Oct. 19, 1970, 84 Stat. 994, 1015; Pub. L. 95–22, title III, § 308, Apr. 19, 1977, 91 Stat. 52; Pub. L. 95–630, title V, §§ 502(a), (b), 503, Nov. 10, 1978, 92 Stat. 3681; Pub. L. 96–161, title I, § 103(a), Dec. 28, 1979, 93 Stat. 1233; Pub. L. 96–221, title III, §§ 305(a), 307, Mar. 31, 1980, 94 Stat. 146, 147; Pub. L. 97–320, title V, § 501, Oct. 15, 1982, 96 Stat. 1528; Pub. L. 109–351, title VII, § 726(1), (2), Oct. 13, 2006, 120 Stat. 2002.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2006—Par. (3). Pub. L. 109–351, § 726(1), struck out ''and'' after semicolon.

Par. (5). Pub. L. 109–351, § 726(2), substituted ''share draft account'' for ''share draft account account'' in two places and for ''share draft account accounts'' before ''of nonmember''.

1982—Par. (5). Pub. L. 97–320 inserted '', and such terms mean custodial accounts established for loans sold in whole or in part pursuant to section 1757(13) of this title'' after ''section 1787 of this title''.

1980—Par. (5). Pub. L. 96–221, §§ 305(a), 307, inserted provisions respecting applicability to share draft accounts substantially similar to provisions added by Pub. L. 96–161, and repealed the amendment made by Pub. L. 96–161. See Repeals and Effective Date of 1980 Amendment notes below.

Par. (10). Pub. L. 96–221, § 307, struck out par. (10) which defined ''share draft account''. See Repeals and Effective Date of 1980 Amendment notes below.

1979—Par. (5). Pub. L. 96–161, § 103(a)(1), inserted '', and such term also includes a share draft account'' after ''the equivalent of such accounts under State law''.

Par. (10). Pub. L. 96–161, § 103(a)(2)–(4), added par. (10).

1978—Par. (2). Pub. L. 95–630, § 502(a)(1), substituted provisions defining ''Chairman'' for provisions defining ''Administrator''.

Par. (4). Pub. L. 95–630, § 502(a)(2), inserted ''Administration'' after ''National Credit Union''.

Par. (5). Pub. L. 95–630, §§ 502(b), 503(a), (b), redesignated par. (4), defining ''member account'' and ''account'', as (5) and substituted ''share or share certificate'' for ''share, share certificate, or share deposit'' in two places; ''Board'' for ''Administrator'' wherever appearing; ''share or share certificate accounts'' for ''those accounts''; and ''enumerated in section 1787 of this title: *Provided*, That for purposes of State credit unions, reference in this paragraph to 'share' or 'share certificate' accounts includes, as determined by the Board, the equivalent of such accounts under State law;'' for ''in which payments are received by a credit union pursuant to section 1757(6) of this title;''.

Pars. (6) to (8). Pub. L. 95–630, § 503(a), redesignated former pars. (5) to (7) as (6) to (8). Former par. (8) redesignated (9).

Par. (9). Pub. L. 95–630, § 503(a), (c), redesignated former par. (8) as (9), inserted '', including the trust territories,'' after ''several territories'', and inserted provision that term ''branch'' also includes a suboffice, operated by a Federal credit union or by a credit union authorized by the Department of Defense, located on an American military installation in a foreign country or in the trust territories of the United States.

1977—Par. (4). Pub. L. 95–22 inserted provision that such terms mean those accounts of nonmember credit unions and nonmember units of Federal, State, or local governments and political subdivisions thereof in which payments are received by a credit union pursuant to section 1757(6) of this title.

1970—Par. (2). Pub. L. 91–206 substituting ''Administrator'' as meaning Administrator of the National Credit Union Administration for ''Bureau'' as meaning the Bureau of Federal Credit Unions.

Par. (3). Pub. L. 91–206 substituted ''Administration'' as meaning the National Credit Union Administration for ''Director'' as meaning Director of the Bureau of Federal Credit Unions.

Par. (4). Pub. L. 91–206 added par. (4).

Pars. (4) to (8). Pub. L. 91–468, § 2, added pars. (4) to (8).

1959—Pub. L. 86–354 designated the terms defined as subsecs. (1) to (3).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective at close of Mar. 31, 1980, see section 306 of Pub. L. 96–221, set out as a note under section 371a of this title.

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENT

Amendment by Pub. L. 96–161 effective Dec. 31, 1979, with that amendment to remain in effect until the close of Mar. 31, 1980, see section 104 of Pub. L. 96–161, formerly set out as a note under section 371a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 509 of title V of Pub. L. 95–630 provided that: ''The amendments made by this title [amending this section, sections 1753 to 1756, 1757 to 1759, 1761 to 1763, 1766, 1767, 1771, 1772a, and 1781 to 1789 of this title, and sections 5108, 5314, and 5315 of Title 5, Government Organization and Employees] take effect upon the effective date of this Act [see Effective Date note under section 375b of this title], except that the functions of the Administrator of the National Credit Union Administration under the provisions of the Federal Credit Union Act [this chapter], as in effect on the date pre-

ceding the date of enactment of this title [Nov. 10, 1978], shall continue to be performed by him in accordance with such provisions until such time as all the members of the National Credit Union Administration Board, established under the amendments made by this title, take office. All rules, regulations, policies, and procedures of the Administrator in effect on the date of enactment of this title shall remain in effect until amended, superseded, or repealed.''

REPEALS

Amendment by section 103 of Pub. L. 96–161, cited as a credit to this section, was repealed at the close of Mar. 31, 1980, by section 307 of Pub. L. 96–221, and substantially identical provisions were enacted by section 305 of Pub. L. 96–221, such amendments to take effect at the close of Mar. 31, 1980.

§ 1752a. National Credit Union Administration

(a) Establishment; management under National Credit Union Administration Board

There is established in the executive branch of the Government an independent agency to be known as the National Credit Union Administration. The Administration shall be under the management of a National Credit Union Administration Board.

(b) Membership and appointment of Board

(1) In general

The Board shall consist of three members, who are broadly representative of the public interest, appointed by the President, by and with the advice and consent of the Senate. In appointing the members of the Board, the President shall designate the Chairman. Not more than two members of the Board shall be members of the same political party.

(2) Appointment criteria

(A) Experience in financial services

In considering appointments to the Board under paragraph (1), the President shall give consideration to individuals who, by virtue of their education, training, or experience relating to a broad range of financial services, financial services regulation, or financial policy, are especially qualified to serve on the Board.

(B) Limit on appointment of credit union officers

Not more than one member of the Board may be appointed to the Board from among individuals who, at the time of the appointment, are, or have recently been, involved with any insured credit union as a committee member, director, officer, employee, or other institution-affiliated party.

(c) Term of office

The term of office of each member of the Board shall be six years, except that the terms of the two members, other than the Chairman, initially appointed shall expire one upon the expiration of two years after the date of appointment, and the other upon the expiration of four years after the date of appointment. Board members shall not be appointed to succeed themselves except the initial members appointed for less than a six-year term may be reappointed for a full six-year term and future members appointed to fill unexpired terms may be reappointed for a full six-year term. Any Board member may continue to serve as such after the expiration of said member's term until a successor has qualified.

(d) Management of Administration vested in Board; adoption of rules; quorum; report to President and Congress

The management of the Administration shall be vested in the Board. The Board shall adopt such rules as it sees fit for the transaction of its business and shall keep permanent and complete records and minutes of its acts and proceedings. A majority of the Board shall constitute a quorum. Not later than April 1 of each calendar year, and at such other times as the Congress shall determine, the Board shall make a report to the President and to the Congress. Such a report shall summarize the operations of the Administration and set forth such information as is necessary for the Congress to review the financial program approved by the Board.

(e) Functions of Chairman

The Chairman of the Board shall be the spokesman for the Board and shall represent the Board and the National Credit Union Administration in its official relations with other branches of the Government. The Chairman shall determine each Board member's area of responsibility and shall review such assignments biennially. It shall be the Chairman's responsibility to direct the implementation of the adopted policies and regulations of the Board.

(f) Audit by Government Accountability Office

The financial transactions of the Administration shall be subject to audit by the Government Accountability Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the Administration are kept.

(June 26, 1934, ch. 750, title I, § 102, formerly § 3, as added Pub. L. 86–354, § 1, Sept. 22, 1959, 73 Stat. 628; amended Pub. L. 91–206, § 3, Mar. 10, 1970, 84 Stat. 49; renumbered title I, § 102, Pub. L. 91–468, § 1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–630, title V, § 501, Nov. 10, 1978, 92 Stat. 3680; Pub. L. 97–320, title V, § 502, Oct. 15, 1982, 96 Stat. 1528; Pub. L. 105–219, title II, § 204, Aug. 7, 1998, 112 Stat. 922; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

Section 2 of act June 29, 1948, ch. 711, 62 Stat. 1091, which was formerly classified to section 1751a of this title, provided for the establishment in the Federal Security Agency of a Bureau of Federal Credit Unions, which were under the supervision of a Director appointed by the Federal Security Administrator. The Bureau of Federal Credit Unions and the Director thereof were under the general direction and supervision of the Federal Security Administrator. The functions, powers, and duties of the Farm Credit Administration under the Federal Credit Union Act, as amended [this chapter], were exercised by the Bureau of Federal Credit Unions. The functions, powers, and duties of the Governor of the Farm Credit Administration under the Federal Credit Union Act, as amended [this chap-

ter], were exercised by the Director of the Bureau of Federal Credit Unions.

Section 1 of act June 29, 1948 transferred to the Federal Security Agency all functions, powers, and duties of the Farm Credit Administration and of the Governor thereof under the Federal Credit Union Act, as amended [this chapter], together with the functions of the Secretary of Agriculture with respect thereto, which were transferred to the Federal Deposit Insurance Corporation by Reorganization Plan Numbered 1 of 1947, part IV, section 401 [set out in the Appendix to Title 5, Government Organization and Employees].

Section 3 of act June 29, 1948 transferred to the Federal Security Agency, to be used in the administration of the functions, transferred, (a) all property, including office equipment, transferred to the Federal Deposit Insurance Corporation pursuant to Executive Order 9148 of April 27, 1942 [see note under section 1751 of this title], and in use on the effective date of this Act [see section 5 of act June 29, 1948, set out as a note below]; (b) all property, including office equipment, purchased by the Corporation for use exclusively in connection with the administration of the Federal Credit Union Act, as amended [this chapter], the cost of which had been charged to such functions and which were in use on the effective date of this Act; (c) all records and files pertaining exclusively to the supervision of Federal Credit Unions; and (d) all personnel employed primarily in the administration of the Federal Credit Union Act, as amended [this chapter], on the effective date of this Act.

Section 4 of act June 29, 1948 transferred all funds allocated, specifically or otherwise, in the budget of the Federal Deposit Insurance Corporation for the administration of the Federal Credit Union Act, as amended [this chapter], during the fiscal year ending June 30, 1949, which were unexpended on the effective date of this Act [see section 5 of act June 29, 1948, set out as a note below], to the Federal Security Agency for use in the administration of the Federal Credit Union Act, as amended [this chapter]. The Corporation was to be reimbursed for the funds so transferred and for all other funds expended by it prior to the effective date of this Act in the administration of the Federal Credit Union Act, as amended [this chapter], in excess of fees from Federal Credit unions received by the Corporation, by deducting such amounts from the first moneys payable to the Secretary of the Treasury on account of the retirement of the stock of the Federal Deposit Insurance Corporation owned by the United States, and the Corporation was to have a charge on such stock for such amounts.

Section 5 of act June 29, 1948 provided that the Act was to become effective on the thirtieth day following the date of enactment.

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1998—Subsec. (b). Pub. L. 105–219 inserted heading, designated existing provisions as par. (1), and added par. (2).

1982—Subsec. (f). Pub. L. 97–320 struck out ''on a calendar year basis'' after ''subject to audit''.

1978—Pub. L. 95–630 generally revised section to eliminate the position of Administrator and to vest the management of the National Credit Union Administration in the National Credit Union Administration Board.

1970—Pub. L. 91–206 designated existing provisions as subsec. (a), substituted provisions establishing an independent agency known as the National Credit Union Administration and an Administrator of such National Credit Union Administration for provisions establishing a Bureau of Federal Credit Unions under the supervision of a Director, which Director was appointed by, and, under the general direction and supervision of, the Secretary of Health, Education, and Welfare, and added subsecs. (b) to (f).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

TRANSFER OF FUNCTIONS

Section 6 of Pub. L. 91–206 provided that:

''(a) All functions, property, records, and personnel of the Bureau of Federal Credit Unions are transferred to the National Credit Union Administration created by this Act [which generally amended this chapter].

''(b) The Director of the Bureau of Federal Credit Unions in office on the date of enactment of this Act [Mar. 10, 1970] shall serve as acting Administrator of the National Credit Union Administration pending the appointment of an Administrator in accordance with section 3 of the Federal Credit Union Act as amended by this Act [this section].''

STUDY AND REPORT ON DIFFERING REGULATORY TREATMENT

Pub. L. 105–219, title IV, § 401, Aug. 7, 1998, 112 Stat. 934, provided that:

''(a) STUDY.—The Secretary [of the Treasury] shall conduct a study of—

''(1) the differences between credit unions and other federally insured financial institutions, including regulatory differences with respect to regulations enforced by the Office of Thrift Supervision, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Administration; and

''(2) the potential effects of the application of Federal laws, including Federal tax laws, on credit unions in the same manner as those laws are applied to other federally insured financial institutions.

''(b) REPORT.—Not later than 1 year after the date of enactment of this Act [Aug. 7, 1998], the Secretary shall submit a report to the Congress on the results of the study required by subsection (a).''

STUDY OF CORPORATE CREDIT UNIONS

Pub. L. 104–208, div. A, title II, § 2606, Sept. 30, 1996, 110 Stat. 3009–473, provided that:

''(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) ADMINISTRATION.—The term 'Administration' means the National Credit Union Administration.

''(2) BOARD.—The term 'Board' means the National Credit Union Administration Board.

''(3) CORPORATE CREDIT UNION.—The term 'corporate credit union' has the meaning given such term by rule or regulation of the Board.

''(4) FUND.—The term 'Fund' means the National Credit Union Share Insurance Fund established under section 203 of the Federal Credit Union Act [12 U.S.C. 1783].

''(5) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(b) STUDY.—

''(1) IN GENERAL.—The Secretary, in consultation with the Board, the Corporation, the Comptroller of the Currency, and the Administration, shall conduct a study and evaluation of—

''(A) the oversight and supervisory practices of the Administration concerning the Fund, including the treatment of amounts deposited in the Fund pursuant to section 202(c) of the Federal Credit Union Act [12 U.S.C. 1782(c)], including analysis of—

''(i) whether those amounts should be—

''(I) refundable; or

''(II) treated as expenses; and

''(ii) the use of those amounts in determining equity capital ratios;

''(B) the potential for, and potential effects of, administration of the Fund by an entity other than the Administration;

''(C) the 10 largest corporate credit unions in the United States, conducted in cooperation with ap-

propriate employees of other Federal agencies with expertise in the examination of federally insured financial institutions, including—

''(i) the investment practices of those credit unions; and

''(ii) the financial stability, financial operations, and financial controls of those credit unions;

''(D) the regulations of the Administration; and

''(E) the supervision of corporate credit unions by the Administration.

''(c) REPORT.—Not later than 12 months after the date of enactment of this Act [Sept. 30, 1996], the Secretary shall submit to the appropriate committees of the Congress, a report that includes the results of the study and evaluation conducted under subsection (b), together with any recommendations that the Secretary considers to be appropriate.''

STUDY OF CREDIT UNION SYSTEM BY GAO

Pub. L. 101–73, title XII, §1201, Aug. 9, 1989, 103 Stat. 519, directed Comptroller General of the United States to conduct a comprehensive study of Nation's credit union system and before the close of the 18-month period beginning on Aug. 9, 1989, to submit to Committee on Banking, Finance and Urban Affairs of House of Representatives and Committee on Banking, Housing, and Urban Affairs of Senate a final report containing a detailed statement of findings and conclusions, including recommendations for such administrative and legislative action as Comptroller General deemed advisable.

FEDERALLY CHARTERED CENTRAL CREDIT UNIONS; REPORT TO CONGRESS

Section 3 of Pub. L. 86–354 directed Director of Bureau of Federal Credit Unions to make a study of desirability of providing for federally chartered central credit unions and to submit to Secretary of Health, Education, and Welfare, for transmission to Congress on or before Apr. 15, 1960, a report of results thereof and such recommendations for legislation thereon as Director deemed appropriate.

§ 1753. Federal credit union organization

Any seven or more natural persons who desire to form a Federal credit union shall each subscribe either individually or collectively before some officer competent to administer oaths an organization certificate in duplicate which shall specifically state:

(1) the name of the association;

(2) the location of the proposed Federal credit union and the territory in which it will operate;

(3) the names and addresses of the subscribers to the certificate and the number of shares subscribed by each;

(4) the initial par value of the shares;

(5) the proposed field of membership, specified in detail;

(6) the term of the existence of the corporation, which may be perpetual; and

(7) the fact that the certificate is made to enable such persons to avail themselves of the advantages of this chapter.

Such organization certificate may also contain any provisions approved by the Board for the management of the business of the association and for the conduct of its affairs and relative to the powers of its directors, officers, or stockholders.

(June 26, 1934, ch. 750, title I, §103, formerly §3, 48 Stat. 1217; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; renumbered §4 and amended Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 628; Pub. L. 91–206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §103, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97–320, title V, §§503, 504, Oct. 15, 1982, 96 Stat. 1528.)

AMENDMENTS

1982—Pub. L. 97–320, §503, substituted ''each subscribe either individually or collectively'' for ''subscribe''.

Par. (4). Pub. L. 97–320, §504, substituted ''the initial par value of the shares'' for ''the par value of the shares, which shall be $5 each''.

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator''.

1970—Pub. L. 91–206 substituted ''Administrator'' for ''Director''.

1959—Pub. L. 86–354 changed ''The'' to ''the'' in subsecs. (1) to (7) and the period to a semicolon in subsecs. (1) to (6) and inserted ''and'' at end of subsec. (6).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof, generally, see notes set out under section 1751 of this title.

Functions of Governor of Farm Credit Administration under this section transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947.

§ 1754. Approval of organization certificate

The organization certificate shall be presented to the Board for approval. Before any organization certificate is approved, an appropriate investigation shall be made for the purpose of determining (1) whether the organization certificate conforms to the provisions of this chapter; (2) the general character and fitness of the subscribers thereto; and (3) the economic advisability of establishing the proposed Federal credit union. Upon approval of such organization certificate by the Board it shall be the charter of the corporation, and one of the originals thereof shall be delivered to the corporation after the payment of the fee required therefor. Upon such approval the Federal credit union shall be a body corporate and as such, subject to the limitations herein contained, shall be vested with all of the powers and charged with all of the liabilities conferred and imposed by this chapter upon corporations organized hereunder.

(June 26, 1934, ch. 750, title I, §104, formerly §4, 48 Stat. 1217; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; renumbered §5 and amended Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 629; Pub. L. 91–206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §104, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator'' in two places.

1970—Pub. L. 91–206 substituted ''Administrator'' for ''Director'' in two places.

1959—Pub. L. 86–354 substituted ''The'' for ''Any such'' in first sentence and transferred second sentence to make it last sentence.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof, generally, see notes set out under section 1751 of this title.

Functions of Governor of Farm Credit Administration under this section transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947.

§ 1755. Fees

(a) Payment by Federal credit union to Administration

In accordance with rules prescribed by the Board, each Federal credit union shall pay to the Administration an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.

(b) Determinations of amount, assessment periods, and payment dates

The fee assessed under this section shall be determined according to a schedule, or schedules, or other method determined by the Board to be appropriate, which gives due consideration to the expenses of the Administration in carrying out its responsibilities under this chapter and to the ability of Federal credit unions to pay the fee. The Board shall, among other things, determine the periods for which the fee shall be assessed and the date or dates for the payment of the fee or increments thereof.

(c) Supervision charge exception; waiver of payment

If the annual operating fee is composed of separate charges, no supervision charge shall be payable by a Federal credit union, and the Board may waive payment of any or all other charges comprising the fee, with respect to the year in which its charter is issued, or in which final distribution is made in its liquidation or the charter is canceled.

(d) Payment into Treasury of United States

All operating fees shall be deposited with the Treasurer of the United States for the account of the Administration and may be expended by the Board to defray the expenses incurred in carrying out the provisions of this chapter including the examination and supervision of Federal credit unions.

(e) Investment of annual operating fees not needed for current operations

(1) Upon request of the Board, the Secretary of the Treasury shall invest and reinvest such portions of the annual operating fees deposited under subsection (d) of this section as the Board determines are not needed for current operations.

(2) Such investments may be made only in interest bearing securities of the United States with maturities requested by the Board bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(3) All income derived from such investments and reinvestments shall be deposited to the account of the Administration described in subsection (d) of this section.

(June 26, 1934, ch. 750, title I, § 105, formerly § 5, 48 Stat. 1217; 1947 Reorg. Plan No. 1, § 401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§ 1, 2, 62 Stat. 1091; Apr. 17, 1952, ch. 214, § 1, 66 Stat. 63; renumbered § 6 and amended Pub. L. 86–354, § 1, Sept. 22, 1959, 73 Stat. 629; Pub. L. 91–206, § 2(1), (3), Mar. 10, 1970, 84 Stat. 49; renumbered title I, § 105, Pub. L. 91–468, § 1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–630, title V, § 507, Nov. 10, 1978, 92 Stat. 3682; Pub. L. 97–320, title V, § 505, Oct. 15, 1982, 96 Stat. 1528.)

AMENDMENTS

1982—Subsec. (e). Pub. L. 97–320 added subsec. (e).

1978—Pub. L. 95–630 substituted provisions relating to the payment of an operating fee by each Federal credit union to the Board for provisions relating to the payment of costs incident to the ascertainment of whether an organization certificate should be approved and costs upon approval by the subscriber of such certificate to the Administration and payment of a supervision fee by each Federal credit union to the Administration.

1970—Pub. L. 91–206 substituted ''Administrator'' for ''Director'' and ''Administration'' for ''Bureau'', wherever appearing.

1959—Pub. L. 86–354 incorporated in last sentence subject matter formerly contained in a proviso clause following table and authorized fees to be expended for supervisory expenses.

1952—Act Apr. 17, 1952, amended section, substituting a graduated scale of supervisory fees for the $10 a year supervisory fee.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 2 of act Apr. 17, 1952, provided that: ''The amendment by section 1 of this Act [amending this section] shall apply to supervision fees payable with respect to the calendar year 1952 and subsequent calendar years.''

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof, generally, see notes set out under section 1751 of this title.

Functions of Governor of Farm Credit Administration under this section transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947.

§ 1756. Reports and examinations

Federal credit unions shall be under the supervision of the Board, and shall make financial reports to it as and when it may require, but at least annually. Each Federal credit union shall be subject to examination by, and for this purpose shall make its books and records accessible to, any person designated by the Board.

(June 26, 1934, ch. 750, title I, § 106, formerly § 6, 48 Stat. 1218; Dec. 6, 1937, ch. 3, § 1, 51 Stat. 4; 1947

Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; renumbered §7 and amended Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 629; Pub. L. 91–206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §106, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–630, title V, §508, Nov. 10, 1978, 92 Stat. 3683.)

AMENDMENTS

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator'' in two places and ''reports to it as and when it'' for ''reports to him as and when he'' and struck out provisions relating to the payment of an examination fee by Federal credit unions and the deposit of such fee to the credit of the special fund created by section 1755 of this title.

1970—Pub. L. 91–206 substituted ''Administrator'' for ''Director'' in three places.

1959—Pub. L. 86–354 provided for the making of reports to the Director as and when he may require.

1937—Act Dec. 6, 1937, inserted ''giving due consideration to the time and expense incident to such examinations, and to the ability of Federal credit unions to pay such fees'' and struck out proviso relating to conditions relieving certain unions from payment of examination fee.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof, generally, see notes set out under section 1751 of this title.

Functions of Governor of Farm Credit Administration under this section transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947.

§ 1756a. Omitted

Section, act July 22, 1942, ch. 516, 56 Stat. 700, which authorized reimbursement of Farm Credit Administration personnel for use of private automobiles for examining, supervising, and servicing Federal credit unions, was from the Department of Agriculture Appropriation Act, 1943, and was not repeated in subsequent appropriation acts. Similar provisions were contained in act July 1, 1941, ch. 267, 55 Stat. 444, the Department of Agriculture Appropriation Act, 1942.

§ 1757. Powers

A Federal credit union shall have succession in its corporate name during its existence and shall have power—

(1) to make contracts;

(2) to sue and be sued;

(3) to adopt and use a common seal and alter the same at pleasure;

(4) to purchase, hold, and dispose of property necessary or incidental to its operations;

(5) to make loans, the maturities of which shall not exceed 15 years, except as otherwise provided herein, and extend lines of credit to its members, to other credit unions, and to credit union organizations and to participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:

(A) Loans to members shall be made in conformity with criteria established by the board of directors: *Provided*, That—

(i) a residential real estate loan on a one-to-four-family dwelling, including an individual cooperative unit, that is or will be the principal residence of a credit union member, and which is secured by a first lien upon such dwelling, may have a maturity not exceeding thirty years or such other limits as shall be set by the National Credit Union Administration Board (except that a loan on an individual cooperative unit shall be adequately secured as defined by the Board), subject to the rules and regulations of the Board;

(ii) a loan to finance the purchase of a mobile home, which shall be secured by a first lien on such mobile home, to be used by the credit union member as his residence, a loan for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member, or a second mortgage loan secured by a residential dwelling which is the residence of a credit union member, shall have a maturity not to exceed 15 years or any longer term which the Board may allow;

(iii) a loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government, or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance, guarantee, or commitment is provided;

(iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan which exceeds $20,000 plus pledged shares, be approved by the board of directors;

(v) loans to other members for which directors or members of the supervisory or credit committee act as guarantor or endorser be approved by the board of directors when such loans standing alone or when added to any outstanding loan or loans of the guarantor or endorser exceeds $20,000;

(vi) the rate of interest may not exceed 15 per centum per annum on the unpaid balance inclusive of all finance charges, except that the Board may establish—

(I) after consultation with the appropriate committees of the Congress, the Department of Treasury, and the Federal financial institution regulatory agencies, an interest rate ceiling exceeding such 15 per centum per annum rate, for periods not to exceed 18 months, if it determines that money market interest rates have risen over the preceding six-month period and that prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth; and

(II) a higher interest rate ceiling for Agent members for the Central Liquidity Facility in carrying out the provisions of subchapter III of this chapter for such periods as the Board may authorize;

(vii) the taking, receiving, reserving, or charging of a rate of interest greater than is allowed by this paragraph, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back from the credit union taking or receiving the same, in an action in the nature of an action of debt, the entire amount of interest paid; but such action must be commenced within two years from the time the usurious collection was made;

(viii) a borrower may repay his loan, prior to maturity in whole or in part on any business day without penalty, except that on a first or second mortgage loan a Federal credit union may require that any partial prepayments (I) be made on the date monthly installments are due, and (II) be in the amount of that part of one or more monthly installments which would be applicable to principal;

(ix) loans shall be paid or amortized in accordance with rules and regulations prescribed by the Board after taking into account the needs or conditions of the borrowers, the amounts and duration of the loans, the interests of the members and the credit unions, and such other factors as the Board deems relevant;

(x) loans must be approved by the credit committee or a loan officer, but no loan may be made to any member if, upon the making of that loan, the member would be indebted to the Federal credit union upon loans made to him in an aggregate amount which would exceed 10 per centum of the credit union's unimpaired capital and surplus.

(B) A self-replenishing line of credit to a borrower may be established to a stated maximum amount on certain terms and conditions which may be different from the terms and conditions established for another borrower.

(C) Loans to other credit unions shall be approved by the board of directors.

(D) Loans to credit union organizations shall be approved by the board of directors and shall not exceed 1 per centum of the paid-in and unimpaired capital and surplus of the credit union. A credit union organization means any organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve.

(E) Participation loans with other credit unions, credit union organizations, or financial organizations shall be in accordance with written policies of the board of directors: *Provided*, That a credit union which originates a loan for which participation arrangements are made in accordance with this subsection shall retain an interest of at least 10 per centum of the face amount of the loan;

(6) to receive from its members, from other credit unions, from an officer, employee, or agent of those nonmember units of Federal, Indian tribal, State, or local governments and political subdivisions thereof enumerated in section 1787 of this title and in the manner so prescribed, from the Central Liquidity Facility, and from nonmembers in the case of credit unions serving predominately low-income members (as defined by the Board) payments, representing equity, on—

(A) shares which may be issued at varying dividend rates;

(B) share certificates which may be issued at varying dividend rates and maturities; and

(C) share draft accounts authorized under section 1785(f) of this title;

subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the Board;

(7) to invest its funds (A) in loans exclusively to members; (B) in obligations of the United States of America, or securities fully guaranteed as to principal and interest thereby; (C) in accordance with rules and regulations prescribed by the Board, in loans to other credit unions in the total amount not exceeding 25 per centum of its paid-in and unimpaired capital and surplus; (D) in shares or accounts of savings and loan associations or mutual savings banks, the accounts of which are insured by the Federal Deposit Insurance Corporation; (E) in obligations issued by banks for cooperatives, Federal land banks, Federal intermediate credit banks, Federal home loan banks, the Federal Housing Finance Board, or any corporation designated in section 9101(3) of title 31 as a wholly owned Government corporation; or in obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association, or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or 1455 of this title; or in obligations or other instruments or securities of the Student Loan Marketing Association; or in obligations, participations, securities, or other instruments of, or issued by, or fully guaranteed as to principal and interest by any other agency of the United States and a Federal credit union may issue and sell securities which are guaranteed pursuant to section 1721(g) of this title; (F) in participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections therefrom, which obligations have been subjected by one or more Government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States (or the head thereof) has been named to act as trustee; (G) in shares or deposits of any central credit union in which such investments are specifically authorized by the board of directors of the Federal credit union making the investment; (H) in shares, share certificates, or share deposits of feder-

ally insured credit unions; (I) in the shares, stocks, or obligations of any other organization, providing services which are associated with the routine operations of credit unions, up to 1 per centum of the total paid in and unimpaired capital and surplus of the credit union with the approval of the Board: *Provided, however*, That such authority does not include the power to acquire control directly or indirectly, of another financial institution, nor invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility or any other similar organization, corporation, or association, except as otherwise expressly provided by this chapter; (J) in the capital stock of the National Credit Union Central Liquidity Facility; (K) investments in obligations of, or issued by, any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision), except that no credit union may invest more than 10 per centum of its unimpaired capital and surplus in the obligations of any one issuer (exclusive of general obligations of the issuer);

(8) to make deposits in national banks and in State banks, trust companies, and mutual savings banks operating in accordance with the laws of the State in which the Federal credit union does business, or in banks or institutions the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, and for Federal credit unions or credit unions authorized by the Department of Defense operating suboffices on American military installations in foreign countries or trust territories of the United States to maintain demand deposit accounts in banks located in those countries or trust territories, subject to such regulations as may be issued by the Board and provided such banks are correspondents of banks described in this paragraph;

(9) to borrow, in accordance with such rules and regulations as may be prescribed by the Board, from any source, in an aggregate amount not exceeding, except as authorized by the Board in carrying out the provisions of subchapter III of this chapter, 50 per centum of its paid-in and unimpaired capital and surplus: *Provided*, That any Federal credit union may discount with or sell to any Federal intermediate credit bank any eligible obligations up to the amount of its paid-in and unimpaired capital;

(10) to levy late charges, in accordance with the bylaws, for failure of members to meet promptly their obligations to the Federal credit union;

(11) to impress and enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him;

(12) in accordance with regulations prescribed by the Board—

(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers and remittance transfers, as defined in section 1693*o*–1 of title 15); and

(B) to cash checks and money orders for persons in the field of membership for a fee;

(13) in accordance with rules and regulations prescribed by the Board, to purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations (as defined by the Board) of its members and to purchase from any liquidating credit union notes made by individual members of the liquidating credit union at such prices as may be agreed upon by the board of directors of the liquidating credit union and the board of directors of the purchasing credit union, but no purchase may be made under authority of this paragraph if, upon the making of that purchase, the aggregate of the unpaid balances of notes purchased under authority of this paragraph would exceed 5 per centum of the unimpaired capital and surplus of the credit union;

(14) to sell all or a part of its assets to another credit union, to purchase all or part of the assets of another credit union and to assume the liabilities of the selling credit union and those of its members subject to regulations of the Board;

(15) to invest in securities that—

(A) are offered and sold pursuant to section 77d(5) of title 15;

(B) are mortgage related securities (as that term is defined in section 78c(a)(41) of title 15), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both; or

(C) are small business related securities (as defined in section 78c(a)(53) of title 15), subject to such regulations as the Board may prescribe, including regulations prescribing the minimum size of the issue (at the time of the initial distribution), the minimum aggregate sales price, or both;

(16) subject to such regulations as the Board may prescribe, to provide technical assistance to credit unions in Poland and Hungary; and

(17) to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

(June 26, 1934, ch. 750, title I, §107, formerly §7, 48 Stat. 1218; Dec. 6, 1937, ch. 3, §2, 51 Stat. 4; July 31, 1946, ch. 711, §1, 60 Stat. 744; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; Oct. 25, 1949, ch. 713, §1, 63 Stat. 890; May 13, 1952, ch. 264, 66 Stat. 70; renumbered §8 and amended Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 630; Pub. L. 88–353, §1, July 2, 1964, 78 Stat. 269; Pub. L. 89–429, §7, May 24, 1966, 80 Stat. 167; Pub. L. 90–44, §§2, 3, July 3, 1967, 81 Stat. 110, 111; Pub. L. 90–375, §1(1)–(3), July 5, 1968, 82 Stat. 284; Pub. L. 90–448, title VIII, §807(n), Aug. 1, 1968, 82 Stat. 545; Pub. L. 91–206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §107, and amended Pub. L. 91–468, §§1(2), 10, Oct. 19, 1970, 84 Stat. 994, 1017; Pub. L. 92–318, title I, §133(c)(4), June 23, 1972, 86 Stat. 270; Pub. L. 93–383, title VII,

§ 721, title VIII, § 805(c)(5), Aug. 22, 1974, 88 Stat. 719, 727; Pub. L. 93–495, title I, § 101(d), Oct. 28, 1974, 88 Stat. 1502; Pub. L. 93–569, § 6, Dec. 31, 1974, 88 Stat. 1866; Pub. L. 95–22, title III, §§ 302, 303, Apr. 19, 1977, 91 Stat. 49, 51; Pub. L. 95–630, title V, § 502(b), title XVIII, § 1803, Nov. 10, 1978, 92 Stat. 3681, 3723; Pub. L. 96–153, title III, § 323(d), Dec. 21, 1979, 93 Stat. 1120; Pub. L. 96–161, title I, § 103(b), Dec. 28, 1979, 93 Stat. 1234; Pub. L. 96–221, title III, §§ 305(b), 307, 309(a)(1), 310, Mar. 31, 1980, 94 Stat. 146–149; Pub. L. 97–320, title V, §§ 506–514, 516–518, Oct. 15, 1982, 96 Stat. 1528–1530; Pub. L. 97–457, §§ 25, 26, Jan. 12, 1983, 96 Stat. 2510; Pub. L. 98–440, title I, § 105(b), Oct. 3, 1984, 98 Stat. 1691; Pub. L. 98–479, title II, § 206, Oct. 17, 1984, 98 Stat. 2234; Pub. L. 100–86, title VII, §§ 702, 703, Aug. 10, 1987, 101 Stat. 652; Pub. L. 101–179, title II, § 206(b), Nov. 28, 1989, 103 Stat. 1311; Pub. L. 103–325, title II, § 206(b), Sept. 23, 1994, 108 Stat. 2199; Pub. L. 104–208, div. A, title II, § 2306, Sept. 30, 1996, 110 Stat. 3009–426; Pub. L. 109–351, title V, §§ 502, 503, title VII, § 726(3)–(8), Oct. 13, 2006, 120 Stat. 1975, 2002; Pub. L. 111–203, title III, § 362(1), title X, § 1073(d), July 21, 2010, 124 Stat. 1549, 2066.)

AMENDMENT OF PARAGRAPH (8)

Pub. L. 111–203, title III, §§ 351, 362(1), July 21, 2010, 124 Stat. 1546, 1549, provided that, effective on the transfer date, paragraph (8) of this section is amended by striking out ''or the Federal Savings and Loan Insurance Corporation''. See Effective Date of 2010 Amendment note below.

CODIFICATION

In par. (7), ''section 9101(3) of title 31'' substituted for ''section 101 of the Government Corporation Control Act [31 U.S.C. 846]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2010—Par. (12). Pub. L. 111–203, § 1073(d), amended par. (12) generally. Prior to amendment, par. (12) read as follows: ''in accordance with regulations prescribed by the Board—

''(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers); and

''(B) to cash checks and money orders and receive international and domestic electronic fund transfers for persons in the field of membership for a fee;''.

2006—Par. (5). Pub. L. 109–351, § 502, substituted ''to make loans, the maturities of which shall not exceed 15 years,'' for ''to make loans, the maturities of which shall not exceed twelve years'' in introductory provisions.

Par. (5)(E). Pub. L. 109–351, § 726(3), substituted semicolon for period at end.

Par. (6). Pub. L. 109–351, § 726(4), substituted semicolon for period at end.

Par. (7). Pub. L. 109–351, § 726(4), substituted semicolon for period at end.

Par. (7)(D). Pub. L. 109–351, § 726(5), struck out ''the Federal Savings and Loan Insurance Corporation or'' before ''the Federal Deposit Insurance Corporation''.

Par. (7)(E). Pub. L. 109–351, § 726(6), substituted ''the Federal Housing Finance Board,'' for ''the Federal Home Loan Bank Board,''.

Par. (9). Pub. L. 109–351, § 726(7), made technical amendment to reference in original act which appears in text as reference to subchapter III.

Par. (12). Pub. L. 109–351, § 503, amended par. (12) generally. Prior to amendment, par. (12) read as follows: ''in accordance with rules and regulations prescribed by the Board, to sell to members negotiable checks (including travelers checks), money orders, and other similar money transfer instruments, and to cash checks and money orders for members, for a fee;''.

Par. (13). Pub. L. 109–351, § 726(8), struck out ''and'' after semicolon at end.

1996—Par. (5)(A)(iv), (v). Pub. L. 104–208 substituted ''$20,000'' for ''$10,000''.

1994—Par. (15)(C). Pub. L. 103–325 added subpar. (C).

1989—Pars. (16), (17). Pub. L. 101–179 added par. (16) and redesignated former par. (16) as (17).

1987—Par. (5)(A)(ii). Pub. L. 100–86, § 702, substituted ''15 years or any longer term which the Board may allow'' for ''fifteen years unless such loan is insured or guaranteed as provided in subparagraph (iii)''.

Par. (6). Pub. L. 100–86, § 703, inserted '', representing equity,'' after ''payments''.

1984—Par. (5)(A)(ii). Pub. L. 98–479 inserted ''a loan for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member,''.

Pars. (15), (16). Pub. L. 98–440, § 105(b), added par. (15) and redesignated former par. (15) as (16).

1983—Par. (5)(A)(i). Pub. L. 97–457, § 25, substituted ''Administration'' for ''Association'' after ''National Credit Union''.

Par. (7)(K). Pub. L. 97–457, § 26, redesignated cl. (L) as (K) and substituted a period for ''; and'' at end.

1982—Par. (5)(A)(i). Pub. L. 97–320, §§ 507–509, substituted ''on'' for ''which is made to finance the acquisition of'' after ''real estate loan'' and ''that is or will be'' for ''for'' after ''cooperative unit,'', struck out ''the sales price of which is not more than 150 per centum of the median sales price of residential real property situated in the geographical area (as determined by the board of directors) in which the property is located,'' after ''credit union member'', and inserted ''or such other limits as shall be set by the National Credit Union Association Board'' after ''not exceeding thirty years''.

Par. (5)(A)(ii). Pub. L. 97–320, § 510, substituted ''or a second mortgage loan secured by a residential dwelling'' for ''or for the repair, alteration, or improvement of a residential dwelling''.

Par. (5)(A)(iii). Pub. L. 97–320, § 511, inserted '', or with advance commitment to purchase the loan by,'' and substituted ''insurance, guarantee, or commitment'' for ''insurance or guarantee''.

Par. (5)(A)(iv), (v). Pub. L. 97–320, § 512, substituted ''$10,000'' for ''$5,000''.

Par. (5)(A)(viii). Pub. L. 97–320, § 513, inserted condition relating to partial prepayments of first or second mortgage loans.

Par. (5)(A)(x). Pub. L. 97–320, § 506, added cl. (x).

Par. (7)(E). Pub. L. 97–320, § 516, inserted provisions relating to instruments issued or guaranteed by any other agency of the United States, and that a Federal Credit Union may issue and sell securities which are guaranteed pursuant to section 1721(g) of this title.

Par. (7)(L). Pub. L. 97–320, § 514, added cl. (L).

Par. (8). Pub. L. 97–320, § 517, inserted ''or in banks or institutions the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation,'' after ''in which the Federal Credit Union does business,''.

Par. (12). Pub. L. 97–320, § 518, substituted '', money orders, and other similar money transfer instruments'' for ''and money orders'', and struck out ''which does not exceed the direct and indirect costs incident to providing such service'' after ''for a fee''.

1980—Par. (5)(A)(i). Pub. L. 96–221, § 309(a)(1), inserted provisions relating to an individual cooperative unit.

Par. (5)(A)(vi). Pub. L. 96–221, § 310, substituted provisions setting forth maximum interest rate of 15 per centum per annum, subject to specified exceptions, for provisions setting forth a maximum interest rate of 1 per centum per month.

Par. (6). Pub. L. 96–221, §§305(b), 307, revised existing provisions respecting credit unions serving predominately low-income members including provisions added by Pub. L. 96–161, and repealed the amendment made by Pub. L. 96–161. See Repeals and Effective Date of 1980 Amendment notes below.

1979—Par. (6). Pub. L. 96–161 inserted '', and to issue, deal in, and accept share drafts as orders of withdrawal against shares, subject to such terms, rates, and conditions as may be prescribed by the Board'' after ''within limitations prescribed by the Board''.

Pub. L. 96–153 substituted ''Federal, Indian tribal, State'' for ''Federal, State''.

1978—Par. (5). Pub. L. 95–630, §502(b), substituted ''Board'' for ''Administrator'' wherever appearing.

Par. (6). Pub. L. 95–630, §§502(b), 1803(a), inserted ''from the Central Liquidity Facility,'' after ''in the manner so prescribed,'' and substituted ''Board'' for ''Administrator'' in two places.

Par. (7). Pub. L. 95–630, §§502(b), 1803(b), substituted ''Board'' for ''Administrator'' wherever appearing and added cl. (J).

Par. (8). Pub. L. 95–630, §502(b), substituted ''Board'' for ''Administrator''.

Par. (9). Pub. L. 95–630, §§502(b), 1803(c), substituted ''Board'' for ''Administrator'' and inserted '', except as authorized by the Board in carrying out the provisions of subchapter III of this chapter,'' after ''amount not exceeding''.

Pars. (12) to (14). Pub. L. 95–630, §502(b), substituted ''Board'' for ''Administrator'' wherever appearing.

1977—Par. (5). Pub. L. 95–22, §302(a), among other changes, inserted provisions permitting Federal credit unions to establish lines of credit for their members, to raise the maximum loan maturity for most loans to twelve years, and to make loans secured by a first lien and made for the purchase of a one-to-four-family dwelling for the principal residence of a credit union member.

Par. (6). Pub. L. 95–22, §§302(b), 303(a), redesignated par. (7) as (6) and substituted reference to payments on shares which may be issued at varying dividend rates and payments on share certificates which may be issued at varying dividend rates and maturities, subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the Administrator for reference to payments on shares, share certificates, or share deposits. Former par. (6), relating to the power of Federal credit unions to make loans to its own directors and to its own supervisory credit committee, was struck out.

Par. (7). Pub. L. 95–22, §303(b), redesignated par. (8) as (7) and added subpar. (I). Former par. (7) redesignated (6).

Pars. (8) to (12). Pub. L. 95–22, §303(c), redesignated pars. (9) to (13) as (8) to (12), respectively. Former par. (8) redesignated (7).

Par. (13). Pub. L. 95–22, §303(c), (d), redesignated par. (14) as (13) and inserted reference to purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations (as defined by the Administrator) of its members. Former par. (13) redesignated (12).

Par. (14). Pub. L. 95–22, §303(e), added par. (14).

1974—Par. (5). Pub. L. 93–569 inserted ''except that loans made in accordance with section 1703(b) of this title and section 1819 of title 38, may be for the maturities specified therein,'' after ''ten years''.

Par. (6). Pub. L. 93–383, §721(a), substituted provisions relating to approval of loans by the board of directors for provisions requiring annual reports to the Administrator with respect to loans and setting forth conditions for the making of loans.

Par. (7). Pub. L. 93–495 inserted provisions relating to receipt of payments of shares, etc., from officers, employees, or agents of nonmember units of Federal, State, or local governments and political subdivisions enumerated in section 1787 of this title.

Par. (8)(E). Pub. L. 93–383, §805(c)(5), inserted reference to mortgages, obligations, or other securities sold by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or 1455 of this title.

Par. (9). Pub. L. 93–383, §721(b), inserted provisions relating to Federal credit unions or credit unions authorized by the Department of Defense.

1972—Par. (8)(E). Pub. L. 92–318 authorized investments in obligations or other instruments or securities of the Student Loan Marketing Association.

1970—Pars. (5), (6), (8), (10), (13), (14), Pub. L. 91–206 substituted ''Administrator'' for ''Director'' wherever appearing.

Par. (7). Pub. L. 91–468, §10(1), permitted a Federal credit union to not only receive from members but also from other federally insured credit unions, payments on shares as well as share certificates or share deposits and, in the case of credit unions serving predominantly low-income members, to receive payments on shares, share certificates or share deposits from nonmembers.

Par. (8). Pub. L. 91–468, §10(2), authorized a Federal credit union to invest in shares, share certificates or share deposits of federally insured credit unions.

1968—Par. (5). Pub. L. 90–375, §1(1), substituted provisions authorizing Federal credit unions to make unsecured loans with maturities not exceeding five years, and secured loans with maturities not exceeding ten years for provisions authorizing federal credit unions to make loans with maturities not exceeding five years.

Par. (8). Pub. L. 90–448 authorized investments in obligations, participations, or other instruments of or issued by, or guaranteed as to principal and interest by, the Government National Mortgage Association.

Pub. L. 90–375, §1(2), added cl. (G).

Pars. (14), (15). Pub. L. 90–375, §1(3), added par. (14) and redesignated former par. (14) as (15).

1967—Par. (5). Pub. L. 90–44, §2(1), substituted ''may be made except as authorized under paragraph (6) of this section'' for ''shall exceed the amount of his holdings in the Federal Credit Union as represented by shares thereof plus the total unencumbered and unpledged shareholdings in the Federal Credit Union of any member pledged as security for the obligation of such director or committee member''.

Pars. (6), (7). Pub. L. 90–44, §2(3), added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively.

Pars. (8) to (14). Pub. L. 90–44, §§2(2), (3), redesignated former par. (7) as (8), authorized in cl. (D) investment of funds in shares or accounts of mutual savings banks, the accounts of which are insured by the Federal Deposit Insurance Corporation, and redesignated former pars. (8) to (13) as (9) to (14), respectively.

1966—Par. (7). Pub. L. 89–429 expanded list of possible areas of investment of funds by Federal credit unions to include obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association and participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections therefrom, which obligations have been subjected by one or more Government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States (or the head thereof) has been named to act as trustee.

1964—Par. (7)(E). Pub. L. 88–353 added cl. (E).

1959—Pub. L. 86–354 made numerous capitalization, punctuation and phraseological changes throughout text; increased maturities limits for loans from three to five years, authorized approval of loans by a loan officer and authorized loans in an amount which shall include total unencumbered and unpledged shareholdings in the Federal credit union of any member pledged as security for the obligation of the director or committee member, provided for payment and amortization of loans, redesignated provisions (a) to (d) as (A) to (D) in par. (7), substituted ''levy late charges'' for ''fine members'' and inserted ''of members'' in par. (10), substituted ''charges'' for ''fines'' in par. (11), added par. (12); and redesignated former par. (12) as par. (13).

1952—Par. (7)(d). Act May 13, 1952, authorized investment of funds in shares or accounts of any other institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation.

1949—Par. (5). Act Oct. 25, 1949, increased from 2 years to 3 years the limit for maturity of loans.

1946—Par. (5). Act July 31, 1946, inserted last two sentences to provide for the forfeiture of the entire amount of interest reserved and for the recovery of the entire amount of interest paid for the violation of the interest limitation.

1937—Par. (7)(c), (d). Act Dec. 6, 1937, added cls. (c) and (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 362(1) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 1073(d) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 305(b) of Pub. L. 96–221 effective at close of Mar. 31, 1980, see section 306 of Pub. L. 96–221, set out as a note under section 371a of this title.

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENTS

Amendment by Pub. L. 96–161 effective Dec. 31, 1979, with that amendment to remain in effect until the close of Mar. 31, 1980, see section 104 of Pub. L. 96–161, formerly set out as a note under section 371a of this title.

Section 323(e) of Pub. L. 96–153 provided that: ''The amendments made by subsections (a) through (d) [amending this section and sections 1728, 1787, and 1821 of this title] are not applicable to any claim arising out of the closing of a bank, savings and loan association, or credit union prior to the date of enactment of this Act [Dec. 21, 1979], but shall be applicable to any such claim arising on or after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 502(b) of Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

Amendment by section 1803 of Pub. L. 95–630 effective Oct. 1, 1979, see section 1806 of Pub. L. 95–630, set out as an Effective Date note under section 1795 of this title.

EFFECTIVE DATE OF 1974 AMENDMENTS

Amendment by Pub. L. 93–569 effective Dec. 31, 1974, see section 10 of Pub. L. 93–569, set out as a note under section 3702 of Title 38, Veterans' Benefits.

Amendment by Pub. L. 93–495 effective on 30th day beginning after Oct. 28, 1974, see section 101(g) of Pub. L. 93–495, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

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

REPEALS

Amendment by section 103 of Pub. L. 96–161, cited as a credit to this section, was repealed at the close of Mar. 31, 1980, by section 307 of Pub. L. 96–221, and substantially identical provisions were enacted by section 305 of Pub. L. 96–221, such amendments to take effect at the close of Mar. 31, 1980.

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

§ 1757a. Limitation on member business loans

(a) In general

On and after August 7, 1998, no insured credit union may make any member business loan that would result in a total amount of such loans outstanding at that credit union at any one time equal to more than the lesser of—

(1) 1.75 times the actual net worth of the credit union; or

(2) 1.75 times the minimum net worth required under section 1790d(c)(1)(A) of this title for a credit union to be well capitalized.

(b) Exceptions

Subsection (a) of this section does not apply in the case of—

(1) an insured credit union chartered for the purpose of making, or that has a history of primarily making, member business loans to its members, as determined by the Board; or

(2) an insured credit union that—

(A) serves predominantly low-income members, as defined by the Board; or

(B) is a community development financial institution, as defined in section 4702 of this title.

(c) Definitions

As used in this section—

(1) the term ''member business loan''—

(A) means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate or other business investment property or venture, or agricultural purpose; and

(B) does not include an extension of credit—

(i) that is fully secured by a lien on a 1- to 4-family dwelling that is the primary residence of a member;

(ii) that is fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions;

(iii) that is described in subparagraph (A), if it was made to a borrower or an associated member that has a total of all such extensions of credit in an amount equal to less than $50,000;

(iv) the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the Federal Government or of a State, or any political subdivision thereof; or

(v) that is granted by a corporate credit union (as that term is defined by the Board) to another credit union.

(2) the term ''net worth''—

(A) with respect to any insured credit union, means the credit union's retained earnings balance, as determined under generally accepted accounting principles; and

(B) with respect to a credit union that serves predominantly low-income members, as defined by the Board, includes secondary capital accounts that are—

(i) uninsured; and

(ii) subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the Fund; and

(3) the term ''associated member'' means any member having a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower.

(d) Effect on existing loans

An insured credit union that has, on August 7, 1998, a total amount of outstanding member business loans that exceeds the amount permitted under subsection (a) of this section shall, not later than 3 years after August 7, 1998, reduce the total amount of outstanding member business loans to an amount that is not greater than the amount permitted under subsection (a) of this section.

(e) Consultation and cooperation with State credit union supervisors

In implementing this section, the Board shall consult and seek to work cooperatively with State officials having jurisdiction over State-chartered insured credit unions.

(June 26, 1934, ch. 750, title I, §107A, as added Pub. L. 105–219, title II, §203(a), Aug. 7, 1998, 112 Stat. 920.)

STUDY AND REPORT

Pub. L. 105–219, title II, §203(b), Aug. 7, 1998, 112 Stat. 922, provided that:

''(1) STUDY.—The Secretary [of the Treasury] shall conduct a study of member business lending by insured credit unions, including—

''(A) an examination of member business lending over $500,000 and under $50,000, and a breakdown of the types and sizes of businesses that receive member business loans;

''(B) a review of the effectiveness and enforcement of regulations applicable to insured credit union member business lending;

''(C) whether member business lending by insured credit unions could affect the safety and soundness of insured credit unions or the National Credit Union Share Insurance Fund;

''(D) the extent to which member business lending by insured credit unions helps to meet financial services needs of low- and moderate-income individuals within the field of membership of insured credit unions;

''(E) whether insured credit unions that engage in member business lending have a competitive advantage over other insured depository institutions, and if any such advantage could affect the viability and profitability of such other insured depository institutions; and

''(F) the effect of enactment of this Act [see Short Title of 1998 Amendment note set out under section 1751 of this title] on the number of insured credit unions involved in member business lending and the overall amount of commercial lending.

''(2) NCUA COOPERATION.—The National Credit Union Administration shall, upon request, provide such information as the Secretary may require to conduct the study required under paragraph (1).

''(3) REPORT.—Not later than 12 months after the date of enactment of this Act [Aug. 7, 1998], the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).''

§ 1758. Bylaws

In order to simplify the organization of Federal credit unions the Board shall from time to time cause to be prepared a form of organization certificate and a form of bylaws consistent with this chapter, which shall be used by Federal credit union incorporators, and shall be supplied to them on request. At the time of presenting the organization certificate the incorporators shall also submit proposed bylaws to the Board for its approval.

(June 26, 1934, ch. 750, title I, §108, formerly §8, 48 Stat. 1219; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; renumbered §9 and amended Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 631; Pub. L. 91–206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §108, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator'' in two places, and ''its approval'' for ''his approval''.

1970—Pub. L. 91–206 substituted ''Administrator'' for ''Director'' in two places.

1959—Pub. L. 86–354 substituted ''from time to time'' for '', upon the passage of this Act,''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof, generally, see notes set out under section 1751 of this title.

Functions of Governor of Farm Credit Administration under this section transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947.

§ 1759. Membership

(a) In general

Subject to subsection (b) of this section, Federal credit union membership shall consist of the incorporators and such other persons and incorporated and unincorporated organizations, to the extent permitted by rules and regulations prescribed by the Board, as may be elected to membership and as such shall each, subscribe to at least one share of its stock and pay the initial installment thereon and a uniform entrance fee if required by the board of directors. Shares may be issued in joint tenancy with right of survivorship with any persons designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless he is within the field of membership and is a qualified member.

(b) Membership field

Subject to the other provisions of this section, the membership of any Federal credit union shall be limited to the membership described in one of the following categories:

(1) Single common-bond credit union

One group that has a common bond of occupation or association.

(2) Multiple common-bond credit union

More than one group—

(A) each of which has (within the group) a common bond of occupation or association; and

(B) the number of members, each of which (at the time the group is first included within the field of membership of a credit union described in this paragraph) does not exceed any numerical limitation applicable under subsection (d) of this section.

(3) Community credit union

Persons or organizations within a well-defined local community, neighborhood, or rural district.

(c) Exceptions

(1) Grandfathered members and groups

(A) In general

Notwithstanding subsection (b) of this section—

(i) any person or organization that is a member of any Federal credit union as of August 7, 1998, may remain a member of the credit union after August 7, 1998; and

(ii) a member of any group whose members constituted a portion of the membership of any Federal credit union as of August 7, 1998, shall continue to be eligible to become a member of that credit union, by virtue of membership in that group, after August 7, 1998.

(B) Successors

If the common bond of any group referred to in subparagraph (A) is defined by any particular organization or business entity, subparagraph (A) shall continue to apply with respect to any successor to the organization or entity.

(2) Exception for underserved areas

Notwithstanding subsection (b) of this section, in the case of a Federal credit union, the field of membership category of which is described in subsection (b)(2) of this section, the Board may allow the membership of the credit union to include any person or organization within a local community, neighborhood, or rural district if—

(A) the Board determines that the local community, neighborhood, or rural district—

(i) is an ''investment area'', as defined in section 4702(16) of this title, and meets such additional requirements as the Board may impose; and

(ii) is underserved, based on data of the Board and the Federal banking agencies (as defined in section 1813 of this title), by other depository institutions (as defined in section 461(b)(1)(A) of this title); and

(B) the credit union establishes and maintains an office or facility in the local community, neighborhood, or rural district at which credit union services are available.

(d) Multiple common-bond credit union group requirements

(1) Numerical limitation

Except as provided in paragraph (2), only a group with fewer than 3,000 members shall be eligible to be included in the field of membership category of a credit union described in subsection (b)(2) of this section.

(2) Exceptions

In the case of any Federal credit union, the field of membership category of which is described in subsection (b)(2) of this section, the numerical limitation in paragraph (1) of this subsection shall not apply with respect to—

(A) any group that the Board determines, in writing and in accordance with the guidelines and regulations issued under paragraph (3), could not feasibly or reasonably establish a new single common-bond credit union, the field of membership category of which is described in subsection (b)(1) of this section because—

(i) the group lacks sufficient volunteer and other resources to support the efficient and effective operation of a credit union;

(ii) the group does not meet the criteria that the Board has determined to be important for the likelihood of success in establishing and managing a new credit union, including demographic characteristics such as geographical location of members, diversity of ages and income levels, and other factors that may affect the financial viability and stability of a credit union; or

(iii) the group would be unlikely to operate a safe and sound credit union;

(B) any group transferred from another credit union—

(i) in connection with a merger or consolidation recommended by the Board or any appropriate State credit union supervisor based on safety and soundness concerns with respect to that other credit union; or

(ii) by the Board in the Board's capacity as conservator or liquidating agent with respect to that other credit union; or

(C) any group transferred in connection with a voluntary merger, having received conditional approval by the Administration of the merger application prior to October 25, 1996, but not having consummated the merger prior to October 25, 1996, if the merger is consummated not later than 180 days after August 7, 1998.

(3) Regulations and guidelines

The Board shall issue guidelines or regulations, after notice and opportunity for comment, setting forth the criteria that the Board will apply in determining under this subsection whether or not an additional group may be included within the field of membership category of an existing credit union described in subsection (b)(2) of this section.

(e) Additional membership eligibility provisions

(1) Membership eligibility limited to immediate family or household members

No individual shall be eligible for membership in a credit union on the basis of the relationship of the individual to another person who is eligible for membership in the credit

union, unless the individual is a member of the immediate family or household (as those terms are defined by the Board, by regulation) of the other person.

(2) Retention of membership

Except as provided in section 1764 of this title, once a person becomes a member of a credit union in accordance with this subchapter, that person or organization may remain a member of that credit union until the person or organization chooses to withdraw from the membership of the credit union.

(f) Criteria for approval of expansion of multiple common-bond credit unions

(1) In general

The Board shall—

(A) encourage the formation of separately chartered credit unions instead of approving an application to include an additional group within the field of membership of an existing credit union whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union; and

(B) if the formation of a separate credit union by the group is not practicable or consistent with the standards referred to in subparagraph (A), require the inclusion of the group in the field of membership of a credit union that is within reasonable proximity to the location of the group whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union.

(2) Approval criteria

The Board may not approve any application by a Federal credit union, the field of membership category of which is described in subsection (b)(2) of this section to include any additional group within the field of membership of the credit union (or an application by a Federal credit union described in subsection (b)(1) of this section to include an additional group and become a credit union described in subsection (b)(2) of this section), unless the Board determines, in writing, that—

(A) the credit union has not engaged in any unsafe or unsound practice (as defined in section 1786(b) of this title) that is material during the 1-year period preceding the date of filing of the application;

(B) the credit union is adequately capitalized;

(C) the credit union has the administrative capability to serve the proposed membership group and the financial resources to meet the need for additional staff and assets to serve the new membership group;

(D) any potential harm that the expansion of the field of membership of the credit union may have on any other insured credit union and its members is clearly outweighed in the public interest by the probable beneficial effect of the expansion in meeting the convenience and needs of the members of the group proposed to be included in the field of membership; and

(E) the credit union has met such additional requirements as the Board may prescribe, by regulation.

(g) Regulations required for community credit unions

(1) Definition of well-defined local community, neighborhood, or rural district

The Board shall prescribe, by regulation, a definition for the term ''well-defined local community, neighborhood, or rural district'' for purposes of—

(A) making any determination with regard to the field of membership of a credit union described in subsection (b)(3) of this section; and

(B) establishing the criteria applicable with respect to any such determination.

(2) Scope of application

The definition prescribed by the Board under paragraph (1) shall apply with respect to any application to form a new credit union, or to alter or expand the field of membership of an existing credit union, that is filed with the Board after August 7, 1998.

(June 26, 1934, ch. 750, title I, §109, formerly §9, 48 Stat. 1219; July 31, 1946, ch. 711, §2, 60 Stat. 744; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; renumbered §10 and amended Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 631; Pub. L. 91–206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §109, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 93–383, title VII, §722, Aug. 22, 1974, 88 Stat. 719; Pub. L. 95–630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 105–219, title I, §§101–103, Aug. 7, 1998, 112 Stat. 914–917; Pub. L. 109–351, title VII, §726(9), Oct. 13, 2006, 120 Stat. 2002.)

AMENDMENTS

2006—Subsec. (c)(2)(A)(i). Pub. L. 109–351 made technical amendment to reference in original act which appears in text as reference to section 4702(16) of this title.

1998—Subsec. (a). Pub. L. 105–219, §101(1)(A), designated existing provisions as subsec. (a) and inserted heading and ''Subject to subsection (b) of this section,'' before ''Federal credit union membership shall consist of''.

Pub. L. 105–219, §101(1)(B), which directed the amendment of subsec. (a) by striking out '', except that Federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district'' after ''directors'', was executed by striking out such language which began with a semicolon rather than a comma after ''directors'' to reflect the probable intent of Congress.

Subsecs. (b) to (e). Pub. L. 105–219, §101(2), added subsecs. (b) to (e).

Subsec. (f). Pub. L. 105–219, §102, added subsec. (f).

Subsec. (g). Pub. L. 105–219, §103, added subsec. (g).

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator''.

1974—Pub. L. 93–383 substituted ''a uniform entrance fee if required by the board of directors'' for ''the entrance fee''.

1970—Pub. L. 91–206 substituted ''Administrator'' for ''Director''.

1959—Pub. L. 86–354 substituted ''persons'' for ''person'' before ''designated''.

1946—Act July 31, 1946, inserted sentence at end permitting a Federal credit union to issue shares in joint tenancy with a right of survivorship.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provi-

sions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

REPORT AND CONGRESSIONAL REVIEW REQUIREMENT FOR CERTAIN REGULATIONS

Pub. L. 105–219, title II, § 205, Aug. 7, 1998, 112 Stat. 923, provided that: ''A regulation prescribed by the Board [National Credit Union Administration Board] shall be treated as a major rule for purposes of chapter 8 of title 5, United States Code, if the regulation defines, or amends the definition of—

''(1) the term 'immediate family or household' for purposes of section 109(e)(1) of the Federal Credit Union Act [12 U.S.C. 1759(e)(1)] (as added by section 101 of this Act); or

''(2) the term 'well-defined local community, neighborhood, or rural district' for purposes of section 109(g) of the Federal Credit Union Act (as added by section 103 of this Act).''

§ 1760. Members' meetings

The fiscal year of all Federal credit unions shall end December 31. The annual meeting of each Federal credit union shall be held at such place as its bylaws shall prescribe. Special meetings may be held in the manner indicated in the bylaws. No member shall be entitled to vote by proxy, but a member other than a natural person may vote through an agent designated for the purpose. Irrespective of the number of shares held, no member shall have more than one vote.

(June 26, 1934, ch. 750, title I, § 110, formerly § 10, 48 Stat. 1219; renumbered § 11, Pub. L. 86–354, § 1, Sept. 22, 1959, 73 Stat. 631; amended Pub. L. 88–150, § 1, Oct. 17, 1963, 77 Stat. 270; renumbered title I, § 110, Pub. L. 91–468, § 1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 97–320, title V, § 519, Oct. 15, 1982, 96 Stat. 1531.)

AMENDMENTS

1982—Pub. L. 97–320 struck out ''at such time during the following January, February, or March and'' after ''shall be held'', and ''by him'' after ''shares held''.

1963—Pub. L. 88–150 substituted ''during the following January, February, or March'' for ''during the month of the following January''.

§ 1761. Management

(a) Board of directors, credit committee, and supervisory committee; election to board

The management of a Federal credit union shall be by a board of directors, a supervisory committee, and where the bylaws so provide, a credit committee. The board shall consist of an odd number of directors, at least five in number, to be elected annually by and from the members as the bylaws provide. Any vacancy occurring on the board shall be filled until the next annual election by appointment by the remainder of the directors.

(b) Membership on supervisory committee; names and addresses of officers and committee members

The supervisory committee shall be appointed by the board of directors and shall consist of not less than three members nor more than five members, one of whom may be a director other than the compensated officer of the board. A record of the names and addresses of the executive officers, members of the supervisory committee, credit committee, and loan officers, shall be filed with the Administration within ten days after their election or appointment.

(c) Compensation

No member of the board or of any other committee shall, as such, be compensated, except that reasonable health, accident, similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of the duties of the position shall not be considered compensation.

(June 26, 1934, ch. 750, title I, § 111, formerly § 11, 48 Stat. 1219; June 15, 1940, ch. 366, 54 Stat. 398; July 31, 1946, ch. 711, §§ 3–6, 60 Stat. 745; 1947 Reorg. Plan No. 1, § 401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§ 1, 2, 62 Stat. 1091; Oct. 25, 1949, ch. 713, § 2, 63 Stat. 890; June 30, 1954, ch. 426, § 1, 68 Stat. 335; Aug. 24, 1954, ch. 905, §§ 1, 2, 68 Stat. 792; renumbered § 12 and amended Pub. L. 86–354, § 1, Sept. 22, 1959, 73 Stat. 632; Pub. L. 88–353, § 2, July 2, 1964, 78 Stat. 269; Pub. L. 91–206, § 2(3), Mar. 10, 1970, 84 Stat. 49; renumbered title I, § 111, Pub. L. 91–468, § 1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 93–495, title I, § 116, Oct. 28, 1974, 88 Stat. 1507; Pub. L. 95–630, title V, § 502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97–320, title V, § 520, Oct. 15, 1982, 96 Stat. 1531.)

AMENDMENTS

1982—Pub. L. 97–320 substituted provisions divided into subsecs. (a), (b), and (c) relating to the management of a Federal credit union, including the board of directors, credit and supervisory committees, and the matter of their compensation, for provisions which read as follows: ''The business affairs of a Federal credit union shall be managed by a board of not less than five directors, and a credit committee of not less than three members, all to be elected at the annual members' meeting by and from the members, and by a supervisory committee of not less than three members nor more than five members, one of whom may be a director other than the treasurer, to be appointed by the board. Any vacancy occurring in the supervisory committee shall be filled in the same manner as original appointments to such committee. All members of the board and of such committees shall hold office for such terms, respectively, as the bylaws may provide. A record of the names and addresses of the members of the board and such committees and of the officers of the credit union shall be filed with the Administration within ten days after their election or appointment. No member of the board or of either such committee shall, as such, be compensated: *Provided, however*, That reasonable health, accident, and similar insurance protection shall not be considered compensation under regulations promulgated by the Board.''

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator''.

1974—Pub. L. 93–495 inserted proviso relating to compensation in the form of health, accident, and similar insurance protection.

1970—Pub. L. 91–206 substituted ''Administration'' for ''Bureau''.

1964—Pub. L. 88–353 increased size of supervisory committee from three members to not less than three members nor more than five members.

1959—Pub. L. 86–354 provided for appointment instead of election of members of supervisory committee and for filling of vacancies in such committee, and struck out former subsecs. (b) to (e) relating to officers, directors, credit committee and supervisory committee. See sections 1761a to 1761d of this title, respectively.

1954—Subsecs. (b), (c). Act Aug. 24, 1954, provided express authority for the Director of the Bureau of Fed-

eral Credit Unions to regulate the minimum amount and character of surety bonds for officers and employees.

Subsec. (c). Act June 30, 1954, inserted provision with respect to interest refunds.

1949—Subsec. (d). Act Oct. 25, 1949, substituted ''$400'' for ''$300'' wherever appearing.

1946—Subsec. (c). Act July 31, 1946, struck out ''fix the amount and character of the surety bond required of any officer having custody of funds'' and inserted ''require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character to be determined, from time to time, by the board and authorize the payment of the premium or premiums therefor from the funds of the Federal credit union''.

Subsec. (d). Act July 31, 1946, struck out requirement that notice of meeting of the credit committee must be given by the treasurer and increased the maximum amount of an unsecured loan to a member from $100 to $300.

Subsec. (e). Act July 31, 1946, inserted last sentence defining ''passbook''.

1940—Subsec. (d). Act June 15, 1940, substituted ''$100'' for ''$50'' in fourth sentence.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof, generally, see notes set out under section 1751 of this title.

Functions of Governor of Farm Credit Administration under this section transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947.

§ 1761a. Officers of the board

At their first meeting after the annual meeting of the members, the directors shall elect from their number the board officers specified in the bylaws. Only one board officer may be compensated as an officer of the board and the bylaws shall specify such position as well as the specific duties of each of the board officers. The board shall elect from their number a financial officer who shall give adequate fidelity coverage in accordance with section 1761b(2) of this title.

(June 26, 1934, ch. 750, title I, §112, formerly §13, as added Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 632; amended Pub. L. 88–150, §2, Oct. 17, 1963, 77 Stat. 270; Pub. L. 91–206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §112, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97–320, title V, §521, Oct. 15, 1982, 96 Stat. 1531; Pub. L. 100–86, title VII, §704(a), Aug. 10, 1987, 101 Stat. 652.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 11(b) of act June 26, 1934, ch. 750, 48 Stat. 1219 (formerly classified to section 1761(b) of this title), prior to the amendment and renumbering of act June 26, 1934, by Pub. L. 86–354.

AMENDMENTS

1987—Pub. L. 100–86 inserted third sentence and struck out former third sentence which read as follows: ''The board shall elect from their number a financial officer who shall give bond with good and sufficient surety, in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the Board conditioned upon the faithful performance of the officer's trust.''

1982—Pub. L. 97–320 substituted provisions relating to the officers of the board for provisions which read: ''At their first meeting after the annual meeting of the members, the directors shall elect from their number a president, one or more vice presidents, a secretary, and a treasurer, who shall be the executive officers of the corporation. No executive officer, except the treasurer, shall be compensated as such. The offices of secretary and treasurer may be held by the same person. The duties of the officers shall be as determined by the bylaws. Before the treasurer shall enter upon his duties he shall give bond with good and sufficient surety, in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the Board, conditioned upon the faithful performance of his trust.''

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator''.

1970—Pub. L. 91–206 substituted ''Administrator'' for ''Director''.

1963—Pub. L. 88–150 struck out '', except that the treasurer shall be the general manager of the corporation'' after ''bylaws'' in fourth sentence.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1761b. Board of directors; meetings; powers and duties; executive committee; membership officers; membership application

The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the Federal credit union. Minutes of all meetings shall be kept. Among other things, the board of directors shall—

(1) act upon applications for membership or appoint membership officers from among the members of the credit union, other than the board member paid as an officer, the financial board officer, any assistant to the paid officer of the board or to the financial officer, or any loan officer;

(2) provide adequate fidelity coverage for officers and employees having custody of or handling funds according to regulations issued by the Board;

(3) fill vacancies on the board of directors until successors elected at the next annual meeting have qualified;

(4) if the bylaws provide for an elected credit committee, fill vacancies on the credit committee until successors elected at the next annual meeting have qualified;

(5) appoint the members of the supervisory committee and, if the bylaws so provide, appoint the members of the credit committee;

(6) have charge of investments including the right to designate an investment committee of not less than two to act on its behalf;

(7) determine the maximum number of shares, share certificates, and share draft accounts, and the classes of shares, share certificates, and share draft accounts;

(8) subject to any limitations of this subchapter,[1] determine the interest rates on

[1] See References in Text note below.

loans, the security, and the maximum amount which may be loaned and provided in lines of credit;

(9) authorize interest refunds to members of record at the close of business on the last day of any dividend period from income earned and received in proportion to the interest paid by them during that dividend period;

(10) if the bylaws so provide, appoint one or more loan officers and delegate to these officers the power to approve or disapprove loans, lines of credit, or advances from lines of credit;

(11) establish the par value of the share;

(12) subject to the limitations of this subchapter and the bylaws of the credit union, provide for the hiring and compensation of officers and employees;

(13) if the bylaws so provide, appoint an executive committee of not less than three directors to act on its behalf and any other committees to which it can delegate specific functions;

(14) prescribe conditions and limitations for any committee which it appoints;

(15) review at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting together with such other related information as it or the bylaws require;

(16) provide for the furnishing of the written reasons for any denial of a membership application to the applicant upon the written request of the applicant;

(17) in the absence of a credit committee, and upon the written request of a member, review a loan application denied by a loan officer;

(18) declare the dividend rate to be paid on shares, share certificates, and share draft accounts pursuant to the terms and conditions of section 1763 of this title;

(19) establish and maintain a system of internal controls consistent with the regulations of the Board;

(20) establish lending policies; and

(21) do all other things that are necessary and proper to carry out all the purposes and powers of the Federal credit union, subject to regulations issued by the Board.

(June 26, 1934, ch. 750, title I, §113, formerly §14, as added Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 632; amended Pub. L. 88–353, §3, July 2, 1964, 78 Stat. 269; Pub. L. 90–375, §1(4), July 5, 1968, 82 Stat. 284; Pub. L. 91–206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §113, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 93–383, title VII, §723, Aug. 22, 1974, 88 Stat. 719; Pub. L. 95–22, title III, §309, Apr. 19, 1977, 91 Stat. 53; Pub. L. 95–630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97–320, title V, §522, Oct. 15, 1982, 96 Stat. 1532; Pub. L. 97–457, §28, Jan. 12, 1983, 96 Stat. 2510; Pub. L. 100–86, title VII, §§704(b), 705, Aug. 10, 1987, 101 Stat. 652.)

REFERENCES IN TEXT

This subchapter, referred to in par. (8), probably should have been a reference to this title in the original, meaning title I of act June 26, 1934, ch. 750, which is classified generally to this subchapter.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 11(c) of act June 26, 1934, ch. 750, 48 Stat. 1219 (formerly classified to section 1761(c) of this title), prior to the amendment and renumbering of act June 26, 1934, by Pub. L. 86–354.

AMENDMENTS

1987—Par. (1). Pub. L. 100–86, §705, substituted ''of the credit union'' for ''of the board of directors''.

Par. (2). Pub. L. 100–86, §704(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character in compliance with regulations of the Board, and authorize the payment of the premium or premiums therefor from the funds of the Federal credit union;''.

1983—Pub. L. 97–457, §28(1), substituted ''direction'' for ''directions'' after ''shall have the general''.

Par. (2). Pub. L. 97–457, §28(2), substituted ''union'' for ''unions'' after ''Federal credit''.

Par. (9). Pub. L. 97–457, §28(3), inserted ''by'' after ''interest paid''.

Par. (15). Pub. L. 97–457, §28(4), substituted ''meeting'' for ''meetings'' after ''previous monthly''.

1982—Pub. L. 97–320, §522, substituted provisions relating to the board of directors, its meetings, powers, and duties, membership officers and membership applications, for provisions which read as follows: ''The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the corporation. Minutes of all such meetings shall be kept. Among other things they shall act upon applications for membership; require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the Board, and authorize the payment of the premium or premiums therefor from the funds of the Federal credit union; fill vacancies in the board and in the credit committee until successors elected at the next annual meeting have qualified; have charge of investments other than loans to members, except that the board may designate a committee of not less than two to act as an investment committee, such investment committee to have charge of making investments under rules and procedures established by the board of directors; determine from time to time the maximum number of shares and share certificates and the classes of shares and share certificates that may be held; subject to the limitations of this chapter, determine the interest rates on loans, the security, and the maximum amount which may be loaned or provided in lines of credit; subject to such regulations as may be issued by the Board, authorized an interest refund to members of record at the close of business on the last day of any dividend period in proportion to the interest paid by them during that dividend period; and provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee, and of loan officers appointed by the credit committee. The board may appoint an executive committee of not less than three directors to exercise such authority as may be delegated to it subject to such conditions and limitations as may be prescribed by the board. Such executive committee or one or more membership officers appointed by the board from among the members of the credit union, other than the treasurer, an assistant treasurer, or a loan officer, may be authorized by the board to approve applications for membership under such conditions as the board may prescribe; except that such committee or membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require. If a membership application is

denied, the reasons therefor shall be furnished in writing to the person whose application is denied, upon written request.''

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator'' in two places.

1977—Pub. L. 95–22 substituted ''and share certificates and the classes of shares and share certificates that may be held'' for ''that may be held by an individual'' and '', the security, and the maximum amount which may be loaned or provided in lines of credit'' for ''and the maximum amount which may be loaned with or without security to any member''.

1974—Pub. L. 93–383 inserted provisions authorizing designation of a committee of not less than two to act as an investment committee and provisions relating to denial of a membership application, substituted ''one or more membership officers'' for ''a membership officer'', and substituted provisions relating to exercise of authority by the executive committee for provisions setting forth specified functions of the executive committee.

1970—Pub. L. 91–206 substituted ''Administrator'' for ''Director'' in two places.

1968—Pub. L. 90–375 substituted ''the purchase and sale of securities, the borrowing of funds, and the making of loans to other credit unions'' for ''the purchase and sale of securities or the making of loans to other credit unions, or both''.

1964—Pub. L. 88–353 substituted ''the last day of any dividend period in proportion to the interest paid by them during that dividend period'' for ''December 31 in proportion to the interest paid by them during that year''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1761c. Credit committee

(a) Members; meetings; lines of credit and approval of loans; delegation to loan officers

If the bylaws provide for a credit committee, then pursuant to the provisions of the bylaws, the board of directors may appoint or the members may elect a credit committee which shall consist of an odd number of members of the credit union, but which shall not include more than one loan officer. The method used shall be set forth in the bylaws. The credit committee shall hold such meetings as the business of the Federal credit union may require, not less frequently than once a month, to consider applications for loans or lines of credit. Reasonable notice of such meetings shall be given to all members of the committee. Except for those loans or lines of credit required to be approved by the board of directors in section 1757(5) of this title, approval of an application shall be by majority of the committee who are present at the meeting at which it is considered provided that a majority of the full committee is present. The credit committee may appoint and delegate to loan officers the authority to approve applications.

(b) Review and reversal of loan refusals; review by board in lieu of committee; limitation on disbursements by loan officers

If the bylaws provide for a credit committee, all applications not approved by the loan officer shall be reviewed by the credit committee, and the approval of a majority of the members who are present at the meeting when such review is undertaken shall be required to reverse the loan officer's decision provided a majority of the full committee is present. If there is not a credit committee, a member shall have the right upon written request of review by the board of directors of a loan application which has been denied. No individual shall have authority to disburse funds of the Federal credit union with respect to any loan or line of credit for which the application has been approved by him in his capacity as a loan officer.

(June 26, 1934, ch. 750, title I, §114, formerly §15, as added Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 633; amended Pub. L. 88–353, §4, July 2, 1964, 78 Stat. 269; Pub. L. 90–188, §1, Dec. 13, 1967, 81 Stat. 567; Pub. L. 90–375, §1(5), July 5, 1968, 82 Stat. 284; Pub. L. 91–206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §114, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–22, title III, §304, Apr. 19, 1977, 91 Stat. 51; Pub. L. 95–630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97–320, title V, §523, Oct. 15, 1982, 96 Stat. 1533.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 11(d) of act June 26, 1934, ch. 750, 48 Stat. 1219 (formerly classified to section 1761(d) of this title), prior to the amendment and renumbering of act June 26, 1934 by Pub. L. 86–354.

AMENDMENTS

1982—Pub. L. 97–320 designated existing provisions as subsecs. (a) and (b), in subsec. (a) as so designated, inserted provisions relating to the membership of the committee and provisions requiring the majority of the full committee to be present for votes on lines of credit, struck out provision requiring each loan officer to report his action on an application in seven days of its filing, in subsec. (b) as so designated, inserted provisions relating to the number of members needed to reverse a loan officer's decision and provision for the case where there is no credit committee, and thereafter struck out provisions that not more than one member of the committee might be appointed as a loan officer, that applications for loans and lines of credit be made on forms prepared by such committee which set forth the security, if any, and such other data as required, that no loan may be made to any member if, upon the making of that loan, the member would have been indebted to the Federal credit union upon loans made to him in an aggregate amount which would exceed 10 per centum of the credit union's unimpaired capital and surplus, and that for the purposes of this section an assignment of shares or the endorsement of a note would be deemed security and, subject to such regulations as the Board prescribed, insurance obtained under title I of the National Housing Act [12 U.S.C. 1702 et seq.] would be deemed adequate security.

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator''.

1977—Pub. L. 95–22 substituted ''loans and lines of credit'' for ''loans'' in three places, ''Except for those loans or lines of credit required to be approved by the board of directors in section 1757(5) of this title, approval of an application shall be'' for ''No loan shall be made unless it is approved'', ''application approved'' for ''loan approved'', ''applications not approved'' for ''loans not approved'', and ''with respect to any loan or line of credit for which the application'' for ''for any loan which'' and struck out ''the purpose for which the loan is desired'' after ''which shall set forth'', ''$200 or'' after ''amount which would exceed'', ''whichever is greater'' after ''capital and surplus'', and provision relating to requirement that no unsecured loan be made to a member which would make the member indebted to the Federal credit union in excess of a specified amount.

1970—Pub. L. 91–206 substituted ''Administrator'' for ''Director''.

1968—Pub. L. 90–375 substituted provisions which increased the unsecured loan limit, in the case of a credit union whose unimpaired capital and surplus is less than $8,000 to $200, and, in the case of any other credit union to $2,500 or 2½% of the unimpaired capital and surplus, whichever is less, for provisions which authorized credit unions to make unsecured loans of $750 or 10% of their unimpaired capital and surplus, whichever is smaller.

1967—Pub. L. 90–188 struck out ''up to the unsecured limit, or in excess of such limit if such excess is fully secured by unpledged shares'' from end of provision that credit committees may appoint one or more loan officers, and delegate to him or them the power to approve loans.

1964—Pub. L. 88–353 inserted ''and, subject to such regulations as the Director may prescribe, insurance obtained under title I of the National Housing Act shall be deemed adequate security''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630 set out as a note under section 1752 of this title.

§ 1761d. Supervisory committee; powers and duties; suspension of members; passbook

The supervisory committee shall make or cause to be made an annual audit and shall submit a report of that audit to the board of directors and a summary of the report to the members at the next annual meeting of the credit union; shall make or cause to be made such supplementary audits as it deems necessary or as may be ordered by the Board, and submit reports of the supplementary audits to the board of directors; may by a unanimous vote suspend any officer of the credit union or any member of the credit committee or of the board of directors, until the next members' meeting, which shall be held not less than seven or more than fourteen days after any such suspension, at which meeting any such suspension shall be acted upon by the members; and may call by a majority vote a special meeting of the members to consider any violations of this chapter, the charter, or the bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized. Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members shall decide, at a meeting held not less than seven nor more than fourteen days after any such suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee. The supervisory committee shall cause the passbooks and accounts of the members to be verified with the records of the treasurer from time to time, and not less frequently than once every two years. As used in this section, the term ''passbook'' shall include any book, statement of account, or other record approved by the Board for use by Federal credit unions.

(June 26, 1934, ch. 750, title I, § 115, formerly § 16, as added Pub. L. 86–354, § 1, Sept. 22, 1959, 73 Stat. 633; amended Pub. L. 90–375, § 1(6), (7), July 5, 1968, 82 Stat. 284, 285; Pub. L. 91–206, § 2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, § 115, Pub. L. 91–468, § 1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 93–383, title VII, § 724, Aug. 22, 1974, 88 Stat. 719; Pub. L. 95–630, title V, § 502(b), Nov. 10, 1978, 92 Stat. 3681.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 11(e) of act June 26, 1934, ch. 750, 48 Stat. 1219 (formerly classified to section 1761(e) of this title), prior to the amendment and renumbering of act June 26, 1934 by Pub. L. 86–354.

AMENDMENTS

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator''.

1974—Pub. L. 93–383 substituted ''an annual'' for ''a semiannual''.

1970—Pub. L. 91–206 substituted ''Administrator'' for ''Director'' in two places.

1968—Pub. L. 90–375 substituted provisions which required a semiannual audit for provisions which required a quarterly examination of the affairs of a Federal credit union, including an audit of the books, authorized the making of such supplementary audits as deemed necessary by the supervisory committee or as ordered by the Director, eliminated the requirement of an annual audit, and provided that the suspension of any member of the supervisory committee be pursuant to a majority vote of the board of directors.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1762. Repealed. Pub. L. 105–219, title III, § 301(g)(3), Aug. 7, 1998, 112 Stat. 931

Section, acts June 26, 1934, ch. 750, title I, § 116, formerly § 12, 48 Stat. 1221; Oct. 25, 1949, ch. 713, § 3, 63 Stat. 890; renumbered § 17 and amended Pub. L. 86–354, § 1, Sept. 22, 1959, 73 Stat. 634; Pub. L. 91–206, § 2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, § 116, and amended Pub. L. 91–468, §§ 1(2), 9, Oct. 19, 1970, 84 Stat. 994, 1017; Pub. L. 95–22, title III, § 305, Apr. 19, 1977, 91 Stat. 52; Pub. L. 95–630, title V, § 502(b), Nov. 10, 1978, 92 Stat. 3681, related to requirement of reserves against losses and authorization of Board to decrease reserve requirement or to require special reserves. See section 1790d(e) of this title.

§ 1763. Dividends

At such intervals as the board of directors may authorize, and after provision for required reserves, the board of directors may declare a dividend to be paid at different rates on different types of shares, at different rates and maturity dates in the case of share certificates, and at different rates on different types of share draft accounts. Dividends credited may be accrued on various types of shares, share certificates, and share draft accounts as authorized by the board of directors. If the par value of a share exceeds $5, dividends shall be paid on all funds in the regular share account once a full share has been purchased.

(June 26, 1934, ch. 750, title I, § 117, formerly § 13, 48 Stat. 1221; renumbered § 18 and amended Pub. L. 86–354, § 1, Sept. 22, 1959, 73 Stat. 634; Pub. L. 90–188, § 2, Dec. 13, 1967, 81 Stat. 567; renumbered title I, § 117, Pub. L. 91–468, § 1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 93–383, title VII, § 725, Aug. 22, 1974, 88 Stat. 720; Pub. L. 95–22, title III, § 310, Apr. 19, 1977, 91 Stat. 53; Pub. L. 95–630, title V, § 502(b), Nov. 10, 1978, 92 Stat. 3681; Pub.

L. 96–221, title II, § 207(b)(10), title III, § 305(c), Mar. 31, 1980, 94 Stat. 144, 147; Pub. L. 97–320, title V, § 524, Oct. 15, 1982, 96 Stat. 1534.)

AMENDMENTS

1982—Pub. L. 97–320 substituted ''the board of directors may declare'' for ''the board may declare'' and ''Dividends credited'' for ''Dividend credit'', and inserted provision that if the par value of a share exceeds $5, dividends shall be paid on all funds in the regular share account once a full share has been published.

1980—Pub. L. 96–221, § 207(b)(10), struck out '', pursuant to such regulations as may be issued by the Board,'' after ''declare''.

Pub. L. 96–221, § 305(c), inserted provisions relating to share draft accounts.

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator''.

1977—Pub. L. 95–22 substituted ''the board may declare, pursuant to such regulations as may be issued by the Administrator, a dividend to be paid at different rates on different types of shares and at different rates and maturity dates in the case of share certificates'' for ''the board of directors may declare a dividend to be paid from the remaining net earnings'' and ''accrued on various types of shares and share certificates'' for ''accrued on shares'' and struck out provision that such dividends shall be paid on all paid-up shares outstanding at the end of the period for which the dividend is declared and provision that shares which become fully paid up during such dividend period and are outstanding at the close of the period shall be entitled to a proportional part of such dividend.

1974—Pub. L. 93–383 substituted ''At such intervals as the board of directors may authorize'' for ''Annually, semiannually, or quarterly, as the bylaws may provide'', and ''Dividend credit may be accrued on shares as authorized by the board of directors'' for ''Dividend credit for a month may be accrued on shares which are or become fully paid up during the first ten days of that month''.

1967—Pub. L. 90–188 inserted ''or quarterly'' after ''semiannually'' and substituted ''ten'' for ''five''.

1959—Pub. L. 86–354 authorized semiannual dividends, empowered the board of directors to declare them instead of only recommend them, and provided for dividend credit.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 207(b) of Pub. L. 96–221 provided in part that the amendment made by that section is effective 6 years after Mar. 31, 1980.

Amendment by section 305(c) of Pub. L. 96–221 effective at close of Mar. 31, 1980, see section 306 of Pub. L. 96–221, set out as a note under section 371a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1764. Expulsion and withdrawal

(a) Expulsion by two-thirds vote

Except as provided in subsection (b) of this section, a member may be expelled by a two-thirds vote of the members of a Federal credit union present at a special meeting called for the purpose, but only after opportunity has been given him to be heard.

(b) Expulsion based on nonparticipation

The board of directors of a Federal credit union may, by majority vote of a quorum of directors, adopt and enforce a policy with respect to expulsion from membership based on nonparticipation by a member in the affairs of the credit union. In establishing its policy, the board should consider a member's failure to vote in annual credit union elections or failure to purchase shares from, obtain a loan from, or lend to the Federal credit union. If such a policy is adopted, written notice of the policy as adopted and the effective date of such policy shall be mailed to each member of the credit union at the member's current address appearing on the records of the credit union not less than thirty days prior to the effective date of such policy. In addition, each new member shall be provided written notice of any such policy prior to or upon applying for membership.

(c) Liability to credit union

Withdrawal or expulsion of a member pursuant to either subsection (a) or (b) of this section shall not operate to relieve him from liability to the Federal credit union. The amount to be paid a withdrawing or expelled member by a Federal credit union shall be determined and paid in a manner specified in the bylaws.

(June 26, 1934, ch. 750, title I, § 118, formerly § 14, 48 Stat. 1221; renumbered § 19, Pub. L. 86–354, § 1, Sept. 22, 1959, 73 Stat. 634; renumbered title I, § 118, Pub. L. 91–468, § 1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 97–320, title V, § 525, Oct. 15, 1982, 96 Stat. 1534; Pub. L. 100–86, title VII, § 706, Aug. 10, 1987, 101 Stat. 653.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–86, § 706(1), substituted ''Except as provided in'' for ''Subject to''.

Subsec. (b). Pub. L. 100–86, § 706(2), inserted ''and enforce'' after ''adopt''.

1982—Pub. L. 97–320 designated existing provisions as subsecs. (a) and (c) and added subsec. (b).

§ 1765. Minors

Shares may be issued in the name of a minor or in trust, subject to such conditions as may be prescribed by the bylaws. When shares are issued in trust, the name of the beneficiary shall be disclosed to the Federal credit union.

(June 26, 1934, ch. 750, title I, § 119, formerly § 15, 48 Stat. 1221; renumbered § 20, and amended Pub. L. 86–354, § 1, Sept. 22, 1959, 73 Stat. 634; renumbered title I, § 119, Pub. L. 91–468, § 1(2), Oct. 19, 1970, 84 Stat. 994.)

AMENDMENTS

1959—Pub. L. 86–354 substituted ''When shares are issued in trust, the'' for ''The'' in second sentence.

§ 1766. Powers of Board

(a) The Board may prescribe rules and regulations for the administration of this chapter (including, but not by way of limitation, the merger, consolidation, and dissolution of corporations organized under this chapter). Any central credit union chartered by the Board shall be subject to such rules, regulations, and orders as the Board deems appropriate and, except as otherwise specifically provided in such rules, regulations, or orders, shall be vested with or subject to the same rights, privileges, duties, restrictions, penalties, liabilities, conditions, and limitations that would apply to all Federal credit unions under this chapter.

(b)(1) The Board may suspend or revoke the charter of any Federal credit union, or place the same in involuntary liquidation and appoint a liquidating agent therefor, upon its finding that the organization is bankrupt or insolvent, or has violated any of the provisions of its charter, its bylaws, this chapter, or any regulations issued thereunder.

(2) The Board, through such persons as it shall designate, may examine any Federal credit union in voluntary liquidation and, upon its finding that such voluntary liquidation is not being conducted in an orderly or efficient manner or in the best interests of its members, may terminate such voluntary liquidation and place such organization in involuntary liquidation and appoint a liquidating agent therefor.

(3) Such liquidating agent shall have power and authority, subject to the control and supervision of the Board and under such rules and regulations as the Board may prescribe, (A) to receive and take possession of the books, records, assets, and property of every description of the Federal credit union in liquidation, to sell, enforce collection of, and liquidate all such assets and property, to compound all bad or doubtful debts, and to sue in his own name or in the name of the Federal credit union in liquidation, and defend such actions as may be brought against him as liquidating agent or against the Federal credit union; (B) to receive, examine, and pass upon all claims against the Federal credit union in liquidation, including claims of members on member accounts; (C) to make distribution and payment to creditors and members as their interests may appear; and (D) to execute such documents and papers and to do such other acts and things which he may deem necessary or desirable to discharge his duties hereunder.

(4) Subject to the control and supervision of the Board and under such rules and regulations as the Board may prescribe, the liquidating agent of a Federal credit union in involuntary liquidation shall (A) cause notice to be given to creditors and members to present their claims and make legal proof thereof, which notice shall be published once a week in each of three successive weeks in a newspaper of general circulation in each county in which the Federal credit union in liquidation maintained an office or branch for the transaction of business on the date it ceased unrestricted operations; except that whenever the aggregate book value of the assets and property of a Federal credit union in involuntary liquidation is less than $1,000, unless the Board shall find that its books and records do not contain a true and accurate record of its liabilities he shall declare such Federal credit union in liquidation to be a ''no publication'' liquidation, and publication of notice to creditors and members shall not be required in such case; (B) from time to time make a ratable dividend on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction and, after the assets of such organization have been liquidated, make further dividends on all claims previously proved or adjudicated, and he may accept in lieu of a formal proof of claim on behalf of any creditor or member the statement of any amount due to such creditor or member as shown on the books and records of the credit union; but all claims not filed before payment of the final dividend shall be barred and claims rejected or disallowed by the liquidating agent shall be likewise barred unless suit be instituted thereon within three months after notice of rejection or disallowance; and (C) in a ''no publication'' liquidation, determine from all sources available to him, and within the limits of available funds of the Federal credit union, the amounts due to creditors and members, and after sixty days shall have elapsed from the date of his appointment distribute the funds of the Federal credit union to creditors and members ratably and as their interests may appear.

(5) Upon certification by the liquidating agent in the case of an involuntary liquidation, and upon such proof as shall be satisfactory to the Board in the case of a voluntary liquidation, that distribution has been made and that liquidation has been completed, as provided herein, the Board shall cancel the charter of such Federal credit union; but the corporate existence of the Federal credit union shall continue for a period of three years from the date of such cancellation of its charter, during which period the liquidating agent, or his duly appointed successor, or such persons as the Board shall designate, may act on behalf of the Federal credit union for the purpose of paying, satisfying, and discharging any existing liabilities or obligations, collecting and distributing its assets, and doing all other acts required to adjust and wind up its business and affairs, and it may sue and be sued in its corporate name.

(c) After the expiration of five years from the date of cancellation of the charter of a Federal credit union the Board may, in its discretion, destroy any or all books and records of such Federal credit union in its possession or under its control.

(d) The Board is authorized and empowered to execute any and all functions and perform any and all duties vested in it hereby, through such persons as it shall designate or employ; and it may delegate to any person or persons, including any institution operating under the general supervision of the Administration, the performance and discharge of any authority, power, or function vested in it by this chapter.

(e) All books and records of Federal credit unions shall be kept and reports shall be made in accordance with forms approved by the Board.

(f)(1) The Board is authorized to make investigations and to conduct researches and studies of the problems of persons of small means in obtaining credit at reasonable rates of interest, and of the methods and benefits of cooperative saving and lending among such persons. It is further authorized to make reports of such investigations and to publish and disseminate the same.

(2)(A) The Board is authorized to conduct directly, or to make grants to or contracts with colleges or universities, State or local educational agencies, or other appropriate public or private nonprofit organizations to conduct, programs for the training of persons engaged, or preparing to engage, in the operation of credit

unions and in related consumer counseling programs, serving the poor. It is authorized to establish a program of experimental, developmental, demonstration, and pilot projects, either directly or by grants to public or private nonprofit organizations, including credit unions, or by contracts with such organizations or other private organizations, designed to promote more effective operation of credit unions, and related consumer counseling programs, serving the poor.

(B) In carrying out its authority under this paragraph, the Board shall consult with officials of the Office of Economic Opportunity and other appropriate Federal agencies responsible for the administration of projects or programs concerned with problems of the poor. The development and operation of programs and projects under this paragraph shall involve maximum feasible participation of residents of the areas and members of the groups served by such programs and projects, with community action agencies established under the provisions of the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] serving, to the extent feasible, as the means through which such participation is achieved.

(C) In order to carry out the purposes of this paragraph, there is authorized to be appropriated, as a supplement to any funds that may be expended by the Board pursuant to sections 1755 and 1756 of this title for such purposes, not to exceed $300,000 for the fiscal year ending June 30, 1970, and not to exceed $1,000,000 for the fiscal year ending June 30, 1971.

(g) Any officer or employee of the Administration is authorized, when designated for the purpose by the Board, to administer oaths and affirmations and to take affidavits and depositions touching upon any matter within the jurisdiction of the Administration.

(h) The Board is authorized, empowered, and directed to require that every person appointed or elected by any Federal credit union to any position requiring the receipt, payment, or custody of money or other personal property owned by a Federal credit union, or in its custody or control as collateral or otherwise, give bond in a corporate surety company holding a certificate of authority from the Secretary of the Treasury under chapter 93 of title 31, as an acceptable surety on Federal bonds. Any such bond or bonds shall be in a form approved by the Board with a view to providing surety coverage to the Federal credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction, or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Board may determine to be reasonably appropriate or as elsewhere required by this chapter. Any such bond or bonds shall be in such an amount in relation to the money or other personal property involved or in relation to the assets of the Federal credit union as the Board may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. In lieu of individual bonds the Board may approve the use of a form of schedule or blanket bond which covers all of the officers and employees of a Federal credit union whose duties include the receipt, payment, or custody of money or other personal property for or on behalf of the Federal credit union. The Board may also approve the use of a form of excess coverage bond whereby a Federal credit union may obtain an amount of coverage in excess of the basic surety coverage.

(i) In addition to the authority conferred upon it by other sections of this chapter, the Board is authorized in carrying out its functions under this chapter—

(1) to appoint such personnel as may be necessary to enable the Administration to carry out its functions;

(2) to expend such funds, enter into such contracts with public and private organizations and persons, make such payments in advance or by way of reimbursement, acquire and dispose of, by lease or purchase, real or personal property, without regard to the provisions of any other law applicable to executive or independent agencies of the United States, and perform such other functions or acts as it may deem necessary or appropriate to carry out the provisions of this chapter, in accordance with the rules and regulations or policies established by the Board not inconsistent with this chapter; and

(3) to pay stipends, including allowances for travel to and from the place of residence, to any individual to study in a program assisted under this chapter upon a determination by the Board that assistance to such individual in such studies will be in furtherance of the purposes of this chapter.

(j) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The Board shall fix the compensation and number of, and appoint and direct, employees of the Board. Rates of basic pay for employees of the Board may be set and adjusted by the Board without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5.

(2) ADDITIONAL COMPENSATION AND BENEFITS.—The Board may provide additional compensation and benefits to employees of the Board if the same type of compensation or benefits are then being provided by any other Federal bank regulatory agency or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees of the Board, the Board shall seek to maintain comparability with other Federal bank regulatory agencies.

(3) FUNDING.—The salaries and expenses of the Board and employees of the Board shall be paid from fees and assessments (including income earned on insurance deposits) levied on insured credit unions under this chapter.

(June 26, 1934, ch. 750, title I, §120, formerly §16, 48 Stat. 1221; Dec. 6, 1937, ch. 3, §3, 51 Stat. 4; July 31, 1946, ch. 711, §8, 60 Stat. 745; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; June 30, 1954, ch. 426, §2, 68 Stat. 336; Aug. 24, 1954, ch. 905, §3, 68 Stat. 792; renumbered §21 and amended Pub. L. 86–354, §1, Sept. 22, 1959, 73

Stat. 635; Pub. L. 90–375, § 2(a), July 5, 1968, 82 Stat. 285; Pub. L. 91–206, §§ 2(1), (3), 4, Mar. 10, 1970, 84 Stat. 49, 50; renumbered title I, § 120, Pub. L. 91–468, § 1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–22, title III, § 306, Apr. 19, 1977, 91 Stat. 52; Pub. L. 95–630, title V, § 502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97–320, title V, § 526, Oct. 15, 1982, 96 Stat. 1535; Pub. L. 100–86, title VII, § 707, Aug. 10, 1987, 101 Stat. 653; Pub. L. 101–73, title XII, § 1203, Aug. 9, 1989, 103 Stat. 520; Pub. L. 101–144, title III, Nov. 9, 1989, 103 Stat. 864; Pub. L. 103–325, title I, § 120(a), Sept. 23, 1994, 108 Stat. 2188; Pub. L. 109–351, title VII, § 726(10), Oct. 13, 2006, 120 Stat. 2002.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in subsec. (f)(2)(B), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended, which was classified generally to chapter 34 (§ 2701 et seq.) of Title 42, The Public Health and Welfare, prior to repeal, except for titles VIII and X, by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. Titles VIII and X of the Act are classified generally to subchapters VIII (§ 2991 et seq.) and X (§ 2996 et seq.) of chapter 34 of Title 42. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2006—Subsec. (h). Pub. L. 109–351 substituted ''chapter 93 of title 31'' for ''the Act approved July 30, 1947 (6 U.S.C., secs. 6–13)''.

1994—Subsec. (k). Pub. L. 103–325 struck out subsec. (k) which read as follows: ''Notwithstanding any other provision of law, the Board may exercise the authority granted it by the Community Development Credit Union Revolving Loan Fund Transfer Act (Public Law 99–609, sec. 1, Nov. 6, 1986, 100 Stat. 3475) subject only to the rules and regulations prescribed by the Board.''

1989—Subsec. (j). Pub. L. 101–73 added subsec. (j).

Subsec. (k). Pub. L. 101–144 added subsec. (k).

1987—Subsec. (i)(2). Pub. L. 100–86 inserted ''acquire and dispose of, by lease or purchase, real or personal property, without regard to the provisions of any other law applicable to executive or independent agencies of the United States,'' after ''reimbursement,'' and '', in accordance with the rules and regulations or policies established by the Board not inconsistent with this chapter'' after ''this chapter''.

1982—Subsec. (a). Pub. L. 97–320 inserted provisions relating to the special authority of the Board over a central credit union, and such a union's general prerogatives and liabilities.

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator'' wherever appearing; and ''it'', ''them'', and ''its'' for ''he'', ''him'', and ''his'', respectively, where appropriate.

1977—Subsec. (b)(3)(B). Pub. L. 95–22 substituted ''member accounts'' for ''shares''.

1970—Subsecs. (a) to (h). Pub. L. 91–206, § 2(1), (3), substituted ''Administrator'' for ''Director'' and ''Administration'' for ''Bureau'' wherever appearing.

Subsec. (i). Pub. L. 91–206, § 4, added subsec. (i).

1968—Subsec. (f). Pub. L. 90–375 redesignated existing provisions as par. (1) and added par. (2).

1959—Pub. L. 86–354 made capitalization, punctuation and phraseological changes throughout text; redesignated, in subsec. (b)(3), cls. (i) to (iv) as (A) to (D) and corrected in cl. (A) the final ''cerdit'' to read ''credit''; redesignated, in subsec. (b)(4), cls. (i) to (iii) as cls. (A) to (C); and redesignated the second subsec. (b) and subsecs. (c) to (g) as (c) to (h), respectively.

1954—Subsec. (f). Act June 30, 1954, added subsec. (f).

Subsec. (g). Act Aug. 24, 1954, added subsec. (g).

1946—Subsec. (b). Act July 31, 1946, provided a more adequate statutory procedure for the administration of this chapter by expressly authorizing the liquidation of a Federal credit union and setting up a procedure which will achieve more orderly and complete liquidation.

1937—Subsec. (e). Act Dec. 6, 1937, added subsec. (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 2(b) of Pub. L. 90–375 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective July 1, 1968.''

§ 1767. Fiscal agents and depositories; authorization to secure deposits by governmental bodies

(a) Each Federal credit union organized under this chapter, when requested by the Secretary of the Treasury, shall act as fiscal agent of the United States and shall perform such services as the Secretary of the Treasury may require in connection with the collection of taxes and other obligations due the United States and the lending, borrowing, and repayment of money by the United States, including the issue, sale, redemption, or repurchase of bonds, notes, Treasury certificates of indebtedness, or other obligations of the United States; and to facilitate such purposes the Board shall furnish to the Secretary of the Treasury from time to time the names and addresses of all Federal credit unions with such other available information concerning them as may be requested by the Secretary of the Treasury. Any Federal credit union organized under this chapter, when designated for that purpose by the Secretary of the Treasury, shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary of the Treasury.

(b) Any Federal credit union, upon the deposit with it of any funds by the Federal Government, an Indian tribe, or any State or local government or political subdivision thereof as otherwise authorized by this chapter, is authorized to pledge any of its assets securing the payment of the funds so deposited.

(June 26, 1934, ch. 750, title I, § 121, formerly § 17, 48 Stat. 1222; 1947, Reorg. Plan No. 1, § 401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§ 1, 2, 62 Stat. 1091; renumbered § 22, Pub. L. 86–354, § 1, Sept. 22, 1959, 73 Stat. 637; amended Pub. L. 91–206, § 2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, § 121, Pub. L. 91–468, § 1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–630, title V, § 502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 100–86, title VII, § 716, Aug. 10, 1987, 101 Stat. 656.)

AMENDMENTS

1987—Pub. L. 100–86 designated existing provisions as subsec. (a) and added subsec. (b).

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator''.

1970—Pub. L. 91–206 substituted ''Administrator'' for ''Director''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof, generally, see notes set out under section 1751 of this title.

Functions of Governor of Farm Credit Administration under this section transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947.

§ 1768. Taxation

The Federal credit unions organized hereunder, their property, their franchises, capital, reserves, surpluses, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property of such Federal credit unions shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed. Nothing herein contained shall prevent holdings in any Federal credit union organized hereunder from being included in the valuation of the personal property of the owners or holders thereof in assessing taxes imposed by authority of the State or political subdivision thereof in which the Federal credit union is located; but the duty or burden of collecting or enforcing the payment of such a tax shall not be imposed upon any such Federal credit union and the tax shall not exceed the rate of taxes imposed upon holdings in domestic credit unions.

(June 26, 1934, ch. 750, title I, §122, formerly §18, 48 Stat. 1222; Dec. 6, 1937, ch. 3, §4, 51 Stat. 4; renumbered §23 and amended Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 637; renumbered title I, §122, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994.)

AMENDMENTS

1959—Pub. L. 86–354 substituted ''but'' for ''*Provided, however*, That'' and inserted ''a'' before ''tax''.

1937—Act Dec. 6, 1937, inserted tax exemption provision, the real and tangible personal property proviso, provided that responsibility of tax collection would not be imposed upon Federal credit unions, and that tax rate would not exceed that of domestic credit unions.

§ 1769. Separability; right to alter, amend, or repeal chapter

(a) If any provision of this chapter or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) The right to alter, amend, or repeal this chapter or any part thereof, or any charter issued pursuant to the provisions of this chapter, is expressly reserved.

(June 26, 1934, ch. 750, title I, §123, formerly §24, as added Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 637; renumbered title I, §123, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994.)

PRIOR PROVISIONS

A prior section 1769, act June 26, 1934, ch. 750, §19, 48 Stat. 1222, made available not more than $50,000 of the funds available to the Governor, under section 1404 of this title, for administrative expenses in administering this chapter, prior to the amendment of act June 26, 1934, by Pub. L. 86–354.

Provisions similar to those comprising this section were contained in section 20 of act June 26, 1934, ch. 750, 48 Stat. 1222 (formerly classified to section 1770 of this title), prior to the amendment and renumbering of act June 26, 1934, by Pub. L. 86–354.

§ 1770. Allotment of space in Federal buildings or Federal land

Notwithstanding any other provision of law, upon application by any credit union organized under State law or by any Federal credit union organized in accordance with the terms of this chapter, which application shall be addressed to the officer or agency of the United States charged with the allotment of space on lands reserved for the use of, and under the exclusive or concurrent jurisdiction of, the United States or in the Federal buildings in the community or district in which such credit union does business, such officer or agency may in his or its discretion lease land or allot space to such credit union without charge for rent or services if at least 95 percent of the membership of the credit union to be served by the allotment of space or the facility built on the lease land is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families, and if space is available. For the purpose of this section, the term ''services'' includes, but is not limited to, the providing of lighting, heating, cooling, electricity, office furniture, office machines and equipment, telephone service (including installation of lines and equipment and other expenses associated with telephone service), and security systems (including installation and other expenses associated with security systems). Where there is an agreement for the payment of costs associated with the provision of space or services, nothing in title 31 or any other provision of law, shall be construed to prohibit or restrict payment by reimbursement to the miscellaneous receipts or other appropriate account of the Treasury.

(June 26, 1934, ch. 750, title I, §124, formerly §25, as added Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 638; renumbered title I, §124, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 97–320, title V, §515, Oct. 15, 1982, 96 Stat. 1530; Pub. L. 97–457, §27, Jan. 12, 1983, 96 Stat. 2510; Pub. L. 103–160, div. B, title XXVIII, §2854, Nov. 30, 1993, 107 Stat. 1908; Pub. L. 103–337, div. A, title X, §1070(b)(12), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 109–351, title V, §501, Oct. 13, 2006, 120 Stat. 1974.)

PRIOR PROVISIONS

A prior section 1770, act June 26, 1934, ch. 750, §20, 48 Stat. 1222, related to separability of provisions and right to alter, amend, or repeal chapter, prior to the amendment of act June 26, 1934, by Pub. L. 86–354. See section 1769 of this title.

Provisions similar to those comprising this section were contained in section 21 of act June 26, 1934, ch. 750, as added July 9, 1937, ch. 471, 50 Stat. 487 (formerly classified to section 1771 of this title), prior to the amendment and renumbering of act June 26, 1934, by Pub. L. 86–354.

AMENDMENTS

2006—Pub. L. 109–351, in section catchline, inserted ''or Federal land'' after ''buildings'' and, in text, sub-

stituted ''Notwithstanding any other provision of law, upon application by any credit union'' for ''Upon application by any credit union'' and inserted ''on lands reserved for the use of, and under the exclusive or concurrent jurisdiction of, the United States or'' after ''officer or agency of the United States charged with the allotment of space'', ''lease land or'' after ''such officer or agency may in his or its discretion'', and ''or the facility built on the lease land'' after ''credit union to be served by the allotment of space''.

1994—Pub. L. 103–337 made technical correction to Pub. L. 103–160, § 2854(1). See 1993 Amendment note below.

1993—Pub. L. 103–160, § 2854(2), substituted ''allot space to such credit union without charge for rent or services if at least 95 percent of the membership of the credit union to be served by the allotment of space is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families, and if space is available.'' for ''allot space to such credit union if space is available without charge for rent or services.''

Pub. L. 103–160, § 2854(1), as amended by Pub. L. 103–337, struck out ''at least 95 per centum of the membership of which is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families,'' after ''terms of this chapter''.

1983—Pub. L. 97–457 inserted ''of'' after ''including installation''.

1982—Pub. L. 97–320 inserted definition of ''services'', and provided that where there is an agreement for the payment of costs associated with the provision of space or services, nothing in title 31 or any other provision of law shall be construed to prohibit or restrict payment by reimbursement to the miscellaneous receipts or other appropriate account of the Treasury.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(b) of Pub. L. 103–337 provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as enacted.

§ 1771. Conversion from Federal to State credit union and from State to Federal credit union

(a) A Federal credit union may be converted into a State credit union under the laws of any State, the District of Columbia, the several Territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, by complying with the following requirements:

(1) The proposition for such conversion shall first be approved, and a date set for a vote thereon by the members (either at a meeting to be held on such date or by written ballot to be filed on or before such date), by a majority of the directors of the Federal credit union. Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty nor less than seven days prior to such date. Approval of the proposition for conversion shall be by the affirmative vote of a majority of the members of the credit union who vote on the proposal. The written notice of the proposition shall in boldface type state that the issue will be decided by a majority of the members who vote.

(2) A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the Administration within ten days after the vote is taken.

(3) Promptly after the vote is taken and in no event later than ninety days thereafter, if the proposition for conversion was approved by such vote, the credit union shall take such action as may be necessary under the applicable State law to make it a State credit union, and within ten days after receipt of the State credit union charter there shall be filed with the Administration a copy of the charter thus issued. Upon such filing the credit union shall cease to be a Federal credit union.

(4) Upon ceasing to be a Federal credit union, such credit union shall no longer be subject to any of the provisions of this chapter. The successor State credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the Federal credit union to the same extent as though the conversion had not taken place.

(b)(1) A State credit union, organized under the laws of any State, the District of Columbia, the several Territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, may be converted into a Federal credit union by (A) complying with all State requirements requisite to enabling it to convert to a Federal credit union or to cease being a State credit union, (B) filing with the Administration proof of such compliance, satisfactory to the Board, and (C) filing with the Administration an organization certificate as required by this chapter.

(2) When the Board has been satisfied that all of such requirements, and all other requirements of this chapter, have been complied with, the Board shall approve the organization certificate. Upon such approval, the State credit union shall become a Federal credit union as of the date it ceases to be a State credit union. The Federal credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the State credit union to the same extent as though the conversion had not taken place.

(June 26, 1934, ch. 750, title I, § 125, formerly § 26, as added Pub. L. 86–354, § 1, Sept. 22, 1959, 73 Stat. 638; amended Pub. L. 91–206, § 2(1), (3), Mar. 10, 1970, 84 Stat. 49; renumbered title I, § 125, Pub. L. 91–468, § 1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–630, title V, § 502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97–320, title V, § 527, Oct. 15, 1982, 96 Stat. 1535.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

PRIOR PROVISIONS

A prior section 1771, act June 26, 1934, ch. 750, § 21, as added July 9, 1937, ch. 471, 50 Stat. 487, related to allotment of space in Federal buildings, prior to the amendment of act June 26, 1934, by Pub. L. 86–354. See section 1770 of this title.

AMENDMENTS

1982—Subsec. (a)(1). Pub. L. 97–320 substituted ''of the credit union who vote on the proposal'' for '', in person

or in writing'', and inserted provision that the written notice of the proposition shall in boldface type state that the issue will be decided by a majority of the members who vote.

1978—Subsec. (b). Pub. L. 95–630 substituted ''Board'' for ''Administrator'' in two places.

1970—Pub. L. 91–206 substituted ''Administration'' for ''Bureau'' and ''Administrator'' for ''Director'' wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1772. Territorial application of chapter

The provisions of this chapter shall apply to the several States, the District of Columbia, the several Territories, including the trust territories, and possessions of the United States, the Panama Canal Zone, and the Commonwealth of Puerto Rico.

(June 26, 1934, ch. 750, title I, § 126, formerly § 22, as added July 31, 1946, ch. 711, § 7, 60 Stat. 745; amended May 8, 1952, ch. 245, 66 Stat. 66, renumbered § 27 and amended Pub. L. 86–354, § 1, Sept. 22, 1959, 73 Stat. 638; renumbered title I, § 126, Pub. L. 91–468, § 1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 93–383, title VII, § 726, Aug. 22, 1974, 88 Stat. 720.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1974—Pub. L. 93–383 inserted reference to trust territories.

1959—Pub. L. 86–354 provided for application of chapter to the States, the District of Columbia, the Territories and possessions of the United States and Puerto Rico and struck out specific reference to the Virgin Islands.

1952—Act May 8, 1952, amended section to extend provisions of this chapter to the Virgin Islands.

§ 1772a. Gifts; acceptance of conditional gifts; deposit

The Board is authorized to accept gifts of money made unconditionally by will or otherwise for the carrying out of any of the functions under this chapter. A conditional gift of money made by will or otherwise for such purposes may be accepted and used in accordance with its conditions, but no such gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from income thereof unless the Board determines that supplementation of such gift from the fees it may expend pursuant to sections 1755 and 1756 of this title or from any funds appropriated pursuant to section 1766(f)(2)(C) of this title for the purpose of making such expenditure will not adversely affect the sound administration of this chapter. Any such gift shall be deposited in the Treasury of the United States for the account of the Administration and may be expended in accordance with section 1755 of this title or as provided in the preceding sentence.

(June 26, 1934, ch. 750, title I, § 127, formerly § 28, as added Pub. L. 90–375, § 3, July 5, 1968, 82 Stat. 285; amended Pub. L. 91–206, § 2(1), (3), Mar. 10, 1970, 84 Stat. 49; renumbered title I, § 127, Pub. L. 91–468, § 1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–630, title V, § 502(b), Nov. 10, 1978, 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator'' in two places, and ''it may expend'' for ''he may expend''.

1970—Pub. L. 91–206 substituted ''Administrator'' for ''Director'' and ''Administration'' for ''Bureau'' wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1772b. Apportionment

Notwithstanding any other provision of law, funds received by the Board pursuant to any method provided by this chapter, and interest, dividend, or other income thereon, shall not be subject to apportionment for the purpose of chapter 15 of title 31 or under any other authority.

(June 26, 1934, ch. 750, title I, § 128, as added Pub. L. 100–86, title V, § 505(e), Aug. 10, 1987, 101 Stat. 633.)

§ 1772c. Trust fund

Notwithstanding any other provision of law, all moneys of the Board shall be treated as trust funds for the purpose of section 906(a)(2)[1] of title 2. This section is effective for fiscal year 1986 and every fiscal year thereafter.

(June 26, 1934, ch. 750, title I, § 129, as added Pub. L. 100–86, title VII, § 708, Aug. 10, 1987, 101 Stat. 653.)

REFERENCES IN TEXT

Section 906(a) of title 2, referred to in text, was amended generally by Pub. L. 101–508, title XIII, § 13101(d)(1), Nov. 5, 1990, 104 Stat. 1388–589, and subsequently repealed by Pub. L. 111–139, title I, § 10(a), Feb. 12, 2010, 124 Stat. 21. Provisions similar to those formerly appearing in section 906(a)(2) are now contained in section 906(k)(6) of Title 2, The Congress.

§ 1772c–1. Community development revolving loan fund for credit unions

(a) In general

The Board may exercise the authority granted to it by the Community Development Credit Union Revolving Loan Fund Transfer Act, including any additional appropriation made or earnings accrued, subject only to this section and to regulations prescribed by the Board.

(b) Investment

The Board may invest any idle Fund moneys in United States Treasury securities. Any interest accrued on such securities shall become a part of the Fund.

(c) Loans

The Board may require that any loans made from the Fund be matched by increased shares in the borrower credit union.

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[1] See References in Text note below.

(d) Interest

Interest earned by the Fund may be allocated by the Board for technical assistance to community development credit unions, subject to an appropriations Act.

(e) "Fund" defined

As used in this section, the term ''Fund'' means the Community Development Credit Union Revolving Loan Fund.

(June 26, 1934, ch. 750, title I, § 130, as added Pub. L. 103–325, title I, § 120(b), Sept. 23, 1994, 108 Stat. 2188.)

REFERENCES IN TEXT

The Community Development Credit Union Revolving Loan Fund Transfer Act, referred to in subsec. (a), is Pub. L. 99–609, Nov. 6, 1986, 100 Stat. 3475, which is set out as a note under section 9822 of Title 42, The Public Health and Welfare.

§ 1772d. Forfeiture of organization certificate for money laundering or cash transaction reporting offenses

(a) Forfeiture of franchise for money laundering or cash transaction reporting offenses

(1) Conviction of title 18 offenses

(A) Duty to notify

If a credit union has been convicted of any criminal offense under section 1956 or 1957 of title 18, the Attorney General shall provide to the Board a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

(B) Notice of termination; pretermination hearing

After receiving written notification from the Attorney General of such a conviction, the Board shall issue to such credit union a notice of its intention to terminate all rights, privileges, and franchises of the credit union and schedule a pretermination hearing.

(2) Conviction of title 31 offenses

If a credit union is convicted of any criminal offense under section 5322 or 5324 of title 31 after receiving written notification from the Attorney General, the Board may issue to such credit union a notice of its intention to terminate all rights, privileges, and franchises of the credit union and schedule a pretermination hearing.

(3) Judicial review

Section 1786(j) of this title shall apply to any proceeding under this section.

(b) Factors to be considered

In determining whether a franchise shall be forfeited under subsection (a) of this section, the Board shall take into account the following factors:

(1) The extent to which directors, committee members, or senior executive officers (as defined by the Board in regulations which the Board shall prescribe) of the credit union knew of, or were involved in, the commission of the money laundering offense of which the credit union was found guilty.

(2) The extent to which the offense occurred despite the existence of policies and procedures within the credit union which were designed to prevent the occurrence of any such offense.

(3) The extent to which the credit union has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the credit union was found guilty.

(4) The extent to which the credit union has implemented additional internal controls (since the commission of the offense of which the credit union was found guilty) to prevent the occurrence of any other money laundering offense.

(5) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the forfeiture of the franchise.

(c) Successor liability

This section shall not apply to a successor to the interests of, or a person who acquires, a credit union that violated a provision of law described in subsection (a) of this section, if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this section or regulations prescribed under this section.

(June 26, 1934, ch. 750, title I, § 131, as added Pub. L. 102–550, title XV, § 1502(c), Oct. 28, 1992, 106 Stat. 4047; amended Pub. L. 103–325, title IV, § 411(c)(2)(B), Sept. 23, 1994, 108 Stat. 2253.)

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–325 substituted ''section 5322 or 5324 of title 31'' for ''section 5322 of title 31''.

§ 1773. District of Columbia credit unions; conversion to Federal status

Any credit union organized under the District of Columbia Credit Unions Act, as amended, may apply for conversion into a Federal credit union by filing with the National Credit Union Administration Board (in sections 1773 to 1775 of this title referred to as the Board), pursuant to a resolution adopted by a majority of its directors, an organization certificate meeting the requirements of section 1753 of this title.

(Pub. L. 88–395, § 1, Aug. 1, 1964, 78 Stat. 377; Pub. L. 91–206, § 3, Mar. 10, 1970, 84 Stat. 49; Pub. L. 95–630, title V, § 501, Nov. 10, 1978, 92 Stat. 3680.)

REFERENCES IN TEXT

The District of Columbia Credit Unions Act, referred to in text, was repealed by Pub. L. 88–395, § 4, Aug. 1, 1964, 78 Stat. 377.

CODIFICATION

Section was not enacted as part of the Federal Credit Union Act which comprises this chapter.

TRANSFER OF FUNCTIONS

''National Credit Union Administration Board'' and ''Board'' substituted in text for ''Director of the Bureau of Federal Credit Unions'' and ''Director'', respectively, pursuant to section 3 of Pub. L. 91–206 and section 501 of Pub. L. 95–630 [12 U.S.C. 1752a] which transferred functions of Bureau of Federal Credit Unions, and Director thereof, to National Credit Union Administra-

tion and vested authority for management of Administration in National Credit Union Administration Board.

REPEALS; REVOCATION OF ORGANIZATION CERTIFICATES ISSUED UNDER DISTRICT OF COLUMBIA CREDIT UNIONS ACT

Section 4 of Pub. L. 88–395 provided that: ''Effective thirty days after enactment of this Act [Aug. 1, 1964], the District of Columbia Credit Unions Act (47 Stat. 326), as amended, is repealed and all organization certificates issued thereunder and still in force are revoked.''

§ 1774. Approval of certificate; assets and obligations of applicant credit union

The Board shall approve any such organization certificate meeting such requirements. Upon such approval, the applicant credit union shall become a Federal credit union, and shall be vested with all of the assets and shall continue responsible for all of the obligations of such applicant credit union to the same extent as though the conversion had not taken place.

(Pub. L. 88–395, § 2, Aug. 1, 1964, 78 Stat. 377; Pub. L. 91–206, § 3, Mar. 10, 1970, 84 Stat. 49; Pub. L. 95–630, title V, § 501, Nov. 10, 1978, 92 Stat. 3680.)

CODIFICATION

Section was not enacted as part of the Federal Credit Union Act which comprises this chapter.

TRANSFER OF FUNCTIONS

''Board'', meaning the National Credit Union Administration Board, substituted in text for ''Director'', meaning Director of Bureau of Federal Credit Unions, pursuant to section 3 of Pub. L. 91–206 and section 501 of Pub. L. 95–630 [12 U.S.C. 1752a] which transferred functions of Bureau of Federal Credit Unions, and Director thereof, to National Credit Union Administration and vested authority for management of Administration in National Credit Union Administration Board.

§ 1775. Conditions upon conversion to Federal status

Any District of Columbia credit union converting into a Federal credit union in accordance with sections 1773 to 1775 of this title shall thereupon be subject to the limitations, vested with the powers, and charged with the liabilities conferred and imposed by this chapter upon credit unions organized thereunder, except that—

(1) no fee shall be imposed upon a credit union converting pursuant to sections 1773 to 1775 of this title as an incident to its conversion;

(2) any loan or investment made by a credit union converting pursuant to sections 1773 to 1775 of this title in conformity with the District of Columbia Credit Unions Act prior to its conversion, which does not conform to the requirements of this chapter and is still outstanding at the time of conversion, shall be liquidated at or before its maturity or, if it has no maturity date, in a prudent manner and within a reasonable period of time;

(3) a credit union converting pursuant to sections 1773 to 1775 of this title shall submit proposed bylaws to the Board for the Board's approval after its conversion, but not later than thirty days following its next annual meeting or six months after August 1, 1964, whichever is later: *Provided*, That any existing bylaw inconsistent with any other requirements of this chapter shall be deemed null and void.

(Pub. L. 88–395, § 3, Aug. 1, 1964, 78 Stat. 377; Pub. L. 91–206, § 3, Mar. 10, 1970, 84 Stat. 49; Pub. L. 95–630, title V, § 501, Nov. 10, 1978, 92 Stat. 3680.)

REFERENCES IN TEXT

The District of Columbia Credit Unions Act, referred to in text, was repealed by Pub. L. 88–395, § 4, Aug. 1, 1964, 78 Stat. 377.

CODIFICATION

Section was not enacted as part of the Federal Credit Union Act which comprises this chapter.

TRANSFER OF FUNCTIONS

''Board'' and ''the Board's'', meaning the National Credit Union Administration Board, substituted in par. (3) for ''Director'' and ''his'', respectively, meaning Director of Bureau of Federal Credit Unions, pursuant to section 3 of Pub. L. 91–206 and section 501 of Pub. L. 95–630 [12 U.S.C. 1752a] which transferred functions of Bureau of Federal Credit Unions, and Director thereof, to National Credit Union Administration and vested authority for management of Administration in National Credit Union Administration Board.

SUBCHAPTER II—SHARE INSURANCE

§ 1781. Insurance of member accounts

(a) Eligibility

The Board, as hereinafter provided, shall insure the member accounts of all Federal credit unions and it may insure the member accounts of (1) credit unions organized and operated according to the laws of any State, the District of Columbia, the several territories, including the trust territories, and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, and (2) credit unions organized and operating under the jurisdiction of the Department of Defense if such credit unions are operating in compliance with the requirements of subchapter I of this chapter and regulations issued thereunder.

(b) Application; agreement

Application for insurance of member accounts shall be made immediately by each Federal credit union and may be made at any time by a State credit union or a credit union operating under the jurisdiction of the Department of Defense. Applications for such insurance shall be in such form as the Board shall provide and shall contain an agreement by the applicant—

(1) to pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the applicant for insurance: *Provided*, That examinations required under subchapter I of this chapter shall be so conducted that the information derived therefrom may be utilized for share insurance purposes, and examinations conducted by State regulatory agencies shall be utilized by the Board for such purposes to the maximum extent feasible;

(2) to permit and pay the reasonable cost of such examinations as in the judgment of the

Board may from time to time be necessary for the protection of the fund and of other insured credit unions;

(3) to permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority, including any commission, board, or authority having supervision of a State-chartered credit union, and furnish such additional information with respect thereto as the Board may require;

(4) to provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates;

(5) to maintain such regular reserves as may be required by the laws of the State, district, territory, or other jurisdiction pursuant to which it is organized and operated, in the case of a State-chartered credit union, or as may be required by this chapter, in the case of a Federal credit union;

(6) to maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members or to assure that all insured credit unions maintain regular reserves which are not less than those required under subchapter I of this chapter;

(7) not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board except for accounts authorized by State law for State credit unions;

(8) to pay and maintain its deposit and to pay the premium charges for insurance imposed by this subchapter; and

(9) to comply with the requirements of this subchapter and of regulations prescribed by the Board pursuant thereto.

(c) Approval of application

(1) Before approving the application of any credit union for insurance of its member accounts, the Board shall consider—

(A) the history, financial condition, and management policies of the applicant;

(B) the economic advisability of insuring the applicant without undue risk of the fund;

(C) the general character and fitness of the applicant's management;

(D) the convenience and needs of the members to be served by the applicant; and

(E) whether the applicant is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

(2) The Board shall disapprove the application of any credit union for insurance of its member accounts if it finds that its reserves are inadequate, that its financial condition and policies are unsafe or unsound, that its management is unfit, that insurance of its member accounts would otherwise involve undue risk to the fund, or that its powers and purposes are inconsistent with the promotion of thrift among its members and the creation of a source of credit for provident or productive purposes.

(3) Repealed. Pub. L. 95–22, title III, § 301, Apr. 19, 1977, 91 Stat. 49.

(d) Certificate of insurance

Upon the approval of any application for insurance, the Board shall notify the applicant and shall issue to it a certificate evidencing the fact that it is, as of the date of issuance of the certificate, an insured credit union under the provisions of this subchapter.

(e) Prohibition on certain associations

(1) In general

No insured credit union may be sponsored by or accept financial support, directly or indirectly, from any Government-sponsored enterprise, if the credit union includes the customers of the Government-sponsored enterprise in the field of membership of the credit union.

(2) Routine business financing

Paragraph (1) shall not apply with respect to advances or other forms of financial assistance generally provided by a Government-sponsored enterprise in the ordinary course of business of the enterprise.

(3) "Government-sponsored enterprise" defined

For purposes of this subsection, the term ''Government-sponsored enterprise'' has the meaning given to such term in section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(4) Employee credit union

No provision of this subsection shall be construed as prohibiting any employee of a Government-sponsored enterprise from becoming a member of a credit union whose field of membership is the employees of such enterprise.

(June 26, 1934, ch. 750, title II, § 201, as added Pub. L. 91–468, § 1(3), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 92–221, §§ 1, 2, Dec. 23, 1971, 85 Stat. 796, 797; Pub. L. 95–22, title III, § 301, Apr. 19, 1977, 91 Stat. 49; Pub. L. 95–630, title V, §§ 502(b), 504, Nov. 10, 1978, 92 Stat. 3681, 3682; Pub. L. 98–369, div. B, title VIII, § 2801, July 18, 1984, 98 Stat. 1203; Pub. L. 104–208, div. A, title II, § 2615(a), Sept. 30, 1996, 110 Stat. 3009–478; Pub. L. 109–351, title VII, § 726(11), Oct. 13, 2006, 120 Stat. 2002.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (e)(3), is section 1404(e)(1)(A) of Pub. L. 101–73, which is set out as a note under section 1811 of this title.

AMENDMENTS

2006—Subsec. (b)(5). Pub. L. 109–351 substituted ''this chapter'' for ''section 1762 of this title''.

1996—Subsec. (e). Pub. L. 104–208 added subsec. (e).

1984—Subsec. (b)(8). Pub. L. 98–369 inserted provisions relating to payment and maintenance of the deposit.

1978—Subsec. (a). Pub. L. 95–630, §§ 502(b), 504(a), substituted ''Board'' for ''Administrator'' and ''it'' for ''he'', and inserted '', including the trust territories,'' after ''the several territories''.

Subsec. (b). Pub. L. 95–630, §§ 502(b), 504(b), substituted ''Board'' for ''Administrator'' wherever appearing and inserted in par. (7) ''except for accounts authorized by State law for State credit unions'' after ''by the Board''.

Subsec. (c). Pub. L. 95–630, § 502(b), substituted ''Board'' for ''Administrator'' wherever appearing, and in par. (2) substituted ''it'' for ''he'' before ''finds''.

Subsecs. (d), (e). Pub. L. 95–630, §§ 502(b), 504(c), struck out subsec. (d), redesignated subsec. (e) as (d) and substituted ''Board'' for ''Administrator''.

1977—Subsec. (c)(3) Pub. L. 95–22 struck out par. (3) which provided for approval by Administrator of applications of State credit unions for insurance of its member accounts where credit union meets requirements of this chapter and where in the event of liquidation of the credit union, the claims with respect to demand deposit accounts shall be subordinate to the claims with respect to member accounts.

1971—Subsec. (c)(2). Pub. L. 92–221, § 1(a), substituted ''disapproved'' for ''reject''.

Subsec. (c)(3). Pub. L. 92–221, § 2, added par. (3).

Subsec. (d). Pub. L. 92–221, § 1(b), substituted provisions allowing, in certain cases, a two–year period to meet the requirements for insurance following the disapproval of an application for insurance by a Federal credit union, for provisions mandating the suspension or revocation of the charter of a Federal credit union unless the credit union met the requirements for insurance and became an insured credit union within one year of the rejection of its application for insurance.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2615(c) of div. A of Pub. L. 104–208 provided that: ''The amendments made by this section [amending this section and section 1828 of this title] shall apply on and after January 1, 1996.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1782. Administration of insurance fund

(a) Reports of condition

(1) Each insured credit union shall make reports of condition to the Board upon dates which shall be selected by it. Such reports of condition shall be in such form and shall contain such information as the Board may require. The reporting dates selected for reports of condition shall be the same for all insured credit unions except that when any of said reporting dates is a nonbusiness day for any credit union the preceding business day shall be its reporting date. The total amount of the member accounts of each insured credit union as of each reporting date shall be reported in such reports of condition in accordance with regulations prescribed by the Board. Each report of condition shall contain a declaration by the president, by a vice president, by the treasurer, or by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief. Unless such requirement is waived by the Board, the correctness of each report of condition shall be attested by the signatures of three of the officers of the reporting credit union with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct.

(2) The Board may call for such other reports as it may from time to time require.

(3) The Board may require reports of condition to be published in such manner, not inconsistent with any applicable law, as it may direct. Any insured credit union which maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit or publish any report required under this subsection or section 1756 of this title, within the period of time specified by the Board, or submits or publishes any false or misleading report or information, or inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The insured credit union shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any insured credit union which fails to submit or publish any report required under this subsection or section 1756 of this title, within the period of time specified by the Board, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any insured credit union knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Board may assess a penalty of not more than $1,000,000 or 1 percent of total assets of such credit union, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Board in the manner provided in section 1786(k)(2) of this title (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any insured credit union against which any penalty is assessed under this subsection shall be afforded an agency hearing if such insured credit union submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1786(j) of this title shall apply to any proceeding under this subsection.

(4) The Board may accept any report of condition made to any commission, board, or authority having supervision of a State-chartered credit union and may furnish to any such commission, board, or authority reports of condition made to the Board.

(5) Reports required under subchapter I of this chapter shall be so prepared that they can be used for share insurance purposes. To the maximum extent feasible, the Board shall use for insurance purposes reports submitted to State regulatory agencies by State-chartered credit unions.

(6) AUDIT REQUIREMENT.—

(A) IN GENERAL.—Before the end of the 120-day period beginning on August 9, 1989, and notwithstanding any other provision of Fed-

eral or State law, the Board shall prescribe, by regulation, audit standards which require an outside, independent audit of any insured credit union by a certified public accountant for any fiscal year (of such credit union)—

(i) for which such credit union has not conducted an annual supervisory committee audit;

(ii) for which such credit union has not received a complete and satisfactory supervisory committee audit; or

(iii) during which such credit union has experienced persistent and serious record-keeping deficiencies, as determined by the Board.

(B) UNSAFE OR UNSOUND PRACTICE.—The Board may treat the failure of any insured credit union to obtain an outside, independent audit for any fiscal year for which such audit is required under subparagraph (A) or (D) as an unsafe or unsound practice within the meaning of section 1786(b) of this title.

(C) ACCOUNTING PRINCIPLES.—

(i) IN GENERAL.—Accounting principles applicable to reports or statements required to be filed with the Board by each insured credit union shall be uniform and consistent with generally accepted accounting principles.

(ii) BOARD DETERMINATION.—If the Board determines that the application of any generally accepted accounting principle to any insured credit union is not appropriate, the Board may prescribe an accounting principle for application to the credit union that is no less stringent than generally accepted accounting principles.

(iii) DE MINIMUS[1] EXCEPTION.—This subparagraph shall not apply to any insured credit union, the total assets of which are less than $10,000,000, unless prescribed by the Board or an appropriate State credit union supervisor.

(D) LARGE CREDIT UNION AUDIT REQUIREMENT.—

(i) IN GENERAL.—Each insured credit union having total assets of $500,000,000 or more shall have an annual independent audit of the financial statements of the credit union, performed in accordance with generally accepted auditing standards by an independent certified public accountant or public accountant licensed by the appropriate State or jurisdiction to perform those services.

(ii) VOLUNTARY AUDITS.—If a Federal credit union that is not required to conduct an audit under clause (i), and that has total assets of more than $10,000,000 conducts such an audit for any purpose, using an independent auditor who is compensated for his or her audit services with respect to that audit, the audit shall be performed consistent with the accountancy laws of the appropriate State or jurisdiction, including licensing requirements.

(7) REPORT TO INDEPENDENT AUDITOR.—

(A) IN GENERAL.—Each insured credit union which has engaged the services of an independent auditor to audit such depository institution within the past 2 years shall transmit to such auditor a copy of the most recent report of condition made by such credit union (pursuant to this chapter or any other provision of law) and a copy of the most recent report of examination received by such credit union.

(B) ADDITIONAL INFORMATION.—In addition to the copies of the reports required to be provided to an auditor under subparagraph (A), each insured credit union shall provide such auditor with—

(i) a copy of any supervisory memorandum of understanding with such credit union and any written agreement between the Board or a State regulatory agency and the credit union which is in effect during the period covered by the audit; and

(ii) a report of any action initiated or taken by the Board during such period under subsection (e), (f), (g), (i), (*l*), or (q) of section 1786 of this title, or any similar action taken by a State regulatory agency under State law, or any other civil money penalty assessed by the Board under this chapter, with respect to—

(I) the credit union; or

(II) any institution-affiliated party.

(8) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Board (with respect to all insured credit unions, including a credit union for which the Corporation has been appointed conservator or liquidating agent) or an appropriate State commission, board, or authority having supervision of a State-chartered credit union, the Board may, in the discretion of the Board, furnish any report of examination or other confidential supervisory information concerning any credit union or other entity examined by the Board under authority of any Federal law, to—

(A) any other Federal or State agency or authority with supervisory or regulatory authority over the credit union or other entity;

(B) any officer, director, or receiver of such credit union or entity; and

(C) any other person that the Board determines to be appropriate.

(b) Certified statement

(1) Statement required

(A) In general

For each calendar year, in the case of an insured credit union with total assets of not more than $50,000,000, and for each semi-annual period in the case of an insured credit union with total assets of $50,000,000 or more, an insured credit union shall file with the Board, at such time as the Board prescribes, a certified statement showing the total amount of insured shares in the credit union at the close of the relevant period and both the amount of its deposit or adjustment of deposit and the amount of the insurance charge due to the Fund for that period, both as computed under subsection (c) of this section.

[1] So in original. Probably should be ''De minimis''.

(B) Exception for newly insured credit union

Subparagraph (A) shall not apply with respect to a credit union that became insured during the reporting period.

(2) Form

The certified statements required to be filed with the Board pursuant to this subsection shall be in such form and shall set forth such supporting information as the Board shall require.

(3) Certification

The president of the credit union or any officer designated by the board of directors shall certify, with respect to each statement required to be filed with the Board pursuant to this subsection, that to the best of his or her knowledge and belief the statement is true, correct, complete, and in accordance with this subchapter and the regulations issued under this subchapter.

(c) Deposit with National Credit Union Share Insurance Fund; amount, return, distribution, etc.

(1)(A)(i) Each insured credit union shall pay to and maintain with the National Credit Union Share Insurance Fund a deposit in an amount equaling 1 per centum of the credit union's insured shares.

(ii) The Board may, in its discretion, authorize insured credit unions to initially fund such deposit over a period of time in excess of one year if necessary to avoid adverse effects on the condition of insured credit unions.

(iii) PERIODIC ADJUSTMENT.—The amount of each insured credit union's deposit shall be adjusted as follows, in accordance with procedures determined by the Board, to reflect changes in the credit union's insured shares:

(I) annually, in the case of an insured credit union with total assets of not more than $50,000,000; and

(II) semi-annually, in the case of an insured credit union with total assets of $50,000,000 or more.

(B)(i) The deposit shall be returned to an insured credit union in the event that its insurance coverage is terminated, it converts to insurance coverage from another source, or in the event the operations of the fund are transferred from the National Credit Union Administration Board.

(ii) The deposit shall be returned in accordance with procedures and valuation methods determined by the Board, but in no event shall the deposit be returned any later than one year after the final date on which no shares of the credit union are insured by the Board.

(iii) The deposit shall not be returned in the event of liquidation on account of bankruptcy or insolvency.

(iv) The deposit funds may be used by the fund if necessary to meet its expenses, in which case the amount so used shall be expensed and shall be replenished by insured credit unions in accordance with procedures established by the Board.

(2) INSURANCE PREMIUM CHARGES.—

(A) IN GENERAL.—Each insured credit union shall, at such times as the Board prescribes (but not more than twice in any calendar year), pay to the Fund a premium charge for insurance in an amount stated as a percentage of insured shares (which shall be the same for all insured credit unions).

(B) RELATION OF PREMIUM CHARGE TO EQUITY RATIO OF FUND.—The Board may assess a premium charge only if—

(i) the Fund's equity ratio is less than 1.3 percent; and

(ii) the premium charge does not exceed the amount necessary to restore the equity ratio to 1.3 percent.

(C) PREMIUM CHARGE REQUIRED IF EQUITY RATIO FALLS BELOW 1.2 PERCENT.—If the Fund's equity ratio is less than 1.2 percent, the Board shall, subject to subparagraph (B), assess a premium charge in such an amount as the Board determines to be necessary to restore the equity ratio to, and maintain that ratio at, 1.2 percent.

(D) FUND RESTORATION PLANS.—

(i) IN GENERAL.—Whenever—

(I) the Board projects that the equity ratio of the Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (C); or

(II) the equity ratio of the Fund actually falls below the minimum amount specified in subparagraph (C) without any determination under sub-clause (I) having been made,

the Board shall establish and implement a restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Board determines to be appropriate.

(ii) REQUIREMENTS OF RESTORATION PLAN.—A restoration plan meets the requirements of this clause if the plan provides that the equity ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (C) before the end of the 8-year period beginning upon the implementation of the plan (or such longer period as the Board may determine to be necessary due to extraordinary circumstances).

(iii) TRANSPARENCY.—Not more than 30 days after the Board establishes and implements a restoration plan under clause (i), the Board shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.

(3) DISTRIBUTIONS FROM FUND REQUIRED.—

(A) IN GENERAL.—The Board shall, subject to the requirements of section 1790e(e) of this title, effect a pro rata distribution to insured credit unions after each calendar year if, as of the end of that calendar year—

(i) any loans to the Fund from the Federal Government, and any interest on those loans, have been repaid;

(ii) the Fund's equity ratio exceeds the normal operating level; and

(iii) the Fund's available assets ratio exceeds 1.0 percent.

(B) AMOUNT OF DISTRIBUTION.—The Board shall distribute under subparagraph (A) the maximum possible amount that—

(i) does not reduce the Fund's equity ratio below the normal operating level; and

(ii) does not reduce the Fund's available assets ratio below 1.0 percent.

(C) CALCULATION BASED ON CERTIFIED STATEMENTS.—In calculating the Fund's equity ratio and available assets ratio for purposes of this paragraph, the Board shall determine the aggregate amount of the insured shares in all insured credit unions from insured credit unions certified statements under subsection (b) of this section of this section for the final reporting period of the calendar year referred to in subparagraph (A).

(4) TIMELINESS AND ACCURACY OF DATA.—In calculating the available assets ratio and equity ratio of the Fund, the Board shall use the most current and accurate data reasonably available.

(d) Remedy for failure to report; penalty for failure to file certified statement or pay premium; dispute as to deposit or premium charge; prohibition on distribution of assets or dividends while in default

(1) Any insured credit union which fails to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by it in connection with determining the amount of its deposit or any premium charge for insurance may be compelled to make such report or to file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the Board against the credit union and any officer or officers thereof. Any such suit may be brought in any court of the United States of competent jurisdiction in the district or territory in which the principal office of the credit union is located.

(2) PENALTY FOR FAILURE TO MAKE ACCURATE CERTIFIED STATEMENT OR TO PAY DEPOSIT OR PREMIUM.—

(A) FIRST TIER.—Any insured credit union which—

(i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit any certified statement under subsection (b)(1) of this section within the period of time required or submits a false or misleading certified statement under such subsection; or

(ii) submits the statement at a time which is minimally after the time required,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false and misleading information is not corrected. The insured credit union shall have the burden of proving that an error was inadvertent or that a statement was inadvertently submitted late.

(B) SECOND TIER.—Any insured credit union which—

(i) fails to submit any certified statement under subsection (b)(1) of this section within the period of time required or submits a false or misleading certified statement in a manner not described in subparagraph (A); or

(ii) fails or refuses to pay any deposit or premium for insurance required under this subchapter,

shall be subject to a penalty of not more than $20,000 for each day during which such failure continues, such false and misleading information is not corrected, or such deposit or premium is not paid.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), if any insured credit union knowingly or with reckless disregard for the accuracy of any certified statement under subsection (b)(1) of this section submits a false or misleading certified statement under such subsection, the Board may assess a penalty of not more than $1,000,000 or not more than 1 percent of the total assets of the credit union, whichever is less, per day for each day during which the failure continues or the false or misleading information in such statement is not corrected.

(D) ASSESSMENT PROCEDURE.—Any penalty imposed under this paragraph shall be assessed and collected by the Board in the manner provided in section 1786(k)(2) of this title (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

(E) HEARING.—Any insured credit union against which any penalty is assessed under this paragraph shall be afforded an agency hearing if the credit union submits a request for such hearing within 20 days after the issuance of the notice of the assessment. Section 1786(j) of this title shall apply to any proceeding under this subparagraph.

(F) SPECIAL RULE FOR DISPUTED PAYMENTS.—No penalty may be assessed for the failure of any insured credit union to pay any deposit or premium for insurance if—

(i) the failure is due to a dispute between the credit union and the Board over the amount of the deposit or premium which is due from the credit union; and

(ii) the credit union deposits security satisfactory to the Board for payment of the deposit or insurance premium upon final determination of the dispute.

(3) No insured credit union shall pay any dividends on its insured shares or distribute any of its assets while it remains in default in the payment of its deposit or any premium charge for insurance due to the fund. Any director or officer of any insured credit union who knowingly participates in the declaration or payment of any such dividend or in any such distribution shall, upon conviction, be fined not more than $1,000 or imprisoned not more than one year, or both. The provisions of this paragraph shall not be applicable in any case in which the default is due to a dispute between the credit union and the Board over the amount of its deposit or the premium charge due to the fund if the credit union deposits security satisfactory to the Board for payment of its deposit or the premium charge upon final determination of the issue.

(e) Recovery of unpaid deposit or premium; limitations

The Board, in a suit brought at law or in equity in any court of competent jurisdiction, shall be entitled to recover from any insured credit union the amount of any unpaid deposit

or premium charge for insurance lawfully payable by the credit union to the fund, whether or not such credit union shall have made any report of condition under subsection (a) of this section or filed any certified statement required under subsection (b) of this section and whether or not suit shall have been brought to compel the credit union to make any such report or to file any such statement. No action or proceeding shall be brought for the recovery of any deposit or premium charge due to the fund, or for the recovery of any amount paid to the fund in excess of the amount due it, unless such action or proceeding shall have been brought within five years after the right accrued for which the claim is made. Where the insured credit union has made or filed with the Board a false or fraudulent certified statement with the intent to evade, in whole or in part, the payment of its deposit or any premium charge, the claim shall not be deemed to have accrued until the discovery by the Board of the fact that the certified statement is false or fraudulent.

(f) Penalty for failure to comply with section; court determination of failure; remedies not exclusive

Should any Federal credit union fail to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed under subsection (b) of this section or to pay its deposit or any premium charge for insurance required to be paid under any provision of this subchapter, and should the credit union fail to correct such failure within thirty days after written notice has been given by the Board to an officer of the credit union, citing this subsection and stating that the credit union has failed to make any such report or file any such statement or pay any such deposit or premium charges as required by law, all the rights, privileges, and franchises of the credit union granted to it under subchapter I of this chapter shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged by any court of the United States of competent jurisdiction in a suit brought for that purpose in the district or territory in which the principal office of such credit union is located, under direction of and by the Board in its own name, before the credit union shall be declared dissolved. The remedies provided in this subsection and in subsections (d) and (e) of this section shall not be construed as limiting any other remedies against any insured credit union but shall be in addition thereto.

(g) Records

Each insured credit union shall maintain such records as will readily permit verification of the correctness of its reports of condition, certified statements, and deposit and premium charges for insurance. However, no insured credit union shall be required to retain such records for such purpose for a period in excess of five years from the date of the making of any such report, the filing of any such statement, or the payment of any deposit or adjustment thereof or any premium charge, except that when there is a dispute between the insured credit union and the Board over the amount of any deposit or adjustment thereof or any premium charge for insurance the credit union shall retain such records until final determination of the issue.

(h) Definitions

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

(1) Available assets ratio

The term ''available assets ratio'', when applied to the Fund, means the ratio of—

(A) the amount determined by subtracting—

(i) direct liabilities of the Fund and contingent liabilities for which no provision for losses has been made, from

(ii) the sum of cash and the market value of unencumbered investments authorized under section 1783(c) of this title, to

(B) the aggregate amount of the insured shares in all insured credit unions.

(2) Equity ratio

The term ''equity ratio'', which shall be calculated using the financial statements of the Fund alone, without any consolidation or combination with the financial statements of any other fund or entity, means the ratio of—

(A) the amount of Fund capitalization, including insured credit unions' 1 percent capitalization deposits and the retained earnings balance of the Fund (net of direct liabilities of the Fund and contingent liabilities for which no provision for losses has been made); to

(B) the aggregate amount of the insured shares in all insured credit unions.

(3) Insured shares

The term ''insured shares'', when applied to this section, includes share, share draft, share certificate, and other similar accounts as determined by the Board, but does not include amounts exceeding the insured account limit set forth in section 1787(k)(1) of this title.

(4) Normal operating level

The term ''normal operating level'', when applied to the Fund, means an equity ratio specified by the Board, which shall be not less than 1.2 percent and not more than 1.5 percent.

(June 26, 1934, ch. 750, title II, §202, as added Pub. L. 91–468, §1(3), Oct. 19, 1970, 84 Stat. 995; amended Pub. L. 93–383, title VII, §727, Aug. 22, 1974, 88 Stat. 720; Pub. L. 95–630, title V, §§502(b), 505, Nov. 10, 1978, 92 Stat. 3681, 3682; Pub. L. 97–320, title V, §§528, 529, Oct. 15, 1982, 96 Stat. 1535; Pub. L. 97–457, §29, Jan. 12, 1983, 96 Stat. 2510; Pub. L. 98–369, div. B, title VIII, §§2802–2810, July 18, 1984, 98 Stat. 1204, 1205; Pub. L. 101–73, title IX, §§911(f), 919, 931(b), Aug. 9, 1989, 103 Stat. 482, 488, 493; Pub. L. 102–242, title III, §313(b), Dec. 19, 1991, 105 Stat. 2369; Pub. L. 102–550, title XVI, §1605(b)(3), Oct. 28, 1992, 106 Stat. 4087; Pub. L. 105–219, title II, §201, title III, §302(a), Aug. 7, 1998, 112 Stat. 918, 931; Pub. L. 109–351, title VII, §§707(b), 726(12), Oct. 13, 2006, 120 Stat. 1987, 2002; Pub. L. 111–22, div. A, title II, §204(e), (f)(2), May 20, 2009, 123 Stat. 1651, 1653; Pub. L. 111–382, §2, Jan. 4, 2011, 124 Stat. 4135.)

AMENDMENTS

2011—Subsec. (h)(2). Pub. L. 111–382 substituted ''which shall be calculated using the financial statements of the Fund alone, without any consolidation or combination with the financial statements of any other fund or entity,'' for ''when applied to the Fund,'' in introductory provisions.

2009—Subsec. (c)(2)(D). Pub. L. 111–22, § 204(e), added subpar. (D).

Subsec. (c)(3)(A). Pub. L. 111–22, § 204(f)(2), inserted '', subject to the requirements of section 1790e(e) of this title,'' after ''The Board shall'' in introductory provisions.

2006—Subsec. (a)(8). Pub. L. 109–351, § 707(b), added par. (8).

Subsec. (h)(3). Pub. L. 109–351, § 726(12), substituted ''section 1787(k)(1) of this title'' for ''section 1787(c)(1) of this title''.

1998—Subsec. (a)(6). Pub. L. 105–219, § 201, substituted ''subparagraph (A) or (D)'' for ''subparagraph (A)'' in subpar. (B) and added subpars. (C) and (D).

Subsec. (b). Pub. L. 105–219, § 302(a)(1), added subsec. (b) and struck out former subsec. (b) which read as follows:

''(b)(1) For each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the Board, at such time as the Board prescribes, a certified statement showing the total amount of insured shares in the credit union at the close of the preceding insurance year and both the amount of its deposit or adjustment thereof and the amount of the premium charge for insurance due to the fund for that year, both as computed under subsection (c) of this section.

''(2) The certified statements required to be filed with the Board pursuant to this subsection shall be in such form and shall set forth such supporting information as the Board shall require.

''(3) Each such statement shall be certified by the president of the credit union, or by any officer of the credit union designated by its board of directors, that to the best of his knowledge and belief that statement is true, correct, and complete and in accordance with this subchapter and regulations issued thereunder.''

Subsec. (c)(1)(A)(iii). Pub. L. 105–219, § 302(a)(2), added cl. (iii) and struck out former cl. (iii) which read as follows: ''The amount of each insured credit union's deposit shall be adjusted annually, in accordance with procedures determined by the Board, to reflect changes in the credit union's insured shares.''

Subsec. (c)(2), (3). Pub. L. 105–219, § 302(a)(3), added pars. (2) and (3) and struck out former pars. (2) and (3) which read as follows:

''(2) Each insured credit union, at such time as the Board prescribes, shall pay to the fund a premium charge for insurance equal to one–twelfth of 1 per centum of the total amount of the insured shares in such credit union at the close of the preceding insurance year.

''(3) When, at the end of a given insurance year, any loans to the fund from the Federal Government and the interest thereon have been repaid and the equity of the fund exceeds the normal operating level, the Board shall effect for that insurance year a pro rata distribution to insured credit unions of an amount sufficient to reduce the equity in the fund to its normal operating level.''

Subsec. (c)(4). Pub. L. 105–219, § 302(a)(4), added par. (4).

Subsec. (h). Pub. L. 105–219, § 302(a)(5), added subsec. (h) and struck out former subsec. (h) which read as follows: ''For the purposes of this section—

''(1) the term 'insurance year' means the period beginning on January 1 and ending on the following December 31, both dates inclusive, unless otherwise prescribed by the Board;

''(2) the term 'normal operating level', when applied to the fund, means an amount equal to 1.3 per centum of the aggregate amount of the insured shares in all insured credit unions, or such lower level as the Board may determine; and

''(3) the term 'insured shares' when applied to this section includes share, share draft, share certificate and other similar accounts as determined by the Board, but does not include amounts in excess of the insured account limit set forth in section 1787(c)(1) of this title.''

1992—Subsec. (d)(2). Pub. L. 102–550, in subpar. (C), substituted ''insured credit union'' for ''insured depository institution'', struck out ''or'' after ''subsection (b)(1) of this section'', and substituted ''Board'' for ''Corporation'' and ''assets of the credit union'' for ''assets of the institution'', in subpar. (D), substituted ''Board'' for ''Corporation'', and in subpar. (E), substituted ''insured credit union'' for ''insured depository institution'' and ''if the credit union'' for ''if the institution''.

1991—Subsec. (d)(2). Pub. L. 102–242 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Any insured credit union which willfully fails or refuses to file any certified statement or to pay its deposit or any premium charge for insurance required under this subchapter shall be subject to a penalty of not more than $100 for each day that such violation continues, which penalty the Board may recover for its use. The provisions of this paragraph shall not be applicable in any case in which the refusal to pay its deposit or the premium charge for insurance is due to a dispute between the insured credit union and the Board over the amount of its deposit or the premium charge due to the fund if the credit union deposits security satisfactory to the Board for payment of its deposit or the premium charge upon final determination of the issue.''

1989—Subsec. (a)(3). Pub. L. 101–73, § 911(f), inserted provisions relating to penalties and agency hearings and struck out at end: ''Every insured credit union which willfully fails to make or publish any such report within ten days shall be subject to a penalty of not more than $100 for each day of such failure, recoverable by the Board for its use.''

Subsec. (a)(6). Pub. L. 101–73, § 919, added par. (6).

Subsec. (a)(7). Pub. L. 101–73, § 931(b), added par. (7).

1984—Subsec. (b). Pub. L. 98–369, § 2802, in amending subsec. (b) generally, revised existing provisions into numbered pars. (1) to (3) and in par. (1) substituted ''For each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the Board, at such time as the Board prescribes, a certified statement showing the total amount of insured shares in the credit union at the close of the preceding insurance year and both the amount of its deposit or adjustment thereof and the amount of the premium charge for insurance due to the fund for that year, both as computed under subsection (c) of this section.'' for ''On or before January 31 of each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the Board a certified statement showing the total amount of the member accounts in the credit union at the close of the preceding insurance year and the amount of the premium charge for insurance due to the fund for that year, as computed under subsection (c) of this section.''

Subsec. (c)(1). Pub. L. 98–369, § 2803(6), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 98–369, § 2803(3)–(5), substituted ''Each insured credit union, at such time as the Board prescribes'' for ''Except as provided in paragraph (2) of this subsection, each insured credit union, on or before January 31 of each insurance year'' and ''insured shares'' for ''member accounts''.

Pub. L. 98–369, § 2803(1), (2), redesignated par. (1) as (2). Former par. (2), which related to payment of a premium charge for insurance by each credit union in existence prior to Oct. 19, 1970, and insured under this subchapter after January 1 of any insurance, was struck out.

Subsec. (c)(3). Pub. L. 98–369, § 2804, amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''When any loans to the fund from the Federal Government and the interest thereon have been repaid and the amount in the fund equals or exceeds the normal operating level, the Board may reduce the premium charge for insurance, but not below the amount necessary, in its judgment, to maintain the fund at the normal operating level. Any such reduction shall be effective only so long as the amount in the fund equals or exceeds the normal operating level and no loan to the fund from the Federal Government is outstanding.''

Subsec. (c)(4). Pub. L. 98–369, § 2805, struck out par. (4) which provided that ''If in any year expenditures from the fund exceed the income of the fund, the Board may require each insured credit union to pay to the fund for such year, in addition to the regular premium charge for insurance payable under paragraph (1), (2), or (3) of this subsection, a special premium charge which shall not exceed an amount equal to the amount of the regular premium charge''.

Subsec. (d)(1), (2). Pub. L. 98–369, § 2806(a)(1), inserted ''its deposit or'' wherever appearing.

Subsec. (d)(3). Pub. L. 98–369, § 2806(a), inserted ''its deposit or'' wherever appearing and substituted ''insured shares'' for ''member accounts''.

Subsec. (e). Pub. L. 98–369, § 2806(a)(1), (b)(1), (2), inserted ''its deposit or'' and ''deposit or'' wherever appearing.

Subsec. (f). Pub. L. 98–369, § 2806(a)(1), (b)(3), inserted ''its deposit or'' and ''deposit or''.

Subsec. (g). Pub. L. 98–369, § 2807, inserted ''and deposit'' and ''deposit or adjustment thereof or any'' in two places.

Subsec. (h)(1). Pub. L. 98–369, § 2808, inserted '', unless otherwise prescribed by the Board''.

Subsec. (h)(2). Pub. L. 98–369, § 2809, in amending par. (2) generally, substituted ''fund, means an amount equal to 1.3 per centum of the aggregate amount of the insured shares in all insured credit unions, or such lower level as the Board may determine'' for ''Fund, means an amount equal to 1 per centum of the aggregate amount of the member accounts in all insured credit unions''.

Subsec. (h)(3). Pub. L. 98–369, § 2810, amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''the term 'members accounts' when applied to the premium charge for insurance of accounts shall not include amounts received from other credit unions, the accounts of which are federally insured or insured or guaranteed by a fund established under State law or regulation for this purpose, in excess of the insured account limit set forth in section 1787(c)(1) of this title;''.

1983—Subsec. (c)(1). Pub. L. 97–457 substituted ''paragraph (2)'' for ''paragraphs (2) and (3)'' after ''except as provided in''.

1982—Subsec. (c)(3). Pub. L. 97–320, § 529, redesignated par. (4) as (3). Former (3), which set forth rules for computing the insurance premiums due from credit unions chartered after Oct. 19, 1970, that became insured in the insurance year of their charter, was struck out.

Subsec. (c)(4), (5). Pub. L. 97–320, § 529, redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (c)(6). Pub. L. 97–320, § 529, struck out par. (6) which set forth rules for payment of insurance rebates to insured credit unions closed for liquidation because of insolvency or otherwise.

Subsec. (h)(3). Pub. L. 97–320, § 528, substituted '' 'members accounts' '' for '' 'member account' '', struck out ''federally insured'' after ''received from other'', and inserted '', the accounts of which are federally insured or insured or guaranteed by a fund established under State law or regulation for this purpose,'' after ''credit unions''.

1978—Subsec. (a). Pub. L. 95–630, §§ 502(b), 505(a), substituted ''Board'' for ''Administrator'' wherever appearing; ''it'' for ''him'' and ''such officer's knowledge'' for ''his knowledge'' in par. (1); ''reports as it'' for ''reports as he'' in par. (2); and ''it may direct'' for ''he may direct'' and ''for its use'' for ''for his use'' in par. (3).

Subsecs. (b) to (g). Pub. L. 95–630, § 502(b), substituted ''Board'' for ''Administrator'' wherever appearing, and ''its'' for ''his'' where appropriate.

Subsec. (h)(3). Pub. L. 95–630, § 505(b), substituted ''The term 'member account' when'' for ''the term 'members accounts' when'', struck out ''of federally insured credit unions'' after ''of accounts'', and inserted ''received from other federally insured credit unions'' after ''not include amounts''.

1974—Subsec. (h)(3). Pub. L. 93–383 added par. (3).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–219, title III, § 302(b), Aug. 7, 1998, 112 Stat. 934, provided that: ''This section [amending this section] and the amendments made by this section shall become effective on January 1 of the first calendar year beginning more than 180 days after the date of enactment of this Act [Aug. 7, 1998].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 911(f) of Pub. L. 101–73 applicable with respect to reports filed or required to be filed after Aug. 9, 1989, see section 911(i) of Pub. L. 101–73, set out as a note under section 161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1783. National Credit Union Share Insurance Fund

(a) Creation; use of fund

There is hereby created in the Treasury of the United States a National Credit Union Share Insurance Fund which shall be used by the Board as a revolving fund for carrying out the purposes of this subchapter. Money in the fund shall be available upon requisition by the Board, without fiscal year limitation, for making payments of insurance under section 1787 of this title, for providing assistance and making expenditures under section 1788 of this title in connection with the liquidation or threatened liquidation of insured credit unions, and for such administrative and other expenses incurred in carrying out the purposes of this subchapter as it may determine to be proper.

(b) Deposit of deposits and premium charges, fees and penalties

All deposits and premium charges for insurance paid pursuant to the provisions of section 1782 of this title and all fees for examinations and all penalties collected by the Board under any provision of this subchapter shall be deposited in the National Credit Union Share Insurance Fund. The Board shall report annually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives with respect to the operating level of the fund. Such report shall also include the results of an independent audit of the fund.

(c) Investment authorization

The Board may authorize the Secretary of the Treasury to invest and reinvest such portions of

the fund as the Board may determine are not needed for current operations in any interest-bearing securities of the United States or in any securities guaranteed as to both principal and interest by the United States or in bonds or other obligations which are lawful investments for fiduciary, trust, and public funds of the United States, and the income therefrom shall constitute a part of the fund.

(d) Loans to fund, limitation and terms; interest accrual; determination of interest rate

(1) If, in the judgment of the Board, a loan to the insurance fund, or to the stabilization fund described in section 1790e of this title, is required at any time for purposes of this subchapter,[1] the Secretary of the Treasury shall make the loan, but loans under this paragraph shall not exceed in the aggregate $6,000,000,000 outstanding at any one time. Except as otherwise provided in this subsection, section 1790e of this title, and in subsection (e) of this section, each loan under this paragraph shall be made on such terms as may be fixed by agreement between the Board and the Secretary of the Treasury.

(2) Interest shall accrue to the Treasury on the amount of any outstanding loans made to the fund pursuant to paragraph (1) of this subsection on the basis of the average daily amount of such outstanding loans determined at the close of each fiscal year with respect to such year, and the Board shall pay the interest so accruing into the Treasury as miscellaneous receipts annually from the fund. The Secretary of the Treasury shall determine the applicable interest rate in advance by calculating the average yield to maturity (on the basis of daily closing market bid quotations during the month of September of the preceding fiscal year) on outstanding marketable public debt obligations of the United States having a maturity date of five or less years from the first day of such month of September and by adjusting such yield to the nearest one-eighth of 1 per centum.

(3) For the purpose of making loans under paragraph (1) of this subsection, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are hereby extended to include such loans. All loans and repayments under this section shall be treated as public debt transactions of the United States.

(4) TEMPORARY INCREASES AUTHORIZED.—

(A) RECOMMENDATIONS FOR INCREASE.—During the period beginning on May 20, 2009, and ending on December 31, 2010, if, upon the written recommendation of the Board (upon a vote of not less than two-thirds of the members of the Board) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that additional amounts above the $6,000,000,000 amount specified in paragraph (1) are necessary, such amount shall be increased to the amount so determined to be necessary, not to exceed $30,000,000,000.

(B) REPORT REQUIRED.—If the borrowing authority of the Board is increased above $6,000,000,000 pursuant to subparagraph (A), the Board shall promptly submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the reasons and need for the additional borrowing authority and its intended uses.

(e) Excess funds credited against loans

So long as any loans to the fund are outstanding, the Board shall from time to time, not less often than annually, determine whether the balance in the fund is in excess of the amount which, in its judgment, is needed to meet the requirements of the fund and shall pay such excess to the Secretary of the Treasury, to be credited against the loans to the fund.

(f) Authorization for fund to borrow from Central Liquidity Facility

In addition to the authority to borrow from the Secretary of the Treasury provided in subsection (d) of this section, if in the judgment of the Board, a loan to the fund is required at any time for carrying out the purposes of this subchapter, the fund is authorized to borrow from the National Credit Union Administration Central Liquidity Facility.

(June 26, 1934, ch. 750, title II, § 203, as added Pub. L. 91–468, § 1(3), Oct. 19, 1970, 84 Stat. 999; amended Pub. L. 94–273, § 2(4), Apr. 21, 1976, 90 Stat. 375; Pub. L. 95–630, title V, § 502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97–320, title V, § 530, Oct. 15, 1982, 96 Stat. 1535; Pub. L. 98–369, div. B, title VIII, § 2811, July 18, 1984, 98 Stat. 1206; Pub. L. 111–22, div. A, title II, § 204(c)(2), (3), May 20, 2009, 123 Stat. 1650.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (d)(1), probably should have been a reference to this title in the original, meaning title II of act June 26, 1934, ch. 750, which is classified generally to this subchapter.

CODIFICATION

In subsec. (d)(3), ''chapter 31 of title 31'' substituted for ''the Second Liberty Bond Act, as amended'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2009—Subsec. (d)(1). Pub. L. 111–22, § 204(c)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''If, in the judgment of the Board, a loan to the fund is required at any time for carrying out the purposes of this subchapter, the Secretary of the Treasury shall make the loan, but loans under this paragraph shall not exceed in the aggregate $100,000,000 outstanding at any one time. Except as otherwise provided in this subsection and in subsection (e) of this section, each loan under this paragraph shall be made on such terms as may be fixed by agreement between the Board and the Secretary of the Treasury.''

Subsec. (d)(4). Pub. L. 111–22, § 204(c)(3), added par. (4).

1984—Subsec. (b). Pub. L. 98–369 inserted ''deposits and'' and provisions relating to annual reporting requirements by the Board.

1982—Subsec. (f). Pub. L. 97–320 added subsec. (f).

[1] See References in Text note below.

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator'' wherever appearing and ''it'' and ''its'' for ''he'' and ''his'', respectively, where appropriate.

1976—Subsec. (d)(2). Pub. L. 94–273 substituted ''September'' for ''June'' wherever appearing.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1784. Examination of insured credit unions

(a) Examiners and claim agents; powers; report by examiner; jurisdiction of court

The Board shall appoint examiners who shall have power, on its behalf, to examine any insured credit union, any credit union making application for insurance of its member accounts, or any closed insured credit union whenever in the judgment of the Board an examination is necessary to determine the condition of any such credit union for insurance purposes. Each examiner shall have power to make a thorough examination of all of the affairs of the credit union and shall make a full and detailed report of the condition of the credit union to the Board. The Board in like manner shall appoint claim agents who shall have power to investigate and examine all claims for insured member accounts. Each claim agent shall have power to administer oaths and affirmations, to examine and to take and preserve testimony under oath as to any matter in respect to claims for insured accounts, and to issue subpenas and subpenas duces tecum and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States court in any territory in which the principal office of the credit union is located or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpena.

(b) Power of Board; jurisdiction of court

In connection with examinations of insured credit unions, or with other types of investigations to determine compliance with applicable law and regulations, the Board, or its designated representatives, shall have power to administer oaths and affirmations, to examine and to take and preserve testimony under oath as to any matter in respect of the affairs of any such credit union, and to issue subpenas and subpenas duces tecum and to exercise such other powers as are set forth in section 1786(p) of this title and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States Court in any territory in which the principal office of the credit union is located or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpena.

(c) Court orders enforcing subpenas; immunity

In cases of refusal to obey a subpena issued to, or contumacy by, any person, the Board may invoke the aid of any court of the United States within the jurisdiction of which such hearing, examination, or investigation is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, records, or other papers. Such court may issue an order requiring such person to appear before the Board, or before a person designated by it, there to produce records, if so ordered, or to give testimony touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or carries on business or wherever he may be found. No person shall be excused from attending and testifying or from producing books, records, or other papers in obedience to a subpena issued under the authority of this subchapter on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture, but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(d) Administration acceptance of State board reports; reports of Board furnished to State board

The Administration may accept any report of examination made by or to any commission, board, or authority having supervision of a State-chartered credit union and may furnish to any such commission, board, or authority reports of examination made on behalf of the Board.

(e) Flood insurance compliance by insured credit unions

(1) Examination

The Board shall, during each examination conducted under this section, determine whether the insured credit union is complying with the requirements of the national flood insurance program.

(2) Report

(A) Requirement

Not later than 1 year after September 23, 1994, and biennially thereafter for the next 4 years, the Board shall submit a report to the Congress on compliance by insured credit unions with the requirements of the national flood insurance program.

(B) Contents

The report shall include a description of the methods used to determine compliance, the number of insured credit unions examined during the reporting year, a listing and total number of insured credit unions found not to be in compliance, actions taken to correct incidents of noncompliance, and an analysis of compliance, including a discussion of any trends, patterns, and problems, and recommendations regarding reasonable actions to improve the efficiency of the examinations processes.

(f) Access to liquidity

The Board shall—

(1) periodically assess the potential liquidity needs of each insured credit union, and the options that the credit union has available for meeting those needs; and

(2) periodically assess the potential liquidity needs of insured credit unions as a group, and the options that insured credit unions have available for meeting those needs.

(g) Sharing information with Federal reserve banks

The Board shall, for the purpose of facilitating insured credit unions' access to liquidity, make available to the Federal reserve banks (subject to appropriate assurances of confidentiality) information relevant to making advances to such credit unions, including the Board's reports of examination.

(June 26, 1934, ch. 750, title II, § 204, as added Pub. L. 91–468, § 1(3), Oct. 19, 1970, 84 Stat. 1001; amended Pub. L. 95–630, title V, § 502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 101–73, title IX, § 915(a), Aug. 9, 1989, 103 Stat. 486; Pub. L. 103–325, title V, § 529(b), Sept. 23, 1994, 108 Stat. 2266; Pub. L. 105–219, title III, § 303, Aug. 7, 1998, 112 Stat. 934; Pub. L. 109–351, title VII, § 726(13), Oct. 13, 2006, 120 Stat. 2002.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–351 substituted ''such other powers'' for ''such others powers''.

1998—Subsecs. (f), (g). Pub. L. 105–219 added subsecs. (f) and (g).

1994—Subsec. (e). Pub. L. 103–325 added subsec. (e).

1989—Subsec. (b). Pub. L. 101–73, § 915(a)(1), inserted ''or with other types of investigations to determine compliance with applicable law and regulations,'' after ''insured credit unions,''.

Pub. L. 101–73, § 915(a)(2), which directed the insertion of ''and to exercise such others powers as are set forth in section 1786(p) of this title'' after ''subpena duces tecum'', was executed by making the insertion after ''subpenas duces tecum'', as the probable intent of Congress.

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator'' wherever appearing, and ''it'' and ''its'' for ''him'' and ''his'', respectively, where appropriate.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1785. Requirements governing insured credit unions

(a) Insurance logo

(1) Insured credit unions

(A) In general

Each insured credit union shall display at each place of business maintained by that credit union a sign or signs relating to the insurance of the share accounts of the institution, in accordance with regulations to be prescribed by the Board.

(B) Statement to be included

Each sign required under subparagraph (A) shall include a statement that insured share accounts are backed by the full faith and credit of the United States Government.

(2) Regulations

The Board shall prescribe regulations to carry out this subsection, including regulations governing the substance of signs required by paragraph (1) and the manner of display or use of such signs.

(3) Penalties

For each day that an insured credit union continues to violate this subsection or any regulation issued under this subsection, it shall be subject to a penalty of not more than $100, which the Board may recover for its use.

(b) Restrictions

(1) Except as provided in paragraph (2), no insured credit union shall, without the prior approval of the Board—

(A) merge or consolidate with any noninsured credit union or institution;

(B) assume liability to pay any member accounts in, or similar liabilities of, any noninsured credit union or institution;

(C) transfer assets to any noninsured credit union or institution in consideration of the assumption of liabilities for any portion of the member accounts in such insured credit union; or

(D) convert into a noninsured credit union or institution.

(2) CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS.—

(A) IN GENERAL.—Notwithstanding paragraph (1), an insured credit union may convert to a mutual savings bank or savings association (if the savings association is in mutual form), as those terms are defined in section 1813 of this title, without the prior approval of the Board, subject to the requirements and procedures set forth in the laws and regulations governing mutual savings banks and savings associations.

(B) CONVERSION PROPOSAL.—A proposal for a conversion described in subparagraph (A) shall first be approved, and a date set for a vote thereon by the members (either at a meeting to be held on that date or by written ballot to be filed on or before that date), by a majority of the directors of the insured credit union. Approval of the proposal for conversion shall be by the affirmative vote of a majority of the members of the insured credit union who vote on the proposal.

(C) NOTICE OF PROPOSAL TO MEMBERS.—An insured credit union that proposes to convert to a mutual savings bank or savings association under subparagraph (A) shall submit notice to each of its members who is eligible to vote on the matter of its intent to convert—

(i) 90 days before the date of the member vote on the conversion;

(ii) 60 days before the date of the member vote on the conversion; and

(iii) 30 days before the date of the member vote on the conversion.

(D) NOTICE OF PROPOSAL TO BOARD.—The Board may require an insured credit union that proposes to convert to a mutual savings bank or savings association under subparagraph (A) to submit a notice to the Board of its intent to convert during the 90-day period preceding the date of the completion of the conversion.

(E) INAPPLICABILITY OF CHAPTER UPON CONVERSION.—Upon completion of a conversion described in subparagraph (A), the credit union shall no longer be subject to any of the provisions of this chapter.

(F) LIMIT ON COMPENSATION OF OFFICIALS.—

(i) IN GENERAL.—No director or senior management official of an insured credit union may receive any economic benefit in connection with a conversion of the credit union as described in subparagraph (A), other than—

(I) director fees; and

(II) compensation and other benefits paid to directors or senior management officials of the converted institution in the ordinary course of business.

(ii) SENIOR MANAGEMENT OFFICIAL.—For purposes of this subparagraph, the term ''senior management official'' means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer (as defined by the appropriate Federal banking agency pursuant to section 1831i(f) of this title).

(G) CONSISTENT RULES.—

(i) IN GENERAL.—Not later than 6 months after August 7, 1998, the Administration shall promulgate final rules applicable to charter conversions described in this paragraph that are consistent with rules promulgated by other financial regulators, including the Office of Thrift Supervision and the Office of the Comptroller of the Currency. The rules required by this clause shall provide that charter conversion by an insured credit union shall be subject to regulation that is no more or less restrictive than that applicable to charter conversions by other financial institutions.

(ii) OVERSIGHT OF MEMBER VOTE.—The member vote concerning charter conversion under this paragraph shall be administered by the Administration, and shall be verified by the Federal or State regulatory agency that would have jurisdiction over the institution after the conversion. If either the Administration or that regulatory agency disapproves of the methods by which the member vote was taken or procedures applicable to the member vote, the member vote shall be taken again, as directed by the Administration or the agency.

(3) Except with the prior written approval of the Board, no insured credit union shall merge or consolidate with any other insured credit union or, either directly or indirectly, acquire the assets of, or assume liability to pay any member accounts in, any other insured credit union.

(c) Considerations for waiver or enforcement of restrictions

In granting or withholding approval or consent under subsection (b) of this section, the Board shall consider—

(1) the history, financial condition, and management policies of the credit union;

(2) the adequacy of the credit union's reserves;

(3) the economic advisability of the transaction;

(4) the general character and fitness of the credit union's management;

(5) the convenience and needs of the members to be served by the credit union; and

(6) whether the credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

(d) Prohibition

(1) In general

Except with prior written consent of the Board—

(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

(i) become, or continue as, an institution-affiliated party with respect to any insured credit union; or

(ii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union; and

(B) any insured credit union may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

(2) Minimum 10-year prohibition period for certain offenses

(A) In general

If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragraph is—

(i) an offense under—

(I) section 215, 656, 657, 1005, 1006, 1007, 1008,[1] 1014, 1032, 1344, 1517, 1956, or 1957 of title 18; or

(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

(ii) the offense of conspiring to commit any such offense,

[1] See References in Text note below.

the Board may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

(B) Exception by order of sentencing court

(i) In general

On motion of the Board, the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.

(ii) Period for filing

A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.

(3) Penalty

Whoever knowingly violates paragraph (1) or (2) shall be fined not more than $1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.

(e) Security standards; reports; penalty

(1) The Board shall promulgate rules establishing minimum standards with which each insured credit union must comply with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.

(2) The rules shall establish the time limits within which insured credit unions shall comply with the standards and shall require the submission of periodic reports with respect to the installation, maintenance, and operation of security devices and procedures.

(3) An insured credit union which violates a rule promulgated pursuant to this subsection shall be subject to a civil penalty which shall not exceed $100 for each day of the violation.

(f) Share draft accounts; maintenance, loans, etc.

(1) Every insured credit union is authorized to maintain, and make loans with respect to, share draft accounts in accordance with rules and regulations prescribed by the Board. Except as provided in paragraph (2), an insured credit union may pay dividends on share draft accounts and may permit the owners of such share draft accounts to make withdrawals by negotiable or transferable instruments or other orders for the purpose of making transfers to third parties.

(2) Paragraph (1) shall apply only with respect to share draft accounts in which the entire beneficial interest is held by one or more individuals or members or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

(g) Interest rates

(1) If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this subsection, take, receive, reserve, and charge on any loan, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such insured credit union is located or at the rate allowed by the laws of the State, territory, or district where such credit union is located, whichever may be greater.

(2) If the rate prescribed in paragraph (1) exceeds the rate such credit union would be permitted to charge in the absence of this subsection, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving, or charging a greater rate than is allowed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the credit union taking or receiving such interest.

(h) Emergency merger

Notwithstanding any other provision of law, the Board may authorize a merger or consolidation of an insured credit union which is insolvent or is in danger of insolvency with any other insured credit union or may authorize an insured credit union to purchase any of the assets of, or assume any of the liabilities of, any other insured credit union which is insolvent or in danger of insolvency if the Board is satisfied that—

(1) an emergency requiring expeditious action exists with respect to such other insured credit union;

(2) other alternatives are not reasonably available; and

(3) the public interest would best be served by approval of such merger, consolidation, purchase, or assumption.

(i) Emergency purchase of assets; conversion to insured deposits

(1) Notwithstanding any other provision of this chapter or of State law, the Board may authorize an institution whose deposits or accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation to purchase any of the assets of or assume any of the liabilities of an insured credit union which is insolvent or in danger of insolvency, except that prior to exercising this authority the Board must attempt to effect the merger or consolidation of an insured

credit union which is insolvent or in danger of insolvency with another insured credit union, as provided in subsection (h) of this section.

(2) For purposes of the authority contained in paragraph (1), insured accounts of the credit union may upon consummation of the purchase and assumption be converted to insured deposits or other comparable accounts in the acquiring institution, and the Board and the National Credit Union Share Insurance Fund shall be absolved of any liability to the credit union's members with respect to those accounts.

(j) Privileges not affected by disclosure to banking agency or supervisor

(1) In general

The submission by any person of any information to the Administration, any State credit union supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such Board, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such Board, supervisor, or authority.

(2) Rule of construction

No provision of paragraph (1) may be construed as implying or establishing that—

(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

(B) any person would waive any privilege applicable to any information by submitting the information to the Administration, any State credit union supervisor, or foreign banking authority, but for this subsection.

(June 26, 1934, ch. 750, title II, §205, as added Pub. L. 91–468, §1(3), Oct. 19, 1970, 84 Stat. 1002; amended Pub. L. 95–630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 96–221, title III, §305(d), title V, §523, Mar. 31, 1980, 94 Stat. 147, 166; Pub. L. 97–320, title I, §131, 141(a)(8), title VII, §706(b), Oct. 15, 1982, 96 Stat. 1486, 1489, 1540; Pub. L. 100–86, title V, §509(a), Aug. 10, 1987, 101 Stat. 635; Pub. L. 101–73, title IX, §910(b), Aug. 9, 1989, 103 Stat. 478; Pub. L. 103–322, title XXXII, §320606, Sept. 13, 1994, 108 Stat. 2119; Pub. L. 105–219, title II, §202, Aug. 7, 1998, 112 Stat. 919; Pub. L. 109–173, §2(d)(3), Feb. 15, 2006, 119 Stat. 3604; Pub. L. 109–351, title VI, §607(b), Oct. 13, 2006, 120 Stat. 1982; Pub. L. 111–203, title III, §362(2), July 21, 2010, 124 Stat. 1549.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§351, 362(2), July 21, 2010, 124 Stat. 1546, 1549, provided that, effective on the transfer date, this section is amended:

(1) in subsection (b)(2)(G)(i), by striking out ''the Office of Thrift Supervision and''; and

(2) in subsection (i)(1), by striking out ''or the Federal Savings and Loan Insurance Corporation''.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 1008 of title 18, referred to in subsec. (d)(2)(A)(i)(I), was repealed by Pub. L. 101–73, title IX, §961(g)(1), Aug. 9, 1989, 103 Stat. 500.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–173 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''Every insured credit union shall display at each place of business maintained by it a sign or signs indicating that its member accounts are insured by the Board and shall include in all of its advertisements a statement to the effect that its member accounts are insured by the Board. The Board may exempt from this requirement advertisements which do not relate to member accounts or advertisements in which it is impractical to include such a statement. The Board shall prescribe by regulation the forms of such signs, the manner of display, the substance of any such statement, and the manner of use.''

Subsec. (j). Pub. L. 109–351 added subsec. (j).

1998—Subsec. (b)(1). Pub. L. 105–219, §202(1), substituted ''Except as provided in paragraph (2), no insured credit union shall, without the prior approval of the Board'' for ''Except with the prior written approval of the Board, no insured credit union shall''.

Subsec. (b)(2), (3). Pub. L. 105–219, §202(2), (3), added par. (2) and redesignated former par. (2) as (3).

1994—Subsec. (d). Pub. L. 103–322 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows:

''(1) PROHIBITION.—Except with the prior written consent of the Board—

''(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust may not participate, directly or indirectly, in any manner in the conduct of the affairs of an insured credit union; and

''(B) an insured credit union may not permit such participation.

''(2) PENALTY.—Whoever knowingly violates paragraph (1) shall be fined not more than $1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.''

1989—Subsec. (d). Pub. L. 101–73 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Except with the written consent of the Board, no person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the credit union involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Board may recover for its use.''

1987—Pub. L. 100–86 repealed Pub. L. 97–320, §141. See 1982 Amendment note below.

1982—Subsec. (f)(2). Pub. L. 97–320, §706(b), inserted provisions relating to deposits of public funds.

Subsecs. (h), (i). Pub. L. 97–320, §131, added subsecs. (h) and (i).

Pub. L. 97–320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 131 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

1980—Subsec. (f). Pub. L. 96–221, §305(d), added subsec. (f).

Subsec. (g). Pub. L. 96–221, §523, added subsec. (g).

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator'' wherever appearing, and ''its'' for ''his'' where appropriate.

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–173, §2(e), Feb. 15, 2006, 119 Stat. 3605, provided that: ''This section [amending this section and sections 1787, 1817, 1821, 1828, 1831t, and 3104 of this title] and the amendments made by this section shall take effect on the date on which the final regulations required under section 2109(a)(2) of the Federal Deposit Insurance Reform Act of 2005 [Pub. L. 109–171, set out as a Regulations note under section 1817 of this title] take effect [Apr. 1, 2006, see 71 F.R. 14629].''

EFFECTIVE DATE OF 1980 AMENDMENT

Enactment of subsec. (f) by Pub. L. 96–221 effective at the close of Mar. 31, 1980, see section 306 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 371a of this title.

Section 525 of Pub. L. 96–221 provided that: ''The amendments made by sections 521 through 523 of this title [amending this section and enacting sections 1730g and 1831d of this title] shall apply only with respect to loans made in any State during the period beginning on April 1, 1980, and ending on the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the amendments made by such sections to apply with respect to loans made in such State, except that such amendments shall apply to a loan made on or after the date such law is adopted or such certification is made if such loan is made pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97–320

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100–86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99–452, set out as a note under section 1464 of this title.

Section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day after Aug. 27, 1986, applicable as if included in Pub. L. 97–320 on Oct. 15, 1982, with no amendment made by such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99–400, set out as a note under section 1464 of this title.

DEFINITION OF ''STATE''

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

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

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

§ 1786. Termination of insured credit union status; cease and desist orders; removal or suspension from office; procedure

(a) Termination of insurance

(1) Any insured credit union other than a Federal credit union may, upon not less than ninety days' written notice to the Board and upon the affirmative vote of a majority of its members within one year prior to the giving of such notice, terminate its status as an insured credit union.

(2) Any insured credit union, other than a Federal credit union, which has obtained a new certificate of insurance from a corporation authorized and duly licensed to insure member accounts may upon not less than ninety days' written notice to the Board convert from status as an insured credit union under this chapter: *Provided*, That at the time of giving notice to the Board the provisions of paragraph (b)(1) of this section are not being invoked against the credit union.

(b) Unsound condition of credit union; notice to correct condition; hearing; judicial review

(1) Whenever, in the opinion of the Board, any insured credit union is engaging or has engaged in unsafe or unsound practices in conducting the business of such credit union, or is in an unsafe or unsound condition to continue operations as an insured credit union, or is violating or has violated an applicable law, rule, regulation, order, or any condition imposed in writing by the Board in connection with any action on any application, notice, or other request by the credit union or institution-affiliated party,,[1] or is violating or has violated any written agreement entered into with the Board, the Board shall serve upon the credit union a statement with respect to such practices or conditions or violations for the purpose of securing the correction thereof. In the case of an insured State-chartered credit union, the Board shall send a copy of such statement to the commission, board, or authority, if any, having supervision of such credit union. Unless such correction shall be made within one hundred and twenty days after service of such statement, or within such shorter period of not less than twenty days after such service as the Board shall require in any case where it determines that the insurance risk with respect to such credit union could be unduly jeopardized by further delay in the correction of

[1] So in original.

such practices or conditions or violations, or as the commission, board, or authority having supervision of such credit union, if any, shall require in the case of an insured State-chartered credit union, the Board, if it shall determine to proceed further, shall give to the credit union not less than thirty days' written notice of its intention to terminate the status of the credit union as an insured credit union. Such notice shall contain a statement of the facts constituting the alleged unsafe and unsound practices or conditions or violations and shall fix a time and place for a hearing thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Board at the request of the credit union. Unless the credit union shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured credit union. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any unsafe or unsound practice or condition or violation specified in the notice has been established and has not been corrected within the time above-prescribed in which to make such correction, the Board may issue and serve upon the credit union an order terminating its status as an insured credit union on a date subsequent to the date of such finding and subsequent to the expiration of the time specified in the notice.

(2) Any credit union whose insured status has been terminated by order of the Board under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (j) of this section.

(c) Notice to members of termination of insured status

In the event of the termination of a credit union's status as an insured credit union as provided under subsection (a)(1) or (b) of this section, the credit union shall give prompt and reasonable notice to all of its members whose accounts are insured that it has ceased to be an insured credit union. It may include in such notice a statement of the fact that member accounts insured on the effective date of such termination, to the extent not withdrawn, remain insured for one year from the date of such termination, but it shall not further represent itself in any manner as an insured credit union. In the event of failure to give the notice as herein provided to members whose accounts are insured, the Board is authorized to give reasonable notice.

(d) Continuation of insurance for one year; approval of conversion of status; procedure subsequent to approval; reduction of premium charges

(1) After the termination of the insured status of any credit union as provided under subsection (a)(1) or (b) of this section, insurance of its member accounts to the extent that they were insured on the effective date of such termination, less any amounts thereafter withdrawn which reduce the accounts below the amount covered by insurance on the effective date of such termination, shall continue for a period of one year, but no shares issued by the credit union or deposits made after the date of such termination shall be insured by the Board. The credit union shall continue to maintain its deposit with and pay premiums to the Board during such period as in the case of an insured credit union and the Board shall have the right to examine such credit union from time to time during the period during which such insurance continues. Such credit union shall, in all other respects, be subject to the duties and obligations of an insured credit union for the period of one year from the date of such termination. In the event that such credit union shall be closed for liquidation within such period of one year, the Board shall have the same powers and rights with respect to such credit union as in the case of an insured credit union. Notwithstanding the above, when an insured credit union's insured status is terminated and the credit union subsequently obtains comparable insurance coverage from another source, insurance of its accounts by the fund may cease immediately upon the effective date of such comparable coverage by mutual consent of the credit union and the Board.

(2) No credit union shall convert from status as an insured credit union under this chapter as provided under subsection (a)(2) of this section until the proposition for such conversion has been approved by a majority of all the directors of the credit union, and by affirmative vote of a majority of the members of the credit union who vote on the proposition in a vote in which at least 20 per centum of the total membership of the credit union participates. Following approval by the directors, written notice of the proposition and of the date set for the membership vote shall be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty nor less than seven days prior to such date. The membership shall be given the opportunity to vote by mail ballot. If the proposition is approved by the membership, prompt and reasonable notice of insurance conversion shall be given to all members.

(3) In the event of a conversion of a credit union from status as an insured credit union under this chapter as provided under subsection (a)(2) of this section, premium charges payable under section 1782(c) of this title shall be reduced by an amount proportionate to the number of calendar months for which the converting credit union will no longer be insured under this chapter. As long as a converting credit union remains insured under this chapter it shall remain subject to all of the provisions of this subchapter.

(e) Opinion of Board as to unsound condition of credit union; notice of charges; hearing; order to cease and desist; judicial review

(1) If, in the opinion of the Board, any insured credit union, credit union which has insured accounts, or any institution-affiliated party is engaging or has engaged, or the Board has reasonable cause to believe that the credit union or any institution-affiliated party is about to engage, in an unsafe or unsound practice in con-

ducting the business of such credit union, or is violating or has violated, or the Board has reasonable cause to believe that the credit union or any institution-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Board in connection with the granting of any application or other request by the credit union or any written agreement entered into with the Board, the Board may issue and serve upon the credit union or such party a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the credit union or the institution-affiliated party. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Board at the request of any party so served. Unless the party or parties so served shall appear at the hearing by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the Board shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and serve upon the credit union or the institution-affiliated party an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the credit union or its institution-affiliated parties to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the credit union or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(3) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority to issue an order under this subsection and subsection (f) of this section which requires an insured credit union or any institution-affiliated party to take affirmative action to correct any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such insured credit union or such party to—

(A) make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(i) such credit union or such party was unjustly enriched in connection with such violation or practice; or

(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Board;

(B) restrict the growth of the institution;

(C) rescind agreements or contracts;

(D) dispose of any loan or asset involved;

(E) employ qualified officers or employees (who may be subject to approval by the Board at the direction of such Board); and

(F) take such other action as the Board determines to be appropriate.

(4) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this subsection or subsection (f) of this section includes the authority to place limitations on the activities or functions of an insured credit union or any institution-affiliated party.

(f) Temporary cease and desist order; injunctive procedure

(1) Whenever the Board shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the credit union or any institution-affiliated party pursuant to paragraph (1) of subsection (e) of this section, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the credit union, or is likely to weaken the condition of the credit union or otherwise prejudice the interests of its insured members prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (e) of this section, the Board may issue a temporary order requiring the credit union or such party to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under subsection (e)(3) of this section. Such order shall become effective upon service upon the credit union or such institution-affiliated party and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Administration shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the credit union or such party, until the effective date of such order.

(2) Within ten days after the credit union concerned or any institution-affiliated party has been served with a temporary cease-and-desist order, the credit union or such party may apply to the United States district court for the judicial district in which the home office of the credit union is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the credit union or such party under paragraph (1) of subsection (e) of this section, and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (e)(1) of this section specifies, on the basis of particular facts and circumstances, that an insured cred-

it union's books and records are so incomplete or inaccurate that the Board is unable, through the normal supervisory process, to determine the financial condition of that insured credit union or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that insured credit union, the Board may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (e)(1) of this section.

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (e)(1) of this section in connection with the notice of charges; or

(II) the date the Board determines, by examination or otherwise, that the insured credit union's books and records are accurate and reflect the financial condition of the credit union.

(4) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order, the Board may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the principal office of the credit union is located for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(g) Removal and prohibition authority

(1) AUTHORITY TO ISSUE ORDER.—Whenever the Board determines that—

(A) any institution-affiliated party has, directly or indirectly—

(i) violated—

(I) any law or regulation;

(II) any cease-and-desist order which has become final;

(III) any condition imposed in writing by the Board in connection with any action on any application, notice, or request by such credit union or institution-affiliated party; or

(IV) any written agreement between such credit union and the Board;

(ii) engaged or participated in any unsafe or unsound practice in connection with any insured credit union or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

(B) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

(i) such insured credit union or business institution has suffered or will probably suffer financial loss or other damage;

(ii) the interests of the insured credit union's members have been or could be prejudiced; or

(iii) such party has received financial gain or other benefit by reason of such violation, practice or breach; and

(C) such violation, practice, or breach—

(i) involves personal dishonesty on the part of such party; or

(ii) demonstrates such party's unfitness to serve as a director or officer of, or to otherwise participate in the conduct of the affairs of, an insured credit union,

the Board may serve upon such party a written notice of the Board's intention to remove such party from office or to prohibit any further participation, by such party, in any manner in the conduct of the affairs of any insured credit union.

(2) SPECIFIC VIOLATIONS.—

(A) IN GENERAL.—Whenever the Board determines that—

(i) an institution-affiliated party has committed a violation of any provision of subchapter II of chapter 53 of title 31, unless such violation was inadvertent or unintentional;

(ii) an officer or director of an insured credit union has knowledge that an institution-affiliated party of the insured credit union has violated any such provision or any provision of law referred to in subsection (i)(1)(A)(ii) of this section; or

(iii) an officer or director of an insured credit union has committed any violation of the Depository Institution Management Interlocks Act [12 U.S.C. 3201 et seq.],

the Board may serve upon such party, officer, or director a written notice of the Board's intention to remove such officer or director from office.

(B) FACTORS TO BE CONSIDERED.—In determining whether an officer or director should be removed as a result of the application of subparagraph (A)(ii), the Board shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.

(3) SUSPENSION ORDER.—

(A) SUSPENSION OR PROHIBITION AUTHORIZED.—If the Board serves written notice under paragraph (1) or (2) to any institution-affiliated party of the Board's intention to issue an order under such paragraph, the Board may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the institution, if the Board—

(i) determines that such action is necessary for the protection of the credit union or the interests of the credit union's members; and

(ii) serves such person with written notice of the suspension order.

(B) EFFECTIVE PERIOD.—Any suspension order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless a court issues a stay of such order under paragraph (6), shall remain in effect and enforceable until—

(I) the date the Board dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such party; or

(II) the effective date of an order issued by the Board to such person under paragraph (1) or (2).

(C) COPY OF ORDER.—If the Board issues a suspension order under subparagraph (A) to any institution-affiliated party, the Board shall serve a copy of such order on any insured credit union with which such party is associated at the time such order is issued.

(4) A notice of intention to remove a director, committee member, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an insured credit union, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Board at the request of (A) such director, committee member, or officer or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, committee member, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any of the grounds specified in such notice have been established, the Board may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the credit union, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such credit union and the director, committee member, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(5) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this subsection shall not—

(A) participate in any manner in the conduct of the affairs of any institution or agency specified in paragraph (7)(A);

(B) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subparagraph (A);

(C) violate any voting agreement previously approved by the appropriate Federal banking agency; or

(D) vote for a director, or serve or act as an institution-affiliated party.

(6) Within ten days after any director, officer, committee member, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured credit union under paragraph (3) of this subsection, such director, officer, committee member, or other person may apply to the United States district court for the judicial district in which the principal office of the credit union is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, committee member, or other person under paragraph (1) or (2) of this subsection, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(7) INDUSTRYWIDE PROHIBITION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any person who, pursuant to an order issued under this subsection or subsection (i) of this section, has been removed or suspended from office in an insured credit union or prohibited from participating in the conduct of the affairs of an insured credit union may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

(i) any insured depository institution;

(ii) any institution treated as an insured bank under paragraph (3) or (4) of section 1818(b) of this title, or as a savings association under section 1818(b)(8)[2] of this title;

(iii) any insured credit union;

(iv) any institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.];

(v) any appropriate Federal depository institution regulatory agency;

(vi) the Federal Housing Finance Board and any Federal home loan bank; and

(vii) the Resolution Trust Corporation.

(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this subsection which removes or suspends from office any institution-affiliated party or prohibits such party from participating in the conduct of the affairs of an insured credit union, such party receives the written consent of—

(i) the Board; and

(ii) the appropriate Federal financial institutions regulatory agency of the institution described in any clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party,

subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent. If any person receives such a written consent from the Board, the Board shall publicly disclose such consent. If the agency referred to in clause (ii) grants such a written consent, such agency shall report such action to the Board and publicly disclose such consent.

[2] See References in Text note below.

(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

(D) ''APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY'' DEFINED.—For purposes of this paragraph, the term ''appropriate Federal financial institutions regulatory agency'' means—

(i) the appropriate Federal banking agency, as provided in section 1813(q) of this title;

(ii) the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.];

(iii) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 1752(7) of this title);

(iv) the Secretary of the Treasury, in the case of the Federal Housing Finance Board and any Federal home loan bank; and

(v) the Thrift Depositor Protection Oversight Board, in the case of the Resolution Trust Corporation.

(E) CONSULTATION BETWEEN AGENCIES.—The agencies referred to in clauses (i) and (ii) of subparagraph (B) shall consult with each other before providing any written consent described in subparagraph (B).

(F) APPLICABILITY.—This paragraph shall only apply to a person who is an individual, unless the Board specifically finds that it should apply to a corporation, firm, or other business enterprise.

(h) Board's appointment of conservator; consultation with State; authority

(1) The Board may, *ex parte* without notice, appoint itself or another (including, in the case of a State-chartered insured credit union, the State official having jurisdiction over the credit union) as conservator and immediately take possession and control of the business and assets of any insured credit union in any case in which—

(A) the Board determines that such action is necessary to conserve the assets of any insured credit union or to protect the Fund or the interests of the members of such insured credit union;

(B) an insured credit union, by a resolution of its board of directors, consents to such an action by the Board;

(C) the Attorney General notifies the Board in writing that an insured credit union has been found guilty of a criminal offense under section 1956 or 1957 of title 18 or section 5322 or 5324 of title 31;

(D) there is a willful violation of a cease-and-desist order which has become final;

(E) there is concealment of books, papers, records, or assets of the credit union or refusal to submit books, papers, records, or affairs of the credit union for inspection to any examiner or to any lawful agent of the Board;

(F) the credit union is significantly undercapitalized, as defined in section 1790d of this title, and has no reasonable prospect of becoming adequately capitalized, as defined in section 1790d of this title; or

(G) the credit union is critically undercapitalized, as defined in section 1790d of this title.

(2)(A) Except as provided in subparagraph (C), in the case of a State-chartered insured credit union, the authority conferred by paragraph (1) shall not be exercised without the written approval of the State official having jurisdiction over the State-chartered credit union that the grounds specified for such exercise exist.

(B) If such approval has not been received by the Board within 30 days of receipt of notice by the State that the Board has determined such grounds exist, and the Board has responded in writing to the State's written reasons, if any, for withholding approval, then the Board may proceed without State approval only by a unanimous vote of the Board.

(C) In the case of a State-chartered insured credit union, the authority conferred by subparagraphs (F) and (G) of paragraph (1) may not be exercised unless the Board has complied with section 1790d(*l*) of this title.

(3) Not later than ten days after the date on which the Board takes possession and control of the business and assets of an insured credit union pursuant to paragraph (1), such insured credit union may apply to the United States district court for the judicial district in which the principal office of such insured credit union is located or the United States District Court for the District of Columbia, for an order requiring the Board to show cause why it should not be enjoined from continuing such possession and control. Except as provided in this paragraph, no court may take any action, except at the request of the Board by regulation or order, to restrain or affect the exercise of powers or functions of the Board as conservator.

(4) Except as provided in paragraph (3), in the case of a Federal credit union, the Board may maintain possession and control of the business and assets of such credit union and may operate such credit union until such time—

(A) as the Board shall permit such credit union to continue business subject to such terms and conditions as may be imposed by the Board; or

(B) as such credit union is liquidated in accordance with the provisions of section 1787 of this title.

(5) Except as provided in paragraph (3), in the case of an insured State-chartered credit union, the Board may maintain possession and control of the business and assets of such credit union and may operate such credit union until such time—

(A) as the Board shall permit such credit union to continue business, subject to such terms and conditions as may be imposed by the Board;

(B) as the Board shall permit the transfer of possession and control of such credit union to any commission, board, or authority which has supervisory authority over such credit union and which is authorized by State law to operate such credit union; or

(C) as such credit union is liquidated in accordance with the provisions of section 1787 of this title.

(6) The Board may appoint such agents as it considers necessary in order to assist the Board in carrying out its duties as a conservator under this subsection.

(7) All expenses incurred by the Board in exercising its authority under this subsection with respect to any credit union shall be paid out of the assets of such credit union.

(8) The conservator shall have all the powers of the members, the directors, the officers, and the committees of the credit union and shall be authorized to operate the credit union in its own name or to conserve its assets in the manner and to the extent authorized by the Board.

(9) The authority granted by this subsection is in addition to all other authority granted to the Board under this chapter.

(i) Suspension, removal, and prohibition from participation orders in the case of certain criminal offenses

(1) SUSPENSION OR PROHIBITION AUTHORIZED.—

(A) IN GENERAL.—Whenever any institution-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in—

(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

(ii) a criminal violation of section 1956, 1957, or 1960 of title 18 or section 5322 or 5324 of title 31,

the Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in any credit union, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any credit union.

(B) PROVISIONS APPLICABLE TO NOTICE.—

(i) COPY.—A copy of any notice under subparagraph (A) shall also be served upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party.

(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the Board.

(C) REMOVAL OR PROHIBITION.—

(i) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an institution-affiliated party in connection with a crime described in subparagraph (A)(i), at such time as such judgment is not subject to further appellate review, the Board may, if continued service or participation by such party may pose a threat to the interests of any credit union's members or may threaten to impair public confidence in any credit union, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of any credit union without the prior written consent of the Board.

(ii) REQUIRED FOR CERTAIN OFFENSES—In the case of a judgment of conviction or agreement against an institution-affiliated party in connection with a violation described in subparagraph (A)(ii), the Board shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of any credit union without the prior written consent of the Board.

(D) PROVISIONS APPLICABLE TO ORDER.—

(i) COPY.—A copy of any order under subparagraph (C) shall also be served upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party, whereupon such party (if a director or an officer) shall cease to be a director or officer of such credit union.

(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the Board from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in credit union affairs, pursuant to paragraph (1), (2), or (3) of subsection (g) of this section.

(iii) EFFECTIVE PERIOD.—Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the Board.

(E) CONTINUATION OF AUTHORITY.—The Board may issue an order under this paragraph with respect to an individual who is an institution-affiliated party at a credit union at the time of an offense described in subparagraph (A) without regard to—

(i) whether such individual is an institution-affiliated party at any credit union at the time the order is considered or issued by the Board; or

(ii) whether the credit union at which the individual was an institution-affiliated party at the time of the offense remains in existence at the time the order is considered or issued by the Board.

(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a Federal credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a Federal credit union are suspended pursuant to this section, the Board shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office. Directors appointed

temporarily by the Board shall, within thirty days following their appointment, call a special meeting for the election of new directors, unless during the thirty-day period (A) the regular annual meeting is scheduled, or (B) the suspensions giving rise to the appointment of temporary directors are terminated.

(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the institution-affiliated party concerned may request in writing an opportunity to appear before the Board to show that the continued service to or participation in the conduct of the affairs of the credit union by such party does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair public confidence in the credit union. Upon receipt of any such request, the Board shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before the Board or its designee to submit written materials (or, at the discretion of the Board, oral testimony) and oral argument. Within sixty days of such hearing, the Board shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the credit union will be continued, terminated or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the credit union will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Board's decision, if adverse to such party. The Board is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(j) Jurisdiction of hearing; procedure; judicial review

(1) Any hearing provided for in this section (other than the hearing provided for in subsection (i)(3) of this section) shall be held in the Federal judicial district or in the territory in which the principal office of the credit union is located, unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. After such hearing, and within ninety days after the Board has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (j). Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Board may at any time, upon such notice and in such manner as it may deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Board may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the credit union or the institution-affiliated party concerned or an order issued under subsection (i)(1) of this section) by filing in the court of appeals of the United States for the circuit in which the principal office of the credit union is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Board be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Board. Review of such proceedings shall be had as provided in chapter 7 of title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Board.

(k) Jurisdiction and enforcement; penalty

(1) The Board may in its discretion apply to the United States district court, or the United States court of any territory within the jurisdiction of which the principal office of the credit union is located, for the enforcement of any effective and outstanding notice or order issued under this section or section 1790d of this title, and such courts shall have jurisdiction and power to order and require compliance therewith. However, except as otherwise provided in this section or section 1790d of this title, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section or section 1790d of this title or to review, modify, suspend, terminate, or set aside any such notice or order.

(2) CIVIL MONEY PENALTY.—

(A) FIRST TIER.—Any insured credit union which, and any institution-affiliated party who—

(i) violates any law or regulation;

(ii) violates any final order or temporary order issued pursuant to subsection (e), (f), (g), (i), or (q) of this section, or any final order under section 1790d of this title;

(iii) violates any condition imposed in writing by the Board in connection with any action on any application, notice, or other request by the credit union or institution-affiliated party; or

(iv) violates any written agreement between such credit union and such agency,

shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding subparagraph (A), any insured credit union which, and any institution-affiliated party who—

(i)(I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of such credit union; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach—

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such credit union; or

(III) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any insured credit union which, and any institution-affiliated party who—

(i) knowingly—

(I) commits any violation described in any clause of subparagraph (A);

(II) engages in any unsafe or unsound practice in conducting the affairs of such credit union; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such credit union or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

(i) in the case of any person other than an insured credit union, an amount to not[3] exceed $1,000,000; and

(ii) in the case of any insured credit union, an amount not to exceed the lesser of—

(I) $1,000,000; or

(II) 1 percent of the total assets of such credit union.

(E) ASSESSMENT.—

(i) WRITTEN NOTICE.—Any penalty imposed under subparagraph (A), (B), or (C) may be assessed and collected by the Board by written notice.

(ii) FINALITY OF ASSESSMENT.—If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

(F) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Board may compromise, modify, or remit any penalty which such agency may assess or had already assessed under subparagraph (A), (B), or (C).

(G) MITIGATING FACTORS.—In determining the amount of any penalty imposed under subparagraph (A), (B), or (C), the Board shall take into account the appropriateness of the penalty with respect to—

(i) the size of financial resources and good faith of the insured credit union or the person charged;

(ii) the gravity of the violation;

(iii) the history of previous violations; and

(iv) such other matters as justice may require.

(H) HEARING.—The insured credit union or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

(I) COLLECTION.—

(i) REFERRAL.—If any insured credit union or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the Board shall recover the amount assessed by action in the appropriate United States district court.

(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under clause (i), the validity and appropriateness of the penalty shall not be subject to review.

(J) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(K) ''VIOLATE'' DEFINED.—For purposes of this section, the term ''violate'' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(L) REGULATIONS.—The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(3) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of a institution-affiliated party (including a separation caused by the closing of an insured credit union) shall not affect the jurisdiction and authority of the Board to issue any notice or order and proceed under this section against any such party, if such notice or order is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such credit union (whether such date occurs before, on, or after August 9, 1989).

(*l*) Criminal penalty for violation of certain orders

Whoever—

(1) under this chapter, is suspended or removed from, or prohibited from participating in the affairs of any credit union described in subsection (g)(5) of this section; and

[3] So in original. Probably should be ''not to''.

(2) knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order or in subsection (g)(5) of this section) in the conduct of the affairs of such a credit union;

shall be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.

(m) Definitions

As used in this section (1) the terms ''cease-and-desist order which has become final'' and ''order which has become final'' means a cease-and-desist order, or an order issued by the Board with the consent of the credit union or the director, officer, committee member, or other person concerned, or with respect to which no petition for review of the action of the Board has been filed and perfected in a court of appeals as specified in paragraph (2) of subsection (j) of this section, or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said paragraph, or an order issued under subsection (i) of this section, and (2) the term ''violation'' includes, without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(n) Notice or order to State board supervising State-chartered credit union

Any service required or authorized to be made by the Board under this section may be made by registered mail or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Copies of any notice or order served by the Board upon any State-chartered credit union or any director, officer, or committee member thereof or other person participating in the conduct of its affairs, pursuant to the provisions of this section, shall also be sent to the commission, board, or authority, if any, having supervision of such credit union.

***(o)* Notice of proceedings to State board supervising State-chartered credit union; effect of corrective action by State board; attack on validity of notice or order**

In connection with any proceeding under subsection (e), (f)(1), or (g) of this section involving an insured State-chartered credit union or any institution-affiliated party, the Board shall provide the commission, board, or authority, if any, having supervision of such credit union, with notice of its intent to institute such a proceeding and the grounds thereof. Unless within such time as the Board deems appropriate in the light of the circumstances of the case (which time must be specified in the notice prescribed in the preceding sentence) satisfactory corrective action is effectuated by action of such commission, board, or authority, the Board may proceed as provided in this section. No credit union or other party who is the subject of any notice or order issued by the Board under this section shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

(p) Proceedings; powers of Board; court enforcement of subpenas; witness fees; expenses and attorneys' fees

In the course of or in connection with any proceeding under this section or in connection with any claim for insured deposits or any examination or investigation under section 1784(b) of this title, the Board, in conducting the proceeding, examination, or investigation or considering the claim for insured deposits,,[4] or any designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum, and the Board is empowered to make rules and regulations with respect to any such proceedings, claims, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceedings instituted under this section by an insured credit union or a director, officer, or committee member thereof may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper, and such expenses and fees shall be paid by the credit union or from its assets.

(q) Compliance with monetary transaction recordkeeping and report requirements

(1) Compliance procedures required

The Board shall prescribe regulations requiring insured credit unions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such credit unions with the requirements of subchapter II of chapter 53 of title 31.

(2) Examinations of credit unions to include review of compliance procedures

(A) In general

Each examination of an insured credit union by the Board shall include a review of the procedures required to be established and maintained under paragraph (1).

(B) Exam report requirement

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

[4] So in original.

(3) Order to comply with requirements

If the Board determines that an insured credit union—

(A) has failed to establish and maintain the procedures described in paragraph (1); or

(B) has failed to correct any problem with the procedures maintained by such credit union which was previously reported to the credit union by the Board,

the Board shall issue an order in the manner prescribed in subsection (e) or (f) of this section requiring such credit union to cease and desist from its violation of this subsection or regulations prescribed under this subsection.

(r) "Institution-affiliated party" defined

For purposes of this chapter, the term ''institution-affiliated party'' means—

(1) any committee member, director, officer, or employee of, or agent for, an insured credit union;

(2) any consultant, joint venture partner, and any other person as determined by the Board (by regulation or on a case-by-case basis) who participates in the conduct of the affairs of an insured credit union; and

(3) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(A) any violation of any law or regulation;

(B) any breach of fiduciary duty; or

(C) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured credit union.

(s) Public disclosure of agency action

(1) In general

The Board shall publish and make available to the public on a monthly basis—

(A) any written agreement or other written statement for which a violation may be enforced by the Board, unless the Board, in its discretion, determines that publication would be contrary to the public interest;

(B) any final order issued with respect to any administrative enforcement proceeding initiated by the Board under this section or any other law; and

(C) any modification to or termination of any order or agreement made public pursuant to this paragraph.

(2) Hearings

All hearings on the record with respect to any notice of charges issued by the Board shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

(3) Reports to Congress

A written report shall be made part of a determination not to hold a public hearing pursuant to paragraph (2) or not to publish a document pursuant to paragraph (1)(A). At the end of each calendar quarter, all such reports shall be transmitted to the Congress.

(4) Transcript of hearing

A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to subsection (k) of this section. A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5.

(5) Delay of publication under exceptional circumstances

If the Board makes a determination in writing that the publication of a final order pursuant to paragraph (1)(B) would seriously threaten the safety and soundness of an insured depository institution, the agency may delay the publication of the document for a reasonable time.

(6) Documents filed under seal in public enforcement hearings

The Board may file any document or part of a document under seal in any administrative enforcement hearing commenced by the agency if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph (2).

(7) Retention of documents

The Board shall keep and maintain a record, for a period of at least 6 years, of all documents described in paragraph (1) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceeding initiated by such agency under this section or any other laws.

(8) Disclosures to Congress

No provision of this subsection may be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee of the Congress.

(9) Preservation of records

(A) In general

The Board may cause any and all records, papers, or documents kept by the Administration or in the possession or custody of the Administration to be—

(i) photographed or microphotographed or otherwise reproduced upon film; or

(ii) preserved in any electronic medium or format which is capable of—

(I) being read or scanned by computer; and

(II) being reproduced from such electronic medium or format by printing or any other form of reproduction of electronically stored data.

(B) Treatment as original records

Any photographs, micrographs, or photographic film or copies thereof described in subparagraph (A)(i) or reproduction of electronically stored data described in subparagraph (A)(ii) shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies, and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

(C) Authority of the administration

Any photographs, microphotographs, or photographic film or copies thereof described in subparagraph (A)(i) or reproduction of electronically stored data described in subparagraph (A)(ii) shall be preserved in such manner as the Administration shall prescribe, and the original records, papers, or documents may be destroyed or otherwise disposed of as the Administration may direct.

(t) Regulation of certain forms of benefits to institution-affiliated parties

(1) Golden parachutes and indemnification payments

The Board may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

(2) Factors to be taken into account

The Board shall prescribe, by regulation, the factors to be considered by the Board in taking any action pursuant to paragraph (1) which may include such factors as the following:

(A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the credit union that has had a material affect on the financial condition of the credit union.

(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for the insolvency of the credit union, the appointment of a conservator or liquidating agent for the credit union, or the credit union's troubled condition (as defined in regulations prescribed by the Board pursuant to paragraph (4)(A)(ii)(III)).

(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material effect on the financial condition of the credit union.

(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate—

(i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18; or

(ii) section 1341 or 1343 of such title affecting a financial institution.

(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.

(F) The length of time the party was affiliated with the credit union and the degree to which—

(i) the payment reasonably reflects compensation earned over the period of employment; and

(ii) the compensation involved represents a reasonable payment for services rendered.

(3) Certain payments prohibited

No credit union may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made—

(A) in contemplation of the insolvency of such credit union or after the commission of an act of insolvency; and

(B) with a view to, or has the result of—

(i) preventing the proper application of the assets of the credit union; or

(ii) preferring one creditor over another.

(4) "Golden parachute payment" defined

For purposes of this subsection—

(A) In general

The term ''golden parachute payment'' means any payment (or any agreement to make any payment) in the nature of compensation by any credit union for the benefit of any institution-affiliated party pursuant to an obligation of such credit union that—

(i) is contingent on the termination of such party's affiliation with the credit union; and

(ii) is received on or after the date on which—

(I) the credit union is insolvent;

(II) any conservator or liquidating agent is appointed for such credit union;

(III) the Board determines that the credit union is in a troubled condition (as defined in regulations which the Board shall prescribe);

(IV) the credit union has been assigned a composite rating by the Board of 4 or 5 under the Uniform Financial Institutions Rating System (as applicable with respect to credit unions); or

(V) the credit union is subject to a proceeding initiated by the Board to terminate or suspend deposit insurance for such credit union.

(B) Certain payments in contemplation of an event

Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

(C) Certain payments not included

The term ''golden parachute payment'' shall not include—

(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of title 26 or other nondiscriminatory retirement or severance benefit plan;

(ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Board determines, by regulation or order, to be permissible; or

(iii) any payment made by reason of the death or disability of an institution-affiliated party.

(5) Other definitions

For purposes of this subsection—

(A) Indemnification payment

Subject to paragraph (6), the term ''indemnification payment'' means any payment (or

any agreement to make any payment) by any credit union for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the Board which results in a final order under which such person—

(i) is assessed a civil money penalty;

(ii) is removed or prohibited from participating in conduct of the affairs of the credit union; or

(iii) is required to take any affirmative action described in subsection (e)(3) of this section with respect to such credit union.

(B) Liability or legal expense

The term ''liability or legal expense'' means—

(i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

(ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(C) Payment

The term ''payment'' includes—

(i) any direct or indirect transfer of any funds or any asset; and

(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

(I) the determination, after such date, of the liability for the payment of such amount; or

(II) the liquidation, after such date, of the amount of such payment.

(6) Certain commercial insurance coverage not treated as covered benefit payment

No provision of this subsection shall be construed as prohibiting any credit union from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the credit union which is described in paragraph (5)(A).

(u) Foreign investigations

(1) Requesting assistance from foreign banking authorities

In conducting any investigation, examination, or enforcement action under this chapter, the Board may—

(A) request the assistance of any foreign banking authority; and

(B) maintain an office outside the United States.

(2) Providing assistance to foreign banking authorities

(A) In general

The Board may, at the request of any foreign banking authority, assist such authority if such authority states that the requesting authority is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to banking matters or currency transactions administered or enforced by the requesting authority.

(B) Investigation by Federal banking agency

The Board may, in the Board's discretion, investigate and collect information and evidence pertinent to a request for assistance under subparagraph (A). Any such investigation shall comply with the laws of the United States and the policies and procedures of the Board.

(C) Factors to consider

In deciding whether to provide assistance under this paragraph, the Board shall consider—

(i) whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of the Board or any appropriate Federal banking agency; and

(ii) whether compliance with the request would prejudice the public interest of the United States.

(D) Treatment of foreign banking authority

For purposes of any Federal law or Board regulation relating to the collection or transfer of information by the Board or any appropriate Federal banking agency, the foreign banking authority shall be treated as another appropriate Federal banking agency.

(3) Rule of construction

Paragraphs (1) and (2) shall not be construed to limit the authority of the Board or any other Federal agency to provide or receive assistance or information to or from any foreign authority with respect to any matter.

(v) Termination of insurance for money laundering or cash transaction reporting offenses

(1) In general

(A) Conviction of title 18 offenses

(i) Duty to notify

If an insured State credit union has been convicted of any criminal offense under section 1956 or 1957 of title 18, the Attorney General shall provide to the Board a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

(ii) Notice of termination

After written notification from the Attorney General to the Board of such a conviction, the Board shall issue to such insured credit union a notice of its intention to terminate the insured status of the insured credit union and schedule a hearing on the matter, which shall be conducted as a termination hearing pursuant to subsection (b) of this section, except that no period for correction shall apply to a notice issued under this subparagraph.

(B) Conviction of title 31 offenses

If a credit union is convicted of any criminal offense under section 5322 or 5324 of title 31 after prior written notification from the Attorney General, the Board may initiate proceedings to terminate the insured status of such credit union in the manner described in subparagraph (A).

(C) Notice to State supervisor

The Board shall simultaneously transmit a copy of any notice under this paragraph to the appropriate State financial institutions supervisor.

(2) Factors to be considered

In determining whether to terminate insurance under paragraph (1), the Board shall take into account the following factors:

(A) The extent to which directors, committee members, or senior executive officers (as defined by the Board in regulations which the Board shall prescribe) of the credit union knew of, or were involved in, the commission of the money laundering offense of which the credit union was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the credit union which were designed to prevent the occurrence of any such offense.

(C) The extent to which the credit union has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the credit union was found guilty.

(D) The extent to which the credit union has implemented additional internal controls (since the commission of the offense of which the credit union was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the termination of insurance.

(3) Notice to State credit union supervisor and public

When the order to terminate insured status initiated pursuant to this subsection is final, the Board shall—

(A) notify the commission, board, or authority (if any) having supervision of the credit union described in paragraph (1) at least 10 days prior to the effective date of the order of the termination of the insured status of such credit union; and

(B) publish notice of the termination of the insured status of the credit union.

(4) Temporary insurance of previously insured deposits

Upon termination of the insured status of any State credit union pursuant to paragraph (1), the deposits of such credit union shall be treated in accordance with subsection (d)(2) of this section.

(5) Successor liability

This subsection shall not apply to a successor to the interests of, or a person who acquires, an insured credit union that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

(w) One-year restrictions on Federal examiners of insured credit unions

(1) In general

In addition to other applicable restrictions set forth in title 18, the penalties set forth in paragraph (5) of this subsection shall apply to any person who—

(A) was an officer or employee (including any special Government employee) of the Administration;

(B) served 2 or more months during the final 12 months of his or her employment with the Administration as the senior examiner (or a functionally equivalent position) of an insured credit union with continuing, broad responsibility for the examination (or inspection) of that insured credit union on behalf of the Administration; and

(C) within 1 year after the termination date of his or her service or employment with the Administration, knowingly accepts compensation as an employee, officer, director, or consultant from such insured credit union.

(2) Rule of construction

For purposes of this subsection, a person shall be deemed to act as a consultant for an insured credit union only if such person directly works on matters for, or on behalf of, such insured credit union.

(3) Regulations

(A) In general

The Board shall prescribe rules or regulations to administer and carry out this subsection, including rules, regulations, or guidelines to define the scope of persons referred to in paragraph (1)(B).

(B) Consultation

In prescribing rules or regulations under this paragraph, the Board shall, to the extent it deems necessary, consult with the Federal banking agencies (as defined in section 1813 of this title) on regulations issued by such agencies in carrying out section 1820(k) of this title.

(4) Waiver

The Board may grant a waiver, on a case by case basis, of the restriction imposed by this subsection to any officer or employee (including any special Government employee) of the Administration if the Chairman certifies in writing that granting the waiver would not affect the integrity of the supervisory program of the Administration.

(5) Penalties

(A) In general

In addition to any other administrative, civil, or criminal remedy or penalty that may otherwise apply, whenever the Board

determines that a person subject to paragraph (1) has become associated, in the manner described in paragraph (1)(C), with an insured credit union, the Board shall impose upon such person one or more of the following penalties:

(i) Industry-wide prohibition order

The Board shall serve a written notice or order in accordance with and subject to the provisions of subsection (g)(4) of this section for written notices or orders under paragraph (1) or (2) of subsection (g) of this section, upon such person of the intention of the Board—

(I) to remove such person from office or to prohibit such person from further participation in the conduct of the affairs of the insured credit union for a period of up to 5 years; and

(II) to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any insured credit union for a period of up to 5 years.

(ii) Civil monetary penalty

The Board may, in an administrative proceeding or civil action in an appropriate United States district court, impose on such person a civil monetary penalty of not more than $250,000. Any administrative proceeding under this clause shall be conducted in accordance with subsection (k) of this section. In lieu of an action by the Board under this clause, the Attorney General of the United States may bring a civil action under this clause in the appropriate United States district court.

(B) Scope of prohibition order

Any person subject to an order issued under this subparagraph (A)(i) shall be subject to paragraphs (5) and (7) of subsection (g) of this section in the same manner and to the same extent as a person subject to an order issued under subsection (g) of this section.

(June 26, 1934, ch. 750, title II, § 206, as added Pub. L. 91–468, § 1(3), Oct. 19, 1970, 84 Stat. 1003; amended Pub. L. 93–383, title VII, § 728, Aug. 22, 1974, 88 Stat. 720; Pub. L. 95–22, title III, § 307, Apr. 19, 1977, 91 Stat. 52; Pub. L. 95–630, title I, §§ 107(a)(4), (c)(4), (d)(4), (e)(4), 111(d), title V, § 502(b), Nov. 10, 1978, 92 Stat. 3652, 3656, 3659, 3663, 3670, 3681; Pub. L. 97–320, title I, §§ 132, 141(a)(8), title IV, §§ 424(a), (d)(9), (e), 427(c), Oct. 15, 1982, 96 Stat. 1487, 1489, 1522, 1523, 1525; Pub. L. 98–369, div. B, title VIII, § 2812, July 18, 1984, 98 Stat. 1206; Pub. L. 99–570, title I, § 1359(d), Oct. 27, 1986, 100 Stat. 3207–29; Pub. L. 100–86, title V, § 509(a), title VII, §§ 709–713, Aug. 10, 1987, 101 Stat. 635, 653, 654; Pub. L. 101–73, title IX, §§ 901(a), (b)(2), 902(b), 903(b), 904(b), 905(b), 906(b), 907(b), 908(b), 913(b), 915(b), 920(b), title XII, § 1217(b), Aug. 9, 1989, 103 Stat. 446, 448, 451, 455, 458, 460, 462, 464, 477, 484, 486, 488, 546; Pub. L. 101–647, title XXV, §§ 2523(b), 2532(c), 2547(b), Nov. 29, 1990, 104 Stat. 4870, 4881, 4887; Pub. L. 102–233, title III, § 302(a), Dec. 12, 1991, 105 Stat. 1767; Pub. L. 102–550, title XV, §§ 1501(b), 1503(b), 1504(b), Oct. 28, 1992, 106 Stat. 4044, 4050, 4053; Pub. L. 103–325, title IV, § 411(c)(2)(B), Sept. 23, 1994, 108 Stat. 2253; Pub. L. 105–219, title III, § 301(b)(1), (g)(1), (2), Aug. 7, 1998, 112 Stat. 930, 931; Pub. L. 108–458, title VI, § 6303(c), Dec. 17, 2004, 118 Stat. 3753; Pub. L. 109–351, title VII, §§ 708(b), 715(b), 716(b), 723(b), 726(14)–(19), Oct. 13, 2006, 120 Stat. 1989, 1995, 1996, 2000, 2002, 2003; Pub. L. 111–203, title III, § 362(3), July 21, 2010, 124 Stat. 1549.)

AMENDMENT OF SUBSECTION (g)(7)

Pub. L. 111–203, title III, §§ 351, 362(3), July 21, 2010, 124 Stat. 1546, 1549, provided that, effective on the transfer date, subsection (g)(7) of this section is amended:

(1) in subparagraph (A)—

(A) in clause (ii), by substituting ''(b)(9)'' for ''(b)(8)'';

(B) in clause (v), by substituting ''financial'' for ''depository'' and inserting ''and'' at the end;

(C) in clause (vi), by substituting ''Agency'' for ''Board'' and a period for ''; and''; and

(D) by striking out clause (vii); and

(2) in subparagraph (D)—

(A) in clause (iii), by inserting ''and'' at the end;

(B) in clause (iv), by substituting ''Agency'' for ''Board'' and striking out ''and'' at the end; and

(C) by striking out clause (v).

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Depository Institution Management Interlocks Act, referred to in subsec. (g)(2)(A)(iii), is title II of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3672, as amended, which is classified principally to chapter 33 (§ 3201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of this title and Tables.

Section 1818(b)(8) of this title, referred to in subsec. (g)(7)(A)(ii), was redesignated section 1818(b)(9) by Pub. L. 102–242, title I, § 131(c)(1), Dec. 19, 1991, 105 Stat. 2266.

The Farm Credit Act of 1971, referred to in subsec. (g)(7)(A)(iv), (D)(ii), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§ 2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–351, § 716(b)(1), substituted ''any action on any application, notice, or other request by the credit union or institution-affiliated party,'' for ''the granting of any application or other request by the credit union'' in first sentence.

Subsec. (e)(3)(D). Pub. L. 109–351, § 726(14), struck out ''and'' after semicolon.

Subsec. (f)(1). Pub. L. 109–351, § 726(15), substituted ''subsection (e)(3)'' for ''subsection (e)(3)(B)''.

Subsec. (g)(1)(A)(i)(III). Pub. L. 109–351, § 716(b)(2), substituted ''any action on any application, notice, or request by such credit union or institution-affiliated party'' for ''the grant of any application or other request by such credit union''.

Subsec. (g)(7)(D). Pub. L. 109–351, § 726(16), struck out ''and subsection (1)'' after ''For purposes of this paragraph'' in introductory provisions.

Subsec. (i). Pub. L. 109–351, § 708(b)(2), inserted heading.

Subsec. (i)(1)(A). Pub. L. 109–351, § 708(b)(1)(A), substituted ''any credit union'' for ''the credit union'' in two places.

Subsec. (i)(1)(B)(i). Pub. L. 109–351, § 708(b)(1)(B), inserted ''of which the subject of the order is, or most recently was, an institution-affiliated party'' before period at end.

Subsec. (i)(1)(C). Pub. L. 109–351, §708(b)(1)(C), substituted ''any credit union's'' for ''the credit union's'' in cl. (i) and ''any credit union'' for ''the credit union'' wherever appearing.

Subsec. (i)(1)(D)(i). Pub. L. 109–351, §708(b)(1)(D), substituted ''upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party'' for ''upon such credit union''.

Subsec. (i)(1)(E). Pub. L. 109–351, §708(b)(1)(E), added subpar. (E).

Subsec. (k)(2)(A)(iii). Pub. L. 109–351, §716(b)(3), substituted ''any action on any application, notice, or other request by the credit union or institution-affiliated party'' for ''the grant of any application or other request by such credit union''.

Subsec. (k)(3). Pub. L. 109–351, §715(b), inserted ''or order'' after ''notice'' in two places.

Subsec. (s)(9). Pub. L. 109–351, §723(b), added par. (9).

Subsec. (t)(2)(B). Pub. L. 109–351, §726(17), inserted ''regulations'' after ''(as defined in''.

Subsec. (t)(2)(C). Pub. L. 109–351, §726(18), substituted ''material effect'' for ''material affect''.

Subsec. (t)(4)(A)(ii)(II). Pub. L. 109–351, §726(19), struck out ''or'' after semicolon at end.

2004—Subsec. (w). Pub. L. 108–458 added subsec. (w).

1998—Subsec. (h)(1). Pub. L. 105–219, §301(g)(2), inserted ''or another (including, in the case of a State-chartered insured credit union, the State official having jurisdiction over the credit union)'' after ''appoint itself'' in introductory provisions.

Subsec. (h)(1)(F), (G). Pub. L. 105–219, §301(b)(1)(A), added subpars. (F) and (G).

Subsec. (h)(2)(A). Pub. L. 105–219, §301(b)(1)(B)(i), substituted ''Except as provided in subparagraph (C), in the case'' for ''In the case''.

Subsec. (h)(2)(C). Pub. L. 105–219, §301(b)(1)(B)(ii), added subpar. (C).

Subsec. (k)(1). Pub. L. 105–219, §301(g)(1)(A), inserted ''or section 1790d of this title'' after ''this section'' in three places.

Subsec. (k)(2)(A)(ii). Pub. L. 105–219, §301(g)(1)(B), inserted '', or any final order under section 1790d of this title'' before semicolon at end.

1994—Subsecs. (h)(1)(C), (i)(1)(A)(ii), (v)(1)(B). Pub. L. 103–325 substituted ''section 5322 or 5324 of title 31'' for ''section 5322 of title 31''.

1992—Subsec. (g)(2). Pub. L. 102–550, §1504(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Whenever, in the opinion of the Board, any director, officer, or committee member of an insured credit union has committed any violation of the Depository Institution Management Interlocks Act, the Board may serve upon such director, officer, or committee member a written notice of its intention to remove him from office.''

Subsec. (h)(1)(C) to (E). Pub. L. 102–550, §1501(b), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (i)(1). Pub. L. 102–550, §1504(b)(2), amended par. (1) generally, subdividing existing provisions into subpars. (A) to (D), and, in subpar. (A), including violations under section 1956, 1957, or 1960 of title 18 or section 5322 of title 31 as reason for suspension of any violator from further participation in the affairs of the credit union.

Subsec. (v). Pub. L. 102–550, §1503(b), added subsec. (v).

1990—Subsec. (j)(1). Pub. L. 101–647, §2547(b)(2), which directed amendment of par. (1) by striking out after first sentence ''Such hearing shall be private, unless the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest.'' was executed by striking out ''Such hearing shall be private unless the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest.'' as the probable intent of Congress.

Subsec. (s). Pub. L. 101–647, §2547(b)(1), amended subsec. (s) generally. Prior to amendment, subsec. (s) read as follows:

''(1) IN GENERAL.—The Board shall publish and make available to the public—

''(A) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other provision of law; and

''(B) any modification to or termination of any final order described in subparagraph (A).

''(2) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Board makes a determination in writing that the publication of any final order pursuant to paragraph (1) would seriously threaten the safety or soundness of an insured credit union or other federally regulated depository institution, the Board may delay the publication of such order for a reasonable time.''

Subsec. (t). Pub. L. 101–647, §2523(b), added subsec. (t).

Subsec. (u). Pub. L. 101–647, §2532(c), added subsec. (u).

1989—Subsec. (e)(1). Pub. L. 101–73, §901(b)(2)(A), (B), substituted references to institution-affiliated parties for references to directors, officers, committee members, agents, or other persons participating in the conduct of the affairs of credit unions.

Subsec. (e)(3), (4). Pub. L. 101–73, §902(b)(1), added pars. (3) and (4).

Subsec. (f)(1). Pub. L. 101–73, §902(b)(2)(B), substituted ''significant'' for ''substantial'', struck out ''seriously'' before ''weaken the condition of'' and before ''prejudice the interests of'', and inserted after first sentence ''Such order may include any requirement authorized under subsection (e)(3)(B) of this section.''

Pub. L. 101–73, §901(b)(2)(B), (C), substituted references to institution-affiliated parties for references to directors, officers, committee members, employees, agents, or other persons participating in the conduct of the affairs of credit unions.

Subsec. (f)(2). Pub. L. 101–73, §901(b)(2)(B), substituted references to institution-affiliated parties for references to directors, officers, committee members, employees, agents, or other persons participating in the conduct of the affairs of credit unions.

Subsec. (f)(3), (4). Pub. L. 101–73, §902(b)(2)(A), (C), added par. (3) and redesignated former par. (3) as (4).

Subsec. (g)(1). Pub. L. 101–73, §903(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Whenever, in the opinion of the Board, any director, officer, committee member, or employee of an insured credit union has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the credit union, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director, officer, committee member, or employee and the Board determines that the credit union has suffered or will probably suffer substantial financial loss or other damage or that the interests of its insured members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, the Board may serve upon such director, officer, committee member, or employee a written notice of its intention to remove him from office.''

Subsec. (g)(2). Pub. L. 101–73, §903(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Whenever, in the opinion of the Board, any director, officer, committee member, or employee of an insured credit union, by conduct or practice with respect to another insured credit union or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty or unfitness to continue as a director, officer, committee member, or employee, and, whenever, in the opinion of the Board, any agent or other person participating in the conduct of the affairs of an insured credit union, by conduct or practice with respect to such credit union or other insured credit union or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty or unfitness to participate in the conduct of the affairs

of such insured credit union, the Board may serve upon such director, officer, committee member, employee, agent, or other person a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of such credit union.''

Subsec. (g)(3). Pub. L. 101–73, § 903(b)(2), added par. (3). Former par. (3) redesignated (2).

Subsec. (g)(4). Pub. L. 101–73, § 903(b)(2), redesignated par. (5) as (4) and struck out former par. (4) which provided for temporary suspension from office or prohibition from further participation in credit union activities.

Subsec. (g)(5). Pub. L. 101–73, § 903(b)(2), (3), added par. (5). Former par. (5) redesignated (4).

Subsec. (g)(6). Pub. L. 101–73, § 903(b)(4), substituted ''credit union under paragraph (3)'' for ''credit union under paragraph (4)'' and ''person under paragraph (1) or (2)'' for ''person under paragraph (1), (2), or (3)''.

Subsec. (g)(7). Pub. L. 101–73, § 904(b), amended par. (7) generally, revising and restating as subpars. (A) to (F) provisions of former subpars. (A) and (B).

Subsec. (h)(3). Pub. L. 101–73, § 1217(b), inserted at end ''Except as provided in this paragraph, no court may take any action, except at the request of the Board by regulation or order, to restrain or affect the exercise of powers or functions of the Board as conservator.''

Subsec. (i)(1). Pub. L. 101–73, § 906(b), struck out ''authorized by a United States attorney'' after ''is charged in any information, indictment, or complaint'', and substituted ''or an agreement to enter a pre-trial diversion or other similar program'' for ''with respect to such crime'' after ''judgment of conviction''.

Pub. L. 101–73, § 901(b)(2)(D)(i)–(iv), (vi), substituted references to institution-affiliated parties for references to directors, committee members, or officers of insured credit unions, or other persons participating in the conduct of the affairs of credit unions, and substituted ''whereupon such party (if a director, a committee member, or an officer)'' for ''whereupon such director, committee member, or officer''.

Pub. L. 101–73, § 901(b)(2)(D)(v), which directed the substitution of ''party'' for ''director, officer or other person'' could not be executed because ''director, officer or other person'' does not appear in par. (1).

Subsec. (i)(3). Pub. L. 101–73, § 901(b)(2)(E)(i)–(iv), substituted references to institution-affiliated parties for references to directors, committee members, officers, or other persons.

Pub. L. 101–73, § 901(b)(2)(E)(v), which directed the substitution of ''such party'' for ''said director, committee member, officer or other person'' was executed by making the substitution for ''said director, committee member, officer, or other person'' after ''whether the order removing'' in third sentence to reflect the probable intent of Congress.

Subsec. (j)(2). Pub. L. 101–73, § 920(b), substituted ''Any party to any proceeding under paragraph (1)'' for ''Any party to the proceeding, or any person required by an order issued under this section to cease and desist from any of the practices or violations stated therein,''.

Pub. L. 101–73, § 901(b)(2)(F), substituted ''institution-affiliated party'' for ''director, officer, committee member, or other person''.

Subsec. (k)(2). Pub. L. 101–73, § 907(b), in amending par. (2) generally, designated existing provisions as cls. (i) to (iv), substituted provisions imposing a fine of $5,000 per day for violation of any law or regulation, a final or temporary order, any condition imposed in writing, or any written agreement for provisions imposing a fine of $1,000 per day for violation of any final order, authorizing the penalizing agency to compromise or modify such penalty, providing for assessment and collection of such penalty by written notice, and defining ''violates'', and added subpars. (B) to (L).

Subsec. (k)(3). Pub. L. 101–73, § 905(b), added par. (3).

Subsec. (*l*). Pub. L. 101–73, § 908(b), amended subsec. (*l*) generally. Prior to amendment, subsec. (*l*) read as follows: ''Any director, officer, or committee member, or former director, officer, or committee member, of an insured credit union or of a credit union any of the member accounts of which are insured, or any other person against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, committee member, or other person under subsections (g)(4), (g)(5), or (i) of this section and who (i) participates in any manner in the conduct of the affairs of the credit union involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such credit union, or (ii) without the prior written approval of the Board votes for a director, serves or acts as a director, officer, committee member, or employee of any credit union, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.''

Subsec. (*o*). Pub. L. 101–73, § 901(b)(2)(G), substituted ''institution-affiliated party'' for ''director, officer, committee member or other person participating in the conduct of its affairs''.

Subsec. (p). Pub. L. 101–73, § 915(b), in first sentence, inserted ''or in connection with any claim for insured deposits or any examination or investigation under section 1784(b) of this title'' after ''any proceeding under this section'', '', in conducting the proceeding, examination, or investigation or considering the claim for insured deposits,'' after ''section, the Board'', and '', claims, examinations, or investigations'' before period at end.

Subsec. (r). Pub. L. 101–73, § 901(a), added subsec. (r).

Subsec. (s). Pub. L. 101–73, § 913(b), added subsec. (s).

1987—Pub. L. 100–86, § 509(a), repealed Pub. L. 97–320, § 141. See 1982 Amendment notes below.

Subsec. (g)(1). Pub. L. 100–86, § 709(1), substituted ''committee member, or employee'' for ''or committee member'' in three places.

Subsec. (g)(2). Pub. L. 100–86, § 709(2)–(4), substituted ''committee member, or employee'' for ''or committee member'' in two places, substituted ''any agent or other person'' for ''any other person'', and inserted ''employee, agent,'' before ''or other person''.

Subsec. (g)(7). Pub. L. 100–86, § 710, added par. (7).

Subsec. (h)(1)(C), (D). Pub. L. 100–86, § 711, added subpars. (C) and (D).

Subsec. (h)(2)(B). Pub. L. 100–86, § 712, substituted ''30'' for ''ninety''.

Subsec. (h)(8), (9). Pub. L. 100–86, § 713, added par. (8) and redesignated former par. (8) as (9).

1986—Subsec. (k)(2)(A). Pub. L. 99–570, § 1359(d)(2), inserted reference to subsec. (q) of this section.

Subsec. (q). Pub. L. 99–570, § 1359(d)(1), added subsec. (q).

1984—Subsec. (d)(1). Pub. L. 98–369 inserted ''(1)'' after ''subsection (a)'', ''maintain its deposit with and'', and provisions relating to termination of insured status and the obtaining of comparable insurance coverage from another source.

1982—Subsec. (b)(2). Pub. L. 97–320, § 132(b), substituted ''subsection (j)'' for ''subsection (i)''.

Pub. L. 97–320, § 141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, § 509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

Subsec. (g)(3) to (6). Pub. L. 97–320, § 427(c)(1), added par. (3); redesignated former pars. (3) to (5) as (4) to (6), respectively; inserted reference to par. (3) in two places and substituted reference to par. (6) for par. (5) in par. (4); and inserted reference to par. (3) and substituted reference to par. (4) for par. (3) in par. (6).

Subsecs. (h), (i). Pub. L. 97–320, § 132(a), added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

Pub. L. 97–320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

Subsec. (j). Pub. L. 97–320, §132(a), (c), (d), redesignated former subsec. (i) as (j), substituted ''subsection (i)(3)'' for ''subsection (h)(3)'' in first sentence and ''subsection (j)'' for ''subsection (i)'' in fourth sentence of par. (1), and substituted ''subsection (i)(1)'' for ''subsection (h)(1)'' after ''an order issued under'' in par. (2). Former subsec. (j) redesignated (k).

Pub. L. 97–320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

Subsec. (k). Pub. L. 97–320, §132(a)(1), redesignated former subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Pub. L. 97–320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

Subsec. (k)(2)(A), (D). Pub. L. 97–320, §424(a), (d)(9), (e), which directed insertion of proviso giving Board authority to compromise, etc., any civil money penalty imposed under this subsection and substitution of ''may be assessed'' for ''shall be assessed'' in subsec. (j)(2)(A), and substitution of ''twenty days from the service'' for ''ten days from the date'' in subsection (j)(2)(D), was executed to subsec. (k)(2)(A), (D) to reflect the probable intent of Congress and the redesignation of subsec. (j) as (k) by section 132(a)(1) of Pub. L. 97–320.

Subsec. (*l*). Pub. L. 97–320, §132(a)(1), (e), redesignated former subsec. (k) as (*l*) and substituted ''(i)'' for ''(h)'' after ''(g)(3), (g)(4), or''. Former subsec. (*l*) redesignated (m).

Pub. L. 97–320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

Pub. L. 97–320, §427(c)(2), which directed substitution of reference to subsec. (g)(5) for subsec. (g)(3) in subsec. (k), was executed to subsec. (*l*) to reflect the probable intent of Congress and the redesignation of subsec. (k) as (*l*) by section 132(a)(1) of Pub. L. 97–320.

Subsec. (m). Pub. L. 97–320, §132(a)(1), (f), redesignated former subsec. (*l*) as (m) and substituted ''subjection (j)'' for ''subsection (i)'' after ''paragraph (2) of'' and ''subsection (i)'' for ''subsection (h)'' after ''an order issued under''. Former subsec. (m) redesignated (n).

Pub. L. 97–320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

Subsecs. (n) to (p). Pub. L. 97–320, §132(a)(1), redesignated former subsecs. (m) to (*o*) as (n) to (p), respectively.

Pub. L. 97–320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

1978—Subsecs. (a) to (d). Pub. L. 95–630, §502(b), substituted ''Board'' for ''Administrator'' wherever appearing, and ''it'' and ''its'' for ''he'' and ''his'', respectively, where appropriate.

Subsec. (e). Pub. L. 95–630, §§107(a)(4), 502(b), substituted ''Board'' for ''Administrator'' wherever appearing, and in par. (1) extended coverage of provisions to include directors, officers, committee members, employees, agents, or other persons participating in the conduct of the affairs of any insured credit union or credit union which has insured accounts.

Subsec. (f). Pub. L. 95–630, §§107(c)(4), 502(b), substituted ''Board'' for ''Administrator'' wherever appearing, inserted references to any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of the credit union, and inserted in par. (1) ''prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (e) of this section'' after ''its insured members'' and ''and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings'' after ''violation or practice''.

Subsec. (g). Pub. L. 95–630, §§107(d)(4), 502(b), substituted ''Board'' for ''Administrator'' wherever appearing, in pars. (1), (2) ''its'' for ''his'', in par. (3) ''it'' for ''he'', ''or prohibit him'' for ''and/or prohibit him'', ''suspension or prohibition'' for ''suspension and/or prohibition'', and ''removal and prohibition'' for ''removal and/or prohibition'', and in par. (4) ''or to prohibit'' for ''and/or to prohibit'', ''removal or prohibition'' for ''removal and/or prohibition'', and ''or prohibition'' for ''and/or prohibition''.

Subsec. (h). Pub. L. 95–630, §§111(d)(1), 502(b), among other changes, substituted ''Board'' for ''Administrator'' wherever appearing, in par. (1) substituted ''Crime'' for ''felony'' in two places and ''subsection (g) of this section'' for ''paragraph (1) or (2) of subsection (g) of this section'', inserted ''which is punishable by imprisonment for a term exceeding one year under State or Federal law'' after ''or breach of trust'' and '', if continued service or participation by the individual may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union'' after ''the Board may'' in two places, and inserted provision that any notice of suspension or order of removal issued under this paragraph remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the Board, and added par. (3).

Subsec. (i). Pub. L. 95–630, §§111(d)(2), (3), 502(b), substituted ''Board'' for ''Administrator'' wherever appearing, in par. (1) substituted ''its'' for ''his'' and ''it'' for ''he'' and ''him'' and inserted ''(other than the hearing provided for in subsection (h)(3) of this section)'' after ''provided for in this section'', and in par. (2) substituted ''subsection (h)(1)'' for ''subsection (h)''.

Subsec. (j). Pub. L. 95–630, §§107(e)(4), 502(b), designated existing provisions as par. (1), added par. (2), and substituted ''Board'' for ''Administrator'' wherever appearing and ''its'' for ''his'' in par. (1).

Subsecs. (k) to (*o*). Pub. L. 95–630, §502(b), substituted ''Board'' for ''Administrator'' wherever appearing.

1977—Subsec. (g)(1). Pub. L. 95–22, §307(a), struck out ''and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director, officer, or committee member'' after ''or breach of fiduciary duty''.

Subsec. (g)(2). Pub. L. 95–22, § 307(b), substituted ''dishonesty or unfitness'' for ''dishonesty and unfitness'' wherever appearing.

1974—Subsec. (a). Pub. L. 93–383, § 728(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 93–383, § 728(b), inserted ''(1)'' after ''(a)''.

Subsec. (d). Pub. L. 93–383, § 728(c), designated existing provisions as par. (1) and added pars. (2) and (3).

CHANGE OF NAME

Oversight Board redesignated Thrift Depositor Protection Oversight Board, effective Feb. 1, 1992, see section 302(a) of Pub. L. 102–233, set out as a note under section 1441a of this title. Thrift Depositor Protection Oversight Board abolished, see section 14(a)–(d) of Pub. L. 105–216, set out as a note under section 1441a of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–458, title VI, § 6303(d), Dec. 17, 2004, 118 Stat. 3754, provided that: ''Notwithstanding any other effective date established pursuant to this Act [see Tables for classification], subsection (a) shall become effective on the date of enactment of this Act [Dec. 17, 2004], and the amendments made by subsections (b) and (c) [amending this section and section 1820 of this title] shall become effective at the end of the 12-month period beginning on the date of enactment of this Act [Dec. 17, 2004], whether or not final regulations are issued in accordance with the amendments made by this section [amending this section and section 1820 of this title] as of that date of enactment.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1501(c) of Pub. L. 102–550 provided that: ''The amendments made by this section [amending this section and section 1821 of this title] shall take effect on December 20, 1992.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 903(e) of Pub. L. 101–73 provided that: ''The amendments made by this section [amending this section and section 1818 of this title] shall apply with respect to violations committed and activities engaged in after the date of the enactment of this Act [Aug. 9, 1989].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by sections 107(a)(4), (c)(4), (d)(4), and 111(d)(1)–(3) of Pub. L. 95–630 effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

Amendment by section 107(e)(4) of Pub. L. 95–630 applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95–630, set out as a note under section 93 of this title.

Amendment by section 502(b) of Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

EFFECTIVE DATE OF REGULATIONS PRESCRIBED UNDER 1986 AMENDMENT

The regulations required to be prescribed under amendment by Pub. L. 99–570 effective at end of 3-month period beginning on October 27, 1986, see section 1364(e) of Pub. L. 99–570, set out as a note under section 1464 of this title.

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97–320

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100–86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99–452, set out as a note under section 1464 of this title.

Section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day after Aug. 27, 1986, applicable as if included in Pub. L. 97–320 on Oct. 15, 1982, with no amendment made by such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99–400, set out as a note under section 1464 of this title.

§ 1786a. Omitted

CODIFICATION

Section, act June 26, 1934, ch. 750, title II, § 206A, as added Pub. L. 105–164, § 3(b), Mar. 20, 1998, 112 Stat. 35; amended Pub. L. 109–351, title VII, § 726(20), Oct. 13, 2006, 120 Stat. 2003, which related to regulation and examination of credit union organizations and service providers by the National Credit Union Administration Board, ceased to be effective as of Dec. 31, 2001, pursuant to subsec. (f) of the section.

§ 1787. Payment of insurance

(a) Liquidation by Board; bond; appointment of agent; fees to be fixed by Board

(1)(A) Upon its finding that a Federal credit union insured under this subchapter is bankrupt or insolvent, the Board shall close such credit union for liquidation and appoint itself liquidating agent therefor.

(B) Not later than 10 days after the date on which the Board closes a credit union for liquidation pursuant to paragraph (1), or accepts appointment as liquidating agent pursuant to subsection (b) of this section, such insured credit union may apply to the United States district court for the judicial district in which the principal office of such insured credit union is located or the United States District Court for the District of Columbia, for an order requiring the Board to show cause why it should not be prohibited from continuing such liquidation. Except as otherwise provided in this subparagraph, no court may take any action for or toward the removal of any liquidating agent or, except at the instance of the Board, restrain or affect the exercise of powers or functions of a liquidating agent.

(2) Notwithstanding any other provision of law, the Board as liquidating agent of a closed Federal credit union insured under this subchapter shall not be required to furnish bond and shall have the right to appoint an agent or agents to assist it in its duties as such liquidating agent. All fees, compensation, and expenses of liquidation and administration thereof shall be fixed by the Board and may be paid by them out of funds coming into its possession as such liquidating agent.

(3) LIQUIDATION TO FACILITATE PROMPT CORRECTIVE ACTION.—The Board may close any credit union for liquidation, and appoint itself or another (including, in the case of a State-chartered insured credit union, the State official having jurisdiction over the credit union) as liquidating agent of that credit union, if—

(A) the Board determines that—

(i) the credit union is significantly undercapitalized, as defined in section 1790d of this title, and has no reasonable prospect of becoming adequately capitalized, as defined in section 1790d of this title; or

(ii) the credit union is critically undercapitalized, as defined in section 1790d of this title; and

(B) in the case of a State-chartered insured credit union, the Board has complied with section 1790d(*l*) of this title.

(b) Powers and duties of Board as conservator or liquidating agent

(1) Rulemaking authority of Board

The Board may prescribe such regulations as the Board determines to be appropriate regarding the conduct of the Board as conservator or liquidating agent.

(2) General powers

(A) Successor to credit union

The Board shall, as conservator or liquidating agent, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the credit union, and of any member, accountholder, officer, or director of such credit union with respect to the credit union and the assets of the credit union; and

(ii) title to the books, records, and assets of any previous conservator or other legal custodian of such credit union.

(B) Operate the credit union

The Board may, as conservator or liquidating agent—

(i) take over the assets of and operate the credit union with all the powers of the members or shareholders, the directors, and the officers of the credit union and shall be authorized to conduct all business of the credit union;

(ii) collect all obligations and money due the credit union;

(iii) perform all functions of the credit union in the name of the credit union which is consistent with the appointment as conservator or liquidating agent; and

(iv) preserve and conserve the assets and property of such credit union.

(C) Functions of credit union's officers, directors, and shareholders

The Board may, by regulation or order, provide for the exercise of any function by any member or stockholder, director, or officer of any credit union for which the Board has been appointed conservator or liquidating agent.

(D) Powers as conservator

The Board may, as conservator, take such action as may be—

(i) necessary to put the credit union in a sound and solvent condition; and

(ii) appropriate to carry on the business of the credit union and preserve and conserve the assets and property of the credit union.

(E) Additional powers as liquidating agent

The Board may, as liquidating agent, place the credit union in liquidation and proceed to realize upon the assets of the credit union, having due regard to the conditions of credit in the locality.

(F) Payment of valid obligations

The Board, as conservator or liquidating agent, shall pay all valid obligations of the credit union in accordance with the prescriptions and limitations of this chapter.

(G) Attachment of assets and injunctive relief

Subject to subparagraph (H), any court of competent jurisdiction may, at the request of the Board (in the Board's capacity as conservator or liquidating agent for any insured credit union or in the Board's corporate capacity in the exercise of any authority under this section), issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Board under the control of the court and appointing a trustee to hold such assets.

(H) Standards

(i) Showing

Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subparagraph (G) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(ii) State proceeding

If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by clause (i)), the relief sought by the Board pursuant to subparagraph (G) may be requested under the laws of such State.

(I) Subpoena authority

(i) In general

The Board may, as conservator or liquidating agent and for purposes of carrying out any power, authority, or duty with respect to an insured credit union (including determining any claim against the credit union and determining and realizing upon any asset of any person in the course of collecting money due the credit union), exercise any power established under section 1786(p) of this title, and the provisions of such section shall apply with respect to the exercise of any such power under this subparagraph in the same manner as such provisions apply under such section.

(ii) Authority of Board

A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Board or their designees.

(iii) Rule of construction

This subsection shall not be construed as limiting any rights that the Board, in any capacity, might otherwise have under section 1786(p) of this title.

(J) Incidental powers

The Board may, as conservator or liquidating agent—

(i) exercise all powers and authorities specifically granted to conservators or liquidating agents, respectively, under this chapter and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this chapter,

which the Board determines is in the best interests of the credit union, its account holders, or the Board.

(K) Exemption from criminal prosecution

The Administration shall be exempt from all prosecution by the United States or any State, county, municipality, or local authority for any criminal offense arising under Federal, State, county, municipal, or local law, which was allegedly committed by a credit union, or persons acting on behalf of a credit union, prior to the appointment of the Administration as liquidating agent.

(3) Authority of liquidating agent to determine claims

(A) In general

The Board may, as liquidating agent, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4).

(B) Notice requirements

The liquidating agent, in any case involving the liquidation or winding up of the affairs of a closed credit union, shall—

(i) promptly publish a notice to the credit union's creditors to present their claims, together with proof, to the liquidating agent by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) Mailing required

The liquidating agent shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the credit union's books—

(i) at the creditor's last address appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the credit union's books within 30 days after the discovery of such name and address.

(4) Rulemaking authority relating to determination of claims

The Board may prescribe regulations regarding the allowance or disallowance of claims by the liquidating agent and providing for administrative determination of claims and review of such determination.

(5) Procedures for determination of claims

(A) Determination period

(i) In general

Before the end of the 180-day period beginning on the date any claim against a credit union is filed with the Board as liquidating agent, the Board shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) Extension of time

The period described in clause (i) may be extended by a written agreement between the claimant and the Board.

(iii) Mailing of notice sufficient

The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the credit union's books;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) Contents of notice of disallowance

If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) Allowance of proven claims

The liquidating agent shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the liquidating agent from any claimant which is proved to the satisfaction of the liquidating agent.

(C) Disallowance of claims filed after end of filing period

(i) In general

Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.

(ii) Certain exceptions

Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the liquidating agent if—

(I) the claimant did not receive notice of the appointment of the liquidating

agent in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) Authority to disallow claims

The liquidating agent may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the liquidating agent.

(E) No judicial review of determination pursuant to subparagraph (D)

No court may review the Board's determination pursuant to subparagraph (D) to disallow a claim.

(F) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the liquidating agent shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the liquidating agent shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the liquidating agent.

(6) Provision for agency review or judicial determination of claims

(A) In general

Before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a credit union for which the Board is liquidating agent; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i),

the claimant may request administrative review of the claim in accordance with subparagraph (A) or (B) of paragraph (7) or file suit on such claim (or continue an action commenced before the appointment of the liquidating agent) in the district or territorial court of the United States for the district within which the credit union's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

(B) Statute of limitations

If any claimant fails to—

(i) request administrative review of any claim in accordance with subparagraph (A) or (B) of paragraph (7); or

(ii) file suit on such claim (or continue an action commenced before the appointment of the liquidating agent),

before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the liquidating agent) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(7) Review of claims

(A) Administrative hearing

If any claimant requests review under this subparagraph in lieu of filing or continuing any action under paragraph (6) and the Board agrees to such request, the Board shall consider the claim after opportunity for a hearing on the record. The final determination of the Board with respect to such claim shall be subject to judicial review under chapter 7 of title 5.

(B) Other review procedures

(i) In general

The Board shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) Criteria

In establishing alternative dispute resolution processes, the Board shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) Voluntary binding or nonbinding procedures

The Board may establish both binding and nonbinding processes, which may be conducted by any government or private party, but all parties, including the claimant and the Board, must agree to the use of the process in a particular case.

(iv) Consideration of incentives

The Board shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) Expedited determination of claims

(A) Establishment required

The Board shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any credit union for which the Board has been appointed liquidating agent; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) Determination period

Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Board shall—

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (5); or

(ii) notify the claimant of the determination, and if the claim is disallowed, a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) Period for filing or renewing suit

Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the liquidating agent, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Board denies the claim.

(D) Statute of limitations

If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the liquidating agent), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the liquidating agent shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the liquidating agent shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the liquidating agent.

(9) Agreement as basis of claim

(A) Requirements

Except as provided in subparagraph (B), any agreement which does not meet the requirements set forth in section 1788(a)(3) of this title shall not form the basis of, or substantially comprise, a claim against the liquidating agent or the Board.

(B) Exception to contemporaneous execution requirement

Notwithstanding section 1788(a)(3) of this title, any agreement between a Federal home loan bank or Federal Reserve bank and any insured credit union which was executed before the extension of credit by such bank to such credit union shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (A).

(10) Payment of claims

(A) In general

The liquidating agent may, in the liquidating agent's discretion and to the extent funds are available, pay creditor claims which are allowed by the liquidating agent, approved by the Board pursuant to a final determination pursuant to paragraph (7) or (8), or determined by the final judgment of any court of competent jurisdiction in such manner and amounts as are authorized under this chapter.

(B) Payment of dividends on claims

The liquidating agent may, in the liquidating agent's sole discretion, pay dividends on proved claims at any time, and no liability shall attach to the Board (in such Board's corporate capacity or as liquidating agent), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(11) Distribution of assets

(A) Subrogated claims; claims of uninsured accountholders and other creditors

The liquidating agent shall—

(i) retain for the account of the Board such portion of the amounts realized from any liquidation as the Board may be entitled to receive in connection with the subrogation of the claims of accountholders; and

(ii) pay to accountholders and other creditors the net amounts available for distribution to them.

(B) Distribution to shareholders of amounts remaining after payment of all other claims and expenses

In any case in which funds remain after all accountholders, creditors, other claimants, and administrative expenses are paid, the liquidating agent shall distribute such funds to the credit union's shareholders or members together with the accounting report required under paragraph (14)(C).

(12) Suspension of legal actions

(A) In general

After the appointment of a conservator or liquidating agent for an insured credit union, the conservator or liquidating agent may request a stay for a period not to exceed—

(i) 45 days, in the case of any conservator; and

(ii) 90 days, in the case of any liquidating agent,

in any judicial action or proceeding to which such credit union is or becomes a party.

(B) Grant of stay by all courts required

Upon receipt of a request by any conservator or liquidating agent pursuant to subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(13) Additional rights and duties

(A) Prior final adjudication

The Board shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Board as conservator or liquidating agent.

(B) Rights and remedies of conservator or liquidating agent

In the event of any appealable judgment, the Board as conservator or liquidating agent shall—

(i) have all the rights and remedies available to the credit union (before the appointment of such conservator or liquidating agent) and the Board in its corporate capacity, including removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) No attachment or execution

No attachment or execution may issue by any court upon assets in the possession of the liquidating agent.

(D) Limitation on judicial review

Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any credit union for which the Board has been appointed liquidating agent, including assets which the Board may acquire from itself as such liquidating agent; or

(ii) any claim relating to any act or omission of such credit union or the Board as liquidating agent.

(14) Statute of limitations for actions brought by conservator or liquidating agent

(A) In general

Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Board as conservator or liquidating agent shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date the claim accrues; or

(II) the period applicable under State law.

(B) Determination of the date on which a claim accrues

For purposes of subparagraph (A), the date on which the statute of limitation begins to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Board as conservator or liquidating agent; or

(ii) the date on which the cause of action accrues.

(15) Accounting and recordkeeping requirements

(A) In general

The Board as conservator or liquidating agent shall, consistent with the accounting and reporting practices and procedures established by the Board, maintain a full accounting of each conservatorship and liquidation or other disposition of credit unions in default.

(B) Annual accounting or report

With respect to each conservatorship or liquidation to which the Board was appointed, the Board shall make an annual accounting or report, as appropriate, available to the Comptroller General of the United States or, in the case of a State-chartered credit union, the authority which appointed the Board as conservator or liquidating agent.

(C) Availability of reports

Any report prepared pursuant to subparagraph (B) shall be made available by the Board upon request to any shareholder of the credit union for which the Board was appointed conservator or liquidating agent or any other member of the public.

(D) Recordkeeping requirement

(i) In general

Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Board is appointed as liquidating agent of an insured credit union, the Board may destroy any records of such credit union which the Board, in the Board's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) Old records

Notwithstanding clause (i) the Board may destroy records of an insured credit union which are at least 10 years old as of the date on which the Board is appointed as liquidating agent of such credit union in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

(16) Fraudulent transfers

(A) In general

The Board, as conservator or liquidating agent for any insured credit union, may avoid a transfer of any interest of an institution-affiliated party, or any person who the Board determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Board becomes conservator or liquidating agent if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the insured credit union or the Board.

(B) Right of recovery

To the extent a transfer is avoided under subparagraph (A), the Board may recover, for the benefit of the insured credit union, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(C) Rights of transferee or obligee

The Board may not recover under subparagraph (B) from—

(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

(ii) any immediate or mediate good faith transferee of such transferee.

(D) Rights under this paragraph

The rights of the Board under this paragraph shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11.

(c) Provisions relating to contracts entered into before appointment of conservator or liquidating agent

(1) Authority to repudiate contracts

In addition to any other rights a conservator or liquidating agent may have, the conservator or liquidating agent for any insured credit union may disaffirm or repudiate any contract or lease—

(A) to which such credit union is a party;

(B) the performance of which the conservator or liquidating agent, in the conservator's or liquidating agent's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or liquidating agent determines, in the conservator's or liquidating agent's discretion, will promote the orderly administration of the credit union's affairs.

(2) Timing of repudiation

The conservator or liquidating agent appointed for any insured credit union shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) Claims for damages for repudiation

(A) In general

Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or liquidating agent for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or liquidating agent; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) No liability for other damages

For purposes of subparagraph (A), the term ''actual direct compensatory damages'' does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) Measure of damages for repudiation of financial contracts

In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (f) of this section except as otherwise specifically provided in this section.

(4) Leases under which the credit union is the lessee

(A) In general

If the conservator or liquidating agent disaffirms or repudiates a lease under which the credit union was the lessee, the conservator or liquidating agent shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) Payments of rent

Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective,

unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (b) of this section.

(5) Leases under which the credit union is the lessor

(A) In general

If the conservator or liquidating agent repudiates an unexpired written lease of real property of the credit union under which the credit union is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) Provisions applicable to lessee remaining in possession

If any lessee under a lease described in subparagraph (A) remains in possession of a

leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the credit union under the lease after such date; and

(ii) the conservator or liquidating agent shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

(6) Contracts for the sale of real property

(A) In general

If the conservator or liquidating agent repudiates any contract (which meets the requirements of each paragraph of section 1788(a)(3) of this title) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) Provisions applicable to purchaser remaining in possession

If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the credit union under the contract; and

(ii) the conservator or liquidating agent shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) Assignment and sale allowed

(i) In general

No provision of this paragraph shall be construed as limiting the right of the conservator or liquidating agent to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) No liability after assignment and sale

If an assignment and sale described in clause (i) is consummated, the conservator or liquidating agent shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) Provisions applicable to service contracts

(A) Services performed before appointment

In the case of any contract for services between any person and any insured credit union for which the Board has been appointed conservator or liquidating agent, any claim of such person for services performed before the appointment of the conservator or the liquidating agent shall be—

(i) a claim to be paid in accordance with subsection (b) of this section; and

(ii) deemed to have arisen as of the date the conservator or liquidating agent was appointed.

(B) Services performed after appointment and prior to repudiation

If, in the case of any contract for services described in subparagraph (A), the conservator or liquidating agent accepts performance by the other person before the conservator or liquidating agent makes any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or liquidation.

(C) Acceptance of performance no bar to subsequent repudiation

The acceptance by any conservator or liquidating agent of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or liquidating agent to repudiate such contract under this section at any time after such performance.

(8) Certain qualified financial contracts

(A) Rights of parties to contracts

Subject to paragraphs (9) and (10) of this subsection and notwithstanding any other provision of this chapter (other than subsection (b)(9) of this section and section 1788(a)(3) of this title), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with an insured credit union which arises upon the appointment of the Board as liquidating agent for such credit union at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);[1]

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) Applicability of other provisions

Subsection (b)(12) of this section shall apply in the case of any judicial action or proceeding brought against any liquidating agent referred to in subparagraph (A), or the credit union for which such liquidating agent was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such credit union.

(C) Certain transfers not avoidable

(i) In general

Notwithstanding paragraph (11), section 91 of this title or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Board, whether acting as such or as conservator or liquidating agent of an insured credit union, may not avoid any transfer of money or other property in connection with any qualified financial contract with an insured credit union.

(ii) Exception for certain transfers

Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with an insured credit union if the Board determines that the transferee had actual intent to hinder, delay, or defraud such credit union, the creditors of such credit union, or any conservator or liquidating agent appointed for such credit union.

(D) Certain contracts and agreements defined

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

(i) Qualified financial contract

The term ''qualified financial contract'' means any securities contract, forward contract, repurchase agreement, and any similar agreement that the Board determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) Securities contract

The term ''securities contract''—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a ''repurchase agreement'', as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II));

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is re-

[1] So in original. Probably should be followed by ''or''.

ferred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) Commodity contract

The term ''commodity contract'' means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) Forward contract

The term ''forward contract'' means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including,[2] a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a ''repurchase agreement'', as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) Repurchase agreement

The term ''repurchase agreement'' (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.]), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit,

[2] So in original. The comma probably should not appear.

eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term ''qualified foreign government security'' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

(vi) Swap agreement

The term ''swap agreement'' means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000 [7 U.S.C. 27 to 27f], the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)]) and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(vii) Treatment of master agreement as one agreement

Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(viii) Transfer

The term ''transfer'' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.

(ix) Person

The term ''person'' includes any governmental entity in addition to any entity included in the definition of such term in section 1 of title 1.

(E) Certain protections in event of appointment of conservator

Notwithstanding any other provision of this chapter (other than subsections (b)(9) and (c)(10) of this section, and section 1788(a)(3) of this title), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a credit union in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);[1]

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) Clarification

No provision of law shall be construed as limiting the right or power of the Board, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Board to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (c)(1) of this section.

(G) Walkaway clauses not effective

(i) In general

Notwithstanding the provisions of subparagraphs (A) and (E), and sections 4403 and 4404 of this title, no walkaway clause shall be enforceable in a qualified financial contract of an insured credit union in default.

(ii) Limited suspension of certain obligations

In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the liquidating agent is appointed until the earlier of—

(I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent.

(iii) Walkaway clause defined

For purposes of this subparagraph, the term ''walkaway clause'' means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party's status as a nondefaulting party in connection with the insolvency of an insured credit union or the appointment of or the exercise of rights or powers by a conservator or liquidating agent of such credit union, and not as a result of a party's exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(H) Recordkeeping requirements

The Board, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured credit union with respect to qualified financial contracts (including market valuations) only if such insured credit union is in a troubled condition (as such term is defined by the Board pursuant to section 1790a of this title).

(9) Transfer of qualified financial contracts

(A) In general

In making any transfer of assets or liabilities of a credit union in default which includes any qualified financial contract, the conservator or liquidating agent for such credit union shall either—

(i) transfer to 1 financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the credit union in default;

(II) all claims of such person or any affiliate of such person against such credit union under any such contract (other

than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such credit union);

(III) all claims of such credit union against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) Transfer to foreign bank, foreign financial institution, or branch or agency of a foreign bank or financial institution

In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or liquidating agent for the credit union shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) Transfer of contracts subject to the rules of a clearing organization

In the event that a conservator or liquidating agent transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) Definitions

For purposes of this paragraph—

(i) the term ''financial institution'' means a broker or dealer, a depository institution, a futures commission merchant, a credit union, or any other institution, as determined by the Board by regulation to be a financial institution; and

(ii) the term ''clearing organization'' has the same meaning as in section 4402 of this title.

(10) Notification of transfer

(A) In general

If—

(i) the conservator or liquidating agent for an insured credit union in default makes any transfer of the assets and liabilities of such credit union; and

(ii) the transfer includes any qualified financial contract,

the conservator or liquidating agent shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent in the case of a liquidation, or the business day following such transfer in the case of a conservatorship.

(B) Certain rights not enforceable

(i) Liquidation

A person who is a party to a qualified financial contract with an insured credit union may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a liquidating agent for the credit union institution (or the insolvency or financial condition of the credit union for which the liquidating agent has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) Conservatorship

A person who is a party to a qualified financial contract with an insured credit union may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a conservator for the credit union or[3] the insolvency or financial condition of the credit union for which the conservator has been appointed).

(iii) Notice

For purposes of this paragraph, the Board as conservator or liquidating agent of an insured credit union shall be deemed to have notified a person who is a party to a qualified financial contract with such credit union if the Board has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) Treatment of bridge banks[4]

The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

(i) A bridge depository institution.

(ii) A credit union organized by the Board, for which a conservator is appointed either—

[3] So in original. Probably should read ''(or''.

[4] So in original. Probably should be ''bridge depository institutions''.

(I) immediately upon the organization of the credit union; or

(II) at the time of a purchase and assumption transaction between the credit union and the Board as receiver for a credit union in default.

(D) "Business day" defined

For purposes of this paragraph, the term ''business day'' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) Disaffirmance or repudiation of qualified financial contracts

In exercising the rights of disaffirmance or repudiation of a conservator or liquidating agent with respect to any qualified financial contract to which an insured credit union is a party, the conservator or liquidating agent for such credit union shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the credit union in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) Certain security interests not avoidable

No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any credit union except where such an interest is taken in contemplation of the credit union's insolvency or with the intent to hinder, delay, or defraud the credit union or the creditors of such credit union.

(13) Authority to enforce contracts

(A) In general

The conservator or liquidating agent may enforce any contract, other than a director's or officer's liability insurance contract or a credit union bond, entered into by the credit union notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a conservator or liquidating agent.

(B) Certain rights not affected

No provision of this paragraph may be construed as impairing or affecting any right of the conservator or liquidating agent to enforce or recover under a directors or officers liability insurance contract or credit union bond under other applicable law.

(C) Consent requirement

(i) In general

Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the credit union is a party, or to obtain possession of or exercise control over any property of the credit union or affect any contractual rights of the credit union, without the consent of the conservator or liquidating agent, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator, or during the 90-day period beginning on the date of the appointment of the liquidating agent, as applicable.

(ii) Certain exceptions

No provision of this subparagraph shall apply to a director or officer liability insurance contract or a credit union bond, or to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or shall be construed as permitting the conservator or liquidating agent to fail to comply with otherwise enforceable provisions of such contract.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to limit or otherwise affect the applicability of title 11.

(14) Exception for Federal Reserve and Federal home loan banks

No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(B) any security interest in the assets of the institution securing any such extension of credit.

(15) Savings clause

The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000 [7 U.S.C. 27 to 27f], the securities laws (as that term is defined in section (a)(47)[5] of the Securities Exchange Act of 1934), and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(d) Payment of insured deposits

(1) In general

In case of the liquidation of any insured credit union, payment of the insured deposits in such credit union shall be made by the Board as soon as possible, subject to the provisions of subsection (e) of this section, either by cash or by making available to each accountholder a transferred deposit in a new credit union in the same community or in another insured credit union in an amount equal to the insured deposit of such accountholder.

(2) Proof of claims

The Board, in its discretion, may require proof of claims to be filed and may approve or reject such claims for insured deposits.

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[5] So in original. Probably should be section ''3(a)(47)''.

(3) Resolution of disputes

A determination by the Administration regarding any claim for insurance coverage shall be treated as a final determination for purposes of this section. In its discretion, the Board may promulgate regulations prescribing procedures for resolving any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit. A final determination made by the Board regarding any claim for insurance coverage shall be a final agency action reviewable in accordance with chapter 7 of title 5 by the United States district court for the Federal judicial district where the principal place of business of the credit union is located.

(4) Statute of limitations

Any request for review of a final determination by the Board regarding any claim for insurance coverage shall be filed with the appropriate United States district court not later than 60 days after the date on which such determination is issued.

(e) Subrogation of Board

(1) In general

Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Board, upon the payment to any accountholder as provided in subsection (d) of this section in connection with any insured credit union described in such subsection or the assumption of any deposit in such credit union by another insured credit union pursuant to this section, shall be subrogated to all rights of the accountholder against such credit union to the extent of such payment or assumption.

(2) Dividends on subrogated amounts

The subrogation of the Board under paragraph (1) with respect to any insured credit union shall include the right on the part of the Board to receive the same dividends from the proceeds of the assets of such credit union as would have been payable to the accountholder on a claim for the insured deposit, but such accountholder shall retain such claim for any uninsured or unassumed portion of the deposit.

(f) Valuation of claims in default

(1) In general

Notwithstanding any other provision of Federal law or the law of any State, this subsection shall govern the rights of the creditors (other than insured accountholders) of such credit union.

(2) Maximum liability

The maximum liability of the Board, acting as liquidating agent or in any other capacity, to any person having a claim against the liquidating agent or the insured credit union for which such liquidating agent is appointed shall equal the amount such claimant would have received if the Board had liquidated the assets and liabilities of such credit union without exercising the Board's authority under subsection (n) of this section.

(3) Additional payments authorized

(A) In general

The Board may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. The Board shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(B) Manner of payment

The Board may make the payments or credit the amounts specified in subparagraph (A) directly to the claimants or may make such payments or credit such amounts to an open insured credit union to induce the open insured credit union to accept liability for such claims.

(g) Limitation on court action

Except as provided in this section, no court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Board as a conservator or a liquidating agent.

(h) Liability of directors and officers

A director or officer of an insured credit union may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Board, which action is prosecuted wholly or partially for the benefit of the Board—

(1) acting as conservator or liquidating agent of such insured credit union,

(2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such liquidating agent or conservator, or

(3) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by an insured credit union or its affiliate in connection with assistance provided under section 1788 of this title,

for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law. Nothing in this paragraph shall impair or affect any right, if any, of the Board under other applicable law.

(i) Damages

In any proceeding related to any claim against an insured credit union's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured credit union, recoverable damages determined to result from the improvident or otherwise improper use or investment of any insured credit union's assets shall include principal losses and appropriate interest.

(j) Board as liquidating agent of State-chartered credit unions

Whenever any insured State-chartered credit union shall have been closed by action of its board of directors or by the commission, board, or authority having supervision of such credit union, as the case may be, or by a court of competent jurisdiction, on account of bankruptcy or insolvency, the Board shall accept appointment as liquidating agent therefor, if such appointment is tendered by the commission, board, or authority having supervision of such credit union, or by a court of competent jurisdiction, and is authorized or permitted by State law. With respect to any such State-chartered credit union, the Board as such liquidating agent shall possess all the rights, powers, and privileges granted by State law to a liquidating agent of a State-chartered credit union. For the purposes of this subsection, the term ''liquidating agent'' includes a liquidating agent, receiver, conservator, commission, person, or other agency charged by law with the duty of winding up the affairs of a credit union.

(k) Insured amounts payable

(1) Net insured amount

(A) In general

(i) Net amount of insurance payable

Subject to clause (ii) and the provisions of paragraph (2), the net amount of share insurance payable to any member at an insured credit union shall not exceed the total amount of the shares or deposits in the name of the member (after deducting offsets), less any part thereof which is in excess of the standard maximum share insurance amount, as determined in accordance with this paragraph and paragraphs (5) and (6), and consistently with actions taken by the Federal Deposit Insurance Corporation under section 1821(a) of this title.

(ii) Insurance for noninterest-bearing transaction accounts

Notwithstanding clause (i), the Board shall fully insure the net amount that any member or depositor at an insured credit union maintains in a noninterest-bearing transaction account. Such amount shall not be taken into account when computing the net amount due to such member or depositor under clause (i).

(iii) Noninterest-bearing transaction account defined

For purposes of this subparagraph, the term ''noninterest-bearing transaction account'' means an account or deposit maintained at an insured credit union—

(I) with respect to which interest is neither accrued nor paid;

(II) on which the account holder or depositor is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

(III) on which the insured credit union does not reserve the right to require advance notice of an intended withdrawal.

(B) Aggregation

Determination of the net amount of share insurance under subparagraph (A)(i), shall be in accordance with such regulations as the Board may prescribe, and, in determining the amount payable to any member, there shall be added together all accounts in the credit union maintained by that member for that member's own benefit, either in the member's own name or in the names of others.

(C) Authority to define the extent of coverage

The Board may define, with such classifications and exceptions as it may prescribe, the extent of the share insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy.

(2) Government depositors or members

(A) In general

Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of insurance available to any 1 depositor or member, deposits or shares of a government depositor or member shall be insured in an amount equal to the standard maximum share insurance amount (as determined under paragraph (5)), subject to subparagraph (C).

(B) Government depositor

In this paragraph, the term ''government depositor'' means a depositor that is—

(i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this subchapter;

(ii) an officer, employee, or agent of any State of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this subchapter in such State;

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this subchapter in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Panama Canal Zone, or of any territory or possession of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this subchapter in the Commonwealth of Puerto Rico, the Panama Canal Zone, or any such territory or possession, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 1452(c) of

title 25) or agency thereof having official custody of tribal funds and lawfully investing the same in a credit union insured in accordance with this subchapter.

(C) Authority to limit deposits

The Board may limit the aggregate amount of funds that may be invested or deposited in any credit union insured in accordance with this subchapter by any government depositor or member on the basis of the size of any such credit union in terms of its assets.

(3) Notwithstanding any limitation in this subchapter or in any other provision of law relating to the amount of insurance available for the account of any one depositor or member, funds invested in a credit union insured in accordance with this subchapter pursuant to a pension or profit-sharing plan described in section 401(d) of title 26, and funds invested in such an insured credit union in the form of individual retirement accounts as described in section 408(a) of title 26, shall be insured in the amount of ''$250,000[6] (which amount shall be subject to inflation adjustments as provided under section 1821(a)(1)(F) of this title, except that $250,000[7] shall be substituted for $100,000[7] wherever such term appears in such section)''[6] per account. As to any plan qualifying under section 401(d) or section 408(a) of title 26, the term ''per account'' means the present vested and ascertainable interest of each beneficiary under the plan, excluding any remainder interest created by, or as a result of, the plan.

(4) Coverage for certain employee benefit plan deposits

(A) Pass-through insurance

The Administration shall provide pass-through share insurance for the deposits or shares of any employee benefit plan.

(B) Prohibition on acceptance of deposits

An insured credit union that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

(C) Definitions

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

(i) Capital standards

The terms ''well capitalized'' and ''adequately capitalized'' have the same meanings as in section 1790d(c) of this title.

(ii) Employee benefit plan

The term ''employee benefit plan''—

(I) has the meaning given to such term in section 1002(3) of title 29;

(II) includes any plan described in section 401(d) of title 26; and

(III) includes any eligible deferred compensation plan described in section 457 of title 26.

(iii) Pass-through share insurance

The term ''pass-through share insurance'' means, with respect to an employee benefit plan, insurance coverage based on the interest of each participant, in accordance with regulations issued by the Administration.

(D) Rule of construction

No provision of this paragraph shall be construed as authorizing an insured credit union to accept the deposits of an employee benefit plan in an amount greater than such credit union is authorized to accept under any other provision of Federal or State law.

(5) Standard maximum share insurance amount defined

For purposes of this chapter, the term ''standard maximum share insurance amount'' means $250,000, adjusted as provided under section 1821(a)(1)(F) of this title.

***(l)* Payment; discharge of liability**

Payment of an insured account to any person by the Board shall discharge the Board to the same extent that payment to such person by the closed insured credit union would have discharged it from liability for the insured account.

(m) Undisclosed names

Except as otherwise prescribed by the Board, the Board shall not be required to recognize as the owner of any portion of an account appearing on the records of the closed credit union under a name other than that of the claimant any person whose name or interest as such owner is not disclosed on the records of such closed credit union as part owner of such account, if such recognition would increase the aggregate amount of the insured accounts in such closed credit union.

(n) Withholding of payment due to liability of credit union member

The Board may withhold payment of such portion of the insured account of any member of a closed credit union as may be required to provide for the payment of any direct or indirect liability of such member to the closed credit union or its liquidating agent, which is not offset against a claim due from such credit union, pending the determination and payment of such liability by such member or any other person liable therefor.

***(o)* Unclaimed insured accounts; limitations**

If, after the Board shall have given at least four months' notice to the member by mailing a copy thereof to his last-known address appearing on the records of the closed credit union, any member of the closed credit union shall fail to claim his insured account from the Board within 18 months after the appointment of the liquidating agent for the closed credit union, all rights of the member against the Board with respect to the insured accounts shall be barred, and all rights of the member against the closed credit union, or the estate to which the Board may have become subrogated, shall thereupon revert to the member.

(p) Sale of assets; security for loans; approval of court; agreements affecting interest of Board in any asset acquired by it

(1) Liquidating agents of insured credit unions closed for liquidation on account of bankruptcy

[6] So in original. Quotation marks probably should not appear.
[7] So in original. Probably should be set off by quotation marks.

or insolvency may offer the assets of such credit unions for sale to the Board or as security for loans from the Board, upon receiving permission from the commission, board, or authority having supervision of such credit union, in the case of an insured State-chartered credit union, in accordance with express provisions of State law. The proceeds of every such sale or loan shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such credit unions. The Board, in its discretion, may make loans on the security of or may purchase and liquidate or sell any part of the assets of an insured credit union closed for liquidation on account of bankruptcy or insolvency, but in any case in which the Board is acting as liquidating agent of a closed insured credit union, no such loan or purchase shall be made without the approval of a court of competent jurisdiction.

(2) No agreement which tends to diminish or defeat the right, title, or interest of the Board in any asset acquired by it under this subsection, either as security for a loan or by purchase, shall be valid against the Board unless such agreement—

(A) shall be in writing;

(B) shall have been executed by the credit union and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the credit union;

(C) shall have been approved by the board of directors of the credit union, which approval shall be reflected in the minutes of such board; and

(D) shall have been, continuously, from the time of its execution, an official record of the credit union.

(q) Prohibition on certain acquisitions of assets

(1) Convicted debtors

Except as provided in paragraph (2), any individual who—

(A) has been convicted of an offense under section 215, 657, 1006, 1014, 1032, 1341, 1343, or 1344 of title 18 or of conspiring to commit any such offense, affecting any insured credit union for which the Board is appointed conservator or liquidating agent; and

(B) is in default on any loan or other extension of credit from such insured credit union which, if not paid, will cause substantial loss to the credit union, the National Credit Union Share Insurance Fund, or the Board,

may not purchase any asset of such credit union from the conservator or liquidating agent.

(2) Settlement of claims

Paragraph (1) shall not apply to the sale or transfer by the Board of any asset of any insured credit union to any individual if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of—

(A) 1 or more claims that have been, or could have been, asserted by the Board against the individual; or

(B) obligations owed by the individual to the insured credit union or the Board.

(r) Foreign investigations

The Board, as conservator or liquidating agent of any insured credit union and for purposes of carrying out any power, authority, or duty with respect to an insured credit union—

(1) may request the assistance of any foreign banking authority and provide assistance to any foreign banking authority in accordance with section 1786(u) of this title; and

(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign banking authorities.

(June 26, 1934, ch. 750, title II, §207, as added Pub. L. 91–468, §1(3), Oct. 19, 1970, 84 Stat. 1010; amended Pub. L. 93–495, title I, §§101(c), 104(a), Oct. 28, 1974, 88 Stat. 1501, 1503; Pub. L. 95–630, title V, §502(b), title XIV, §1401(c), Nov. 10, 1978, 92 Stat. 3681, 3712; Pub. L. 96–153, title III, §323(c), Dec. 21, 1979, 93 Stat. 1120; Pub. L. 96–221, title III, §308(c)(1), Mar. 31, 1980, 94 Stat. 148; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–86, title VII, §714(a), (b), Aug. 10, 1987, 101 Stat. 654, 655; Pub. L. 101–73, title IX, §915(c), title XII, §1217(a), Aug. 9, 1989, 103 Stat. 486, 530; Pub. L. 101–647, title XXV, §§2521(a)(2), 2526(b), 2528(b), 2532(d), 2534(b), Nov. 29, 1990, 104 Stat. 4864, 4876, 4878, 4882, 4883; Pub. L. 103–394, title V, §501(c)(1), Oct. 22, 1994, 108 Stat. 4143; Pub. L. 105–219, title III, §301(b)(2), Aug. 7, 1998, 112 Stat. 930; Pub. L. 109–8, title IX, §§901(a)(2), (b)(2), (c)(2), (d)(2), (e)(2), (f)(2), (g)(2), (h)(2), (i)(2), 902(b), 903(b), 904(b), 905(b), 908(b), Apr. 20, 2005, 119 Stat. 147, 148, 150, 152, 154, 156–159, 162, 166, 183; Pub. L. 109–173, §2(d)(1), (2), Feb. 15, 2006, 119 Stat. 3602, 3604; Pub. L. 109–351, title VII, §§718(b), 720(b), 721(b), 722(b), 726(21)–(23), Oct. 13, 2006, 120 Stat. 1997–1999, 2003; Pub. L. 109–390, §§2(a)(2), (b)(2), (c)(2), 3(b), 6(b), Dec. 12, 2006, 120 Stat. 2693–2695, 2699; Pub. L. 110–289, div. A, title VI, §1604(b)(2), July 30, 2008, 122 Stat. 2829; Pub. L. 111–203, title III, §§335(b), 343(b)(1), (3), July 21, 2010, 124 Stat. 1540, 1545.)

AMENDMENT OF SUBSECTION (k)(1)

Pub. L. 111–203, title III, §343(b)(3), July 21, 2010, 124 Stat. 1545, provided that, effective January 1, 2013, subsection (k)(1) of this section is amended:

(1) in subparagraph (A)—

(A) by substituting ''Subject to the provisions of paragraph (2), the net amount'' for ''(i) net amount of insurance payable.—'' and all that follows through ''paragraph (2), the net amount''; and

(B) by striking out clauses (ii) and (iii); and

(2) in subparagraph (B), by substituting ''subparagraph (A)'' for ''subparagraph (A)(i)''.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2)(G), (H), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Securities Exchange Act of 1934, referred to in subsec. (c)(8)(D)(v)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. Section 3(a)(47) of the Act is classified to section 78c of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Gramm-Leach-Bliley Act, referred to in subsec. (c)(8)(D)(vi), (15), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, as amended. For complete classification of

this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

The Legal Certainty for Bank Products Act of 2000, referred to in subsec. (c)(8)(D)(vi), (15), is title IV of H.R. 5660, as enacted by Pub. L. 106–554, §1(a)(5), Dec. 21, 2000, 114 Stat. 2763, 2763A–457, which is classified to sections 27 to 27f of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of Title 7 and Tables.

The Commodity Exchange Act, referred to in subsec. (c)(8)(D)(vi), (15), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

For definition of Canal Zone, referred to in subsec. (k)(2)(B)(iv), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2010—Subsec. (k)(1)(A). Pub. L. 111–203, §343(b)(1)(A), designated existing provisions as cl. (i), inserted heading, substituted ''Subject to clause (ii) and the provisions of paragraph (2), the net amount'' for ''Subject to the provisions of paragraph (2), the net amount'', and added cls. (ii) and (iii).

Subsec. (k)(1)(B). Pub. L. 111–203, §343(b)(1)(B), substituted ''subparagraph (A)(i)'' for ''subparagraph (A)''.

Subsec. (k)(5). Pub. L. 111–203, §335(b), substituted ''$250,000'' for ''$100,000''.

2008—Subsec. (c)(10)(C)(i). Pub. L. 110–289 substituted ''bridge depository institution'' for ''bridge bank''.

2006—Subsec. (b)(2)(K). Pub. L. 109–351, §720(b), added subpar. (K).

Subsec. (b)(15)(D). Pub. L. 109–351, §722(b), designated existing provisions as cl. (i), inserted cl. heading, substituted ''Except as provided in clause (ii), after the end of the 6-year period'' for ''After the end of the 6-year period'', and added cl. (ii).

Subsec. (c)(5)(B)(i)(I). Pub. L. 109–351, §726(21), inserted ''and'' after semicolon.

Subsec. (c)(8)(D)(ii)(I). Pub. L. 109–390, §2(a)(2)(A), substituted ''a mortgage loan,'' for ''a mortgage loan, or'' after ''certificate of deposit,'' and inserted before semicolon at end ''(whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in clause (v))''.

Subsec. (c)(8)(D)(ii)(IV). Pub. L. 109–390, §2(a)(2)(B), inserted ''(including by novation)'' after ''the guarantee'' and ''(whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II))'' before semicolon at end.

Subsec. (c)(8)(D)(ii)(VI) to (VIII). Pub. L. 109–390, §2(a)(2)(D), (E), added subcls. (VI) and (VII) and redesignated former subcl. (VI) as (VIII). Former subcl. (VIII) redesignated (X).

Subsec. (c)(8)(D)(ii)(IX). Pub. L. 109–390, §2(a)(2)(D), redesignated subcl. (VII) as (IX). Former subcl. (IX) redesignated (XI).

Pub. L. 109–390, §2(a)(2)(C), substituted ''(VIII), (IX), or (X)'' for ''or (VIII)'' in two places.

Subsec. (c)(8)(D)(ii)(X) to (XII). Pub. L. 109–390, §2(a)(2)(D), redesignated subcls. (VIII) to (X) as (X) to (XII), respectively.

Subsec. (c)(8)(D)(iv)(I). Pub. L. 109–390, §2(b)(2), substituted ''or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in clause (v))'' for ''transaction, reverse repurchase transaction''.

Subsec. (c)(8)(D)(vi). Pub. L. 109–390, §2(c)(2)(C), substituted in concluding provisions ''the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act'' for ''the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000''.

Subsec. (c)(8)(D)(vi)(I). Pub. L. 109–390, §2(c)(2)(A), substituted '', precious metals, or other commodity'' for ''or precious metals'' and ''weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement'' for ''or a weather swap, weather derivative, or weather option''.

Subsec. (c)(8)(D)(vi)(II). Pub. L. 109–390, §2(c)(2)(B), inserted ''or other derivatives'' after ''dealings in the swap'' and substituted ''future, option, or spot transaction'' for ''future, or option''.

Subsec. (c)(8)(D)(ix). Pub. L. 109–390, §3(b), added cl. (ix).

Subsec. (c)(8)(G)(ii), (iii). Pub. L. 109–390, §6(b), added cls. (ii) and (iii) and struck out former cl. (ii) which defined walkaway clause.

Subsec. (c)(13)(C). Pub. L. 109–351, §718(b), which directed addition of subpar. (C) to subsec. (c)(12), was executed to par. (13) to reflect the probable intent of Congress because par. (12) does not contain subpars. and par. (12) was redesignated (13) by Pub. L. 109–8, §904(b)(1). See 2005 Amendment note below.

Subsec. (d)(3). Pub. L. 109–351, §721(b), added par. (3) and struck out former par. (3) which related to resolution of dispute and adjudication of claims.

Subsec. (d)(3)(A). Pub. L. 109–351, §726(22), which directed substitution of ''with'' for ''to'' in heading, could not be executed because there is no subpar. (A) heading after the amendment by Pub. L. 109–351, §721(b). See above.

Subsec. (d)(4), (5). Pub. L. 109–351, §721(b), added par. (4) and struck out former pars. (4) and (5) which related to review of the Board's final determination and the statute of limitations.

Subsec. (f)(3)(A). Pub. L. 109–351, §726(23), substituted ''category of claimants.'' for ''category or claimants.'' in last sentence.

Subsec. (k). Pub. L. 109–173, §2(d)(1)(A), inserted subsec. heading.

Subsec. (k)(1). Pub. L. 109–173, §2(d)(1)(A), added par. (1) and struck out former par. (1) which read as follows: ''Subject to the provisions of paragraph (2), for the purposes of this subsection, the term 'insured account' means the total amount of the account in the member's name (after deducting offsets) less any part thereof which is in excess of $100,000. Such amount shall be determined according to such regulations as the Board may prescribe, and, in determining the amount due to any member, there shall be added together all accounts in the credit union maintained by him for his own benefit either in his own name or in the names of others. The Board may define, with such classifications and exceptions as it may prescribe, the extent of the insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy.''

Subsec. (k)(2). Pub. L. 109–173, §2(d)(1)(B)(ii)–(iv), inserted par. heading, added subpar. (A), substituted subpar. (B) designation, heading, and introductory provisions for former subpar. (A) designation and introductory provisions which read ''Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of insurance available for the account of any one depositor or member, in the case of a depositor or member who is—'', redesignated former subpar. (B) as (C), inserted heading, and substituted ''government depositor or member'' for ''depositor or member referred to in subparagraph (A)''.

Subsec. (k)(2)(A). Pub. L. 109–173, §2(d)(1)(B)(i), substituted period for semicolon at end of cl. (v), realigned margins of cls. (i) to (v), and struck out concluding provisions which read as follows: ''his account shall be insured in an amount not to exceed $100,000 per account.''

Subsec. (k)(3). Pub. L. 109–173, §2(d)(2), substituted '' '$250,000 (which amount shall be subject to inflation

adjustments as provided under section 1821(a)(1)(F) of this title, except that $250,000 shall be substituted for $100,000 wherever such term appears in such section)'' for ''$100,000''.

Subsec. (k)(4), (5). Pub. L. 109–173, §2(d)(1)(C), added pars. (4) and (5).

2005—Subsec. (c)(8)(A). Pub. L. 109–8, §901(h)(2)(A)(i), substituted ''paragraphs (9) and (10)'' for ''paragraph (12)'' in introductory provisions.

Subsec. (c)(8)(A)(i). Pub. L. 109–8, §901(h)(2)(A)(ii), substituted ''such person has to cause the termination, liquidation, or acceleration'' for ''to cause the termination or liquidation''.

Subsec. (c)(8)(A)(ii). Pub. L. 109–8, §901(h)(2)(A)(iii), added cl. (ii) and struck out former cl. (ii) which read as follows: ''any right under any security arrangement relating to any contract or agreement described in clause (i); or''.

Subsec. (c)(8)(C)(i). Pub. L. 109–8, §901(i)(2), inserted ''section 91 of this title or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Board''.

Subsec. (c)(8)(D). Pub. L. 109–8, §901(a)(2)(A), substituted ''subsection, the following definitions shall apply:'' for ''subsection—'' in introductory provisions.

Subsec. (c)(8)(D)(i). Pub. L. 109–8, §901(a)(2)(B), inserted '', resolution, or order'' after ''any similar agreement that the Board determines by regulation''.

Subsec. (c)(8)(D)(ii). Pub. L. 109–8, §901(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'securities contract'—

''(I) has the meaning given to such term in section 741 of title 11, except that the term 'security' (as used in such section) shall be deemed to include any mortgage loan, any mortgage-related security (as defined in section 78c(a)(41) of title 15), and any interest in any mortgage loan or mortgage-related security; and

''(II) does not include any participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such participation within the meaning of such term.''

Subsec. (c)(8)(D)(iii). Pub. L. 109–8, §901(c)(2), amended heading and text of cl. (iii) generally. Prior to amendment, text read as follows: ''The term 'forward contract' has the meaning given to such term in section 101 of title 11.''

Subsec. (c)(8)(D)(iv). Pub. L. 109–8, §901(d)(2), amended heading and text of cl. (iv) generally. Prior to amendment, text read as follows: ''The term 'repurchase agreement'—

''(I) has the meaning given to such term in section 101 of title 11, except that the items (as described in such section) which may be subject to any such agreement shall be deemed to include mortgage-related securities (as such term is defined in section 78c(a)(41) of title 15, any mortgage loan, and any interest in any mortgage loan; and

''(II) does not include any participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such participation within the meaning of such term.''

Subsec. (c)(8)(D)(v). Pub. L. 109–8, §901(e)(2), amended heading and text of cl. (v) generally. Prior to amendment, text read as follows: ''The term 'transfer' has the meaning given to such term in section 101 of title 11.''

Subsec. (c)(8)(D)(vi). Pub. L. 109–8, §901(f)(2), added cl. (vi).

Subsec. (c)(8)(D)(vii). Pub. L. 109–8, §905(b), added cl. (vii).

Subsec. (c)(8)(D)(viii). Pub. L. 109–8, §901(g)(2), added cl. (viii).

Subsec. (c)(8)(E). Pub. L. 109–8, §902(b)(1)(A), substituted ''other than subsections (b)(9) and (c)(10)'' for ''other than paragraph (12) of this subsection, subsection (b)(9)'' in introductory provisions.

Subsec. (c)(8)(E)(ii). Pub. L. 109–8, §901(h)(2)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: ''any right under any security arrangement relating to such qualified financial contracts; or''.

Subsec. (c)(8)(F), (G). Pub. L. 109–8, §902(b)(1)(B), added subpars. (F) and (G).

Subsec. (c)(8)(H). Pub. L. 109–8, §908(b), added subpar. (H).

Subsec. (c)(9). Pub. L. 109–8, §903(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text related to the transfer of qualified financial contracts, claims, and property of a credit union in default.

Subsec. (c)(10)(A). Pub. L. 109–8, §903(b)(2), substituted concluding provisions for former concluding provisions which read as follows: ''the conservator or liquidating agent shall use such conservator's or liquidating agent's best efforts to notify any person who is a party to any such contract of such transfer by 12:00, noon (local time), on the business day following such transfer.''

Subsec. (c)(10)(B) to (D). Pub. L. 109–8, §903(b)(3), added subpars. (B) and (C) and redesignated former subpar. (B) as (D).

Subsec. (c)(11). Pub. L. 109–8, §904(b)(2), added par. (11). Former par. (11) redesignated (12).

Subsec. (c)(12). Pub. L. 109–8, §904(b)(1), redesignated par. (11) as (12). Former par. (12) redesignated (13).

Subsec. (c)(12)(A). Pub. L. 109–8, §902(b)(2), inserted ''or the exercise of rights or powers by'' after ''the appointment of''.

Subsec. (c)(13), (14). Pub. L. 109–8, §904(b)(1), redesignated pars. (12) and (13) as (13) and (14), respectively.

Subsec. (c)(15). Pub. L. 109–8, §904(b)(3), added par. (15).

1998—Subsec. (a)(1)(A). Pub. L. 105–219, §301(b)(2)(A), substituted ''itself'' for ''himself''.

Subsec. (a)(3). Pub. L. 105–219, §301(b)(2)(B), added par. (3).

1994—Subsec. (c)(8)(D). Pub. L. 103–394 substituted ''section 741'' for ''section 741(7)'' in cl. (ii)(I), ''section 101'' for ''section 101(24)'' in cl. (iii), ''section 101'' for ''section 101(41)'' in cl. (iv)(I), and ''section 101'' for ''section 101(50)'' in cl. (v).

1990—Subsec. (b)(2)(G), (H). Pub. L. 101–647, §2521(a)(2), added subpars. (G) and (H). Former subpar. (G) redesignated (I).

Subsec. (b)(2)(I). Pub. L. 101–647, §2534(b), added subpar. (I). Former subpar. (I) redesignated (J).

Pub. L. 101–647, §2521(a)(2), redesignated subpar. (G) as (I).

Subsec. (b)(2)(J). Pub. L. 101–647, §2534(b), redesignated subpar. (I) as (J).

Subsec. (b)(16). Pub. L. 101–647, §2528(b), added par. (16).

Subsec. (q). Pub. L. 101–647, §2526(b), added subsec. (q).

Subsec. (r). Pub. L. 101–647, §2532(d), added subsec. (r).

1989—Subsec. (a)(2), (3). Pub. L. 101–73, §1217(a)(1), redesignated par. (3) as (2) and struck out former par. (2) which detailed the duties of the Board in serving as liquidating agent for bankrupt or insolvent credit unions.

Subsec. (b). Pub. L. 101–73, §1217(a)(3), (4), added subsec. (b) and redesignated former subsec. (b) as (j).

Subsec. (c). Pub. L. 101–73, §1217(a)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (k).

Subsec. (d). Pub. L. 101–73, §1217(a)(2), (4), added subsec. (d) and struck out former subsec. (d) which provided for subrogation by the Board to all rights of a member against a closed credit union to the extent of the Board's payment to the member.

Subsecs. (e) to (i). Pub. L. 101–73, §1217(a)(3), (4), added subsecs. (e) to (i) and redesignated former subsecs. (e) to (i) as (*l*) to (p), respectively.

Subsec. (j). Pub. L. 101–73, §1217(a)(2), (3), redesignated former subsec. (b) as (j) and struck out former subsec. (j) which provided that the power of the Board respecting liquidations was subject to the Board's own regulations or to regulations of other public authorities.

Subsec. (k). Pub. L. 101–73, §1217(a)(3), (5), redesignated former subsec. (c) as (k) and in par. (1), struck out first and fifth sentences which provided that, whenever an insured credit union was closed for liquidation on account of bankruptcy or insolvency, the Board was

to pay insured accounts as soon as possible, and that in such cases the Board could investigate claims, require proof of them, and require determination by a court.

Subsec. (k)(1). Pub. L. 101–73, § 915(c), inserted ''may investigate said claims under section 1786(p) of this title,'' after ''before paying the insured accounts,'' in last sentence.

Subsecs. (*l*) to (p). Pub. L. 101–73, § 1217(a)(3), redesignated former subsecs. (e) to (i) as (*l*) to (p), respectively.

1987—Subsec. (a)(1). Pub. L. 100–86, § 714(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (j). Pub. L. 100–86, § 714(b), redesignated former section 1788(c) of this title as subsec. (j) of this section and substituted ''subject only to the regulation of the Board, or, in cases where the Board has been appointed liquidating agent solely by a public authority having jurisdiction over the matter other than said Board, subject only to the regulation of such public authority'' for ''subject to the regulation of the court or other public body having jurisdiction over the matter''.

1986—Subsec. (c)(3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1980—Subsec. (c)(1). Pub. L. 96–221 substituted ''$100,000'' for ''$40,000''.

1979—Subsec. (c)(2)(A)(v). Pub. L. 96–153 added cl. (v).

1978—Subsecs. (a), (b). Pub. L. 95–630, § 502(b), substituted ''Board'' for ''Administrator'' wherever appearing, ''it'' for ''he'' and ''him'', and ''its'' for ''his'', where appropriate.

Subsec. (c). Pub. L. 95–630, §§ 502(b), 1401(c), substituted in pars. (1) and (2) ''Board'' for ''Administrator'' wherever appearing and ''it'' and ''its'' for ''he'' and ''his'', respectively, where appropriate, and added par. (3).

Subsecs. (d) to (i). Pub. L. 95–630, § 502(b), substituted ''Board'' for ''Administrator'' wherever appearing, and ''it'' and ''its'' for ''him'' and ''his'', respectively, where appropriate.

1974—Subsec. (c)(1). Pub. L. 93–495, §§ 101(c)(1), (2), 104(a), redesignated existing provisions as par. (1), substituted ''Subject to the provisions of paragraph (2), for the purposes of this subsection'' for ''For the purposes of this subsection'', and substituted ''$40,000'' for ''$20,000''. As enacted section 104(a) of Pub. L. 93–495 amended the first sentence; however the amendment was executed to the second sentence editorially since this would appear to be the probable intent of Congress.

Subsec. (c)(2). Pub. L. 93–495, § 101(c)(3), added par. (2).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 335(b) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

Pub. L. 111–203, title III, § 343(b)(2), July 21, 2010, 124 Stat. 1545, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect upon the date of the enactment of this Act [July 21, 2010]''.

Pub. L. 111–203, title III, § 343(b)(3), July 21, 2010, 124 Stat. 1545, provided that the amendment made by section 343(b)(3) is effective Jan. 1, 2013.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–390 not applicable to any cases commenced under Title 11, Bankruptcy, or to appointments made under any Federal or State law, before Dec. 12, 2006, see section 7 of Pub. L. 109–390, set out as a note under section 101 of Title 11.

Amendment by Pub. L. 109–173 effective Apr. 1, 2006, see section 2(e) of Pub. L. 109–173, set out as a note under section 1785 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on Mar. 31, 1980, see section 308(e) of Pub. L. 96–221, set out as a note under section 1817 of this title.

APPLICABILITY OF 1980 AMENDMENT

Section 308(c)(2) of Pub. L. 96–221 provided that: ''The amendment made by this subsection [amending this section] is not applicable to any claim arising out of the closing of a credit union for liquidation on account of bankruptcy or insolvency pursuant to section 207 of the Federal Credit Union Act (12 U.S.C. 1787) prior to the effective date of this section [see section 308(e) of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1817 of this title].''

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 applicable only to claims arising after Dec. 21, 1979, with respect to a closing of a bank, etc., see section 323(e) of Pub. L. 96–153, set out as an Effective and Termination Dates of 1979 Amendment note under section 1728 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 502(b) of Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

Section 1402 of title XIV of Pub. L. 95–630 provided that: ''This title [amending this section and sections 1728 and 1821 of this title] shall take effect upon enactment [Nov. 10, 1978].''

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by section 101(c)(1), (2) of Pub. L. 93–495 see section 101(g) of Pub. L. 93–495, set out as a note under section 1813 of this title.

Section 104(b), (c) of Pub. L. 93–495 provided that:

''(b) The amendment made by this section [amending this section] is not applicable to any claim arising out of the closing of a credit union for liquidation on account of bankruptcy or insolvency pursuant to section 207 of title II of the Federal Credit Union Act (12 U.S.C. 1787) prior to the effective date of this section.

''(c) The amendment made by this section shall take effect on the thirtieth day beginning after the date of enactment of this Act [Oct. 28, 1974.].''

TEMPORARY ADJUSTMENT IN STANDARD MAXIMUM SHARE INSURANCE AMOUNT

Subsec. (k)(5) of this section to apply with ''$250,000'' substituted for ''$100,000'' during period beginning on Oct. 3, 2008, and ending on Dec. 31, 2009, see section 5241(b)(1) of this title.

§ 1788. Special assistance to avoid liquidation

(a) Loans; purchase of assets; accounts; agreements affecting interest of Board in any asset acquired by it

(1) In order to reopen a closed insured credit union or in order to prevent the closing of an insured credit union which the Board has determined is in danger of closing or in order to assist in the voluntary liquidation of a solvent

credit union, the Board, in its discretion, is authorized to make loans to, or purchase the assets of, or establish accounts in such insured credit union upon such terms and conditions as it may prescribe. Except with respect to the voluntary liquidation of a solvent credit union, such loans shall be made and such accounts shall be established only when, in the opinion of the Board, such action is necessary to protect the fund or the interests of the members of the credit union.

(2) Whenever in the judgment of the Board such action will reduce the risk or avert a threatened loss to the fund and will facilitate a merger or consolidation of an insured credit union with another insured credit union, or will facilitate the sale of the assets of an open or closed insured credit union to and assumption of its liability by another person, the Board may, upon such terms and conditions as it may determine, make loans secured in whole or in part by assets of an open or closed insured credit union, which loans may be in subordination to the rights of members and creditors of such credit union, or the Board may purchase any of such assets or may guarantee any person against loss by reason of its assuming the liabilities and purchasing the assets of an open or closed insured credit union. For purposes of this paragraph, the term ''person'' means any credit union, individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(3) No agreement which tends to diminish or defeat the right, title, or interest of the Board, in any asset acquired by it under this subsection, either as security for a loan or by purchase, shall be valid against the Board unless such agreement—

(A) shall be in writing;

(B) shall have been executed by the credit union and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the credit union;

(C) shall have been approved by the board of directors of the credit union, which approval shall be reflected in the minutes of such board; and

(D) shall have been continuously, from the time of its execution, an official record of the credit union.

(b) Protection of Fund

For the protection of the Fund, the Board, without regard to chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, may—

(1) deal with, complete, reconstruct, rent, renovate, modernize, insure, make contracts for the management of, sell for cash or credit, or lease, in its discretion, any real property acquired or held by it under this section; and

(2) assign or sell at public or private sale, or otherwise dispose of, any evidence of debt, contract, claim, personal property, or security assigned to or held by it under this section.

Section 6101 of title 41 shall not apply to any purchase or contract for services or supplies made or entered into by the Board under this section if the amount thereof does not exceed $1,000, or to any contract for hazard insurance on any real property acquired or held by it under this section.

(c) Money paid into Fund

Money received by the Board in carrying out this section shall be paid into the Fund.

(June 26, 1934, ch. 750, title II, §208, as added Pub. L. 91–468, §1(3), Oct. 19, 1970, 84 Stat. 1013; amended Pub. L. 92–221, §3, Dec. 23, 1971, 85 Stat. 797; Pub. L. 93–383, title VII, §729, Aug. 22, 1974, 88 Stat. 721; Pub. L. 95–630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 100–86, title VII, §714(b), (c), Aug. 10, 1987, 101 Stat. 655.)

CODIFICATION

In subsec. (b), ''chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' substituted for ''the Federal Property and Administrative Services Act of 1949'' and ''Section 6101 of title 41'' substituted for ''Section 3709 of the Revised Statutes of the United States'' on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1987—Subsecs. (c), (d). Pub. L. 100–86 redesignated subsec. (c) as section 1787(j) of this title and subsec. (d) as (c).

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator'' wherever appearing, ''it'' for ''he'' and ''its'' for ''him'', and ''its'' for ''his'', where appropriate.

1974—Subsec. (a)(1). Pub. L. 93–383 inserted provisions relating to the voluntary liquidation of a solvent credit union and struck out provisions subordinating loans and accounts to the rights of members and creditors of the credit union.

1971—Subsec. (a)(2). Pub. L. 92–221 substituted ''assumption of its liability by another person'' for ''assumption of its liability by another insured credit union'' and ''may guarantee any person against loss by reason of his'' for ''may guarantee any other insured credit union against loss by reason of its'' and inserted definition of ''person'' as that term is used in par. (2).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1789. Administrative provisions

(a) In carrying out the purposes of this subchapter, the Board may—

(1) make contracts;

(2) sue and be sued, complain and defend, in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Board shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy. The Board may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect, except that any such suit to

which the Board is a party in its capacity as liquidating agent of a State-chartered credit union and which involves only the rights or obligations of members, creditors, and such State credit union under State law shall not be deemed to arise under the laws of the United States. No attachment or execution shall be issued against the Board or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court. The Board shall designate an agent upon whom service of process may be made in any State, territory, or jurisdiction in which any insured credit union is located;

(3) pursue to final disposition by way of compromise or otherwise claims both for and against the United States (other than tort claims, claims involving administrative expenses, and claims in excess of $5,000 arising out of contracts for construction, repairs, and the purchase of supplies and materials) which are not in litigation and have not been referred to the Department of Justice;

(4) to appoint such officers and employees as are not otherwise provided for in this chapter, to define their duties, fix their compensation, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees. Nothing in this chapter or any other Act shall be construed to prevent the appointment and compensation as an officer or employee of the Administration of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof;

(5) employ experts and consultants or organizations thereof, as authorized by section 3109 of title 5;

(6) prescribe the manner in which its general business may be conducted and the privileges granted to it by law may be exercised and enjoyed;

(7) exercise all powers specifically granted by the provisions of this subchapter and such incidental powers as shall be necessary to carry out the power so granted;

(8) make examinations of and require information and reports from insured credit unions, as provided in this subchapter;

(9) act as liquidating agent;

(10) delegate to any officer or employee of the Administration such of its functions as it deems appropriate; and

(11) prescribe such rules and regulations as it may deem necessary or appropriate to carry out the provisions of this subchapter.

(b) With respect to the financial operations arising by reason of this subchapter, the Board shall—

(1) prepare annually and submit a business-type budget as provided for wholly owned Government corporations by chapter 91 of title 31; and

(2) maintain an integral set of accounts, which shall be audited by the Government Accountability Office in accordance with principles and procedures applicable to commercial corporate transactions, as provided by section 9105[1] of title 31.

[1] See References in Text note below.

(June 26, 1934, ch. 750, title II, § 209, as added Pub. L. 91–468, § 1(3), Oct. 19, 1970, 84 Stat. 1014; amended Pub. L. 93–604, title VII, § 706, Jan. 2, 1975, 88 Stat. 1964; Pub. L. 95–630, title V, § 502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–351, title VII, § 726(24), Oct. 13, 2006, 120 Stat. 2003.)

REFERENCES IN TEXT

Section 9105 of title 31, referred to in subsec. (b)(2), was amended generally by Pub. L. 101–576, title III, § 305, Nov. 15, 1990, 104 Stat. 2853, and as so amended no longer directs audits to be conducted in accordance with principles and procedures applicable to commercial corporate transactions.

CODIFICATION

In subsec. (a)(5), ''section 3109 of title 5'' substituted for ''section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a)'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (b), ''chapter 91 of title 31'' and ''section 9105 of title 31'' substituted for ''the Government Corporation Control Act [31 U.S.C. 841 et seq.]'' and ''section 105 of the Government Corporation Control Act [31 U.S.C. 850]'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2006—Subsec. (a)(8). Pub. L. 109–351 substituted a semicolon for period at end.

2004—Subsec. (b)(2). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1978—Pub. L. 95–630 substituted ''Board'' for ''Administrator'' wherever appearing, ''its'' for ''his'', and ''it'' for ''he'' and ''him'', where appropriate.

1975—Subsec. (b)(2). Pub. L. 93–604 substituted ''audited by the General Accounting Office'' for ''audited annually by the General Accounting Office''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1789a. Credit unions as depositaries of public money; fiscal agents; duties

Any credit union the accounts of which are insured under this title shall be a depositary of public money and may be employed as fiscal agent of the United States. The Secretary of the Treasury is authorized to deposit public money in any such insured credit union, and shall prescribe such regulations as may be necessary to enable such credit unions to become depositaries of public money and fiscal agents of the United States. Each credit union shall perform all such reasonable duties as depositaries of public money and fiscal agent of the United States as may be required of it including services in connection with the collection of taxes and other obligations owed the United States.

(June 26, 1934, ch. 750, title II, § 210, as added Pub. L. 95–147, § 2(c)(1), Oct. 28, 1977, 91 Stat. 1227.)

PRIOR PROVISIONS

A prior section 210 of act June 26, 1934, ch. 750, was renumbered section 211 and is classified to section 1790 of this title.

§ 1790. Nondiscriminatory provision

It is not the purpose of this subchapter to discriminate in any manner against State-chartered credit unions and in favor of Federal credit unions, but it is the purpose of this subchapter to provide all credit unions with the same opportunity to obtain and enjoy the benefits of this subchapter.

(June 26, 1934, ch. 750, title II, §211, formerly §210, as added Pub. L. 91–468, §1(3), Oct. 19, 1970, 84 Stat. 1015; renumbered §211, Pub. L. 95–147, §2(c)(2), Oct. 28, 1977, 91 Stat. 1228.)

§ 1790a. Board disapproval of directors, committee members, and senior executive officers of insured credit unions

(a) Prior notice required

An insured credit union shall notify the Board of the proposed addition of any individual to the board of directors or committee or the employment of any individual as a senior executive officer of such credit union at least 30 days before such addition or employment becomes effective, if the insured credit union—

(1) has been chartered less than 2 years; or

(2) is in troubled condition, as determined on the basis of such credit union's most recent report of condition or report of examination.

(b) Disapproval by Board

An insured credit union may not add any individual to the board of directors or employ any individual as a senior executive officer if the Board issues a notice of disapproval of such addition or employment before the end of the 30-day period beginning on the date the agency receives notice of the proposed action pursuant to subsection (a) of this section.

(c) Exception in extraordinary circumstances

(1) In general

The Board may prescribe by regulation conditions under which the prior notice requirement of subsection (a) of this section may be waived in the event of extraordinary circumstances.

(2) No effect on disapproval authority of Board

Such waivers shall not affect the authority of the Board to issue notices of disapproval of such additions or employment of such individuals within 30 days after each such waiver.

(d) Additional information

Any notice submitted to the Board by any insured credit union pursuant to subsection (a) of this section shall include—

(1) the information described in section 1817(j)(6)(A) of this title about the individual; and

(2) such other information as the Board may prescribe by regulation.

(e) Standard for disapproval

The Board shall issue a notice of disapproval with respect to a notice submitted pursuant to subsection (a) of this section if the competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interests of the depositors of the insured credit union or in the best interests of the public to permit the individual to be employed by, or associated with, such insured credit union.

(f) Definition regulations

The Board shall prescribe by regulation a definition for the terms ''troubled condition'' and ''senior executive officer'' for purposes of subsection (a) of this section.

(June 26, 1934, ch. 750, title II, §212, as added Pub. L. 101–73, title IX, §914(b), Aug. 9, 1989, 103 Stat. 485.)

CODIFICATION

Section 914(b) of Pub. L. 101–73, which directed that this section be added to title II of ''the Federal Credit Union Insurance Act (12 U.S.C. 1781 et seq.)'' was executed by adding this section to the Federal Credit Union Act, which comprises this chapter, as the probable intent of Congress.

§ 1790b. Credit union employee protection remedy

(a) In general

(1) Employees of credit unions

No insured credit union may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Board or the Attorney General regarding any possible violation of any law or regulation by the credit union or any director, officer, or employee of the credit union.

(2) Employees of the Administration

The Administration may not discharge or otherwise discriminate against any employee (including any employee of the National Credit Union Central Liquidity Facility) with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Administration or the Attorney General regarding any possible violation of any law or regulation by—

(A) any credit union or the Administration;

(B) any director, officer, committee member, or employee of any credit union; or

(C) any officer or employee of the Administration.

(b) Enforcement

Any employee or former employee who believes he has been discharged or discriminated against in violation of subsection (a) of this section may file a civil action in the appropriate United States district court before the close of the 2-year period beginning on the date of such discharge or discrimination. The complainant shall also file a copy of the complaint initiating such action with the Board.

(c) Remedies

If the district court determines that a violation of subsection (a) of this section has occurred, it may order the credit union or the Administration which committed the violation—

(1) to reinstate the employee to his former position,

(2) to pay compensatory damages, or

(3) take other appropriate actions to remedy any past discrimination.

(d) Limitations

The protections of this section shall not apply to any employee who—

(1) deliberately causes or participates in the alleged violation of law or regulation, or

(2) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.

(June 26, 1934, ch. 750, title II, § 213, as added Pub. L. 101–73, title IX, § 932(b), Aug. 9, 1989, 103 Stat. 494; amended Pub. L. 102–242, title II, § 251(b)(1), (2), Dec. 19, 1991, 105 Stat. 2332, 2333; Pub. L. 102–550, title XVI, § 1604(d), Oct. 28, 1992, 106 Stat. 4084.)

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–550 substituted, in subpar. (A), ''union or the'' for ''union the'' and in subpar. (B), ''committee member, or employee of any credit union'' for ''or employee of any depository institution or any such bank''.

1991—Subsec. (a). Pub. L. 102–242, § 251(b)(1), substituted ''In general'' for ''Prohibition against discrimination against whistleblowers'' in heading and amended text generally. Prior to amendment, text read as follows: ''No federally insured credit union may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Board or to the Attorney General regarding a possible violation of any law or regulation by the credit union or any of its officers, directors, or employees.''

Subsec. (c). Pub. L. 102–242, § 251(b)(2), inserted ''or the Administration'' after ''the credit union''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 251(b)(3) of Pub. L. 102–242 provided that: ''Paragraph (2) of section 213(a) of the Federal Credit Union Act [12 U.S.C. 1790b(a)(2)] (as added under the amendment made by paragraph (1)) shall be treated as having taken effect on January 1, 1987, and for purposes of any cause of action arising under such paragraph (as so effective) before the date of the enactment of this Act [Dec. 19, 1991], the 2-year period referred to in section 213(b) of such Act shall be deemed to begin on such date of enactment.''

§ 1790c. Reward for information leading to recoveries or civil penalties

The Board may pay rewards in connection with an offense affecting an insured credit union, under the same circumstances and subject to the same limitations that a Federal banking agency may pay rewards under section 1831j of this title in connection with an offense affecting a depository institution insured by the Federal Deposit Insurance Corporation.

(June 26, 1934, ch. 750, title II, § 214, as added Pub. L. 101–73, title IX, § 933(b), Aug. 9, 1989, 103 Stat. 496.)

§ 1790d. Prompt corrective action

(a) Resolving problems to protect Fund

(1) Purpose

The purpose of this section is to resolve the problems of insured credit unions at the least possible long-term loss to the Fund.

(2) Prompt corrective action required

The Board shall carry out the purpose of this section by taking prompt corrective action to resolve the problems of insured credit unions.

(b) Regulations required

(1) Insured credit unions

(A) In general

The Board shall, by regulation, prescribe a system of prompt corrective action for insured credit unions that is—

(i) consistent with this section; and

(ii) comparable to section 1831*o* of this title.

(B) Cooperative character of credit unions

The Board shall design the system required under subparagraph (A) to take into account that credit unions are not-for-profit cooperatives that—

(i) do not issue capital stock;

(ii) must rely on retained earnings to build net worth; and

(iii) have boards of directors that consist primarily of volunteers.

(2) New credit unions

(A) In general

In addition to regulations under paragraph (1), the Board shall, by regulation, prescribe a system of prompt corrective action that shall apply to new credit unions in lieu of this section and the regulations prescribed under paragraph (1).

(B) Criteria for alternative system

The Board shall design the system prescribed under subparagraph (A)—

(i) to carry out the purpose of this section;

(ii) to recognize that credit unions (as cooperatives that do not issue capital stock) initially have no net worth, and give new credit unions reasonable time to accumulate net worth;

(iii) to create adequate incentives for new credit unions to become adequately capitalized by the time that they either—

(I) have been in operation for more than 10 years; or

(II) have more than $10,000,000 in total assets;

(iv) to impose appropriate restrictions and requirements on new credit unions that do not make sufficient progress toward becoming adequately capitalized; and

(v) to prevent evasion of the purpose of this section.

(c) Net worth categories

(1) In general

For purposes of this section the following definitions shall apply:

(A) Well capitalized

An insured credit union is ''well capitalized'' if—

(i) it has a net worth ratio of not less than 7 percent; and

(ii) it meets any applicable risk-based net worth requirement under subsection (d) of this section.

(B) Adequately capitalized

An insured credit union is ''adequately capitalized'' if—

(i) it has a net worth ratio of not less than 6 percent; and

(ii) it meets any applicable risk-based net worth requirement under subsection (d) of this section.

(C) Undercapitalized

An insured credit union is ''undercapitalized'' if—

(i) it has a net worth ratio of less than 6 percent; or

(ii) it fails to meet any applicable risk-based net worth requirement under subsection (d) of this section.

(D) Significantly undercapitalized

An insured credit union is ''significantly undercapitalized''—

(i) if it has a net worth ratio of less than 4 percent; or

(ii) if—

(I) it has a net worth ratio of less than 5 percent; and

(II) it—

(aa) fails to submit an acceptable net worth restoration plan within the time allowed under subsection (f) of this section; or

(bb) materially fails to implement a net worth restoration plan accepted by the Board.

(E) Critically undercapitalized

An insured credit union is ''critically undercapitalized'' if it has a net worth ratio of less than 2 percent (or such higher net worth ratio, not to exceed 3 percent, as the Board may specify by regulation).

(2) Adjusting net worth levels

(A) In general

If, for purposes of section 1831*o*(c) of this title, the Federal banking agencies increase or decrease the required minimum level for the leverage limit (as those terms are used in section 1831*o* of this title), the Board may, by regulation, and subject to subparagraph (B) of this paragraph, correspondingly increase or decrease 1 or more of the net worth ratios specified in subparagraphs (A) through (D) of paragraph (1) of this subsection in an amount that is equal to not more than the difference between the required minimum level most recently established by the Federal banking agencies and 4 percent of total assets (with respect to institutions regulated by those agencies).

(B) Determinations required

The Board may increase or decrease net worth ratios under subparagraph (A) only if the Board—

(i) determines, in consultation with the Federal banking agencies, that the reason for the increase or decrease in the required minimum level for the leverage limit also justifies the adjustment in net worth ratios; and

(ii) determines that the resulting net worth ratios are sufficient to carry out the purpose of this section.

(C) Transition period required

If the Board increases any net worth ratio under this paragraph, the Board shall give insured credit unions a reasonable period of time to meet the increased ratio.

(d) Risk-based net worth requirement for complex credit unions

(1) In general

The regulations required under subsection (b)(1) of this section shall include a risk-based net worth requirement for insured credit unions that are complex, as defined by the Board based on the portfolios of assets and liabilities of credit unions.

(2) Standard

The Board shall design the risk-based net worth requirement to take account of any material risks against which the net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection.

(e) Earnings-retention requirement applicable to credit unions that are not well capitalized

(1) In general

An insured credit union that is not well capitalized shall annually set aside as net worth an amount equal to not less than 0.4 percent of its total assets.

(2) Board's authority to decrease earnings-retention requirement

(A) In general

The Board may, by order, decrease the 0.4 percent requirement in paragraph (1) with respect to a credit union to the extent that the Board determines that the decrease—

(i) is necessary to avoid a significant redemption of shares; and

(ii) would further the purpose of this section.

(B) Periodic review required

The Board shall periodically review any order issued under subparagraph (A).

(f) Net worth restoration plan required

(1) In general

Each insured credit union that is undercapitalized shall submit an acceptable net worth restoration plan to the Board within the time allowed under this subsection.

(2) Assistance to small credit unions

The Board (or the staff of the Board) shall, upon timely request by an insured credit union with total assets of less than $10,000,000, and subject to such regulations or guidelines as the Board may prescribe, assist that credit union in preparing a net worth restoration plan.

(3) Deadlines for submission and review of plans

The Board shall, by regulation, establish deadlines for submission of net worth restoration plans under this subsection that—

(A) provide insured credit unions with reasonable time to submit net worth restoration plans; and

(B) require the Board to act on net worth restoration plans expeditiously.

(4) Failure to submit acceptable plan within time allowed

(A) Failure to submit any plan

If an insured credit union fails to submit a net worth restoration plan within the time allowed under paragraph (3), the Board shall—

(i) promptly notify the credit union of that failure; and

(ii) give the credit union a reasonable opportunity to submit a net worth restoration plan.

(B) Submission of unacceptable plan

If an insured credit union submits a net worth restoration plan within the time allowed under paragraph (3), and the Board determines that the plan is not acceptable, the Board shall—

(i) promptly notify the credit union of why the plan is not acceptable; and

(ii) give the credit union a reasonable opportunity to submit a revised plan.

(5) Accepting plan

The Board may accept a net worth restoration plan only if the Board determines that the plan is based on realistic assumptions and is likely to succeed in restoring the net worth of the credit union.

(g) Restrictions on undercapitalized credit unions

(1) Restriction on asset growth

An insured credit union that is undercapitalized shall not generally permit its average total assets to increase, unless—

(A) the Board has accepted the net worth restoration plan of the credit union for that action;

(B) any increase in total assets is consistent with the net worth restoration plan; and

(C) the net worth ratio of the credit union increases at a rate that is consistent with the net worth restoration plan.

(2) Restriction on member business loans

Notwithstanding section 1757a(a) of this title, an insured credit union that is undercapitalized may not make any increase in the total amount of member business loans (as defined in section 1757a(c) of this title) outstanding at that credit union at any one time, until such time as the credit union becomes adequately capitalized.

(h) More stringent treatment based on other supervisory criteria

With respect to the exercise of authority by the Board under regulations comparable to section 1831*o*(g) of this title—

(1) the Board may not reclassify an insured credit union into a lower net worth category, or treat an insured credit union as if it were in a lower net worth category, for reasons not pertaining to the safety and soundness of that credit union; and

(2) the Board may not delegate its authority to reclassify an insured credit union into a lower net worth category or to treat an insured credit union as if it were in a lower net worth category.

(i) Action required regarding critically undercapitalized credit unions

(1) In general

The Board shall, not later than 90 days after the date on which an insured credit union becomes critically undercapitalized—

(A) appoint a conservator or liquidating agent for the credit union; or

(B) take such other action as the Board determines would better achieve the purpose of this section, after documenting why the action would better achieve that purpose.

(2) Periodic redeterminations required

Any determination by the Board under paragraph (1)(B) to take any action with respect to an insured credit union in lieu of appointing a conservator or liquidating agent shall cease to be effective not later than the end of the 180-day period beginning on the date on which the determination is made, and a conservator or liquidating agent shall be appointed for that credit union under paragraph (1)(A), unless the Board makes a new determination under paragraph (1)(B) before the end of the effective period of the prior determination.

(3) Appointment of liquidating agent required if other action fails to restore net worth

(A) In general

Notwithstanding paragraphs (1) and (2), the Board shall appoint a liquidating agent for an insured credit union if the credit union is critically undercapitalized on average during the calendar quarter beginning 18 months after the date on which the credit union became critically undercapitalized.

(B) Exception

Notwithstanding subparagraph (A), the Board may continue to take such other action as the Board determines to be appropriate in lieu of appointment of a liquidating agent if—

(i) the Board determines that—

(I) the insured credit union has been in substantial compliance with an approved net worth restoration plan that requires consistent improvement in the net worth of the credit union since the date of the approval of the plan; and

(II) the insured credit union has positive net income or has an upward trend in earnings that the Board projects as sustainable; and

(ii) the Board certifies that the credit union is viable and not expected to fail.

(4) Nondelegation

(A) In general

Except as provided in subparagraph (B), the Board may not delegate the authority of the Board under this subsection.

(B) Exception

The Board may delegate the authority of the Board under this subsection with respect to an insured credit union that has less than $5,000,000 in total assets, if the Board permits the credit union to appeal any adverse action to the Board.

(j) Reviews required when share insurance fund experiences losses

(1) In general

If the Fund incurs a material loss with respect to an insured credit union, the Inspector General of the Board shall—

(A) submit to the Board a written report reviewing the supervision of the credit union by the Administration (including the implementation of this section by the Administration), which shall include—

(i) a description of the reasons why the problems of the credit union resulted in a material loss to the Fund; and

(ii) recommendations for preventing any such loss in the future; and

(B) submit a copy of the report under subparagraph (A) to—

(i) the Comptroller General of the United States;

(ii) the Corporation;

(iii) in the case of a report relating to a State credit union, the appropriate State supervisor; and

(iv) to any Member of Congress, upon request.

(2) Material loss defined

For purposes of determining whether the Fund has incurred a material loss with respect to an insured credit union, a loss is material if it exceeds the sum of—

(A) $25,000,000; and

(B) an amount equal to 10 percent of the total assets of the credit union on the date on which the Board initiated assistance under section 1788 of this title or was appointed liquidating agent.

(3) Public disclosure required

(A) In general

The Board shall disclose a report under this subsection, upon request under section 552 of title 5, without excising—

(i) any portion under section 552(b)(5) of title 5; or

(ii) any information about the insured credit union (other than trade secrets) under section 552(b)(8) of title 5.

(B) Rule of construction

Subparagraph (A) may not be construed as requiring the agency to disclose the name of any customer of the insured credit union (other than an institution-affiliated party), or information from which the identity of such customer could reasonably be ascertained.

(4) Losses that are not material

(A) Semiannual report

For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of the Board shall—

(i) identify any losses that the Inspector General estimates were incurred by the Fund during such 6-month period, with respect to insured credit unions;

(ii) for each loss to the Fund that is not a material loss, determine—

(I) the grounds identified by the Board or the State official having jurisdiction over a State credit union for appointing the Board as the liquidating agent for any Federal or State credit union; and

(II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and

(iii) prepare and submit a written report to the Board and to Congress on the results of the determinations of the Inspector General that includes—

(I) an identification of any loss that warrants an in-depth review, and the reasons such review is warranted, or if the Inspector General determines that no review is warranted, an explanation of such determination; and

(II) for each loss identified in subclause (I) that warrants an in-depth review, the date by which such review, and a report on the review prepared in a manner consistent with reports under paragraph (1)(A), will be completed.

(B) Deadline for semiannual report

The Inspector General of the Board shall—

(i) submit each report required under subparagraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and

(ii) provide a copy of the report required under subparagraph (A) to any Member of Congress, upon request.

(5) GAO review

The Comptroller General of the United States shall, under such conditions as the Comptroller General determines to be appropriate—

(A) review each report made under paragraph (1), including the extent to which the Inspector General of the Board complied with the requirements under section 8L of the Inspector General Act of 1978 (5 U.S.C. App.) with respect to each such report; and

(B) recommend improvements to the supervision of insured credit unions (including improvements relating to the implementation of this section).

(k) Appeals process

Material supervisory determinations, including decisions to require prompt corrective action, made pursuant to this section by Administration officials other than the Board may be appealed to the Board pursuant to the independent appellate process required by section 4806 of this title (or, if the Board so specifies, pursuant to separate procedures prescribed by regulation).

(*l*) Consultation and cooperation with State credit union supervisors

(1) In general

In implementing this section, the Board shall consult and seek to work cooperatively with State officials having jurisdiction over State-chartered insured credit unions.

(2) Evaluating net worth restoration plan

In evaluating any net worth restoration plan submitted by a State-chartered insured credit union, the Board shall seek the views of the State official having jurisdiction over the credit union.

(3) Deciding whether to appoint conservator or liquidating agent

With respect to any decision by the Board on whether to appoint a conservator or liquidating agent for a State-chartered insured credit union—

(A) the Board shall—

(i) seek the views of the State official having jurisdiction over the credit union; and

(ii) give that official an opportunity to take the proposed action;

(B) the Board shall, upon timely request of an official referred to in subparagraph (A), promptly provide the official with—

(i) a written statement of the reasons for the proposed action; and

(ii) reasonable time to respond to that statement;

(C) if the official referred to in subparagraph (A) makes a timely written response that disagrees with the proposed action and gives reasons for that disagreement, the Board shall not appoint a conservator or liquidating agent for the credit union, unless the Board, after considering the views of the official, has determined that—

(i) the Fund faces a significant risk of loss with respect to the credit union if a conservator or liquidating agent is not appointed; and

(ii) the appointment is necessary to reduce—

(I) the risk that the Fund would incur a loss with respect to the credit union; or

(II) any loss that the Fund is expected to incur with respect to the credit union; and

(D) the Board may not delegate any determination under subparagraph (C).

(m) Corporate credit unions exempted

This section does not apply to any insured credit union that—

(1) operates primarily for the purpose of serving credit unions; and

(2) permits individuals to be members of the credit union only to the extent that applicable law requires that such persons own shares.

(n) Other authority not affected

This section does not limit any authority of the Board or a State to take action in addition to (but not in derogation of) any action that is required under this section.

(*o*) Definitions

For purposes of this section the following definitions shall apply:

(1) Federal banking agency

The term ''Federal banking agency'' has the same meaning as in section 1813 of this title.

(2) Net worth

The term ''net worth''—

(A) with respect to any insured credit union, means the retained earnings balance of the credit union, as determined under generally accepted accounting principles, together with any amounts that were previously retained earnings of any other credit union with which the credit union has combined;

(B) with respect to any insured credit union, includes, at the Board's discretion and subject to rules and regulations established by the Board, assistance provided under section 1788 of this title to facilitate a least-cost resolution consistent with the best interests of the credit union system; and

(C) with respect to a low-income credit union, includes secondary capital accounts that are—

(i) uninsured; and

(ii) subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the Fund.

(3) Net worth ratio

The term ''net worth ratio'' means, with respect to a credit union, the ratio of the net worth of the credit union to the total assets of the credit union.

(4) New credit union

The term ''new credit union'' means an insured credit union that—

(A) has been in operation for less than 10 years; and

(B) has not more than $10,000,000 in total assets.

(June 26, 1934, ch. 750, title II, § 216, as added Pub. L. 105–219, title III, § 301(a), Aug. 7, 1998, 112 Stat. 923; amended Pub. L. 109–351, title V, § 504, title VII, § 726(25), Oct. 13, 2006, 120 Stat. 1975, 2003; Pub. L. 111–203, title IX, § 988(a), July 21, 2010, 124 Stat. 1938; Pub. L. 111–382, § 3, Jan. 4, 2011, 124 Stat. 4135.)

REFERENCES IN TEXT

Section 8L of the Inspector General Act of 1978, referred to in subsec. (j)(5)(A), is section 8L of Pub. L. 95–452, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2011—Subsec. (*o*)(2). Pub. L. 111–382 amended par. (2) generally. Prior to amendment, text read as follows: ''The term 'net worth'—

''(A) with respect to any insured credit union, means the retained earnings balance of the credit union, as determined under generally accepted accounting principles, together with any amounts that were previously retained earnings of any other credit union with which the credit union has combined; and

''(B) with respect to a low-income credit union, includes secondary capital accounts that are—

''(i) uninsured; and

''(ii) subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the Fund.''

2010—Subsec. (j). Pub. L. 111–203 amended subsec. (j) generally. Prior to amendment, text read as follows: ''For purposes of determining whether the Fund has incurred a material loss with respect to an insured credit union (such that the inspector general of the Board must make a report), a loss is material if it exceeds the sum of—

''(1) $10,000,000; and

''(2) an amount equal to 10 percent of the total assets of the credit union at the time at which the Board initiated assistance under section 1788 of this title or was appointed liquidating agent.''

2006—Subsec. (n). Pub. L. 109–351, § 726(25), inserted ''any action'' before ''that is required''.

Subsec. (*o*)(2)(A). Pub. L. 109–351, § 504, inserted ''the'' before ''retained earnings balance'' and '', together with any amounts that were previously retained earnings of any other credit union with which the credit union has combined'' before semicolon.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE

Pub. L. 105–219, title III, § 301(e), Aug. 7, 1998, 112 Stat. 931, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), section 216 of the Federal Credit Union Act [12 U.S.C. 1790d] (as added by this section) shall become effective 2 years after the date of enactment of this Act [Aug. 7, 1998].

''(2) RISK-BASED NET WORTH REQUIREMENT.—Section 216(d) of the Federal Credit Union Act (as added by this section) shall become effective on January 1, 2001.''

REGULATIONS

Pub. L. 105–219, title III, § 301(d), Aug. 7, 1998, 112 Stat. 930, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the Board shall—

''(A) publish in the Federal Register proposed regulations to implement section 216 of the Federal Credit Union Act [12 U.S.C. 1790d] (as added by subsection (a) of this section) not later than 270 days after the date of enactment of this Act [Aug. 7, 1998]; and

''(B) promulgate final regulations to implement section 216 not later than 18 months after the date of enactment of this Act.

''(2) RISK-BASED NET WORTH REQUIREMENT.—

''(A) ADVANCE NOTICE OF PROPOSED RULEMAKING.—Not later than 180 days after the date of enactment of this Act, the Board shall publish in the Federal Register an advance notice of proposed rulemaking, as required by section 216(d) of the Federal Credit Union Act, as added by this Act.

''(B) FINAL REGULATIONS.—The Board shall promulgate final regulations, as required by section 216(d) not later than 2 years after the date of enactment of this Act.''

CONSULTATION REQUIRED

Pub. L. 105–219, title III, § 301(c), Aug. 7, 1998, 112 Stat. 930, provided that: ''In developing regulations to implement section 216 of the Federal Credit Union Act [12 U.S.C. 1790d] (as added by subsection (a) of this section), the Board shall consult with the Secretary, the Federal banking agencies, and the State officials having jurisdiction over State-chartered insured credit unions.''

REPORT TO CONGRESS

Pub. L. 105–219, title III, § 301(f), Aug. 7, 1998, 112 Stat. 931, provided that: ''When the Board publishes proposed regulations pursuant to subsection (d)(1)(A) [set out above], or promulgates final regulations pursuant to subsection (d)(1)(B) [set out above], the Board shall submit to the Congress a report that specifically explains—

''(1) how the regulations carry out section 216(b)(1)(B) of the Federal Credit Union Act [12 U.S.C. 1790d(b)(1)(B)] (as added by this section), relating to the cooperative character of credit unions; and

''(2) how the regulations differ from section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*], and the reasons for those differences.''

DEFINITIONS

Pub. L. 105–219, § 3, Aug. 7, 1998, 112 Stat. 914, provided that: ''As used in this Act [see Short Title of 1998 Amendment note set out under section 1751 of this title]—

''(1) the term 'Administration' means the National Credit Union Administration;

''(2) the term 'Board' means the National Credit Union Administration Board;

''(3) the term 'Federal banking agencies' has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813];

''(4) the terms 'insured credit union' and 'State-chartered insured credit union' have the same meanings as in section 101 of the Federal Credit Union Act [12 U.S.C. 1752]; and

''(5) the term 'Secretary' means the Secretary of the Treasury.''

§ 1790e. Temporary Corporate Credit Union Stabilization Fund

(a) Establishment of Stabilization Fund

There is hereby created in the Treasury of the United States a fund to be known as the ''Temporary Corporate Credit Union Stabilization Fund.'' The Board will administer the Stabilization Fund as prescribed by section 1789 of this title.

(b) Expenditures from Stabilization Fund

Money in the Stabilization Fund shall be available upon requisition by the Board, without fiscal year limitation, for making payments for the purposes described in section 1783(a) of this title, subject to the following additional limitations:

(1) All payments other than administrative payments shall be connected to the conservatorship, liquidation, or threatened conservatorship or liquidation, of a corporate credit union.

(2) Prior to authorizing each payment the Board shall—

(A) certify that, absent the existence of the Stabilization Fund, the Board would have made the identical payment out of the National Credit Union Share Insurance Fund (Insurance Fund); and

(B) report each such certification to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(c) Authority to borrow

(1) In general

The Stabilization Fund is authorized to borrow from the Secretary of the Treasury from time-to-time as deemed necessary by the Board. The maximum outstanding amount of all borrowings from the Treasury by the Sta-

bilization Fund and the National Credit Union Share Insurance Fund, combined, is limited to the amount provided for in section 1783(d)(1) of this title, including any authorized increases in that amount.

(2) Repayment of advances

(A) In general

The advances made under this section shall be repaid by the Stabilization Fund, and interest on such advance shall be paid, to the General fund of the Treasury.

(B) Variable rate of interest

The Secretary of the Treasury shall make the first rate determination at the time of the first advance under this section and shall reset the rate again for all advances on each anniversary of the first advance. The interest rate shall be equal to the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity equal to 12 months.

(3) Repayment schedule

The Stabilization Fund shall repay the advances on a first-in, first-out basis, with interest on the amount repaid, at times and dates determined by the Board at its discretion. All advances shall be repaid not later than the date of the seventh anniversary of the first advance to the Stabilization Fund, unless the Board extends this final repayment date. The Board shall obtain the concurrence of the Secretary of the Treasury on any proposed extension, including the terms and conditions of the extended repayment and any additional advances.

(d) Assessment authority

(1) Assessments relating to expenditures under subsection (b)

In order to make expenditures, as described in subsection (b), the Board may assess a special premium with respect to each insured credit union in an aggregate amount that is reasonably calculated to make any pending or future expenditure described in subsection (b), which premium shall be due and payable not later than 60 days after the date of the assessment. In setting the amount of any assessment under this subsection, the Board shall take into consideration any potential impact on credit union earnings that such an assessment may have.

(2) Special premiums relating to repayments under subsection (c)(3)

Not later than 90 days before the scheduled date of each repayment described in subsection (c)(3), the Board shall set the amount of the upcoming repayment and shall determine whether the Stabilization Fund will have sufficient funds to make the repayment. If the Stabilization Fund is not likely to have sufficient funds to make the repayment, the Board shall assess with respect to each insured credit union a special premium, which shall be due and payable not later than 60 days after the date of the assessment, in an aggregate amount calculated to ensure that the Stabilization Fund is able to make the required repayment.

(3) Computation

Any assessment or premium charge for an insured credit union under this subsection shall be stated as a percentage of its insured shares, as represented on the previous call report of that insured credit union. The percentage shall be identical for each insured credit union. Any insured credit union that fails to make timely payment of the assessment or special premium is subject to the procedures and penalties described under subsections (d), (e), and (f) of section 1782 of this title.

(e) Distributions from Insurance Fund

At the end of any calendar year in which the Stabilization Fund has an outstanding advance from the Treasury, the Insurance Fund is prohibited from making the distribution to insured credit unions described in section 1782(c)(3) of this title. In lieu of the distribution described in that section, the Insurance Fund shall make a distribution to the Stabilization Fund of the maximum amount possible that does not reduce the Insurance Fund's equity ratio below the normal operating level and does not reduce the Insurance Fund's available assets ratio below 1.0 percent.

(f) Investment of Stabilization Fund assets

The Board may request the Secretary of the Treasury to invest such portion of the Stabilization Fund as is not, in the Board's judgment, required to meet the current needs of the Stabilization Fund. Such investments shall be made by the Secretary of the Treasury in public debt securities, with maturities suitable to the needs of the Stabilization Fund, as determined by the Board, and bearing interest at a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

(g) Reports

The Board shall submit an annual report to Congress on the financial condition and the results of the operation of the Stabilization Fund. The report is due to Congress within 30 days after each anniversary of the first advance made under subsection (c)(1). Because the Fund will use advances from the Treasury to meet corporate stabilization costs with full repayment of borrowings to Treasury at the Board's discretion not due until 7 years from the initial advance, to the extent operating expenses of the Fund exceed income, the financial condition of the Fund may reflect a deficit. With planned and required future repayments, the Board shall resolve all deficits prior to termination of the Fund.

(h) Closing of Stabilization Fund

Within 90 days following the seventh anniversary of the initial Stabilization Fund advance, or earlier at the Board's discretion, the Board shall distribute any funds, property, or other assets remaining in the Stabilization Fund to the Insurance Fund and shall close the Stabilization Fund. If the Board extends the final repayment date as permitted under subsection (c)(3), the mandatory date for closing the Stabilization Fund shall be extended by the same number of days.

(June 26, 1934, ch. 750, title II, § 217, as added Pub. L. 111–22, div. A, title II, § 204(f)(1), May 20, 2009, 123 Stat. 1651; amended Pub. L. 111–382, § 1, Jan. 4, 2011, 124 Stat. 4134.)

AMENDMENTS

2011—Subsec. (c)(3). Pub. L. 111–382, § 1(a), inserted ''and any additional advances'' before period at end.

Subsec. (d). Pub. L. 111–382, § 1(b), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows:

''At least 90 days prior to each repayment described in subsection (c)(3), the Board shall set the amount of the upcoming repayment and determine if the Stabilization Fund will have sufficient funds to make the repayment. If the Stabilization Fund might not have sufficient funds to make the repayment, the Board shall assess each federally insured credit union a special premium due and payable within 60 days in an aggregate amount calculated to ensure the Stabilization Fund is able to make the repayment. The premium charge for each credit union shall be stated as a percentage of its insured shares as represented on the credit union's previous call report. The percentage shall be identical for each credit union. Any credit union that fails to make timely payment of the special premium is subject to the procedures and penalties described under subsections (d), (e), and (f) of section 1782 of this title.''

SUBCHAPTER III—CENTRAL LIQUIDITY FACILITY

§ 1795. Congressional findings

The Congress finds that the establishment of a National Credit Union Central Liquidity Facility is needed to improve general financial stability by meeting the liquidity needs of credit unions and thereby encourage savings, support consumer and mortgage lending, and provide basic financial resources to all segments of the economy.

(June 26, 1934, ch. 750, title III, formerly subch. III, § 301, as added Pub. L. 95–630, title XVIII, § 1802, Nov. 10, 1978, 92 Stat. 3719; amended Pub. L. 96–221, title III, § 309(b)(1), Mar. 31, 1980, 94 Stat. 149.)

CODIFICATION

Section 309(b)(1) of Pub. L. 96–221 redesignated subch. III as title III of act June 26, 1934, ch. 750, cited as a credit to this section.

EFFECTIVE DATE

Section 1806 of title XVIII of Pub. L. 95–630 provided that: ''This title [enacting this subchapter and amending section 1757 of this title, section 709 of Title 18, Crimes and Criminal Procedure, and section 856 of former Title 31, Money and Finance] shall take effect on October 1, 1979.''

SHORT TITLE

For short title of title XVIII of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3719, as the ''National Credit Union Central Liquidity Facility Act'', see section 1801 of Pub. L. 95–630, set out as a Short Title of 1978 Amendment note under section 1751 of this title.

§ 1795a. Definitions

As used in this subchapter, the term—

(1) ''liquidity needs'' means the needs of credit unions primarily serving natural persons for—

(A) short-term adjustment credit available to assist in meeting temporary requirements for funds or to cushion more persistent outflows of funds pending an orderly adjustment of credit union assets and liabilities;

(B) seasonal credit available for longer periods to assist in meeting seasonal needs for funds arising from a combination of expected patterns of movement in share and deposit accounts and loans; and

(C) protracted adjustment credit available in the event of unusual or emergency circumstances of a longer term nature resulting from national, regional or local difficulties.

(2) ''Central Liquidity Facility'' or ''Facility'' means the National Credit Union Central Liquidity Facility;

(3) ''paid-in and unimpaired capital and surplus'' means the balance of the paid-in share accounts and deposits as of a given date, less any loss that may have been incurred for which there is no reserve or which has not been charged against undivided earnings, plus the credit balance (or less the debit balance) of the undivided earnings account as of a given date, after all losses have been provided for and net earnings or net losses have been added thereto or deducted therefrom. Reserves shall not be considered as part of surplus, and

(4) ''member'' means a Regular or an Agent member of the Facility.

(June 26, 1934, ch. 750, title III, formerly subch. III, § 302, as added Pub. L. 95–630, title XVIII, § 1802, Nov. 10, 1978, 92 Stat. 3719; amended Pub. L. 96–221, title III, § 309(b)(1), (2), Mar. 31, 1980, 94 Stat. 149.)

CODIFICATION

Section 309(b)(1) of Pub. L. 96–221 redesignated subch. III as title III of act June 26, 1934, ch. 750, cited as a credit to this section.

AMENDMENTS

1980—Pub. L. 96–221, § 309(b)(2), substituted ''title'' for ''subchapter'', which for purposes of codification has been editorially translated as ''subchapter'', thereby requiring no further change in text.

§ 1795b. National Credit Union Administration Central Liquidity Facility; establishment; management; jurisdiction

There is created the National Credit Union Administration Central Liquidity Facility. The Central Liquidity Facility, an instrumentality of the United States, shall exist within the National Credit Union Administration and be managed by the Board. The United States district court shall have original jurisdiction over any case to which the Board on behalf of the Facility is a party, without regard to the amount in controversy.

(June 26, 1934, ch. 750, title III, formerly subch. III, § 303, as added and amended Pub. L. 95–630, title V, § 502(b), title XVIII, § 1802, Nov. 10, 1978, 92 Stat. 3681, 3720; Pub. L. 96–221, title III, § 309(a)(4), (b)(1), Mar. 31, 1980, 94 Stat. 149; Pub. L. 98–369, div. B, title VIII, § 2813(a)(1), July 18, 1984, 98 Stat. 1206.)

CODIFICATION

Section 309(b)(1) of Pub. L. 96–221 redesignated subch. III as title III of act June 26, 1934, ch. 750, cited as a credit to this section.

AMENDMENTS

1984—Pub. L. 98–369 inserted ‘‘, an instrumentality of the United States,’’.

1980—Pub. L. 96–221, § 309(a)(4), substituted ‘‘Board’’ for ‘‘Administrator’’ in two places, such change having been made previously by Pub. L. 95–630.

1978—Pub. L. 95–630, § 502(b), substituted ‘‘Board’’ for ‘‘Administrator’’ in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1979, see section 2813(c) of Pub. L. 98–369, set out as an Effective Date note under section 1795k of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1795c. Membership

(a) Credit unions serving natural persons

A credit union primarily serving natural persons may be a Regular member of the Facility by subscribing to the capital stock of the Facility in an amount not less than one-half of 1 per centum of the credit union's paid-in and unimpaired capital and surplus.

(b) Credit unions serving other credit unions

A credit union or group of credit unions, primarily serving other credit unions, may be an Agent member of the Facility by—

(1) obtaining the approval of the Board;

(2) subscribing to the capital stock of the Facility in an amount not less than one-half of 1 per centum of the paid-in and unimpaired capital and surplus of all those credit unions which primarily serve natural persons, which are members of such credit union or of any credit union comprising such credit union group, and which are not regular members;

(3) agreeing to comply with rules and regulations the Board shall prescribe with respect to, but not limited to, management quality, asset and liability safety and soundness, internal operating and control practices and procedures, and participation of natural persons in the affairs of such credit union or credit union group; and

(4) agreeing to submit to the supervision of the Board which shall include, but not be limited to, reporting requirements and periodic unrestricted examinations.

(c) Stock subscription requirements

Stock subscriptions provided for in subsections (a) and (b)(2) of this section shall be—

(1) based on an arithmetic average of paid-in capital and surplus over the six months preceding application and membership; and

(2) adjusted at the close of each calendar year in accordance with an arithmetic average of paid-in capital and surplus over a period determined by the Board.

(d) Functions of Agent members of Facility

An Agent member of the Facility shall perform for its member credit unions those functions required by the Board to carry out this subchapter.

(e) Withdrawal from or termination of membership

(1) A member of the Facility whose capital stock subscription constitutes less than 5 per centum of such stock outstanding, may withdraw from membership in the Facility six months after notifying the Board of its intention to do so.

(2) A member of the Facility whose capital stock subscription constitutes 5 per centum or more of such stock outstanding, may withdraw from membership in the Facility twenty-four months after notifying the Board of its intention to do so.

(3) The Board may terminate membership in the Facility if, after opportunity for a hearing, the Board determines a member has failed to comply with any provision of this subchapter or regulation issued pursuant thereto.

(June 26, 1934, ch. 750, title III, formerly subch. III, § 304, as added and amended Pub. L. 95–630, title V, § 502(b), title XVIII, § 1802, Nov. 10, 1978, 92 Stat. 3681, 3720; Pub. L. 96–221, title III, § 309(a)(4), (b)(1), (2), Mar. 31, 1980, 94 Stat. 149; Pub. L. 109–351, title VII, § 726(26), Oct. 13, 2006, 120 Stat. 2003.)

CODIFICATION

Section 309(b)(1) of Pub. L. 96–221 redesignated subch. III as title III of act June 26, 1934, ch. 750, cited as a credit to this section.

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–351 substituted ‘‘the affairs of such credit union’’ for ‘‘the affairs or such credit union’’.

1980—Subsecs. (b), (c). Pub. L. 96–221, § 309(a)(4), substituted ‘‘Board’’ for ‘‘Administrator’’ wherever appearing, such change having been made previously by Pub. L. 95–630.

Subsecs. (d), (e). Pub. L. 96–221, § 309(a)(4), (b)(2), substituted ‘‘Board’’ for ‘‘Administrator’’ wherever appearing, such change having been made previously by Pub. L. 95–630, and ‘‘title’’ for ‘‘subchapter’’ wherever appearing, which for purposes of codification has been editorially translated as ‘‘subchapter’’, thereby requiring no further change in text.

1978—Pub. L. 95–630, § 502(b), substituted ‘‘Board’’ for ‘‘Administrator’’ wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630 set out as a note under section 1752 of this title.

§ 1795d. Capital stock

(a) Opening of books; minimum subscription

As soon as practicable, the Board shall open books for subscriptions to the capital stock of the Facility. The minimum subscription shall be $50.

(b) Requirements

The capital stock of the Facility—

(1) shall be divided into shares having a par value of $50 each;

(2) shall be paid for with cash or with securities of the United States or any Agency thereof in accordance with requirements the Board may impose;

(3) shall share in dividend distributions at rates determined by the Board. However, rates on the required capital stock shall be without preference; and

(4) shall not be transferred or hypothecated except as provided for herein.

(c) Redemption of stock

When circumstances require that all or a portion of a member's stock be redeemed by the Facility, the Board shall pay an amount equal to what the member originally paid for the stock less any amount owed by the member to the Facility.

(d) Use of subscription amount

At least one-half of the payment for the subscription amount required for membership under section 1795c of this title shall be transferred to the Facility. The remainder may be held by the member on call of the Board and shall be invested in assets designated by the Board.

(e) Restriction on advances to credit unions

A credit union or credit union group that becomes a member of the Facility later than six months after the date the Board opens books for capital stock subscriptions, may not borrow or receive advances from the Facility without approval by the Board for a period of six months after becoming a member.

(June 26, 1934, ch. 750, title III, formerly subch. III, § 305, as added and amended Pub. L. 95–630, title V, § 502(b), title XVIII, § 1802, Nov. 10, 1978, 92 Stat. 3681, 3721; Pub. L. 96–221, title III, § 309(a)(2), (4), (b)(1), Mar. 31, 1980, 94 Stat. 148, 149.)

CODIFICATION

Section 309(b)(1) of Pub. L. 96–221 redesignated subch. III as title III of act June 26, 1934, ch. 750, cited as a credit to this section.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–221, § 309(a)(4), substituted ''Board'' for ''Administrator'', such change having been previously made by Pub. L. 95–630.

Subsec. (b). Pub. L. 96–221, § 309(a)(2), (4), substituted ''Board'' for ''Administrator'' wherever appearing, such change having been previously made by Pub. L. 95–630, and in par. (3) inserted specific requirement that rates on required capital stock be without preference.

Subsecs. (c) to (e). Pub. L. 96–221, § 309(a)(4), substituted ''Board'' for ''Administrator'' wherever appearing, such change having been previously made by Pub. L. 95–630.

1978—Pub. L. 95–630, § 502(b), substituted ''Board'' for ''Administrator'' wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1795e. Extensions of credit

(a)(1) A member may apply for an extension of credit from the Facility to meet its liquidity needs. The Board shall approve or deny any such application within five working days after receiving it. The Board shall not approve an application for credit the intent of which is to expand credit union portfolios.

(2) The Board may advance funds to a member on terms and conditions prescribed by the Board after giving due consideration to creditworthiness.

(3) The Board shall not advance funds for the benefit of a credit union whose share or deposit accounts are insured by a State share or deposit guaranty credit union, insurance corporation, or guaranty association, without consultation with the appropriate State share or deposit guaranty credit union, insurance corporation, or guaranty association.

(b) The Secretary of the Treasury is authorized to lend to the Facility up to $500,000,000, in the event the Board certifies to the Secretary that the Facility does not have sufficient funds to meet liquidity needs of credit unions. Any such loan shall bear an interest rate not greater than one-eighth of 1 per centum above the current average market yield on outstanding obligations of the United States with remaining time to maturity comparable to the maturity of such loan. The authority of the Secretary to lend under this subsection shall be limited to such extent or in such amounts as are provided in advance in appropriation Acts.

(June 26, 1934, ch. 750, title III, formerly subch. III, § 306, as added and amended Pub. L. 95–630, title V, § 502(b), title XVIII, § 1802, Nov. 10, 1978, 92 Stat. 3681, 3721; Pub. L. 96–221, title III, § 309(a)(4), (b)(1), Mar. 31, 1980, 94 Stat. 149.)

CODIFICATION

Section 309(b)(1) of Pub. L. 96–221 redesignated subch. III as title III of act June 26, 1934, ch. 750, cited as a credit to this section.

AMENDMENTS

1980—Subsecs. (a), (b). Pub. L. 96–221, § 309(a)(4), substituted ''Board'' for ''Administrator'' wherever appearing, such change having been previously made by Pub. L. 95–630.

1978—Pub. L. 95–630, § 502(b), substituted ''Board'' for ''Administrator'' wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1795f. Powers of Board

(a) General authorities

The Board on behalf of the Facility shall have the ability to—

(1) prescribe the manner in which the general business of the Facility shall be conducted;

(2) prescribe rules and regulations to carry out this subchapter;

(3) determine the expenditures incurred by the Administration to carry out this subchapter, and the expenditures incurred by the Facility to carry out subchapters I and II of this chapter, and annually assess the Facility and the Administration accordingly;

(4) borrow from—

(A) any source, provided that the total face value of these obligations shall not exceed twelve times the subscribed capital stock and surplus of the Facility; and

(B) the National Credit Union Share Insurance Fund up to $500,000 to defray initial organizational and operating expenses of the Facility at such rates and terms consistent with prevailing market conditions;

(5) guarantee performance of the terms of any financial obligation of a member but only

when such obligation bears a clear and conspicuous notice on its face that only the resources of the Facility underlie such guarantee;

(6) purchase any asset from a member with the member's endorsement;

(7) invest in obligations of the United States or any agency thereof;

(8) make deposits in federally insured financial institutions and make investments in shares or deposits of credit unions;

(9) sue and be sued, complain, and defend, in any State or Federal court;

(10) adopt a seal;

(11) pursue to final disposition by way of compromise or otherwise claims both for and against the United States (other than tort claims, claims involving administrative expenses, and claims in excess of $5,000 arising out of contracts for construction, repairs, and the purchase of supplies and materials) which are not in litigation and have not been referred to the Department of Justice;

(12) appoint officers and employees to assist in carrying out this subchapter, who shall be appointed subject to the provisions of title 5;

(13) conduct business, carry on operations, have offices, and exercise the powers granted by this subchapter in any State or territory;

(14) lease, purchase, or otherwise acquire and own, hold, improve, use, or otherwise deal in and with property, real, personal, or mixed, or any interest therein, wherever situated;

(15) enter into contracts with any public or private organization, partnership, corporation, or individual;

(16) advance funds on a fully secured basis to a State credit union share or deposit insurance corporation, guaranty credit union, or guaranty association. Such advance shall not exceed twelve months in maturity, shall be relent at an interest rate not exceeding that imposed by the Facility, and shall not be renewable;

(17) exercise such incidental powers as shall be necessary or requisite to enable it to carry out effectively the purposes for which the facility is incorporated; and

(18) advance funds to the National Credit Union Share Insurance Fund under such terms and conditions as may be established by the Board.

(b) Collection and settlement of checks, share drafts, etc.; charges; rules and regulations

(1) The Board may authorize the Central Liquidity Facility or its Agent members, subject to such rules and regulations, including definitions of terms used in this subsection, as the Board shall from time to time prescribe, to be drawees of, and to engage in, or be agents or intermediaries for, or otherwise participate or assist in, the collection and settlement of (including presentment, clearing, and payment of, and remitting for), checks, share drafts, or any other negotiable or nonnegotiable items or instruments of payment drawn on or issued by members of the Central Liquidity Facility, any of its Agent members, or any other credit union eligible to become a member of the Central Liquidity Facility, and to have such incidental powers as the Board shall find necessary for the exercise of any such authorization.

(2) The Central Liquidity Facility or its Agent members shall make charges, to be determined and regulated by the Board consistent with the principles set forth in section 248a(c) of this title, or utilize the services of, or act as agent for, or be a member of, a Federal Reserve bank, clearinghouse, or any other public or private financial institution or other agency, in the exercise of any powers or functions pursuant to this subsection.

(3) The Board is authorized, with respect to participation in the collection and settlement of any items by the Central Liquidity Facility or by its Agent members, and with respect to the collection and settlement (including payment by the payor institution) of items payable by members of the Central Liquidity Facility or of any of its Agent members, to prescribe rules and regulations regarding the rights, powers, responsibilities, duties, and liabilities, including standards relating thereto, of such entities and other parties to any such items or their collection and settlement. In prescribing such rules and regulations, the Board may adopt or apply, in whole or in part, general banking usage and practices, and, in instances or respects in which they would otherwise not be applicable, Federal Reserve regulations and operating letters, the Uniform Commercial Code, and clearinghouse rules.

(June 26, 1934, ch. 750, title III, formerly subch. III, § 307, as added and amended Pub. L. 95–630, title V, § 502(b), title XVIII, § 1802, Nov. 10, 1978, 92 Stat. 3681, 3722; Pub. L. 96–221, title III, §§ 309(a)(3), (4), (b), 312, Mar. 31, 1980, 94 Stat. 149, 150; Pub. L. 97–320, title V, § 531, Oct. 15, 1982, 96 Stat. 1536.)

CODIFICATION

Section 309(b)(1) of Pub. L. 96–221 redesignated subch. III as title III of act June 26, 1934, ch. 750, cited as a credit to this section.

AMENDMENTS

1982—Subsec. (a)(17), (18). Pub. L. 97–320 added pars. (17) and (18).

1980—Pub. L. 96–221, §§ 309(a)(3), (4), (b)(2), (3), 312, designated existing provisions as subsec. (a) substituted ''Board'' for ''Administrator'', such change having been made previously by Pub. L. 95–630, and ''title'' and ''titles'' for ''subchapter'' and ''subchapters'', which for purposes of codification has been editorially translated as ''subchapter'' or ''subchapters'' thereby requiring no further change in text, in par. (15) struck out requirement respecting advance appropriation of amounts, and added subsec. (b).

1978—Pub. L. 95–630, § 502(b), substituted ''Board'' for ''Administrator''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1795g. Depositories, custodians, and fiscal agents

The Federal Reserve Banks are authorized to act as depositories, custodians and/or fiscal agents for the Central Liquidity Facility in the general performance of its powers conferred by

this subchapter. Each Federal Reserve Bank when designated by the Board as fiscal agent for the Central Liquidity Facility, shall be entitled to be reimbursed for all expenses incurred as such fiscal agent.

(June 26, 1934, ch. 750, title III, formerly subch. III, § 308, as added and amended Pub. L. 95–630, title V, § 502(b), title XVIII, § 1802, Nov. 10, 1978, 92 Stat. 3681, 3723; Pub. L. 96–221, title III, § 309(a)(4), (b)(1), (2), Mar. 31, 1980, 94 Stat. 149.)

CODIFICATION

Section 309(b)(1) of Pub. L. 96–221 redesignated subch. III as title III of act June 26, 1934, ch. 750, cited as a credit to this section.

AMENDMENTS

1980—Pub. L. 96–221, § 309(a)(4), (b)(2), substituted ''Board'' for ''Administrator'', such change having been made previously by Pub. L. 95–630, and ''title'' for ''subchapter'', which for purposes of codification has been editorially translated as ''subchapter'', thereby requiring no further change in text.

1978—Pub. L. 95–630, § 502(b), substituted ''Board'' for ''Administrator''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§ 1795h. Audit of financial transactions

The Comptroller General of the United States shall audit the Central Liquidity Facility under such rules and regulations as the Comptroller may prescribe.

(June 26, 1934, ch. 750, title III, formerly subch. III, § 309, as added Pub. L. 95–630, title XVIII, § 1802, Nov. 10, 1978, 92 Stat. 3723; amended Pub. L. 96–221, title III, § 309(b)(1), Mar. 31, 1980, 94 Stat. 149.)

CODIFICATION

Section 309(b)(1) of Pub. L. 96–221 redesignated subch. III as title III of act June 26, 1934, ch. 750, cited as a credit to this section.

§ 1795i. Annual report

The annual report required by section 1752a(d) of this title shall include a full report of the activities of the Facility.

(June 26, 1934, ch. 750, title III, formerly subch. III, § 310, as added Pub. L. 95–630, title XVIII, § 1802, Nov. 10, 1978, 92 Stat. 3723; amended Pub. L. 96–221, title III, § 309(b)(1), Mar. 31, 1980, 94 Stat. 149; Pub. L. 109–351, title VII, § 726(27), Oct. 13, 2006, 120 Stat. 2003.)

CODIFICATION

Section 309(b)(1) of Pub. L. 96–221 redesignated subch. III as title III of act June 26, 1934, ch. 750, cited as a credit to this section.

AMENDMENTS

2006—Pub. L. 109–351 substituted ''section 1752a(d)'' for ''section 1752a(e)''.

§ 1795j. Agent of Federal Reserve System

The facility is authorized to act upon the request of the Board of Governors of the Federal Reserve System as an agent of the Federal Reserve System in matters pertaining to credit unions under such terms and conditions as may be established by the Board of Governors of the Federal Reserve System.

(June 26, 1934, ch. 750, title III, § 311, as added Pub. L. 97–320, title V, § 532, Oct. 15, 1982, 96 Stat. 1536.)

§ 1795k. State and local tax exemption

(a) Franchise, activities, etc., of Central Liquidity Facility; exception

The Central Liquidity Facility, and its franchise, activities, capital reserves, surplus, and income, shall be exempt from all State and local taxation now or hereafter imposed, other than taxes on real property held by the Facility (to the same extent, according to its value, as other similar property held by other persons is taxed).

(b) Notes, bonds, debentures and other obligations of Central Liquidity Facility; exceptions

(1) Except as provided in paragraph (2), the notes, bonds, debentures, and other obligations issued on behalf of the Central Liquidity Facility and the income therefrom shall be exempt from all State and local taxation now or hereafter imposed.

(2) Any obligation described in paragraph (1) shall not be exempt from State or local gift, estate, inheritance, legacy, succession, or other wealth transfer taxes.

(c) "State" defined; tax status

For purposes of this section—

(1) the term ''State'' includes the District of Columbia; and

(2) taxes imposed by counties or municipalities, or any territory, dependency, or possession of the United States shall be treated as local taxes.

(June 26, 1934, ch. 750, title III, § 312, as added Pub. L. 98–369, div. B, title VIII, § 2813(a)(2), July 18, 1984, 98 Stat. 1206.)

EFFECTIVE DATE

Section 2813(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [enacting this section and amending section 1795b of this title and section 501 of Title 26, Internal Revenue Code] shall take effect on October 1, 1979.''

CHAPTER 15—FEDERAL LOAN AGENCY

§§ 1801 to 1805. Omitted

CODIFICATION

Sections, acts Feb. 24, 1945, ch. 4, §§ 1, 2, 4, 5, 59 Stat. 5, 6; Apr. 25, 1945, ch. 95, title I, 59 Stat. 81, related to the Federal Loan Agency which was established by Reorg. Plan No. I of 1939, § 402, set out in the Appendix to Title 5, Government Organization and Employees, and continued as an independent establishment of the Government by act Feb. 24, 1945, ch. 4, 59 Stat. 5, and was abolished by section 204 of act June 30, 1947, ch. 166, title II, 61 Stat. 208, and its property and records were transferred to the Reconstruction Finance Corporation. By act June 24, 1954, ch. 410, § 2(a), 68 Stat. 320, section 609 of Title 15, Commerce and Trade, the Secretary of the Treasury was authorized to liquidate the Reconstruction Finance Corporation. Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat.

647, set out as a note under section 601 of Title 15, Commerce and Trade, abolished the Reconstruction Finance Corporation.

CHAPTER 16—FEDERAL DEPOSIT INSURANCE CORPORATION

Sec.
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§ 1811. Federal Deposit Insurance Corporation

(a) Establishment of Corporation

There is hereby established a Federal Deposit Insurance Corporation (hereinafter referred to as the ''Corporation'') which shall insure, as hereinafter provided, the deposits of all banks and savings associations which are entitled to the benefits of insurance under this chapter, and which shall have the powers hereinafter granted.

(b) Asset disposition division

(1) Establishment

The Corporation shall have a separate division of asset disposition.

(2) Management

The division of asset disposition shall have an administrator who shall be appointed by the Board of Directors.

(3) Responsibilities of division

The division of asset disposition shall carry out all of the responsibilities of the Corporation under this chapter relating to the liquidation of insured depository institutions and the disposition of assets of such institutions.

(Sept. 21, 1950, ch. 967, § 2[1], 64 Stat. 873; Pub. L. 101–73, title II, § 202, Aug. 9, 1989, 103 Stat. 188; Pub. L. 103–204, § 22(a), Dec. 17, 1993, 107 Stat. 2407.)

CODIFICATION

The Federal Deposit Insurance Corporation was originally created as a part of the Federal Reserve Act by act June 16, 1933, ch. 89, § 8, 48 Stat. 168, which added section 12B to the Federal Reserve Act, act Dec. 23, 1913, ch. 6, 38 Stat. 103, and was classified to section 264 of this title. Act Dec. 23, 1913, ch. 6, § 12B, as added June

16, 1933, ch. 89, § 8, 48 Stat. 168 has been amended by acts June 16, 1934, ch. 546, § 1(1)–(10), 48 Stat. 969, 970; June 28, 1935, ch. 335, 49 Stat. 435; Aug. 23, 1935, ch. 614, § 101, 49 Stat. 684; Apr. 21, 1936, ch. 244, 49 Stat. 1237; May 25, 1938, ch. 276, 52 Stat. 442; June 16, 1938, ch. 489, 52 Stat. 767; June 20, 1939, ch. 214, § 2, 53 Stat. 842; Apr. 13, 1943, ch. 62, § 1, 57 Stat. 65; Aug. 5, 1947, ch. 492, §§ 2, 4, 61 Stat. 773; June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948; Oct. 15, 1949, ch. 695, § 4, 63 Stat. 880; Aug. 17, 1950, ch. 729, §§ 5–7, 64 Stat. 457.

Section 12B of the Federal Reserve Act was withdrawn from the Federal Reserve Act and made a separate Act by section 1 of act Sept. 21, 1950, and set out as this chapter.

PRIOR PROVISIONS

Section is derived from subsec. (a) of former section 264 of this title. See Codification note above.

AMENDMENTS

1993—Pub. L. 103–204 inserted ''Federal Deposit Insurance Corporation'' as section catchline, redesignated existing provisions as subsec. (a), inserted heading, and substituted ''There is hereby established'' for ''There is hereby created'', and added subsec. (b).

1989—Pub. L. 101–73 inserted ''and savings associations'' after ''banks''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 22(b) of Pub. L. 103–204 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on July 1, 1995.''

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–203, title VI, § 601, July 21, 2010, 124 Stat. 1596, provided that: ''This title [enacting sections 214d, 1467b, 1831c, 1831*o*–1, 1850a, 1851, and 1852 of this title and section 77z–2a of Title 15, Commerce and Trade, amending sections 35, 36, 84, 371a, 371c, 371c–1, 375, 375b, 1462, 1464, 1467a, 1468, 1828, 1831u, 1841 to 1844, 1848a, and 3907 of this title and section 78q of Title 15, and enacting provisions set out as notes under sections 35, 84, 371a, 371c, 375, 375b, 1462, 1467a, 1815, 1828, 1831c, and 1831u of this title and sections 77z–2a and 78q of Title 15] may be cited as the 'Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2010'.''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–351, § 1(a), Oct. 13, 2006, 120 Stat. 1966, provided that: ''This Act [see Tables for classification] may be cited as the 'Financial Services Regulatory Relief Act of 2006'.''

Pub. L. 109–173, § 1, Feb. 15, 2006, 119 Stat. 3601, provided that: ''This Act [see Tables for classification] may be cited as the 'Federal Deposit Insurance Reform Conforming Amendments Act of 2005'.''

Pub. L. 109–171, title II, § 2101, Feb. 8, 2006, 120 Stat. 9, provided that: ''This subtitle [subtitle B (§§ 2101–2109) of title II of Pub. L. 109–171, amending sections 24, 338a, 347b, 1431, 1441a, 1441b, 1464, 1467a, 1723i, 1735f–14, 1813, 1815 to 1817, 1821, 1821a, 1823 to 1825, 1827, 1828, 1831a, 1831e, 1831h, 1831m, 1831*o*, 1833a, 1834, 1841, and 3341 of this title and section 905 of Title 2, The Congress, enacting provisions set out as notes under sections 1817 and 1821 of this title, and repealing provisions set out as notes under section 1821 of this title] may be cited as the 'Federal Deposit Insurance Reform Act of 2005'.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–386, § 1, Oct. 30, 2004, 118 Stat. 2228, provided that: ''This Act [amending sections 321, 1709, 1813, 1817, 1820, 1821, 1828, 1841, 1842, 1881, 3206, and 3207 of this title and sections 78c, 78*l*, and 78q of Title 15, Commerce and Trade, and enacting provisions set out as notes under section 321 of this title] may be cited as the '2004 District of Columbia Omnibus Authorization Act'.''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–569, title XII, § 1200, Dec. 27, 2000, 114 Stat. 3032, provided that: ''This title [enacting sections 215a–2, 215a–3, and 4805a of this title, amending sections 11, 71 to 72, 83, 215b, 1426, 1464, 1467a, 1817, 1818, 1821, 1828, 1831n, and 3102 of this title, repealing sections 51, 1465, and 1831f–1 of this title, enacting provisions set out as a note under section 1817 of this title, and amending provisions set out as a note under section 1828 of this title] may be cited as the 'Financial Regulatory Relief and Economic Efficiency Act of 2000'.''

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–102, § 1(a), Nov. 12, 1999, 113 Stat. 1338, provided that: ''This Act [see Tables for classification] may be cited as the 'Gramm-Leach-Bliley Act'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–277, div. H, § 1, Oct. 21, 1998, 112 Stat. 2681–854, provided that: ''This Division [amending section 1828 of this title] may be cited as the 'Depository Institution-GSE Affiliation Act of 1998'.''

SHORT TITLE OF 1997 AMENDMENTS

Pub. L. 105–24, § 1, July 3, 1997, 111 Stat. 238, provided that: ''This Act [amending sections 36 and 1831a of this title and enacting provisions set out as a note under section 1831a of this title] may be cited as the 'Riegle-Neal Amendments Act of 1997'.''

Pub. L. 105–18, title V, § 50001, June 12, 1997, 111 Stat. 211, provided that: ''This title [enacting provisions set out as notes under this section and sections 1828, 1831*o*, and 4008 of this title] may be cited as the 'Depository Institutions Disaster Relief Act of 1997'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title II, § 2701, Sept. 30, 1996, 110 Stat. 3009–479, provided that: ''This subtitle [subtitle G (§§ 2701–2711) of title II of div. A of Pub. L. 104–208 amending sections 24, 338a, 347b, 1431, 1441 to 1441b, 1464, 1467a, 1723i, 1735f–14, 1813, 1815 to 1817, 1821, 1821a, 1823 to 1825, 1827, 1828, 1831a, 1831e, 1831m, 1831*o*, 1833a, 1834, 1841, and 3341 of this title and section 905 of Title 2, The Congress, repealing section 1831h of this title, and enacting provisions set out as notes under sections 1441, 1817, and 1821 of this title and section 162 of Title 26, Internal Revenue Code] may be cited as the 'Deposit Insurance Funds Act of 1996'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–328, § 1(a), Sept. 29, 1994, 108 Stat. 2338, provided that: ''This Act [enacting sections 43, 215a–1, 1831u, and 1835a of this title, amending sections 30, 36, 215, 215a, 215b, 1441a, 1462a, 1820, 1821, 1828, 1831a, 1831r–1, 1841, 1842, 1846, 2906, 3103 to 3105, and 3106a of this title and section 1927 of Title 7, Agriculture, enacting provisions set out as notes under this section, sections 215, 1828, 3104, 3105, and 3107 of this title, section 1927 of Title 7, and section 5112 of Title 31, Money and Finance, and amending provisions set out as notes under this section and sections 5111 and 5112 of Title 31] may be cited as the 'Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994'.''

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–76, § 1, Aug. 12, 1993, 107 Stat. 752, provided that: ''This Act [enacting provisions set out as notes under this section and sections 1828, 1831*o*, and 4008 of this title] may be cited as the 'Depository Institutions Disaster Relief Act of 1993'.''

SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102–550, title XV, § 1500, Oct. 28, 1992, 106 Stat. 4044, provided that: ''This title [see Tables for classification] may be cited as the 'Annunzio-Wylie Anti-Money Laundering Act'.''

Pub. L. 102–485, § 1, Oct. 23, 1992, 106 Stat. 2771, provided that: ''This Act [enacting sections 338a and 3352 of this title, amending section 24 of this title, and enacting provisions set out as notes under this section and sections 1811, 1828, 1831*o*, and 4008 of this title] may

be cited as the 'Depository Institutions Disaster Relief Act of 1992'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–242, § 1(a), Dec. 19, 1991, 105 Stat. 2236, as amended by Pub. L. 102–550, title XVI, § 1601, Oct. 28, 1992, 106 Stat. 4075, provided that: ''This Act [see Tables for classification] may be cited as the 'Federal Deposit Insurance Corporation Improvement Act of 1991'.''

Pub. L. 102–242, title II, § 231, Dec. 19, 1991, 105 Stat. 2308, provided that: ''This subtitle [subtitle C (§§ 231–234) of title II of Pub. L. 102–242, enacting sections 1834, 1834a, and 1834b of this title and amending section 1817 of this title] may be cited as the 'Bank Enterprise Act of 1991'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–508, title II, § 2001, Nov. 5, 1990, 104 Stat. 1388–14, provided that: ''This Act [probably means this subtitle, which is subtitle A (§§ 2001–2005) of title II of Pub. L. 101–508, amending sections 1817 and 1824 of this title] may be cited as the 'FDIC Assessment Rate Act of 1990'.''

SHORT TITLE OF 1989 AMENDMENT

Section 1(a) of Pub. L. 101–73 provided that: ''This Act [see Tables for classification] may be cited as the 'Financial Institutions Reform, Recovery, and Enforcement Act of 1989'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–86, title V, § 501, Aug. 10, 1987, 101 Stat. 623, provided that: ''This title [enacting sections 1439–1 and 1772b of this title, amending sections 481, 1726, 1727, 1729, 1730a, 1785, 1786, 1813, 1821, 1823, 1828, 1842, 1843, and 1849 of this title and sections 905 and 906 of Title 2, The Congress, enacting provisions set out as a note under section 1464 of this title, amending provisions set out as a note under section 1729 of this title, and repealing provisions set out as a note under section 1464 of this title] may be cited as the 'Financial Institutions Emergency Acquisitions Amendments of 1987'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–320, title I, § 101, Oct. 15, 1982, 96 Stat. 1469, provided that: ''This title [amending sections 1431, 1436, 1437, 1462, 1464, 1725, 1726, 1727, 1728, 1729, 1730, 1730a, 1785, 1786, 1813, 1814, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1831c, 1841, 1842, and 1843 of this title and enacting provisions set out as a note under section 1464 of this title] may be cited as the 'Deposit Insurance Flexibility Act'.''

Pub. L. 97–320, title II, § 201, Oct. 15, 1982, 96 Stat. 1489, provided that: ''This title [amending sections 1464, 1726, 1729, and 1823 of this title and enacting provisions set out as notes under section 1823 of this title] may be cited as the 'Net Worth Certificate Act'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–110, title I, § 101, Dec. 26, 1981, 95 Stat. 1513, provided that: ''This title [amending sections 1813, 1817, and 1821 of this title] may be cited as the 'International Banking Facility Deposit Insurance Act'.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–630, title VI, § 601, Nov. 10, 1978, 92 Stat. 3683, provided that: ''This title [amending section 1817 of this title] may be cited as the 'Change in Bank Control Act of 1978'.''

SHORT TITLE

Section 1 of act Sept. 21, 1950, provided: ''That section 12B of the Federal Reserve Act, as amended, is hereby withdrawn as a part of that Act and is made a separate Act [enacting this chapter] to be known as the 'Federal Deposit Insurance Act'.''

SEPARABILITY

Pub. L. 102–242, title IV, § 481, Dec. 19, 1991, 105 Stat. 2388, provided that: ''If any provision of this Act [see Short Title of 1991 Amendment note above], or any application of any provision of this Act to any person or circumstance, is held invalid, the remainder of the Act, and the application of any remaining provision of the Act to any other person or circumstance, shall not be affected by such holding.''

Section 1221 of Pub. L. 101–73 provided that: ''If any provision of this Act [see Short Title of 1989 Amendment note above] or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.''

CONSTRUCTION OF 1999 AMENDMENTS

Pub. L. 106–102, title II, § 210, Nov. 12, 1999, 113 Stat. 1396, provided that: ''Nothing in this Act [see Short Title of 1999 Amendment note above] shall supersede, affect, or otherwise limit the scope and applicability of the Commodity Exchange Act (7 U.S.C. 1 et seq.).''

Pub. L. 106–102, title VII, § 714, Nov. 12, 1999, 113 Stat. 1470, provided that: ''Nothing in this Act [see Short Title of 1999 Amendment note above] shall be construed to repeal any provision of the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.].''

CONSTRUCTION OF 1997 AMENDMENT

Pub. L. 105–18, title V, § 50006, June 12, 1997, 111 Stat. 213, provided that: ''No provision of this title [see Short Title of 1997 Amendments note above] shall be construed as limiting the authority of any department or agency under any other provision of law.''

CONSTRUCTION OF 1994 AMENDMENT

Pub. L. 103–328, title I, § 111, Sept. 29, 1994, 108 Stat. 2365, provided that: ''No provision of this title [enacting sections 43, 215a–1, 1831u, and 1835a of this title, amending sections 30, 36, 215, 215a, 215b, 1462a, 1820, 1828, 1831a, 1831r–1, 1841, 1842, 1846, 2906, 3103 to 3105, and 3106a of this title and section 1927 of Title 7, Agriculture, enacting provisions set out as notes under this section, sections 215, 1828, 3104, 3105, and 3107 of this title and section 1927 of Title 7, and amending provisions set out as a note under this section] and no amendment made by this title to any other provision of law shall be construed as affecting in any way—

''(1) the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any such bank, bank holding company, or foreign bank, to the extent that such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law;

''(2) the right of any State, or any political subdivision of any State, to impose or maintain a nondiscriminatory franchise tax or other nonproperty tax instead of a franchise tax in accordance with section 3124 of title 31, United States Code; or

''(3) the applicability of section 5197 of the Revised Statutes [section 85 of this title] or section 27 of the Federal Deposit Insurance Act [section 1831d of this title].''

CONSTRUCTION OF 1993 AMENDMENTS

Pub. L. 103–76, § 7, Aug. 12, 1993, 107 Stat. 755, provided that: ''Nothing in this Act [see Short Title of 1993 Amendment note above] limits the authority of any department or agency under any other provision of law.''

CONSTRUCTION OF 1992 AMENDMENTS

Pub. L. 102–485, § 8, Oct. 23, 1992, 106 Stat. 2775, provided that: ''Nothing in this Act [see Short Title of 1992 Amendments note above] limits the authority of any department or agency under any other provision of law.''

YEAR 2000 READINESS FOR FINANCIAL INSTITUTIONS

Pub. L. 105–164, § 2, Mar. 20, 1998, 112 Stat. 32, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the Year 2000 computer problem poses a serious challenge to the American economy, including the Nation's banking and financial services industries;

''(2) thousands of banks, savings associations, and credit unions rely heavily on internal information technology and computer systems, as well as outside service providers, for mission-critical functions, such as check clearing, direct deposit, accounting, automated teller machine networks, credit card processing, and data exchanges with domestic and international borrowers, customers, and other financial institutions; and

''(3) Federal financial regulatory agencies must have sufficient examination authority to ensure that the safety and soundness of the Nation's financial institutions will not be at risk.

''(b) DEFINITIONS.—For purposes of this section—

''(1) the terms 'depository institution' and 'Federal banking agency' have the same meanings as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813];

''(2) the term 'Federal home loan bank' has the same meaning as in section 2 of the Federal Home Loan Bank Act [12 U.S.C. 1422];

''(3) the term 'Federal reserve bank' means a reserve bank established under the Federal Reserve Act [12 U.S.C. 221 et seq.];

''(4) the term 'insured credit union' has the same meaning as in section 101 of the Federal Credit Union Act [12 U.S.C. 1752]; and

''(5) the term 'Year 2000 computer problem' means, with respect to information technology, any problem which prevents such technology from accurately processing, calculating, comparing, or sequencing date or time data—

''(A) from, into, or between—

''(i) the 20th and 21st centuries; or

''(ii) the years 1999 and 2000; or

''(B) with regard to leap year calculations.

''(c) SEMINARS AND MODEL APPROACHES TO YEAR 2000 COMPUTER PROBLEM.—

''(1) SEMINARS.—

''(A) IN GENERAL.—Each Federal banking agency and the National Credit Union Administration Board shall offer seminars to all depository institutions and insured credit unions under the jurisdiction of such agency on the implication of the Year 2000 computer problem for—

''(i) the safe and sound operations of such depository institutions and credit unions; and

''(ii) transactions with other financial institutions, including Federal reserve banks and Federal home loan banks.

''(B) CONTENT AND SCHEDULE.—The content and schedule of seminars offered pursuant to subparagraph (A) shall be determined by each Federal banking agency and the National Credit Union Administration Board taking into account the resources and examination priorities of such agency.

''(2) MODEL APPROACHES.—

''(A) IN GENERAL.—Each Federal banking agency and the National Credit Union Administration Board shall make available to each depository institution and insured credit union under the jurisdiction of such agency model approaches to common Year 2000 computer problems, such as model approaches with regard to project management, vendor contracts, testing regimes, and business continuity planning.

''(B) VARIETY OF APPROACHES.—In developing model approaches to the Year 2000 computer problem pursuant to subparagraph (A), each Federal banking agency and the National Credit Union Administration Board shall take into account the need to develop a variety of approaches to correspond to the variety of depository institutions or credit unions within the jurisdiction of the agency.

''(3) COOPERATION.—In carrying out this section, the Federal banking agencies and the National Credit Union Administration Board may cooperate and coordinate their activities with each other, the Financial Institutions Examination Council, and appropriate organizations representing depository institutions and credit unions.''

STUDY AND REPORT ON UNITED STATES FINANCIAL SERVICES SYSTEM

Pub. L. 103–328, title II, §210, Sept. 29, 1994, 108 Stat. 2379, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Secretary of the Treasury (hereafter in this section referred to as the 'Secretary') shall, after consultation with the Advisory Commission on Financial Services established under subsection (b), and consultation in accordance with paragraph (3), conduct a study of matters relating to the strengths and weaknesses of the United States financial services system in meeting the needs of the system's users, including the needs of—

''(A) individual consumers and households;

''(B) communities;

''(C) agriculture;

''(D) small-, medium-, and large-sized businesses;

''(E) governmental and nonprofit entities; and

''(F) exporters and other users of international financial services.

''(2) MATTERS STUDIED.—The study required under paragraph (1) shall include consideration of—

''(A) the changes underway in the national and international economies and the financial services industry, and how those changes affect the financial services system's ability to efficiently meet the needs of the national economy and the system's users during the next 10 years and beyond; and

''(B) the adequacy of existing statutes and regulations, and the existing regulatory structure, to meet the needs of the financial services system's users effectively, efficiently, and without unfair, anticompetitive, or discriminatory practices.

''(3) CONSULTATION.—Consultation in accordance with this paragraph means consultation with—

''(A) the Board of Governors of the Federal Reserve System;

''(B) the Commodity Futures Trading Commission;

''(C) the Comptroller of the Currency;

''(D) the Director of the Office of Thrift Supervision;

''(E) the Federal Deposit Insurance Corporation;

''(F) the Secretary of the Department of Housing and Urban Development;

''(G) the Securities and Exchange Commission;

''(H) the Director of the Congressional Budget Office; and

''(I) the Comptroller General of the United States.

''(b) ADVISORY COMMISSION ON FINANCIAL SERVICES.—

''(1) ESTABLISHMENT.—There is established the Advisory Commission on Financial Services (hereafter in this section referred to as the 'Advisory Commission').

''(2) MEMBERSHIP OF COMMISSION.—The Advisory Commission—

''(A) shall consist of not less than 9 nor more than 14 members appointed by the Secretary from among individuals—

''(i) who are—

''(I) users of the financial services system; or

''(II) experts in finance or on the financial services system; and

''(ii) who are not employees of the Federal Government; and

''(B) shall include representatives of business, agriculture, and consumers.

''(3) CHAIRPERSON.—The Secretary or the Secretary's designee shall serve as Chairperson of the Advisory Commission.

''(4) TRAVEL EXPENSES.—Members of the Advisory Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates author-

ized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in performing services for the Advisory Commission.

''(5) TERMINATION.—The Advisory Commission shall terminate 30 days after the date of submission of the report required under subsection (d).

''(c) RECOMMENDATIONS.—Based on the results of the study conducted under subsection (a), the Secretary shall develop such recommendations as may be appropriate for changes in statutes, regulations, and policies to improve the operation of the financial services system, including changes to better—

''(1) meet the needs of, and assure access to the system for, current and potential users;

''(2) promote economic growth;

''(3) protect consumers;

''(4) promote competition and efficiency;

''(5) avoid risk to the taxpayers;

''(6) control systemic risk; and

''(7) eliminate discrimination.

''(d) REPORT.—Not later than 15 months after the date of enactment of this Act [Sept. 29, 1994], the Secretary shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report describing the study conducted under subsection (a) and any recommendations developed under subsection (c).''

STUDY AND REPORT ON DEPOSITORY INSTITUTIONS DISASTER RELIEF ACTS OF 1992 AND 1993

Pub. L. 103–76, § 5, Aug. 12, 1993, 107 Stat. 754, directed Secretary of the Treasury, after consultation with appropriate Federal banking agencies to conduct a study that (1) examined how agencies and entities granted authority by Depository Institutions Disaster Relief Act of 1992 and by this Act have exercised such authority, (2) evaluated the utility of such Acts in facilitating recovery from disasters consistent with safety and soundness of depository institutions, and (3) contained recommendations with respect to whether the authority granted by this Act should be made permanent, and, not later than 18 months after Aug. 12, 1993, submit to Congress a report on the results of the study.

FEASIBILITY STUDY ON AUTHORIZING INSURED AND UNINSURED DEPOSIT ACCOUNTS

Pub. L. 102–242, title III, § 321, Dec. 19, 1991, 105 Stat. 2370, directed Federal Deposit Insurance Corporation to study the feasibility of authorizing insured depository institutions to offer both insured and uninsured deposit accounts to customers, specified factors to be considered in conducting the study, and directed Corporation, before the end of the 6-month period beginning on Dec. 19, 1991, to submit a report to Congress containing the Corporation's findings and conclusions with respect to the study and any recommendations for legislative or administrative action the Corporation determined to be appropriate.

PRIVATE REINSURANCE STUDY

Pub. L. 102–242, title III, § 322, Dec. 19, 1991, 105 Stat. 2370, directed Board of Directors of Federal Deposit Insurance Corporation, in consultation with Secretary of the Treasury and individuals from the private sector with expertise in private insurance, private reinsurance, depository institutions, or economics, to conduct a study of the feasibility of establishing a private reinsurance system, such study to include a demonstration project consisting of a simulation, by a sample of private reinsurers and insured depository institutions, of the activities required for a private reinsurance system, with a report to Congress on the study before the end of the 18-month period beginning on Dec. 19, 1991.

PURPOSES OF 1989 AMENDMENT

Section 101 of Pub. L. 101–73 provided that: ''The purposes of this Act [see Short Title of 1989 Amendment note above] are as follows:

''(1) To promote, through regulatory reform, a safe and stable system of affordable housing finance.

''(2) To improve the supervision of savings associations by strengthening capital, accounting, and other supervisory standards.

''(3) To curtail investments and other activities of savings associations that pose unacceptable risks to the Federal deposit insurance funds.

''(4) To promote the independence of the Federal Deposit Insurance Corporation from the institutions the deposits of which it insures, by providing an independent board of directors, adequate funding, and appropriate powers.

''(5) To put the Federal deposit insurance funds on a sound financial footing.

''(6) To establish an Office of Thrift Supervision in the Department of the Treasury, under the general oversight of the Secretary of the Treasury.

''(7) To establish a new corporation, to be known as the Resolution Trust Corporation, to contain, manage, and resolve failed savings associations.

''(8) To provide funds from public and private sources to deal expeditiously with failed depository institutions.

''(9) To strengthen the enforcement powers of Federal regulators of depository institutions.

''(10) To strengthen the civil sanctions and criminal penalties for defrauding or otherwise damaging depository institutions and their depositors.''

STUDIES OF FEDERAL DEPOSIT INSURANCE, BANKING SERVICES, AND SAFETY AND SOUNDNESS OF GOVERNMENT-SPONSORED ENTERPRISES

Pub. L. 101–73, title X, Aug. 9, 1989, 103 Stat. 507, as amended by Pub. L. 103–328, title I, § 108(a), Sept. 29, 1994, 108 Stat. 2361; Pub. L. 104–208, div. A, title II, § 2608, Sept. 30, 1996, 110 Stat. 3009–474, provided that:

''SEC. 1001. STUDY OF FEDERAL DEPOSIT INSURANCE SYSTEM.

''(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the National Credit Union Administration Board, the Director of the Office of Management and Budget, and individuals from the private sector, shall conduct a study of the Federal deposit insurance system.

''(b) TOPICS.—As part of the study required under subsection (a), the Secretary of the Treasury shall investigate, review, and evaluate the following:

''(1) The feasibility of establishing a deposit insurance premium rate structure which would take into account, on an institution-by-institution basis—

''(A) asset quality risk;

''(B) interest rate risk;

''(C) quality of management; and

''(D) profitability and capital.

''(2) Incentives for market discipline, including the advantages of—

''(A) limiting each depositor to 1 insured account per institution;

''(B) reducing the amount insured, or providing for a graduated decrease in the percentage of the amounts deposited which are insured as the amounts deposited increase;

''(C) combining Federal with private insurance in order to bring the market discipline of private insurance to bear on the management of the depository institution; and

''(D) ensuring, by law or regulation, that on the closing of any insured depository institution, the appropriate Federal insurance fund will honor only its explicit liabilities, and will never make good any losses on deposits not explicitly covered by Federal deposit insurance.

''(3) The scope of deposit insurance coverage and its impact on the liability of the insurance fund.

''(4) The feasibility of market value accounting, assessments on foreign deposits, limitations on brokered deposits, the addition of collateralized borrowings to the deposit insurance base, and multiple insured accounts.

''(5) The impact on the deposit insurance funds of varying State and Federal bankruptcy exemptions and the feasibility of—

''(A) uniform exemptions;

''(B) limits on exemptions when necessary to repay obligations owed to federally insured depository institutions; and

''(C) requiring borrowers from federally insured depository institutions to post a personal or corporate bond when obtaining a mortgage on real property.

''(6) Policies to be followed with respect to the recapitalization or closure of insured depository institutions whose capital is depleted to, or near the point of, insolvency.

''(7) The efficiency of housing subsidies through the Federal home loan bank system.

''(8) Alternatives to Federal deposit insurance.

''(9) The feasibility of developing and administering, through the appropriate Federal banking agency, an examination of the principles and techniques of risk management and the application of such principles and techniques to the management of insured institutions.

''(10) The adequacy of capital of insured credit unions and the National Credit Union Share Insurance Fund, including whether the supervision of such fund should be separated from the other functions of the National Credit Union Administration.

''(11) The feasibility of requiring, by statute or other means, that—

''(A) independent auditors and accountants of a depository institution report the results of any audit of the institution to the relevant regulatory agency or agencies;

''(B) a regulator share reports on a depository institution with the institution's independent auditors and accountants; and

''(C) independent auditors and accountants participate in conferences between the regulator and the depository institution.

''(12) The feasibility of adopting regulations which are the same as or similar to the provisions of England's Banking Act, 1987, ch. 22 (4 Halsbury's Statutes of England and Wales 527–650 (1987)), enacted on May 15, 1987, relating to the Bank of England's relationship with auditors and reporting accountants (including sections 8, 39, 41, 45, 46, 47, 82, 83, 85, and 94 of such Act).

''(c) FINAL REPORT.—Not later than the close of the 18-month period beginning on the date of the enactment of this Act [Aug. 9, 1989], the Secretary of the Treasury shall submit to the Congress a final report containing a detailed statement of findings made, and conclusions drawn from, the study conducted under this section, including such recommendations for administrative and legislative action as the Secretary determines to be appropriate.

''SEC. 1002. SURVEY OF BANK FEES AND SERVICES.

''(a) ANNUAL SURVEY REQUIRED.—The Board of Governors of the Federal Reserve System shall obtain a sample, which is representative by geographic location and size of the institution, of—

''(1) certain retail banking services provided by insured depository institutions; and

''(2) the fees, if any, which are imposed by such institutions for providing any such service, including fees imposed for not sufficient funds, deposit items returned, and automated teller machine transactions.

''(b) ANNUAL REPORT TO CONGRESS REQUIRED.—

''(1) PREPARATION.—The Board of Governors of the Federal Reserve System shall prepare a report of the results of each survey conducted pursuant to subsection (a).

''(2) CONTENTS OF THE REPORT.—Each report prepared pursuant to paragraph (1) shall include—

''(A) a description of any discernible trend, in the Nation as a whole, in each of the 50 States, and in each consolidated metropolitan statistical area or primary metropolitan statistical area (as defined by the Director of the Office of Management and Budget), in the cost and availability of retail banking services (including fees imposed for providing such services), that delineates differences between insured depository institutions on the basis of both the size of the institution and any engagement of the institution in multistate activity; and

''(B) a description of the correlation, if any, among the following factors:

''(i) An increase or decrease in the amount of any deposit insurance premium assessed by the Federal Deposit Insurance Corporation against insured depository institutions.

''(ii) An increase or decrease in the amount of the fees imposed by such institutions for providing retail banking services.

''(iii) A decrease in the availability of such services.

''(3) SUBMISSION TO CONGRESS.—The Board of Governors of the Federal Reserve System shall submit an annual report to the Congress not later than September 1, 1995, and not later than June 1 of each subsequent year.

''SEC. 1003. GENERAL ACCOUNTING OFFICE [GOVERNMENT ACCOUNTABILITY OFFICE] STUDY.

''(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of deposit insurance issues raised by section 1001 emphasizing in particular—

''(1) analysis of the policy considerations affecting the scope of deposit insurance coverage;

''(2) evaluation of the risks associated with bank insurance contracts both as to the issuing institution and the deposit insurance funds; and

''(3) the effect of proposed changes in the definition of 'deposit' on—

''(A) market discipline; and

''(B) the ability of other participants in capital markets to raise funds.

''(b) REPORT.—Not later than the close of the 18-month period beginning on the date of the enactment of this Act [Aug. 9, 1989], the Comptroller General shall submit to the Congress the results of the study required by subsection (a).

''SEC. 1004. STUDY REGARDING CAPITAL REQUIREMENTS FOR GOVERNMENT-SPONSORED ENTERPRISES.

''(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the risks undertaken by all government-sponsored enterprises and the appropriate level of capital for such enterprises consistent with—

''(1) the financial soundness and stability of the government-sponsored enterprises;

''(2) minimizing any potential financial exposure of the Federal Government; and

''(3) minimizing any potential impact on borrowing of the Federal Government.

''(b) CONSULTATION AND COOPERATION WITH OTHER AGENCIES.—The Comptroller General shall determine the structure and methodology of the study under this section in consultation with and with the cooperation of the Secretary of Agriculture and the Farm Credit Administration (with respect to the Farm Credit Banks, the Banks for Cooperatives, and the Federal Agricultural Mortgage Corporation), the Secretary of Education (with respect to the Student Loan Marketing Association and the College Construction Loan Corporation), the Secretary of Housing and Urban Development (with respect to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation), and the government-sponsored enterprises.

''(c) ACCESS TO RELEVANT INFORMATION.—Each government-sponsored enterprise shall provide full and

prompt access to the Comptroller General to its books and records and shall promptly provide any other information requested by the Comptroller General. In conducting the study under this section, the Comptroller General may request information from, or the assistance of, any department or agency of the Federal Government that is authorized by law to supervise or approve any of the activities of any government-sponsored enterprise.

''(d) SPECIFIC REQUIREMENTS.—The study shall examine and evaluate—

''(1) the degrees and types of risks that are undertaken by the government-sponsored enterprises in the course of their operations, including credit risk, interest rate risk, management and operational risk, and business risk;

''(2) the most appropriate method or methods for quantifying the types of risks undertaken by the government-sponsored enterprises;

''(3) the actual level of risk that exists with respect to each government-sponsored enterprise, which shall take into account factors including the volume and type of securities outstanding that are issued or guaranteed by each government-sponsored enterprise and the extent of off-balance sheet expense of each government-sponsored enterprise;

''(4) the appropriateness of applying a risk-based capital standard to each government-sponsored enterprise, taking into account the nature of the business each government-sponsored enterprise conducts;

''(5) the costs and benefits to the public from application of a risk-based capital standard to the government-sponsored enterprises and the impact of such a standard on the capability of each government-sponsored enterprise to carry out its purpose under law;

''(6) the impact, if any, of the operation of the government-sponsored enterprises on borrowing of the Federal Government;

''(7) the overall level of capital appropriate for each of the government-sponsored enterprises; and

''(8) the quality and timeliness of information currently available to the public and the Federal Government concerning the extent and nature of the activities of government-sponsored enterprises and the financial risk associated with such activities.

''(e) REPORTS TO CONGRESS.—The Comptroller General shall submit to the Congress 2 reports regarding the study under this section. The first report shall be submitted to the Congress not later than 9 months after the date of the enactment of this Act [Aug. 9, 1989] and the second report shall be submitted to the Congress not later than 21 months after the date of the enactment of this Act. Each report shall set forth—

''(1) the results of the study under this section;

''(2) any recommendations of the Comptroller General with respect to appropriate capital standards for each government-sponsored enterprise;

''(3) any recommendations of the Comptroller General with respect to information that, in the determination of the Comptroller General, should be provided to the Congress concerning—

''(A) the extent and nature of the activities of the government-sponsored enterprises; and

''(B) the nature of any periodic reports that the Comptroller General believes should be submitted to the Congress relating to the capital condition and operations of the government-sponsored enterprises; and

''(4) any recommendations and opinions of the Secretary of Agriculture, the Secretary of Education, the Secretary of Housing and Urban Development, and the Secretary of the Treasury regarding the report, to the extent that the recommendations and views of such officers differ from the recommendations and opinions of the Comptroller General.

''(f) DEFINITION.—For purposes of this section, the term 'government-sponsored enterprises' means the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Home Loan Bank System, the Farm Credit Banks, the Banks for Cooperatives, the Federal Agricultural Mortgage Corporation, the College Construction Loan Insurance Corporation, the Student Loan Marketing Association.''

[Pub. L. 103–328, title I, §108(b), Sept. 29, 1994, 108 Stat. 2362, provided that: ''The requirements of subsection (a) [amending section 1002 of Pub. L. 101–73, set out above] shall not apply after the end of the 7-year period beginning on the date of enactment of this Act [Sept. 29, 1994].'']

EXPANSION OF USE OF UNDERUTILIZED MINORITY BANKS, WOMEN'S BANKS, AND LOW-INCOME CREDIT UNIONS

Section 1204 of Pub. L. 101–73 provided that:

''(a) CONSULTATION ON EXPANDED USE.—The Secretary of the Treasury shall consult with the appropriate Federal banking agencies and the National Credit Union Administration Board on methods for increasing the use of underutilized minority banks, women's banks, and limited income credit unions as depositaries or financial agents of Federal agencies.

''(b) REPORT TO CONGRESS.—The Secretary of the Treasury shall include, in the 1st annual report submitted to the Congress under section 331(a) of title 31, United States Code, after the completion of the consultation required by subsection (a), a report of the actions taken by the Secretary to increase the use of underutilized minority banks, women's banks, and limited income credit unions as depositaries or financial agents of Federal agencies.

''(c) DEFINITIONS.—For purposes of this section:

''(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the meaning given to such term in section 3(q) of the Federal Deposit Insurance Act [12 U.S.C. 1813(q)].

''(2) MINORITY BANK.—The term 'minority bank' means any depository institution described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)(i), (ii), (iii)]—

''(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

''(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

''(3) MINORITY.—The term 'minority' means any Black American, Native American, Hispanic American, or Asian American.

''(4) LOW-INCOME CREDIT UNION.—The term 'low-income credit union' means any depository institution described in section 19(b)(1)(A)(iv) of the Federal Reserve Act which serves predominately low-income members (as defined by the National Credit Union Administration Board pursuant to section 101(5) of the Federal Credit Union Act [12 U.S.C. 1752(5)]).

''(5) WOMEN'S BANK.—The term 'women's bank' means any depository institution described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act—

''(A) more than 50 percent of the outstanding shares of which are held by 1 or more women;

''(B) a majority of the directors on the board of directors of which are women; and

''(C) a significant percentage of senior management positions of which are held by women.''

SMALL INVESTOR PARTICIPATION IN UNITED STATES GOVERNMENT SECURITIES OFFERINGS; STUDY BY SECRETARY OF THE TREASURY

Section 1207 of Pub. L. 101–73 provided that: ''Not later than the close of the 18-month period beginning on the date of the enactment of this Act [Aug. 9, 1989], the Secretary of the Treasury shall conduct a study and report to the Congress on—

''(1) whether, and to what extent, the issuance of securities by the United States Government in small denominations benefits small investors, increases the participation of small investors in United States Government securities offerings, and promotes savings and thrift by the average United States taxpayer; and

''(2) additional measures the Secretary recommends be taken to expand the availability of securities issued by the United States Government to benefit small investors, increase their participation in United States Government securities offerings, and to promote savings and thrift by the average United States taxpayer.''

EXPENDITURE OF TAXPAYER MONEY ONLY FOR DEPOSIT INSURANCE PURPOSES

Section 1208 of Pub. L. 101–73 provided that: ''Funds appropriated to the Secretary of the Treasury pursuant to an authorization contained in this Act [see Short Title of 1989 Amendment note above], and any amount authorized to be borrowed from the Secretary of the Treasury by any entity pursuant to this Act, may only be used as permitted by law, and may not otherwise be used for making any payment to any shareholder in, or creditor to, any insured depository institution.''

STUDIES OF RELATIONSHIP BETWEEN PUBLIC DEBT AND ACTIVITIES OF GOVERNMENT-SPONSORED ENTERPRISES

Section 1404 of Pub. L. 101–73 provided that:

''(a) IN GENERAL.—In order to better manage the bonded indebtedness of the United States, the Secretary shall conduct 2 annual studies to assess the financial safety and soundness of the activities of all Government-sponsored enterprises and the impact of their operations on Federal borrowing.

''(b) ACCESS TO RELEVANT INFORMATION.—

''(1) INFORMATION FROM GSE'S.—Each Government-sponsored enterprise shall provide full and prompt access to the Secretary to its books and records, and shall promptly provide any other information requested by the Secretary.

''(2) INFORMATION FROM SUPERVISORY AGENCIES.—In conducting the studies under this section, the Secretary may request information from, or the assistance of, any Federal department or agency authorized by law to supervise the activities of any Government-sponsored enterprise.

''(3) CONFIDENTIALITY OF INFORMATION.—

''(A) IN GENERAL.—The Secretary shall determine and maintain the confidentiality of any book, record, or information made available under this subsection in a manner generally consistent with the level of confidentiality established for the material by the Government-sponsored enterprise involved.

''(B) EXEMPTION FROM PUBLIC DISCLOSURE REQUIREMENTS.—The Department of the Treasury shall be exempt from section 552 of title 5, United States Code, with respect to any book, record, or information made available under this subsection and determined by the Secretary to be confidential under subparagraph (A).

''(C) PENALTY FOR UNAUTHORIZED DISCLOSURE.—Any officer or employee of the Department of the Treasury shall be subject to the penalties set forth in section 1906 of title 18, United States Code, if—

''(i) by virtue of his employment or official position, he has possession of or access to any book, record, or information made available under this subsection and determined by the Secretary to be confidential under subparagraph (A); and

''(ii) he discloses the material in any manner other than—

''(I) to an officer or employee of the Department of the Treasury; or

''(II) pursuant to the exceptions set forth in such section 1906.

''(c) ASSESSMENT OF RISK.—In assessing the financial safety and soundness of the activities of Government-sponsored enterprises, and the impact of their activities on Federal borrowing, the Secretary shall quantify the risks associated with each Government-sponsored enterprise. In quantifying such risks, the Secretary shall determine the volume and type of securities outstanding which are issued or guaranteed by each Government-sponsored enterprise, the capitalization of each Government-sponsored enterprise, and the degree of risk involved in the operations of each Government-sponsored enterprise due to factors such as credit risk, interest rate risk, management and operations risk, and business risk. The Secretary shall also report on the quality and timeliness of information currently available to the public and the Federal Government concerning the extent and nature of the activities of Government-sponsored enterprises and the financial risk associated with such activities.

''(d) REPORTS TO CONGRESS.—The Secretary shall submit to the Congress—

''(1) by May 15, 1990, a report setting forth the results of the 1st annual study conducted under this section; and

''(2) by May 15, 1991, a report setting forth the results of the 2nd annual study conducted under this section.

''(e) DEFINITIONS.—For purposes of this section:

''(1) GOVERNMENT-SPONSORED ENTERPRISE.—The term 'Government-sponsored enterprise' means—

''(A) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank System, the Farm Credit Banks, the Banks for Cooperatives, the Federal Agricultural Mortgage Corporation, the Student Loan Marketing Association, the College Construction Loan Insurance Association, and any of their affiliated or member institutions; and

''(B) any other Government-sponsored enterprise, as designated by the Secretary.

''(2) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate.''

§ 1812. Management

(a) Board of Directors

(1) In general

The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—

(A) 1 of whom shall be the Comptroller of the Currency;

(B) 1 of whom shall be the Director of the Office of Thrift Supervision; and

(C) 3 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, 1 of whom shall have State bank supervisory experience.

(2) Political affiliation

After February 28, 1993, not more than 3 of the members of the Board of Directors may be members of the same political party.

(b) Chairperson and Vice Chairperson

(1) Chairperson

1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairperson of the Board of Directors for a term of 5 years.

(2) Vice Chairperson

1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairperson of the Board of Directors.

(3) Acting Chairperson

In the event of a vacancy in the position of Chairperson of the Board of Directors or during the absence or disability of the Chair-

person, the Vice Chairperson shall act as Chairperson.

(c) Terms

(1) Appointed members

Each appointed member shall be appointed for a term of 6 years.

(2) Interim appointments

Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(3) Continuation of service

The Chairperson, Vice Chairperson, and each appointed member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified.

(d) Vacancy

(1) In general

Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made.

(2) Acting officials may serve

In the event of a vacancy in the office of the Comptroller of the Currency or the office of Director of the Office of Thrift Supervision and pending the appointment of a successor, or during the absence or disability of the Comptroller or such Director, the acting Comptroller of the Currency or the acting Director of the Office of Thrift Supervision, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director.

(e) Ineligibility for other offices

(1) Postservice restriction

(A) In general

No member of the Board of Directors may hold any office, position, or employment in any insured depository institution or any depository institution holding company during—

(i) the time such member is in office; and

(ii) the 2-year period beginning on the date such member ceases to serve on the Board of Directors.

(B) Exception for members who serve full term

The limitation contained in subparagraph (A)(ii) shall not apply to any member who has ceased to serve on the Board of Directors after serving the full term for which such member was appointed.

(2) Restriction during service

No member of the Board of Directors may—

(A) be an officer or director of any insured depository institution, depository institution holding company, Federal Reserve bank, or Federal home loan bank; or

(B) hold stock in any insured depository institution or depository institution holding company.

(3) Certification

Upon taking office, each member of the Board of Directors shall certify under oath that such member has complied with this subsection and such certification shall be filed with the secretary of the Board of Directors.

(f) Status of employees

(1) In general

A director, member, officer, or employee of the Corporation has no liability under the Securities Act of 1933 [15 U.S.C. 77a et seq.] with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the Corporation. This subsection shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other acts or omissions outside the scope of such person's employment.

(2) "Employee of the Corporation" defined

For purposes of this subsection, the term ''employee of the Corporation'' includes any employee of the Office of the Comptroller of the Currency or of the Office of Thrift Supervision who serves as a deputy or assistant to a member of the Board of Directors of the Corporation in connection with activities of the Corporation.

(3) Effect on other law

This subsection does not affect—

(A) any other immunities and protections that may be available to such person under applicable law with respect to such transactions, or

(B) any other right or remedy against the Corporation, against the United States under applicable law, or against any person other than a person described in paragraph (1) participating in such transactions.

This subsection shall not be construed to limit or alter in any way the immunities that are available under applicable law for Federal officials and employees not described in this subsection.

(Sept. 21, 1950, ch. 967, § 2[2], 64 Stat. 873; Pub. L. 86–230, § 19, Sept. 8, 1959, 73 Stat. 460; Pub. L. 98–181, title VII, § 702(a), Nov. 30, 1983, 97 Stat. 1267; Pub. L. 101–73, title II, § 203(a), Aug. 9, 1989, 103 Stat. 188; Pub. L. 102–18, title I, § 103(b), Mar. 23, 1991, 105 Stat. 60; Pub. L. 104–208, div. A, title II, § 2243, Sept. 30, 1996, 110 Stat. 3009–419; Pub. L. 111–203, title III, § 336(a), July 21, 2010, 124 Stat. 1540.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, § 336, July 21, 2010, 124 Stat. 1540, provided that, effect on the transfer date, this section is amended:

(1) in subsection (a)(1)(B), by substituting ''Director of the Consumer Financial Protection Bureau'' for ''Director of the Office of Thrift Supervision'';

(2) by amending subsection (d)(2) to read as follows:

''(2) Acting officials may serve

''In the event of a vacancy in the office of the Comptroller of the Currency or the office of Direc-

tor of the Consumer Financial Protection Bureau and pending the appointment of a successor, or during the absence or disability of the Comptroller of the Currency or the Director of the Consumer Financial Protection Bureau, the acting Comptroller of the Currency or the acting Director of the Consumer Financial Protection Bureau, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director.''; and

(3) in subsection (f)(2), by substituting ''Consumer Financial Protection Bureau'' for ''Office of Thrift Supervision''.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (f)(1), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

PRIOR PROVISIONS

Section is derived from subsec. (b) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1996—Subsec. (a)(1)(C). Pub. L. 104–208 inserted '', 1 of whom shall have State bank supervisory experience'' before period at end.

1991—Subsec. (f). Pub. L. 102–18 added subsec. (f).

1989—Pub. L. 101–73 amended section generally, designating existing provisions as subsecs. (a) to (e), and making other changes relating to the make-up and operation of the Board.

1983—Pub. L. 98–181 inserted provision that each such appointive member may continue to serve after the expiration of his term until a successor has been appointed and qualified.

1959—Pub. L. 86–230 provided for membership of Acting Comptroller of the Currency on Board of Directors during absence or disability of Comptroller instead of only during his absence from Washington.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title III, § 336(b), July 21, 2010, 124 Stat. 1540, provided that: ''This section [amending this section], and the amendments made by this section, shall take effect on the transfer date.''

[For definition of ''transfer date'' as used in section 336(b) of Pub. L. 111–203, set out above, see section 5301 of this title.]

TRANSITION PROVISION

Pub. L. 101–73, title II, § 203(b), Aug. 9, 1989, 103 Stat. 189, provided that:

''(1) CHAIRPERSON.—Notwithstanding any provision of section 2 of the Federal Deposit Insurance Act [12 U.S.C. 1812], the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Aug. 9, 1989] may continue to serve as the Chairperson until the end of the term to which such Chairman was appointed.

''(2) MEMBERS.—Notwithstanding any provision of section 2 of the Federal Deposit Insurance Act, the appointed member of the Board of Directors of the Federal Deposit Insurance Corporation on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 who is not the Chairman shall continue to serve in office until the earlier of—

''(A) the end of the term to which such member was appointed; or

''(B) February 28, 1993,

except that such member may continue to serve after the end of such term until a successor has been appointed and qualified.

''(3) APPOINTMENTS BEFORE MARCH 1, 1993.—Notwithstanding any provision of section 2 of the Federal Deposit Insurance Act, the term of any member appointed to the Board of Directors of the Federal Deposit Insurance Corporation before February 28, 1993 (including the term of any Chairperson), shall end on such date.''

[Pub. L. 111–203, title III, §§ 351, 367(1), July 21, 2010, 124 Stat. 1546, 1556, provided that, effective on the transfer date (defined in section 5301 of this title), section 203(b) of Pub. L. 101–73, set out above, is repealed.]

COMPENSATION OF BOARD OF DIRECTORS

Compensation of Chairman and members of the Board, see sections 5314 and 5315 of Title 5, Government Organization and Employees.

§ 1813. Definitions

As used in this chapter—

(a) Definitions of bank and related terms

(1) Bank

The term ''bank''—

(A) means any national bank and State bank, and any Federal branch and insured branch;

(B) includes any former savings association.

(2) State bank

The term ''State bank'' means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which—

(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

(B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia,

including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before August 9, 1989.

(3) State

The term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(b) Definition of savings associations and related terms

(1) Savings association

The term ''savings association'' means—

(A) any Federal savings association;

(B) any State savings association; and

(C) any corporation (other than a bank) that the Board of Directors and the Director of the Office of Thrift Supervision jointly determine to be operating in substantially the same manner as a savings association.

(2) Federal savings association

The term ''Federal savings association'' means any Federal savings association or

Federal savings bank which is chartered under section 1464 of this title.

(3) State savings association

The term ''State savings association'' means—

(A) any building and loan association, savings and loan association, or homestead association; or

(B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (a)(2) of this section),

which is organized and operating according to the laws of the State (as defined in subsection (a)(3) of this section) in which it is chartered or organized.

(c) Definitions relating to depository institutions

(1) Depository institution

The term ''depository institution'' means any bank or savings association.

(2) Insured depository institution

The term ''insured depository institution'' means any bank or savings association the deposits of which are insured by the Corporation pursuant to this chapter.

(3) Institutions included for certain purposes

The term ''insured depository institution'' includes any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank for purposes of section 1818 of this title.

(4) Federal depository institution

The term ''Federal depository institution'' means any national bank, any Federal savings association, and any Federal branch.

(5) State depository institution

The term ''State depository institution'' means any State bank, any State savings association, and any insured branch which is not a Federal branch.

(d) Definitions relating to member banks

(1) National member bank

The term ''national member bank'' means any national bank which is a member of the Federal Reserve System.

(2) State member bank

The term ''State member bank'' means any State bank which is a member of the Federal Reserve System.

(e) Definitions relating to nonmember banks

(1) National nonmember bank

The term ''national nonmember bank'' means any national bank which—

(A) is located in any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Northern Mariana Islands; and

(B) is not a member of the Federal Reserve System.

(2) State nonmember bank

The term ''State nonmember bank'' means any State bank which is not a member of the Federal Reserve System.

(f) Mutual savings bank

The term ''mutual savings bank'' means a bank without capital stock transacting a savings bank business, the net earnings of which inure wholly to the benefit of its depositors after payment of obligations for any advances by its organizers.

(g) Savings bank

The term ''savings bank'' means a bank (including a mutual savings bank) which transacts its ordinary banking business strictly as a savings bank under State laws imposing special requirements on such banks governing the manner of investing their funds and of conducting their business.

(h) Insured bank

The term ''insured bank'' means any bank (including a foreign bank having an insured branch) the deposits of which are insured in accordance with the provisions of this chapter; and the term ''noninsured bank'' means any bank the deposits of which are not so insured.

(i) New depository institution and bridge depository institution defined

(1) New depository institution

The term ''new depository institution'' means a new national bank or Federal savings association, other than a bridge depository institution, organized by the Corporation in accordance with section 1821(m) of this title.

(2) Bridge depository institution

The term ''bridge depository institution'' means a new national bank or Federal savings association organized by the Corporation in accordance with section 1821(n) of this title.

(j) Receiver

The term ''receiver'' includes a receiver, liquidating agent, conservator, commission, person, or other agency charged by law with the duty of winding up the affairs of a bank or savings association or of a branch of a foreign bank.

(k) Board of Directors

The term ''Board of Directors'' means the Board of Directors of the Corporation.

***(l)* Deposit**

The term ''deposit'' means—

(1) the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the bank or savings association, or a letter of credit or a traveler's check on which the bank or savings association is primarily liable: *Provided*, That, without limiting the generality of the term ''money or its equivalent'', any such account

or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to such bank or savings association for collection.

(2) trust funds as defined in this chapter received or held by such bank or savings association, whether held in the trust department or held or deposited in any other department of such bank or savings association.

(3) money received or held by a bank or savings association, or the credit given for money or its equivalent received or held by a bank or savings association, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the bank or savings association or others (including funds held as dealers reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes: *Provided*, That there shall not be included funds which are received by the bank or savings association for immediate application to the reduction of an indebtedness to the receiving bank or savings association, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness.

(4) outstanding draft (including advice or authorization to charge a bank's or a savings association's balance in another bank or savings association), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose, including without being limited to those issued in payment for services, dividends, or purchases, and

(5) such other obligations of a bank or savings association as the Board of Directors, after consultation with the Comptroller of the Currency, Director of the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, shall find and prescribe by regulation to be deposit liabilities by general usage, except that the following shall not be a deposit for any of the purposes of this chapter or be included as part of the total deposits or of an insured deposit:

(A) any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless—

(i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at, an office located in any State; and

(ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State;

(B) any international banking facility deposit, including an international banking facility time deposit, as such term is from time to time defined by the Board of Governors of the Federal Reserve System in regulation D or any successor regulation issued by the Board of Governors of the Federal Reserve System; and

(C) any liability of an insured depository institution that arises under an annuity contract, the income of which is tax deferred under section 72 of title 26.

(m) Insured deposit

(1) IN GENERAL.—Subject to paragraph (2), the term ''insured deposit'' means the net amount due to any depositor for deposits in an insured depository institution as determined under sections 1817(i) and 1821(a) of this title.

(2) In the case of any deposit in a branch of a foreign bank, the term ''insured deposit'' means an insured deposit as defined in paragraph (1) of this subsection which—

(A) is payable in the United States to—

(i) an individual who is a citizen or resident of the United States,

(ii) a partnership, corporation, trust, or other legally cognizable entity created under the laws of the United States or any State and having its principal place of business within the United States or any State, or

(iii) an individual, partnership, corporation, trust, or other legally cognizable entity which is determined by the Board of Directors in accordance with its regulations to have such business or financial relationships in the United States as to make the insurance of such deposit consistent with the purposes of this chapter;

and

(B) meets any other criteria prescribed by the Board of Directors by regulation as necessary or appropriate in its judgment to carry out the purposes of this chapter or to facilitate the administration thereof.

(3) UNINSURED DEPOSITS.—The term ''uninsured deposit'' means the amount of any deposit of any depositor at any insured depository institution in excess of the amount of the insured deposits of such depositor (if any) at such depository institution.

(4) PREFERRED DEPOSITS.—The term ''preferred deposits'' means deposits of any public unit (as defined in paragraph (1)) at any insured depository institution which are secured or collateralized as required under State law.

(n) Transferred deposit

The term ''transferred deposit'' means a deposit in a new bank or other insured depository institution made available to a depositor

by the Corporation as payment of the insured deposit of such depositor in a closed bank, and assumed by such new bank or other insured depository institution.

(*o*) Domestic branch

The term ''domestic branch'' includes any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands at which deposits are received or checks paid or money lent. The term ''domestic branch'' does not include an automated teller machine or a remote service unit. The term ''foreign branch'' means any office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, at which banking operations are conducted.

(p) Trust funds

The term ''trust funds'' means funds held by an insured depository institution in a fiduciary capacity and includes, without being limited to, funds held as trustee, executor, administrator, guardian, or agent.

(q) Appropriate Federal banking agency

The term ''appropriate Federal banking agency'' means—

(1) the Comptroller of the Currency, in the case of any national banking association or any Federal branch or agency of a foreign bank;

(2) the Board of Governors of the Federal Reserve System, in the case of—

(A) any State member insured bank,

(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978,

(C) any foreign bank which does not operate an insured branch,

(D) any agency or commercial lending company other than a Federal agency,

(E) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act of 1966, and

(F) any bank holding company and any subsidiary of a bank holding company (other than a bank);

(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank or a foreign bank having an insured branch; and

(4) the Director of the Office of Thrift Supervision in the case of any savings association or any savings and loan holding company.

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution.

(r) State bank supervisor

(1) In general

The term ''State bank supervisor'' means any officer, agency, or other entity of any State which has primary regulatory authority over State banks or State savings associations in such State.

(2) Interstate application

The State bank supervisors of more than 1 State may be the appropriate State bank supervisor for any insured depository institution.

(s) Definitions relating to foreign banks and branches

(1) Foreign bank

The term ''foreign bank'' has the meaning given to such term by section 1(b)(7) of the International Banking Act of 1978 [12 U.S.C. 3101(b)(7)].

(2) Federal branch

The term ''Federal branch'' has the meaning given to such term by section 1(b)(6) of the International Banking Act of 1978 [12 U.S.C. 3101(b)(6)].

(3) Insured branch

The term ''insured branch'' means any branch (as defined in section 1(b)(3) of the International Banking Act of 1978 [12 U.S.C. 3101(b)(3)]) of a foreign bank any deposits in which are insured pursuant to this chapter.

(t) Includes, including

(1) In general

The terms ''includes'' and ''including'' shall not be construed more restrictively than the ordinary usage of such terms so as to exclude any other thing not referred to or described.

(2) Rule of construction

Paragraph (1) shall not be construed as creating any inference that the term ''includes'' or ''including'' in any other provision of Federal law may be deemed to exclude any other thing not referred to or described.

(u) Institution-affiliated party

The term ''institution-affiliated party'' means—

(1) any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, an insured depository institution;

(2) any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under section 1817(j) of this title;

(3) any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the appropriate Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; and

(4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(A) any violation of any law or regulation;

(B) any breach of fiduciary duty; or

(C) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution.

(v) Violation

The term ''violation'' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(w) Definitions relating to affiliates of depository institutions

(1) Depository institution holding company

The term ''depository institution holding company'' means a bank holding company or a savings and loan holding company.

(2) Bank holding company

The term ''bank holding company'' has the meaning given to such term in section 1841 of this title.

(3) Savings and loan holding company

The term ''savings and loan holding company'' has the meaning given to such term in section 1467a of this title.

(4) Subsidiary

The term ''subsidiary''—

(A) means any company which is owned or controlled directly or indirectly by another company; and

(B) includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation.

(5) Control

The term ''control'' has the meaning given to such term in section 1841 of this title.

(6) Affiliate

The term ''affiliate'' has the meaning given to such term in section 1841(k) of this title.

(7) Company

The term ''company'' has the same meaning as in section 1841(b) of this title.

(x) Definitions relating to default

(1) Default

The term ''default'' means, with respect to an insured depository institution, any adjudication or other official determination by any court of competent jurisdiction, the appropriate Federal banking agency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured depository institution or, in the case of a foreign bank having an insured branch, for such branch.

(2) In danger of default

The term ''in danger of default'' means an insured depository institution with respect to which (or in the case of a foreign bank having an insured branch, with respect to such insured branch) the appropriate Federal banking agency or State chartering authority has advised the Corporation (or, if the appropriate Federal banking agency is the Corporation, the Corporation has determined) that—

(A) in the opinion of such agency or authority—

(i) the depository institution or insured branch is not likely to be able to meet the demands of the institution's or branch's depositors or pay the institution's or branch's obligations in the normal course of business; and

(ii) there is no reasonable prospect that the depository institution or insured branch will be able to meet such demands or pay such obligations without Federal assistance; or

(B) in the opinion of such agency or authority—

(i) the depository institution or insured branch has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(ii) there is no reasonable prospect that the capital of the depository institution or insured branch will be replenished without Federal assistance.

(y) Definitions relating to Deposit Insurance Fund

(1) Deposit Insurance Fund

The term ''Deposit Insurance Fund'' means the Deposit Insurance Fund established under section 1821(a)(4) of this title.

(2) Designated reserve ratio

The term ''designated reserve ratio'' means the reserve ratio designated by the Board of Directors in accordance with section 1817(b)(3) of this title.

(3) Reserve ratio

The term ''reserve ratio'', when used with regard to the Deposit Insurance Fund other than in connection with a reference to the designated reserve ratio, means the ratio of the net worth of the Deposit Insurance Fund to the value of the aggregate estimated insured deposits, or such comparable percentage of the assessment base set forth in section 1817(b)(2)(C)[1] of this title.

(z) Federal banking agency

The term ''Federal banking agency'' means the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

(Sept. 21, 1950, ch. 967, §2[3], 64 Stat. 873; July 14, 1952, ch. 725, 66 Stat. 605; Aug. 1, 1956, ch. 852, §3, 70 Stat. 908; Pub. L. 86–671, §1, July 14, 1960, 74 Stat. 546; Pub. L. 89–695, title II, §201, title III, §§301(a), 303(a), Oct. 16, 1966, 80 Stat. 1046, 1055, 1056; Pub. L. 91–151, §7(a)(1), Dec. 23, 1969, 83 Stat. 375; Pub. L. 91–609, title IX, §910(a)–(f), Dec. 31, 1970, 84 Stat. 1811, 1812; Pub. L. 93–495, title I, §§101(a)(1), 102(a)(1), Oct. 28, 1974, 88 Stat. 1500,

[1] See References in Text note below.

1502; Pub. L. 95–369, § 6(c)(2)–(6), Sept. 17, 1978, 92 Stat. 614, 615; Pub. L. 95–630, title III, § 301(a), Nov. 10, 1978, 92 Stat. 3675; Pub. L. 96–221, title III, § 308(a)(1)(A), Mar. 31, 1980, 94 Stat. 147; Pub. L. 97–110, title I, §§ 102, 103(a), Dec. 26, 1981, 95 Stat. 1513; Pub. L. 97–320, title I, § 113(a), (b), title VII, § 703(a), (b), Oct. 15, 1982, 96 Stat. 1473, 1538, 1539; Pub. L. 100–86, title I, § 101(g)(1), title V, § 503(b), Aug. 10, 1987, 101 Stat. 563, 632; Pub. L. 101–73, title II, §§ 201(a), 204, Aug. 9, 1989, 103 Stat. 187, 190; Pub. L. 102–242, title I, §§ 111(e), 112(b), 131(c)(3), 141(f), 161(c), title III, §§ 305(c), 311(b)(5)(A), Dec. 19, 1991, 105 Stat. 2242, 2266, 2278, 2286, 2355, 2366; Pub. L. 102–550, title XVI, §§ 1603(b)(2)(B), (d)(5), 1606(g)(2), Oct. 28, 1992, 106 Stat. 4079, 4080, 4089; Pub. L. 103–204, § 19(b), Dec. 17, 1993, 107 Stat. 2404; Pub. L. 103–325, title III, § 326(b)(2), title VI, § 602(a)(1), Sept. 23, 1994, 108 Stat. 2229, 2288; Pub. L. 104–208, div. A, title II, §§ 2205(b), 2614(a), 2704(d)(6)(A), (14)(A), Sept. 30, 1996, 110 Stat. 3009–405, 3009–478, 3009–488, 3009–490; Pub. L. 108–386, § 8(a)(1), Oct. 30, 2004, 118 Stat. 2231; Pub. L. 109–171, title II, §§ 2102(b), 2107(b), Feb. 8, 2006, 120 Stat. 9, 19; Pub. L. 109–173, §§ 4(a), 8(a)(1), Feb. 15, 2006, 119 Stat. 3606, 3610; Pub. L. 109–351, title VII, § 725(d), Oct. 13, 2006, 120 Stat. 2002; Pub. L. 109–356, title I, § 123(d), Oct. 16, 2006, 120 Stat. 2029; Pub. L. 110–289, div. A, title VI, § 1604(b)(1)(A), July 30, 2008, 122 Stat. 2829; Pub. L. 111–203, title III, §§ 312(c), 334(b), 363(1), July 21, 2010, 124 Stat. 1522, 1539, 1550.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 363(1), July 21, 2010, 124 Stat. 1546, 1550, provided that, effective on the transfer date, this section is amended:

(1) in subsection (b)(1)(C), by substituting ''Comptroller of the Currency'' for ''Director of the Office of Thrift Supervision'';

(2) in subsection (l)(5), in introductory provisions, by striking out ''Director of the Office of Thrift Supervision,''; and

(3) in subsection (z), by striking out ''the Director of the Office of Thrift Supervision,''.

Pub. L. 111–203, title III, § 312(a), (c), July 21, 2010, 124 Stat. 1521, 1522, provided that, effective on the transfer date, this section is amended:

(1) in subsection (q), by striking paragraphs (1) through (4) and inserting the following:

''(1) the Office of the Comptroller of the Currency, in the case of—

''(A) any national banking association;

''(B) any Federal branch or agency of a foreign bank; and

''(C) any Federal savings association;

''(2) the Federal Deposit Insurance Corporation, in the case of—

''(A) any State nonmember insured bank;

''(B) any foreign bank having an insured branch; and

''(C) any State savings association;

''(3) the Board of Governors of the Federal Reserve System, in the case of—

''(A) any State member bank;

''(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978;

''(C) any foreign bank which does not operate an insured branch;

''(D) any agency or commercial lending company other than a Federal agency;

''(E) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act of 1966;

''(F) any bank holding company and any subsidiary (other than a depository institution) of a bank holding company; and

''(G) any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company.''; and

(2) in paragraphs (1) and (3) of subsection (u), by striking ''(other than a bank holding company'' and inserting ''(other than a bank holding company or savings and loan holding company''.

See Effective Date of 2010 Amendment notes below.

REFERENCES IN TEXT

The Federal Reserve Act, referred to in subsec. (q)(2)(B), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The International Banking Act of 1978, referred to in subsec. (q)(2)(B), is Pub. L. 95–369, Sept. 17, 1978, 92 Stat. 607, which enacted sections 347d, 611a, and 3101 to 3111 of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under sections 36, 247, 601, 611a, and 3101 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

The Financial Institutions Supervisory Act of 1966, referred to in subsec. (q)(2)(E), is Pub. L. 89–695, Oct. 16, 1966, 80 Stat. 1028. For complete classification of this Act to the Code, see Short Title of 1966 Amendment note set out under section 1464 of this title and Tables.

Section 1817(b)(2)(C) of this title, referred to in subsec. (y)(3), was redesignated section 1817(b)(2)(D) of this title by Pub. L. 111–203, title III, § 331(a)(2), July 21, 2010, 124 Stat. 1538.

PRIOR PROVISIONS

Section is derived from subsec. (c) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2010—Subsec. (y)(3). Pub. L. 111–203, § 334(b), inserted '', or such comparable percentage of the assessment base set forth in section 1817(b)(2)(C) of this title'' before the period.

2008—Subsec. (i). Pub. L. 110–289 added subsec. (i) and struck out former subsec. (i). Prior to amendment, text read as follows:

''(1) NEW BANK.—The term 'new bank' means a new national bank, other than a bridge bank, organized by the Corporation in accordance with section 1821(m) of this title.

''(2) BRIDGE BANK.—The term 'bridge bank' means a new national bank organized by the Corporation in accordance with section 1821(n) of this title.''

2006—Subsec. (a)(1)(B). Pub. L. 109–173, § 8(a)(1)(A), added subpar. (B) and struck out former subpar. (B) which read as follows: ''includes any former savings association that—

''(i) has converted from a savings association charter; and

''(ii) is a Savings Association Insurance Fund member.''

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(14)(A). See 1996 Amendment note below.

Subsec. (a)(2)(B). Pub. L. 109–351 and 109–356 amended subpar. (B) identically, striking out ''(except a national bank)'' after ''District of Columbia''.

Subsec. (y). Pub. L. 109–173, §4(a), inserted subsec. heading and par. (1) designation and heading and added par. (2).

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(6)(A). See 1996 Amendment note below.

Subsec. (y)(1). Pub. L. 109–173, §8(a)(1)(B), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''The term 'deposit insurance fund' means the Bank Insurance Fund or the Savings Association Insurance Fund, as appropriate.''

Subsec. (y)(3). Pub. L. 109–171, §2107(b), added par. (3).

2004—Subsec. (a)(1)(A). Pub. L. 108–386, §8(a)(1)(A), substituted ''and State bank'' for '', State bank, and District bank''.

Subsec. (a)(4). Pub. L. 108–386, §8(a)(1)(B), struck out heading and text of par. (4). Text read as follows: ''The term 'District bank' means any State bank operating under the Code of Law of the District of Columbia.''

Subsec. (q)(1). Pub. L. 108–386, §8(a)(1)(C), struck out '', any District bank,'' after ''national banking association''.

Subsec. (q)(2)(A). Pub. L. 108–386, §8(a)(1)(D), struck out ''(except a District bank)'' after ''State member insured bank''.

Subsec. (q)(3). Pub. L. 108–386, §8(a)(1)(E), struck out ''(except a District bank),'' after ''State nonmember insured bank''.

1996—Subsec. (a)(1)(B). Pub. L. 104–208, §2704(d)(14)(A), which directed striking out subpar. (B) and adding a new subpar. (B), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (*l*)(5)(C). Pub. L. 104–208, §2614(a), added subpar. (C).

Subsec. (*o*). Pub. L. 104–208, §2205(b), substituted ''lent. The term 'domestic branch' does not include an automated teller machine or a remote service unit. The'' for ''lent; and the''.

Subsec. (y). Pub. L. 104–208, §2704(d)(6)(A), which directed the general amendment of subsec. (y), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Subsec. (i)(1). Pub. L. 103–325, §602(a)(1)(A), substituted ''section 1821(m) of this title'' for ''section 1821(h) of this title''.

Subsec. (*l*)(4). Pub. L. 103–325, §602(a)(1)(B), substituted ''a bank's or a'' for ''bank's or'' before ''savings association's balance''.

Subsec. (*l*)(5)(A). Pub. L. 103–325, §326(b)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''any obligation of a bank or savings association which is payable only at an office of such bank or savings association located outside of the States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands; and''.

Subsec. (q)(2)(E). Pub. L. 103–325, §602(a)(1)(C), substituted ''Financial Institutions Supervisory Act of 1966'' for ''Depository Institutions Supervisory Act''.

1993—Subsec. (w)(7). Pub. L. 103–204, §19(b)(2), added par. (7).

Subsec. (z). Pub. L. 103–204, §19(b)(1), amended subsec. (z) generally. Prior to amendment, subsec. (z) read as follows: ''FEDERAL BANKING AGENCIES.—The term 'Federal banking agencies' means the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.''

1992—Subsec. (i)(2). Pub. L. 102–550, §1606(g)(2), substituted ''1821(n)'' for ''1821(i)''.

Subsec. (r). Pub. L. 102–550, §1603(b)(2)(B), which directed the amendment of section 112 of the ''Federal Deposit Insurance Corporation Improvement Act of 1992'', was executed by amending section 112 of Pub. L. 102–242, which is the Federal Deposit Insurance Corporation Improvement Act of 1991, to reflect the probable intent of Congress. See 1991 Amendment note below.

Subsec. (y). Pub. L. 102–550, §1603(d)(5), amended directory language of Pub. L. 102–242, §131(c)(3). See 1991 Amendment note below.

1991—Subsec. (m). Pub. L. 102–242, §311(b)(5)(A), inserted heading.

Subsec. (m)(1). Pub. L. 102–242, §311(b)(5)(A), added par. (1) and struck out former par. (1) which read as follows: ''Subject to the provisions of paragraph (2) of this subsection, the term 'insured deposit' means the net amount due to any depositor (other than a depositor referred to in the third sentence of this subsection) for deposits in an insured depository institution (after deducting offsets) less any part thereof which is in excess of $100,000. Such net amount shall be determined according to such regulations as the Board of Directors may prescribe, and in determining the amount due to any depositor there shall be added together all deposits in the depository institution maintained in the same capacity and the same right for his benefit either in his own name or in the names of others except trust funds which shall be insured as provided in subsection (i) of section 1817 of this title. Each officer, employee, or agent of the United States, of any State of the United States, of the District of Columbia, of any Territory of the United States, of Puerto Rico, of Guam, of American Samoa, of the Trust Territory of the Pacific Islands, of the Virgin Islands, of the Northern Mariana Islands, of any county, of any municipality, or of any political subdivision thereof, herein called 'public unit', having official custody of public funds and lawfully depositing the same in an insured depository institution shall, for the purpose of determining the amount of the insured deposits, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the same or any public unit having official custody of public funds and lawfully depositing the same in the same insured depository institution in custodial capacity. For the purpose of clarifying and defining the insurance coverage under this subsection and subsection (i) of section 1817 of this title, the Corporation is authorized to define, with such classifications and exceptions as it may prescribe, terms used in those subsections, in subsection (p) of this section, and in subsections (a) and (i) of section 1821 of this title and the extent of the insurance coverage resulting therefrom.''

Subsec. (m)(3), (4). Pub. L. 102–242, §141(f), added pars. (3) and (4).

Subsec. (r). Pub. L. 102–242, §112(b), as added by Pub. L. 102–550, §1603(b)(2)(B), amended subsec. (r) generally. Prior to amendment, subsec. (r) read as follows: ''The terms 'foreign bank' and 'Federal branch' shall be construed consistently with the usage of such terms in the International Banking Act of 1978.''

Subsec. (s). Pub. L. 102–242, §111(e), amended subsec. (s) generally. Prior to amendment, subsec. (s) read as follows: ''The term 'insured branch' means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of this chapter.''

Subsec. (w). Pub. L. 102–242, §161(c), substituted ''Affiliates of Depository Institutions'' for ''Holding Companies'' in heading.

Subsec. (y). Pub. L. 102–242, §131(c)(3), as amended by Pub. L. 102–550, §1603(d)(5), added subsec. (y).

Subsec. (z). Pub. L. 102–242, §305(c), added subsec. (z).

1989—Subsec. (a). Pub. L. 101–73, §204(a), amended subsec. (a) generally, substituting provisions defining ''bank'', ''State bank'', ''State'', and ''District bank'' for provisions defining ''State bank'' and ''State''.

Subsec. (b). Pub. L. 101–73, §204(b), amended subsec. (b) generally, substituting provisions defining ''savings

association'', ''Federal savings association'', and ''State savings association'' for provisions defining ''State member bank'' and ''State nonmember bank''.

Subsec. (c). Pub. L. 101–73, § 204(c), amended subsec. (c) generally, substituting definitions relating to depository institutions for definition of ''District bank''.

Subsec. (d). Pub. L. 101–73, § 204(d), amended subsec. (d) generally, substituting provisions defining ''national member bank'' and ''State member bank'' for provisions defining ''national member bank''.

Subsec. (e). Pub. L. 101–73, § 204(e), amended subsec. (e) generally, substituting provisions defining ''national nonmember bank'' and ''State nonmember bank'' for provisions defining ''national nonmember bank''.

Subsec. (j). Pub. L. 101–73, § 204(f)(1), inserted ''or savings association'' after ''of a bank''.

Subsec. (*l*)(1) to (3). Pub. L. 101–73, § 204(f)(2)(A), inserted ''or savings association'' after ''a bank'', ''the bank'', ''receiving bank'', and ''such bank'' wherever appearing.

Subsec. (*l*)(4). Pub. L. 101–73, § 204(f)(2)(A), (B), inserted ''or savings association'' after ''another bank'', and ''or savings association's'' after ''bank's''.

Subsec. (*l*)(5). Pub. L. 101–73, § 204(f)(2)(A), (C), inserted ''or savings association'' after ''a bank'', and '', Director of the Office of Thrift Supervision,'' after ''Comptroller of the Currency''.

Subsec. (*l*)(5)(A). Pub. L. 101–73, § 204(f)(2)(A), (D), inserted ''or savings association'' after ''a bank'' and after ''such bank'', and substituted ''the Virgin Islands, and the Northern Mariana Islands'' for ''and the Virgin Islands''.

Subsec. (m)(1). Pub. L. 101–73, § 204(f)(3)(A), substituted ''deposits in the depository institution maintained'' for ''deposits in the bank maintained'' and inserted reference to the Northern Mariana Islands.

Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank'' wherever appearing.

Subsec. (m)(2). Pub. L. 101–73, § 204(f)(3)(B), substituted ''term'' for ''ther''.

Subsec. (n). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank'' wherever appearing.

Subsec. (p). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (q). Pub. L. 101–73, § 204(f)(4), amended subsec. (q) generally. Prior to amendment, subsec. (q) read as follows: ''The term 'appropriate Federal banking agency' shall mean—

''(1) the Comptroller of the Currency in the case of a national banking association, a District bank, or a Federal branch or agency of a foreign bank;

''(2) the Board of Governors of the Federal Reserve System—

''(A) in the case of a State member insured bank (except a District bank),

''(B) in the case of any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978,

''(C) in the case of any foreign bank which does not operate an insured branch,

''(D) in the case of any agency or commercial lending company other than a Federal agency, and

''(E) in the case of supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act,

''(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured Bank (except a District bank) or a foreign bank having an insured branch; and

''(4) the Federal Home Loan Bank Board in the case of an insured Federal savings bank.

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution. For the purposes of subsections (b) through (n) of section 1818 of this title, the term 'insured bank' shall be deemed to include any uninsured branch or agency of a foreign bank or any commercial lending company owned or controlled by a foreign bank.''

Subsec. (t). Pub. L. 101–73, § 204(f)(5), amended subsec. (t) generally, substituting provisions relating to definition and construction of ''includes'' and ''including'' for provisions defining ''insured Federal savings bank''.

Subsecs. (u) to (x). Pub. L. 101–73, § 204(f)(6), added subsecs. (u) to (x).

1987—Subsec. (g). Pub. L. 100–86, § 101(g)(1), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''The term 'savings bank' means a bank (other than a mutual savings bank) which transacts its ordinary banking business strictly as a savings bank under State laws imposing special requirements on such banks governing the manner of investing their funds and of conducting their business: *Provided*, That the bank maintains, until maturity date or until withdrawn, all deposits made with it (other than funds held by it in a fiduciary capacity) as time savings deposits of the specific term type or of the type where the right is reserved to the bank to require written notice before permitting withdrawal: *Provided further*, That such bank to be considered a savings bank must elect to become subject to regulations of the Corporation with respect to the redeposit of maturing deposits and prohibiting withdrawal of deposits by checking except in cases where such withdrawal was permitted by law on August 23, 1935, from specifically designated deposit accounts totaling not more than 15 per centum of the bank's total deposits.''

Subsec. (i). Pub. L. 100–86, § 503(b), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''The term 'new bank' means a new national banking association organized by the Corporation to assume the insured deposits of an insured bank closed on account of inability to meet the demands of its depositors and otherwise to perform temporarily the functions prescribed in this chapter.''

1982—Subsec. (a). Pub. L. 97–320, § 703(a), inserted ''industrial bank or similar financial institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank,'' before ''or other banking institution''.

Subsec. (*l*)(1). Pub. L. 97–320, § 703(b), inserted ''thrift certificate, investment certificate, certificate of indebtedness, or other similar name,'' before ''or a check or draft drawn against a deposit account''.

Subsec. (q)(4). Pub. L. 97–320, § 113(a), added par. (4).

Subsec. (t). Pub. L. 97–320, § 113(b), added subsec. (t).

1981—Subsec. (a). Pub. L. 97–110, § 103(a)(1), inserted ''the Trust Territory of the Pacific Islands,'' after ''American Samoa,'' wherever appearing.

Subsec. (*l*)(5). Pub. L. 97–110, § 102, reenacted without change the provisions preceding subpar. (A), redesignated remaining existing provisions as subpar. (A), inserted reference to banks located outside of the Trust Territory of the Pacific Islands in subpar. (A) as thus redesignated, and added subpar. (B).

Subsec. (m)(1). Pub. L. 97–110, § 103(a)(2), inserted ''of the Trust Territory of the Pacific Islands,'' after ''American Samoa,''.

Subsec. (*o*). Pub. L. 97–110, § 103(a)(3), inserted ''the Trust Territory of the Pacific Islands,'' after ''American Samoa,'' wherever appearing.

1980—Subsec. (m)(1). Pub. L. 96–221 substituted ''$100,000'' for ''$40,000''.

1978—Subsec. (h). Pub. L. 95–369, § 6(c)(2), inserted ''(including a foreign bank having an insured branch)'' after ''The term 'insured bank' means any bank''.

Subsec. (j). Pub. L. 95–369, § 6(c)(3), inserted ''or of a branch of a foreign bank'' after ''affairs of a bank''.

Subsec. (m). Pub. L. 95–369, § 6(c)(4), designated existing provisions as par. (1), inserted ''Subject to the provisions of paragraph (2) of this subsection'', and added par. (2).

Subsec. (*o*). Pub. L. 95–630 inserted ''domestic'' before ''branch'' the first time it appeared, and inserted a definition of ''foreign branch'' at end.

Subsec. (q). Pub. L. 95–369, § 6(c)(5), inserted reference to a Federal branch or agency of a foreign bank in par. (1), designated existing provisions of par. (2) as par. (2)(A) and added subpars. (B) to (E), inserted reference to a foreign bank having an insured branch in par. (3), and inserted closing provisions relating to the number of agencies which may be an appropriate Federal banking agency, and defining ''insured bank'' for purposes of section 1818(b) to (n) of this title.

Subsecs. (r), (s). Pub. L. 95–369, § 6(c)(6), added subsecs. (r) and (s).

1974—Subsec. (m). Pub. L. 93–495 inserted ''(other than a depositor referred to in the third sentence of this subsection)'' after ''net amount due to any depositor'', and substituted ''$40,000'' for ''$20,000''.

1970—Pub. L. 91–609 inserted reference to American Samoa in subsecs. (a), (d), (e), (*l*)(5), (m), and (*o*), respectively.

1969—Subsec. (m). Pub. L. 91–151 substituted $20,000 for $15,000 in first sentence.

1966—Subsec. (m). Pub. L. 89–695, §§ 301(a), 303(a), substituted ''$15,000'' for ''$10,000'' in first sentence and inserted sentence which, for purpose of clarifying and defining the insurance coverage under subsec. (m) of this section and section 1817(i) of this title, authorized the Corporation to define terms used in those provisions, subsec. (p) of this section, and section 1821(a) and (i) of this title and the extent of insurance coverage resulting therefrom, respectively.

Subsec. (q). Pub. L. 89–695, § 201, added subsec. (q).

1960—Subsec. (*l*). Pub. L. 86–671 amended subsec. (*l*) generally, and among other changes, inserted in par. (1) ''or held'', ''either conditionally or unconditionally'', ''or a check or draft drawn against a deposit account and certified by the bank, or a letter of credit or a traveler's check on which the bank is primarily liable'', and inserted the proviso, added pars. (3) and (4), inserted provisions in par. (5) requiring the Board of Directors to consult with the Comptroller of the Currency and the Board of Governors of the Federal Reserve System, and struck out provisions which permitted mainland banks to exclude from deposit insurance the deposits of any of its branches in the Virgin Islands.

1956—Subsec. (a). Act Aug. 1, 1956, § 3(a), inserted ''Guam,'' after ''Puerto Rico,'' and substituted a comma for the period and inserted ''and the word 'State' means any State of the United States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, or the Virgin Islands''.

Subsecs. (d), (e). Act Aug. 1, 1956, § 3(b), inserted ''Guam,'' after ''Puerto Rico,''.

Subsec. (*l*). Act Aug. 1, 1956, § 3(c), inserted ''Guam,'' after ''Puerto Rico,'' in first proviso.

Subsec. (m). Act Aug. 1, 1956, § 3(d), inserted ''of Guam,'' after ''of Puerto Rico,''.

Subsec. (*o*). Act Aug. 1, 1956, § 3(b), inserted ''Guam,'' after ''Puerto Rico,''.

1952—Subsec. (*l*). Act July 14, 1952, made it compulsory for banks having branches in Puerto Rico to insure their deposits.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 312(c) of Pub. L. 111–203 effective on the transfer date, see section 5412(a) of this title.

Amendment by section 334(b) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

Amendment by section 363(1) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–173, § 4(b), Feb. 15, 2006, 119 Stat. 3606, provided that: ''This section [amending this section] and the amendments made by this section shall take effect on the date that the final regulations required under section 2109(a)(1) of the Federal Deposit Insurance Reform Act of 2005 [Pub. L. 109–171, set out as a Regulations note under section 1817 of this title] take effect [Jan. 1, 2007, see 71 F.R. 69323].''

Pub. L. 109–173, § 8(b), Feb. 15, 2006, 119 Stat. 3616, provided that: ''This section [amending this section and sections 1815 to 1818, 1821 to 1825, 1827, 1828, 1831a, 1831e, 1831m, 1831n, and 1831*o* of this title and repealing section 1831h of this title] and the amendments made by this section shall take effect on the day of the merger of the Bank Insurance Fund and the Savings Association Insurance Fund [Mar. 31, 2006, see 71 F.R. 20524] pursuant to the Federal Deposit Insurance Reform Act of 2005 [subtitle B (§§ 2101–2109) of title II of Pub. L. 109–171, see Short Title of 2006 Amendment note set out under section 1811 of this title].''

Amendment by section 2102(b) of Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2614(b) of div. A of Pub. L. 104–208 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to any liability of an insured depository that arises under an annuity contract issued on or after the date of enactment of this Act [Sept. 30, 1996].''

Amendment by section 2704(d)(6)(A), (14)(A) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 131(c)(3) of Pub. L. 102–242 effective 1 year after Dec. 19, 1991, see section 131(f) of Pub. L. 102–242, set out as a note under section 1464 of this title.

Amendment by section 311(b)(5)(A) of Pub. L. 102–242 not applicable to any time deposit which was made before Dec. 19, 1991, and matures after end of 2-year period beginning Dec. 19, 1991, with rollovers and renewals treated as new deposits, see section 311(c)(2) of Pub. L. 102–242, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective Mar. 31, 1980, see section 308(e) of Pub. L. 96–221, set out as a note under section 1817 of this title.

APPLICABILITY OF 1980 AMENDMENT

Section 308(a)(2) of Pub. L. 96–221 provided that: ''The amendments made by this subsection [amending this section and sections 1817 and 1821 of this title] are not applicable to any claim arising out of the closing of a bank prior to the effective date of this section [see section 308(e) of Pub. L. 96–221, set out as a note under section 1817 of this title].''

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1974 AMENDMENT

Section 101(g) of Pub. L. 93–495 provided that: ''This section and the amendments made by it [amending this section and sections 1464, 1724, 1728, 1757, 1787, 1817, and 1821 of this title] shall take effect on the thirtieth day beginning after the date of enactment of this Act [Oct. 28, 1974].''

Section 102(b), (c) of Pub. L. 93–495 provided that:

''(b) The amendments made by this section [amending this section and sections 1817 and 1821 of this title] are not applicable to any claim arising out of the closing of a bank prior to the effective date of this section.

''(c) The amendments made by this section shall take effect on the thirtieth day beginning after the date of enactment of this Act [Oct. 28, 1974].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 7(b) of Pub. L. 91–151 provided that: ''The amendments made by this section [amending this section and sections 1817 and 1821 of this title] are not applicable to any claim arising out of the closing of a bank prior to the date of enactment of this Act [Dec. 23, 1969].''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 301(e) of Pub. L. 89–695 provided that: ''The amendments made by this section [amending this section and sections 1817 and 1821 of this title] shall not be applicable to any claim arising out of the closing of a bank where such closing is prior to the date of enactment of this Act [Oct. 16, 1966].''

EXPIRATION OF 1966 AMENDMENT

Pub. L. 91–609, title IX, § 908, Dec. 31, 1970, 84 Stat. 1811, repealed section 401 of Pub. L. 89–695 which had provided that: ''The provisions of titles I and II of this Act [amending this section and sections 1464, 1730, 1817 to 1820 of this title, repealing section 77 of this title, and enacting provisions set out as notes under this section and sections 1464 and 1730 of this title] and any provisions of law enacted by said titles shall be effective only during the period ending at the close of June 30, 1972. Effective upon the expiration of such period, each provision of law amended by either of such titles is further amended to read as it did immediately prior to the enactment of this Act [Oct. 16, 1966] and each provision of law repealed by either of such titles is reenacted''.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–671 effective Jan. 1, 1961, see section 7 of Pub. L. 86–671, set out as a note under section 1817 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

CONDITIONS GOVERNING EMPLOYMENT OF PERSONNEL NOT REPEALED, MODIFIED, OR AFFECTED

Section 206 of title II of Pub. L. 89–695 provided that: ''Nothing contained in this title [amending this section and sections 1817 to 1820 of this title and repealing section 77 of this title] shall be construed to repeal, modify, or affect the provisions of section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829).''

§ 1814. Insured depository institutions

(a) Continuation of insurance

(1) Banks

Each bank, which is an insured depository institution on September 21, 1950, shall be and continue to be, without application or approval, an insured depository institution and shall be subject to the provisions of this chapter.

(2) Savings associations

Each savings association the accounts of which were insured by the Federal Savings and Loan Insurance Corporation on the day before August 9, 1989, shall be, without application or approval, an insured depository institution.

(b) Continuation of insurance upon becoming a member bank

In the case of an insured bank which is admitted to membership in the Federal Reserve System or an insured State bank which is converted into a national member bank, the bank shall continue as an insured bank.

(c) Continuation of insurance after conversion

Subject to section 1815(d) of this title and section 1464(i)(5) of this title—

(1) any State depository institution which results from the conversion of any insured Federal depository institution; and

(2) any Federal depository institution which results from the conversion of any insured State or Federal depository institution,

shall continue as an insured depository institution.

(d) Continuation of insurance after merger or consolidation

Any State depository institution or any Federal depository institution which results from the merger or consolidation of insured depository institutions, or from the merger or consolidation of a noninsured depository institution with an insured depository institution, shall continue as an insured depository institution.

(Sept. 21, 1950, ch. 967, § 2[4], 64 Stat. 875; Pub. L. 97–320, title I, § 113(c), Oct. 15, 1982, 96 Stat. 1473; Pub. L. 101–73, title II, §§ 201(a), 205, Aug. 9, 1989, 103 Stat. 187, 194; Pub. L. 102–242, title I, § 115(b), Dec. 19, 1991, 105 Stat. 2249; Pub. L. 102–550, title XVI, § 1603(b)(6), Oct. 28, 1992, 106 Stat. 4079; Pub. L. 109–351, title VI, § 608(b), Oct. 13, 2006, 120 Stat. 1983.)

PRIOR PROVISIONS

Section is derived from subsec. (e) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–351, § 608(b)(1), inserted ''and section 1464(i)(5) of this title'' after ''section 1815(d) of this title'' in introductory provisions.

Subsec. (c)(2). Pub. L. 109–351, § 608(b)(2), which directed insertion of ''or Federal'' after ''insured State,'', was executed by making the insertion after ''insured State'', to reflect the probable intent of Congress.

1992—Subsec. (b). Pub. L. 102–550 amended directory language of Pub. L. 102–242, § 115(b). See 1991 Amendment note below.

1991—Subsec. (b). Pub. L. 102–242, § 115(b), as amended by Pub. L. 102–550, § 1603(b)(6), amended subsec. (b) gen-

erally, substituting present provisions for provisions which related to certification by other banking agencies.

1989—Pub. L. 101–73, § 201(a), substituted references to insured depository institutions for references to insured banks wherever appearing.

Subsec. (a). Pub. L. 101–73, § 205(1), inserted heading, designated existing provisions as par. (1), inserted par. (1) heading, and substituted ''Each bank'' for ''Every bank'', and added par. (2).

Subsec. (b). Pub. L. 101–73, § 205(2)(A), (B), inserted after first sentence ''Any application or notice for membership or to commence or resume business shall be promptly provided by the appropriate Federal banking agency to the Corporation and the Corporation shall have a reasonable period of time to provide comments on such application or notice. Any comments submitted by the Corporation to the appropriate Federal banking agency shall be considered by such agency.'' and struck out at end ''A State bank, resulting from the conversion of an insured national bank, shall continue as an insured bank. A State bank, resulting from the merger or consolidation of insured banks, or from the merger or consolidation of a noninsured bank or institution with an insured State bank, shall continue as an insured bank.''

Pub. L. 101–73, § 205(2)(C), which directed the amendment of subsec. (b) by substituting ''(b) CERTIFICATION BY OTHER BANKING AGENCIES.—Every national bank'' for ''(b) Every national bank'' could not be executed literally because the original read ''(b) Every national member bank'', but was executed by inserting the heading without changing the text to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 101–73, § 205(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Every Federal savings bank which is chartered pursuant to section 1464(*o*) of this title, and which is engaged in the business of receiving deposits other than trust funds, shall be an insured bank from the time it is authorized to commence business, until such time as its accounts are insured by the Federal Savings and Loan Insurance Corporation.''

Subsec. (d). Pub. L. 101–73, § 205(3), added subsec. (d).

1982—Subsec. (c). Pub. L. 97–320 added subsec. (c).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102–558, set out as a note under section 2062 of Title 50, Appendix, War and National Defense.

§ 1815. Deposit insurance

(a) Application to Corporation required

(1) In general

Except as provided in paragraphs (2) and (3), any depository institution which is engaged in the business of receiving deposits other than trust funds (as defined in section 1813(p) of this title), upon application to and examination by the Corporation and approval by the Board of Directors, may become an insured depository institution.

(2) Interim depository institutions

In the case of any interim Federal depository institution that is chartered by the appropriate Federal banking agency and will not open for business, the depository institution shall be an insured depository institution upon the issuance of the institution's charter by the agency.

(3) Application and approval not required in cases of continued insurance

Paragraph (1) shall not apply in the case of any depository institution whose insured status is continued pursuant to section 1814 of this title.

(4) Review requirements

In reviewing any application under this subsection, the Board of Directors shall consider the factors described in section 1816 of this title in determining whether to approve the application for insurance.

(5) Notice of denial of application for insurance

If the Board of Directors votes to deny any application for insurance by any depository institution, the Board of Directors shall promptly notify the appropriate Federal banking agency and, in the case of any State depository institution, the appropriate State banking supervisor of the denial of such application, giving specific reasons in writing for the Board of Directors' determination with reference to the factors described in section 1816 of this title.

(6) Nondelegation requirement

The authority of the Board of Directors to make any determination to deny any application under this subsection may not be delegated by the Board of Directors.

(b) Foreign branch nonmember banks; matters considered

Subject to the provisions of this chapter and to such terms and conditions as the Board of Directors may impose, any branch of a foreign bank, upon application by the bank to the Corporation, and examination by the Corporation of the branch, and approval by the Board of Directors, may become an insured branch. Before approving any such application, the Board of Directors shall give consideration to—

(1) the financial history and condition of the bank,

(2) the adequacy of its capital structure,

(3) its future earnings prospects,

(4) the general character and fitness of its management, including but not limited to the management of the branch proposed to be insured,

(5) the risk presented to the Deposit Insurance Fund,

(6) the convenience and needs of the community to be served by the branch,

(7) whether or not its corporate powers, insofar as they will be exercised through the proposed insured branch, are consistent with the purposes of this chapter, and

(8) the probable adequacy and reliability of information supplied and to be supplied by the bank to the Corporation to enable it to carry out its functions under this chapter.

(c) Protection to Deposit Insurance Fund; surety bond, pledge of assets, etc.; injunction

(1) Before any branch of a foreign bank becomes an insured branch, the bank shall deliver to the Corporation or as the Corporation may direct a surety bond, a pledge of assets, or both, in such amounts and of such types as the Corporation may require or approve, for the purpose set forth in paragraph (4) of this subsection.

(2) After any branch of a foreign bank becomes an insured branch, the bank shall maintain on

deposit with the Corporation, or as the Corporation may direct, surety bonds or assets or both, in such amounts and of such types as shall be determined from time to time in accordance with such regulations as the Board of Directors may prescribe. Such regulations may impose differing requirements on the basis of any factors which in the judgment of the Board of Directors are reasonably related to the purpose set forth in paragraph (4).

(3) The Corporation may require of any given bank larger deposits of bonds and assets than required under paragraph (2) of this subsection if, in the judgment of the Corporation, the situation of that bank or any branch thereof is or becomes such that the deposits of bonds and assets otherwise required under this section would not adequately fulfill the purpose set forth in paragraph (4). The imposition of any such additional requirements may be without notice or opportunity for hearing, but the Corporation shall afford an opportunity to any such bank to apply for a reduction or removal of any such additional requirements so imposed.

(4) The purpose of the surety bonds and pledges of assets required under this subsection is to provide protection to the Deposit Insurance Fund against the risks entailed in insuring the domestic deposits of a foreign bank whose activities, assets, and personnel are in large part outside the jurisdiction of the United States. In the implementation of its authority under this subsection, however, the Corporation shall endeavor to avoid imposing requirements on such banks which would unnecessarily place them at a competitive disadvantage in relation to domestically incorporated banks.

(5) In the case of any failure or threatened failure of a foreign bank to comply with any requirement imposed under this subsection (c), the Corporation, in addition to all other administrative and judicial remedies, may apply to any United States district court, or United States court of any territory, within the jurisdiction of which any branch of the bank is located, for an injunction to compel such bank and any officer, employee, or agent thereof, or any other person having custody or control of any of its assets, to deliver to the Corporation such assets as may be necessary to meet such requirement, and to take any other action necessary to vest the Corporation with control of assets so delivered. If the court shall determine that there has been any such failure or threatened failure to comply with any such requirement, it shall be the duty of the court to issue such injunction. The propriety of the requirement may be litigated only as provided in chapter 7 of title 5, and may not be made an issue in an action for an injunction under this paragraph.

(d) Insurance fees

(1) In general

Any institution that becomes insured by the Corporation, and any noninsured branch that becomes insured by the Corporation, shall pay the Corporation any fee which the Corporation may by regulation prescribe, after giving due consideration to the need to establish and maintain the reserve ratio of the Deposit Insurance Fund.

(2) Fee credited to the Deposit Insurance Fund

The fee paid by the depository institution under paragraph (1) shall be credited to the Deposit Insurance Fund.

(3) Exception for certain depository institutions

Any depository institution that becomes an insured depository institution by operation of section 1814(a) of this title shall not pay any fee.

(e) Liability of commonly controlled depository institutions

(1) In general

(A) Liability established

Any insured depository institution shall be liable for any loss incurred by the Corporation, or any loss which the Corporation reasonably anticipates incurring, after August 9, 1989, in connection with—

(i) the default of a commonly controlled insured depository institution; or

(ii) any assistance provided by the Corporation to any commonly controlled insured depository institution in danger of default.

(B) Payment upon notice

An insured depository institution shall pay the amount of any liability to the Corporation under subparagraph (A) upon receipt of written notice by the Corporation in accordance with this subsection.

(C) Notice required to be provided within 2 years of loss

No insured depository institution shall be liable to the Corporation under subparagraph (A) if written notice with respect to such liability is not received by such institution before the end of the 2-year period beginning on the date the Corporation incurred the loss.

(2) Amount of compensation; procedures

(A) Use of estimates

When an insured depository institution is in default or requires assistance to prevent default, the Corporation shall—

(i) in good faith, estimate the amount of the loss the Corporation will incur from such default or assistance;

(ii) if, with respect to such insured depository institution, there is more than 1 commonly controlled insured depository institution, estimate the amount of each such commonly controlled depository institution's share of such liability; and

(iii) advise each commonly controlled depository institution of the Corporation's estimate of the amount of such institution's liability for such losses.

(B) Procedures; immediate payment

The Corporation, after consultation with the appropriate Federal banking agency and the appropriate State chartering agency, shall—

(i) on a case-by-case basis, establish the procedures and schedule under which any insured depository institution shall reim-

burse the Corporation for such institution's liability under paragraph (1) in connection with any commonly controlled insured depository institution; or

(ii) require any insured depository institution to make immediate payment of the amount of such institution's liability under paragraph (1) in connection with any commonly controlled insured depository institution.

(C) Priority

The liability of any insured depository institution under this subsection shall have priority with respect to other obligations and liabilities as follows:

(i) Superiority

The liability shall be superior to the following obligations and liabilities of the depository institution:

(I) Any obligation to shareholders arising as a result of their status as shareholders (including any depository institution holding company or any shareholder or creditor of such company).

(II) Any obligation or liability owed to any affiliate of the depository institution (including any other insured depository institution), other than any secured obligation which was secured as of May 1, 1989.

(ii) Subordination

The liability shall be subordinate in right and payment to the following obligations and liabilities of the depository institution:

(I) Any deposit liability (which is not a liability described in clause (i)(II)).

(II) Any secured obligation, other than any obligation owed to any affiliate of the depository institution (including any other insured depository institution) which was secured after May 1, 1989.

(III) Any other general or senior liability (which is not a liability described in clause (i)).

(IV) Any obligation subordinated to depositors or other general creditors (which is not an obligation described in clause (i)).

(D) Adjustment of estimated payment

(i) Overpayment

If the amount of compensation estimated by and paid to the Corporation by 1 or more such commonly controlled depository institutions is greater than the actual loss incurred by the Corporation, the Corporation shall reimburse each such commonly controlled depository institution its pro rata share of any overpayment.

(ii) Underpayment

If the amount of compensation estimated by and paid to the Corporation by 1 or more such commonly controlled depository institutions is less than the actual loss incurred by the Corporation, the Corporation shall redetermine in its discretion the liability of each such commonly controlled depository institution to the Corporation and shall require each such commonly controlled depository institution to make payment of any additional liability to the Corporation.

(3) Review

(A) Judicial

Actions of the Corporation shall be reviewable pursuant to chapter 7 of title 5.

(B) Administrative

The Corporation shall prescribe regulations and establish administrative procedures which provide for a hearing on the record for the review of—

(i) the amount of any loss incurred by the Corporation in connection with any insured depository institution;

(ii) the liability of individual commonly controlled depository institutions for the amount of such loss; and

(iii) the schedule of payments to be made by such commonly controlled depository institutions.

(4) Limitation on rights of private parties

To the extent the exercise of any right or power of any person would impair the ability of any insured depository institution to perform such institution's obligations under this subsection—

(A) the obligations of such insured depository institution shall supersede such right or power; and

(B) no court may give effect to such right or power with respect to such insured depository institution.

(5) Waiver authority

(A) In general

The Corporation, in its discretion, may exempt any insured depository institution from the provisions of this subsection if the Corporation determines that such exemption is in the best interests of the Deposit Insurance Fund.

(B) Condition

During the period any exemption granted to any insured depository institution under subparagraph (A) or (C) is in effect, such insured depository institution and all other insured depository institution affiliates of such depository institution shall comply fully with the restrictions of sections 371c and 371c–1 of this title without regard to section 371c(d)(1) of this title.

(C) Limited partnerships

(i) In general

The Corporation may, in its discretion, exempt any limited partnership and any affiliate of any limited partnership (other than any insured depository institution which is a majority owned subsidiary of such partnership) from the provisions of this subsection if such limited partnership or affiliate has filed a registration statement with the Securities and Exchange Commission on or before April 10, 1989, indicating that as of the date of such filing

such partnership intended to acquire 1 or more insured depository institutions.

(ii) Review and notice

Within 10 business days after the date of submission of any request for an exemption under this subparagraph together with such information as shall be reasonably requested by the Corporation, the Corporation shall make a determination on the request and shall so advise the applicant.

(6) Exclusion for institutions acquired in debt collections

Any depository institution shall not be treated as commonly controlled, for purposes of this subsection, during the 5-year period beginning on the date of an acquisition described in subparagraph (A) or such longer period as the Corporation may determine after written application by the acquirer, if—

(A) 1 depository institution controls another by virtue of ownership of voting shares acquired in securing or collecting a debt previously contracted in good faith; and

(B) during the period beginning on August 9, 1989, and ending upon the expiration of the exclusion, the controlling bank and all other insured depository institution affiliates of such controlling bank comply fully with the restrictions of sections 371c and 371c–1 of this title, without regard to section 371c(d)(1) of this title, in transactions with the acquired insured depository institution.

(7) Exception for certain FSLIC assisted institutions

No depository institution shall have any liability to the Corporation under this subsection as the result of the default of, or assistance provided with respect to, an insured depository institution which is an affiliate of such depository institution if—

(A) such affiliate was receiving cash payments from the Federal Savings and Loan Insurance Corporation under an assistance agreement or note entered into before August 9, 1989;

(B) the Federal Savings and Loan Insurance Corporation, or such other entity which has succeeded to the payment obligations of such Corporation with respect to such assistance agreement or note, is unable to continue such payments; and

(C) such affiliate—

(i) is in default or in need of assistance solely as a result of the failure to meet the payment obligations referred to in subparagraph (B); and

(ii) is not otherwise in breach of the terms of any assistance agreement or note which would authorize the Federal Savings and Loan Insurance Corporation or such other successor entity, pursuant to the terms of such assistance agreement or note, to refuse to make such payments.

(8) Commonly controlled defined

For purposes of this subsection, depository institutions are commonly controlled if—

(A) such institutions are controlled by the same company; or

(B) 1 depository institution is controlled by another depository institution.

(Sept. 21, 1950, ch. 967, § 2[5], 64 Stat. 876; Pub. L. 95–369, § 6(c)(7), Sept. 17, 1978, 92 Stat. 616; Pub. L. 97–320, title VII, § 703(c), Oct. 15, 1982, 96 Stat. 1539; Pub. L. 101–73, title II, §§ 201(a), 206(a), Aug. 9, 1989, 103 Stat. 187, 195; Pub. L. 102–242, title I, § 115(a), title III, § 302(e)(1), (2), title V, § 501(a), Dec. 19, 1991, 105 Stat. 2249, 2349, 2388; Pub. L. 102–550, title XVI, §§ 1605(a)(5)(B), 1607(a), Oct. 28, 1992, 106 Stat. 4085, 4089; Pub. L. 102–558, title III, §§ 303(b)(6)(B), 305, Oct. 28, 1992, 106 Stat. 4225, 4226; Pub. L. 103–204, § 9, Dec. 17, 1993, 107 Stat. 2388; Pub. L. 103–325, title III, § 319(b), title VI, § 602(a)(2), (3), Sept. 23, 1994, 108 Stat. 2225, 2288; Pub. L. 104–208, div. A, title II, §§ 2201(a), 2702(i), 2704(d)(14)(B)–(E), Sept. 30, 1996, 110 Stat. 3009–403, 3009–483, 3009–491; Pub. L. 109–171, title II, § 2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, § 8(a)(2)–(6), Feb. 15, 2006, 119 Stat. 3610, 3611; Pub. L. 109–351, title VII, § 703, Oct. 13, 2006, 120 Stat. 1986.)

PRIOR PROVISIONS

Section is derived from subsec. (f)(2) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2006—Subsec. (b)(5). Pub. L. 109–173, § 8(a)(2), substituted ''the Deposit Insurance Fund,'' for ''the Bank Insurance Fund or the Savings Association Insurance Fund,''.

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

Subsec. (c)(4). Pub. L. 109–173, § 8(a)(3), substituted ''Deposit Insurance Fund'' for ''deposit insurance fund''.

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

Subsec. (d)(1). Pub. L. 109–173, § 8(a)(5) substituted, ''the reserve ratio of the Deposit Insurance Fund'' for ''reserve ratios in the Bank Insurance Fund and the Savings Association Insurance Fund as required by section 1817 of this title'' in subpar. (A), struck out par. (1) designation and heading, redesignated subpar. (A) as par. (1) and realigned margin, and struck out subpar. (B), the text of which read as follows: ''The fee paid by the depository institution shall be credited to the Bank Insurance Fund if the depository institution becomes a Bank Insurance Fund member, and to the Savings Association Insurance Fund if the depository institution becomes a Savings Association Insurance Fund member.'' Former subpar. (C) redesignated par. (3).

Subsec. (d)(2). Pub. L. 109–173, § 8(a)(4), (5)(B), added par. (2) and struck out former par. (2) which related to conversion transactions by insured depository institutions.

Subsec. (d)(3). Pub. L. 109–173, § 8(a)(4), (5)(D), redesignated par. (1)(C) of subsec. (d) as (3), realigned margin, and struck out former par. (3) which related to optional conversions by insured depository institutions subject to special rules on deposit insurance payments.

Subsec. (e)(5)(A). Pub. L. 109–173, § 8(a)(6)(A), substituted ''Deposit Insurance Fund'' for ''Bank Insurance Fund or the Savings Association Insurance Fund''.

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

Subsec. (e)(6) to (9). Pub. L. 109–173, § 8(a)(6)(B), (C), redesignated pars. (7) to (9) as (6) to (8), respectively, and struck out heading and text of former par. (6). Text read as follows: ''During the 5-year period beginning on August 9, 1989—

''(A) no Savings Association Insurance Fund member shall have any liability to the Corporation under this subsection arising out of assistance provided by

the Corporation or any loss incurred by the Corporation as a result of the default of a Bank Insurance Fund member which was acquired by such Savings Association Insurance Fund member or any affiliate of such member before August 9, 1989; and

''(B) no Bank Insurance Fund member shall have such liability with respect to assistance provided by or loss incurred by the Corporation as a result of the default of a Savings Association Insurance Fund member which was acquired by such Bank Insurance Fund member or any affiliate of such member before August 9, 1989.''

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

Subsec. (e)(8)(A). Pub. L. 109–351, §703, which directed general amendment of par. (9)(A) of subsec. (e), was executed by making the amendment to par. (8)(A) to reflect the probable intent of Congress and amendment by 109–173, §8(a)(6)(B), (C). Prior to amendment, subpar. (A) read as follows: ''such institutions are controlled by the same depository institution holding company (including any company required to file reports pursuant to section 1843(f)(6) of this title); or''.

1996—Subsec. (b)(5). Pub. L. 104–208, §2704(d)(14)(B), which directed substitution of ''Deposit Insurance Fund,'' for ''the Bank Insurance Fund or the Savings Association Insurance Fund;'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (d). Pub. L. 104–208, §2704(d)(14)(C) and (D), which directed the amendment of subsec. (d) by striking out par. (1) designation and heading, redesignating subpar. (A) of par. (1) as par. (1), realigning margin, and substituting ''the reserve ratio of the Deposit Insurance Fund'' for ''reserve ratios in the Bank Insurance Fund and the Savings Association Insurance Fund'', striking out subpar. (B) of par. (1) and pars. (2) and (3) and adding new par. (2), and redesignating subpar. (C) of par. (1) as par. (3) and realigning margin, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (d)(3)(A). Pub. L. 104–208, §2201(a)(1), substituted ''if the transaction is approved by'' for ''with the prior written approval of''.

Subsec. (d)(3)(C). Pub. L. 104–208, §2702(i)(1), substituted ''Except as provided in subparagraph (K), the adjusted attributable deposit amount'' for ''The adjusted attributable deposit amount'' in introductory provisions.

Subsec. (d)(3)(E). Pub. L. 104–208, §2201(a)(2), added cl. (iii), redesignated former cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cls. (i) and (iv), which directed review of any application under the procedures and factors set forth in section 1828(c) of this title and disapproval of any application unless depository institution met all applicable capital requirements, respectively.

Subsec. (d)(3)(G) to (J). Pub. L. 104–208, §2201(a)(3), (4), redesignated subpars. (H) to (J) as (G) to (I), respectively and struck out former subpar. (G) which related to expedited approval of acquisitions.

Subsec. (d)(3)(K). Pub. L. 104–208, §2702(i)(2), added subpar. (K).

Subsec. (e)(5)(A). Pub. L. 104–208, §2704(d)(14)(E)(i), which directed substitution of ''Deposit Insurance Fund'' for ''Bank Insurance Fund or the Savings Association Insurance Fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (e)(6) to (9). Pub. L. 104–208, §2704(d)(14)(E)(ii), (iii), which directed striking out par. (6) and redesignating pars. (7) to (9) as (6) to (8), respectively, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Subsec. (b)(5). Pub. L. 103–325, §602(a)(2), substituted comma for semicolon at end.

Subsec. (d)(3)(A). Pub. L. 103–325, §319(b)(1), redesignated cl. (i) formerly entitled ''In general'' as subpar. (A), inserted comma after ''Notwithstanding paragraph (2)(A)'', and struck out heading and text of cl. (ii). Text read as follows: ''If, in connection with any transaction referred to in clause (i), the acquiring, assuming, or resulting depository institution is a Bank Insurance Fund member which is a subsidiary of a bank holding company, the prior written approval of the Board shall be required for such transaction in addition to the approval of any agency referred to in clause (i).''

Subsec. (d)(3)(E)(i). Pub. L. 103–325, §319(b)(2)(A), struck out ''(and, in the event the acquiring, assuming, or resulting depository institution is a Bank Insurance Fund member which is a subsidiary of a bank holding company, the Board)'' after ''responsible agency''.

Subsec. (d)(3)(E)(ii). Pub. L. 103–325, §319(b)(2)(B), struck out ''or Board'' after ''responsible agency''.

Subsec. (d)(3)(E)(iv). Pub. L. 103–325, §319(b)(2)(C), struck out '', and the appropriate Federal banking agency for any depository institution holding company,'' after ''responsible agency'', ''each'' before ''such agency determines'', and '', and any depository institution holding company which controls such institution,'' after ''resulting depository institution''.

Subsec. (d)(3)(F). Pub. L. 103–325, §319(b)(3), substituted ''A Bank'' for ''The Board may not approve any transaction under subparagraph (A) in which the acquiring, assuming, or resulting depository institution is a Bank'' and ''may not be the acquiring, assuming, or resulting depository institution in a transaction under subparagraph (A) unless'' for ''unless the Board determines that''.

Subsec. (d)(3)(K). Pub. L. 103–325, §319(b)(4), struck out heading and text of subpar. (K). Text read as follows: ''For purposes of this paragraph, the term 'Board' (other than when such term appears in connection with a reference to the Board of Directors) means the Board of Governors of the Federal Reserve System.''

Subsec. (e)(4). Pub. L. 103–325, §602(a)(3), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigned margins.

1993—Subsec. (d)(2)(A)(ii). Pub. L. 103–204, §9(a), substituted ''before the later of the end'' for ''before the end'' and inserted before period at end ''or the date on which the Savings Association Insurance Fund first meets or exceeds the designated reserve ratio for such fund''.

Subsec. (d)(2)(B)(v). Pub. L. 103–204, §9(b), added cl. (v).

Subsec. (d)(2)(C)(ii), (iii), (3)(I)(i). Pub. L. 103–204, §9(c), substituted ''moratorium period established by'' for ''5-year period referred to in''.

1992—Subsec. (d)(3)(B). Pub. L. 102–558, §303(b)(6)(B), amended directory language of Pub. L. 102–242, §302(e). See 1991 amendment note below. Pub. L. 102–550, §1605(a)(5)(B), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note below.

Subsec. (d)(3)(K). Pub. L. 102–550, §1607(a), added subpar. (K).

1991—Pub. L. 102–242, §115(a), amended section catchline.

Subsec. (a). Pub. L. 102–242, §115(a), added subsec. (a) consisting of pars. (1) to (6) and struck out former subsec. (a) relating to application for insurance, which consisted of pars. (1) to (7).

Subsec. (d)(3). Pub. L. 102–242, §501(a), amended par. (3) generally, substituting present provisions consisting of subpars. (A) to (J) for provisions related to optional conversion through merger, which consisted of subpars. (A) to (G).

Subsec. (d)(3)(B)(i). Pub. L. 102–242, §302(e)(1), as amended by Pub. L. 102–558, §303(b)(6)(B), substituted ''deposits'' for ''average assessment base'' and ''shall be treated as deposits which are insured by the Savings Association Insurance Fund.'' for ''shall—

''(I) be subject to assessment at the assessment rate applicable under section 1817 of this title for Savings Association Insurance Fund members;

''(II) not be taken into account for purposes of any assessment under section 1817 of this title for Bank Insurance Fund members; and

''(III) be treated as deposits which are insured by the Savings Association Insurance Fund.''

Subsec. (d)(3)(B)(ii). Pub. L. 102–242, § 302(e)(2), as added by Pub. L. 102–558, § 303(b)(6)(B), substituted ''deposits'' for ''average assessment base'' and ''shall be treated as deposits which are insured by the Bank Insurance Fund.'' for ''shall—

''(I) be subject to assessment at the assessment rate applicable under section 1817 of this title for Bank Insurance Fund members;

''(II) not be taken into account for purposes of any assessment under section 1817 of this title for Savings Association Insurance Fund members; and

''(III) be treated as deposits which are insured by the Bank Insurance Fund.''

1989—Pub. L. 101–73, § 201(a), substituted references to insured depository institutions for references to insured banks wherever appearing.

Subsec. (a). Pub. L. 101–73, § 206(a)(1)–(4), inserted heading, designated existing provisions as par. (1), inserted par. (1) heading, and substituted ''Any'' for ''Subject to the provisions of this chapter, any'', inserted ''and State savings association'' after ''any State nonmember bank'' and after ''such State nonmember bank'', ''or savings association'' after ''such bank'', and ''or savings association, and in the case of an application by a State savings association, the Corporation shall notify the Director of the Office of Thrift Supervision of the Corporation's approval of such application'' after ''books of the bank'', and added pars. (2) to (7).

Subsec. (b)(4). Pub. L. 101–73, § 206(a)(5), inserted ''and fitness'' after ''character''.

Subsec. (b)(5) to (8). Pub. L. 101–73, § 206(a)(6), added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

Subsecs. (d), (e). Pub. L. 101–73, § 206(a)(7), added subsecs. (d) and (e).

1982—Subsec. (a). Pub. L. 97–320 inserted provision relating to the determination before the application of an industrial bank or similar institution is approved that it is chartered and operating under provisions substantially comparable to those applicable to banks operating in the same State.

1978—Pub. L. 95–369 designated existing provision as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(14)(B)–(E) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by section 303(b)(6)(B) of Pub. L. 102–558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102–558, set out as a note under section 2062 of Title 50, Appendix, War and National Defense.

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 302(e)(1), (2) of Pub. L. 102–242 effective on earlier of 180 days after date on which final regulations promulgated in accordance with section 302(c) of Pub. L. 102–242, set out as a note under section 1817 of this title, become effective or Jan. 1, 1994, see section 302(g) of Pub. L. 102–242, set out as a note under section 1817 of this title.

Section 501(b) of Pub. L. 102–242 provided that: ''The amendment made by subsection (a) to section 5(d)(3)(C) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(3)(C)] shall apply with respect to semiannual periods beginning after the date of the enactment of this Act [Dec. 19, 1991].''

REPEAL OF DUPLICATIVE PROVISIONS

Section 305 of Pub. L. 102–558 provided that: ''In the event of the enactment of H.R. 5334 (An Act to amend and extend certain laws relating to housing and community development, and for other purposes) [enacted as Pub. L. 102–550], the following provisions of that Act, and the amendments made by such provisions, are repealed, effective on the date of enactment of this Act [Oct. 28, 1992]:

''(1) Section 1603(a)(3) of such Act [amending section 1817 of this title and enacting provisions set out as a note under section 1817 of this title].

''(2) Section 1604(a)(11) of such Act [amending section 3104 of this title].

''(3) Paragraphs (1), (2), and (3) of section 1604(b) of such Act [amending sections 1817, 1834, and 1834a of this title].

''(3) [sic] Paragraphs (2) through (7) of section 1605(a) of such Act [amending sections 1815, 1817, 1818, 1820, 1834, and 1834a of this title and enacting provisions set out as notes under sections 1817, 1834, and 1834a of this title].''

MORATORIUM ON TREATMENT OF CREDIT CARD BANKS, INDUSTRIAL LOAN COMPANIES, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING COMPANY ACT OF 1956.

Pub. L. 111–203, title VI, § 603(a), July 21, 2010, 124 Stat. 1597, provided that:

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'credit card bank' means an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F));

''(B) the term 'industrial bank' means an institution described in section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)); and

''(C) the term 'trust bank' means an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)).

''(2) MORATORIUM ON PROVISION OF DEPOSIT INSURANCE.—The Corporation may not approve an application for deposit insurance under section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) that is received after November 23, 2009, for an industrial bank, a credit card bank, or a trust bank that is directly or indirectly owned or controlled by a commercial firm.

''(3) CHANGE IN CONTROL.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the appropriate Federal banking agency shall disapprove a change in control, as provided in section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)), of an industrial bank, a credit card bank, or a trust bank if the change in control would result in direct or indirect control of the industrial bank, credit card bank, or trust bank by a commercial firm.

''(B) EXCEPTIONS.—Subparagraph (A) shall not apply to a change in control of an industrial bank, credit card bank, or trust bank—

''(i) that—

''(I) is in danger of default, as determined by the appropriate Federal banking agency;

''(II) results from the merger or whole acquisition of a commercial firm that directly or indi-

rectly controls the industrial bank, credit card bank, or trust bank in a bona fide merger with or acquisition by another commercial firm, as determined by the appropriate Federal banking agency; or

''(III) results from an acquisition of voting shares of a publicly traded company that controls an industrial bank, credit card bank, or trust bank, if, after the acquisition, the acquiring shareholder (or group of shareholders acting in concert) holds less than 25 percent of any class of the voting shares of the company; and

''(ii) that has obtained all regulatory approvals otherwise required for such change of control under any applicable Federal or State law, including section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)).

''(4) SUNSET.—This subsection shall cease to have effect 3 years after the date of enactment of this Act [July 21, 2010].''

[For definitions of terms used in section 603(a) of Pub. L. 111–203, set out above, see section 5301 of this title.]

DEPOSIT OF FUNDS INTO DEPOSIT INSURANCE FUND

Pub. L. 109–173, §8(a)(4), Feb. 15, 2006, 119 Stat. 3610, provided in part that: ''any funds resulting from the application of such paragraph (2) [of subsec. (d) of this section] prior to its repeal [see 2006 Amendment note above] shall be deposited into the general fund of the Deposit Insurance Fund''.

NEWLY INSURED THRIFT PROVISION

Section 206(b) of Pub. L. 101–73 provided that: ''Any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)], as added by section 204(c) of this Act)—

''(1) which was an insured institution (as defined in section 401(a) of the National Housing Act [12 U.S.C. 1724(a)], as in effect before the date of the enactment of this Act [Aug. 9, 1989]) on the day before the date of the enactment of this Act;

''(2) the board of directors of which determined, before April 1, 1987, to terminate such association's status as an insured institution (as so defined) as evidenced in sworn minutes of the board of directors meeting held before such date;

''(3) had insured deposits of less than $11,000,000 on April 1, 1987; and

''(4) was an insured institution (as so defined) for less than 1 year as of April 1, 1987,

may cease to be a Savings Association Insurance Fund member and become a Bank Insurance Fund member at any time during the 2-year period beginning on the date of the enactment of this Act without the approval of the Federal Deposit Insurance Corporation under section 5(d)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(2)] (as added by subsection (a) of this section) and without incurring any liability for any exit or entrance fee imposed under such section 5(d)(2).''

DEFINITION OF ''COMMERCIAL FIRM''

Pub. L. 111–203, title VI, §602, July 21, 2010, 124 Stat. 1596, provided that: ''For purposes of this title [see Short Title note set out under section 1811 of this title], a company is a 'commercial firm' if the annual gross revenues derived by the company and all of its affiliates from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k))) and, if applicable, from the ownership or control of one or more insured depository institutions, represent less than 15 percent of the consolidated annual gross revenues of the company.''

[For definitions of terms used in section 602 of Pub. L. 111–203, set out above, see section 5301 of this title.]

§ 1816. Factors to be considered

The factors that are required, under section 1814 of this title, to be considered in connection with, and enumerated in, any certificate issued pursuant to section 1814 of this title and that are required, under section 1815 of this title, to be considered by the Board of Directors in connection with any determination by such Board pursuant to section 1815 of this title are the following:

(1) The financial history and condition of the depository institution.

(2) The adequacy of the depository institution's capital structure.

(3) The future earnings prospects of the depository institution.

(4) The general character and fitness of the management of the depository institution.

(5) The risk presented by such depository institution to the Deposit Insurance Fund.

(6) The convenience and needs of the community to be served by such depository institution.

(7) Whether the depository institution's corporate powers are consistent with the purposes of this chapter.

(Sept. 21, 1950, ch. 967, §2[6], 64 Stat. 876; Pub. L. 101–73, title II, §207, Aug. 9, 1989, 103 Stat. 206; Pub. L. 104–208, div. A, title II, §2704(d)(14)(F), Sept. 30, 1996, 110 Stat. 3009–491; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §8(a)(7), Feb. 15, 2006, 119 Stat. 3611.)

PRIOR PROVISIONS

Section is derived from subsec. (g) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2006—Par. (5). Pub. L. 109–173 substituted ''Deposit Insurance Fund'' for ''Bank Insurance Fund or the Savings Association Insurance Fund''.

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

1996—Par. (5). Pub. L. 104–208, §2704(d)(14)(F), which directed substitution of ''Deposit Insurance Fund'' for ''Bank Insurance Fund or the Savings Association Insurance Fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows: ''The factors to be enumerated in the certificate required under section 1814 of this title and to be considered by the Board of Directors under section 1815 of this title shall be the following: The financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether or not its corporate powers are consistent with the purposes of this chapter.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

§ 1817. Assessments

(a) Reports of condition; access to reports

(1) Each insured State nonmember bank and each foreign bank having an insured branch which is not a Federal branch shall make to the Corporation reports of condition which shall be in such form and shall contain such information as the Board of Directors may require. Such reports shall be made to the Corporation on the dates selected as provided in paragraph (3) of this subsection and the deposit liabilities shall be reported therein in accordance with and pursuant to paragraphs (4) and (5) of this subsection. The Board of Directors may call for additional reports of condition on dates to be fixed by it and may call for such other reports as the Board may from time to time require. Any such bank which (A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, or (B) inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such bank shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any such bank which fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any such bank knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Corporation may assess a penalty of not more than $1,000,000 or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any such bank against which any penalty is assessed under this subsection shall be afforded an agency hearing if such bank submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this paragraph.

(2)(A) The Corporation and, with respect to any State depository institution, any appropriate State bank supervisor for such institution, shall have access to reports of examination made by, and reports of condition made to, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Housing Finance Board, any Federal home loan bank, or any Federal Reserve bank and to all revisions of reports of condition made to any of them, and they shall promptly advise the Corporation of any revisions or changes in respect to deposit liabilities made or required to be made in any report of condition. The Corporation may accept any report made by or to any commission, board, or authority having supervision of a depository institution, and may furnish to the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Housing Finance Board, any Federal home loan bank, to any Federal Reserve bank, and to any such commission, board, or authority, reports of examinations made on behalf of, and reports of condition made to, the Corporation.

(B) ADDITIONAL REPORTS.—The Board of Directors may from time to time require any insured depository institution to file such additional reports as the Corporation, after consultation with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision, as appropriate, may deem advisable for insurance purposes.

(C) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Corporation (with respect to all insured depository institutions, including a depository institution for which the Corporation has been appointed conservator or receiver) or an appropriate State bank supervisor (with respect to a State depository institution) under subparagraph (A) or (B), a Federal banking agency may, in the discretion of the agency, furnish any report of examination or other confidential supervisory information concerning any depository institution or other entity examined by such agency under authority of any Federal law, to—

(i) any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity;

(ii) any officer, director, or receiver of such depository institution or entity; and

(iii) any other person that the Federal banking agency determines to be appropriate.

(3) Each insured depository institution shall make to the appropriate Federal banking agency 4 reports of condition annually upon dates which shall be selected by the Chairman of the Board of Directors, the Comptroller of the Currency, and the Chairman of the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision. The dates selected shall be the same for all insured depository institutions, except that when any of said reporting dates is a nonbusiness day for any depository institution, the preceding business day shall be its reporting date. Such reports of condition shall be the basis for the certified statements to be filed pursuant to subsection (c). The deposit liabilities shall be reported in said reports of conditions in accordance with and pursuant to paragraphs (4) and (5) of this

subsection, and such other information shall be reported therein as may be required by the respective agencies. Each said report of condition shall contain a declaration by the president, a vice president, the cashier or the treasurer, or by any other officer designated by the board of directors or trustees of the reporting depository institution to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of said report of condition shall be attested by the signatures of at least two directors or trustees of the reporting depository institution other than the officer making such declaration, with a declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct. At the time of making said reports of condition each insured depository institution shall furnish to the Corporation a copy thereof containing such signed declaration and attestations. Nothing herein shall preclude any of the foregoing agencies from requiring the banks or savings associations under its jurisdiction to make additional reports of condition at any time.

(4) In the reports of condition required to be made by paragraph (3) of this subsection, each insured depository institution shall report the total amount of the liability of the depository institution for deposits in the main office and in any branch located in any State of the United States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, according to the definition of the term ''deposit'' in and pursuant to subsection (*l*) of section 1813 of this title without any deduction for indebtedness of depositors or creditors or any deduction for cash items in the process of collection drawn on others than the reporting depository institution: *Provided*, That the depository institution in reporting such deposits may (i) subtract from the deposit balance due to any depository institution the deposit balance due from the same depository institution (other than trust funds deposited by either depository institution) and any cash items in the process of collection due from or due to such depository institutions shall be included in determining such net balance, except that balances of time deposits of any depository institution and any balances standing to the credit of private depository institutions, of depository institutions in foreign countries, of foreign branches of other American depository institutions, and of American branches of foreign banks shall be reported gross without any such subtraction, and (ii) exclude any deposits received in any office of the depository institution for deposit in any other office of the depository institution: *And provided further*, That outstanding drafts (including advices and authorizations to charge depository institution's balance in another depository institution) drawn in the regular course of business by the reporting depository institution on depository institutions need not be reported as deposit liabilities. The amount of trust funds held in the depository institution's own trust department, which the reporting depository institution keeps segregated and apart from its general assets and does not use in the conduct of its business, shall not be included in the total deposits in such reports, but shall be separately stated in such reports. Deposits which are accumulated for the payment of personal loans and are assigned or pledged to assure payment of loans at maturity shall not be included in the total deposits in such reports, but shall be deducted from the loans for which such deposits are assigned or pledged to assure repayment.

(5) The deposits to be reported on such reports of condition shall be segregated between (i) time and savings deposits and (ii) demand deposits. For this purpose, the time and savings deposits shall consist of time certificates of deposit, time deposits-open account, and savings deposits; and demand deposits shall consist of all deposits other than time and savings deposits.

(6) LIFELINE ACCOUNT DEPOSITS.—In the reports of condition required to be reported under this subsection, the deposits in lifeline accounts (as defined in section 1834(a)(3)(C) of this title) shall be reported separately.

(7) The Board of Directors, after consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, may by regulation define the terms ''cash items'' and ''process of collection'', and shall classify deposits as ''time'', ''savings'', and ''demand'' deposits, for the purposes of this section.

(8) In respect of any report required or authorized to be supplied or published pursuant to this subsection or any other provision of law, the Board of Directors or the Comptroller of the Currency, as the case may be, may differentiate between domestic banks and foreign banks to such extent as, in their judgment, may be reasonably required to avoid hardship and can be done without substantial compromise of insurance risk or supervisory and regulatory effectiveness.

(9) DATA COLLECTIONS.—In addition to or in connection with any other report required under this subsection, the Corporation shall take such action as may be necessary to ensure that—

(A) each insured depository institution maintains; and

(B) the Corporation receives on a regular basis from such institution,

information on the total amount of all insured deposits, preferred deposits, and uninsured deposits at the institution. In prescribing reporting and other requirements for the collection of actual and accurate information pursuant to this paragraph, the Corporation shall minimize the regulatory burden imposed upon insured depository institutions that are well capitalized (as defined in section 1831*o* of this title) while taking into account the benefit of the information to the Corporation, including the use of the information to enable the Corporation to more accurately determine the total amount of insured deposits in each insured depository institution for purposes of compliance with this chapter.

(10) A Federal banking agency may not, by regulation or otherwise, designate, or require an insured institution or an affiliate to designate, a corporation as highly leveraged or a transaction with a corporation as a highly leveraged trans-

action solely because such corporation is or has been a debtor or bankrupt under title 11, if, after confirmation of a plan of reorganization, such corporation would not otherwise be highly leveraged.

(11) STREAMLINING REPORTS OF CONDITION.—

(A) REVIEW OF INFORMATION AND SCHEDULES.—Before the end of the 1-year period beginning on October 13, 2006, and before the end of each 5-year period thereafter, each Federal banking agency shall, in conjunction with the other relevant Federal banking agencies, review the information and schedules that are required to be filed by an insured depository institution in a report of condition required under paragraph (3).

(B) REDUCTION OR ELIMINATION OF INFORMATION FOUND TO BE UNNECESSARY.—After completing the review required by subparagraph (A), a Federal banking agency, in conjunction with the other relevant Federal banking agencies, shall reduce or eliminate any requirement to file information or schedules under paragraph (3) (other than information or schedules that are otherwise required by law) if the agency determines that the continued collection of such information or schedules is no longer necessary or appropriate.

(b) Assessments

(1) Risk-based assessment system

(A) Risk-based assessment system required

The Board of Directors shall, by regulation, establish a risk-based assessment system for insured depository institutions.

(B) Private reinsurance authorized

In carrying out this paragraph, the Corporation may—

(i) obtain private reinsurance covering not more than 10 percent of any loss the Corporation incurs with respect to an insured depository institution; and

(ii) base that institution's assessment (in whole or in part) on the cost of the reinsurance.

(C) "Risk-based assessment system" defined

For purposes of this paragraph, the term ''risk-based assessment system'' means a system for calculating a depository institution's assessment based on—

(i) the probability that the Deposit Insurance Fund will incur a loss with respect to the institution, taking into consideration the risks attributable to—

(I) different categories and concentrations of assets;

(II) different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent; and

(III) any other factors the Corporation determines are relevant to assessing such probability;

(ii) the likely amount of any such loss; and

(iii) the revenue needs of the Deposit Insurance Fund.

(D) Separate assessment systems

The Board of Directors may establish separate risk-based assessment systems for large and small members of the Deposit Insurance Fund.

(E) Information concerning risk of loss and economic conditions

(i) Sources of information

For purposes of determining risk of losses at insured depository institutions and economic conditions generally affecting depository institutions, the Corporation shall collect information, as appropriate, from all sources the Board of Directors considers appropriate, including reports of condition, inspection reports, and other information from all Federal banking agencies, any information available from State bank supervisors, State insurance and securities regulators, the Securities and Exchange Commission (including information described in section 1831*l* of this title), the Secretary of the Treasury, the Commodity Futures Trading Commission, the Farm Credit Administration, the Federal Trade Commission, any Federal reserve bank or Federal home loan bank, and other regulators of financial institutions, and any information available from credit rating entities, and other private economic or business analysts.

(ii) Consultation with Federal banking agencies

(I) In general

Except as provided in subclause (II), in assessing the risk of loss to the Deposit Insurance Fund with respect to any insured depository institution, the Corporation shall consult with the appropriate Federal banking agency of such institution.

(II) Treatment on aggregate basis

In the case of insured depository institutions that are well capitalized (as defined in section 1831*o* of this title) and, in the most recent examination, were found to be well managed, the consultation under subclause (I) concerning the assessment of the risk of loss posed by such institutions may be made on an aggregate basis.

(iii) Rule of construction

No provision of this paragraph shall be construed as providing any new authority for the Corporation to require submission of information by insured depository institutions to the Corporation, except as provided in subsection (a)(2)(B).

(F) Modifications to the risk-based assessment system allowed only after notice and comment

In revising or modifying the risk-based assessment system at any time after February 8, 2006, the Board of Directors may implement such revisions or modification in final form only after notice and opportunity for comment.

(2) Setting assessments

(A) In general

The Board of Directors shall set assessments for insured depository institutions in

such amounts as the Board of Directors may determine to be necessary or appropriate, subject to subparagraph (D).[1]

(B) Factors to be considered

In setting assessments under subparagraph (A), the Board of Directors shall consider the following factors:

(i) The estimated operating expenses of the Deposit Insurance Fund.

(ii) The estimated case resolution expenses and income of the Deposit Insurance Fund.

(iii) The projected effects of the payment of assessments on the capital and earnings of insured depository institutions.

(iv) The risk factors and other factors taken into account pursuant to paragraph (1) under the risk-based assessment system, including the requirement under such paragraph to maintain a risk-based system.

(v) Any other factors the Board of Directors may determine to be appropriate.

(D)[2] Notice of assessments

The Corporation shall notify each insured depository institution of that institution's assessment.

(E) Bank Enterprise Act requirement

The Corporation shall design the risk-based assessment system so that, insofar as the system bases assessments, directly or indirectly, on deposits, the portion of the deposits of any insured depository institution which are attributable to lifeline accounts established in accordance with the Bank Enterprise Act of 1991 shall be subject to assessment at a rate determined in accordance with such Act.

(3) Designated reserve ratio

(A) Establishment

(i) In general

Before the beginning of each calendar year, the Board of Directors shall designate the reserve ratio applicable with respect to the Deposit Insurance Fund and publish the reserve ratio so designated.

(ii) Rulemaking requirement

Any change to the designated reserve ratio shall be made by the Board of Directors by regulation after notice and opportunity for comment.

(B) Minimum reserve ratio

The reserve ratio designated by the Board of Directors for any year may not be less than 1.35 percent of estimated insured deposits, or the comparable percentage of the assessment base set forth in paragraph (2)(C).[2]

(C) Factors

In designating a reserve ratio for any year, the Board of Directors shall—

(i) take into account the risk of losses to the Deposit Insurance Fund in such year and future years, including historic experience and potential and estimated losses from insured depository institutions;

(ii) take into account economic conditions generally affecting insured depository institutions so as to allow the designated reserve ratio to increase during more favorable economic conditions and to decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during such less favorable conditions, as determined to be appropriate by the Board of Directors;

(iii) seek to prevent sharp swings in the assessment rates for insured depository institutions; and

(iv) take into account such other factors as the Board of Directors may determine to be appropriate, consistent with the requirements of this subparagraph.

(D) Publication of proposed change in ratio

In soliciting comment on any proposed change in the designated reserve ratio in accordance with subparagraph (A), the Board of Directors shall include in the published proposal a thorough analysis of the data and projections on which the proposal is based.

(E) DIF restoration plans

(i) In general

Whenever—

(I) the Corporation projects that the reserve ratio of the Deposit Insurance Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio; or

(II) the reserve ratio of the Deposit Insurance Fund actually falls below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio without any determination under subclause (I) having been made,

the Corporation shall establish and implement a Deposit Insurance Fund restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Corporation determines to be appropriate.

(ii) Requirements of restoration plan

A Deposit Insurance Fund restoration plan meets the requirements of this clause if the plan provides that the reserve ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio before the end of the 8-year period beginning upon the implementation of the plan (or such longer period as the Corporation may determine to be necessary due to extraordinary circumstances).

(iii) Restriction on assessment credits

As part of any restoration plan under this subparagraph, the Corporation may elect to restrict the application of assessment credits provided under subsection (e)(3) for any period that the plan is in effect.

(iv) Limitation on restriction

Notwithstanding clause (iii), while any restoration plan under this subparagraph

[1] See References in Text note below.

[2] So in original. Par. (2) does not contain a subpar. (C).

is in effect, the Corporation shall apply credits provided to an insured depository institution under subsection (e)(3) against any assessment imposed on the institution for any assessment period in an amount equal to the lesser of—

(I) the amount of the assessment; or

(II) the amount equal to 3 basis points of the institution's assessment base.

(v) Transparency

Not more than 30 days after the Corporation establishes and implements a restoration plan under clause (i), the Corporation shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.

(4) Depository institution required to maintain assessment-related records

Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of any assessment on the insured depository institution under this subsection until the later of—

(A) the end of the 3-year period beginning on the due date of the assessment; or

(B) in the case of a dispute between the insured depository institution and the Corporation with respect to such assessment, the date of a final determination of any such dispute.

(5) Emergency special assessments

In addition to the other assessments imposed on insured depository institutions under this subsection, the Corporation may impose 1 or more special assessments on insured depository institutions in an amount determined by the Corporation if the amount of any such assessment is necessary—

(A) to provide sufficient assessment income to repay amounts borrowed from the Secretary of the Treasury under section 1824(a) of this title in accordance with the repayment schedule in effect under section 1824(c) of this title during the period with respect to which such assessment is imposed;

(B) to provide sufficient assessment income to repay obligations issued to and other amounts borrowed from insured depository institutions under section 1824(d) of this title; or

(C) for any other purpose that the Corporation may deem necessary.

(6) Community enterprise credits

The Corporation shall allow a credit against any semiannual assessment to any insured depository institution which satisfies the requirements of the Community Enterprise Assessment Credit Board under section 233(a)(1) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(a)(1)] in the amount determined by such Board by regulation.

(c) Certified statements; payments

(1) Certified statements required

(A) In general

Each insured depository institution shall file with the Corporation a certified statement containing such information as the Corporation may require for determining the institution's assessment.

(B) Form of certification

The certified statement required under subparagraph (A) shall—

(i) be in such form and set forth such supporting information as the Board of Directors shall prescribe; and

(ii) be certified by the president of the depository institution or any other officer designated by its board of directors or trustees that to the best of his or her knowledge and belief, the statement is true, correct and complete, and in accordance with this chapter and regulations issued hereunder.

(2) Payments required

(A) In general

Each insured depository institution shall pay to the Corporation the assessment imposed under subsection (b) of this section.

(B) Form of payment

The payments required under subparagraph (A) shall be made in such manner and at such time or times as the Board of Directors shall prescribe by regulation.

(3) Newly insured institutions

To facilitate the administration of this section, the Board of Directors may waive the requirements of paragraphs (1) and (2) for the initial assessment period in which a depository institution becomes insured.

(4) Penalty for failure to make accurate certified statement

(A) First tier

Any insured depository institution which—

(i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit the certified statement under paragraph (1) within the period of time required under paragraph (1) or submits a false or misleading certified statement; or

(ii) submits the statement at a time which is minimally after the time required in such paragraph,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false and misleading information is not corrected. The institution shall have the burden of proving that an error was inadvertent or that a statement was inadvertently submitted late.

(B) Second tier

Any insured depository institution which fails to submit the certified statement under paragraph (1) within the period of time required under paragraph (1) or submits a false or misleading certified statement in a manner not described in subparagraph (A) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false and misleading information is not corrected.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), if any insured depository institution knowingly or with reckless disregard for the accuracy of any certified statement described in paragraph (1) submits a false or misleading certified statement under paragraph (1), the Corporation may assess a penalty of not more than $1,000,000 or not more than 1 percent of the total assets of the institution, whichever is less, per day for each day during which the failure continues or the false or misleading information in such statement is not corrected.

(D) Assessment procedure

Any penalty imposed under this paragraph shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

(E) Hearing

Any insured depository institution against which any penalty is assessed under this paragraph shall be afforded an agency hearing if the institution submits a request for such hearing within 20 days after the issuance of the notice of the assessment. Section 1818(h) of this title shall apply to any proceeding under this subparagraph.

(d) Corporation exempt from apportionment

Notwithstanding any other provision of law, amounts received pursuant to any assessment under this section and any other amounts received by the Corporation shall not be subject to apportionment for the purposes of chapter 15 of title 31 or under any other authority.

(e) Refunds, dividends, and credits

(1) Refunds of overpayments

In the case of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation, the Corporation may—

(A) refund the amount of the excess payment to the insured depository institution; or

(B) credit such excess amount toward the payment of subsequent assessments until such credit is exhausted.

(2) Dividends from excess amounts in Deposit Insurance Fund

(A) Reserve ratio in excess of 1.5 percent of estimated insured deposits

If, at the end of a calendar year, the reserve ratio of the Deposit Insurance Fund exceeds 1.5 percent of estimated insured deposits, the Corporation shall declare the amount in the Fund in excess of the amount required to maintain the reserve ratio at 1.5 percent of estimated insured deposits, as dividends to be paid to insured depository institutions.

(B) Limitation

The Board of Directors may, in its sole discretion, suspend or limit the declaration of payment of dividends under subparagraph (A).

(C) Notice and opportunity for comment

The Corporation shall prescribe, by regulation, after notice and opportunity for comment, the method for the declaration, calculation, distribution, and payment of dividends under this paragraph [3]

(3) One-time credit based on total assessment base at year-end 1996

(A) In general

Before the end of the 270-day period beginning on February 8, 2006, the Board of Directors shall, by regulation after notice and opportunity for comment, provide for a credit to each eligible insured depository institution (or a successor insured depository institution), based on the assessment base of the institution on December 31, 1996, as compared to the combined aggregate assessment base of all eligible insured depository institutions, taking into account such factors as the Board of Directors may determine to be appropriate.

(B) Credit limit

The aggregate amount of credits available under subparagraph (A) to all eligible insured depository institutions shall equal the amount that the Corporation could collect if the Corporation imposed an assessment of 10.5 basis points on the combined assessment base of the Bank Insurance Fund and the Savings Association Insurance Fund as of December 31, 2001.

(C) Eligible insured depository institution defined

For purposes of this paragraph, the term ''eligible insured depository institution'' means any insured depository institution that—

(i) was in existence on December 31, 1996, and paid a deposit insurance assessment prior to that date; or

(ii) is a successor to any insured depository institution described in clause (i).

(D) Application of credits

(i) In general

Subject to clause (ii), the amount of a credit to any eligible insured depository institution under this paragraph shall be applied by the Corporation, subject to subsection (b)(3)(E), to the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning after the effective date of regulations prescribed under subparagraph (A).

(ii) Temporary restriction on use of credits

The amount of a credit to any eligible insured depository institution under this paragraph may not be applied to more than 90 percent of the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning in fiscal years 2008, 2009, and 2010.

[3] So in original. Probably should be followed be a period.

(iii) Regulations

The regulations prescribed under subparagraph (A) shall establish the qualifications and procedures governing the application of assessment credits pursuant to clause (i).

(E) Limitation on amount of credit for certain depository institutions

In the case of an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not adequately capitalized (as defined in section 1831*o* of this title) at the beginning of an assessment period, the amount of any credit allowed under this paragraph against the assessment on that depository institution for such period may not exceed the amount calculated by applying to that depository institution the average assessment rate on all insured depository institutions for such assessment period.

(F) Successor defined

The Corporation shall define the term ''successor'' for purposes of this paragraph, by regulation, and may consider any factors as the Board may deem appropriate.

(4) Administrative review

(A) In general

The regulations prescribed under paragraphs (2) and (3) shall include provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of the credit or dividend determined under paragraph (2) or (3) for such institution.

(B) Administrative review

Any review under subparagraph (A) of any determination of the Corporation under paragraph (2) or (3) shall be final and not subject to judicial review.

(f) Action against depository institutions failing to file certified statements

Any insured depository institution which fails to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by it in connection with determining the amount of any assessment payable by the depository institution to the Corporation may be compelled to make such report or file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the Corporation against the depository institution and any officer or officers thereof in any court of the United States of competent jurisdiction in the District or Territory in which such depository institution is located.

(g) Assessment actions

(1) In general

The Corporation, in any court of competent jurisdiction, shall be entitled to recover from any insured depository institution the amount of any unpaid assessment lawfully payable by such insured depository institution.

(2) Statute of limitations

The following provisions shall apply to actions relating to assessments, notwithstanding any other provision in Federal law, or the law of any State:

(A) Any action by an insured depository institution to recover from the Corporation the overpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exception in subparagraph (E).

(B) Any action by the Corporation to recover from an insured depository institution the underpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exceptions in subparagraphs (C) and (E).

(C) If an insured depository institution has made a false or fraudulent statement with intent to evade any or all of its assessment, the Corporation shall have until 3 years after the date of discovery of the false or fraudulent statement in which to bring an action to recover the underpaid amount.

(D) Except as provided in subparagraph (C), assessment deposit information contained in records no longer required to be maintained pursuant to subsection (b)(4) shall be considered conclusive and not subject to change.

(E) Any action for the underpaid or overpaid amount of any assessment that became due before January 1, 2007, shall be subject to the statute of limitations for assessments in effect at the time the assessment became due.

(h) Forfeiture of rights for failure to comply with law

Should any national member bank or any insured national nonmember bank fail to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by such bank under any provision of this section, or fail to pay any assessment required to be paid by such bank under any provision of this chapter, and should the bank not correct such failure within thirty days after written notice has been given by the Corporation to an officer of the bank, citing this subsection, and stating that the bank has failed to make any report of condition under subsection (a) of this section or to file or pay as required by law, all the rights, privileges, and franchises of the bank granted to it under the National Bank Act, as amended [12 U.S.C. 21 et seq.], the Federal Reserve Act, as amended [12 U.S.C. 221 et seq.], or this chapter, shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged in the manner provided in the sixth paragraph of section 2 of the Federal Reserve Act, as amended [12 U.S.C. 501a]. The remedies provided in this subsection and in subsections (f) and (g) of this section shall not be construed as limiting any other remedies against any insured depository institution, but shall be in addition thereto.

(i) Insurance of trust funds

(1) In general

Trust funds held on deposit by an insured depository institution in a fiduciary capacity as

trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement shall be insured in an amount not to exceed the standard maximum deposit insurance amount (as determined under section 1821(a)(1) of this title) for each trust estate.

(2) Interbank deposits

Trust funds described in paragraph (1) which are deposited by the fiduciary depository institution in another insured depository institution shall be similarly insured to the fiduciary depository institution according to the trust estates represented.

(3) Bank deposit financial assistance program

Notwithstanding paragraph (1), funds deposited by an insured depository institution pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy shall be separately insured in an amount not to exceed the standard maximum deposit insurance amount (as determined under section 1821(a)(1) of this title) for each insured depository institution depositing such funds.

(4) Regulations

The Board of Directors may prescribe such regulations as may be necessary to clarify the insurance coverage under this subsection and to prescribe the manner of reporting and depositing such trust funds.

(j) Change in control of insured depository institutions

(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured depository institution through a purchase, assignment, transfer, pledge, or other disposition of voting stock of such insured depository institution unless the appropriate Federal banking agency has been given sixty days' prior written notice of such proposed acquisition and within that time period the agency has not issued a notice disapproving the proposed acquisition or, in the discretion of the agency, extending for an additional 30 days the period during which such a disapproval may issue. The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

(B) in the agency's judgment, any material information submitted is substantially inaccurate;

(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

(D) the agency determines that additional time is needed—

(i) to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31; or

(ii) to analyze the safety and soundness of any plans or proposals described in paragraph (6)(E) or the future prospects of the institution.

An acquisition may be made prior to expiration of the disapproval period if the agency issues written notice of its intent not to disapprove the action.

(2)(A) NOTICE TO STATE AGENCY.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall forward a copy thereof to the appropriate State depository institution supervisory agency if the depository institution the voting shares of which are sought to be acquired is a State depository institution, and shall allow thirty days within which the views and recommendations of such State depository institution supervisory agency may be submitted. The appropriate Federal banking agency shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this paragraph, if the appropriate Federal banking agency determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the probable default of the depository institution involved in the proposed acquisition, such Federal banking agency may dispense with the requirements of this paragraph or, if a copy of the notice is forwarded to the State depository institution supervisory agency, such Federal banking agency may request that the views and recommendations of such State depository institution supervisory agency be submitted immediately in any form or by any means acceptable to such Federal banking agency.

(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall—

(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

(C) REPORT.—The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The agency shall retain such written report as a record of the agency.

(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, unless such agency determines that an emergency exists, within a reasonable period of time—

(i) publish the name of the insured depository institution proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the bank[4] proposed to

[4] So in original. Probably should be ''depository institution''.

be acquired is located, before final consideration of such notice by the agency,

unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such bank.[4]

(3) Within three days after its decision to disapprove any proposed acquisition, the appropriate Federal banking agency shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

(4) Within ten days of receipt of such notice of disapproval, the acquiring party may request an agency hearing on the proposed acquisition. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The length of the hearing shall be determined by the appropriate Federal banking agency. At the conclusion thereof, the appropriate Federal banking agency shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(5) Any person whose proposed acquisition is disapproved after agency hearings under this subsection may obtain review by the United States court of appeals for the circuit in which the home office of the bank [4] to be acquired is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the disapproval was based. The findings of the appropriate Federal banking agency shall be set aside if found to be arbitrary or capricious or if found to violate procedures established by this subsection.

(6) Except as otherwise provided by regulation of the appropriate Federal banking agency, a notice filed pursuant to this subsection shall contain the following information:

(A) The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

(B) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the notice.

(C) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

(D) The identity, source and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

(E) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank,[4] to sell its assets or merge it with any company or to make any other major change in its business or corporate structure or management.

(F) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation.

(G) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

(H) Any additional relevant information in such form as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular notice.

(7) The appropriate Federal banking agency may disapprove any proposed acquisition if—

(A) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(C) either the financial condition of any acquiring person or the future prospects of the institution is such as might jeopardize the financial stability of the bank [4] or prejudice the interests of the depositors of the bank; [4]

(D) the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person to control the bank; [4]

(E) any acquiring person neglects, fails, or refuses to furnish the appropriate Federal banking agency all the information required by the appropriate Federal banking agency; or

(F) the appropriate Federal banking agency determines that the proposed transaction would result in an adverse effect on the Deposit Insurance Fund.

(8) For the purposes of this subsection, the term—

(A) ''person'' means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein; and

(B) ''control'' means the power, directly or indirectly, to direct the management or policies of an insured depository institution or to vote 25 per centum or more of any class of voting securities of an insured depository institution.

(9) REPORTING OF STOCK LOANS.—

(A) REPORT REQUIRED.—Any foreign bank, or any affiliate thereof, that has credit outstanding to any person or group of persons which is secured, directly or indirectly, by shares of an insured depository institution shall file a consolidated report with the appropriate Federal banking agency for such insured depository institution if the extensions of credit by the foreign bank or any affiliate thereof, in the aggregate, are secured, directly or indirectly, by 25 percent or more of any class of shares of the same insured depository institution.

(B) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) FOREIGN BANK.—The terms ''foreign bank'' and ''affiliate'' have the same meanings as in section 3101 of this title.

(ii) CREDIT OUTSTANDING.—The term ''credit outstanding'' includes—

(I) any loan or extension of credit,

(II) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, and

(III) any other type of transaction that extends credit or financing to the person or group of persons.

(iii) GROUP OF PERSONS.—The term ''group of persons'' includes any number of persons that the foreign bank or any affiliate thereof reasonably believes—

(I) are acting together, in concert, or with one another to acquire or control shares of the same insured depository institution, including an acquisition of shares of the same insured depository institution at approximately the same time under substantially the same terms; or

(II) have made, or propose to make, a joint filing under section 78m of title 15 regarding ownership of the shares of the same insured depository institution.

(C) INCLUSION OF SHARES HELD BY THE FINANCIAL INSTITUTION.—Any shares of the insured depository institution held by the foreign bank or any affiliate thereof as principal shall be included in the calculation of the number of shares in which the foreign bank or any affiliate thereof has a security interest for purposes of subparagraph (A).

(D) REPORT REQUIREMENTS.—

(i) TIMING OF REPORT.—The report required under this paragraph shall be a consolidated report on behalf of the foreign bank and all affiliates thereof, and shall be filed in writing within 30 days of the date on which the foreign bank or affiliate thereof first believes that the security for any outstanding credit consists of 25 percent or more of any class of shares of an insured depository institution.

(ii) CONTENT OF REPORT.—The report under this paragraph shall indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the foreign bank and any affiliate thereof.

(iii) COPY TO OTHER AGENCIES.—A copy of any report under this paragraph shall be filed with the appropriate Federal banking agency for the foreign bank or any affiliate thereof (if other than the agency receiving the report under this paragraph).

(iv) OTHER INFORMATION.—Each appropriate Federal banking agency may require any additional information necessary to carry out the agency's supervisory responsibilities.

(E) EXCEPTIONS.—

(i) EXCEPTION WHERE INFORMATION PROVIDED BY BORROWER.—Notwithstanding subparagraph (A), a foreign bank or any affiliate thereof shall not be required to report a transaction under this paragraph if the person or group of persons referred to in such subparagraph has disclosed the amount borrowed from such foreign bank or any affiliate thereof and the security interest of the foreign bank or any affiliate thereof to the appropriate Federal banking agency for the insured depository institution in connection with a notice filed under this subsection, an application filed under the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], section 1467a of this title, or any other application filed with the appropriate Federal banking agency for the insured depository institution as a substitute for a notice under this subsection, such as an application for deposit insurance, membership in the Federal Reserve System, or a national bank charter.

(ii) EXCEPTION FOR SHARES OWNED FOR MORE THAN 1 YEAR.—Notwithstanding subparagraph (A), a foreign bank and any affiliate thereof shall not be required to report a transaction involving—

(I) a person or group of persons that has been the owner or owners of record of the stock for a period of 1 year or more; or

(II) stock issued by a newly chartered bank before the bank's opening.

(10) The reports required by paragraph (9) of this subsection shall contain such of the information referred to in paragraph (6) of this subsection, and such other relevant information, as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular report.

(11) The Federal banking agency receiving a notice or report filed pursuant to paragraph (1) or (9) shall immediately furnish to the other Federal banking agencies a copy of such notice or report.

(12) Whenever such a change in control occurs, each insured depository institution shall report promptly to the appropriate Federal banking

agency any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(13) The appropriate Federal banking agencies are authorized to issue rules and regulations to carry out this subsection.

(14) Within two years after the effective date of the Change in Bank Control Act of 1978, and each year thereafter in each appropriate Federal banking agency's annual report to the Congress, the appropriate Federal banking agency shall report to the Congress the results of the administration of this subsection, and make any recommendations as to changes in the law which in the opinion of the appropriate Federal banking agency would be desirable.

(15) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

(A) INVESTIGATIONS.—The appropriate Federal banking agency may exercise any authority vested in such agency under section 1818(n) of this title in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the agency, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

(B) ENFORCEMENT.—Whenever it appears to the appropriate Federal banking agency that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

(C) JURISDICTION.—

(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the appropriate Federal banking agency under subparagraph (A) as such courts have under section 1818(n) of this title.

(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief granted under this paragraph shall be granted without requiring the posting of any bond.

The resignation, termination of employment or participation, divestiture of control, or separation of or by an institution-affiliated party (including a separation caused by the closing of a depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this subsection against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such date occurs before, on, or after August 9, 1989).

(16) CIVIL MONEY PENALTY.—

(A) FIRST TIER.—Any person who violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency under this subsection, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding subparagraph (A), any person who—

(i)(I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of a depository institution; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach—

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such institution; or

(III) results in pecuniary gain or other benefit to such person,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any person who—

(i) knowingly—

(I) commits any violation described in any clause of subparagraph (A);

(II) engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such institution or a substantial pecuniary gain or other benefit to such person by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

(i) in the case of any person other than a depository institution, an amount to not exceed $1,000,000; and

(ii) in the case of a depository institution, an amount not to exceed the lesser of—

(I) $1,000,000; or

(II) 1 percent of the total assets of such institution.

(E) ASSESSMENT; ETC.—Any penalty imposed under subparagraph (A), (B), or (C) shall be as-

sessed and collected by the appropriate Federal banking agency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(F) HEARING.—The depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or other person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this paragraph.

(G) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(17) EXCEPTIONS.—This subsection shall not apply with respect to a transaction which is subject to—

(A) section 1842 of this title;
(B) section 1828(c) of this title; or
(C) section 1467a of this title.

(18) APPLICABILITY OF CHANGE IN CONTROL PROVISIONS TO OTHER INSTITUTIONS.—For purposes of this subsection, the term ''insured depository institution'' includes—

(A) any depository institution holding company; and

(B) any other company which controls an insured depository institution and is not a depository institution holding company.

(k) Federal banking agency rules and regulations for reports and public disclosure by banks of extension of credit to executive officers or principal shareholders or the related interests of such persons

The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by a bank or any executive officer or principal shareholder thereof concerning extensions of credit by the bank to any of its executive officers or principal shareholders, or the related interests of such persons.

***(l)* Designation of fund membership for newly insured depository institutions; definitions**

For purposes of this section:

(1) Bank Insurance Fund

Any institution which—

(A) becomes an insured depository institution; and

(B) does not become a Savings Association Insurance Fund member pursuant to paragraph (2),

shall be a Bank Insurance Fund member.

(2) Savings Association Insurance Fund

Any savings association, other than any Federal savings bank chartered pursuant to section 1464(*o*) of this title, which becomes an insured depository institution shall be a Savings Association Insurance Fund member.

(3) Transition provision

(A) Bank Insurance Fund

Any depository institution the deposits of which were insured by the Federal Deposit Insurance Corporation on the day before August 9, 1989, including—

(i) any Federal savings bank chartered pursuant to section 1464(*o*) of this title; and

(ii) any cooperative bank,

shall be a Bank Insurance Fund member as of August 9, 1989.

(B) Savings Association Insurance Fund

Any savings association which is an insured depository institution by operation of section 1814(a)(2) of this title shall be a Savings Association Insurance Fund member as of August 9, 1989.

(4) Bank Insurance Fund member

The term ''Bank Insurance Fund member'' means any depository institution the deposits of which are insured by the Bank Insurance Fund.

(5) Savings Association Insurance Fund member

The term ''Savings Association Insurance Fund member'' means any depository institution the deposits of which are insured by the Savings Association Insurance Fund.

(6) Bank Insurance Fund reserve ratio

The term ''Bank Insurance Fund reserve ratio'' means the ratio of the net worth of the Bank Insurance Fund to the value of the aggregate estimated insured deposits held in all Bank Insurance Fund members.

(7) Savings Association Insurance Fund reserve ratio

The term ''Savings Association Insurance Fund reserve ratio'' means the ratio of the net worth of the Savings Association Insurance Fund to the value of the aggregate estimated insured deposits held in all Savings Association Insurance Fund members.

(m) Secondary reserve offsets against premiums

(1) Offsets in calendar years beginning before 1993

Subject to the maximum amount limitation contained in paragraph (2) and notwithstanding any other provision of law, any insured savings association may offset such association's pro rata share of the statutorily prescribed amount against any premium assessed against such association under subsection (b) of this section for any calendar year beginning before 1993.

(2) Annual maximum amount limitation

The amount of any offset allowed for any savings association under paragraph (1) for any calendar year beginning before 1993 shall not exceed an amount which is equal to 20 percent of such association's pro rata share of the statutorily prescribed amount (as computed for such calendar year).

(3) Offsets in calendar years beginning after 1992

Notwithstanding any other provision of law, a savings association may offset such association's pro rata share of the statutorily prescribed amount against any premium assessed

against such association under subsection (b) of this section for any calendar year beginning after 1992.

(4) Transferability

No right, title, or interest of any insured depository institution in or with respect to its pro rata share of the secondary reserve shall be assignable or transferable whether by operation of law or otherwise, except to the extent that the Corporation may provide for transfer of such pro rata share in cases of merger or consolidation, transfer of bulk assets or assumption of liabilities, and similar transactions, as defined by the Corporation for purposes of this paragraph.

(5) Pro rata distribution on termination of insured status

If—

(A) the status of any savings association as an insured depository institution is terminated pursuant to any provision of section 1818 of this title or the insurance of accounts of any such institution is otherwise terminated;

(B) a receiver or other legal custodian is appointed for the purpose of liquidation or winding up the affairs of any savings association; or

(C) the Corporation makes a determination that for the purposes of this subsection any savings association has otherwise gone into liquidation,

the Corporation shall pay in cash to such institution its pro rata share of the secondary reserve, in accordance with such terms and conditions as the Corporation may prescribe, or, at the option of the Corporation, the Corporation may apply the whole or any part of the amount which would otherwise be paid in cash toward the payment of any indebtedness or obligation, whether matured or not, of such institution to the Corporation, existing or arising before such payment in cash. Such payment or such application need not be made to the extent that the provisions of the exception in paragraph (4) are applicable.

(6) "Statutorily prescribed amount" defined

For purposes of this subsection, the term ''statutorily prescribed amount'' means, with respect to any calendar year which ends after August 9, 1989—

(A) $823,705,000, minus

(B) the sum of—

(i) the aggregate amount of offsets made before August 9, 1989, by all insured institutions under section 404(e)(2)[1] of the National Housing Act [12 U.S.C. 1727(e)(2)] (as in effect before August 9, 1989); and

(ii) the aggregate amount of offsets made by all savings associations under this subsection before the beginning of such calendar year.

(7) Savings association's pro rata amount

For purposes of this subsection, any savings association's pro rata share of the statutorily prescribed amount is the percentage which is equal to such association's share of the secondary reserve as determined under section 404(e)[1] of the National Housing Act on the day before the date on which the Federal Savings and Loan Insurance Corporation ceased to recognize the secondary reserve (as such Act [12 U.S.C. 1701 et seq.] was in effect on the day before such date).

(8) Year of enactment rule

With respect to the calendar year in which the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is enacted, the Corporation shall make such adjustments as may be necessary—

(A) in the computation of the statutorily prescribed amount which shall be applicable for the remainder of such calendar year after taking into account the aggregate amount of offsets by all insured institutions under section 404(e)(2)[1] of the National Housing Act [12 U.S.C. 1727(e)(2)] (as in effect before August 9, 1989) after the beginning of such calendar year and before August 9, 1989; and

(B) in the computation of the maximum amount of any savings association's offset for such calendar year under paragraph (1) after taking into account—

(i) the amount of any offset by such savings association under section 404(e)(2)[1] of the National Housing Act (as in effect before August 9, 1989) after the beginning of such calendar year and before August 9, 1989; and

(ii) the change of such association's premium year from the 1-year period applicable under section 404(b)[1] of the National Housing Act (as in effect before August 9, 1989) to a calendar year basis.

(n) Collections on behalf of Director of Office of Thrift Supervision

When requested by the Director of the Office of Thrift Supervision, the Corporation shall collect on behalf of the Director assessments on savings associations levied by the Director under section 1467 of this title. The Corporation shall be reimbursed for its actual costs for the collection of such assessments. Any such assessments by the Director shall be in addition to any amounts assessed by the Corporation, the Financing Corporation, and the Resolution Funding Corporation.

(Sept. 21, 1950, ch. 967, § 2[7], 64 Stat. 876; Pub. L. 86–671, §§ 2, 3, July 14, 1960, 74 Stat. 547–551; Pub. L. 88–593, Sept. 12, 1964, 78 Stat. 940; Pub. L. 89–695, title II, § 201, title III, § 301(b), Oct. 16, 1966, 80 Stat. 1046, 1055; Pub. L. 91–151, § 7(a)(2), Dec. 23, 1969, 83 Stat. 375; Pub. L. 91–609, title IX, § 910(g), (h), Dec. 31, 1970, 84 Stat. 1812; Pub. L. 93–495, title I, §§ 101(a)(2), 102(a)(2), Oct. 28, 1974, 88 Stat. 1500, 1502; Pub. L. 95–369, § 6(c)(8)–(13), Sept. 17, 1978, 92 Stat. 617, 618; Pub. L. 95–630, title III, §§ 302, 310, title VI, § 602, title IX, § 901, Nov. 10, 1978, 92 Stat. 3676, 3678, 3683, 3693; Pub. L. 96–221, title III, § 308(a)(1)(B), (d), Mar. 31, 1980, 94 Stat. 147, 148; Pub. L. 97–110, title I, § 103(b), Dec. 26, 1981, 95 Stat. 1514; Pub. L. 97–320, title I, §§ 113(d)–(f), (q), 117, title IV, § 429, Oct. 15, 1982, 96 Stat. 1473, 1475, 1479, 1527; Pub. L. 99–570, title I, § 1360, Oct. 27, 1986, 100 Stat. 3207–29; Pub. L. 100–86, title V, § 505(a), Aug. 10, 1987, 101 Stat. 633; Pub. L. 101–73, title II, §§ 201, 208, title IX,

§§ 905(c), 907(d), 911(c), 931(a), Aug. 9, 1989, 103 Stat. 187, 206, 460, 468, 479, 493; Pub. L. 101–508, title II, §§ 2002–2004, Nov. 5, 1990, 104 Stat. 1388–14—1388–16; Pub. L. 102–242, title I, §§ 103(b), 104, 113(c)(1), 141(c), title II, §§ 205, 232(b), 233(c), title III, §§ 302(a), (b), (e)(3), (4), formerly (e)(2), (3), 311(a)(2), (b)(3), 313(a), title IV, § 474, Dec. 19, 1991, 105 Stat. 2238, 2247, 2277, 2292, 2310, 2314, 2345, 2348, 2349, 2363, 2365, 2368, 2386; Pub. L. 102–550, title IX, § 931(a), (b), title XVI, §§ 1603(a)(1), (3), 1604(b)(1), (3), 1605(a)(2), (5)(A), (6), (b)(1), (2), 1606(i)(1), Oct. 28, 1992, 106 Stat. 3888, 4078, 4083, 4085–4087, 4089; Pub. L. 102–558, title III, §§ 303(a), (b)(1), (3), (6)(A), (7), (8), 305, Oct. 28, 1992, 106 Stat. 4224–4226; Pub. L. 103–204, §§ 8(h), 38(a), Dec. 17, 1993, 107 Stat. 2388, 2416; Pub. L. 103–325, title III, §§ 305(b), 308(b), 348, title VI, § 602(a)(4)–(10), Sept. 23, 1994, 108 Stat. 2217, 2218, 2241, 2288; Pub. L. 104–208, div. A, title II, §§ 2226, 2703(b), 2704(d)(6)(B), (14)(G), 2706–2708, Sept. 30, 1996, 110 Stat. 3009–417, 3009–485, 3009–488, 3009–491, 3009–496, 3009–497; Pub. L. 106–569, title XII, § 1231(a), Dec. 27, 2000, 114 Stat. 3036; Pub. L. 108–386, § 8(a)(2), Oct. 30, 2004, 118 Stat. 2231; Pub. L. 109–171, title II, §§ 2102(b), 2104(a), (b), (d), 2105(a), 2106, 2107(a), 2108, Feb. 8, 2006, 120 Stat. 9, 12–16, 19; Pub. L. 109–173, §§ 2(b), 3(a)(1)–(5), 8(a)(8), (9), Feb. 15, 2006, 119 Stat. 3602, 3605, 3611; Pub. L. 109–351, title VI, § 604, title VII, §§ 705, 707(a), Oct. 13, 2006, 120 Stat. 1980, 1987; Pub. L. 111–22, div. A, title II, § 204(b), May 20, 2009, 123 Stat. 1649; Pub. L. 111–203, title III, §§ 331(a), 332–334(a), 363(2), title IX, § 939(a)(1), July 21, 2010, 124 Stat. 1538, 1539, 1550, 1885.)

AMENDMENT OF SECTION

Pub. L. 111–203, title IX, § 939(a)(1), (g), July 21, 2010, 124 Stat. 1885, 1887, provided that, effective 2 years after July 21, 2010, subsection (b)(1)(E)(i) of this section is amended by substituting ''private economic, credit,'' for ''credit rating entities, and other private economic''.

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title III, §§ 351, 363(2), July 21, 2010, 124 Stat. 1546, 1550, provided that, effective on the transfer date, this section is amended:

(1) in subsection (a)—

(A) in paragraph (2)—

(i) in subparagraph (A)—

(I) in the first sentence, by striking out ''the Director of the Office of Thrift Supervision,'';

(II) in the second sentence—

(aa) by substituting ''to'' for ''the Director of the Office of Thrift Supervision,''; and

(bb) by inserting ''to'' before ''any Federal home''; and

(III) by substituting ''Finance Agency'' for ''Finance Board'' wherever appearing; and

(ii) in subparagraph (B), by substituting ''the Comptroller of the Currency and the Board of Governors of the Federal Reserve System,'' for ''the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision,'';

(B) in paragraph (3), in the first sentence, by substituting ''Comptroller of the Currency, and the Chairman of the Board of Governors of the Federal Reserve System.'' for ''Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision.'';

(C) in paragraph (6), by substituting ''section 1834(a)(3)(D)'' for ''section 1834(a)(3)(C)''; and

(D) in paragraph (7), by striking out '', the Director of the Office of Thrift Supervision,''; and

(2) in subsection (n)—

(i) in the heading, by substituting ''Comptroller of the Currency'' for ''Director of the Office of Thrift Supervision'';

(ii) in the first sentence—

(I) by substituting ''the Comptroller of the Currency'' for ''the Director of the Office of Thrift Supervision''; and

(II) by inserting ''Federal'' before ''savings associations'';

(iii) in the third sentence, by striking out '', the Financing Corporation, and the Resolution Funding Corporation''; and

(iv) by substituting ''the Comptroller'' for ''the Director'' wherever appearing.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Subparagraph (D), referred to in subsec. (b)(2)(A), was repealed by Pub. L. 111–203, § 331(a)(1). See 2010 Amendment note below.

The Bank Enterprise Act of 1991, referred to in subsec. (b)(2)(E), is subtitle C (§§ 231–234) of title II of Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2308–2315, which enacted sections 1834 to 1834b of this title, amended this section, and enacted provisions set out as a note under section 1811 of this title. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of this title and Tables.

The National Bank Act, referred to in subsec. (h), is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified principally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

The Federal Reserve Act, referred to in subsec. (h), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The Bank Holding Company Act of 1956, referred to in subsec. (j)(9)(E)(i), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

For effective date of the Change in Bank Control Act of 1978 [title VI of Pub. L. 95–630], referred to in subsec. (j)(14), see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

The National Housing Act, referred to in subsec. (m)(6) to (8), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of this title. Section 404 of the National Housing Act, is section 1727 of this title, as such section was in effect prior to repeal by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The calendar year in which the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is enacted, referred to in subsec. (m)(8), means the calendar year in which Pub. L. 101–73 was enacted. Such Act was approved Aug. 9, 1989.

PRIOR PROVISIONS

Section is derived from subsec. (h) of former section 264 of this title. See Codification note under section 1811 of this title.

AMENDMENTS

2010—Subsec. (a)(2)(B). Pub. L. 111–203, §333(a), substituted ''consultation'' for ''agreement''.

Subsec. (b)(1)(E)(i). Pub. L. 111–203, §333(b)(1), substituted ''including reports'' for ''such as reports''.

Subsec. (b)(1)(E)(iii). Pub. L. 111–203, §333(b)(2), which directed substitution of ''Corporation, except as provided in subsection (a)(2)(B)'' for ''Corporation'', was executed by making the substitution for ''Corporation'' the second time appearing, to reflect the probable intent of Congress.

Subsec. (b)(2)(C), (D). Pub. L. 111–203, §331(a), redesignated subpar. (C) as (D) and struck out former subpar. (D). Prior to amendment, text of subpar. (D) read as follows: ''No insured depository institution shall be barred from the lowest-risk category solely because of size.''

Subsec. (b)(3)(B). Pub. L. 111–203, §334(a), amended subpar. (B) generally. Prior to amendment, text read as follows: ''The reserve ratio designated by the Board of Directors for any year—

''(i) may not exceed 1.5 percent of estimated insured deposits; and

''(ii) may not be less than 1.15 percent of estimated insured deposits.''

Subsec. (e)(2)(B). Pub. L. 111–203, §332(1)(A), amended subpar. (B) generally. Prior to amendment, text read as follows: ''If, at the end of a calendar year, the reserve ratio of the Deposit Insurance Fund equals or exceeds 1.35 percent of estimated insured deposits and is not more than 1.5 percent of such deposits, the Corporation shall declare the amount in the Fund that is equal to 50 percent of the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent of the estimated insured deposits as dividends to be paid to insured depository institutions.''

Subsec. (e)(2)(C) to (G). Pub. L. 111–203, §332(1)(B), (C), amended subpar. (C) generally and struck out subpars. (D) to (G). Prior to amendment, subpars. (C) to (G) related to basis for distribution of dividends, notice and opportunity for comment, suspension or limitation of dividends by Board upon making certain determination, considerations in such determination, and annual review of such determination, respectively.

Subsec. (e)(4)(A). Pub. L. 111–203, §332(2), substituted ''paragraphs (2) and'' for ''paragraphs (2)(D) and''.

2009—Subsec. (b)(3)(E)(ii). Pub. L. 111–22 substituted ''8-year period'' for ''5-year period''.

2006—Subsec. (a)(2)(C). Pub. L. 109–351, §707(a), added subpar. (C).

Subsec. (a)(3). Pub. L. 109–173, §3(a)(1), substituted ''Such reports of condition shall be the basis for the certified statements to be filed pursuant to subsection (c).'' for ''Two dates shall be selected within the semiannual period of January to June inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in July pursuant to subsection (c) of this section, and two dates shall be selected within the semiannual period of July to December inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in January pursuant to subsection (c) of this section.''

Subsec. (a)(11). Pub. L. 109–351, §604, added par. (11).

Subsec. (b)(1)(B)(ii). Pub. L. 109–173, §3(a)(2), struck out ''semiannual'' before ''assessment''.

Subsec. (b)(1)(C). Pub. L. 109–173, §3(a)(2), struck out ''semiannual'' before ''assessment based'' in introductory provisions.

Subsec. (b)(1)(C)(i), (iii). Pub. L. 109–173, §8(a)(8)(A), substituted ''Deposit Insurance Fund'' for ''deposit insurance fund''.

Subsec. (b)(1)(D). Pub. L. 109–173, §8(a)(8)(B), substituted ''the Deposit Insurance Fund'' for ''each deposit insurance fund''.

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(14)(G)(i). See 1996 Amendment note below.

Subsec. (b)(1)(E), (F). Pub. L. 109–171, §2106, added subpars. (E) and (F).

Subsec. (b)(2)(A). Pub. L. 109–171, §2104(a)(1), added subpar. (A) and struck out heading and text of former subpar. (A). Text related to semiannual assessments for insured depository institutions to achieve or maintain the reserve ratio of each deposit insurance fund at the designated reserve ratio, the factors to be considered by the Board of Directors, and limitations on the assessment amount unless the insured depository institution exhibited financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory or was not well capitalized.

Subsec. (b)(2)(A)(i)(I), (iii), (iv). Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(14)(G)(ii)–(iv). See 1996 Amendment note below.

Subsec. (b)(2)(B). Pub. L. 109–171, §2104(a)(1), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: ''The Board of Directors shall—

''(i) set semiannual assessments for members of each deposit insurance fund independently from semiannual assessments for members of any other deposit insurance fund; and

''(ii) set the designated reserve ratio of each deposit insurance fund independently from the designated reserve ratio of any other deposit insurance fund.''

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(6)(B)(iii). See 1996 Amendment note below.

Subsec. (b)(2)(C). Pub. L. 109–173, §3(a)(3)(B), struck out ''semiannual'' before ''assessment''.

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(6)(B)(iii), (14)(G)(v). See 1996 Amendment note below.

Subsec. (b)(2)(D). Pub. L. 109–171, §2104(a)(2), added subpar. (D).

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(6)(B)(iii), (14)(G)(vi). See 1996 Amendment note below.

Subsec. (b)(2)(E) to (H). Pub. L. 109–173, §3(a)(3)(A), (C), redesignated subpar. (H) as (E) and struck out former subpars. (E) to (G), which related to minimum assessments, the transition rule for the Savings Association Insurance Fund, and a special rule until insurance funds achieved the designated reserve ratio, respectively.

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(6)(B)(iii). See 1996 Amendment notes below.

Subsec. (b)(3). Pub. L. 109–171, §2105(a), amended par. (3) generally. Prior to amendment, par. (3) related to a special rule for recapitalizing undercapitalized funds.

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(14)(G)(vii). See 1996 Amendment notes below.

Subsec. (b)(3)(E). Pub. L. 109–171, §2108, added subpar. (E) to par. (3), as amended by Pub. L. 109–171, §2105(a). See note above.

Subsec. (b)(4). Pub. L. 109–173, §3(a)(4), redesignated par. (5) as (4) and struck out heading and text of former par. (4). Text read as follows: ''For purposes of this section, the term 'semiannual period' means a period beginning on January 1 of any calendar year and ending on June 30 of the same year, or a period beginning on July 1 of any calendar year and ending on December 31 of the same year.''

Subsec. (b)(5). Pub. L. 109–173, §8(a)(8)(C), substituted ''any such assessment is necessary'' for ''any such assessment'' in introductory provisions, struck out ''(A) is necessary—'' immediately following introductory provisions, redesignated cls. (i) to (iii) of former subpar. (A) as subpars (A) to (C), respectively, and realigned margins, substituted ''insured depository institutions'' for ''Bank Insurance Fund members'' in subpar. (A), inserted ''that'' before ''the Corporation'' and substituted period for ''; and'' at end of subpar. (C), and struck out former subpar. (B) which read: ''is allocated between Bank Insurance Fund members and Savings Association Insurance Fund members in amounts which reflect the degree to which the proceeds of the amounts borrowed are to be used for the benefit of the respective insurance funds.''

Pub. L. 109–173, §3(a)(4), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 109–171, §2104(b), amended heading and text of par. (5) generally. Prior to amendment, text read as follows: ''Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of the institution's semiannual assessments. No insured depository institution shall be required to retain those records for that purpose for a period of more than 5 years from the date of the filing of any certified statement, except that when there is a dispute between the insured depository institution and the Corporation over the amount of any assessment, the depository institution shall retain the records until final determination of the issue.''

Subsec. (b)(6). Pub. L. 109–173, §3(a)(4), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(14)(G)(viii). See 1996 Amendment note below.

Subsec. (b)(7). Pub. L. 109–173, §3(a)(4), redesignated par. (7) as (6).

Subsec. (c)(1)(A), (2)(A). Pub. L. 109–173, §3(a)(5)(A), (B), struck out ''semiannual'' before ''assessment''.

Subsec. (c)(3). Pub. L. 109–173, §3(a)(5)(C), substituted ''initial assessment period'' for ''semiannual period''.

Subsec. (e). Pub. L. 109–171, §2107(a), amended heading and text of subsec. (e) generally. Prior to amendment, text related to refunds of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation and refunds in the event of a balance in the insurance fund in excess of the designated reserve.

Subsec. (g). Pub. L. 109–171, §2104(d), amended subsec. (g) generally. Prior to amendment, subsec. (g) provided that the Corporation was entitled to recover, by suit, any unpaid assessment lawfully payable to it by any insured depository institution, except that no proceeding could be brought after 5 years after the right accrued for which the claim was made unless fraudulent certified statements had been made by the depository institution, with special rules with respect to a cause of action which had expired within one year from Sept. 21, 1950, and with respect to assessments for any year prior to 1945.

Subsec. (i)(1), (3). Pub. L. 109–173, §2(b), substituted ''the standard maximum deposit insurance amount (as determined under section 1821(a)(1) of this title)'' for ''$100,000''.

Subsec. (j)(1)(D). Pub. L. 109–351, §705(1), substituted ''is needed—'' for ''is needed'' and ''title 31; or'' for ''title 31.'', inserted cl. (i) designation before ''to investigate'', and added cl. (ii).

Subsec. (j)(7)(C). Pub. L. 109–351, §705(2), substituted ''either the financial condition of any acquiring person or the future prospects of the institution'' for ''the financial condition of any acquiring person''.

Subsec. (j)(7)(F). Pub. L. 109–173, §8(a)(9), substituted ''Deposit Insurance Fund'' for ''Bank Insurance Fund or the Savings Association Insurance Fund''.

Subsecs. (*l*) to (n). Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(6)(B)(i), (ii). See 1996 Amendment note below.

2004—Subsec. (a)(1). Pub. L. 108–386 struck out ''(except a District bank)'' after ''State nonmember bank'' in first sentence.

2000—Subsec. (b)(2)(E)(iii). Pub. L. 106–569 amended directory language of Pub. L. 104–208, §2707. See 1996 Amendment note below.

1996—Subsec. (b)(1)(D). Pub. L. 104–208, §2704(d)(14)(G)(i), which directed substitution of ''the Deposit Insurance Fund'' for ''each deposit insurance fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (b)(2)(A)(i). Pub. L. 104–208, §2708(a), inserted ''when necessary, and only to the extent necessary'' after ''insured depository institutions'' in introductory provisions.

Subsec. (b)(2)(A)(i)(I). Pub. L. 104–208, §2704(d)(14)(G)(ii), which directed substitution of ''the Deposit Insurance Fund'' for ''each deposit insurance fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below.

Subsec. (b)(2)(A)(iii). Pub. L. 104–208, §2708(b), amended heading and text of cl. (iii) generally. Prior to amendment, text read as follows: ''The semiannual assessment for each member of a deposit insurance fund shall be not less than $1,000.''

Pub. L. 104–208, §2704(d)(14)(G)(iii), which directed substitution of ''the Deposit Insurance Fund'' for ''a deposit insurance fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below.

Subsec. (b)(2)(A)(iv). Pub. L. 104–208, §2704(d)(14)(G)(ii), (iv), which directed substitution of ''the Deposit Insurance Fund'' for ''each deposit insurance fund'' and striking out cl. (iv), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below.

Subsec. (b)(2)(A)(v). Pub. L. 104–208, §2708(c), added cl. (v).

Subsec. (b)(2)(B). Pub. L. 104–208, §2704(d)(6)(B)(iii), which directed the striking of subpar. (B) and the redesignation of subpar. (C) as (B), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below.

Subsec. (b)(2)(C). Pub. L. 104–208, §2704(d)(6)(B)(iii), (14)(G)(v), which directed the redesignation of subpar. (E) as (C) and substitution of ''the Deposit Insurance Fund'' for ''any deposit insurance fund'' and ''the Deposit Insurance Fund'' for ''that fund'' wherever appearing, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below.

Subsec. (b)(2)(D). Pub. L. 104–208, §2704(d)(6)(B)(iii), (14)(G)(vi), which directed the redesignation of subpar. (G) as (D) and substitution of ''fund achieves'' for ''funds achieve'' in heading and ''the Deposit Insurance Fund'' for ''a deposit insurance fund'' in text, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below.

Pub. L. 104–208, §2703(b), struck out heading and text of subpar. (D). Text read as follows: ''Notwithstanding any other provision of this paragraph, amounts assessed by the Financing Corporation under section 1441 of this title against Savings Association Insurance Fund members shall be subtracted from the amounts authorized to be assessed by the Corporation under this paragraph.''

Subsec. (b)(2)(E). Pub. L. 104–208, §2704(d)(6)(B)(iii), which directed the redesignation of subpar. (H) as (E), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (b)(2)(E)(iii). Pub. L. 104–208, §2707, as amended by Pub. L. 106–569, added cl. (iii).

Subsec. (b)(2)(F) to (H). Pub. L. 104–208, §2704(d)(6)(B)(iii), which directed the striking of subpar. (F) and the redesignation of subpars. (G) and (H) as (D) and (E), respectively, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (b)(3). Pub. L. 104–208, §2704(d)(14)(G)(vii)(I), which directed substitution of ''fund'' for ''funds'' in heading, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (b)(3)(A). Pub. L. 104–208, §2704(d)(14)(G)(vii)(II)–(V), which directed substitution of ''If'' for ''Except as provided in paragraph (2)(F), if'', ''the Deposit Insurance Fund'' for ''any deposit insurance fund'', and ''insured depository institutions'' for ''members of that fund'' in introductory provisions and directed substitution of ''the Deposit Insurance Fund'' for ''that fund'' in cl. (i), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (b)(3)(B). Pub. L. 104–208, §2704(d)(14)(G)(vii)(III), which directed substitution of ''the Deposit Insurance Fund'' for ''that fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (b)(3)(C), (D). Pub. L. 104–208, § 2704(d)(14)(G)(vii)(VI), which directed the striking of subpars. (C) and (D) and the addition of a new subpar. (C), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (b)(6). Pub. L. 104–208, § 2704(d)(14)(G)(viii), which directed the amendment of par. (6) by substituting ''any such assessment is necessary'' for ''any such assessment'' in introductory provisions, striking subpar. (A) designation, introductory provisions, and subpar. (B), redesignating cls. (i) to (iii) of subpar. (A) as subpars. (A) to (C), respectively, realigning margins, and substituting period for ''; and'' at end of subpar. (C), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (e). Pub. L. 104–208, § 2706, inserted heading and amended text of subsec. (e) generally. Prior to amendment, text read as follows: ''The Corporation (1) may refund to an insured depository institution any payment of assessment in excess of the amount due to the Corporation or (2) may credit such excess toward the payment of the assessment next becoming due from such depository institution and upon succeeding assessments until the credit is exhausted.''

Subsec. (j)(9)(A). Pub. L. 104–208, § 2226(1), substituted ''foreign bank, or any affiliate thereof,'' for ''financial institution and any affiliate of any financial institution'' and ''by the foreign bank or any affiliate thereof'' for ''by the financial institution and such institution's affiliates''.

Subsec. (j)(9)(B). Pub. L. 104–208, § 2226(2)(A), substituted ''paragraph, the following definitions shall apply:'' for ''paragraph—'' in introductory provisions.

Subsec. (j)(9)(B)(i). Pub. L. 104–208, § 2226(2)(B), added cl. (i) and struck out heading and text of former cl. (i). Text read as follows: ''The term 'financial institution' means any insured depository institution and any foreign bank that is subject to the provisions of the Bank Holding Company Act of 1956 by virtue of section 3106(a) of this title.''

Subsec. (j)(9)(B)(iii). Pub. L. 104–208, § 2226(2)(C), substituted ''foreign bank or any affiliate thereof'' for ''financial institution'' in introductory provisions.

Subsec. (j)(9)(C). Pub. L. 104–208, § 2226(3), substituted ''foreign bank or any affiliate thereof'' for ''financial institution or any of its affiliates'' before ''as principal'' and for ''financial institution or its affiliates'' before ''has a security interest''.

Subsec. (j)(9)(D)(i). Pub. L. 104–208, § 2226(4)(A), substituted ''the foreign bank and all affiliates thereof'' for ''the financial institution and all affiliates of the institution'' and ''foreign bank or affiliate thereof'' for ''financial institution or any such affiliate''.

Subsec. (j)(9)(D)(ii), (iii). Pub. L. 104–208, § 2226(4)(B), (C), substituted ''foreign bank and any affiliate thereof'' for ''financial institution and any affiliate of such institution'' before period at end of cl. (ii) and ''foreign bank or any affiliate thereof'' for ''financial institution'' before parenthetical at end of cl. (iii).

Subsec. (j)(9)(E)(i). Pub. L. 104–208, § 2226(5)(A), substituted ''subparagraph (A), a foreign bank or any affiliate thereof'' for ''subparagraph (A), a financial institution and the affiliates of such institution'' and substituted ''foreign bank or any affiliate thereof'' for ''institution or affiliate'' in two places.

Subsec. (j)(9)(E)(ii). Pub. L. 104–208, § 2226(5)(B), substituted ''foreign bank and any affiliate thereof'' for ''financial institution and any affiliate of such institution''.

Subsecs. (*l*) to (n). Pub. L. 104–208, § 2704(d)(6)(B)(i), (ii), which directed the striking of subsec. (*l*) and the redesignation of subsecs. (m) and (n) as (*l*) and (m), respectively, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Subsec. (a)(1). Pub. L. 103–325, § 308(b), struck out after third sentence ''The Board of Directors may require reports of condition to be published in such manner, not inconsistent with any applicable law, as it may direct.''

Subsec. (a)(2)(A). Pub. L. 103–325, § 305(b), inserted ''and, with respect to any State depository institution, any appropriate State bank supervisor for such institution,'' after ''The Corporation'' in first sentence.

Subsec. (a)(3). Pub. L. 103–325, § 602(a)(4), struck out ''Chairman of the'' before ''Director of the Office of Thrift Supervision''.

Subsec. (a)(9). Pub. L. 103–325, § 348, inserted at end ''In prescribing reporting and other requirements for the collection of actual and accurate information pursuant to this paragraph, the Corporation shall minimize the regulatory burden imposed upon insured depository institutions that are well capitalized (as defined in section 1831*o* of this title) while taking into account the benefit of the information to the Corporation, including the use of the information to enable the Corporation to more accurately determine the total amount of insured deposits in each insured depository institution for purposes of compliance with this chapter.''

Subsec. (b)(3)(C). Pub. L. 103–325, § 602(a)(5), struck out first period at end.

Subsec. (j)(2)(A). Pub. L. 103–325, § 602(a)(6), in third sentence substituted ''this paragraph'' for ''this section (j)(2)'' and ''this subsection (j)(2)'', respectively.

Subsec. (j)(7)(A). Pub. L. 103–325, § 602(a)(7), substituted ''monopolize'' for ''monoplize'' after ''conspiracy to''.

Subsec. (*l*)(7). Pub. L. 103–325, § 602(a)(8), substituted ''the ratio of'' for ''the ratio of the value of''.

Subsec. (m)(5)(A). Pub. L. 103–325, § 602(a)(9), substituted ''such institution'' for ''savings association institution''.

Subsec. (m)(7). Pub. L. 103–325, § 602(a)(10), inserted ''the'' before ''Federal''.

1993—Subsec. (b)(3)(C). Pub. L. 103–204, § 8(h), substituted ''and such amendment may extend the date specified in subparagraph (B) to such later date as the Corporation determines will, over time, maximize the amount of semiannual assessments received by the Savings Association Insurance Fund, net of insurance losses incurred by the Fund.'' for '', but such amendments may not extend the date specified in subparagraph (B)''.

Subsec. (i)(3), (4). Pub. L. 103–204, § 38(a), added par. (3) and redesignated former par. (3) as (4).

1992—Subsec. (a). Pub. L. 102–558, § 303(b)(1), amended directory language of Pub. L. 102–242, § 232(b)(1). See 1991 Amendment note below. Pub. L. 102–550, § 1604(b)(1), which contained a similar amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (a)(5). Pub. L. 102–558, § 303(b)(6)(A), amended directory language of Pub. L. 102–242, § 302(e). See 1991 Amendment note below. Pub. L. 102–550, § 1605(a)(5)(A), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (a)(9), (10). Pub. L. 102–550, § 1606(i)(1), redesignated par. (9), relating to designation of debtor or bankrupt corporation or transaction with such a corporation as highly leveraged, as (10).

Subsec. (b)(1)(A)(iii). Pub. L. 102–550, § 1603(a)(1), substituted ''assessment rate.'' for ''assessment.''

Subsec. (b)(2). Pub. L. 102–558, § 303(a), struck out comma after ''members'' in subpar. (D) and added subpar. (H). Pub. L. 102–550, § 1605(a)(2), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (b)(2)(A)(iii)(I). Pub. L. 102–550, § 931(b), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''½ the assessment rate applicable with respect to such deposits pursuant to paragraph (10) during that semiannual assessment period; and''.

Subsec. (b)(6). Pub. L. 102–558, §303(b)(7), added par. (6). Pub. L. 102–550, §1603(a)(3), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (b)(6)(D). Pub. L. 102–550, §1605(b)(1), added subpar. (D) and struck out former subpar. (D) which read as follows: ''any liability of the insured depository institution which is not treated as an insured deposit pursuant to section 1821(a)(8) of this title.''

Subsec. (b)(7). Pub. L. 102–558, §303(b)(8), added par. (7). Pub. L. 102–550, §1605(a)(6), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (b)(10). Pub. L. 102–550, §931(a), substituted ''at an assessment rate to be determined by the Corporation by regulation. Such assessment rate may not be less than ½ the maximum assessment rate.'' for ''at the assessment rate of ½ the maximum rate.''

Subsec. (c)(4). Pub. L. 102–550, §1605(b)(2), added par. (4) and substituted ''paragraph (1)'' for ''paragraph (1) or (2)'' wherever appearing.

Subsec. (d). Pub. L. 102–558, §303(b)(6)(A), amended directory language of Pub. L. 102–242, §302(e). See 1991 Amendment note below. Pub. L. 102–550, §1605(a)(5)(A), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (d)(5). Pub. L. 102–558, §303(b)(3), made technical amendment to reference to section 1834b of this title, to correct underlying provisions of original act. Pub. L. 102–550, §1604(b)(3), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

1991—Subsec. (a). Pub. L. 102–242, §474, added par. (9) relating to designation of debtor or bankrupt corporation or transaction with such a corporation as highly leveraged.

Pub. L. 102–242, §232(b)(1), as amended by Pub. L. 102–558, §303(b)(1), added par. (6) and redesignated former pars. (6) to (8) as (7) to (9), respectively.

Pub. L. 102–242, §141(c), amended par. (8) generally, substituting provisions relating to data collections for provisions which required that the reports of conditions made by depository institutions be provided to auditors which had made independent audits of insured depository institutions within the past two years and that such reports also include specified additional information. Par. (8) subsequently redesignated (9), see above.

Subsec. (a)(5). Pub. L. 102–242, §302(e)(3), as renumbered by Pub. L. 102–558, §303(b)(6)(A), struck out ''and for the computation of assessments provided in subsection (b) of this section'' after ''For this purpose''.

Subsec. (b). Pub. L. 102–242, §302(a), amended subsec. (b) generally, revising and restating as pars. (1) to (5) provisions of former pars. (1) to (11).

Subsec. (b)(1)(A)(iii). Pub. L. 102–242, §104(b), added cl. (iii) and struck out former cl. (iii) which read as follows: ''DEADLINE FOR ANNOUNCING RATE CHANGES.—The Corporation shall announce any change in assessment rates.—

''(I) for the semiannual period beginning on January 1 and ending on June 30, not later than the preceding November 1; and

''(II) for the semiannual period beginning on July 1 and ending on December 31, not later than the preceding May 1.''

Subsec. (b)(1)(C). Pub. L. 102–242, §104(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''ASSESSMENT RATE FOR BANK INSURANCE FUND MEMBERS.—

''(i) IN GENERAL.—The assessment rate for Bank Insurance Fund members shall be the greater of 0.15 percent or such rate as the Board of Directors, in its sole discretion, determines to be appropriate—

''(I) to maintain the reserve ratio at the designated reserve ratio; or

''(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio within a reasonable period of time.

''(ii) FACTORS TO BE CONSIDERED.—In making any determination under clause (i), the Board of Directors shall consider the Bank Insurance Fund's expected operating expenses, case resolution expenditures, and income, the effect of the assessment rate on members' earnings and capital, and such other factors as the Board of Directors may deem appropriate.

''(iii) MINIMUM ASSESSMENT.—Notwithstanding clause (i), the assessment shall not be less than $1,000 for each member in each year.''

Subsec. (b)(2)(A)(i)(II). Pub. L. 102–242, §232(b)(3)(A), added subcl. (II) and struck out former subcl. (II) which read as follows: ''such Bank Insurance Fund member's average assessment base for the immediately preceding semiannual period; and''.

Subsec. (b)(2)(A)(ii)(II). Pub. L. 102–242, §232(b)(3)(B), added subcl. (II) and struck out former subcl. (II) which read as follows: ''such Savings Association Insurance Fund member's average assessment base for the immediately preceding semiannual period.''

Subsec. (b)(2)(A)(iii). Pub. L. 102–242, §232(b)(3)(C), added cl. (iii).

Subsec. (b)(6)(D). Pub. L. 102–242, §311(a)(2), added subpar. (D).

Subsec. (b)(7) to (9). Pub. L. 102–242, §103(b), added par. (7) and redesignated former pars. (7) and (8) as (8) and (9), respectively. Former par. (9) redesignated (10).

Subsec. (b)(10). Pub. L. 102–242, §232(b)(2), added par. (10) and redesignated former par. (10) as (11).

Pub. L. 102–242, §113(c)(1), inserted ''or section 1820(e) of this title'' after ''under this section''.

Pub. L. 102–242, §103(b)(1), redesignated par. (9) as (10).

Subsec. (b)(11). Pub. L. 102–242, §232(b)(2), redesignated par. (10) as (11).

Subsec. (c). Pub. L. 102–242, §302(b), amended subsec. (c) generally, revising and restating as pars. (1) to (3) provisions of former pars. (1) to (5).

Subsec. (c)(5). Pub. L. 102–242, §313(a), added par. (5).

Subsec. (d). Pub. L. 102–242, §302(e)(4), as renumbered by Pub. L. 102–558, §303(b)(6)(A), amended subsec. (d) generally, substituting provisions exempting Corporation from apportionment for purposes of chapter 15 of title 31 for provisions relating to assessment credits.

Subsec. (d)(1)(A). Pub. L. 102–242, §233(c)(2)(A), inserted ''(other than credits allowed pursuant to paragraph (4))'' after ''amount to be credited''.

Subsec. (d)(1)(B). Pub. L. 102–242, §233(c)(2)(B), inserted ''(taking into account any assessment credit allowed pursuant to paragraph (4))'' after ''should be reduced''.

Subsec. (d)(4) to (7). Pub. L. 102–242, §233(c)(1), added pars. (4) and (5) and redesignated former pars. (4) and (5) as (6) and (7), respectively.

Subsec. (i). Pub. L. 102–242, §311(b)(3), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''Except with respect to trust funds which are owned by a depositor referred to in paragraph (2) of section 1821(a) of this title, trust funds held by an insured depository institution in a fiduciary capacity whether held in its trust department or held or deposited in any other department of the fiduciary depository institution shall be insured in an amount not to exceed $100,000 for each trust estate, and when deposited by the fiduciary depository institution in another insured depository institution such trust fund shall be similarly insured to the fiduciary depository institution according to the trust estates represented. Notwithstanding any other provision of this chapter, such insurance shall be separate from and additional to that covering other deposits of the owners of such trust funds or the beneficiaries of such trust estates. The Board of Directors shall have power by regulation to prescribe the manner of reporting and of depositing such trust funds.''

Subsec. (j)(9). Pub. L. 102–242, §205, amended par. (9) generally. Prior to amendment, par. (9) read as follows:

''Whenever any insured depository institution makes a loan or loans, secured, or to be secured, by 25 per centum or more of the outstanding voting stock of an insured depository institution, the president or other chief executive officer of the lending bank shall promptly report such fact to the appropriate Federal banking agency of the bank whose stock secures the loan or loans upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more or where the stock is that of the newly organized bank prior to its opening.''

1990—Subsec. (b)(1)(A). Pub. L. 101–508, § 2003(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

''(A) ANNUAL ASSESSMENT RATES PRESCRIBED.—

''(i) The Corporation shall set assessment rates for insured depository institutions annually.

''(ii) The Corporation shall fix the annual assessment rate of Bank Insurance Fund members independently from the annual assessment rate for Savings Association Insurance Fund members.

''(iii) The Corporation shall, by September 30 of each year, announce the assessment rates for the succeeding calendar year.''

Subsec. (b)(1)(B)(i)(II), (ii)(II). Pub. L. 101–508, § 2004(1), struck out '', not exceeding 1.50 percent,'' after ''insured deposits''.

Subsec. (b)(1)(B)(iii). Pub. L. 101–508, § 2004(2), inserted ''and'' after ''Fund;'' in subcl. (I), redesignated subcl. (IV) as (II) and struck out former subcls. (II) and (III) which read as follows:

''(II) allocate each calendar quarter to an Earnings Participation Account in the Bank Insurance Fund the investment income earned by the Bank Insurance Fund on such Supplemental Reserves in the preceding calendar quarter;

''(III) distribute such Earnings Participation Account at the conclusion of each calendar year to Bank Insurance Fund members; and''.

Subsec. (b)(1)(B)(iv). Pub. L. 101–508, § 2004(3), inserted ''and'' after ''Fund;'' in subcl. (I), redesignated subcl. (IV) as (II), and struck out former subcls. (II) and (III) which read as follows:

''(II) allocate each calendar quarter to an Earnings Participation Account in the Savings Association Insurance Fund the investment income earned by the Savings Association Insurance Fund on such Supplemental Reserves in the preceding calendar quarter;

''(III) distribute such Earnings Participation Account at the conclusion of each calendar year to Savings Association Insurance Fund members; and''.

Subsec. (b)(1)(C). Pub. L. 101–508, § 2002(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''ASSESSMENT RATE FOR BANK INSURANCE FUND MEMBERS.—The annual assessment rate for Bank Insurance Fund members shall be—

''(i) until December 31, 1989, 1/12 of 1 percent;

''(ii) from January 1, 1990, through December 31, 1990, 0.12 percent;

''(iii) on and after January 1, 1991, 0.15 percent;

''(iv) on January 1 of a calendar year in which the reserve ratio of the Bank Insurance Fund is expected to be less than the designated reserve ratio by determination of the Board of Directors, such rate determined by the Board of Directors to be appropriate to restore the reserve ratio to the designated reserve ratio within a reasonable period of time, after taking into consideration the expected operating expenses, case resolution expenditures, and investment income of the Bank Insurance Fund, and the impact on insured bank earnings and capitalization, except that—

''(I) from August 9, 1989, until the earlier of January 1, 1995, or January 1 of the calendar year in which the Bank Insurance Fund reserve ratio is expected to first attain the designated reserve ratio, the rate shall be as specified in clauses (i), (ii), and (iii) of this subparagraph so long as the Bank Insurance Fund reserve ratio is increasing on a calendar year basis;

''(II) the rate shall not exceed 0.325 percent; and

''(III) the increase in the rate in any 1 year shall not exceed 0.075 percent; and

''(v) sufficient to ensure that for each member in each year the assessment shall not be less than $1,000.''

Subsec. (b)(1)(D). Pub. L. 101–508, § 2002(b), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''ASSESSMENT RATE FOR SAVINGS ASSOCIATION INSURANCE FUND MEMBERS.—The annual assessment rate for Savings Association Insurance Fund members shall be—

''(i) until December 31, 1990, 0.208 percent;

''(ii) from January 1, 1991, through December 31, 1993, 0.23 percent;

''(iii) from January 1, 1994, through December 31, 1997, 0.18 percent;

''(iv) on and after January 1, 1998, 0.15 percent;

''(v) on January 1 of a calendar year in which the reserve ratio of the Savings Association Insurance Fund is expected to be less than the designated reserve ratio by determination of the Board of Directors, such rate determined by the Board of Directors to be appropriate to restore the reserve ratio to the designated reserve ratio within a reasonable period of time, after taking into consideration the expected expenses and income of the Savings Association Insurance Fund, and the effect on insured savings association earnings and capitalization, except that—

''(I) from August 9, 1989, through December 31, 1994, the rate shall be as specified in clauses (i), (ii), and (iii) above;

''(II) the rate shall not exceed 0.325 percent; and

''(III) the increase in the rate in any one year shall not exceed 0.075 percent; and

''(vi) sufficient to ensure that for each member in each year the assessment shall not be less than $1,000.''

Subsec. (b)(2)(A). Pub. L. 101–508, § 2002(c)(1), inserted ''or subparagraph (C)(iii) or (D)(iii) of subsection (b)(1) of this section'' after ''subsection (c)(2) of this section'' in introductory provisions.

Subsec. (b)(2)(A)(i). Pub. L. 101–508, § 2002(c)(2), inserted ''the greater of $500 or an amount'' before ''equal to the product of'' in introductory provisions.

Subsec. (b)(2)(A)(i)(I). Pub. L. 101–508, § 2003(b)(1), (2), struck out ''annual'' before ''assessment'' and inserted ''during that semiannual period'' after ''member''.

Subsec. (b)(2)(A)(ii). Pub. L. 101–508, § 2002(c)(2), inserted ''the greater of $500 or an amount'' before ''equal to the product of'' in introductory provisions.

Subsec. (b)(2)(A)(ii)(I). Pub. L. 101–508, § 2003(b)(1), (3), struck out ''annual'' before ''assessment'' and inserted ''during that semiannual period'' after ''member''.

Subsec. (d)(1)(A). Pub. L. 101–508, § 2003(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''By September 30 of each calendar year, the Corporation shall prescribe and publish the aggregate amount to be credited to insured depository institutions in the succeeding calendar year.''

1989—Pub. L. 101–73, § 201, substituted references to insured depository institutions for references to insured banks wherever appearing in this section and references to Director of the Office of Thrift Supervision for references to Federal Home Loan Bank Board wherever appearing in this section.

Subsec. (a)(1). Pub. L. 101–73, § 911(c), substituted provisions for different and increasing levels of penalties, and provisions regarding assessment and collection of penalties and agency hearings, for provision at end that every such bank which failed to make or publish any such report within 10 days would be subject to a penalty of not more than $100 for each day of such failure recoverable by the Corporation for its use.

Subsec. (a)(2)(A). Pub. L. 101–73, § 208(1)(A)–(C), (E), inserted references to Director of Office of Thrift Supervision, Federal Housing Finance Board, and any Federal home loan bank in two places, substituted ''any of them'' for ''either of them'', and substituted ''depository institution, and may furnish'' for ''State non-

member bank (except a District bank), and may furnish''.

Pub. L. 101–73, §208(1)(D), which directed the amendment of last sentence of subpar. (A) by inserting ''or savings associations'' after ''banks'' could not be executed, because ''banks'' does not appear in text.

Subsec. (a)(2)(B). Pub. L. 101–73, §208(1)(F), added subpar. (B) and struck out former subpar. (B) which read as follows: ''The Corporation shall have access to reports of examination made by, and reports of condition made to, the Federal Home Loan Bank Board or any Federal Home Loan Bank, respecting any insured Federal savings bank, and the Corporation shall have access to all revisions of reports of condition made to either such agency. Such agency shall promptly advise the Corporation of any revisions or changes in respect to deposit liabilities made or required to be made in any report of condition.''

Subsec. (a)(3). Pub. L. 101–73, §208(2)(A), substituted ''Each insured depository institution shall make to the appropriate Federal banking agency 4 reports'' for ''Each insured State nonmember bank (except a District bank) and each foreign bank having an insured branch (other than a Federal branch) shall make to the Corporation, each insured national bank, each foreign bank having an insured branch which is a Federal branch, and each insured District bank shall make to the Comptroller of the Currency, each insured State member bank shall make to the Federal Reserve bank of which it is a member, and each insured Federal savings bank shall make to the Federal Home Loan Bank Board, four reports''.

Pub. L. 101–73, §208(2)(B)–(D), substituted ''depository institution, the preceding'' for ''bank, the preceding'', ''depository institution to make such'' for ''bank to make such'', ''depository institution other than the officer'' for ''bank other than the officer'', ''insured depository institution shall furnish to the Corporation'' for ''insured national, District and State member bank shall furnish to the Corporation'', and ''banks or savings associations under its jurisdiction'' for ''banks under its jurisdiction''.

Subsec. (a)(4). Pub. L. 101–73, §208(3), which directed the substitution of references to depository institutions for references to banks, except where ''foreign bank'' appeared, was executed as directed, except that the exception was made for ''foreign banks'' rather than ''foreign bank'', as the probable intent of Congress.

Subsec. (a)(8). Pub. L. 101–73, §931(a), added par. (8).

Subsec. (b)(1). Pub. L. 101–73, §208(4), added par. (1) and struck out former par. (1) which read as follows: ''The annual assessment rate shall be one-twelfth of 1 per centum. Except as provided in subsection (c)(2) of this section, the semiannual assessment due from any insured bank for any semiannual period shall be equal to one-half the annual assessment rate multiplied by such bank's average assessment base for the immediately preceding semiannual period.''

Subsec. (b)(2). Pub. L. 101–73, §208(4), added par. (2) and struck out former par. (2) which read as follows: ''For the purposes of this section the term 'semiannual period' means a period beginning on January 1 of any calendar year and ending on June 30 of the same year, or a period beginning on July 1 of any calendar year and ending on December 31 of the same year.''

Subsec. (b)(3) to (8). Pub. L. 101–73, §208(6), substituted references to depository institutions for references to banks wherever appearing.

Subsec. (c)(1) to (3). Pub. L. 101–73, §208(7), substituted ''depository institution'' for ''bank'' wherever appearing.

Subsec. (d). Pub. L. 101–73, §208(5), amended subpar. (d) generally, substituting provisions relating to computation, applicability, definitions, etc., respecting assessment credits, for provisions relating to transfer of net assessment income of Corporation to capital account, pro rata credit to insured banks, and adjustment of transferred income.

Subsecs. (e) to (g), (i). Pub. L. 101–73, §208(7), substituted ''depository institution'' for ''bank'' wherever appearing.

Subsec. (j)(1). Pub. L. 101–73, §208(8), struck out at end ''For purposes of this subsection, the term 'insured bank' shall include any 'bank holding company', as that term is defined in section 1841 of this title, which has control of any such insured bank, and the appropriate Federal banking agency in the case of bank holding companies shall be the Board of Governors of the Federal Reserve System.''

Subsec. (j)(2)(A). Pub. L. 101–73, §208(9), substituted ''depository institution'' for ''bank'' wherever appearing, and substituted ''default'' for ''failure''.

Subsec. (j)(2)(D). Pub. L. 101–73, §208(10), inserted ''unless such agency determines that an emergency exists,'' after ''banking agency shall,''.

Subsec. (j)(7)(F). Pub. L. 101–73, §208(11), added subpar. (F).

Subsec. (j)(15). Pub. L. 101–73, §905(c), inserted at end ''The resignation, termination of employment or participation, divestiture of control, or separation of or by an institution-affiliated party (including a separation caused by the closing of a depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this subsection against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such date occurs before, on, or after the date of the enactment of this sentence).''

Subsec. (j)(16). Pub. L. 101–73, §907(d), amended par. (16) generally. Prior to amendment, par. (16) read as follows: ''Any person who willfully violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency pursuant thereto, shall forfeit and pay a civil penalty of not more than $10,000 per day for each day during which such violation continues. The appropriate Federal banking agency shall have authority to assess such a civil penalty, after giving notice and an opportunity to the person to submit data, views, and arguments, and after giving due consideration to the appropriateness of the penalty with respect to the size of financial resources and good faith of the person charged, the gravity of the violation, and any data, views, and arguments submitted. The agency may collect such civil penalty by agreement with the person or by bringing an action in the appropriate United States district court, except that in any such action, the person against whom the penalty has been assessed shall have a right to trial de novo.''

Subsec. (j)(17). Pub. L. 101–73, §208(12), amended par. (17) generally. Prior to amendment, par. (17) read as follows: ''This subsection shall not apply to a transaction subject to section 1842 or section 1828 of this title. This subsection shall not apply to an insured Federal savings bank.''

Subsec. (j)(18). Pub. L. 101–73, §208(13), added par. (18).

Subsec. (*l*). Pub. L. 101–73, §208(14), added subsec. (*l*).

Subsecs. (m), (n). Pub. L. 101–73, §208(15), added subsecs. (m) and (n).

1987—Subsec. (b)(9). Pub. L. 100–86 added par. (9).

1986—Subsec. (j)(1). Pub. L. 99–570, §1360(a), substituted ''or, in the discretion of the agency, extending for an additional 30 days'' for ''or extending for up to another thirty days'' in first sentence, notwithstanding directory language that new wording be substituted for ''or extending up to another thirty days'', and amended second sentence generally. Prior to amendment, second sentence read as follows: ''The period for disapproval may be further extended only if the agency determines that any acquiring party has not furnished all the information required under paragraph (6) of this subsection or that in its judgment any material information submitted is substantially inaccurate''.

Subsec. (j)(2). Pub. L. 99–570, §1360(b), (c), designated existing provisions as subpar. (A) and added subpars. (B) to (D).

Subsec. (j)(15) to (16). Pub. L. 99–570, §1360(d), added par. (15) and redesignated former pars. (15) and (16) as (16) and (17), respectively.

1982—Subsec. (a)(2). Pub. L. 97–320, § 113(d), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(3). Pub. L. 97–320, § 113(e), inserted the reporting requirement for each insured Federal savings bank, added the Chairman of the Federal Home Loan Bank Board to the group designated to decide upon which dates the reports will be made, and struck out alternative provision that such decision would be made by a majority of such group.

Subsec. (a)(6). Pub. L. 97–320, § 113(f), inserted '', the Federal Home Loan Bank Board,'' after ''Comptroller of the Currency''.

Subsec. (d)(1)(4). Pub. L. 97–320, § 117, added cl. (4).

Subsec. (j)(16). Pub. L. 97–320, § 113(q), inserted provision that this subsection shall not apply to an insured Federal savings bank.

Subsec. (k). Pub. L. 97–320, § 429, substituted requirement that Federal banking agencies issue rules and regulations for reports and public disclosure by banks of extensions of credits to its executive officers or principal shareholders or the relative interests of such persons for prior provisions: covering annual reports of insured banks to Federal banking agencies containing information respecting preceding calendar year listing names of stockholders of record owning, controlling, or having more than a 10 per centum voting control of any class of voting securities of the bank and also listing names of executive officers and controlling stockholders and aggregate amount of extensions of credit to such persons, any company controlled by such persons, and any political or campaign committee the funds or services of which will benefit such persons, or which is controlled by such persons; defining an executive officer as one meant under section 375a of this title; authorizing Federal banking agencies to issue rules and regulations to require filed information to be included in any required reports to be made available to the public upon request; and requiring copies of any reports to be made publicly available upon request.

1981—Subsec. (a)(4). Pub. L. 97–110, § 103(b)(1), inserted ''the Trust Territory of the Pacific Islands,'' after ''American Samoa,''.

Subsec. (b)(5)(B). Pub. L. 97–110, § 103(b)(2), inserted ''the Trust Territory of the Pacific Islands,'' after ''American Samoa,''.

1980—Subsec. (d). Pub. L. 96–221, § 308(d), designated existing provisions as par. (1), substituted ''1980'' for ''1961'' and ''40'' for ''33⅓'', and added par. (2).

Subsec. (i). Pub. L. 96–221, § 308(a)(1)(B), substituted ''$100,000'' for ''$40,000''.

1978—Subsec. (a)(1). Pub. L. 95–369, § 6(c)(8), inserted ''and each foreign bank having an insured branch which is not a Federal branch'' after ''(except a District bank)''.

Subsec. (a)(3). Pub. L. 95–630, § 302, substituted ''the signatures of at least two directors or trustees of the reporting bank other than the officer making such declaration'' for ''the signatures of at least three of the directors or trustees of the reporting bank other than the officer making such declaration, or by at least two if there are not more than three directors or trustees''.

Pub. L. 95–369, § 6(c)(9), inserted ''and each foreign bank having an insured branch (other than a Federal branch)'' after ''(except a District Bank)'' and ''each foreign bank having an insured branch which is a Federal branch'' after ''each insured national bank''.

Subsec. (a)(4). Pub. L. 95–630, § 310(a), inserted provision that deposits which are accumulated for payment of personal loans and are assigned or pledged to assure payment of loans at maturity not be included in total deposits in such reports, but shall be deducted from loans for which such deposits are assigned or pledged to assure repayment.

Subsec. (a)(5). Pub. L. 95–630, § 310(b), struck out ''deposits accumulated for the payment of personal loans,'' after ''deposit-open account,''.

Subsec. (a)(7). Pub. L. 95–369, § 6(c)(10), added par. (7).

Subsec. (b)(4). Pub. L. 95–369, § 6(c)(11), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B) of this paragraph, a bank's assessment base'' for ''A bank's assessment base'', and added subpar. (B).

Subsec. (b)(6). Pub. L. 95–630, § 310(c), redesignated subpars. (C) and (D) as (B) and (C) and struck out former subpar. (B) which related to deposits included in reported deposit liabilities which are accumulated for the payment of personal loans and are assigned or pledged to assure repayment of the loans at maturity.

Subsec. (j). Pub. L. 95–630, § 602, amended subsec. (j) generally, substituting provisions relating to the requirement that no person shall acquire control of any insured bank unless the appropriate Federal agency is notified 60 days prior to such transfer and authorizing the appropriate Federal agency to approve or disapprove such transfer for provisions relating to the requirement that notification of a transfer of control of an insured bank be given to the appropriate Federal agency after such transfer.

Subsec. (j)(1). Pub. L. 95–369, § 6(c)(12), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B) of this paragraph, whenever'' for ''Whenever'', and added subpar. (B).

Subsec. (j)(2). Pub. L. 95–369, § 6(c)(13), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B) of this paragraph, whenever'' for ''Whenever'', and added subpars. (B) and (C).

Subsec. (k). Pub. L. 95–630, § 901, added subsec. (k).

1974—Subsec. (i). Pub. L. 93–495 inserted exception relating to trust funds owned by a depositor referred to par. (2) of section 1821(a) of this title, and substituted ''$40,000'' for ''$20,000''.

1970—Pub. L. 91–609 inserted reference to American Samoa in subsecs. (a)(4) and (b)(5)(B), respectively.

1969—Subsec. (i). Pub. L. 91–151 substituted $20,000 for $15,000 in first sentence.

1966—Subsec. (i). Pub. L. 89–695, § 301(b), substituted ''$15,000'' for ''$10,000'' in first sentence.

Subsec. (j)(6). Pub. L. 89–695, § 201, repealed par. (6) definition of ''appropriate Federal banking agency'', now incorporated in section 1813(q) of this title.

1964—Subsec. (j). Pub. L. 88–593 added subsec. (j).

1960—Subsec. (a). Pub. L. 86–671, § 2, amended subsec. (a) generally, and among other changes, provided for reports of condition, the form, contents, date of making, number, and publication of the reports of condition, declaration and attestation of officers, penalties, access to reports, computation of deposit liabilities, segregation and classification of deposits and definitions. Former provisions of the subsection relating to rate and amount of assessment, assessment base and deductions therefrom, form and contents of certified statements, and payment of assessments, are either covered or superseded by provisions incorporated in subsecs. (b)(1), (3), (4), (6) including the last paragraph, and (c)(3) of this section.

Subsec. (b). Pub. L. 86–671, § 2, amended subsec. (b) generally, and among other changes, provided for the computation of assessments, the rate and amount, the base, additions and deductions, records and definition. Former provisions of the subsection relating to filing of certified statements of assessment base and amounts due and payment thereof are incorporated in subsec. (c)(1) of this section.

Subsec. (c). Pub. L. 86–671, § 2, inserted provisions of pars. (1) and (3), incorporated in par. (2) the provisions of former subsec. (c) relating to exemption from payment of assessment for semiannual period in which bank became an insured bank and amount of first semiannual assessment due, omitted therefrom the provision for inclusion in the assessment base of the assumed liabilities for deposits of other banks, and required the filing of certified statement of the assessment base or the making of a special report of condition.

Subsec. (d). Pub. L. 86–671, § 3, substituted ''December 31, 1961'' and ''33⅓'' for ''December 31, 1960'' and ''40'', respectively.

Subsec. (f). Pub. L. 86–671, § 3, substituted ''fails to make any report of condition under subsection (a) of this section or to file'' for ''fails to file'' and inserted ''make such report or'' before ''file such statement''.

Subsec. (g). Pub. L. 86–671, § 3, substituted ''made any such report of condition under subsection (a) of this section or filed'' for ''filed'' and ''to make any such report or file'' for ''to file'' in first sentence.

Subsec. (h). Pub. L. 86–671, § 3, inserted ''to make any report of condition under subsection (a) of this section or'' before ''to file''.

Subsec. (i). Pub. L. 86–671, § 3, substituted ''in its trust department or held or deposited in any other department of the fiduciary bank'' for ''in its trust or deposited in any other department or in another bank'' in first sentence and deleted proviso respecting deposit liability of insured bank in which trust funds are deposited rather than deposit liability of depositing fiduciary bank from second sentence.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 331(a) and 332 to 334(a) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

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

Amendment by section 939(a)(1) of Pub. L. 111–203 effective 2 years after July 21, 2010, see section 939(g) of Pub. L. 111–203, set out as a note under section 24a of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 2(b) of Pub. L. 109–173 effective Apr. 1, 2006, see section 2(e) of Pub. L. 109–173, set out as a note under section 1785 of this title.

Pub. L. 109–173, § 3(b), Feb. 15, 2006, 119 Stat. 3606, provided that: ''This section [amending this section and sections 1818, 1823, and 1834 of this title] and the amendments made by this section shall take effect on the date that the final regulations required under section 2109(a)(5) of the Federal Deposit Insurance Reform Act of 2005 [Pub. L. 109–171, set out as a Regulations note below] take effect [Jan. 1, 2007, see 71 F.R. 69282].''

Amendment by section 8(a)(8), (9) of Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

Amendment by section 2102(b) of Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

Pub. L. 109–171, title II, § 2104(e), Feb. 8, 2006, 120 Stat. 14, provided that: ''This section [amending this section and section 1828 of this title] and the amendments made by this section shall take effect on the date that the final regulations required under section 9(a)(5) [probably means section 2109(a)(5) of Pub. L. 109–171, set out as a Regulations note below] take effect [Jan. 1, 2007, see 71 F.R. 69323].''

Pub. L. 109–171, title II, § 2105(b), Feb. 8, 2006, 120 Stat. 15, provided that: ''This section [amending this section] and the amendments made by this section shall take effect on the date that the final regulations required under section 9(a)(1) [probably means section 2109(a)(1) of Pub. L. 109–171, set out as a Regulations note below] take effect [Jan. 1, 2007, see 71 F.R. 69323].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–569, title XII, § 1231(b), Dec. 27, 2000, 114 Stat. 3037, provided that: ''The amendments made by subsection (a) [amending this section] shall be deemed to have the same effective date as section 2707 of the Deposit Insurance Funds Act of 1996 (Public Law 104–208; 110 Stat. 3009–496).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2703(b) of Pub. L. 104–208 applicable with respect to semiannual periods which begin after Dec. 31, 1996, see section 2703(c)(1) of Pub. L. 104–208, set out as an Effective and Termination Dates of 1996 Amendment note under section 1441 of this title.

Amendment by section 2704(d)(6)(B), (14)(G) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 8(h) of Pub. L. 103–204 provided that the amendment made by that section is effective on the effective date of the amendment made by section 302(a) of Pub. L. 102–242. See Effective Date of 1991 Amendment note below.

Section 38(a) of Pub. L. 103–204 provided that the amendment made by that section is effective Dec. 19, 1993.

EFFECTIVE DATE OF 1992 AMENDMENTS

Section 303(b)(7) of Pub. L. 102–558 provided that the amendment made by that section is effective on the effective date of the amendment made by section 302(a) of Pub. L. 102–242. See Effective Date of 1991 Amendment note below.

Section 303(b)(8) of Pub. L. 102–558 provided that the amendment made by that section is effective on the effective date of the amendment made by section 302(e)(4) of Pub. L. 102–242. See Effective Date of 1991 Amendment note below.

Amendment by section 303(a), (b)(1), (3), (6)(A) of Pub. L. 102–558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102–558, set out as a note under section 2062 of Title 50, Appendix, War and National Defense.

Sections 1603(a)(3) and 1605(a)(6) of Pub. L. 102–550, which provided effective date provisions for the amendments made by those sections, were repealed, effective Oct. 28, 1992, by section 305 of Pub. L. 102–558, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Section 1605(b)(2) of Pub. L. 102–550 provided that the amendment made by that section is effective on the effective date of the amendment made by section 302(b) of Pub. L. 102–242. See Effective Date of 1991 Amendment note below.

Amendment by sections 1603(a)(1), 1604(b)(1), (3), 1605(a)(2), (5)(A), (b)(1), 1606(i)(1) of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 302(g) of Pub. L. 102–242 provided that: ''The amendments made by this section [amending this section and sections 1815, 1818, and 1820 of this title] shall become effective on the earlier of—

''(1) 180 days after the date on which final regulations promulgated in accordance with subsection (c) [set out below] become effective [Final regulations became effective Oct. 1, 1993. See 58 F.R. 34357.]; or

''(2) January 1, 1994.''

Amendment by section 311(a)(2), (b)(3) of Pub. L. 102–242 effective at end of 2-year period beginning Dec. 19, 1991, but not applicable to any time deposit which was made before Dec. 19, 1991, and matures after end of 2-year period beginning on Dec. 19, 1991, with rollovers

and renewals treated as new deposits, see section 311(c)(1), (2) of Pub. L. 102–242, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 907(d) of Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of $5,000 and $25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(*l*) of Pub. L. 101–73, set out as a note under section 93 of this title.

Amendment by section 911(c) of Pub. L. 101–73 applicable with respect to reports filed or required to be filed after Aug. 9, 1989, see section 911(i) of Pub. L. 101–73, set out as a note under section 161 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1364(f) of Pub. L. 99–570 provided that: ''The amendments made by sections 1360 and 1361 [amending this section and section 1730 of this title] shall apply with respect to notices of proposed acquisitions filed after the date of the enactment of this Act [Oct. 27, 1986].''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 430 of Pub. L. 97–320 provided that: ''The provision of law amended by section 428(b) [amending section 1972 of this title] and section 429 [amending this section] shall remain in effect until the regulations referred to in such amendments become effective.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 308(e) of Pub. L. 96–221 provided that: ''The amendments made by this section [amending this section and sections 1724, 1728, 1787, 1813, and 1821 of this title] shall take effect on the date of enactment of this Act [Mar. 31, 1980].''

Amendment by section 308(a)(1)(B) of Pub. L. 96–221 not applicable to any claim arising out of the closing of a bank prior to the effective date of section 308 of Pub. L. 96–221, Mar. 31, 1980, see section 308(a)(2) of Pub. L. 96–221, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by section 101(a)(2) of Pub. L. 93–495, see section 101(g) of Pub. L. 93–495, set out as a note under section 1813 of this title.

For effective date of amendment by section 102(a)(2) of Pub. L. 93–495, see section 102(b), (c) of Pub. L. 93–495, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

For effective date of amendment by Pub. L. 91–151, see section 7(b) of Pub. L. 91–151, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by section 301(b) of Pub. L. 89–695, see section 301(e) of Pub. L. 89–695, set out as a note under section 1813 of this title.

EXPIRATION OF 1966 AMENDMENT

Pub. L. 91–609, title IX, § 908, Dec. 31, 1970, 84 Stat. 1811, repealed section 401 of Pub. L. 89–695 which had provided that: ''The provisions of titles I and II of this Act [amending this section and sections 1464, 1730, 1813, 1818 to 1820 of this title, repealing section 77 of this title, and enacting provisions set out as notes under sections 1464, 1730, and 1813 of this title] and any provisions of law enacted by said titles shall be effective only during the period ending at the close of June 30, 1972. Effective upon the expiration of such period, each provision of law amended by either of such titles is further amended to read as it did immediately prior to the enactment of this Act [Oct. 16, 1966] and each provision of law repealed by either of such titles is reenacted.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 7 of Pub. L. 86–671 provided that: ''The amendments made by this Act [amending this section and sections 161, 1813, 1820 and repealing section 162 of this title] shall take effect on January 1, 1961, except that the certified statements covering the semiannual period ending December 31, 1960, and the determination and payment of assessments (for the semiannual period ending June 30, 1961) required to be certified in such statements, shall be made as if such amendments were not in effect.''

SHORT TITLE OF 1978 AMENDMENT

For short title of title VI of Pub. L. 95–630 as the ''Change in Bank Control Act of 1978'', see section 601 of Pub. L. 95–630, set out as a note under section 1811 of this title.

REGULATIONS

Pub. L. 111–203, title III, § 331(b), July 21, 2010, 124 Stat. 1538, provided that: ''The Corporation shall amend the regulations issued by the Corporation under section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) to define the term 'assessment base' with respect to an insured depository institution for purposes of that section 7(b)(2), as an amount equal to—

''(1) the average consolidated total assets of the insured depository institution during the assessment period; minus

''(2) the sum of—

''(A) the average tangible equity of the insured depository institution during the assessment period; and

''(B) in the case of an insured depository institution that is a custodial bank (as defined by the Corporation, based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody) or a banker's bank (as that term is used in section 5136 of the Revised Statutes (12 U.S.C. 24)), an amount that the Corporation determines is necessary to establish assessments consistent with the definition under section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) for a custodial bank or a banker's bank.''

[For definitions of terms used in section 331(b) of Pub. L. 111–203, set out above, see section 5301 of this title.]

Pub. L. 109–171, title II, § 2109, Feb. 8, 2006, 120 Stat. 20, provided that:

''(a) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Feb. 8, 2006], the Board of Directors of the Federal Deposit Insurance Corporation shall prescribe final regulations, after notice and opportunity for comment—

''(1) designating the reserve ratio for the Deposit Insurance Fund in accordance with section 7(b)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)(3)] (as amended by section 2105 of this subtitle);

''(2) implementing increases in deposit insurance coverage in accordance with the amendments made by section 2103 of this subtitle [amending 12 U.S.C. 1821];

''(3) implementing the dividend requirement under section 7(e)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1817(e)(2)] (as amended by section 2107 of this subtitle);

''(4) implementing the 1-time assessment credit to certain insured depository institutions in accordance

with section 7(e)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1817(e)(3)], as amended by section 2107 of this subtitle, including the qualifications and procedures under which the Corporation would apply assessment credits; and

''(5) providing for assessments under section 7(b) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)], as amended by this subtitle.

''(b) TRANSITION PROVISIONS.—

''(1) CONTINUATION OF EXISTING ASSESSMENT REGULATIONS.—No provision of this subtitle [subtitle B (§§ 2101–2109) of title II of Pub. L. 109–171, see Short Title of 2006 Amendment note set out under section 1811 of this title] or any amendment made by this subtitle shall be construed as affecting the authority of the Corporation to set or collect deposit insurance assessments pursuant to any regulations in effect before the effective date of the final regulations prescribed under subsection (a).

''(2) TREATMENT OF DIF MEMBERS UNDER EXISTING REGULATIONS.—As of the date of the merger of the Bank Insurance Fund and the Savings Association Insurance Fund pursuant to section 2102 [section 2102 of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title], the assessment regulations in effect immediately before the date of the enactment of this Act [Feb. 8, 2006] shall continue to apply to all members of the Deposit Insurance Fund, until such regulations are modified by the Corporation, notwithstanding that such regulations may refer to 'Bank Insurance Fund members' or 'Savings Association Insurance Fund members'.''

Section 302(c) of Pub. L. 102–242 provided that: ''To implement the risk-based assessment system required under section 7(b) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)] (as amended by subsection (a)), the Federal Deposit Insurance Corporation shall—

''(1) provide notice of proposed regulations in the Federal Register, not later than December 31, 1992, with an opportunity for comment on the proposal of not less than 120 days; and

''(2) promulgate final regulations not later than July 1, 1993.''

Section 302(f) of Pub. L. 102–242 provided that: ''To carry out the amendments made by this section [amending this section and sections 1815, 1818, and 1820 of this title], the Corporation may promulgate regulations governing the transition from the assessment system in effect on the date of enactment of this Act [Dec. 19, 1991] to the assessment system required under the amendments made by this section.''

TRANSITION RESERVE RATIO REQUIREMENTS TO REFLECT NEW ASSESSMENT BASE

Pub. L. 111–203, title III, § 334(c)–(e), July 21, 2010, 124 Stat. 1539, provided that:

''(c) For a period of not less than 5 years after the date of the enactment of this title [July 21, 2010], the Federal Deposit Insurance Corporation shall make available to the public the reserve ratio and the designated reserve ratio using both estimated insured deposits and the assessment base under [former] section 7(b)(2)(C) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)(2) does not contain a subpar. (C)].

''(d) RESERVE RATIO.—Notwithstanding the timing requirements of section 7(b)(3)(E)(ii) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)(3)(E)(ii)], the Corporation shall take such steps as may be necessary for the reserve ratio of the Deposit Insurance Fund to reach 1.35 percent of estimated insured deposits by September 30, 2020.

''(e) OFFSET.—In setting the assessments necessary to meet the requirements of subsection (d), the Corporation shall offset the effect of subsection (d) on insured depository institutions with total consolidated assets of less than $10,000,000,000.''

[For definitions of terms used in section 334(c)–(e) of Pub. L. 111–203, set out above, see section 5301 of this title.]

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

REPORT TO CONGRESS ON REFUNDS, DIVIDENDS, AND CREDITS FROM DEPOSIT INSURANCE FUND

Pub. L. 109–173, § 5, Feb. 15, 2006, 119 Stat. 3606, required that any determination under former subsection (e)(2)(E) of this section be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 270 days after making such determination and provided that the report submitted include a detailed explanation for the determination and a discussion of the factors required to be considered under former subsection (e)(2)(F) of this section.

SPECIAL ASSESSMENT TO CAPITALIZE SAIF

Pub. L. 104–208, div. A, title II, § 2702, Sept. 30, 1996, 110 Stat. 3009–479, provided that the Board of Directors of the Federal Deposit Insurance Corporation was to impose a special assessment on the SAIF-assessable deposits of each insured depository institution in accordance with assessment regulations of the Corporation at a rate applicable to all such institutions that the Board of Directors determined would cause the Savings Association Insurance Fund to achieve the designated reserve ratio on the first business day of the 1st month beginning after Sept. 30, 1996.

SMALL BUSINESS AND SMALL FARM LOAN INFORMATION

Section 122 of Pub. L. 102–242, as amended by Pub. L. 102–550, title XVI, § 1603(c), Oct. 28, 1992, 106 Stat. 4079, provided that:

''(a) IN GENERAL.—Before the end of the 180-day period beginning on the date of the enactment of this Act [Dec. 19, 1991], the appropriate Federal banking agency shall prescribe regulations requiring insured depository institutions to annually submit information on small businesses and small farm lending in their reports of condition.

''(b) CREDIT AVAILABILITY.—The regulations prescribed under subsection (a) shall require insured depository institutions to submit such information as the agency may need to assess the availability of credit to small businesses and small farms.

''(c) CONTENTS.—The information required under subsection (a) may include information regarding the following:

''(1) The total number and aggregate dollar amount of commercial loans and commercial mortgage loans to small businesses.

''(2) Charge-offs, interest, and interest fee income on commercial loans and commercial mortgage loans to small businesses.

''(3) Agricultural loans to small farms.''

CONDITIONS GOVERNING EMPLOYMENT OF PERSONNEL NOT REPEALED, MODIFIED, OR AFFECTED

Nothing contained in section 201 of Pub. L. 89–695, which amended this section, to be construed as repealing, modifying, or affecting section 1829 of this title, see section 206 of Pub. L. 89–695, set out as a note under section 1813 of this title.

§ 1818. Termination of status as insured depository institution

(a) Termination of insurance

(1) Voluntary termination

Any insured depository institution which is not—

(A) a national member bank;

(B) a State member bank;

(C) a Federal branch;

(D) a Federal savings association; or

(E) an insured branch which is required to be insured under subsection (a) or (b)[1] of section 3104 of this title,

may terminate such depository institution's status as an insured depository institution if such insured institution provides written notice to the Corporation of the institution's intent to terminate such status not less than 90 days before the effective date of such termination.

(2) Involuntary termination

(A) Notice to primary regulator

If the Board of Directors determines that—

(i) an insured depository institution or the directors or trustees of an insured depository institution have engaged or are engaging in unsafe or unsound practices in conducting the business of the depository institution;

(ii) an insured depository institution is in an unsafe or unsound condition to continue operations as an insured institution; or

(iii) an insured depository institution or the directors or trustees of the insured institution have violated any applicable law, regulation, order, condition imposed in writing by the Corporation in connection with the approval of any application or other request by the insured depository institution, or written agreement entered into between the insured depository institution and the Corporation,

the Board of Directors shall notify the appropriate Federal banking agency with respect to such institution (if other than the Corporation) or the State banking supervisor of such institution (if the Corporation is the appropriate Federal banking agency) of the Board's determination and the facts and circumstances on which such determination is based for the purpose of securing the correction of such practice, condition, or violation. Such notice shall be given to the appropriate Federal banking agency not less than 30 days before the notice required by subparagraph (B), except that this period for notice to the appropriate Federal banking agency may be reduced or eliminated with the agreement of such agency.

(B) Notice of intention to terminate insurance

If, after giving the notice required under subparagraph (A) with respect to an insured depository institution, the Board of Directors determines that any unsafe or unsound practice or condition or any violation specified in such notice requires the termination of the insured status of the insured depository institution, the Board shall—

(i) serve written notice to the insured depository institution of the Board's intention to terminate the insured status of the institution;

(ii) provide the insured depository institution with a statement of the charges on the basis of which the determination to terminate such institution's insured status was made (or a copy of the notice under subparagraph (A)); and

(iii) notify the insured depository institution of the date (not less than 30 days after notice under this subparagraph) and place for a hearing before the Board of Directors (or any person designated by the Board) with respect to the termination of the institution's insured status.

(3) Hearing; termination

If, on the basis of the evidence presented at a hearing before the Board of Directors (or any person designated by the Board for such purpose), in which all issues shall be determined on the record pursuant to section 554 of title 5 and the written findings of the Board of Directors (or such person) with respect to such evidence (which shall be conclusive), the Board of Directors finds that any unsafe or unsound practice or condition or any violation specified in the notice to an insured depository institution under paragraph (2)(B) or subsection (w) of this section has been established, the Board of Directors may issue an order terminating the insured status of such depository institution effective as of a date subsequent to such finding.

(4) Appearance; consent to termination

Unless the depository institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured depository institution and termination of such status thereupon may be ordered.

(5) Judicial review

Any insured depository institution whose insured status has been terminated by order of the Board of Directors under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (h) of this section.

(6) Publication of notice of termination

The Corporation may publish notice of such termination and the depository institution shall give notice of such termination to each of its depositors at his last address of record on the books of the depository institution, in such manner and at such time as the Board of Directors may find to be necessary and may order for the protection of depositors.

(7) Temporary insurance of deposits insured as of termination

After the termination of the insured status of any depository institution under the provisions of this subsection, the insured deposits of each depositor in the depository institution on the date of such termination, less all subsequent withdrawals from any deposits of such depositor, shall continue for a period of at least 6 months or up to 2 years, within the discretion of the Board of Directors, to be insured, and the depository institution shall

[1] See References in Text note below.

continue to pay to the Corporation assessments as in the case of an insured depository institution during such period. No additions to any such deposits and no new deposits in such depository institution made after the date of such termination shall be insured by the Corporation, and the depository institution shall not advertise or hold itself out as having insured deposits unless in the same connection it shall also state with equal prominence that such additions to deposits and new deposits made after such date are not so insured. Such depository institution shall, in all other respects, be subject to the duties and obligations of an insured depository institution for the period referred to in the 1st sentence from the date of such termination, and in the event that such depository institution shall be closed on account of inability to meet the demands of its depositors within such period, the Corporation shall have the same powers and rights with respect to such depository institution as in case of an insured depository institution.

(8) Temporary suspension of insurance

(A) In general

If the Board of Directors initiates a termination proceeding under paragraph (2), and the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a savings association to which subparagraph (B) applies) has no tangible capital under the capital guidelines or regulations of the appropriate Federal banking agency, the Corporation may issue a temporary order suspending deposit insurance on all deposits received by the institution.

(B) Special rule for certain savings institutions

(i) Certain goodwill included in tangible capital

In determining the tangible capital of a savings association for purposes of this paragraph, the Board of Directors shall include goodwill to the extent it is considered a component of capital under section 1464(t) of this title. Any savings association which would be subject to a suspension order under subparagraph (A) but for the operation of this subparagraph, shall be considered by the Corporation to be a ''special supervisory association''.

(ii) Suspension order

The Corporation may issue a temporary order suspending deposit insurance on all deposits received by a special supervisory association whenever the Board of Directors determines that—

(I) the capital of such association, as computed utilizing applicable accounting standards, has suffered a material decline;

(II) that such association (or its directors or officers) is engaging in an unsafe or unsound practice in conducting the business of the association;

(III) that such association is in an unsafe or unsound condition to continue operating as an insured association; or

(IV) that such association (or its directors or officers) has violated any applicable law, rule, regulation, or order, or any condition imposed in writing by a Federal banking agency, or any written agreement including a capital improvement plan entered into with any Federal banking agency, or that the association has failed to enter into a capital improvement plan which is acceptable to the Corporation within the time period set forth in section 1464(t) of this title.

Nothing in this paragraph limits the right of the Corporation or the Director of the Office of Thrift Supervision to enforce a contractual provision which authorizes the Corporation or the Director of the Office of Thrift Supervision, as a successor to the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board, to require a savings association to write down or amortize goodwill at a faster rate than otherwise required under this chapter or under applicable accounting standards.

(C) Effective period of temporary order

Any order issued under subparagraph (A) shall become effective not earlier than 10 days from the date of service upon the institution and, unless set aside, limited, or suspended by a court in proceedings authorized hereunder, such temporary order shall remain effective and enforceable until an order of the Board under paragraph (3) becomes final or until the Corporation dismisses the proceedings under paragraph (3).

(D) Judicial review

Before the close of the 10-day period beginning on the date any temporary order has been served upon an insured depository institution under subparagraph (A), such institution may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the home office of the institution is located, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order, and such court shall have jurisdiction to issue such injunction.

(E) Continuation of insurance for prior deposits

The insured deposits of each depositor in such depository institution on the effective date of the order issued under this paragraph, minus all subsequent withdrawals from any deposits of such depositor, shall continue to be insured, subject to the administrative proceedings as provided in this chapter.

(F) Publication of order

The depository institution shall give notice of such order to each of its depositors in such manner and at such times as the Board of Directors may find to be necessary and may order for the protection of depositors.

(G) Notice by Corporation

If the Corporation determines that the depository institution has not substantially complied with the notice to depositors required by the Board of Directors, the Corporation may provide such notice in such manner as the Board of Directors may find to be necessary and appropriate.

(H) Lack of notice

Notwithstanding subparagraph (A), any deposit made after the effective date of a suspension order issued under this paragraph shall remain insured to the extent that the depositor establishes that—

(i) such deposit consists of additions made by automatic deposit the depositor was unable to prevent; or

(ii) such depositor did not have actual knowledge of the suspension of insurance.

(9) Final decisions to terminate insurance

Any decision by the Board of Directors to—

(A) issue a temporary order terminating deposit insurance; or

(B) issue a final order terminating deposit insurance (other than under subsection (p) or (q) of this section);

shall be made by the Board of Directors and may not be delegated.

(10) Low- to moderate-income housing lender

In making any determination regarding the termination of insurance of a solvent savings association, the Corporation may consider the extent of the association's low- to moderate-income housing loans.

(b) Cease-and-desist proceedings

(1) If, in the opinion of the appropriate Federal banking agency, any insured depository institution, depository institution which has insured deposits, or any institution-affiliated party is engaging or has engaged, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of such depository institution, or is violating or has violated, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request by the depository institution or institution-affiliated party, or any written agreement entered into with the agency, the appropriate Federal banking agency for the depository institution may issue and serve upon the depository institution or such party a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the depository institution or the institution-affiliated party. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the agency at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the agency shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the agency may issue and serve upon the depository institution or the institution-affiliated party an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the depository institution or its institution-affiliated parties to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the depository institution or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(3) This subsection, subsections (c) through (s) and subsection (u) of this section, and section 1831aa of this title shall apply to any bank holding company, and to any subsidiary (other than a bank) of a bank holding company, as those terms are defined in the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and to any organization organized and operated under section 25(a)[2] of the Federal Reserve Act [12 U.S.C. 611 et seq.] or operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.], in the same manner as they apply to a State member insured bank. Nothing in this subsection or in subsection (c) of this section shall authorize any Federal banking agency, other than the Board of Governors of the Federal Reserve System, to issue a notice of charges or cease-and-desist order against a bank holding company or any subsidiary thereof (other than a bank or subsidiary of that bank).

(4) This subsection, subsections (c) through (s) and subsection (u) of this section, and section 1831aa of this title shall apply to any foreign bank or company to which subsection (a) of section 3106 of this title applies and to any subsidiary (other than a bank) of any such foreign bank or company in the same manner as they apply to a bank holding company and any subsidiary thereof (other than a bank) under paragraph (3) of this subsection. For the purposes of this paragraph, the term ''subsidiary'' shall have the meaning assigned to it in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841].

(5) This section shall apply, in the same manner as it applies to any insured depository institution for which the appropriate Federal banking agency is the Comptroller of the Currency, to any national banking association chartered

[2] See References in Text note below.

by the Comptroller of the Currency, including an uninsured association.

(6) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority to issue an order under this subsection and subsection (c) of this section which requires an insured depository institution or any institution-affiliated party to take affirmative action to correct or remedy any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such depository institution or such party to—

(A) make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(i) such depository institution or such party was unjustly enriched in connection with such violation or practice; or

(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the appropriate Federal banking agency;

(B) restrict the growth of the institution;

(C) dispose of any loan or asset involved;

(D) rescind agreements or contracts; and

(E) employ qualified officers or employees (who may be subject to approval by the appropriate Federal banking agency at the direction of such agency); and

(F) take such other action as the banking agency determines to be appropriate.

(7) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this subsection or subsection (c) of this section includes the authority to place limitations on the activities or functions of an insured depository institution or any institution-affiliated party.

(8) UNSATISFACTORY ASSET QUALITY, MANAGEMENT, EARNINGS, OR LIQUIDITY AS UNSAFE OR UNSOUND PRACTICE.—If an insured depository institution receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the appropriate Federal banking agency may (if the deficiency is not corrected) deem the institution to be engaging in an unsafe or unsound practice for purposes of this subsection.

(9) EXPANSION OF AUTHORITY TO SAVINGS AND LOAN AFFILIATES AND ENTITIES.—Subsections (a) through (s) of this section and subsection (u) of this section shall apply to any savings and loan holding company and to any subsidiary (other than a bank or subsidiary of that bank) of a savings and loan holding company,,[3] whether wholly or partly owned, in the same manner as such subsections apply to a savings association.

(10) STANDARD FOR CERTAIN ORDERS.—No authority under this subsection or subsection (c) of this section to prohibit any institution-affiliated party from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property may be exercised unless the appropriate Federal banking agency meets the standards of Rule 65 of the Federal Rules of Civil Procedure, without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

[3] So in original.

(c) Temporary cease-and-desist orders

(1) Whenever the appropriate Federal banking agency shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the depository institution or any institution-affiliated party pursuant to paragraph (1) of subsection (b) of this section, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the depository institution, or is likely to weaken the condition of the depository institution or otherwise prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section, the agency may issue a temporary order requiring the depository institution or such party to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under subsection (b)(6) of this section. Such order shall become effective upon service upon the depository institution or such institution-affiliated party and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the depository institution or such party, until the effective date of such order.

(2) Within ten days after the depository institution concerned or any institution-affiliated party has been served with a temporary cease-and-desist order, the depository institution or such party may apply to the United States district court for the judicial district in which the home office of the depository institution is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the depository institution or such party under paragraph (1) of subsection (b) of this section, and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b)(1) of this section specifies, on the basis of particular facts and circumstances, that an insured depository institution's books and records are so incomplete or inaccurate that the appropriate Federal banking agency is unable, through the normal supervisory process, to determine the financial condition of that depository institution or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that depository institution, the agency may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1) of this section.

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b)(1) of this section in connection with the notice of charges; or

(II) the date the appropriate Federal banking agency determines, by examination or otherwise, that the insured depository institution's books and records are accurate and reflect the financial condition of the depository institution.

(4) FALSE ADVERTISING OR MISUSE OF NAMES TO INDICATE INSURED STATUS.—

(A) TEMPORARY ORDER.—

(i) IN GENERAL.—If a notice of charges served under subsection (b)(1) specifies on the basis of particular facts that any person engaged or is engaging in conduct described in section 1828(a)(4) of this title, the Corporation or other appropriate Federal banking agency may issue a temporary order requiring—

(I) the immediate cessation of any activity or practice described, which gave rise to the notice of charges; and

(II) affirmative action to prevent any further, or to remedy any existing, violation.

(ii) EFFECT OF ORDER.—Any temporary order issued under this subparagraph shall take effect upon service.

(B) EFFECTIVE PERIOD OF TEMPORARY ORDER.—A temporary order issued under subparagraph (A) shall remain effective and enforceable, pending the completion of an administrative proceeding pursuant to subsection (b)(1) in connection with the notice of charges—

(i) until such time as the Corporation or other appropriate Federal banking agency dismisses the charges specified in such notice; or

(ii) if a cease-and-desist order is issued against such person, until the effective date of such order.

(C) CIVIL MONEY PENALTIES.—Any violation of section 1828(a)(4) of this title shall be subject to civil money penalties, as set forth in subsection (i), except that for any person other than an insured depository institution or an institution-affiliated party that is found to have violated this paragraph, the Corporation or other appropriate Federal banking agency shall not be required to demonstrate any loss to an insured depository institution.

(d) Temporary cease-and-desist orders; enforcement

In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to paragraph (1) of subsection (c) of this section, the appropriate Federal banking agency may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(e) Removal and prohibition authority

(1) AUTHORITY TO ISSUE ORDER.—Whenever the appropriate Federal banking agency determines that—

(A) any institution-affiliated party has, directly or indirectly—

(i) violated—

(I) any law or regulation;

(II) any cease-and-desist order which has become final;

(III) any condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or request by such depository institution or institution-affiliated party; or

(IV) any written agreement between such depository institution and such agency;

(ii) engaged or participated in any unsafe or unsound practice in connection with any insured depository institution or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

(B) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

(i) such insured depository institution or business institution has suffered or will probably suffer financial loss or other damage;

(ii) the interests of the insured depository institution's depositors have been or could be prejudiced; or

(iii) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

(C) such violation, practice, or breach—

(i) involves personal dishonesty on the part of such party; or

(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such insured depository institution or business institution,

the appropriate Federal banking agency for the depository institution may serve upon such party a written notice of the agency's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any insured depository institution.

(2) SPECIFIC VIOLATIONS.—

(A) IN GENERAL.—Whenever the appropriate Federal banking agency determines that—

(i) an institution-affiliated party has committed a violation of any provision of sub-

chapter II of chapter 53 of title 31 and such violation was not inadvertent or unintentional;

(ii) an officer or director of an insured depository institution has knowledge that an institution-affiliated party of the insured depository institution has violated any such provision or any provision of law referred to in subsection (g)(1)(A)(ii) of this section;

(iii) an officer or director of an insured depository institution has committed any violation of the Depository Institution Management Interlocks Act [12 U.S.C. 3201 et seq.]; or

(iv) an institution-affiliated party of a subsidiary (other than a bank) of a bank holding company or of a subsidiary (other than a savings association) of a savings and loan holding company has been convicted of any criminal offense involving dishonesty or a breach of trust or a criminal offense under section 1956, 1957, or 1960 of title 18 or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense,

the agency may serve upon such party, officer, or director a written notice of the agency's intention to remove such party from office.

(B) FACTORS TO BE CONSIDERED.—In determining whether an officer or director should be removed as a result of the application of subparagraph (A)(ii), the agency shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.

(3) SUSPENSION ORDER.—

(A) SUSPENSION OR PROHIBITION AUTHORIZED.—If the appropriate Federal banking agency serves written notice under paragraph (1) or (2) to any institution-affiliated party of such agency's intention to issue an order under such paragraph, the appropriate Federal banking agency may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution, if the agency—

(i) determines that such action is necessary for the protection of the depository institution or the interests of the depository institution's depositors; and

(ii) serves such party with written notice of the suspension order.

(B) EFFECTIVE PERIOD.—Any suspension order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless a court issues a stay of such order under subsection (f) of this section, shall remain in effect and enforceable until—

(I) the date the appropriate Federal banking agency dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such party; or

(II) the effective date of an order issued by the agency to such party under paragraph (1) or (2).

(C) COPY OF ORDER.—If an appropriate Federal banking agency issues a suspension order under subparagraph (A) to any institution-affiliated party, the agency shall serve a copy of such order on any insured depository institution with which such party is associated at the time such order is issued.

(4) A notice of intention to remove an institution-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of an insured depository institution, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the agency at the request of (A) such party, and for good cause shown, or (B) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the agency shall find that any of the grounds specified in such notice have been established, the agency may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the depository institution, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such depository institution and such party concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(5) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term ''officer'' within the term ''institution-affiliated party'' as used in this subsection means an employee or officer with management functions, and the term ''director'' within the term ''institution-affiliated party'' as used in this subsection includes an advisory or honorary director, a trustee of a depository institution under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

(6) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this subsection shall not—

(A) participate in any manner in the conduct of the affairs of any institution or agency specified in paragraph (7)(A);

(B) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subparagraph (A);

(C) violate any voting agreement previously approved by the appropriate Federal banking agency; or

(D) vote for a director, or serve or act as an institution-affiliated party.

(7) INDUSTRYWIDE PROHIBITION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any person who, pursuant to an order issued under this subsection or subsection (g) of this section, has been removed or suspended from office in an insured depository institution or prohibited from participating in the conduct of the affairs of an insured depository institution may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

(i) any insured depository institution;

(ii) any institution treated as an insured bank under subsection (b)(3) or (b)(4) of this section, or as a savings association under subsection (b)(9) of this section;

(iii) any insured credit union under the Federal Credit Union Act [12 U.S.C. 1751 et seq.];

(iv) any institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.];

(v) any appropriate Federal depository institution regulatory agency;

(vi) the Federal Housing Finance Board and any Federal home loan bank; and

(vii) the Resolution Trust Corporation.

(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this subsection which removes or suspends from office any institution-affiliated party or prohibits such party from participating in the conduct of the affairs of an insured depository institution, such party receives the written consent of—

(i) the agency that issued such order; and

(ii) the appropriate Federal financial institutions regulatory agency of the institution described in any clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party,

subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent. Any agency that grants such a written consent shall report such action to the Corporation and publicly disclose such consent.

(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

(D) ''APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY'' DEFINED.—For purposes of this paragraph and subsection (j) of this section, the term ''appropriate Federal financial institutions regulatory agency'' means—

(i) the appropriate Federal banking agency, in the case of an insured depository institution;

(ii) the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.];

(iii) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act [12 U.S.C. 1752(7)]);

(iv) the Secretary of the Treasury, in the case of the Federal Housing Finance Board and any Federal home loan bank; and

(v) the Thrift Depositor Protection Oversight Board, in the case of the Resolution Trust Corporation.

(E) CONSULTATION BETWEEN AGENCIES.—The agencies referred to in clauses (i) and (ii) of subparagraph (B) shall consult with each other before providing any written consent described in subparagraph (B).

(F) APPLICABILITY.—This paragraph shall only apply to a person who is an individual, unless the appropriate Federal banking agency specifically finds that it should apply to a corporation, firm, or other business enterprise.

(f) Stay of suspension and/or prohibition of institution-affiliated party

Within ten days after any institution-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured depository institution under subsection (e)(3) of this section, such party may apply to the United States district court for the judicial district in which the home office of the depository institution is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such party under subsection (e)(1) or (e)(2) of this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(g) Suspension, removal, and prohibition from participation orders in the case of certain criminal offenses

(1) SUSPENSION OR PROHIBITION.—

(A) IN GENERAL.—Whenever any institution-affiliated party is the subject of any information, indictment, or complaint, involving the commission of or participation in—

(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

(ii) a criminal violation of section 1956, 1957, or 1960 of title 18 or section 5322 or 5324 of title 31,

the appropriate Federal banking agency may, if continued service or participation by such party posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)), by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any depository institution.

(B) PROVISIONS APPLICABLE TO NOTICE.—

(i) COPY.—A copy of any notice under subparagraph (A) shall also be served upon any depository institution that the subject of the notice is affiliated with at the time the notice is issued.

(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall re-

main in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the agency.

(C) REMOVAL OR PROHIBITION.—

(i) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an institution-affiliated party in connection with a crime described in subparagraph (A)(i), at such time as such judgment is not subject to further appellate review, the appropriate Federal banking agency may, if continued service or participation by such party posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)), issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of any depository institution without the prior written consent of the appropriate agency.

(ii) REQUIRED FOR CERTAIN OFFENSES.—In the case of a judgment of conviction or agreement against an institution-affiliated party in connection with a violation described in subparagraph (A)(ii), the appropriate Federal banking agency shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of any depository institution without the prior written consent of the appropriate agency.

(D) PROVISIONS APPLICABLE TO ORDER.—

(i) COPY.—A copy of any order under subparagraph (C) shall also be served upon any depository institution that the subject of the order is affiliated with at the time the order is issued, whereupon the institution-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such depository institution.

(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the agency from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in depository institution affairs, pursuant to paragraph (1), (2), or (3) of subsection (e) of this section.

(iii) EFFECTIVE PERIOD.—Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the agency.

(E) RELEVANT DEPOSITORY INSTITUTION.—For purposes of this subsection, the term ''relevant depository institution'' means any depository institution of which the party is or was an institution-affiliated party at the time at which—

(i) the information, indictment, or complaint described in subparagraph (A) was issued; or

(ii) the notice is issued under subparagraph (A) or the order is issued under subparagraph (C)(i).

(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national bank less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national bank are suspended pursuant to this section, the Comptroller of the Currency shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the bank and their respective successors take office.

(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the institution-affiliated party concerned may request in writing an opportunity to appear before the agency to show that the continued service to or participation in the conduct of the affairs of the depository institution by such party does not, or is not likely to, pose a threat to the interests of the bank's[4] depositors or threaten to impair public confidence in the depository institution. Upon receipt of any such request, the appropriate Federal banking agency shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before one or more members of the agency or designated employees of the agency to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the agency shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the depository institution will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the agency's decision, if adverse to such party. The Federal banking agencies are authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(h) Hearings and judicial review

(1) Any hearing provided for in this section (other than the hearing provided for in subsection (g)(3) of this section) shall be held in the Federal judicial district or in the territory in which the home office of the depository institution is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. After such hearing, and within ninety days after the appropriate Federal

[4] So in original. Probably should be ''depository institution's''.

banking agency or Board of Governors of the Federal Reserve System has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (h). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the issuing agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the agency may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the depository institution or the institution-affiliated party concerned, or an order issued under paragraph (1) of subsection (g) of this section) by the filing in the court of appeals of the United States for the circuit in which the home office of the depository institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the agency be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the agency, and thereupon the agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the agency. Review of such proceedings shall be had as provided in chapter 7 of title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the agency.

(i) Jurisdiction and enforcement; penalty

(1) The appropriate Federal banking agency may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, for the enforcement of any effective and outstanding notice or order issued under this section or under section 1831*o* or 1831p–1 of this title, and such courts shall have jurisdiction and power to order and require compliance herewith; but except as otherwise provided in this section or under section 1831*o* or 1831p–1 of this title no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under any such section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(2) CIVIL MONEY PENALTY.—

(A) FIRST TIER.—Any insured depository institution which, and any institution-affiliated party who—

(i) violates any law or regulation;

(ii) violates any final order or temporary order issued pursuant to subsection (b), (c), (e), (g), or (s) of this section or any final order under section 1831*o* or 1831p–1 of this title;

(iii) violates any condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request by the depository institution or institution-affiliated party; or

(iv) violates any written agreement between such depository institution and such agency,

shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding subparagraph (A), any insured depository institution which, and any institution-affiliated party who—

(i)(I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of such insured depository institution; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach—

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such depository institution; or

(III) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any insured depository institution which, and any institution-affiliated party who—

(i) knowingly—

(I) commits any violation described in any clause of subparagraph (A);

(II) engages in any unsafe or unsound practice in conducting the affairs of such depository institution; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such depository institution or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—

The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

(i) in the case of any person other than an insured depository institution, an amount to not exceed $1,000,000; and

(ii) in the case of any insured depository institution, an amount not to exceed the lesser of—

(I) $1,000,000; or

(II) 1 percent of the total assets of such institution.

(E) ASSESSMENT.—

(i) WRITTEN NOTICE.—Any penalty imposed under subparagraph (A), (B), or (C) may be assessed and collected by the appropriate Federal banking agency by written notice.

(ii) FINALITY OF ASSESSMENT.—If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

(F) AUTHORITY TO MODIFY OR REMIT PENALTY.—Any appropriate Federal banking agency may compromise, modify, or remit any penalty which such agency may assess or had already assessed under subparagraph (A), (B), or (C).

(G) MITIGATING FACTORS.—In determining the amount of any penalty imposed under subparagraph (A), (B), or (C), the appropriate agency shall take into account the appropriateness of the penalty with respect to—

(i) the size of financial resources and good faith of the insured depository institution or other person charged;

(ii) the gravity of the violation;

(iii) the history of previous violations; and

(iv) such other matters as justice may require.

(H) HEARING.—The insured depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

(I) COLLECTION.—

(i) REFERRAL.—If any insured depository institution or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the agency that imposed the penalty shall recover the amount assessed by action in the appropriate United States district court.

(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under clause (i), the validity and appropriateness of the penalty shall not be subject to review.

(J) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(K) REGULATIONS.—Each appropriate Federal banking agency shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(3) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of a institution-affiliated party (including a separation caused by the closing of an insured depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice or order and proceed under this section against any such party, if such notice or order is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such date occurs before, on, or after August 9, 1989).

(4) PREJUDGMENT ATTACHMENT.—

(A) IN GENERAL.—In any action brought by an appropriate Federal banking agency (excluding the Corporation when acting in a manner described in section 1821(d)(18) of this title) pursuant to this section, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought by such agency, the court may, upon application of the agency, issue a restraining order that—

(i) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

(ii) appoints a temporary receiver to administer the restraining order.

(B) STANDARD.—

(i) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subparagraph (A) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(ii) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to a party's right to due process as Rule 65 (as modified with respect to such proceeding by clause (i)), the relief sought under subparagraph (A) may be requested under the laws of such State.

(j) Criminal penalty

Whoever, being subject to an order in effect under subsection (e) or (g) of this section, without the prior written approval of the appropriate Federal financial institutions regulatory agency, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order or in subsection (e)(6) of this section) in the conduct of the affairs of—

(1) any insured depository institution;

(2) any institution treated as an insured bank under subsection (b)(3) or (b)(4) of this section, or as a savings association under subsection (b)(9) of this section;

(3) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act [12 U.S.C. 1752(7)]);

(4) any institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.]; or

(5) the Resolution Trust Corporation,

shall be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.

(k) Repealed. Pub. L. 101–73, title IX, § 920(c), Aug. 9, 1989, 103 Stat. 488

(*l*) Notice of service

Any service required or authorized to be made by the appropriate Federal banking agency under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the agency may by regulation or otherwise provide. Copies of any notice or order served by the agency upon any State depository institution or any institution-affiliated party, pursuant to the provisions of this section, shall also be sent to the appropriate State supervisory authority.

(m) Notice to State authorities

In connection with any proceeding under subsection (b), (c)(1), or (e) of this section involving an insured State bank or any institution-affiliated party, the appropriate Federal banking agency shall provide the appropriate State supervisory authority with notice of the agency's intent to institute such a proceeding and the grounds therefor. Unless within such time as the Federal banking agency deems appropriate in the light of the circumstances of the case (which time must be specified in the notice prescribed in the preceding sentence) satisfactory corrective action is effectuated by action of the State supervisory authority, the agency may proceed as provided in this section. No bank or other party who is the subject of any notice or order issued by the agency under this section shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

(n) Ancillary provisions; subpena power, etc.

In the course of or in connection with any proceeding under this section, or in connection with any claim for insured deposits or any examination or investigation under section 1820(c) of this title, the agency conducting the proceeding, examination, or investigation or considering the claim for insured deposits, or any member or designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and such agency is empowered to make rules and regulations with respect to any such proceedings, claims, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any such agency or any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an insured depository institution or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the depository institution or from its assets. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the appropriate Federal banking agency, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year or both.

(*o*) Termination of membership of State bank in Federal Reserve System

Whenever the insured status of a State member bank shall be terminated by action of the Board of Directors, the Board of Governors of the Federal Reserve System shall terminate its membership in the Federal Reserve System in accordance with the provisions of subchapter VIII of chapter 3 of this title, and whenever the insured status of a national member bank shall be so terminated the Comptroller of the Currency shall appoint a receiver for the bank, which shall be the Corporation. Except as provided in subsection (c) or (d) of section 1814 of this title, whenever a member bank shall cease to be a member of the Federal Reserve System, its status as an insured depository institution shall, without notice or other action by the Board of Directors, terminate on the date the bank shall cease to be a member of the Federal Reserve System, with like effect as if its insured status had been terminated on said date by the Board of Directors after proceedings under subsection (a) of this section. Whenever the insured status of an insured Federal savings bank shall be terminated by action of the Board of Directors, the Director of the Office of Thrift Supervision shall appoint a receiver for the bank, which shall be the Corporation.

(p) Banks not receiving deposits

Notwithstanding any other provision of law, whenever the Board of Directors shall determine that an insured depository institution is not engaged in the business of receiving deposits, other than trust funds as herein defined, the Corporation shall notify the depository institution that its insured status will terminate at the expiration of the first full assessment period following such notice. A finding by the Board of Directors that a depository institution is not engaged in the business of receiving deposits, other than such trust funds, shall be conclusive. The Board of Directors shall prescribe the notice to be given by the depository institution of such termination and the Corporation may publish

notice thereof. Upon the termination of the insured status of any such depository institution, its deposits shall thereupon cease to be insured and the depository institution shall thereafter be relieved of all future obligations to the Corporation, including the obligation to pay future assessments.

(q) Assumption of liabilities

Whenever the liabilities of an insured depository institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract (1) the insured status of the depository institution whose liabilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption; (2) the separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any time deposit, the earliest maturity date after the six-month period. Where the deposits of an insured depository institution are assumed by a newly insured depository institution, the depository institution whose deposits are assumed shall not be required to pay any assessment with respect to the deposits which have been so assumed after the assessment period in which the assumption takes effect.

(r) Action or proceeding against foreign bank; basis; removal of officer or other person; venue; service of process

(1) Except as otherwise specifically provided in this section, the provisions of this section shall be applied to foreign banks in accordance with this subsection.

(2) An act or practice outside the United States on the part of a foreign bank or any officer, director, employee, or agent thereof may not constitute the basis for any action by any officer or agency of the United States under this section, unless—

(A) such officer or agency alleges a belief that such act or practice has been, is, or is likely to be a cause of or carried on in connection with or in furtherance of an act or practice within any one or more States which, in and of itself, would constitute an appropriate basis for action by a Federal officer or agency under this section; or

(B) the alleged act or practice is one which, if proven, would, in the judgment of the Board of Directors, adversely affect the insurance risk assumed by the Corporation.

(3) In any case in which any action or proceeding is brought pursuant to an allegation under paragraph (2) of this subsection for the suspension or removal of any officer, director, or other person associated with a foreign bank, and such person fails to appear promptly as a party to such action or proceeding and to comply with any effective order or judgment therein, any failure by the foreign bank to secure his removal from any office he holds in such bank and from any further participation in its affairs shall, in and of itself, constitute grounds for termination of the insurance of the deposits in any branch of the bank.

(4) Where the venue of any judicial or administrative proceeding under this section is to be determined by reference to the location of the home office of a bank, the venue of such a proceeding with respect to a foreign bank having one or more branches or agencies in not more than one judicial district or other relevant jurisdiction shall be within such jurisdiction. Where such a bank has branches or agencies in more than one such jurisdiction, the venue shall be in the jurisdiction within which the branch or branches or agency or agencies involved in the proceeding are located, and if there is more than one such jurisdiction, the venue shall be proper in any such jurisdiction in which the proceeding is brought or to which it may appropriately be transferred.

(5) Any service required or authorized to be made on a foreign bank may be made on any branch or agency located within any State, but if such service is in connection with an action or proceeding involving one or more branches or one or more agencies located in any State, service shall be made on at least one branch or agency so involved.

(s) Compliance with monetary transaction recordkeeping and report requirements

(1) Compliance procedures required

Each appropriate Federal banking agency shall prescribe regulations requiring insured depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions with the requirements of subchapter II of chapter 53 of title 31.

(2) Examinations of depository institution to include review of compliance procedures

(A) In general

Each examination of an insured depository institution by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under paragraph (1).

(B) Exam report requirement

The report of examination shall describe any problem with the procedures maintained by the insured depository institution.

(3) Order to comply with requirements

If the appropriate Federal banking agency determines that an insured depository institution—

(A) has failed to establish and maintain the procedures described in paragraph (1); or

(B) has failed to correct any problem with the procedures maintained by such depository institution which was previously reported to the depository institution by such agency,

the agency shall issue an order in the manner prescribed in subsection (b) or (c) of this section requiring such depository institution to cease and desist from its violation of this subsection or regulations prescribed under this subsection.

(t) Authority of FDIC to take enforcement action against insured depository institutions and institution-affiliated parties

(1) Recommending action by appropriate Federal banking agency

The Corporation, based on an examination of an insured depository institution by the Corporation or by the appropriate Federal banking agency or on other information, may recommend in writing to the appropriate Federal banking agency that the agency take any enforcement action authorized under section 1817(j) of this title, this section, or section 1828(j) of this title with respect to any insured depository institution, any depository institution holding company, or any institution-affiliated party. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) FDIC's authority to act if appropriate Federal banking agency fails to follow recommendation

If the appropriate Federal banking agency does not, before the end of the 60-day period beginning on the date on which the agency receives the recommendation under paragraph (1), take the enforcement action recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the Corporation's concerns, the Corporation may take the recommended enforcement action if the Board of Directors determines, upon a vote of its members, that—

(A) the insured depository institution is in an unsafe or unsound condition;

(B) the institution or institution-affiliated party is engaging in unsafe or unsound practices, and the recommended enforcement action will prevent the institution or institution-affiliated party from continuing such practices;

(C) the conduct or threatened conduct (including any acts or omissions) poses a risk to the Deposit Insurance Fund, or may prejudice the interests of the institution's depositors or[5]

(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund, provided that such authority may not be used with respect to a depository institution holding company that is in generally sound condition and whose conduct does not pose a foreseeable and material risk of loss to the Deposit Insurance Fund;[6]

(3) Effect of exigent circumstances

(A) Authority to act

The Corporation may, upon a vote of the Board of Directors, and after notice to the appropriate Federal banking agency, exercise its authority under paragraph (2) in exigent circumstances without regard to the time period set forth in paragraph (2).

(B) Agreement on exigent circumstances

The Corporation shall, by agreement with the appropriate Federal banking agency, set forth those exigent circumstances in which the Corporation may act under subparagraph (A).

(4) Corporation's powers; institution's duties

For purposes of this subsection—

(A) the Corporation shall have the same powers with respect to any insured depository institution and its affiliates as the appropriate Federal banking agency has with respect to the institution and its affiliates; and

(B) the institution and its affiliates shall have the same duties and obligations with respect to the Corporation as the institution and its affiliates have with respect to the appropriate Federal banking agency.

(5) Requests for formal actions and investigations

(A) Submission of requests

A regional office of an appropriate Federal banking agency (including a Federal Reserve bank) that requests a formal investigation of or civil enforcement action against an insured depository institution or institution-affiliated party shall submit the request concurrently to the chief officer of the appropriate Federal banking agency and to the Corporation.

(B) Agencies required to report on requests

Each appropriate Federal banking agency shall report semiannually to the Corporation on the status or disposition of all requests under subparagraph (A), including the reasons for any decision by the agency to approve or deny such requests.

(6) Powers and duties with respect to depository institution holding companies

For purposes of exercising the backup authority provided in this subsection—

(A) the Corporation shall have the same powers with respect to a depository institution holding company and its affiliates as the appropriate Federal banking agency has with respect to the holding company and its affiliates; and

(B) the holding company and its affiliates shall have the same duties and obligations with respect to the Corporation as the holding company and its affiliates have with respect to the appropriate Federal banking agency.

(u) Public disclosures of final orders and agreements

(1) In general

The appropriate Federal banking agency shall publish and make available to the public on a monthly basis—

(A) any written agreement or other written statement for which a violation may be enforced by the appropriate Federal banking agency, unless the appropriate Federal banking agency, in its discretion, determines that publication would be contrary to the public interest;

(B) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other law; and

[5] So in original. Probably should be ''; or''.

[6] So in original. The semicolon probably should be a period.

(C) any modification to or termination of any order or agreement made public pursuant to this paragraph.

(2) Hearings

All hearings on the record with respect to any notice of charges issued by a Federal banking agency shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

(3) Transcript of hearing

A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to subsection (i) of this section. A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5.

(4) Delay of publication under exceptional circumstances

If the appropriate Federal banking agency makes a determination in writing that the publication of a final order pursuant to paragraph (1)(B) would seriously threaten the safety and soundness of an insured depository institution, the agency may delay the publication of the document for a reasonable time.

(5) Documents filed under seal in public enforcement hearings

The appropriate Federal banking agency may file any document or part of a document under seal in any administrative enforcement hearing commenced by the agency if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph (2).

(6) Retention of documents

Each Federal banking agency shall keep and maintain a record, for a period of at least 6 years, of all documents described in paragraph (1) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceeding initiated by such agency under this section or any other laws.

(7) Disclosures to Congress

No provision of this subsection may be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee of the Congress.

(v) Foreign investigations

(1) Requesting assistance from foreign banking authorities

In conducting any investigation, examination, or enforcement action under this chapter, the appropriate Federal banking agency may—

(A) request the assistance of any foreign banking authority; and

(B) maintain an office outside the United States.

(2) Providing assistance to foreign banking authorities

(A) In general

Any appropriate Federal banking agency may, at the request of any foreign banking authority, assist such authority if such authority states that the requesting authority is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to banking matters or currency transactions administered or enforced by the requesting authority.

(B) Investigation by Federal banking agency

Any appropriate Federal banking agency may, in such agency's discretion, investigate and collect information and evidence pertinent to a request for assistance under subparagraph (A). Any such investigation shall comply with the laws of the United States and the policies and procedures of the appropriate Federal banking agency.

(C) Factors to consider

In deciding whether to provide assistance under this paragraph, the appropriate Federal banking agency shall consider—

(i) whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of any appropriate Federal banking agency; and

(ii) whether compliance with the request would prejudice the public interest of the United States.

(D) Treatment of foreign banking authority

For purposes of any Federal law or appropriate Federal banking agency regulation relating to the collection or transfer of information by any appropriate Federal banking agency, the foreign banking authority shall be treated as another appropriate Federal banking agency.

(3) Rule of construction

Paragraphs (1) and (2) shall not be construed to limit the authority of an appropriate Federal banking agency or any other Federal agency to provide or receive assistance or information to or from any foreign authority with respect to any matter.

(w) Termination of insurance for money laundering or cash transaction reporting offenses

(1) In general

(A) Conviction of title 18 offenses

(i) Duty to notify

If an insured State depository institution has been convicted of any criminal offense under section 1956 or 1957 of title 18, the Attorney General shall provide to the Corporation a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

(ii) Notice of termination; pretermination hearing

After receipt of written notification from the Attorney General by the Corpora-

tion of such a conviction, the Board of Directors shall issue to the insured depository institution a notice of its intention to terminate the insured status of the insured depository institution and schedule a hearing on the matter, which shall be conducted in all respects as a termination hearing pursuant to paragraphs (3) through (5) of subsection (a) of this section.

(B) Conviction of title 31 offenses

If an insured State depository institution is convicted of any criminal offense under section 5322 or 5324 of title 31 after receipt of written notification from the Attorney General by the Corporation, the Board of Directors may initiate proceedings to terminate the insured status of the insured depository institution in the manner described in subparagraph (A).

(C) Notice to State supervisor

The Corporation shall simultaneously transmit a copy of any notice issued under this paragraph to the appropriate State financial institutions supervisor.

(2) Factors to be considered

In determining whether to terminate insurance under paragraph (1), the Board of Directors shall take into account the following factors:

(A) The extent to which directors or senior executive officers of the depository institution knew of, or were involved in, the commission of the money laundering offense of which the institution was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the depository institution which were designed to prevent the occurrence of any such offense.

(C) The extent to which the depository institution has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the institution was found guilty.

(D) The extent to which the depository institution has implemented additional internal controls (since the commission of the offense of which the depository institution was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the termination of insurance.

(3) Notice to State banking supervisor and public

When the order to terminate insured status initiated pursuant to this subsection is final, the Board of Directors shall—

(A) notify the State banking supervisor of any State depository institution described in paragraph (1) and the Office of Thrift Supervision, where appropriate, at least 10 days prior to the effective date of the order of termination of the insured status of such depository institution, including a State branch of a foreign bank; and

(B) publish notice of the termination of the insured status of the depository institution in the Federal Register.

(4) Temporary insurance of previously insured deposits

Upon termination of the insured status of any State depository institution pursuant to paragraph (1), the deposits of such depository institution shall be treated in accordance with subsection (a)(7) of this section.

(5) Successor liability

This subsection shall not apply to a successor to the interests of, or a person who acquires, an insured depository institution that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

(6) "Senior executive officer" defined

The term ''senior executive officer'' has the same meaning as in regulations prescribed under section 1831i(f) of this title.

(Sept. 21, 1950, ch. 967, § 2[8], 64 Stat. 879; Pub. L. 89–695, title II, §§ 202, 204, Oct. 16, 1966, 80 Stat. 1046, 1054; Pub. L. 93–495, title I, § 110, Oct. 28, 1974, 88 Stat. 1506; Pub. L. 95–369, §§ 6(c)(14), (15), 11, Sept. 17, 1978, 92 Stat. 618, 624; Pub. L. 95–630, title I, §§ 107(a)(1), (b), (c)(1), (d)(1), (e)(1), 111(a), title II, § 208(a), title III, §§ 303, 304, Nov. 10, 1978, 92 Stat. 3649, 3653, 3654, 3656, 3660, 3665, 3674, 3676; Pub. L. 97–320, title I, § 113(g), (h), title IV, §§ 404(c), 424(c), (d)(6), (e), 425(b), (c), 427(d), 433(a), Oct. 15, 1982, 96 Stat. 1473, 1474, 1512, 1523–1527; Pub. L. 99–570, title I, § 1359(a), Oct. 27, 1986, 100 Stat. 3207–27; Pub. L. 101–73, title II, § 201, title IX, §§ 901(b)(1), (d), 902(a), 903(a), 904(a), 905(a), 906(a), 907(a), 908(a), 912, 913(a), 920(a), (c), 926, Aug. 9, 1989, 103 Stat. 187, 446, 450, 453, 457, 459, 462, 477, 482, 483, 488; Pub. L. 101–647, title XXV, §§ 2521(b)(1), 2532(a), 2547(a)(1), (2), 2596(a), (b), Nov. 29, 1990, 104 Stat. 4864, 4880, 4886, 4887, 4908; Pub. L. 102–233, title III, § 302(a), Dec. 12, 1991, 105 Stat. 1767; Pub. L. 102–242, title I, § 131(c)(1), (2), title III, §§ 302(e)(5), formerly (e)(4), 307, Dec. 19, 1991, 105 Stat. 2266, 2349, 2360; Pub. L. 102–550, title XV, §§ 1503(a), 1504(a), title XVI, §§ 1603(d)(2)–(4), 1605(a)(5)(A), (11), Oct. 28, 1992, 106 Stat. 4048, 4051, 4080, 4085, 4086; Pub. L. 102–558, title III, §§ 303(b)(6)(A), 305, Oct. 28, 1992, 106 Stat. 4225, 4226; Pub. L. 103–204, § 25, Dec. 17, 1993, 107 Stat. 2408; Pub. L. 103–325, title IV, § 411(c)(2)(A), title VI, § 602(a)(11)–(18), Sept. 23, 1994, 108 Stat. 2253, 2289; Pub. L. 105–164, § 3(a)(2), Mar. 20, 1998, 112 Stat. 35; Pub. L. 105–362, title X, § 1001(d), Nov. 10, 1998, 112 Stat. 3291; Pub. L. 106–569, title XII, § 1232, Dec. 27, 2000, 114 Stat. 3037; Pub. L. 109–173, §§ 3(a)(6), (7), 8(a)(10), Feb. 15, 2006, 119 Stat. 3605, 3611; Pub. L. 109–351, title III, § 303, title VII, §§ 702(c), 708(a), 710(b), 715(a), 716(a), 717, Oct. 13, 2006, 120 Stat. 1970, 1985, 1988, 1991, 1995, 1996; Pub. L. 110–343, div. A, title I, § 126(b), Oct. 3, 2008, 122 Stat. 3795; Pub. L. 111–203, title I, § 172(b), title III, § 363(3), title X, § 1090(1), July 21, 2010, 124 Stat. 1439, 1551, 2093.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1090(1), 1100H, July 21, 2010, 124 Stat. 2093, 2113, provided that, ef-

fective on the designated transfer date, subsection (t) of this section is amended by adding at the end the following:

''(6) Referral to Bureau of Consumer Financial Protection

''Subject to subtitle B of the Consumer Financial Protection Act of 2010, each appropriate Federal banking agency shall make a referral to the Bureau of Consumer Financial Protection when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in the Consumer Financial Protection Act of 2010, has been committed by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.''

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title III, §§ 351, 363(3), July 21, 2010, 124 Stat. 1546, 1551, provided that, effective on the transfer date, this section is amended:

(1) in subsection (a)(8)(B)(ii), in the last sentence, by substituting ''Comptroller of the Currency'' for ''Director of the Office of Thrift Supervision'' wherever appearing;

(2) in subsection (b)—

(A) in paragraph (3), by inserting ''any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company (as such terms are defined in section 1467a of this title)), any noninsured State member bank'' after ''Bank Holding Company Act of 1956,'' and ''or against a savings and loan holding company or any subsidiary thereof (other than a depository institution or a subsidiary of such depository institution)'' before the period at the end; and

(B) by striking out paragraph (9) and inserting the following:

''(9) [Repealed]'';

(3) in subsection (e)(7)—

(A) in subparagraph (A)—

(i) in clause (v), by inserting ''and'' after the semicolon;

(ii) in clause (vi), by substituting ''Agency'' for ''Board'' and a period for ''; and''; and

(iii) by striking out clause (vii); and

(B) in subparagraph (D)—

(i) in clause (iii), by inserting ''and'' after the semicolon;

(ii) in clause (iv), by substituting ''Agency'' for ''Board'' and a period for ''; and''; and

(iii) by striking out clause (v);

(4) in subsection (j)—

(A) in paragraph (2), by striking out '', or as a savings association under subsection (b)(9) of this section'';

(B) in paragraph (3), by inserting ''or'' after the semicolon;

(C) in paragraph (4), by substituting a comma for ''; or''; and

(D) by striking out paragraph (5);

(5) in subsection (o), by substituting ''Comptroller of the Currency'' for ''Director of the Office of Thrift Supervision''; and

(6) in subsection (w)(3)(A), by striking out ''and the Office of Thrift Supervision''.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Subsections (a) and (b) of section 3104 of this title, referred to in subsec. (a)(1)(E), were redesignated subsections (b) and (c), respectively, of section 3104 of this title by Pub. L. 103–328, title I, §107(a)(1), Sept. 29, 1994, 108 Stat. 2358.

The Bank Holding Company Act of 1956, referred to in subsec. (b)(3), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

Section 25(a) of the Federal Reserve Act, referred to in subsec. (b)(3), which is classified to subchapter II (§611 et seq.) of chapter 6 of this title, was renumbered section 25A of that Act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§601 et seq.) of chapter 6 of this title.

The Federal Rules of Civil Procedure, referred to in subsecs. (b)(10) and (i)(4)(B), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Depository Institution Management Interlocks Act, referred to in subsec. (e)(2)(A)(iii), is title II of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3672, as amended, which is classified principally to chapter 33 (§3201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of this title and Tables.

The Federal Credit Union Act, referred to in subsec. (e)(7)(A)(iii), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

The Farm Credit Act of 1971, referred to in subsecs. (e)(7)(A)(iv), (D)(ii) and (j)(4), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

Subchapter VIII of chapter 3 of this title, referred to in subsec. (*o*), was in the original ''section 9 of the Federal Reserve Act'', meaning section 9 of act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified generally to subchapter VIII (§321 et seq.) of chapter 3 of this title.

PRIOR PROVISIONS

Section is derived from subsec. (i) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2010—Subsec. (t)(1). Pub. L. 111–203, §172(b)(1), inserted '', any depository institution holding company,'' before ''or any institution-affiliated party''.

Subsec. (t)(2)(D). Pub. L. 111–203, §172(b)(2), added subpar. (D).

Subsec. (t)(6). Pub. L. 111–203, §172(b)(3), added par. (6) relating to powers and duties with respect to depository institution holding companies.

2008—Subsec. (c)(4). Pub. L. 110–343 added par. (4).

2006—Subsec. (b)(1). Pub. L. 109–351, §§716(a)(1), 717(1), in first sentence, substituted ''in writing by a Federal banking agency'' for ''in writing by the agency'', ''any action on any application, notice, or other request by the depository institution or institution-affiliated party,'' for ''the granting of any application or other request by the depository institution'', and ''the appropriate Federal banking agency for the depository institution may issue and serve'' for ''the agency may issue and serve''.

Subsec. (b)(3). Pub. L. 109–351, §702(c)(1), substituted ''This subsection, subsections (c) through (s) and subsection (u) of this section, and section 1831aa of this title'' for ''This subsection and subsections (c) through (s) and subsection (u) of this section''.

Subsec. (b)(4). Pub. L. 109–351, § 702(c)(2), substituted ''This subsection, subsections (c) through (s) and subsection (u) of this section, and section 1831aa of this title'' for ''This subsection and subsections (c) through (s) and subsection (u) of this section''.

Subsec. (e)(1). Pub. L. 109–351, § 717(2)(B), substituted ''the appropriate Federal banking agency for the depository institution may serve upon such party'' for ''the agency may serve upon such party'' in concluding provisions.

Subsec. (e)(1)(A)(i)(III). Pub. L. 109–351, §§ 716(a)(2), 717(2)(A), substituted ''in writing by a Federal banking agency'' for ''in writing by the appropriate Federal banking agency'' and ''any action on any application, notice, or request by such depository institution or institution-affiliated party'' for ''the grant of any application or other request by such depository institution''.

Subsec. (e)(2)(A)(iv). Pub. L. 109–351, § 710(b), added cl. (iv).

Subsec. (e)(4). Pub. L. 109–351, § 303, struck out ''In any action brought under this section by the Comptroller of the Currency in respect to any such party with respect to a national banking association or a District depository institution, the findings and conclusions of the Administrative Law Judge shall be certified to the Board of Governors of the Federal Reserve System for the determination of whether any order shall issue.'' before ''Any such order shall become effective''.

Subsec. (g). Pub. L. 109–351, § 708(a)(2), inserted heading.

Subsec. (g)(1)(A). Pub. L. 109–351, § 708(a)(1)(A), substituted, in introductory provisions, ''is the subject of any information, indictment, or complaint, involving the commission of or participation in'' for ''is charged in any information, indictment, or complaint, with the commission of or participation in'' and, in concluding provisions, ''posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)),'' for ''may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution,'' and ''affairs of any depository institution'' for ''affairs of the depository institution''.

Subsec. (g)(1)(B)(i). Pub. L. 109–351, § 708(a)(1)(B), substituted ''any depository institution that the subject of the notice is affiliated with at the time the notice is issued'' for ''the depository institution''.

Subsec. (g)(1)(C)(i). Pub. L. 109–351, § 708(a)(1)(C), substituted ''posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)),'' for ''may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution,'' and ''affairs of any depository institution'' for ''affairs of the depository institution''.

Subsec. (g)(1)(C)(ii). Pub. L. 109–351, § 708(a)(1)(D), substituted ''affairs of any depository institution'' for ''affairs of the depository institution''.

Subsec. (g)(1)(D)(i). Pub. L. 109–351, § 708(a)(1)(E), substituted ''any depository institution that the subject of the order is affiliated with at the time the order is issued'' for ''the depository institution''.

Subsec. (g)(1)(E). Pub. L. 109–351, § 708(a)(1)(F), added subpar. (E).

Subsec. (i)(2)(A)(iii). Pub. L. 109–351, §§ 716(a)(3), 717(3), substituted ''in writing by a Federal banking agency'' for ''in writing by the appropriate Federal banking agency'' and ''any action on any application, notice, or other request by the depository institution or institution-affiliated party'' for ''the grant of any application or other request by such depository institution''.

Subsec. (i)(3). Pub. L. 109–351, § 715(a), inserted ''or order'' after ''notice'' in two places.

Subsec. (p). Pub. L. 109–173, § 3(a)(6), struck out ''semiannual'' before ''assessment period''.

Subsec. (q). Pub. L. 109–173, § 3(a)(7), substituted ''assessment period'' for ''semiannual period''.

Subsec. (t)(2)(C). Pub. L. 109–173, § 8(a)(10), substituted ''Deposit Insurance Fund'' for ''deposit insurance fund''.

2000—Subsec. (*o*). Pub. L. 106–569 substituted ''subsection (c) or (d) of section 1814'' for ''subsection (d) of section 1814''.

1998—Subsec. (b)(9). Pub. L. 105–164, § 3(a)(2)(A), struck out ''to any service corporation of a savings association and to any subsidiary of such service corporation'' after ''of a savings and loan holding company,''.

Subsec. (e)(7)(A)(ii). Pub. L. 105–164, § 3(a)(2)(B), substituted ''(b)(9)'' for ''(b)(8)''.

Subsec. (j)(2). Pub. L. 105–164, § 3(a)(2)(C), substituted ''(b)(9)'' for ''(b)(8)''.

Subsec. (u)(3) to (8). Pub. L. 105–362 redesignated pars. (4) to (8) as (3) to (7), respectively, and struck out heading and text of former par. (3). Text read as follows: ''A written report shall be made part of a determination not to hold a public hearing pursuant to paragraph (2) or not to publish a document pursuant to paragraph (1)(A). At the end of each calendar quarter, all such reports shall be transmitted to the Congress.''

1994—Subsec. (a)(3). Pub. L. 103–325, § 602(a)(11), substituted ''paragraph (2)(B)'' for ''subparagraph (B) of this subsection''.

Subsec. (a)(7). Pub. L. 103–325, § 602(a)(12), inserted comma after ''Board of Directors'' in first sentence and substituted ''the period'' for ''the period the period'' in third sentence.

Subsec. (b)(4). Pub. L. 103–325, § 602(a)(13), substituted ''paragraph (3)'' for ''subparagraph (3)''.

Subsec. (c)(2). Pub. L. 103–325, § 602(a)(14), substituted ''injunction'' for ''injuction''.

Subsec. (g)(1)(A)(ii). Pub. L. 103–325, § 411(c)(2)(A), substituted ''section 5322 or 5324 of title 31'' for ''section 5322 of title 31''.

Subsec. (g)(2). Pub. L. 103–325, § 602(a)(15), substituted ''bank'' for ''depository institution'' wherever appearing.

Subsec. (*o*). Pub. L. 103–325, § 602(a)(16), in second sentence, substituted ''subsection (d)'' for ''subsection (b)'' and ''Board of Directors'' for ''board of directors'' in two places.

Subsec. (p). Pub. L. 103–325, § 602(a)(17), substituted ''depository'' for ''banking'' wherever appearing.

Subsec. (r)(2). Pub. L. 103–325, § 602(a)(18), substituted ''agent thereof'' for ''agent therof''.

Subsec. (w)(1)(B). Pub. L. 103–325, § 411(c)(2)(A), substituted ''section 5322 or 5324 of title 31'' for ''section 5322 of title 31''.

1993—Subsec. (b)(10). Pub. L. 103–204, § 25(2), added par. (10).

Subsec. (i)(4)(B). Pub. L. 103–204, § 25(1), added subpar. (B) and struck out former subpar. (B) which read as follows: ''A permanent or temporary injunction or restraining order shall be granted without bond upon a prima facie showing that money damages, restitution, or civil money penalties, as sought by such agency, is appropriate.''

1992—Subsec. (a)(3). Pub. L. 102–550, § 1503(a)(2), inserted ''of this subsection or subsection (w) of this section'' after ''subparagraph (B)''.

Subsec. (e)(2). Pub. L. 102–550, § 1504(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured depository institution has committed any violation of the Depository Institution Management Interlocks Act, the agency may serve upon such director or officer a written notice of its intention to remove him from office.''

Subsec. (g)(1). Pub. L. 102–550, § 1504(a)(2), amended par. (1) generally, subdividing existing provisions into subpars. (A) to (D) and, in subpar. (A), including violations under section 1956, 1957, or 1960 of title 18, or section 5322 of title 31, as cause for suspension of any institution-affiliated party.

Subsec. (i)(1). Pub. L. 102–550, § 1603(d)(3), inserted reference to section 1831p–1 of this title in two places, and

substituted ''order under any such section, or to review'' for ''order under this section, or to review''.

Pub. L. 102–550, §1603(d)(2), amended directory language of Pub. L. 102–242, §131(c)(2)(A). See 1991 Amendment note below.

Subsec. (i)(2)(A)(ii). Pub. L. 102–550, §1603(d)(4), substituted ''subsection (b), (c), (e), (g), or (s) of this section or any final order under section 1831*o* or 1831p–1 of this title'' for ''subsection (b), (c), (e), (g), or (s) of this section, or final order under section 1831*o* of this title''.

Subsec. (q). Pub. L. 102–558, §303(b)(6)(A), amended directory language of Pub. L. 102–242, §302(e). See 1991 amendment note below. Pub. L. 102–550, §1605(a)(5)(A), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out in a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (t)(2)(B). Pub. L. 102–550, §1605(a)(11)(A), inserted ''or institution-affiliated party'' after ''institution'' in two places.

Subsec. (t)(2)(C). Pub. L. 102–550, §1605(a)(11)(B), substituted ''the conduct or threatened conduct'' for ''the institution's conduct or threatened conduct''.

Subsec. (t)(5)(A). Pub. L. 102–550, §1605(a)(11)(C), inserted ''or institution-affiliated party'' after ''depository institution''.

Subsec. (w). Pub. L. 102–550, §1503(a)(1), added subsec. (w).

1991—Subsec. (b)(8), (9). Pub. L. 102–242, §131(c)(1), added par. (8) and redesignated former par. (8) as (9).

Subsec. (i)(1). Pub. L. 102–242, §131(c)(2)(A), as amended by Pub. L. 102–550, §1603(d)(2), inserted ''or under section 1831*o* of this title'' after first and second references to ''section''.

Subsec. (i)(2)(A)(ii). Pub. L. 102–242, §131(c)(2)(B), inserted '', or final order under section 1831*o* of this title'' after ''section''.

Subsec. (q). Pub. L. 102–242, §302(e)(5), as renumbered by Pub. L. 102–558, §303(b)(6)(A), substituted ''assessment with respect to the deposits'' for ''assessment upon the deposits''.

Subsec. (t). Pub. L. 102–242, §307, amended subsec. (t) generally, substituting present provisions for provisions relating to authority of Board to take enforcement action against savings associations.

1990—Subsec. (b)(4). Pub. L. 101–647, §2596(a)(2), substituted ''subsections (c) through (s) and subsection (u) of this section'' for ''subsections (c), (d), (h), (i), (k), (*l*), (m), and (n) of this section''.

Subsec. (b)(6). Pub. L. 101–647, §2596(a)(1), inserted ''or remedy'' after ''to correct''.

Subsec. (c)(1). Pub. L. 101–647, §2596(b), inserted ''or remedy'' after ''to prevent'' and substituted ''(b)(6)'' for ''(b)(6)(B)''.

Subsec. (h)(1). Pub. L. 101–647, §2547(a)(2), struck out after first sentence ''Such hearing shall be private, unless the appropriate Federal banking agency, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest.''

Subsec. (i)(4). Pub. L. 101–647, §2521(b)(1), added par. (4).

Subsec. (u). Pub. L. 101–647, §2547(a)(1), amended subsec. (u) generally. Prior to amendment, subsec. (u) read as follows:

''(1) IN GENERAL.—The appropriate Federal banking agency shall publish and make available to the public—

''(A) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other provision of law; and

''(B) any modification to or termination of any final order described in subparagraph (A) of this paragraph.

''(2) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the appropriate Federal banking agency makes a determination in writing that the publication of any final order pursuant to paragraph (1) would seriously threaten the safety or soundness of an insured depository institution, such agency may delay the publication of such order for a reasonable time.''

Subsec. (v). Pub. L. 101–647, §2532(a), added subsec. (v).

1989—Pub. L. 101–73, §201(a), substituted references to insured depository institutions for references to insured banks wherever appearing in this section.

Subsec. (a). Pub. L. 101–73, §926(1), inserted heading.

Subsec. (a)(1) to (3). Pub. L. 101–73, §926(1), added pars. (1) to (3) and struck out first four sentences which read as follows: ''Any insured bank (except a national member bank, a foreign bank having an insured branch which is a Federal branch, a foreign bank having an insured branch which is required to be insured under section 3104(a) or (b) of this title, or State member bank) may, upon not less than ninety days' written notice to the Corporation, terminate its status as an insured bank. Whenever the Board of Directors shall find that an insured bank or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such bank, or is in an unsafe or unsound condition to continue operations as an insured bank, or violated an applicable law, rule, regulation or order, or any condition imposed in writing by the Corporation in connection with the granting of any application or other request by the bank, or any written agreement entered into with the Corporation the Board of Directors shall first give to the Comptroller of the Currency in the case of a national bank or a district bank, to the Federal Home Loan Bank Board in the case of an insured Federal savings bank, to the authority having supervision of the bank in the case of a State bank, and to the Board of Governors of the Federal Reserve System in the case of a State member bank, a statement with respect to such practices or violations for the purpose of securing the correction thereof and shall give a copy thereof to the bank. Unless such correction shall be made within one hundred and twenty days, or such shorter period not less than twenty days fixed by the Corporation in any case where the Board of Directors in its discretion has determined that the insurance risk of the Corporation is unduly jeopardized, or fixed by the Comptroller of the Currency in the case of a national bank, or the Federal Home Loan Bank Board in the case of an insured Federal savings bank, or the State authority in the case of a State bank, or Board of Governors of the Federal Reserve System in the case of a State member bank as the case may be, the Board of Directors, if it shall determine to proceed further, shall give to the bank not less than thirty days' written notice of intention to terminate the status of the bank as an insured bank, and shall fix a time and place for a hearing before the Board of Directors or before a person designated by it to conduct such hearing, at which evidence may be produced, and upon such evidence the Board of Directors shall make written findings which shall be conclusive. If the Board of Directors shall find that any unsafe or unsound practice or condition or violation specified in such statement has been established and has not been corrected within the time above prescribed in which to make such corrections, the Board of Directors may order that the insured status of the bank be terminated on a date subsequent to such finding and to the expiration of the time specified in such notice of intention.''

Subsec. (a)(4). Pub. L. 101–73, §926(2), designated fifth sentence as par. (4) and inserted heading.

Pub. L. 101–73, §901(d), substituted ''depository institution'' for ''bank''.

Subsec. (a)(5). Pub. L. 101–73, §926(3), designated sixth sentence as par. (5), inserted heading, and substituted ''Any insured depository institution whose insured status'' for ''Any insured bank whose insured status''.

Subsec. (a)(6). Pub. L. 101–73, §926(4), designated seventh sentence as par. (6) and inserted heading.

Pub. L. 101–73, §901(d), substituted ''depository institution'' for ''bank'' wherever appearing.

Subsec. (a)(7). Pub. L. 101–73, §926(5), (6), designated last three sentences as par. (7), inserted heading, substituted ''of at least 6 months or up to 2 years, within the discretion of the Board of Directors'' for first reference to ''of two years'', and ''the period referred to in the 1st sentence'' for second reference to ''of two

years'', and struck out ''of two years'' after ''within such period''.

Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank'' wherever appearing.

Subsec. (a)(8) to (10). Pub. L. 101–73, § 926(7), added pars. (8) to (10).

Subsec. (b)(1). Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank'' wherever appearing.

Pub. L. 101–73, § 901(b)(1)(A)(i), (B), substituted references to institution-affiliated parties for references to directors, officers, employees, agents, or other persons participating in the conduct of banks.

Pub. L. 101–73, § 901(b)(1)(A)(ii), which directed that ''institution-affiliated parties'' be substituted for ''directors, officers, employees, agents, or other persons participating in the conduct of the affairs of such bank'', was executed by making the substitution for ''directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such bank'', as the probable intent of Congress.

Subsec. (b)(2). Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank''.

Subsec. (b)(3). Pub. L. 101–73, § 902(a)(1)(A), substituted ''subsections (c) through (s) and subsection (u)'' for ''subsections (c) through (f) and (h) through (n)''.

Subsec. (b)(4). Pub. L. 101–73, § 902(a)(1)(B), which directed the substitution of ''subsections (c) through (s) and subsection (u)'' for ''subsections (c) through (f) and (h) through (n)'', could not be executed because the words ''subsections (c) through (f) and (h) through (n)'' did not appear. See 1990 Amendment note above.

Subsec. (b)(6) to (8). Pub. L. 101–73, § 902(a)(1)(C), added pars. (6) to (8).

Subsec. (c)(1). Pub. L. 101–73, § 902(a)(2)(A), substituted ''insolvency or significant dissipation'' for ''insolvency or substantial dissipation'', struck out ''seriously'' before ''weaken the condition of'' and before ''prejudice the interests of'', and inserted after first sentence ''Such order may include any requirement authorized under subsection (b)(6)(B) of this section''.

Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank'' wherever appearing.

Pub. L. 101–73, § 901(b)(1)(B), substituted references to institution-affiliated parties for references to directors, officers, employees, agents or other persons participating in the conduct of the affairs of banks.

Subsec. (c)(2). Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank'' wherever appearing.

Pub. L. 101–73, § 901(b)(1)(B), substituted references to institution-affiliated parties for references to directors, officers, employees, agents or other persons participating in the conduct of the affairs of banks.

Subsec. (c)(3). Pub. L. 101–73, § 902(a)(2)(B), added par. (3).

Subsec. (d). Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank''.

Subsec. (e)(1). Pub. L. 101–73, § 903(a)(1), amended par. (1) generally, by, among other changes, giving existing provisions subpar. designations, and by adding as conditions for removal of a party a violation of any condition imposed by writing in connection with a grant of any application or request, and violation of any written agreement between such depository institution and agency.

Subsec. (e)(2). Pub. L. 101–73, § 903(a)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured bank, by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to continue as a director or officer and, whenever, in the opinion of the appropriate Federal banking agency, any other person participating in the conduct of the affairs of an insured bank, by conduct or practice with respect to such bank or other insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such insured bank, the agency may serve upon such director, officer, or other person a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the bank.''

Subsec. (e)(3). Pub. L. 101–73, § 903(a)(2), added par. (3). Former par. (3) redesignated (2).

Subsec. (e)(4). Pub. L. 101–73, § 903(a)(2), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''In respect to any director or officer of an insured bank or any other person referred to in paragraph (1), (2), or (3) of this subsection, the appropriate Federal banking agency may, if it deems it necessary for the protection of the bank or the interests of its depositors, by written notice to such effect served upon such director, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the bank. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (f) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1), (2), or (3) of this subsection and until such time as the agency shall dismiss the charges specified in such notice, or, if an order of removal or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated.''

Pub. L. 101–73, § 901(b)(1)(C), substituted references to institution-affiliated parties for references to directors, officers, or other persons.

Pub. L. 101–73, § 901(d), substituted reference to depository institutions for reference to banks.

Subsec. (e)(5). Pub. L. 101–73, § 903(a)(2), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 101–73, § 901(b)(1)(D), inserted ''within the term 'institution-affiliated party''' after ''the term 'officer'\'', and inserted ''within the term 'institution-affiliated party' as used in this subsection'' after ''the term 'director'\''.

Pub. L. 101–73, § 901(d), substituted reference to depository institution for reference to bank.

Subsec. (e)(6). Pub. L. 101–73, § 903(a)(2), (3), added par. (6) and redesignated former par. (6) as (5).

Subsec. (e)(7). Pub. L. 101–73, § 904(a), added par. (7).

Subsec. (f). Pub. L. 101–73, § 903(a)(4)(A), substituted ''(e)(3)'' for ''(e)(4)'' and ''(e)(1) or (e)(2)'' for ''(e)(1), (e)(2), or (e)(3)''.

Pub. L. 101–73, § 901(b)(1)(E), substituted ''any institution-affiliated party'' and ''such party'' for ''any director, officer, or other person'' and ''such director, officer, or other person'', respectively, wherever appearing.

Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank''.

Subsec. (g)(1). Pub. L. 101–73, § 906(a), struck out ''authorized by a United States attorney'' after ''information, indictment, or complaint'', and substituted ''or an agreement to enter a pre-trial diversion or other similar program'' for ''with respect to such crime''.

Pub. L. 101–73, § 903(a)(4)(B), substituted ''(1), (2), or (3)'' for ''(1), (2), (3), or (4)''.

Pub. L. 101–73, § 901(d), substituted references to depository institutions for references to banks wherever appearing.

Pub. L. 101–73, § 901(b)(1)(F)(i), substituted ''institution-affiliated party'' for ''director or officer of an insured bank, or other person participating in the conduct of the affairs of such bank''.

Pub. L. 101–73, § 901(b)(1)(F)(v), which directed the substitution of ''party'' for ''director, officer or other person'', could not be executed, because the phrase did not appear.

Pub. L. 101–73, §901(b)(1)(F)(ii)–(iv), (vi), substituted ''such party'' for ''the individual'' wherever appearing, ''such party'' for ''such director, officer, or other person'' wherever appearing, ''such party'' for ''him'' wherever appearing, and ''whereupon such party (if a director or an officer)'' for ''whereupon such director or officer''.

Subsec. (g)(2). Pub. L. 101–73, §901(d), substituted references to depository institutions for references to banks wherever appearing.

Subsec. (g)(3). Pub. L. 101–73, §901(d), substituted references to depository institutions for references to banks wherever appearing.

Pub. L. 101–73, §901(b)(1)(G), substituted ''the institution-affiliated party concerned'' for ''the director, officer, or other person concerned'' and substituted ''such party'' for ''such individual'', for ''the concerned director, officer, or other person'', and for any other reference to the director, officer or other person.

Subsec. (h)(1). Pub. L. 101–73, §901(d), substituted ''depository institution'' for ''bank''.

Subsec. (h)(2). Pub. L. 101–73, §920(a), substituted ''Any party to any proceeding under paragraph (1)'' for ''Any party to the proceeding, or any person required by an order issued under this section to cease and desist from any of the violations or practices stated therein,''.

Pub. L. 101–73, §901(d), substituted ''depository institution'' for ''bank'' wherever appearing.

Pub. L. 101–73, §901(b)(1)(H), substituted ''institution-affiliated party'' for ''director or officer or other person''.

Subsec. (i)(1). Pub. L. 101–73, §901(d), substituted ''depository institution'' for ''bank''.

Subsec. (i)(2). Pub. L. 101–73, §907(a), amended par. (2) generally, revising and restating as subpars. (A) to (K) provisions of former cls. (i) to (vii).

Subsec. (i)(3). Pub. L. 101–73, §905(a), added par. (3).

Subsec. (j). Pub. L. 101–73, §908(a), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: ''Any director or officer, or former director or officer of an insured bank, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under subsections (e)(4), (e)(5), or (g) of this section, and who (i) participates in any manner in the conduct of the affairs of the bank involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such bank, or (ii) without the prior written approval of the appropriate Federal banking agency, votes for a director, serves or acts as a director, officer, or employee of any bank, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.''

Subsec. (k). Pub. L. 101–73, §920(c), struck out subsec. (k) which defined the terms ''cease-and-desist order which has become final'', ''order which has become final'', and ''violation'', as those terms were used in this section.

Subsec. (*l*). Pub. L. 101–73, §901(d), substituted ''State depository institution'' for ''State bank''.

Pub. L. 101–73, §901(b)(1)(I), substituted ''institution-affiliated party'' for ''director or officer thereof or other person participating in the conduct of its affairs''.

Subsec. (m). Pub. L. 101–73, §901(b)(1)(J), substituted ''institution-affiliated party'' for ''director or officer or other person participating in the conduct of its affairs''.

Subsec. (n). Pub. L. 101–73, §901(d), substituted ''depository institution'' for ''bank''.

Subsec. (*o*). Pub. L. 101–73, §201(b), substituted ''Director of the Office of Thrift Supervision'' for ''Federal Home Loan Bank Board''.

Subsec. (q). Pub. L. 101–73, §901(d), substituted ''depository institution'' for ''bank'' wherever appearing and ''depository institutions'' for ''banks''.

Subsec. (s). Pub. L. 101–73, §901(d), substituted references to depository institutions for references to banks wherever appearing.

Subsec. (t). Pub. L. 101–73, §912, added subsec. (t).

Subsec. (u). Pub. L. 101–73, §913(a), added subsec. (u).

1986—Subsec. (i)(2)(i). Pub. L. 99–570, §1359(a)(2), inserted reference to subsec. (s) of this section.

Subsec. (s). Pub. L. 99–570, §1359(a)(1), added subsec. (s).

1982—Subsec. (a). Pub. L. 97–320, §113(g), inserted ''to the Federal Home Loan Bank Board in the case of an insured Federal savings bank,'' after ''national bank or a district bank,'' and ''or the Federal Home Loan Bank Board in the case of an insured Federal savings bank,'' after ''Currency in the case of a national bank,''.

Subsec. (b)(3). Pub. L. 97–320, §425(b), substituted ''25(a)'' for ''25A''.

Subsec. (b)(4). Pub. L. 97–320, §425(c), which directed the amendment of subsec. (b) by adding a new par. (4) at end, was executed (as the probable intent of Congress) as a general amendment of existing par. (4), as added by Pub. L. 95–369, the two pars. (4) being identical except that the new par. (4) refers to ''purposes of this paragraph'' rather than ''purposes of this subparagraph''.

Subsec. (b)(5). Pub. L. 97–320, §404(c), added par. (5).

Subsec. (e)(3). Pub. L. 97–320, §427(d)(1)(A), added par. (3). Former par. (3) redesignated (4).

Subsec. (e)(4). Pub. L. 97–320, §427(d)(1)(A), (B), redesignated former par. (3) as (4) and inserted references to par. (3) of this subsection in two places. Former par. (4) redesignated (5).

Subsec. (e)(5), (6). Pub. L. 97–320, §427(d)(1)(A), redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (f). Pub. L. 97–320, §427(d)(2), substituted references to ''subsection (e)(4)'' for ''subsection (e)(5) or (e)(7)'' and ''subsection (e)(1), (e)(2), or (e)(3)'' for ''subsection (e)(1), (e)(3), or (e)(7)''.

Subsec. (g)(1). Pub. L. 97–320, §427(d)(3), in penultimate sentence, included reference to par. (4) of subsec. (e) of this section.

Subsec. (i)(2)(i). Pub. L. 97–320, §424(c), (d)(6), inserted proviso giving agency discretionary authority to compromise, etc., any civil money penalty imposed under such authority, and substituted ''may be assessed'' for ''shall be assessed''.

Subsec. (i)(2)(iv). Pub. L. 97–424(e) substituted ''twenty days from the service'' for ''ten days from the date''.

Subsec. (j). Pub. L. 97–320, §427(d)(4), struck out reference to subsec. (e)(3) and included reference to subsec. (e)(5) of this section.

Subsec. (*o*). Pub. L. 97–320, §113(h), inserted provision that whenever the insured status of an insured Federal savings bank shall be terminated by action of the Board of Directors, the Federal Home Loan Bank Board shall appoint a receiver for the bank, which shall be the Corporation.

Subsec. (q). Pub. L. 97–320, §433(a), struck out item (3) provisions requiring the assuming or resulting bank to give notice of an assumption to each of the depositors of the bank whose liabilities are assumed within thirty days after such assumption takes effect.

1978—Subsec. (a). Pub. L. 95–369, §6(c)(14), inserted ''a foreign bank having an insured branch which is a Federal branch, a foreign bank having an insured branch which is required to be insured under section 3104(a) or (b) of this title'' after ''(except a national member bank''.

Subsec. (b)(1), (2). Pub. L. 95–630, §107(a)(1), extended coverage of par. (1) to include directors, officers, employees, agents, or other persons participating in the conduct of the affairs of an insured bank or a bank which has insured deposits, and reenacted par. (2) without change.

Subsec. (b)(3). Pub. L. 95–630, §107(b), substituted ''subsections (c) through (f) and (h) through (n) of this section'' for ''subsections (c), (d), (h), (i), (k), (*l*), (m), and (n) of this section'' and inserted provisions relating to any organization organized and operated under sec-

tion 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act and provisions relating to the issuance of a notice of charges or cease-and-desist order against a bank holding company or subsidiary by any Federal banking agency other than the Board of Governors of the Federal Reserve System.

Subsec. (b)(4). Pub. L. 95–369, § 11, added par. (4).

Subsec. (c). Pub. L. 95–630, § 107(c)(1), in pars. (1) and (2) inserted references to any director, officer, employee, agent, or other person participating in the conduct of the affairs of the bank and in par. (1) inserted ''prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section'' after ''interests of its depositors'' and ''and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings'' after ''violation or practice''.

Subsec. (e). Pub. L. 95–630, §§ 107(d)(1), 208(a), generally revised and condensed the provisions relating to the suspension and removal of bank directors and officers, consolidated procedures relating to the certification of facts to the Board of Governors of the Federal Reserve System by the Comptroller of the Currency, substituted references to insured banks for references to insured State banks (other than a District Bank), and inserted provisions defining ''officer'' and ''director'' for the purpose of enforcing any law, rule, etc., in connection with an interlocking relationship.

Subsec. (g). Pub. L. 95–630, § 111(a)(1), among other changes, inserted in par. (1) '', if continued service or participation by the individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank'' after ''agency may'' in two places, inserted provision that any notice of suspension or order of removal issued under this paragraph remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the agency, and added par. (3).

Subsec. (h)(1). Pub. L. 95–630, § 111(a)(2), inserted ''(other than the hearing provided for in subsection (g)(3) of this section)'' after ''provided for in this section''.

Subsec. (i). Pub. L. 95–630, § 107(e)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 95–630, § 111(a)(3), substituted ''subsections (e)(3), (e)(4)'' for ''subsections (e)(5), (e)(7), (e)(8)''.

Subsec. (k). Pub. L. 95–630, § 111(a)(4), substituted ''paragraph (1) or (3) of subsection (g)'' for ''paragraph (1) of subsection (g)''.

Subsec. (n). Pub. L. 95–630, § 111(a)(5), inserted provision creating a criminal penalty for a willful failure or refusal to attend and testify or to answer any lawful inquiry or to produce books, papers, etc. in obedience to the subpoena of the appropriate Federal banking agency.

Pub. L. 95–630, § 303, inserted ''or in connection with any claim for insured deposits or any examination or investigation under section 1820(c) of this title,'' after ''proceeding under this section,'', ''examination, or investigation or considering the claim for insured deposits,'' after ''conducting the proceeding,'', and ''such agency or any'' before ''party to proceedings'' and substituted ''any such proceedings, claims, examinations, or investigations'' for ''any such proceedings'' and ''subpenaed under this subsection'' for ''subpenaed under this section''.

Subsec. (q). Pub. L. 95–630, § 304, among other changes, substituted provisions requiring the assuming or resulting bank to give notice of an assumption to each of the depositors of the bank whose liabilities are so assumed within thirty days after such assumption takes effect for provisions requiring the bank whose liabilities are being assumed to give notice of such assumption to its depositors within thirty days after such assumption takes effect, by publication or by any reasonable means, in accordance with regulations to be prescribed by the Board of Directors.

Subsec. (r). Pub. L. 95–369, § 6(c)(15), added subsec. (r).

1974—Subsec. (b)(3). Pub. L. 93–495 added par. (3).

1966—Subsec. (a). Pub. L. 89–695, § 204, enlarged the authority of the Corporation to institute involuntary termination proceedings against an insured bank which had engaged in or whose directors or trustees had engaged in, rather than merely continued unsafe or unsound practices, or was in an unsafe or unsound condition to continue operations as an insured bank, or had violated any law, rule, regulation or order, or any condition imposed in writing by the Corporation or any written agreement entered into with the Corporation; made it clear that the Corporation would be required to give the State authority a copy of the statement dealing the practices or violations where the State bank involved was a State member bank; provided for an alternative and shortened correction period of not less than twenty days in those cases where the Board of Directors of the Corporation on its discretion determined that the insurance risk of the Corporation was unduly jeopardized; provided the State authority with power to shorten the correction period in those cases involving State banks whether member or nonmember banks; transposed the position of the fourth and fifth sentences; and provided a bank whose insured status had been terminated with right of judicial review to the extent provided in subsec. (h) of this section.

Subsecs. (b) to (q). Pub. L. 89–695, § 202, added subsecs. (b) to (n) and redesignated former subsecs. (b) to (d) as (*o*) to (q), respectively.

CHANGE OF NAME

Oversight Board redesignated Thrift Depositor Protection Oversight Board, effective Feb. 1, 1992, see section 302(a) of Pub. L. 102–233, set out as a note under section 1441a of this title. Thrift Depositor Protection Oversight Board abolished, see section 14(a)–(d) of Pub. L. 105–216, set out as a note under section 1441a of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 172(b) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

Amendment by section 363(3) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 1090(1) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 3(a)(6), (7) of Pub. L. 109–173 effective Jan. 1, 2007, see section 3(b) of Pub. L. 109–173, set out as a note under section 1817 of this title.

Amendment by section 8(a)(10) of Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by section 303(b)(6)(A) of Pub. L. 102–558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102–558, set out as a note under section 2062 of Title 50, Appendix, War and National Defense.

Amendment by sections 1603(d)(2)–(4) and 1605(a)(5)(A), (11) of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 131(c)(1), (2) of Pub. L. 102–242 effective 1 year after Dec. 19, 1991, see section 131(f) of

Pub. L. 102–242, set out as a note under section 1464 of this title.

Amendment by section 302(e)(4) of Pub. L. 102–242 effective on earlier of 180 days after date on which final regulations promulgated in accordance with section 302(c) of Pub. L. 102–242, set out as a note under section 1817 of this title, become effective or Jan. 1, 1994, see section 302(g) of Pub. L. 102–242, set out as a note under section 1817 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 2547(a)(3) of Pub. L. 101–647 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to all written agreements which are entered into and all written statements which become effective after the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 903(a) of Pub. L. 101–73 applicable with respect to violations committed and activities engaged in after Aug. 9, 1989, see section 903(e) of Pub. L. 101–73, set out as a note under section 1786 of this title.

Amendment by section 907(a) of Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of $5,000 and $25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(*l*) of Pub. L. 101–73, set out as a note under section 93 of this title.

EFFECTIVE DATE OF REGULATIONS PRESCRIBED UNDER 1986 AMENDMENT

The regulations required to be prescribed under amendment by Pub. L. 99–570 effective at end of 3-month period beginning on Oct. 27, 1986, see section 1364(e) of Pub. L. 99–570, set out as a note under section 1464 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630, except for amendment by section 107(e)(1), effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

Amendment by section 107(e)(1) of Pub. L. 95–630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95–630, set out as a note under section 93 of this title.

EXPIRATION OF 1966 AMENDMENT

Pub. L. 91–609, title IX, § 908, Dec. 31, 1970, 84 Stat. 1811, repealed section 401 of Pub. L. 89–695 which had provided that: ''The provisions of titles I and II of this Act [amending sections 1464, 1730, 1813, 1817 to 1820 and repealing section 77 of this title and enacting provisions set out as notes under sections 1464, 1730, and 1813 of this title] and any provisions of law enacted by said titles shall be effective only during the period ending at the close of June 30, 1972. Effective upon the expiration of such period, each provision of law amended by either of such titles is further amended to read as it did immediately prior to the enactment of this Act [Oct. 16, 1966] and each provision of law repealed by either of such titles is reenacted.''

IMPROVED ADMINISTRATIVE HEARINGS AND PROCEDURES FOR FEDERAL BANKING AGENCIES AND NATIONAL CREDIT UNION ADMINISTRATION BOARD

Section 916 of Pub. L. 101–73 provided that before close of 24-month period beginning on Aug. 9, 1989, appropriate Federal banking agencies (as defined in section 3(q) of the Federal Deposit Insurance Act [12 U.S.C. 1813(q)]) and National Credit Union Administration Board jointly establish their own pool of administrative law judges and develop a set of uniform rules and procedures for administrative hearings, including provisions for summary judgment rulings where there are no disputes as to material facts of the case.

TASK FORCE STUDY OF DELEGATION OF ENFORCEMENT ACTIONS

Section 917 of Pub. L. 101–73 directed appropriate Federal banking agencies (as defined in section 1813(q) of this title and National Credit Union Administration Board to create a joint task force to study desirability and feasibility of delegating investigation and enforcement authority to their regional or district offices or banks, provided for composition of task force, and required that not later than Sept. 30, 1990, task force report to Congress its findings and recommendations, together with responses of Comptroller of the Currency, Director of Office of Thrift Supervision, Chairperson of Federal Deposit Insurance Corporation, Chairman of Board of Governors of Federal Reserve System, and Chairman of National Credit Union Administration.

CREDIT STANDARDS ADVISORY COMMITTEE

Pub. L. 101–73, title XII, § 1205, Aug. 9, 1989, 103 Stat. 521, as amended by Pub. L. 102–242, title IV, § 422, Dec. 19, 1991, 105 Stat. 2377; Pub. L. 111–203, title III, § 367(7), July 21, 2010, 124 Stat. 1557, provided that:

''(a) ESTABLISHMENT.—There is hereby established the Credit Standards Advisory Committee (in this section referred to as the 'Committee').

''(b) MEMBERSHIP.—

''(1) APPOINTMENT.—The Committee shall consist of 11 members, as follows:

''(A) The Chairman of the Board of Governors of the Federal Reserve System, or the Chairman's designee.

''(B) The Director of the Office of Thrift Supervision, or the Director's designee.

''(C) The Chairperson of the Federal Deposit Insurance Corporation, or the Chairperson's designee.

''(D) The Comptroller of the Currency, or the Comptroller's designee.

''(E) The Chairman of the National Credit Union Administration, or the Chairman's designee.

''(F) 6 members of the public appointed by the President who are knowledgeable with the credit standards and lending practices of insured depository institutions, no more than 3 of whom shall be from the same political party.

''(2) TERMS.—Each member appointed under paragraph (1)(F) shall serve for the life of the Committee.

''(3) CHAIRPERSON.—The Chairperson of the Committee shall be designated by the President from among the members appointed under paragraph (1)(F).

''(4) VACANCIES.—Any vacancy on the Committee shall be filled in the manner in which the original appointment was made.

''(5) PAY AND EXPENSES.—Members of the Committee shall serve without pay but each member of the Committee shall be reimbursed for expenses incurred in connection with attendance of such members at meetings of the Committee. All expenses of the Committee shall be shared on a pro rata basis, based upon each agency's total budget for the preceding year by the Federal financial regulators specified in subparagraphs (A) through (E) of paragraph (1).

''(6) MEETINGS.—The Committee shall meet, not less frequently than quarterly, at the call of the chairperson or a majority of the members.

''(c) DUTIES OF THE COMMITTEE.—The Committee shall do the following:

''(1) REVIEW CREDIT STANDARDS, LENDING PRACTICES, AND SUPERVISION BY FEDERAL REGULATORS.—Review the credit standards and lending practices of insured depository institutions and the supervision of such standards and practices by the Federal financial regulators.

''(2) PREPARE RECOMMENDATIONS.—Prepare written comments and recommendations for the Federal financial regulators to ensure that insured depository institutions adhere to prudential credit standards and lending practices that are consistent for all insured depository institutions, to the maximum extent possible.

''(3) MONITOR CREDIT STANDARDS, LENDING PRACTICES, AND SUPERVISION BY FEDERAL REGULATORS.—Monitor the credit standards and lending practices of insured depository institutions, and the supervision of such standards and practices by the Federal financial regulators, to ensure that insured depository institutions can meet the demands of a modern and globally competitive financial world.

''(d) ANNUAL REPORT.—

''(1) REQUIRED.—Not later than January 30 of each year, the Committee shall submit a report to the Committee on Banking, Finance and Urban Affairs [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

''(2) CONTENTS.—The report required by paragraph (1) shall describe the activities of the Committee during the preceding year and the reports and recommendations made by the Committee to the Federal financial regulators.

''(e) CONFLICT OF INTEREST GUIDELINES.—The Committee shall prescribe such guidelines as the Committee determines to be appropriate to avoid conflicts of interest with respect to the disclosure to and use by members of the Committee of information relating to insured depository institutions and the Federal financial regulators.

''(f) FEDERAL ADVISORY COMMITTEE ACT DOES NOT APPLY.—The Federal Advisory Committee Act [5 U.S.C. App.] shall not apply with respect to the Committee.''

[Pub. L. 111–203, title III, §§351, 367(7), July 21, 2010, 124 Stat. 1546, 1557, provided that, effective on the transfer date (defined in section 5301 of this title), section 1205(b) of Pub. L. 101–73, set out above, is amended, in paragraph (1), by striking subparagraph (B) and by redesignating subparagraphs (C) through (F) as subparagraphs (B) through (E), respectively, and, in paragraph (2), by striking ''paragraph (1)(F)'' and inserting ''paragraph (1)(E)''.]

[For termination, effective May 15, 2000, of reporting provisions under 1205(d) of Pub. L. 101–73, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 159 of House Document No. 103–7.]

CONDITIONS GOVERNING EMPLOYMENT OF PERSONNEL NOT REPEALED, MODIFIED, OR AFFECTED

Nothing contained in sections 202 and 204 of Pub. L. 89–695 amending this section to be construed as repealing, modifying, or affecting section 1829 of this title, see section 206 of Pub. L. 89–695, set out as a note under section 1813 of this title.

§ 1819. Corporate powers

(a) In general

Upon June 16, 1933, the Corporation shall become a body corporate and as such shall have power—

First. To adopt and use a corporate seal.

Second. To have succession until dissolved by an Act of Congress.

Third. To make contracts.

Fourth. To sue and be sued, and complain and defend, by and through its own attorneys, in any court of law or equity, State or Federal.

Fifth. To appoint by its Board of Directors such officers and employees as are not otherwise provided for in this chapter, to define their duties, fix their compensation, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees. Nothing in this chapter or any other Act shall be construed to prevent the appointment and compensation as an officer or employee of the Corporation of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof.

Sixth. To prescribe, by its Board of Directors, bylaws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

Seventh. To exercise by its Board of Directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this chapter, and such incidental powers as shall be necessary to carry out the powers so granted.

Eighth. To make examinations of and to require information and reports from depository institutions, as provided in this chapter.

Ninth. To act as receiver.

Tenth. To prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this chapter or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency).

(b) Agency authority

(1) Status

The Corporation, in any capacity, shall be an agency of the United States for purposes of section 1345 of title 28 without regard to whether the Corporation commenced the action.

(2) Federal court jurisdiction

(A) In general

Except as provided in subparagraph (D), all suits of a civil nature at common law or in equity to which the Corporation, in any capacity, is a party shall be deemed to arise under the laws of the United States.

(B) Removal

Except as provided in subparagraph (D), the Corporation may, without bond or security, remove any action, suit, or proceeding from a State court to the appropriate United States district court before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation or the Corporation is substituted as a party.

(C) Appeal of remand

The Corporation may appeal any order of remand entered by any United States district court.

(D) State actions

Except as provided in subparagraph (E), any action—

(i) to which the Corporation, in the Corporation's capacity as receiver of a State insured depository institution by the exclusive appointment by State authorities, is a party other than as a plaintiff;

(ii) which involves only the preclosing rights against the State insured depository

institution, or obligations owing to, depositors, creditors, or stockholders by the State insured depository institution; and

(iii) in which only the interpretation of the law of such State is necessary,

shall not be deemed to arise under the laws of the United States.

(E) Rule of construction

Subparagraph (D) shall not be construed as limiting the right of the Corporation to invoke the jurisdiction of any United States district court in any action described in such subparagraph if the institution of which the Corporation has been appointed receiver could have invoked the jurisdiction of such court.

(3) Service of process

The Board of Directors shall designate agents upon whom service of process may be made in any State, territory, or jurisdiction in which any insured depository institution is located.

(4) Bonds or fees

The Corporation shall not be required to post any bond to pursue any appeal and shall not be subject to payments of any filing fees in United States district courts or courts of appeal.

(Sept. 21, 1950, ch. 967, §2[9], 64 Stat. 881; Pub. L. 89–695, title II, §205, Oct. 16, 1966, 80 Stat. 1055; Pub. L. 95–630, title III, §309, Nov. 10, 1978, 92 Stat. 3677; Pub. L. 101–73, title II, §209, Aug. 9, 1989, 103 Stat. 216; Pub. L. 102–242, title I, §161(d), Dec. 19, 1991, 105 Stat. 2286; Pub. L. 103–325, title III, §331(e), Sept. 23, 1994, 108 Stat. 2232.)

PRIOR PROVISIONS

Section is derived from subsec. (j) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–325 in par. Fourth inserted ''by and through its own attorneys,'' after ''complain and defend,''.

1991—Subsec. (b)(2)(B). Pub. L. 102–242 inserted before period at end ''before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation or the Corporation is substituted as a party''.

1989—Subsec. (a). Pub. L. 101–73, §209(2), designated existing provisions as subsec. (a) and inserted heading.

Pub. L. 101–73, §209(3), amended par. Fourth generally. Prior to amendment, par. Fourth read as follows: ''Fourth. To sue and be sued, complain and defend, in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy; and the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect, except that any such suit to which the Corporation is a party in its capacity as receiver of a State bank and which involves only the rights or obligations of depositors, creditors, stockholders, and such State bank under State law shall not be deemed to arise under the laws of the United States. No attachment or execution shall be issued against the Corporation or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court. The Board of Directors shall designate an agent upon whom service of process may be made in any State, Territory, or jurisdiction in which any insured bank is located.''

Pub. L. 101–73, §209(1), in par. Eighth, substituted reference to depository institutions for reference to banks.

Subsec. (b). Pub. L. 101–73, §209(4), added subsec. (b).

1978—Pub. L. 95–630 in par. Tenth inserted ''or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency)'' after ''provisions of this chapter''.

1966—Pub. L. 89–695 in par. Fourth vested United States district courts, without regard to the amount in controversy, with original jurisdiction over any action to which the Corporation is a party and authorized the removal of such actions to the Federal courts.

EFFECTIVE DATE OF 1978 AMENDMENT

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

EXPIRATION OF 1966 AMENDMENT

Pub. L. 91–609, title IX, §908, Dec. 31, 1970, 84 Stat. 1811, repealed section 401 of Pub. L. 89–695 which provided that: ''The provisions of titles I and II of this Act [amending sections 1464, 1730, 1813, 1817 to 1820 and repealing section 77 of this title and enacting provisions set out as notes under sections 1464, 1730, and 1813 of this title] and any provisions of law enacted by said titles shall be effective only during the period ending at the close of June 30, 1972. Effective upon the expiration of such period, each provision of law amended by either of such titles is further amended to read as it did immediately prior to the enactment of this Act [Oct. 16, 1966] and each provision of law repealed by either of such titles is reenacted.''

CONDITIONS GOVERNING EMPLOYMENT OF PERSONNEL NOT REPEALED, MODIFIED, OR AFFECTED

Nothing contained in section 205 of Pub. L. 89–695 amending subsec. Fourth of this section to be construed as repealing, modifying, or affecting section 1829 of this title, see section 206 of Pub. L. 89–695, set out as a note under section 1813 of this title.

§1820. Administration of Corporation

(a) Board of Directors; use of mails; cooperation with other Federal agencies

The Board of Directors shall administer the affairs of the Corporation fairly and impartially and without discrimination. The Board of Directors of the Corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid. The Corporation shall be entitled to the free use of the United States mails in the same manner as the executive departments of the Government. The Corporation with the consent of any Federal Reserve bank or of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, may avail itself of the use of information, services, and facilities thereof in carrying out the provisions of this chapter.

(b) Examinations

(1) Appointment of examiners and claims agents

The Board of Directors shall appoint examiners and claims agents.

(2) Regular examinations

Any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to examine—

(A) any insured State nonmember bank or insured State branch of any foreign bank;

(B) any depository institution which files an application with the Corporation to become an insured depository institution; and

(C) any insured depository institution in default,

whenever the Board of Directors determines an examination of any such depository institution is necessary.

(3) Special examination of any insured depository institution

(A) In general

In addition to the examinations authorized under paragraph (2), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make any special examination of any insured depository institution or nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010 [12 U.S.C. 5365(a)], whenever the Board of Directors determines that a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance purposes, or of such nonbank financial company supervised by the Board of Governors or bank holding company described in section 165(a) of the Financial Stability Act of 2010 [12 U.S.C. 5365(a)], for the purpose of implementing its authority to provide for orderly liquidation of any such company under title II[1] of that Act, provided that such authority may not be used with respect to any such company that is in a generally sound condition.

(B) Limitation

Before conducting a special examination of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010 [12 U.S.C. 5365(a)], the Corporation shall review any available and acceptable resolution plan that the company has submitted in accordance with section 165(d) of that Act [12 U.S.C. 5365(d)], consistent with the nonbinding effect of such plan, and available reports of examination, and shall coordinate to the maximum extent practicable with the Board of Governors, in order to minimize duplicative or conflicting examinations.

(4) Examination of affiliates

(A) In general

In making any examination under paragraph (2) or (3), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make such examinations of the affairs of any affiliate of any depository institution as may be necessary to disclose fully—

(i) the relationship between such depository institution and any such affiliate; and

(ii) the effect of such relationship on the depository institution.

(B) Commitment by foreign banks to allow examinations of affiliates

No branch or depository institution subsidiary of a foreign bank may become an insured depository institution unless such foreign bank submits a written binding commitment to the Board of Directors to permit any examination of any affiliate of such branch or depository institution subsidiary pursuant to subparagraph (A) to the extent determined by the Board of Directors to be necessary to carry out the purposes of this chapter.

(5) Examination of insured State branches

The Board of Directors shall—

(A) coordinate examinations of insured State branches of foreign banks with examinations conducted by the Board of Governors of the Federal Reserve System under section 3105(c)(1) of this title; and

(B) to the extent possible, participate in any simultaneous examination of the United States operations of a foreign bank requested by the Board under such section.

(6) Power and duty of examiners

Each examiner appointed under paragraph (1) shall—

(A) have power to make a thorough examination of any insured depository institution or affiliate under paragraph (2), (3), (4), or (5); and

(B) shall make a full and detailed report of condition of any insured depository institution or affiliate examined to the Corporation.

(7) Power of claim agents

Each claim agent appointed under paragraph (1) shall have power to investigate and examine all claims for insured deposits.

(c) Administration of oaths and affirmations; evidence; subpena powers

In connection with examinations of insured depository institutions and any State nonmember bank, savings association, or other institution making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, the appropriate Federal banking agency, or its designated representatives, are authorized to administer oaths and affirmations, and to examine and to take and preserve testimony under oath as to any matter in respect to the affairs or ownership of any such bank or institution or affiliate thereof, and to exercise such other powers as are set forth in section 1818(n) of this title.

(d) Annual on-site examinations of all insured depository institutions required

(1) In general

The appropriate Federal banking agency shall, not less than once during each 12-month

[1] See References in Text note below.

period, conduct a full-scope, on-site examination of each insured depository institution.

(2) Examinations by Corporation

Paragraph (1) shall not apply during any 12-month period in which the Corporation has conducted a full-scope, on-site examination of the insured depository institution.

(3) State examinations acceptable

The examinations required by paragraph (1) may be conducted in alternate 12-month periods, as appropriate, if the appropriate Federal banking agency determines that an examination of the insured depository institution conducted by the State during the intervening 12-month period carries out the purpose of this subsection.

(4) 18-month rule for certain small institutions

Paragraphs (1), (2), and (3) shall apply with ''18-month'' substituted for ''12-month'' if—

(A) the insured depository institution has total assets of less than $500,000,000;

(B) the institution is well capitalized, as defined in section 1831*o* of this title;

(C) when the institution was most recently examined, it was found to be well managed, and its composite condition—

(i) was found to be outstanding; or

(ii) was found to be outstanding or good, in the case of an insured depository institution that has total assets of not more than $100,000,000;

(D) the insured institution is not currently subject to a formal enforcement proceeding or order by the Corporation or the appropriate Federal banking agency; and

(E) no person acquired control of the institution during the 12-month period in which a full-scope, on-site examination would be required but for this paragraph.

(5) Certain Government-controlled institutions exempted

Paragraph (1) does not apply to—

(A) any institution for which the Corporation or the Resolution Trust Corporation is conservator; or

(B) any bridge depository institution, none of the voting securities of which are owned by a person or agency other than the Corporation or the Resolution Trust Corporation.

(6) Coordinated examinations

To minimize the disruptive effects of examinations on the operations of insured depository institutions—

(A) each appropriate Federal banking agency shall, to the extent practicable and consistent with principles of safety and soundness and the public interest—

(i) coordinate examinations to be conducted by that agency at an insured depository institution and its affiliates;

(ii) coordinate with the other appropriate Federal banking agencies in the conduct of such examinations;

(iii) work to coordinate with the appropriate State bank supervisor—

(I) the conduct of all examinations made pursuant to this subsection; and

(II) the number, types, and frequency of reports required to be submitted to such agencies and supervisors by insured depository institutions, and the type and amount of information required to be included in such reports; and

(iv) use copies of reports of examinations of insured depository institutions made by any other Federal banking agency or appropriate State bank supervisor to eliminate duplicative requests for information; and

(B) not later than 2 years after September 23, 1994, the Federal banking agencies shall jointly establish and implement a system for determining which one of the Federal banking agencies or State bank supervisors shall be the lead agency responsible for managing a unified examination of each insured depository institution and its affiliates, as required by this subsection.

(7) Separate examinations permitted

Notwithstanding paragraph (6), each appropriate Federal banking agency may conduct a separate examination in an emergency or under other exigent circumstances, or when the agency believes that a violation of law may have occurred.

(8) Report

At the time the system provided for in paragraph (6) is established, the Federal banking agencies shall submit a joint report describing the system to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives. Thereafter, the Federal banking agencies shall annually submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives regarding the progress of the agencies in implementing the system and indicating areas in which enhancements to the system, including legislature improvements, would be appropriate.

(9) Standards for determining adequacy of State examinations

The Federal Financial Institutions Examination Council shall issue guidelines establishing standards to be used at the discretion of the appropriate Federal banking agency for purposes of making a determination under paragraph (3).

(10) Agencies authorized to increase maximum asset amount of institutions for certain purposes

At any time after the end of the 2-year period beginning on September 23, 1994, the appropriate Federal banking agency, in the agency's discretion, may increase the maximum amount limitation contained in paragraph (4)(C)(ii), by regulation, from $100,000,000 to an amount not to exceed $500,000,000 for purposes of such paragraph, if the agency determines that the greater amount would be consistent with the principles of safety and soundness for insured depository institutions.

(e) Examination fees

(1) Regular and special examinations of depository institutions

The cost of conducting any regular examination or special examination of any depository institution under subsection (b)(2), (b)(3), or (d) of this section may be assessed by the Corporation against the institution to meet the Corporation's expenses in carrying out such examinations.

(2) Examination of affiliates

The cost of conducting any examination of any affiliate of any insured depository institution under subsection (b)(4) of this section may be assessed by the Corporation against each affiliate which is examined to meet the Corporation's expenses in carrying out such examination.

(3) Assessment against depository institution in case of affiliate's refusal to pay

(A) In general

Subject to subparagraph (B), if any affiliate of any insured depository institution—

(i) refuses to pay any assessment under paragraph (2); or

(ii) fails to pay any such assessment before the end of the 60-day period beginning on the date the affiliate receives notice of the assessment,

the Corporation may assess such cost against, and collect such cost from, the depository institution.

(B) Affiliate of more than 1 depository institution

If any affiliate referred to in subparagraph (A) is an affiliate of more than 1 insured depository institution, the assessment under subparagraph (A) may be assessed against the depository institutions in such proportions as the Corporation determines to be appropriate.

(4) Civil money penalty for affiliate's refusal to cooperate

(A) Penalty imposed

If any affiliate of any insured depository institution—

(i) refuses to permit an examiner appointed by the Board of Directors under subsection (b)(1) of this section to conduct an examination; or

(ii) refuses to provide any information required to be disclosed in the course of any examination,

the depository institution shall forfeit and pay a penalty of not more than $5,000 for each day that any such refusal continues.

(B) Assessment and collection

Any penalty imposed under subparagraph (A) shall be assessed and collected by the Corporation in the manner provided in section 1818(i)(2) of this title.

(5) Deposits of examination assessment

Amounts received by the Corporation under this subsection (other than paragraph (4)) may be deposited in the manner provided in section 1823 of this title.

(f) Preservation of agency records

(1) In general

A Federal banking agency may cause any and all records, papers, or documents kept by the agency or in the possession or custody of the agency to be—

(A) photographed or microphotographed or otherwise reproduced upon film; or

(B) preserved in any electronic medium or format which is capable of—

(i) being read or scanned by computer; and

(ii) being reproduced from such electronic medium or format by printing any other form of reproduction of electronically stored data.

(2) Treatment as original records

Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies, and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

(3) Authority of the Federal banking agencies

Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be preserved in such manner as the Federal banking agency shall prescribe, and the original records, papers, or documents may be destroyed or otherwise disposed of as the Federal banking agency may direct.

(g) Authority to prescribe regulations and definitions

Except to the extent that authority under this chapter is conferred on any of the Federal banking agencies other than the Corporation, the Corporation may—

(1) prescribe regulations to carry out this chapter; and

(2) by regulation define terms as necessary to carry out this chapter.

(h) Coordination of examination authority

(1) State bank supervisors of home and host States

(A) Home State of bank

The appropriate State bank supervisor of the home State of an insured State bank has authority to examine and supervise the bank.

(B) Host State branches

The State bank supervisor of the home State of an insured State bank and any State bank supervisor of an appropriate host State shall exercise its respective authority to supervise and examine the branches of the bank in a host State in accordance with the terms of any applicable cooperative agreement between the home State bank supervisor and the State bank supervisor of the relevant host State.

(C) Supervisory fees

Except as expressly provided in a cooperative agreement between the State bank supervisors of the home State and any host State of an insured State bank, only the State bank supervisor of the home State of an insured State bank may levy or charge State supervisory fees on the bank.

(2) Host State examination

(A) In general

With respect to a branch operated in a host State by an out-of-State insured State bank that resulted from an interstate merger transaction approved under section 1831u of this title, or that was established in such State pursuant to section 36(g) of this title, the third undesignated paragraph of section 321 of this title or section 1828(d)(4) of this title, the appropriate State bank supervisor of such host State may—

(i) with written notice to the State bank supervisor of the bank's home State and subject to the terms of any applicable cooperative agreement with the State bank supervisor of such home State, examine such branch for the purpose of determining compliance with host State laws that are applicable pursuant to section 1831a(j) of this title, including those that govern community reinvestment, fair lending, and consumer protection; and

(ii) if expressly permitted under and subject to the terms of a cooperative agreement with the State bank supervisor of the bank's home State or if such out-of-State insured State bank has been determined to be in a troubled condition by either the State bank supervisor of the bank's home State or the bank's appropriate Federal banking agency, participate in the examination of the bank by the State bank supervisor of the bank's home State to ascertain that the activities of the branch in such host State are not conducted in an unsafe or unsound manner.

(B) Notice of determination

(i) In general

The State bank supervisor of the home State of an insured State bank shall notify the State bank supervisor of each host State of the bank if there has been a final determination that the bank is in a troubled condition.

(ii) Timing of notice

The State bank supervisor of the home State of an insured State bank shall provide notice under clause (i) as soon as is reasonably possible, but in all cases not later than 15 business days after the date on which the State bank supervisor has made such final determination or has received written notification of such final determination.

(3) Host State enforcement

If the State bank supervisor of a host State determines that a branch of an out-of-State insured State bank is violating any law of the host State that is applicable to such branch pursuant to section 1831a(j) of this title, including a law that governs community reinvestment, fair lending, or consumer protection, the State bank supervisor of the host State or, to the extent authorized by the law of the host State, a host State law enforcement officer may, with written notice to the State bank supervisor of the bank's home State and subject to the terms of any applicable cooperative agreement with the State bank supervisor of the bank's home State, undertake such enforcement actions and proceedings as would be permitted under the law of the host State as if the branch were a bank chartered by that host State.

(4) Cooperative agreement

(A) In general

The State bank supervisors from 2 or more States may enter into cooperative agreements to facilitate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations.

(B) Definition

For purposes of this subsection, the term ''cooperative agreement'' means a written agreement that is signed by the home State bank supervisor and the host State bank supervisor to facilitate State regulatory supervision of State banks, and includes nationwide or multi-State cooperative agreements and cooperative agreements solely between the home State and host State.

(C) Rule of construction

Except for State bank supervisors, no provision of this subsection relating to such cooperative agreements shall be construed as limiting in any way the authority of home State and host State law enforcement officers, regulatory supervisors, or other officials that have not signed such cooperative agreements to enforce host State laws that are applicable to a branch of an out-of-State insured State bank located in the host State pursuant to section 1831a(j) of this title.

(5) Federal regulatory authority

No provision of this subsection shall be construed as limiting in any way the authority of any Federal banking agency.

(6) State taxation authority not affected

No provision of this subsection shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent that such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

(7) Definitions

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

(A) Host State, home State, out-of-State bank

The terms ''host State'', ''home State'', and ''out-of-State bank'' have the same meanings as in section 1831u(g) of this title.

(B) State supervisory fees

The term ''State supervisory fees'' means assessments, examination fees, branch fees, license fees, and all other fees that are levied or charged by a State bank supervisor directly upon an insured State bank or upon branches of an insured State bank.

(C) Troubled condition

Solely for purposes of paragraph (2)(B), an insured State bank has been determined to be in ''troubled condition'' if the bank—

(i) has a composite rating, as determined in its most recent report of examination, of 4 or 5 under the Uniform Financial Institutions Ratings System;

(ii) is subject to a proceeding initiated by the Corporation for termination or suspension of deposit insurance; or

(iii) is subject to a proceeding initiated by the State bank supervisor of the bank's home State to vacate, revoke, or terminate the charter of the bank, or to liquidate the bank, or to appoint a receiver for the bank.

(D) Final determination

For purposes of paragraph (2)(B), the term ''final determination'' means the transmittal of a report of examination to the bank or transmittal of official notice of proceedings to the bank.

(i) Flood insurance compliance by insured depository institutions

(1) Examinations

The appropriate Federal banking agency shall, during each scheduled on-site examination required by this section, determine whether the insured depository institution is complying with the requirements of the national flood insurance program.

(2) Report

(A) Requirement

Not later than 1 year after September 23, 1994, and biennially thereafter for the next 4 years, each appropriate Federal banking agency shall submit a report to the Congress on compliance by insured depository institutions with the requirements of the national flood insurance program.

(B) Contents

Each report submitted under this paragraph shall include a description of the methods used to determine compliance, the number of institutions examined during the reporting year, a listing and total number of institutions found not to be in compliance, actions taken to correct incidents of noncompliance, and an analysis of compliance, including a discussion of any trends, patterns, and problems, and recommendations regarding reasonable actions to improve the efficiency of the examinations processes.

(j) Consultation among examiners

(1) In general

Each appropriate Federal banking agency shall take such action as may be necessary to ensure that examiners employed by the agency—

(A) consult on examination activities with respect to any depository institution; and

(B) achieve an agreement and resolve any inconsistencies in the recommendations to be given to such institution as a consequence of any examinations.

(2) Examiner-in-charge

Each appropriate Federal banking agency shall consider appointing an examiner-in-charge with respect to a depository institution to ensure consultation on examination activities among all of the examiners of that agency involved in examinations of the institution.

(k) One-year restrictions on Federal examiners of financial institutions

(1) In general

In addition to other applicable restrictions set forth in title 18, the penalties set forth in paragraph (6) of this subsection shall apply to any person who—

(A) was an officer or employee (including any special Government employee) of a Federal banking agency or a Federal reserve bank;

(B) served 2 or more months during the final 12 months of his or her employment with such agency or entity as the senior examiner (or a functionally equivalent position) of a depository institution or depository institution holding company with continuing, broad responsibility for the examination (or inspection) of that depository institution or depository institution holding company on behalf of the relevant agency or Federal reserve bank; and

(C) within 1 year after the termination date of his or her service or employment with such agency or entity, knowingly accepts compensation as an employee, officer, director, or consultant from—

(i) such depository institution, any depository institution holding company that controls such depository institution, or any other company that controls such depository institution; or

(ii) such depository institution holding company or any depository institution that is controlled by such depository institution holding company.

(2) Definitions

For purposes of this subsection—

(A) the term ''depository institution'' includes an uninsured branch or agency of a foreign bank, if such branch or agency is located in any State; and

(B) the term ''depository institution holding company'' includes any foreign bank or company described in section 3106(a) of this title.

(3) Rules of construction

For purposes of this subsection, a foreign bank shall be deemed to control any branch or

agency of the foreign bank, and a person shall be deemed to act as a consultant for a depository institution, depository institution holding company, or other company, only if such person directly works on matters for, or on behalf of, such depository institution, depository institution holding company, or other company.

(4) Regulations

(A) In general

Each Federal banking agency shall prescribe rules or regulations to administer and carry out this subsection, including rules, regulations, or guidelines to define the scope of persons referred to in paragraph (1)(B).

(B) Consultation required

The Federal banking agencies shall consult with each other for the purpose of assuring that the rules and regulations issued by the agencies under subparagraph (A) are, to the extent possible, consistent, comparable, and practicable, taking into account any differences in the supervisory programs utilized by the agencies for the supervision of depository institutions and depository institution holding companies.

(5) Waiver

(A) Agency authority

A Federal banking agency may grant a waiver, on a case by case basis, of the restriction imposed by this subsection to any officer or employee (including any special Government employee) of that agency, and the Board of Governors of the Federal Reserve System may grant a waiver of the restriction imposed by this subsection to any officer or employee of a Federal reserve bank, if the head of such agency certifies in writing that granting the waiver would not affect the integrity of the supervisory program of the relevant Federal banking agency.

(B) Definition

For purposes of this paragraph, the head of an agency is—

(i) the Comptroller of the Currency, in the case of the Office of the Comptroller of the Currency;

(ii) the Chairman of the Board of Governors of the Federal Reserve System, in the case of the Board of Governors of the Federal Reserve System;

(iii) the Chairperson of the Board of Directors, in the case of the Corporation; and

(iv) the Director of the Office of Thrift Supervision, in the case of the Office of Thrift Supervision.

(6) Penalties

(A) In general

In addition to any other administrative, civil, or criminal remedy or penalty that may otherwise apply, whenever a Federal banking agency determines that a person subject to paragraph (1) has become associated, in the manner described in paragraph (1)(C), with a depository institution, depository institution holding company, or other company for which such agency serves as the appropriate Federal banking agency, the agency shall impose upon such person one or more of the following penalties:

(i) Industry-wide prohibition order

The Federal banking agency shall serve a written notice or order in accordance with and subject to the provisions of section 1818(e)(4) of this title for written notices or orders under paragraph (1) or (2) of section 1818(e) of this title, upon such person of the intention of the agency—

(I) to remove such person from office or to prohibit such person from further participation in the conduct of the affairs of the depository institution, depository institution holding company, or other company for a period of up to 5 years; and

(II) to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any insured depository institution for a period of up to 5 years.

(ii) Civil monetary penalty

The Federal banking agency may, in an administrative proceeding or civil action in an appropriate United States district court, impose on such person a civil monetary penalty of not more than $250,000. Any administrative proceeding under this clause shall be conducted in accordance with section 1818(i) of this title. In lieu of an action by the Federal banking agency under this clause, the Attorney General of the United States may bring a civil action under this clause in the appropriate United States district court.

(B) Scope of prohibition order

Any person subject to an order issued under subparagraph (A)(i) shall be subject to paragraphs (6) and (7) of section 1818(e) of this title in the same manner and to the same extent as a person subject to an order issued under such section.

(C) Definitions

Solely for purposes of this paragraph, the ''appropriate Federal banking agency'' for a company that is not a depository institution or depository institution holding company shall be the Federal banking agency on whose behalf the person described in paragraph (1) performed the functions described in paragraph (1)(B).

(Sept. 21, 1950, ch. 967, §2[10], 64 Stat. 882; Pub. L. 86–671, §4, July 14, 1960, 74 Stat. 551; Pub. L. 89–695, title II, §203, Oct. 16, 1966, 80 Stat. 1053; Pub. L. 91–452, title II, §208, Oct. 15, 1970, 84 Stat. 929; Pub. L. 95–369, §6(c)(16), Sept. 17, 1978, 92 Stat. 619; Pub. L. 95–630, title III, §305, Nov. 10, 1978, 92 Stat. 3677; Pub. L. 97–320, title I, §113(i), title IV, §410(g), Oct. 15, 1982, 96 Stat. 1474, 1520; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 101–73, title II, §§201(a), 210, Aug. 9, 1989, 103 Stat. 187, 217; Pub. L. 102–242, title I, §§111(a), 113(a), (b), (c)(2), title II, §203(c), title III, §302(d), Dec. 19, 1991, 105 Stat. 2240, 2246–2248, 2292, 2349; Pub. L. 102–550, title XVI,

§§ 1603(b)(1), (4), 1604(a)(3), 1605(a)(4), Oct. 28, 1992, 106 Stat. 4078, 4079, 4082, 4085; Pub. L. 102–558, title III, §§ 303(b)(5), 305, Oct. 28, 1992, 106 Stat. 4225, 4226; Pub. L. 103–325, title III, §§ 305(a), 306, 349(a), title V, § 529(a), title VI, § 602(a)(19), (20), Sept. 23, 1994, 108 Stat. 2216, 2217, 2242, 2266, 2289; Pub. L. 103–328, title I, § 105, Sept. 29, 1994, 108 Stat. 2357; Pub. L. 104–208, div. A, title II, §§ 2221, 2244, Sept. 30, 1996, 110 Stat. 3009–414, 3009–419; Pub. L. 108–386, § 8(a)(3), Oct. 30, 2004, 118 Stat. 2231; Pub. L. 108–458, title VI, § 6303(b), Dec. 17, 2004, 118 Stat. 3751; Pub. L. 109–351, title VI, § 605, title VII, §§ 711, 723(a), Oct. 13, 2006, 120 Stat. 1981, 1991, 2000; Pub. L. 109–473, § 1, Jan. 11, 2007, 120 Stat. 3561; Pub. L. 110–289, div. A, title VI, § 1604(b)(1)(B), July 30, 2008, 122 Stat. 2829; Pub. L. 111–203, title I, § 172(a), title III, §§ 318(d), 363(4), July 21, 2010, 124 Stat. 1438, 1527, 1552.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 363(4), July 21, 2010, 124 Stat. 1546, 1552, provided that, effective on the transfer date, this section is amended:

(1) in subsection (d)(5), by striking out ''or the Resolution Trust Corporation'' wherever appearing; and

(2) in subsection (k)(5)(B)—

(A) in clause (ii), by inserting ''and'' after the semicolon;

(B) in clause (iii), by substituting a period for ''; and''; and

(C) by striking out clause (iv).

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title III, § 318(d), (e), July 21, 2010, 124 Stat. 1527, provided that, effective on the transfer date, subsection (e) of this section is amended by striking out paragraph (1) and inserting the following:

''(1) Regular and special examinations of depository institutions

''The cost of conducting any regular examination or special examination of any depository institution under subsection (b)(2), (b)(3), or (d) or of any entity described in section 1813(q)(2) of this title may be assessed by the Corporation against the institution or entity to meet the expenses of the Corporation in carrying out such examinations.''

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Title II of that Act, referred to in subsec. (b)(3)(A), probably means title II of Pub. L. 111–203, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which is classified principally to subchapter II (§ 5381 et seq.) of chapter 53 of this title. The Financial Stability Act of 2010, which is title I of Pub. L. 111–203, does not contain titles. For complete classification of title II to the Code, see Tables.

PRIOR PROVISIONS

Subsecs. (a), (b), [former] (e), and [former] (f) are derived from subsec. (k) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2010—Subsec. (b)(3). Pub. L. 111–203, § 172(a)(2), which directed substitution of ''or nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010, whenever the Board of Directors determines that a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance purposes, or of such nonbank financial company supervised by the Board of Governors or bank holding company described in section 165(a) of the Financial Stability Act of 2010, for the purpose of implementing its authority to provide for orderly liquidation of any such company under title II of that Act, provided that such authority may not be used with respect to any such company that is in a generally sound condition.

''(B) LIMITATION.—Before conducting a special examination of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010, the Corporation shall review any available and acceptable resolution plan that the company has submitted in accordance with section 165(d) of that Act, consistent with the nonbinding effect of such plan, and available reports of examination, and shall coordinate to the maximum extent practicable with the Board of Governors, in order to minimize duplicative or conflicting examinations.''

for '''whenever the board of directors determines' and all that follows through the period'', was executed by making the substitution for ''whenever the Board of Directors determines'' and all that followed through the period, to reflect the probable intent of Congress.

Pub. L. 111–203, § 172(a)(1), designated existing provisions as subpar. (A) and inserted heading.

2008—Subsec. (d)(5)(B). Pub. L. 110–289 substituted ''bridge depository institution'' for ''bridge bank''.

2007—Subsec. (d)(10). Pub. L. 109–473 substituted ''$500,000,000'' for ''$250,000,000''.

2006—Subsec. (d)(4)(A). Pub. L. 109–351, § 605, substituted ''$500,000,000'' for ''$250,000,000''.

Subsec. (f). Pub. L. 109–351, § 723(a), amended subsec. (f) generally. Prior to amendment, text read as follows: ''The Corporation may cause any and all records, papers, or documents kept by it or in its possession or custody to be photographed or microphotographed or otherwise reproduced upon film, which photographic film shall comply with the minimum standards of quality approved for permanent photographic records by the National Institute of Standards and Technology. Such photographs, microphotographs, or photographic film or copies thereof shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies and shall be admissible to prove any act, transaction, occurrence, or event therein recorded. Such photographs, microphotographs, or reproduction shall be preserved in such manner as the Board of Directors of the Corporation shall prescribe and the original records, papers, or documents may be destroyed or otherwise disposed of as the Board shall direct.''

Subsec. (h). Pub. L. 109–351, § 711, amended subsec. (h) generally. Prior to amendment, subsec. (h) related to coordination of examination authority.

2004—Subsec. (b)(2)(A). Pub. L. 108–386 struck out ''(except a District bank)'' after ''State nonmember bank''.

Subsec. (k). Pub. L. 108–458 added subsec. (k).

1996—Subsec. (d)(6)(B). Pub. L. 104–208, § 2244(b), which directed insertion of ''or State bank supervisors'' after ''one of the Federal agencies'', was executed by making the insertion after ''one of the Federal banking agencies'' to reflect the probable intent of Congress.

Subsec. (d)(8). Pub. L. 104–208, § 2221(1), redesignated par. (8), relating to agencies authorized to increase maximum asset amount of institutions for certain purposes, as (10).

Subsec. (d)(10). Pub. L. 104–208, § 2221(2), substituted ''$250,000,000'' for ''$175,000,000''.

Pub. L. 104–208, § 2221(1), redesignated par. (8), relating to agencies authorized to increase maximum asset amount of institutions for certain purposes, as (10).

Subsec. (j). Pub. L. 104–208, § 2244(a), added subsec. (j).

1994—Subsec. (b)(1). Pub. L. 103–325, § 602(a)(19), substituted ''claims'' for ''claim''.

Subsec. (b)(2)(B). Pub. L. 103–325, § 602(a)(20), inserted ''and'' at end.

Subsec. (d)(4)(A). Pub. L. 103–325, § 306(a)(1), substituted ''$250,000,000'' for ''$100,000,000''.

Subsec. (d)(4)(C). Pub. L. 103–325, § 306(a)(2), substituted ''and its composite condition—

''(i) was found to be outstanding; or

''(ii) was found to be outstanding or good, in the case of an insured depository institution that has total assets of not more than $100,000,000;''

for ''and its composite condition was found to be outstanding; and''.

Subsec. (d)(4)(D), (E). Pub. L. 103–325, § 306(a)(3), (4), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (d)(6), (7). Pub. L. 103–325, § 305(a), added pars. (6) and (7).

Subsec. (d)(8). Pub. L. 103–325, § 306(b), added par. (8) relating to agencies authorized to increase maximum asset amount of institutions for certain purposes.

Pub. L. 103–325, § 305(a), added par. (8) relating to report requirements.

Subsec. (d)(9). Pub. L. 103–325, § 349(a), added par. (9).

Subsec. (h). Pub. L. 103–328 added subsec. (h).

Subsec. (i). Pub. L. 103–325, § 529(a), added subsec. (i).

1992—Subsec. (b)(6)(A). Pub. L. 102–550, § 1604(a)(3), substituted ''paragraph (2), (3), (4), or (5);'' for '' 'paragraph (2)' and all that follows through the semicolon'' resulting in no change in text.

Subsec. (d)(5). Pub. L. 102–550, § 1603(b)(1)(A), (B), inserted ''or the Resolution Trust Corporation'' in subpars. (A) and (B) and inserted a comma after ''bank'' in subpar. (B).

Subsec. (d)(6). Pub. L. 102–550, § 1603(b)(1)(C), struck out par. (6) which read as follows: ''(6) CONSUMER COMPLIANCE EXAMINATIONS EXCLUDED.—For purposes of this subsection, the term 'full-scope, on-site examination' does not include a consumer compliance examination, as defined in section 41(b).''

Subsec. (e). Pub. L. 102–550, § 1603(b)(4), amended directory language of Pub. L. 102–242, § 113(a)(2). See 1991 Amendment note below.

Subsec. (g). Pub. L. 102–558, § 303(b)(5), redesignated subsec. (f), relating to authority to prescribe regulations and definitions, as (g). Pub. L. 102–550, § 1605(a)(4), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

1991—Subsec. (b)(2)(B). Pub. L. 102–242, § 113(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''any savings association, State nonmember bank, or State branch of a foreign bank, or other depository institution which files an application with the Corporation to become an insured depository institution; and''.

Subsec. (b)(4)(A). Pub. L. 102–242, § 113(c)(2), struck out ''insured'' before ''depository institution'' in three places.

Subsec. (b)(5) to (7). Pub. L. 102–242, § 203(c), added par. (5), redesignated former par. (5) as (6) and substituted ''(4), or (5)'' for ''or (4)'', and redesignated former par. (6) as (7).

Subsec. (d). Pub. L. 102–242, § 111(a), added subsec. (d).

Subsec. (e). Pub. L. 102–242, § 113(a)(2), as amended by Pub. L. 102–550, § 1603(b)(4), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 102–242, § 302(d), added subsec. (f) relating to authority to prescribe regulations and definitions.

Pub. L. 102–242, § 113(a)(1), redesignated subsec. (e), relating to preservation of records by photography, as (f).

1989—Subsec. (b). Pub. L. 101–73, § 210(a), amended subsec. (b) generally, revising and restating as pars. (1) to (6) provisions formerly contained in a single unnumbered paragraph.

Subsec. (c). Pub. L. 101–73, § 210(b)(1), substituted ''and any State nonmember bank, savings association, or other institution'' for '', State nonmember banks or other institutions''.

Pub. L. 101–73, § 201(a), substituted ''insured depository institutions'' for ''insured banks'' wherever appearing.

Subsec. (d). Pub. L. 101–73, § 210(b)(2), struck out subsec. (d) which defined ''affiliate'' and ''member bank'' for purposes of this section.

1988—Subsec. (e). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

1982—Subsec. (b). Pub. L. 97–320, § 113(i), inserted ''or any insured Federal savings bank,'' after ''foreign bank, or District bank,''.

Subsec. (d). Pub. L. 97–320, § 410(g), inserted ''as in section 221a(b) of this title and''.

1978—Subsec. (b). Pub. L. 95–630, § 305(a), inserted ''or other institution'' after ''any State nonmember bank'' and struck out provisions that each claim agent have power to administer oaths and affirmations and to examine and to take and preserve testimony under oath as to any matter in respect to claims for insured deposits, and to issue subpenas and subpenas duces tecum, and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States court in any territory in which the main office of the bank or affiliate thereof is located, or in which the witness resides or carriers on business and that such courts have jurisdiction and power to order and require compliance with any such subpena.

Pub. L. 95–369 inserted ''any insured State branch of a foreign bank, any State branch of a foreign bank making application to become an insured bank'' after ''(except a District bank)'', inserted ''or branch'' after ''and any closed insured bank'', substituted ''any national bank, insured Federal branch of a foreign bank, or District bank'' for ''any national bank or District bank'' and inserted ''and in the case of a foreign bank, a binding commitment by such bank to permit such examination to the extent determined by the Board of Directors to be necessary to carry out the purposes of this chapter shall be required as a condition to the insurance of any deposits'' after ''effect of such relations upon such banks''.

Subsec. (c). Pub. L. 95–630, § 305(b), among other changes, inserted references to State nonmember banks, other institutions making application to become insured banks, and investigations to determine compliance with applicable law and regulations and struck out provisions defining ''affiliate'' and ''member bank''.

Subsec. (d). Pub. L. 95–630, § 305(b), substituted provisions defining the terms ''affiliate'' and ''member bank'' for provisions relating to the enforcement of subpenas and orders.

1970—Subsec. (d). Pub. L. 91–452 struck out provisions which granted immunity from prosecution for any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1966—Subsec. (b). Pub. L. 89–695 empowered Corporation examiners making examinations of insured banks to make such examinations of the affairs of all affiliates of such banks as shall be necessary to disclose fully the relations between such banks and their affiliates and the effect of such relations upon such banks, authorized Corporation claim agents to issue subpenas and subpenas duces tecum in connection with investigation and examination of claims for insured deposits and to apply to the proper United States district court for the enforcement of such subpenas and provided such courts with jurisdiction and power to order and require compliance with any such subpena.

Subsec. (c). Pub. L. 89–695 provided that in connection with examinations of insured banks and affiliates thereof, the appropriate Federal banking agency, or its designated representatives, could administer oaths and affirmations, take and preserve testimony under oath as to any matter in respect of the affairs or ownership of such bank or affiliate thereof, issue subpenas and

subpenas duces tecum, and apply to the proper United States district court for the enforcement of such subpenas, provided such courts with jurisdiction and power to order and require compliance with any such subpena, and defined ''affiliate'' and ''member bank''.

1960—Subsecs. (e) to (g). Pub. L. 86–671 struck out subsecs. (e) and (f) which related to reports of condition by insured nonmember State banks and access by Corporation to information of other bank supervisory authorities, and redesignated subsec. (g) as (e). See section 1817(a)(1) and (2) of this title.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 172(a) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

Amendment by section 318(d) of Pub. L. 111–203 effective on the transfer date, see section 318(e) of Pub. L. 111–203, set out as an Effective Date note under section 16 of this title.

Amendment by section 363(4) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–458 effective at the end of the 12-month period beginning on Dec. 17, 2004, whether or not final regulations are issued as of Dec. 17, 2004, in accordance with the amendments made by section 6303 of Pub. L. 108–458, amending this section and section 1786 of this title, see section 6303(d) of Pub. L. 108–458, set out as a note under section 1786 of this title.

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by section 303(b)(5) of Pub. L. 102–558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102–558, set out as a note under section 2062 of Title 50, Appendix, War and National Defense.

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 111(b) of Pub. L. 102–242 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective 1 year after the date of enactment of this Act [Dec. 19, 1991].''

Amendment by section 302(d) of Pub. L. 102–242 effective on earlier of 180 days after date on which final regulations promulgated in accordance with section 302(c) of Pub. L. 102–242, set out as a note under section 1817 of this title, become effective or Jan. 1, 1994, see section 302(g) of Pub. L. 102–242, set out as a note under section 1817 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

EXPIRATION OF 1966 AMENDMENT

Pub. L. 91–609, title IX, § 908, Dec. 31, 1970, 84 Stat. 1811, repealed section 401 of Pub. L. 89–695 which had provided that: ''The provisions of titles I and II of this Act [amending sections 1464, 1730, 1813, 1817 to 1820 and repealing section 77 of this title and enacting provisions set out as notes under sections 1464, 1730, and 1813 of this title] and any provisions of law enacted by said titles shall be effective only during the period ending at the close of June 30, 1972. Effective upon the expiration of such period, each provision of law amended by either of such titles is further amended to read as it did immediately prior to the enactment of this Act [Oct. 16, 1966] and each provision of law repealed by either of such titles is reenacted.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–671 effective Jan. 1, 1961, see section 7 of Pub. L. 86–671, set out as a note under section 1817 of this title.

EFFECTIVE DATE OF INITIAL GUIDELINES

Section 349(b) of Pub. L. 103–325 provided that: ''The initial guidelines required to be issued pursuant to the amendment made by subsection (a) [amending this section] shall become effective not later than 1 year after the date of enactment of this Act [Sept. 23, 1994].''

TRANSITION RULE

Section 111(c) of Pub. L. 102–242 provided that: ''Notwithstanding section 10(d) of the Federal Deposit Insurance Act [12 U.S.C. 1820(d)] (as added by subsection (a)), during the period beginning on the date of enactment of this Act [Dec. 19, 1991] and ending on December 31, 1993, a full-scope, on-site examination of an insured depository institution is not required more often than once during every 18-month period, unless—

''(1) the institution, when most recently examined, was found to be in a less than satisfactory condition; or

''(2) 1 or more persons acquired control of the institution.''

CONDITIONS GOVERNING EMPLOYMENT OF PERSONNEL NOT REPEALED, MODIFIED, OR AFFECTED

Nothing contained in section 203 of Pub. L. 89–695 amending subsecs. (b) and (c) of this section to be construed as repealing, modifying, or affecting section 1829 of this title, see section 206 of Pub. L. 89–695, set out as a note under section 1813 of this title.

§ 1820a. Examination of investment companies

(a) Exclusive Commission authority

Except as provided in subsection (c) of this section, a Federal banking agency may not inspect or examine any registered investment

company that is not a bank holding company or a savings and loan holding company.

(b) Examination results and other information

The Commission shall provide to any Federal banking agency, upon request, the results of any examination, reports, records, or other information with respect to any registered investment company to the extent necessary for the agency to carry out its statutory responsibilities.

(c) Certain examinations authorized

Nothing in this section shall prevent the Corporation, if the Corporation finds it necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 1820(b)(4) of this title, as may be necessary to disclose fully the relationship between the insured depository institution and the affiliate, and the effect of such relationship on the insured depository institution.

(d) Definitions

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

(1) Bank holding company

The term ''bank holding company'' has the meaning given the term in section 1841 of this title.

(2) Commission

The term ''Commission'' means the Securities and Exchange Commission.

(3) Corporation

The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(4) Federal banking agency

The term ''Federal banking agency'' has the meaning given the term in section 1813(z) of this title.

(5) Insured depository institution

The term ''insured depository institution'' has the meaning given the term in section 1813(c) of this title.

(6) Registered investment company

The term ''registered investment company'' means an investment company that is registered with the Commission under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.].

(7) Savings and loan holding company

The term ''savings and loan holding company'' has the meaning given the term in section 1467a(a)(1)(D) of this title.

(Pub. L. 106–102, title I, §115, Nov. 12, 1999, 113 Stat. 1371.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (d)(6), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Gramm-Leach-Bliley Act, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

EFFECTIVE DATE

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

§ 1821. Insurance Funds

(a) Deposit insurance

(1) Insured amounts payable

(A) In general

The Corporation shall insure the deposits of all insured depository institutions as provided in this chapter.

(B) Net amount of insured deposit

(i) In general

Subject to clause (ii), the net amount due to any depositor at an insured depository institution shall not exceed the standard maximum deposit insurance amount as determined in accordance with subparagraphs (C), (D), (E) and (F) and paragraph (3).

(ii) Insurance for noninterest-bearing transaction accounts

Notwithstanding clause (i), the Corporation shall fully insure the net amount that any depositor at an insured depository institution maintains in a noninterest-bearing transaction account. Such amount shall not be taken into account when computing the net amount due to such depositor under clause (i).

(iii) Noninterest-bearing transaction account defined

For purposes of this subparagraph, the term ''noninterest-bearing transaction account'' means—

(I) a deposit or account maintained at an insured depository institution—

(aa) with respect to which interest is neither accrued nor paid;

(bb) on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

(cc) on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal; and

(II) a trust account established by an attorney or law firm on behalf of a client, commonly known as an ''Interest on Lawyers Trust Account'', or a functionally equivalent account, as determined by the Corporation.

(C) Aggregation of deposits

For the purpose of determining the net amount due to any depositor under subparagraph (B)(i), the Corporation shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the

same right for the benefit of the depositor either in the name of the depositor or in the name of any other person, other than any amount in a trust fund described in paragraph (1) or (2) of section 1817(i) of this title or any funds described in section 1817(i)(3) of this title.

(D) Coverage for certain employee benefit plan deposits

(i) Pass-through insurance

The Corporation shall provide pass-through deposit insurance for the deposits of any employee benefit plan.

(ii) Prohibition on acceptance of benefit plan deposits

An insured depository institution that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

(iii) Definitions

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

(I) Capital standards

The terms ''well capitalized'' and ''adequately capitalized'' have the same meanings as in section 1831*o* of this title.

(II) Employee benefit plan

The term ''employee benefit plan'' has the same meaning as in paragraph (5)(B)(ii), and includes any eligible deferred compensation plan described in section 457 of title 26.

(III) Pass-through deposit insurance

The term ''pass-through deposit insurance'' means, with respect to an employee benefit plan, deposit insurance coverage based on the interest of each participant, in accordance with regulations issued by the Corporation.

(E) Standard maximum deposit insurance amount defined

For purposes of this chapter, the term ''standard maximum deposit insurance amount'' means $250,000, adjusted as provided under subparagraph (F) after March 31, 2010. Notwithstanding any other provision of law, the increase in the standard maximum deposit insurance amount to $250,000 shall apply to depositors in any institution for which the Corporation was appointed as receiver or conservator on or after January 1, 2008, and before October 3, 2008. The Corporation shall take such actions as are necessary to carry out the requirements of this section with respect to such depositors, without regard to any time limitations under this chapter. In implementing this and the preceding 2 sentences, any payment on a deposit claim made by the Corporation as receiver or conservator to a depositor above the standard maximum deposit insurance amount in effect at the time of the appointment of the Corporation as receiver or conservator shall be deemed to be part of the net amount due to the depositor under subparagraph (B).

(F) Inflation adjustment

(i) In general

By April 1 of 2010, and the 1st day of each subsequent 5-year period, the Board of Directors and the National Credit Union Administration Board shall jointly consider the factors set forth under clause (v), and, upon determining that an inflation adjustment is appropriate, shall jointly prescribe the amount by which the standard maximum deposit insurance amount and the standard maximum share insurance amount (as defined in section 1787(k) of this title) applicable to any depositor at an insured depository institution shall be increased by calculating the product of—

(I) $100,000; and

(II) the ratio of the published annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which the adjustment is calculated under this clause, to the published annual value of such index for the calendar year preceding April 1, 2006.

The values used in the calculation under subclause (II) shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

(ii) Rounding

If the amount determined under clause (ii) for any period is not a multiple of $10,000, the amount so determined shall be rounded down to the nearest $10,000.

(iii) Publication and report to the Congress

Not later than April 5 of any calendar year in which an adjustment is required to be calculated under clause (i) to the standard maximum deposit insurance amount and the standard maximum share insurance amount under such clause, the Board of Directors and the National Credit Union Administration Board shall—

(I) publish in the Federal Register the standard maximum deposit insurance amount, the standard maximum share insurance amount, and the amount of coverage under paragraph (3)(A) and section 1787(k)(3) of this title, as so calculated; and

(II) jointly submit a report to the Congress containing the amounts described in subclause (I).

(iv) 6-month implementation period

Unless an Act of Congress enacted before July 1 of the calendar year in which an adjustment is required to be calculated under clause (i) provides otherwise, the increase in the standard maximum deposit insurance amount and the standard maximum share insurance amount shall take effect on January 1 of the year immediately succeeding such calendar year.

(v) Inflation adjustment consideration

In making any determination under clause (i) to increase the standard maxi-

mum deposit insurance amount and the standard maximum share insurance amount, the Board of Directors and the National Credit Union Administration Board shall jointly consider—

(I) the overall state of the Deposit Insurance Fund and the economic conditions affecting insured depository institutions;

(II) potential problems affecting insured depository institutions; or

(III) whether the increase will cause the reserve ratio of the fund to fall below 1.15 percent of estimated insured deposits.

(2) Government depositors

(A) In general

Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of deposit insurance available to any 1 depositor—

(i) a government depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed to be a depositor separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in subparagraph (B); and

(ii) except as provided in subparagraph (C), the deposits of a government depositor shall be insured in an amount equal to the standard maximum deposit insurance amount (as determined under paragraph (1)).

(B) Government depositor

In this paragraph, the term ''government depositor'' means a depositor that is—

(i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution;

(ii) an officer, employee, or agent of any State of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in such State;

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Virgin Islands, of American Samoa, of the Trust Territory of the Pacific Islands, or of Guam, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 1452(c) of title 25) or agency thereof having official custody of tribal funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution.

(C) Authority to limit deposits

The Corporation may limit the aggregate amount of funds that may be invested or deposited in deposits in any insured depository institution by any government depositor on the basis of the size of any such bank[1] in terms of its assets: *Provided, however*, such limitation may be exceeded by the pledging of acceptable securities to the government depositor when and where required.

(3) Certain retirement accounts

(A) In general

Notwithstanding any limitation in this chapter relating to the amount of deposit insurance available for the account of any 1 depositor, deposits in an insured depository institution made in connection with—

(i) any individual retirement account described in section 408(a) of title 26;

(ii) subject to the exception contained in paragraph (1)(D)(ii), any eligible deferred compensation plan described in section 457 of title 26; and

(iii) any individual account plan defined in section 1002(34) of title 29, and any plan described in section 401(d) of title 26, to the extent that participants and beneficiaries under such plan have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plan,

shall be aggregated and insured in an amount not to exceed $250,000 (which amount shall be subject to inflation adjustments as provided in paragraph (1)(F), except that $250,000 shall be substituted for $100,000 wherever such term appears in such paragraph) per participant per insured depository institution.

(B) Amounts taken into account

For purposes of subparagraph (A), the amount aggregated for insurance coverage under this paragraph shall consist of the present vested and ascertainable interest of each participant under the plan, excluding any remainder interest created by, or as a result of, the plan.

(4) Deposit Insurance Fund

(A) Establishment

There is established the Deposit Insurance Fund, which the Corporation shall—

(i) maintain and administer;

(ii) use to carry out its insurance purposes, in the manner provided by this subsection; and

(iii) invest in accordance with section 1823(a) of this title.

(B) Uses

The Deposit Insurance Fund shall be available to the Corporation for use with respect

[1] So in original. Probably should be ''depository institution''.

to insured depository institutions the deposits of which are insured by the Deposit Insurance Fund.

(C) Limitation on use

Notwithstanding any provision of law other than section 1823(c)(4)(G) of this title, the Deposit Insurance Fund shall not be used in any manner to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this chapter) of—

(i) any insured depository institution for which the Corporation has been appointed conservator or receiver, in connection with any type of resolution by the Corporation;

(ii) any other insured depository institution in default or in danger of default, in connection with any type of resolution by the Corporation; or

(iii) any insured depository institution, in connection with the provision of assistance under this section or section 1823 of this title with respect to such institution, except that this clause shall not prohibit any assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquiring (as defined in section 1823(f)(8)(B) of this title) another insured depository institution.

(D) Deposits

All amounts assessed against insured depository institutions by the Corporation shall be deposited into the Deposit Insurance Fund.

(5) Certain investment contracts not treated as insured deposits

(A) In general

A liability of an insured depository institution shall not be treated as an insured deposit if the liability arises under any insured depository institution investment contract between any insured depository institution and any employee benefit plan which expressly permits benefit-responsive withdrawals or transfers.

(B) Definitions

For purposes of subparagraph (A)—

(i) Benefit-responsive withdrawals or transfers

The term ''benefit-responsive withdrawals or transfers'' means any withdrawal or transfer of funds (consisting of any portion of the principal and any interest credited at a rate guaranteed by the insured depository institution investment contract) during the period in which any guaranteed rate is in effect, without substantial penalty or adjustment, to pay benefits provided by the employee benefit plan or to permit a plan participant or beneficiary to redirect the investment of his or her account balance.

(ii) Employee benefit plan

The term ''employee benefit plan''—

(I) has the meaning given to such term in section 1002(3) of title 29; and

(II) includes any plan described in section 401(d) of title 26.

(b) Liquidation as closing of depository institution

For the purposes of this chapter an insured depository institution shall be deemed to have been closed on account of inability to meet the demands of its depositors in any case in which it has been closed for the purpose of liquidation without adequate provision being made for payment of its depositors.

(c) Appointment of Corporation as conservator or receiver

(1) In general

Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may accept appointment and act as conservator or receiver for any insured depository institution upon appointment in the manner provided in paragraph (2) or (3).

(2) Federal depository institutions

(A) Appointment

(i) Conservator

The Corporation may, at the discretion of the supervisory authority, be appointed conservator of any insured Federal depository institution and the Corporation may accept such appointment.

(ii) Receiver

The Corporation shall be appointed receiver, and shall accept such appointment, whenever a receiver is appointed for the purpose of liquidation or winding up the affairs of an insured Federal depository institution by the appropriate Federal banking agency, notwithstanding any other provision of Federal law (other than section 1441a of this title).

(B) Additional powers

In addition to and not in derogation of the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver, the Corporation, to the extent not inconsistent with such powers and duties, shall have any other power conferred on or any duty (which is related to the exercise of such power) imposed on a conservator or receiver for any Federal depository institution under any other provision of law.

(C) Corporation not subject to any other agency

When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of the Corporation's rights, powers, and privileges.

(D) Depository institution in conservatorship subject to banking agency supervision

Notwithstanding subparagraph (C), any Federal depository institution for which the

Corporation has been appointed conservator shall remain subject to the supervision of the appropriate Federal banking agency.

(3) Insured State depository institutions

(A) Appointment by appropriate State supervisor

Whenever the authority having supervision of any insured State depository institution appoints a conservator or receiver for such institution and tenders appointment to the Corporation, the Corporation may accept such appointment.

(B) Additional powers

In addition to the powers conferred and the duties related to the exercise of such powers imposed by State law on any conservator or receiver appointed under the law of such State for an insured State depository institution, the Corporation, as conservator or receiver pursuant to an appointment described in subparagraph (A), shall have the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver.

(C) Corporation not subject to any other agency

When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of its rights, powers, and privileges.

(D) Depository institution in conservatorship subject to banking agency supervision

Notwithstanding subparagraph (C), any insured State depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate State bank or savings association supervisor.

(4) Appointment of Corporation by the Corporation

Except as otherwise provided in section 1441a of this title and notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may appoint itself as sole conservator or receiver of any insured State depository institution if—

(A) the Corporation determines—

(i) that—

(I) a conservator, receiver, or other legal custodian has been appointed for such institution;

(II) such institution has been subject to the appointment of any such conservator, receiver, or custodian for a period of at least 15 consecutive days; and

(III) 1 or more of the depositors in such institution is unable to withdraw any amount of any insured deposit; or

(ii) that such institution has been closed by or under the laws of any State; and

(B) the Corporation determines that 1 or more of the grounds specified in paragraph (5)—

(i) existed with respect to such institution at the time—

(I) the conservator, receiver, or other legal custodian was appointed; or

(II) such institution was closed; or

(ii) exist at any time—

(I) during the appointment of the conservator, receiver, or other legal custodian; or

(II) while such institution is closed.

(5) Grounds for appointing conservator or receiver

The grounds for appointing a conservator or receiver (which may be the Corporation) for any insured depository institution are as follows:

(A) ASSETS INSUFFICIENT FOR OBLIGATIONS.—The institution's assets are less than the institution's obligations to its creditors and others, including members of the institution.

(B) SUBSTANTIAL DISSIPATION.—Substantial dissipation of assets or earnings due to—

(i) any violation of any statute or regulation; or

(ii) any unsafe or unsound practice.

(C) UNSAFE OR UNSOUND CONDITION.—An unsafe or unsound condition to transact business.

(D) CEASE AND DESIST ORDERS.—Any willful violation of a cease-and-desist order which has become final.

(E) CONCEALMENT.—Any concealment of the institution's books, papers, records, or assets, or any refusal to submit the institution's books, papers, records, or affairs for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or State bank or savings association supervisor.

(F) INABILITY TO MEET OBLIGATIONS.—The institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business.

(G) LOSSES.—The institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized (as defined in section 1831*o*(b) of this title) without Federal assistance.

(H) VIOLATIONS OF LAW.—Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

(i) cause insolvency or substantial dissipation of assets or earnings;

(ii) weaken the institution's condition; or

(iii) otherwise seriously prejudice the interests of the institution's depositors or the Deposit Insurance Fund.

(I) CONSENT.—The institution, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(J) CESSATION OF INSURED STATUS.—The institution ceases to be an insured institution.

(K) UNDERCAPITALIZATION.—The institution is undercapitalized (as defined in section 1831*o*(b) of this title), and—

(i) has no reasonable prospect of becoming adequately capitalized (as defined in that section);

(ii) fails to become adequately capitalized when required to do so under section 1831*o*(f)(2)(A) of this title;

(iii) fails to submit a capital restoration plan acceptable to that agency within the time prescribed under section 1831*o*(e)(2)(D) of this title; or

(iv) materially fails to implement a capital restoration plan submitted and accepted under section 1831*o*(e)(2) of this title.

(L) The institution—

(i) is critically undercapitalized, as defined in section 1831*o*(b) of this title; or

(ii) otherwise has substantially insufficient capital.

(M) MONEY LAUNDERING OFFENSE.—The Attorney General notifies the appropriate Federal banking agency or the Corporation in writing that the insured depository institution has been found guilty of a criminal offense under section 1956 or 1957 of title 18 or section 5322 or 5324 of title 31.

(6) Appointment by Director of the Office of Thrift Supervision

(A) Conservator

The Corporation or the Resolution Trust Corporation may, at the discretion of the Director of the Office of Thrift Supervision, be appointed conservator and the Corporation may accept any such appointment.

(B) Receiver

Whenever the Director of the Office of Thrift Supervision appoints a receiver under the provisions of subparagraph (A) or (C) of section 1464(d)(2) of this title for the purpose of liquidation or winding up any savings association's affairs—

(i) before such date as is determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title, the Resolution Trust Corporation shall be appointed;

(ii) on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title, the Resolution Trust Corporation shall be appointed if the Resolution Trust Corporation had been placed in control of the depository institution at any time before such date; and

(iii) on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title, the Corporation shall be appointed unless the Resolution Trust Corporation is required to be appointed under clause (ii).

(7) Judicial review

If the Corporation is appointed (including the appointment of the Corporation as receiver by the Board of Directors) as conservator or receiver of a depository institution under paragraph (4), (9), or (10), the depository institution may, not later than 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such depository institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to be removed as the conservator or receiver (regardless of how such appointment was made), and the court shall, upon the merits, dismiss such action or direct the Corporation to be removed as the conservator or receiver.

(8) Replacement of conservator of State depository institution

(A) In general

In the case of any insured State depository institution for which the Corporation appointed itself as conservator pursuant to paragraph (4), the Corporation may, without any requirement of notice, hearing, or other action, replace itself as conservator with itself as receiver of such institution.

(B) Replacement treated as removal of incumbent

The replacement of a conservator with a receiver under subparagraph (A) shall be treated as the removal of the Corporation as conservator.

(C) Right of review of original appointment not affected

The replacement of a conservator with a receiver under subparagraph (A) shall not affect any right of the insured State depository institution to obtain review, pursuant to paragraph (7), of the original appointment of the conservator.

(9) Appropriate Federal banking agency may appoint Corporation as conservator or receiver for insured State depository institution to carry out section 1831*o*

(A) In general

The appropriate Federal banking agency may appoint the Corporation as sole receiver (or, subject to paragraph (11), sole conservator) of any insured State depository institution, after consultation with the appropriate State supervisor, if the appropriate Federal banking agency determines that—

(i) 1 or more of the grounds specified in subparagraphs (K) and (L) of paragraph (5) exist with respect to that institution; and

(ii) the appointment is necessary to carry out the purpose of section 1831*o* of this title.

(B) Nondelegation

The appropriate Federal banking agency shall not delegate any action under subparagraph (A).

(10) Corporation may appoint itself as conservator or receiver for insured depository institution to prevent loss to Deposit Insurance Fund

The Board of Directors may appoint the Corporation as sole conservator or receiver of an insured depository institution, after consultation with the appropriate Federal banking agency and the appropriate State supervisor

(if any), if the Board of Directors determines that—

(A) 1 or more of the grounds specified in any subparagraph of paragraph (5) exist with respect to the institution; and

(B) the appointment is necessary to reduce—

(i) the risk that the Deposit Insurance Fund would incur a loss with respect to the insured depository institution, or

(ii) any loss that the Deposit Insurance Fund is expected to incur with respect to that institution.

(11) Appropriate Federal banking agency shall not appoint conservator under certain provisions without giving Corporation opportunity to appoint receiver

The appropriate Federal banking agency shall not appoint a conservator for an insured depository institution under subparagraph (K) or (L) of paragraph (5) without the Corporation's consent unless the agency has given the Corporation 48 hours notice of the agency's intention to appoint the conservator and the grounds for the appointment.

(12) Directors not liable for acquiescing in appointment of conservator or receiver

The members of the board of directors of an insured depository institution shall not be liable to the institution's shareholders or creditors for acquiescing in or consenting in good faith to—

(A) the appointment of the Corporation or the Resolution Trust Corporation as conservator or receiver for that institution; or

(B) an acquisition or combination under section 1831*o*(f)(2)(A)(iii) of this title.

(13) Additional powers

In any case in which the Corporation is appointed conservator or receiver under paragraph (4), (6), (9), or (10) for any insured State depository institution—

(A) this section shall apply to the Corporation as conservator or receiver in the same manner and to the same extent as if that institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

(B) the Corporation as receiver of the institution may—

(i) liquidate the institution in an orderly manner; and

(ii) make any other disposition of any matter concerning the institution, as the Corporation determines is in the best interests of the institution, the depositors of the institution, and the Corporation.

(d) Powers and duties of Corporation as conservator or receiver

(1) Rulemaking authority of Corporation

The Corporation may prescribe such regulations as the Corporation determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) General powers

(A) Successor to institution

The Corporation shall, as conservator or receiver, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution; and

(ii) title to the books, records, and assets of any previous conservator or other legal custodian of such institution.

(B) Operate the institution

The Corporation may (subject to the provisions of section 1831q of this title), as conservator or receiver—

(i) take over the assets of and operate the insured depository institution with all the powers of the members or shareholders, the directors, and the officers of the institution and conduct all business of the institution;

(ii) collect all obligations and money due the institution;

(iii) perform all functions of the institution in the name of the institution which are consistent with the appointment as conservator or receiver; and

(iv) preserve and conserve the assets and property of such institution.

(C) Functions of institution's officers, directors, and shareholders

The Corporation may, by regulation or order, provide for the exercise of any function by any member or stockholder, director, or officer of any insured depository institution for which the Corporation has been appointed conservator or receiver.

(D) Powers as conservator

The Corporation may, as conservator, take such action as may be—

(i) necessary to put the insured depository institution in a sound and solvent condition; and

(ii) appropriate to carry on the business of the institution and preserve and conserve the assets and property of the institution.

(E) Additional powers as receiver

The Corporation may (subject to the provisions of section 1831q of this title), as receiver, place the insured depository institution in liquidation and proceed to realize upon the assets of the institution, having due regard to the conditions of credit in the locality.

(F) Organization of new institutions

The Corporation may, as receiver, with respect to any insured depository institution, organize a new depository institution under subsection (m) or a bridge depository institution under subsection (n).

(G) Merger; transfer of assets and liabilities

(i) In general

The Corporation may, as conservator or receiver—

(I) merge the insured depository institution with another insured depository institution; or

(II) subject to clause (ii), transfer any asset or liability of the institution in default (including assets and liabilities associated with any trust business) without any approval, assignment, or consent with respect to such transfer.

(ii) Approval by appropriate Federal banking agency

No transfer described in clause (i)(II) may be made to another depository institution (other than a new depository institution or a bridge depository institution established pursuant to subsection (m) or (n) of this section) without the approval of the appropriate Federal banking agency for such institution.

(H) Payment of valid obligations

The Corporation, as conservator or receiver, shall pay all valid obligations of the insured depository institution in accordance with the prescriptions and limitations of this chapter.

(I) Subpoena authority

(i) In general

The Corporation may, as conservator, receiver, or exclusive manager and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution (including determining any claim against the institution and determining and realizing upon any asset of any person in the course of collecting money due the institution), exercise any power established under section 1818(n) of this title, and the provisions of such section shall apply with respect to the exercise of any such power under this subparagraph in the same manner as such provisions apply under such section.

(ii) Authority of Board of Directors

A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Board of Directors or their designees (or, in the case of a subpoena or subpoena duces tecum issued by the Resolution Trust Corporation under this subparagraph and section 1441a(b)(4)[2] of this title, only by, or with the written approval of, the Board of Directors of such Corporation or their designees).

(iii) Rule of construction

This subsection shall not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have under section 1820(c) of this title.

(J) Incidental powers

The Corporation may, as conservator or receiver—

(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this chapter and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this chapter,

which the Corporation determines is in the best interests of the depository institution, its depositors, or the Corporation.

(K) Utilization of private sector

In carrying out its responsibilities in the management and disposition of assets from insured depository institutions, as conservator, receiver, or in its corporate capacity, the Corporation shall utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, only if such services are available in the private sector and the Corporation determines utilization of such services is the most practicable, efficient, and cost effective.

(3) Authority of receiver to determine claims

(A) In general

The Corporation may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4).

(B) Notice requirements

The receiver, in any case involving the liquidation or winding up of the affairs of a closed depository institution, shall—

(i) promptly publish a notice to the depository institution's creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) Mailing required

The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the institution's books—

(i) at the creditor's last address appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the institution's books within 30 days after the discovery of such name and address.

(4) Rulemaking authority relating to determination of claims

(A) In general

The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

(B) Final settlement payment procedure

(i) In general

In the handling of receiverships of insured depository institutions, to maintain essential liquidity and to prevent financial disruption, the Corporation may, after the declaration of an institution's insolvency, settle all uninsured and unsecured claims on the receivership with a final settlement payment which shall constitute full payment and disposition of the Corporation's obligations to such claimants.

[2] See References in Text note below.

(ii) Final settlement payment

For purposes of clause (i), a final settlement payment shall be payment of an amount equal to the product of the final settlement payment rate and the amount of the uninsured and unsecured claim on the receivership; and

(iii) Final settlement payment rate

For purposes of clause (ii), the final settlement payment rate shall be a percentage rate reflecting an average of the Corporation's receivership recovery experience, determined by the Corporation in such a way that over such time period as the Corporation may deem appropriate, the Corporation in total will receive no more or less than it would have received in total as a general creditor standing in the place of insured depositors in each specific receivership.

(iv) Corporation authority

The Corporation may undertake such supervisory actions and promulgate such regulations as may be necessary to assure that the requirements of this section can be implemented with respect to each insured depository institution in the event of its insolvency.

(5) Procedures for determination of claims

(A) Determination period

(i) In general

Before the end of the 180-day period beginning on the date any claim against a depository institution is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) Extension of time

The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation.

(iii) Mailing of notice sufficient

The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the depository institution's books;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) Contents of notice of disallowance

If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) Allowance of proven claims

The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

(C) Disallowance of claims filed after end of filing period

(i) In general

Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.

(ii) Certain exceptions

Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the receiver if—

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) Authority to disallow claims

(i) In general

The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

(ii) Payments to less than fully secured creditors

In the case of a claim of a creditor against an insured depository institution which is secured by any property or other asset of such institution, any receiver appointed for any insured depository institution—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the institution; and

(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the institution.

(iii) Exceptions

No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(II) any security interest in the assets of the institution securing any such extension of credit.

(E) No judicial review of determination pursuant to subparagraph (D)

No court may review the Corporation's determination pursuant to subparagraph (D) to disallow a claim.

(F) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the

receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(6) Provision for agency review or judicial determination of claims

(A) In general

Before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a depository institution for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i),

the claimant may request administrative review of the claim in accordance with subparagraph (A) or (B) of paragraph (7) or file suit on such claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

(B) Statute of limitations

If any claimant fails to—

(i) request administrative review of any claim in accordance with subparagraph (A) or (B) of paragraph (7); or

(ii) file suit on such claim (or continue an action commenced before the appointment of the receiver),

before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(7) Review of claims

(A) Administrative hearing

If any claimant requests review under this subparagraph in lieu of filing or continuing any action under paragraph (6) and the Corporation agrees to such request, the Corporation shall consider the claim after opportunity for a hearing on the record. The final determination of the Corporation with respect to such claim shall be subject to judicial review under chapter 7 of title 5.

(B) Other review procedures

(i) In general

The Corporation shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) Criteria

In establishing alternative dispute resolution processes, the Corporation shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) Voluntary binding or nonbinding procedures

The Corporation may establish both binding and nonbinding processes, which may be conducted by any government or private party, but all parties, including the claimant and the Corporation, must agree to the use of the process in a particular case.

(iv) Consideration of incentives

The Corporation shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) Expedited determination of claims

(A) Establishment required

The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any depository institution for which the Corporation has been appointed receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) Determination period

Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (5); and

(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) Period for filing or renewing suit

Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Corporation denies the claim.

(D) Statute of limitations

If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in

accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(9) Agreement as basis of claim

(A) Requirements

Except as provided in subparagraph (B), any agreement which does not meet the requirements set forth in section 1823(e) of this title shall not form the basis of, or substantially comprise, a claim against the receiver or the Corporation.

(B) Exception to contemporaneous execution requirement

Notwithstanding section 1823(e)(2)[2] of this title, any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (A).

(10) Payment of claims

(A) In general

The receiver may, in the receiver's discretion and to the extent funds are available, pay creditor claims which are allowed by the receiver, approved by the Corporation pursuant to a final determination pursuant to paragraph (7) or (8), or determined by the final judgment of any court of competent jurisdiction in such manner and amounts as are authorized under this chapter.

(B) Payment of dividends on claims

The receiver may, in the receiver's sole discretion, pay dividends on proved claims at any time, and no liability shall attach to the Corporation (in such Corporation's corporate capacity or as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(C) Rulemaking authority of Corporation

The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of insured Federal or State depository institutions following satisfaction by the receiver of the principal amount of all creditor claims.

(11) Depositor preference

(A) In general

Subject to section 1815(e)(2)(C) of this title, amounts realized from the liquidation or other resolution of any insured depository institution by any receiver appointed for such institution shall be distributed to pay claims (other than secured claims to the extent of any such security) in the following order of priority:

(i) Administrative expenses of the receiver.

(ii) Any deposit liability of the institution.

(iii) Any other general or senior liability of the institution (which is not a liability described in clause (iv) or (v)).

(iv) Any obligation subordinated to depositors or general creditors (which is not an obligation described in clause (v)).

(v) Any obligation to shareholders or members arising as a result of their status as shareholders or members (including any depository institution holding company or any shareholder or creditor of such company).

(B) Effect on State law

(i) In general

The provisions of subparagraph (A) shall not supersede the law of any State except to the extent such law is inconsistent with the provisions of such subparagraph, and then only to the extent of the inconsistency.

(ii) Procedure for determination of inconsistency

Upon the Corporation's own motion or upon the request of any person with a claim described in subparagraph (A) or any State which is submitted to the Corporation in accordance with procedures which the Corporation shall prescribe, the Corporation shall determine whether any provision of the law of any State is inconsistent with any provision of subparagraph (A) and the extent of any such inconsistency.

(iii) Judicial review

The final determination of the Corporation under clause (ii) shall be subject to judicial review under chapter 7 of title 5.

(C) Accounting report

Any distribution by the Corporation in connection with any claim described in subparagraph (A)(v) shall be accompanied by the accounting report required under paragraph (15)(B).

(12) Suspension of legal actions

(A) In general

After the appointment of a conservator or receiver for an insured depository institution, the conservator or receiver may request a stay for a period not to exceed—

(i) 45 days, in the case of any conservator; and

(ii) 90 days, in the case of any receiver,

in any judicial action or proceeding to which such institution is or becomes a party.

(B) Grant of stay by all courts required

Upon receipt of a request by any conservator or receiver pursuant to subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(13) Additional rights and duties

(A) Prior final adjudication

The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as conservator or receiver.

(B) Rights and remedies of conservator or receiver

In the event of any appealable judgment, the Corporation as conservator or receiver shall—

(i) have all the rights and remedies available to the insured depository institution (before the appointment of such conservator or receiver) and the Corporation in its corporate capacity, including removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) No attachment or execution

No attachment or execution may issue by any court upon assets in the possession of the receiver.

(D) Limitation on judicial review

Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the Corporation has been appointed receiver, including assets which the Corporation may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such institution or the Corporation as receiver.

(E) Disposition of assets

In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of any insured depository institution for which the Corporation has been appointed conservator or receiver, including any sale or disposition of assets acquired by the Corporation under section 1823(d)(1) of this title, the Corporation shall conduct its operations in a manner which—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases;

(iii) ensures adequate competition and fair and consistent treatment of offerors;

(iv) prohibits discrimination on the basis of race, sex, or ethnic groups in the solicitation and consideration of offers; and

(v) maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals.

(14) Statute of limitations for actions brought by conservator or receiver

(A) In general

Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as conservator or receiver shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim (other than a claim which is subject to section 1441a(b)(14) of this title), the longer of—

(I) the 3-year period beginning on the date the claim accrues; or

(II) the period applicable under State law.

(B) Determination of the date on which a claim accrues

For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Corporation as conservator or receiver; or

(ii) the date on which the cause of action accrues.

(C) Revival of expired State causes of action

(i) In general

In the case of any tort claim described in clause (ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Corporation as conservator or receiver, the Corporation may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(ii) Claims described

A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the institution.

(15) Accounting and recordkeeping requirements

(A) In general

The Corporation as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established

by the Corporation, maintain a full accounting of each conservatorship and receivership or other disposition of institutions in default.

(B) Annual accounting or report

With respect to each conservatorship or receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary of the Treasury, the Comptroller General of the United States, and the authority which appointed the Corporation as conservator or receiver.

(C) Availability of reports

Any report prepared pursuant to subparagraph (B) shall be made available by the Corporation upon request to any shareholder of the depository institution for which the Corporation was appointed conservator or receiver or any other member of the public.

(D) Recordkeeping requirement

(i) In general

Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Corporation is appointed as receiver of an insured depository institution, the Corporation may destroy any records of such institution which the Corporation, in the Corporation's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) Old records

Notwithstanding clause (i), the Corporation may destroy records of an insured depository institution which are at least 10 years old as of the date on which the Corporation is appointed as the receiver of such depository institution in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

(16) Contracts with State housing finance authorities

(A) In general

The Corporation may enter into contracts with any State housing finance authority for the sale of mortgage-related assets (as such terms are defined in section 1441a–1 of this title) of any depository institution in default (including assets and liabilities associated with any trust business), such contracts to be effective in accordance with their terms without any further approval, assignment, or consent with respect thereto.

(B) Factors to consider

In evaluating the disposition of mortgage related assets to any State housing finance authority the Corporation shall consider—

(i) the State housing finance authority's ability to acquire and service current, delinquent, and defaulted mortgage related assets;

(ii) the State housing finance authority's ability to further national housing policies;

(iii) the State housing finance authority's sensitivity to the impact of the sale of mortgage related assets upon the State and local communities;

(iv) the costs to the Federal Government associated with alternative ownership or disposition of the mortgage related assets;

(v) the minimization of future guaranties which may be required of the Federal Government;

(vi) the maximization of mortgage related asset values; and

(vii) the utilization of institutions currently established in mortgage related asset market activities.

(17) Fraudulent transfers

(A) In general

The Corporation, as conservator or receiver for any insured depository institution, and any conservator appointed by the Comptroller of the Currency or the Director of the Office of Thrift Supervision may avoid a transfer of any interest of an institution-affiliated party, or any person who the Corporation or conservator determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation or conservator was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the insured depository institution, the Corporation or other conservator, or any other appropriate Federal banking agency.

(B) Right of recovery

To the extent a transfer is avoided under subparagraph (A), the Corporation or any conservator described in such subparagraph may recover, for the benefit of the insured depository institution, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(C) Rights of transferee or obligee

The Corporation or any conservator described in subparagraph (A) may not recover under subparagraph (B) from—

(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

(ii) any immediate or mediate good faith transferee of such transferee.

(D) Rights under this paragraph

The rights under this paragraph of the Corporation and any conservator described in subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11.

(18) Attachment of assets and other injunctive relief

Subject to paragraph (19), any court of competent jurisdiction may, at the request of—

(A) the Corporation (in the Corporation's capacity as conservator or receiver for any insured depository institution or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under this section or section 1822 or 1823 of this title); or

(B) any conservator appointed by the Comptroller of the Currency or the Director of the Office of Thrift Supervision,

issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation or such conservator under the control of the court and appointing a trustee to hold such assets.

(19) Standards

(A) Showing

Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (18) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) State proceeding

If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation or a conservator pursuant to paragraph (18) may be requested under the laws of such State.

(20) Treatment of claims arising from breach of contracts executed by the receiver or conservator

Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against a receiver or conservator for an insured depository institution for the breach of an agreement executed or approved by such receiver or conservator after the date of its appointment shall be paid as an administrative expense of the receiver or conservator. Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(e) Provisions relating to contracts entered into before appointment of conservator or receiver

(1) Authority to repudiate contracts

In addition to any other rights a conservator or receiver may have, the conservator or receiver for any insured depository institution may disaffirm or repudiate any contract or lease—

(A) to which such institution is a party;

(B) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs.

(2) Timing of repudiation

The conservator or receiver appointed for any insured depository institution in accordance with subsection (c) of this section shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) Claims for damages for repudiation

(A) In general

Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) No liability for other damages

For purposes of subparagraph (A), the term ''actual direct compensatory damages'' does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) Measure of damages for repudiation of financial contracts

In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (i) of this section except as otherwise specifically provided in this section.

(4) Leases under which the institution is the lessee

(A) In general

If the conservator or receiver disaffirms or repudiates a lease under which the insured depository institution was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) Payments of rent

Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective,

unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (i) of this section.

(5) Leases under which the institution is the lessor

(A) In general

If the conservator or receiver repudiates an unexpired written lease of real property of the insured depository institution under which the institution is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) Provisions applicable to lessee remaining in possession

If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease;

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the insured depository institution under the lease after such date; and

(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

(6) Contracts for the sale of real property

(A) In general

If the conservator or receiver repudiates any contract (which meets the requirements of each paragraph of section 1823(e) of this title) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) Provisions applicable to purchaser remaining in possession

If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the depository institution under the contract; and

(ii) the conservator or receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) Assignment and sale allowed

(i) In general

No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) No liability after assignment and sale

If an assignment and sale described in clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) Provisions applicable to service contracts

(A) Services performed before appointment

In the case of any contract for services between any person and any insured depository institution for which the Corporation has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—

(i) a claim to be paid in accordance with subsections (d) and (i) of this section; and

(ii) deemed to have arisen as of the date the conservator or receiver was appointed.

(B) Services performed after appointment and prior to repudiation

If, in the case of any contract for services described in subparagraph (A), the conservator or receiver accepts performance by the

other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

(C) Acceptance of performance no bar to subsequent repudiation

The acceptance by any conservator or receiver of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

(8) Certain qualified financial contracts

(A) Rights of parties to contracts

Subject to paragraphs (9) and (10) of this subsection and notwithstanding any other provision of this chapter (other than subsection (d)(9) of this section and section 1823(e) of this title), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with an insured depository institution which arises upon the appointment of the Corporation as receiver for such institution at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);[3]

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) Applicability of other provisions

Subsection (d)(12) of this section shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the insured depository institution for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such institution.

(C) Certain transfers not avoidable

(i) In general

Notwithstanding paragraph (11), section 91 of this title or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as such or as conservator or receiver of an insured depository institution, may not avoid any transfer of money or other property in connection with any qualified financial contract with an insured depository institution.

(ii) Exception for certain transfers

Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with an insured depository institution if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such institution, the creditors of such institution, or any conservator or receiver appointed for such institution.

(D) Certain contracts and agreements defined

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

(i) Qualified financial contract

The term ''qualified financial contract'' means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) Securities contract

The term ''securities contract''—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a ''repurchase agreement'', as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such secu-

[3] So in original. Probably should be followed by ''or''.

rity, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II));[4]

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) Commodity contract

The term ''commodity contract'' means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) Forward contract

The term ''forward contract'' means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including,[5] a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a ''repurchase agreement'', as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred

[4] So in original. The semicolon probably should be preceded by an additional closing parenthesis.

[5] So in original. The comma probably should not appear.

to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) Repurchase agreement

The term ''repurchase agreement'' (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.]), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term ''qualified foreign government security'' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

(vi) Swap agreement

The term ''swap agreement'' means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or meas-

ures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000 [7 U.S.C. 27 to 27f], the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)]) and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(vii) Treatment of master agreement as one agreement

Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(viii) Transfer

The term ''transfer'' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.

(ix) Person

The term ''person'' includes any governmental entity in addition to any entity included in the definition of such term in section 1 of title 1.

(E) Certain protections in event of appointment of conservator

Notwithstanding any other provision of this chapter (other than subsections (d)(9) and (e)(10) of this section, and section 1823(e) of this title), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a depository institution in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);[3]

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) Clarification

No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

(G) Walkaway clauses not effective

(i) In general

Notwithstanding the provisions of subparagraphs (A) and (E), and sections 4403 and 4404 of this title, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

(ii) Limited suspension of certain obligations

In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the receiver is appointed until the earlier of—

(I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

(iii) Walkaway clause defined

For purposes of this subparagraph, the term ''walkaway clause'' means any provi-

sion in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party's status as a nondefaulting party in connection with the insolvency of an insured depository institution that is a party to the contract or the appointment of or the exercise of rights or powers by a conservator or receiver of such depository institution, and not as a result of a party's exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(H) Recordkeeping requirements

The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 1831i of this title).

(9) Transfer of qualified financial contracts

(A) In general

In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) Transfer to foreign bank, foreign financial institution, or branch or agency of a foreign bank or financial institution

In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) Transfer of contracts subject to the rules of a clearing organization

In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) Definitions

For purposes of this paragraph, the term ''financial institution'' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term ''clearing organization'' has the same meaning as in section 4402 of this title.

(10) Notification of transfer

(A) In general

If—

(i) the conservator or receiver for an insured depository institution in default makes any transfer of the assets and liabilities of such institution; and

(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.

(B) Certain rights not enforceable

(i) Receivership

A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under para-

graph (8)(A) of this subsection or section 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) Conservatorship

A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

(iii) Notice

For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) Treatment of bridge depository institutions

The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

(i) A bridge depository institution.

(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

(I) immediately upon the organization of the institution; or

(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.

(D) "Business day" defined

For purposes of this paragraph, the term ''business day'' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) Disaffirmance or repudiation of qualified financial contracts

In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the depository institution in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) Certain security interests not avoidable

No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any depository institution except where such an interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.

(13) Authority to enforce contracts

(A) In general

The conservator or receiver may enforce any contract, other than a director's or officer's liability insurance contract or a depository institution bond, entered into by the depository institution notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a conservator or receiver.

(B) Certain rights not affected

No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director's or officer's liability insurance contract or depository institution bond under other applicable law.

(C) Consent requirement

(i) In general

Except as otherwise provided by this section or section 1825 of this title, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the depository institution is a party, or to obtain possession of or exercise control over any property of the institution or affect any contractual rights of the institution, without the consent of the conservator or receiver, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator, or during the 90-day period beginning on the date of the appointment of the receiver, as applicable.

(ii) Certain exceptions

No provision of this subparagraph shall apply to a director or officer liability insurance contract or a depository institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A

of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contract.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to limit or otherwise affect the applicability of title 11.

(14) Exception for Federal Reserve and Federal home loan banks

No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(B) any security interest in the assets of the institution securing any such extension of credit.

(15) Selling credit card accounts receivable

(A) Notification required

An undercapitalized insured depository institution (as defined in section 1831*o* of this title) shall notify the Corporation in writing before entering into an agreement to sell credit card accounts receivable.

(B) Waiver by Corporation

The Corporation may at any time, in its sole discretion and upon such terms as it may prescribe, waive its right to repudiate an agreement to sell credit card accounts receivable if the Corporation—

(i) determines that the waiver is in the best interests of the Deposit Insurance Fund; and

(ii) provides a written waiver to the selling institution.

(C) Effect of waiver on successors

(i) In general

If, under subparagraph (B), the Corporation has waived its right to repudiate an agreement to sell credit card accounts receivable—

(I) any provision of the agreement that restricts solicitation of a credit card customer of the selling institution, or the use of a credit card customer list of the institution, shall bind any receiver or conservator of the institution; and

(II) the Corporation shall require any acquirer of the selling institution, or of substantially all of the selling institution's assets or liabilities, to agree to be bound by a provision described in subclause (I) as if the acquirer were the selling institution.

(ii) Exception

Clause (i)(II) does not—

(I) restrict the acquirer's authority to offer any product or service to any person identified without using a list of the selling institution's customers in violation of the agreement;

(II) require the acquirer to restrict any preexisting relationship between the acquirer and a customer; or

(III) apply to any transaction in which the acquirer acquires only insured deposits.

(D) Waiver not actionable

The Corporation shall not, in any capacity, be liable to any person for damages resulting from the waiver of or failure to waive the Corporation's right under this section to repudiate any contract or lease, including an agreement to sell credit card accounts receivable. No court shall issue any order affecting any such waiver or failure to waive.

(E) Other authority not affected

This paragraph does not limit any other authority of the Corporation to waive the Corporation's right to repudiate an agreement or lease under this section.

(16) Certain credit card customer lists protected

(A) In general

If any insured depository institution sells credit card accounts receivable under an agreement negotiated at arm's length that provides for the sale of the institution's credit card customer list, the Corporation shall prohibit any party to a transaction with respect to the institution under this section or section 1823 of this title from using the list, except as permitted under the agreement.

(B) Fraudulent transactions excluded

Subparagraph (A) does not limit the Corporation's authority to repudiate any agreement entered into with the intent to hinder, delay, or defraud the institution, the institution's creditors, or the Corporation.

(17) Savings clause

The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000 [7 U.S.C. 27 to 27f], the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)]), and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(f) Payment of insured deposits

(1) In general

In case of the liquidation of, or other closing or winding up of the affairs of, any insured depository institution, payment of the insured deposits in such institution shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g) of this section, either by cash or by making available to each depositor a transferred deposit in a new insured depository institution in the same community or in another insured depository institution in an amount equal to the insured deposit of such depositor.

(2) Proof of claims

The Corporation, in its discretion, may require proof of claims to be filed and may ap-

prove or reject such claims for insured deposits.

(3) Resolution of disputes

A determination by the Corporation regarding any claim for insurance coverage shall be treated as a final determination for purposes of this section. In its discretion, the Corporation may promulgate regulations prescribing procedures for resolving any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit.

(4) Review of Corporation determination

A final determination made by the Corporation regarding any claim for insurance coverage shall be a final agency action reviewable in accordance with chapter 7 of title 5 by the United States district court for the Federal judicial district where the principal place of business of the depository institution is located.

(5) Statute of limitations

Any request for review of a final determination by the Corporation regarding any claim for insurance coverage shall be filed with the appropriate United States district court not later than 60 days after the date on which such determination is issued.

(g) Subrogation of Corporation

(1) In general

Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation, upon the payment to any depositor as provided in subsection (f) of this section in connection with any insured depository institution or insured branch described in such subsection or the assumption of any deposit in such institution or branch by another insured depository institution pursuant to this section or section 1823 of this title, shall be subrogated to all rights of the depositor against such institution or branch to the extent of such payment or assumption.

(2) Dividends on subrogated amounts

The subrogation of the Corporation under paragraph (1) with respect to any insured depository institution shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such institution and recoveries on account of stockholders' liability as would have been payable to the depositor on a claim for the insured deposit, but such depositor shall retain such claim for any uninsured or unassumed portion of the deposit.

(3) Waiver of certain claims

With respect to any bank which closes after May 25, 1938, the Corporation shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the bank or its creditors, for the amount unpaid upon such stock in such bank; but any such waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries or dividends on account of claims to which the Corporation is not subrogated.

(4) Applicability of State law

Subject to subsection (d)(11) of this section, if the Corporation is appointed pursuant to subsection (c)(3) of this section, or determines not to invoke the authority conferred in subsection (c)(4) of this section, the rights of depositors and other creditors of any State depository institution shall be determined in accordance with the applicable provisions of State law.

(h) Conditions applicable to resolution proceedings

(1) Consideration of local economic impact required

The Corporation shall fully consider the adverse economic impact on local communities, including businesses and farms, of actions to be taken by it during the administration and liquidation of loans of a depository institution in default.

(2) Actions to alleviate adverse economic impact to be considered

The actions which the Corporation shall consider include the release of proceeds from the sale of products and services for family living and business expenses and shortening the undue length of the decisionmaking process for the acceptance of offers of settlement contingent upon third party financing.

(3) Guidelines required

The Corporation shall adopt and publish procedures and guidelines to minimize adverse economic effects caused by its actions on individual debtors in the community.

(4) Financial services industry impact analysis

After the appointment of the Corporation as conservator or receiver for any insured depository institution and before taking any action under this section or section 1823 of this title in connection with the resolution of such institution, the Corporation shall—

(A) evaluate the likely impact of the means of resolution, and any action which the Corporation may take in connection with such resolution, on the viability of other insured depository institutions in the same community; and

(B) take such evaluation into account in determining the means for resolving the institution and establishing the terms and conditions for any such action.

(i) Valuation of claims in default

(1) In general

Notwithstanding any other provision of Federal law or the law of any State and regardless of the method which the Corporation determines to utilize with respect to an insured depository institution in default or in danger of default, including transactions authorized under subsection (n) of this section and section 1823(c) of this title, this subsection shall govern the rights of the creditors (other than insured depositors) of such institution.

(2) Maximum liability

The maximum liability of the Corporation, acting as receiver or in any other capacity, to

any person having a claim against the receiver or the insured depository institution for which such receiver is appointed shall equal the amount such claimant would have received if the Corporation had liquidated the assets and liabilities of such institution without exercising the Corporation's authority under subsection (n) of this section or section 1823 of this title.

(3) Additional payments authorized

(A) In general

The Corporation may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. Notwithstanding any other provision of Federal or State law, or the constitution of any State, the Corporation shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(B) Manner of payment

The Corporation may make the payments or credit the amounts specified in subparagraph (A) directly to the claimants or may make such payments or credit such amounts to an open insured depository institution to induce such institution to accept liability for such claims.

(j) Limitation on court action

Except as provided in this section, no court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Corporation as a conservator or a receiver.

(k) Liability of directors and officers

A director or officer of an insured depository institution may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

(1) acting as conservator or receiver of such institution,

(2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator, or

(3) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by an insured depository institution or its affiliate in connection with assistance provided under section 1823 of this title,

for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law. Nothing in this paragraph shall impair or affect any right of the Corporation under other applicable law.

***(l)* Damages**

In any proceeding related to any claim against an insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured depository institution, recoverable damages determined to result from the improvident or otherwise improper use or investment of any insured depository institution's assets shall include principal losses and appropriate interest.

(m) New depository institutions

(1) Organization authorized

As soon as possible after the default of an insured depository institution, the Corporation, if it finds that it is advisable and in the interest of the depositors of the insured depository institution in default or the public shall organize a new national bank or Federal savings association in the same community as the insured depository institution in default to assume the insured deposits of such depository institution in default and otherwise to perform temporarily the functions hereinafter provided for.

(2) Articles of association

The articles of association and the organization certificate of the new depository institution shall be executed by representatives designated by the Corporation.

(3) Capital stock

No capital stock need be paid in by the Corporation.

(4) Executive officer

The new depository institution shall not have a board of directors, but shall be managed by an executive officer appointed by the Board of Directors of the Corporation who shall be subject to its directions.

(5) Subject to laws relating to national banks

In all other respects the new depository institution shall be organized in accordance with the then existing provisions of law relating to the organization of national banking associations.

(6) New deposits

The new depository institution may, with the approval of the Corporation, accept new deposits which shall be subject to withdrawal on demand and which, except where the new depository institution is the only depository institution in the community, shall not exceed an amount equal to the standard maximum deposit insurance amount from any depositor.

(7) Insured status

The new depository institution, without application to or approval by the Corporation, shall be an insured depository institution and shall maintain on deposit with the Federal Reserve bank of its district reserves in the amount required by law for member banks, but it shall not be required to subscribe for stock of the Federal Reserve bank.

(8) Investments

Funds of the new depository institution shall be kept on hand in cash, invested in obli-

gations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Corporation, any Federal Reserve bank, or, to the extent of the insurance coverage on any such deposit, an insured depository institution.

(9) Conduct of business

The new depository institution, unless otherwise authorized by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, as appropriate, shall transact business only as authorized by this chapter and as may be incidental to its organization.

(10) Exempt status

Notwithstanding any other provision of Federal or State law, the new depository institution, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(11) Transfer of deposits

(A) Upon the organization of a new depository institution, the Corporation shall promptly make available to it an amount equal to the estimated insured deposits of such depository institution in default plus the estimated amount of the expenses of operating the new depository institution, and shall determine as soon as possible the amount due each depositor for the depositor's insured deposit in the insured depository institution in default, and the total expenses of operation of the new depository institution.

(B) Upon such determination, the amounts so estimated and made available shall be adjusted to conform to the amounts so determined.

(12) Earnings

Earnings of the new depository institution shall be paid over or credited to the Corporation in such adjustment.

(13) Losses

If any new depository institution, during the period it continues its status as such, sustains any losses with respect to which it is not effectively protected except by reason of being an insured depository institution, the Corporation shall furnish to it additional funds in the amount of such losses.

(14) Payment of insured deposits

(A) The new depository institution shall assume as transferred deposits the payment of the insured deposits of such depository institution in default to each of its depositors.

(B) Of the amounts so made available, the Corporation shall transfer to the new depository institution, in cash, such sums as may be necessary to enable it to meet its expenses of operation and immediate cash demands on such transferred deposits, and the remainder of such amounts shall be subject to withdrawal by the new depository institution on demand.

(15) Issuance of stock

(A) Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of the new depository institution to be offered for sale on such terms and conditions as the Board of Directors shall deem advisable in an amount sufficient, in the opinion of the Board of Directors, to make possible the conduct of the business of the new depository institution on a sound basis.

(B) The stockholders of the insured depository institution in default shall be given the first opportunity to purchase any shares of common stock so offered.

(16) Issuance of certificate

Upon proof that an adequate amount of capital stock in the new depository institution has been subscribed and paid for in cash, the Comptroller of the Currency or the Director of the Office of Thrift Supervision, as appropriate, shall require the articles of association and the organization certificate to be amended to conform to the requirements for the organization of a national bank or Federal savings association, and thereafter, when the requirements of law with respect to the organization of a national bank or Federal savings association have been complied with, the Comptroller of the Currency or the Director of the Office of Thrift Supervision, as appropriate, shall issue to the depository institution a certificate of authority to commence business, and thereupon the depository institution shall cease to have the status of a new depository institution, shall be managed by directors elected by its own shareholders, may exercise all the powers granted by law, and shall be subject to all provisions of law relating to national banks or Federal savings associations. Such depository institution shall thereafter be an insured national bank or Federal savings association, without certification to or approval by the Corporation.

(17) Transfer to other institution

If the capital stock of the new depository institution is not offered for sale, or if an adequate amount of capital for such new depository institution is not subscribed and paid for, the Board of Directors may offer to transfer its business to any insured depository institution in the same community which will take over its assets, assume its liabilities, and pay to the Corporation for such business such amount as the Board of Directors may deem adequate; or the Board of Directors in its discretion may change the location of the new depository institution to the office of the Corporation or to some other place or may at any time wind up its affairs as herein provided.

(18) Winding up

Unless the capital stock of the new depository institution is sold or its assets are taken over and its liabilities are assumed by an insured depository institution as above provided within 2 years after the date of its organization, the Corporation shall wind up the affairs of such depository institution, after giving such notice, if any, as the Comptroller of the Currency or the Director of the Office of Thrift Supervision, as appropriate, may require, and shall certify to the Comptroller of

the Currency or the Director of the Office of Thrift Supervision, as appropriate, the termination of the new depository institution. Thereafter the Corporation shall be liable for the obligations of such depository institution and shall be the owner of its assets.

(19) Applicability of certain laws

The provisions of sections 181 and 182 of this title shall not apply to a new depository institution under this subsection.

(n) Bridge depository institutions

(1) Organization

(A) Purpose

When 1 or more insured depository institutions are in default, or when the Corporation anticipates that 1 or more insured depository institutions may become in default, the Corporation may, in its discretion, organize, and the Office of the Comptroller of the Currency, with respect to 1 or more insured banks, or the Director of the Office of Thrift Supervision, with respect to 1 or more insured savings associations, shall charter, 1 or more national banks or Federal savings associations, as appropriate, with respect thereto with the powers and attributes of national banking associations or Federal savings associations, as applicable,,[6] subject to the provisions of this subsection, to be referred to as ''bridge depository institutions''.

(B) Authorities

Upon the granting of a charter to a bridge depository institution, the bridge depository institution may—

(i) assume such deposits of such insured depository institution or institutions that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(ii) assume such other liabilities (including liabilities associated with any trust business) of such insured depository institution or institutions that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(iii) purchase such assets (including assets associated with any trust business) of such insured depository institution or institutions that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate; and

(iv) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this chapter.

(C) Articles of association

The articles of association and organization certificate of a bridge depository institution as approved by the Corporation shall be executed by 3 representatives designated by the Corporation.

(D) Interim directors

A bridge depository institution shall have an interim board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) National bank or Federal savings association

A bridge depository institution shall be organized as a national bank, in the case of 1 or more insured banks, and as a Federal savings association, in the case of 1 or more insured savings associations.

(2) Chartering

(A) Conditions

A national bank or Federal savings association may be chartered by the Comptroller of the Currency or the Director of the Office of Thrift Supervision as a bridge depository institution only if the Board of Directors determines that—

(i) the amount which is reasonably necessary to operate such bridge depository institution will not exceed the amount which is reasonably necessary to save the cost of liquidating, including paying the insured accounts of, 1 or more insured depository institutions in default or in danger of default with respect to which the bridge depository institution is chartered;

(ii) the continued operation of such insured depository institution or institutions in default or in danger of default with respect to which the bridge depository institution is chartered is essential to provide adequate banking services in the community where each such depository institution in default or in danger of default is located; or

(iii) the continued operation of such insured depository institution or institutions in default or in danger of default with respect to which the bridge depository institution is chartered is in the best interest of the depositors of such depository institution or institutions in default or in danger of default or the public.

(B) Insured national bank or Federal savings association

A bridge depository institution shall be an insured depository institution from the time it is chartered as a national bank or Federal savings association.

(C) Bridge bank[7] treated as being in default for certain purposes

A bridge depository institution shall be treated as an insured depository institution in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(D) Management

A bridge depository institution, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) Bylaws

The board of directors of a bridge depository institution shall adopt such bylaws as may be approved by the Corporation.

[6] So in original.

[7] So in original. Probably should be ''Bridge depository institution''.

(3) Transfer of assets and liabilities

(A) In general

(i) Transfer upon grant of charter

Upon the granting of a charter to a bridge depository institution pursuant to this subsection, the Corporation, as receiver, or any other receiver appointed with respect to any insured depository institution in default with respect to which the bridge depository institution is chartered may transfer any assets and liabilities of such depository institution in default to the bridge depository institution in accordance with paragraph (1).

(ii) Subsequent transfers

At any time after a charter is granted to a bridge depository institution, the Corporation, as receiver, or any other receiver appointed with respect to an insured depository institution in default may transfer any assets and liabilities of such insured depository institution in default as the Corporation may, in its discretion, determine to be appropriate in accordance with paragraph (1).

(iii) Treatment of trust business

For purposes of this paragraph, the trust business, including fiduciary appointments, of any insured depository institution in default is included among its assets and liabilities.

(iv) Effective without approval

The transfer of any assets or liabilities, including those associated with any trust business, of an insured depository institution in default transferred to a bridge depository institution shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(B) Intent of Congress regarding continuing operations

It is the intent of the Congress that, in order to prevent unnecessary hardship or losses to the customers of any insured depository institution in default with respect to which a bridge depository institution is chartered, especially creditworthy farmers, small businesses, and households, the Corporation should—

(i) continue to honor commitments made by the depository institution in default to creditworthy customers, and

(ii) not interrupt or terminate adequately secured loans which are transferred under subparagraph (A) and are being repaid by the debtor in accordance with the terms of the loan instrument.

(4) Powers of bridge banks[8]

Each bridge depository institution chartered under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, a national bank or Federal savings association, as appropriate, except that—

(A) the Corporation may—

(i) remove the interim directors and directors of a bridge depository institution;

(ii) fix the compensation of members of the interim board of directors and the board of directors and senior management, as determined by the Corporation in its discretion, of a bridge depository institution; and

(iii) waive any requirement established under section 71, 72, 73, 74, or 75 of this title (relating to directors of national banks) or section 71a of this title which would otherwise be applicable with respect to directors of a bridge depository institution by operation of paragraph (2)(B);

(B) the Corporation may indemnify the representatives for purposes of paragraph (1)(B) and the interim directors, directors, officers, employees, and agents of a bridge depository institution on such terms as the Corporation determines to be appropriate;

(C) no requirement under any provision of law relating to the capital of a national bank shall apply with respect to a bridge depository institution;

(D) the Comptroller of the Currency and the Director of the Office of Thrift Supervision, as appropriate, may establish a limitation on the extent to which any person may become indebted to a bridge depository institution without regard to the amount of the bridge depository institution's capital or surplus;

(E)(i) the board of directors of a bridge depository institution shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Corporation; and

(ii) the board of directors of a bridge depository institution may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Corporation;

(F) a bridge depository institution shall not be required to purchase stock of any Federal Reserve bank;

(G) the Comptroller of the Currency and the Director of the Office of Thrift Supervision, as appropriate, shall waive any requirement for a fidelity bond with respect to a bridge depository institution at the request of the Corporation;

(H) any judicial action to which a bridge depository institution becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a depository institution in default shall be stayed from further proceedings for a period of up to 45 days at the request of the bridge depository institution;

(I) no agreement which tends to diminish or defeat the right, title or interest of a bridge depository institution in any asset of an insured depository institution in default acquired by it shall be valid against the bridge depository institution unless such agreement—

[8] So in original. Probably should be ''bridge depository institution''.

(i) is in writing,

(ii) was executed by such insured depository institution in default and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by such insured depository institution in default,

(iii) was approved by the board of directors of such insured depository institution in default or its loan committee, which approval shall be reflected in the minutes of said board or committee, and

(iv) has been, continuously from the time of its execution, an official record of such insured depository institution in default;

(J) notwithstanding section 1823(e)(2) of this title, any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such depository institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (I); and

(K) except with the prior approval of the Corporation, a bridge depository institution may not, in any transaction or series of transactions, issue capital stock or be a party to any merger, consolidation, disposition of assets or liabilities, sale or exchange of capital stock, or similar transaction, or change its charter.

(5) Capital

(A) No capital required

The Corporation shall not be required to—

(i) issue any capital stock on behalf of a bridge depository institution chartered under this subsection; or

(ii) purchase any capital stock of a bridge depository institution, except that notwithstanding any other provision of Federal or State law, the Corporation may purchase and retain capital stock of a bridge depository institution in such amounts and on such terms as the Corporation, in its discretion, determines to be appropriate.

(B) Operating funds in lieu of capital

Upon the organization of a bridge depository institution, and thereafter, as the Board of Directors may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge depository institution, upon such terms and conditions and in such form and amounts as the Corporation may in its discretion determine, funds for the operation of the bridge depository institution in lieu of capital.

(C) Authority to issue capital stock

Whenever the Board of Directors determines it is advisable to do so, the Corporation shall cause capital stock of a bridge depository institution to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(D) Capital levels

A bridge depository institution shall not be considered an undercapitalized depository institution or a critically undercapitalized depository institution for purposes of section 347b(b) of this title.

(6) No Federal status

(A) Agency status

A bridge depository institution is not an agency, establishment, or instrumentality of the United States.

(B) Employee status

Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a bridge depository institution are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a bridge depository institution shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5 or any other provision of law, or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge depository institution in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(7) Assistance authorized

The Corporation may, in its discretion, provide assistance under section 1823(c) of this title to facilitate any transaction described in clause (i), (ii), or (iii) of paragraph (10)(A) with respect to any bridge depository institution in the same manner and to the same extent as such assistance may be provided under such section with respect to an insured depository institution in default, or to facilitate a bridge depository institution's acquisition of any assets or the assumption of any liabilities of an insured depository institution in default.

(8) Acquisition

(A) In general

The responsible agency shall notify the Attorney General of any transaction involving the merger or sale of a bridge depository institution requiring approval under section 1828(c) of this title and if a report on competitive factors is requested within 10 days, such transaction may not be consummated before the 5th calendar day after the date of approval by the responsible agency with respect thereto. If the responsible agency has found that it must act immediately to prevent the probable failure of 1 of the depository institutions involved, the preceding sentence does not apply and the transaction may be consummated immediately upon approval by the agency.

(B) By out-of-State holding company

Any depository institution, including an out-of-State depository institution, or any out-of-State depository institution holding company may acquire and retain the capital stock or assets of, or otherwise acquire and retain a bridge depository institution if the bridge depository institution at any time had assets aggregating $500,000,000 or more, as determined by the Corporation on the basis of the bridge depository institution's reports of condition or on the basis of the last available reports of condition of any insured depository institution in default, which institution has been acquired, or whose assets have been acquired, by the bridge depository institution. The acquiring entity may acquire the bridge depository institution only in the same manner and to the same extent as such entity may acquire an insured depository institution in default under section 1823(f)(2) of this title.

(9) Duration of bridge depository institution

Subject to paragraphs (11) and (12), the status of a bridge depository institution as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Board of Directors may, in its discretion, extend the status of the bridge depository institution as such for 3 additional 1-year periods.

(10) Termination of bridge depository institution status

The status of any bridge depository institution as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge depository institution with a depository institution that is not a bridge depository institution;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge depository institution to an entity other than the Corporation and other than another bridge depository institution;

(C) the sale of 80 percent, or more, of the capital stock of the bridge depository institution to an entity other than the Corporation and other than another bridge depository institution;

(D) at the election of the Corporation, either the assumption of all or substantially all of the deposits and other liabilities of the bridge depository institution by a depository institution holding company or a depository institution that is not a bridge depository institution, or the acquisition of all or substantially all of the assets of the bridge depository institution by a depository institution holding company, a depository institution that is not a bridge depository institution, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (9), or the earlier dissolution of the bridge depository institution as provided in paragraph (12).

(11) Effect of termination events

(A) Merger or consolidation

A bridge depository institution that participates in a merger or consolidation as provided in paragraph (10)(A) shall be for all purposes a national bank or a Federal savings association, as the case may be, with all the rights, powers, and privileges thereof, and such merger or consolidation shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law.

(B) Charter conversion

Following the sale of a majority of the capital stock of the bridge depository institution as provided in paragraph (10)(B), the Corporation may amend the charter of the bridge depository institution to reflect the termination of the status of the bridge depository institution as such, whereupon the depository institution shall remain a national bank or a Federal savings association, as the case may be,,[6] with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(C) Sale of stock

Following the sale of 80 percent or more of the capital stock of a bridge depository institution as provided in paragraph (10)(C), the depository institution shall remain a national bank or a Federal savings association, as the case may be,,[6] with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(D) Assumption of liabilities and sale of assets

Following the assumption of all or substantially all of the liabilities of the bridge depository institution, or the sale of all or substantially all of the assets of the bridge depository institution, as provided in paragraph (10)(D), at the election of the Corporation the bridge depository institution may retain its status as such for the period provided in paragraph (9).

(E) Effect on holding companies

A depository institution holding company acquiring a bridge depository institution under section 1823(f) of this title, paragraph (8)(B) (or any predecessor provision), or both provisions, shall not be impaired or adversely affected by the termination of the status of a bridge depository institution as a result of subparagraph (A), (B), (C), or (D) of paragraph (10), and shall be entitled to the rights and privileges provided in section 1823(f) of this title.

(F) Amendments to charter

Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (10), the charter of the resulting institution shall be amended to reflect the termination of bridge depository institution status, if appropriate.

(12) Dissolution of bridge depository institution

(A) In general

Notwithstanding any other provision of State or Federal law, if the bridge depository institution's status as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (10)—

(i) the Board of Directors may, in its discretion, dissolve a bridge depository institution in accordance with this paragraph at any time; and

(ii) the Board of Directors shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge depository institution was chartered, or any extension thereof, as provided in paragraph (9).

(B) Procedures

The Comptroller of the Currency or the Director of the Office of Thrift Supervision, as appropriate, shall appoint the Corporation receiver for a bridge depository institution upon certification by the Board of Directors to the Comptroller of the Currency or the Director of the Office of Thrift Supervision, as appropriate, of its determination to dissolve the bridge depository institution. The Corporation as such receiver shall wind up the affairs of the bridge depository institution in conformity with the provisions of law relating to the liquidation of closed national banks or Federal savings associations, as appropriate. With respect to any such bridge depository institution, the Corporation as such receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to a receiver of any insured depository institution and notwithstanding any other provision of law in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(13) Multiple bridge depository institutions

Subject to paragraph (1)(B)(i), the Corporation may, in the Corporation's discretion, organize 2 or more bridge depository institutions under this subsection to assume any deposits of, assume any other liabilities of, and purchase any assets of a single depository institution in default.

(*o*) Supervisory records

In addition to the requirements of section 1817(a)(2) of this title to provide to the Corporation copies of reports of examination and reports of condition, whenever the Corporation has been appointed as receiver for an insured depository institution, the appropriate Federal banking agency shall make available all supervisory records to the receiver which may be used by the receiver in any manner the receiver determines to be appropriate.

(p) Certain sales of assets prohibited

(1) Persons who engaged in improper conduct with, or caused losses to, depository institutions

The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a failed institution by the Corporation to—

(A) any person who—

(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations the aggregate amount of which exceed $1,000,000, to such failed institution;

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any institution for which the Corporation has been appointed as conservator or receiver;

(B) any person who participated, as an officer or director of such failed institution or of any affiliate of such institution, in a material way in transactions that resulted in a substantial loss to such failed institution;

(C) any person who has been removed from, or prohibited from participating in the affairs of, such failed institution pursuant to any final enforcement action by an appropriate Federal banking agency; or

(D) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such failed institution.

(2) Convicted debtors

Except as provided in paragraph (3), any person who—

(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008,[2] 1014, 1032, 1341, 1343, or 1344 of title 18 or of conspiring to commit such an offense, affecting any insured depository institution for which any conservator or receiver has been appointed; and

(B) is in default on any loan or other extension of credit from such insured depository institution which, if not paid, will cause substantial loss to the institution, the Deposit Insurance Fund, the Corporation, the FSLIC Resolution Fund, or the Resolution Trust Corporation,

may not purchase any asset of such institution from the conservator or receiver.

(3) Settlement of claims

Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any insured depository institution to any person if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of—

(A) 1 or more claims that have been, or could have been, asserted by the Corporation against the person; or

(B) obligations owed by the person to any insured depository institution, the FSLIC

Resolution Fund, the Resolution Trust Corporation, or the Corporation.

(4) "Default" defined

For purposes of this subsection, the term ''default'' means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

(q) Expedited procedures for certain claims

(1) Time for filing notice of appeal

The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against an insured depository institution's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) Scheduling

Consistent with section 1657 of title 18,[9] a court of the United States shall expedite the consideration of any case brought by the Corporation against an insured depository institution's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution. As far as practicable the court shall give such case priority on its docket.

(3) Judicial discretion

The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(r) Foreign investigations

The Corporation and the Resolution Trust Corporation, as conservator or receiver of any insured depository institution and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution—

(1) may request the assistance of any foreign banking authority and provide assistance to any foreign banking authority in accordance with section 1818(v) of this title; and

(2) may each maintain an office to coordinate foreign investigations or investigations on behalf of foreign banking authorities.

(s) Prohibition on entering secrecy agreements and protective orders

The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as conservator or receiver for an insured depository institution.

(t) Agencies may share information without waiving privilege

(1) In general

A covered agency, in any capacity, shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

(A) any other covered agency, in any capacity; or

(B) any other agency of the Federal Government (as defined in section 6 of title 18).

(2) Definitions

For purposes of this subsection:

(A) Covered agency

The term ''covered agency'' means any of the following:

(i) Any Federal banking agency.

(ii) The Farm Credit Administration.

(iii) The Farm Credit System Insurance Corporation.

(iv) The National Credit Union Administration.

(v) The Government Accountability Office.

(vii)[10] Federal[11] Housing Finance Agency.

(B) Privilege

The term ''privilege'' includes any work-product, attorney-client, or other privilege recognized under Federal or State law.

(3) Rule of construction

Paragraph (1) shall not be construed as implying that any person waives any privilege applicable to any information because paragraph (1) does not apply to the transfer or use of that information.

(u) Purchase rights of tenants

(1) Notice

Except as provided in paragraph (3), the Corporation may make available for sale a 1- to 4-family residence (including a manufactured home) to which the Corporation acquires title only after the Corporation has provided the household residing in the property notice (in writing and mailed to the property) of the availability of such property and the preference afforded such household under paragraph (2).

(2) Preference

In selling such a property, the Corporation shall give preference to any bona fide offer made by the household residing in the property, if—

(A) such offer is substantially similar in amount to other offers made within such period (or expected by the Corporation to be made within such period);

(B) such offer is made during the period beginning upon the Corporation making such property available and of a reasonable duration, as determined by the Corporation based on the normal period for sale of such properties; and

[9] So in original. Probably should be ''title 28,''.

[10] So in original. There is no cl. (vi).

[11] So in original. Probably should be preceded by ''The''.

(C) the household making the offer complies with any other requirements applicable to purchasers of such property, including any downpayment and credit requirements.

(3) Exceptions

Paragraphs (1) and (2) shall not apply to—

(A) any residence transferred in connection with the transfer of substantially all of the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver;

(B) any eligible single family property (as such term is defined in section 1831q(p) of this title; or

(C) any residence for which the household occupying the residence was the mortgagor under a mortgage on such residence and to which the Corporation acquired title pursuant to default on such mortgage.

(v) Preference for sales for homeless families

Subject to subsection (u) of this section, in selling any real property (other than eligible residential property and eligible condominium property, as such terms are defined in section 1831q(p) of this title) to which the Corporation acquires title, the Corporation shall give preference among offers to purchase the property that will result in the same net present value proceeds, to any offer that would provide for the property to be used, during the remaining useful life of the property, to provide housing or shelter for homeless persons (as such term is defined in section 11302 of title 42) or homeless families.

(w) Preferences for sales of certain commercial real properties

(1) Authority

In selling any eligible commercial real properties of the Corporation, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer—

(A) that is made by a public agency or nonprofit organization; and

(B) under which the purchaser agrees that the property shall be used, during the remaining useful life of the property, for offices and administrative purposes of the purchaser to carry out a program to acquire residential properties to provide (i) homeownership and rental housing opportunities for very-low-, low-, and moderate-income families, or (ii) housing or shelter for homeless persons (as such term is defined in section 11302 of title 42) or homeless families.

(2) Definitions

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

(A) Eligible commercial real property

The term ''eligible commercial real property'' means any property (i) to which the Corporation acquires title, and (ii) that the Corporation, in the discretion of the Corporation, determines is suitable for use for the location of offices or other administrative functions involved with carrying out a program referred to in paragraph (1)(B).

(B) Nonprofit organization and public agency

The terms ''nonprofit organization'' and ''public agency'' have the same meanings as in section 1831q(p) of this title.

(Sept. 21, 1950, ch. 967, §2[11], 64 Stat. 884; Pub. L. 89–695, title III, §301(c), (d), Oct. 16, 1966, 80 Stat. 1055; Pub. L. 91–151, title I, §7(a)(3), (4), Dec. 23, 1969, 83 Stat. 375; Pub. L. 93–495, title I, §§101(a)(3), 102(a)(3), (4), Oct. 28, 1974, 88 Stat. 1500, 1502; Pub. L. 95–369, §6(c)(17)–(22), Sept. 17, 1978, 92 Stat. 619; Pub. L. 95–630, title XIV, §1401(a), Nov. 10, 1978, 92 Stat. 3712; Pub. L. 96–153, title III, §323(a), Dec. 21, 1979, 93 Stat. 1120; Pub. L. 96–221, title III, §308(a)(1)(C), (D), Mar. 31, 1980, 94 Stat. 147; Pub. L. 97–110, title I, §103(c), Dec. 26, 1981, 95 Stat. 1514; Pub. L. 97–320, title I, §113(j), (k), Oct. 15, 1982, 96 Stat. 1474; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–86, title V, §§503(a), 507, Aug. 10, 1987, 101 Stat. 629, 634; Pub. L. 101–73, title II, §§201(a), 211–214, title IX, §909, Aug. 9, 1989, 103 Stat. 187, 218–246, 477; Pub. L. 101–647, title XXV, §§2521(a)(1), 2526(a), 2527(a), 2528(a), 2532(b), 2534(a), Nov. 29, 1990, 104 Stat. 4863, 4875, 4877, 4880, 4882; Pub. L. 102–233, title I, §102, title II, §202(a), (b), title III, §302(a), Dec. 12, 1991, 105 Stat. 1761, 1766, 1767; Pub. L. 102–242, title I, §§123(a), 133(a), (e), 141(b), (d), 161(a), (e), title II, §241(c)(1), title III, §311(a)(1), (b)(1), (2), (5)(B), (C), title IV, §§416, 426, 446, Dec. 19, 1991, 105 Stat. 2252, 2270, 2272, 2277, 2285, 2286, 2331, 2363, 2364, 2366, 2376, 2378, 2382; Pub. L. 102–550, title XV, §§1501(a), 1544, title XVI, §§1603(e)(1), 1604(c)(2), 1606(c), 1611(b), Oct. 28, 1992, 106 Stat. 4044, 4069, 4081, 4083, 4088, 4090; Pub. L. 103–66, title III, §3001(a), (b), Aug. 10, 1993, 107 Stat. 336; Pub. L. 103–204, §§3(d), 4(b), 8(a)–(f), (i), 11, 15(b), 16(b), 17(b), 20, 27(b), 38(b), Dec. 17, 1993, 107 Stat. 2379, 2380, 2384–2389, 2399–2401, 2404, 2410, 2416; Pub. L. 103–325, title III, §325, title IV, §411(c)(2)(A), title VI, §602(a)(21)–(33), Sept. 23, 1994, 108 Stat. 2228, 2253, 2289; Pub. L. 103–328, title II, §201(a), Sept. 29, 1994, 108 Stat. 2368; Pub. L. 103–394, title V, §501(c)(2), Oct. 22, 1994, 108 Stat. 4143; Pub. L. 104–208, div. A, title II, §§2602, 2704(d)(1)–(4), (6)(C), (14)(H), (I), 2705, Sept. 30, 1996, 110 Stat. 3009–469, 3009–487, 3009–488, 3009–492, 3009–495; Pub. L. 104–316, title I, §106(i), Oct. 19, 1996, 110 Stat. 3831; Pub. L. 106–102, title I, §117, title VII, §736(a), (b)(2), Nov. 12, 1999, 113 Stat. 1372, 1479; Pub. L. 106–400, §2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 106–569, title XII, §1222, Dec. 27, 2000, 114 Stat. 3036; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 108–386, §8(a)(4), Oct. 30, 2004, 118 Stat. 2231; Pub. L. 109–8, title IX, §§901(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), 902(a), 903(a), 904(a), 905(a), 908(a), Apr. 20, 2005, 119 Stat. 146, 147, 149, 151, 152, 155, 157–160, 165, 166, 183; Pub. L. 109–171, title II, §§2102(b), 2103(a)–(c), Feb. 8, 2006, 120 Stat. 9, 11; Pub. L. 109–173, §§2(a), (c)(1), 8(a)(11)–(14), Feb. 15, 2006, 119 Stat. 3601, 3602, 3611, 3612; Pub. L. 109–351, title VII, §§701(b), 718(a), 721(a), 722(a), 724, Oct. 13, 2006, 120 Stat. 1985, 1997–1999, 2001; Pub. L. 109–390, §§2(a)(1), (b)(1), (c)(1), 3(a), 6(a), Dec. 12, 2006, 120 Stat. 2692–2694, 2698; Pub. L. 110–289, div. A, title I, §1161(i), title VI, §1604(a), (c), (d), July 30, 2008, 122 Stat. 2781, 2826, 2829; Pub. L. 111–203, title III, §§335(a), 343(a)(1), (3), 363(5), July 21, 2010, 124 Stat. 1540, 1544, 1552; Pub. L. 111–343, §1(a), Dec. 29, 2010, 124 Stat. 3609.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 363(5), July 21, 2010, 124 Stat. 1546, 1552, provided that, effective on the transfer date, this section is amended:

(1) in subsection (c)—

(A) in paragraph (2)(A)(ii), by striking out ''(other than section 1441a of this title)'';

(B) in paragraph (4), by substituting ''Notwithstanding'' for ''Except as otherwise provided in section 1441a of this title and notwithstanding'';

(C) in paragraph (6)—

(i) in the heading, by substituting ''Comptroller of the Currency'' for ''Director of the Office of Thrift Supervision'';

(ii) in subparagraph (A)—

(I) by striking out ''or the Resolution Trust Corporation''; and

(II) by substituting ''Comptroller of the Currency'' for ''Director of the Office of Thrift Supervision''; and

(iii) by amending subparagraph (B) to read as follows:

''(B) Receiver

''The Corporation may, at the discretion of the Comptroller of the Currency, be appointed receiver and the Corporation may accept any such appointment.''; and

(D) in paragraph (12)(A), by striking out ''or the Resolution Trust Corporation'';

(2) in subsection (d), in paragraphs (17)(A) and (18)(B), by striking out ''or the Director of the Office of Thrift Supervision'';

(3) in subsection (m)—

(A) in paragraph (9), by striking out ''or the Director of the Office of Thrift Supervision, as appropriate''; and

(B) in paragraphs (16) and (18), by striking out ''or the Director of the Office of Thrift Supervision, as appropriate'' wherever appearing;

(4) in subsection (n)—

(A) in paragraph (1)(A), by substituting ''or'' for '', or the Director of the Office of Thrift Supervision, with respect to'' and ''applicable,'' for ''applicable,,'';

(B) in paragraph (2)(A), by striking out ''or the Director of the Office of Thrift Supervision'';

(C) in paragraph (4), in subparagraphs (D) and (G), by striking out ''and the Director of the Office of Thrift Supervision, as appropriate,''; and

(D) in paragraph (12)(B), by inserting ''as'' after ''shall appoint the Corporation'' and striking out ''or the Director of the Office of Thrift Supervision, as appropriate,'' wherever appearing;

(5) in subsection (p)—

(i) in paragraph (2)(B), by substituting ''or the Corporation,'' for ''the Corporation, the FSLIC Resolution Fund, or the Resolution Trust Corporation,''; and

(ii) in paragraph (3)(B), by striking out '', the FSLIC Resolution Fund, the Resolution Trust Corporation,''; and

(6) in subsection (r), by striking out ''and the Resolution Trust Corporation''.

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title III, § 343(a)(3), July 21, 2010, 124 Stat. 1544, provided that, effective Jan. 1, 2013, subsection (a)(1) of this section is amended:

(1) in subparagraph (B)—

(A) by substituting ''deposit.—

''The net amount''

for ''deposit.—'' and all that follows through ''clause (ii), the net amount''; and

(B) by striking out clauses (ii) and (iii); and

(2) in subparagraph (C), by substituting ''subparagraph (B)'' for ''subparagraph (B)(i)''.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 1441a(b)(4) of this title, referred to in subsec. (d)(2)(I)(ii), was in the original ''section 21A(b)(4)'', which has been translated as reading ''section 21A(b)(4) of the Federal Home Loan Bank Act'', to reflect the probable intent of Congress.

Section 1823(e)(2) of this title, referred to in subsec. (d)(9)(B), was redesignated section 1823(e)(1)(B) of this title by Pub. L. 103–325, title III, § 317(1), Sept. 23, 1994, 108 Stat. 2223.

The Federal Rules of Civil Procedure, referred to in subsec. (d)(18), (19), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Securities Exchange Act of 1934, referred to in subsec. (e)(8)(D)(v)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Gramm-Leach-Bliley Act, referred to in subsec. (e)(8)(D)(vi), (17), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, as amended. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

The Legal Certainty for Bank Products Act of 2000, referred to in subsec. (e)(8)(D)(vi), (17), is title IV of H.R. 5660, as enacted by Pub. L. 106–554, § 1(a)(5), Dec. 21, 2000, 114 Stat. 2763, 2763A–457, which is classified to sections 27 to 27f of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of Title 7 and Tables.

The Commodity Exchange Act, referred to in subsec. (e)(8)(D)(vi), (17), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsec. (e)(13)(C)(ii), is Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2236, as amended. Subtitle A of title IV of the Act is classified generally to subchapter I (§ 4401 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of this title and Tables.

Section 1008 of title 18, referred to in subsec. (p)(2)(A), was repealed by Pub. L. 101–73, title IX, § 961(g)(1), Aug. 9, 1989, 103 Stat. 500.

CODIFICATION

Amendments to subsec. (m) of this section by section 1604(a)(4)(J)(ii) of Pub. L. 110–289 were executed before amendments by section 1604(a)(4)(E) of Pub. L. 110–289, to reflect the probable intent of Congress.

Amendments to subsec. (n) of this section by section 1604(a)(5)(I) of Pub. L. 110–289 were executed before amendments by section 1604(a)(5)(E) and (G) of Pub. L. 110–289, to reflect the probable intent of Congress.

Amendments to subsec. (n) of this section by section 1604(a)(5)(O)(iv) and (P)(ii) of Pub. L. 110–289 were exe-

cuted before amendments by section 1604(a)(5)(D) of Pub. L. 110–289, to reflect the probable intent of Congress.

PRIOR PROVISIONS

Section is derived from subsec. (*l*) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2010—Subsec. (a)(1)(B). Pub. L. 111–203, § 343(a)(1)(A), designated existing provisions as cl. (i), inserted heading, substituted ''Subject to clause (ii), the net amount'' for ''The net amount'', and added cls. (ii) and (iii).

Subsec. (a)(1)(B)(iii). Pub. L. 111–343 substituted ''means—'' for ''means a deposit'' in introductory provisions, inserted ''(I) a deposit'' before ''or account maintained'', redesignated former subcls. (I) to (III) as items (aa) to (cc) of subcl. (I), and added subcl. (II).

Subsec. (a)(1)(C). Pub. L. 111–203, § 343(a)(1)(B), substituted ''subparagraph (B)(i)'' for ''subparagraph (B)''.

Subsec. (a)(1)(E). Pub. L. 111–203, § 335(a), substituted ''$250,000,'' for ''$100,000,'' and inserted at the end ''Notwithstanding any other provision of law, the increase in the standard maximum deposit insurance amount to $250,000 shall apply to depositors in any institution for which the Corporation was appointed as receiver or conservator on or after January 1, 2008, and before October 3, 2008. The Corporation shall take such actions as are necessary to carry out the requirements of this section with respect to such depositors, without regard to any time limitations under this chapter. In implementing this and the preceding 2 sentences, any payment on a deposit claim made by the Corporation as receiver or conservator to a depositor above the standard maximum deposit insurance amount in effect at the time of the appointment of the Corporation as receiver or conservator shall be deemed to be part of the net amount due to the depositor under subparagraph (B).''

2008—Subsec. (d)(2)(F). Pub. L. 110–289, § 1604(a)(1)(A), substituted ''as receiver, with respect to any insured depository institution, organize a new depository institution under subsection (m) or a bridge depository institution under subsection (n).'' for ''as receiver—

''(i) with respect to savings associations and by application to the Director of the Office of Thrift Supervision, organize a new Federal savings association to take over such assets or such liabilities as the Corporation may determine to be appropriate; and

''(ii) with respect to any insured bank, organize a new national bank under subsection (m) of this section or a bridge bank under subsection (n) of this section.''

Subsec. (d)(2)(G)(ii). Pub. L. 110–289, § 1604(a)(1)(B), substituted ''new depository institution or a bridge depository institution'' for ''new bank or a bridge bank''.

Subsec. (e)(10)(C). Pub. L. 110–289, § 1604(a)(2), substituted ''bridge depository institutions'' for ''bridge banks'' in heading.

Subsec. (e)(10)(C)(i). Pub. L. 110–289, § 1604(a)(3), substituted ''bridge depository institution'' for ''bridge bank''.

Subsec. (m). Pub. L. 110–289, § 1604(a)(4)(A)–(E), substituted ''depository institutions'' for ''banks'' in heading, ''the insured depository institution in default to'' for ''the bank in default to'' in par. (1), ''the insured depository institution in default, and'' for ''the bank in default, and'' in par. (11), ''insured depository institution'' for ''insured bank'' wherever appearing in pars. (1), (11)(A), (13), and (15)(B), and ''new depository institution'' for ''new bank'' and ''such depository institution'' for ''such bank'' wherever appearing in text. See Codification note above.

Subsec. (m)(1). Pub. L. 110–289, § 1604(a)(4)(F), inserted ''or Federal savings association'' after ''national bank''.

Subsec. (m)(6). Pub. L. 110–289, § 1604(a)(4)(G), substituted ''only depository institution'' for ''only bank''.

Subsec. (m)(9). Pub. L. 110–289, § 1604(a)(4)(H), inserted ''or the Director of the Office of Thrift Supervision, as appropriate'' after ''Comptroller of the Currency''.

Subsec. (m)(15)(A). Pub. L. 110–289, § 1604(a)(4)(I), struck out '', but in no event less than that required by section 51 of this title for the organization of a national bank in the place where such new bank is located'' before period at end.

Subsec. (m)(16). Pub. L. 110–289, § 1604(a)(4)(j)(iii)–(v), inserted ''or Federal savings association'' after ''national bank'' wherever appearing and ''or Federal savings associations'' after ''national banks'' and substituted ''Such depository institution'' for ''Such bank''.

Pub. L. 110–289, § 1604(a)(4)(J)(ii), substituted ''the depository institution'' for ''the bank'' in two places. See Codification note above.

Pub. L. 110–289, § 1604(a)(4)(J)(i), inserted ''or the Director of the Office of Thrift Supervision, as appropriate,'' after ''Comptroller of the Currency'' in two places.

Subsec. (m)(18). Pub. L. 110–289, § 1604(a)(4)(K), inserted ''or the Director of the Office of Thrift Supervision, as appropriate,'' after ''Comptroller of the Currency'' in two places.

Subsec. (n). Pub. L. 110–289, § 1604(a)(5)(A)–(I), in heading substituted ''depository institutions'' for ''banks'' and in text substituted, wherever appearing, ''bridge depository institution'' for ''bridge bank'', ''bridge depository institutions'' for ''bridge banks'' except in par. (1)(A), ''bridge depository institution's'' for ''bridge bank's'', ''insured depository institution'' for ''insured bank'' in pars. (2), (3), (4)(I), (7), and (8)(B), ''insured depository institutions'' for ''insured banks'', ''such depository institution'' for ''such bank'' except in par. (4)(J), ''the depository institution'' for ''the bank'', and ''depository institution or institutions'' for ''bank or banks''. See Codification note above.

Subsec. (n)(1)(A). Pub. L. 110–289, § 1604(a)(5)(J), inserted '', with respect to 1 or more insured banks, or the Director of the Office of Thrift Supervision, with respect to 1 or more insured savings associations,'' after ''Comptroller of the Currency'', ''or Federal savings associations, as appropriate,'' after ''national banks'', and ''or Federal savings associations, as applicable,'' after ''banking associations'', and substituted ''as 'bridge depository institutions' '' for ''as bridge banks''.

Subsec. (n)(1)(B)(i). Pub. L. 110–289, § 1604(c), struck out '', except that if any insured deposits are assumed, all insured deposits shall be assumed by the bridge bank or another insured depository institution'' before semicolon at end.

Pub. L. 110–289, § 1604(a)(5)(K), struck out ''of a bank'' after ''any insured deposits'' and ''of that bank'' after ''all insured deposits''.

Subsec. (n)(1)(E). Pub. L. 110–289, § 1604(a)(5)(L), (M), inserted ''or Federal savings association'' after ''National bank'' in heading and '', in the case of 1 or more insured banks, and as a Federal savings association, in the case of 1 or more insured savings associations'' after ''national bank'' in text.

Subsec. (n)(2)(A). Pub. L. 110–289, § 1604(a)(5)(N)(i), (ii), inserted ''or Federal savings association'' after ''national bank'' and ''or the Director of the Office of Thrift Supervision'' after ''Comptroller of the Currency'' in introductory provisions.

Subsec. (n)(2)(B). Pub. L. 110–289, § 1604(a)(5)(N)(i), (iii), inserted ''or Federal savings association'' after ''national bank'' in heading and introductory provisions.

Subsec. (n)(4). Pub. L. 110–289, § 1604(a)(5)(O)(i), inserted ''or Federal savings association, as appropriate'' after ''national bank'' in introductory provisions.

Subsec. (n)(4)(C). Pub. L. 110–289, § 1604(a)(5)(O)(ii), substituted ''under any'' for ''under section 51 of this title or any other''.

Subsec. (n)(4)(D). Pub. L. 110–289, § 1604(a)(5)(O)(iv), substituted ''depository institution's'' for ''bank's''. See Codification note above.

Pub. L. 110–289, §1604(a)(5)(O)(iii), inserted ''and the Director of the Office of Thrift Supervision, as appropriate,'' after ''Comptroller of the Currency''.

Subsec. (n)(4)(G). Pub. L. 110–289, §1604(a)(5)(O)(iii), inserted ''and the Director of the Office of Thrift Supervision, as appropriate,'' after ''Comptroller of the Currency''.

Subsec. (n)(4)(H). Pub. L. 110–289, §1604(a)(5)(O)(v), substituted ''a depository institution in default'' for ''a bank in default''.

Subsec. (n)(5)(D). Pub. L. 110–289, §1604(d), added subpar. (D).

Subsec. (n)(8)(A). Pub. L. 110–289, §1604(a)(5)(P)(i), substituted ''the depository institutions'' for ''the banks''.

Subsec. (n)(8)(B). Pub. L. 110–289, §1604(a)(5)(P)(ii), substituted ''depository institution's'' for ''bank's''. See Codification note above.

Subsec. (n)(9), (10). Pub. L. 110–289, §1604(a)(5)(Q), substituted ''bridge depository institution'' for ''bridge bank'' in heading.

Subsec. (n)(11)(A) to (C). Pub. L. 110–289, §1604(a)(5)(R), inserted ''or a Federal savings association, as the case may be,'' after ''national bank''.

Subsec. (n)(12). Pub. L. 110–289, §1604(a)(5)(Q), substituted ''bridge depository institution'' for ''bridge bank'' in heading.

Subsec. (n)(12)(B). Pub. L. 110–289, §1604(a)(5)(S), inserted ''or the Director of the Office of Thrift Supervision, as appropriate,'' after ''Comptroller of the Currency'' in two places and ''or Federal savings associations, as appropriate'' after ''national banks''.

Subsec. (n)(13). Pub. L. 110–289, §1604(a)(5)(Q), (T), substituted ''bridge depository institutions'' for ''bridge banks'' in heading and ''single depository institution'' for ''single bank'' in text.

Subsec. (t)(2)(A)(vii). Pub. L. 110–289, §1161(i), added cl. (vii).

2006—Subsec. (a)(1)(B). Pub. L. 109–171, §2103(a)(1), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: ''The net amount due to any depositor at an insured depository institution shall not exceed $100,000 as determined in accordance with subparagraphs (C) and (D).''

Subsec. (a)(1)(D). Pub. L. 109–171, §2103(b), amended heading and text of subpar. (D) generally. Prior to amendment, subpar. (D) provided that for the purpose of determining the amount of insurance due under subpar. (B), the Corporation was to provide deposit insurance coverage with respect to deposits accepted by any insured depository institution on a pro rata or ''pass-through'' basis to a participant in or beneficiary of an employee benefit plan, including any eligible deferred compensation plan described in section 457 of title 26.

Subsec. (a)(1)(E), (F). Pub. L. 109–171, §2103(a)(2), added subpars. (E) and (F).

Subsec. (a)(2). Pub. L. 109–173, §2(a), inserted par. (2) heading and substituted subpar. (A) and heading and introductory provisions of subpar. (B) for introductory provisions of former subpar. (A) which related to exception to limitation relating to the amount of deposit insurance available for the account of any one depositor, struck out concluding provisions of former subpar. (A) which related to the status of certain depositors under former provisions, redesignated former subpar. (B) as (C), inserted heading, and substituted ''government depositor'' for ''depositor referred to in subparagraph (A) of this paragraph'' in two places.

Subsec. (a)(3)(A). Pub. L. 109–171, §2103(c), in concluding provisions substituted ''$250,000 (which amount shall be subject to inflation adjustments as provided in paragraph (1)(F), except that $250,000 shall be substituted for $100,000 wherever such term appears in such paragraph)'' for ''$100,000''.

Subsec. (a)(4). Pub. L. 109–173, §8(a)(11)(B), added par. (4) and struck out former par. (4) which set out general provisions relating to the Bank Insurance Fund and the Savings Association Insurance Fund.

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(1)–(3). See 1996 Amendment notes below.

Subsec. (a)(5) to (8). Pub. L. 109–173, §8(a)(11)(C), (D), redesignated par. (8) as (5) and struck out former pars. (5) to (7), which related to the establishment and operations of the Bank Insurance Fund and Savings Association Insurance Fund and provisions applicable to maintenance of accounts.

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(6)(C). See 1996 Amendment notes below.

Subsec. (c)(5)(H)(iii). Pub. L. 109–173, §8(a)(11)(A), substituted ''Deposit Insurance Fund'' for ''deposit insurance fund''.

Subsec. (c)(7). Pub. L. 109–351, §701(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''If the Corporation appoints itself as conservator or receiver under paragraph (4), the insured State depository institution may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to remove itself as such conservator or receiver, and the court shall, upon the merits, dismiss such action or direct the Corporation to remove itself as such conservator or receiver.''

Subsec. (c)(10). Pub. L. 109–173, §8(a)(11)(A), substituted ''Deposit Insurance Fund'' for ''deposit insurance fund'' in heading and cls. (i) and (ii) of subpar. (B).

Subsec. (d)(15)(D). Pub. L. 109–351, §722(a), designated existing provisions as cl. (i), inserted heading, substituted ''Except as provided in clause (ii), after the end of the 6-year period'' for ''After the end of the 6-year period'', and added cl. (ii).

Subsec. (e)(8)(D)(ii)(I). Pub. L. 109–390, §2(a)(1)(A), substituted ''a mortgage loan,'' for ''a mortgage loan, or'' after ''certificate of deposit,'' and inserted before semicolon at end ''(whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in clause (v))''.

Subsec. (e)(8)(D)(ii)(IV). Pub. L. 109–390, §2(a)(1)(B), inserted ''(including by novation)'' after ''the guarantee'' and ''(whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II))'' before semicolon at end.

Subsec. (e)(8)(D)(ii)(VI) to (VIII). Pub. L. 109–390, §2(a)(1)(D), (E), added subcls. (VI) and (VII) and redesignated former subcl. (VI) as (VIII). Former subcls. (VII) and (VIII) redesignated (IX) and (X), respectively.

Subsec. (e)(8)(D)(ii)(IX). Pub. L. 109–390, §2(a)(1)(D), redesignated subcl. (VII) as (IX). Former subcl. (IX) redesignated (XI).

Pub. L. 109–390, §2(a)(1)(C), substituted ''(VIII), (IX), or (X)'' for ''or (VIII)'' in two places.

Subsec. (e)(8)(D)(ii)(X) to (XII). Pub. L. 109–390, §2(a)(1)(D), redesignated subcls. (VIII) to (X) as (X) to (XII), respectively.

Subsec. (e)(8)(D)(iv)(I). Pub. L. 109–390, §2(b)(1), substituted ''or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in clause (v))'' for ''transaction, reverse repurchase transaction''.

Subsec. (e)(8)(D)(vi). Pub. L. 109–390, §2(c)(1)(C), substituted in concluding provisions ''the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act'' for ''the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000''.

Subsec. (e)(8)(D)(vi)(I). Pub. L. 109–390, §2(c)(1)(A), substituted '', precious metals, or other commodity'' for ''or precious metals'' and ''weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement'' for ''or a weather swap, weather derivative, or weather option''.

Subsec. (e)(8)(D)(vi)(II). Pub. L. 109–390, §2(c)(1)(B), inserted ''or other derivatives'' after ''dealings in the swap'' and substituted ''future, option, or spot transaction'' for ''future, or option''.

Subsec. (e)(8)(D)(ix). Pub. L. 109–390, §3(a), added cl. (ix).

Subsec. (e)(8)(G)(ii), (iii). Pub. L. 109–390, §6(a), added cls. (ii) and (iii) and struck out former cl. (ii) which defined walkaway clause.

Subsec. (e)(13)(C). Pub. L. 109–351, §718(a), added subpar. (C).

Subsec. (e)(15)(B)(i). Pub. L. 109–173, §8(a)(11)(A), substituted ''Deposit Insurance Fund'' for ''deposit insurance fund''.

Subsec. (f)(1). Pub. L. 109–173, §8(a)(12), substituted period at end for '', except that—

''(A) all payments made pursuant to this section on account of a closed Bank Insurance Fund member shall be made only from the Bank Insurance Fund, and

''(B) all payments made pursuant to this section on account of a closed Savings Association Insurance Fund member shall be made only from the Savings Association Insurance Fund.''

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(14)(H). See 1996 Amendment note below.

Subsec. (f)(3) to (5). Pub. L. 109–351, §721(a), added pars. (3) to (5) and struck out former pars. (3) to (5) which related to resolution of disputes, review of Corporation's determination, and statute of limitations, respectively.

Subsec. (i)(3)(B), (C). Pub. L. 109–173, §8(a)(13), redesignated subpar. (C) as (B), substituted ''subparagraph (A)'' for ''subparagraphs (A) and (B)'', and struck out heading and text of former subpar. (B). Text read as follows: ''If the depository institution in default is a Bank Insurance Fund member, the Corporation may only make such payments out of funds held in the Bank Insurance Fund. If the depository institution in default is a Savings Association Insurance Fund member, the Corporation may only make such payments out of funds held in the Savings Association Insurance Fund.''

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(14)(I). See 1996 Amendment note below.

Subsec. (m)(6). Pub. L. 109–173, §2(c)(1), substituted ''an amount equal to the standard maximum deposit insurance amount'' for ''$100,000''.

Subsec. (p)(2)(B). Pub. L. 109–173, §8(a)(11)(A), (14), substituted ''the Deposit Insurance Fund'' for ''any deposit insurance fund''.

Subsec. (t)(1). Pub. L. 109–351, §724(1), inserted '', in any capacity,'' after ''A covered agency'' in introductory provisions.

Subsec. (t)(2)(A)(i). Pub. L. 109–351, §724(2)(A), struck out ''appropriate'' before ''Federal banking agency''.

Subsec. (t)(2)(A)(ii) to (vi). Pub. L. 109–351, §724(2)(B), (C), redesignated cls. (iii) to (vi) as (ii) to (v), respectively, and struck out former cl. (ii) which read as follows: ''The Resolution Trust Corporation.''

2005—Subsec. (e)(8)(A). Pub. L. 109–8, §901(h)(1)(A), substituted ''paragraphs (9) and (10)'' for ''paragraph (10)'' in introductory provisions and ''such person has to cause the termination, liquidation, or acceleration'' for ''to cause the termination or liquidation'' in cl. (i), added cl. (ii), and struck out former cl. (ii) which read as follows: ''any right under any security arrangement relating to any contract or agreement described in clause (i); or''.

Subsec. (e)(8)(C)(i). Pub. L. 109–8, §901(i)(1), inserted ''section 91 of this title or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Corporation''.

Subsec. (e)(8)(D). Pub. L. 109–8, §901(a)(1)(A), substituted ''subsection, the following definitions shall apply:'' for ''subsection—'' in introductory provisions.

Subsec. (e)(8)(D)(i). Pub. L. 109–8, §901(a)(1)(B), inserted '', resolution, or order'' after ''any similar agreement that the Corporation determines by regulation''.

Subsec. (e)(8)(D)(ii). Pub. L. 109–8, §901(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'securities contract'—

''(I) has the meaning given to such term in section 741 of title 11, except that the term 'security' (as used in such section) shall be deemed to include any mortgage loan, any mortgage-related security (as defined in section 78c(a)(41) of title 15), and any interest in any mortgage loan or mortgage-related security; and

''(II) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.''

Subsec. (e)(8)(D)(iii). Pub. L. 109–8, §901(c)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'commodity contract' has the meaning given to such term in section 761 of title 11.''

Subsec. (e)(8)(D)(iv). Pub. L. 109–8, §901(d)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'forward contract' has the meaning given to such term in section 101 of title 11.''

Subsec. (e)(8)(D)(v). Pub. L. 109–8, §901(e)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'repurchase agreement'—

''(I) has the meaning given to such term in section 101 of title 11, except that the items (as described in such section) which may be subject to any such agreement shall be deemed to include mortgage-related securities (as such term is defined in section 78c(a)(41) of title 15), any mortgage loan, and any interest in any mortgage loan; and

''(II) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.''

Subsec. (e)(8)(D)(vi). Pub. L. 109–8, §901(f)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'swap agreement'—

''(I) means any agreement, including the terms and conditions incorporated by reference in any such agreement, which is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option purchased, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option purchased or any other similar agreement, and

''(II) includes any combination of such agreements and any option to enter into any such agreement.''

Subsec. (e)(8)(D)(vii). Pub. L. 109–8, §905(a), amended heading and text of cl. (vii) generally. Prior to amendment, text read as follows: ''Any master agreement for any agreements described in clause (vi)(I) together with all supplements to such master agreement shall be treated as 1 swap agreement.''

Subsec. (e)(8)(D)(viii). Pub. L. 109–8, §901(g)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'transfer' has the meaning given to such term in section 101 of title 11.''

Subsec. (e)(8)(E). Pub. L. 109–8, §902(a)(1)(A), substituted ''other than subsections (d)(9) and (e)(10)'' for ''other than paragraph (12) of this subsection, subsection (d)(9)'' in introductory provisions.

Subsec. (e)(8)(E)(ii). Pub. L. 109–8, §901(h)(1)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: ''any right under any security arrangement relating to such qualified financial contracts; or''.

Subsec. (e)(8)(F), (G). Pub. L. 109–8, §902(a)(1)(B), added subpars. (F) and (G).

Subsec. (e)(8)(H). Pub. L. 109–8, §908(a), added subpar. (H).

Subsec. (e)(9). Pub. L. 109–8, §903(a)(1), reenacted heading without change and amended text generally.

Prior to amendment, text related to transfer of qualified financial contracts, claims, and property of a depository institution in default.

Subsec. (e)(10)(A). Pub. L. 109–8, §903(a)(2), substituted concluding provisions for former concluding provisions which read as follows: ''the conservator or receiver shall use such conservator's or receiver's best efforts to notify any person who is a party to any such contract of such transfer by 12:00, noon (local time) on the business day following such transfer.''

Subsec. (e)(10)(B) to (D). Pub. L. 109–8, §903(a)(3), added subpars. (B) and (C) and redesignated former subpar. (B) as (D).

Subsec. (e)(11). Pub. L. 109–8, §904(a)(2), added par. (11). Former par. (11) redesignated (12).

Subsec. (e)(12). Pub. L. 109–8, §904(a)(1), redesignated par. (11) as (12). Former par. (12) redesignated (13).

Subsec. (e)(12)(A). Pub. L. 109–8, §902(a)(2), inserted ''or the exercise of rights or powers by'' after ''the appointment of''.

Subsec. (e)(13) to (16). Pub. L. 109–8, §904(a)(1), redesignated pars. (12) to (15) as (13) to (16), respectively.

Subsec. (e)(17). Pub. L. 109–8, §904(a)(3), added par. (17).

2004—Subsec. (c)(2)(A)(i). Pub. L. 108–386, §8(a)(4)(A), struck out ''or District bank'' after ''Federal depository institution''.

Subsec. (c)(2)(A)(ii). Pub. L. 108–386, §8(a)(4)(B), struck out ''or District bank'' after ''Federal depository institution'' and ''or the code of law for the District of Columbia'' before period at end.

Subsec. (c)(3)(A). Pub. L. 108–386, §8(a)(4)(C), struck out ''(other than a District depository institution)'' after ''State depository institution''.

Subsec. (t)(2)(A)(vi). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2000—Subsec. (d)(10)(C). Pub. L. 106–569 added subpar. (C).

Subsecs. (v), (w)(1)(B)(ii). Pub. L. 106–400 made technical amendment to references in original act which appear in text as references to section 11302 of title 42.

1999—Subsec. (a)(4)(B). Pub. L. 106–102, §117, substituted ''to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this chapter) of'' for ''to benefit any shareholder of'' in introductory provisions.

Subsec. (a)(5). Pub. L. 106–102, §736(b)(2), amended Pub. L. 104–208, §2704(d)(4), (6)(C). See 1996 Amendment notes below.

Subsec. (a)(6). Pub. L. 106–102, §736(b)(2)(B), amended Pub. L. 104–208, §2704(d)(6)(C)(i). See 1996 Amendment note below.

Subsec. (a)(6)(L). Pub. L. 106–102, §736(a), struck out heading and text of subpar. (L). Text read as follows:

''(i) ESTABLISHMENT.—If, on January 1, 1999, the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, there is established a Special Reserve of the Savings Association Insurance Fund, which shall be administered by the Corporation and shall be invested in accordance with section 1823(a) of this title.

''(ii) AMOUNTS IN SPECIAL RESERVE.—If, on January 1, 1999, the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, the amount by which the reserve ratio exceeds the designated reserve ratio shall be placed in the Special Reserve of the Savings Association Insurance Fund established by clause (i).

''(iii) LIMITATION.—The Corporation shall not provide any assessment credit, refund, or other payment from any amount in the Special Reserve of the Savings Association Insurance Fund.

''(iv) EMERGENCY USE OF SPECIAL RESERVE.—Notwithstanding clause (iii), the Corporation may, in its sole discretion, transfer amounts from the Special Reserve of the Savings Association Insurance Fund to the Savings Association Insurance Fund for the purposes set forth in paragraph (4), only if—

''(I) the reserve ratio of the Savings Association Insurance Fund is less than 50 percent of the designated reserve ratio; and

''(II) the Corporation expects the reserve ratio of the Savings Association Insurance Fund to remain at less than 50 percent of the designated reserve ratio for each of the next 4 calendar quarters.

''(v) EXCLUSION OF SPECIAL RESERVE IN CALCULATING RESERVE RATIO.—Notwithstanding any other provision of law, any amounts in the Special Reserve of the Savings Association Insurance Fund shall be excluded in calculating the reserve ratio of the Savings Association Insurance Fund.''

Subsec. (a)(7), (8). Pub. L. 106–102, §736(b)(2)(B), (C), amended Pub. L. 104–208, §2704(d)(6)(C). See 1996 Amendment notes below.

1996—Subsec. (a)(4). Pub. L. 104–208, §2704(d)(1)(C), which directed substitution of ''Establishment of the Deposit Insurance Fund'' for ''General provisions relating to funds'' in heading, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (a)(4)(A) to (C). Pub. L. 104–208, §2704(d)(1)(A), (B), (2), which directed striking out subpar. (A), redesignating subpar. (B) as (C) and substituting ''Deposit Insurance Fund'' for ''Bank Insurance Fund and the Savings Association Insurance Fund'' in introductory provisions, and adding new subpars. (A) and (B), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (a)(4)(D). Pub. L. 104–208, §2704(d)(3), which directed adding subpar. (D), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (a)(5). Pub. L. 104–208, §2704(d)(6)(C), as amended by Pub. L. 106–102, §736(b)(2)(B), (C), which directed striking out par. (5) and redesignating par. (8) as (5), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Pub. L. 104–208, §2704(d)(4), which directed general amendment of par. (5), was repealed by Pub. L. 106–102, §736(b)(2)(A).

Subsec. (a)(6). Pub. L. 104–208, §2704(d)(6)(C)(i), as amended by Pub. L. 106–102, §736(b)(2)(B), which directed striking out par. (6), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (a)(6)(L). Pub. L. 104–208, §2705, added subpar. (L).

Subsec. (a)(7), (8). Pub. L. 104–208, §2704(d)(6)(C), as amended by Pub. L. 106–102, §736(b)(2)(B), (C), which directed striking out par. (7) and redesignating par. (8) as (5), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (d)(20). Pub. L. 104–208, §2602, added par. (20).

Subsec. (f)(1). Pub. L. 104–208, §2704(d)(14)(H), which directed substitution of a period for '', except that—'' and subpars. (A) and (B), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (i)(3)(B), (C). Pub. L. 104–208, §2704(d)(14)(I), which directed striking out subpar. (B) and redesignating subpar. (C) as (B) and substituting ''subparagraph (A)'' for ''subparagraphs (A) and (B)'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (t)(2)(A)(vi). Pub. L. 104–316 added cl. (vi).

1994—Subsec. (a)(4). Pub. L. 103–325, §602(a)(21), substituted ''PROVISIONS'' for ''PROVISIONS'' in heading.

Subsec. (c)(5)(M). Pub. L. 103–325, §411(c)(2)(A), substituted ''section 5322 or 5324 of title 31'' for ''section 5322 of title 31''.

Subsec. (d)(2)(B)(iii). Pub. L. 103–325, §602(a)(22), substituted ''are consistent'' for ''is consistent''.

Subsec. (d)(8)(B)(ii). Pub. L. 103–325, §602(a)(23), inserted ''provide'' before ''a statement''.

Subsec. (d)(14)(B). Pub. L. 103–325, §602(a)(24), substituted ''statute of limitations'' for ''statute of limitation''.

Subsec. (d)(14)(C). Pub. L. 103–328 added subpar. (C).

Subsec. (d)(16)(B)(iv). Pub. L. 103–325, § 602(a)(25), substituted ''disposition'' for ''dispositions''.

Subsec. (e)(8)(D). Pub. L. 103–394 substituted ''section 741'' for ''section 741(7)'' in cl. (ii)(I), ''section 761'' for ''section 761(4)'' in cl. (iii), ''section 101'' for ''section 101(24)'' in cl. (iv), ''section 101'' for ''section 101(41)'' in cl. (v)(I), and ''section 101'' for ''section 101(50)'' in cl. (viii).

Subsec. (e)(8)(D)(v)(I). Pub. L. 103–325, § 602(a)(26), substituted ''title 15),'' for ''title 15,''.

Subsec. (e)(12)(B). Pub. L. 103–325, § 602(a)(27), substituted ''director's or officer's'' for ''directors or officers''.

Subsec. (e)(14), (15). Pub. L. 103–325, § 325, added pars. (14) and (15).

Subsec. (f)(3)(A). Pub. L. 103–325, § 602(a)(28), substituted ''WITH'' for ''TO'' in heading.

Subsec. (i)(3)(A). Pub. L. 103–325, § 602(a)(29), substituted ''other claimant or category of claimants'' for ''other claimant or category or claimants'' in second sentence.

Subsec. (n)(4)(E)(i). Pub. L. 103–325, § 602(a)(30), inserted ''and'' at end.

Subsec. (n)(12)(A). Pub. L. 103–325, § 602(a)(31), substituted ''subparagraph'' for ''subparagraphs''.

Subsec. (q)(1). Pub. L. 103–325, § 602(a)(32), substituted ''held'' for ''decided'' in second sentence.

Subsec. (u)(3)(B). Pub. L. 103–325, § 602(a)(33), substituted ''section 1831q(p) of this title'' for ''subsection (c)(9)''.

1993—Subsec. (a)(1)(C). Pub. L. 103–204, § 38(b), substituted ''paragraph (1) or (2) of section 1817(i) of this title or any funds described in section 1817(i)(3) of this title'' for ''section 1817(i)(1) of this title''.

Subsec. (a)(4). Pub. L. 103–204, § 11, substituted ''PROVISIONS'' for ''PROVISION'' in heading, and amended text generally. Prior to amendment, text read as follows: ''The Bank Insurance Fund established under paragraph (5) and the Savings Association Insurance Fund established under paragraph (6) shall each be—

''(A) maintained and administered by the Corporation;

''(B) maintained separately and not commingled; and

''(C) used by the Corporation to carry out its insurance purposes in the manner provided in this subsection.''

Subsec. (a)(6)(D) to (F). Pub. L. 103–204, § 8(a)–(c), amended subpars. (D) to (F) generally. Prior to amendment, subpars. (D) to (F) related to the availability of funds for administrative expenses, Treasury payments to the Fund, and Treasury payments to maintain the net worth of the Fund, respectively.

Subsec. (a)(6)(G). Pub. L. 103–204, § 8(i), substituted ''subparagraph (D)'' for ''subparagraphs (E) and (F)'' in heading and text.

Subsec. (a)(6)(H). Pub. L. 103–204, § 8(d), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: ''DISCRETIONARY RTC PAYMENTS.—If amounts available to the Savings Association Insurance Fund for purposes other than the payment of administrative expenses are insufficient for the Savings Association Insurance Fund to carry out the purposes of this chapter, the Corporation may request the Resolution Trust Corporation to provide, and the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation (in the discretion of the Thrift Depositor Protection Oversight Board) may pay, such amount as may be needed for such purposes.''

Subsec. (a)(6)(J). Pub. L. 103–204, § 8(e), substituted ''Subject to subparagraph (E), there are'' for ''There are'' and ''of subparagraph (D) for fiscal years 1994 through 1998, except that the aggregate amount appropriated pursuant to this authorization may not exceed $8,000,000,000.'' for ''of this paragraph, except that—

''(i) the annual amount appropriated under subparagraph (F) shall not exceed $2,000,000,000 in either fiscal year 1992 or fiscal year 1993; and

''(ii) the cumulative amount appropriated under subparagraph (F) for fiscal years 1992 through 2000 shall not exceed $16,000,000,000.''

Subsec. (a)(6)(K). Pub. L. 103–204, § 8(f), added subpar. (K).

Subsec. (c)(6)(B)(i). Pub. L. 103–204, § 27(b)(1), substituted ''such date as is determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title'' for ''October 1, 1993''.

Subsec. (c)(6)(B)(ii). Pub. L. 103–204, § 27(b)(2), (3), substituted ''on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title'' for ''after September 30, 1993'' and ''before such date'' for ''on or before such date''.

Subsec. (c)(6)(B)(iii). Pub. L. 103–204, § 27(b)(2), substituted ''on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title'' for ''after September 30, 1993''.

Subsec. (c)(13). Pub. L. 103–66, § 3001(b)(1), in subpar. (A) struck out ''subject to subparagraph (B),'' before ''this section shall'' and inserted ''and'' at end, redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''the Corporation shall apply the law of the State in which the institution is chartered insofar as that law gives the claims of depositors priority over those of other creditors or claimants; and''.

Subsec. (d)(2)(K). Pub. L. 103–204, § 3(d), inserted ''legal,'' after ''auction marketing,'' and substituted ''only if'' for ''if'' and ''the most practicable'' for ''practicable''.

Subsec. (d)(11). Pub. L. 103–66, § 3001(a), amended par. (11) generally, substituting present provisions for former provisions relating to distribution of assets, which consisted of a subpar. (A) relating to subrogated claims and claims of uninsured depositors and other creditors and a subpar. (B) relating to distribution to shareholders of amounts remaining after payment of all other claims and expenses.

Subsec. (d)(14)(A)(ii). Pub. L. 103–204, 4(b), inserted ''(other than a claim which is subject to section 1441a(b)(14) of this title)'' after ''any tort claim''.

Subsec. (g)(4). Pub. L. 103–66, § 3001(b)(2), substituted ''Subject to subsection (d)(11) of this section, if'' for ''If''.

Subsec. (p). Pub. L. 103–204, § 20, in heading, substituted ''CERTAIN SALES OF ASSETS PROHIBITED'' for ''CERTAIN CONVICTED DEBTORS PROHIBITED FROM PURCHASING ASSETS'', added par. (1), redesignated former pars. (1) and (2) as pars. (2) and (3), respectively, in par. (2) substituted ''paragraph (3)'' for ''paragraph (2)'' and ''person'' for ''individual'', in par. (3) substituted ''Paragraphs (1) and (2)'' for ''Paragraph (1)'' and ''person'' for ''individual'', wherever appearing, and added par. (4).

Subsec. (u). Pub. L. 103–204, § 15(b), added subsec. (u).

Subsec. (v). Pub. L. 103–204, § 16(b), added subsec. (v).

Subsec. (w). Pub. L. 103–204, § 17(b), added subsec. (w).

1992—Subsec. (c)(5)(M). Pub. L. 102–550, § 1501(a), added subpar. (M).

Subsec. (c)(6)(B). Pub. L. 102–550, § 1611(b)(2), substituted ''subparagraph (A) or (C) of section 1464(d)(2) of this title'' for ''subparagraph (C) or (F) of section 1464(d)(2) of this title''.

Pub. L. 102–550, § 1611(b)(1), substituted ''subparagraph (C) or (F) of section 1464(d)(2) of this title'' for ''section 1464(d)(2)(C) of this title''.

Subsec. (d)(2)(B), (E). Pub. L. 102–550, § 1604(c)(2), made technical amendment to reference to section 1831q of this title to reflect change in reference to corresponding section of original act.

Subsec. (d)(4)(A). Pub. L. 102–550, § 1606(c), substituted ''determination'' for ''determinations'' after ''administrative''.

Subsec. (d)(5)(D)(iii)(I). Pub. L. 102–550, § 1603(e)(1), substituted ''insured depository institution'' for ''institution described in paragraph (3)(A)''.

Subsec. (t). Pub. L. 102–550, § 1544, added subsec. (t).

1991—Subsec. (a)(1). Pub. L. 102–242, § 311(b)(1), added par. (1) and struck out former par. (1) which read as fol-

lows: ''The Corporation shall insure the deposits of all insured depository institutions as provided in this chapter. The maximum amount of the insured deposit of any depositor shall be $100,000.''

Subsec. (a)(2)(A). Pub. L. 102–242, §311(b)(5)(B), in closing provisions, substituted ''such depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in clause (ii), (iii), (iv), or (v) and the deposit of any such depositor shall be insured in an amount not to exceed $100,000 per account'' for ''his deposit shall be insured'' before ''in an amount not to exceed $100,000 per account.''

Subsec. (a)(2)(B). Pub. L. 102–242, §311(b)(5)(C), substituted ''(B)'' for ''(b)'' as subpar. designation.

Subsec. (a)(3). Pub. L. 102–242, §311(b)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of deposit insurance available for the account of any one depositor, time and savings deposits in an insured depository institution made pursuant to a pension or profit-sharing plan described in section 401(d) of title 26, or made in the form of individual retirement accounts as described in section 408(a) of title 26, shall be insured in the amount of $100,000 per account. As to any plan qualifying under section 401(d) or section 408(a) of title 26, the term 'per account' means the present vested and ascertainable interest of each beneficiary under the plan, excluding any remainder interest created by, or as a result of, the plan.''

Subsec. (a)(6)(E). Pub. L. 102–233, §202(a), substituted ''1993'' for ''1992'' and ''2000'' for ''1999''.

Subsec. (a)(6)(J). Pub. L. 102–233, §202(b), substituted ''1992'' for ''1991'' and ''1993'' for ''1992'' in cl. (i), and ''1992'' for ''1991'' and ''2000'' for ''1999'' in cl. (ii).

Subsec. (a)(8). Pub. L. 102–242, §311(a)(1), added par. (8).

Subsec. (c)(5). Pub. L. 102–242, §133(a), amended par. (5) generally, revising and restating as subpars. (A) to (L) provisions of former subpars. (A) to (H).

Subsec. (c)(6)(B). Pub. L. 102–233, §102, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Whenever the Director of the Office of Thrift Supervision appoints a receiver under the provisions of section 1464(d)(2)(C) of this title for the purpose of liquidation or winding up any savings association's affairs—

''(i) during the 3-year period beginning on August 9, 1989, the Resolution Trust Corporation shall be appointed; and

''(ii) after the end of the 3-year period referred to in clause (i), the Corporation shall be appointed.''

Subsec. (c)(9). Pub. L. 102–242, §133(e), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''In any case in which the Corporation is appointed conservator or receiver pursuant to paragraph (4) or (6)—

''(A) the provisions of this section shall be applicable to the Corporation, as conservator or receiver of any insured State depository institution in the same manner and to the same extent as if such institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

''(B) the Corporation as receiver of any insured State depository institution may—

''(i) liquidate such institution in an orderly manner; and

''(ii) make such other disposition of any matter concerning such institution as the Corporation determines is in the best interests of the institution, the depositors of such institution, and the Corporation.''

Subsec. (c)(10) to (13). Pub. L. 102–242, §133(e), added pars. (10) to (13).

Subsec. (d)(2)(B). Pub. L. 102–242, §241(c)(1)(A), inserted ''(subject to the provisions of section 1831q of this title)'' before comma in introductory provisions.

Subsec. (d)(2)(E). Pub. L. 102–242, §241(c)(1)(B), inserted ''(subject to the provisions of section 1831q of this title)'' before first comma.

Subsec. (d)(2)(K). Pub. L. 102–242, §426, added subpar. (K).

Subsec. (d)(3)(A). Pub. L. 102–242, §161(a)(1), substituted ''paragraph (4)'' for ''paragraph (4)(A)''.

Subsec. (d)(4). Pub. L. 102–242, §416, amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.''

Subsec. (d)(5)(D). Pub. L. 102–242, §141(b), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.''

Subsec. (d)(11)(B). Pub. L. 102–242, §161(a)(2), substituted ''paragraph (15)(B)'' for ''paragraph (14)(C)''.

Subsec. (d)(13)(E). Pub. L. 102–242, §123(a), added subpar. (E).

Subsec. (e)(3)(C)(ii), (4)(B)(iii). Pub. L. 102–242, §161(a)(3), (4), substituted ''subsection (i)'' for ''subsection (k)''.

Subsec. (e)(8)(A), (E). Pub. L. 102–242, §161(a)(5), substituted ''subsection (d)(9) of this section'' for ''subsections (d)(9) and (i)(4)(I) of this section''.

Subsec. (h). Pub. L. 102–242, §141(d)(2), substituted ''RESOLUTION'' for ''LIQUIDATION'' in heading.

Subsec. (h)(4). Pub. L. 102–242, §141(d)(1), added par. (4).

Subsec. (i)(3)(A). Pub. L. 102–242, §161(e), substituted ''Notwithstanding any other provision of Federal or State law, or the constitution of any State, the'' for ''The''.

Subsec. (n)(9). Pub. L. 102–242, §161(a)(6), substituted ''paragraphs (11) and (12)'' for ''paragraphs (11) and (13)''.

Subsec. (n)(11)(D). Pub. L. 102–242, §161(a)(7), substituted ''paragraph (9)'' for ''paragraph (8)''.

Subsec. (s). Pub. L. 102–242, §446, added subsec. (s).

1990—Subsec. (d)(2)(I), (J). Pub. L. 101–647, §2534(a), added subpar. (I) and redesignated former subpar. (I) as (J).

Subsec. (d)(17). Pub. L. 101–647, §2528(a), added par. (17).

Subsec. (d)(18), (19). Pub. L. 101–647, §2521(a)(1), added pars. (18) and (19).

Subsec. (p). Pub. L. 101–647, §2526(a), added subsec. (p).

Subsec. (q). Pub. L. 101–647, §2527, added subsec. (q).

Subsec. (r). Pub. L. 101–647, §2532(b), added subsec. (r).

1989—Subsec. (a)(1). Pub. L. 101–73, §211(1), added par. (1) and struck out former par. (1) which read as follows: ''The Temporary Federal Deposit Insurance Fund and the Fund for Mutuals heretofore created pursuant to the provisions of section 12B of the Federal Reserve Act, as amended, are consolidated into a Permanent Insurance Fund for insuring deposits, and the assets therein shall be held by the Corporation for the uses and purposes of the Corporation: *Provided*, That the obligations to and rights of the Corporation, depositors, banks, and other persons arising out of any event or transaction prior to September 21, 1950, shall remain unimpaired. On and after August 23, 1935, the Corporation shall insure the deposits of all insured banks as provided in this chapter: *Provided further*, That the insurance shall apply only to deposits of insured banks which have been made available since March 10, 1933, for withdrawal in the usual course of the banking business: *Provided further*, That if any insured bank shall, without the consent of the Corporation, release or modify restrictions on or deferments of deposits which had not been made available for withdrawal in the usual course of the banking business on or before August 23, 1935, such deposits shall not be insured. Except as provided in paragraph (2), the maximum amount of the insured deposit of any depositor shall be $100,000.''

Subsec. (a)(2)(A). Pub. L. 101–73, §201(a), substituted ''insured depository institution'' for ''insured bank'' wherever appearing.

Subsec. (a)(2)(B). Pub. L. 101–73, §211(2), struck out ''time and savings'' after ''deposited in''.

Pub. L. 101–73, §201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (a)(3). Pub. L. 101–73, §201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (a)(4) to (7). Pub. L. 101–73, §211(3), added pars. (4) to (7).

Subsec. (b). Pub. L. 101–73, §201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (c). Pub. L. 101–73, §212(a), added subsec. (c) and struck out former subsec. (c) which related to Corporation as receiver.

Subsec. (d). Pub. L. 101–73, §212(a), added subsec. (d) and struck out former subsec. (d) which related to powers and duties of Corporation as receiver.

Subsec. (e). Pub. L. 101–73, §212(a), added subsec. (e) and struck out former subsec. (e) which related to Corporation as receiver of State banks.

Subsec. (f). Pub. L. 101–73, §212(a), added subsec. (f) and struck out former subsec. (f) which related to payment of insured deposits of closed insured bank or insured branch of a foreign bank.

Subsec. (g). Pub. L. 101–73, §212(a), added subsec. (g) and struck out former subsec. (g) which related to subrogation rights of Corporation in the case of a closed national bank, insured branch of a foreign bank, District bank, or closed insured Federal savings bank.

Subsec. (h). Pub. L. 101–73, §212(a), added subsec. (h) and struck out former subsec. (h) which related to organization, etc., of new national banks upon closing of insured banks. See subsec. (m) of this section.

Subsec. (i). Pub. L. 101–73, §212(a), added subsec. (i) and struck out former subsec. (i) which related to establishment, etc., of bridge banks. See subsec. (n) of this section.

Subsec. (j). Pub. L. 101–73, §212(a), added subsec. (j) and struck out former subsec. (j) which related to conditions applicable to liquidation proceedings.

Subsecs. (k), (*l*). Pub. L. 101–73, §212(a), added subsecs. (k) and (*l*).

Subsec. (m). Pub. L. 101–73, §213, added subsec. (m).

Subsec. (n). Pub. L. 101–73, §214, added subsec. (n).

Subsec. (*o*). Pub. L. 101–73, §909, added subsec. (*o*).

1987—Subsec. (h). Pub. L. 100–86, §503(a)(1), (2), designated existing provisions as par. (1) and redesignated former subsecs. (i) to (*l*) as pars. (2) to (5), respectively.

Subsec. (i). Pub. L. 100–86, §503(a)(2), (3), added subsec. (i). Former subsec. (i) redesignated subsec. (h)(2) of this section.

Subsec. (j). Pub. L. 100–86, §§503(a)(2), 507, added subsec. (j). Former subsec. (j) redesignated subsec. (h)(3) of this section.

Subsecs. (k), (*l*). Pub. L. 100–86, §503(a)(2), redesignated subsecs. (k) and (*l*) as pars. (4) and (5), respectively, of subsec. (h).

1986—Subsec. (a)(3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1982—Subsec. (c). Pub. L. 97–320, §113(j), inserted provision relating to appointment of Corporation as receiver for an insured Federal savings bank by Federal Home Loan Bank Board.

Subsec. (g). Pub. L. 97–320, §113(k), inserted ''or closed insured Federal savings bank,'' after ''foreign bank, or District bank,''.

1981—Subsec. (a)(2)(A)(iv). Pub. L. 97–110 inserted ''the Trust Territory of the Pacific Islands,'' after ''Virgin Islands, American Samoa,'' and ''of the Trust Territory of the Pacific Islands,'' after ''of American Samoa,''.

1980—Subsec. (a)(1). Pub. L. 96–221, §308(a)(1)(C), substituted ''$100,000'' for ''$40,000''.

Subsec. (i). Pub. L. 96–221, §308(a)(1)(D), substituted ''$100,000'' for ''$40,000''.

1979—Subsec. (a)(2)(A)(v). Pub. L. 96–153 added cl. (v).

1978—Subsec. (a)(3). Pub. L. 95–630 added par. (3).

Subsec. (c). Pub. L. 95–369, §6(c)(17), inserted ''insured Federal branch of a foreign bank'' after ''any insured national bank''.

Subsec. (e). Pub. L. 95–369, §6(c)(18), (19), inserted ''or any insured branch (other than a Federal branch) of a foreign bank'' after ''(except a District bank)'', and substituted ''such insured State bank or insured branch of a foreign bank'' for ''such insured State bank''.

Subsec. (f). Pub. L. 95–369, §6(c)(20), inserted ''or insured branch of a foreign bank'' after ''Whenever an insured bank''.

Subsec. (g). Pub. L. 95–369, §6(c)(21), (22), inserted ''insured branch of a foreign bank'' after ''In the case of a closed national bank'', and substituted ''In the case of any closed insured bank or closed insured branch of a foreign bank, such subrogation'' for ''In the case of any closed insured bank, such subrogation''.

1974—Subsec. (a). Pub. L. 93–495, §§101(a)(3), 102(a)(3), redesignated existing provisions as par. (1), inserted exception relating to applicability of par. (2), substituted ''$40,000'' for ''$20,000', and added par. (2).

Subsec. (i). Pub. L. 93–495, §102(a)(4), substituted ''$40,000'' for ''$20,000''.

1969—Subsec. (a). Pub. L. 91–151, §7(a)(3), substituted $20,000 for $15,000 in last sentence.

Subsec. (i). Pub. L. 91–151, §7(a)(4), substituted $20,000 for $15,000 in fifth sentence.

1966—Subsec. (a). Pub. L. 89–695, §301(c), substituted in last sentence ''$15,000'' for ''$10,000'' and struck out '': *And provided further*, That in the case of banks closing prior to September 21, 1950, the maximum amount of the insured deposit of any depositor shall be $5,000''.

Subsec. (i). Pub. L. 89–695, §301(d), substituted ''$15,000'' for ''$10,000'' in fifth sentence.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Oversight Board redesignated Thrift Depositor Protection Oversight Board, effective Feb. 1, 1992, see section 302(a) of Pub. L. 102–233, set out as a note under section 1441a of this title. Thrift Depositor Protection Oversight Board abolished, see section 14(a)–(d) of Pub. L. 105–216, set out as a note under section 1441a of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–343, §1(b), Dec. 29, 2010, 124 Stat. 3609, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on December 31, 2010.''

Amendment by section 335(a) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

Pub. L. 111–203, title III, §343(a)(2), July 21, 2010, 124 Stat. 1544, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on December 31, 2010.''

Pub. L. 111–203, title III, §343(a)(3), July 21, 2010, 124 Stat. 1544, provided that the amendment made by section 343(a)(3) is effective Jan. 1, 2013.

Amendment by section 363(5) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–390 not applicable to any cases commenced under Title 11, Bankruptcy, or to appointments made under any Federal or State law, be-

fore Dec. 12, 2006, see section 7 of Pub. L. 109–390, set out as a note under section 101 of Title 11.

Amendment by subsection 701(b) of Pub. L. 109–351 applicable with respect to conservators or receivers appointed on or after Oct. 13, 2006, see section 701(c) of Pub. L. 109–351, set out as a note under section 191 of this title.

Amendment by section 2(a), (c)(1) of Pub. L. 109–173 effective Apr. 1, 2006, see section 2(e) of Pub. L. 109–173, set out as a note under section 1785 of this title.

Amendment by section 8(a)(11)–(14) of Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

Amendment by section 2102(b) of Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note below.

Pub. L. 109–171, title II, §2103(d), Feb. 8, 2006, 120 Stat. 12, provided that: ''This section [amending this section] and the amendments made by this section shall take effect on the date the final regulations required under section 9(a)(2) [probably means section 2109(a)(2) of Pub. L. 109–171, set out as a Regulations note under section 1817 of this title] take effect [Apr. 1, 2006, see 71 F.R. 14629].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 117 of Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

Pub. L. 106–102, title VII, §736(c), Nov. 12, 1999, 113 Stat. 1479, provided that: ''This section [amending this section and provisions set out as a note under this section] and the amendments made by this section shall become effective on the date of the enactment of this Act [Nov. 12, 1999].''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title II, §2704(c), Sept. 30, 1996, 110 Stat. 3009–487, which provided that section 2704 of div. A of Pub. L. 104–208 (amending this section, sections 24, 338a, 347b, 1431, 1441a, 1441b, 1464, 1467a, 1723i, 1735f–14, 1813, 1815 to 1817, 1821a, 1823 to 1825, 1827, 1828, 1831a, 1831e, 1831m, 1831*o*, 1833a, 1834, 1841, and 3341 of this title, and section 905 of Title 2, The Congress, repealing section 1831h of this title, and enacting provisions set out as notes under this section) was to become effective on Jan. 1, 1999, if no insured depository institution was a savings association on that date, was repealed by Pub. L. 109–171, title II, §2102(b), (c), Feb. 8, 2006, 120 Stat. 9, eff. no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 3001(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply with respect to insured depository institutions for which a receiver is appointed after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1501(a) of Pub. L. 102–550 effective Dec. 20, 1992, see section 1501(c) of Pub. L. 102–550, set out as a note under section 1786 of this title.

Amendment by sections 1603(e)(1), 1604(c)(2), and 1606(c) of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

Section 1611(b)(2) of Pub. L. 102–550 provided that the amendment made by that section is effective one year after Dec. 19, 1991.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 133(a), (e) of Pub. L. 102–242 effective 1 year after Dec. 19, 1991, see section 133(g) of Pub. L. 102–242, set out as a note under section 191 of this title.

Section 311(c) of Pub. L. 102–242 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) and paragraphs (2) and (3) of subsection (b) [amending this section and section 1817 of this title] shall take effect at the end of the 2-year period beginning on the date of the enactment of this Act [Dec. 19, 1991].

''(2) APPLICATION TO TIME DEPOSITS.—

''(A) CERTAIN DEPOSITS EXCLUDED.—Except with respect to the amendment referred to in paragraph (3), the amendments made by subsections (a) and (b) [amending this section and sections 1813 and 1817 of this title] shall not apply to any time deposit which—

''(i) was made before the date of enactment of this Act [Dec. 19, 1991]; and

''(ii) matures after the end of the 2-year period referred to in paragraph (1).

''(B) ROLLOVERS AND RENEWALS TREATED AS NEW DEPOSIT.—Any renewal or rollover of a time deposit described in subparagraph (A) after the date of the enactment of this Act shall be treated as a new deposit which is not described in such subparagraph.

''(3) EFFECTIVE DATE FOR AMENDMENT RELATING TO CERTAIN EMPLOYEE PLANS.—

''(A) Section 11(a)(1)(B) of the Federal Deposit Insurance Act [12 U.S.C. 1821(a)(1)(B)] (as amended by subsection (b)(1) of this section) shall take effect on the earlier of—

''(i) the date of the enactment of this Act [Dec. 19, 1991]; or

''(ii) January 1, 1992.

''(B) Section 11(a)(3)(A) of the Federal Deposit Insurance Act (as amended by subsection (b)(2) of this section) shall take effect on the earlier of the dates described in clauses (i) and (ii) of subparagraph (A) with respect to plans described in clause (ii) of such section.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective Mar. 31, 1980, see section 308(e) of Pub. L. 96–221, set out as a note under section 1817 of this title.

Amendment by section 308(a)(1) of Pub. L. 96–221 not applicable to any claim arising out of the closing of a bank prior to the effective date of section 308 of Pub L. 96–221, see section 308(a)(2) of Pub. L. 96–221, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 applicable only to claims arising after Dec. 21, 1979, with respect to a closing of a bank, etc., see section 323(e) of Pub. L. 96–153,

set out as an Effective and Termination Dates of 1979 Amendment note under section 1757 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective Nov. 10, 1978, see section 1402 of Pub. L. 95–630, set out as a note under section 1787 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 101(a)(3) and 102(a)(3), (4) of Pub. L. 93–495 effective on thirtieth day beginning after Oct. 28, 1974, and amendment by section 102(a)(3), (4) of Pub. L. 93–495 not applicable to any claim arising out of the closing of any bank prior to such effective date, see sections 101(g) and 102(a)(3), (4) of Pub. L. 93–495, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–151 not applicable to any claim arising out of the closing of a bank where such closing took place prior to Dec. 23, 1969, see section 7(b) of Pub. L. 91–151, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–695 not applicable to any claim arising out of the closing of a bank where such closing is prior to Oct. 16, 1966, see section 301(e) of Pub. L. 89–695, set out as a note under section 1813 of this title.

REGULATIONS

Section 311(b)(4) of Pub. L. 102–242 provided that:

''(A) REVIEW OF COVERAGE.—For the purpose of prescribing regulations, during the 1-year period beginning on the date of the enactment of this Act [Dec. 19, 1991], the Board of Directors shall review the capacities and rights in which deposit accounts are maintained and for which deposit insurance coverage is provided by the Corporation.

''(B) REGULATIONS.—After the end of the 1-year period referred to in subparagraph (A), the Board of Directors may prescribe regulations that provide for separate insurance coverage for the different capacities and rights in which deposit accounts are maintained if a determination is made by the Board of Directors that such separate insurance coverage is consistent with—

''(i) the purpose of protecting small depositors and limiting the undue expansion of deposit insurance coverage; and

''(ii) the insurance provisions of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

''(C) DELAYED EFFECTIVE DATE FOR REGULATIONS.—No regulation prescribed under subparagraph (B) may take effect before the 2-year period beginning on the date of the enactment of this Act [Dec. 19, 1991].''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TEMPORARY ADJUSTMENT IN STANDARD MAXIMUM DEPOSIT INSURANCE AMOUNT

Subsec. (a)(1)(E) of this section to apply with ''$250,000'' substituted for ''$100,000'' during period beginning on Oct. 3, 2008, and ending on Dec. 31, 2009, see section 5241(a)(1) of this title.

MERGER OF BIF AND SAIF

Pub. L. 109–171, title II, § 2102, Feb. 8, 2006, 120 Stat. 9, provided that:

''(a) IN GENERAL.—

''(1) MERGER.—The Bank Insurance Fund and the Savings Association Insurance Fund shall be merged into the Deposit Insurance Fund.

''(2) DISPOSITION OF ASSETS AND LIABILITIES.—All assets and liabilities of the Bank Insurance Fund and the Savings Association Insurance Fund shall be transferred to the Deposit Insurance Fund.

''(3) NO SEPARATE EXISTENCE.—The separate existence of the Bank Insurance Fund and the Savings Association Insurance Fund shall cease on the effective date of the merger thereof under this section.

''(b) REPEAL OF OUTDATED MERGER PROVISION.—Section 2704 of the Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821 note) [section 2704 of Pub. L. 104–208, which amended this section, sections 24, 338a, 347b, 1431, 1441a, 1441b, 1464, 1467a, 1723i, 1735f–14, 1813, 1815 to 1817, 1821a, 1823 to 1825, 1827, 1828, 1831a, 1831e, 1831m, 1831*o*, 1833a, 1834, 1841, and 3341 of this title, and section 905 of Title 2, The Congress, repealed section 1831h of this title, and enacted provisions set out as notes under this section] is repealed.

''(c) EFFECTIVE DATE.—This section shall take effect no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning on the date of the enactment of this Act [Feb. 8, 2006].''

Pub. L. 104–208, div. A, title II, § 2704(a), (b), Sept. 30, 1996, 110 Stat. 3009–486, as amended by Pub. L. 106–102, title VII, § 736(b)(1), Nov. 12, 1999, 113 Stat. 1479, which provided that the Bank Insurance Fund and the Savings Association Insurance Fund were to be merged into the Deposit Insurance Fund, that all assets and liabilities of the Bank Insurance Fund and the Savings Association Insurance Fund were to be transferred to the Deposit Insurance Fund, and that the separate existence of the Bank Insurance Fund and the Savings Association Insurance Fund was to cease, was repealed by Pub. L. 109–171, title II, § 2102(b), (c), Feb. 8, 2006, 120 Stat. 9, eff. no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006. See Effective Date of 1996 Amendment note and note above.

GAO REPORT

Section 8(g) of Pub. L. 103–204 provided that: ''Not later than 60 days after receipt of any certification submitted pursuant to subparagraph (E) or (F) of section 11(a)(6) of the Federal Deposit Insurance Act [former 12 U.S.C. 1821(a)(6)], the Comptroller General shall transmit a report to the Congress evaluating any such certification.''

SINGLE AGENCY FOR REAL PROPERTY DISPOSITION

Section 26(b) of Pub. L. 103–204 provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine the feasibility and effectiveness of establishing a single Federal agency responsible for selling and otherwise disposing of real property owned or held by the Department of Housing and Urban Development, the Farmers Home Administration of the Department of Agriculture, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation. The study shall examine the real property disposition procedures of such agencies and corporations, analyze the feasibility of consolidating such procedures through such single agency, and determine the characteristics and authority necessary for any such single agency to efficiently carry out such disposition activities.

''(2) REPORT.—Not later than 12 months after the date of enactment of this Act [Dec. 17, 1993], the Comptroller General shall submit a report to the Congress on the study required under paragraph (1), which shall describe any findings under the study and contain any recommendations of the Comptroller General for the establishment of such single agency.''

EXEMPTIONS FOR CERTAIN TRANSACTIONS

Section 37 of Pub. L. 103–204 provided that:

''(a) TRANSACTIONS INVOLVING CERTAIN INSTITUTIONS.—Section 11(a)(4)(B) of the Federal Deposit Insurance Act [12 U.S.C. 1821(a)(4)(B)] shall not prohibit assistance from the Bank Insurance Fund that otherwise meets all the criteria established in section 13(c) of such Act [12 U.S.C. 1823(c)] from being provided to an

insured depository institution that became wholly-owned, either directly or through a wholly-owned subsidiary, by an entity or instrumentality of a State government during the period beginning on January 1, 1992, and ending on the date of enactment of this Act [Dec. 17, 1993].

''(b) TRANSACTIONS INVOLVING THE FDIC AS RECEIVER.—Notwithstanding the extension, pursuant to section 27 [12 U.S.C. 1831d], of the Resolution Trust Corporation's jurisdiction to be appointed conservator or receiver of certain savings associations after September 30, 1993, no provision of this Act [see Short Title of 1993 Amendment note set out under section 1421 of this title] or any amendment made by this Act shall invalidate or otherwise affect—

''(1) any appointment of the Federal Deposit Insurance Corporation as receiver for any savings association that became effective before the date of enactment of this Act; or

''(2) any action taken by the Federal Deposit Insurance Corporation as such receiver before, on, or after such date of enactment.''

INFORMATIONAL STUDY

Section 311(d) of Pub. L. 102–242 provided that:

''(1) IN GENERAL.—The Federal Deposit Insurance Corporation, in conjunction with such consultants and technical experts as the Corporation determines to be appropriate, shall conduct a study of the cost and feasibility of tracking the insured and uninsured deposits of any individual and the exposure, under any Act of Congress or any regulation of any appropriate Federal banking agency, of the Federal Government with respect to all insured depository institutions.

''(2) ANALYSIS OF COSTS AND BENEFITS.—The study under paragraph (1) shall include detailed, technical analysis of the costs and benefits associated with the least expensive way to implement the system.

''(3) SPECIFIC FACTORS TO BE STUDIED.—As part of the study under paragraph (1), the Corporation shall investigate, review, and evaluate—

''(A) the data systems that would be required to track deposits in all insured depository institutions;

''(B) the reporting burdens of such tracking on individual depository institutions;

''(C) the systems which exist or which would be required to be developed to aggregate such data on an accurate basis;

''(D) the implications such tracking would have for individual privacy; and

''(E) the manner in which systems would be administered and enforced.

''(4) FEDERAL RESERVE BOARD SURVEY.—As part of the informational study required under paragraph (1), the Board of Governors of the Federal Reserve System shall conduct, in conjunction with other Federal departments and agencies as necessary, a survey of the ownership of deposits held by individuals including the dollar amount of deposits held, the type of deposit accounts held, and the type of financial institutions in which the deposit accounts are held.

''(5) ANALYSIS BY FDIC.—The results of the survey under paragraph (4) shall be provided to the Federal Deposit Insurance Corporation before the end of the 1-year period beginning on the date of the enactment of this Act [Dec. 19, 1991] for analysis and inclusion in the informational study.

''(6) REPORT TO CONGRESS.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Federal Deposit Insurance Corporation shall submit to the Congress a report containing a detailed statement of findings made and conclusions drawn from the study conducted under this section, including such recommendations for administrative and legislative action as the Corporation determines to be appropriate.''

CONTINUATION OF HEALTH PLAN COVERAGE IN CASES OF FAILED FINANCIAL INSTITUTIONS

Section 451 of Pub. L. 102–242, as amended by Pub. L. 102–550, title XVI, §1606(g)(1), Oct. 28, 1992, 106 Stat. 4088, provided that:

''(a) CONTINUATION COVERAGE.—The Federal Deposit Insurance Corporation—

''(1) shall, in its capacity as a successor of a failed depository institution (whether acting directly or through any bridge bank), have the same obligation to provide a group health plan meeting the requirements of section 602 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1162] (relating to continuation coverage requirements of group health plans) with respect to former employees of such institution as such institution would have had but for its failure, and

''(2) shall require that any successor described in subsection (b)(1)(B)(iii) provide a group health plan with respect to former employees of such institution in the same manner as the failed depository institution would have been required to provide but for its failure.

''(b) DEFINITIONS.—For purposes of this section—

''(1) SUCCESSOR.—An entity is a successor of a failed depository institution during any period if—

''(A) such entity holds substantially all of the assets or liabilities of such institution, and

''(B) such entity is—

''(i) the Federal Deposit Insurance Corporation,

''(ii) any bridge bank, or

''(iii) an entity that acquires such assets or liabilities from the Federal Deposit Insurance Corporation or a bridge bank.

''(2) FAILED DEPOSITORY INSTITUTION.—The term 'failed depository institution' means any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)]) for which a receiver has been appointed.

''(3) BRIDGE BANK.—The term 'bridge bank' has the meaning given such term by section 3(i)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(i)(2)].

''(c) NO PREMIUM COSTS IMPOSED ON FDIC.—Subsection (a) shall not be construed as requiring the Federal Deposit Insurance Corporation to incur, by reason of this section, any obligation for any premium under any group health plan referred to in such subsection.

''(d) EFFECTIVE DATE.—This section shall apply to plan years beginning on or after the date of the enactment of this Act [Dec. 19, 1991], regardless of whether the qualifying event under section 603 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163] occurred before, on, or after such date.''

DEFINITIONS

Section 2710 of div. A of Pub. L. 104–208 provided that: ''For purposes of this subtitle [subtitle G (§§2701–2711) of title II of div. A of Pub. L. 104–208, see Short Title of 1996 Amendment note set out under section 1811 of this title], the following definitions shall apply:

''(1) BANK INSURANCE FUND.—The term 'Bank Insurance Fund' means the fund established pursuant to section (11)(a)(5)(A) of the Federal Deposit Insurance Act [former 12 U.S.C. 1821(a)(5)(A)], as that section existed on the day before the date of enactment of this Act [Sept. 30, 1996].

''(2) BIF MEMBER, SAIF MEMBER.—The terms 'Bank Insurance Fund member' and 'Savings Association Insurance Fund member' have the same meanings as in section 7(*l*) of the Federal Deposit Insurance Act [12 U.S.C. 1817(*l*)].

''(3) VARIOUS BANKING TERMS.—The terms 'bank', 'Board of Directors', 'Corporation', 'deposit', 'insured depository institution', 'Federal savings association', 'savings association', 'State savings bank', and 'State depository institution' have the same meanings as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

''(4) DEPOSIT INSURANCE FUND.—The term 'Deposit Insurance Fund' means the fund established under section 11(a)(4) of the Federal Deposit Insurance Act [former 12 U.S.C. 1821(a)(4)] (as amended by section 2704(d) of this subtitle).

''(5) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term 'depository institution holding company'

has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

''(6) DESIGNATED RESERVE RATIO.—The term 'designated reserve ratio' has the same meaning as in section 7(b)(2)(A)(iv) of the Federal Deposit Insurance Act [former 12 U.S.C. 1817(b)(2)(A)(iv), see 12 U.S.C. 1817(b)(3)].

''(7) SAIF.—The term 'Savings Association Insurance Fund' means the fund established pursuant to section 11(a)(6)(A) of the Federal Deposit Insurance Act [former 12 U.S.C. 1821(a)(6)(A)], as that section existed on the day before the date of enactment of this Act [Sept. 30, 1996].

''(8) SAIF-ASSESSABLE DEPOSIT.—The term 'SAIF-assessable deposit'—

''(A) means a deposit that is subject to assessment for purposes of the Savings Association Insurance Fund under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] (including a deposit that is treated as insured by the Savings Association Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(3)]); and

''(B) includes any deposit described in subparagraph (A) which is assumed after March 31, 1995, if the insured depository institution, the deposits of which are assumed, is not an insured depository institution when the special assessment is imposed under section 2702(a) [former 12 U.S.C. 1817 note].''

§ 1821a. FSLIC Resolution Fund

(a) Established

(1) In general

There is established a separate fund to be designated as the FSLIC Resolution Fund which shall be managed by the Corporation and separately maintained and not commingled.

(2) Transfer of FSLIC assets and liabilities

Except as provided in section 1441a of this title, all assets and liabilities of the Federal Savings and Loan Insurance Corporation on the day before August 9, 1989, shall be transferred to the FSLIC Resolution Fund.

(3) Separate holding

Assets and liabilities transferred to the FSLIC Resolution Fund shall be the assets and liabilities of the Fund and not of the Corporation and shall not be consolidated with the assets and liabilities of the Deposit Insurance Fund or the Corporation for accounting, reporting, or any other purpose.

(4) Rights, powers, and duties

Effective August 10, 1989, the Corporation shall have all rights, powers, and duties to carry out the Corporation's duties with respect to the assets and liabilities of the FSLIC Resolution Fund that the Corporation otherwise has under this chapter.

(5) Corporation as conservator or receiver

(A) In general

Effective August 10, 1989, the Corporation shall succeed the Federal Savings and Loan Insurance Corporation as conservator or receiver with respect to any depository institution—

(i) the accounts of which were insured before August 10, 1989 by the Federal Savings and Loan Insurance Corporation; and

(ii) for which a conservator or receiver was appointed before January 1, 1989.

(B) Rights, powers, and duties

When acting as conservator or receiver with respect to any depository institution described in subparagraph (A), the Corporation shall have all rights, powers, and duties that the Corporation otherwise has as conservator or receiver under this chapter.

(b) Source of funds

The FSLIC Resolution Fund shall be funded from the following sources to the extent funds are needed in the listed priority:

(1) Income earned on assets of the FSLIC Resolution Fund.

(2) Liquidating dividends and payments made on claims received by the FSLIC Resolution Fund from receiverships to the extent such funds are not required by the Resolution Funding Corporation pursuant to section 1441b of this title or the Financing Corporation pursuant to section 1441 of this title.

(3) Amounts borrowed by the Financing Corporation pursuant to section 1441 of this title.

(c) Treasury backup

(1) In general

If the funds described in subsections (a) and (b) of this section are insufficient to satisfy the liabilities of the FSLIC Resolution Fund, the Secretary of the Treasury shall pay to the Fund such amounts as may be necessary, as determined by the Corporation and the Secretary, for FSLIC Resolution Fund purposes.

(2) Authorization of appropriations

There are authorized to be appropriated to the Secretary of the Treasury, without fiscal year limitation, such sums as may be necessary to carry out this section.

(d) Legal proceedings

Any judgment resulting from a proceeding to which the Federal Savings and Loan Insurance Corporation was a party prior to its dissolution or which is initiated against the Corporation with respect to the Federal Savings and Loan Insurance Corporation or with respect to the FSLIC Resolution Fund shall be limited to the assets of the FSLIC Resolution Fund.

(e) Transfer of net proceeds from sale of RTC assets

The FSLIC Resolution Fund shall transfer to the Resolution Funding Corporation any net proceeds from the sale of assets acquired from the Resolution Trust Corporation upon the termination of such Corporation pursuant to section 1441a of this title.

(f) Dissolution

The FSLIC Resolution Fund shall be dissolved upon satisfaction of all debts and liabilities and sale of all assets. Upon dissolution any remaining funds shall be paid into the Treasury. Any administrative facilities and supplies, including offices and office supplies, shall be transferred to the Corporation for use by and to be held as assets of the Deposit Insurance Fund.

(Sept. 21, 1950, ch. 967, § 2[11A], as added Pub. L. 101–73, title II, § 215, Aug. 9, 1989, 103 Stat. 252; amended Pub. L. 102–233, title II, § 202(c), (d), Dec. 12, 1991, 105 Stat. 1767; Pub. L. 102–242, title

I, §161(b), Dec. 19, 1991, 105 Stat. 2285; Pub. L. 104–208, div. A, title II, §2704(d)(14)(J)–(L), Sept. 30, 1996, 110 Stat. 3009–492; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §8(a)(15)–(17), Feb. 15, 2006, 119 Stat. 3612, 3613.)

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–173, §8(a)(15)(A), (B), struck out subpar. (A) designation and heading before ''Except as'' and struck out heading and text of subpar. (B). Text read as follows: ''The FSLIC Resolution Fund shall pay to the Savings Association Insurance Fund such amounts as are needed for administrative and supervisory expenses from August 9, 1989, through September 30, 1992.''

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

Subsec. (a)(3). Pub. L. 109–173, §8(a)(15)(C), substituted ''the Deposit Insurance Fund'' for ''the Bank Insurance Fund, the Savings Association Insurance Fund,''.

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

Subsec. (b)(4). Pub. L. 109–173, §8(a)(16), struck out par. (4) which read as follows: ''During the period beginning on August 9, 1989, and ending on December 31, 1992, amounts assessed against Savings Association Insurance Fund members by the Corporation pursuant to section 1817 of this title which are not required by the Financing Corporation pursuant to section 1441 of this title or by the Resolution Funding Corporation pursuant to section 1441b of this title.''

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

Subsec. (f). Pub. L. 109–173, §8(a)(17), substituted ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund''.

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

1996—Subsec. (a)(2). Pub. L. 104–208, §2704(d)(14)(J)(i), (ii), which directed striking out subpar. (A) heading and subpar. (B) and redesignating subpar. (A) as par. (2), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (a)(3). Pub. L. 104–208, §2704(d)(14)(J)(iii), which directed substitution of ''the Deposit Insurance Fund'' for ''the Bank Insurance Fund, the Savings Association Insurance Fund,'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (b)(4). Pub. L. 104–208, §2704(d)(14)(K), which directed striking out par. (4), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (f). Pub. L. 104–208, §2704(d)(14)(L), which directed substitution of ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1991—Subsec. (a)(2)(B). Pub. L. 102–233, §202(c), substituted ''1992'' for ''1991''.

Subsec. (a)(4), (5). Pub. L. 102–242 added pars. (4) and (5).

Subsec. (b)(4). Pub. L. 102–233, §202(d), substituted ''1992'' for ''1991''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

PAYMENT OF JUDGMENTS AND SETTLEMENTS OF CLAIMS AGAINST UNITED STATES

Pub. L. 106–113, div. B, §1000(a)(1) [title I, §110], Nov. 29, 1999, 113 Stat. 1535, 1501A–20, provided that: ''Hereafter, for payments of judgments against the United States and compromise settlements of claims in suits against the United States arising from the Financial Institutions Reform, Recovery and Enforcement Act [Pub. L. 101–73, see Tables for classification] and its implementation, such sums as may be necessary, to remain available until expended: *Provided*, That the foregoing authority is available solely for payment of judgments and compromise settlements: *Provided further*, That payment of litigation expenses is available under existing authority and will continue to be made available as set forth in the Memorandum of Understanding between the Federal Deposit Insurance Corporation and the Department of Justice, dated October 2, 1998.''

Similar provisions were contained in Pub. L. 105–277, div. A, §101(b) [title I, §130], Oct. 21, 1998, 112 Stat. 2681–50, 2681–77.

§ 1822. Corporation as receiver

(a) Bond not required; agents; fee

The Corporation as receiver of an insured depository institution or branch of a foreign bank shall not be required to furnish bond and may appoint an agent or agents to assist it in its duties as such receiver. All fees, compensation, and expenses of liquidation and administration shall be fixed by the Corporation, and may be paid by it out of funds coming into its possession as such receiver.

(b) Payment of insured deposit as discharge from liability

Payment of an insured deposit to any person by the Corporation shall discharge the Corporation, and payment of a transferred deposit to any person by the new depository institution or by an insured depository institution in which a transferred deposit has been made available shall discharge the Corporation and such new depository institution or other insured depository institution, to the same extent that payment to such person by the depository institution in default would have discharged it from liability for the insured deposit.

(c) Recognition of claimant not on depository institution records

Except as otherwise prescribed by the Board of Directors, neither the Corporation nor such new depository institution or other insured depository institution shall be required to recognize as the owner of any portion of a deposit appearing on the records of the depository institution in default under a name other than that of the claimant, any person whose name or interest as such owner is not disclosed on the records of such depository institution in default as part owner of said deposit, if such recognition would increase the aggregate amount of the insured deposits in such depository institution in default.

(d) Withholding payments to meet liability to depository institution

The Corporation may withhold payment of such portion of the insured deposit of any de-

positor in a depository institution in default as may be required to provide for the payment of any liability of such depositor to the depository institution in default or its receiver, which is not offset against a claim due from such depository institution, pending the determination and payment of such liability by such depositor or any other person liable therefor.

(e) Disposition of unclaimed deposits

(1) Notices

(A) First notice

Within 30 days after the initiation of the payment of insured deposits under section 1821(f) of this title, the Corporation shall provide written notice to all insured depositors that they must claim their deposit from the Corporation, or if the deposit has been transferred to another institution, from the transferee institution.

(B) Second notice

A second notice containing this information shall be mailed by the Corporation to all insured depositors who have not responded to the first notice, 15 months after the Corporation initiates such payment of insured depositors.

(C) Address

The notices shall be mailed to the last known address of the depositor appearing on the records of the insured depository institution in default.

(2) Transfer to appropriate State

If an insured depositor fails to make a claim for his, her, or its insured or transferred deposit within 18 months after the Corporation initiates the payment of insured deposits under section 1821(f) of this title—

(A) any transferee institution shall refund the deposit to the Corporation, and all rights of the depositor against the transferee institution shall be barred; and

(B) with the exception of United States deposits, the Corporation shall deliver the deposit to the custody of the appropriate State as unclaimed property, unless the appropriate State declines to accept custody. Upon delivery to the appropriate State, all rights of the depositor against the Corporation with respect to the deposit shall be barred and the Corporation shall be deemed to have made payment to the depositor for purposes of section 1821(g)(1) of this title.

(3) Refusal of appropriate State to accept custody

If the appropriate State declines to accept custody of the deposit tendered pursuant to paragraph (2)(B), the deposit shall not be delivered to any State, and the insured depositor shall claim the deposit from the Corporation before the receivership is terminated, or all rights of the depositor with respect to such deposit shall be barred.

(4) Treatment of United States deposits

If the deposit is a United States deposit it shall be delivered to the Secretary of the Treasury for deposit in the general fund of the Treasury. Upon delivery to the Secretary of the Treasury, all rights of the depositor against the Corporation with respect to the deposit shall be barred and the Corporation shall be deemed to have made payment to the depositor for purposes of section 1821(g)(1) of this title.

(5) Reversion

If a depositor does not claim the deposit delivered to the custody of the appropriate State pursuant to paragraph (2)(B) within 10 years of the date of delivery, the deposit shall be immediately refunded to the Corporation and become its property. All rights of the depositor against the appropriate State with respect to such deposit shall be barred as of the date of the refund to the Corporation.

(6) Definitions

For purposes of this subsection—

(A) the term ''transferee institution'' means the insured depository institution in which the Corporation has made available a transferred deposit pursuant to section 1821(f)(1) of this title;

(B) the term ''appropriate State'' means the State to which notice was mailed under paragraph (1)(C), except that if the notice was not mailed to an address that is within a State it shall mean the State in which the depository institution in default has its main office; and

(C) the term ''United States deposit'' means an insured or transferred deposit for which the deposit records of the depository institution in default disclose that title to the deposit is held by the United States, any department, agency, or instrumentality of the Federal Government, or any officer or employee thereof in such person's official capacity.

(f) Conflict of interest

(1) Applicability of other provisions

(A) Clarification of status of Corporation

The Corporation is, and has been since its creation, an agency for purposes of title 18.

(B) Treatment of contractors

Any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation, shall be deemed to be an employee of the Corporation for purposes of title 18 and this chapter. Any individual who, pursuant to a contract or any other agreement, acts for or on behalf of the Corporation, and who is not otherwise treated as an officer or employee of the United States for purposes of title 18 shall be deemed to be a public official for purposes of section 201 of title 18.

(2) Regulations concerning employee conduct

The officers and employees of the Corporation and those individuals under contract to the Corporation who are deemed, under paragraph (1)(B), to be employees of the Corporation for purposes of title 18 shall be subject to the ethics and conflict of interest rules and

regulations issued by the Office of Government Ethics, including those concerning employee conduct, financial disclosure, and post-employment activities. The Board of Directors may prescribe regulations that supplement such rules and regulations only with the concurrence of that Office.

(3) Regulations concerning independent contractors

The Board of Directors shall prescribe regulations applicable to those independent contractors who are not deemed, under paragraph (1)(B), to be employees of the Corporation for purposes of title 18 governing conflicts of interest, ethical responsibilities, and the use of confidential information consistent with the goals and purposes of titles 18 and 41. Any such regulations shall be in addition to, and not in lieu of, any other statute or regulation which may apply to the conduct of such independent contractors.

(4) Disapproval of contractors

(A) In general

The Board of Directors shall prescribe regulations establishing procedures for ensuring that any individual who is performing, directly or indirectly, any function or service on behalf of the Corporation meets minimum standards of competence, experience, integrity, and fitness.

(B) Prohibition from service on behalf of Corporation

The procedures established under subparagraph (A) shall provide that the Corporation shall prohibit any person who does not meet the minimum standards of competence, experience, integrity, and fitness from—

(i) entering into any contract with the Corporation; or

(ii) becoming employed by the Corporation or otherwise performing any service for or on behalf of the Corporation.

(C) Information required to be submitted

The procedures established under subparagraph (A) shall require that any offer submitted to the Corporation by any person under this section and any employment application submitted to the Corporation by any person shall include—

(i) a list and description of any instance during the 5 years preceding the submission of such application in which the person or a company under such person's control defaulted on a material obligation to an insured depository institution; and

(ii) such other information as the Board may prescribe by regulation.

(D) Subsequent submissions

(i) In general

No offer submitted to the Corporation may be accepted unless the offeror agrees that no person will be employed, directly or indirectly, by the offeror under any contract with the Corporation unless—

(I) all applicable information described in subparagraph (C) with respect to any such person is submitted to the Corporation; and

(II) the Corporation does not disapprove of the direct or indirect employment of such person.

(ii) Finality of determination

Any determination made by the Corporation pursuant to this paragraph shall be in the Corporation's sole discretion and shall not be subject to review.

(E) Prohibition required in certain cases

The standards established under subparagraph (A) shall require the Corporation to prohibit any person who has—

(i) been convicted of any felony;

(ii) been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency;

(iii) demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or

(iv) caused a substantial loss to the Deposit Insurance Fund (or any predecessor deposit insurance fund);

from performing any service on behalf of the Corporation.

(5) Abrogation of contracts

The Corporation may rescind any contract with a person who—

(A) fails to disclose a material fact to the Corporation;

(B) would be prohibited under paragraph (6) from providing services to, receiving fees from, or contracting with the Corporation; or

(C) has been subject to a final enforcement action by any Federal banking agency.

(6) Priority of FDIC rules

To the extent that the regulations under this subsection conflict with rules of other agencies or Government corporations, officers, directors, employees, and independent contractors of the Corporation who are also subject to the conflict of interest or ethical rules of another agency or Government corporation, shall be governed by the regulations prescribed by the Board of Directors under this subsection when acting for or on behalf of the Corporation. Notwithstanding the preceding sentence, the rules of the Corporation shall not take priority over the ethics and conflict of interest rules and regulations promulgated by the Office of Government Ethics unless specifically authorized by that Office.

(Sept. 21, 1950, ch. 967, §2[12], 64 Stat. 887; Pub. L. 95–369, §6(c)(23), Sept. 17, 1978, 92 Stat. 619; Pub. L. 97–320, title I, §113(*l*), Oct. 15, 1982, 96 Stat. 1474; Pub. L. 101–73, title II, §§201(a), 216, Aug. 9, 1989, 103 Stat. 187, 254; Pub. L. 103–44, §1, June 28, 1993, 107 Stat. 220; Pub. L. 103–204, §19(a), Dec. 17, 1993, 107 Stat. 2402; Pub. L. 104–179, §4(b)(1), Aug. 6, 1996, 110 Stat. 1567; Pub. L. 109–173, §8(a)(18), Feb. 15, 2006, 119 Stat. 3613; Pub. L. 110–289, div. A, title VI, §1604(b)(1)(C), July 30, 2008, 122 Stat. 2829.)

PRIOR PROVISIONS

Section is derived from subsec. (m) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2008—Subsecs. (b), (c). Pub. L. 110–289 substituted ''new depository institution'' for ''new bank'' wherever appearing.

2006—Subsec. (f)(4)(E)(iv). Pub. L. 109–173 substituted ''the Deposit Insurance Fund (or any predecessor deposit insurance fund)'' for ''Federal deposit insurance funds''.

1996—Subsec. (f)(3). Pub. L. 104–179 struck out '', with the concurrence of the Office of Government Ethics,'' after ''The Board of Directors''.

1993—Subsec. (e). Pub. L. 103–44 inserted heading and amended text generally. Prior to amendment, text read as follows: ''If, after the Corporation shall have given at least three months' notice to the depositor by mailing a copy thereof to his last-known address appearing on the records of the depository institution in default, any depositor in the depository institution in default shall fail to claim his insured deposit from the Corporation within eighteen months after the appointment of the receiver for the depository institution in default, or shall fail within such period to claim or arrange to continue the transferred deposit with the new bank or with the other insured depository institution which assumes liability therefor, all rights of the depositor against the Corporation with respect to the insured deposit, and against the new bank and such other insured depository institution with respect to the transferred deposit, shall be barred, and all rights of the depositor against the depository institution in default and its shareholders, or the receivership estate to which the Corporation may have become subrogated, shall thereupon revert to the depositor. The amount of any transferred deposits not claimed within such eighteen months' period, shall be refunded to the Corporation.''

Subsec. (f). Pub. L. 103–204 added subsec. (f).

1989—Pub. L. 101–73, § 201(a), substituted references to insured depository institutions for references to insured banks wherever appearing in this section.

Subsec. (a). Pub. L. 101–73, § 216(2), inserted heading and text of subsec. (a), and struck out former subsec. (a) which read as follows: ''Notwithstanding any other provision of law, the Corporation as receiver of a closed national bank, branch of a foreign bank, insured Federal savings bank, or District bank shall not be required to furnish bond and shall have the right to appoint an agent or agents to assist it in its duties as such receiver, and all fees, compensation, and expenses of liquidation and administration thereof shall be fixed by the Corporation, and may be paid by it out of funds coming into its possession as such receiver.''

Subsecs. (b), (c). Pub. L. 101–73, § 216(1), substituted ''depository institution in default'' for ''closed bank'' wherever appearing.

Subsec. (d). Pub. L. 101–73, § 216(1), (3), substituted ''depository institution in default'' for ''closed bank'' in three places, struck out ''as a stockholder of the depository institution in default, or of any liability of such depositor'' after ''payment of any liability of such depositor'', and substituted ''such depository institution'' for ''such bank''.

Subsec. (e). Pub. L. 101–73, § 216(1), substituted ''depository institution in default'' for ''closed bank'' wherever appearing.

1982—Subsec. (a). Pub. L. 97–320 inserted ''insured Federal savings bank,'' after ''foreign bank,''.

1978—Subsec. (a). Pub. L. 95–369 inserted '', branch of a foreign bank,'' after ''a closed national bank''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1993 AMENDMENTS

Section 19(c) of Pub. L. 103–204 provided that: ''The amendment made by subsection (a) [amending this section] shall apply after the end of the 6-month period beginning on the date of enactment of this Act [Dec. 17, 1993].''

Section 2 of Pub. L. 103–44 provided that:

''(a) IN GENERAL.—The amendments made by section 1 of this Act [amending this section] shall only apply with respect to institutions for which the Corporation has initiated the payment of insured deposits under section 11(f) of the Federal Deposit Insurance Act [12 U.S.C. 1821(f)] after the date of enactment of this Act [June 28, 1993].

''(b) SPECIAL RULE FOR RECEIVERSHIPS IN PROGRESS.—Section 12(e) of the Federal Deposit Insurance Act [12 U.S.C. 1822(e)] as in effect on the day before the date of enactment of this Act [June 28, 1993] shall apply with respect to insured deposits in depository institutions for which the Corporation was first appointed receiver during the period between January 1, 1989 and the date of enactment of this Act, except that such section 12(e) shall not bar any claim made against the Corporation by an insured depositor for an insured or transferred deposit, so long as such claim is made prior to the termination of the receivership.

''(c) INFORMATION TO STATES.—Within 120 days after the date of enactment of this Act [June 28, 1993], the Corporation shall provide, at the request of and for the sole use of any State, the name and last known address of any insured depositor (as shown on the records of the institution in default) eligible to make a claim against the Corporation solely due to the operation of subsection (b) of this section.

''(d) DEFINITION.—For purposes of this section, the term 'Corporation' means the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or the Federal Savings and Loan Insurance Corporation, as appropriate.''

§ 1823. Corporation monies

(a) Investment of Corporation's funds

(1) Authority

Funds held in the Deposit Insurance Fund or the FSLIC Resolution Fund, that are not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

(2) Limitation

The Corporation shall not sell or purchase any obligations described in paragraph (1) for its own account, at any one time aggregating in excess of $100,000, without the approval of the Secretary of the Treasury. The Secretary may approve a transaction or class of transactions subject to the provisions of this paragraph under such conditions as the Secretary may determine.

(b) Depository accounts

The depository accounts of the Corporation shall be kept with the Treasurer of the United States, or, with the approval of the Secretary of the Treasury, with a Federal Reserve bank, or with a depository institution designated as a depository or fiscal agent of the United States: *Provided*, That the Secretary of the Treasury may waive the requirements of this subsection under such conditions as he may determine: *And provided further*, That this subsection shall not apply to the establishment and maintenance in any depository institution for temporary purposes of depository accounts not in excess of $50,000 in any one depository institution, or to the establishment and maintenance in any depository institution of any depository accounts to facilitate the payment of insured deposits, or the making of loans to, or the purchase of assets

of, insured depository institutions. When designated for that purpose by the Secretary of the Treasury, the Corporation shall be a depositary of public moneys, except receipts from customs, under such regulations as may be prescribed by the said Secretary, and may also be employed as a financial agent of the Government. It shall perform all such reasonable duties as depositary of public moneys and financial agent of the Government as may be required of it.

(c) Assistance to insured depository institutions

(1) The Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe, to make loans to, to make deposits in, to purchase the assets or securities of, to assume the liabilities of, or to make contributions to, any insured depository institution—

(A) if such action is taken to prevent the default of such insured depository institution;

(B) if, with respect to an insured bank in default, such action is taken to restore such insured bank to normal operation; or

(C) if, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, such action is taken in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(2)(A) In order to facilitate a merger or consolidation of another[1] insured depository institution described in subparagraph (B) with another insured depository institution or the sale of any or all of the assets of such insured depository institution or the assumption of any or all of such insured depository institution's liabilities by another insured depository institution, or the acquisition of the stock of such insured depository institution, the Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe—

(i) to purchase any such assets or assume any such liabilities;

(ii) to make loans or contributions to, or deposits in, or purchase the securities of, such other insured depository institution or the company which controls or will acquire control of such other insured depository institution;

(iii) to guarantee such other insured depository institution or the company which controls or will acquire control of such other insured depository institution against loss by reason of such insured institution's merging or consolidating with or assuming the liabilities and purchasing the assets of such insured depository institution or by reason of such company acquiring control of such insured depository institution; or

(iv) to take any combination of the actions referred to in subparagraphs (i) through (iii).

(B) For the purpose of subparagraph (A), the insured depository institution must be an insured depository institution—

(i) which is in default;

(ii) which, in the judgment of the Board of Directors, is in danger of default; or

(iii) which, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, is determined by the Corporation, in its sole discretion, to require assistance under subparagraph (A) in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(C) Any action to which the Corporation is or becomes a party by acquiring any asset or exercising any other authority set forth in this section shall be stayed for a period of 60 days at the request of the Corporation.

(3) The Corporation may provide any person acquiring control of, merging with, consolidating with or acquiring the assets of an insured depository institution under subsection (f) or (k) of this section with such financial assistance as it could provide an insured institution under this subsection.

(4) LEAST-COST RESOLUTION REQUIRED.—

(A) IN GENERAL.—Notwithstanding any other provision of this chapter, the Corporation may not exercise any authority under this subsection or subsection (d), (f), (h), (i), or (k) of this section with respect to any insured depository institution unless—

(i) the Corporation determines that the exercise of such authority is necessary to meet the obligation of the Corporation to provide insurance coverage for the insured deposits in such institution; and

(ii) the total amount of the expenditures by the Corporation and obligations incurred by the Corporation (including any immediate and long-term obligation of the Corporation and any direct or contingent liability for future payment by the Corporation) in connection with the exercise of any such authority with respect to such institution is the least costly to the Deposit Insurance Fund of all possible methods for meeting the Corporation's obligation under this section.

(B) DETERMINING LEAST COSTLY APPROACH.—In determining how to satisfy the Corporation's obligations to an institution's insured depositors at the least possible cost to the Deposit Insurance Fund, the Corporation shall comply with the following provisions:

(i) PRESENT-VALUE ANALYSIS; DOCUMENTATION REQUIRED.—The Corporation shall—

(I) evaluate alternatives on a present-value basis, using a realistic discount rate;

(II) document that evaluation and the assumptions on which the evaluation is based, including any assumptions with regard to interest rates, asset recovery rates, asset holding costs, and payment of contingent liabilities; and

(III) retain the documentation for not less than 5 years.

(ii) FOREGONE TAX REVENUES.—Federal tax revenues that the Government would forego as the result of a proposed transaction, to the extent reasonably ascertainable, shall be

[1] So in original. Probably should be ''an''.

treated as if they were revenues foregone by the Deposit Insurance Fund.

(C) TIME OF DETERMINATION.—

(i) GENERAL RULE.—For purposes of this subsection, the determination of the costs of providing any assistance under paragraph (1) or (2) or any other provision of this section with respect to any depository institution shall be made as of the date on which the Corporation makes the determination to provide such assistance to the institution under this section.

(ii) RULE FOR LIQUIDATIONS.—For purposes of this subsection, the determination of the costs of liquidation of any depository institution shall be made as of the earliest of—

(I) the date on which a conservator is appointed for such institution;

(II) the date on which a receiver is appointed for such institution; or

(III) the date on which the Corporation makes any determination to provide any assistance under this section with respect to such institution.

(D) LIQUIDATION COSTS.—In determining the cost of liquidating any depository institution for the purpose of comparing the costs under subparagraph (A) (with respect to such institution), the amount of such cost may not exceed the amount which is equal to the sum of the insured deposits of such institution as of the earliest of the dates described in subparagraph (C), minus the present value of the total net amount the Corporation reasonably expects to receive from the disposition of the assets of such institution in connection with such liquidation.

(E) DEPOSIT INSURANCE FUND AVAILABLE FOR INTENDED PURPOSE ONLY.—

(i) IN GENERAL.—After December 31, 1994, or at such earlier time as the Corporation determines to be appropriate, the Corporation may not take any action, directly or indirectly, with respect to any insured depository institution that would have the effect of increasing losses to the Deposit Insurance Fund by protecting—

(I) depositors for more than the insured portion of deposits (determined without regard to whether such institution is liquidated); or

(II) creditors other than depositors.

(ii) DEADLINE FOR REGULATIONS.—The Corporation shall prescribe regulations to implement clause (i) not later than January 1, 1994, and the regulations shall take effect not later than January 1, 1995.

(iii) PURCHASE AND ASSUMPTION TRANSACTIONS.—No provision of this subparagraph shall be construed as prohibiting the Corporation from allowing any person who acquires any assets or assumes any liabilities of any insured depository institution for which the Corporation has been appointed conservator or receiver to acquire uninsured deposit liabilities of such institution so long as the insurance fund does not incur any loss with respect to such deposit liabilities in an amount greater than the loss which would have been incurred with respect to such liabilities if the institution had been liquidated.

(F) DISCRETIONARY DETERMINATIONS.—Any determination which the Corporation may make under this paragraph shall be made in the sole discretion of the Corporation.

(G) SYSTEMIC RISK.—

(i) EMERGENCY DETERMINATION BY SECRETARY OF THE TREASURY.—Notwithstanding subparagraphs (A) and (E), if, upon the written recommendation of the Board of Directors (upon a vote of not less than two-thirds of the members of the Board of Directors) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that—

(I) the Corporation's compliance with subparagraphs (A) and (E) with respect to an insured depository institution for which the Corporation has been appointed receiver would have serious adverse effects on economic conditions or financial stability; and

(II) any action or assistance under this subparagraph would avoid or mitigate such adverse effects,

the Corporation may take other action or provide assistance under this section for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver as necessary to avoid or mitigate such effects.

(ii) REPAYMENT OF LOSS.—

(I) IN GENERAL.—The Corporation shall recover the loss to the Deposit Insurance Fund arising from any action taken or assistance provided with respect to an insured depository institution under clause (i) from 1 or more special assessments on insured depository institutions, depository institution holding companies (with the concurrence of the Secretary of the Treasury with respect to holding companies), or both, as the Corporation determines to be appropriate.

(II) TREATMENT OF DEPOSITORY INSTITUTION HOLDING COMPANIES.—For purposes of this clause, sections 1817(c)(2) and 1828(h) of this title shall apply to depository institution holding companies as if they were insured depository institutions.

(III) REGULATIONS.—The Corporation shall prescribe such regulations as it deems necessary to implement this clause. In prescribing such regulations, defining terms, and setting the appropriate assessment rate or rates, the Corporation shall establish rates sufficient to cover the losses incurred as a result of the actions of the Corporation under clause (i) and shall consider: the types of entities that benefit from any action taken or assistance provided under this subparagraph; economic conditions, the effects on the industry, and such other factors as the Corporation deems appropriate and relevant to the action taken or the assistance provided. Any funds so collected that exceed actual

losses shall be placed in the Deposit Insurance Fund.

(iii) DOCUMENTATION REQUIRED.—The Secretary of the Treasury shall—

(I) document any determination under clause (i); and

(II) retain the documentation for review under clause (iv).

(iv) GAO REVIEW.—The Comptroller General of the United States shall review and report to the Congress on any determination under clause (i), including—

(I) the basis for the determination;

(II) the purpose for which any action was taken pursuant to such clause; and

(III) the likely effect of the determination and such action on the incentives and conduct of insured depository institutions and uninsured depositors.

(v) NOTICE.—

(I) IN GENERAL.—Not later than 3 days after making a determination under clause (i), the Secretary of the Treasury shall provide written notice of any determination under clause (i) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

(II) DESCRIPTION OF BASIS OF DETERMINATION.—The notice under subclause (I) shall include a description of the basis for any determination under clause (i).

(H) RULE OF CONSTRUCTION.—No provision of law shall be construed as permitting the Corporation to take any action prohibited by paragraph (4) unless such provision expressly provides, by direct reference to this paragraph, that this paragraph shall not apply with respect to such action.

(5) The Corporation may not use its authority under this subsection to purchase the voting or common stock of an insured depository institution. Nothing in the preceding sentence shall be construed to limit the ability of the Corporation to enter into and enforce covenants and agreements that it determines to be necessary to protect its financial interest.

(6)(A) During any period in which an insured depository institution has received assistance under this subsection and such assistance is still outstanding, such insured depository institution may defer the payment of any State or local tax which is determined on the basis of the deposits held by such insured depository institution or of the interest or dividends paid on such deposits.

(B) When such insured depository institution no longer has any outstanding assistance, such insured depository institution shall pay all taxes which were deferred under subparagraph (A). Such payments shall be made in accordance with a payment plan established by the Corporation, after consultation with the applicable State and local taxing authorities.

(7) The transfer of any assets or liabilities associated with any trust business of an insured depository institution in default under subparagraph (2)(A) shall be effective without any State or Federal approval, assignment, or consent with respect thereto.

(8) ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(A) IN GENERAL.—Subject to the least-cost provisions of paragraph (4), the Corporation shall consider providing direct financial assistance under this section for depository institutions before the appointment of a conservator or receiver for such institution only under the following circumstances:

(i) TROUBLED CONDITION CRITERIA.—The Corporation determines—

(I) grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the depository institution's capital levels are increased; and

(II) it is unlikely that the institution can meet all currently applicable capital standards without assistance.

(ii) OTHER CRITERIA.—The depository institution meets the following criteria:

(I) The appropriate Federal banking agency and the Corporation have determined that, during such period of time preceding the date of such determination as the agency or the Corporation considers to be relevant, the institution's management has been competent and has complied with applicable laws, rules, and supervisory directives and orders.

(II) The institution's management did not engage in any insider dealing, speculative practice, or other abusive activity.

(B) PUBLIC DISCLOSURE.—Any determination under this paragraph to provide assistance under this section shall be made in writing and published in the Federal Register.

(9) Any assistance provided under this subsection may be in subordination to the rights of depositors and other creditors.

(10) In its annual report to the Congress, the Corporation shall report the total amount it has saved, or estimates it has saved, by exercising the authority provided in this subsection.

(11) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—No provision contained in any existing or future standstill, confidentiality, or other agreement that, directly or indirectly—

(A) affects, restricts, or limits the ability of any person to offer to acquire or acquire,

(B) prohibits any person from offering to acquire or acquiring, or

(C) prohibits any person from using any previously disclosed information in connection with any such offer to acquire or acquisition of,

all or part of any insured depository institution, including any liabilities, assets, or interest therein, in connection with any transaction in which the Corporation exercises its authority under section 1821 of this title or this section, shall be enforceable against or impose any liability on such person, as such enforcement or liability shall be contrary to public policy.

(d) Sale of assets to Corporation

(1) In general

Any conservator, receiver, or liquidator appointed for any insured depository institution

in default, including the Corporation acting in such capacity, shall be entitled to offer the assets of such depository institutions for sale to the Corporation or as security for loans from the Corporation.

(2) Proceeds

The proceeds of every sale or loan of assets to the Corporation shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such depository institutions.

(3) Rights and powers of Corporation

(A) In general

With respect to any asset acquired or liability assumed pursuant to this section, the Corporation shall have all of the rights, powers, privileges, and authorities of the Corporation as receiver under sections 1821 and 1825(b) of this title.

(B) Rule of construction

Such rights, powers, privileges, and authorities shall be in addition to and not in derogation of any rights, powers, privileges, and authorities otherwise applicable to the Corporation.

(C) Fiduciary responsibility

In exercising any right, power, privilege, or authority described in subparagraph (A), the Corporation shall continue to be subject to the fiduciary duties and obligations of the Corporation as receiver to claimants against the insured depository institution in receivership.

(D) Disposition of assets

In exercising any right, power, privilege, or authority described in subparagraph (A) regarding the sale or disposition of assets sold to the Corporation pursuant to paragraph (1), the Corporation shall conduct its operations in a manner which—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases;

(iii) ensures adequate competition and fair and consistent treatment of offerors;

(iv) prohibits discrimination on the basis of race, sex, or ethnic groups in the solicitation and consideration of offers; and

(v) maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals.

(4) Loans

The Corporation, in its discretion, may make loans on the security of or may purchase and liquidate or sell any part of the assets of an insured depository institution which is now or may hereafter be in default.

(e) Agreements against interests of Corporation

(1) In general

No agreement which tends to diminish or defeat the interest of the Corporation in any asset acquired by it under this section or section 1821 of this title, either as security for a loan or by purchase or as receiver of any insured depository institution, shall be valid against the Corporation unless such agreement—

(A) is in writing,

(B) was executed by the depository institution and any person claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the depository institution,

(C) was approved by the board of directors of the depository institution or its loan committee, which approval shall be reflected in the minutes of said board or committee, and

(D) has been, continuously, from the time of its execution, an official record of the depository institution.

(2) Exemptions from contemporaneous execution requirement

An agreement to provide for the lawful collateralization of—

(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 1821(a)(2) of this title, including an agreement to provide collateral in lieu of a surety bond;

(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11;

(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

(D) one or more qualified financial contracts, as defined in section 1821(e)(8)(D) of this title,

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.

(f) Assisted emergency interstate acquisitions

(1) This subsection shall apply only to an acquisition of an insured bank or a holding company by an out-of-State bank[2] savings association or out-of-State holding company for which the Corporation provides assistance under subsection (c) of this section.

(2)(A) Whenever an insured bank with total assets of $500,000,000 or more (as determined from its most recent report of condition) is in default, the Corporation, as receiver, may, in its discretion and upon such terms and conditions as the Corporation may determine, arrange the sale of assets of the bank in default and the assumption of the liabilities of the bank in default, including the sale of such assets to and the assumption of such liabilities by an insured depository institution located in the State where the bank in default was chartered but established by an out-of-State bank or holding company. Where otherwise lawfully required, a transaction under this subsection must be approved by the primary Federal or State supervisor of all parties thereto.

(B)(i) Before making a determination to take any action under subparagraph (A), the Corpora-

[2] So in original. Probably should be followed by ''or''.

tion shall consult the State bank supervisor of the State in which the insured bank in default was chartered.

(ii) The State bank supervisor shall be given a reasonable opportunity, and in no event less than forty-eight hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

(iii) If the State supervisor objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent of the Board of Directors. The Board of Directors shall provide to the State supervisor, as soon as practicable, a written certification of its determination.

(3) EMERGENCY INTERSTATE ACQUISITIONS OF INSURED BANKS IN DANGER OF DEFAULT.—

(A) ACQUISITION OF INSURED BANKS IN DANGER OF DEFAULT.—One or more out-of-State banks or out-of-State holding companies may acquire and retain all or part of the shares or assets of, or otherwise acquire and retain—

(i) an insured bank in danger of default which has total assets of $500,000,000 or more; or

(ii) 2 or more affiliated insured banks in danger of default which have aggregate total assets of $500,000,000 or more, if the aggregate total assets of such banks is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks.

(B) ACQUISITION OF A HOLDING COMPANY OR OTHER BANK AFFILIATE.—If one or more out-of-State banks or out-of-State holding companies acquire 1 or more affiliated insured banks under subparagraph (A) the aggregate total assets of which is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks, any such out-of-State bank or out-of-State holding company may also, as part of the same transaction, acquire and retain the shares or assets of, or otherwise acquire and retain—

(i) the holding company which controls the affiliated insured banks so acquired; or

(ii) any other affiliated insured bank.

(C) REQUEST FOR ASSISTANCE BY CORPORATE BOARD OF DIRECTORS.—The Corporation may assist an acquisition or merger authorized under subparagraph (A) only if the board of directors or trustees of each insured bank in danger of default which is being acquired has requested in writing that the Corporation assist the acquisition or merger.

(D) CERTAIN ACQUISITIONS AUTHORIZED AFTER ASSISTANCE IS PROVIDED.—Notwithstanding paragraph (1), if—

(i) at any time after August 10, 1987, the Corporation provides any assistance under subsection (c) of this section to an insured bank; and

(ii) at the time such assistance is granted, the insured bank, the holding company which controls the insured bank (if any), or any affiliated insured bank is eligible to be acquired by an out-of-State bank or out-of-State holding company under this paragraph,

the insured bank, the holding company, and such other affiliated insured bank shall remain eligible, subject to such terms and conditions as the Corporation (in the Corporation's discretion) may impose, to be acquired by an out-of-State bank or out-of-State holding company under this paragraph as long as any portion of such assistance remains outstanding.

(E) STATE BANK SUPERVISOR APPROVAL.—The Corporation may take no final action in connection with any acquisition under this paragraph unless the State bank supervisor of the State in which the bank in danger of default is located approves the acquisition.

(F) OTHER REQUIREMENTS NOT AFFECTED.—This paragraph does not affect any other requirement under Federal or State law for regulatory approval of an acquisition under this paragraph.

(G) ACQUISITION MAY BE CONDITIONED ON RECEIPT OF CONSIDERATION FOR CORPORATION'S ASSISTANCE.—Any acquisition described in subparagraph (D) may be conditioned on the receipt of such consideration for the Corporation's assistance as the Board of Directors deems appropriate.

(4)(A) ACQUISITIONS NOT SUBJECT TO CERTAIN OTHER LAWS.—Section 1842(d) of this title, any provision of State law, and section 1730a(e)(3)[3] of this title shall not apply to prohibit any acquisition under paragraph (2) or (3), except that an out-of-State bank may make such an acquisition only if such ownership is otherwise specifically authorized.

(B) Any subsidiary created by operation of this subsection may retain and operate any existing branch or branches of the institution merged with or acquired under paragraph (2) or (3), but otherwise shall be subject to the conditions upon which a national bank may establish and operate branches in the State in which such insured institution is located.

(C) No insured institution acquired under this subsection shall after it is acquired move its principal office or any branch office which it would be prohibited from moving if the institution were a national bank.

(D) SUBSEQUENT NONEMERGENCY INTERSTATE ACQUISITIONS SUBJECT TO STATE LAW.—

(i) IN GENERAL.—Any out-of-State bank holding company which acquires control of an insured bank in any State under paragraph (2) or (3) may acquire any other insured bank and establish branches in such State to the same extent as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State may acquire any other insured bank or establish branches.

(ii) DELAYED DATE OF APPLICABILITY.—Clause (i) shall not apply with respect to any out-of-State bank holding company referred to in such clause before the earlier of—

(I) the end of the 2-year period beginning on the date the acquisition referred to in such clause with respect to such company is consummated; or

(II) the end of any period established under State law during which such out-of-State

[3] See References in Text note below.

bank holding company may not be treated as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State for purposes of acquiring other insured banks or establishing bank branches.

(iii) DETERMINATION OF PRINCIPALLY CONDUCTED.—For purposes of this subparagraph, the State in which the operations of a holding company's insured bank subsidiaries are principally conducted is the State determined under section 1842(d) of this title with respect to such holding company.

(E) CERTAIN STATE INTERSTATE BANKING LAWS INAPPLICABLE.—Any holding company which acquires control of any insured bank or holding company under paragraph (2) or (3) or subparagraph (D) of this paragraph shall not, by reason of such acquisition, be required under the law of any State to divest any other insured bank or be prevented from acquiring any other bank or holding company.

(5) In determining whether to arrange a sale of assets and assumption of liabilities or an acquisition or a merger under the authority of paragraph (2) or (3), the Corporation may solicit such offers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the bank in default or the bank in danger of default.

(6)(A) If, after receiving offers, the offer presenting the lowest expense to the Corporation, that is in a form and with conditions acceptable to the Corporation (hereinafter referred to as the ''lowest acceptable offer''), is from an offeror that is not an existing in-State bank of the same type as the bank that is in default or is in danger of default (or, where the bank is an insured bank other than a mutual savings bank, the lowest acceptable offer is not from an in-State holding company), the Corporation shall permit the offeror which made the initial lowest acceptable offer and each offeror who made an offer the estimated cost of which to the Corporation was within 15 per centum or $15,000,000, whichever is less, of the initial lowest acceptable offer to submit a new offer.

(B) In considering authorizations under this subsection, the Corporation shall give consideration to the need to minimize the cost of financial assistance and to the maintenance of specialized depository institutions. The Corporation shall authorize transactions under this subsection considering the following priorities:

(i) First, between depository institutions of the same type within the same State.

(ii) Second, between depository institutions of the same type—

(I) in different States which by statute specifically authorize such acquisitions; or

(II) in the absence of such statutes, in different States which are contiguous.

(iii) Third, between depository institutions of the same type in different States other than the States described in clause (ii).

(iv) Fourth, between depository institutions of different types in the same State.

(v) Fifth, between depository institutions of different types—

(I) in different States which by statute specifically authorize such acquisitions; or

(II) in the absence of such statutes, in different States which are contiguous.

(vi) Sixth, between depository institutions of different types in different States other than the States described in clause (v).

(C) MINORITY BANK PRIORITY.—In the case of a minority-controlled bank, the Corporation shall seek an offer from other minority-controlled banks before proceeding with the bidding priorities set forth in subparagraph (B).

(D) In determining the cost of offers and reoffers, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers and reoffers.

(7) No sale may be made under the provisions of paragraph (2) or (3)—

(A) which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(B) whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Corporation finds that the anticompetitive effects of the proposed transactions are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served; or

(C) if in the opinion of the Corporation the acquisition threatens the safety and soundness of the acquirer or does not result in the future viability of the resulting depository institution.

(8) As used in this subsection—

(A) the term ''in-State depository institution or in-State holding company'' means an existing insured depository institution currently operating in the State in which the bank in default or the bank in danger of default is chartered or a company that is operating an insured depository institution subsidiary in the State in which the bank in default or the bank in danger of default is chartered;

(B) the term ''acquire'' means to acquire, directly or indirectly, ownership or control through—

(i) an acquisition of shares;

(ii) an acquisition of assets or assumption of liabilities;

(iii) a merger or consolidation; or

(iv) any similar transaction;

(C) the term ''affiliated insured bank'' means—

(i) when used in connection with a reference to a holding company, an insured bank which is a subsidiary of such holding company; and

(ii) when used in connection with a reference to 2 or more insured banks, insured banks which are subsidiaries of the same holding company; and

(D) the term ''subsidiary'' has the meaning given to such term in section 1841(d) of this title.

(9) NO ASSISTANCE AUTHORIZED FOR CERTAIN SUBSIDIARIES OF HOLDING COMPANIES.—

(A) IN GENERAL.—The Corporation shall not provide any assistance to a subsidiary, other than a subsidiary that is an insured depository institution, of a holding company in connection with any acquisition under this subsection.

(B) INTERMEDIATE HOLDING COMPANY PERMITTED.—This paragraph does not prohibit an intermediate holding company or an affiliate of an insured depository institution from being a conduit for assistance ultimately intended for an insured bank.

(10) ANNUAL REPORT.—

(A) REQUIRED.—In its annual report to Congress the Corporation shall include a report on the acquisitions under this subsection during the preceding year.

(B) CONTENTS.—The report required under subparagraph (A) shall contain the following information:

(i) The number of acquisitions under this subsection.

(ii) A brief description of each such acquisition and the circumstances under which such acquisition occurred.

(11) DETERMINATION OF TOTAL ASSETS.—For purposes of this subsection, the total assets of any insured bank shall be determined on the basis of the most recent report of condition of such bank which is available at the time of such determination.

(12) ACQUISITION OF MINORITY BANK BY MINORITY BANK HOLDING COMPANY WITHOUT REGARD TO ASSET SIZE.—

(A) IN GENERAL.—For the purpose of ensuring continued minority control of a minority-controlled bank, paragraphs (2) and (3) shall apply with respect to the acquisition of a minority-controlled bank by an out-of-State minority-controlled depository institution or depository institution holding company without regard to the fact that the total assets of such minority-controlled bank are less than $500,000,000.

(B) DEFINITIONS.—For purposes of this paragraph:

(i) MINORITY BANK.—The term ''minority bank'' means any depository institution described in clause (i), (ii), or (iii) of section 461(b)(1)(A) of this title—

(I) more than 50 percent of the ownership or control of which is held by one or more minority individuals; and

(II) more than 50 percent of the net profit or loss of which accrues to minority individuals.

(ii) MINORITY.—The term ''minority'' means any Black American, Native American, Hispanic American, or Asian American.

(g) Payment of interest on stock subscriptions

Prior to July 1, 1951, the Corporation shall pay out of its capital account to the Secretary of the Treasury an amount equal to 2 per centum simple interest per annum on amounts advanced to the Corporation on stock subscriptions by the Secretary of the Treasury and the Federal Reserve banks, from the time of such advances until the amounts thereof were repaid. The amount payable hereunder shall be paid in two equal installments, the first installment to be paid prior to December 31, 1950.

(h) Reopening or aversion of closing of insured branch of foreign bank

The powers conferred on the Board of Directors and the Corporation by this section to take action to reopen an insured depository institution in default or to avert the default of an insured depository institution may be used with respect to an insured branch of a foreign bank if, in the judgment of the Board of Directors, the public interest in avoiding the default of such branch substantially outweighs any additional risk of loss to the Deposit Insurance Fund which the exercise of such powers would entail.

(i) Repealed. Pub. L. 97–320, title II, § 206, Oct. 15, 1982, 96 Stat. 1496

(j) Loan loss amortization for certain banks

(1) Eligibility

The appropriate Federal banking agency shall permit an agricultural bank to take the actions referred to in paragraph (2) if it finds that—

(A) there is no evidence that fraud or criminal abuse on the part of the bank led to the losses referred to in paragraph (2); and

(B) the agricultural bank has a plan to restore its capital, not later than the close of the amortization period established under paragraph (2), to a level prescribed by the appropriate Federal banking agency.

(2) Seven-year loss amortization

(A) Any loss on any qualified agricultural loan that an agricultural bank would otherwise be required to show on its annual financial statement for any year between December 31, 1983, and January 1, 1992, may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

(B) An agricultural bank may reappraise any real estate or other property, real or personal, that it acquired coincident to the making of a qualified agricultural loan and that it owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992. Any loss that such bank would otherwise be required to show on its annual financial statements as the result of any such reappraisal may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

(3) Regulations

Not later than 90 days after August 10, 1987, the appropriate Federal banking agency shall issue regulations implementing this subsection with respect to banks that it supervises, including regulations implementing the capital restoration requirement of paragraph (1)(B).

(4) Definitions

As used in this subsection—

(A) the term ''agricultural bank'' means a bank—

(i) the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) which is located in an area the economy of which is dependent on agriculture;

(iii) which has assets of $100,000,000 or less; and

(iv) which has—

(I) at least 25 percent of its total loans in qualified agricultural loans; or

(II) fewer than 25 percent of its total loans in qualified agricultural loans but which the appropriate Federal banking agency or State bank commissioner recommends to the Corporation for eligibility under this section, or which the Corporation, on its motion, deems eligible; and

(B) the term ''qualified agricultural loan'' means a loan made to finance the production of agricultural products or livestock in the United States, a loan secured by farmland or farm machinery, or such other category of loans as the appropriate Federal banking agency may deem eligible.

(5) Maintenance of portfolio

As a condition of eligibility under this subsection, the agricultural bank must agree to maintain in its loan portfolio a percentage of agricultural loans which is not lower than the percentage of such loans in its loan portfolio on January 1, 1986.

(k) Emergency acquisitions

(1) In general

(A) Acquisitions authorized

(i) Transactions described

Notwithstanding any provision of State law, upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, the Corporation, in its discretion and if it determines such authorization would lessen the risk to the Corporation, may authorize—

(I) a savings association that is eligible for assistance pursuant to subsection (c) of this section to merge or consolidate with, or to transfer its assets and liabilities to, any other savings association or any insured bank,

(II) any other savings association to acquire control of such savings association, or

(III) any company to acquire control of such savings association or to acquire the assets or assume the liabilities thereof.

The Corporation may not authorize any transaction under this subsection unless the Corporation determines that the authorization will not present a substantial risk to the safety or soundness of the savings association to be acquired or any acquiring entity.

(ii) Terms of transactions

Mergers, consolidations, transfers, and acquisitions under this subsection shall be on such terms as the Corporation shall provide.

(iii) Approval by appropriate agency

Where otherwise required by law, transactions under this subsection must be approved by the appropriate Federal banking agency of every party thereto.

(iv) Acquisitions by savings associations

Any Federal savings association that acquires another savings association pursuant to clause (i) may, with the concurrence of the Director of the Office of Thrift Supervision, hold that savings association as a subsidiary notwithstanding the percentage limitations of section 1464(c)(4)(B) of this title.

(v) Dual service

Dual service by a management official that would otherwise be prohibited under the Depository Institution Management Interlocks Act [12 U.S.C. 3201 et seq.] may, with the approval of the Corporation, continue for up to 10 years.

(vi) Continued applicability of certain State restrictions

Nothing in this subsection overrides or supersedes State laws restricting or limiting the activities of a savings association on behalf of another entity.

(B) Consultation with State official

(i) Consultation required

Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State official having jurisdiction of the acquired institution.

(ii) Period for State response

The official shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

(iii) Approval over objection of State official

If the official objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent or more of the voting members of the Board of Directors. The Corporation shall provide to the official, as soon as practicable, a written certification of its determination.

(2) Solicitation of offers

(A) In general

In considering authorizations under this subsection, the Corporation may solicit such offers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the savings association.

(B) Minority-controlled institutions

In the case of a minority-controlled depository institution, the Corporation shall seek

an offer from other minority-controlled depository institutions before seeking an offer from other persons or entities.

(3) Determination of costs

In determining the cost of offers under this subsection, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers.

(4) Branching provisions

(A) In general

If a merger, consolidation, transfer, or acquisition under this subsection involves a savings association eligible for assistance and a bank or bank holding company, a savings association may retain and operate any existing branch or branches or any other existing facilities. If the savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any savings association that is not affiliated with a bank holding company and the home office of which is located in the same State.

(B) Restrictions

(i) In general

Notwithstanding subparagraph (A), if—

(I) a savings association described in such subparagraph does not have its home office in the State of the bank holding company bank subsidiary, and

(II) such association does not qualify as a domestic building and loan association under section 7701(a)(19) of title 26, or does not meet the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify,

such savings association shall be subject to the conditions upon which a bank may retain, operate, and establish branches in the State in which the savings association is located.

(ii) Transition period

The Corporation, for good cause shown, may allow a savings association up to 2 years to comply with the requirements of clause (i).

(5) Assistance before appointment of conservator or receiver

(A) Assistance proposals

The Corporation shall consider proposals by savings associations for assistance pursuant to subsection (c) of this section before grounds exist for appointment of a conservator or receiver for such member under the following circumstances:

(i) Troubled condition criteria

The Corporation determines—

(I) that grounds for appointment of a conservator or receiver exist or likely will exist in the future unless the member's tangible capital is increased;

(II) that it is unlikely that the member can achieve positive tangible capital without assistance; and

(III) that providing assistance pursuant to the member's proposal would be likely to lessen the risk to the Corporation.

(ii) Other criteria

The member meets the following criteria:

(I) Before August 9, 1989, the member was solvent under applicable regulatory accounting principles but had negative tangible capital.

(II) The member's negative tangible capital position is substantially attributable to its participation in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons.

(III) The member is a qualified thrift lender (as defined in section 1467a(m) of this title) or would be a qualified thrift lender if commercial real estate owned and nonperforming commercial loans acquired in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons were excluded from the member's total assets.

(IV) The appropriate Federal banking agency has determined that the member's management is competent and has complied with applicable laws, rules, and supervisory directives and orders.

(V) The member's management did not engage in insider dealing or speculative practices or other activities that jeopardized the member's safety and soundness or contributed to its impaired capital position.

(VI) The member's offices are located in an economically depressed region.

(B) Corporation consideration of assistance proposal

If a member meets the requirements of clauses (i) and (ii) of subparagraph (A), the Corporation shall consider providing direct financial assistance.

(C) "Economically depressed region" defined

For purposes of this paragraph, the term ''economically depressed region'' means any geographical region which the Corporation determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices.

(Sept. 21, 1950, ch. 967, §2[13], 64 Stat. 888; Pub. L. 95–369, §6(c)(24), Sept. 17, 1978, 92 Stat. 619; Pub. L. 97–320, title I, §§111, 113(m), 116, 141(a)(1), (3), title II, §§203, 206, Oct. 15, 1982, 96 Stat. 1469, 1474, 1476, 1488, 1489, 1492, 1496; Pub. L. 97–457, §§1(a), 4, 10(a), Jan. 12, 1983, 96 Stat. 2507, 2508; Pub. L. 98–29, §1(a), May 16, 1983, 97 Stat. 189; Pub. L. 100–86, title V, §§502(a)–(g), (i), 509(a), title VIII, §801, Aug. 10, 1987, 101 Stat. 623–627, 629, 635, 656; Pub. L. 101–73, title II, §§201(a), 217, Aug. 9, 1989, 103 Stat. 187, 254; Pub. L. 102–242, title I, §§123(b),

141(a)(1), (e), Dec. 19, 1991, 105 Stat. 2252, 2273, 2278; Pub. L. 103–325, title III, § 317, title VI, § 602(a)(34)–(42), Sept. 23, 1994, 108 Stat. 2223, 2289, 2290; Pub. L. 104–208, div. A, title II, § 2704(d)(14)(M), Sept. 30, 1996, 110 Stat. 3009–492; Pub. L. 109–8, title IX, § 909, Apr. 20, 2005, 119 Stat. 183; Pub. L. 109–171, title II, § 2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §§ 3(a)(8), 8(a)(19), Feb. 15, 2006, 119 Stat. 3606, 3613; Pub. L. 110–343, div. A, title I, § 126(c), Oct. 3, 2008, 122 Stat. 3795; Pub. L. 111–22, div. A, title II, § 204(d), May 20, 2009, 123 Stat. 1650; Pub. L. 111–203, title III, § 363(6), title XI, § 1106(b), July 21, 2010, 124 Stat. 1553, 2125.)

AMENDMENT OF SUBSECTION (k)(1)(A)(iv)

Pub. L. 111–203, title III, §§ 351, 363(6), July 21, 2010, 124 Stat. 1546, 1553, provided that, effective on the transfer date, subsection (k)(1)(A)(iv) of this section is amended by substituting ''Comptroller of the Currency'' for ''Director of the Office of Thrift Supervision''. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 1730a of this title, referred to in subsec. (f)(4)(A), was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

The Depository Institution Management Interlocks Act, referred to in subsec. (k)(1)(A)(v), is title II of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3672, as amended, which is classified principally to chapter 33 (§ 3201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of this title and Tables.

PRIOR PROVISIONS

Section is derived from subsec. (n) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2010—Subsec. (c)(4)(G)(i). Pub. L. 111–203, § 1106(b)(1)(B), inserted ''for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver'' after ''provide assistance under this section'' in concluding provisions.

Subsec. (c)(4)(G)(i)(I). Pub. L. 111–203, § 1106(b)(1)(A), inserted ''for which the Corporation has been appointed receiver'' before ''would have serious''.

Subsec. (c)(4)(G)(v)(I). Pub. L. 111–203, § 1106(b)(2), substituted ''Not later than 3 days after making a determination under clause (i), the'' for ''The''.

2009—Subsec. (c)(4)(G)(ii). Pub. L. 111–22 amended cl. (ii) generally. Prior to amendment, text read as follows: ''The Corporation shall recover the loss to the Deposit Insurance Fund arising from any action taken or assistance provided with respect to an insured depository institution under clause (i) expeditiously from 1 or more emergency special assessments on insured depository institutions equal to the product of—

''(I) an assessment rate established by the Corporation; and

''(II) the amount of each insured depository institution's average total assets during the assessment period, minus the sum of the amount of the institution's average total tangible equity and the amount of the institution's average total subordinated debt.''

2008—Subsec. (c)(11). Pub. L. 110–343 added par. (11).

2006—Subsec. (a)(1). Pub. L. 109–173, § 8(a)(19)(B), substituted ''Deposit Insurance Fund'' for ''Bank Insurance Fund, the Savings Association Insurance Fund,''.

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

Subsec. (c)(4)(A)(ii), (B). Pub. L. 109–173, § 8(a)(19)(A), substituted ''Deposit Insurance Fund'' for ''deposit insurance fund'' wherever appearing.

Subsec. (c)(4)(E). Pub. L. 109–173, § 8(a)(19)(C)(i), substituted ''fund'' for ''funds'' in heading.

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

Subsec. (c)(4)(E)(i). Pub. L. 109–173, § 8(a)(19)(C)(ii), substituted ''the Deposit Insurance Fund'' for ''any insurance fund'' in introductory provisions.

Subsec. (c)(4)(G)(ii). Pub. L. 109–173, § 8(a)(19)(D)(i), (ii), in introductory provisions, substituted ''Deposit Insurance Fund'' for ''appropriate insurance fund'' and ''insured depository institutions'' for ''the members of the insurance fund (of which such institution is a member)''.

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

Subsec. (c)(4)(G)(ii)(II). Pub. L. 109–173, § 8(a)(19)(D)(iii), (iv), substituted ''the institution's'' for ''the member's'' in two places and substituted ''each insured depository institution's'' for ''each member's''.

Pub. L. 109–173, § 3(a)(8), substituted ''assessment period'' for ''semiannual period''.

Subsec. (c)(11). Pub. L. 109–173, § 8(a)(19)(E), struck out par. (11) which read as follows: ''Payments made under this subsection shall be made—

''(A) from the Bank Insurance Fund in the case of payments to or on behalf of a member of such Fund; or

''(B) from the Savings Association Insurance Fund or from funds made available by the Resolution Trust Corporation in the case of payments to or on behalf of any Savings Association Insurance Fund member.''

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

Subsec. (h). Pub. L. 109–173, § 8(a)(19)(F), substituted ''Deposit Insurance Fund'' for ''Bank Insurance Fund''.

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

Subsec. (k)(4)(B)(i). Pub. L. 109–173, § 8(a)(19)(G), substituted ''savings association is'' for ''Savings Association Insurance Fund member is'' in concluding provisions.

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

Subsec. (k)(5)(A). Pub. L. 109–173, § 8(a)(19)(H), substituted ''savings associations'' for ''Savings Association Insurance Fund members'' in introductory provisions.

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

2005—Subsec. (e)(2). Pub. L. 109–8 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''An agreement to provide for the lawful collateralization of deposits of a Federal, State, or local governmental entity or of any depositor referred to in section 1821(a)(2) of this title shall not be deemed to be invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or with any changes in the collateral made in accordance with such agreement.''

1996—Subsec. (a)(1). Pub. L. 104–208, § 2704(d)(14)(M)(i), which directed substitution of ''Deposit Insurance Fund, the Special Reserve of the Deposit Insurance Fund,'' for ''Bank Insurance Fund, the Savings Association Insurance Fund,'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (c)(4)(E). Pub. L. 104–208, § 2704(d)(14)(M)(ii), which directed substitution of ''fund'' for ''funds'' in heading and ''the Deposit Insurance Fund'' for ''any insurance fund'' in cl. (i), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (c)(4)(G)(ii). Pub. L. 104–208, § 2704(d)(14)(M)(iii), which directed substitution of ''Deposit Insurance Fund'' for ''appropriate insurance fund'', ''insured depository institutions'' for ''the members of the insurance fund (of which such institution is a member)'', ''each insured depository institution's'' for ''each member's'', and ''the institution's'' for ''the

member's'' in two places, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (c)(11). Pub. L. 104–208, §2704(d)(14)(M)(iv), which directed striking out par. (11), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (h). Pub. L. 104–208, §2704(d)(14)(M)(v), which directed substitution of ''Deposit Insurance Fund'' for ''Bank Insurance Fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (k)(4)(B)(i). Pub. L. 104–208, §2704(d)(14)(M)(vi), which directed substitution of ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (k)(5)(A). Pub. L. 104–208, §2704(d)(14)(M)(vii), which directed substitution of ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Subsec. (c)(1)(B). Pub. L. 103–325, §602(a)(34), substituted ''an insured bank in default'' for ''a in default insured bank'' and ''such insured bank'' for ''such in default insured bank''.

Subsec. (c)(2)(A). Pub. L. 103–325, §602(a)(35), substituted ''with another insured depository institution'' for ''with an insured institution'' and ''by another depository institution'' for ''by an insured institution''.

Subsec. (e). Pub. L. 103–325, §317, designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) to (4) as subpars. (A) to (D) of par. (1), respectively, and added par. (2).

Subsec. (f)(2)(B)(i). Pub. L. 103–325, §602(a)(36), substituted ''the insured bank in default'' for ''the in default insured bank''.

Subsec. (f)(2)(B)(iii). Pub. L. 103–325, §602(a)(37), substituted ''of'' for ''of of'' after ''percent''.

Subsec. (f)(3). Pub. L. 103–325, §602(a)(38), substituted ''DEFAULT'' for ''CLOSING'' in heading.

Subsec. (f)(6)(A). Pub. L. 103–325, §602(a)(39), substituted ''bank that is in default'' for ''bank that has in default''.

Subsec. (f)(6)(B)(i). Pub. L. 103–325, §602(a)(40), inserted period for semicolon at end.

Subsec. (f)(7)(A), (B). Pub. L. 103–325, §602(a)(41), struck out ''or'' at end of subpar. (A) and substituted ''; or'' for period at end of subpar. (B).

Subsec. (f)(12)(A). Pub. L. 103–325, §602(a)(42), substituted ''are'' for ''is''.

1991—Subsec. (c)(4) to (10). Pub. L. 102–242, §141(a)(1), (e), redesignated former pars. (5) to (9) as (6) to (10), respectively, redesignated subpar. (B) of par. (4) as par. (5), amended par. (4)(A) generally and redesignated it as par. (4), further redesignated pars. (8) to (10) as (9) to (11), respectively, and added par. (8). Prior to amendment, par. (4)(A) read as follows: ''No assistance shall be provided under this subsection in an amount in excess of that amount which the Corporation determines to be reasonably necessary to save the cost of liquidating, including paying the insured accounts of, such insured depository institution, except that such restriction shall not apply in any case in which the Corporation determines that the continued operation of such insured depository institution is essential to provide adequate depository services in its community. In calculating the cost of assistance, the Corporation shall include (i) the immediate and long-term obligations of the Corporation with respect to such assistance, including contingent liabilities, and (ii) the Federal tax revenues foregone by the Government, to the extent reasonably ascertainable.''

Subsec. (d)(3)(D). Pub. L. 102–242, §123(b), added subpar. (D).

1989—Subsec. (a). Pub. L. 101–73, §217(1), added heading and text of subsec. (a) and struck out former subsec. (a) which read as follows: ''Money of the Corporation not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States: *Provided*, That the Corporation shall not sell or purchase any such obligations for its own account and in its own right and interest, at any one time aggregating in excess of $100,000, without the approval of the Secretary of the Treasury: *And provided further*, That the Secretary of the Treasury may waive the requirement of his approval with respect to any transaction or classes of transactions subject to the provisions of this subsection for such period of time and under such conditions as he may determine.''

Subsec. (b). Pub. L. 101–73, §217(2), substituted ''depository accounts of the Corporation'', ''temporary purposes of depository accounts'', and ''depository accounts to facilitate'' for ''banking or checking accounts of the Corporation'', ''temporary purposes of banking and checking accounts'', and ''banking and checking accounts to facilitate'', respectively, and substituted ''depository institution'' for ''bank'' in four places.

Pub. L. 101–73, §201(a), substituted ''insured depository institutions'' for ''insured banks''.

Subsec. (c)(1). Pub. L. 101–73, §201(a), substituted reference to insured depository institution for reference to insured bank in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 101–73, §217(3)(A), substituted ''default'' for ''closing''.

Pub. L. 101–73, §201(a), substituted reference to insured depository institution for reference to insured bank.

Subsec. (c)(1)(B). Pub. L. 101–73, §217(3)(C), which directed the amendment of subsec. (c) by substituting ''insured depository institution in default'' for ''in default insured depository institution'' wherever appearing, could not be executed because phrase ''in default insured depository institution'' did not appear in text.

Pub. L. 101–73, §217(3)(B), which directed the amendment of subsec. (c) by substituting ''a'' for ''an'' wherever appearing before ''closed insured bank'', could not be executed because ''an'' did not appear before ''closed insured bank'' in text.

Pub. L. 101–73, §217(3)(A), substituted ''in default'' for ''closed'' in two places.

Subsec. (c)(1)(C). Pub. L. 101–73, §201(a), substituted references to insured depository institutions for references to insured banks wherever appearing.

Subsec. (c)(2)(A). Pub. L. 101–73, §217(3)(D)(i), substituted ''such other insured depository institution'' for ''such insured institution'' wherever appearing in cls. (ii) and (iii) and ''another insured depository institution'' for ''an insured depository institution'' in introductory provisions.

Pub. L. 101–73, §217(3)(D)(ii), (iii), in introductory provisions, substituted ''the sale of any or all of the assets'' for ''the sale of assets'' and ''or the assumption of any or all'' for ''and the assumption''.

Pub. L. 101–73, §201(a), substituted ''insured depository institution'' and ''insured depository institution's'' for ''insured bank'' and ''insured bank's'' wherever appearing.

Subsec. (c)(2)(B). Pub. L. 101–73, §217(3)(A), substituted ''in default'' for ''closed'' in cl. (i) and ''default'' for ''closing'' in cl. (ii).

Pub. L. 101–73, §201(a), substituted references to insured depository institutions for references to insured banks wherever appearing.

Subsec. (c)(2)(C). Pub. L. 101–73, §217(3)(E), added subpar. (C).

Subsec. (c)(3). Pub. L. 101–73, §217(3)(F), substituted ''subsection (f) or (k) of this section'' for ''subsection (f) of this section''.

Pub. L. 101–73, §201(a), substituted reference to insured depository institution for reference to insured bank.

Subsec. (c)(4)(A). Pub. L. 101–73, §217(3)(G), substituted ''depository services'' for ''banking services'' and inserted sentence at end relating to calculation of the cost of assistance.

Pub. L. 101–73, §201(a), substituted references to insured depository institutions for references to insured banks wherever appearing.

Subsec. (c)(4)(B). Pub. L. 101–73, §201(a), substituted reference to insured depository institution for reference to insured bank.

Subsec. (c)(5). Pub. L. 101–73, §201(a), substituted references to insured depository institutions for references to insured banks wherever appearing.

Subsec. (c)(6). Pub. L. 101–73, §217(3)(J), added par. (6). Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 101–73, §217(3)(I), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (c)(8). Pub. L. 101–73, §217(3)(H), (I), redesignated par. (7) as (8) and struck out former par. (8) which read as follows: ''For purposes of this subsection, the term 'insured institution' means an insured bank as defined in section 1813 of this title or an insured institution as defined in section 1724 of this title.''

Subsec. (c)(9). Pub. L. 101–73, §217(3)(K), added par. (9).

Subsec. (d). Pub. L. 101–73, §217(4), added subsec. (d) and struck out former subsec. (d), changing the structure of the subsection from a single unnumbered paragraph to one consisting of four numbered paragraphs.

Subsec. (e). Pub. L. 101–73, §217(4), added subsec. (e) and struck out former subsec. (e) which read as follows: ''No agreement which tends to diminish or defeat the right, title or interest of the Corporation in any asset acquired by it under this section, either as security for a loan or by purchase, shall be valid against the Corporation unless such agreement (1) shall be in writing, (2) shall have been executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank, (3) shall have been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of said board or committee, and (4) shall have been, continuously, from the time of its execution, an official record of the bank.''

Subsec. (f)(1). Pub. L. 101–73, §217(5)(C), inserted ''savings association'' after ''out-of-State bank''.

Subsec. (f)(2)(A). Pub. L. 101–73, §217(5)(A), (B), substituted ''is in default'' for ''is closed'', and ''bank in default'' for ''closed bank'' in three places.

Subsec. (f)(2)(B). Pub. L. 101–73, §217(5)(A), (D), substituted ''in default insured bank'' for ''closed insured bank'' in cl. (i), and ''a vote of 75 percent of'' for ''a unanimous vote'' in cl. (iii).

Subsec. (f)(3)(A)(i), (ii), (C), (E). Pub. L. 101–73, §217(5)(A), substituted ''danger of default'' for ''danger of closing''.

Subsec. (f)(4)(A). Pub. L. 101–73, §217(5)(E), struck out ''the constitution of any State,'' after ''State law,''.

Subsec. (f)(5). Pub. L. 101–73, §217(5)(A), (B), substituted ''danger of default'' for ''danger of closing'' and ''bank in default'' for ''closed bank''.

Subsec. (f)(6)(A). Pub. L. 101–73, §217(5)(A), (F), substituted ''the bank that has in default or is in danger of default'' for ''the bank that has closed or is in danger of closing'' and ''the Corporation shall permit the offeror which made the initial lowest acceptable offer and'' for ''the Corporation shall permit''.

Subsec. (f)(7)(C). Pub. L. 101–73, §217(5)(G), added subpar. (C).

Subsec. (f)(8)(A). Pub. L. 101–73, §217(5)(H), redesignated subpar. (C) as (A) and struck out former subpar. (A) which read as follows: ''the term 'receiver' means the Corporation when it has been appointed the receiver of a closed insured bank;''.

Pub. L. 101–73, §217(5)(A), (B), substituted ''danger of default'' for ''danger of closing'' in two places and ''bank in default'' for ''closed bank'' in two places.

Subsec. (f)(8)(B). Pub. L. 101–73, §217(5)(H), redesignated subpar. (E) as (B) and struck out former subpar. (B) which read as follows: ''the term 'insured depository institution' means an insured bank or an association or savings bank insured by the Federal Savings and Loan Insurance Corporation;''.

Subsec. (f)(8)(C). Pub. L. 101–73, §217(5)(H), redesignated subpar. (F) as (C). Former subpar. (C) redesignated (A).

Subsec. (f)(8)(D). Pub. L. 101–73, §217(5)(H), redesignated subpar. (G) as (D) and struck out former subpar. (D) which read as follows: ''the term 'bank in danger of closing' means an insured bank with respect to which the appropriate Federal or State chartering authority certifies in writing that—

''(i)(I) the bank is not likely to be able to meet the demands of such bank's depositors or pay the obligations of the bank in the normal course of business, and

''(II) there is no reasonable prospect that the bank will be able to meet such demands or pay such obligations without Federal assistance; or

''(ii)(I) the bank has incurred or is likely to incur losses that will deplete all or substantially all of the capital of the bank, and

''(II) there is no reasonable prospect for the replenishment of the bank's capital without Federal assistance;''.

Subsec. (f)(8)(E) to (G). Pub. L. 101–73, §217(5)(H), redesignated subpars. (E) to (G) as (B) to (D), respectively.

Subsec. (f)(9). Pub. L. 101–73, §217(5)(I), substituted ''certain subsidiaries'' for ''nonbank subsidiaries'' in heading, ''subsidiary, other than a subsidiary that is an insured depository institution,'' for ''subsidiary'' and ''holding company'' for ''holding company which is not an insured bank'' in subpar. (A), and ''intermediate holding company or an affiliate of an insured depository institution'' for ''intermediate holding company'' in subpar. (B).

Subsec. (f)(12). Pub. L. 101–73, §217(5)(J), added par. (12).

Subsec. (h). Pub. L. 101–73, §217(6), substituted ''an insured depository institution in default'' for ''a closed insured depository institution'', ''default'' for ''closing'', and ''Bank Insurance Fund'' for ''insurance fund''.

Pub. L. 101–73, §201(a), substituted ''insured depository institution'' for ''insured bank'' wherever appearing.

Subsec. (i)(1)(A). Pub. L. 101–73, §217(7)(A), inserted ''depository'' before ''institution'' in three places.

Subsec. (i)(1)(C). Pub. L. 101–73, §217(7)(B), substituted ''Corporation'' for ''corporation'' where first appearing, ''chartered depository institution'' for ''chartered bank'', ''State member bank, a savings association,'' for ''State member bank'', and ''Federal Reserve System or the Director of the Office of Thrift Supervision'' for ''Federal Reserve System''.

Subsec. (i)(1)(D). Pub. L. 101–73, §217(7)(A), inserted ''depository'' before ''institution'' in two places.

Subsec. (i)(2). Pub. L. 101–73, §217(7)(A), (C), inserted ''depository'' before ''institution'' in two places, and struck out ''or insured or guaranteed under State law'' after ''insured under this chapter''.

Subsec. (i)(3) to (9). Pub. L. 101–73, §217(7)(A), inserted ''depository'' before ''institution'' wherever appearing.

Subsec. (i)(10). Pub. L. 101–73, §217(7)(D), struck out par. (10) which read as follows: ''Notwithstanding any other Federal or State law, net worth certificates purchased by the Corporation under this subsection shall be deemed to be net worth for statutory and regulatory purposes.''

Subsec. (i)(11). Pub. L. 101–73, §217(7)(A), inserted ''depository'' before ''institution''.

Subsec. (i)(12). Pub. L. 101–73, §217(7)(D), struck out par. (12) which read as follows: ''The Corporation may provide assistance to a qualified institution which is not an insured institution only if the State fund which insures or guarantees the deposits of such qualified institution enters into an agreement with the Corporation which provides that—

''(A) the State fund will indemnify the Corporation for any losses which the Corporation may incur as a result of providing assistance under this subsection to such qualified institution; and

''(B) during any period when such qualified institution has outstanding capital instruments issued in accordance with this subsection, the State insurance fund maintains a level of assessments on its members

which results in costs to its members which are at least equivalent to the premium assessments paid to the Corporation by insured institutions during such period.''

Subsec. (i)(13). Pub. L. 101–73, §217(7)(A), inserted ''depository'' before ''institution'' in two places.

Subsec. (k). Pub. L. 101–73, §217(8), added subsec. (k).

1987—Pub. L. 100–86, §509(a), repealed Pub. L. 97–320, §141. See 1982 Amendment notes below.

Subsec. (f)(1). Pub. L. 100–86, §502(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Nothing contained in paragraph (2) or (3) shall be construed to limit the Corporation's powers in subsection (c) of this section to assist a transaction under paragraph (2) or (3).''

Subsec. (f)(3). Pub. L. 100–86, §502(b), amended par. (3) generally, substituting subpars. (A) to (G) relating to emergency interstate acquisitions of insured banks in danger of closing for former subpars. (A) to (C) which authorized merger, purchase of assets, or assumption of liabilities of insured bank organized in mutual form with total assets of $500,000,000 or more upon Corporation's determination it was in danger of closing.

Subsec. (f)(4). Pub. L. 100–86, §502(c)(1), redesignated cls. (i) to (iii) as subpars. (A) to (C), amended subpar. (A) generally, and added subpars. (D) and (E). Prior to amendment, subpar. (A), as so redesignated, read as follows: ''Notwithstanding section 1842(d) of this title or any other provision of law, State or Federal, or the constitution of any State, an institution that merges with or acquires an insured bank under paragraph (2) or (3) is authorized to be and shall be operated as a subsidiary of an out-of-State bank or bank holding company, except that an out-of-State bank may operate the resulting institution as a subsidiary only if such ownership is otherwise specifically authorized.''

Subsec. (f)(5). Pub. L. 100–86, §502(i)(1), struck out ''to permit'' before ''an acquisition''.

Subsec. (f)(6)(A). Pub. L. 100–86, §502(i)(2), substituted ''where the bank'' for ''where the closed bank'' and ''in-State holding company'' for ''in-State bank holding company''.

Subsec. (f)(6)(B). Pub. L. 100–86, §502(c)(2)(A), added cls. (ii) to (vi) and struck out former cls. (ii) to (iv) which read as follows:

''(ii) Second, between depository institutions of the same type in different States;

''(iii) Third, between depository institutions of different types in the same State; and

''(iv) Fourth, between depository institutions of different types in different States.''

Subsec. (f)(6)(C). Pub. L. 100–86, §502(c)(2)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''In considering offers from different States, the Corporation shall give a priority to offers from adjoining States.''

Subsec. (f)(8)(D) to (G). Pub. L. 100–86, §502(d)–(g), added subpars. (D) to (G).

Subsec. (f)(9) to (11). Pub. L. 100–86, §502(c)(3)–(5), added pars. (9) to (11).

Subsec. (j). Pub. L. 100–86, §801, added subsec. (j).

1983—Subsec. (i)(1)(D). Pub. L. 98–29 inserted provision that issuance of net worth certificates in accordance with this subsection shall not constitute a default under the terms of any debt obligations subordinated to the claims of general creditors which were outstanding when such net worth certificates were issued.

1983—Subsec. (c)(5)(A). Pub. L. 97–457, §1(a), inserted ''or dividends'' after ''interest''.

Subsec. (f)(1). Pub. L. 97–457, §4, substituted ''paragraph'' for ''paragraphs'' wherever appearing.

Subsec. (i)(9). Pub. L. 97–457, §10, inserted ''or dividends'' after ''interest''.

1982—Subsec. (c). Pub. L. 97–320, §111, substituted provisions contained in numbered pars. (1) through (8) relating to the Corporation's authority to assist insured banks for prior provisions contained in a single undesignated paragraph authorizing the Corporation, in order to reopen a closed insured bank or, when the Corporation had determined that an insured bank was in danger of closing, in order to prevent such closing, in the discretion of its Board of Directors, to make loans to, or purchase the assets of, or make deposits in, such insured bank, upon such terms and conditions as the Board of Directors might prescribe, when in the opinion of the Board of Directors the continued operation of such bank was essential to provide adequate banking service in the community, with such loans and deposits to be in subordination to the rights of depositors and other creditors.

Pub. L. 97–320, §141(a)(1), which directed the repeal of par. (5) effective Oct. 13, 1986, was repealed by Pub. L. 100–86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

Subsec. (e). Pub. L. 97–320, §113(m)(2), inserted ''(e)'' before ''No agreement'' and struck out provision authorizing the Board of Directors, for the purpose of averting loss to the Corporation and facilitating a merger of an insured bank or facilitating the sale of an insured bank's assets and assumption of its liabilities by another insured bank, to make secured loans or to purchase the insured bank's assets or to guarantee another insured bank against loss by reason of its assuming the liabilities and purchasing the assets of an insured bank, and authorizing national or District banks or the Corporation as receiver thereof to contract for such sales or loans and to pledge assets to secure such loans.

Subsecs. (f) to (h). Pub. L. 97–320, §§113(m)(1), 116, added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

Pub. L. 97–320, §141(a)(3), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 116 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

Subsec. (i). Pub. L. 97–320, §§203, 206, added subsec. (i), relating to net worth certificates, and provided for its prospective repeal. See Effective Date of 1982 Amendment note below.

1978—Subsec. (g). Pub. L. 95–369 added subsec. (g).

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 363(6) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 1106(b) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 3(a)(8) of Pub. L. 109–173 effective Jan. 1, 2007, see section 3(b) of Pub. L. 109–173, set out as a note under section 1817 of this title.

Amendment by section 8(a)(19) of Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 1(b) of Pub. L. 98–29 provided that: ''The amendment made by subsection (a) [amending this section] shall be deemed to have taken effect on the date of enactment of the Garn-St Germain Depository Institutions Act of 1982 [Oct. 15, 1982].''

Section 1(b) of Pub. L. 97–457 provided that: ''The amendment made by subsection (a) [amending this section] shall be deemed to have taken effect upon the enactment of Public Law 97–320 [Oct. 15, 1982].''

Section 10(b) of Pub. L. 97–457 provided that: ''The amendment made by subsection (a) [amending this section] shall be deemed to have taken effect upon the enactment of Public Law 97–320 [Oct. 15, 1982].''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 206 of Pub. L. 97–320, as amended by Pub. L. 97–457, § 11, Jan. 12, 1983, 96 Stat. 2508; Pub. L. 99–120, § 6(b), Oct. 8, 1985, 99 Stat. 504; Pub. L. 99–278, § 1(b), Apr. 24, 1986, 100 Stat. 397; Pub. L. 99–400, § 1(b), Aug. 27, 1986, 100 Stat. 902; Pub. L. 99–452, § 1(b), Oct. 8, 1986, 100 Stat. 1140; Pub. L. 100–86, title V, § 509(b), Aug. 10, 1987, 101 Stat. 635, provided that:

''(a) On October 13, 1991, section 406(f)(5) of the National Housing Act [12 U.S.C. 1729(f)(5)] and section 13(i) of the Federal Deposit Insurance Act [12 U.S.C. 1823(i)] are repealed.

''(b) The repeal by subsection (a) shall have no effect on any action taken or authorized pursuant to the amendments made by this title [see Short Title of 1982 Amendments note set out under section 1811 of this title] by or for a qualified institution while such amendments were in effect and while net worth certificates issued pursuant to these amendments are outstanding.''

GAO COMPLIANCE AUDIT

Section 141(a)(2) of Pub. L. 102–242, as amended by Pub. L. 104–316, title I, § 106(b), Oct. 19, 1996, 110 Stat. 3830, provided that: ''The Comptroller General of the United States shall audit, under such conditions as the Comptroller General determines to be appropriate, the Federal Deposit Insurance Corporation and the Resolution Trust Corporation to determine the extent to which such corporations are complying with section 13(c)(4) of the Federal Deposit Insurance Act [12 U.S.C. 1823(c)(4)].''

EARLY RESOLUTION OF TROUBLED INSURED DEPOSITORY INSTITUTIONS

Section 143 of Pub. L. 102–242 provided that:

''(a) IN GENERAL.—It is the sense of the Congress that the Federal banking agencies should facilitate early resolution of troubled insured depository institutions whenever feasible if early resolution would have the least possible long-term cost to the deposit insurance fund, consistent with the least-cost and prompt corrective action provisions of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

''(b) GENERAL PRINCIPLES.—In encouraging the Federal banking agencies to pursue early resolution strategies, the Congress contemplates that any resolution transaction under section 13(c) of that Act [12 U.S.C. 1823(c)] would observe the following general principles:

''(1) COMPETITIVE NEGOTIATION.—The transaction should be negotiated competitively, taking into account the value of expediting the process.

''(2) RESULTING INSTITUTION ADEQUATELY CAPITALIZED.—Any insured depository institution created or assisted in the transaction (hereafter the 'resulting institution') and any institution acquiring the troubled institution should meet all applicable minimum capital standards.

''(3) SUBSTANTIAL PRIVATE INVESTMENT.—The transaction should involve substantial private investment.

''(4) CONCESSIONS.—Preexisting owners and debtholders of any troubled institution or its holding company should make substantial concessions.

''(5) QUALIFIED MANAGEMENT.—Directors and senior management of the resulting institution should be qualified to perform their duties, and should not include individuals substantially responsible for the troubled institution's problems.

''(6) FDIC'S PARTICIPATION.—The transaction should give the Federal Deposit Insurance Corporation an opportunity to participate in the success of the resulting institution.

''(7) STRUCTURE OF TRANSACTION.—The transaction should, insofar as practical, be structured so that—

''(A) the Federal Deposit Insurance Corporation—

''(i) does not acquire a significant proportion of the troubled institution's problem assets;

''(ii) succeeds to the interests of the troubled institution's preexisting owners and debtholders in proportion to the assistance the Corporation provides; and

''(iii) limits the Corporation's assistance in term and amount; and

''(B) new investors share risk with the Corporation.

''(c) REPORT.—Two years after the date of enactment of this Act [Dec. 19, 1991], the Federal Deposit Insurance Corporation shall submit a report to Congress analyzing the effect of early resolution on the deposit insurance funds.''

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97–320

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, or section 206(a) of Pub. L. 97–320, set out as a note above, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100–86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) or section 206(a) of Pub. L. 97–320, set out as notes under sections 1464 and 1729 of this title, respectively, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99–452, set out as a note under section 1464 of this title.

Sections 141(a) and 206(a) of Pub. L. 97–320, which are set out as notes under sections 1464 and 1729 of this title, as such sections were in effect on the day after Aug. 27, 1986, applicable as if such sections had been included in Pub. L. 97–320 on Oct. 15, 1982, with no amendment made by any such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27,

1986, see section 1(c) of Pub. L. 99–400, set out as a note under section 1464 of this title.

ANNUAL REPORTS TO CONGRESS BY FEDERAL HOME LOAN BANK BOARD AND FEDERAL DEPOSIT INSURANCE CORPORATION ON PURCHASES OF NET WORTH CERTIFICATES

Section 204 of Pub. L. 97–320 provided that: ''The Federal Home Loan Bank Board and the Board of Directors of the Federal Deposit Insurance Corporation shall each transmit an annual report to each House of the Congress specifying the types and amounts of net worth certificates purchased from each depository institution and the conditions imposed on each such depository institution.''

[For termination, effective May 15, 2000, of reporting provisions relating to the Federal Deposit Insurance Corporation in section 204 of Pub. L. 97–320, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 167 of House Document No. 103–7.]

SEMIANNUAL AUDIT BY COMPTROLLER GENERAL OF NET WORTH CERTIFICATE PROGRAMS OF FEDERAL DEPOSIT INSURANCE CORPORATION AND FEDERAL HOME LOAN BANK BOARD

Section 205 of Pub. L. 97–320 provided that: ''The Comptroller General of the United States shall conduct on a semiannual basis an audit of the net worth certificate programs of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board. A report on each such audit shall be transmitted to each House of the Congress.''

[For termination, effective May 15, 2000, of reporting provisions in section 205 of Pub. L. 97–320, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 3 of House Document No. 103–7.]

§ 1824. Borrowing authority

(a) Borrowing from Treasury

(1) In general

The Corporation is authorized to borrow from the Treasury, and the Secretary of the Treasury is authorized and directed to loan to the Corporation on such terms as may be fixed by the Corporation and the Secretary, such funds as in the judgment of the Board of Directors of the Corporation are from time to time required for insurance purposes, not exceeding in the aggregate $100,000,000,000 outstanding at any one time, subject to the approval of the Secretary of the Treasury: *Provided*, That the rate of interest to be charged in connection with any loan made pursuant to this subsection shall not be less than an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. For such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include such loans. Any such loan shall be used by the Corporation solely in carrying out its functions with respect to such insurance. All loans and repayments under this subsection shall be treated as public-debt transactions of the United States. The Corporation may employ any funds obtained under this section for purposes of the Deposit Insurance Fund and the borrowing shall become a liability of the Deposit Insurance Fund to the extent funds are employed therefor.

(2) Funding

There are hereby appropriated to the Secretary, for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to carry out this subsection.

(3) Temporary increases authorized

(A) Recommendations for increase

During the period beginning on May 20, 2009, and ending on December 31, 2010, if, upon the written recommendation of the Board of Directors (upon a vote of not less than two-thirds of the members of the Board of Directors) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that additional amounts above the $100,000,000,000 amount specified in paragraph (1) are necessary, such amount shall be increased to the amount so determined to be necessary, not to exceed $500,000,000,000.

(B) Report required

If the borrowing authority of the Corporation is increased above $100,000,000,000 pursuant to subparagraph (A), the Corporation shall promptly submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the reasons and need for the additional borrowing authority and its intended uses.

(C) Restriction on usage

The Corporation may not borrow pursuant to subparagraph (A) to fund obligations of the Corporation incurred as a part of a program established by the Secretary of the Treasury pursuant to the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.] to purchase or guarantee assets.

(b) Borrowing from Federal Financing Bank

The Corporation is authorized to issue and sell the Corporation's obligations, on behalf of the Deposit Insurance Fund, to the Federal Financing Bank established by the Federal Financing Bank Act of 1973 [12 U.S.C. 2281 et seq.]. The Federal Financing Bank is authorized to purchase and sell the Corporation's obligations on terms and conditions determined by the Federal Financing Bank. Any such borrowings shall be obligations subject to the obligation limitation of section 1825(c) of this title. This subsection does not affect the eligibility of any other entity to borrow from the Federal Financing Bank.

(c) Repayment schedules required for any borrowing

(1) In general

No amount may be provided by the Secretary of the Treasury to the Corporation under subsection (a) of this section unless an agreement is in effect between the Secretary and the Corporation which—

(A) provides a schedule for the repayment of the outstanding amount of any borrowing under such subsection; and

(B) demonstrates that income to the Corporation from assessments under this chapter will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance.

(2) Consultation with and report to Congress

The Secretary of the Treasury and the Corporation shall—

(A) consult with the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the terms of any repayment schedule agreement described in paragraph (1) relating to repayment, including terms relating to any emergency special assessment under section 1817(b)(7) of this title; and

(B) submit a copy of each repayment schedule agreement entered into under paragraph (1) to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate before the end of the 30-day period beginning on the date any amount is provided by the Secretary of the Treasury to the Corporation under subsection (a) of this section.

(d) Borrowing for the Deposit Insurance Fund from insured depository institutions

(1) Borrowing authority

The Corporation may issue obligations to insured depository institutions, and may borrow from insured depository institutions and give security for any amount borrowed, and may pay interest on (and any redemption premium with respect to) any such obligation or amount to the extent—

(A) the proceeds of any such obligation or amount are used by the Corporation solely for purposes of carrying out the Corporation's functions with respect to the Deposit Insurance Fund; and

(B) the terms of the obligation or instrument limit the liability of the Corporation or the Deposit Insurance Fund for the payment of interest and the repayment of principal to the amount which is equal to the amount of assessment income received by the Fund from assessments under section 1817 of this title.

(2) Limitations on borrowing

(A) Applicability of public debt limit

For purposes of the public debt limit established in section 3101(b) of title 31, any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall be considered to be an obligation to which such limit applies.

(B) Applicability of FDIC borrowing limit

For purposes of the dollar amount limitation established in subsection (a) of this section, any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall be considered to be an amount borrowed from the Treasury under such subsection.

(C) Interest rate limit

The rate of interest payable in connection with any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall not exceed an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(D) Obligations to be held only by BIF members[1]

The terms of any obligation issued by the Corporation under paragraph (1) shall provide that the obligation will be valid only if held by a[2] insured depository institution.

(3) Liability of the Deposit Insurance Fund

Any obligation issued or amount borrowed under paragraph (1) shall be a liability of the Deposit Insurance Fund.

(4) Terms and conditions

Subject to paragraphs (1) and (2), the Corporation shall establish the terms and conditions for obligations issued or amounts borrowed under paragraph (1), including interest rates and terms to maturity.

(5) Investment by insured depository institutions

(A) Authority to invest

Subject to subparagraph (B) and notwithstanding any other provision of Federal law or the law of any State, any insured depository institution may purchase and hold for investment any obligation issued by the Corporation under paragraph (1) without limitation, other than any limitation the appropriate Federal banking agency may impose specifically with respect to such obligations.

(B) Investment only from capital and retained earnings

Any insured depository institution may purchase obligations or make loans to the Corporation under paragraph (1) only to the extent the purchase money or the money loaned is derived from the member's[3] capital or retained earnings.

(6) Accounting treatment

In accounting for any investment in an obligation purchased from, or any loan made to, the Corporation for purposes of determining compliance with any capital standard and preparing any report required pursuant to section 1817(a) of this title, the amount of such investment or loan shall be treated as an asset.

(e) Borrowing for the Deposit Insurance Fund from Federal home loan banks

(1) In general

The Corporation may borrow from the Federal home loan banks, with the concurrence of

[1] So in original. Probably should be ''insured depository institutions''.

[2] So in original. Probably should be ''an''.

[3] So in original. Probably should be ''institution's''.

the Federal Housing Finance Board, such funds as the Corporation considers necessary for the use of the Deposit Insurance Fund.

(2) Terms and conditions

Any loan from any Federal home loan bank under paragraph (1) to the Deposit Insurance Fund shall—

(A) bear a rate of interest of not less than the current marginal cost of funds to that bank, taking into account the maturities involved;

(B) be adequately secured, as determined by the Federal Housing Finance Board;

(C) be a direct liability of the Deposit Insurance Fund; and

(D) be subject to the limitations of section 1825(c) of this title.

(Sept. 21, 1950, ch. 967, §2[14], 64 Stat. 890; Pub. L. 101–73, title II, §218, Aug. 9, 1989, 103 Stat. 261; Pub. L. 101–508, title II, §2005, Nov. 5, 1990, 104 Stat. 1388–16; Pub. L. 102–242, title I, §§101, 103(a), 105, Dec. 19, 1991, 105 Stat. 2236, 2237, 2239; Pub. L. 102–550, title XVI, §1603(a)(2), Oct. 28, 1992, 106 Stat. 4078; Pub. L. 103–204, §10, Dec. 17, 1993, 107 Stat. 2389; Pub. L. 104–208, div. A, title II, §2704(d)(14)(N)–(Q), Sept. 30, 1996, 110 Stat. 3009–493; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §8(a)(20)–(24), Feb. 15, 2006, 119 Stat. 3613, 3614; Pub. L. 111–22, div. A, title II, §204(c)(1), May 20, 2009, 123 Stat. 1649.)

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (a)(3)(C), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§5201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

The Federal Financing Bank Act of 1973, referred to in subsec. (b), is Pub. L. 93–224, Dec. 29, 1973, 87 Stat. 937, as amended, which is classified generally to chapter 24 (§2281 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2281 of this title and Tables.

CODIFICATION

''Chapter 31 of title 31'' substituted in subsec. (a) for ''the Second Liberty Bond Act, as amended'' on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

Section is derived from subsec. (*o*) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–22 substituted ''$100,000,000,000'' for ''$30,000,000,000'', designated existing provisions as pars. (1) and (2), inserted par. headings, and added par. (3).

2006—Subsec. (a). Pub. L. 109–173, §8(a)(20), in fifth sentence, substituted ''Deposit Insurance Fund'' for ''Bank Insurance Fund or the Savings Association Insurance Fund'' and ''the Deposit Insurance Fund'' for ''each such fund''.

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

Subsec. (b). Pub. L. 109–173, §8(a)(21), substituted ''Deposit Insurance Fund'' for ''Bank Insurance Fund or Savings Association Insurance Fund''.

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

Subsec. (c)(3). Pub. L. 109–173, §8(a)(22), struck out heading and text of par. (3). Text read as follows:

''(A) BIF MEMBER PAYMENTS.—No agreement or repayment schedule under paragraph (1) shall require any payment by a Bank Insurance Fund member for funds obtained under subsection (a) of this section for purposes of the Savings Association Fund.

''(B) SAIF MEMBER PAYMENTS.—No agreement or repayment schedule under paragraph (1) shall require any payment by a Savings Association Insurance Fund member for funds obtained under subsection (a) of this section for purposes of the Bank Insurance Fund.''

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

Subsec. (d). Pub. L. 109–173, §8(a)(23)(D), substituted ''Borrowing for the Deposit Insurance Fund from insured depository institutions'' for ''Borrowing for BIF from BIF members'' in heading.

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

Subsec. (d)(1). Pub. L. 109–173, §8(a)(23)(B), (C), substituted ''insured depository institutions'' for ''Bank Insurance Fund members'' in two places in introductory provisions and ''Deposit Insurance Fund'' for ''Bank Insurance Fund'' in subpars. (A) and (B).

Subsec. (d)(2)(D). Pub. L. 109–173, §8(a)(23)(A), substituted ''insured depository institution'' for ''Bank Insurance Fund member''.

Subsec. (d)(3). Pub. L. 109–173, §8(a)(23)(C), (E), substituted ''the Deposit Insurance Fund'' for ''BIF'' in heading and ''Deposit Insurance Fund'' for ''Bank Insurance Fund'' in text.

Subsec. (d)(5). Pub. L. 109–173, §8(a)(23)(A), (F), substituted ''insured depository institutions'' for ''BIF members'' in heading and ''insured depository institution'' for ''Bank Insurance Fund member'' in subpars. (A) and (B).

Subsec. (e). Pub. L. 109–173, §8(a)(24), added subsec. (e).

1996—Subsec. (a). Pub. L. 104–208, §2704(d)(14)(N), which directed substitution of ''Deposit Insurance Fund'' for ''Bank Insurance Fund or the Savings Association Insurance Fund'' and ''the Deposit Insurance Fund'' for ''each such fund'' in fifth sentence, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (b). Pub. L. 104–208, §2704(d)(14)(O), which directed substitution of ''Deposit Insurance Fund'' for ''Bank Insurance Fund or Savings Association Insurance Fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (c)(3). Pub. L. 104–208, §2704(d)(14)(P), which directed striking out par. (3), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (d). Pub. L. 104–208, §2704(d)(14)(Q), which directed substitution of ''DIF'' for ''BIF'' and ''Deposit Insurance Fund'' for ''Bank Insurance Fund'' wherever appearing, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1993—Subsec. (c)(3). Pub. L. 103–204 added par. (3).

1992—Subsec. (d)(2)(D). Pub. L. 102–550 substituted ''member'' for ''Member''.

1991—Subsec. (a). Pub. L. 102–242, §101, substituted ''$30,000,000,000'' for ''$5,000,000,000''.

Subsec. (c). Pub. L. 102–242, §103(a), added subsec. (c).

Subsec. (d). Pub. L. 102–242, §105, added subsec. (d).

1990—Pub. L. 101–508 inserted section catchline, designated existing provisions as subsec. (a), inserted heading, substituted ''this subsection'' for ''this section'' wherever appearing, substituted ''The Corporation may employ any funds obtained under this section'' for ''The Corporation may employ such funds'', and added subsec. (b).

1989—Pub. L. 101–73 substituted ''$5,000,000,000 outstanding at any one time, subject to the approval of the

Secretary of the Treasury'' for ''$3,000,000,000 outstanding at any one time'', substituted ''an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities'' for ''the current average rate on outstanding marketable and nonmarketable obligations of the United States as of the last day of the month preceding the making of such loan'', and inserted at end ''The Corporation may employ such funds for purposes of the Bank Insurance Fund or the Savings Association Insurance Fund and the borrowing shall become a liability of each such fund to the extent funds are employed therefor. There are hereby appropriated to the Secretary, for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to carry out this section.''

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

RETIREMENT AND CANCELLATION OF CAPITAL STOCK; PAYMENTS OF CAPITAL AND SURPLUS TO SECRETARY OF THE TREASURY

Section 1 of act Aug. 5, 1947, ch. 492, 61 Stat. 773, directed the Federal Deposit Insurance Corporation to retire its capital stock by paying the amount received therefor (whether received from the Secretary of the Treasury or the Federal Reserve banks) to the Secretary of the Treasury, to be covered into the Treasury as miscellaneous receipts, with the Corporation to pay to the Secretary so much of its capital and surplus as is in excess of $1,000,000,000, the balance of the amount to be paid to the Secretary in units of $10,000,000 except that the last unit to be paid could be less than $10,000,000.

§ 1825. Issuance of notes, debentures, bonds, and other obligations; exemption from taxation

(a) General rule

All notes, debentures, bonds, or other such obligations issued by the Corporation shall be exempt, both as to principal and interest, from all taxation (except estate and inheritance taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority: *Provided*, That interest upon or any income from any such obligations and gain from the sale or other disposition of such obligations shall not have any exemption, as such, and loss from the sale or other disposition of such obligations shall not have any special treatment, as such, under the Internal Revenue Code, or laws amendatory or supplementary thereto. The Corporation, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(b) Other exemptions

When acting as a receiver, the following provisions shall apply with respect to the Corporation:

(1) The Corporation including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of such property's value, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed.

(2) No property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation, nor shall any involuntary lien attach to the property of the Corporation.

(3) The Corporation shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

(4) EXEMPTION FROM CRIMINAL PROSECUTION.—The Corporation shall be exempt from all prosecution by the United States or any State, county, municipality, or local authority for any criminal offense arising under Federal, State, county, municipal, or local law, which was allegedly committed by the institution, or persons acting on behalf of the institution, prior to the appointment of the Corporation as receiver.

This subsection shall not apply with respect to any tax imposed (or other amount arising) under the Internal Revenue Code of 1986.

(c) Limitation on borrowing

(1) Cost estimate for outstanding obligations, guarantees, and liabilities

As soon as practicable after August 9, 1989, the Corporation shall estimate the aggregate cost to the Corporation for all outstanding obligations and guarantees of the Corporation which were issued, and all outstanding liabilities which were incurred, by the Corporation before August 9, 1989.

(2) Estimate of notes and other obligations required

Before issuing an obligation or making a guarantee, the Corporation shall estimate the cost of such obligations or guarantees.

(3) Inclusion of estimates in financial statements

The Corporation shall—

(A) reflect in its financial statements the estimates made by the Corporation under paragraphs (1) and (2) of the aggregate amount of the costs to the Corporation for outstanding obligations and other liabilities, and

(B) make such adjustments as are appropriate in the estimate of such aggregate amount not less frequently than quarterly.

(4) Estimate of other assets required

The Corporation shall—

(A) estimate the market value of assets held by it as a result of case resolution activities, with a reduction for expenses expected to be incurred by the Corporation in connection with the management and sale of such assets;

(B) reflect the amounts so estimated in its financial statements; and

(C) make such adjustments as are appropriate of such market value not less than quarterly.

(5) Maximum amount limitation on outstanding obligations

Notwithstanding any other provisions of this chapter, the Corporation may not issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of obligations of the Deposit Insurance Fund, outstanding would exceed the sum of—

(A) the amount of cash or the equivalent of cash held by the Deposit Insurance Fund;

(B) the amount which is equal to 90 percent of the Corporation's estimate of the fair market value of assets held by the Deposit Insurance Fund, other than assets described in subparagraph (A); and

(C) the total of the amounts authorized to be borrowed from the Secretary of the Treasury pursuant to section 1824(a) of this title.

(6) "Obligation" defined

(A) In general

For purposes of paragraph (5), the term ''obligation'' includes—

(i) any guarantee issued by the Corporation, other than deposit guarantees;

(ii) any amount borrowed pursuant to section 1824 of this title; and

(iii) any other obligation for which the Corporation has a direct or contingent liability to pay any amount.

(B) Valuation of contingent liabilities

The Corporation shall value any contingent liability at its expected cost to the Corporation.

(d) Full faith and credit

The full faith and credit of the United States is pledged to the payment of any obligation issued after August 9, 1989, by the Corporation, with respect to both principal and interest, if—

(1) the principal amount of such obligation is stated in the obligation; and

(2) the term to maturity or the date of maturity of such obligation is stated in the obligation.

(Sept. 21, 1950, ch. 967, §2[15], 64 Stat. 890; Pub. L. 101–73, title II, §219, Aug. 9, 1989, 103 Stat. 261; Pub. L. 102–242, title I, §102(a), (c), Dec. 19, 1991, 105 Stat. 2236, 2237; Pub. L. 103–325, title VI, §602(a)(43), Sept. 23, 1994, 108 Stat. 2290; Pub. L. 104–208, div. A, title II, §2704(d)(14)(R), Sept. 30, 1996, 110 Stat. 3009–493; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §8(a)(25), Feb. 15, 2006, 119 Stat. 3614; Pub. L. 109–351, title VII, §720(a), Oct. 13, 2006, 120 Stat. 1998.)

REFERENCES IN TEXT

The Internal Revenue Code, referred to in subsecs. (a) and (b), is classified to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

Section is derived from subsec. (p) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2006—Subsec. (b)(4). Pub. L. 109–351 added par. (4).

Subsec. (c)(5). Pub. L. 109–173 substituted ''the Deposit Insurance Fund'' for ''the Bank Insurance Fund or Savings Association Insurance Fund, respectively'' in introductory provisions and in subpar. (A) and ''the Deposit Insurance Fund'' for ''the Bank Insurance Fund or the Savings Association Insurance Fund, respectively'' in subpar. (B).

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

1996—Subsec. (c)(5). Pub. L. 104–208, §2704(D)(14)(R), which directed substitution of ''the Deposit Insurance Fund'' for ''the Bank Insurance Fund or Savings Association Insurance Fund, respectively'' in introductory provisions and in subpar. (A) and ''the Deposit Insurance Fund'' for ''the Bank Insurance Fund or the Savings Association Insurance Fund, respectively'' in subpar. (B), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Subsec. (c)(1). Pub. L. 103–325 substituted ''OBLIGATIONS, GUARANTEES, AND LIABILITIES'' for ''OBLIGATIONS LIABILITIES'' in heading.

1991—Subsec. (c)(5), (6). Pub. L. 102–242, §102(a), added pars. (5) and (6) and struck out former par. (5) which provided for a 10-percent-minimum net worth requirement for Bank Insurance Fund or Savings Association Insurance Fund and former par. (6) which provided exception for up to $5,000,000,000 in additional liabilities beyond limitations of par. (5).

Subsec. (c)(7). Pub. L. 102–242, §102(c), struck out par. (7) which provided for calculation of net worth and asset valuation of Bank Insurance Fund and the Savings Association Insurance Fund for purposes of par. (5).

1989—Subsec. (a). Pub. L. 101–73 designated existing provision as subsec. (a), inserted heading, and added subsecs. (b) to (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

GAO REPORTS

Section 102(b) of Pub. L. 102–242, as amended by Pub. L. 103–325, title III, § 327, Sept. 23, 1994, 108 Stat. 2230; Pub. L. 104–66, title II, § 2061, Dec. 21, 1995, 109 Stat. 729, directed Comptroller General to submit report to congressional committees, not later than 90 days after end of any calendar quarter in which Federal Deposit Insurance Corporation had any outstanding obligations pursuant to section 1824 of this title, on Corporation's compliance at the end of that quarter with subsec. (c) of this section, prior to repeal by Pub. L. 104–316, title I, § 106(c), Oct. 19, 1996, 110 Stat. 3831.

§ 1826. Forms of obligations; preparation by Secretary of the Treasury

In order that the Corporation may be supplied with such forms of notes, debentures, bonds, or other such obligations as it may need for issuance under this chapter, the Secretary of the Treasury is authorized to prepare such forms as shall be suitable and approved by the Corporation, to be held in the Treasury subject to delivery, upon order of the Corporation. The engraved plates, dies, bed pieces, and other material executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Corporation shall reimburse the Secretary of the Treasury for any expenses incurred in the preparation, custody, and delivery of such notes, debentures, bonds, or other such obligations.

(Sept. 21, 1950, ch. 967, § 2[16], 64 Stat. 890.)

PRIOR PROVISIONS

Section is derived from subsec. (q) of former section 264 of this title. See Codification note set out under section 1811 of this title.

§ 1827. Reports by Corporation; audit of financial transactions; report on audits; employment of certified public accountants for audits

(a) Annual reports on the Deposit Insurance Fund and the FSLIC Resolution Fund

(1) In general

The Corporation shall annually submit a full report of its operations, activities, budget, receipts, and expenditures for the preceding 12-month period. The report shall include, with respect to the Deposit Insurance Fund and the FSLIC Resolution Fund, an analysis by the Corporation of—

(A) the current financial condition of each such fund;

(B) the purpose, effect, and estimated cost of each resolution action taken for an insured depository institution during the preceding year;

(C) the extent to which the actual costs of assistance provided to, or for the benefit of, an insured depository institution during the preceding year exceeded the estimated costs of such assistance reported in a previous year under paragraph (A);

(D) the exposure of the Deposit Insurance Fund to changes in those economic factors most likely to affect the condition of that fund;

(E) a current estimate of the resources needed for the Deposit Insurance Fund or the FSLIC Resolution Fund to achieve the purposes of this chapter; and

(F) any findings, conclusions, and recommendations for legislative and administrative actions considered appropriate to future resolution activities by the Corporation.

(2) Manner of submission

Such report shall be submitted to the President of the Senate and the Speaker of the House of Representatives, who shall cause the same to be printed for the information of Congress, and the President as soon as practicable after the first day of January each year.

(3) Coordination with other report requirements

The report required under this subsection shall include the report required under section 57a(f)(7) of title 15.

(b) Quarterly reports to Treasury

(1) Financial operating plans and forecasts

Before the beginning of each fiscal quarter, the Corporation shall provide to the Secretary of the Treasury a copy of the Corporation's financial operating plans and forecasts.

(2) Financial condition and reports of operations

As soon as practicable after the end of each fiscal quarter, the Corporation shall submit to the Secretary of the Treasury a copy of the report of the Corporation's financial condition as of the end of such fiscal quarter and the results of the Corporation's operations during such fiscal quarter.

(3) Items to be included

The plans, forecasts, and reports required under this subsection shall reflect the estimates required to be made under section 1825(b) of this title of the liabilities and obligations of the Corporation described in such section.

(4) Rule of construction

The requirement to provide plans, forecasts, and reports to the Secretary of the Treasury under this subsection may not be construed as implying any obligation on the part of the Corporation to obtain the consent or approval of such Secretary with respect to such plans, forecasts, and reports.

(c) Reports to OMB

(1) Financial information

The Corporation shall continue to provide to the Director of the Office of Management and

Budget financial information consistent with that contained in the reports that were being provided to the Director immediately prior to the effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) Financial operating plans and forecasts

The Corporation shall also provide to the Director copies of the Corporation's financial operating plans and forecasts as prepared by the Corporation in the ordinary course of its operations, and copies of the quarterly reports of the Corporation's financial condition and results of operations as prepared by the Corporation in the ordinary course of its operations.

(3) Rule of construction

This subsection may not be construed as implying any obligation on the part of the Corporation to consult with or obtain the consent or approval of the Director with respect to any reports, plans, forecasts, or other information referred to in paragraph (1) or (2) or any jurisdiction or oversight over the affairs or operations of the Corporation.

(d) Audit

(1) Audit required

The Comptroller General shall audit annually the financial transactions of the Corporation[1] the Deposit Insurance Fund and the FSLIC Resolution Fund in accordance with generally accepted government auditing standards.

(2) Access to books and records

All books, records, accounts, reports, files, and property belonging to or used by the Corporation[1] the Deposit Insurance Fund and the FSLIC Resolution Fund, or by an independent certified public accountant retained to audit the Fund's financial statements, shall be made available to the Comptroller General.

(e) Audit of Corporation

The financial transactions of the Corporation shall be audited by the Government Accountability Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representatives of the Government Accountability Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation pertaining to its financial transactions and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of the Corporation shall remain in possession and custody of the Corporation. The audit shall begin with financial transactions occurring on and after August 31, 1948. The Corporation shall be audited at least once in every three years.

[1] So in original. Probably should be followed by a comma.

(f) Report of audit

A report of each audit conducted under subsection (b) of this section shall be made by the Comptroller General to the Congress not later than six and one-half months following the close of the last year covered by such audit. The report to the Congress shall set forth the scope of the audit and shall include a statement of assets and liabilities and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expenses; a statement of sources and application of funds and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Corporation, together with such recommendations with respect thereto as the Comptroller General may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary of the Treasury, and to the Corporation at the time submitted to the Congress.

(g) Assistance in audit; costs

For the purpose of conducting such audit the Comptroller General is authorized in his discretion to employ by contract, without regard to section 6101 of title 41, professional services of firms and organizations of certified public accountants, with the concurrence of the Corporation, for temporary periods or for special purposes. The Corporation shall reimburse the Government Accountability Office for the cost of any such audit as billed therefor by the Comptroller General, and the Government Accountability Office shall deposit the sums so reimbursed into the Treasury as miscellaneous receipts.

(Sept. 21, 1950, ch. 967, §2[17], 64 Stat. 890; Pub. L. 93–604, title VI, §602, Jan. 2, 1975, 88 Stat. 1963; Pub. L. 101–73, title II, §220(a), Aug. 9, 1989, 103 Stat. 263; Pub. L. 102–242, title IV, §427, Dec. 19, 1991, 105 Stat. 2378; Pub. L. 104–208, div. A, title II, §2704(d)(14)(S), (T), Sept. 30, 1996, 110 Stat. 3009–493, 3009–494; Pub. L. 106–569, title XI, §§1103(a), 1104(b), Dec. 27, 2000, 114 Stat. 3030, 3032; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §8(a)(26), (27), Feb. 15, 2006, 119 Stat. 3614, 3615.)

REFERENCES IN TEXT

The effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 101–73, which was approved Aug. 9, 1989.

CODIFICATION

In subsec. (g), ''section 6101 of title 41'' substituted for ''section 3709 of the Revised Statutes'' on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

PRIOR PROVISIONS

Subsec. (a) is derived from subsec. (r) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–173, § 8(a)(26)(A), substituted ''the Deposit Insurance Fund'' for ''BIF, SAIF,'' in heading.

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

Subsec. (a)(1). Pub. L. 109–173, § 8(a)(26)(B)(i), substituted ''the Deposit Insurance Fund'' for ''the Bank Insurance Fund, the Savings Association Insurance Fund,'' in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 109–173, § 8(a)(26)(B)(ii), substituted ''the Deposit Insurance Fund'' for ''each insurance fund''.

Subsec. (a)(1)(E). Pub. L. 109–173, § 8(a)(26)(B)(i), substituted ''the Deposit Insurance Fund'' for ''the Bank Insurance Fund, the Savings Association Insurance Fund,''.

Subsec. (d). Pub. L. 109–173, § 8(a)(27), substituted ''the Deposit Insurance Fund'' for '', the Bank Insurance Fund, the Savings Association Insurance Fund,'' in pars. (1) and (2).

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

2004—Subsecs. (e), (g). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in two places.

2000—Subsec. (a)(3). Pub. L. 106–569, § 1103(a), added par. (3).

Subsec. (h). Pub. L. 106–569, § 1104(b), struck out subsec. (h) which related to additional reports.

1996—Subsec. (a). Pub. L. 104–208, § 2704(d)(14)(S), which directed substitution of ''the Deposit Insurance Fund'' for ''BIF, SAIF,'' in heading and ''the Deposit Insurance Fund'' for ''the Bank Insurance Fund, the Savings Association Insurance Fund,'' wherever appearing in par. (1), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (d). Pub. L. 104–208, § 2704(d)(14)(T), which directed substitution of ''the Deposit Insurance Fund'' for ''the Bank Insurance Fund, the Savings Association Insurance Fund,'' in two places, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1991—Subsec. (h). Pub. L. 102–242 added subsec. (h).

1989—Subsec. (a). Pub. L. 101–73, § 220(a)(1), added heading and text and struck out former subsec. (a) which read as follows: ''The Corporation shall annually make a report of its operations to the Congress as soon as practicable after the 1st day of January in each year.''

Subsecs. (b) to (g). Pub. L. 101–73, § 220(a)(2), (3), added subsecs. (b) to (d) and redesignated former subsecs. (b) to (d) as (e) to (g), respectively.

1975—Subsec. (b). Pub. L. 93–604, § 602(a), inserted provisions that the Corporation shall be audited at least once in every three years.

Subsec. (c). Pub. L. 93–604, § 602(b), substituted provisions that a report of each audit conducted under subsec. (b) of this section shall be made by the Comptroller General to the Congress not later than six and one-half months following the close of previous year covered by such audit, for provisions that a report of the audit for each fiscal year ending on June 30 shall be made by the Comptroller General to the Congress not later than Jan. 15 following the close of such fiscal year.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

FINAL REPORTS ON RTC AND SAIF FUNDING

Pub. L. 103–204, § 28, Dec. 17, 1993, 107 Stat. 2410, provided that:

''(a) IN GENERAL.—

''(1) RTC REPORT.—The Chairperson of the Thrift Depositor Protection Oversight Board shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, a final report containing a detailed description of the purposes for which the funds made available to the Resolution Trust Corporation under this Act [See Short Title of 1993 Amendment note set out under section 1421 of this title] were used.

''(2) SAIF REPORT.—The Chairperson of the Federal Deposit Insurance Corporation shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a final report containing a detailed description of the purposes for which the funds made available to the Savings Association Insurance Fund under this Act were used.

''(b) TIME FOR SUBMISSION.—The reports described in subsection (a) shall be transmitted—

''(1) not later than 45 days after the final expenditure of funds provided for under this Act by the Resolution Trust Corporation; and

''(2) not later than 45 days after the final expenditure of funds authorized to be provided under this Act by the Savings Association Insurance Fund.''

REPORT TO CONGRESS ON RISK-BASED ASSESSMENTS

Section 220(b)(1) of Pub. L. 101–73 directed Federal Deposit Insurance Corporation to study establishment of premium assessment categories related to types of risk to insurance funds and report its recommendations to Congress not later than Jan. 1, 1991; if Corporation recommended establishment of such a risk-based assessment plan, it was to provide a timetable and plan for implementation; and not later than 180 days after receipt of report and accompanying plan and timetable, Congress was to make a recommendation to Chairperson of Board of Directors regarding disposition of such plan and timetable.

§ 1828. Regulations governing insured depository institutions

(a) Representations of deposit insurance

(1) Insured depository institutions

(A) In general

Each insured depository institution shall display at each place of business maintained by that institution a sign or signs relating to the insurance of the deposits of the institution, in accordance with regulations to be prescribed by the Corporation.

(B) Statement to be included

Each sign required under subparagraph (A) shall include a statement that insured deposits are backed by the full faith and credit of the United States Government.

(2) Regulations

The Corporation shall prescribe regulations to carry out this subsection, including regulations governing the substance of signs required by paragraph (1) and the manner of display or use of such signs.

(3) Penalties

For each day that an insured depository institution continues to violate paragraph (1) or any regulation issued under paragraph (2), it shall be subject to a penalty of not more than $100, which the Corporation may recover for its use.

(4) False advertising, misuse of FDIC names, and misrepresentation to indicate insured status

(A) Prohibition on false advertising and misuse of FDIC names

No person may represent or imply that any deposit liability, obligation, certificate, or share is insured or guaranteed by the Corporation, if such deposit liability, obligation, certificate, or share is not insured or guaranteed by the Corporation—

(i) by using the terms ''Federal Deposit'', ''Federal Deposit Insurance'', ''Federal Deposit Insurance Corporation'', any combination of such terms, or the abbreviation ''FDIC'' as part of the business name or firm name of any person, including any corporation, partnership, business trust, association, or other business entity; or

(ii) by using such terms or any other terms, sign, or symbol as part of an advertisement, solicitation, or other document.

(B) Prohibition on misrepresentations of insured status

No person may knowingly misrepresent—

(i) that any deposit liability, obligation, certificate, or share is insured, under this chapter, if such deposit liability, obligation, certificate, or share is not so insured; or

(ii) the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured under this chapter, if such deposit liability, obligation, certificate, or share is not so insured, to the extent or in the manner represented.

(C) Authority of the appropriate Federal banking agency

The appropriate Federal banking agency shall have enforcement authority in the case of a violation of this paragraph by any person for which the agency is the appropriate Federal banking agency, or any institution-affiliated party thereof.

(D) Corporation authority if the appropriate Federal banking agency fails to follow recommendation

(i) Recommendation

The Corporation may recommend in writing to the appropriate Federal banking agency that the agency take any enforcement action authorized under section 1818 of this title for purposes of enforcement of this paragraph with respect to any person for which the agency is the appropriate Federal banking agency or any institution-affiliated party thereof.

(ii) Agency response

If the appropriate Federal banking agency does not, within 30 days of the date of receipt of a recommendation under clause (i), take the enforcement action with respect to this paragraph recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the situation presented, the Corporation may take the recommended enforcement action against such person or institution-affiliated party.

(E) Additional authority

In addition to its authority under subparagraphs (C) and (D), for purposes of this paragraph, the Corporation shall have, in the same manner and to the same extent as with respect to a State nonmember insured bank—

(i) jurisdiction over—

(I) any person other than a person for which another agency is the appropriate Federal banking agency or any institution-affiliated party thereof; and

(II) any person that aids or abets a violation of this paragraph by a person described in subclause (I); and

(ii) for purposes of enforcing the requirements of this paragraph, the authority of the Corporation under—

(I) section 1820(c) of this title to conduct investigations; and

(II) subsections (b), (c), (d) and (i) of section 1818 of this title to conduct enforcement actions.

(F) Other actions preserved

No provision of this paragraph shall be construed as barring any action otherwise available, under the laws of the United States or any State, to any Federal or State agency or individual.

(b) Payment of dividends by defaulting depository institutions

No insured depository institution shall pay any dividends on its capital stock or interest on its capital notes or debentures (if such interest is required to be paid only out of net profits) or distribute any of its capital assets while it remains in default in the payment of any assessment due to the Corporation; and any director or officer of any insured depository institution who participates in the declaration or payment of any such dividend or interest or in any such distribution shall, upon conviction, be fined not more than $1,000 or imprisoned not more than one year, or both: *Provided*, That, if such default is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment, this subsection shall not apply if the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(c) Merger transactions; consent of banking agencies; emergency approval; notice; uniform standards; antitrust actions; review de novo; limitations; report to Congress; money laundering; applicability

(1) Except with the prior written approval of the responsible agency, which shall in every case referred to in this paragraph be the Cor-

poration, no insured depository institution shall—

(A) merge or consolidate with any noninsured bank or institution;

(B) assume liability to pay any deposits (including liabilities which would be ''deposits'' except for the proviso in section 1813(*l*)(5) of this title) made in, or similar liabilities of, any noninsured bank or institution; or

(C) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured depository institution.

(2) No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency, which shall be—

(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank;

(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank;

(C) the Corporation if the acquiring, assuming, or resulting bank is to be a State nonmember insured bank (except a savings bank supervised by the Director of the Office of Thrift Supervision); and

(D) the Director of the Office of Thrift Supervision if the acquiring, assuming, or resulting institution is to be a savings association.

(3) Notice of any proposed transaction for which approval is required under paragraph (1) or (2) (referred to hereafter in this subsection as a ''merger transaction'') shall, unless the responsible agency finds that it must act immediately in order to prevent the probable default of one of the banks or savings associations involved, be published—

(A) prior to the granting of approval of such transaction,

(B) in a form approved by the responsible agency,

(C) at appropriate intervals during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection, and

(D) in a newspaper of general circulation in the community or communities where the main offices of the banks or savings associations involved are located, or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto.

(4) REPORTS ON COMPETITIVE FACTORS.—

(A) REQUEST FOR REPORT.—In the interests of uniform standards and subject to subparagraph (B), before acting on any application for approval of a merger transaction, the responsible agency shall—

(i) request a report on the competitive factors involved from the Attorney General of the United States; and

(ii) provide a copy of the request to the Corporation (when the Corporation is not the responsible agency).

(B) FURNISHING OF REPORT.—The report requested under subparagraph (A) shall be furnished by the Attorney General to the responsible agency—

(i) not later than 30 calendar days after the date on which the Attorney General received the request; or

(ii) not later than 10 calendar days after such date, if the requesting agency advises the Attorney General that an emergency exists requiring expeditious action.

(C) EXCEPTIONS.—A responsible agency may not be required to request a report under subparagraph (A) if—

(i) the responsible agency finds that it must act immediately in order to prevent the probable failure of 1 of the insured depository institutions involved in the merger transaction; or

(ii) the merger transaction involves solely an insured depository institution and 1 or more of the affiliates of such depository institution.

(5) The responsible agency shall not approve—

(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the insured depository institutions involved, or if the proposed merger transaction is solely between an insured depository institution and 1 or more of its affiliates, and the report on the competitive factors has been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General under paragraph (4)(B)(ii) of the existence of an emergency requiring expeditious action and has requested a report on the competitive factors within 10 days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the agency or, if the agency has not received any adverse comment from the Attorney General of the United

States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval.

(7)(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

(C) Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, but nothing in this subsection shall exempt any bank or savings association resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction.

(D) In any action brought under the antitrust laws arising out of a merger transaction approved by a Federal supervisory agency pursuant to this subsection, such agency, and any State banking supervisory agency having jurisdiction within the State involved, may appear as a part of its own motion and as of right, and be represented by its counsel.

(8) For the purposes of this subsection, the term ''antitrust laws'' means the Act of July 2, 1890 (the Sherman Antitrust Act), the Act of October 15, 1914 (the Clayton Act), and any other Acts in pari materia.

(9) Each of the responsible agencies shall include in its annual report to the Congress a description of each merger transaction approved by it during the period covered by the report, along with—

(A) the name and total resources of each bank or savings association involved;

(B) whether a report was submitted by the Attorney General under paragraph (4), and, if so, a summary by the Attorney General of the substance of such report; and

(C) a statement by the responsible agency of the basis for its approval.

(10) Until June 30, 1976, the responsible agency shall not grant any approval required by law which has the practical effect of permitting a conversion from the mutual to the stock form of organization, including approval of any application pending on the date of enactment of this subsection, except that this sentence shall not be deemed to limit now or hereafter the authority of the responsible agency to grant approvals in cases where the responsible agency finds that it must act in order to maintain the safety, soundness, and stability of an insured depository institution. The responsible agency may by rule, regulation, or otherwise and under such civil penalties (which shall be cumulative to any other remedies) as it may prescribe take whatever action it deems necessary or appropriate to implement or enforce this subsection.

(11) MONEY LAUNDERING.—In every case, the responsible agency, shall take into consideration the effectiveness of any insured depository institution involved in the proposed merger transaction in combatting money laundering activities, including in overseas branches.

(12) The provisions of this subsection do not apply to any merger transaction involving a foreign bank if no party to the transaction is principally engaged in business in the United States.

(13)(A) Except as provided in subparagraph (B), the responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Subparagraph (A) shall not apply to an interstate merger transaction that involves 1 or more insured depository institutions in default or in danger of default, or with respect to which the Corporation provides assistance under section 1823 of this title.

(C) In this paragraph—

(i) the term ''interstate merger transaction'' means a merger transaction involving 2 or more insured depository institutions that have different home States and that are not affiliates; and

(ii) the term ''home State'' means—

(I) with respect to a national bank, the State in which the main office of the bank is located;

(II) with respect to a State bank or State savings association, the State by which the State bank or State savings association is chartered; and

(III) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date,[1] the Comptroller of the Currency) of the Federal savings association is located.

(d) Branch banks

(1) No State nonmember insured bank shall establish and operate any new domestic branch unless it shall have the prior written consent of the Corporation, and no State nonmember insured bank shall move its main office or any such branch from one location to another without such consent. No foreign bank may move any insured branch from one location to another without such consent. The factors to be consid-

[1] See References in Text note below.

ered in granting or withholding the consent of the Corporation under this subsection shall be those enumerated in section 1816 of this title.

(2) No State nonmember insured bank shall establish or operate any foreign branch, except with the prior written consent of the Corporation and upon such conditions and pursuant to such regulations as the Corporation may prescribe from time to time.

(3) EXCLUSIVE AUTHORITY FOR ADDITIONAL BRANCHES.—

(A) IN GENERAL.—Effective June 1, 1997, a State nonmember bank may not acquire, establish, or operate a branch in any State other than the bank's home State (as defined in section 1831u(f)(4)[1] of this title) or a State in which the bank already has a branch unless the acquisition, establishment, or operation of a branch in such State by a State nonmember bank is authorized under this subsection or section 1823(f), 1823(k), or 1831u of this title.

(B) RETENTION OF BRANCHES.—In the case of a State nonmember bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State which was the bank's home State (as defined in section 1831u(f)(4)[1] of this title) before the relocation of such office only to the extent the bank would be authorized, under this section or any other provision of law referred to in subparagraph (A), to acquire, establish, or commence to operate a branch in such State if—

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

(ii) the branch resulted from—

(I) an interstate merger transaction approved pursuant to section 1831u of this title; or

(II) a transaction after May 31, 1997, pursuant to which the bank received assistance from the Corporation under section 1823(c) of this title.

(4) STATE ''OPT-IN'' ELECTION TO PERMIT INTERSTATE BRANCHING THROUGH DE NOVO BRANCHES.—

(A) IN GENERAL.—Subject to subparagraph (B), the Corporation may approve an application by an insured State nonmember bank to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch if—

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

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

(B) CONDITIONS ON ESTABLISHMENT AND OPERATION OF INTERSTATE BRANCH.—

(i) ESTABLISHMENT.—An application by an insured State nonmember bank to establish and operate a de novo branch in a host State shall be subject to the same requirements and conditions to which an application for a merger transaction is subject under paragraphs (1), (3), and (4) of section 1831u(b) of this title.

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

(C) ''DE NOVO BRANCH'' DEFINED.—For purposes of this paragraph, the term ''de novo branch'' means a branch of a State bank which—

(i) is originally established by the State bank as a branch; and

(ii) does not become a branch of such bank as a result of—

(I) the acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or

(II) the conversion, merger, or consolidation of any such institution or branch.

(D) ''HOME STATE'' DEFINED.—The term ''home State'' means the State by which a State bank is chartered.

(E) ''HOST STATE'' DEFINED.—The term ''host State'' means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(e) Indemnity insurance

The Corporation may require any insured depository institution to provide protection and indemnity against burglary, defalcation, and other similar insurable losses. Whenever any insured depository institution refuses to comply with any such requirement the Corporation may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank.[2]

(f) Publication of reports

Whenever any insured depository institution (except a national bank), after written notice of the recommendations of the Corporation based on a report of examination of such insured depository institution by an examiner of the Corporation, shall fail to comply with such recommendations within one hundred and twenty days after such notice, the Corporation shall have the power, and is authorized, to publish only such part of such report of examination as relates to any recommendation not complied with: *Provided*, That notice of intention to make such publication shall be given to the insured depository institution at least ninety days before such publication is made.

(g) Interest or dividend on demand deposits; definitions; regulation of interest rates

(1) The Board of Directors shall by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks and for such purpose it may define the term ''demand

[2] So in original. Probably should be ''insured depository institution''.

deposits''; but such exceptions from this prohibition shall be made as are now or may hereafter be prescribed with respect to deposits payable on demand in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the Board of Governors of the Federal Reserve System. The Board of Directors may from time to time, after consulting with the Board of Governors of the Federal Reserve System and the Director of the Office of Thrift Supervision, prescribe rules governing the advertisement of interest or dividends on deposits by insured nonmember banks (including insured mutual savings banks) on time and savings deposits. The Board of Directors is authorized for the purposes of this subsection to define the terms ''time deposits'' and ''savings deposits'', to determine what shall be deemed a payment of interest, and to prescribe such regulations as it may deem necessary to effectuate the purposes of this subsection and to prevent evasions thereof. The provisions of this subsection and of regulations issued thereunder shall also apply, in the discretion of the Board of Directors, to obligations other than deposits that are undertaken by insured nonmember banks or their affiliates. As used in this subsection, the term ''affiliate'' has the same meaning as when used in section 221a(b) of this title, except that the term ''member bank'', as used in such section 221a(b), shall be deemed to refer to an insured nonmember bank. During the period commencing on October 15, 1962, and ending on October 15, 1968, the provisions of this subsection shall not apply to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member. The authority conferred by this subsection shall also apply to noninsured banks in any State if the total amount of time and savings deposits held in all such banks in the State, plus the total amount of deposits, shares, and withdrawable accounts held in all building and loan, savings and loan, and homestead associations (including cooperative banks) in the State which are not members of a Federal home loan bank, is more than 20 per centum of the total amount of such deposits, shares, and withdrawable accounts held in all banks, and building and loan, savings and loan, and homestead associations (including cooperative banks) in the State. Such authority shall only be exercised by the Board of Directors with respect to such noninsured banks prior to July 31, 1970, to limit the rates of interest or dividends which such banks may pay on time and savings deposits to maximum rates not lower than 5½ per centum per annum. Whenever it shall appear to the Board of Directors that any noninsured bank or any affiliate thereof is engaged or has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subsection or of any regulations thereunder, the Board of Directors may, in its discretion, bring an action in the United States district court for the judicial district in which the principal office of the noninsured bank or affiliate thereof is located to enjoin such acts or practices, to enforce compliance with this subsection or any regulations thereunder, or for a combination of the foregoing, and such courts shall have jurisdiction of such actions, and, upon a proper showing, an injunction, restraining order, or other appropriate order may be granted without bond.

(2) Notwithstanding the provisions of paragraph (1), an insured nonmember bank may permit withdrawals to be made automatically from a savings deposit that consists only of funds in which the entire beneficial interest is held by one or more individuals through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to written authorization from the depositor to make such payments or transfers in connection with checks or drafts drawn upon the bank, pursuant to terms and conditions prescribed by the Board of Directors.

(h) Penalty for failure to timely pay assessments

(1) In general

Subject to paragraph (3), any insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

(2) Exception in case of dispute

Paragraph (1) shall not apply if—

(A) the failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

(B) the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(3) Special rule for small assessment amounts

If the amount of the assessment which an insured depository institution fails or refuses to pay is less than $10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (1) shall not exceed $100 for each day that such violation continues.

(4) Authority to modify or remit penalty

The Corporation, in the sole discretion of the Corporation, may compromise, modify or remit any penalty which the Corporation may assess or has already assessed under paragraph (1) upon a finding that good cause prevented the timely payment of an assessment.

(i) Reduction or retirement of capital stock, notes, or debentures; conversion of insured Federal depository institutions to insured State banks or noninsured institutions; consent of banking agencies; applicability

(1) No insured State nonmember bank shall, without the prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.

(2) No insured Federal depository institution shall convert into an insured State depository institution if its capital stock or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the

shareholder's meeting approving such conversion, without the prior written consent of—

(A) the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank;

(B) the Corporation if the resulting bank is to be a State nonmember insured bank; and

(C) the Director of the Office of Thrift Supervision if the resulting institution is to be an insured State savings association.

(3) Without the prior written consent of the Corporation, no insured depository institution shall convert into a noninsured bank or institution.

(4) In granting or withholding consent under this subsection, the responsible agency shall consider—

(A) the financial history and condition of the bank,

(B) the adequacy of its capital structure,

(C) its future earnings prospects,

(D) the general character and fitness of its management,

(E) the convenience and needs of the community to be served, and

(F) whether or not its corporate powers are consistent with the purposes of this chapter.

(j) Restrictions on transactions with affiliates and insiders

(1) Transactions with affiliates

(A) In general

Sections 371c and 371c–1 of this title shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(B) "Affiliate" defined

For the purpose of subparagraph (A), any company that would be an affiliate (as defined in sections 371c and 371c–1 of this title) of a nonmember insured bank if the nonmember insured bank were a member bank shall be deemed to be an affiliate of that nonmember insured bank.

(2) Extensions of credit to officers, directors, and principal shareholders

Sections 375a and 375b of this title shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(3) Avoiding extraterritorial application to foreign banks

(A) Transactions with affiliates

Paragraph (1) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch.

(B) Extensions of credit to officers, directors, and principal shareholders

Paragraph (2) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch, but shall apply with respect to the insured branch.

(C) "Foreign bank" defined

For purposes of this paragraph, the term ''foreign bank'' has the same meaning as in section 3101(7) of this title.

(k) Authority to regulate or prohibit certain forms of benefits to institution-affiliated parties

(1) Golden parachutes and indemnification payments

The Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

(2) Factors to be taken into account

The Corporation shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action pursuant to paragraph (1) which may include such factors as the following:

(A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution or covered company that has had a material affect on the financial condition of the institution.

(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for—

(i) the insolvency of the depository institution or covered company;

(ii) the appointment of a conservator or receiver for the depository institution; or

(iii) the troubled condition of the depository institution (as defined in the regulations prescribed pursuant to section 1831i(f) of this title).

(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material affect on the financial condition of the institution.

(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate—

(i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18; or

(ii) section 1341 or 1343 of such title affecting a federally insured financial institution.

(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.

(F) The length of time the party was affiliated with the insured depository institution or covered company, and the degree to which—

(i) the payment reasonably reflects compensation earned over the period of employment; and

(ii) the compensation involved represents a reasonable payment for services rendered.

(3) Certain payments prohibited

No insured depository institution or covered company may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made—

(A) in contemplation of the insolvency of such institution or covered company or after the commission of an act of insolvency; and

(B) with a view to, or has the result of—

(i) preventing the proper application of the assets of the institution to creditors; or

(ii) preferring one creditor over another.

(4) "Golden parachute payment" defined

For purposes of this subsection—

(A) In general

The term ''golden parachute payment'' means any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution or covered company for the benefit of any institution-affiliated party pursuant to an obligation of such institution or covered company that—

(i) is contingent on the termination of such party's affiliation with the institution or covered company; and

(ii) is received on or after the date on which—

(I) the insured depository institution or covered company, or any insured depository institution subsidiary of such covered company, is insolvent;

(II) any conservator or receiver is appointed for such institution;

(III) the institution's appropriate Federal banking agency determines that the insured depository institution is in a troubled condition (as defined in the regulations prescribed pursuant to section 1831i(f) of this title);

(IV) the insured depository institution has been assigned a composite rating by the appropriate Federal banking agency or the Corporation of 4 or 5 under the Uniform Financial Institutions Rating System; or

(V) the insured depository institution is subject to a proceeding initiated by the Corporation to terminate or suspend deposit insurance for such institution.

(B) Certain payments in contemplation of an event

Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

(C) Certain payments not included

The term ''golden parachute payment'' shall not include—

(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of title 26 or other nondiscriminatory benefit plan;

(ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Board determines, by regulation or order, to be permissible; or

(iii) any payment made by reason of the death or disability of an institution-affiliated party.

(5) Other definitions

For purposes of this subsection—

(A) Indemnification payment

Subject to paragraph (6), the term ''indemnification payment'' means any payment (or any agreement to make any payment) by any insured depository institution or covered company for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the appropriate Federal banking agency which results in a final order under which such person—

(i) is assessed a civil money penalty;

(ii) is removed or prohibited from participating in conduct of the affairs of the insured depository institution; or

(iii) is required to take any affirmative action described in section 1818(b)(6) of this title with respect to such institution.

(B) Liability or legal expense

The term ''liability or legal expense'' means—

(i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

(ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(C) Payment

The term ''payment'' includes—

(i) any direct or indirect transfer of any funds or any asset; and

(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

(I) the determination, after such date, of the liability for the payment of such amount; or

(II) the liquidation, after such date, of the amount of such payment.

(D) Covered company

The term ''covered company'' means any depository institution holding company (including any company required to file a report under section 1843(f)(6) of this title), or any other company that controls an insured depository institution.

(6) Certain commercial insurance coverage not treated as covered benefit payment

No provision of this subsection shall be construed as prohibiting any insured depository institution or covered company, from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any

legal or liability expense of the institution or covered company which is described in paragraph (5)(A).

(*l*) Acquisition of foreign banks or entities

When authorized by State law, a State nonmember insured bank may, but only with the prior written consent of the Corporation and upon such conditions and under such regulations as the Corporation may prescribe from time to time, acquire and hold, directly or indirectly, stock or other evidences of ownership in one or more banks or other entities organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Directors, shall be incidental to the international or foreign business of such foreign bank or entity; and, notwithstanding the provisions of subsection (j) of this section, such State nonmember insured bank may, as to such foreign bank or entity, engage in transactions that would otherwise be covered thereby, but only in the manner and within the limit prescribed by the Corporation by general or specific regulation or ruling.

(m) Activities of savings associations and their subsidiaries

(1) Procedures

When an insured savings association establishes or acquires a subsidiary or when an insured savings association elects to conduct any new activity through a subsidiary that the insured savings association controls, the insured savings association—

(A) shall notify the Corporation and the Director of the Office of Thrift Supervision not less than 30 days prior to the establishment, or acquisition, of any such subsidiary, and not less than 30 days prior to the commencement of any such activity, and in either case shall provide at that time such information as each such agency may, by regulation, require; and

(B) shall conduct the activities of the subsidiary in accordance with regulations and orders of the Director of the Office of Thrift Supervision.

(2) Enforcement powers

With respect to any subsidiary of an insured savings association:

(A) the Corporation and the Director of the Office of Thrift Supervision shall each have, with respect to such subsidiary, the respective powers that each has with respect to the insured savings association pursuant to this section or section 1818 of this title; and

(B) the Director of the Office of Thrift Supervision may determine, after notice and opportunity for hearing, that the continuation by the insured savings association of its ownership or control of, or its relationship to, the subsidiary—

(i) constitutes a serious risk to the safety, soundness, or stability of the insured savings association, or

(ii) is inconsistent with sound banking principles or with the purposes of this chapter.

Upon making any such determination, the Corporation or the Director of the Office of Thrift Supervision shall have authority to order the insured savings association to divest itself of control of the subsidiary. The Director of the Office of Thrift Supervision may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Director may deem appropriate.

(3) Activities incompatible with deposit insurance

(A) In general

The Corporation may determine by regulation or order that any specific activity poses a serious threat to the Deposit Insurance Fund. Prior to adopting any such regulation, the Corporation shall consult with the Director of the Office of Thrift Supervision and shall provide appropriate State supervisors the opportunity to comment thereon, and the Corporation shall specifically take such comments into consideration. Any such regulation shall be issued in accordance with section 553 of title 5. If the Board of Directors makes such a determination with respect to an activity, the Corporation shall have authority to order that no savings association may engage in the activity directly.

(B) Authority of Director

This section does not limit the authority of the Office of Thrift Supervision to issue regulations to promote safety and soundness or to enforce compliance with other applicable laws.

(C) Additional authority of FDIC to prevent serious risks to insurance fund

Notwithstanding subparagraph (A), the Corporation may prescribe and enforce such regulations and issue such orders as the Corporation determines to be necessary to prevent actions or practices of savings associations that pose a serious threat to the Deposit Insurance Fund.

(4) "Subsidiary" defined

As used in this subsection, the term ''subsidiary'' does not include an insured depository institution.

(5) Applicability to certain savings banks

Subparagraphs (A) and (B) of paragraph (1) of this subsection do not apply to—

(A) any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law, or

(B) a savings association that acquired its principal assets from an institution that was chartered prior to October 15, 1982, as a savings bank under State law.

(n) Calculation of capital

No appropriate Federal banking agency shall allow any insured depository institution to include an unidentifiable intangible asset in its calculation of compliance with the appropriate capital standard, if such unidentifiable intangible asset was acquired after April 12, 1989, except

to the extent permitted under section 1464(t) of this title.

(*o*) Real estate lending

(1) Uniform regulations

Not more than 9 months after December 19, 1991, each appropriate Federal banking agency shall adopt uniform regulations prescribing standards for extensions of credit that are—

(A) secured by liens on interests in real estate; or

(B) made for the purpose of financing the construction of a building or other improvements to real estate.

(2) Standards

(A) Criteria

In prescribing standards under paragraph (1), the agencies shall consider—

(i) the risk posed to the Deposit Insurance Fund by such extensions of credit;

(ii) the need for safe and sound operation of insured depository institutions; and

(iii) the availability of credit.

(B) Variations permitted

In prescribing standards under paragraph (1), the appropriate Federal banking agencies may differentiate among types of loans—

(i) as may be required by Federal statute;

(ii) as may be warranted, based on the risk to the Deposit Insurance Fund; or

(iii) as may be warranted, based on the safety and soundness of the institutions.

(3) Loan evaluation standard

No appropriate Federal banking agency shall adversely evaluate an investment or a loan made by an insured depository institution, or consider such a loan to be nonperforming, solely because the loan is made to or the investment is in commercial, residential, or industrial property, unless such investment or loan may affect the institution's safety and soundness.

(4) Effective date

The regulations adopted under paragraph (1) shall become effective not later than 15 months after December 19, 1991. Such regulations shall continue in effect except as uniformly amended by the appropriate Federal banking agencies, acting in concert.

(p) Periodic review of capital standards

Each appropriate Federal banking agency shall, in consultation with the other Federal banking agencies, biennially review its capital standards for insured depository institutions to determine whether those standards require sufficient capital to facilitate prompt corrective action to prevent or minimize loss to the Deposit Insurance Fund, consistent with section 1831*o* of this title.

(q) Sovereign risk

Section 633 of this title shall apply to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(r) Subsidiary depository institutions as agents for certain affiliates

(1) In general

Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for a depository institution affiliate.

(2) Bank acting as agent is not a branch

Notwithstanding any other provision of law, a bank acting as an agent in accordance with paragraph (1) for a depository institution affiliate shall not be considered to be a branch of the affiliate.

(3) Prohibitions on activities

A depository institution may not—

(A) conduct any activity as an agent under paragraph (1) or (6) which such institution is prohibited from conducting as a principal under any applicable Federal or State law; or

(B) as a principal, have an agent conduct any activity under paragraph (1) or (6) which the institution is prohibited from conducting under any applicable Federal or State law.

(4) Existing authority not affected

No provision of this subsection shall be construed as affecting—

(A) the authority of any depository institution to act as an agent on behalf of any other depository institution under any other provision of law; or

(B) whether a depository institution which conducts any activity as an agent on behalf of any other depository institution under any other provision of law shall be considered to be a branch of such other institution.

(5) Agency relationship required to be consistent with safe and sound banking practices

An agency relationship between depository institutions under paragraph (1) or (6) shall be on terms that are consistent with safe and sound banking practices and all applicable regulations of any appropriate Federal banking agency.

(6) Affiliated insured savings associations

An insured savings association which was an affiliate of a bank on July 1, 1994, may conduct activities as an agent on behalf of such bank in the same manner as an insured bank affiliate of such bank may act as agent for such bank under this subsection to the extent such activities are conducted only in—

(A) any State in which—

(i) the bank is not prohibited from operating a branch under any provision of Federal or State law; and

(ii) the savings association maintained an office or branch and conducted business as of July 1, 1994; or

(B) any State in which—

(i) the bank is not expressly prohibited from operating a branch under a State law described in section 1831u(a)(2) of this title; and

(ii) the savings association maintained a main office and conducted business as of July 1, 1994.

(s) Prohibition on certain affiliations

(1) In general

No depository institution may be an affiliate of, be sponsored by, or accept financial support, directly or indirectly, from any Government-sponsored enterprise.

(2) Exception for members of a Federal home loan bank

Paragraph (1) shall not apply with respect to the membership of a depository institution in a Federal home loan bank.

(3) Routine business financing

Paragraph (1) shall not apply with respect to advances or other forms of financial assistance provided by a Government-sponsored enterprise pursuant to the statutes governing such enterprise.

(4) Student loans

(A) In general

This subsection shall not apply to any arrangement between the Holding Company (or any subsidiary of the Holding Company other than the Student Loan Marketing Association) and a depository institution, if the Secretary approves the affiliation and determines that—

(i) the reorganization of such Association in accordance with section 1087–3 of title 20 will not be adversely affected by the arrangement;

(ii) the dissolution of the Association pursuant to such reorganization will occur before the end of the 2-year period beginning on the date on which such arrangement is consummated or on such earlier date as the Secretary deems appropriate: *Provided*, That the Secretary may extend this period for not more than 1 year at a time if the Secretary determines that such extension is in the public interest and is appropriate to achieve an orderly reorganization of the Association or to prevent market disruptions in connection with such reorganization, but no such extensions shall in the aggregate exceed 2 years;

(iii) the Association will not purchase or extend credit to, or guarantee or provide credit enhancement to, any obligation of the depository institution;

(iv) the operations of the Association will be separate from the operations of the depository institution; and

(v) until the ''dissolution date'' (as that term is defined in section 1087–3 of title 20) has occurred, such depository institution will not use the trade name or service mark ''Sallie Mae'' in connection with any product or service it offers if the appropriate Federal banking agency for such depository institution determines that—

(I) the depository institution is the only institution offering such product or service using the ''Sallie Mae'' name; and

(II) such use would result in the depository institution having an unfair competitive advantage over other depository institutions.

(B) Terms and conditions

In approving any arrangement referred to in subparagraph (A) the Secretary may impose any terms and conditions on such an arrangement that the Secretary considers appropriate, including—

(i) imposing additional restrictions on the issuance of debt obligations by the Association; or

(ii) restricting the use of proceeds from the issuance of such debt.

(C) Additional limitations

In the event that the Holding Company (or any subsidiary of the Holding Company) enters into such an arrangement, the value of the Association's ''investment portfolio'' shall not at any time exceed the lesser of—

(i) the value of such portfolio on the date of the enactment of this subsection; or

(ii) the value of such portfolio on the date such an arrangement is consummated. The term ''investment portfolio'' shall mean all investments shown on the consolidated balance sheet of the Association other than—

(I) any instrument or assets described in section 1087–2(d) of title 20, as such section existed on the day before the date of the repeal of such section;

(II) any direct noncallable obligations of the United States or any agency thereof for which the full faith and credit of the United States is pledged; or

(III) cash or cash equivalents.

(D) Enforcement

The terms and conditions imposed under subparagraph (B) may be enforced by the Secretary in accordance with section 1087–3 of title 20.

(E) Definitions

For purposes of this paragraph, the following definition shall apply—

(i) Association; Holding Company

Notwithstanding any provision in section 1813 of this title, the terms ''Association'' and ''Holding Company'' have the same meanings as in section 1087–3(i) of title 20.

(ii) Secretary

The term ''Secretary'' means the Secretary of the Treasury.

(5) "Government-sponsored enterprise" defined

For purposes of this subsection, the term ''Government-sponsored enterprise'' has the meaning given to such term in section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(t) Recordkeeping requirements

(1) Requirements

Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 78c(a) of title 15. Such recordkeeping requirements shall be sufficient to

demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions.

(2) Availability to Commission; confidentiality

Each appropriate Federal banking agency shall make any information required under paragraph (1) available to the Commission upon request. Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any such information. Nothing in this paragraph shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(3) Definition

As used in this subsection the term ''Commission'' means the Securities and Exchange Commission.

(u) Limitation on claims

(1) In general

No person may bring a claim against any Federal banking agency (including in its capacity as conservator or receiver) for the return of assets of an affiliate or controlling shareholder of the insured depository institution transferred to, or for the benefit of, an insured depository institution by such affiliate or controlling shareholder of the insured depository institution, or a claim against such Federal banking agency for monetary damages or other legal or equitable relief in connection with such transfer, if at the time of the transfer—

(A) the insured depository institution is subject to any direction issued in writing by a Federal banking agency to increase its capital; and

(B) for that portion of the transfer that is made by an entity covered by section 1844(g) of this title or section 1831v of this title, the Federal banking agency has followed the procedure set forth in such section.

(2) Definition of claim

For purposes of paragraph (1), the term ''claim''—

(A) means a cause of action based on Federal or State law that—

(i) provides for the avoidance of preferential or fraudulent transfers or conveyances; or

(ii) provides similar remedies for preferential or fraudulent transfers or conveyances; and

(B) does not include any claim based on actual intent to hinder, delay, or defraud pursuant to such a fraudulent transfer or conveyance law.

(v) Loans by insured institutions on their own stock

(1) General prohibition

No insured depository institution may make any loan or discount on the security of the shares of its own capital stock.

(2) Exclusion

For purposes of this subsection, an insured depository institution shall not be deemed to be making a loan or discount on the security of the shares of its own capital stock if it acquires the stock to prevent loss upon a debt previously contracted for in good faith.

(w) Written employment references may contain suspicions of involvement in illegal activity

(1) Authority to disclose information

Notwithstanding any other provision of law, any insured depository institution, and any director, officer, employee, or agent of such institution, may disclose in any written employment reference relating to a current or former institution-affiliated party of such institution which is provided to another insured depository institution in response to a request from such other institution, information concerning the possible involvement of such institution-affiliated party in potentially unlawful activity.

(2) Information not required

Nothing in paragraph (1) shall be construed, by itself, to create any affirmative duty to include any information described in paragraph (1) in any employment reference referred to in paragraph (1).

(3) Malicious intent

Notwithstanding any other provision of this subsection, voluntary disclosure made by an insured depository institution, and any director, officer, employee, or agent of such institution, under this subsection concerning potentially unlawful activity that is made with malicious intent, shall not be shielded from liability from the person identified in the disclosure.

(4) Definition

For purposes of this subsection, the term ''insured depository institution'' includes any uninsured branch or agency of a foreign bank.

(x) Privileges not affected by disclosure to banking agency or supervisor

(1) In general

The submission by any person of any information to any Federal banking agency, State bank supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such agency, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such agency, supervisor, or authority.

(2) Rule of construction

No provision of paragraph (1) may be construed as implying or establishing that—

(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

(B) any person would waive any privilege applicable to any information by submitting the information to any Federal banking agency, State bank supervisor, or foreign banking authority, but for this subsection.

(y) State lending limit treatment of derivatives transactions

An insured State bank may engage in a derivative transaction, as defined in section 84(b)(3) of this title, only if the law with respect to lending limits of the State in which the insured State bank is chartered takes into consideration credit exposure to derivative transactions.

(z) General prohibition on sale of assets

(1) In general

An insured depository institution may not purchase an asset from, or sell an asset to, an executive officer, director, or principal shareholder of the insured depository institution, or any related interest of such person (as such terms are defined in section 375b of this title), unless—

(A) the transaction is on market terms; and

(B) if the transaction represents more than 10 percent of the capital stock and surplus of the insured depository institution, the transaction has been approved in advance by a majority of the members of the board of directors of the insured depository institution who do not have an interest in the transaction.

(2) Rulemaking

The Board of Governors of the Federal Reserve System may issue such rules as may be necessary to define terms and to carry out the purposes this subsection. Before proposing or adopting a rule under this paragraph, the Board of Governors of the Federal Reserve System shall consult with the Comptroller of the Currency and the Corporation as to the terms of the rule.

(Sept. 21, 1950, ch. 967, § 2[18], 64 Stat. 891; Pub. L. 86–463, May 13, 1960, 74 Stat. 129; Pub. L. 87–827, § 2, Oct. 15, 1962, 76 Stat. 953; Pub. L. 89–79, § 2, July 21, 1965, 79 Stat. 244; Pub. L. 89–356, § 1, Feb. 21, 1966, 80 Stat. 7; Pub. L. 89–485, § 12(c), July 1, 1966, 80 Stat. 242; Pub. L. 89–597, § 3, Sept. 21, 1966, 80 Stat. 824; Pub. L. 90–505, § 2(b), Sept. 21, 1968, 82 Stat. 856; Pub. L. 91–151, title I, §§ 2(a), 4(b), (c), Dec. 23, 1969, 83 Stat. 372, 374, 375; Pub. L. 93–100, § 3, Aug. 16, 1973, 87 Stat. 342; Pub. L. 93–495, title I, § 106, Oct. 28, 1974, 88 Stat. 1505; Pub. L. 93–501, title I, § 102(a), title III, § 302, Oct. 29, 1974, 88 Stat. 1558, 1560; Pub. L. 95–369, § 6(c)(25)–(28), Sept. 17, 1978, 92 Stat. 620; Pub. L. 95–630, title I, § 108, title III, §§ 301(b), (c), 306, Nov. 10, 1978, 92 Stat. 3664, 3675, 3677; Pub. L. 96–104, title II, § 202, Nov. 5, 1979, 93 Stat. 792; Pub. L. 96–161, title I, § 101(b), title II, § 209, Dec. 28, 1979, 93 Stat. 1233, 1239; Pub. L. 96–221, title II, § 207(b)(2), (3), title III, §§ 302(b), 307, title V, § 529, Mar. 31, 1980, 94 Stat. 144, 146, 147, 168; Pub. L. 97–320, title I, § 113(n), (*o*), title IV, §§ 410(d), 423, 424(b), (d)(10), (e), Oct. 15, 1982, 96 Stat. 1474, 1520, 1522, 1523; Pub. L. 100–86, title I, §§ 102(b), 103, title V, § 504(b), Aug. 10, 1987, 101 Stat. 566, 632; Pub. L. 101–73, title II, §§ 201, 221, title IX, §§ 905(d), 907(c), Aug. 9, 1989, 103 Stat. 187, 266, 460, 466; Pub. L. 101–647, title XXV, § 2523(a), Nov. 29, 1990, 104 Stat. 4868; Pub. L. 102–242, title III, §§ 304(a), 305(a), 306(k), Dec. 19, 1991, 105 Stat. 2354, 2359; Pub. L. 102–550, title XVI, § 1605(a)(9), Oct. 28, 1992, 106 Stat. 4086; Pub. L. 103–325, title III, §§ 321(b), 324, 326(b)(1), title VI, § 602(a)(44)–(50), Sept. 23, 1994, 108 Stat. 2226, 2227, 2229, 2290; Pub. L. 103–328, title I, §§ 101(d), 102(b)(3)(A), 103(b), Sept. 29, 1994, 108 Stat. 2342, 2350, 2353; Pub. L. 104–208, div. A, title II, §§ 2615(b), 2704(d)(14)(U), (V), Sept. 30, 1996, 110 Stat. 3009–479, 3009–494; Pub. L. 105–277, div. H, § 2, Oct. 21, 1998, 112 Stat. 2681–854; Pub. L. 106–102, title II, § 204, title VII, § 730, Nov. 12, 1999, 113 Stat. 1391, 1476; Pub. L. 106–569, title XII, § 1207(b), Dec. 27, 2000, 114 Stat. 3034; Pub. L. 107–56, title III, §§ 327(b)(1), 355, Oct. 26, 2001, 115 Stat. 319, 324; Pub. L. 108–386, § 8(a)(5), Oct. 30, 2004, 118 Stat. 2231; Pub. L. 108–458, title VI, § 6203(j), Dec. 17, 2004, 118 Stat. 3747; Pub. L. 109–171, title II, §§ 2102(b), 2104(c), Feb. 8, 2006, 120 Stat. 9, 13; Pub. L. 109–173, §§ 2(c)(2), 8(a)(28)–(30), Feb. 15, 2006, 119 Stat. 3602, 3615; Pub. L. 109–351, title VI, §§ 606, 607(a), title VII, §§ 702(b), 704, Oct. 13, 2006, 120 Stat. 1981, 1982, 1985, 1986; Pub. L. 110–315, title IV, § 438(b), Aug. 14, 2008, 122 Stat. 3258; Pub. L. 110–343, div. A, title I, § 126(a), (d), Oct. 3, 2008, 122 Stat. 3793, 3796; Pub. L. 111–203, title III, § 363(7), title VI, §§ 604(f), 611(a), 613(b), 615(a), 623(a), 627(a)(3), July 21, 2010, 124 Stat. 1553, 1602, 1612, 1614, 1634, 1640.)

AMENDMENT OF SECTION

Pub. L. 111–203, title VI, § 627(a)(3), (b), July 21, 2010, 124 Stat. 1640, provided that effective 1 year after July 21, 2010, subsection (g) of this section is amended to read as follows:

''(g) [Repealed]''.

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title VI, § 604(f), (j), July 21, 2010, 124 Stat. 1602, 1604, provided that effective on the transfer date, subsection (c)(5) of this section is amended in the concluding provisions by substituting ''the convenience and needs of the community to be served, and the risk to the stability of the United States banking or financial system'' for ''and the convenience and needs of the community to be served''. See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title III, §§ 351, 363(7), July 21, 2010, 124 Stat. 1546, 1553, provided that, effective on the transfer date, this section is amended:

(1) in subsection (c)(2)—

(A) in subparagraph (A), by inserting ''or a Federal savings association'' before the semicolon;

(B) in subparagraph (B), by inserting ''and'' at the end;

(C) in subparagraph (C), by substituting ''or a State savings association.'' for ''(except'' and all that follows through ''; and''; and

(D) by striking out subparagraph (D);

(2) in subsection (g)(1), by substituting ''the Comptroller of the Currency'' for ''the Director of the Office of Thrift Supervision'';

(3) in subsection (i)(2)(C), by substituting ''Corporation'' for ''Director of the Office of Thrift Supervision''; and

(4) in subsection (m)—

(A) in paragraph (1)—

(i) in subparagraph (A), by substituting ''or the Comptroller of the Currency, as appropriate,'' for ''and the Director of the Office of Thrift Supervision''; and

(ii) in subparagraph (B), by substituting ''of the Comptroller of the Currency and orders of the Corporation and the Comptroller of the Currency'' for ''and orders of the Director of the Office of Thrift Supervision'';

(B) in paragraph (2)—

(i) in subparagraph (A), by substituting ''Comptroller of the Currency, as appropriate,'' for ''Director of the Office of Thrift Supervision''; and

(ii) in subparagraph (B)—

(I) in introductory provisions, by substituting ''Corporation or the Comptroller of the Currency, as appropriate,'' for ''Director of the Office of Thrift Supervision''; and

(II) in concluding provisions, in the first sentence, by substituting ''Office of the Comptroller of the Currency, as appropriate,'' for ''Director of the Office of Thrift Supervision'' and by striking out the second sentence and inserting the following: ''The Corporation or the Comptroller of the Currency, as appropriate, may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Corporation or the Comptroller of the Currency, respectively, may deem appropriate.''; and

(C) in paragraph (3)—

(i) in subparagraph (A), in the second sentence, by inserting '', in the case of a Federal savings association,'' before ''consult with'' and substituting ''Comptroller of the Currency'' for ''Director of the Office of Thrift Supervision''; and

(ii) in subparagraph (B)—

(I) in the heading, by substituting ''Comptroller of the Currency'' for ''Director''; and

(II) by substituting ''Comptroller of the Currency'' for ''Office of Thrift Supervision'', inserting a comma after ''soundness'', and inserting ''as to Federal savings associations'' after ''compliance''.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Act of July 2, 1890 (the Sherman Antitrust Act), referred to in subsec. (c)(8), is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of the Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914 (the Clayton Act), referred to in subsec. (c)(8), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The date of enactment of this subsection, referred to in subsec. (c)(10), probably means the date of enactment of Pub. L. 93–495, which was approved Oct. 28, 1974.

The transfer date, referred to in subsec. (c)(13)(C)(ii)(III), probably means the transfer date defined in section 5301 of this title.

Section 1831u of this title, referred to in subsec. (d)(3), was subsequently amended, and subsec. (f)(4) of section 1831u no longer defines the term ''home State''. However, such term is defined elsewhere in that section.

Section 19 of the Federal Reserve Act, as amended, referred to in subsec. (g)(1), is classified to sections 142, 371a, 371b, 371b–1, 374, 374a, 461, 463 to 466, 505, and 506 of this title. For provisions of section 19 relating to payment of interest on demand deposits, see section 371a of this title.

The date of the enactment of this subsection, referred to in subsec. (s)(4)(C)(i), probably means the date of enactment of Pub. L. 105–277, which added par. (4) of subsec. (s) and redesignated former par. (4) as (5), and which was approved Oct. 21, 1998.

For the date of the repeal of section 1087–2(d) of title 20, referred to in subsec. (s)(4)(C)(ii)(I), see section 101(e) [title VI, §602(d)(2)] of div. A of Pub. L. 104–208, set out as an Effective Date of 1996 Amendment note under section 1087–2 of Title 20, Education.

Section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (s)(5), is section 1404(e)(1)(A) of Pub. L. 101–73, which is set out as a note under section 1811 of this title.

CODIFICATION

Section 202 of Pub. L. 96–104, cited as a credit to this section, was repealed by section 212 of Pub. L. 96–161, effective at the close of Dec. 27, 1979. The amendment of this section by that repealed provision, described in the 1979 Amendment note set out under this section, shall continue in effect for limited purposes pursuant to section 212 of Pub. L. 96–161. See Savings Provisions note, describing the provisions of section 212 of Pub. L. 96–161, set out under section 85 of this title.

Section 302 of Pub. L. 93–501, cited as a credit to this section, was repealed by Pub. L. 96–104, §1, Nov. 5, 1979, 93 Stat. 789. The amendment of this section by that repealed provision, described in the 1974 Amendment note set out under this section, shall continue in effect for limited purposes pursuant to section 1 of Pub. L. 96–104. See Savings Provisions note, describing the provisions of section 1 of Pub. L. 96–104, set out under section 85 of this title.

PRIOR PROVISIONS

Subsecs. (a) to (g) are derived from subsec. (v)(2) to (8) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2010—Subsec. (c)(13). Pub. L. 111–203, §623(a), added par. (13).

Subsec. (d)(4)(A)(i). Pub. L. 111–203, §613(b), amended cl. (i) generally. Prior to amendment, text read as follows: ''there is in effect in the host State a law that—

''(I) applies equally to all banks; and

''(II) expressly permits all out-of-State banks to establish de novo branches in such State; and''.

Subsec. (y). Pub. L. 111–203, §611(a), which directed amendment of section by adding subsec. (y) at the end, was executed by adding subsec. (y) after subsec. (x), as the probable intent of Congress, even though Pub. L. 111–203, §615(a), which added subsec. (z) at the end, was effective earlier. See Amendment note and Effective Date of 2010 Amendment note below.

Subsec. (z). Pub. L. 111–203, §615(a), added subsec. (z).

2008—Subsec. (a). Pub. L. 110–343, §126(d)(2), substituted ''Representations of deposit insurance'' for ''Insurance logo'' in heading.

Subsec. (a)(3). Pub. L. 110–343, §126(d)(1), substituted ''violate paragraph (1)'' for ''violate this subsection'' and ''under paragraph (2)'' for ''under this subsection''.

Subsec. (a)(4). Pub. L. 110–343, §126(a), added par. (4).

Subsec. (s)(4)(C)(ii)(I). Pub. L. 110–315 inserted '', as such section existed on the day before the date of the repeal of such section'' after ''section 1087–2(d) of title 20''.

2006—Subsec. (a). Pub. L. 109–173, §2(c)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to the insurance logo and signs to be displayed at insured savings associations and insured banks.

Subsec. (c)(4). Pub. L. 109–351, §606(a), inserted heading and amended text generally. Prior to amendment, text read as follows: ''In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless it finds that it must act immediately in order to prevent the probable failure of one of the banks or savings associations involved, shall request reports on the competitive factors involved from the Attorney General and the other Federal banking agencies referred to in this subsection. The reports shall be furnished within thirty calendar days of the date on which they are requested, or within ten calendar days of such date if the requesting agency advises the Attorney General and the other Federal banking agencies that an emergency exists requiring expeditious action. Notwithstanding the preceding sentence, a banking agency shall not be required to file a report requested by the responsible agency under this paragraph if such banking agency advises the responsible agency by the applicable date under the preceding sentence that the report is not necessary because none of the effects described in paragraph (5) are likely to occur as a result of the transaction.''

Subsec. (c)(6). Pub. L. 109–351, §606(b)(2), substituted, in penultimate sentence, ''If the agency has advised the Attorney General under paragraph (4)(B)(ii) of the existence of an emergency requiring expeditious action and has requested a report on the competitive factors within 10 days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency.'' for ''If the agency has advised the Attorney General and the other Federal banking agencies of the existence of an emergency requiring expeditious actions and has requested reports on the competitive factors within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency.''

Pub. L. 109–351, §606(b)(1), substituted, in second sentence, ''insured depository institutions involved, or if the proposed merger transaction is solely between an insured depository institution and 1 or more of its affiliates, and the report on the competitive factors has'' for ''banks or savings associations involved and reports on the competitive factors have''.

Subsec. (h). Pub. L. 109–171, §2104(c), amended subsec. (h) generally. Prior to amendment, text read as follows: ''Any insured depository institution which willfully fails or refuses to file any certified statement or pay any assessment required under this chapter shall be subject to a penalty of not more than $100 for each day that such violations continue, which penalty the Corporation may recover for its use: *Provided*, That this subsection shall not be applicable under the circumstances stated in the proviso of subsection (b) of this section.''

Subsec. (k)(2)(A). Pub. L. 109–351, §704(1), substituted ''or covered company'' for ''or depository institution holding company''.

Subsec. (k)(2)(B). Pub. L. 109–351, §704(2), added subpar. (B) and struck out former subpar. (B) which read as follows: ''Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for the insolvency of the depository institution or depository institution holding company, the appointment of a conservator or receiver for the depository institution, or the depository institution's troubled condition (as defined in the regulations prescribed pursuant to section 1831i(f) of this title).''

Subsec. (k)(2)(F). Pub. L. 109–351, §704(3), substituted ''covered company,'' for ''depository institution holding company'' in introductory provisions.

Subsec. (k)(3). Pub. L. 109–351, §704(4), substituted ''covered company'' for ''depository institution holding company'' in introductory provisions.

Subsec. (k)(3)(A). Pub. L. 109–351, §704(5), substituted ''covered company'' for ''holding company''.

Subsec. (k)(4)(A). Pub. L. 109–351, §704(6), substituted ''covered company for the benefit'' for ''depository institution holding company for the benefit'' and ''or covered company that—'' for ''or holding company that—'' in introductory provisions, ''covered company;'' for ''holding company;'' in cl. (i), and ''covered company,'' for ''depository institution holding company,'' and ''such covered company'' for ''such holding company'' in cl. (ii)(I).

Subsec. (k)(5)(A). Pub. L. 109–351, §704(7), substituted ''covered company'' for ''depository institution holding company'' in introductory provisions.

Subsec. (k)(5)(D). Pub. L. 109–351, §704(8), added subpar. (D).

Subsec. (k)(6). Pub. L. 109–351, §704(9), substituted ''covered company,'' for ''depository institution holding company'' and ''or covered company which is described'' for ''or holding company which is described''.

Subsec. (m)(3). Pub. L. 109–173, §8(a)(28), in subpar. (A) substituted ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund'' and ''savings association'' for ''Savings Association Insurance Fund member'' and in subpar. (C) substituted ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund or the Bank Insurance Fund''.

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(14)(U). See 1996 Amendment note below.

Subsec. (*o*)(2). Pub. L. 109–173, §8(a)(29), substituted ''Deposit Insurance Fund'' for ''deposit insurance funds'' in subpar. (A)(i) and for ''deposit insurance fund'' in subpar. (B)(ii).

Subsec. (p). Pub. L. 109–173, §8(a)(30), substituted ''Deposit Insurance Fund'' for ''deposit insurance funds''.

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(14)(V). See 1996 Amendment note below.

Subsec. (u)(1). Pub. L. 109–351, §702(b), inserted ''and'' at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar, (B) which read as follows: ''the insured depository institution is undercapitalized (as defined in section 1831*o* of this title); and''.

Subsec. (x). Pub. L. 109–351, §607(a), added subsec. (x).

2004—Subsec. (c)(2)(A). Pub. L. 108–386, §8(a)(5)(A), struck out ''or a District bank'' after ''national bank''.

Subsec. (c)(2)(B). Pub. L. 108–386, §8(a)(5)(B), struck out ''(except a District bank)'' after ''State member bank''.

Subsec. (c)(2)(C). Pub. L. 108–386, §8(a)(5)(C), struck out ''a District Bank or'' before ''a savings bank''.

Subsec. (d)(1). Pub. L. 108–386, §8(a)(5)(D), struck out ''(except a District bank)'' after ''nonmember insured bank'' in two places.

Subsec. (f). Pub. L. 108–386, §8(a)(5)(E), struck out ''or a District bank'' after ''national bank''.

Subsec. (i)(1). Pub. L. 108–386, §8(a)(5)(F), struck out ''(except a District bank)'' after ''State nonmember bank''.

Subsec. (i)(2)(A) to (D). Pub. L. 108–386, §8(a)(5)(G)–(I), redesignated subpars. (B) to (D) as (A) to (C), respectively, struck out ''(except a District bank)'' before semicolon in subpars. (A) and (B), and struck out former subpar. (A), which read as follows: ''the Comptroller of the Currency if the resulting bank is to be a District bank;''.

Subsec. (w)(3). Pub. L. 108–458 inserted comma after ''agent of such institution''.

2001—Subsec. (c)(11), (12). Pub. L. 107–56, §327(b)(1), added par. (11) and redesignated former par. (11) as (12).

Subsec. (w). Pub. L. 107–56, §355, added subsec. (w).

2000—Subsecs. (t), (u). Pub. L. 106–569, §1207(b)(1), redesignated subsec. (t), relating to limitation on claims, as (u).

Subsec. (v). Pub. L. 106–569, §1207(b)(2), added subsec. (v).

1999—Subsec. (t). Pub. L. 106–102, §730, added subsec. (t) relating to limitation on claims.

Pub. L. 106–102, §204, which directed amendment of section by adding at end subsec. (t) relating to recordkeeping requirements, was executed by making the addition after subsec. (s) to reflect the probable intent of Congress.

1998—Subsec. (s)(4), (5). Pub. L. 105–277 redesignated par. (4) as (5) and added par. (4).

1996—Subsec. (m)(3). Pub. L. 104–208, § 2704(d)(14)(U), which directed substitution of ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund'' wherever appearing and striking of ''or the Bank Insurance Fund'' in subpar. (C), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (p). Pub. L. 104–208, § 2704(d)(14)(V), which directed substitution of ''Deposit Insurance Fund'' for ''deposit insurance funds'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (s). Pub. L. 104–208, § 2615(b), added subsec. (s).

1994—Subsec. (b). Pub. L. 103–325, § 602(a)(44), substituted ''if the insured depository institution deposits'' for '', if such bank shall deposit''.

Subsec. (c)(1)(B). Pub. L. 103–325, § 602(a)(45), inserted ''or'' at end.

Subsec. (c)(4). Pub. L. 103–325, §§ 324, 602(a)(46), substituted ''other Federal banking agencies'' for ''other two banking agencies'' in two places and inserted at end ''Notwithstanding the preceding sentence, a banking agency shall not be required to file a report requested by the responsible agency under this paragraph if such banking agency advises the responsible agency by the applicable date under the preceding sentence that the report is not necessary because none of the effects described in paragraph (5) are likely to occur as a result of the transaction.''

Subsec. (c)(6). Pub. L. 103–325, §§ 321(b), 602(a)(47), substituted ''other Federal banking agencies'' for ''other two banking agencies'' and inserted before period at end ''or, if the agency has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval''.

Subsec. (c)(9). Pub. L. 103–325, § 602(a)(48), substituted ''with—'' for ''with the following information:''.

Subsec. (d)(3). Pub. L. 103–328, § 102(b)(3)(A), added par. (3).

Subsec. (d)(4). Pub. L. 103–328, § 103(b), added par. (4).

Subsec. (f). Pub. L. 103–325, § 602(a)(49), substituted ''such insured depository institution'' for ''such bank'' and ''the insured depository institution'' for ''the bank''.

Subsec. (k)(4)(A)(ii)(II). Pub. L. 103–325, § 602(a)(50), struck out ''or'' at end.

Subsec. (q). Pub. L. 103–325, § 326(b)(1), added subsec. (q).

Subsec. (r). Pub. L. 103–328, § 101(d), added subsec. (r).

1992—Subsec. (p). Pub. L. 102–550 redesignated subsec. (*o*), relating to periodic review of capital standards, as (p).

1991—Subsec. (j). Pub. L. 102–242, § 306(k), amended subsec. (j) generally, revising and restating as pars. (1) to (3) provisions of former pars. (1) to (6).

Subsec. (*o*). Pub. L. 102–242, § 305(a), added subsec. (*o*) relating to periodic review of capital standards.

Pub. L. 102–242, § 304(a), added subsec. (*o*) relating to real estate lending.

1990—Subsec. (k). Pub. L. 101–647 added subsec. (k).

1989—Subsec. (a). Pub. L. 101–73, § 221(1), substituted heading and pars. (1) to (3) for first two sentences which read as follows: ''Every insured bank shall display at each place of business maintained by it a sign or signs, and shall include a statement to the effect that its deposits are insured by the Corporation in all of its advertisements: *Provided*, That the Board of Directors may exempt from this requirement advertisements which do not relate to deposits or when it is impractical to include such statement therein. The Board of Directors shall prescribe by regulation the forms of such signs and the manner of display and the substance of such statements and the manner of use.''

Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsecs. (b), (c)(1), (2). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank'' wherever appearing.

Subsec. (c)(2)(C), (D). Pub. L. 101–73, § 221(2)(A), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: ''the Corporation if the acquiring, assuming or resulting bank is to be a nonmember insured bank (except a District bank).''

Subsec. (c)(3). Pub. L. 101–73, § 221(2)(C), (D), substituted ''banks or savings associations'' for ''banks'' wherever appearing and ''default'' for ''failure''.

Subsec. (c)(4), (6). Pub. L. 101–73, § 221(2)(C), substituted ''banks or savings associations'' for ''banks''.

Subsec. (c)(7)(C), (9)(A). Pub. L. 101–73, § 221(2)(C), substituted ''bank or savings association'' for ''bank''.

Subsec. (c)(10). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (c)(12). Pub. L. 101–73, § 221(2)(B), struck out par. (12) which read as follows: ''The provisions of this subsection shall not apply to any transaction where the acquiring, assuming, or resulting institution is an insured Federal savings bank or an institution insured by the Federal Savings and Loan Insurance Corporation, except that any insured bank involved in the transaction shall notify the Corporation in writing at least 30 days prior to consummation of the transaction and, if any approval by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation is required in connection therewith, such approving authority shall provide the Corporation with notification of the application for approval, shall consult with the Corporation before disposing of the application, and shall provide notification to the Corporation of the determination with respect to said application.''

Subsecs. (e), (f). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank'' wherever appearing.

Subsec. (g)(1). Pub. L. 101–73, § 201(b), substituted ''Director of the Office of Thrift Supervision'' for ''Federal Home Loan Bank Board''.

Subsec. (h). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (i)(2). Pub. L. 101–73, § 221(3)(A), (B), substituted ''insured Federal depository institution'' and ''insured State depository institution'' for ''insured bank'' and ''insured State bank'', respectively.

Subsec. (i)(2)(D). Pub. L. 101–73, § 221(3)(C), (D), added subpar. (D).

Subsec. (i)(3). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (i)(4)(D). Pub. L. 101–73, § 221(3)(E), which directed the amendment of subsec. (i)(2) by inserting ''and fitness'' after ''character'' in par. (4)(D), was executed to par. (4)(D) as the probable intent of Congress.

Subsec. (i)(5). Pub. L. 101–73, § 221(3)(F), which directed the amendment of subsec. (i)(2) by striking out par. (5), was executed to par. (5) as the probable intent of Congress. Prior to amendment, par. (5) read as follows: ''Nothing in this subsection shall apply to a conversion of an insured bank to an insured institution pursuant to section 1726(e) of this title.''

Subsec. (j)(3)(D). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (j)(4), (5). Pub. L. 101–73, § 907(c), amended pars. (4) and (5) generally. Prior to amendment, pars. (4) and (5) read as follows:

''(4)(A) Any nonmember insured bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such nonmember insured bank who violates any provision of section 371c, 371c–1, or 375b of this title, or any lawful regulation issued pursuant thereto, or any provision of section 377 of this title, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues: *Provided*, That the Corporation may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Corporation by written notice. As used

in this section, the term 'violates' includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

''(B) In determining the amount of the penalty the Corporation shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

''(C) The nonmember insured bank or person charged shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided the assessment shall constitute a final and unappealable order.

''(D) Any nonmember insured bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the member bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within twenty days from the service of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the Corporation shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

''(E) If any nonmember insured bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Corporation shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

''(F) The Corporation shall promulgate regulations establishing procedures necessary to implement this paragraph.

''(G) All penalties collected under the authority of this paragraph shall be covered into the Treasury of the United States.

''(5) The provisions of this subsection shall not apply to an insured Federal savings bank.''

Subsec. (j)(6). Pub. L. 101–73, § 905(d), added par. (6).

Subsecs. (m), (n). Pub. L. 101–73, § 221(4), added subsecs. (m) and (n).

1987—Subsec. (c)(12). Pub. L. 100–86, § 504(b)(1), amended par. (12) generally. Prior to amendment, par. (12) read as follows: ''The provisions of this subsection shall not apply to any merger transaction involving an insured Federal savings bank unless the resulting institution will be an insured bank other than an insured Federal savings bank.''

Subsec. (i)(5). Pub. L. 100–86, § 504(b)(2), added par. (5).

Subsec. (j)(1). Pub. L. 100–86, § 102(b)(1), inserted reference to section 371c–1 of this title in two places.

Subsec. (j)(3). Pub. L. 100–86, § 103(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (j)(4). Pub. L. 100–86, §§ 102(b)(2), 103, redesignated former par. (3) as (4) and in subpar. (A) inserted '', 371c–1,'' and ''or any provision of section 377 of this title,''.

Subsec. (j)(5). Pub. L. 100–86, § 103(a), redesignated former par. (4) as (5).

1982—Subsec. (c)(12). Pub. L. 97–320, § 113(n), added par. (12).

Subsec. (j)(1). Pub. L. 97–320, § 410(d), struck out ''within the meaning of section 221a of this title and'' after ''of a nonmember insured bank,''.

Subsec. (j)(2). Pub. L. 97–320, § 423, inserted provisions relating to the applicability of this subsection to any foreign bank as defined in section 3101(7) of this title and its branch in the United States.

Subsec. (j)(3)(A). Pub. L. 97–320, § 424(b), (d)(10), inserted proviso giving the Corporation discretionary authority to compromise, etc., any civil money penalty imposed under this subsection, and substituted ''may be assessed'' for ''shall be assessed''.

Subsec. (j)(3)(D). Pub. L. 97–424(e), substituted ''twenty days from the service'' for ''ten days from the date''.

Subsec. (j)(4). Pub. L. 97–320, § 113(*o*), added par. (4).

1980—Subsec. (g). Pub. L. 96–221, §§ 302(b), 307, inserted provisions identical to provisions inserted by section 101(b) of Pub. L. 96–161, designating existing provisions as par. (1) and adding par. (2), and repealing the amendment made by Pub. L. 96–161. See Repeals and Effective Date of 1980 Amendment notes below.

Pub. L. 96–221, § 207(b)(2), (3), provided for the future amendment of subsec. (g)(1) by striking out ''payment and'' and '', including limitations on the rates of interest or dividends that may be paid'' in second sentence, and by striking out third, fifth, and eighth sentences which read as follows: ''The Board of Directors may prescribe different rate limitations for different classes of deposits, for deposits of different amounts or with different maturities or subject to different conditions regarding withdrawal or repayment, according to the nature or location of insured nonmember banks or their depositors, or according to such other reasonable bases as the Board of Directors may deem desirable in the public interest. Such regulations shall prohibit any insured nonmember bank from paying any time deposit before its maturity except upon such conditions and in accordance with such rules and regulations as may be prescribed by the Board of Directors, and from waiving any requirement of notice before payment of any savings deposit except as to all savings deposits having the same requirement. For each violation of any provision of this subsection or any lawful provision of such regulations relating to the payment of interest or dividends on deposits or to withdrawal of deposits, the offending bank shall be subject to a penalty of not more than $100, which the Corporation may recover for its use.'' See Effective Date of 1980 Amendment note below.

Subsec. (k). Pub. L. 96–221, § 529, repealed Pub. L. 96–104 and title II of Pub. L. 96–161, resulting in the striking out of subsec. (k) which had provided that no insured nonmember bank or affiliate, or any successor, assignee, endorser, guarantor, or surety thereof, could plead or claim, directly or otherwise, with respect to any deposit or obligation of such bank or affiliate, any defense, right, or benefit under any provision of a State or territory of the United States, or the District of Columbia, regulating or limiting the rate of interest which could be charged or received, etc. and any such provision was preempted, and no civil or criminal penalty which would otherwise be applicable under such provision would apply to such bank or affiliate or any other person.

1979—Subsec. (g). Pub. L. 96–161, § 101(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (k). Pub. L. 96–161, § 209, added subsec. (k). A prior subsec. (k), added by Pub. L. 96–104 and identical to the subsec. (k) added by Pub. L. 96–161, was repealed by section 212 of Pub. L. 96–161. See Codification note above.

Pub. L. 96–104 added subsec. (k). A prior subsec. (k), which also related to the inapplicability of State usury ceilings to certain obligations issued by insured nonmember banks and affiliates, was repealed by section 1 of Pub. L. 96–104.

1978—Subsec. (c)(1)(B). Pub. L. 95–630, § 306, inserted ''(including liabilities which would be 'deposits' except for the proviso in section 1813(*l*)(5) of this title)'' after ''pay any deposits''.

Subsec. (c)(11). Pub. L. 95–369, § 6(c)(25), added par. (11).

Subsec. (d). Pub. L. 95–630, § 301(b), designated existing provisions as par. (1) and, inserted ''domestic'' after

''operate any new'' and ''such'' after ''main office or any'', and added par. (2).

Pub. L. 95–369, § 6(c)(26), inserted provision prohibiting a foreign bank from moving any insured branch from one location to another without the consent of the Corporation.

Subsec. (g). Pub. L. 95–369, § 6(c)(27), inserted ''and in insured branches of foreign banks'' after ''in insured nonmember banks''.

Subsec. (j). Pub. L. 95–630, § 108, designated existing provisions as par. (1) and added pars. (2) and (3).

Pub. L. 95–369, § 6(c)(28), inserted at end ''The provisions of this subsection shall not apply to any foreign bank having an insured branch with respect to dealings between such bank and any affiliate thereof.''

Subsec. (*l*). Pub. L. 95–630, § 301(c), added subsec. (*l*).

1974—Subsec. (c)(10). Pub. L. 93–495 added par. (10).

Subsec. (g). Pub. L. 93–501, § 102(a), struck out requirement that obligations other than deposits undertaken by insured non-member banks be for the purpose of obtaining funds to be used in the banking business in provisions relating to applicability of this subsection and of regulations under the subsection to such obligations.

Subsec. (k). Pub. L. 93–501, § 302, added subsec. (k).

1973—Subsec. (g). Pub. L. 93–100 extended rulemaking authority of Board of Directors to payment and advertisement of dividends on deposits and in the provisions relating to the applicability of the subsection to noninsured banks in the States, eliminated clause designation and struck out provisions of former cl. (2).

1969—Subsec. (g). Pub. L. 91–151 extended the authority of the Board under this subsection to noninsured banks in the States where uninsured savings deposits exceed 20 per cent of the total savings deposits, and, where State laws do not provide for such regulations, empowered the Board up to July 31, 1970, to prevent the rates paid by such noninsured institutions from exceeding 5½ per cent, and further authorized the Board to bring actions in federal courts for compliance, authorized the Board to determine what could be deemed a payment of interest and provided for the promulgation of regulations necessary for the enforcement of the subsection, made the subsection and the regulations thereunder applicable to obligations other than deposits undertaken by insured nonmember banks and their affiliates and extended the regulatory power of the Board to include ''dividends''.

1968—Subsec. (g). Pub. L. 90–505 gave the Board power to prescribe rules governing the payment and advertisement of interest on deposits.

1966—Subsec. (c). Pub. L. 89–356, § 1(a), laid down more definite guidelines for dealing with the antitrust aspects of bank mergers by prohibiting monopoly bank mergers in all cases, forbidding anticompetitive mergers except in cases where a clear showing is made that a given merger is so beneficial that its allowance is in the public interest, and requiring the uniform application of the law by both judicial and administrative bodies, inserted provisions to delay the effectiveness of agency approval of merger transactions except in emergency situations, imposed a special statute of limitations for antitrust actions arising out of agency-approved merger transactions thereby precluding antitrust actions when the agency has acted immediately to prevent probable failure of a bank, provided for the automatic staying of the effectiveness of agency action by the commencement of an antitrust action unless the court orders otherwise, called for de novo court review, permitted federal bank agencies which approved a subsequently challenged merger to appear in the suit by its own counsel, allowed state banking agencies to present their views, and inserted a definition of ''antitrust laws'' which would include the Sherman Act, the Clayton Act, and any other Acts in pari materia.

Subsec. (g). Pub. L. 89–597 made the authority of the FDIC Board to prescribe maximum permissible rates of interest that may be paid by member banks on time and savings deposits discretionary rather than mandatory, included such payments by insured mutual savings banks, required prior consultations with the Board of Governors of the FRS and the FHLB Board, authorized different rate limitations for different classes of deposits, for deposits of different amounts, or according to such other reasonable bases as the Board may deem desirable in the public interest, and eliminate provision for rate limitation according to the varying discount rates of member banks in the several Federal Reserve districts.

Subsec. (i). Pub. L. 89–356, § 1(b), added subsec. (i).

Subsec. (j). Pub. L. 89–485 added subsec. (j).

1965—Subsec. (g). Pub. L. 89–79 extended until Oct. 15, 1968, the period during which the provisions of this subsection should not apply to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

1962—Subsec. (g). Pub. L. 87–827 inserted sentence making the subsection inapplicable, during the period commencing on Oct. 15, 1962, and ending upon the expiration of three years after such date, to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

1960—Subsec. (c). Pub. L. 86–463 prohibited merger or consolidation of any insured bank with any other insured bank, or acquisition of assets of, or assumption of liability to pay any deposits made in, any other insured bank without prior written consent, required publication of notice of any proposed merger, consolidation, acquisition of assets, or assumption of liabilities, enumerated specific items required to be considered before consent may be granted or withheld, directed the agency involved to request a report on competitive factors involved from the Attorney General and the other two banking agencies referred to in this subsection, and provided for inclusion in the annual report of the Comptroller, the Board and the Corporation of each merger, consolidation, acquisition of assets, or assumption of liabilities approved.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 363(7) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 604(f) of Pub. L. 111–203 effective on the transfer date, see section 604(j) of Pub. L. 111–203, set out as a note under section 1462 of this title.

Pub. L. 111–203, title VI, § 611(b), July 21, 2010, 124 Stat. 1612, provided that: ''The amendment made by this section [amending this section] shall take effect 18 months after the transfer date.''

[For definition of ''transfer date'' as used in section 611(b) of Pub. L. 111–203, set out above, see section 5301 of this title.]

Amendment by sections 613(b) and 623(a) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

Amendment by section 615(a) of Pub. L. 111–203 effective on the transfer date, see section 615(c) of Pub. L. 111–203, set out as a note under section 375 of this title.

Amendment by section 627(a)(3) of Pub. L. 111–203 effective 1 year after July 21, 2010, see section 627(b) of Pub. L. 111–203, set out as an Effective Date of Repeal note under section 371a of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 2(c)(2) of Pub. L. 109–173 effective Apr. 1, 2006, see section 2(e) of Pub. L. 109–173, set out as a note under section 1785 of this title.

Amendment by section 8(a)(28)–(30) of Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

Amendment by section 2102(b) of Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

Amendment by section 2104(c) of Pub. L. 109–171 effective Jan. 1, 2007, see section 2104(e) of Pub L. 109–171, set out as a note under section 1817 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–458, title VI, § 6205, Dec. 17, 2004, 118 Stat. 3747, provided that: ''The amendments made by this subchapter [probably means subtitle C (§§ 6201–6205) of title VI of Pub. L. 108–458, see Short Title of 2004 Amendment note set out under section 5301 of Title 31, Money and Finance] to Public Law 107–56, the United States Code, the Federal Deposit Insurance Act, and any other provision of law shall take effect as if such amendments had been included in Public Law 107–56, as of the date of enactment of such Public Law [Oct. 26, 2001], and no amendment made by such Public Law that is inconsistent with an amendment made by this subchapter shall be deemed to have taken effect.''

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–56, title III, § 327(b)(2), Oct. 26, 2001, 115 Stat. 319, as amended by Pub. L. 108–458, title VI, § 6202(i), Dec. 17, 2004, 118 Stat. 3746, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to any application submitted to the responsible agency under section 18(c) of the Federal Deposit Insurance Act [12 U.S.C. 1828(c)] after December 31, [sic].''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–102, title II, § 209, Nov. 12, 1999, 113 Stat. 1395, provided that: ''This subtitle [subtitle A (§§ 201–210) of title II of Pub. L. 106–102, amending this section and sections 78c, 78*o*, and 78*o*–3 of Title 15, Commerce and Trade, and enacting provisions set out as notes under section 1811 of this title and section 78c of Title 15] shall take effect at the end of the 18-month period beginning on the date of the enactment of this Act [Nov. 12, 1999].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2615(b) of Pub. L. 104–208 applicable on and after Jan. 1, 1996, see section 2615(c) of Pub. L. 104–208, set out as a note under section 1781 of this title.

Amendment by section 2704(d)(14)(U), (V) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 101(e) of Pub. L. 103–328 provided that: ''The amendments made by this section [amending this section and sections 1841, 1842, and 1846 of this title] shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act [Sept. 29, 1994].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 306(k) of Pub. L. 102–242 effective upon earlier of date on which final regulations under section 306(m)(1) of Pub. L. 102–242 become effective or 150 days after Dec. 19, 1991, see section 306(*l*) of Pub. L. 102–242, set out as a note under section 375b of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 907(c) of Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of $5,000 and $25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(*l*) of Pub. L. 101–73, set out as a note under section 93 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 207(b) of Pub. L. 96–221 provided in part that the amendment by that section is effective 6 years after Mar. 31, 1980.

Amendment by section 302(b) of Pub. L. 96–221 effective at the close of Mar. 31, 1980, see section 306 of Pub. L. 96–221, set out as a note under section 371a of this title.

Section 529 of Pub. L. 96–221 provided that the amendment made by that section is effective at the close of Mar. 31, 1980.

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENTS

Amendment by section 101(b) of Pub. L. 96–161 effective Dec. 31, 1979, with that amendment to remain in effect until the close of Mar. 31, 1980, see section 104 of Pub. L. 96–161, formerly set out as a note under section 371a of this title.

Amendment by section 209 of Pub. L. 96–161 applicable only with respect to deposits made or obligations issued in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want the amendment made by Pub. L. 96–161 to apply with respect to such deposits and obligations; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State which limits the amount of interest which may be charged in connection with such deposits and obligations, see section 211 of Pub. L. 96–161, set out as an Effective Date of 1979 Amendment note under section 371b–1 of this title.

Amendment by Pub. L. 96–104 applicable to deposits made or obligations issued in any State during the period beginning on Nov. 5, 1979, and ending on the earlier of July 1, 1981, the date after Nov. 5, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section to apply with respect to such deposits and obligations, or the date on which such State certifies that the voters of such State have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State, which limits the amount of interest which may be charged in connection with such deposits and obligations, see section 204 of Pub. L. 96–104, set out as an Effective Date of 1979 Amendment note under section 371b–1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 108 of Pub. L. 95–630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95–630, set out as a note under section 93 of this title.

Amendment by sections 301(c) and 306 of Pub. L. 95–630 effective on the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 102(b) of Pub. L. 93–501 provided that: ''The amendment made by subsection (a) [amending this section] shall not apply to any bank holding company which has filed prior to the date of enactment of this Act [Oct. 29, 1974] an irrevocable declaration with the Board of Governors of the Federal Reserve System to divest itself of all of its banks under section 4 of the Bank Holding Company Act [section 1843 of this title], or to any debt obligation which is an exempted security under section 3(a)(3) of the Securities Act of 1933 [section 77c(a)(3) of Title 15, Commerce and Trade].''

Amendment by section 302 of Pub. L. 93–501 applicable to deposits made or obligations issued in any state after Oct. 29, 1974, but prior to the earlier of July 1, 1977 or the date of enactment by the state of a law limiting the amount of interest which may be charged in connection with such deposits or obligations, see section 304 of Pub. L. 93–501, set out as a note under section 371b–1 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

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

EFFECTIVE AND TERMINATION DATES OF 1969 AMENDMENT

Section 7 of Pub. L. 89–597, as amended, formerly set out as an Effective and Termination Dates of 1966 Amendment note under section 461 of this title (which provided in part that amendment of subsec. (g) of this section by addition of three sentences at the end thereof by section 2(a) of Pub. L. 91–151 to be effective only to Dec. 15, 1980, and that on Dec 15, 1980, such three sentences were to be repealed) was repealed by section 207(a) of Pub. L. 96–221.

EFFECTIVE AND TERMINATION DATES OF 1966 AMENDMENT

Section 7 of Pub. L. 89–597, as amended, formerly set out as an Effective and Termination Dates of 1966 Amendment note under section 461 of this title (which provided in part that amendment of the second and third sentences of subsec. (g) of this section by section 3 of Pub. L. 89–597 was effective only to Dec. 15, 1980, and that on Dec. 15, 1980, such sentences were to be amended to read as they would without the amendment by section 3 of Pub. L. 89–597), was repealed by section 207(a) of Pub. L. 96–221.

REPEALS

Amendment by section 101 of Pub. L. 96–161, cited as a credit to this section, was repealed at the close of Mar. 31, 1980, by section 307 of Pub. L. 96–221, and substantially identical provisions were enacted by section 302 of Pub. L. 96–221, such amendments to take effect at the close of Mar. 31, 1980.

SAVINGS PROVISION

Section 529 of Pub. L. 96–221 provided in part that, notwithstanding the repeal of Pub. L. 96–104 and title II of Pub. L. 96–161, the provisions of subsec. (k) of this section [which had been added to this section by those repealed laws] shall continue to apply to any loan made, any deposit made, or any obligation issued to any State during any period when those provisions were in effect in such State.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsection (c)(9) of this section is listed on page 171), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

BANKING AGENCY PUBLICATION REQUIREMENTS

Pub. L. 105–18, title V, § 50004, June 12, 1997, 111 Stat. 212, provided that:

''(a) IN GENERAL.—A qualifying regulatory agency may take any of the following actions with respect to depository institutions or other regulated entities whose principal place of business is within, or with respect to transactions or activities within, an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170], has determined, on or after February 28, 1997, that a major disaster exists, or within an area determined to be eligible for disaster relief under other Federal law by reason of damage related to the 1997 flooding of the Red River of the North, the Minnesota River, and the tributaries of such rivers, if the agency determines that the action would facilitate recovery from the major disaster:

''(1) PROCEDURE.—Exercising the agency's authority under provisions of law other than this section without complying with—

''(A) any requirement of section 553 of title 5, United States Code; or

''(B) any provision of law that requires notice or opportunity for hearing or sets maximum or minimum time limits with respect to agency action.

''(2) PUBLICATION REQUIREMENTS.—Making exceptions, with respect to institutions or other entities for which the agency is the primary Federal regulator, to—

''(A) any publication requirement with respect to establishing branches or other deposit-taking facilities; or

''(B) any similar publication requirement.

''(b) PUBLICATION REQUIRED.—A qualifying regulatory agency shall publish in the Federal Register a statement that—

''(1) describes any action taken under this section; and

''(2) explains the need for the action.

''(c) QUALIFYING REGULATORY AGENCY DEFINED.—For purposes of this section, the term 'qualifying regulatory agency' means—

''(1) the Board of Governors of the Federal Reserve System;

''(2) the Comptroller of the Currency;

''(3) the Director of the Office of Thrift Supervision;

''(4) the Federal Deposit Insurance Corporation;

''(5) the Financial Institutions Examination Council;

''(6) the National Credit Union Administration; and

''(7) with respect to chapter 53 of title 31, United States Code, the Secretary of the Treasury.

''(d) EXPIRATION.—Any exception made under this section shall expire not later than February 28, 1998.''

Similar provisions were contained in the following prior acts:

Pub. L. 103–76, § 4, Aug. 12, 1993, 107 Stat. 753.

Pub. L. 102–485, § 5, Oct. 23, 1992, 106 Stat. 2773.

REVIEW OF RISK-BASED CAPITAL STANDARDS

Section 305(b) of Pub. L. 102–242, as amended by Pub. L. 103–325, title III, § 335, Sept. 23, 1994, 108 Stat. 2233, provided that:

''(1) IN GENERAL.—Each appropriate Federal banking agency shall revise its risk-based capital standards for insured depository institutions to ensure that those standards—

''(A) take adequate account of—

''(i) interest-rate risk;

''(ii) concentration of credit risk; and

''(iii) the risks of nontraditional activities;

''(B) reflect the actual performance and expected risk of loss of multifamily mortgages; and

''(C) take into account the size and activities of the institutions and do not cause undue reporting burdens.

''(2) INTERNATIONAL DISCUSSIONS.—The Federal banking agencies shall discuss the development of com-

parable standards with members of the supervisory committee of the Bank for International Settlements.

''(3) DEADLINE FOR PRESCRIBING REVISED STANDARDS.—Each appropriate Federal banking agency shall—

''(A) publish final regulations in the Federal Register to implement paragraph (1) not later than 18 months after the date of enactment of this Act [Dec. 19, 1991]; and

''(B) establish reasonable transition rules to facilitate compliance with those regulations.

''(4) DEFINITIONS.—For purposes of this subsection, the terms 'appropriate Federal banking agency', 'Federal banking agency' and 'insured depository institution' have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).''

PURCHASED MORTGAGE SERVICING RIGHTS

Pub. L. 102–242, title IV, § 475, Dec. 19, 1991, 105 Stat. 2386, as amended by Pub. L. 102–550, title XVI, § 1606(i)(2), Oct. 28, 1992, 106 Stat. 4089; Pub. L. 106–569, title XII, § 1208, Dec. 27, 2000, 114 Stat. 3035, provided that:

''(a) IN GENERAL.—Notwithstanding section 5(t)(4) of the Home Owners' Loan Act [former 12 U.S.C. 1464(t)(4)], each appropriate Federal banking agency shall determine, with respect to insured depository institutions for which it is the appropriate Federal regulator, the amount of readily marketable purchased mortgage servicing rights that may be included in calculating such institution's tangible capital, risk-based capital, or leverage limit, if—

''(1) such servicing rights are valued at not more than 90 percent (or such other percentage exceeding 90 percent but not exceeding 100 percent, as may be determined under subsection (b)) of their fair market value; and

''(2) the fair market value of such servicing rights is determined not less often than quarterly.

''(b) AUTHORITY TO DETERMINE PERCENTAGE BY WHICH TO DISCOUNT VALUE OF SERVICING RIGHTS.—The appropriate Federal banking agencies may allow readily marketable purchased mortgage servicing rights to be valued at more than 90 percent of their fair market value but at not more than 100 percent of such value, if such agencies jointly make a finding that such valuation would not have an adverse effect on the deposit insurance funds or the safety and soundness of insured depository institutions.

''(c) DEFINITION.—For purposes of this section, the terms 'appropriate Federal banking agency', 'deposit insurance fund', and 'insured depository institution' have the same meanings as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

''(d) EFFECTIVE DATE.—This section shall apply after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 19, 1991].''

ELIMINATION OF INTEREST RATE DIFFERENTIALS

Section 326(b)–(d) of Pub. L. 97–320 provided that:

''(b)(1) Interest rate differentials for all categories of deposits or accounts between (i) any bank (other than a savings bank) the deposits of which are insured by the Federal Deposit Insurance Corporation, and (ii) any savings and loan, building and loan, or homestead association (including cooperative banks) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any mutual savings bank as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(j)) [12 U.S.C. 1813(f)], shall be phased out on or before January 1, 1984.

''(2) Any differential which is being phased out pursuant to a schedule established by regulations prescribed by the Depository Institutions Deregulation Committee prior to the date of enactment of this Act [Oct. 15, 1982] shall be phased out as soon as practicable, but in no event later than such schedule provides.

''(3) Notwithstanding any other provision of law, no differential for any category of deposits or accounts shall be established or maintained on or after January 1, 1984.

''(c) No interest rate differential may be established or maintained in the case of the deposit account authorized pursuant to section 204(c) of the Depository Institutions Deregulation Act of 1980 [12 U.S.C. 3503(c)].

''(d) In the case of the elimination or reduction of any interest rate differential under subsection (b) with respect to any category of deposits or accounts between (1) any bank (other than a savings bank) the deposits of which are insured by the Federal Deposit Insurance Corporation and (2) any savings and loan, building and loan, or homestead association (including cooperative banks) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any mutual savings bank as defined in section 3(f) of the Federal Deposit Insurance Act [12 U.S.C. 1813(f)], the maximum rate of interest which shall be established for such category of deposits for banks (other than savings banks) the deposits of which are insured by the Federal Deposit Insurance Corporation shall be equal to the highest rate of interest which savings and loan associations the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation were permitted to pay on such category of deposits immediately prior to the elimination or reduction of such interest rate differential.''

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

Section 213 of Pub. L. 96–161 provided that the provisions of title II of Pub. L. 96–161, which enacted subsec. (k) of this section and repealed provisions which had formerly amended this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates.

INTEREST RATES; CONTROLS

Reduction of interest rates to maximum extent feasible in light of prevailing money market and general economic conditions, see section 1 of Pub. L. 89–597, set out as a note under section 461 of this title.

REINSTATEMENT OF WITHDRAWN OR ABANDONED APPLICATIONS MADE BEFORE FEBRUARY 21, 1966, FOR APPROVAL OF MERGERS

Section 3 of Pub. L. 89–356 provided that: ''Any application for approval of a merger transaction (as the term 'merged transaction' is used in section 18(c) of the Federal Deposit Insurance Act) [subsec. (c) of this section] which was made before the date of enactment of this Act [Feb. 21, 1966], but was withdrawn or abandoned as a result of any objections made or any suit brought by the Attorney General, may be reinstituted and shall be acted upon in accordance with the provisions of this Act without prejudice by such withdrawal, abandonment, objections, or judicial proceedings.''

SPECIAL ANTITRUST TREATMENT OF MERGER TRANSACTIONS CONSUMMATED BEFORE FEBRUARY 21, 1966, AND OF LITIGATION PENDING ON OR AFTER FEBRUARY 21, 1966, WITH RESPECT TO MERGER TRANSACTIONS CONSUMMATED AFTER JUNE 16, 1963

Section 2 of Pub. L. 89–356 provided that:

''(a) Any merger, consolidation, acquisition of assets, or assumption of liabilities involving an insured bank which was consummated prior to June 17, 1963, the bank resulting from which has not been dissolved or divided and has not effected a sale or distribution of assets and has not taken any other similar action pursuant to a final judgment under the antitrust laws prior to the enactment of this Act [Feb. 21, 1966], shall be conclusively presumed to have not been in violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

''(b) No merger, consolidation, acquisition of assets, or assumption of liabilities involving an insured bank which was consummated after June 16, 1963, and prior to the date of enactment of this Act [Feb. 21, 1966] and

as to which no litigation was initiated by the Attorney General prior to the date of enactment of this Act [Feb. 21, 1966] may be attacked after such date in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

''(c) Any court having pending before it on or after the date of enactment of this Act [Feb. 21, 1966] any litigation initiated under the antitrust laws by the Attorney General after June 16, 1963 with respect to the merger, consolidation, acquisition of assets, or assumption of liabilities of an insured bank consummated after June 16, 1963, shall apply the substantive rule of law set forth in section 18(c)(5) of the Federal Deposit Insurance Act [subsec. (c)(5) of this section], as amended by this Act.

''(d) For the purposes of this section, the term 'antitrust laws' means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1–7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12–27), and any other Acts in pari materia.''

§ 1828a. Prudential safeguards

(a) Comptroller of the Currency

(1) In general

The Comptroller of the Currency may, by regulation or order, impose restrictions or requirements on relationships or transactions between a national bank and a subsidiary of the national bank that the Comptroller finds are—

(A) consistent with the purposes of this Act, title LXII of the Revised Statutes of the United States, and other Federal law applicable to national banks; and

(B) appropriate to avoid any significant risk to the safety and soundness of insured depository institutions or the Deposit Insurance Fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(2) Review

The Comptroller of the Currency shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (1)(B); and

(B) modify or eliminate any such restriction or requirement the Comptroller finds is no longer required for such purposes.

(b) Board of Governors of the Federal Reserve System

(1) In general

The Board of Governors of the Federal Reserve System may, by regulation or order, impose restrictions or requirements on relationships or transactions—

(A) between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution); or

(B) between a State member bank and a subsidiary of such bank;

if the Board makes a finding described in paragraph (2) with respect to such restriction or requirement.

(2) Finding

The Board of Governors of the Federal Reserve System may exercise authority under paragraph (1) if the Board finds that the exercise of such authority is—

(A) consistent with the purposes of this Act, the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], the Federal Reserve Act [12 U.S.C. 221 et seq.], and other Federal law applicable to depository institution subsidiaries of bank holding companies or State member banks, as the case may be; and

(B) appropriate to prevent an evasion of any provision of law referred to in subparagraph (A) or to avoid any significant risk to the safety and soundness of depository institutions or the Deposit Insurance Fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(3) Review

The Board of Governors of the Federal Reserve System shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) or (4) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (2)(B) or (4)(B); and

(B) modify or eliminate any such restriction or requirement the Board finds is no longer required for such purposes.

(4) Foreign banks

The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a branch, agency, or commercial lending company of a foreign bank in the United States and any affiliate in the United States of such foreign bank that the Board finds are—

(A) consistent with the purposes of this Act, the Bank Holding Company Act of 1956, the Federal Reserve Act, and other Federal law applicable to foreign banks and their affiliates in the United States; and

(B) appropriate to prevent an evasion of any provision of law referred to in subparagraph (A) or to avoid any significant risk to the safety and soundness of depository institutions or the Deposit Insurance Fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(c) Federal Deposit Insurance Corporation

(1) In general

The Federal Deposit Insurance Corporation may, by regulation or order, impose restrictions or requirements on relationships or transactions between a State nonmember bank (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) and a subsidiary of the State nonmember bank that the Corporation finds are—

(A) consistent with the purposes of this Act, the Federal Deposit Insurance Act [12

U.S.C. 1811 et seq.], or other Federal law applicable to State nonmember banks; and

(B) appropriate to avoid any significant risk to the safety and soundness of depository institutions or the Deposit Insurance Fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(2) Review

The Federal Deposit Insurance Corporation shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (1)(B); and

(B) modify or eliminate any such restriction or requirement the Corporation finds is no longer required for such purposes.

(Pub. L. 106–102, title I, § 114, Nov. 12, 1999, 113 Stat. 1369; Pub. L. 109–173, § 9(i), Feb. 15, 2006, 119 Stat. 3618.)

REFERENCES IN TEXT

This Act and the Act, referred to in text, probably are references to Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

Title LXII of the Revised Statutes, referred to in subsec. (a)(1)(A), consists of R.S. §§ 5133 to 5244, which are classified to sections 16, 21, 22 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

The Bank Holding Company Act of 1956, referred to in subsec. (b)(2)(A), (4)(A), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

The Federal Reserve Act, referred to in subsec. (b)(2)(A), (4)(A), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (c)(1)(A), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section was enacted as part of the Gramm-Leach-Bliley Act, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

AMENDMENTS

2006—Subsecs. (a)(1)(B), (b)(2)(B), (4)(B), (c)(1)(B). Pub. L. 109–173 substituted ''the Deposit Insurance Fund'' for ''any Federal deposit insurance fund''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

EFFECTIVE DATE

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

§ 1828b. Interagency data sharing

(a) In general

To the extent not prohibited by other law, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System shall make available to the Attorney General and the Federal Trade Commission any data in the possession of any such banking agency that the antitrust agency deems necessary for antitrust review of any transaction requiring notice to any such antitrust agency or the approval of such agency under section 1842 or 1843 of this title, section 1828(c) of this title, the National Bank Consolidation and Merger Act [12 U.S.C. 215 et seq.], section 1467a of this title, or the antitrust laws.

(b) Confidentiality requirements

(1) In general

Any information or material obtained by any agency pursuant to subsection (a) of this section shall be treated as confidential.

(2) Procedures for disclosure

If any information or material obtained by any agency pursuant to subsection (a) of this section is proposed to be disclosed to a third party, written notice of such disclosure shall first be provided to the agency from which such information or material was obtained and an opportunity shall be given to such agency to oppose or limit the proposed disclosure.

(3) Other privileges not waived by disclosure under this section

The provision by any Federal agency of any information or material pursuant to subsection (a) of this section to another agency shall not constitute a waiver, or otherwise affect, any privilege any agency or person may claim with respect to such information under Federal or State law.

(4) Exception

No provision of this section shall be construed as preventing or limiting access to any information by any duly authorized committee of the Congress or the Comptroller General of the United States.

(c) Banking agency information sharing

The provisions of subsection (b) of this section shall apply to—

(1) any information or material obtained by any Federal banking agency (as defined in section 1813(z) of this title) from any other Federal banking agency; and

(2) any report of examination or other confidential supervisory information obtained by any State agency or authority, or any other person, from a Federal banking agency.

(Pub. L. 106–102, title I, § 132, Nov. 12, 1999, 113 Stat. 1382.)

REFERENCES IN TEXT

The National Bank Consolidation and Merger Act, referred to in subsec. (a), is act Nov. 7, 1918, ch. 209, as added by Pub. L. 86–230, § 20, Sept. 8, 1959, 73 Stat. 460, and amended, which is classified generally to subchapter XVI (§ 215 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 215 of this title and Tables.

CODIFICATION

Section was enacted as part of the Gramm-Leach-Bliley Act, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

EFFECTIVE DATE

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

§ 1829. Penalty for unauthorized participation by convicted individual

(a) Prohibition

(1) In general

Except with the prior written consent of the Corporation—

(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

(i) become, or continue as, an institution-affiliated party with respect to any insured depository institution;

(ii) own or control, directly or indirectly, any insured depository institution; or

(iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution; and

(B) any insured depository institution may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

(2) Minimum 10-year prohibition period for certain offenses

(A) In general

If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragraph is—

(i) an offense under—

(I) section 215, 656, 657, 1005, 1006, 1007, 1008,[1] 1014, 1032, 1344, 1517, 1956, or 1957 of title 18; or

(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

(ii) the offense of conspiring to commit any such offense,

the Corporation may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

(B) Exception by order of sentencing court

(i) In general

On motion of the Corporation, the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.

(ii) Period for filing

A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.

(b) Penalty

Whoever knowingly violates subsection (a) of this section shall be fined not more than $1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.

(d)[2] Bank holding companies

(1) In general

Subsections (a) and (b) shall apply to any company (other than a foreign bank) that is a bank holding company and any organization organized and operated under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.] or operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.], as if such bank holding company or organization were an insured depository institution, except that such subsections shall be applied for purposes of this subsection by substituting ''Board of Governors of the Federal Reserve System'' for ''Corporation'' each place that term appears in such subsections.

(2) Authority of Board

The Board of Governors of the Federal Reserve System may provide exemptions, by regulation or order, from the application of paragraph (1) if the exemption is consistent with the purposes of this subsection.

(e) Savings and loan holding companies

(1) In general

Subsections (a) and (b) shall apply to any savings and loan holding company as if such savings and loan holding company were an insured depository institution, except that such subsections shall be applied for purposes of this subsection by substituting ''Director of the Office of Thrift Supervision'' for ''Corporation'' each place that term appears in such subsections.

(2) Authority of Director

The Director of the Office of Thrift Supervision may provide exemptions, by regulation or order, from the application of paragraph (1) if the exemption is consistent with the purposes of this subsection.

(Sept. 21, 1950, ch. 967, § 2[19], 64 Stat. 893; Pub. L. 101–73, title IX, § 910(a), Aug. 9, 1989, 103 Stat. 477; Pub. L. 101–647, title XXV, § 2502(a), Nov. 29, 1990,

[1] See References in Text note below.

[2] So in original. No subsec. (c) has been enacted.

104 Stat. 4860; Pub. L. 102–550, title XV, § 1505, Oct. 28, 1992, 106 Stat. 4055; Pub. L. 103–322, title XXXII, § 320605, Sept. 13, 1994, 108 Stat. 2119; Pub. L. 109–351, title VII, § 710(a), Oct. 13, 2006, 120 Stat. 1990; Pub. L. 111–203, title III, § 363(8), July 21, 2010, 124 Stat. 1554.)

AMENDMENT OF SUBSECTION (e)

Pub. L. 111–203, title III, §§ 351, 363(8), July 21, 2010, 124 Stat. 1546, 1554, provided that, effective on the transfer date, subsection (e) of this section is amended, in paragraphs (1) and (2), by substituting ''Board of Governors of the Federal Reserve System'' for ''Director of the Office of Thrift Supervision''. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 1008 of title 18, referred to in subsec. (a)(2)(A)(i)(I), was repealed by Pub. L. 101–73, title IX, § 961(g)(1), Aug. 9, 1989, 103 Stat. 500.

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (d)(1), are classified to subchapters I (§ 601 et seq.) and II (§ 611 et seq.), respectively, of chapter 6 of this title.

AMENDMENTS

2006—Subsecs. (d), (e). Pub. L. 109–351 added subsecs. (d) and (e).

1994—Subsec. (a)(2)(A)(i)(I). Pub. L. 103–322 substituted ''1517, 1956, or 1957'' for ''or 1956''.

1992—Subsec. (a)(1)(A). Pub. L. 102–550 inserted ''or money laundering'' after ''breach of trust''.

1990—Subsec. (a). Pub. L. 101–647 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Except with the prior written consent of the Corporation—

''(1) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust may not participate, directly or indirectly, in any manner in the conduct of the affairs of an insured depository institution; and

''(2) an insured depository institution may not permit such participation.''

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows: ''Except with the written consent of the Corporation, no person shall serve as a director, officer, or employee of an insured bank who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the bank involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Corporation may recover for its use.''

EFFECTIVE DATE OF 2010 AMENDMENT

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

PROVISIONS NOT REPEALED, MODIFIED OR AFFECTED

Nothing contained in sections 201 to 205 and 207 of Pub. L. 89–695 amending sections 1813 and 1817 to 1820 and repealing section 77 of this title to be construed as repealing, modifying, or affecting this section, see section 206 of Pub. L. 89–695, set out as a note under section 1813 of this title.

§ 1829a. Participation by State nonmember insured banks in lotteries and related activities

(a) Prohibited activities

A State nonmember insured bank may not—

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery; or

(4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

(b) Use of banking premises prohibited

A State nonmember insured bank may not permit—

(1) the use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a) of this section, or

(2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank under subsection (a) of this section.

(c) Definitions

As used in this section—

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

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

(A) a random selection;

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

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

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

(d) Lawful banking services connected with operation of lottery

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

(e) Regulations; enforcement

The Board of Directors shall prescribe such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

(Sept. 21, 1950, ch. 967, § 2[20], as added Pub. L. 90–203, § 3, Dec. 15, 1967, 81 Stat. 610; amended Pub. L. 103–325, title VI, § 602(a)(51), Sept. 23, 1994, 108 Stat. 2290.)

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103–325 inserted ''or'' at end.

EFFECTIVE DATE

Section effective Apr. 1, 1968, see section 6 of Pub. L. 90–203, set out as a note under section 25a of this title.

§ 1829b. Retention of records by insured depository institutions

(a) Congressional findings and declaration of purpose

(1) Findings

Congress finds that—

(A) adequate records maintained by insured depository institutions have a high degree of usefulness in criminal, tax, and regulatory investigations or proceedings, and that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against domestic and international terrorism; and

(B) microfilm or other reproductions and other records made by insured depository institutions of checks, as well as records kept by such institutions, of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in proceedings described in subparagraph (A).

(2) Purpose

It is the purpose of this section to require the maintenance of appropriate types of records by insured depository institutions in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, recognizing that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.

(b) Recordkeeping regulations

(1) In general

Where the Secretary of the Treasury (referred to in this section as the ''Secretary'') determines that the maintenance of appropriate types of records and other evidence by insured depository institutions has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

(2) Domestic funds transfers

Whenever the Secretary and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ''Board'') determine that the maintenance of records, by insured depository institutions, of payment orders which direct transfers of funds over wholesale funds transfer systems has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, the Secretary and the Board shall jointly prescribe regulations to carry out the purposes of this section with respect to the maintenance of such records.

(3) International funds transfers

(A) In general

The Secretary and the Board shall jointly prescribe, after consultation with State banking supervisors, final regulations requiring that insured depository institutions, businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks or other similar instruments maintain such records of payment orders which—

(i) involve international transactions; and

(ii) direct transfers of funds over wholesale funds transfer systems or on the books of any insured depository institution, or on the books of any business that provides check cashing services, any money transmitting business, and any business that issues or redeems money orders, travelers' checks or similar instruments,

that will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(B) Factors for consideration

In prescribing the regulations required under subparagraph (A), the Secretary and the Board shall consider—

(i) the usefulness in criminal, tax, or regulatory investigations or proceedings of any record required to be maintained pursuant to the proposed regulations; and

(ii) the effect the recordkeeping required pursuant to such proposed regulations will have on the cost and efficiency of the payment system.

(C) Availability of records

Any records required to be maintained pursuant to the regulations prescribed under subparagraph (A) shall be submitted or made available to the Secretary or the Board upon request.

(c) Identity of persons having accounts and persons authorized to act with respect to such accounts; exemptions

Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) of this section, each insured depository institution shall maintain such records and other evidence, in such form as the Secretary shall require, of the identity of each person having an account in the United States with the insured depository institution and of each individual authorized to sign checks, make withdrawals, or otherwise act with respect to any such account. The Secretary may make such exemptions from any requirement otherwise imposed under this subsection as are consistent with the purposes of this section.

(d) Reproduction of checks, drafts, and other instruments; record of transactions; identity of party

Each insured depository institution shall make, to the extent that the regulations of the Secretary so require—

(1) a microfilm or other reproduction of each check, draft, or similar instrument drawn on it and presented to it for payment; and

(2) a record of each check, draft, or similar instrument received by it for deposit or collection, together with an identification of the party for whose account it is to be deposited or collected, unless the insured depository institution has already made a record of the party's identity pursuant to subsection (c) of this section.

(e) Identity of persons making reportable currency and foreign transactions

Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) of this section, whenever any individual engages (whether as principal, agent, or bailee) in any transaction with an insured depository institution which is required to be reported or recorded under subchapter II of chapter 53 of title 31, the insured depository institution shall require and retain such evidence of the identity of that individual as the Secretary may prescribe as appropriate under the circumstances.

(f) Additions to or substitutes for required records

Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) of this section and in addition to or in lieu of the records and evidence otherwise referred to in this section, each insured depository institution shall maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section.

(g) Retention period

Any type of record or evidence required under this section shall be retained for such period as the Secretary may prescribe for the type in question. Any period so prescribed shall not exceed six years unless the Secretary determines, having regard for the purposes of this section, that a longer period is necessary in the case of a particular type of record or evidence.

(h) Report to Congress by Secretary of the Treasury

The Secretary shall include in his annual report to the Congress information on his implementation of the authority conferred by this section and any similar authority with respect to recordkeeping or reporting requirements conferred by other provisions of law.

(i) Application of provisions to foreign banks

The provisions of this section shall not apply to any foreign bank except with respect to the transactions and records of any insured branch of such a bank.

(j) Civil penalties

(1) Penalty imposed

Any insured depository institution and any director, officer, or employee of an insured depository institution who willfully or through gross negligence violates, or any person who willfully causes such a violation, any regulation prescribed under subsection (b) of this section shall be liable to the United States for a civil penalty of not more than $10,000.

(2) Treatment of continuing violation

A separate violation of any regulation prescribed under subsection (b) of this section occurs for each day the violation continues and at each office, branch, or place of business at which such violation occurs.

(3) Assessment

Any penalty imposed under paragraph (1) shall be assessed, mitigated, and collected in the manner provided in subsections (b) and (c) of section 5321 of title 31.

(Sept. 21, 1950, ch. 967, § 2[21], as added Pub. L. 91–508, title I, § 101, Oct. 26, 1970, 84 Stat. 1114; amended Pub. L. 95–369, § 6(c)(29), Sept. 17, 1978, 92 Stat. 620; Pub. L. 100–690, title VI, § 6185(d)(1), Nov. 18, 1988, 102 Stat. 4356; Pub. L. 101–73, title II, § 201(a), Aug. 9, 1989, 103 Stat. 187; Pub. L. 102–550, title XV, §§ 1515(a), (b), 1535(b), Oct. 28, 1992, 106 Stat. 4058, 4059, 4066; Pub. L. 103–325, title VI, § 602(a)(52)–(54), Sept. 23, 1994, 108 Stat. 2290; Pub. L. 107–56, title III, § 358(d), Oct. 26, 2001, 115 Stat. 326; Pub. L. 108–458, title VI, § 6203(k), Dec. 17, 2004, 118 Stat. 3747.)

CODIFICATION

In subsec. (e), ''subchapter II of chapter 53 of title 31'' was substituted for ''the Currency and Foreign Transactions Reporting Act [31 U.S.C. 1051 et seq.]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–458 substituted ''recognizing that'' for ''recognizes that''.

2001—Subsec. (a). Pub. L. 107–56 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) The Congress finds that adequate records maintained by insured depository institutions have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that microfilm or other reproductions and other records made by banks of checks, as well as records kept by banks of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in this respect.

''(2) It is the purpose of this section to require the maintenance of appropriate types of records by insured depository institutions in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.''

1994—Subsecs. (c), (d)(2), (e). Pub. L. 103–325 substituted ''the insured depository institution'' for ''the bank''.

1992—Subsec. (b). Pub. L. 102–550, § 1515(a), inserted heading, designated existing provisions as par. (1) and inserted heading, and added pars. (2) and (3).

Subsec. (c). Pub. L. 102–550, § 1515(b)(1), substituted ''Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) of this section, each insured'' for ''Each insured''.

Subsec. (e). Pub. L. 102–550, § 1515(b)(2), substituted ''Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) of this section, whenever any'' for ''Whenever any''.

Subsec. (f). Pub. L. 102–550, § 1515(b)(3), substituted ''Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) of this section and in addition to'' for ''In addition to''.

Subsec. (j)(1). Pub. L. 102–550, § 1535(b), inserted '', or any person who willfully causes such a violation,'' after ''gross negligence violates''.

1989—Pub. L. 101–73 substituted references to insured depository institutions for references to insured banks wherever appearing in this section.

1988—Subsec. (j). Pub. L. 100–690 added subsec. (j).

1978—Subsec. (i). Pub. L. 95–369 added subsec. (i).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–458 effective as if included in Pub. L. 107–56, as of the date of enactment of such Act, and no amendment made by Pub. L. 107–56 that is inconsistent with such amendment to be deemed to have taken effect, see section 6205 of Pub. L. 108–458, set out as a note under section 1828 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–56, title III, § 358(h), Oct. 26, 2001, 115 Stat. 328, provided that: ''The amendments made by this section [enacting section 1681v of Title 15, Commerce and Trade, amending this section and sections 1953, 3412, 3414, and 3420 of this title, section 1681u of Title 15, and sections 5311, 5318, and 5319 of Title 31, Money and Finance] shall apply with respect to reports filed or records maintained on, before, or after the date of enactment of this Act [Oct. 26, 2001].''

EFFECTIVE DATE

Section effective on first day of seventh calendar month which begins after Oct. 26, 1970, except that the Secretary of the Treasury may, by regulation, provide that this section be effective on any date not earlier than the publication of such regulations in the Federal Register and not later than first day of thirteenth calendar month which begins after Oct. 26, 1970, see section 401(a), (b) of Pub. L. 91–508, set out as a note under section 1951 of this title.

REGULATIONS

Section 1515(c) of Pub. L. 102–550 provided that: ''The initial final regulations prescribed pursuant to section 21(b)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1829b(b)(3)] (as added by subsection (a)(2) of this section) shall take effect before January 1, 1994.''

ADDITIONAL CRIMINAL PENALTIES

Willful violation of regulations under this section punishable by fine of not more than $10,000 or imprisonment of not more than five years, or both, when such willful violation is committed in furtherance of the commission of any violation of federal law punishable by imprisonment of more than one year, see section 1957 of this title.

ADMINISTRATIVE PROCEDURE

Administrative procedure and judicial review provisions of subchapter II (§ 551 et seq.) of chapter 5 and chapter 7 (§ 701 et seq.) of Title 5, Government Organization and Employees, applicable to all proceedings under this section, see section 1959 of this title.

RESPONSIBILITY FOR COMPLIANCE

Responsibility for the Secretary of the Treasury to assure compliance with requirements of this section, and Secretary's authority to delegate such responsibility to the appropriate bank supervisory agency, or other supervisory agency, see section 1958 of this title.

§ 1830. Nondiscrimination

It is not the purpose of this chapter to discriminate in any manner against State nonmember banks or State savings associations and in favor of national or member banks or Federal savings associations, respectively. It is the purpose of this chapter to provide all banks and savings associations with the same opportunity to obtain and enjoy the benefits of this chapter.

(Sept. 21, 1950, ch. 967, § 2[22], formerly § 2[20], 64 Stat. 893; renumbered § 2[21], Pub. L. 90–203, § 3, Dec. 15, 1967, 81 Stat. 610; renumbered § 2[22], Pub. L. 91–508, title I, § 101, Oct. 26, 1970, 84 Stat. 1114; amended Pub. L. 101–73, title II, § 223, Aug. 9, 1989, 103 Stat. 273.)

PRIOR PROVISIONS

Section is derived from subsec. (y) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows: ''It is not the purpose of this chapter to discriminate in any manner against State nonmember banks and in favor of national or member banks; but the purpose is to provide all banks with the same opportunity to obtain and enjoy the benefits of this chapter. No bank shall be discriminated against because its capital stock is less than the amount required for eligibility for admission into the Federal Reserve System.''

§ 1831. Separability of certain provisions of this chapter

The provisions of this chapter limiting the insurance of the deposits of any depositor to a maximum less than the full amount shall be independent and separable from each and all of the provisions of this chapter.

(Sept. 21, 1950, ch. 967, § 2[23], formerly § 2[21], 64 Stat. 894; renumbered § 2[22], Pub. L. 90–203, § 3, Dec. 15, 1967, 81 Stat. 610; renumbered § 2[23], Pub. L. 91–508, title I, § 101, Oct. 26, 1970, 84 Stat. 1114.)

PRIOR PROVISIONS

Section is derived from subsec. (z) of former section 264 of this title. See Codification note set out under section 1811 of this title.

§ 1831a. Activities of insured State banks

(a) Permissible activities

(1) In general

After the end of the 1-year period beginning on December 19, 1991, an insured State bank may not engage as principal in any type of activity that is not permissible for a national bank unless—

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

(B) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

(2) Processing period

(A) In general

The Corporation shall make a determination under paragraph (1)(A) not later than 60 days after receipt of a completed application that may be required under this subsection.

(B) Extension of time period

The Corporation may extend the 60-day period referred to in subparagraph (A) for not more than 30 additional days, and shall notify the applicant of any such extension.

(b) Insurance underwriting

(1) In general

Notwithstanding subsection (a) of this section, an insured State bank may not engage in

insurance underwriting except to the extent that activity is permissible for national banks.

(2) Exception for certain federally reinsured crop insurance

Notwithstanding any other provision of law, an insured State bank or any of its subsidiaries that provided insurance on or before September 30, 1991, which was reinsured in whole or in part by the Federal Crop Insurance Corporation may continue to provide such insurance.

(c) Equity investments by insured State banks

(1) In general

An insured State bank may not, directly or indirectly, acquire or retain any equity investment of a type that is not permissible for a national bank.

(2) Exception for certain subsidiaries

Paragraph (1) shall not prohibit an insured State bank from acquiring or retaining an equity investment in a subsidiary of which the insured State bank is a majority owner.

(3) Exception for qualified housing projects

(A) Exception

Notwithstanding any other provision of this subsection, an insured State bank may invest as a limited partner in a partnership, the sole purpose of which is direct or indirect investment in the acquisition, rehabilitation, or new construction of a qualified housing project.

(B) Limitation

The aggregate of the investments of any insured State bank pursuant to this paragraph shall not exceed 2 percent of the total assets of the bank.

(C) Qualified housing project defined

As used in this paragraph—

(i) Qualified housing project

The term ''qualified housing project'' means residential real estate that is intended to primarily benefit lower income people throughout the period of the investment.

(ii) Lower income

The term ''lower income'' means income that is less than or equal to the median income based on statistics from State or Federal sources.

(4) Transition rule

(A) In general

The Corporation shall require any insured State bank to divest any equity investment the retention of which is not permissible under this subsection as quickly as can be prudently done, and in any event before the end of the 5-year period beginning on December 19, 1991.

(B) Treatment of noncompliance during divestment

With respect to any equity investment held by any insured State bank on December 19, 1991, which was lawfully acquired before December 19, 1991, the bank shall be deemed not to be in violation of the prohibition in this subsection on retaining such investment so long as the bank complies with the applicable requirements established by the Corporation for divesting such investments.

(d) Subsidiaries of insured State banks

(1) In general

After the end of the 1-year period beginning on December 19, 1991, a subsidiary of an insured State bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless—

(A) the Corporation has determined that the activity poses no significant risk to the Deposit Insurance Fund; and

(B) the bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

(2) Insurance underwriting prohibited

(A) Prohibition

Notwithstanding paragraph (1), no subsidiary of an insured State bank may engage in insurance underwriting except to the extent such activities are permissible for national banks.

(B) Continuation of existing activities

Notwithstanding subparagraph (A), a well-capitalized insured State bank or any of its subsidiaries that was lawfully providing insurance as principal in a State on November 21, 1991, may continue to provide, as principal, insurance of the same type to residents of the State (including companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the State, but only on behalf of their employees resident in or property located in the State), individuals employed in the State, and any other person to whom the bank or subsidiary has provided insurance as principal, without interruption, since such person resided in or was employed in such State.

(C) Exception

Subparagraph (A) does not apply to a subsidiary of an insured State bank if—

(i) the insured State bank was required, before June 1, 1991, to provide title insurance as a condition of the bank's initial chartering under State law; and

(ii) control of the insured State bank has not changed since that date.

(3) Processing period

(A) In general

The Corporation shall make a determination under paragraph (1)(A) not later than 60 days after receipt of a completed application that may be required under this subsection.

(B) Extension of time period

The Corporation may extend the 60-day period referred to in subparagraph (A) for not more than 30 additional days, and shall notify the applicant of any such extension.

(e) Savings bank life insurance

(1) In general

No provision of this chapter shall be construed as prohibiting or impairing the sale or underwriting of savings bank life insurance, or the ownership of stock in a savings bank life insurance company, by any insured bank which—

(A) is located in the Commonwealth of Massachusetts or the State of New York or Connecticut; and

(B) meets applicable consumer disclosure requirements with respect to such insurance.

(2) FDIC finding and action regarding risk

(A) Finding

Before the end of the 1-year period beginning on December 19, 1991, the Corporation shall make a finding whether savings bank life insurance activities of insured banks pose or may pose any significant risk to the Deposit Insurance Fund.

(B) Actions

(i) In general

The Corporation shall, pursuant to any finding made under subparagraph (A), take appropriate actions to address any risk that exists or may subsequently develop with respect to insured banks described in paragraph (1)(A).

(ii) Authorized actions

Actions the Corporation may take under this subparagraph include requiring the modification, suspension, or termination of insurance activities conducted by any insured bank if the Corporation finds that the activities pose a significant risk to any insured bank described in paragraph (1)(A) or to the Deposit Insurance Fund.

(f) Common and preferred stock investment

(1) In general

An insured State bank shall not acquire or retain, directly or indirectly, any equity investment of a type or in an amount that is not permissible for a national bank or is not otherwise permitted under this section.

(2) Exception for banks in certain States

Notwithstanding paragraph (1), an insured State bank may, to the extent permitted by the Corporation, acquire and retain ownership of securities described in paragraph (1) to the extent the aggregate amount of such investment does not exceed an amount equal to 100 percent of the bank's capital if such bank—

(A) is located in a State that permitted, as of September 30, 1991, investment in common or preferred stock listed on a national securities exchange or shares of an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.]; and

(B) made or maintained an investment in such securities during the period beginning on September 30, 1990, and ending on November 26, 1991.

(3) Exception for certain types of institutions

Notwithstanding paragraph (1), an insured State bank may—

(A) acquire not more than 10 percent of a corporation that only—

(i) provides directors', trustees', and officers' liability insurance coverage or bankers' blanket bond group insurance coverage for insured depository institutions; or

(ii) reinsures such policies; and

(B) acquire or retain shares of a depository institution if—

(i) the institution engages only in activities permissible for national banks;

(ii) the institution is subject to examination and regulation by a State bank supervisor;

(iii) 20 or more depository institutions own shares of the institution and none of those institutions owns more than 15 percent of the institution's shares; and

(iv) the institution's shares (other than directors' qualifying shares or shares held under or initially acquired through a plan established for the benefit of the institution's officers and employees) are owned only by the institution.

(4) Transition period for common and preferred stock investments

(A) In general

During each year in the 3-year period beginning on December 19, 1991, each insured State bank shall reduce by not less than 1/3 of its shares (as of December 19, 1991) the bank's ownership of securities in excess of the amount equal to 100 percent of the capital of such bank.

(B) Compliance at end of period

By the end of the 3-year period referred to in subparagraph (A), each insured State bank and each subsidiary of a State bank shall be in compliance with the maximum amount limitations on investments referred to in paragraph (1).

(5) Loss of exception upon acquisition

Any exception applicable under paragraph (2) with respect to any insured State bank shall cease to apply with respect to such bank upon any change in control of such bank or any conversion of the charter of such bank.

(6) Notice and approval

An insured State bank may only engage in any investment pursuant to paragraph (2) if—

(A) the bank has filed a 1-time notice of the bank's intention to acquire and retain investments described in paragraph (1); and

(B) the Corporation has determined, within 60 days of receiving such notice, that acquiring or retaining such investments does not pose a significant risk to the Deposit Insurance Fund.

(7) Divestiture

(A) In general

The Corporation may require divestiture by an insured State bank of any investment permitted under this subsection if the Corporation determines that such investment will have an adverse effect on the safety and soundness of the bank.

(B) Reasonable standard

The Corporation shall not require divestiture by any bank pursuant to subparagraph (A) without reason to believe that such investment will have an adverse effect on the safety and soundness of the bank.

(g) Determinations

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

(h) "Activity" defined

For purposes of this section, the term ''activity'' includes acquiring or retaining any investment.

(i) Other authority not affected

This section shall not be construed as limiting the authority of any appropriate Federal banking agency or any State supervisory authority to impose more stringent restrictions.

(j) Activities of branches of out-of-State banks

(1) Application of host State law

The laws of a host State, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank. To the extent host State law is inapplicable to a branch of an out-of-State State bank in such host State pursuant to the preceding sentence, home State law shall apply to such branch.

(2) Activities of branches

An insured State bank that establishes a branch in a host State may conduct any activity at such branch that is permissible under the laws of the home State of such bank, to the extent such activity is permissible either for a bank chartered by the host State (subject to the restrictions in this section) or for a branch in the host State of an out-of-State national bank.

(3) Savings provision

No provision of this subsection shall be construed as affecting the applicability of—

(A) any State law of any home State under subsection (b), (c), or (d) of section 1831u of this title; or

(B) Federal law to State banks and State bank branches in the home State or the host State.

(4) Definitions

The terms ''host State'', ''home State'', and ''out-of-State bank'' have the same meanings as in section 1831u(f)[1] of this title.

(Sept. 21, 1950, ch. 967, § 2[24], as added Pub. L. 102–242, title III, § 303(a), Dec. 19, 1991, 105 Stat. 2349; amended Pub. L. 102–550, title XVI, § 1605(a)(8), Oct. 28, 1992, 106 Stat. 4086; Pub. L. 103–328, title I, § 102(b)(3)(B), Sept. 29, 1994, 108 Stat. 2351; Pub. L. 104–208, div. A, title II, §§ 2217, 2704(d)(14)(W), Sept. 30, 1996, 110 Stat. 3009–414, 3009–494; Pub. L. 105–24, § 2(a), July 3, 1997, 111 Stat. 238; Pub. L. 109–171, title II, § 2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, § 8(a)(31), Feb. 15, 2006, 119 Stat. 3615.)

[1] See References in Text note below.

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (f)(2)(A), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

Section 1831u of this title, referred to in subsec. (j)(4), was subsequently amended, and subsec. (f) of section 1831u no longer defines the terms ''host State'', ''home State'', and ''out-of-State bank''. However, such terms are defined elsewhere in that section.

PRIOR PROVISIONS

A prior section 1831a, act Sept. 21, 1950, ch. 967, § 2[24], as added Dec. 28, 1979, Pub. L. 96–161, title II, § 202, 93 Stat. 1235, provided that if the applicable rate prescribed in subsec. (a) exceeded the rate a State bank would be permitted to charge in absence of that subsection, that State bank could for a business or agricultural loan of $25,000 or more, notwithstanding State law, take or charge on any evidence of debt, interest of not more than 5 per centum in excess of the discount rate in effect at the Federal Reserve Bank in the district where the bank was located, that the taking or charging of interest at a greater rate than that prescribed by subsec. (a), if knowingly done, would be deemed a forfeit of the entire interest on that particular evidence of debt, and that if such greater rate of interest had already been paid, the payor could recover twice the amount of such payment in a civil action commenced within two years of such payment, prior to repeal by Pub. L. 96–221, title V, § 529, Mar. 31, 1980, 94 Stat. 168, effective at close of Mar. 31, 1980.

Another prior section 1831a, act Sept. 21, 1950, ch. 967, § 2[24], as added Nov. 5, 1979, Pub. L. 96–104, title I, § 102, 93 Stat. 789, identical to this section as added by Pub. L. 96–161, was repealed by section 212 of Pub. L. 96–161, effective at the close of Dec. 27, 1979, except that its provisions would continue to apply to any loan made in any State on or after Nov. 5, 1979, but prior to such repeal.

Another prior section 1831a, act Sept. 21, 1950, ch. 967, § 2[24], as added Oct. 29, 1974, Pub. L. 93–501, title II, § 202, 88 Stat. 1558, identical to this section as added by Pub. L. 96–104, was repealed by section 1 of Pub. L. 96–104 except that its provisions shall continue to apply to any loan made in any State during the period specified in section 206 of Pub. L. 93–501.

AMENDMENTS

2006—Subsecs. (a)(1)(A), (d)(1)(A). Pub. L. 109–173, § 8(a)(31)(A), substituted ''Deposit Insurance Fund'' for ''appropriate deposit insurance fund''.

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

Subsec. (e)(2)(A). Pub. L. 109–173, § 8(a)(31)(B), substituted ''risk to the Deposit Insurance Fund.'' for ''risk to the insurance fund of which such banks are members.''

Subsecs. (e)(2)(B)(ii), (f)(6)(B). Pub. L. 109–173, § 8(a)(31)(C), substituted ''the Deposit Insurance Fund'' for ''the insurance fund of which such bank is a member''.

1997—Subsec. (j). Pub. L. 105–24 amended subsec. (j) generally, substituting pars. (1) to (4) for former pars. (1) to (3) relating to general provisions, activities of branches, and definitions, respectively.

1996—Subsec. (a). Pub. L. 104–208, § 2217(1), substituted ''Permissible activities'' for ''In general'' in heading, designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B) of par. (1), respectively, and realigned margins, and added par. (2).

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

Subsec. (d)(1)(A). Pub. L. 104–208, §2704(d)(14)(W), which directed substitution of ''Deposit Insurance Fund'' for ''appropriate deposit insurance fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (d)(3). Pub. L. 104–208, §2217(2), added par. (3).

1994—Subsec. (j). Pub. L. 103–328 added subsec. (j).

1992—Subsec. (e)(1)(B). Pub. L. 102–550 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''meets the consumer disclosure requirements under section 1828(k) of this title with respect to such insurance.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(14)(W) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

RIGHT OF STATE TO OPT OUT

Section 3 of Pub. L. 105–24 provided that: ''Nothing in this Act [amending this section and section 36 of this title and enacting provisions set out as a note under section 1811 of this title] alters the right of States under section 525 of Public Law 96–221 [12 U.S.C. 1785 note].''

§ 1831b. Disclosures with respect to certain federally related mortgage loans

(a) Identity of beneficiary interest as condition for a loan; report to Corporation

No insured depository institution, insured branch of a foreign bank, or mutual savings or cooperative bank which is not an insured depository institution, shall make any federally related mortgage loan to any agent, trustee, nominee, or other person acting in a fiduciary capacity without the prior condition that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the insured depository institution, insured branch, or bank. At the request of the Corporation, the insured depository institution, insured branch, or bank shall report to the Corporation on the identity of such person and the nature and amount of the loan, discount, or other extension of credit.

(b) Enforcement; bank status

In addition to other available remedies, this section may be enforced with respect to mutual savings and cooperative banks which are not insured depository institutions in accordance with section 1818 of this title, and for such purpose such mutual savings and cooperative banks shall be held and considered to be State nonmember insured banks and the appropriate Federal agency with respect to such mutual savings and cooperative banks shall be the Federal Deposit Insurance Corporation.

(Sept. 21, 1950, ch. 967, §2[25], as added Pub. L. 93–533, §11(a), Dec. 22, 1974, 88 Stat. 1729; amended Pub. L. 95–369, §6(c)(30), Sept. 17, 1978, 92 Stat. 620; Pub. L. 101–73, title II, §201(a), Aug. 9, 1989, 103 Stat. 187; Pub. L. 103–325, title VI, §602(a)(55), Sept. 23, 1994, 108 Stat. 2290.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–325 substituted ''the insured depository institution, insured branch, or bank'' for ''the bank'' in two places.

1989—Pub. L. 101–73 substituted references to insured depository institutions for references to insured banks wherever appearing in this section.

1978—Subsec. (a). Pub. L. 95–369 inserted ''insured branch of a foreign bank'' after ''No insured bank''.

EFFECTIVE DATE

Section effective 180 days after Dec. 22, 1974, see section 20 of Pub. L. 93–533, set out as a note under section 2601 of this title.

EXEMPTIONS; REGULATIONS

Section 11(c) of Pub. L. 93–533 provided that: ''The Federal Deposit Insurance Corporation or the Federal Home Loan Bank Board as appropriate may by regulation exempt classes or types of transactions from the provisions added by this section [enacting this section and section 1730f of this title] if the Corporation or the Board determines that the purposes of such provisions would not be advanced materially by their application to such transactions.''

§ 1831c. Assuring consistent oversight of subsidiaries of holding companies

(a) Definitions

For purposes of this section:

(1) Board

The term ''Board'' means the Board of Governors of the Federal Reserve System.

(2) Functionally regulated subsidiary

The term ''functionally regulated subsidiary'' has the same meaning as in section 1844(c)(5)[1] of this title.

(3) Lead insured depository institution

The term ''lead insured depository institution'' has the same meaning as in section 1841(*o*)(8)[1] of this title.

(b) Examination requirements

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], the Board shall examine the activities of a nondepository institution subsidiary (other than a functionally regulated subsidiary or a subsidiary of a depository institution) of a depository institution holding company that are permissible for the insured depository institution subsidiaries of the depository institution holding

[1] See References in Text note below.

company in the same manner, subject to the same standards, and with the same frequency as would be required if such activities were conducted in the lead insured depository institution of the depository institution holding company.

(c) State coordination

(1) Consultation and coordination

If a nondepository institution subsidiary is supervised by a State bank supervisor or other State regulatory authority, the Board, in conducting the examinations required in subsection (b), shall consult and coordinate with such State regulator.

(2) Alternating examinations permitted

The examinations required under subsection (b) may be conducted in joint or alternating manner with a State regulator, if the Board determines that an examination of a nondepository institution subsidiary conducted by the State carries out the purposes of this section.

(d) Appropriate Federal banking agency backup examination authority

(1) In general

In the event that the Board does not conduct examinations required under subsection (b) in the same manner, subject to the same standards, and with the same frequency as would be required if such activities were conducted by the lead insured depository institution subsidiary of the depository institution holding company, the appropriate Federal banking agency for the lead insured depository institution may recommend in writing (which shall include a written explanation of the concerns giving rise to the recommendation) that the Board perform the examination required under subsection (b).

(2) Examination by an appropriate Federal banking agency

If the Board does not, before the end of the 60-day period beginning on the date on which the Board receives a recommendation under paragraph (1), begin an examination as required under subsection (b) or provide a written explanation or plan to the appropriate Federal banking agency making such recommendation responding to the concerns raised by the appropriate Federal banking agency for the lead insured depository institution, the appropriate Federal banking agency for the lead insured depository institution may, subject to the Consumer Financial Protection Act of 2010, examine the activities that are permissible for a depository institution subsidiary conducted by such nondepository institution subsidiary (other than a functionally regulated subsidiary or a subsidiary of a depository institution) of the depository institution holding company as if the nondepository institution subsidiary were an insured depository institution for which the appropriate Federal banking agency of the lead insured depository institution was the appropriate Federal banking agency, to determine whether the activities—

(A) pose a material threat to the safety and soundness of any insured depository institution subsidiary of the depository institution holding company;

(B) are conducted in accordance with applicable Federal law; and

(C) are subject to appropriate systems for monitoring and controlling the financial, operating, and other material risks of the activities that may pose a material threat to the safety and soundness of the insured depository institution subsidiaries of the holding company.

(3) Agency coordination with the Board

An appropriate Federal banking agency that conducts an examination pursuant to paragraph (2) shall coordinate examination of the activities of nondepository institution subsidiaries described in subsection (b) with the Board in a manner that—

(A) avoids duplication;

(B) shares information relevant to the supervision of the depository institution holding company;

(C) achieves the objectives of subsection (b); and

(D) ensures that the depository institution holding company and the subsidiaries of the depository institution holding company are not subject to conflicting supervisory demands by such agency and the Board.

(4) Fee permitted for examination costs

An appropriate Federal banking agency that conducts an examination or enforcement action pursuant to this section may collect an assessment, fee, or such other charge from the subsidiary as the appropriate Federal banking agency determines necessary or appropriate to carry out the responsibilities of the appropriate Federal banking agency in connection with such examination.

(e) Referrals for enforcement by appropriate Federal banking agency

(1) Recommendation of enforcement action

The appropriate Federal banking agency for the lead insured depository institution, based upon its examination of a nondepository institution subsidiary conducted pursuant to subsection (d), or other relevant information, may submit to the Board, in writing, a recommendation that the Board take enforcement action against such nondepository institution subsidiary, together with an explanation of the concerns giving rise to the recommendation, if the appropriate Federal banking agency determines (by a vote of its members, if applicable) that the activities of the nondepository institution subsidiary pose a material threat to the safety and soundness of any insured depository institution subsidiary of the depository institution holding company.

(2) Back-up authority of the appropriate Federal banking agency

If, within the 60-day period beginning on the date on which the Board receives a recommendation under paragraph (1), the Board does not take enforcement action against the nondepository institution subsidiary or provide a plan for supervisory or enforcement action that is acceptable to the appropriate Federal

banking agency that made the recommendation pursuant to paragraph (1), such agency may take the recommended enforcement action against the nondepository institution subsidiary, in the same manner as if the nondepository institution subsidiary were an insured depository institution for which the agency was the appropriate Federal banking agency.

(f) Coordination among appropriate Federal banking agencies

Each Federal banking agency, prior to or when exercising authority under subsection (d) or (e) shall—

(1) provide reasonable notice to, and consult with, the appropriate Federal banking agency or State bank supervisor (or other State regulatory agency) of the nondepository institution subsidiary of a depository institution holding company that is described in subsection (d) before commencing any examination of the subsidiary;

(2) to the fullest extent possible—

(A) rely on the examinations, inspections, and reports of the appropriate Federal banking agency or the State bank supervisor (or other State regulatory agency) of the subsidiary;

(B) avoid duplication of examination activities, reporting requirements, and requests for information; and

(C) ensure that the depository institution holding company and the subsidiaries of the depository institution holding company are not subject to conflicting supervisory demands by the appropriate Federal banking agencies.

(g) Rule of construction

No provision of this section shall be construed as limiting any authority of the Board, the Corporation, or the Comptroller of the Currency under any other provision of law.

(Sept. 21, 1950, ch. 967, §2[26], as added Pub. L. 111–203, title VI, §605(a), July 21, 2010, 124 Stat. 1604.)

REFERENCES IN TEXT

Section 1844(c)(5) of this title, referred to in subsec. (a)(2), was in the original ''section 5(c)(5) of the Bank Holding Company Act'' and was translated as reading ''section 5(c)(5) of the Bank Holding Company Act of 1956'' to reflect the probable intent of Congress.

Section 1841(*o*)(8) of this title, referred to in subsec. (a)(3), was in the original ''section 2(*o*)(8) of the Bank Holding Company Act'' and was translated as reading ''section 2(*o*)(8) of the Bank Holding Company Act of 1956'' to reflect the probable intent of Congress.

The Consumer Financial Protection Act of 2010, referred to in subsecs. (b) and (d)(2), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, which enacted subchapter V (§5481 et seq.) of chapter 53 of this title and enacted, amended, and repealed numerous other sections and notes in the Code. Subtitle B (§§1021–1029A) of the Act is classified generally to part B (§5511 et seq.) of subchapter V of chapter 53 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

PRIOR PROVISIONS

A prior section 1831c, act Sept. 21, 1950, ch. 967, §2[26], as added Nov. 10, 1978, Pub. L. 95–630, title XII, §1205, 92 Stat. 3711; amended Oct. 15, 1982, Pub. L. 97–320, title I, §113(p), 96 Stat. 1474; Jan. 12, 1983, Pub. L. 97–457, §3, 96 Stat. 2507, which related to conversion, merger, or consolidation of mutual savings banks into Federal savings banks or savings banks which are insured institutions within meaning of former section 1724 of this title, was repealed by Pub. L. 103–325, title VI, §602(f)(1), Sept. 23, 1994, 108 Stat. 2292.

EFFECTIVE DATE

Pub. L. 111–203, title VI, §605(b), July 21, 2010, 124 Stat. 1607, provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect on the transfer date.''

[For definition of ''transfer date'' as used in section 605(b) of Pub. L. 111–203, set out above, see section 5301 of this title.]

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

(a) Interest rates

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

(b) Interest overcharge; forfeiture; interest payment recovery

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

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

PRIOR PROVISIONS

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

AMENDMENTS

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

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

EFFECTIVE DATE

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

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

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

DEFINITION OF ''STATE''

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

§ 1831e. Activities of savings associations

(a) In general

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

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

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

(b) Differences of magnitude between State and Federal powers

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

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

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

(c) Equity investments by State savings associations

(1) In general

Notwithstanding subsections (a) and (b) of this section, a savings association chartered under State law may not directly acquire or retain any equity investment of a type or in an amount that is not permissible for a Federal savings association.

(2) Exception for service corporations

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

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

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

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

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

(3) Transition rule

(A) In general

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

(B) Treatment of noncompliance during divestment

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

(d) Corporate debt securities not of investment grade

(1) In general

No savings association may, directly or through a subsidiary, acquire or retain any corporate debt security not of investment grade.

(2) Exception for securities held by qualified affiliate

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

(3) Transition rule

(A) In general

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

(B) Treatment of noncompliance during divestment

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

(4) Definitions

For purposes of this section—

(A) Investment grade

Any corporate debt security is not of ''investment grade'' unless that security, when acquired by the savings association or subsidiary, was rated in one of the 4 highest rating categories by at least one nationally recognized statistical rating organization.

(B) Qualified affiliate

The term ''qualified affiliate'' means—

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

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

(C) Certain securities not included

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

(e) Transfer of corporate debt security not of investment grade in exchange for a qualified note

(1) Acquisition of note

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

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

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

if the conditions of paragraph (2) are met.

(2) Conditions for exchange of security for qualified note

The conditions of this paragraph are met if—

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

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

(ii) adopts and complies with a capital plan acceptable to the Director of the Office of Thrift Supervision;

(B) the company to which the corporate debt security not of investment grade is transferred is not a bank holding company, an insured savings association, or a direct or indirect subsidiary of such holding company or insured savings association;

(C) before the end of the 90-day period beginning on August 9, 1989, the insured savings association notifies the Director of the Office of Thrift Supervision of such association's intention to transfer the corporate debt security not of investment grade to the savings and loan holding company or the subsidiary of such holding company;

(D) the transfer of the corporate debt security not of investment grade is completed—

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

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

(E) the insured savings association receives in exchange for the corporate debt security not of investment grade the fair market value of such security;

(F) the Director of the Office of Thrift Supervision has—

(i) approved the transaction; and

(ii) determined that the transfer represents a complete and effective divestiture of the corporate debt security not of investment grade and is in compliance with the provisions of this subsection; and

(G) any gain on the sale of the corporate debt security not of investment grade is recognized, and included for applicable regulatory capital requirements, by the insured savings association only at such time and to the extent that the insured savings association receives payment of principal on the note in cash in excess of the fair market

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

value of the transferred corporate debt security not of investment grade as carried on the accounts of the insured savings association immediately prior to the transfer.

(3) "Qualified note" defined

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

(A) is at all times fully secured by the corporate debt security not of investment grade transferred in exchange for the note, or by other collateral of at least equivalent value that is acceptable to the Director of the Office of Thrift Supervision;

(B) contains provisions acceptable to the Director of the Office of Thrift Supervision that would—

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

(ii) allow the sale of the corporate debt security not of investment grade if the proceeds of the sale are reinvested in assets of equivalent value;

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

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

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

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

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

(4) Failure to repay on schedule

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

(f) Determinations

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

(g) "Activity" defined

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

(1) In general

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

(2) Divestiture of certain assets

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

(h) Other authority not affected

This section may not be construed as limiting—

(1) any other authority of the Corporation; or

(2) any authority of the Director of the Office of Thrift Supervision or of a State to impose more stringent restrictions.

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

AMENDMENT OF SECTION

Pub. L. 111–203, title IX, § 939(a)(2), (3), (g), July 21, 2010, 124 Stat. 1885, 1887, provided that, effective 2 years after July 21, 2010, this section is amended:

(1) in subsection (d)—

(A) in the heading, by striking out ''Not of Investment Grade'';

(B) in paragraph (1), by substituting ''that does not meet standards of credit-worthiness as established by the Corporation'' for ''not of investment grade'';

(C) in paragraph (2), by striking out ''not of investment grade'';

(D) by striking paragraph (3);

(E) by redesignating paragraph (4) as (3); and

(F) in paragraph (3), as so redesignated—

(i) by striking out subparagraph (A);

(ii) by redesignating subparagraphs (B) and (C) as (A) and (B), respectively; and

(iii) in subparagraph (B), as so redesignated, by substituting ''that does not meet standards of credit-worthiness as established by the Corporation'' for ''not of investment grade''; and

(2) in subsection (e)—

(A) in the heading, by striking out ''Not of Investment Grade'';

(B) in paragraph (1), by substituting ''that does not meet standards of credit-worthiness as established by the Corporation'' for ''not of investment grade''; and

(C) in paragraphs (2) and (3), by substituting ''that does not meet standards of credit-worthiness established by the Corporation'' for ''not of investment grade'' wherever appearing.

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title III, §§ 351, 363(9), July 21, 2010, 124 Stat. 1546, 1555, provided that, effective on the transfer date, this section is amended:

(1) in subsection (e)—

(A) in paragraph (2), by substituting ''Comptroller of the Currency or the Corporation, as appropriate'' for ''Director of the Office of Thrift Supervision'' in subparagraphs (A)(ii), (C), and (F); and

(B) in paragraph (3), by substituting ''Comptroller of the Currency or the Corporation, as appropriate'' for ''Director of the Office of Thrift Supervision'' in subparagraphs (A) and (B); and

(2) in subsection (h)(2), by substituting ''Comptroller of the Currency, of the Corpora-

tion,'' for ''Director of the Office of Thrift Supervision''.

See Effective Date of 2010 Amendment note below.

AMENDMENTS

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

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

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

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

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

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

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

EFFECTIVE DATE OF 2010 AMENDMENT

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

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

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 151(a)(3) of Pub. L. 102–242 provided that the amendment made by that section is effective 1 year after Dec. 19, 1991.

§ 1831f. Brokered deposits

(a) In general

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

(b) Renewals and rollovers treated as acceptance of funds

Any renewal of an account in any troubled institution and any rollover of any amount on deposit in any such account shall be treated as an acceptance of funds by such troubled institution for purposes of subsection (a) of this section.

(c) Waiver authority

The Corporation may, on a case-by-case basis and upon application by an insured depository institution which is adequately capitalized (but not well capitalized), waive the applicability of subsection (a) of this section upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice with respect to such institution.

(d) Limited exception for certain conservatorships

In the case of any insured depository institution for which the Corporation has been appointed as conservator, subsection (a) of this section shall not apply to the acceptance of deposits (described in such subsection) by such institution if the Corporation determines that the acceptance of such deposits—

(1) is not an unsafe or unsound practice;

(2) is necessary to enable the institution to meet the demands of its depositors or pay its obligations in the ordinary course of business; and

(3) is consistent with the conservator's fiduciary duty to minimize the institution's losses.

Effective 90 days after the date on which the institution was placed in conservatorship, the institution may not accept such deposits.

(e) Restriction on interest rate paid

Any insured depository institution which, under subsection (c) or (d) of this section, accepts funds obtained, directly or indirectly, by or through a deposit broker, may not pay a rate of interest on such funds which, at the time that such funds are accepted, significantly exceeds—

(1) the rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area; or

(2) the national rate paid on deposits of comparable maturity, as established by the Corporation, for deposits accepted outside the institution's normal market area.

(f) Additional restrictions

The Corporation may impose, by regulation or order, such additional restrictions on the acceptance of brokered deposits by any institution as the Corporation may determine to be appropriate.

(g) Definitions relating to deposit broker

(1) Deposit broker

The term ''deposit broker'' means—

(A) any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and

(B) an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

(2) Exclusions

The term ''deposit broker'' does not include—

(A) an insured depository institution, with respect to funds placed with that depository institution;

(B) an employee of an insured depository institution, with respect to funds placed with the employing depository institution;

(C) a trust department of an insured depository institution, if the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(D) the trustee of a pension or other employee benefit plan, with respect to funds of the plan;

(E) a person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that that person is performing managerial functions with respect to the plan;

(F) the trustee of a testamentary account;

(G) the trustee of an irrevocable trust (other than one described in paragraph (1)(B)), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(H) a trustee or custodian of a pension or profitsharing plan qualified under section 401(d) or 403(a) of title 26; or

(I) an agent or nominee whose primary purpose is not the placement of funds with depository institutions.

(3) Inclusion of depository institutions engaging in certain activities

Notwithstanding paragraph (2), the term ''deposit broker'' includes any insured depository institution that is not well capitalized (as defined in section 1831*o* of this title), and any employee of such institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.

(4) Employee

For purposes of this subsection, the term ''employee'' means any employee—

(A) who is employed exclusively by the insured depository institution;

(B) whose compensation is primarily in the form of a salary;

(C) who does not share such employee's compensation with a deposit broker; and

(D) whose office space or place of business is used exclusively for the benefit of the insured depository institution which employs such individual.

(h) Deposit solicitation restricted

An insured depository institution that is undercapitalized, as defined in section 1831*o* of this title, shall not solicit deposits by offering rates of interest that are significantly higher than the prevailing rates of interest on insured deposits—

(1) in such institution's normal market areas; or

(2) in the market area in which such deposits would otherwise be accepted.

(Sept. 21, 1950, ch. 967, §2[29], as added Pub. L. 101–73, title II, §224(a), Aug. 9, 1989, 103 Stat. 273; amended Pub. L. 102–242, title III, §301(a), (c), Dec. 19, 1991, 105 Stat. 2343, 2345; Pub. L. 102–550, title XVI, §1605(a)(1), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 103–325, title III, §337, Sept. 23, 1994, 108 Stat. 2235.)

AMENDMENTS

1994—Subsec. (g)(3). Pub. L. 103–325 inserted ''that is not well capitalized (as defined in section 1831*o* of this title)'' after ''includes any insured depository institution'', substituted ''of such institution'' for ''of any insured depository institution'', and struck out ''(with respect to such deposits)'' after ''offering rates of interest'' and ''having the same type of charter'' after ''other insured depository institutions''.

1992—Subsec. (a). Pub. L. 102–550, §1605(a)(1)(A), substituted ''An insured'' for ''A insured''.

Subsec. (c). Pub. L. 102–550, §1605(a)(1)(B), substituted ''capitalized (but not well capitalized)'' for ''capitalized''.

1991—Subsec. (a). Pub. L. 102–242, §301(a)(1), substituted ''insured depository institution that is not well capitalized'' for ''troubled institution''.

Subsec. (c). Pub. L. 102–242, §301(a)(2), substituted ''insured depository institution which is adequately capitalized'' for ''insured depositary institution''.

Subsec. (d). Pub. L. 102–242, §301(a)(3), added pars. (2) and (3) and closing provisions, struck out ''and'' at end of par. (1), and struck out former par. (2) which read as follows: ''either—

''(A) is necessary to enable the institution to meet the demands of its depositors or pay its obligations in the ordinary course of business; or

''(B) is consistent with the conservator's fiduciary duty to minimize the losses of the institution.''

Subsecs. (e) to (h). Pub. L. 102–242, §301(a)(4)–(6), (c), added subsec. (e), redesignated former subsec. (e) as (f) and struck out ''troubled'' before ''institution as the'', redesignated former subsecs. (f) and (g) as (g) and (h), respectively, added subsec. (h), and struck out former subsec. (h), as previously redesignated, which defined ''troubled institution''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE

Section 224(b) of Pub. L. 101–73 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to deposits accepted after the end of the 120-day period beginning on the date of the enactment of this Act [Aug. 9, 1989].''

REGULATIONS

Section 301(d) of Pub. L. 102–242 provided that: ''The Corporation shall promulgate final regulations to carry out the amendments made under subsections (a), (b), and (c) [enacting section 1831f–1 of this title and amending this section] not later than 150 days after the date of enactment of this Act [Dec. 19, 1991], and those regulations shall become effective not later than 180 days after that date of enactment, except that such regulations shall not apply to any specific time deposit made before that date of enactment until the stated maturity of the time deposit.''

§ 1831f–1. Repealed. Pub. L. 106–569, title XII, § 1203, Dec. 27, 2000, 114 Stat. 3032

Section, act Sept. 21, 1950, ch. 967, §2[29A], as added Pub. L. 102–242, title III, §301(b), Dec. 19, 1991, 105 Stat. 2344, related to deposit broker notification and recordkeeping.

§ 1831g. Contracts between depository institutions and persons providing goods, products, or services

(a) In general

An insured depository institution may not enter into a written or oral contract with any person to provide goods, products, or services to or for the benefit of such depository institution if the performance of such contract would adversely affect the safety or soundness of the institution.

(b) Rulemaking

The Corporation shall prescribe such regulations and issue such orders, including definitions consistent with this section, as may be necessary to administer and carry out the purposes of, and prevent evasions of, this section.

(c) Enforcement

Any action taken by any appropriate Federal banking agency under section 1818 of this title to enforce compliance on the part of any insured depository institution with the requirements of this section may include a requirement that such institution properly reflect the transaction on its books and records.

(d) No private right of action

This section may not be construed as creating any private right of action.

(e) Study

(1) In general

The Attorney General and the Comptroller General of the United States shall jointly conduct a study on the extent to which—

(A) insured depository institutions are entering into contracts with vendors under which the vendors agree to purchase stock or assets from insured depository institutions or to invest capital in or make deposits in such institutions; and

(B) if such practices occur, the extent to which such practices are having an anticompetitive effect and should be prohibited.

(2) Report to Congress

Before the end of the 1-year period beginning on August 9, 1989, the Attorney General and the Comptroller General shall submit a report to the Congress on the results of the study conducted pursuant to paragraph (1).

(Sept. 21, 1950, ch. 967, §2[30], as added Pub. L. 101–73, title II, §225, Aug. 9, 1989, 103 Stat. 275; amended Pub. L. 103–325, title VI, §602(a)(59), Sept. 23, 1994, 108 Stat. 2291.)

AMENDMENTS

1994—Subsec. (e)(1)(A). Pub. L. 103–325 substituted ''the vendors'' for ''venders''.

§ 1831h. Repealed. Pub. L. 109–173, § 8(a)(33), Feb. 15, 2006, 119 Stat. 3615

Section, act Sept. 21, 1950, ch. 967, §2[31], as added Pub. L. 101–73, title II, §226, Aug. 9, 1989, 103 Stat. 276; amended Pub. L. 103–325, title VI, §602(a)(60), Sept. 23, 1994, 108 Stat. 2291; Pub. L. 104–208, div. A, title II, §2704(d)(14)(Y), Sept. 30, 1996, 110 Stat. 3009–494; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9, related to the Savings Association Insurance Fund Industry Advisory Committee.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as an Effective Date of 2006 Amendment note under section 1813 of this title.

§ 1831i. Agency disapproval of directors and senior executive officers of insured depository institutions or depository institution holding companies

(a) Prior notice required

An insured depository institution or depository institution holding company shall notify the appropriate Federal banking agency of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such institution or holding company at least 30 days (or such other period, as determined by the appropriate Federal banking agency) before such addition or employment becomes effective, if—

(1) the insured depository institution or depository institution holding company is not in compliance with the minimum capital requirement applicable to such institution or is otherwise in a troubled condition, as determined by such agency on the basis of such institution's or holding company's most recent report of condition or report of examination or inspection; or

(2) the agency determines, in connection with the review by the agency of the plan required under section 1831*o* of this title or otherwise, that such prior notice is appropriate.

(b) Disapproval by agency

An insured depository institution or depository institution holding company may not add any individual to the board of directors or employ any individual as a senior executive officer if the appropriate Federal banking agency issues a notice of disapproval of such addition or employment before the end of the notice period, not to exceed 90 days, beginning on the date the agency receives notice of the proposed action pursuant to subsection (a) of this section.

(c) Exception in extraordinary circumstances

(1) In general

Each appropriate Federal banking agency may prescribe by regulation conditions under which the prior notice requirement of subsection (a) of this section may be waived in the event of extraordinary circumstances.

(2) No effect on disapproval authority of agency

Such waivers shall not affect the authority of each agency to issue notices of disapproval of such additions or employment of such individuals within 30 days after each such waiver.

(d) Additional information

Any notice submitted to an appropriate Federal banking agency with respect to an individual by any insured depository institution or depository institution holding company pursuant to subsection (a) of this section shall include—

(1) the information described in section 1817(j)(6)(A) of this title about the individual; and

(2) such other information as the agency may prescribe by regulation.

(e) Standard for disapproval

The appropriate Federal banking agency shall issue a notice of disapproval with respect to a notice submitted pursuant to subsection (a) of this section if the competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interests of the depositors of the depository institution or in the best interests of the public to permit the individual to be employed by, or associated with, the depository institution or depository institution holding company.

(f) Definition regulations

Each appropriate Federal banking agency shall prescribe by regulation a definition for the terms ''troubled condition'' and ''senior executive officer'' for purposes of subsection (a) of this section.

(Sept. 21, 1950, ch. 967, §2[32], as added Pub. L. 101–73, title IX, §914(a), Aug. 9, 1989, 103 Stat. 484; amended Pub. L. 104–208, div. A, title II, §2209, Sept. 30, 1996, 110 Stat. 3009–409.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, §2209(1)(A), (B), in introductory provisions, inserted ''(or such other period, as determined by the appropriate Federal banking agency)'' after ''30 days'' and substituted ''if'' for ''if the insured depository institution or depository institution holding company''.

Subsec. (a)(1). Pub. L. 104–208, §2209(1)(E), inserted ''the insured depository institution or depository institution holding company'' before ''is not in compliance'' and substituted ''; or'' for period at end.

Pub. L. 104–208, §2209(1)(C), (D), redesignated par. (3) as (1) and struck out former par. (1) which read as follows: ''has been chartered less than 2 years in the case of an insured depository institution;''.

Subsec. (a)(2). Pub. L. 104–208, §2209(1)(C), (F), added par. (2) and struck out former par. (2) which read as follows: ''has undergone a change in control within the preceding 2 years; or''.

Subsec. (a)(3). Pub. L. 104–208, §2209(1)(D), redesignated par. (3) as (1).

Subsec. (b). Pub. L. 104–208, §2209(2), substituted ''notice period, not to exceed 90 days,'' for ''30-day period''.

§ 1831j. Depository institution employee protection remedy

(a) In general

(1) Employees of depository institutions

No insured depository institution may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any Federal banking agency or to the Attorney General regarding—

(A) a possible violation of any law or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

by the depository institution or any director, officer, or employee of the institution.

(2) Employees of banking agencies

No Federal banking agency, Federal home loan bank, Federal reserve bank, or any person who is performing, directly or indirectly, any function or service on behalf of the Corporation may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any such agency or bank or to the Attorney General regarding any possible violation of any law or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety by—

(A) any depository institution or any such bank or agency;

(B) any director, officer, or employee of any depository institution or any such bank;

(C) any officer or employee of the agency which employs such employee; or

(D) the person, or any officer or employee of the person, who employs such employee.

(b) Enforcement

Any employee or former employee who believes he has been discharged or discriminated against in violation of subsection (a) of this section may file a civil action in the appropriate United States district court before the close of the 2-year period beginning on the date of such discharge or discrimination. The complainant shall also file a copy of the complaint initiating such action with the appropriate Federal banking agency.

(c) Remedies

If the district court determines that a violation of subsection (a) of this section has occurred, it may order the depository institution, Federal home loan bank, Federal Reserve bank, or Federal banking agency which committed the violation—

(1) to reinstate the employee to his former position;

(2) to pay compensatory damages; or

(3) take other appropriate actions to remedy any past discrimination.

(d) Limitation

The protections of this section shall not apply to any employee who—

(1) deliberately causes or participates in the alleged violation of law or regulation; or

(2) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.

(e) "Federal banking agency" defined

For purposes of subsections (a) and (c) of this section, the term ''Federal banking agency'' means the Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Board, the Comptroller of the Currency, and the Director of the Office of Thrift Supervision.

(f) Burdens of proof

The legal burdens of proof that prevail under subchapter III of chapter 12 of title 5 shall gov-

ern adjudication of protected activities under this section.

(Sept. 21, 1950, ch. 967, § 2[33], as added Pub. L. 101–73, title IX, § 932(a), Aug. 9, 1989, 103 Stat. 494; amended Pub. L. 102–242, title II, § 251(a)(1)–(3), Dec. 19, 1991, 105 Stat. 2331, 2332; Pub. L. 103–204, § 21(a), Dec. 17, 1993, 107 Stat. 2406; Pub. L. 103–325, title VI, § 602(a)(61), (c), Sept. 23, 1994, 108 Stat. 2291; Pub. L. 111–203, title III, § 363(10), July 21, 2010, 124 Stat. 1555.)

AMENDMENT OF SUBSECTION (e)

Pub. L. 111–203, title III, §§ 351, 363(10), July 21, 2010, 124 Stat. 1546, 1555, provided that, effective on the transfer date, subsection (e) of this section is amended by substituting ''Federal Housing Finance Agency and the Comptroller of the Currency'' for ''Federal Housing Finance Board, the Comptroller of the Currency, and the Director of the Office of Thrift Supervision''. See Effective Date of 2010 Amendment note below.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–325, § 602(c), amended directory language of Pub. L. 103–204, § 21(a). See 1993 Amendment note below.

Subsec. (c)(1). Pub. L. 103–325, § 602(a)(61), substituted semicolon for comma at end.

Subsec. (f). Pub. L. 103–325, § 602(c)(1)–(3), amended directory language of Pub. L. 103–204, § 21(a)(1)(B). See 1993 Amendment note below.

1993—Subsec. (a)(1). Pub. L. 103–204, § 21(a)(1)(A), as amended by Pub. L. 103–325, § 602(c)(1)–(3), substituted ''regarding—

''(A) a possible violation of any law or regulation; or

''(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

by the depository institution or any director, officer, or employee of the institution.'' for ''regarding any possible violation of any law or regulation by the depository institution or any director, officer, or employee of the institution.''

Subsec. (a)(2). Pub. L. 103–204, § 21(a)(2)(A), (B), as amended by Pub. L. 103–325, § 602(c)(1), (2), (4), in introductory provisions, substituted ''Federal reserve bank, or any person who is performing, directly or indirectly, any function or service on behalf of the Corporation'' for ''or Federal Reserve bank'' and ''any possible violation of any law or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety by'' for ''any possible violation of any law or regulation by''.

Subsec. (a)(2)(D). Pub. L. 103–204, § 21(a)(2)(C)–(E), as amended by Pub. L. 103–325, § 602(c)(1), (2), (4), added subpar. (D).

Subsec. (f). Pub. L. 103–204, § 21(a)(1)(B), as amended by Pub. L. 103–325, § 602(c)(1)–(3), added subsec. (f).

1991—Subsec. (a). Pub. L. 102–242, § 251(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''No federally insured depository institution may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any Federal banking agency or to the Attorney General regarding a possible violation of any law or regulation by the depository institution or any of its officers, directors, or employees.''

Subsec. (c). Pub. L. 102–242, § 251(a)(2), inserted '', Federal home loan bank, Federal Reserve bank, or Federal banking agency''.

Subsec. (e). Pub. L. 102–242, § 251(a)(3), added subsec. (e).

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENT

Section 251(a)(4) of Pub. L. 102–242 provided that: ''Paragraph (2) of section 33(a) of the Federal Deposit Insurance Act [12 U.S.C. 1831j(a)(2)] (as added under the amendment made by paragraph (1)) shall be treated as having taken effect on January 1, 1987, and for purposes of any cause of action arising under such paragraph (as so effective) before the date of the enactment of this Act [Dec. 19, 1991], the 2-year period referred to in section 33(b) of such Act shall be deemed to begin on such date of enactment.''

§ 1831k. Reward for information leading to recoveries or civil penalties

(a) In general

An appropriate Federal banking agency, with the concurrence of the Attorney General, may pay a reward to a person who provides original information which leads to—

(1) recovery of a criminal fine, restitution, or civil penalty—

(A) under—

(i) this chapter;

(ii) the Federal Credit Union Act [12 U.S.C. 1751 et seq.];

(iii) section 93(b), 164, or 481 to 485 of this title;

(iv) the Federal Reserve Act [12 U.S.C. 221 et seq.];

(v) the Bank Holding Company Act Amendments of 1970;

(vi) the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.];

(vii) the Home Owners' Loan Act [12 U.S.C. 1461 et seq.]; or

(viii) section 3663 of title 18 pursuant to a conviction for an offense referred to in subparagraph (B) of this paragraph,

(B) pursuant to a conviction for an offense under section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of title 18 affecting a depository institution insured by the Federal Deposit Insurance Corporation, or for a conspiracy to commit such an offense; or

(C) under section 1833a of this title; or

(2) a forfeiture under section 981 or 982 of title 18 that arises in connection with a depository institution insured by the Federal Deposit Insurance Corporation.

(b) Percentage limitation

An appropriate Federal banking agency may not pay a reward under subsection (a) of this section of more than 25 percent of the amount of the fine, penalty, restitution, or forfeiture or $100,000, whichever is less.

(c) Officials and persons ineligible

An appropriate Federal banking agency may not pay a reward under subsection (a) of this section to—

(1) an officer or employee of the United States or of a State or local government who provides information described in subsection

(a) of this section, obtained in the performance of official duties; or

(2) a person who—

(A) deliberately causes or participates in the alleged violation of law or regulation, or

(B) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.

(d) Nonreviewability

Any agency decision under this section is final and not reviewable by any court.

(Sept. 21, 1950, ch. 967, § 2[34], as added Pub. L. 101–73, title IX, § 933(a), Aug. 9, 1989, 103 Stat. 495; amended Pub. L. 101–647, title XXV, § 2586, Nov. 29, 1990, 104 Stat. 4903; Pub. L. 103–325, title VI, § 602(a)(62), (63), Sept. 23, 1994, 108 Stat. 2291.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in subsec. (a)(1)(A)(ii), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

The Federal Reserve Act, referred to in subsec. (a)(1)(A)(iv), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The Bank Holding Company Act Amendments of 1970, referred to in subsec. (a)(1)(A)(v), is Pub. L. 91–607, Dec. 31, 1970, 84 Stat. 1760, as amended. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 1841 of this title and Tables.

The Bank Holding Company Act of 1956, referred to in subsec. (a)(1)(A)(vi), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

The Home Owners' Loan Act, referred to in subsec. (a)(1)(A)(vii), is act June 13, 1933, ch. 64, 48 Stat. 128, as amended, which is classified generally to chapter 12 (§ 1461 et seq.) of this title. For complete classification of this Act to the Code, see section 1461 of this title and Tables.

AMENDMENTS

1994—Subsec. (a)(1)(A)(iii). Pub. L. 103–325, § 602(a)(62), substituted ''section'' for ''sections'' and ''or'' for ''and''.

Subsec. (a)(2). Pub. L. 103–325, § 602(a)(63), inserted period at end.

1990—Subsec. (a)(1). Pub. L. 101–647, § 2586(1), struck out '', in an amount that exceeds $50,000,'' after ''recovery'' in introductory provisions.

Subsec. (a)(2). Pub. L. 101–647, § 2586(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''a forfeiture under section 981 or 982 of title 18 that—

''(A) arises in connection with a depository institution insured by the Federal Deposit Insurance Corporation; and

''(B) exceeds $50,000.''

§ 1831*l*. Coordination of risk analysis between SEC and Federal banking agencies

Any appropriate Federal banking agency shall notify the Securities and Exchange Commission of any concerns of the agency regarding significant financial or operational risks to any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency (as defined in section 78c of title 15), resulting from the activities of any insured depository institution, any depository institution holding company, or any affiliate of any such institution or company if such broker, dealer, municipal securities dealer, government securities broker, or government securities dealer is an affiliate of any such institution, company, or affiliate.

(Sept. 21, 1950, ch. 967, § 2[35], as added Pub. L. 101–432, § 7, Oct. 16, 1990, 104 Stat. 975.)

§ 1831m. Early identification of needed improvements in financial management

(a) Annual report on financial condition and management

(1) Report required

Each insured depository institution shall submit an annual report to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor (including any State bank supervisor of a host State).

(2) Contents of report

Any annual report required under paragraph (1) shall contain—

(A) the information required to be provided by—

(i) the institution's management under subsection (b) of this section; and

(ii) an independent public accountant under subsections (c) and (d) of this section; and

(B) such other information as the Corporation and the appropriate Federal banking agency may determine to be necessary to assess the financial condition and management of the institution.

(3) Public availability

Any annual report required under paragraph (1) shall be available for public inspection. Notwithstanding the preceding sentence, the Corporation and the appropriate Federal banking agencies may designate certain information as privileged and confidential and not available to the public.

(b) Management responsibility for financial statements and internal controls

Each insured depository institution shall prepare—

(1) annual financial statements in accordance with generally accepted accounting principles and such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe; and

(2) a report signed by the chief executive officer and the chief accounting or financial officer of the institution which contains—

(A) a statement of the management's responsibilities for—

(i) preparing financial statements;

(ii) establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(iii) complying with the laws and regulations relating to safety and soundness

which are designated by the Corporation and the appropriate Federal banking agency; and

(B) an assessment, as of the end of the institution's most recent fiscal year, of—

(i) the effectiveness of such internal control structure and procedures; and

(ii) the institution's compliance with the laws and regulations relating to safety and soundness which are designated by the Corporation and the appropriate Federal banking agency.

(c) Internal control evaluation and reporting requirements for independent public accountants

(1) In general

With respect to any internal control report required by subsection (b)(2) of this section of any institution, the institution's independent public accountant shall attest to, and report separately on, the assertions of the institution's management contained in such report.

(2) Attestation requirements

Any attestation pursuant to paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

(d) Annual independent audits of financial statements

(1) Audits required

The Corporation, in consultation with the appropriate Federal banking agencies, shall prescribe regulations requiring that each insured depository institution shall have an annual independent audit made of the institution's financial statements by an independent public accountant in accordance with generally accepted auditing standards and section 1831n of this title.

(2) Scope of audit

In connection with any audit under this subsection, the independent public accountant shall determine and report whether the financial statements of the institution—

(A) are presented fairly in accordance with generally accepted accounting principles; and

(B) comply with such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe.

(3) Requirements for insured subsidiaries of holding companies

The requirements for an independent audit under this subsection may be satisfied for insured depository institutions that are subsidiaries of a holding company by an independent audit of the holding company.

(e) Repealed. Pub. L. 104–208, div. A, title II, § 2301(a), Sept. 30, 1996, 110 Stat. 3009–419

(f) Form and content of reports and auditing standards

(1) In general

The scope of each report by an independent public accountant pursuant to this section, and the procedures followed in preparing such report, shall meet or exceed the scope and procedures required by generally accepted auditing standards and other applicable standards recognized by the Corporation.

(2) Consultation

The Corporation shall consult with the other appropriate Federal banking agencies in implementing this subsection.

(g) Improved accountability

(1) Independent audit committee

(A) Establishment

Each insured depository institution (to which this section applies) shall have an independent audit committee entirely made up of outside directors who are independent of management of the institution, except as provided in subparagraph (D), and who satisfy any specific requirements the Corporation may establish.

(B) Duties

An independent audit committee's duties shall include reviewing with management and the independent public accountant the basis for the reports issued under subsections (b)(2), (c), and (d) of this section.

(C) Criteria applicable to committees of large insured depository institutions

In the case of each insured depository institution which the Corporation determines to be a large institution, the audit committee required by subparagraph (A) shall—

(i) include members with banking or related financial management expertise;

(ii) have access to the committee's own outside counsel; and

(iii) not include any large customers of the institution.

(D) Exemption authority

(i) In general

An appropriate Federal banking agency may, by order or regulation, permit the independent audit committee of an insured depository institution to be made up of less than all, but no fewer than a majority of, outside directors, if the agency determines that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors to serve on the internal audit committee of the institution.

(ii) Factors to be considered

In determining whether an insured depository institution has encountered hardships referred to in clause (i), the appropriate Federal banking agency shall consider factors such as the size of the institution, and whether the institution has made a good faith effort to elect or name additional competent outside directors to the board of directors of the institution who may serve on the internal audit committee.

(2) Review of quarterly reports of large insured depository institutions

(A) In general

In the case of any insured depository institution which the Corporation has deter-

mined to be a large institution, the Corporation may require the independent public accountant retained by such institution to perform reviews of the institution's quarterly financial reports in accordance with procedures agreed upon by the Corporation.

(B) Report to audit committee

The independent public accountant referred to in subparagraph (A) shall provide the audit committee of the insured depository institution with reports on the reviews under such subparagraph and the audit committee shall provide such reports to the Corporation, any appropriate Federal banking agency, and any appropriate State bank supervisor.

(C) Limitation on notice

Reports provided under subparagraph (B) shall be only for the information and use of the insured depository institution, the Corporation, any appropriate Federal banking agency, and any State bank supervisor that received the report.

(D) Notice to institution

The Corporation shall promptly notify an insured depository institution, in writing, of a determination pursuant to subparagraph (A) to require a review of such institution's quarterly financial reports.

(3) Qualifications of independent public accountants

(A) In general

All audit services required by this section shall be performed only by an independent public accountant who—

(i) has agreed to provide related working papers, policies, and procedures to the Corporation, any appropriate Federal banking agency, and any State bank supervisor, if requested; and

(ii) has received a peer review that meets guidelines acceptable to the Corporation.

(B) Reports on peer reviews

Reports on peer reviews shall be filed with the Corporation and made available for public inspection.

(4) Enforcement actions

(A) In general

In addition to any authority contained in section 1818 of this title, the Corporation or an appropriate Federal banking agency may remove, suspend, or bar an independent public accountant, upon a showing of good cause, from performing audit services required by this section.

(B) Joint rulemaking

The appropriate Federal banking agencies shall jointly issue rules of practice to implement this paragraph.

(5) Notice by accountant of termination of services

Any independent public accountant performing an audit under this section who subsequently ceases to be the accountant for the institution shall promptly notify the Corporation and each appropriate Federal banking agency pursuant to such rules as the Corporation and each appropriate Federal banking agency shall prescribe.

(h) Exchange of reports and information

(1) Report to the independent auditor

(A) In general

Each insured depository institution which has engaged the services of an independent auditor to audit such institution shall transmit to the auditor a copy of the most recent report of condition made by the institution (pursuant to this chapter or any other provision of law) and a copy of the most recent report of examination received by the institution.

(B) Additional information

In addition to the copies of the reports required to be provided under subparagraph (A), each insured depository institution shall provide the auditor with—

(i) a copy of any supervisory memorandum of understanding with such institution and any written agreement between such institution and any appropriate Federal banking agency or any appropriate State bank supervisor which is in effect during the period covered by the audit; and

(ii) a report of—

(I) any action initiated or taken by the appropriate Federal banking agency or the Corporation during such period under subsection (a), (b), (c), (e), (g), (i), (s), or (t) of section 1818 of this title;

(II) any action taken by any appropriate State bank supervisor under State law which is similar to any action referred to in subclause (I); or

(III) any assessment of any civil money penalty under any other provision of law with respect to the institution or any institution-affiliated party.

(2) Reports to banking agencies

(A) Independent auditor reports

Each insured depository institution shall provide to the Corporation, any appropriate Federal banking agency, and any appropriate State bank supervisor, a copy of each audit report and any qualification to such report, any management letter, and any other report within 15 days of receipt of any such report, qualification, or letter from the institution's independent auditors.

(B) Notice of change of auditor

Each insured depository institution shall provide written notification to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor of the resignation or dismissal of the institution's independent auditor or the engagement of a new independent auditor by the institution, including a statement of the reasons for such change within 15 calendar days of the occurrence of the event.

(i) Requirements for insured subsidiaries of holding companies

(1) In general

Except with respect to any audit requirements established under or pursuant to sub-

section (d) of this section, the requirements of this section may be satisfied for insured depository institutions that are subsidiaries of a holding company, if—

(A) services and functions comparable to those required under this section are provided at the holding company level; and

(B) the institution—

(i) has total assets, as of the beginning of such fiscal year, of less than $5,000,000,000; or

(ii) has—

(I) total assets, as of the beginning of such fiscal year, of $5,000,000,000, or more; and

(II) a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution by the Corporation or the appropriate Federal banking agency.

(2) Large institutions

For purposes of this subsection, in the case of an insured depository institution described in paragraph (1)(B)(ii) that the Corporation determines to be a large institution, the audit committee of the holding company of such an institution shall not include any large customers of the institution.

(3) Applicability based on risk to fund

The appropriate Federal banking agency may require an institution with total assets in excess of $9,000,000,000 to comply with this section, notwithstanding the exemption provided by this subsection, if it determines that such exemption would create a significant risk to the Deposit Insurance Fund if applied to that institution.

(j) Exemption for small depository institutions

This section shall not apply with respect to any fiscal year of any insured depository institution the total assets of which, as of the beginning of such fiscal year, are less than the greater of—

(1) $150,000,000; or

(2) such amount (in excess of $150,000,000) as the Corporation may prescribe by regulation.

(Sept. 21, 1950, ch. 967, §2[36], as added Pub. L. 102–242, title I, §112(a), Dec. 19, 1991, 105 Stat. 2242; amended Pub. L. 102–550, title XVI, §1603(b)(3), Oct. 28, 1992, 106 Stat. 4079; Pub. L. 103–325, title III, §314, Sept. 23, 1994, 108 Stat. 2221; Pub. L. 104–208, div. A, title II, §§2301, 2704(d)(14)(Z), Sept. 30, 1996, 110 Stat. 3009–419, 3009–494; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §8(a)(34), Feb. 15, 2006, 119 Stat. 3615.)

AMENDMENTS

2006—Subsec. (i)(3). Pub. L. 109–173 substituted ''Deposit Insurance Fund'' for ''affected deposit insurance fund''.

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

1996—Subsec. (a)(3). Pub. L. 104–208, §2301(c), inserted at end ''Notwithstanding the preceding sentence, the Corporation and the appropriate Federal banking agencies may designate certain information as privileged and confidential and not available to the public.''

Subsec. (e). Pub. L. 104–208, §2301(a), inserted ''[Repealed]'' and struck out heading and text of subsec. (e). Text read as follows:

''(1) IN GENERAL—An independent public accountant shall apply procedures agreed upon by the Corporation to objectively determine the extent of the compliance of any insured depository institution or depository institution holding company with laws and regulations designated by the Corporation, in consultation with the appropriate Federal banking agencies.

''(2) ATTESTATION REQUIREMENTS—Any attestation pursuant to paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.''

Subsec. (g)(1)(A). Pub. L. 104–208, §2301(b)(1), inserted '', except as provided in subparagraph (D)'' after ''management of the institution''.

Subsec. (g)(1)(D). Pub. L. 104–208, §2301(b)(2), added subpar. (D).

Subsec. (i)(3). Pub. L. 104–208, §2704(d)(14)(Z), which directed substitution of ''Deposit Insurance Fund'' for ''affected deposit insurance fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Subsec. (g)(2)(D). Pub. L. 103–325, §314(b), added subpar. (D).

Subsec. (i). Pub. L. 103–325, §314(a), inserted par. (1) designation and heading before ''Except with respect to'', redesignated former par. (1) as subpar. (A) of par. (1), added subpar. (B) of par. (1) and pars. (2) and (3), and struck out former par. (2) which read as follows: ''either—

''(A) the institution has total assets, as of the beginning of such fiscal year, of less than $5,000,000,000; or

''(B) the institution—

''(i) has total assets, as of the beginning of such fiscal year, of more than $5,000,000,000 and less than $9,000,000,000; and

''(ii) has a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution by the Corporation or the appropriate Federal banking agency.''

1992—Subsec. (b)(2)(A)(iii). Pub. L. 102–550, §1603(b)(3)(A), substituted ''Corporation and'' for ''Corporation or''.

Subsec. (g)(3)(A)(i). Pub. L. 102–550, §1603(b)(3)(B), substituted ''any appropriate'' for ''an appropriate''.

Subsec. (g)(5). Pub. L. 102–550, §1603(b)(3)(C), inserted ''and each appropriate Federal banking agency'' after ''Corporation'' in two places.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(14)(Z) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE

Section 112(c), formerly 112(b), of Pub. L. 102–242, as redesignated by Pub. L. 102–550, title XVI, § 1603(b)(2)(A), Oct. 28, 1992, 106 Stat. 4079, provided that: ''The requirements established by the amendment made by subsection (a) [enacting this section] shall apply with respect to fiscal years of insured depository institutions which begin after December 31, 1992.''

§ 1831m–1. Reports of information regarding safety and soundness of depository institutions

(a) Reports to appropriate Federal banking agencies

(1) In general

The Attorney General, the Secretary of the Treasury, and the head of any other agency or instrumentality of the United States shall, unless otherwise prohibited by law, disclose to the appropriate Federal banking agency any information that the Attorney General, the Secretary of the Treasury, or such agency head believes raises significant concerns regarding the safety or soundness of any depository institution doing business in the United States.

(2) Exceptions

(A) Intelligence information

(i) In general

The Director of Central Intelligence shall disclose to the Attorney General or the Secretary of the Treasury any intelligence information that would otherwise be reported to an appropriate Federal banking agency pursuant to paragraph (1). After consultation with the Director of Central Intelligence, the Attorney General or the Secretary of the Treasury, shall disclose the intelligence information to the appropriate Federal banking agency.

(ii) Procedures for receipt of intelligence information

Each appropriate Federal banking agency, in consultation with the Director of Central Intelligence, shall establish procedures for receipt of intelligence information that are adequate to protect the intelligence information.

(B) Criminal investigations, safety of Government investigators, informants, and witnesses

If the Attorney General, the Secretary of the Treasury or their respective designees determines that the disclosure of information pursuant to paragraph (1) may jeopardize a pending civil investigation or litigation, or a pending criminal investigation or prosecution, may result in serious bodily injury or death to Government employees, informants, witnesses or their respective families, or may disclose sensitive investigative techniques and methods, the Attorney General or the Secretary of the Treasury shall—

(i) provide the appropriate Federal banking agency a description of the information that is as specific as possible without jeopardizing the investigation, litigation, or prosecution, threatening serious bodily injury or death to Government employees, informants, or witnesses or their respective families, or disclosing sensitive investigation techniques and methods; and

(ii) permit a full review of the information by the Federal banking agency at a location and under procedures that the Attorney General determines will ensure the effective protection of the information while permitting the Federal banking agency to ensure the safety and soundness of any depository institution.

(C) Grand jury investigations; criminal procedure

Paragraph (1) shall not—

(i) apply to the receipt of information by an agency or instrumentality in connection with a pending grand jury investigation; or

(ii) be construed to require disclosure of information prohibited by rule 6 of the Federal Rules of Criminal Procedure.

(b) Procedures for receipt of disclosure reports

(1) In general

Within 90 days after October 28, 1992, each appropriate Federal banking agency shall establish procedures for receipt of a disclosure report by an agency or instrumentality made in accordance with subsection (a)(1) of this section. The procedures established in accordance with this subsection shall ensure adequate protection of information disclosed, including access control and information accountability.

(2) Procedures related to each disclosure report

Upon receipt of a report in accordance with subsection (a)(1) of this section, the appropriate Federal banking agency shall—

(A) consult with the agency or instrumentality that made the disclosure regarding the adequacy of the procedures established pursuant to paragraph (1), and

(B) adjust the procedures to ensure adequate protection of the information disclosed.

(c) Effect on agencies

This section does not impose an affirmative duty on the Attorney General, the Secretary of the Treasury, or the head of any agency or instrumentality of the United States to collect new or to review existing information.

(d) Definitions

For purposes of this section, the terms ''appropriate Federal banking agency'' and ''depository institution'' have the same meanings as in section 1818 of this title.

(Pub. L. 102–550, title XV, § 1542, Oct. 28, 1992, 106 Stat. 4067; Pub. L. 105–362, title X, § 1001(f), Nov. 10, 1998, 112 Stat. 3292.)

REFERENCES IN TEXT

Rule 6 of the Federal Rules of Criminal Procedure, referred to in subsec. (a)(2)(C)(ii), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CODIFICATION

Section was enacted as part of the Annunzio-Wylie Anti-Money Laundering Act and also as part of the

Housing and Community Development Act of 1992, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–362 struck out heading and text of subsec. (e). Text read as follows: ''The Attorney General and the Secretary of the Treasury shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, not later than 90 days after the end of each calendar year on their utilization of the exceptions provided in subsection (a)(1)(B) of this section.''

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

§ 1831n. Accounting objectives, standards, and requirements

(a) In general

(1) Objectives

Accounting principles applicable to reports or statements required to be filed with Federal banking agencies by insured depository institutions should—

(A) result in financial statements and reports of condition that accurately reflect the capital of such institutions;

(B) facilitate effective supervision of the institutions; and

(C) facilitate prompt corrective action to resolve the institutions at the least cost to the Deposit Insurance Fund.

(2) Standards

(A) Uniform accounting principles consistent with GAAP

Subject to the requirements of this chapter and any other provision of Federal law, the accounting principles applicable to reports or statements required to be filed with Federal banking agencies by all insured depository institutions shall be uniform and consistent with generally accepted accounting principles.

(B) Stringency

If the appropriate Federal banking agency or the Corporation determines that the application of any generally accepted accounting principle to any insured depository institution is inconsistent with the objectives described in paragraph (1), the agency or the Corporation may, with respect to reports or statements required to be filed with such agency or Corporation, prescribe an accounting principle which is applicable to such institutions which is no less stringent than generally accepted accounting principles.

(3) Review and implementation of accounting principles required

Before the end of the 1-year period beginning on December 19, 1991, each appropriate Federal banking agency shall take the following actions:

(A) Review of accounting principles

Review—

(i) all accounting principles used by depository institutions with respect to reports or statements required to be filed with a Federal banking agency;

(ii) all requirements established by the agency with respect to such accounting procedures; and

(iii) the procedures and format for reports to the agency, including reports of condition.

(B) Modification of noncomplying measures

Modify or eliminate any accounting principle or reporting requirement of such Federal agency which the agency determines fails to comply with the objectives and standards established under paragraphs (1) and (2).

(C) Inclusion of "off balance sheet" items

Develop and prescribe regulations which require that all assets and liabilities, including contingent assets and liabilities, of insured depository institutions be reported in, or otherwise taken into account in the preparation of any balance sheet, financial statement, report of condition, or other report of such institution, required to be filed with a Federal banking agency.

(b) Uniform accounting of capital standards

(1) In general

Each appropriate Federal banking agency shall maintain uniform accounting standards to be used for determining compliance with statutory or regulatory requirements of depository institutions.

(2) Transition provision

Any standards in effect on December 19, 1991, under section 1833d[1] of this title shall continue in effect after December 19, 1991, until amended by the appropriate Federal banking agency under paragraph (1).

(c) Reports to banking committees

(1) Annual reports required

The Federal banking agencies shall jointly submit an annual report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing a description of any difference between any accounting or capital standard used by any such agency and any accounting or capital standard used by any other agency.

(2) Explanation of reasons for discrepancy

Each report submitted under paragraph (1) shall contain an explanation of the reasons for any discrepancy between any accounting or capital standard used by any such agency and any accounting or capital standard used by any other agency.

(3) Publication

Each report under this subsection shall be published in the Federal Register.

[1] See References in Text note below.

(Sept. 21, 1950, ch. 967, §2[37], as added Pub. L. 102–242, title I, §121(a), Dec. 19, 1991, 105 Stat. 2250; amended Pub. L. 106–569, title XII, §§1221, 1223, Dec. 27, 2000, 114 Stat. 3036; Pub. L. 109–173, §8(a)(35), Feb. 15, 2006, 119 Stat. 3615.)

REFERENCES IN TEXT

Section 1833d, referred to in subsec. (b)(2), was repealed by Pub. L. 102–242, title I, §121(b), Dec. 19, 1991, 105 Stat. 2251.

AMENDMENTS

2006—Subsec. (a)(1)(C). Pub. L. 109–173 substituted ''Deposit Insurance Fund'' for ''insurance funds''.

2000—Subsec. (a)(3)(D). Pub. L. 106–569, §1221, struck out heading and text of subpar. (D). Text read as follows: ''Develop jointly with the other appropriate Federal banking agencies a method for insured depository institutions to provide supplemental disclosure of the estimated fair market value of assets and liabilities, to the extent feasible and practicable, in any balance sheet, financial statement, report of condition, or other report of any insured depository institution required to be filed with a Federal banking agency.''

Subsec. (c)(1). Pub. L. 106–569, §1223, substituted ''The Federal banking agencies shall jointly submit an annual report'' for ''Each appropriate Federal banking agency shall annually submit a report'' and inserted ''any'' before ''such agency''.

Subsec. (c)(2). Pub. L. 106–569, §1223(2), inserted ''any'' before ''such agency''.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

RISK-WEIGHTING OF HOUSING LOANS FOR PURPOSES OF CAPITAL REQUIREMENTS

Pub. L. 102–233, title VI, §618, Dec. 12, 1991, 105 Stat. 1789, provided that:

''(a) SINGLE FAMILY HOUSING LOANS.—

''(1) 50 PERCENT RISK-WEIGHTED CLASSIFICATION.—

''(a)[(A)] IN GENERAL.—To provide consistent regulatory treatment of loans made for the construction of single family housing, not later than the expiration of the 120-day period beginning on the date of this Act [probably means date of enactment, Dec. 12, 1991] each Federal banking agency shall amend the regulations and guidelines of the agency establishing minimum acceptable capital levels to provide that any single family residence construction loan described under subparagraph (B) shall be considered as a loan within the 50 percent risk-weighted category.

''(B) REQUIREMENTS.—Subparagraph (A) shall apply to any construction loan—

''(i) made for the construction of a residence consisting of 1 to 4 dwelling units;

''(ii) under which the lender has acquired from the lender originating the mortgage loan for purchase of the residence, before the making of the construction loan—

''(I) documentation demonstrating that the buyer of the residence intends to purchase the residence and has the ability to obtain a mortgage loan sufficient to purchase the residence; and

''(II) any other documentation from the mortgage lender that the appropriate Federal banking agency may consider appropriate to provide assurance of the buyer's intent to purchase the property (including written commitments and letters of intent);

''(iii) under which the borrower requires the buyer of the residence to make a nonrefundable deposit to the borrower in an amount (as determined by the appropriate Federal banking agency) of not less than 1 percent of the principal amount of mortgage loan obtained by the borrower for purchase of the residence, for use in defraying costs relating to any cancellation of the purchase contract of the buyer; and

''(iv) that meets any other underwriting characteristics that the appropriate Federal banking agency may establish, consistent with the purposes of the minimum acceptable capital requirements to maintain the safety and soundness of financial institutions.

''(2) 100 PERCENT RISK-WEIGHTED CLASSIFICATION.—Not later than the expiration of the 120-day period beginning on the date of this Act [Dec. 12, 1991] each Federal banking agency shall amend the regulations and guidelines of the agency establishing minimum acceptable capital levels to provide that—

''(A) any single family residence construction loan for a residence for which the purchase contract is canceled shall be considered as a loan within the 100 percent risk-weighted category; and

''(B) the lender of any single family residence construction loan shall promptly notify the appropriate Federal banking agency of any such cancellation.

''(b) MULTIFAMILY HOUSING LOANS.—

''(1) 50 PERCENT RISK-WEIGHTED CLASSIFICATION.—

''(A) IN GENERAL.—To provide consistent regulatory treatment of loans made for the purchase of multifamily rental and homeowner properties, not later than the expiration of the 120-day period beginning on the date of this Act [Dec. 12, 1991] each Federal banking agency shall amend the regulations and guidelines of the agency establishing minimum acceptable capital levels to provide that any multifamily housing loan described under subparagraph (B) and any security collateralized by such a loan shall be considered as a loan or security within the 50 percent risk-weighted category.

''(B) REQUIREMENTS.—Subparagraph (A) shall apply to any loan—

''(i) secured by a first lien on a residence consisting of more than 4 dwelling units;

''(ii) under which—

''(I) the rate of interest does not change over the term of the loan, (b) the principal obligation does not exceed 80 percent of the appraised value of the property, and (c) the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan is not less than 120 percent; or

''(II) the rate of interest changes over the term of the loan, (b) the principal obligation does not exceed 75 percent of the appraised value of the property, and (c) the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan is not less than 115 percent;

''(iii) under which—

''(I) amortization of principal and interest occurs over a period of not more than 30 years;

''(II) the minimum maturity for repayment of principal is not less than 7 years; and

''(III) timely payment of all principal and interest, in accordance with the terms of the loan, occurs for a period of not less than 1 year; and

''(iv) that meets any other underwriting characteristics that the appropriate Federal banking agency may establish, consistent with the purposes of the minimum acceptable capital requirements to maintain the safety and soundness of financial institutions.

''(2) SALE PURSUANT TO PRO RATA LOSS SHARING ARRANGEMENTS.—Not later than the expiration of the 120-day period beginning on the date of this Act [Dec. 12, 1991], each Federal banking agency shall amend the regulations and guidelines of the agency establishing minimum acceptable capital levels to provide that any loan fully secured by a first lien on a multifamily housing property that is sold subject to a pro rata loss sharing arrangement by an institution subject to the jurisdiction of the agency shall be treated as sold to the extent that loss is incurred by the purchaser of the loan. For purposes of this paragraph, the term 'pro rata loss sharing arrangement' means an agreement providing that the purchaser of a loan shares in any loss incurred on the loan with the selling institution on a pro rata basis.

''(3) SALE PURSUANT TO OTHER ARRANGEMENTS FOR LOSS.—Not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Dec. 12, 1991], each Federal banking agency shall amend the regulations and guidelines of the agency establishing minimum acceptable capital levels to take into account other loss sharing arrangements, in connection with the sale by an institution subject to the jurisdiction of the agency of any loan that is fully secured by a first lien on multifamily housing property, for purposes of determining the extent to which such loans shall be treated as sold. For purposes of this paragraph, the term 'other loss sharing arrangement' means an agreement providing that the purchaser of a loan shares in any loss incurred on the loan with the selling institution on other than a pro rata basis.

''(c) APPROPRIATE FEDERAL BANKING AGENCY.—For purposes of this section, the term 'Federal banking agency' means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Director of the Office of Thrift Supervision.''

§ 1831*o*. Prompt corrective action

(a) Resolving problems to protect Deposit Insurance Fund

(1) Purpose

The purpose of this section is to resolve the problems of insured depository institutions at the least possible long-term loss to the Deposit Insurance Fund.

(2) Prompt corrective action required

Each appropriate Federal banking agency and the Corporation (acting in the Corporation's capacity as the insurer of depository institutions under this chapter) shall carry out the purpose of this section by taking prompt corrective action to resolve the problems of insured depository institutions.

(b) Definitions

For purposes of this section:

(1) Capital categories

(A) Well capitalized

An insured depository institution is ''well capitalized'' if it significantly exceeds the required minimum level for each relevant capital measure.

(B) Adequately capitalized

An insured depository institution is ''adequately capitalized'' if it meets the required minimum level for each relevant capital measure.

(C) Undercapitalized

An insured depository institution is ''undercapitalized'' if it fails to meet the required minimum level for any relevant capital measure.

(D) Significantly undercapitalized

An insured depository institution is ''significantly undercapitalized'' if it is significantly below the required minimum level for any relevant capital measure.

(E) Critically undercapitalized

An insured depository institution is ''critically undercapitalized'' if it fails to meet any level specified under subsection (c)(3)(A) of this section.

(2) Other definitions

(A) Average

(i) In general

The ''average'' of an accounting item (such as total assets or tangible equity) during a given period means the sum of that item at the close of business on each business day during that period divided by the total number of business days in that period.

(ii) Agency may permit weekly averaging for certain institutions

In the case of insured depository institutions that have total assets of less than $300,000,000 and normally file reports of condition reflecting weekly (rather than daily) averages of accounting items, the appropriate Federal banking agency may provide that the ''average'' of an accounting item during a given period means the sum of that item at the close of business on the relevant business day each week during that period divided by the total number of weeks in that period.

(B) Capital distribution

The term ''capital distribution'' means—

(i) a distribution of cash or other property by any insured depository institution or company to its owners made on account of that ownership, but not including—

(I) any dividend consisting only of shares of the institution or company or rights to purchase such shares; or

(II) any amount paid on the deposits of a mutual or cooperative institution that the appropriate Federal banking agency determines is not a distribution for purposes of this section;

(ii) a payment by an insured depository institution or company to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit to finance an affiliated company's acquisition of those shares or interests; or

(iii) a transaction that the appropriate Federal banking agency or the Corpora-

tion determines, by order or regulation, to be in substance a distribution of capital to the owners of the insured depository institution or company.

(C) Capital restoration plan

The term ''capital restoration plan'' means a plan submitted under subsection (e)(2) of this section.

(D) Company

The term ''company'' has the same meaning as in section 1841 of this title.

(E) Compensation

The term ''compensation'' includes any payment of money or provision of any other thing of value in consideration of employment.

(F) Relevant capital measure

The term ''relevant capital measure'' means the measures described in subsection (c) of this section.

(G) Required minimum level

The term ''required minimum level'' means, with respect to each relevant capital measure, the minimum acceptable capital level specified by the appropriate Federal banking agency by regulation.

(H) Senior executive officer

The term ''senior executive officer'' has the same meaning as the term ''executive officer'' in section 375b of this title.

(I) Subordinated debt

The term ''subordinated debt'' means debt subordinated to the claims of general creditors.

(c) Capital standards

(1) Relevant capital measures

(A) In general

Except as provided in subparagraph (B)(ii), the capital standards prescribed by each appropriate Federal banking agency shall include—

(i) a leverage limit; and

(ii) a risk-based capital requirement.

(B) Other capital measures

An appropriate Federal banking agency may, by regulation—

(i) establish any additional relevant capital measures to carry out the purpose of this section; or

(ii) rescind any relevant capital measure required under subparagraph (A) upon determining (with the concurrence of the other Federal banking agencies) that the measure is no longer an appropriate means for carrying out the purpose of this section.

(2) Capital categories generally

Each appropriate Federal banking agency shall, by regulation, specify for each relevant capital measure the levels at which an insured depository institution is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.

(3) Critical capital

(A) Agency to specify level

(i) Leverage limit

Each appropriate Federal banking agency shall, by regulation, in consultation with the Corporation, specify the ratio of tangible equity to total assets at which an insured depository institution is critically undercapitalized.

(ii) Other relevant capital measures

The agency may, by regulation, specify for 1 or more other relevant capital measures, the level at which an insured depository institution is critically undercapitalized.

(B) Leverage limit range

The level specified under subparagraph (A)(i) shall require tangible equity in an amount—

(i) not less than 2 percent of total assets; and

(ii) except as provided in clause (i), not more than 65 percent of the required minimum level of capital under the leverage limit.

(C) FDIC's concurrence required

The appropriate Federal banking agency shall not, without the concurrence of the Corporation, specify a level under subparagraph (A)(i) lower than that specified by the Corporation for State nonmember insured banks.

(d) Provisions applicable to all institutions

(1) Capital distributions restricted

(A) In general

An insured depository institution shall make no capital distribution if, after making the distribution, the institution would be undercapitalized.

(B) Exception

Notwithstanding subparagraph (A), the appropriate Federal banking agency may permit, after consultation with the Corporation, an insured depository institution to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

(i) is made in connection with the issuance of additional shares or obligations of the institution in at least an equivalent amount; and

(ii) will reduce the institution's financial obligations or otherwise improve the institution's financial condition.

(2) Management fees restricted

An insured depository institution shall pay no management fee to any person having control of that institution if, after making the payment, the institution would be undercapitalized.

(e) Provisions applicable to undercapitalized institutions

(1) Monitoring required

Each appropriate Federal banking agency shall—

(A) closely monitor the condition of any undercapitalized insured depository institution;

(B) closely monitor compliance with capital restoration plans, restrictions, and requirements imposed under this section; and

(C) periodically review the plan, restrictions, and requirements applicable to any undercapitalized insured depository institution to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.

(2) Capital restoration plan required

(A) In general

Any undercapitalized insured depository institution shall submit an acceptable capital restoration plan to the appropriate Federal banking agency within the time allowed by the agency under subparagraph (D).

(B) Contents of plan

The capital restoration plan shall—

(i) specify—

(I) the steps the insured depository institution will take to become adequately capitalized;

(II) the levels of capital to be attained during each year in which the plan will be in effect;

(III) how the institution will comply with the restrictions or requirements then in effect under this section; and

(IV) the types and levels of activities in which the institution will engage; and

(ii) contain such other information as the appropriate Federal banking agency may require.

(C) Criteria for accepting plan

The appropriate Federal banking agency shall not accept a capital restoration plan unless the agency determines that—

(i) the plan—

(I) complies with subparagraph (B);

(II) is based on realistic assumptions, and is likely to succeed in restoring the institution's capital; and

(III) would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the institution is exposed; and

(ii) if the insured depository institution is undercapitalized, each company having control of the institution has—

(I) guaranteed that the institution will comply with the plan until the institution has been adequately capitalized on average during each of 4 consecutive calendar quarters; and

(II) provided appropriate assurances of performance.

(D) Deadlines for submission and review of plans

The appropriate Federal banking agency shall by regulation establish deadlines that—

(i) provide insured depository institutions with reasonable time to submit capital restoration plans, and generally require an institution to submit a plan not later than 45 days after the institution becomes undercapitalized;

(ii) require the agency to act on capital restoration plans expeditiously, and generally not later than 60 days after the plan is submitted; and

(iii) require the agency to submit a copy of any plan approved by the agency to the Corporation before the end of the 45-day period beginning on the date such approval is granted.

(E) Guarantee liability limited

(i) In general

The aggregate liability under subparagraph (C)(ii) of all companies having control of an insured depository institution shall be the lesser of—

(I) an amount equal to 5 percent of the institution's total assets at the time the institution became undercapitalized; or

(II) the amount which is necessary (or would have been necessary) to bring the institution into compliance with all capital standards applicable with respect to such institution as of the time the institution fails to comply with a plan under this subsection.

(ii) Certain affiliates not affected

This paragraph may not be construed as—

(I) requiring any company not having control of an undercapitalized insured depository institution to guarantee, or otherwise be liable on, a capital restoration plan;

(II) requiring any person other than an insured depository institution to submit a capital restoration plan; or

(III) affecting compliance by brokers, dealers, government securities brokers, and government securities dealers with the financial responsibility requirements of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] and regulations and orders thereunder.

(3) Asset growth restricted

An undercapitalized insured depository institution shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

(A) the appropriate Federal banking agency has accepted the institution's capital restoration plan;

(B) any increase in total assets is consistent with the plan; and

(C) the institution's ratio of tangible equity to assets increases during the calendar quarter at a rate sufficient to enable the institution to become adequately capitalized within a reasonable time.

(4) Prior approval required for acquisitions, branching, and new lines of business

An undercapitalized insured depository institution shall not, directly or indirectly, acquire any interest in any company or insured depository institution, establish or acquire

any additional branch office, or engage in any new line of business unless—

(A) the appropriate Federal banking agency has accepted the insured depository institution's capital restoration plan, the institution is implementing the plan, and the agency determines that the proposed action is consistent with and will further the achievement of the plan; or

(B) the Board of Directors determines that the proposed action will further the purpose of this section.

(5) Discretionary safeguards

The appropriate Federal banking agency may, with respect to any undercapitalized insured depository institution, take actions described in any subparagraph of subsection (f)(2) of this section if the agency determines that those actions are necessary to carry out the purpose of this section.

(f) Provisions applicable to significantly undercapitalized institutions and undercapitalized institutions that fail to submit and implement capital restoration plans

(1) In general

This subsection shall apply with respect to any insured depository institution that—

(A) is significantly undercapitalized; or

(B) is undercapitalized and—

(i) fails to submit an acceptable capital restoration plan within the time allowed by the appropriate Federal banking agency under subsection (e)(2)(D) of this section; or

(ii) fails in any material respect to implement a plan accepted by the agency.

(2) Specific actions authorized

The appropriate Federal banking agency shall carry out this section by taking 1 or more of the following actions:

(A) Requiring recapitalization

Doing 1 or more of the following:

(i) Requiring the institution to sell enough shares or obligations of the institution so that the institution will be adequately capitalized after the sale.

(ii) Further requiring that instruments sold under clause (i) be voting shares.

(iii) Requiring the institution to be acquired by a depository institution holding company, or to combine with another insured depository institution, if 1 or more grounds exist for appointing a conservator or receiver for the institution.

(B) Restricting transactions with affiliates

(i) Requiring the institution to comply with section 371c of this title as if subsection (d)(1) of that section (exempting transactions with certain affiliated institutions) did not apply.

(ii) Further restricting the institution's transactions with affiliates.

(C) Restricting interest rates paid

(i) In general

Restricting the interest rates that the institution pays on deposits to the prevailing rates of interest on deposits of comparable amounts and maturities in the region where the institution is located, as determined by the agency.

(ii) Retroactive restrictions prohibited

This subparagraph does not authorize the agency to restrict interest rates paid on time deposits made before (and not renewed or renegotiated after) the agency acted under this subparagraph.

(D) Restricting asset growth

Restricting the institution's asset growth more stringently than subsection (e)(3) of this section, or requiring the institution to reduce its total assets.

(E) Restricting activities

Requiring the institution or any of its subsidiaries to alter, reduce, or terminate any activity that the agency determines poses excessive risk to the institution.

(F) Improving management

Doing 1 or more of the following:

(i) New election of directors

Ordering a new election for the institution's board of directors.

(ii) Dismissing directors or senior executive officers

Requiring the institution to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the institution became undercapitalized. Dismissal under this clause shall not be construed to be a removal under section 1818 of this title.

(iii) Employing qualified senior executive officers

Requiring the institution to employ qualified senior executive officers (who, if the agency so specifies, shall be subject to approval by the agency).

(G) Prohibiting deposits from correspondent banks

Prohibiting the acceptance by the institution of deposits from correspondent depository institutions, including renewals and rollovers of prior deposits.

(H) Requiring prior approval for capital distributions by bank holding company

Prohibiting any bank holding company having control of the insured depository institution from making any capital distribution without the prior approval of the Board of Governors of the Federal Reserve System.

(I) Requiring divestiture

Doing one or more of the following:

(i) Divestiture by the institution

Requiring the institution to divest itself of or liquidate any subsidiary if the agency determines that the subsidiary is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause a significant dissipation of the institution's assets or earnings.

(ii) Divestiture by parent company of nondepository affiliate

Requiring any company having control of the institution to divest itself of or liquidate any affiliate other than an insured depository institution if the appropriate Federal banking agency for that company determines that the affiliate is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause a significant dissipation of the institution's assets or earnings.

(iii) Divestiture of institution

Requiring any company having control of the institution to divest itself of the institution if the appropriate Federal banking agency for that company determines that divestiture would improve the institution's financial condition and future prospects.

(J) Requiring other action

Requiring the institution to take any other action that the agency determines will better carry out the purpose of this section than any of the actions described in this paragraph.

(3) Presumption in favor of certain actions

In complying with paragraph (2), the agency shall take the following actions, unless the agency determines that the actions would not further the purpose of this section:

(A) The action described in clause (i) or (iii) of paragraph (2)(A) (relating to requiring the sale of shares or obligations, or requiring the institution to be acquired by or combine with another institution).

(B) The action described in paragraph (2)(B)(i) (relating to restricting transactions with affiliates).

(C) The action described in paragraph (2)(C) (relating to restricting interest rates).

(4) Senior executive officers' compensation restricted

(A) In general

The insured depository institution shall not do any of the following without the prior written approval of the appropriate Federal banking agency:

(i) Pay any bonus to any senior executive officer.

(ii) Provide compensation to any senior executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month in which the institution became undercapitalized.

(B) Failing to submit plan

The appropriate Federal banking agency shall not grant any approval under subparagraph (A) with respect to an institution that has failed to submit an acceptable capital restoration plan.

(5) Discretion to impose certain additional restrictions

The agency may impose 1 or more of the restrictions prescribed by regulation under subsection (i) of this section if the agency determines that those restrictions are necessary to carry out the purpose of this section.

(6) Consultation with other regulators

Before the agency or Corporation makes a determination under paragraph (2)(I) with respect to an affiliate that is a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the agency or Corporation shall consult with the Securities and Exchange Commission and, in the case of any other affiliate which is subject to any financial responsibility or capital requirement, any other appropriate regulator of such affiliate with respect to the proposed determination of the agency or the Corporation and actions pursuant to such determination.

(g) More stringent treatment based on other supervisory criteria

(1) In general

If the appropriate Federal banking agency determines (after notice and an opportunity for hearing) that an insured depository institution is in an unsafe or unsound condition or, pursuant to section 1818(b)(8) of this title, deems the institution to be engaging in an unsafe or unsound practice, the agency may—

(A) if the institution is well capitalized, reclassify the institution as adequately capitalized;

(B) if the institution is adequately capitalized (but not well capitalized), require the institution to comply with 1 or more provisions of subsections (d) and (e) of this section, as if the institution were undercapitalized; or

(C) if the institution is undercapitalized, take any 1 or more actions authorized under subsection (f)(2) of this section as if the institution were significantly undercapitalized.

(2) Contents of plan

Any plan required under paragraph (1) shall specify the steps that the insured depository institution will take to correct the unsafe or unsound condition or practice. Capital restoration plans shall not be required under paragraph (1)(B).

(h) Provisions applicable to critically undercapitalized institutions

(1) Activities restricted

Any critically undercapitalized insured depository institution shall comply with restrictions prescribed by the Corporation under subsection (i) of this section.

(2) Payments on subordinated debt prohibited

(A) In general

A critically undercapitalized insured depository institution shall not, beginning 60 days after becoming critically undercapitalized, make any payment of principal or interest on the institution's subordinated debt.

(B) Exceptions

The Corporation may make exceptions to subparagraph (A) if—

(i) the appropriate Federal banking agency has taken action with respect to the insured depository institution under paragraph (3)(A)(ii); and

(ii) the Corporation determines that the exception would further the purpose of this section.

(C) Limited exemption for certain subordinated debt

Until July 15, 1996, subparagraph (A) shall not apply with respect to any subordinated debt outstanding on July 15, 1991, and not extended or otherwise renegotiated after July 15, 1991.

(D) Accrual of interest

Subparagraph (A) does not prevent unpaid interest from accruing on subordinated debt under the terms of that debt, to the extent otherwise permitted by law.

(3) Conservatorship, receivership, or other action required

(A) In general

The appropriate Federal banking agency shall, not later than 90 days after an insured depository institution becomes critically undercapitalized—

(i) appoint a receiver (or, with the concurrence of the Corporation, a conservator) for the institution; or

(ii) take such other action as the agency determines, with the concurrence of the Corporation, would better achieve the purpose of this section, after documenting why the action would better achieve that purpose.

(B) Periodic redeterminations required

Any determination by an appropriate Federal banking agency under subparagraph (A)(ii) to take any action with respect to an insured depository institution in lieu of appointing a conservator or receiver shall cease to be effective not later than the end of the 90-day period beginning on the date that the determination is made and a conservator or receiver shall be appointed for that institution under subparagraph (A)(i) unless the agency makes a new determination under subparagraph (A)(ii) at the end of the effective period of the prior determination.

(C) Appointment of receiver required if other action fails to restore capital

(i) In general

Notwithstanding subparagraphs (A) and (B), the appropriate Federal banking agency shall appoint a receiver for the insured depository institution if the institution is critically undercapitalized on average during the calendar quarter beginning 270 days after the date on which the institution became critically undercapitalized.

(ii) Exception

Notwithstanding clause (i), the appropriate Federal banking agency may continue to take such other action as the agency determines to be appropriate in lieu of such appointment if—

(I) the agency determines, with the concurrence of the Corporation, that (aa) the insured depository institution has positive net worth, (bb) the insured depository institution has been in substantial compliance with an approved capital restoration plan which requires consistent improvement in the institution's capital since the date of the approval of the plan, (cc) the insured depository institution is profitable or has an upward trend in earnings the agency projects as sustainable, and (dd) the insured depository institution is reducing the ratio of nonperforming loans to total loans; and

(II) the head of the appropriate Federal banking agency and the Chairperson of the Board of Directors both certify that the institution is viable and not expected to fail.

(i) Restricting activities of critically undercapitalized institutions

To carry out the purpose of this section, the Corporation shall, by regulation or order—

(1) restrict the activities of any critically undercapitalized insured depository institution; and

(2) at a minimum, prohibit any such institution from doing any of the following without the Corporation's prior written approval:

(A) Entering into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the depository institution is required to provide notice to the appropriate Federal banking agency.

(B) Extending credit for any highly leveraged transaction.

(C) Amending the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order.

(D) Making any material change in accounting methods.

(E) Engaging in any covered transaction (as defined in section 371c(b) of this title).

(F) Paying excessive compensation or bonuses.

(G) Paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas.

(j) Certain Government-controlled institutions exempted

Subsections (e) through (i) of this section (other than paragraph (3) of subsection (e) of this section) shall not apply—

(1) to an insured depository institution for which the Corporation or the Resolution Trust Corporation is conservator; or

(2) to a bridge depository institution, none of the voting securities of which are owned by a person or agency other than the Corporation or the Resolution Trust Corporation.

(k) Reviews required when Deposit Insurance Fund incurs losses

(1) In general

If the Deposit Insurance Fund incurs a material loss with respect to an insured depository institution on or after July 1, 1993, the inspector general of the appropriate Federal banking agency shall—

(A) make a written report to that agency reviewing the agency's supervision of the institution (including the agency's implementation of this section), which shall—

(i) ascertain why the institution's problems resulted in a material loss to the Deposit Insurance Fund; and

(ii) make recommendations for preventing any such loss in the future; and

(B) provide a copy of the report to—

(i) the Comptroller General of the United States;

(ii) the Corporation (if the agency is not the Corporation);

(iii) in the case of a State depository institution, the appropriate State banking supervisor; and

(iv) upon request by any Member of Congress, to that Member.

(2) Material loss incurred

For purposes of this subsection:

(A) Loss incurred

The Deposit Insurance Fund incurs a loss with respect to an insured depository institution—

(i) if the Corporation provides any assistance under section 1823(c) of this title with respect to that institution; and—

(I) it is not substantially certain that the assistance will be fully repaid not later than 24 months after the date on which the Corporation initiated the assistance; or

(II) the institution ceases to repay the assistance in accordance with its terms; or

(ii) if the Corporation is appointed receiver of the institution, and it is or becomes apparent that the present value of the outlays of the Deposit Insurance Fund with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

(B) Material loss defined

The term ''material loss'' means any estimated loss in excess of—

(i) $200,000,000, if the loss occurs during the period beginning on January 1, 2010, and ending on December 31, 2011;

(ii) $150,000,000, if the loss occurs during the period beginning on January 1, 2012, and ending on December 31, 2013; and

(iii) $50,000,000, if the loss occurs on or after January 1, 2014, provided that if the inspector general of a Federal banking agency certifies to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that the number of projected failures of depository institutions that would require material loss reviews for the following 12 months will be greater than 30 and would hinder the effectiveness of its oversight functions, then the definition of ''material loss'' shall be $75,000,000 for a duration of 1 year from the date of the certification.

(3) Deadline for report

The inspector general of the appropriate Federal banking agency shall comply with paragraph (1) expeditiously, and in any event (except with respect to paragraph (1)(B)(iv)) as follows:

(A) If the institution is described in paragraph (2)(A)(i), during the 6-month period beginning on the earlier of—

(i) the date on which the institution ceases to repay assistance under section 1823(c) of this title in accordance with its terms, or

(ii) the date on which it becomes apparent that the assistance will not be fully repaid during the 24-month period described in paragraph (2)(A)(i).

(B) If the institution is described in paragraph (2)(A)(ii), during the 6-month period beginning on the date on which it becomes apparent that the present value of the outlays of the Deposit Insurance Fund with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

(4) Public disclosure required

(A) In general

The appropriate Federal banking agency shall disclose any report on losses required under this subsection, upon request under section 552 of title 5 without excising—

(i) any portion under section 552(b)(5) of that title; or

(ii) any information about the insured depository institution under paragraph (4) (other than trade secrets) or paragraph (8) of section 552(b) of that title.

(B) Exception

Subparagraph (A) does not require the agency to disclose the name of any customer of the insured depository institution (other than an institution-affiliated party), or information from which such a person's identity could reasonably be ascertained.

(5) Losses that are not material

(A) Semiannual report

For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of each Federal banking agency shall—

(i) identify losses that the Inspector General estimates have been incurred by the Deposit Insurance Fund during that 6-month period, with respect to the insured depository institutions supervised by the Federal banking agency;

(ii) for each loss incurred by the Deposit Insurance Fund that is not a material loss, determine—

(I) the grounds identified by the Federal banking agency or State bank supervisor for appointing the Corporation as receiver under section 1821(c)(5) of this title; and

(II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and

(iii) prepare and submit a written report to the appropriate Federal banking agency and to Congress on the results of any determination by the Inspector General, including—

(I) an identification of any loss that warrants an in-depth review, together with the reasons why such review is warranted, or, if the Inspector General determines that no review is warranted, an explanation of such determination; and

(II) for each loss identified under subclause (I) that warrants an in-depth review, the date by which such review, and a report on such review prepared in a manner consistent with reports under paragraph (1)(A), will be completed and submitted to the Federal banking agency and Congress.

(B) Deadline for semiannual report

The Inspector General of each Federal banking agency shall—

(i) submit each report required under paragraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and

(ii) provide a copy of the report required under paragraph (A) to any Member of Congress, upon request.

(6) GAO review

The Comptroller General of the United States shall, under such conditions as the Comptroller General determines to be appropriate, review reports made under paragraph (1) and recommend improvements in the supervision of insured depository institutions (including the implementation of this section).

(*l*) Implementation

(1) Regulations and other actions

Each appropriate Federal banking agency shall prescribe such regulations (in consultation with the other Federal banking agencies), issue such orders, and take such other actions as are necessary to carry out this section.

(2) Written determination and concurrence required

Any determination or concurrence by an appropriate Federal banking agency or the Corporation required under this section shall be written.

(m) Other authority not affected

This section does not limit any authority of an appropriate Federal banking agency, the Corporation, or a State to take action in addition to (but not in derogation of) that required under this section.

(n) Administrative review of dismissal orders

(1) Timely petition required

A director or senior executive officer dismissed pursuant to an order under subsection (f)(2)(F)(ii) of this section may obtain review of that order by filing a written petition for reinstatement with the appropriate Federal banking agency not later than 10 days after receiving notice of the dismissal.

(2) Procedure

(A) Hearing required

The agency shall give the petitioner an opportunity to—

(i) submit written materials in support of the petition; and

(ii) appear, personally or through counsel, before 1 or more members of the agency or designated employees of the agency.

(B) Deadline for hearing

The agency shall—

(i) schedule the hearing referred to in subparagraph (A)(ii) promptly after the petition is filed; and

(ii) hold the hearing not later than 30 days after the petition is filed, unless the petitioner requests that the hearing be held at a later time.

(C) Deadline for decision

Not later than 60 days after the date of the hearing, the agency shall—

(i) by order, grant or deny the petition;

(ii) if the order is adverse to the petitioner, set forth the basis for the order; and

(iii) notify the petitioner of the order.

(3) Standard for review of dismissal orders

The petitioner shall bear the burden of proving that the petitioner's continued employment would materially strengthen the insured depository institution's ability—

(A) to become adequately capitalized, to the extent that the order is based on the institution's capital level or failure to submit or implement a capital restoration plan; and

(B) to correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the order is based on subsection (g)(1) of this section.

(*o*) Transition rules for savings associations

Subsections (e)(2), (f), and (h) of this section shall not apply before July 1, 1994, to any insured savings association if—

(1) before December 19, 1991—

(A) the savings association had submitted a plan meeting the requirements of section 1464(t)(6)(A)(ii) of this title; and

(B) the Director of the Office of Thrift Supervision had accepted the plan;

(2) the plan remains in effect; and

(3) the savings association remains in compliance with the plan or is operating under a written agreement with the appropriate Federal banking agency.

(Sept. 21, 1950, ch. 967, §2[38], as added Pub. L. 102–242, title I, §131(a), Dec. 19, 1991, 105 Stat. 2253; amended Pub. L. 102–550, title XVI,

§ 1603(d)(1), Oct. 28, 1992, 106 Stat. 4079; Pub. L. 103–325, title VI, § 602(a)(64), Sept. 23, 1994, 108 Stat. 2291; Pub. L. 104–208, div. A, title II, § 2704(d)(14)(AA)–(CC), Sept. 30, 1996, 110 Stat. 3009–494; Pub. L. 104–316, title I, § 106(d), Oct. 19, 1996, 110 Stat. 3831; Pub. L. 109–171, title II, § 2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, § 8(a)(36)–(39), Feb. 15, 2006, 119 Stat. 3615; Pub. L. 110–289, div. A, title VI, § 1604(b)(1)(D), July 30, 2008, 122 Stat. 2829; Pub. L. 111–203, title IX, § 987, July 21, 2010, 124 Stat. 1936.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (e)(2)(E)(ii)(III), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2010—Subsec. (k). Pub. L. 111–203, § 987(b), substituted ''Reviews'' for ''Review'' and ''losses'' for ''material loss'' in heading.

Subsec. (k)(2)(B). Pub. L. 111–203, § 987(a)(1), added subpar. (B) and struck out former subpar. (B). Prior to amendment, text read as follows: ''A loss is material if it exceeds the greater of—

''(i) $25,000,000; or

''(ii) 2 percent of the institution's total assets at the time the Corporation initiated assistance under section 1823(c) of this title or was appointed receiver.''

Subsec. (k)(4)(A). Pub. L. 111–203, § 987(a)(2), substituted ''any report on losses required under this subsection,'' for ''the report'' in introductory provisions.

Subsec. (k)(5). Pub. L. 111–203, § 987(a)(5), added par. (5). Former par. (5) redesignated (6).

Subsec. (k)(6). Pub. L. 111–203, § 987(a)(3), (4), redesignated par. (5) as (6) and struck out former par. (6). Prior to amendment, par. (6) related to transition rule during the period beginning on July 1, 1993, and ending on June 30, 1997.

2008—Subsec. (j)(2). Pub. L. 110–289 substituted ''bridge depository institution'' for ''bridge bank''.

2006—Subsec. (a). Pub. L. 109–173, § 8(a)(37), substituted ''Fund'' for ''funds'' in heading.

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

Subsec. (a)(1). Pub. L. 109–173, § 8(a)(36), substituted ''the Deposit Insurance Fund'' for ''the deposit insurance fund''.

Subsec. (k)(1). Pub. L. 109–173, § 8(a)(38)(A), substituted ''the Deposit Insurance Fund'' for ''a deposit insurance fund'' in introductory provisions.

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

Subsec. (k)(1)(A)(i). Pub. L. 109–173, § 8(a)(36), substituted ''the Deposit Insurance Fund'' for ''the deposit insurance fund''.

Subsec. (k)(2)(A). Pub. L. 109–173, § 8(a)(38)(B), substituted ''The Deposit Insurance Fund'' for ''A deposit insurance fund'' in introductory provisions.

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

Subsec. (k)(2)(A)(ii). Pub. L. 109–173, § 8(a)(38)(C), substituted ''the outlays of the Deposit Insurance Fund'' for ''the deposit insurance fund's outlays''.

Subsec. (k)(3)(B). Pub. L. 109–173, § 8(a)(38)(C), substituted ''the outlays of the Deposit Insurance Fund'' for ''the deposit insurance fund's outlays''.

Subsec. (*o*). Pub. L. 109–173, § 8(a)(39), struck out heading and text of par. (1) and designation and heading of par. (2), redesignated former subpars. (A) to (C) of par. (2) as pars. (1) to (3), respectively, and former cls. (i) and (ii) of par. (2)(A) as subpars. (A) and (B) of par. (1), respectively, and realigned margins. Prior to amendment, text of par. (1) read as follows:

''(A) IN GENERAL.—In implementing this section, the appropriate Federal banking agency (and, to the extent applicable, the Corporation) shall exercise the same care as if the Savings Association Insurance Fund (rather than the Resolution Trust Corporation) bore the cost of resolving the problems of insured savings associations described in clauses (i) and (ii)(II) of section 1441a(b)(3)(A) of this title.

''(B) REPORTS.—Subparagraph (A) does not require reports under subsection (k) of this section.''

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

1996—Subsec. (a). Pub. L. 104–208, § 2704(d)(14)(AA), which directed substitution of ''fund'' for ''funds'' in heading, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (k)(1). Pub. L. 104–208, § 2704(d)(14)(BB)(i), which directed substitution of ''the Deposit Insurance Fund'' for ''a deposit insurance fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (k)(2)(A). Pub. L. 104–208, § 2704(d)(14)(BB)(ii), which directed substitution of ''The Deposit Insurance Fund'' for ''A deposit insurance fund'' in introductory provisions and ''the outlays of the Deposit Insurance Fund'' for ''the deposit insurance fund's outlays'' in cl. (ii), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (k)(5). Pub. L. 104–316 amended heading and text of par. (5) generally. Prior to amendment, text read as follows: ''The General Accounting Office shall annually—

''(A) review reports made under paragraph (1) and recommend improvements in the supervision of insured depository institutions (including the implementation of this section); and

''(B) verify the accuracy of 1 or more of those reports.''

Subsec. (*o*). Pub. L. 104–208, § 2704(d)(14)(CC), which directed the amendment of subsec. (*o*) by striking par. (1) and the par. designation and heading of par. (2), redesignating subpars. (A) to (C) as pars. (1) to (3), respectively, and cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigning margins, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Subsec. (f)(6). Pub. L. 103–325 substituted ''Commission'' for ''Commisssion''.

1992—Subsec. (e)(2)(D)(i). Pub. L. 102–550, § 1603(d)(1)(A), struck out ''and'' after semicolon at end.

Subsec. (f)(6). Pub. L. 102–550, § 1603(d)(1)(B), (D), in heading substituted ''other regulators'' for ''functional regulators'' and in text substituted ''appropriate regulator'' for ''functional regulator (as defined in section 1841(s) of this title)''.

Subsec. (g)(1)(B). Pub. L. 102–550, § 1603(d)(1)(C), substituted ''capitalized (but not well capitalized)'' for ''capitalized''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109–173, set out as a note under section 1813 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings asso-

ciation on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE

Section effective 1 year after Dec. 19, 1991, see section 131(f) of Pub. L. 102–242, set out as an Effective Date of 1991 Amendment note under section 1464 of this title.

REGULATIONS

Section 131(b) of Pub. L. 102–242 provided that: ''Each appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) (and the Corporation, acting in the Corporation's capacity as insurer of depository institutions under that Act [12 U.S.C. 1811 et seq.]) shall, after notice and opportunity for comment, promulgate final regulations under section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*] (as added by subsection (a)) not later than 9 months after the date of enactment of this Act [Dec. 19, 1991], and those regulations shall become effective not later than 1 year after that date of enactment.''

DEPOSIT OF INSURANCE PROCEEDS

Pub. L. 105–18, title V, § 50003, June 12, 1997, 111 Stat. 211, provided that:

''(a) IN GENERAL.—The appropriate Federal banking agency may, by order, permit an insured depository institution to subtract from the institution's total assets, in calculating compliance with the leverage limit prescribed under section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*], an amount not exceeding the qualifying amount attributable to insurance proceeds, if the agency determines that—

''(1) the institution—

''(A) had its principal place of business within an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170], has determined, on or after February 28, 1997, that a major disaster exists, or within an area determined to be eligible for disaster relief under other Federal law by reason of damage related to the 1997 flooding of the Red River of the North, the Minnesota River, and the tributaries of such rivers, on the day before the date of any such determination;

''(B) derives more than 60 percent of its total deposits from persons who normally reside within, or whose principal place of business is normally within, areas of intense devastation caused by the major disaster;

''(C) was adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act) before the major disaster; and

''(D) has an acceptable plan for managing the increase in its total assets and total deposits; and

''(2) the subtraction is consistent with the purpose of section 38 of the Federal Deposit Insurance Act.

''(b) TIME LIMIT ON EXCEPTIONS.—Any exception made under this section shall expire not later than February 28, 1999.

''(c) DEFINITIONS.—For purposes of this section:

''(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

''(2) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

''(3) LEVERAGE LIMIT.—The term 'leverage limit' has the same meaning as in section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*].

''(4) QUALIFYING AMOUNT ATTRIBUTABLE TO INSURANCE PROCEEDS.—The term 'qualifying amount attributable to insurance proceeds' means the amount (if any) by which the institution's total assets exceed the institution's average total assets during the calendar quarter ending before the date of any determination referred to in subsection (a)(1)(A), because of the deposit of insurance payments or governmental assistance made with respect to damage caused by, or other costs resulting from, the major disaster.''

Similar provisions were contained in the following prior acts:

Pub. L. 103–76, § 3, Aug. 12, 1993, 107 Stat. 753.

Pub. L. 102–485, § 4, Oct. 23, 1992, 106 Stat. 2772.

TRANSITION RULE REGARDING CURRENT DIRECTORS AND SENIOR EXECUTIVE OFFICERS

Section 131(e) of Pub. L. 102–242 provided that:

''(1) DISMISSAL FROM OFFICE.—Section 38(f)(2)(F)(ii) of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*(f)(2)(F)(ii)] (as added by subsection (a)) shall not apply with respect to—

''(A) any director whose current term as a director commenced on or before the date of enactment of this Act [Dec. 19, 1991] and has not been extended—

''(i) after that date of enactment, or

''(ii) to evade section 38(f)(2)(F)(ii); or

''(B) any senior executive officer who accepted employment in his or her current position on or before the date of enactment of this Act and whose contract of employment has not been renewed or renegotiated—

''(i) after that date of enactment, or

''(ii) to evade section 38(f)(2)(F)(ii).

''(2) RESTRICTING COMPENSATION.—Section 38(f)(4) of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*(f)(4)] (as added by subsection (a)) shall not apply with respect to any senior executive officer who accepted employment in his or her current position on or before the date of enactment of this Act [Dec. 19, 1991] and whose contract of employment has not been renewed or renegotiated—

''(A) after that date of enactment, or

''(B) to evade section 38(f)(4).''

§ 1831*o*–1. Source of strength

(a) Holding companies

The appropriate Federal banking agency for a bank holding company or savings and loan holding company shall require the bank holding company or savings and loan holding company to serve as a source of financial strength for any subsidiary of the bank holding company or savings and loan holding company that is a depository institution.

(b) Other companies

If an insured depository institution is not the subsidiary of a bank holding company or savings and loan holding company, the appropriate Federal banking agency for the insured depository institution shall require any company that directly or indirectly controls the insured depository institution to serve as a source of financial strength for such institution.

(c) Reports

The appropriate Federal banking agency for an insured depository institution described in subsection (b) may, from time to time, require the company, or a company that directly or in-

directly controls the insured depository institution, to submit a report, under oath, for the purposes of—

(1) assessing the ability of such company to comply with the requirement under subsection (b); and

(2) enforcing the compliance of such company with the requirement under subsection (b).

(d) Rules

Not later than 1 year after the transfer date, as defined in section 5411 of this title, the appropriate Federal banking agencies shall jointly issue final rules to carry out this section.

(e) Definition

In this section, the term ''source of financial strength'' means the ability of a company that directly or indirectly owns or controls an insured depository institution to provide financial assistance to such insured depository institution in the event of the financial distress of the insured depository institution.

(Sept. 21, 1950, ch. 967, § 2[38A], as added Pub. L. 111–203, title VI, § 616(d), July 21, 2010, 124 Stat. 1616.)

EFFECTIVE DATE

Section effective on the transfer date, see section 616(e) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1467a of this title.

§ 1831p. Transferred

CODIFICATION

Section, act Sept. 21, 1950, ch. 967, § 2[39], as added Dec. 19, 1991, Pub. L. 102–242, title II, § 228, 105 Stat. 2308, which related to notice of branch closure, was renumbered section 2[42] of act Sept. 21, 1950, by Pub. L. 102–550, title XI, § 1602(a), Oct. 28, 1992, 106 Stat. 4079, and transferred to section 1831r–1 of this title.

§ 1831p–1. Standards for safety and soundness

(a) Operational and managerial standards

Each appropriate Federal banking agency shall, for all insured depository institutions, prescribe—

(1) standards relating to—

(A) internal controls, information systems, and internal audit systems, in accordance with section 1831m of this title;

(B) loan documentation;

(C) credit underwriting;

(D) interest rate exposure;

(E) asset growth; and

(F) compensation, fees, and benefits, in accordance with subsection (c) of this section; and

(2) such other operational and managerial standards as the agency determines to be appropriate.

(b) Asset quality, earnings, and stock valuation standards

Each appropriate Federal banking agency shall prescribe standards, by regulation or guideline, for all insured depository institutions relating to asset quality, earnings, and stock valuation that the agency determines to be appropriate.

(c) Compensation standards

Each appropriate Federal banking agency shall, for all insured depository institutions, prescribe—

(1) standards prohibiting as an unsafe and unsound practice any employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement that—

(A) would provide any executive officer, employee, director, or principal shareholder of the institution with excessive compensation, fees or benefits; or

(B) could lead to material financial loss to the institution;

(2) standards specifying when compensation, fees, or benefits referred to in paragraph (1) are excessive, which shall require the agency to determine whether the amounts are unreasonable or disproportionate to the services actually performed by the individual by considering—

(A) the combined value of all cash and noncash benefits provided to the individual;

(B) the compensation history of the individual and other individuals with comparable expertise at the institution;

(C) the financial condition of the institution;

(D) comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

(E) for postemployment benefits, the projected total cost and benefit to the institution;

(F) any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the institution; and

(G) other factors that the agency determines to be relevant; and

(3) such other standards relating to compensation, fees, and benefits as the agency determines to be appropriate.

(d) Standards to be prescribed

(1) In general

Standards under subsections (a), (b), and (c) of this section shall be prescribed by regulation or guideline. Such regulations or guidelines may not prescribe standards that set a specific level or range of compensation for directors, officers, or employees of insured depository institutions.

(2) Applicability of other laws

Paragraph (1) shall not affect the authority of any appropriate Federal banking agency to restrict the level of compensation, including golden parachute payments (as defined in section 1828(k)(4) of this title), paid to any director, officer, or employee of an insured depository institution under any other provision of law.

(3) Senior executive officers at undercapitalized institutions

Paragraph (1) shall not affect the authority of any appropriate Federal banking agency to

restrict compensation paid to any senior executive officer of an undercapitalized insured depository institution pursuant to section 1831*o* of this title.

(4) Safety and soundness or enforcement actions

Paragraph (1) shall not be construed as affecting the authority of any appropriate Federal banking agency under any provision of this chapter other than this section, or under any other provision of law, to prescribe a specific level or range of compensation for any director, officer, or employee of an insured depository institution—

(A) to preserve the safety and soundness of the institution; or

(B) in connection with any action under section 1818 of this title or any order issued by the agency, any agreement between the agency and the institution, or any condition imposed by the agency in connection with the agency's approval of an application or other request by the institution, which is enforceable under section 1818 of this title.

(e) Failure to meet standards

(1) Plan required

(A) In general

If the appropriate Federal banking agency determines that an insured depository institution fails to meet any standard prescribed under subsection (a) or (b) of this section—

(i) if such standard is prescribed by regulation of the agency, the agency shall require the institution to submit an acceptable plan to the agency within the time allowed by the agency under subparagraph (C); and

(ii) if such standard is prescribed by guideline, the agency may require the institution to submit a plan described in clause (i).

(B) Contents of plan

Any plan required under subparagraph (A) shall specify the steps that the institution will take to correct the deficiency. If the institution is undercapitalized, the plan may be part of a capital restoration plan.

(C) Deadlines for submission and review of plans

The appropriate Federal banking agency shall by regulation establish deadlines that—

(i) provide institutions and companies with reasonable time to submit plans required under subparagraph (A), and generally require the institution to submit a plan not later than 30 days after the agency determines that the institution fails to meet any standard prescribed under subsection (a), (b), or (c) of this section; and

(ii) require the agency to act on plans expeditiously, and generally not later than 30 days after the plan is submitted.

(2) Order required if institution fails to submit or implement plan

If an insured depository institution fails to submit an acceptable plan within the time allowed under paragraph (1)(C), or fails in any material respect to implement a plan accepted by the appropriate Federal banking agency, the agency, by order—

(A) shall require the institution to correct the deficiency; and

(B) may do 1 or more of the following until the deficiency has been corrected:

(i) Prohibit the institution from permitting its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, or restrict the rate at which the average total assets of the institution may increase from one calendar quarter to another.

(ii) Require the institution to increase its ratio of tangible equity to assets.

(iii) Take the action described in section 1831*o*(f)(2)(C) of this title.

(iv) Require the institution to take any other action that the agency determines will better carry out the purpose of section 1831*o* of this title than any of the actions described in this subparagraph.

(3) Restrictions mandatory for certain institutions

In complying with paragraph (2), the appropriate Federal banking agency shall take 1 or more of the actions described in clauses (i) through (iii) of paragraph (2)(B) if—

(A) the agency determines that the insured depository institution fails to meet any standard prescribed under subsection (a)(1) or (b)(1) of this section;

(B) the institution has not corrected the deficiency; and

(C) either—

(i) during the 24-month period before the date on which the institution first failed to meet the standard—

(I) the institution commenced operations; or

(II) 1 or more persons acquired control of the institution; or

(ii) during the 18-month period before the date on which the institution first failed to meet the standard, the institution underwent extraordinary growth, as defined by the agency.

(f) Definitions

For purposes of this section, the terms ''average'' and ''capital restoration plan'' have the same meanings as in section 1831*o* of this title.

(g) Other authority not affected

The authority granted by this section is in addition to any other authority of the Federal banking agencies.

(Sept. 21, 1950, ch. 967, § 2[39], as added Pub. L. 102–242, title I, § 132(a), Dec. 19, 1991, 105 Stat. 2267; amended Pub. L. 102–550, title IX, § 956, Oct. 28, 1992, 106 Stat. 3895; Pub. L. 103–325, title III, § 318(a)–(c), Sept. 23, 1994, 108 Stat. 2223, 2224.)

CODIFICATION

Section was formerly classified to section 1831s of this title.

Another section 2[39] of act Sept. 21, 1950, was renumbered section 2[42] and is classified to section 1831r–1 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–325, § 318(c)(1), struck out ''and depository institution holding companies'' before '', prescribe'' in introductory provisions.

Subsec. (b). Pub. L. 103–325, § 318(a), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''Each appropriate Federal banking agency shall, for all insured depository institutions and depository institution holding companies, prescribe—

''(1) standards specifying—

''(A) a maximum ratio of classified assets to capital;

''(B) minimum earnings sufficient to absorb losses without impairing capital; and

''(C) to the extent feasible, a minimum ratio of market value to book value for publicly traded shares of the institution or company; and

''(2) such other standards relating to asset quality, earnings, and valuation as the agency determines to be appropriate.''

Subsec. (d). Pub. L. 103–325, § 318(b)(1), struck out ''by regulation'' after ''Standards to be prescribed'' in heading.

Subsec. (d)(1). Pub. L. 103–325, § 318(b)(2), inserted ''or guideline'' before period at end of first sentence and inserted ''or guidelines'' after ''Such regulations'' in second sentence.

Subsec. (e)(1)(A). Pub. L. 103–325, § 318(c)(2)(A)–(C), struck out ''or depository institution holding company'' after ''insured depository institution'', substituted ''or (b) of this section—

''(i) if such standard is prescribed by regulation of the agency, the agency shall require''

for ''or (b) of this section the agency shall require'', struck out ''or company'' before ''to submit an acceptable plan'', substituted ''; and'' for period at end of cl. (i), and added cl. (ii).

Subsec. (e)(1)(B), (C). Pub. L. 103–325, § 318(c)(2)(A), struck out ''or company'' before ''will take to correct'' in subpar. (B) and before ''to submit a plan'' and ''fails to meet any standard'' in subpar. (C).

Subsec. (e)(2). Pub. L. 103–325, § 318(c)(2)(B), struck out ''or depository institution holding company'' after ''insured depository institution'' in introductory provisions.

Subsec. (e)(2)(A), (B). Pub. L. 103–325, § 318(c)(2)(A), struck out ''or company'' after ''institution'' wherever appearing.

1992—Subsec. (d). Pub. L. 102–550, § 956(1), added subsec. (d) and struck out former subsec. (d) which read as follows: ''Standards under subsections (a), (b), and (c) of this section shall be prescribed by regulation.''

Subsec. (e)(1)(A). Pub. L. 102–550, § 956(2), substituted ''(a) or (b)'' for ''(a), (b), or (c)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 318(d) of Pub. L. 103–325 provided that: ''The amendments made by this section [amending this section] shall be construed to have the same effective date as section 39 of the Federal Deposit Insurance Act [this section], as provided in section 132(c) of the Federal Deposit Insurance Corporation Improvement Act of 1991 [Pub. L. 102–242, set out as an Effective Date note below].''

EFFECTIVE DATE

Section 132(c) of Pub. L. 102–242 provided that: ''The amendment made by subsection (a) [enacting this section] shall become effective on the earlier of—

''(1) the date on which final regulations promulgated in accordance with subsection (b) [set out below] become effective [Final rules were published July 10, 1995, 60 F.R. 35674, eff. Aug. 9, 1995.]; or

''(2) December 1, 1993.''

REGULATIONS

Section 132(b) of Pub. L. 102–242 provided that: ''Each appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) shall promulgate final regulations under section 39 of the Federal Deposit Insurance Act [12 U.S.C. 1831p–1] (as added by subsection (a)) not later than August 1, 1993.''

§ 1831q. FDIC affordable housing program

(a) Purpose

The purpose of this section is to provide homeownership and rental housing opportunities for very low-income, low-income, and moderate-income families.

(b) Funding and limitations of program

(1) Duration of program

The provisions of this section shall be effective, subject to the provisions of paragraph (2), only during the 3-year period beginning upon the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A).

(2) Annual fiscal limitations

(A) In general

In each fiscal year during the 3-year period referred to in paragraph (1), the provisions of this section shall apply only—

(i) to such extent or in such amounts as are provided in appropriations Acts for any losses resulting during the fiscal year from the sale of properties under this section, except that such amounts for losses may not exceed $30,000,000 in any fiscal year; and

(ii) to the extent that amounts are provided in appropriations Acts pursuant to subparagraph (C) for any other costs relating to the program under this section.

(B) Definition of losses

For purposes of this paragraph, the amount of losses resulting from the sale of properties under this section during any fiscal year shall be the amount equal to the sum of any affordable housing discounts reasonably anticipated to accrue during the fiscal year.

(C) Authorization of appropriations

There are authorized to be appropriated, for each fiscal year during the 3-year period referred to in paragraph (1), such sums as may be necessary for any costs of the program under this section other than losses resulting from the sale of properties under this section.

(D) Other definitions

For purposes of this paragraph:

(i) Affordable housing discount

The term ''affordable housing discount'' means, with respect to any eligible residential or eligible condominium property transferred under this section by the Corporation, the difference (if any) between the realizable disposition value of the property and the actual sale price of the property under this section.

(ii) Realizable disposition value

The term ''realizable disposition value'' means the estimated sale price that the

Corporation reasonably would be able to obtain upon the sale of a property by the Corporation under the provisions of this chapter, not including this section, and any other applicable laws. Not later than the expiration of the 120-day period beginning upon the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A), the Corporation shall establish, and publish in the Federal Register, procedures for determining the realizable disposition value of a property transferred under this section, which shall take into consideration such factors as the Corporation considers appropriate, including the actual sale prices of properties disposed of by the Resolution Trust Corporation under section 1441a(c) of this title, the prices of other properties sold under similar programs, and the appraised value of the property transferred under this section. Until such procedures are established, the Corporation may consider the realizable disposition value of any eligible residential or condominium property to be equal to the appraised value of the property.

(3) Existing contracts

The provisions of this section shall not apply to any eligible residential property or any eligible condominium property that is subject to an agreement entered into by the Corporation before the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A) that provides for any other disposition of the property.

(c) Rules governing disposition of eligible single family properties

(1) Notice to clearinghouses

Within a reasonable period of time after acquiring title to an eligible single family property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, condition, and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to other public agencies, other nonprofit organizations, and qualifying households. The Corporation shall allow public agencies, nonprofit organizations, and qualifying households reasonable access to eligible single family property for purposes of inspection.

(2) Offers to sell to nonprofit organizations, public agencies, and qualifying households

During the 180-day period beginning on the date on which the Corporation makes an eligible single family property available for sale, the Corporation shall offer to sell the property to—

(A) qualifying households (including qualifying households with members who are veterans); or

(B) public agencies or nonprofit organizations that agree to (i) make the property available for occupancy by and maintain it as affordable for low-income families (including low-income families with members who are veterans) for the remaining useful life of such property, or (ii) make the property available for purchase by any such family who, except as provided in paragraph (4), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months.

The restrictions described in clause (i) of subparagraph (B) shall be contained in the deed or other recorded instrument. If, upon the expiration of such 180-day period, no qualifying household, public agency, or nonprofit organization has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any purchaser. The Corporation shall actively market eligible single family properties for sale to low-income families and to low-income families with members who are veterans.

(3) Recapture of profits from resale

Except as provided in paragraph (4), if any eligible single family property sold (A) to a qualifying household, or (B) to a low-income family pursuant to paragraph (2)(B)(ii), subsection (j)(3)(A) of this section, or subsection (k)(2) of this section, is resold by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or low-income family, the Corporation shall recapture 75 percent of the amount of any proceeds from the resale that exceed the sum of (i) the original sale price for the acquisition of the property by the qualifying household or low-income family, (ii) the costs of any improvements to the property made after the date of the acquisition, and (iii) any closing costs in connection with the acquisition.

(4) Exceptions to recapture requirement

(A) Relocation

The Corporation may in its discretion waive the applicability (i) to any qualifying household of the requirement under paragraph (3) and the requirements relating to residency of a qualifying household under subparagraphs (B) and (C) of subsection (p)(12) of this section, and (ii) to any low-income family of the requirement under paragraph (3) and the residency requirements under paragraph (2)(B)(ii). The Corporation may grant any such waiver only for good cause shown, including any necessary relocation of the qualifying household or low-income family.

(B) Other recapture provisions

The requirement under paragraph (3) shall not apply to any eligible single family property for which, upon resale by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or family, a portion of the sale proceeds or any subsidy provided in connection with the acquisition of the property by the household or family is required to be recaptured or repaid under any other Federal, State, or local law (including sec-

tion 143(m) of title 26) or regulation or under any sale agreement.

(5) Exception to avoid displacement of existing residents

Notwithstanding the first sentence of paragraph (2), during the 180-day period following the date on which the Corporation makes an eligible single family property available for sale, the Corporation may sell the property to the household residing in the property, but only if (A) such household was residing in the property at the time notice regarding the property was provided to clearinghouses under paragraph (1), (B) such sale is necessary to avoid the displacement of, and unnecessary hardship to, the resident household, (C) the resident household intends to occupy the property as a principal residence for at least 12 months, and (D) the resident household certifies in writing that the household intends to occupy the property for at least 12 months.

(d) Rules governing disposition of eligible multifamily housing properties

(1) Notice to clearinghouses

Within a reasonable period of time after acquiring title to an eligible multifamily housing property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, number of units (identified by number of bedrooms), and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to qualifying multifamily purchasers. The Corporation shall allow qualifying multifamily purchasers reasonable access to eligible multifamily housing properties for purposes of inspection.

(2) Expression of serious interest

Qualifying multifamily purchasers may give written notice of serious interest in a property during a period ending 90 days after the time the Corporation provides notice under paragraph (1). The notice of serious interest shall be in such form and include such information as the Corporation may prescribe.

(3) Notice of readiness for sale

Upon the expiration of the period referred to in paragraph (2) for a property, the Corporation shall provide written notice to any qualifying multifamily purchaser that has expressed serious interest in the property. Such notice shall specify the minimum terms and conditions for sale of the property.

(4) Offers by qualifying multifamily purchasers

A qualifying multifamily purchaser receiving notice in accordance with paragraph (3) shall have 45 days (from the date notice is received) to make a bona fide offer to purchase the property. The Corporation shall accept an offer that complies with the terms and conditions established by the Corporation. If, before the expiration of such 45-day period, any offer to purchase a property initially accepted by the Corporation is subsequently rejected or fails (for any reason), the Corporation shall accept another offer to purchase the property made during such period that complies with the terms and conditions established by the Corporation (if such another offer is made). The preceding sentence may not be construed to require a qualifying multifamily purchaser whose offer is accepted during the 45-day period to purchase the property before the expiration of the period.

(5) Extension of restricted offer periods

The Corporation may provide notice to clearinghouses regarding, and offer for sale under the provisions of paragraphs (1) through (4), any eligible multifamily housing property—

(A) in which no qualifying multifamily purchaser has expressed serious interest during the period referred to in paragraph (2), or

(B) for which no qualifying multifamily purchaser has made a bona fide offer before the expiration of the period referred to in paragraph (4),

except that the Corporation may, in the discretion of the Corporation, alter the duration of the periods referred to in paragraphs (2) and (4) in offering any property for sale under this paragraph.

(6) Sale of multifamily properties to other purchasers

(A) Timing

If, upon the expiration of the period referred to in paragraph (2), no qualifying multifamily purchaser has expressed serious interest in a property, the Corporation may offer to sell the property, individually or in combination with other properties, to any purchaser.

(B) Limitation on combination sales

The Corporation may not sell in combination with other properties any property for which a qualifying multifamily purchaser has expressed serious interest in purchasing individually.

(C) Expiration of offer period

If, upon the expiration of the period referred to in paragraph (4), no qualifying multifamily purchaser has made an offer to purchase a property, the Corporation may offer to sell the property, individually or in combination with other properties, to any purchaser.

(7) Low-income occupancy requirements

(A) Single property purchases

With respect to any purchase of a single eligible multifamily housing property by a qualifying multifamily purchaser under paragraph (4) or (5)—

(i) not less than 35 percent of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for low-income and very low-income families during the remaining useful life of the property in which the units are located; provided that

(ii) not less than 20 percent of all dwelling units purchased shall be made available for occupancy by and maintained as

affordable for very low-income families during the remaining useful life of the property in which the units are located.

(B) Aggregation requirements for multiproperty purchases

With respect to any purchase under paragraph (4) or (5) by a qualifying multifamily purchaser involving more than one eligible multifamily housing property as a part of the same negotiation, with respect to which the purchaser intends to aggregate the low-income occupancy required under this paragraph over the total number of units so purchased—

(i) not less than 40 percent of the aggregate number of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for low-income and very low-income families during the remaining useful life of the building or structure in which the units are located; provided that

(ii) not less than 20 percent of the aggregate number of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for very low-income families during the remaining useful life of the building or structure in which the units are located; and further provided that

(iii) not less than 10 percent of the dwelling units in each separate property purchased shall be made available for occupancy by and maintained as affordable for low-income families during the remaining useful life of the property in which the units are located.

The requirements of this paragraph shall be contained in the deed or other recorded instrument.

(8) Exemptions

(A) Continued occupancy of current residents

No purchaser of an eligible multifamily property may terminate the occupancy of any person residing in the property on the date of purchase for purposes of meeting the low-income occupancy requirement applicable to the property under paragraph (7). The purchaser shall be considered to be in compliance with this subsection if each newly vacant dwelling unit is reserved for low-income occupancy until the low-income occupancy requirement is met.

(B) Financial infeasibility

The Secretary or the State housing finance agency for the State in which an eligible multifamily housing property is located may temporarily reduce the low-income occupancy requirements under paragraph (7) applicable to the property, if the Secretary or such agency determines that an owner's compliance with such requirements is no longer financially feasible. The owner of the property shall make a good-faith effort to return low-income occupancy to the level required under paragraph (7), and the Secretary or the State housing finance agency, as appropriate, shall review the reduction annually to determine whether financial infeasibility continues to exist.

(e) Rent limitations

(1) In general

With respect to properties under paragraph (2), rents charged to tenants for units made available for occupancy by very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the median income for the area, as determined by the Secretary, with adjustment for family size. Rents charged to tenants for units made available for occupancy by low-income families other than very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(2) Applicability

The rent limitations under this subsection shall apply to any eligible single family property sold pursuant to subsection (c)(2)(B)(i) of this section and to any eligible multifamily housing property sold pursuant to subsection (d) of this section.

(f) Preferences for sales

(1) In general

In selling any eligible multifamily housing property or combinations of eligible residential properties, the Corporation shall give preference, among substantially similar offers, to the offer that would reserve the highest percentage of dwelling units for occupancy or purchase by very low-income and low-income families and would retain such affordability for the longest term.

(2) Multiproperty purchases

The Corporation shall give preference, among substantially similar offers made under paragraph (4) or (5) of subsection (d) of this section to purchase more than one eligible multifamily housing property as a part of the same negotiation, to offers made by purchasers who agree to maintain low-income occupancy in each separate property purchased in compliance with the levels required for properties under subsection (d)(7)(A) of this section.

(3) Definition of substantially similar offers

For purposes of this subsection, a given offer to purchase eligible multifamily housing property or combinations of such properties shall be considered to be substantially similar to another offer if the purchase price under such given offer is not less than 85 percent of the purchase price under the other offer.

(g) Financing sales

(1) Assistance by Corporation

(A) Sale price

The Corporation shall establish a market value for each eligible multifamily housing property. The Corporation shall sell eligible multifamily housing property at the net realizable market value, except that the Cor-

poration may agree to sell eligible multifamily housing property at a price below the net realizable market value to the extent necessary to facilitate an expedited sale of such property and enable a public agency or nonprofit organization to comply with the low-income occupancy requirements applicable to such property under subsection (d)(7) of this section. The Corporation may sell eligible single family property or eligible condominium property to qualifying households, nonprofit organizations, and public agencies without regard to any minimum sale price.

(B) Purchase loan

The Corporation may provide a loan at market interest rates to any purchaser of eligible residential property for all or a portion of the purchase price, which loan shall be secured by a first or second mortgage on the property. The Corporation may provide the loan at below market interest rates to the extent necessary to facilitate an expedited sale of eligible residential property and permit (i) a low-income family to purchase an eligible single family property under subsection (c) of this section, or (ii) a public agency or nonprofit organization to comply with the low-income occupancy requirements applicable to the purchase of an eligible residential property under subsection (c) or (d) of this section. The Corporation shall provide loans under this subparagraph in a form permitting sale or transfer of the loan to a subsequent holder. In providing financing for combinations of eligible multifamily housing properties under this section, the Corporation may hold a participating share, including a subordinate participation. The Corporation shall periodically provide, to a wide range of minority- and women-owned businesses engaged in providing affordable housing and to nonprofit organizations, more than 50 percent of the control of which is held by 1 or more minority individuals, that are engaged in providing affordable housing, information that is sufficient to inform such businesses and organizations of the availability and terms of financing under this subparagraph; such information may be provided directly, by notices published in periodicals and other publications that regularly provide information to such businesses or organizations, and through persons and organizations that regularly provide information or services to such businesses or organizations. For purposes of this subparagraph, the terms ''women-owned business'' and ''minority-owned business'' have the meanings given such terms in section 1441a(r) of this title, and the term ''minority'' has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) Assistance by HUD

The Secretary shall take such action as may be necessary to expedite the processing of applications for assistance under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11360 et seq.], and the National Housing Act [12 U.S.C. 1701 et seq.], to enable any organization or individual to purchase eligible residential property.

(3) Assistance by FMHA

The Secretary of Agriculture shall take such action as may be necessary to expedite the processing of applications for assistance under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.] to enable any organization or individual to purchase eligible residential property.

(4) Exception to disposition rules

Notwithstanding the requirements under paragraphs (1), (2), (3), (4), (6), and (8) of subsection (d) of this section, the Corporation may provide for the disposition of eligible multifamily housing properties as necessary to facilitate purchase of such properties for use in connection with section 202 of the Housing Act of 1959 [12 U.S.C. 1701q].

(5) Bulk acquisitions under Home Investment Partnerships Act

(A) Purchase price

In providing for bulk acquisition of eligible single family properties by participating jurisdictions for inclusion in affordable housing activities under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], the Corporation shall agree to an amount to be paid for acquisition of such properties. The acquisition price shall include discounts for bulk purchase and for holding of the property such that the acquisition price for each property shall not exceed the fair market value of the property, as valued individually.

(B) Exemptions

To the extent necessary to facilitate sale of properties under this paragraph, the requirements of subsections (c) and (f) of this section and of paragraph (1) of this subsection shall not apply to such transactions and properties involved in such transactions.

(C) Inventories

To facilitate acquisitions by such participating jurisdictions, the Corporation shall provide the participating jurisdictions with inventories of eligible single family properties not less than 4 times each year.

(h) Coordination with other programs

(1) Use of secondary market agencies

In the disposition of eligible residential properties, the Corporation (in consultation with the Secretary) shall explore opportunities to work with secondary market entities to provide housing for low- and moderate-income families.

(2) Credit enhancement

(A) In general

With respect to such properties, the Secretary may, consistent with statutory au-

thorities, work through the Federal Housing Administration, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and other secondary market entities to develop risk-sharing structures, mortgage insurance, and other credit enhancements to assist in the provision of property ownership, rental, and cooperative housing opportunities for low- and moderate-income families.

(B) Certain tax-exempt bonds

The Corporation may provide credit enhancements with respect to tax-exempt bonds issued on behalf of nonprofit organizations pursuant to section 103, and subpart A of part IV of subchapter A of chapter 1, of title 26, with respect to the disposition of eligible residential properties for the purposes described in subparagraph (A).

(3) National Affordable Housing Act

The Corporation shall coordinate the disposition of eligible residential property under this section with appropriate programs and provisions of, and amendments made by, the Cranston-Gonzalez National Affordable Housing Act, including titles II [42 U.S.C. 12721 et seq.] and IV of such Act.

(i) Exemption for certain transactions with insured depository institutions

The provisions of this section shall not apply with respect to any eligible residential property after the date the Corporation enters into a contract to sell such property to an insured depository institution (as defined in section 1813 of this title), including any sale in connection with a transfer of all or substantially all of the assets of a closed insured depository institution (including such property) to another insured depository institution.

(j) Transfer of certain eligible residential properties to State housing agencies for disposition

Notwithstanding subsections (c), (d), (f), and (g) of this section, the Corporation may transfer eligible residential properties to the State housing finance agency or any other State housing agency for the State in which the property is located, or to any local housing agency in whose jurisdiction the property is located. Transfers of eligible residential properties under this subsection may be conducted by direct sale, consignment sale, or any other method the Corporation considers appropriate and shall be subject to the following requirements:

(1) Individual or bulk transfer

The Corporation may transfer such properties individually or in bulk, as agreed to by the Corporation and the State housing finance agency or State or local housing agency.

(2) Acquisition price

The acquisition price paid by the State housing finance agency or State or local housing agency to the Corporation for properties transferred under this subsection shall be an amount agreed to by the Corporation and the transferee agency.

(3) Low-income use

Any State housing finance agency or State or local housing agency acquiring properties under this subsection shall offer to sell or transfer the properties only as follows:

(A) Eligible single family properties

For eligible single family properties—

(i) to purchasers described under subparagraphs (A) and (B) of subsection (c)(2) of this section;

(ii) if the purchaser is a purchaser described under subsection (c)(2)(B)(i) of this section, subject to the rent limitations under subsection (e)(1) of this section;

(iii) subject to the requirement in the second sentence of subsection (c)(2) of this section; and

(iv) subject to recapture by the Corporation of excess proceeds from resale of the properties under paragraphs (3) and (4) of subsection (c) of this section.

(B) Eligible multifamily housing properties

For eligible multifamily housing properties—

(i) to qualifying multifamily purchasers;

(ii) subject to the low-income occupancy requirements under subsection (d)(7) of this section;

(iii) subject to the provisions of subsection (d)(8) of this section;

(iv) subject to a preference, among financially acceptable offers, to the offer that would reserve the highest percentage of dwelling units for occupancy or purchase by very low- and low-income families and would retain such affordability for the longest term; and

(v) subject to the rent limitations under subsection (e)(1) of this section.

(4) Affordability

The State housing finance agency or State or local housing agency shall endeavor to make the properties transferred under this subsection more affordable to low-income families based upon the extent to which the acquisition price of a property under paragraph (2) is less than the market value of the property.

(k) Exception for sales to nonprofit organizations and public agencies

(1) Suspension of offer periods

With respect to any eligible residential property, the Corporation may (in the discretion of the Corporation) suspend any of the requirements of paragraphs (1) and (2) of subsection (c) of this section and paragraphs (1) through (4) of subsection (d) of this section, as applicable, but only to the extent that for the duration of the suspension the Corporation negotiates the sale of the property to a nonprofit organization or public agency. If the property is not sold pursuant to such negotiations, the requirements of any provisions suspended shall apply upon the termination of the suspension. Any time period referred to in such subsections shall toll for the duration of any suspension under this paragraph.

(2) Use restrictions

(A) Eligible single family property

Any eligible single family property sold under this subsection shall be (i) made available for occupancy by and maintained as affordable for low-income families for the remaining useful life of the property, or made available for purchase by such families, (ii) subject to the rent limitations under subsection (e)(1) of this section, (iii) subject to the requirements relating to residency of a qualifying household under subsection (p)(12) of this section and to residency of a low-income family under subsection (c)(2)(B) of this section, and (iv) subject to recapture by the Corporation of excess proceeds from resale of the property under paragraphs (3) and (4) of subsection (c) of this section.

(B) Eligible multifamily housing property

Any eligible multifamily housing property sold under this subsection shall comply with the low-income occupancy requirements under subsection (d)(7) of this section and shall be subject to the rent limitations under subsection (e)(1) of this section.

(*l*) Rules governing disposition of eligible condominium property

(1) Notice to clearinghouses

Within a reasonable period of time after acquiring title to an eligible condominium property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property. Each clearinghouse shall make such information available, upon request, to purchasers described in subparagraphs (A) through (D) of paragraph (2). The Corporation shall allow such purchasers reasonable access to an eligible condominium property for purposes of inspection.

(2) Offers to sell

For the 180-day period following the date on which the Corporation makes an eligible condominium property available for sale, the Corporation may offer to sell the property, at the discretion of the Corporation, to 1 or more of the following purchasers:

(A) Qualifying households.
(B) Nonprofit organizations.
(C) Public agencies.
(D) For-profit entities.

(3) Low-income occupancy requirements

(A) In general

Except as provided in subparagraph (B), any nonprofit organization, public agency, or for-profit entity that purchases an eligible condominium property shall (i) make the property available for occupancy by and maintain it as affordable for low-income families for the remaining useful life of the property, or (ii) make the property available for purchase by any such family who, except as provided in paragraph (5), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months. The restriction described in clause (i) of the preceding sentence shall be contained in the deed or other recorded instrument.

(B) Multiple-unit purchases

If any nonprofit organization, public agency, or for-profit entity purchases more than 1 eligible condominium property as a part of the same negotiation or purchase, the Corporation may (in the discretion of the Corporation) waive the requirement under subparagraph (A) and provide instead that not less than 35 percent of all eligible condominium properties purchased shall be (i) made available for occupancy by and maintained as affordable for low-income families for the remaining useful life of the property, or (ii) made available for purchase by any such family who, except as provided in paragraph (5), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months. The restriction described in clause (i) of the preceding sentence shall be contained in the deed or other recorded instrument.

(C) Sale to other purchasers

If, upon the expiration of the 180-day period referred to in paragraph (2), no purchaser described in subparagraphs (A) through (D) of paragraph (2) has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any other purchaser.

(4) Recapture of profits from resale

Except as provided in paragraph (5), if any eligible condominium property sold (A) to a qualifying household, or (B) to a low-income family pursuant to paragraph (3)(A)(ii) or (3)(B)(ii), is resold by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or family, the Corporation shall recapture 75 percent of the amount of any proceeds from the resale that exceed the sum of (i) the original sale price for the acquisition of the property by the qualifying household or low-income family, (ii) the costs of any improvements to the property made after the date of the acquisition, and (iii) any closing costs in connection with the acquisition.

(5) Exception to recapture requirement

The Corporation (or its successor) may in its discretion waive the applicability to any qualifying household or low-income family of the requirement under paragraph (4) and the requirements relating to residency of a qualifying household or low-income family (under subsection (p)(12) of this section and paragraph (3) of this subsection, respectively). The Corporation may grant any such a waiver only for good cause shown, including any necessary relocation of the qualifying household or low-income family.

(6) Limitations on multiple unit purchases

The Corporation may not sell or offer to sell as part of the same negotiation or purchase any eligible condominium properties that are

not located in the same condominium project (as such term is defined in section 3603 of title 15). The preceding sentence may not be construed to require all eligible condominium properties offered or sold as part of the same negotiation or purchase to be located in the same structure.

(7) Rent limitations

Rents charged to tenants of eligible condominium properties made available for occupancy by very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the median income for the area, as determined by the Secretary, with adjustment for family size. Rents charged to tenants of eligible condominium properties made available for occupancy by low-income families other than very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(m) Liability provisions

(1) In general

The provisions of this section, or any failure by the Corporation to comply with such provisions, may not be used by any person to attack or defeat any title to property after it is conveyed by the Corporation.

(2) Low-income occupancy

The low-income occupancy requirements under subsections (c), (d), (j)(3), (k)(2), and (*l*)(3) of this section shall be judicially enforceable against purchasers of property under this section and their successors in interest by affected very low- and low-income families, State housing finance agencies, and any agency, corporation, or authority of the United States. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

(3) Clearinghouses

A clearinghouse shall not be subject to suit for its failure to comply with the requirements of this section.

(4) Corporation

The Corporation shall not be liable to any depositor, creditor, or shareholder of any insured depository institution for which the Corporation has been appointed receiver or conservator, or of any subsidiary corporation of a depository institution under receivership or conservatorship, or any claimant against such institution or subsidiary, because the disposition of assets of the institution or the subsidiary under this section affects the amount of return from the assets.

(n) Unified affordable housing programs

(1) In general

Not later than 4 months after December 17, 1993, the Corporation shall enter into an agreement, as described in paragraph (3), with the Resolution Trust Corporation that sets out a plan for the orderly unification of the Corporation's activities, authorities, and responsibilities under this section with the authorities, activities, and responsibilities of the Resolution Trust Corporation pursuant to section 1441a(c) of this title in a manner that best achieves an effective and comprehensive affordable housing program management structure. The agreement shall be entered into after consultation with the Affordable Housing Advisory Board under section 14(b) of the Resolution Trust Corporation Completion Act.

(2) Authority and implementation

The Corporation shall have the authority to carry out the provisions of the agreement entered into pursuant to paragraph (1) and shall implement such agreement as soon as practicable but in no event later than 8 months after December 17, 1993.

(3) Terms of agreement

The agreement required under paragraph (1) shall provide a plan for—

(A) a program unifying all activities and responsibilities of the Corporation and the Resolution Trust Corporation, and the design of the unified program shall take into consideration the substantial experience of the Resolution Trust Corporation regarding—

(i) seller financing;

(ii) technical assistance;

(iii) marketing skills and relationships with public and nonprofit entities; and

(iv) staff resources;

(B) the elimination of duplicative and unnecessary administrative costs and resources;

(C) the management structure of the unified program;

(D) a timetable for the unification; and

(E) a methodology to determine the extent to which the provisions of this section shall be effective, in accordance with the limitations under subsection (b)(2) of this section.

(4) Transfer to FDIC

Beginning not later than October 1, 1995, the Corporation shall carry out any remaining authority and responsibilities of the Resolution Trust Corporation, as set forth in section 1441a(c) of this title.

(*o*) Report

To the extent applicable, in the annual report submitted by the Secretary to the Congress under section 3536 of title 42, the Secretary shall include a detailed description of any activities under this section, including recommendations for any additional authority the Secretary considers necessary to implement the provisions of this section.

(p) Definitions

For purposes of this section:

(1) Adjusted income and income

The terms ''adjusted income'' and ''income'' shall have the meaning given such terms in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)].

(2) Clearinghouse

The term ''clearinghouse'' means—

(A) the State housing finance agency for the State in which an eligible residential property or eligible condominium property is located;

(B) the Office of Community Investment (or other comparable division) within the Federal Housing Finance Board; and

(C) any national nonprofit organizations (including any nonprofit entity established by the corporation established under title IX of the Housing and Community Development Act of 1968 [42 U.S.C. 3931 et seq.]) that the Corporation determines has the capacity to act as a clearinghouse for information.

(3) Corporation

The term ''Corporation'' means the Federal Deposit Insurance Corporation acting in its corporate capacity or its capacity as receiver.

(4) Eligible condominium property

The term ''eligible condominium property'' means a condominium unit, as such term is defined in section 3603 of title 15—

(A) to which such Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(B) that has an appraised value that does not exceed the amount provided in section 203(b)(2)(A) of the National Housing Act [12 U.S.C. 1709(b)(2)(A)] except that such amount shall not exceed $101,250 in the case of a 1-family residence, $114,000 in the case of a 2-family residence, $138,000 in the case of a 3-family residence, and $160,000 in the case of a 4-family residence.

(5) Eligible multifamily housing property

The term ''eligible multifamily housing property'' means a property consisting of more than 4 dwelling units—

(A) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(B) that has an appraised value that does not exceed the applicable dollar amount specified in section 221(d)(3)(ii) of the National Housing Act [12 U.S.C. 1715*l*(d)(3)(ii)] for elevator-type structures, as such dollar amount is increased under such section for geographical areas or on a project-by-project basis (except that any such increase on a project-by-project basis shall be made pursuant to a determination by the Corporation that such increase is necessary).

(6) Eligible residential property

The term ''eligible residential property'' includes eligible single family properties and eligible multifamily housing properties.

(7) Eligible single family property

The term ''eligible single family property'' means a 1- to 4-family residence (including a manufactured home)—

(A) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(B) that has an appraised value that does not exceed the amount provided in section 203(b)(2)(A) of the National Housing Act [12 U.S.C. 1709(b)(2)(A)] except that such amount shall not exceed $101,250 in the case of a 1-family residence, $114,000 in the case of a 2-family residence, $138,000 in the case of a 3-family residence, and $160,000 in the case of a 4-family residence.

(8) Low-income families

The term ''low-income families'' means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

(9) Net realizable market value

The term ''net realizable market value'' means a price below the market value that takes into account (A) any reductions in holding costs resulting from the expedited sale of a property, including foregone real estate taxes, insurance, maintenance costs, security costs, and loss of use of funds, and (B) the avoidance, if applicable, of fees paid to real estate brokers, auctioneers, or other individuals or organizations involved in the sale of property owned by the Corporation.

(10) Nonprofit organization

The term ''nonprofit organization'' means a private organization (including a limited equity cooperative)—

(A) no part of the earnings of which inures to the benefit of any member, shareholder, founder, contributor, or individual; and

(B) that is approved by the Corporation as to financial responsibility.

(11) Public agency

The term ''public agency'' means any Federal, State, local, or other governmental entity, and includes any public housing agency.

(12) Qualifying household

The term ''qualifying household'' means a household—

(A) who intends to occupy eligible single family property as a principal residence;

(B) who agrees to occupy the property as a principal residence for at least 12 months;

(C) who certifies in writing that the household intends to occupy the property as a principal residence for at least 12 months; and

(D) whose income does not exceed 115 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(13) Qualifying multifamily purchaser

The term ''qualifying multifamily purchaser'' means—

(A) a public agency;

(B) a nonprofit organization; or

(C) a for-profit entity, which makes a commitment (for itself or any related entity) to comply with the low-income occupancy requirements under subsection (d)(7) of this section for any eligible multifamily housing property for which an offer to purchase is made during or after the periods specified under subsection (d) of this section.

(14) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development.

(15) State housing finance agency

The term ''State housing finance agency'' means the public agency, authority, corporation, or other instrumentality of a State that has the authority to provide residential mortgage loan financing throughout the State.

(16) Very low-income families

The term ''very low-income families'' means families and individuals whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

(q) Notice to clearinghouses regarding ineligible properties

(1) In general

Within a reasonable period of time after acquiring title to an ineligible residential property, the Corporation shall, to the extent practicable, provide written notice to clearinghouses.

(2) Content

For ineligible single family properties, such notice shall contain the same information about such properties that the notice required under subsection (c)(1) of this section contains with respect to eligible single family properties. For ineligible multifamily housing properties, such notice shall contain the same information about such properties that the notice required under subsection (d)(1) of this section contains with respect to eligible multifamily housing properties. For ineligible condominium properties, such notice shall contain the same information about such properties that the notice required under subsection (*l*)(1) of this section contains with respect to eligible condominium properties.

(3) Availability

The clearinghouses shall make such information available, upon request, to other public agencies, other nonprofit organizations, qualifying households, qualifying multifamily purchasers, and other purchasers, as appropriate.

(4) Definitions

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

(A) Ineligible condominium property

The term ''ineligible condominium property'' means any eligible condominium property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A) of this section.

(B) Ineligible multifamily housing property

The term ''ineligible multifamily housing property'' means any eligible multifamily housing property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A) of this section.

(C) Ineligible single family property

The term ''ineligible single family property'' means any eligible single family property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A) of this section.

(D) Ineligible residential property

The term ''ineligible residential property'' includes ineligible single family properties, ineligible multifamily housing properties, and ineligible condominium properties.

(Sept. 21, 1950, ch. 967, § 2[40], as added Pub. L. 102–242, title II, § 241(a), Dec. 19, 1991, 105 Stat. 2317; amended Pub. L. 102–389, title II, Oct. 6, 1992, 106 Stat. 1592, 1593; Pub. L. 102–550, title V, § 503(c)(4), Oct. 28, 1992, 106 Stat. 3780; Pub. L. 103–204, §§ 13, 14(a)(2), (d)(2), (e)(2), (f)(2), Dec. 17, 1993, 107 Stat. 2391, 2393, 2396, 2398; Pub. L. 103–325, title VI, § 602(a)(65), (66), Sept. 23, 1994, 108 Stat. 2291; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

Section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (g)(1)(B), is section 1204(c)(3) of Pub. L. 101–73, which is set out as a note under section 1811 of this title.

The United States Housing Act of 1937, referred to in subsec. (g)(2), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (g)(2), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482. Title IV of the Act is classified generally to subchapter IV (§ 11360 et seq.) of chapter 119 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

The National Housing Act, referred to in subsec. (g)(2), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (g)(3), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsecs. (g)(5)(A) and (h)(3), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, also known as the ''HOME Investment Partnerships Act'', is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of Title 42. Title IV of the Act, also known as the ''Homeownership and Opportunity Through HOPE Act'', enacted subchapter II–A (§ 1437aaa et seq.) of chapter 8 of Title 42 and subchapter IV (§ 12871 et seq.) of chapter 130 of Title 42, amended sections 1437c, 1437f, 1437*l*, 1437p, 1437r, and 1437s of Title 42 and section 1709 of this title, and enacted provisions

set out as notes under sections 1437c, 1437aa, and 1437aaa of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

Section 14(b) of the Resolution Trust Corporation Completion Act, referred to in subsec. (n)(1), is section 14(b) of Pub. L. 103–204, which is set out below.

The Housing and Community Development Act of 1968, referred to in subsec. (p)(2)(C), probably means the Housing and Urban Development Act of 1968, Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IX of the Act is classified principally to chapter 49 (§ 3931 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title of 1968 Amendments note set out under section 1701 of this title and Tables.

CODIFICATION

Another section 2[40] of act Sept. 21, 1950, was renumbered section 2[43] and is classified to section 1831t of this title.

AMENDMENTS

2000—Subsec. (g)(2). Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

1994—Subsec. (c)(4)(A). Pub. L. 103–325, § 602(a)(65), substituted ''subparagraphs (B) and (C) of subsection (p)(12) of this section'' for ''subsections (p)(12)(B) and (C) of this section''.

Subsec. (d)(8)(A). Pub. L. 103–325, § 602(a)(66), substituted ''meeting the'' for ''meeting''.

1993—Subsec. (g)(1)(B). Pub. L. 103–204, § 14(d)(2), inserted at end ''The Corporation shall periodically provide, to a wide range of minority- and women-owned businesses engaged in providing affordable housing and to nonprofit organizations, more than 50 percent of the control of which is held by 1 or more minority individuals, that are engaged in providing affordable housing, information that is sufficient to inform such businesses and organizations of the availability and terms of financing under this subparagraph; such information may be provided directly, by notices published in periodicals and other publications that regularly provide information to such businesses or organizations, and through persons and organizations that regularly provide information or services to such businesses or organizations. For purposes of this subparagraph, the terms 'women-owned business' and 'minority-owned business' have the meanings given such terms in section 1441a(r) of this title, and the term 'minority' has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.''

Subsec. (m)(4). Pub. L. 103–204, § 14(f)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The Corporation shall not be liable to any depositor, creditor, or shareholder of any insured depository institution for which the Corporation has been appointed receiver, or any claimant against such an institution, because the disposition of assets of the institution under this section affects the amount of return from the assets.''

Subsec. (n). Pub. L. 103–204, § 14(e)(2), amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: ''AFFORDABLE HOUSING PROGRAM OFFICE.—The Corporation shall establish an Affordable Housing Program Office within the Corporation to carry out the provisions of this section and shall dedicate certain staff of the Corporation to the office.''

Subsec. (p)(4)(A), (5)(A), (7)(A). Pub. L. 103–204, § 13, inserted ''in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property)'' before ''; and''.

Subsec. (q). Pub. L. 103–204, § 14(a)(2), added subsec. (q).

1992—Subsec. (p)(4)(B). Pub. L. 102–550 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''that has an appraised value that does not exceed the applicable dollar amount specified in the first sentence of section 203(b)(2) of the National Housing Act, as such dollar amount is increased on an area-by-area basis under such section for areas with high prevailing housing sales prices, except that for purposes of this paragraph no such increase may exceed 150 percent of the dollar amount specified in section 203(b)(2).''

Pub. L. 102–389 added subpar. (B) and struck out former subpar. (B) which read as follows: ''that has an appraised value that does not exceed the applicable dollar amount set forth in the first sentence of section 203(b)(2) of the National Housing Act (which may, in the discretion of the Corporation, take into consideration any increase of such amount for high-cost areas).''

Subsec. (p)(5)(B). Pub. L. 102–389 added subpar. (B) and struck out former subpar. (B) which read as follows: ''that has an appraised value that does not exceed the applicable dollar amount set forth in section 221(d)(3)(ii) of the National Housing Act for elevator-type structures (which may, in the discretion of the Corporation, take into consideration any increase of such amount for high-cost areas).''

Subsec. (p)(7)(B). Pub. L. 102–550 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''that has an appraised value that does not exceed the applicable dollar amount specified in the first sentence of section 203(b)(2) of the National Housing Act, as such dollar amount is increased on an area-by-area basis under such section for areas with high prevailing housing sales prices, except that for purposes of this paragraph no such increase may exceed 150 percent of the dollar amount specified in section 203(b)(2).''

Pub. L. 102–389 added subpar. (B) and struck out former subpar. (B) which read as follows: ''that has an appraised value that does not exceed the applicable dollar amount set forth in the first sentence of section 203(b)(2) of the National Housing Act (which may, in the discretion of the Corporation, take into consideration any increase of such amount for high-cost areas).''

AFFORDABLE HOUSING ADVISORY BOARD

Section 14(b) of Pub. L. 103–204, as amended by Pub. L. 105–216, § 14(e), (f), July 29, 1998, 112 Stat. 910, provided that:

''(1) ESTABLISHMENT.—There is hereby established the Affordable Housing Advisory Board (in this subsection referred to as the 'Advisory Board') to advise the Thrift Depositor Protection Oversight Board and the Board of Directors of the Federal Deposit Insurance Corporation on policies and programs related to the provision of affordable housing, including the operation of the affordable programs.

''(2) MEMBERSHIP.—The Advisory Board shall consist of—

''(A) the Secretary of Housing and Urban Development;

''(B) the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation (or the Chairperson's delegate), who shall be a nonvoting member;

''(C) 4 persons appointed by the Secretary of Housing and Urban Development not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Dec. 17, 1993], who represent the interests of individuals and organizations involved in using the affordable housing programs (including nonprofit organizations, public agencies, and for-profit organizations that purchase properties under the affordable housing programs, organizations that provide technical assistance regarding the affordable housing programs, and organizations that represent the interest of low- and moderate-income families); and

''(D) 2 persons who are members of the National Housing Advisory Board pursuant to section 21A(d)(2)(B)(ii) of the Federal Home Loan Bank Act

[12 U.S.C. 1441a(d)(2)(B)(ii)] (as in effect before the effective date of the repeal under subsection (c)(2) [90 days after Dec. 17, 1993]), who shall be appointed by such Board before such effective date.

''(3) TERMS.—Each member shall be appointed for a term of 4 years, except as provided in paragraphs (4) and (5).

''(4) TERMS OF INITIAL APPOINTEES.—

''(A) PERMANENT POSITIONS.—As designated by the Secretary of Housing and Urban Development at the time of appointment, of the members first appointed under paragraph (2)(D)—

''(i) 1 shall be appointed for a term of 1 year;

''(ii) 1 shall be appointed for a term of 2 years;

''(iii) 1 shall be appointed for a term of 3 years; and

''(iv) 1 shall be appointed for a term of 4 years.

''(B) INTERIM MEMBERS.—The members of the Advisory Board under paragraph (2)(E) shall be appointed for a single term of 4 years, which shall begin upon the earlier of (i) the expiration of the 90-day period beginning on the date of the enactment of this Act [Dec. 17, 1993], or (ii) the first meeting of the Advisory Board.

''(5) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

''(6) MEETINGS.—

''(A) TIMING.—The Advisory Board shall meet 2 times a year or at the request of the Board of Directors of the Federal Deposit Insurance Corporation. The first meeting of the Advisory Board shall take place not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Dec. 17, 1993].

''(B) ADVICE.—The Advisory Board shall submit information and advice resulting from each meeting, in such form as the Board considers appropriate, to the Thrift Depositor Protection Oversight Board and the Board of Directors of the Federal Deposit Insurance Corporation.

''(7) ANNUAL REPORTS.—For each year, the Advisory Board shall submit a report containing its findings and recommendations to the Committee on Banking, Housing, and Urban affairs [sic] of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation. The first such report shall be made not later than the expiration of the 6-month period beginning on the date of the enactment of this Act [Dec. 17, 1993].

''(8) DEFINITION.—For purposes of this subsection, the term 'affordable housing programs' means the program under section 21A(c) of the Federal Home Loan Bank Act [12 U.S.C. 1441a(c)] and the program under section 40 of the Federal Deposit Insurance Act [12 U.S.C. 1831q].

''(9) SUNSET.—The Advisory Board established under this subsection shall terminate on September 30, 1998.''

[Pub. L. 105–216, §14(e), July 29, 1998, 112 Stat. 910, provided that the amendment made by section 14(e) to section 14(b)(2) of Pub. L. 103–204, set out above, is effective July 29, 1998.]

COORDINATION AND CONSULTATION BETWEEN FEDERAL DEPOSIT INSURANCE CORPORATION AND RESOLUTION TRUST CORPORATION UNDER AFFORDABLE HOUSING PROGRAMS

Section 241(b) of Pub. L. 102–242, as amended by Pub. L. 102–550, title XVI, §1604(c)(1), Oct. 28, 1992, 106 Stat. 4083, provided that: ''The Federal Deposit Insurance Corporation and the Resolution Trust Corporation shall consult and coordinate with each other in carrying out their respective responsibilities under the affordable housing programs under section 40 of the Federal Deposit Insurance Act [12 U.S.C. 1831q] and section 21A(c) of the Federal Home Loan Bank Act [12 U.S.C. 1441a(c)]. Such corporations shall develop any procedures, and may enter into any agreements, necessary to provide for the coordinated, efficient, and effective operation of such programs.''

§ 1831r. Payments on foreign deposits prohibited

(a) In general

Notwithstanding any other provision of law, the Corporation, the Board of Governors of the Federal Reserve System, the Resolution Trust Corporation, any other agency, department, and instrumentality of the United States, and any corporation owned or controlled by the United States may not, directly or indirectly, make any payment or provide any assistance, guarantee, or transfer under this chapter or any other provision of law in connection with any insured depository institution which would have the direct or indirect effect of satisfying, in whole or in part, any claim against the institution for obligations of the institution which would constitute deposits as defined in section 1813(*l*) of this title but for subparagraphs (A) and (B) of section 1813(*l*)(5) of this title.

(b) Exception

Subsection (a) of this section shall not apply to any payment, assistance, guarantee, or transfer made or provided by the Corporation if the Board of Directors determines in writing that such action is not inconsistent with any requirement of section 1823(c) of this title.

(c) Discount window lending

No provision of this section shall be construed as prohibiting any Federal Reserve bank from making advances or otherwise extending credit pursuant to the Federal Reserve Act [12 U.S.C. 221 et seq.] to any insured depository institution to the extent that such advance or extension of credit is consistent with the conditions and limitations imposed under section 10B of such Act [12 U.S.C. 347b].

(Sept. 21, 1950, ch. 967, §2[41], as added Pub. L. 102–242, title III, §312, Dec. 19, 1991, 105 Stat. 2367.)

REFERENCES IN TEXT

The Federal Reserve Act, referred to in subsec. (c), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

§ 1831r–1. Notice of branch closure

(a) Notice to appropriate Federal banking agency

(1) In general

An insured depository institution which proposes to close any branch shall submit a notice of the proposed closing to the appropriate Federal banking agency not later than the first day of the 90-day period ending on the date proposed for the closing.

(2) Contents of notice

A notice under paragraph (1) shall include—

(A) a detailed statement of the reasons for the decision to close the branch; and

(B) statistical or other information in support of such reasons.

(b) Notice to customers

(1) In general

An insured depository institution which proposes to close a branch shall provide notice of the proposed closing to its customers.

(2) Contents of notice

Notice under paragraph (1) shall consist of—

(A) posting of a notice in a conspicuous manner on the premises of the branch proposed to be closed during not less than the 30-day period ending on the date proposed for that closing; and

(B) inclusion of a notice in—

(i) at least one of any regular account statements mailed to customers of the branch proposed to be closed, or

(ii) in a separate mailing,

by not later than the beginning of the 90-day period ending on the date proposed for that closing.

(c) Adoption of policies

Each insured depository institution shall adopt policies for closings of branches of the institution.

(d) Branch closures in interstate banking or branching operations

(1) Notice requirements

In the case of an interstate bank which proposes to close any branch in a low- or moderate-income area, the notice required under subsection (b)(2) of this section shall contain the mailing address of the appropriate Federal banking agency and a statement that comments on the proposed closing of such branch may be mailed to such agency.

(2) Action required by appropriate Federal banking agency

If, in the case of a branch referred to in paragraph (1)—

(A) a person from the area in which such branch is located—

(i) submits a written request relating to the closing of such branch to the appropriate Federal banking agency; and

(ii) includes a statement of specific reasons for the request, including a discussion of the adverse effect of such closing on the availability of banking services in the area affected by the closing of the branch; and

(B) the agency concludes that the request is not frivolous,

the agency shall consult with community leaders in the affected area and convene a meeting of representatives of the agency and other interested depository institution regulatory agencies with community leaders in the affected area and such other individuals, organizations, and depository institutions (as defined in section 461(b)(1)(A) of this title) as the agency may determine, in the discretion of the agency, to be appropriate, to explore the feasibility of obtaining adequate alternative facilities and services for the affected area, including the establishment of a new branch by another depository institution, the chartering of a new depository institution, or the establishment of a community development credit union, following the closing of the branch.

(3) No effect on closing

No action by the appropriate Federal banking agency under paragraph (2) shall affect the authority of an interstate bank to close a branch (including the timing of such closing) if the requirements of subsections (a) and (b) of this section have been met by such bank with respect to the branch being closed.

(4) Definitions

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

(A) Interstate bank defined

The term ''interstate bank'' means a bank which maintains branches in more than 1 State.

(B) Low- or moderate-income area

The term ''low- or moderate-income area'' means a census tract for which the median family income is—

(i) less than 80 percent of the median family income for the metropolitan statistical area (as designated by the Director of the Office of Management and Budget) in which the census tract is located; or

(ii) in the case of a census tract which is not located in a metropolitan statistical area, less than 80 percent of the median family income for the State in which the census tract is located, as determined without taking into account family income in metropolitan statistical areas in such State.

(e) Scope of application

This section shall not apply with respect to—

(1) an automated teller machine;

(2) the relocation of a branch or consolidation of one or more branches into another branch, if the relocation or consolidation—

(A) occurs within the immediate neighborhood; and

(B) does not substantially affect the nature of the business or customers served; or

(3) a branch that is closed in connection with—

(A) an emergency acquisition under—

(i) section 1821(n) of this title; or

(ii) subsection (f) or (k) of section 1823 of this title; or

(B) any assistance provided by the Corporation under section 1823(c) of this title.

(Sept. 21, 1950, ch. 967, §2[42], formerly §2[39], as added Pub. L. 102–242, title II, §228, Dec. 19, 1991, 105 Stat. 2308; renumbered §2[42], Pub. L. 102–550, title XVI, §1602(a), Oct. 28, 1992, 106 Stat. 4078; amended Pub. L. 103–328, title I, §106, Sept. 29, 1994, 108 Stat. 2357; Pub. L. 104–208, div. A, title II, §2213, Sept. 30, 1996, 110 Stat. 3009–411.)

CODIFICATION

Section was classified to section 1831p of this title prior to renumbering by Pub. L. 102–550.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–208 added subsec. (e).

1994—Subsec. (d). Pub. L. 103–328 added subsec. (d).

§ 1831s. Transferred

CODIFICATION

Section, act Sept. 21, 1950, ch. 967, § 2[39], as added Dec. 19, 1991, Pub. L. 102–242, title I, § 132(a), 105 Stat. 2267, as amended, which related to standards for safety and soundness, was transferred to section 1831p–1 of this title.

§ 1831t. Depository institutions lacking Federal deposit insurance

(a) Annual independent audit of private deposit insurers

(1) Audit required

Any private deposit insurer shall obtain an annual audit from an independent auditor using generally accepted auditing standards. The audit shall include a determination of whether the private deposit insurer follows generally accepted accounting principles and has set aside sufficient reserves for losses.

(2) Providing copies of audit report

(A) Private deposit insurer

The private deposit insurer shall provide a copy of the audit report—

(i) to each depository institution the deposits of which are insured by the private deposit insurer, not later than 14 days after the audit is completed; and

(ii) to the appropriate supervisory agency of each State in which such an institution receives deposits, not later than 7 days after the audit is completed.

(B) Depository institution

Any depository institution the deposits of which are insured by the private deposit insurer shall provide a copy of the audit report, upon request, to any current or prospective customer of the institution.

(3) Enforcement by appropriate State supervisor

Any appropriate State supervisor of a private deposit insurer, and any appropriate State supervisor of a depository institution which receives deposits that are insured by a private deposit insurer, may examine and enforce compliance with this subsection under the applicable regulatory authority of such supervisor.

(b) Disclosure required

Any depository institution lacking Federal deposit insurance shall, within the United States, do the following:

(1) Periodic statements; account records

Include conspicuously in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or share certificate.[1] a notice that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money.

[1] So in original. The period probably should not appear.

(2) Advertising; premises

(A) In general

Include clearly and conspicuously in all advertising, except as provided in subparagraph (B); and at each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page, a notice that the institution is not federally insured.

(B) Exceptions

The following need not include a notice that the institution is not federally insured:

(i) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution.

(ii) Small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.

(3) Acknowledgment of disclosure

(A) New depositors obtained other than through a conversion or merger

With respect to any depositor who was not a depositor at the depository institution before October 13, 2006, and who is not a depositor as described in subparagraph (B), receive any deposit for the account of such depositor only if the depositor has signed a written acknowledgement that—

(i) the institution is not federally insured; and

(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

(B) New depositors obtained through a conversion or merger

With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking federal insurance after October 13, 2006, receive any deposit for the account of such depositor only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment.

(C) Current depositors

Receive any deposit after October 13, 2006, for the account of any depositor who was a depositor on that date only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution has complied with the provisions of subparagraph (E) which are applicable as of the date of the deposit.

(D) Alternative provision of notice to new depositors obtained through a conversion or merger

(i)[2] In general

Transmit to each depositor who has not signed a written acknowledgement described in subparagraph (A)—

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(E) Alternative provision of notice to current depositors

(i) In general

Transmit to each depositor who was a depositor before October 13, 2006, and has not signed a written acknowledgement described in subparagraph (A)—

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(ii) Manner and timing of notice

(I) First notice

Make the transmission described in clause (i) via mail not later than three months after October 13, 2006.

(II) Second notice

Make a second transmission described in clause (i) via mail not less than 30 days and not more than three months after a transmission to the depositor in accordance with subclause (I), if the institution has not, by the date of such mailing, received from the depositor a card referred to in clause (i) which has been signed by the depositor.

(c) Manner and content of disclosure

To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Federal Trade Commission, by regulation or order, shall prescribe the manner and content of disclosure required under this section, which shall be presented in such format and in such type size and manner as to be simple and easy to understand.

(d) Exceptions for institutions not receiving retail deposits

The Federal Trade Commission may, by regulation or order, make exceptions to subsection (b) of this section for any depository institution that, within the United States, does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

[2] So in original. No cl. (ii) has been enacted.

(e) Definitions

For purposes of this section:

(1) Appropriate supervisor

The ''appropriate supervisor'' of a depository institution means the agency primarily responsible for supervising the institution.

(2) Depository institution

The term ''depository institution'' includes—

(A) any entity described in section 461(b)(1)(A)(iv) of this title; and

(B) any entity that, as determined by the Federal Trade Commission—

(i) is engaged in the business of receiving deposits; and

(ii) could reasonably be mistaken for a depository institution by the entity's current or prospective customers.

(3) Lacking Federal deposit insurance

A depository institution lacks Federal deposit insurance if the institution is not either—

(A) an insured depository institution; or

(B) an insured credit union, as defined in section 101 of the Federal Credit Union Act [12 U.S.C. 1752].

(4) Private deposit insurer

The term ''private deposit insurer'' means any entity insuring the deposits of any depository institution lacking Federal deposit insurance.

(f) Enforcement

(1) Limited FTC enforcement authority

Compliance with the requirements of subsections (b), (c) and (e), and any regulation prescribed or order issued under any such subsection, shall be enforced under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] by the Federal Trade Commission.

(2) Broad State enforcement authority

(A) In general

Subject to subparagraph (C), an appropriate State supervisor of a depository institution lacking Federal deposit insurance may examine and enforce compliance with the requirements of this section, and any regulation prescribed under this section.

(B) State powers

For purposes of bringing any action to enforce compliance with this section, no provision of this section shall be construed as preventing an appropriate State supervisor of a depository institution lacking Federal deposit insurance from exercising any powers conferred on such official by the laws of such State.

(C) Limitation on State action while Federal action pending

If the Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisor may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation

of this section that is alleged in that complaint.

(Sept. 21, 1950, ch. 967, § 2[43], formerly § 2[40], as added Pub. L. 102–242, title I, § 151(a)(1), Dec. 19, 1991, 105 Stat. 2282; renumbered § 2[43], Pub. L. 102–550, title XVI § 1602(b), Oct. 28, 1992, 106 Stat. 4078; amended Pub. L. 103–325, title III, § 340(a), Sept. 23, 1994, 108 Stat. 2237; Pub. L. 109–173, § 2(c)(3), Feb. 15, 2006, 119 Stat. 3602; Pub. L. 109–351, title V, § 505, Oct. 13, 2006, 120 Stat. 1975; Pub. L. 111–203, title X, § 1090(2), July 21, 2010, 124 Stat. 2094.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1090(2), 1100H, July 21, 2010, 124 Stat. 2094, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) in subsections (c) and (d), by substituting ''Bureau'' for ''Federal Trade Commission'';

(2) in subsection (e)—

(A) in paragraph (2), by substituting ''Bureau'' for ''Federal Trade Commission''; and

(B) by adding at the end the following:

''(5) Bureau

''The term 'Bureau' means the Bureau of Consumer Financial Protection.''; and

(3) in subsection (f)—

(A) by striking out paragraph (1) and adding the following:

''(1) Limited enforcement authority

''Compliance with the requirements of subsections (b), (c), and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Act of 2010, by the Bureau, subject to subtitle B of the Consumer Financial Protection Act of 2010, and under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission.''; and

(B) in paragraph (2), by striking out subparagraph (C) and adding the following:

''(C) Limitation on State action while Federal action pending

''If the Bureau or Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisory agency may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Bureau or Federal Trade Commission for any violation of this section that is alleged in that complaint.''.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (f)(1), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

AMENDMENTS

2006—Subsec. (a)(3). Pub. L. 109–351, § 505(a), added par. (3).

Subsec. (b)(1). Pub. L. 109–351, § 505(b), substituted ''or share certificate.'' for ''or similar instrument evidencing a deposit''.

Subsec. (b)(2). Pub. L. 109–351, § 505(c), amended heading and text generally. Prior to amendment, text read as follows: ''Include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured.''

Subsec. (b)(3). Pub. L. 109–351, § 505(d), amended par. (3) generally. Prior to amendment, par. (3) related to acknowledgement of disclosure and consisted of subpars. (A) to (C).

Subsec. (c). Pub. L. 109–351, § 505(e), amended heading and text generally. Prior to amendment, text read as follows: ''To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Federal Trade Commission, by regulation or order, shall prescribe the manner and content of disclosure required under this section.''

Subsec. (d). Pub. L. 109–173 substituted ''an amount equal to the standard maximum deposit insurance amount'' for ''$100,000''.

Subsec. (e). Pub. L. 109–351, § 505(f), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to eligibility for Federal deposit insurance.

Subsec. (f). Pub. L. 109–351, § 505(g), amended heading and text generally. Prior to amendment, text read as follows: ''Compliance with the requirements of this section, and any regulation prescribed or order issued under this section, shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission.''

Pub. L. 109–351, § 505(f)(2), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 109–351, § 505(f)(2), redesignated subsec. (g) as (f).

1994—Subsec. (b)(3). Pub. L. 103–325 amended heading and text of subsec. (b)(3) generally. Prior to amendment, text read as follows: ''Receive deposits only for the account of persons who have signed a written acknowledgment that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that they will get back their money.''

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Apr. 1, 2006, see section 2(e) of Pub. L. 109–173, set out as a note under section 1785 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 340(b) of Pub. L. 103–325 provided that: ''Section 43(b)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1831t(b)(3)], as amended by subsection (a), shall take effect in accordance with section 151(a)(2)(D) of the Federal Deposit Insurance Corporation Improvement Act of 1991 [see Effective Date note below].''

EFFECTIVE DATE

Section 151(a)(2) of Pub. L. 102–242 provided that: ''Section 40 of the Federal Deposit Insurance Act [12 U.S.C. 1831t] (as added by paragraph (1)) shall become effective on the date of enactment of this Act [Dec. 19, 1991], except that—

''(A) paragraphs (1) and (2) of subsection (b) shall become effective 1 year after the date of enactment of this Act;

''(B) during the period beginning 1 year after that date of enactment of this Act and ending 30 months after that date of enactment, subsection (b)(1) shall apply with ', and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money' omitted;

''(C) subsection (e) shall become effective 2 years after that date of enactment; and

''(D) subsection (b)(3) shall become effective 30 months after that date of enactment.''

VIABILITY OF PRIVATE DEPOSIT INSURERS

Section 151(b) of Pub. L. 102–242, as amended by Pub. L. 102–550, title XVI, §1603(f)(1), Oct. 28, 1992, 106 Stat. 4081, provided that:

''(1) DEADLINE FOR INITIAL INDEPENDENT AUDIT.—The initial annual audit under section 43(a)(1) of the Federal Deposit Insurance Act [12 U.S.C. 1831t(a)(1)] (as added by subsection (a)) shall be completed not later than 120 days after the date of enactment of this Act [Dec. 19, 1991].

''(2) BUSINESS PLAN REQUIRED.—Not later than 240 days after the date of enactment of this Act [Dec. 19, 1991], any private deposit insurer shall provide a business plan to each appropriate supervisor of each State in which deposits are received by any depository institution lacking Federal deposit insurance the deposits of which are insured by a private deposit insurer. The business plan shall explain in detail why the private deposit insurer is viable, and shall, at a minimum—

''(A) describe the insurer's—

''(i) underwriting standards;

''(ii) resources, including trends in and forecasts of assets, income, and expenses;

''(iii) risk-management program, including examination and supervision, problem case resolution, and remedies; and

''(B) include, for the preceding 5 years, copies of annual audits, annual reports, and annual meeting agendas and minutes.

''(3) DEFINITIONS.—For purposes of this subsection, the terms 'appropriate supervisor', 'depository institution', 'lacking Federal deposit insurance', and 'private deposit insurer' have the same meaning as in section 43(f) of the Federal Deposit Insurance Act [12 U.S.C. 1831t(f)] (as added by subsection (a)).''

§ 1831u. Interstate bank mergers

(a) Approval of interstate merger transactions authorized

(1) In general

Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 1828(c) of this title between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

(2) State election to prohibit interstate merger transactions

(A) In general

Notwithstanding paragraph (1), a merger transaction may not be approved pursuant to paragraph (1) if the transaction involves a bank the home State of which has enacted a law after September 29, 1994, and before June 1, 1997, that—

(i) applies equally to all out-of-State banks; and

(ii) expressly prohibits merger transactions involving out-of-State banks.

(B) No effect on prior approvals of merger transactions

A law enacted by a State pursuant to subparagraph (A) shall have no effect on merger transactions that were approved before the effective date of such law.

(3) State election to permit early interstate merger transactions

(A) In general

A merger transaction may be approved pursuant to paragraph (1) before June 1, 1997, if the home State of each bank involved in the transaction has in effect, as of the date of the approval of such transaction, a law that—

(i) applies equally to all out-of-State banks; and

(ii) expressly permits interstate merger transactions with all out-of-State banks.

(B) Certain conditions allowed

A host State may impose conditions on a branch within such State of a bank resulting from an interstate merger transaction if—

(i) the conditions do not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or any subsidiary of such bank or company (other than on the basis of a nationwide reciprocal treatment requirement);

(ii) the imposition of the conditions is not preempted by Federal law; and

(iii) the conditions do not apply or require performance after May 31, 1997.

(4) Interstate merger transactions involving acquisitions of branches

(A) In general

An interstate merger transaction may involve the acquisition of a branch of an insured bank without the acquisition of the bank only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank.

(B) Treatment of branch for purposes of this section

In the case of an interstate merger transaction which involves the acquisition of a branch of an insured bank without the acquisition of the bank, the branch shall be treated, for purposes of this section, as an insured bank the home State of which is the State in which the branch is located.

(5) Preservation of State age laws

(A) In general

The responsible agency may not approve an application pursuant to paragraph (1) that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host State that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State.

(B) Special rule for State age laws specifying a period of more than 5 years

Notwithstanding subparagraph (A), the responsible agency may approve a merger transaction pursuant to paragraph (1) involving the acquisition of a bank that has been in existence at least 5 years without regard to any longer minimum period of time specified in a statutory law of the host State.

(6) Shell banks

For purposes of this subsection, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substan-

tially all of the assets of, an existing bank or branch shall be deemed to have been in existence for the same period of time as the bank or branch to be acquired.

(b) Provisions relating to application and approval process

(1) Compliance with State filing requirements

(A) In general

Any bank which files an application for an interstate merger transaction shall—

(i) comply with the filing requirements of any host State of the bank which will result from such transaction to the extent that the requirement—

(I) does not have the effect of discriminating against out-of-State banks or out-of-State bank holding companies or subsidiaries of such banks or bank holding companies; and

(II) is similar in effect to any requirement imposed by the host State on a nonbanking corporation incorporated in another State that engages in business in the host State; and

(ii) submit a copy of the application to the State bank supervisor of the host State.

(B) Penalty for failure to comply

The responsible agency may not approve an application for an interstate merger transaction if the applicant materially fails to comply with subparagraph (A).

(2) Concentration limits

(A) Nationwide concentration limits

The responsible agency may not approve an application for an interstate merger transaction if the resulting bank (including all insured depository institutions which are affiliates of the resulting bank), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Statewide concentration limits other than with respect to initial entries

The responsible agency may not approve an application for an interstate merger transaction if—

(i) any bank involved in the transaction (including all insured depository institutions which are affiliates of any such bank) has a branch in any State in which any other bank involved in the transaction has a branch; and

(ii) the resulting bank (including all insured depository institutions which would be affiliates of the resulting bank), upon consummation of the transaction, would control 30 percent or more of the total amount of deposits of insured depository institutions in any such State.

(C) Effectiveness of State deposit caps

No provision of this subsection shall be construed as affecting the authority of any State to limit, by statute, regulation, or order, the percentage of the total amount of deposits of insured depository institutions in the State which may be held or controlled by any bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to the extent the application of such limitation does not discriminate against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(D) Exceptions to subparagraph (B)

The responsible agency may approve an application for an interstate merger transaction pursuant to subsection (a) of this section without regard to the applicability of subparagraph (B) with respect to any State if—

(i) there is a limitation described in subparagraph (C) in a State statute, regulation, or order which has the effect of permitting a bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to control a greater percentage of total deposits of all insured depository institutions in the State than the percentage permitted under subparagraph (B); or

(ii) the transaction is approved by the appropriate State bank supervisor of such State and the standard on which such approval is based does not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(E) Exception for certain banks

This paragraph shall not apply with respect to any interstate merger transaction involving only affiliated banks.

(3) Community reinvestment compliance

In determining whether to approve an application for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction, the responsible agency shall—

(A) comply with the responsibilities of the agency regarding such application under section 2903 of this title;

(B) take into account the most recent written evaluation under section 2903 of this title of any bank which would be an affiliate of the resulting bank; and

(C) take into account the record of compliance of any applicant bank with applicable State community reinvestment laws.

(4) Adequacy of capital and management skills

The responsible agency may approve an application for an interstate merger transaction pursuant to subsection (a) of this section only if—

(A) each bank involved in the transaction is adequately capitalized as of the date the application is filed; and

(B) the responsible agency determines that the resulting bank will continue to be adequately capitalized and adequately managed upon the consummation of the transaction.

(5) Surrender of charter after merger transaction

The charters of all banks involved in an interstate merger transaction, other than the charter of the resulting bank, shall be surrendered, upon request, to the Federal banking agency or State bank supervisor which issued the charter.

(c) Applicability of certain laws to interstate banking operations

(1) State taxation authority not affected

(A) In general

No provision of this section shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

(B) Imposition of shares tax by host States

In the case of a branch of an out-of-State bank which results from an interstate merger transaction, a proportionate amount of the value of the shares of the out-of-State bank may be subject to any bank shares tax levied or imposed by the host State, or any political subdivision of such host State that imposes such tax based upon a method adopted by the host State, which may include allocation and apportionment.

(2) Applicability of antitrust laws

No provision of this section shall be construed as affecting—

(A) the applicability of the antitrust laws; or

(B) the applicability, if any, of any State law which is similar to the antitrust laws.

(3) Reservation of certain rights to States

No provision of this section shall be construed as limiting in any way the right of a State to—

(A) determine the authority of State banks chartered by that State to establish and maintain branches; or

(B) supervise, regulate, and examine State banks chartered by that State.

(4) State-imposed notice requirements

A host State may impose any notification or reporting requirement on a branch of an out-of-State bank if the requirement—

(A) does not discriminate against out-of-State banks or bank holding companies; and

(B) is not preempted by any Federal law regarding the same subject.

(d) Operations of the resulting bank

(1) Continued operations

A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

(2) Additional branches

Following the consummation of any interstate merger transaction, the resulting bank may establish, acquire, or operate additional branches at any location where any bank involved in the transaction could have established, acquired, or operated a branch under applicable Federal or State law if such bank had not been a party to the merger transaction.

(3) Certain conditions and commitments continued

If, as a condition for the acquisition of a bank by an out-of-State bank holding company before September 29, 1994—

(A) the home State of the acquired bank imposed conditions on such acquisition by such out-of-State bank holding company; or

(B) the bank holding company made commitments to such State in connection with the acquisition,

the State may enforce such conditions and commitments with respect to such bank holding company or any affiliated successor company which controls a bank or branch in such State as a result of an interstate merger transaction to the same extent as the State could enforce such conditions or commitments against the bank holding company before the consummation of the merger transaction.

(e) Exception for banks in default or in danger of default

If an application under subsection (a)(1) of this section for approval of a merger transaction which involves 1 or more banks in default or in danger of default or with respect to which the Corporation provides assistance under section 1823(c) of this title, the responsible agency may approve such application without regard to subsection (b) of this section, or paragraph (2), (4), or (5) of subsection (a) of this section.

(f) Applicable rate and other charge limitations

(1) In general

In the case of any State that has a constitutional provision that sets a maximum lawful annual percentage rate of interest on any contract at not more than 5 percent above the discount rate for 90-day commercial paper in effect at the Federal reserve bank for the Federal reserve district in which such State is located, except as provided in paragraph (2), upon the establishment in such State of a branch of any out-of-State insured depository institution in such State under this section, the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved (or in the case of a governmental entity located in such State, paid) from time to time in any loan or discount made or upon any note, bill of exchange, financing transaction, or other evidence of debt by—

(A) any insured depository institution whose home State is such State shall be equal to not more than the greater of—

(i) the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved in a similar transaction under the constitution or any statute or other law of the home State of the out-of-State insured depository institution establishing any such branch, without reference to this section, as such maximum interest rate or amount of interest may change from time to time; or

(ii) the maximum rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved in a similar transaction by a State insured depository institution chartered under the laws of such State or a national bank or Federal savings association whose main office is located in such State without reference to this section; and

(B) any governmental entity located in such State or any person that is not a depository institution described in subparagraph (A) doing business in such State, shall be equal to not more than the greater of the State's maximum lawful annual percentage rate or 17 percent—

(i) to facilitate the uniform implementation of federally mandated or federally established programs and financings related thereto, including—

(I) uniform accessibility of student loans, including the issuance of qualified student loan bonds as set forth in section 144(b) of title 26;

(II) the uniform accessibility of mortgage loans, including the issuance of qualified mortgage bonds and qualified veterans' mortgage bonds as set forth in section 143 of such title;

(III) the uniform accessibility of safe and affordable housing programs administered or subject to review by the Department of Housing and Urban Development, including—

(aa) the issuance of exempt facility bonds for qualified residential rental property as set forth in section 142(d) of such title; and

(bb) the issuance of low income housing tax credits as set forth in section 42 of such title; and

(IV) the uniform accessibility of bonds and obligations issued under the American Recovery and Reinvestment Act of 2009;

(ii) to facilitate interstate commerce through the issuance of bonds and obligations under any provision of State law, including bonds and obligations for the purpose of economic development, education, and improvements to infrastructure; and

(iii) to facilitate interstate commerce generally, including consumer loans, in the case of any person or governmental entity (other than a depository institution subject to subparagraph (A) and paragraph (2)).

(2) Rule of construction

(A) In general

No provision of this subsection shall be construed as superseding or affecting—

(i) the authority of any insured depository institution to take, receive, reserve, and charge interest on any loan made in any State other than the State referred to in paragraph (1); or

(ii) the applicability of section 1735f–7a of this title, section 85 of this title, or section 1831d of this title.

(B) Applicability

This subsection shall be construed to apply to any loan or discount made, or note, bill of exchange, financing transaction, or other evidence of debt, originated by an insured depository institution, a governmental entity located in such State, or a person that is not a depository institution described in subparagraph (A) doing business in such State.

(g) Definitions

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

(1) Adequately capitalized

The term ''adequately capitalized'' has the same meaning as in section 1831*o* of this title.

(2) Antitrust laws

The term ''antitrust laws''—

(A) has the same meaning as in subsection (a) of section 12 of title 15; and

(B) includes section 45 of title 15 to the extent such section 45 relates to unfair methods of competition.

(3) Branch

The term ''branch'' means any domestic branch.

(4) Home State

The term ''home State''—

(A) means—

(i) with respect to a national bank, the State in which the main office of the bank is located; and

(ii) with respect to a State bank, the State by which the bank is chartered; and

(B) with respect to a bank holding company, has the same meaning as in section 1841(*o*)(4) of this title.

(5) Host State

The term ''host State'' means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(6) Interstate merger transaction

The term ''interstate merger transaction'' means any merger transaction approved pursuant to subsection (a)(1) of this section.

(7) Merger transaction

The term ''merger transaction'' has the meaning determined under section 1828(c)(3) of this title.

(8) Out-of-State bank

The term ''out-of-State bank'' means, with respect to any State, a bank whose home State is another State.

(9) Out-of-State bank holding company

The term ''out-of-State bank holding company'' means, with respect to any State, a bank holding company whose home State is another State.

(10) Responsible agency

The term ''responsible agency'' means the agency determined in accordance with section 1828(c)(2) of this title with respect to a merger transaction.

(11) Resulting bank

The term ''resulting bank'' means a bank that has resulted from an interstate merger transaction under this section.

(Sept. 21, 1950, ch. 967, §2[44], as added Pub. L. 103–328, title I, §102(a), Sept. 29, 1994, 108 Stat. 2343; amended Pub. L. 106–102, title VII, §731, Nov. 12, 1999, 113 Stat. 1477; Pub. L. 111–32, title V, §504(a), June 24, 2009, 123 Stat. 1880; Pub. L. 111–83, title V, §563(a), (b), Oct. 28, 2009, 123 Stat. 2183; Pub. L. 111–203, title VI, §607(b), July 21, 2010, 124 Stat. 1608.)

AMENDMENT OF SUBSECTION (b)(4)(B)

Pub. L. 111–203, title VI, §607(b), (c), July 21, 2010, 124 Stat. 1608, provided that, effective on the transfer date, subsection (b)(4)(B) of this section is amended by substituting ''will be well capitalized and well managed'' for ''will continue to be adequately capitalized and adequately managed''. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The American Recovery and Reinvestment Act of 2009, referred to in subsec. (f)(1)(B)(i)(IV), is Pub. L. 111–5, Feb. 17, 2009, 123 Stat. 115. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 1 of Title 26, Internal Revenue Code, and Tables.

AMENDMENTS

2009—Subsec. (f)(1). Pub. L. 111–83, §563(a)(1), inserted ''(or in the case of a governmental entity located in such State, paid)'' after ''received, or reserved'' in introductory provisions.

Pub. L. 111–32 substituted ''evidence of debt by—'' for ''evidence of debt by'', inserted subpar. (A) designation, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, realigned margins, and added subpar. (B).

Subsec. (f)(1)(B). Pub. L. 111–83, §563(a)(2)(A), substituted ''governmental entity located in such State or any person that is not a depository institution described in subparagraph (A) doing business in such State'' for ''nondepository institution operating in such State'' in introductory provisions.

Subsec. (f)(1)(B)(i)(III)(aa). Pub. L. 111–83, §563(a)(2)(C)(i)(I), inserted ''and'' at end.

Subsec. (f)(1)(B)(i)(III)(bb). Pub. L. 111–83, §563(a)(2)(C)(i)(II), struck out '', to facilitate the uniform accessibility of provisions of the American Recovery and Reinvestment Act of 2009'' after ''section 42 of such title''.

Subsec. (f)(1)(B)(i)(III)(cc). Pub. L. 111–83, §563(a)(2)(C)(i)(III), struck out item (cc), which read as follows: ''the issuance of bonds and obligations issued under that Act, to facilitate economic development, higher education, and improvements to infrastructure, and the issuance of bonds and obligations issued under any provision of law to further the same; and''.

Subsec. (f)(1)(B)(i)(IV). Pub. L. 111–83, §563(a)(2)(C)(ii), added subcl. (IV).

Subsec. (f)(1)(B)(ii), (iii). Pub. L. 111–83, §563(a)(2)(B), (D), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (f)(2). Pub. L. 111–83, §563(b), designated existing provisions as subpar. (A), inserted heading, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), realigned margins, and added subpar. (B).

1999—Subsecs. (f), (g). Pub. L. 106–102 added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title VI, §607(c), July 21, 2010, 124 Stat. 1608, provided that: ''The amendments made by this section [amending this section and section 1842 of this title] shall take effect on the transfer date.''

[For definition of ''transfer date'' as used in section 607(c) of Pub. L. 111–203, set out above, see section 5301 of this title.]

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–83, title V, §563(c), Oct. 28, 2009, 123 Stat. 2184, provided that: ''The amendments made by this section [amending this section] shall apply with respect to contracts consummated during the period beginning on the date of enactment of this Act [Oct. 28, 2009] and ending on December 31, 2010.''

Pub. L. 111–32, title V, §504(b), June 24, 2009, 123 Stat. 1880, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to contracts consummated during the period beginning on the date of enactment of this Act [June 24, 2009] and ending on December 31, 2010.''

§ 1831v. Authority of State insurance regulator and Securities and Exchange Commission

(a) In general

Notwithstanding any other provision of law, the provisions of—

(1) section 1844(c) of this title that limit the authority of the Board of Governors of the Federal Reserve System to require reports from, to make examinations of, or to impose capital requirements on holding companies and their functionally regulated subsidiaries or that require deference to other regulators;

(2) section 1844(g) of this title that limit the authority of the Board to require a functionally regulated subsidiary of a holding company to provide capital or other funds or assets to a depository institution subsidiary of the holding company and to take certain actions including requiring divestiture of the depository institution; and

(3) section 1848a of this title that limit whatever authority the Board might otherwise have to take direct or indirect action with respect to holding companies and their functionally regulated subsidiaries;

shall also limit whatever authority that a Federal banking agency might otherwise have under any statute or regulation to require reports, make examinations, impose capital requirements, or take any other direct or indirect action with respect to any functionally regulated affiliate of a depository institution, subject to the same standards and requirements as are applicable to the Board under those provisions.

(b) Certain exemption authorized

No provision of this section shall be construed as preventing the Corporation, if the Corporation finds it necessary to determine the condition of a depository institution for insurance purposes, from examining an affiliate of any depository institution, pursuant to section 1820(b)(4) of this title, as may be necessary to disclose fully the relationship between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

(c) Definitions

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

(1) Functionally regulated subsidiary

The term ''functionally regulated subsidiary'' has the meaning given the term in section 1844(c)(5) of this title.

(2) Functionally regulated affiliate

The term ''functionally regulated affiliate'' means, with respect to any depository institution, any affiliate of such depository institution that is—

(A) not a depository institution holding company; and

(B) a company described in any clause of section 1844(c)(5)(B) of this title.

(Sept. 21, 1950, ch. 967, § 2[45], as added Pub. L. 106–102, title I, § 112(b), Nov. 12, 1999, 113 Stat. 1367.)

EFFECTIVE DATE

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

§ 1831w. Safety and soundness firewalls applicable to financial subsidiaries of banks

(a) In general

An insured State bank may control or hold an interest in a subsidiary that engages in activities as principal that would only be permissible for a national bank to conduct through a financial subsidiary if—

(1) the State bank and each insured depository institution affiliate of the State bank are well capitalized (after the capital deduction required by paragraph (2));

(2) the State bank complies with the capital deduction and financial statement disclosure requirements in section 24a(c) of this title;

(3) the State bank complies with the financial and operational safeguards required by section 24a(d) of this title; and

(4) the State bank complies with the amendments to sections 23A and 23B of the Federal Reserve Act [12 U.S.C. 371c and 371c–1] made by section 121(b) of the Gramm-Leach-Bliley Act.

(b) Preservation of existing subsidiaries

Notwithstanding subsection (a) of this section, an insured State bank may retain control of a subsidiary, or retain an interest in a subsidiary, that the State bank lawfully controlled or acquired before November 12, 1999, and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date.

(c) Definitions

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

(1) Subsidiary

The term ''subsidiary'' means any company that is a subsidiary (as defined in section 1813(w)(4) of this title) of 1 or more insured banks.

(2) Financial subsidiary

The term ''financial subsidiary'' has the meaning given the term in section 24a(g) of this title.

(d) Preservation of authority

(1) This chapter

No provision of this section shall be construed as superseding the authority of the Federal Deposit Insurance Corporation to review subsidiary activities under section 1831a of this title.

(2) Federal Reserve Act

No provision of this section shall be construed as affecting the applicability of the 20th undesignated paragraph of section 9 of the Federal Reserve Act [12 U.S.C. 335].

(Sept. 21, 1950, ch. 967, § 2[46], as added Pub. L. 106–102, title I, § 121(d)(1), Nov. 12, 1999, 113 Stat. 1380.)

REFERENCES IN TEXT

Section 121(b) of the Gramm-Leach-Bliley Act, referred to in subsec. (a)(4), is section 121(b) of Pub. L. 106–102, title I, Nov. 12, 1999, 113 Stat. 1378, which amended section 371c of this title.

EFFECTIVE DATE

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

§ 1831x. Insurance customer protections

(a) Regulations required

(1) In general

The Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on November 12, 1999, customer protection regulations (which the agencies jointly determine to be appropriate) that—

(A) apply to retail sales practices, solicitations, advertising, or offers of any insurance product by any depository institution or any person that is engaged in such activities at an office of the institution or on behalf of the institution; and

(B) are consistent with the requirements of this chapter and provide such additional protections for customers to whom such sales, solicitations, advertising, or offers are directed.

(2) Applicability to subsidiaries

The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiary of a depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the consumer protections provided by this section.

(3) Consultation and joint regulations

The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the State insurance regulators, as appropriate.

(b) Sales practices

The regulations prescribed pursuant to subsection (a) of this section shall include antitying and anticoercion rules applicable to the sale of insurance products that prohibit a depository institution from engaging in any practice that would lead a customer to believe an extension of credit, in violation of section 1972 of this title, is conditional upon—

(1) the purchase of an insurance product from the institution or any of its affiliates; or

(2) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

(c) Disclosures and advertising

The regulations prescribed pursuant to subsection (a) of this section shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of an insurance product:

(1) Disclosures

(A) In general

Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iii), at the time of application for an extension of credit:

(i) Uninsured status

As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the depository institution.

(ii) Investment risk

In the case of a variable annuity or other insurance product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value.

(iii) Coercion

The approval of an extension of credit may not be conditioned on—

(I) the purchase of an insurance product from the institution in which the application for credit is pending or of any affiliate of the institution; or

(II) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

(B) Making disclosure readily understandable

Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:

(i) ''NOT FDIC—INSURED''.

(ii) ''NOT GUARANTEED BY THE BANK''.

(iii) ''MAY GO DOWN IN VALUE''.

(iv) ''NOT INSURED BY ANY GOVERNMENT AGENCY''.

(C) Limitation

Nothing in this paragraph requires the inclusion of the foregoing disclosures in advertisements of a general nature describing or listing the services or products offered by an institution.

(D) Meaningful disclosures

Disclosures shall not be considered to be meaningfully provided under this paragraph if the institution or its representative states that disclosures required by this subsection were available to the customer in printed material available for distribution, where such printed material is not provided and such information is not orally disclosed to the customer.

(E) Adjustments for alternative methods of purchase

In prescribing the requirements under subparagraphs (A) and (F), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgments.

(F) Consumer acknowledgment

A requirement that a depository institution shall require any person selling an insurance product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under this paragraph or at the time of the initial purchase by the consumer of such product, an acknowledgment by such consumer of the receipt of the disclosure required under this subsection with respect to such product.

(2) Prohibition on misrepresentations

A prohibition on any practice, or any advertising, at any office of, or on behalf of, the depository institution, or any subsidiary, as appropriate, that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—

(A) the uninsured nature of any insurance product sold, or offered for sale, by the institution or any subsidiary of the institution;

(B) in the case of a variable annuity or insurance product that involves an investment risk, the investment risk associated with any such product; or

(C) in the case of an institution or subsidiary at which insurance products are sold or offered for sale, the fact that—

(i) the approval of an extension of credit to a customer by the institution or subsidiary may not be conditioned on the purchase of an insurance product by such customer from the institution or subsidiary; and

(ii) the customer is free to purchase the insurance product from another source.

(d) Separation of banking and nonbanking activities

(1) Regulations required

The regulations prescribed pursuant to subsection (a) of this section shall include such

provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from insurance product activity.

(2) Requirements

Regulations prescribed pursuant to paragraph (1) shall include the following requirements:

(A) Separate setting

A clear delineation of the setting in which, and the circumstances under which, transactions involving insurance products should be conducted in a location physically segregated from an area where retail deposits are routinely accepted.

(B) Referrals

Standards that permit any person accepting deposits from the public in an area where such transactions are routinely conducted in a depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

(C) Qualification and licensing requirements

Standards prohibiting any depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.

(e) Domestic violence discrimination prohibition

(1) In general

In the case of an applicant for, or an insured under, any insurance product described in paragraph (2), the status of the applicant or insured as a victim of domestic violence, or as a provider of services to victims of domestic violence, shall not be considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of insurance policies, or payment of insurance claims, except as required or expressly permitted under State law.

(2) Scope of application

The prohibition contained in paragraph (1) shall apply to any life or health insurance product which is sold or offered for sale, as principal, agent, or broker, by any depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution.

(3) Domestic violence defined

For purposes of this subsection, the term ''domestic violence'' means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(A) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault.

(B) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm.

(C) Subjecting another person to false imprisonment.

(D) Attempting to cause or cause damage to property so as to intimidate or attempt to control the behavior of another person.

(f) Consumer grievance process

The Federal banking agencies shall jointly establish a consumer complaint mechanism, for receiving and expeditiously addressing consumer complaints alleging a violation of regulations issued under the section, which shall—

(1) establish a group within each regulatory agency to receive such complaints;

(2) develop procedures for investigating such complaints;

(3) develop procedures for informing consumers of rights they may have in connection with such complaints; and

(4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.

(g) Effect on other authority

(1) In general

No provision of this section shall be construed as granting, limiting, or otherwise affecting—

(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or

(B) except as provided in paragraph (2), any authority of any State insurance commission (or any agency or office performing like functions), or of any State securities commission (or any agency or office performing like functions), or other State authority under any State law.

(2) Coordination with State law

(A) In general

Except as provided in subparagraph (B), insurance customer protection regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any insurance product by any depository institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.

(B) Preemption

(i) In general

If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Re-

serve System, the Comptroller of the Currency, and the Board of Directors of the Corporation determine jointly that the protection afforded by such provision for customers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, the appropriate State regulatory authority shall be notified of such determination in writing.

(ii) Considerations

Before making a final determination under clause (i), the Federal agencies referred to in clause (i) shall give appropriate consideration to comments submitted by the appropriate State regulatory authorities relating to the level of protection afforded to consumers under State law.

(iii) Federal preemption and ability of States to override Federal preemption

If the Federal agencies referred to in clause (i) jointly determine that any provision of the regulations prescribed under this section affords greater protections than a comparable State law, rule, regulation, order, or interpretation, those agencies shall send a written preemption notice to the appropriate State regulatory authority to notify the State that the Federal provision will preempt the State provision and will become applicable unless, not later than 3 years after the date of such notice, the State adopts legislation to override such preemption.

(h) Non-discrimination against non-affiliated agents

The Federal banking agencies shall ensure that the regulations prescribed pursuant to subsection (a) of this section shall not have the effect of discriminating, either intentionally or unintentionally, against any person engaged in insurance sales or solicitations that is not affiliated with a depository institution.

(Sept. 21, 1950, ch. 967, §2[47], as added Pub. L. 106–102, title III, §305, Nov. 12, 1999, 113 Stat. 1410.)

§ 1831y. CRA sunshine requirements

(a) Public disclosure of agreements

Any agreement (as defined in subsection (e) of this section) entered into after November 12, 1999, by an insured depository institution or affiliate with a nongovernmental entity or person made pursuant to or in connection with the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.] involving funds or other resources of such insured depository institution or affiliate—

(1) shall be in its entirety fully disclosed, and the full text thereof made available to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution and to the public by each party to the agreement; and

(2) shall obligate each party to comply with this section.

(b) Annual report of activity by insured depository institution

Each insured depository institution or affiliate that is a party to an agreement described in subsection (a) of this section shall report to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution, not less frequently than once each year, such information as the Federal banking agency may by rule require relating to the following actions taken by the party pursuant to the agreement during the preceding 12-month period:

(1) Payments, fees, or loans made to any party to the agreement or received from any party to the agreement and the terms and conditions of the same.

(2) Aggregate data on loans, investments, and services provided by each party in its community or communities pursuant to the agreement.

(3) Such other pertinent matters as determined by regulation by the appropriate Federal banking agency with supervisory responsibility over the insured depository institution.

(c) Annual report of activity by nongovernmental entities

(1) In general

Each nongovernmental entity or person that is not an affiliate of an insured depository institution and that is a party to an agreement described in subsection (a) of this section shall report to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution that is a party to such agreement, not less frequently than once each year, an accounting of the use of funds received pursuant to each such agreement during the preceding 12-month period.

(2) Submission to insured depository institution

A nongovernmental entity or person referred to in paragraph (1) may comply with the reporting requirement in such paragraph by transmitting the report to the insured depository institution that is a party to the agreement, and such insured depository institution shall promptly transmit such report to the appropriate Federal banking agency with supervisory authority over the insured depository institution.

(3) Information to be included

The accounting referred to in paragraph (1) shall include a detailed, itemized list of the uses to which such funds have been made, including compensation, administrative expenses, travel, entertainment, consulting and professional fees paid, and such other categories, as determined by regulation by the appropriate Federal banking agency with supervisory responsibility over the insured depository institution.

(d) Applicability

Subsections (b) and (c) of this section shall not apply with respect to any agreement entered into before the end of the 6-month period beginning on November 12, 1999.

(e) Definitions

(1) Agreement

For purposes of this section, the term ''agreement''—

(A) means—

(i) any written contract, written arrangement, or other written understanding that provides for cash payments, grants, or other consideration with a value in excess of $10,000, or for loans the aggregate amount of principal of which exceeds $50,000, annually (or the sum of all such agreements during a 12-month period with an aggregate value of cash payments, grants, or other consideration in excess of $10,000, or with an aggregate amount of loan principal in excess of $50,000); or

(ii) a group of substantively related contracts with an aggregate value of cash payments, grants, or other consideration in excess of $10,000, or with an aggregate amount of loan principal in excess of $50,000, annually;

made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.], at least 1 party to which is an insured depository institution or affiliate thereof, whether organized on a profit or not-for-profit basis; and

(B) does not include—

(i) any individual mortgage loan;

(ii) any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities, if the funds are loaned at rates not substantially below market rates and if the purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to other parties; or

(iii) any agreement entered into by an insured depository institution or affiliate with a nongovernmental entity or person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.].

(2) Fulfillment of CRA

For purposes of subparagraph (A), the term ''fulfillment'' means a list of factors that the appropriate Federal banking agency determines have a material impact on the agency's decision—

(A) to approve or disapprove an application for a deposit facility (as defined in section 803 of the Community Reinvestment Act of 1977 [12 U.S.C. 2902]); or

(B) to assign a rating to an insured depository institution under section 807 of the Community Reinvestment Act of 1977 [12 U.S.C. 2906].

(f) Violations

(1) Violations by persons other than insured depository institutions or their affiliates

(A) Material failure to comply

If the party to an agreement described in subsection (a) of this section that is not an insured depository institution or affiliate willfully fails to comply with this section in a material way, as determined by the appropriate Federal banking agency, the agreement shall be unenforceable after the offending party has been given notice and a reasonable period of time to perform or comply.

(B) Diversion of funds or resources

If funds or resources received under an agreement described in subsection (a) of this section have been diverted contrary to the purposes of the agreement for personal financial gain, the appropriate Federal banking agency with supervisory responsibility over the insured depository institution may impose either or both of the following penalties:

(i) Disgorgement by the offending individual of funds received under the agreement.

(ii) Prohibition of the offending individual from being a party to any agreement described in subsection (a) of this section for a period of not to exceed 10 years.

(2) Designation of successor nongovernmental party

If an agreement described in subsection (a) of this section is found to be unenforceable under this subsection, the appropriate Federal banking agency may assist the insured depository institution in identifying a successor nongovernmental party to assume the responsibilities of the agreement.

(3) Inadvertent or de minimis reporting errors

An error in a report filed under subsection (c) of this section that is inadvertent or de minimis shall not subject the filing party to any penalty.

(g) Rule of construction

No provision of this section shall be construed as authorizing any appropriate Federal banking agency to enforce the provisions of any agreement described in subsection (a) of this section.

(h) Regulations

(1) In general

Each appropriate Federal banking agency shall prescribe regulations, in accordance with paragraph (4), requiring procedures reasonably designed to ensure and monitor compliance with the requirements of this section.

(2) Protection of parties

In carrying out paragraph (1), each appropriate Federal banking agency shall—

(A) ensure that the regulations prescribed by the agency do not impose an undue burden on the parties and that proprietary and confidential information is protected; and

(B) establish procedures to allow any nongovernmental entity or person who is a party to a large number of agreements described in subsection (a) of this section to make a single or consolidated filing of a report under subsection (c) of this section to an insured depository institution or an appropriate Federal banking agency.

(3) Parties not subject to reporting requirements

The Board of Governors of the Federal Reserve System may prescribe regulations—

(A) to prevent evasions of subsection (e)(1)(B)(iii) of this section; and

(B) to provide further exemptions under such subsection, consistent with the purposes of this section.

(4) Coordination, consistency, and comparability

In carrying out paragraph (1), each appropriate Federal banking agency shall consult and coordinate with the other such agencies for the purposes of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

(Sept. 21, 1950, ch. 967, §2[48], as added Pub. L. 106–102, title VII, §711, Nov. 12, 1999, 113 Stat. 1465.)

REFERENCES IN TEXT

The Community Reinvestment Act of 1977, referred to in subsecs. (a) and (e)(1)(A), (B)(iii), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, as amended, which is classified generally to chapter 30 (§2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

§ 1831z. Bi-annual FDIC survey and report on encouraging use of depository institutions by the unbanked

(a) Survey required

(1) In general

The Corporation shall conduct a bi-annual survey on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the ''unbanked'') into the conventional finance system.

(2) Factors and questions to consider

In conducting the survey, the Corporation shall take the following factors and questions into account:

(A) To what extent do insured depository institutions promote financial education and financial literacy outreach?

(B) Which financial education efforts appear to be the most effective in bringing ''unbanked'' individuals and families into the conventional finance system?

(C) What efforts are insured institutions making at converting ''unbanked'' money order, wire transfer, and international remittance customers into conventional account holders?

(D) What cultural, language and identification issues as well as transaction costs appear to most prevent ''unbanked'' individuals from establishing conventional accounts?

(E) What is a fair estimate of the size and worth of the ''unbanked'' market in the United States?

(b) Reports

The Chairperson of the Board of Directors shall submit a bi-annual report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing the Corporation's findings and conclusions with respect to the survey conducted pursuant to subsection (a) of this section, together with such recommendations for legislative or administrative action as the Chairperson may determine to be appropriate.

(Sept. 21, 1950, ch. 967, §2[49], as added Pub. L. 109–173, §7, Feb. 15, 2006, 119 Stat. 3609.)

§ 1831aa. Enforcement of agreements

(a) In general

Notwithstanding clause (i) or (ii) of section 1818(b)(6)(A) of this title or section 1831*o*(e)(2)(E)(i) of this title, the appropriate Federal banking agency for a depository institution may enforce, under section 1818 of this title, the terms of—

(1) any condition imposed in writing by the agency on the depository institution or an institution-affiliated party in connection with any action on any application, notice, or other request concerning the depository institution; or

(2) any written agreement entered into between the agency and the depository institution or an institution-affiliated party.

(b) Receiverships and conservatorships

After the appointment of the Corporation as the receiver or conservator for a depository institution, the Corporation may enforce any condition or agreement described in paragraph (1) or (2) of subsection (a) imposed on or entered into with such institution or institution-affiliated party through an action brought in an appropriate United States district court.

(Sept. 21, 1950, ch. 967, §2[50], as added Pub. L. 109–351, title VII, §702(a), Oct. 13, 2006, 120 Stat. 1985.)

§ 1832. Withdrawals by negotiable or transferable instruments for transfers to third parties

(a) Authority of depository institution; applicability

(1) Notwithstanding any other provision of law but subject to paragraph (2), a depository institution is authorized to permit the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.

(2) Paragraph (1) shall apply only with respect to deposits or accounts which consist solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, political, or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

(b) "Depository institution" defined

For purposes of this section, the term ''depository institution'' means—

(1) any insured bank as defined in section 1813 of this title;

(2) any State bank as defined in section 1813 of this title;

(3) any mutual savings bank as defined in section 1813 of this title;

(4) any savings bank as defined in section 1813 of this title;

(5) any insured institution as defined in section 1724[1] of this title; and

(6) any building and loan association or savings and loan association organized and operated according to the laws of the State in which it is chartered or organized; and, for purposes of this paragraph, the term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(c) Fine

Any depository institution which violates this section shall be fined $1,000 for each violation.

(Pub. L. 93–100, § 2, Aug. 16, 1973, 87 Stat. 342; Pub. L. 94–222, § 2, Feb. 27, 1976, 90 Stat. 197; Pub. L. 95–630, title XIII, § 1301, Nov. 10, 1978, 92 Stat. 3712; Pub. L. 96–161, title I, § 106, Dec. 28, 1979, 93 Stat. 1235; Pub. L. 96–221, title III, § 303, Mar. 31, 1980, 94 Stat. 146; Pub. L. 97–320, title VII, § 706(a), Oct. 15, 1982, 96 Stat. 1540; Pub. L. 100–86, title I, § 109, Aug. 10, 1987, 101 Stat. 579.)

REFERENCES IN TEXT

Section 1724 of this title, referred to in subsec. (b)(5), was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

CODIFICATION

Section was not enacted as part of the Federal Deposit Insurance Act which comprises this chapter.

AMENDMENTS

1987—Subsec. (a)(2). Pub. L. 100–86 inserted ''political,'' after ''educational,''.

1982—Subsec. (a)(2). Pub. L. 97–320 inserted provisions relating to deposits of public funds.

1980—Subsec. (a). Pub. L. 96–221 designated existing provisions as par. (1) inserted provisions expanding authorization for withdrawals from selected States to the entire United States, and added par. (2).

1979—Subsec. (a). Pub. L. 96–161 inserted ''New Jersey,'' after ''New York,''.

1978—Subsec. (a). Pub. L. 95–630 inserted ''New York,'' after ''Vermont,''.

1976—Subsec. (a). Pub. L. 94–222 authorized withdrawals by negotiable or transferable instruments in the States of Connecticut, Rhode Island, Maine, and Vermont.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective Dec. 31, 1980, see section 306 of Pub. L. 96–221, set out as a note under section 371a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1302 of title XIII of Pub. L. 95–630 provided that: ''This title [amending this section] shall take effect upon enactment [Nov. 10, 1978].''

[1] See References in Text note below.

EFFECTIVE DATE

Section effective on thirtieth day after Aug. 16, 1973, see section 8 of Pub. L. 93–100, set out as a note under section 1469 of this title.

§ 1833. Repealed. Pub. L. 104–208, div. A, title II, § 2224(b), Sept. 30, 1996, 110 Stat. 3009–415

Section, Pub. L. 101–73, title IX, § 918, Aug. 9, 1989, 103 Stat. 487, required certain agencies to annually report to Congress detailing civil and criminal actions and investigations undertaken during preceding 12-month period.

§ 1833a. Civil penalties

(a) In general

Whoever violates any provision of law to which this section is made applicable by subsection (c) of this section shall be subject to a civil penalty in an amount assessed by the court in a civil action under this section.

(b) Maximum amount of penalty

(1) Generally

The amount of the civil penalty shall not exceed $1,000,000.

(2) Special rule for continuing violations

In the case of a continuing violation, the amount of the civil penalty may exceed the amount described in paragraph (1) but may not exceed the lesser of $1,000,000 per day or $5,000,000.

(3) Special rule for violations creating gain or loss

(A) If any person derives pecuniary gain from the violation, or if the violation results in pecuniary loss to a person other than the violator, the amount of the civil penalty may exceed the amounts described in paragraphs (1) and (2) but may not exceed the amount of such gain or loss.

(B) As used in this paragraph, the term ''person'' includes the Bank Insurance Fund, the Savings Association Insurance Fund, and after the merger of such funds, the Deposit Insurance Fund, and the National Credit Union Share Insurance Fund.

(c) Violations to which penalty is applicable

This section applies to a violation of, or a conspiracy to violate—

(1) section 215, 656, 657, 1005, 1006, 1007, 1014, or 1344 of title 18;

(2) section 287, 1001, 1032,[1] 1341 or 1343 of title 18 affecting a federally insured financial institution; or

(3) section 645(a) of title 15.

(d) Effective date

This section shall apply to violations occurring on or after August 10, 1984.

(e) Attorney General to bring action

A civil action to recover a civil penalty under this section shall be commenced by the Attorney General.

(f) Burden of proof

In a civil action to recover a civil penalty under this section, the Attorney General must

[1] See 1990 Amendment note below.

establish the right to recovery by a preponderance of the evidence.

(g) Administrative subpoenas

(1) In general

For the purpose of conducting a civil investigation in contemplation of a civil proceeding under this section, the Attorney General may—

(A) administer oaths and affirmations;

(B) take evidence; and

(C) by subpoena, summon witnesses and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry. Such subpoena may require the attendance of witnesses and the production of any such records from any place in the United States at any place in the United States designated by the Attorney General.

(2) Procedures applicable

The same procedures and limitations as are provided with respect to civil investigative demands in subsections (g), (h), and (j) of section 1968 of title 18 apply with respect to a subpoena issued under this subsection. Process required by such subsections to be served upon the custodian shall be served on the Attorney General. Failure to comply with an order of the court to enforce such subpoena shall be punishable as contempt.

(3) Limitation

In the case of a subpoena for which the return date is less than 5 days after the date of service, no person shall be found in contempt for failure to comply by the return date if such person files a petition under paragraph (2) not later than 5 days after the date of service.

(h) Statute of limitations

A civil action under this section may not be commenced later than 10 years after the cause of action accrues.

(Pub. L. 101–73, title IX, §951, Aug. 9, 1989, 103 Stat. 498; Pub. L. 101–647, title XXV, §§2533, 2596(d), Nov. 29, 1990, 104 Stat. 4882, 4908; Pub. L. 103–322, title XXXIII, §330003(g), Sept. 13, 1994, 108 Stat. 2141; Pub. L. 104–208, div. A, title II, §2704(d)(15)(A), Sept. 30, 1996, 110 Stat. 3009–494; Pub. L. 107–100, §4(b), Dec. 21, 2001, 115 Stat. 966; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §9(g)(1), Feb. 15, 2006, 119 Stat. 3618.)

CODIFICATION

Section was enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

AMENDMENTS

2006—Subsec. (b)(3)(B). Pub. L. 109–173 inserted ''and after the merger of such funds, the Deposit Insurance Fund,'' after ''the Savings Association Insurance Fund,''.

Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(15)(A). See 1996 Amendment note below.

2001—Subsec. (c). Pub. L. 107–100, §4(b)(2)(D), designated concluding provisions as (d) and inserted heading.

Subsec. (c)(2). Pub. L. 107–100, §4(b)(2)(B)(i), which directed the substitution of ''1341'' for ''1341;'', could not be executed because par. (2) does not contain a semicolon after ''1341''.

Subsec. (c)(3). Pub. L. 107–100, §4(b)(2)(A), (B)(ii), (C), added par. (3).

Subsec. (d) to (h). Pub. L. 107–100, §4(b)(1), (2)(D), designated concluding provisions of subsec. (c) as (d), inserted heading, and redesignated former subsecs. (d) to (g) as (e) to (h), respectively.

1996—Subsec. (b)(3)(B). Pub. L. 104–208, §2704(d)(15)(A), which directed substitution of ''Deposit Insurance Fund'' for ''Bank Insurance Fund, the Savings Association Insurance Fund,'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Subsec. (c). Pub. L. 103–322 amended directory language of Pub. L. 101–647, §2596(d). See 1990 Amendment note below.

1990—Subsec. (c). Pub. L. 101–647, §2596(d)(2), as amended by Pub. L. 103–322, inserted at end a flush sentence ''This section shall apply to violations occurring on or after August 10, 1984.''

Subsec. (c)(2). Pub. L. 101–647, §2596(d)(1), as amended by Pub. L. 103–322, which directed insertion of ''287, 1001, 1032,'' before ''1341;'', was executed by making the insertion before ''1341 or 1343'' to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 101–647, §2533, added subsec. (g).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330003(g) of Pub. L. 103–322 provided that the amendment made by that section is effective retroactively to the date of enactment of Pub. L. 101–647, which was approved Nov. 29, 1990.

§ 1833b. Comparability in compensation schedules

(a) In general

The Federal Deposit Insurance Corporation, the Comptroller of the Currency, the National Credit Union Administration Board, the Federal Housing Finance Board, the Office of Financial Research, and the Bureau of Consumer Financial Protection, the[1] Farm Credit Administration, in establishing and adjusting schedules of compensation and benefits which are to be determined solely by each agency under applicable provisions of law, shall inform the heads of the other agencies and the Congress of such compensation and benefits and shall seek to maintain comparability regarding compensation and benefits.

(b) Commodity Futures Trading Commission

In establishing and adjusting schedules of compensation and benefits for employees of the

[1] So in original. Probably should be ''Research, the Bureau of Consumer Financial Protection, and the''.

Commodity Futures Trading Commission under applicable provisions of law, the Commission shall—

(1) inform the heads of the agencies referred to in subsection (a) of this section and Congress of such compensation and benefits; and

(2) seek to maintain comparability with those agencies regarding compensation and benefits.

(Pub. L. 101–73, title XII, § 1206, Aug. 9, 1989, 103 Stat. 523; Pub. L. 102–233, title III, § 302(a), Dec. 12, 1991, 105 Stat. 1767; Pub. L. 107–123, § 8(d)(3), Jan. 16, 2002, 115 Stat. 2400; Pub. L. 107–171, title X, § 10702(b), May 13, 2002, 116 Stat. 516; Pub. L. 111–203, title I, § 152(d)(3), title III, § 367(8), July 21, 2010, 124 Stat. 1414, 1557.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 367(8), July 21, 2010, 124 Stat. 1546, 1557, provided that, effective on the transfer date, this section is amended by substituting ''Agency, and'' for ''Board, the Oversight Board of the Resolution Trust Corporation'' and striking out '', and the Office of Thrift Supervision''. See Effective Date of 2010 Amendment note below.

CODIFICATION

Section was enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, § 152(d)(3), substituted ''Finance Board, the Office of Financial Research, and the Bureau of Consumer Financial Protection'' for ''Finance Board,'' and struck out ''and the Office of Thrift Supervision,'' after ''Credit Administration,''.

2002—Pub. L. 107–171 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 107–123 struck out ''the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation'' after ''Federal Housing Finance Board,''.

CHANGE OF NAME

Oversight Board redesignated Thrift Depositor Protection Oversight Board, effective Feb. 1, 1992, see section 302(a) of Pub. L. 102–233, set out as a note under section 1441a of this title. Thrift Depositor Protection Oversight Board abolished, see section 14(a)–(d) of Pub. L. 105–216, set out as a note under section 1441a of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 152(d)(3)of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

Amendment by section 367(8) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–123 effective Oct. 1, 2001, see section 11 of Pub. L. 107–123, set out as a note under section 78ee of Title 15, Commerce and Trade.

§ 1833c. Comptroller General audit and access to records

(a) Audit of agencies or other persons performing functions under banking laws

(1) In general

Except as provided in paragraph (2), all agencies, corporations, organizations, and other persons of any description which perform any function or activity under this Act, or any other Act which is amended by this Act, shall be subject to audit by the Comptroller General of the United States with respect to such function or activity.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) any function or activity of the Board of Governors of the Federal Reserve System or the Federal Reserve banks that is described in any paragraph of section 714(b) of title 31; and

(B) any function or activity of the Federal National Mortgage Association, except as provided in section 1723a(j) of this title.

(b) Audit of persons providing certain goods or services

All persons and organizations which, by contract, grant, or otherwise, provide goods or services to, or receive financial assistance from, any agency or other person performing functions or activities under this Act shall be subject to audit by the Comptroller General with respect to such provision of goods or services or receipt of financial assistance.

(c) Provisions applicable to audits under this section

(1) Nature and scope of audit

The Comptroller General shall determine the nature, scope, and terms and conditions of audits conducted under this section.

(2) Coordination with other provisions of law

The authority of the Comptroller General under this section shall be in addition to any audit authority available to the Comptroller General under other provisions of this Act or any other law.

(3) Rights of access, examination, and copying

The Comptroller General, and any duly authorized representative of the Comptroller General, shall have access to, and the right to examine and copy, all records and other recorded information in any form, and to examine any property, within the possession or control of any agency or person which is subject to audit under this section which the Comptroller General deems relevant to an audit conducted under this section.

(4) Enforcement of right of access

The Comptroller General's right of access to information under this section shall be enforceable pursuant to section 716 of title 31.

(5) Maintenance of confidential records

The provisions of section 716(e) of title 31 shall apply to information obtained by the Comptroller General under this section.

(Pub. L. 101–73, title XII, § 1213, Aug. 9, 1989, 103 Stat. 528.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(1), (b), and (c)(2), is Pub. L. 101–73, Aug. 9, 1989, 103 Stat. 183, known as the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1811 of this title and Tables.

CODIFICATION

Section was enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

§ 1833d. Repealed. Pub. L. 102–242, title I, § 121(b), Dec. 19, 1991, 105 Stat. 2251

Section, Pub. L. 101–73, title XII, § 1215, Aug. 9, 1989, 103 Stat. 529, related to establishment of uniform capital and accounting standards for federally-insured depository institutions. See section 1831n of this title.

§ 1833e. Equal opportunity

(a) In general

For purposes of this Act, Executive Order Numbered 11478, providing for equal employment opportunity in the Federal Government, shall apply to—

(1) the Comptroller of the Currency;

(2) the Director of the Office of Thrift Supervision;

(3) the Federal Housing Finance Agency;

(4) the Federal Deposit Insurance Corporation;

(5) the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation; and

(6) the Resolution Trust Corporation.

(b) Affirmative program for equal employment opportunity

For purposes of this Act, sections 1 and 2 of Executive Order Numbered 11478, providing for the adoption and implementation of equal employment opportunity, shall apply to the Federal Home Loan Banks, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(c) Solicitation of contracts

The Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Housing Finance Agency, the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation shall each prescribe regulations to establish and oversee a minority outreach program within each such agency to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the agency with such persons or entities, public and private, in order to manage the institutions and their assets for which the agency is responsible or to perform such other functions authorized under any law applicable to such agency.

(d) Report to Congress

Before the end of the 180-day period beginning on August 9, 1989—

(1) the Federal Deposit Insurance Corporation;

(2) the Comptroller of the Currency;

(3) the Director of the Office of Thrift Supervision;

(4) the Federal Housing Finance Board;

(5) the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation;

(6) the Resolution Trust Corporation;

(7) the Federal Home Loan Mortgage Corporation; and

(8) the Federal National Mortgage Association,

shall each submit to the Congress a report containing a complete description of the actions taken by such agency pursuant to subsections (a) and (b) of this section and such recommendations for administrative and legislative action as each such agency may determine to be appropriate to carry out the purposes of such subsection.

(Pub. L. 101–73, title XII, § 1216, Aug. 9, 1989, 103 Stat. 529; Pub. L. 102–233, title III, § 302(a), Dec. 12, 1991, 105 Stat. 1767; Pub. L. 110–289, div. A, title II, § 1216(g), July 30, 2008, 122 Stat. 2793; Pub. L. 111–203, title III, § 367(9), July 21, 2010, 124 Stat. 1557.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 367(9), July 21, 2010, 124 Stat. 1546, 1557, provided that, effective on the transfer date, this section is amended:

(1) in subsection (a)—

(A) in paragraph (3), by inserting ''and'' at the end;

(B) in paragraph (4), by substituting a period for the semicolon at the end;

(C) by striking out paragraphs (2), (5), and (6); and

(D) by redesignating paragraphs (3) and (4), as (2) and (3), respectively;

(2) in subsection (c)—

(A) by substituting ''and'' for ''the Director of the Office of Thrift Supervision,''; and

(B) by striking out ''the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation''; and

(3) in subsection (d)—

(A) by striking out paragraphs (3), (5), and (6); and

(B) by redesignating paragraphs (4), (7), and (8) as (3) to (5), respectively.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b), is Pub. L. 101–73, Aug. 9, 1989, 103 Stat. 183, known as the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1811 of this title and Tables.

Executive Order Numbered 11478, referred to in subsecs. (a) and (b), is set out as a note under section 2000e of Title 42, The Public Health and Welfare.

CODIFICATION

Section was enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989,

and not as part of the Federal Deposit Insurance Act which comprises this chapter.

Pub. L. 110–289, div. A, title II, §1216(g), which directed amendment of section 1216 of the ''Financial Institutions Reform, Recovery, and Enhancement Act of 1989'', was executed to this section, which is section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, to reflect the probable intent of Congress. See 2008 Amendment notes below.

AMENDMENTS

2008—Subsec. (a)(3). Pub. L. 110–289, §1216(g)(1), added par. (3) and struck out former par. (3) which read as follows: ''the Federal home loan banks;''. See Codification note above.

Subsec. (b). Pub. L. 110–289, §1216(g)(2), substituted ''Federal Home Loan Banks, the Federal National Mortgage Association,'' for ''Federal National Mortgage Association''. See Codification note above.

Subsec. (c). Pub. L. 110–289, §1216(g)(3), substituted ''Finance Agency'' for ''Finance Board''. See Codification note above.

CHANGE OF NAME

Oversight Board redesignated Thrift Depositor Protection Oversight Board, effective Feb. 1, 1992, see section 302(a) of Pub. L. 102–233, set out as a note under section 1441a of this title. Thrift Depositor Protection Oversight Board abolished, see section 14(a)–(d) of Pub. L. 105–216, set out as a note under section 1441a of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

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

§ 1834. Reduced assessment rate for deposits attributable to lifeline accounts

(a) Qualification of lifeline accounts by Federal Reserve Board

(1) In general

The Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall establish minimum requirements for accounts providing basic transaction services for consumers at insured depository institutions in order for such accounts to qualify as lifeline accounts for purposes of this section and section 1817(b)(2)(H)[1] of this title.

(2) Factors to be considered

In determining the minimum requirements under paragraph (1) for lifeline accounts at insured depository institutions, the Corporation shall consider the following factors:

(A) Whether the account is available to provide basic transaction services for individuals who maintain a balance of less than $1,000 or such other amount which the Board may determine to be appropriate.

(B) Whether any service charges or fees to which the account is subject, if any, for routine transactions do not exceed a minimal amount.

(C) Whether any minimum balance or minimum opening requirement to which the account is subject, if any, is not more than a minimal amount.

(D) Whether checks, negotiable orders of withdrawal, or similar instruments for making payments or other transfers to third parties may be drawn on the account.

(E) Whether the depositor is permitted to make more than a minimal number of withdrawals from the account each month by any means described in subparagraph (D) or any other means.

(F) Whether a monthly statement itemizing all transactions for the monthly reporting period is made available to the depositor with respect to such account or a passbook is provided in which all transactions with respect to such account are recorded.

(G) Whether depositors are permitted access to tellers at the institution for conducting transactions with respect to such account.

(H) Whether other account relationships with the institution are required in order to open any such account.

(I) Whether individuals are required to meet any prerequisite which discriminates against low-income individuals in order to open such account.

(J) Such other factors as the Corporation may determine to be appropriate.

(3) Definitions

For purposes of this subsection—

(A) Corporation

The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(B) Insured depository institution

The term ''insured depository institution'' has the meaning given to such term in section 1813(c)(2) of this title.

(C) Lifeline account

The term ''lifeline account'' means any transaction account (as defined in section 461(b)(1)(C) of this title) which meets the minimum requirements established by the Corporation under this subsection.

(b) Omitted

(c) Availability of funds

The provisions of this section shall not take effect until appropriations are specifically provided in advance. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 102–242, title II, §232, Dec. 19, 1991, 105 Stat. 2308; Pub. L. 102–550, title XVI, §§1604(b)(1), 1605(a)(3), Oct. 28, 1992, 106 Stat. 4083, 4085; Pub. L. 102–558, title III, §§303(b)(1), (4), 305, Oct. 28, 1992, 106 Stat. 4224–4226; Pub. L. 104–208, div. A, title II, §2704(d)(16), Sept. 30, 1996, 110 Stat. 3009–495; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §3(a)(9), Feb. 15, 2006, 119 Stat. 3606; Pub. L. 111–203, title III, §353, July 21, 2010, 124 Stat. 1546.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 111–203, title III, §§351, 353, July 21, 2010, 124 Stat. 1546, provided that, effective on the transfer date, subsection (a) of this section is amended:

(1) in the heading, by striking out ''by Federal Reserve Board'';

(2) in paragraph (1)—

[1] See References in Text note below.

(A) by substituting ''The Comptroller of the Currency'' for ''The Board of Governors of the Federal Reserve System,''; and

(B) by substituting ''section 1817(b)(2)(E)'' for ''section 1817(b)(2)(H)'';

(3) in paragraph (2)(A), by substituting ''Comptroller'' for ''Board''; and

(4) in paragraph (3)—

(A) by redesignating subparagraphs (A) to (C) as (B) to (D), respectively; and

(B) by adding before subparagraph (B) the following:

(A) Comptroller

The term ''Comptroller'' means the Comptroller of the Currency.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 1817(b)(2)(H) of this title, referred to in subsec. (a)(1), was redesignated section 1817(b)(2)(E) by Pub. L. 109–173, §3(a)(3)(C), Feb. 15, 2006, 119 Stat. 3605.

CODIFICATION

Section was enacted as part of the Bank Enterprise Act of 1991, and also as part of the Foreign Bank Supervision Enhancement Act of 1991 and as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

Section is comprised of section 232 of Pub. L. 102–242. Subsec. (b) of section 232 of Pub. L. 102–242 amended section 1817 of this title.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(16). See 1996 Amendment note below.

Subsec. (a)(2). Pub. L. 109–173, §3(a)(9)(A), struck out ''the Board and'' before ''the Corporation'' in introductory provisions.

Subsec. (a)(2)(J). Pub. L. 109–173, §3(a)(9)(B), substituted ''the Corporation'' for ''the Board''.

Subsec. (a)(3)(A). Pub. L. 109–173, §3(a)(9)(C), added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: ''The term 'Board' means the Board of Governors of the Federal Reserve System.''

Subsec. (a)(3)(C). Pub. L. 109–173, §3(a)(9)(D), substituted ''Corporation'' for ''Board''.

1996—Subsec. (a)(1). Pub. L. 104–208, §2704(d)(16), which directed substitution of ''section 1817(b)(2)(G) of this title'' for ''section 1817(b)(2)(H) of this title'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below.

1992—Subsec. (a)(1). Pub. L. 102–558, §303(b)(4), substituted ''section 1817(b)(2)(H)'' for ''section 1817(b)(10)''. Pub. L. 102–550, §1605(a)(3), which made an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (b). Pub. L. 102–558, §303(b)(1), made technical correction to directory language of subsec. (b)(1). See Codification note above. Pub. L. 102–550, §1604(b)(1), which made a similar amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Jan. 1, 2007, see section 3(b) of Pub. L. 109–173, set out as a note under section 1817 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Section 303(b)(4) of Pub. L. 102–558 provided that the amendment made by that section is effective on the effective date of the amendment made by section 302(a) of Pub. L. 102–242 [see section 302(g) of Pub. L. 102–242, set out as a note under section 1817 of this title].

Section 1605(a)(3) of Pub. L. 102–550, which provided effective date provisions for the amendment made by that section, was repealed, effective Oct. 28, 1992, by section 305 of Pub. L. 102–558, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

§ 1834a. Assessment credits for qualifying activities relating to distressed communities

(a) Determination of credits for increases in community enterprise activities

(1) In general

The Community Enterprise Assessment Credit Board established under subsection (d) of this section shall issue guidelines for insured depository institutions eligible under this subsection for any community enterprise assessment credit with respect to any semiannual period. Such guidelines shall—

(A) designate the eligibility requirements for any institution meeting applicable capital standards to receive an assessment credit under section 1817(b)(7) of this title; and

(B) determine the community enterprise assessment credit available to any eligible institution under paragraph (3).

(2) Qualifying activities

An insured depository institution may apply for for[1] any community enterprise assessment credit for any semiannual period for—

(A) the amount, during such period, of new originations of qualified loans and other assistance provided for low- and moderate-income persons in distressed communities, or enterprises integrally involved with such neighborhoods, which the Board determines are qualified to be taken into account for purposes of this subsection;

(B) the amount, during such period, of deposits accepted from persons domiciled in the distressed community, at any office of the institution (including any branch) located in any qualified distressed community, and new originations of any loans and other financial assistance made within that community, except that in no case shall the credit for deposits at any institution or branch exceed the credit for loans and other financial assistance by the bank or branch in the distressed community; and

(C) any increase during the period in the amount of new equity investments in community development financial institutions.

[1] So in original.

(3) Amount of assessment credit

The amount of any community enterprise assessment credit available under section 1817(b)(7) of this title for any insured depository institution, or a qualified portion thereof, shall be the amount which is equal to 5 percent, in the case of an institution which does not meet the community development organization requirements under section 1834b of this title, and 15 percent, in the case of an institution, or a qualified portion thereof, which meets such requirements (or any percentage designated under paragraph (5)) of—

(A) for the first full semiannual period in which community enterprise assessment credits are available, the sum of—

(i) the amounts of assets described in paragraph (2)(A); and

(ii) the amounts of deposits, loans, and other financial assistance described in paragraph (2)(B); and

(B) for any subsequent semiannual period, the sum of—

(i) any increase during such period in the amount of assets described in paragraph (2)(A) that has been deemed eligible for credit by the Board; and

(ii) any increase during such period in the amounts of deposits, loans, and other financial assistance described in paragraph (2)(B) that has been deemed eligible for credit by the Board.

(4) Determination of qualified loans and other financial assistance

Except as provided in paragraph (6), the types of loans and other assistance which the Board may determine to be qualified to be taken into account under paragraph (2)(A) for purposes of the community enterprise assessment credit, may include the following:

(A) Loans insured or guaranteed by the Secretary of Housing and Urban Development, the Secretary of the Department of Veterans Affairs, the Administrator of the Small Business Administration, and the Secretary of Agriculture.

(B) Loans or financing provided in connection with activities assisted by the Administrator of the Small Business Administration or any small business investment company and investments in small business investment companies.

(C) Loans or financing provided in connection with any neighborhood housing service program assisted under the Neighborhood Reinvestment Corporation Act [42 U.S.C. 8101 et seq.].

(D) Loans or financing provided in connection with any activities assisted under the community development block grant program under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(E) Loans or financing provided in connection with activities assisted under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.].

(F) Loans or financing provided in connection with a homeownership program assisted under title III of the United States Housing Act of 1937 [42 U.S.C. 1437aaa et seq.] or subtitle B or C of title IV of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12871 et seq., 12891 et seq.].

(G) Financial assistance provided through community development corporations.

(H) Federal and State programs providing interest rate assistance for homeowners.

(I) Extensions of credit to nonprofit developers or purchasers of low-income housing and small business developments.

(J) In the case of members of any Federal home loan bank, participation in the community investment fund program established by the Federal home loan banks.

(K) Conventional mortgages targeted to low- or moderate-income persons.

(L) Loans made for the purpose of developing or supporting—

(i) commercial facilities that enhance revitalization, community stability, or job creation and retention efforts;

(ii) business creation and expansion efforts that—

(I) create or retain jobs for low-income people;

(II) enhance the availability of products and services to low-income people; or

(III) create or retain businesses owned by low-income people or residents of a targeted area;

(iii) community facilities that provide benefits to low-income people or enhance community stability;

(iv) home ownership opportunities that are affordable to low-income households;

(v) rental housing that is principally affordable to low-income households; and

(vi) other activities deemed appropriate by the Board.

(M) The provision of technical assistance to residents of qualified distressed communities in managing their personal finances through consumer education programs either sponsored or offered by insured depository institutions.

(N) The provision of technical assistance and consulting services to newly formed small businesses located in qualified distressed communities.

(O) The provision of technical assistance to, or servicing the loans of low- or moderate-income homeowners and homeowners located in qualified distressed communities.

(5) Adjustment of percentage

The Board may increase or decrease the percentage referred to in paragraph (3)(A) for determining the amount of any community enterprise assessment credit pursuant to such paragraph, except that the percentage established for insured depository institutions which meet the community development organization requirements under section 1834b of this title shall not be less than 3 times the amount of the percentage applicable for insured depository institutions which do not meet such requirements.

(6) Certain investments not eligible to be taken into account

Loans, financial assistance, and equity investments made by any insured depository institution that are not the result of originations by the institution shall not be taken into account for purposes of determining the amount of any credit pursuant to this subsection.

(7) Quantitative analysis of technical assistance

The Board may establish guidelines for analyzing the technical assistance described in subparagraphs (M), (N), and (O) of paragraph (4) for the purpose of quantifying the results of such assistance in determining the amount of any community assessment credit under this subsection.

(b) "Qualified distressed community" defined

(1) In general

For purposes of this section, the term ''qualified distressed community'' means any neighborhood or community which—

(A) meets the minimum area requirements under paragraph (3) and the eligibility requirements of paragraph (4); and

(B) is designated as a distressed community by any insured depository institution in accordance with paragraph (2) and such designation is not disapproved under such paragraph.

(2) Designation requirements

(A) Notice of designation

(i) Notice to agency

Upon designating an area as a qualified distressed community, an insured depository institution shall notify the appropriate Federal banking agency of the designation.

(ii) Public notice

Upon the effective date of any designation of an area as a qualified distressed community, an insured depository institution shall publish a notice of such designation in major newspapers and other community publications which serve such area.

(B) Agency duties relating to designations

(i) Providing information

At the request of any insured depository institution, the appropriate Federal banking agency shall provide to the institution appropriate information to assist the institution to identify and designate a qualified distressed community.

(ii) Period for disapproval

Any notice received by the appropriate Federal banking agency from any insured depository institution under subparagraph (A)(i) shall take effect at the end of the 90-day period beginning on the date such notice is received unless written notice of the approval or disapproval of the application by the agency is provided to the institution before the end of such period.

(3) Minimum area requirements

For purposes of this subsection, an area meets the requirements of this paragraph if—

(A) the area is within the jurisdiction of 1 unit of general local government;

(B) the boundary of the area is contiguous; and

(C) the area—

(i) has a population, as determined by the most recent census data available, of not less than—

(I) 4,000, if any portion of such area is located within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) with a population of 50,000 or more; or

(II) 1,000, in any other case; or

(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

(4) Eligibility requirements

For purposes of this subsection, an area meets the requirements of this paragraph if the following criteria are met:

(A) At least 30 percent of the residents residing in the area have incomes which are less than the national poverty level.

(B) The unemployment rate for the area is 1½ times greater than the national average (as determined by the Bureau of Labor Statistics' most recent figures).

(C) Such additional eligibility requirements as the Board may, in its discretion, deem necessary to carry out the provisions of this subtitle.

(c) Omitted

(d) Community Enterprise Assessment Credit Board

(1) Establishment

There is hereby established the ''Community Enterprise Assessment Credit Board''.

(2) Number and appointment

The Board shall be composed of 5 members as follows:

(A) The Secretary of the Treasury or a designee of the Secretary.

(B) The Secretary of Housing and Urban Development or a designee of the Secretary.

(C) The Chairperson of the Federal Deposit Insurance Corporation or a designee of the Chairperson.

(D) 2 individuals appointed by the President from among individuals who represent community organizations.

(3) Terms

(A) Appointed members

Each appointed member shall be appointed for a term of 5 years.

(B) Interim appointment

Any member appointed to fill a vacancy occurring before the expiration of the term to which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(C) Continuation of service

Each appointed member may continue to serve after the expiration of the period to

which such member was appointed until a successor has been appointed.

(4) Chairperson

The Secretary of the Treasury shall serve as the Chairperson of the Board.

(5) No pay

No members of the Commission may receive any pay for service on the Board.

(6) Travel expenses

Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(7) Meetings

The Board shall meet at the call of the Chairperson or a majority of the Board's members.

(e) Duties of Board

(1) Procedure for determining community enterprise assessment credits

The Board shall establish procedures for accepting and considering applications by insured depository institutions under subsection (a)(1) of this section for community enterprise assessment credits and making determinations with respect to such applications.

(2) Notice to FDIC

The Board shall notify the applicant and the Federal Deposit Insurance Corporation of any determination of the Board with respect to any application referred to in paragraph (1) in sufficient time for the Corporation to include the amount of such credit in the computation of the semiannual assessment to which such credit is applicable.

(f) Availability of funds

The provisions of this section shall not take effect until appropriations are specifically provided in advance. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(g) Prohibition on double funding for same activities

No community development financial institution may receive a community enterprise assessment credit if such institution, either directly or through a community partnership—

(1) has received assistance within the preceding 12-month period, or has an application for assistance pending, under section 4704 of this title; or

(2) has ever received assistance, under section 4707 of this title, for the same activity during the same semiannual period for which the institution seeks a community enterprise assessment credit under this section.

(h) Priority of awards

(1) Qualifying loans and services

(A) In general

If the amount of funds appropriated for purposes of carrying out this section for any fiscal year are insufficient to award the amount of assessment credits for which insured depository institutions have applied and are eligible under this section, the Board shall, in awarding community enterprise assessment credits for qualifying activities under subparagraphs (A) and (B) of subsection (a)(2) of this section for any semiannual period for which such appropriation is available, determine which institutions shall receive an award.

(B) Priority for support of efforts of CDFI

The Board shall give priority to institutions that have supported the efforts of community development financial institutions in the qualified distressed community.

(C) Other factors

The Board may also consider the following factors:

(i) Degree of difficulty

The degree of difficulty in carrying out the activities that form the basis for the institution's application.

(ii) Community impact

The extent to which the activities that form the basis for the institution's application have benefited the qualified distressed community.

(iii) Innovation

The degree to which the activities that form the basis for the institution's application have incorporated innovative methods for meeting community needs.

(iv) Leverage

The leverage ratio between the dollar amount of the activities that form the basis for the institution's application and the amount of the assessment credit calculated in accordance with this section for such activities.

(v) Size

The amount of total assets of the institution.

(vi) New entry

Whether the institution had provided financial services in the designated distressed community before such semiannual period.

(vii) Need for subsidy

The degree to which the qualified activity which forms the basis for the application needs enhancement through an assessment credit.

(viii) Extent of distress in community

The degree of poverty and unemployment in the designated distressed community, the proportion of the total population of the community which are low-income families and unrelated individuals, and the extent of other adverse economic conditions in such community.

(2) Qualifying investments

If the amount of funds appropriated for purposes of carrying out this section for any fiscal year are insufficient to award the amount of assessment credits for which insured depository institutions have applied and are eligible

under this section, the Board shall, in awarding community enterprise assessment credits for qualifying activities under subsection (a)(2)(C) of this section for any semiannual period for which such appropriation is available, determine which institutions shall receive an award based on the leverage ratio between the dollar amount of the activities that form the basis for the institution's application and the amount of the assessment credit calculated in accordance with this section for such activities.

(i) Determination of amount of assessment credit

Notwithstanding any other provision of this section, the determination of the amount of any community enterprise assessment credit under subsection (a)(3) of this section for any insured depository institution for any semiannual period shall be made solely at the discretion of the Board. No insured depository institution shall be awarded community enterprise assessment credits for any semiannual period in excess of an amount determined by the Board.

(j) Definitions

For purposes of this section—

(1) Appropriate Federal banking agency

The term ''appropriate Federal banking agency'' has the meaning given to such term in section 1813(q) of this title.

(2) Board

The term ''Board'' means the Community Enterprise Assessment Credit Board established under the amendment made[2] by subsection (d) of this section.

(3) Insured depository institution

The term ''insured depository institution'' has the meaning given to such term in section 1813(c)(2) of this title.

(4) Community development financial institution

The term ''community development financial institution'' has the same meaning as in section 4702(5) of this title.

(5) Affiliate

The term ''affiliate'' has the same meaning as in section 1841 of this title.

(Pub. L. 102–242, title II, §233, Dec. 19, 1991, 105 Stat. 2311; Pub. L. 102–550, title IX, §931(c)–(e), title XVI, §§1604(b)(2), 1605(a)(7), Oct. 28, 1992, 106 Stat. 3888, 3889, 4083, 4086; Pub. L. 102–558, title III, §§303(b)(2), (9), 305, Oct. 28, 1992, 106 Stat. 4224, 4226; Pub. L. 103–325, title I, §114(c), Sept. 23, 1994, 108 Stat. 2181.)

REFERENCES IN TEXT

The Neighborhood Reinvestment Corporation Act, referred to in subsec. (a)(4)(C), is title VI of Pub. L. 95–557, Oct. 31, 1978, 92 Stat. 2115, which is classified to subchapter I (§8101 et seq.) of chapter 90 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 601 of Pub. L. 95–557, set out as a Short Title note under section 8101 of Title 42 and Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (a)(4)(D), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Act is classified principally to chapter 69 (§5301 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (a)(4)(E), (F), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, also known as the ''HOME Investment Partnerships Act'', is classified principally to subchapter II (§12721 et seq.) of chapter 130 of Title 42. Subtitles B and C of title IV of the Act are classified respectively to parts A (§12871 et seq.) and B (§12891 et seq.) of subchapter IV of chapter 130 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

The United States Housing Act of 1937, referred to in subsec. (a)(4)(F), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653. Title III of the Act is classified generally to subchapter II–A (§1437aaa et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

This subtitle, referred to in subsec. (b)(4)(C), is subtitle C (§§231–234) of title II of Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2308, known as the Bank Enterprise Act of 1991, which enacted this section and sections 1834 and 1834b of this title, amended section 1817 of this title, and enacted provisions set out as a note under section 1811 of this title. For complete classification of subtitle C to the Code, see section 231 of Pub. L. 102–242, set out as a Short Title of 1991 Amendment note under section 1811 of this title and Tables.

CODIFICATION

Section was enacted as part of the Bank Enterprise Act of 1991, and also as part of the Foreign Bank Supervision Enhancement Act of 1991 and as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

Section is comprised of section 233 of Pub. L. 102–242. Subsec. (c) of section 233 of Pub. L. 102–242 amended section 1817 of this title.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–325, §114(c)(1)(A), substituted ''may apply for'' for ''shall be eligible'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 103–325, §114(c)(1)(B), substituted ''assistance'' for ''financial assistance''.

Subsec. (a)(2)(C). Pub. L. 103–325, §114(c)(1)(C) to (E), added subpar. (C).

Subsec. (a)(4). Pub. L. 103–325, §114(c)(2)(A), struck out ''financial'' before ''assistance'' in introductory provisions.

Subsec. (a)(4)(L) to (O). Pub. L. 103–325, §114(c)(2)(B), added subpars. (L) to (O).

Subsec. (a)(5). Pub. L. 103–325, §114(c)(3), substituted ''paragraph (3)(A)'' for ''paragraph (3)''.

Subsec. (a)(6). Pub. L. 103–325, §114(c)(4), substituted ''Loans, financial assistance, and equity investments made by any insured depository institution'' for ''Investments by any insured depository institution in loans and securities''.

Subsec. (a)(7). Pub. L. 103–325, §114(c)(5), added par. (7).

Subsec. (g). Pub. L. 103–325, §114(c)(6), added subsec. (g) and redesignated former subsec. (g) as (j).

Subsecs. (h), (i). Pub. L. 103–325, §114(c)(7), added subsecs. (h) and (i).

Subsec. (j). Pub. L. 103–325, §114(c)(6)(A), redesignated subsec. (g) as (j).

Subsec. (j)(4), (5). Pub. L. 103–325, §114(a)(8), added pars. (4) and (5).

1992—Subsec. (a)(1)(A). Pub. L. 102–558, §303(b)(9)(A), substituted ''section 1817(b)(7)'' for ''section 1817(d)(4)''. Pub. L. 102–550, §1605(a)(7)(A), which contained an iden-

[2] So in original. The words ''under the amendment made'' probably should not appear.

tical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (a)(2). Pub. L. 102–550, §931(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''An insured depository institution shall be eligible for any community enterprise assessment credit for any semiannual period for—

''(A) any increase during such period in the amount of new originations of qualified loans and other financial assistance provided for low- and moderate-income persons in distressed communities, or enterprises integrally involved with such neighborhoods, which the Board determines are qualified to be taken into account for purposes of this subsection; and

''(B) any increase during such period in the amount of deposits accepted from persons domiciled in the distressed community, at any office of the institution (including any branch) located in any qualified distressed community, and any increase during such period in the amount of new originations of loans and other financial assistance made within that community, except that in no case shall the credit for increased deposits at any institution or branch exceed the credit for increased loan and other financial assistance by the bank or branch in the distressed community.''

Subsec. (a)(3). Pub. L. 102–558, §303(b)(9)(B), substituted ''section 1817(b)(7)'' for ''section 1817(d)(4)''. Pub. L. 102–550, §1605(a)(7)(B), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Pub. L. 102–558, §303(b)(2), which directed technical amendment to reference to section 1834b of this title to correct reference to corresponding section of original act, could not be executed because of prior general amendment by Pub. L. 102–550, §931(d). See below. Pub. L. 102–550, §1604(b)(2), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Pub. L. 102–550, §931(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The amount of any community enterprise assessment credit available under section 1817(d)(4) of this title for any insured depository institution, or a qualified portion thereof, for any semiannual period shall be the amount which is equal to 5 percent, in the case of an institution which does not meet the community development organization requirements under section 1834b of this title, and 15 percent, in the case of an institution, or a qualified portion thereof, which meets such requirements (or any percentage designated under paragraph (5)) of the sum of—

''(A) the amounts of assets described in paragraph (2)(A); and

''(B) the amounts of deposits, loans, and other extensions of credit described in paragraph (2)(B).''

Subsec. (a)(5). Pub. L. 102–558, §303(b)(2), made technical amendment to reference to section 1834b of this title to correct reference to corresponding section of original act. Pub. L. 102–550, §1604(b)(2), which made identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (b)(4). Pub. L. 102–550, §931(e), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''For purposes of this subsection, an area meets the requirements of this paragraph if at least 2 of the following criteria are met:

''(A) INCOME.—At least 70 percent of the families and unrelated individuals residing in the area have incomes of less than 80 percent of the median income of the area.

''(B) POVERTY.—At least 20 percent of the residents residing in the area have incomes which are less than the national poverty level (as determined pursuant to criteria established by the Director of the Office of Management and Budget).

''(C) UNEMPLOYMENT.—The unemployment rate for the area is one and one-half times greater than the national average (as determined by the Bureau of Labor Statistic's most recent figures).''

Subsec. (e)(2). Pub. L. 102–558, §303(b)(9)(C), substituted ''of the semiannual assessment to which such credit is applicable'' for ''made for purposes of the notification required under section 1817(d)(1)(B) of this title''. Pub. L. 102–550, §1605(a)(7)(C), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 303(b)(2) of Pub. L. 102–558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102–558, set out as a note under section 2062 of Title 50, Appendix, War and National Defense.

Section 303(b)(9) of Pub. L. 102–558 provided that the amendment made by that section is effective on the effective date of the amendment made by section 302(e)(4) of Pub. L. 102–242 [see section 302(g) of Pub. L. 102–242, set out as a note under section 1817 of this title].

Section 1605(a)(7) of Pub. L. 102–550, which provided effective date provisions for the amendment made by that section, was repealed, effective Oct. 28, 1992, by section 305 of Pub. L. 102–558, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

§ 1834b. Community development organizations

(a) Community development organizations described

For purposes of this subtitle, any insured depository institution, or a qualified portion thereof, shall be treated as meeting the community development organization requirements of this section if—

(1) the institution—

(A) is a community development bank, or controls any community development bank, which meets the requirements of subsection (b) of this section;

(B) controls any community development corporation, or maintains any community development unit within the institution, which meets the requirements of subsection (c) of this section;

(C) invests in accounts in any community development credit union designated as a low-income credit union, subject to restrictions established for such credit unions by the National Credit Union Administration Board; or

(D) invests in a community development organization jointly controlled by two or more institutions;

(2) except in the case of an institution which is a community development bank, the amount of the capital invested, in the form of debt or equity, by the institution in the community development organization referred to in paragraph (1) (or, in the case of any community development unit, the amount which the institution irrevocably makes available to such unit for the purposes described in paragraph (3)) is not less than the greater of—

(A) ½ of 1 percent of the capital, as defined by generally accepted accounting principles, of the institution; or

(B) the sum of the amounts invested in such community development organization; and

(3) the community development organization provides loans for residential mortgages, home improvement, and community development and other financial services, other than financing for the purchase of automobiles or extension of credit under any open-end credit plan (as defined in section 1602(i) of title 15), to low- and moderate-income persons, nonprofit organizations, and small businesses located in qualified distressed communities in a manner consistent with the intent of this subtitle.

(b) Community development bank requirements

A community development bank meets the requirements of this subsection if—

(1) the community development bank has a 15-member advisory board designated as the ''Community Investment Board'' and consisting entirely of community leaders who—

(A) shall be appointed initially by the board of directors of the community development bank and thereafter by the Community Investment Board from nominations received from the community; and

(B) are appointed for a single term of 2 years, except that, of the initial members appointed to the Community Investment Board, ⅓ shall be appointed for a term of 8 months, ⅓ shall be appointed for a term of 16 months, and ⅓ shall be appointed for a term of 24 months, as designated by the board of directors of the community development bank at the time of the appointment;

(2) ⅓ of the members of the community development bank's board of directors are appointed from among individuals nominated by the Community Investment Board; and

(3) the bylaws of the community development bank require that the board of directors of the bank meet with the Community Investment Board at least once every 3 months.

(c) Community development corporation requirements

Any community development corporation, or community development unit within any insured depository institution meets the requirements of this subsection if the corporation or unit provides the same or greater, as determined by the appropriate Federal banking agency, community participation in the activities of such corporation or unit as would be provided by a Community Investment Board under subsection (b) of this section if such corporation or unit were a community development bank.

(d) Adequate dispersal requirement

The appropriate Federal banking agency may approve the establishment of a community development organization under this subtitle only upon finding that the distressed community is not adequately served by an existing community development organization.

(e) Definitions

For purposes of this section—

(1) Community development bank

The term ''community development bank'' means any depository institution (as defined in section 1813(c)(1) of this title).

(2) Community development organization

The term ''community development organization'' means any community development bank, community development corporation, community development unit within any insured depository institution, or community development credit union.

(3) Low- and moderate-income persons

The term ''low- and moderate-income persons'' has the meaning given such term in section 5302(a)(20) of title 42.

(4) Nonprofit organization; small business

The terms ''nonprofit organization'' and ''small business'' have the meanings given to such terms by regulations which the appropriate Federal banking agency shall prescribe for purposes of this section.

(5) Qualified distressed community

The term ''qualified distressed community'' has the meaning given to such term in section 1834a(b) of this title.

(Pub. L. 102–242, title II, § 234, Dec. 19, 1991, 105 Stat. 2315.)

REFERENCES IN TEXT

This subtitle, referred to in subsecs. (a) and (d), is subtitle C (§§ 231–234) of title II of Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2308, known as the Bank Enterprise Act of 1991, which enacted this section and sections 1834 and 1834a of this title, amended section 1817 of this title, and enacted provisions set out as a note under section 1811 of this title. For complete classification of subtitle C to the Code, see section 231 of Pub. L. 102–242, set out as a Short Title of 1991 Amendment note under section 1811 of this title and Tables.

CODIFICATION

Section was enacted as part of the Bank Enterprise Act of 1991, and also as part of the Foreign Bank Supervision Enhancement Act of 1991 and as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

§ 1835. Insured depository institution capital requirements for transfers of small business obligations

(a) Accounting principles

The accounting principles applicable to the transfer of a small business loan or a lease of personal property with recourse contained in reports or statements required to be filed with Federal banking agencies by a qualified insured depository institution shall be consistent with generally accepted accounting principles.

(b) Capital and reserve requirements

With respect to the transfer of a small business loan or lease of personal property with recourse that is a sale under generally accepted accounting principles, each qualified insured depository institution shall—

(1) establish and maintain a reserve equal to an amount sufficient to meet the reasonable estimated liability of the institution under the recourse arrangement; and

(2) include, for purposes of applicable capital standards and other capital measures, only the amount of the retained recourse in the risk-weighted assets of the institution.

(c) Qualified institutions criteria

An insured depository institution is a qualified insured depository institution for purposes

of this section if, without regard to the accounting principles or capital requirements referred to in subsections (a) and (b) of this section, the institution is—

(1) well capitalized; or

(2) with the approval, by regulation or order, of the appropriate Federal banking agency, adequately capitalized.

(d) Aggregate amount of recourse

The total outstanding amount of recourse retained by a qualified insured depository institution with respect to transfers of small business loans and leases of personal property under subsections (a) and (b) of this section shall not exceed—

(1) 15 percent of the risk-based capital of the institution; or

(2) such greater amount, as established by the appropriate Federal banking agency by regulation or order.

(e) Institutions that cease to be qualified or exceed aggregate limits

If an insured depository institution ceases to be a qualified insured depository institution or exceeds the limits under subsection (d) of this section, this section shall remain applicable to any transfers of small business loans or leases of personal property that occurred during the time that the institution was qualified and did not exceed such limit.

(f) Prompt corrective action not affected

The capital of an insured depository institution shall be computed without regard to this section in determining whether the institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under section 1831*o* of this title.

(g) Regulations required

Not later than 180 days after September 23, 1994, each appropriate Federal banking agency shall promulgate final regulations implementing this section.

(h) Alternative system permitted

(1) In general

At the discretion of the appropriate Federal banking agency, this section shall not apply if the regulations of the agency provide that the aggregate amount of capital and reserves required with respect to the transfer of small business loans and leases of personal property with recourse does not exceed the aggregate amount of capital and reserves that would be required under subsection (b) of this section.

(2) Existing transactions not affected

Notwithstanding paragraph (1), this section shall remain in effect with respect to transfers of small business loans and leases of personal property with recourse by qualified insured depository institutions occurring before the effective date of regulations referred to in paragraph (1).

(i) Definitions

For purposes of this section—

(1) the term ''adequately capitalized'' has the same meaning as in section 1831*o*(b) of this title;

(2) the term ''appropriate Federal banking agency'' has the same meaning as in section 1813 of this title;

(3) the term ''capital standards'' has the same meaning as in section 1831*o*(c) of this title;

(4) the term ''Federal banking agencies'' has the same meaning as in section 1813 of this title;

(5) the term ''insured depository institution'' has the same meaning as in section 1813 of this title;

(6) the term ''other capital measures'' has the meaning as in section 1831*o*(c) of this title;

(7) the term ''recourse'' has the meaning given to such term under generally accepted accounting principles;

(8) the term ''small business'' means a business that meets the criteria for a small business concern established by the Small Business Administration under section 632(a) of title 15; and

(9) the term ''well capitalized'' has the same meaning as in section 1831*o*(b) of this title.

(Pub. L. 103–325, title II, § 208, Sept. 23, 1994, 108 Stat. 2201.)

CODIFICATION

Section was enacted as part of the Small Business Loan Securitization and Secondary Market Enhancement Act of 1994 and as part of the Riegle Community Development and Regulatory Improvement Act of 1994, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

§ 1835a. Prohibition against deposit production offices

(a) Regulations

The appropriate Federal banking agencies shall prescribe uniform regulations effective June 1, 1997, which prohibit any out-of-State bank from using any authority to engage in interstate branching pursuant to this title,[1] or any amendment made by this title[1] to any other provision of law, primarily for the purpose of deposit production.

(b) Guidelines for meeting credit needs

Regulations issued under subsection (a) of this section shall include guidelines to ensure that interstate branches operated by an out-of-State bank in a host State are reasonably helping to meet the credit needs of the communities which the branches serve.

(c) Limitation on out-of-State loans

(1) Limitation

Regulations issued under subsection (a) of this section shall require that, beginning no earlier than 1 year after establishment or acquisition of an interstate branch or branches in a host State by an out-of-State bank, if the appropriate Federal banking agency for the out-of-State bank determines that the bank's level of lending in the host State relative to the deposits from the host State (as reasonably determinable from available information including the agency's sampling of the bank's loan files during an examination or such data

[1] See References in Text note below.

as is otherwise available) is less than half the average of total loans in the host State relative to total deposits from the host State (as determinable from relevant sources) for all banks the home State of which is such State—

(A) the appropriate Federal banking agency for the out-of-State bank shall review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities served by the bank in the host State; and

(B) if the agency determines that the out-of-State bank is not reasonably helping to meet those needs—

(i) the agency may order that an interstate branch or branches of such bank in the host State be closed unless the bank provides reasonable assurances to the satisfaction of the appropriate Federal banking agency that the bank has an acceptable plan that will reasonably help to meet the credit needs of the communities served by the bank in the host State, and

(ii) the out-of-State bank may not open a new interstate branch in the host State unless the bank provides reasonable assurances to the satisfaction of the appropriate Federal banking agency that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(2) Considerations

In making a determination under paragraph (1)(A), the appropriate Federal banking agency shall consider—

(A) whether the interstate branch or branches of the out-of-State bank were formerly part of a failed or failing depository institution;

(B) whether the interstate branch was acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(C) whether the interstate branch or branches of the out-of-State bank have a higher concentration of commercial or credit card lending, trust services, or other specialized activities;

(D) the ratings received by the out-of-State bank under the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.];

(E) economic conditions, including the level of loan demand, within the communities served by the interstate branch or branches of the out-of-State bank; and

(F) the safe and sound operation and condition of the out-of-State bank.

(3) Branch closing procedure

(A) Notice required

Before exercising any authority under paragraph (1)(B)(i), the appropriate Federal banking agency shall issue to the bank a notice of the agency's intention to close an interstate branch or branches and shall schedule a hearing.

(B) Hearing

Section 1818(h) of this title shall apply to any proceeding brought under this paragraph.

(d) Application

This section shall apply with respect to any interstate branch established or acquired in a host State pursuant to this title[2] or any amendment made by this title[2] to any other provision of law.

(e) Definitions

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

(1) Appropriate Federal banking agency, bank, State, and State bank

The terms ''appropriate Federal banking agency'', ''bank'', ''State'', and ''State bank'' have the same meanings as in section 1813 of this title.

(2) Home State

The term ''home State'' means—

(A) in the case of a national bank, the State in which the main office of the bank is located; and

(B) in the case of a State bank, the State by which the bank is chartered.

(3) Host State

The term ''host State'' means a State in which a bank establishes a branch other than the home State of the bank.

(4) Interstate branch

The term ''interstate branch'' means a branch established pursuant to this title[2] or any amendment made by this title[2] to any other provision of law and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 1841(*o*)(7) of this title).

(5) Out-of-State bank

The term ''out-of-State bank'' means, with respect to any State, a bank the home State of which is another State and, for purposes of this section, includes a foreign bank, the home State of which is another State.

(Pub. L. 103–328, title I, §109, Sept. 29, 1994, 108 Stat. 2362; Pub. L. 106–102, title I, §106, Nov. 12, 1999, 113 Stat. 1359.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a), (d), and (e)(4), is title I of Pub. L. 103–328, Sept. 29, 1994, 108 Stat. 2339, which enacted this section and sections 43, 215a–1, and 1831u of this title, amended sections 30, 36, 215, 215a, 215b, 1462a, 1820, 1828, 1831a, 1831r–1, 1841, 1842, 1846, 2906, 3103 to 3105, and 3106a of this title and section 1927 of Title 7, Agriculture, enacted provisions set out as notes under sections 215, 1811, 1828, 3104, 3105, and 3107 of this title and section 1927 of Title 7, and amended provisions set out as a note under section 1811 of this title. For complete classification of this title to the Code, see Tables.

The Community Reinvestment Act of 1977, referred to in subsec. (c)(2)(D), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, as amended, which is classified generally to chapter 30 (§2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

CODIFICATION

Section was enacted as part of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,

[2] See References in Text note below.

and not as part of the Federal Deposit Insurance Act which comprises this chapter.

AMENDMENTS

1999—Subsec. (e)(4). Pub. L. 106–102 inserted before period at end ''and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 1841(*o*)(7) of this title)''.

EFFECTIVE DATE OF 1999 AMENDMENT

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

CHAPTER 17—BANK HOLDING COMPANIES

Sec.
1841. Definitions.
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§ 1841. Definitions

(a)(1) Except as provided in paragraph (5) of this subsection, ''bank holding company'' means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this chapter.

(2) Any company has control over a bank or over any company if—

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company;

(B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(3) For the purposes of any proceeding under paragraph (2)(C) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 per centum of any class of voting securities of a given bank or company does not have control over that bank or company.

(4) In any administrative or judicial proceeding under this chapter, other than a proceeding under paragraph (2)(C) of this subsection, a company may not be held to have had control over any given bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 per centum or more of any class of voting securities of the bank or company, or had already been found to have control in a proceeding under paragraph (2)(C).

(5) Notwithstanding any other provision of this subsection—

(A) No bank and no company owning or controlling voting shares of a bank is a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (g) of this section. For the purpose of the preceding sentence, bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; except that this limitation is applicable in the case of a bank or company acquiring such shares prior to December 31, 1970, only if the bank or company has the right consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship to divest itself of such voting rights and fails to exercise that right to divest within a reasonable period not to exceed one year after December 31, 1970.

(B) No company is a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis.

(C) No company formed for the sole purpose of participating in a proxy solicitation is a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation.

(D) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The Board is authorized upon application by a company to extend, from time to time for not more than one year at a time, the two-year period referred to herein for disposing of any shares acquired by a company in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.

(E) No company is a bank holding company by virtue of its ownership or control of any State-chartered bank or trust company which—

(i) is wholly owned by 1 or more thrift institutions or savings banks; and

(ii) is restricted to accepting—

(I) deposits from thrift institutions or savings banks;

(II) deposits arising out of the corporate business of the thrift institutions or savings banks that own the bank or trust company; or

(III) deposits of public moneys.

(F) No trust company or mutual savings bank which is an insured bank under the Fed-

eral Deposit Insurance Act [12 U.S.C. 1811 et seq.] is a bank holding company by virtue of its direct or indirect ownership or control of one bank located in the same State, if (i) such ownership or control existed on December 31, 1970, and is specifically authorized by applicable State law, and (ii) the trust company or mutual savings bank does not after that date acquire an interest in any company that, together with any other interest it holds in that company, will exceed 5 per centum of any class of the voting shares of that company, except that this limitation shall not be applicable to investments of the trust company or mutual savings bank, direct and indirect, which are otherwise in accordance with the limitations applicable to national banks under section 24 of this title.

(6) For the purposes of this chapter, any successor to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor company became a bank holding company.

(b) ''Company'' means any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust but shall not include any corporation the majority of the shares of which are owned by the United States or by any State, and shall not include a qualified family partnership. ''Company covered in 1970'' means a company which becomes a bank holding company as a result of the enactment of the Bank Holding Company Act Amendments of 1970 and which would have been a bank holding company on June 30, 1968, if those amendments had been enacted on that date.

(c) BANK DEFINED.—For purposes of this chapter—

(1) IN GENERAL.—Except as provided in paragraph (2), the term ''bank'' means any of the following:

(A) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act [12 U.S.C. 1813(h)].

(B) An institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands which both—

(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

(ii) is engaged in the business of making commercial loans.

(2) EXCEPTIONS.—The term ''bank'' does not include any of the following:

(A) A foreign bank which would be a bank within the meaning of paragraph (1) solely because such bank has an insured or uninsured branch in the United States.

(B) An insured institution (as defined in subsection (j) of this section).

(C) An organization that does not do business in the United States except as an incident to its activities outside the United States.

(D) An institution that functions solely in a trust or fiduciary capacity, if—

(i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

(ii) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

(iii) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

(iv) such institution does not—

(I) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act [12 U.S.C. 248a]; or

(II) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act [12 U.S.C. 461(b)(7)].

(E) A credit union (as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)(iv)]).

(F) An institution, including an institution that accepts collateral for extensions of credit by holding deposits under $100,000, and by other means which—

(i) engages only in credit card operations;

(ii) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;

(iii) does not accept any savings or time deposit of less than $100,000;

(iv) maintains only one office that accepts deposits; and

(v) does not engage in the business of making commercial loans, other than credit card loans that are made to businesses that meet the criteria for a small business concern to be eligible for business loans under regulations established by the Small Business Administration under part 121 of title 13, Code of Federal Regulations.

(G) An organization operating under section 25 or section 25(a)[1] of the Federal Reserve Act.

(H) An industrial loan company, industrial bank, or other similar institution which is—

(i) an institution organized under the laws of a State which, on March 5, 1987, had in effect or had under consideration in such State's legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]—

(I) which does not accept demand deposits that the depositor may withdraw

[1] See References in Text note below.

by check or similar means for payment to third parties;

(II) which has total assets of less than $100,000,000; or

(III) the control of which is not acquired by any company after August 10, 1987; or

(ii) an institution which does not, directly, indirectly, or through an affiliate, engage in any activity in which it was not lawfully engaged as of March 5, 1987,

except that this subparagraph shall cease to apply to any institution which permits any overdraft (including any intraday overdraft), or which incurs any such overdraft in such institution's account at a Federal Reserve bank, on behalf of an affiliate if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate, or that is otherwise permissible for a bank controlled by a company described in section 1843(f)(1) of this title.

(d) ''Subsidiary'', with respect to a specified bank holding company, means (1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such bank holding company, or is held by it with power to vote; (2) any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or (3) any company with respect to the management of policies of which such bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the Board, after notice and opportunity for hearing.

(e) The term ''successor'' shall include any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank. The Board may, by regulation, further define the term ''successor'' to the extent necessary to prevent evasion of the purposes of this chapter.

(f) ''Board'' means the Board of Governors of the Federal Reserve System.

(g) For the purposes of this chapter—

(1) shares owned or controlled by any subsidiary of a bank holding company shall be deemed to be indirectly owned or controlled by such bank holding company; and

(2) shares held or controlled directly or indirectly by trustees for the benefit of (A) a company, (B) the shareholders or members of a company, or (C) the employees (whether exclusively or not) of a company, shall be deemed to be controlled by such company, unless the Board determines that such treatment is not appropriate in light of the facts and circumstances of the case and the purposes of this chapter.

(h)(1) Except as provided by paragraph (2), the application of this chapter and of section 371c of this title shall not be affected by the fact that a transaction takes place wholly or partly outside the United States or that a company is organized or operates outside the United States.

(2) Except as provided in paragraph (3), the prohibitions of section 1843 of this title shall not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States. For the purpose of this subsection, the term ''section 2(h)(2) company'' means any company whose shares are held pursuant to this paragraph.

(3) Nothing in paragraph (2) authorizes a section 2(h)(2) company to engage in (or acquire or hold more than 5 percent of the outstanding shares of any class of voting securities of a company engaged in) any banking, securities, insurance, or other financial activities, as defined by the Board, in the United States. This paragraph does not prohibit a section 2(h)(2) company from holding shares that were lawfully acquired before August 10, 1987.

(4) No domestic office or subsidiary of a bank holding company or subsidiary thereof holding shares of a section 2(h)(2) company may extend credit to a domestic office or subsidiary of such section 2(h)(2) company on terms more favorable than those afforded similar borrowers in the United States.

(5) No domestic banking office or bank subsidiary of a bank holding company that controls a section 2(h)(2) company may offer or market products or services of such section 2(h)(2) company, or permit its products or services to be offered or marketed by or through such section 2(h)(2) company, unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date.

(i) THRIFT INSTITUTION.—For purposes of this chapter, the term ''thrift institution'' means—

(1) any domestic building and loan or savings and loan association;

(2) any cooperative bank without capital stock organized and operated for mutual purposes and without profit;

(3) any Federal savings bank; and

(4) any State-chartered savings bank the holding company of which is registered pursuant to section 1730a[1] of this title.

(j) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERM.—The term ''savings association'' or ''insured institution'' means—

(1) any Federal savings association or Federal savings bank;

(2) any building and loan association, savings and loan association, homestead association, or cooperative bank if such association or cooperative bank is a member of the Deposit Insurance Fund; and

(3) any savings bank or cooperative bank which is deemed by the Director of the Office

of Thrift Supervision to be a savings association under section 1467a(*l*) of this title.

(k) AFFILIATE.—For purposes of this chapter, the term ''affiliate'' means any company that controls, is controlled by, or is under common control with another company.

(*l*) SAVINGS BANK HOLDING COMPANY.—For purposes of this chapter, the term ''savings bank holding company'' means any company which controls one or more qualified savings banks if the aggregate total assets of such savings banks constitute, upon formation of the holding company and at all times thereafter, at least 70 percent of the total assets of such company.

(m) [Repealed]

(n) INCORPORATED DEFINITIONS.—For purposes of this chapter, the terms ''depository institution'', ''insured depository institution'', ''appropriate Federal banking agency'', ''default'', ''in danger of default'', and ''State bank supervisor'' have the same meanings as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

(*o*) OTHER DEFINITIONS.—For purposes of this chapter, the following definitions shall apply:

(1) CAPITAL TERMS.—

(A) INSURED DEPOSITORY INSTITUTIONS.—With respect to insured depository institutions, the terms ''well capitalized'', ''adequately capitalized'', and ''undercapitalized'' have the same meanings as in section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*].

(B) BANK HOLDING COMPANY.—

(i) ADEQUATELY CAPITALIZED.—With respect to a bank holding company, the term ''adequately capitalized'' means a level of capitalization which meets or exceeds all applicable Federal regulatory capital standards.

(ii) WELL CAPITALIZED.—A bank holding company is ''well capitalized'' if it meets the required capital levels for well capitalized bank holding companies established by the Board.

(C) OTHER CAPITAL TERMS.—The terms ''Tier 1'' and ''risk-weighted assets'' have the meanings given those terms in the capital guidelines or regulations established by the Board for bank holding companies.

(2) ANTITRUST LAWS.—Except as provided in section 1849 of this title, the term ''antitrust laws''—

(A) has the same meaning as in subsection (a) of section 12 of title 15; and

(B) includes section 45 of title 15 to the extent that such section 45 relates to unfair methods of competition.

(3) BRANCH.—The term ''branch'' means a domestic branch (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]).

(4) HOME STATE.—The term ''home State'' means—

(A) with respect to a national bank, the State in which the main office of the bank is located;

(B) with respect to a State bank, the State by which the bank is chartered;

(C) with respect to a bank holding company, the State in which the total deposits of all banking subsidiaries of such company are the largest on the later of—

(i) July 1, 1966; or

(ii) the date on which the company becomes a bank holding company under this chapter;

(D) with respect to a State savings association, the State by which the savings association is chartered; and

(E) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date,[1] the Comptroller of the Currency) of the Federal savings association is located.

(5) HOST STATE.—The term ''host State'' means—

(A) with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch; and

(B) with respect to a bank holding company, a State, other than the home State of the company, in which the company controls, or seeks to control, a bank subsidiary.

(6) OUT-OF-STATE BANK.—The term ''out-of-State bank'' means, with respect to any State, a bank whose home State is another State.

(7) OUT-OF-STATE BANK HOLDING COMPANY.—The term ''out-of-State bank holding company'' means, with respect to any State, a bank holding company whose home State is another State.

(8) LEAD INSURED DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—The term ''lead insured depository institution'' means the largest insured depository institution controlled by the subject bank holding company at any time, based on a comparison of the average total risk-weighted assets controlled by each insured depository institution during the previous 12-month period.

(B) BRANCH OR AGENCY.—For purposes of this paragraph and section 1843(j)(4) of this title, the term ''insured depository institution'' includes any branch or agency operated in the United States by a foreign bank.

(9) WELL MANAGED.—The term ''well managed'' means—

(A) in the case of any company or depository institution which receives examinations, the achievement of—

(i) a CAMEL composite rating of 1 or 2 (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of such company or institution; and

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

(B) in the case of a company or depository institution that has not received an examination rating, the existence and use of managerial resources which the Board determines are satisfactory.

(10) QUALIFIED FAMILY PARTNERSHIP.—The term ''qualified family partnership'' means a general or limited partnership that the Board determines—

(A) does not directly control any bank, except through a registered bank holding company;

(B) does not control more than 1 registered bank holding company;

(C) does not engage in any business activity, except indirectly through ownership of other business entities;

(D) has no investments other than those permitted for a bank holding company pursuant to section 1843(c) of this title;

(E) is not obligated on any debt, either directly or as a guarantor;

(F) has partners, all of whom are either—

(i) individuals related to each other by blood, marriage (including former marriage), or adoption; or

(ii) trusts for the primary benefit of individuals related as described in clause (i); and

(G) has filed with the Board a statement that includes—

(i) the basis for the eligibility of the partnership under subparagraph (F);

(ii) a list of the existing activities and investments of the partnership;

(iii) a commitment to comply with this paragraph;

(iv) a commitment to comply with section 7 of the Federal Deposit Insurance Act [12 U.S.C. 1817] with respect to any acquisition of control of an insured depository institution occurring after September 30, 1996; and

(v) a commitment to be subject, to the same extent as if the qualified family partnership were a bank holding company—

(I) to examination by the Board to assure compliance with this paragraph; and

(II) to section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818].

(p) FINANCIAL HOLDING COMPANY.—For purposes of this chapter, the term ''financial holding company'' means a bank holding company that meets the requirements of section 1843(*l*)(1) of this title.

(q) INSURANCE COMPANY.—For purposes of sections 1843 and 1844 of this title, the term ''insurance company'' includes any person engaged in the business of insurance to the extent of such activities.

(May 9, 1956, ch. 240, § 2, 70 Stat. 133; Pub. L. 89–485, §§ 1–6, July 1, 1966, 80 Stat. 236, 237; Pub. L. 91–607, title I, § 101, Dec. 31, 1970, 84 Stat. 1760; Pub. L. 95–188, title III, § 301(b), Nov. 16, 1977, 91 Stat. 1389; Pub. L. 95–369, § 8(e), Sept. 17, 1978, 92 Stat. 623; Pub. L. 97–320, title I, § 118(b), title III, § 333, title IV, § 404(d)(1), Oct. 15, 1982, 96 Stat. 1479, 1504, 1512; Pub. L. 100–86, title I, § 101(a), (e), title II, § 205(a), Aug. 10, 1987, 101 Stat. 554, 562, 584; Pub. L. 101–73, title VI, § 602(a), Aug. 9, 1989, 103 Stat. 409; Pub. L. 103–328, title I, § 101(c), Sept. 29, 1994, 108 Stat. 2341; Pub. L. 104–208, div. A, title II, §§ 2207, 2208(b), 2304(b), 2610, 2704(d)(17), Sept. 30, 1996, 110 Stat. 3009–406, 3009–408, 3009–425, 3009–475, 3009–495; Pub. L. 106–102, title I, §§ 103(c)(1), 107(c), 119, title VII, § 724, Nov. 12, 1999, 113 Stat. 1351, 1359, 1373, 1471; Pub. L. 108–386, § 8(c)(1), Oct. 30, 2004, 118 Stat. 2231; Pub. L. 109–171, title II, § 2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, § 9(h)(1), Feb. 15, 2006, 119 Stat. 3618; Pub. L. 109–351, title VII, §§ 706, 727(a), Oct. 13, 2006, 120 Stat. 1987, 2003; Pub. L. 111–203, title III, § 354(1), title VI, §§ 623(b)(2), 628, July 21, 2010, 124 Stat. 1546, 1635, 1640.)

AMENDMENT OF SUBSECTION (j)(3)

Pub. L. 111–203, title III, §§ 351, 354(1), July 21, 2010, 124 Stat. 1546, provided that, effective on the transfer date, subsection (j)(3) of this section is amended by substituting ''appropriate Federal banking agency'' for ''Director of the Office of Thrift Supervision''. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (4), (c), and (g) to (p), was in the original ''this Act'', meaning act May 9, 1956, ch. 240, 70 Stat. 133, as amended, known as the Bank Holding Company Act of 1956, which enacted this chapter and sections 1101 to 1103 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under this section. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Federal Deposit Insurance Act, referred to in subsecs. (a)(5)(F) and (c)(2)(H)(i), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

Enactment of the Bank Holding Company Act Amendments of 1970, referred to in subsec. (b), means enactment of Pub. L. 91–607, on Dec. 31, 1970. For classification of Pub. L. 91–607, see Short Title of 1970 Amendment note below.

Section 25 of the Federal Reserve Act, referred to in subsec. (c)(2)(G), is classified to subchapter I (§ 601 et seq.) of chapter 6 of this title. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§ 611 et seq.) of chapter 6 of this title, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

Sections 1727 and 1730a of this title, referred to in subsec. (i)(4), were repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

A section 2(h)(2) company, referred to in subsec. (h)(3) to (5), is defined in subsec. (h)(2) of this section.

The transfer date, referred to in subsec. (*o*)(4)(E), probably means the transfer date defined in section 5301 of this title.

AMENDMENTS

2010—Subsec. (c)(2)(F)(v). Pub. L. 111–203, § 628, inserted '', other than credit card loans that are made to businesses that meet the criteria for a small business concern to be eligible for business loans under regulations established by the Small Business Administration under part 121 of title 13, Code of Federal Regulations'' before the period.

Subsec. (*o*)(4)(D), (E). Pub. L. 111–203, § 623(b)(2), added subpars. (D) and (E).

2006—Subsec. (c)(2)(I), (J). Pub. L. 109–351, § 727(a)(1), struck out subpars. (I) and (J), which related to the Investors Fiduciary Trust Company, located in Kansas City, Missouri, and certain savings banks as defined by section 1831(g) of this title, respectively.

Subsec. (g)(2). Pub. L. 109–351, § 706, inserted before period at end '', unless the Board determines that such treatment is not appropriate in light of the facts and circumstances of the case and the purposes of this chapter''.

Subsec. (j)(2). Pub. L. 109–173 substituted ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund''.

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(17). See 1996 Amendment note below.

Subsec. (m). Pub. L. 109–351, §727(a)(2), substituted ''(m) [Repealed]'' for subsec. (m), which defined ''qualified savings bank''.

2004—Subsec. (c)(3). Pub. L. 108–386 struck out heading and text of par. (3). Text read as follows: ''The term 'District bank' means any bank operating under the Code of Law for the District of Columbia''.

1999—Subsec. (a)(5)(E)(i). Pub. L. 106–102, §724, inserted ''1 or more'' before ''thrift institutions''.

Subsec. (c)(2)(H). Pub. L. 106–102, §107(c), inserted '', or that is otherwise permissible for a bank controlled by a company described in section 1843(f)(1) of this title'' before period at end of concluding provisions.

Subsec. (n). Pub. L. 106–102, §103(c)(1)(A), inserted '' 'depository institution','' after ''the terms''.

Subsec. (*o*)(1)(A). Pub. L. 106–102, §119, substituted ''section 38'' for ''section 38(b)''.

Subsecs. (p), (q). Pub. L. 106–102, §103(c)(1)(B), added subsecs. (p) and (q).

1996—Subsec. (b). Pub. L. 104–208, §2610(1), inserted '', and shall not include a qualified family partnership'' after ''by any State''.

Subsec. (c)(2)(F). Pub. L. 104–208, §2304(b), inserted '', including an institution that accepts collateral for extensions of credit by holding deposits under $100,000, and by other means'' after ''An institution'' in introductory provisions.

Subsec. (g)(3). Pub. L. 104–208, §2207, struck out par. (3) which read as follows: ''shares transferred after January 1, 1966, by any bank holding company (or by any company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the Board, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.''

Subsec. (j)(2). Pub. L. 104–208, §2704(d)(17), which directed substitution of ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (*o*)(1). Pub. L. 104–208, §2208(b)(1), added heading and text of par. (1) and struck out heading and text of former par. (1). Text read as follows: ''The term 'adequately capitalized' means a level of capitalization which meets or exceeds all applicable Federal regulatory capital standards.''

Subsec. (*o*)(8), (9). Pub. L. 104–208, §2208(b)(2), added pars. (8) and (9).

Subsec. (*o*)(10). Pub. L. 104–208, §2610(2), added par. (10).

1994—Subsecs. (n), (*o*). Pub. L. 103–328 added subsecs. (n) and (*o*).

1989—Subsec. (j). Pub. L. 101–73 amended subsec. (j) generally, substituting provisions defining ''saving association'' or ''insured institution'' for provisions defining ''insured institution''.

1987—Subsec. (a)(5)(E). Pub. L. 100–86, §101(e), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''No company is a bank holding company by virtue of its ownership or control of any State chartered bank or trust company which is wholly owned by thrift institutions and which restricts itself to the acceptance of deposits from thrift institutions, deposits arising out of the corporate business of its owners, and deposits of public moneys.''

Subsec. (c). Pub. L. 100–86, §101(a)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: '' 'Bank' means any institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, except an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or an institution chartered by the Federal Home Loan Bank Board, which (1) accepts deposits that the depositor has a legal right to withdraw on demand, and (2) engages in the business of making commercial loans. Such term does not include any organization operating under section 25 or section 25 (a) of the Federal Reserve Act, or any organization which does not do business within the United States except as an incident to its activities outside the United States. 'District bank' means any bank organized or operating under the Code of Law for the District of Columbia. The term 'bank' also includes a State chartered bank or a national banking association which is owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions or by a bank holding company which is owned exclusively by other depository institutions and is organized to engage exclusively in providing services for other depository institutions and their officers, directors, and employees.''

Subsec. (h)(2). Pub. L. 100–86, §205(a), added par. (2) and struck out former par. (2) which read as follows: ''The prohibitions of section 1843 of this title shall not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States, except that (1) such exempt foreign company (A) may engage in or hold shares of a company engaged in the business of underwriting, selling or distributing securities in the United States only to the extent that a bank holding company may do so under this chapter and under regulations or orders issued by the Board under this chapter, and (B) may engage in the United States in any banking or financial operations or types of activities permitted under section 1843(c)(8) of this title or in any order or regulation issued by the Board under such section only with the Board's prior approval under that section, and (2) no domestic office or subsidiary of a bank holding company or subsidiary thereof holding shares of such company may extend credit to a domestic office or subsidiary of such exempt company on terms more favorable than those afforded similar borrowers in the United States.''

Subsec. (h)(3) to (5). Pub. L. 100–86, §205(a), added pars. (3) to (5).

Subsec. (i). Pub. L. 100–86, §101(a)(2), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''The term 'thrift institution' means (1) a domestic building and loan or savings and loan association, (2) a cooperative bank without capital stock organized and operated for mutual purposes and without profit, (3) a mutual savings bank not having capital stock represented by shares or (4) a Federal savings bank.''

Subsecs. (j) to (m). Pub. L. 100–86, §101(a)(3), added subsecs. (j) to (m).

1982—Subsec. (c). Pub. L. 97–320, §404(d)(1), inserted references to State chartered banks and national banking associations as being included in definition of ''bank''.

Pub. L. 97–320, §333, excepted from term ''bank'' an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or an institution chartered by the Federal Home Loan Bank Board.

Subsec. (i)(4). Pub. L. 97–320, §118(b), added cl. (4).

1978—Subsec. (h). Pub. L. 95–369 designated existing provisions as par. (1), substituted ''Except as provided by paragraph (2), the application'' for ''The application''; struck out a proviso holding the prohibitions of section 1843 not applicable to shares of any company organized under the laws of a foreign country not doing business within the United States, if such shares are held or acquired by a bank holding company principally engaged in banking business outside the United States; and added par. (2).

1977—Subsec. (a)(5)(D). Pub. L. 95–188 authorized the Board to extend the time for disposition of acquired shares for not more than one year at a time and three years in the aggregate.

1970—Subsec. (a). Pub. L. 91–607, §101(a), in revising the provisions, added par. (1) definition of bank holding company; incorporated provisions of former cl. (1) in provisions designated as par. (2)(A), inserting text respecting company acting through one or more other persons, substituting ''power to vote'' for ''holds with power to vote'' and provision for voting of any class of voting securities of the bank or company for prior provision for voting of voting shares of each of two or more banks; incorporated former provisions of former cl. (2) in provisions designated as par. (2)(B), providing for election of trustees and substituting bank or company for directors of each of two or more banks designated cl. (A) as par. (5)(A), inserting provision that acquisition of shares shall not be deemed acquisition of shares in a fiduciary capacity if the banks or company has sole discretionary authority to exercise voting rights with respect thereto, and making such limitation applicable to bank or company acquiring the shares prior to Dec. 31, 1970, where there is right of divestiture of voting rights and there is a failure to exercise that right within reasonable time not exceeding one year after Dec. 31, 1970; incorporated former cls. (B) and (C) in provisions designated as pars. (5)(B) and (C); added par. (5)(D) to (F); and designated concluding part of first sentence as par. (6), substituting ''from the date on which'' for ''from the date as of which''.

Subsec. (b). Pub. L. 91–607, §101(b), redefined term ''company'' to include ''partnership'', which has been expressly excluded, and inserted definition of ''company covered in 1970''.

Subsec. (c). Pub. L. 91–607, §101(c), redefined term ''bank'' to mean any institution organized under Federal, State, District of Columbia, etc., laws, designated existing provisions as cl. (1), added cl. (2), and excepted from exclusion from such term an organization which does business within the United States as an incident to its activities outside the United States.

Subsec. (d)(3). Pub. L. 91–607, §101(d), added cl. (3).

Subsec. (i). Pub. L. 91–607, §101(e), added subsec. (i).

1966—Subsec. (a). Pub. L. 89–485, §1, struck out provision placing within the classification of bank holding company any company for the benefit of whose shareholders or members 25 per centum or more of the voting shares of each of two or more banks or a bank holding company is held by trustees, struck out provision exempting from classification as bank holding companies any companies that are registered under the Investment Company Act of 1940, and were so registered prior to May 15, 1955 (or which is affiliated with any such company in such manner as to constitute an affiliated company within the meaning of that Act), unless that company (or affiliated company), as the case may be, directly owns 25 per centum or more of the voting shares of each of two or more banks, struck out provision exempting from classification as bank holding companies any companies having 80 per centum or more of their total assets composed of holdings in the field of agriculture, substituted voting shares for shares in the description of the securities the ownership or control of which, in a fiduciary capacity, would be exempted from causing the formation of a bank holding company, added ''company'' to ''bank'' as the business entities eligible for the fiduciary ownership exemption, and inserted reference in the fiduciary ownership exemption to pars. (2) and (3) of subsec. (g) of this section.

Subsec. (b). Pub. L. 89–485, §2, exempted from definition of ''company'' any trust which by its terms must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, and struck out the exemption formerly granted to nonprofit religious, charitable, and educational organizations.

Subsec. (c). Pub. L. 89–485, §3, substituted ''any institution that accepts deposits that the depositor has a legal right to withdraw on demand'' for ''any national banking institution or any state bank, savings bank, or trust company'' in the definition of ''bank'' and extended the exemption for foreign banking corporations to include ''agreement'' foreign banking corporations under section 25 of the Federal Reserve Act.

Subsec. (d). Pub. L. 89–485, §4, inserted provision relating to indirect ownership or control and the holding of power to vote to direct ownership or control as the methods by which the holding of 25 per centum or more of voting shares in a company will qualify that company as a subsidiary, and struck out provisions under which any company 25 per centum or more of whose voting shares are held by trustees for the benefit of the shareholders or members of a bank holding company qualifies as a subsidiary.

Subsec. (g). Pub. L. 89–485, §§5, 6, substituted provisions setting out treatment to be accorded shares owned or controlled by subsidiaries of bank holding companies, shares held or controlled by trustees for the benefit of companies, shareholders or members of companies, and employees of companies, and shares transferred after January 1, 1966, by bank holding companies to transferees that are indebted to the transferor or have one or more officers, directors, trustees, or beneficiaries in common with the transferor for provisions defining ''agriculture''.

Subsec. (h). Pub. L. 89–485, §6, added subsec. (h).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 354(1) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by sections 623(b)(2) and 628 of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by sections 103(c)(1), 107(c), and 119 of Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(17) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–328 effective at end of 1-year period beginning on Sept. 29, 1994, see section 101(e) of Pub. L. 103–328, set out as a note under section 1828 of this title.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–418, title III, §3401, Aug. 23, 1988, 102 Stat. 1384, provided that: ''This subtitle [subtitle E (§§3401,

3402) of title III of Pub. L. 100–418, amending section 1843 of this title] may be cited as the 'Export Trading Company Act Amendments of 1988'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–290, title II, § 201, Oct. 8, 1982, 96 Stat. 1235, provided that: ''This title [enacting section 635a–4 of this title, amending sections 372 and 1843 of this title, and enacting provisions set out as notes under section 1843 of this title] may be cited as the 'Bank Export Services Act'.''

SHORT TITLE OF 1970 AMENDMENT

Section 1 of Pub. L. 91–607 provided: ''That this Act [enacting chapter 22 (§ 1971 et seq.) and section 1850 of this title and sections 324b and 324c of former Title 31, Money and Finance, amending sections 1841 to 1843 and 1849 of this title and sections 324, 391 of former Title 31, repealing sections 316 and 458 of former Title 31, enacting provisions set out as notes under sections 317e and 391 of former Title 31, and amending provisions set out as a note under section 405a–1 of former Title 31] may be cited as the 'Bank Holding Company Act Amendments of 1970'.''

SHORT TITLE

Section 1 of act May 9, 1956, provided: ''That this Act [enacting this chapter and sections 1101 to 1103 of Title 26, Internal Revenue Code] may be cited as the 'Bank Holding Company Act of 1956'.''

SEPARABILITY

Section 12 of act May 9, 1956, provided that: ''If any provision of this Act [enacting this chapter and sections 1101 to 1103 of Title 26, Internal Revenue Code], or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.''

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

TRANSITIONAL RULE FOR 1987 AMENDMENT

Section 101(h) of Pub. L. 100–86 provided that:

''(1) DELAY IN APPLICATION OF AMENDMENT TO CERTAIN INSTITUTIONS.—If—

''(A) on March 5, 1987, an institution was not a bank (as defined in section 2(c) of the Bank Holding Company Act of 1956 [12 U.S.C. 1841(c)]), as in effect on such date; and

''(B) any person which had a controlling interest in such institution on March 5, 1987, made a public announcement before such date that the transfer or other disposition of such person's controlling interest in such institution was being considered,

the institution shall not become a bank (for purposes of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.]) due to the amendment made to such section 2(c) by this section before the date on which such institution fails to meet any requirement of paragraph (2).

''(2) REQUIREMENTS FOR APPLICATION OF SUBSECTION.—This subsection shall not apply with respect to any institution described in paragraph (1) unless—

''(A) the transfer or other disposition of the controlling interest referred to in such paragraph is completed, or an agreement to make such transfer or other disposition is in effect (or is subject only to final approval by the appropriate Federal and State regulatory agencies), before the end of the 180-day period beginning on the date of the enactment of this title [Aug. 10, 1987];

''(B) a written notice by the person acquiring a controlling interest in such institution (pursuant to the transfer or other disposition described in subparagraph (A)) of such person's intention to operate such institution as an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956, as in effect after the enactment of this title is filed with the Board before the end of the 7-day period beginning on the later of the date of such transfer (or other disposition) or the date of the enactment of this title; and

''(C) the operation of such institution as an institution described in such section 2(c)(2)(F) begins before the end of the 180-day period beginning on the date the transfer (or other disposition) described in subparagraph (A) is completed.

''(3) CONTROLLING INTEREST.—For purposes of this subsection, a person has a controlling interest in any institution if such person controls—

''(A) such institution; or

''(B) any company which controls such institution, as determined in accordance with the provisions of subsections (b) and (g) of section 2 of the Bank Holding Company Act of 1956.''

MORATORIUM ON CERTAIN NONBANKING ACTIVITIES

Pub. L. 100–86, title II, §§ 201–203, Aug. 10, 1987, 101 Stat. 581–584, provided for the period of Mar. 6, 1987, to Mar. 1, 1988, a moratorium on certain nonbanking activities, including expansion of activities of foreign banks and authority of Federal banking agencies to authorize or allow certain security, insurance, or real estate activities.

§ 1842. Acquisition of bank shares or assets

(a) Prior approval of Board as necessary; exceptions; disposition, time extension; subsequent approval or disposition upon disapproval

It shall be unlawful, except with the prior approval of the Board, (1) for any action to be taken that causes any company to become a bank holding company; (2) for any action to be taken that causes a bank to become a subsidiary of a bank holding company; (3) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (4) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (5) for any bank holding company to merge or consolidate with any other bank holding company. Notwithstanding the foregoing this prohibition shall not apply to (A) shares acquired by a bank, (i) in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 1841(b) of this title and except as provided in paragraphs (2) and (3) of section 1841(g) of this title, or (ii) in the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after May 9, 1956, in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired; (B) additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition; or (C) the acquisition, by a company, of control of a bank in a reorganization in which a person or group of persons exchanges their shares of the bank for shares of a newly formed bank holding company and receives after the re-

organization substantially the same proportional share interest in the holding company as they held in the bank except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law if—

(i) immediately following the acquisition—

(I) the bank holding company meets the capital and other financial standards prescribed by the Board by regulation for such a bank holding company; and

(II) the bank is adequately capitalized (as defined in section 1831*o* of this title);

(ii) the holding company does not engage in any activities other than those of managing and controlling banks as a result of the reorganization;

(iii) the company provides 30 days prior notice to the Board and the Board does not object to such transaction during such 30-day period; and

(iv) the holding company will not acquire control of any additional bank as a result of the reorganization..[1]

The Board is authorized upon application by a bank to extend, from time to time for not more than one year at a time, the two-year period referred to above for disposing of any shares acquired by a bank in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years. For the purpose of the preceding sentence, bank shares acquired after December 31, 1970, shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior approval of the Board if the Board, upon application filed within ninety days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

(b) Application for approval; notice to Comptroller of Currency or State authority; views and recommendations; disapproval; hearing; order of Board; nonaction deemed grant of application; procedure in emergencies or probable failures requiring immediate Board action and orders

(1) Notice and hearing requirements

Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be required[2] is a national banking association, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, in order to provide for the submission of the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be. The views and recommendations shall be submitted within thirty calendar days of the date on which notice is given, or within ten calendar days of such date if the Board advises the Comptroller of the Currency or the State supervisory authority that an emergency exists requiring expeditious action. If the thirty-day notice period applies and if the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within this period, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten nor more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board shall, by order, grant or deny the application on the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for approval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. Notwithstanding any other provision of this subsection, if the Board finds that it must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition, merger, or consolidation transaction, the Board may dispense with the notice requirements of this subsection, and if notice is given, the Board may request that the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, be submitted immediately in any form or by any means acceptable to the Board. If the Board has found pursuant to this subsection either that an emergency exists requiring expeditious action or that it must act immediately to prevent probable failure, the Board may grant or deny any such application without a hearing notwithstanding any recommended disapproval by the appropriate supervisory authority.

(2) Waiver in case of bank in danger of closing

If the Board receives a certification described in section 1823(f)(8)(D)[3] of this title from the appropriate Federal or State chartering authority that a bank is in danger of closing, the Board may dispense with the notice and hearing requirements of paragraph (1) with respect to any application received by

[1] So in original.

[2] So in original. Probably should be ''acquired''.

[3] See References in Text note below.

the Board relating to the acquisition of such bank, the bank holding company which controls such bank, or any other affiliated bank.

(c) Factors for consideration by Board

(1) Competitive factors

The Board shall not approve—

(A) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint or[4] trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

(2) Banking and community factors

In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

(3) Supervisory factors

The Board shall disapprove any application under this section by any company if—

(A) the company fails to provide the Board with adequate assurances that the company will make available to the Board such information on the operations or activities of the company, and any affiliate of the company, as the Board determines to be appropriate to determine and enforce compliance with this chapter; or

(B) in the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.

(4) Treatment of certain bank stock loans

Notwithstanding any other provision of law, the Board shall not follow any practice or policy in the consideration of any application for the formation of a one-bank holding company if following such practice or policy would result in the rejection of such application solely because the transaction to form such one-bank holding company involves a bank stock loan which is for a period of not more than twenty-five years. The previous sentence shall not be construed to prohibit the Board from rejecting any application solely because the other financial arrangements are considered unsatisfactory. The Board shall consider transactions involving bank stock loans for the formation of a one-bank holding company having a maturity of twelve years or more on a case by case basis and no such transaction shall be approved if the Board believes the safety or soundness of the bank may be jeopardized.

(5) Managerial resources

Consideration of the managerial resources of a company or bank under paragraph (2) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank.

(6) Money laundering

In every case, the Board shall take into consideration the effectiveness of the company or companies in combatting money laundering activities, including in overseas branches.

(d) Interstate banking

(1) Approvals authorized

(A) Acquisition of banks

The Board may approve an application under this section by a bank holding company that is adequately capitalized and adequately managed to acquire control of, or acquire all or substantially all of the assets of, a bank located in a State other than the home State of such bank holding company, without regard to whether such transaction is prohibited under the law of any State.

(B) Preservation of State age laws

(i) In general

Notwithstanding subparagraph (A), the Board may not approve an application pursuant to such subparagraph that would have the effect of permitting an out-of-State bank holding company to acquire a bank in a host State that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State.

(ii) Special rule for State age laws specifying a period of more than 5 years

Notwithstanding clause (i), the Board may approve, pursuant to subparagraph (A), the acquisition of a bank that has been in existence for at least 5 years without regard to any longer minimum period of time specified in a statutory law of the host State.

(C) Shell banks

For purposes of this subsection, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, an existing bank shall be deemed to have been in existence for the same period of time as the bank to be acquired.

(D) Effect on State contingency laws

No provision of this subsection shall be construed as affecting the applicability of a State law that makes an acquisition of a bank contingent upon a requirement to hold a portion of such bank's assets available for call by a State-sponsored housing entity established pursuant to State law, if—

[4] So in original. Probably should be ''of''.

(i) the State law does not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or bank holding companies;

(ii) that State law was in effect as of September 29, 1994;

(iii) the Federal Deposit Insurance Corporation has not determined that compliance with such State law would result in an unacceptable risk to the Deposit Insurance Fund; and

(iv) the appropriate Federal banking agency for such bank has not found that compliance with such State law would place the bank in an unsafe or unsound condition.

(2) Concentration limits

(A) Nationwide concentration limits

The Board may not approve an application pursuant to paragraph (1)(A) if the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the acquisition for which such application is filed would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Statewide concentration limits other than with respect to initial entries

The Board may not approve an application pursuant to paragraph (1)(A) if—

(i) immediately before the consummation of the acquisition for which such application is filed, the applicant (including any insured depository institution affiliate of the applicant) controls any insured depository institution or any branch of an insured depository institution in the home State of any bank to be acquired or in any host State in which any such bank maintains a branch; and

(ii) the applicant (including all insured depository institutions which are affiliates of the applicant), upon consummation of the acquisition, would control 30 percent or more of the total amount of deposits of insured depository institutions in any such State.

(C) Effectiveness of State deposit caps

No provision of this subsection shall be construed as affecting the authority of any State to limit, by statute, regulation, or order, the percentage of the total amount of deposits of insured depository institutions in the State which may be held or controlled by any bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to the extent the application of such limitation does not discriminate against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(D) Exceptions to subparagraph (B)

The Board may approve an application pursuant to paragraph (1)(A) without regard to the applicability of subparagraph (B) with respect to any State if—

(i) there is a limitation described in subparagraph (C) in a State statute, regulation, or order which has the effect of permitting a bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to control a greater percentage of total deposits of all insured depository institutions in the State than the percentage permitted under subparagraph (B); or

(ii) the acquisition is approved by the appropriate State bank supervisor of such State and the standard on which such approval is based does not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(E) "Deposit" defined

For purposes of this paragraph, the term ''deposit'' has the same meaning as in section 1813(*l*) of this title.

(3) Community reinvestment compliance

In determining whether to approve an application under paragraph (1)(A), the Board shall—

(A) comply with the responsibilities of the Board regarding such application under section 2903 of this title; and

(B) take into account the applicant's record of compliance with applicable State community reinvestment laws.

(4) Applicability of antitrust laws

No provision of this subsection shall be construed as affecting—

(A) the applicability of the antitrust laws; or

(B) the applicability, if any, of any State law which is similar to the antitrust laws.

(5) Exception for banks in default or in danger of default

The Board may approve an application pursuant to paragraph (1)(A) which involves—

(A) an acquisition of 1 or more banks in default or in danger of default; or

(B) an acquisition with respect to which assistance is provided under section 1823(c) of this title;

without regard to subparagraph (B) or (D) of paragraph (1) or paragraph (2) or (3).

(e) Insured depository institution

Every bank that is a holding company and every bank that is a subsidiary of such a company shall become and remain an insured depository institution as defined in section 1813 of this title.

(f) [Repealed]

(g) Mutual bank holding company

(1) Establishment

Notwithstanding any provision of Federal law other than this chapter, a savings bank or cooperative bank operating in mutual form may reorganize so as to form a holding company.

(2) Regulations

A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.

(May 9, 1956, ch. 240, § 3, 70 Stat. 134; Pub. L. 89–485, § 7, July 1, 1966, 80 Stat. 237; Pub. L. 91–607, title I, § 102, Dec. 31, 1970, 84 Stat. 1763; Pub. L. 95–188, title III, §§ 301(a), 302, Nov. 16, 1977, 91 Stat. 1388, 1389; Pub. L. 96–221, title VII, §§ 712(b), (c), 713, Mar. 31, 1980, 94 Stat. 189, 190; Pub. L. 97–320, title I, §§ 118(c), 141(a)(4), title IV, § 404(d)(2), Oct. 15, 1982, 96 Stat. 1479, 1489, 1512; Pub. L. 100–86, title I, §§ 101(d), 107(b), title V, §§ 502(h)(1), 509(a), Aug. 10, 1987, 101 Stat. 561, 579, 628, 635; Pub. L. 101–73, title VI, § 602(b), Aug. 9, 1989, 103 Stat. 409; Pub. L. 102–242, title II, §§ 202(d), 210, Dec. 19, 1991, 105 Stat. 2290, 2298; Pub. L. 103–325, title III, §§ 319(a), 322(c)(1), Sept. 23, 1994, 108 Stat. 2224, 2227; Pub. L. 103–328, title I, § 101(a), Sept. 29, 1994, 108 Stat. 2339; Pub. L. 106–102, title I, §§ 105, 118, Nov. 12, 1999, 113 Stat. 1359, 1373; Pub. L. 107–56, title III, § 327(a)(1), Oct. 26, 2001, 115 Stat. 318; Pub. L. 108–386, § 8(c)(2), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 109–173, § 9(h)(2), Feb. 15, 2006, 119 Stat. 3618; Pub. L. 111–203, title VI, §§ 604(d), 607(a), July 21, 2010, 124 Stat. 1601, 1607.)

AMENDMENT OF SUBSECTION (c)

Pub. L. 111–203, title VI, § 604(d), (j), July 21, 2010, 124 Stat. 1601, 1604, provided that, effective on the transfer date, subsection (c) of this section is amended by adding at the end the following:

''(7) Financial stability

''In every case, the Board shall take into consideration the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.''

See Effective Date of 2010 Amendment note below.

AMENDMENT OF SUBSECTION (d)(1)(A)

Pub. L. 111–203, title VI, § 607(a), (c), July 21, 2010, 124 Stat. 1607, 1608, provided that, effective on the transfer date, subsection (d)(1)(A) of this section is amended by substituting ''well capitalized and well managed'' for ''adequately capitalized and adequately managed''. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 1823(f)(8)(D) of this title, referred to in subsec. (b)(2), which defined ''bank in danger of closing'', was repealed by Pub. L. 101–73, title II, § 217(5)(H), Aug. 9, 1989, 103 Stat. 257.

AMENDMENTS

2006—Subsec. (d)(1)(D)(iii). Pub. L. 109–173 substituted ''Deposit Insurance Fund'' for ''appropriate deposit insurance fund''.

2004—Subsec. (b)(1). Pub. L. 108–386 struck out ''or a District bank'' after ''national banking association'' in first sentence.

2001—Subsec. (c)(6). Pub. L. 107–56 added par. (6).

1999—Subsec. (f). Pub. L. 106–102, § 118, amended subsec. (f) generally, substituting ''(f) [Repealed].'' for provisions relating to authorized activities of qualified savings banks which are subsidiaries of bank holding companies.

Subsec. (g)(2). Pub. L. 106–102, § 105, amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''A corporation organized as a holding company under this subsection shall be regulated on the same terms and be subject to the same limitations as any other holding company which controls a savings bank.''

1994—Subsec. (a). Pub. L. 103–325, § 319(a), substituted ''(B)'' for ''or (B)'' and added subpar. (C).

Subsec. (d). Pub. L. 103–328 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Notwithstanding any other provision of this section, no application (except an application filed as a result of a transaction authorized under section 1823(f) of this title) shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside the State in which the operations of such bank holding company's banking subsidiaries were principally conducted on July 1, 1966, or the date on which such company became a bank holding company, whichever is later, unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication. For the purposes of this section, the State in which the operations of a bank holding company's subsidiaries are principally conducted is that State in which total deposits of all such banking subsidiaries are largest.''

Subsec. (e). Pub. L. 103–325, § 322(c)(1), struck out after first sentence ''This subsection does not apply to a bank described in the last sentence of section 1841(c) of this title.''

1991—Subsec. (c). Pub. L. 102–242, § 202(d), inserted heading, inserted par. (1) designation and heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, inserted par. (2) designation and heading, added par. (3), and inserted par. (4) designation and heading.

Subsec. (c)(5). Pub. L. 102–242, § 210, added par. (5).

1989—Subsec. (e). Pub. L. 101–73, which directed the substitution of ''an insured depository institution as defined in section 1813 of this title'' for ''an insured bank as defined in section 1813(h) of this title'', was executed by making the substitution for ''an insured bank as such term is defined in section 1813(h) of this title'', as the probable intent of Congress.

1987—Pub. L. 100–86, § 509(a), repealed Pub. L. 97–320, § 141. See 1982 Amendment note below.

Subsec. (b). Pub. L. 100–86, § 502(h)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (f). Pub. L. 100–86, § 101(d), added subsec. (f).

Subsec. (g). Pub. L. 100–86, § 107(b), added subsec. (g).

1982—Subsec. (d). Pub. L. 97–320, § 118(c), inserted ''(except an application filed as a result of a transaction authorized under section 1823(f) of this title)'' after ''no application''.

Pub. L. 97–320, § 141(a)(4), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 118 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, § 509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

Subsec. (e). Pub. L. 97–320, § 404(d)(2), inserted ''This subsection does not apply to a bank described in the last sentence of section 1841(c) of this title.''

1980—Subsec. (c). Pub. L. 96–221, § 713, inserted provisions relating to applications for the formation of one-bank holding companies.

Subsec. (d). Pub. L. 96–221, § 712(b), (c), temporarily designated existing provisions as par. (1) and added par. (2). See Termination Date of 1980 Amendment note set out below.

1977—Subsec. (a). Pub. L. 95–188, § 301(a), authorized the Board to extend the time for disposition of acquired shares for not more than one year at a time and three years in the aggregate.

Subsec. (b). Pub. L. 95–188, § 302, inserted provision for alternative submission of views and recommendations within ten calendar days of the date on which notice is given if the Board advises the appropriate supervisory authority that an emergency exists requiring expeditious action, substituted ''shall, by order,'' for ''shall by order'' and inserted provisions respecting procedure in emergencies or probable failures requiring immediate Board action and orders.

1970—Subsec. (a). Pub. L. 91–607, § 102(1), inserted provision deeming acquisition of bank shares after Dec. 31, 1970, as not being in good faith in a fiduciary capacity if acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, and provision for subsequent approval of retention of acquired shares upon application filed within 90 days of acquisition and disposition of shares or sole discretionary voting rights within two years after order in an event of disapproval.

Subsec. (b). Pub. L. 91–607, § 102(2), inserted provision deeming an application for approval as granted where Board has not acted on application within 91 day period beginning on date of submission to Board of complete record on application.

Subsec. (e). Pub. L. 91–607, § 102(3), added subsec. (e).

1966—Subsec. (a). Pub. L. 89–485, § 7(a), (b), expanded the list of acts requiring prior approval of the Board by including therein any action that causes a bank to become a subsidiary of a bank holding company and substituted provisions excepting shares that are held under a trust that constitutes a company as defined in section 1841(b) of this title and excepting shares as provided in pars. (2) and (3) of section 1841(g) of this title from the effect of the clause lifting the requirements of prior Board approved in the case of shares acquired by a bank in good faith in a fiduciary capacity for provisions excepting shares held for the benefit of the shareholders of a bank from the effect of the clause.

Subsec. (c). Pub. L. 89–485, § 7(c), inserted provision prohibiting any acquisition, merger, or consolidation that would result in a monopoly or would further any combination or conspiracy to monopolize the banking business in any part of the United States or would substantially lessen competition or in any manner be in restraint of trade unless the public interest clearly outweighed the anticompetitive effects and substituted provisions requiring the Board to take into consideration the financial and managerial resources and future prospects of the company or bank concerned and the convenience and needs of the community to be served for provisions requiring the Board to take into consideration the financial history of the company or bank concerned, its prospects, the character of its management, the needs of the community, and the public interest.

Subsec. (d). Pub. L. 89–485, § 7(d), substituted provisions restricting expansion to state in which the operations of the bank holding company's banking subsidiaries were principally conducted, defined, as that state in which total deposits of all such banking subsidiaries were largest, on July 1, 1966, or the date on which the company became a bank holding company, whichever is later, for provisions restricting expansion to state in which the holding company maintains its principal office and place of business or in which it conducts its principal operations.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 604(d) of Pub. L. 111–203 effective on the transfer date, see section 604(j) of Pub. L. 111–203, set out as a note under section 1462 of this title.

Amendment by section 607(a) of Pub. L. 111–203 effective on the transfer date, see section 607(c) of Pub. L. 111–203, set out as a note under section 1831u of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–56, title III, § 327(a)(2), Oct. 26, 2001, 115 Stat. 319, as amended by Pub. L. 108–458, title VI, § 6202(i), Dec. 17, 2004, 118 Stat. 3746, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to any application submitted to the Board of Governors of the Federal Reserve System under section 3 of the Bank Holding Company Act of 1956 [12 U.S.C. 1842] after December 31, [sic].''

EFFECTIVE DATE OF 1999 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–328 effective at end of 1-year period beginning on Sept. 29, 1994, see section 101(e) of Pub. L. 103–328, set out as a note under section 1828 of this title.

TERMINATION DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 repealed on Oct. 1, 1981, see section 712(c) of Pub. L. 96–221, set out as a note under section 27 of this title.

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97–320

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100–86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99–452, set out as a note under section 1464 of this title.

Section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day after Aug. 27, 1986, applicable as if included in Pub. L. 97–320 on Oct. 15, 1982, with no amendment made by such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99–400, set out as a note under section 1464 of this title.

§ 1843. Interests in nonbanking organizations

(a) Ownership or control of voting shares of any company not a bank; engagement in activities other than banking

Except as otherwise provided in this chapter, no bank holding company shall—

(1) after May 9, 1956, acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or

(2) after two years from the date as of which it becomes a bank holding company, or in the case of a company which has been continuously affiliated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act, after December 31, 1978, or, in the case of any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on December 31, 1970, after December 31, 1980, retain direct or indirect ownership or control of any voting shares of any company which is not a bank or bank holding company or engage in any activities other than (A) those of banking or of managing or controlling banks and other subsidiaries authorized under this chapter or of furnishing services to or performing services for its subsidiaries, and (B) those permitted under paragraph (8) of subsection (c) of this section subject to all the conditions specified in such paragraph or in any order or regulation issued by the Board under such paragraph: *Provided*, That a company covered in 1970 may also engage in those activities in which directly or through a subsidiary (i) it was lawfully engaged on June 30, 1968 (or on a date subsequent to June 30, 1968 in the case of activities carried on as the result of the acquisition by such company or subsidiary, pursuant to a binding written contract entered into on or before June 30, 1968, of another company engaged in such activities at the time of the acquisition), and (ii) it has been continuously engaged since June 30, 1968 (or such subsequent date). The Board by order, after opportunity for hearing, may terminate the authority conferred by the preceding proviso on any company to engage directly or through a subsidiary in any activity otherwise permitted by that proviso if it determines, having due regard to the purposes of this chapter, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices; and in the case of any such company controlling a bank having bank assets in excess of $60,000,000 on or after December 31, 1970, the Board shall determine, within two years after such date (or, if later, within two years after the date on which the bank assets first exceed $60,000,000), whether the authority conferred by the preceding proviso with respect to such company should be terminated as provided in this sentence. Nothing in this paragraph shall be construed to authorize any bank holding company referred to in the preceding proviso, or any subsidiary thereof, to engage in activities authorized by that proviso through the acquisition, pursuant to a contract entered into after June 30, 1968, of any interest in or the assets of a going concern engaged in such activities. Any company which is authorized to engage in any activity pursuant to the preceding proviso or subsection (d) of this section but, as a result of action of the Board, is required to terminate such activity may (notwithstanding any otherwise applicable time limit prescribed in this paragraph) retain the ownership or control of shares in any company carrying on such activity for a period of ten years from the date on which its authority was so terminated by the Board. Notwithstanding any other provision of this paragraph, if any company that became a bank holding company as a result of the enactment of the Competitive Equality Amendments of 1987 acquired, between March 5, 1987, and August 10, 1987, an institution that became a bank as a result of the enactment of such Amendments, that company shall, upon enactment of such Amendments, immediately come into compliance with the requirements of this chapter.

The Board is authorized, upon application by a bank holding company, to extend the two year period referred to in paragraph (2) above from time to time as to such bank holding company for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall in the aggregate exceed three years. Notwithstanding any other provision of this chapter, the period ending December 31, 1980, referred to in paragraph (2) above, may be extended by the Board of Governors to December 31, 1984, but only for the divestiture by a bank holding company of real estate or interests in real estate lawfully acquired for investment or development. In making its decision whether to grant such extension, the Board shall consider whether the company has made a good faith effort to divest such interests and whether such extension is necessary to avert substantial loss to the company.

(b) Statement purporting to represent shares of any company except a bank or bank holding company

After two years from May 9, 1956, no certificate evidencing shares of any bank holding company shall bear any statement purporting to represent shares of any other company except a bank or a bank holding company, nor shall the ownership, sale, or transfer of shares of any bank holding company be conditioned in any manner whatsoever upon the ownership, sale, or transfer of shares of any other company except a bank or a bank holding company.

(c) Exemptions

The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of title 26, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) shares of any company engaged or to be engaged solely in one or more of the following

activities: (A) holding or operating properties used wholly or substantially by any banking subsidiary of such bank holding company in the operations of such banking subsidiary or acquired for such future use; or (B) conducting a safe deposit business; or (C) furnishing services to or performing services for such bank holding company or its banking subsidiaries; or (D) liquidating assets acquired from such bank holding company or its banking subsidiaries or acquired from any other source prior to May 9, 1956, or the date on which such company became a bank holding company, whichever is later;

(2) shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of within a period of two years from the date on which they were acquired, except that the Board is authorized upon application by such bank holding company to extend such period of two years from time to time as to such holding company if, in its judgment, such an extension would not be detrimental to the public interest, and, in the case of a bank holding company which has not disposed of such shares within 5 years after the date on which such shares were acquired, the Board may, upon the application of such company, grant additional exemptions if, in the judgment of the Board, such extension would not be detrimental to the public interest and, either the bank holding company has made a good faith attempt to dispose of such shares during such 5-year period, or the disposal of such shares during such 5-year period would have been detrimental to the company, except that the aggregate duration of such extensions shall not extend beyond 10 years after the date on which such shares were acquired;

(3) shares acquired by such bank holding company from any of its subsidiaries which subsidiary has been requested to dispose of such shares by any Federal or State authority having statutory power to examine such subsidiary, but such bank holding company shall dispose of such shares within a period of two years from the date on which they were acquired;

(4) shares held or acquired by a bank in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 1841(b) of this title and except as provided in paragraphs (2) and (3) of section 1841(g) of this title;

(5) shares which are of the kinds and amounts eligible for investment by national banking associations under the provisions of section 24 of this title;

(6) shares of any company which do not include more than 5 per centum of the outstanding voting shares of such company;

(7) shares of an investment company which is not a bank holding company and which is not engaged in any business other than investing in securities, which securities do not include more than 5 per centum of the outstanding voting shares of any company;

(8) shares of any company the activities of which had been determined by the Board by regulation or order under this paragraph as of the day before November 12, 1999, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation or order, unless modified by the Board);

(9) shares held or activities conducted by any company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this chapter and would be in the public interest;

(10) shares lawfully acquired and owned prior to May 9, 1956, by a bank which is a bank holding company, or by any of its wholly owned subsidiaries;

(11) shares owned directly or indirectly by a company covered in 1970 in a company which does not engage in any activities other than those in which the bank holding company, or its subsidiaries, may engage by virtue of this section, but nothing in this paragraph authorizes any bank holding company, or subsidiary thereof, to acquire any interest in or the assets of any going concern (except pursuant to a binding written contract entered into before June 30, 1968, or pursuant to another provision of this chapter) other than one which was a subsidiary on June 30, 1968;

(12) shares retained or acquired, or activities engaged in, by any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on December 31, 1970, or by any subsidiary thereof, if such company—

(A) within the applicable time limits prescribed in subsection (a)(2) of this section (i) ceases to be a bank holding company, or (ii) ceases to retain direct or indirect ownership or control of those shares and to engage in those activities not authorized under this section; and

(B) complies with such other conditions as the Board may by regulation or order prescribe;

(13) shares of, or activities conducted by, any company which does no business in the United States except as an incident to its international or foreign business, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this chapter and would be in the public interest; or

(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been

given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

(ii) The period for disapproval may be extended for such additional thirty-day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

(iv) The Board may disapprove any proposed investment only if—

(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

(II) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company, or

(III) the bank holding company fails to furnish the information required under clause (iii).

(v) LEVERAGE.—The Board may not disapprove any proposed investment solely on the basis of the anticipated or proposed asset-to-equity ratio of the export trading company with respect to which such investment is proposed, unless the anticipated or proposed annual average asset-to-equity ratio is greater than 20-to-1.

(vi) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

(vii) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of credit.

(iii) No bank holding company or subsidiary of such company which invests in an export trading company may extend credit to such export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(C) For purposes of this paragraph, an export trading company—

(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a)[1] of the Federal Reserve Act (12 U.S.C. 611–631), which is a subsidiary of a bank holding company, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.], which is a subsidiary of a bank holding company, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in banking) in the voting stock of[2] other evidences of ownership in one or more export trading companies.

(F) For purposes of this paragraph—

(i) the term ''export trading company'' means a company which does business under the laws of the United States or any State, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United

[1] See References in Text note below.

[2] So in original. Probably should be ''or''.

States by unaffiliated persons by providing one or more export trade services.[3]

(ii) the term ''export trade services'' includes, but is not limited to, consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

(iii) the term ''bank holding company'' shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

(iv) the term ''extension of credit'' shall have the same meaning given such term in the fourth paragraph of section 371c[1] of this title.

(G) DETERMINATION OF STATUS AS EXPORT TRADING COMPANY.—

(i) TIME PERIOD REQUIREMENTS.—For purposes of determining whether an export trading company is operated principally for the purposes described in subparagraph (F)(i)—

(I) the operations of such company during the 2-year period beginning on the date such company commences operations shall not be taken into account in making any such determination; and

(II) not less than 4 consecutive years of operations of such company (not including any portion of the period referred to in subclause (I)) shall be taken into account in making any such determination.

(ii) EXPORT REVENUE REQUIREMENTS.—A company shall not be treated as operated principally for the purposes described in subparagraph (F)(i) unless—

(I) the revenues of such company from the export, or facilitating the export, of goods or services produced in the United States exceed the revenues of such company from the import, or facilitating the import, into the United States of goods or services produced outside the United States; and

(II) at least ⅓ of such company's total revenues are revenues from the export, or facilitating the export, of goods or services produced in the United States by persons not affiliated with such company.

(H) INVENTORY.—

(i) NO GENERAL LIMITATION.—The Board may not prescribe by regulation any maximum dollar amount limitation on the value of goods which an export trading company may maintain in inventory at any time.

(ii) SPECIFIC LIMITATION BY ORDER.—Notwithstanding clause (i), the Board may issue an order establishing a maximum dollar amount limitation on the value of goods which a particular export trading company may maintain in inventory at any time (after such company has been operating for a reasonable period of time) if the Board finds that, under the facts and circumstances, such limitation is necessary to prevent risks that would affect the financial or managerial resources of an investor bank holding company to an extent which would be likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company.

The Board shall include in its annual report to the Congress a description and a statement of the reasons for approval of each activity approved by it by order or regulation under such paragraph during the period covered by the report.

(d) Exemption of company controlling one bank prior to July 1, 1968

To the extent that such action would not be substantially at variance with the purposes of this chapter and subject to such conditions as it considers necessary to protect the public interest, the Board by order, after opportunity for hearing, may grant exemptions from the provisions of this section to any bank holding company which controlled one bank prior to July 1, 1968, and has not thereafter acquired the control of any other bank in order (1) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved, or (2) to avoid forced sales of small locally owned banks to purchasers not similarly representative of community interests, or (3) to allow retention of banks that are so small in relation to the holding company's total interests and so small in relation to the banking market to be served as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desire to further the holding company's other interests.

(e) Divestiture of nonexempt shares

With respect to shares which were not subject to the prohibitions of this section as originally enacted by reason of any exemption with respect thereto but which were made subject to such

[3] So in original. The period probably should be a semicolon.

prohibitions by the subsequent repeal of such exemption, no bank holding company shall retain direct or indirect ownership or control of such shares after five years from the date of the repeal of such exemption, except as provided in paragraph (2) of subsection (a) of this section. Any bank holding company subject to such five-year limitation on the retention of nonbanking assets shall endeavor to divest itself of such shares promptly and such bank holding company shall report its progress in such divestiture to the Board two years after repeal of the exemption applicable to it and annually thereafter.

(f) Certain companies not treated as bank holding companies

(1) In general

Except as provided in paragraph (9), any company which—

(A) on March 5, 1987, controlled an institution which became a bank as a result of the enactment of the Competitive Equality Amendments of 1987; and

(B) was not a bank holding company on the day before August 10, 1987,

shall not be treated as a bank holding company for purposes of this chapter solely by virtue of such company's control of such institution.

(2) Loss of exemption

Subject to paragraph (3), a company described in paragraph (1) shall no longer qualify for the exemption provided under that paragraph if—

(A) such company directly or indirectly—

(i) acquires control of an additional bank or an insured institution (other than an insured institution described in paragraph (10) or (12) of this subsection) after March 5, 1987; or

(ii) acquires control of more than 5 percent of the shares or assets of an additional bank or a savings association other than—

(I) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

(II) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company described in paragraph (1) or any subsidiary of that company and the beneficiaries of those employees;

(III) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(IV) shares held in an account solely for trading purposes;

(V) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(VI) loans or other accounts receivable acquired in the normal course of business;

(VII) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

(VIII) shares or assets of a savings association described in paragraph (10) or (12) of this subsection;

(IX) shares of a savings association held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(17)], except as provided in paragraph (11);

(X) shares issued in a qualified stock issuance under section 1467a(q) of this title; and

(XI) assets that are derived from, or incidental to, activities in which institutions described in subparagraph (F) or (H) of section 1841(c)(2) of this title are permitted to engage;

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), (V), and (VIII)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association;

(B) any bank subsidiary of such company—

(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and

(ii) engages in the business of making commercial loans (except that, for purposes of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or

(C) after August 10, 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in the account of the bank at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).

(3) Permissible overdrafts described

For purposes of paragraph (2)(C), an overdraft is described in this paragraph if—

(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate;

(B) such overdraft—

(i) is permitted or incurred on behalf of an affiliate that is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations that are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system; or

(C) such overdraft—

(i) is permitted or incurred by, or on behalf of, an affiliate in connection with an activity that is financial in nature or incidental to a financial activity; and

(ii) does not cause the bank to violate any provision of section 371c or 371c–1 of this title, either directly, in the case of a bank that is a member of the Federal Reserve System, or by virtue of section 18(j) of the Federal Deposit Insurance Act [12 U.S.C. 1828(j)], in the case of a bank that is not a member of the Federal Reserve System.

(4) Divestiture in case of loss of exemption

If any company described in paragraph (1) fails to qualify for the exemption provided under paragraph (1) by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date on which the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless, before the end of such 180-day period, the company has—

(A) either—

(i) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; or

(ii) submitted a plan to the Board for approval to cease the activity or correct the condition in a timely manner (which shall not exceed 1 year); and

(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.

(5) Subsection ceases to apply under certain circumstances

This subsection shall cease to apply to any company described in paragraph (1) if such company—

(A) registers as a bank holding company under section 1844(a) of this title;

(B) immediately upon such registration, complies with all of the requirements of this chapter, and regulations prescribed by the Board pursuant to this chapter, including the nonbanking restrictions of this section; and

(C) does not, at the time of such registration, control banks in more than one State, the acquisition of which would be prohibited by section 1842(d) of this title if an application for such acquisition by such company were filed under section 1842(a) of this title.

(6) Information requirement

Each company described in paragraph (1) shall, within 60 days after August 10, 1987, provide the Board with the name and address of such company, the name and address of each bank such company controls, and a description of each such bank's activities.

(7) Examination

The Board may, from time to time, examine a company described in paragraph (1), or a bank controlled by such company, or require reports under oath from appropriate officers or directors of such company or bank solely for purposes of assuring compliance with the provisions of this subsection and enforcing such compliance.

(8) Enforcement

(A) In general

In addition to any other power of the Board, the Board may enforce compliance with the provisions of this chapter which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company or bank were a State member insured bank.

(B) Application of other act

Any violation of this chapter by any company described in paragraph (1), and any bank controlled by such company, may also be treated as a violation of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] for purposes of subparagraph (A).

(C) No effect on other authority

No provision of this paragraph shall be construed as limiting any authority of the Comptroller of the Currency or the Federal Deposit Insurance Corporation.

(9) Tying provisions

A company described in paragraph (1) shall be—

(A) treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.] and section 22(h) of the Federal Reserve Act [12 U.S.C. 375b] and any regulation prescribed under any such section; and

(B) subject to the restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.], in connection with any transaction involving the products or services of such company or affiliate and those of a bank affiliate, as if such company or affiliate were a bank and such bank were a subsidiary of a bank holding company.

(10) Exemption unaffected by certain emergency acquisitions

For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if—

(A) the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1) in an acquisition under section 1730a(m)[1] of this title or section 13(k) of the Federal Deposit Insurance Act [12 U.S.C. 1823(k)]; and

(B) either—

(i) the insured institution is located in a State in which such company controlled a bank on March 5, 1987; or

(ii) the insured institution has total assets of $500,000,000 or more at the time of such acquisition.

(11) Shares held by insurance affiliates

Shares described in clause (ii)(IX) of paragraph (2)(A) shall not be excluded for purposes of clause (ii) of such paragraph if—

(A) all shares held under such clause (ii)(IX) by all insurance company affiliates of such savings association in the aggregate exceed 5 percent of all outstanding shares or of the voting power of the savings association; or

(B) such shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association.

(12) Exemption unaffected by certain other acquisitions

For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1)—

(A) from the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision, in any capacity; or

(B) in an acquisition in which the insured institution has been found to be in danger of default (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) by the appropriate Federal or State authority.

(13) Special rule relating to shares acquired in a qualified stock issuance

A company described in paragraph (1) that holds shares issued in a qualified stock issuance pursuant to section 1467a(q) of this title by any savings association or savings and loan holding company (neither of which is a subsidiary) shall not be deemed to control such savings association or savings and loan holding company solely because such company holds such shares unless—

(A) the company fails to comply with any requirement or condition imposed by paragraph (2)(A)(ii)(X) or section 1467a(q) of this title with respect to such shares; or

(B) the shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company.

(14) Foreign bank subsidiaries of limited purpose credit card banks

(A) In general

An institution described in section 1841(c)(2)(F) of this title may control a foreign bank if—

(i) the investment of the institution in the foreign bank meets the requirements of section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.] and the foreign bank qualifies under such sections;

(ii) the foreign bank does not offer any products or services in the United States; and

(iii) the activities of the foreign bank are permissible under otherwise applicable law.

(B) Other limitations inapplicable

The limitations contained in any clause of section 1841(c)(2)(F) of this title shall not apply to a foreign bank described in subparagraph (A) that is controlled by an institution described in such section.

(g) Limitations on certain banks

(1) In general

Notwithstanding any other provision of this section (other than the last sentence of subsection (a)(2) of this section), a bank holding company which controls an institution that became a bank as a result of the enactment of the Competitive Equality Amendments of 1987 may retain control of such institution if such institution does not—

(A) engage in any activity after August 10, 1987, which would have caused such institution to be a bank (as defined in section 1841(c) of this title, as in effect before such date) if such activities had been engaged in before such date; or

(B) increase the number of locations from which such institution conducts business after March 5, 1987.

(2) Limitations cease to apply under certain circumstances

The limitations contained in paragraph (1) shall cease to apply to a bank described in such paragraph at such time as the acquisition of such bank, by the bank holding company referred to in such paragraph, would not be prohibited under section 1842(d) of this title if—

(A) an application for such acquisition were filed under section 1842(a) of this title; and

(B) such bank were treated as an additional bank (under section 1842(d) of this title).

(h) Tying provisions

(1) Applicable to certain exempt institutions and parent companies

An institution described in subparagraph (D), (F), (G), or (H) of section 1841(c)(2) of this title shall be treated as a bank, and a company that controls such an institution shall be treated as a bank holding company, for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.] and section 22(h) of the Federal Reserve Act [12 U.S.C. 375b] and any regulation prescribed under any such section.

(2) Applicable with respect to certain transactions

A company that controls an institution described in subparagraph (D), (F), (G), or (H) of section 1841(c)(2) of this title and any of such company's other affiliates, shall be subject to the tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.] in connection with any transaction involving the products or services of such company or affiliate and those of such institution, as if such company or affiliate were a bank and such institution were a subsidiary of a bank holding company.

(i) Acquisition of savings associations

(1) In general

The Board may approve an application by any bank holding company under subsection (c)(8) of this section to acquire any savings association in accordance with the requirements and limitations of this section.

(2) Prohibition on tandem restrictions

In approving an application by a bank holding company to acquire a savings association, the Board shall not impose any restriction on transactions between the savings association and its holding company affiliates, except as required under sections 371c and 371c–1 of this title or any other applicable law.

(3) Acquisition of insolvent savings associations

(A) In general

Notwithstanding any other provision of this chapter, any qualified savings association which became a federally chartered stock company in December of 1986 and which is acquired by any bank holding company without Federal financial assistance after June 1, 1991, and before March 1, 1992, and any subsidiary of any such association, may after such acquisition continue to engage within the home State of the qualified savings association in insurance agency activities in which any Federal savings association (or any subsidiary thereof) may engage in accordance with the Home Owners' Loan Act [12 U.S.C. 1461 et seq.] and regulations pursuant to such Act if the qualified savings association or subsidiary thereof was continuously engaged in such activity from June 1, 1991, to the date of the acquisition.

(B) "Qualified savings association" defined

For purposes of this paragraph, the term ''qualified savings association'' means any savings association that—

(i) was chartered or organized as a savings association before June 1, 1991;

(ii) had, immediately before the acquisition of such association by the bank holding company referred to in subparagraph (A), negative tangible capital and total insured deposits in excess of $3,000,000,000; and

(iii) will meet all applicable regulatory capital requirements as a result of such acquisition.

(4) Solicitation of views

(A) Notice to Director

Upon receiving any application or notice by a bank holding company to acquire, directly or indirectly, a savings association under subsection (c)(8) of this section, the Board shall solicit comments and recommendations from the Director with respect to such acquisition.

(B) Comment period

The comments and recommendations of the Director under subparagraph (A) with respect to any acquisition subject to such subparagraph shall be transmitted to the Board not later than 30 days after the receipt by the Director of the notice relating to such acquisition (or such shorter period as the Board may specify if the Board advises the Director that an emergency exists that requires expeditious action).

(5) Examination

(A) Scope

The Board shall consult with the Director, as appropriate, in establishing the scope of an examination by the Board of a bank holding company that directly or indirectly controls a savings association.

(B) Access to inspection reports

Upon the request of the Director, the Board shall furnish the Director with a copy of any inspection report, additional examination materials, or supervisory information relating to any bank holding company that directly or indirectly controls a savings association.

(6) Coordination of enforcement efforts

The Board and the Director shall cooperate in any enforcement action against any bank holding company that controls a savings association, if the relevant conduct involves such association.

(7) "Director" defined

For purposes of this section, the term ''Director'' means the Director of the Office of Thrift Supervision.

(8) Interstate acquisitions

(A) In general

The Board may not approve an application by a bank holding company to acquire an insured depository institution under subsection (c)(8) or any other provision of this chapter if—

(i) the home State of such insured depository institution is a State other than the home State of the bank holding company; and

(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Exception

Subparagraph (A) shall not apply to an acquisition that involves an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823).

(j) Notice procedures for nonbanking activities

(1) General notice procedure

(A) Notice requirement

Except as provided in paragraph (3), no bank holding company may engage in any nonbanking activity or acquire or retain ownership or control of the shares of a company engaged in activities based on sub-

section (c)(8) or (a)(2) of this section or in any complementary activity under subsection (k)(1)(B) of this section without providing the Board with written notice of the proposed transaction or activity at least 60 days before the transaction or activity is proposed to occur or commence.

(B) Contents of notice

The notice submitted to the Board shall contain such information as the Board shall prescribe by regulation or by specific request in connection with a particular notice.

(C) Procedure for agency action

(i) Notice of disapproval

Any notice filed under this subsection shall be deemed to be approved by the Board unless, before the end of the 60-day period beginning on the date the Board receives a complete notice under subparagraph (A), the Board issues an order disapproving the transaction or activity and setting forth the reasons for disapproval.

(ii) Extension of period

The Board may extend the 60-day period referred to in clause (i) for an additional 30 days. The Board may further extend the period with the agreement of the bank holding company submitting the notice pursuant to this subsection.

(iii) Determination of period in case of public hearing

In the event a hearing is requested or the Board determines that a hearing is warranted, the Board may extend the notice period provided in this subsection for such time as is reasonably necessary to conduct a hearing and to evaluate the hearing record. Such extension shall not exceed the 91-day period beginning on the date that the hearing record is complete.

(D) Approval before end of period

(i) In general

Any transaction or activity may commence before the expiration of any period for disapproval established under this paragraph if the Board issues a written notice of approval.

(ii) Shorter periods by regulation

The Board may prescribe regulations which provide for a shorter notice period with respect to particular activities or transactions.

(E) Extension of period

In the case of any notice to engage in, or to acquire or retain ownership or control of shares of any company engaged in, any activity pursuant to subsection (c)(8) or (a)(2) of this section or in any complementary activity under subsection (k)(1)(B) of this section that has not been previously approved by regulation, the Board may extend the notice period under this subsection for an additional 90 days. The Board may further extend the period with the agreement of the bank holding company submitting the notice pursuant to this subsection.

(2) General standards for review

(A) Criteria

In connection with a notice under this subsection, the Board shall consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(B) Grounds for disapproval

The Board may deny any proposed transaction or activity for which notice has been submitted pursuant to this subsection if the bank holding company submitting such notice neglects, fails, or refuses to furnish the Board all the information required by the Board.

(C) Conditional action

Nothing in this subsection limits the authority of the Board to impose conditions in connection with an action under this section.

(3) No notice required for certain transactions

No notice under paragraph (1) of this subsection or under subsection (c)(8) or (a)(2)(B) of this section is required for a proposal by a bank holding company to engage in any activity, other than any complementary activity under subsection (k)(1)(B) of this section, or acquire the shares or assets of any company, other than an insured depository institution or a company engaged in any complementary activity under subsection (k)(1)(B) of this section, if the proposal qualifies under paragraph (4).

(4) Criteria for statutory approval

A proposal qualifies under this paragraph if all of the following criteria are met:

(A) Financial criteria

Both before and immediately after the proposed transaction—

(i) the acquiring bank holding company is well capitalized;

(ii) the lead insured depository institution of such holding company is well capitalized;

(iii) well capitalized insured depository institutions control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company; and

(iv) no insured depository institution controlled by such holding company is undercapitalized.

(B) Managerial criteria

(i) Well managed

At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 90 percent of the aggregate total

risk-weighted assets of insured depository institutions controlled by such holding company are well managed.

(ii) Limitation on poorly managed institutions

Except as provided in paragraph (6), no insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the later of the institution's most recent examination or subsequent review.

(C) Activities permissible

Following consummation of the proposal, the bank holding company engages directly or through a subsidiary solely in—

(i) activities that are permissible under subsection (c)(8) of this section, as determined by the Board by regulation or order thereunder, subject to all of the restrictions, terms, and conditions of such subsection and such regulation or order; and

(ii) such other activities as are otherwise permissible under this section, subject to the restrictions, terms and conditions, including any prior notice or approval requirements, provided in this section.

(D) Size of acquisition

(i) Asset size

The book value of the total assets to be acquired does not exceed 10 percent of the consolidated total risk-weighted assets of the acquiring bank holding company.

(ii) Consideration

The gross consideration to be paid for the securities or assets does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company.

(E) Notice not otherwise warranted

For proposals described in paragraph (5)(B), the Board has not, before the conclusion of the period provided in paragraph (5)(B), advised the bank holding company that a notice under paragraph (1) is required.

(F) Compliance criterion

During the 12-month period ending on the date on which the bank holding company proposes to commence an activity or acquisition, no administrative enforcement action has been commenced, and no cease and desist order has been issued pursuant to section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], against the bank holding company or any depository institution subsidiary of the holding company, and no such enforcement action, order, or other administrative enforcement proceeding is pending as of such date.

(5) Notification

(A) Commencement of activities approved by rule

A bank holding company that qualifies under paragraph (4) and that proposes to engage de novo, directly or through a subsidiary, in any activity that is permissible under subsection (c)(8) of this section, as determined by the Board by regulation, may commence that activity without prior notice to the Board and must provide written notification to the Board not later than 10 business days after commencing the activity.

(B) Activities permitted by order and acquisitions

(i) In general

At least 12 business days before commencing any activity pursuant to paragraph (3) (other than an activity described in subparagraph (A) of this paragraph) or acquiring shares or assets of any company pursuant to paragraph (3), the bank holding company shall provide written notice of the proposal to the Board, unless the Board determines that no notice or a shorter notice period is appropriate.

(ii) Description of activities and terms

A notification under this subparagraph shall include a description of the proposed activities and the terms of any proposed acquisition.

(6) Recently acquired institutions

Any insured depository institution which has been acquired by a bank holding company during the 12-month period preceding the date on which the company proposes to commence an activity or acquisition pursuant to paragraph (3) may be excluded for purposes of paragraph (4)(B)(ii) if—

(A) the bank holding company has developed a plan for the institution to restore the capital and management of the institution which is acceptable to the appropriate Federal banking agency; and

(B) all such insured depository institutions represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the bank holding company.

(7) Adjustment of percentages

The Board may, by regulation, adjust the percentages and the manner in which the percentages of insured depository institutions are calculated under paragraph (4)(B)(i), (4)(D), or (6)(B) if the Board determines that any such adjustment is consistent with safety and soundness and the purposes of this chapter.

(k) Engaging in activities that are financial in nature

(1) In general

Notwithstanding subsection (a) of this section, a financial holding company may engage in any activity, and may acquire and retain the shares of any company engaged in any activity, that the Board, in accordance with paragraph (2), determines (by regulation or order)—

(A) to be financial in nature or incidental to such financial activity; or

(B) is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.

(2) Coordination between the Board and the Secretary of the Treasury

(A) Proposals raised before the Board

(i) Consultation

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

(ii) Treasury view

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

(B) Proposals raised by the Treasury

(i) Treasury recommendation

The Secretary of the Treasury may, at any time, recommend in writing that the Board find an activity to be financial in nature or incidental to a financial activity.

(ii) Time period for Board action

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

(3) Factors to be considered

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

(A) the purposes of this chapter and the Gramm-Leach-Bliley Act;

(B) changes or reasonably expected changes in the marketplace in which financial holding companies compete;

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

(D) whether such activity is necessary or appropriate to allow a financial holding company and the affiliates of a financial holding company to—

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

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

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

(4) Activities that are financial in nature

For purposes of this subsection, the following activities shall be considered to be financial in nature:

(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any State.

(C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940 [15 U.S.C. 80a–3]).

(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

(E) Underwriting, dealing in, or making a market in securities.

(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on November 12, 1999, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

(G) Engaging, in the United States, in any activity that—

(i) a bank holding company may engage in outside of the United States; and

(ii) the Board has determined, under regulations prescribed or interpretations issued pursuant to subsection (c)(13) of this section (as in effect on the day before November 12, 1999) to be usual in connection with the transaction of banking or other financial operations abroad.

(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls), or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or subsidiary of a depository institution;

(ii) such shares, assets, or ownership interests are acquired and held by—

(I) a securities affiliate or an affiliate thereof; or

(II) an affiliate of an insurance company described in subparagraph (I)(ii) that provides investment advice to an insurance company and is registered pursuant to the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], or an affiliate of such investment adviser;

as part of a bona fide underwriting or merchant or investment banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

(iii) such shares, assets, or ownership interests are held for a period of time to enable the sale or disposition thereof on a reasonable basis consistent with the financial viability of the activities described in clause (ii); and

(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company or entity except as may be necessary or required to obtain a reasonable return on investment upon resale or disposition.

(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;

(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities;

(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company except as may be necessary or required to obtain a reasonable return on investment.

(5) Actions required

(A) In general

The Board shall, by regulation or order, define, consistent with the purposes of this chapter, the activities described in subparagraph (B) as financial in nature, and the extent to which such activities are financial in nature or incidental to a financial activity.

(B) Activities

The activities described in this subparagraph are as follows:

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

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

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

(6) Required notification

(A) In general

A financial holding company that acquires any company or commences any activity pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired not later than 30 calendar days after commencing the activity or consummating the acquisition, as the case may be.

(B) Approval not required for certain financial activities

Except as provided in subsection (j) of this section with regard to the acquisition of a[4] insured depository institution, a financial holding company may commence any activity, or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board.

(7) Merchant banking activities

(A) Joint regulations

The Board and the Secretary of the Treasury may issue such regulations implementing paragraph (4)(H), including limitations on transactions between depository institutions and companies controlled pursuant to such paragraph, as the Board and the Secretary jointly deem appropriate to assure compliance with the purposes and prevent evasions of this chapter and the Gramm-Leach-Bliley Act and to protect depository institutions.

(B) Sunset of restrictions on merchant banking activities of financial subsidiaries

The restrictions contained in paragraph (4)(H) on the ownership and control of shares, assets, or ownership interests by or on behalf of a subsidiary of a depository institution shall not apply to a financial subsidiary (as defined in section 24a of this title) of a bank, if the Board and the Secretary of the Treasury jointly authorize fi-

[4] So in original. Probably should be ''an''.

nancial subsidiaries of banks to engage in merchant banking activities pursuant to section 122 of the Gramm-Leach-Bliley Act.

(*l*) Conditions for engaging in expanded financial activities

(1) In general

Notwithstanding subsection (k), (n), or (*o*) of this section, a bank holding company may not engage in any activity, or directly or indirectly acquire or retain shares of any company engaged in any activity, under subsection (k), (n), or (*o*) of this section, other than activities permissible for any bank holding company under subsection (c)(8) of this section, unless—

(A) all of the depository institution subsidiaries of the bank holding company are well capitalized;

(B) all of the depository institution subsidiaries of the bank holding company are well managed; and

(C) the bank holding company has filed with the Board—

(i) a declaration that the company elects to be a financial holding company to engage in activities or acquire and retain shares of a company that were not permissible for a bank holding company to engage in or acquire before the enactment of the Gramm-Leach-Bliley Act; and

(ii) a certification that the company meets the requirements of subparagraphs (A) and (B).

(2) CRA requirement

Notwithstanding subsection (k) or (n) of this section, section 24a(a) of this title, or section 46(a) of the Federal Deposit Insurance Act [12 U.S.C. 1831w(a)], the appropriate Federal banking agency shall prohibit a financial holding company or any insured depository institution from—

(A) commencing any new activity under subsection (k) or (n) of this section, section 24a(a) of this title, or section 46(a) of the Federal Deposit Insurance Act; or

(B) directly or indirectly acquiring control of a company engaged in any activity under subsection (k) or (n) of this section, section 24a(a) of this title, or section 46(a) of the Federal Deposit Insurance Act (other than an investment made pursuant to subparagraph (H) or (I) of subsection (k)(4) of this section, or section 122 of the Gramm-Leach-Bliley Act, or under section 46(a) of the Federal Deposit Insurance Act by reason of such section 122, by an affiliate already engaged in activities under any such provision);

if any insured depository institution subsidiary of such financial holding company, or the insured depository institution or any of its insured depository institution affiliates, has received in its most recent examination under the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.], a rating of less than ''satisfactory record of meeting community credit needs''.

(3) Foreign banks

For purposes of paragraph (1), the Board shall apply comparable capital and management standards to a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, giving due regard to the principle of national treatment and equality of competitive opportunity.

(m) Provisions applicable to financial holding companies that fail to meet certain requirements

(1) In general

If the Board finds that—

(A) a financial holding company is engaged, directly or indirectly, in any activity under subsection (k), (n), or (*o*) of this section, other than activities that are permissible for a bank holding company under subsection (c)(8) of this section; and

(B) such financial holding company is not in compliance with the requirements of subsection (*l*)(1) of this section;

the Board shall give notice to the financial holding company to that effect, describing the conditions giving rise to the notice.

(2) Agreement to correct conditions required

Not later than 45 days after the date of receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the financial holding company shall execute an agreement with the Board to comply with the requirements applicable to a financial holding company under subsection (*l*)(1) of this section.

(3) Board may impose limitations

Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected, the Board may impose such limitations on the conduct or activities of that financial holding company or any affiliate of that company as the Board determines to be appropriate under the circumstances and consistent with the purposes of this chapter.

(4) Failure to correct

If the conditions described in a notice to a financial holding company under paragraph (1) are not corrected within 180 days after the date of receipt by the financial holding company of a notice under paragraph (1), the Board may require such financial holding company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the discretion of the Board, either—

(A) to divest control of any subsidiary depository institution; or

(B) at the election of the financial holding company instead to cease to engage in any activity conducted by such financial holding company or its subsidiaries (other than a depository institution or a subsidiary of a depository institution) that is not an activity that is permissible for a bank holding company under subsection (c)(8) of this section.

(5) Consultation

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

(n) Authority to retain limited nonfinancial activities and affiliations

(1) In general

Notwithstanding subsection (a) of this section, a company that is not a bank holding company or a foreign bank (as defined in section 3101(7) of this title) and becomes a financial holding company after November 12, 1999, may continue to engage in any activity and retain direct or indirect ownership or control of shares of a company engaged in any activity if—

(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1999;

(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

(C) the company engaged in such activity continues to engage only in the same activities that such company conducted on September 30, 1999, and other activities permissible under this chapter.

(2) Predominantly financial

For purposes of this subsection, a company is predominantly engaged in financial activities if the annual gross revenues derived by the holding company and all subsidiaries of the holding company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to a financial activity under subsection (k) of this section represent at least 85 percent of the consolidated annual gross revenues of the company.

(3) No expansion of grandfathered commercial activities through merger or consolidation

A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company that is engaged in any activity that the Board has not determined to be financial in nature or incidental to a financial activity under subsection (k) of this section, except this paragraph shall not apply with respect to a company that owns a broadcasting station licensed under title III of the Communications Act of 1934 [47 U.S.C. 301 et seq.] and the shares of which are under common control with an insurance company since January 1, 1998, unless such company is acquired by, or otherwise becomes an affiliate of, a bank holding company that, at the time such acquisition or affiliation is consummated, is 1 of the 5 largest domestic bank holding companies (as determined on the basis of the consolidated total assets of such companies).

(4) Continuing revenue limitation on grandfathered commercial activities

Notwithstanding any other provision of this subsection, a financial holding company may continue to engage in activities or hold shares in companies pursuant to this subsection only to the extent that the aggregate annual gross revenues derived from all such activities and all such companies does not exceed 15 percent of the consolidated annual gross revenues of the financial holding company (excluding revenues derived from subsidiary depository institutions).

(5) Cross marketing restrictions applicable to commercial activities

(A) In general

A depository institution controlled by a financial holding company shall not—

(i) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection or subparagraph (H) or (I) of subsection (k)(4) of this section; or

(ii) permit any of its products or services to be offered or marketed, directly or through any arrangement, by or through any company described in clause (i).

(B) Rule of construction

Subparagraph (A) shall not be construed as prohibiting an arrangement between a depository institution and a company owned or controlled pursuant to subparagraph (H) or (I) of subsection (k)(4) of this section for the marketing of products or services through statement inserts or Internet websites if—

(i) such arrangement does not violate section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.]; and

(ii) the Board determines that the arrangement is in the public interest, does not undermine the separation of banking and commerce, and is consistent with the safety and soundness of depository institutions.

(6) Transactions with nonfinancial affiliates

A depository institution controlled by a financial holding company may not engage in a covered transaction (as defined in section 371c(b)(7) of this title) with any affiliate controlled by the company pursuant to this subsection.

(7) Sunset of grandfather

A financial holding company engaged in any activity, or retaining direct or indirect ownership or control of shares of a company, pursuant to this subsection, shall terminate such activity and divest ownership or control of the shares of such company before the end of the 10-year period beginning on November 12, 1999. The Board may, upon application by a financial holding company, extend such 10-year period by a period not to exceed an additional 5 years if such extension would not be detrimental to the public interest.

(*o*) Regulation of certain financial holding companies

Notwithstanding subsection (a) of this section, a company that is not a bank holding company or a foreign bank (as defined in section 3101(7) of this title) and becomes a financial holding com-

pany after November 12, 1999, may continue to engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of September 30, 1997, if—

(1) the holding company, or any subsidiary of the holding company, lawfully was engaged, directly or indirectly, in any of such activities as of September 30, 1997, in the United States;

(2) the attributed aggregate consolidated assets of the company held by the holding company pursuant to this subsection, and not otherwise permitted to be held by a financial holding company, are equal to not more than 5 percent of the total consolidated assets of the bank holding company, except that the Board may increase that percentage by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this chapter; and

(3) the holding company does not permit—

(A) any company, the shares of which it owns or controls pursuant to this subsection, to offer or market any product or service of an affiliated depository institution; or

(B) any affiliated depository institution to offer or market any product or service of any company, the shares of which are owned or controlled by such holding company pursuant to this subsection.

(May 9, 1956, ch. 240, § 4, 70 Stat. 135; Pub. L. 89–485, § 8, July 1, 1966, 80 Stat. 238; Pub. L. 91–607, title I, § 103, Dec. 31, 1970, 84 Stat. 1763; Pub. L. 95–188, title III, § 301(c), Nov. 16, 1977, 91 Stat. 1389; Pub. L. 95–630, title I, § 112, Nov. 10, 1978, 92 Stat. 3671; Pub. L. 96–221, title VII, § 701(b), Mar. 31, 1980, 94 Stat. 186; Pub. L. 97–290, title II, § 203, Oct. 8, 1982, 96 Stat. 1236; Pub. L. 97–320, title I, §§ 118(a), 141(a)(4), title IV, § 433(b), title VI, § 601, Oct. 15, 1982, 96 Stat. 1479, 1489, 1527, 1536; Pub. L. 97–457, § 30, Jan. 12, 1983, 96 Stat. 2511; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–86, title I, § 101(b), (c), title V, §§ 502(h)(2), 509(a), Aug. 10, 1987, 101 Stat. 557, 628, 635; Pub. L. 100–418, title III, § 3402, Aug. 23, 1988, 102 Stat. 1384; Pub. L. 101–73, title VI, §§ 601(a), 603, 604(b), title XII, § 1219, Aug. 9, 1989, 103 Stat. 408, 409, 411, 546; Pub. L. 102–242, title IV, § 461, Dec. 19, 1991, 105 Stat. 2384; Pub. L. 102–550, title XVI, § 1606(h)(1), Oct. 28, 1992, 106 Stat. 4089; Pub. L. 103–325, title III, § 346, Sept. 23, 1994, 108 Stat. 2239; Pub. L. 104–208, div. A, title II, §§ 2203(d), 2208(a), 2215, 2304(a), 2612, Sept. 30, 1996, 110 Stat. 3009–404, 3009–406, 3009–413, 3009–425, 3009–476; Pub. L. 106–102, title I, §§ 102(a), 103(a), (c)(2), 107(a), (b), (d)–(f), Nov. 12, 1999, 113 Stat. 1341, 1342, 1351, 1359–1361; Pub. L. 109–351, title VI, § 611, title VII, § 727(b), Oct. 13, 2006, 120 Stat. 1984, 2003; Pub. L. 111–203, title III, § 354(2)(A), title VI, §§ 604(e), 606(a), 623(b)(1), July 21, 2010, 124 Stat. 1546, 1601, 1607, 1634.)

AMENDMENT OF SECTION

Pub. L. 111–203, title VI, § 606(a), (c), July 21, 2010, 124 Stat. 1607, provided that, effective on the transfer date, subsection (l)(1) of this section is amended:

(1) in subparagraph (B), by striking out ''and'' at the end;

(2) by redesignating subparagraph (C) as (D);

(3) by adding after subparagraph (B) the following:

''(C) the bank holding company is well capitalized and well managed; and''; and

(4) in subparagraph (D)(ii), as so redesignated, by substituting ''subparagraphs (A), (B), and (C)'' for ''subparagraphs (A) and (B)''.

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title VI, § 604(e), (j), July 21, 2010, 124 Stat. 1601, 1604, provided that, effective on the transfer date, this section is amended:

(1) in subsection (j)(2)(A), by substituting ''unsound banking practices, or risk to the stability of the United States banking or financial system'' for ''or unsound banking practices''; and

(2) by amending subsection (k)(6)(B) to read as follows:

''(B) Approval not required for certain financial activities

''(i) In general

''Except as provided in subsection (j) with regard to the acquisition of a savings association and clause (ii), a financial holding company may commence any activity, or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board.

''(ii) Exception

''A financial holding company may not acquire a company, without the prior approval of the Board, in a transaction in which the total consolidated assets to be acquired by the financial holding company exceed $10,000,000,000.

''(iii) Hart-Scott-Rodino filing requirement

''Solely for purposes of section 18a(c)(8) of title 15, the transactions subject to the requirements of this paragraph shall be treated as if the approval of the Board is not required.''

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title III, §§ 351, 354(2)(A), July 21, 2010, 124 Stat. 1546, provided that, effective on the transfer date, subsection (i) of this section is amended:

(1) in paragraph (4)—

(A) in subparagraph (A)—

(i) in the heading, by striking out ''to director''; and

(ii) by striking out ''Board'' and all that follows through the end and inserting ''Board shall solicit comments and recommendations from—

''(i) the Comptroller of the Currency, with respect to the acquisition of a Federal savings association; and

''(ii) the Federal Deposit Insurance Corporation, with respect to the acquisition of a State savings association.''; and

(B) in subparagraph (B), by substituting ''Comptroller of the Currency or the Federal De-

posit Insurance Corporation, as applicable,'' for ''Director'' wherever appearing;

(2) in paragraph (5)—

(A) in subparagraph (B), by substituting ''Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, with'' for ''Director with''; and

(B) by substituting ''Comptroller of the Currency or the Federal Deposit Insurance Corporation'' for ''Director'' wherever appearing;

(3) in paragraph (6), by substituting ''Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable,'' for ''Director''; and

(4) by striking out paragraph (7).

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act May 9, 1956, ch. 240, 70 Stat. 133, known as the Bank Holding Company Act of 1956, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (a)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

Enactment of the Bank Holding Company Act Amendments of 1970, referred to in subsecs. (a)(2) and (c)(12), means enactment of Pub. L. 91–607 on Dec. 31, 1970. For classification of Pub. L. 91–607, see Short Title of 1970 Amendment note set out under section 1841 of this title.

Enactment of the Competitive Equality Amendments of 1987, referred to in subsecs. (a)(2), (f)(1)(A), and (g)(1), means enactment of title I of Pub. L. 100–86, Aug. 10, 1987, 101 Stat. 554. For classification of title I of Pub. L. 100–86, see Short Title of 1987 Amendment note set out under section 226 of this title and Tables.

Section 25 of the Federal Reserve Act, referred to in subsecs. (c)(14)(E) and (f)(14)(A)(i), is classified to subchapter I (§ 601 et seq.) of chapter 6 of this title. Section 25(a) of the Federal Reserve Act (12 U.S.C. 611–631), referred to in subsec. (c)(14)(E), was renumbered section 25A of the Federal Reserve Act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281 and is classified to subchapter II (§ 611 et seq.) of chapter 6 of this title.

Section 371c of this title, referred to in subsec. (c)(14)(F)(iv), was amended generally by Pub. L. 97–320, title IV, § 410(b), Oct. 15, 1982, 96 Stat. 1515, and, as so amended, no longer contains undesignated pars. and no longer defines ''extension of credit''.

The Federal Deposit Insurance Act, referred to in subsec. (f)(8)(B), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

Section 106 of the Bank Holding Company Act Amendments of 1970, referred to in subsecs. (f)(9)(A), (h) and (n)(5)(B)(i), is Pub. L. 91–607, title I, § 106, Dec. 31, 1970, 84 Stat. 1766, as amended, which is classified generally to chapter 22 (§ 1971 et seq.) of this title.

Section 1730a of this title, referred to in subsec. (f)(10)(A), was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

The Home Owners' Loan Act, referred to in subsec. (i)(3)(A), is act June 13, 1933, ch. 64, 48 Stat. 128, as amended, which is classified generally to chapter 12 (§ 1461 et seq.) of this title. For complete classification of this Act to the Code, see section 1461 of this title and Tables.

The Gramm-Leach-Bliley Act, referred to in subsecs. (k)(3)(A), (7) and (*l*)(1)(C)(i), (2)(B), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338. Section 122 of the Act is set out as a note below. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (k)(4)(H)(ii)(II), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§ 80b–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Community Reinvestment Act of 1977, referred to in subsec. (*l*)(2), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, as amended, which is classified generally to chapter 30 (§ 2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

The Communications Act of 1934, referred to in subsec. (n)(3), is act June 19, 1934, ch. 652, 48 Stat. 1964, as amended. Title III of the Act is classified generally to subchapter III (§ 301 et seq.) of chapter 5 of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

AMENDMENTS

2010—Subsec. (i)(8). Pub. L. 111–203, § 623(b)(1)(A), added par. (8).

Subsec. (k)(6)(B). Pub. L. 111–203, § 623(b)(1)(B), substituted ''insured depository institution'' for ''savings association''.

2006—Subsec. (h)(1), (2). Pub. L. 109–351, § 727(b), substituted ''(G), or (H) of section 1841(c)(2)'' for ''(G), (H), (I), or (J) of section 1841(c)(2)''.

Subsec. (n)(5)(B). Pub. L. 109–351, § 611, substituted ''subparagraph (H) or (I) of subsection (k)(4)'' for ''subsection (k)(4)(I)'' in introductory provisions.

1999—Subsec. (c)(8). Pub. L. 106–102, § 102(a), amended par. (8) generally, substituting present provisions for provisions which exempted from prohibitions of this section shares of any bank holding company the activities of which were determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, which further provided that for purposes of this subsection it was not closely related to banking or managing or controlling banks for a bank holding company to provide insurance as a principal, agent, or broker except in certain circumstances, which further provided factors to consider in determining whether a particular activity is a proper incident to banking or managing or controlling banks, and which further provided notice and other procedural requirements in making such determinations.

Subsec. (f)(2). Pub. L. 106–102, § 107(d)(1), added introductory provisions and struck out former introductory provisions which read as follows: ''Paragraph (1) shall cease to apply to any company described in such paragraph if—''.

Subsec. (f)(2)(A)(ii)(XI). Pub. L. 106–102, § 107(d)(2)(A)–(C), added subcl. (XI).

Subsec. (f)(2)(B), (C). Pub. L. 106–102, § 107(d)(2)(D), (3), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: ''any bank subsidiary of such company fails to comply with the restrictions contained in paragraph (3)(B).''

Subsec. (f)(3). Pub. L. 106–102, § 107(a), (b), added par. (3) and struck out heading and text of former par. (3) which related to limitation on banks controlled by paragraph (1) companies.

Subsec. (f)(4). Pub. L. 106–102, § 107(e), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: ''If any company described in paragraph (1) loses the exemption provided under such paragraph by operation of paragraph (2), such company shall divest control of each bank it controls within 180 days after such company becomes a bank holding company due to the loss of such exemption.''

Subsec. (f)(14). Pub. L. 106–102, §107(f), added par. (14).

Subsec. (j)(1)(A), (E). Pub. L. 106–102, §103(c)(2)(A), inserted ''or in any complementary activity under subsection (k)(1)(B) of this section'' after ''subsection (c)(8) or (a)(2) of this section''.

Subsec. (j)(3). Pub. L. 106–102, §103(c)(2)(B), inserted '', other than any complementary activity under subsection (k)(1)(B) of this section,'' after ''to engage in any activity'' and ''or a company engaged in any complementary activity under subsection (k)(1)(B) of this section'' after ''insured depository institution''.

Subsecs. (k) to (*o*). Pub. L. 106–102, §103(a), added subsecs. (k) to (*o*).

1996—Subsec. (c)(2). Pub. L. 104–208, §2215, struck out ''for not more than one year at a time'' before ''if, in its judgment,'' and substituted ''and, in the case of a bank holding company which has not disposed of such shares within 5 years after the date on which such shares were acquired, the Board may, upon the application of such company, grant additional exemptions if, in the judgment of the Board, such extension would not be detrimental to the public interest and, either the bank holding company has made a good faith attempt to dispose of such shares during such 5-year period, or the disposal of such shares during such 5-year period would have been detrimental to the company, except that the aggregate duration of such extensions shall not extend beyond 10 years'' for ''but no such extensions shall extend beyond a date five years''.

Subsec. (c)(8). Pub. L. 104–208, §2612, substituted ''(and opportunity for hearing in the case of an acquisition of a savings association)'' for ''and opportunity for hearing''.

Subsec. (f)(3)(B)(iv). Pub. L. 104–208, §2304(a), struck out cl. (iv) which read as follows: ''increase its assets at an annual rate of more than 7 percent during any 12-month period beginning after the end of the 1-year period beginning on August 10, 1987.''

Subsec. (i)(4) to (7). Pub. L. 104–208, §2203(d), added pars. (4) to (7).

Subsec. (j)(1)(A). Pub. L. 104–208, §2208(a)(1), substituted ''Except as provided in paragraph (3), no'' for ''No''.

Subsec. (j)(3) to (7). Pub. L. 104–208, §2208(a)(2), added pars. (3) to (7).

1994—Subsec. (c). Pub. L. 103–325, §346(2), struck out before last sentence ''In the event of the failure of the Board to act on any application for an order under paragraph (8) of this subsection within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted.''

Subsec. (j). Pub. L. 103–325, §346(1), added subsec. (j).

1992—Subsec. (i)(3). Pub. L. 102–550, §1606(h)(1), amended directory language of Pub. L. 102–242, §461. See 1991 Amendment note below.

1991—Subsec. (i)(3). Pub. L. 102–242, §461, as amended by Pub. L. 102–550, §1606(h)(1), added par. (3).

1989—Subsec. (f)(2)(A)(i). Pub. L. 101–73, §604(b)(2), inserted reference to par. (12).

Subsec. (f)(2)(A)(ii). Pub. L. 101–73, §603(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''acquires control of more than 5 percent of the shares or assets of an additional bank or an insured institution other than—

''(I) shares acquired in a bona fide fiduciary capacity;

''(II) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

''(III) shares held in an account solely for trading purposes;

''(IV) loans or other accounts receivable acquired in the normal course of business; and

''(V) shares or assets of an insured institution described in paragraph (10) of this subsection; or''.

Subsec. (f)(3)(B)(ii). Pub. L. 101–73, §1219, added cl. (ii) and struck out former cl. (ii) which read as follows: ''offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under subsection (c)(8) of this section, or permit its products or services to be offered or marketed by or through an affiliate (other than an affiliate that engages only in activities permissible for bank holding companies under subsection (c)(8) of this section), unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date;''.

Subsec. (f)(10). Pub. L. 101–73, §603(b)(1), substituted ''and (ii)(VIII)'' for ''and (ii)(V)'', and in subpar. (A) inserted reference to section 13(k) of the Federal Deposit Insurance Act.

Subsec. (f)(11). Pub. L. 101–73, §603(b)(2), added par. (11).

Subsec. (f)(12), (13). Pub. L. 101–73, §604(b)(1), added pars. (12) and (13).

Subsec. (i). Pub. L. 101–73, §601(a), added subsec. (i).

1988—Subsec. (c)(14)(A). Pub. L. 100–418, §3402(b), added cl. (v) and redesignated former cls. (v) and (vi) as (vi) and (vii), respectively.

Subsec. (c)(14)(G). Pub. L. 100–418, §3402(a), added subpar. (G).

Subsec. (c)(14)(H). Pub. L. 100–418, §3402(c), added subpar. (H).

1987—Pub. L. 100–86, §509(a), repealed Pub. L. 97–320, §141. See 1982 Amendment note below.

Subsec. (a)(2). Pub. L. 100–86, §101(b), inserted at end ''Notwithstanding any other provision of this paragraph, if any company that became a bank holding company as a result of the enactment of the Competitive Equality Amendments of 1987 acquired, between March 5, 1987, and August 10, 1987, an institution that became a bank as a result of the enactment of such Amendments, that company shall, upon enactment of such Amendments, immediately come into compliance with the requirements of this chapter.''

Subsec. (c)(8). Pub. L. 100–86, §502(h)(2), struck out semicolon at end and substituted a period and following sentences: ''If an application is filed under this paragraph in connection with an application to make an acquisition pursuant to section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. If an application described in the preceding sentence is approved, the Board shall publish in the Federal Register, not later than 7 days after such approval is granted, the order approving the application and a description of the nonbanking activities involved in the acquisition;''.

Subsecs. (f) to (h). Pub. L. 100–86, §101(c), added subsecs. (f) to (h).

1986—Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1983—Subsec. (c)(8)(F). Pub. L. 97–457, §30(1), inserted proviso that such a bank holding company and its subsidiaries may not engage in sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C).

Subsec. (c)(8)(G). Pub. L. 97–457, §30(2), struck out proviso that such bank holding company and its subsidiaries may not engage in sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C).

1982—Subsec. (a). Pub. L. 97–320, §433(b), substituted ''December 31, 1984'' for ''December 31, 1982''.

Subsec. (c)(8). Pub. L. 97–320, §§118(a), 601, inserted specification that providing insurance is not being closely related to banking or managing or controlling banks for purposes of this subsection, exceptions thereto in cls. (A) through (G), and the subsequent proviso relating to the sale of life insurance or annuities, and inserted provisions relating to dispensation from the notice and hearing requirement in the event of an emergency.

Pub. L. 97–320, §141(a)(4), which directed that, effective Oct. 13, 1986, the provisions of law amended by sec-

tion 118 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, § 509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

Subsec. (c)(14). Pub. L. 97–290 added par. (14).

1980—Subsec. (a). Pub. L. 96–221 inserted provisions relating to extension of period ending Dec. 31, 1980, to Dec. 31, 1982.

1978—Subsec. (c). Pub. L. 95–630 substituted ''The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of title 26, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred'' for ''The prohibitions in this section shall not apply to any bank holding company which is (i) a labor, agricultural, or horticultural organization and which is exempt from taxation under section 501 of title 26''.

1977—Subsec. (c)(2). Pub. L. 95–188 substituted ''shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of within a period of two years'' for ''shares acquired by a bank in satisfaction of a debt previously contracted in good faith, but such bank shall dispose of such shares within a period of two years''.

1970—Subsec. (a). Pub. L. 91–607, § 103(1), (2), in par. (2) of first sentence, inserted provision respecting prohibition in the case of a company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, after Dec. 31, 1980, substituted ''engage in any activities'' for ''engage in any business'', designated existing provisions as cl. (A), substituting therein ''and other subsidiaries authorized under this chapter or of furnishing services to or performing services for its subsidiaries'' for ''or of furnishing services to or performing services for any bank of which it owns or controls 25 per centum or more of the voting shares'', added cl. (B) and provisions respecting activities of a company covered in 1970, and termination of authority for engaging in the activities, authorization of bank holding company to engage in activities through acquisition of interest in or assets of a going concern engaged in the activities, and retention for period of ten years ownership or control of shares in a company carrying on the activity, where the activity of the company has been terminated; and, in second sentence substituted ''two year period'' for ''period'', respectively.

Subsec. (c). Pub. L. 91–607, § 103(3), (6), designated existing provisions of text preceding par. (1) as cl. (i) and added cl. (2), and inserted concluding text following par. (13) deeming an application under par. (8) as granted upon failure of Board to act within prescribed period and requiring the Board in the report to Congress to include a description and a statement of reasons for approval of each activity under par. (8), respectively.

Subsec. (c)(8). Pub. L. 91–607, § 103(4), inserted provisions respecting criteria to be used for determining whether particular activity is proper incident to banking and provision for differentiation by orders and regulations between de novo activities and going concern activities, deleted description of company activities as being of a financial, fiduciary, or insurance nature, specific language respecting determination on basis of record made at the hearing, and provision respecting the close relationship of the activities making it unnecessary for prohibitions of this section to apply in order to carry out the purposes of this chapter, substituted ''opportunity for hearing'' for ''hearing'', and provided for determination by regulation.

Subsec. (c)(9). Pub. L. 91–607, § 103(5), extended exemption to company activities, substituted provision respecting conduct of greater part of company's business; outside the United States for prior provision respecting engaging principally in the banking business outside the United States, and conditioned exemption on Board determination by regulation or order that the exemption would not be substantially at variance with the purposes of this chapter and would be in the public interest.

Subsec. (c)(11) to (13). Pub. L. 91–607, § 103(6), added pars. (11) to (13).

Subsecs. (d), (e). Pub. L. 91–607, § 103(7), added subsec. (d) and redesignated former subsec. (d) as (e).

1966—Subsec. (a). Pub. L. 89–485, § 8(a), extended until December 31, 1978, the deadline for divestiture by bank holding companies of their nonbanking interests in the case of any company that has been continuously affiliated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940, prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act.

Subsec. (c). Pub. L. 89–485, § 8(b), limited the exception granted companies engaged in liquidating assets acquired by the bank holding company by requiring that, to qualify for the exception, the company be engaged solely in liquidating assets acquired from the holding company and its banks or from another source before it became subject to this chapter and not merely engaged in the general liquidating business with only a part of its operations performed for the holding company system, authorized the grant of one year extensions up to a total of three years to the two year period allowed for the disposal of shares acquired by a bank in satisfaction of a debt previously contracted in good faith, substituted reference, in par. (4), to shares held under a trust that constitutes a company as defined in section 1841(b) and except as provided in pars. (2) and (3) of section 1841(g) of this title for reference to shares held for the benefit of the shareholders of a bank holding company or any of its subsidiaries, and eliminated the requirement that, in order to qualify for the exemption allowing a bank holding company to hold shares in a nonbanking company, the shares do not exceed 5 per centum of the holding company's assets in value.

Subsec. (d). Pub. L. 89–485, § 8(c), added subsec. (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 354(2)(A) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 604(e) of Pub. L. 111–203 effective on the transfer date, see section 604(j) of Pub. L. 111–203, set out as a note under section 1462 of this title.

Amendment by section 606(a) of Pub. L. 111–203 effective on the transfer date, see section 606(c) of Pub. L. 111–203, set out as a note under section 1467a of this title.

Amendment by section 623(b)(1) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

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

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

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

SHORT TITLE OF 1982 AMENDMENT

For short title of title II of Pub. L. 97–290 as the ''Bank Export Services Act'', see Short Title of 1982 Amendment note set out under section 1841 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsection (c) (last sentence) of this section is listed on page 171), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

DETERMINATIONS REGARDING REAL ESTATE BROKERAGE ACTIVITY OR REAL ESTATE MANAGEMENT ACTIVITY

Pub. L. 111–8, div. D, title VI, §624, Mar. 11, 2009, 123 Stat. 678, provided that: ''Notwithstanding any other provision of law, for fiscal year 2009 and each fiscal year thereafter, neither the Board of Governors of the Federal Reserve System nor the Secretary of the Treasury may determine, by rule, regulation, order, or otherwise, for purposes of section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)], or section 5136A of the Revised Statutes of the United States [12 U.S.C. 24a], that real estate brokerage activity or real estate management activity is an activity that is financial in nature, is incidental to any financial activity, or is complementary to a financial activity. For purposes of this section, 'real estate brokerage activity' shall mean 'real estate brokerage', and 'real estate management activity' shall mean 'property management', as those terms were understood by the Board of Governors of the Federal Reserve System prior to March 11, 2000.''

REPORT TO CONGRESS ON NEW ACTIVITIES OF FINANCIAL HOLDING COMPANIES

Pub. L. 106–102, title I, §103(d), Nov. 12, 1999, 113 Stat. 1351, provided that:

''(1) IN GENERAL.—By the end of the 4-year period beginning on the date of the enactment of this Act [Nov. 12, 1999], the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall submit a joint report to the Congress containing a summary of new activities, including grandfathered commercial activities, in which any financial holding company is engaged pursuant to subsection (k)(1) or (n) of section 4 of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)(1), (n)] (as added by subsection (a)).

''(2) OTHER CONTENTS.—The report submitted to the Congress pursuant to paragraph (1) shall also contain the following:

''(A) A discussion of actions by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, whether by regulation, order, interpretation, or guideline or by approval or disapproval of an application, with regard to activities of financial holding companies that are incidental to activities that are financial in nature or complementary to such financial activities.

''(B) An analysis and discussion of the risks posed by commercial activities of financial holding companies to the safety and soundness of affiliate depository institutions.

''(C) An analysis and discussion of the effect of mergers and acquisitions under section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)] on market concentration in the financial services industry.''

CONSIDERATION OF MERCHANT BANKING ACTIVITIES BY FINANCIAL SUBSIDIARIES

Pub. L. 106–102, title I, §122, Nov. 12, 1999, 113 Stat. 1381, provided that: ''After the end of the 5-year period beginning on the date of the enactment of the Gramm-Leach-Bliley Act [Nov. 12, 1999], the Board of Governors of the Federal Reserve System and the Secretary of the Treasury may, if appropriate, after considering—

''(1) the experience with the effects of financial modernization under this Act [see Tables for classification] and merchant banking activities of financial holding companies;

''(2) the potential effects on depository institutions and the financial system of allowing merchant banking activities in financial subsidiaries; and

''(3) other relevant facts;

jointly adopt rules that permit financial subsidiaries to engage in merchant banking activities described in section 4(k)(4)(H) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)(4)(H)], under such terms and conditions as the Board of Governors of the Federal Reserve System and the Secretary of the Treasury jointly determine to be appropriate.''

MODIFICATION OF PRIOR APPROVALS

Section 601(b) of Pub. L. 101–73 provided that: ''If the Board of Governors of the Federal Reserve System, in approving an application by a bank holding company to acquire a savings association, imposed any restriction that would have been prohibited under section 4(i)(2) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(i)(2)] (as added by subsection (a) of this section) if that section had been in effect when the application was approved, the Board shall modify that approval in a manner consistent with that section.''

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97–320

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100–86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99–452, set out as a note under section 1464 of this title.

Section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day after Aug. 27, 1986, applicable as if included in Pub. L. 97–320 on Oct. 15, 1982, with no amendment made by such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99–400, set out as a note under section 1464 of this title.

BANK EXPORT SERVICES

Section 202 of Pub. L. 97–290 provided that: ''The Congress hereby declares that it is the purpose of this title [enacting section 635a–4 of this title, amending sections 372 and 1843 of this title, and enacting provisions set out as notes under section 1843 of this title] to provide for meaningful and effective participation by bank holding companies, bankers' banks, and Edge Act [12 U.S.C. 611 et seq.] corporations, in the financing and development of export trading companies in the United States. In furtherance of such purpose, the Congress intends that, in implementing its authority under section 4(c)(14) of the Bank Holding Company Act of 1956 [subsec. (c)(14) of this section] the Board of Governors of the Federal Reserve System should pursue regulatory policies that—

''(1) provide for the establishment of export trading companies with powers sufficiently broad to enable them to complete with similar foreign-owned institutions in the United States and abroad;

''(2) afford to United States commerce, industry, and agriculture, especially small- and medium-size firms, a means of exporting at all times;

''(3) foster the participation by regional and smaller banks in the development of export trading companies; and

''(4) facilitate the formation of joint venture export trading companies between bank holding companies and nonbank firms that provide for the efficient combination of complementary trade and financing services designed to create export trading companies that can handle all of an exporting company's needs.''

REPORT TO CONGRESS BY FEDERAL RESERVE BOARD REGARDING CHANGES IN FINANCING OF UNITED STATES EXPORTS

Section 205 of Pub. L. 97–290 required Federal Reserve Board, within two years after Oct. 8, 1982, to report to Congress its recommendations with respect to implementation of this section, on any changes in United States law to facilitate financing of United States exports, and on effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in United States.

§ 1844. Administration

(a) Registration of bank holding company

Within one hundred and eighty days after May 9, 1956, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each bank holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry out the purposes of this chapter. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information. A declaration filed in accordance with section 1843(*l*)(1)(C) of this title shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 1842 of this title.

(b) Regulations and orders

The Board is authorized to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of this chapter and prevent evasions thereof.

(c) Reports and examinations

(1) Reports

(A) In general

The Board, from time to time, may require a bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the bank holding company; and

(ii) compliance by the company or subsidiary with applicable provisions of this chapter or any other Federal law that the Board has specific jurisdiction to enforce against such company or subsidiary.

(B) Use of existing reports

(i) In general

For purposes of compliance with this paragraph, the Board shall, to the fullest extent possible, accept—

(I) reports that a bank holding company or any subsidiary of such company has provided or been required to provide to other Federal or State supervisors or to appropriate self-regulatory organizations;

(II) information that is otherwise required to be reported publicly; and

(III) externally audited financial statements.

(ii) Availability

A bank holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).

(iii) Reports filed with other agencies

(I) In general

In the event that the Board requires a report under this subsection from a functionally regulated subsidiary of a bank holding company of a kind that is not required by another Federal or State regulatory authority or an appropriate self-regulatory organization, the Board shall first request that the appropriate regulatory authority or self-regulatory organization obtain such report.

(II) Availability from other subsidiary

If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or any of its depository institution subsidiaries or compliance with this chapter or any other Federal law that the Board has specific jurisdiction to enforce against such company or subsidiary or the systems described in paragraph (2)(A)(ii)(II), the Board may require such functionally regulated subsidiary to provide such a report to the Board.

(2) Examinations

(A) Examination authority for bank holding companies and subsidiaries

Subject to subparagraph (B), the Board may make examinations of each bank holding company and each subsidiary of such holding company in order—

(i) to inform the Board of the nature of the operations and financial condition of the holding company and such subsidiaries;

(ii) to inform the Board of—

(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any depository institution subsidiary of such holding company; and

(II) the systems for monitoring and controlling such risks; and

(iii) to monitor compliance with the provisions of this chapter or any other Fed-

eral law that the Board has specific jurisdiction to enforce against such company or subsidiary and those governing transactions and relationships between any depository institution subsidiary and its affiliates.

(B) Functionally regulated subsidiaries

Notwithstanding subparagraph (A), the Board may make examinations of a functionally regulated subsidiary of a bank holding company only if—

(i) the Board has reasonable cause to believe that such subsidiary is engaged in activities that pose a material risk to an affiliated depository institution;

(ii) the Board reasonably determines, after reviewing relevant reports, that examination of the subsidiary is necessary to adequately inform the Board of the systems described in subparagraph (A)(ii)(II); or

(iii) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this chapter or any other Federal law that the Board has specific jurisdiction to enforce against such subsidiary, including provisions relating to transactions with an affiliated depository institution, and the Board cannot make such determination through examination of the affiliated depository institution or the bank holding company.

(C) Restricted focus of examinations

The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a bank holding company to—

(i) the bank holding company; and

(ii) any subsidiary of the bank holding company that could have a materially adverse effect on the safety and soundness of any depository institution subsidiary of the holding company due to—

(I) the size, condition, or activities of the subsidiary; or

(II) the nature or size of transactions between the subsidiary and any depository institution that is also a subsidiary of the bank holding company.

(D) Deference to bank examinations

The Board shall, to the fullest extent possible, for the purposes of this paragraph, use the reports of examinations of depository institutions made by the appropriate Federal and State depository institution supervisory authority.

(E) Deference to other examinations

The Board shall, to the fullest extent possible, forego an examination by the Board under this paragraph and instead review the reports of examination made of—

(i) any registered broker or dealer by or on behalf of the Securities and Exchange Commission;

(ii) any registered investment adviser properly registered by or on behalf of either the Securities and Exchange Commission or any State;

(iii) any licensed insurance company by or on behalf of any State regulatory authority responsible for the supervision of insurance companies; and

(iv) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

(3) Capital

(A) In general

The Board may not, by regulation, guideline, order, or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any functionally regulated subsidiary of a bank holding company that—

(i) is not a depository institution; and

(ii) is—

(I) in compliance with the applicable capital requirements of its Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority;

(II) properly registered as an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], or with any State; or

(III) is licensed as an insurance agent with the appropriate State insurance authority.

(B) Rule of construction

Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to—

(i) activities of a registered investment adviser other than with respect to investment advisory activities or activities incidental to investment advisory activities; or

(ii) activities of a licensed insurance agent other than insurance agency activities or activities incidental to insurance agency activities.

(C) Limitations on indirect action

In developing, establishing, or assessing bank holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board may not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], unless the investment company is—

(i) a bank holding company; or

(ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the shares owned by the bank holding company have a market value equal to more than $1,000,000.

(4) Functional regulation of securities and insurance activities

(A) Securities activities

Securities activities conducted in a functionally regulated subsidiary of a depository

institution shall be subject to regulation by the Securities and Exchange Commission, and by relevant State securities authorities, as appropriate, subject to section 6701 of title 15, to the same extent as if they were conducted in a nondepository institution subsidiary of a bank holding company.

(B) Insurance activities

Subject to section 6701 of title 15, insurance agency and brokerage activities and activities as principal conducted in a functionally regulated subsidiary of a depository institution shall be subject to regulation by a State insurance authority to the same extent as if they were conducted in a nondepository institution subsidiary of a bank holding company.

(5) Definition

For purposes of this subsection, the term ''functionally regulated subsidiary'' means any company—

(A) that is not a bank holding company or a depository institution; and

(B) that is—

(i) a broker or dealer that is registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.];

(ii) a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

(iii) an investment company that is registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.];

(iv) an insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator; or

(v) an entity that is subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.

(d) Reports to the Congress; recommendations

Before the expiration of two years following May 9, 1956, and each year thereafter in the Board's annual report to the Congress, the Board shall report to the Congress the results of the administration of this chapter, stating what, if any, substantial difficulties have been encountered in carrying out the purposes of this chapter, and any recommendations as to changes in the law which in the opinion of the Board would be desirable.

(e) Termination of activities or ownership or control of nonbank subsidiaries constituting serious risk

(1) Notwithstanding any other provision of this chapter, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this chapter or with the Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—

(A) order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the bank holding company; or

(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the primary supervisor for the bank, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.

The distribution referred to in subparagraph (A) shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(2) The Board may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the holding company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in section 1848 of this title, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(f) Powers of Board respecting applications, examinations, or other proceedings

In the course of or in connection with an application, examination, investigation or other proceeding under this chapter, the Board, or any member or designated representative thereof, including any person designated to conduct any hearing under this chapter, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and the Board is empowered to make rules and regulations to effectuate the purposes of this subsection. The attendance of witnesses and the production of documents provided for in this subsection may be required

from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this chapter may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted or where the witness resides or carries on business, for the enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any service required under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Any court having jurisdiction of any proceeding instituted under this subsection may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpena of the Board, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year or both.

(g) Authority of State insurance regulator and the Securities and Exchange Commission

(1) In general

Notwithstanding any other provision of law, any regulation, order, or other action of the Board that requires a bank holding company to provide funds or other assets to a subsidiary depository institution shall not be effective nor enforceable with respect to an entity described in subparagraph (A) if—

(A) such funds or assets are to be provided by—

(i) a bank holding company that is an insurance company, a broker or dealer registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; or

(ii) an affiliate of the depository institution that is an insurance company or a broker or dealer registered under the Securities Exchange Act of 1934, an investment company registered under the Investment Company Act of 1940, or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; and

(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker, dealer, investment adviser (solely with respect to investment advisory activities or activities incidental thereto), or investment company, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material[1] adverse effect on the financial condition of the insurance company or the broker, dealer, investment company, or investment adviser, as the case may be.

(2) Notice to State insurance authority or SEC required

If the Board requires a bank holding company, or an affiliate of a bank holding company, that is an insurance company or a broker, dealer, investment company, or investment adviser described in paragraph (1)(A) to provide funds or assets to a depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company, the Securities and Exchange Commission, or State securities regulator, as the case may be, of such requirement.

(3) Divestiture in lieu of other action

If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in that paragraph, the Board may order the bank holding company to divest the depository institution not later than 180 days after receiving the notice, or such longer period as the Board determines consistent with the safe and sound operation of the depository institution.

(4) Conditions before divestiture

During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the depository institution, including restricting or prohibiting transactions between the depository institution and any affiliate of the institution, as are appropriate under the circumstances.

(5) Rule of construction

No provision of this subsection may be construed as limiting or otherwise affecting, except to the extent specifically provided in this subsection, the regulatory authority, including the scope of the authority, of any Federal agency or department with regard to any entity that is within the jurisdiction of such agency or department.

(May 9, 1956, ch. 240, § 5, 70 Stat. 137; Pub. L. 95–630, title I, §§ 105(a), 106(b), Nov. 10, 1978, 92 Stat. 3646, 3648; Pub. L. 106–102, title I, §§ 111, 112(a), 116, Nov. 12, 1999, 113 Stat. 1362, 1366, 1372; Pub. L. 111–203, title III, § 354(3), title VI,

[1] So in original. Probably should be ''materially''.

§§ 604(a)–(c)(1), 616(a), July 21, 2010, 124 Stat. 1547, 1599–1601, 1615.)

AMENDMENT OF SECTION

Pub. L. 111–203, title VI, § 616(a), (e), July 21, 2010, 124 Stat. 1615, 1616, provided that, effective on the transfer date, subsection (b) of this section is amended by inserting '', including regulations and orders relating to the capital requirements for bank holding companies,'' after ''orders'' and ''In establishing capital regulations pursuant to this subsection, the Board shall seek to make such requirements countercyclical, so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the company.'' at the end. See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title VI, § 604(a)–(c)(1), (j), July 21, 2010, 124 Stat. 1599–1601, 1604, provided that, effective on the transfer date, subsection (c) of this section is amended:

(1) in paragraph (1)—

(A) by striking out subclause (A)(ii) and adding the following:

''(ii) compliance by the bank holding company or subsidiary with—

''(I) this chapter;

''(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

''(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provision of Federal law.'';

(B) by striking out subparagraph (B) and adding the following:

''(B) Use of existing reports and other supervisory information

''The Board shall, to the fullest extent possible, use—

''(i) reports and other supervisory information that the bank holding company or any subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

''(ii) externally audited financial statements of the bank holding company or subsidiary;

''(iii) information otherwise available from Federal or State regulatory agencies; and

''(iv) information that is otherwise required to be reported publicly.''; and

(C) by adding at the end the following:

''(C) Availability

''Upon the request of the Board, the bank holding company or a subsidiary of the bank holding company shall promptly provide to the Board any information described in clauses (i) through (iii) of subparagraph (B).'';

(2) by amending paragraph (2) to read as follows:

''(2) Examinations

''(A) In general

''Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Board may make examinations of a bank holding company and each subsidiary of a bank holding company in order to—

''(i) inform the Board of—

''(I) the nature of the operations and financial condition of the bank holding company and the subsidiary;

''(II) the financial, operational, and other risks within the bank holding company system that may pose a threat to—

''(aa) the safety and soundness of the bank holding company or of any depository institution subsidiary of the bank holding company; or

''(bb) the stability of the financial system of the United States; and

''(III) the systems of the bank holding company for monitoring and controlling the risks described in subclause (II); and

''(ii) monitor the compliance of the bank holding company and the subsidiary with—

''(I) this chapter;

''(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

''(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provisions of Federal law.

''(B) Use of reports to reduce examinations

''For purposes of this paragraph, the Board shall, to the fullest extent possible, rely on—

''(i) examination reports made by other Federal or State regulatory agencies relating to a bank holding company and any subsidiary of a bank holding company; and

''(ii) the reports and other information required under paragraph (1).

''(C) Coordination with other regulators

''The Board shall—

''(i) provide reasonable notice to, and consult with, the appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or State regulatory agency, as appropriate, for a subsidiary that is a depository institution or a functionally regulated subsidiary of a bank holding company before commencing an examination of the subsidiary under this section; and

''(ii) to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information.''; and

(3) by striking out paragraph (5)(B)(v) and adding the following:

''(v) an entity that is subject to regulation by, or registration with, the Commodity Futures Trading Commission, with respect to activities conducted as a futures commission merchant, commodity trading adviser, commodity pool, commodity pool operator, swap execution facility, swap data repository, swap dealer, major swap participant, and activities that are incidental to such commodities and swaps activities.''

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title III, §§351, 354(3), July 21, 2010, 124 Stat. 1546, 1547, provided that, effective on the transfer date, subsection (f) of this section is amended by substituting ''subpoena'' for ''subpena'' wherever appearing, ''subpoenas'' for ''subpenas'' wherever appearing, and ''subpoenaed'' for ''subpenaed''. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act May 9, 1956, ch. 240, 70 Stat. 133, known as the Bank Holding Company Act of 1956, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (c)(3)(A)(ii)(II), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Investment Company Act of 1940, referred to in subsecs. (c)(3)(C), (5)(B)(iii) and (g)(1)(A), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (c)(5)(B)(i) and (g)(1)(A), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Financial Institutions Supervisory Act of 1966, referred to in subsec. (e)(1), is Pub. L. 89–695, Oct. 16, 1966, 80 Stat. 1028. For complete classification of this Act to the Code, see Short Title of 1966 Amendment note set out under section 1464 of this title and Tables.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–102, §116(a), inserted at end ''A declaration filed in accordance with section 1843(*l*)(1)(C) of this title shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 1842 of this title.''

Subsec. (c). Pub. L. 106–102, §111, inserted heading and amended text of subsec. (c) generally. Prior to amendment, text read as follows: ''The Board from time to time may require reports under oath to keep it informed as to whether the provisions of this chapter and such regulations and orders issued thereunder have been complied with; and the Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and paid by, such holding company. The Board shall, as far as possible, use the report of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this section.''

Subsec. (e)(1). Pub. L. 106–102, §116(b), in first sentence, substituted ''Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—'' along with subpar. (A) designation and ''order'' for ''Financial Institutions Supervisory Act of 1966, order'' and ''shareholders of the bank holding company; or'' along with subpar. (B) for ''shareholders of the bank holding company.'', designated second sentence as concluding provisions, and substituted ''The distribution referred to in subparagraph (A)'' for ''Such distribution''.

Subsec. (g). Pub. L. 106–102, §112(a), added subsec. (g).

1978—Subsec. (e). Pub. L. 95–630, §105(a), added subsec. (e).

Subsec. (f). Pub. L. 95–630, §106(b), added subsec. (f).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 354(3) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 604(a)–(c)(1) of Pub. L. 111–203 effective on the transfer date, see section 604(j) of Pub. L. 111–203, set out as a note under section 1462 of this title.

Amendment by section 616(a) of Pub. L. 111–203 effective on the transfer date, see section 616(e) of Pub. L. 111–203, set out as a note under section 1467a of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsection (d) of this section is listed on page 171), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 1845. Repealed. Pub. L. 89–485, § 9, July 1, 1966, 80 Stat. 240

Section, act May 9, 1956, ch. 240, §6, 70 Stat. 137, prohibited any subsidiary bank from lending to or investing in its parent holding company or a fellow subsidiary bank. See section 371c of this title.

§ 1846. Reservation of rights to States

(a) In general

No provision of this chapter shall be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to companies, banks, bank holding companies, and subsidiaries thereof.

(b) State taxation authority not affected

No provision of this chapter shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent that such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

(May 9, 1956, ch. 240, §7, 70 Stat. 138; Pub. L. 100–86, title I, §101(f), Aug. 10, 1987, 101 Stat. 563; Pub. L. 103–328, title I, §101(b), Sept. 29, 1994, 108 Stat. 2341.)

AMENDMENTS

1994—Pub. L. 103–328 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1987—Pub. L. 100–86 substituted ''No provision of this chapter shall'' for ''The enactment by the Congress of

this chapter shall not'' and inserted ''companies,'' before ''banks,''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–328 effective at end of 1-year period beginning on Sept. 29, 1994, see section 101(e) of Pub. L. 103–328, set out as a note under section 1828 of this title.

§ 1847. Penalties

(a) Criminal penalty

(1) Whoever knowingly violates any provision of this chapter or, being a company, violates any regulation or order issued by the Board under this chapter, shall be imprisoned not more than 1 year, fined not more than $100,000 per day for each day during which the violation continues, or both.

(2) Whoever, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this chapter shall be imprisoned not more than 5 years, fined not more than $1,000,000 per day for each day during which the violation continues, or both.

Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18.

(b) Civil money penalty

(1) Penalty

Any company which violates, and any individual who participates in a violation of, any provision of this chapter, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

(2) Assessment; etc.

Any penalty imposed under paragraph (1) may be assessed and collected by the Board in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(3) Hearing

The company or other person against whom any penalty is assessed under this subsection shall be afforded an agency hearing if such association or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this subsection.

(4) Disbursement

All penalties collected under authority of this subsection shall be deposited into the Treasury.

(5) "Violate" defined

For purposes of this section, the term ''violate'' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(6) Regulations

The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this subsection.

(c) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to a bank holding company (including a separation caused by the deregistration of such a company) shall not affect the jurisdiction and authority of the Board to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such holding company (whether such date occurs before, on, or after August 9, 1989).

(d) Penalty for failure to make reports

(1) First tier

Any company which—

(A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error—

(i) fails to make, submit, or publish such reports or information as may be required under this chapter or under regulations prescribed by the Board pursuant to this chapter, within the period of time specified by the Board; or

(ii) submits or publishes any false or misleading report or information; or

(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The company shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

(2) Second tier

Any company which—

(A) fails to make, submit, or publish such reports or information as may be required under this chapter or under regulations prescribed by the Board pursuant to this chapter, within the period of time specified by the Board; or

(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(3) Third tier

Notwithstanding paragraph (2), if any company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Board may, in its discretion, assess a pen-

alty of not more than $1,000,000 or 1 percent of total assets of such company, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) Assessment; etc.

Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Board in the manner provided in subsection (b) of this section (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(5) Hearing

Any company against which any penalty is assessed under this subsection shall be afforded an agency hearing if such company submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this subsection.

(May 9, 1956, ch. 240, § 8, 70 Stat. 138; Pub. L. 95–630, title I, § 106(a), Nov. 10, 1978, 92 Stat. 3647; Pub. L. 97–320, title IV, § 424(a), (d)(4), Oct. 15, 1982, 96 Stat. 1522, 1523; Pub. L. 101–73, title IX, §§ 905(i), 907(j), 911(e), Aug. 9, 1989, 103 Stat. 461, 475, 481.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–73, § 907(j)(1), substituted heading and pars. (1) and (2) for first two sentences which read as follows: ''Any company which willfully violates any provision of this chapter, or any regulation or order issued by the Board pursuant thereto, shall upon conviction be fined not more than $1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this chapter shall upon conviction be fined not more than $10,000 or imprisoned not more than one year, or both.''

Subsec. (b). Pub. L. 101–73, § 907(j)(2), added headings and amended text generally. Prior to amendment, subsec. (b) read as follows:

''(1) Any company which violates or any individual who participates in a violation of any provision of this chapter, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues: *Provided*, That the Board may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Board by written notice. As used in the section, the term 'violates' includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

''(2) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

''(3) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in section 1848 of this title. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

''(4) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Board, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

''(5) The Board shall promulgate regulations establishing procedures necessary to implement this subsection.

''(6) All penalties collected under authority of this subsection shall be covered into the Treasury of the United States.''

Subsec. (c). Pub. L. 101–73, § 905(i), added subsec. (c).

Subsec. (d). Pub. L. 101–73, § 911(e), added subsec. (d).

1982—Subsec. (b)(1). Pub. L. 97–320 inserted proviso giving the Board discretionary authority to compromise, etc., any civil money penalty imposed under this subsection, and substituted ''may be assessed'' for ''shall be assessed''.

1978—Pub. L. 95–630 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 907(j) of Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of $5,000 and $25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(*l*) of Pub. L. 101–73, set out as a note under section 93 of this title.

Amendment by section 911(e) of Pub. L. 101–73 applicable with respect to reports filed or required to be filed after Aug. 9, 1989, see section 911(i) of Pub. L. 101–73, set out as a note under section 161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95–630, set out as a note under section 93 of this title.

§ 1848. Judicial review

Any party aggrieved by an order of the Board under this chapter may obtain a review of such order in the United States Court of Appeals within any circuit wherein such party has its principal place of business or in the Court of Appeals in the District of Columbia, by filing in the court, within thirty days after the entry of the Board's order, a petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28. Upon the filing of such petition the court shall have the jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive.

(May 9, 1956, ch. 240, § 9, 70 Stat. 138; Pub. L. 85–791, § 34, Aug. 28, 1958, 72 Stat. 951; Pub. L. 89–485, § 10, July 1, 1966, 80 Stat. 240.)

AMENDMENTS

1966—Pub. L. 89–485 reduced from 60 to 30 days the period allowed for the filing of a petition to obtain judicial review of a Board order.

1958—Pub. L. 85–791 substituted, in second sentence, ''transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28'' for ''served upon the Board, and thereupon the Board shall certify and file in the court a transcript of the record made before the Board'', and in third sentence, ''such petition'' for ''the transcript''.

§ 1848a. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board

(a) Limitation on direct action

The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this chapter or section 1818 of this title against or with respect to a functionally regulated subsidiary of a bank holding company unless—

(1) the action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to—

(A) the financial safety, soundness, or stability of an affiliated depository institution; or

(B) the domestic or international payment system; and

(2) the Board finds that it is not reasonably possible to protect effectively against the material risk at issue through action directed at or against the affiliated depository institution or against depository institutions generally.

(b) Limitation on indirect action

The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this chapter or section 1818 of this title against or with respect to a bank holding company that requires the bank holding company to require a functionally regulated subsidiary of the holding company to engage, or to refrain from engaging, in any conduct or activities unless the Board could take such action directly against or with respect to the functionally regulated subsidiary in accordance with subsection (a) of this section.

(c) Actions specifically authorized

Notwithstanding subsection (a) or (b) of this section, the Board may take action under this chapter or section 1818 of this title to enforce compliance by a functionally regulated subsidiary of a bank holding company with any Federal law that the Board has specific jurisdiction to enforce against such subsidiary.

(d) Functionally regulated subsidiary defined

For purposes of this section, the term ''functionally regulated subsidiary'' has the meaning given the term in section 1844(c)(5) of this title.

(May 9, 1956, ch. 240, § 10A, as added Pub. L. 106–102, title I, § 113, Nov. 12, 1999, 113 Stat. 1368.)

REPEAL OF SECTION

Pub. L. 111–203, title VI, § 604(c)(2), (j), July 21, 2010, 124 Stat. 1601, 1604, provided that, effective on the transfer date, this section is repealed.

EFFECTIVE DATE OF REPEAL

Repeal effective on the transfer date, see section 604(j) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1462 of this title.

EFFECTIVE DATE

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

§ 1849. Saving provision

(a) General rule

Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct, except as specifically provided in this section.

(b) Antitrust review

(1) In general

The Board shall immediately notify the Attorney General of any approval by it pursuant to section 1842 of this title of a proposed acquisition, merger, or consolidation transaction and, if the transaction also involves an acquisition under section 1843 of this title, the Board shall also notify the Federal Trade Commission of such approval. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board or, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 1842 of this title shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 1842 of this title might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall other-

wise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 1842 of this title on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, the standards applied by the court shall be identical with those that the Board is directed to apply under section 1842 of this title. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 1842 of this title in compliance with this chapter and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, but nothing in this chapter shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

(2) Section 1823(f) cases

(A) If—

(i) the Federal Deposit Insurance Corporation learns that a bank insured by such Corporation is in danger of closing; and

(ii) the Corporation is considering assisting the acquisition of such bank and its affiliated banks by another bank or holding company under section 1823(f) of this title and such acquisition is subject to the approval of the Board under section 1842 of this title;

the Corporation shall immediately notify the Board of such facts.

(B) Upon receipt of notice from the Federal Deposit Insurance Corporation under subparagraph (A) or at such earlier time as deemed appropriate by the Board, the Board shall immediately notify the Attorney General of the United States of the facts concerning the possible acquisition.

(C) Within 5 days of receiving notice under subparagraph (B), the Attorney General shall notify the Board in writing of the Attorney General's preliminary finding as to the consistency of the possible acquisition with the antitrust laws.

(D) The Board may reduce or eliminate the post-approval waiting period established under paragraph (1) for an acquisition to which this paragraph applies, except that such period may not be eliminated or reduced to less than 5 days without the concurrence of the Attorney General.

(c) Antitrust proceedings; Board and State banking agency as party; representation by counsel

In any action brought under the antitrust laws arising out of any acquisition, merger, or consolidation transaction approved by the Board under section 1842 of this title, the Board and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.

(d) Treatment of merger transactions consummated prior or subsequent to May 9, 1956, and not in litigation prior to July 1, 1966

Any acquisition, merger, or consolidation of the kind described in section 1842(a) of this title which was consummated at any time prior or subsequent to May 9, 1956, and as to which no litigation was initiated by the Attorney General prior to July 1, 1966, shall be conclusively presumed not to have been in violation of any antitrust laws other than section 2 of title 15.

(e) Antitrust litigation; substantive law applicable to proceedings pending on or after July 1, 1966, with respect to merger transactions

Any court having pending before it on or after July 1, 1966, any litigation initiated under the antitrust laws by the Attorney General with respect to any acquisition, merger, or consolidation of the kind described in section 1842(a) of this title shall apply the substantive rule of law set forth in section 1842 of this title.

(f) "Antitrust laws" defined

For the purposes of this section, the term ''antitrust laws'' means the Act of July 2, 1890 (the Sherman Antitrust Act), the Act of October 15, 1914 (the Clayton Act), and any other Acts in pari materia.

(May 9, 1956, ch. 240, §11, 70 Stat. 146; Pub. L. 89–485, §11, July 1, 1966, 80 Stat. 240; Pub. L. 91–607, title I, §104, Dec. 31, 1970, 84 Stat. 1766; Pub. L. 95–188, title III, §303, Nov. 16, 1977, 91 Stat. 1390; Pub. L. 100–86, title V, §502(h)(3), Aug. 10, 1987, 101 Stat. 628; Pub. L. 103–325, title III, §321(a), Sept. 23, 1994, 108 Stat. 2226; Pub. L. 106–102, title I, §131, Nov. 12, 1999, 113 Stat. 1382.)

REFERENCES IN TEXT

Act of July 2, 1890 (the Sherman Antitrust Act), referred to in subsec. (f), is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914 (the Clayton Act), referred to in subsec. (f), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106–102 inserted before period at end of first sentence ''and, if the transaction also involves an acquisition under section 1843 of this title, the Board shall also notify the Federal Trade Commission of such approval''.

1994—Subsec. (b)(1). Pub. L. 103–325 inserted before period at end of fourth sentence ''or, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval''.

1987—Subsec. (b). Pub. L. 100–86 designated existing provisions as par. (1) and added par. (2).

1977—Subsec. (b). Pub. L. 95–188 authorized a proposed acquisition, merger, or consolidation transaction to be consummated immediately upon approval by the Board where the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction; prohibited a transaction from being consummated before the fifth calendar day after the date of approval by the Board where the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days; continued for all other cases the thirty day waiting period after date of approval by the Board for consummation of the transaction; and substituted provision for commencement of stay actions prior to the earliest time at which the transaction approval under section 1842 of this title might be consummated for prior provision for commencement of such stay actions within the thirty-day waiting period.

1970—Subsec. (b). Pub. L. 91–607, § 104(a), substituted ''section 1842 of this title'' for ''this chapter'' where appearing first two times, and inserted ''approved under section 1842 of this title'' in second sentence before ''shall be commended'' and in last sentence before ''in compliance with this chapter''.

Subsec. (c). Pub. L. 91–607, § 104(b), substituted ''under section 1842 of this title'' for ''pursuant to this chapter''.

1966—Pub. L. 89–485 designated existing provisions as subsec. (a), inserted ''except as specifically provided in this section'', and added subsecs. (b) to (f).

EFFECTIVE DATE OF 1999 AMENDMENT

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

§ 1850. Acquisition of subsidiary and tying arrangement: Federal Reserve Board proceedings; application for authorization; competitor as party in interest and person aggrieved; judicial review

With respect to any proceeding before the Federal Reserve Board wherein an applicant seeks authority to acquire a subsidiary which is a bank under section 1842 of this title or to engage in an activity otherwise prohibited under chapter 22 of this title, a party who would become a competitor of the applicant or subsidiary thereof by virtue of the applicant's or its subsidiary's acquisition, entry into the business involved, or activity, shall have the right to be a party in interest in the proceeding and, in the event of an adverse order of the Board, shall have the right as an aggrieved party to obtain judicial review thereof as provided in section 1848 of this title or as otherwise provided by law.

(Pub. L. 91–607, title I, § 105, Dec. 31, 1970, 84 Stat. 1766; Pub. L. 106–102, title I, § 102(b)(1), Nov. 12, 1999, 113 Stat. 1341.)

CODIFICATION

Section was enacted as part of the Bank Holding Company Act Amendments of 1970, and not as part of the Bank Holding Company Act of 1956 which comprises this chapter.

AMENDMENTS

1999—Pub. L. 106–102 struck out '', to engage directly or indirectly in a nonbanking activity pursuant to section 1843 of this title,'' after ''section 1842 of this title''.

EFFECTIVE DATE OF 1999 AMENDMENT

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

§ 1850a. Securities holding companies

(a) Definitions

In this section—

(1) the term ''associated person of a securities holding company'' means a person directly or indirectly controlling, controlled by, or under common control with, a securities holding company;

(2) the term ''foreign bank'' has the same meaning as in section 3101(7) of this title;

(3) the term ''insured bank'' has the same meaning as in section 1813 of this title;

(4) the term ''securities holding company''—

(A) means—

(i) a person (other than a natural person) that owns or controls 1 or more brokers or dealers registered with the Commission; and

(ii) the associated persons of a person described in clause (i); and

(B) does not include a person that is—

(i) a nonbank financial company supervised by the Board under title I;[1]

(ii) an insured bank (other than an institution described in subparagraphs[2] (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))[3] or a savings association;

(iii) an affiliate of an insured bank (other than an institution described in subparagraphs[2] (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))[3] or an affiliate of a savings association;

(iv) a foreign bank, foreign company, or company that is described in section 3106(a) of this title;

(v) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.); or

(vi) subject to comprehensive consolidated supervision by a foreign regulator;

(5) the term ''supervised securities holding company'' means a securities holding company that is supervised by the Board of Governors under this section; and

(6) the terms ''affiliate'', ''bank'', ''bank holding company'', ''company'', ''control'', ''savings association'', and ''subsidiary'' have the same meanings as in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841].

(b) Supervision of a securities holding company not having a bank or savings association affiliate

(1) In general

A securities holding company that is required by a foreign regulator or provision of foreign law to be subject to comprehensive

[1] See References in Text note below.

[2] So in original. Probably should be ''subparagraph''.

[3] So in original. Another closing parenthesis probably should appear.

consolidated supervision may register with the Board of Governors under paragraph (2) to become a supervised securities holding company. Any securities holding company filing such a registration shall be supervised in accordance with this section, and shall comply with the rules and orders prescribed by the Board of Governors applicable to supervised securities holding companies.

(2) Registration as a supervised securities holding company

(A) Registration

A securities holding company that elects to be subject to comprehensive consolidated supervision shall register by filing with the Board of Governors such information and documents as the Board of Governors, by regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

(B) Effective date

A securities holding company that registers under subparagraph (A) shall be deemed to be a supervised securities holding company, effective on the date that is 45 days after the date of receipt of the registration information and documents under subparagraph (A) by the Board of Governors, or within such shorter period as the Board of Governors, by rule or order, may determine.

(c) Supervision of securities holding companies

(1) Recordkeeping and reporting

(A) Recordkeeping and reporting required

Each supervised securities holding company and each affiliate of a supervised securities holding company shall make and keep for periods determined by the Board of Governors such records, furnish copies of such records, and make such reports, as the Board of Governors determines to be necessary or appropriate to carry out this section, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) Form and contents

(i) In general

Any record or report required to be made, furnished, or kept under this paragraph shall—

(I) be prepared in such form and according to such specifications (including certification by a registered public accounting firm), as the Board of Governors may require; and

(II) be provided promptly to the Board of Governors at any time, upon request by the Board of Governors.

(ii) Contents

Records and reports required to be made, furnished, or kept under this paragraph may include—

(I) a balance sheet or income statement of the supervised securities holding company or an affiliate of a supervised securities holding company;

(II) an assessment of the consolidated capital and liquidity of the supervised securities holding company;

(III) a report by an independent auditor attesting to the compliance of the supervised securities holding company with the internal risk management and internal control objectives of the supervised securities holding company; and

(IV) a report concerning the extent to which the supervised securities holding company or affiliate has complied with the provisions of this section and any regulations prescribed and orders issued under this section.

(2) Use of existing reports

(A) In general

The Board of Governors shall, to the fullest extent possible, accept reports in fulfillment of the requirements of this paragraph that a supervised securities holding company or an affiliate of a supervised securities holding company has been required to provide to another regulatory agency or a self-regulatory organization.

(B) Availability

A supervised securities holding company or an affiliate of a supervised securities holding company shall promptly provide to the Board of Governors, at the request of the Board of Governors, any report described in subparagraph (A), as permitted by law.

(3) Examination authority

(A) Focus of examination authority

The Board of Governors may make examinations of any supervised securities holding company and any affiliate of a supervised securities holding company to carry out this subsection, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) Deference to other examinations

For purposes of this subparagraph, the Board of Governors shall, to the fullest extent possible, use the reports of examination made by other appropriate Federal or State regulatory authorities with respect to any functionally regulated subsidiary or any institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)).

(d) Capital and risk management

(1) In general

The Board of Governors shall, by regulation or order, prescribe capital adequacy and other risk management standards for supervised securities holding companies that are appropriate to protect the safety and soundness of the supervised securities holding companies and address the risks posed to financial stability by supervised securities holding companies.

(2) Differentiation

In imposing standards under this subsection, the Board of Governors may differentiate

among supervised securities holding companies on an individual basis, or by category, taking into consideration the requirements under paragraph (3).

(3) Content

Any standards imposed on a supervised securities holding company under this subsection shall take into account—

(A) the differences among types of business activities carried out by the supervised securities holding company;

(B) the amount and nature of the financial assets of the supervised securities holding company;

(C) the amount and nature of the liabilities of the supervised securities holding company, including the degree of reliance on short-term funding;

(D) the extent and nature of the off-balance sheet exposures of the supervised securities holding company;

(E) the extent and nature of the transactions and relationships of the supervised securities holding company with other financial companies;

(F) the importance of the supervised securities holding company as a source of credit for households, businesses, and State and local governments, and as a source of liquidity for the financial system; and

(G) the nature, scope, and mix of the activities of the supervised securities holding company.

(4) Notice

A capital requirement imposed under this subsection may not take effect earlier than 180 days after the date on which a supervised securities holding company is provided notice of the capital requirement.

(e) Other provisions of law applicable to supervised securities holding companies

(1) Federal Deposit Insurance Act

Subsections (b), (c) through (s), and (u) of section 1818 of this title shall apply to any supervised securities holding company, and to any subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, in the same manner as such subsections apply to a bank holding company for which the Board of Governors is the appropriate Federal banking agency. For purposes of applying such subsections to a supervised securities holding company or a subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, the Board of Governors shall be deemed the appropriate Federal banking agency for the supervised securities holding company or subsidiary.

(2) Bank Holding Company Act of 1956

Except as the Board of Governors may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent a bank holding company is subject to such provisions, except that a supervised securities holding company may not, by reason of this paragraph, be deemed to be a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

(Pub. L. 111–203, title VI, § 618, July 21, 2010, 124 Stat. 1616.)

REFERENCES IN TEXT

Title I, referred to in subsec. (a)(4)(B)(i), is title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, known as the Financial Stability Act of 2010, which is classified principally to subchapter I (§ 5311 et seq.) of chapter 53 of this title. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 25A of the Federal Reserve Act, referred to in subsec. (a)(4)(B)(v), popularly known as the Edge Act, is classified to subchapter II (§ 611 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 611 of this title and Tables.

The Bank Holding Company Act of 1956, referred to in subsec. (e)(2), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

CODIFICATION

Section was enacted as part of the Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2010, and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Bank Holding Company Act of 1956 which comprises this chapter.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of this title.

§ 1851. Prohibitions on proprietary trading and certain relationships with hedge funds and private equity funds

(a) In general

(1) Prohibition

Unless otherwise provided in this section, a banking entity shall not—

(A) engage in proprietary trading; or

(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

(2) Nonbank financial companies supervised by the Board

Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject, by rule, as provided in subsection (b)(2), to additional capital requirements for and additional quantitative limits

with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall not be subject to the additional capital and additional quantitative limits except as provided in subsection (d)(3), as if the nonbank financial company supervised by the Board were a banking entity.

(b) Study and rulemaking

(1) Study

Not later than 6 months after July 21, 2010, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

(A) promote and enhance the safety and soundness of banking entities;

(B) protect taxpayers and consumers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

(F) appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws, while protecting the safety and soundness of any banking entity with which such insurance company is affiliated and of the United States financial system; and

(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

(2) Rulemaking

(A) In general

Unless otherwise provided in this section, not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

(B) Coordinated rulemaking

(i) Regulatory authority

The regulations issued under this paragraph shall be issued by—

(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act,[1] any nonbank financial company supervised by the Board, and any subsidiary of any of the foregoing (other than a subsidiary for which an agency described in subclause (I), (III), or (IV) is the primary financial regulatory agency);

(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 5301 of this title; and

(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 5301 of this title.

(ii) Coordination, consistency, and comparability

In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

(iii) Council role

The Chairperson of the Financial Stability Oversight Council shall be responsible for coordination of the regulations issued under this section.

(c) Effective date

(1) In general

Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

(A) 12 months after the date of the issuance of final rules under subsection (b); or

(B) 2 years after July 21, 2010.

(2) Conformance period for divestiture

A banking entity or nonbank financial company supervised by the Board shall bring its activities and investments into compliance with the requirements of this section not later than 2 years after the date on which the requirements become effective pursuant to this section or 2 years after the date on which the

[1] See References in Text note below.

entity or company becomes a nonbank financial company supervised by the Board. The Board may, by rule or order, extend this two-year period for not more than one year at a time, if, in the judgment of the Board, such an extension is consistent with the purposes of this section and would not be detrimental to the public interest. The extensions made by the Board under the preceding sentence may not exceed an aggregate of 3 years.

(3) Extended transition for illiquid funds

(A) Application

The Board may, upon the application of a banking entity, extend the period during which the banking entity, to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010, may take or retain its equity, partnership, or other ownership interest in, or otherwise provide additional capital to, an illiquid fund.

(B) Time limit on approval

The Board may grant 1 extension under subparagraph (A), which may not exceed 5 years.

(4) Divestiture required

Except as otherwise provided in subsection (d)(1)(G), a banking entity may not engage in any activity prohibited under subsection (a)(1)(B) after the earlier of—

(A) the date on which the contractual obligation to invest in the illiquid fund terminates; and

(B) the date on which any extensions granted by the Board under paragraph (3) expire.

(5) Additional capital during transition period

Notwithstanding paragraph (2), on the date on which the rules are issued under subsection (b)(2), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue rules, as provided in subsection (b)(2), to impose additional capital requirements, and any other restrictions, as appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity.

(6) Special rulemaking

Not later than 6 months after July 21, 2010, the Board shall issues rules to implement paragraphs (2) and (3).

(d) Permitted activities

(1) In general

Notwithstanding the restrictions under subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as ''permitted activities'') are permitted:

(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof, obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting or market-making-related activities, to the extent that any such activities permitted by this subparagraph are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(C) Risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of a banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings.

(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

(E) Investments in one or more small business investment companies, as defined in section 102[1] of the Small Business Investment Act of 1958 (15 U.S.C. 662), investments designed primarily to promote the public welfare, of the type permitted under paragraph (11) of section 24 of this title, or investments that are qualified rehabilitation expenditures with respect to a qualified rehabilitated building or certified historic structure, as such terms are defined in section 47 of title 26 or a similar State historic tax credit program.

(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described

in clause (i) is insufficient to protect the safety and soundness of the banking entity, or of the financial stability of the United States.

(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds except for a de minimis investment subject to and in compliance with paragraph (4);

(iv) the banking entity complies with the restrictions under paragraphs (1) and (2) of subparagraph (f);

(v) the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the hedge fund or private equity fund or of any hedge fund or private equity fund in which such hedge fund or private equity fund invests;

(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in the hedge fund or private equity fund, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

(viii) the banking entity discloses to prospective and actual investors in the fund, in writing, that any losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity, and otherwise complies with any additional rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as provided in subsection (b)(2), designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

(H) Proprietary trading conducted by a banking entity pursuant to paragraph (9) or (13) of section 1843(c) of this title, provided that the trading occurs solely outside of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity pursuant to paragraph (9) or (13) of section 1843(c) of this title solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine, by rule, as provided in subsection (b)(2), would promote and protect the safety and soundness of the banking entity and the financial stability of the United States.

(2) Limitation on permitted activities

(A) In general

No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if the transaction, class of transactions, or activity—

(i) would involve or result in a material conflict of interest (as such term shall be defined by rule as provided in subsection (b)(2)) between the banking entity and its clients, customers, or counterparties;

(ii) would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies (as such terms shall be defined by rule as provided in subsection (b)(2));

(iii) would pose a threat to the safety and soundness of such banking entity; or

(iv) would pose a threat to the financial stability of the United States.

(B) Rulemaking

The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

(3) Capital and quantitative limitations

The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall, as provided in subsection (b)(2), adopt rules imposing additional capital requirements and quantitative limitations, including diversification requirements, regarding the activities permitted under this section if the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine that additional capital and quan-

titative limitations are appropriate to protect the safety and soundness of banking entities engaged in such activities.

(4) De minimis investment

(A) In general

A banking entity may make and retain an investment in a hedge fund or private equity fund that the banking entity organizes and offers, subject to the limitations and restrictions in subparagraph (B) for the purposes of—

(i) establishing the fund and providing the fund with sufficient initial equity for investment to permit the fund to attract unaffiliated investors; or

(ii) making a de minimis investment.

(B) Limitations and restrictions on investments

(i) Requirement to seek other investors

A banking entity shall actively seek unaffiliated investors to reduce or dilute the investment of the banking entity to the amount permitted under clause (ii).

(ii) Limitations on size of investments

Notwithstanding any other provision of law, investments by a banking entity in a hedge fund or private equity fund shall—

(I) not later than 1 year after the date of establishment of the fund, be reduced through redemption, sale, or dilution to an amount that is not more than 3 percent of the total ownership interests of the fund;

(II) be immaterial to the banking entity, as defined, by rule, pursuant to subsection (b)(2), but in no case may the aggregate of all of the interests of the banking entity in all such funds exceed 3 percent of the Tier 1 capital of the banking entity.

(iii) Capital

For purposes of determining compliance with applicable capital standards under paragraph (3), the aggregate amount of the outstanding investments by a banking entity under this paragraph, including retained earnings, shall be deducted from the assets and tangible equity of the banking entity, and the amount of the deduction shall increase commensurate with the leverage of the hedge fund or private equity fund.

(C) Extension

Upon an application by a banking entity, the Board may extend the period of time to meet the requirements under subparagraph (B)(ii)(I) for 2 additional years, if the Board finds that an extension would be consistent with safety and soundness and in the public interest.

(e) Anti-evasion

(1) Rulemaking

The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations, as part of the rule-making provided for in subsection (b)(2), regarding internal controls and recordkeeping, in order to insure compliance with this section.

(2) Termination of activities or investment

Notwithstanding any other provision of law, whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this paragraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

(f) Limitations on relationships with hedge funds and private equity funds

(1) In general

No banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), and no affiliate of such entity, may enter into a transaction with the fund, or with any other hedge fund or private equity fund that is controlled by such fund, that would be a covered transaction, as defined in section 371c of this title, with the hedge fund or private equity fund, as if such banking entity and the affiliate thereof were a member bank and the hedge fund or private equity fund were an affiliate thereof.

(2) Treatment as member bank

A banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), shall be subject to section 371c–1 of this title, as if such banking entity were a member bank and such hedge fund or private equity fund were an affiliate thereof.

(3) Permitted services

(A) In general

Notwithstanding paragraph (1), the Board may permit a banking entity to enter into any prime brokerage transaction with any hedge fund or private equity fund in which a hedge fund or private equity fund managed, sponsored, or advised by such banking entity

has taken an equity, partnership, or other ownership interest, if—

(i) the banking entity is in compliance with each of the limitations set forth in subsection (d)(1)(G) with regard to a hedge fund or private equity fund organized and offered by such banking entity;

(ii) the chief executive officer (or equivalent officer) of the banking entity certifies in writing annually (with a duty to update the certification if the information in the certification materially changes) that the conditions specified in subsection (d)(1)(g)(v)[2] are satisfied; and

(iii) the Board has determined that such transaction is consistent with the safe and sound operation and condition of the banking entity.

(B) Treatment of prime brokerage transactions

For purposes of subparagraph (A), a prime brokerage transaction described in subparagraph (A) shall be subject to section 371c–1 of this title as if the counterparty were an affiliate of the banking entity.

(4) Application to nonbank financial companies supervised by the Board

The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall adopt rules, as provided in subsection (b)(2), imposing additional capital charges or other restrictions for nonbank financial companies supervised by the Board to address the risks to and conflicts of interest of banking entities described in paragraphs (1), (2), and (3) of this subsection.

(g) Rules of construction

(1) Limitation on contrary authority

Except as provided in this section, notwithstanding any other provision of law, the prohibitions and restrictions under this section shall apply to activities of a banking entity or nonbank financial company supervised by the Board, even if such activities are authorized for a banking entity or nonbank financial company supervised by the Board.

(2) Sale or securitization of loans

Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

(3) Authority of Federal agencies and State regulatory authorities

Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

(h) Definitions

In this section, the following definitions shall apply:

(1) Banking entity

The term ''banking entity'' means any insured depository institution (as defined in section 1813 of this title), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term ''insured depository institution'' does not include an institution that functions solely in a trust or fiduciary capacity, if—

(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

(D) such institution does not—

(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 248a of this title; or

(ii) exercise discount or borrowing privileges pursuant to section 461(b)(7) of this title.

(2) Hedge fund; private equity fund

The terms ''hedge fund'' and ''private equity fund'' mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act [15 U.S.C. 80a–3(c)(1), (7)], or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule, as provided in subsection (b)(2), determine.

(3) Nonbank financial company supervised by the Board

The term ''nonbank financial company supervised by the Board'' means a nonbank financial company supervised by the Board of Governors, as defined in section 5311 of this title.

(4) Proprietary trading

The term ''proprietary trading'', when used with respect to a banking entity or nonbank financial company supervised by the Board, means engaging as a principal for the trading account of the banking entity or nonbank financial company supervised by the Board in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

(5) Sponsor

The term to ''sponsor'' a fund means—

[2] So in original. Probably should be ''(d)(1)(G)(v)''.

(A) to serve as a general partner, managing member, or trustee of a fund;

(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

(6) Trading account

The term ''trading account'' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

(7) Illiquid fund

(A) In general

The term ''illiquid fund'' means a hedge fund or private equity fund that—

(i) as of May 1, 2010, was principally invested in, or was invested and contractually committed to principally invest in, illiquid assets, such as portfolio companies, real estate investments, and venture capital investments; and

(ii) makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets. In issuing rules regarding this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

(B) Hedge fund

For the purposes of this paragraph, the term ''hedge fund'' means any fund identified under subsection (h)(2), and does not include a private equity fund, as such term is used in section 80b–3(m) of this title.

(May 9, 1956, ch. 240, §13, as added Pub. L. 111–203, title VI, §619, July 21, 2010, 124 Stat. 1620.)

REFERENCES IN TEXT

Section 8 of the International Banking Act, referred to in subsec. (b)(2)(B)(i)(II), probably means section 8 of Pub. L. 95–369, known as the International Banking Act of 1978, which enacted section 3106 of this title and amended section 1841 of this title.

The Farm Credit Act of 1971, referred to in subsec. (d)(1)(A), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to chapter 23 (§2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

Section 102 of the Small Business Investment Act of 1958, referred to in subsec. (d)(1)(E), probably should be section 103 of the Small Business Investment Act of 1958, which is classified to section 662 of Title 15, Commerce and Trade.

Section 8 of the International Banking Act of 1978, referred to in subsec. (h)(1), is section 8 of Pub. L. 95–369, which enacted section 3106 of this title and amended section 1841 of this title.

The Investment Company Act of 1940, referred to in subsec. (h)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

§ 1852. Concentration limits on large financial firms

(a) Definitions

In this section—

(1) the term ''Council'' means the Financial Stability Oversight Council;

(2) the term ''financial company'' means—

(A) an insured depository institution;

(B) a bank holding company;

(C) a savings and loan holding company;

(D) a company that controls an insured depository institution;

(E) a nonbank financial company supervised by the Board under title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 5311 et seq.]; and

(F) a foreign bank or company that is treated as a bank holding company for purposes of this chapter; and

(3) the term ''liabilities'' means—

(A) with respect to a United States financial company—

(i) the total risk-weighted assets of the financial company, as determined under the risk-based capital rules applicable to bank holding companies, as adjusted to reflect exposures that are deducted from regulatory capital; less

(ii) the total regulatory capital of the financial company under the risk-based capital rules applicable to bank holding companies;

(B) with respect to a foreign-based financial company—

(i) the total risk-weighted assets of the United States operations of the financial company, as determined under the applicable risk-based capital rules, as adjusted to reflect exposures that are deducted from regulatory capital; less

(ii) the total regulatory capital of the United States operations of the financial company, as determined under the applicable risk-based capital rules; and

(C) with respect to an insurance company or other nonbank financial company supervised by the Board, such assets of the company as the Board shall specify by rule, in order to provide for consistent and equitable treatment of such companies.

(b) Concentration limit

Subject to the recommendations by the Council under subsection (e), a financial company

may not merge or consolidate with, acquire all or substantially all of the assets of, or otherwise acquire control of, another company, if the total consolidated liabilities of the acquiring financial company upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction.

(c) Exception to concentration limit

With the prior written consent of the Board, the concentration limit under subsection (b) shall not apply to an acquisition—

(1) of a bank in default or in danger of default;

(2) with respect to which assistance is provided by the Federal Deposit Insurance Corporation under section 1823(c) of this title; or

(3) that would result only in a de minimis increase in the liabilities of the financial company.

(d) Rulemaking and guidance

The Board shall issue regulations implementing this section in accordance with the recommendations of the Council under subsection (e), including the definition of terms, as necessary. The Board may issue interpretations or guidance regarding the application of this section to an individual financial company or to financial companies in general.

(e) Council study and rulemaking

(1) Study and recommendations

Not later than 6 months after July 21, 2010, the Council shall—

(A) complete a study of the extent to which the concentration limit under this section would affect financial stability, moral hazard in the financial system, the efficiency and competitiveness of United States financial firms and financial markets, and the cost and availability of credit and other financial services to households and businesses in the United States; and

(B) make recommendations regarding any modifications to the concentration limit that the Council determines would more effectively implement this section.

(2) Rulemaking

Not later than 9 months after the date of completion of the study under paragraph (1), and notwithstanding subsections (b) and (d), the Board shall issue final regulations implementing this section, which shall reflect any recommendations by the Council under paragraph (1)(B).

(May 9, 1956, ch. 240, §14, as added Pub. L. 111–203, title VI, §622, July 21, 2010, 124 Stat. 1632.)

REFERENCES IN TEXT

The Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (a)(2)(E), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376. Title I of the Act, known as the Financial Stability Act of 2010, is classified principally to subchapter I (§5311 et seq.) of chapter 53 of this title. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

This chapter, referred to in subsec. (a)(2)(F), was in the original ''this Act'', meaning act May 9, 1956, ch. 240, 70 Stat. 133, known as the Bank Holding Company Act of 1956, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

CHAPTER 18—BANK SERVICE COMPANIES

Sec.
1861. Short title and definitions.
1862. Amount of investment in bank service company.
1863. Permissible bank service company activities for depository institutions.
1864. Permissible bank service company activities for other persons.
1865. Prior approval for investments in bank service companies.
1866. Services to nonstockholders or nonmembers.
1867. Regulation and examination of bank service companies.

§ 1861. Short title and definitions

(a) Short title

This chapter may be cited as the ''Bank Service Company Act''.

(b) Definitions

For the purpose of this chapter—

(1) the term ''appropriate Federal banking agency'' shall have the meaning provided in section 1813(q) of this title;

(2) the term ''bank service company'' means—

(A) any corporation—

(i) which is organized to perform services authorized by this chapter; and

(ii) all of the capital stock of which is owned by 1 or more insured depository institutions; and

(B) any limited liability company—

(i) which is organized to perform services authorized by this chapter; and

(ii) all of the members of which are 1 or more insured depository institutions.

(3) the term ''Board'' means the Board of Governors of the Federal Reserve System;

(4) the term ''depository institution'' means, except when such term appears in connection with the term ''insured depository institution'', an insured bank, financial institution subject to examination by the Director of the Office of Thrift Supervision or the National Credit Union Administration Board, or a financial institution the accounts or deposits of which are insured or guaranteed under State law and are eligible to be insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration Board;

(5) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' has the same meaning as in section 1813(c) of this title;

(6) the term ''invest'' includes any advance of funds to a bank service company, whether

by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment;

(7) the term ''limited liability company'' means any company, partnership, trust, or similar business entity organized under the law of a State (as defined in section 1813 of this title) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company;

(8) the term ''principal investor'' means the insured depository institution that has the largest dollar amount invested in the equity of a bank service company. In any case where two or more insured depository institutions have equal dollar amounts invested in a bank service company, the company shall, prior to commencing operations, select one of the insured depository institutions as its principal investor and shall notify the depository institution's appropriate Federal banking agency of that choice within 5 business days of its selection; and

(9) the terms ''State depository institution'', ''Federal depository institution'', ''State savings association'' and ''Federal savings association'' have the same meanings as in section 1813 of this title.

(Pub. L. 87–856, §1, Oct. 23, 1962, 76 Stat. 1132; Pub. L. 97–320, title VII, §709, Oct. 15, 1982, 96 Stat. 1540; Pub. L. 97–457, §32(a), Jan. 12, 1983, 96 Stat. 2511; Pub. L. 104–208, div. A, title II, §2613(a), (b), Sept. 30, 1996, 110 Stat. 3009–476; Pub. L. 109–351, title VI, §602(b)(1), Oct. 13, 2006, 120 Stat. 1979; Pub. L. 111–203, title III, §357(1), (2), July 21, 2010, 124 Stat. 1547, 1548.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 111–203, title III, §§351, 357(1), (2), July 21, 2010, 124 Stat. 1546–1548, provided that, effective on the transfer date, subsection (b) of this section is amended:

(1) in paragraph (4)—

(A) by inserting after ''an insured bank,'' the following: ''a savings association,'';

(B) by substituting ''appropriate Federal banking agency'' for ''Director of the Office of Thrift Supervision''; and

(C) by striking out '', the Federal Savings and Loan Insurance Corporation,''; and

(2) in paragraph (5), by substituting ''terms 'depository institution' and 'savings association' have the same meanings as in section 1813'' for ''term 'insured depository institution' has the same meaning as in section 1813(c)''.

See Effective Date of 2010 Amendment note below.

AMENDMENTS

2006—Subsec. (b)(2)(A)(ii), (B)(ii). Pub. L. 109–351, §602(b)(1)(F), substituted ''insured depository institutions'' for ''insured banks''.

Subsec. (b)(4). Pub. L. 109–351, §602(b)(1)(A), inserted '', except when such term appears in connection with the term 'insured depository institution','' after ''means'' and substituted ''Director of the Office of Thrift Supervision'' for ''Federal Home Loan Bank Board''.

Subsec. (b)(5). Pub. L. 109–351, §602(b)(1)(B), added par. (5) and struck out former par. (5) which defined ''insured bank''.

Subsec. (b)(8). Pub. L. 109–351, §602(b)(1)(G), substituted ''means the insured depository institution'' for ''means the insured bank'', ''insured depository institutions'' for ''insured banks'' in two places, and ''the depository institution's appropriate'' for ''the bank's appropriate''.

Subsec. (b)(9). Pub. L. 109–351, §602(b)(1)(C)–(E), added par. (9).

1996—Subsec. (a). Pub. L. 104–208, §2613(a), inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: ''This chapter may be cited as the 'Bank Service Corporation Act'.''

Subsec. (b)(2). Pub. L. 104–208, §2613(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the term 'bank service corporation' means a corporation organized to perform services authorized by this chapter, all of the capital stock of which is owned by one or more insured banks;''.

Subsec. (b)(6). Pub. L. 104–208, §2613(b)(2), substituted ''company'' for ''corporation'' and struck out ''and'' after semicolon at end.

Subsec. (b)(7). Pub. L. 104–208, §2613(b)(3), added par. (7). Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 104–208, §2613(b)(4), substituted ''company'' for ''corporation'' wherever appearing and ''equity'' for ''capital stock''.

Pub. L. 104–208, §2613(b)(3), redesignated par. (7) as (8).

1983—Subsec. (b)(4). Pub. L. 97–457 substituted ''a'' for ''or another'' after ''insured bank,'' and inserted reference to a financial institution insured by State law and eligible to be insured by certain Federal agencies.

1982—Subsec. (a). Pub. L. 97–320 substituted provision that this chapter may be cited as the ''Bank Service Corporation Act'' for provision that term ''Federal supervisory agency'' meant the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Board of Directors of the Federal Deposit Insurance Corporation.

Subsec. (b). Pub. L. 97–320 substituted definitions of ''appropriate Federal banking agency'', ''bank service corporation'', ''Board'', ''depository institution'', ''insured bank'', ''invest'', and ''principal investor'' for provision that term ''bank services'' meant services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank.

Subsec. (c). Pub. L. 97–320 redesignated provisions of subsec. (c) defining ''bank service corporation'' as (b)(2), and revised definition.

Subsec. (d). Pub. L. 97–320 redesignated provisions of subsec. (d) as (b)(6).

EFFECTIVE DATE OF 2010 AMENDMENT

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

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

§ 1862. Amount of investment in bank service company

Notwithstanding any limitation or prohibition otherwise imposed by any provision of law exclusively relating to banks or savings associations, other than the limitation on the amount of investment by a Federal savings association contained in section 1464(c)(4)(B) of this title, an insured depository institution may invest not more than 10 per centum of paid-in and unimpaired capital and unimpaired surplus in a bank

service company. No insured depository institution shall invest more than 5 per centum of its total assets in bank service companies.

(Pub. L. 87–856, §2, Oct. 23, 1962, 76 Stat. 1132; Pub. L. 97–320, title VII, §709, Oct. 15, 1982, 96 Stat. 1541; Pub. L. 104–208, div. A, title II, §2613(c), Sept. 30, 1996, 110 Stat. 3009–477; Pub. L. 109–351, title VI, §602(a), (b)(2), Oct. 13, 2006, 120 Stat. 1978, 1979.)

AMENDMENTS

2006—Pub. L. 109–351 inserted ''or savings associations, other than the limitation on the amount of investment by a Federal savings association contained in section 1464(c)(4)(B) of this title'' after ''relating to banks'' and substituted ''insured depository institution'' for ''insured bank'' in two places.

1996—Pub. L. 104–208 substituted ''company'' for ''corporation'' in section catchline and ''company'' and ''companies'' for ''corporation'' and ''corporations'', respectively, in text.

1982—Pub. L. 97–320 substituted provisions relating to the maximum permissible amount of investment in a bank service corporation by an insured bank for provisions which read as follows:

''(a) No limitation or prohibition otherwise imposed by any provision of Federal law exclusively relating to banks shall prevent any two or more banks from investing not more than 10 per centum of the paid-in and unimpaired capital and unimpaired surplus of each of them in a bank service corporation.

''(b) If stock in a bank service corporation has been held by two banks, and one of such banks ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves the other as the sole stockholding bank, the corporation may nevertheless continue to function as such and the other bank may continue to hold stock in it.''

§ 1863. Permissible bank service company activities for depository institutions

Without regard to the provisions of sections 1864 and 1865 of this title, an insured depository institution may invest in a bank service company that performs, and a bank service company may perform, the following services only for depository institutions: check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a depository institution.

(Pub. L. 87–856, §3, Oct. 23, 1962, 76 Stat. 1132; Pub. L. 97–320, title VII, §709, Oct. 15, 1982, 96 Stat. 1541; Pub. L. 104–208, div. A, title II, §2613(d), Sept. 30, 1996, 110 Stat. 3009–477; Pub. L. 109–351, title VI, §602(a), Oct. 13, 2006, 120 Stat. 1978.)

AMENDMENTS

2006—Pub. L. 109–351 substituted ''insured depository institution'' for ''insured bank''.

1996—Pub. L. 104–208 substituted ''company'' for ''corporation'' wherever appearing in section catchline and text.

1982—Pub. L. 97–320 substituted provisions relating to permissible bank service corporation activities for depository institutions for provisions that a bank service corporation must provide bank services to a bank that applied for them if the applying bank competed with a bank which held stock in the corporation unless comparable services were available elsewhere at competitive cost or furnishing the services would be beyond the practical capacity of the corporation.

§ 1864. Permissible bank service company activities for other persons

(a) Services permissible other than taking deposits

A bank service company may provide to any person any service authorized by this section, except that a bank service company shall not take deposits.

(b) Services to be performed in State where shareholders or members are located

Except as permissible under subsection (c), (d), or (e) or with the prior approval of the Board under section 1865(b) of this title in accordance with subsection (f) of this section—

(1) a bank service company shall not perform the services authorized by this section in any State other than that State in which its shareholders or members are located; and

(2) all insured bank shareholders or members of a bank service company shall be located in the same State.

(c) Performance where State bank or savings association is shareholder or member

A bank service company in which a State bank or State savings association is a shareholder or member shall perform only those services that such State bank or State savings association shareholder or member is authorized to perform under the law of the State in which such State bank or State savings association operates and shall perform such services only at locations in the State in which such State bank or State savings association shareholder or member could be authorized to perform such services.

(d) Performance where national bank or Federal savings association is shareholder or member

A bank service company in which a national bank or Federal savings association is a shareholder or member shall perform only those services that such national bank or Federal savings association shareholder or member is authorized to perform under the law of the United States and shall perform such services only at locations in the State at which such national bank or Federal savings association shareholder or member could be authorized to perform such services.

(e) Performance where State bank and national bank are shareholders or members

A bank service company may perform—

(1) only those services that each depository institution shareholder or member is otherwise authorized to perform under any applicable Federal or State law; and

(2) such services only at locations in a State in which each such shareholder or member is authorized to perform such services.

(f) Geographic location

Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of Federal and State branching law regulating the geographic location of banks or savings associations to the extent that those laws are applicable to an activity authorized by this subsection, a bank service company may

perform at any geographic location any service, other than deposit taking, that the Board has determined, by regulation, to be permissible for a bank holding company under section 1843(c)(8) of this title as of the day before November 12, 1999.

(Pub. L. 87–856, §4, Oct. 23, 1962, 76 Stat. 1132; Pub. L. 97–320, title VII, §709, Oct. 15, 1982, 96 Stat. 1542; Pub. L. 97–457, §32(b)(2), Jan. 12, 1983, 96 Stat. 2511; Pub. L. 104–208, div. A, title II, §2613(e), Sept. 30, 1996, 110 Stat. 3009–477; Pub. L. 106–102, title I, §102(b)(2), Nov. 12, 1999, 113 Stat. 1342; Pub. L. 109–351, title VI, §602(b)(3), Oct. 13, 2006, 120 Stat. 1979.)

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

Subsec. (f). Pub. L. 104–208, §2613(e)(1), substituted ''company'' for ''corporation''.

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

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

EFFECTIVE DATE OF 1999 AMENDMENT

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

§ 1865. Prior approval for investments in bank service companies

(a) Approval of Federal banking agency

No insured depository institution shall invest in the capital stock of a bank service company that performs any service under authority of subsection (c), (d), or (e) of section 1864 of this title without prior notice, as determined by the appropriate Federal banking agency for the insured depository institution.

(b) Approval of Board

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

(c) Considerations in determining approval

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

(d) Failure to act on application for approval

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

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

AMENDMENTS

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

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

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

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

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

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

1982—Pub. L. 97–320 substituted provisions relating to prior approval for investments in bank service corporations for provisions relating to regulation and examination of bank services for a regularly examined bank or its subsidiary or affiliate whether performed on or off its premises. See section 1867(c) of this title.

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

§ 1866. Services to nonstockholders or nonmembers

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

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

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

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

AMENDMENTS

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

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

§ 1867. Regulation and examination of bank service companies

(a) Principal investor

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

(b) Applicability of section 1818 of this title

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

(c) Services performed by contract or otherwise

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

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

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

(d) Issuance of regulations and orders

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

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

AMENDMENT OF SUBSECTION (c)(2)

Pub. L. 111–203, title III, §§ 351, 357(3), July 21, 2010, 124 Stat. 1546, 1548, provided that, effective on the transfer date, subsection (c)(2) of this section is amended by inserting ''each'' after ''notify''. See Effective Date of 2010 Amendment note below.

AMENDMENTS

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

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

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

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

Subsec. (b). Pub. L. 104–208, § 2613(h)(1), substituted ''company'' for ''corporation'' wherever appearing.

1983—Subsec. (b). Pub. L. 97–457 substituted reference to section 1818 of this title for reference to the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1818(b) et seq.).

EFFECTIVE DATE OF 2010 AMENDMENT

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

CHAPTER 19—SECURITY MEASURES FOR BANKS AND SAVINGS ASSOCIATIONS

Sec.
1881. ''Federal supervisory agency'' defined.
1882. Security measures.
1883. Insurance rates; report to Congress.
1884. Penalties for violations.

§ 1881. "Federal supervisory agency" defined

As used in this chapter the term ''Federal supervisory agency'' means—

(1) The Comptroller of the Currency with respect to national banks,

(2) The Board of Governors of the Federal Reserve System with respect to Federal Reserve banks and State banks which are members of the Federal Reserve System,

(3) The Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation and State savings associations, and

(4) The Director of the Office of Thrift Supervision with respect to Federal savings.[1]

(Pub. L. 90–389, § 2, July 7, 1968, 82 Stat. 294; Pub. L. 101–73, title VII, § 744(h), Aug. 9, 1989, 103 Stat. 439; Pub. L. 108–386, § 8(d), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 111–203, title III, § 356(1), July 21, 2010, 124 Stat. 1547.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 356(1), July 21, 2010, 124 Stat. 1546, 1547, provided that, effective on the transfer date, this section is amended by substituting ''the term 'Federal supervisory agency' means the appropriate Federal banking agency, as defined in section 1813(q) of this title.'' for ''the term'' and all that follows through the end. See Effective Date of 2010 Amendment note below.

AMENDMENTS

2004—Par. (1). Pub. L. 108–386 struck out ''and district banks'' after ''national banks''.

1989—Par. (3). Pub. L. 101–73, § 744(h)(2), inserted reference to State savings associations.

Par. (4). Pub. L. 101–73, § 744(h)(1), substituted ''Director of the Office of Thrift Supervision'' for ''Federal Home Loan Bank Board'', struck out ''and loan'' after ''Federal savings'', and struck out ''associations, and institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation'' before period at end.

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

SHORT TITLE

Section 1 of Pub. L. 90–389 provided: ''That this Act [enacting this chapter and amending section 1729 of this title] may be cited as the 'Bank Protection Act of 1968'.''

§ 1882. Security measures

(a) Rules for installation, maintenance, and operation of security devices and procedures

Within six months from July 7, 1968, each Federal supervisory agency shall promulgate rules establishing minimum standards with which each bank or savings and loan association must comply with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.

(b) Time for compliance with standards

The rules shall establish the time limits within which banks and savings and loan associations shall comply with the standards.

(Pub. L. 90–389, § 3, July 7, 1968, 82 Stat. 295; Pub. L. 101–73, title IX, § 911(a), Aug. 9, 1989, 103 Stat. 478; Pub. L. 111–203, title III, § 356(2), July 21, 2010, 124 Stat. 1547.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 356(2), July 21, 2010, 124 Stat. 1546, 1547, provided that, effective on the transfer date, this section is amended by striking out ''and loan'' wherever appearing. See Effective Date of 2010 Amendment note below.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–73 struck out ''and shall require the submission of periodic reports with respect to the installation, maintenance, and operation of security devices and procedures'' before period at end.

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–73 applicable with respect to reports filed or required to be filed after Aug. 9, 1989, see section 911(i) of Pub. L. 101–73, set out as a note under section 161 of this title.

[1] So in original. Probably should be ''Federal savings associations.''

§ 1883. Insurance rates; report to Congress

The Federal supervisory agencies shall consult with

(1) insurers furnishing insurance protection against losses resulting from robberies, burglaries, and larcenies committed against financial institutions referred to in section 1881 of this title, and

(2) State agencies having supervisory or regulatory responsibilities with respect to such insurers

to determine the feasibility and desirability of premium rate differentials based on the installation, maintenance, and operation of security devices and procedures. The Federal supervisory agencies shall report to the Congress the results of their consultations pursuant to this section not later than two years after July 7, 1968.

(Pub. L. 90–389, § 4, July 7, 1968, 82 Stat. 295.)

§ 1884. Penalties for violations

A bank or savings and loan association which violates a rule promulgated pursuant to this chapter shall be subject to a civil penalty which shall not exceed $100 for each day of the violation.

(Pub. L. 90–389, § 5, July 7, 1968, 82 Stat. 295; Pub. L. 111–203, title III, § 356(3), July 21, 2010, 124 Stat. 1547.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 356(3), July 21, 2010, 124 Stat. 1546, 1547, provided that, effective on the transfer date, this section is amended by striking out ''and loan''. See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

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

CHAPTER 20—CREDIT CONTROL

§§ 1901 to 1910. Omitted

CODIFICATION

Sections 1901 to 1910 were omitted pursuant to section 1910 which provided that the authority conferred by this chapter expired at the close of June 30, 1982.

Section 1901, Pub. L. 91–151, title II, § 202, Dec. 23, 1969, 83 Stat. 376, related to definitions for this chapter.

Pub. L. 91–151, title II, § 201, Dec. 23, 1969, 83 Stat. 376, provided that title II of Pub. L. 91–151 (this chapter) could be cited as the ''Credit Control Act''.

Section 1902, Pub. L. 91–151, title II, § 203, Dec. 23, 1969, 83 Stat. 376, directed Board of Governors of Federal Reserve System to prescribe regulations to carry out purposes of this chapter.

Section 1903, Pub. L. 91–151, title II, § 204, Dec. 23, 1969, 83 Stat. 377, related to determination of interest charges in connection with credit transactions.

Section 1904, Pub. L. 91–151, title II, § 205, Dec. 23, 1969, 83 Stat. 377, related to credit controls.

Section 1905, Pub. L. 91–151, title II, § 206, Dec. 23, 1969, 83 Stat. 377, related to extent of controls.

Section 1906, Pub. L. 91–151, title II, § 207, Dec. 23, 1969, 83 Stat. 378, related to reporting of extensions of credit and production of records.

Section 1907, Pub. L. 91–151, title II, § 208, Dec. 23, 1969, 83 Stat. 378, related to injunctions for noncompliance.

Section 1908, Pub. L. 91–151, title II, § 209, Dec. 23, 1969, 83 Stat. 378, related to civil penalties.

Section 1909, Pub. L. 91–151, title II, § 210, Dec. 23, 1969, 83 Stat. 378, related to criminal penalties.

Section 1910, Pub. L. 91–151, title II, § 211, as added Pub. L. 96–508, § 9, Dec. 8, 1980, 94 Stat. 2749, provided that the authority conferred by this chapter expired at the close of June 30, 1982.

COUNCIL ON WAGE AND PRICE STABILITY

Pub. L. 93–387, Aug. 24, 1974, 88 Stat. 750, as amended by Pub. L. 93–449, § 4(e), Oct. 18, 1974, 88 Stat. 1367; Pub. L. 94–78, §§ 2–7, Aug. 9, 1975, 89 Stat. 411, 412; Pub. L. 95–121, §§ 1–6, Oct. 6, 1977, 91 Stat. 1091; Pub. L. 96–10, §§ 1–5, May 10, 1979, 96 Stat. 23; Pub. L. 96–508, §§ 1–8, Dec. 8, 1980, 94 Stat. 2748, 2749; Pub. L. 97–35, title III, § 383, Aug. 13, 1981, 95 Stat. 432, known as the ''Council on Wage and Price Stability Act'', provided for the establishment of a Council on Wage and Price Stability and the appointment and compensation of members, chairman, director, and employees; authorized cooperation with other agencies; specified the powers and duties of the Council; directed the establishment and duties of an Office of Productivity; specified that the Act did not authorize the continuation or imposition of economic controls or affect the Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 751 et seq.); provided for the disclosure of information; required annual reports; authorized appropriations; and terminated the authority granted by the Act on Sept. 30, 1981.

ECONOMIC STABILIZATION PROGRAM

Title II of Pub. L. 91–379, Aug. 15, 1970, 84 Stat. 799, as amended by Pub. L. 91–558, title II, § 201, Dec. 17, 1970, 84 Stat. 1468; Pub. L. 92–8, § 2, Mar. 31, 1971, 85 Stat. 13; Pub. L. 92–15, § 3, May 18, 1971, 85 Stat. 38; Pub. L. 92–210, § 2, Dec. 22, 1971, 85 Stat. 743; Pub. L. 93–28, §§ 1–8, Apr. 30, 1973, 87 Stat. 27–29; Pub. L. 102–572, title I, § 102(a), Oct. 29, 1992, 106 Stat. 4506, known as the ''Economic Stabilization Act of 1970'', authorized the President, within an established procedural framework, to stabilize prices, rents, wages, salaries, interest rates, dividends and similar transfers, and establish priorities for use and allocation of supplies of petroleum products, including crude oil, and to issue standards to serve as a guide for determining levels of wages, prices, etc., which would allow for adjustments, exceptions and variations to prevent inequities, taking into account changes in productivity, cost of living and other pertinent factors. The Act provided for limitations on the exercise of Presidential authority and allowed delegation of the performance of any of the President's functions to appropriate officers, departments and agencies of the United States or to entities composed of members appointed to represent different sectors of the economy and the general public. The Act provided for disclosure of information, subpena power, administrative procedure, criminal and civil sanctions, injunctions and suits for damages and other relief. The Act specified original jurisdiction for judicial review of cases or controversies arising under the Act or regulations issued thereunder in the district courts of the United States, and directed that appeals of final decisions or permitted interlocutory appeals be brought in the United States Court of Appeals for the Federal Circuit. The Act made specific provision for small business and mass transportation systems, required the President to issue periodic reports to Congress, authorized appropriations, and provided for its expiration on April 30, 1974.

EXEMPTION FROM PRICE RESTRAINTS AND ALLOCATION PROGRAMS OF FIRST SALE OF CRUDE OIL AND NATURAL GAS OF CERTAIN LEASES

Pub. L. 93–153, title IV, § 406, Nov. 16, 1973, 87 Stat. 590, provided that the first sale of crude oil and natural gas liquids produced from any lease whose average daily production did not exceed ten barrels per well not be subject to price restraints or any allocation program established pursuant to any Federal law, prior to repeal by Pub. L. 94–163, title IV, § 401(b)(4), Dec. 22, 1975, 89

Stat. 946. For effective date of repeal of section 406 of Pub. L. 93–153, see section 401(b)(5) of Pub. L. 94–163.

EX. ORD. NO. 12288. TERMINATION OF WAGE AND PRICE REGULATORY PROGRAM

Ex. Ord. No. 12288, Jan. 29, 1981, 46 F.R. 10135, provided:

By the authority vested in me as President and as Commander in Chief of the Armed Forces by the Constitution and laws of the United States of America, including Sections 2(c) and 3(a) of the Council on Wage and Price Stability Act, as amended (12 U.S.C. 1904 note), and Section 205(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(a)) [now 40 U.S.C. 121(a)], and in order to terminate the regulatory burdens of the current wage and price program, it is hereby ordered as follows:

SECTION 1. Executive Order No. 12092, as amended, is revoked.

SEC. 2. The head of each Executive agency and military department, including the Council on Wage and Price Stability and the Office of Federal Procurement Policy, is authorized to take appropriate steps to terminate actions adopted in response to Executive Order No. 12092, as amended.

RONALD REAGAN.

CHAPTER 21—FINANCIAL RECORDKEEPING

Sec.

1951. Congressional findings and declaration of purpose.
1952. Reports on ownership and control.
1953. Recordkeeping and procedures.
1954. Injunctions.
1955. Civil penalties.
1956. Criminal penalty.
1957. Additional criminal penalty in certain cases.
1958. Compliance.
1959. Administrative procedure.

§ 1951. Congressional findings and declaration of purpose

(a) The Congress finds that certain records maintained by businesses engaged in the functions described in section 1953(b) of this title have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that the power to require reports of changes in the ownership, control, and managements of types of financial institutions referred to in section 1952 of this title may be necessary for the same purpose.

(b) It is the purpose of this chapter to require the maintenance of appropriate types of records and the making of appropriate reports by such businesses in the United States where such records or reports have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(Pub. L. 91–508, title I, § 121, Oct. 26, 1970, 84 Stat. 1116.)

EFFECTIVE DATE

Section 401(a), (b) of Pub. L. 91–508 provided that:

''(a) Except as otherwise provided in this section, titles I, II, and III of this Act and the amendments made thereby [enacting this chapter and sections 1730d and 1829b of this title and section 1051 et seq. of former Title 31, Money and Finance, amending section 78g of Title 15, Commerce and Trade, and enacting provisions set out as notes under section 78g of Title 15 and section 1051 of former Title 31] take effect on the first day of the seventh calendar month which begins after the date of enactment [Oct. 26, 1970].

''(b) The Secretary of the Treasury may by regulation provide that any provision of title I or II or any amendment made thereby [enacting this chapter and sections 1730d and 1829b of this title] shall be effective on any date not earlier than the publication of the regulation in the Federal Register and not later than the first day of the thirteenth calendar month which begins after the date of enactment [Oct. 26, 1970].''

SHORT TITLE

Title I of Pub. L. 91–508, title II of Pub. L. 91–508, titles I and II of Pub. L. 91–508, and subchapter II of chapter 53 of Title 31, Money and Finance, have each been popularly known as the ''Bank Secrecy Act''. Title I of Pub. L. 91–508, Oct. 26, 1970, 84 Stat. 1114, as amended, enacted this chapter, former section 1730d of this title, and section 1829b of this title. Title II of Pub. L. 91–508, Oct. 26, 1970, 84 Stat. 1118, as amended, also known as the Currency and Foreign Transactions Reporting Act, enacted chapter 21 (§ 1051 et seq.) of former Title 31, Money and Finance, which was repealed and reenacted as subchapter II of chapter 53 of Title 31, Money and Finance, by Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31. For complete classification of Pub. L. 91–508 to the Code, see Tables.

§ 1952. Reports on ownership and control

Where the Secretary determines that the making of appropriate reports by uninsured banks or uninsured institutions of any type with respect to their ownership, control, and managements and any changes therein has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he may by regulation require such banks or institutions to make such reports as he determines in respect of such ownership, control, and managements and changes therein.

(Pub. L. 91–508, title I, § 122, Oct. 26, 1970, 84 Stat. 1116.)

§ 1953. Recordkeeping and procedures

(a) Regulations

If the Secretary determines that the maintenance of appropriate records and procedures by any uninsured bank or uninsured institution, or any person engaging in the business of carrying on in the United States any of the functions referred to in subsection (b) of this section, has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, and that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism, he may by regulation require such bank, institution, or person—

(1) to require, retain, or maintain, with respect to its functions as an uninsured bank or uninsured institution or its functions referred to in subsection (b) of this section, any records or evidence of any type which the Secretary is authorized under section 1829b of this title to require insured banks to require, retain, or maintain; and

(2) to maintain procedures to assure compliance with requirements imposed under this chapter. For the purposes of any civil or criminal penalty, a separate violation of any requirement under this paragraph occurs with

respect to each day and each separate office, branch, or place of business in which the violation occurs or continues.

(b) Institutions subject to recordkeeping requirements

The authority of the Secretary of the Treasury under subsection (a) of this section extends to any financial institution (as defined in section 5312(a)(2) of title 31), other than any insured bank (as defined in section 1813(h) of this title) and any insured institution (as defined in section 1724(a)[1] of this title), and any partner, officer, director, or employee of any such financial institution.

(c) Acceptance of automated records

The Secretary shall permit an uninsured bank or financial institution to retain or maintain records referred to in subsection (a) of this section in electronic or automated form, subject to terms and conditions established by the Secretary.

(Pub. L. 91–508, title I, § 123, Oct. 26, 1970, 84 Stat. 1116; Pub. L. 100–690, title VI, § 6185(d)(3)(A), Nov. 18, 1988, 102 Stat. 4357; Pub. L. 103–325, title III, § 310, Sept. 23, 1994, 108 Stat. 2221; Pub. L. 107–56, title III, § 358(e), Oct. 26, 2001, 115 Stat. 327; Pub. L. 108–458, title VI, § 6202(k), Dec. 17, 2004, 118 Stat. 3746.)

REFERENCES IN TEXT

Section 1724 of this title, referred to in subsec. (b), was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–458 made technical correction to Pub. L. 107–56. See 2001 Amendment note below.

2001—Subsec. (a). Pub. L. 107–56, as amended by Pub. L. 108–458, amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''Where the Secretary determines that the maintenance of appropriate records and procedures by any uninsured bank or uninsured institution, or any person engaging in the business of carrying on in the United States any of the functions referred to in subsection (b) of this section, has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he may by regulation require such bank, institution, or person—''.

1994—Subsec. (c). Pub. L. 103–325 added subsec. (c).

1988—Subsec. (b). Pub. L. 100–690 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The authority of the Secretary under this section extends to any person engaging in the business of carrying on any of the following functions:

''(1) Issuing or redeeming checks, money orders, travelers' checks, or similar instruments, except as an incident to the conduct of its own nonfinancial business.

''(2) Transferring funds or credits domestically or internationally.

''(3) Operating a currency exchange or otherwise dealing in foreign currencies or credits.

''(4) Operating a credit card system.

''(5) Performing such similar, related, or substitute functions for any of the foregoing or for banking as may be specified by the Secretary in regulations.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–458 effective as if included in Pub. L. 107–56, as of the date of enactment of such Act, and no amendment made by Pub. L. 107–56 that is inconsistent with such amendment to be deemed to have taken effect, see section 6205 of Pub. L. 108–458, set out as a note under section 1828 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–56 applicable with respect to reports filed or records maintained on, before, or after Oct. 26, 2001, see section 358(h) of Pub. L. 107–56, set out as a note under section 1829b of this title.

[1] See References in Text note below.

§ 1954. Injunctions

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any regulation under this chapter, he may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Secretary, any such court may also issue mandatory injunctions commanding any person to comply with any regulation of the Secretary under this chapter.

(Pub. L. 91–508, title I, § 124, Oct. 26, 1970, 84 Stat. 1117.)

§ 1955. Civil penalties

(a) For each willful or grossly negligent violation of any regulation under this chapter, the Secretary may assess upon any person to which the regulation applies, or any person willfully causing a violation of the regulation, and, if such person is a partnership, corporation, or other entity, upon any partner, director, officer, or employee thereof who willfully or through gross negligence participates in the violation, a civil penalty not exceeding $10,000.

(b) In the event of the failure of any person to pay any penalty assessed under this section, a civil action for the recovery thereof may, in the discretion of the Secretary, be brought in the name of the United States.

(Pub. L. 91–508, title I, § 125, Oct. 26, 1970, 84 Stat. 1117; Pub. L. 100–690, title VI, § 6185(d)(3)(B), Nov. 18, 1988, 102 Stat. 4357; Pub. L. 102–550, title XV, § 1535(c)(1), Oct. 28, 1992, 106 Stat. 4067.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550 inserted ''or any person willfully causing a violation of the regulation,'' after ''applies,''.

1988—Subsec. (a). Pub. L. 100–690 inserted ''or grossly negligent'' after ''willful'' and ''or through gross negligence'' after ''willfully'' and substituted ''$10,000'' for ''$1,000''.

§ 1956. Criminal penalty

Whoever willfully violates any regulation under this chapter shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(Pub. L. 91–508, title I, § 126, Oct. 26, 1970, 84 Stat. 1118.)

§ 1957. Additional criminal penalty in certain cases

Whoever willfully violates, or willfully causes a violation of any regulation under this chapter, section 1829b of this title, or section 1730d[1] of this title, where the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than one year, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(Pub. L. 91–508, title I, § 127, Oct. 26, 1970, 84 Stat. 1118; Pub. L. 102–550, title XV, § 1535(c)(2), Oct. 28, 1992, 106 Stat. 4067.)

REFERENCES IN TEXT

Section 1730d of this title, referred to in text, was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

AMENDMENTS

1992—Pub. L. 102–550 inserted '', or willfully causes a violation of'' after ''Whoever willfully violates''.

§ 1958. Compliance

The Secretary shall have the responsibility to assure compliance with the requirements of this chapter and sections 1730d[1] and 1829b of this title and may delegate such responsibility to the appropriate bank supervisory agency, or other supervisory agency.

(Pub. L. 91–508, title I, § 128, Oct. 26, 1970, 84 Stat. 1118.)

REFERENCES IN TEXT

Section 1730d of this title, referred to in text, was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

§ 1959. Administrative procedure

The administrative procedure and judicial review provisions of subchapter II of chapter 5 and chapter 7 of title 5 shall apply to all proceedings under this chapter, section 1829b of this title, and section 1730d[1] of this title.

(Pub. L. 91–508, title I, § 129, Oct. 26, 1970, 84 Stat. 1118.)

REFERENCES IN TEXT

Section 1730d of this title, referred to in text, was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

CHAPTER 22—TYING ARRANGEMENTS

Sec.

1971. Definitions.
1972. Certain tying arrangements prohibited; correspondent accounts.
1973. Jurisdiction of courts; duty of United States attorneys; equitable proceedings; petition; expedition of cases; temporary restraining orders; bringing in additional parties; subpenas.
1974. Actions by United States; subpenas for witnesses.
1975. Civil actions by persons injured; jurisdiction and venue; amount of recovery.
1976. Injunctive relief for persons against threatened loss or damages; equitable proceedings; preliminary injunctions.
1977. Limitation of actions; suspension of limitations.
1978. Actions under other Federal or State laws unaffected; regulations or orders barred as a defense.

§ 1971. Definitions

As used in this chapter, the terms ''bank'', ''bank holding company'', ''subsidiary'', and ''Board'' have the meaning ascribed to such terms in section 1841 of this title. For purposes of this chapter only, the term ''company'', as used in section 1841 of this title, means any person, estate, trust, partnership, corporation, association, or similar organization, but does not include any corporation the majority of the shares of which are owned by the United States or by any State. The term ''trust service'' means any service customarily performed by a bank trust department. For purposes of this chapter, a financial subsidiary of a national bank engaging in activities pursuant to section 24a(a) of this title shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.

(Pub. L. 91–607, title I, § 106(a), Dec. 31, 1970, 84 Stat. 1766; Pub. L. 106–102, title I, § 121(c), Nov. 12, 1999, 113 Stat. 1380.)

AMENDMENTS

1999—Pub. L. 106–102 inserted at end ''For purposes of this chapter, a financial subsidiary of a national bank engaging in activities pursuant to section 24a(a) of this title shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.''

EFFECTIVE DATE OF 1999 AMENDMENT

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

§ 1972. Certain tying arrangements prohibited; correspondent accounts

(1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

(E) that the customer shall not obtain some other credit, property, or service from a com-

[1] See References in Text note below.
[1] See References in Text note below.
[1] See References in Text note below.

petitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Board may by regulation or order permit such exceptions to the foregoing prohibition and the prohibitions of section 1843(f)(9) and 1843(h)(2) of this title as it considers will not be contrary to the purposes of this chapter.

(2)(A) No bank which maintains a correspondent account in the name of another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank or to any related interest of such person unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(B) No bank shall open a correspondent account at another bank while such bank has outstanding an extension of credit to an executive officer or director of, or other person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, the bank desiring to open the account or to any related interest of such person, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(C) No bank which maintains a correspondent account at another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank or to any related interest of such person, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(D) No bank which has outstanding an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, another bank or to any related interest of such person shall open a correspondent account at such other bank, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(E) For purposes of this paragraph, the term ''extension of credit'' shall have the meaning prescribed by the Board pursuant to section 375b of this title, and the term ''executive officer'' shall have the same meaning given it under section 375a of this title.

(F) CIVIL MONEY PENALTY.—

(i) FIRST TIER.—Any bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such bank who, violates any provision of this paragraph shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(ii) SECOND TIER.—Notwithstanding clause (i), any bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such bank who—

(I)(aa) commits any violation described in clause (i);

(bb) recklessly engages in an unsafe or unsound practice in conducting the affairs of such bank; or

(cc) breaches any fiduciary duty;

(II) which violation, practice, or breach—

(aa) is part of a pattern of misconduct;

(bb) causes or is likely to cause more than a minimal loss to such bank; or

(cc) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(iii) THIRD TIER.—Notwithstanding clauses (i) and (ii), any bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such bank who—

(I) knowingly—

(aa) commits any violation described in clause (i);

(bb) engages in any unsafe or unsound practice in conducting the affairs of such bank; or

(cc) breaches any fiduciary duty; and

(II) knowingly or recklessly causes a substantial loss to such bank or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under clause (iv) for each day during which such violation, practice, or breach continues.

(iv) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN CLAUSE (iii).—The maximum daily amount of any civil penalty which may be assessed pursuant to clause (iii) for any violation, practice, or breach described in such clause is—

(I) in the case of any person other than a bank, an amount to not exceed $1,000,000; and

(II) in the case of a bank, an amount not to exceed the lesser of—

(aa) $1,000,000; or

(bb) 1 percent of the total assets of such bank.

(v) ASSESSMENT; ETC.—Any penalty imposed under clause (i), (ii), or (iii) may be assessed and collected—

(I) in the case of a national bank, by the Comptroller of the Currency;

(II) in the case of a State member bank, by the Board; and

(III) in the case of an insured nonmember State bank, by the Federal Deposit Insurance Corporation,

in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(vi) HEARING.—The bank or other person against whom any penalty is assessed under this subparagraph shall be afforded an agency hearing if such bank or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this subparagraph.

(vii) DISBURSEMENT.—All penalties collected under authority of this subsection shall be deposited into the Treasury.

(viii) ''VIOLATE'' DEFINED.—For purposes of this paragraph, the term ''violate'' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(ix) REGULATIONS.—The Comptroller of the Currency, the Board, and the Federal Deposit Insurance Corporation shall prescribe regulations establishing such procedures as may be necessary to carry out this subparagraph.

(G) For the purpose of this paragraph—

(i) the term ''bank'' includes a mutual savings bank, a savings bank, and a savings association (as those terms are defined in section 1813 of this title);

(ii) the term ''related interests of such persons'' includes any company controlled by such executive officer, director, or person, or any political or campaign committee the funds or services of which will benefit such executive officer, director, or person or which is controlled by such executive officer, director, or person; and

(iii) the terms ''control of a company'' and ''company'' have the same meaning as under section 375b of this title.

(H) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such a bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such bank (whether such date occurs before, on, or after August 9, 1989).

(Pub. L. 91–607, title I, § 106(b), Dec. 31, 1970, 84 Stat. 1766; Pub. L. 95–630, title VIII, § 801, Nov. 10, 1978, 92 Stat. 3690; Pub. L. 97–320, title IV, §§ 410(f), 424(c), (d)(11), (e), 428, Oct. 15, 1982, 96 Stat. 1520, 1523, 1526; Pub. L. 101–73, title IX, §§ 905(h), 907(i), Aug. 9, 1989, 103 Stat. 461, 473; Pub. L. 102–242, title III, § 306(j), Dec. 19, 1991, 105 Stat. 2359; Pub. L. 104–208, div. A, title II, § 2216(a), Sept. 30, 1996, 110 Stat. 3009–413; Pub. L. 109–351, title VI, § 601(b), Oct. 13, 2006, 120 Stat. 1978; Pub. L. 111–203, title III, § 355, July 21, 2010, 124 Stat. 1547.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 355, July 21, 2010, 124 Stat. 1546, 1547, provided that, effective on the transfer date, paragraph (1) of this section is amended in the undesignated matter following subparagraph (E) by inserting ''issue such regulations as are necessary to carry out this section, and, in consultation with the Comptroller of the Currency and the Federal Deposit Insurance Company, may'' after ''The Board may''. See Effective Date of 2010 Amendment note below.

AMENDMENTS

2006—Par. (2)(G) to (I). Pub. L. 109–351 redesignated subpars. (H) and (I) as (G) and (H), respectively, and struck out former subpar. (G) which related to written reporting requirements relating to bank loans to executive officers or stockholders with power to vote more than 10 per centum of any class of voting securities of an insured bank.

1996—Par. (1). Pub. L. 104–208, in concluding provisions, inserted ''and the prohibitions of section 1843(f)(9) and 1843(h)(2) of this title'' after ''prohibition''.

1991—Par. (2)(H)(i). Pub. L. 102–242 inserted before semicolon at end '', a savings bank, and a savings association (as those terms are defined in section 1813 of this title)''.

1989—Par. (2)(F). Pub. L. 101–73, § 907(i), amended subpar. (F) generally, revising and restating as cls. (i) to (ix) provisions of former cls. (i) to (vii).

Par. (2)(I). Pub. L. 101–73, § 905(h), added subpar. (I).

1982—Par. (2)(A) to (D). Pub. L. 97–320, § 428(a)(1)–(4), inserted ''or to any related interest of such person'' after ''such other bank'' in subpar. (A), ''desiring to open the account'' in subpar. (B), ''such other bank'' in subpar. (C), and ''another bank'' in subpar. (D).

Par. (2)(E). Pub. L. 97–320, § 410(f), substituted ''the meaning prescribed by the Board pursuant to section 375b of this title'' for ''the same meaning given it in section 371c of this title''.

Par. (2)(F)(i). Pub. L. 97–320, § 424(c), (d)(11), inserted proviso giving agency discretionary authority to compromise, etc., any civil money penalty imposed under such authority, and substituted ''may be assessed'' for ''shall be assessed''.

Par. (2)(F)(iv). Pub. L. 97–320, § 424(e), substituted ''twenty days from the service'' for ''ten days from the date''.

Par. (2)(G)(ii). Pub. L. 97–320, § 428(b)(1), substituted ''(ii) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by any bank or executive officer or principal shareholder thereof concerning any extension of credit by a correspondent bank to the reporting bank's executive officers or principal shareholders, or the related interests of such persons.'' for ''(ii) Each insured bank shall compile the reports filed pursuant to subparagraph (G)(i) and forward such compilation to

the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, and the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank.''

Par. (2)(G)(iii). Pub. L. 97–320, §428(b)(2), struck out cl. (iii) which required insured banks to include in their section 1817(k)(1) report a list of names of executive officers or stockholders of record owning, controlling, or having more than a 10 per centum voting control of any class of voting securities of the bank who file information required by subpar. (G)(i) and aggregate amount of extensions of credit by correspondent banks to such executive officers or stockholders of record, any company controlled by such persons, and any political or campaign committee the funds or services of which will benefit such persons, or which is controlled by such persons.

Par. (2)(H). Pub. L. 97–320, §428(c), added subpar. (H).

1978—Pub. L. 95–630 designated existing provisions as par. (1), redesignated former pars. (1) to (5) as subpars. (A) to (E), and added par. (2).

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–242 effective upon earlier of date on which final regulations under section 306(m)(1) of Pub. L. 102–242 become effective or 150 days after Dec. 19, 1991, see section 306(*l*) of Pub. L. 102–242, set out as a note under section 375b of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 907(i) of Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of $5,000 and $25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(*l*) of Pub. L. 101–73, set out as a note under section 93 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 428(b) of Pub. L. 97–320 effective when regulations referred to in the amendment become effective as provided in section 430 of Pub. L. 97–320, set out as a note under section 1817 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

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

§ 1973. Jurisdiction of courts; duty of United States attorneys; equitable proceedings; petition; expedition of cases; temporary restraining orders; bringing in additional parties; subpenas

The district courts of the United States have jurisdiction to prevent and restrain violations of section 1972 of this title and it is the duty of the United States attorneys, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. The proceedings may be by way of a petition setting forth the case and praying that the violation be enjoined or otherwise prohibited. When the parties complained of have been duly notified of the petition, the court shall proceed, as soon as possible, to the hearing and determination of the case. While the petition is pending, and before final decree, the court may at any time make such temporary restraining order or prohibition as it deems just. Whenever it appears to the court that the ends of justice require that other parties be brought before it, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and subpenas to that end may be served in any district by the marshal thereof.

(Pub. L. 91–607, title I, §106(c), Dec. 31, 1970, 84 Stat. 1767.)

§ 1974. Actions by United States; subpenas for witnesses

In any action brought by or on behalf of the United States under section 1972 of this title, subpenas for witnesses may run into any district, but no writ of subpena may issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the prior permission of the trial court upon proper application and cause shown.

(Pub. L. 91–607, title I, §106(d), Dec. 31, 1970, 84 Stat. 1767.)

§ 1975. Civil actions by persons injured; jurisdiction and venue; amount of recovery

Any person who is injured in his business or property by reason of anything forbidden in section 1972 of this title may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, and shall be entitled to recover three times the amount of the damages sustained by him, and the cost of suit, including a reasonable attorney's fee.

(Pub. L. 91–607, title I, §106(e), Dec. 31, 1970, 84 Stat. 1767.)

§ 1976. Injunctive relief for persons against threatened loss or damages; equitable proceedings; preliminary injunctions

Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of a violation of section 1972 of this title, under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

(Pub. L. 91–607, title I, §106(f), Dec. 31, 1970, 84 Stat. 1767.)

§ 1977. Limitation of actions; suspension of limitations

(1) Subject to paragraph (2) of this section, any action to enforce any cause of action under this chapter shall be forever barred unless commenced within four years after the cause of action accrued.

(2) Whenever any enforcement action is instituted by or on behalf of the United States with respect to any matter which is or could be the subject of a private right of action under this chapter, the running of the statute of limitations in respect of every private right of action arising under this chapter and based in whole or in part on such matter shall be suspended during the pendency of the enforcement action so instituted and for one year thereafter: *Provided*, That whenever the running of the statute of limitations in respect of a cause of action arising under this chapter is suspended under this paragraph, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within the four-year period referred to in paragraph (1) of this section.

(Pub. L. 91–607, title I, §106(g), Dec. 31, 1970, 84 Stat. 1768.)

§ 1978. Actions under other Federal or State laws unaffected; regulations or orders barred as a defense

Nothing contained in this chapter shall be construed as affecting in any manner the right of the United States or any other party to bring an action under any other law of the United States or of any State, including any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this chapter. No regulation or order issued by the Board under this chapter shall in any manner constitute a defense to such action.

(Pub. L. 91–607, title I, §106(h), Dec. 31, 1970, 84 Stat. 1768.)

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§ 2001. Congressional declaration of policy and objectives

(a) It is declared to be the policy of the Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.

(b) It is the objective of this chapter to continue to encourage farmer- and rancher-borrowers participation in the management, control, and ownership of a permanent system of credit for agriculture which will be responsive to the credit needs of all types of agricultural producers having a basis for credit, and to modernize and improve the authorizations and means for furnishing such credit and credit for housing in rural areas made available through the institutions constituting the Farm Credit System as herein provided.

(c) It is declared to be the policy of Congress that the credit needs of farmers, ranchers, and their cooperatives are best served if the institutions of the Farm Credit System provide equitable and competitive interest rates to eligible borrowers, taking into consideration the creditworthiness and access to alternative sources of credit for borrowers, the cost of funds, including

any costs of defeasance under section 2159(b) of this title, the operating costs of the institution, including the costs of any loan loss amortization under section 2254(b) of this title, the cost of servicing loans, the need to retain earnings to protect borrowers' stock, and the volume of net new borrowing. Further, it is declared to be the policy of Congress that Farm Credit System institutions take action in accordance with the Farm Credit Act Amendments of 1986 in such manner that borrowers from the institutions derive the greatest benefit practicable from that Act: *Provided*, That in no case is any borrower to be charged a rate of interest that is below competitive market rates for similar loans made by private lenders to borrowers of equivalent creditworthiness and access to alternative credit.

(Pub. L. 92–181, §1.1, Dec. 10, 1971, 85 Stat. 583; Pub. L. 99–509, title I, §1032, Oct. 21, 1986, 100 Stat. 1877.)

REFERENCES IN TEXT

The Farm Credit Act Amendments of 1986, referred to in subsec. (c), is subtitle D of Pub. L. 99–509, title I, §§1031–1037, Oct. 21, 1986, 100 Stat. 1877, which amended sections 2001, 2015, 2075, 2131, 2159, 2205, 2252, and 2254 of this title and enacted provisions set out as a note below. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note below and Tables.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–509 added subsec. (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–205, title IV, §401, Dec. 23, 1985, 99 Stat. 1709, provided that: ''The provisions of titles I, II, III, and VI of this Act [enacting sections 2152, 2161, 2199, 2200, 2216 to 2216k, 2219, 2219a, 2253, 2261 to 2273 of this title and provisions set out as notes under section 2001 of this title, amending sections 2002, 2012, 2013, 2031, 2033, 2034, 2051, 2052, 2054, 2072 to 2074, 2077, 2078, 2091, 2093 to 2096, 2098, 2122 to 2126, 2132 to 2134, 2151, 2153 to 2156, 2182, 2183, 2201, 2202, 2205, 2206, 2211 to 2213, 2221 to 2223, 2227, 2241 to 2246, 2248 to 2252, and 2254 of this title, and repealing sections 2152, 2247, and 2253 of this title] shall become effective thirty days after enactment [Dec. 23, 1985].''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–105, §1(a), Feb. 10, 1996, 110 Stat. 162, provided that: ''This Act [enacting sections 2214a, 2219e, 2277a–10a, 2277a–10b, 2279bb–7, and 2279cc of this title, amending sections 2013, 2018, 2020, 2129, 2154a, 2199, 2202a, 2252, 2254, 2277a, 2277a–2, 2277a–4, 2277a–5, 2277a–7, 2277a–8, 2277a–10, 2279aa, 2279aa–1, 2279aa–3, 2279aa–5, 2279aa–6, 2279aa–8, 2279aa–9, 2279aa–11 to 2279aa–13, 2279bb–1 to 2279bb–4 of this title, sections 5314 and 5315 of Title 5, Government Organization and Employees, and section 1999 of Title 7, Agriculture, repealing section 2279aa–7 of this title, and enacting provisions set out as notes under this section and sections 2013 and 2252 of this title] may be cited as the 'Farm Credit System Reform Act of 1996'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–376, §1, Oct. 19, 1994, 108 Stat. 3497, provided that: ''This Act [enacting section 2206a of this title and amending sections 2122, 2128, and 2129 of this title] may be cited as the 'Farm Credit System Agricultural Export and Risk Management Act'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–552, §1(a), Oct. 28, 1992, 106 Stat. 4102, provided that: ''This Act [see Tables for classification] may be cited as the 'Farm Credit Banks and Associations Safety and Soundness Act of 1992'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–399, §1, Aug. 17, 1988, 102 Stat. 989, provided that: ''This Act [see Tables for classification] may be cited as the 'Agricultural Credit Technical Corrections Act of 1988'.''

Pub. L. 100–233, §1(a), Jan. 6, 1988, 101 Stat. 1568, provided that: ''This Act [see Tables for classification] may be cited as the 'Agricultural Credit Act of 1987'.''

SHORT TITLE OF 1986 AMENDMENT

Section 1031 of title I of Pub. L. 99–509 provided that: ''This subtitle [subtitle D (§§1031–1037) of title I of Pub. L. 99–509, amending sections 2001, 2015, 2075, 2131, 2159, 2205, 2252, and 2254 of this title] may be cited as the 'Farm Credit Act Amendments of 1986'.''

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–205, §1, Dec. 23, 1985, 99 Stat. 1678, provided: ''That this Act [enacting sections 2152, 2161, 2199, 2200, 2216 to 2216k, 2219, 2219a, 2253, 2261 to 2273 of this title and provisions set out as notes under this section and section 2241 of this title, amending sections 2002, 2012, 2013, 2031, 2033, 2034, 2051, 2052, 2054, 2072 to 2074, 2077, 2078, 2091, 2093 to 2096, 2098, 2122 to 2126, 2132 to 2134, 2151, 2153 to 2156, 2182, 2183, 2201, 2202, 2205, 2206, 2211 to 2213, 2221 to 2223, 2227, 2241 to 2246, 2248 to 2252, and 2254 of this title, and repealing sections 2152, 2247, and 2253 of this title] may be cited as the 'Farm Credit Amendments Act of 1985'.''

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–592, §1, Dec. 24, 1980, 94 Stat. 3437, provided: ''That this Act [enacting sections 2205 to 2208, 2211 to 2214, 2218, and 2260 of this title and amending sections 1141b, 2012 to 2020, 2033, 2034, 2051 to 2054, 2072 to 2077, 2091, 2093, 2094, 2096, 2097, 2122, 2124, 2126, 2128 to 2132, 2156, 2181, 2221, 2223, 2242, 2244, 2249, 2251, and 2252 of this title and section 3802 of Title 7, Agriculture] may be cited as the 'Farm Credit Act Amendments of 1980'.''

SHORT TITLE

Section 1 of Pub. L. 92–181 provided: ''That this Act [enacting this chapter and provisions set out as notes under this section, amending sections 5314 and 5315 of Title 5, Government Organization and Employees, and section 393 of this title, and repealing section 636 et seq. of this title] may be cited as the 'Farm Credit Act of 1971'.''

REGULATIONS

Pub. L. 104–105, title III, §301, Feb. 10, 1996, 110 Stat. 185, provided that: ''The Secretary of Agriculture and the Farm Credit Administration shall promulgate regulations and take other required actions to implement the provisions of this Act [see Short Title of 1996 Amendment note above] not later than 90 days after the effective date of this Act [Feb. 10, 1996].''

Pub. L. 100–233, title IX, §901, Jan. 6, 1988, 101 Stat. 1717, as amended by Pub. L. 100–399, title VIII, §801, Aug. 17, 1988, 102 Stat. 1006, provided that:

''(a) ISSUANCE OF REGULATIONS.—

''(1) AUTHORITY.—The Farm Credit Administration Board shall issue such regulations as the Board considers necessary for the orderly and efficient implementation of the provisions of, and the amendments made by, this Act [see Tables for classification] relating to the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

''(2) TIMING.—To the extent the Farm Credit Administration is required to issue regulations to implement this Act and the amendments made by this Act, the Farm Credit Administration shall issue such regulations as expeditiously as possible, and, except as otherwise provided in this Act, not later than 180 days after the date of the enactment of this Act [Jan. 6, 1988].

''(b) TEMPORARY RETENTION OF CERTAIN REGULATIONS.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the regulations issued by the Farm Credit Administration before the date of the enactment of this Act [Jan. 6, 1988] under provisions amended by this Act shall remain in effect, notwithstanding such amendments, until the Farm Credit Administration issues regulations to implement such amendments, but in no event later than 180 days after such date of enactment.

''(2) CERTAIN REGULATIONS RELATING TO BORROWERS' RIGHTS.—The regulations implementing, interpreting, or applying part C of title IV (12 U.S.C. 2201 et seq.) [12 U.S.C. 2199 et seq.] (other than section 4.13(a) [12 U.S.C. 2199(a)]) (in effect immediately before the date of the enactment of this Act), to the extent that such regulations are not contrary to this Act and the amendments made by this Act, shall remain in effect until January 1, 1989.

''(3) REGULATIONS RELATING TO DISCLOSURE BY BANKS AND ASSOCIATIONS.—Any regulation issued or approved by the Farm Credit Administration that implements, interprets, or applies section 4.13(a) (12 U.S.C. 2201(a) [12 U.S.C. 2199(a)]) (in effect immediately before the date of the enactment of this Act) shall remain in effect for 120 days after such date of enactment.''

REPEALS

Pub. L. 92–181, which enacted this chapter, represents a complete rewriting of the farm credit laws and a fundamental reworking of the statutory basis for the farm credit system. In connection with such reworking of material, the existing statutory provisions covering this area were repealed and their substance revised, reenacted, and expanded by Pub. L. 92–181.

The repealed provisions constituted the bulk of chapter 7 of this title. Section 5.40(a), formerly 5.26(a), of Pub. L. 92–181, as renumbered by Pub. L. 99–205, title II, §205(a)(2), Dec. 23, 1985, 99 Stat. 1703, enumerated the repealed statutes as follows: The Federal Farm Loan Act, as amended; section 2 of the Act of March 10, 1924 (Public Numbered 35, Sixty-eighth Congress, 43 Stat. 17), as amended; section 6 of the Act of January 23, 1932 (Public Numbered 3, Seventy-second Congress, 47 Stat. 14), as amended; the Farm Credit Act of 1933, as amended; sections 29 and 40 of the Emergency Farm Mortgage Act of 1933; Act of June 18, 1934 (Public Numbered 381, Seventy-third Congress, 48 Stat. 983); Act of June 4, 1936 (Public Numbered 644, Seventy-fourth Congress, 49 Stat. 1461), as amended; sections 5, 6, 20, 25(b) and 39 of the Farm Credit Act of 1937, as amended; sections 601 and 602 of the Act of September 21, 1944 (Public Law 425, Seventy-eighth Congress, 58 Stat. 740, 741), as amended; sections 1, 2, 3, 4, 5, 6, 7, 8, 16, and 17(b) of the Farm Credit Act of 1953, as amended; sections 2, 101, and 201(b) of the Farm Credit Act of 1956.

SAVINGS PROVISION

Section 5.40(b), formerly §5.26(b), of Pub. L. 92–181, as renumbered by Pub. L. 99–205, title II, §205(a)(2), Dec. 23, 1985, 99 Stat. 1703, provided that: ''All regulations of the Farm Credit Administration or the institutions of the System and all charters, bylaws, resolutions, stock classifications, and policy directives issued or approved by the Farm Credit Administration, and all elections held and appointments made under the Acts repealed by subsection (a) of this section [see Repeals note above] shall be continuing and remain valid until superseded, modified, or replaced under the authority of this Act [this chapter]. All stock, notes, bonds, debentures, and other obligations issued under the repealed acts shall be valid and enforceable upon the terms and conditions under which they were issued, including the pledge of collateral against which they were issued, and all loans made and security or collateral therefor held by, and all contracts entered into by, institutions of the System shall remain enforceable according to their terms unless and until modified in accordance with the provisions of this Act; it being the purpose of this subsection to avoid disruption in the effective operation of the System by reason of said repeals.''

SEPARABILITY

Section 5.42, formerly §5.28, of Pub. L. 92–181, as renumbered by Pub. L. 99–205, title II, §205(a)(2), Dec. 23, 1985, 99 Stat. 1703, provided that: ''If any provision of this Act [this chapter], or the application thereof to any persons or in any circumstances, is held invalid, the remainder of this Act and the application of such provision to other persons or in other circumstances shall not be affected thereby.''

REFERENCES TO EARLIER FARM CREDIT ACTS

Section 5.40(a), formerly §5.26(a), of Pub. L. 92–181, as renumbered by Pub. L. 99–205, title II, §205(a)(2), Dec. 23, 1985, 99 Stat. 1703, provided in part that: ''All references in other legislation, State or Federal, rules and regulations of any agency, stock, contracts, deeds, security instruments, bonds, debentures, notes, mortgages and other documents of the institutions of the System, to the Acts repealed hereby [see Repeals note above], shall be deemed to refer to comparable provisions of this Act [this chapter].''

RESERVATION OF RIGHT TO AMEND OR REPEAL

Section 5.43, formerly §5.29, of Pub. L. 92–181, as renumbered by Pub. L. 99–205, title II, §205(a)(2), Dec. 23, 1985, 99 Stat. 1703, provided that: ''The right to alter, amend, or repeal any provision or all of this Act [this chapter] is expressly reserved.''

STUDY ON DEMAND FOR AND AVAILABILITY OF CREDIT IN RURAL AREAS FOR AGRICULTURE, HOUSING, AND RURAL DEVELOPMENT

Pub. L. 104–127, title VI, §650, Apr. 4, 1996, 110 Stat. 1105, provided that:

''(a) IN GENERAL.—The Secretary of Agriculture shall conduct a study and report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the demand for and availability of credit in rural areas for agriculture, housing, and rural development.

''(b) PURPOSE.—The purpose of the study shall be to ensure that Congress has current and comprehensive information to consider as Congress deliberates on rural credit needs and the availability of credit to satisfy the needs of rural areas of the United States.

''(c) ITEMS IN STUDY.—In conducting the study, the Secretary shall base the study on the most current available data and analyze—

''(1) rural demand for credit from the Farm Credit System, the ability of the Farm Credit System to meet the demand, and the extent to which the Farm Credit System provides loans to satisfy the demand;

''(2) rural demand for credit from the United States banking system, the ability of banks to meet the demand, and the extent to which banks provide loans to satisfy the demand;

''(3) rural demand for credit from the Secretary, the ability of the Secretary to meet the demand, and the extent to which the Secretary provides loans to satisfy the demand;

''(4) rural demand for credit from other Federal agencies, the ability of the agencies to meet the demand, and the extent to which the agencies provide loans to satisfy the demand;

''(5) what measure or measures exist to gauge the overall demand for rural credit, the extent to which rural demand for credit is satisfied, and what the measures have demonstrated;

''(6) a comparison of the interest rates and terms charged by the Farm Credit System Farm Credit Banks, production credit associations, and banks for cooperatives with the rates and terms charged by the banks of the United States for credit of comparable risk and maturity;

''(7) the advantages and disadvantages of the modernization and expansion proposals of the Farm Credit System on the Farm Credit System, the United States banking system, rural users of credit, local rural communities, and the Federal Government, including—

''(A) any added risk to the safety and soundness of the Farm Credit System that may result from approval of a proposal; and

''(B) any positive or adverse impacts on competition between the Farm Credit System and the banks of the United States in providing credit to rural users;

''(8) the nature and extent of the unsatisfied rural credit need that the Farm Credit System proposals are supposed to address and what aspects of the present Farm Credit System prevent the Farm Credit System from meeting the need;

''(9) the advantages and disadvantages of the proposal by commercial bankers to allow banks access to the Farm Credit System as a funding source on the Farm Credit System, the United States banking system, rural users of credit, local rural communities, and the Federal Government, including—

''(A) any added risk to the safety and soundness of the Farm Credit System that may result from approval of the proposal; and

''(B) any positive or adverse impacts on competition between the Farm Credit System and the banks of the United States in providing credit to rural users; and

''(10) problems that commercial banks have in obtaining capital for lending in rural areas, how access to Farm Credit System funds would improve the availability of capital in rural areas in ways that cannot be achieved in the system in existence on the date of enactment of this Act [Apr. 4, 1996], and the possible effects on the viability of the Farm Credit System of granting banks access to Farm Credit System funds.

''(d) INTERAGENCY TASK FORCE.—In completing the study, the Secretary shall use, among other things, data and information obtained by the interagency task force on rural credit.''

GAO STUDY OF RURAL CREDIT COST AND AVAILABILITY

Pub. L. 101–624, title XVIII, §1842, Nov. 28, 1990, 104 Stat. 3835, directed Comptroller General of the United States to conduct a study relating to cost and availability of credit in rural America and, not later than 2 years after Nov. 28, 1990, submit a report to Committee on Agriculture of House of Representatives and Committee on Agriculture, Nutrition, and Forestry of Senate.

AUTHORIZATION OF APPROPRIATIONS FOR NATIONAL COMMISSION ON AGRICULTURAL FINANCE AND NATIONAL COMMISSION ON AGRICULTURE AND RURAL DEVELOPMENT POLICY

Pub. L. 100–71, title V, §519(b), July 11, 1987, 101 Stat. 475, authorized and appropriated (1) for National Commission on Agricultural Finance established under section 501 of Pub. L. 99–205, $100,000, to remain available until expended, and (2) for National Commission on Agriculture and Rural Development [Policy] established under section 5002 of this title, $100,000, to remain available until expended.

LOAN REVIEW BY LOCAL LENDING INSTITUTIONS

Pub. L. 99–205, title III, §307, Dec. 23, 1985, 99 Stat. 1709, required each local lending institution of Farm Credit System established under this chapter to (1) review each loan that had been placed in non-accrual status by such institution to determine whether such loan could be restructured based on changes in circumstances of such institution as the result of this Act and the amendments made by this Act, and (2) notify in writing borrower of each such loan of provisions of this section.

NATIONAL COMMISSION ON AGRICULTURAL FINANCE

Pub. L. 99–205, title V, §501, Dec. 23, 1985, 99 Stat. 1710, directed President to appoint a National Commission on Agricultural Finance, comprised of 15 members, representing the financial community, the agricultural sector, and government, to conduct a study of methods to ensure availability of adequate credit to agricultural producers and agribusiness, taking into account long-term financing needs of agricultural economy, roles of commercial banks, Farm Credit System, and Farmers Home Administration in meeting those financial needs, with the Commission, in conducting such study, to (1) evaluate financial circumstances relative to both lenders and borrowers of farm credit, (2) evaluate structure, performance, and conduct of private lenders—commercial bankers and Farm Credit System—and public lenders, (3) explore need for long-term assistance in stabilizing value of agricultural assets, and (4) evaluate effect on suppliers, producers, processors, and local communities when financial institutions fail, and not later than Dec. 23, 1986, to submit to Congress a report containing results of study, together with comments and recommendations for legislation providing for a sound, reasonable, and primarily self-supporting credit program for farmers and ranchers as Commission considers appropriate.

§ 2002. Farm Credit System

(a) Composition

The Farm Credit System shall include the the[1] Farm Credit Banks, the Federal land bank associations, the production credit associations, the banks for cooperatives, and such other institutions as may be made a part of the System, all of which shall be chartered by and subject to regulation by the Farm Credit Administration.

(b) Farm credit districts

There shall be not more than twelve farm credit districts in the United States, which may be designated by number, one of which districts shall include the Commonwealth of Puerto Rico and one of which districts may, if authorized by the Farm Credit Administration, include the Virgin Islands of the United States: *Provided*, That the extension of credit and other services authorized by this chapter in the Virgin Islands of the United States shall be undertaken only if determined to be feasible under regulations of the Farm Credit Administration. The boundaries of the twelve farm credit districts existing on December 10, 1971, may be readjusted from time to time by the Farm Credit Administration, with the concurrence of the boards of the banks in each district involved. Two or more districts may be merged as provided in section 2252(a)(2) of this title.

(Pub. L. 92–181, §1.2, formerly §§1.2, 5.0, Dec. 10, 1971, 85 Stat. 583, 614; Pub. L. 96–592, title V, §501, Dec. 24, 1980, 94 Stat. 3448; Pub. L. 99–205, title II, §205(c), (g)(1), Dec. 23, 1985, 99 Stat. 1703, 1706; Pub. L. 100–233, title IV, §434, title VIII, §805(a), (v), Jan. 6, 1988, 101 Stat. 1662, 1715, 1716; Pub. L. 100–399, title IX, §901(q)–(s), Aug. 17, 1988, 102 Stat. 1008.)

CODIFICATION

Pub. L. 100–399, §901(r), transferred section 5.0 of Pub. L. 92–181, which was classified to section 2221 of this title, to subsec. (b) of this section.

[1] So in original.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–399, § 901(s), designated existing provisions as subsec. (a), inserted heading, and substituted ''regulation'' for ''the regulation''.

Pub. L. 100–233, § 434, amended provisions generally. Prior to amendment, provisions read as follows: ''The Farm Credit System shall include the Federal land banks, the Federal land bank associations, the Federal intermediate credit banks, the production credit associations, the banks for cooperatives, and such other institutions as may be made a part of the System, all of which shall be chartered by and subject to regulation by the Farm Credit Administration.''

Pub. L. 100–233, § 805(a), substituted ''subject to regulation'' for ''subject to the regulation''.

Subsec. (b). Pub. L. 100–399, § 901(q), (r), designated section 2221 of this title as subsec. (b), inserted heading, and substituted ''boards of the banks in each district'' for ''district boards''.

Pub. L. 100–233, § 805(v), substituted ''section 2252(a)(2) of this title'' for ''section 2252(2) of this title''.

1985—Subsec. (a). Pub. L. 99–205, § 205(c), substituted ''regulation by'' for ''supervision of''.

Subsec. (b). Pub. L. 99–205, § 205(g)(1), substituted ''Farm Credit Administration'' for ''Federal Farm Credit Board'' in first and second sentences, and made a technical amendment to reference to section 2252(2) of this title to reflect the renumbering of the corresponding section of the original act.

1980—Subsec. (b). Pub. L. 96–592 inserted provisions relating to Virgin Islands of the United States.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 1001 of Pub. L. 100–399 provided that:

''(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this Act [see Tables for classification] shall take effect as if enacted immediately after the enactment of the 1987 Act [Pub. L. 100–233, which was enacted Jan. 6, 1988].

''(b) EXCEPTIONS.—The amendments made by sections 102(b), 102(f), 102(g), 102(h), 201(q), 302(c), 302(d), 302(e), 401, 402(b), 409(d), 411, 414, and 901 (other than by subsections (a), (b), (c), (e), (f), and (g) thereof) of this Act [see Tables for classification] shall take effect immediately after the amendment made by section 401 of the 1987 Act takes effect [section 401 of Pub. L. 100–233, effective 6 months after Jan. 6, 1988].''

Section 434 of Pub. L. 100–233 provided in part that the amendment of this section by section 434 of Pub. L. 100–233 is effective 6 months after Jan. 6, 1988.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

CONSOLIDATION OF DISTRICT FARM CREDIT BANKS

Section 412 of Pub. L. 100–233, as amended by Pub. L. 100–399, title IV, § 404, Aug. 17, 1988, 102 Stat. 999, provided that:

''(a) SUBMISSION OF PROPOSAL.—

''(1) SPECIAL COMMITTEE.—

''(A) IN GENERAL.—Not later than 6 months after the date of the enactment of this section [Jan. 6, 1988], a special committee shall be selected pursuant to regulations of the Farm Credit Administration for the purpose of developing a proposal for the consolidation of Farm Credit System districts.

''(B) COMPOSITION.—The special committee selected under subparagraph (A) shall be composed of one representative from each Farm Credit Bank board and the members of the Board of Directors of the Assistance Board.

''(2) DEVELOPMENT OF PROPOSAL.—Not later than 6 months after the formation of the special committee, the committee shall develop a proposal to consolidate the Farm Credit Banks into no less than six financially viable Farm Credit Banks through inter-district mergers.

''(3) REPORT.—Not later than the end of each calendar quarter beginning at least 6 months after the selection of the special committee, such committee shall prepare and submit, to the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report on the progress of the committee in developing a proposal under this subsection.

''(b) PREREQUISITES TO CONSOLIDATION.—

''(1) FCA REVIEW OF PROPOSAL.—Prior to the submission of the proposal developed under subsection (a)(2) to the stockholders under paragraph (3), the proposal together with all information to be presented to the stockholders, shall be submitted to the Farm Credit Administration for approval.

''(2) PREREQUISITES.—The proposal developed under subsection (a)(2) shall not be submitted to stockholders under paragraph (3) unless the proposal is approved by—

''(A) a majority of the members of the Board of Directors of the Assistance Board; and

''(B) the members of the special committee that represent the districts affected by the terms of the proposal.

''(3) SUBMISSION TO STOCKHOLDERS.—Not later than the end of the 18-month period after the date of enactment of this Act [Jan. 6, 1988], each Farm Credit Bank involved, in consultation with the special committee, shall submit the proposed merger affecting such bank to the voting stockholders of each such bank.

''(4) STOCKHOLDER VOTE.—Each association shall be entitled to cast a number of votes equal to the number of voting stockholders of such association.''

[For termination, effective May 15, 2000, of reporting provisions in section 412(a)(3) of Pub. L. 100–233, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 166 of House Document No. 103–7.]

APPLICABILITY OF LAWS ENACTED AFTER JANUARY 1, 1960

Pub. L. 86–168, title II, § 203(b), Aug. 18, 1959, 73 Stat. 390, provided that: ''Any Act of Congress enacted after the effective date of this title [Jan. 1, 1960] and which states that it shall be applicable to agencies or instrumentalities of the United States or to corporations controlled or owned, in whole or in part, by the United States, or to officers and employees of the United States or such agencies or instrumentalities or corporations, shall not be applicable to a Federal land bank, Federal intermediate credit bank, or bank for cooperatives, or to its directors, officers, or employees unless such Act specifically so provides by naming such banks.''

SUBCHAPTER I—FARM CREDIT BANKS

CODIFICATION

Title I of the Farm Credit Act of 1971, comprising this subchapter, was originally enacted by Pub. L. 92–181, title I, Dec. 10, 1971, 85 Stat. 583, and amended by Pub. L. 96–592, Dec. 24, 1980, 94 Stat. 3437; Pub. L. 99–205, Dec. 23, 1985, 99 Stat. 1678; Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1874; Pub. L. 100–233, Jan. 6, 1988, 101 Stat. 1568. Such title is shown herein, however, as having been added by Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1622, without reference to such intervening amendments because of the extensive revision of the title's provisions by Pub. L. 100–233.

§ 2011. Establishment, charters, titles, branches

(a) Establishment

The banks established pursuant to the merger of each District Federal Intermediate Credit Bank and Federal Land Bank (hereinafter referred to in this subchapter as ''Farm Credit Banks''), as provided in section 410 of the Agri-

cultural Credit Act of 1987, shall be Federally chartered instrumentalities of the United States.

(b) Charters

The Farm Credit Administration shall, consistent with this chapter, issue charters for, and approve amendments to charters of, the Farm Credit Banks.

(c) Title

Each Farm Credit Bank may include in its title the name of the city in which it is located or other geographical designation.

(d) Branches

Each Farm Credit Bank may establish such branches or other offices as may be appropriate for the effective operation of its business.

(Pub. L. 92–181, title I, §1.3, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622; amended Pub. L. 100–399, title IV, §401(a), (b), Aug. 17, 1988, 102 Stat. 995.)

REFERENCES IN TEXT

Section 410 of the Agricultural Credit Act of 1987, referred to in subsec. (a), is section 410 of Pub. L. 100–233, which is set out as a note below.

PRIOR PROVISIONS

A prior section 2011, Pub. L. 92–181, title I, §1.3, Dec. 10, 1971, 85 Stat. 583; Pub. L. 100–233, title VIII, §802(a), Jan. 6, 1988, 101 Stat. 1710, related to establishment, title, and branches of Federal land banks prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–399, §401(a), inserted '', as provided in section 410 of the Agricultural Credit Act of 1987,'' before ''shall''.

Subsec. (b). Pub. L. 100–399, §401(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The charters or organization certificates of Farm Credit Banks may be modified from time to time by the Farm Credit Administration Board, not inconsistent with the provisions of this subchapter, as may be necessary or expedient to implement this chapter.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE

Section 401 of Pub. L. 100–233 provided that this subchapter is effective 6 months after Jan. 6, 1988.

LONG-TERM LENDING AUTHORITY OF FARM CREDIT BANK OF TEXAS WITH RESPECT TO STATES OF ALABAMA, LOUISIANA, AND MISSISSIPPI

Pub. L. 102–552, title IV, §401(b), Oct. 28, 1992, 106 Stat. 4128, as amended by Pub. L. 110–234, title V, §5407(c)(3), May 22, 2008, 122 Stat. 1160; Pub. L. 110–246, §4(a), title V, §5407(c)(3), June 18, 2008, 122 Stat. 1664, 1922, provided that:

''(1) IN GENERAL.—Notwithstanding any other provision of law (except section 7.7 of the Farm Credit Act of 1971 [12 U.S.C. 2279c]), the Farm Credit Bank of Texas may act in accordance with the exclusive charter of the bank, as amended by the Farm Credit Administration on February 7, 1989, and effective February 9, 1989 (except to the extent that the charter may be further amended by the Farm Credit Administration in accordance with its general authorities under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

''(2) EFFECTIVE DATE.—Paragraph (1) shall take effect as if such paragraph had become law on February 7, 1989.''

MANDATORY MERGER OF SYSTEM INSTITUTIONS

Pub. L. 100–233, title IV, §410, Jan. 6, 1988, 101 Stat. 1637, as amended by Pub. L. 100–399, title IV, §402, Aug. 17, 1988, 102 Stat. 999; Pub. L. 102–552, title IV, §401(a), Oct. 28, 1992, 106 Stat. 4116; Pub. L. 110–234, title V, §5407(c)(2), May 22, 2008, 122 Stat. 1160; Pub. L. 110–246, §4(a), title V, §5407(c)(2), June 18, 2008, 122 Stat. 1664, 1922, provided that:

''(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this section [Jan. 6, 1988], the Federal land bank and the Federal intermediate credit bank of each Farm Credit System district shall merge into a Farm Credit Bank in such district pursuant to a plan of merger agreed on by the Boards of Directors of such banks and approved by the Farm Credit Administration, or if such banks fail to agree, a plan of merger prescribed by the Farm Credit Administration. The mergers required by this section shall be implemented without regard to title VII [enacting sections 2279aa to 2279aa–14 of this title, amending sections 2012, 2033, 2072, and 2093 of this title, section 1988 of Title 7, Agriculture, and section 9105 of Title 31, Money and Finance, and enacting provisions set out as notes under section 2279aa of this title and section 1988 of Title 7].

''(b) CAPITAL STOCK.—Notwithstanding section 1.6 (as added by section 401 of this Act) [12 U.S.C. 2014], the number of shares of capital stock issued by a Farm Credit Bank to stockholders and other owners of the institution involved in the merger, and the rights and privileges of such shares (including voting power, redemption rights, preferences on liquidation, and the right to dividends) shall be determined by the plan of merger adopted by the merging banks, and shall be consistent with section 4.3A [12 U.S.C. 2154a] and the regulations issued by the Farm Credit Administration.

''(c) ASSISTANCE.—The Assistance Board established under section 6.0 [12 U.S.C. 2278a] shall direct the Financial Assistance Corporation established under section 6.20 [12 U.S.C. 2278b] to provide any Farm Credit Bank with that amount of financial assistance as is necessary to ensure that the stock of the Farm Credit Bank, upon implementation of the merger, has a book value equal to 75 percent of par, and such Farm Credit Bank shall be subject to all of the requirements of title VI of the Farm Credit Act of 1971 [12 U.S.C. 2278a et seq.].

''(d) INITIAL BOARD.—Notwithstanding section 1.4 (as added by section 401 of this Act) [12 U.S.C. 2012], the initial board of each Farm Credit Bank shall be composed of the members of the district board (which is dissolved upon the creation of such bank) elected by the production credit associations, Federal land bank associations, and stockholders at large. Such initial board shall operate for such term as is agreed to by the members of the board, except that such period shall not exceed two years. Thereafter the board shall be elected and serve in accordance with the provisions of section 1.4 of the Farm Credit Act of 1971 [12 U.S.C. 2012].

''(e) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANK.—

''(1) NEGOTIATED MERGER.—

''(A) REQUIREMENT.—

''(i) IN GENERAL.—Not later than June 30, 1993, except as provided in subparagraph (C), the Federal Intermediate Credit Bank of Jackson (as chartered on the date of enactment of this subsection [Oct. 28, 1992]) shall merge with a Farm Credit Bank pursuant to the procedures prescribed by section 7.12 of the Farm Credit Act of 1971 (12 U.S.C. 2279f).

''(ii) MERGER OF ENTIRE BANK.—Notwithstanding subparagraph (B), or any other provision of law, the Farm Credit Administration shall approve a merger of the Federal Intermediate Credit Bank

of Jackson only if the Bank (as chartered on the date of enactment of this subsection [Oct. 28, 1992], except as provided in subparagraph (B)(ii)(II)(bb)) merges in its entirety with a Farm Credit Bank.

''(iii) LIMITED LENDING AUTHORITY.—Notwithstanding any provision of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) (except section 7.7 of that Act [12 U.S.C. 2279c]), the Farm Credit Bank resulting from a merger under this subsection shall have only the lending authorities in the States of Alabama, Louisiana, and Mississippi that the constituent banks exercised in such States immediately prior to the merger, except as may be provided in section 5.17(a)(2) of such Act (12 U.S.C. 2252(a)(2)).

''(B) OPERATING AND MERGER AUTHORITY.—

''(i) IN GENERAL.—Except as provided in clause (ii), the Federal Intermediate Credit Bank of Jackson may operate subject to such provisions of part A of title II of the Farm Credit Act of 1971 [12 U.S.C. 2071 et seq.] (as in effect immediately before the amendment made by section 401 took effect) and such provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) (as in effect after the amendment), as the Farm Credit Administration deems appropriate to carry out the purposes of this subsection and such Act. This subparagraph shall take effect as if it had become law at the same time as the amendment made by section 401 and shall remain in effect until the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

''(ii) LIMITATION ON OPERATING AUTHORITY.—

''(I) IN GENERAL.—Notwithstanding clause (i) and subparagraph (A)(ii), the authority of the Federal Intermediate Credit Bank of Jackson to operate as provided under clause (i) shall expire, and the Farm Credit Administration shall revoke the Bank's charter, immediately on the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

''(II) DISTRICT BOUNDARY MODIFICATION.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson shall not include the authority for the Bank to modify, nor shall the Farm Credit Administration approve such a modification to, the boundaries of the Fifth Farm Credit District to reaffiliate any portion of the District with another Farm Credit Bank, except—

''(aa) in the case of the merger of the entire Bank as an entity with a Farm Credit Bank such that the entire chartered territory of the Federal Intermediate Credit Bank of Jackson (except as provided in item (bb)) is merged with the Farm Credit Bank; and

''(bb) in the case of the reaffiliation of the Northwest Louisiana Production Credit Association with another farm credit district pursuant to the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations under such Act.

''(iii) LIMITATION ON AUTHORITY TO MERGE.—

''(I) IN GENERAL.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank as provided under clause (i) shall expire, and the Farm Credit Administration shall revoke the Bank's charter, immediately on the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

''(II) BANK INTEGRITY.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank shall be limited to a merger of the Federal Intermediate Credit Bank of Jackson (as chartered on the date of enactment of this subsection [Oct. 28, 1992] to include the territory in the States of Alabama, Louisiana, and Mississippi, except as provided in clause (ii)(II)(bb)) as a whole entity such that the entire chartered territory of the Federal Intermediate Credit Bank of Jackson is merged with the Farm Credit Bank.

''(III) LIMITATION.—Beginning on the date of an order issued by the Farm Credit Administration under subparagraph (D), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank shall be limited to the arbitrated merger provided for in paragraph (2).

''(C) EXTENSION.—

''(i) LETTER OF INTENT.—If no later than June 30, 1993, the Federal Intermediate Credit Bank of Jackson delivers to the Farm Credit Administration a letter of intent to merge with a Farm Credit Bank, summarizing the terms and conditions of the merger (including, but not limited to, board composition, capital structure, exchange, or transfer of equities, and termination) signed by the chief executive officer and the members of the boards of directors of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank, the Farm Credit Administration shall, on its determination that the letter of intent represents a bona fide good faith agreement in principle between the two banks to merge, and that there is at least a reasonable prospect that the merger will be completed in an expeditious manner, grant a one-time extension, until a date certain not later than October 31, 1993, of the requirement under subparagraph (A). Any extension provided under this subparagraph may be conditioned on such terms and conditions as the Farm Credit Administration determines necessary to ensure that the merger described in the letter of intent is completed by the closing date of the extension.

''(ii) COMPLIANCE.—If the Farm Credit Administration grants an extension under clause (i), it shall issue an order under subparagraph (D) immediately if—

''(I) the Federal Intermediate Credit Bank of Jackson, or the Farm Credit Bank that is a signatory to the letter of intent under clause (i), provides written notification to the Farm Credit Administration that the bank does not intend to complete the merger described in the letter of intent;

''(II) the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is not complying with any term or condition on which an extension under clause (i) was conditioned; or

''(III) the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is not pursuing in good faith the merger provided for in the letter of intent.

If the Farm Credit Administration issues an order under subparagraph (D) pursuant to this clause, the Federal Intermediate Credit Bank of Jackson shall be deemed to have failed to comply with the requirements of subparagraph (A).

''(D) FAILURE TO MERGE; ISSUANCE OF ORDER.—If the Federal Intermediate Credit Bank of Jackson fails to comply, or notifies the Farm Credit Administration in writing that it does not intend to comply, with the requirements of subparagraph (A), the Farm Credit Administration shall, within 5 days after the date specified in subparagraph (A), or such other date specified by the Farm Credit Administration under subparagraph (C), issue, notwithstanding any other provision of law, an order requiring the Federal Intermediate Credit Bank of Jackson to merge with the Farm Credit Bank of Texas in accordance with paragraph (2).

''(2) ARBITRATED MERGER.—

''(A) IN GENERAL.—Not later than 30 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), an arbitrator (or panel of arbitrators) shall be named by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association to serve as the arbitrator referred to in this paragraph.

''(B) DUTIES.—The arbitrator shall determine the terms and conditions of the merger required under an order issued under paragraph (1)(D), such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders and borrowers of the associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. The arbitrator shall have the authority to hire staff and secure the services of consultants as necessary to discharge the duties of the arbitrator under this paragraph.

''(C) EXPENSES.—Notwithstanding any other provision of law, the compensation and expenses of the arbitrator, the fees and expenses of the American Arbitration Association, and any expenses associated with the referendum required under subparagraph (F) shall be paid from the Farm Credit Assistance Fund established under section 6.25 of the Farm Credit Act of 1971 (12 U.S.C. 2278b–5).

''(D) DEVELOPMENT OF MERGER PLANS.—

''(i) IN GENERAL.—Not later than 100 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the arbitrator shall develop and submit for certification to the Farm Credit Administration a plan specifying the terms and conditions of the merger of the two banks required under this paragraph, such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders or farmer-borrowers of the associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. In devising the plan, the arbitrator shall, to the extent practicable, achieve the following objectives:

''(I) Implementation of the preferences expressed by the affected and interested parties in submissions under clause (ii).

''(II) Valuation of assets fairly, equitably, and consistently for all parties involved.

''(III) Establishment of capitalization and funding terms in a manner that treats farmer-borrowers and stockholders in the two involved farm credit districts equitably and takes account of risk.

''(IV) Ensure the viability of the resulting Farm Credit Bank and associations of the bank and the ability of the resulting bank and associations of the bank to lend to eligible borrowers at reasonable and competitive rates of interest.

''(ii) SUBMISSION OF VIEWS AND INFORMATION.—The arbitrator shall receive from affected and interested parties written submissions, in accordance with fair and reasonable procedures established by the arbitrator, regarding the terms and conditions of an appropriate plan for the merger of the two banks required under this paragraph. The Federal Intermediate Credit Bank of Jackson, the Farm Credit Bank of Texas, and their affiliated associations shall make available all books, records, financial information, and other material that the arbitrator determines is necessary to the development of the plan or the fulfillment of any other requirement under this paragraph. A copy of any submission or information provided to the arbitrator by any party under this paragraph shall be furnished to the Federal Intermediate Credit Bank of Jackson or the Farm Credit Bank of Texas on the written request of the bank and at the bank's expense. The arbitrator shall provide both banks with a reasonable opportunity to review and respond to any submission or information provided by any party.

''(iii) CONTENT OF PLAN; FARM CREDIT BANK.—The plan developed and submitted under clause (i) shall include provisions regarding the following matters:

''(I) The initial composition, following the merger, of the board of directors of the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

''(II) The valuation, for purposes of the merger, of the assets and liabilities of the merging banks.

''(III) The terms and conditions on which the shares of capital stock of the Federal Intermediate Credit Bank of Jackson and, if necessary, the Farm Credit Bank of Texas, will be converted into shares of the resulting Farm Credit Bank.

''(IV) The capital structure and capitalization levels of the resulting Farm Credit Bank and the affiliated associations of the Farm Credit Bank in the States of Alabama, Louisiana, and Mississippi as the arbitrator determines necessary to carry out the purposes of this paragraph (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

''(V) The terms of financing agreements between any production credit associations or agricultural credit associations described in clause (iv), and the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

''(VI) Any other terms and conditions or other matters that the arbitrator considers necessary.

''(iv) CONTENT OF PLAN; AGRICULTURAL CREDIT ASSOCIATIONS.—If the arbitrator determines that the chartering of agricultural credit associations in the States of Alabama, Louisiana, and Mississippi will be in the best interests of the farmers, ranchers, and aquatic producers eligible to borrow from Farm Credit System associations, the plan required under this subparagraph shall also include, based on submissions from the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas, provisions for the establishment of agricultural credit associations to operate in the States, subject to approval in the referendum under subparagraph (F). Such provisions shall include provisions regarding the following matters:

''(I) A proposal for the establishment of an agricultural credit association in each of the geographic areas specified in subparagraph (F)(iii) (the charters of which, if validly issued under subparagraph (G)(i) pursuant to approval in the referendum under subparagraph (F), shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

''(II) The initial composition, if the proposal for the establishment of agricultural credit associations is approved, of the board of directors of each such agricultural credit association (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

''(III) The valuation, for purposes of the proposed merger of the production credit associa-

tion and the Federal land bank association in each of the geographic areas specified in subparagraph (F)(iii), of the assets and liabilities of the associations.

''(IV) The terms and conditions on which the shares of capital stock of any associations that may merge under the plan to form agricultural credit associations will be converted into shares of the resulting agricultural credit associations.

''(V) The capital structure and capitalization levels of the resulting Farm Credit Bank and such affiliated associations of the Farm Credit Bank in the States of Alabama, Louisiana, and Mississippi as the arbitrator determines necessary to carry out the purposes of this paragraph (which capital structure and capitalization levels shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

''(VI) The terms of financing agreements between any agricultural credit associations and the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

''(VII) Any other terms and conditions or other matters that the arbitrator considers necessary.

''(v) CONSULTATION WITH INSURANCE CORPORATION.—The arbitrator shall consult with the Farm Credit System Insurance Corporation regarding the valuation of the assets and liabilities under the plan of merger, the capitalization of the Farm Credit System institutions resulting under the plan, and any other matters relevant to the assistance to be provided by the Insurance Corporation to facilitate the merger under subparagraph (H).

''(E) CERTIFICATION OF PLAN.—Not later than 30 days after the receipt of the plan developed by the arbitrator, the Farm Credit Administration shall—

''(i) certify; or

''(ii) recommend to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify,

that the resulting bank and any resulting associations are proposed to be organized in such a fashion that they will, on implementation of the plan, operate in compliance with applicable laws and regulations. The arbitrator and the Farm Credit Administration shall work cooperatively to ensure the expeditious issuance of the certification. If the Farm Credit Administration recommends to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify the plan, the arbitrator shall, not later than 15 days after receipt of the recommended revisions, incorporate the revisions into the plan as the arbitrator deems appropriate to secure the certification.

''(F) REFERENDUM ON ASSOCIATION STRUCTURE.—

''(i) IN GENERAL.—Not later than 170 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the American Arbitration Association shall conduct, and compile and forward to the Farm Credit Administration the results of, a vote of current farmer-borrowers of the production credit associations and the Federal land bank associations in the States of Alabama, Louisiana, and Mississippi, in accordance with the Election Rules of the American Arbitration Association, to determine whether the farmer-borrowers of each association in the geographic areas described in clause (iii) prefer to have credit delivered—

''(I) in the case of production credit association farmer-borrowers, through a production credit association or through an agricultural credit association as proposed in the plan; and

''(II) in the case of Federal land bank association farmer-borrowers, through a Federal land bank association or through an agricultural credit association as proposed in the plan.

Each farmer-borrower shall be entitled to one vote. The arbitrator shall establish record dates and other procedures for conducting the referendum. The Federal Intermediate Credit Bank of Jackson, the Farm Credit Bank of Texas, and their affiliated associations shall cooperate in the conduct of the referendum, as determined necessary by the Arbitrator.

''(ii) DISCLOSURE.—The arbitrator shall send to farmer-borrowers eligible to vote under this subparagraph, with their ballot, a statement describing the potential consequences to the farmer-borrowers, and to the associations from which they borrow, of voting to charter an agricultural credit association and setting forth factors that farmer-borrowers should consider relevant to the choice between credit delivery through the current association structure and the chartering of an agricultural credit association. The arbitrator shall develop the disclosure materials in cooperation with the Farm Credit Administration and ensure that the materials are not inconsistent with applicable laws and regulations.

''(iii) TABULATION OF RESULTS.—The results of the vote under this subparagraph shall be compiled separately for production credit association farmer-borrowers and Federal land bank association farmer-borrowers in each of the following seven geographic areas:

''(I) The area served by the Federal Land Bank Association of South Mississippi.

''(II) The area served by the Federal Land Bank Association of North Mississippi.

''(III) The area served by the Federal Land Bank Association of South Alabama.

''(IV) The area served by the Federal Land Bank Association of North Alabama.

''(V) The area served by the Federal Land Bank Association of South Louisiana.

''(VI) The area served by both the Federal Land Bank Association of North Louisiana and the First South Production Credit Association.

''(VII) The area served by both the Federal Land Bank Association of North Louisiana and the Northwest Louisiana Production Credit Association.

''(iv) PUBLICATION OF RESULTS.—The results of the vote under this subparagraph, as tabulated by the American Arbitration Association, shall be made promptly available to the public in a manner determined appropriate by the Farm Credit Administration.

''(G) IMPLEMENTATION.—Not later than 10 days after the date of the receipt of the results of the referendum conducted under subparagraph (F), the Farm Credit Administration shall issue such charters or charter amendments and take such other regulatory actions as may be necessary to implement the merger or mergers as provided for under the certified plan. In this regard, the Farm Credit Administration shall—

''(i) issue a charter or charter amendment and take any such other regulatory actions as may be necessary to provide for the establishment of an agricultural credit association in each of the geographic areas described in subparagraph (F)(iii) where a majority of the farmer-borrowers of both the production credit association and the Federal land bank association voted under subparagraph (F)(i) that they preferred to have credit delivered through an agricultural credit association (which charter shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations); and

''(ii) not issue a charter or charter amendment or take any such other regulatory action to pro-

vide for the establishment of an agricultural credit association in any of the geographic areas described in subparagraph (F)(iii) where less than a majority of the farmer-borrowers of the production credit association or the Federal land bank association voted in the referendum under subparagraph (F)(i) that they preferred to have credit delivered through an agricultural credit association (provided that the charter of any remaining association in such geographic area shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

''(H) FACILITATION.—

''(i) IN GENERAL.—Beginning on the date of the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the Farm Credit System Insurance Corporation shall expend amounts from the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed in the plan.

''(ii) MAINTENANCE OF BOOK VALUE.—Assistance provided by the Corporation under this subparagraph shall be in amounts not to exceed that required to maintain book value per share of stockholders' equity at the same value reflected on the most recent audited financial statements of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas prior to or effective with the date of the merger.

''(iii) OTHER ASSISTANCE.—Until the expiration of 5 years from the effective date of a merger authorized by this subsection, or the final resolution of any litigation against the Federal Intermediate Credit Bank of Jackson or any of its stockholders pending on the date of the enactment of this subsection [Oct. 28, 1992], whichever is later, the Corporation shall guarantee prompt payment of any loss experienced by the merged bank, which loss is caused by the failure of any association-stockholder of the merged bank that was a stockholder of the Federal Intermediate Credit Bank of Jackson immediately prior to the merger, or any successor to the association, to pay when due any obligation of principal or interest owed by the association or its successor to the resulting bank.

''(iv) TERMS AND CONDITIONS.—Assistance provided by the Corporation under this subparagraph shall be on such terms and conditions as the Corporation deems appropriate to facilitate the merger.

''(I) SAFETY AND SOUNDNESS.—

''(i) IN GENERAL.—Except as provided in clause (ii), if at any time prior to the completion of the merger required under this subsection the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is being operated in an unsafe or unsound manner (as determined in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)), the Farm Credit Administration, after consultation with the respective boards of directors of the affected banks and taking into consideration the purposes of this subsection, may require the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank, subject to such terms and conditions as the Farm Credit Administration may prescribe. The Farm Credit System Insurance Corporation shall expend amounts in the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed under this subparagraph, including the provision of assistance as provided in section 5.61(a)(2)(A)(iii) of the Farm Credit Act of 1971 (12 U.S.C. 2277a–10(a)(2)(A)(iii)), on such terms and conditions as the Corporation deems appropriate.

''(ii) ARBITRATED MERGER.—If at any time after the Farm Credit Administration issues an order under paragraph (1)(D), but prior to the completion of the merger required under this subsection, the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is being operated in an unsafe or unsound manner (as determined in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)), the Farm Credit Administration shall, after consultation with the boards of directors of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas, take such action as it deems necessary pursuant to the authorities provided under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) to return the operation of the Federal Intermediate Credit Bank of Jackson to a safe and sound condition, pending the completion of the merger under paragraph (2).

''(J) MERGER PLAN FOR AGRICULTURAL CREDIT ASSOCIATIONS.—In any of the States of Alabama, Louisiana, or Mississippi where all of the associations are chartered as agricultural credit associations, the boards of directors of each such association in each State are encouraged to submit to the farmer-borrowers of each such association for their approval a plan for merging the associations into one statewide agricultural credit association, in accordance with the applicable provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

''(K) DEFINITIONS.—As used in this paragraph:

''(i) AGRICULTURAL CREDIT ASSOCIATION.—The term 'agricultural credit association' means an association having the same authorities, attributes, and obligations as, and for all purposes an agricultural credit association resulting from the implementation of the plan under this paragraph shall be deemed to be, an association resulting from the merger of a production credit association and a Federal land bank association under section 7.8 of the Farm Credit Act of 1971 (12 U.S.C. 2279c–1).

''(ii) FARMER-BORROWER.—The term 'farmer-borrower' means a borrower from a Farm Credit System association in the State of Alabama, Louisiana, or Mississippi who holds voting stock, or is eligible to hold voting stock, in the association or a stockholder in any such association.

''(3) REVIEW.—

''(A) IN GENERAL.—Actions and determinations of the arbitrator, the Farm Credit Administration, or the Farm Credit System Insurance Corporation pursuant to this subsection shall not be subject to judicial review except as provided in this paragraph, nor shall they be subject to the requirements of subchapter II of chapter 5 or chapter 7 of title 5, United States Code.

''(B) AGENCY DETERMINATIONS.—

''(i) IN GENERAL.—Any petition for review of a determination or other action of the Farm Credit Administration or the Farm Credit System Insurance Corporation under this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit not later than 10 days after the determination, or the petition shall be barred. The court shall have exclusive jurisdiction to determine the proceeding in accordance with standard procedures as supplemented by procedures hereinafter provided and no other district court or court of appeals of the United States shall have jurisdiction over any such challenge in any proceeding instituted prior to, on, or after the date of enactment of this subsection. The review of any determination or action of the Farm Credit Administration or the Farm Credit System Insurance Corporation under this subsection shall be based on the examination of all of the information before the Farm Credit Administration or the Farm Credit System Insurance Corporation, as the case may be, at the time the determination was made. The court reviewing the determination or action shall not enter a stay or order of mandamus unless the court has deter-

mined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

''(ii) PROCEDURES.—Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding that set page limits on briefs and time limits for filing briefs and motions and other actions that are shorter than the limits specified in the Federal Rules of Civil or Appellate Procedure.

''(iii) EXPEDITED REVIEW.—Any such proceeding before the court shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way. The court shall render its final decision relative to any challenge not later than 50 days from the date the challenge is brought unless the court determines that a longer period of time is required to satisfy the requirements of the Constitution.

''(C) ARBITRATOR DETERMINATIONS.—

''(i) IN GENERAL.—Except as otherwise provided in this paragraph, any petition for review of a determination or other action of the arbitrator named under paragraph (2) shall be filed in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.). Such Act shall apply to the arbitration conducted pursuant to paragraph (2) to the same extent as if the arbitration were established in a contract evidencing a transaction in commerce between the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas.

''(ii) PROCEDURES.—Notwithstanding the United States Arbitration Act (9 U.S.C. 1 et seq.), any petition for review of a determination or other action of the arbitrator under this subsection shall be filed not later than 10 days after the determination, or the petition shall be barred. The court specified under such Act shall have exclusive jurisdiction to determine the proceeding in accordance with the applicable procedures under such Act, as supplemented by procedures hereinafter provided, and no other district court shall have jurisdiction over any such challenge in any such proceeding. Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding that set page limits on briefs and time limits for filing briefs and motions and other actions that are shorter than the limits specified in the United States Arbitration Act or the Federal Rules of Civil or Appellate Procedure [28 U.S.C. App.].

''(iii) EXPEDITED REVIEW.—Any such proceeding before the court shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way. The court shall render its final decision relative to any challenge as soon as possible in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.), or not later than 30 days from the date the challenge is brought, whichever is sooner, unless the court determines that a longer period of time is required to satisfy the requirements of the Constitution.''

§ 2012. Board of directors

Each Farm Credit Bank shall elect a board of directors of such number, for such term, in such manner, and with such qualifications, as may be required in its bylaws, except that, at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, or stockholder of a System institution.

(Pub. L. 92–181, title I, § 1.4, as added Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1622; amended Pub. L. 100–399, title IV, § 401(c), Aug. 17, 1988, 102 Stat. 995.)

PRIOR PROVISIONS

A prior section 2012, Pub. L. 92–181, title I, § 1.4, Dec. 10, 1971, 85 Stat. 584; Pub. L. 96–592, title I, § 101, Dec. 24, 1980, 94 Stat. 3437; Pub. L. 99–205, title II, § 205(d)(1), Dec. 23, 1985, 99 Stat. 1703; Pub. L. 100–233, title VII, § 705(a), title VIII, § 802(b), Jan. 6, 1988, 101 Stat. 1706, 1710; Pub. L. 100–399, title VI, § 604, Aug. 17, 1988, 102 Stat. 1006, related to corporate existence and general corporate powers, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

AMENDMENTS

1988—Pub. L. 100–399 struck out ''from its voting stockholders'' after ''shall elect''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2013. General corporate powers

Each Farm Credit Bank shall be a body corporate and, subject to regulation by the Farm Credit Administration, shall have power to—

(1) adopt and use a corporate seal;

(2) have succession until dissolved under the provisions of this chapter or other Act of Congress;

(3) make contracts;

(4) sue and be sued;

(5) acquire, hold, dispose, and otherwise exercise all the usual incidents of ownership of real and personal property necessary or convenient to its business;

(6) make, participate in, and discount loans, make commitments for credit, accept advance payments, and provide services as authorized in this chapter, and charge fees for such;

(7) operate under the direction of its board of directors;

(8) provide by its board of directors for a president, one or more vice presidents, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, as provided in this chapter, define their duties, and require surety bonds or make other provision against losses occasioned by employees;

(9) prescribe, by its board of directors, its bylaws that shall be consistent with law, and that shall provide for—

(A) the classes of its stock and the manner in which such stock shall be issued, transferred, and retired; and

(B) the manner in which it is to—

(i) select officers, employees, and agents;

(ii) acquire, hold, and transfer property;

(iii) make loans and discounts;

(iv) conduct general business; and

(v) exercise and enjoy the privileges granted to it by law;

(10) borrow money and issue notes, bonds, debentures, or other obligations individually, or in concert with one or more other banks of the System, of such character, terms, conditions, and rates of interest as may be determined as provided for in this chapter;

(11) purchase nonvoting stock in, or pay in surplus to, and accept deposits of securities or funds from associations in its district, and pay interest on such funds;

(12) participate with—

(A) one or more other Farm Credit Banks in loans under this subchapter on such terms as may be agreed on among such banks;

(B) one or more other Farm Credit System institutions in loans made under this subchapter or other subchapters of this chapter on the basis prescribed in section 2206 of this title; and

(C) lenders that are not Farm Credit System institutions in loans that the bank is authorized to make under this subchapter;

(13) approve the salary scale of the officers and employees of the associations in its district and supervise the exercise by such associations of the functions vested in or delegated to them;

(14) deposit the securities and current funds of the bank with any member bank of the Federal Reserve System or any insured State nonmember bank (within the meaning of section 1813 of this title) and pay fees and receive interest on such as may be agreed, and when designated for that purpose by the Secretary of the Treasury, such bank—

(A) shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary;

(B) may be employed as a fiscal agent of the Government; and

(C) shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of such bank;

except that no Government funds deposited under the provisions of this paragraph shall be invested in loans or bonds or other obligations of the bank;

(15) buy and sell obligations of, or insured by, the United States or any agency thereof, or securities backed by the full faith and credit of any such agency, and make other investments as may be authorized under regulations issued by the Farm Credit Administration;

(16) sell to lenders that are not Farm Credit System institutions interests in loans, and buy from and sell to Farm Credit System institutions interests in loans and other extensions of credit, and nonvoting stock as may be authorized under regulations issued by the Farm Credit Administration;

(17) conduct studies and make and adopt standards for lending;

(18) delegate to associations such functions as the bank determines appropriate;

(19) amend and modify loan contracts, documents, and payment schedules, and release, subordinate, or substitute security for any of such items;

(20) for loans made by the bank, require associations to endorse notes and other obligations of borrowers from the bank;

(21) exercise through the board of directors or authorized officers, employees, or agents of the bank, all such incidental powers as may be necessary or expedient to carry on the business of the bank;

(22) accept contributions to the capital of the bank from associations and account for such in accordance with generally accepted accounting principles, except as may be authorized by the Farm Credit Administration;

(23) as may be authorized by the board of directors of the bank, agree with other Farm Credit System institutions to share loan and other losses, whether to protect against capital impairment or for any other purpose; and

(24) operate as an originator and become certified as a certified facility under subchapter VIII of this chapter.

(Pub. L. 92–181, title I, §1.5, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1623; amended Pub. L. 100–399, title IV, §401(d), Aug. 17, 1988, 102 Stat. 995; Pub. L. 104–105, title II, §201, Feb. 10, 1996, 110 Stat. 172.)

PRIOR PROVISIONS

A prior section 2013, Pub. L. 92–181, title I, §1.5, Dec. 10, 1971, 85 Stat. 585; Pub. L. 96–592, title I, §102, Dec. 24, 1980, 94 Stat. 3437; Pub. L. 99–205, title II, §205(d)(2), (3), title VI, §601, Dec. 23, 1985, 99 Stat. 1703, 1711; Pub. L. 100–233, title VIII, §802(c), Jan. 6, 1988, 101 Stat. 1710, related to land bank stock, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1996—Par. (13). Pub. L. 104–105 struck out '', and the appointment and compensation of the chief executive officer thereof,'' after ''in its district''.

1988—Par. (9). Pub. L. 100–399, §401(d)(1), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''prescribe by its board of directors—

''(A) the bylaws of such bank that shall not be inconsistent with law, providing for the classes of the stock of the bank and the manner in which such stock shall be issued, transferred, and retired;

''(B) the officers, employees, and agents of the bank as provided for;

''(C) the property of the bank acquired, held, and transferred;

''(D) the loans and discounts made by the bank;

''(E) the general business conducted by the bank; and

''(F) the privileges granted to the bank by law exercised and enjoyed;''.

Par. (11). Pub. L. 100–399, §401(d)(2), substituted ''of securities or'' for ''or securities of''.

Par. (12)(B), (C). Pub. L. 100–399, §401(d)(3), struck out ''participate with'' before ''one or more'' in subpar. (B) and ''participate with'' before ''lenders that'' in subpar. (C).

Par. (14). Pub. L. 100–399, §401(d)(4), substituted ''(within the meaning of section 1813 of this title)'' for ''as defined in section 1813 of this title''.

Par. (18). Pub. L. 100–399, §401(d)(5), struck out ''Federal land bank'' after ''delegate to''.

Par. (22). Pub. L. 100–399, §401(d)(6), substituted ''in accordance with generally accepted accounting principles, except as may be authorized by the Farm Credit Administration;'' for ''as authorized by the Farm Credit Administration; and''.

Par. (23). Pub. L. 100–399, §401(d)(7), struck out ''and approved by the Farm Credit Administration Board'' after ''of the bank'' and substituted ''purpose; and'' for ''purpose.''

Par. (24). Pub. L. 100–399, §401(d)(8), added par. (24).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 302 of Pub. L. 104–105 provided that: ''Except as otherwise provided in this Act, this Act [see Short Title of 1996 Amendment note set out under section 2001 of this title] and the amendments made by this Act shall become effective on the date of enactment [Feb. 10, 1996].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233,

which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2014. Farm Credit Bank capitalization

In accordance with section 2154a of this title, the Farm Credit Banks shall provide, through bylaws and subject to Farm Credit Administration regulations, for the capitalization of the bank and the manner in which bank stock shall be issued, held, transferred, and retired and bank earnings distributed.

(Pub. L. 92–181, title I, § 1.6, as added Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1624.)

PRIOR PROVISIONS

A prior section 2014, Pub. L. 92–181, title I, § 1.6, Dec. 10, 1971, 85 Stat. 585; Pub. L. 96–592, title I, § 103, Dec. 24, 1980, 94 Stat. 3438, related to real estate mortgage loans, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

§ 2015. Lending authority

(a) Real estate loans and related assistance

(1) Real estate loans

The Farm Credit Banks may make or participate with other lenders in long-term real estate mortgage loans in rural areas, as defined by the Farm Credit Administration, or to producers or harvesters of aquatic products, and make continuing commitments to make such loans under specified circumstances, for a term of not less than 5 nor more than 40 years.

(2) Financial assistance

The Farm Credit Banks may provide and extend financial assistance to, and discount for, or purchase from, a Federal land bank association any note, draft, or other obligation with the endorsement or guarantee of the association, the proceeds of which have been advanced to persons eligible and for purposes of financing by the association, as authorized under section 2279b(a) of this title.

(b) Intermediate credit

(1) In general

The Farm Credit Banks are authorized to make loans and extend other similar financial assistance to and to discount for or purchase from—

(A) any production credit association, or

(B) any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products,

any note, draft, or other obligation with the institution's endorsement or guarantee, the proceeds of which note, draft, or other obligation have been advanced to persons and for purposes eligible for financing by production credit associations as authorized by this chapter.

(2) Participation with other entities

The Farm Credit Banks may participate with one or more production credit associations or other Farm Credit Banks in the making of loans to eligible borrowers and may participate with one or more other Farm Credit System institutions in loans made under this subchapter or other subchapters of this chapter on the basis prescribed in section 2206 of this title.

(3) Limitations on extension of financial services

(A) General rule

No paper shall be purchased from or discounted for, and no loans shall be made or other similar financial assistance extended by a Farm Credit Bank to any entity identified in paragraph (1)(B) of this subsection if the amount of such paper added to the aggregate liabilities of such entity, whether direct or contingent (other than bona fide deposit liabilities), exceeds ten times the paid-in and unimpaired capital and surplus of such entity or the amount of such liabilities permitted under the laws of the jurisdiction creating such institution, whichever is the lesser.

(B) Limitation on national bank

It shall be unlawful for any national bank which is indebted to any Farm Credit Bank, on paper discounted or purchased under paragraph (1), to incur any additional indebtedness, if by virtue of such additional indebtedness its aggregate liabilities direct or contingent, will exceed the limitation described in subparagraph (A).

(4) FCA regulations

(A) In general

All of the loans, financial assistance, discounts and purchases authorized by this subsection shall be subject to regulations of the Farm Credit Administration and shall be secured by collateral, if any, as may be required in such regulations.

(B) Requirement of regulations

The regulations shall assure that such loans, financial assistance, discounts, and purchases are available on a reasonable basis to any financing institution authorized to receive such services under paragraph (1)(B) of this subsection, and that—

(i) is significantly involved in lending for agricultural or aquatic purposes;

(ii) demonstrates a continuing need for supplementary sources of funds to meet the credit requirements of its agricultural or aquatic borrowers;

(iii) has limited access to national or regional capital markets; and

(iv) does not use such services to expand its financing activities to persons and for purposes other than those authorized under subchapter II of this chapter.

(C) Fees

The regulations may authorize a Farm Credit Bank to charge reasonable fees for any commitment to extend service under this section to such a financing institution.

(D) Subsidiaries and affiliates

For purposes of this subsection, a financing institution together with the subsidi-

aries and affiliates of such may be considered as one, but such determination to consider such institution together with the subsidiaries and affiliates of such as one shall be made in the first instance by the bank and in the event of a denial by the bank of its services to a financial institution, then by the Farm Credit Administration on a case-by-case basis with due regard to the total relationship of the financing institution, its subsidiaries, and affiliates.

(5) Effective date

Nothing in this section shall require termination of discount relationships in existence on December 24, 1980.

(Pub. L. 92–181, title I, §1.7, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1625; amended Pub. L. 100–399, title IV, §401(e), (f), Aug. 17, 1988, 102 Stat. 995, 996.)

CODIFICATION

In subsec. (b)(5), ''December 24, 1980'' substituted for ''the effective date of the Farm Credit Act Amendments of 1980''.

PRIOR PROVISIONS

A prior section 2015, Pub. L. 92–181, title I, §1.7, Dec. 10, 1971, 85 Stat. 585; Pub. L. 96–592, title I, §104, Dec. 24, 1980, 94 Stat. 3438; Pub. L. 99–509, title I, §1033(a), Oct. 21, 1986, 100 Stat. 1877, related to interest rates and other charges, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–399, §401(e), inserted in heading ''and related assistance'' and amended text generally. Prior to amendment, text read as follows: ''The Farm Credit Banks are authorized to make or participate with other lenders in long-term real estate mortgage loans in rural areas, as defined by the Farm Credit Administration, or to producers or harvesters of aquatic products, and make continuing commitments to make such loans under specified circumstances, for a term of not less than 5 nor more than 40 years.''

Subsec. (b)(2). Pub. L. 100–399, §401(f)(1), struck out provision that banks may own and lease or lease with an option to purchase to persons eligible for assistance under this subchapter, equipment needed in the operations of such persons.

Subsec. (b)(3). Pub. L. 100–399, §401(f)(2), substituted in heading ''services'' for ''assistance'' and in subpar. (B) ''described in subparagraph (A)'' for ''herein contained''.

Subsec. (b)(4)(A). Pub. L. 100–399, §401(f)(3), substituted ''subsection'' for ''section''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2016. Interest rates and other charges

(a) In general

Loans and discounts made by a Farm Credit Bank shall bear such rate or rates of interest or discount, and be on such terms and conditions, as may be determined by the board of directors of the bank from time to time.

(b) Setting rates and charges

In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable costs on a sound business basis taking into consideration the cost of money to the bank, necessary reserve and expenses of the bank and associations, and providing services to members. The loan documents or discounting and financing agreements, may provide for the interest rate or rates to vary from time to time during the repayment period of the loan or agreement.

(Pub. L. 92–181, title I, §1.8, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1626; amended Pub. L. 100–399, title IV, §401(g), Aug. 17, 1988, 102 Stat. 996.)

PRIOR PROVISIONS

A prior section 2016, Pub. L. 92–181, title I, §1.8, Dec. 10, 1971, 85 Stat. 586; Pub. L. 96–592, title I, §105, Dec. 24, 1980, 94 Stat. 3438, related to eligibility, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–399 substituted ''such rate or rates of interest or discount, and be'' for ''interest at a rate or rates, and''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2017. Eligibility

The credit and financial services authorized in this subchapter may be made available to persons who are or become stockholders or members of the bank or associations in the district, and who are—

(1) bona fide farmers, ranchers, or producers or harvesters of aquatic products;

(2) persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs; or

(3) owners of rural homes.

(Pub. L. 92–181, title I, §1.9, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1626.)

PRIOR PROVISIONS

A prior section 2017, Pub. L. 92–181, title I, §1.9, Dec. 10, 1971, 85 Stat. 586; Pub. L. 96–592, title I, §106, Dec. 24, 1980, 94 Stat. 3438; Pub. L. 100–233, title IV, §426, title VIII, §802(d), Jan. 6, 1988, 101 Stat. 1657, 1710; Pub. L. 100–399, title IV, §412, title VII, §701, Aug. 17, 1988, 102 Stat. 1004, 1006, related to security, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

§ 2018. Security; terms

(a) Real estate loans

(1) Maximum level of loans

(A) In general

Real estate mortgage loans originated by a Farm Credit Bank, or in which a Farm Credit Bank participates in with a lender that is not a System institution, shall not exceed 85 percent of the appraised value of the real estate security, except as provided for in subparagraphs (C) and (D).

(B) Regulation

The Farm Credit Administration may, by regulation, require that loans not exceed 75

percent of the appraised value of the real estate security.

(C) Guaranteed loans

If the loan is guaranteed by Federal, State, or other governmental agencies, the loan may not exceed 97 percent of the appraised value of the real estate security, as may be authorized under regulations of the Farm Credit Administration.

(D) Private mortgage insurance

A loan on which private mortgage insurance is obtained may exceed 85 percent of the appraised value of the real estate security to the extent that the loan amount in excess of such 85 percent is covered by the insurance.

(2) Security

All loans originated or participated in by a bank under this section shall be secured by first liens on interests in real estate of such classes as may be prescribed by regulations of the Farm Credit Administration.

(3) Value of security

To adequately secure the loan, the value of security shall be determined by appraisal under standards prescribed by the bank in accordance with regulations of the Farm Credit Administration.

(4) Additional security

Additional security for any loan may be required by the bank to supplement real estate security. Credit factors, other than the ratio between the amount of the loan and the security value, shall be given due consideration.

(b) Intermediate credit

Loans, other than real estate loans, and discounts made under the provisions of this subchapter shall be repayable in not more than 7 years (15 years if made to producers or harvesters of aquatic products) from the time that such are made or discounted by the Farm Credit Bank, except that the Board of Directors, under regulations of the Farm Credit Administration, may approve policies permitting loans, advances, or discounts (other than those made to producers or harvesters of aquatic products) to be repayable in not more than 10 years from the time that such are made or discounted by such bank.

(Pub. L. 92–181, title I, §1.10, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1627; amended Pub. L. 100–399, title IV, §401(h), (i), Aug. 17, 1988, 102 Stat. 996; Pub. L. 104–105, title II, §§202, 203, Feb. 10, 1996, 110 Stat. 172.)

PRIOR PROVISIONS

A prior section 2018, Pub. L. 92–181, title I, §1.10, Dec. 10, 1971, 85 Stat. 586; Pub. L. 96–592, title I, §107, Dec. 24, 1980, 94 Stat. 3438, related to purposes, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104–105, §202(b), substituted ''subparagraphs (C) and (D)'' for ''paragraphs (2) and (3)''.

Subsec. (a)(1)(D). Pub. L. 104–105, §202(a), added subpar. (D).

Subsec. (a)(5). Pub. L. 104–105, §203, struck out heading and text of par. (5). Text read as follows: ''Each Farm Credit Bank shall require a financial statement from each borrower at least once every 3 years, or during such shorter period of time as may be required under regulations of the Farm Credit Administration.''

1988—Subsec. (a)(2). Pub. L. 100–399, §401(h)(1), substituted ''prescribed by regulations of'' for ''approved by''.

Subsec. (a)(3). Pub. L. 100–399, §401(h)(2), substituted ''under standards'' for ''under appraisal standards'' and ''in accordance with regulations of'' for ''and approved by''.

Subsec. (b). Pub. L. 100–399, §401(i), substituted ''harvesters of aquatic products) from'' for ''harvester of aquatic products) from''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2019. Purposes for extensions of credit

(a) Agricultural or aquatic purposes

(1) In general

Loans made by a Farm Credit Bank to farmers, ranchers, and producers or harvesters of aquatic products may be for any agricultural or aquatic purpose and other credit needs of the applicant, including financing for basic processing and marketing directly related to the applicant's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products, except that the operations of the applicant shall supply some portion of the total processing or marketing for which financing is extended.

(2) Limitation on loans for basic processing and marketing operations

The aggregate of the financing provided by any Farm Credit Bank for basic processing and marketing directly related to the operations of farmers, ranchers, and producers or harvesters of aquatic products, if the operations of the applicant supply less than 20 percent of the total processing or marketing for which financing is extended, shall not exceed 15 percent of the total of all outstanding loans of such bank.

(b) Rural housing financing

(1) In general

Loans and discounts may be made to rural residents for rural housing financing under regulations of the Farm Credit Administration.

(2) Limitations

Rural housing financed under this subchapter shall be for single-family, moderate-priced dwellings and their appurtenances not inconsistent with the general quality and standards of housing existing in, or planned or recommended for, the rural area where it is located, except that a Farm Credit Bank may not at any one time have a total amount of loans outstanding for such rural housing to persons other than farmers or ranchers in amounts exceeding 15 percent of the total of all loans outstanding in such bank.

(3) Rural areas

For rural housing purposes under this section the term ''rural areas'' shall not be defined to include any city or village having a population in excess of 2,500 inhabitants.

(c) Farm-related services

(1) In general

Loans to persons furnishing farm-related services to farmers and ranchers directly related to their on-farm operating needs may be made for the necessary capital structures and equipment and initial working capital for such services.

(2) Facilities

The banks may own and lease, or lease with option to purchase, to persons eligible for credit under this subchapter or subchapter II of this chapter, equipment or facilities needed in the operations of such persons.

(Pub. L. 92–181, title I, §1.11, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1627; amended Pub. L. 100–399, title IV, §401(j), Aug. 17, 1988, 102 Stat. 996; Pub. L. 101–624, title XVIII, §1832(a), Nov. 28, 1990, 104 Stat. 3832; Pub. L. 102–237, title V, §502(a), Dec. 13, 1991, 105 Stat. 1868.)

PRIOR PROVISIONS

A prior section 2019, Pub. L. 92–181, title I, §1.11, Dec. 10, 1971, 85 Stat. 586; Pub. L. 96–592, title I, §108, Dec. 24, 1980, 94 Stat. 3438, related to services related to borrower's operations, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–237 made technical amendments to headings of subsec. (a) and pars. (1) and (2).

1990—Subsec. (a). Pub. L. 101–624 designated existing provisions as par. (1), inserted heading, substituted ''some portion'' for ''at least 20 percent, or such larger percent as may be required by the board of directors of the bank under regulations of the Farm Credit Administration,'', and added par. (2).

1988—Subsec. (c)(2). Pub. L. 100–399 substituted ''this subchapter or subchapter II of this chapter, equipment or facilities'' for ''this subchapter, facilities''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–237 effective as if included in the provision of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, to which the amendment relates, see section 1101(b)(4) of Pub. L. 102–237, set out as a note under section 1421 of Title 7, Agriculture.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§2020. Related services

(a) In general

The Farm Credit Banks may provide technical assistance to borrowers, members, and applicants from the bank and associations in the district, including persons obligated on paper discounted by the bank, and may make available to them at their option such financial related services appropriate to their on-farm and aquatic operations as determined to be feasible by the board of directors of the bank, under regulations of the Farm Credit Administration.

(b) Authority to pass along cost of insurance premiums

(1) In general

Each Farm Credit Bank may assess each production credit association, other association making direct loans under the authority provided under section 2279b of this title, and other financing institution described in section 2015(b)(1)(B) of this title in the district in which the bank is located to cover the costs of making premium payments under part E of subchapter V of this chapter.

(2) Computation

The assessment on any association or other financing institution described in paragraph (1) for any period shall be computed in an equitable manner, as determined by the Corporation.

(Pub. L. 92–181, title I, §1.12, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1628; amended Pub. L. 100–399, title IV, §401(k), Aug. 17, 1988, 102 Stat. 996; Pub. L. 101–220, §6(b)(1), (2), Dec. 12, 1989, 103 Stat. 1880; Pub. L. 104–105, title II, §215(a)(2)(C), Feb. 10, 1996, 110 Stat. 176; Pub. L. 107–171, title V, §5403(a)(2)(A), May 13, 2002, 116 Stat. 350; Pub. L. 110–234, title V, §5401(a), May 22, 2008, 122 Stat. 1154; Pub. L. 110–246, §4(a), title V, §5401(a), June 18, 2008, 122 Stat. 1664, 1915.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 2020, Pub. L. 92–181, title I, §1.12, Dec. 10, 1971, 85 Stat. 586; Pub. L. 96–592, title I, §109, Dec. 24, 1980, 94 Stat. 3439, related to loans through associations or agents, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–246, §5401(a), designated first sentence as par. (1), inserted heading, added par. (2), and struck out former second sentence which related to computation of the assessment on the same basis as is used to compute the premium payment and provided formula to calculate a maximum amount.

2002—Subsec. (b)(1). Pub. L. 107–171, §5403(a)(2)(A)(i), inserted ''and Government Sponsored Enterprise-guaranteed loans (as defined in section 2277a–4(a)(4) of this title) provided for in paragraph (4)'' after ''government-guaranteed loans (as defined in section 2277a–4(a)(3) of this title) provided for in paragraph (3)''.

Subsec. (b)(4). Pub. L. 107–171, §5403(a)(2)(A)(ii)–(iv), added par. (4).

1996—Pub. L. 104–105, §215(a)(2)(C), which directed amendment of ''section 1.12(b)'', without specifying the name of the Act being amended, was executed to this section, which is section 112 of the Farm Credit Act of 1971, to reflect the probable intent of Congress.

Subsec. (b)(1). Pub. L. 104–105, §215(a)(2)(C)(i), inserted ''(as defined in section 2277a–4(a)(3) of this title)'' after ''government-guaranteed loans''.

Subsec. (b)(3). Pub. L. 104–105, §215(a)(2)(C)(i), inserted ''(as so defined)'' after ''government-guaranteed loans'' in subpars. (A) and (B).

1989—Subsec. (b). Pub. L. 101–220, §6(b)(1), inserted '', other association making direct loans under the au-

thority provided under section 2279b of this title,'' after ''production credit association''.

Subsec. (b)(1). Pub. L. 101–220, §6(b)(2)(A), inserted ''funded by or'' before ''discounted with'' and ''excluding the guaranteed portions of government-guaranteed loans provided for in paragraph (3),'' and struck out ''and'' after ''multiplied by 0.0015;''.

Subsec. (b)(2). Pub. L. 101–220, §6(b)(2)(B), inserted ''funded by or'' before ''discounted with'' and substituted ''0.0025; and'' for ''0.0025.''.

Subsec. (b)(3). Pub. L. 101–220, §6(b)(2)(C), added par. (3).

1988—Subsec. (a). Pub. L. 100–399 designated existing provision as subsec. (a), inserted heading, substituted ''directors of the bank'' for ''directors of each district bank'', and added subsec. (b).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–171, title V, §5403(b), May 13, 2002, 116 Stat. 351, provided that: ''The amendments made by this section [amending this section and sections 2277a–4 and 2277a–5 of this title] shall apply with respect to determinations of premiums for calendar year 2002 and for any succeeding calendar year, and to certified statements with respect to such premiums.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6(c) of Pub. L. 101–220 provided that: ''The amendments made by subsections (a) and (b) [amending sections 2020, 2277a–4, 2277a–8, and 2277a–10 of this title] shall be effective for insurance premiums due to the Farm Credit System Insurance Corporation under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) on or after January 1, 1990, based on the loan volume of each bank for each calendar year beginning with calendar year 1989, and shall be effective for the calculation of the initial premium payment required under section 5.56(c) of the Farm Credit Act of 1971 (12 U.S.C. 2277a–5(c)).''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2021. Loans through associations or agents

(a) In general

The Farm Credit Banks shall, except as otherwise herein provided, make loans of the type authorized under section 2015(a) of this title through a Federal land bank association chartered to serve the territory in which the real estate of the borrower is located.

(b) No active association

If there is no active association chartered to serve territory where the real estate is located, the bank may make the loan directly or through such bank or trust company or savings or other financial institution as such bank may designate.

(c) Purchase of stock required

When the loan is not made through a Federal land bank association, the applicant shall purchase stock in the bank in accordance with the capitalization requirements provided for in the bylaws of the bank.

(Pub. L. 92–181, title I, §1.13, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1628.)

PRIOR PROVISIONS

A prior section 1.13 of Pub. L. 92–181 was classified to section 2031 of this title prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

§ 2022. Liens on stock

The Farm Credit Banks shall have a first lien on the stock or participation certificates it issues for the payment of any liability of the stockholders to the bank.

(Pub. L. 92–181, title I, §1.14, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1629.)

PRIOR PROVISIONS

A prior section 1.14 of Pub. L. 92–181 was classified to section 2032 of this title prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

§ 2023. Taxation

The Farm Credit Banks and the capital, reserves, and surplus thereof, and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate held by a Farm Credit Bank to the same extent, according to its value, as other similar property held by other persons is taxed. The mortgages held by the Farm Credit Banks and the notes, bonds, debentures, and other obligations issued by the banks shall be considered and held to be instrumentalities of the United States and, as such, they and the income therefrom shall be exempt from all Federal, State, municipal, and local taxation, other than Federal income tax liability of the holder thereof under the Public Debt Act of 1941 (31 U.S.C. 3124).

(Pub. L. 92–181, title I, §1.15, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1629; amended Pub. L. 100–399, title IV, §401(*l*), Aug. 17, 1988, 102 Stat. 997.)

PRIOR PROVISIONS

A prior section 1.15 of Pub. L. 92–181 was classified to section 2033 of this title prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

A prior section 2031, Pub. L. 92–181, title I, §1.13, Dec. 10, 1971, 85 Stat. 587; Pub. L. 99–205, title II, §205(d)(4), Dec. 23, 1985, 99 Stat. 1703; Pub. L. 100–233, title VIII, §802(e), Jan. 6, 1988, 101 Stat. 1710, related to organizations, articles, and charters of Federal land bank associations, and powers of Farm Credit Administration, prior to the general amendment of this subchapter by Pub. L. 100–233, §401. See section 2011 of this title.

A prior section 2032, Pub. L. 92–181, title I, §1.14, Dec. 10, 1971, 85 Stat. 587, related to board of directors, prior to the general amendment of this subchapter by Pub. L. 100–233, §401. See section 2012 of this title.

A prior section 2033, Pub. L. 92–181, title I, §1.15, Dec. 10, 1971, 85 Stat. 587; Pub. L. 96–592, title I, §110, Dec. 24, 1980, 94 Stat. 3439; Pub. L. 99–205, title II, §205(d)(5), Dec. 23, 1985, 99 Stat. 1704; Pub. L. 100–233, title VII, §705(b), title VIII, §805(b), Jan. 6, 1988, 101 Stat. 1707, 1715; Pub. L. 100–399, title VI, §604, title VII, §702(a), Aug. 17, 1988, 102 Stat. 1006, related to general corporate powers, prior to the general amendment of this subchapter by Pub. L. 100–233, §401. See section 2013 of this title.

A prior section 2034, Pub. L. 92–181, title I, §1.16, Dec. 10, 1971, 85 Stat. 589; Pub. L. 96–592, title I, §111, Dec. 24, 1980, 94 Stat. 3439; Pub. L. 99–205, title III, §304(a), Dec. 23, 1985, 99 Stat. 1708, related to association stock, value

of shares, voting, and purchase, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

A prior section 2051, Pub. L. 92–181, title I, § 1.17, Dec. 10, 1971, 85 Stat. 589; Pub. L. 96–592, title I, § 112, Dec. 24, 1980, 94 Stat. 3439; Pub. L. 99–205, title II, § 205(d)(6), title VI, § 602, Dec. 23, 1985, 99 Stat. 1704, 1711; Pub. L. 100–233, title VIII, § 802(f), Jan. 6, 1988, 101 Stat. 1711, related to land bank reserves, dividends, and patronage refunds, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

A prior section 2052, Pub. L. 92–181, title I, § 1.18, Dec. 10, 1971, 85 Stat. 589; Pub. L. 96–592, title I, § 113, Dec. 24, 1980, 94 Stat. 3439; Pub. L. 99–205, title VI, § 603, Dec. 23, 1985, 99 Stat. 1711; Pub. L. 100–233, title VIII, § 802(g), Jan. 6, 1988, 101 Stat. 1711, related to association reserves, dividends, and patronage refunds, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

A prior section 2053, Pub. L. 92–181, title I, § 1.19, Dec. 10, 1971, 85 Stat. 590; Pub. L. 96–592, title I, § 114, Dec. 24, 1980, 94 Stat. 3439, related to agreements for sharing gains or losses, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

A prior section 2054, Pub. L. 92–181, title I, § 1.20, Dec. 10, 1971, 85 Stat. 590; Pub. L. 96–592, title I, § 115, Dec. 24, 1980, 94 Stat. 3439; Pub. L. 99–205, title II, § 205(d)(7), Dec. 23, 1985, 99 Stat. 1704; Pub. L. 100–233, title VIII, § 805(c), Jan. 6, 1988, 101 Stat. 1715, related to liens on stock and participation certificates, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

A prior section 2055, Pub. L. 92–181, title I, § 1.21, Dec. 10, 1971, 85 Stat. 590; Pub. L. 100–399, title IX, § 901(a), Aug. 17, 1988, 102 Stat. 1007, related to tax exempt status, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401. See section 2023 of this title.

AMENDMENTS

1988—Pub. L. 100–399 inserted a comma after ''therefrom'' and substituted ''3124'' for ''742(a)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

SUBCHAPTER II—FARM CREDIT ASSOCIATIONS

CODIFICATION

Title II of the Farm Credit Act of 1971, comprising this subchapter, was originally enacted by Pub. L. 92–181, title II, Dec. 10, 1971, 85 Stat. 590, and amended by Pub. L. 95–443, Oct. 10, 1978, 92 Stat. 1066; Pub. L. 96–592, Dec. 24, 1980, 94 Stat. 3437; Pub. L. 99–205, Dec. 23, 1985, 99 Stat. 1678; Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1874; Pub. L. 100–233, Jan. 6, 1988, 101 Stat. 1568. Such title is shown herein, however, as having been added by Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1622, without reference to such intervening amendments because of the extensive revision of the title's provisions by Pub. L. 100–233.

PART A—PRODUCTION CREDIT ASSOCIATIONS

AMENDMENTS

1988—Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1629, substituted ''Farm Credit Associations'' for ''Federal Intermediate Credit Banks and Production Credit Associations'' as subchapter heading, and substituted ''Production Credit Associations'' for ''Federal Intermediate Credit Banks'' as heading for part A.

§ 2071. Organization and charters

(a) Charter

Each production credit association shall continue as a Federally chartered instrumentality of the United States.

(b) Organization

(1) In general

Production credit associations may be organized by 10 or more farmers or ranchers or producers or harvesters of aquatic products desiring to borrow money under the provisions of this part.

(2) Articles of association

The proposed articles of association shall be forwarded to the Farm Credit Bank for the district accompanied by an agreement to subscribe on behalf of the association for stock in the bank in such amounts as may be required by the bank.

(3) Contents of articles

The articles shall specify in general terms the—

(A) objects for which the association is formed;

(B) powers to be exercised by the association in carrying out the functions authorized by this part; and

(C) territory the association proposes to serve.

(4) Signatures

The articles shall be signed by persons desiring to form such an association and shall be accompanied by a statement signed by each such person establishing eligibility to borrow from the association in which such person will become a stockholder.

(5) Copy to FCA

A copy of the articles of association shall be forwarded to the Farm Credit Administration with the recommendations of the bank concerning the need for such an association in order to adequately serve the credit needs of eligible persons in the proposed territory and whether that territory includes any area described in the charter of another production credit association.

(6) Denial of charter

The Farm Credit Administration for good cause shown may deny the charter.

(7) Approval of articles

On approval of the proposed articles by the Farm Credit Administration, and on the issuance of a charter, the association shall become as of such date a federally chartered body corporate and an instrumentality of the United States.

(8) Powers of FCA

The Farm Credit Administration shall have the power, under rules and regulations prescribed by the Farm Credit Administration or by prescribing in the terms of the charter, to—

(A) provide for the organization of the association;

(B) provide for the initial amount of stock of the association;

(C) provide for the territory within which the association's operations may be carried on; and

(D) approve amendments to the charter of the association.

(Pub. L. 92–181, title II, § 2.0, as added Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1629;

amended Pub. L. 100–399, title IV, § 401(m), Aug. 17, 1988, 102 Stat. 997; Pub. L. 102–237, title V, § 502(b), Dec. 13, 1991, 105 Stat. 1868.)

PRIOR PROVISIONS

A prior section 2071, Pub. L. 92–181, title II, § 2.0, Dec. 10, 1971, 85 Stat. 590; Pub. L. 100–233, title VIII, § 802(h), Jan. 6, 1988, 101 Stat. 1711, related to establishment and branches of Federal intermediate credit banks, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

AMENDMENTS

1991—Subsec. (b)(8). Pub. L. 102–237 substituted ''charter, to'' for ''charter to'' in introductory provisions.

1988—Subsec. (b)(1). Pub. L. 100–399, § 401(m)(1), substituted ''this part'' for ''this subchapter''.

Subsec. (b)(3)(B). Pub. L. 100–399, § 401(m)(2), (3), struck out ''the'' before ''powers'' and substituted ''this subtitle'' for ''this part'', both of which for purposes of codification were translated as ''this part'', requiring no change in text.

Subsec. (b)(3)(C). Pub. L. 100–399, § 401(m)(3), struck out ''the'' before ''territory''.

Subsec. (b)(8). Pub. L. 100–399, § 401(m)(4), struck out in introductory provision ''or by approval of bylaws of the association'' after ''the charter'' and amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''direct at any time such changes in the charter as the Farm Credit Administration finds necessary for the accomplishment of the purposes of this chapter''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–237 effective as if included in the provision of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, to which the amendment relates, see section 1101(b)(4) of Pub. L. 102–237, set out as a note under section 1421 of Title 7, Agriculture.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE

Section 401 of Pub. L. 100–233 provided in part that this subchapter is effective 6 months after Jan. 6, 1988.

MERGER OF PRODUCTION CREDIT ASSOCIATIONS AND FEDERAL LAND BANK ASSOCIATIONS

Section 411 of Pub. L. 100–233, as amended by Pub. L. 100–399, title IV, § 403, Aug. 17, 1988, 102 Stat. 999, provided that:

''(a) SUBMISSION OF PROPOSAL.—Not later than 6 months after the date of the merger of the Federal land bank and the Federal intermediate credit bank in a district, the Boards of Directors of each Federal land bank association and each production credit association in such district, that share substantially the same geographical territory with each other, shall submit to the voting stockholders of each such association for their approval, a plan, approved by the supervising bank and the Farm Credit Administration, for merging such associations.

''(b) PREREQUISITES TO MERGER.—

''(1) STOCKHOLDER VOTE.—The stockholder vote required for approval of a merger under subsection (a) shall be a majority of the voting stockholders of each association voting, in person or by written proxy, at a duly authorized stockholders meeting.

''(2) SUBMISSION TO FCA.—Not later than 60 days prior to the end of the 12-month period beginning on the date of the enactment of this section [Jan. 6, 1988], the plan of merger under subsection (a), together with all information to be presented to the stockholders, shall be submitted to the Farm Credit Administration.

''(3) EXPEDITED CONSIDERATION BY FCA.—The Farm Credit Administration shall expedite its consideration of the plan and accompanying information submitted under paragraph (2) so that review and approval of such plan and information shall be completed by the Administration so as to enable a stockholder vote to occur within the 12-month period referred to in paragraph (2).

''(c) DIRECT LENDERS.—On approval of a merger under this subsection, the resulting association shall be a direct lender in the same manner as applies to production credit associations.''

REASSIGNMENT OF ASSOCIATIONS TO ADJOINING DISTRICTS

Section 433 of Pub. L. 100–233, as amended by Pub. L. 100–399, title IV, § 417, Aug. 17, 1988, 102 Stat. 1004, provided that:

''(a) PETITION OF BANK.—Notwithstanding any other provision of law, effective for the 12-month period beginning on the date of enactment of this Act [Jan. 6, 1988], each Federal land bank association or production credit association, whose chartered territory adjoins the territory of another district, may petition the Farm Credit Administration to amend the charters of the association and the adjoining district bank to provide that the territory of the association is part of the adjoining district.

''(b) REQUIREMENTS OF PETITION.—To be considered under this section, the petition must be signed by not less than 15 percent of the stockholders of the association. Only one such petition may be filed by an association under this section.

''(c) FCA ACTION.—The Farm Credit Administration shall take any action necessary—

''(1) to amend the charters of the association and the district bank; and

''(2) to incorporate the petitioning association into the adjoining district if the reassignment is approved by—

''(A) a majority of the stockholders of the association voting, in person or by proxy, at a duly authorized stockholders' meeting held for such purpose;

''(B) the board of directors of the adjoining district bank;

''(C) the Farm Credit System Assistance Board; and

''(D) the Farm Credit Administration Board.''

§ 2072. Board of directors

Each production credit association shall elect from the voting members of such association, a board of directors of such number, for such terms, with such qualifications, and in such manner as may be required by the bylaws of the association, except that at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, stockholder, or agent of a System institution.

(Pub. L. 92–181, title II, § 2.1, as added Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1630; amended Pub. L. 100–399, title IV, § 401(n), Aug. 17, 1988, 102 Stat. 997; Pub. L. 102–237, title V, § 502(c), Dec. 13, 1991, 105 Stat. 1868.)

PRIOR PROVISIONS

A prior section 2072, Pub. L. 92–181, title II, § 2.1, Dec. 10, 1971, 85 Stat. 591; Pub. L. 96–592, title II, § 201, Dec. 24, 1980, 94 Stat. 3439; Pub. L. 99–205, title II, § 205(e)(1), Dec. 23, 1985, 99 Stat. 1704; Pub. L. 100–233, title VII, § 705(c), title VIII, §§ 802(i), 805(d), Jan. 6, 1988, 101 Stat.

1707, 1711, 1715; Pub. L. 100–399, title VI, § 604, title IX, § 901(b), Aug. 17, 1988, 102 Stat. 1006, 1007, related to corporate existence and general corporate powers, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

AMENDMENTS

1991—Pub. L. 102–237 substituted ''stockholder, or agent'' for ''or stockholder''.

1988—Pub. L. 100–399 struck out the comma after ''except that''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2073. General corporate powers

Each production credit association shall be a body corporate and, subject to supervision by the Farm Credit Bank for the district and regulation by the Farm Credit Administration, shall have the power to—

(1) have succession until terminated in accordance with this chapter or any other Act of Congress;

(2) adopt and use a corporate seal;

(3) make contracts;

(4) sue and be sued;

(5) acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real and personal property necessary or convenient to the business of the association;

(6) operate under the direction of the board of directors of the association in accordance with the provisions of this chapter;

(7) subscribe to stock of the bank;

(8) purchase stock of the bank held by other production credit associations and stock of other production credit associations;

(9) contribute to the capital of the bank or other production credit associations;

(10) invest funds of the association as may be approved by the Farm Credit Bank under regulations of the Farm Credit Administration and deposit the current funds and securities of such with the Farm Credit Bank, a member bank of the Federal Reserve System, or any bank insured under the Federal Deposit Insurance Corporation, and may pay fees therefor and receive interest thereon as may be agreed;

(11) buy and sell obligations of or insured by the United States or of any agency thereof or of any banks of the Farm Credit System and buy from and sell to such banks, interests in loans and in other financial assistance extended and nonvoting stock, as may be authorized by the Farm Credit Bank in accordance with regulations of the Farm Credit Administration;

(12) borrow money from the Farm Credit Bank, and with the approval of such bank, borrow from and issue notes or other obligations to any commercial bank or other financial institution;

(13) make and participate in loans, accept advance payments, and provide services and other assistance as authorized in this part and charge fees therefor, and when authorized by the bank participate with one or more other Farm Credit System institutions in loans made under this subchapter or other subchapters of this chapter on the basis prescribed in section 2206 of this title;

(14) endorse and become liable on loans discounted or pledged to the Farm Credit Bank;

(15) as may be authorized by the Farm Credit Bank in accordance with regulations of the Farm Credit Administration, agree with other Farm Credit System institutions to share loan or other losses, whether to protect against capital impairment or for any other purpose;

(16) prescribe, by its board of directors, its bylaws that shall be consistent with law, and that shall provide for—

(A) the classes of its stock and the manner in which such stock shall be issued, transferred, and retired; and

(B) the manner in which it is to—

(i) select officers and employees;

(ii) acquire, hold, and transfer property;

(iii) conduct general business; and

(iv) exercise and enjoy the privileges granted to it by law;

(17) provide by its board of directors for a manager or other chief executive officer, and provide for such other officers or employees as may be necessary, including joint employees as provided in this chapter, define their duties, and require surety bonds or make other provisions against losses occasioned by employees, but no director shall, within one year after the date when such director ceases to be a member of the board, serve as a salaried employee of the association on the board of which he served;

(18) elect by the board of directors of the association a loan committee with power to approve applications for membership in the association and loans or participations or, with the approval of the bank, delegate the approval of applications for membership and loans or participations within specified limits to other committees or to authorized officers and employees of the association;

(19) perform any functions delegated to the association by the bank;

(20) exercise by the board of directors or authorized officers or employees of the association, all such incidental powers as may be necessary or expedient to carry on the business of the association; and

(21) operate as an originator and become certified as a certified facility under subchapter VIII of this chapter.

(Pub. L. 92–181, title II, § 2.2, as added Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1630; amended Pub. L. 100–399, title IV, § 401(*o*), Aug. 17, 1988, 102 Stat. 997.)

PRIOR PROVISIONS

A prior section 2073, Pub. L. 92–181, title II, § 2.2, Dec. 10, 1971, 85 Stat. 592; Pub. L. 96–592, title II, § 202, Dec. 24, 1980, 94 Stat. 3440; Pub. L. 99–205, title II, § 205(e)(2)–(5), title VI, § 604, Dec. 23, 1985, 99 Stat. 1704, 1711; Pub. L. 100–233, title VIII, §§ 802(j), 805(e), Jan. 6, 1988, 101 Stat. 1711, 1715, related to Federal intermediate credit bank stock, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

AMENDMENTS

1988—Par. (16). Pub. L. 100–399, § 401(*o*)(1), amended par. (16) generally. Prior to amendment, par. (16) read

as follows: ''prescribe by the board of directors of the association the bylaws not inconsistent with law providing for—

''(A) the classes of association stock and the manner in which the stock shall be issued, transferred, and retired;

''(B) the officers and employees elected or provided for;

''(C) the property acquired, held, and transferred by the association; and

''(D) the general business conducted, and the privileges granted to the association by law exercised and enjoyed;''.

Par. (17). Pub. L. 100–399, § 401(*o*)(2), substituted ''provide by its board of directors for'' for ''elect by the board of directors of the association'' and ''serve as'' for ''be elected or designated''.

Par. (21). Pub. L. 100–399, § 401(*o*)(3)–(5), added par. (21).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2074. Production credit association capitalization

(a) In general

In accordance with section 2154a of this title, each production credit association shall provide, through its bylaws and subject to Farm Credit Administration regulations, for its capitalization and the manner in which its stock shall be issued, held, transferred, and retired and, except as provided in subsection (b) of this section, its earnings distributed.

(b) Application of earnings

At the end of each fiscal year, each production credit association shall apply the amount of the earnings of the association for the fiscal year in excess of the operating expenses of the association (including provision for valuation reserves against loan assets in accordance with generally accepted accounting principles)—

(1) first, to the restoration of the impairment (if any) of capital; and

(2) second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Farm Credit Bank.

(c) Patronage

When the bylaws of an association so provide and subject to the general directions of the Farm Credit Administration, available net earnings at the end of any fiscal year may be distributed on a patronage basis in stock, participation certificates, or in cash. Any part of the earnings of the fiscal year in excess of the operating expenses for such year held in the surplus account may be allocated to patrons on a patronage basis.

(Pub. L. 92–181, title II, § 2.3, as added Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1632; amended Pub. L. 102–552, title V, § 501, Oct. 28, 1992, 106 Stat. 4129.)

PRIOR PROVISIONS

A prior section 2074, Pub. L. 92–181, title II, § 2.3, Dec. 10, 1971, 85 Stat. 593; Pub. L. 96–592, title II, § 203, Dec. 24, 1980, 94 Stat. 3440; Pub. L. 99–205, title II, § 205(e)(6), Dec. 23, 1985, 99 Stat. 1704, related to loans, discounts, participation, and leasing, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–552 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Each production credit association at the end of each fiscal year shall apply the amount of the earnings of the association for such year in excess of the operating expenses of the association (including provision for valuation reserves against loan assets in an amount equal to one-half of 1 percent of the loans outstanding at the end of the fiscal year to the extent that such earnings in such year in excess of other operating expenses permit, or in such greater amounts as are deemed necessary under generally accepted accounting principles, until such reserves equal or exceed 3½ percent of the loans outstanding at the end of the fiscal year, beyond which 3½ percent further additions to such reserves may be made, if deemed necessary under generally accepted accounting principles) first to the restoration of the impairment, if any, of capital, and second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Farm Credit Bank.''

§ 2075. Short- and intermediate-term loans; participation; other financial assistance; terms; conditions; interest; security

(a) Short- and intermediate-term loans

Each production credit association, under standards prescribed by the board of directors of the Farm Credit Bank of the district, may make, guarantee, or participate with other lenders in short- and intermediate-term loans and other similar financial assistance to—

(1) bona fide farmers and ranchers and the producers or harvesters of aquatic products, for agricultural or aquatic purposes and other requirements of such borrowers, including financing for basic processing and marketing directly related to the operations of the borrower and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products, except that the operations of the borrower shall supply some portion of the total processing or marketing for which financing is extended, except that the aggregate of the financing provided by any association for basic processing and marketing directly related to the operations of farmers, ranchers, and producers or harvesters of aquatic products, if the operations of the applicant supply less than 20 percent of the total processing or marketing for which financing is extended, shall not exceed 15 percent of the total of all outstanding loans of all associations in the district at the end of its preceding fiscal year;

(2) rural residents for housing financing in rural areas, under regulations of the Farm Credit Administration; and

(3) persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs.

(b) Rural housing

(1) In general

Rural housing financed under this part shall be for single-family, moderate-priced dwellings and the appurtenances of such not inconsistent with the general quality and standards of housing existing in, or planned or rec-

ommended for, the rural area where it is located.

(2) Limitation

The aggregate of such housing loans in an association to persons other than farmers or ranchers shall not exceed 15 percent of the outstanding loans at the end of its preceding fiscal year except on prior approval by the Farm Credit Bank of the district. The aggregate of such housing loans in any farm credit district shall not exceed 15 percent of the outstanding loans of all associations in the district at the end of the preceding fiscal year.

(3) Rural areas

For rural housing purposes under this section the term ''rural areas'' shall not be defined to include any city or village having a population in excess of 2,500 inhabitants.

(4) Equipment

Each association may own and lease, or lease with option to purchase, to stockholders of the association equipment needed in the operations of the stockholder.

(c) Interest rates and charges

(1) In general

Loans authorized in subsection (a) of this section shall bear such rate or rates of interest as are determined under standards prescribed by the board of the bank subject to the provisions of section 2205 of this title, and shall be made upon such terms, conditions, and upon such security, if any, as shall be authorized in such standards.

(2) Setting of rates

In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers, at the lowest reasonable cost on a sound business basis, taking into account the cost of money to the association, necessary reserves and expenses of the association, and services provided to borrowers and members.

(3) Varying rates

The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan in accordance with the rate or rates currently being charged by the association.

(4) Prior approval

Such standards may require prior approval of the bank on certain classes of loans, and may authorize a continuing commitment to a borrower of a line of credit.

(d) Special district rule

(1) Provision of credit and technical assistance outside service territory

Notwithstanding any territorial limitation in the charter of a production credit association located in a district in which there are only two such associations, the Farm Credit Administration Board, on request of such association, may permit such association to provide credit and technical assistance to any borrower who is denied credit by the other production credit association in the district if the Board determines that such other production credit association in the district is unduly restrictive in the application of credit standards.

(2) Timing of determination

If the Farm Credit Administration Board approves the extension of credit and technical assistance under paragraph (1), the association shall approve or deny the application for credit within 90 days after receipt of the application from the borrower.

(Pub. L. 92–181, title II, §2.4, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1632; amended Pub. L. 100–399, title IV, §401(p), (q), Aug. 17, 1988, 102 Stat. 997; Pub. L. 101–624, title XVIII, §1832(b), Nov. 28, 1990, 104 Stat. 3832.)

PRIOR PROVISIONS

A prior section 2075, Pub. L. 92–181, title II, §2.4, Dec. 10, 1971, 85 Stat. 594; Pub. L. 95–443, Oct. 10, 1978, 92 Stat. 1066; Pub. L. 96–592, title II, §204, Dec. 24, 1980, 94 Stat. 3441; Pub. L. 99–509, title I, §1033(b), Oct. 21, 1986, 100 Stat. 1877, related to terms, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–624 substituted ''some portion of the total processing or marketing for which financing is extended, except that the aggregate of the financing provided by any association for basic processing and marketing directly related to the operations of farmers, ranchers, and producers or harvesters of aquatic products, if the operations of the applicant supply less than 20 percent of the total processing or marketing for which financing is extended, shall not exceed 15 percent of the total of all outstanding loans of all associations in the district at the end of its preceding fiscal year'' for ''at least 20 percent, or such larger percent as is required by the supervising bank under regulations of the Farm Credit Administration, of the total processing or marketing for which financing is extended''.

1988—Subsec. (b)(1). Pub. L. 100–399, §401(p), substituted ''this part'' for ''this subchapter'' and substituted ''or planned'' for ''planned''.

Subsec. (d). Pub. L. 100–399, §401(q), added subsec. (d).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2076. Other services

Each production credit association may provide technical assistance to borrowers, applicants, and members and may make available to them at their option such financial related services appropriate to their on-farm and aquatic operations as is determined feasible by the board of directors of each Farm Credit Bank, under regulations prescribed by the Farm Credit Administration.

(Pub. L. 92–181, title II, §2.5, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1633.)

PRIOR PROVISIONS

A prior section 2076, Pub. L. 92–181, title II, §2.5, Dec. 10, 1971, 85 Stat. 595; Pub. L. 96–592, title II, §205, Dec. 24, 1980, 94 Stat. 3442; Pub. L. 100–233, title III, §305, Jan. 6, 1988, 101 Stat. 1621, related to services related to borrowers' operations, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

§ 2076a. Liens on stock

Except with regard to stock or participation certificates held by other Farm Credit System institutions, each production credit association shall have a first lien on stock and participation certificates the association issues, on allocated surplus, and on investments in equity reserve, for any indebtedness of the holder of the capital investments and, in the case of equity reserves, for charges for association losses in excess of reserves and surpluses.

(Pub. L. 92–181, title II, § 2.6, as added Pub. L. 101–624, title XVIII, § 1833(2), Nov. 28, 1990, 104 Stat. 3832.)

PRIOR PROVISIONS

A prior section 2.6 of Pub. L. 92–181 was renumbered section 2.7 and is classified to section 2077 of this title.

EFFECTIVE DATE

Section effective Jan. 7, 1988, see section 1861(d) of Pub. L. 101–624, set out as an Effective Date of 1990 Amendment note under section 2001 of Title 7, Agriculture.

§ 2077. Taxation

Each production credit association and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such associations shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority, except that interest on such obligations shall be subject to Federal income taxation in the hands of the holder.

(Pub. L. 92–181, title II, § 2.7, formerly § 2.6, as added Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1633; amended Pub. L. 100–399, title IV, § 401(r), Aug. 17, 1988, 102 Stat. 998; renumbered § 2.7, Pub. L. 101–624, title XVIII, § 1833(1), Nov. 28, 1990, 104 Stat. 3832.)

PRIOR PROVISIONS

A prior section 2077, Pub. L. 92–181, title II, § 2.6, Dec. 10, 1971, 85 Stat. 595; Pub. L. 96–592, title II, § 206, Dec. 24, 1980, 94 Stat. 3442; Pub. L. 99–205, title II, § 205(e)(7), (8), Dec. 23, 1985, 99 Stat. 1704; Pub. L. 100–233, title VIII, §§ 802(k), 805(f), Jan. 6, 1988, 101 Stat. 1711, 1715, related to net earnings, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

A prior section 2078, Pub. L. 92–181, title II, § 2.7, Dec. 10, 1971, 85 Stat. 597; Pub. L. 99–205, title II, § 205(e)(9), Dec. 23, 1985, 99 Stat. 1704, related to distribution of assets on liquidation, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

A prior section 2079, Pub. L. 92–181, title II, § 2.8, Dec. 10, 1971, 85 Stat. 597; Pub. L. 100–399, title IX, § 901(a), Aug. 17, 1988, 102 Stat. 1007, related to taxation, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

AMENDMENTS

1988—Pub. L. 100–399 substituted ''interest,'' for ''interest'' and inserted '', except that interest on such obligations shall be subject to Federal income taxation in the hands of the holder''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

PART B—FEDERAL LAND BANK ASSOCIATIONS

AMENDMENTS

1988—Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1634, substituted ''Federal Land Bank Associations'' for ''Production Credit Associations'' as heading for part B.

§ 2091. Organizations; articles; charters; powers of the Farm Credit Administration

(a) Charter

Each Federal land bank association shall continue as a federally chartered instrumentality of the United States.

(b) Organization

(1) In general

A Federal land bank association may be organized by any group of 10 or more persons desiring to borrow money from a Farm Credit Bank under section 2015(a) of this title, including persons to whom the Farm Credit Bank has made a loan directly or through an agent and has taken as security real estate located in the territory proposed to be served by the association.

(2) Articles of association

(A) Description of territory

The articles of association shall describe the territory within which the association proposes to carry on its operations.

(B) Submission to FCB

Proposed articles shall be forwarded to the Farm Credit Bank for the district, accompanied by an agreement to subscribe on behalf of the association for stock in accordance with the bylaws of the Farm Credit Bank.

(C) Stock purchase

Association stock may be paid for by surrendering for cancellation stock in the bank held by a borrower and the issuance of an equivalent amount of stock to such borrower in the association.

(D) Statement

The articles shall be accompanied by a statement signed by each of the members of the proposed association establishing—

(i) the individual's eligibility and request for a Farm Credit Bank loan;

(ii) that the real estate with respect to which the individual desires the loan for is not being served by another Federal land bank association; and

(iii) that the individual is or will become a stockholder in the proposed association.

(E) Submission to FCA

A copy of the articles of association shall be forwarded to the Farm Credit Administration with the recommendations of the bank concerning the need for the proposed association in order to adequately serve the credit needs of eligible persons in the proposed territory and a statement as to wheth-

er or not the territory includes any territory described in the charter of another Federal land bank association.

(3) Denials of charters

The Farm Credit Administration for good cause shown may deny the charter applied for.

(4) Approval of articles

On the approval of the proposed articles by the Farm Credit Administration and the issuance of such charter, the association shall become as of such date a federally chartered body corporate and an instrumentality of the United States.

(c) FCA authority on organization

The Farm Credit Administration shall have power, in the terms of the charter, under rules and regulations prescribed by the Farm Credit Administration—

(1) to provide for the organization of the association;

(2) to provide for the initial amount of stock of the association;

(3) to provide for the territory within which the association may carry on its operations; and

(4) to approve amendments to the charter of such association.

(Pub. L. 92–181, title II, §2.10, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1634; amended Pub. L. 100–399, title IV, §401(s), (t), Aug. 17, 1988, 102 Stat. 998.)

PRIOR PROVISIONS

A prior section 2091, Pub. L. 92–181, title II, §2.10, Dec. 10, 1971, 85 Stat. 597; Pub. L. 96–592, title II, §207, Dec. 24, 1980, 94 Stat. 3442; Pub. L. 99–205, title II, §205(e)(10), Dec. 23, 1985, 99 Stat. 1704; Pub. L. 100–233, title VIII, §§802(*l*), 805(g), Jan. 6, 1988, 101 Stat. 1711, 1715, related to organization and charters of production credit associations, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100–399, §401(s)(1), inserted ''under section 2015(a) of this title'' after ''a Farm Credit Bank''.

Subsec. (b)(2)(D)(i). Pub. L. 100–399, §401(s)(2), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the individual's eligibility for, and request or need of the individual of a Farm Credit Bank loan;''.

Subsec. (c). Pub. L. 100–399, §401(t), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Farm Credit Administration shall have power, in the terms of the charter, under rules and regulations prescribed by the Farm Credit Administration or by approving the bylaws of the association, to provide for the—

''(1) organization of the association;

''(2) the initial amount of stock of such association;

''(3) the territory within which the operations of the association may be carried on; and

''(4) to direct at any time changes in the charter of such association as the Farm Credit Administration finds necessary in accomplishing the purposes of this chapter.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2092. Board of directors

Each Federal land bank association shall elect from its voting shareholders a board of directors of such number, for such terms, in such manner, and with such qualifications as may be required by its bylaws except that, at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, stockholder, or agent of a System institution.

(Pub. L. 92–181, title II, §2.11, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1635; amended Pub. L. 102–237, title V, §502(d), Dec. 13, 1991, 105 Stat. 1868.)

PRIOR PROVISIONS

A prior section 2092, Pub. L. 92–181, title II, §2.11, Dec. 10, 1971, 85 Stat. 598, related to board of directors, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1991—Pub. L. 102–237 substituted ''stockholder, or agent'' for ''or stockholder''.

§ 2093. General corporate powers

Each Federal land bank association shall be a body corporate and, subject to supervision of the Farm Credit Bank for the district and the regulation of the Farm Credit Administration, shall have the power to—

(1) adopt and use a corporate seal;

(2) have succession until dissolved under the provisions of this chapter or other Act of Congress;

(3) make contracts;

(4) sue and be sued;

(5) acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real estate and personal property necessary or convenient to the business of the association;

(6) operate under the direction of the board of directors of the association in accordance with this chapter;

(7) provide by its board of directors for a manager or other chief executive officer, and provide for such other officers or employees as may be necessary, including joint employees as provided in this chapter, define the duties of such, and require surety bonds or make other provision against losses occasioned by employees, except that no director shall, within one year after the date when such director ceases to be a member of the board, serve as a salaried employee of the association on the board of which such director served;

(8) prescribe, by its board of directors, its bylaws that shall be consistent with law, and that shall provide for—

(A) the classes of its stock and the manner in which such stock shall be issued, transferred, and retired; and

(B) the manner in which it is to—

(i) select officers and employees;

(ii) acquire, hold, and transfer property;

(iii) conduct general business; and

(iv) exercise and enjoy the privileges granted to it by law;

(9) accept applications for Farm Credit Bank loans and receive from such bank and disburse to the borrowers the proceeds of such loans;

(10) subscribe to stock of the Farm Credit Bank of the district;

(11) elect by its board of directors a loan committee with power to elect applicants for membership in the association and recommend loans to the Farm Credit Bank, or with the approval of the Farm Credit Bank, delegate the election of applicants for membership and the approval of loans within specified limits to other committees or to authorized employees of the association;

(12) on agreement with the bank, take such additional actions with respect to applications and loans and perform such functions as are vested by law in the Farm Credit Banks as may be agreed to by the association;

(13) endorse and become liable to the bank on loans it makes to association members;

(14) receive such compensation and deduct such sums from loan proceeds with respect to each loan as may be agreed between the association and the bank and make such other charges for services as may be approved by the bank;

(15) provide technical assistance to members, borrowers, applicants, and other eligible persons and make available to them, at their option, such financial related services appropriate to their operations as it determines, with Farm Credit Bank approval, are feasible, under regulations of the Farm Credit Administration;

(16) borrow money from the bank and, with the approval of such bank, borrow from and issue association notes or other obligations to any commercial bank or other financial institution;

(17) buy and sell obligations of or insured by the United States or any agency thereof or of any banks of the Farm Credit System;

(18) invest association funds in such obligations as may be authorized in regulations of the Farm Credit Administration and approved by the bank and deposit securities and current funds of the association with any member bank of the Federal Reserve System, with the Farm Credit Bank, or with any bank insured by the Federal Deposit Insurance Corporation, and pay fees therefor and receive interest thereon as may be agreed;

(19) perform such other function delegated to the association by the Farm Credit Bank of the district;

(20) exercise by its board of directors or authorized officers or agents all such incidental powers as may be necessary or expedient in the conduct of its business;

(21) contribute to the capital of the bank; and

(22) operate as an originator and become certified as a certified facility under subchapter VIII of this chapter.

(Pub. L. 92–181, title II, § 2.12, as added Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1635; amended Pub. L. 100–399, title IV, § 401(u), Aug. 17, 1988, 102 Stat. 998.)

PRIOR PROVISIONS

A prior section 2093, Pub. L. 92–181, title II, § 2.12, Dec. 10, 1971, 85 Stat. 598; Pub. L. 96–592, title II, § 208, Dec. 24, 1980, 94 Stat. 3442; Pub. L. 99–205, title II, § 205(e)(11), Dec. 23, 1985, 99 Stat. 1704; Pub. L. 100–233, title VII, § 705(d), Jan. 6, 1988, 101 Stat. 1707; Pub. L. 100–399, title VI, § 604, Aug. 17, 1988, 102 Stat. 1006, related to general corporate powers, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

AMENDMENTS

1988—Par. (7). Pub. L. 100–399, § 401(u)(1), substituted ''provide by its board of directors for'' for ''elect by its board of directors'' and ''serve as'' for ''be elected or designated''.

Par. (8). Pub. L. 100–399, § 401(u)(2), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''prescribe by its board of directors, association bylaws, not inconsistent with law, providing for the classes of association stock and the manner in which such stock shall be issued, transferred, and retired; the officers and employees of the association elected or provided for, the property of the association that is acquired, held, and transferred, the general business of the association conducted, and the privileges granted to the association by law exercised and enjoyed;''.

Par. (12). Pub. L. 100–399, § 401(u)(3), substituted ''agreed to by'' for ''agreed to or delegated to''.

Par. (22). Pub. L. 100–399, § 401(u)(4)–(6), added par. (22).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2094. Federal land bank association capitalization

In accordance with section 2154a of this title, the Federal land bank association shall provide, through its bylaws and subject to Farm Credit Administration regulations, for its capitalization and the manner in which its stock shall be issued, held, transferred, and retired and its earnings distributed.

(Pub. L. 92–181, title II, § 2.13, as added Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1636.)

PRIOR PROVISIONS

A prior section 2094, Pub. L. 92–181, title II, § 2.13, Dec. 10, 1971, 85 Stat. 599; Pub. L. 96–592, title II, § 209, Dec. 24, 1980, 94 Stat. 3442; Pub. L. 99–205, title II, § 205(e)(12)–(14), title III, § 304(b), Dec. 23, 1985, 99 Stat. 1705, 1708; Pub. L. 100–233, title VIII, § 805(h), Jan. 6, 1988, 101 Stat. 1715, related to stock and participation certificates, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

§ 2095. Repealed. Pub. L. 100–399, title IV, § 401(v), Aug. 17, 1988, 102 Stat. 999

Section, Pub. L. 92–181, title II, § 2.14, as added Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1636, provided that whenever any Federal land bank association was liquidated, a sum equal to its reserve account as required in this chapter was to be paid and become the property of the bank in which such association was a shareholder.

A prior section 2095, Pub. L. 92–181, title II, § 2.14, Dec. 10, 1971, 85 Stat. 600; Pub. L. 99–205, title II, § 205(e)(15), title VI, § 605, Dec. 23, 1985, 99 Stat. 1705, 1711, related to application of earnings, restoration of capital impairment, and surplus account, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

CONSTRUCTION OF REPEAL

Section 401(v) of Pub. L. 100–399 repealed this section and provided that this chapter be applied and administered as if this section had not been enacted.

§ 2096. Agreements for sharing gains or losses

Each Farm Credit Bank may enter into agreements with Federal land bank associations in its district for sharing the gain or losses on loans or on security held therefor or acquired in liquidation thereof, and associations are authorized to enter into any such agreements and also, subject to bank approval, agreements with other associations in the district for sharing the risk of loss on loans endorsed by each such association. As may be authorized by the bank in accordance with regulations of the Farm Credit Administration, associations also may enter into agreements with other Farm Credit System institutions to share loan and other losses, whether to protect against capital impairment or for any other purpose.

(Pub. L. 92–181, title II, § 2.14, formerly § 2.15, as added Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1636; renumbered § 2.14, Pub. L. 100–399, title IV, § 401(w), Aug. 17, 1988, 102 Stat. 999.)

PRIOR PROVISIONS

A prior section 2096, Pub. L. 92–181, title II, § 2.15, Dec. 10, 1971, 85 Stat. 601; Pub. L. 96–592, title II, § 210, Dec. 24, 1980, 94 Stat. 3442; Pub. L. 99–205, title II, § 205(b), Dec. 23, 1985, 99 Stat. 1703; Pub. L. 100–233, title IV, § 431(f), title VIII, § 805(i), Jan. 6, 1988, 101 Stat. 1660, 1715; Pub. L. 100–399, title IV, § 415(b), Aug. 17, 1988, 102 Stat. 1004, related to short- and intermediate-term loans, participation, other financial assistance, terms, conditions, interest, and security, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

A prior section 2.14 of Pub. L. 92–181 was classified to section 2095 of this title and was repealed by Pub. L. 100–399, § 401(v).

§ 2097. Liens on stock

Each Federal land bank association shall have a first lien on the stock and participation certificates it issues, except on stock or participation certificates held by other Farm Credit System institutions, for the payment of any liability of the stockholder to the association or to the bank, or to both of them.

(Pub. L. 92–181, title II, § 2.15, formerly § 2.16, as added Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1637; renumbered § 2.15, Pub. L. 100–399, title IV, § 401(w), Aug. 17, 1988, 102 Stat. 999.)

PRIOR PROVISIONS

A prior section 2097, Pub. L. 92–181, title II, § 2.16, Dec. 10, 1971, 85 Stat. 602; Pub. L. 96–592, title II, § 211, Dec. 24, 1980, 94 Stat. 3443, related to other services, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

A prior section 2.15 of Pub. L. 92–181 was renumbered section 2.14 and is classified to section 2096 of this title.

§ 2098. Taxation

Each Federal land bank association and the capital, reserves, and surplus thereof, and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate held by a Federal land bank association to the same extent, according to its value, as other similar property held by other persons is taxed. The mortgages held by the Federal land bank associations and the notes, bonds, debentures, and other obligations issued by the associations shall be considered and held to be instrumentalities of the United States and, as such, they and the income therefrom shall be exempt from all Federal, State, municipal, and local taxation, other than Federal income tax liability of the holder thereof under the Public Debt Act of 1941 (31 U.S.C. 3124).

(Pub. L. 92–181, title II, § 2.16, formerly § 2.17, as added Pub. L. 100–233, title IV, § 401, Jan. 6, 1988, 101 Stat. 1637; renumbered § 2.16 and amended Pub. L. 100–399, title IV, § 401(w), (x), Aug. 17, 1988, 102 Stat. 999.)

PRIOR PROVISIONS

A prior section 2098, Pub. L. 92–181, title II, § 2.17, Dec. 10, 1971, 85 Stat. 602; Pub. L. 99–205, title II, § 205(e)(16), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title VIII, § 805(j), Jan. 6, 1988, 101 Stat. 1715, related to taxation, prior to the general amendment of this subchapter by Pub. L. 100–233, § 401.

A prior section 2.16 of Pub. L. 92–181 was renumbered section 2.15 and is classified to section 2097 of this title.

AMENDMENTS

1988—Pub. L. 100–399, § 401(x), substituted ''derived therefrom, shall'' for ''derived therefrom shall'', ''by the associations'' for ''by the banks'', and ''3124'' for ''742(a)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

SUBCHAPTER III—BANKS FOR COOPERATIVES

PART A—BANKS FOR COOPERATIVES

AMENDMENTS

1988—Pub. L. 100–233, title IV, § 415(1), Jan. 6, 1988, 101 Stat. 1642, inserted part A heading.

§ 2121. Establishment; titles; branches

The banks for cooperatives established pursuant to sections 2 and 30 of the Farm Credit Act of 1933, as amended, shall continue as federally chartered instrumentalities of the United States. The Farm Credit Administration shall approve amendments consistent with this chapter to charters and organizational certificates of banks for cooperatives. Unless an existing bank for cooperatives is merged with another bank, there shall be a bank for cooperatives in each farm credit district and a Central Bank for Cooperatives. A bank for cooperatives may include in its title the name of the city in which it is located or other geographical designation. The Central Bank for Cooperatives may be located in such place as its board of directors may determine with the approval of the Farm Credit Administration. When authorized by the Farm Credit Administration each bank for cooperatives may establish such branches or other offices as may be appropriate for the effective operation of its business.

(Pub. L. 92–181, title III, § 3.0, Dec. 10, 1971, 85 Stat. 602; Pub. L. 100–233, title IV, § 414(b), title VIII, § 802(m), Jan. 6, 1988, 101 Stat. 1641, 1711; Pub. L. 100–399, title IV, § 406(b), title IX, § 901(c), Aug. 17, 1988, 102 Stat. 1000, 1007.)

REFERENCES IN TEXT

Sections 2 and 30 of the Farm Credit Act of 1933, as amended, referred to in text, were classified to sections 1134 and 1134f, respectively, of this title prior to their repeal by section 5.26 of Pub. L. 92–181, which enacted this chapter.

AMENDMENTS

1988—Pub. L. 100–399, § 901(c), substituted ''merged with another bank'' for ''merged with one or more other such banks under section 2181 of this title''.

Pub. L. 100–233, § 802(m), substituted ''The Farm Credit Administration shall approve amendments consistent with this chapter to charters and organizational certificates of banks for cooperatives'' for ''Their charters or organization certificates may be modified from time to time by the Farm Credit Administration, not inconsistent with the provisions of this subchapter, as may be necessary or expedient to implement this chapter''.

Pub. L. 100–233, § 414(b), which designated existing provisions as subsec. (a), and added subsec. (b) reading ''Each bank for cooperatives shall elect from its voting stockholders a board of directors of such number, for such term, in such manner, and with such qualifications as may be required in its bylaws, except that, at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, or stockholder of a System institution.'', was repealed by section 406(b) of Pub. L. 100–399. See Construction of 1988 Amendment note below.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

CONSTRUCTION OF 1988 AMENDMENT

Section 406(b) of Pub. L. 100–399 provided that section 414(b) of Pub. L. 100–233, cited as a credit to this section, is repealed and that the Agricultural Credit Act of 1987 (Pub. L. 100–233) and this chapter shall be applied and administered as if such section had not been enacted.

VOLUNTARY MERGER OF BANKS FOR COOPERATIVES

Section 413 of Pub. L. 100–233, as amended by Pub. L. 100–399, title IV, § 405, Aug. 17, 1988, 102 Stat. 1000, provided that:

''(a) SUBMISSION OF PROPOSAL.—

''(1) SPECIAL COMMITTEE.—

''(A) IN GENERAL.—Not later than 15 days after the date of the enactment of this section [Jan. 6, 1988], a special committee shall be selected pursuant to subparagraph (B), for the purpose of developing a proposal for the voluntary merger of the banks for cooperatives.

''(B) COMPOSITION.—The special committee selected under subparagraph (A) shall be composed of—

''(i) one member of each district board elected by the voting stockholders of the bank for cooperatives in the district; and

''(ii) one member chosen from the board of directors of the Central Bank for Cooperatives by the board of such Bank.

''(C) DEVELOPMENT OF PLAN.—Not later than 75 days after the date of the enactment of this section [Jan. 6, 1988], the special committee shall develop a plan of merger for all such banks and the Central Bank for Cooperatives into a National Bank for Cooperatives.

''(2) PREREQUISITES TO MERGER.—

''(A) SUBMISSION TO FCA.—On completion of the plan of merger pursuant to paragraph (1)(C), the special committee shall submit the proposed plan, together with all information that is to be distributed to the stockholders concerning such plan, to the Farm Credit Administration for approval.

''(B) EXPEDITED REVIEW.—Not later than 30 days after the Farm Credit Administration receives the plan of merger, the Administration shall promptly review such plan and advise the special committee concerning any required changes that are necessary to the plan.

''(3) SUBMISSION TO STOCKHOLDERS.—On approval of the plan by the Farm Credit Administration, the special committee shall, under such procedures as may be established by the committee, submit the plan and recommendations to all voting stockholders of the district banks for cooperatives and the Central Bank for Cooperatives.

''(b) VOTING REQUIREMENTS.—

''(1) MAJORITY VOTE REQUIRED.—An approval of the plan of merger developed and submitted under subsection (a) shall—

''(A) require a majority vote of the stockholders of each district bank for cooperatives voting, in person or by proxy, at a duly authorized stockholders' meeting, computed both—

''(i) in accordance with the requirement that, except as provided in section 3.3(d) [12 U.S.C. 2124(d)], each cooperative that is the holder of voting stock in the bank for cooperatives shall be entitled to cast one vote; and

''(ii) on the basis of the total equity interests in the bank (including allocated, but not unallocated, surplus and reserves) held by such stockholders;

''(B) require a majority vote of the voting stockholders of the Central Bank for Cooperatives voting on a one-bank-one-vote basis;

''(C) take place not later than 180 days after the date of the enactment of this section [Jan. 6, 1988]; and

''(D) take place prior to any other merger vote involving a bank for cooperatives.

''(2) APPROVAL BY ALL BANKS FOR COOPERATIVES.—If the stockholders of all of the banks for cooperatives approve the merger, the merger shall take place.

''(3) EFFECT OF LESSER VOTE.—If the stockholders of more than one but fewer than all of the banks approve the plan, each such bank whose stockholders voted to approve the merger shall be merged into a single bank for cooperatives, as provided in paragraphs (4) or (5).

''(4) NATIONAL BANK FOR COOPERATIVES.—

''(A) CREATION.—If the stockholders of eight or more of the district banks for cooperatives approve the merger, such banks, and the Central Bank for Cooperatives, shall be merged into a single bank, which shall be referred to as the 'National Bank for Cooperatives'.

''(B) SERVICES PROVIDED.—The National Bank for Cooperatives may offer credit and related services to eligible borrowers located within any territory that may be served by Farm Credit System institutions under section 5.0 [12 U.S.C. 2221], or to any borrower otherwise eligible under section 3.7(b) [12 U.S.C. 2128(b)].

''(5) UNITED BANK FOR COOPERATIVES.—

''(A) CREATION.—If the stockholders of more than one but fewer than eight of the district banks approve the plan, each such bank, and the Central Bank for Cooperatives (if approved by a numerical majority of its stockholders), shall be merged into a single bank, which shall be referred to as the 'United Bank for Cooperatives'.

''(B) SERVICES PROVIDED.—The United Bank for Cooperatives shall offer credit and related services only in the territory included, as of the date of the enactment of this section [Jan. 6, 1988], within the boundaries of the districts that had been served by the constituent banks of the United Bank for Cooperatives, and to any borrower otherwise eligible under section 3.7(b) [12 U.S.C. 2128(b)].

''(6) NONCONSENTING BANKS.—

''(A) IN GENERAL.—

''(i) NATIONAL BANK FOR COOPERATIVES.—Any of the district banks whose stockholders did not approve the plan of merger may offer credit and related services to any eligible borrowers within any territory or area that may be served by the National Bank.

''(ii) UNITED BANK FOR COOPERATIVES.—Any of the district banks whose stockholders did not approve the plan of merger shall continue as district banks for cooperatives and shall continue to serve only the territory within the boundaries of the district that such banks served as of the date of the enactment of this section [Jan. 6, 1988].

''(B) NONDISCRIMINATION.—Any district bank whose stockholders did not approve the plan of merger shall be entitled to the availability, from the National Bank for Cooperatives or the United Bank for Cooperatives, as the case may be, of the same credit and related services now provided by the Central Bank for Cooperatives as of the date of the enactment of this section [Jan. 6, 1988], regardless of the decision not to merge.

''(C) SUBSEQUENT MERGERS.—Any district bank referred to in subparagraph (A) may subsequently merge with the National Bank for Cooperatives or the United Bank for Cooperatives, as the case may be, on the approval of the voting stockholders of both banks proposing to merge based on the voting requirement of subsection (b)(1).

''(c) REFERENCES.—References in this section to voting stockholders shall include subscribers to the guaranty fund.''

BANK FOR COOPERATIVES INITIAL BOARD OF DIRECTORS

Section 414(a) of Pub. L. 100–233, as amended by Pub. L. 100–399, title IV, § 406(a), Aug. 17, 1988, 102 Stat. 1000, provided that: ''Notwithstanding section 3.2 [probably means section 3.2 of Pub. L. 92–181, 12 U.S.C. 2123], the initial board of each district bank for cooperatives shall be composed of the members of the district board (which is dissolved upon the creation of the district Farm Credit Bank) elected by the stockholders of the bank for cooperatives and one member elected by the other two members, which member shall not be a director, officer, employee, or stockholder of a System institution. The initial board shall operate for such term as is agreed to by the members of the board, except that such period shall not exceed two years. Thereafter, the board shall be elected and serve in accordance with section 3.0 of the Farm Credit Act of 1971 [12 U.S.C. 2121].''

§ 2122. Corporate existence; general corporate powers

Each bank for cooperatives shall be a body corporate and, subject to regulation by the Farm Credit Administration, shall have power to—

(1) Adopt and use a corporate seal.

(2) Have succession until dissolved under the provisions of this chapter or other Act of Congress.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real and personal property necessary or convenient to its business.

(6) Make loans and commitments for credit, provide services and other assistance as authorized in this chapter, and charge fees therefor.

(7) Operate under the direction of its board of directors.

(8) Elect by its board of directors a president, any vice presidents, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, including joint employees as provided in this chapter, define their duties and require surety bonds or make other provisions against losses occasioned by employees.

(9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, or agents elected or provided for; its property acquired, held, and transferred; its loans made; its general business conducted; and the privileges granted it by law exercised and enjoyed.

(10) Borrow money and issue notes, bonds, debentures, or other obligations individually or in concert with one or more other banks of the System, of such character, and such terms, conditions, and rates of interest as may be determined.

(11)(A) Participate in loans under this subchapter with one or more other banks for cooperatives and with commercial banks and other financial institutions upon such terms as may be agreed among them, and participate with one or more other Farm Credit System institutions in loans made under this subchapter or other subchapters of this chapter on the basis prescribed in section 2206 of this title.

(B)(i) Participate in any loan of a type otherwise authorized under this subchapter that is made to a similar entity by any institution in the business of extending credit, including purchases of participations in loans to finance international trade transactions involving the sale of agricultural commodities or the products thereof, except that—

(I) a bank for cooperatives may not participate in a loan—

(aa) if the participation would cause the total amount of all loan participations by the bank under this subparagraph involving a single credit risk to exceed 10 percent of the bank's total capital; or

(bb) if the participation by the bank will itself equal or exceed 50 percent of the principal of the loan or, when taken together with participations in the loan by other Farm Credit System institutions, will cause the cumulative amount of the participations by all Farm Credit System institutions in the loan to equal or exceed 50 percent of the principal of the loan;

(II) a bank for cooperatives may not participate in a loan to a similar entity under this subparagraph if the similar entity has a loan or loan commitment outstanding with a Farm Credit Bank or an association chartered under this chapter, unless agreed to by the Bank or association; and

(III) the cumulative amount of participations that a bank for cooperatives may have outstanding under this subparagraph at any time may not exceed 15 percent of the bank's total assets.

(ii) As used in this subparagraph, the term ''similar entity'' means an entity that, while not eligible for a loan under section 2129 of this title, is functionally similar to an entity eligible for a loan under section 2129 of this title in

that it derives a majority of its income from, or has a majority of its assets invested in, the conduct of activities functionally similar to those conducted by the entity.

(iii) As used in this subparagraph, the term ''participate'' or ''participation'' refers to multilender transactions, including syndications, assignments, loan participations, subparticipations, or other forms of the purchase, sale, or transfer of interests in loans, other extensions of credit, or other technical and financial assistance.

(12) Deposit its securities and its current funds with any member bank of the Federal Reserve System or any insured State nonmember bank (within the meaning of section 1813 of this title) or, to the extent necessary to facilitate transactions which may be financed under section 2128(b) of this title, any other financial organization, domestic or foreign, as may be authorized by its board of directors, and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; may be employed as a fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under the provisions of this subsection shall be invested in loans or bonds or other obligations of the bank.

(13)(A) Buy and sell obligations of or insured by the United States or of any agency thereof, or securities backed by the full faith and credit of any such agency and make such other investments as may be authorized under regulations issued by the Farm Credit Administration.

(B) As may be authorized by its board of directors, buy from and sell to Farm Credit System institutions interests in loans and in other financial assistance extended and nonvoting stock.

(C) As may be authorized by its board of directors, and solely for the purposes of obtaining credit information and other services needed to facilitate transactions which may be financed under section 2128(b) of this title, invest in ownership interests in foreign business entities that are principally engaged in providing credit information to and performing such servicing functions for their members in connection with the members' international activities.

(14) Conduct studies and adopt standards for lending.

(15) Amend and modify loan contracts, documents, and payment schedules, and release, subordinate, or substitute security for any of them.

(16) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the bank.

(17) As may be authorized by the board of directors, maintain credit balances and pay or receive fees or interest thereon, for the purpose of assisting in the transfer of funds to or from parties to transactions that may be financed under section 2128(b) of this title: *Provided, however*, That nothing herein shall authorize the banks for cooperatives to engage in the business of accepting domestic deposits.

(18) As may be authorized by its board of directors, agree with other Farm Credit System institutions to share loan or other losses, whether to protect against capital impairment or for any other purpose.

(Pub. L. 92–181, title III, § 3.1, Dec. 10, 1971, 85 Stat. 602; Pub. L. 96–592, title III, § 301, Dec. 24, 1980, 94 Stat. 3443; Pub. L. 99–205, title II, § 205(e)(1), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title VIII, § 802(n), Jan. 6, 1988, 101 Stat. 1712; Pub. L. 100–399, title IX, § 901(b), Aug. 17, 1988, 102 Stat. 1007; Pub. L. 102–552, title V, § 502, Oct. 28, 1992, 106 Stat. 4130; Pub. L. 103–376, §§ 2, 6, Oct. 19, 1994, 108 Stat. 3497, 3500; Pub. L. 107–171, title V, § 5401(a), May 13, 2002, 116 Stat. 349.)

AMENDMENTS

2002—Par. (11)(B)(iii), (iv). Pub. L. 107–171 redesignated cl. (iv) as (iii) and struck out former cl. (iii) which read as follows: ''With respect to similar entities that are eligible to borrow from a Farm Credit Bank or association under subchapter I or II of this chapter, the authority of a bank for cooperatives to participate in loans to the entities under this subparagraph shall be subject to the prior approval of the Farm Credit Bank or Banks in whose chartered territory the entity is eligible to borrow. The approval may be granted on an annual basis and under such terms and conditions as may be agreed on between the bank for cooperatives and the Farm Credit Bank or Banks that serve the territory.''

1994—Par. (11)(B)(i)(I)(bb). Pub. L. 103–376, § 6, substituted ''other Farm Credit System institutions'' for ''the other banks for cooperatives under this subparagraph'' and ''all Farm Credit System institutions'' for ''all banks for cooperatives''.

Par. (11)(B)(iv). Pub. L. 103–376, § 2, added cl. (iv).

1992—Par. (11). Pub. L. 102–552 designated existing provisions as subpar. (A) and added subpar. (B).

1988—Par. (12). Pub. L. 100–399 substituted ''(within the meaning of section 1813 of this title)'' for ''as defined in section 1812 of this title.''

Pars. (12), (13)(B), (C), (17), (18). Pub. L. 100–233 struck out ''and approved by the Farm Credit Administration'' after ''board of directors''.

1985—Pub. L. 99–205 substituted ''regulation'' for ''supervision'' in provision preceding par. (1).

Par. (13)(A). Pub. L. 99–205 inserted ''under regulations issued'' after ''authorized''.

Pars. (16) to (19). Pub. L. 99–205 struck out par. (16) respecting power of bank for cooperatives to perform any function delegated to it by the Farm Credit Administration, and redesignated pars. (17) to (19) as (16) to (18), respectively.

1980—Par. (11). Pub. L. 96–592, § 301(1), inserted provisions respecting participation with one or more other Farm Credit System institutions in loans.

Par. (12). Pub. L. 96–592, § 301(2), inserted applicability to any insured State nonmember bank and to other domestic or foreign financial organizations.

Par. (13). Pub. L. 96–592, § 301(3), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Pars. (18), (19). Pub. L. 96–592, § 301(4), added pars. (18) and (19).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2123. Board of directors

(a)(1) Each bank for cooperatives not merged into the United Bank for Cooperatives or the National Bank for Cooperatives shall elect a board of directors of such number, for such term, in such manner, and with such qualifications as may be required in its bylaws, except that at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, or stockholder of a System institution.

(2)(A) If approved by the stockholders through a bylaw amendment, the nomination and election of one member from a bank for cooperatives (other than the National Bank for Cooperatives) shall be carried out with each voting stockholder of a bank for cooperatives having one vote, plus a number of votes (or fractional part thereof) equal to—

(i) the number of stockholders eligible to vote; multiplied by

(ii) the percentage (or fractional part thereof) of the total equity interest (including allocated, but not unallocated, surplus and reserves) in the bank of all stockholders held by the individual voting stockholder at the close of the immediately preceding fiscal year of the bank.

(B) The total number of votes under this paragraph shall be the number of voting stockholders of a bank for cooperatives multiplied by two.

(b) The board of directors of the Central Bank for Cooperatives shall consist of one member elected by the board of each bank for cooperatives, including the United Bank for Cooperatives if the Central Bank for Cooperatives is not merged into such bank, and one member appointed by the Farm Credit Administration.

(Pub. L. 92–181, title III, § 3.2, Dec. 10, 1971, 85 Stat. 603; Pub. L. 99–205, title II, § 205(e)(2), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–399, title IX, § 901(d), Aug. 17, 1988, 102 Stat. 1007; Pub. L. 102–552, title V, § 503, Oct. 28, 1992, 106 Stat. 4130.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–552 designated existing provisions as par. (1) and added par. (2).

1988—Subsec. (a). Pub. L. 100–399 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''In the case of a district bank for cooperatives, the board of directors shall be the farm credit district board and in the case of the Central Bank for Cooperatives shall be a separate board of not more than thirteen members, one from each farm credit district and one at large. One district director of the Central Bank Board shall be elected by each district farm credit board and the member at large shall be appointed by the Farm Credit Administration.''

Subsec. (b). Pub. L. 100–399 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For the purposes of this section the provisions of sections 2222(b) and (c), 2225, 2226, and 2227 of this title shall apply to and shall be the authority of the Central Bank for Cooperatives the same as though it were a district bank.''

1985—Subsec. (a). Pub. L. 99–205 substituted ''Farm Credit Administration'' for ''Governor with the advice and consent of the Federal Farm Credit Board''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2124. Stock of banks for cooperatives

(a) Amount

The Capital stock of each bank for cooperatives shall be in such amount as its board determines is required for the purpose of providing adequate capital to permit the bank to meet the credit needs of borrowers from the bank and such amounts may be increased or decreased from time to time in accordance with such needs.

(b) Value

The capital stock of each bank shall be divided into shares of par value of $100 each and may be of such classes as the board may determine. Such stock may be issued in fractional shares.

(c) Eligible holders of voting stock

Voting stock may be issued or transferred to and held only by (i) cooperative associations eligible to borrow from the banks[1] (ii) other categories of persons and entities described in sections 2128 and 2129 of this title eligible to borrow from the bank, as determined by the bank's board of directors; and (iii) other banks for cooperatives, and shall not be otherwise transferred, pledged, or hypothecated except as consented to by the issuing bank under regulations of the Farm Credit Administration.

(d) Entitlement to vote

Each holder of one or more shares of voting stock which is eligible to borrow from a bank for cooperatives shall be entitled only to one vote and only in the affairs of the bank in the district in which its principal office is located unless otherwise authorized under regulations issued by the Farm Credit Administration, except that if such holder has not been a borrower from the bank in which it holds such stock within a period of two years next preceding the date fixed by the Farm Credit Administration prior to the commencement of voting, it shall not be entitled to vote.

(e) Nonvoting investment stock

Nonvoting investment stock may be issued in such series and in such amounts as may be determined by the board and may be exchanged for voting stock or sold or transferred to any person subject to the approval of the issuing bank.

(f) Participation certificates

Participation certificates may be issued to parties to whom voting stock may not be issued.

(Pub. L. 92–181, title III, § 3.3, Dec. 10, 1971, 85 Stat. 603; Pub. L. 96–592, title III, § 302, Dec. 24, 1980, 94 Stat. 3443; Pub. L. 99–205, title II, § 205(e)(3), (4), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title VIII, §§ 802(*o*), 805(k), Jan. 6, 1988,

[1] So in original. There probably should be a semicolon after ''banks''.

101 Stat. 1712, 1715; Pub. L. 110–234, title V, §§ 5402, 5403(a), May 22, 2008, 122 Stat. 1154; Pub. L. 110–246, § 4(a), title V, §§ 5402, 5403(a), June 18, 2008, 122 Stat. 1664, 1915.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–246, § 5402, which directed substitution of ''par'' for ''per'', could not be executed because ''per'' did not appear.

Subsec. (c)(ii), (iii). Pub. L. 110–246, § 5403(a), added cl. (ii) and redesignated former cl. (ii) as (iii).

1988—Subsec. (a). Pub. L. 100–233, § 802(*o*)(1), struck out '', with the approval of Farm Credit Administration,'' after ''board determines''.

Subsec. (b). Pub. L. 100–233, § 802(*o*)(2), struck out ''with the approval of the Farm Credit Administration'' after ''board may determine''.

Subsec. (d). Pub. L. 100–233, § 805(k), substituted ''by'' for ''by by'' after ''regulations issued''.

Subsec. (e). Pub. L. 100–233, § 802(*o*)(3), struck out ''and approved by the Farm Credit Administration'' after ''Board''.

1985—Subsec. (d). Pub. L. 99–205, § 205(e)(3), inserted ''under regulations issued by'' after ''authorized''.

Subsec. (e). Pub. L. 99–205, § 205(e)(4), struck out '', except for stock held by the Governor,'' before ''may be exchanged''.

1980—Subsec. (f). Pub. L. 96–592 added subsec. (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2125. Dividends

Dividends may be payable only on nonvoting investment stock, if declared by the board of directors of the bank, subject to the general direction of the Farm Credit Administration.

(Pub. L. 92–181, title III, § 3.4, Dec. 10, 1971, 85 Stat. 604; Pub. L. 99–205, title II, § 205(e)(5), title VI, § 606, Dec. 23, 1985, 99 Stat. 1705, 1711; Pub. L. 100–233, title VIII, § 805(*l*), Jan. 6, 1988, 101 Stat. 1715.)

AMENDMENTS

1988—Pub. L. 100–233 struck out ''other than stock held by the Farm Credit Administration,'' after ''investment stock,''.

1985—Pub. L. 99–205 struck out ''the Governor of'' before ''the Farm Credit Administration'' and inserted '', subject to the general direction of the Farm Credit Administration''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2126. Retirement of stock

Nonvoting investment stock and participation certificates may be called for retirement at par. With the approval of the issuing bank, the holder may elect not to have the called stock or participation certificates retired in response to a call, reserving the right to have such stock or participation certificates included in the next call for retirement. Voting stock may also be retired at par, on call or on such revolving basis as the board may determine with due regard for its total capital needs: *Provided, however*, That all equities in the district banks issued or allocated with respect to 1971 and prior years shall be retired on a revolving basis according to the year of issue with the oldest outstanding equities being first retired. Equities issued for subsequent years shall not be called or retired until equities described in the preceding sentence of this proviso have been retired.

(Pub. L. 92–181, title III, § 3.5, Dec. 10, 1971, 85 Stat. 604; Pub. L. 96–592, title III, § 303, Dec. 24, 1980, 94 Stat. 3444; Pub. L. 99–205, title II, § 205(e)(6), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title VIII, § 802(p), Jan. 6, 1988, 101 Stat. 1712.)

AMENDMENTS

1988—Pub. L. 100–233 struck out ''with approval of the Farm Credit Administration'' after ''board may determine''.

1985—Pub. L. 99–205 substituted ''Nonvoting investment stock'' for ''Any nonvoting stock held by the Governor of the Farm Credit Administration shall be retired to the extent required by section 2151(b) of this title before any other outstanding voting or nonvoting stock or participation certificates shall be retired except as may be otherwise authorized by the Farm Credit Administration. When those requirements have been satisfied, nonvoting investment stock'', and substituted ''Voting'' for ''When the requirements of section 2151(b) of this title have been met, voting''.

1980—Pub. L. 96–592 inserted provisions respecting applicability to participation certificates and struck out provisions relating to maximum amount of fair book value at retirement.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2127. Guaranty fund subscriptions in lieu of stock

If any cooperative association is not authorized under the laws of the State in which it is organized to take and hold stock in a bank for cooperatives, the bank shall, in lieu of any requirement for stock purchase, require the association to pay into or have on deposit in a guaranty fund, or the bank may retain out of the amount of the loan and credit to the guaranty fund account of the borrower, a sum equal to the amount of stock which the association would otherwise be required to own. Each reference to stock of the banks for cooperatives in this chapter shall include such guaranty fund equivalents. The holder of the guaranty fund equivalent and the bank shall each be entitled to the same rights and obligations with respect thereto as the rights and obligations associated with the class or classes of stock involved.

(Pub. L. 92–181, title III, § 3.6, Dec. 10, 1971, 85 Stat. 604.)

§ 2128. Loans, commitments, and technical and financial assistance

(a) Authorities

The banks for cooperatives are authorized to make loans and commitments to eligible cooperative associations and to extend to them other technical and financial assistance at any time (whether or not they have a loan from the bank outstanding), including but not limited to discounting notes and other obligations, guarantees, currency exchange necessary to service individual transactions that may be financed under subsection (b) of this section, collateral custody, or participation with other banks for cooperatives and commercial banks or other financial institutions in loans to eligible cooperatives, under such terms and conditions as may be determined to be feasible by the board of directors of each bank for cooperatives under regulations of the Farm Credit Administration. Such regulations may include provisions for avoiding duplication between the Central Bank and district banks for cooperatives. Each bank may own and lease, or lease with option to purchase, to stockholders eligible to borrow from the bank equipment needed in the operations of the stockholder and may make or participate in loans or commitments and extend other technical and financial assistance to other domestic parties for the acquisition of equipment and facilities to be leased to such stockholders for use in their operations in the United States.

(b) Additional authorities

(1) A bank for cooperatives is authorized to make or participate in loans and commitments to, and to extend other technical and financial assistance to a domestic or foreign party with respect to its transactions with an association that is a voting stockholder of the bank for the import of agricultural commodities or products thereof, agricultural supplies, or aquatic products through purchases, sales or exchanges, if the bank for cooperatives determines, under regulations of the Farm Credit Administration, that the voting stockholder will benefit substantially as a result of such loan, commitment, or assistance.

(2)(A) A bank for cooperatives may make or participate in loans and commitments to, and extend other technical and financial assistance to—

(i) any domestic or foreign party for the export, including (where applicable) the cost of freight, of agricultural commodities or products thereof, agricultural supplies, or aquatic products from the United States under policies and procedures established by the bank to ensure that the commodities, products, or supplies are originally sourced, where reasonably available, from one or more eligible cooperative associations described in section 2129(a) of this title on a priority basis, except that if the total amount of the balances outstanding on loans made by a bank under this clause that—

(I) are made to finance the export of commodities, products, or supplies that are not originally sourced from a cooperative, and

(II) are not guaranteed or insured, in an amount equal to at least 95 percent of the amount loaned, by a department, agency, bureau, board, commission, or establishment of the United States or a corporation wholly-owned directly or indirectly by the United States,

exceeds an amount that is equal to 50 percent of the bank's capital, then a sufficient interest in the loans shall be sold by the bank for cooperatives to commercial banks and other non-System lenders to reduce the total amount of such outstanding balances to an amount not greater than an amount equal to 50 percent of the bank's capital; and

(ii) except as provided in subparagraph (B), any domestic or foreign party in which an eligible cooperative association described in section 2129(a) of this title (including, for the purpose of facilitating its domestic business operations only, a cooperative or other entity described in section 2129(b)(1)(A) of this title) has an ownership interest, for the purpose of facilitating the domestic or foreign business operations of the association, except that if the ownership interest by an eligible cooperative association, or associations, is less than 50 percent, the financing shall be limited to the percentage held in the party by the association or associations.

(B) A bank for cooperatives shall not use the authority provided in subparagraph (A)(ii) to provide financial assistance to a party for the purpose of financing the relocation of a plant or facility from the United States to another country.

(3) A bank for cooperatives is authorized to provide such services as may be customary and normal in maintaining relationships with domestic or foreign entities to facilitate the activities specified in paragraphs (1) and (2), consistent with this chapter.

(4) DEFINITION OF AGRICULTURAL SUPPLY.—In this subsection, the term ''agricultural supply'' includes—

(A) a farm supply; and

(B)(i) agriculture-related processing equipment;

(ii) agriculture-related machinery; and

(iii) other capital goods related to the storage or handling of agricultural commodities or products.

(c) Applicable policies

Loans, commitments, and assistance authorized by subsection (b) of this section shall be extended in accordance with policies adopted by the board of directors of the bank under regulations of the Farm Credit Administration.

(d) Regulatory limitations

The regulations of the Farm Credit Administration implementing subsection (b) of this section and other provisions of this subchapter relating to the authority under subsection (b) of this section may not confer upon the banks for cooperatives powers and authorities greater than those specified in this subchapter. The Farm Credit Administration shall, during the formulation of such regulations, closely consult on a continuing basis with the Board of Governors of the Federal Reserve System to insure that such regulations conform to national banking policies, objectives, and limitations.

(e) Speculative futures transactions

Notwithstanding any other provision of this subchapter, the banks for cooperatives shall not make or participate in loans or commitments for the purpose of financing speculative futures transactions by eligible borrowers in foreign currencies.

(f) Installation, expansion, or improvement of water and waste disposal facilities

The banks for cooperatives may, for the purpose of installing, maintaining, expanding, improving, or operating water and waste disposal facilities in rural areas, make and participate in loans and commitments and extending other technical and financial assistance to—

(1) cooperatives formed specifically for the purpose of establishing or operating such facilities; and

(2) public and quasi-public agencies and bodies, and other public and private entities that, under authority of State or local law, establish or operate such facilities.

For purposes of this subsection, the term ''rural area'' means all territory of a State that is not within the outer boundary of any city or town having a population of more than 20,000 based on the latest decennial census of the United States.

(Pub. L. 92–181, title III, § 3.7, Dec. 10, 1971, 85 Stat. 605; Pub. L. 96–592, title III, § 304, Dec. 24, 1980, 94 Stat. 3444; Pub. L. 101–624, title XXIII, § 2323(a), Nov. 28, 1990, 104 Stat. 4013; Pub. L. 102–237, title V, § 502(e)(1), Dec. 13, 1991, 105 Stat. 1868; Pub. L. 102–552, title V, §§ 504, 505, Oct. 28, 1992, 106 Stat. 4131; Pub. L. 103–376, § 3, Oct. 19, 1994, 108 Stat. 3497; Pub. L. 107–171, title V, § 5402, May 13, 2002, 116 Stat. 350.)

AMENDMENTS

2002—Subsec. (b)(1), (2)(A)(i). Pub. L. 107–171, § 5402(1), substituted ''agricultural supplies'' for ''farm supplies''.

Subsec. (b)(4). Pub. L. 107–171, § 5402(2), added par. (4).

1994—Subsec. (b)(1). Pub. L. 103–376, § 3(A), substituted ''assistance to'' for ''assistance to (A)'', ''bank for the import'' for ''bank for the export or import'', and ''if the bank for cooperatives'' for ''and (B) a domestic or foreign party in which such an association has at least the minimum ownership interest approved under regulations of the Farm Credit Administration for the purpose of facilitating the association's export or import operations of the type described in subparagraph (A): *Provided*, That a''.

Subsec. (b)(2). Pub. L. 103–376, § 3(B), added par. (2) and struck out former par. (2) which read as follows: ''A bank for cooperatives is authorized to make or participate in loans and commitments, and to extend other technical and financial assistance, to any domestic or foreign entity that is eligible for a guarantee or insurance as described in subparagraphs (A) and (B) with respect to transactions involving the Soviet Union (its successor entities or any of the individual republics of the Soviet Union) or an emerging democracy (as defined in section 1542(f) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5622 note)) for the export of agricultural commodities and products thereof from the United States, including (where applicable) the cost of freight, if in each case—

''(A) the loan involved is unconditionally guaranteed or insured by a department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States; and

''(B) the guarantee or insurance—

''(i) covers at least 95 percent of the amount loaned for the purchase of the commodities or products; and

''(ii) is issued on or before September 30, 1995.''

1992—Subsec. (a). Pub. L. 102–552, § 504, inserted ''at any time (whether or not they have a loan from the bank outstanding)'' after ''assistance'' in first sentence.

Subsec. (f). Pub. L. 102–552, § 505, in introductory provisions, substituted ''installing, maintaining, expanding, improving, or operating'' for ''the installation, expansion, or improvement of'' and ''extending'' for ''to extend''.

1991—Subsec. (b). Pub. L. 102–237 designated existing provisions as par. (1), redesignated cl. (1) as (A) and inserted ''or products thereof'' after ''commodities'', redesignated cl. (2) as (B) and substituted ''subparagraph (A)'' for ''clause (1) of this subsection'', and added pars. (2) and (3).

1990—Subsec. (f). Pub. L. 101–624 added subsec. (f).

1980—Pub. L. 96–592 designated existing provisions as subsec. (a), inserted provisions relating to currency exchanges and provisions relating to loans, etc., to domestic parties, and added subsecs. (b) to (e).

§ 2129. Eligibility

(a) Any association of farmers, producers or harvesters of aquatic products, or any federation of such associations, which is operated on a cooperative basis, and has the powers for processing, preparing for market, handling, or marketing farm or aquatic products; or for purchasing, testing, grading, processing, distributing, or furnishing farm or aquatic supplies or furnishing farm or aquatic business services or services to eligible cooperatives and conforms to either of the two following requirements:

(1) no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

(2) does not pay dividends on stock or membership capital in excess of such per centum per annum as may be approved under regulations of the Farm Credit Administration; and in any case

(3) does not deal in farm products or aquatic products, or products processed therefrom, farm or aquatic supplies, farm or aquatic business services, or services to eligible cooperatives with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members, excluding from the total of member and nonmember business transactions with the United States or any agency or instrumentality thereof or services or supplies furnished as a public utility; and

(4) a percentage of the voting control of the association not less than 80 per centum (60 per centum (A) in the case of rural electric, telephone, public utility, and service cooperatives; (B) in the case of local farm supply cooperatives that have historically served needs of the community that would not adequately be served by other suppliers and have experienced a reduction in the percentage of farmer membership due to changed circumstances beyond their control such as, but not limited to, urbanization of the community; and (C) in the case of local farm supply cooperatives that provide or will provide needed services to a community and that are or will be in competi-

tion with a cooperative specified in paragraph (B)) or, with respect to any type of association or cooperative, such higher percentage as established by the bank board, is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations as defined herein;

shall be eligible to borrow from a bank for cooperatives. Any such association that has received a loan from a bank for cooperatives shall, without regard to the requirements of paragraphs (1) through (4), continue to be eligible for so long as more than 50 percent (or such higher percentage as is established by the bank board) of the voting control of the association is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations.

(b) Notwithstanding any other provision of this section:

(1) The following entities shall also be eligible to borrow from a bank for cooperatives:

(A) Cooperatives and other entities that have received a loan, loan commitment, or loan guarantee from the Rural Electrification Administration, or a loan or loan commitment from the Rural Telephone Bank, or that are eligible under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) for a loan, loan commitment, or loan guarantee from the Administration or the Bank (or a successor of the Administration or the Bank), and subsidiaries of such cooperatives or other entities.

(B) Any legal entity that (i) holds more than 50 percent of the voting control of an association or other entity that is eligible to borrow from a bank for cooperatives under subsection (a) of this section or subparagraph (A) of this paragraph, and (ii) borrows for the purpose of making funds available to that association or entity, and makes funds available to that association or entity under the same terms and conditions that the funds are borrowed from a bank for cooperatives.

(C) Any cooperative or other entity described in subsection (b) or (f) of section 2128 of this title.

(D) Any creditworthy private entity that satisfies the requirements for a service cooperative under paragraphs (1), (2), and (4), or under the last sentence, of subsection (a) of this section and subsidiaries of the entity, if the entity is organized to benefit agriculture in furtherance of the welfare of its farmer-members and is operated on a not-for-profit basis.

(2) Notwithstanding the provisions of section 2130 of this title, the board of directors of a bank for cooperatives may determine that, with respect to a loan to any borrower eligible to borrow from a bank under paragraph (1)(A) that is fully guaranteed by the United States, no stock purchase requirement shall apply, other than the requirement that a borrower eligible to own voting stock shall purchase one share of such stock.

(3) Each association and other entity eligible to borrow from a bank for cooperatives under this subsection, for purposes of section 2128(a) of this title, shall be treated as an eligible cooperative association and a stockholder eligible to borrow from the bank.

(4) Nothing in this subsection shall be construed to adversely affect the eligibility, as it existed on January 6, 1988, of cooperatives and other entities for any other credit assistance under Federal law.

(Pub. L. 92–181, title III, §3.8, Dec. 10, 1971, 85 Stat. 605; Pub. L. 94–184, §1(a), Dec. 31, 1975, 89 Stat. 1060; Pub. L. 96–592, title III, §305, Dec. 24, 1980, 94 Stat. 3445; Pub. L. 99–198, title XIII, §1322, Dec. 23, 1985, 99 Stat. 1534; Pub. L. 100–233, title IV, §421, title VIII, §805(m), Jan. 6, 1988, 101 Stat. 1654, 1715; Pub. L. 100–399, title IV, §410, title IX, §901(e), Aug. 17, 1988, 102 Stat. 1003, 1007; Pub. L. 101–624, title XXIII, §2323(b), Nov. 28, 1990, 104 Stat. 4013; Pub. L. 102–237, title V, §502(e)(2), (f), Dec. 13, 1991, 105 Stat. 1869; Pub. L. 102–552, title V, §506, Oct. 28, 1992, 106 Stat. 4131; Pub. L. 103–376, §4, Oct. 19, 1994, 108 Stat. 3498; Pub. L. 104–105, title II, §§204, 205, Feb. 10, 1996, 110 Stat. 172.)

REFERENCES IN TEXT

The Rural Electrification Act of 1936, referred to in subsec. (b)(1)(A), is act May 20, 1936, ch. 432, 49 Stat. 1363, as amended, which is classified generally to chapter 31 (§901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–105, §204(a), inserted at end ''Any such association that has received a loan from a bank for cooperatives shall, without regard to the requirements of paragraphs (1) through (4), continue to be eligible for so long as more than 50 percent (or such higher percentage as is established by the bank board) of the voting control of the association is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations.''

Subsec. (b)(1)(A). Pub. L. 104–105, §205, substituted ''are eligible under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) for'' for ''have been certified by the Administrator of the Rural Electrification Administration to be eligible for such'' and ''loan guarantee from the Administration or the Bank (or a successor of the Administration or the Bank), and'' for ''loan guarantee, and''.

Subsec. (b)(1)(D). Pub. L. 104–105, §204(b), substituted ''and (4), or under the last sentence, of subsection (a) of this section'' for ''and (4) of subsection (a) of this section''.

1994—Subsec. (b)(1)(B) to (E). Pub. L. 103–376 redesignated subpars. (C) to (E) as (B) to (D), respectively, realigned margin of subpar. (D), and struck out former subpar. (B) which read as follows: ''Any legal entity more than 50 percent of the voting control of which is held by one or more associations or other entities that are eligible to borrow from a bank for cooperatives under subsection (a) of this section or subparagraph (A) of this paragraph, except that any such legal entity, when considered together with one or more such associations or other entities that hold such control, meet the requirement of subsection (a)(3) of this section.''

1992—Subsec. (b)(1)(E). Pub. L. 102–552 added subpar. (E).

1991—Subsec. (a)(4). Pub. L. 102–237, §502(f)(1), substituted ''a percentage'' for ''A percentage''.

Subsec. (b)(1)(D). Pub. L. 102–237, §502(e)(2), (f)(2), substituted ''subsection (b) or (f) of section 2128 of this title'' for ''section 2128(f) of this title'' and realigned margin of subpar. (D).

1990—Subsec. (b)(1)(D). Pub. L. 101–624 added subpar. (D).

1988—Pub. L. 100–399, § 901(e), substituted ''bank board'' for ''district board'' in subsec. (a)(4).

Pub. L. 100–399, § 410, substituted ''makes'' for ''make'' in subsec. (b)(1)(C).

Pub. L. 100–233, § 805(m), redesignated subsec. (1) as subsec. (a) and pars. (a) to (d) as pars. (1) to (4), respectively, in par. (4) redesignated cls. (1) to (3) as (A) to (C), respectively, and in cl. (C) substituted ''paragraph (B)'' for ''paragraph (2)''.

Pub. L. 100–233, § 421, added subsec. (b) and struck out former subsec. (2) which read as follows: ''Notwithstanding any other provision of this subchapter, cooperatives and other entities that have received a loan, loan commitment, or loan guarantee from the Rural Electrification Administration, or a loan or loan commitment from the Rural Telephone Bank, or that have been certified by the Administrator of the Rural Electrification Administration to be eligible for such a loan, loan commitment, or loan guarantee, and subsidiaries of such cooperatives or other entities, shall also be eligible to borrow from a bank for cooperatives.''

1985—Pub. L. 99–198, § 1322(1), designated existing provisions as subsec. (1) and added subsec. (2).

1980—Pub. L. 96–592, § 305(1), inserted reference to aquatic business in introductory text.

Subsec. (c). Pub. L. 96–592, § 305(2), inserted reference to aquatic business services or services to eligible cooperatives.

Subsec. (d). Pub. L. 96–592, § 305(3), substituted ''60'' for ''70'', and designated former parenthetical material as item (1), and added items (2) and (3) and limitation with respect to any type of association or cooperative.

1975—Subsec. (d). Pub. L. 94–184 inserted provision relating to 70 per centum of voting control in the case of rural electric, telephone, and public utility cooperatives.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 502(f) of Pub. L. 102–237 effective as if included in the provision of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, to which the amendment relates, see section 1101(b)(4) of Pub. L. 102–237, set out as a note under section 1421 of Title 7, Agriculture.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2130. Ownership of stock by borrowers

(a) Each borrower entitled to hold voting stock shall, at the time a loan is made by a bank for cooperatives, own at least one share of voting stock and shall be required by the bank to invest in additional voting stock or nonvoting investment stock at that time, or from time to time, as the lending bank may determine, but the requirement for investment in stock at the time the loan is closed shall not exceed an amount equal to 10 per centum of the face amount of the loan. Such additional ownership requirements may be based on the face amount of the loan, the outstanding loan balance or on a percentage of the interest payable by the borrower during any year or during any quarter thereof, or upon such other basis as the bank determines will provide adequate capital for the operation of the bank and equitable ownership thereof among borrowers. In the case of a direct loan by the Central Bank, the borrower shall be required to own or invest in the necessary stock in a district bank or banks and such district bank shall be required to own a corresponding amount of stock in the Central Bank, but voting stock shall be in the one district bank, designated by the Farm Credit Administration.

(b) Notwithstanding the provisions of subsection (a) of this section, the purchase of stock need not be required with respect to that part of any loan made by a bank for cooperatives which it sells to or makes in participation with financial institutions other than any of the banks for cooperatives. In such cases the distribution of earnings of the bank for cooperatives shall be on the basis of the interest in the loan retained by such bank.

(Pub. L. 92–181 title III, § 3.9, Dec. 10, 1971, 85 Stat. 605; Pub. L. 96–592, title III, § 306, Dec. 24, 1980, 94 Stat. 3445; Pub. L. 100–233, title VIII, § 802(q), Jan. 6, 1988, 101 Stat. 1712.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–233 substituted ''by the bank to invest'' for ''by the bank with the approval of the Farm Credit Administration to invest'', ''or upon such other basis as the bank determines'' for ''or upon such other basis as the bank, with the approval of the Farm Credit Administration, determines'', and ''in a district bank or banks and such district bank shall be required'' for ''in a district bank or banks as may be approved by the Farm Credit Administration and such district bank shall be required''.

1980—Subsec. (a). Pub. L. 96–592 inserted provisions respecting entitlement to hold voting stock.

§ 2131. Loans

(a) Interest rates and charges

Loans made by a bank for cooperatives shall bear interest at a rate or rates determined by the board of directors of the bank from time to time. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis, taking into account the net cost of money to the bank, necessary reserves and expenses of the bank, and services provided. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank.

(b) Security

Loans shall be made upon such terms, conditions, and security, if any, as may be determined by the bank in accordance with regulations of the Farm Credit Administration.

(c) Lien

Each bank for cooperatives shall have a first lien on all stock or other equities in the bank as collateral for the payment of any indebtedness of the owner thereof to the bank. In the case of a direct loan to an eligible cooperative by the Central Bank, the Central Bank shall have a first lien on the stock and equities of the borrower in the district bank and the district bank shall have a lien thereon junior only to the lien of the Central Bank.

(d) Cancellation; application on indebtedness

In any case where the debt of a borrower is in default, or in any case of liquidation or dissolution of a present or former borrower from a bank for cooperatives, the bank may, but shall

not be required to, retire and cancel all or a part of the stock, allocated surplus or contingency reserves, or any other equity in the bank owned by or allocated to such borrower, at the fair market value thereof not exceeding par, and, to the extent required in such cases, corresponding shares and allocations and other equity interests held by a district bank in another district bank on account of such indebtedness, shall be retired or equitably adjusted. In no event shall the bank's equities be retired or canceled if the retirement or cancellation would adversely affect the bank's capital structure, as determined by the Farm Credit Administration.

(Pub. L. 92–181, title III, §3.10, Dec. 10, 1971, 85 Stat. 606; Pub. L. 96–592, title III, §307, Dec. 24, 1980, 94 Stat. 3445; Pub. L. 99–509, title I, §1033(c), Oct. 21, 1986, 100 Stat. 1877.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–509 struck out ", with the approval of the Farm Credit Administration as provided in section 2205 of this title" after "from time to time".

1980—Subsec. (a). Pub. L. 96–592, §307(1), inserted reference to section 2205 of this title.

Subsec. (d). Pub. L. 96–592, §307(2), substituted "market" for "book" and inserted provisions respecting retirement or cancellation of equities as affected by the capital structure.

§ 2132. Earnings and reserves; application of savings

(a) Application of savings

At the end of each fiscal year, the net savings shall, under regulations prescribed by the Farm Credit Administration, continue to be applied on a cooperative basis with provision for sound, adequate capitalization to meet the changing financing needs of eligible cooperative borrowers and prudent corporate fiscal management, to the end that current year's patrons carry their fair share of the capitalization, ultimate expenses, and reserves related to the year's operations and the remaining net savings shall be distributed as patronage refunds as provided in subsections (b) and (c) of this section. Such regulations may provide for application of net savings to the restoration or maintenance of an allocated surplus account, reasonable additions to unallocated surplus, or to unallocated reserves after payment of operating expenses, and provide for allocations to patrons not qualified under title 26, or payment of such per centum of patronage refunds in cash, as the board may determine.

(b) Patronage refunds

The net savings of each district bank for cooperatives, after the earnings for the fiscal year have been applied in accordance with subsection (a) of this section shall be paid in stock, participation certificates, or cash, or in any of them, as determined by its board, as patronage refunds to borrowers to whom such refunds are payable who are borrowers of the fiscal year for which such patronage refunds are distributed. Except as provided in subsection (c) below, all patronage refunds shall be paid in proportion that the amount of interest and service fees on the loans to each borrower during the year bears to the interest and service fees on the loans of all borrowers during the year or on such other proportionate patronage basis as may be approved by the board of directors.

(c) Savings of Central Bank for Cooperatives

The net savings of the Central Bank for Cooperatives after the earnings for the fiscal year have been applied in accordance with subsection (a) of this section shall be paid in stock or cash, or both, as determined by the board, as patronage refunds to the district banks on the basis of interests held by the Central Bank in loans made by the district banks and upon any direct loans made by the Central Bank to cooperative associations, or on such other proportionate patronage basis as may be approved by the board of directors. In cases of direct loans, such refund shall be paid to the district bank or banks which issued their stock to the borrower incident to such loans, and the district bank or banks shall issue a like amount of patronage refunds to the borrower.

(d) Loss carryover

In the event of a net loss in any fiscal year after providing for all operating expenses (including reasonable valuation reserves and losses in excess of any applicable reserves), such loss may be carried forward or carried back, if appropriate, or otherwise shall be absorbed by charges to unallocated reserve or surplus accounts established after December 10, 1971; charges to allocated contingency reserve account; charges to allocated surplus accounts; charges to other contingency reserve and surplus accounts; the impairment of voting stock; or the impairment of all other stock.

(e) Charge of unrecognized costs or expenses to reserve, surplus, or patronage allocations

Notwithstanding any other provisions of this section any costs or expenses attributable to a prior year or years but not recognized in determining the net savings for such year or years may be charged to reserves or surplus of the bank or to patronage allocations for such years, as may be determined by the board of directors.

(f) Payment of patronage refunds in cash

A bank for cooperatives may pay in cash such portion of its patronage refunds as will permit its taxable income to be determined without taking into account savings applied as allocated surplus, allocated contingency reserves, and patronage refunds under subsection (a) of this section.

(Pub. L. 92–181, title III, §3.11, Dec. 10, 1971, 85 Stat. 606; Pub. L. 96–592, title III, §308, Dec. 24, 1980, 94 Stat. 3445; Pub. L. 99–205, title II, §205(e)(7), (8), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title VIII, §§802(r), 805(n), Jan. 6, 1988, 101 Stat. 1712, 1716.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–233, §§802(r)(1), 805(n)(1), (5), redesignated subsec. (b) as (a), substituted "(b) and (c)" for "(c) and (d)", struck out "as may be approved by the Farm Credit Administration" after "payment of operating expenses", and struck out at end "If during the fiscal year but not at the end thereof a bank shall have had outstanding capital stock held by the United States, provision will be made for payment of franchise taxes required in section 2151 of this title."

Subsec. (b). Pub. L. 100–233, §§802(r)(2), 805(n)(2), (5), redesignated subsec. (c) as (b) and substituted ''(a) of this section'' for ''(b) of this section, whichever is applicable,'', ''(c) below'' for ''(d) below'', and ''may be approved by the board of directors'' for ''the Farm Credit Administration may approve''. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 100–233, §§802(r)(3), 805(n)(3), (5), redesignated subsec. (d) as (c) and substituted ''(a) of this section'' for ''(b) of this section whichever is applicable,'' and ''may be approved by the board of directors'' for ''the Farm Credit Administration may approve''. Former subsec. (c) redesignated (b).

Subsecs. (d), (e). Pub. L. 100–233, §805(n)(5), redesignated subsecs. (e) and (f) as (d) and (e), respectively. Former subsec. (d) redesignated (c).

Subsecs. (f), (g). Pub. L. 100–233, §805(n)(4), (5), redesignated subsec. (g) as (f), substituted ''A bank for cooperatives'' for ''For any year that a bank for cooperatives is subject to Federal income tax, it'', and struck out ''or (b)'' after ''subsection (a)''. Former subsec. (f) redesignated (e).

1985—Subsec. (a). Pub. L. 99–205, §205(e)(7), struck out subsec. (a) which provided for application of savings when bank for cooperatives has outstanding stock held by the Governor.

Subsec. (b). Pub. L. 99–205, §205(e)(8)(A), substituted ''At the end of each fiscal year, the net'' for ''Whenever at the end of any fiscal year a bank for cooperatives shall have no outstanding capital stock held by the Governor of the Farm Credit Administration, the net''.

Subsecs. (c), (d). Pub. L. 99–205, §205(e)(8)(B), substituted ''subsection (b) of this section'' for ''subsection (a) or (b) of this section''.

1980—Subsec. (b). Pub. L. 96–592, §308(1), struck out provisions relating to 25 per centum requirement for net savings.

Subsec. (c). Pub. L. 96–592, §308(2), inserted applicability to participation certificates and to borrowers to whom refunds are payable.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2133. Distribution of assets on liquidation or dissolution

In the case of liquidation or dissolution of any bank for cooperatives, after payment or retirement, first, of all liabilities; second, of all capital stock issued before January 1, 1956, at par, and all nonvoting stock at par; and third, all voting stock at par; any surplus and reserves existing on January 1, 1956, shall be paid to the holders of stock issued before that date, and voting stock pro rata; and any remaining allocated surplus and reserves shall be distributed to those entities to which they are allocated on the books of the bank, and any other remaining surplus shall be paid to the holders of outstanding voting stock. If it should become necessary to use any surplus or reserves to pay any liabilities or to retire any capital stock, unallocated reserves or surplus, allocated reserves and surplus shall be exhausted in accordance with rules prescribed by the Farm Credit Administration.

(Pub. L. 92–181, title III, §3.12, Dec. 10, 1971, 85 Stat. 608; Pub. L. 99–205, title II, §205(e)(9), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title VIII, §805(*o*), Jan. 6, 1988, 101 Stat. 1716.)

AMENDMENTS

1988—Pub. L. 100–233 inserted ''the'' before ''Farm Credit Administration''.

1985—Pub. L. 99–205 struck out '', any stock held by the Governor of the Farm Credit Administration at par'' before '', and all nonvoting stock at par'', and struck out ''stock held by the Governor of the Farm Credit Administration,'' before ''and voting stock pro rata'' in first sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2134. Taxation

Each bank for cooperatives and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such bank shall be exempt, both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority, except that interest on such obligations shall be subject to Federal income taxation in the hands of the holder.

(Pub. L. 92–181, title III, §3.13, Dec. 10, 1971, 85 Stat. 608; Pub. L. 99–205, title II, §205(e)(10), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title VIII, §805(p), Jan. 6, 1988, 101 Stat. 1716.)

AMENDMENTS

1988—Pub. L. 100–233 inserted before period at end '', except that interest on such obligations shall be subject to Federal income taxation in the hands of the holder''.

1985—Pub. L. 99–205 struck out last two sentences relating to exemption of banks for cooperatives and their property, franchises, capital, reserves, surplus, other funds, and income from Federal and non-Federal taxation except for Federal income taxation of interest on obligations of such banks and for Federal and non-Federal taxation of real and tangible personal property of such banks to same extent as similar property is taxed, and making such exemption provisions applicable only for any year or part thereof in which stock in such banks was held by the Governor of the Farm Credit Administration.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

PART B—UNITED AND NATIONAL BANKS FOR COOPERATIVES

§ 2141. Charter, powers, and operation

(a) Charter

The National Bank for Cooperatives or the United Bank for Cooperatives, as the case may be (hereinafter in this part referred to as the ''consolidated bank''), established under section 413 of the Agricultural Credit Act of 1987, shall be a federally chartered instrumentality of the United States and an institution of the Farm Credit System.

(b) Powers

The consolidated bank and the board of directors of such bank shall have all of the powers, rights, responsibilities, and obligations of the district banks for cooperatives and the Central Bank for Cooperatives and the boards of directors of such banks, except as otherwise provided for in this chapter.

(c) Operation

The consolidated bank shall be organized and operated on a cooperative basis.

(Pub. L. 92–181, title III, §3.20, as added Pub. L. 100–233, title IV, §415(2), Jan. 6, 1988, 101 Stat. 1642; amended Pub. L. 100–399, title IV, §407(a), (b), Aug. 17, 1988, 102 Stat. 1000.)

REFERENCES IN TEXT

Section 413 of the Agricultural Credit Act of 1987, referred to in subsec. (a), is section 413 of Pub. L. 100–233, as amended, which is set out as a note under section 2121 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–399, §407(a), struck out ''in this section'' after ''referred to'' and inserted '', established under section 413 of the Agricultural Credit Act of 1987,'' before ''shall''.

Subsec. (b). Pub. L. 100–399, §407(b), inserted ''except'' before ''as otherwise''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2142. Board of directors provisions

(a) Initial board of directors

The initial board of directors of a consolidated bank shall include the members of the boards of directors of the farm credit districts who were elected by voting stockholders of the constituent district banks for cooperatives (as such banks existed on January 6, 1988) and who shall serve out the terms for which they were elected.

(b) Permanent board of directors

(1) Composition

The permanent board of directors of a consolidated bank shall consist of—

(A) three members, elected by the voting stockholders of the consolidated bank, from each of the farm credit districts that had been served by constituent banks, as such districts existed on January 6, 1988, at least one of whom, from each such district, shall be a farmer;

(B) one member elected by the voting stockholders of each district bank for cooperatives that is not a constituent of the consolidated bank; and

(C) one member appointed by the members chosen under subparagraphs (A) and (B) who shall not be a stockholder or borrower of a System institution or an officer or director of any such stockholder or borrower.

(2) Nomination and election

For purposes of nominating and electing members of the board of directors under paragraph (1)(A):

(A) First member

The nomination and election of the first member from each district shall be carried out on the basis provided for in section 2124(d) of this title.

(B) Second member

(i) In general

The nomination and election of the second member from each district shall be carried out with each voting stockholder of the consolidated bank located in the district having one vote, plus a number of votes (or fractional part thereof) equal to the number of stockholders eligible to vote in that district multiplied by the percentage (or fractional part thereof) of the total equity interest (including allocated, but not unallocated, surplus and reserves) in the consolidated bank of all such stockholders located in that district held by the individual voting stockholder—

(I) at the close of the immediately preceding fiscal year of the consolidated bank; or

(II) with respect to the first election held under this subsection, as of such date as the Farm Credit Administration shall prescribe.

(ii) Total number of votes

The total number of votes for each district under this subparagraph shall be the number of voting stockholders of the consolidated bank located in the district multiplied by two.

(C) Third member

The nomination and election of the third member from each district shall be carried out in accordance with procedures prescribed in the bylaws of the consolidated bank.

(3) Terms

(A) In general

The members of the board of directors of the consolidated bank shall serve for a term of 3 years.

(B) Timing of elections

Procedures for electing members of the board of directors of the consolidated bank under this subsection shall ensure that the beginning of the terms of such members coincide with the expiration of the terms of members of the interim board of directors of the bank under subsection (a) of this section.

(4) FCA regulations

The nomination and election of the members of the board of directors of the consolidated bank under this subsection shall be carried out in accordance with regulations issued by the Farm Credit Administration.

(c) Modification of board of directors provisions

The provisions of subsection (b) of this section relating to the board of directors of the consolidated bank, other than the provisions relating to the initial composition, nomination, and election of the members of the board, may be modified on an affirmative vote of at least two-thirds of the voting stockholders of the bank, with each such stockholder to have, for such purposes, only one vote. Any proposals for modifying such provisions shall be submitted for a vote by such stockholders in accordance with procedures prescribed by the Farm Credit Administration.

(Pub. L. 92–181, title III, §3.21, as added Pub. L. 100–233, title IV, §415(2), Jan. 6, 1988, 101 Stat.

1642; amended Pub. L. 100–399, title IV, § 407(c), (d), Aug. 17, 1988, 102 Stat. 1000.)

AMENDMENTS

1988—Subsec. (b)(2)(B)(i)(I). Pub. L. 100–399, § 407(d), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''as of the final date of the fiscal year of the consolidated bank; or''.

Subsec. (b)(2)(C). Pub. L. 100–399, § 407(c), added subpar. (C).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2143. Credit delivery office

On a determination by the board of directors of the consolidated bank that the bank's loan portfolio is concentrated in any one district or districts (according to the district boundaries in effect immediately prior to the effective date of the establishment of the bank under section 413 of the Agricultural Credit Act of 1987), the bank may consider the creation of regional service centers to accommodate such loan concentrations.

(Pub. L. 92–181, title III, § 3.22, as added Pub. L. 100–233, title IV, § 415(2), Jan. 6, 1988, 101 Stat. 1643; amended Pub. L. 100–399, title IV, § 407(e), Aug. 17, 1988, 102 Stat. 1000.)

REFERENCES IN TEXT

Section 413 of the Agricultural Credit Act of 1987, referred to in text, is section 413 of Pub. L. 100–233, as amended, which is set out as a note under section 2121 of this title.

AMENDMENTS

1988—Pub. L. 100–399 substituted ''consolidated bank'' for ''United Bank for Cooperatives or the National Bank for Cooperatives'' and ''establishment of the bank under section 413 of the Agricultural Credit Act of 1987'' for ''merger''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2144. Consolidation of functions

Subject to section 2143 of this title, to the greatest extent practicable, the functions of the consolidated bank shall be consolidated in the central office of the bank.

(Pub. L. 92–181, title III, § 3.23, as added Pub. L. 100–233, title IV, § 415(2), Jan. 6, 1988, 101 Stat. 1644.)

§ 2145. Exchange of ownership interests

On the establishment of the consolidated bank, ownership interests of the stockholders and subscribers to the guaranty funds of the constituent district banks for cooperatives (including stock, participation certificates, and allocated equities) shall be exchanged for like ownership interests in the consolidated bank on a book value basis.

(Pub. L. 92–181, title III, § 3.24, as added Pub. L. 100–233, title IV, § 415(2), Jan. 6, 1988, 101 Stat. 1644.)

§ 2146. Capitalization

In accordance with section 2154a of this title, each consolidated bank shall provide, through bylaws and subject to Farm Credit Administration regulations, for the capitalization of the bank and the manner in which bank stock shall be issued, held, transferred, and retired and bank earnings distributed.

(Pub. L. 92–181, title III, § 3.25, as added Pub. L. 100–233, title IV, § 415(2), Jan. 6, 1988, 101 Stat. 1644; amended Pub. L. 100–399, title IV, § 407(f), Aug. 17, 1988, 102 Stat. 1000.)

AMENDMENTS

1988—Pub. L. 100–399 amended section generally. Prior to amendment, section read as follows: ''The board of directors of the consolidated bank shall provide for the capitalization of such bank in accordance with the provisions of section 2154a of this title.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2147. Patronage pools

Under such terms and conditions as may be determined by its board of directors, the consolidated bank may—

(1) for a period of at least 3 years following January 6, 1988, establish separate patronage pools consisting of loans to eligible borrowers located in each constituent farm credit district (as such district existed on January 6, 1988); and

(2) allocate revenues, expenses, and net savings among such pools on an equitable basis.

(Pub. L. 92–181, title III, § 3.26, as added Pub. L. 100–233, title IV, § 415(2), Jan. 6, 1988, 101 Stat. 1644.)

§ 2148. Transactions to accomplish merger

The receipt of assets or assumption of liabilities by the consolidated bank, the exchange of stock, equities, or other ownership interests, and any other transaction carried out in accomplishing the merger of the banks for cooperatives shall not be treated as a taxable event under the laws of the United States or of any State or political subdivision thereof. The preceding sentence shall also apply to the receipt of assets and liabilities by a cooperative to the extent that the net amount of the distribution is immediately reinvested in stock of a consolidated bank (and in such case the basis of such stock shall be appropriately reduced by the amount of gain not recognized by reason of this sentence).

(Pub. L. 92–181, title III, § 3.27, as added Pub. L. 100–233, title IV, § 415(2), Jan. 6, 1988, 101 Stat. 1644; amended Pub. L. 100–399, title IV, § 407(g), Aug. 17, 1988, 102 Stat. 1001.)

AMENDMENTS

1988—Pub. L. 100–399 substituted ''cooperative'' for ''taxable institution''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which

was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2149. Lending limits

The Farm Credit Administration may not establish lending limits for the consolidated bank with respect to any loans or borrowers that are more restrictive than the combined lending limits that were previously established by the Farm Credit Administration for a district bank for cooperatives and the Central Bank for Cooperatives with respect to such loans or borrowers.

(Pub. L. 92–181, title III, § 3.28, as added Pub. L. 100–233, title IV, § 415(2), Jan. 6, 1988, 101 Stat. 1644.)

§ 2149a. Reports by merged banks for cooperatives

(a) In general

When two or more banks for cooperatives merge, the resulting bank shall, not later than December 31 of each year of the succeeding 5 years following the date of the merger, file an annual report with the Farm Credit Administration that—

(1) analyzes the effect of the merger;

(2) includes a breakdown of loans outstanding according to the size of the cooperative stockholders of the bank; and

(3) describes the adequacy of credit and other assistance services provided to smaller cooperatives.

(b) Availability

A copy of the report required in subsection (a) of this section shall be made available to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Pub. L. 92–181, title III, § 3.29, formerly title VII, § 7.5, as added Pub. L. 100–233, title IV, § 416, Jan. 6, 1988, 101 Stat. 1646; renumbered § 3.29, Pub. L. 100–399, title IV, § 408(e), Aug. 17, 1988, 102 Stat. 1001.)

CODIFICATION

Section was classified to section 2279a–5 of this title prior to renumbering by Pub. L. 100–399.

SUBCHAPTER IV—PROVISIONS APPLICABLE TO TWO OR MORE CLASSES OF INSTITUTIONS OF THE SYSTEM

PART A—FUNDING

§ 2151. Revolving fund

The revolving fund established by this section (in effect immediately before January 6, 1988) shall be available to the Farm Credit Administration and the Assistance Board during the periods, and for the purposes, provided for in sections 2278a–13 and 2278a–7 of this title, respectively.

(Pub. L. 92–181, title IV, § 4.0, Dec. 10, 1971, 85 Stat. 609; Pub. L. 99–205, title I, § 101(1), Dec. 23, 1985, 99 Stat. 1678; Pub. L. 100–233, title II, § 202, Jan. 6, 1988, 101 Stat. 1605; Pub. L. 100–399, title II, § 202, Aug. 17, 1988, 102 Stat. 992.)

REFERENCES IN TEXT

For explanation of the revolving fund established by this section (in effect immediately before January 6, 1988), referred to in text, see Revolving Funds note below.

AMENDMENTS

1988—Pub. L. 100–399 amended section generally. Prior to amendment, section read as follows:

''(a) REVOLVING FUND.—The revolving fund established by this section (in effect immediately before January 6, 1988) shall be available to the Farm Credit Administration during the period, and for the purposes provided for, in sections 2278a–7(b) and 2278a–13 of this title.

''(b) FARM CREDIT INSURANCE FUND.—On the date the first premium is due and payable under section 2277a–5(c) of this title, any funds remaining in the revolving fund shall be transferred to the Farm Credit Insurance Fund in accordance with the terms and conditions established by the Farm Credit Administration.''

Pub. L. 100–233 amended section generally. Prior to amendment, section read as follows: ''The revolving fund established by Public Law 87–343, 75 Stat. 758, as amended, and the revolving fund established by Public Law 87–494, 76 Stat. 109, as amended, and continued by Public Law 96–592, shall be merged and shall be available to the Farm Credit Administration for the purchase, on behalf of the United States, of capital stock of the Capital Corporation. The Farm Credit Administration may make such purchases of stock as the Farm Credit Administration determines, in its discretion, are necessary to achieve the purposes of this chapter.''

1985—Pub. L. 99–205 substituted provisions relating to revolving funds and investments for provisions respecting stock purchased by the Governor for the Farm Credit Administration, retirement, and franchise tax.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

REVOLVING FUNDS

The revolving fund established by this section (in effect immediately before January 6, 1988), referred to in text, means the revolving fund created by former provisions of this section, which merged the revolving fund established by Public Law 87–343, 75 Stat. 758, as amended (described below as ''first fund''), with the revolving fund established by Public Law 87–494, 76 Stat. 109, as amended (described below as ''second fund''), which was regarded as continued by Pub. L. 96–592.

At the time of enactment of former section 2152 of this title (see second par. of note under former section 2152 of this title) by Pub. L. 92–181 funds for temporary investment by the Governor of the Farm Credit Administration in the farm credit system were available from two revolving funds.

The first fund, providing moneys for investment in production credit associations and intermediate credit banks, was covered by former section 1131i of this title. Such fund was itself the result of an earlier merger of two revolving funds, the first having been created by the Farm Credit Act of 1933 and the second having been created by the Federal Farm Mortgage Corporation Act of 1934. These two were combined into a single fund pursuant to Pub. L. 87–343, § 2(1), Oct. 3, 1961, 75 Stat. 758. Each of the statutory steps in the establishment of such fund was cast in the form of an amendment to the Farm Credit Act of 1933. Since such Farm Credit Act of 1933 has been repealed by section 5.26 of Pub. L. 92–181, section 1131i of this title is carried as repealed. Notwithstanding such apparent repeal, statements of Congressional intent indicate an intention to retain the fund using as its statutory base the law (Pub. L. 87–343) which had effected the consolidation in 1961.

The second fund, providing moneys for investment in banks for cooperatives, is covered by section 1141d of this title. Although the basic authority for such fund would be the Agricultural Marketing Act of 1929, a more updated authority for such fund is the Agricultural Marketing Act Amendment of 1962, Pub. L. 87–494, June 25, 1962, 76 Stat. 109, under which the fund was reduced to $150,000,000 and the amount in such fund in excess of such figure was returned to the Treasury as miscellaneous receipts.

Pub. L. 96–592, referred to above as continuing the revolving fund established by Pub. L. 87–494, is the Farm Credit Act Amendment of 1980, Pub. L. 96–592, Dec. 24, 1980, 94 Stat. 3437. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 2001 of this title and Tables.

§ 2152. Repealed. Pub. L. 100–233, title II, § 207(a)(1), Jan. 6, 1988, 101 Stat. 1607

Section, Pub. L. 92–181, title IV, § 4.1, as added Pub. L. 99–205, title I, § 104, Dec. 23, 1985, 99 Stat. 1687, contained requirements for purchase of stock and payment of assessments and contribution of capital to Capital Corporation.

A prior section 2152, Pub. L. 92–181, title IV, § 4.1, Dec. 10, 1971, 85 Stat. 609, related to revolving funds and government deposits, prior to repeal, effective thirty days after Dec. 23, 1985, by Pub. L. 99–205, title I, § 101(2), Dec. 23, 1985, 99 Stat. 1678. See section 2151 of this title.

EFFECTIVE DATE OF REPEAL

Section 207(b) of Pub. L. 100–233 provided that: ''The repeals made by subsection (a) [repealing this section and sections 2216 to 2216k, and 2252(a)(8) of this title] shall take effect 15 days after the date of the enactment of this Act [Jan. 6, 1988].''

§ 2153. Power to borrow; issuance of notes, bonds, debentures, and other obligations

Each of the banks of the System, in order to obtain funds for its authorized purposes, shall have power, subject to regulation by the Farm Credit Administration, and subject to the limitations of paragraph (e) of this section, to—

(a) Borrow money from or loan to any other institution of the System, borrow from any commercial bank or other lending institution, issue its notes or other evidence of debt on its own individual responsibility and full faith and credit, and invest its excess funds in such sums, at such times, and on such terms and conditions as it may determine.

(b) Issue its own notes, bonds, debentures, or other similar obligations, fully collateralized as provided in section 2154(c) of this title by the notes, mortgages, and security instruments it holds in the performance of its functions under this chapter in such sums, maturities, rates of interest, and terms and conditions of each issue as it may determine with approval of the Farm Credit Administration.

(c) Join with any or all banks organized and operating under the same subchapter of this chapter in borrowing or in issuance of consolidated notes, bonds, debentures, or other obligations as may be agreed with approval of the Farm Credit Administration.

(d) Join with other banks of the System in issuance of System-wide notes, bonds, debentures, and other obligations in the manner, form, amounts, and on such terms and conditions as may be agreed upon with approval of the Farm Credit Administration. Such System-wide issue by the participating banks and such participations by each bank shall not exceed the limits to which each such bank is subject in the issuance of its individual or consolidated obligations and each such issue shall be subject to approval of the Farm Credit Administration: *Provided, however*, There shall be no issues of System-wide obligations without the concurrence of the boards of directors of each bank and the approval of the Farm Credit Administration for such issues shall be conditioned on and be evidence of the compliance with this provision.

(e) No bank or banks shall issue notes, bonds, debentures, or other obligations individually or in concert with one or more banks of the System other than through the Federal Farm Credit Banks Funding Corporation under any provision of this chapter except under subsection (a) of this section: *Provided*, That any bank or banks may issue investment bonds or like obligations other than through the Federal Farm Credit Banks Funding Corporation if the interest rate is not in excess of the interest allowable on savings deposits of commercial banks of comparable amounts and maturities under Federal Reserve regulation on its member banks.

(Pub. L. 92–181, title IV, § 4.2, Dec. 10, 1971, 85 Stat. 610; Pub. L. 99–205, title II, § 205(f)(1), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title IV, § 418(b), formerly § 415(b), Jan. 6, 1988, 101 Stat. 1653, renumbered § 418(b), Pub. L. 100–399, title IV, § 409(a), Aug. 17, 1988, 102 Stat. 1003; Pub. L. 100–399, title II, § 203(e), Aug. 17, 1988, 102 Stat. 993.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–233 substituted ''the boards of directors of each bank'' for ''the boards of directors of each of the 12 districts and the Central Bank for Cooperatives''.

Subsec. (e). Pub. L. 100–399, § 203(e), substituted ''System other than through the'' for ''System other than through their'', and substituted ''Federal Farm Credit Banks Funding Corporation'' for ''fiscal agent'' in two places.

1985—Pub. L. 99–205 substituted ''regulation by'' for ''supervision of'' in provision preceding subsec. (a).

Subsec. (b). Pub. L. 99–205 substituted references to section ''2154(c)'' for ''2154(b)'' and ''Farm Credit Administration'' for ''Governor''.

Subsecs. (c), (d). Pub. L. 99–205 substituted ''Farm Credit Administration'' for ''Governor'' wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2154. Capital adequacy of banks and institutions

(a) Minimum levels of capital

The Farm Credit Administration shall cause System institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such System institutions and by using such other methods as the Farm Credit Administration deems appropriate. The Farm

Credit Administration may establish such minimum level of capital for a System institution as the Farm Credit Administration, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the System institution.

(b) Failure to maintain minimum levels; directives; plans for achieving minimum levels; proposals affecting compliance

(1) Failure of a System institution to maintain capital at or above its minimum level as established under subsection (a) of this section may be deemed by the Farm Credit Administration, in its discretion, to constitute an unsafe and unsound practice within the meaning of this chapter.

(2) In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the Farm Credit Administration may issue a directive to a System institution that fails to maintain capital at or above its required level as established under subsection (a) of this section. Such directive may require the System institution to submit and adhere to a plan acceptable to the Farm Credit Administration describing the means and timing by which the System institution shall achieve its required capital level, but may not require merger or consolidation without a majority vote of the voting stockholders or the contributors to the guaranty fund of the institution.

(3) The Farm Credit Administration may consider such System institution's progress in adhering to any plan required under paragraph (2) whenever such System institution, or an affiliate thereof, seeks the requisite approval of the Farm Credit Administration for any proposal that would divert earnings, diminish capital, or otherwise impede such System institution's progress in achieving its minimum capital level. The Farm Credit Administration may deny such approval where it determines that such proposal would adversely affect the ability of the System institution to comply with such plan.

(c) Enhancement of capital adequacy of banks

Each bank shall have on hand at the time of issuance of any note, bond, debenture, or other similar obligation and at all times thereafter maintain, free from any lien or other pledge, notes and other obligations representing loans made under this chapter or real or personal property acquired in connection with loans made under this chapter, obligations of the United States or any agency thereof direct or fully guaranteed, other bank assets (including marketable securities) approved by the Farm Credit Administration, or cash, in an aggregate value equal to the total amount of notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.

(Pub. L. 92–181, title IV, §4.3, Dec. 10, 1971, 85 Stat. 611; Pub. L. 99–205, title I, §101(3), Dec. 23, 1985, 99 Stat. 1678; Pub. L. 100–233, title III, §304, title VIII, §§804(a)(3), 805(q), Jan. 6, 1988, 101 Stat. 1621, 1715, 1716; Pub. L. 100–399, title VII, §702(b), Aug. 17, 1988, 102 Stat. 1006.)

AMENDMENTS

1988—Subsec. (b)(2). Pub. L. 100–233, §804(a)(3), struck out subpar. (A) designation and struck out subpar. (B) which read as follows: ''Any directive issued under this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 2267 of this title to the same extent as an effective and outstanding order issued under section 2261 of this title that has become final.''

Subsec. (c). Pub. L. 100–233, §805(q), which directed the amendment of subsec. (c) by substituting ''direct or fully guaranteed'' for ''direct of fully guaranteed'' was repealed by Pub. L. 100–399, §702(b). See Construction of 1988 Amendment note below.

Pub. L. 100–233, §304, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Each bank shall have on hand at the time of issuance of any long-term notes, bonds, debentures, or other similar obligations and at all times thereafter maintain, free from any lien or other pledge, notes and other obligations representing loans made under the authority of this chapter, obligations of the United States or any agency thereof direct or fully guaranteed, other readily marketable securities approved by the Farm Credit Administration, or cash, in an aggregate value equal to the total amount of long-term notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.''

1985—Pub. L. 99–205 substituted ''Capital adequacy of banks and associations'' for ''Aggregate of obligations; collateral'' in section catchline.

Subsec. (a). Pub. L. 99–205 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''No issue of long-term notes, bonds, debentures, or other similar obligations by a bank or banks shall be approved in an amount which, together with the amount of other bonds, debentures, long-term notes, or other similar obligations issued and outstanding, exceeds twenty times the capital and surplus of all the banks which will be primarily liable on the proposed issue, or such lesser amount as the Farm Credit Administration shall establish by regulation.''

Subsecs. (b), (c). Pub. L. 99–205 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

CONSTRUCTION OF 1988 AMENDMENT

Section 702(b) of Pub. L. 100–399 provided that section 805(q) of Pub. L. 100–233, cited as a credit to this section, is repealed and that subsec. (c) of this section shall be applied and administered as if such section had not been enacted.

MINIMUM CAPITAL ADEQUACY STANDARDS

Section 301(a) of Pub. L. 100–233, as amended by Pub. L. 100–399, title III, §301(a), Aug. 17, 1988, 102 Stat. 993, provided that:

''(1) IN GENERAL.—

''(A) ESTABLISHMENT.—Within 120 days after the date of the enactment of this Act [Jan. 6, 1988], the Farm Credit Administration shall issue regulations under section 4.3(a) of the Farm Credit Act of 1971 (12 U.S.C. 2154(c) [12 U.S.C. 2154(a)]) that establish minimum permanent capital adequacy standards for Farm Credit System institutions.

''(B) BASIS FOR ESTABLISHMENT.—The standards established under subparagraph (A) shall apply to an institution based on the financial statements of the institution prepared in accordance with generally accepted accounting principles.

''(C) RATIO OF CAPITAL TO ASSETS.—The standards established under subparagraph (A) shall specify fixed percentages representing the ratio of permanent capital of the institution to the assets of the institution, taking into consideration relative risk factors as determined by the Farm Credit Administration.

''(D) PHASE-IN PERIOD.—The standards established under subparagraph (A) shall be phased in during the

5-year period beginning on the date of the enactment of this Act [Jan. 6, 1988].

''(2) EMERGENCY POWER NOT AVAILABLE.—The Farm Credit Administration shall not invoke the emergency provisions of section 5.17(c)(2) of the Farm Credit Act of 1971 (12 U.S.C. 2251(c)(2) [12 U.S.C. 2252(c)(2)]) with respect to the issuance of the regulations required under paragraph (1)(A).

''(3) PROHIBITIONS DURING TRANSITION PERIOD.—During the 5-year period specified in paragraph (1)(D), the Farm Credit Administration shall not initiate any receivership, conservatorship, liquidation, or enforcement action against any System institution certified to issue preferred stock under section 6.27 of the Farm Credit Act of 1971 (as added by section 201 of this Act) [12 U.S.C. 2278b–7], solely because of the failure of such institution to meet minimum permanent capital adequacy standards unless such action is recommended or concurred in by the Farm Credit System Assistance Board established under section 6.0 of such Act (as added by section 201 of this Act) [12 U.S.C. 2278a].

''(4) PERMANENT CAPITAL.—For purposes of this subsection, the term 'permanent capital' has the same meaning given that term in section 4.3A(a)(1) of the Farm Credit Act of 1971 [12 U.S.C. 2154a(a)(1)].''

§ 2154a. Capitalization of System institutions

(a) Definitions

As used in this section:

(1) Permanent capital

The term ''permanent capital'' means—

(A) current year retained earnings;

(B) allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, shall be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

(C) all surplus (less allowances for losses);

(D) stock issued by a System institution, except—

(i) stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder; or

(ii) stock that is protected under section 2162 of this title or is otherwise not at risk; and

(E) any other debt or equity instruments or other accounts that the Farm Credit Administration determines appropriate to be considered permanent capital.

(2) Stock

The term ''stock'' means voting and nonvoting stock (including preferred stock), equivalent contributions to a guaranty fund, participation certificates, allocated equities, and other forms and types of equities.

(b) Adoption of bylaws

Subject to approval by shareholders under subsection (c)(2) of this section, each bank and association shall adopt bylaws, developed by its board of directors, that provide for the capitalization of the institution in accordance with subsection (c)(1) of this section.

(c) Requirements of bylaws

(1) In general

Notwithstanding any other provision of this chapter, the bylaws adopted under subsection (b) of this section—

(A) shall provide for such classes, par value, and amounts of the stock of the institution, the manner in which such stock shall be issued, transferred, and retired, and the payment of dividends and patronage refunds, as determined appropriate by the Board of Directors, subject to this section;

(B) may provide for the charging of loan origination fees as determined appropriate by the Board of Directors;

(C) shall enable the institution to meet the capital adequacy standards established under the regulations issued under section 2154(a) of this title;

(D) shall provide for the issuance of voting stock, which may only be held by—

(i) borrowers who are farmers, ranchers, or producers or harvesters of aquatic products, and cooperative associations eligible to borrow from System institutions under this chapter;

(ii) persons and entities eligible to borrow from the banks for cooperatives, as described in section 2124(c)(ii) of this title;

(iii) in the case of a Central Bank for Cooperatives, other banks for cooperatives; and

(iv) in the case of banks other than banks for cooperatives, System associations;

(E) shall require that—

(i) as a condition of borrowing from or through the institution, any borrower who is entitled to hold voting stock or participation certificates shall, at the time a loan is made, acquire voting stock or participation certificates in an amount not less than $1,000 or 2 percent of the amount of the loan, whichever is less; and

(ii) within 2 years after the loan of a borrower is repaid in full, any voting stock held by the borrower be converted to nonvoting stock;

(F) may provide that persons who are not borrowers from the institution may hold nonvoting stock of the institution;

(G) shall require that any holder of voting stock issued before the adoption of bylaws under this section exchange a portion of such stock for new voting stock;

(H) do not need to provide for maximum or minimum standards of borrower stock ownership based on a percentage of the loan of the borrower, except as otherwise provided in this section;

(I) shall permit the retirement of stock at the discretion of the institution if the institution meets the capital adequacy standards established under section 2154(a) of this title; and

(J) shall permit stock to be transferable.

(2) Effective date

The bylaws adopted by the board of directors of a System institution under subsection (b) of

this section shall take effect only on approval of a majority of the stockholders of such institution present and voting, or voting by written proxy, at a duly authorized stockholders' meeting.

(d) Reduction of capital

(1) General rule

Except as provided in paragraph (2), the board of directors of a System institution may not reduce the permanent capital of the institution through the payment of patronage refunds or dividends, or the retirement of stock if, after or due to such action, the permanent capital of the institution would thereafter fail to meet the minimum capital adequacy standards established under section 2154(a) of this title.

(2) Exceptions

Paragraph (1) shall not apply to the payment of noncash patronage refunds by any institution exempt from Federal income tax if the entire refund paid qualifies as permanent capital. Notwithstanding paragraph (1), any System institution subject to Federal income tax may pay patronage refunds partially in cash as long as the cash portion of the refund is the minimum amount required to qualify the refund as a deductible patronage distribution for Federal income tax purposes and the remaining portion of the refund paid qualifies as permanent capital.

(e) Compliance

The Farm Credit Administration may issue a directive that requires compliance with subsection (d) of this section, to the board of directors of any System institution that fails to comply therewith.

(f) Loans designated for sale or sold into secondary market

(1) In general

Subject to paragraph (2) and notwithstanding any other provision of this section, the bylaws adopted by a bank or association under subsection (b) of this section may provide—

(A) in the case of a loan made on or after February 10, 1996, that is designated, at the time the loan is made, for sale into a secondary market, that no voting stock or participation certificate purchase requirement shall apply to the borrower for the loan; and

(B) in the case of a loan made before February 10, 1996, that is sold into a secondary market, that all outstanding voting stock or participation certificates held by the borrower with respect to the loan shall, subject to subsection (d)(1) of this section, be retired.

(2) Applicability

Notwithstanding any other provision of this section, in the case of a loan sold to a secondary market under subchapter VIII of this chapter, paragraph (1) shall apply regardless of whether the bank or association retains a subordinated participation interest in a loan or pool of loans or contributes to a cash reserve.

(3) Exception

(A) In general

Subject to subparagraph (B) and notwithstanding any other provision of this section, if a loan designated for sale under paragraph (1)(A) is not sold into a secondary market during the 180-day period that begins on the date of the designation, the voting stock or participation certificate purchase requirement that would otherwise apply to the loan in the absence of a bylaw provision described in paragraph (1)(A) shall be effective.

(B) Retirement

The bylaws adopted by a bank or association under subsection (b) of this section may provide that if a loan described in subparagraph (A) is sold into a secondary market after the end of the 180-day period described in the subparagraph, all outstanding voting stock or participation certificates held by the borrower with respect to the loan shall, subject to subsection (d)(1) of this section, be retired.

(g) Construction

This section shall not be construed to affect the provisions of this chapter that confer on System institutions a lien on borrower stock or other equities and the privilege to retire or cancel such stock or other equities for application against the indebtedness on a defaulted or restructured loan.

(h) Controlling authority

To the extent that any provision of this section is inconsistent with any other provision of this chapter (other than section 2162 of this title), the provision of this section shall control.

(Pub. L. 92–181, title IV, § 4.3A, as added Pub. L. 100–233, title III, § 301(b), Jan. 6, 1988, 101 Stat. 1608; amended Pub. L. 100–399, title III, § 301(b)–(f), Aug. 17, 1988, 102 Stat. 994; Pub. L. 102–552, title I, § 101, Oct. 28, 1992, 106 Stat. 4103; Pub. L. 104–105, title II, § 206, Feb. 10, 1996, 110 Stat. 173; Pub. L. 110–234, title V, § 5403(b), May 22, 2008, 122 Stat. 1154; Pub. L. 110–246, § 4(a), title V, § 5403(b), June 18, 2008, 122 Stat. 1664, 1916.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (c)(1)(D)(ii) to (iv). Pub. L. 110–246, § 5403(b), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

1996—Subsecs. (f) to (h). Pub. L. 104–105 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

1992—Subsec. (a)(1). Pub. L. 102–552 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'permanent capital' means current year retained earnings, allocated and unallocated earnings, all surplus (less allowances for losses), and stock issued by a System institution, except stock that—

''(A) may be retired by the holder thereof on repayment of the holder's loan, or otherwise at the option or request of the holder; or

''(B) is protected under section 2162 of this title or is otherwise not at risk.''

1988—Subsec. (a)(1)(B). Pub. L. 100–399, § 301(b), substituted ''section 2162 of this title'' for ''section 4.9B''.

Subsec. (c)(1)(D)(i). Pub. L. 100–399, § 301(c)(1), substituted ''producers or'' for ''producers, or''.

Subsec. (c)(1)(G). Pub. L. 100–399, § 301(c)(2), substituted ''voting stock issued'' for ''stock issued''.

Subsec. (c)(1)(H). Pub. L. 100–399, § 301(d), inserted '', except as otherwise provided in this section'' after ''the borrower''.

Subsec. (c)(1)(I). Pub. L. 100–399, § 301(e), struck out ''standards issued under'' after ''established under''.

Subsec. (d)(1). Pub. L. 100–399, § 301(f), struck out ''and in section 2162 of this title'' after ''paragraph (2)'' and ''or allocated equities'' after ''retirement of stock''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2155. Liability of banks; United States not liable

(a) Joint and several liability of banks

(1) Each bank of the System shall be fully liable on notes, bonds, debentures, or other obligations issued by it individually, and shall be liable for the interest payments on long-term notes, bonds, debentures, or other obligations issued by other banks operating under the same subchapter of this chapter.

(2)(A) Each bank shall also be primarily liable for the portion of any issue of consolidated or System-wide obligations made on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration in order to make payments of interest or principal which any bank primarily liable therefor shall be unable to make.

(B) Such calls first shall be made on all nondefaulting banks in proportion to each such bank's proportionate share of the aggregate available collateral held by all such banks.

(C) For purposes of this paragraph, the term ''available collateral'' means the amount (determined at the close of the last calendar quarter ending before such call) by which a bank's collateral as described in section 2154 of this title exceeds the collateral required to support the bank's outstanding notes, bonds, debentures, and other similar obligations.

(D) If the Farm Credit Administration makes any such call and the available collateral of all such banks does not fully satisfy the liability necessitating such calls, such calls shall be made on all nondefaulting banks in proportion to each such bank's remaining assets.

(E) Any System bank that, pursuant to a call by the Farm Credit Administration, makes a payment of principal or interest to the holder of any consolidated or System-wide obligation issued on behalf of another System bank shall be subrogated to all rights of the holder against such other bank to the extent of such payment.

(F) On making such a call with respect to obligations issued on behalf of a System bank, the Farm Credit Administration shall appoint a receiver for the bank, which shall expeditiously liquidate or otherwise wind up the affairs of the bank.

(b) Resolutions as to liability; execution of obligations

Each bank participating in an issue shall by appropriate resolution undertake such responsibility as provided in subsection (a) of this section, and in the case of consolidated or System-wide obligations shall authorize the execution of such long-term notes, bonds, debentures, or other obligations on its behalf. When a consolidated or System-wide issue is approved, the notes, bonds, debentures, or other obligations shall be executed and the banks shall be liable thereon as provided herein.

(c) United States liability

The United States shall not be liable or assume any liability directly or indirectly thereon.

(d) Insurance Fund called on before invoking joint and several liability

Beginning 5 years after January 6, 1988, the Farm Credit Administration shall not call on any System institution to satisfy the liability of the institution on any joint, consolidated, or System-wide obligation participated in by the institution or with respect to which the institution is primarily, or jointly and severally, liable, before the Farm Credit Insurance Fund is exhausted, even if the Fund is only able to make a partial payment because of insufficient amounts in the Fund.

(Pub. L. 92–181, title IV, § 4.4, Dec. 10, 1971, 85 Stat. 611; Pub. L. 99–205, title I, § 101(4), title II, § 205(f)(2), Dec. 23, 1985, 99 Stat. 1679, 1706; Pub. L. 100–233, title II, § 207(c), title III, § 303, Jan. 6, 1988, 101 Stat. 1608, 1620; Pub. L. 100–399, title III, § 303, Aug. 17, 1988, 102 Stat. 995.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–233, § 303(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Each bank of the System shall be fully liable on notes, bonds, debentures, or other obligations issued by it individually, and shall be liable for the interest payments on long-term notes, bonds, debentures, or other obligations issued by other banks operating under the same subchapter of this chapter. Each bank shall also be primarily liable for the portion of any issue of consolidated or System-wide obligations made on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration in order to make payments of interest or principal which any bank primarily liable therefor shall be unable to make. Such calls shall be made first upon the other banks operating under the same subchapter of this chapter as the defaulting bank, and second upon banks operating under other subchapters of this chapter, taking into consideration the capital, surplus, bonds, debentures, or other obligations which each may have outstanding at the time of such assessment.''

Subsec. (c). Pub. L. 100–233, § 207(c), redesignated subsec. (d) as (c), and struck out former subsec. (c) which provided that for purposes of this part, the term ''bank'' included the Capital Corporation.

Subsec. (d). Pub. L. 100–399 redesignated subsec. (e) as (d).

Pub. L. 100–233, § 207(c), redesignated subsec. (d) as (c).

Subsec. (e). Pub. L. 100–399 redesignated subsec. (e) as (d).

Pub. L. 100–233, § 303(b), added subsec. (e).

1985—Subsec. (b). Pub. L. 99–205, § 205(f)(2), substituted ''execution of'' for ''Governor to execute'' in first sentence and struck out ''by the Governor'' after ''shall be executed'' in second sentence.

Subsecs. (c), (d). Pub. L. 99–205, §101(4), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2156. Repealed. Pub. L. 100–233, title II, § 204(b), Jan. 6, 1988, 101 Stat. 1607

Section, Pub. L. 92–181, title IV, §4.5, Dec. 10, 1971, 85 Stat. 611; Pub. L. 96–592, title IV, §401, Dec. 24, 1980, 94 Stat. 3446; Pub. L. 99–205, title II, §205(f)(3), Dec. 23, 1985, 99 Stat. 1706, provided for establishment of a finance committee for banks organized and operated under subchapters I, II, and III of this chapter. See section 2160 of this title.

§ 2157. Bonds as investments

The bonds, debentures, and other similar obligations issued under the authority of this chapter shall be lawful investments for all fiduciary and trust funds and may be accepted as security for all public deposits.

(Pub. L. 92–181, title IV, §4.6, Dec. 10, 1971, 85 Stat. 612.)

§ 2158. Purchase and sale by Federal Reserve System

Any member of the Federal Reserve System may buy and sell bonds, debentures, or other similar obligations issued under the authority of this chapter and any Federal Reserve bank may buy and sell such obligations to the same extent and subject to the same limitations placed upon the purchase and sale by said banks of State, county, district, and municipal bonds under section 355 of this title.

(Pub. L. 92–181, title IV, §4.7, Dec. 10, 1971, 85 Stat. 612.)

§ 2159. Purchase and sale of obligations; additional powers

(a) Each bank of the System may purchase its own obligations and the obligations of other banks of the System and may provide for the sale of obligations issued by it, consolidated obligations, or Systemwide obligations through a fiscal agent or agents, by negotiation, offer, bid, syndicate sale, and to deliver such obligations by book entry, wire transfer, or such other means as may be appropriate.

(b) Through December 31, 1992, each bank of the System, in addition to purchasing obligations as authorized by this chapter, may, with the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, (1) reduce the cost of its borrowings by doing one or more of the following: (A) contracting with a third party, or an entity that is established as a limited purpose System institution under section 2211 of this title and that is not to be included in the combined financial statements of other System institutions, with respect to the payment of interest on the bank's obligations and the obligations of other banks incurred before January 1, 1985, in consideration of the payment of market interest rates on such obligations, plus a premium, or (B) for the period July 1, 1986, through December 31, 1992, capitalizing interest costs on obligations incurred before January 1, 1985, in excess of the estimated interest costs on an equivalent amount of Farm Credit System obligations at prevailing market rates on such obligations of similar maturities as of October 21, 1986, or (C) taking other similar action; and (2) amortize, over a period of not to exceed 20 years, the capitalization of the premium, capitalization of interest expense, or like costs of any action taken under clause (1).

(Pub. L. 92–181, title IV, §4.8, Dec. 10, 1971, 85 Stat. 612; Pub. L. 99–509, title I, §1034, Oct. 21, 1986, 100 Stat. 1878; Pub. L. 100–233, title II, §205(a), Jan. 6, 1988, 101 Stat. 1607.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–233 substituted ''December 31, 1992'' for ''December 31, 1988'' in two places.

1986—Pub. L. 99–509 designated existing provisions as subsec. (a) and added subsec. (b).

§ 2160. Federal Farm Credit Banks Funding Corporation

(a) Establishment

There is hereby established the Federal Farm Credit Banks Funding Corporation (hereinafter in this section referred to as the ''Corporation''), which shall be an institution of the Farm Credit System.

(b) Duties

The Corporation—

(1) shall issue, market, and handle the obligations of the banks of the Farm Credit System, and interbank or intersystem flow of funds as may from time to time be required;

(2) acting for the banks of the Farm Credit System, subject to approval of the Farm Credit Administration, shall determine the amount, maturities, rates of interest, terms, and conditions of participation by the several banks in each issue of joint, consolidated, or System-wide obligations; and

(3) shall exercise such other powers as were provided to the predecessor Federal Farm Credit Banks Funding Corporation in accordance with its charter issued under section 2211 of this title, in effect immediately before January 6, 1988.

(c) Officers and committees

(1) Designation

The board of directors may designate such officers and committees for such terms and such purposes as may be agreed on by the board.

(2) Issuance of obligations

When appropriate to the board's functions under this section, a committee of the board of directors of the Corporation, or representatives thereof, may act on behalf of the board in connection with the issuance of joint, consolidated, and System-wide obligations.

(d) Board of directors

(1) Composition

The board of directors shall be composed of nine voting members and one nonvoting member, as follows:

(A) Four voting members shall be current or former directors of the System banks elected by the shareholders of the Corporation.

(B) Three voting members shall be chief executive officers or presidents of System banks elected by the shareholders of the Corporation.

(C) Two voting members shall be appointed by the members elected under subparagraphs (A) and (B) after the elected members have received recommendations for such appointments from, and consulted with, the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System. The appointed members shall be selected from United States citizens—

(i) who are not borrowers from, shareholders in, or employees or agents of any System institution, who are not affiliated with the Farm Credit Administration, and who are not actively engaged with a bank or investment organization that is a member of the Corporation's selling group for System-wide securities; and

(ii) who are experienced or knowledgeable in corporate and public finance, agricultural economics, and financial reporting and disclosure.

(D) The president of the Corporation shall serve as a nonvoting member of the board.

In selecting candidates under subparagraphs (A) and (B), due consideration shall be given to choosing individuals knowledgeable in agricultural economics, public and corporate finance, and financial reporting and disclosure.

(2) Non-voting representatives

(A) Assistance Board

During the period in which the Assistance Board is in existence, the board of directors of the Assistance Board shall designate one of its directors to serve as a non-voting representative to the board of directors of the Corporation.

(B) Meetings

The person designated by the Assistance Board under subparagraph (A) may attend and participate in all deliberations of the board of directors of the Corporation.

(C) Termination of Assistance Board

After termination of the Assistance Board, neither the Assistance Board nor its successor, the Farm Credit System Insurance Corporation, shall have any representation on the board of directors of the Corporation.

(e) Transitional authority

Until a majority of the voting members of the board of directors of the Corporation is elected, which shall occur as soon as is practicable after January 6, 1988—

(1) the finance committee established under section 2156[1] of this title in effect before January 6, 1988, and the fiscal agency established under section 2160[1] of this title in effect before January 6, 1988, shall continue to operate as if this section had not been enacted; and

(2) the board of directors of the predecessor Federal Farm Credit Banks Funding Corporation shall be the board of directors of the Financial Assistance Corporation.

(f) Succession

(1) Assets and liabilities

The Corporation shall, by operation of law and without any further action by the Farm Credit Administration, the predecessor Federal Farm Credit Banks Funding Corporation (hereinafter referred to in this subsection as ''the predecessor corporation'') chartered under this chapter, or any court, succeed to the assets of and assume all debts, obligations, contracts, and other liabilities of the predecessor corporation, matured or unmatured, accrued, absolute, contingent or otherwise, and whether or not reflected or reserved against on balance sheets, books of account, or records of the predecessor corporation.

(2) Contracts

The existing contractual obligations, security instruments, and title instruments of the predecessor corporation shall, by operation of law and without any further action by the Farm Credit Administration, the predecessor corporation, or any court, become and be converted into obligations, entitlements, and instruments of the Corporation.

(3) Stock

The stock of the predecessor corporation issued before January 6, 1988, shall, by operation of law and without any further action by the Farm Credit Administration, the predecessor corporation, or any court, become and be converted into stock of the Corporation established by this section.

(4) Taxation

The succession to assets, assumption of liabilities, conversion of obligations, instruments, and stock, and effectuation of any other transaction by the Corporation to carry out this subsection shall not be treated as a taxable event under the laws of any State or political subdivision thereof.

(Pub. L. 92–181, title IV, § 4.9, Dec. 10, 1971, 85 Stat. 612; Pub. L. 100–233, title II, § 204(a), Jan. 6, 1988, 101 Stat. 1605; Pub. L. 100–399, title II, § 203(a)–(d), Aug. 17, 1988, 102 Stat. 992, 993; Pub. L. 102–552, title V, § 507, Oct. 28, 1992, 106 Stat. 4131.)

REFERENCES IN TEXT

January 6, 1988, referred to in subsecs. (e) and (f)(3), was in the original ''the enactment of this section'', ''the date of the enactment of this section'', and ''such date of enactment'', which were translated as meaning the date of enactment of Pub. L. 100–233, which amended this section generally, to reflect the probable intent of Congress.

Section 2156 of this title, referred to in subsec. (e)(1), was repealed by Pub. L. 100–233, title II, § 204(b), Jan. 6, 1988, 101 Stat. 1607.

For text of section 2160 of this title in effect before January 6, 1988, referred to in subsec. (e)(1), see 1988 Amendment note below.

[1] See References in Text note below.

AMENDMENTS

1992—Subsec. (d)(2). Pub. L. 102–552 amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(A) ASSISTANCE BOARD.—During the period in which the Assistance Board is in existence, the board of directors of the Assistance Board shall designate one of its directors to serve as a nonvoting representative to the board of directors of the Corporation.

''(B) INSURANCE CORPORATION.—After such period, the board of directors of the Farm Credit System Insurance Corporation may designate one of its directors to serve as a nonvoting representative to the board of directors of the Corporation.

''(C) MEETINGS.—The persons so designated by the Assistance Board and by the Farm Credit System Insurance Corporation may attend and participate in all deliberations of the board of directors of the Corporation.''

1988—Pub. L. 100–233 amended section generally. Prior to amendment, section read as follows: ''A fiscal agency shall be established by the banks for such of their functions relating to the issuance, marketing, and handling of their obligations, and interbank or intersystem flow of funds as may from time to time be required.''

Subsec. (b)(3). Pub. L. 100–399, §203(b), inserted ''predecessor Federal Farm Credit Banks'' before ''Funding Corporation''.

Subsec. (d)(2)(B), (C). Pub. L. 100–399, §203(c), substituted ''directors of the Corporation'' for ''directors of the Federal Farm Credit Banks Funding Corporation''.

Subsec. (e). Pub. L. 100–399, §203(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Until a quorum of the board of directors of the Corporation is elected or appointed, the finance committee established under section 2156 of this title in effect before January 6, 1988, and the fiscal agency established under section 2160 of this title in effect before January 6, 1988, shall continue to operate as if this section had not been enacted.''

Subsec. (f). Pub. L. 100–399, §203(a), added subsec. (f).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2161. Repealed. Pub. L. 100–399, title I, § 101(a), Aug. 17, 1988, 102 Stat. 989

Section, Pub. L. 92–181, title IV, §4.9A, as added Pub. L. 99–205, title I, §105, Dec. 23, 1985, 99 Stat. 1687, authorized a central reserve for Farm Credit System.

EFFECTIVE DATE OF REPEAL

Repeal effective immediately after enactment of Pub. L. 100–233, approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2162. Protection of borrower stock

(a) Retirement of stock

Notwithstanding any other section of this chapter, each institution of the Farm Credit System, when retiring eligible borrower stock in accordance with this chapter, shall retire such stock at par value.

(b) Certain powers not affected

This section does not affect the authority of any institution of the Farm Credit System—

(1) to retire or cancel borrower stock at par value for application against a loan in default;

(2) to cancel borrower stock at par value under section 2202b of this title; or

(3) to apply, against any outstanding indebtedness to a System association arising out of or in connection with a liquidation referred to in subsection (d)(2) of this section, the par value of borrower stock frozen in such liquidation.

(c) Inability to retire stock at par value

If an institution is unable to retire eligible borrower stock at par value due to the liquidation of the institution, the receiver of the institution shall retire such stock at par value as would have been retired in the ordinary course of business of the institution, and—

(1) during the 5-year period beginning on January 6, 1988, the Assistance Board shall direct the Financial Assistance Corporation to provide the receiver with sufficient funds to enable the receiver to carry out this subsection; and

(2) after such 5-year period, the Farm Credit System Insurance Corporation shall provide the receiver with sufficient funds from the Farm Credit Insurance Fund to enable the receiver to carry out this subsection.

(d) Definitions

For purposes of this section:

(1) Borrower stock

The term ''borrower stock'' means voting and nonvoting stock, equivalent contributions to a guaranty fund, participation certificates, allocated equities, and other similar equities that are subject to retirement under a revolving cycle issued by any System institution and held by any person other than any System institution.

(2) Eligible borrower stock

The term ''eligible borrower stock'' means borrower stock that—

(A) is outstanding on January 6, 1988;

(B) is issued or allocated after January 6, 1988, but prior to the earlier of—

(i) in the case of each bank and association, the date of approval, by the stockholders of such bank or association, of the capitalization requirements of the institution in accordance with section 2154a of this title; or

(ii) the date that is 9 months after January 6, 1988;

(C) was, after January 1, 1983, but before January 6, 1988, frozen by an institution that was placed in liquidation; or

(D) was retired at less than par value by an institution that was placed in liquidation after January 1, 1983, but before January 6, 1988.

(3) Institution

The term ''institution'' means a bank or association chartered under this chapter.

(4) Par value

The term ''par value'' means—

(A) in the case of stock, par value;

(B) in the case of participation certificates and other equities and interests not described in subparagraph (C), face or equivalent value; or

(C) in the case of participation certificates and allocated equities subject to retirement under a revolving cycle but that a System

institution elects to retire out of order for application against a loan in default or otherwise as provided in this chapter, par or face value discounted, at a rate determined by the institution, to reflect the present value of the equity or interest as of the date of such retirement.

(Pub. L. 92–181, title IV, § 4.9A, as added Pub. L. 100–233, title I, § 101, Jan. 6, 1988, 101 Stat. 1572; amended Pub. L. 100–399, title I, § 101(b)–(d), Aug. 17, 1988, 102 Stat. 989.)

PRIOR PROVISIONS

A prior section 4.9A of Pub. L. 92–181, which authorized a central reserve for Farm Credit System, was classified to section 2161 of this title and was repealed by Pub. L. 100–399, § 101(a).

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–399, § 101(b), struck out provision that an institution whose capital stock is impaired coordinate retirement of stock under this section with the activities of the Assistance Board and the Financial Assistance Corporation.

Subsec. (c). Pub. L. 100–399, § 101(c), inserted ''stock'' in subsec. heading and amended text generally. Prior to amendment, text read as follows: ''If an institution is unable to retire eligible borrower stock at par value due to the freezing of such stock during a liquidation of the institution, the receiver of the institution shall retire such stock at par value as would have been retired in the ordinary course of business of the institution and the Financial Assistance Corporation, on request of the Assistance Board, shall provide the receiver with sufficient funds to enable the receiver to carry out this subsection.''

Subsec. (d)(2)(B). Pub. L. 100–399, § 101(d), in introductory provision substituted ''issued or allocated'' for ''required to be purchased, and is purchased, as a condition of obtaining a loan made'' and in cl. (i) substituted ''section 2154a of this title'' for ''section 4.9B''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

PART B—DISSOLUTION

AMENDMENTS

1988—Pub. L. 100–233, title IV, § 418(a)(1), formerly § 415(a)(1), Jan. 6, 1988, 101 Stat. 1653, renumbered § 418(a)(1), Pub. L. 100–399, title IV, § 409(a), Aug. 17, 1988, 102 Stat. 1003, substituted ''Dissolution'' for ''Dissolution and merger'' as part B heading.

§§ 2181, 2182. Repealed. Pub. L. 100–233, title IV, § 418(a)(2), (3), formerly § 415(a)(2), (3), Jan. 6, 1988, 101 Stat. 1653; renumbered § 418(a)(2), (3), Pub. L. 100–399, title IV, § 409(a), Aug. 17, 1988, 102 Stat. 1003

Section 2181, Pub. L. 92–181, title IV, § 4.10, Dec. 10, 1971, 85 Stat. 612; Pub. L. 96–592, title IV, § 402, Dec. 24, 1980, 94 Stat. 3446, related to merger of similar banks.

Section 2182, Pub. L. 92–181, title IV, § 4.11, Dec. 10, 1971, 85 Stat. 612; Pub. L. 99–205, title II, § 205(f)(4), Dec. 23, 1985, 99 Stat. 1706, related to board of directors for merged bank.

§ 2183. Dissolution; voluntary or involuntary liquidation; mergers; receiverships or conservators

(a) Voluntary liquidation; consent of Farm Credit Administration; rules and regulations; minimization of adverse effect; voluntary merger; mandatory merger on failure to comply or meet obligations

No institution of the System shall go into voluntary liquidation without the consent of the Farm Credit Administration and with such consent may liquidate only in accordance with regulations prescribed by the Farm Credit Administration. In the case of a voluntary liquidation of an association, such regulations, among other things, shall direct the supervising bank to institute such measures as it deems appropriate to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution. The Farm Credit Administration Board may require an association to merge with another association whenever it determines, with the concurrence of the board of the supervising bank, that an association has failed to meet its outstanding obligations or failed to conduct its operations in accordance with this chapter.

(b) Appointment of conservator or receiver; grounds; action for removal; stay of actions or proceedings

The Farm Credit Administration Board may appoint a conservator or receiver for any System institution on the determination by the Farm Credit Administration Board that one or more of the following exists, or is occurring, with respect to the institution: (1) insolvency, in that the assets of the institution are less than its obligations to its creditors and others, including its members; (2) substantial dissipation of assets or earnings due to any violation of law, rules, or regulations, or to any unsafe or unsound practice; (3) an unsafe or unsound condition to transact business; (4) willful violation of a cease and desist order that has become final; (5) concealment of books, papers, records, or assets of the institution or refusal to submit books, papers, records, or other material relating to the affairs of the institution for inspection to any examiner or to any lawful agent of the Farm Credit Administration; (6) the institution is unable to timely pay principal or interest on any insured obligation (as defined in section 2277a(3) of this title) issued by the institution. The Farm Credit Administration Board shall have exclusive power and jurisdiction to appoint a conservator or receiver, and such receiver or conservator, after the 5-year period beginning on January 6, 1988, shall be the Farm Credit System Insurance Corporation. If the Farm Credit Administration Board determines that a ground for the appointment of a conservator or receiver as herein provided exists, the Farm Credit Administration Board may appoint ex parte and without notice a conservator or receiver for the institution. In the event of such appointment, the institution, within thirty days thereafter, may bring an action in the United States district court for the judicial district in which the home office of such institution is located, or in

the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration Board to remove such conservator or receiver, and the court shall on the merits, dismiss such action or direct the Farm Credit Administration Board to remove such conservator or receiver. On the commencement of such an action, the court having jurisdiction of any other action or enforcement proceeding authorized under this chapter to which the institution is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

(c) Involuntary liquidation; rules and regulations; minimization of adverse effect

In the case of an involuntary liquidation of an association, regulations of the Farm Credit Administration, among other things, shall direct the supervising bank to institute such measures as it deems appropriate to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution.

(Pub. L. 92–181, title IV, §4.12, Dec. 10, 1971, 85 Stat. 612; Pub. L. 99–205, title I, §102, title II, §205(f)(5), title III, §305, Dec. 23, 1985, 99 Stat. 1679, 1706, 1708; Pub. L. 100–233, title III, §306, title IV, §418(a)(4), formerly §415(a)(4), §431(g), title VIII, §805(r), Jan. 6, 1988, 101 Stat. 1622, 1653, 1660, 1716, renumbered §418(a)(4), Pub. L. 100–399, title IV, §409(a), Aug. 17, 1988, 102 Stat. 1003; Pub. L. 100–399, title IX, §901(f), Aug. 17, 1988, 102 Stat. 1007.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–399, §901(f), substituted ''board of the supervising bank'' for ''district board''.

Pub. L. 100–233, §415(a)(4), struck out third sentence which provided that Associations may voluntarily merge with other like associations upon the vote of a majority of each of their stockholders present and voting or voting by written proxy at duly authorized meetings, and with the approval of the supervising bank and the Farm Credit Administration, and substituted ''Board may require an association to merge with another association'' for ''may require such merger'' in fourth sentence.

Subsec. (b). Pub. L. 100–233, §431(g), substituted ''Farm Credit Administration Board'' for ''Farm Credit Administration'' wherever appearing other than in cl. (5).

Pub. L. 100–233, §306, added cl. (6) and inserted '', and such receiver or conservator, after the 5-year period beginning on January 6, 1988, shall be the Farm Credit System Insurance Corporation'' before the period at end of second sentence.

Pub. L. 100–233, §805(r), substituted ''court shall'' for ''court, shall''.

1985—Subsec. (a). Pub. L. 99–205, §205(f)(5), substituted ''Farm Credit Administration'' for ''Federal Farm Credit Board'' in last sentence.

Pub. L. 99–205, §305(a), inserted after first sentence a sentence requiring the regulations, in the case of a voluntary liquidation of an association, to direct the supervising bank to institute appropriate measures to minimize the adverse effect of the liquidation on borrowers whose loans are purchased by or otherwise transferred to another System institution.

Subsec. (b). Pub. L. 99–205, §102, in revising subsec. (b), substituted expanded provisions respecting appointment of conservator or receiver for former provision, which read as follows: ''Upon default of any obligation by any institution of the System, such institution may be declared insolvent and placed in the hands of a conservator or a receiver appointed by the Governor and the proceedings thereon shall be in accordance with regulations of the Farm Credit Administration regarding such insolvencies.''

Subsec. (c). Pub. L. 99–205, §305(b), added subsec. (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2184. Communications with stockholders

(a) Provision of stockholder lists

(1) In general

Within 7 days after receipt of a written request by a stockholder, a bank for cooperatives, Federal land bank association, or production credit association shall provide a current list of its stockholders to such requesting stockholder.

(2) Conditions

As a condition of providing a stockholder list under paragraph (1), the bank or association may require that the stockholder agree and certify in writing that the stockholder will—

(A) use the list exclusively for communicating with stockholders for permissible purposes; and

(B) not make the list available to any person, other than the stockholder's attorney or accountant, without first obtaining the written consent of the institution.

(b) Alternative communications

(1) Request to issue

As an alternative to receiving a list of stockholders, a stockholder may request the institution to mail or otherwise furnish to each stockholder a communication for a permissible purpose on behalf of the requesting stockholder.

(2) When permissible

Alternative communications may be used, at the discretion of the requesting stockholder, if the requester agrees to defray the reasonable costs of the communication. If the requester decides to exercise this option, the institution shall provide the requester with a written estimate of the costs of handling and mailing the communication as soon as is practicable after receipt of the stockholder's request to furnish the communication.

(Pub. L. 92–181, title IV, §4.12A, as added Pub. L. 100–233, title IV, §420, Jan. 6, 1988, 101 Stat. 1653.)

PART C—RIGHTS OF BORROWERS; LOAN RESTRUCTURING

AMENDMENTS

1988—Pub. L. 100–233, title VIII, §804(b), Jan. 6, 1988, 101 Stat. 1715, substituted ''Rights of Borrowers; Loan Restructuring'' for ''Rights of Applicants'' as part C heading.

§ 2199. Disclosure

(a) In general

In accordance with regulations of the Farm Credit Administration, qualified lenders shall provide to borrowers, for all loans that are not subject to the Truth in Lending Act (15 U.S.C. 1601 et seq.), meaningful and timely disclosure not later than the time of the loan closing, of—

(1) the current rate of interest on the loan;

(2) in the case of an adjustable or variable rate loan, the amount and frequency by which the interest rate can be increased during the term of the loan or, if there are no such limitations, a statement to that effect, and the factors (including the cost of funds, operating expenses, and provision for loan losses) that will be taken into account by the qualified lender in determining adjustments to the interest rate;

(3) the effect, as shown by a representative example or examples, of any loan origination charges or purchases of stock or participation certificates on the effective rate of interest;

(4) any change in the interest rate applicable to the borrower's loan, and notice to the borrower of a change in the interest rate applicable to the loan of the borrower may be made within a reasonable time after the effective date of an increase or decrease in the interest rate;

(5) except with respect to stock guaranteed under section 2162 of this title, a statement indicating that stock that is purchased is at risk; and

(6) a statement indicating the various types of loan options available to borrowers, with an explanation of the terms and borrowers' rights that apply to each type of loan.

(b) Differential interest rates

A qualified lender offering more than one rate of interest to borrowers shall, at the request of a borrower of a loan—

(1) provide a review of the loan to determine if the proper interest rate has been established;

(2) explain to the borrower in writing the basis for the interest rate charged; and

(3) explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

(Pub. L. 92–181, title IV, § 4.13, as added Pub. L. 99–205, title III, § 301(b), Dec. 23, 1985, 99 Stat. 1707; amended Pub. L. 100–233, title I, §§ 103, 109, Jan. 6, 1988, 101 Stat. 1579, 1584; Pub. L. 104–105, title II, § 207, Feb. 10, 1996, 110 Stat. 173.)

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (a), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, as amended, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

PRIOR PROVISIONS

A prior section 4.13 of Pub. L. 92–181, title IV, Dec. 10, 1971, 85 Stat. 613, was renumbered section 4.13B by Pub. L. 99–205, title III, § 301(a), Dec. 23, 1985, 99 Stat. 1707, and is classified to section 2201 of this title.

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104–105 inserted before semicolon at end ", and notice to the borrower of a change in the interest rate applicable to the loan of the borrower may be made within a reasonable time after the effective date of an increase or decrease in the interest rate".

1988—Pub. L. 100–233, § 109, designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 100–233, § 103, amended section generally, substituting introductory provisions and cls. (1) to (6) for former subsecs. (a) and (b).

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2200. Access to documents and information

In accordance with regulations of the Farm Credit Administration, qualified lenders shall provide their borrowers, at the time of execution of loans, copies of all documents signed by the borrower and at any time thereafter, on a borrower's request, copies of all documents signed or delivered by the borrower and at any time, on request, a copy of the institution's articles of incorporation or charter and bylaws and copies of each appraisal of the borrower's assets made or used by the qualified lender.

(Pub. L. 92–181, title IV, § 4.13A, as added Pub. L. 99–205, title III, § 301(b), Dec. 23, 1985, 99 Stat. 1707; amended Pub. L. 100–233, title I, § 104, Jan. 6, 1988, 101 Stat. 1579.)

AMENDMENTS

1988—Pub. L. 100–233 substituted "qualified lenders" for "System institutions" and inserted "and copies of each appraisal of the borrower's assets made or used by the qualified lender" before period at end.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2201. Notice of action on application

(a) Loan applications

Each qualified lender to which a person has applied for a loan shall provide the person with prompt written notice of—

(1) the action on the application;

(2) if the loan applied for is reduced or denied, the reasons for such action; and

(3) the applicant's right to review under section 2202 of this title.

(b) Distressed loans

Each qualified lender that has a distressed loan outstanding that is subject to restructuring requirements under this chapter shall provide, in accordance with regulations prescribed by the Farm Credit Administration, the borrower with prompt written notice of—

(1) any action taken with respect to restructuring the loan under section 2202a of this title;

(2) if restructuring is denied, the reasons for such action; and

(3) the borrower's right to review under section 2202 of this title.

(Pub. L. 92–181, title IV, § 4.13B, formerly § 4.13, Dec. 10, 1971, 85 Stat. 613, renumbered § 4.13B and amended Pub. L. 99–205, title III, §§ 301(a), 302, Dec. 23, 1985, 99 Stat. 1707, 1708; Pub. L. 100–233, title I, § 105, Jan. 6, 1988, 101 Stat. 1579.)

AMENDMENTS

1988—Pub. L. 100–233 amended section generally. Prior to amendment, section read as follows: ''Every applicant for a loan from an institution of the System shall be entitled to prompt written notice of action on his application, and, if the loan applied for is reduced or denied, the reason for such action, and of the applicant's right to review under section 2202 of this title.''

1985—Pub. L. 99–205, § 302, provided for a ''written'' notice and for the applicant's right to review under section 2202 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2202. Reconsideration of actions

(a) Credit review committees

(1) In general

The board of directors of each qualified lender shall establish one or more credit review committees, which shall include farmer board representation.

(2) Membership

In no case shall a loan officer involved in the initial decision on a loan serve on the credit review committee when the committee reviews such loan.

(b) Review of decisions

(1) Denials or reductions

Any applicant for a loan from a qualified lender that has received a written notice issued under section 2201 of this title of a decision to deny or reduce the loan applied for may submit a written request, not later than 30 days after receiving a notice denying or reducing the amount of the loan application, to obtain a review of the decision before the credit review committee.

(2) Denials of restructuring

A borrower of a loan from a qualified lender that has received notice, under section 2201 of this title, of a decision to deny loan restructuring with respect to a loan made to the borrower, if the borrower so requests in writing within 7 days after receiving such notice, may obtain a review of such decision in person before the credit review committee.

(c) Personal appearance

An applicant for a loan or for restructuring, who is entitled to and has requested a review under this section, may appear in person before the credit review committee, and may be accompanied by counsel or by any other representative of such person's choice, to seek a reversal of the decision on the application under review.

(d) Independent appraisal

(1) In general

An appeal filed with a credit review committee under this section may include, as a part of the request for a review of the decision filed under subsection (b)(1) or (2) of this section, a request for an independent appraisal, by an accredited appraiser, of any interests in property securing the loan (other than the stock or participation certificates of the qualified lender held by the borrower).

(2) Arrangement and cost

Within 30 days after a request for an appraisal under paragraph (1), the credit review committee shall present the borrower with a list of three appraisers approved by the appropriate qualified lender from which the borrower shall select an appraiser to conduct the appraisal the cost of which shall be borne by the borrower, and shall consider the results of such appraisal in any final determination with respect to the loan.

(3) Copy to borrower

A copy of any appraisal made under this subsection shall be provided to the borrower.

(4) Additional collateral

An independent appraisal shall be permitted if additional collateral for a loan is demanded by the qualified lender when determining whether to restructure the loan.

(e) Notification of applicant

Promptly after a review by the credit review committee, the committee shall notify the applicant or borrower, as the case may be, in writing of the decision of the committee and the reasons for the decision.

(Pub. L. 92–181, title IV, § 4.14, Dec. 10, 1971, 85 Stat. 613; Pub. L. 99–205, title III, § 303, Dec. 23, 1985, 99 Stat. 1708; Pub. L. 100–233, title I, § 106, title VIII, § 805(s), Jan. 6, 1988, 101 Stat. 1580, 1716; Pub. L. 100–399, title I, § 103, title VII, § 702(b), Aug. 17, 1988, 102 Stat. 990, 1006.)

AMENDMENTS

1988—Pub. L. 100–233, § 805(s), which directed amendment of this section by substituting ''committees'' for ''committee(s)'', ''2201'' for ''2199'', and ''review'' for ''reviews'', was repealed by Pub. L. 100–399, § 702(b). See Construction of 1988 Amendment note below.

Pub. L. 100–233, § 106, amended section generally. Prior to amendment, section read as follows: ''The board of directors of each Farm Credit System institution shall establish one or more credit review committee(s), which shall include farmer board respresentation. [sic] Any loan applicant who has received written notice, under section 2199 of this title, of a decision to deny or reduce the loan applied for, if the applicant so requests in writing within thirty days after receiving such notice, may obtain a review of such decision in person before the credit review committee. When a loan applicant requests review of an adverse credit decision, a majority of persons serving on such reviews committee must be persons who were not involved in making the adverse decision. Promptly after any such review, the applicant shall be notified in writing of the credit review committee's decision and the reasons therefor.''

Subsec. (b)(1). Pub. L. 100–399, § 103(a), substituted ''before the'' for ''by a''.

Subsec. (d)(1). Pub. L. 100–399, § 103(b), inserted ''or (2)''.

1985—Pub. L. 99–205, in amending section generally, substituted provisions respecting reconsideration of action on loan application for prior reconsideration provisions which read as follows: ''Any applicant who has

reason to believe that the action on his application by an association failed to take into account facts pertinent to his application, or has misinterpreted or failed to properly apply the applicable law or rules and regulations governing his application, may, if he so requests in writing within thirty days of the date of that notice, request an informal hearing on his application and the action of the association in reduction or denial thereof, or the reason for such action, in person before the loan committee or officer or employee thereof authorized to act on applications under section 2033(11) or 2093(18) of this title. Promptly after such a hearing, he shall be notified of the decision upon reconsideration and the reasons therefor.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

CONSTRUCTION OF 1988 AMENDMENT

Section 702(b) of Pub. L. 100–399 provided that section 805(s) of Pub. L. 100–233, cited as a credit to this section, is repealed and that this section shall be applied and administered as if such section had not been enacted.

§ 2202a. Restructuring distressed loans

(a) Definitions

As used in this part:

(1) Application for restructuring

The term ''application for restructuring'' means a written request—

(A) from a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as a part of the application;

(B) submitted on the appropriate forms prescribed by the qualified lender; and

(C) accompanied by sufficient financial information and repayment projections, where appropriate, as required by the qualified lender to support a sound credit decision.

(2) Cost of foreclosure

The term ''cost of foreclosure'' includes—

(A) the difference between the outstanding balance due on a loan made by a qualified lender and the liquidation value of the loan, taking into consideration the borrower's repayment capacity and the liquidation value of the collateral used to secure the loan;

(B) the estimated cost of maintaining a loan as a nonperforming asset;

(C) the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure, including attorneys' fees and court costs;

(D) the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of an action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

(E) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(3) Distressed loan

The term ''distressed loan'' means a loan that the borrower does not have the financial capacity to pay according to its terms and that exhibits one or more of the following characteristics:

(A) The borrower is demonstrating adverse financial and repayment trends.

(B) The loan is delinquent or past due under the terms of the loan contract.

(C) One or both of the factors listed in subparagraphs (A) and (B), together with inadequate collateralization, present a high probability of loss to the lender.

(4) Foreclosure proceeding

The term ''foreclosure proceeding'' means—

(A) a foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a nonaccrual or distressed loan; or

(B) the seizing of and realizing on nonreal property collateral, other than collateral subject to a statutory lien arising under subchapter I or II of this chapter, to effect collection of a nonaccrual or distressed loan.

(5) Loan

(A) In general

Subject to subparagraph (B), the term ''loan'' means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(B) Exclusion for loans designated for sale into secondary market

(i) In general

Except as provided in clause (ii), the term ''loan'' does not include a loan made on or after February 10, 1996, that is designated, at the time the loan is made, for sale into a secondary market.

(ii) Unsold loans

(I) In general

Except as provided in subclause (II), if a loan designated for sale under clause (i) is not sold into a secondary market during the 180-day period that begins on the date of the designation, the provisions of this section and sections 2202, 2202b, 2202c, 2202d, and 2219a of this title that would otherwise apply to the loan in the absence of the exclusion described in clause (i) shall become effective with respect to the loan.

(II) Later sale

If a loan described in subclause (I) is sold into a secondary market after the end of the 180-day period described in subclause (I), subclause (I) shall not apply with respect to the loan beginning on the date of the sale.

(6) Qualified lender

The term ''qualified lender'' means—

(A) a System institution that makes loans (as defined in paragraph (5)) except a bank for cooperatives; and

(B) each bank, institution, corporation, company, union, and association described in section 2015(b)(1)(B) of this title but only with respect to loans discounted or pledged under section 2015(b)(1) of this title.

(7) Restructure and restructuring

The terms ''restructure'' and ''restructuring'' include rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, and the taking of any other action to modify the terms of, or forbear on, a loan in any way that will make it probable that the operations of the borrower will become financially viable.

(b) Notice

(1) In general

On a determination by a qualified lender that a loan made by the lender is or has become a distressed loan, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring, and include with such notice—

(A) a copy of the policy of the lender established under subsection (g) of this section that governs the treatment of distressed loans; and

(B) all materials necessary to enable the borrower to submit an application for restructuring on the loan.

(2) Notice before foreclosure

Not later than 45 days before any qualified lender begins foreclosure proceedings with respect to a loan outstanding to any borrower, the lender shall notify the borrower that the loan may be suitable for restructuring and that the lender will review any such suitable loan for restructuring, and shall include with such notice a copy of the policy and the materials described in paragraph (1).

(3) Limitation on foreclosure

No qualified lender may foreclose or continue any foreclosure proceeding with respect to any distressed loan before the lender has completed any pending consideration of the loan for restructuring under this section.

(c) Meetings

On determination by a qualified lender that a loan made by the lender is or has become a distressed loan, the lender shall provide a reasonable opportunity for the borrower thereof to personally meet with a representative of the lender—

(1) to review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring; and

(2) with respect to a loan that is in nonaccrual status, to develop a plan for restructuring the loan if the loan is suitable for restructuring.

(d) Consideration of applications

(1) In general

When a qualified lender receives an application for restructuring from a borrower, the qualified lender shall determine whether or not to restructure the loan, taking into consideration—

(A) whether the cost to the lender of restructuring the loan is equal to or less than the cost of foreclosure;

(B) whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

(C) whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

(D) whether the borrower is capable of working out existing financial difficulties, reestablishing a viable operation, and repaying the loan on a rescheduled basis; and

(E) in the case of a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not become a loan that it is necessary to place in nonaccrual status.

(2) Applications not required for restructuring plans

This section shall not prevent a qualified lender from proposing a restructuring plan for an individual borrower in the absence of an application for restructuring from the borrower.

(e) Restructuring

(1) In general

If a qualified lender determines that the potential cost to such qualified lender of restructuring the loan in accordance with a proposed restructuring plan is less than or equal to the potential cost of foreclosure, the qualified lender shall restructure the loan in accordance with the plan.

(2) Computation of cost of restructuring

In determining whether the potential cost to the qualified lender of restructuring a distressed loan is less than or equal to the potential cost of foreclosure, a qualified lender shall consider all relevant factors, including—

(A) the present value of interest income and principal forgone by the lender in carrying out the restructuring plan;

(B) reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the restructuring plan;

(C) whether the borrower has presented a preliminary restructuring plan and cashflow analysis taking into account income from all sources to be applied to the debt and all assets to be pledged, showing a reasonable probability that orderly debt retirement will occur as a result of the proposed restructuring; and

(D) whether the borrower has furnished or is willing to furnish complete and current financial statements in a form acceptable to the institution.

(f) Least cost alternative

If two or more restructuring alternatives are available to a qualified lender under this section with respect to a distressed loan, the lender shall restructure the loan in conformity with the alternative that results in the least cost to the lender.

(g) Restructuring policy

(1) Establishment

Each bank board of directors shall develop a policy within 60 days after January 6, 1988, that is consistent with this section, to govern the restructuring of distressed loans. Such policy shall constitute the restructuring policy of each qualified lender within the district.

(2) Contents of policy

The policy established under paragraph (1) shall include an explanation of—

(A) the procedure for submitting an application for restructuring; and

(B) the right of borrowers with distressed loans to seek review by a credit review committee in accordance with section 2202 of this title of a denial of an application for restructuring.

(3) Submission of policy to FCA

Each bank board shall submit the policy of the district governing the treatment of distressed loans under this section to the Farm Credit Administration. Notwithstanding the duty imposed by the preceding sentence, the other duties imposed by this section shall take effect on January 6, 1988.

(h) Reports

During the 5-year period beginning on January 6, 1988, each qualified lender shall submit semiannual reports to the Farm Credit Administration containing—

(1) the results of the review of distressed loans of the lender; and

(2) the financial effect of loan restructurings and liquidations on the lender.

(i) Compliance

The Farm Credit Administration may issue a directive requiring compliance with any provision of this section to any qualified lender that fails to comply with such provision.

(j) Permitted foreclosures

This section shall not be construed to prevent any qualified lender from enforcing any contractual provision that allows the lender to foreclose a loan, or from taking such other lawful action as the lender deems appropriate, if the lender has reasonable grounds to believe that the loan collateral will be destroyed, dissipated, consumed, concealed, or permanently removed from the State in which the collateral is located.

(k) Application of section

The time limitation prescribed in subsection (b)(2) of this section, and the requirements of subsection (c) of this section, shall not apply to a loan that became a distressed loan before January 6, 1988, if the borrower and lender of the loan are in the process of negotiating loan restructuring with respect to the loan.

***(l)* Assistance in restructuring**

Each Farm Credit Bank, on request of any production credit association, may assist the association in restructuring loans under this section.

(Pub. L. 92–181, title IV, §4.14A, as added Pub. L. 100–233, title I, §102(a), Jan. 6, 1988, 101 Stat. 1574; amended Pub. L. 100–399, title I, §102(a)–(f), Aug. 17, 1988, 102 Stat. 990; Pub. L. 104–105, title II, §208(a), Feb. 10, 1996, 110 Stat. 173.)

AMENDMENTS

1996—Subsec. (a)(5). Pub. L. 104–105 designated existing provisions as subpar. (A), inserted subpar. heading, substituted ''Subject to subparagraph (B), the term'' for ''The term'', and added subpar. (B).

1988—Subsec. (a). Pub. L. 100–399, §102(a), struck out ''(other than in sections 2205 and 2206 of this title)'' after ''in this part''.

Subsec. (a)(6)(B). Pub. L. 100–399, §102(b), substituted ''section 2015(b)(1)(B) of this title'' for ''section 2074(a)(2) of this title'' and ''section 2015(b)(1) of this title'' for ''section 2074(a) of this title''.

Subsec. (e)(1). Pub. L. 100–399, §102(c), substituted ''cost to such qualified'' for ''cost to a qualified''.

Subsec. (g)(1). Pub. L. 100–399, §102(d), substituted ''bank'' for ''farm credit district''.

Subsec. (g)(3). Pub. L. 100–399, §102(e), substituted ''bank board'' for ''district board''.

Subsec. (*l*). Pub. L. 100–399, §102(f), substituted ''Farm Credit Bank'' for ''Federal intermediate credit bank''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 102(b), (f) of Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, and amendment by section 102(a), (c)–(e) of Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001 of Pub. L. 100–399, set out as a note under section 2002 of this title.

SENSE OF CONGRESS

Section 102(b) of Pub. L. 100–233 provided that: ''It is the sense of Congress that the banks and associations (except banks for cooperatives) operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) should administer distressed loans to farmers with the objective of using the loan guarantee programs of the Farmers Home Administration and other loan restructuring measures, including participation in interest rate buydown programs that are Federally or State funded, and other Federal and State sponsored financial assistance programs that offer relief to financially distressed farmers, as alternatives to foreclosure, considering the availability and appropriateness of such programs on a case-by-case basis.''

§ 2202b. Effect of restructuring on borrower stock

(a) Farm Credit Bank

If a Farm Credit Bank forgives and writes off, under section 2202a of this title, any of the principal outstanding on a loan made to any borrower, the Federal land bank association of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock, and, to the extent provided for in the bylaws of the bank relating to its capitalization, the bank shall retire an equal amount of stock owned by the Federal land bank association.

(b) Production credit association

If a production credit association forgives and writes off, under section 2202a of this title, any of the principal outstanding on a loan made to any borrower, the association shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock.

(c) Retention of stock

Notwithstanding subsections (a) and (b) of this section, the borrower shall be entitled to retain at least one share of stock to maintain the borrower's membership and voting interest in the association.

(Pub. L. 92–181, title IV, § 4.14B, as added Pub. L. 100–233, title I, § 102(a), Jan. 6, 1988, 101 Stat. 1577; amended Pub. L. 100–399, title I, § 102(g), Aug. 17, 1988, 102 Stat. 990.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–399 substituted in subsec. heading ''Farm Credit Bank'' for ''Federal land bank'' and in text ''a Farm Credit Bank'' for ''a Federal land bank'' and '', to the extent provided for in the bylaws of the bank relating to capitalization, the bank shall'' for ''the Federal land bank shall''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2202c. Review of restructuring denials

(a) Requirements for restructuring by System institutions

(1) Existing nonaccrual loans

Within 9 months after a qualified lender is certified under section 2278a–4 of this title, such lender shall review each loan that has not been previously restructured and that is in nonaccrual status on the date the lender is certified, and determine whether to restructure the loan.

(2) New nonaccrual loans

Within 6 months after a loan made by a certified lender is placed in nonaccrual status, the lender shall determine whether to restructure the loan.

(b) Special asset groups

(1) Establishment

Within 30 days after a qualified lender in a district is certified to issue preferred stock under section 2278b–7 of this title, the Farm Credit Bank board shall establish a special asset group that shall review each determination by the lender not to restructure a loan.

(2) Restructuring plan

If a special asset group determines under paragraph (1) that a loan under review should be restructured, the group shall prescribe a restructuring plan for the loan that the qualified lender shall implement.

(c) National Special Asset Council

(1) Establishment

A National Special Asset Council shall be established by the Assistance Board to—

(A) monitor compliance with the restructuring requirements of this section by qualified lenders certified to issue preferred stock under section 2278b–7 of this title, and by special asset groups established under subsection (b) of this section; and

(B) review a sample of determinations made by each special asset group that a loan will not be restructured.

(2) Review of determination

The National Special Asset Council shall review a sufficient number of determinations made by each special asset group to foreclose on any loan to assure the Council that such group is complying with this section. With regard to each determination reviewed, the Council shall make an independent judgment on the merits of the decision to foreclose rather than restructure the loan.

(3) Noncompliance

If the National Special Asset Council determines that any special asset group is not in substantial compliance with this section, the Council shall notify the group of the determination, and may take such other action as the Council considers necessary to ensure that such group complies with this section.

(d) Report

With respect to determinations by a special asset group that a loan will not be restructured, the special asset group shall submit to the National Special Asset Council a report evaluating the loan and the basis for the determination that the loan should not be restructured.

(e) Restructuring factors

In determining whether a loan is to be restructured, the National Special Asset Council, each special asset group, and each qualified lender certified under section 2278a–4 of this title shall take into consideration the factors specified in section 2202a(d)(1) of this title.

(Pub. L. 92–181, title IV, § 4.14C, as added Pub. L. 100–233, title I, § 102(a), Jan. 6, 1988, 101 Stat. 1578; amended Pub. L. 100–399, title I, § 102(h), Aug. 17, 1988, 102 Stat. 990.)

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100–399 substituted ''Farm Credit Bank board'' for ''district board of such district''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2202d. Protection of borrowers who meet all loan obligations

(a) Foreclosure prohibited

A qualified lender may not foreclose on any loan because of the failure of the borrower thereof to post additional collateral, if the borrower has made all accrued payments of principal, interest, and penalties with respect to the loan.

(b) Prohibition against required principal reduction

A qualified lender may not require any borrower to reduce the outstanding principal balance of any loan made to the borrower by any amount that exceeds the regularly scheduled principal installment payment (when due and payable), unless—

(1) the borrower sells or otherwise disposes of part or all of the collateral; or

(2) the parties agree otherwise in a written agreement entered into by the parties.

(c) Nonenforcement

After a borrower has made all accrued payments of principal, interest, and penalties with respect to a loan made by a qualified lender, the lender shall not enforce acceleration of the borrower's repayment schedule due to the borrower having not timely made one or more principal or interest payments.

(d) Placing loans in nonaccrual status

(1) Notification

If a qualified lender places any loan in nonaccrual status, the lender shall document such change of status and promptly notify the borrower thereof in writing of such action and the reasons therefor.

(2) Review of denial

If the borrower was not delinquent in any principal or interest payment under the loan at the time of such action and the borrower's request to have the loan placed back into accrual status is denied, the borrower may obtain a review of such denial before the appropriate credit review committee under section 2202 of this title.

(3) Application

This subsection shall only apply if a loan being placed in nonaccrual status results in an adverse action being taken against the borrower.

(Pub. L. 92–181, title IV, § 4.14D, as added Pub. L. 100–233, title I, § 107, Jan. 6, 1988, 101 Stat. 1581.)

§ 2202e. Waiver of mediation rights by borrowers

No System institution may make a loan secured by a mortgage or lien on agricultural property to a borrower on the condition that the borrower waive any right under the mediation program of any State.

(Pub. L. 92–181, title IV, § 4.14E, as added Pub. L. 100–233, title V, § 511, Jan. 6, 1988, 101 Stat. 1664; amended Pub. L. 103–354, title II, § 282(f)(2), Oct. 13, 1994, 108 Stat. 3235.)

AMENDMENTS

1994—Pub. L. 103–354 struck out ''agricultural loan'' before ''mediation program''.

PART D—ACTIVITIES OF INSTITUTIONS OF THE SYSTEM

AMENDMENTS

1988—Pub. L. 100–233, title VIII, § 805(t)(1), Jan. 6, 1988, 101 Stat. 1716, added heading for part D.

§ 2203. Nomination of association directors; representative selection of nominees

Each production credit association and each Federal land bank association shall elect a nominating committee by vote of the stockholders at the annual meeting to serve for the following year. Each nominating committee shall review lists of farmers from the association territory, determine their willingness to serve, and submit for election a slate of eligible candidates which shall include at least two nominees for each elective office to be filled. In doing so, the committee shall endeavor to assure representation to all sections of the association territory and as nearly as possible to all types of agriculture practiced within the area. Employees of the association shall not be eligible to be nominated, elected, or serve as a member of the board. Nominations shall also be accepted from the floor. Members of the board are not eligible to serve on the nominating committee. Regulations of the Farm Credit Administration governing the election of bank directors shall similarly assure a choice of two nominees for each elective office to be filled and that the bank board represent as nearly as possible all types of agriculture in the district.

(Pub. L. 92–181, title IV, § 4.15, Dec. 10, 1971, 85 Stat. 613; Pub. L. 100–399, title IX, § 901(g), Aug. 17, 1988, 102 Stat. 1007.)

AMENDMENTS

1988—Pub. L. 100–399 substituted ''bank directors'' for ''district directors'' and ''bank board'' for ''district board''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2204. Repealed. Pub. L. 102–552, title V, § 508, Oct. 28, 1992, 106 Stat. 4132

Section, Pub. L. 92–181, title IV, § 4.16, Dec. 10, 1971, 85 Stat. 613, prohibited tax-exempt guarantees.

§ 2205. Interest rates

Interest rates on loans from institutions of the Farm Credit System shall not be subject to any interest rate limitation imposed by any State constitution or statute or other laws. Such limitation is preempted for purposes of this chapter. Interest rates on loans made by agricultural credit corporations organized in conjunction with cooperative associations for the purpose of financing the ordinary crop operations of the members of such associations or other producers and eligible to discount with the Federal intermediate credit banks and Farm Credit Banks shall be exempt from any interest rate limitation imposed by any State constitution or statute or other laws which are hereby preempted for purposes of this chapter.

(Pub. L. 92–181, title IV, § 4.17, as added Pub. L. 96–592, title IV, § 403, Dec. 24, 1980, 94 Stat. 3446; amended Pub. L. 99–205, title II, § 205(f)(6), Dec. 23, 1985, 99 Stat. 1706; Pub. L. 99–509, title I, § 1035, Oct. 21, 1986, 100 Stat. 1878; Pub. L. 100–399, title IX, § 901(h), Aug. 17, 1988, 102 Stat. 1007.)

AMENDMENTS

1988—Pub. L. 100–399 substituted ''and Farm Credit Banks'' for ''pursuant to section 2074 of this title''.

1986—Pub. L. 99–509 substituted first two sentences for former first sentence which read as follows: ''Interest rates on loans from institutions of the Farm Credit System shall be determined with the approval of, as provided in section 2252(a)(5) of this title, the Farm Credit Administration as provided in this chapter, notwithstanding any interest rate limitation imposed by any State constitution or statute or other laws which are hereby preempted for purposes of this chapter.''

1985—Pub. L. 99–205 inserted '', as provided in section 2252(a)(5) of this title,'' after ''with the approval of'' in first sentence.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2206. Participation loans

Notwithstanding any other provisions of this chapter, the terms of any loan participated in by two or more Farm Credit System institutions operating under different subchapters of this chapter, including provisions for capitalization of the portion of the loan participated in by each institution, shall be as may be agreed upon among such institutions and authorized under regulations issued by the Farm Credit Administration, except that for purposes of determining borrower eligibility, membership, term, amount, loan security, and purchase of stock or participation certificates by the borrower, the provisions of law applicable to the loan shall be the provisions in the subchapter under which the institution that originates the loan operates.

(Pub. L. 92–181, title IV, § 4.18, as added Pub. L. 96–592, title IV, § 403, Dec. 24, 1980, 94 Stat. 3446; amended Pub. L. 99–205, title II, § 205(f)(7), Dec. 23, 1985, 99 Stat. 1706.)

AMENDMENTS

1985—Pub. L. 98–205 inserted ''under regulations issued'' after ''authorized''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2206a. Authority of Farm Credit Banks and direct lender associations to participate in loans to similar entities for risk management purposes

(a) Definitions

As used in this section:

(1) Participate and participation

The terms ''participate'' and ''participation'' shall have the meaning provided in section 2122(11)(B)(iii) of this title.

(2) Similar entity

The term ''similar entity'' means a person that—

(A) is not eligible for a loan from the Farm Credit Bank or association; and

(B) has operations that are functionally similar to a person that is eligible for a loan from the Farm Credit Bank or association in that the person derives a majority of the income of the person from, or has a majority of the assets of the person invested in, the conduct of activities that are functionally similar to the activities that are conducted by an eligible person.

(b) Loan participation authority

Notwithstanding any other provision of this chapter, any Farm Credit Bank or direct lender association chartered under this chapter may participate in any loan of a type otherwise authorized under subchapter I or II of this chapter made to a similar entity by any person in the business of extending credit, except that a Farm Credit Bank or direct lender association may not participate in a loan under this section if—

(1) the participation would cause the total amount of all participations by the Farm Credit Bank or association under this section involving a single credit risk to exceed 10 percent (or the applicable higher lending limit authorized under regulations issued by the Farm Credit Administration if the stockholders of the respective Farm Credit Bank or association so approve) of the total capital of the Farm Credit Bank or association;

(2) the participation by the Farm Credit Bank or association would equal or exceed 50 percent of the principal of the loan or, when taken together with participations in the loan by other Farm Credit System institutions, would cause the cumulative amount of the participations by all Farm Credit System institutions in the loan to equal or exceed 50 percent of the principal of the loan;

(3) the participation would cause the cumulative amount of participations that the Farm Credit Bank or association has outstanding under this section to exceed 15 percent of the total assets of the Farm Credit Bank or association; or

(4) the loan is of the type authorized under section 2019(b) or 2075(a)(2) of this title.

(Pub. L. 92–181, title IV, § 4.18A, as added Pub. L. 103–376, § 5, Oct. 19, 1994, 108 Stat. 3498; Pub. L. 107–171, title V, § 5401(b), May 13, 2002, 116 Stat. 349.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–171, § 5401(b)(1), substituted ''2122(11)(B)(iii) of this title'' for ''2122(11)(B)(iv) of this title''.

Subsec. (c). Pub. L. 107–171, § 5401(b)(2), struck out heading and text of subsec. (c). Text read as follows:

''(1) IN GENERAL.—With respect to a similar entity that is eligible to borrow from a bank for cooperatives under subchapter III of this chapter, the authority of a Farm Credit Bank or association to participate in a loan to the entity under this section shall be subject to the prior approval of the bank for cooperatives having, at the time the loan is made, the greatest loan volume in the State in which the headquarters office of the similar entity is located.

''(2) TERMS AND CONDITIONS.—Approval under paragraph (1) may be granted on an annual basis and under such terms and conditions as may be agreed on between the Farm Credit Bank or association, as the case may be, and the bank for cooperatives granting the approval.

''(3) APPROVAL BY SUPERVISING FARM CREDIT BANK.—An association may not participate in a loan to a similar entity under this section without the approval of the supervising Farm Credit Bank of the association.''

§ 2207. Young, beginning, and small farmers and ranchers

(a) Under policies of the district Farm Credit Bank board, each Federal land bank association and production credit association shall prepare

a program for furnishing sound and constructive credit and related services to young, beginning, and small farmers and ranchers. Such programs shall assure that such credit and services are available in coordination with other units of the Farm Credit System serving the territory and with other governmental and private sources of credit. Each program shall be subject to review and approval by the supervising bank.

(b) The Farm Credit Bank for each district shall annually obtain from associations under its supervision reports of activities under programs developed pursuant to subsection (a) of this section and progress toward program objectives. On the basis of such reports, the bank shall provide to the Farm Credit Administration an annual report summarizing the operations and achievements in its district under such programs.

(Pub. L. 92–181, title IV, § 4.19, as added Pub. L. 96–592, title IV, § 403, Dec. 24, 1980, 94 Stat. 3446; amended Pub. L. 100–399, title IX, § 901(i), (j), Aug. 17, 1988, 102 Stat. 1007.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–399, § 901(i), inserted ''Farm Credit Bank'' after ''district''.

Subsec. (b). Pub. L. 100–399, § 901(j)(1), (2), (4), (5), substituted ''The Farm Credit Bank for each district'' for ''The Federal land bank and the Federal intermediate credit bank for each district'', ''under its supervision'' for ''under their supervision'', ''the bank shall'' for ''the banks shall'', ''an annual report'' for ''a joint annual report'', and ''achievements in its district'' for ''achievements in their district''.

Pub. L. 100–399, § 901(j)(3), substituted ''subsection (a)'' for ''subsection (a) of this section'', which for purposes of codification was translated as ''subsection (a) of this section'', requiring no change in text.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2208. Prohibition against use of signed ballots

In any election or merger vote, or other proceeding subject to a vote of the stockholders (or subscribers to the guaranty fund of a bank for cooperatives), conducted by a lending institution of the Farm Credit System, the institution—

(1) may not use signed ballots; and

(2) shall implement measures to safeguard the voting process for the protection of the right of stockholders (or subscribers) to a secret ballot.

(Pub. L. 92–181, title IV, § 4.20, as added Pub. L. 96–592, title IV, § 403, Dec. 24, 1980, 94 Stat. 3447; amended Pub. L. 100–233, title IV, § 425, Jan. 6, 1988, 101 Stat. 1657.)

AMENDMENTS

1988—Pub. L. 100–233 amended section generally. Prior to amendment, section read as follows: ''The provisions of (1) section 2074 of this title authorizing the Federal intermediate credit banks to lend to or discount paper for other financial institutions, and (2) section 2128(b) of this title authorizing the financing of certain domestic or foreign entities in connection with the import or export activities of cooperatives which are borrowers from the banks for cooperatives, shall expire on September 30, 1990, unless extended by Act of Congress prior to that date. Any contract or agreement entered into under the authority of either provision prior to its expiration shall remain in full force and effect notwithstanding such expiration.''

§ 2209. Compensation of bank directors

(a) In general

The Farm Credit Administration shall monitor the compensation of members of the board of directors of a System bank received as compensation for serving as a director of the bank to ensure that the amount of the compensation does not exceed a level of $20,000 per year, as adjusted to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, unless the Farm Credit Administration determines that such level adversely affects the safety and soundness of the bank.

(b) Waiver

The Farm Credit Administration may waive the limitation prescribed in subsection (a) of this section under exceptional circumstances, as determined in accordance with regulations promulgated by the Farm Credit Administration.

(Pub. L. 92–181, title IV, § 4.21, as added Pub. L. 100–399, title IV, § 414, Aug. 17, 1988, 102 Stat. 1004; amended Pub. L. 102–552, title V, § 509, Oct. 28, 1992, 106 Stat. 4132.)

AMENDMENTS

1992—Pub. L. 102–552 amended section generally. Prior to amendment, section read as follows: ''No member of the board of directors of a System bank may receive more than $15,000 per year under this chapter as compensation for serving as a director of such bank.''

EFFECTIVE DATE

Section effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as an Effective Date of 1988 Amendment note under section 2002 of this title.

PART E—SERVICE ORGANIZATIONS

AMENDMENTS

1988—Pub. L. 100–233, title VIII, § 805(t)(2), Jan. 6, 1988, 101 Stat. 1716, redesignated part D as E.

§ 2211. Establishment

Any bank of the Farm Credit System, or two or more of such banks acting together, may organize a corporation or corporations for the purpose of performing functions and services for or on behalf of the organizing bank or banks that the bank or banks may perform pursuant to this chapter: *Provided*, That a corporation so organized shall have no authority either to extend credit or provide insurance services for borrowers from Farm Credit System institutions, nor shall it have any greater authority with respect to functions and services than the organizing bank or banks possess under this chapter. The organizing bank or banks shall apply for a Federal charter for the corporation by forwarding to the Farm Credit Administration a statement of the need for the corporation and proposed articles specifying in general terms the objectives

for which the corporation is formed, the powers to be exercised by it in carrying out the functions and services, and the territory it is to serve. The Farm Credit Administration for good cause may deny the charter applied for. Upon the approval of articles by the Farm Credit Administration and the issuance of a charter, the corporation shall become as of such date a federally chartered body corporate and an instrumentality of the United States.

(Pub. L. 92–181, title IV, § 4.25, as added Pub. L. 96–592, title IV, § 404, Dec. 24, 1980, 94 Stat. 3447; amended Pub. L. 99–205, title II, § 205(f)(8), Dec. 23, 1985, 99 Stat. 1706.)

AMENDMENTS

1985—Pub. L. 99–205 struck out ''the Governor of'' before ''the Farm Credit Administration'' in second sentence and substituted ''Farm Credit Administration'' for ''Governor'' in third and fourth sentences.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2212. Powers of Farm Credit Administration

The Farm Credit Administration shall have power, under rules and regulations prescribed by the Farm Credit Administration, to provide for the organization of any corporation chartered under this part and the territory within which its operations may be carried on, and to approve amendments consistent with this chapter to charters or articles of service corporations.

(Pub. L. 92–181, title IV, § 4.26, as added Pub. L. 96–592, title IV, § 404, Dec. 24, 1980, 94 Stat. 3447; amended Pub. L. 99–205, title II, § 205(f)(9), Dec. 23, 1985, 99 Stat. 1706; Pub. L. 100–233, title VIII, § 802(s), Jan. 6, 1988, 101 Stat. 1712.)

AMENDMENTS

1988—Pub. L. 100–233 struck out ''or by prescribing in the terms of the charter or by approval of the bylaws of the corporation'' after second reference to Farm Credit Administration, substituted ''approve amendments consistent with this chapter to charters or articles of service corporations'' for ''direct at any time such changes in its charter as the Farm Credit Administration finds necessary for the accomplishment of the purposes of this chapter'', and struck out last sentence which read as follows: ''The powers of the Farm Credit Administration to provide for the organization of any corporation chartered under this part include, but are not limited to approval of—

''(1) corporate title;

''(2) general corporate powers;

''(3) eligibility for membership on, and the powers, composition, selection, terms, and compensation of the board of directors;

''(4) classes, issuance, value, and retirement of stock;

''(5) sources of operating funds;

''(6) dissolution, liquidation, and distribution of assets on liquidation; and

''(7) application and distribution of earnings.''

1985—Pub. L. 99–205 substituted ''Farm Credit Administration'' for ''Governor'' in heading and wherever appearing in text, and substituted ''the Federal Credit Administration'' for ''he'' before ''finds necessary'' in first sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2213. Regulation and examination

The corporations organized under this part shall be institutions of the Farm Credit System and shall be subject to the same regulation and examination by the Farm Credit Administration as are the organizing bank or banks under this chapter.

(Pub. L. 92–181, title IV, § 4.27, as added Pub. L. 96–592, title IV, § 404, Dec. 24, 1980, 94 Stat. 3447; amended Pub. L. 99–205, title II, § 205(f)(10), Dec. 23, 1985, 99 Stat. 1706; Pub. L. 100–233, title VIII, § 802(t), Jan. 6, 1988, 101 Stat. 1712.)

AMENDMENTS

1988—Pub. L. 100–233 substituted ''Regulation'' for ''Supervision'' in section catchline.

1985—Pub. L. 99–205 substituted ''regulation'' for ''supervision''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2214. State laws

State and other laws shall apply to corporations organized pursuant to this part to the same extent such laws would apply to the organizing banks engaged in the same activity in the same jurisdiction: *Provided*, *however*, That to the extent that sections 2023, 2098, and 2134 of this title may exempt banks or associations of the Farm Credit System from taxation, such exemptions, other than with respect to franchise taxes, shall not extend to corporations organized pursuant to this part.

(Pub. L. 92–181, title IV, § 4.28, as added Pub. L. 96–592, title IV, § 404, Dec. 24, 1980, 94 Stat. 3448; amended Pub. L. 100–399, title IX, § 901(k), Aug. 17, 1988, 102 Stat. 1007; Pub. L. 102–237, title V, § 502(g), Dec. 13, 1991, 105 Stat. 1869.)

AMENDMENTS

1991—Pub. L. 102–237 made technical amendment to reference to section 2098 of this title to reflect change in reference to corresponding section of original act.

1988—Pub. L. 100–399 inserted ''or associations'' and substituted ''2023, 2098,'' for ''2055, 2079,''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–237 effective as if included in the provision of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, to which the amendment relates, see section 1101(b)(4) of Pub. L. 102–237, set out as a note under section 1421 of Title 7, Agriculture.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2214a. "Bank" defined

In this part, the term ''bank'' includes each association operating under subchapter II of this chapter.

(Pub. L. 92–181, title IV, § 4.28A, as added Pub. L. 104–105, title II, § 209, Feb. 10, 1996, 110 Stat. 174.)

PRIOR PROVISIONS

A prior section 4.28A of title IV of Pub. L. 92–181, which provided for chartering of Farm Credit System

Capital Corporation by Farm Credit Administration and revoked charter of Farm Credit System Capital Corporation which had been issued under part D of this subchapter, was classified to section 2216 of this title, prior to repeal by Pub. L. 100–233, title II, §207(a)(3), Jan. 6, 1988, 101 Stat. 1607.

PART D1—FARM CREDIT SYSTEM CAPITAL CORPORATION

§§ 2216 to 2216k. Repealed. Pub. L. 100–233, title II, § 207(a)(3), Jan. 6, 1988, 101 Stat. 1607

Section 2216, Pub. L. 92–181, title IV, §4.28A, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1680, provided for chartering of Farm Credit System Capital Corporation by Farm Credit Administration and revoked charter of Farm Credit System Capital Corporation which had been issued under part D of this subchapter. See sections 2278a et seq. and 2278b et seq. of this title.

Section 2216a, Pub. L. 92–181, title IV, §4.28B, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1680, set out purposes of Capital Corporation. See sections 2278a–1 and 2278b–1 of this title.

Section 2216b, Pub. L. 92–181, title IV, §4.28C, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1680, provided for Board of Directors of Capital Corporation. See sections 2278a–2 and 2278b–2 of this title.

Section 2216c, Pub. L. 92–181, title IV, §4.28D, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1682, provided for compensation of members of Board of Directors of Capital Corporation. See sections 2278a–2 and 2278b–2 of this title.

Section 2216d, Pub. L. 92–181, title IV, §4.28E, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1682, authorized Board of Directors of Capital Corporation to adopt rules. See sections 2278a–2 and 2278b–2 of this title.

Section 2216e, Pub. L. 92–181, title IV, §4.28F, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1682, provided for selection of chief executive officer of Capital Corporation. See sections 2278a–2 and 2278b–2 of this title.

Section 2216f, Pub. L. 92–181, title IV, §4.28G, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1682, enumerated corporate powers of Capital Corporation. See sections 2278a–3 and 2278b–4 of this title.

Section 2216g, Pub. L. 92–181, title IV, §4.28H, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1685, provided for succession of Capital Corporation. See section 2278a–9 of this title.

Section 2216h, Pub. L. 92–181, title IV, §4.28I, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1685, set out provisions limiting powers of Capital Corporation. See section 2278a–8 of this title.

Section 2216i, Pub. L. 92–181, title IV, §4.28J, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1686, set out authority of Secretary of the Treasury. See section 2278b–6 of this title.

Section 2216j, Pub. L. 92–181, title IV, §4.28K, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1687, provided for initial capitalization of Capital Corporation.

Section 2216k, Pub. L. 92–181, title IV, §4.28L, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1687, provided for tax status of consolidated obligations. See sections 2278a–11 and 2278b–10 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 15 days after Jan. 6, 1988, see section 207(b) of Pub. L. 100–233, set out as a note under section 2152 of this title.

PART F—SALE OF INSURANCE

AMENDMENTS

1988—Pub. L. 100–399, title VII, §702(c), Aug. 17, 1988, 102 Stat. 1006, redesignated part G as F.

Pub. L. 100–233, title VIII, §805(u), Jan. 6, 1988, 101 Stat. 1716, redesignated part E as G.

§ 2218. Lines of insurance

(a) Regulatory authorization

(1) The regulations of the Farm Credit Administration governing financially related services that the banks and associations of the Farm Credit System may provide under subchapters I and II of this chapter may authorize the sale to any member of or borrower from any such bank or association, on an optional basis, of credit or term life and credit disability insurance appropriate to protect the loan commitment in the event of death or disability of the debtors and other insurance necessary to protect the member's farm or aquatic unit, but limited to, hail and multiple-peril crop insurance, title insurance, and insurance to protect the facilities and equipment of aquatic borrowers. A member or borrower shall have the option, without coercion from the bank or association of such member or borrower, to accept or reject such insurance.

(2) In making insurance available through private insurers, the banks shall approve the programs of more than two insurers for each type of insurance offered in the district, if more than two insurers for each type of insurance have proposed programs to a bank that will, in all likelihood, have long-term viability and meet the requirements of subsection (b)(2)(D) of this section. The banks may provide comparative information relating to costs and quality of approved programs and the financial conditions of approved companies. Associations shall offer at least two insurers for each program from among those approved by the Farm Credit Banks, if at least two insurers have been approved in accordance with this paragraph.

(b) Contents of regulations

Such regulations shall provide that—

(1) in any case in which insurance is required as a condition for a loan or other financial assistance from a bank or association, notice be given that it is not necessary to purchase the insurance from the bank or association and that the borrower has the option of obtaining the insurance elsewhere;

(2) such insurance services may be offered only if—

(A) the bank or association has the capacity to render insurance service under this chapter in an effective and efficient manner;

(B) there exists the probability that any insurance program under this chapter will generate sufficient revenue to cover all costs;

(C) rendering insurance service will not have an adverse effect on the bank's or association's credit or other operations;

(D) the insurance program has been approved by the bank or association from among specific programs made available to it by insurers—

(i) meeting reasonable financial and quality of service standards; and

(ii) licensed under State law to do business in the State; and

(E) in making insurance available through approved insurers, the board of directors of

the association or bank selects and offers at least two approved insurers for each type of insurance made available to the members and borrowers, if at least two insurers have been approved in accordance with subsection (a)(2) of this section; and

(3) no bank or association shall directly or indirectly discriminate in any manner against any agent, broker, or insurer that is not affiliated with such bank or association, or against any party who purchases insurance through any such nonaffiliated insurance agent, broker, or insurer.

(c) Continuation of existing coverage

Notwithstanding any provision of this section to the contrary, any bank or association that on December 24, 1980, is offering insurance coverages not authorized by this section may continue to sell such coverages for a period of not more than one year from such date and may continue to service such coverages until their expiration.

(Pub. L. 92–181, title IV, § 4.29, as added Pub. L. 96–592, title IV, § 404, Dec. 24, 1980, 94 Stat. 3448; amended Pub. L. 100–233, title IV, § 422(a), Jan. 6, 1988, 101 Stat. 1655; Pub. L. 100–399, title IV, § 411, Aug. 17, 1988, 102 Stat. 1003; Pub. L. 101–624, title XVIII, § 1834, Nov. 28, 1990, 104 Stat. 3833.)

AMENDMENTS

1990—Subsec. (a)(2). Pub. L. 101–624, § 1834(1), inserted '', if more than two insurers for each type of insurance have proposed programs to a bank that will, in all likelihood, have long-term viability and meet the requirements of subsection (b)(2)(D) of this section'' before period at end of first sentence, and '', if at least two insurers have been approved in accordance with this paragraph'' before period at end of third sentence.

Subsec. (b)(2)(E). Pub. L. 101–624, § 1834(2), inserted before semicolon at end '', if at least two insurers have been approved in accordance with subsection (a)(2) of this section''.

1988—Subsec. (a). Pub. L. 100–233, § 422(a)(1), designated existing provisions as par. (1), struck out ''of this Act'' to conform to style of original enactment, resulting in no change in text, inserted ''or borrower from'' before ''any such bank'', inserted provision at end giving a member or borrower the option, without coercion from the bank or association of such member or borrower, to accept or reject such insurance, and added par. (2).

Subsec. (a)(1). Pub. L. 100–399, § 411(a), substituted ''subchapters I and II of this chapter'' for ''sections 2019, 2033, 2076, and 2097 of this title''.

Subsec. (a)(2). Pub. L. 100–399, § 411(b), substituted ''Farm Credit Banks'' for ''Federal intermediate credit banks''.

Subsec. (b)(2). Pub. L. 100–233, § 422(a)(2), redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively, and added subpars. (D) and (E).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

CONTINUATION OF PROGRAM

Section 422(b) of Pub. L. 100–233 provided that: ''Notwithstanding the amendments made to section 4.29 [12 U.S.C. 2218] by subsection (a), any insurance program offered by any bank or association of the Farm Credit System on the date of the enactment of this Act [Jan. 6, 1988] that does not meet the requirements of section 4.29, as so amended, may be continued until July 1, 1988.''

PART G—MISCELLANEOUS

AMENDMENTS

1988—Pub. L. 100–399, title VII, § 702(c), Aug. 17, 1988, 102 Stat. 1006, redesignated part H as G.

Pub. L. 100–233, title VIII, § 805(u), Jan. 6, 1988, 101 Stat. 1716, redesignated part F as H.

§ 2219. Limitation on separate sale

If real property is acquired by any institution of the Farm Credit System through foreclosure, no institution of the Farm Credit System shall sell the surface rights to that real property to any person unless the institution also sells all mineral rights to that real property to that person.

(Pub. L. 92–181, title IV, § 4.35, as added Pub. L. 99–205, title III, § 306, Dec. 23, 1985, 99 Stat. 1709.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2219a. Right of first refusal

(a) General rule

Agricultural real estate that is acquired by an institution of the System as a result of a loan foreclosure or a voluntary conveyance by a borrower (hereinafter in this section referred to as the ''previous owner'') who, as determined by the institution, does not have the financial resources to avoid foreclosure (hereinafter in this section referred to as ''acquired real estate'') shall be subject to the right of first refusal of the previous owner to repurchase or lease the property, as provided in this section.

(b) Application of right of first refusal to sale of property

(1) Election to sell and notification

Within 15 days after an institution of the System first elects to sell acquired real estate, or any portion of such real estate, the institution shall notify the previous owner by certified mail of the owner's right—

(A) to purchase the property at the appraised fair market value of the property, as established by an accredited appraiser; or

(B) to offer to purchase the property at a price less than the appraised value.

(2) Eligibility to purchase

To be eligible to purchase the property under paragraph (1), the previous owner must, within 30 days after receiving the notice required by such paragraph, submit an offer to purchase the property.

(3) Mandatory sale

An institution of the System receiving an offer from the previous owner to purchase the property at the appraised value shall, within 15 days after the receipt of such offer, accept such offer and sell the property to the previous owner.

(4) Permissive sale

An institution of the System receiving an offer from the previous owner to purchase the

property at a price less than the appraised value may accept such offer and sell the property to the previous owner. Notice shall be provided to the previous owner of the acceptance or rejection of such offer within 15 days after the receipt of such offer.

(5) Rejection of offer of previous owner

(A) Duties of institution

An institution of the System that rejects an offer from the previous owner to purchase the property at a price less than the appraised value may not sell the property to any other person—

(i) at a price equal to, or less than, that offered by the previous owner; or

(ii) on different terms and conditions than those that were extended to the previous owner,

without first affording the previous owner an opportunity to purchase the property at such price or under such terms and conditions.

(B) Notice

Notice of the opportunity in subparagraph (A) shall be provided to the previous owner by certified mail, and the previous owner shall have 15 days in which to submit an offer to purchase the property at such price or under such terms and conditions.

(c) Application of right of first refusal to leasing of property

(1) Election to lease and notification

Within 15 days after an institution of the System first elects to lease acquired real estate, or any portion of such real estate, the institution shall notify the previous owner by certified mail of the owner's right—

(A) to lease the property at a rate equivalent to the appraised rental value of the property, as established by an accredited appraiser; or

(B) to offer to lease the property at a rate that is less than the appraised rental value of the property.

(2) Eligibility to lease

To be eligible to lease the property under paragraph (1), the previous owner must, within 15 days after receiving the notice required by such paragraph, submit an offer to lease the property.

(3) Mandatory lease

An institution of the System receiving an offer from the previous owner to lease the property at a rate equivalent to the appraised rental value of the property shall, within 15 days after the receipt of such offer, accept such offer and lease the property to the previous owner unless the institution determines that the previous owner—

(A) does not have the resources available to conduct a successful farming or ranching operation; or

(B) cannot meet all of the payments, terms, and conditions of such lease.

(4) Permissive lease

An institution of the System receiving an offer from the previous owner to lease the property at a rate that is less than the appraised rental value of the property may accept such offer and lease the property to the previous owner.

(5) Notice to previous owner

An institution of the System receiving an offer from the previous owner to lease the property at a rate less than the appraised rental value of the property shall notify the previous owner of its acceptance or rejection of the offer within 15 days after the receipt of such offer.

(6) Rejection of offer of previous owner

(A) Duties of institution

An institution of the System rejecting an offer from the previous owner to lease the property at a rate less than the appraised rental value of the property may not lease the property to any other person—

(i) at a rate equal to or less than that offered by the previous owner; or

(ii) on different terms and conditions than those that were extended to the previous owner,

without first affording the previous owner an opportunity to lease the property at such rate or under such terms and conditions.

(B) Notice

Notice of the opportunity described in subparagraph (A) shall be given to the previous owner by certified mail, and the previous owner shall have 15 days after the receipt of such notice in which to agree to lease the property at such rate or under such terms and conditions.

(d) Public offerings

(1) Notification of previous owner

If an institution of the System elects to sell or lease acquired property or a portion thereof through a public auction, competitive bidding process, or other similar public offering, the institution shall notify the previous owner, by certified mail, of the availability of the property. Such notice shall contain the minimum amount, if any, required to qualify a bid as acceptable to the institution and any terms and conditions to which such sale or lease will be subject.

(2) Priority

If two or more qualified bids in the same amount are received by the institution under paragraph (1), such bids are the highest received, and one of the qualified bids is offered by the previous owner, the institution shall accept the offer by the previous owner.

(3) Nondiscrimination

No institution of the System may discriminate against a previous owner in any public auction, competitive bidding process, or other similar public offering of property acquired by the institution from such person.

(e) Term or condition

For the purposes of this section, financing by a System institution shall not be considered to be a term or condition of a sale of acquired real estate.

(f) Financing

Notwithstanding any other provision of this section, a System institution shall not be required to provide financing to the previous owner in connection with the sale of acquired real estate.

(g) Mailing of notice

Notwithstanding any other provision of this section, each certified mail notice requirement in this section shall be fully satisfied by mailing one certified mail notice to the last known address of the previous owner.

(h) State laws

The rights provided in this section shall not diminish any such right of first refusal under the law of the State in which the property is located.

(i) Applicability

This section shall not apply to a bank for cooperatives.

(Pub. L. 92–181, title IV, § 4.36, as added Pub. L. 99–205, title III, § 306, Dec. 23, 1985, 99 Stat. 1709; amended Pub. L. 100–233, title I, § 108, Jan. 6, 1988, 101 Stat. 1582; Pub. L. 100–399, title I, § 104, Aug. 17, 1988, 102 Stat. 990.)

AMENDMENTS

1988—Pub. L. 100–233 amended section generally. Prior to amendment, section read as follows: ''No institution of the Farm Credit System shall sell any real property that previously served as security for a loan in a tract larger than a normal family size farm in the vicinity of the property for less than the amount it can receive from the Capital Corporation.''

Subsec. (b)(2). Pub. L. 100–399, § 104(a), substituted ''30'' for ''15''.

Subsec. (b)(3). Pub. L. 100–399, § 104(b), substituted ''15'' for ''30''.

Subsec. (g). Pub. L. 100–399, § 104(c), substituted ''previous owner'' for ''former borrower''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2219b. Application of uninsured accounts

(a) In general

Money of a borrower held by a Farm Credit System institution in an uninsured voluntary or involuntary account as authorized under regulations issued by the Farm Credit Administration (as in effect immediately before January 6, 1988), including all such other accounts known as ''advanced payment accounts'' or ''future prepayment accounts'' shall, in the event the institution is placed in liquidation, be immediately applied as payment against the indebtedness of any outstanding loans of such borrower.

(b) Regulations

The Farm Credit Administration shall promulgate regulations—

(1) that define the term ''uninsured voluntary or involuntary account''; and

(2) to otherwise effectively carry out this section.

(Pub. L. 92–181, title IV, § 4.37, as added Pub. L. 100–233, title I, § 110, Jan. 6, 1988, 101 Stat. 1585.)

CODIFICATION

Another section 4.37 of Pub. L. 92–181 was renumbered section 4.38 and is classified to section 2219c of this title.

§ 2219c. Affirmative action

The Assistance Board established under section 2278a of this title and all institutions of the Farm Credit System with more than 20 employees shall establish and maintain an affirmative action program plan that applies the affirmative action standards otherwise applied to contractors of the Federal Government.

(Pub. L. 92–181, title IV, § 4.38, formerly § 4.37, as added Pub. L. 100–233, title IV, § 427, Jan. 6, 1988, 101 Stat. 1657; renumbered § 4.38, Pub. L. 100–399, title IV, § 413, Aug. 17, 1988, 102 Stat. 1004.)

§ 2219d. Encouragement of conservation practices

At the time a System institution or an agricultural mortgage loan originator (as defined in section 2279aa(7) of this title) approves a loan made to a borrower that, in the opinion of the institution or originator, would be ineligible for a loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) by reason of subtitle B or C of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 et seq.), the institution or originator, as the case may be, shall encourage the borrower to contact the Department of Agriculture Soil Conservation Service to obtain information about soil conservation methods and practices.

(Pub. L. 92–181, title IV, § 4.39, formerly § 4.38, as added Pub. L. 100–233, title IV, § 428, Jan. 6, 1988, 101 Stat. 1658; renumbered § 4.39, Pub. L. 100–399, title IV, § 413, Aug. 17, 1988, 102 Stat. 1004.)

REFERENCES IN TEXT

The Consolidated Farm and Rural Development Act, referred to in text, is title III of Pub. L. 87–128, Aug. 8, 1961, 75 Stat. 307, as amended, which is classified principally to chapter 50 (§ 1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

The Food Security Act of 1985, referred to in text, is Pub. L. 99–198, Dec. 23, 1985, 99 Stat. 1354, as amended. Subtitles B and C of title XII of the Food Security Act are classified generally to subchapters II (§ 3811 et seq.) and III (§ 3821 et seq.), respectively, of chapter 58 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of Title 7 and Tables.

§ 2219e. Liability for making criminal referrals

(a) In general

Any institution of the Farm Credit System, or any director, officer, employee, or agent of a Farm Credit System institution, that discloses to a Government authority information prof-

fered in good faith that may be relevant to a possible violation of any law or regulation shall not be liable to any person under any law of the United States or any State—

(1) for the disclosure; or

(2) for any failure to notify the person involved in the possible violation.

(b) No prohibition on disclosure

Any institution of the Farm Credit System, or any director, officer, employee, or agent of a Farm Credit System institution, may disclose information to a Government authority that may be relevant to a possible violation of any law or regulation.

(Pub. L. 104–105, title II, § 221, Feb. 10, 1996, 110 Stat. 184.)

CODIFICATION

Section was enacted as part of the Farm Credit System Reform Act of 1996, and not as part of the Farm Credit Act of 1971 which comprises this chapter.

SUBCHAPTER V—FARM CREDIT ADMINISTRATION ORGANIZATION

AMENDMENTS

1988—Pub. L. 100–399, title IX, § 901(*o*), (p), Aug. 17, 1988, 102 Stat. 1008, struck out ''DISTRICT AND'' before ''FARM'' in subchapter heading and struck out part A heading ''District Organization''.

PART A—District Organization

§ 2221. Transferred

CODIFICATION

Section, Pub. L. 92–181, title V, § 5.0, Dec. 10, 1971, 85 Stat. 614; Pub. L. 96–592, title V, § 501, Dec. 24, 1980, 94 Stat. 3448; Pub. L. 99–205, title II, § 205(g)(1), Dec. 23, 1985, 99 Stat. 1706; Pub. L. 100–233, title VIII, § 805(v), Jan. 6, 1988, 101 Stat. 1716; Pub. L. 100–399, title IX, § 901(q), (r), Aug. 17, 1988, 102 Stat. 1008, which related to creation of districts, was transferred to section 1.2(b) of Pub. L. 92–181 by section 901(r) of Pub. L. 100–399 and is classified to section 2002(b) of this title.

§§ 2222 to 2227. Repealed. Pub. L. 100–399, title IV, § 409(d), Aug. 17, 1988, 102 Stat. 1003

Sections 2222 to 2227 were directed to be repealed by Pub. L. 100–233, title IV, § 418(c), formerly § 415(c), Jan. 6, 1988, 101 Stat. 1653, renumbered § 418(c), Pub. L. 100–399, title IV, § 409(a), Aug. 17, 1988, 102 Stat. 1003, which was repealed by section 409(c) of Pub. L. 100–399, title IV, Aug. 17, 1988, 102 Stat. 1003.

Section 409(c) of Pub. L. 100–399 provided in part that section 418(c) of Pub. L. 100–233 is repealed and that this chapter shall be applied and administered, and the amendments by sections 430 and 802(u) of Pub. L. 100–233 (amending sections 2226 and 2223, respectively, of this title) shall take effect, as if such section 418(c) had not been enacted.

Section 2222, Pub. L. 92–181, title V, § 5.1, Dec. 10, 1971, 85 Stat. 614; Pub. L. 99–205, title II, § 205(g)(2), Dec. 23, 1985, 99 Stat. 1707, related to district boards of directors, membership, eligibility, and terms.

Section 2223, Pub. L. 92–181, title V, § 5.2, Dec. 10, 1971, 85 Stat. 614; Pub. L. 96–592, title V, § 502, Dec. 24, 1980, 94 Stat. 3449; Pub. L. 99–205, title II, § 205(g)(3), (4), title VI, § 607, Dec. 23, 1985, 99 Stat. 1707, 1712; Pub. L. 100–233, title VIII, § 802(u), Jan. 6, 1988, 101 Stat. 1712, related to nomination and election of district directors.

Section 2224, Pub. L. 92–181, title V, § 5.3, Dec. 10, 1971, 85 Stat. 615, related to functions of district directors.

Section 2225, Pub. L. 92–181, title V, § 5.4, Dec. 10, 1971, 85 Stat. 615, related to district board officers.

Section 2226, Pub. L. 92–181, title V, § 5.5, Dec. 10, 1971, 85 Stat. 616; Pub. L. 100–233, title IV, § 430, Jan. 6, 1988, 101 Stat. 1658, related to compensation of district boards.

Section 2227, Pub. L. 92–181, title V, § 5.6, Dec. 10, 1971, 85 Stat. 616; 1978 Reorg. Plan No. 2, § 102, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 99–205, title II, § 205(g)(5), Dec. 23, 1985, 99 Stat. 1707, related to powers of district farm credit board.

EFFECTIVE DATE OF REPEAL

Repeal effective immediately after amendments made by section 401 of Pub. L. 100–233, which were effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as an Effective Date of 1988 Amendment note under section 2002 of this title.

PART B—FARM CREDIT ADMINISTRATION ORGANIZATION

EX. ORD. NO. 6084. REORGANIZING AGRICULTURAL CREDIT AGENCIES OF THE UNITED STATES

Ex. Ord. No. 6084, Mar. 27, 1933, provided in part: . . . it is hereby ordered that:

(1) The functions of the Secretary of Agriculture as a member of the Federal Farm Board, and the offices of the appointed members of the Federal Farm Board, except the office of the member designated as chairman thereof, are abolished.

(2) The name of the Federal Farm Board is changed to the Farm Credit Administration.

(3) The name of the office of Chairman of the Federal Farm Board is changed to Governor of the Farm Credit Administration, and he is vested with all the powers and duties of the Federal Farm Board.

(4) The functions of the Secretary of the Treasury as a member of the Federal Farm Loan Board, and the offices of the appointed members of the Federal Farm Loan Board, except the office of the member designated as farm loan commissioner, are abolished, and all the powers and functions of the Federal Farm Loan Board, are transferred to and vested in the Farm Loan Commissioner, subject to the jurisdiction and control of the Farm Credit Administration as herein provided.

(5) There are transferred to the jurisdiction and control of the Farm Credit Administration:

(a) The Federal Farm Loan Bureau and the functions thereof; together with the functions of the Federal Farm Loan Board, including the functions of the Farm Loan Commissioner;

(b) The functions of the Treasury Department and the Department of Agriculture, and the Secretaries thereof, under Executive authorizations to give aid to farmers, dated July 26, 1918, and any extensions or amendments thereof;

(c) The functions of the Secretary of Agriculture under all provisions of law relating to the making of advances or loans to farmers, fruit growers, producers and owners of livestock and crops, and to individuals for the purpose of assisting in forming or increasing the capital stock of agricultural-credit corporations, livestock-loan companies, or like organizations, except Public Resolution No. 74, Seventieth Congress, approved December 21, 1928, providing for the Puerto Rican Hurricane Relief Commission;

(d) The Crop Production Loan Office and the Seed Loan Office of the Department of Agriculture, and the functions thereof;

(e) The functions of the Reconstruction Finance Corporation and its Board of Directors relating to the appointment of officers and agents to manage regional agricultural credit corporations formed under section 201(e) of the Emergency Relief and Construction Act of 1932 [section 1148 of this title]; relating to the establishment of rules and regulations for such management; and relating to the approval of loans and advances made by such corporations and of the terms and conditions thereof.

(6) The functions vested in the Federal Farm Board by section 9 of the Agricultural Marketing Act [section

1141g of this title] are abolished except that such functions shall continue to be exercised to such extent and for such time as may be necessary to permit the orderly winding up of the activities of stabilization corporations heretofore recognized under authority of such section, and the governor of the Farm Credit Administration shall take appropriate action for winding up at the earliest practicable date the activities of such corporations and all affairs related to the exercise of such functions.

(7) The records, property (including office equipment), and personnel used and employed in the execution of the functions hereinbefore transferred are transferred to the jurisdiction and control of the Farm Credit Administration.

(8) The sum of $2,000,000 of the unexpended balances of appropriations made to the Federal Farm Board by Public Resolutions No. 43 and No. 51 of the Seventy-second Congress shall be impounded and returned to the Treasury, which sum shall be in addition to the other savings to be effected by the Farm Credit Administration as a result of this order.

(9) The unexpended balances of appropriations to the Secretary of Agriculture, the Federal Farm Loan Bureau, and the Federal Farm Board for salaries, expenses, and all other administrative expenditures in the execution of the functions herein vested in the Farm Credit Administration shall be transferred to and vested in the Farm Credit Administration as a single fund for its use for salaries, expenses, and all other administrative expenditures for the execution of any or all of such functions without restriction as to the particular functions for the execution of which the same were originally appropriated. All other appropriations, allotments, and other funds available for use in connection with the functions and executive agencies hereby transferred and consolidated are hereby transferred to and vested in the Farm Credit Administration, and shall be available for use by it, for the same purposes as if the Farm Credit Administration were named in the law or authority providing such appropriations, allotments, or other funds.

(10) All power, authority, and duties conferred by law upon any officer, executive agency, or head thereof, from which or from whom transfer is hereinbefore made, in relation to the executive agency or function transferred, are transferred to and vested in the Governor of the Farm Credit Administration.

(11) The Governor of the Farm Credit Administration is directed to dismiss, furlough, transfer, or make other appropriate disposition of such of the officers and employees under his jurisdiction and control as are not required for the proper execution of the functions of the Farm Credit Administration.

(12) The Governor of the Farm Credit Administration is authorized to execute any and all functions and perform any and all duties vested in him through such persons as he shall by order designate or employ.

(13) The Governor of the Farm Credit Administration, by order or rules and regulations, may consolidate, regroup, and transfer offices, bureaus, activities, and functions in the Farm Credit Administration, so far as may be required to carry out the purposes to which this order is directed, and may fix or change the names of such offices, bureaus, and activities and the duties, powers, and titles of their executive heads.

This order shall take effect upon the sixty-first calendar day after its transmission to Congress unless otherwise determined in accordance with the provisions of section 407 of the act cited above, as amended.

[All functions, powers and duties of the Governor of the Farm Credit Administration which relate to the making, administration, and liquidation of all loans identified or referred to in pars. 5(b), 5(c), and 5(d) of this Executive Order were abolished by act Aug. 14, 1946, ch. 964, § 2(a)(2), 60 Stat. 1062, set out as a note under sections 1001 to 1006 of Title 7, Agriculture.]

§ 2241. Farm Credit Administration

The Farm Credit Administration shall be an independent agency in the executive branch of the Government. It shall be composed of the Farm Credit Administration Board and such other personnel as are employed in carrying out the functions, powers, and duties vested in the Farm Credit Administration by this chapter.

(Pub. L. 92–181, title V, § 5.7, Dec. 10, 1971, 85 Stat. 617; Pub. L. 99–205, title II, § 201(1), Dec. 23, 1985, 99 Stat. 1688.)

AMENDMENTS

1985—Pub. L. 99–205 amended section generally, substituting ''Farm Credit Administration Board and such other personnel'' for ''Federal Farm Credit Board, the Governor of the Farm Credit Administration, and such other personnel''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

Section 402 of Pub. L. 99–205 provided that:

''(a) Until the Chairman of the Farm Credit Administration Board provided for under the amendment made by section 201(1) of this Act [see section 2242 of this title] is appointed by the President and confirmed by the Senate, the Governor of the Farm Credit Administration, under the Farm Credit Act of 1971 [this chapter] as in effect on the day before the date of enactment of this Act [Dec. 23, 1985], shall perform the functions of the Chairman prescribed for the Chairman by this Act [Pub. L. 99–205, see Short Title of 1985 Amendment note set out under section 2001 of this title].

''(b)(1) Except as provided in paragraph (2), until at least two members of the Farm Credit Administration Board provided under the amendment made by section 201(1) of this Act [see section 2242 of this title] are appointed by the President and confirmed by the Senate, the Governor of the Farm Credit Administration, under the Farm Credit Act of 1971 [this chapter] as in effect on the day before the date of enactment of this Act [Dec. 23, 1985], shall perform the functions of the Farm Credit Administration Board prescribed for such Board by this Act [Pub. L. 99–205, see Short Title of 1985 Amendment note set out under section 2001 of this title].

''(2) When the Chairman of such Board is so appointed and confirmed, the Chairman shall assume any responsibilities and powers of the Board being exercised by the Governor under this subsection.

''(c) In carrying out the duties and functions specified in subsections (a) and (b), the Governor of the Farm Credit Administration shall serve at the pleasure of the President.

''(d) All regulations of the Farm Credit Administration or the institutions of the System, and all charters, bylaws, resolutions, stock classifications, and policy directives issued or approved by the Farm Credit Administration, and all elections held and appointments made under the Farm Credit Act of 1971 [this chapter], before the date of enactment of this Act [Dec. 23, 1985], shall be continuing and remain valid until superseded, modified, or replaced under the authority of this Act [Pub. L. 99–205, see Short Title of 1985 Amendment note set out under section 2001 of this title].''

§ 2242. Farm Credit Administration Board

(a) Appointment

The management of the Farm Credit Administration shall be vested in a Farm Credit Administration Board (referred to in this part as ''the Board''). The Board shall consist of three members, who shall be citizens of the United States and broadly representative of the public interest. Members of the Board shall be appointed by

the President, by and with the advice and consent of the Senate. Not more than two members of the Board shall be members of the same political party. Of the persons thus appointed, one shall be designated by the President to serve as Chairman of the Board for the duration of the member's term. The members of the Board shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any institution of the Farm Credit System.

(b) Terms of office

The term of office of each member of the Board shall be six years, except that the terms of the two members, other than the Chairman, first appointed under subsection (a) of this section shall expire, one on the expiration of two years after the date of appointment, and one on the expiration of four years after the date of appointment. Members of the Board shall not be appointed to succeed themselves, except that the members first appointed under subsection (a) of this section for a term of less than six years may be reappointed for a full six-year term and members appointed to fill unexpired terms of three years or less may be reappointed for a full six-year term. Any vacancy shall be filled for the unexpired term on like appointment. Any member of the Board shall continue to serve as such after the expiration of the member's term until a successor has been appointed and qualified.

(c) Organization

Each member of the Board, within fifteen days after notice of appointment, shall subscribe to the oath of office. The Board may transact business if a vacancy exists, provided a quorum is present. A quorum shall consist of two members of the Board. The Board shall hold at least one meeting each month and such additional meetings at such times and places as it may fix and determine. Such meetings shall be held on the call of the Chairman or any two Board members. The Board shall adopt such rules as it deems appropriate for the transaction of business by the Board, and shall keep permanent and accurate records and minutes of the actions and proceedings of the Board.

(d) Compensation

The members of the Board shall devote their full time and attention to the business of the Board. The Chairman of the Board shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5. Each of the other members of the Board shall receive compensation at the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5. Each member of the Board shall be reimbursed for necessary travel, subsistence, and other expenses in the discharge of the member's official duties without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States. This subsection shall be subject to the provisions of section 2245 of this title.

(e) Qualifications of Farm Credit Administration Board members

The President shall appoint members of the Board who—

(1) are experienced or knowledgeable in agricultural economics and financial reporting and disclosure;

(2) are experienced or knowledgeable in the regulation of financial entities; or

(3) have a strong financial, legal, or regulatory background.

(Pub. L. 92–181, title V, § 5.8, Dec. 10, 1971, 85 Stat. 617; Pub. L. 96–592, title V, § 503, Dec. 24, 1980, 94 Stat. 3449; Pub. L. 99–205, title II, § 201(1), Dec. 23, 1985, 99 Stat. 1688; Pub. L. 100–233, title IV, § 431(a), Jan. 6, 1988, 101 Stat. 1658; Pub. L. 102–552, title I, § 102, Oct. 28, 1992, 106 Stat. 4103.)

AMENDMENTS

1992—Subsec. (e). Pub. L. 102–552 added subsec. (e).

1988—Subsec. (c). Pub. L. 100–233 amended last sentence generally, substituting ''business by the Board,'' for ''its business'' and ''the actions and proceedings of the Board'' for ''its acts and proceedings''.

1985—Pub. L. 99–205 amended section generally, substituting provisions of subsecs. (a) to (d) relating to the Farm Credit Administration Board for provisions of former subsecs. (a) to (i) which related to the Federal Farm Credit Board.

1980—Subsec. (h). Pub. L. 96–592 substituted provisions relating to applicability of compensation under section 5332 of title 5, for provisions setting forth compensation at the rate of $100 a day.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

For provisions authorizing interim implementation by Governor of Farm Credit Administration of amendments to this section by Pub. L. 99–205, see section 402 of Pub. L. 99–205, set out as a note under section 2241 of this title.

§ 2243. Powers of Board

The Board shall manage and administer, and establish policies for, the Farm Credit Administration. It—

(1) shall approve the rules and regulations for the implementation of this chapter not inconsistent with its provisions;

(2) shall provide for the examination of the condition of, and general regulation of the performance of the powers, functions, and duties vested in, each institution of the Farm Credit System;

(3) shall provide for the performance of all the powers and duties vested in the Farm Credit Administration; and

(4) may require such reports as it deems necessary from the institutions of the Farm Credit System.

(Pub. L. 92–181, title V, § 5.9, Dec. 10, 1971, 85 Stat. 619; Pub. L. 99–205, title II, § 201(1), Dec. 23, 1985, 99 Stat. 1689; Pub. L. 100–233, title VIII, § 805(w), Jan. 6, 1988, 101 Stat. 1716.)

AMENDMENTS

1988—Pub. L. 100–233 struck out ''; civil proceedings'' in section catchline.

1985—Pub. L. 99–205 substituted requirement that the Board manage and administer, and establish policies for, the Farm Credit Administration for former requirement that the Federal Farm Credit Board establish the general policy for the guidance of the Farm

Credit Administration, including matters of broad and general supervisory, advisory, or policy nature; incorporated existing text in provisions designated cls. (1) to (4); substituted in cl. (2) ''general regulation'' for ''general supervision''; and struck out last sentence which read as follows: ''The Board shall function as a unit without delegating any of its functions to individual members, but may appoint committees and subcommittees for studies and reports for consideration by the Board. It shall not operate in an administrative capacity.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

For provisions authorizing interim implementation by Governor of Farm Credit Administration of amendments to this section by Pub. L. 99–205, see section 402 of Pub. L. 99–205, set out as a note under section 2241 of this title.

§ 2244. Chairman; responsibilities; governing standards

(a) Chairman of Farm Credit Administration Board; power and authority

(1) The Chairman of the Board shall be the chief executive officer of the Farm Credit Administration.

(2) In carrying out the responsibilities of the chief executive officer, the Chairman shall be responsible for directing the implementation of policies and regulations adopted by the Board and, after consultation with the Board, the execution of the administrative functions and duties of the Farm Credit Administration.

(3) In carrying out policies as directed by the Board, the Chairman shall act as spokesperson for the Board and represent the Board and the Farm Credit Administration in their official relations within the Federal Government.

(4) Under policies adopted by the Board, the Chairman shall consult on a regular basis with—

(A) the Secretary of the Treasury concerning the exercise, by the System, of the powers conferred under section 2153 of this title;

(B) the Board of Governors of the Federal Reserve System concerning the effect of System lending activities on national monetary policy; and

(C) the Secretary of Agriculture concerning the effect of System policies on farmers, ranchers, and the agricultural economy.

(b) Governing standards

In carrying out responsibilities under this chapter, the Chairman of the Board shall be governed by general policies adopted by the Board and by such regulatory decisions, findings, and determinations as the Board may by law be authorized to make and, as to third persons, all acts of the Chairman of the Board shall be conclusively presumed to be in compliance with such general policies and regulatory decisions, findings, and determinations.

(c) Enforcement of rules, regulations, and orders of Board; civil proceedings; representation by attorneys

The Chairman of the Board shall enforce the rules, regulations, and orders of the Board. Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman shall represent the Farm Credit Administration in any civil proceeding or civil action brought in connection with the administration of conservatorships and receiverships. Attorneys designated by the Chairman may represent the Farm Credit Administration in any other civil proceedings or civil action when so authorized by the Attorney General under provisions of title 28.

(Pub. L. 92–181, title V, § 5.10, Dec. 10, 1971, 85 Stat. 619; Pub. L. 96–592, title V, § 504, Dec. 24, 1980, 94 Stat. 3449; Pub. L. 99–205, title II, § 201(1), Dec. 23, 1985, 99 Stat. 1689; Pub. L. 100–233, title IV, § 431(b), Jan. 6, 1988, 101 Stat. 1658.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–233 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Chairman of the Board shall be the executive officer of the Board and the chief executive officer of the Farm Credit Administration. The Chairman shall be responsible for directing the implementation of the policies and regulations adopted by the Board and the execution of all of the administrative functions and duties of the Farm Credit Administration. The Chairman shall be the spokesman for the Board and the Farm Credit Administration and shall represent the Board and the Farm Credit Administration in their official relations within the Government. Under policies adopted by the Board, the Chairman shall consult on a regular basis with the Secretary of the Treasury in connection with the exercise by the System of the powers conferred under section 2153 of this title, with the Board of Governors of the Federal Reserve System in connection with the effect of System lending activities on national monetary policy, and with the Secretary of Agriculture in connection with the effect of System policies on farmers and the agricultural economy.''

1985—Pub. L. 99–205 substituted provisions relating to the Chairman of the Board, his responsibilities, and governing standards for provisions relating to the Governor of the Farm Credit Administration.

1980—Pub. L. 96–592 inserted provisions relating to requirements of the Governor to consult with the Secretary of the Treasury and the Governors of the Federal Reserve System.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

For provisions authorizing interim implementation by Governor of Farm Credit Administration of amendments to this section by Pub. L. 99–205, see section 402 of Pub. L. 99–205, set out as a note under section 2241 of this title.

§ 2245. Organization of Farm Credit Administration

(a) Policies of Board

The Chairman of the Farm Credit Administration Board, in carrying out the powers and duties vested in the Chairman by this chapter, and Acts supplementary thereto, shall be governed by policies of the Board and by such regulatory decisions, findings, and determinations as the Board may by law be authorized to make.

(b) Appointments

The Chairman of the Board shall appoint such personnel as may be necessary to carry out the

functions of the Farm Credit Administration. The appointment by the Chairman of the heads of major administrative divisions under the Board shall be subject to the approval of the Board.

(c) Personnel

(1) Appointments by Board members

Personnel employed regularly and full-time in the immediate offices of Board members shall be appointed by each such Board member.

(2) Officers and employees

(A) Appointment, compensation, and benefits

The Chairman shall fix the compensation and number of, and appoint and direct, employees of the Administration. The Chairman may set and adjust the rates of basic pay for employees of the Administration without regard to the provisions of chapter 51, or subchapter III of chapter 53, of title 5. The Chairman may provide such additional compensation and benefits to employees of the Administration as is necessary to maintain comparability with the total amount of compensation and benefits provided by other Federal bank regulatory agencies. In setting and adjusting the total amount of compensation and benefits for employees of the Administration, the Chairman shall consult with, and seek to maintain comparability with, other Federal bank regulatory agencies.

(B) "Other Federal bank regulatory agencies" defined

For purposes of this subsection, the term ''other Federal bank regulatory agencies'' has the same meaning given to the term ''appropriate Federal banking agency'' in section 1813(q) of this title.

(C) Ethics in Government

The officers and employees of the agency shall be—

(i) subject to the Ethics in Government Act of 1978; and

(ii) considered officers or employees of the United States for the purposes of sections 201 through 203, and sections 205 through 209, of title 18.

(3) Delegation

The powers of the Chairman as chief executive officer necessary for day to day management may be exercised and performed by the Chairman through such other officers and employees of the Administration as the Chairman shall designate, except that the Chairman may not delegate powers specifically reserved to the Chairman by this chapter without Board approval.

(d) Funding

The operations of the Farm Credit Administration, and the salaries of members of the Board and employees of the Administration, shall be funded and paid for from the fund created under section 2250 of this title.

(Pub. L. 92–181, title V, § 5.11, Dec. 10, 1971, 85 Stat. 620; Pub. L. 99–205, title II, § 201(1), Dec. 23, 1985, 99 Stat. 1690; Pub. L. 100–233, title IV, § 431(c), title VIII, § 805(x), Jan. 6, 1988, 101 Stat. 1659, 1716; Pub. L. 100–399, title IV, § 415(a), title VII, § 702(b), Aug. 17, 1988, 102 Stat. 1004, 1006; Pub. L. 101–73, title XII, § 1210, Aug. 9, 1989, 103 Stat. 523.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in subsec. (c)(2)(C)(i), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5, Government Organization and Employees, and Tables.

AMENDMENTS

1989—Subsec. (c)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The officers and employees of the agency shall be—

''(A) subject to the Ethics in Government Act of 1978 (2 U.S.C. 701 et seq.);

''(B) considered officers or employees of the United States for the purposes of sections 201 through 203, and sections 205 through 209, of title 18; and

''(C) subject to section 5373 of title 5.''

1988—Pub. L. 100–233, § 805(x), which directed the amendment of this section by striking out the last sentence, was repealed by Pub. L. 100–399, § 702(b). See Construction of 1988 Amendment note below.

Pub. L. 100–233, § 431(c), amended section generally, substituting subsecs. (a) to (d) for former text consisting of single undesignated paragraph.

Subsec. (c)(2)(C). Pub. L. 100–399, § 415(a), substituted ''5373'' for ''5315''.

1985—Pub. L. 99–205 substituted provisions respecting organization of the Farm Credit Administration for provisions relating to compensation and expense allowance of the Governor of the Farm Credit Administration.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 415(a) of Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

CONSTRUCTION OF 1988 AMENDMENT

Section 702(b) of Pub. L. 100–399 provided that section 805(x) of Pub. L. 100–233, cited as a credit to this section, is repealed and that this section shall be applied and administered as if such section had not been enacted.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

For provisions authorizing interim implementation by Governor of Farm Credit Administration of amendments to this section by Pub. L. 99–205, see section 402 of Pub. L. 99–205, set out as a note under section 2241 of this title.

§ 2246. Advisory committees

The Chairman of the Board, subject to the approval of the Board, may establish one or more advisory committees in accordance with the Federal Advisory Committee Act and may appoint to such committee or committees individuals who are members of the Federal Farm Credit Board when such Board is terminated by the Farm Credit Amendments Act of 1985.

(Pub. L. 92–181, title V, § 5.12, Dec. 10, 1971, 85 Stat. 620; Pub. L. 99–205, title II, § 201(1), Dec. 23,

1985, 99 Stat. 1690; Pub. L. 100–233, title IV, § 431(d), Jan. 6, 1988, 101 Stat. 1660.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in text, is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Farm Credit Amendments Act of 1985, referred to in text, is Pub. L. 99–205, Dec. 23, 1985, 99 Stat. 1678. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 2001 of this title and Tables.

AMENDMENTS

1988—Pub. L. 100–233 inserted ‘‘, subject to the approval of the Board,’’ after ‘‘Chairman of the Board’’.

1985—Pub. L. 99–205 substituted provisions respecting advisory committees for provisions respecting compliance by the Governor with orders of the Federal Farm Credit Board.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

For provisions authorizing interim implementation by Governor of Farm Credit Administration of amendments to this section by Pub. L. 99–205, see section 402 of Pub. L. 99–205, set out as a note under section 2241 of this title.

§ 2247. Repealed. Pub. L. 99–205, title II, § 201(2), Dec. 23, 1985, 99 Stat. 1690

Section, Pub. L. 92–181, title V, § 5.13, Dec. 10, 1971, 85 Stat. 620, related to authority of Governor of the Farm Credit Administration to fix powers and duties of divisions and instrumentalities of the Administration.

EFFECTIVE DATE OF REPEAL

Repeal effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2248. Seal of the Farm Credit Administration

The Farm Credit Administration shall have a seal, as adopted by the Board, which shall be judicially noted.

(Pub. L. 92–181, title V, § 5.13, formerly § 5.14, Dec. 10, 1971, 85 Stat. 620; renumbered § 5.13 and amended Pub. L. 99–205, title II, § 201(3), Dec. 23, 1985, 99 Stat. 1690.)

PRIOR PROVISIONS

A prior section 5.13 of Pub. L. 92–181 was classified to section 2247 of this title prior to repeal by Pub. L. 99–205, title II, § 201(2), Dec. 23, 1985, 99 Stat. 1690.

AMENDMENTS

1985—Pub. L. 99–205 substituted ‘‘Board’’ for ‘‘Governor’’.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2249. Administrative expenses

The Farm Credit Administration may, within the limits of funds available therefor, make necessary expenditures for personnel services and rent at the seat of Government and elsewhere; contract stenographic reporting services; purchase and exchange lawbooks, books of reference, periodicals, newspapers, expenses of attendance at meetings and conferences; purchase, operation, and maintenance at the seat of Government and elsewhere of motor-propelled passenger-carrying vehicles and other vehicles; printing and binding; and for such other facilities and services, including temporary employment by contract or otherwise, as it may from time to time find necessary for the proper administration of this chapter. The Farm Credit Administration may dispose of property so acquired and any amounts collected from the disposition of such property shall be deposited in the special fund provided for in section 2250(b) of this title and shall be available to the Administration in the same manner and for the same purposes as the funds collected under section 2250(a) of this title.

(Pub. L. 92–181, title V, § 5.14, formerly § 5.15, Dec. 10, 1971, 85 Stat. 620; Pub. L. 96–592, title V, § 505, Dec. 24, 1980, 94 Stat. 3449; renumbered § 5.14 and amended Pub. L. 99–205, title II, § 201(4), Dec. 23, 1985, 99 Stat. 1690.)

PRIOR PROVISIONS

A prior section 5.14 of Pub. L. 92–181 was renumbered section 5.13 and is classified to section 2248 of this title.

AMENDMENTS

1985—Pub. L. 99–205 made technical amendments to the references to sections 2250(b) and 2250(a) of this title appearing in second sentence to reflect the renumbering of the corresponding section of the original act.

1980—Pub. L. 96–592 inserted provisions relating to disposal of property and deposit of amounts from such disposal.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2250. Farm Credit Administration operating expenses fund

(a) Determinations required

(1) Generally

Prior to the first day of each fiscal year, the Farm Credit Administration shall determine—

(A) the cost of administering this chapter for the subsequent fiscal year, including expenses for official functions;

(B) the amount of assessments that will be required to pay such administrative expenses, taking into consideration the funds contained in the Administrative Expense Account, and maintain a necessary reserve; and

(C) the amount of assessments that will be required to pay the costs of supervising and examining the Mortgage Corporation established under subchapter VIII of this chapter.

(2) Apportionments

On the basis of the determinations made under paragraph (1), the Farm Credit Administration shall—

(A) apportion the amount of the assessment described in paragraph (1)(B) among the System institutions on a basis that is

determined to be equitable by the Farm Credit Administration;

(B) assess and collect such apportioned amounts from time to time during the fiscal year as determined necessary by the Farm Credit Administration; and

(C) assess and collect from the Mortgage Corporation, from time to time during the fiscal year, the amount described in paragraph (1)(C).

(b) Deposits into fund

(1) Treasury fund

The amounts collected under subsection (a) of this section shall be deposited in the Farm Credit Administration Administrative Expense Account. The Expense Account shall be maintained in the Treasury of the United States and shall be available, without regard, for purposes of sequestration, to the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 900 et seq.], to pay the expenses of the Farm Credit Administration.

(2) Nongovernment funds

The funds contained in the Expense Account shall not be construed to be Federal Government funds or appropriated moneys.

(3) Investment

(A) Authority

On request of the Farm Credit Administration, the Secretary of the Treasury shall invest and reinvest such amounts contained in the Expense Account as, in the determination of the Farm Credit Administration, are in excess of the amounts necessary for current expenses of the Farm Credit Administration.

(B) Returns

All income earned from such investments and reinvestments shall be deposited in the Expense Account.

(C) Type

Such investments shall be made in public debt securities with maturities suitable to the needs of the Expense Account, as determined by the Farm Credit Administration, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(Pub. L. 92–181, title V, § 5.15, formerly § 5.16, Dec. 10, 1971, 85 Stat. 620; renumbered § 5.15 and amended Pub. L. 99–205, title II, §§ 201(5), 205(g)(6), Dec. 23, 1985, 99 Stat. 1690, 1707; Pub. L. 100–233, title IV, § 432(a), Jan. 6, 1988, 101 Stat. 1660; Pub. L. 100–399, title IV, § 416(a), (b), Aug. 17, 1988, 102 Stat. 1004; Pub. L. 102–552, title V, § 510, Oct. 28, 1992, 106 Stat. 4132.)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (b)(1), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§ 900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

PRIOR PROVISIONS

A prior section 5.15 of Pub. L. 92–181 was renumbered section 5.14 and is classified to section 2249 of this title.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102–552 inserted ‘‘, for purposes of sequestration,’’ after ‘‘regard’’ and struck out ‘‘or any other law’’ before ‘‘, to pay the expenses’’.

1988—Pub. L. 100–233 amended section generally. Prior to amendment, section read as follows:

‘‘(a) The Farm Credit Administration shall prior to the first day of each fiscal year estimate the cost of administrative expenses for the ensuing fiscal year in administering this chapter, including official functions, and shall apportion the amount so determined among the institutions of the System on such equitable basis as the Farm Credit Administration shall determine, and shall assess against and collect in advance the amounts so apportioned from the institutions among which the apportionment is made.

‘‘(b) The amounts collected pursuant to subsection (a) of this section shall be covered into the Treasury, and credited to a special fund and, without regard to other law, shall be available to the Farm Credit Administration for expenditure during each fiscal year for salaries and expenses of the Farm Credit Administration. As soon as practicable after the end of each such fiscal year, the Farm Credit Administration shall determine, on a fair and reasonable basis, the cost of operation of the Farm Credit Administration and the part thereof which fairly and equitably should be allocated to each bank and association as its share of the cost during the fiscal year of the Farm Credit Administration. If the amount so allocated is greater than the amount collected from the bank or other institutions, the difference shall be collected from such bank or other institutions, and, if less, shall be refunded from the special fund to the bank or other institutions entitled thereto or credited in the special fund to such bank or other institutions for use for the same purposes in future fiscal years.’’

Subsec. (a)(2)(A). Pub. L. 100–399, § 416(a), substituted ‘‘the assessment described in paragraph (1)(B)’’ for ‘‘such assessment’’.

Subsec. (a)(2)(C). Pub. L. 100–399, § 416(b), substituted ‘‘described’’ for ‘‘specified’’.

1985—Subsec. (b). Pub. L. 99–205, § 205(g)(6), substituted ‘‘the Farm Credit Administration’’ for ‘‘said Administration’’ twice in first sentence, and for ‘‘the Administration’’ and ‘‘such Administration’’ in second sentence.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2251. Quarters and facilities for the Farm Credit Administration

As an alternate to the rental of quarters under section 2249 of this title, and without regard to any other provision of law, the banks of the System, with the concurrence of two-thirds of the bank boards, are hereby authorized—

(1) To lease or acquire real property in the District of Columbia or elsewhere for quarters of the Farm Credit Administration.

(2) To construct, develop, furnish, and equip such building thereon and such facilities appurtenant thereto as in their judgment may be appropriate to provide, to the extent the Board may deem advisable, suitable, and adequate quarters and facilities for the Farm Credit Administration.

(3) To enlarge, remodel, or reconstruct the same.

(4) To make or enter into contracts for any of the foregoing.

(5) To sell or otherwise dispose of any interest in property leased or acquired under the foregoing if authorized by the Board.

The Board may require of the respective banks of the System, and they shall make to the Farm Credit Administration, such advances of funds for the purposes set out in this section as in the sole judgment of the Board may from time to time be advisable for the purposes of this section. Such advances shall be in addition to and kept in a separate fund from the assessments authorized in section 2250 of this title and shall be apportioned by the Board among the banks in proportion to the total assets of the respective banks, and determined in such manner and at such times as the Board may prescribe. The powers of the banks of the System and purposes for which obligations may be issued by such banks are hereby enlarged to include the purpose of obtaining funds to permit the making of advances required by this section. The plans and decisions for such building and facilities and for the enlargement, remodeling, or reconstruction thereof shall be such as is approved in the sole discretion of the Board. In actions undertaken by the banks pursuant to the foregoing provisions of this section, the Farm Credit Administration may act as agent for the banks.

(Pub. L. 92–181, title V, §5.16, formerly §5.17, Dec. 10, 1971, 85 Stat. 621; Pub. L. 96–592, title V, §506, Dec. 24, 1980, 94 Stat. 3449; renumbered §5.16 and amended Pub. L. 99–205, title II, §201(6), Dec. 23, 1985, 99 Stat. 1690; Pub. L. 100–233, title VIII, §805(y), Jan. 6, 1988, 101 Stat. 1717; Pub. L. 100–399, title IX, §901(*l*), Aug. 17, 1988, 102 Stat. 1008.)

PRIOR PROVISIONS

A prior section 5.16 of Pub. L. 92–181 was renumbered section 5.15 and is classified to section 2250 of this title.

AMENDMENTS

1988—Pub. L. 100–399 substituted ''bank boards'' for ''district boards'' in introductory provisions.

Pub. L. 100–233 transferred undesignated provisions following par. (4) consisting of four sentences relating to advances of funds for purposes set out in this section as in the sole judgment of the Board may from time to time be advisable for purposes of this section, to a position immediately before last sentence of this section which provides for agency status of Administration for the banks.

1985—Pub. L. 99–205, §201(6)(A)–(C), made technical amendments to the references to sections 2249 and 2250 of this title in first and third sentences to reflect the renumbering of the corresponding sections of the original act, and struck out ''Federal Farm Credit'' before ''Board'' in par. (2) of first sentence.

1980—Pub. L. 96–592 added par. (5) and provisions respecting agency status of Administration for the banks.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§ 2252. Powers and duties

(a) Enumerated powers

The Farm Credit Administration shall have the following powers, functions, and responsibilities in connection with the institutions of the Farm Credit System and the administration of this chapter:

(1) Modify the boundaries of farm credit districts, with due regard for the farm credit needs of the country, as approved by the Board, with the concurrence of the district banks involved.

(2) Where necessary or appropriate to carry out the policy and objectives of this chapter, issue and approve amendments to Federal charters of institutions of the System; approve change in names of banks operating under this chapter; approve the merger of districts when agreed to by the district bank boards involved and by a majority vote of the voting stockholders and contributors to the guaranty funds of each bank for each of such districts, voting in the same manner as is provided in section 2279a of this title; approve mergers and any related activities as provided for in subchapter VII of this chapter; and approve the consolidation or division of the territories of institutions when agreed to by a majority vote of the voting stockholders or contributors to the guaranty fund of each of the institutions involved; and approve consolidations of boards of directors when agreed to by a majority vote of the voting stockholders or contributors to the guaranty fund of each of the institutions involved. In issuing charters and certificates of territory for district-wide mergers of associations where stockholders of one or more associations did not approve the merger, the charter of the new or merged association shall not include the territory of the disagreeing association or associations; charters issued during calendar year 1985 for district-wide new or merged associations which included the territory of a disagreeing association shall be revoked and reissued to exclude such territory, unless subsequently agreed to by the board of directors of such association or associations. The Farm Credit Administration Board shall ensure that disapproving associations (A) shall not be charged any assessment under this chapter at a rate higher than that charged other like associations in the district, and (B) shall be provided with financial services and assistance on the same basis as other like associations in the district (including, but not limited to, access to credit and rates of in-

terest on loans and discounts) by a district Farm Credit bank to the association and its member-borrowers. The Farm Credit Administration Board, after consultation with the respective boards of directors of the affected banks, may require two or more banks operating under the same or different titles to merge if the Board determines that one of such banks has failed to meet its outstanding obligations.

(3) Make annual reports directly to Congress on the condition of the System and its institutions, based on the examinations carried out under section 2254 of this title, and on the manner and extent to which the purposes and objectives of this chapter are being carried out and, from time to time, recommend directly legislative changes. The annual reports shall include a summary and analysis of the reports submitted to the Farm Credit Administration by the Farm Credit Banks under section 2207(b) of this title relating to programs for serving young, beginning, and small farmers and ranchers.

(4) Approve the issuance of obligations of the System under subsections (c) and (d) of section 2153 of this title for the purpose of funding the authorized operations of the institutions of the System, and prescribe collateral therefor.

(5) Grant approvals provided for under this chapter either on a case-by-case basis or through regulations that confer approval on actions of Farm Credit System institutions.

(6) Establish standards for the System institutions with respect to loan security requirements and regulate the borrowing, repayment, and transfer of funds and equities between institutions of the System.

(7) Conduct loan and collateral security review.

(8) Regulate the preparation by System institutions and the dissemination to stockholders and investors of information on the financial condition and operations of such institutions, except that the requirements of the Farm Credit Administration governing the dissemination to stockholders of quarterly reports of System institutions may not be more burdensome or costly than the requirements applicable to national banks, and the Farm Credit Administration may not require any System institution to disclose in any report to stockholders information concerning the condition or classification of a loan—

(A) to a director of the institution—

(i) who has resigned before the time for filing the applicable report with the Farm Credit Administration; or

(ii) whose term of office will expire no later than the date of the meeting of stockholders to which the report relates; or

(B) to a member of the immediate family of a director of the institution unless—

(i) the family member resides in the same household as the director; or

(ii) the director has a material financial or legal interest in the loan or business operation of the family member.

(9) Prescribe rules and regulations necessary or appropriate for carrying out this chapter.

(10) Exercise the powers conferred on it under part C of this subchapter for the purpose of ensuring the safety and soundness of System institutions.

(11) Exercise such incidental powers as may be necessary or appropriate to fulfill its duties and carry out the purposes of this chapter.

(12) Require surety bonds or other provisions for protection of the assets of the institutions of the System against losses occasioned by employees.

(13)(A) Subject to subparagraph (B), the Farm Credit Administration may approve an amendment to the charter of any institution of the Farm Credit System operating under subchapter I or II of this chapter, which would authorize the institution to exercise lending authority in any territory—

(i) in the geographic area served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (12 U.S.C. 2071 note) (where the geographic area was a part of the association's territory as of the date of the reassignment); and

(ii) in which the charter of an institution that is not seeking the charter amendment authorizes the institution to exercise the type of lending authority that is the subject of the charter request.

(B) The Farm Credit Administration may approve a charter amendment under subparagraph (A) only on the approval of—

(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

(ii) a majority of the stockholders of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholders' meeting; and

(iii) the respective boards of directors of the Farm Credit Banks that, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).

(14)(A) Subject to subparagraph (B), the Farm Credit Administration may approve a request to charter an association of the Farm Credit System to operate under subchapter II of this chapter where the proposed charter—

(i) will include any of the geographic area included in the territory served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (12 U.S.C. 2071 note) (where the geographic area was a part of the association's territory as of the date of the reassignment); and

(ii) will authorize the association to exercise lending authority in any territory in the geographic area in which the charter of an association that is not requesting the charter authorizes the association to exercise the type of lending authority that is the subject of the charter request.

(B) The Farm Credit Administration may approve a charter request under subparagraph (A) only on the approval of—

(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

(ii) a majority vote of the stockholders (if any) of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholder's meeting; and

(iii) the respective boards of directors of the Farm Credit Banks that, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).

(15)(A) Approve amendments to the charters of institutions of the Farm Credit System to implement the equalization of loan-making powers of a Farm Credit System association under section 2279c of this title.

(B) Amendments described in subparagraph (A) to the charters of an association and the related Farm Credit Bank shall be approved by the Farm Credit Administration, subject to any conditions of approval imposed, by not later than 30 days after the date on which the Farm Credit Administration receives all approvals required by section 2279c(a)(2) of this title.

(b) Exclusions

The Farm Credit Administration shall not have authority, either direct or indirect, to approve bylaws, or any amendments or modifications or changes to bylaws, of System institutions.

(c) Proposed and final regulations; procedures applicable

(1) At least thirty days prior to publishing any proposed regulation in the Federal Register, the Farm Credit Administration shall transmit a copy of the regulation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. The Farm Credit Administration shall also transmit to such committees a copy of any final regulation prior to its publication in the Federal Register. Except as provided in paragraph (2) of this subsection, no final regulation of the Farm Credit Administration shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of the Congress are in session.

(2) In the case of an emergency, a final regulation of the Farm Credit Administration may become effective without regard to the last sentence of paragraph (1) of this subsection if the Farm Credit Administration notifies in writing the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate setting forth the reasons why it is necessary to make the regulation effective prior to the expiration of the thirty-day period.

(d) Legislative veto of regulations; procedures applicable

(1) If there are any unresolved differences between the Farm Credit Administration and the Board of Governors of the Federal Reserve System as to whether any regulation implementing section 2128(b) of this title or the other provisions of subchapter III relating to the authority under section 2128(b) of this title conforms to national banking policies, objectives and limitations, simultaneously with promulgation of any such regulation under this chapter, and simultaneously with promulgation of any regulation implementing section 2015(b) of this title, the Farm Credit Administration shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in paragraph (2), the regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: ''That Congress disapproves the regulations promulgated by the Farm Credit Administration dealing with the matter of , which regulation was transmitted to Congress on '', the blank spaces therein being appropriately filled.

(2) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided in paragraph (1).

(3) For the purposes of paragraphs (1) and (2) of this subsection—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

(4) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulation.

(Pub. L. 92–181, title V, §5.17, formerly §5.18, Dec. 10, 1971, 85 Stat. 621; Pub. L. 96–592, title V, §§507, 508, Dec. 24, 1980, 94 Stat. 3449; renumbered §5.17 and amended Pub. L. 99–205, title II, §201(7), Dec. 23, 1985, 99 Stat. 1691; Pub. L. 99–509, title I, §1036, Oct. 21, 1986, 100 Stat. 1878; Pub. L. 100–233, title II, §207(a)(2), title IV, §417, formerly §414, §418(d), formerly §415(d), §§424(a), 431(e), title VIII, §§802(v), 805(z), Jan. 6, 1988, 101 Stat. 1607, 1653, 1656, 1660, 1713, 1717, renumbered §§417, 418(d), Pub. L. 100–399, title IV, §409(a), Aug. 17, 1988, 102 Stat. 1003; Pub. L. 100–399, title II, §205, title IV, §409(e), title IX, §901(m), (n), Aug. 17, 1988, 102 Stat. 993, 1003, 1008; Pub. L. 101–624, title XVIII, §1843(a)(1), Nov. 28, 1990, 104 Stat. 3836; Pub. L. 102–237, title V, §502(h), Dec. 13, 1991, 105 Stat. 1869; Pub. L. 102–552, title IV, §401(c), title V, §511, Oct. 28, 1992, 106 Stat. 4128, 4132; Pub. L.

104–105, title II, §§ 210, 211, Feb. 10, 1996, 110 Stat. 174; Pub. L. 110–234, title V, § 5407(b), (c)(1), May 22, 2008, 122 Stat. 1160; Pub. L. 110–246, § 4(a), title V, § 5407(b), (c)(1), June 18, 2008, 122 Stat. 1664, 1921, 1922.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 5.17 of Pub. L. 92–181 was renumbered section 5.16 and is classified to section 2251 of this title.

AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110–246, § 5407(c)(1), substituted ''(2)'' for ''(2)(A)'' and struck out pars. (B) and (C) which prohibited issuance or amendment of the charter of any institution of the Farm Credit System that would authorize the institution to exercise lending authority in a territory in which the charter of another such institution authorized the other institution to exercise like authority, unless specified approvals were obtained, and provided that such prohibition would apply only in geographic areas where, due to the failure of a merger, the Federal intermediate credit bank or its successor was chartered to provide short- and intermediate-term credit, and a neighboring Farm Credit Bank that was not the successor to the Federal intermediate credit bank was chartered to provide long-term credit, in the same geographic territory.

Subsec. (a)(15). Pub. L. 110–246, § 5407(b), added par. (15).

1996—Subsec. (a)(2)(A). Pub. L. 104–105, § 210, struck out ''or management agreements'' after ''consolidations of boards of directors'' in first sentence.

Subsec. (a)(8). Pub. L. 104–105, § 211, inserted ''the requirements of the Farm Credit Administration governing the dissemination to stockholders of quarterly reports of System institutions may not be more burdensome or costly than the requirements applicable to national banks, and'' after ''except that''.

1992—Subsec. (a)(2). Pub. L. 102–552, § 401(c), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (a)(13), (14). Pub. L. 102–552, § 511, added pars. (13) and (14).

1991—Subsec. (a)(8)(B)(ii). Pub. L. 102–237 struck out second period at end.

1990—Subsec. (a)(13). Pub. L. 101–624 struck out par. (13) which read as follows: ''Except for associations, approve the salary scale for employees of the institutions of the System, and approve the compensation of the chief executive officer of such institutions: *Provided*, That no salary scale or rate of compensation shall be approved under this provision unless determined by the Board to be fair and reasonable. The Board may not delegate its responsibilities under this paragraph.''

1988—Subsec. (a)(1). Pub. L. 100–399, § 901(m)(1), substituted ''district banks'' for ''district boards''.

Subsec. (a)(2). Pub. L. 100–399, § 901(m)(2), substituted ''district bank boards'' for ''boards of the districts''.

Pub. L. 100–399, § 409(e), substituted ''approve the consolidation or division of the territories of institutions when agreed to'' for ''the consolidation or division of the territories that they serve when agreed to''.

Pub. L. 100–233, § 802(v)(1)(A), substituted ''approve amendments to'' for ''amend or modify''.

Pub. L. 100–233, § 415(d), substituted ''section 2279a of this title'' for ''section 2181 of this title'' and ''approve mergers and any related activities as provided for in subchapter VII of this chapter; and'' for ''; approve mergers of banks operating under the same subchapter of this chapter, merger of Federal land bank associations, merger of production credit associations, and''.

Pub. L. 100–233, § 414, substituted ''. The Farm Credit Administration Board shall ensure that disapproving associations (A) shall not be charged any assessment under this chapter at a rate higher than that charged other like associations in the district, and (B) shall be provided with financial services and assistance on the same basis as other like associations in the district'' for ''; and the Farm Credit Administration shall ensure that the board of directors of district banks does not discriminate against the disapproving associations in exercising its supervisory authorities. Such associations shall not be (i) charged any assessment under this chapter at a rate higher than that charged other like associations in the district or (ii) discriminated against in the provision of any financial service and assistance''.

Pub. L. 100–233, § 431(e)(1), substituted ''The Farm Credit Administration Board, after consultation with the respective boards of directors of the affected banks, may require two or more banks operating under the same or different titles to merge if the Board determines that one of such banks has failed to meet its outstanding obligations'' for ''The Chairman of the Farm Credit Administration Board, after consultation with the respective district board or boards and the board of directors of the Capital Corporation may require two or more banks of the Farm Credit System (other than Central Banks for Cooperatives) operating under the same subchapter to merge if the Chairman determines that one of such banks has failed to meet outstanding obligations of such bank.''

Subsec. (a)(3). Pub. L. 100–399, § 901(m)(3), substituted ''Farm Credit Banks under section 2207(b) of this title'' for ''Federal land banks and Federal intermediate credit banks under section 2207(b) of this title''.

Subsec. (a)(5). Pub. L. 100–233, § 802(v)(1)(B), struck out ''that meet standards and criteria established by the Farm Credit Administration, including standards and criteria with respect to (A) interest rates on obligations of Farm Credit System institutions, and (B) the payment of dividends or patronage refunds by Farm Credit System institutions'' after ''Farm Credit institutions''.

Subsec. (a)(8). Pub. L. 100–399, § 205, redesignated par. (9) as (8).

Pub. L. 100–233, § 207(a)(2), struck out par. (8) which read as follows: ''Make investments in stock of the Capital Corporation out of the revolving fund referred to in section 2151 of this title, and require the retirement of such stock.''

Subsec. (a)(9). Pub. L. 100–399, § 205, redesignated par. (10) as (9). Former par. (9) redesignated (8).

Pub. L. 100–233, § 424(a), inserted provisions limiting Farm Credit Administration from requiring System institutions to disclose in reports to stockholders certain information concerning condition or classification of loans to certain directors or members of immediate family of certain directors.

Subsec. (a)(10) to (12). Pub. L. 100–399, § 205, redesignated pars. (11) to (13) as (10) to (12), respectively. Former par. (10) redesignated (9).

Subsec. (a)(13). Pub. L. 100–399, § 205, redesignated par. (14) as (13). Former par. (13) redesignated (12).

Pub. L. 100–233, § 805(z), redesignated par. (14) as (13), and struck out former par. (13) which read as follows: ''Sue and be sued, complain and defend in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Farm Credit Administration shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount of the controversy; and the Farm Credit Administration may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect. Service of process on the Farm Credit Administration shall be in accordance with provisions of title 28 and rules adopted under title 28 for suits in which an agency of the United States is a party. The Farm Credit Adminis-

tration shall designate an agent at its principal office to accept service of process.''

Subsec. (a)(14). Pub. L. 100–399, § 205, redesignated par. (14) as (13).

Pub. L. 100–233, §§ 431(e)(2), 805(z), redesignated par. (15) as (14) and inserted ''by the Board'' and ''The Board may not delegate its responsibilities under this paragraph.'' Former subsec. (14) redesignated (13).

Subsec. (a)(15). Pub. L. 100–233, § 805(z), redesignated par. (15) as (14).

Subsecs. (b), (c). Pub. L. 100–233, § 802(v)(2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–233, § 802(v)(2), redesignated subsec. (c) as (d).

Subsec. (d)(1). Pub. L. 100–399, § 901(n)(1), made technical amendment to reference to sections 2015(b) and 2128(b) of this title involving underlying provisions of original act and requiring no change in text.

Pub. L. 100–399, § 901(n), substituted ''section 2015(b) of this title'' for ''section 2074 of this title''.

1986—Subsec. (a)(5)(A). Pub. L. 99–509 struck out ''and on loans made or discounted by such institutions'' after ''Farm Credit System institutions''.

1985—Subsec. (a). Pub. L. 99–205 amended subsec. (a) generally, revising and reorganizing the enumerated powers of the Farm Credit Administration by substituting pars. (1) to (15) for former pars. (1) to (17).

1980—Pub. L. 96–592 designated existing provisions as subsec. (a), in par. (3) inserted provisions relating to summary and analysis of reports, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title V, § 5407(d), May 22, 2008, 122 Stat. 1161, and Pub. L. 110–246, § 4(a), title V, § 5407(d), June 18, 2008, 122 Stat. 1664, 1922, provided that: ''The amendments made by this section [enacting section 2279c of this title and amending this section and provisions set out as notes under section 2011 of this title] take effect on January 1, 2010.''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–237 effective as if included in the provision of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, to which the amendment relates, see section 1101(b)(4) of Pub. L. 102–237, set out as a note under section 1421 of Title 7, Agriculture.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by sections 205 and 409(a), (e) of Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, and amendment by section 901(m), (n) of Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001 of Pub. L. 100–399, set out as a note under section 2002 of this title.

Amendment by section 207(a)(2) of Pub. L. 100–233 effective 15 days after Jan. 6, 1988, see section 207(b) of Pub. L. 100–233 set out as an Effective Date of Repeal note under section 2152 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

REGULATIONS

Section 424(b) of Pub. L. 100–233 provided that: ''Within 30 days after the date of the enactment of this Act [Jan. 6, 1988], the Farm Credit Administration shall amend its regulations as necessary to implement the amendment made by subsection (a) [amending this section].''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a)(3) of this section relating to requirement to make annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 166 of House Document No. 103–7.

REGULATORY REVIEW

Section 212 of Pub. L. 104–105 provided that:

''(a) FINDINGS.—Congress finds that—

''(1) the Farm Credit Administration, in the role of the Administration as an arms-length safety and soundness regulator, has made considerable progress in reducing the regulatory burden on Farm Credit System institutions;

''(2) the efforts of the Farm Credit Administration described in paragraph (1) have resulted in cost savings for Farm Credit System institutions; and

''(3) the cost savings described in paragraph (2) ultimately benefit the farmers, ranchers, agricultural cooperatives, and rural residents of the United States.

''(b) CONTINUATION OF REGULATORY REVIEW.—The Farm Credit Administration shall continue the comprehensive review of regulations governing the Farm Credit System to identify and eliminate, consistent with law, safety, and soundness, all regulations that are unnecessary, unduly burdensome or costly, or not based on law.''

FORBEARANCE AND RESTRUCTURING FOR FARM LOANS; FARM CREDIT ADMINISTRATION

Pub. L. 100–387, title III, § 313(b), Aug. 11, 1988, 102 Stat. 950, provided that: ''It further is the sense of Congress that the Farm Credit Administration should in its oversight of Farm Credit System institutions, with respect to farmers and ranchers who suffer major losses due to drought, hail, excessive moisture, or related condition in 1988—

''(1) ensure that Farm Credit System institutions exercise forbearance in the collection of principal and interest on loans outstanding to such farmers and ranchers;

''(2) expedite the use of credit restructuring and other credit relief mechanisms authorized under the Agricultural Credit Act of 1987 [Pub. L. 100–233, Jan. 6, 1988, 101 Stat. 1568, see Tables for classification] and related provisions of law for such farmers and ranchers; and

''(3) encourage other lenders participating with Farm Credit System institutions in mutual loan agreements to exercise forbearance before declaring loans to such farmers and ranchers in default.''

§ 2253. Prior delegations

Any delegations by the Farm Credit Administration and redelegations thereof made in accordance with section 5.19 of the Farm Credit Act of 1971 as in effect prior to the effective date of the Farm Credit Amendments Act of 1985 may continue in full force and effect, at the discretion of the Farm Credit Administration, for the period ending twelve months after December 23, 1985.

(Pub. L. 92–181, title V, § 5.18, as added Pub. L. 99–205, title II, § 202(b), Dec. 23, 1985, 99 Stat. 1693.)

REFERENCES IN TEXT

Section 5.19 of the Farm Credit Act of 1971 as in effect prior to the effective date of the Farm Credit Amend-

ments Act of 1985, referred to in text, is section 5.19 of Pub. L. 92–181 which was classified to this section prior to its repeal by section 202(a) of Pub. L. 99–205, known as the Farm Credit Amendments Act of 1985. See Prior Provisions and Effective Date notes below.

PRIOR PROVISIONS

A prior section 2253, Pub. L. 92–181, title V, § 5.19, Dec. 10, 1971, 85 Stat. 622, related to delegation of duties and powers to financial institutions, prior to repeal, effective thirty days after Dec. 23, 1985, by Pub. L. 99–205, title II, § 202(a), Dec. 23, 1985, 99 Stat. 1693.

A prior section 5.18 of Pub. L. 92–181 was renumbered section 5.17 and is classified to section 2252 of this title.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2254. Examinations

(a) Scope and frequency of examinations; power, authority, and liability of examiners

Except for Federal land bank associations, each institution of the System shall be examined by Farm Credit Administration examiners at such times as the Board may determine, but in no event less than once during each 18-month period. Each Federal land bank association shall be examined by Farm Credit Administration examiners at such times as the Farm Credit Administration Board may determine, except that each such association shall be examined at least once every three years. Such examinations may include, if appropriate, but are not limited to, an analysis of credit and collateral quality and capitalization of the institution, and appraisals of the effectiveness of the institution's management and application of policies governing the carrying out of this chapter and regulations of the Farm Credit Administration and servicing all eligible borrowers. Examination of banks shall include an analysis of the compensation paid to the chief executive officer and the salary scales of the employees of the bank. At the direction of the Board, Farm Credit Administration examiners also shall make examinations of the condition of any organization, other than federally regulated financial institutions, to, for, or with which any institution of the System contemplates making a loan or discounting paper. For the purposes of this chapter, examiners of the Farm Credit Administration shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act [12 U.S.C. 21 et seq.], the Federal Reserve Act [12 U.S.C. 221 et seq.], and Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law.

(b) Annual report of condition

(1) Each institution of the System shall make and publish an annual report of condition as prescribed by the Farm Credit Administration. Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles, except with respect to any actions taken by any banks of the System under section 2159(b) of this title, and contain such additional information as the Farm Credit Administration by regulation may require. Notwithstanding the provisions of the preceding sentence and any other provision of this chapter, for the period July 1, 1986, through December 31, 1988, the institutions of the Farm Credit System may, on the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, capitalize annually their provision for losses that is in excess of one-half of 1 percent of loans outstanding and amortize such capitalized amounts over a period not to exceed 20 years. Such financial statements of System institutions shall be audited by an independent public accountant.

(2) In accordance with the regulations of the Farm Credit Administration, for the period ending December 31, 1992, System institutions are authorized to use the authorities contained in the third sentence of paragraph (1) except as otherwise provided in section 2278a–6 of this title.

(3) Any preferred stock issued under section 2278b–7 of this title shall be subordinated to, and impaired before, other stock or equities of the institution.

(c) Report of examination of noncomplying institution; publication; notice of intention

The Farm Credit Administration may publish the report of examination of any System institution that does not, before the end of the 120th day after the date of notification of the recommendations and suggestions of the Farm Credit Administration, based on such examination, comply with such recommendations and suggestions to the satisfaction of the Farm Credit Administration. The Farm Credit Administration shall give notice of intention to publish in the event of such noncompliance at least 90 days before such publication. Such notice of intention may be given any time after such notification of recommendations and suggestions.

(d) Duties of Farm Credit Administration

On receipt of a request made under section 2277a–8(b)(1)(B) of this title with respect to a System institution, the Farm Credit Administration shall—

(1) furnish for the confidential use of the Farm Credit System Insurance Corporation reports of examination of the institution and other reports or information on the institution; and

(2)(A) examine, or obtain other information on, the institution and furnish for the confidential use of the Farm Credit System Insurance Corporation the report of the examination and such other information; or

(B) if the Farm Credit Administration Board determines that compliance with the request would substantially impair the ability of the Farm Credit Administration to carry out the other duties and responsibilities of the Farm Credit Administration under this chapter, notify the Board of Directors of the Farm Credit System Insurance Corporation that the Farm Credit Administration will be unable to comply with the request.

(Pub. L. 92–181, title V, § 5.19, formerly § 5.20, Dec. 10, 1971, 85 Stat. 623; renumbered § 5.19 and

amended Pub. L. 99–205, title II, § 203(a), Dec. 23, 1985, 99 Stat. 1693; Pub. L. 99–509, title I, § 1037, Oct. 21, 1986, 100 Stat. 1878; Pub. L. 100–233, title II, § 205(b), title IV, § 432(b), Jan. 6, 1988, 101 Stat. 1607, 1661; Pub. L. 100–399, title II, § 204, title IV, § 416(c), Aug. 17, 1988, 102 Stat. 993, 1004; Pub. L. 101–624, title XVIII, § 1843(b), Nov. 28, 1990, 104 Stat. 3836; Pub. L. 102–552, title V, §§ 512, 513(b), Oct. 28, 1992, 106 Stat. 4133, 4134; Pub. L. 104–105, title II, § 213, Feb. 10, 1996, 110 Stat. 175.)

PRIOR PROVISIONS

A prior section 5.19 of Pub. L. 92–181 was classified to section 2253 of this title prior to repeal by Pub. L. 99–205, title II, § 202(a), Dec. 23, 1985, 99 Stat. 1693.

REFERENCES IN TEXT

The National Bank Act, referred to in subsec. (a), is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified principally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

The Federal Reserve Act, referred to in subsec. (a), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (a), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–105 substituted ''during each 18-month period'' for ''each year'' in first sentence.

1992—Subsec. (a). Pub. L. 102–552, § 512, substituted ''may include, if appropriate'' for ''shall include'' in third sentence.

Subsec. (d). Pub. L. 102–552, § 513(b), added subsec. (d).

1990—Subsec. (a). Pub. L. 101–624 inserted after third sentence ''Examination of banks shall include an analysis of the compensation paid to the chief executive officer and the salary scales of the employees of the bank.''

1988—Subsec. (a). Pub. L. 100–399, § 416(c), substituted ''at least once every three years'' for ''at least once every 5 years''.

Pub. L. 100–233, § 432(b), substituted ''Except for Federal land bank associations, each'' for ''Each'', substituted ''the Board'' for ''the Chairman of the Board'' in two places, and inserted after first sentence ''Each Federal land bank association shall be examined by Farm Credit Administration examiners at such times as the Farm Credit Administration Board may determine, except that each such association shall be examined at least once every 5 years.''

Subsec. (b). Pub. L. 100–233, § 205(b), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (b)(2). Pub. L. 100–399, § 204, substituted ''the third sentence of paragraph (1)'' for ''this section''.

1986—Subsec. (b). Pub. L. 99–509 substituted second and third sentences for former second sentence which read as follows: ''Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles and contain such additional information as the Farm Credit Administration by regulation may require.''

1985—Pub. L. 99–205 in amending section generally, revised and restated existing provisions in subsec. (a) and added subsecs. (b) and (c). Prior to amendment, section read as follows: ''Except as provided herein, each institution of the System, and each of their agents, at such times as the Governor of the Farm Credit Administration may determine, shall be examined and audited by farm credit examiners under the direction of an independent chief Farm Credit Administration examiner, but each bank and each production credit association shall be examined and audited not less frequently than once each year. Such examinations shall include objective appraisals of the effectiveness of management and application of policies in carrying out the provisions of this chapter and in servicing all eligible borrowers. If the Governor determines it to be necessary or appropriate, the required examinations and audits may be made by independent certified public accountants, certified by a regulatory authority of a State, and in accordance with generally accepted auditing standards. Upon request of the Governor or any bank of the System, farm credit examiners shall also make examinations and written reports of the condition of any organization, other than national banks, to which, or with which, any institution of the System contemplates making a loan or discounting paper of such organization. For the purposes of this chapter, examiners of the Farm Credit Administration shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act [12 U.S.C. 21 et seq.], the Federal Reserve Act [12 U.S.C. 221 et seq.], the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

RESTRAINT BY FEDERAL BANK REGULATORY AGENCIES IN OVERSEEING AGRICULTURAL BORROWERS

Pub. L. 99–198, title XIII, § 1326, Dec. 23, 1985, 99 Stat. 1540, provided that:

''(a) Congress finds and declares that—

''(1) high production costs and low commodity prices have combined to reduce farm income to the lowest levels since the depths of the Depression in the 1930's, to subject many agricultural producers, through no fault of their own, to severe economic hardship, and in many cases temporarily but seriously to impair producers' ability to meet loan repayment schedules in a timely fashion; and

''(2) a policy of adverse classification of agricultural loans by bank examiners under these circumstances will trigger a wave of foreclosures and similar actions on the part of banks, thereby depressing land values and prices for agricultural facilities and equipment and having a devastating effect on farmers and the banking industry, and upon rural areas of the United States in general.

''(b) It is therefore the sense of Congress that the Federal bank regulatory agencies should ensure, in their examination procedures, that examiners exercise caution and restraint and give due consideration not only to the current cash flow of agricultural borrowers under financial stress, but to factors such as their loan collateral and ultimate ability to repay as well, for so long as the adverse economic effects of the cost-price squeeze of recent years continue to impair the ability of these borrowers to meet scheduled repayments on their loans.''

§ 2255. Conditions of other banks and lending institutions

The Comptroller of the Currency is authorized and directed, upon request of the Farm Credit

Administration to furnish for confidential use of an institution of the System such reports, records, and other information as he may have available relating to the financial condition of national banks through, for, or with which such institution of the System has made or contemplates making discounts or loans and to make such further examination, as may be agreed, of organizations through, for, or with which such institution of the Farm Credit System has made or contemplates making discounts or loans.

(Pub. L. 92–181, title V, § 5.20, formerly § 5.21, Dec. 10, 1971, 85 Stat. 623; renumbered § 5.20, Pub. L. 99–205, title II, § 203(b), Dec. 23, 1985, 99 Stat. 1694.)

PRIOR PROVISIONS

A prior section 5.20 of Pub. L. 92–181 was renumbered section 5.19 and is classified to section 2254 of this title.

§ 2256. Consent to the availability of reports and to examinations

Any organization other than State banks, trust companies, and savings associations shall, as a condition precedent to securing discount privileges with a bank of the Farm Credit System, file with such bank its written consent to examination by farm credit examiners as may be directed by the Farm Credit Administration; and State banks, trust companies, and savings associations may be required in like manner to file a written consent that reports of their examination by constituted State authorities may be furnished by such authorities upon the request of the Farm Credit Administration.

(Pub. L. 92–181, title V, § 5.21, formerly § 5.22, Dec. 10, 1971, 85 Stat. 623; renumbered § 5.21, Pub. L. 99–205, title II, § 203(b), Dec. 23, 1985, 99 Stat. 1694.)

PRIOR PROVISIONS

A prior section 5.21 of Pub. L. 92–181 was renumbered section 5.20 and is classified to section 2255 of this title.

§ 2257. Reports on conditions of institutions receiving loans or deposits

The executive departments, boards, commissions, and independent establishments of the Government of the United States, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Reserve banks are severally authorized under such conditions as they may prescribe, upon request of the Farm Credit Administration, to make available to it or to any institution of the System in confidence all reports, records, or other information relating to the condition of any organization to which such institution of the System has made or contemplates making loan or for which it has or contemplates discounting paper, or which it is using or contemplates using as a custodian of securities or other credit instruments, or a depository. The Federal Reserve banks in their capacity as depositories, agents, and custodians for bonds, debentures, and other obligations issued by the banks of the System or book entries thereof are also authorized and directed, upon request of the Farm Credit Administration, to make available for audit by farm credit examiners all appropriate books, accounts, financial records, files, and other papers.

(Pub. L. 92–181, title V, § 5.22, formerly § 5.23, Dec. 10, 1971, 85 Stat. 624; renumbered § 5.22, Pub. L. 99–205, title II, § 203(b), Dec. 23, 1985, 99 Stat. 1694.)

PRIOR PROVISIONS

A prior section 5.22 of Pub. L. 92–181 was renumbered section 5.21 and is classified to section 2256 of this title.

§ 2257a. Uniform financial reporting instructions

(a) In general

Each System institution shall comply with uniform financial reporting instructions required by the Farm Credit Administration, to standardize and facilitate the reporting of System data.

(b) Computerized system

If the financial reports are maintained by a computer system, each System institution may develop an internal computer system or it may contract out to a vendor under open competitive bidding any or all aspects of the computerized system.

(c) Submission of proposal

Within 6 months of January 6, 1988, each System institution shall submit to the Farm Credit Administration a report on the plan of that institution to bring the operations of the institution into compliance with the uniform financial reporting instructions required by the Farm Credit Administration.

(Pub. L. 92–181, title V, § 5.22A, as added Pub. L. 100–233, title IV, § 429, Jan. 6, 1988, 101 Stat. 1658.)

§ 2258. Jurisdiction

Each institution of the System shall for the purposes of jurisdiction be deemed to be a citizen of the State, commonwealth, or District of Columbia in which its principal office is located.

(Pub. L. 92–181, title V, § 5.23, formerly § 5.24, Dec. 10, 1971, 85 Stat. 624; Pub. L. 94–184, § 1(b), Dec. 31, 1975, 89 Stat. 1060; renumbered § 5.23, Pub. L. 99–205, title II, § 203(b), Dec. 23, 1985, 99 Stat. 1694.)

PRIOR PROVISIONS

A prior section 5.23 of Pub. L. 92–181 was renumbered section 5.22 and is classified to section 2257 of this title.

AMENDMENTS

1975—Pub. L. 94–184 struck out provisions prohibiting district court jurisdiction on the basis of incorporation under this Act or prior Federal law, and prohibiting jurisdiction except in cases by or against the United States or one of its officers, or against a person over whom State courts have no jurisdiction and except in cases by or against a receiver or conservator appointed under this chapter.

§ 2259. State legislation

Whenever it is determined by the Farm Credit Administration, or by judicial decision, that a State law is applicable to the obligations and securities authorized to be held by the institutions of the System under this chapter, which

law would provide insufficient protection or inadequate safeguards against loss in the event of default, the Farm Credit Administration may declare such obligations or securities to be ineligible as collateral for the issuance of new notes, bonds, debentures, and other obligations under this chapter.

(Pub. L. 92–181, title V, § 5.24, formerly § 5.25, Dec. 10, 1971, 85 Stat. 624; renumbered § 5.24, Pub. L. 99–205, title II, § 203(b), Dec. 23, 1985, 99 Stat. 1694.)

PRIOR PROVISIONS

A prior section 5.24 of Pub. L. 92–181 was renumbered section 5.23 and is classified to section 2258 of this title.

§ 2260. Transferred

CODIFICATION

Section, Pub. L. 92–181, title V, § 5.30, as added Pub. L. 96–592, title V, § 509, Dec. 24, 1980, 94 Stat. 3450, which related to audit and report to Congress by the Comptroller General, was renumbered section 5.44 of Pub. L. 92–181 by, Pub. L. 99–205, title II, § 205(a)(2), Dec. 23, 1985, 99 Stat. 1703, and was transferred to section 2275 of this title.

PART C—ENFORCEMENT POWERS OF FARM CREDIT ADMINISTRATION

§ 2261. Cease and desist proceedings

(a) If, in the opinion of the Farm Credit Administration, any institution in the Farm Credit System, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such an institution is engaging or has engaged, or the Farm Credit Administration has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to engage, in an unsafe or unsound practice in conducting the business of such institution, or is violating or has violated, or the Farm Credit Administration has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Farm Credit Administration in connection with the granting of any application or other request by the institution or any written agreement entered into with the Farm Credit Administration, the Farm Credit Administration may issue and serve upon the institution or such director, officer, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Farm Credit Administration at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease and desist order. In the event of such consent, or if upon the record made at any such hearing, the Farm Credit Administration shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Farm Credit Administration may issue and serve upon the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution an order to cease and desist from any such violation or practice. Such order may, by provisions that may be mandatory or otherwise, require the institution or its directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such institution to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(b) A cease and desist order shall become effective at the expiration of thirty days after the service of such order upon the institution or other person concerned (except in the case of a cease and desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein except to such extent as it is stayed, modified, terminated, or set aside by action of the Farm Credit Administration or a reviewing court.

(Pub. L. 92–181, title V, § 5.25, as added Pub. L. 99–205, title II, § 204, Dec. 23, 1985, 99 Stat. 1694.)

PRIOR PROVISIONS

A prior section 5.25 of Pub. L. 92–181 was renumbered section 5.24 and is classified to section 2259 of this title.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2262. Temporary cease and desist orders

(a) Whenever the Farm Credit Administration shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution under section 2261 of this title, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to seriously weaken the condition of the institution or otherwise seriously prejudice the interests of the investors in Farm Credit System obligations or shareholders in the institution prior to the completion of the proceedings conducted under section 2261 of this title, the Farm Credit Administration may issue a temporary order requiring the institution or such director, officer, employee, agent, or other person to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion

of such proceedings. Such order shall become effective upon service upon the institution or such director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution and, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (b) of this section, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Farm Credit Administration shall dismiss the charges specified in such notice, or if a cease and desist order is issued against the institution or such director, officer, employee, agent, or other person, until effective date of such order.

(b) Within ten days after the institution concerned or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution has been served with a temporary cease and desist order, the institution or such director, officer, employee, agent, or other person may apply to the United States district court for the judicial district in which the home office of the institution is located, or the United States district court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the institution or such director, officer, employee, agent, or other person under section 2261 of this title, and such court shall have jurisdiction to issue such injunction.

(Pub. L. 92–181, title V, § 5.26, as added Pub. L. 99–205, title II, § 204, Dec. 23, 1985, 99 Stat. 1695.)

PRIOR PROVISIONS

A prior section 5.26 of Pub. L. 92–181 was renumbered section 5.40 and is set out in part as notes under section 2001 of this title.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2263. Enforcement of temporary cease and desist orders

In the case of violation or threatened violation of, or failure to obey, a temporary cease and desist order issued under section 2262 of this title, the Farm Credit Administration may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(Pub. L. 92–181, title V, § 5.27, as added Pub. L. 99–205, title II, § 204, Dec. 23, 1985, 99 Stat. 1696.)

PRIOR PROVISIONS

A prior section 5.27 of Pub. L. 92–181, which amended section 393 of this title and sections 5314 and 5315 of Title 5, Government Organization and Employees, was renumbered section 5.41.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2264. Suspension or removal of director or officer

(a) Written notice of intention to remove; violation of law, rule, regulation, or final cease and desist order; unsafe or unsound practice; breach of fiduciary duty

Whenever, in the opinion of the Farm Credit Administration, any director or officer of any institution in the Farm Credit System has committed any violation of law, rule, or regulation or of a cease and desist order that has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution, or has committed or engaged in any act, omission, or practice which constitutes a breach of a fiduciary duty as such director or officer, and the Farm Credit Administration determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its shareholders or investors in Farm Credit System obligations could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or one that demonstrates a willful or continuing disregard for the safety or soundness of the System institution, the Farm Credit Administration may serve upon such director or officer a written notice of its intention to remove him from office.

(b) Written notice of intention to remove or suspend director, officer or other person; personal dishonesty; willful or continuing disregard; unfitness to continue in office or to participate in affairs of institution

Whenever, in the opinion of the Farm Credit Administration, any director or officer of an institution in the Farm Credit System, by conduct or practice with respect to another institution in the Farm Credit System or other business institution that resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness and, in addition, has evidenced his unfitness to continue as a director or officer, and whenever, in the opinion of the Farm Credit Administration, any other person participating in the conduct of the affairs of an institution in the Farm Credit System, by the conduct or practice with respect to such institution or other institution in the Farm Credit System or other business institution that resulted in substantial financial loss or other damage, has evidenced either personal dishonesty or a willful or continuing disregard for its safety and soundness and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such institution, the Farm Credit Administration may serve upon such director, officer, or other person a written

notice of its intention to remove that director, officer, or other person from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

(c) Suspension from office; prohibition from further participation in conduct of affairs of institution; service of notice

In respect to any director or officer of an institution in the Farm Credit System or any other person referred to in subsection (a) or (b) of this section, the Farm Credit Administration may, if it deems it necessary for the protection of the institution or the interests of its shareholders and the investors in the Farm Credit System obligations, by written notice to such effect served upon such director, officer, or other person, suspend such director, officer, or other person from office or prohibit such director, officer, or other person from further participation in any manner in the conduct of the affairs of the institution. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (e) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subsection (a) or (b) of this section and until such time as the Farm Credit Administration shall dismiss the charges specified in such notice, or, if an order of removal or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs the person has participated.

(d) Statement of grounds for removal or prohibition; notice and hearing; order of suspension, removal or prohibition; service of order

A notice of intention to remove a director, officer, or other person from office or to prohibit such director's, officer's, or other person's participation in the conduct of the affairs of an institution in the Farm Credit System, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Farm Credit Administration at the request of (1) such director or officer or other person, and for good cause shown, or (2) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, such director, officer, or other person shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Farm Credit Administration shall find that any of the grounds specified in such notice have been established, the Farm Credit Administration may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the institution, as it may deem appropriate. A copy of an order issued under this subsection shall be served upon the institution concerned. Any such order shall become effective at the expiration of thirty days after service upon such institution and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(e) Stay of suspension or prohibition

Within ten days after any director, officer, or other person has been suspended from office or prohibited from participation in the conduct of the affairs of a System institution under subsection (c) of this section, such director, officer, or other person may apply to the United States district court for the judicial district in which the home office of the institution is located, or the United States district court for the District of Columbia, for a stay of either such suspension or prohibition, or both, pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under subsection (a) or (b) of this section, and such court shall have jurisdiction to stay either such suspension or prohibition, or both.

(Pub. L. 92–181, title V, §5.28, as added Pub. L. 99–205, title II, §204, Dec. 23, 1985, 99 Stat. 1696; amended Pub. L. 100–233, title VIII, §805(aa), Jan. 6, 1988, 101 Stat. 1717; Pub. L. 100–399, title VII, §702(d), Aug. 17, 1988, 102 Stat. 1006.)

PRIOR PROVISIONS

A prior section 5.28 of Pub. L. 92–181 was renumbered section 5.42 and is set out as a note under section 2001 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–233, §805(aa)(1), designated provisions preceding subsec. (b) as subsec. (a).

Subsec. (e). Pub. L. 100–399 substituted ''subsection (c)'' for ''subsection (d)''.

Pub. L. 100–233, §805(aa)(2), substituted ''subsection (d) of this section'' for ''subsection (d)(3) of this section''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2265. Suspension or removal of director or officer charged with felony

(a) Whenever any director or officer of an institution in the Farm Credit System, or other person participating in the conduct of the affairs of such institution, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under

State or Federal law, the Farm Credit Administration may, if continued service or participation by the individual may pose a threat to the interests of the institution's shareholders or investors in Farm Credit System obligations or threaten to impair public confidence in the institution or the Farm Credit System, by written notice served upon such director, officer, or other person, suspend such director, officer, or other person from office or prohibit such director, officer, or other person from further participation in any manner in the conduct of the affairs of the institution. A copy of such notice shall also be served upon the institution. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Farm Credit Administration. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Farm Credit Administration may, if continued service or participation by the individual may pose a threat to the interests of the institution's shareholders or the investors in Farm Credit System obligations or may threaten to impair public confidence in the institution or the Farm Credit System, issue and serve upon such director, officer, or other person an order removing such director, officer, or other person from office or prohibiting such director, officer, or other person from further participation in any manner in the conduct of the affairs of the institution except with the consent of the Farm Credit Administration. A copy of such order shall also be served upon such institution, whereupon such director or officer shall cease to be a director or officer of such institution. A finding of not guilty or other disposition of the charge shall not preclude the Farm Credit Administration from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in Farm Credit System affairs under section 2264 of this title. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under subsection (b) of this section unless terminated by the Farm Credit Administration.

(b) Within thirty days from service of any notice of suspension or order of removal issued under subsection (a) of this section, the director, officer, or other person concerned may request in writing an opportunity to appear before the Farm Credit Administration to show that the continued service to or participation in the conduct of the affairs of the institution by such individual does not, or is not likely to, pose a threat to the interest of the institution's shareholders or the investors in Farm Credit System obligations or threaten to impair public confidence in the institution or the Farm Credit System. Upon receipt of any such request, the Farm Credit Administration shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, officer, or other person) and place at which the director, officer, or other person may appear, personally or through counsel, before the Chairman of the Farm Credit Administration or designated employees of the Farm Credit Administration to submit written materials (or, at the discretion of the Farm Credit Administration, oral testimony) and oral argument. Within sixty days of such hearing, the Farm Credit Administration shall notify the director, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the institution will be continued, terminated, or otherwise modified, or whether the order removing such director, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the institution will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Farm Credit Administration's decision, if adverse to the director, officer, or other person. The Farm Credit Administration may prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(Pub. L. 92–181, title V, § 5.29, as added Pub. L. 99–205, title II, § 204, Dec. 23, 1985, 99 Stat. 1698; amended Pub. L. 100–233, title VIII, § 805(bb), Jan. 6, 1988, 101 Stat. 1717; Pub. L. 100–399, title VII, § 702(e), Aug. 17, 1988, 102 Stat. 1006.)

PRIOR PROVISIONS

A prior section 5.29 of Pub. L. 92–181 was renumbered section 5.43 and is set out as a note under section 2001 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–233, § 805(bb)(1), substituted ''may pose a threat to the interests of the institution's shareholders or investors in Farm Credit System obligations or may threaten to impair public confidence in the institution or the Farm Credit System'' for ''may pose a threat to the interest of the institution's shareholders or the investors in the Farm Credit System obligations or may threaten to impair public confidence in the institution or Farm Credit System''.

Subsec. (b). Pub. L. 100–233 struck out ''may'' before ''threaten to impair public confidence''.

Pub. L. 100–233, § 805(bb)(2), substituted ''of the institution's shareholders or the investors in Farm Credit System obligations or may threaten to impair public confidence in the institution or the Farm Credit System'' for ''in Farm Credit System obligations''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2266. Hearings and judicial review

(a) Venue; closed hearings; decisions and findings of fact; orders; modification or other action by Farm Credit Administration; judicial review

Any hearing provided for in this part (other than the hearing provided for in section 2265 of

this title) shall be held in the Federal judicial district or in the territory in which the home office of the institution is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. Such hearing shall be private, unless the Farm Credit Administration, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After such hearing, and within ninety days after the Farm Credit Administration has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this part. Judicial review of any such order shall be exclusively as provided in this section. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subsection (b) of this section, and thereafter until the record in the proceeding has been filed as so provided, the Farm Credit Administration may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Farm Credit Administration may modify, terminate, or set aside any such order with permission of the court.

(b) Judicial review; commencement of proceedings; filing of petition and record; exclusive jurisdiction; finality of judgment and decree

Any party to the proceeding, or any person required by an order issued under this part to cease and desist from any of the violations or practices stated therein, may obtain a review of any order served under subsection (a) of this section (other than an order issued with the consent of the System institution or the director or officer or other person concerned, or an order issued under section 2265 of this title) by the filing in the court of appeals of the United States for the circuit in which the home office of the institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Farm Credit Administration be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Farm Credit Administration, and thereupon the Farm Credit Administration shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of subsection (a) of this section be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Farm Credit Administration. Review of such proceedings shall be had as provided in chapter 7 of title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(c) Proceedings operating as stays of orders

The commencement of proceedings for judicial review under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Farm Credit Administration.

(Pub. L. 92–181, title V, §5.30, as added Pub. L. 99–205, title II, §204, Dec. 23, 1985, 99 Stat. 1699; amended Pub. L. 100–233, title VIII, §805(cc), Jan. 6, 1988, 101 Stat. 1717.)

PRIOR PROVISIONS

A prior section 5.30 of Pub. L. 92–181 was renumbered section 5.44 and transferred from section 2260 to section 2275 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–233 substituted ''this section'' for ''this subsection (g)''.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2267. Jurisdiction and enforcement

The Farm Credit Administration may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the institution is located, for the enforcement of any effective and outstanding notice or order issued under this part, and such courts shall have jurisdiction and power to order and require compliance herewith; but except as otherwise provided in this part no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this part, or to review, modify, suspend, terminate, or set aside any such notice or order. For purposes of this section, any directive issued under section 2154(b)(2), 2154a(e), or 2202a(i) of this title shall be treated as an effective and outstanding order issued under section 2261 of this title that has become final.

(Pub. L. 92–181, title V, §5.31, as added Pub. L. 99–205, title II, §204, Dec. 23, 1985, 99 Stat. 1700; amended Pub. L. 100–233, title VIII, §804(a)(1), Jan. 6, 1988, 101 Stat. 1714.)

AMENDMENTS

1988—Pub. L. 100–233 inserted at end ''For purposes of this section, any directive issued under section 2154(b)(2), 2154a(e), or 2202a(i) of this title shall be treated as an effective and outstanding order issued under section 2261 of this title that has become final.''

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2268. Penalty

(a) Forfeiture and payment; compromise, modification, or remitting by Farm Credit Administration; assessment and collection by written notice

Any institution in the System that violates or any officer, director, employee, agent, or other

person participating in the conduct of the affairs of such an institution who violates the terms of any order that has become final and was issued under section 2261 or 2262 of this title, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. Any such institution or person who violates any provision of this chapter or any regulation issued under this chapter shall forfeit and pay a civil penalty of not more than $500 per day for each day during which such violation continues. Notwithstanding the preceding sentences, the Farm Credit Administration may, in its discretion, compromise, modify, or remit any civil money penalty that is subject to imposition or has been imposed under such authority. The penalty may be assessed and collected by the Farm Credit Administration by written notice.

(b) Factors determining amount

Before determining whether to assess a civil money penalty and determining the amount of such penalty, the Farm Credit Administration shall notify the institution or person to be assessed of the violation or violations alleged to have occurred or to be occurring, and shall solicit the views of the institution or person regarding the imposition of such penalty. In determining the amount of the penalty, the Farm Credit Administration shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the System institution or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(c) Notice and hearing; final orders

The System institution or person assessed shall be afforded an opportunity for a hearing by the Farm Credit Administration, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The Farm Credit Administration determination shall be made by final order which may be reviewed only as provided in subsection (d) of this section. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(d) Judicial review

Any System institution or person against whom an order imposing a civil money penalty has been entered after a Farm Credit Administration hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the System institution is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within twenty days after the service of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Farm Credit Administration. The Farm Credit Administration shall promptly certify and file in such Court the record upon which the penalty was imposed, as provided in section 2112 of title 28. Final orders of the Farm Credit Administration issued under subsection (c) of this section shall be reviewable under chapter 7 of title 5.

(e) Action by Attorney General to recover amount assessed

If any System institution or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Farm Credit Administration, the Farm Credit Administration shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(f) Rules and regulations

The Farm Credit Administration shall promulgate regulations establishing procedures necessary to implement section 2267 of this title and this section.

(g) Payment into Treasury

All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(h) Directives as final orders

For purposes of this section, any directive issued under section 2154(b)(2), 2154a(e), or 2202a(i) of this title shall be treated as an order that has become final and was issued under section 2261 of this title.

(Pub. L. 92–181, title V, § 5.32, as added Pub. L. 99–205, title II, § 204, Dec. 23, 1985, 99 Stat. 1700; amended Pub. L. 100–233, title IV, § 423, title VIII, §§ 804(a)(2), 805(dd), Jan. 6, 1988, 101 Stat. 1656, 1714, 1717.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–233, § 423(a), substituted ''continues. Any such institution or person who violates any provision of this chapter or any regulation issued under this chapter shall forfeit and pay a civil penalty of not more than $500 per day for each day during which such violation continues. Notwithstanding the preceding sentences,'' for ''continues, but''.

Subsec. (b). Pub. L. 100–233, § 423(b), inserted ''Before determining whether to assess a civil money penalty and determining the amount of such penalty, the Farm Credit Administration shall notify the institution or person to be assessed of the violation or violations alleged to have occurred or to be occurring, and shall solicit the views of the institution or person regarding the imposition of such penalty.''

Subsec. (d). Pub. L. 100–233, § 423(c), substituted ''Final orders of the Farm Credit Administration issued under subsection (c) of this section shall be reviewable under chapter 7 of title 5'' for ''The findings of the Farm Credit Administration shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5''.

Subsec. (f). Pub. L. 100–233, § 805(dd), substituted ''section 2267 of this title and this section'' for ''sections 2267 and 2268 of this title''.

Subsec. (h). Pub. L. 100–233, § 804(a)(2), added subsec. (h).

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2269. Further penalties

Any director or officer, or former director or officer of a System institution, or any other per-

son, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under section 2264 or 2265 of this title, and who (1) participates in any manner in the conduct of the affairs of the institution involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such institution, or (2) without the prior written approval of the Farm Credit Administration, votes for a director, serves or acts as a director, officer, or employee of any System institution, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

(Pub. L. 92–181, title V, § 5.33, as added Pub. L. 99–205, title II, § 204, Dec. 23, 1985, 99 Stat. 1701.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2270. Replacement of suspended or removed directors

If at any time, because of the suspension or removal of one or more directors pursuant to section 2264 or 2265 of this title, there shall be on the board of directors of a System institution less than a quorum of directors not so suspended, the Chairman shall appoint persons to serve temporarily as directors in their place and stead so as to establish a quorum until such time as those who have been removed are reinstated or their respective successors are duly elected and take office.

(Pub. L. 92–181, title V, § 5.34, as added Pub. L. 99–205, title II, § 204, Dec. 23, 1985, 99 Stat. 1701.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2271. Definitions

As used in this part—

(1) the terms ''cease and desist order that has become final'' and ''order which has become final'' mean a cease and desist order, or an order, issued by the Farm Credit Administration with the consent of the System institution or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Farm Credit Administration has been filed and perfected in a court of appeals as specified in section 2266(b) of this title, or with respect to which the action of the court in which such petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in section 2266(b) of this title, or an order issued under section 2265 of this title;

(2) the term ''violation'' includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation;

(3) the terms ''institution in the System'', ''System institution'', and ''institution'' mean all institutions enumerated in section 2002 of this title, any service organization chartered under part E of subchapter IV of this chapter, and the Financial Assistance Corporation; and

(4) the term ''unsafe or unsound practice'' shall—

(A) have the meaning given to it by the Farm Credit Administration by regulation, rule, or order;

(B) during the period beginning on January 6, 1988, and ending December 31, 1992, mean any noncompliance by a System institution, as determined by the Farm Credit Administration in consultation with the Assistance Board, with any term or condition imposed on the institution by the Assistance Board under section 2278a–6 of this title; and

(C) after December 31, 1992, mean any significant noncompliance by a System institution (as determined by the Farm Credit Administration, in consultation with the Farm Credit System Insurance Corporation) with any term or condition imposed on the institution by the Farm Credit System Assistance Board under section 2278a–6 of this title or by the Farm Credit System Insurance Corporation under section 2277a–10 of this title.

(Pub. L. 92–181, title V, § 5.35, as added Pub. L. 99–205, title II, § 204, Dec. 23, 1985, 99 Stat. 1701; amended Pub. L. 100–233, title II, §§ 203, 207(d), Jan. 6, 1988, 101 Stat. 1605, 1608; Pub. L. 102–237, title V, § 502(i), Dec. 13, 1991, 105 Stat. 1869; Pub. L. 102–552, title II, § 202(b), Oct. 28, 1992, 106 Stat. 4106.)

CODIFICATION

January 6, 1988, referred to in par. (4)(B), was in the original ''the date of the enactment of this paragraph'' which was translated as meaning the date of enactment of Pub. L. 100–233, which amended par. (4) generally, to reflect the probable intent of Congress.

AMENDMENTS

1992—Par. (4)(C). Pub. L. 102–552 added subpar. (C).

1991—Par. (3). Pub. L. 102–237 substituted ''part E'' for ''part D''.

1988—Par. (3). Pub. L. 100–233, § 207(d), substituted ''Financial Assistance Corporation'' for ''Capital Corporation''.

Par. (4). Pub. L. 100–233, § 203, amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the term 'unsafe or unsound practice' shall have the meaning given to it by the Farm Credit Administration by regulations, rule, or order.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–237 effective as if included in the provision of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, to which the amendment relates, see section 1101(b)(4) of Pub. L. 102–237, set out as a note under section 1421 of Title 7, Agriculture.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2272. Notice of service

Any service required or authorized to be made by the Farm Credit Administration under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Farm Credit Administration may by regulation or otherwise provide. Any such service by mail is complete upon mailing. Copies of any notice or order served by the Farm Credit Administration on any association or any director or officer thereof or other person participating in the conduct of its affairs, under the provisions of this part, shall also be sent to the supervisory bank.

(Pub. L. 92–181, title V, § 5.36, as added Pub. L. 99–205, title II, § 204, Dec. 23, 1985, 99 Stat. 1702.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2273. Ancillary provisions; subpena power; etc.

In the course of or in connection with any proceeding under this part or any examination or investigation under this chapter, the Farm Credit Administration or any designated representative thereof, including any person designated to conduct any hearing under this part, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and the Farm Credit Administration is empowered to make rules and regulations with respect to any such proceedings, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. The Farm Credit Administration or any party to proceedings under this part may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this part, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this part by a System institution or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the System institution or from its assets. Any person who willfully shall fail or refuse to attend or testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpena of the Farm Credit Administration, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year or both.

(Pub. L. 92–181, title V, § 5.37, as added Pub. L. 99–205, title II, § 204, Dec. 23, 1985, 99 Stat. 1702; amended Pub. L. 100–233, title VIII, § 805(ee), Jan. 6, 1988, 101 Stat. 1717.)

AMENDMENTS

1988—Pub. L. 100–233 substituted ''proceedings, examinations, or investigations'' for ''proceedings, claims, examinations, or investigations''.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2274. Power to remove directors and officers

Notwithstanding any other provision of this chapter, a farm credit district board, bank board, or bank officer or employee shall not remove any director or officer of any production credit association or Federal land bank association.

(Pub. L. 92–181, title V, § 5.38, as added Pub. L. 100–233, title IV, § 432(c), Jan. 6, 1988, 101 Stat. 1661.)

PART D—MISCELLANEOUS

§ 2275. Government Accountability Office audit; report to Congress

(a) The Comptroller General shall conduct an evaluation of the programs and activities authorized under the 1980 amendments to this chapter, and shall make an interim report to the Congress no later than December 31, 1982, and a final report to the Congress no later than December 31, 1984. The Comptroller General shall include in such evaluation the effect that this chapter, as amended, will have on agricultural credit services provided by the Farm Credit System, Federal agencies, and other entities. The Comptroller General may make such interim reports to the Congress on the programs and activities under these amendments as the Comptroller General deems necessary or as requested by Members of Congress.

(b) For the purpose of conducting program evaluations required in subsection (a) of this section, the Comptroller General or his duly authorized representatives shall have access to and the right to examine all books, documents, papers, records, or other recorded information within the possession or control of the Federal land banks and Federal land bank associations, Federal intermediate credit banks and production credit associations and banks for cooperatives.

(Pub. L. 92–181, title V, § 5.44, formerly § 5.30, as added Pub. L. 96–592, title V, § 509, Dec. 24, 1980, 94 Stat. 3450; renumbered § 5.44, Pub. L. 99–205, title II, § 205(a)(2), Dec. 23, 1985, 99 Stat. 1703; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The 1980 amendments to this chapter and these amendments, referred to in subsec. (a), are the amend-

ments made to this chapter by the Farm Credit Act Amendment of 1980, Pub. L. 96–592, Dec. 24, 1980, 94 Stat. 3437. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 2001 of this title and Tables.

CODIFICATION

Section was formerly classified to section 2260 of this title.

Similar provisions relating to general powers of the Comptroller General with respect to access and examination of books, documents, etc., are set out in section 2276 of this title.

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in section catchline.

§ 2275a. Transition rules relating to amendment of certain FCA approval authorities

(a) In general

Any approvals granted by the Farm Credit Administration before January 6, 1988, shall remain in effect on and after such date.

(b) Authority to issue regulations

(1) In general

Any approval authority of the Farm Credit Administration that, under the amendments made by section 802 of the Agricultural Credit Act of 1987, became an authority to issue regulations may be exercised only until the earlier of the date the Farm Credit Administration issues final regulations under such authority, or 1 year after January 6, 1988.

(2) Enforcement actions

At the close of the 1-year period referred to in paragraph (1), the Farm Credit Administration shall not take any enforcement action against any System institution with respect to any provision so amended, until the Farm Credit Administration issues final regulations under such provision.

(c) Effect of section

This section shall not affect the authority of the Farm Credit Administration to exercise any other approval authority either on a case-by-case basis or through regulation, as provided in section 2252(a)(5) of this title.

(Pub. L. 92–181, title V, § 5.45, as added Pub. L. 100–233, title VIII, § 802(w), Jan. 6, 1988, 101 Stat. 1713.)

REFERENCES IN TEXT

The amendments made by section 802 of the Agricultural Credit Act of 1987, referred to in subsec. (b)(1), are the amendments made by section 802 of Pub. L. 100–233, title VIII, Jan. 6, 1988, 101 Stat. 1710, which enacted section 2275a of this title and amended sections 2011 to 2013, 2017, 2031, 2051, 2052, 2071 to 2073, 2077, 2091, 2121, 2122, 2124, 2126, 2130, 2132, 2212, 2213, 2223, and 2252 of this title. For complete classification of section 802 to the Code, see Tables.

§ 2276. Access to and examination by Comptroller General of books, documents, etc., of farm credit system banks and institutions

On and after December 19, 1985, the Comptroller General or his duly authorized representatives shall have access to and the right to examine all books, documents, papers, records, or other recorded information within the possession or control of the Federal land banks and Federal land bank associations, Federal intermediate credit banks and production credit associations and banks for cooperatives.

(Pub. L. 99–190, § 107, Dec. 19, 1985, 99 Stat. 1316.)

CODIFICATION

Section was not enacted as part of the Farm Credit Act of 1971 which comprises this chapter.

Similar provisions relating to powers of the Comptroller General with respect to access and examination of books, documents, etc., for purposes of conducting program evaluations under section 2275(a) of this title, are set out in section 2275(b) of this title.

PART E—FARM CREDIT SYSTEM INSURANCE CORPORATION

§ 2277a. Definitions

As used in this part:

(1) Board of Directors

The term ''Board of Directors'' means the Board of Directors of the Corporation.

(2) Corporation

The term ''Corporation'' means the Farm Credit System Insurance Corporation established in section 2277a–1 of this title.

(3) Insured obligation

The term ''insured obligation'' means any note, bond, debenture, or other obligation issued under subsection (c) or (d) of section 2153 of this title—

(A) on or before January 5, 1989, on behalf of any System bank; and

(B) after such date, which, when issued, is issued on behalf of any insured System bank.

(4) Insured System bank

The term ''insured System bank'' means any System bank whose participation in notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 2153 of this title is insured under this part.

(5) State

The term ''State'' means any of the 50 States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands.

(Pub. L. 92–181, title V, § 5.51, as added Pub. L. 100–233, title III, § 302, Jan. 6, 1988, 101 Stat. 1611; amended Pub. L. 100–399, title III, § 302(a), (b), Aug. 17, 1988, 102 Stat. 994; Pub. L. 104–105, title II, § 214(a), Feb. 10, 1996, 110 Stat. 175.)

AMENDMENTS

1996—Pars. (5), (6). Pub. L. 104–105 redesignated par. (6) as (5) and struck out heading and text of former par. (5). Text read as follows: ''The term 'receiver' means a receiver or conservator appointed by the Farm Credit Administration for a System institution.''

1988—Par. (3)(A), (B). Pub. L. 100–399, § 302(a), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A) on or before January 6, 1988, on behalf of any System bank; and

''(B) after such date, on behalf of any insured System bank.''

Par. (5). Pub. L. 100–399, § 302(b), substituted ''for'' for ''to liquidate''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 2277a–1. Establishment of Farm Credit System Insurance Corporation

There is hereby established the Farm Credit System Insurance Corporation which shall insure, in accordance with this part, the timely payment of principal and interest on notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 2153 of this title on behalf of one or more System banks all of which are entitled to the benefits of insurance under this part.

(Pub. L. 92–181, title V, § 5.52, as added Pub. L. 100–233, title III, § 302, Jan. 6, 1988, 101 Stat. 1611.)

§ 2277a–2. Board of Directors

(a) Establishment

The Corporation shall be managed by a Board of Directors that shall consist of the members of the Farm Credit Administration Board.

(b) Chairman

The Board of Directors shall be chaired by any Board member other than the Chairman of the Farm Credit Administration Board.

(Pub. L. 92–181, title V, § 5.53, as added Pub. L. 100–233, title III, § 302, Jan. 6, 1988, 101 Stat. 1611; amended Pub. L. 102–552, title II, § 201(a), Oct. 28, 1992, 106 Stat. 4104; Pub. L. 104–105, title II, § 219(a), Feb. 10, 1996, 110 Stat. 184.)

AMENDMENTS

1996—Pub. L. 104–105 amended section generally. Prior to amendment, section related to Board of Directors, including provisions relating to establishment, appointment, chairperson, postemployment prohibition, terms of office, succession, vacancies, oath, quorum, meetings, rules and records, compensation, and expenses.

1992—Pub. L. 102–552 amended section generally. Prior to amendment, section read as follows:

''(a) ESTABLISHMENT.—The Corporation shall be managed by a Board of Directors that shall consist of the members of the Farm Credit Administration Board.

''(b) CHAIRMAN.—The Board of Directors shall be chaired by any Board member other than the Chairman of the Farm Credit Administration Board.''

EFFECTIVE DATE OF 1992 AMENDMENT; TRANSITION PROVISION

Section 201(c) of Pub. L. 102–552 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 5314 and 5315 of Title 5, Government Organization and Employees] shall become effective on January 1, 1996.

''(2) TRANSITIONAL PROVISION.—The Board of Directors of the Farm Credit System Insurance Corporation as established by section 5.53 of the Farm Credit Act of 1971 (12 U.S.C. 2277a–2) (as it existed before the amendments made by subsection (a) of this section) shall continue in existence and continue to manage the Farm Credit System Insurance Corporation until at least two members are appointed by the President, by and with the advice and consent of the Senate, to the new Board established by section 5.53 of such Act (as amended by subsection (a) of this section).''

§ 2277a–3. Commencement of insurance

Effective beginning on January 1, 1989, or 12 months after January 6, 1988, whichever is later, each System bank shall be an insured System bank and shall be subject to this part. Each System bank that is authorized to commence or resume operations under a subchapter of this chapter shall be an insured System bank from the time of such authorization. A bank resulting from the merger or consolidation of insured System banks shall be an insured System bank.

(Pub. L. 92–181, title V, § 5.54, as added Pub. L. 100–233, title III, § 302, Jan. 6, 1988, 101 Stat. 1611.)

§ 2277a–4. Premiums

(a) Amount in Fund not exceeding secure base amount

(1) In general

If at the end of any calendar year the aggregate of amounts in the Farm Credit Insurance Fund does not exceed the secure base amount, subject to paragraph (3), the premium due from any insured System bank for the calendar year shall be equal to the sum of—

(A) the average outstanding insured obligations issued by the bank for the calendar year, after deducting from the obligations the percentages of the guaranteed portions of loans and investments described in paragraph (2), multiplied by 0.0020; and

(B) the product obtained by multiplying—

(i) the sum of—

(I) the average principal outstanding for the calendar year on loans made by the bank that are in nonaccrual status; and

(II) the average amount outstanding for the calendar year of other-than-temporarily impaired investments made by the bank; by

(ii) 0.0010.

(2) Deductions from average outstanding insured obligations

The average outstanding insured obligations issued by the bank for the calendar year referred to in paragraph (1)(A) shall be reduced by deducting from the obligations the sum of (as determined by the Corporation)—

(A) 90 percent of each of—

(i) the average principal outstanding for the calendar year on the guaranteed portions of Federal government-guaranteed loans made by the bank that are in accrual status; and

(ii) the average amount outstanding for the calendar year of the guaranteed portions of Federal government-guaranteed investments made by the bank that are not permanently impaired; and

(B) 80 percent of each of—

(i) the average principal outstanding for the calendar year on the guaranteed portions of State government-guaranteed loans made by the bank that are in accrual status; and

(ii) the average amount outstanding for the calendar year of the guaranteed portions of State government-guaranteed investments made by the bank that are not permanently impaired.

(3) Reduced premiums

The Corporation, in the sole discretion of the Corporation, may reduce by a percentage uniformly applied to all insured System banks the premium due from each insured System bank during any calendar year, as determined under paragraph (1).

(4) Definition of government-guaranteed loans or investments

In this section, the term ''government-guaranteed'', when applied to a loan or an investment, means a loan, credit, or investment, or portion of a loan, credit, or investment, that is guaranteed—

(A) by the full faith and credit of the United States Government or any State government;

(B) by an agency or other entity of the United States Government whose obligations are explicitly guaranteed by the United States Government; or

(C) by an agency or other entity of a State government whose obligations are explicitly guaranteed by such State government.

(b) Amount in Fund exceeding secure base amount

At any time the aggregate of amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the Corporation shall reduce the premium due from each insured System bank, as determined under subsection (a)(1) of this section, by a percentage determined by the Corporation so that the aggregate of the premiums payable by all System banks is sufficient to ensure that the aggregate of amounts in the Farm Credit Insurance Fund after such premiums are paid is not less than the secure base amount at such time.

(c) Secure base amount

(1) In general

For purposes of this part, the term ''secure base amount'' means, with respect to any point in time, 2 percent of the aggregate outstanding insured obligations of all insured System banks at such time (as adjusted under paragraph (2)), or such other percentage of the aggregate amount as the Corporation in its sole discretion determines is actuarially sound to maintain in the Insurance Fund taking into account the risk of insuring outstanding insured obligations.

(2) Adjustment

The aggregate outstanding insured obligations of all insured System banks under paragraph (1) shall be adjusted downward to exclude an amount equal to the sum of (as determined by the corporation)—

(A) 90 percent of each of—

(i) the guaranteed portions of principal outstanding on Federal government-guaranteed loans in accrual status made by the banks; and

(ii) the guaranteed portions of the amount of Federal government-guaranteed investments made by the banks that are not permanently impaired; and

(B) 80 percent of each of—

(i) the guaranteed portions of principal outstanding on State government-guaranteed loans in accrual status made by the banks; and

(ii) the guaranteed portions of the amount of State government-guaranteed investments made by the banks that are not permanently impaired.

(d) Determination of loan and investment amounts

For the purpose of subsections (a) and (c), the principal outstanding on all loans made by an insured System bank, and the amount outstanding on all investments made by an insured System bank, shall be determined based on—

(1) all loans or investments made by any production credit association, or any other association making direct loans under authority provided under section 2279b of this title, that is able to make such loans or investments because such association is receiving, or has received, funds provided through the insured System bank;

(2) all loans or investments made by any bank, company, institution, corporation, union, or association described in section 2015(b)(1)(B) of this title, that is able to make such loans or investments because such entity is receiving, or has received, funds provided through the insured System bank; and

(3) all loans or investments made by such insured System bank (other than loans made to any party described in paragraph (1) or (2)).

(e) Allocation to System institutions of excess reserves

(1) Establishment of Allocated Insurance Reserves Accounts

There is hereby established in the Farm Credit Insurance Fund an Allocated Insurance Reserves Account—

(A) for each insured System bank; and

(B) subject to paragraph (6)(C), for all holders, in the aggregate, of Financial Assistance Corporation stock.

(2) Treatment

Amounts in any Allocated Insurance Reserves Account shall be considered to be part of the Farm Credit Insurance Fund.

(3) Annual allocations

If, at the end of any calendar year, the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the Corporation shall allocate to the Allocated Insurance Reserves Accounts the excess amount less the amount that the Corporation, in its sole discretion, determines to be the sum of the estimated operating expenses and estimated insurance obligations of the Cor-

poration for the immediately succeeding calendar year.

(4) Allocation formula

From the total amount required to be allocated at the end of a calendar year under paragraph (3)—

(A) 10 percent of the total amount shall be credited to the Allocated Insurance Reserves Account established under paragraph (1)(B), subject to paragraph (6)(C); and

(B) there shall be credited to the allocated insurance reserves account[1] of each insured system[2] bank an amount that bears the same ratio to the total amount (less any amount credited under subparagraph (A)) as—

(i) the average principal outstanding for the calendar year on insured obligations issued by the bank (after deducting from the principal the percentages of the guaranteed portions of loans and investments described in subsection (a)(2)); bears to

(ii) the average principal outstanding for the calendar year on insured obligations issued by all insured System banks (after deducting from the principal the percentages of the guaranteed portions of loans and investments described in subsection (a)(2)).

(5) Use of funds in Allocated Insurance Reserves Accounts

To the extent that the sum of the operating expenses of the Corporation and the insurance obligations of the Corporation for a calendar year exceeds the sum of operating expenses and insurance obligations determined under paragraph (3) for the calendar year, the Corporation shall cover the expenses and obligations by—

(A) reducing each Allocated Insurance Reserves Account by the same proportion; and

(B) expending the amounts obtained under subparagraph (A) before expending other amounts in the Fund.

(6) Other disposition of Account funds

(A) In general

As soon as practicable during each calendar year, the Corporation may—

(i) subject to subparagraph (D), pay to each insured System bank, in a manner determined by the Corporation, an amount equal to the balance in the Allocated Insurance Reserves Account of the System bank; and

(ii) subject to subparagraphs (C) and (E), pay to each System bank and association holding Financial Assistance Corporation stock a proportionate share, determined by dividing the number of shares of Financial Assistance Corporation stock held by the institution by the total number of shares of Financial Assistance Corporation stock outstanding at the time of the termination of the Financial Assistance Corporation, of the balance in the Allocated Insurance Reserves Account established under paragraph (1)(B).

(B) Authority to eliminate or reduce payments

The Corporation may eliminate or reduce payments during a calendar year under subparagraph (A) if the Corporation determines, in its sole discretion, that the payments, or other circumstances that might require use of the Farm Credit Insurance Fund, could cause the amount in the Farm Credit Insurance Fund during the calendar year to be less than the secure base amount.

(C) Reimbursement for Financial Assistance Corporation stock

(i) Sufficient funding

Notwithstanding paragraph (4)(A), on provision by the Corporation for the accumulation in the Account established under paragraph (1)(B) of funds in an amount equal to $56,000,000, the Corporation shall not allocate any further funds to the Account except to replenish the Account if funds are diminished below $56,000,000 by the Corporation under paragraph (5).

(ii) Termination of account

On disbursement of an amount equal to $56,000,000, the Corporation shall—

(I) close the account established under paragraph (1)(B); and

(II) transfer any remaining funds in the Account to the remaining Allocated Insurance Reserves Accounts in accordance with paragraph (4)(B) for the calendar year in which the transfer occurs.

(D) Distribution of payments received

Not later than 60 days after receipt of a payment made under subparagraph (A)(i), each insured System bank, in consultation with affiliated associations of the insured System bank, and taking into account the direct or indirect payment of insurance premiums by the associations, shall develop and implement an equitable plan to distribute payments received under subparagraph (A)(i) among the bank and associations of the bank.

(E) Exception for previously reimbursed associations

For purposes of subparagraph (A)(ii), in any Farm Credit district in which the funding bank has reimbursed 1 or more affiliated associations of the bank for the previously unreimbursed portion of the Financial Assistance Corporation stock held by the associations, the funding bank shall be deemed to be the holder of the shares of Financial Assistance Corporation stock for which the funding bank has provided the reimbursement.

(Pub. L. 92–181, title V, §5.55, as added Pub. L. 100–233, title III, §302, Jan. 6, 1988, 101 Stat. 1612; amended Pub. L. 100–399, title III, §302(c)–(e), Aug. 17, 1988, 102 Stat. 994; Pub. L. 101–220, §6(a), Dec. 12, 1989, 103 Stat. 1879; Pub. L. 104–105, title II, §215(a)(1), (2)(A), (b), (c), Feb. 10, 1996, 110 Stat. 175, 176, 179; Pub. L. 107–171, title V,

[1] So in original. Probably should be ''Allocated Insurance Reserves Account''.

[2] So in original. Probably should be ''System''.

§ 5403(a)(1), May 13, 2002, 116 Stat. 350; Pub. L. 110–234, title V, § 5404, May 22, 2008, 122 Stat. 1154; Pub. L. 110–246, § 4(a), title V, § 5404, June 18, 2008, 122 Stat. 1664, 1916.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–246, § 5404(a)(1)(A), in introductory provisions, substituted ''paragraph (3)'' for ''paragraph (2)'' and struck out ''annual'' before ''premium''.

Subsec. (a)(1)(A) to (D). Pub. L. 110–246, § 5404(a)(1)(B), added subpars. (A) and (B) and struck out former subpars. (A) to (D) which described how to calculate the annual premium due from an insured System bank.

Subsec. (a)(2) to (4). Pub. L. 110–246, § 5404(a)(2)–(6), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, in par. (3), struck out ''annual'' before ''premium'', in par. (4), inserted ''or investments'' after ''loans'' in heading and, in introductory provisions, substituted ''In this section, the term 'government-guaranteed', when applied to a loan or an investment, means a loan, credit, or investment, or portion of a loan, credit, or investment, that is guaranteed—'' for ''As used in this section and section 2020(b) of this title, the term 'government-guaranteed loans' means loans or credits, or portions of loans or credits, that are guaranteed—'', and struck out former par. (4). Prior to amendment, text read as follows: ''In this section and sections 2020(b) and 2277a–5(a) of this title, the term 'Government Sponsored Enterprise-guaranteed loan' means a loan or credit, or portion of a loan or credit, that is guaranteed by an entity that is chartered by Congress to serve a public purpose and the debt obligations of which are not explicitly guaranteed by the United States, including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank System, and the Federal Agricultural Mortgage Corporation, but not including any other institution of the Farm Credit System.''

Subsec. (b). Pub. L. 110–246, § 5404(b), struck out ''annual'' before ''premium''.

Subsec. (c). Pub. L. 110–246, § 5404(c), designated existing provisions as par. (1), inserted heading, substituted ''(as adjusted under paragraph (2))'' for ''(adjusted downward to exclude an amount equal to the sum of (1) 90 percent of the guaranteed portions of principal outstanding on Federal Government-guaranteed loans in accrual status made by such banks and (2) 80 percent of the guaranteed portions of principal outstanding on State government-guaranteed loans in accrual status made by such banks, as determined by the Corporation)'', and added par. (2).

Subsec. (d). Pub. L. 110–246, § 5404(d)(1), (2), in heading, substituted ''loan and investment amounts'' for ''principal outstanding'' and, in introductory provisions, substituted ''For the purpose of subsections (a) and (c), the principal outstanding on all loans made by an insured System bank, and the amount outstanding on all investments made by an insured System bank, shall be determined based on—'' for ''For the purpose of subsections (a), (c), and (e) of this section, the principal outstanding on all loans made by an insured System bank shall be determined based on all loans made—''.

Subsec. (d)(1) to (3). Pub. L. 110–246, § 5404(d)(3), (4), in pars. (1) to (3), inserted ''all loans or investments made'' after par. designation and, in pars. (1) and (2), inserted ''or investments'' after ''such loans''.

Subsec. (e)(3). Pub. L. 110–246, § 5404(e)(1), substituted ''the secure base amount'' for ''the average secure base amount for the calendar year (as calculated on an average daily balance basis)''.

Subsec. (e)(4)(B). Pub. L. 110–246, § 5404(e)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: ''there shall be credited to the Allocated Insurance Reserves Account of each insured System bank an amount that bears the same ratio to the total amount (less any amount credited under subparagraph (A)) as the average principal outstanding for the 3-year period ending on the end of the calendar year on loans made by the bank that are in accrual status bears to the average principal outstanding for the 3-year period ending on the end of the calendar year on loans made by all insured System banks that are in accrual status (excluding, in each case, the guaranteed portions of loans described in subparagraph (C) or (D) of subsection (a)(1) of this section).''

Subsec. (e)(6)(A). Pub. L. 110–246, § 5404(e)(3)(A)(i), struck out ''beginning more than 8 years after the date on which the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the secure base amount, but not earlier than January 1, 2005'' after ''calendar year'' in introductory provisions.

Subsec. (e)(6)(A)(i). Pub. L. 110–246, § 5404(e)(3)(A)(ii), added cl. (i) and struck out former cl. (i) which read as follows: ''subject to subparagraphs (D) and (F), pay to each insured System bank, in a manner determined by the Corporation, an amount equal to the lesser of—

''(I) 20 percent of the balance in the insured System bank's Allocated Insurance Reserves Account as of the preceding December 31; or

''(II) 20 percent of the balance in the bank's Allocated Insurance Reserves Account on the date of the payment; and''.

Subsec. (e)(6)(A)(ii). Pub. L. 110–246, § 5404(e)(3)(A)(iii), substituted ''subparagraphs (C) and (E)'' for ''subparagraphs (C), (E), and (F)'' and ''at the time of the termination of the Financial Assistance Corporation, of the balance in the Allocated Insurance Reserves Account established under paragraph (1)(B).'' for '', of the lesser of—

''(I) 20 percent of the balance in the Allocated Insurance Reserves Account established under paragraph (1)(B) as of the preceding December 31; or

''(II) 20 percent of the balance in the Allocated Insurance Reserves Account established under paragraph (1)(B) on the date of the payment.''

Subsec. (e)(6)(C)(i). Pub. L. 110–246, § 5404(e)(3)(B)(i), struck out ''(in addition to the amounts described in subparagraph (F)(ii))'' after ''an amount equal to $56,000,000''.

Subsec. (e)(6)(C)(ii). Pub. L. 110–246, § 5404(e)(3)(B)(ii), added cl. (ii) and struck out former cl. (ii) which related to wind down and termination of the Allocated Insurance Reserves Account established under subsec. (e)(1) of this section.

Subsec. (e)(6)(F). Pub. L. 110–246, § 5404(e)(3)(C), struck out subpar. (F) which related to determination of amount of initial payment made to each payee under subsec. (e)(6)(A) of this section.

2002—Subsec. (a)(1)(A). Pub. L. 107–171, § 5403(a)(1)(A)(i)(I), substituted ''loans provided for in subparagraphs (C) and (D)'' for ''government-guaranteed loans provided for in subparagraph (C)''.

Subsec. (a)(1)(D). Pub. L. 107–171, § 5403(a)(1)(A)(i)(II)–(IV), added subpar. (D).

Subsec. (a)(4). Pub. L. 107–171, § 5403(a)(1)(A)(ii), added par. (4).

Subsec. (e)(4)(B). Pub. L. 107–171, § 5403(a)(1)(B), substituted ''loans described in subparagraph (C) or (D) of subsection (a)(1) of this section'' for ''government-guaranteed loans described in subsection (a)(1)(C) of this section''.

1996—Subsec. (a). Pub. L. 104–105, § 215(a)(1)(A), substituted ''If at the end of any calendar year the aggregate of amounts in the Farm Credit Insurance Fund does not exceed the secure base amount, subject to paragraph (2), the annual premium due from any insured System bank for the calendar year'' for ''Until the aggregate of amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the annual premium due from any insured System bank for any calendar year''.

Subsec. (a)(2), (3). Pub. L. 104–105, § 215(a)(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b). Pub. L. 104–105, § 215(a)(2)(A), substituted ''Farm Credit Insurance Fund'' for ''Insurance Fund'' in two places, and ''subsection (a)(1) of this section'' for ''subsection (a) of this section'', and struck out ''for the following calendar year'' after ''each insured System bank''.

Subsec. (d). Pub. L. 104–105, § 215(c), in introductory provisions, substituted ''subsections (a), (c), and (e) of this section'' for ''subsections (a) and (c) of this section'' and ''an insured System bank'' for ''a Farm Credit Bank'', and in pars. (1) through (3), substituted ''insured System bank'' for ''Farm Credit Bank''.

Subsec. (e). Pub. L. 104–105, § 215(b), added subsec. (e).

1989—Subsec. (a). Pub. L. 101–220, § 6(a)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''Until the aggregate of amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the annual premium due from any insured System bank for any calendar year shall be equal to the sum of—

''(1) the annual average principal outstanding for such year on loans made by the bank that are in accrual status, multiplied by 0.0015; and

''(2) the annual average principal outstanding for such year on loans made by the bank that are in nonaccrual status, multiplied by 0.0025.''

Subsec. (b). Pub. L. 101–220, § 6(a)(2), inserted '', as determined under subsection (a) of this section,'' after ''calendar year''.

Subsec. (c). Pub. L. 101–220, § 6(a)(3), inserted ''(adjusted downward to exclude an amount equal to the sum of (1) 90 percent of the guaranteed portions of principal outstanding on Federal Government-guaranteed loans in accrual status made by such banks and (2) 80 percent of the guaranteed portions of principal outstanding on State government-guaranteed loans in accrual status made by such banks, as determined by the Corporation)'' after ''such time''.

Subsec. (d). Pub. L. 101–220, § 6(a)(4), in introductory provisions, substituted ''subsections (a) and (c) of this section'' for ''subsection (a) of this section'' and struck out ''intermediate term'' after ''outstanding on all'', inserted par. (1), and struck out former par. (1) which read as follows: ''by the production credit associations in the district in which such bank is located;''.

1988—Subsec. (d). Pub. L. 100–399, § 302(c), substituted in introductory provisions ''intermediate term loans made by a Farm Credit Bank'' for ''loans made by a Federal intermediate credit bank''.

Subsec. (d)(2). Pub. L. 100–399, § 302(d), (e), substituted ''section 2015(b)(1)(B) of this title'' for ''section 2074(a)(2) of this title'' and ''Farm Credit Bank'' for ''Federal intermediate credit bank''.

Subsec. (d)(3). Pub. L. 100–399, § 302(e), substituted ''Farm Credit Bank'' for ''Federal intermediate credit bank''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–171 applicable with respect to determinations of premiums for calendar year 2002 and for any succeeding calendar year, and to certified statements with respect to such premiums, see section 5403(b) of Pub. L. 107–171, set out as a note under section 2020 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–220 effective for insurance premiums due to the Farm Credit System Insurance Corporation under this chapter on or after Jan. 1, 1990, based on the loan volume of each bank for each calendar year beginning with calendar year 1989, and effective for the calculation of the initial premium payment required under section 2277a–5(c) of this title, see section 6(c) of Pub. L. 101–220, set out as a note under section 2020 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100–399, set out as a note under section 2002 of this title.

GAO REPORTS ON RISK-BASED INSURANCE PREMIUMS, ACCESS TO ASSOCIATION CAPITAL, SUPPLEMENTAL PREMIUMS, AND CONSOLIDATION

Pub. L. 102–552, title II, § 204, Oct. 28, 1992, 106 Stat. 4106, as amended by Pub. L. 104–316, title I, § 106(e), Oct. 19, 1996, 110 Stat. 3831, provided that:

''(a) IN GENERAL.—The Comptroller General of the United States may investigate, review, and evaluate the feasibility and appropriateness, and report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, on the advantages and disadvantages of providing the Farm Credit System Insurance Corporation with—

''(1) the authority to directly or indirectly assess associations to ensure that all System capital is available to prevent losses to investors, including a study of—

''(A) the effects of direct assessments by the Insurance Corporation on associations, including interest rate charges to borrowers;

''(B) the effects of requiring that banks pass along the cost of insurance premiums to owner associations and other financing institutions having a discount relationship with the bank;

''(C) the effects of requiring owner associations to purchase stock in the district bank, if needed, to prevent a bank from having to return to the Insurance Corporation for financial assistance once the assistance has been given;

''(D) the effects of the purchase of stock from funds of the association (through funds obtained from other than the district bank) or allowing the bank to increase the direct line of credit to the association in order to fund the purchase; and

''(E) the effect that authorizing the Insurance Corporation to assess the association could have on the association's incentives for building capital;

''(2) the authority to collect supplemental insurance premiums under certain circumstances, including a study of—

''(A) the possibility of the Insurance Fund being depleted more rapidly than it could be replenished under the current premium structure;

''(B) the effects of the depletion under alternate economic scenarios and the probability of the occurrence of each of those scenarios;

''(C) the effects on capital accumulation and interest rates of levying a supplemental premium; and

''(D) limitations on any authority to levy supplemental premiums and the underlying basis for the limitations; and

''(3) the authority to establish an insurance premium rate structure that would take into account, on an institution-by-institution basis, asset quality risk, interest rate risk, earnings, and capital.

''(b) REPORT ON CONSOLIDATION.—

''(1) IN GENERAL.—The Comptroller General of the United States shall evaluate and report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on whether there are likely to be benefits to farmer and rancher borrowers of the Farm Credit System institutions of merging the 10 district Farm Credit Banks (and the Federal Intermediate Credit Bank of Jackson) into fewer regional Farm Credit Banks.

''(2) FACTORS.—In preparing the report, the Comptroller General shall consider—

''(A) the potential reduction in services to farmers and ranchers;

''(B) the potential benefits of jointly providing services to farmers and ranchers among these proposed regional districts;

''(C) any economy of scale effects on a district-by-district basis;

''(D) the potential impact on the cooperative nature of the Farm Credit System;

''(E) the potential impact on bank and association relationships; and

''(F) the potential impact on System-wide bond issuances.

''(c) POTENTIAL SAVINGS.—The Comptroller General of the United States shall evaluate and report to the appropriate committees of Congress on the potential savings to the Farm Credit System and its shareholders that might occur if System institutions and the Farm Credit Administration were required to comply with General Services Administration standards for office space, furniture, and equipment.

''(d) DEADLINE.—The reports required under this section shall be provided to Congress not later than 12 months after the date of enactment of this Act [Oct. 28, 1992].''

§ 2277a–5. Certification of premiums

(a) Filing certified statement

On a date to be determined in the sole discretion of the Board of Directors of the Corporation, each insured System bank that became insured before the beginning of the period for which premiums are being assessed (referred to in this section as the ''period'') shall file with the Corporation a certified statement showing—

(1) the average outstanding insured obligations for the period issued by the bank;

(2)(A) the average principal outstanding for the period on the guaranteed portion of Federal government-guaranteed loans that are in accrual status; and

(B) the average amount outstanding for the period of Federal government-guaranteed investments that are not permanently impaired (as defined in section 2277a–4(a)(4) of this title);

(3)(A) the average principal outstanding for the period on State government-guaranteed loans that are in accrual status; and

(B) the average amount outstanding for the period of State government-guaranteed investments that are not permanently impaired (as defined in section 2277a–4(a)(4) of this title);

(4)(A) the average principal outstanding for the period on loans that are in nonaccrual status; and

(B) the average amount outstanding for the period of other-than-temporarily impaired investments; and

(5) the amount of the premium due the Corporation from the bank for the period.

(b) Contents and form of statement

The certified statement required to be filed with the Corporation under subsection (a) of this section shall be in such form and set forth such supporting information as the Board of Directors shall prescribe, and shall be certified by the president of the bank or any other officer designated by its board of directors that to the best of the person's knowledge and belief the statement is true, correct, complete, and has been prepared in accordance with this part and all regulations issued thereunder.

(c) Premium payments

(1) In general

Except as provided in paragraph (2), each insured System bank shall pay to the Corporation the premium payments required under subsection (a), not more frequently than once in each calendar quarter, in such manner and at such 1 or more times as the Board of Directors shall prescribe.

(2) Premium amount

The amount of the premium shall be established not later than 60 days after filing the certified statement specifying the amount of the premium.

(d) Regulations

The Board of Directors shall prescribe all rules and regulations necessary for the enforcement of this section. The Board of Directors may limit the retroactive effect, if any, of any of its rules or regulations.

(Pub. L. 92–181, title V, § 5.56, as added Pub. L. 100–233, title III, § 302, Jan. 6, 1988, 101 Stat. 1612; amended Pub. L. 100–399, title III, § 302(f), Aug. 17, 1988, 102 Stat. 994; Pub. L. 101–624, title XVIII, § 1835, Nov. 28, 1990, 104 Stat. 3833; Pub. L. 104–105, title II, § 215(a)(2)(B), Feb. 10, 1996, 110 Stat. 176; Pub. L. 107–171, title V, § 5403(a)(2)(B), May 13, 2002, 116 Stat. 351; Pub. L. 110–234, title V, § 5405, May 22, 2008, 122 Stat. 1157; Pub. L. 110–246, § 4(a), title V, § 5405, June 18, 2008, 122 Stat. 1664, 1919.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–246, § 5405(a), added subsec. (a) and struck out former subsec. (a) which related to the required annual filing of a certified statement from each insured System bank that became insured before the beginning of the year.

Subsec. (c). Pub. L. 110–246, § 5405(b), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: ''Each System bank shall pay to the Corporation the amount of the initial premium it is required to certify under subsection (a) of this section as soon as practicable after January 1, 1990, based on the application of section 2277a–4 of this title to the accruing loan volume of the bank for calendar year 1989.''

Subsecs. (d), (e). Pub. L. 110–246, § 5405(c), redesignated subsec. (e) as (d) and struck out former subsec. (d). Prior to amendment, text read as follows: ''The premium payments required from insured System banks under subsection (a) of this section shall be made not less frequently than annually in such manner and at such time or times as the Board of Directors shall prescribe, except that the amount of the premium shall be established not later than 60 days after filing the certified statement setting forth the amount of the premium.''

2002—Subsec. (a)(1). Pub. L. 107–171, § 5403(a)(2)(B)(i), inserted ''and Government Sponsored Enterprise-guaranteed loans (as defined in section 2277a–4(a)(4) of this title)'' after ''government-guaranteed loans''.

Subsec. (a)(4) to (6). Pub. L. 107–171, § 5403(a)(2)(B)(ii), (iii), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

1996—Subsec. (a)(2), (3). Pub. L. 104–105 substituted ''2277a–4(a)(3) of this title'' for ''2277a–4(a)(2) of this title''.

1990—Subsec. (a). Pub. L. 101–624 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Annually, on a date to be determined in the sole discretion of the Board of Directors, each insured System bank that became insured before the beginning of the year shall file with the Corporation a certified statement showing the annual average principal outstanding on loans made by the bank that are in accrual status, the annual average principal outstanding on loans that are in nonaccrual status, and the amount of the premium due the Corporation from the bank for such year.''

1988—Subsec. (a). Pub. L. 100–399 substituted ''of the year'' for ''of such year''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–171 applicable with respect to determinations of premiums for calendar year 2002 and for any succeeding calendar year, and to certified statements with respect to such premiums, see section 5403(b) of Pub. L. 107–171, set out as a note under section 2020 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2277a–6. Overpayment and underpayment of premiums; remedies

(a) Overpayments

The Corporation may refund to any insured System bank any premium payment made by the bank exceeding the amount due the Corporation.

(b) Underpayments

(1) Recovery

The Corporation, in a suit brought at law or in equity in any court of competent jurisdiction, may recover from any insured System bank the amount of any unpaid premium lawfully payable by the bank to the Corporation, whether or not the bank has filed any certified statement under section 2277a–5 of this title, and whether or not suit has been brought to compel the bank to file any such statement.

(2) Limitation

Any action or proceeding for the recovery of any premium due the Corporation under paragraph (1), or for the recovery of any amount paid to the Corporation exceeding the amount due the Corporation, shall be brought within 5 years after the right accrued for which the claim is made. If an insured System bank has filed with the Corporation a false or fraudulent certified statement with the intent to evade, in whole or in part, the payment of a premium, the claim shall not be deemed to have accrued until the Corporation discovers that the certified statement is false or fraudulent.

(c) Failure to file statement or pay premium

(1) Forfeiture of rights

If any insured System bank fails to file any certified statement required to be filed by such bank under section 2277a–5 of this title or fails to pay any premium required to be paid by such bank under any provision of this part, and if the bank does not correct such failure within 30 days after the Corporation gives written notice to an officer of the bank, citing this subsection and stating that the bank has failed to so file or pay as required by law, all the rights, privileges, and franchises of the bank granted to it under this chapter shall be thereby forfeited.

(2) Enforcement

The Corporation may bring an action to enforce this subsection against any such bank in any court of competent jurisdiction for the judicial district in which the bank is located.

(3) Liability of directors

Every director who participated in or assented to a failure (described in paragraph (1)) shall be held personally liable for all consequential damages.

(d) Effect on other remedies

The remedies provided in subsections (b) and (c) of this section shall not be construed as limiting any other remedies against any insured System bank, but shall be in addition thereto.

(Pub. L. 92–181, title V, § 5.57, as added Pub. L. 100–233, title III, § 302, Jan. 6, 1988, 101 Stat. 1613; amended Pub. L. 100–399, title III, § 302(g), (h), Aug. 17, 1988, 102 Stat. 994.)

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100–399, § 302(g), struck out ''made any report of condition required under section 2277a–4 of this title or'' after ''bank has'' and ''make any such report or'' after ''bank to''.

Subsec. (b)(2). Pub. L. 100–399, § 302(h), substituted ''bank has filed'' for ''bank has made or filed''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2277a–7. General corporate powers

On January 6, 1988, the Corporation shall become a body corporate and as such shall have the following powers:

(1) Seal

The Corporation may adopt and use a corporate seal.

(2) Succession

The Corporation may have succession until dissolved by an Act of Congress. The Corporation shall succeed to the rights of the Farm Credit System Assistance Board under agreements between the Farm Credit System Assistance Board and System institutions certifying the institutions as eligible to issue preferred stock pursuant to subchapter VI of this chapter on the termination of the Assistance Board on the date provided in section 2278a–12 of this title.

(3) Contracts

The Corporation may make contracts.

(4) Legal actions

(A) In general

The Corporation may sue and be sued, complain and defend, in any court of law or equity, State or Federal.

(B) Jurisdiction

All suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy, and the Corporation, in any capacity, without bond or security, may remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal then in effect.

(C) Attachment and execution

No attachment or execution may be issued against the Corporation or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court.

(D) Agent for service of process

The Board of Directors shall designate an agent on whom service of process may be made in any State or jurisdiction in which any insured System bank is located.

(5) Officers and employees

(A) In general

The Corporation may appoint by its Board of Directors such officers and employees as are not otherwise provided for in this part, define their duties, fix their compensation, and require bonds of them and fix the penalty thereof, and dismiss at pleasure such officers or employees.

(B) Employees of the United States

Nothing in this chapter or any other Act shall be construed to prevent the appointment and compensation, as an officer or employee of the Corporation, of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof.

(6) Bylaws

The Corporation may prescribe, by its Board of Directors, bylaws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

(7) Incidental powers

The Corporation may exercise by its Board of Directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this part, and such incidental powers as shall be necessary to carry out the powers so granted.

(8) Information

The Corporation may, when necessary, make examinations of, and require information and reports from, System institutions, as provided in this part.

(9) Conservator or receiver

The Corporation may act as a conservator or receiver.

(10) Rules and regulations

The Corporation may prescribe by its Board of Directors such rules and regulations as it considers necessary to carry out this part and section 2020(b) of this title (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency).

(Pub. L. 92–181, title V, §5.58, as added Pub. L. 100–233, title III, §302, Jan. 6, 1988, 101 Stat. 1614; amended Pub. L. 100–399, title III, §302(i), Aug. 17, 1988, 102 Stat. 994; Pub. L. 102–237, title V, §502(j), Dec. 13, 1991, 105 Stat. 1869; Pub. L. 102–552, title II, §202(a), Oct. 28, 1992, 106 Stat. 4105; Pub. L. 104–105, title II, §214(b), Feb. 10, 1996, 110 Stat. 175; Pub. L. 110–234, title V, §5401(b), May 22, 2008, 122 Stat. 1154; Pub. L. 110–246, §4(a), title V, §5401(b), June 18, 2008, 122 Stat. 1664, 1915.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Par. (10). Pub. L. 110–246, §5401(b), inserted ''and section 2020(b) of this title'' after ''this part''.

1996—Par. (9). Pub. L. 104–105 added par. (9) and struck out heading and text of former par. (9). Text read as follows: ''The Corporation may act as receiver.''

1992—Par. (2). Pub. L. 102–552 inserted at end ''The Corporation shall succeed to the rights of the Farm Credit System Assistance Board under agreements between the Farm Credit System Assistance Board and System institutions certifying the institutions as eligible to issue preferred stock pursuant to subchapter VI of this chapter on the termination of the Assistance Board on the date provided in section 2278a–12 of this title.''

1991—Par. (4)(B). Pub. L. 102–237 inserted ''in any capacity,'' after ''and the Corporation,''.

1988—Par. (5)(A). Pub. L. 100–399 struck out ''to'' before ''define'' and ''dismiss''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§2277a–8. Conduct of corporate affairs; examination of System institutions

(a) Conduct of corporate affairs

(1) Fair administration

The Board of Directors shall administer the affairs of the Corporation fairly and impartially and without discrimination.

(2) Obligations and expenses

The Board of Directors shall determine and prescribe the manner in which the obligations

of the Corporation may be incurred and the expenses of the Corporation may be allowed and paid.

(3) Use of mails

The Corporation may use the United States mails in the same manner and under the same conditions as the executive departments of the Federal Government.

(4) Use of information

The Corporation, with the consent of any board, commission, independent establishment, or executive department of the Federal Government, including any field service thereof, may avail itself of the use of information, services, and facilities thereof in carrying out this part.

(5) Use of Farm Credit Administration personnel

To the extent practicable, the Corporation shall use the personnel and resources of the Farm Credit Administration to minimize duplication of effort and to reduce costs.

(b) Examination of System institutions

(1) Examination authority

(A) In general

If the Board of Directors considers it necessary to examine an insured System bank, a production credit association, an association making direct loans under the authority provided under section 2279b of this title, or any System institution in receivership, the Board may, using Farm Credit Administration examiners, conduct the examination using reports and other information on the System institution prepared or held by the Farm Credit Administration. Notwithstanding any other provision of this chapter, on cancellation of the charter of a System institution, the Corporation shall have authority to examine the system[1] institution in receivership. An examination shall be performed at such intervals as the Corporation shall determine.

(B) Request for additional examination or other information

If the Board determines that such reports or information are not adequate to enable the Corporation to carry out the duties of the Corporation under this subsection, the Board shall request the Farm Credit Administration to examine or to obtain other information from or about the System institution and provide to the Corporation the resulting examination report or such other information.

(2) Appointment of examiners

If the Farm Credit Administration informs the Corporation that the Farm Credit Administration is unable to comply with a request made under paragraph (1)(B) with respect to a System institution, the Board may appoint examiners to examine the institution.

(3) Powers and report

Each examiner appointed under paragraph (2) shall make such examination of the affairs of the System institution as the Board may direct, and shall make a full and detailed report of the examination to the Corporation.

(4) Appointment of claim agents

The Board of Directors of the Corporation shall appoint claim agents who may investigate and examine all claims for insured obligations.

(c) Oath, affirmations, and testimony

In connection with examinations under this section, the Corporation or its designated representatives may administer oaths and affirmations, and may examine, take, and preserve testimony under oath, as to any matter with respect to the affairs of any such institution.

(d) Cooperation with FCA examiners

The examiners appointed by the Board of Directors shall cooperate to the maximum extent possible with examiners of the Farm Credit Administration to minimize duplication of effort and minimize costs.

(Pub. L. 92–181, title V, § 5.59, as added Pub. L. 100–233, title III, § 302, Jan. 6, 1988, 101 Stat. 1615; amended Pub. L. 101–220, § 6(b)(3), Dec. 12, 1989, 103 Stat. 1880; Pub. L. 102–552, title II, § 203, title V, § 513(a), Oct. 28, 1992, 106 Stat. 4106, 4133; Pub. L. 104–105, title II, § 216, Feb. 10, 1996, 110 Stat. 179.)

AMENDMENTS

1996—Subsec. (b)(1)(A). Pub. L. 104–105 inserted at end ''Notwithstanding any other provision of this chapter, on cancellation of the charter of a System institution, the Corporation shall have authority to examine the system institution in receivership. An examination shall be performed at such intervals as the Corporation shall determine.''

1992—Pub. L. 102–552, § 513(a)(1), substituted ''System institutions'' for ''insured System banks'' in section catchline.

Subsec. (a)(5). Pub. L. 102–552, § 203, added par. (5).

Subsec. (b). Pub. L. 102–552, § 513(a)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: ''(b) EXAMINATION OF INSURED SYSTEM BANKS.—

''(1) APPOINTMENT OF EXAMINERS.—The Board of Directors may appoint examiners who may, on behalf of the Corporation, examine any insured System bank, any production credit association, any other association making direct loans under authority provided under section 2279b of this title, and any System institution in receivership, if in the judgment of the Board of Directors an examination of the institution is necessary.

''(2) POWERS AND REPORT.—Each examiner may make a thorough examination of all affairs of the institution, and shall make a full and detailed report of the condition of the institution to the Corporation.

''(3) APPOINTMENT OF CLAIM AGENTS.—The Board of Directors, in like manner, shall appoint claim agents who may investigate and examine all claims for insured obligations.''

1989—Subsec. (b)(1). Pub. L. 101–220 inserted ''any other association making direct loans under authority provided under section 2279b of this title,'' after ''any production credit association,''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–220 effective for insurance premiums due to the Farm Credit System Insurance Corporation under this chapter on or after Jan. 1, 1990, based on the loan volume of each bank for each calendar year beginning with calendar year 1989, and effective for the calculation of the initial premium payment

[1] So in original. Probably should be capitalized.

required under section 2277a–5(c) of this title, see section 6(c) of Pub. L. 101–220, set out as a note under section 2020 of this title.

§ 2277a–9. Insurance Fund

(a) Establishment

There is hereby established a Farm Credit Insurance Fund (hereinafter referred to in this section as the ''Insurance Fund'') for insuring the timely payment of principal and interest on insured obligations. The assets in the Fund shall be held by the Corporation for the uses and purposes of the Corporation.

(b) Amounts in Fund

(1) Revolving fund

All amounts in the revolving fund established by section 2151 of this title shall be transferred into the Farm Credit Insurance Fund on January 1, 1989, or 12 months after January 6, 1988, whichever is later, except that the obligations to, and rights of, any person in such revolving fund arising out of any event or transaction before January 6, 1988, shall remain unimpaired.

(2) Deposit of premiums

The Corporation shall deposit in the Insurance Fund all premium payments received by the Corporation under this part.

(c) Uses of Fund

(1) Mandatory use

Beginning January 1, 1993, the Corporation shall expend amounts in the Insurance Fund to the extent necessary to insure the timely payment of interest and principal on insured obligations.

(2) Other mandatory uses

Beginning January 1, 1993, the Corporation shall use amounts in the Insurance Fund to—

(A) satisfy System institution defaults through the purchase of preferred stock or other payments as provided for in section 2278b–6(d)(3) of this title; and

(B) ensure the retirement of eligible borrower stock at par value under section 2162 of this title.

(3) Permissive uses

The Corporation may expend amounts in the Insurance Fund to carry out section 2277a–10 of this title and to cover the operating costs of the Corporation.

(4) Corporate payment or refunds

The Corporation shall make all payments and refunds required to be made by the Corporation under this part from amounts in the Insurance Fund.

(Pub. L. 92–181, title V, § 5.60, as added Pub. L. 100–233, title III, § 302, Jan. 6, 1988, 101 Stat. 1616; amended Pub. L. 100–399, title III, § 302(j)–(*l*), Aug. 17, 1988, 102 Stat. 994; Pub. L. 101–624, title XVIII, § 1836(a), Nov. 28, 1990, 104 Stat. 3833.)

AMENDMENTS

1990—Subsec. (c)(1), (2). Pub. L. 101–624 substituted ''January 1, 1993'' for ''5 years after the date of the enactment of this part'' in par. (1) and for ''5 years after the date of enactment of this part'' in par. (2).

1988—Subsec. (b)(1). Pub. L. 100–399, § 302(j), struck out ''(in effect immediately before January 6, 1988)'' after ''section 2151 of this title''.

Subsec. (b)(2). Pub. L. 100–399, § 302(k), substituted ''The'' for ''Beginning 5 years after January 6, 1988, the''.

Subsec. (c)(2)(B). Pub. L. 100–399, § 302(*l*), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''ensure the retirement of borrower stock at par value and participation certificates or other similar equities at face value as provided for under section 2162(c)(2) of this title.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2277a–10. Powers of Corporation with respect to troubled insured System banks

(a) Authority to provide assistance

(1) Stand-alone assistance

The Corporation, in its sole discretion and on such terms and conditions as the Board of Directors may prescribe, may make loans to, purchase the assets or securities of, assume the liabilities of, or make contributions to, any insured System bank if such action is taken—

(A) to prevent the placing of the bank in receivership;

(B) to restore the bank to normal operation; or

(C) to reduce the risk to the Corporation posed by the bank when severe financial conditions threaten the stability of a significant number of insured System banks or of insured System banks possessing significant financial resources.

(2) Facilitation of mergers or consolidation

(A) In general

To facilitate a merger or consolidation of a qualifying insured System bank, the sale of assets of such insured System bank to another insured System bank, the assumption of such insured System bank's liabilities by such other insured System bank, or the acquisition of the stock of such insured System bank by such other insured System bank, the Corporation, in its sole discretion and on such terms and conditions as the Board of Directors may prescribe, may—

(i) purchase any such assets or assume any such liabilities;

(ii) make loans or contributions to, or purchase debt securities of, such other insured System bank;

(iii) guarantee such other insured System bank against loss by reason of such other insured System bank's merging or consolidating with, or assuming the liabilities and purchasing the assets of, such insured System bank; or

(iv) take any combination of the actions referred to in the preceding clauses.

(B) Qualifying insured System bank

For purposes of subparagraph (A), the term ''qualifying insured System bank'' means any insured System bank that—

(i) is in receivership;

(ii) is, in the judgment of the Board of Directors, in danger of being placed in receivership; or

(iii) is, in the sole discretion of the Corporation, an insured System bank that, when severe financial conditions exist that threaten the stability of a significant number of insured System banks or of insured System banks possessing significant financial resources, requires assistance under subparagraph (A) to lessen the risk to the Corporation posed by such insured System bank under such threat of instability.

(3) Limitation

(A) Least-cost resolution

Assistance may not be provided to an insured System bank under this subsection unless the means of providing the assistance is the least costly means of providing the assistance by the Farm Credit Insurance Fund of all possible alternatives available to the Corporation, including liquidation of the bank (including paying the insured obligations issued on behalf of the bank). Before making a least-cost determination under this subparagraph, the Corporation shall accord such other insured System banks as the Corporation determines to be appropriate the opportunity to submit information relating to the determination.

(B) Determining least costly approach

In determining the least costly alternative under subparagraph (A), the Corporation shall—

(i) evaluate alternatives on a present-value basis, using a reasonable discount rate;

(ii) document the evaluation and the assumptions on which the evaluation is based; and

(iii) retain the documentation for not less than 5 years.

(C) Time of determination

(i) General rule

For purposes of this subsection, the determination of the costs of providing any assistance under any provision of this section with respect to any insured System bank shall be made as of the date on which the Corporation makes the determination to provide the assistance to the institution under this section.

(ii) Rule for liquidations

For purposes of this subsection, the determination of the costs of liquidation of any insured System bank shall be made as of the earliest of—

(I) the date on which a conservator is appointed for the insured System bank;

(II) the date on which a receiver is appointed for the insured System bank; or

(III) the date on which the Corporation makes any determination to provide any assistance under this section with respect to the insured System bank.

(D) Rule for stand-alone assistance

Before providing any assistance under paragraph (1), the Corporation shall evaluate the adequacy of managerial resources of the insured System bank. The continued service of any director or senior ranking officer who serves in a policymaking role for the assisted insured System bank, as determined by the Corporation, shall be subject to approval by the Corporation as a condition of assistance.

(E) Discretionary determinations

Any determination that the Corporation makes under this paragraph shall be in the sole discretion of the Corporation.

(F) Purchase of stock

The Corporation may not use its authority under this subsection to purchase any stock of an insured System bank. The preceding sentence shall not be construed to limit the ability of the Corporation to enter into and enforce covenants and agreements that it determines to be necessary to protect the financial interests of the Corporation.

(4) Subordination

Any assistance provided under this subsection may be in subordination to the rights of owners of obligations and other creditors.

(5) Reports

The Corporation, in its annual report to Congress, shall report the total amount saved, or it estimates to be saved, by the Corporation exercising the authority provided to the Corporation in this subsection.

(b) Authority to pledge or sell assets

The Corporation, in its discretion, may make loans on the security of, or may purchase, and liquidate or sell, any part of the assets of, any insured System bank that is placed in receivership because of the inability of the bank to pay principal or interest on any of its notes, bonds, debentures, or other obligations in a timely manner.

(c) Subrogation

(1) In general

On the payment to an owner of an insured obligation issued on behalf of an insured System bank in receivership, the Corporation shall be subrogated to all rights of the owner against the bank to the extent of the payment.

(2) Receipt of dividends

Subrogation under paragraph (1) shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of the bank as would have been payable to the owner on a claim for the insured obligation.

(d) Right to assets

Any agreement that shall diminish or defeat the right, title, or interest of the Corporation in any asset acquired by such Corporation under this section, either as security for a loan or by purchase, shall not be valid against the Corporation unless the agreement—

(1) is in writing;

(2) is executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contempora-

neously with the acquisition of the asset by the bank;

(3) has been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of the board or committee; and

(4) has been, continuously, from the time of its execution, an official record of the bank.

(e) Insured System bank

As used in this section, the terms ''insured System bank'' and ''bank'' include each production credit association and other association making direct loans under the authority provided under section 2279b of this title.

(f) Effective date

The Corporation shall not exercise any authority under this section during the 5-year period prior to January 1, 1993.

(Pub. L. 92–181, title V, § 5.61, as added Pub. L. 100–233, title III, § 302, Jan. 6, 1988, 101 Stat. 1616; amended Pub. L. 101–220, § 6(b)(4), Dec. 12, 1989, 103 Stat. 1880; Pub. L. 101–624, title XVIII, § 1836(b), Nov. 28, 1990, 104 Stat. 3833; Pub. L. 104–105, title II, § 217, Feb. 10, 1996, 110 Stat. 179.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–105, § 217(b)(1), substituted ''Stand-alone assistance'' for ''In general'' in par. heading.

Subsec. (a)(2). Pub. L. 104–105, § 217(b)(2)(A), substituted ''Facilitation of mergers or consolidation'' for ''Enumerated powers'' in par. heading.

Subsec. (a)(2)(A). Pub. L. 104–105, § 217(b)(2)(B), substituted ''In general'' for ''Facilitation of mergers or consolidation'' in subpar. heading.

Subsec. (a)(3)(A). Pub. L. 104–105, § 217(a)(2), added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: ''Assistance shall not be provided to an insured System bank under this subsection if the amount of such assistance exceeds an amount determined by the Corporation to be the cost of liquidating the bank (including paying the insured obligations issued on behalf of the bank). This subparagraph shall not apply to the provision of assistance to a bank if the Corporation determines that the continued operation of the bank is essential to provide adequate agricultural credit services in the area of operations of the bank.''

Subsec. (a)(3)(B) to (F). Pub. L. 104–105, § 217(a), added subpars. (B) to (E) and redesignated former subpar. (B) as (F).

1990—Subsec. (f). Pub. L. 101–624 substituted ''prior to January 1, 1993'' for ''beginning on the date of the enactment of this part''.

1989—Subsec. (e). Pub. L. 101–220 inserted ''and other association making direct loans under the authority provided under section 2279b of this title,'' after ''production credit association''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–220 effective for insurance premiums due to the Farm Credit System Insurance Corporation under this chapter on or after Jan. 1, 1990, based on the loan volume of each bank for each calendar year beginning with calendar year 1989, and effective for the calculation of the initial premium payment required under section 2277a–5(c) of this title, see section 6(c) of Pub. L. 101–220, set out as a note under section 2020 of this title.

§ 2277a–10a. Oversight actions by Corporation

(a) "Institution" defined

In this section, the term ''institution'' means—

(1) an insured System bank; and

(2) a production credit association or other association making loans under section 2279b of this title with a direct loan payable to the funding bank of the association that comprises 20 percent or more of the funding bank's total loan volume net of nonaccrual loans.

(b) Consultation regarding participation of undercapitalized banks in issuance of insured obligations

The Farm Credit Administration shall consult with the Corporation prior to approving an insured obligation that is to be issued by or on behalf of, or participated in by, any insured System bank that fails to meet the minimum level for any capital requirement established by the Farm Credit Administration for the bank.

(c) Consultation regarding applications for mergers and restructurings

(1) Corporation to receive copy of transaction applications

On receiving an application for a merger or restructuring of an institution, the Farm Credit Administration shall forward a copy of the application to the Corporation.

(2) Consultation required

If the proposed merger or restructuring involves an institution that fails to meet the minimum level for any capital requirement established by the Farm Credit Administration applicable to the institution, the Farm Credit Administration shall allow 30 days within which the Corporation may submit the views and recommendations of the Corporation, including any conditions for approval. In determining whether to approve or disapprove any proposed merger or restructuring, the Farm Credit Administration shall give due consideration to the views and recommendations of the Corporation.

(Pub. L. 92–181, title V, § 5.61A, as added Pub. L. 104–105, title II, § 218, Feb. 10, 1996, 110 Stat. 180.)

§ 2277a–10b. Authority to regulate golden parachute and indemnification payments

(a) Definitions

In this section:

(1) Golden parachute payment

The term ''golden parachute payment''—

(A) means a payment (or any agreement to make a payment) in the nature of compensation for the benefit of any institution-related party under an obligation of any Farm Credit System institution that—

(i) is contingent on the termination of the party's relationship with the institution; and

(ii) is received on or after the date on which—

(I) the institution is insolvent;

(II) a conservator or receiver is appointed for the institution;

(III) the institution has been assigned by the Farm Credit Administration a composite CAMEL rating of 4 or 5 under the Farm Credit Administration Rating System, or an equivalent rating; or

(IV) the Corporation otherwise determines that the institution is in a troubled condition (as defined in regulations issued by the Corporation); and

(B) includes a payment that would be a golden parachute payment but for the fact that the payment was made before the date referred to in subparagraph (A)(ii) if the payment was made in contemplation of the occurrence of an event described in any subclause of subparagraph (A); but

(C) does not include—

(i) a payment made under a retirement plan that is qualified (or is intended to be qualified) under section 401 of title 26 or other nondiscriminatory benefit plan;

(ii) a payment made under a bona fide supplemental executive retirement plan, deferred compensation plan, or other arrangement that the Corporation determines, by regulation or order, to be permissible; or

(iii) a payment made by reason of the death or disability of an institution-related party.

(2) Indemnification payment

The term ''indemnification payment'' means a payment (or any agreement to make a payment) by any Farm Credit System institution for the benefit of any person who is or was an institution-related party, to pay or reimburse the person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the Farm Credit Administration that results in a final order under which the person—

(A) is assessed a civil money penalty; or

(B) is removed or prohibited from participating in the conduct of the affairs of the institution.

(3) Institution-related party

The term ''institution-related party'' means—

(A) a director, officer, employee, or agent for a Farm Credit System institution or any conservator or receiver of such an institution;

(B) a stockholder (other than another Farm Credit System institution), consultant, joint venture partner, or any other person determined by the Farm Credit Administration to be a participant in the conduct of the affairs of a Farm Credit System institution; and

(C) an independent contractor (including any attorney, appraiser, or accountant) that knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice that caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the Farm Credit System institution.

(4) Liability or legal expense

The term ''liability or legal expense'' means—

(A) a legal or other professional expense incurred in connection with any claim, proceeding, or action;

(B) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(C) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(5) Payment

The term ''payment'' means—

(A) a direct or indirect transfer of any funds or any asset; and

(B) any segregation of any funds or assets for the purpose of making, or under an agreement to make, any payment after the date on which the funds or assets are segregated, without regard to whether the obligation to make the payment is contingent on—

(i) the determination, after that date, of the liability for the payment of the amount; or

(ii) the liquidation, after that date, of the amount of the payment.

(b) Prohibition

The Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment by a Farm Credit System institution (including any conservator or receiver of the Federal Agricultural Mortgage Corporation) in troubled condition (as defined in regulations issued by the Corporation).

(c) Factors to be taken into account

The Corporation shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action under subsection (b) of this section. The factors may include—

(1) whether there is a reasonable basis to believe that an institution-related party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the Farm Credit System institution involved that has had a material effect on the financial condition of the institution;

(2) whether there is a reasonable basis to believe that the institution-related party is substantially responsible for the insolvency of the Farm Credit System institution, the appointment of a conservator or receiver for the institution, or the institution's troubled condition (as defined in regulations prescribed by the Corporation);

(3) whether there is a reasonable basis to believe that the institution-related party has materially violated any applicable law or regulation that has had a material effect on the financial condition of the institution;

(4) whether there is a reasonable basis to believe that the institution-related party has violated or conspired to violate—

(A) section 215, 657, 1006, 1014, or 1344 of title 18; or

(B) section 1341 or 1343 of title 18, affecting a Farm Credit System institution;

(5) whether the institution-related party was in a position of managerial or fiduciary responsibility; and

(6) the length of time that the party was related to the Farm Credit System institution and the degree to which—

(A) the payment reasonably reflects compensation earned over the period of employment; and

(B) the compensation represents a reasonable payment for services rendered.

(d) Certain payments prohibited

No Farm Credit System institution may prepay the salary or any liability or legal expense of any institution-related party if the payment is made—

(1) in contemplation of the insolvency of the institution or after the commission of an act of insolvency; and

(2) with a view to, or with the result of—

(A) preventing the proper application of the assets of the institution to creditors; or

(B) preferring 1 creditor over another creditor.

(e) Rule of construction

Nothing in this section—

(1) prohibits any Farm Credit System institution from purchasing any commercial insurance policy or fidelity bond, so long as the insurance policy or bond does not cover any legal or liability expense of an institution described in subsection (a)(2) of this section; or

(2) limits the powers, functions, or responsibilities of the Farm Credit Administration.

(Pub. L. 92–181, title V, §5.61B, as added Pub. L. 104–105, title II, §218, Feb. 10, 1996, 110 Stat. 181.)

§ 2277a–11. Investment of funds

Money of the Corporation not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

(Pub. L. 92–181, title V, §5.62, as added Pub. L. 100–233, title III, §302, Jan. 6, 1988, 101 Stat. 1618.)

§ 2277a–12. Exemption from taxation

Notwithstanding any other provision of law, the Corporation, including its franchise, and its capital, reserves, surplus, and income, shall be exempt from all taxation imposed by the United States, or by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, county, municipal, and local taxation to the same extent according to its value as other real property is taxed.

(Pub. L. 92–181, title V, §5.63, as added Pub. L. 100–233, title III, §302, Jan. 6, 1988, 101 Stat. 1618.)

§ 2277a–13. Omitted

CODIFICATION

Section, Pub. L. 92–181, title V, §5.64, as added Pub. L. 100–233, title III, §302, Jan. 6, 1988, 101 Stat. 1619, which required the Farm Credit System Insurance Corporation to submit an annual report to Congress on the operations of the Corporation, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 167 of House Document No. 103–7.

§ 2277a–14. Prohibitions

(a) Corporate name

(1) Use of corporate name

It shall be unlawful for any person or entity to use the words ''Farm Credit System Insurance Corporation'' or any combination of such words that would have the effect of leading the public to believe that there is any connection between such person or entity and the Corporation, by virtue of the name under which such person or entity does business.

(2) False representation

(A) By outside person or entities

It shall be unlawful for any person or entity to falsely represent by any device, that the notes, bonds, debentures, or other obligations of the person or entity are insured or in any way guaranteed by the Corporation.

(B) System banks

It shall be unlawful for any insured System bank or person that markets insured obligations to falsely represent the extent to which or the manner in which such obligations are insured by the Corporation.

(3) Penalty

Any person or entity that willfully violates any provision of this subsection shall be fined not more than $1,000, imprisoned for not more than 1 year, or both.

(b) Payments or distributions while in default

(1) In general

It shall be unlawful for any insured System bank to pay any dividends on bank stock or participation certificates or interest on the capital notes or debentures of such bank (if such interest is required to be paid only out of net profits) or distribute any of the capital assets of such bank while the bank remains in default in the payment of any premium due to the Corporation.

(2) Liability of directors

Each director or officer of any insured System bank who willfully participates in the declaration or payment of any dividend or interest or in any distribution in violation of this subsection shall be fined not more than $1,000, imprisoned not more than 1 year, or both.

(3) Applicability

This subsection shall not apply to any default that is due to a dispute between the insured System bank and the Corporation over the amount of such premium if such bank deposits security satisfactory to the Corporation for payment on final determination of the issue.

(c) Failure to file statement or pay premium

(1) In general

Any insured System bank that willfully fails or refuses to file any certified statement or pay any premium required under this part shall be subject to a penalty of not more than $100 for each day that such violations continue, which penalty the Corporation may recover for its use.

(2) Applicability

This subsection shall not apply to conduct with respect to any default that is due to a dispute between the insured System bank and the Corporation over the amount of such pre-

mium if such bank deposits security satisfactory to the Corporation for payment on final determination of the issue.

(d) Employment of persons convicted of criminal offenses

(1) In general

Except with the prior written consent of the Farm Credit Administration, it shall be unlawful for any person convicted of any criminal offense involving dishonesty or a breach of trust to serve as a director, officer, or employee of any System institution.

(2) Penalty

For each willful violation of paragraph (1), the institution involved shall be subject to a penalty of not more than $100 for each day during which the violation continues, which the Corporation may recover for its use.

(Pub. L. 92–181, title V, § 5.65, as added Pub. L. 100–233, title III, § 302, Jan. 6, 1988, 101 Stat. 1619; amended Pub. L. 101–624, title XVIII, § 1837, Nov. 28, 1990, 104 Stat. 3834; Pub. L. 102–237, title V, § 502(k), Dec. 13, 1991, 105 Stat. 1869.)

AMENDMENTS

1991—Subsec. (d)(1). Pub. L. 102–237 struck out ''insured'' before ''System''.

1990—Subsec. (d)(1). Pub. L. 101–624, § 1837(1), substituted ''insured System institution'' for ''insured System bank''.

Subsec. (d)(2). Pub. L. 101–624, § 1837(2), substituted ''institution'' for ''bank''.

SUBCHAPTER VI—ASSISTANCE TO FARM CREDIT SYSTEM

PART A—ASSISTANCE BOARD

§ 2278a. Establishment of Board

(a) Charters

On the date which is 15 days after January 6, 1988, the Farm Credit Administration shall revoke the charter of the Farm Credit System Capital Corporation (hereinafter referred to in this subchapter as the ''Capital Corporation'') and shall charter the Farm Credit System Assistance Board (hereinafter referred to in this chapter as the ''Assistance Board'') that, subject to this part, shall be a Federally chartered instrumentality of the United States.

(b) Use of Capital Corporation staff

During the 90-day period beginning on the date of the revocation of the charter of the Capital Corporation, the Assistance Board may temporarily employ, by contract or otherwise under reasonable and necessary terms and conditions, such staff of the Capital Corporation as is necessary to facilitate and effectuate an orderly transition to, and commencement of, the Assistance Board, and the termination of the affairs of the Capital Corporation.

(Pub. L. 92–181, title VI, § 6.0, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1585.)

§ 2278a–1. Purposes

The purposes of the Assistance Board shall be to carry out a program to provide assistance to, and protect the stock of borrowers of, the institutions of the Farm Credit System, and to assist in restoring System institutions to economic viability and permitting such institutions to continue to provide credit to farmers, ranchers, and the cooperatives of such, at reasonable and competitive rates.

(Pub. L. 92–181, title VI, § 6.1, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1585.)

§ 2278a–2. Board of Directors

(a) Membership

The Board of Directors of the Assistance Board (hereinafter referred to in this part as the ''Board of Directors'') shall consist of three members—

(1) one of which shall be the Secretary of the Treasury;

(2) one of which shall be the Secretary of Agriculture; and

(3) one of which shall be an agricultural producer experienced in financial matters, and appointed by the President, by and with the advice and consent of the Senate.

(b) Chairman

The Board of Directors shall elect annually a Chairman from among the members of the Board.

(c) Terms of office, succession, and vacancies

(1) Terms of office and succession

The term of each member of the Board of Directors shall expire when the Assistance Board is terminated.

(2) Vacancies

Vacancies on the Board of Directors shall be filled in the same manner as the vacant position was previously filled.

(d) Compensation of Board members

Members of the Board of Directors—

(1) appointed under paragraphs (1) and (2) of subsection (a) of this section shall receive reasonable allowances for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Assistance Board, as set forth in the bylaws issued by the Board of Directors, except that such level shall not exceed the maximum fixed by subchapter I of chapter 57 of title 5 for officers and employees of the United States; and

(2) appointed under paragraph (3) of subsection (a) of this section shall receive compensation for the time devoted to meetings and other activities at a daily rate not to exceed the daily rate of compensation prescribed for Level III of the Executive Schedule under section 5314 of title 5 and reasonable allowances for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Assistance Board, as set forth in the bylaws issued by the Board of Directors, except that such level shall not exceed the maximum fixed by subchapter I of chapter 57 of title 5 for officers and employees of the United States.

(e) Rules and records

The Board of Directors of the Assistance Board shall adopt such rules as it may deem ap-

propriate for the transaction of the business of the Assistance Board, and shall keep permanent and accurate records and minutes of its acts and proceedings.

(f) Quorum required

A quorum shall consist of two members of the Board of Directors. All decisions of the Board shall require an affirmative vote of at least a majority of the members voting.

(g) Chief executive officer

A chief executive officer of the Assistance Board shall be selected by the Board of Directors of the Assistance Board and shall serve at the pleasure of the Board.

(Pub. L. 92–181, title VI, § 6.2, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1586; amended Pub. L. 102–237, title V, § 502(*l*), Dec. 13, 1991, 105 Stat. 1869.)

AMENDMENTS

1991—Subsec. (d)(1), (2). Pub. L. 102–237 substituted ''subchapter I'' for ''subchapter 1''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–237 effective as if included in the provision of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, to which the amendment relates, see section 1101(b)(4) of Pub. L. 102–237, set out as a note under section 1421 of Title 7, Agriculture.

§ 2278a–3. Corporate powers

(a) In general

The Assistance Board shall be a body corporate that shall have the power to—

(1) operate under the direction of its Board of Directors;

(2) adopt, alter, and use a corporate seal, which shall be judicially noted;

(3) provide for one or more vice presidents, a secretary, a treasurer, and such other officers, employees, and agents, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

(4) hire, promote, compensate, and discharge officers and employees of the Assistance Board, without regard to title 5, except that no such officer or employee shall receive an annual rate of basic pay in excess of the rate prescribed for Level III of the Executive Schedule under section 5314 of title 5;

(5) prescribe by its Board of Directors its bylaws, that shall be consistent with law, and that shall provide for the manner in which—

(A) its officers, employees, and agents are selected;

(B) its property is acquired, held, and transferred;

(C) its general operations are to be conducted; and

(D) the privileges granted by law are exercised and enjoyed;

(6) with the consent of any executive department or independent agency, use the information, services, staff, and facilities of such in carrying out this subchapter;

(7) enter into contracts and make advance, progress, or other payments with respect to such contracts;

(8) sue and be sued in its corporate name, and complain and defend in courts of competent jurisdiction;

(9) acquire, hold, lease, mortgage, or dispose of, at public or private sale, real and personal property, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to its operations;

(10) obtain insurance against loss;

(11) modify or consent to the modification of any contract or agreement to which it is a party or in which it has an interest under this subchapter;

(12) deposit its securities and its current funds with any member bank of the Federal Reserve System or any insured State nonmember bank (within the meaning of section 1813 of this title) and pay fees therefor and receive interest thereon as may be agreed; and

(13) exercise other powers as set forth in this subchapter, and such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with this subchapter.

(b) Power to remove; jurisdiction

Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Assistance Board is a party shall be deemed to arise under the laws of the United States, and the United States District Court for the District of Columbia shall have exclusive jurisdiction over such. The Assistance Board may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the District of Columbia.

(Pub. L. 92–181, title VI, § 6.3, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1587; amended Pub. L. 100–399, title II, § 201(a), (b), Aug. 17, 1988, 102 Stat. 990.)

AMENDMENTS

1988—Subsec. (a)(12). Pub. L. 100–399, § 201(a), substituted ''(within the meaning of section 1813 of this title)'' for ''(as defined in section 1813(b) of this title)''.

Subsec. (b). Pub. L. 100–399, § 201(b), substituted ''exclusive'' for ''original''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

HIRING, PROMOTION, COMPENSATION, AND DISCHARGE OF EMPLOYEES

Pub. L. 102–341, title VI, Aug. 14, 1992, 106 Stat. 906, provided: ''That officers and employees of the Farm Credit System Assistance Board shall be hired, promoted, compensated, and discharged in accordance with title 5, United States Code.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–142, title VI, Oct. 28, 1991, 105 Stat. 910.
Pub. L. 101–506, title V, Nov. 5, 1990, 104 Stat. 1345.
Pub. L. 101–161, title V, Nov. 21, 1989, 103 Stat. 981.
Pub. L. 100–460, title V, Oct. 1, 1988, 102 Stat. 2259.

§ 2278a–4. Certification of eligibility to issue preferred stock

(a) Book value less than par value of stock and equities

If the book value of the stock, participation certificates, and other similar equities of a Sys-

tem institution, based on generally accepted accounting principles, is less than the par value of the stock or the face value of the certificates or equities—

(1) the Farm Credit Administration shall notify the Assistance Board of such impairment;

(2) the Assistance Board shall monitor the financial condition, business plans, and operations of the institution; and

(3) the institution may request the Assistance Board to grant certification to issue preferred stock under section 2278b–7(a) of this title.

(b) Book value less than 75 percent of par value of stock and equities

If the book value of the stock, participation certificates, and other similar equities of a System institution, based on generally accepted accounting principles, is less than 75 percent of the par value of the stock or the face value of the certificates or equities, the institution shall request the Assistance Board to grant certification to issue preferred stock under section 2278b–7(a) of this title.

(c) Mandatory determination of eligibility

(1) In general

The Assistance Board shall determine whether to certify a System institution as eligible to issue preferred stock under section 2278b–7 of this title, if—

(A) the institution requests such certification;

(B) the book value of the stock, participation certificates, and other similar equities of the institution, based on generally accepted accounting principles, has declined to 75 percent of the par value of the stock or the face value of the certificates or equities; and

(C) the institution agrees to meet the terms and conditions specified by the Assistance Board pursuant to section 2278a–6 of this title.

(2) Effective date of certification

If the determination of the Assistance Board is to certify the institution under paragraph (1), such certification shall be effective at the time of such determination.

(d) Implementation

As soon as practicable after January 6, 1988, the Assistance Board shall take such actions as are necessary to carry out this section.

(e) "Other similar equities" defined

Except where otherwise provided in this chapter, the term ''other similar equities'' includes allocated equities.

(Pub. L. 92–181, title VI, §6.4, as added Pub. L. 100–233, title II, §201, Jan. 6, 1988, 101 Stat. 1588; amended Pub. L. 100–399, title II, §201(c), Aug. 17, 1988, 102 Stat. 991.)

AMENDMENTS

1988—Subsecs. (c) to (e). Pub. L. 100–399 redesignated second subsec. (c) and subsec. (d) as (d) and (e), respectively.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2278a–5. Assistance

(a) In general

The Assistance Board shall assist an institution that has been certified under section 2278a–4 of this title by—

(1) authorizing the institution to issue preferred stock under section 2278b–7 of this title, in amounts necessary to maintain the book value of stock, participation certificates, and other similar equities of the institution, at the level provided for in subsection (c) of this section;

(2) in the case of high-cost debt for which the institution is primarily liable, authorizing the institution to issue preferred stock under section 2278b–7 of this title, in an amount equal to the premium that would be required by the holder of the debt for the institution to retire the debt at the then current market value;

(3) on a request by the institution, authorizing the issuance of preferred stock under section 2278b–7 of this title to facilitate the merger of the requesting institution with one or more other System institutions; or

(4) providing assistance by such other methods as the Assistance Board determines appropriate.

(b) "High-cost debt" defined

For purposes of subsection (a)(2) of this section, the term ''high-cost debt'' means securities or similar obligations issued before January 1, 1986, that mature on or after December 31, 1987, and bear a rate of interest in excess of the then current market rate for similar securities or obligations.

(c) Minimum equity value

The Assistance Board shall authorize a certified institution to issue amounts of preferred stock under section 2278b–7 of this title sufficient to—

(1) maintain the value of stock, participation certificates and other similar equities at no less than 75 percent of the par value of the stock or the face value of the certificates or equities, as determined under generally accepted accounting principles; and

(2) strengthen the institution to a point where it is economically viable, and capable of delivering credit at reasonable and competitive rates.

(d) Limitation

Except as provided in section 410(c) of the Agricultural Credit Act of 1987, no assistance shall be provided in connection with a merger until the stockholders and the institutions involved have approved the merger and the Farm Credit Administration has given final approval to the merger plan.

(Pub. L. 92–181, title VI, §6.5, as added Pub. L. 100–233, title II, §201, Jan. 6, 1988, 101 Stat. 1588; amended Pub. L. 100–399, title II, §201(d), (e), Aug. 17, 1988, 102 Stat. 991.)

REFERENCES IN TEXT

Section 410(c) of the Agricultural Credit Act of 1987, referred to in subsec. (d), is section 410(c) of Pub. L.

100–233, which is set out as a note under section 2011 of this title.

AMENDMENTS

1988—Subsecs. (a)(1) to (3), (c). Pub. L. 100–399, § 201(e), struck out ''the appropriate provision of'' after ''under'' wherever appearing.

Subsec. (d). Pub. L. 100–399, § 201(d), substituted ''Except as provided in section 410(c) of the Agricultural Credit Act of 1987, no'' for ''No''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2278a–6. Special powers

(a) In general

In the case of a System institution that requests certification under section 2278a–4 of this title, the Assistance Board may—

(1) require the institution to obtain approval from the Assistance Board before implementing business, operating, and investment plans and policies;

(2) if one or more of the conditions described in section 2183(b) of this title are met, as determined by the Farm Credit Administration, direct the Farm Credit Administration Board to appoint a conservator for the institution, in accordance with such section, and to instruct the conservator to evaluate the operations of the institution and report to the Farm Credit Administration Board and the Assistance Board on the possibility of restoring the institution to sound financial condition;

(3) request that the Farm Credit Administration Board or the Farm Credit Administration, as appropriate—

(A) approve or require a merger or consolidation of the institution to the extent authorized under this chapter;

(B) initiate action to appoint a receiver under section 2183(b) of this title; or

(C) exercise any enforcement power authorized under this chapter;

(4) require the institution to obtain approval from the Assistance Board before setting the terms and conditions of any debt issuances of the institution;

(5) require the institution to obtain approval from the Assistance Board before setting the policy on credit standards to be used, and the policy on rates of interest to be charged on loans, by the institution, including requiring that—

(A) the institution set interest rates at levels necessary to ensure that the cost of money to the institution reflects the marginal cost to the institution of borrowing an additional amount of money at the time a new loan is made; and

(B) loans primarily secured by real estate mortgages not exceed 85 percent of the appraised agricultural value of the real estate security, or 75 percent of the then current market value of the real estate security, whichever is greater;

(6) require the institution to obtain approval from the Assistance Board for the design of management information and accounting systems at the institution, and of the continued use by the institution of regulatory accounting practices in accordance with sections 2159(b) and 2254(b) of this title;

(7) require that the plans and policies of the institution resulting from the merger of System banks reduce the overhead costs of such institution, to the maximum extent practicable, with respect to the delivery of services to, and performance of duties for, System associations in the district;

(8) require the institution to obtain approval from the Assistance Board of—

(A) the hiring policies of the institution;

(B) the compensation and retirement benefits of the chief executive officer, other managers, and directors of the institution;

(C) any change in the management of the institution; and

(D) policy decisions regarding continued employment and promotion of the officials referred to in subparagraph (B);

(9) suspend for any period of time, or terminate, any certification granted to an institution under section 2278a–4 of this title if the Farm Credit Administration notifies the Assistance Board that the institution has substantially deviated from the institution's business plan or has failed to comply with a term or condition governing the use of any financial assistance provided to the institution under this subchapter; and

(10) take such other action as the Assistance Board determines may be necessary to establish prudent operating practices at the institution and to return the institution to a sound financial condition.

(b) Suspension of assistance

(1) Notification

The Assistance Board shall promptly notify the Farm Credit Administration of any action taken by the Assistance Board under subsection (a)(9) of this section.

(2) Enforcement

The Farm Credit Administration may use any of its enforcement powers, with respect to any institution to which the Assistance Board has provided assistance or has certified the institution to issue preferred stock under section 2278b–7 of this title, to obtain the compliance of the institution with the terms or conditions governing the use of financial assistance provided under this subchapter.

(c) Undated letters of resignation

The Assistance Board shall not, for any reason, request or require any member of the board of directors of any System institution to submit to the Assistance Board an undated letter of resignation. Immediately after January 6, 1988, the Assistance Board shall destroy all such letters over which it has control.

(d) Reports

During the 5-year period beginning on January 6, 1988, the Assistance Board, in coordination with the Financial Assistance Corporation, shall report annually to the Committee on Agriculture of the House of Representatives and the

Committee on Agriculture, Nutrition, and Forestry of the Senate on the extent to which System institutions translate the savings in the cost of the operations of such institutions due to the Federal assistance provided to the System under this subchapter into lower interest rates charged to System borrowers or enhanced financial solvency of such institutions.

(Pub. L. 92–181, title VI, § 6.6, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1589; amended Pub. L. 100–399, title II, § 201(f)–(i), Aug. 17, 1988, 102 Stat. 991; Pub. L. 101–624, title XVIII, § 1843(a)(2), Nov. 28, 1990, 104 Stat. 3836.)

AMENDMENTS

1990—Subsec. (a)(8)(B). Pub. L. 101–624 struck out before semicolon at end ''notwithstanding the authority of the Farm Credit Administration to approve such matters''.

1988—Subsec. (a)(8)(B). Pub. L. 100–399, § 201(f), struck out ''under sections 2226 and 2252(a)(15) of this title'' after ''such matters''.

Subsec. (a)(9). Pub. L. 100–399, § 201(g), struck out ''may'' before ''suspend''.

Subsec. (b)(1). Pub. L. 100–399, § 201(h), substituted ''(a)(9)'' for ''(a)(8)''.

Subsec. (b)(2). Pub. L. 100–399, § 201(i), struck out ''the appropriate provision of'' after ''stock under''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2278a–7. Administration

(a) Expenses

The Financial Assistance Corporation shall pay the necessary and reasonable administrative expenses of the Assistance Board from funds in the Assistance Fund established in section 2278b–5 of this title.

(b) Interim funding

Before the availability of funding from the Assistance Fund, the Assistance Board may use the revolving fund established under section 2151 of this title. Such amounts used shall be repaid to the revolving fund out of the Assistance Fund within the same fiscal year that such funds were received by the Assistance Board.

(c) Assistance operations

The Farm Credit Administration shall provide such personnel and facilities to the Assistance Board as the Farm Credit Administration considers are necessary to avoid unnecessary duplication and waste.

(d) Access to FCA documents

The Assistance Board shall have access to all reports of examination and supervisory documents of the Farm Credit Administration, and relevant supporting material, for the purpose of carrying out the special powers of the Assistance Board under section 2278a–6 of this title, under such terms and conditions, acceptable to the Farm Credit Administration Board, as are necessary and appropriate to protect the confidentiality of the documents and materials.

(Pub. L. 92–181, title VI, § 6.7, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1591; amended Pub. L. 100–399, title II, § 201(j), Aug. 17, 1988, 102 Stat. 991.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–399 substituted ''material,'' for ''material'' and ''under such terms and conditions, acceptable'' for ''under terms and conditions that are acceptable''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2278a–8. Limitation of powers

(a) Purposes

The powers of the Assistance Board under this subchapter shall be exercised only for the purposes specified in this subchapter and shall not be exercised in a manner that would result in the Assistance Board supplanting the Farm Credit System lending institutions as the primary providers of credit and other financial services to farmers, ranchers, and the cooperatives of such.

(b) Prohibition

The powers of the Assistance Board under this subchapter shall not include the management, administration, or disposition of any loans or other assets owned by other System institutions, or the providing of technical assistance or other related services to other System institutions in connection with the administration of loans owned by such other institutions.

(Pub. L. 92–181, title VI, § 6.8, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1591.)

§ 2278a–9. Succession

(a) Assets and liabilities

On the issuance by the Farm Credit Administration of the charter for the Assistance Board under this part, the Assistance Board shall succeed to the assets of and assume all debts, obligations, contracts, and other liabilities of the Capital Corporation, matured or unmatured, accrued, absolute, contingent or otherwise, and whether or not reflected or reserved against on balance sheets, books of account, or records of the Capital Corporation.

(b) Contracts

The existing contractual obligations, security instruments, and title instruments of the Capital Corporation shall, by operation of law and without any further action by the Farm Credit Administration, the Capital Corporation, or any court, become and be converted into obligations, entitlements, and instruments of the Assistance Board chartered under this part.

(c) Adjustment of assessments

Not later than 15 days after the issuance of the charter of the Assistance Board, the Board shall retire all debt and equity obligations issued to any System institution under section 2216f(a)(14) or 2216g[1] of this title (as in effect immediately before January 6, 1988) at the book value of such

[1] See References in Text note below.

obligations (determined as of January 6, 1988) and shall pay such amounts to the holders of such debt and equity obligations.

(d) Surplus funds

To the extent that, on the extinguishing of liabilities assumed by the Assistance Board under this section, and on full performance or other final disposition of contract obligations of the Assistance Board, there remain surplus funds attributable to such obligations or contracts, the Assistance Board shall distribute such surplus funds among the System institutions that contributed funds to the Capital Corporation on the basis of the relative amount of funds so contributed by each institution.

(e) Preservation agreements

(1) Transfer of obligations

Notwithstanding any other provision of this chapter or the terms and conditions of the Thirty-Seven Banks Capital Preservation Agreement, the Federal Land Banks Capital Preservation Agreement, the Federal Intermediate Credit Banks Capital Preservation Agreement, and the Banks for Cooperatives Loss Sharing Agreement—

(A) at the time the receiving bank receives funds from the Financial Assistance Corporation in an equal and equivalent amount in accordance with this subsection, any amounts received by, or that remain accrued to, any System bank in accordance with the activation of any such agreement for the calendar quarter ending on September 30, 1986, shall be—

(i) repaid to the contributing bank by the bank that received such payments; or

(ii) cancelled;

(B) on the date the Financial Assistance Corporation is chartered, the accounts payable of each contributing bank under such agreements for the calendar quarter ending on September 30, 1986, shall, by operation of law and without any further action by such contributing bank, any other bank, or any court, become and be converted into accounts payable of the Financial Assistance Corporation to each receiving bank under such agreement for such calendar quarter in the same amounts as previously carried on the books of each such receiving bank; and

(C) on the date the Financial Assistance Corporation is chartered, the accounts receivable of each receiving bank under such agreements for the calendar quarter ending September 30, 1986, shall, by operation of law and without any further action by such receiving bank or any other bank, or any court, become and be converted into accounts receivable to such receiving bank from the Financial Assistance Corporation, in the same amount as previously carried on the books of such receiving bank and such receivables shall, for all financial reporting purposes, be accounted for as an asset on the books of such receiving bank in accordance with generally accepted accounting practices.

(2) Payments to receiving banks

(A) Not later than 30 days after the first issuance of obligations by the Financial Assistance Corporation in accordance with section 2278b–6 of this title, the Corporation shall pay to each receiving bank such sums as are necessary to permit each receiving bank to repay, in accordance with paragraph (1), the amounts each such receiving bank received under any such agreement.

(B) The accruals shall be paid by the Corporation to each receiving bank for the actual net loan charge-offs recorded on the books of each such bank before January 1, 1993, not previously paid by the contributing banks.

(3) Debt obligations

(A) Issuance

For the purpose of obtaining funds to carry out this subsection, the Financial Assistance Corporation shall issue debt obligations under section 2278b–6 of this title. Such obligations shall be subject to the terms and conditions of such section, except as provided for in this paragraph.

(B) Payment of interest

During each year of the 15-year period of such obligation issued pursuant to subparagraph (A), the banks operating under this chapter shall pay to the Financial Assistance Corporation, at such times as the Corporation shall determine, an amount equal to the entire amount of interest due on such obligation. Each bank shall pay a proportion of such interest equal to—

(i) the average accruing loan volume of the bank during the year preceding the year of such payment; divided by

(ii) the average accruing loan volume of all of the banks of the System for the same period.

(C) Payment of principal

(i) In general

After the end of the 15-year period beginning on the date of the issuance of any obligation issued to carry out this subsection, the banks operating under this chapter shall pay to the Financial Assistance Corporation, on demand, an amount equal to the outstanding principal of the obligation. Each bank shall pay a proportion of the principal equal to—

(I) the average accruing loan volume of the bank for the preceding 15 years; divided by

(II) the average accruing loan volume of all banks of the System for the same period.

(ii) Banks leaving system

Any bank leaving the Farm Credit System pursuant to section 2279d of this title shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of the payment required under this subparagraph had the bank remained in the System.

(iii) Banks undergoing liquidation

With respect to any bank undergoing liquidation under this chapter, a liability to the Financial Assistance Corporation in

the amount of the payment required under this subparagraph (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of the bank.

(iv) Obligations of other banks

The obligations of other banks shall not be reduced in anticipation of any recoveries under this subparagraph from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.

(D) Annual payments

(i) In general

In order to provide for the orderly funding and discharge over time of the obligation of each System bank to the Financial Assistance Corporation under subparagraph (C), each System bank shall enter into or continue in effect an agreement with the Financial Assistance Corporation under which the bank will make annual annuity-type payments to the Financial Assistance Corporation, beginning no later than December 31, 1992 (except for any bank that did not meet its interim capital requirement on December 31, 1990, in which case the bank shall begin making the payments no later than December 31, 1993) in amounts designed to accumulate, in total, including earnings on the amounts, to 90 percent of the bank's ultimate obligation. The Financial Assistance Corporation shall partially discharge the bank from its obligation under subparagraph (C) to the extent of each such payment and the earnings on the payment as earned.

(ii) Capital requirements

The agreement shall not require payments to be made to the extent that making a particular payment or part of a payment would cause the bank to fail to satisfy applicable regulatory permanent capital requirements, but shall provide for recalculation of subsequent payments accordingly.

(iii) Investment; availability

The funds received by the Financial Assistance Corporation pursuant to the agreements shall be invested in eligible investments as defined in section 2278b–5(a)(1) of this title. The funds and the earnings on the funds shall be available only for the payment of the principal of the bonds issued by the Financial Assistance Corporation under this subsection.

(E) Financial reporting

Until each obligation issued in accordance with this subsection reaches maturity, for all financial reporting purposes, such obligation shall be considered to be the sole obligation of the Financial Assistance Corporation and shall not be considered a liability of any System bank, nor shall the obligation to make future annuity payments to the Financial Assistance Corporation under subparagraph (D) be considered a liability of any System bank.

(4) Funds not considered financial assistance

The funds made available to each bank, whether through the issuance of stock or otherwise, by the Financial Assistance Corporation to meet obligations under any agreement referred to in paragraph (1) or to meet any obligations of the contributing banks under any such agreement, as required by this subsection, shall not be considered financial assistance under this chapter.

(5) Suspension of preservation agreements

During the 5-year period beginning on January 6, 1988, and thereafter whenever funds from the Farm Credit System Insurance Fund are available for use in assisting System institutions to meet their obligations on their debt instruments, activation of the Thirty-Seven Banks Capital Preservation Agreement, the Federal Land Banks Capital Preservation Agreement, the Federal Intermediate Credit Banks Capital Preservation Agreement, and the Banks for Cooperatives Loss Sharing Agreement shall be suspended, in exchange for the benefits flowing to the signatories to such agreements under the Agricultural Credit Act of 1987.

(Pub. L. 92–181, title VI, § 6.9, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1591; amended Pub. L. 100–399, title II, § 201(k), (*l*), Aug. 17, 1988, 102 Stat. 991; Pub. L. 102–552, title III, § 301, Oct. 28, 1992, 106 Stat. 4107.)

REFERENCES IN TEXT

Sections 2216f and 2216g of this title, referred to in subsec. (c), were repealed by Pub. L. 100–233, title II, § 207(a)(3), Jan. 6, 1988, 101 Stat. 1607, effective 15 days after Jan. 6, 1988.

The Agricultural Credit Act of 1987, referred to in subsec. (e)(5), is Pub. L. 100–233, Jan. 6, 1988, 101 Stat. 1568, as amended. For complete classification of this Act to the Code see Short Title of 1988 Amendment note set out under section 2001 of this title and Tables.

AMENDMENTS

1992—Subsec. (e)(3)(C). Pub. L. 102–552, § 301(1), added subpar. (C) and struck out former subpar. (C) which read as follows:

''(C) PAYMENT OF PRINCIPAL.—After the end of the 15-year period beginning on the date of the issuance of any obligation issued to carry out this subsection, the banks operating under this chapter shall pay to the Financial Assistance Corporation, on demand, an amount equal to the outstanding principal of such obligation. Each bank shall pay a proportion of such principal equal to—

''(i) the average accruing loan volume of the bank for the preceding 15 years; divided by

''(ii) the average accruing loan volume of all banks of the System for the same period.''

Subsec. (e)(3)(D). Pub. L. 102–552, § 301(2), (3), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (e)(3)(E). Pub. L. 102–552, § 301(2), (4), redesignated subpar. (D) as (E) and inserted before period at

end '', nor shall the obligation to make future annuity payments to the Financial Assistance Corporation under subparagraph (D) be considered a liability of any System bank''.

1988—Subsec. (a). Pub. L. 100–399, § 201(k), inserted in heading ''Assets and''.

Subsec. (e)(5). Pub. L. 100–399, § 201(*l*), inserted ''activation of'' after ''instruments,'' and struck out closing quotation mark and following period, which for purposes of codification had been previously struck out requiring no change in text.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2278a–10. Effect of regulations; audits

(a) Issuance

The Assistance Board may issue such regulations, policies, procedures, guidelines, or statements as the Board considers necessary or appropriate to carry out this subchapter, all of which shall be promulgated and enforced without regard to subchapter II of chapter 5 of title 5.

(b) Regulation by Farm Credit Administration

The Assistance Board shall not be subject to regulation by the Farm Credit Administration.

(c) Audits

The Assistance Board shall not require an audit or examination of a System institution that would be duplicative of an audit or examination that is conducted under other provisions of law.

(Pub. L. 92–181, title VI, § 6.10, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1594.)

§ 2278a–11. Exemption from taxation

The Assistance Board, the capital, reserves, and surplus thereof, and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate held by the Assistance Board to the same extent, according to its value, as other similar property held by other persons is taxed.

(Pub. L. 92–181, title VI, § 6.11, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1594.)

§ 2278a–12. Termination

The Assistance Board and the authority provided to the Assistance Board by this part shall terminate on December 31, 1992.

(Pub. L. 92–181, title VI, § 6.12, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1594; amended Pub. L. 100–399, title II, § 201(m), Aug. 17, 1988, 102 Stat. 991.)

AMENDMENTS

1988—Pub. L. 100–399 inserted ''to the Assistance Board'' after ''provided''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2278a–13. Transitional provisions

(a) Exercise of powers

The powers of the Assistance Board under this subchapter shall be exercised by the Farm Credit Administration Board until the issuance of the charter of the Assistance Board, or such later date not to exceed 30 days thereafter, as may be requested by the Assistance Board.

(b) Limitation on assistance

Any assistance provided to System institutions by the Farm Credit Administration in accordance with this section shall be provided from, and shall not exceed, the amounts contained in the revolving fund established under section 2151 of this title.

(c) Issuance of stock

Each institution that receives assistance from the Farm Credit Administration during the interim period specified in subsection (a) of this section, in consideration thereof, shall issue preferred stock to the Financial Assistance Corporation in an amount equal to the amount of such assistance. Payments by the Financial Assistance Corporation under subsection (d) of this section shall be considered to be payments to each such institution for such stock.

(d) Repayment

The Financial Assistance Corporation shall pay to the Farm Credit Administration, for return to the revolving fund established under section 2151 of this title, the full amount of all financial assistance provided by the Farm Credit Administration in accordance with this section, from the proceeds from the sale of the first issue of obligations by the Financial Assistance Corporation in accordance with section 2278b–6 of this title.

(Pub. L. 92–181, title VI, § 6.13, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1594; amended Pub. L. 100–399, title II, § 201(n), Aug. 17, 1988, 102 Stat. 991.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–399 inserted '', for return to the revolving fund established under section 2151 of this title,'' before ''the full''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

PART B—FINANCIAL ASSISTANCE CORPORATION

§ 2278b. Establishment of Corporation

Not later than 5 days after January 6, 1988, the Farm Credit Administration shall charter the Farm Credit System Financial Assistance Corporation (hereinafter referred to in this chapter as the ''Financial Assistance Corporation'') which shall be—

(1) an institution of the Farm Credit System; and

(2) a Federally chartered instrumentality of the United States.

(Pub. L. 92–181, title VI, § 6.20, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1595.)

FINANCIAL REPORT

Section 206 of Pub. L. 100–233 provided that: ''During the period beginning September 30, 2001, and ending December 31, 2001, the Farm Credit Administration shall review and evaluate the financial condition of the Farm Credit System and report to the Secretary of the Treasury and the appropriate committees of Congress on—

''(1) the general financial condition of each System institution;

''(2) the total outstanding principal of debt obligations issued under section 6.26 of the Farm Credit Act of 1971 (as added by section 201 of this Act) [12 U.S.C. 2278b–6]; and

''(3) the ability of each System institution to retire, at par value, preferred stock issued by the institution in accordance with section 6.27 of the Farm Credit Act of 1971 (as added by section 201 of this Act) [12 U.S.C. 2278b–7].''

§ 2278b–1. Purpose

The purpose of the Financial Assistance Corporation shall be to carry out a program to provide capital to institutions of the Farm Credit System that are experiencing financial difficulty and to assist, pursuant to section 2278a–9(e) of this title and subsections (c) through (g) of section 2278b–6 of this title, in the repayment by System institutions to those persons who provided funds in connection with the program.

(Pub. L. 92–181, title VI, § 6.21, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1595; amended Pub. L. 102–552, title III, § 307(a), Oct. 28, 1992, 106 Stat. 4116.)

AMENDMENTS

1992—Pub. L. 102–552 inserted before period at end ''and to assist, pursuant to section 2278a–9(e) of this title and subsections (c) through (g) of section 2278b–6 of this title, in the repayment by System institutions to those persons who provided funds in connection with the program''.

§ 2278b–2. Board of Directors

(a) Board of Directors

(1) Composition

The Board of Directors of the Financial Assistance Corporation (hereinafter referred to in this part as the ''Board of Directors'') shall consist of the Board of Directors of the Federal Farm Credit Banks Funding Corporation.

(2) Chairman

The Board of Directors shall elect annually a Chairman from among the members of the Board.

(3) Compensation

The members of the Board of Directors shall receive compensation for the time devoted to meetings and other activities of the Board and reasonable allowances for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Board of Directors in amounts not exceeding levels set by the Farm Credit Administration Board.

(b) Rules and records

The Board of Directors shall adopt such rules as it may deem appropriate for the transaction of its business and shall keep permanent and accurate records and minutes of its acts and proceedings.

(c) Quorum required

No business may be conducted at a meeting of the Board of Directors unless a quorum of the members of the Board is present, and a vote to approve an action requires a majority vote of the members voting.

(d) Chief executive officer

A chief executive officer of the Financial Assistance Corporation shall be selected by the Board of Directors and shall serve at the pleasure of the Board.

(Pub. L. 92–181, title VI, § 6.22, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1595; amended Pub. L. 100–399, title II, § 201(*o*), Aug. 17, 1988, 102 Stat. 991.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–399 substituted ''part'' for ''chapter''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2278b–3. Stock

The Financial Assistance Corporation shall issue stock with a par value of $5 to System institutions, as provided for in this part, and such stock shall not be transferable, except in the event of a restructuring or liquidation to a successor System institution.

(Pub. L. 92–181, title VI, § 6.23, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1595; amended Pub. L. 102–237, title V, § 502(m), Dec. 13, 1991, 105 Stat. 1869.)

AMENDMENTS

1991—Pub. L. 102–237 inserted before period at end '', except in the event of a restructuring or liquidation to a successor System institution''.

§ 2278b–4. Corporate powers

(a) In general

The Financial Assistance Corporation shall have the power to—

(1) operate under the direction of its Board of Directors;

(2) adopt, alter, and use a corporate seal, which shall be judicially noted;

(3) provide for such officers, employees, and agents, including joint employees with the Funding Corporation, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

(4) adopt a salary scale for officers and employees of the Financial Assistance Corporation, in accordance with the directives of the Board of Directors;

(5) prescribe by its Board of Directors bylaws, that are not inconsistent with law, and that shall provide for the manner in which—

(A) its officers, employees, and agents are selected;

(B) its property is acquired, held, and transferred;

(C) its general business is conducted; and

(D) the privileges granted by law are exercised and enjoyed;

(6) enter into contracts and make advance, progress, or other payments with respect to such contracts;

(7) sue and be sued in its corporate name and complain and defend in courts of competent jurisdiction;

(8) acquire, hold, lease, mortgage, or dispose of, at public or private sale, real and personal property, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to its business;

(9) obtain insurance against loss;

(10) modify or consent to the modification of any contract or agreement to which it is a party or in which it has an interest under this part;

(11) borrow from any commercial bank on its own individual responsibility and on such terms and conditions as it may determine with the approval of the Farm Credit Administration;

(12) deposit its securities and its current funds with any member bank of the Federal Reserve System or any insured State nonmember bank (within the meaning of section 1813 of this title) and pay fees therefor and receive interest thereon as may be agreed; and

(13) exercise such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with its charter and this part.

(b) Power to remove, and jurisdiction

Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Financial Assistance Corporation is a party shall be deemed to arise under the laws of the United States, and the United States District Court for the District of Columbia shall have exclusive jurisdiction over such. The Financial Assistance Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the District of Columbia.

(Pub. L. 92–181, title VI, §6.24, as added Pub. L. 100–233, title II, §201, Jan. 6, 1988, 101 Stat. 1596; amended Pub. L. 100–399, title II, §201(a), (b), Aug. 17, 1988, 102 Stat. 990.)

AMENDMENTS

1988—Subsec. (a)(12). Pub. L. 100–399, §201(a), substituted ''(within the meaning of section 1813 of this title)'' for ''(as defined in section 1813(b) of this title)''.

Subsec. (b). Pub. L. 100–399, §201(b), substituted ''exclusive'' for ''original''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2278b–5. Accounts

(a) Farm Credit Assistance Fund

(1) Establishment

The Financial Assistance Corporation shall establish an account called the Farm Credit Assistance Fund (referred to in this chapter as the ''Assistance Fund'') which shall be available to the Financial Assistance Corporation as a revolving fund to carry out this part. The moneys of such Assistance Fund shall be invested in direct obligations of the United States or obligations guaranteed by the United States or an agency thereof.

(2) Funding

The Assistance Fund shall be funded through the issuance of debt obligations and payments, as provided in section 2278b–6 of this title, and payments, as provided in section 2278b–8 of this title.

(b) Financial Assistance Corporation Trust Fund

The Financial Assistance Corporation shall establish an account called the Financial Assistance Corporation Trust Fund (hereinafter referred to in this chapter as the ''Trust Fund'') that shall consist of securities of the United States Treasury purchased by the Financial Assistance Corporation with the funds received from the purchase of stock by System institutions from the Financial Assistance Corporation under section 2278b–9 of this title.

(Pub. L. 92–181, title VI, §6.25, as added Pub. L. 100–233, title II, §201, Jan. 6, 1988, 101 Stat. 1597.)

§ 2278b–6. Debt obligations

(a) Issuance

During the period beginning 61 days after January 6, 1988, and ending September 30, 1992, the Financial Assistance Corporation, subject to the approval of the Assistance Board, may issue uncollateralized bonds, notes, debentures, and similar obligations, guaranteed as to the timely payment of principal and interest by the Secretary of the Treasury as set forth in subsection (d) of this section, with semiannual interest coupon payments and a maturity period of 15 years—

(1) in an aggregate amount not to exceed $2,800,000,000; and

(2) beginning January 1, 1989, in an additional amount, not to exceed $1,200,000,000, if—

(A) debt obligations have been issued by the Corporation to the full extent authorized under paragraph (1);

(B) the Assistance Board determines that such additional funds are needed to carry out this subchapter; and

(C) at least 90 days before the issuance of any debt obligations under this paragraph, the Assistance Board submits a report to Congress that sets forth the determination of the Assistance Board that such additional debt obligations should be issued, and that contains a detailed evaluation supporting the determination.

(b) Conditions

The debt obligations shall be in such forms and denominations, bear such rates of interest, be subject to such conditions, be issued in such manner, and be sold at such prices as may be prescribed by the Financial Assistance Corporation.

(c) Interest payments

(1) Payment of interest during first 5-year period

During each year of the first 5-year period of the 10-year period beginning on the date of issuance of each obligation under subsection (a) of this section, the Financial Assistance Corporation shall pay, without recourse to System institutions, other than that described in paragraph (5), all of the interest due on such obligation.

(2) Payment of interest during second 5-year period

(A) In general

During each year of the second 5-year period of the 10-year period beginning on the date of issuance of each obligation under subsection (a) of this section, the Financial Assistance Corporation shall pay all of the interest due on such obligation.

(B) Payment by System banks to Financial Assistance Corporation

During each year of the second 5-year period, System banks shall pay to the Financial Assistance Corporation 50 percent of the interest due on the obligations, except that System banks shall pay an additional 10 percent of the interest expense for each 1 percent that the unallocated retained earnings of the System (as determined under generally accepted accounting principles) exceed 5 percent of net assets (total assets less allowance for loan losses) based on a year-end financial statement for the preceding year.

(C) Allocation

During each year of the second 5-year period, each System bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the interest due from System banks under this paragraph equal to—

(i) the amount of the average accruing retail loan volume of the bank and its affiliated associations for the preceding year; divided by

(ii) the total average accruing retail loan volume of all such banks and their affiliated associations for the preceding year.

(3) Payments by Treasury

The Secretary of the Treasury, in accordance with section 2278b–8 of this title, shall pay to the Financial Assistance Corporation, in a timely manner, the balance of each interest payment not made by the System banks.

(4) Payment of interest after first 10-year period

During each year of the third 5-year period of the 15-year period beginning on the date of the issuance of each obligation under subsection (a) of this section, the Financial Assistance Corporation shall pay all of the interest due on such obligation. During each year of such 5-year period, System banks shall pay the entire amount of interest due on the obligation allocated in the same manner as under paragraph (2)(C). Such payments shall be made to the Financial Assistance Corporation at such times as the Financial Assistance Corporation shall determine.

(5) Repayment of Treasury-paid interest

(A) In general

On the maturity date of the last-maturing debt obligation issued under subsection (a) of this section, the Financial Assistance Corporation shall repay to the Secretary of the Treasury the total amount of any annual interest charges on the debt obligations that Farm Credit System institutions (other than the Financial Assistance Corporation) have not previously paid, and the Financial Assistance Corporation shall not be required to pay any additional interest charges on the payments.

(B) Assessment

In order to provide for the orderly funding by the banks of the System of the repayment by the Financial Assistance Corporation to the Secretary of the Treasury, the Financial Assistance Corporation shall assess each System bank, on or about December 31 of each year beginning in 1992, and each System bank shall promptly pay to the Financial Assistance Corporation, an annual annuity type payment in an amount designed to accumulate, in total, including earnings thereon, the amount of the bank's ultimate obligation (as determined by the Corporation on a fair and equitable basis), and no greater than .0006 nor less than .0004 times the bank's and its affiliated associations' average accruing retail loan volume for the preceding year, subject to—

(i) upward or downward adjustment, as appropriate, by the Financial Assistance Corporation during each of the last 5 years prior to the date the Financial Assistance Corporation is obligated to make the repayment, in order to ensure that the Financial Assistance Corporation will have the amount of funds needed to make the repayment on the due date; and

(ii) reduction or termination in any year when the funds paid to the Financial Assistance Corporation, including any anticipated future earnings on the funds, are sufficient to make the repayment on the due date.

(C) Investment of funds

The Financial Assistance Corporation shall invest funds derived from the investment in eligible investments as defined in section 2278b–5(a)(1) of this title. The funds and the earnings on the funds shall be available only for the repayment to the Secretary of the Treasury provided for in subparagraph (A).

(D) Pass through

A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of the assessments to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding year, but the bank shall remain primarily liable for the amounts.

(E) Liability

(i) Banks terminating System status or in liquidation

Any bank terminating System status pursuant to section 2279d of this title shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of all future such assessments against the bank had the bank remained in the System. A liability to the Financial Assistance Corporation in this amount (calculated as if the bank had left the System on the date the bank was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation.

(ii) No anticipatory reductions in other obligations

The obligations of other banks shall not be reduced in anticipation of any recoveries under this subparagraph from banks leaving the System or in liquidation.

(iii) Refund of recoveries

The Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.

(F) Associations terminating System status or in liquidation

Any association terminating System status pursuant to section 2279d of this title shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the estimated present value of all future such assessments against the bank. A liability to the bank in this amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation.

(G) Capital requirements

(i) In general

Until the date that is 5 years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.

(ii) During the final 5 years prior to repayment

During the—

(I) period beginning 5 years, and ending 4 years, prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 60 percent;

(II) period beginning 4 years, and ending 3 years, prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 30 percent; and

(III) period beginning 3 years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 0 percent,

of all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and of any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.

(d) Refinancing and payment of principal; defaults

(1) In general

(A) Time of repayment

On maturity of an obligation issued under subsection (a) of this section, the obligation shall be repaid by the Financial Assistance Corporation.

(B) Payments by institutions

(i) In general

Except as provided in subparagraph (C), in order to enable the Financial Assistance Corporation to repay the obligation referred to in subparagraph (A), each institution that issued preferred stock under section 2278b–7(a) of this title with respect to the obligation (or the successor to the institution) shall pay to the Financial Assistance Corporation, before the maturity date of the obligation, an amount equal to the par value of the stock outstanding for the institution.

(ii) Annual appropriation

Except as provided in clause (iii), each year beginning in 1992, as soon as practicable following the end of the prior year, each such institution (except institutions in receivership and institutions that have previously redeemed their preferred stock) shall appropriate from its earnings in the

prior year to an appropriated unallocated surplus account with respect to preferred stock, the sum of—

(I) the greater of—

(aa) such amount as the institution may be required to appropriate under any assistance agreement the institution has with the Farm Credit System Assistance Board or the Farm Credit System Insurance Corporation; or

(bb) the amount that, if appropriated to the account in equal amounts in each year thereafter until the maturity of the obligation referred to in subparagraph (A), would cause the amount in the account to equal the par value of the preferred stock issued by the institution with respect to the obligation; plus

(II) any amount that had been appropriated to the account in a previous year but had thereafter been offset by losses.

(iii) Limitation

An annual appropriation shall not be made to the extent that the appropriation would exceed the institution's net income (as determined pursuant to generally accepted accounting principles) in that year or to the extent that the appropriation would cause the institution's preferred stock to be impaired.

(iv) Use

The amount in the appropriated unallocated surplus account shall be unavailable to pay dividends or other allocations or distributions to shareholders or holders of participation certificates. The account shall be senior to all other unallocated surplus accounts but junior to all preferred and common stock for purposes of the application of operating losses.

(v) Preferred stock

The appropriations of surplus by an institution shall not affect the treatment of its preferred stock (and of the appropriated unallocated surplus) as equity for purposes of regulatory permanent capital requirements.

(C) Systemwide repayment

(i) In general

In order to enable the Financial Assistance Corporation to repay the obligations issued to provide assistance under subsections (c) and (e) of section 410 of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note) and section 2162(c) of this title, or issued to provide funds to cover the expenses of the Assistance Board or the Financial Assistance Corporation under sections 2278a–7(a) and 2278b–4, respectively, of this title, each System bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the obligation equal to—

(I) the average accruing retail loan volume of the bank and its affiliated associations for the preceding 15 years; divided by

(II) the average accruing retail loan volume of all such banks and their affiliated associations for the same period.

(ii) Expense item

The annual increase in the present value of the estimated obligation of each bank to the Financial Assistance Corporation under this subparagraph shall be recorded each year as an expense item, in accordance with generally accepted accounting principles, on the books of the bank.

(iii) Pass through

A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of the amount necessary to satisfy the payment requirement to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding 15 years, except that the bank shall remain primarily liable for the amount.

(iv) Banks leaving System

Any bank leaving the Farm Credit System pursuant to section 2279d of this title shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of the payment required under this subparagraph had the bank remained in the System. A liability to the Financial Assistance Corporation in this amount (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation. The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.

(v) Associations terminating System status or in liquidation

Any association leaving the Farm Credit System pursuant to section 2279d of this title shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the present value of the future payment obligation of its supervising bank. A liability to the bank in this amount (calculated as if the association had left the System on the date it was placed in liquidation) shall

be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation.

(D) Funds for payments

Payments under subparagraphs (B) and (C) shall be made by each such institution from the funds of the institution or from funds raised by the institution through the issuance of debt obligations, which may be issued without a collateral requirement and without any guarantee by the Secretary of the Treasury.

(2) Refinanced obligations

The refinanced obligations issued under paragraph (1) shall be solely the obligations of the institutions refinancing such, and sections 2154 and 2155 of this title shall not apply to such obligations.

(3) Defaults

(A) Certain principal and interest obligations

(i) Payment by Corporation

If a System bank defaults on the payment of interest due under subsection (c) of this section during the first 15 years after an obligation is issued under subsection (a) of this section, on the payment of principal or interest due under subparagraphs (B) and (C) of section 2278a–9(e)(3) of this title, on the payment of principal due under paragraph (1)(C), or on the payment of an assessment due under subsection (c)(5)(B) of this section, the Financial Assistance Corporation shall pay the amount due by the System bank out of the Trust Fund, and shall recover the amount due from the defaulting System bank, and such amount shall be paid to the Trust Fund.

(ii) Payment by Insurance Fund

If the Financial Assistance Corporation has not recovered the full amount due from a defaulting bank by the end of the 12-month period beginning on the date of default, any uncollected amount shall be paid to the Trust Fund from the Insurance Fund established under section 2277a–9 of this title, to the full extent of funds available in the Insurance Fund as of the date the Financial Assistance Corporation notified the Farm Credit System Insurance Corporation of amounts due under this section.

(iii) Payment by remaining institutions

To the extent that the payment from the Insurance Fund is insufficient to reimburse the Trust Fund, the remaining balance shall be allocated to other System banks in accordance with the allocation mechanism applicable under this chapter to the particular defaulted obligation.

(B) Principal of bonds issued to fund purchase of preferred stock

(i) Evaluation

Not later than 90 days before the maturity of any obligation issued under subsection (a) of this section, the Farm Credit Administration shall complete an evaluation of the general financial condition of each System institution that issued preferred stock under section 2278b–7(a) of this title with respect to such obligation to determine whether such System institution will be able to redeem such stock at par value on the maturity of the obligation, and remain a viable institution capable of providing credit to eligible borrowers at equitable and competitive interest rates.

(ii) Availability of evaluation

A copy of the evaluation required under clause (i) shall be furnished to the Secretary of the Treasury and the appropriate committees of Congress.

(iii) Redemption by institution; purchase by Secretary of the Treasury

If the Farm Credit Administration determines, in consultation with the Secretary of the Treasury, on the basis of the evaluation required under clause (i), that the redemption of such stock at par value would impair the other stock or equities of such institution or render such institution incapable of meeting its capital adequacy standards, the institution shall be prohibited from redeeming the preferred stock it issued under section 2278b–7 of this title with respect to the maturing obligation. If the Farm Credit Administration determines, in consultation with the Secretary of the Treasury, on the basis of the evaluation required under clause (i), that such institution will be able to redeem, in a timely manner and at par value, the preferred stock it issued under section 2278b–7 of this title with respect to the maturing obligation, and remain a viable and competitive institution, such institution shall have the option of redeeming or not redeeming such stock. If such institution is prohibited from redeeming or elects not to redeem such stock, the Financial Assistance Corporation shall withdraw funds from the Trust Fund in an amount equal to the par value of the preferred stock issued by such institution under section 2278b–7 of this title so as to enable the Financial Assistance Corporation to pay the principal of the maturing obligation. Simultaneously with such withdrawal of funds from the Trust Fund, the Financial Assistance Corporation shall transfer to the Insurance Fund an equal amount, at par value, of preferred stock of such institution. To the extent that the Trust Fund is insufficient to enable the Financial Assistance Corporation to pay the full principal of the maturing obligation, the Insurance Fund shall be used by the Farm Credit System Insurance Corporation to purchase, at par value, the preferred stock issued by such institution under section 2278b–7(a) of this title to enable the Financial Assistance Corporation to pay the principal of the maturing obligation. To the extent that the Insurance Fund is insufficient to enable the Financial Assistance Corporation

to pay the full principal of the maturing obligation, the Secretary of the Treasury shall purchase, at par value, the remaining quantity of the preferred stock issued by such institution to enable the Financial Assistance Corporation to make such full payment. For that purpose, the Secretary of the Treasury may use, as a public debt transaction, the proceeds from the sale of any securities issued under chapter 31 of title 31. The purposes for which such securities may be issued under such chapter are extended to include such purchases of stock. Any preferred stock transferred to, or purchased by, the Farm Credit System Insurance Corporation under this clause shall be retired by the issuing institution at such times and under such terms and conditions as are agreed to between the Insurance Corporation and such institution.

(C) Recourse by other System banks

A defaulting bank shall be liable to the remaining System banks for any amounts paid by the remaining banks under this paragraph.

(4) Payment by United States

(A) Inability to pay

Notwithstanding any other provision of this chapter, if the Financial Assistance Corporation is unable to pay the principal or interest of any obligation issued under subsection (a) of this section or section 2278a–9(e)(3)(A) of this title, the Secretary of the Treasury shall pay to the Financial Assistance Corporation the amount due which shall be used by the Financial Assistance Corporation to pay the obligation.

(B) Recovery

(i) Certain principal and interest obligations

In each instance in which the Secretary of the Treasury is required to make a payment under subparagraph (A) to the Financial Assistance Corporation as a result of a default made by a System bank on interest due from such System bank under subsection (c) of this section, on the payment of principal or interest due under subparagraphs (B) and (C) of section 2278a–9(e)(3) of this title, on the payment of principal due under paragraph (1)(C), or on the payment of an assessment due under subsection (c)(5)(B) of this section, the Secretary of the Treasury shall recover the amount of the payments the Secretary made, with respect to each defaulting bank, from such defaulting bank. If the Secretary has not recovered the full amount due from the defaulting bank by the end of the 12-month period beginning on the date of payment by the Secretary, the uncollected amount shall be paid to the Secretary from the Insurance Fund established under section 2277a–9 of this title.

(ii) Principal of bonds issued to fund purchase of preferred stock

In each instance in which the Secretary of the Treasury is required under paragraph (3)(B)(iii) to purchase preferred stock issued by a System institution under section 2278b–7(a) of this title, the Farm Credit System Insurance Corporation shall use funds deposited in the Insurance Fund to repurchase, at par value, from the Secretary of the Treasury such stock required to be purchased under paragraph (3)(B)(iii) as funds become available for such repurchase.

(iii) Priority

Notwithstanding any other provision of this chapter except for section 2277a–9(c)(2)(B) of this title, during any year in which payments are due to the Secretary of the Treasury from the Insurance Fund under clause (i), or preferred stock held by the Secretary is due to be repurchased by the Insurance Fund under clause (ii), the funds in such Fund, and all funds deposited in such Fund during such year, shall be used first for the purposes specified in clauses (i) and (ii).

(e) Administration

(1) "Retail loan volume" defined

As used in this section, the term ''retail loan volume'' means all loans (as defined in accordance with generally accepted accounting principles) by a System bank or association, excluding loans by such a bank or association to another System institution.

(2) Calculation of average annual loan volumes

For purposes of this section and section 2278a–9 of this title, average annual loan volumes shall be calculated using month-end balances.

(3) Exclusion of banks undergoing liquidation

For purposes of this section and section 2278a–9 of this title, the term ''bank'' shall not include a bank that had entered liquidation prior to October 28, 1992.

(Pub. L. 92–181, title VI, § 6.26, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1597; amended Pub. L. 100–399, title II, § 201(p)–(x), Aug. 17, 1988, 102 Stat. 991, 992; Pub. L. 102–552, title III, §§ 302–304(a), 305, 306, Oct. 28, 1992, 106 Stat. 4109–4111, 4114.)

AMENDMENTS

1992—Subsec. (c)(2)(B). Pub. L. 102–552, § 305(1)(A), (B), substituted ''banks'' for ''institutions'' wherever appearing in heading and text.

Subsec. (c)(2)(C), (D). Pub. L. 102–552, § 305(1)(C), added subpar. (C) and struck out former subpars. (C) and (D) which read as follows:

''(C) ALLOCATION.—During each year of the second 5-year period, each System institution shall pay to the Financial Assistance Corporation a proportion of the interest due from System institutions under this paragraph equal to—

''(i) the amount of the performing loan volume of the institution (based on the average loan volume for the preceding year); divided by

''(ii) the total performing loan volume of the System for the preceding year.

''(D) SPECIAL RULE.—For purposes of determining the average loan volume of Farm Credit Banks, loan volume shall consist of loans made by such banks with the exception of loans made to associations.''

Subsec. (c)(3), (4). Pub. L. 102–552, § 305(1)(B), substituted ''banks'' for ''institutions''.

Subsec. (c)(5). Pub. L. 102–552, §304(a), amended par. (5) generally, substituting present provisions for provisions relating to repayments by System institutions generally, time of payments, and terms of payments.

Subsec. (d)(1)(B). Pub. L. 102–552, §302, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Except as provided in subparagraph (C), in order to enable the Financial Assistance Corporation to repay the obligation referred to in subparagraph (A), each institution that issued preferred stock under section 2278b–7(a) of this title with respect to such obligation (or the successor thereto) shall pay to the Financial Assistance Corporation, before the maturity date of such obligation, an amount equal to the par value of such stock outstanding for such institution.''

Subsec. (d)(1)(C). Pub. L. 102–552, §303, amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''In order to enable the Financial Assistance Corporation to repay the obligations issued to provide assistance under section 410(c) of the Agricultural Credit Act of 1987 and section 2162(c) of this title, or issued to provide funds to cover the expenses of the Assistance Board under section 2278a–7(a) of this title, each System institution shall pay to the Financial Assistance Corporation a proportion of such obligation equal to—

''(i) the average performing loan volume of the institution for the preceding 15 years; divided by

''(ii) the average performing loan volume of all of the System institutions for the same period.''

Subsec. (d)(1)(D), (E). Pub. L. 102–552, §305(2), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: ''(D) SPECIAL RULE.—For purposes of determining the average loan volume of Farm Credit Banks, loan volume shall consist of loans made by such banks with the exception of loans made to associations.''

Subsec. (d)(3)(A). Pub. L. 102–552, §306(1)(A), inserted heading and struck out former heading ''Interest'', in cl. (i), inserted ''on the payment of principal or interest due under subparagraphs (B) and (C) of section 2278a–9(e)(3) of this title, on the payment of principal due under paragraph (1)(C), or on the payment of an assessment due under subsection (c)(5)(B) of this section,'', struck out ''of the interest'' after ''the amount'' in two places, and substituted ''bank'' for ''institution'' wherever appearing, in cl. (ii), struck out ''of interest'' after ''the full amount'', and substituted ''defaulting bank'' for ''defaulting institution'' and ''any uncollected amount'' for ''such uncollected interest'', and in cl. (iii), substituted ''allocated to other System banks in accordance with the allocation mechanism applicable under this chapter to the particular defaulted obligation.'' for ''added to the amount of interest due from remaining System institutions, under subsection (c) of this section, and each remaining System institution, subject to the special rule provided in subsection (c)(2)(D) of this section, shall pay to the Trust Fund a proportion of the uncollected interest equal to—

''(I) the amount of the performing loan volume of the institution (based on the average loan volume for the preceding year); divided by

''(II) the total performing loan volume of the System.''

Subsec. (d)(3)(B). Pub. L. 102–552, §306(1)(B), inserted heading and struck out former heading ''Principal''.

Subsec. (d)(3)(C). Pub. L. 102–552, §306(1)(C), substituted ''banks'' for ''institutions'' wherever appearing in heading and text, ''bank'' for ''institution'', and ''any amounts'' for ''the amount of any interest''.

Subsec. (d)(4)(A). Pub. L. 102–552, §306(2)(A), inserted ''or section 2278a–9(e)(3)(A) of this title''.

Subsec. (d)(4)(B)(i). Pub. L. 102–552, §306(2)(B)(i), inserted heading and struck out former heading ''Interest payments'', substituted ''bank'' for ''institution'' wherever appearing, and inserted ''on the payment of principal or interest due under subparagraphs (B) and (C) of section 2278a–9(e)(3) of this title, on the payment of principal due under paragraph (1)(C), or on the payment of an assessment due under subsection (c)(5)(B) of this section,''.

Subsec. (d)(4)(B)(ii). Pub. L. 102–552, §306(2)(B)(ii), inserted heading and struck out former heading ''Principal payments''.

Subsec. (e). Pub. L. 102–552, §305(3), added subsec. (e).

1988—Subsec. (c)(2)(D). Pub. L. 100–399, §201(q), substituted ''Farm Credit Banks'' for ''Federal intermediate credit banks and Federal land banks''.

Pub. L. 100–399, §201(p), inserted ''and Federal land banks'' after ''credit banks'' and struck out ''production credit'' before ''associations''.

Subsec. (c)(5)(B). Pub. L. 100–399, §201(r)(1), substituted ''payments under this paragraph'' for ''interest payments''.

Pub. L. 100–399, §201(r)(2), substituted ''referred to in subsection (d)(1)(E)'' for ''issued under subsection (d)(1)(C)''.

Subsec. (c)(5)(C)(i). Pub. L. 100–399, §201(r)(1), substituted ''payments under this paragraph'' for ''interest payments''.

Subsec. (d). Pub. L. 100–399, §201(s), inserted ''; defaults'' after ''principal'' in heading.

Subsec. (d)(1)(C). Pub. L. 100–399, §201(t), in introductory provisions substituted ''issued to provide assistance under section 410(c) of the Agricultural Credit Act of 1987 and section 2162(c) of this title, or issued to provide funds to cover the expenses of the Assistance Board under section 2278a–7(a) of this title,'' for ''referred to in section 410(c) of the Agricultural Credit Act of 1987,'' and ''such obligation'' for ''such principal'', in cl. (i) substituted ''institution'' for ''bank'', and in cl. (ii) substituted ''institutions'' for ''banks''.

Subsec. (d)(1)(D). Pub. L. 100–399, §201(q), substituted ''Farm Credit banks'' for ''Federal intermediate credit banks and Federal land banks''.

Pub. L. 100–399, §201(p), inserted ''and Federal land banks'' after ''credit banks'' and struck out ''production credit'' before ''associations''.

Subsec. (d)(1)(E). Pub. L. 100–399, §201(u), substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Subsec. (d)(3)(A)(i), (iii). Pub. L. 100–399, §201(v), substituted ''subsection (c) of this section'' for ''this subsection''.

Subsec. (d)(3)(B)(iii). Pub. L. 100–399, §201(w), inserted ''is prohibited from redeeming or'' after ''If such institution''.

Subsec. (d)(4)(B)(iii). Pub. L. 100–399, §201(x), substituted ''section 2277a–9(c)(2)(B) of this title'' for ''section 2277a–9 of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 201(q) of Pub. L. 100–399 effective immediately after amendment made by section 401 of Pub. L. 100–233, which was effective 6 months after Jan. 6, 1988, and amendment by section 201(p), (r)–(x) of Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001 of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2278b–7. Preferred stock

(a) Issuance

(1) In general

Each System institution that is certified under section 2278a–4 of this title may issue a special class of preferred stock only in an amount, and subject to such terms and conditions, as authorized by the Assistance Board.

(2) Dividends

(A) In general

Except as provided in subparagraph (B), dividends shall not be payable on stock issued under this section.

(B) Exception

Stock issued under this section shall be issued under such terms and conditions as to

enable the Secretary of the Treasury, with respect to any of such stock the Secretary purchases under section 2278b–6(d)(3)(B)(iii) of this title, and the Farm Credit System Insurance Corporation, with respect to any of such stock that the Insurance Corporation purchases or otherwise acquires under section 2278b–6(d)(3)(B)(iii) of this title or section 2278b–6(d)(4)(B)(ii) of this title, to establish for such stock a stated dividend rate equal to the current market yield on outstanding, marketable obligations of the United States with maturities of 30 years, plus a premium to reflect the cost of capital for institutions in financial distress.

(3) Voting rights

A holder of stock issued under this subsection shall have no voting rights with respect to the stock.

(b) Purchase

The Financial Assistance Corporation shall purchase shares of stock issued by certified System institutions under subsection (a) of this section to the extent that the issuance of such stock is approved by the Assistance Board.

(Pub. L. 92–181, title VI, § 6.27, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1602; amended Pub. L. 100–399, title II, § 201(y)–(aa), Aug. 17, 1988, 102 Stat. 992.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–399, § 201(y), struck out ''(a) or (b)'' after ''section 2278a–4''.

Subsec. (a)(2)(B). Pub. L. 100–399, § 201(z), substituted ''Farm Credit System Insurance Corporation'' for ''Reserve Account Board'' and ''Insurance Corporation purchases'' for ''Board purchases''.

Subsec. (b). Pub. L. 100–399, § 201(aa), substituted ''subsection (a)'' for ''subsections (a) and (b)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2278b–8. Payments

(a) In general

Beginning in fiscal year 1989, the Secretary of the Treasury shall reimburse the Financial Assistance Corporation for any amounts such Corporation pays in interest charges under section 2278b–6(c) of this title during fiscal year 1988, and thereafter the Secretary shall pay the Financial Assistance Corporation any amounts due from the Secretary to such Corporation under section 2278b–6(c) of this title.

(b) Authorization of appropriations

There is authorized to be appropriated to the Secretary of the Treasury such sums on an annual basis as may be necessary to carry out this part.

(Pub. L. 92–181, title VI, § 6.28, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1603; amended Pub. L. 100–399, title II, § 201(bb), Aug. 17, 1988, 102 Stat. 992; Pub. L. 102–552, title III, § 304(b), Oct. 28, 1992, 106 Stat. 4114.)

AMENDMENTS

1992—Subsecs. (b), (c). Pub. L. 102–552 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows:

''(b) REPAYMENT OF INTEREST PAID BY SECRETARY OF THE TREASURY.—

''(1) IN GENERAL.—Any amounts paid into the Assistance Fund by the Secretary of the Treasury pursuant to subsection (a) of this section exceeding $2,000,000,000 shall be repaid by System institutions in accordance with a schedule to be established by the Farm Credit Administration Board.

''(2) ALLOCATION.—Until such repayment is completed, each System institution shall pay a proportionate share of the amount due under paragraph (1) equal to—

''(A) the amount of the performing loan volume of the institution, determined in accordance with section 2278b–6(c)(2)(D) of this title (based on the average loan volume for the preceding year); divided by

''(B) the total performing loan volume of the System for the preceding year.''

1988—Subsec. (b)(2). Pub. L. 100–399 in introductory provision substituted ''paragraph (1) equal'' for ''this paragraph'' and in subpar. (A) substituted ''section 2278b–6(c)(2)(D) of this title'' for ''subsection (c)(1)(D) of this section''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2278b–9. One-time stock purchase

(a) Amount of stock purchase

(1) In general

Except as provided in paragraphs (2) and (3), for the purpose of obtaining funds for the Trust Fund, each System institution shall purchase from the Financial Assistance Corporation stock issued in accordance with section 2278b–3 of this title in an amount equal to the amount by which the unallocated retained earnings of the institution (after taking into account any funds received by the institution under section 2278a–9(c) of this title) exceeds—

(A) in the case of a System bank, 5 percent of assets; or

(B) in the case of a production credit association or a Federal land bank association, 13 percent of assets.

(2) Reallocation

The district board of a district, subject to the unanimous consent of the bank and associations in the district that would be affected by the reallocation, may reallocate the amount of stock required to be purchased by banks and associations in the district under paragraph (1) to equitably reflect the ability of the banks and associations to pay, except that—

(A) the total amount of stock purchased by banks and associations in the district under this paragraph shall equal the total amount of stock required to be purchased by the banks and associations under paragraph (1); and

(B) the board may not impair the stock of an association in carrying out this paragraph; and

(C) a district board's authority to reallocate stock purchases under this paragraph shall be limited to reallocation among like associations of the amount of stock required to be purchased by such associations; re-

allocation of the amount of stock required to be purchased by production credit associations among such associations and the district Federal intermediate credit bank; and reallocation of the amount of stock required to be purchased by Federal land bank associations among such associations and the district Federal land bank. Other reallocations than those enumerated above shall not be permitted.

(3) Periodic purchases

(A) Notwithstanding any other provision of this section, the Financial Assistance Corporation shall establish a program under which System institutions shall purchase, as debt obligations are issued under section 2278b–6(a) of this title, stock of the Corporation in amounts described in this paragraph.

(B) The program shall provide, with respect to each issuance of debt obligations under section 2278b–6(a) of this title, that each System institution originally required to purchase stock under paragraph (1), or the successor thereto, shall purchase Corporation stock in an amount determined by multiplying the amount of stock such institution was originally required to purchase under that paragraph by a percentage equal to the percentage which the amount of the issuance bears to $4,000,000,000.

(C) The Financial Assistance Corporation shall promptly rescind purchases of stock of the Corporation made under paragraph (1) or (2) by System institutions and refund to such institutions, or their successors, the purchase price for the stock, except that, with respect to each issuance of debt obligations that occurs before October 1, 1988, the Corporation shall deduct from any refund due any System institution, and retain, the amount payable by such institution.

(b) Computations

For purposes of subsection (a) of this section, the unallocated retained earnings and assets of a System institution shall be computed in accordance with generally accepted accounting principles on the basis of the financial statement of the institution on December 31, 1986.

(c) Notice

(1) Within 15 days after the retirement of the obligations of the Capital Corporation under section 2278a–9 of this title—

(A) the Financial Assistance Corporation shall notify each System institution of the amount of stock such institution is required to purchase under subsection (a) of this section; or

(B) in the case of a district in which the district board has reallocated the stock purchase requirement in accordance with subsection (a)(2) of this section, the district board shall notify each System institution in the district of the amount of stock such institution is required to purchase under subsection (a) of this section.

(2) Not later than 15 days before each issuance of debt obligations under section 2278b–6(a) of this title occurring after September 30, 1988, the Financial Assistance Corporation shall notify each System institution required to purchase Corporation stock under subsection (a)(3) of this section of the amount of the stock it is required to purchase.

(d) Institution requirements after notice

Within 15 days after a System institution is notified of the amounts due under subsection (c) of this section, the institution shall purchase from the Financial Assistance Corporation the amount of stock required to be purchased by the institution under this section. No further stock purchases, obligations, or assessments shall be required beyond that provided in section 2278b–6 of this title and this section.

(e) Jurisdiction over actions

Notwithstanding any other provision of law, the United States district court for the District of Columbia shall have exclusive jurisdiction over any action brought under or arising out of this section. No suit or proceeding shall be maintained for the recovery of any amount of stock alleged to have been erroneously or illegally purchased, and no suit or proceeding shall be maintained to enjoin or otherwise prevent or impede the giving of notice or the purchase of stock required under this section, unless the amount of stock required to be purchased under this section has been purchased and paid for in full.

(Pub. L. 92–181, title VI, §6.29, as added Pub. L. 100–233, title II, §201, Jan. 6, 1988, 101 Stat. 1603; amended Pub. L. 100–460, title VI, §646, Oct. 1, 1988, 102 Stat. 2266.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–460, §646(1), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)'' in introductory provisions.

Subsec. (a)(3). Pub. L. 100–460, §646(2), added par. (3).

Subsec. (c). Pub. L. 100–460, §646(3), (4), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

EFFECTIVE DATE OF 1988 AMENDMENTS

Pub. L. 101–220, §7(a), Dec. 12, 1989, 103 Stat. 1881, and Pub. L. 101–239, title I, §1006(a), Dec. 19, 1989, 103 Stat. 2109, provided that: ''Notwithstanding any other provision of law, the amendments to section 6.29 of the Farm Credit Act of 1971 (12 U.S.C. 2278b–9) made by section 646 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Public Law 100–460; 102 Stat. 2266) shall be effective on October 1, 1992.''

Section 646 of Pub. L. 100–460 provided that the amendment made by that section is effective Oct. 1, 1989.

PAYMENTS TO FARM CREDIT SYSTEM INSTITUTIONS FOR PURCHASES OF FINANCIAL ASSISTANCE CORPORATION STOCK

Pub. L. 101–239, title I, §1006(b), Dec. 19, 1989, 103 Stat. 2109, directed Financial Assistance Corporation to pay, out of Financial Assistance Corporation Trust Fund established under section 2278b–5(b) of this title, to each of institutions of Farm Credit System that purchased stock in Financial Assistance Corporation under section 2278b–9 of this title, four annual payments, required the annual payments to be made available as soon as practicable after October 1 of each of calendar years 1989 through 1992, established method of calculating payments, and provided that payments be made available to such institutions in an amount equal to total amount of annual payments to be made available

times the ratio of the amount of stock each institution purchased divided by $177,000,000.

Similar provisions were contained in Pub. L. 101–220, § 7(b), Dec. 12, 1989, 103 Stat. 1881.

§ 2278b–10. Exemption from taxation

(a) Assets

The Financial Assistance Corporation, and the capital, reserves, and surplus thereof, and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate held by the Financial Assistance Corporation to the same extent, according to its value, as other similar property held by other persons is taxed.

(b) Obligations

The notes, bonds, debentures, and other obligations issued by the Financial Assistance Corporation shall be accorded the same tax treatment as System-wide obligations.

(Pub. L. 92–181, title VI, § 6.30, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1604.)

§ 2278b–11. Termination

(a) Financial Assistance Corporation

The Financial Assistance Corporation and the authority provided to such Corporation by this part shall terminate on the complete discharge by the Financial Assistance Corporation of its responsibilities under section 2278a–9(e) of this title and subsections (c) through (g) of section 2278b–6 of this title with regard to repayments by System institutions, but in no event later than 2 years following the maturity and full payment of all debt obligations issued under section 2278b–6(a) of this title.

(b) Accounts

Simultaneously with the termination of the Financial Assistance Corporation as provided in subsection (a) of this section, any funds in the accounts established under section 2278b–5 of this title shall be transferred to the Insurance Fund established under section 2277a–9 of this title.

(Pub. L. 92–181, title VI, § 6.31, as added Pub. L. 100–233, title II, § 201, Jan. 6, 1988, 101 Stat. 1605; amended Pub. L. 102–552, title III, § 307(b), Oct. 28, 1992, 106 Stat. 4116.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–552 substituted ''terminate on the complete discharge by the Financial Assistance Corporation of its responsibilities under section 2278a–9(e) of this title and subsections (c) through (g) of section 2278b–6 of this title with regard to repayments by System institutions, but in no event later than 2 years following'' for ''terminate on''.

SUBCHAPTER VII—RESTRUCTURING OF SYSTEM INSTITUTIONS

AMENDMENTS

1988—Pub. L. 100–399, title IV, § 408(a), Aug. 17, 1988, 102 Stat. 1001, substituted ''RESTRUCTURING OF'' for ''MERGERS OF'' in subchapter heading.

PART A—MERGER OF BANKS WITHIN A DISTRICT

§ 2279a. Power to merge

The banks within a district may merge into a single entity (hereinafter in this subchapter referred to as a ''merged bank'') if the plan of merger is approved by—

(1) the Farm Credit Administration Board;

(2) the respective boards of directors of the banks involved;

(3) a majority of the stockholders of each bank voting, in person or by proxy, at a duly authorized stockholders' meeting with each association entitled to cast a number of votes equal to the number of its voting stockholders; and

(4) in the case of a bank for cooperatives, a majority of the total equity interests in such merging bank for cooperatives (including allocated, but not unallocated, surplus and reserves) held by those stockholders or subscribers to the guaranty fund of the bank voting.

(Pub. L. 92–181, title VII, § 7.0, as added Pub. L. 100–233, title IV, § 416, Jan. 6, 1988, 101 Stat. 1645; amended Pub. L. 100–399, title IV, § 408(b), Aug. 17, 1988, 102 Stat. 1001.)

AMENDMENTS

1988—Pub. L. 100–399 substituted ''The banks'' for ''Two or more banks'' in introductory provisions, and in par. (3) substituted ''with each association entitled to cast a number of votes equal to the number of its voting'' for ''in accordance with the provisions of section 2223(c) of this title relating to the casting of votes by''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2279a–1. Board of directors

Each merged bank shall elect a board of directors of such number, for such term, in such manner, and with such qualifications, as may be required in its bylaws, except that at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, or stockholder of a System institution.

(Pub. L. 92–181, title VII, § 7.1, as added Pub. L. 100–233, title IV, § 416, Jan. 6, 1988, 101 Stat. 1645; amended Pub. L. 100–399, title IV, § 408(c), Aug. 17, 1988, 102 Stat. 1001.)

AMENDMENTS

1988—Pub. L. 100–399 struck out ''for the district'' in section catchline and amended text generally, revising and restating as a single unlettered paragraph provisions of former subsecs. (a) and (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2279a–2. Powers of merged banks

(a) In general

Except as otherwise provided in this subchapter, a merged bank shall have all of the powers granted to, and shall be subject to all of the obligations imposed on, any of the constituent entities of the merged bank.

(b) Regulations

The Farm Credit Administration shall issue regulations that establish the manner in which

the powers and obligations of the banks that form the merged bank are consolidated, and to the extent necessary, reconciled in the merged bank.

(Pub. L. 92–181, title VII, §7.2, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1645.)

§ 2279a–3. Capitalization

In accordance with section 2154a of this title, each merged bank shall provide, through bylaws and subject to Farm Credit Administration regulations, for the capitalization of the bank and the manner in which bank stock shall be issued, held, transferred, and retired and bank earnings distributed.

(Pub. L. 92–181, title VII, §7.3, as added Pub. L. 100–399, title IV, §408(d), Aug. 17, 1988, 102 Stat. 1001.)

PRIOR PROVISIONS

A prior section 2279a–3, Pub. L. 92–181, title VII, §7.3, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1645, related to issuance of shares of capital stock, prior to repeal by Pub. L. 100–399, title IV, §408(d), Aug. 17, 1988, 102 Stat. 1001.

EFFECTIVE DATE

Section effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as an Effective Date of 1988 Amendment note under section 2002 of this title.

§ 2279a–4. Repealed. Pub. L. 100–399, title IV, § 408(d), Aug. 17, 1988, 102 Stat. 1001

Section, Pub. L. 92–181, title VII, §7.4, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1646, related to earnings, reserves, and distributions with regard to merged banks. See section 2279a–3 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective as if repealing provisions had been enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as an Effective Date of 1988 Amendment note under section 2002 of this title.

§ 2279a–5. Transferred

CODIFICATION

Section, Pub. L. 92–181, title VII, §7.5, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1646, which required reports by merged banks for cooperatives, was renumbered section 3.29 of title III of Pub. L. 92–181 by Pub. L. 100–399, title IV, §408(e), Aug. 17, 1988, 102 Stat. 1001, and is classified to section 2149a of this title.

PART B—MERGERS, TRANSFERS OF ASSETS, AND POWERS OF ASSOCIATIONS WITHIN A DISTRICT

SUBPART 1—TRANSFERS BY FEDERAL LAND BANKS TO FEDERAL LAND BANK ASSOCIATIONS

§ 2279b. Transfer of lending authority

(a) Voluntary transfers

A Federal land bank or a merged bank having a Federal land bank as one of its constituents, may transfer to a Federal land bank association, and the association may assume, the authority of the transferring bank in the territorial area served by the association, to make and participate in long-term real estate mortgage loans under this chapter if the transfer is approved by—

(1) the Farm Credit Administration Board;

(2) the Board of Directors of both institutions; and

(3) a majority of the stockholders of the bank and of the association, in accordance with the voting provisions of sections 2279a and 2279c–1 of this title, respectively.

(b) Direct loans and financial assistance

After a transfer described in subsection (a) or (d) of this section—

(1) the Federal land bank association shall possess all of the direct long-term real estate mortgage loan authority, formerly possessed by the transferring bank, in the territory served by the association; and

(2) the bank may provide and extend financial assistance to, and discount for, or purchase from, the transferee Federal land bank association any note, draft, or other obligation with the endorsement or guarantee of the association, the proceeds of which have been advanced to persons eligible and for purposes of financing by the association under subsection (a) of this section.

(c) Regulations

The Farm Credit Administration shall issue regulations that establish the manner in which the powers and obligations of the banks that make transfers are consolidated and, to the extent necessary, reconciled in the association referred to in subsection (a) of this section.

(d) Mandatory transfer

On the merger of one or more production credit associations with one or more Federal land bank associations, the bank supervising the Federal land bank association shall transfer all of the direct lending authority of the bank in the territory served by such Federal land bank association to such merged association.

(Pub. L. 92–181, title VII, §7.6, formerly §§7.6, 7.7, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1647; amended Pub. L. 100–399, title IV, §408(f)–(j), Aug. 17, 1988, 102 Stat. 1001, 1002.)

CODIFICATION

Pub. L. 100–399, §408(j), transferred section 7.7 of Pub. L. 92–181, which was classified to section 2279c of this title, to subsec. (d) of this section.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–399, §408(f), substituted ''Voluntary transfers'' for ''Assignments'' as subsection heading, and in text substituted ''may transfer'' for ''may assign'', ''this chapter'' for ''sections 2014 through 2017 of this title'', and ''transfer is approved'' for ''assignment is approved'' in introductory provisions, and ''sections 2279a and 2279c–1 of this title, respectively'' for ''sections 2279a and 2279b of this title'' in par. (3).

Subsec. (b). Pub. L. 100–399, §408(g), substituted ''a transfer described in subsection (a) or (d)'' for ''an assignment described in subsection (a)'' in introductory provisions and ''the bank may provide'' for ''the Federal land bank may provide'' in par. (2).

Subsec. (c). Pub. L. 100–399, §408(h), struck out ''assignments or'' before ''transfers are consolidated'' and struck out second sentence, which provided that, following a transfer or assignment under subsection (a) of

this section, the provisions of section 2154a of this title were to be applicable to the association.

Subsec. (d). Pub. L. 100–399, § 408(i), (j), transferred section 2279c of this title to subsec. (d) of this section, substituted heading for former section heading, and amended text generally. Prior to amendment, text read as follows: ''On the merger of one or more production credit associations with one or more Federal land bank associations, the bank supervising the Federal land bank association shall transfer all of its direct lending authority of the bank to such association under section 2279c–1 of this title.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2279c. Equalization of loan-making powers of certain district associations

(a) Equalization of loan-making powers

(1) In general

(A) Federal land bank associations

Subject to paragraph (2), any association that owns a Federal land bank association authorized as of January 1, 2007, to make long-term loans under subchapter I in its chartered territory within the geographic area described in subsection (b) may make short- and intermediate-term loans and otherwise operate as a production credit association under subchapter II within that same chartered territory.

(B) Production credit associations

Subject to paragraph (2), any association that under its charter has subchapter I lending authority and that owns a production credit association authorized as of January 1, 2007, to make short- and intermediate-term loans under subchapter II in the geographic area described in subsection (b) may make long-term loans and otherwise operate, directly or through a subsidiary association, as a Federal land bank association or Federal land credit association under subchapter I in the geographic area.

(C) Farm Credit Bank

Notwithstanding section 2252(a) of this title, the Farm Credit Bank with which any association had a written financing agreement as of January 1, 2007, may make loans and extend other comparable financial assistance with respect to, and may purchase, any loans made under the new authority provided under subparagraph (A) or (B) by an association exercising such authority.

(2) Required approvals

An association may exercise the additional authority provided for in paragraph (1) only after the exercise of the authority is approved by—

(A) the board of directors of the association; and

(B) a majority of the voting stockholders of the association (or, if the association is a subsidiary of another association, the voting stockholders of the parent association) voting, in person or by proxy, at a duly authorized meeting of stockholders in accordance with the process described in section 2279e of this title.

(b) Applicability

This section applies only to associations the chartered territory of which was within the geographic area served by the Federal intermediate credit bank immediately prior to its merger with a Farm Credit Bank under section 410(e)(1) of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note; Public Law 100–233).

(Pub. L. 92–181, title VII, § 7.7, as added Pub. L. 110–234, title V, § 5407(a), May 22, 2008, 122 Stat. 1159, and Pub. L. 110–246, § 4(a), title V, § 5407(a), June 18, 2008, 122 Stat. 1664, 1921.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 2279c, Pub. L. 92–181, title VII, § 7.7, as added Pub. L. 100–233, title IV, § 416, Jan. 6, 1988, 101 Stat. 1647; amended Pub. L. 100–399, title IV, § 408(i), (j), Aug. 17, 1988, 102 Stat. 1002, related to mergers of unlike associations, prior to renumbering as section 7.6(d) of Pub. L. 92–181 and transfer to section 2279b(d) of this title.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

Section effective Jan. 1, 2010, see section 5407(d) of Pub. L. 110–246, set out as an Effective Date of 2008 Amendment note under section 2252 of this title.

SUBPART 2—MERGER OF LIKE AND UNLIKE ASSOCIATIONS

§ 2279c–1. Merger of associations

(a) In general

Two or more associations within the same district, whether or not organized under the same subchapter of this chapter, may merge into a single entity (hereinafter in this subchapter referred to as a ''merged association'') if the plan of merger is approved by—

(1) the Farm Credit Administration Board;

(2) the boards of directors of the associations;

(3) a majority of the shareholders of each association voting, in person or by proxy, at a duly authorized stockholders' meeting; and

(4) the Farm Credit Bank.

(b) Powers, obligations, and consolidation

(1) Powers and obligations

Except as otherwise provided by this subchapter, a merged association shall—

(A) possess all powers granted under this chapter to the associations forming the merged association; and

(B) be subject to all of the obligations imposed under this chapter on the associations forming the merged association.

(2) Consolidation

The Farm Credit Administration shall issue regulations that establish the manner in

which the powers and obligations of the associations that form the merged association are consolidated and, to the extent necessary, reconciled in the merged association.

(c) Stock issuance

(1) Plan of merger

Subject to section 2154a of this title, the number of shares of capital stock issued by a merged association to the stockholders of any association forming such merged association, and the rights and privileges of such shares (including voting power, preferences on liquidation, and the right to dividends), shall be determined by the plan of merger adopted by the merged associations.

(2) Capitalization

In accordance with section 2154a of this title, each merged association shall provide, through bylaws and subject to Farm Credit Administration regulations, for the capitalization of the association and the manner in which association stock shall be issued, held, transferred, and retired, and association earnings shall be distributed.

(Pub. L. 92–181, title VII, §7.8, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1647; amended Pub. L. 100–399, title IV, §408(k), (*l*), Aug. 17, 1988, 102 Stat. 1002.)

AMENDMENTS

1988—Subsec. (b)(2). Pub. L. 100–399, §408(k), struck out second sentence, which directed that, following a merger under subsection (a) of this section, the provisions of section 2154a of this title were to be applicable to the merged association.

Subsec. (c)(2). Pub. L. 100–399, §408(*l*), substituted ''Capitalization'' for ''Plan of capitalization'' as par. (2) heading and amended text generally. Prior to amendment, text read as follows: ''The number of shares of capital stock, and the rights and privileges thereof, issued by a merged association after a merger shall be determined by the Board of Directors of the merged association, with the approval of the supervising bank, and shall be consistent with section 2154a of this title and the regulations issued by the Farm Credit Administration.''

Subsec. (c)(3). Pub. L. 100–399, §408(*l*), struck out par. (3) which read as follows: ''Voting stock of a merged association shall be issued to and held by farmers, ranchers, or producers or harvesters of aquatic products who are or were, immediately prior to the merger, direct borrowers from one of the associations forming the merged association or the supervising bank of such merged association.''

Subsec. (d). Pub. L. 100–399, §408(*l*), struck out subsec. (d) which read as follows: ''The plan of merger shall provide for the issuance, transfer, and retirement of stock and the distribution of earnings in accordance with the provisions of section 2154a of this title.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

SUBPART 3—RECONSIDERATION

§ 2279c–2. Reconsideration

(a) Period

A stockholder vote in favor of—

(1) the merger of districts under this chapter;

(2) the merger of banks within a district under section 2279a of this title;

(3) the transfer of the lending authority of a Federal land bank or a merged bank having a Federal land bank as one of its constituents, under section 2279b of this title;

(4) the merger of two or more associations under section 2279c–1 or 2279f–1 of this title;

(5) the termination of the status of an institution as a System institution under section 2279d of this title; or

(6) the merger of similar banks under section 2279f of this title;

shall not take effect except in accordance with subsection (b) of this section.

(b) Reconsideration

(1) Notice

Not later than 30 days after a stockholder vote in favor of any of the actions described in subsection (a) of this section, the officer or employee that records such vote shall ensure that all stockholders of the voting entity receive notice of the final results of the vote.

(2) Effective date

A voluntary merger, transfer, or termination that is approved by a vote of the stockholders of two or more banks or associations shall not take effect until the expiration of 30 days after the date on which the stockholders of such banks or associations are notified of the final result of the vote in accordance with paragraph (1).

(3) Petition filed

If a petition for reconsideration of a merger, transfer, or termination vote, signed by at least 15 percent of the stockholders of one or more of the affected banks or associations, is presented to the Farm Credit Administration within 30 days after the date of the notification required under paragraph (1)—

(A) a voluntary merger, transfer, or termination shall not take effect until the expiration of 60 days after the date on which the stockholders were notified of the final result of the vote; and

(B) a special meeting of the stockholders of the affected banks or associations shall be held during the period referred to in subparagraph (A) to reconsider the vote.

(4) Vote on reconsideration

If a majority of stockholders of any one of the affected banks or associations voting, in person or by written proxy, at a duly authorized stockholders' meeting, vote against the proposed merger, transfer, or termination, such action shall not take place.

(5) Failure to file petition

If a petition for reconsideration of such vote is either not filed prior to the 60th day after the vote or, if timely filed, is not signed by at least 15 percent of the stockholders, the merger, transfer, or termination shall become effective in accordance with the plan of merger, transfer, or termination.

(c) Special reconsideration

(1) Issuance of regulations

Notwithstanding any other provision of this chapter, the Farm Credit Administration shall

issue regulations under which the stockholders of any association that voluntarily merged with one or more associations after December 23, 1985, and before January 6, 1988, may petition for the opportunity to organize as a separate association.

(2) Requirements

The regulations issued by the Farm Credit Administration shall require that—

(A) the petition be filed within 1 year after the date of the implementation of such regulations;

(B) the petition be signed by at least 15 percent of the stockholders of any one of the associations that merged during the period;

(C) the petition describe the territory in which the proposed separate association will operate;

(D) if the petition is approved—

(i) the loans of the members of the new association will be transferred from the current association to such new association;

(ii) the stock, participation certificates, and other similar equities of the current association held by members of the new association will be retired at book value and the proceeds of such will be transferred to the new association, and an equivalent amount of stock, participation certificates, and other similar equities will be issued to the members by the new association; and

(iii) the other assets of the current association will be distributed equitably among the current association and any resulting new association.

(3) Notification

(A) In general

Not later than 30 days after the filing of the petition for organization, the current association shall notify its stockholders that a petition to establish the separate association has been filed.

(B) Contents

The notification required under this paragraph shall contain—

(i) the date of a special stockholders' meeting to consider the petition for organization; and

(ii) an enumerated statement of the anticipated benefits and the potential disadvantages to such stockholders if the new association is established.

(C) FCA approval

(i) In general

All notifications under this paragraph shall be submitted to the Farm Credit Administration Board for approval prior to being distributed to the stockholders.

(ii) Amending notification

The Farm Credit Administration Board shall require that, prior to the distribution of the notification to the stockholders, the notification be amended as determined necessary by the Board to provide accurate information to the stockholders that will enable such stockholders to make an informed decision as to the advisability of establishing a new association.

(D) Special stockholders' meeting

(i) Timing of meeting

The special stockholders' meeting to consider the petition shall be held within 60 days after the filing of the petition.

(ii) Approval

If, at the special stockholders' meeting, a majority of the stockholders of the current association who would be served by the new association approve, by voting in person or by proxy, the establishment of the separate association, the Farm Credit Administration shall, within 30 days of such vote, issue a charter to the new association and amend the charter of the current association to reflect the territory to be served by the new association.

(Pub. L. 92–181, title VII, § 7.9, as added Pub. L. 100–233, title IV, § 416, Jan. 6, 1988, 101 Stat. 1648; amended Pub. L. 100–399, title IV, § 408(n), (*o*), Aug. 17, 1988, 102 Stat. 1002.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–399, § 408(n)(1), substituted ''this chapter'' for ''section 2252(a)(2) of this title''.

Subsec. (a)(4). Pub. L. 100–399, § 408(n)(5), redesignated par. (5) as (4).

Pub. L. 100–399, § 408(n)(2), inserted reference to section 2279f–1 of this title.

Subsec. (a)(5). Pub. L. 100–399, § 408(n)(5), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 100–399, § 408(n)(3), substituted ''or'' for ''and''.

Subsec. (a)(6). Pub. L. 100–399, § 408(n)(5), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Pub. L. 100–399, § 408(n)(4), substituted ''section 2279f'' for ''section 2279f–1''.

Subsec. (a)(7). Pub. L. 100–399, § 408(n)(5), redesignated par. (7) as (6).

Subsec. (b)(2). Pub. L. 100–399, § 408(*o*), struck out comma before ''shall not take effect'' and substituted ''such banks or'' for ''such''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

SUBPART 4—TERMINATION AND DISSOLUTION OF INSTITUTIONS

AMENDMENTS

1988—Pub. L. 100–399, title IV, § 408(m), Aug. 17, 1988, 102 Stat. 1002, redesignated subpart 3 as 4.

§ 2279d. Termination of System institution status

(a) Conditions

A System institution may terminate the status of the institution as a System institution if—

(1) the institution provides written notice to the Farm Credit Administration Board not later than 90 days prior to the proposed termination date;

(2) the termination is approved by the Farm Credit Administration Board;

(3) the appropriate Federal or State authority grants approval to charter the institution

as a bank, savings and loan association, or other financial institution;

(4) the institution pays to the Farm Credit Assistance Fund, as created under section 2278b–5 of this title, if the termination is prior to January 1, 1992, or pays to the Farm Credit Insurance Fund, if the termination is after such date, the amount by which the total capital of the institution exceeds, 6 percent of the assets;

(5) the institution pays or makes adequate provision for payment of all outstanding debt obligations of the institution;

(6) the termination is approved by a majority of the stockholders of the institution voting, in person or by written proxy, at a duly authorized stockholders' meeting, held prior to giving notice to the Farm Credit Administration Board; and

(7) the institution meets such other conditions as the Farm Credit Administration Board by regulation considers appropriate.

(b) Effect

On termination of its status as a System institution—

(1) the Farm Credit Administration Board shall revoke the charter of the institution; and

(2) the institution shall no longer be an instrumentality of the United States under this chapter.

(Pub. L. 92–181, title VII, §7.10, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1650.)

PART C—APPROVAL OF DISCLOSURE INFORMATION AND ISSUANCE OF CHARTERS BY THE FARM CREDIT ADMINISTRATION BOARD

§ 2279e. Approval of disclosure information and issuance of charters

(a) Disclosure of information

(1) Approval of plan

With respect to any plan of merger, transfer of lending authority, dissolution, or termination, prior to submission to the voters (voting stockholders and, where required, contributors to guaranty funds) of the institutions involved, such plan shall be submitted to the Farm Credit Administration Board, together with all information that is to be distributed to the voters with respect to the contemplated action, including an enumerated statement of the anticipated benefits and potential disadvantages of such action.

(2) Notice of approval

On notification that the Farm Credit Administration Board has approved such plan for submission to the stockholders, or after 60 days of no action on the plan by the Board, the submitting institutions may submit the plan, together with the disclosure information, to the voters for the prescribed vote.

(b) Notice of reasons for disapproval

If the Farm Credit Administration Board disapproves the plan for submission to the stockholders, notification to the submitting institutions shall specify the reasons for the determination by the Board. If such plan is determined to be inadequate, it shall not be submitted to the voters for a vote.

(c) Federal charter

Each plan of merger or transfer of lending authority may include a proposed new or revised Federal charter for the merged or transferee entity. The Farm Credit Administration Board shall issue such charter on the approval of the plan, as prescribed in this subchapter, unless the Board determines that the charter submitted is not consistent with this chapter.

(Pub. L. 92–181, title VII, §7.11, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1651; amended Pub. L. 100–399, title IV, §408(p), Aug. 17, 1988, 102 Stat. 1002; Pub. L. 102–237, title V, §502(n), Dec. 13, 1991, 105 Stat. 1870.)

AMENDMENTS

1991—Subsec. (a)(2). Pub. L. 102–237 substituted ''60 days'' for ''30 days''.

1988—Subsec. (a)(1). Pub. L. 100–399 substituted ''transfer of lending authority'' for ''transfer or assignment of lending authority'' and ''the institutions involved'' for ''such institutions''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

PART D—MERGERS OF LIKE ENTITIES

§ 2279f. Merger of similar banks

(a) In general

Banks organized or operating under this chapter may merge with banks in other districts operating under the same subchapter if the plan of merger is approved by—

(1) the Farm Credit Administration Board;

(2) the respective Boards of Directors of the banks involved;

(3) a majority vote of the stockholders of each bank voting, in person or by proxy, at a duly authorized stockholders' meeting, with each association having a number of votes equal to the number of such association's voting stockholders; and

(4) in the case of a bank for cooperatives, a majority of the total equity interests in such merging bank for cooperatives (including allocated, but not unallocated, surplus and reserves) held by those stockholders or subscribers to the guaranty fund of the bank voting.

(b) Powers and capitalization

Sections 2279a–2 and 2279a–3 of this title shall apply to banks merged under this section.

(c) Board of directors

(1) In general

After a merger under subsection (a) of this section, a board of directors shall be created for the resulting bank.

(2) Composition

The board shall be composed of—

(A) two directors elected by each of the bank boards, with at least one such director from each bank being elected by the eligible stockholders of, or subscribers to, the guaranty fund of the merging banks; and

(B) one outside director elected by the directors elected under subparagraph (A).

(3) Outside director

(A) Qualifications

The outside director elected under paragraph (2)(B) shall be experienced in financial services and credit, and within the 2-year period prior to such election, shall not have been a borrower from, shareholder in, or director, officer, employee, or agent of any institution of the Farm Credit System.

(B) Failure to elect

If the other members of the board fail to elect an outside director, the Farm Credit Administration Board shall appoint a qualified person to serve on the board of directors until such member is so elected.

(4) Bylaws

Notwithstanding paragraph (2), the bylaws of the merged bank may, with the approval of the Farm Credit Administration, provide for a different number of directors to be selected in a different manner, except that the bylaws shall provide for at least one outside director.

(Pub. L. 92–181, title VII, §7.12, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1652; amended Pub. L. 100–399, title IV, §408(q), (r), Aug. 17, 1988, 102 Stat. 1002, 1003.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–399, §408(q), substituted ''Powers and capitalization'' for ''Procedures'' in heading and, in amending text generally, substituted ''Sections 2279a–2 and 2279a–3 of this title'' for ''The provisions of sections 2279a–2 through 2279a–4 of this title''.

Subsec. (c)(2)(B). Pub. L. 100–399, §408(r), substituted ''directors'' for ''members''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2279f–1. Merger of similar associations

(a) In general

Associations may voluntarily merge with other like associations if the plan of merger is approved by—

(1) the Farm Credit Administration Board;

(2) the respective Boards of Directors of the associations involved;

(3) a majority vote of the stockholders of each association voting, in person or by proxy, at a duly authorized stockholders' meeting; and

(4) the Farm Credit Banks involved.

(b) Procedures

The provisions of subsections (b) and (c) of section 2279c–1 of this title shall apply to associations merged under this section.

(Pub. L. 92–181, title VII, §7.13, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1653; amended Pub. L. 100–399, title IV, §408(s), (t), Aug. 17, 1988, 102 Stat. 1003.)

AMENDMENTS

1988—Subsec. (a)(4). Pub. L. 100–399, §408(s), substituted ''the Farm Credit Banks involved'' for ''the Farm Credit Bank''.

Subsec. (b). Pub. L. 100–399, §408(t), substituted ''subsections (b) and (c)'' for ''subsections (b), (c), and (d)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

PART E—TAXATION OF MERGER TRANSACTIONS

§ 2279g. Transactions to accomplish mergers exempt from certain State taxes

No State or political subdivision thereof may treat the merger or consolidation of two or more institutions of the Farm Credit System under this subchapter or title IV of the Agricultural Credit Act of 1987 as resulting in a change of ownership of any property owned by any of such merging or consolidating institutions, for purposes of any law of such State or political subdivision providing for reassessment of property on the occurrence of a change of ownership or imposing a tax on the ownership or transfer of property.

(Pub. L. 92–181, title VII, §7.14, as added Pub. L. 100–399, title IV, §408(u), Aug. 17, 1988, 102 Stat. 1003.)

REFERENCES IN TEXT

The Agricultural Credit Act of 1987, referred to in text, is Pub. L. 100–233, Jan. 6, 1988, 101 Stat. 1568, as amended. Title IV of that Act amended this chapter. For complete classification of this Act to the Code see Short Title of 1988 Amendment note set out under section 2001 of this title and Tables.

EFFECTIVE DATE

Section effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as an Effective Date of 1988 Amendment note under section 2002 of this title.

SUBCHAPTER VIII—AGRICULTURAL MORTGAGE SECONDARY MARKET

§ 2279aa. Definitions

For purposes of this subchapter:

(1) Agricultural real estate

The term ''agricultural real estate'' means—

(A) a parcel or parcels of land, or a building or structure affixed to the parcel or parcels, that—

(i) is used for the production of one or more agricultural commodities or products; and

(ii) consists of a minimum acreage or is used in producing minimum annual receipts, as determined by the Corporation; or

(B) a principal residence that is a single family, moderate-priced residential dwelling located in a rural area, excluding—

(i) any community having a population in excess of 2,500 inhabitants; and

(ii) any dwelling, excluding the land to which the dwelling is affixed, with a value exceeding $100,000 (as adjusted for inflation).

(2) Board

The term ''Board'' means—

(A) the interim board of directors established in section 2279aa–2(a) of this title; and

(B) the permanent board of directors established in section 2279aa–2(b) of this title;

as the case may be.

(3) Certified facility

The term ''certified facility'' means—

(A) an agricultural mortgage marketing facility that is certified under section 2279aa–5 of this title; or

(B) the Corporation and any affiliate thereof.

(4) Corporation

The term ''Corporation'' means the Federal Agricultural Mortgage Corporation established in section 2279aa–1 of this title.

(5) Guarantee

The term ''guarantee'' means the guarantee of timely payment of the principal and interest on securities representing interests in, or obligations backed by, pools of qualified loans, in accordance with this subchapter.

(6) Interim board

The term ''interim board'' means the interim board of directors established in section 2279aa–2(a) of this title.

(7) Originator

The term ''originator'' means any Farm Credit System institution, bank, insurance company, business and industrial development company, savings and loan association, association of agricultural producers, agricultural cooperative, commercial finance company, trust company, credit union, or other entity that originates and services agricultural mortgage loans.

(8) Permanent board

The term ''permanent board'' means the permanent board of directors established in section 2279aa–2(b) of this title.

(9) Qualified loan

The term ''qualified loan'' means an obligation—

(A)(i) that is secured by a fee-simple or leasehold mortgage with status as a first lien, on agricultural real estate located in the United States that is not subject to any legal or equitable claims deriving from a preceding fee-simple or leasehold mortgage;

(ii) of—

(I) a citizen or national of the United States or an alien lawfully admitted for permanent residence in the United States; or

(II) a private corporation or partnership whose members, stockholders, or partners holding a majority interest in the corporation or partnership are individuals described in subclause (I); and

(iii) of a person, corporation, or partnership that has training or farming experience that, under criteria established by the Corporation, is sufficient to ensure a reasonable likelihood that the loan will be repaid according to its terms;

(B) that is the portion of a loan guaranteed by the Secretary of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), except that—

(i) subsections (b) through (d) of section 2279aa–6 of this title, and sections 2279aa–8 and 2279aa–9 of this title, shall not apply to the portion of a loan guaranteed by the Secretary or to an obligation, pool, or security representing an interest in or obligation backed by a pool of obligations relating to the portion of a loan guaranteed by the Secretary; and

(ii) the portion of a loan guaranteed by the Secretary shall be considered to meet all standards for qualified loans for all purposes under this chapter; or

(C) that is a loan, or an interest in a loan, for an electric or telephone facility by a cooperative lender to a borrower that has received, or is eligible to receive, a loan under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.).

(10) State

The term ''State'' has the meaning given such term in section 2277a of this title.

(Pub. L. 92–181, title VIII, §8.0, as added Pub. L. 100–233, title VII, §702, Jan. 6, 1988, 101 Stat. 1686; amended Pub. L. 100–399, title VI, §601(a), Aug. 17, 1988, 102 Stat. 1005; Pub. L. 101–624, title XVIII, §1839, Nov. 28, 1990, 104 Stat. 3834; Pub. L. 104–105, title I, §§101, 102, 108(c)(1), 109(b)(1), Feb. 10, 1996, 110 Stat. 163–165; Pub. L. 110–234, title V, §5406(a), May 22, 2008, 122 Stat. 1158; Pub. L. 110–246, §4(a), title V, §5406(a), June 18, 2008, 122 Stat. 1664, 1920.)

REFERENCES IN TEXT

The Consolidated Farm and Rural Development Act, referred to in par. (9)(B), is title III of Pub. L. 87–128, Aug. 8, 1961, 75 Stat. 307, as amended, which is classified principally to chapter 50 (§1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

The Rural Electrification Act of 1936, referred to in par. (9)(C), is act May 20, 1936, ch. 432, 49 Stat. 1363, which is classified generally to chapter 31 (§901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Par. (9)(C). Pub. L. 110–246, §5406(a), added subpar. (C).

1996—Par. (1)(B)(ii). Pub. L. 104–105, §101, substituted '', excluding the land to which the dwelling is affixed, with a value'' for ''with a purchase price''.

Par. (3)(A). Pub. L. 104–105, §102(1), substituted ''an agricultural mortgage marketing'' for ''a secondary marketing agricultural loan''.

Par. (3)(B). Pub. L. 104–105, §102(2), struck out '', but only with respect to qualified loans described in paragraph (9)(B)'' after ''thereof''.

Par. (9)(B)(i). Pub. L. 104–105, §§108(c)(1), 109(b)(1), substituted ''(d)'' for ''(f)'' and ''2279aa–8'' for ''2279aa–7, 2279aa–8,''.

1990—Par. (3). Pub. L. 101–624, § 1839(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The term 'certified facility' means a secondary marketing agricultural loan facility that is certified under section 2279aa–5 of this title.''

Par. (9). Pub. L. 101–624, § 1839(b), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''The term 'qualified loan' means an obligation that—

''(A) is secured by a fee-simple or leasehold mortgage with status as a first lien on agricultural real estate located in the United States that is not subject to any legal or equitable claims deriving from a preceding fee-simple or leasehold mortgage;

''(B) is an obligation of—

''(i) a citizen or national of the United States or an alien lawfully admitted for permanent residence in the United States; or

''(ii) a private corporation or partnership whose members, stockholders, or partners holding a majority interest in the corporation or partnership are individuals described in clause (i); and

''(C) is an obligation of a person, corporation, or partnership that has training or farming experience that, under criteria established by the Corporation, is sufficient to ensure a reasonable likelihood that the loan will be repaid according to its terms.''

1988—Par. (9)(B)(ii). Pub. L. 100–399 substituted ''holding'' for ''hold'' and struck out ''and'' before ''are''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

STATEMENT OF PURPOSE

Section 701 of subtitle A (§§ 701–705) of title VII of Pub. L. 100–233 provided that: ''It is the purpose of this subtitle [enacting this subchapter, amending sections 2012, 2033, 2072, and 2093 of this title and section 9105 of Title 31, Money and Finance, and enacting provisions set out as a note below]—

''(1) to establish a corporation chartered by the Federal Government;

''(2) to authorize the certification of agricultural mortgage marketing facilities by the corporation;

''(3) to provide for a secondary marketing arrangement for agricultural real estate mortgages that meet the underwriting standards of the corporation—

''(A) to increase the availability of long-term credit to farmers and ranchers at stable interest rates;

''(B) to provide greater liquidity and lending capacity in extending credit to farmers and ranchers; and

''(C) to provide an arrangement for new lending to facilitate capital market investments in providing long-term agricultural funding, including funds at fixed rates of interest; and

''(4) to enhance the ability of individuals in small rural communities to obtain financing for moderate-priced homes.''

GAO STUDIES

Section 704 of subtitle A (§§ 701–705) of title VII of Pub. L. 100–233, as amended by Pub. L. 100–399, title VI, § 603, Aug. 17, 1988, 102 Stat. 1006, directed Comptroller General of United States to conduct studies of (1) implementation of amendments made by subtitle A of title VII of Pub. L. 100–233 (which enacted this subchapter and amended sections 2012, 2033, 2072, and 2093 of this title and section 9105 of Title 31, Money and Finance) by Federal Agricultural Mortgage Corporation and effect of operations of Corporation on producers, Farm Credit System, and other lenders, and capital markets, (2) feasibility and appropriateness of promoting establishment of a secondary market for securities representing interests in, or obligations backed by, pools of agricultural real estate loans for which a guarantee had not been provided by Federal Agricultural Mortgage Corporation, and (3) feasibility of expanding authority granted under amendments made by such subtitle A to authorize sale of securities based on or backed by a trust or pool consisting of loans made to farm-related and rural small businesses, and required, not later than Jan. 6, 1990, Comptroller General to transmit to Congress a report on the studies, including therein such recommendations for administrative action and legislation as might be appropriate.

PART A—ESTABLISHMENT AND ACTIVITIES OF FEDERAL AGRICULTURAL MORTGAGE CORPORATION

§ 2279aa–1. Federal Agricultural Mortgage Corporation

(a) Establishment

(1) In general

There is hereby established a corporation to be known as the Federal Agricultural Mortgage Corporation, which shall be a federally chartered instrumentality of the United States.

(2) Institution within Farm Credit System

The Corporation shall be an institution of the Farm Credit System.

(3) Liability

(A) Corporation

The Corporation shall not be liable for any debt or obligation of any other institution of the Farm Credit System.

(B) System institutions

The Farm Credit System and System institutions (other than the Corporation) shall not be liable for any debt or obligation of the Corporation.

(b) Duties

The Corporation shall—

(1) in consultation with originators, develop uniform underwriting, security appraisal, and repayment standards for qualified loans;

(2) determine the eligibility of agricultural mortgage marketing facilities to contract with the Corporation for the provision of guarantees for specific mortgage pools;

(3) provide guarantees for the timely repayment of principal and interest on securities representing interests in, or obligations backed by, pools of qualified loans; and

(4) purchase qualified loans and issue securities representing interests in, or obligations backed by, the qualified loans, guaranteed for the timely repayment of principal and interest.

(Pub. L. 92–181, title VIII, § 8.1, as added Pub. L. 100–233, title VII, § 702, Jan. 6, 1988, 101 Stat. 1687; amended Pub. L. 104–105, title I, § 103, Feb. 10, 1996, 110 Stat. 163.)

AMENDMENTS

1996—Subsec. (b)(4). Pub. L. 104–105 added par. (4).

§ 2279aa–2. Board of directors

(a) Interim board

(1) Number and appointment

Until the permanent board of directors established in subsection (b) of this section first meets with a quorum of its members present, the Corporation shall be under the management of an interim board of directors composed of 9 members appointed by the President within 90 days after January 6, 1988, as follows:

(A) 3 members appointed from among persons who are representatives of banks, other financial institutions or entities, and insurance companies.

(B) 3 members appointed from among persons who are representatives of the Farm Credit System institutions.

(C) 2 members appointed from among persons who are farmers or ranchers who are not serving, and have not served, as directors or officers of any financial institution or entity, of which not more than 1 may be a stockholder of any Farm Credit System institution.

(D) 1 member appointed from among persons who represent the interests of the general public and are not serving, and have not served, as directors or officers of any financial institution or entity.

(2) Political affiliation

Not more than 5 members of the interim board shall be of the same political party.

(3) Vacancy

A vacancy in the interim board shall be filled in the manner in which the original appointment was made.

(4) Continuation of membership

If—

(A) any member of the interim board who was appointed to such board from among persons who are representatives of banks, other financial institutions or entities, insurance companies, or Farm Credit System institutions ceases to be such a representative; or

(B) any member who was appointed from among persons who are not or have not been directors or officers of any financial institution or entity becomes a director or an officer of any financial institution or entity;

such member may continue as a member for not longer than the 45-day period beginning on the date such member ceases to be such a representative or becomes such a director or officer, as the case may be.

(5) Terms

The members of the interim board shall be appointed for the life of such board.

(6) Quorum

5 members of the interim board shall constitute a quorum.

(7) Chairperson

The President shall designate 1 of the members of the interim board as the chairperson of the interim board.

(8) Meetings

The interim board shall meet at the call of the chairperson or a majority of its members.

(9) Voting common stock

(A) Initial offering

Upon the appointment of sufficient members of the interim board to convene a meeting with a quorum present, the interim board shall arrange for an initial offering of common stock and shall take whatever other actions are necessary to proceed with the operations of the Corporation.

(B) Purchasers

Subject to subparagraph (C), the voting common stock shall be offered to banks, other financial entities, insurance companies, and System institutions under such terms and conditions as the interim board may adopt.

(C) Distribution

The voting stock shall be fairly and broadly offered to ensure that no institution or institutions acquire a disproportionate amount of the total amount of voting common stock outstanding of a class and that capital contributions and issuances of voting common stock for the contributions are fairly distributed between entities eligible to hold class A and class B stock, as provided under section 2279aa–4 of this title.

(10) Termination

The interim board shall terminate when the permanent board of directors established in subsection (b) of this section first meets with a quorum present.

(b) Permanent board

(1) Establishment

Immediately after the date that banks, other financial institutions or entities, insurance companies, and System institutions have subscribed and fully paid for at least $20,000,000 of common stock of the Corporation, the Corporation shall arrange for the election and appointment of a permanent board of directors. After the termination of the interim board, the Corporation shall be under the management of the permanent board.

(2) Composition

The permanent board shall consist of 15 members, of which—

(A) 5 members shall be elected by holders of common stock that are insurance companies, banks, or other financial institutions or entities;

(B) 5 members shall be elected by holders of common stock that are Farm Credit System institutions; and

(C) 5 members shall be appointed by the President, by and with the advice and consent of the Senate—

(i) which members shall not be, or have been, officers or directors of any financial institutions or entities;

(ii) which members shall be representatives of the general public;

(iii) of which members not more than 3 shall be members of the same political party; and

(iv) of which members at least 2 shall be experienced in farming or ranching.

(3) Presidential appointees

The President shall appoint the members of the permanent board referred to in paragraph (2)(C) not later than the later of—

(A) the date referred to in paragraph (1); or

(B) the expiration of the 270-day period beginning on January 6, 1988.

(4) Vacancy

(A) Elected members

Subject to paragraph (6), a vacancy among the members elected to the permanent board in the manner described in subparagraph (A) or (B) of paragraph (2) shall be filled by the permanent board from among persons eligible for election to the position for which the vacancy exists.

(B) Appointed members

A vacancy among the members appointed to the permanent board under paragraph (2)(C) shall be filled in the manner in which the original appointment was made.

(5) Continuation of membership

If—

(A) any member of the permanent board who was appointed or elected to the permanent board from among persons who are representatives of banks, other financial institutions or entities, insurance companies, or Farm Credit System institutions ceases to be such a representative; or

(B) any member who was appointed from persons who are not or have not been directors or officers of any financial institution or entity becomes a director or an officer of any financial institution or entity;

such member may continue as a member for not longer than the 45-day period beginning on the date such member ceases to be such a representative, officer, or employee or becomes such a director or officer, as the case may be.

(6) Terms

(A) Appointed members

The members appointed by the President shall serve at the pleasure of the President.

(B) Elected members

The members elected under subparagraphs (A) and (B) of subsection (b)(2) of this section shall each be elected annually for a term ending on the date of the next annual meeting of the common stockholders of the Corporation and shall serve until their successors are elected and qualified. Any seat on the permanent board that becomes vacant after the annual election of the directors shall be filled by the members of the permanent board from the same category of directors, but only for the unexpired portion of the term.

(C) Vacancy appointment

Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed only for the remainder of such term.

(D) Service after expiration of term

A member may serve after the expiration of the term of the member until the successor of the member has taken office.

(7) Quorum

8 members of the permanent board shall constitute a quorum.

(8) No additional pay for Federal officers or employees

Members of the permanent board who are fulltime officers or employees of the United States shall receive no additional pay by reason of service on the permanent board.

(9) Chairperson

The President shall designate 1 of the members of the permanent board who are appointed by the President as the chairperson of the permanent board.

(10) Meetings

The permanent board shall meet at the call of the chairperson or a majority of its members.

(c) Officers and staff

The Board may appoint, employ, fix the pay of, and provide other allowances and benefits for such officers and employees of the Corporation as the Board determines to be appropriate.

(Pub. L. 92–181, title VIII, § 8.2, as added Pub. L. 100–233, title VII, § 702, Jan. 6, 1988, 101 Stat. 1688; amended Pub. L. 100–399, title VI, § 601(b), Aug. 17, 1988, 102 Stat. 1005.)

AMENDMENTS

1988—Subsecs. (a)(1), (b)(3)(B). Pub. L. 100–399 substituted ''date of the enactment'' for ''effective date'', both of which for purposes of codification were translated as ''January 6, 1988,''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2279aa–3. Powers and duties of Corporation and Board

(a) Guarantees

After the Board has been duly constituted, subject to the other provisions of this subchapter and other commitments and requirements established pursuant to law, the Corporation may provide guarantees on terms and conditions determined by the Corporation of securities issued on the security of, or in participation in, pooled interests in qualified loans.

(b) Duties of Board

(1) In general

The Board shall—

(A) determine the general policies that shall govern the operations of the Corporation;

(B) select, appoint, and determine the compensation of qualified persons to fill such offices as may be provided for in the bylaws of the Corporation; and

(C) assign to such persons such executive functions, powers, and duties as may be pre-

scribed by the bylaws of the Corporation or by the Board.

(2) Executive officers and functions

The persons elected or appointed under paragraph (1)(B) shall be the executive officers of the Corporation and shall discharge the executive functions, powers, and duties of the Corporation.

(c) Powers of Corporation

The Corporation shall be a body corporate and shall have the following powers:

(1) To operate under the direction of its Board.

(2) To issue stock in the manner provided in section 2279aa–4 of this title.

(3) To adopt, alter, and use a corporate seal, which shall be judicially noted.

(4) To provide for a president, 1 or more vice presidents, secretary, treasurer, and such other officers, employees, and agents, as may be necessary, define their duties and compensation levels, all without regard to title 5, and require surety bonds or make other provisions against losses occasioned by acts of such persons.

(5) To provide guarantees in the manner provided under section 2279aa–6 of this title.

(6) To have succession until dissolved by a law enacted by the Congress.

(7) To prescribe bylaws, through the Board, not inconsistent with law, that shall provide for—

(A) the classes of the stock of the Corporation; and

(B) the manner in which—

(i) the stock shall be issued, transferred, and retired;

(ii) the officers, employees, and agents of the Corporation are selected;

(iii) the property of the Corporation is acquired, held, and transferred;

(iv) the commitments and other financial assistance of the Corporation are made;

(v) the general business of the Corporation is conducted; and

(vi) the privileges granted by law to the Corporation are exercised and enjoyed;

(8) To prescribe such standards as may be necessary to carry out this subchapter.

(9) To enter into contracts and make payments with respect to the contracts.

(10) To sue and be sued in its corporate capacity and to complain and defend in any action brought by or against the Corporation in any State or Federal court of competent jurisdiction.

(11) To make and perform contracts, agreements, and commitments with persons and entities both inside and outside of the Farm Credit System.

(12) To acquire, hold, lease, mortgage or dispose of, at public or private sale, real and personal property, purchase or sell any securities or obligations, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to the business of the Corporation.

(13) To purchase, hold, sell, or assign a qualified loan, to issue a guaranteed security, representing an interest in, or an obligation backed by, the qualified loan, and to perform all the functions and responsibilities of an agricultural mortgage marketing facility operating as a certified facility under this subchapter.

(14) To establish, acquire, and maintain affiliates (as such term is defined in section 2279aa–11(e) of this title) under applicable State laws to carry out any activities that otherwise would be performed directly by the Corporation under this subchapter.

(15) To exercise such other incidental powers as are necessary to carry out the powers, duties, and functions of the Corporation in accordance with this subchapter.

(d) Federal Reserve banks as depositaries and fiscal agents

The Federal Reserve banks shall act as depositories for, and as fiscal agents or custodians of, the Corporation.

(e) Access to book-entry system

The Corporation shall have access to the book-entry system of the Federal Reserve System.

(Pub. L. 92–181, title VIII, §8.3, as added Pub. L. 100–233, title VII, §702, Jan. 6, 1988, 101 Stat. 1691; amended Pub. L. 100–399, title VI, §601(c), Aug. 17, 1988, 102 Stat. 1005; Pub. L. 102–237, title V, §503(c), Dec. 13, 1991, 105 Stat. 1877; Pub. L. 102–552, title III, §308(b)(1), Oct. 28, 1992, 106 Stat. 4116; Pub. L. 104–105, title I, §§104, 105, Feb. 10, 1996, 110 Stat. 163.)

AMENDMENTS

1996—Subsec. (c)(13) to (15). Pub. L. 104–105, §104, added par. (13) and redesignated former pars. (13) and (14) as (14) and (15), respectively.

Subsec. (d). Pub. L. 104–105, §105(1), which directed the amendment of subsec. (d) by substituting ''shall act as depositories for, and'' for ''may act as depositories for, or'', was executed by making the substitution for ''may act as depositaries for, or'' to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 104–105, §105(2), substituted ''Corporation shall have access to'' for ''Secretary of the Treasury may authorize the Corporation to use''.

1992—Subsec. (c)(13). Pub. L. 102–552 substituted ''2279aa–11(e)'' for ''2279aa–11(g)''.

1991—Subsec. (c)(13), (14). Pub. L. 102–237 added par. (13) and redesignated former par. (13) as (14).

1988—Subsec. (c)(4). Pub. L. 100–399 substituted ''such persons'' for ''the persons''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2279aa–4. Stock issuance

(a) Voting common stock

(1) Issue

The Corporation shall issue voting common stock having such par value as may be fixed by the Board from time to time. Each share of voting common stock shall be entitled to one vote with rights of cumulative voting at all elections of directors. Voting shall be by classes as described in section 2279aa–2(a)(9) of this title. The stock shall be divided into two classes with the same par value per share.

Class A stock may be held only by entities that are not Farm Credit System institutions and that are entitled to vote for directors specified in section 2279aa–2(b)(2)(A) of this title, including national banking associations (which shall be allowed to purchase and hold such stock). Class B stock may be held only by Farm Credit System institutions that are entitled to vote for directors specified in section 2279aa–2(b)(2)(B) of this title.

(2) Limitation on issue

After the date the permanent board first meets with a quorum of its members present, voting common stock of the Corporation may be issued only to originators and certified facilities.

(3) Authority of Board to establish terms and procedures

The Board shall adopt such terms, conditions, and procedures with regard to the issue of stock under this section as may be necessary, including the establishment of a maximum amount limitation on the number of shares of voting common stock that may be outstanding at any time.

(4) Transferability

Subject to such limitations as the Board may impose, any share of any class of voting common stock issued under this section shall be transferable among the institutions or entities to which shares of such class of common stock may be offered under paragraph (1), except that, as to the Corporation, such shares shall be transferable only on the books of the Corporation.

(5) Maximum number of shares

No stockholder, other than a holder of class B stock, may own, directly or indirectly, more than 33 percent of the outstanding shares of such class of the voting common stock of the Corporation.

(b) Required capital contributions

(1) In general

The Corporation may require each originator and each certified facility to make, or commit to make, such nonrefundable capital contributions to the Corporation as are reasonable and necessary to meet the administrative expenses of the Corporation.

(2) Stock issued as consideration for contribution

The Corporation, from time to time, shall issue to each originator or certified facility voting common stock evidencing any capital contributions made pursuant to this subsection.

(c) Dividends

(1) In general

Such dividends as may be declared by the Board, in the discretion of the Board, shall be paid by the Corporation to the holders of the voting common stock of the Corporation pro rata based on the total number of shares of both classes of stock outstanding.

(2) Reserves requirement

No dividend may be declared or paid by the Board under this section unless the Board determines that adequate provision has been made for the reserve required under section 2279aa–10(c)(1) of this title.

(3) Dividends prohibited while obligations are outstanding

No dividend may be declared or paid by the Board under this section while any obligation issued by the Corporation to the Secretary of the Treasury under section 2279aa–13 of this title remains outstanding.

(d) Nonvoting common stock

The Corporation is authorized to issue nonvoting common stock having such par value as may be fixed by the Board from time to time. Such nonvoting common stock shall be freely transferable, except that, as to the Corporation, such stock shall be transferable only on the books of the Corporation. Such dividends as may be declared by the Board, in the discretion of the Board, may be paid by the Corporation to the holders of the nonvoting common stock of the Corporation, subject to paragraphs (2) and (3) of subsection (c) of this section.

(e) Preferred stock

(1) Authority of Board

The Corporation is authorized to issue nonvoting preferred stock having such par value as may be fixed by the Board from time to time. Such preferred stock issued shall be freely transferable, except that, as to the Corporation, such stock shall be transferred only on the books of the Corporation.

(2) Rights of preferred stock

Subject to paragraphs (2) and (3) of subsection (c) of this section, the holders of the preferred stock shall be entitled to such rate of cumulative dividends, and such holders shall be subject to such redemption or other conversion provisions, as may be provided for at the time of issuance. No dividends shall be payable on any share of common stock at any time when any dividend is due on any share of preferred stock and has not been paid.

(3) Preference on termination of business

In the event of any liquidation, dissolution, or winding up of the business of the Corporation, the holders of the preferred shares of stock shall be paid in full at the par value thereof, plus all accrued dividends, before the holders of the common shares receive any payment.

(Pub. L. 92–181, title VIII, § 8.4, as added Pub. L. 100–233, title VII, § 702, Jan. 6, 1988, 101 Stat. 1692; amended Pub. L. 100–399, title VI, § 601(d), (e), Aug. 17, 1988, 102 Stat. 1005.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–399, § 601(d), in penultimate sentence, inserted ''and'' after ''institutions'' and inserted '', including national banking associations (which shall be allowed to purchase and hold such stock)'' before period at end.

Subsec. (e)(1). Pub. L. 100–399, § 601(e), substituted ''books of the Corporation'' for ''books of the Association''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which

was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2279aa–5. Certification of agricultural mortgage marketing facilities

(a) Eligibility standards

(1) Establishment required

Within 120 days after the date on which the permanent board first meets with a quorum present, the Corporation shall issue standards for the certification of agricultural mortgage marketing facilities (other than the Corporation), including eligibility standards in accordance with paragraph (2).

(2) Minimum requirements

To be eligible to be certified under the standards referred to in paragraph (1), an agricultural mortgage marketing facility (other than the Corporation) shall—

(A) be an institution of the Farm Credit System or a corporation, association, or trust organized under the laws of the United States or of any State;

(B) meet or exceed capital standards established by the Board;

(C) have as one of the purposes of the facility, the sale or resale of securities representing interests in, or obligations backed by, pools of qualified loans that have been provided guarantees by the Corporation;

(D) demonstrate managerial ability with respect to agricultural mortgage loan underwriting, servicing, and marketing that is acceptable to the Corporation;

(E) adopt appropriate agricultural mortgage loan underwriting, appraisal, and servicing standards and procedures that meet or exceed the standards established by the Board;

(F) for purposes of enabling the Corporation to examine the facility, agree to allow officers or employees of the Corporation to have access to all books, accounts, financial records, reports, files, and all other papers, things, or property, of any type whatsoever, belonging to or used by the Corporation that are necessary to facilitate an examination of the operations of the facility in connection with securities, and the pools of qualified loans that back securities, for which the Corporation has provided guarantees; and

(G) adopt appropriate minimum standards and procedures relating to loan administration and disclosure to borrowers concerning the terms and rights applicable to loans for which guarantee is provided, in conformity with uniform standards established by the Corporation.

(3) Nondiscrimination requirement

The standards established under this subsection shall not discriminate between or against Farm Credit System and non-Farm Credit System applicants.

(b) Certification by Corporation

Within 60 days after receiving an application for certification under this section, the Corporation shall certify the facility if the facility meets the standards established by the Corporation under subsection (a)(1) of this section.

(c) Maximum time period for certification

Any certification by the Corporation of an agricultural mortgage marketing facility shall be effective for a period determined by the Corporation of not to exceed 5 years.

(d) Revocation

(1) In general

After notice and an opportunity for a hearing, the Corporation may revoke the certification of an agricultural mortgage marketing facility if the Corporation determines that the facility no longer meets the standards referred to in subsection (a) of this section.

(2) Effect of revocation

Revocation of a certification shall not affect any pool guarantee that has been issued by the Corporation.

(e) Affiliation of FCS institutions with facility

(1) Establishment of affiliate authorized

Notwithstanding any other provision of this chapter, any Farm Credit System institution, acting for such institution alone or in conjunction with one or more other such institutions, may establish and operate, as an affiliate, an agricultural mortgage marketing facility if, within a reasonable time after such establishment, such facility obtains and thereafter retains certification under subsection (b) of this section as a certified facility.

(2) Exclusive agency agreement authorized

Any number of Farm Credit System institutions (other than the Corporation) may enter into an agreement with any certified facility (including an affiliate established under paragraph (1)) to sell the qualified loans of such institutions exclusively to or through the facility.

(Pub. L. 92–181, title VIII, § 8.5, as added Pub. L. 100–233, title VII, § 702, Jan. 6, 1988, 101 Stat. 1694; amended Pub. L. 104–105, title I, § 106, Feb. 10, 1996, 110 Stat. 164.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–105, § 106(1)(A), inserted ''(other than the Corporation)'' after ''facilities''.

Subsec. (a)(2). Pub. L. 104–105, § 106(1)(B), inserted ''(other than the Corporation)'' after ''facility'' in introductory provisions.

Subsec. (e)(1). Pub. L. 104–105, § 106(2), struck out ''(other than the Corporation)'' after ''System institution''.

§ 2279aa–6. Guarantee of qualified loans

(a) Guarantee authorized for certified facilities

(1) In general

Subject to the requirements of this section and on such other terms and conditions as the Corporation shall consider appropriate, the Corporation—

(A) shall guarantee the timely payment of principal and interest on the securities issued by a certified facility that represents interests solely in, or obligations fully backed by, any pool consisting solely of qualified loans which meet the applicable standards established under section 2279aa–8

of this title and which are held by such facility; and

(B) may issue a security, guaranteed as to the timely payment of principal and interest, that represents an interest solely in, or an obligation fully backed by, a pool consisting of qualified loans that—

(i) meet the applicable standards established under section 2279aa–8 of this title; and

(ii) have been purchased and held by the Corporation.

(2) Inability of facility to pay

If the facility is unable to make any payment of principal or interest on any security for which a guarantee has been provided by the Corporation under paragraph (1), the Corporation shall make such payment as and when due in cash, and on such payment shall be subrogated fully to the rights satisfied by such payment.

(3) Power of Corporation

Notwithstanding any other provision of law, the Corporation is empowered, in connection with any guarantee under this subsection, whether before or after any default, to provide by contract with the facility for the extinguishment, on default by the facility, of any redemption, equitable, legal, or other right, title, or interest of the facility in any mortgage or mortgages constituting the pool against which the guaranteed securities are issued. With respect to any issue of guaranteed securities, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such pool shall become the absolute property of the Corporation subject only to the unsatisfied rights of the holders of the securities based on and backed by such pool.

(b) Other responsibilities of and limitations on certified facilities

As a condition for providing any guarantees under this section for securities issued by a certified facility that represent interests in, or obligations backed by, any pool of qualified loans, the Corporation shall require such facility to agree to comply with the following requirements:

(1) Loan default resolution

The facility shall act in accordance with the standards of a prudent institutional lender to resolve loan defaults.

(2) Subrogation of United States and Corporation to interests of facility

The proceeds of any collateral, judgments, settlements, or guarantees received by the facility with respect to any loan in such pool, shall be applied, after payment of costs of collection—

(A) first, to reduce the amount of any principal outstanding on any obligation of the Corporation that was purchased by the Secretary of the Treasury under section 2279aa–13 of this title to the extent the proceeds of such obligation were used to make guarantees in connection with such securities; and

(B) second, to reimburse the Corporation for any such guarantee payments.

(3) Loan servicing

The originator of any loan in such pool shall be permitted to retain the right to service the loan.

(4) Minority participation in public offerings

The facility shall take such steps as may be necessary to ensure that minority owned or controlled investment banking firms, underwriters, and bond counsels throughout the United States have an opportunity to participate to a significant degree in any public offering of securities.

(5) No discrimination against States with borrowers rights

The facility may not refuse to purchase qualified loans originating in States that have established borrowers rights laws either by statute or under the constitution of such States, except that the facility may require discounts or charge fees reasonably related to costs and expenses arising from such statutes or constitutional provisions.

(c) Additional authority of Board

To ensure the liquidity of securities for which guarantees have been provided under this section, the Board shall adopt appropriate standards regarding—

(1) the characteristics of any pool of qualified loans serving as collateral for such securities; and

(2) transfer requirements.

(d) Aggregate principal amounts of qualified loans

(1) Initial year

During the first year after January 6, 1988, the Corporation may not provide guarantees for securities representing interests in, or obligations backed by, qualified loans (other than loans which back securities issued by Farm Credit System institutions for which the Corporation provides a guarantee) in an aggregate principal amount in excess of 2 percent of the total agricultural real estate debt outstanding at the close of the prior calendar year (as published by the Board of Governors of the Federal Reserve System), less all Farmers Home Administration agricultural real estate debt.

(2) Second year

During the year following the year referred to in paragraph (1), the Corporation may not provide guarantees for securities representing interests in, or obligations backed by, qualified loans (other than loans which back securities issued by Farm Credit System institutions for which the Corporation provides a guarantee) in an additional principal amount in excess of 4 percent of the total agricultural real estate debt outstanding at the close of the prior calendar year, less all Farmers Home Administration agricultural real estate debt.

(3) Third year

During the year following the year referred to in paragraph (2), the Corporation may not

provide guarantees for securities representing interests in, or obligations backed by, qualified loans (other than loans which back securities issued by Farm Credit System institutions for which the Corporation provides a guarantee) in an additional principal amount in excess of 8 percent of the total agricultural real estate debt outstanding at the close of the prior calendar year, less all Farmers Home Administration agricultural real estate debt.

(4) Subsequent years

In years subsequent to the year referred to in paragraph (3), the Corporation may provide guarantees without regard to the principal amount of the qualified loans guaranteed.

(e) Purchase of guaranteed securities

(1) Purchase authority

The Corporation (and affiliates) may purchase, hold, and sell any securities guaranteed under this section by the Corporation that represent interests in, or obligations backed by, pools of qualified loans. Securities issued under this section shall have maturities and bear rates of interest as determined by the Corporation.

(2) Issuance of debt obligations

The Corporation (and affiliates) may issue debt obligations solely for the purpose of obtaining amounts for the purchase of any securities under paragraph (1), for the purchase of qualified loans (as defined in section 2279aa(9) of this title), and for maintaining reasonable amounts for business operations (including adequate liquidity) relating to activities under this subsection.

(3) Terms and limitations

(A) Terms

The obligations issued under this subsection shall have maturities and bear rates of interest as determined by the Corporation, and may be redeemable at the option of the Corporation before maturity in the manner stipulated in the obligations.

(B) Requirement

Each obligation shall clearly indicate that the obligation is not an obligation of, and is not guaranteed as to principal and interest by, the Farm Credit Administration, the United States, or any other agency or instrumentality of the United States (other than the Corporation).

(C) Authority

The Corporation may not issue obligations pursuant to paragraph (2) under this subsection while any obligation issued by the Corporation under section 2279aa–13(a) of this title remains outstanding.

(Pub. L. 92–181, title VIII, §8.6, as added Pub. L. 100–233, title VII, §702, Jan. 6, 1988, 101 Stat. 1695; amended Pub. L. 100–399, title VI, §601(f)–(h), Aug. 17, 1988, 102 Stat. 1005; Pub. L. 102–237, title V, §503(d), Dec. 13, 1991, 105 Stat. 1877; Pub. L. 104–105, title I, §§107, 108(a), (c)(2), 109(a), (b)(4), Feb. 10, 1996, 110 Stat. 164, 165; Pub. L. 110–234, title V, §5406(b), May 22, 2008, 122 Stat. 1158; Pub. L. 110–246, §4(a), title V, §5406(b), June 18, 2008, 122 Stat. 1664, 1920.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (a)(1)(A), (B)(i). Pub. L. 110–246, §5406(b), inserted ''applicable'' before ''standards''.

1996—Subsec. (a)(1). Pub. L. 104–105, §107(1), designated part of existing text as subpar. (A) and added subpar. (B).

Subsec. (a)(2). Pub. L. 104–105, §108(c)(2), struck out ''subject to the provisions of subsection (b) of this section'' after ''paragraph (1),''.

Subsec. (b). Pub. L. 104–105, §§108(a), 109(a)(2), redesignated subsec. (d) as (b) and struck out heading and text of former subsec.(b). Text read as follows: ''In the case of any pool referred to in subsection (a) of this section, the Corporation shall—

''(1) provide a guarantee only with respect to an individual pool of qualified loans on application of a certified facility;

''(2) provide a guarantee only if a reserve, or retained subordinated participating interests, in an amount equal to at least 10 percent of the outstanding principal amount of the loans constituting the pool has been established in accordance with this subchapter;

''(3) require that full recourse be taken against reserves and retained subordinated participating interests before any demand be made by the certified facility with respect to the guarantee of the Corporation; and

''(4) ensure the timely receipt of principal and interest due to security or obligation holders only after full recourse has been taken against such reserves and retained subordinated participating interests.''

Subsec. (b)(4) to (6). Pub. L. 104–105, §109(b)(4), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out heading and text of former par. (4). Text read as follows: ''The facility shall comply with the standards adopted by the Board under subsection (c) of this section in establishing and maintaining the pool.''

Subsec. (c). Pub. L. 104–105, §109(a), redesignated subsec. (e) as (c) and struck out heading and text of former subsec. (c) which related to standards requiring diversified pools, including establishment of minimum criteria for pools of qualified loans, provisions to encourage loans to small farms and family farmers, and requirements for congressional review of standards.

Subsec. (d). Pub. L. 104–105, §109(a)(2), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (b).

Subsec. (d)(4) to (7). Pub. L. 104–105, §107(2), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out heading and text of former par. (4). Text read as follows: ''Each loan in the pool shall have been sold to the certified facility without recourse to the originator of such loan (other than recourse to any interest of such originator in a reserve established in connection with such loan or any subordinated participation interest of such originator in such loan).''

Subsecs. (e), (f). Pub. L. 104–105, §109(a)(2), redesignated subsecs. (f) and (g) as (d) and (e), respectively. Former subsec. (e) redesignated (c).

Subsec. (g). Pub. L. 104–105, §109(a)(2), redesignated subsec. (g) as (e).

Subsec. (g)(2). Pub. L. 104–105, §107(3), substituted ''2279aa(9) of this title'' for ''2279aa(9)(B) of this title''.

1991—Subsec. (g). Pub. L. 102–237 added subsec. (g).

1988—Subsec. (a)(1). Pub. L. 100–399, §601(f), substituted ''represents interests solely in, or obligations fully backed by, any pool consisting solely of qualified loans which meet the standards established under section 2279aa–8 of this title and which are'' for ''represents interests in, or obligations backed by, any pool of qualified loans''.

Subsec. (e). Pub. L. 100–399, §601(g), redesignated par. (3) as (2) and struck out former par. (2) which read as

follows: ''registration requirements (if any) with respect to such securities; and''.

Subsec. (f)(1). Pub. L. 100–399, § 601(h), substituted ''date of the enactment'' for ''effective date'', both of which for purposes of codification were translated as ''January 6, 1988,''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2279aa–7. Repealed. Pub. L. 104–105, title I, § 108(b), Feb. 10, 1996, 110 Stat. 164

Section, Pub. L. 92–181, title VIII, § 8.7, as added Pub. L. 100–233, title VII, § 702, Jan. 6, 1988, 101 Stat. 1698, related to reserves and subordinated participation interests of certified facilities, including provisions relating to cash contributions, retention of subordinated participation interests, additional requirements relating to reserves under section 2279aa–6(b)(2) of this title, and authority of Board of Directors of Federal Agricultural Mortgage Corporation to establish other policies and procedures.

§ 2279aa–8. Standards for qualified loans

(a) Standards

(1) In general

The Corporation shall establish underwriting, security appraisal, and repayment standards for qualified loans taking into account the nature, risk profile, and other differences between different categories of qualified loans.

(2) Supervision, examination, and report of condition

The standards shall be subject to the authorities of the Farm Credit Administration under section 2279aa–11 of this title.

(3) Mortgage loans

In establishing standards for qualified loans, the Corporation shall confine corporate operations, so far as practicable, to mortgage loans that are deemed by the Board to be of such quality so as to meet, substantially and generally, the purchase standards imposed by private institutional mortgage investors.

(b) Minimum criteria

To further the purpose of this subchapter to provide a new source of long-term fixed rate financing to assist farmers and ranchers to purchase agricultural real estate, the standards established by the Board pursuant to subsection (a) of this section with respect to loans secured by agricultural real estate shall, at a minimum—

(1) provide that no agricultural mortgage loan with a loan-to-value ratio in excess of 80 percent may be treated as a qualified loan;

(2) require each borrower to demonstrate sufficient cash-flow to adequately service the agricultural mortgage loan;

(3) contain sufficient documentation standards;

(4) contain adequate standards to protect the integrity of the appraisal process with respect to any agricultural mortgage loans;

(5) contain adequate standards to ensure that the farmer or rancher is or will be actively engaged in agricultural production, and require the borrower to certify to the originator that the borrower intends to continue agricultural production on the farm or ranch involved;

(6) minimize speculation in agricultural real estate for nonagricultural purposes; and

(7) in establishing the value of agricultural real estate, consider the purpose for which the real estate is taxed.

(c) Loan amount limitation

(1) In general

A loan secured by agricultural real estate may not be treated as a qualified loan if the principal amount of such loan exceeds $2,500,000, adjusted for inflation, except as provided in paragraph (2).

(2) Acreage exception

Paragraph (1) shall not apply with respect to any agricultural mortgage loan described in such paragraph if such loan is secured by agricultural real estate that, in the aggregate, comprises not more than 1,000 acres.

(d) Nondiscrimination requirement

The standards established under subsection (a) of this section shall not discriminate against small originators or small agricultural mortgage loans that are at least $50,000. The Board shall promote and encourage the inclusion of qualified loans for small farms and family farmers in the agricultural mortgage secondary market.

(Pub. L. 92–181, title VIII, § 8.8, as added Pub. L. 100–233, title VII, § 702, Jan. 6, 1988, 101 Stat. 1700; amended Pub. L. 100–399, title VI, § 601(i), Aug. 17, 1988, 102 Stat. 1005; Pub. L. 104–105, title I, § 110, Feb. 10, 1996, 110 Stat. 165; Pub. L. 110–234, title V, § 5406(c), May 22, 2008, 122 Stat. 1158; Pub. L. 110–246, § 4(a), title V, § 5406(c), June 18, 2008, 122 Stat. 1664, 1920.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–246, § 5406(c)(1), added pars. (1) and (2), designated last sentence as par. (3) and inserted heading, and struck out former first sentence which read as follows: ''Not later than 120 days after the appointment and election of the permanent Board, the Corporation, in consultation with originators, shall establish uniform underwriting, security appraisal, and repayment standards for qualified loans.''

Subsec. (b). Pub. L. 110–246, § 5406(c)(2)(A), inserted ''with respect to loans secured by agricultural real estate'' after ''subsection (a) of this section'' in introductory provisions.

Subsec. (b)(5). Pub. L. 110–246, § 5406(c)(2)(B), substituted ''ensure that the farmer or rancher'' for ''ensure that the borrower'' and ''farm or ranch'' for ''site''.

Subsec. (c)(1). Pub. L. 110–246, § 5406(c)(3), inserted ''secured by agricultural real estate'' after ''A loan''.

Subsecs. (d), (e). Pub. L. 110–246, § 5406(c)(4), (5), redesignated subsec. (e) as (d) and struck out former subsec. (d). Prior to amendment, text read as follows: ''No standard prescribed under subsection (a) of this section shall take effect before the later of—

''(1) the end of a period consisting of 30 legislative days and beginning on the date such standards are submitted to the Congress; or

''(2) the end of a period consisting of 90 calendar days and beginning on such date.''

1996—Subsec. (e). Pub. L. 104–105 inserted at end ''The Board shall promote and encourage the inclusion of qualified loans for small farms and family farmers in the agricultural mortgage secondary market.''

1988—Subsec. (a). Pub. L. 100–399 inserted ''permanent'' after ''appointment and election of the''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2279aa–9. Exemption from restructuring and borrowers rights provisions for pooled loans

(a) Restructuring

Notwithstanding any other provision of law, sections 2202, 2202a, 2202b, 2202c, 2202d, and 2219a of this title shall not apply to any loan included in a pool of qualified loans backing securities or obligations for which the Corporation provides guarantee. The loan servicing standards established by the Corporation shall be patterned after similar standards adopted by other federally sponsored secondary market facilities.

(b) Borrowers rights

At the time of application for a loan (as defined in section 2202a(a)(5) of this title), originators that are Farm Credit System institutions shall give written notice to each applicant of the terms and conditions of the loan, setting forth separately terms and conditions for pooled loans and loans that are not pooled. This notice shall include a statement, if applicable, that the loan may be pooled and that, if pooled, sections 2202, 2202a, 2202b, 2202c, 2202d, and 2219a of this title shall not apply. This notice also shall inform the applicant that he or she has the right not to have the loan pooled. Within 3 days from the time of commitment, an applicant has the right to refuse to allow the loan to be pooled, thereby retaining rights under sections 2202, 2202a, 2202b, 2202c, 2202d, and 2219a of this title, if applicable.

(Pub. L. 92–181, title VIII, § 8.9, as added Pub. L. 100–233, title VII, § 702, Jan. 6, 1988, 101 Stat. 1701; amended Pub. L. 100–399, title VI, § 601(j), Aug. 17, 1988, 102 Stat. 1005; Pub. L. 104–105, title II, § 208(b), Feb. 10, 1996, 110 Stat. 174.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–105 inserted ''(as defined in section 2202a(a)(5) of this title)'' after ''application for a loan''.

1988—Subsecs. (a), (b). Pub. L. 100–399 substituted ''2202d, and 2219a'' for ''and 2219b'' wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2279aa–10. Funding for guarantee; reserves of Corporation

(a) Guarantee

The Corporation shall provide guarantees for securities representing interests in, or obligations backed by, pools of qualified loans through commitments issued by the Corporation providing for guarantees.

(b) Guarantee fees

(1) Initial fee

At the time a guarantee is issued by the Corporation, the Corporation shall assess the certified facility a fee of not more than ½ of 1 percent of the initial principal amount of each pool of qualified loans.

(2) Annual fees

Beginning in the second year after the date the guarantee is issued under paragraph (1), the Corporation may, at the end of each year, assess the certified facility an annual fee of not more than ½ of 1 percent of the principal amount of the loans then constituting the pool.

(3) Determination of amount

The Corporation shall establish such fees on the amount of risk incurred by the Corporation in providing the guarantees with respect to which such fee is assessed, as determined by the Corporation. Fees assessed under paragraphs (1) and (2) shall be established on an actuarially sound basis.

(4) Review by GAO

The Comptroller General of the United States may review, and submit to the Congress a report regarding, the actuarial soundness and reasonableness of the fees established by the Corporation under this subsection.

(c) Corporation reserve against guarantees losses required

(1) In general

So much of the fees assessed under this section as the Board determines to be necessary shall be set aside by the Corporation in a segregated account as a reserve against losses arising out of the guarantee activities of the Corporation.

(2) Exhaustion of reserve required

The Corporation may not issue obligations to the Secretary of the Treasury under section 2279aa–13 of this title in order to meet the obligations of the Corporation with respect to any guarantees provided under this subchapter until the reserve established under paragraph (1) has been exhausted.

(d) Fees to cover administrative costs authorized

The Corporation may impose charges or fees in reasonable amounts in connection with the administration of its activities under this subchapter to recover its costs for performing such administration.

(Pub. L. 92–181, title VIII, § 8.10, as added Pub. L. 100–233, title VII, § 702, Jan. 6, 1988, 101 Stat. 1701; amended Pub. L. 104–316, title I, § 106(f), Oct. 19, 1996, 110 Stat. 3831.)

AMENDMENTS

1996—Subsec. (b)(4). Pub. L. 104–316 substituted ''Review'' for ''Annual review'' in heading and ''may review'' for ''shall annually review'' in text.

§ 2279aa–11. Supervision, examination, and report of condition

(a) Regulation

(1) Authority

Notwithstanding any other provision of this chapter, the Farm Credit Administration shall have the authority to provide, acting through the Office of Secondary Market Oversight—

(A) for the examination of the Corporation and its affiliates; and

(B) for the general supervision of the safe and sound performance of the powers, functions, and duties vested in the Corporation and its affiliates by this subchapter, including through the use of the authorities granted to the Farm Credit Administration under—

(i) part C of subchapter V of this chapter; and

(ii) beginning 6 months after December 13, 1991, section 2252(a)(9) of this title.

(2) Considerations

In exercising its authority pursuant to this section, the Farm Credit Administration shall consider—

(A) the purposes for which the Corporation was created;

(B) the practices appropriate to the conduct of secondary markets in agricultural loans; and

(C) the reduced levels of risk associated with appropriately structured secondary market transactions.

(3) Office of Secondary Market Oversight

(A) Not later than 180 days after December 13, 1991, the Farm Credit Administration Board shall establish within the Farm Credit Administration the Office of Secondary Market Oversight.

(B) The Farm Credit Administration Board shall carry out the authority set forth in this section through the Office of Secondary Market Oversight.

(C) The Office of Secondary Market Oversight shall be managed by a full-time Director who shall be selected by and report to the Farm Credit Administration Board.

(b) Examinations and audits

(1) In general

The financial transactions of the Corporation shall be examined by examiners of the Farm Credit Administration in accordance with the principles and procedures applicable to commercial corporate transactions under such rules and regulations as may be prescribed by the Administration.

(2) Frequency

The examinations shall occur at such times as the Farm Credit Administration Board may determine, but in no event less than once each year.

(3) Access

The examiners shall—

(A) have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit; and

(B) be afforded full access for verifying transactions with certified facilities and other entities with whom the Corporation conducts transactions.

(c) Annual report of condition

The Corporation shall make and publish an annual report of condition as prescribed by the Farm Credit Administration. Each report shall contain financial statements prepared in accordance with generally accepted accounting principles and contain such additional information as the Farm Credit Administration may by regulation prescribe. The financial statements of the Corporation shall be audited by an independent public accountant.

(d) FCA assessments to cover costs

The Farm Credit Administration shall assess the Corporation for the cost to the Administration of any regulatory activities conducted under this section, including the cost of any examination.

(e) "Affiliate" defined

As used in this subchapter, the term ''affiliate'' shall mean an entity effectively controlled or owned by the Corporation, except that such term shall not include an originator (as defined in section 2279aa(7) of this title).

(f) Employees and personnel

The Farm Credit Administration Board shall ensure that—

(1) the Office of Secondary Market Oversight has access to a sufficient number of qualified and trained employees to adequately supervise the secondary market activities of the Corporation; and

(2) the supervision of the powers, functions, and duties of the Corporation is performed, to the extent practicable, by personnel who are not responsible for the supervision of the banks and associations of the Farm Credit System.

(Pub. L. 92–181, title VIII, § 8.11, as added Pub. L. 100–233, title VII, § 702, Jan. 6, 1988, 101 Stat. 1702; amended Pub. L. 101–624, title XVIII, § 1840, Nov. 28, 1990, 104 Stat. 3835; Pub. L. 102–237, title V, § 503(a), Dec. 13, 1991, 105 Stat. 1870; Pub. L. 102–552, title III, § 308(b)(2), Oct. 28, 1992, 106 Stat. 4116; Pub. L. 104–105, title I, § 111, Feb. 10, 1996, 110 Stat. 165.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–105 substituted ''section 2279aa(7) of this title'' for ''paragraphs (3) and (7), respectively, of section 2279aa of this title'' and struck out ''a certified facility or'' before ''an originator''.

1992—Subsec. (a)(1)(B)(ii). Pub. L. 102–552 substituted ''December 13, 1991'' for ''the date of enactment of this section''.

1991—Subsec. (a)(1). Pub. L. 102–237, § 503(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read

as follows: ''Notwithstanding any other provision of this chapter, the Farm Credit Administration shall have the authority to—

''(A) provide for the examination of the condition of the Corporation and its affiliates; and

''(B) provide for the general supervision of the safe and sound performance of the powers, functions, and duties vested in the Corporation and its affiliates by this subchapter, including through the use of the enforcement powers of the Farm Credit Administration under part C of subchapter V of this chapter.''

Subsec. (a)(3). Pub. L. 102–237, § 503(a)(2), added par. (3).

Subsec. (f). Pub. L. 102–237, § 503(a)(3), added subsec. (f).

1990—Subsec. (a)(1). Pub. L. 101–624, § 1840(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Notwithstanding any other provision of this chapter, the regulatory authority of the Farm Credit Administration with respect to the Corporation shall be confined to—

''(A) providing for the examination of the condition of the Corporation; and

''(B) providing for the general supervision of the safe and sound performance of the powers, functions, and duties vested in the Corporation by this subchapter, including through the use of the enforcement powers of the Farm Credit Administration under part C of subchapter V of this chapter.''

Subsec. (e). Pub. L. 101–624, § 1840(2), added subsec. (e).

§ 2279aa–12. Securities in credit enhanced pools

(a) Federal laws

(1) Applicability of certain Federal securities laws

For purposes of section 77c(a)(2) of title 15, no security representing an interest in, or obligations backed by, a pool of qualified loans for which guarantees have been provided by the Corporation shall be deemed to be a security issued or guaranteed by a person controlled or supervised by, or acting as an instrumentality of, the Government of the United States. No such security shall be deemed to be a ''government security'' for purposes of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] or for purposes of the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.].

(2) No full faith and credit of the United States

Each security for which credit enhancement has been provided by the Corporation shall clearly indicate that the security is not an obligation of, and is not guaranteed as to principal or interest by, the Farm Credit Administration, the United States, or any other agency or instrumentality of the United States (other than the Corporation).

(b) State securities laws

(1) General exemption

Any security or obligation that has been provided a guarantee by the Corporation shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by, or guaranteed as to principal and interest by, the United States or any agency or instrumentality of the United States.

(2) State override

The provisions of paragraph (1) shall not be applicable to any State that, during the 8-year period beginning on January 6, 1988, enacts a law that—

(A) specifically refers to this subsection; and

(B) expressly provides that paragraph (1) shall not apply to the State.

(c) Authorized investments

(1) In general

Securities representing an interest in, or obligations backed by, pools of qualified loans with respect to which the Corporation has provided a guarantee shall be authorized investments of any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State to the same extent that the person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold, or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality of the United States. Such securities or obligations may be accepted as security for all fiduciary, trust, and public funds, the investment or deposits of which shall be under the authority and control of the United States or any State or any officers of either.

(2) State limitations on purchase, holding, or investment

If State law limits the purchase, holding, or investment in obligations issued by the United States by the person, trust, corporation, partnership, association, business trust, or business entity, securities or obligations of a certified facility issued on which the Corporation has provided a guarantee shall be considered to be obligations issued by the United States for purposes of the limitation.

(3) Nonapplicability of provisions

(A) Subsequent State law

Paragraphs (1) and (2) shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity, or class thereof, in any State that, prior to the expiration of the 8-year period beginning on January 6, 1988, enacts a law that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in the securities by any person, trust, corporation, partnership, association, business trust, or business entity, or class thereof, than is provided in paragraphs (1) and (2).

(B) Effect of subsequent State law

The enactment by any State of a law of the type described in subparagraph (A) shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior to the effective date of the law and shall not require the sale or other disposition of any securities acquired prior to the effective date of the law.

(d) State usury laws superseded

A provision of the Constitution or law of any State shall not apply to an agricultural loan

made by an originator or a certified facility in accordance with this subchapter for sale to the Corporation or to a certified facility for inclusion in a pool for which the Corporation has provided, or has committed to provide, a guarantee, if the loan, not later than 180 days after the date the loan was made, is sold to the Corporation or included in a pool for which the Corporation has provided a guarantee, if the provision—

(1) limits the rate or amount of interest, discount points, finance charges, or other charges that may be charged, taken, received, or reserved by an agricultural lender or a certified facility; or

(2) limits or prohibits a prepayment penalty (either fixed or declining), yield maintenance, or make-whole payment that may be charged, taken, or received by an agricultural lender or a certified facility in connection with the full or partial payment of the principal amount due on a loan by a borrower in advance of the scheduled date for the payment under the terms of the loan, otherwise known as a prepayment of the loan principal.

(Pub. L. 92–181, title VIII, § 8.12, as added Pub. L. 100–233, title VII, § 702, Jan. 6, 1988, 101 Stat. 1703; amended Pub. L. 100–399, title VI, § 601(k), (*l*), Aug. 17, 1988, 102 Stat. 1006; Pub. L. 104–105, title I, § 112, Feb. 10, 1996, 110 Stat. 165.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (a)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Investment Company Act of 1940, referred to in subsec. (a)(1), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–105 added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: ''Any provision of the constitution or law of any State which expressly limits the rate or amount of interest, discount points, finance charges, or other charges that may be charged, taken, received, or reserved by agricultural lenders or certified facilities shall not apply to any agricultural loan made by an originator or a certified facility in accordance with this subchapter that is included in a pool for which the Corporation has provided a guarantee.''

1988—Subsec. (a)(1). Pub. L. 100–399, § 601(k), inserted '', or obligations backed by,'' before ''a pool''.

Subsec. (b)(2). Pub. L. 100–399, § 601(*l*), substituted ''date of the enactment'' for ''effective date'' both of which for purposes of codification was translated as ''January 6, 1988,''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§ 2279aa–13. Authority to issue obligations to cover guarantee losses of Corporation

(a) Sale of obligations to Treasury

(1) In general

Subject to the limitations contained in section 2279aa–10(c) of this title and the requirement of paragraph (2), the Corporation may issue obligations to the Secretary of the Treasury the proceeds of which may be used by the Corporation solely for the purpose of fulfilling the obligations of the Corporation under any guarantee provided by the Corporation under this subchapter.

(2) Certification

The Secretary of the Treasury may purchase obligations of the Corporation under paragraph (1) only if the Corporation certifies to the Secretary that—

(A) the requirements of section 2279aa–10(c) of this title have been fulfilled; and

(B) the proceeds of the sale of such obligations are needed to fulfill the obligations of the Corporation under any guarantee provided by the Corporation under this subchapter.

(b) Expeditious transaction required

Not later than 10 business days after receipt by the Secretary of the Treasury of any certification by the Corporation under subsection (a)(2) of this section, the Secretary of the Treasury shall purchase obligations issued by the Corporation in an amount determined by the Corporation to be sufficient to meet the guarantee liabilities of the Corporation.

(c) Limitation on amount of outstanding obligations

The aggregate amount of obligations issued by the Corporation under subsection (a)(1) of this section which may be held by the Secretary of the Treasury at any time (as determined by the Secretary) shall not exceed $1,500,000,000.

(d) Terms of obligation

(1) Interest

Each obligation purchased by the Secretary of the Treasury shall bear interest at a rate determined by the Secretary, taking into consideration the average rate on outstanding marketable obligations of the United States as of the last day of the last calendar month ending before the date of the purchase of such obligation.

(2) Redemption

The Secretary of the Treasury shall require that such obligations be repurchased by the Corporation within a reasonable time.

(e) Coordination with title 31

(1) Authority to use proceeds from sale of Treasury securities

For the purpose of purchasing obligations of the Corporation, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale by the Secretary of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include such purchases.

(2) Treatment of transactions

All purchases and sales by the Secretary of the Treasury of obligations issued by the Corporation under this section shall be treated as public debt transactions of the United States.

(f) Authorization of appropriations

There is authorized to be appropriated to the Secretary of the Treasury $1,500,000,000, without fiscal year limitation, to carry out the purposes of this subchapter.

(Pub. L. 92–181, title VIII, § 8.13, as added Pub. L. 100–233, title VII, § 702, Jan. 6, 1988, 101 Stat. 1704; amended Pub. L. 104–105, title I, § 109(b)(2), Feb. 10, 1996, 110 Stat. 165.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–105 substituted ''section'' for ''sections 2279aa–6(b) and'' in pars. (1) and (2)(A).

§ 2279aa–14. Federal jurisdiction

Notwithstanding section 1349 of title 28 or any other provision of law:

(1) The Corporation shall be considered an agency under sections 1345 and 1442 of such title.

(2) All civil actions to which the Corporation is a party shall be deemed to arise under the laws of the United States and, to the extent applicable, shall be deemed to be governed by Federal common law. The district courts of the United States shall have original jurisdiction of all such actions, without regard to amount of value.

(3) Any civil or other action, case, or controversy in a court of a State or any court, other than a district court of the United States, to which the Corporation is a party may at any time before trial be removed by the Corporation, without the giving of any bond or security—

(A) to the District Court of the United States for the district and division embracing the place where the same is pending; or

(B) if there is no such district court, to the District Court of the United States for the district in which the principal office of the Corporation is located;

by following any procedure for removal for causes in effect at the time of such removal.

(4) No attachment or execution shall be issued against the Corporation or any of the property of the Corporation before final judgment in any Federal, State, or other court.

(Pub. L. 92–181, title VIII, § 8.14, as added Pub. L. 100–233, title VII, § 702, Jan. 6, 1988, 101 Stat. 1705.)

PART B—REGULATION OF FINANCIAL SAFETY AND SOUNDNESS OF FEDERAL AGRICULTURAL MORTGAGE CORPORATION

§ 2279bb. Definitions

For purposes of this part:

(1) Compensation

The term ''compensation'' means any payment of money or the provision of any other thing of current or potential value in connection with employment.

(2) Core capital

The term ''core capital'' means, with respect to the Corporation, the sum of the following (as determined in accordance with generally accepted accounting principles):

(A) The par value of outstanding common stock.

(B) The par value of outstanding preferred stock.

(C) Paid-in capital.

(D) Retained earnings.

(3) Director

The term ''Director'' means the Director of the Office of Secondary Market Oversight of the Farm Credit Administration, selected under section 2279aa–11(a)(3) of this title.

(4) Office

The term ''Office'' means the Office of Secondary Market Oversight of the Farm Credit Administration, established in section 2279aa–11(a) of this title.

(5) Regulatory capital

The term ''regulatory capital'' means, with respect to the Corporation, the core capital of the Corporation plus an allowance for losses and guarantee claims, as determined in accordance with generally accepted accounting principles.

(6) State

The term ''State'' means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(Pub. L. 92–181, title VIII, § 8.31, as added Pub. L. 102–237, title V, § 503(b)(2), Dec. 13, 1991, 105 Stat. 1871.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 2279bb–1. Risk-based capital levels

(a) Risk-based capital test

Not sooner than the expiration of the 3-year period beginning on February 10, 1996, the Director of the Office of Secondary Market Oversight shall, by regulation, establish a risk-based capital test under this section for the Corporation. When applied to the Corporation, the risk-based capital test shall determine the amount of regulatory capital for the Corporation that is sufficient for the Corporation to maintain positive capital during a 10-year period in which both of the following circumstances occur:

(1) Credit risk

(A) In general

With respect to securities representing an interest in, or obligations backed by, a pool of qualified loans owned or guaranteed by the Corporation and other obligations of the Corporation, losses on the underlying qualified loans occur throughout the United States at a rate of default and severity (based on any measurements of default reasonably related to prevailing industry practice in determining capital adequacy) rea-

sonably related to the rate and severity that occurred in contiguous areas of the United States containing an aggregate of not less than 5 percent of the total population of the United States that, for a period of not less than 2 years (as established by the Director), experienced the highest rates of default and severity of agricultural mortgage losses, in comparison with such rates of default and severity of agricultural mortgage losses in other such areas for any period of such duration, as determined by the Director.

(B) Rural utility loans

With respect to securities representing an interest in, or obligation backed by, a pool of qualified loans described in section 2279aa(9)(C) of this title owned or guaranteed by the Corporation, losses occur at a rate of default and severity reasonably related to risks in electric and telephone facility loans (as applicable), as determined by the Director.

(2) Interest rate risk

Interest rates on Treasury obligations of varying terms increase or decrease over the first 12 months of such 10-year period by not more than the lesser of (A) 50 percent (with respect to the average interest rates on such obligations during the 12-month period preceding the 10-year period), or (B) 600 basis points, and remain at such level for the remainder of the period. This paragraph may not be construed to require the Director to determine interest rate risk under this paragraph based on the interest rates for various long-term and short-term obligations all increasing or all decreasing concurrently.

(b) Considerations

(1) Establishment of test

In establishing the risk-based capital test under subsection (a) of this section—

(A) the Director shall take into account appropriate distinctions based on various types of agricultural mortgage products, varying terms of Treasury obligations, and any other factors the Director considers appropriate;

(B) the Director shall conform loan data used in determining credit risk to the minimum geographic and commodity diversification standards applicable to pools of qualified loans eligible for guarantee;

(C) the Director may take into account retained subordinated participating interests under section 2279aa–6(b)(2) of this title (as in effect before February 10, 1996);

(D) the Director may take into account other methods or tests to determine credit risk developed by the Corporation before December 13, 1991; and

(E) the Director shall consider any other information submitted by the Corporation in writing during the 180-day period beginning on December 13, 1991.

(2) Revising test

Upon the expiration of the 8-year period beginning on December 13, 1991, the Director shall examine the risk-based capital test under subsection (a) of this section and may revise the test. In making examinations and revisions under this paragraph, the Director shall take into account that, before December 13, 1991, the Corporation has not issued guarantees for pools of qualified loans. To the extent that the revision of the risk-based capital test causes a change in the classification of the Corporation within the enforcement levels established under section 2279bb–4 of this title, the Director shall waive the applicability of any additional enforcement actions available because of such change for a reasonable period of time, to permit the Corporation to increase the amount of regulatory capital of the Corporation accordingly.

(c) Risk-based capital level

For purposes of this part, the risk-based capital level for the Corporation shall be equal to the sum of the following amounts:

(1) Credit and interest rate risk

The amount of regulatory capital determined by applying the risk-based capital test under subsection (a) of this section to the Corporation, adjusted to account for foreign exchange risk.

(2) Management and operations risk

To provide for management and operations risk, 30 percent of the amount of regulatory capital determined by applying the risk-based capital test under subsection (a) of this section to the Corporation.

(d) Specified contents

(1) In general

The regulations establishing the risk-based capital test under this section shall—

(A) be issued by the Director for public comment in the form of a notice of proposed rulemaking, to be first published after the expiration of the period referred to in subsection (a) of this section; and

(B) contain specific requirements, definitions, methods, variables, and parameters used under the risk-based capital test and in implementing the test (such as loan loss severity, float income, loan-to-value ratios, taxes, yield curve slopes, default experience, prepayment rates, and performance of pools of qualified loans).

(2) Specificity

The regulations referred to in paragraph (1) shall be sufficiently specific to permit an individual other than the Director to apply the test in the same manner as the Director.

(e) Availability of model

The Director shall make copies of the statistical model or models used to implement the risk-based capital test under this section available for public acquisition and may charge a reasonable fee for such copies.

(Pub. L. 92–181, title VIII, § 8.32, as added Pub. L. 102–237, title V, § 503(b)(2), Dec. 13, 1991, 105 Stat. 1871; amended Pub. L. 102–552, title III, § 308(b)(3), Oct. 28, 1992, 106 Stat. 4116; Pub. L. 104–105, title I, §§ 109(b)(3), 113, Feb. 10, 1996, 110 Stat. 165, 166; Pub. L. 110–234, title V, § 5406(d), May 22, 2008, 122

Stat. 1159; Pub. L. 110–246, § 4(a), title V, § 5406(d), June 18, 2008, 122 Stat. 1664, 1920.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–246, § 5406(d), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1996—Subsec. (a). Pub. L. 104–105, § 113(1), in first sentence, substituted ''Not sooner than the expiration of the 3-year period beginning on February 10, 1996,'' for ''Not later than the expiration of the 2-year period beginning on December 13, 1991,''.

Subsec. (b)(1)(C). Pub. L. 104–105, § 109(b)(3), substituted ''Director may'' for ''Director shall'' and inserted before semicolon at end ''(as in effect before February 10, 1996)''.

Subsec. (b)(2). Pub. L. 104–105, § 113(2), substituted ''8-year'' for ''5-year'' in first sentence.

Subsec. (d). Pub. L. 104–105, § 113(3), designated first sentence of existing provisions as par. (1), inserted heading, added subpar. (A), and designated part of first sentence as subpar. (B), designated second sentence of existing provisions as par. (2), inserted heading, and substituted ''The regulations referred to in paragraph (1) shall'' for ''The regulations shall''.

1992—Subsecs. (a), (b)(1)(D). Pub. L. 102–552, § 308(b)(3)(A), substituted ''December 13, 1991'' for ''the date of the enactment of this section''.

Subsec. (b)(1)(E). Pub. L. 102–552, § 308(b)(3)(B), substituted ''December 13, 1991'' for ''the date of the enactment of such Act''.

Subsec. (b)(2). Pub. L. 102–552, § 308(b)(3)(A), substituted ''December 13, 1991'' for ''the date of the enactment of this section'' in two places.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 2279bb–2. Minimum capital level

(a) In general

Except as provided in subsection (b) of this section, for purposes of this part, the minimum capital level for the Corporation shall be an amount of core capital equal to the sum of

(1) 2.75 percent of the aggregate on-balance sheet assets of the Corporation, as determined in accordance with generally accepted accounting principles; and

(2) 0.75 percent of the aggregate off-balance sheet obligations of the Corporation, which, for the purposes of this part, shall include

(A) the unpaid principal balance of outstanding securities that are guaranteed by the Corporation and backed by pools of qualified loans;

(B) instruments that are issued or guaranteed by the Corporation and are substantially equivalent to instruments described in subparagraph (A); and

(C) other off-balance sheet obligations of the Corporation.

(b) Transition period

(1) In general

For purposes of this part, the minimum capital level for the Corporation—

(A) prior to January 1, 1997, shall be the amount of core capital equal to the sum of—

(i) 0.45 percent of aggregate off-balance sheet obligations of the Corporation;

(ii) 0.45 percent of designated on-balance sheet assets of the Corporation, as determined under paragraph (2); and

(iii) 2.50 percent of on-balance sheet assets of the Corporation other than assets designated under paragraph (2);

(B) during the 1-year period ending December 31, 1997, shall be the amount of core capital equal to the sum of—

(i) 0.55 percent of aggregate off-balance sheet obligations of the Corporation;

(ii) 1.20 percent of designated on-balance sheet assets of the Corporation, as determined under paragraph (2); and

(iii) 2.55 percent of on-balance sheet assets of the Corporation other than assets designated under paragraph (2);

(C) during the 1-year period ending December 31, 1998, shall be the amount of core capital equal to—

(i) if the Corporation's core capital is not less than $25,000,000 on January 1, 1998, the sum of—

(I) 0.65 percent of aggregate off-balance sheet obligations of the Corporation;

(II) 1.95 percent of designated on-balance sheet assets of the Corporation, as determined under paragraph (2); and

(III) 2.65 percent of on-balance sheet assets of the Corporation other than assets designated under paragraph (2); or

(ii) if the Corporation's core capital is less than $25,000,000 on January 1, 1998, the amount determined under subsection (a) of this section; and

(D) on and after January 1, 1999, shall be the amount determined under subsection (a) of this section.

(2) Designated on-balance sheet assets

For purposes of this subsection, the designated on-balance sheet assets of the Corporation shall be—

(A) the aggregate on-balance sheet assets of the Corporation acquired under section 2279aa–6(e) of this title; and

(B) the aggregate amount of qualified loans purchased and held by the Corporation under section 2279aa–3(c)(13) of this title.

(Pub. L. 92–181, title VIII, § 8.33, as added Pub. L. 102–237, title V, § 503(b)(2), Dec. 13, 1991, 105 Stat. 1873; amended Pub. L. 104–105, title I, § 114, Feb. 10, 1996, 110 Stat. 166.)

AMENDMENTS

1996—Pub. L. 104–105 amended section generally, substituting present provisions for provisions relating to minimum capital level, including general provisions, provisions relating to 18-month transition, and provisions relating to linked portfolio assets.

§ 2279bb–3. Critical capital level

For purposes of this part, the critical capital level for the Corporation shall be an amount of core capital equal to 50 percent of the total min-

imum capital amount determined under section 2279bb–2 of this title.

(Pub. L. 92–181, title VIII, § 8.34, as added Pub. L. 102–237, title V, § 503(b)(2), Dec. 13, 1991, 105 Stat. 1874; amended Pub. L. 104–105, title I, § 115, Feb. 10, 1996, 110 Stat. 167.)

AMENDMENTS

1996—Pub. L. 104–105 amended section generally. Prior to amendment, section read as follows: ''For purposes of this part, the critical capital level for the Corporation shall be an amount of core capital equal to the sum of—

''(1) 1.25 percent of the aggregate on-balance sheet assets of the Corporation (other than assets referred to in paragraph (3)), as determined in accordance with generally accepted accounting principles;

''(2) 0.25 percent of the unpaid principal balance of outstanding securities guaranteed by the Corporation and backed by pools of qualified loans and substantially equivalent instruments issued or guaranteed by the Corporation, and other off-balance sheet obligations of the Corporation; and

''(3) a percentage of any aggregate assets of the Corporation acquired pursuant to the linked portfolio option under section 2279aa–6(g) of this title, which shall be—

''(A) during the 5-year period beginning on December 13, 1991, one-half of the percentage that is determined under section 2279bb–2(c)(1) of this title; and

''(B) after the expiration of such 5-year period, 1.25 percent of any such aggregate assets.''

§ 2279bb–4. Enforcement levels

(a) In general

The Director shall classify the Corporation, for purposes of this part, according to the following enforcement levels:

(1) Level I

The Corporation shall be classified as within level I if the Corporation—

(A) maintains an amount of regulatory capital that is equal to or exceeds the risk-based capital level established under section 2279bb–1 of this title; and

(B) equals or exceeds the minimum capital level established under section 2279bb–2 of this title.

(2) Level II

The Corporation shall be classified as within level II if—

(A) the Corporation—

(i) maintains an amount of regulatory capital that is less than the risk-based capital level; and

(ii) equals or exceeds the minimum capital level; or

(B) the Corporation is otherwise classified as within level II under subsection (b) of this section.

(3) Level III

The Corporation shall be classified as within level III if—

(A) the Corporation—

(i) does not equal or exceed the minimum capital level; and

(ii) equals or exceeds the critical capital level established under section 2279bb–3 of this title; or

(B) the Corporation is otherwise classified as within level III under subsection (b) of this section.

(4) Level IV

The Corporation shall be classified as within level IV if the Corporation—

(A) does not equal or exceed the critical capital level; or

(B) is otherwise classified as within level IV under subsection (b) of this section.

(b) Discretionary classification

If at any time the Director determines in writing (and provides written notification to the Corporation and the Farm Credit Administration) that the Corporation is taking any action not approved by the Director that could result in a rapid depletion of core capital or that the value of the property subject to mortgages securitized by the Corporation or property underlying securities guaranteed by the Corporation, has decreased significantly, the Director may classify the Corporation—

(1) as within level II, if the Corporation is otherwise within level I;

(2) as within level III, if the Corporation is otherwise within level II; or

(3) as within level IV, if the Corporation is otherwise within level III.

(c) Quarterly determination

The Director shall determine the classification of the Corporation for purposes of this part on not less than a quarterly basis (and as appropriate under subsection (b) of this section). The first such determination shall be made for the quarter ending March 31, 1992.

(d) Notice

Upon determining under subsection (b) or (c) of this section that the Corporation is within level II or III, the Director shall provide written notice to the Congress and to the Corporation—

(1) that the Corporation is within such level;

(2) that the Corporation is subject to the provisions of section 2279bb–5 or 2279bb–6 of this title, as applicable; and

(3) stating the reasons for the classification of the Corporation within such level.

(e) Implementation

Notwithstanding paragraphs (1) and (2) of subsection (a) of this section, during the period beginning on December 13, 1991, and ending on the effective date of the risk based capital regulation issued by the Director under section 2279bb–1 of this title, the Corporation shall be classified as within level I if the Corporation equals or exceeds the minimum capital level established under section 2279bb–2 of this title.

(Pub. L. 92–181, title VIII, § 8.35, as added Pub. L. 102–237, title V, § 503(b)(2), Dec. 13, 1991, 105 Stat. 1874; amended Pub. L. 104–105, title I, § 116, Feb. 10, 1996, 110 Stat. 168.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–105 substituted ''during the period beginning on December 13, 1991, and ending on the effective date of the risk based capital regulation issued by the Director under section 2279bb–1 of this title,'' for ''during the 30-month period beginning on December 13, 1991,''.

§ 2279bb–5. Mandatory actions applicable to level II

(a) Capital restoration plan

If the Corporation is classified as within level II, the Corporation shall, within the time period determined by the Director, submit to the Director a capital restoration plan and, after approval, carry out the plan.

(b) Restriction on dividends

If the Corporation is classified as within level II, the Corporation may not make any payment of dividends that would result in the Corporation being reclassified as within level III or IV.

(c) Reclassification from level II to level III

The Director shall immediately reclassify the Corporation as within level III (and the Corporation shall be subject to the provisions of section 2279bb–6 of this title), if—

(1) the Corporation is within level II; and

(2)(A) the Corporation does not submit a capital restoration plan that is approved by the Director; or

(B) the Director determines that the Corporation has failed to make, in good faith, reasonable efforts necessary to comply with such a capital restoration plan and fulfill the schedule for the plan approved by the Director.

(d) Effective date

This section shall take effect upon the expiration of the 30-month period beginning on December 13, 1991.

(Pub. L. 92–181, title VIII, § 8.36, as added Pub. L. 102–237, title V, § 503(b)(2), Dec. 13, 1991, 105 Stat. 1876.)

§ 2279bb–6. Supervisory actions applicable to level III

(a) Mandatory supervisory actions

(1) Capital restoration plan

If the Corporation is classified as within level III, the Corporation shall, within the time period determined by the Director, submit to the Director a capital restoration plan and, after approval, carry out the plan.

(2) Restrictions on dividends

(A) Prior approval

If the Corporation is classified as within level III, the Corporation—

(i) may not make any payment of dividends that would result in the Corporation being reclassified as within level IV; and

(ii) may make any other payment of dividends only if the Director approves the payment before the payment.

(B) Standard for approval

If the Corporation is classified as within level III, the Director may approve a payment of dividends by the Corporation only if the Director determines that the payment (i) will enhance the ability of the Corporation to meet the risk-based capital level and the minimum capital level promptly, (ii) will contribute to the long-term safety and soundness of the Corporation, or (iii) is otherwise in the public interest.

(3) Reclassification from level III to level IV

The Director shall immediately reclassify the Corporation as within level IV if—

(A) the Corporation is classified as within level III; and

(B)(i) the Corporation does not submit a capital restoration plan that is approved by the Director; or

(ii) the Director determines that the Corporation has failed to make, in good faith, reasonable efforts necessary to comply with such a capital restoration plan and fulfill the schedule for the plan approved by the Director.

(b) Discretionary supervisory actions

In addition to any other actions taken by the Director (including actions under subsection (a) of this section), the Director may, at any time, take any of the following actions if the Corporation is classified as within level III:

(1) Limitation on increase in obligations

Limit any increase in, or order the reduction of, any obligations of the Corporation, including off-balance sheet obligations.

(2) Limitation on growth

Limit or prohibit the growth of the assets of the Corporation or require contraction of the assets of the Corporation.

(3) Prohibition on dividends

Prohibit the Corporation from making any payment of dividends.

(4) Acquisition of new capital

Require the Corporation to acquire new capital in any form and in any amount sufficient to provide for the reclassification of the Corporation as within level II.

(5) Restriction of activities

Require the Corporation to terminate, reduce, or modify any activity that the Director determines creates excessive risk to the Corporation.

(6) Conservatorship

Appoint a conservator for the Corporation consistent with this chapter.

(c) Effective date

This section shall take effect on January 1, 1992.

(Pub. L. 92–181, title VIII, § 8.37, as added Pub. L. 102–237, title V, § 503(b)(2), Dec. 13, 1991, 105 Stat. 1876.)

§ 2279bb–7. Recapitalization of Corporation

(a) Mandatory recapitalization

The Corporation shall increase the core capital of the Corporation to an amount equal to or greater than $25,000,000, not later than the earlier of—

(1) the date that is 2 years after February 10, 1996; or

(2) the date that is 180 days after the end of the first calendar quarter that the aggregate on-balance sheet assets of the Corporation, plus the outstanding principal of the off-balance sheet obligations of the Corporation, equal or exceed $2,000,000,000.

(b) Raising core capital

In carrying out this section, the Corporation may issue stock under section 2279aa–4 of this title and otherwise employ any recognized and legitimate means of raising core capital in the power of the Corporation under section 2279aa–3 of this title.

(c) Limitation on growth of total assets

During the 2-year period beginning on February 10, 1996, the aggregate on-balance sheet assets of the Corporation plus the outstanding principal of the off-balance sheet obligations of the Corporation may not exceed $3,000,000,000 if the core capital of the Corporation is less than $25,000,000.

(d) Enforcement

If the Corporation fails to carry out subsection (a) of this section by the date required under paragraph (1) or (2) of subsection (a) of this section, the Corporation may not purchase a new qualified loan or issue or guarantee a new loan-backed security until the core capital of the Corporation is increased to an amount equal to or greater than $25,000,000.

(Pub. L. 92–181, title VIII, § 8.38, as added Pub. L. 104–105, title I, § 117, Feb. 10, 1996, 110 Stat. 168.)

PART C—RECEIVERSHIP, CONSERVATORSHIP, AND LIQUIDATION OF FEDERAL AGRICULTURAL MORTGAGE CORPORATION

§ 2279cc. Conservatorship; liquidation; receivership

(a) Voluntary liquidation

The Corporation may voluntarily liquidate only with the consent of, and in accordance with a plan of liquidation approved by, the Farm Credit Administration Board.

(b) Involuntary liquidation

(1) In general

The Farm Credit Administration Board may appoint a conservator or receiver for the Corporation under the circumstances specified in section 2183(b) of this title.

(2) Application

In applying section 2183(b) of this title to the Corporation under paragraph (1)—

(A) the Corporation shall also be considered insolvent if the Corporation is unable to pay its debts as they fall due in the ordinary course of business;

(B) a conservator may also be appointed for the Corporation if the authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; and

(C) a receiver may also be appointed for the Corporation if—

(i)(I) the authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; or

(II) the Corporation is classified under section 2279bb–4 of this title as within level III or IV and the alternative actions available under part B are not satisfactory; and

(ii) the Farm Credit Administration determines that the appointment of a conservator would not be appropriate.

(3) No effect on supervisory actions

The grounds for appointment of a conservator for the Corporation under this subsection shall be in addition to those in section 2279bb–6 of this title.

(c) Appointment of conservator or receiver

(1) Qualifications

Notwithstanding section 2183(b) of this title, if a conservator or receiver is appointed for the Corporation, the conservator or receiver shall be—

(A) the Farm Credit Administration or any other governmental entity or employee, including the Farm Credit System Insurance Corporation; or

(B) any person that—

(i) has no claim against, or financial interest in, the Corporation or other basis for a conflict of interest as the conservator or receiver; and

(ii) has the financial and management expertise necessary to direct the operations and affairs of the Corporation and, if necessary, to liquidate the Corporation.

(2) Compensation

(A) In general

A conservator or receiver for the Corporation and professional personnel (other than a Federal employee) employed to represent or assist the conservator or receiver may be compensated for activities conducted as, or for, a conservator or receiver.

(B) Limit on compensation

Compensation may not be provided in amounts greater than the compensation paid to employees of the Federal Government for similar services, except that the Farm Credit Administration may provide for compensation at higher rates that are not in excess of rates prevailing in the private sector if the Farm Credit Administration determines that compensation at higher rates is necessary in order to recruit and retain competent personnel.

(C) Contractual arrangements

The conservator or receiver may contract with any governmental entity, including the Farm Credit System Insurance Corporation, to make personnel, services, and facilities of the entity available to the conservator or receiver on such terms and compensation arrangements as shall be mutually agreed, and each entity may provide the same to the conservator or receiver.

(3) Expenses

A valid claim for expenses of the conservatorship or receivership (including compensation under paragraph (2)) and a valid claim with respect to a loan made under subsection (f) of this section shall—

(A) be paid by the conservator or receiver from funds of the Corporation before any other valid claim against the Corporation; and

(B) may be secured by a lien, on such property of the Corporation as the conservator or receiver may determine, that shall have priority over any other lien.

(4) Liability

If the conservator or receiver for the Corporation is not a Federal entity, or an officer or employee of the Federal Government, the conservator or receiver shall not be personally liable for damages in tort or otherwise for an act or omission performed pursuant to and in the course of the conservatorship or receivership, unless the act or omission constitutes gross negligence or any form of intentional tortious conduct or criminal conduct.

(5) Indemnification

The Farm Credit Administration may allow indemnification of the conservator or receiver from the assets of the conservatorship or receivership on such terms as the Farm Credit Administration considers appropriate.

(d) Judicial review of appointment

(1) In general

Notwithstanding subsection (i)(1) of this section, not later than 30 days after a conservator or receiver is appointed under subsection (b) of this section, the Corporation may bring an action in the United States District Court for the District of Columbia for an order requiring the Farm Credit Administration Board to remove the conservator or receiver. The court shall, on the merits, dismiss the action or direct the Farm Credit Administration Board to remove the conservator or receiver.

(2) Stay of other actions

On the commencement of an action under paragraph (1), any court having jurisdiction of any other action or enforcement proceeding authorized under this chapter to which the Corporation is a party shall stay the action or proceeding during the pendency of the action for removal of the conservator or receiver.

(e) General powers of conservator or receiver

The conservator or receiver for the Corporation shall have such powers to conduct the conservatorship or receivership as shall be provided pursuant to regulations adopted by the Farm Credit Administration Board. Such powers shall be comparable to the powers available to a conservator or receiver appointed pursuant to section 2183(b) of this title.

(f) Borrowings for working capital

(1) In general

If the conservator or receiver of the Corporation determines that it is likely that there will be insufficient funds to pay the ongoing administrative expenses of the conservatorship or receivership or that there will be insufficient liquidity to fund maturing obligations of the conservatorship or receivership, the conservator or receiver may borrow funds in such amounts, from such sources, and at such rates of interest as the conservator or receiver considers necessary or appropriate to meet the administrative expenses or liquidity needs of the conservatorship or receivership.

(2) Working capital from Farm Credit banks

A Farm Credit bank may loan funds to the conservator or receiver for a loan authorized under paragraph (1) or, in the event of receivership, a Farm Credit bank may purchase assets of the Corporation.

(g) Agreements against interests of conservator or receiver

No agreement that tends to diminish or defeat the right, title, or interest of the conservator or receiver for the Corporation in any asset acquired by the conservator or receiver as conservator or receiver for the Corporation shall be valid against the conservator or receiver unless the agreement—

(1) is in writing;

(2) is executed by the Corporation and any person claiming an adverse interest under the agreement, including the obligor, contemporaneously with the acquisition of the asset by the Corporation;

(3) is approved by the Board or an appropriate committee of the Board, which approval shall be reflected in the minutes of the Board or committee; and

(4) has been, continuously, from the time of the agreement's execution, an official record of the Corporation.

(h) Report to Congress

On a determination by the receiver for the Corporation that there are insufficient assets of the receivership to pay all valid claims against the receivership, the receiver shall submit to the Secretary of the Treasury, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the financial condition of the receivership.

(i) Termination of authorities

(1) Corporation

The charter of the Corporation shall be canceled, and the authority provided to the Corporation by this subchapter shall terminate, on such date as the Farm Credit Administration Board determines is appropriate following the placement of the Corporation in receivership, but not later than the conclusion of the receivership and discharge of the receiver.

(2) Oversight

The Office of Secondary Market Oversight established under section 2279aa–11 of this title shall be abolished, and section 2279aa–11(a) of this title and part B shall have no force or effect, on such date as the Farm Credit Administration Board determines is appropriate following the placement of the Corporation in receivership, but not later than the conclusion of the receivership and discharge of the receiver.

(Pub. L. 92–181, title VIII, §8.41, as added Pub. L. 104–105, title I, §118, Feb. 10, 1996, 110 Stat. 168.)

CHAPTER 24—FEDERAL FINANCING BANK

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2282. Definitions.
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§ 2281. Congressional findings and declaration of purpose

The Congress finds that demands for funds through Federal and federally assisted borrowing programs are increasing faster than the total supply of credit and that such borrowings are not adequately coordinated with overall Federal fiscal and debt management policies. The purpose of this chapter is to assure coordination of these programs with the overall economic and fiscal policies of the Government, to reduce the cost of Federal and federally assisted borrowings from the public, and to assure that such borrowings are financed in a manner least disruptive of private financial markets and institutions.

(Pub. L. 93–224, § 2, Dec. 29, 1973, 87 Stat. 937.)

EFFECTIVE DATE

Section 20 of Pub. L. 93–224 provided that: ''This Act [enacting this chapter and amending section 24 of this title] becomes effective upon the date of its enactment [Dec. 29, 1973], except that section 7 [section 2286 of this title] becomes effective upon the expiration of thirty days after such date [Dec. 29, 1973].''

SHORT TITLE

Section 1 of Pub. L. 93–224 provided: ''That this Act [enacting this chapter and amending section 24 of this title] may be cited as the 'Federal Financing Bank Act of 1973'.''

SEPARABILITY

Section 19 of Pub. L. 93–224 provided that: ''If any provision of this Act [enacting this chapter and amending section 24 of this title], or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act [this chapter], and the application of such provisions to other persons or circumstances, shall not be affected.''

EXECUTIVE ORDER NO. 11782

Ex. Ord. No. 11782, May 6, 1974, 39 F.R. 15991, which established the Federal Financing Bank Advisory Council and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, § 15, Aug. 17, 1982, 47 F.R. 36099, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 2282. Definitions

For the purposes of this chapter—

(1) The term ''Federal agency'' means an executive department, an independent Federal establishment, or a corporation or other entity established by the Congress which is owned in whole or in part by the United States.

(2) The term ''obligation'' means any note, bond, debenture, or other evidence of indebtedness, but does not include Federal Reserve notes or stock evidencing an ownership interest in the issuing Federal agency.

(3) The term ''guarantee'' means any guarantee, insurance, or other pledge with respect to the payment of all or part of the principal or interest on any obligation, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions, or any guarantee or pledge arising out of a statutory obligation to insure such deposits, shares, or other withdrawable accounts.

(4) The term ''Bank'' means the Federal Financing Bank established by section 2283 of this title.

(Pub. L. 93–224, § 3, Dec. 29, 1973, 87 Stat. 937.)

§ 2283. Creation of Federal Financing Bank

There is hereby created a body corporate to be known as the Federal Financing Bank, which shall have succession until dissolved by an Act of Congress. The Bank shall be subject to the general supervision and direction of the Secretary of the Treasury. The Bank shall be an instrumentality of the United States Government and shall maintain such offices as may be necessary or appropriate in the conduct of its business.

(Pub. L. 93–224, § 4, Dec. 29, 1973, 87 Stat. 937.)

§ 2284. Board of Directors

(a) The Bank shall have a Board of Directors consisting of five persons, one of whom shall be the Secretary of the Treasury as Chairman of the Board, and four of whom shall be appointed by the President from among the officers or employees of the Bank or of any Federal agency. The Chairman and each other member of the Board may designate some other officer or employee of the Government to serve in his place.

(b) The Board of Directors shall meet at the call of its Chairman. The Board shall determine the general policies which shall govern the operations of the Bank. The Chairman of the Board shall select and effect the appointment of qualified persons to fill such offices as may be provided for in the bylaws, and such persons shall be the executive officers of the Bank and shall discharge such executive functions, powers, and duties as may be provided for in the bylaws or by the Board of Directors. The members of the Board and their designees shall not receive compensation for their services on the Board.

(Pub. L. 93–224, § 5, Dec. 29, 1973, 87 Stat. 937.)

§ 2285. Functions

(a) Purchase and sale of obligations issued, sold, or guaranteed by Federal agencies

The Bank is authorized to make commitments to purchase and sell, and to purchase and sell on terms and conditions determined by the Bank, any obligation which is issued, sold, or guaranteed by a Federal agency. Any Federal agency which is authorized to issue, sell, or guarantee any obligation is authorized to issue or sell such obligations directly to the Bank.

(b) Yield

Any purchase by the Bank shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration (1) the current average yield on outstanding marketable obligations of the United States of comparable maturity, or (2) whenever the Bank's own obligations outstanding are sufficient, the current average yield on outstanding obligations of the Bank of comparable maturity.

(c) Fees

The Bank is authorized to charge fees for its commitments and other services adequate to cover all expenses and to provide for the accumulation of reasonable contingency reserves.

(Pub. L. 93–224, § 6, Dec. 29, 1973, 87 Stat. 938.)

§ 2285a. Acquisition of obligations involving loan guarantees for New York City

Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire any obligation the payment of interest or principal of which has at any time been guaranteed in whole or in part under title I of the New York City Loan Guarantee Act of 1978.

(Pub. L. 95–339, title II, § 201(b), Aug. 8, 1978, 92 Stat. 467.)

REFERENCES IN TEXT

Title I of the New York City Loan Guarantee Act of 1978, referred to in text, is title I of Pub. L. 95–339, Aug. 8, 1978, 92 Stat. 460, as amended, which was classified generally to subchapter II (§ 1521 et seq.) of chapter 27 of former Title 31, and was omitted from the Code in the general revision and reenactment of Title 31, Money and Finance, by Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 877.

CODIFICATION

Section was enacted as part of the New York City Loan Guarantee Act of 1978, and not as part of the Federal Financing Bank Act of 1973 which comprises this chapter.

§ 2286. Approval of financing plans by Secretary of the Treasury

(a) Method, source, timing, terms, and conditions of sale of obligations issued or sold by Federal agencies

To insure the orderly and coordinated marketing of Treasury and Federal agency obligations and appropriate financing planning with respect thereto, and to facilitate the effective financing of programs authorized by law subject to the applicable provisions of such law, the prior approval of the Secretary of the Treasury shall be required with respect to—

(1) the method of financing,

(2) the source of financing,

(3) the timing of financing in relation to market conditions and financing by other Federal agencies, and

(4) the financing terms and conditions, including rates of interest and maturities,

of obligations issued or sold by any Federal agency; except that the approval of the Secretary of the Treasury shall not be required with respect to (A) obligations issued or sold pursuant to an Act of Congress which expressly prohibits any guarantee of such obligations by the United States, and (B) obligations issued or sold by the Farmers Home Administration.

(b) Grant or denial of approval by Secretary

Upon receipt of a request from a Federal agency for his approval under subsection (a) of this section, the Secretary of the Treasury shall act promptly either to grant his approval or to advise the agency of the reasons for withholding his approval. In no case shall the Secretary of the Treasury withhold such approval for a period longer than sixty days unless, prior to the end of such period, he submits to the Congress a detailed explanation of his reasons for so doing. In no case shall the Secretary withhold such approval for a period longer than one hundred and twenty days. To the maximum extent practicable, withholdings of approval shall be made in a manner which is not disproportionately detrimental to the functioning of any particular type of Federal program. Expedited treatment shall be accorded in any case in which the Federal agency advises the Secretary of the Treasury that unusual circumstances require such treatment.

(c) Time and form for submission of financing plans

Federal agencies subject to this section shall submit financing plans to the Secretary of the Treasury at such times and in such forms as he shall prescribe.

(Pub. L. 93–224, § 7, Dec. 29, 1973, 87 Stat. 938.)

EFFECTIVE DATE

Section effective on expiration of 30 days after Dec. 29, 1973, see section 20 of Pub. L. 93–224, set out as a note under section 2281 of this title.

§ 2287. Initial capital

The Secretary of the Treasury is authorized to advance the funds necessary to provide initial capital to the Bank. Each such advance shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity. Interest payments on such advances may be deferred, at the discretion of the Secretary, but any such deferred payments shall themselves bear interest at the rate specified in this section. There is authorized to be appropriated not to exceed $100,000,000, which shall be available for the pur-

poses of this section without fiscal year limitation.

(Pub. L. 93–224, § 8, Dec. 29, 1973, 87 Stat. 939.)

§ 2288. Bank obligations

(a) Maximum amount of obligations issued publicly and outstanding at any one time

The Bank is authorized, with the approval of the Secretary of the Treasury, to issue publicly and have outstanding at any one time not in excess of $15,000,000,000, or such additional amounts as may be authorized in appropriations Acts, of obligations having such maturities and bearing such rate or rates of interest as may be determined by the Bank. Such obligations may be redeemable at the option of the Bank before maturity in such manner as may be stipulated therein. So far as is feasible, the debt structure of the Bank shall be commensurate with its asset structure.

(b) Purchase and sale of obligations of Federal Financing Bank by Secretary of the Treasury as public debt transactions

The Bank is also authorized to issue its obligations to the Secretary of the Treasury and the Secretary of the Treasury may in his discretion purchase or agree to purchase any such obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity. The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this subsection. All purchases and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

(c) Authority of Federal Financing Bank to require Secretary of the Treasury to purchase obligations of the Bank

The Bank may require the Secretary of the Treasury to purchase obligations of the Bank issued pursuant to subsection (b) of this section in such amounts as will not cause the holding by the Secretary of the Treasury resulting from such required purchases to exceed $5,000,000,000 at any one time. This subsection shall not be construed as limiting the authority of the Secretary to purchase obligations of the Bank in excess of such amount.

(d) Bank obligations as lawful investments

Obligations of the Bank issued pursuant to this section shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or any agency or instrumentality of any of the foregoing, or any officer or officers thereof.

(Pub. L. 93–224, § 9, Dec. 29, 1973, 87 Stat. 939.)

CODIFICATION

In subsec. (b), ''chapter 31 of title 31'' substituted for ''the Second Liberty Bond Act'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 2289. General powers

The Bank shall have power—

(1) to sue and be sued, complain, and defend, in its corporate name;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal bylaws, rules, and regulations as may be necessary for the conduct of its business;

(4) to conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter in any State without regard to any qualification or similar statute in any State;

(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Bank;

(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

(8) to appoint such officers, attorneys, employees, and agents as may be required, to define their duties, to fix and to pay such compensation for their services as may be determined, subject to the civil service and classification laws, to require bonds for them and pay the premium thereof;

(9) to enter into contracts, to execute instruments to incur liabilities, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business;

(10) to act through any corporate or other agency or instrumentality of the United States, and to utilize the services thereof on a reimbursable basis, and any such agency or instrumentality is authorized to provide services as requested by the Bank; and

(11) to determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to Government corporations.

(Pub. L. 93–224, § 10, Dec. 29, 1973, 87 Stat. 940.)

§ 2290. Exemptions

(a) Federal, State, and local taxes

The Bank, its property, its franchise, capital, reserves, surplus, security holdings, and other funds, and its income shall be exempt from all

taxation now or hereafter imposed by the United States or by any State or local taxing authority; except that (1) any real property and any tangible personal property of the Bank shall be subject to Federal, State, and local taxation to the same extent according to its value as other such property is taxed, and (2) any obligations issued by the Bank shall be subject to Federal taxation to the same extent as the obligations of private corporations are taxed.

(b) Exempt securities

All obligations issued by the Bank pursuant to this chapter shall be deemed to be exempted securities within the meaning of sections 77c(a)(2), 77ddd(a)(4), and 78c(a)(12) of title 15.

(c) Budget status of Federal agencies; restrictions

Nothing herein shall affect the budget status of the Federal agencies selling obligations to the Bank under section 2285(a) of this title, or the method of budget accounting for their transactions. The receipts and disbursements of the Bank in the discharge of its functions shall not be included in the totals of the budget of the United States Government and shall be exempt from any general limitation imposed by statute on expenditures and net lending (budget outlays) of the United States.

(Pub. L. 93–224, § 11, Dec. 29, 1973, 87 Stat. 940.)

§ 2291. Preparation of obligations

In order to furnish obligations for delivery by the Bank, the Secretary of the Treasury is authorized to prepare such obligations in such form as the Bank may approve, such obligations when prepared to be held in the Treasury subject to delivery upon order by the Bank. The engraved plates, dies, bed pieces, and other material executed in connection therewith, shall remain in the custody of the Secretary of the Treasury. The Bank shall reimburse the Secretary of the Treasury for any expenditures made in preparation, custody, and delivery of such obligations.

(Pub. L. 93–224, § 12, Dec. 29, 1973, 87 Stat. 941.)

§ 2292. Annual report to the President and Congress

The Bank shall, as soon as practicable after the end of each fiscal year, transmit to the President and the Congress an annual report of its operations and activities.

(Pub. L. 93–224, § 13, Dec. 29, 1973, 87 Stat. 941.)

§ 2293. Budget and audit provisions of Government corporation control law applicable

The budget and audit provisions of chapter 91 of title 31 shall be applicable to the Federal Financing Bank in the same manner as they are applied to the wholly owned Government corporations named in section 9101(3) of title 31.

(Pub. L. 93–224, § 15, Dec. 29, 1973, 87 Stat. 941.)

CODIFICATION

''Chapter 91 of title 31'' and ''section 9101(3) of title 31'' substituted in text for ''the Government Corporation Control Act (31 U.S.C. 841 et seq.)'' and ''section 101 of such Act (31 U.S.C. 846)'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 2294. Payments on behalf of public bodies

(a) Notwithstanding any other provision of this chapter, the purchase by the Bank of the obligations of any local public body or agency within the United States shall be made upon such terms and conditions as may be necessary to avoid an increase in borrowing costs to such local public body or agency as a result of the purchase by the Bank of its obligations. The head of the Federal agency guaranteeing such obligations, in consultation with the Secretary of the Treasury, shall estimate the borrowing costs that would be incurred by the local public body or agency if its obligations were not sold to the Bank.

(b) The Federal agency guaranteeing obligations purchased by the Bank may contract to make periodic payments to the Bank which shall be sufficient to offset the costs to the Bank of purchasing obligations of local public bodies or agencies upon terms and conditions as prescribed in this section rather than as prescribed by section 2285 of this title. Such contracts may be made in advance of appropriations therefor, and appropriations for making payments under such contracts are hereby authorized.

(Pub. L. 93–224, § 16, Dec. 29, 1973, 87 Stat. 941.)

§ 2294a. Contracts for periodic payments to offset costs of purchase of obligations of local public housing agencies

In addition to any authority provided before October 1, 1981, the Secretary of Housing and Urban Development may, on and after October 1, 1981, enter into contracts for periodic payments to the Federal Financing Bank to offset the costs to the Bank of purchasing obligations (as described in the first sentence of section 2294(b) of this title) issued by local public housing agencies for purposes of financing public housing projects authorized by section 1437c(c) of title 42. Notwithstanding any other provision of law, such contracts may be entered into only to the extent approved in appropriation Acts, and the aggregate amount which may be obligated over the duration of such contracts may not exceed $400,000,000. There are hereby authorized to be appropriated any amounts necessary to provide for such payments. The authority to enter into contracts under this subsection shall be in lieu of any authority (except for authority provided specifically to the Secretary before October 1, 1981) of the Secretary to enter into contracts for such purposes under section 2294(b) of this title.

(Pub. L. 97–35, title III, § 329E, Aug. 13, 1981, 95 Stat. 410.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Amendments of 1981 and also as part of the Omnibus Budget Reconciliation Act of 1981, and not as part of the Federal Financing Bank Act of 1973 which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as a note under section 3701 of this title.

§ 2295. Authority or responsibility under other provisions of law not to be affected or impaired

Nothing in this chapter shall be construed as impairing any authority or responsibility of the President or the Secretary of the Treasury under any other provision of law, nor shall anything in this chapter affect in any manner any provision of law concerning the right of any Federal agency to sell obligations to the Secretary of the Treasury or the authority or responsibility of the Secretary of the Treasury to purchase such obligations.

(Pub. L. 93–224, § 17, Dec. 29, 1973, 87 Stat. 942.)

§ 2296. Increase not authorized in amounts of obligations issued, sold, or guaranteed by Federal agencies

Nothing in this chapter shall be construed as authorizing an increase in the amounts of obligations issued, sold, or guaranteed by any Federal agency which issues, sells, or guarantees obligations purchased by the Bank.

(Pub. L. 93–224, § 18, Dec. 29, 1973, 87 Stat. 942.)

CHAPTER 25—NATIONAL COMMISSION ON ELECTRONIC FUND TRANSFERS

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2402. Membership of Commission.
2403. Functions of Commission.
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2405. Executive Director and additional staff personnel; appointment and compensation; experts and consultants; employment and compensation; audits by Comptroller General.
2406. Compensation of members of Commission.
2407. Cooperation and assistance of other Federal departments, agencies, and instrumentalities.
2408. Authorization of appropriations.

§ 2401. Establishment of Commission

There is established the National Commission on Electronic Fund Transfers (hereinafter referred to as the ''Commission'') which shall be an independent instrumentality of the United States.

(Pub. L. 93–495, title II, § 201, Oct. 28, 1974, 88 Stat. 1508.)

§ 2402. Membership of Commission

(a) Composition

The Commission shall be composed of twenty-six members as follows:

(1) the Chairman of the Board of Governors of the Federal Reserve System or his delegate;

(2) the Attorney General or his delegate;

(3) the Comptroller of the Currency or his delegate;

(4) the Chairman of the Federal Home Loan Bank Board or his delegate;

(5) the Administrator of the National Credit Union Administration or his delegate;

(6) the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation or his delegate;

(7) the Chairman of the Federal Communications Commission or his delegate;

(8) the Postmaster General or his delegate;

(9) the Secretary of the Treasury or his delegate;

(10) the Chairman of the Federal Trade Commission or his delegate;

(11) two individuals, appointed by the President, one of whom is an official of a State agency which regulates banking, or similar financial institutions, and one of whom is an official of a State agency which regulates thrift or similar financial institutions;

(12) seven individuals, appointed by the President, who are officers or employees of, or who otherwise represent banking, thrift, or other business entities, including one representative each of commercial banks, mutual savings banks, savings and loan associations, credit unions, retailers, nonbanking institutions offering credit card services, and organizations providing interchange services for credit cards issued by banks;

(13) five individuals, appointed by the President, from private life who are not affiliated with, do not represent and have no substantial interest in any banking, thrift, or other financial institution, including but not limited to credit unions, retailers, and insurance companies;

(14) the Comptroller General of the United States or his delegate; and

(15) the Director of the Office of Technology Assessment.

(b) Designation of Chairperson

The Chairperson shall be designated by the President at the time of his appointment from among the members of the Commission and such selection shall be by and with the advice and consent of the Senate unless the appointee holds an office to which he was appointed by and with the advice and consent of the Senate.

(c) Vacancies

A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(Pub. L. 93–495, title II, § 202, Oct. 28, 1974, 88 Stat. 1508.)

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of this title.

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

§ 2403. Functions of Commission

(a) Study, investigation, and recommendations; considerations

The Commission shall conduct a thorough study and investigation and recommend appropriate administrative action and legislation necessary in connection with the possible development of public or private electronic fund trans-

fer systems, taking into account, among other things—

(1) the need to preserve competition among the financial institutions and other business enterprises using such a system;

(2) the need to promote competition among financial institutions and to assure Government regulation and involvement or participation in a system competitive with the private sector be kept to a minimum;

(3) the need to prevent unfair or discriminatory practices by any financial institution or business enterprise using or desiring to use such a system;

(4) the need to afford maximum user and consumer convenience;

(5) the need to afford maximum user and consumer rights to privacy and confidentiality;

(6) the impact of such a system on economic and monetary policy;

(7) the implications of such a system on the availability of credit;

(8) the implications of such a system expanding internationally and into other forms of electronic communications; and

(9) the need to protect the legal rights of users and consumers.

(b) Interim and final reports; submission dates; transmittal of final report to President and Congress; contents; availability to public; termination date of Commission

The Commission shall make an interim report within one year of the date of the confirmation by the Senate of the Chairperson or the appointment by the President of an acting Chairperson and at such other times as it deems advisable and shall transmit to the President and to the Congress not later than two years after the date of the confirmation by the Senate of the Chairperson or the appointment by the President of an acting Chairperson, a final report of its findings and recommendations. Any such report shall include all hearing transcripts, staff studies, and other material used in preparation of the report. The interim and final reports shall be made available to the public upon transmittal. Sixty days after transmission of its final report the Commission shall cease to exist.

(c) Clearance by Federal agencies prior to transmittal of interim or final report

The Commission shall not be required to obtain the clearance of any Federal agency prior to the transmittal of any interim or final report.

(Pub. L. 93–495, title II, § 203, Oct. 28, 1974, 88 Stat. 1508; Pub. L. 94–200, title II, § 201, Dec. 31, 1975, 89 Stat. 1124.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 94–200 changed the time for submission of interim and final reports from one year of the Commission's findings and recommendations and two years after Oct. 28, 1974, to one year and two years respectively after the confirmation by the Senate of the Chairperson or the appointment by the President of an acting Chairperson.

§ 2404. Powers of Commission

(a) Hearings; administration of oaths

The Commission may for the purpose of carrying out this chapter hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission may deem advisable. The Commission may administer oaths of[1] affirmations to witnesses appearing before it.

(b) Implementation authority of members or agents of Commission

When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

(c) Request for information from other Federal departments or agencies

The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this chapter. Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission.

(d) Issuance of subpenas for attendance of witnesses and production of evidence; refusal to obey; contempt proceedings; manner of service of subpenas; service of process

(1) The Commission shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Commission. Such attendance of witnesses and the production of such evidence may be required from any place within the United States at any designated place of hearing within the United States.

(2) If a person issued a subpena under paragraph (1) refuses to obey such subpena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Commission) order such person to appear before the Commission to produce evidence or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) The subpenas of the Commission shall be served in the manner provided for subpenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(4) All process of any court to which application may be made under this section may be served in the judicial district wherein the person required to be served resides or may be found.

(Pub. L. 93–495, title II, § 204, Oct. 28, 1974, 88 Stat. 1509.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original ''this Act'', meaning Pub. L. 93–495, which enacted this chapter (§ 2401 et seq.). For complete classification of this Act to the Code, see Tables.

[1] So in original. Probably should be ''or''.

§ 2405. Executive Director and additional staff personnel; appointment and compensation; experts and consultants; employment and compensation; audits by Comptroller General

(a) The Commission—

(1) may appoint with the advice and consent of the Senate and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title; and

(2) may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, but at rates not to exceed $150 a day for individuals.

(b) The Comptroller General is authorized to make detailed audits of the books and records of the Commission, and shall report the results of any such audit to the Commission and to the Congress.

(Pub. L. 93–495, title II, § 205, Oct. 28, 1974, 88 Stat. 1510.)

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 2406. Compensation of members of Commission

(a) A member of the Commission who is an officer or employee of the United States shall serve as a member of the Commission without additional compensation, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of his duties as a member of the Commission.

(b) A member of the Commission who is not otherwise an officer or employee of the United States shall be compensated at a rate of $150 per day when engaged in the performance of his duties as a member of the Commission, and shall also be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of his duties as a member of the Commission.

(Pub. L. 93–495, title II, § 206, Oct. 28, 1974, 88 Stat. 1510.)

§ 2407. Cooperation and assistance of other Federal departments, agencies, and instrumentalities

(a) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request, such data, reports, and other information as the Commission deems necessary to carry out its functions under this chapter.

(b) The head of any department, agency, or instrumentality of the United States may detail such personnel and may furnish such services, with or without reimbursement, as the Commission may request to assist it in carrying out its functions.

(Pub. L. 93–495, title II, § 207, Oct. 28, 1974, 88 Stat. 1510.)

§ 2408. Authorization of appropriations

There are authorized to be appropriated without fiscal year limitations such sums, not to exceed $2,000,000, as may be necessary to carry out the provisions of this chapter.

(Pub. L. 93–495, title II, § 208, Oct. 28, 1974, 88 Stat. 1511.)

CHAPTER 26—DISPOSITION OF ABANDONED MONEY ORDERS AND TRAVELER'S CHECKS

Sec.
2501. Congressional findings and declaration of purpose.
2502. Definitions.
2503. State entitlement to escheat or custody.

§ 2501. Congressional findings and declaration of purpose

The Congress finds and declares that—

(1) the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments;

(2) a substantial majority of such purchasers reside in the States where such instruments are purchased;

(3) the States wherein the purchasers of money orders and traveler's checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment;

(4) it is a burden on interstate commerce that the proceeds of such instruments are not being distributed to the States entitled thereto; and

(5) the cost of maintaining and retrieving addresses of purchasers of money orders and traveler's checks is an additional burden on interstate commerce since it has been determined that most purchasers reside in the State of purchase of such instruments.

(Pub. L. 93–495, title VI, § 601, Oct. 28, 1974, 88 Stat. 1525.)

APPLICABILITY TO SUMS PAYABLE ON MONEY ORDERS, ETC., DEEMED ABANDONED ON OR AFTER FEBRUARY 1, 1965; EXCEPTION

Section 604 of Pub. L. 93–495 provided that: ''This title [enacting this chapter] shall be applicable to sums payable on money orders, traveler's checks, and similar written instruments deemed abandoned on or after February 1, 1965, except to the extent that such sums have been paid over to a State prior to January 1, 1974.''

§ 2502. Definitions

As used in this chapter—

(1) ''banking organization'' means any bank, trust company, savings bank, safe deposit

company, or a private banker engaged in business in the United States;

(2) ''business association'' means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals; and

(3) ''financial organization'' means any savings and loan association, building and loan association, credit union, or investment company engaged in business in the United States.

(Pub. L. 93–495, title VI, § 602, Oct. 28, 1974, 88 Stat. 1525.)

§ 2503. State entitlement to escheat or custody

Where any sum is payable on a money order, traveler's check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable—

(1) if the books and records of such banking or financial organization or business association show the State in which such money order, traveler's check, or similar written instrument was purchased, that State shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum;

(2) if the books and records of such banking or financial organization or business association do not show the State in which such money order, traveler's check, or similar written instrument was purchased, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, until another State shall demonstrate by written evidence that it is the State of purchase; or

(3) if the books and records of such banking or financial organizations or business association show the State in which such money order, traveler's check, or similar written instrument was purchased and the laws of the State of purchase do not provide for the escheat or custodial taking of the sum payable on such instrument, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, subject to the right of the State of purchase to recover such sum from the State of principal place of business if and when the law of the State of purchase makes provision for escheat or custodial taking of such sum.

(Pub. L. 93–495, title VI, § 603, Oct. 28, 1974, 88 Stat. 1525.)

CHAPTER 27—REAL ESTATE SETTLEMENT PROCEDURES

Sec.
2601. Congressional findings and purpose.
2602. Definitions.
2603. Uniform settlement statement.
2604. Special information booklets.
2605. Servicing of mortgage loans and administration of escrow accounts.
2606. Exempted transactions.
2607. Prohibition against kickbacks and unearned fees.
2608. Title companies; liability of seller.
2609. Limitation on requirement of advance deposits in escrow accounts.
2610. Prohibition of fees for preparation of truth-in-lending, uniform settlement, and escrow account statements.
2611 to 2613. Repealed.
2614. Jurisdiction of courts; limitations.
2615. Contracts and liens; validity.
2616. State laws unaffected; inconsistent Federal and State provisions.
2617. Authority of Secretary.

§ 2601. Congressional findings and purpose

(a) The Congress finds that significant reforms in the real estate settlement process are needed to insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country. The Congress also finds that it has been over two years since the Secretary of Housing and Urban Development and the Administrator of Veterans' Affairs submitted their joint report to the Congress on ''Mortgage Settlement Costs'' and that the time has come for the recommendations for Federal legislative action made in that report to be implemented.

(b) It is the purpose of this chapter to effect certain changes in the settlement process for residential real estate that will result—

(1) in more effective advance disclosure to home buyers and sellers of settlement costs;

(2) in the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services;

(3) in a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance; and

(4) in significant reform and modernization of local recordkeeping of land title information.

(Pub. L. 93–533, § 2, Dec. 22, 1974, 88 Stat. 1724.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, as amended, known as the Real Estate Settlement Procedures Act of 1974, which is classified principally to this chapter (§ 2601 et seq.). For complete classification of this Act to the Code, see Short Title note below and Tables.

CHANGE OF NAME

Reference to Administrator of Veterans' Affairs deemed to refer to Secretary of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE

Section 20, formerly 19, of Pub. L. 93–533, as renumbered by Pub. L. 94–205, § 10, Jan. 2, 1976, 89 Stat. 1159,

provided that: ''The provisions of this Act, and the amendments made thereby [see Short Title note below], shall become effective one hundred and eighty days after the date of the enactment of this Act [Dec. 22, 1974].''

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94–205, Jan. 2, 1976, 89 Stat. 1157, provided: ''That this Act [enacting section 2617 of this title, amending sections 2602, 2603, 2604, 2607, 2609 and 2616 of this title and section 1631 of Title 15, Commerce and Trade, repealing sections 2605 and 2606 of this title, enacting provisions set out as a note under section 2602 of this title and amending provisions set out as a note under this section] may be cited as the 'Real Estate Settlement Procedures Act Amendments of 1975'.''

SHORT TITLE

Section 1 of Pub. L. 93–533 provided that: ''This Act [enacting this chapter and sections 1730f and 1831b of this title and provisions set out as notes under this section and section 1730f of this title] may be cited as the 'Real Estate Settlement Procedures Act of 1974'.''

SIMPLIFICATION AND UNIFICATION OF DISCLOSURES REQUIRED UNDER RESPA AND TILA FOR MORTGAGE TRANSACTIONS

Pub. L. 104–208, div. A, title II, § 2101, Sept. 30, 1996, 110 Stat. 3009–398, provided that:

''(a) IN GENERAL.—With respect to credit transactions which are subject to the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] and the Truth in Lending Act [15 U.S.C. 1601 et seq.], the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board') and the Secretary of Housing and Urban Development (hereafter in this section referred to as the 'Secretary') shall take such action as may be necessary before the end of the 6-month period beginning on the date of enactment of this Act [Sept. 30, 1996]—

''(1) to simplify and improve the disclosures applicable to such transactions under such Acts, including the timing of the disclosures; and

''(2) to provide a single format for such disclosures which will satisfy the requirements of each such Act with respect to such transactions.

''(b) REGULATIONS.—To the extent that it is necessary to prescribe any regulation in order to effect any changes required to be made under subsection (a), the proposed regulation shall be published in the Federal Register before the end of the 6-month period referred to in subsection (a).

''(c) RECOMMENDATIONS FOR LEGISLATION.—If the Board and the Secretary find that legislative action may be necessary or appropriate in order to simplify and unify the disclosure requirements under the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] and the Truth in Lending Act [15 U.S.C. 1601 et seq.], the Board and the Secretary shall submit a report containing recommendations to the Congress concerning such action.''

§ 2602. Definitions

For purposes of this chapter—

(1) the term ''federally related mortgage loan'' includes any loan (other than temporary financing such as a construction loan) which—

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B)(i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government, or

(ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(iii) is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or

(iv) is made in whole or in part by any ''creditor'', as defined in section 1602(f) of title 15, who makes or invests in residential real estate loans aggregating more than $1,000,000 per year, except that for the purpose of this chapter, the term ''creditor'' does not include any agency or instrumentality of any State;

(2) the term ''thing of value'' includes any payment, advance, funds, loan, service, or other consideration;

(3) the term ''Settlement services'' includes any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing or settlement;

(4) the term ''title company'' means any institution which is qualified to issue title insurance, directly or through its agents, and also refers to any duly authorized agent of a title company;

(5) the term ''person'' includes individuals, corporations, associations, partnerships, and trusts;

(6) the term ''Secretary'' means the Secretary of Housing and Urban Development;

(7) the term ''affiliated business arrangement'' means an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider; and

(8) the term ''associate'' means one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor, or franchisee of such person; or (D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business.

(Pub. L. 93–533, §3, Dec. 22, 1974, 88 Stat. 1724; Pub. L. 94–205, §2, Jan. 2, 1976, 89 Stat. 1157; Pub. L. 98–181, title IV, §461(a), Nov. 30, 1983, 97 Stat. 1230; Pub. L. 102–550, title IX, §908(a), (b), Oct. 28, 1992, 106 Stat. 3873, 3874; Pub. L. 104–208, div. A, title II, §2103(c)(1), Sept. 30, 1996, 110 Stat. 3009–400; Pub. L. 111–203, title X, §1098(1), July 21, 2010, 124 Stat. 2103.)

ADDITION OF PARAGRAPH (9)

Pub. L. 111–203, title X, §§1098(1), 1100H, July 21, 2010, 124 Stat. 2103, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) in paragraph (7), by striking ''and'' at the end;

(2) in paragraph (8), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(9) the term 'Bureau' means the Bureau of Consumer Financial Protection.''

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1996—Par. (7). Pub. L. 104–208 substituted ''affiliated business arrangement'' for ''controlled business arrangement''.

1992—Par. (1)(A). Pub. L. 102–550, §908(b), inserted ''or subordinate'' after ''first'' and '', including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property'' after ''families''.

Par. (3). Pub. L. 102–550, §908(a), inserted ''the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans),'' after ''broker,''.

1983—Pars. (7), (8). Pub. L. 98–181 added pars. (7) and (8).

1976—Par. (1). Pub. L. 94–205, §2(1), inserted ''(other than temporary financing such as a construction loan)'' in introductory text.

Par. (1)(A). Pub. L. 94–205, §2(2), inserted ''a first lien on'' after ''is secured by''.

Par. (1)(B)(iii). Pub. L. 94–205, §2(3)–(5), substituted ''is intended to be sold by the originating lender to'' for ''is eligible for purchase by'' and ''a'' and ''is to'' for ''from any'' and ''could'', respectively, and struck out ''or'' after ''the Government National Mortgage Association''.

Par. (1)(B)(iv). Pub. L. 94–205, §2(6), inserted '', except that for the purpose of this chapter, the term 'creditor' does not include any agency or instrumentality of any State'' after ''more than $1,000,000 per year''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 908(d) of Pub. L. 102–550 provided that: ''This section [amending this section and enacting provisions set out below] shall take effect on the date of enactment of this Act [Oct. 28, 1992] and shall not apply retroactively.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 461(f) of Pub. L. 98–181 provided that: ''The amendments made by this section [amending this section and sections 2607, 2614, and 2617 of this title] shall become effective on January 1, 1984.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 12 of Pub. L. 94–205 provided that: ''The provisions of this Act and the amendments made hereby [enacting section 2617 of this title, amending this section, sections 2603, 2604, 2607, 2609, and 2616 of this title, and section 1631 of Title 15, Commerce and Trade, repealing sections 2605 and 2606 of this title, and enacting and amending provisions set out as notes under section 2601 of this title] shall become effective upon enactment [Jan. 2, 1976]. The Secretary may suspend for up to one hundred and eighty days from the date of enactment of this Act [Jan. 2, 1976] any provision of section 4 and section 5 of the Real Estate Settlement Procedures Act of 1974 [sections 2603 and 2604 of this title], as amended by this Act.''

REGULATIONS

Section 908(c) of Pub. L. 102–550 provided that: ''The Secretary of Housing and Urban Development shall issue regulations to implement the amendments made by this section [amending this section] not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).''

§ 2603. Uniform settlement statement

(a) The Secretary, in consultation with the Administrator of Veteran's Affairs, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision, shall develop and prescribe a standard form for the statement of settlement costs which shall be used (with such variations as may be necessary to reflect differences in legal and administrative requirements or practices in different areas of the country) as the standard real estate settlement form in all transactions in the United States which involve federally related mortgage loans. Such form shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement and shall indicate whether any title insurance premium included in such charges covers or insures the lender's interest in the property, the borrower's interest, or both. The Secretary may, by regulation, permit the deletion from the form prescribed under this section of items which are not, under local laws or customs, applicable in any locality, except that such regulation shall require that the numerical code prescribed by the Secretary be retained in forms to be used in all localities. Nothing in this section may be construed to require that that part of the standard form which relates to the borrower's transaction be furnished to the seller, or to require that that part

of the standard form which relates to the seller be furnished to the borrower.

(b) The form prescribed under this section shall be completed and made available for inspection by the borrower at or before settlement by the person conducting the settlement, except that (1) the Secretary may exempt from the requirements of this section settlements occurring in localities where the final settlement statement is not customarily provided at or before the date of settlement, or settlements where such requirements are impractical and (2) the borrower may, in accordance with regulations of the Secretary, waive his right to have the form made available at such time. Upon the request of the borrower to inspect the form prescribed under this section during the business day immediately preceding the day of settlement, the person who will conduct the settlement shall permit the borrower to inspect those items which are known to such person during such preceding day.

(Pub. L. 93–533, §4, Dec. 22, 1974, 88 Stat. 1725; Pub. L. 94–205, §3, Jan. 2, 1976, 89 Stat. 1157; Pub. L. 104–208, div. A, title II, §2103(g)(1), Sept. 30, 1996, 110 Stat. 3009–401; Pub. L. 111–203, title X, §1098(2), title XIV, §1475, July 21, 2010, 124 Stat. 2103, 2200.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1475, July 21, 2010, 124 Stat. 2136, 2200, provided that, effective on the date on which final regulations implementing such amendments take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, this section is amended by adding at the end the following:

''(c) Disclosure of fees

''The standard form described in subsection (a) may include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 3350(11) of this title), a clear disclosure of—

''(1) the fee paid directly to the appraiser by such company; and

''(2) the administration fee charged by such company.''

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title X, §§1098(2), 1100H, July 21, 2010, 124 Stat. 2103, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) in subsection (a), by substituting ''The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 2604 of this title, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this chapter and the Truth in Lending Act, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'' for the first sentence;

(2) by substituting ''Bureau'' for ''Secretary'' wherever appearing; and

(3) by substituting ''forms'' for ''form'' wherever appearing.

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208 substituted ''Director of the Office of Thrift Supervision'' for ''Federal Home Loan Bank Board''.

1976—Subsec. (a). Pub. L. 94–205, §3(1)–(3), designated existing provisions as subsec. (a), struck out ''minimum'' after ''with such'' and ''unavoidable'' after ''necessary to reflect'' in parenthetical provisions covering allowable regional variations in the uniform settlement statement, and substituted provisions authorizing the Secretary to permit deletions from the standard form for provisions requiring that the standard form contain all the information and data required under the Truth in Lending Act.

Subsec. (b). Pub. L. 94–205, §3(4), added subsec. (b).

CHANGE OF NAME

Reference to Administrator of Veterans' Affairs deemed to refer to Secretary of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1098(2) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by section 1475 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–205 effective Jan. 2, 1976, with the Secretary authorized to suspend for up to 180 days from Jan. 2, 1976, any provision of this section as amended by Pub. L. 94–205, see section 12 of Pub. L. 94–205, set out as a note under section 2602 of this title.

§ 2604. Special information booklets

(a) Distribution by Secretary to lenders to help borrowers

The Secretary shall prepare and distribute booklets to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services. The Secretary shall distribute such booklets to all lenders which make federally related mortgage loans.

(b) Form and detail; cost elements, standard settlement form, escrow accounts, selection of persons for settlement services; consideration of differences in settlement procedures

Each booklet shall be in such form and detail as the Secretary shall prescribe and, in addition to such other information as the Secretary may provide, shall include in clear and concise language—

(1) a description and explanation of the nature and purpose of each cost incident to a real estate settlement;

(2) an explanation and sample of the standard real estate settlement form developed and prescribed under section 2603 of this title;

(3) a description and explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate;

(4) an explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incident to a real estate settlement; and

(5) an explanation of the unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

Such booklets shall take into consideration differences in real estate settlement procedures which may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.

(c) Estimate of charges

Each lender shall include with the booklet a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Secretary.

(d) Distribution by lenders to loan applicants at time of receipt or preparation of applications

Each lender referred to in subsection (a) of this section shall provide the booklet described in such subsection to each person from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate. Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if the lender denies the application for credit before the end of the 3-day period.

(e) Printing and distribution by lenders of booklets approved by Secretary

Booklets may be printed and distributed by lenders if their form and content are approved by the Secretary as meeting the requirements of subsection (b) of this section.

(Pub. L. 93–533, §5, Dec. 22, 1974, 88 Stat. 1725; Pub. L. 94–205, §4, Jan. 2, 1976, 89 Stat. 1158; Pub. L. 102–550, title IX, §951, Oct. 28, 1992, 106 Stat. 3892; Pub. L. 111–203, title X, §1098(3), title XIV, §1450, July 21, 2010, 124 Stat. 2104, 2174.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1450, July 21, 2010, 124 Stat. 2136, 2174, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) in the section catchline, by substituting ''Home buying'' for ''Special'';

(2) by striking out subsections (a) and (b) and adding the following:

''(a) Preparation and distribution

''The Director of the Bureau of Consumer Financial Protection (hereafter in this section referred to as the 'Director') shall prepare, at least once every 5 years, a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The Director shall prepare the booklet in various languages and cultural styles, as the Director determines to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds. The Director shall distribute such booklets to all lenders that make federally related mortgage loans. The Director shall also distribute to such lenders lists, organized by location, of homeownership counselors certified under section 1701x(e) of this title for use in complying with the requirement under subsection (c) of this section.

''(b) Contents

''Each booklet shall be in such form and detail as the Director shall prescribe and, in addition to such other information as the Director may provide, shall include in plain and understandable language the following information:

''(1) A description and explanation of the nature and purpose of the costs incident to a real estate settlement or a federally related mortgage loan. The description and explanation shall provide general information about the mortgage process as well as specific information concerning, at a minimum—

''(A) balloon payments;

''(B) prepayment penalties;

''(C) the advantages of prepayment; and

''(D) the trade-off between closing costs and the interest rate over the life of the loan.

''(2) An explanation and sample of the uniform settlement statement required by section 2603 of this title.

''(3) A list and explanation of lending practices, including those prohibited by the Truth in Lending Act or other applicable Federal law, and of other unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

''(4) A list and explanation of questions a consumer obtaining a federally related mortgage loan should ask regarding the loan, including whether the consumer will have the ability to repay the loan, whether the consumer sufficiently shopped for the loan, whether the loan terms include prepayment penalties or balloon payments, and whether the loan will benefit the borrower.

''(5) An explanation of the right of rescission as to certain transactions provided by sections 125 and 129 of the Truth in Lending Act.

''(6) A brief explanation of the nature of a variable rate mortgage and a reference to the booklet entitled 'Consumer Handbook on Adjustable Rate Mortgages', published by the Director, or to any suitable substitute of such booklet that the Director may subsequently adopt pursuant to such section.

''(7) A brief explanation of the nature of a home equity line of credit and a reference to the pamphlet required to be provided under section 127A of the Truth in Lending Act.

''(8) Information about homeownership counseling services made available pursuant to section 1701x(a)(4) of this title, a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.

''(9) An explanation of the nature and purpose of escrow accounts when used in connection with

loans secured by residential real estate and the requirements under section 2609 of this title regarding such accounts.

''(10) An explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incidental to a real estate settlement.

''(11) An explanation of a consumer's responsibilities, liabilities, and obligations in a mortgage transaction.

''(12) An explanation of the nature and purpose of real estate appraisals, including the difference between an appraisal and a home inspection.

''(13) Notice that the Office of Housing of the Department of Housing and Urban Development has made publicly available a brochure regarding loan fraud and a World Wide Web address and toll-free telephone number for obtaining the brochure.

The booklet prepared pursuant to this section shall take into consideration differences in real estate settlement procedures that may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.'';

(3) in subsection (c), by inserting at the end the following: ''Each lender shall also include with the booklet a reasonably complete or updated list of homeownership counselors who are certified pursuant to section 1701x(e) of this title and located in the area of the lender.''; and

(4) in subsection (d), by inserting after the period at the end of the first sentence the following: ''The lender shall provide the booklet in the version that is most appropriate for the person receiving it.''

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title X, §§ 1098(3), 1100H, July 21, 2010, 124 Stat. 2104, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) by substituting ''Bureau'' for ''Secretary'' wherever appearing; and

(2) in subsection (a), by substituting ''The Bureau shall prepare and distribute booklets jointly addressing compliance with the requirements of the Truth in Lending Act and the provisions of this chapter, in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services.'' for the first sentence.

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–550 substituted ''Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if the lender denies the application for credit before the end of the 3-day period.'' for ''Such booklet shall be provided at the time of receipt or preparation of such application.''

1976—Subsecs. (c) to (e). Pub. L. 94–205 added subsec. (c), redesignated former subsec. (c) as (d), substituted ''or for whom it prepares a written application'' for ''an application'' and inserted ''or preparation'' after ''receipt'', and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1098(3) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by section 1450 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–205 effective Jan. 2, 1976, with the Secretary authorized to suspend for up to 180 days from Jan. 2, 1976, any provision of this section as amended by Pub. L. 94–205, see section 12 of Pub. L. 94–205, set out as a note under section 2602 of this title.

§ 2605. Servicing of mortgage loans and administration of escrow accounts

(a) Disclosure to applicant relating to assignment, sale, or transfer of loan servicing

Each person who makes a federally related mortgage loan shall disclose to each person who applies for the loan, at the time of application for the loan, whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding.

(b) Notice by transferor of loan servicing at time of transfer

(1) Notice requirement

Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person.

(2) Time of notice

(A) In general

Except as provided under subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not less than 15 days before the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception for certain proceedings

The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by—

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing

The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with

respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice

The notice required under paragraph (1) shall include the following information:

(A) The effective date of transfer of the servicing described in such paragraph.

(B) The name, address, and toll-free or collect call telephone number of the transferee servicer.

(C) A toll-free or collect call telephone number for (i) an individual employed by the transferor servicer, or (ii) the department of the transferor servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

(D) The name and toll-free or collect call telephone number for (i) an individual employed by the transferee servicer, or (ii) the department of the transferee servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

(E) The date on which the transferor servicer who is servicing the mortgage loan before the assignment, sale, or transfer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments.

(F) Any information concerning the effect the transfer may have, if any, on the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance and what action, if any, the borrower must take to maintain coverage.

(G) A statement that the assignment, sale, or transfer of the servicing of the mortgage loan does not affect any term or condition of the security instruments other than terms directly related to the servicing of such loan.

(c) Notice by transferee of loan servicing at time of transfer

(1) Notice requirement

Each transferee servicer to whom the servicing of any federally related mortgage loan is assigned, sold, or transferred shall notify the borrower of any such assignment, sale, or transfer.

(2) Time of notice

(A) In general

Except as provided in subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not more than 15 days after the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception for certain proceedings

The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by—

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing

The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice

Any notice required under paragraph (1) shall include the information described in subsection (b)(3) of this section.

(d) Treatment of loan payments during transfer period

During the 60-day period beginning on the effective date of transfer of the servicing of any federally related mortgage loan, a late fee may not be imposed on the borrower with respect to any payment on such loan and no such payment may be treated as late for any other purposes, if the payment is received by the transferor servicer (rather than the transferee servicer who should properly receive payment) before the due date applicable to such payment.

(e) Duty of loan servicer to respond to borrower inquiries

(1) Notice of receipt of inquiry

(A) In general

If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 20 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

(B) Qualified written request

For purposes of this subsection, a qualified written request shall be a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that—

(i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and

(ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

(2) Action with respect to inquiry

Not later than 60 days (excluding legal public holidays, Saturdays, and Sundays) after

the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall—

(A) make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of such correction (which shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower);

(B) after conducting an investigation, provide the borrower with a written explanation or clarification that includes—

(i) to the extent applicable, a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower; or

(C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes—

(i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.

(3) Protection of credit rating

During the 60-day period beginning on the date of the servicer's receipt from any borrower of a qualified written request relating to a dispute regarding the borrower's payments, a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such period or qualified written request, to any consumer reporting agency (as such term is defined under section 1681a of title 15).

(f) Damages and costs

Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

(1) Individuals

In the case of any action by an individual, an amount equal to the sum of—

(A) any actual damages to the borrower as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed $1,000.

(2) Class actions

In the case of a class action, an amount equal to the sum of—

(A) any actual damages to each of the borrowers in the class as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than $1,000 for each member of the class, except that the total amount of damages under this subparagraph in any class action may not exceed the lesser of—

(i) $500,000; or

(ii) 1 percent of the net worth of the servicer.

(3) Costs

In addition to the amounts under paragraph (1) or (2), in the case of any successful action under this section, the costs of the action, together with any attorneys fees incurred in connection with such action as the court may determine to be reasonable under the circumstances.

(4) Nonliability

A transferor or transferee servicer shall not be liable under this subsection for any failure to comply with any requirement under this section if, within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before the commencement of an action under this subsection and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

(g) Administration of escrow accounts

If the terms of any federally related mortgage loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due.

(h) Preemption of conflicting State laws

Notwithstanding any provision of any law or regulation of any State, a person who makes a federally related mortgage loan or a servicer shall be considered to have complied with the provisions of any such State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of the servicing of a loan if such person or servicer complies with the requirements under this section regarding timing, content, and procedures for notification of the borrower.

(i) Definitions

For purposes of this section:

(1) Effective date of transfer

The term ''effective date of transfer'' means the date on which the mortgage payment of a borrower is first due to the transferee servicer of a mortgage loan pursuant to the assignment, sale, or transfer of the servicing of the mortgage loan.

(2) Servicer

The term ''servicer'' means the person responsible for servicing of a loan (including the

person who makes or holds a loan if such person also services the loan). The term does not include—

(A) the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to section 1823(c) of this title or as receiver or conservator of an insured depository institution; and

(B) the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by—

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(3) Servicing

The term ''servicing'' means receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in section 2609 of this title, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

(j) Transition

(1) Originator liability

A person who makes a federally related mortgage loan shall not be liable to a borrower because of a failure of such person to comply with subsection (a) of this section with respect to an application for a loan made by the borrower before the regulations referred to in paragraph (3) take effect.

(2) Servicer liability

A servicer of a federally related mortgage loan shall not be liable to a borrower because of a failure of the servicer to perform any duty under subsection (b), (c), (d), or (e) of this section that arises before the regulations referred to in paragraph (3) take effect.

(3) Regulations and effective date

The Secretary shall, by regulations that shall take effect not later than April 20, 1991, establish any requirements necessary to carry out this section. Such regulations shall include the model disclosure statement required under subsection (a)(2) of this section.

(Pub. L. 93–533, § 6, as added Pub. L. 101–625, title IX, § 941, Nov. 28, 1990, 104 Stat. 4405; amended Pub. L. 102–27, title III, § 312(a), Apr. 10, 1991, 105 Stat. 154; Pub. L. 103–325, title III, § 345, Sept. 23, 1994, 108 Stat. 2239; Pub. L. 104–208, div. A, title II, § 2103(a), Sept. 30, 1996, 110 Stat. 3009–399; Pub. L. 111–203, title X, § 1098(4), title XIV, § 1463, July 21, 2010, 124 Stat. 2104, 2182.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§ 1400(c), 1463, July 21, 2010, 124 Stat. 2136, 2182, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) in subsection (e)—

(A) in paragraph (1)(A), by substituting ''5 days'' for ''20 days'';

(B) in paragraph (2), by substituting ''30 days'' for ''60 days''; and

(C) by adding at the end the following new paragraph:

''(4) Limited extension of response time

''The 30-day period described in paragraph (2) may be extended for not more than 15 days if, before the end of such 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding.'';

(2) in subsection (f)—

(A) in paragraphs (1)(B) and (2)(B), by substituting ''$2,000'' for ''$1,000'' wherever appearing; and

(B) in paragraph (2)(B)(i), by substituting ''$1,000,000'' for ''$500,000'';

(3) in subsection (g), by inserting at the end ''Any balance in any such account that is within the servicer's control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the same lender.''; and

(4) by adding at the end the following:

''(k) Servicer prohibitions

''(1) In general

''A servicer of a federally related mortgage shall not—

''(A) obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance;

''(B) charge fees for responding to valid qualified written requests (as defined in regulations which the Bureau of Consumer Financial Protection shall prescribe) under this section;

''(C) fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties;

''(D) fail to respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner or assignee of the loan; or

''(E) fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this chapter.

''(2) Force-placed insurance defined

''For purposes of this subsection and subsections (l) and (m), the term 'force-placed insurance' means hazard insurance coverage obtained

by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage.

''(l) Requirements for force-placed insurance

''A servicer of a federally related mortgage shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

''(1) Written notices to borrower

''A servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless—

''(A) the servicer has sent, by first-class mail, a written notice to the borrower containing—

''(i) a reminder of the borrower's obligation to maintain hazard insurance on the property securing the federally related mortgage;

''(ii) a statement that the servicer does not have evidence of insurance coverage of such property;

''(iii) a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and

''(iv) a statement that the servicer may obtain such coverage at the borrower's expense if the borrower does not provide such demonstration of the borrower's existing coverage in a timely manner;

''(B) the servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (A) that contains all the information described in each clause of such subparagraph; and

''(C) the servicer has not received from the borrower any demonstration of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the notice under subparagraph (B) was sent by the servicer.

''(2) Sufficiency of demonstration

''A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent, or as otherwise required by the Bureau of Consumer Financial Protection.

''(3) Termination of force-placed insurance

''Within 15 days of the receipt by a servicer of confirmation of a borrower's existing insurance coverage, the servicer shall—

''(A) terminate the force-placed insurance; and

''(B) refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the borrower's insurance coverage and the force-placed insurance coverage were each in effect, and any related fees charged to the consumer's account with respect to the force-placed insurance during such period.

''(4) Clarification with respect to Flood Disaster Protection Act

''No provision of this section shall be construed as prohibiting a servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to section 4012a(e) of title 42.

''(m) Limitations on force-placed insurance charges

''All charges, apart from charges subject to State regulation as the business of insurance, related to force-placed insurance imposed on the borrower by or through the servicer shall be bona fide and reasonable.''

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title X, §§ 1098(4), 1100H, July 21, 2010, 124 Stat. 2104, 2113, provided that, effective on the designated transfer date, subsection (j)(3) of this section is amended by substituting ''Bureau'' for ''Secretary'' and striking out '', by regulations that shall take effect not later than April 20, 1991,''. See Effective Date of 2010 Amendment note below.

PRIOR PROVISIONS

A prior section 2605, Pub. L. 93–533, § 6, Dec. 22, 1974, 88 Stat. 1726, related to advanced itemized disclosure of settlement costs by the lender and liability of the lender for failure to comply, prior to repeal by Pub. L. 94–205, § 5, Jan. 2, 1976, 89 Stat. 1158.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208 amended heading and text of subsec. (a) generally. Prior to amendment, text consisted of pars. (1) to (3) relating to requirements for lenders of federally related mortgage loans to disclose to applicants whether servicing of such loan may be assigned, sold, or transferred, directed Secretary to develop model disclosure statement, and required signature of applicant on all such disclosure statements.

1994—Subsec. (a)(1)(B). Pub. L. 103–325 substituted ''(B) at the choice of the person making a federally related mortgage loan—

''(i) for each of the most recent''

for ''(B) for each of the most recent'', redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, and realigned margins, substituted ''or'' for ''and'' at end of subcl. (II), and added cl. (ii).

1991—Subsec. (j). Pub. L. 102–27 added subsec. (j).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1098(4) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by section 1463 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 2606. Exempted transactions

(a) In general

This chapter does not apply to credit transactions involving extensions of credit—

(1) primarily for business, commercial, or agricultural purposes; or

(2) to government or governmental agencies or instrumentalities.

(b) Interpretation

In prescribing regulations under section 2617(a) of this title, the Secretary shall ensure that, with respect to subsection (a) of this section, the exemption for credit transactions in-

volving extensions of credit primarily for business, commercial, or agricultural purposes, as provided in subsection (a)(1)[1] of this section shall be the same as the exemption for such credit transactions under section 1603(1) of title 15.

(Pub. L. 93–533, § 7, as added Pub. L. 103–325, title III, § 312, Sept. 23, 1994, 108 Stat. 2221; amended Pub. L. 104–208, div. A, title II, § 2103(b), Sept. 30, 1996, 110 Stat. 3009–399; Pub. L. 111–203, title X, § 1098(5), July 21, 2010, 124 Stat. 2104.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 111–203, title X, §§ 1098(5), 1100H, July 21, 2010, 124 Stat. 2104, 2113, provided that, effective on the designated transfer date, subsection (b) of this section is amended by substituting ''Bureau'' for ''Secretary''. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Subsection (a)(1) of this section, referred to in subsec. (b), was in the original ''section 7(1) of the Real Estate Settlement Procedures Act of 1974'', and was translated as referring to section 7(a)(1) of that Act to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 2606, Pub. L. 93–533, § 7, Dec. 22, 1974, 88 Stat. 1727, related to seller or his agent confirming that information concerning an existing residence was disclosed to buyer in writing before a commitment for a mortgage loan was made, prior to repeal by Pub. L. 94–205, § 6, Jan. 2, 1976, 89 Stat. 1158.

AMENDMENTS

1996—Pub. L. 104–208 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 2607. Prohibition against kickbacks and unearned fees

(a) Business referrals

No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

(b) Splitting charges

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

(c) Fees, salaries, compensation, or other payments

Nothing in this section shall be construed as prohibiting (1) the payment of a fee (A) to attorneys at law for services actually rendered or (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or (C) by a lender to its duly appointed agent for services actually performed in the making of a loan, (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed, (3) payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers, (4) affiliated business arrangements so long as (A) a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with such referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred (i) in the case of a face-to-face referral or a referral made in writing or by electronic media, at or before the time of the referral (and compliance with this requirement in such case may be evidenced by a notation in a written, electronic, or similar system of records maintained in the regular course of business); (ii) in the case of a referral made by telephone, within 3 business days after the referral by telephone,[1] (and in such case an abbreviated verbal disclosure of the existence of the arrangement and the fact that a written disclosure will be provided within 3 business days shall be made to the person being referred during the telephone referral); or (iii) in the case of a referral by a lender (including a referral by a lender to an affiliated lender), at the time the estimates required under section 2604(c) of this title are provided (notwithstanding clause (i) or (ii)); and any required written receipt of such disclosure (without regard to the manner of the disclosure under clause (i), (ii), or (iii)) may be obtained at the closing or settlement (except that a person making a face-to-face referral who provides the written disclosure at or before the time of the referral shall attempt to obtain any required written receipt of such disclosure at such time and if the person being referred chooses not to acknowledge the receipt of the disclosure at that time, that fact shall be noted in the written, electronic, or similar system of records maintained in the regular course of business by the person making the referral), (B) such person is not required to use any particular provider of settlement services, and (C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship, or (5) such other payments or classes of payments or other transfers as are specified in regulations prescribed by the Secretary, after consultation with the Attorney General, the Secretary of Veterans Affairs, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Secretary of Agriculture. For purposes of the preceding sentence, the following shall not be considered a violation of clause (4)(B): (i) any arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser

[1] See References in Text note below.

[1] So in original.

chosen by the lender to represent the lender's interest in a real estate transaction, or (ii) any arrangement where an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(d) Penalties for violations; joint and several liability; treble damages; actions for injunction by Secretary and by State officials; costs and attorney fees; construction of State laws

(1) Any person or persons who violate the provisions of this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(2) Any person or persons who violate the prohibitions or limitations of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service.

(3) No person or persons shall be liable for a violation of the provisions of subsection (c)(4)(A) of this section if such person or persons proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adapted to avoid such error.

(4) The Secretary, the Attorney General of any State, or the insurance commissioner of any State may bring an action to enjoin violations of this section.

(5) In any private action brought pursuant to this subsection, the court may award to the prevailing party the court costs of the action together with reasonable attorneys fees.

(6) No provision of State law or regulation that imposes more stringent limitations on affiliated business arrangements shall be construed as being inconsistent with this section.

(Pub. L. 93–533, § 8, Dec. 22, 1974, 88 Stat. 1727; Pub. L. 94–205, § 7, Jan. 2, 1976, 89 Stat. 1158; Pub. L. 98–181, title IV, § 461(b), (c), Nov. 30, 1983, 97 Stat. 1231; Pub. L. 100–242, title V, § 570(g), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 102–54, § 13(d)(4), June 13, 1991, 105 Stat. 275; Pub. L. 104–208, div. A, title II, § 2103(c)(2), (d), Sept. 30, 1996, 110 Stat. 3009–400; Pub. L. 111–203, title X, § 1098(6), (7), July 21, 2010, 124 Stat. 2104.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1098(6), (7), 1100H, July 21, 2010, 124 Stat. 2104, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) in subsection (c)(5), by substituting ''Bureau'' for ''Secretary''; and

(2) in subsection (d)—

(A) in the heading, by inserting ''Bureau and'' before ''Secretary''; and

(B) by striking out paragraph (4), and adding the following:

''(4) The Bureau, the Secretary, or the attorney general or the insurance commissioner of any State may bring an action to enjoin violations of this section. Except, to the extent that a person is subject to the jurisdiction of the Bureau, the Secretary, or the attorney general or the insurance commissioner of any State, the Bureau shall have primary authority to enforce or administer this section, subject to subtitle B of the Consumer Financial Protection Act of 2010.''

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1996—Subsec. (c)(4). Pub. L. 104–208, § 2103(c)(2), substituted ''affiliated business arrangements'' for ''controlled business arrangements''.

Subsec. (c)(4)(A). Pub. L. 104–208, § 2103(d), amended subcl. (A) generally. Prior to amendment, subcl. (A) read as follows: ''at or prior to the time of the referral a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with the referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred, except that where a lender makes the referral, this requirement may be satisfied as part of and at the time that the estimates of settlement charges required under section 2604(c) of this title are provided,''.

Subsec. (d)(6). Pub. L. 104–208, § 2103(c)(2), substituted ''affiliated business arrangements'' for ''controlled business arrangements''.

1991—Subsec. (c)(5). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1988—Subsec. (c)(5). Pub. L. 100–242 substituted ''clause (4)(B)'' for ''clause 4(B)''.

1983—Subsec. (c). Pub. L. 98–181, § 461(b), redesignated cl. (4) as (5), added cl. (4) and provisions following cl. (5), as so redesignated, relating to arrangements which shall not be considered a violation of cl. (4)(B).

Subsec. (d)(2). Pub. L. 98–181, § 461(c), substituted provisions setting forth the liability of persons violating the prohibitions or limitations of this section for provisions setting forth liability, in addition to penalties provided in par. (1), of persons violating subsecs. (a) and (b) of this section, plus costs and attorney's fees.

Subsec. (d)(3) to (6). Pub. L. 98–181, § 461(c), added pars. (3) to (6).

1976—Subsec. (c). Pub. L. 94–205 added cls. (3) and (4).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 effective Jan. 1, 1984, see section 461(f) of Pub. L. 98–181, set out as a note under section 2602 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–205 effective Jan. 2, 1976, see section 12 of Pub. L. 94–205, set out as a note under section 2602 of this title.

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

§ 2608. Title companies; liability of seller

(a) No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company.

(b) Any seller who violates the provisions of subsection (a) of this section shall be liable to the buyer in an amount equal to three times all charges made for such title insurance.

(Pub. L. 93–533, § 9, Dec. 22, 1974, 88 Stat. 1728.)

§ 2609. Limitation on requirement of advance deposits in escrow accounts

(a) In general

A lender, in connection with a federally related mortgage loan, may not require the borrower or prospective borrower—

(1) to deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property, in connection with the settlement, an aggregate sum (for such purpose) in excess of a sum that will be sufficient to pay such taxes, insurance premiums and other charges attributable to the period beginning on the last date on which each such charge would have been paid under the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, and ending on the due date of its first full installment payment under the mortgage, plus one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period; or

(2) to deposit in any such escrow account in any month beginning with the first full installment payment under the mortgage a sum (for the purpose of assuring payment of taxes, insurance premiums and other charges with respect to the property) in excess of the sum of (A) one-twelfth of the total amount of the estimated taxes, insurance premiums and other charges which are reasonably anticipated to be paid on dates during the ensuing twelve months which dates are in accordance with the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, plus (B) such amount as is necessary to maintain an additional balance in such escrow account not to exceed one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period: *Provided, however*, That in the event the lender determines there will be or is a deficiency he shall not be prohibited from requiring additional monthly deposits in such escrow account to avoid or eliminate such deficiency.

(b) Notification of shortage in escrow account

If the terms of any federally related mortgage loan require the borrower to make payments to the servicer (as the term is defined in section 2605(i) of this title) of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall notify the borrower not less than annually of any shortage of funds in the escrow account.

(c) Escrow account statements

(1) Initial statement

(A) In general

Any servicer that has established an escrow account in connection with a federally related mortgage loan shall submit to the borrower for which the escrow account has been established a statement clearly itemizing the estimated taxes, insurance premiums, and other charges that are reasonably anticipated to be paid from the escrow account during the first 12 months after the establishment of the account and the anticipated dates of such payments.

(B) Time of submission

The statement required under subparagraph (A) shall be submitted to the borrower at closing with respect to the property for which the mortgage loan is made or not later than the expiration of the 45-day period beginning on the date of the establishment of the escrow account.

(C) Initial statement at closing

Any servicer may submit the statement required under subparagraph (A) to the borrower at closing and may incorporate such statement in the uniform settlement statement required under section 2603 of this title. The Secretary shall issue regulations prescribing any changes necessary to the uniform settlement statement under section 2603 of this title that specify how the statement required under subparagraph (A) of this section shall be incorporated in the uniform settlement statement.

(2) Annual statement

(A) In general

Any servicer that has established or continued an escrow account in connection with a federally related mortgage loan shall submit to the borrower for which the escrow account has been established or continued a statement clearly itemizing, for each period described in subparagraph (B) (during which the servicer services the escrow account), the amount of the borrower's current monthly payment, the portion of the monthly payment being placed in the escrow account, the total amount paid into the escrow account during the period, the total amount paid out of the escrow account during the period for taxes, insurance premiums, and other charges (as separately identified), and the balance in the escrow account at the conclusion of the period.

(B) Time of submission

The statement required under subparagraph (A) shall be submitted to the borrower not less than once for each 12-month period, the first such period beginning on the first January 1st that occurs after November 28, 1990, and shall be submitted not more than 30 days after the conclusion of each such 1-year period.

(d) Penalties

(1) In general

In the case of each failure to submit a statement to a borrower as required under sub-

section (c) of this section, the Secretary shall assess to the lender or escrow servicer failing to submit the statement a civil penalty of $50 for each such failure, but the total amount imposed on such lender or escrow servicer for all such failures during any 12-month period referred to in subsection (b)[1] of this section may not exceed $100,000.

(2) Intentional violations

If any failure to which paragraph (1) applies is due to intentional disregard of the requirement to submit the statement, then, with respect to such failure—

(A) the penalty imposed under paragraph (1) shall be $100; and

(B) in the case of any penalty determined under subparagraph (A), the $100,000 limitation under paragraph (1) shall not apply.

(Pub. L. 93–533, § 10, Dec. 22, 1974, 88 Stat. 1728; Pub. L. 94–205, § 8, Jan. 2, 1976, 89 Stat. 1158; Pub. L. 101–625, title IX, § 942(a), Nov. 28, 1990, 104 Stat. 4411; Pub. L. 104–208, div. A, title II, § 2103(g)(2), Sept. 30, 1996, 110 Stat. 3009–401; Pub. L. 111–203, title X, § 1098(8), July 21, 2010, 124 Stat. 2104.)

AMENDMENT OF SUBSECTION (c)

Pub. L. 111–203, title X, §§ 1098(8), 1100H, July 21, 2010, 124 Stat. 2104, 2113, provided that, effective on the designated transfer date, subsection (c) of this section is amended by substituting ''Bureau'' for ''Secretary''. See Effective Date of 2010 Amendment note below.

AMENDMENTS

1996—Subsec. (c)(1)(C). Pub. L. 104–208 substituted ''The Secretary'' for ''Not later than the expiration of the 90-day period beginning on November 28, 1990, the Secretary'' in second sentence.

1990—Pub. L. 101–625 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) to (d).

1976—Pub. L. 94–205 provided that in addition to amounts required for the payment of taxes, insurance premiums, and other charges due at settlement, the buyer could not be required at settlement to place into an escrow account more than one-sixth of the estimated total amount of such taxes, insurance premiums, and other charges payable within a twelve month period beginning on the date of settlement, but the buyer could be required to make monthly payments into an escrow account sufficient to maintain a surplus of one-sixth of the estimated total amount payable in the coming twelve month period.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–205 effective Jan. 2, 1976, see section 12 of Pub. L. 94–205, set out as a note under section 2602 of this title.

§ 2610. Prohibition of fees for preparation of truth-in-lending, uniform settlement, and escrow account statements

No fee shall be imposed or charge made upon any other person (as a part of settlement costs or otherwise) by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a mobile home), or by a servicer (as the term is defined under section 2605(i) of this title), for or on account of the preparation and submission by such lender or servicer of the statement or statements required (in connection with such loan) by sections 2603 and 2609(c) of this title or by the Truth in Lending Act [15 U.S.C. 1601 et seq.].

(Pub. L. 93–533, § 12, Dec. 22, 1974, 88 Stat. 1729; Pub. L. 101–625, title IX, § 942(b), Nov. 28, 1990, 104 Stat. 4412.)

REFERENCES IN TEXT

Truth in Lending Act, referred to in text, is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, as amended, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

AMENDMENTS

1990—Pub. L. 101–625 substituted present section catchline for ''Fee for preparation of truth-in-lending and uniform settlement statements'', inserted after first comma ''or by a servicer (as the term is defined under section 2605(i) of this title),'', and substituted ''lender or servicer'' for second reference to ''lender'' and ''2609(c)'' for ''2605''.

§§ 2611 to 2613. Repealed. Pub. L. 104–208, div. A, title II, § 2103(h), Sept. 30, 1996, 110 Stat. 3009–401

Section 2611, Pub. L. 93–533, § 13, Dec. 22, 1974, 88 Stat. 1730, related to establishment of land parcel recordation system on demonstration basis.

Section 2612, Pub. L. 93–533, § 14, Dec. 22, 1974, 88 Stat. 1730, directed Secretary of Housing and Urban Development to report on necessity for further legislation involving real estate settlements.

Section 2613, Pub. L. 93–533, § 15, Dec. 22, 1974, 88 Stat. 1730, directed Secretary of Housing and Urban Development to determine, and report to Congress on, feasibility of including statements of settlement costs in special information booklets.

§ 2614. Jurisdiction of courts; limitations

Any action pursuant to the provisions of section 2605, 2607, or 2608 of this title may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within 3 years in the case of a violation of section 2605 of this title and 1 year in the case of a violation of section 2607 or 2608 of this title from the date of the occurrence of the violation, except that actions brought by the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation.

(Pub. L. 93–533, § 16, Dec. 22, 1974, 88 Stat. 1731; Pub. L. 98–181, title IV, § 461(d), Nov. 30, 1983, 97 Stat. 1232; Pub. L. 104–208, div. A, title II, § 2103(e), Sept. 30, 1996, 110 Stat. 3009–400; Pub. L. 111–203, title X, § 1098(9), July 21, 2010, 124 Stat. 2104.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1098(9), 1100H, July 21, 2010, 124 Stat. 2104, 2113, provided that, ef-

[1] So in original. Probably should be subsection ''(c)''.

fective on the designated transfer date, this section is amended by inserting ''the Bureau,'' before ''the Secretary''. See Effective Date of 2010 Amendment note below.

AMENDMENTS

1996—Pub. L. 104–208 substituted ''section 2605, 2607, or 2608 of this title'' for ''section 2607 or 2608 of this title'' and ''within 3 years in the case of a violation of section 2605 of this title and 1 year in the case of a violation of section 2607 or 2608 of this title'' for ''within one year''.

1983—Pub. L. 98–181 amended section generally, striking out a reference to section 2605 of this title, and inserting provision allowing action in district where violation is alleged to have occurred, and provision relating to time limitations in actions brought by the Secretary, the Attorney General of any State, or the insurance commissioner of any State.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 effective Jan. 1, 1984, see section 461(f) of Pub. L. 98–181, set out as a note under section 2602 of this title.

§ 2615. Contracts and liens; validity

Nothing in this chapter shall affect the validity or enforceability of any sale or contract for the sale of real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a federally related mortgage loan.

(Pub. L. 93–533, § 17, Dec. 22, 1974, 88 Stat. 1731.)

§ 2616. State laws unaffected; inconsistent Federal and State provisions

This chapter does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter from complying with, the laws of any State with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Secretary is authorized to determine whether such inconsistencies exist. The Secretary may not determine that any State law is inconsistent with any provision of this chapter if the Secretary determines that such law gives greater protection to the consumer. In making these determinations the Secretary shall consult with the appropriate Federal agencies.

(Pub. L. 93–533, § 18, Dec. 22, 1974, 88 Stat. 1731; Pub. L. 94–205, § 9, Jan. 2, 1976, 89 Stat. 1159; Pub. L. 111–203, title X, § 1098(10), July 21, 2010, 124 Stat. 2104.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1098(10), 1100H, July 21, 2010, 124 Stat. 2104, 2113, provided that, effective on the designated transfer date, this section is amended by substituting ''Bureau'' for ''Secretary'' wherever appearing. See Effective Date of 2010 Amendment note below.

AMENDMENTS

1976—Pub. L. 94–205 struck out ''(a)'' before ''This chapter'' and struck out subsec. (b) which provided for Federal protection against liability for acts done or omitted in good faith in accordance with the rules, regulations, or interpretations issued by the Secretary. See section 2617 (b) of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–205 effective Jan. 2, 1976, see section 12 of Pub. L. 94–205, set out as a note under section 2602 of this title.

§ 2617. Authority of Secretary

(a) Issuance of regulations; exemptions

The Secretary is authorized to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of this chapter.

(b) Liability for acts done in good faith in conformity with rule, regulation, or interpretation

No provision of this chapter or the laws of any State imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Secretary or the Attorney General, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(c) Investigations; hearings; failure to obey order; contempt

(1) The Secretary may investigate any facts, conditions, practices, or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of this chapter, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices. To aid in the investigations, the Secretary is authorized to hold such hearings, administer such oaths, and require by subpena the attendance and testimony of such witnesses and production of such documents as the Secretary deems advisable.

(2) Any district court of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena of the Secretary issued under this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Delay of effectiveness of recent final regulation relating to payments to employees

(1) In general

The amendment to part 3500 of title 24 of the Code of Federal Regulations contained in the final regulation prescribed by the Secretary and published in the Federal Register on June 7, 1996, which will, as of the effective date of such amendment—

(A) eliminate the exemption for payments by an employer to employees of such em-

ployer for referral activities which is currently codified as section 3500.14(g)(1)(vii) of such title 24; and

(B) replace such exemption with a more limited exemption in new clauses (vii), (viii), and (ix) of section 3500.14 of such title 24,

shall not take effect before July 31, 1997.

(2) Continuation of prior rule

The regulation codified as section 3500.14(g)(1)(vii) of title 24 of the Code of Federal Regulations, relating to employer-employee payments, as in effect on May 1, 1996, shall remain in effect until the date the amendment referred to in paragraph (1) takes effect in accordance with such paragraph.

(3) Public notice of effective date

The Secretary shall provide public notice of the date on which the amendment referred to in paragraph (1) will take effect in accordance with such paragraph not less than 90 days and not more than 180 days before such effective date.

(Pub. L. 93–533, § 19, as added Pub. L. 94–205, § 10, Jan. 2, 1976, 89 Stat. 1159; amended Pub. L. 98–181, title IV, § 461(e), Nov. 30, 1983, 97 Stat. 1232; Pub. L. 104–208, div. A, title II, § 2103(f), Sept. 30, 1996, 110 Stat. 3009–401; Pub. L. 111–203, title X, § 1098(11), July 21, 2010, 124 Stat. 2104.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1098(11), 1100H, July 21, 2010, 124 Stat. 2104, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) by substituting ''Bureau'' for ''Secretary'' in the section catchline;

(2) in subsection (a), by substituting ''Bureau'' for ''Secretary'' wherever appearing; and

(3) in subsections (b) and (c), by substituting ''the Bureau'' for ''the Secretary'' wherever appearing.

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–208 added subsec. (d).
1983—Subsec. (c). Pub. L. 98–181 added subsec. (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 effective Jan. 1, 1984, see section 461(f) of Pub. L. 98–181, set out as a note under section 2602 of this title.

EFFECTIVE DATE

Section effective Jan. 2, 1976, see section 12 of Pub. L. 94–205, set out as an Effective Date of 1976 Amendment note under section 2602 of this title.

CHAPTER 28—EMERGENCY MORTGAGE RELIEF

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§ 2701. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) the Nation is in a severe recession and that the sharp downturn in economic activity has driven large numbers of workers into unemployment and has reduced the incomes of many others;

(2) as a result of these adverse economic conditions the capacity of many homeowners to continue to make mortgage payments has deteriorated and may further deteriorate in the months ahead, leading to the possibility of widespread mortgage foreclosures and distress sales of homes; and

(3) many of these homeowners could retain their homes with temporary financial assistance until economic conditions improve.

(b) It is the purpose of this chapter to provide a standby authority which will prevent widespread mortgage foreclosures and distress sales of homes resulting from the temporary loss of employment and income through a program of emergency loans and advances and emergency mortgage relief payments to homeowners to defray mortgage expenses.

(Pub. L. 94–50, title I, § 102, July 2, 1975, 89 Stat. 249.)

SHORT TITLE

Section 1 of Pub. L. 94–50 provided: ''That this Act [enacting this chapter, amending sections 1723e and 1735b of this title and sections 1452 and 4106 of Title 42, The Public Health and Welfare, enacting provisions set out as a note under this section, and amending provisions set out as a note under section 1723e of this title] may be cited as the 'Emergency Housing Act of 1975'.''

Section 101 of title I of Pub. L. 94–50 provided that: ''This title [enacting this chapter] may be cited as the 'Emergency Homeowners' Relief Act'.''

§ 2702. Mortgages eligible for assistance

No assistance shall be extended with respect to any mortgage under this chapter unless—

(1) the holder of the mortgage has indicated to the mortgagor its intention to foreclose;

(2) the mortgagor and holder of the mortgage have indicated in writing to the Secretary of Housing and Urban Development (hereinafter referred to as the ''Secretary'') and to any agency or department of the Federal Government responsible for the regulation of the holder that circumstances (such as the volume of delinquent loans in its portfolio) make it probable that there will be a fore-

closure and that the mortgagor is in need of emergency mortgage relief as authorized by this chapter, except that such statement by the holder of the mortgage may be waived by the Secretary if in his judgment such waiver would further the purposes of this chapter;

(3) payments under the mortgage have been delinquent for at least three months;

(4) the mortgagor has incurred a substantial reduction in income as a result of involuntary unemployment or underemployment due to adverse economic conditions and is financially unable to make full mortgage payments;

(5) there is a reasonable prospect that the mortgagor will be able to make the adjustments necessary for a full resumption of mortgage payments; and

(6) the mortgaged property is the principal residence of the mortgagor.

(Pub. L. 94–50, title I, §103, July 2, 1975, 89 Stat. 249; Pub. L. 111–203, title XIV, §1496(b)(1), July 21, 2010, 124 Stat. 2207.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1496(b)(1), July 21, 2010, 124 Stat. 2136, 2207, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) in paragraph (2)—

(A) by substituting ''have certified'' for ''have indicated'' and all that follows through ''regulation of the holder'';

(B) by striking out ''(such as the volume of delinquent loans in its portfolio)''; and

(C) by striking out '', except that such statement'' and all that follows through ''purposes of this chapter''; and

(2) in paragraph (4), by inserting ''or medical conditions'' after ''adverse economic conditions''.

See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 2703. Manner of assistance and repayment

(a) Form of assistance

Assistance under this chapter with respect to a mortgage which meets the requirements of section 2702 of this title may be provided in the form of emergency mortgage relief loans and advances of credit insured pursuant to section 2704 of this title or in the form of emergency mortgage relief payments made by the Secretary pursuant to section 2705 of this title.

(b) Amount of assistance

Assistance under this chapter on behalf of a homeowner may be made available in an amount up to the amount of the principal, interest, taxes, ground rents, hazard insurance, and mortgage insurance premiums due under the homeowner's mortgage, but such assistance shall not exceed the lesser of $250 per month or the amount determined to be reasonably necessary to supplement such amount as the homeowner is capable of contributing toward such mortgage payment.

(c) Monthly payments; extension of time; report of increase in income

Monthly payments may be provided under this chapter either with the proceeds of an insured loan or advance of credit or with emergency mortgage relief payments for up to twelve months, and, in accordance with criteria prescribed by the Secretary, such monthly payments may be extended once for up to twelve additional months. A mortgagor receiving the benefit of mortgage relief assistance pursuant to this chapter shall be required, in accordance with criteria prescribed by the Secretary, to report any increase in income which will permit a reduction or termination of such assistance during this period.

(d) Conditions and terms of repayment; interest rate

Emergency loans or advances of credit made and insured under section 2704 of this title, and emergency mortgage relief payments made under section 2705 of this title, shall be repayable by the homeowner upon such terms and conditions as the Secretary shall prescribe, except that interest on a loan or advance of credit insured under section 2704 of this title or emergency mortgage relief payments made under section 2705 of this title shall not be charged at a rate which exceeds the maximum interest rate applicable with respect to mortgages insured pursuant to section 1709(b) of this title.

(e) Deferral of commencement of repayment; security for repayment

The Secretary may provide for the deferral of the commencement of the repayment of a loan or advance insured under section 2704 of this title or emergency mortgage relief payments made under section 2705 of this title until one year following the date of the last disbursement of the proceeds of the loan or advance or payments or for such longer period as the Secretary determines would further the purpose of this chapter. The Secretary shall by regulation require such security for the repayment of insured loans or advances of credit or emergency mortgage relief payments as he deems appropriate and may require that such repayment be secured by a lien on the mortgaged property.

(Pub. L. 94–50, title I, §104, July 2, 1975, 89 Stat. 250; Pub. L. 111–203, title XIV, §1496(b)(2), July 21, 2010, 124 Stat. 2208.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1496(b)(2), July 21, 2010, 124 Stat. 2136, 2208, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) in subsection (b), by substituting ''. The amount of assistance provided to a homeowner under this chapter shall be an amount that the Secretary determines is reasonably necessary to supplement such amount as the homeowner is capable of contributing toward such mortgage payment, except that the aggregate amount of such assistance provided for any homeowner shall not exceed $50,000.'' for '', but such assistance'' and all that follows through the period at the end;

(2) in subsection (d), by substituting ''(1) the rate of interest on any loan or advance of credit insured under this chapter shall be fixed for the life of the loan or advance of credit and shall not exceed the rate of interest that is generally charged for mortgages on single-family housing insured by the Secretary of Housing and Urban Development under title II of the National Housing Act at the time such loan or advance of credit is made, and (2) no interest shall be charged on interest which is deferred on a loan or advance of credit made under this chapter. In establishing rates, terms and conditions for loans or advances of credit made under this chapter, the Secretary shall take into account a homeowner's ability to repay such loan or advance of credit.'' for ''interest on a loan or advance'' and all that follows through the end; and

(3) in subsection (e), by inserting ''Any eligible homeowner who receives a grant or an advance of credit under this chapter may repay the loan in full, without penalty, by lump sum or by installment payments at any time before the loan becomes due and payable.'' after the period at the end of the first sentence.

See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 2704. Insurance for emergency mortgage loans and advances

(a) Institutions eligible

The Secretary is authorized, upon such terms and conditions as the Secretary may prescribe, to insure banks, trust companies, finance companies, mortgage companies, savings and loan associations, insurance companies, credit unions, and such other financial institutions, which the Secretary finds to be qualified by experience and facilities and approves as eligible for insurance, against losses which they may sustain as a result of emergency loans or advances of credit made in accordance with the provisions of section 2703 of this title and this section with respect to mortgages eligible for assistance under this chapter.

(b) Amount of insurance

In no case shall the insurance granted by the Secretary under this section to any financial institution on loans and advances made by such financial institution for the purposes of this chapter exceed 40 per centum of the total amount of such loans and advances made by the institution, except that, with respect to any individual loan or advance of credit, the amount of any claim for loss on such individual loan or advance of credit paid by the Secretary under the provision of this section shall not exceed 90 per centum of such loss.

(c) Premium charge; amount

The Secretary is authorized to fix a premium charge or charges for the insurance granted under this section, but in the case of any loan or advance of credit, such charge or charges shall not exceed an amount equivalent to one-half of 1 per centum per annum of the principal obligation of such loan or advance of credit outstanding at any time.

(d) Waiver of compliance with rules and regulations; finality and incontestability of payment for loss; transfer of insurance

The Secretary is authorized and empowered to waive compliance with any rule or regulation prescribed by the Secretary for the purposes of this section if, in the Secretary's judgment, the enforcement of such rule or regulation would impose an injustice upon an insured lending institution which has substantially complied with such regulations in good faith. Any payment for loss made to an insured financial institution under this section shall be final and incontestable after two years from the date the claim was certified for payment by the Secretary, in the absence of fraud or misrepresentation on the part of such institution unless a demand for repurchase of the obligation shall have been made on behalf of the United States prior to the expiration of such two-year period. The Secretary is authorized to transfer to any financial institution approved for insurance under this chapter any insurance in connection with any loan which may be sold to it by another insured financial institution.

(e) Maximum aggregate amount of loans and advances insured

The aggregate amount of loans and advances insured under this section shall not exceed $1,500,000,000 at any one time.

(Pub. L. 94–50, title I, § 105, July 2, 1975, 89 Stat. 251; Pub. L. 111–203, title XIV, § 1496(b)(3), July 21, 2010, 124 Stat. 2208.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§ 1400(c), 1496(b)(3), July 21, 2010, 124 Stat. 2136, 2208, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) by striking out subsection (b);

(2) in subsection (e), by inserting ''and emergency mortgage relief payments made under section 2705 of this title'' after ''insured under this section'' and substituting ''$3,000,000,000'' for ''$1,500,000,000 at any one time'';

(3) by redesignating subsections (c), (d), and (e) as (b), (c), and (d), respectively; and

(4) by adding at the end the following:

''(e) The Secretary shall establish underwriting guidelines or procedures to allocate amounts made available for loans and advances insured under this section and for emergency relief payments made under section 2705 of this title based on the likelihood that a mortgagor will be able to resume mortgage payments, pursuant to the requirement under section 2702(5) of this title.''

See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 2705. Emergency mortgage relief payments

(a) Direct payments to mortgagee

In the case of any mortgagee which would otherwise be eligible to participate in the program authorized under section 2704 of this title but does not qualify for an advance or advances as authorized by section 2712 of this title or under section 1430, 1430b, or 1431 of this title or otherwise elects not to participate in the program authorized under section 2704 of this title, the Secretary is authorized to make repayable emergency mortgage relief payments directly to such mortgagee on behalf of homeowners whose mortgages are held by such financial institution and who are delinquent in their mortgage payments.

(b) Mortgages eligible; terms and conditions

Emergency mortgage relief payments shall be made under this section only with respect to a mortgage which meets the requirements of section 2702 of this title and only on such terms and conditions as the Secretary may prescribe, subject to the provisions of section 2703 of this title.

(c) Processing of relief payments; power of Secretary

The Secretary may make such delegations and accept such certifications with respect to the processing of mortgage relief payments provided under this section as he deems appropriate to facilitate the prompt and efficient implementation of the assistance authorized under this section.

(Pub. L. 94–50, title I, §106, July 2, 1975, 89 Stat. 251.)

§ 2706. Emergency Homeowners' Relief Fund

(a) To carry out the purposes of this chapter, the Secretary is authorized to establish in the Treasury of the United States an Emergency Homeowners' Relief Fund (hereinafter in this chapter referred to as the ''fund'') which shall be available to the Secretary without fiscal year limitation—

(1) for making payments in connection with defaulted loans or advances of credit insured under section 2704 of this title;

(2) for making emergency mortgage relief payments under section 2705 of this title;

(3) to pay such administrative expenses (or portion of such expenses) of carrying out the provisions of this chapter as the Secretary may deem necessary.

(b) The fund shall be credited with—

(1) all amounts received by the Secretary as premium charges for insurance or as repayment for emergency mortgage relief payments under this chapter and all receipts, earnings, collections, or proceeds derived from any claim or other assets acquired by the Secretary under this Act; and

(2) such amounts as may be appropriated for the purposes of this chapter.

(Pub. L. 94–50, title I, §107, July 2, 1975, 89 Stat. 252; Pub. L. 98–479, title II, §204(m)(1), Oct. 17, 1984, 98 Stat. 2234; Pub. L. 111–203, title XIV, §1496(b)(4), July 21, 2010, 124 Stat. 2208.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1496(b)(4), July 21, 2010, 124 Stat. 2136, 2208, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, by striking out ''(a)'' and subsection (b). See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), is Pub. L. 94–50, July 2, 1975, 89 Stat. 249, as amended, known as the Emergency Housing Act of 1975, which in addition to enacting this chapter, amended sections 1723e, 1723e note and 1735b of this title, and sections 1452 and 4106 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–479, §204(m)(1)(A), (B), redesignated subsec. (a)(1) as subsec. (a) and subpars. (A), (B), and (C) as pars. (1), (2), and (3), respectively.

Subsec. (b). Pub. L. 98–479, §204(m)(1)(C), (D), redesignated subsec. (a)(2) as subsec. (b) and subpars. (A) and (B) as pars. (1) and (2), respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

EMERGENCY MORTGAGE RELIEF

Pub. L. 111–203, title XIV, §1496(a), July 21, 2010, 124 Stat. 2207, provided that: ''Effective October 1, 2010, and notwithstanding any other provision of law, there is hereby made available to the Secretary of Housing and Urban Development such sums as are necessary to provide $1,000,000,000 in assistance through the Emergency Homeowners' Relief Fund, which such Secretary shall establish pursuant to section 107 of the Emergency Housing Act of 1975 (12 U.S.C. 2706), as such Act is amended by this section, for use for emergency mortgage assistance in accordance with title I of such Act [12 U.S.C. 2701 et seq.].''

§ 2707. Authority of Secretary

(a) Rules and regulations

The Secretary is authorized to make such rules and regulations as may be necessary to carry out the provisions of this chapter.

(b) Payment of expenses and charges relating to acquisition, handling, improvement, or disposal of real and personal property

Notwithstanding any other provision of law relating to the acquisition, handling, improvement, or disposal of real or other property by the United States, the Secretary shall have power, for the protection of the interest of the fund authorized under this chapter, to pay out of such fund all expenses or charges in connection with the acquisition, handling, improvement, or disposal of any property, real or personal, acquired by the Secretary as a result of recoveries under security, subrogation, or other rights.

(c) Powers with respect to property rights held by Secretary

In the performance of, with respect to, the functions, powers, and duties vested in the Secretary by this chapter, the Secretary shall—

(1) have the power, notwithstanding any other provision of law, whether before or after default, to provide by contract or otherwise for the extinguishment upon default of any redemption, equitable, legal, or other right, title in any mortgage, deed, trust, or other instrument held by or held on behalf of the Secretary under the provisions of this chapter; and

(2) have the power to foreclose on any property or commence any action to protect or enforce any right conferred upon the Secretary by law, contract, or other agreement, and bid for and purchase at any foreclosure or other sale any property in connection with which assistance has been provided pursuant to this chapter. In the event of any such acquisition, the Secretary may, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, remodel and convert, dispose of, lease, and otherwise deal with, such property. Notwithstanding any other provision of law, the Secretary also shall have power to pursue to final collection by way of compromise or otherwise all claims acquired by him in connection with any security, subrogation, or other rights obtained by him in administering this chapter.

(Pub. L. 94–50, title I, § 108, July 2, 1975, 89 Stat. 252; Pub. L. 111–203, title XIV, § 1496(b)(5), July 21, 2010, 124 Stat. 2208.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§ 1400(c), 1496(b)(5), July 21, 2010, 124 Stat. 2136, 2208, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, by adding at the end the following:

''(d) Coverage of existing programs

''The Secretary shall allow funds to be administered by a State that has an existing program that is determined by the Secretary to provide substantially similar assistance to homeowners. After such determination is made such State shall not be required to modify such program to comply with the provisions of this chapter.''

See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 2708. Authorization and expiration date

(a) There are authorized to be appropriated for purposes of this chapter such sums as may be necessary, except that the funds authorized to be appropriated for section 2705 of this title shall not exceed $500,000,000. Any amounts so appropriated shall remain available until expended.

(b) No loans or advance of credit shall be insured and no emergency mortgage relief payments made under this chapter after September 30, 1977, except if such loan or advance or such payments are made with respect to a mortgagor receiving the benefit of a loan or advance insured, or emergency mortgage relief payments made, under this chapter on such date.

(Pub. L. 94–50, title I, § 109, July 2, 1975, 89 Stat. 253; Pub. L. 94–375, § 13(a), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 111–203, title XIV, § 1496(b)(6), July 21, 2010, 124 Stat. 2209.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§ 1400(c), 1496(b)(6), July 21, 2010, 124 Stat. 2136, 2209, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) in the section catchline, by striking out ''Authorization and'';

(2) by striking out subsection (a);

(3) by striking out ''(b)''; and

(4) by substituting ''2011'' for ''1977''.

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–375 substituted ''September 30, 1977'' for ''June 30, 1976''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 2709. Waiver and relaxation by institutions and approved mortgagees of limitations with respect to mortgage delinquencies; notification to Federal supervisory agency prior to foreclosure proceedings

Each Federal supervisory agency with respect to financial institutions subject to its jurisdiction, and the Secretary, with respect to other approved mortgagees, shall (1) prior to October 1, 1977, take appropriate action, not inconsistent with laws relating to the safety or soundness of such institutions or mortgagee, as the case may be, to waive or relax limitations pertaining to the operations of such institutions or mortgagees with respect to mortgage delinquencies in order to cause or encourage forebearance in residential mortgage loan foreclosures, and (2) until one year from July 2, 1975, request each such institution or mortgagee to notify that Federal supervisory agency, the Secretary, and the mortgagor, at least thirty days prior to instituting foreclosure proceedings in connection with any mortgage loan. As used in this chapter the term ''Federal supervisory agency'' means the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration.

(Pub. L. 94–50, title I, §110, July 2, 1975, 89 Stat. 253; Pub. L. 94–375, §13(b), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 98–479, title II, §204(m)(2), Oct. 17, 1984, 98 Stat. 2234; Pub. L. 111–203, title III, §361, July 21, 2010, 124 Stat. 1549.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§351, 361, July 21, 2010, 124 Stat. 1546, 1549, provided that, effective on the transfer date, this section is amended in the second sentence by substituting ''Housing Finance Agency'' for ''Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation''. See Effective Date of 2010 Amendment note below.

REPEAL OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1496(b)(7), July 21, 2010, 124 Stat. 2136, 2209, provided that this section is repealed, effective on the date on which final regulations implementing such repeal take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date. See Effective Date of Repeal note below.

AMENDMENTS

1984—Pub. L. 98–479 struck out subsection ''(a)'' designation.

1976—Subsec. (a). Pub. L. 94–375 substituted ''Each'' for ''Until one year from July 2, 1975, each'', and inserted ''prior to October 1, 1977'' after ''(1)'', and ''until one year from July 2, 1975'' after ''(2)''.

EFFECTIVE DATE OF REPEAL

Repeal effective on the date on which final regulations implementing such repeal take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 361 of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board and Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

§ 2710. Reports to Congress; time; contents

Within sixty days after July 2, 1975, and within each sixty-day period thereafter prior to October 1, 1977, the Secretary shall make a report to the Congress on (1) the current rate of delinquencies and foreclosures in the housing market areas of the country which should be of immediate concern if the purposes of this chapter is to be achieved; (2) the extent of, and prospect for continuance of, voluntary forebearance by mortgagees in such housing market areas; (3) actions being taken by governmental agencies to encourage forebearance by mortgagees in such housing market areas; (4) actions taken and actions likely to be taken with respect to making assistance under this chapter available to alleviate hardships resulting from any serious rates of delinquencies and foreclosures; and (5) the current default status and projected default trends with respect to mortgages covering multifamily properties with special attention to mortgages insured under the various provisions of the National Housing Act [12 U.S.C. 1701 et seq.] and with recommendations on how such defaults and prospective defaults may be cured or avoided in a manner which, while giving weight to the financial interests of the United States, takes into full consideration the urgent needs of the many low- and moderate-income families that currently occupy such multifamily properties.

(Pub. L. 94–50, title I, §111, July 2, 1975, 89 Stat. 253; Pub. L. 94–375, §13(c), Aug. 3, 1976, 90 Stat. 1075.)

REPEAL OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1496(b)(7), July 21, 2010, 124 Stat. 2136, 2209, provided that this section is repealed, effective on the date on which final regulations implementing such repeal take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date. See Effective Date of Repeal note below.

REFERENCES IN TEXT

The National Housing Act, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1976—Pub. L. 94–375 substituted ''October 1, 1977'' for ''July 1, 1976''.

EFFECTIVE DATE OF REPEAL

Repeal of section effective on the date on which final regulations implementing such repeal take effect, or on

the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 2711. Nonapplicability of other laws

Notwithstanding any provision of law which limits the nature, amount, term, form, or rate of interest, or the nature, amount, or form of security of loans or advances of credit, loans, or advances of credit may be made in accordance with the provisions of this chapter without regard to such provision of law.

(Pub. L. 94–50, title I, § 112, July 2, 1975, 89 Stat. 254.)

RENUMBERING OF SECTION

Pub. L. 111–203, title XIV, §§ 1400(c), 1496(b)(8), July 21, 2010, 124 Stat. 2136, 2209, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, by renumbering section 112 of Pub. L. 94–50, which is classified to this section, as section 110 of Pub. L. 94–50. See Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

§ 2712. Federal Deposit Insurance Corporation advances to insured banks

Notwithstanding any other provision of law, the Federal Deposit Insurance Corporation is authorized, upon such terms and conditions as the Corporation may prescribe, to make such advances to any insured bank as the Corporation determines may be necessary or appropriate to facilitate participation by such bank in the program authorized by this chapter. For the purpose of obtaining such funds as it determines are necessary for such advances, the Corporation may borrow from the Treasury as authorized in section 1824 of this title, and the Secretary of the Treasury is authorized and directed to make loans to the Corporation for such purpose in the same manner as loans may be made for insurance purposes under such section, subject to the maximum limitation on outstanding aggregate loans there provided.

(Pub. L. 94–50, title I, § 113, July 2, 1975, 89 Stat. 254.)

REPEAL OF SECTION

Pub. L. 111–203, title XIV, §§ 1400(c), 1496(b)(7), July 21, 2010, 124 Stat. 2136, 2209, provided that this section is repealed, effective on the date on which final regulations implementing such repeal take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date. See Effective Date of Repeal note below.

EFFECTIVE DATE OF REPEAL

Repeal effective on the date on which final regulations implementing such repeal take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

CHAPTER 29—HOME MORTGAGE DISCLOSURE

Sec.
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§ 2801. Congressional findings and declaration of purpose

(a) Findings of Congress

The Congress finds that some depository institutions have sometimes contributed to the decline of certain geographic areas by their failure pursuant to their chartering responsibilities to provide adequate home financing to qualified applicants on reasonable terms and conditions.

(b) Purpose of chapter

The purpose of this chapter is to provide the citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.

(c) Construction of chapter

Nothing in this chapter is intended to, nor shall it be construed to, encourage unsound lending practices or the allocation of credit.

(Pub. L. 94–200, title III, § 302, Dec. 31, 1975, 89 Stat. 1125.)

SHORT TITLE

Section 301 of title III of Pub. L. 94–200 provided that: ''This title [this chapter] may be cited as the 'Home Mortgage Disclosure Act of 1975'.''

§ 2802. Definitions

For purposes of this chapter—

(1) the term ''mortgage loan'' means a loan which is secured by residential real property or a home improvement loan;

(2) the term ''depository institution''—

(A) means—

(i) any bank (as defined in section 1813(a)(1) of this title);

(ii) any savings association (as defined in section 1813(b)(1) of this title); and

(iii) any credit union,

which makes federally related mortgage loans as determined by the Board; and

(B) includes any other lending institution (as defined in paragraph (4)) other than any institution described in subparagraph (A);

(3) the term ''completed application'' means an application in which the creditor has received the information that is regularly obtained in evaluating applications for the amount and type of credit requested;

(4) the term ''other lending institutions'' means any person engaged for profit in the business of mortgage lending;

(5) the term ''Board'' means the Board of Governors of the Federal Reserve System; and

(6) the term ''Secretary'' means the Secretary of Housing and Urban Development.

(Pub. L. 94–200, title III, § 303, Dec. 31, 1975, 89 Stat. 1125; Pub. L. 100–242, title V, § 565(a)(1), Feb. 5, 1988, 101 Stat. 1945; Pub. L. 101–73, title XII, § 1211(d), (e), Aug. 9, 1989, 103 Stat. 525; Pub. L. 111–203, title X, § 1094(2), July 21, 2010, 124 Stat. 2097.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1094(2), 1100H, July 21, 2010, 124 Stat. 2097, 2113, provided that, effective on the designated transfer date, this section is amended by redesignating paragraphs (1) to (6) as (2) to (7), respectively, and adding before paragraph (2) the following:

''(1) the term 'Bureau' means the Bureau of Consumer Financial Protection;''.

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1989—Par. (2). Pub. L. 101–73, § 1211(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the term 'depository institution' means any commercial bank, savings bank, savings and loan association, building and loan association, homestead association (including cooperative banks) or credit union which makes federally related mortgage loans as determined by the Board, mortgage banking subsidiary of a bank holding company or savings and loan holding company, or savings and loan service corporation that originates or purchases mortgage loans;''.

Pars. (3) to (6). Pub. L. 101–73, § 1211(e), added pars. (3) and (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively.

1988—Par. (2). Pub. L. 100–242 struck out ''or'' before ''homestead association'' and inserted before semicolon at end '', mortgage banking subsidiary of a bank holding company or savings and loan holding company, or savings and loan service corporation that originates or purchases mortgage loans''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 1211(k) of Pub. L. 101–73 provided that: ''The amendments made by this section [amending this section and sections 2803, 2804, 2807, and 2810 of this title] shall apply to each calendar year beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 565(a)(4) of Pub. L. 100–242, as amended by Pub. L. 100–628, title X, § 1087(a), Nov. 7, 1988, 102 Stat. 3280, provided that: ''The amendments made by this subsection [amending sections 2802, 2803, and 2810 of this title] shall be applicable to the portion of calendar year 1988 that begins August 19, 1988, and to each calendar year beginning after December 31, 1988.''

§ 2803. Maintenance of records and public disclosure

(a) Duty of depository institutions; nature and content of information

(1) Each depository institution which has a home office or branch office located within a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas, as defined by the Department of Commerce shall compile and make available, in accordance with regulations of the Board, to the public for inspection and copying at the home office, and at least one branch office within each primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas in which the depository institution has an office the number and total dollar amount of mortgage loans which were (A) originated (or for which the institution received completed applications), or (B) purchased by that institution during each fiscal year (beginning with the last full fiscal year of that institution which immediately preceded the effective date of this chapter).

(2) The information required to be maintained and made available under paragraph (1) shall also be itemized in order to clearly and conspicuously disclose the following:

(A) The number and dollar amount for each item referred to in paragraph (1), by census tracts for mortgage loans secured by property located within any county with a population of more than 30,000, within that primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas, otherwise, by county, for mortgage loans secured by property located within any other county within that primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas.

(B) The number and dollar amount for each item referred to in paragraph (1) for all such mortgage loans which are secured by property located outside that primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas.

For the purpose of this paragraph, a depository institution which maintains offices in more than one primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas shall be required to make the information required by this paragraph available at any such office only to the extent that such information relates to mortgage loans which were originated or purchased (or for which completed applications were received) by an office of that depository institution located in the primary metropolitan statistical area, metropoli-

tan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas in which the office making such information available is located. For purposes of this paragraph, other lending institutions shall be deemed to have a home office or branch office within a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas if such institutions have originated or purchased or received completed applications for at least 5 mortgage loans in such area in the preceding calendar year.

(b) Itemization of loan data

Any item of information relating to mortgage loans required to be maintained under subsection (a) of this section shall be further itemized in order to disclose for each such item—

(1) the number and dollar amount of mortgage loans which are insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.] or under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.] or which are guaranteed under chapter 37 of title 38;

(2) the number and dollar amount of mortgage loans made to mortgagors who did not, at the time of execution of the mortgage, intend to reside in the property securing the mortgage loan;

(3) the number and dollar amount of home improvement loans; and

(4) the number and dollar amount of mortgage loans and completed applications involving mortgagors or mortgage applicants grouped according to census tract, income level, racial characteristics, and gender.

(c) Period of maintenance

Any information required to be compiled and made available under this section, other than loan application register information under subsection (j) of this section, shall be maintained and made available for a period of five years after the close of the first year during which such information is required to be maintained and made available.

(d) Duration of disclosure requirements

Notwithstanding the provisions of subsection (a)(1) of this section, data required to be disclosed under this section for 1980 and thereafter shall be disclosed for each calendar year. Any depository institution which is required to make disclosures under this section but which has been making disclosures on some basis other than a calendar year basis shall make available a separate disclosure statement containing data for any period prior to calendar year 1980 which is not covered by the last full year report prior to the 1980 calendar year report.

(e) Format for disclosures

Subject to subsection (h) of this section, the Board shall prescribe a standard format for the disclosures required under this section.

(f) Data disclosure system; operation, etc.

The Federal Financial Institutions Examination Council, in consultation with the Secretary, shall implement a system to facilitate access to data required to be disclosed under this section. Such system shall include arrangements for a central depository of data in each primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas. Disclosure statements shall be made available to the public for inspection and copying at such central depository of data for all depository institutions which are required to disclose information under this section (or which are exempted pursuant to section 2805(b) of this title) and which have a home office or branch office within such primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas.

(g) Exceptions

The requirements of subsections (a) and (b) of this section shall not apply with respect to mortgage loans that are—

(1) made (or for which completed applications are received) by any mortgage banking subsidiary of a bank holding company or savings and loan holding company or by any savings and loan service corporation that originates or purchases mortgage loans; and

(2) approved (or for which completed applications are received) by the Secretary for insurance under title I or II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.].

(h) Submission to agencies

The data required to be disclosed under subsection (b)(4) of this section shall be submitted to the appropriate agency for each institution reporting under this chapter. Notwithstanding the requirement of subsection (a)(2)(A) of this section for disclosure by census tract, the Board, in cooperation with other appropriate regulators, including—

(1) the Office of the Comptroller of the Currency for national banks and Federal branches and Federal agencies of foreign banks;

(2) the Director of the Office of Thrift Supervision for savings associations;

(3) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and any other depository institution described in section 2802(2)(A) of this title which is not otherwise referred to in this paragraph;

(4) the National Credit Union Administration Board for credit unions; and

(5) the Secretary of Housing and Urban Development for other lending institutions not regulated by the agencies referred to in paragraphs (1) through (4),

shall develop regulations prescribing the format for such disclosures, the method for submission of the data to the appropriate regulatory agency, and the procedures for disclosing the information to the public. These regulations shall also require the collection of data required to be disclosed under subsection (b)(4) of this section

with respect to loans sold by each institution reporting under this chapter, and, in addition, shall require disclosure of the class of the purchaser of such loans. Any reporting institution may submit in writing to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.

(i) Exemption from certain disclosure requirements

The requirements of subsection (b)(4) of this section shall not apply with respect to any depository institution described in section 2802(2)(A) of this title which has total assets, as of the most recent full fiscal year of such institution, of $30,000,000 or less.

(j) Loan application register information

(1) In general

In addition to the information required to be disclosed under subsections (a) and (b) of this section, any depository institution which is required to make disclosures under this section shall make available to the public, upon request, loan application register information (as defined by the Board by regulation) in the form required under regulations prescribed by the Board.

(2) Format of disclosure

(A) Unedited format

Subject to subparagraph (B), the loan application register information described in paragraph (1) may be disclosed by a depository institution without editing or compilation and in the format in which such information is maintained by the institution.

(B) Protection of applicant's privacy interest

The Board shall require, by regulation, such deletions as the Board may determine to be appropriate to protect—

(i) any privacy interest of any applicant, including the deletion of the applicant's name and identification number, the date of the application, and the date of any determination by the institution with respect to such application; and

(ii) a depository institution from liability under any Federal or State privacy law.

(C) Census tract format encouraged

It is the sense of the Congress that a depository institution should provide loan register information under this section in a format based on the census tract in which the property is located.

(3) Change of form not required

A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in the form in which the institution maintains such information.

(4) Reasonable charge for information

Any depository institution which provides information under this subsection may impose a reasonable fee for any cost incurred in reproducing such information.

(5) Time of disclosure

The disclosure of the loan application register information described in paragraph (1) for any year pursuant to a request under paragraph (1) shall be made—

(A) in the case of a request made on or before March 1 of the succeeding year, before April 1 of the succeeding year; and

(B) in the case of a request made after March 1 of the succeeding year, before the end of the 30-day period beginning on the date the request is made.

(6) Retention of information

Notwithstanding subsection (c) of this section, the loan application register information described in paragraph (1) for any year shall be maintained and made available, upon request, for 3 years after the close of the 1st year during which such information is required to be maintained and made available.

(7) Minimizing compliance costs

In prescribing regulations under this subsection, the Board shall make every effort to minimize the costs incurred by a depository institution in complying with this subsection and such regulations.

(k) Disclosure of statements by depository institutions

(1) In general

In accordance with procedures established by the Board pursuant to this section, any depository institution required to make disclosures under this section—

(A) shall make a disclosure statement available, upon request, to the public no later than 3 business days after the institution receives the statement from the Federal Financial Institutions Examination Council; and

(B) may make such statement available on a floppy disc which may be used with a personal computer or in any other media which is not prohibited under regulations prescribed by the Board.

(2) Notice that data is subject to correction after final review

Any disclosure statement provided pursuant to paragraph (1) shall be accompanied by a clear and conspicuous notice that the statement is subject to final review and revision, if necessary.

(3) Reasonable charge for information

Any depository institution which provides a disclosure statement pursuant to paragraph (1) may impose a reasonable fee for any cost incurred in providing or reproducing such statement.

***(l)* Prompt disclosures**

(1) In general

Any disclosure of information pursuant to this section or section 2809 of this title shall be made as promptly as possible.

(2) Maximum disclosure period

(A) 6- and 9-month maximum periods

Except as provided in subsections (j)(5) and (k)(1) of this section and regulations prescribed by the Board and subject to subparagraph (B), any information required to be

disclosed for any year beginning after December 31, 1992, under—

(i) this section shall be made available to the public before September 1 of the succeeding year; and

(ii) section 2809 of this title shall be made available to the public before December 1 of the succeeding year.

(B) Shorter periods encouraged after 1994

With respect to disclosures of information under this section or section 2809 of this title for any year beginning after December 31, 1993, every effort shall be made—

(i) to make information disclosed under this section available to the public before July 1 of the succeeding year; and

(ii) to make information required to be disclosed under section 2809 of this title available to the public before September 1 of the succeeding year.

(3) Improved procedure

The Federal Financial Institutions Examination Council shall make such changes in the system established pursuant to subsection (f) of this section as may be necessary to carry out the requirements of this subsection.

(m) Opportunity to reduce compliance burden

(1) In general

(A) Satisfaction of public availability requirements

A depository institution shall be deemed to have satisfied the public availability requirements of subsection (a) of this section if the institution compiles the information required under that subsection at the home office of the institution and provides notice at the branch locations specified in subsection (a) of this section that such information is available from the home office of the institution upon written request.

(B) Provision of information upon request

Not later than 15 days after the receipt of a written request for any information required to be compiled under subsection (a) of this section, the home office of the depository institution receiving the request shall provide the information pertinent to the location of the branch in question to the person requesting the information.

(2) Form of information

In complying with paragraph (1), a depository institution shall, in the sole discretion of the institution, provide the person requesting the information with—

(A) a paper copy of the information requested; or

(B) if acceptable to the person, the information through a form of electronic medium, such as a computer disk.

(Pub. L. 94–200, title III, § 304, Dec. 31, 1975, 89 Stat. 1125; Pub. L. 96–399, title III, § 340(a), Oct. 8, 1980, 94 Stat. 1657; Pub. L. 98–181, title VII, § 701(a), Nov. 30, 1983, 97 Stat. 1266; Pub. L. 100–242, title V, §§ 565(a)(2), 570(h), Feb. 5, 1988, 101 Stat. 1945, 1950; Pub. L. 101–73, title XII, § 1211(a)–(c)(2)(C), (f), (i), (j), Aug. 9, 1989, 103 Stat. 524–526; Pub. L. 102–242, title II, § 212(a)(1), Dec. 19, 1991, 105 Stat. 2299; Pub. L. 102–550, title IX, § 932(a), (b), Oct. 28, 1992, 106 Stat. 3889, 3891; Pub. L. 104–208, div. A, title II, § 2225(b), Sept. 30, 1996, 110 Stat. 3009–416; Pub. L. 111–203, title X, § 1094(1), (3), July 21, 2010, 124 Stat. 2097.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1094(1), (3), 1100H, July 21, 2010, 124 Stat. 2097, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) by substituting ''Bureau'' for ''Board'' wherever appearing, other than in subsection (h);

(2) in subsection (b)—

(A) in paragraph (3), by striking ''and'' at the end;

(B) in paragraph (4), by inserting ''age,'' before ''and gender'' and substituting a semicolon for the period at the end; and

(C) by adding at the end the following:

''(5) the number and dollar amount of mortgage loans grouped according to measurements of—

''(A) the total points and fees payable at origination in connection with the mortgage as determined by the Bureau, taking into account 15 U.S.C. 1602(aa)(4);

''(B) the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans;

''(C) the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and

''(D) such other information as the Bureau may require; and

''(6) the number and dollar amount of mortgage loans and completed applications grouped according to measurements of—

''(A) the value of the real property pledged or proposed to be pledged as collateral;

''(B) the actual or proposed term in months of any introductory period after which the rate of interest may change;

''(C) the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term;

''(D) the actual or proposed term in months of the mortgage loan;

''(E) the channel through which application was made, including retail, broker, and other relevant categories;

''(F) as the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 5102 of this title;

''(G) as the Bureau may determine to be appropriate, a universal loan identifier;

''(H) as the Bureau may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

''(I) the credit score of mortgage applicants and mortgagors, in such form as the Bureau may prescribe; and

''(J) such other information as the Bureau may require.'';

(3) by striking out subsection (h) and adding the following:

''(h) Submission to agencies

''(1) In general

''The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for the institution reporting under this chapter, in accordance with rules prescribed by the Bureau. Notwithstanding the requirement of subsection (a)(2)(A) for disclosure by census tract, the Bureau, in consultation with other appropriate agencies described in paragraph (2) and, after notice and comment, shall develop regulations that—

''(A) prescribe the format for such disclosures, the method for submission of the data to the appropriate agency, and the procedures for disclosing the information to the public;

''(B) require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this chapter;

''(C) require disclosure of the class of the purchaser of such loans;

''(D) permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans; and

''(E) modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public.

''(2) Other appropriate agencies

''The appropriate agencies described in this paragraph are—

''(A) the appropriate Federal banking agencies, as defined in section 1813(q) of this title, with respect to the entities that are subject to the jurisdiction of each such agency, respectively;

''(B) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and any other depository institution described in section 2802(2)(A)of this title which is not otherwise referred to in this paragraph;

''(C) the National Credit Union Administration Board with respect to credit unions; and

''(D) the Secretary of Housing and Urban Development with respect to other lending institutions not regulated by the agencies referred to in subparagraph (A) or (B).

''(3) Rules for modifications under paragraph (1)

''(A) Application

''A modification under paragraph (1)(E) shall apply to information concerning—

''(i) credit score data described in subsection (b)(6)(I), in a manner that is consistent with the purpose described in paragraph (1)(E); and

''(ii) age or any other category of data described in paragraph (5) or (6) of subsection (b), as the Bureau determines to be necessary to satisfy the purpose described in paragraph (1)(E), and in a manner consistent with that purpose.

''(B) Standards

''The Bureau shall prescribe standards for any modification under paragraph (1)(E) to effectuate the purposes of this chapter, in light of the privacy interests of mortgage applicants or mortgagors. Where necessary to protect the privacy interests of mortgage applicants or mortgagors, the Bureau shall provide for the disclosure of information described in subparagraph (A) in aggregate or other reasonably modified form, in order to effectuate the purposes of this chapter.''

(4) in subsection (i), by substituting ''subsections (b)(4), (b)(5), and (b)(6)'' for ''subsection (b)(4)'';

(5) in subsection (j)—

(A) in paragraph (2)(A), by substituting ''in such formats as the Bureau may require'' for ''in the format in which such information is maintained by the institution''; and

(B) by striking out paragraph (3) and adding the following:

''(3) Change of form not required

''A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in such formats as the Bureau may require'';

(6) in subsection (m), by striking out paragraph (2) and adding the following:

''(2) Form of information

''In complying with paragraph (1), a depository institution shall provide the person requesting the information with a copy of the information requested in such formats as the Bureau may require.''; and

(7) by adding at the end the following:

''(n) Timing of certain disclosures

''The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for any institution reporting under this chapter, in accordance with regulations prescribed by the Bureau. Institutions shall not be required to report new data under paragraph (5) or (6) of subsection (b) before the first January 1 that occurs after the end of the 9-month period beginning on the date on which regulations are issued by the Bureau in final form with respect to such disclosures.''

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

For the effective date of this chapter, referred to in subsec. (a)(1), see section 2808 of this title.

The National Housing Act, referred to in subsecs. (b)(1) and (g)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Titles I and II of the National Housing Act are classified generally to subchapters I (§1702 et seq.) and II (§1707 et seq.), respectively, of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (b)(1), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

AMENDMENTS

1996—Subsec. (m). Pub. L. 104–208 added subsec. (m).

1992—Subsec. (c). Pub. L. 102–550, § 932(b), inserted '', other than loan application register information under subsection (j) of this section,'' after ''under this section''.

Subsecs. (j) to (*l*). Pub. L. 102–550, § 932(a), added subsecs. (j) to (*l*).

1991—Subsec. (h)(1). Pub. L. 102–242, § 212(a)(1)(A), added par. (1) and struck out former par. (1) which read as follows: ''the Comptroller of the Currency for national banks;''.

Subsec. (h)(3). Pub. L. 102–242, § 212(a)(1)(B), added par. (3) and struck out former par. (3) which read as follows: ''the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, and any other depository institution described in section 2802(2)(A) of this title which is not otherwise referred to in this paragraph;''.

1989—Subsec. (a)(1). Pub. L. 101–73, § 1211(c)(1), inserted ''(or for which the institution received completed applications)'' after ''originated''.

Subsec. (a)(2). Pub. L. 101–73, § 1211(c)(2)(A), inserted ''(or for which completed applications were received)'' after ''originated or purchased'' in last sentence.

Pub. L. 101–73, § 1211(f), inserted at end ''For purposes of this paragraph, other lending institutions shall be deemed to have a home office or branch office within a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas if such institutions have originated or purchased or received completed applications for at least 5 mortgage loans in such area in the preceding calendar year.''

Subsec. (b)(4). Pub. L. 101–73, § 1211(a), added par. (4).

Subsec. (e). Pub. L. 101–73, § 1211(i), substituted ''Subject to subsection (h) of this section, the Board'' for ''The Board''.

Subsec. (g)(1). Pub. L. 101–73, § 1211(c)(2)(B), inserted ''(or for which completed applications are received)'' after ''made''.

Subsec. (g)(2). Pub. L. 101–73, § 1211(c)(2)(C), inserted ''(or for which completed applications are received)'' after ''approved''.

Subsec. (h). Pub. L. 101–73, § 1211(b), added subsec. (h).

Subsec. (i). Pub. L. 101–73, § 1211(j), added subsec. (i).

1988—Subsec. (a)(1). Pub. L. 100–242, § 570(h), substituted ''at least one branch'' for ''at at least one branch''.

Subsec. (g). Pub. L. 100–242, § 565(a)(2), added subsec. (g).

1983—Subsecs. (a), (f). Pub. L. 98–181 substituted ''primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas'' for ''standard metropolitan statistical area'' wherever appearing.

1980—Subsec. (a)(1). Pub. L. 96–399, § 340(a)(1), substituted ''Department of Commerce'' for ''Office of Management and Budget''.

Subsec. (a)(2)(A). Pub. L. 96–399, § 340(a)(2), revised applicable factors so as to include mortgage loans in a census tract, or by a county, and exclude readily available and reasonably costing census tracts, or by ZIP code.

Subsecs. (d) to (f). Pub. L. 96–399, § 340(a)(3), added subsecs. (d) to (f).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 932(c) of Pub. L. 102–550 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to information disclosed under section 304 of the Home Mortgage Disclosure Act of 1975 [this section] for any year which ends after the date of the enactment of this Act [Oct. 28, 1992].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–73 applicable to each calendar year beginning after Dec. 31, 1989, see section 1211(k) of Pub. L. 101–73, set out as a note under section 2802 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 565(a)(2) of Pub. L. 100–242 applicable to the portion of calendar year 1988 that begins Aug. 19, 1988, and to each calendar year beginning after Dec. 31, 1988, see section 565(a)(4) of Pub. L. 100–242, as amended, set out as a note under section 2802 of this title.

EVALUATION AND REPORT ON FEASIBILITY AND DESIRABILITY OF ESTABLISHING A UNIFIED SYSTEM FOR ENFORCING FAIR LENDING LAWS AND REGULATIONS

Evaluation of status and effectiveness of data collection and analysis systems involving fair lending, etc., and report thereof, see section 340(e) of Pub. L. 96–399, set out as a note under section 3305 of this title.

§ 2804. Enforcement

(a) Regulations

The Board shall prescribe such regulations as may be necessary to carry out the purposes of this chapter. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary and proper to effectuate the purposes of this chapter, and prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(b) Powers of certain other agencies

Compliance with the requirements imposed under this chapter shall be enforced under—

(1) section 1818 of this title, in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a)[1] of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks as defined in section 1813(f) of this title, insured State branches of foreign banks, and any other depository institution not referred to in this paragraph or paragraph (2) or (3) of this subsection, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 1818 of this title, by the Director of the Office of Thrift Supervision, in the case

[1] See References in Text note below.

of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any credit union; and

(4) other lending institutions, by the Secretary of Housing and Urban Development.

The terms used in paragraph (1) that are not defined in this chapter or otherwise defined in section 1813(s) of this title shall have the meaning given to them in section 3101 of this title.

(c) Violations of this chapter deemed violations of certain other provisions

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this chapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on it by law.

(Pub. L. 94–200, title III, §305, Dec. 31, 1975, 89 Stat. 1126; Pub. L. 101–73, title VII, §744(p)(1), title XII, §1211(g), Aug. 9, 1989, 103 Stat. 440, 526; Pub. L. 102–242, title II, §212(a)(2), Dec. 19, 1991, 105 Stat. 2299; Pub. L. 111–203, title X, §1094(1), (4), July 21, 2010, 124 Stat. 2097, 2099.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§1094(1), (4), 1100H, July 21, 2010, 124 Stat. 2097, 2099, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) by substituting ''Bureau'' for ''Board'' wherever appearing, other than in subsection (b) (as amended by section 1094 of Pub. L. 111–203);

(2) by striking out subsection (b) and adding the following:

''(b) Powers of certain other agencies

''(1) In general

''Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements of this chapter shall be enforced—

''(A) under section 1818 of this title, the appropriate Federal banking agency, as defined in section 1813(q) of this title, with respect to—

''(i) any national bank or Federal savings association, and any Federal branch or Federal agency of a foreign bank;

''(ii) any member bank of the Federal Reserve System (other than a national bank), branch or agency of a foreign bank (other than a Federal branch, Federal agency, and insured State branch of a foreign bank), commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25A of the Federal Reserve Act; and

''(iii) any bank or State savings association insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), any mutual savings bank as, defined in section 1813(f) of this title, any insured State branch of a foreign bank, and any other depository institution not referred to in this paragraph or subparagraph (B) or (C);

''(B) under subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this subtitle;

''(C) under the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any insured credit union; and

''(D) with respect to other lending institutions, by the Secretary of Housing and Urban Development.

''(2) Incorporated definitions

''The terms used in paragraph (1) that are not defined in this chapter or otherwise defined in section 1813(s) of this title shall have the same meanings as in section 3101 of this title.''; and

(3) by adding at the end the following:

''(d) Overall enforcement authority of the Bureau of Consumer Financial Protection

''Subject to subtitle B of the Consumer Financial Protection Act of 2010, enforcement of the requirements imposed under this chapter is committed to each of the agencies under subsection (b). To facilitate research, examinations, and enforcement, all data collected pursuant to section 2803 of this title shall be available to the entities listed under subsection (b). The Bureau may exercise its authorities under the Consumer Financial Protection Act of 2010 to exercise principal authority to examine and enforce compliance by any person with the requirements of this chapter.''

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 25 of the Federal Reserve Act, referred to in subsec. (b)(1)(B), is classified to subchapter I (§601 et seq.) of chapter 6 of this title. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§611 et seq.) of chapter 6 of this title, was renumbered section 25A of that act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

The Federal Credit Union Act, referred to in subsec. (b)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–242, §212(a)(2)(B), inserted at end ''The terms used in paragraph (1) that are not defined in this chapter or otherwise defined in section 1813(s) of this title shall have the meaning given to them in section 3101 of this title.''

Subsec. (b)(1). Pub. L. 102–242, §212(a)(2)(A), added par. (1) and struck out former par. (1) which read as follows: ''section 1818 of this title, in the case of—

''(A) national banks, by the Comptroller of the Currency;

''(B) member banks of the Federal Reserve System, other than national banks, by the Board;

''(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and mutual savings banks as defined in section 1813(f) of this title and any other depository institution not referred to in this paragraph or

paragraph (2) or (3) of this subsection, by the Board of Directors of the Federal Deposit Insurance Corporation;''.

1989—Subsec. (b)(2). Pub. L. 101–73, § 744(p)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''section 1464(d) of this title, section 1730 of this title, and sections 1426(i) and 1437 of this title, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation) in the case of any institution subject to any of those provisions; and''.

Subsec. (b)(4). Pub. L. 101–73, § 1211(g), added par. (4).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 1211(g) of Pub. L. 101–73 applicable to each calendar year beginning after Dec. 31, 1989, see section 1211(k) of Pub. L. 101–73, set out as a note under section 2802 of this title.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of this title.

§ 2805. Relation to State laws

(a) This chapter does not annul, alter, or affect, or exempt any State chartered depository institution subject to the provisions of this chapter from complying with the laws of any State or subdivision thereof with respect to public disclosure and recordkeeping by depositor institutions, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any such law is inconsistent with any provision of this chapter if the Board determines that such law requires the maintenance of records with greater geographic or other detail than is required under this chapter, or that such law otherwise provides greater disclosure than is required under this chapter.

(b) The Board may by regulation exempt from the requirements of this chapter any State chartered depository institution within any State or subdivision thereof if it determines that, under the law of such State or subdivision, that institution is subject to requirements substantially similar to those imposed under this chapter, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced under—

(1) section 1818 of this title in the case of national banks, by the Comptroller of the Currency; and

(2) section 1818 of this title, by the Director of the Office of Thrift Supervision in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.

(Pub. L. 94–200, title III, § 306, Dec. 31, 1975, 89 Stat. 1127; Pub. L. 100–628, title X, § 1087(b), Nov. 7, 1988, 102 Stat. 3280; Pub. L. 101–73, title VII, § 744(p)(2), Aug. 9, 1989, 103 Stat. 440; Pub. L. 111–203, title X, § 1094(1), (5), July 21, 2010, 124 Stat. 2097, 2100.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1094(1), (5), 1100H, July 21, 2010, 124 Stat. 2097, 2100, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) by substituting ''Bureau'' for ''Board'' wherever appearing; and

(2) by striking out subsection (b) and adding the following:

''(b) Exemption authority

''The Bureau may, by regulation, exempt from the requirements of this chapter any State-chartered depository institution within any State or subdivision thereof, if the agency determines that, under the law of such State or subdivision, that institution is subject to requirements that are substantially similar to those imposed under this chapter, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced by the Office of the Comptroller of the Currency under section 1818 of this title, in the case of national banks and Federal savings associations, the deposits of which are insured by the Federal Deposit Insurance Corporation.''

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1989—Subsec. (b)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''section 1464(d) of this title in the case of any institution subject to that provision, by the Federal Home Loan Bank Board.''

1988—Subsec. (b)(1), (2). Pub. L. 100–628 substituted ''section'' for ''Section''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 2806. Research and improved methods; authorization of appropriations; recommendations to Congressional committees

(a)(1) The Director of the Office of Thrift Supervision, with the assistance of the Secretary, the Director of the Bureau of the Census, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons as the Director of the Office of Thrift Supervision deems appropriate, shall develop, or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this chapter.

(2) There is authorized to be appropriated such sums as may be necessary to carry out this subsection.

(3) The Director of the Office of Thrift Supervision is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

(b) The Director of the Office of Thrift Supervision shall recommend to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate such additional legislation as the Director of the Office of Thrift Supervision deems appropriate to carry out the purpose of this chapter.

(Pub. L. 94–200, title III, §307, Dec. 31, 1975, 89 Stat. 1127; Pub. L. 100–628, title X, §1087(c), Nov. 7, 1988, 102 Stat. 3280; Pub. L. 101–73, title VII, §744(p)(3), Aug. 9, 1989, 103 Stat. 440.)

REPEAL OF SECTION AND ENACTMENT OF NEW SECTION

Pub. L. 111–203, title X, §§1094(6), 1100H, July 21, 2010, 124 Stat. 2101, 2113, provided that, effective on the designated transfer date, this section is repealed and a new section is enacted to read as follows:

''§ 2806. Compliance improvement methods

''(a) In general

''(1) Consultation required

''The Director of the Bureau of Consumer Financial Protection, with the assistance of the Secretary, the Director of the Bureau of the Census, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons as the Bureau deems appropriate, shall develop or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this chapter.

''(2) Authorization of appropriations

''There are authorized to be appropriated, such sums as may be necessary to carry out this subsection.

''(3) Contracting authority

''The Director of the Bureau of Consumer Financial Protection is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

''(b) Recommendations to Congress

''The Director of the Bureau of Consumer Financial Protection shall recommend to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, such additional legislation as the Director of the Bureau of Consumer Financial Protection deems appropriate to carry out the purpose of this chapter.''

See Effective Date of Repeal and Enactment of Section note below.

AMENDMENTS

1989—Subsecs. (a)(1), (3), (b). Pub. L. 101–73 substituted ''Director of the Office of Thrift Supervision'' for ''Federal Home Loan Bank Board'' wherever appearing.

1988—Subsec. (b). Pub. L. 100–628 substituted ''Committee on Banking, Finance and Urban Affairs of the House of Representatives'' for ''Committee on Banking, Currency and Housing of the House of Representatives'' and inserted a comma after Housing in the phrase ''Committee on Banking, Housing, and Urban Affairs of the Senate''.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF REPEAL AND ENACTMENT OF SECTION

Repeal and enactment of section effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 552a of Title 5, Government Organization and Employees.

§ 2807. Report

The Board, in consultation with the Secretary of Housing and Urban Development, shall report annually to the Congress on the utility of the requirements of section 2803(b)(4) of this title.

(Pub. L. 94–200, title III, §308, Dec. 31, 1975, 89 Stat. 1128; Pub. L. 98–181, title VII, §701(b), Nov. 30, 1983, 97 Stat. 1266; Pub. L. 101–73, title XII, §1211(h), Aug. 9, 1989, 103 Stat. 526; Pub. L. 111–203, title X, §1094(1), July 21, 2010, 124 Stat. 2097.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§1094(1), 1100H, July 21, 2010, 124 Stat. 2097, 2113, provided that, effective on the designated transfer date, this section is amended by substituting ''Bureau'' for ''Board'' wherever appearing. See Effective Date of 2010 Amendment note below.

AMENDMENTS

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows:

''(a) The Board, in consultation with the Secretary of Housing and Urban Development, is authorized and directed to carry out a study to determine the feasibility and usefulness of requiring depository institutions located outside primary metropolitan statistical areas, metropolitan statistical areas, or consolidated metropolitan statistical areas that are not comprised of designated primary metropolitan statistical areas, as defined by the Office of Management and Budget, to make disclosures comparable to those required by this chapter.

''(b) A report on the study under this section shall be transmitted to the Congress not later than three years after December 31, 1975.''

1983—Subsec. (a). Pub. L. 98–181 substituted ''primary metropolitan statistical areas, metropolitan statistical areas, or consolidated metropolitan statistical areas that are not comprised of designated primary metropolitan statistical areas'' for ''standard metropolitan statistical areas''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–73 applicable to each calendar year beginning after Dec. 31, 1989, see section 1211(k) of Pub. L. 101–73, set out as a note under section 2802 of this title.

§ 2808. Effective date

(a) In general

This chapter shall take effect on the one hundred and eightieth day beginning after December 31, 1975. Any institution specified in section 2802(2)(A) of this title which has total assets as of its last full fiscal year of $10,000,000 or less is exempt from the provisions of this chapter. The Board, in consultation with the Secretary, may exempt institutions described in section 2802(2)(B) of this title that are comparable within their respective industries to institutions that are exempt under the preceding sentence (as determined without regard to the adjustment made by subsection (b) of this section).

(b) CPI adjustments

(1) In general

Subject to paragraph (2), the dollar amount applicable with respect to institutions described in section 2802(2)(A) of this title under the 2d sentence of subsection (a) of this section shall be adjusted annually after December 31, 1996, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

(2) 1-time adjustment for prior inflation

The first adjustment made under paragraph (1) after September 30, 1996, shall be the percentage by which—

(A) the Consumer Price Index described in such paragraph for the calendar year 1996, exceeds

(B) such Consumer Price Index for the calendar year 1975.

(3) Rounding

The dollar amount applicable under paragraph (1) for any calendar year shall be the amount determined in accordance with subparagraphs (A) and (B) of paragraph (2) and rounded to the nearest multiple of $1,000,000.

(Pub. L. 94–200, title III, § 309, Dec. 31, 1975, 89 Stat. 1128; Pub. L. 102–242, title II, § 224(a), Dec. 19, 1991, 105 Stat. 2307; Pub. L. 102–550, title XVI, § 1604(a)(15), Oct. 28, 1992, 106 Stat. 4083; Pub. L. 104–208, div. A, title II, § 2225(a), Sept. 30, 1996, 110 Stat. 3009–415; Pub. L. 111–203, title X, § 1094(1), July 21, 2010, 124 Stat. 2097.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1094(1), 1100H, July 21, 2010, 124 Stat. 2097, 2113, provided that, effective on the designated transfer date, this section is amended by substituting ''Bureau'' for ''Board'' wherever appearing. See Effective Date of 2010 Amendment note below.

AMENDMENTS

1996—Pub. L. 104–208 designated existing provisions as subsec. (a), inserted heading, inserted ''(as determined without regard to the adjustment made by subsection (b) of this section)'' before period at end, and added subsec. (b).

1992—Pub. L. 102–550, § 1604(a)(15), amended directory language of Pub. L. 102–242, § 224(a). See 1991 Amendment note below.

1991—Pub. L. 102–242, § 224(a), as amended by Pub. L. 102–550, § 1604(a)(15), struck out ''depository'' before ''institution'', inserted ''specified in section 2802(2)(A) of this title'' after ''institution'', and inserted at end: ''The Board, in consultation with the Secretary, may exempt institutions described in section 2802(2)(B) of this title that are comparable within their respective industries to institutions that are exempt under the preceding sentence.''

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 224(b) of Pub. L. 102–242 provided that: ''This section [amending this section] shall become effective on January 1, 1992.''

§ 2809. Compilation of aggregate data

(a) Commencement; scope of data and tables

Beginning with data for calendar year 1980, the Federal Financial Institutions Examination Council shall compile each year, for each primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas, aggregate data by census tract for all depository institutions which are required to disclose data under section 2803 of this title or which are exempt pursuant to section 2805(b) of this title. The Council shall also produce tables indicating, for each primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas, aggregate lending patterns for various categories of census tracts grouped according to location, age of housing stock, income level, and racial characteristics.

(b) Staff and data processing resources

The Board shall provide staff and data processing resources to the Council to enable it to carry out the provisions of subsection (a) of this section.

(c) Availability to public

The data and tables required pursuant to subsection (a) of this section shall be made available to the public by no later than December 31 of the year following the calendar year on which the data is based.

(Pub. L. 94–200, title III, § 310, as added Pub. L. 96–399, title III, § 340(c), Oct. 8, 1980, 94 Stat. 1658; amended Pub. L. 98–181, title VII, § 701(a), Nov. 30, 1983, 97 Stat. 1266; Pub. L. 111–203, title X, § 1094(1), July 21, 2010, 124 Stat. 2097.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1094(1), 1100H, July 21, 2010, 124 Stat. 2097, 2113, provided that, effective on the designated transfer date, this section is amended by substituting ''Bureau'' for ''Board'' wherever appearing. See Effective Date of 2010 Amendment note below.

PRIOR PROVISIONS

A prior section 2809, Pub. L. 94–200, title III, § 310, Dec. 31, 1975, 89 Stat. 1128, provided for termination of authority granted by this chapter, prior to repeal by section 340(b) of Pub. L. 96–399. See section 2811 of this title.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–181 substituted ''primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas'' for ''standard metropolitan statistical areas'' in two places.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 2810. Disclosure by Secretary; commencement, scope, etc.

Beginning with data for calendar year 1980, the Secretary shall make publicly available data in the Secretary's possession for each mortgagee which is not otherwise subject to the requirements of this chapter and which is not exempt pursuant to section 2805(b) of this title (and for each mortgagee making mortgage loans exempted under section 2803(g) of this title), with respect to mortgage loans approved (or for which completed applications are received) by the Secretary for insurance under title I or II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.]. Such data to be disclosed shall consist of data comparable to the data which would be disclosed if such mortgagee were subject to the requirements of section 2803 of this title. Disclosure statements containing data for each such mortgagee for a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas shall, at a minimum, be publicly available at the central depository of data established pursuant to section 2803(f) of this title for such primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas. The Secretary shall also compile and make publicly available aggregate data for such mortgagees by census tract, and tables indicating aggregate lending patterns, in a manner comparable to the information required to be made publicly available in accordance with section 2809 of this title.

(Pub. L. 94–200, title III, § 311, as added Pub. L. 96–399, title III, § 340(c), Oct. 8, 1980, 94 Stat. 1658; amended Pub. L. 98–181, title VII, § 701(a), Nov. 30, 1983, 97 Stat. 1266; Pub. L. 100–242, title V, § 565(a)(3), Feb. 5, 1988, 101 Stat. 1945; Pub. L. 101–73, title XII, § 1211(c)(2)(D), Aug. 9, 1989, 103 Stat. 525.)

REFERENCES IN TEXT

The National Housing Act, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Titles I and II of the Act are classified generally to subchapters I (§ 1702 et seq.) and II (§ 1707 et seq.), respectively, of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1989—Pub. L. 101–73 inserted ''(or for which completed applications are received)'' after ''approved''.

1988—Pub. L. 100–242 inserted ''(and for each mortgagee making mortgage loans exempted under section 2803(g) of this title)'' after ''section 2805(b) of this title''.

1983—Pub. L. 98–181 substituted ''primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas'' for ''standard metropolitan statistical areas'' in two places.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–73 applicable to each calendar year beginning after Dec. 31, 1989, see section 1211(k) of Pub. L. 101–73, set out as a note under section 2802 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–242 applicable to the portion of calendar year 1988 that begins Aug. 19, 1988, and to each calendar year beginning after Dec. 31, 1988, see section 565(a)(4) of Pub. L. 100–242, as amended, set out as a note under section 2802 of this title.

§ 2811. Repealed. Pub. L. 100–242, title V, § 565(b), Feb. 5, 1988, 101 Stat. 1945

Section, Pub. L. 94–200, title III, § 312, as added Pub. L. 96–399, title III, § 340(c), Oct. 8, 1980, 94 Stat. 1659; amended Pub. L. 99–120, § 5(c), Oct. 8, 1985, 99 Stat. 504; Pub. L. 99–156, § 5(c), Nov. 15, 1985, 99 Stat. 817; Pub. L. 99–219, § 5(c), Dec. 26, 1985, 99 Stat. 1732; Pub. L. 99–267, § 5(c), Mar. 27, 1986, 100 Stat. 75; Pub. L. 99–272, title III, § 3011(c), Apr. 7, 1986, 100 Stat. 106; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327, provided that authority granted by this chapter was to expire on Mar. 15, 1988.

CHAPTER 30—COMMUNITY REINVESTMENT

Sec.
2901. Congressional findings and statement of purpose.
2902. Definitions.
2903. Financial institutions; evaluation.
2904. Report to Congress.
2905. Regulations.
2906. Written evaluations.
2907. Operation of branch facilities by minorities and women.
2908. Small bank regulatory relief.

§ 2901. Congressional findings and statement of purpose

(a) The Congress finds that—

(1) regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business;

(2) the convenience and needs of communities include the need for credit services as well as deposit services; and

(3) regulated financial institutions have continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.

(b) It is the purpose of this chapter to require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.

(Pub. L. 95–128, title VIII, § 802, Oct. 12, 1977, 91 Stat. 1147.)

SHORT TITLE

Section 801 of title VIII of Pub. L. 95–128 provided that: ''This title [enacting this chapter] may be cited as the 'Community Reinvestment Act of 1977'.''

RESPONSIVENESS TO COMMUNITY NEEDS FOR FINANCIAL SERVICES

Pub. L. 106–102, title VII, § 715, Nov. 12, 1999, 113 Stat. 1470, provided that:

''(a) STUDY.—The Secretary of the Treasury, in consultation with the Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act [12 U.S.C. 1813(z)]), shall conduct a study of the extent to which adequate services are being provided as intended by the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.], including services in low- and moderate-income neighborhoods and for persons of modest means, as a result of the enactment of this Act [see Tables for classification].

''(b) REPORTS.—

''(1) IN GENERAL.—The Secretary of the Treasury shall—

''(A) before March 15, 2000, submit a baseline report to the Congress on the study conducted pursuant to subsection (a); and

''(B) before the end of the 2-year period beginning on the date of the enactment of this Act [Nov. 12, 1999], in consultation with the Federal banking agencies, submit a final report to the Congress on the study conducted pursuant to subsection (a).

''(2) RECOMMENDATIONS.—The final report submitted under paragraph (1)(B) shall include such recommendations as the Secretary determines to be appropriate for administrative and legislative action with respect to institutions covered under the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.].''

REPORT ON COMMUNITY DEVELOPMENT LENDING

Pub. L. 102–550, title IX, § 910, Oct. 28, 1992, 106 Stat. 3874, provided that:

''(a) IN GENERAL.—Not later than 12 months after the date of enactment of this section [Oct. 28, 1992], the Board of Governors of the Federal Reserve System, in consultation with the Comptroller of the Currency, the Chairman of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the Chairman of the National Credit Union Administration, shall submit a report to the Congress comparing residential, small business, and commercial lending by insured depository institutions in low-income, minority, and distressed neighborhoods to such lending in other neighborhoods.

''(b) CONTENTS OF REPORT.—The report required by subsection (a) shall—

''(1) compare the risks and returns of lending in low-income, minority, and distressed neighborhoods with the risks and returns of lending in other neighborhoods;

''(2) analyze the reasons for any differences in risk and return between low-income, minority, and distressed neighborhoods and other neighborhoods; and

''(3) if the risks of lending in low-income, minority, and distressed neighborhoods exceed the risks of lending in other neighborhoods, recommend ways of mitigating those risks.''

§ 2902. Definitions

For the purposes of this chapter—

(1) the term ''appropriate Federal financial supervisory agency'' means—

(A) the Comptroller of the Currency with respect to national banks;

(B) the Board of Governors of the Federal Reserve System with respect to State chartered banks which are members of the Federal Reserve System and bank holding companies;

(C) the Federal Deposit Insurance Corporation with respect to State chartered banks and savings banks which are not members of the Federal Reserve System and the deposits of which are insured by the Corporation; and

(2)[1] section 1818 of this title, by the Director of the Office of Thrift Supervision, in the case of a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and a savings and loan holding company;

(2) the term ''regulated financial institution'' means an insured depository institution (as defined in section 1813 of this title); and

(3) the term ''application for a deposit facility'' means an application to the appropriate Federal financial supervisory agency otherwise required under Federal law or regulations thereunder for—

(A) a charter for a national bank or Federal savings and loan association;

(B) deposit insurance in connection with a newly chartered State bank, savings bank, savings and loan association or similar institution;

(C) the establishment of a domestic branch or other facility with the ability to accept deposits of a regulated financial institution;

(D) the relocation of the home office or a branch office of a regulated financial institution;

(E) the merger or consolidation with, or the acquisition of the assets, or the assumption of the liabilities of a regulated financial institution requiring approval under section 1828(c) of this title or under regulations issued under the authority of title IV[2] of the National Housing Act [12 U.S.C. 1724 et seq.]; or

(F) the acquisition of shares in, or the assets of, a regulated financial institution requiring approval under section 1842 of this title or section 408(e)[2] of the National Housing Act [12 U.S.C. 1730a(e)].

(4) A financial institution whose business predominately consists of serving the needs of military personnel who are not located within a defined geographic area may define its ''entire community'' to include its entire deposit customer base without regard to geographic proximity.

(Pub. L. 95–128, title VIII, § 803, Oct. 12, 1977, 91 Stat. 1147; Pub. L. 95–630, title XV, § 1502, Nov. 10, 1978, 92 Stat. 3713; Pub. L. 101–73, title VII, § 744(q), title XII, § 1212(a), Aug. 9, 1989, 103 Stat. 440, 526; Pub. L. 111–203, title III, § 358(1), July 21, 2010, 124 Stat. 1548.)

[1] So in original. Text reading ''(2) section 1818 of this title, by the Director'' probably should read ''(D) the Director''.

[2] See References in Text note below.

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 358(1), July 21, 2010, 124 Stat. 1546, 1548, provided that, effective on the transfer date, this section is amended:

(1) in paragraph (1)—

(A) in subparagraph (A), by inserting ''and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)'' after ''banks'';

(B) in subparagraph (B), by substituting '', bank holding companies, and savings and loan holding companies'' for ''and bank holding companies''; and

(C) in subparagraph (C), by substituting '', and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation).'' for ''; and''; and

(2) by striking out paragraph (2) (relating to the Office of Thrift Supervision), as added by section 744(q) of Pub. L. 101–73.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The National Housing Act, referred to in par. (3)(E), (F), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title IV of the National Housing Act which was classified generally to subchapter IV (§ 1724 et seq.) of chapter 13 of this title, was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363. Section 408 of the National Housing Act, which was classified to section 1730a of this title, was also repealed by section 407 of Pub. L. 101–73. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1989—Par. (1)(D). Pub. L. 101–73, § 744(q), directed the general amendment of par. (1)(D) but then set out ''(2)'' followed by the text of the new provisions. Prior to amendment, par. (1)(D) read as follows: ''the Federal Home Loan Bank Board with respect to institutions the deposits of which are insured by the Federal Savings and Loan Insurance Corporation and to savings and loan holding companies;''.

Par. (2). Pub. L. 101–73, § 1212(a), substituted ''insured depository institution (as defined in section 1813 of this title)'' for ''insured bank as defined in section 1813 of this title or an insured institution as defined in section 401 of the National Housing Act''.

1978—Par. (4). Pub. L. 95–630 added par. (4).

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective Nov. 10, 1978, see section 1505 of Pub. L. 95–630, set out as a note under section 27 of this title.

§ 2903. Financial institutions; evaluation

(a) In general

In connection with its examination of a financial institution, the appropriate Federal financial supervisory agency shall—

(1) assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and

(2) take such record into account in its evaluation of an application for a deposit facility by such institution.

(b) Majority-owned institutions

In assessing and taking into account, under subsection (a) of this section, the record of a nonminority-owned and nonwomen-owned financial institution, the appropriate Federal financial supervisory agency may consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.

(c) Financial holding company requirement

(1) In general

An election by a bank holding company to become a financial holding company under section 1843 of this title shall not be effective if—

(A) the Board finds that, as of the date the declaration of such election and the certification is filed by such holding company under section 1843(*l*)(1)(C) of this title, not all of the subsidiary insured depository institutions of the bank holding company had achieved a rating of ''satisfactory record of meeting community credit needs'', or better, at the most recent examination of each such institution; and

(B) the Board notifies the company of such finding before the end of the 30-day period beginning on such date.

(2) Limited exclusions for newly acquired insured depository institutions

Any insured depository institution acquired by a bank holding company during the 12-month period preceding the date of the submission to the Board of the declaration and certification under section 1843(*l*)(1)(C) of this title may be excluded for purposes of paragraph (1) during the 12-month period beginning on the date of such acquisition if—

(A) the bank holding company has submitted an affirmative plan to the appropriate Federal financial supervisory agency to take such action as may be necessary in order for such institution to achieve a rating of ''satisfactory record of meeting community credit needs'', or better, at the next examination of the institution; and

(B) the plan has been accepted by such agency.

(3) Definitions

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

(A) Bank holding company; financial holding company

The terms ''bank holding company'' and ''financial holding company'' have the meanings given those terms in section 1841 of this title.

(B) Board

The term ''Board'' means the Board of Governors of the Federal Reserve System.

(C) Insured depository institution

The term ''insured depository institution'' has the meaning given the term in section 1813(c) of this title.

(d) Low-cost education loans

In assessing and taking into account, under subsection (a), the record of a financial institution, the appropriate Federal financial supervisory agency shall consider, as a factor, low-cost education loans provided by the financial institution to low-income borrowers.

(Pub. L. 95–128, title VIII, § 804, Oct. 12, 1977, 91 Stat. 1148; Pub. L. 102–550, title IX, § 909(1), Oct. 28, 1992, 106 Stat. 3874; Pub. L. 106–102, title I, § 103(b), Nov. 12, 1999, 113 Stat. 1350; Pub. L. 110–315, title X, § 1031(a), Aug. 14, 2008, 122 Stat. 3488.)

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–315 added subsec. (d).
1999—Subsec. (c). Pub. L. 106–102 added subsec. (c).
1992—Pub. L. 102–550 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 1999 AMENDMENT

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

REGULATIONS

Pub. L. 110–315, title X, § 1031(b), Aug. 14, 2008, 122 Stat. 3488, provided that: ''Not later than 1 year after the date of enactment of this Act [Aug. 14, 2008], each appropriate Federal financial supervisory agency shall issue rules in final form to implement section 804(d) of the Community Reinvestment Act of 1977 [12 U.S.C. 2903(d)], as added by this section.''

§ 2904. Report to Congress

Each appropriate Federal financial supervisory agency shall include in its annual report to the Congress a section outlining the actions it has taken to carry out its responsibilities under this chapter.

(Pub. L. 95–128, title VIII, § 805, Oct. 12, 1977, 91 Stat. 1148.)

§ 2905. Regulations

Regulations to carry out the purposes of this chapter shall be published by each appropriate Federal financial supervisory agency, and shall take effect no later than 390 days after October 12, 1977.

(Pub. L. 95–128, title VIII, § 806, Oct. 12, 1977, 91 Stat. 1148; Pub. L. 111–203, title III, § 358(2), July 21, 2010, 124 Stat. 1548.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 358(2), July 21, 2010, 124 Stat. 1546, 1548, provided that, effective on the transfer date, this section is amended by inserting '', except that the Comptroller of the Currency shall prescribe regulations applicable to savings associations and the Board of Governors shall prescribe regulations applicable to insured State member banks, bank holding companies and savings and loan holding companies,'' after ''supervisory agency''. See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

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

§ 2906. Written evaluations

(a) Required

(1) In general

Upon the conclusion of each examination of an insured depository institution under section 2903 of this title, the appropriate Federal financial supervisory agency shall prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.

(2) Public and confidential sections

Each written evaluation required under paragraph (1) shall have a public section and a confidential section.

(b) Public section of report

(1) Findings and conclusions

(A) Contents of written evaluation

The public section of the written evaluation shall—

(i) state the appropriate Federal financial supervisory agency's conclusions for each assessment factor identified in the regulations prescribed by the Federal financial supervisory agencies to implement this chapter;

(ii) discuss the facts and data supporting such conclusions; and

(iii) contain the institution's rating and a statement describing the basis for the rating.

(B) Metropolitan area distinctions

The information required by clauses (i) and (ii) of subparagraph (A) shall be presented separately for each metropolitan area in which a regulated depository institution maintains one or more domestic branch offices.

(2) Assigned rating

The institution's rating referred to in paragraph (1)(C)[1] shall be 1 of the following:

(A) ''Outstanding record of meeting community credit needs''.

(B) ''Satisfactory record of meeting community credit needs''.

(C) ''Needs to improve record of meeting community credit needs''.

(D) ''Substantial noncompliance in meeting community credit needs''.

Such ratings shall be disclosed to the public on and after July 1, 1990.

(c) Confidential section of report

(1) Privacy of named individuals

The confidential section of the written evaluation shall contain all references that identify any customer of the institution, any employee or officer of the institution, or any person or organization that has provided informa-

[1] So in original. Probably should be paragraph ''(1)(A)(iii)''.

tion in confidence to a Federal or State financial supervisory agency.

(2) Topics not suitable for disclosure

The confidential section shall also contain any statements obtained or made by the appropriate Federal financial supervisory agency in the course of an examination which, in the judgment of the agency, are too sensitive or speculative in nature to disclose to the institution or the public.

(3) Disclosure to depository institution

The confidential section may be disclosed, in whole or part, to the institution, if the appropriate Federal financial supervisory agency determines that such disclosure will promote the objectives of this chapter. However, disclosure under this paragraph shall not identify a person or organization that has provided information in confidence to a Federal or State financial supervisory agency.

(d) Institutions with interstate branches

(1) State-by-State evaluation

In the case of a regulated financial institution that maintains domestic branches in 2 or more States, the appropriate Federal financial supervisory agency shall prepare—

(A) a written evaluation of the entire institution's record of performance under this chapter, as required by subsections (a), (b), and (c) of this section; and

(B) for each State in which the institution maintains 1 or more domestic branches, a separate written evaluation of the institution's record of performance within such State under this chapter, as required by subsections (a), (b), and (c) of this section.

(2) Multistate metropolitan areas

In the case of a regulated financial institution that maintains domestic branches in 2 or more States within a multistate metropolitan area, the appropriate Federal financial supervisory agency shall prepare a separate written evaluation of the institution's record of performance within such metropolitan area under this chapter, as required by subsections (a), (b), and (c) of this section. If the agency prepares a written evaluation pursuant to this paragraph, the scope of the written evaluation required under paragraph (1)(B) shall be adjusted accordingly.

(3) Content of State level evaluation

A written evaluation prepared pursuant to paragraph (1)(B) shall—

(A) present the information required by subparagraphs (A) and (B) of subsection (b)(1) of this section separately for each metropolitan area in which the institution maintains 1 or more domestic branch offices and separately for the remainder of the nonmetropolitan area of the State if the institution maintains 1 or more domestic branch offices in such nonmetropolitan area; and

(B) describe how the Federal financial supervisory agency has performed the examination of the institution, including a list of the individual branches examined.

(e) Definitions

For purposes of this section the following definitions shall apply:

(1) Domestic branch

The term ''domestic branch'' means any branch office or other facility of a regulated financial institution that accepts deposits, located in any State.

(2) Metropolitan area

The term ''metropolitan area'' means any primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area, as defined by the Director of the Office of Management and Budget, with a population of 250,000 or more, and any other area designated as such by the appropriate Federal financial supervisory agency.

(3) State

The term ''State'' has the same meaning as in section 1813 of this title.

(Pub. L. 95–128, title VIII, §807, as added Pub. L. 101–73, title XII, §1212(b), Aug. 9, 1989, 103 Stat. 527; amended Pub. L. 102–242, title II, §222, Dec. 19, 1991, 105 Stat. 2306; Pub. L. 103–328, title I, §110, Sept. 29, 1994, 108 Stat. 2364.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1)(A)(i) and (c)(3), was in the original ''this Act'' and was translated as reading ''this title'', meaning title VIII of Pub. L. 95–128, known as the Community Reinvestment Act of 1977, to reflect the probable intent of Congress.

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–328, §110(b), redesignated existing provisions as subpar. (A) and former subpars. (A) to (C) as cls. (i) to (iii), respectively, of subpar. (A), inserted subpar. (A) heading, and added subpar. (B).

Subsecs. (d), (e). Pub. L. 103–328, §110(a), added subsecs. (d) and (e).

1991—Subsec. (a)(1). Pub. L. 102–242, §222(b)(1), substituted ''financial supervisory'' for ''depository institutions regulatory''.

Subsec. (b)(1)(A). Pub. L. 102–242, §222(b)(2), substituted ''financial supervisory'' for ''depository institutions regulatory'' in two places.

Subsec. (b)(1)(B). Pub. L. 102–242, §222(a), inserted ''and data'' after ''facts''.

Subsec. (c). Pub. L. 102–242, §222(b)(3), substituted ''financial supervisory'' for ''depository institutions regulatory'' wherever appearing.

§ 2907. Operation of branch facilities by minorities and women

(a) In general

In the case of any depository institution which donates, sells on favorable terms (as determined by the appropriate Federal financial supervisory agency), or makes available on a rent-free basis any branch of such institution which is located in any predominantly minority neighborhood to any minority depository institution or women's depository institution, the amount of the contribution or the amount of the loss incurred in connection with such activity may be a factor in determining whether the depository institution is meeting the credit needs of the institution's community for purposes of this chapter.

(b) Definitions

For purposes of this section—

(1) Minority depository institution

The term ''minority institution''[1] means a depository institution (as defined in section 1813(c) of this title)—

(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

(2) Women's depository institution

The term ''women's depository institution'' means a depository institution (as defined in section 1813(c) of this title)—

(A) more than 50 percent of the ownership or control of which is held by 1 or more women;

(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women; and

(C) a significant percentage of senior management positions of which are held by women.

(3) Minority

The term ''minority'' has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

(Pub. L. 95–128, title VIII, § 808, as added Pub. L. 102–233, title IV, § 402(b), Dec. 12, 1991, 105 Stat. 1775; amended Pub. L. 102–550, title IX, § 909(2), Oct. 28, 1992, 106 Stat. 3874.)

REFERENCES IN TEXT

Section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, referred to in subsec. (b)(3), is section 1204(c)(3) of Pub. L. 101–73, which is set out as a note under section 1811 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550 substituted ''may be a factor in determining whether the depository institution is'' for ''shall be treated as''.

§ 2908. Small bank regulatory relief

(a) In general

Except as provided in subsections (b) and (c) of this section, any regulated financial institution with aggregate assets of not more than $250,000,000 shall be subject to routine examination under this chapter—

(1) not more than once every 60 months for an institution that has achieved a rating of ''outstanding record of meeting community credit needs'' at its most recent examination under section 2903 of this title;

(2) not more than once every 48 months for an institution that has received a rating of ''satisfactory record of meeting community credit needs'' at its most recent examination under section 2903 of this title; and

(3) as deemed necessary by the appropriate Federal financial supervisory agency, for an institution that has received a rating of less than ''satisfactory record of meeting community credit needs'' at its most recent examination under section 2903 of this title.

(b) No exception from CRA examinations in connection with applications for deposit facilities

A regulated financial institution described in subsection (a) of this section shall remain subject to examination under this chapter in connection with an application for a deposit facility.

(c) Discretion

A regulated financial institution described in subsection (a) of this section may be subject to more frequent or less frequent examinations for reasonable cause under such circumstances as may be determined by the appropriate Federal financial supervisory agency.

(Pub. L. 95–128, title VIII, § 809, as added Pub. L. 106–102, title VII, § 712, Nov. 12, 1999, 113 Stat. 1469.)

[1] So in original. Probably should be ''minority depository institution''.

CHAPTER 31—NATIONAL CONSUMER COOPERATIVE BANK

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3001. Congressional statement of findings and purpose.

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§ 3001. Congressional statement of findings and purpose

The economic and financial structure of this country in combination with the Nation's natural resources and the productivity of the American people has produced one of the highest average standards of living in the world. However, the Nation has been experiencing inflation and unemployment together with an increasing gap between producers' prices and consumers' purchasing power. This has resulted in a growing number of our citizens, especially the elderly, the poor, and the inner city resident, being unable to share in the fruits of our Nation's highly efficient economic system. The Congress finds that user-owned cooperatives are a proven method for broadening ownership and control of the economic organizations, increasing the number of market participants, narrowing price spreads, raising the quality of goods and services available to their membership, and building bridges between producers and consumers, and their members and patrons. The Congress also finds that consumer and other types of self-help cooperatives have been hampered in their formation and growth by lack of access to adequate cooperative credit facilities and lack of technical assistance. Therefore, the Congress finds a need for the establishment of a National Consumer Cooperative Bank which will make available necessary financial and technical assistance to cooperative self-help endeavors as a means of strengthening the Nation's economy.

(Pub. L. 95–351, § 2, Aug. 20, 1978, 92 Stat. 499.)

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–206, § 1, Dec. 7, 1989, 103 Stat. 1832, provided that: ''This Act [amending section 3014 of this title] may be cited as the 'National Consumer Cooperative Bank Amendments of 1989'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–35, title III, § 390, Aug. 13, 1981, 95 Stat. 433, provided that: ''This subtitle [subtitle C (§§ 390–396) of title III of Pub. L. 97–35, enacting sections 3017a, 3026, and 3051 of this title; amending sections 3011 to 3015, 3017, 3018, 3019, 3024, 3025, 3042, and 3043 of this title, section 5315 of Title 5, Government Organization and Employees, and sections 856, 867, and 868 of former Title 31, Money and Finance; and enacting provisions set out as notes under sections 3011 to 3015, 3017, 3017a, 3019, 3025, and 3026 of this title] may be cited as the 'National Consumer Cooperative Bank Act Amendments of 1981'.''

SHORT TITLE

Section 1 of Pub. L. 95–351 provided: ''That this Act [enacting this chapter and amending section 5315 of Title 5, Government Organization and Employees, and sections 856, 867, and 868 of former Title 31, Money and Finance] may be cited as the 'National Consumer Cooperative Bank Act'.''

SUBCHAPTER I—ESTABLISHMENT AND OPERATION

§ 3011. Creation and charter; principal office; venue; purposes

The Congress of the United States hereby creates and charters a body corporate to be known as the National Consumer Cooperative Bank (hereinafter in this chapter referred to as the ''Bank''). The Bank shall have perpetual existence unless and until its charter is revoked or modified by Act of Congress. The right to revise, amend, or modify the charter of the Bank is specifically and exclusively reserved to the Congress. The principal office of the Bank shall be in Washington, District of Columbia, and, for the purpose of venue, shall be considered a resident thereof. It shall make loans and offer its services throughout the United States, its territories and possessions, and in the Commonwealth of Puerto Rico. The Bank shall—

(1) encourage the development of new and existing cooperatives eligible for its assistance by providing specialized credit and technical assistance;

(2) maintain broad-based control of the Bank by its voting stockholders;

(3) encourage broad-based ownership, control, and active participation by members in eligible cooperatives;

(4) assist in improving the quality and availability of goods and services to consumers; and

(5) encourage ownership of its equity securities by cooperatives and others as provided in section 3014 of this title, so that the date when all of the Bank's class A stock owned by the United States has been fully redeemed (the ''Final Government Equity Redemption Date'') occurs as early as practicable.

(Pub. L. 95–351, title I, § 101, Aug. 20, 1978, 92 Stat. 499; Pub. L. 97–35, title III, § 396(b), Aug. 13, 1981, 95 Stat. 439.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 95–351, Aug. 20, 1978, 92 Stat. 499, known as the National Consumer Cooperative Bank Act, which enacted this chapter, amended section 5315 of Title 5, Government Organization and Employees, and sections 856, 867, and 868 of former Title 31, Money and Finance, and enacted provisions set out as a note under section 3001 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

AMENDMENTS

1981—Pub. L. 97–35 substituted provisions respecting creation, and denomination of the National Consumer Cooperative Bank, for provisions respecting creation, denomination, and status of the National Consumer Cooperative Bank.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 396(i) of Pub. L. 97–35 provided that: ''The amendments made by subsections (b) through (h) [amending this section, sections 3014, 3017, 3018, 3024, and 3043 of this title, section 5315 of Title 5, Government Organization and Employees, and sections 856, 867, and 868 of former Title 31, Money and Finance] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981].'' For definition of ''Final Government Equity Redemption Date'', see

section 396(a) of Pub. L. 97–35, set out as a note under section 3012 of this title.

FINAL GOVERNMENT EQUITY REDEMPTION DATE ESTABLISHED

For establishment of Final Government Equity Redemption Date as Dec. 31, 1981, see section 3026 of this title and notes set out under that section.

§ 3012. General corporate powers

The Bank shall have the power to make and service loans, commitments for credit, guarantees, furnish financially related services, technical assistance and the results of research, issue its obligations within the limitations imposed by section 3017 of this title in such amounts, at such times, and on such terms as the Bank may determine, and to exercise the other powers and duties prescribed in this chapter, and shall have the power to—

(1) operate under the direction of its Board of Directors;

(2) adopt, alter, and use a corporate seal, which shall be judicially noted;

(3) elect by its Board of Directors a president, one or more vice presidents, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, and define their duties in accordance with regulations and standards adopted by the Board, and require surety bonds or make other provisions against losses occasioned by acts of employees;

(4) prescribe by its Board of Directors its bylaws not inconsistent with law, which shall establish the terms of office and the procedure for election of elective members; provide in a manner not inconsistent with this chapter for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; and prescribe the manner in which its officers, employees, and agents are elected or selected, its property acquired, held and transferred, its loans, commitments, other financial assistance, guarantees and appraisals may be made, its general business conducted, and the privilege granted it by law exercised and enjoyed;

(5) enter into contracts and make advance, progress, or other payments with respect to such contracts, without regard to the provisions of section 3324(a) and (b) of title 31;

(6) sue and be sued in its corporate name and complain and defend, in any court of competent jurisdiction, State or Federal;

(7) acquire, hold, lease, mortgage, or dispose of, at public or private sale, real and personal property and sell or exchange any securities or obligations, and otherwise exercise all the usual incidents of ownership of property necessary or convenient to its business: *Provided*, That any such acquisition or ownership of real property shall not deprive a State or political subdivision thereof of its civil or criminal jurisdiction in and over such property or impair the civil rights of the inhabitants of such property under Federal, State, or local laws;

(8) obtain insurance against loss in connection with property and other assets;

(9) modify or consent to the modification with respect to the rate of interest, time of payment of any installment of principal or interest, security, or any other term of any contract or agreement to which it is a party or has an interest pursuant to this chapter;

(10) utilize and act through any Federal, State, or local public agency or instrumentality, or private agency or organization, with the consent of the agency or organization concerned, and contract with such agency, instrumentality, or organization for furnishing or receiving technical services and benefits of research, services, funds or facilities; and make advance, progress, or other payments with respect to such contracts without regard to section 3324(a) and (b) of title 31;

(11) within the limitations of section 3017 of this title, borrow money and issue notes, bonds and debentures or other obligations individually or in concert with other financial institutions, agencies or instrumentalities, of such character and such terms and conditions and at rates of interest as may be determined;

(12) issue certificates of indebtedness to its stockholders or members and pay interest on funds left with the Bank, and accept grants or interest free temporary use of funds made available to it;

(13) participate with one or more other financial institutions, agencies, instrumentalities, or foundations in loans or guarantees under this chapter on terms as may be agreed upon;

(14) accept guarantees from other agencies for which loans made by the Bank may be eligible;

(15) establish one or more branch offices and one or more advisory councils in connection with any such branch offices, as may from time to time be authorized by the Board of Directors;

(16) buy and sell obligations of, or insured by, the United States or any agency or instrumentalities thereof, or securities backed by the full faith and credit of any such agency or instrumentality and, after the final Government Equity Redemption Date, make such other investments as may be authorized by the Board of Directors;

(17) approve the salary scale of officers and employees of the Bank, in accordance with regulations and standards adopted by the Board of Directors, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, but, except as otherwise provided in this chapter, the General Schedule pay rates shall be applicable until all class A stock held by the Secretary of the Treasury has been retired; and

(18) have such other incidental powers as may be necessary or expedient to carry out its duties under this chapter.

In determining whether a public offering is taking place for the purpose of the Securities Act of 1933 [15 U.S.C. 77a et seq.], there shall be excluded from consideration all class B and class C stock purchases which took place prior to August 13, 1981.

(Pub. L. 95–351, title I, § 102, Aug. 20, 1978, 92 Stat. 500; Pub. L. 97–35, title III, § 394(d)(1), Aug. 13, 1981, 95 Stat. 436.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in text, is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

CODIFICATION

In pars. (5) and (10), ''section 3324(a) and (b) of title 31'' substituted for ''section 3648 of the Revised Statutes [31 U.S.C. 529]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1981—Pub. L. 97–35 substituted provisions relating to a public offering for purposes of the Securities Act of 1933, for provisions setting forth criteria for the term ''exempt securities''.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 394(d)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981].'' See section 396(a) of Pub. L. 97–35 set out below.

''FINAL GOVERNMENT EQUITY REDEMPTION DATE'' DEFINED

Section 396(a) of subtitle C of title III of Pub. L. 97–35 provided that: ''For purposes of this subtitle [see Short Title of 1981 Amendment note set out under section 3001 of this title], the term 'Final Government Equity Redemption Date' shall have the same meaning given such term in section 101(5) of the National Consumer Cooperative Bank Act (12 U.S.C. 3011(5)).''

§ 3013. Board of Directors

(a) Composition; term of office; removal by President

The Bank shall be governed by a Board of Directors (hereinafter in this chapter referred to as the ''Board'') which shall consist of 15 members. All members shall serve for a term of 3 years. After the expiration of the term of any member, such member may continue to serve until his successor has been elected or has been appointed and qualified. Any member appointed by the President may be removed for cause by the President.

(b) Appointment by President; election by stockholders

(1) The President shall appoint, by and with the advice and consent of the Senate—

(A) one member who shall be selected from among proprietors of small business concerns, as defined under section 632 of title 15, which are manufacturers or retailers;

(B) one member who shall be selected from among the officers of the agencies and departments of the United States; and

(C) one member who shall be selected from among persons having extensive experience in the cooperative field representing low-income cooperatives eligible to borrow from the Bank.

(2) Twelve members of the Board shall be elected by the holders of class B stock and class C stock in accordance with the provisions of subsection (d) of this section and the bylaws of the Bank.

(c) Resignations; continuances; completion of term; committee representation

(1) On the day after the Final Government Equity Redemption Date, all members of the Board of Directors of the Bank who were appointed by the President shall resign, except that—

(A) the member who shall have been appointed by the President from among proprietors of small business concerns, and

(B) one member who shall be designated by the President and who shall have been appointed by the President from among the officers and employees of the agencies and departments of the United States Government,

may continue to serve until their successors have been appointed and qualified.

(2) Any member of the Board of Directors of the Bank who was elected by the holders of class B or class C stock before the Final Government Equity Redemption Date shall serve the remainder of the term for which such member was elected.

(3) Any member appointed pursuant to subsection (b)(1) of this section shall be entitled to sit on any committee of the Board, but not more than one member so appointed may sit on any one committee.

(d) Elections; nominations by cooperative classes; vacancies filled; representation requirements

(1) All elections of members of the Board by the holders of class B stock and class C stock shall be conducted in accordance with the bylaws of the Bank. Such bylaws shall conform to the requirements of this section. Nominations for such elections shall be made by the following classes of cooperatives: (A) housing, (B) consumer goods, (C) low-income cooperatives, (D) consumer services, and (E) all other eligible cooperatives.

(2)(A) Vacant shareholder directorships shall be filled so that at any time when there are three or more shareholder directors on the Board, there shall be at least one director representing each of the following classes of cooperatives: (i) housing cooperatives, (ii) low-income cooperatives, and (iii) consumer goods and services cooperatives.

(B) Each nominee for a shareholder directorship of a particular class shall have at least three years experience as a director or senior officer in the class of cooperatives to be represented.

(C) No one class of cooperatives specified in paragraph (1) shall be represented on the Board by more than three directors.

(e) Terms; officer of Bank not to serve as director; notice requirements of Bank and voting shareholders

No director shall be eligible to be elected for more than two consecutive full three-year terms. No officer of the Bank shall be eligible to serve simultaneously as a director on the Board of the Bank. The Bank shall give adequate advance notice to all voting stockholders of nominees and of the procedures for nominating other candidates. Each voting stockholder shall make the information required in this paragraph available to its members.

(f) Annual election of chairman and vice chairman and selection of secretary; eligibility; establishment of Bank policies and direction of management

The Board shall annually elect from among its members a chairman and vice chairman and select a secretary who need not be a member. The Board shall establish the policies of the Bank governing its funding, lending, and other financial and technical assistance, and shall direct the management of the Bank.

(g) Conduct of meetings; rules governing

The Board shall meet at least quarterly. Its meeting shall be open to members or representatives of all eligible cooperatives and other eligible organizations, as observers only, and to persons or representatives of groups who identify their interest in the Bank and who are invited to attend a meeting, subject to such rules as the Board may establish for the conduct of such meetings. Those rules shall include the manner of giving notice of meetings, the procedure for the conduct of meetings, the manner of submitting topics for the agenda, the allocation of time of presentations, and debate. The chairman, when sustained by the majority of the Board present, may adjourn the open meeting into an executive session on motion of the chairman, any Board member, or at the request of any applicant, borrower, officer, or employee when the matter under discussion involves an application, a loan, a personnel action, or other matter which might tend to impinge on the right of privacy of any person.

(h) Compensation and expenses

Members of the Board appointed by the President from among the officers of the agencies and departments of the United States Government shall not receive any additional compensation by virtue of their service on the Board. The member of the Board appointed from among proprietors of small business and the member of the Board appointed pursuant to subsection (b)(1)(C) of this section shall (1) receive compensation at a rate equal to the daily equivalent of the rate prescribed for grade GS–18 under section 5332 of title 5 for each day that they are engaged in the performance of their duties on the Board, and (2) be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b)[1] of title 5 for each day that they are away from their homes or regular places of business in the performance of their duties on the Board. The members of the Board who are elected by the holders of class B stock and class C stock shall be compensated in accordance with the bylaws of the Bank. All compensation and expenses paid to the members of the Board of Directors shall be paid by the Bank.

(Pub. L. 95–351, title I, § 103, Aug. 20, 1978, 92 Stat. 502; Pub. L. 96–149, Dec. 16, 1979, 93 Stat. 1089; Pub. L. 97–35, title III, § 393(a), (b), Aug. 13, 1981, 95 Stat. 435, 436.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (h), was amended generally by Pub. L. 94–22, § 4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35, § 393(a), substituted provisions relating to composition, term of office, and removal by the President, for provisions relating to composition, appointment, eligibility, removal, and vacancies.

Subsec. (b). Pub. L. 97–35, § 393(a), substituted provisions relating to appointment by the President, and election by the stockholders, for provisions relating to resignation and termination of terms of Presidential appointees, shareholder directorships, resignation of remaining Presidential appointees on Final Government Equity Redemption Date, and continuation of Presidential appointment power.

Subsec. (c). Pub. L. 97–35, § 393(a), substituted provisions relating to resignations, continuances, completion of term, and committee representation, for provisions relating to nominating criteria for appointment or election, and representational limitations.

Subsec. (d). Pub. L. 97–35, § 393(a), substituted provisions relating to nominations by cooperative classes, vacancies, and representational requirements for elections, for provisions relating to rules governing election of successors to resigned Presidential appointees and successors to shareholder directors.

Subsec. (h). Pub. L. 97–35, § 393(b), inserted provisions relating to compensation of members elected by holders of class B and C stock, and provisions relating to payment of compensation and expenses by the Bank, and substituted provisions relating to members appointed under subsec. (b)(1)(C) of this section, for provisions relating to Final Government Equity Redemption Date, and members elected by holders of class B and C stock.

1979—Subsec. (a). Pub. L. 96–149, § 1(a), inserted provisions respecting appointment of a member from among proprietors of small business concerns, and substituted ''fifteen'' for ''thirteen'', ''eight'' for ''seven'', and ''this section'' for ''this section 104'', which for purposes of codification had been editorially translated as ''section 3014 of this title''.

Subsec. (b). Pub. L. 96–149, § 1(b), substituted provisions respecting criteria for resignations of initial two additional Board members and the additional Board member, for provisions respecting criteria for resignation of an additional Board member, and substituted ''Five of the'' for ''Five''.

Subsec. (d). Pub. L. 96–149, § 1(c), substituted ''five of the'' for ''all five''.

Subsec. (h). Pub. L. 96–149, § 1(d), inserted provisions relating to Board member appointed from among proprietors of small businesses.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 393(c) of Pub. L. 97–35 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981].'' For definition of ''Final Government Equity Redemption Date'', see section 396(a) of Pub. L. 97–35, set out as a note under section 3012 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 3014. Capitalization

(a) Subscriptions for capital; authorization of appropriations

The capital of the Bank shall consist of capital subscribed by borrowers from the Bank, by cooperatives eligible to become borrowers, by organizations owned and controlled by such borrowers, by foundations, trust or charitable funds, by public bodies, by other public or private investors, and by the United States. There are authorized to be appropriated not to exceed $47,000,000 for fiscal year 1982 for purposes of purchasing class A stock.

(b) Classes of stock; general requirements respecting rights, powers, privileges, and preferences

The capital stock of the Bank shall include class B and class C stock and such other classes with such rights, powers, privileges, and preferences of the separate classes as may be specified, not inconsistent with law, in the bylaws of the Bank. Class A notes which are held by the United States shall have first preference with respect to assets and interest payments over all classes of stock issued by the Bank. So long as any class A notes are outstanding, the Bank shall not pay any dividend on any class of stock at a rate greater than the statutory interest rate payable on class A notes. Class B and class C stock shall be common stock with voting rights as provided for herein and shall be issued only to eligible borrowers and organizations controlled by such borrowers or organizations eligible to borrow, and shall be transferable only on the books of the Bank and then only to another eligible borrower. No holder of voting stock of the Bank shall be entitled to more than one vote regardless of the number of shares of stock of other classes held, except as provided in subsection (g) of this section.

(c) Class A notes; interest payments; redemption, etc.

The holder of class A notes shall be entitled to interest at a rate or rates determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable terms and conditions as of the last day of the month preceding each issuance of such class A notes to the Secretary of the Treasury, except that, until October 1, 1990, interest payments shall not exceed 25 percent of gross revenues for the year, less necessary operating expenses including a reserve for possible losses. From time to time, the Bank may, with the approval of the Secretary of the Treasury and consistent with the terms of this chapter, issue replacement class A notes upon terms and conditions to be agreed upon by the Bank and the Secretary, bearing interest as provided in this subsection, in substitution for those class A notes previously issued. Any such interest payment may be deferred by the Board of Directors with the approval of the Secretary of the Treasury, except that any interest payment so deferred shall bear interest at a rate equal to the rate determined pursuant to the first sentence of this subsection. Without the approval of the Secretary of the Treasury, the Bank shall not pay any dividend or distribution on, or make any redemption or repurchase of, any class of stock at any time when the deferred interest payments on class A notes shall not have been paid in full, together with any unpaid interest on such notes. Upon any liquidation or dissolution of the Bank, the holder of class A notes shall be entitled to receive out of the assets of the Bank available for distribution to its stockholders, prior to any payment to the holders of any class of stock of the Bank, an amount not less than the aggregate face value of all class A notes outstanding, plus all accrued and unpaid interest payments accrued thereon to and including the date of payment (together with all unpaid interest thereon). The class A notes shall be redeemed and retired as soon as practicable consistent with the purposes of this chapter (such redemption to be at a price equal to the face value of the class A notes so redeemed plus interest payments accrued thereon to the date of redemption), except that beginning on October 1, 1990, there shall be redeemed as a minimum with respect to each fiscal year a number of class A notes having an aggregate face value equal to the aggregate consideration received by the Bank for the issue of its class B and class C stock during that fiscal year. Each such redemption shall take place not later than ninety days after the close of each fiscal year. All class A notes shall be redeemed by the Bank no later than October 31, 2020.

(d) Class B stock; ownership requirements, etc.

Class B stock shall be held only by recipients of loans under section 3015 of this title, and such borrowers shall be required to own class B stock in an amount not less than 1 per centum of the face amount of the loan at the time the loan is made. Such borrowers may be required by the Bank to own additional class B or class C stock at the time the loan is made, but not to exceed an amount equal to 10 per centum of the face amount of the loan, or from time to time, as the Bank may determine. Such additional stock ownership requirements may be on the basis of the face amount of the loan, the outstanding balances, or on a percentage of interest payable during any year or any quarter thereof, as the Bank may determine will provide adequate capital for the operation of the Bank and equitable ownership thereof among borrowers.

(e) Class C stock; purchase, dividends, etc.

Class C stock shall be available for purchase and shall be held only by borrowers or by organizations eligible to borrow under section 3015 of this title or by organizations controlled by such borrowers, and shall be entitled to dividends in the manner specified in the bylaws of the Bank. Such dividends shall be payable only from income, and, until all class A notes has[1] been retired, the rate of such dividends shall not exceed the rate of the statutory interest payment on class A notes.

(f) Nonvoting stock of other classifications and priorities; issuance, etc.

Nonvoting stock of other classifications and other priorities may be issued at the discretion

[1] So in original. Probably should be ''have''.

of the Board, to other investors, except that so long as any class A notes are outstanding, the Board shall not authorize or issue any class of stock, whether voting or nonvoting, that would rank prior or equal to the class A notes as to dividends, interest payments, or upon liquidation or dissolution.

(g) Voting requirements of bylaws

(1) The bylaws of the Bank may provide for more than one vote on the basis of—

(A) the amount of class B stock, class C stock, or both classes held, with such limitations as will encourage investments in class C stock;

(B) the amount of patronage of the Bank; and

(C) number of members in the cooperative.

(2) Such bylaws shall avoid—

(A) voting control of the Bank from becoming concentrated with the larger affluent or smaller less affluent organizations;

(B) a disproportionately larger vote in one or more of the groups of cooperatives referred to in section 3013(d)(2)(A) of this title; and

(C) the concentration of more than 5 per centum of the total voting control in any one class B or class C stockholder.

(h) Acceptance by Bank of nonreturnable capital contributions

The Bank may accept nonreturnable capital contributions on which no interest, dividend, or patronage refund shall be payable from associations, foundations, or funds or public bodies or agencies at the discretion of the Board.

(i) Patronage refunds

After payment of all operating expenses of the Bank, including interest on its obligations, and after setting aside appropriate funds for reserves for losses, for interest payments on class A notes and dividends on class C stock and for any redemption of class A notes in accordance with subsection (c) of this section, the Bank shall annually set aside the remaining earnings of the Bank for patronage refunds in the form of class B or C stock or allocated surplus in accordance with the bylaws of the Bank. After ten years from the date of issue of any such stock, or at such earlier time as all the Government-held stock is retired, patronage refunds may be made in cash, or partly in stock and partly in cash.

(Pub. L. 95–351, title I, § 104, Aug. 20, 1978, 92 Stat. 503; Pub. L. 97–35, title III, §§ 394(c)(1), 395(b)(2), 396(c), Aug. 13, 1981, 95 Stat. 436, 439; Pub. L. 101–206, § 2, Dec. 7, 1989, 103 Stat. 1832.)

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–206 substituted ''The holder of class A notes shall be entitled to interest at a rate or rates determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable terms and conditions as of the last day of the month preceding each issuance of such class A notes to the Secretary of the Treasury, except that, until October 1, 1990, interest payments shall not exceed 25 percent of gross revenues for the year, less necessary operating expenses including a reserve for possible losses. From time to time, the Bank may, with the approval of the Secretary of the Treasury and consistent with the terms of this chapter, issue replacement class A notes upon terms and conditions to be agreed upon by the Bank and the Secretary, bearing interest as provided in this subsection, in substitution for those class A notes previously issued.'' for ''The holder of class A notes shall be entitled to interest payments at a rate determined by the Secretary of the Treasury taking into consideration the average market yield, during the month preceding the close of each fiscal year, on outstanding marketable obligations of the United States of comparable maturity, except that until October 1, 1990, such interest payments shall not exceed 25 per centum of gross revenues for the year less necessary operating expenses, including a reserve for possible losses. Such interest payments shall be payable annually into miscellaneous receipts of the Treasury and shall be cumulative.'' and inserted at end ''All class A notes shall be redeemed by the Bank no later than October 31, 2020.''

1981—Subsec. (a). Pub. L. 97–35, §§ 394(c)(1), 395(b)(2), inserted ''by other public or private investors,'' after ''public bodies,'' and substituted provisions authorizing appropriations for fiscal year 1982, for provisions authorizing appropriations beginning with the fiscal year ending Sept. 30, 1979, and authorizing use of amounts authorized but not appropriated.

Subsec. (b). Pub. L. 97–35, § 396(c)(1), substituted ''class B'' for ''class A, class B,'', and substituted provisions relating to class A notes, for provisions relating to class A preferred stock.

Subsec. (c). Pub. L. 97–35, § 396(c)(2), substituted provisions relating to interest payments, redemption, etc., of class A notes, for provisions relating to issuance, dividends, etc., of class A stock.

Subsec. (e). Pub. L. 97–35, § 396(c)(3), substituted provisions relating to class A notes, for provisions relating to class A stock.

Subsec. (f). Pub. L. 97–35, § 396(c)(4), substituted provisions relating to class A notes, for provisions relating to class A stock.

Subsec. (g)(2)(B). Pub. L. 97–35, § 396(c)(5), substituted ''3013(d)(2)(A)'' for ''3013(c)''.

Subsec. (h). Pub. L. 97–35, § 396(c)(6), struck out provision respecting treatment of the Bank as a governmental unit within section 170(b)(1)(A)(v) of title 26.

Subsec. (i). Pub. L. 97–35, § 396(c)(7), substituted provisions relating to class A notes, for provisions relating to class A stock.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 394(c)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981].'' For definition of ''Final Government Equity Redemption Date'', see section 396(a) of Pub. L. 97–35, set out as a note under section 3012 of this title.

Section 395(b)(3) of Pub. L. 97–35 provided that: ''The amendments made by paragraphs (1) [amending section 3042 of this title] and (2) [amending this section] shall take effect on October 1, 1981.''

Amendment by section 396(c) of Pub. L. 97–35 effective on the day after the Final Government Equity Redemption Date (Dec. 31, 1981), see section 396(i) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 3011 of this title.

§ 3015. Eligibility of cooperatives

(a) General requirements

For the purpose of all subchapters of this chapter, subject to the limitations of subsection (d) of this section, an eligible cooperative is an organization chartered or operated on a cooperative, not-for-profit basis for producing or furnishing goods, services or facilities, primarily for the benefit of its members or voting stockholders who are ultimate consumers of such goods, services, or facilities, or a legally char-

tered entity primarily owned and controlled by any such organization or organizations, if it—

(1) makes such goods, services or facilities directly or indirectly available to its members or voting stockholders on a not-for-profit basis;

(2) does not pay dividends on voting stock or membership capital in excess of such percentage per annum as may be approved under the bylaws of the Bank;

(3) provides that its net savings shall be allocated or distributed to all members or patrons, in proportion to their patronage, or shall be retained for the actual or potential expansion of its services or the reduction of its charges to the patrons, or for such other purposes as may be authorized by its membership not inconsistent with its purposes;

(4) makes membership available on a voluntary basis, without any social, political, racial, or religious discrimination and without any discrimination on the basis of age, sex, or marital status, to all persons who can make use of its services and are willing to accept the responsibilities of membership, subject only to limitations under applicable Federal or State laws or regulations;

(5) in the case of primary cooperative organizations restricts its voting control to members or voting stockholders on a one vote per person basis (except that this requirement shall not apply to any housing cooperative in existence on March 21, 1980, which did not meet such requirement on such date) and takes positive steps to insure economic democracy and maximum participation by members of the cooperative including the holding of annual meetings and, in the case of organizations owned by groups of cooperatives, provides positive protections to insure economic democracy; and

(6) is not a credit union, mutual savings bank, or mutual savings and loan association.

(b) Primary producers

No organization shall be ineligible because it produces, markets, or furnishes goods, services, or facilities on behalf of its members as primary producers, unless the dollar volume of loans made by the Bank to such organizations exceeds 10 per centum of the gross assets of the Bank.

(c) "Net savings" defined

As used in this section, the term ''net savings'' means, for any period, the borrower's gross receipts, less the operating and other expenses deductible therefrom in accordance with generally accepted accounting principles, including, without limitation, contributions to allowable reserves, and after deducting the amounts of any dividends on its capital stock or other membership capital payable during, or within forty-five days after, the close of such period.

(d) Cooperatives eligible for other Federal credit assistance

An eligible cooperative which also has been determined to be eligible for credit assistance from the Rural Electrification Administration, the National Rural Utilities Cooperative Finance Corporation, the Rural Telephone Bank, the Banks for Cooperatives or other institutions of the Farm Credit System, or the Farmers Home Administration may receive the assistance authorized by this chapter only (1) if the Bank determines that a request for assistance from any such source or sources has been rejected or denied solely because of the unavailability of funds from such source or sources, or (2) by agreement between the Bank and the agency or agencies involved.

(e) Credit unions eligible for technical assistance from Office of Self-Help Development and Technical Assistance

Notwithstanding any other provision of this section, a credit union serving predominantly low-income members (as defined by the Administrator of the National Credit Union Administration) may receive technical assistance under subchapter II of this chapter.

(Pub. L. 95–351, title I, §105, Aug. 20, 1978, 92 Stat. 506; Pub. L. 97–35, title III §394(e)(1), (f), Aug. 13, 1981, 95 Stat. 436, 437.)

REFERENCES IN TEXT

All subchapters of this chapter, referred to in subsec. (a), was in the original ''all titles of this Act'', meaning titles I to III of Pub. L. 95–351. Titles I and II constitute this chapter and title III amended section 5315 of Title 5, Government Organization and Employees, and sections 856, 867, and 868 of former Title 31, Money and Finance.

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35, §394(e)(1), substituted ''primarily owned'' for ''entirely owned''.

Subsec. (a)(5). Pub. L. 97–35, §394(f), inserted provisions relating to exception for housing cooperatives in existence on Mar. 21, 1980.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 394(e)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981].'' For definition of ''Final Government Equity Redemption Date'', see section 396(a) of Pub. L. 97–35, set out as a note under section 3012 of this title.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of this title.

§ 3016. Annual meetings; notice, agenda, etc.

The Bank shall hold an annual meeting of its stockholders which shall be open to the public. At least 30 days' advance notice of the time and place of the annual meeting shall be given to all stockholders. Borrowers from the Bank shall also give notice of the meeting to their members, who shall be entitled to attend. At such meeting the Bank shall give a full report of its activities during the year and its financial condition and may present proposals for future action and other matters of general concern to borrowers and organizations eligible to borrow from the Bank. Members and representatives of borrowers may present motions or resolutions relating to matters within the scope of this chapter and may participate in the discussion thereof and other matters on the agenda.

(Pub. L. 95–351, title I, §106, Aug. 20, 1978, 92 Stat. 507.)

§ 3017. Bonds, debentures, notes and other evidences of indebtedness

(a) Authorization for public or private sale; time of issuance, interest rates, and terms and conditions; outstanding amount

The Bank is authorized to obtain funds through the public or private sale of its bonds, debentures, notes, and other evidences of indebtedness. Such obligations shall be issued at such times, bear interest at such rates, and contain such terms and conditions as the Board shall determine: *Provided, however*, That the amount of such obligations which may be outstanding at any one time pursuant to this section shall not exceed ten times the paid-in capital and surplus of the Bank.

(b) Purchase and sale by Bank; methods of sale and delivery

The Bank may purchase its own obligations, and may provide for the sale of any such obligations through a fiscal agent or agents, by negotiation, offer, bid, syndicate sale, or otherwise, and may deliver such obligations by book entry, wire transfer, or such other means as may be appropriate.

(c) Obligations as not guaranteed by United States and not to constitute a debt or obligation of United States

Obligations issued under this section shall not be guaranteed by the United States and shall not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the Bank.

(Pub. L. 95–351, title I, § 107, Aug. 20, 1978, 92 Stat. 507; Pub. L. 97–35, title III, §§ 394(g)(1), 396(d), Aug. 13, 1981, 95 Stat. 437, 440.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35, § 394(g)(1), struck out requirement respecting consultation with the Secretary of the Treasury.

Subsecs. (b) to (d). Pub. L. 97–35, § 396(d), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) relating to discretionary authority for issuance to and purchase by Secretary of Treasury.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 394(g)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981].'' For definition of ''Final Government Equity Redemption Date'', see section 396(a) of Pub. L. 97–35, set out as a note under section 3012 of this title.

Amendment by section 396(d) of Pub. L. 97–35 effective on the day after the Final Government Equity Redemption Date (Dec. 31, 1981), see section 396(i) of Pub. L. 97–35, set out as a note under section 3011 of this title.

§ 3017a. Class A notes as paid-in capital of the Bank

Only for purposes of section 3017(a) of this title, class A notes shall be deemed to be paid-in capital of the Bank.

(Pub. L. 97–35, title III, § 391(b)(1), Aug. 13, 1981, 95 Stat. 434.)

CODIFICATION

Section was enacted as part of the National Consumer Cooperative Bank Act Amendments of 1981 and also as part of the Omnibus Budget Reconciliation Act of 1981, and not as part of the National Consumer Cooperative Bank Act which comprises this chapter.

EFFECTIVE DATE

Section 391(b)(2) of Pub. L. 97–35 provided that: ''This subsection [enacting this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981].'' For definition of ''Final Government Equity Redemption Date'', see section 396(a) of Pub. L. 97–35, set out as a note under section 3012 of this title.

§ 3018. Loans

(a) General requirements for loans and commitments for loans; limitations; allocation of assistance for low-income persons; criteria and factors for making loans, etc.; publication

The Bank may make loans and commitments for loans under this subsection to any organization determined by the Bank to be eligible under the provisions of section 3015 of this title, and may purchase or discount obligations of members of such organizations if the Bank, to the exclusion of all other persons, entities, agencies, or jurisdictions, also determines that the applicant has or will have a sound organizational and financial structure, income in excess of its operating costs and assets in excess of its obligations, and a reasonable expectation of a continuing demand for its production, goods, commodities, or services, or the use of its facilities, so that the loan will be fully repayable in accordance with its terms and conditions. Commencing on October 1, 1985, the Bank shall not make any loan to a cooperative for the purpose of financing the construction, ownership, acquisition, or improvement of any structure used primarily for residential purposes if, after giving effect to such loan, the aggregate amount of all loans outstanding for such purpose would exceed 30 per centum of the gross assets of the Bank. The Board of Directors shall use its best efforts to insure that at the end of each fiscal year of the Bank at least 35 per centum of its outstanding loans are to—

(1) cooperatives at least a majority of the members of which are low-income persons, and

(2) other cooperatives, if the proceeds of such loans are directly applied to finance a facility, activity, or service that the Board finds will be used predominantly by low-income persons.

The Board shall adopt and publish in the Federal Register rules defining the term ''low-income persons'' for purposes of this subsection. The criteria to be applied and the factors to be considered by the Bank in making loans, loan commitments, purchases, discounts, and guarantees shall include an assessment of the impact of the loan on existing small businesses in the eligible organizations' business territory. The criteria and factors shall be stated in rules of the Bank which shall be published and made available to applicants and, upon request, to any other person or organization.

(b) Repayment requirements; criteria for terms, rates, and charges; advancement of loan proceeds

Loans under this section shall be repayable in not more than forty years and, except for loans

with final due date not longer than five years from the date of the loan, shall be amortized as to principal and interest. In setting the terms, rates, and charges, it shall be the objective of the Bank to provide the type of credit needed by eligible borrowers, at the lowest reasonable cost on a sound business basis, taking into account the cost of money to the Bank, necessary reserve and expenses of the Bank, and the technical and other assistance attributable to loans under this section made available by the Bank. The loan terms may provide for interest rates to vary from time to time during the repayment period of the loan in accordance with the rates being charged by the Bank for new loans at such times. The proceeds of a loan under this subsection may be advanced by the borrower to its members or stockholders under circumstances described in the bylaws or rules of the Bank.

(c) Guarantees by Bank; requirements; charges

Subject to section 3012(13) of this title, the Bank may guarantee all or any part of the principal and interest of any loan made by any State or federally chartered lending institution to any borrower if such loan is to an organization that would be an eligible borrower from the Bank for a direct loan and is on terms and conditions (including the rate of interest) which would be permissible terms and conditions for such a direct loan. The Bank may impose a charge for any such guarantee. No loan may be guaranteed by the Bank if the income therefrom to the lender is excluded from such lender's gross income for purposes of chapter 1 of title 26.

(d) Assignment of guaranteed loans; contestability of guarantee; criteria for purchase by Bank of guaranteed loan in lieu of requiring service by lender

Any loan guaranteed under subsection (c) of this section shall be assignable to the extent provided in the contract of guarantee as may be determined by the Bank. The guarantee shall be uncontestable, except for fraud or misrepresentation of which the holder had actual knowledge at the time he acquired the loan. The Bank in lieu of requiring such lender to service such guaranteed loan until final maturity or liquidation, may purchase the loan for the balance of the principal and accrued interest thereon without penalty, if it determines that (1) the liquidation of the loan would result in the insolvency of the borrower or deprive the borrower of assets essential to its continued operation, and (2) the loan will be repayable with revision of the loan rates, terms, or payment periods or other conditions not inconsistent with loans made by the Bank under subsection (a) of this section, which revisions the lender or other holder of such guaranteed loan is unwilling to make.

(e) Aggregate amount of commitments to make or guarantee loans

As long as any of the class A stock of the Bank is held by the Secretary of the Treasury, the aggregate amount of commitments by the Bank to make or guarantee loans shall not exceed such amounts as may be specified in annual appropriation Acts.

(Pub. L. 95–351, title I, §108, Aug. 20, 1978, 92 Stat. 508; Pub. L. 97–35, title III, §§394(b), 396(e), Aug. 13, 1981, 95 Stat. 436, 440; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1981—Subsec. (a). Pub. L. 97–35, §394(b), substituted ''1985'' for ''1983''.

Subsec. (b). Pub. L. 97–35, §396(e), struck out provisions relating to proceeds from class A and class B stock.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 396(e) of Pub. L. 97–35 effective on day after Final Government Equity Redemption Date (Dec. 31, 1981), see section 396(i) of Pub. L. 97–35, set out as a note under section 3011 of this title.

§ 3019. Taxation by State, county, etc., taxing authority; Federal tax status

(a) The Bank, including its franchise, capital, reserves, surplus, mortgages, or other security holdings and income shall be exempt from taxation now or hereafter imposed by any State, county, municipality, or local taxing authority, but any real property held by the Bank shall be subject to any State, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(b) Notwithstanding any other provision of law, for purposes of subchapter T of chapter 1 of title 26—

(1) the Bank shall be treated as a corporation operating on the cooperative basis within the meaning of section 1381(a)(2) of title 26;

(2) the term ''patronage dividend'', as defined in section 1388(a) of title 26 includes, only as such section applies to the Bank, any patronage refunds in the form of class B or class C stock or allocated surplus that are distributed or set aside by the Bank pursuant to section 3014(i) of this title;

(3) the terms ''written notice of allocation'' and ''qualified written notices of allocation'', as defined in sections 1388(b) and (c) of title 26, include (to the extent of par value), only as such sections apply to the Bank, any class B or class C stock distributed by the Bank pursuant to section 3014(i) of this title and shall also include any allocated surplus set aside by the Bank pursuant to section 3014(i) of this title;

(4) patrons of the Bank shall be deemed to have consented under section 1388(c)(2) of title 26 to the inclusion in their incomes of any qualified written notices of allocation received by such patrons from the Bank; and

(5) any amounts required to be included in the incomes of patrons of the Bank with respect to class B or class C stock or allocated surplus shall be treated as earnings from business done by such patrons of the Bank with or for their own patrons.

(Pub. L. 95–351, title I, §109, Aug. 20, 1978, 92 Stat. 509; Pub. L. 97–35, title III, §392(a), Aug. 13, 1981, 95 Stat. 434; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Subchapter T of chapter 1 of title 26, referred to in subsec. (b), is set out as section 1381 et seq. of Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1981—Pub. L. 97–35 designated existing provisions as subsec. (a), struck out applicability of Final Government Equity Redemption Date to provisions, and added subsec. (b).

EFFECTIVE DATE OF 1981 AMENDMENT

Section 392(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981].'' For definition of ''Final Government Equity Redemption Date'', see section 396(a) of Pub. L. 97–35, set out as a note under section 3012 of this title.

§ 3020. Quarters and space for principal and other offices

Until the Final Government Equity Redemption Date, space for the principal office and any branch offices of the Bank shall be provided by the General Services Administration. Thereafter, the Bank may lease, construct, or own quarters and provide for the space requirements of its principal and other offices.

(Pub. L. 95–351, title I, § 110, Aug. 20, 1978, 92 Stat. 510.)

§ 3021. Annual report to Congress; contents

The Board of the Bank shall report annually to the appropriate committees of the Congress on the Bank's capital, operations, and financial condition and make recommendations for legislation needed to improve its services.

(Pub. L. 95–351, title I, § 111, Aug. 20, 1978, 92 Stat. 510.)

§ 3022. Authorization of additional appropriations; restrictions on use

In addition to appropriations specifically authorized in this chapter, there are authorized to be appropriated $2,000,000 for the fiscal year ending September 30, 1979, and for each of the two succeeding fiscal years, ending September 30, 1980, and September 30, 1981, such sums as may be necessary: *Provided*, That none of these appropriated sums shall be used to retire any indebtedness of the Bank incurred pursuant to section 3017 of this title. Any sums so appropriated shall remain available until expended.

(Pub. L. 95–351, title I, § 112, Aug. 20, 1978, 92 Stat. 510.)

§ 3023. Appeal procedures applicable upon denial or restriction of application for assistance

(a) If an application for assistance under this chapter is denied in whole or in part, the applicant shall be informed within thirty days in writing of the reasons for the denial or restriction.

(b) Any applicant for assistance under this chapter receiving notice of denial or restriction of the application may, within thirty days of receipt of such notice, request the Board of Directors to review the application and notice of denial or restriction for a determination of whether the action of the Bank was correctly within the terms of this chapter, the regulations, and the policy of the Board. The Board shall consider the request for review at its next meeting and promptly inform the applicant of its determination and the reasons therefor.

(Pub. L. 95–351, title I, § 113, Aug. 20, 1978, 92 Stat. 510.)

§ 3024. Conflict of interest rules; adoption and publication; requirements

The Board of Directors shall adopt and publish its own conflict of interest rules which shall be no less stringent in effect than the Federal Executive conflict of interest rules contained in Executive Order Numbered 11222 in prohibiting participation or action or the use of inside information for personal advantage on any matter involving a corporation, trust, partnership, or cooperative organization in which a board member, officer, or employee holds a substantial financial interest or holds a position as board member or senior officer, the activities of which organization might be relevant to, be competitive with, or be inconsistent with the objectives of any bank created under this chapter. These rules shall require—

(1) each nominee for elected membership on the Board established under this chapter to make public and file with the election official before the date of election a statement of his financial interest and position, if any, in such organizations; and

(2) each senior executive officer and appointed member of the Board to file with the appointing officer, before entering that office a statement of his financial interest and position, if any, in such organizations, which shall be available for inspection upon request.

(Pub. L. 95–351, title I, § 114, Aug. 20, 1978, 92 Stat. 510; Pub. L. 97–35, title III, § 396(f), Aug. 13, 1981, 95 Stat. 440.)

REFERENCES IN TEXT

Executive Order Numbered 11222, referred to in text, which was formerly set out as a note under section 201 of Title 18, Crimes and Criminal Procedure, was revoked by Ex. Ord. No. 12674, § 501(a), Apr. 12, 1989, 54 F.R. 15161.

AMENDMENTS

1981—Pub. L. 97–35 struck out provisions authorizing section to remain in effect until the Final Government Equity Redemption Date.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective on the day after the Final Government Equity Redemption Date (Dec. 31, 1981), see section 396(i) of Pub. L. 97–35, set out as a note under section 3011 of this title.

§ 3025. Examination and audit

The Farm Credit Administration and the Government Accountability Office are hereby authorized and directed to examine and audit the Bank. Reports regarding such examinations and audits shall be promptly forwarded to both Houses of the Congress. The Bank shall reimburse the Farm Credit Administration for the costs of any examination or audit conducted by the Farm Credit Administration.

(Pub. L. 95–351, title I, § 115, Aug. 20, 1978, 92 Stat. 511; Pub. L. 97–35, title III, § 394(a)(1), Aug.

13, 1981, 95 Stat. 436; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1981—Pub. L. 97–35 substituted provisions relating to examination and audit by the Farm Credit Administration and the General Accounting Office, for provisions relating to annual examinations and audits by an agency or instrumentality of the Federal Government designated by the President.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 394(a)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981].'' For definition of ''Final Government Equity Redemption Date'', see section 396(a) of Pub. L. 97–35, set out as a note under section 3012 of this title.

§ 3026. Acceleration of the Final Government Equity Redemption Date

(a)(1)(A) The Final Government Equity Redemption Date shall occur on December 31, 1981, or not later than 10 days after the date of the enactment of the first Act providing for appropriations for fiscal year 1982 (other than continuing appropriations) for the Department of Housing and Urban Development and Independent Agencies, whichever occurs later.

(B) Not later than 5 days after the Final Government Equity Redemption Date, the Secretary of the Treasury shall publish a notice in the Federal Register indicating the day on which the Final Government Equity Redemption Date occurred.

(2)(A) Before the Final Government Equity Redemption Date, the Secretary of the Treasury shall purchase all class A stock for which the Congress has appropriated funds.

(B) After the Final Government Equity Redemption Date, the Secretary of the Treasury shall not purchase any class A stock.

(3)(A) On the Final Government Equity Redemption Date, all class A stock held by the Secretary of the Treasury on such date shall be redeemed by the Bank in exchange for class A notes which are issued by the Bank to the Secretary of the Treasury on behalf of the United States and which have a total face value equal to the total par value of the class A stock which is so redeemed, plus any unpaid dividends on such stock.

(B) During the period beginning on the Final Government Equity Redemption Date and ending on December 31, 1990, not less than 30 percent of the revenue derived from the sale of stock by the Bank, other than the sale of class B stock or class C stock, shall be used, upon receipt, to retire class A notes.

(C) After December 31, 1990, the Bank shall maintain a repayment schedule for class A notes which will assure full repayment of all class A notes not later than December 31, 2020. The requirement specified in the previous sentence is in addition to the requirement regarding the redemption of class A notes which is specified in section 3014(c) of this title.

(b)(1) The United States shall not be responsible for any obligation of the Bank which is incurred after the Final Government Equity Redemption Date.

(2) As soon as practicable after August 13, 1981, the Board shall adopt bylaws which will assist in expediting and coordinating the activities which will occur with respect to the Final Government Equity Redemption Date.

(Pub. L. 95–351, title I, § 116, as added Pub. L. 97–35, title III, § 391(a)(1), Aug. 13, 1981, 95 Stat. 433.)

REFERENCES IN TEXT

The date of the enactment of the first Act providing for appropriations for fiscal year 1982 (other than continuing appropriations) for the Department of Housing and Urban Development and Independent Agencies, referred to in subsec. (a)(1)(A), is Dec. 23, 1981, the date of enactment of Pub. L. 97–101, 95 Stat. 1417, known as the Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1982.

EFFECTIVE DATE

Section 391(a)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [enacting this section] shall take effect on the date of the enactment of this Act [Aug. 13, 1981].''

FINAL GOVERNMENT EQUITY REDEMPTION DATE ESTABLISHED

Pub. L. 97–101, title V, § 501(36), Dec. 23, 1981, 95 Stat. 1440, provided in part that: ''the final Government equity redemption date for the National Consumer Cooperative Bank shall occur on December 31, 1981.''

SUBCHAPTER II—OFFICE OF SELF-HELP DEVELOPMENT AND TECHNICAL ASSISTANCE

§ 3041. Establishment; appointment, etc., of Director

(a) There is hereby established within the Bank an Office of Self-Help Development and Technical Assistance (hereinafter the ''Office'').

(b) The Office shall have a Director who shall be appointed by the President, with the advice and consent of the Senate, and who shall not be a member of the Board. Subject to review by the Board, the Director shall promulgate and publish in the Federal Register policies and procedures governing the operation of the Office.

(Pub. L. 95–351, title II, § 201, Aug. 20, 1978, 92 Stat. 511.)

ABOLITION OF OFFICE AND PERFORMANCE OF FUNCTIONS

For abolition of the Office of Self-Help Development and Technical Assistance and performance of the functions by a nonprofit corporation upon the incorporation of the nonprofit corporation, see section 3051 of this title.

§ 3042. Authorization of appropriations for advances; deposits into separate Account in Bank; availability of amounts

There are hereby authorized to be appropriated to the Office for the purpose of making advances under section 3043 of this title an amount not to exceed $14,000,000 for fiscal year 1982. Any amounts appropriated to the Office shall be deposited by the Office in a separate account in the Bank (hereinafter the ''Account''), and shall remain available until expended. Repayments of capital investment advances made

pursuant to section 3043(a) of this title and interest supplement advances made pursuant to section 3043(b) of this title and payments of interest thereon pursuant to section 3043(c) of this title shall also be deposited in the Account. No other funds of the Bank shall be transferred into the Account. The Account shall be used by the Office only as authorized in section 3043 of this title.

(Pub. L. 95–351, title II, § 202, Aug. 20, 1978, 92 Stat. 511; Pub. L. 97–35, title III, § 395(b)(1), Aug. 13, 1981, 95 Stat. 438.)

AMENDMENTS

1981—Pub. L. 97–35 substituted provisions authorizing appropriations for fiscal year 1982, for provisions authorizing appropriations for the fiscal year ending Sept. 30, 1979, and the next two succeeding fiscal years.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 395(b)(3) of Pub. L. 97–35, set out as a note under section 3014 of this title.

§ 3043. Advances

(a) Capital investment advances; criteria

The Office may make a capital investment advance to any eligible cooperative, either in conjunction with or without a loan if the Office determines that—

(1)(A) the applicant's initial or supplemental capital requirements exceeds its ability to obtain such capital through a loan under section 3018 of this title or from other sources; or

(B) the membership of the applicant is, or will consist, substantially of low-income persons, as defined by the Board of Directors, or the applicant proposes to undertake to provide specialized goods, services, or facilities to serve their needs; and

(2) the applicant cannot obtain sufficient funds through a loan under section 3018 of this title or otherwise, and the applicant presents a plan which the Office determines will permit the replacement of a capital investment advance out of member equities within a period not to exceed thirty years.

(b) Interest supplement advances; criteria; amount

The Office may make advances to pay all or part of the interest payable to the Bank or any other lender by an eligible cooperative applicant which the Office determines cannot pay a market rate of interest because it sells goods or services to, or provides facilities for the use of, persons of low income: *Provided*, That such advances will not exceed an amount equal to 4 per centum of the principal amount of the indebtedness of such applicant to the Bank or such other lender for any year in which the net income of the cooperative is insufficient to meet scheduled interest payments.

(c) Interest rate applicable to advances

Capital investment advances made by the Office pursuant to subsection (a) of this section and interest supplement advances made by the Office pursuant to subsection (b) of this section shall bear interest at a rate determined by the Board of Directors of the Bank, and the Board of Directors may authorize an interest rate applicable to such advances lower than the rate applicable to loans by the Bank pursuant to section 3018 of this title.

(Pub. L. 95–351, title II, § 203, Aug. 20, 1978, 92 Stat. 512; Pub. L. 97–35, title III, § 396(g), Aug. 13, 1981, 95 Stat. 440.)

AMENDMENTS

1981—Subsecs. (a), (b). Pub. L. 97–35 struck out references to the Account wherever appearing.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective on the day after the Final Government Equity Redemption Date (Dec. 31, 1981), see section 396(i) of Pub. L. 97–35, set out as a note under section 3011 of this title.

§ 3044. Services and information for organization, financing, and management of cooperatives; availability; agreements for development and dissemination; funding

The Office shall make available information and services concerning the organization, financing, and management of cooperatives to best achieve the objectives of this chapter and to best provide the means through which various types of goods, services, and facilities can be made available to members and patrons. The Office may enter into agreements with other agencies of Federal, State, and local governments, colleges and universities, foundations, or other organizations for the development and dissemination of such information, and services described in this subchapter. The Office may make or accept grants or transfer of funds for such purposes.

(Pub. L. 95–351, title II, § 204, Aug. 20, 1978, 92 Stat. 512.)

§ 3045. Investigations and surveys respecting new services, etc., by cooperative not-for-profit organizations

The Office may undertake investigations of new types of services which can more effectively be provided through cooperative not-for-profit organizations and make surveys of areas where the increased use of such organizations will contribute to the economic well-being of the community.

(Pub. L. 95–351, title II, § 205, Aug. 20, 1978, 92 Stat. 512.)

§ 3046. Financial analysis and market surveys at request of eligible cooperative

The Office may, at the request of any eligible cooperative, provide a financial analysis of the applicant's capital structure and needs and its cost of operations, survey the market for the goods or services the cooperative makes or desires to make available to its members or patrons or the users of its facilities.

(Pub. L. 95–351, title II, § 206, Aug. 20, 1978, 92 Stat. 513.)

§ 3047. Programs for training directors and staff of eligible cooperatives, and public education; development and availability; scope and implementation

The Office shall develop and make available, alone or in concert with other organizations, a

program for training directors and staff of eligible cooperatives to improve their understanding of their responsibilities; the problems of and solutions for effective and efficient operation of their organizations or of cooperatives in general; and may by any means it deems appropriate, conduct membership studies, provide membership education programs, and programs for informing consumers and the general public of the advantages of cooperative action. Management supervision, review, and consultations shall be available from the Office to any eligible cooperative.

(Pub. L. 95–351, title II, § 207, Aug. 20, 1978, 92 Stat. 513.)

§ 3048. Cooperation with Federal agencies offering programs for consumer cooperatives in disseminating information

The Office shall work closely with all United States Government agencies offering programs for which consumer cooperatives may be eligible to assure that information concerning all such programs is made available to eligible cooperatives.

(Pub. L. 95–351, title II, § 208, Aug. 20, 1978, 92 Stat. 513.)

§ 3049. Authorization of appropriations for administration; availability of amounts

There are authorized to be appropriated to the Office $2,000,000 for the fiscal year ending September 30, 1979, and for each of the two succeeding fiscal years, such sums as may be necessary for the administration of this subchapter. Any sums so appropriated shall remain available until expended.

(Pub. L. 95–351, title II, § 209, Aug. 20, 1978, 92 Stat. 513.)

§ 3050. Fees for providing technical assistance services; waiver; accounting and availability

The Office may make the technical assistance services under this subchapter available for such fees as it may establish, except that such services as the Office may determine may be made available without charge to eligible cooperatives depending on the nature of the services or on ability to pay. Any fees collected shall be accounted for separately and be available for expenses of the Office.

(Pub. L. 95–351, title II, § 210, Aug. 20, 1978, 92 Stat. 513.)

§ 3051. Nonprofit corporation

(a) Office of Self-Help Development and Technical Assistance abolished; transfer of assets, etc.

(1) Upon the incorporation of the nonprofit corporation described in subsection (b) of this section, the Office of Self-Help Development and Technical Assistance is hereby abolished.

(2)(A) If the nonprofit corporation described in subsection (b) of this section agrees to accept the liabilities of the Office, the Bank, notwithstanding any other provision of law, shall transfer all assets, liabilities, and property of the Office to such nonprofit corporation on the day on which such nonprofit corporation is incorporated.

(B) Such assets shall include all sums which are appropriated to the Office by the Congress and all sums which are contained in the Account established pursuant to section 3042 of this title. If any such sums are appropriated after the date on which the transfer described in subparagraph (A) occurs, the Bank shall promptly transfer such sums to such nonprofit corporation.

(b) Establishment; Board of Directors; functions, etc.

(1) As soon as possible after August 13, 1981, the Board shall establish a nonprofit corporation under the laws of the District of Columbia and, notwithstanding the laws of the District of Columbia, name the directors of such nonprofit corporation.

(2) Notwithstanding the laws of the District of Columbia, the Board of Directors of such nonprofit corporation shall—

(A) select an executive director who shall be responsible for the administration of such nonprofit corporation;

(B) set the compensation of such executive director and the other employees of such nonprofit corporation;

(C) promulgate and publish the policies of such nonprofit corporation and make such policies available at all times to eligible cooperatives; and

(D) perform the functions specified in subparagraphs (A) and (C) of paragraph (3).

(3) Such nonprofit corporation shall only perform—

(A) the functions which are authorized to be performed pursuant to sections 3043 through 3048 of this title and section 3050 of this title;

(B) such functions as are necessary to comply with the laws under which it was incorporated in the District of Columbia; and

(C) such functions as are necessary to remain qualified as an organization described in section 501(c)(3) of title 26.

(4) Notwithstanding any other provision of law—

(A) the Bank may provide administrative or staff support to such nonprofit corporation; and

(B) any member of the Board of Directors of the Bank may serve as a member of the Board of Directors of such nonprofit corporation.

(c) Treatment for tax purposes

(1) Notwithstanding any other provision of law, such nonprofit corporation shall be deemed to be, and treated as, qualified as an organization described in section 501(c)(3) of title 26 from the date on which such nonprofit corporation is established under the laws of the District of Columbia until the date on which the Internal Revenue Service makes a final determination on the application which such nonprofit corporation will submit to the Internal Revenue Service seeking status as an organization qualifying under such section.

(2) When performed by such nonprofit corporation, the functions described in subsection (b)(3)(A) of this section shall be deemed to be performed for ''charitable purposes'' within the meaning of section 501(c)(3) of title 26.

(d) Contributions from the Bank

(1) The Board of Directors of the Bank may make contributions to the nonprofit corporation in such amounts as the Board of Directors of the Bank deems appropriate, except that—

(A) such contributions may be made only out of the Bank's earnings, determined in accordance with generally accepted accounting principles; and

(B) the Bank shall set aside amounts sufficient to satisfy its obligations to the Secretary of the Treasury for payments of principal and interest on class A notes and other debt before making any contributions to such nonprofit corporation.

(2) During any period in which the nonprofit corporation described in subsection (b) of this section is qualified as an organization described in section 501(c)(3) of title 26, contributions made by the Bank pursuant to paragraph (1) shall be treated as charitable contributions within the meaning of section 170(c)(2) of title 26, and may be deducted notwithstanding the provisions of section 170(b)(2) of title 26.

(3) During any period in which the nonprofit corporation described in subsection (b) of this section is qualified as an organization described in section 501(c)(3) of title 26, contributions to such nonprofit corporation by any person shall qualify as charitable contributions, as defined in section 170(c) of title 26, for purposes of the charitable contribution deduction provided for in section 170(a) of title 26, and shall also qualify for the deductions for estate and gift tax purposes provided for in sections 2055 and 2522 of title 26.

(e) Conflict of interest rules

Notwithstanding the laws of the District of Columbia, the Board of Directors of such nonprofit corporation shall adopt and publish its own conflict of interest rules which shall be no less stringent in effect than the conflict of interest provisions adopted by the Board of Directors of the Bank pursuant to section 3024 of this title.

(Pub. L. 95–351, title II, § 211, as added Pub. L. 97–35, title III, § 395(a), Aug. 13, 1981, 95 Stat. 437; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsecs. (b)(3)(C), (c), (d)(2), (3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

CHAPTER 32—FOREIGN BANK PARTICIPATION IN DOMESTIC MARKETS

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§ 3101. Definitions

For the purposes of this chapter—

(1) ''agency'' means any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States;

(2) ''Board'' means the Board of Governors of the Federal Reserve System;

(3) ''branch'' means any office or any place of business of a foreign bank located in any State of the United States at which deposits are received;

(4) ''Comptroller'' means the Comptroller of the Currency;

(5) ''Federal agency'' means an agency of a foreign bank established and operating under section 3102 of this title;

(6) ''Federal branch'' means a branch of a foreign bank established and operating under section 3102 of this title;

(7) ''foreign bank'' means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company. For the purposes of this chapter the term ''foreign bank'' includes, without limitation, foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating;

(8) ''foreign country'' means any country other than the United States, and includes any colony, dependency, or possession of any such country;

(9) ''commercial lending company'' means any institution, other than a bank or an organization operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.], organized under the laws of any State of the United States, or the District of Columbia which maintains credit balances incidental to or arising out of the exercise of banking powers and engages in the business of making commercial loans;

(10) ''State'' means any State of the United States or the District of Columbia;

(11) ''State agency'' means an agency of a foreign bank established and operating under the laws of any State;

(12) ''State branch'' means a branch of a foreign bank established and operating under the laws of any State;

(13) the terms ''affiliate,''[1] ''bank'', ''bank holding company'', ''company'', ''control'', and

[1] So in original. The comma probably should follow the quotation marks.

''subsidiary'' have the same meanings assigned to those terms in the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and the terms ''controlled'' and ''controlling'' shall be construed consistently with the term ''control'' as defined in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841];

(14) ''consolidated'' means consolidated in accordance with generally accepted accounting principles in the United States consistently applied;

(15) the term ''representative office'' means any office of a foreign bank which is located in any State and is not a Federal branch, Federal agency, State branch, or State agency;

(16) the term ''office'' means any branch, agency, or representative office; and

(17) the term ''State bank supervisor'' has the meaning given to such term in section 1813 of this title.

(Pub. L. 95–369, §1(b), Sept. 17, 1978, 92 Stat. 607; Pub. L. 102–242, title II, §202(e), Dec. 19, 1991, 105 Stat. 2290; Pub. L. 106–102, title I, §142(a), Nov. 12, 1999, 113 Stat. 1384.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 95–369, Sept. 17, 1978, 92 Stat. 607, known as the International Banking Act of 1978, which enacted this chapter and sections 347d and 611a of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820 to 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under this section and sections 36, 247, 601, and 611a of this title and formerly set out as notes under sections 36, 247, and 601 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Bank Holding Company Act of 1956, referred to in par. (13), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

AMENDMENTS

1999—Par. (15). Pub. L. 106–102 substituted ''or State agency;'' for ''State agency, or subsidiary of a foreign bank;''.

1991—Par. (13). Pub. L. 102–242, §202(e)(1), inserted reference to affiliate after first reference to ''the terms''.

Pars. (15) to (17). Pub. L. 102–242, §202(e)(2), added pars. (15) to (17).

EFFECTIVE DATE OF 1999 AMENDMENT

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

SHORT TITLE OF 1991 AMENDMENT

Section 201 of Pub. L. 102–242 provided that: ''This subtitle [subtitle A (§§201–215) of title II of Pub. L. 102–242, enacting sections 3109 to 3111 of this title, amending this section and sections 1467a, 1817, 1820, 1842, 2803, 2804, 3102, 3104 to 3108, and 4009 of this title and sections 44, 57a, 1607, 1681s, 1691c, 1692*l*, and 1693*o* of Title 15, Commerce and Trade, and enacting provisions set out as a note under section 3102 of this title] may be cited as the 'Foreign Bank Supervision Enhancement Act of 1991'.''

SHORT TITLE

Section 1(a) of Pub. L. 95–369 provided that: ''This Act [enacting this chapter and sections 347d and 611a of this title, amending sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820 to 1823, 1828, 1829b, 1831b and 1841 of this title, and enacting provisions set out as notes under sections 36, 247, 601, and 611a of this title] may be cited as the 'International Banking Act of 1978'.''

FOREIGN CONTROL OF UNITED STATES FINANCIAL INSTITUTIONS

Pub. L. 96–221, title IX, §§901, 902, Mar. 31, 1980, 94 Stat. 192, 193, provided that:

''SEC. 901. For purposes of this title enacting this provision—

''(1) the term 'domestic financial institution' means any bank, mutual savings bank, or savings and loan association organized under the laws of any State or of the United States;

''(2) the term 'foreign person' means any foreign organization or any individual resident in a foreign country or any organization or individual owned or controlled by such an organization or individual; and

''(3) the term 'takeover' means any acquisition of the stock or assets of any domestic financial institution if, after such acquisition, the amount of stock or assets held is 5 per centum or more of the institution's stock or assets.

''SEC. 902. The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board may not approve any application relating to the takeover of any domestic financial institution by a foreign person until July 1, 1980, unless—

''(1) such takeover is necessary to prevent the bankruptcy or insolvency of the domestic financial institution involved;

''(2) the application was initially submitted for filing on or before March 5, 1980;

''(3) the domestic financial institution has deposits of less than $100,000,000;

''(4) the application relates to a takeover of shares or assets pursuant to a foreign person's intrafirm reorganization of its interests in a domestic financial institution, including specifically any application to establish a bank holding company pursuant to such reorganization;

''(5) the application relates to a takeover of the assets or shares of a domestic financial institution if such assets or shares are owned or controlled by a foreign person; or

''(6) the application relates to the takeover of a domestic financial institution which is a subsidiary of a bank holding company under an order to divest by December 31, 1980.''

§ 3102. Establishment of Federal branches and agencies by foreign bank

(a) Establishment and operation of Federal branches and agencies

(1) Initial Federal branch or agency

Except as provided in section 3103 of this title, a foreign bank which engages directly in a banking business outside the United States may, with the approval of the Comptroller, establish one or more Federal branches or agencies in any State in which (1) it is not operating a branch or agency pursuant to State law and (2) the establishment of a branch or agency, as the case may be, by a foreign bank is not prohibited by State law.

(2) Board conditions required to be included

In considering any application for approval under this subsection, the Comptroller of the Currency shall include any condition imposed by the Board under section 3105(d)(5) of this title as a condition for the approval of such application by the agency.

(b) Rules and regulations; rights and privileges; duties and liabilities; exceptions; coordination of examinations

In establishing and operating a Federal branch or agency, a foreign bank shall be subject to such rules, regulations, and orders as the Comptroller considers appropriate to carry out this section, which shall include provisions for service of process and maintenance of branch and agency accounts separate from those of the parent bank. Except as otherwise specifically provided in this chapter or in rules, regulations, or orders adopted by the Comptroller under this section, operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location, except that (1) any limitation or restriction based on the capital stock and surplus of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital stock and surplus of the foreign bank, and if the foreign bank has more than one Federal branch or agency the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation; (2) a Federal branch or agency shall not be required to become a member bank, as that term is defined in section 221 of this title; and (3) a Federal agency shall not be required to become an insured bank as that term is defined in section 1813(h) of this title. The Comptroller of the Currency shall coordinate examinations of Federal branches and agencies of foreign banks with examinations conducted by the Board under section 3105(c)(1) of this title and, to the extent possible, shall participate in any simultaneous examinations of the United States operations of a foreign bank requested by the Board under such section.

(c) Application to establish Federal branch or agency; matters considered

In acting on any application to establish a Federal branch or agency, the Comptroller shall take into account the effects of the proposal on competition in the domestic and foreign commerce of the United States, the financial and managerial resources and future prospects of the applicant foreign bank and the branch or agency, and the convenience and needs of the community to be served.

(d) Receipt of deposits and exercising of fiduciary powers at Federal agency prohibited

Notwithstanding any other provision of this section, a foreign bank shall not receive deposits or exercise fiduciary powers at any Federal agency. A foreign bank may, however, maintain at a Federal agency for the account of others credit balances incidental to, or arising out of, the exercise of its lawful powers.

(e) Maintenance of Federal branch and Federal agency in same State prohibited

No foreign bank may maintain both a Federal branch and a Federal agency in the same State.

(f) Conversion of foreign bank branch, agency or commercial lending company into Federal branch or agency; approval of Comptroller

Any branch or agency operated by a foreign bank in a State pursuant to State law and any commercial lending company controlled by a foreign bank may be converted into a Federal branch or agency with the approval of the Comptroller. In the event of any conversion pursuant to this subsection, all of the liabilities of such foreign bank previously payable at the State branch or agency, or all of the liabilities of the commercial lending company, shall thereafter be payable by such foreign bank at the branch or agency established under this subsection.

(g) Deposit requirements; asset requirements

(1) Upon the opening of a Federal branch or agency in any State and thereafter, a foreign bank, in addition to any deposit requirements imposed under section 3104 of this title, shall keep on deposit, in accordance with such rules and regulations as the Comptroller may prescribe, with a member bank designated by such foreign bank, dollar deposits or investment securities of the type that may be held by national banks for their own accounts pursuant to paragraph ''Seventh'' of section 24 of this title, in an amount as hereinafter set forth. Such depository bank shall be located in the State where such branch or agency is located and shall be approved by the Comptroller if it is a national bank and by the Board of Governors of the Federal Reserve System if it is a State Bank.

(2) The aggregate amount of deposited investment securities (calculated on the basis of principal amount or market value, whichever is lower) and dollar deposits for each branch or agency established and operating under this section shall be not less than the greater of (1) that amount of capital (but not surplus) which would be required of a national bank being organized at this location, or (2) 5 per centum of the total liabilities of such branch or agency, including acceptances, but excluding (A) accrued expenses, and (B) amounts due and other liabilities to offices, branches, agencies, and subsidiaries of such foreign bank. The Comptroller may require that the assets deposited pursuant to this subsection shall be maintained in such amounts as he may from time to time deem necessary or desirable, for the maintenance of a sound financial condition, the protection of depositors, and the public interest, but such additional amount shall in no event be greater than would be required to conform to generally accepted banking practices as manifested by banks in the area in which the branch or agency is located.

(3) The deposit shall be maintained with any such member bank pursuant to a deposit agreement in such form and containing such limitations and conditions as the Comptroller may prescribe. So long as it continues business in the ordinary course such foreign bank shall, however, be permitted to collect income on the securities and funds so deposited and from time to time examine and exchange such securities.

(4) Subject to such conditions and requirements as may be prescribed by the Comptroller,

each foreign bank shall hold in each State in which it has a Federal branch or agency, assets of such types and in such amount as the Comptroller may prescribe by general or specific regulation or ruling as necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors and the public interest. In determining compliance with any such prescribed asset requirements, the Comptroller shall give credit to (A) assets required to be maintained pursuant to paragraphs (1) and (2) of this subsection, (B) reserves required to be maintained pursuant to section 3105(a) of this title, and (C) assets pledged, and surety bonds payable, to the Federal Deposit Insurance Corporation to secure the payment of domestic deposits. The Comptroller may prescribe different asset requirements for branches or agencies in different States, in order to ensure competitive equality of Federal branches and agencies with State branches and agencies and domestic banks in those States.

(h) Additional branches or agencies

(1) Approval of agency required

A foreign bank with a Federal branch or agency operating in any State may (A) with the prior approval of the Comptroller establish and operate additional branches or agencies in the State in which such branch or agency is located on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by a national bank if the principal office of such national bank were located at the same place as the initial branch or agency in such State of such foreign bank and (B) change the designation of its initial branch or agency to any other branch or agency subject to the same limitations and restrictions as are applicable to a change in the designation of the principal office of a national bank if such principal office were located at the same place as such initial branch or agency.

(2) Notice to and comment by Board

The Comptroller of the Currency shall provide the Board with notice and an opportunity for comment on any application to establish an additional Federal branch or Federal agency under this subsection.

(i) Termination of authority to operate Federal branch or agency

Authority to operate a Federal branch or agency shall terminate when the parent foreign bank voluntarily relinquishes it or when such parent foreign bank is dissolved or its authority or existence is otherwise terminated or canceled in the country of its organization. If (1) at any time the Comptroller is of the opinion or has reasonable cause to believe that such foreign bank has violated or failed to comply with any of the provisions of this section or any of the rules, regulations, or orders of the Comptroller made pursuant to this section, or (2) a conservator is appointed for such foreign bank or a similar proceeding is initiated in the foreign bank's country of organization, the Comptroller shall have the power, after opportunity for hearing, to revoke the foreign bank's authority to operate a Federal branch or agency. The Comptroller may, in his discretion, deny such opportunity for hearing if he determines such denial to be in the public interest. The Comptroller may restore any such authority upon due proof of compliance with the provisions of this section and the rules, regulations, or orders of the Comptroller made pursuant to this section.

(j) Receivership over assets of foreign bank in United States

(1) Whenever the Comptroller revokes a foreign bank's authority to operate a Federal branch or agency or whenever any creditor of any such foreign bank shall have obtained a judgment against it arising out of a transaction with a Federal branch or agency in any court of record of the United States or any State of the United States and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the Comptroller shall become satisfied that such foreign bank is insolvent, he may, after due consideration of its affairs, in any such case, appoint a receiver who shall take possession of all the property and assets of such foreign bank in the United States and exercise the same rights, privileges, powers, and authority with respect thereto as are now exercised by receivers of national banks appointed by the Comptroller.

(2) In any receivership proceeding ordered pursuant to this subsection (j), whenever there has been paid to each and every depositor and creditor of such foreign bank whose claim or claims shall have been proved or allowed, the full amount of such claims arising out of transactions had by them with any branch or agency of such foreign bank located in any State of the United States, except (A) claims that would not represent an enforceable legal obligation against such branch or agency if such branch or agency were a separate legal entity, and (B) amounts due and other liabilities to other offices or branches or agencies of, and wholly owned (except for a nominal number of directors' shares) subsidiaries of, such foreign bank, and all expenses of the receivership, the Comptroller or the Federal Deposit Insurance Corporation, where that Corporation has been appointed receiver of the foreign bank, shall turn over the remainder, if any, of the assets and proceeds of such foreign bank to the head office of such foreign bank, or to the duly appointed domiciliary liquidator or receiver of such foreign bank.

(Pub. L. 95–369, § 4, Sept. 17, 1978, 92 Stat. 610; Pub. L. 102–242, title II, §§ 202(b), (c), 203(b), Dec. 19, 1991, 105 Stat. 2290, 2291; Pub. L. 106–569, title XII, § 1234, Dec. 27, 2000, 114 Stat. 3037.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (b), see References in Text note set out under section 3101 of this title.

The National Bank Act, referred to in subsec. (b), is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified principally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

Section 3104 of this title, referred to in subsec. (g)(1), was in the original a reference to section 6 of Pub. L.

95–369, which enacted section 3104 of this title and amended sections 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, and 1831b of this title.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–569 redesignated cls. (2) to (4) as (1) to (3), respectively, and struck out former cl. (1) which read as follows: ''the requirements of section 481 of this title shall be met with respect to a Federal branch or agency if it is examined at least once in each calendar year;''.

1991—Subsec. (a). Pub. L. 102–242, § 202(b), inserted heading, designated existing provisions as par. (1) and inserted heading, and added par. (2).

Subsec. (b). Pub. L. 102–242, § 203(b), inserted at end: ''The Comptroller of the Currency shall coordinate examinations of Federal branches and agencies of foreign banks with examinations conducted by the Board under section 3105(c)(1) of this title and, to the extent possible, shall participate in any simultaneous examinations of the United States operations of a foreign bank requested by the Board under such section.''

Subsec. (h). Pub. L. 102–242, § 202(c), amended heading, designated existing provisions as par. (1), inserted par. (1) heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

STUDY AND REPORT ON SUBSIDIARY REQUIREMENTS FOR FOREIGN BANKS

Section 215 of Pub. L. 102–242, as amended by Pub. L. 102–550, title XVI, § 1604(a)(14), Oct. 28, 1992, 106 Stat. 4083, directed Secretary of the Treasury, jointly with Board of Governors of the Federal Reserve System and in consultation with Comptroller of the Currency, Federal Deposit Insurance Corporation, and Attorney General, to conduct a study of whether foreign banks should be required to conduct banking operations in United States through subsidiaries rather than branches and, not later than 1 year after Dec. 19, 1991, to transmit to Congress a report on the results of the study.

§ 3103. Interstate banking by foreign banks

(a) Interstate branching and agency operations

(1) Federal branch or agency

Subject to the provisions of this chapter and with the prior written approval by the Board and the Comptroller of the Currency of an application, a foreign bank may establish and operate a Federal branch or agency in any State outside the home State of such foreign bank to the extent that the establishment and operation of such branch would be permitted under section 36(g) of this title or section 1831u of this title if the foreign bank were a national bank whose home State is the same State as the home State of the foreign bank.

(2) State branch or agency

Subject to the provisions of this chapter and with the prior written approval by the Board and the appropriate State bank supervisor of an application, a foreign bank may establish and operate a State branch or agency in any State outside the home State of such foreign bank to the extent that such establishment and operation would be permitted under section 1828(d)(4) or 1831u of this title if the foreign bank were a State bank whose home State is the same State as the home State of the foreign bank.

(3) Criteria for determination

In approving an application under paragraph (1) or (2), the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency—

(A) shall apply the standards applicable to the establishment of a foreign bank office in the United States under section 3105(d) of this title;

(B) may not approve an application unless the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency—

(i) determine that the foreign bank's financial resources, including the capital level of the bank, are equivalent to those required for a domestic bank to be approved for branching under section 36 of this title and section 1831u of this title; and

(ii) consult with the Secretary of the Treasury regarding capital equivalency; and

(C) shall apply the same requirements and conditions to which an application for an interstate merger transaction is subject under paragraphs (1), (3), and (4) of section 1831u(b) of this title.

(4) Operation

Subsections (c) and (d)(2) of section 1831u of this title shall apply with respect to each branch and agency of a foreign bank which is established and operated pursuant to an application approved under this subsection in the same manner and to the same extent such provisions of such section apply to a domestic branch of a national or State bank (as such terms are defined in section 1813 of this title) which resulted from a merger transaction under such section 1831u of this title.

(5) Exclusive authority for additional branches

Except as provided in this section, a foreign bank may not, directly or indirectly, acquire, establish, or operate a branch or agency in any State other than the home State of such bank.

(6) Requirement for a separate subsidiary

If the Board or the Comptroller of the Currency, taking into account differing regulatory or accounting standards, finds that adherence by a foreign bank to capital requirements equivalent to those imposed under section 36 of this title and section 1831u of this title could be verified only if the banking activities of such bank in the United States are carried out in a domestic banking subsidiary within the United States, the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency may approve an application under paragraph (1) or (2) subject to a requirement that the foreign bank or company controlling the foreign bank establish a domestic banking subsidiary in the United States.

(7) Additional authority for interstate branches and agencies of foreign banks, upgrades of certain foreign bank agencies and branches

Notwithstanding paragraphs (1) and (2), a foreign bank may—

(A) with the approval of the Board and the Comptroller of the Currency, establish and

operate a Federal branch or Federal agency or, with the approval of the Board and the appropriate State bank supervisor, a State branch or State agency in any State outside the foreign bank's home State if—

(i) the establishment and operation of such branch or agency is permitted by the State in which the branch or agency is to be established; and

(ii) in the case of a Federal or State branch, the branch receives only such deposits as would be permitted for a corporation organized under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.]; or

(B) with the approval of the Board and the relevant licensing authority (the Comptroller in the case of a Federal branch or the appropriate State supervisor in the case of a State branch), upgrade an agency, or a branch of the type referred to in subparagraph (A)(ii), located in a State outside the foreign bank's home State, into a Federal or State branch if—

(i) the establishment and operation of such branch is permitted by such State; and

(ii) such agency or branch—

(I) was in operation in such State on the day before September 29, 1994; or

(II) has been in operation in such State for a period of time that meets the State's minimum age requirement permitted under section 1831u(a)(5) of this title.

(8) Continuing requirement for meeting community credit needs after initial interstate entry by acquisition

(A) In general

If a foreign bank acquires a bank or a branch of a bank, in a State in which the foreign bank does not maintain a branch, and such acquired bank is, or is part of, a regulated financial institution (as defined in section 803 of the Community Reinvestment Act of 1977 [12 U.S.C. 2902]), the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.] shall continue to apply to each branch of the foreign bank which results from the acquisition as if such branch were a regulated financial institution.

(B) Exception for branch that receives only deposits permissible for an Edge Act corporation

Paragraph (1) shall not apply to any branch that receives only such deposits as are permissible for a corporation organized under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.] to receive.

(9) Home State of domestic bank defined

For purposes of this subsection, the term ''home State'' means—

(A) with respect to a national bank, the State in which the main office of the bank is located; and

(B) with respect to a State bank, the State by which the bank is chartered.

(b) Continuance of lawful interstate banking operations previously commenced

Unless its authority to do so is lawfully revoked otherwise than pursuant to this section, a foreign bank, notwithstanding any restriction or limitation imposed under subsection (a) of this section, may establish and operate, outside its home State, any State branch, State agency, or bank or commercial lending company subsidiary which commenced lawful operation or for which an application to commence business had been lawfully filed with the appropriate State or Federal authority, as the case may be, on or before July 27, 1978. Notwithstanding subsection (a) of this section, a foreign bank may continue to operate, after September 29, 1994, any Federal branch, State branch, Federal agency, State agency, or commercial lending company subsidiary which such bank was operating on the day before September 29, 1994, to the extent the branch, agency, or subsidiary continues, after September 29, 1994, to engage in operations which were lawful under the laws in effect on the day before September 29, 1994.

(c) Determination of home State of foreign bank

For the purposes of this section—

(1) in the case of a foreign bank that has any branch, agency, subsidiary commercial lending company, or subsidiary bank in more than 1 State, the home State of the foreign bank is the 1 State of such States which is selected to be the home State by the foreign bank or, in default of any such selection, by the Board; and

(2) in the case of a foreign bank that does not have a branch, agency, subsidiary commercial lending company, or subsidiary bank in more than 1 State, the home State of the foreign bank is the State in which the foreign bank has a branch, agency, subsidiary commercial lending company, or subsidiary bank.

(d) Clarification of branching rules in case of foreign bank with domestic bank subsidiary

In the case of a foreign bank that has a domestic bank subsidiary within the United States—

(1) the fact that such bank controls a domestic bank shall not affect the authority of the foreign bank to establish Federal and State branches or agencies to the extent permitted under subsection (a) of this section; and

(2) the fact that the domestic bank is controlled by a foreign bank which has Federal or State branches or agencies in States other than the home State of such domestic bank shall not affect the authority of the domestic bank to establish branches outside the home State of the domestic bank to the extent permitted under section 36(g) of this title or section 1828(d)(4) or 1831u of this title, as the case may be.

(Pub. L. 95–369, § 5, Sept. 17, 1978, 92 Stat. 613; Pub. L. 103–328, title I, §§ 104, 107(f), Sept. 29, 1994, 108 Stat. 2354, 2361; Pub. L. 106–102, title VII, § 732, Nov. 12, 1999, 113 Stat. 1478.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (a)(1), (2), see References in Text note set out under section 3101 of this title.

The Community Reinvestment Act of 1977, referred to in subsec. (a)(8)(A), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, as amended, which is classified generally to chapter 30 (§ 2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

Section 25A of the Federal Reserve Act, referred to in subsec. (a)(7)(A)(ii), (8)(B), popularly known as the Edge Act, is classified to subchapter II (§ 611 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 611 of this title and Tables.

AMENDMENTS

1999—Subsec. (a)(7). Pub. L. 106–102 amended heading and text of par. (7) generally. Prior to amendment, text read as follows: ''Notwithstanding paragraphs (1) and (2), a foreign bank may, with the approval of the Board and the Comptroller of the Currency, establish and operate a Federal branch or Federal agency or, with the approval of the Board and the appropriate State bank supervisor, a State branch or State agency in any State outside the foreign bank's home State if—

''(A) the establishment and operation of a branch or agency is expressly permitted by the State in which the branch or agency is to be established; and

''(B) in the case of a Federal or State branch, the branch receives only such deposits as would be permissible for a corporation organized under section 25A of the Federal Reserve Act.''

1994—Subsec. (a). Pub. L. 103–328, §§ 104(a), 107(f), inserted heading and substituted provisions consisting of pars. (1) to (9) for former provisions relating to limitations on interstate banking by foreign banks.

Subsec. (b). Pub. L. 103–328, § 104(b), inserted at end ''Notwithstanding subsection (a) of this section, a foreign bank may continue to operate, after September 29, 1994, any Federal branch, State branch, Federal agency, State agency, or commercial lending company subsidiary which such bank was operating on the day before September 29, 1994, to the extent the branch, agency, or subsidiary continues, after September 29, 1994, to engage in operations which were lawful under the laws in effect on the day before September 29, 1994.''

Subsec. (c). Pub. L. 103–328, § 104(d), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For the purposes of this section, the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than one State, is whichever of such States is so determined by election of the foreign bank, or, in default of such election, by the Board.''

Subsec. (d). Pub. L. 103–328, § 104(c), added subsec. (d).

§ 3104. Insurance of deposits

(a) Objective

In implementing this section, the Comptroller and the Federal Deposit Insurance Corporation shall each, by affording equal competitive opportunities to foreign and United States banking organizations in their United States operations, ensure that foreign banking organizations do not receive an unfair competitive advantage over United States banking organizations.

(b) Deposits of less than amount equal to the standard maximum deposit insurance amount

No foreign bank may establish or operate a Federal branch which receives deposits of less than an amount equal to the standard maximum deposit insurance amount unless the branch is an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act [12 U.S.C. 1813(s)], or unless the Comptroller determines by order or regulation that the branch is not engaged in domestic retail deposit activities requiring deposit insurance protection, taking account of the size and nature of depositors and deposit accounts.

(c) Deposits required to be insured under State law

(1) After September 17, 1978, no foreign bank may establish a branch, and after one year following such date no foreign bank may operate a branch, in any State in which the deposits of a bank organized and existing under the laws of that State would be required to be insured, unless the branch is an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act [12 U.S.C. 1813(s)], or unless the branch will not thereafter accept deposits of less than an amount equal to the standard maximum deposit insurance amount, or unless the Federal Deposit Insurance Corporation determines by order or regulation that the branch is not engaged in domestic retail deposit activities requiring deposit insurance protection, taking account of the size and nature of depositors and deposit accounts.

(2) Notwithstanding the previous paragraph, a branch of a foreign bank in operation on September 17, 1978, which has applied for Federal deposit insurance pursuant to section 5 of the Federal Deposit Insurance Act [12 U.S.C. 1815] by September 17, 1979, and has not had such application denied, may continue to accept domestic retail deposits until January 31, 1980.

(d) Retail deposit-taking by foreign banks

(1) In general

After December 19, 1991, notwithstanding any other provision of this chapter or any provision of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], in order to accept or maintain domestic retail deposit accounts having balances of less than an amount equal to the standard maximum deposit insurance amount, and requiring deposit insurance protection, a foreign bank shall—

(A) establish 1 or more banking subsidies in the United States for that purpose; and

(B) obtain Federal deposit insurance for any such subsidiary in accordance with the Federal Deposit Insurance Act.

(2) Exception

Domestic retail deposit accounts with balances of less than an amount equal to the standard maximum deposit insurance amount that require deposit insurance protection may be accepted or maintained in a branch of a foreign bank only if such branch was an insured branch on December 19, 1991.

(3) Insured banks in U.S. territories

For purposes of this subsection, the term ''foreign bank'' does not include any bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands the deposits of which are insured by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

(e) Standard maximum deposit insurance amount defined

For purposes of this section, the term ''standard maximum deposit insurance amount'' means the amount of the maximum amount of deposit insurance as determined under section 11(a)(1) of the Federal Deposit Insurance Act [12 U.S.C. 1821(a)(1)].

(Pub. L. 95–369, § 6, Sept. 17, 1978, 92 Stat. 614; Pub. L. 96–64, Sept. 14, 1979, 93 Stat. 412; Pub. L. 102–242, title II, § 214(a), Dec. 19, 1991, 105 Stat. 2303; Pub. L. 102–550, title XVI, § 1604(a)(10), (11), Oct. 28, 1992, 106 Stat. 4082, 4083; Pub. L. 102–558, title III, §§ 302(a), 305, Oct. 28, 1992, 106 Stat. 4224, 4226; Pub. L. 103–328, title I, § 107(a), (d), Sept. 29, 1994, 108 Stat. 2358, 2360; Pub. L. 109–173, § 2(c)(4), Feb. 15, 2006, 119 Stat. 3602.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (d)(1), see References in Text note set out under section 3101 of this title.

The Federal Deposit Insurance Act, referred to in subsec. (d)(1), (3), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

AMENDMENTS

2006—Subsecs. (b), (c)(1), (d)(1), (2). Pub. L. 109–173, § 2(c)(4)(A), substituted ''an amount equal to the standard maximum deposit insurance amount'' for ''$100,000''.

Subsec. (e). Pub. L. 109–173, § 2(c)(4)(B), added subsec. (e).

1994—Subsecs. (a) to (d). Pub. L. 103–328, § 107(a), added subsec. (a) and redesignated former subsecs. (a) to (c) as (b) to (d), respectively.

Subsec. (d)(3). Pub. L. 103–328, § 107(d), added par. (3).

1992—Subsec. (c). Pub. L. 102–550, § 1604(a)(10), struck out the subsec. (c) which was in effect before the subsec. (c) added by Pub. L. 102–242, § 214(a)(3), and which amended various other sections of this title.

Subsec. (c)(1). Pub. L. 102–558, § 302(a)(1), inserted ''domestic retail'' before ''deposit accounts'' and ''and requiring deposit insurance protection,'' after ''$100,000,'' in introductory provisions. Pub. L. 102–550, § 1604(a)(11)(A), which made an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (c)(2). Pub. L. 102–558, § 302(a)(2), substituted ''Domestic retail deposit'' for ''Deposit'' and inserted ''that require deposit insurance protection'' after ''$100,000''. Pub. L. 102–550, § 1604(a)(11)(B), which made an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

1991—Subsec. (b). Pub. L. 102–242, § 214(a)(1), (2), redesignated subsec. (b) as (b)(1) and designated last undesignated par. as par. (2).

Subsec. (c). Pub. L. 102–242, § 214(a)(3), added subsec. (c).

1979—Subsec. (b). Pub. L. 96–64 inserted second par. which extended time for foreign banks to obtain required deposit insurance with respect to domestic existing branches.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Apr. 1, 2006, see section 2(e) of Pub. L. 109–173, set out as a note under section 1785 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Section 302(b) of Pub. L. 102–558 provided that: ''This section, and the amendments made by this section [amending this section], shall have the same effective date as the Federal Deposit Insurance Corporation Improvement Act of 1991 [Pub. L. 102–242].''

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

REGULATIONS

Pub. L. 103–328, title I, § 107(b), Sept. 29, 1994, 108 Stat. 2359, provided that:

''(1) IN GENERAL.—Each Federal banking agency, after consultation with the other Federal banking agencies to assure uniformity, shall revise the regulations adopted by such agency under section 6 of the International Banking Act of 1978 [12 U.S.C. 3104] to ensure that the regulations are consistent with the objective set forth in section 6(a) of the International Banking Act of 1978.

''(2) SPECIFIC FACTORS.—In carrying out paragraph (1), each Federal banking agency shall consider whether to permit an uninsured branch of a foreign bank to accept initial deposits of less than $100,000 only from—

''(A) individuals who are not citizens or residents of the United States at the time of the initial deposit;

''(B) individuals who—

''(i) are not citizens of the United States;

''(ii) are residents of the United States; and

''(iii) are employed by a foreign bank, foreign business, foreign government, or recognized international organization;

''(C) persons to whom the branch or foreign bank has extended credit or provided other nondeposit banking services;

''(D) foreign businesses and large United States businesses;

''(E) foreign governmental units and recognized international organizations; and

''(F) persons who are depositing funds in connection with the issuance of a financial instrument by the branch for the transmission of funds.

''(3) REDUCTION IN REGULATORY DE MINIMIS EXEMPTION.—In carrying out paragraph (1), each Federal banking agency shall limit any exemption which is—

''(A) available under any regulation prescribed pursuant to section 6(d) of the International Banking Act of 1978 [12 U.S.C. 3104(d)] providing for the acceptance of initial deposits of less than $100,000 by an uninsured branch of a foreign bank; and

''(B) based on a percentage of the average deposits at such branch;

to not more than 1 percent of the average deposits at such branch.

''(4) ADDITIONAL RELEVANT CONSIDERATIONS.—In carrying out paragraph (1), each Federal banking agency shall also consider the importance of maintaining and improving the availability of credit to all sectors of the United States economy, including the international trade finance sector of the United State [sic] economy.

''(5) DEADLINE FOR PRESCRIBING REVISED REGULATIONS.—Each Federal banking agency—

''(A) shall publish final regulations under paragraph (1) in the Federal Register not later than 12 months after the date of enactment of this Act [Sept. 29, 1994]; and

''(B) may establish reasonable transition rules to facilitate any termination of any deposit-taking activities that were permissible under regulations that were in effect before the date of enactment of this Act.

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'Federal banking agency' means—

''(i) the Comptroller of the Currency with respect to Federal branches of foreign banks; and

''(ii) the Federal Deposit Insurance Corporation with respect to State branches of foreign banks; and

''(B) the term 'uninsured branch' means a branch of a foreign bank that is not an insured branch, as de-

fined in section 3(s)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)(3)).''

§ 3105. Authority of Federal Reserve System

(a) Bank reserves

(1)(A) Except as provided in paragraph (2) of this subsection, sections 371a, 371b, 371b–1,[1] 374, 374a, 461, 464, and 465 of this title shall apply to every Federal branch and Federal agency of a foreign bank in the same manner and to the same extent as if the Federal branch or Federal agency were a member bank as that term is defined in section 221 of this title; but the Board either by general or specific regulation or ruling may waive the minimum and maximum reserve ratios prescribed under sections 461, 463, 464, 465, and 466 of this title and may prescribe any ratio, not more than 22 per centum, for any obligation of any such Federal branch or Federal agency that the Board may deem reasonable and appropriate, taking into consideration the character of business conducted by such institutions and the need to maintain vigorous and fair competition between and among such institutions and member banks. The Board may impose reserve requirements on Federal branches and Federal agencies in such graduated manner as it deems reasonable and appropriate.

(B) After consultation and in cooperation with the State bank supervisory authorities, the Board may make applicable to any State branch or State agency any requirement made applicable to, or which the Board has authority to impose upon, any Federal branch or agency under subparagraph (A) of this paragraph.

(2) A branch or agency shall be subject to this subsection only if (A) its parent foreign bank has total worldwide consolidated bank assets in excess of $1,000,000,000; (B) its parent foreign bank is controlled by a foreign company which owns or controls foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000; or (C) its parent foreign bank is controlled by a group of foreign companies that own or control foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000.

(b) Omitted

(c) Foreign bank examinations and reporting

(1) Examination of branches, agencies, and affiliates

(A) In general

The Board may examine each branch or agency of a foreign bank, each commercial lending company or bank controlled by 1 or more foreign banks or 1 or more foreign companies that control a foreign bank, and other office or affiliate of a foreign bank conducting business in any State.

(B) Coordination of examinations

(i) In general

The Board shall coordinate examinations under this paragraph with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and appropriate State bank supervisors to the extent such coordination is possible.

(ii) Simultaneous examinations

The Board may request simultaneous examinations of each office of a foreign bank and each affiliate of such bank operating in the United States.

(iii) Avoidance of duplication

In exercising its authority under this paragraph, the Board shall take all reasonable measures to reduce burden and avoid unnecessary duplication of examinations.

(C) On-site examination

Each Federal branch or agency, and each State branch or agency, of a foreign bank shall be subject to on-site examination by an appropriate Federal banking agency or State bank supervisor as frequently as would a national bank or a State bank, respectively, by the appropriate Federal banking agency.

(D) Cost of examinations

The cost of any examination under subparagraph (A) shall be assessed against and collected from the foreign bank or the foreign company that controls the foreign bank, as the case may be, only to the same extent that fees are collected by the Board for examination of any State member bank.

(2) Reporting requirements

Each branch or agency of a foreign bank, other than a Federal branch or agency, shall be subject to section 335 of this title and the provision requiring the reports of condition contained in section 324 of this title to the same extent and in the same manner as if the branch or agency were a State member bank. In addition to any requirements imposed under section 3102 of this title, each Federal branch and agency shall be subject to section 248(a) of this title and to section 483 of this title to the same extent and in the same manner as if it were a member bank.

(d) Establishment of foreign bank offices in United States

(1) Prior approval required

No foreign bank may establish a branch or an agency, or acquire ownership or control of a commercial lending company, without the prior approval of the Board.

(2) Required standards for approval

Except as provided in paragraph (6), the Board may not approve an application under paragraph (1) unless it determines that—

(A) the foreign bank engages directly in the business of banking outside of the United States and is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; and

(B) the foreign bank has furnished to the Board the information it needs to adequately assess the application.

(3) Standards for approval

In acting on any application under paragraph (1), the Board may take into account—

[1] See References in Text note below.

(A) whether the appropriate authorities in the home country of the foreign bank have consented to the proposed establishment of a branch, agency or commercial lending company in the United States by the foreign bank;

(B) the financial and managerial resources of the foreign bank, including the bank's experience and capacity to engage in international banking;

(C) whether the foreign bank has provided the Board with adequate assurances that the bank will make available to the Board such information on the operations or activities of the foreign bank and any affiliate of the bank that the Board deems necessary to determine and enforce compliance with this chapter, the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and other applicable Federal law;

(D) whether the foreign bank and the United States affiliates of the bank are in compliance with applicable United States law; and

(E) for a foreign bank that presents a risk to the stability of United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.

(4) Factor

In acting on an application under paragraph (1), the Board shall not make the size of the foreign bank the sole determinant factor, and may take into account the needs of the community as well as the length of operation of the foreign bank and its relative size in its home country. Nothing in this paragraph shall affect the ability of the Board to order a State branch, agency, or commercial lending company subsidiary to terminate its activities in the United States pursuant to any standard set forth in this chapter.

(5) Establishment of conditions

The Board may impose such conditions on its approval under this subsection as it deems necessary.

(6) Exception

(A) In general

If the Board is unable to find, under paragraph (2), that a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve an application by such foreign bank under paragraph (1) if—

(i) the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank; and

(ii) all other factors are consistent with approval.

(B) Other considerations

In deciding whether to use its discretion under subparagraph (A), the Board shall also consider whether the foreign bank has adopted and implements procedures to combat money laundering. The Board may also take into account whether the home country of the foreign bank is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.

(C) Additional conditions

In approving an application under this paragraph, the Board, after requesting and taking into consideration the views of the appropriate State bank supervisor or the Comptroller of the Currency, as the case may be, may impose such conditions or restrictions relating to the activities or business operations of the proposed branch, agency, or commercial lending company subsidiary, including restrictions on sources of funding, as are considered appropriate. The Board shall coordinate with the appropriate State bank supervisor or the Comptroller of the Currency, as appropriate, in the implementation of such conditions or restrictions.

(D) Modification of conditions

Any condition or restriction imposed by the Board in connection with the approval of an application under authority of this paragraph may be modified or withdrawn.

(7) Time period for Board action

(A) Final action

The Board shall take final action on any application under paragraph (1) not later than 180 days after receipt of the application, except that the Board may extend for an additional 180 days the period within which to take final action on such application after providing notice of, and the reasons for, the extension to the applicant foreign bank and any appropriate State bank supervisor or the Comptroller of the Currency, as appropriate.

(B) Failure to submit information

The Board may deny any application if it does not receive information requested from the applicant foreign bank or appropriate authorities in the home country of the foreign bank in sufficient time to permit the Board to evaluate such information adequately within the time periods for final action set forth in subparagraph (A).

(C) Waiver

A foreign bank may waive the applicability of this paragraph with respect to any application under paragraph (1).

(e) Termination of foreign bank offices in United States

(1) Standards for termination

The Board, after notice and opportunity for hearing and notice to any appropriate State bank supervisor, may order a foreign bank that operates a State branch or agency or commercial lending company subsidiary in the United States to terminate the activities of such branch, agency, or subsidiary if the Board finds that—

(A)(i) the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; and

(ii) the appropriate authorities in the home country of the foreign bank are not making demonstrable progress in establishing arrangements for the comprehensive supervision or regulation of such foreign bank on a consolidated basis;

(B)(i) there is reasonable cause to believe that such foreign bank, or any affiliate of such foreign bank, has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

(ii) as a result of such violation or practice, the continued operation of the foreign bank's branch, agency or commercial lending company subsidiary in the United States would not be consistent with the public interest or with the purposes of this chapter, the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], or the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]; or

(C) for a foreign bank that presents a risk to the stability of the United States financial system, the home country of the foreign bank has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

However, in making findings under this paragraph, the Board shall not make size the sole determinant factor, and may take into account the needs of the community as well as the length of operation of the foreign bank and its relative size in its home country. Nothing in this paragraph shall affect the ability of the Board to order a State branch, agency, or commercial lending company subsidiary to terminate its activities in the United States pursuant to any standard set forth in this chapter.

(2) Discretion to deny hearing

The Board may issue an order under paragraph (1) without providing for an opportunity for a hearing if the Board determines that expeditious action is necessary in order to protect the public interest.

(3) Effective date of termination order

An order issued under paragraph (1) shall take effect before the end of the 120-day period beginning on the date such order is issued unless the Board extends such period.

(4) Compliance with State and Federal law

Any foreign bank required to terminate activities conducted at offices or subsidiaries in the United States pursuant to this subsection shall comply with the requirements of applicable Federal and State law with respect to procedures for the closure or dissolution of such offices or subsidiaries.

(5) Recommendation to agency for termination of a Federal branch or agency

The Board may transmit to the Comptroller of the Currency a recommendation that the license of any Federal branch or Federal agency of a foreign bank be terminated in accordance with section 3102(i) of this title if the Board has reasonable cause to believe that such foreign bank or any affiliate of such foreign bank has engaged in conduct for which the activities of any State branch or agency may be terminated under paragraph (1).

(6) Enforcement of orders

(A) In general

In the case of contumacy of any office or subsidiary of the foreign bank against which—

(i) the Board has issued an order under paragraph (1); or

(ii) the Comptroller of the Currency has issued an order under section 3102(i) of this title,

or a refusal by such office or subsidiary to comply with such order, the Board or the Comptroller of the Currency may invoke the aid of the district court of the United States within the jurisdiction of which the office or subsidiary is located.

(B) Court order

Any court referred to in subparagraph (A) may issue an order requiring compliance with an order referred to in subparagraph (A).

(7) Criteria relating to foreign supervision

Not later than 1 year after December 19, 1991, the Board, in consultation with the Secretary of the Treasury, shall develop and publish criteria to be used in evaluating the operation of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis. In developing such criteria, the Board shall allow reasonable opportunity for public review and comment.

(f) Judicial review

(1) Jurisdiction of United States courts of appeals

Any foreign bank—

(A) whose application under subsection (d) of this section or section 3107(a) of this title has been disapproved by the Board;

(B) against which the Board has issued an order under subsection (e) of this section or section 3107(b) of this title; or

(C) against which the Comptroller of the Currency has issued an order under section 3102(i) of this title,

may obtain a review of such order in the United States court of appeals for any circuit in which such foreign bank operates a branch, agency, or commercial lending company that has been required by such order to terminate its activities, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a petition for review in the court before the end of the 30-day period beginning on the date the order was issued.

(2) Scope of judicial review

Section 706 of title 5 (other than paragraph (2)(F) of such section) shall apply with respect to any review under paragraph (1).

(g) Consultation with State bank supervisor

The Board shall request and consider any views of the appropriate State bank supervisor with respect to any application or action under subsection (d) or (e) of this section.

(h) Limitations on powers of State branches and agencies

(1) In general

After the end of the 1-year period beginning on December 19, 1991, a State branch or State agency may not engage in any type of activity that is not permissible for a Federal branch unless—

(A) the Board has determined that such activity is consistent with sound banking practice; and

(B) in the case of an insured branch, the Federal Deposit Insurance Corporation has determined that the activity would pose no significant risk to the deposit insurance fund.

(2) Single borrower lending limit

A State branch or State agency shall be subject to the same limitations with respect to loans made to a single borrower as are applicable to a Federal branch or Federal agency under section 3102(b) of this title.

(3) Other authority not affected

This section does not limit the authority of the Board or any State supervisory authority to impose more stringent restrictions.

(i) Proceedings related to conviction for money laundering offenses

(1) Notice of intention to issue order

If the Board finds or receives written notice from the Attorney General that—

(A) any foreign bank which operates a State agency, a State branch which is not an insured branch, or a State commercial lending company subsidiary;

(B) any State agency;

(C) any State branch which is not an insured branch; or

(D) any State commercial lending subsidiary,

has been found guilty of any money laundering offense, the Board shall issue a notice to the agency, branch, or subsidiary of the Board's intention to commence a termination proceeding under subsection (e) of this section.

(2) Definitions

For purposes of this subsection—

(A) Insured branch

The term ''insured branch'' has the meaning given such term in section 3(s) of the Federal Deposit Insurance Act [12 U.S.C. 1813(s)].

(B) Money laundering offense defined

The term ''money laundering offense'' means any criminal offense under section 1956 or 1957 of title 18 or under section 5322 of title 31.

(j) Study on equivalence of foreign bank capital

Not later than 180 days after December 19, 1991, the Board and the Secretary of the Treasury shall jointly submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report—

(1) analyzing the capital standards contained in the framework for measurement of capital adequacy established by the Supervisory Committee of the Bank for International Settlements, foreign regulatory capital standards that apply to foreign banks conducting banking operations in the United States, and the relationship of the Basle and foreign standards to risk-based capital and leverage requirements for United States banks; and

(2) establishing guidelines for the adjustments to be used by the Board in converting data on the capital of such foreign banks to the equivalent risk-based capital and leverage requirements for United States banks for purposes of determining whether a foreign bank's capital level is equivalent to that imposed on United States banks for purposes of determinations under this section and sections 3 and 4 of the Bank Holding Company Act of 1956 [12 U.S.C. 1842, 1843].

An update shall be prepared annually explaining any changes in the analysis under paragraph (1) and resulting changes in the guidelines pursuant to paragraph (2).

(k) Management of shell branches

(1) Transactions prohibited

A branch or agency of a foreign bank shall not manage, through an office of the foreign bank which is located outside the United States and is managed or controlled by such branch or agency, any type of activity that a bank organized under the laws of the United States, any State, or the District of Columbia is not permitted to manage at any branch or subsidiary of such bank which is located outside the United States.

(2) Regulations

Any regulations promulgated to carry out this section—

(A) shall be promulgated in accordance with section 3108 of this title; and

(B) shall be uniform, to the extent practicable.

(Pub. L. 95–369, § 7, Sept. 17, 1978, 92 Stat. 620; Pub. L. 102–242, title II, §§ 202(a), 203(a), 214(b), Dec. 19, 1991, 105 Stat. 2286, 2291, 2304; Pub. L. 102–550, title XV, § 1507, title XVI, § 1604(a)(1), (2), (12), (13), Oct. 28, 1992, 106 Stat. 4056, 4081–4083; Pub. L. 103–328, title I, § 107(e)(1), Sept. 29, 1994, 108 Stat. 2360; Pub. L. 104–208, div. A, title II, § 2214, Sept. 30, 1996, 110 Stat. 3009–411; Pub. L. 111–203, title I, § 173(a), (b), July 21, 2010, 124 Stat. 1440.)

REFERENCES IN TEXT

Section 371b–1 of this title, referred to in subsec. (a)(1)(A), was repealed by Pub. L. 96–221, title V, § 529, Mar. 31, 1980, 94 Stat. 168, subject to a savings provision.

Sections 461, 463, 464, 465, and 466 of this title, referred to in subsec. (a)(1)(A), was in the original ''section 19 of the Federal Reserve Act.'' Provisions of section 19 relating to minimum and maximum reserve ratios are

classified to the cited sections. For complete classification of section 19 to the Code, see References in Text note set out under section 461 of this title.

For definition of ''this chapter'', referred to in subsecs. (d)(3)(C), (4) and (e)(1), see References in Text note set out under section 3101 of this title.

The Bank Holding Company Act of 1956, referred to in subsecs. (d)(3)(C) and (e)(1)(B)(ii), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (e)(1)(B)(ii), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section is comprised of section 7 of Pub. L. 95–369. Subsec. (b) of section 7 of Pub. L. 95–369 enacted section 347d of this title.

AMENDMENTS

2010—Subsec. (d)(3)(E). Pub. L. 111–203, §173(a), added subpar. (E).

Subsec. (e)(1)(C). Pub. L. 111–203, §173(b), added subpar. (C).

1996—Subsec. (c). Pub. L. 104–208, §2214(a)(1), inserted heading.

Subsec. (c)(1)(B)(iii). Pub. L. 104–208, §2214(a)(2), added cl. (iii).

Subsec. (c)(1)(C). Pub. L. 104–208, §2214(a)(3), added subpar. (C) and struck out heading and text of former subpar. (C). Text read as follows: ''Each branch or agency of a foreign bank shall be examined at least once during each 12-month period (beginning on the date the most recent examination of such branch or agency ended) in an on-site examination.''

Subsec. (c)(1)(D). Pub. L. 104–208, §2214(a)(4), inserted '', only to the same extent that fees are collected by the Board for examination of any State member bank'' before period at end.

Subsec. (d)(2). Pub. L. 104–208, §2214(b)(1), substituted ''Except as provided in paragraph (6), the Board'' for ''The Board''.

Subsec. (d)(5). Pub. L. 104–208, §2214(b)(2), substituted ''The Board'' for ''Consistent with the standards for approval in paragraph (2), the Board''.

Subsec. (d)(6), (7). Pub. L. 104–208, §2214(b)(3), added pars. (6) and (7).

Subsec. (e)(1)(A). Pub. L. 104–208, §2214(c), designated existing provisions as cl. (i), substituted ''and'' for ''or'' at end, and added cl. (ii).

1994—Subsec. (k). Pub. L. 103–328 added subsec. (k).

1992—Subsec. (e)(6)(A). Pub. L. 102–550, §1604(a)(1)(A), substituted ''against which—

''(i) the Board has issued an order under paragraph (1); or

''(ii) the Comptroller of the Currency has issued an order under section 3102(i) of this title,

or a refusal by such office or subsidiary'' for ''against which the Board or, in the case of an order issued under section 3102(i) of this title, the Comptroller of the Currency has issued an order under paragraph (1) or a refusal by such office or subsidiary''.

Subsec. (e)(6)(B). Pub. L. 102–550, §1604(a)(1)(B), substituted ''order referred to in subparagraph (A)'' for ''order issued under paragraph (1)''.

Subsec. (e)(7). Pub. L. 102–550, §1604(a)(2), substituted ''public'' for ''publc''.

Subsec. (i). Pub. L. 102–550, §1507, added subsec. (i).

Subsec. (j). Pub. L. 102–550, §1604(a)(12), made technical amendment to directory language of Pub. L. 102–242, §214(b). See 1991 Amendment note below.

Subsec. (j)(1). Pub. L. 102–550, §1604(a)(13), substituted ''Supervisory Committee'' for ''Supervisory committee''.

1991—Subsec. (c). Pub. L. 102–242, §203(a), added par. (1), inserted heading for par. (2), and struck out former par. (1) which read as follows: ''The Board may make examinations of each branch or agency of a foreign bank, and of each commercial lending company or bank controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank, the cost of which shall be assessed against and paid by such foreign bank or company, as the case may be. The Board shall, insofar as possible, use the reports of examinations made by the Comptroller, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this subsection.''

Subsecs. (d) to (h). Pub. L. 102–242, §202(a), added subsecs. (d) to (h) and struck out former subsec. (d) which read as follows: ''On or before two years after September 17, 1978, the Board after consultation with the appropriate State bank supervisory authorities shall report to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the United States Senate its recommendations with respect to the implementation of this chapter, including any recommended requirements such as limitations on loans to affiliates or capital adequacy requirements which should be imposed on foreign banks to carry out the purposes of this chapter. Not later than one hundred and eighty days after September 17, 1978, the Board shall report to such Committees the steps which have been taken to consult and cooperate with State bank supervisory authorities as required by subsection (a)(1)(B) of this section.''

Subsec. (j). Pub. L. 102–242, §214(b), as amended by Pub. L. 102–550, §1604(a)(12), added subsec. (j).

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 107(e)(2) of Pub. L. 103–328 provided that: ''The amendment made by paragraph (1) [amending this section] shall become effective at the end of the 180-day period beginning on the date of enactment of this Act [Sept. 29, 1994].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1604(a)(1), (2), (12), (13) of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

MORATORIUM ON EXAMINATION FEES UNDER THIS CHAPTER

Section 115(a) of Pub. L. 103–328 provided that: ''Section 7(c)(1)(D) of the International Banking Act of 1978 [12 U.S.C. 3105(c)(1)(D)] shall not apply with respect to any examination under section 7(c)(1)(A) of such Act which begins before or during the 3-year period beginning on July 25, 1994.''

§ 3106. Nonbanking activities of foreign banks

(a) Applicability of Bank Holding Company Acts

Except as otherwise provided in this section (1) any foreign bank that maintains a branch or agency in a State, (2) any foreign bank or foreign company controlling a foreign bank that controls a commercial lending company organized under State law, and (3) any company of which any foreign bank or company referred to in (1) and (2) is a subsidiary shall be subject to the provisions of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and to section 1850 of this title and chapter 22 of this title in the same manner and to the same extent that bank holding companies are subject to such provisions.

(b) Ownership or control of shares of nonbanking companies for certain period

Until December 31, 1985, a foreign bank or other company to which subsection (a) of this section applies on September 17, 1978, may retain direct or indirect ownership or control of any voting shares of any nonbanking company in the United States that it owned, controlled, or held with power to vote on September 17, 1978, or engage in any nonbanking activities in the United States in which it was engaged on such date.

(c) Engagement in nonbanking activities after certain period

(1) After December 31, 1985, a foreign bank or other company to which subsection (a) of this section applies on September 17, 1978, or on the date of the establishment of a branch in a State an application for which was filed on or before July 26, 1978, may continue to engage in nonbanking activities in the United States in which directly or through an affiliate it was lawfully engaged on July 26, 1978 (or on a date subsequent to July 26, 1978, in the case of activities carried on as the result of the direct or indirect acquisition, pursuant to a binding written contract entered into on or before July 26, 1978, of another company engaged in such activities at the time of acquisition), and may engage directly or through an affiliate in nonbanking activities in the United States which are covered by an application to engage in such activities which was filed on or before July 26, 1978; except that the Board by order, after opportunity for hearing, may terminate the authority conferred by this subsection on any such foreign bank or company to engage directly or through an affiliate in any activity otherwise permitted by this subsection if it determines having due regard to the purposes of this chapter and the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States. Notwithstanding subsection (a) of this section, a foreign bank or company referred to in this subsection may retain ownership or control of any voting shares (or, where necessary to prevent dilution of its voting interest, acquire additional voting shares) of any domestically-controlled affiliate covered in 1978 which since July 26, 1978, has engaged in the business of underwriting, distributing, or otherwise buying or selling stocks, bonds, and other securities in the United States, notwithstanding that such affiliate acquired after July 26, 1978, an interest in, or any or all of the assets of, a going concern, or commences to engage in any new activity or activities. Except in the case of affiliates described in the preceding sentence, nothing in this subsection shall be construed to authorize any foreign bank or company referred to in this subsection, or any affiliate thereof, to engage in activities authorized by this subsection through the acquisition, pursuant to a contract entered into after July 26, 1978, of any interest in or the assets of a going concern engaged in such activities. Any foreign bank or company that is authorized to engage in any activity pursuant to this subsection but, as a result of action of the Board, is required to terminate such activity may retain the ownership of control of shares in any company carrying on such activity for a period of two years from the date on which its authority was so terminated by the Board. As used in this subsection, the term ''affiliate'' shall mean any company more than 5 per centum of whose voting shares is directly or indirectly owned or controlled or held with power to vote by the specified foreign bank or company, and the term ''domestically-controlled affiliate covered in 1978'' shall mean an affiliate organized under the laws of the United States or any State thereof if (i) no foreign bank or group of foreign banks acting in concert owns or controls, directly or indirectly, 45 per centum or more of its voting shares, and (ii) no more than 20 per centum of the number of directors as established from time to time to constitute the whole board of directors and 20 per centum of the executive officers of such affiliate are persons affiliated with any such foreign bank. For the purpose of the preceding sentence, the term ''persons affiliated with any such foreign bank'' shall mean (A) any person who is or was an employee, officer, agent, or director of such foreign bank or who otherwise has or had such a relationship with such foreign bank that would lead such person to represent the interests of such foreign bank, and (B) in the case of any director of such domestically controlled affiliate covered in 1978, any person in favor of whose election as a director votes were cast by less than two-thirds of all shares voting in connection with such election other than shares owned or controlled, directly or indirectly, by any such foreign bank.

(2) The authority conferred by this subsection on a foreign bank or other company shall terminate 2 years after the date on which such foreign bank or other company becomes a ''bank holding company'' as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)); except that the Board may, upon application of such foreign bank or other company, extend the 2-year period for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall exceed 3 years in the aggregate.

(3) TERMINATION OF GRANDFATHERED RIGHTS.—

(A) IN GENERAL.—If any foreign bank or foreign company files a declaration under section 4(*l*)(1)(C) of the Bank Holding Company Act of

1956 [12 U.S.C. 1843(*l*)(1)(C)], any authority conferred by this subsection on any foreign bank or company to engage in any activity that the Board has determined to be permissible for financial holding companies under section 4(k) of such Act [12 U.S.C. 1843(k)] shall terminate immediately.

(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity that the Board has determined to be permissible for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)] has not filed a declaration with the Board of its status as a financial holding company under such section by the end of the 2-year period beginning on November 12, 1999, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 1828a of this title.

(d) Construction of terms

Nothing in this section shall be construed to define a branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank or foreign company that controls a foreign bank as a ''bank'' for the purposes of any provisions of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], or section 1850 of this title, except that any such branch, agency or commercial lending company subsidiary shall be deemed a ''bank'' or ''banking subsidiary'', as the case may be, for the purposes of applying the prohibitions of chapter 22 of this title and the exemptions provided in sections 4(c)(1), 4(c)(2), 4(c)(3), and 4(c)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(1), (2), (3), and (4)) to any foreign bank or other company to which subsection (a) of this section applies.

(Pub. L. 95–369, § 8(a)–(d), Sept. 17, 1978, 92 Stat. 622, 623; Pub. L. 97–320, title VII, §§ 704, 705, Oct. 15, 1982, 96 Stat. 1539; Pub. L. 100–86, title II, § 204, Aug. 10, 1987, 101 Stat. 584; Pub. L. 102–242, title II, § 207, Dec. 19, 1991, 105 Stat. 2295; Pub. L. 106–102, title I, § 141, Nov. 12, 1999, 113 Stat. 1383.)

REFERENCES IN TEXT

The Bank Holding Company Act of 1956, referred to in subsecs. (a), (c), and (d), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

For definition of ''this chapter'', referred to in subsec. (c), see References in Text note set out under section 3101 of this title.

AMENDMENTS

1999—Subsec. (c)(3). Pub. L. 106–102 added par. (3).

1991—Subsec. (a). Pub. L. 102–242 substituted ''to such provisions'' for ''thereto, except that any such foreign bank or company shall not by reason of this subsection be deemed a bank holding company for purposes of section 3 of the Bank Holding Company Act of 1956''.

1987—Subsec. (c). Pub. L. 100–86 designated existing provisions as par. (1) and added par. (2).

1982—Subsec. (c). Pub. L. 97–320, § 704, inserted ''or on the date of the establishment of a branch in a State an application for which was filed on or before July 26, 1978'' after ''September 17, 1978,''.

Pub. L. 97–320, § 705(a), substituted provision that the term ''domestically-controlled affiliate covered in 1978'' shall mean an affiliate organized under the laws of the United States or any State thereof if no foreign bank or group of foreign banks acting in concert owns or controls, directly or indirectly, 45 per centum or more of its voting shares, and no more than 20 per centum of the number of directors as established from time to time to constitute the whole board of directors and 20 per centum of the executive officers of such affiliate are persons affiliated with any such foreign bank, for provision that it meant any affiliate the majority of whose voting shares was owned by a company or group of companies organized under the laws of the United States or any State thereof, if it had been under continuous domestic majority-controlling ownership since July 26, 1978, and if a foreign bank or group of foreign banks did not own or control, directly or indirectly, 25 per centum or more of its voting shares, and defined ''persons affiliated with any such foreign bank''.

Pub. L. 97–320, § 705(b), substituted ''since July 26, 1978, has engaged'' for ''engages'' before ''in the business of underwriting'', and inserted '', notwithstanding that such affiliate acquired after July 26, 1978, an interest in, or any or all of the assets of, a going concern, or commences to engage in any new activity or activities'' after ''and other securities in the United States''.

EFFECTIVE DATE OF 1999 AMENDMENT

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

§ 3106a. Compliance with State and Federal laws

(1) Every branch or agency of a foreign bank and every commercial lending company controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank shall conduct its operations in the United States in full compliance with provisions of any law of the United States or any State thereof which—

(A) impose requirements that protect the rights of consumers in financial transactions, to the extent that the branch, agency, or commercial lending company engages in activities that are subject to such laws;

(B) prohibit discrimination against any individual or other person on the basis of the race, color, religion, sex, marital status, age, or national origin of (i) such individual or other person or (ii) any officer, director, employee, or creditor of, or any owner of any interest in, such individual or other person; and

(C) apply to national banks or State-chartered banks doing business in the State in which such branch or agency or commercial lending company, as the case may be, is doing business.

(2) No application for a branch or agency shall be approved by the Comptroller or by a State bank supervisory authority, as the case may be, unless the entity making the application has agreed to conduct all of its operations in the United States in full compliance with provisions of any law of the United States or any State thereof which—

(A) impose requirements that protect the rights of consumers in financial transactions,

to the extent that the branch, agency, or commercial lending company engages in activities that are subject to such laws;

(B) prohibit discrimination against individuals or other persons on the basis of the race, color, religion, sex, marital status, age, or national origin of (i) such individual or other person or (ii) any officer, director, employee, or creditor of, or any owner of any interest in, such individual or other person; and

(C) apply to national banks or State-chartered banks doing business in the State in which the entity to be established is to do business.

(Pub. L. 95–369, § 9(b), as added Pub. L. 95–630, title III, § 311, Nov. 10, 1978, 92 Stat. 3678; amended Pub. L. 103–328, title I, § 107(c), Sept. 29, 1994, 108 Stat. 2360.)

AMENDMENTS

1994—Par. (1). Pub. L. 103–328, § 107(c)(1), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

Par. (2). Pub. L. 103–328, § 107(c)(2), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§ 3107. Representative offices

(a) Prior approval to establish representative offices

(1) In general

No foreign bank may establish a representative office without the prior approval of the Board.

(2) Standards for approval

In acting on any application under this paragraph to establish a representative office, the Board shall take into account the standards contained in section 3105(d)(2) of this title and may impose any additional requirements that the Board determines to be necessary to carry out the purposes of this chapter.

(b) Termination of representative offices

The Board may order the termination of the activities of a representative office of a foreign bank on the basis of the standards, procedures, and requirements applicable under section 3105(e) of this title with respect to branches and agencies.

(c) Examinations

The Board may make examinations of each representative office of a foreign bank, the cost of which shall be assessed against and paid by such foreign bank. The Board may also make examinations of any affiliate of a foreign bank conducting business in any State if the Board deems it necessary to determine and enforce compliance with this chapter, the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], or other applicable Federal banking law.

(d) Compliance with State law

This chapter does not authorize the establishment of a representative office in any State in contravention of State law.

(Pub. L. 95–369, § 10, Sept. 17, 1978, 92 Stat. 624; Pub. L. 102–242, title II, § 204, Dec. 19, 1991, 105 Stat. 2292; Pub. L. 102–550, title XVI, § 1604(a)(4), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 106–102, title I, § 142(b), Nov. 12, 1999, 113 Stat. 1384.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsecs. (a)(2), (c), and (d), see References in Text note set out under section 3101 of this title.

The Bank Holding Company Act of 1956, referred to in subsec. (c), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–102 inserted at end ''The Board may also make examinations of any affiliate of a foreign bank conducting business in any State if the Board deems it necessary to determine and enforce compliance with this chapter, the Bank Holding Company Act of 1956, or other applicable Federal banking law.''

1992—Subsec. (b). Pub. L. 102–550 substituted ''section 3105(e) of this title'' for ''paragraphs (1), (2), and (3) of section 3105(d) of this title''.

1991—Pub. L. 102–242 amended section generally. Prior to amendment, section read as follows:

''(a) Any foreign bank that maintains an office other than a branch or agency in any State shall register with the Secretary of the Treasury in accordance with rules prescribed by him, within one hundred and eighty days after September 17, 1978, or the date on which the office is established, whichever is later.

''(b) This chapter does not authorize the establishment of any such office in any State in contravention of State law.''

EFFECTIVE DATE OF 1999 AMENDMENT

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

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

MORATORIUM ON EXAMINATION FEES UNDER THIS CHAPTER

Pub. L. 103–328, title I, § 115(b), Sept. 29, 1994, 108 Stat. 2368, provided that: ''The provision of section 10(c) of the International Banking Act of 1978 [12 U.S.C. 3107(c)] relating to the cost of examinations under such section shall not apply with respect to any examination under such section which begins before or during the 3-year period beginning on July 25, 1994.''

§ 3108. Regulation and enforcement

(a) Rules, regulations and orders

The Comptroller, the Board, and the Federal Deposit Insurance Corporation, are authorized and empowered to issue such rules, regulations, and orders as each of them may deem necessary in order to perform their respective duties and functions under this chapter and to administer and carry out the provisions and purposes of this chapter and prevent evasions thereof.

(b) Enforcement

(1) In general

In addition to any powers, remedies, or sanctions otherwise provided by law, compliance

with the requirements imposed under this chapter or any amendment made by this chapter may be enforced under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] by any appropriate Federal banking agency as defined in that Act [12 U.S.C. 1811 et seq.].

(2) Authority to administer oaths; subpoena power

In the course of, or in connection with, an application, examination, investigation, or other proceeding under this chapter, the Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, as the case may be, any member of the Board or of the Board of Directors of the Corporation, and any designated representative of the Board, Comptroller, or Corporation (including any person designated to conduct any hearing under this chapter) may—

(A) administer oaths and affirmations and take or cause to be taken depositions; and

(B) issue, revoke, quash, or modify any subpoena, including any subpoena requiring the attendance and testimony of a witness or any subpoenas duces tecum.

(3) Administrative aspects of subpoenas

(A) Attendance and production at designated site

The attendance of any witness and the production of any document pursuant to a subpoena under paragraph (2) may be required at the place designated in the subpoena from any place in any State (as defined in section 3(a)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1813(a)(3)]) or other place subject to the jurisdiction of the United States.

(B) Service of subpoena

Service of a subpoena issued under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board, Comptroller of the Currency, or Federal Deposit Insurance Corporation may by regulation or otherwise provide.

(C) Fees and travel expenses

Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

(4) Contumacy or refusal

(A) In general

In the case of contumacy of any person issued a subpoena under this subsection or a refusal by such person to comply with such subpoena, the Board, Comptroller of the Currency, or Federal Deposit Insurance Corporation, or any other party to proceedings in connection with which subpoena was issued may invoke the aid of—

(i) the United States District Court for the District of Columbia, or

(ii) any district court of the United States within the jurisdiction of which the proceeding is being conducted or the witness resides or carries on business.

(B) Court order

Any court referred to in subparagraph (A) may issue an order requiring compliance with a subpoena issued under this subsection.

(5) Expenses and fees

Any court having jurisdiction of any proceeding instituted under this subsection may allow any party to such proceeding such reasonable expenses and attorneys' fees as the court deems just and proper.

(6) Criminal penalty

Any person who willfully fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records in accordance with any subpoena under this subsection shall be fined under title 18, imprisoned not more than 1 year, or both. Each day during which any such failure or refusal continues shall be treated as a separate offense.

(c) Powers of Federal Reserve Board and Federal Deposit Insurance Corporation

In the case of any provision of the Federal Reserve Act [12 U.S.C. 221 et seq.] to which a foreign bank or branch thereof is subject under this chapter, and which is made applicable to nonmember insured banks by the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], whether by cross-reference to the Federal Reserve Act or by a provision in substantially the same terms in the Federal Deposit Insurance Act, the administration, interpretation, and enforcement of such provision, insofar as it relates to any foreign bank or branch thereof as to which the Board is an appropriate Federal banking agency, are vested in the Board, but where the making of any report to the Board or a Federal Reserve bank is required under any such provision, the Federal Deposit Insurance Corporation may require that a duplicate of any such report be sent directly to it. This subsection shall not be construed to impair any power of the Federal Deposit Insurance Corporation to make regular or special examinations or to require special reports.

(Pub. L. 95–369, § 13, Sept. 17, 1978, 92 Stat. 624; Pub. L. 102–242, title II, § 209, Dec. 19, 1991, 105 Stat. 2297.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in text, see References in Text note set out under section 3101 of this title.

The Federal Deposit Insurance Act, referred to in subsecs. (b)(1) and (c), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

The Federal Reserve Act, referred to in subsec. (c), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–242 inserted heading, designated existing provisions as par. (1) and inserted par. heading, and added pars. (2) to (6).

§ 3109. Cooperation with foreign supervisors

(a) Disclosure of supervisory information to foreign supervisors

Notwithstanding any other provision of law, the Board, Comptroller of the Currency, Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision may disclose information obtained in the course of exercising supervisory or examination authority to any foreign bank regulatory or supervisory authority if the Board, Comptroller, Corporation, or Director determines that such disclosure is appropriate and will not prejudice the interests of the United States.

(b) Requirement of confidentiality

Before making any disclosure of any information to a foreign authority, the Board, Comptroller of the Currency, Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision shall obtain, to the extent necessary, the agreement of such foreign authority to maintain the confidentiality of such information to the extent possible under applicable law.

(c) Confidential information received from foreign supervisors

(1) In general

Except as provided in paragraph (3), a Federal banking agency may not be compelled to disclose information received from a foreign regulatory or supervisory authority if—

(A) the Federal banking agency determines that the foreign regulatory or supervisory authority has, in good faith, determined and represented in writing to such Federal banking agency that public disclosure of the information would violate the laws applicable to that foreign regulatory or supervisory authority; and

(B) the relevant Federal banking agency obtained such information pursuant to—

(i) such procedures as the Federal banking agency may establish for use in connection with the administration and enforcement of Federal banking laws; or

(ii) a memorandum of understanding or other similar arrangement between the Federal banking agency and the foreign regulatory or supervisory authority.

(2) Treatment under title 5

For purposes of section 552 of title 5, this subsection shall be treated as a statute described in subsection (b)(3)(B) of such section.

(3) Savings provision

No provision of this section shall be construed as—

(A) authorizing any Federal banking agency to withhold any information from any duly authorized committee of the House of Representatives or the Senate; or

(B) preventing any Federal banking agency from complying with an order of a court of the United States in an action commenced by the United States or such agency.

(4) Federal banking agency defined

For purposes of this subsection, the term ''Federal banking agency'' means the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision.

(Pub. L. 95–369, § 15, as added Pub. L. 102–242, title II, § 206, Dec. 19, 1991, 105 Stat. 2294; amended Pub. L. 109–351, title VII, § 709, Oct. 13, 2006, 120 Stat. 1990.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–351 added subsec. (c).

§ 3110. Penalties

(a) Civil money penalty

(1) In general

Any foreign bank, and any office or subsidiary of a foreign bank, that violates, and any individual who participates in a violation of, any provision of this chapter, or any regulation prescribed or order issued under this chapter, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

(2) Assessment procedures

Any penalty imposed under paragraph (1) may be assessed and collected by the Board or the Comptroller of the Currency in the manner provided in subparagraphs (E), (F), (G), (H), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section), and any such assessments shall be subject to the provisions of such section.

(3) Hearing procedure

Section 1818(h) of this title shall apply to any proceeding under this section.

(4) Disbursement

All penalties collected under authority of this section shall be deposited into the Treasury.

(5) "Violate" defined

For purposes of this section, the term ''violate'' includes taking any action (alone or with others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(6) Regulations

The Board and the Comptroller of the Currency shall each prescribe regulations establishing such procedures as may be necessary to carry out this section.

(b) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to a foreign bank, or any office or subsidiary of a foreign bank (including a separation caused by the termination of a location in the United States), shall not affect the jurisdiction or authority of the Board or the Comptroller of the Currency to issue any notice or to proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be an institution-affiliated party with respect to such foreign bank or such office or subsidiary of a foreign

bank (whether such date occurs on, before, or after December 19, 1991).

(c) Penalty for failure to make reports

(1) First tier

Any foreign bank, or any office or subsidiary of a foreign bank, that—

(A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such error—

(i) fails to make, submit, or publish such reports or information as may be required under this chapter or under regulations prescribed by the Board or the Comptroller of the Currency under this chapter, within the period of time specified by the agency; or

(ii) submits or publishes any false or misleading report or information; or

(B) inadvertently transmits or publishes any report that is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The foreign bank, or the office or subsidiary of a foreign bank, shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

(2) Second tier

Any foreign bank, or any office or subsidiary of a foreign bank, that—

(A) fails to make, submit, or publish such reports or information as may be required under this chapter or under regulations prescribed by the Board or the Comptroller of the Currency pursuant to this chapter, within the time period specified by such agency; or

(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(3) Third tier

Notwithstanding paragraph (2), if any company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Board or the Comptroller of the Currency may, in the Board's or Comptroller's discretion, assess a penalty of not more than $1,000,000 or 1 percent of total assets of such foreign bank, or such office or subsidiary of a foreign bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) Assessment of penalties

Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Board or the Comptroller of the Currency in the manner provided in subsection (a)(2) of this section (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(5) Hearing procedure

Section 1818(h) of this title shall apply to any proceeding under this subsection.

(Pub. L. 95–369, § 16, as added Pub. L. 102–242, title II, § 208, Dec. 19, 1991, 105 Stat. 2295.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsecs. (a)(1) and (c)(1)(A)(i), (2)(A), see References in Text note set out under section 3101 of this title.

§ 3111. Criminal penalty

Whoever, with the intent to deceive, to gain financially, or to cause financial gain or loss to any person, knowingly violates any provision of this chapter or any regulation or order issued by the appropriate Federal banking agency under this chapter shall be imprisoned not more than 5 years or fined not more than $1,000,000 for each day during which a violation continues, or both.

(Pub. L. 95–369, § 17, as added Pub. L. 102–242, title II, § 213, Dec. 19, 1991, 105 Stat. 2303.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in text, see References in Text note set out under section 3101 of this title.

CHAPTER 33—DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS

Sec.
3201. Definitions.
3202. Dual service of management official as management official of unaffiliated institution or holding company in same area, town, or village prohibited.
3203. Dual service of management official of $2,500,000,000 institution or holding company as management official of unaffiliated $1,500,000,000 institution or holding company prohibited.
3204. Exceptions.
3205. Management official in position prior to November 10, 1978.
3206. Administration and enforcement.
3207. Rules and regulations.
3208. Powers available to Attorney General for enforcement.

§ 3201. Definitions

As used in this chapter—

(1) the term ''depository institution'' means a commercial bank, a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union;

(2) the term ''depository holding company'' means a bank holding company as defined in section 1841(a) of this title, a company which would be a bank holding company as defined in section 1841(a) of this title but for the exemption contained in subsection (a)(5)(F) thereof, or a savings and loan holding company as defined in section 1730a(a)(1)(D)[1] of this title;

[1] See References in Text note below.

(3) the characterization of any corporation (including depository institutions and depository holding companies), as an ''affiliate of,'' or as ''affiliated'' with any other corporation means that—

(A) one of the corporations is a depository holding company and the other is a subsidiary thereof, or both corporations are subsidiaries of the same depository holding company, as the term ''subsidiary'' is defined in either section 1841(d) of this title in the case of a bank holding company or section 1730a(a)(1)(H)[1] of this title in the case of a savings and loan holding company; or

(B) more than 25 percent of the voting stock of one corporation is beneficially owned in the aggregate by one or more persons who also beneficially own in the aggregate more than 25 percent of the voting stock of the other corporation; or

(C) one of the corporations is a trust company all of the stock of which, except for directors qualifying shares, was owned by one or more mutual savings banks on November 10, 1978, and the other corporation is a mutual savings bank; or

(D) one of the corporations is a bank, insured by the Federal Deposit Insurance Corporation and chartered under State law, and is a bankers' bank, described in Paragraph Seventh of section 24 of this title; or

(E) one of the corporations is a bank, chartered under State law and insured by the Federal Deposit Insurance Corporation, the voting securities of which are held only by persons who are officers of other banks, as permitted by State law, and which bank is primarily engaged in providing banking services for other banks and not the public: *Provided, however*, That in no case shall the voting securities of such corporation be held by such officers of other banks in excess of 6 per centum of the paid-in capital and 6 per centum of the surplus of such a bank.[2]

(4) the term ''management official'' means an employee or officer with management functions, a director (including an advisory or honorary director, except in the case of a depository institution with total assets of less than $100,000,000), a trustee of a business organization under the control of trustees, or any person who has a representative or nominee serving in any such capacity: *Provided*, That if a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank is specifically authorized under the laws of the State in which said institution is located to serve as a trustee, director, or other officer of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons, then, for the purposes of this chapter, such corporator, trustee, director, or other officer shall not be deemed to be a management official of such trust company: *And provided further*, That if a management official of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons is specifically authorized under the laws of the State in which said institution is located to serve as a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank, then, for the purposes of this chapter, such management official shall not be deemed to be a management official of any such savings bank or cooperative bank;

(5) the term ''office'' used with reference to a depository institution means either a principal office or a branch; and

(6) the term ''appropriate Federal depository institutions regulatory agency'' means, with respect to any depository institution or depository holding company, the agency referred to in section 3207 of this title in connection with such institution or company.

(Pub. L. 95–630, title II, §202, Nov. 10, 1978, 92 Stat. 3672; Pub. L. 100–650, §§2, 3, 5(b)(1), Nov. 10, 1988, 102 Stat. 3819, 3820; Pub. L. 103–325, title III, §322(c)(2), Sept. 23, 1994, 108 Stat. 2227.)

[2] So in original. The period probably should be a semicolon.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3672, known as the Depository Institution Management Interlocks Act, which enacted this chapter, amended sections 1464, 1730, and 1818 of this title, and enacted provisions set out as a note below. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

Section 1730a of this title, referred to in pars. (2) and (3)(A), was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

AMENDMENTS

1994—Par. (3)(D). Pub. L. 103–325 substituted ''and is a bankers' bank, described in Paragraph Seventh of section 24 of this title; or'' for ''the voting securities of which are held by other banks, as permitted by State law, and which bank is primarily engaged in providing banking services for other banks and not the public: *Provided, however*, That in no case shall the voting securities of such corporation be held by any such other bank in excess of 5 per centum of the paid-in capital and 5 per centum of the surplus of such other bank; or''.

1988—Par. (3)(B). Pub. L. 100–650, §2, substituted ''25 percent'' for ''50 per centum'' in two places.

Par. (4). Pub. L. 100–650, §3, substituted ''(including an advisory or honorary director, except in the case of a depository institution with total assets of less than $100,000,000)'' for ''(including an advisory or honorary director)''.

Par. (6). Pub. L. 100–650, §5(b)(1), added par. (6).

EFFECTIVE DATE

Chapter effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

SHORT TITLE OF 1988 AMENDMENT

Section 1 of Pub. L. 100–650 provided that: ''This Act [amending sections 3201, 3204, and 3205 of this title] may be referred to as the 'Management Interlocks Revision Act of 1988'.''

SHORT TITLE

Section 201 of title II of Pub. L. 95–630 provided that: ''This title [enacting this chapter and amending sections 1464, 1730, and 1818 of this title] may be cited as the 'Depository Institution Management Interlocks Act'.''

§ 3202. Dual service of management official as management official of unaffiliated institution or holding company in same area, town, or village prohibited

A management official of a depository institution or a depository holding company may not serve as a management official of any other depository institution or depository holding company not affiliated therewith if an office of one of the institutions or any depository institution that is an affiliate of such institutions is located within either—

(1) the same primary metropolitan statistical area, the same metropolitan statistical area, or the same consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas as defined by the Office of Management and Budget, except in the case of depository institutions with less than $50,000,000 in assets in which case the provision of paragraph (2) shall apply, as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or

(2) the same city, town, or village as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or in any city, town, or village contiguous or adjacent thereto.

(Pub. L. 95–630, title II, § 203, Nov. 10, 1978, 92 Stat. 3673; Pub. L. 98–181, title VII, § 701(c), Nov. 30, 1983, 97 Stat. 1267; Pub. L. 109–351, title VI, § 610, Oct. 13, 2006, 120 Stat. 1984.)

AMENDMENTS

2006—Par. (1). Pub. L. 109–351 substituted ''$50,000,000'' for ''$20,000,000''.

1983—Par. (1). Pub. L. 98–181 substituted ''primary metropolitan statistical area, the same metropolitan statistical area, or the same consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas'' for ''standard metropolitan statistical area''.

§ 3203. Dual service of management official of $2,500,000,000 institution or holding company as management official of unaffiliated $1,500,000,000 institution or holding company prohibited

If a depository institution or a depository holding company has total assets exceeding $2,500,000,000, a management official of such institution or any affiliate thereof may not serve as a management official of any other nonaffiliated depository institution or depository holding company having total assets exceeding $1,500,000,000 or as a management official of any affiliate of such other institution. In order to allow for inflation or market changes, the appropriate Federal depository institutions regulatory agencies may, by regulation, adjust, as necessary, the amount of total assets required for depository institutions or depository holding companies under this section.

(Pub. L. 95–630, title II, § 204, Nov. 10, 1978, 92 Stat. 3673; Pub. L. 104–208, div. A, title II, § 2210(a), Sept. 30, 1996, 110 Stat. 3009–409.)

AMENDMENTS

1996—Pub. L. 104–208 substituted ''$2,500,000,000'' for ''$1,000,000,000'' and ''$1,500,000,000'' for ''$500,000,000'' and inserted at end ''In order to allow for inflation or market changes, the appropriate Federal depository institutions regulatory agencies may, by regulation, adjust, as necessary, the amount of total assets required for depository institutions or depository holding companies under this section.''

§ 3204. Exceptions

The prohibitions contained in sections 3202 and 3203 of this title shall not apply in the case of any one or more of the following or subsidiary thereof:

(1) A depository institution or depository holding company which has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function.

(2) A corporation operating under section 25 or 25(a)[1] of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.].

(3) A credit union being served by a management official of another credit union.

(4) A depository institution or depository holding company which does not do business within any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands except as an incident to its activities outside the United States.

(5) A State-chartered savings and loan guaranty corporation.

(6) A Federal Home Loan Bank or any other bank organized specifically to serve depository institutions.

(7) A depository institution or a depository holding company which—

(A) is closed or is in danger of closing, as determined by the appropriate Federal depository institutions regulatory agency in accordance with regulations prescribed by such agency; and

(B) is acquired by another depository institution or depository holding company,

during the 5-year period beginning on the date of the acquisition of the depository institution or depository holding company described in subparagraph (A).

(8)(A) A diversified savings and loan holding company (as defined in section 1730a(a)(1)(F)[1] of this title) with respect to the service of a director of such company who is also a director of any nonaffiliated depository institution or depository holding company (including a savings and loan holding company) if—

(i) notice of the proposed dual service is given by such diversified savings and loan holding company to—

(I) the appropriate Federal depository institutions regulatory agency for such company; and

(II) the appropriate Federal depository institutions regulatory agency for the nonaffiliated depository institution or depository holding company of which such person is also a director,

not less than 60 days before such dual service is proposed to begin; and

[1] See References in Text note below.

(ii) the proposed dual service is not disapproved by any such appropriate Federal depository institutions regulatory agency before the end of such 60-day period.

(B) Any appropriate Federal depository institutions regulatory agency may disapprove, under subparagraph (A)(ii), a notice of proposed dual service by any individual if such agency finds that—

(i) the dual service cannot be structured or limited so as to preclude the dual service's resulting in a monopoly or substantial lessening of competition in financial services in any part of the United States;

(ii) the dual service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) the diversified savings and loan holding company has neglected, failed, or refused to furnish all the information required by such agency.

(C) Any appropriate Federal depository institutions regulatory agency may, at any time after the end of the 60-day period referred to in subparagraph (A), require that any dual service by any individual which was not disapproved by such agency during such period be terminated if a change in circumstances occurs with respect to any depository institution or depository holding company of which such individual is a director that would have provided a basis for disapproval of the dual service during such period.

(9) Any savings association (as defined in section 10(a)(1)(A) of the Home Owners' Loan Act [12 U.S.C. 1467a(a)(1)(A)] or any savings and loan holding company (as defined in section 10(a)(1)(D) of such Act) which has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of such Act, except that this paragraph shall apply only with respect to service as a single management official of such savings association or holding company, or any subsidiary of such savings association or holding company, by a single management official of the savings and loan holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the Director of the Office of Thrift Supervision has determined that such service is consistent with the purposes of this chapter and the Home Owners' Loan Act [12 U.S.C. 1461 et seq.].

(Pub. L. 95–630, title II, §205, Nov. 10, 1978, 92 Stat. 3673; Pub. L. 97–320, title IV, §425(d), Oct. 15, 1982, 96 Stat. 1524; Pub. L. 100–650, §§4, 5(a), Nov. 10, 1988, 102 Stat. 3819; Pub. L. 101–73, title VI, §604(a), Aug. 9, 1989, 103 Stat. 410.)

REFERENCES IN TEXT

Section 25 of the Federal Reserve Act, referred to in par. (2), is classified to subchapter I (§601 et seq.) of chapter 6 of this title. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§611 et seq.) of chapter 6 of this title, was renumbered section 25A of that act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

Section 1730a of this title, referred to in par. (8)(A), was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

This chapter, referred to in par. (9), was in the original ''this Act'' and was translated as reading ''this title'', meaning title II of Pub. L. 95–630, known as the Depository Management Interlocks Act, to reflect the probable intent of Congress.

The Home Owners' Loan Act, referred to in par. (9), is act June 13, 1933, ch. 64, 48 Stat. 128, as amended, which is classified generally to chapter 12 (§1461 et seq.) of this title. For complete classification of this Act to the Code, see section 1461 of this title and Tables.

AMENDMENTS

1989—Par. (9). Pub. L. 101–73 added par. (9).
1988—Par. (7). Pub. L. 100–650, §4, added par. (7).
Par. (8). Pub. L. 100–650, §5(a), added par. (8).
1982—Par. (2). Pub. L. 97–320 substituted ''25(a)'' for ''25A''.

§ 3205. Management official in position prior to November 10, 1978

(a) Continuation of service

A person whose service in a position as a management official began prior to November 10, 1978, and who was not immediately prior to November 10, 1978, in violation of section 19 of title 15 is not prohibited by section 3202 or section 3203 of this title from continuing to serve in that position. The appropriate Federal depository institutions regulatory agency may provide a reasonable period of time for compliance with this chapter, not exceeding fifteen months, after any change in circumstances which makes service described in the preceding sentence prohibited by this chapter, except that a merger, acquisition, increase in total assets, establishment of one or more offices, or change in management responsibilities shall not constitute changes in circumstances which would make such service prohibited by section 3202 or section 3203 of this title.

(b) Depository institution and diversified savings and loan holding company

Effective on November 10, 1978, a person who serves as a management official of a company which is not a depository institution or a depository holding company and as a management official of a depository institution or a depository holding company is not prohibited from continuing to serve as a management official of that depository institution or depository holding company as a result of that company which is not a depository institution or depository holding company becoming a diversified savings and loan holding company as that term is defined in section 1730a(a)[1] of this title.

(Pub. L. 95–630, title II, §206, Nov. 10, 1978, 92 Stat. 3674; Pub. L. 97–110, title III, §302, Dec. 26, 1981, 95 Stat. 1515; Pub. L. 100–650, §§5(b)(2), 6, Nov. 10, 1988, 102 Stat. 3820, 3821; Pub. L. 103–325, title III, §338(a), Sept. 23, 1994, 108 Stat. 2235; Pub. L. 104–208, div. A, title II, §2210(b), Sept. 30, 1996, 110 Stat. 3009–410.)

REFERENCES IN TEXT

Section 1730a of this title, referred to in subsec. (b), was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, §2210(b)(1), struck out ''for a period of, subject to the requirements of sub-

[1] See References in Text note below.

section (c) of this section, 20 years after November 10, 1978'' after ''continuing to serve in that position''.

Subsec. (b). Pub. L. 104–208, § 2210(b)(2), struck out at end ''This subsection shall expire, subject to the requirements of subsection (c) of this section, 20 years after November 10, 1978.''

Subsec. (c). Pub. L. 104–208, § 2210(b)(3), struck out subsec. (c) which related to review of existing management interlocks.

1994—Subsecs. (a), (b). Pub. L. 103–325, § 338(a)(1), substituted '', subject to the requirements of subsection (c) of this section, 20 years after November 10, 1978'' for ''15 years after November 10, 1978''.

Subsec. (c). Pub. L. 103–325, § 338(a)(2), added subsec. (c).

1988—Subsec. (a). Pub. L. 100–650, § 5(b)(2), substituted ''depository institutions regulatory agency'' for ''banking agency (as set forth in section 3207 of this title)''.

Pub. L. 100–650, § 6, substituted ''15 years'' for ''ten years''.

Subsec. (b). Pub. L. 100–650, § 6, substituted ''15 years'' for ''ten years''.

1981—Pub. L. 97–110 designated existing provisions as subsec. (a), inserted provision that a merger, acquisition, increase in total assets, establishment of one or more offices, or change in management responsibilities shall not constitute changes in circumstances which would make such service prohibited by section 3202 or 3203 of this title, and added subsec. (b).

§ 3206. Administration and enforcement

This chapter shall be administered and enforced by—

(1) the Comptroller of the Currency with respect to national banks,

(2) the Board of Governors of the Federal Reserve System with respect to State banks which are members of the Federal Reserve System, and bank holding companies,

(3) the Board of Directors of the Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation,

(4) the Director of the Office of Thrift Supervision with respect to a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and savings and loan holding companies,

(5) the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National Credit Union Administration, and

(6) upon referral by the agencies named in the foregoing paragraphs (1) through (5), the Attorney General shall have the authority to enforce compliance by any person with this chapter.

(Pub. L. 95–630, title II, § 207, Nov. 10, 1978, 92 Stat. 3674; Pub. L. 101–73, title VII, § 744(r), Aug. 9, 1989, 103 Stat. 440; Pub. L. 108–386, § 8(e)(1), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 111–203, title III, § 360(1), July 21, 2010, 124 Stat. 1548.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 360(1), July 21, 2010, 124 Stat. 1546, 1548, provided that, effective on the transfer date, this section is amended:

(1) in paragraph (1), by inserting ''and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)'' before the comma at the end;

(2) in paragraph (2), by substituting '', bank holding companies, and savings and loan holding companies'' for '', and bank holding companies'';

(3) in paragraph (3), by substituting ''Corporation and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),'' for ''Corporation,'';

(4) by striking out paragraph (4);

(5) by redesignating paragraphs (5) and (6) as (4) and (5), respectively; and

(6) in paragraph (5), by substituting ''through (4)'' for ''through (5)''.

See Effective Date of 2010 Amendment note below.

AMENDMENTS

2004—Par. (1). Pub. L. 108–386 struck out ''and banks located in the District of Columbia'' after ''national banks''.

1989—Par. (4). Pub. L. 101–73 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the Federal Home Loan Bank Board with respect to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, and savings and loan holding companies,''.

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

§ 3207. Rules and regulations

Regulations to carry out this chapter, including regulations that permit service by a management official that would otherwise be prohibited by section 3202 of this title or section 3203 of this title, if such service would not result in a monopoly or substantial lessening of competition, may be prescribed by—

(1) the Comptroller of the Currency with respect to national banks,

(2) the Board of Governors of the Federal Reserve System with respect to State banks which are members of the Federal Reserve System, and bank holding companies,

(3) the Board of Directors of the Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation,

(4) the Director of the Office of Thrift Supervision with respect to institutions the accounts of which are insured by the Federal Deposit Insurance Corporation, and savings and loan holding companies, and

(5) the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National Credit Union Administration.

(Pub. L. 95–630, title II, § 209, Nov. 10, 1978, 92 Stat. 3675; Pub. L. 103–325, title III, § 338(b), Sept. 23, 1994, 108 Stat. 2236; Pub. L. 104–208, div. A,

title II, § 2210(c), Sept. 30, 1996, 110 Stat. 3009–410; Pub. L. 108–386, § 8(e)(2), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 111–203, title III, § 360(2), July 21, 2010, 124 Stat. 1549.)

AMENDMENT OF SECTION

Pub. L. 111–203, title III, §§ 351, 360(2), July 21, 2010, 124 Stat. 1546, 1549, provided that, effective on the transfer date, this section is amended:

(1) in paragraph (1), by inserting ''and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)'' before the comma at the end;

(2) in paragraph (2), by substituting '', bank holding companies, and savings and loan holding companies'' for '', and bank holding companies'';

(3) in paragraph (3), by substituting ''Corporation and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),'' for ''Corporation,'';

(4) by striking out paragraph (4);

(5) by redesignating paragraph (5) as (4); and

(6) in paragraph (5), as so redesignated, by substituting ''through (4)'' for ''through (5)''.

See Effective Date of 2010 Amendment note below.

AMENDMENTS

2004—Par. (1). Pub. L. 108–386 struck out ''and banks located in the District of Columbia'' after ''national banks''.

1996—Pub. L. 104–208 redesignated subsec. (a) as entire section, in introductory provisions, substituted ''Regulations'' for ''Rules and regulations'' and inserted '', including regulations that permit service by a management official that would otherwise be prohibited by section 3202 of this title or section 3203 of this title, if such service would not result in a monopoly or substantial lessening of competition,'' after ''chapter'', in par. (4), substituted ''Director of the Office of Thrift Supervision'' for ''Federal Home Loan Bank Board'' and ''Federal Deposit Insurance Corporation'' for ''Federal Savings and Loan Insurance Corporation'', and struck out subsecs. (b) and (c), which related to regulatory standards, and to limited exception for management official consignment program, respectively.

1994—Pub. L. 103–325 designated existing provisions as subsec. (a), inserted heading, struck out '', including rules or regulations which permit service by a management official which would otherwise be prohibited by section 3202 or section 3203 of this title,'' after ''Rules and regulations to carry out this chapter'' in introductory provisions, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

§ 3208. Powers available to Attorney General for enforcement

(a) For the purpose of the exercise by the Attorney General of his enforcement functions under section 3206(6) of this title, all of the functions and powers of the Attorney General under the Clayton Act [15 U.S.C. 12 et seq.] are available to the Attorney General, irrespective of any jurisdictional tests in the Clayton Act, including the power to take enforcement actions in the same manner as if the violation had been a violation of the Clayton Act.

(b) All of the functions and powers of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice are available to the Attorney General or to such Assistant Attorney General to investigate possible violations under section 3206(6) of this title in the same manner as if such possible violations were possible violations of the Clayton Act [15 U.S.C. 12 et seq.].

(Pub. L. 95–630, title II, § 210, as added Pub. L. 97–320, title IV, § 426, Oct. 15, 1982, 96 Stat. 1524; amended Pub. L. 111–203, title III, § 360(3), July 21, 2010, 124 Stat. 1549.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 111–203, title III, §§ 351, 360(3), July 21, 2010, 124 Stat. 1546, 1549, provided that, effective on the transfer date, subsection (a) of this section is amended by substituting ''the'' for ''his'' and inserting ''of the Attorney General'' after ''enforcement functions''. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Clayton Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

EFFECTIVE DATE OF 2010 AMENDMENT

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

CHAPTER 34—FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Sec.

3301. Declaration of purpose.
3302. Definitions.
3303. Financial Institutions Examination Council.
3304. Costs and expenses of Council.
3305. Functions of Council.
3306. State liaison.
3307. Administration.
3308. Access to books, accounts, records, etc., by Council.
3309. Risk management training.
3310. Establishment of Appraisal Subcommittee.
3311. Required review of regulations.

§ 3301. Declaration of purpose

It is the purpose of this chapter to establish a Financial Institutions Examination Council which shall prescribe uniform principles and standards for the Federal examination of financial institutions by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, and the National Credit Union Administration and make recommendations to promote uniformity in the supervision of these fi-

nancial institutions. The Council's actions shall be designed to promote consistency in such examination and to insure progressive and vigilant supervision.

(Pub. L. 95–630, title X, § 1002, Nov. 10, 1978, 92 Stat. 3694.)

EFFECTIVE DATE

Chapter effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

SHORT TITLE

Section 1001 of title X of Pub. L. 95–630 provided that: ''This title [enacting this chapter and amending section 67 of former Title 31, Money and Finance] may be cited as the 'Federal Financial Institutions Examination Council Act of 1978'.''

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

§ 3302. Definitions

As used in this chapter—

(1) the term ''Federal financial institutions regulatory agencies'' means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration;

(2) the term ''Council'' means the Financial Institutions Examination Council; and

(3) the term ''financial institution'' means a commercial bank, a savings bank, a trust company, a savings association, a building and loan association, a homestead association, a cooperative bank, or a credit union;[1]

(Pub. L. 95–630, title X, § 1003, Nov. 10, 1978, 92 Stat. 3694; Pub. L. 101–73, title VII, § 744(a)(1), Aug. 9, 1989, 103 Stat. 438.)

AMENDMENTS

1989—Par. (1). Pub. L. 101–73, § 744(a)(1)(A), substituted ''Office of Thrift Supervision'' for ''Federal Home Loan Bank Board''.

Par. (3). Pub. L. 101–73, § 744(a)(1)(B), substituted ''savings association'' for ''savings and loan association''.

§ 3303. Financial Institutions Examination Council

(a) Establishment; composition

There is established the Financial Institutions Examination Council which shall consist of—

(1) the Comptroller of the Currency,

(2) the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation,

(3) a Governor of the Board of Governors of the Federal Reserve System designated by the Chairman of the Board,

(4) the Director, Office of Thrift Supervision,

(5) the Chairman of the National Credit Union Administration Board, and

(6) the Chairman of the State Liaison Committee.

(b) Chairmanship

The members of the Council shall select the first chairman of the Council. Thereafter the chairmanship shall rotate among the members of the Council.

(c) Term of office

The term of the Chairman of the Council shall be two years.

(d) Designation of officers and employees

The members of the Council may, from time to time, designate other officers or employees of their respective agencies to carry out their duties on the Council.

(e) Compensation and expenses

Each member of the Council shall serve without additional compensation but shall be entitled to reasonable expenses incurred in carrying out his official duties as such a member.

(Pub. L. 95–630, title X, § 1004, Nov. 10, 1978, 92 Stat. 3694; Pub. L. 101–73, title VII, § 744(a)(2), Aug. 9, 1989, 103 Stat. 438; Pub. L. 109–351, title VII, § 714(a), Oct. 13, 2006, 120 Stat. 1995; Pub. L. 111–203, title X, § 1091, July 21, 2010, 124 Stat. 2094.)

AMENDMENT OF SUBSECTION (a)(4)

Pub. L. 111–203, title X, §§ 1091, 1100H, July 21, 2010, 124 Stat. 2094, 2113, provided that, effective on the designated transfer date, subsection (a)(4) of this section is amended by striking ''Director, Office of Thrift Supervision'' and inserting ''Director of the Consumer Financial Protection Bureau''. See Effective Date of 2010 Amendment note below.

AMENDMENTS

2006—Subsec. (a)(4). Pub. L. 109–351, § 714(a)(1), substituted ''Thrift Supervision,'' for ''Thrift Supervision''.

Subsec. (a)(6). Pub. L. 109–351, § 714(a)(2), (3), added par. (6).

1989—Subsec. (a)(4). Pub. L. 101–73 substituted ''Director, Office of Thrift Supervision'' for ''Chairman of the Federal Home Loan Bank Board, and''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 3304. Costs and expenses of Council

One-fifth of the costs and expenses of the Council, including the salaries of its employees, shall be paid by each of the Federal financial institutions regulatory agencies. Annual assessments for such share shall be levied by the Council based upon its projected budget for the year, and additional assessments may be made during the year if necessary.

(Pub. L. 95–630, title X, § 1005, Nov. 10, 1978, 92 Stat. 3695.)

§ 3305. Functions of Council

(a) Establishment of principles and standards

The Council shall establish uniform principles and standards and report forms for the examination of financial institutions which shall be applied by the Federal financial institutions regulatory agencies.

[1] So in original. The semicolon probably should be a period.

(b) Making recommendations regarding supervisory matters and adequacy of supervisory tools

(1) The Council shall make recommendations for uniformity in other supervisory matters, such as, but not limited to, classifying loans subject to country risk, identifying financial institutions in need of special supervisory attention, and evaluating the soundness of large loans that are shared by two or more financial institutions. In addition, the Council shall make recommendations regarding the adequacy of supervisory tools for determining the impact of holding company operations on the financial institutions within the holding company and shall consider the ability of supervisory agencies to discover possible fraud or questionable and illegal payments and practices which might occur in the operation of financial institutions or their holding companies.

(2) When a recommendation of the Council is found unacceptable by one or more of the applicable Federal financial institutions regulatory agencies, the agency or agencies shall submit to the Council, within a time period specified by the Council, a written statement of the reasons the recommendation is unacceptable.

(c) Development of uniform reporting system

The Council shall develop uniform reporting systems for federally supervised financial institutions, their holding companies, and nonfinancial institution subsidiaries of such institutions or holding companies. The authority to develop uniform reporting systems shall not restrict or amend the requirements of section 78*l*(i) of title 15.

(d) Conducting schools for examiners and assistant examiners

The Council shall conduct schools for examiners and assistant examiners employed by the Federal financial institutions regulatory agencies. Such schools shall be open to enrollment by employees of State financial institutions supervisory agencies and employees of the Federal Housing Finance Board under conditions specified by the Council.

(e) Affect on Federal regulatory agency research and development of new financial institutions supervisory agencies

Nothing in this chapter shall be construed to limit or discourage Federal regulatory agency research and development of new financial institutions supervisory methods and tools, nor to preclude the field testing of any innovation devised by any Federal regulatory agency.

(f) Annual report

Not later than April 1 of each year, the Council shall prepare an annual report covering its activities during the preceding year.

(g) Flood insurance

The Council shall consult with and assist the Federal entities for lending regulation, as such term is defined in section 4121(a) of title 42, in developing and coordinating uniform standards and requirements for use by regulated lending institutions under the national flood insurance program.

(Pub. L. 95–630, title X, §1006, Nov. 10, 1978, 92 Stat. 3695; Pub. L. 97–320, title IV, §431, Oct. 15, 1982, 96 Stat. 1527; Pub. L. 101–73, title VII, §744(a)(3), Aug. 9, 1989, 103 Stat. 438; Pub. L. 103–325, title V, §530, Sept. 23, 1994, 108 Stat. 2267.)

AMENDMENTS

1994—Subsec. (g). Pub. L. 103–325 added subsec. (g).

1989—Subsec. (d). Pub. L. 101–73 inserted ''and employees of the Federal Housing Finance Board'' after ''supervisory agencies''.

1982—Subsec. (b)(2). Pub. L. 97–320 substituted ''unacceptable'' for ''unaccepted''.

REPORT ON CONSISTENT USE OF FINANCIAL TERMINOLOGY

Section 210 of Pub. L. 103–325 provided that: ''Not later than 2 years after the date of enactment of this Act [Sept. 23, 1994], the Financial Institutions Examination Council shall report to the Congress on its recommendations for the use of consistent financial terminology by depository institutions for small business loans or leases of personal property which are sold for the creation of small business related securities (as defined in section 3(a)(53)(A) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(53)(A)]).''

EXAMINATION IMPROVEMENT PROGRAM

Pub. L. 102–242, title I, §111(d), Dec. 19, 1991, 105 Stat. 2241, provided that:

''(1) IN GENERAL.—The appropriate Federal banking agencies, acting through the Federal Financial Institutions Examination Council, shall each establish a comparable examination improvement program that meets the requirements of paragraph (2).

''(2) REQUIREMENTS.—An examination improvement program meets the requirements of this paragraph if, under the program, the agency is required—

''(A) to periodically review the organization and training of the staff of the agency who are responsible for conducting examinations of insured depository institutions and to make such improvements as the agency determines to be appropriate to ensure frequent, objective, and thorough examinations of such institutions; and

''(B) to increase the number of examiners, supervisors, and other individuals employed by the agency in connection with conducting or supervising examinations of insured depository institutions to the extent necessary to ensure frequent, objective, and thorough examinations of such institutions.''

STUDY ON REGULATORY BURDEN

Pub. L. 102–242, title II, §221, Dec. 19, 1991, 105 Stat. 2305, provided that:

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Dec. 19, 1991], the Federal Financial Institutions Examination Council, in consultation with individuals representing insured depository institutions, consumers, community groups, and other interested parties, shall—

''(1) review the policies and procedures, and recordkeeping and documentation requirements used to monitor and enforce compliance with—

''(A) all laws under the jurisdiction of the Federal banking agencies; and

''(B) all laws affecting insured depository institutions under the jurisdiction of the Secretary of the Treasury;

''(2) determine whether such policies, procedures, and requirements impose unnecessary burdens on insured depository institutions; and

''(3) identify any revisions of such policies, procedures, and requirements that could reduce unnecessary burdens on insured depository institutions without in any respect—

''(A) diminishing either compliance with or enforcement of consumer laws in any respect; or

''(B) endangering the safety and soundness of insured depository institutions.

''(b) REPORT.—Not later than 1 year after the date of enactment of this Act [Dec. 19, 1991], the Federal Financial Institutions Examination Council shall submit to the Congress a report describing the revisions identified under subsection (a)(3).

''(c) DEFINITIONS.—For purposes of this section, the terms 'insured depository institution' and 'Federal banking agency' have the same meanings as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].''

STUDY AND REPORT ASSESSING FEASIBILITY AND USEFULNESS OF DEPOSITORY INSTITUTIONS MAKING SMALL BUSINESS LOANS TO COMPILE AND DISCLOSE LOAN INFORMATION

Pub. L. 96–399, title III, § 340(d), Oct. 8, 1980, 94 Stat. 1659, directed Federal Financial Institutions Examination Council, in consultation with Administrator of Small Business Administration, to conduct a study to assess feasibility and usefulness of requiring depository institutions which make small business loans to compile and publicly disclose information regarding such loans, and directed Council to submit a report on results of such study, together with recommendations, to Senate Committee on Banking, Housing, and Urban Affairs and House Committee on Banking, Finance and Urban Affairs not later than Mar. 1, 1981.

EVALUATION AND REPORT ON FEASIBILITY AND DESIRABILITY OF ESTABLISHING A UNIFIED SYSTEM FOR ENFORCING FAIR LENDING LAWS AND REGULATIONS

Pub. L. 96–399, title III, § 340(e), Oct. 8, 1980, 94 Stat. 1659, directed Federal Financial Institutions Examination Council to transmit a report to Congress not later than Sept. 30, 1982, on feasibility and desirability of establishing a unified system for enforcing fair lending laws and regulations, implementing Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.], and satisfying public disclosure purposes of Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.], such report to evaluate status and effectiveness of data collection and analysis systems of such agencies involving fair lending and community reinvestment, and to outline possible specific timetables for implementing such a unified system.

§ 3306. State liaison

To encourage the application of uniform examination principles and standards by State and Federal supervisory agencies, the Council shall establish a liaison committee composed of five representatives of State agencies which supervise financial institutions which shall meet at least twice a year with the Council. Members of the liaison committee shall receive a reasonable allowance for necessary expenses incurred in attending meetings. Members of the Liaison Committee shall elect a chairperson from among the members serving on the committee.

(Pub. L. 95–630, title X, § 1007, Nov. 10, 1978, 92 Stat. 3696; Pub. L. 109–351, title VII, § 714(b), Oct. 13, 2006, 120 Stat. 1995.)

AMENDMENTS

2006—Pub. L. 109–351 inserted at end ''Members of the Liaison Committee shall elect a chairperson from among the members serving on the committee.''

§ 3307. Administration

(a) Authority of Chairman of Council

The Chairman of the Council is authorized to carry out and to delegate the authority to carry out the internal administration of the Council, including the appointment and supervision of employees and the distribution of business among members, employees, and administrative units.

(b) Use of personnel, services, and facilities of Federal financial institutions regulatory agencies, Federal Reserve banks, and Federal Home Loan Banks

in[1] addition to any other authority conferred upon it by this chapter, in carrying out its functions under this chapter, the Council may utilize, with their consent and to the extent practical, the personnel, services, and facilities of the Federal financial institutions regulatory agencies, Federal Reserve banks, and Federal Home Loan Banks, with or without reimbursement therefor.

(c) Compensation, authority, and duties of officers and employees; experts and consultants

In addition, the Council may—

(1) subject to the provisions of title 5 relating to the competitive service, classification, and General Schedule pay rates, appoint and fix the compensation of such officers and employees as are necessary to carry out the provisions of this chapter, and to prescribe the authority and duties of such officers and employees; and

(2) obtain the services of such experts and consultants as are necessary to carry out the provisions of this chapter.

(Pub. L. 95–630, title X, § 1008, Nov. 10, 1978, 92 Stat. 3696.)

REFERENCES IN TEXT

The provisions of title 5 relating to the competitive service, referred to in subsec. (c), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The provisions of title 5 relating to classification, referred to in subsec. (c), are classified generally to chapter 51 (§ 5101 et seq.) and to subchapter III (§ 5331 et seq.) of chapter 53 of Title 5.

The provisions of title 5 relating to General Schedule pay rates, referred to in subsec. (c), are set out under section 5332 of Title 5.

§ 3308. Access to books, accounts, records, etc., by Council

For the purpose of carrying out this chapter, the Council shall have access to all books, accounts, records, reports, files, memorandums, papers, things, and property belonging to or in use by Federal financial institutions regulatory agencies, including reports of examination of financial institutions or their holding companies from whatever source, together with workpapers and correspondence files related to such reports, whether or not a part of the report, and all without any deletions.

(Pub. L. 95–630, title X, § 1009, Nov. 10, 1978, 92 Stat. 3696.)

§ 3309. Risk management training

(a) Seminars

The Council shall develop and administer training seminars in risk management for its employees and the employees of insured financial institutions.

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[1] So in original. Probably should be capitalized.

(b) Study of risk management training program

Not later than end of the 1-year period beginning on August 9, 1989, the Council shall—

(1) conduct a study on the feasibility and appropriateness of establishing a formalized risk management training program designed to lead to the certification of Risk Management Analysts; and

(2) report to the Congress the results of such study.

(Pub. L. 95–630, title X, § 1009A, as added Pub. L. 101–73, title XII, § 1218, Aug. 9, 1989, 103 Stat. 546.)

§ 3310. Establishment of Appraisal Subcommittee

There shall be within the Council a subcommittee to be known as the ''Appraisal Subcommittee'', which shall consist of the designees of the heads of the Federal financial institutions regulatory agencies. Each such designee shall be a person who has demonstrated knowledge and competence concerning the appraisal profession.

(Pub. L. 95–630, title X, § 1011, as added Pub. L. 101–73, title XI, § 1102, Aug. 9, 1989, 103 Stat. 511; amended Pub. L. 111–203, title XIV, § 1473(s), July 21, 2010, 124 Stat. 2199.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§ 1400(c), 1473(s), July 21, 2010, 124 Stat. 2136, 2199, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) in the first sentence, by inserting '', the Bureau of Consumer Financial Protection, and the Federal Housing Finance Agency'' before the period; and

(2) by inserting ''At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession.'' at the end.

See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 3311. Required review of regulations

(a) In general

Not less frequently than once every 10 years, the Council and each appropriate Federal banking agency represented on the Council shall conduct a review of all regulations prescribed by the Council or by any such appropriate Federal banking agency, respectively, in order to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions.

(b) Process

In conducting the review under subsection (a) of this section, the Council or the appropriate Federal banking agency shall—

(1) categorize the regulations described in subsection (a) of this section by type (such as consumer regulations, safety and soundness regulations, or such other designations as determined by the Council, or the appropriate Federal banking agency); and

(2) at regular intervals, provide notice and solicit public comment on a particular category or categories of regulations, requesting commentators to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome.

(c) Complete review

The Council or the appropriate Federal banking agency shall ensure that the notice and comment period described in subsection (b)(2) of this section is conducted with respect to all regulations described in subsection (a) of this section not less frequently than once every 10 years.

(d) Regulatory response

The Council or the appropriate Federal banking agency shall—

(1) publish in the Federal Register a summary of the comments received under this section, identifying significant issues raised and providing comment on such issues; and

(2) eliminate unnecessary regulations to the extent that such action is appropriate.

(e) Report to Congress

Not later than 30 days after carrying out subsection (d)(1) of this section, the Council shall submit to the Congress a report, which shall include—

(1) a summary of any significant issues raised by public comments received by the Council and the appropriate Federal banking agencies under this section and the relative merits of such issues; and

(2) an analysis of whether the appropriate Federal banking agency involved is able to address the regulatory burdens associated with such issues by regulation, or whether such burdens must be addressed by legislative action.

(Pub. L. 104–208, div. A, title II, § 2222, Sept. 30, 1996, 110 Stat. 3009–414.)

CODIFICATION

Section enacted as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Federal Financial Institutions Examination Council Act of 1978 which comprises this chapter.

CHAPTER 34A—APPRAISAL SUBCOMMITTEE OF FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Sec.
3331. Purpose.
3332. Functions of Appraisal Subcommittee.
3333. Chairperson of Appraisal Subcommittee; term of Chairperson; meetings.
3334. Officers and staff.
3335. Powers of Appraisal Subcommittee.

Sec.
3336. Procedures for establishing appraisal standards and requiring use of certified and licensed appraisers.
3337. Startup funding.
3338. Roster of State certified or licensed appraisers; authority to collect and transmit fees.
3339. Functions of Federal financial institutions regulatory agencies relating to appraisal standards.
3340. Time for proposal and adoption of standards.
3341. Functions of Federal financial institutions regulatory agencies relating to appraiser qualifications.
3342. Transactions requiring services of State certified appraiser.
3343. Transactions requiring services of State licensed appraiser.
3344. Time for proposal and adoption of rules.
3345. Certification and licensing requirements.
3346. Establishment of State appraiser certifying and licensing agencies.
3347. Monitoring of State appraiser certifying and licensing agencies.
3348. Recognition of State certified and licensed appraisers for purposes of this chapter.
3349. Violations in obtaining and performing appraisals in federally related transactions.
3350. Definitions.
3351. Miscellaneous provisions.
3352. Emergency exceptions for disaster areas.
3353. Appraisal management company minimum requirements.
3354. Automated valuation models used to estimate collateral value for mortgage lending purposes.
3355. Broker price opinions.

§ 3331. Purpose

The purpose of this chapter is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

(Pub. L. 101–73, title XI, §1101, Aug. 9, 1989, 103 Stat. 511.)

§ 3332. Functions of Appraisal Subcommittee

(a) In general

The Appraisal Subcommittee shall—

(1) monitor the requirements established by States for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility;

(2) monitor the requirements established by the Federal financial institutions regulatory agencies and the Resolution Trust Corporation with respect to—

(A) appraisal standards for federally related transactions under their jurisdiction, and

(B) determinations as to which federally related transactions under their jurisdiction require the services of a State certified appraiser and which require the services of a State licensed appraiser;

(3) maintain a national registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions; and

(4) Omitted.

(b) Monitoring and reviewing foundation

The Appraisal Subcommittee shall monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation.

(Pub. L. 101–73, title XI, §1103, Aug. 9, 1989, 103 Stat. 512; Pub. L. 111–203, title III, §367(6), title XIV, §1473(b), (f)(1), July 21, 2010, 124 Stat. 1557, 2190, 2191.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 111–203, title XIV, §§1400(c), 1473(b), (f)(1), July 21, 2010, 124 Stat. 2136, 2190, 2191, provided that subsection (a) of this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) by amending paragraph (1) to read as follows:

''(1) monitor the requirements established by States—

''(A) for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; and

''(B) for the registration and supervision of the operations and activities of an appraisal management company;''; and

(2) by adding at the end the following:

''(5) transmit an annual report to the Congress not later than June 15 of each year that describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year. The report shall also detail the activities of the Appraisal Subcommittee, including the results of all audits of State appraiser regulatory agencies, and provide an accounting of disapproved actions and warnings taken in the previous year, including a description of the conditions causing the disapproval and actions taken to achieve compliance.

''(6) maintain a national registry of appraisal management companies that either are registered with and subject to supervision of a State appraiser certifying and licensing agency or are operating subsidiaries of a Federally regulated financial institution.''

See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, title III, §§351, 367(6), July 21, 2010, 124 Stat. 1546, 1557, provided that, effective on the transfer date, subsection (a) of this section is amended by striking out ''and the Resolution Trust Corporation''. See Effective Date of 2010 Amendment note below.

CODIFICATION

Paragraph (4) of subsection (a), which required the Appraisal Subcommittee to submit an annual report to Congress on the manner in which assigned functions were carried out, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 170 of House Document No. 103–7.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 367(6) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 1473(b), (f)(1), of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 3333. Chairperson of Appraisal Subcommittee; term of Chairperson; meetings

(a) Chairperson

The Council shall select the Chairperson of the subcommittee. The term of the Chairperson shall be 2 years.

(b) Meetings; quorum; voting

The Appraisal Subcommittee shall meet at the call of the Chairperson or a majority of its members when there is business to be conducted. A majority of members of the Appraisal Subcommittee shall constitute a quorum but 2 or more members may hold hearings. Decisions of the Appraisal Subcommittee shall be made by the vote of a majority of its members.

(Pub. L. 101–73, title XI, §1104, Aug. 9, 1989, 103 Stat. 512; Pub. L. 111–203, title XIV, §1473(c), July 21, 2010, 124 Stat. 2191.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 111–203, title XIV, §§1400(c), 1473(c), July 21, 2010, 124 Stat. 2136, 2191, provided that subsection (b) of this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, by inserting ''in public session after notice in the Federal Register, but may close certain portions of these meetings related to personnel and review of preliminary State audit reports,'' after ''shall meet'' and ''The subject matter discussed in any closed or executive session shall be described in the Federal Register notice of the meeting.'' after the final period. See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 3334. Officers and staff

The Chairperson of the Appraisal Subcommittee shall appoint such officers and staff as may be necessary to carry out the functions of this chapter consistent with the appointment and compensation practices of the Council.

(Pub. L. 101–73, title XI, §1105, Aug. 9, 1989, 103 Stat. 512.)

§ 3335. Powers of Appraisal Subcommittee

The Appraisal Subcommittee may, for the purpose of carrying out this chapter, establish advisory committees, hold hearings, sit and act at times and places, take testimony, receive evidence, provide information, and perform research, as the Appraisal Subcommittee considers appropriate.

(Pub. L. 101–73, title XI, §1106, Aug. 9, 1989, 103 Stat. 512; Pub. L. 111–203, title XIV, §1473(d), July 21, 2010, 124 Stat. 2191.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1473(d), July 21, 2010, 124 Stat. 2136, 2191, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, by inserting ''prescribe regulations in accordance with chapter 5 of title 5 (commonly referred to as the Administrative Procedures Act) after notice and opportunity for comment,'' after ''hold hearings'' and ''Any regulations prescribed by the Appraisal Subcommittee shall (unless otherwise provided in this chapter) be limited to the following functions: temporary practice, national registry, information sharing, and enforcement. For purposes of prescribing regulations, the Appraisal Subcommittee shall establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, real estate agents, and government agencies, and hold meetings as necessary to support the development of regulations.'' at the end. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title XI of Pub. L. 101–73, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 3336. Procedures for establishing appraisal standards and requiring use of certified and licensed appraisers

Appraisal standards and requirements for using State certified and licensed appraisers in federally related transactions pursuant to this chapter shall be prescribed in accordance with procedures set forth in section 553 of title 5, including the publication of notice and receipt of written comments or the holding of public hearings with respect to any standards or requirements proposed to be established.

(Pub. L. 101–73, title XI, §1107, Aug. 9, 1989, 103 Stat. 513.)

§ 3337. Startup funding

(a) In general

For purposes of this chapter, the Secretary of the Treasury shall pay to the Appraisal Subcommittee a one-time payment of $5,000,000 on August 9, 1989. Thereafter, expenses of the subcommittee shall be funded through the collection of registry fees from certain certified and licensed appraisers pursuant to section 3338 of this title or, if required, pursuant to section 3351(b)[1] of this title.

(b) Additional funds

Except as provided in section 3351(b)[1] of this title, funds in addition to the funds provided under subsection (a) of this section may be made available to the Appraisal Subcommittee only if authorized and appropriated by law.

(c) Repayment of Treasury loan

Not later than September 30, 1998, the Appraisal Subcommittee shall repay to the Secretary of the Treasury the unpaid portion of the $5,000,000 paid to the Appraisal Subcommittee pursuant to this section.

(Pub. L. 101–73, title XI, § 1108, Aug. 9, 1989, 103 Stat. 513; Pub. L. 104–208, div. A, title II, § 2212, Sept. 30, 1996, 110 Stat. 3009–411.)

REFERENCES IN TEXT

Section 3351(b) of this title, referred to in text, was redesignated section 3351(c) of this title by Pub. L. 103–325, title III, § 315(1), Sept. 23, 1994, 108 Stat. 2222.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–208 added subsec. (c).

§ 3338. Roster of State certified or licensed appraisers; authority to collect and transmit fees

(a) In general

Each State with an appraiser certifying and licensing agency whose certifications and licenses comply with this chapter, shall—

(1) transmit to the Appraisal Subcommittee, no less than annually, a roster listing individuals who have received a State certification or license in accordance with this chapter; and

(2) collect from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than $25, such fees to be transmitted by the State agencies to the Council on an annual basis.

Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees, up to a maximum of $50 per annum, as necessary to carry out its functions under this chapter.

(b) Use of amounts appropriated or collected

Amounts appropriated for or collected by the Appraisal Subcommittee under this section shall be used—

(1) to maintain a registry of individuals who are qualified and eligible to perform appraisals in connection with federally related transactions;

(2) to support its activities under this chapter;

(3) to reimburse the general fund of the Treasury for amounts appropriated to and expended by the Appraisal Subcommittee during the 24-month startup period following August 9, 1989; and

(4) to make grants in such amounts as it deems appropriate to the Appraisal Foundation, to help defray those costs of the foundation relating to the activities of its Appraisal Standards and Appraiser Qualification Boards.

(Pub. L. 101–73, title XI, § 1109, Aug. 9, 1989, 103 Stat. 513; Pub. L. 111–203, title XIV, § 1473(g), (h)(1), (i), July 21, 2010, 124 Stat. 2194, 2195.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§ 1400(c), 1473(g), (h)(1), (i), July 21, 2010, 124 Stat. 2136, 2194, 2195, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) in subsection (a)—

(A) in paragraph (1), by striking out ''and'' after the semicolon;

(B) by redesignating paragraph (2) as (4);

(C) by inserting after paragraph (1) the following:

''(2) transmit reports on the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the Appraisal Subcommittee;

''(3) transmit reports on a timely basis of supervisory activities involving appraisal management companies or other third-party providers of appraisals and appraisal management services, including investigations initiated and disciplinary actions taken; and'';

(D) by amending paragraph (4), as so redesignated, to read as follows:

''(4) collect—

''(A) from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than $40, such fees to be transmitted by the State agencies to the Council on an annual basis; and

''(B) from an appraisal management company that either has registered with a State appraiser certifying and licensing agency in accordance with this chapter or operates as a subsidiary of a federally regulated financial institution, an annual registry fee of—

''(i) in the case of such a company that has been in existence for more than a year, $25 multiplied by the number of appraisers working for or contracting with such company in such State during the previous year, but where such $25 amount may be adjusted, up to a maximum of $50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee's functions under this chapter; and

''(ii) in the case of such a company that has not been in existence for more than a year,

[1] See References in Text note below.

$25 multiplied by an appropriate number to be determined by the Appraisal Subcommittee, and where such number will be used for determining the fee of all such companies that were not in existence for more than a year, but where such $25 amount may be adjusted, up to a maximum of $50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee's functions under this chapter.''; and

(E) by amending the matter following paragraph (4) to read as follows:

''Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees under paragraph (4)(A), up to a maximum of $80 per annum, as necessary to carry out its functions under this chapter. The Appraisal Subcommittee shall consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. In implementing any change in registry fees, the Appraisal Subcommittee shall provide flexibility to the States for multi-year certifications and licenses already in place, as well as a transition period to implement the changes in registry fees. In establishing the amount of the annual registry fee for an appraisal management company, the Appraisal Subcommittee shall have the discretion to impose a minimum annual registry fee for an appraisal management company to protect against the under reporting of the number of appraisers working for or contracted by the appraisal management company.''; and

(2) in subsection (b)—

(A) in paragraph (3), by striking out ''and'' after the semicolon;

(B) in paragraph (4), by substituting a semicolon for the period at the end; and

(C) by adding at the end the following:

''(5) to make grants to State appraiser certifying and licensing agencies, in accordance with policies to be developed by the Appraisal Subcommittee, to support the efforts of such agencies to comply with this chapter, including—

''(A) the complaint process, complaint investigations, and appraiser enforcement activities of such agencies; and

''(B) the submission of data on State licensed and certified appraisers and appraisal management companies to the National appraisal registry, including information affirming that the appraiser or appraisal management company meets the required qualification criteria and formal and informal disciplinary actions; and

''(6) to report to all State appraiser certifying and licensing agencies when a license or certification is surrendered, revoked, or suspended.''

See Effective Date of 2010 Amendment note below.

CODIFICATION

Pub. L. 111–203, §1473(i), which amended this section, also enacted provisions set out as a note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

GRANTS AND REPORTS

Pub. L. 111–203, title XIV, §1473(i), July 21, 2010, 124 Stat. 2195, provided that:

[Introductory provisions and pars. (1) to (3) amended this section].

''Obligations authorized under this subsection [amending this section] may not exceed 75 percent of the fiscal year total of incremental increase in fees collected and deposited in the 'Appraisal Subcommittee Account' pursuant to subsection (h) [amending this section and enacting provisions set out as a note under this section].''

INCREMENTAL REVENUES

Pub. L. 111–203, title XIV, §1473(h)(2), July 21, 2010, 124 Stat. 2195, provided that: ''Incremental revenues collected pursuant to the increases required by this subsection [amending this section] shall be placed in a separate account at the United States Treasury, entitled the 'Appraisal Subcommittee Account'.''

§ 3339. Functions of Federal financial institutions regulatory agencies relating to appraisal standards

Each Federal financial institutions regulatory agency and the Resolution Trust Corporation shall prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of each such agency or instrumentality. These rules shall require, at a minimum—

(1) that real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(2) that such appraisals shall be written appraisals.

Each such agency or instrumentality may require compliance with additional standards if it makes a determination in writing that such additional standards are required in order to properly carry out its statutory responsibilities.

(Pub. L. 101–73, title XI, §1110, Aug. 9, 1989, 103 Stat. 514; Pub. L. 111–203, title XIV, §1473(e)(1), July 21, 2010, 124 Stat. 2191.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1473(e)(1), July 21, 2010, 124 Stat. 2136, 2191, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) in paragraph (1), by striking ''and'';

(2) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(3) by inserting after paragraph (2) the following:

''(3) that such appraisals shall be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice.''

See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amend-

ment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 3340. Time for proposal and adoption of standards

Appraisal standards established under this chapter shall be proposed not later than 6 months and shall be adopted in final form and become effective not later than 12 months after August 9, 1989.

(Pub. L. 101–73, title XI, § 1111, Aug. 9, 1989, 103 Stat. 514.)

§ 3341. Functions of Federal financial institutions regulatory agencies relating to appraiser qualifications

(a) In general

Each Federal financial institutions regulatory agency and the Resolution Trust Corporation shall prescribe, in accordance with sections 3342 and 3343 of this title, which categories of federally related transactions should be appraised by a State certified appraiser and which by a State licensed appraiser under this chapter.

(b) Threshold level

Each Federal financial institutions regulatory agency and the Resolution Trust Corporation may establish a threshold level at or below which a certified or licensed appraiser is not required to perform appraisals in connection with federally related transactions, if such agency determines in writing that such threshold level does not represent a threat to the safety and soundness of financial institutions.

(c) GAO study of appraisals in connection with real estate related financial transactions below threshold level

(1) GAO studies

The Comptroller General of the United States may conduct, under such conditions as the Comptroller General determines appropriate, studies on the adequacy and quality of appraisals or evaluations conducted in connection with real estate related financial transactions below the threshold level established under subsection (b) of this section, taking into account—

(A) the cost to any financial institution involved in any such transaction;

(B) the possibility of losses to the Deposit Insurance Fund or the National Credit Union Share Insurance Fund;

(C) the cost to any customer involved in any such transaction; and

(D) the effect on low-income housing.

(2) Reports to Congress and the appropriate Federal financial institutions regulatory agencies

Upon completing each of the studies referred to in paragraph (1), the Comptroller General shall submit a report on the Comptroller General's findings and conclusions with respect to such study to the Federal financial institutions regulatory agencies, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate, together with such recommendations for legislative or administrative action as the Comptroller General determines to be appropriate.

(Pub. L. 101–73, title XI, § 1112, Aug. 9, 1989, 103 Stat. 514; Pub. L. 102–550, title IX, § 954, Oct. 28, 1992, 106 Stat. 3894; Pub. L. 104–208, div. A, title II, § 2704(d)(15)(B), Sept. 30, 1996, 110 Stat. 3009–495; Pub. L. 104–316, title I, § 106(g), Oct. 19, 1996, 110 Stat. 3831; Pub. L. 109–171, title II, § 2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, § 9(g)(2), Feb. 15, 2006, 119 Stat. 3618; Pub. L. 111–203, title XIV, § 1473(a), July 21, 2010, 124 Stat. 2190.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 111–203, title XIV, §§ 1400(c), 1473(a), July 21, 2010, 124 Stat. 2136, 2190, provided that subsection (b) of this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, by inserting '', and receives concurrence from the Bureau of Consumer Financial Protection that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences'' before the period. See Effective Date of 2010 Amendment note below.

AMENDMENTS

2006—Subsec. (c)(1)(B). Pub. L. 109–173 substituted ''Deposit Insurance Fund'' for ''Bank Insurance Fund, the Savings Association Insurance Fund,''.

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(15)(B). See 1996 Amendment note below.

1996—Subsec. (c)(1). Pub. L. 104–316, § 106(g)(1)(A), (2), in heading substituted ''GAO studies'' for ''Study required'', and in text substituted ''The Comptroller General of the United States may conduct, under such conditions as the Comptroller General determines appropriate, studies'' for ''At the end of the 18-month period, and the end of the 36-month period, beginning on October 28, 1992, the Comptroller General of the United States shall conduct a study''.

Subsec. (c)(1)(B). Pub. L. 104–208, § 2704(d)(15)(B), which directed substitution of ''Deposit Insurance Fund'' for ''Bank Insurance Fund, the Savings Association Insurance Fund,'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (c)(2). Pub. L. 104–316, § 106(g)(1)(B), substituted ''referred to in'' for ''required under''.

1992—Pub. L. 102–550 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

§ 3342. Transactions requiring services of State certified appraiser

In determining whether an appraisal in connection with a federally related transaction shall be performed by a State certified appraiser, an agency or instrumentality under this chapter shall consider whether transactions, either individually or collectively, are of sufficient financial or public policy importance to the United States that an individual who performs an appraisal in connection with such transactions should be a State certified appraiser, except that—

(1) a State certified appraiser shall be required for all federally related transactions having a value of $1,000,000 or more; and

(2) 1-to-4 unit, single family residential appraisals may be performed by State licensed appraisers unless the size and complexity requires a State certified appraiser.

(Pub. L. 101–73, title XI, §1113, Aug. 9, 1989, 103 Stat. 514; Pub. L. 111–203, title XIV, §1473(e)(2), July 21, 2010, 124 Stat. 2191.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1473(e)(2), July 21, 2010, 124 Stat. 2136, 2191, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, by inserting '', where a complex 1-to-4 unit single family residential appraisal means an appraisal for which the property to be appraised, the form of ownership, the property characteristics, or the market conditions are atypical'' before the period. See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 3343. Transactions requiring services of State licensed appraiser

All federally related transactions not requiring the services of a State certified appraiser shall be performed by either a State certified or licensed appraiser.

(Pub. L. 101–73, title XI, §1114, Aug. 9, 1989, 103 Stat. 514.)

§ 3344. Time for proposal and adoption of rules

As appropriate, rules issued under sections 3342 and 3343 of this title shall be proposed not later than 6 months and shall be effective upon adoption in final form not later than 12 months after August 9, 1989.

(Pub. L. 101–73, title XI, §1115, Aug. 9, 1989, 103 Stat. 515.)

§ 3345. Certification and licensing requirements

(a) In general

For purposes of this chapter, the term ''State certified real estate appraiser'' means any individual who has satisfied the requirements for State certification in a State or territory whose criteria for certification as a real estate appraiser currently meets the minimum criteria for certification issued by the Appraiser Qualification Board of the Appraisal Foundation.

(b) Restriction

No individual shall be a State certified real estate appraiser under this section unless such individual has achieved a passing grade upon a suitable examination administered by a State or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualification Board of the Appraisal Foundation.

(c) "State licensed appraiser" defined

As used in this section, the term ''State licensed appraiser'' means an individual who has satisfied the requirements for State licensing in a State or territory.

(d) Additional qualification criteria

Nothing in this chapter shall be construed to prevent any Federal agency or instrumentality under this chapter from establishing such additional qualification criteria as may be necessary or appropriate to carry out the statutory responsibilities of such department, agency, or instrumentality.

(e) Authority of Appraisal Subcommittee

The Appraisal Subcommittee shall not set qualifications or experience requirements for the States in licensing real estate appraisers, including a de minimus[1] standard. Recommendations of the Subcommittee shall be nonbinding on the States.

(Pub. L. 101–73, title XI, §1116, Aug. 9, 1989, 103 Stat. 515; Pub. L. 102–233, title VII, §701(a), Dec. 12, 1991, 105 Stat. 1792; Pub. L. 102–242, title IV, §472(a), Dec. 19, 1991, 105 Stat. 2386; Pub. L. 102–550, title XVI, §1617(a), Oct. 28, 1992, 106 Stat. 4096; Pub. L. 111–203, title XIV, §1473(j), July 21, 2010, 124 Stat. 2195.)

[1] So in original. Probably should be ''de minimis''.

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1473(j), July 21, 2010, 124 Stat. 2136, 2195, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) in subsection (c), by inserting ''whose criteria for the licensing of a real estate appraiser currently meet or exceed the minimum criteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers'' before the period at the end; and

(2) by striking out subsection (e) and adding the following:

''(e) Minimum qualification requirements

''Any requirements established for individuals in the position of 'Trainee Appraiser' and 'Supervisory Appraiser' shall meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board of The Appraisal Foundation. The Appraisal Subcommittee shall have the authority to enforce these requirements.''

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1992—Subsec. (e). Pub. L. 102–550, §1617(a), repealed Pub. L. 102–233, §701(a). See 1991 Amendment note below.

1991—Subsec. (e). Pub. L. 102–242 added subsec. (e) prohibiting Appraisal Subcommittee from setting qualifications or experience requirements, including a de minimis standard.

Pub. L. 102–233, §701(a), which added subsec. (e) prohibiting Appraisal Subcommittee from setting qualifications or experience requirements, was repealed by Pub. L. 102–550, §1617(a). See Construction of 1991 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

CONSTRUCTION OF 1991 AMENDMENT

Section 1617(b) of Pub. L. 102–550 provided that: ''No amendments made by title VII of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 [amending this section and section 3348 of this title] shall be deemed to have taken effect before the date of the enactment of this Act [Oct. 28, 1992] and the provisions of law amended by title VII shall continue in effect as if no such amendments had been made by such title.''

§ 3346. Establishment of State appraiser certifying and licensing agencies

To assure the availability of State certified and licensed appraisers for the performance in a State of appraisals in federally related transactions and to assure effective supervision of the activities of certified and licensed appraisers, a State may establish a State appraiser certifying and licensing agency.

(Pub. L. 101–73, title XI, §1117, Aug. 9, 1989, 103 Stat. 515; Pub. L. 111–203, title XIV, §1473(f)(3), July 21, 2010, 124 Stat. 2193.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1473(f)(3), July 21, 2010, 124 Stat. 2136, 2193, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, by inserting ''The duties of such agency may additionally include the registration and supervision of appraisal management companies and the addition of information about the appraisal management company to the national registry.'' at the end. See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 3347. Monitoring of State appraiser certifying and licensing agencies

(a) In general

The Appraisal Subcommittee shall monitor State appraiser certifying and licensing agencies for the purpose of determining whether a State agency's policies, practices, and procedures are consistent with this chapter. The Appraisal Subcommittee and all agencies, instrumentalities, and federally recognized entities under this chapter shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, or procedures are found to be inconsistent with this chapter.

(b) Disapproval by Appraisal Subcommittee

The Federal financial institutions,[1] regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Resolution Trust Corporation shall accept certifications and licenses awarded by a State appraiser certifying the licensing agency unless the Appraisal Subcommittee issues a written finding that—

(1) the State agency fails to recognize and enforce the standards, requirements, and procedures prescribed pursuant to this chapter;

(2) the State agency is not granted authority by the State which is adequate to permit the agency to carry out its functions under this chapter; or

(3) decisions concerning appraisal standards, appraiser qualifications and supervision of appraiser practices are not made in a manner that carries out the purposes of this chapter.

(c) Rejection of State certifications and licenses

(1) Opportunity to be heard or correct conditions

Before refusing to recognize a State's appraiser certifications or licenses, the Ap-

[1] So in original. The comma probably should not appear.

praisal Subcommittee shall provide that State's certifying and licensing agency a written notice of its intention not to recognize the State's certified or licensed appraisers and ample opportunity to provide rebuttal information or to correct the conditions causing the refusal.

(2) Adoption of procedures

The Appraisal Subcommittee shall adopt written procedures for taking actions described in this section.

(3) Judicial review

A decision of the subcommittee under this section shall be subject to judicial review.

(Pub. L. 101–73, title XI, §1118, Aug. 9, 1989, 103 Stat. 515; Pub. L. 111–203, title XIV, §1473(k), July 21, 2010, 124 Stat. 2196.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1473(k), July 21, 2010, 124 Stat. 2136, 2196, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) by amending subsection (a) to read as follows:

''(a) In general

''The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purposes of determining whether such agency—

''(1) has policies, practices, funding, staffing, and procedures that are consistent with this chapter;

''(2) processes complaints and completes investigations in a reasonable time period;

''(3) appropriately disciplines sanctioned appraisers and appraisal management companies;

''(4) maintains an effective regulatory program; and

''(5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the Appraisal Subcommittee.

The Appraisal Subcommittee shall have the authority to remove a State licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration, and disciplinary proceedings. The Appraisal Subcommittee and all agencies, instrumentalities, and Federally recognized entities under this chapter shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with this chapter. The Appraisal Subcommittee shall have the authority to impose sanctions, as described in this section, against a State agency that fails to have an effective appraiser regulatory program. In determining whether such a program is effective, the Appraisal Subcommittee shall include an analysis of the licensing and certification of appraisers, the registration of appraisal management companies, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and appraisal management companies, the investigation of complaints, and enforcement actions against appraisers and appraisal management companies. The Appraisal Subcommittee shall have the authority to impose interim actions and suspensions against a State agency as an alternative to, or in advance of, the derecognition of a State agency.''; and

(2) in subsection (b)(2), by inserting ''or sufficient funding'' after ''authority''.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original ''this title'', meaning title XI of Pub. L. 101–73, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 3348. Recognition of State certified and licensed appraisers for purposes of this chapter

(a) Effective date for use of certified or licensed appraisers only

(1) In general

Not later than December 31, 1992, all appraisals performed in connection with federally related transactions shall be performed only by individuals certified or licensed in accordance with the requirements of this chapter.

(2) Extension of effective date

Subject to the approval of the council, the Appraisal Subcommittee may extend, until December 31, 1991, the effective date for the use of certified or licensed appraisers if it makes a written finding that a State has made substantial progress in establishing a State certification and licensing system that appears to conform to the provisions of this chapter.

(b) Temporary waiver of appraiser certification or licensing requirements for State having scarcity of qualified appraisers

Subject to the approval of the Council, the Appraisal Subcommittee may waive any requirement relating to certification or licensing of a person to perform appraisals under this chapter if the Appraisal Subcommittee or a State agency whose certifications and licenses are in compliance with this chapter, makes a written determination that there is a scarcity of certified or licensed appraisers to perform appraisals in connection with federally related transactions in a State, or in any geographical political subdivision of a State, leading to significant delays in the performance of such appraisals. The waiver terminates when the Appraisal Subcommittee determines that such significant delays have been eliminated.

(c) Reports to State certifying and licensing agencies

The Appraisal Subcommittee, any other Federal agency or instrumentality, or any federally recognized entity shall report any action of a State certified or licensed appraiser that is contrary to the purposes of this chapter, to the appropriate State agency for a disposition of the subject of the referral. The State agency shall provide the Appraisal Subcommittee or the other Federal agency or instrumentality with a report on its disposition of the matter referred. Subsequent to such disposition, the subcommittee or the agency or instrumentality may take such further action, pursuant to written procedures, it deems necessary to carry out the purposes of this chapter.

(Pub. L. 101–73, title XI, § 1119, Aug. 9, 1989, 103 Stat. 516; Pub. L. 102–233, title VII, § 701(b), Dec. 12, 1991, 105 Stat. 1792; Pub. L. 102–242, title IV, § 472(b), Dec. 19, 1991, 105 Stat. 2386; Pub. L. 102–550, title XVI, § 1617(a), Oct. 28, 1992, 106 Stat. 4096; Pub. L. 111–203, title XIV, § 1473(t)(1), July 21, 2010, 124 Stat. 2199.)

AMENDMENT OF SUBSECTION (a)(2)

Pub. L. 111–203, title XIV, §§ 1400(c), 1473(t)(1), July 21, 2010, 124 Stat. 2136, 2199, provided that subsection (a)(2) of this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, by striking ''council,'' and inserting ''Council,''. See Effective Date of 2010 Amendment note below.

AMENDMENTS

1992—Subsecs. (a)(1), (b). Pub. L. 102–550, § 1617(a), repealed Pub. L. 102–233, § 701(b). See 1991 Amendment note below.

1991—Subsec. (a)(1). Pub. L. 102–242, § 472(b)(1), substituted ''December 31, 1992'' for ''July 1, 1991''. Pub. L. 102–233, § 701(b)(1), which made an identical amendment, was repealed by Pub. L. 102–550, § 1617(a). See Construction of 1991 Amendment note below.

Subsec. (b). Pub. L. 102–242, § 472(b)(2), substituted '', or in any geographical political subdivision of a State, leading to significant delays'' for ''leading to inordinate delays'' in first sentence and ''significant'' for ''inordinate'' in second sentence. Pub. L. 102–233, § 701(b)(2), which made an identical amendment, was repealed by Pub. L. 102–550, § 1617(a). See Construction of 1991 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

CONSTRUCTION OF 1991 AMENDMENT

No amendment to this section by section 701 of Pub. L. 102–233 to be deemed to have taken effect before Oct. 28, 1992, and provisions of law amended by such section 701 to continue in effect as if no such amendment had been made, see section 1617(b) of Pub. L. 102–550, set out as a note under section 3345 of this title.

§ 3349. Violations in obtaining and performing appraisals in federally related transactions

(a) Violations

Except as authorized by the Appraisal Subcommittee in exercising its waiver authority pursuant to section 3348(b) of this title, it shall be a violation of this section—

(1) for a financial institution to seek, obtain, or give money or any other thing of value in exchange for the performance of an appraisal by a person who the institution knows is not a State certified or licensed appraiser in connection with a federally related transaction; and

(2) for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Resolution Trust Corporation to knowingly contract for the performance of any appraisal by a person who is not a State certified or licensed appraiser in connection with a real estate related financial transaction defined in section 3350(5) of this title to which such association or corporation is a party.

(b) Penalties

A financial institution that violates subsection (a)(1) of this section shall be subject to civil penalties under section 1818(i)(2) of this title or section 1786(k)(2) of this title, as appropriate.

(c) Proceeding

A proceeding with respect to a violation of this section shall be an administrative proceeding which may be conducted by a Federal financial institutions regulatory agency in accordance with the procedures set forth in subchapter II of chapter 5 of title 5.

(Pub. L. 101–73, title XI, § 1120, Aug. 9, 1989, 103 Stat. 517.)

§ 3350. Definitions

For purposes of this chapter:

(1) State appraiser certifying and licensing agency

The term ''State appraiser certifying and licensing agency'' means a State agency established in compliance with this chapter.

(2) Appraisal Subcommittee; subcommittee

The terms ''Appraisal Subcommittee'' and ''subcommittee'' mean the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(3) Council

The term ''Council'' means the Federal Financial Institutions Examinations Council.

(4) Federally related transaction

The term ''federally related transaction'' means any real estate-related financial transaction which—

(A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and

(B) requires the services of an appraiser.

(5) Real estate related financial transaction

The term ''real estate-related financial transaction'' means any transaction involving—

(A) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;

(B) the refinancing of real property or interests in real property; and

(C) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(6) Federal financial institutions regulatory agencies

The term ''Federal financial institutions regulatory agencies'' means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporations, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.

(7) Financial institution

The term ''financial institution'' means an insured depository institution as defined in section 1813 of this title or an insured credit union as defined in section 1752 of this title.

(8) Chairperson

The term ''Chairperson'' means the Chairperson of the Appraisal Subcommittee selected by the council.[1]

(9) Foundation

The terms ''Appraisal Foundation'' and ''Foundation'' means the Appraisal Foundation established on November 30, 1987, as a not for profit corporation under the laws of Illinois.

(10) Written appraisal

The term ''written appraisal'' means a written statement used in connection with a federally related transaction that is independently and impartially prepared by a licensed or certified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information.

(Pub. L. 101–73, title XI, §1121, Aug. 9, 1989, 103 Stat. 517; Pub. L. 111–203, title XIV, §1473(f)(4), (t)(2), (3), July 21, 2010, 124 Stat. 2193, 2199.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1473(f)(4), (t)(2), (3) July 21, 2010, 124 Stat. 2136, 2193, 2199, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) in paragraph (6), by striking ''Corporations,'' and inserting ''Corporation,'';

(2) in paragraph (8), by striking ''council'' and inserting ''Council''; and

(3) by adding at the end the following:

''(11) Appraisal management company

''The term 'appraisal management company' means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year—

''(A) to recruit, select, and retain appraisers;

''(B) to contract with licensed and certified appraisers to perform appraisal assignments;

''(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

''(D) to review and verify the work of appraisers.''

See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 3351. Miscellaneous provisions

(a) Temporary practice

(1) In general

A State appraiser certifying or licensing agency shall recognize on a temporary basis the certification or license of an appraiser issued by another State if—

(A) the property to be appraised is part of a federally related transaction,

(B) the appraiser's business is of a temporary nature, and

(C) the appraiser registers with the appraiser certifying or licensing agency in the State of temporary practice.

(2) Fees for temporary practice

A State appraiser certifying or licensing agency shall not impose excessive fees or burdensome requirements, as determined by the Appraisal Subcommittee, for temporary practice under this subsection.

(b) Reciprocity

The Appraisal Subcommittee shall encourage the States to develop reciprocity agreements that readily authorize appraisers who are licensed or certified in one State (and who are in good standing with their State appraiser certifying or licensing agency) to perform appraisals in other States.

(c) Supplemental funding

Funds available to the Federal financial institutions regulatory agencies may be made available to the Federal Financial Institutions Examination Council to support the council's[1] functions under this chapter.

[1] So in original. Probably should be capitalized.

[1] So in original. Probably should be capitalized.

(d) Prohibition against discrimination

Criteria established by the Federal financial institutions regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Resolution Trust Corporation for appraiser qualifications in addition to State certification or licensing shall not exclude a certified or licensed appraiser for consideration for an assignment solely by virtue of membership or lack of membership in any particular appraisal organization.

(e) Other requirements

A corporation, partnership, or other business entity may provide appraisal services in connection with federally related transactions if such appraisal is prepared by individuals certified or licensed in accordance with the requirements of this chapter. An individual who is not a State certified or licensed appraiser may assist in the preparation of an appraisal if—

(1) the assistant is under the direct supervision of a licensed or certified individual; and

(2) the final appraisal document is approved and signed by an individual who is certified or licensed.

(f) Studies

(1) Study

The Appraisal Subcommittee shall—

(A) conduct a study to determine whether real estate sales and financing information and data that is available to real estate appraisers in the States is sufficient to permit appraisers to properly estimate the values of properties in connection with federally related transactions; and

(B) study the feasibility and desirability of extending the provisions of this chapter to the function of personal property appraising and to personal property appraisers in connection with Federal financial and public policy interests.

(2) Report

The Appraisal Subcommittee shall—

(A) report its findings to the Congress with respect to the study described in paragraph (1)(A) no later than 12 months after August 9, 1989, and

(B) report its findings with respect to the study described in paragraph (1)(B) to Congress not later than 18 months after August 9, 1989.

(Pub. L. 101–73, title XI, §1122, Aug. 9, 1989, 103 Stat. 518; Pub. L. 103–325, title III, §315, Sept. 23, 1994, 108 Stat. 2222; Pub. L. 111–203, title XIV, §1473(*l*)–(p), (t)(4), July 21, 2010, 124 Stat. 2196, 2197, 2199.)

AMENDMENT OF SECTION

Pub. L. 111–203, title XIV, §§1400(c), 1473(l)–(p), (t)(4), July 21, 2010, 124 Stat. 2136, 2196, 2197, 2199, provided that this section is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date:

(1) in subsection (a)(1) by moving the left margin of subparagraphs (A), (B), and (C) 2 ems to the right;

(2) by amending subsec. (b) to read as follows:

''(b) Reciprocity

''Notwithstanding any other provisions of this chapter, a federally related transaction shall not be appraised by a certified or licensed appraiser unless the State appraiser certifying or licensing agency of the State certifying or licensing such appraiser has in place a policy of issuing a reciprocal certification or license for an individual from another State when—

''(1) the appraiser licensing and certification program of such other State is in compliance with the provisions of this chapter; and

''(2) the appraiser holds a valid certification from a State whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure.'';

(3) in subsection (c), by substituting ''Financial Institutions Examination Council'' for ''Federal Financial Institutions Examination Council'' and ''the Council's functions'' for ''the council's functions'';

(4) in subsection (d), by substituting ''may include education achieved, experience, sample appraisals, and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a criteria considered, though lack of membership therein shall not be the sole bar against consideration for an assignment under these criteria.'' for ''shall not exclude'' and all that follows through the end; and

(5) by adding at the end the following:

''(g) Appraiser independence monitoring

''The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purpose of determining whether such agency's policies, practices, and procedures are consistent with the purposes of maintaining appraiser independence and whether such State has adopted and maintains effective laws, regulations, and policies aimed at maintaining appraiser independence.

''(h) Approved education

''The Appraisal Subcommittee shall encourage the States to accept courses approved by the Appraiser Qualification Board's Course Approval Program.

''(i) Appraisal complaint national hotline

''If, 6 months after July 21, 2010, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of non-compliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee shall establish and operate such a national hotline, which shall include a toll-free telephone number and an email address. If the Appraisal Subcommittee operates such a national hotline, the Appraisal Subcommittee shall refer complaints for further action to appropriate governmental bodies, including a State appraiser certifying and licensing agency, a financial institution regulator, or other appropriate legal authorities. For complaints referred to State appraiser certifying and licensing agencies or to Federal regulators, the Appraisal Subcommittee

shall have the authority to follow up such complaint referrals in order to determine the status of the resolution of the complaint.''

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–325, § 315(3), redesignated existing provisions as par. (1), inserted heading, redesignated former pars. (1) to (3) as subpars. (A) to (C) of par. (1), and added par. (2).

Subsecs. (b) to (f). Pub. L. 103–325, § 315(1), (2), added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§ 3352. Emergency exceptions for disaster areas

(a) In general

Each Federal financial institutions regulatory agency may, by regulation or order, make exceptions to this chapter, and to standards prescribed pursuant to this chapter, for transactions involving institutions for which the agency is the primary Federal regulator with respect to real property located within a disaster area if the agency—

(1) makes the exception not later than 30 months after the date on which the President determines, pursuant to section 5170 of title 42, that a major disaster exists in the area; and

(2) determines that the exception—

(A) would facilitate recovery from the major disaster; and

(B) is consistent with safety and soundness.

(b) 3-year limit on exceptions

Any exception made under this section shall expire not later than 3 years after the date of the determination referred to in subsection (a)(1) of this section.

(c) Publication required

Any Federal financial institutions regulatory agency shall publish in the Federal Register a statement that—

(1) describes any exception made under this section; and

(2) explains how the exception—

(A) would facilitate recovery from the major disaster; and

(B) is consistent with safety and soundness.

(d) "Disaster area" defined

For purposes of this section, the term ''disaster area'' means an area in which the President, pursuant to section 5170 of title 42, has determined that a major disaster exists.

(Pub. L. 101–73, title XI, § 1123, as added Pub. L. 102–485, § 2, Oct. 23, 1992, 106 Stat. 2771.)

§ 3353. Appraisal management company minimum requirements

(a) In general

The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection shall jointly, by rule, establish minimum requirements to be applied by a State in the registration of appraisal management companies. Such requirements shall include a requirement that such companies—

(1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which such company operates;

(2) verify that only licensed or certified appraisers are used for federally related transactions;

(3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice; and

(4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 1639e of title 15.

(b) Relation to State law

Nothing in this section shall be construed to prevent States from establishing requirements in addition to any rules promulgated under subsection (a).

(c) Federally regulated financial institutions

The requirements of subsection (a) shall apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency. An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal financial institution regulatory agency shall not be required to register with a State.

(d) Registration limitations

An appraisal management company shall not be registered by a State or included on the national registry if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall be of good moral character, as determined by the State appraiser certifying and licensing agency, and shall submit to a background investigation carried out by the State appraiser certifying and licensing agency.

(e) Reporting

The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bu-

reau of Consumer Financial Protection shall jointly promulgate regulations for the reporting of the activities of appraisal management companies to the Appraisal Subcommittee in determining the payment of the annual registry fee.

(f) Effective date

(1) In general

No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date on which the regulations required to be prescribed under subsection (a) are prescribed in final form unless such company is registered with such State or subject to oversight by a Federal financial institutions regulatory agency.

(2) Extension of effective date

Subject to the approval of the Council, the Appraisal Subcommittee may extend by an additional 12 months the requirements for the registration and supervision of appraisal management companies if it makes a written finding that a State has made substantial progress in establishing a State appraisal management company registration and supervision system that appears to conform with the provisions of this chapter.

(Pub. L. 101–73, title XI, § 1124, as added Pub. L. 111–203, title XIV, § 1473(f)(2), July 21, 2010, 124 Stat. 2192.)

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

§ 3354. Automated valuation models used to estimate collateral value for mortgage lending purposes

(a) In general

Automated valuation models shall adhere to quality control standards designed to—

(1) ensure a high level of confidence in the estimates produced by automated valuation models;

(2) protect against the manipulation of data;

(3) seek to avoid conflicts of interest;

(4) require random sample testing and reviews; and

(5) account for any other such factor that the agencies listed in subsection (b) determine to be appropriate.

(b) Adoption of regulations

The Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection, in consultation with the staff of the Appraisal Subcommittee and the Appraisal Standards Board of the Appraisal Foundation, shall promulgate regulations to implement the quality control standards required under this section.

(c) Enforcement

Compliance with regulations issued under this subsection shall be enforced by—

(1) with respect to a financial institution, or subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency, the Federal financial institution regulatory agency that acts as the primary Federal supervisor of such financial institution or subsidiary; and

(2) with respect to other participants in the market for appraisals of 1-to-4 unit single family residential real estate, the Federal Trade Commission, the Bureau of Consumer Financial Protection, and a State attorney general.

(d) Automated valuation model defined

For purposes of this section, the term ''automated valuation model'' means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.

(Pub. L. 101–73, title XI, § 1125, as added Pub. L. 111–203, title XIV, § 1473(q), July 21, 2010, 124 Stat. 2198.)

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

§ 3355. Broker price opinions

(a) General prohibition

In conjunction with the purchase of a consumer's principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property.

(b) Broker price opinion defined

For purposes of this section, the term ''broker price opinion'' means an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model, as defined in section 3354(c)[1] of this title.

(Pub. L. 101–73, title XI, § 1126, as added Pub. L. 111–203, title XIV, § 1473(r), July 21, 2010, 124 Stat. 2198.)

REFERENCES IN TEXT

Section 3354(c) of this title, referred to in subsec. (b), probably means section 3354(d) of this title, which defines ''automated valuation model''.

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

[1] See References in Text note below.

CHAPTER 35—RIGHT TO FINANCIAL PRIVACY

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3401. Definitions.
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3422. Applicability to Securities and Exchange Commission.

§ 3401. Definitions

For the purpose of this chapter, the term—

(1) ''financial institution'', except as provided in section 3414 of this title, means any office of a bank, savings bank, card issuer as defined in section 1602(n) of title 15, industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) ''financial record'' means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution;

(3) ''Government authority'' means any agency or department of the United States, or any officer, employee, or agent thereof;

(4) ''person'' means an individual or a partnership of five or fewer individuals;

(5) ''customer'' means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name;

(6) ''holding company'' means—

(A) any bank holding company (as defined in section 1841 of this title);

(B) any company described in section 1843(f)(1) of this title; and

(C) any savings and loan holding company (as defined in the Home Owners' Loan Act [12 U.S.C. 1461 et seq.]);

(7) ''supervisory agency'' means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary—

(A) the Federal Deposit Insurance Corporation;

(B) Director,[1] Office of Thrift Supervision;

(C) the National Credit Union Administration;

(D) the Board of Governors of the Federal Reserve System;

(E) the Comptroller of the Currency;

(F) the Securities and Exchange Commission;

(G) the Commodity Futures Trading Commission;

(H) the Secretary of the Treasury, with respect to the Bank Secrecy Act (Public Law 91–508, title I) [12 U.S.C. 1951 et seq.] and subchapter II of chapter 53 of title 31; or

(I) any State banking or securities department or agency; and

(8) ''law enforcement inquiry'' means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

(Pub. L. 95–630, title XI, § 1101, Nov. 10, 1978, 92 Stat. 3697; Pub. L. 101–73, title VII, § 744(b), title IX, § 941, Aug. 9, 1989, 103 Stat. 438, 496; Pub. L. 101–647, title XXV, § 2596(c), Nov. 29, 1990, 104 Stat. 4908; Pub. L. 106–102, title VII, § 727(b)(1), Nov. 12, 1999, 113 Stat. 1475; Pub. L. 108–177, title III, § 374(b), Dec. 13, 2003, 117 Stat. 2628; Pub. L. 111–203, title X, § 1099(1), July 21, 2010, 124 Stat. 2105.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1099(1), 1100H, July 21, 2010, 124 Stat. 2105, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) in paragraph (6)—

(A) in subparagraph (A), by inserting ''and'' after the semicolon;

(B) in subparagraph (B), by striking out ''and'' at the end; and

(C) by striking out subparagraph (C); and

(2) in paragraph (7), by striking out subparagraph (B), and adding the following:

''(B) the Bureau of Consumer Financial Protection;''.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Home Owners' Loan Act, referred to in par. (6)(C), is act June 13, 1933, ch. 64, 48 Stat. 128, as amended, which is classified generally to chapter 12 (§ 1461 et seq.) of this title. For complete classification of this Act to the Code, see section 1461 of this title and Tables.

The Bank Secrecy Act, referred to in par. (7)(H), is title I of Pub. L. 91–508, Oct. 26, 1970, 84 Stat. 1114, as amended, which is classified principally to chapter 21 (§ 1951 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1951 of this title and Tables.

CODIFICATION

In par. (7)(H), ''the Bank Secrecy Act (Public Law 91–508, title I) [12 U.S.C. 1951 et seq.] and subchapter II

[1] So in original. Probably should be ''the Director,''.

of chapter 53 of title 31'' substituted for ''the Bank Secrecy Act [12 U.S.C. 1951 et seq.] and the Currency and Foreign Transactions Reporting Act [31 U.S.C. 1051 et seq.] (Public Law 91–508, title I and II)'', on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2003—Par. (1). Pub. L. 108–177 inserted '', except as provided in section 3414 of this title,'' before ''means any office''.

1999—Par. (7)(G) to (I). Pub. L. 106–102 added subpar. (G) and redesignated former subpars. (G) and (H) as (H) and (I), respectively.

1990—Par. (6)(B). Pub. L. 101–647 substituted ''section 1843(f)(1)'' for ''section 1842(f)(1)''.

1989—Par. (1). Pub. L. 101–73, § 744(b)(1), substituted ''savings association'' for ''savings and loan''.

Par. (6). Pub. L. 101–73, § 941(3), added par. (6). Former par. (6) redesignated (7).

Par. (7). Pub. L. 101–73, § 941(1), (2), redesignated former par. (6) as (7) and substituted new introductory provisions for former introductory provisions which read as follows: '' 'supervisory agency' means, with respect to any particular financial institution any of the following which has statutory authority to examine the financial condition or business operations of that institution—''. Former par. (7) redesignated (8).

Pub. L. 101–73, § 744(b)(2), (3), redesignated subpars. (C) to (I) as (B) to (H), respectively, substituted ''Director, Office of Thrift Supervision'' for ''the Federal Home Loan Bank Board'' in subpar. (B), and struck out former subpar. (B) which read as follows: ''the Federal Savings and Loan Insurance Corporation;''.

Par. (8). Pub. L. 101–73, § 941(1), redesignated par. (7) as (8).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Chapter (except for section 3415 of this title) effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

SHORT TITLE

Section 1100 of title XI of Pub. L. 95–630 provided that: ''This title [enacting this chapter] may be cited as the 'Right to Financial Privacy Act of 1978'.''

§ 3402. Access to financial records by Government authorities prohibited; exceptions

Except as provided by section 3403(c) or (d), 3413, or 3414 of this title, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution unless the financial records are reasonably described and—

(1) such customer has authorized such disclosure in accordance with section 3404 of this title;

(2) such financial records are disclosed in response to an administrative subpena or summons which meets the requirements of section 3405 of this title;

(3) such financial records are disclosed in response to a search warrant which meets the requirements of section 3406 of this title;

(4) such financial records are disclosed in response to a judicial subpena which meets the requirements of section 3407 of this title; or

(5) such financial records are disclosed in response to a formal written request which meets the requirements of section 3408 of this title.

(Pub. L. 95–630, title XI, § 1102, Nov. 10, 1978, 92 Stat. 3697.)

§ 3403. Confidentiality of financial records

(a) Release of records by financial institutions prohibited

No financial institution, or officer, employees, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in, the financial records of any customer except in accordance with the provisions of this chapter.

(b) Release of records upon certification of compliance with chapter

A financial institution shall not release the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions of this chapter.

(c) Notification to Government authority of existence of relevant information in records

Nothing in this chapter shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation. Such information may include only the name or other identifying information concerning any individual, corporation, or account involved in and the nature of any suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.

(d) Release of records as incident to perfection of security interest, proving a claim in bankruptcy, collecting a debt, or processing an application with regard to a Government loan, loan guarantee, etc.

(1) Nothing in this chapter shall preclude a financial institution, as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary, from providing copies of any financial record to any court or Government authority.

(2) Nothing in this chapter shall preclude a financial institution, as an incident to processing an application for assistance to a customer in the form of a Government loan, loan guaranty, or loan insurance agreement, or as an incident to processing a default on, or administering, a Government guaranteed or insured loan, from

initiating contact with an appropriate Government authority for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement.

(Pub. L. 95–630, title XI, § 1103, Nov. 10, 1978, 92 Stat. 3698; Pub. L. 99–570, title I, § 1353(a), Oct. 27, 1986, 100 Stat. 3207–21; Pub. L. 100–690, title VI, § 6186(a), Nov. 18, 1988, 102 Stat. 4357.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–690 inserted '', corporation,'' after ''individual''.

1986—Subsec. (c). Pub. L. 99–570 inserted provisions that the disclosure of only the name or other identifying information concerning any individual or account involved in and the nature of any suspected illegal activity is permitted notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary, and any financial institutions, officers, agents, or employees thereof making such disclosure shall not be liable to the customer under any State constitution or any Federal, State, or local law or regulation for such disclosure or failure to notify the customer thereof.

§ 3404. Customer authorizations

(a) Statement furnished by customer to financial institution and Government authority; contents

A customer may authorize disclosure under section 3402(1) of this title if he furnishes to the financial institution and to the Government authority seeking to obtain such disclosure a signed and dated statement which—

(1) authorizes such disclosure for a period not in excess of three months;

(2) states that the customer may revoke such authorization at any time before the financial records are disclosed;

(3) identifies the financial records which are authorized to be disclosed;

(4) specifies the purposes for which, and the Government authority to which, such records may be disclosed; and

(5) states the customer's rights under this chapter.

(b) Authorization as condition of doing business prohibited

No such authorization shall be required as a condition of doing business with any financial institution.

(c) Right of customer to access to financial institution's record of disclosures

The customer has the right, unless the Government authority obtains a court order as provided in section 3409 of this title, to obtain a copy of the record which the financial institution shall keep of all instances in which the customer's record is disclosed to a Government authority pursuant to this section, including the identity of the Government authority to which such disclosure is made.

(Pub. L. 95–630, title XI, § 1104, Nov. 10, 1978, 92 Stat. 3698; Pub. L. 96–3, Mar. 7, 1979, 93 Stat. 5.)

AMENDMENTS

1979—Subsec. (d). Pub. L. 96–3 struck out subsec. (d) which had directed that all financial institutions promptly notify all of their customers of their rights under this chapter, that the Board of Governors of the Federal Reserve System prepare a statement of customers' rights under this chapter, and that the supplying of such a statement to their customers by the financial institutions be deemed compliance with the notification requirement.

§ 3405. Administrative subpena and summons

A Government authority may obtain financial records under section 3402(2) of this title pursuant to an administrative subpena or summons otherwise authorized by law only if—

(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

''Records or information concerning your transactions held by the financial institution named in the attached subpena or summons are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose: If you desire that such records or information not be made available, you must:

''1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

''2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States district courts:

.

''3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

.

''4. Be prepared to come to court and present your position in further detail.

''5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer.''; and

(3) ten days have expired from the date of service of the notice or fourteen days have expired from the date of mailing the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or

the customer challenge provisions of section 3410 of this title have been complied with.

(Pub. L. 95–630, title XI, § 1105, Nov. 10, 1978, 92 Stat. 3699.)

REFERENCES IN TEXT

The Right to Financial Privacy Act of 1978, referred to in par. (2), is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§ 3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

§ 3406. Search warrants

(a) Applicability of Federal Rules of Criminal Procedure

A Government authority may obtain financial records under section 3402(3) of this title only if it obtains a search warrant pursuant to the Federal Rules of Criminal Procedure.

(b) Mailing of copy and notice to customer

No later than ninety days after the Government authority serves the search warrant, it shall mail to the customer's last known address a copy of the search warrant together with the following notice:

''Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date) for the following purpose: . You may have rights under the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.].''.

(c) Court-ordered delays in mailing

Upon application of the Government authority, a court may grant a delay in the mailing of the notice required in subsection (b) of this section, which delay shall not exceed one hundred and eighty days following the service of the warrant, if the court makes the findings required in section 3409(a) of this title. If the court so finds, it shall enter an ex parte order granting the requested delay and an order prohibiting the financial institution from disclosing that records have been obtained or that a search warrant for such records has been executed. Additional delays of up to ninety days may be granted by the court upon application, but only in accordance with this subsection. Upon expiration of the period of delay of notification of the customer, the following notice shall be mailed to the customer along with a copy of the search warrant:

''Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date). Notification was delayed beyond the statutory ninety-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning . You may have rights under the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.].''.

(Pub. L. 95–630, title XI, § 1106, Nov. 10, 1978, 92 Stat. 3700.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The Right to Financial Privacy Act of 1978, referred to in subsecs. (b) and (c), is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§ 3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

§ 3407. Judicial subpena

A Government authority may obtain financial records under section 3402(4) of this title pursuant to judicial subpena only if—

(1) such subpena is authorized by law and there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpena has been served upon the customer or mailed to his last known address on or before the date on which the subpena was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

''Records or information concerning your transactions which are held by the financial institution named in the attached subpena are being sought by this (agency or department or authority) in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose: If you desire that such records or information not be made available, you must:

''1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

''2. File the motion and statement by mailing or delivering them to the clerk of the Court.

''3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to .

''4. Be prepared to come to court and present your position in further detail.

''5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer;'' and

(3) ten days have expired from the date of service or fourteen days from the date of mailing of the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 3410 of this title have been complied with.

(Pub. L. 95–630, title XI, § 1107, Nov. 10, 1978, 92 Stat. 3700.)

REFERENCES IN TEXT

The Right to Financial Privacy Act of 1978, referred to in par. (2), is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§ 3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

§ 3408. Formal written request

A Government authority may request financial records under section 3402(5) of this title pursuant to a formal written request only if—

(1) no administrative summons or subpena authority reasonably appears to be available to that Government authority to obtain financial records for the purpose for which such records are sought;

(2) the request is authorized by regulations promulgated by the head of the agency or department;

(3) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry; and

(4)(A) a copy of the request has been served upon the customer or mailed to his last known address on or before the date on which the request was made to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

''Records or information concerning your transactions held by the financial institution named in the attached request are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose:

''If you desire that such records or information not be made available, you must:

''1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

''2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts:

.

''3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

.

''4. Be prepared to come to court and present your position in further detail.

''5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein may be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer;'' and

(B) ten days have expired from the date of service or fourteen days from the date of mailing of the notice by the customer and within such time period the customer has not filed a sworn statement and an application to enjoin the Government authority in an appropriate court, or the customer challenge provisions of section 3410 of this title have been complied with.

(Pub. L. 95–630, title XI, § 1108, Nov. 10, 1978, 92 Stat. 3701.)

REFERENCES IN TEXT

The Right to Financial Privacy Act of 1978, referred to in par. (4), is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§ 3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

§ 3409. Delayed notice

(a) Application by Government authority; findings

Upon application of the Government authority, the customer notice required under section 3404(c), 3405(2), 3406(c), 3407(2), 3408(4), or 3412(b) of this title may be delayed by order of an appropriate court if the presiding judge or magistrate judge finds that—

(1) the investigation being conducted is within the lawful jurisdiction of the Government authority seeking the financial records;

(2) there is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry; and

(3) there is reason to believe that such notice will result in—

(A) endangering life or physical safety of any person;

(B) flight from prosecution;

(C) destruction of or tampering with evidence;

(D) intimidation of potential witnesses; or

(E) otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same extent as the circumstances in the preceeding[1] subparagraphs.

An application for delay must be made with reasonable specificity.

(b) Grant of delay order; duration and specifications; extensions; copy of request and notice to customer

(1) If the court makes the findings required in paragraphs (1), (2), and (3) of subsection (a) of this section, it shall enter an ex parte order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution from disclosing that records have been obtained or that a request for records has been made, except that, if the records have been sought by a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading with the Enemy Act [12 U.S.C. 95a, 50 U.S.C. App. 5(b)], the International Emergency Economic Powers Act (title II, Public

[1] So in original. Probably should be ''preceding''.

Law 95–223) [50 U.S.C. 1701 et seq.], or section 287c of title 22, and the court finds that there is reason to believe that such notice may endanger the lives or physical safety of a customer or group of customers, or any person or group of persons associated with a customer, the court may specify that the delay be indefinite.

(2) Extensions of the delay of notice provided in paragraph (1) of up to ninety days each may be granted by the court upon application, but only in accordance with this subsection.

(3) Upon expiration of the period of delay of notification under paragraph (1) or (2), the customer shall be served with or mailed a copy of the process or request together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

''Records or information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the Government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] that such notice might (state reason). The purpose of the investigation or official proceeding was .''.

(c) Notice requirement respecting emergency access to financial records

When access to financial records is obtained pursuant to section 3414(b) of this title (emergency access), the Government authority shall, unless a court has authorized delay of notice pursuant to subsections (a) and (b) of this section, as soon as practicable after such records are obtained serve upon the customer, or mail by registered or certified mail to his last known address, a copy of the request to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

''Records concerning your transactions held by the financial institution named in the attached request were obtained by (agency or department) under the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] on (date) for the following purpose: Emergency access to such records was obtained on the grounds that (state grounds).''.

(d) Preservation of memorandums, affidavits, or other papers

Any memorandum, affidavit, or other paper filed in connection with a request for delay in notification shall be preserved by the court. Upon petition by the customer to whom such records pertain, the court may order disclosure of such papers to the petitioner unless the court makes the findings required in subsection (a) of this section.

(Pub. L. 95–630, title XI, § 1109, Nov. 10, 1978, 92 Stat. 3702; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

REFERENCES IN TEXT

The International Emergency Economic Powers Act, referred to in subsec. (b)(1), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§ 1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The Right to Financial Privacy Act of 1978, referred to in subsecs. (b)(3) and (c), is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§ 3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

CHANGE OF NAME

In subsec. (a), ''magistrate judge'' substituted for ''magistrate'' pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3410. Customer challenges

(a) Filing of motion to quash or application to enjoin; proper court; contents

Within ten days of service or within fourteen days of mailing of a subpena, summons, or formal written request, a customer may file a motion to quash an administrative summons or judicial subpena, or an application to enjoin a Government authority from obtaining financial records pursuant to a formal written request, with copies served upon the Government authority. A motion to quash a judicial subpena shall be filed in the court which issued the subpena. A motion to quash an administrative summons or an application to enjoin a Government authority from obtaining records pursuant to a formal written request shall be filed in the appropriate United States district court. Such motion or application shall contain an affidavit or sworn statement—

(1) stating that the applicant is a customer of the financial institution from which financial records pertaining to him have been sought; and

(2) stating the applicant's reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the Government authority in its notice, or that there has not been substantial compliance with the provisions of this chapter.

Service shall be made under this section upon a Government authority by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, ''delivery'' has the meaning stated in rule 5(b) of the Federal Rules of Civil Procedure.

(b) Filing of response; additional proceedings

If the court finds that the customer has complied with subsection (a) of this section, it shall order the Government authority to file a sworn response, which may be filed in camera if the Government includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided within

seven calendar days of the filing of the Government's response.

(c) Decision of court

If the court finds that the applicant is not the customer to whom the financial records sought by the Government authority pertain, or that there is a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, it shall deny the motion or application, and, in the case of an administrative summons or court order other than a search warrant, order such process enforced. If the court finds that the applicant is the customer to whom the records sought by the Government authority pertain, and that there is not a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed or shall enjoin the Government authority's formal written request.

(d) Appeals

A court ruling denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer. An appeal of a ruling denying a motion or application under this section may be taken by the customer (1) within such period of time as provided by law as part of any appeal from a final order in any legal proceeding initiated against him arising out of or based upon the financial records, or (2) within thirty days after a notification that no legal proceeding is contemplated against him. The Government authority obtaining the financial records shall promptly notify a customer when a determination has been made that no legal proceeding against him is contemplated. After one hundred and eighty days from the denial of the motion or application, if the Government authority obtaining the records has not initiated such a proceeding, a supervisory official of the Government authority shall certify to the appropriate court that no such determination has been made. The court may require that such certifications be made, at reasonable intervals thereafter, until either notification to the customer has occurred or a legal proceeding is initiated as described in clause (A).[1]

(e) Sole judicial remedy available to customer

The challenge procedures of this chapter constitute the sole judicial remedy available to a customer to oppose disclosure of financial records pursuant to this chapter.

(f) Affect on challenges by financial institutions

Nothing in this chapter shall enlarge or restrict any rights of a financial institution to challenge requests for records made by a Government authority under existing law. Nothing in this chapter shall entitle a customer to assert the rights of a financial institution.

(Pub. L. 95–630, title XI, §1110, Nov. 10, 1978, 92 Stat. 3703.)

[1] So in original. Section does not contain a clause (A).

REFERENCES IN TEXT

Rule 5(b) of the Federal Rules of Civil Procedure, referred to in subsec. (a), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3411. Duty of financial institutions

Upon receipt of a request for financial records made by a Government authority under section 3405 or 3407 of this title, the financial institution shall, unless otherwise provided by law, proceed to assemble the records requested and must be prepared to deliver the records to the Government authority upon receipt of the certificate required under section 3403(b) of this title.

(Pub. L. 95–630, title XI, §1111, Nov. 10, 1978, 92 Stat. 3705.)

§ 3412. Use of information

(a) Transfer of financial records to other agencies or departments; certification

Financial records originally obtained pursuant to this chapter shall not be transferred to another agency or department unless the transferring agency or department certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry, or intelligence or counterintelligence activity, investigation or analysis related to international terrorism within the jurisdiction of the receiving agency or department.

(b) Mailing of copy of certification and notice to customer

When financial records subject to this chapter are transferred pursuant to subsection (a) of this section, the transferring agency or department shall, within fourteen days, send to the customer a copy of the certification made pursuant to subsection (a) of this section and the following notice, which shall state the nature of the law enforcement inquiry with reasonable specificity: ''Copies of, or information contained in, your financial records lawfully in possession of have been furnished to pursuant to the Right of Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose: . If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974 [5 U.S.C. 552a].''

(c) Court-ordered delays in mailing

Notwithstanding subsection (b) of this section, notice to the customer may be delayed if the transferring agency or department has obtained a court order delaying notice pursuant to section 3409(a) and (b) of this title and that order is still in effect, or if the receiving agency or department obtains a court order authorizing a delay in notice pursuant to section 3409(a) and (b) of this title. Upon the expiration of any such period of delay, the transferring agency or department shall serve to the customer the notice specified in subsection (b) of this section and the agency or department that obtained the court order authorizing a delay in notice pursuant to section 3409(a) and (b) of this title shall serve to the customer the notice specified in section 3409(b) of this title.

(d) Exchanges of examination reports by supervisory agencies; transfer of financial records to defend customer action; withholding of information

Nothing in this chapter prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency. Nothing in this chapter prohibits the transfer of a customer's financial records needed by counsel for a Government authority to defend an action brought by the customer. Nothing in this chapter shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee or subcommittee of the Congress.

(e) Exchange of records, reports, or other information

Notwithstanding section 3401(6)[1] of this title or any other provision of law, the exchange of financial records, examination reports or other information with respect to a financial institution, holding company, or any subsidiary of a depository institution or holding company, among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council, the Securities and Exchange Commission, the Federal Trade Commission, and the Commodity Futures Trading Commission is permitted.

(f) Transfer to Attorney General or Secretary of the Treasury

(1) In general

Nothing in this chapter shall apply when financial records obtained by an agency or department of the United States are disclosed or transferred to the Attorney General or the Secretary of the Treasury upon the certification by a supervisory level official of the transferring agency or department that—

(A) there is reason to believe that the records may be relevant to a violation of Federal criminal law; and

(B) the records were obtained in the exercise of the agency's or department's supervisory or regulatory functions.

(2) Limitation on use

Records so transferred shall be used only for criminal investigative or prosecutive purposes, for civil actions under section 1833a of this title, or for forfeiture under sections[2] 981 or 982 of title 18 by the Department of Justice and only for criminal investigative purposes relating to money laundering and other financial crimes by the Department of the Treasury and shall, upon completion of the investigation or prosecution (including any appeal), be returned only to the transferring agency or department. No agency or department so transferring such records shall be deemed to have waived any privilege applicable to those records under law.

(Pub. L. 95–630, title XI, § 1112, Nov. 10, 1978, 92 Stat. 3705; Pub. L. 97–320, title IV, § 432(a), Oct. 15, 1982, 96 Stat. 1527; Pub. L. 100–690, title VI, § 6186(b), Nov. 18, 1988, 102 Stat. 4357; Pub. L. 101–73, title IX, § 944, Aug. 9, 1989, 103 Stat. 498; Pub. L. 102–242, title IV, § 411(1), Dec. 19, 1991, 105 Stat. 2375; Pub. L. 102–550, title XV, § 1516, title XVI, § 1606(b), Oct. 28, 1992, 106 Stat. 4059, 4087; Pub. L. 106–102, title II, § 231(b)(2), title VII, § 727(b)(2), Nov. 12, 1999, 113 Stat. 1407, 1475; Pub. L. 107–56, title III, § 358(f)(1), Oct. 26, 2001, 115 Stat. 327; Pub. L. 109–455, § 10, Dec. 22, 2006, 120 Stat. 3381; Pub. L. 111–203, title X, § 1099(2), July 21, 2010, 124 Stat. 2105.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1099(2), 1100H, July 21, 2010, 124 Stat. 2105, 2113, provided that, effective on the designated transfer date, subsection (e) of this section is amended by substituting ''the Commodity Futures Trading Commission, and the Bureau of Consumer Financial Protection is permitted'' for ''and the Commodity Futures Trading Commission is permitted''. See Effective Date of 2010 Amendment note below.

For termination of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

REFERENCES IN TEXT

The Right of Financial Privacy Act of 1978, and the Financial Privacy Act of 1978, referred to in subsec. (b), both probably mean title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, known as the Right to Financial Privacy Act of 1978, which is classified generally to this chapter (§ 3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

The Privacy Act of 1974, referred to in subsec. (b), is Pub. L. 93–579, Dec. 31, 1974, 88 Stat. 1896, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5.

Section 3401(6) of this title, referred to in subsec. (e), was redesignated section 3401(7) of this title by Pub. L. 101–73, title IX, § 941(1), Aug. 9, 1989, 103 Stat. 496.

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–455, §§ 10, 13, temporarily inserted ''the Federal Trade Commission,'' after ''the Securities and Exchange Commission,''. See Termination Date of 2006 Amendment note below.

2001—Subsec. (a). Pub. L. 107–56 inserted '', or intelligence or counterintelligence activity, investigation or analysis related to international terrorism'' after ''legitimate law enforcement inquiry''.

1999—Subsec. (e). Pub. L. 106–102 inserted '', examination reports'' after ''financial records'' and substituted ''provision of law,'' for ''provision of this chapter,'' and '', the Securities and Exchange Commission, and the Commodity Futures Trading Commission'' for ''and the Securities and Exchange Commission''.

1992—Subsec. (f)(1). Pub. L. 102–550, § 1516(1), inserted ''or the Secretary of the Treasury'' after ''the Attorney General''.

Subsec. (f)(2). Pub. L. 102–550, § 1606(b), inserted a comma before ''for civil actions'' and made technical amendment to reference to sections 981 or 982 of title 18.

Pub. L. 102–550, § 1516(2), inserted ''and only for criminal investigative purposes relating to money laundering and other financial crimes by the Department of the Treasury'' after ''the Department of Justice''.

1991—Subsec. (f)(2). Pub. L. 102–242 inserted ''for civil actions under section 1833a of this title, or for forfeiture under sections 981 or 982 of title 18'' after ''or prosecutive purposes'' and inserted at end ''No agency or de-

[1] See References in Text note below.

[2] So in original. Probably should be ''section''.

partment so transferring such records shall be deemed to have waived any privilege applicable to those records under law.''

1989—Subsec. (e). Pub. L. 101–73, § 944(1), which directed the insertion of '', holding company, or any subsidiary of a depository institution or holding company,'' after ''with respect to a depository institution'', was executed by making the insertion after ''with respect to a financial institution'', as the probable intent of Congress.

Pub. L. 101–73, § 944(2), substituted ''Council and the Securities and Exchange Commission'' for ''Council''.

1988—Subsec. (f). Pub. L. 100–690 added subsec. (f).

1982—Subsec. (e). Pub. L. 97–320 added subsec. (e).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

TERMINATION DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–455 to cease to have effect 7 years after Dec. 22, 2006, see section 13 of Pub. L. 109–455, set out as a note under section 44 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–56 applicable with respect to reports filed or records maintained on, before, or after Oct. 26, 2001, see section 358(h) of Pub. L. 107–56, set out as a note under section 1829b of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1606(b) of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

§ 3413. Exceptions

(a) Disclosure of financial records not identified with particular customers

Nothing in this chapter prohibits the disclosure of any financial records or information which is not identified with or identifiable as being derived from the financial records of a particular customer.

(b) Disclosure to, or examination by, supervisory agency pursuant to exercise of supervisory, regulatory, or monetary functions with respect to financial institutions, holding companies, subsidiaries, institution-affiliated parties, or other persons

This chapter shall not apply to the examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions, including conservatorship or receivership functions, with respect to any financial institution, holding company, subsidiary of a financial institution or holding company, institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to a financial institution, holding company, or subsidiary, or other person participating in the conduct of the affairs thereof.

(c) Disclosure pursuant to title 26

Nothing in this chapter prohibits the disclosure of financial records in accordance with procedures authorized by title 26.

(d) Disclosure pursuant to Federal statute or rule promulgated thereunder

Nothing in this chapter shall authorize the withholding of financial records or information required to be reported in accordance with any Federal statute or rule promulgated thereunder.

(e) Disclosure pursuant to Federal Rules of Criminal Procedure or comparable rules of other courts

Nothing in this chapter shall apply when financial records are sought by a Government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the Government authority and the customer are parties.

(f) Disclosure pursuant to administrative subpena issued by administrative law judge

Nothing in this chapter shall apply when financial records are sought by a Government authority pursuant to an administrative subpena issued by an administrative law judge in an adjudicatory proceeding subject to section 554 of title 5 and to which the Government authority and the customer are parties.

(g) Disclosure pursuant to legitimate law enforcement inquiry respecting name, address, account number, and type of account of particular customers

The notice requirements of this chapter and sections 3410 and 3412 of this title shall not apply when a Government authority by a means described in section 3402 of this title and for a legitimate law enforcement inquiry is seeking only the name, address, account number, and type of account of any customer or ascertainable group of customers associated (1) with a financial transaction or class of financial transactions, or (2) with a foreign country or subdivision thereof in the case of a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading with the Enemy Act [12 U.S.C. 95a, 50 U.S.C. App. 5(b)]; the International Emergency Economic Powers Act (title II, Public Law 95–223) [50 U.S.C. 1701 et seq.]; or section 287c of title 22.

(h) Disclosure pursuant to lawful proceeding, investigation, etc., directed at financial institution or legal entity or consideration or administration respecting Government loans, loan guarantees, etc.

(1) Nothing in this chapter (except sections 3403, 3417 and 3418 of this title) shall apply when financial records are sought by a Government authority—

(A) in connection with a lawful proceeding, investigation, examination, or inspection directed at a financial institution (whether or not such proceeding, investigation, examination, or inspection is also directed at a customer) or at a legal entity which is not a customer; or

(B) in connection with the authority's consideration or administration of assistance to the customer in the form of a Government loan, loan guaranty, or loan insurance program.

(2) When financial records are sought pursuant to this subsection, the Government authority shall submit to the financial institution the certificate required by section 3403(b) of this title.

For access pursuant to paragraph (1)(B), no further certification shall be required for subsequent access by the certifying Government authority during the term of the loan, loan guaranty, or loan insurance agreement.

(3) After the effective date of this chapter, whenever a customer applies for participation in a Government loan, loan guaranty, or loan insurance program, the Government authority administering such program shall give the customer written notice of the authority's access rights under this subsection. No further notification shall be required for subsequent access by that authority during the term of the loan, loan guaranty, or loan insurance agreement.

(4) Financial records obtained pursuant to this subsection may be used only for the purpose for which they were originally obtained, and may be transferred to another agency or department only when the transfer is to facilitate a lawful proceeding, investigation, examination, or inspection directed at a financial institution (whether or not such proceeding, investigation, examination, or inspection is also directed at a customer), or at a legal entity which is not a customer, except that—

(A) nothing in this paragraph prohibits the use or transfer of a customer's financial records needed by counsel representing a Government authority in a civil action arising from a Government loan, loan guaranty, or loan insurance agreement; and

(B) nothing in this paragraph prohibits a Government authority providing assistance to a customer in the form of a loan, loan guaranty, or loan insurance agreement from using or transferring financial records necessary to process, service or foreclose a loan, or to collect on an indebtedness to the Government resulting from a customer's default.

(5) Notification that financial records obtained pursuant to this subsection may relate to a potential civil, criminal, or regulatory violation by a customer may be given to an agency or department with jurisdiction over that violation, and such agency or department may then seek access to the records pursuant to the provisions of this chapter.

(6) Each financial institution shall keep a notation of each disclosure made pursuant to paragraph (1)(B) of this subsection, including the date of such disclosure and the Government authority to which it was made. The customer shall be entitled to inspect this information.

(i) Disclosure pursuant to issuance of subpena or court order respecting grand jury proceeding

Nothing in this chapter (except sections 3415 and 3420 of this title) shall apply to any subpena or court order issued in connection with proceedings before a grand jury, except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 3409 of this title.

(j) Disclosure pursuant to proceeding, investigation, etc., instituted by Government Accountability Office and directed at a government authority

This chapter shall not apply when financial records are sought by the Government Accountability Office pursuant to an authorized proceeding, investigation, examination or audit directed at a government authority.

(k) Disclosure necessary for proper administration of programs of certain Government authorities

(1) Nothing in this chapter shall apply to the disclosure by the financial institution of the name and address of any customer to the Department of the Treasury, the Social Security Administration, or the Railroad Retirement Board, where the disclosure of such information is necessary to, and such information is used solely for the purpose of, the proper administration of section 1441 of title 26, title II of the Social Security Act [42 U.S.C. 401 et seq.], or the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

(2) Nothing in this chapter shall apply to the disclosure by the financial institution of information contained in the financial records of any customer to any Government authority that certifies, disburses, or collects payments, where the disclosure of such information is necessary to, and such information is used solely for the purpose of—

(A) verification of the identity of any person or proper routing and delivery of funds in connection with the issuance of a Federal payment or collection of funds by a Government authority; or

(B) the investigation or recovery of an improper Federal payment or collection of funds or an improperly negotiated Treasury check.

(3) Notwithstanding any other provision of law, a request authorized by paragraph (1) or (2) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing information contained in the financial records of the customer to the Government authority requesting the information, and the financial institution and its agents shall be barred from redisclosure of such information. Any Government authority receiving information pursuant to paragraph (1) or (2) may not disclose or use the information, except for the purposes set forth in such paragraph.

***(l)* Crimes against financial institutions by insiders**

Nothing in this chapter shall apply when any financial institution or supervisory agency provides any financial record of any officer, director, employee, or controlling shareholder (within the meaning of subparagraph (A) or (B) of section 1841(a)(2) of this title or subparagraph (A) or (B) of section 1730a(a)(2) of this title) of such institution, or of any major borrower from such institution who there is reason to believe may be acting in concert with any such officer, director, employee, or controlling shareholder, to the Attorney General of the United States, to a State law enforcement agency, or, in the case of

a possible violation of subchapter II of chapter 53 of title 31, to the Secretary of the Treasury if there is reason to believe that such record is relevant to a possible violation by such person of—

(1) any law relating to crimes against financial institutions or supervisory agencies by directors, officers, employees, or controlling shareholders of, or by borrowers from, financial institutions; or

(2) any provision of subchapter II of chapter 53 of title 31 or of section 1956 or 1957 of title 18.

No supervisory agency which transfers any such record under this subsection shall be deemed to have waived any privilege applicable to that record under law.

(m) Disclosure to, or examination by, employees or agents of Board of Governors of Federal Reserve System or Federal Reserve Bank

This chapter shall not apply to the examination by or disclosure to employees or agents of the Board of Governors of the Federal Reserve System or any Federal Reserve Bank of financial records or information in the exercise of the Federal Reserve System's authority to extend credit to the financial institutions or others.

(n) Disclosure to, or examination by, Resolution Trust Corporation or its employees or agents

This chapter shall not apply to the examination by or disclosure to the Resolution Trust Corporation or its employees or agents of financial records or information in the exercise of its conservatorship, receivership, or liquidation functions with respect to a financial institution.

***(o)* Disclosure to, or examination by, Federal Housing Finance Agency or Federal home loan banks**

This chapter shall not apply to the examination by or disclosure to the Federal Housing Finance Agency or any of the Federal home loan banks of financial records or information in the exercise of the Federal Housing Finance Agency's authority to extend credit (either directly or through a Federal home loan bank) to financial institutions or others.

(p) Access to information necessary for administration of certain veteran benefits laws

(1) Nothing in this chapter shall apply to the disclosure by the financial institution of the name and address of any customer to the Department of Veterans Affairs where the disclosure of such information is necessary to, and such information is used solely for the purposes of, the proper administration of benefits programs under laws administered by the Secretary.

(2) Notwithstanding any other provision of law, any request authorized by paragraph (1) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing the customer's name and address to the Department of Veterans Affairs and shall be barred from redisclosure by the financial institution or its agents.

(q) Disclosure pursuant to Federal contractor-issued travel charge card

Nothing in this chapter shall apply to the disclosure of any financial record or information to a Government authority in conjunction with a Federal contractor-issued travel charge card issued for official Government travel.

(Pub. L. 95–630, title XI, §1113, Nov. 10, 1978, 92 Stat. 3706; Pub. L. 98–21, title I, §121(c)(3)(C), Apr. 20, 1983, 97 Stat. 83; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–570, title I, §1353(b), Oct. 27, 1986, 100 Stat. 3207–22; Pub. L. 100–690, title VI, §6186(c), Nov. 18, 1988, 102 Stat. 4358; Pub. L. 101–73, title IX, §942, Aug. 9, 1989, 103 Stat. 497; Pub. L. 101–647, title I, §104, Nov. 29, 1990, 104 Stat. 4791; Pub. L. 102–242, title IV, §411(2)–(4), Dec. 19, 1991, 105 Stat. 2375; Pub. L. 102–568, title VI, §603(a), Oct. 29, 1992, 106 Stat. 4342; Pub. L. 105–264, §2(c)(1), Oct. 19, 1998, 112 Stat. 2351; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–234, title XIV, §14205, May 22, 2008, 122 Stat. 1459; Pub. L. 110–246, §4(a), title XIV, §14205, June 18, 2008, 122 Stat. 1664, 2221; Pub. L. 110–289, div. A, title II, §1216(a), July 30, 2008, 122 Stat. 2792; Pub. L. 111–203, title X, §1099(3), July 21, 2010, 124 Stat. 2105.)

ADDITION OF SUBSECTION (r)

Pub. L. 111–203, title X, §§1099(3), 1100H, July 21, 2010, 124 Stat. 2105, 2113, provided that, effective on the designated transfer date, this section is amended by adding at the end the following new subsection:

''(r) Disclosure to the Bureau of Consumer Financial Protection

''Nothing in this chapter shall apply to the examination by or disclosure to the Bureau of Consumer Financial Protection of financial records or information in the exercise of its authority with respect to a financial institution.''

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (e), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Criminal Procedure, referred to in subsec. (e), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The International Emergency Economic Powers Act, referred to in subsec. (g), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The effective date of this chapter, referred to in subsec. (h)(3), is the date upon the expiration of 120 days after Nov. 10, 1978. See section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

The Social Security Act, referred to in subsec. (k)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of such Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (k)(1), is act Aug. 29, 1935, ch. 812, as amended, generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (k). Pub. L. 110–246, § 14205, inserted heading, added pars. (2) and (3), and struck out former par. (2) which read as follows: ''Notwithstanding any other provision of law, any request authorized by paragraph (1) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing the customer's name and address to the Department of the Treasury, the Social Security Administration, or the Railroad Retirement Board and shall be barred from redisclosure by the financial institution or its agents.''

Subsec. (*o*). Pub. L. 110–289 substituted ''Federal Housing Finance Agency'' for ''Federal Housing Finance Board'' and ''Federal Housing Finance Agency's'' for ''Federal Housing Finance Board's''.

2004—Subsec. (j). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1998—Subsec. (q). Pub. L. 105–264 added subsec. (q).

1992—Subsec. (p). Pub. L. 102–568 added subsec. (p).

1991—Subsec. (h)(1)(A), (4). Pub. L. 102–242, § 411(2), (3), substituted ''a financial institution (whether or not such proceeding, investigation, examination, or inspection is also directed at a customer)'' for ''the financial institution in possession of such records''.

Subsec. (*l*). Pub. L. 102–242, § 411(4), inserted at end ''No supervisory agency which transfers any such record under this subsection shall be deemed to have waived any privilege applicable to that record under law.''

1990—Subsec. (*l*)(2). Pub. L. 101–647 inserted before period at end ''or of section 1956 or 1957 of title 18''.

1989—Subsec. (b). Pub. L. 101–73, § 942(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Nothing in this chapter prohibits examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.''

Subsecs. (m) to (*o*). Pub. L. 101–73, § 942(2), added subsecs. (m) to (*o*).

1988—Subsec. (*l*). Pub. L. 100–690 added subsec. (*l*).

1986—Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (i). Pub. L. 99–570 inserted '', except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 3409 of this title''.

Subsec. (k)(1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1983—Subsec. (k). Pub. L. 98–21 added subsec. (k).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–264 effective Oct. 1, 1983, and applicable to any records created pursuant to United States Travel and Transportation Payment and Expense Control System or any Federal contractor-issued travel charge card issued for official Government travel, see section 2(c)(2) of Pub. L. 105–264, set out as a Requiring Use of Travel Charge Card note under section 5701 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of Title 26, Internal Revenue Code.

§ 3414. Special procedures

(a) Access to financial records for certain intelligence and protective purposes

(1) Nothing in this chapter (except sections 3415, 3417, 3418, and 3421[1] of this title) shall apply to the production and disclosure of financial records pursuant to requests from—

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities;

(B) the Secret Service for the purpose of conducting its protective functions (18 U.S.C. 3056; 18 U.S.C. 3056A, Public Law 90–331,[1] as amended); or

(C) a Government authority authorized to conduct investigations of, or intelligence or counterintelligence analyses related to, international terrorism for the purpose of conducting such investigations or analyses.

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority.

(3)(A) If the Government authority described in paragraph (1) or the Secret Service, as the case may be, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no financial institution, or officer, employee, or agent of such institution, shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the Government authority or the Secret Service has sought or obtained access to a customer's financial records.

(B) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under subparagraph (A).

(C) Any recipient disclosing to those persons necessary to comply with the request or to an

[1] See References in Text note below.

attorney to obtain legal advice or legal assistance with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under subparagraph (A).

(D) At the request of the authorized Government authority or the Secret Service, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized Government authority or the Secret Service the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the requesting official of the authorized Government authority or the Secret Service of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request for financial records under this subsection.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director) certifies in writing to the financial institution that such records are sought for foreign counter intelligence[2] purposes to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(B) The Federal Bureau of Investigation may disseminate information obtained pursuant to this paragraph only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

(C) On the dates provided in section 415b of title 50, the Attorney General shall fully inform the congressional intelligence committees (as defined in section 401a of title 50) concerning all requests made pursuant to this paragraph.

(D) PROHIBITION OF CERTAIN DISCLOSURE.—

(i) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no financial institution, or officer, employee, or agent of such institution, shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under subparagraph (A).

(ii) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under clause (i).

(iii) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under clause (i).

(iv) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the Director or such designee of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request for financial records under subparagraph (A).

(b) Emergency access to financial records

(1) Nothing in this chapter shall prohibit a Government authority from obtaining financial records from a financial institution if the Government authority determines that delay in obtaining access to such records would create imminent danger of—

(A) physical injury to any person;

(B) serious property damage; or

(C) flight to avoid prosecution.

(2) In the instances specified in paragraph (1), the Government shall submit to the financial institution the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority.

(3) Within five days of obtaining access to financial records under this subsection, the Government authority shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the Government authority setting forth the grounds for the emergency access. The Government authority shall thereafter comply with the notice provisions of section 3409(c) of this title.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

[2] So in original. Probably should be ''counterintelligence''.

(d)[3] Definition of "financial institution"

For purposes of this section, and sections 3415 and 3417 of this title insofar as they relate to the operation of this section, the term ''financial institution'' has the same meaning as in subsections (a)(2) and (c)(1) of section 5312 of title 31, except that, for purposes of this section, such term shall include only such a financial institution any part of which is located inside any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands.

(Pub. L. 95–630, title XI, § 1114, Nov. 10, 1978, 92 Stat. 3707; Pub. L. 97–320, title IV, § 432(b), Oct. 15, 1982, 96 Stat. 1527; Pub. L. 99–569, title IV, § 404, Oct. 27, 1986, 100 Stat. 3197; Pub. L. 107–56, title III, § 358(f)(2), title V, § 505(b), Oct. 26, 2001, 115 Stat. 327, 365; Pub. L. 107–306, title VIII, § 811(b)(9), Nov. 27, 2002, 116 Stat. 2426; Pub. L. 108–177, title III, § 374(a), Dec. 13, 2003, 117 Stat. 2628; Pub. L. 109–177, title I, § 116(d), (e), title VI, § 605(e)(1), Mar. 9, 2006, 120 Stat. 215, 216, 255; Pub. L. 109–178, § 4(d), Mar. 9, 2006, 120 Stat. 280.)

REFERENCES IN TEXT

Section 3421 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 104–66, title III, § 3001(d), Dec. 21, 1995, 109 Stat. 734.

Public Law 90–331, as amended, referred to in subsec. (a)(1)(B), is Pub. L. 90–331, June 6, 1968, 82 Stat. 170, as amended, which was set out as a note under section 3056 of Title 18, Crimes and Criminal Procedure, prior to repeal by Pub. L. 98–587, § 2, Oct. 30, 1984, 98 Stat. 3111. See 18 U.S.C. 3056(a)(7).

AMENDMENTS

2006—Subsec. (a)(1)(B). Pub. L. 109–177, § 605(e)(1), which directed the amendment of section 3414 of title 12, United States Code, by substituting ''18 U.S.C. 3056A'' for ''3 U.S.C. 202'' in subsec. (a)(1)(B), was executed to this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress.

Subsec. (a)(3). Pub. L. 109–177, § 116(d), which directed the general amendment of section 1114(a)(3) of the Right to Financial Privacy Act, was executed to subsec. (a)(3) of this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress. Prior to amendment, par. (3) read as follows: ''No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that a Government authority described in paragraph (1) has sought or obtained access to a customer's financial records.''

Subsec. (a)(3)(D). Pub. L. 109–178, § 4(d)(1), which directed the general amendment of subsec. (a)(3)(D) of section 1114(a)(3) of the Right to Financial Privacy Act, was executed to subsec. (a)(3)(D) of this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress. Prior to amendment, subpar. (D) read as follows: ''At the request of the authorized Government agency or the Secret Service, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized Government agency or the Secret Service the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform such requesting official that the person intends to consult an attorney to obtain legal advice or legal assistance.''

Subsec. (a)(5)(D). Pub. L. 109–177, § 116(e), which directed the general amendment of section 1114(a)(5)(D) of the Right to Financial Privacy Act, was executed to subsec. (a)(5)(D) of this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress. Prior to amendment, subpar. (D) read as follows: ''No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph.''

Subsec. (a)(5)(D)(iv). Pub. L. 109–178, § 4(d)(2), which directed the general amendment of clause (iv) of section 1114(a)(5)(D) of the Right to Financial Privacy Act, was executed to clause (iv) of subsec. (a)(5)(D) of this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress. Prior to amendment, cl. (iv) read as follows: ''At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.''

2003—Subsec. (d). Pub. L. 108–177 added subsec. (d).

2002—Subsec. (a)(5)(C). Pub. L. 107–306 substituted ''On the dates provided in section 415b of title 50, the Attorney General shall fully inform the congressional intelligence committees (as defined in section 401a of title 50)'' for ''On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate''.

2001—Subsec. (a)(1)(C). Pub. L. 107–56, § 358(f)(2), added subpar. (C).

Subsec. (a)(5)(A). Pub. L. 107–56, § 505(b), inserted ''in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director'' after ''Director's designee'' and substituted ''sought for foreign counter intelligence purposes to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States'' for ''sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power as defined in section 1801 of title 50''.

1986—Subsec. (a)(5). Pub. L. 99–569 added par. (5).

1982—Subsec. (b)(2). Pub. L. 97–320 struck out ''of'' after ''financial institution''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–178, Mar. 9, 2006, 120 Stat. 282, provided in part that: ''This Act [amending this section, sections 1681u and 1681v of Title 15, Commerce and Trade, section 2709 of Title 18, Crimes and Criminal Procedure, and sections 436 and 1861 of Title 50, War and National Defense, and enacting provisions set out as a note under section 1 of Title 18] shall become effective immediately upon enactment [Mar. 9, 2006].''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 358(f)(2) of Pub. L. 107–56 applicable with respect to reports filed or records maintained on, before, or after Oct. 26, 2001, see section 358(h) of Pub. L. 107–56, set out as a note under section 1829b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, includ-

[3] So in original. No subsec. (c) has been enacted.

ing the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 3415. Cost reimbursement

Except for records obtained pursuant to section 3403(d) or 3413(a) through (h) of this title, or as otherwise provided by law, a Government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer and in accordance with procedures established by this chapter a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. The Board of Governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.

(Pub. L. 95–630, title XI, § 1115(a), Nov. 10, 1978, 92 Stat. 3708.)

EFFECTIVE DATE

Section 1115(b) of Pub. L. 95–630 provided that: ''This section shall take effect on October 1, 1979.''

§ 3416. Jurisdiction

An action to enforce any provision of this chapter may be brought in any appropriate United States district court without regard to the amount in controversy within three years from the date on which the violation occurs or the date of discovery of such violation, whichever is later.

(Pub. L. 95–630, title XI, § 1116, Nov. 10, 1978, 92 Stat. 3708.)

§ 3417. Civil penalties

(a) Liability of agencies or departments of United States or financial institutions

Any agency or department of the United States or financial institution obtaining or disclosing financial records or information contained therein in violation of this chapter is liable to the customer to whom such records relate in an amount equal to the sum of—

(1) $100 without regard to the volume of records involved;

(2) any actual damages sustained by the customer as a result of the disclosure;

(3) such punitive damages as the court may allow, where the violation is found to have been willful or intentional; and

(4) in the case of any successful action to enforce liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Disciplinary action for willful or intentional violation of chapter by agents or employees of department or agency

Whenever the court determines that any agency or department of the United States has violated any provision of this chapter and the court finds that the circumstances surrounding the violation raise questions of whether an officer or employee of the department or agency acted willfully or intentionally with respect to the violation, the Director of the Office of Personnel Management shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. The Director after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Director recommends.

(c) Good faith defense

Any financial institution or agent or employee thereof making a disclosure of financial records pursuant to this chapter in good-faith reliance upon a certificate by any Government authority or pursuant to the provisions of section 3413(*l*) of this title shall not be liable to the customer for such disclosure under this chapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(d) Exclusive judicial remedies and sanctions

The remedies and sanctions described in this chapter shall be the only authorized judicial remedies and sanctions for violations of this chapter.

(Pub. L. 95–630, title XI, § 1117, Nov. 10, 1978, 92 Stat. 3708; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36067, 92 Stat. 3783; Pub. L. 100–690, title VI, § 6186(d), Nov. 18, 1988, 102 Stat. 4358.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–690 inserted ''or pursuant to the provisions of section 3413(*l*) of this title'' after ''Government authority'' and ''under this chapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State'' after ''such disclosure''.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' and ''Director'' substituted in subsec. (b) for ''Civil Service Commission'' and ''Commission'' pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 3418. Injunctive relief

In addition to any other remedy contained in this chapter, injunctive relief shall be available to require that the procedures of this chapter are complied with. In the event of any successful action, costs together with reasonable attorney's fees as determined by the court may be recovered.

(Pub. L. 95–630, title XI, § 1118, Nov. 10, 1978, 92 Stat. 3709.)

§ 3419. Suspension of limitations

If any individual files a motion or application under this chapter which has the effect of delaying the access of a Government authority to financial records pertaining to such individual, any applicable statute of limitations shall be deemed to be tolled for the period extending from the date such motion or application was filed until the date upon which the motion or application is decided.

(Pub. L. 95–630, title XI, § 1119, Nov. 10, 1978, 92 Stat. 3709.)

§ 3420. Grand jury information; notification of certain persons prohibited

(a) Financial records about a customer obtained from a financial institution pursuant to a subpena issued under the authority of a Federal grand jury—

(1) shall be returned and actually presented to the grand jury unless the volume of such records makes such return and actual presentation impractical in which case the grand jury shall be provided with a description of the contents of the records.;[1]

(2) shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure, or for a purpose authorized by section 3412(a) of this title;

(3) shall be destroyed or returned to the financial institution if not used for one of the purposes specified in paragraph (2); and

(4) shall not be maintained, or a description of the contents of such records shall not be maintained by any Government authority other than in the sealed records of the grand jury, unless such record has been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure.

(b)(1) No officer, director, partner, employee, or shareholder of, or agent or attorney for, a financial institution shall, directly or indirectly, notify any person named in a grand jury subpoena served on such institution in connection with an investigation relating to a possible—

(A) crime against any financial institution or supervisory agency or crime involving a violation of the Controlled Substance Act [21 U.S.C. 801 et seq.], the Controlled Substances Import and Export Act [21 U.S.C. 951 et seq.], section 1956 or 1957 of title 18, sections 5313, 5316 and 5324 of title 31, or section 6050I of title 26; or

(B) conspiracy to commit such a crime,

about the existence or contents of such subpoena, or information that has been furnished to the grand jury in response to such subpoena.

(2) Section 1818 of this title and section 1786(k)(2) of this title shall apply to any violation of this subsection.

(Pub. L. 95–630, title XI, § 1120, Nov. 10, 1978, 92 Stat. 3709; Pub. L. 100–690, title VI, § 6186(e), Nov. 18, 1988, 102 Stat. 4358; Pub. L. 101–73, title IX, § 943, Aug. 9, 1989, 103 Stat. 497; Pub. L. 102–550, title XV, § 1532, Oct. 28, 1992, 106 Stat. 4066; Pub. L. 107–56, title III, § 358(f)(3), Oct. 26, 2001, 115 Stat. 327.)

[1] So in original.

REFERENCES IN TEXT

Rule 6(e) of the Federal Rules of Criminal Procedure, referred to in subsec. (a)(2), (4), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The Controlled Substance Act, referred to in subsec. (b)(1)(A), probably means the Controlled Substances Act, which is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, and which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsec. (b)(1)(A), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

AMENDMENTS

2001—Subsec. (a)(2). Pub. L. 107–56 inserted ‘‘, or for a purpose authorized by section 3412(a) of this title’’ before semicolon at end.

1992—Subsec. (b)(1)(A). Pub. L. 102–550 inserted before semicolon ‘‘or crime involving a violation of the Controlled Substance Act, the Controlled Substances Import and Export Act, section 1956 or 1957 of title 18, sections 5313, 5316 and 5324 of title 31, or section 6050I of title 26’’.

1989—Pub. L. 101–73 designated existing provisions as subsec. (a) and added subsec. (b).

1988—Par. (1). Pub. L. 100–690 inserted ‘‘unless the volume of such records makes such return and actual presentation impractical in which case the grand jury shall be provided with a description of the contents of the records.’’ before semicolon at end.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–56 applicable with respect to reports filed or records maintained on, before, or after Oct. 26, 2001, see section 358(h) of Pub. L. 107–56, set out as a note under section 1829b of this title.

§ 3421. Repealed. Pub. L. 104–66, title III, § 3001(d), Dec. 21, 1995, 109 Stat. 734

Section, Pub. L. 95–630, title XI, § 1121, Nov. 10, 1978, 92 Stat. 3710, related to reporting requirements.

§ 3422. Applicability to Securities and Exchange Commission

Except as provided in the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], this chapter shall apply with respect to the Securities and Exchange Commission.

(Pub. L. 95–630, title XI, § 1122, Nov. 10, 1978, 92 Stat. 3710; Pub. L. 96–433, § 2, Oct. 10, 1980, 94 Stat. 1855.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

1980—Pub. L. 96–433 substituted provision making this chapter applicable with respect to the Commission, ex-

cept as provided in the Securities Exchange Act of 1934, for provision exempting the Commission from this chapter for a period of two years from November 10, 1978.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–433 effective Nov. 10, 1980, see section 5(b) of Pub. L. 96–433, set out as a note under section 78u of Title 15, Commerce and Trade.

CHAPTER 36—DEPOSITORY INSTITUTIONS DEREGULATION AND FINANCIAL REGULATION SIMPLIFICATION

SUBCHAPTER I—DEPOSITORY INSTITUTIONS DEREGULATION

§§ 3501 to 3509. Omitted

CODIFICATION

Sections 3501 to 3509, which provided for creation and operation of Depository Institutions Deregulation Committee, were omitted pursuant to section 3509 which provided that the Committee and all authorities transferred to the Committee ceased to exist on expiration of six years after Mar. 31, 1980.

Section 3501, Pub. L. 96–221, title II, §202, Mar. 31, 1980, 94 Stat. 142, set out congressional findings and stated that the purpose in enacting this subchapter was to provide for orderly phase-out and ultimate elimination of limitations on maximum rates of interest and dividends which could be paid on deposits and accounts by depository institutions.

Pub. L. 96–221, title II, §201, Mar. 31, 1980, 94 Stat. 142, provided that title II of Pub. L. 96–221 (subchapter I of this chapter) could be cited as the ''Depository Institutions Deregulation Act of 1980''.

Pub. L. 96–221, title VIII, §801, Mar. 31, 1980, 94 Stat. 191, provided that title VIII of Pub. L. 96–221 (subchapter II of this chapter) could be cited as the ''Financial Regulation Simplification Act of 1980'', prior to repeal (effective 5 years after the date of enactment) by Pub. L. 96–221, title VIII, §806, Mar. 31, 1980, 94 Stat. 192.

Section 3502, Pub. L. 96–221, title II, §203, Mar. 31, 1980, 94 Stat. 142, provided for membership and authority of Depository Institutions Deregulation Committee.

Section 3503, Pub. L. 96–221, title II, §204, Mar. 31, 1980, 94 Stat. 143; Pub. L. 97–320, title III, §327, Oct. 15, 1982, 96 Stat. 1501; Pub. L. 97–457, §13, Jan. 12, 1983, 96 Stat. 2508, provided for phase-out and elimination of limitations, and gradual increases in maximum rates of interest and dividends paid on deposits and accounts.

Section 3504, Pub. L. 96–221, title II, §205, Mar. 31, 1980, 94 Stat. 143, set voting requirements respecting targets for limitations on maximum rates of interest and dividends paid on deposits and accounts and phase-out of interest rate controls.

Section 3505, Pub. L. 96–221, title II, §206, Mar. 31, 1980, 94 Stat. 143, set out the reporting requirements for individual members of Deregulation Committee.

Section 3506, Pub. L. 96–221, title II, §207, Mar. 31, 1980, 94 Stat. 144, provided for repeal of related statutory authorities.

Section 3507, Pub. L. 96–221, title II, §208, Mar. 31, 1980, 94 Stat. 144; Pub. L. 101–73, title VII, §744(s), Aug. 9, 1989, 103 Stat. 440, set the procedures applicable for enforcement of regulations.

Section 3508, Pub. L. 96–221, title II, §209, Mar. 31, 1980, 94 Stat. 145, provided for transitional application of rules and regulations issued pursuant to transferred statutory authorities.

Section 3509, Pub. L. 96–221, title II, §210, Mar. 31, 1980, 94 Stat. 145, directed that, on the expiration of six years after Mar. 31, 1980, all authorities transferred to Deregulation Committee by this subchapter would cease to be effective and Deregulation Committee would cease to exist.

SUBCHAPTER II—REGULATORY SIMPLIFICATION

§§ 3521 to 3524. Repealed. Pub. L. 96–221, title VIII, §806, Mar. 31, 1980, 94 Stat. 192

Section 3521, Pub. L. 96–221, title VIII, §802, Mar. 31, 1980, 94 Stat. 191, set forth Congressional findings with respect to regulatory simplification.

Section 3522, Pub. L. 96–221, title VIII, §803, Mar. 31, 1980, 94 Stat. 191, set forth statement of policy respecting regulations issued by Federal financial regulatory agencies.

Section 3523, Pub. L. 96–221, title VIII, §804, Mar. 31, 1980, 94 Stat. 192, authorized program for periodic review by financial regulatory agencies of existing regulations, and revision of regulations not in accord with policy statement.

Section 3524, Pub. L. 96–221, title VIII, §805, Mar. 31, 1980, 94 Stat. 192, related to reporting requirements for each financial regulatory agency.

EFFECTIVE DATE OF REPEAL

Section 806 of title II of Pub. L. 96–221 provided that: ''This title [enacting this subchapter] is hereby repealed five years after the date of enactment of this title [Mar. 31, 1980].''

CHAPTER 37—SOLAR ENERGY AND ENERGY CONSERVATION BANK

§§ 3601 to 3620. Repealed. Pub. L. 102–550, title IX, §912(i)(1), Oct. 28, 1992, 106 Stat. 3876

Section 3601, Pub. L. 96–294, title V, §503, June 30, 1980, 94 Stat. 719, provided Congressional statement of purpose for this chapter.

Section 3602, Pub. L. 96–294, title V, §504, June 30, 1980, 94 Stat. 719; Pub. L. 98–181, title IV, §463(a), Nov. 30, 1983, 97 Stat. 1233, provided definitions for this chapter.

Section 3603, Pub. L. 96–294, title V, §505, June 30, 1980, 94 Stat. 722; Pub. L. 100–122, §2(a), Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327, established Solar Energy and Energy Conservation Bank.

Section 3604, Pub. L. 96–294, title V, §506, June 30, 1980, 94 Stat. 723; Pub. L. 100–242, title V, §570(e), Feb. 5, 1988, 101 Stat. 1950, provided for a Board of Directors for Bank.

Section 3605, Pub. L. 96–294, title V, §507, June 30, 1980, 94 Stat. 723, provided for officers and personnel of Bank.

Section 3606, Pub. L. 96–294, title V, §508, June 30, 1980, 94 Stat. 723; Pub. L. 98–181, title IV, §463(b), Nov. 30, 1983, 97 Stat. 1233, provided for establishment of advisory committees of Bank.

Section 3607, Pub. L. 96–294, title V, §509, June 30, 1980, 94 Stat. 725; Pub. L. 100–242, title V, §570(e), Feb. 5, 1988, 101 Stat. 1950, authorized financial assistance in various forms and limitations and conditions on such assistance.

Section 3608, Pub. L. 96–294, title V, §510, June 30, 1980, 94 Stat. 726, provided for establishment of levels of financial assistance.

Section 3609, Pub. L. 96–294, title V, §511, June 30, 1980, 94 Stat. 726; Pub. L. 98–181, title IV, §463(c), Nov. 30, 1983, 97 Stat. 1233, set maximum amounts of financial assistance for residential and commercial energy conserving improvements.

Section 3610, Pub. L. 96–294, title V, §512, June 30, 1980, 94 Stat. 728, set maximum amounts of financial assistance for solar energy systems.

Section 3611, Pub. L. 96–294, title V, §513, June 30, 1980, 94 Stat. 729, established general conditions on financial assistance for loans.

Section 3612, Pub. L. 96–294, title V, §514, June 30, 1980, 94 Stat. 730; Pub. L. 98–181, title IV, §463(d), for-

merly § 463(c), Nov. 30, 1983, 97 Stat. 1234; Pub. L. 98–479, title I, § 104(d)(1), (e)(1), Oct. 17, 1984, 98 Stat. 2226, established conditions on financial assistance for residential and commercial energy conserving improvements.

Section 3613, Pub. L. 96–294, title V, § 515, June 30, 1980, 94 Stat. 732; Pub. L. 100–242, title V, § 570(e), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433, established conditions on financial assistance for solar energy systems.

Section 3614, Pub. L. 96–294, title V, § 516, June 30, 1980, 94 Stat. 734, provided limitations on provision of financial assistance for residential and commercial energy conserving improvements.

Section 3615, Pub. L. 96–294, title V, § 517, June 30, 1980, 94 Stat. 734, provided limitations on provision of financial assistance for solar energy systems.

Section 3616, Pub. L. 96–294, title V, § 518, June 30, 1980, 94 Stat. 735, authorized Bank to promote program established by this chapter.

Section 3617, Pub. L. 96–294, title V, § 519, June 30, 1980, 94 Stat. 736, provided for submission of reports to Congress.

Section 3618, Pub. L. 96–294, title V, § 520, June 30, 1980, 94 Stat. 736; Pub. L. 98–181, title IV, § 463(e), Nov. 30, 1983, 97 Stat. 1234; Pub. L. 98–479, title I, § 104(d)(2)(A), Oct. 17, 1984, 98 Stat. 2226, provided for promulgation of rules and regulations to implement this chapter.

Section 3619, Pub. L. 96–294, title V, § 521, June 30, 1980, 94 Stat. 737, established penalties relating to disclosure of facts or statements required by this chapter.

Section 3620, Pub. L. 96–294, title V, § 522, June 30, 1980, 94 Stat. 737; Pub. L. 98–181, title IV, § 463(f)(2), Nov. 30, 1983, 97 Stat. 1235, authorized appropriations for residential and commercial energy conserving improvements and solar energy systems.

SHORT TITLE

Pub. L. 96–294, title V, § 501, June 30, 1980, 94 Stat. 719, provided that: ''This title [enacting this chapter and sections 6347, 8235 to 8235i, and 8281 to 8286b of Title 42, The Public Health and Welfare, amending sections 1451, 1454, 1717, 1723g, and 1723h of this title and sections 6862 to 6872, 8211, 8213, 8214, 8216, 8217, and 8221 of Title 42, repealing section 1723f of this title, and enacting provisions set out as notes under this section and sections 8211 and 8235 of Title 42] may be cited as the 'Solar Energy and Energy Conservation Act of 1980'.''

Pub. L. 96–294, title V, § 502, June 30, 1980, 94 Stat. 719, provided that subtitle A (§§ 502–534) of title V of Pub. L. 96–294 was to be cited as the ''Solar Energy and Energy Conservation Bank Act'', prior to repeal by Pub. L. 102–550, title IX, § 912(i)(1), Oct. 28, 1992, 106 Stat. 3876.

CHAPTER 38—MULTIFAMILY MORTGAGE FORECLOSURE

Sec.

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§ 3701. Findings and purpose

(a) The Congress finds that—

(1) disparate State laws under which the Secretary of Housing and Urban Development forecloses multifamily mortgages burden the programs administered by the Secretary pursuant to these authorities, and cause detriment to the residents of the affected projects and the community generally;

(2) long periods to complete the foreclosure of these mortgages under certain State laws lead to deterioration in the condition of the properties involved; necessitate substantial Federal management and holding expenditures; increase the risk of vandalism, fire loss, depreciation, damage, and waste with respect to the properties; and adversely affect the residents of the projects and the neighborhoods in which the properties are located;

(3) these conditions seriously impair the Secretary's ability to protect the Federal financial interest in the affected properties and frustrate attainment of the objectives of the underlying Federal program authorities, as well as the national housing goal of ''a decent home and a suitable living environment for every American family'';

(4) application of State redemption periods to these mortgages following their foreclosure would impair the salability of the properties involved and discourage their rehabilitation and improvement, thereby compounding the problems referred to in clause (3);

(5) the availability of a uniform and more expeditious procedure for the foreclosure of these mortgages by the Secretary and continuation of the practice of not applying post-sale redemption periods to such mortgages will tend to ameliorate these conditions; and

(6) providing the Secretary with a nonjudicial foreclosure procedure will reduce unnecessary litigation by removing many foreclosures from the courts where they contribute to overcrowded calendars.

(b) The purpose of this chapter is to create a uniform Federal foreclosure remedy for multifamily mortgages.

(Pub. L. 97–35, title III, § 362, Aug. 13, 1981, 95 Stat. 422; Pub. L. 102–550, title V, § 517(a), Oct. 28, 1992, 106 Stat. 3791.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–550, § 517(a)(1), substituted ''multifamily mortgages'' for ''real estate mortgages which the Secretary holds pursuant to title II of the National Housing Act or section 312 of the Housing Act of 1964 covering multiunit residential and nonresidential properties''.

Subsec. (b). Pub. L. 102–550, § 517(a)(2), substituted ''multifamily mortgages'' for ''multiunit residential and nonresidential mortgages held by the Secretary of Housing and Urban Development pursuant to title II of the National Housing Act or section 312 of the Housing Act of 1964''.

EFFECTIVE DATE

Section 371 of subtitle A of title III of Pub. L. 97–35 provided that:

''(a) Except as otherwise provided in this subtitle, the provisions of this subtitle [for classification of subtitle A (§ 300–371) of title III of Pub. L. 97–35, see Tables] shall take effect on October 1, 1981.

''(b) The amendments made by sections 324, 325, and 326(a) [amending section 1437f of Title 42, The Public Health and Welfare] shall apply only with respect to contracts entered into on and after October 1, 1981.''

SHORT TITLE

Section 361 of part 6 of subtitle A of title III of Pub. L. 97–35 provided that: ''This part [enacting this chapter] may be cited as the 'Multifamily Mortgage Foreclosure Act of 1981'.''

§ 3702. Definitions

As used in this chapter—

(1) ''mortgage'' means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any interest in property, real, personal or mixed, or any interest in property including leaseholds, life estates, reversionary interests, and any other estates under applicable State law, is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien, for the purpose of securing the payment of money or the performance of an obligation;

(2) ''multifamily mortgage'' means a mortgage held by the Secretary pursuant to—

(A) section 608 or 801, or title II or X, of the National Housing Act [12 U.S.C. 1743, 1748, 1707 et seq., 1749aa et seq.];

(B) section 312 of the Housing Act of 1964 [42 U.S.C. 1452b], as it existed immediately before its repeal by section 289 of the Cranston-Gonzalez National Affordable Housing Act;

(C) section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], as it existed immediately before its amendment by section 801 of the Cranston-Gonzalez National Affordable Housing Act;

(D) section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act; and

(E) section 811 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 8013].

(3) ''mortgage agreement'' means the note or debt instrument and the mortgage instrument, deed of trust instrument, trust deed, or instrument or instruments creating the mortgage, including any instrument incorporated by reference therein (including any applicable regulatory agreement), and any instrument or agreement amending or modifying any of the foregoing;

(4) ''mortgagor'' means the obligor, grantor, or trustor named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not personally liable on the mortgage debt;

(5) ''person'' includes any individual, group of individuals, association, partnership, corporation, or organization;

(6) ''record'' and ''recorded'' include ''register'' and ''registered'' in the instance of registered land;

(7) ''security property'' means the property, real, personal or mixed, or an interest in property, including leaseholds, life estate, reversionary interests, and any other estates under applicable State law, together with fixtures and other interests subject to the lien of the mortgage under applicable State law;

(8) ''State'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands, and Indian tribes as defined by the Secretary;

(9) ''county'' means county as defined in section 2 of title 1; and

(10) ''Secretary'' means the Secretary of Housing and Urban Development.

(Pub. L. 97–35, title III, § 363, Aug. 13, 1981, 95 Stat. 422; Pub. L. 102–550, title V, § 517(b), Oct. 28, 1992, 106 Stat. 3792.)

REFERENCES IN TEXT

The National Housing Act, referred to in par. (2)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of this title. Title X of the Act, which was classified principally to subchapter IX–A (§ 1749aa et seq.) of chapter 13 of this title, was repealed by Pub. L. 101–235, title I, § 133(a), Dec. 15, 1989, 103 Stat. 2027. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 312 of the Housing Act of 1964, referred to in par. (2)(B), is section 312 of Pub. L. 88–560, which was classified to section 1452b of Title 42, The Public Health and Welfare, and was repealed by Pub. L. 101–625, title II, § 289(b)(1), Nov. 28, 1990, 104 Stat. 4128.

Section 801 of the Cranston-Gonzalez National Affordable Housing Act, referred to in par. (2)(C), (D), is section 801 of Pub. L. 101–625.

AMENDMENTS

1992—Par. (2). Pub. L. 102–550 amended par. (2) generally. Prior to amendment, par. (2) read as follows: '' 'multifamily mortgage' means a mortgage held by the Secretary pursuant to title II of the National Housing Act or section 312 of the House Act of 1964 covering any property, except a property on which there is located a one- to four-family residence;''.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 3703. Applicability

Multifamily mortgages held by the Secretary encumbering real estate located in any State may be foreclosed by the Secretary in accordance with this chapter, or pursuant to other foreclosure procedures available, at the option of the Secretary. If the Secretary forecloses on any such mortgage pursuant to such other foreclosure procedures available, the provisions of section 3706(b) of this title may be applied at the discretion of the Secretary.

(Pub. L. 97–35, title III, § 364, Aug. 13, 1981, 95 Stat. 423; Pub. L. 98–181, title IV, § 471, Nov. 30, 1983, 97 Stat. 1237.)

AMENDMENTS

1983—Pub. L. 98–181 inserted provision relating to application of section 3706(b) of this title in event of foreclosure under other foreclosure procedures.

§ 3704. Foreclosure commissioner; designation, duties, etc.

A foreclosure commissioner or commissioners designated pursuant to this chapter shall have a nonjudicial power of sale as provided in this chapter. Where the Secretary is the holder of a multifamily mortgage, the Secretary may designate a foreclosure commissioner and, with or without cause, may designate a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, by executing a duly acknowledged, written designation stating the name and business or residential address of the commissioner or substitute commissioner. The designation shall be effective upon execution. Except as provided in section 3707(b) of this title, a copy of the designation shall be mailed with each copy of the notice of default and foreclosure sale served by mail in accordance with section 3708(1) of this title. The foreclosure commissioner, if a natural person, shall be a resident of the State in which the security property is located and, if not a natural person, the foreclosure commissioner must be duly authorized to transact business under the laws of the State in which the security property is located. The foreclosure commissioner shall be a person who is responsible, financially sound and competent to conduct the foreclosure. More than one foreclosure commissioner may be designated. If a natural person is designated as foreclosure commissioner or substitute foreclosure commissioner, such person shall be designated by name, except that where such person is designated in his or her capacity as an official or employee of the government of the State or subdivision thereof in which the security property is located, such person may be designated by his or her unique title or position instead of by name. The Secretary shall be a guarantor of payment of any judgment against the foreclosure commissioner for damages based upon the commissioner's failure properly to perform the commissioner's duties. As between the Secretary and the mortgagor, the Secretary shall bear the risk of any financial default by the foreclosure commissioner. In the event that the Secretary makes any payment pursuant to the preceding two sentences, the Secretary shall be fully subrogated to the rights satisfied by such payment.

(Pub. L. 97–35, title III, § 365, Aug. 13, 1981, 95 Stat. 423.)

§ 3705. Prerequisites to foreclosure

Foreclosure by the Secretary under this chapter of a multifamily mortgage may be commenced, as provided in section 3707 of this title, upon the breach of a covenant or condition in the mortgage agreement for which foreclosure is authorized under the mortgage, except that no such foreclosure may be commenced unless any previously pending proceeding, judicial or nonjudicial, separately instituted by the Secretary to foreclose the mortgage other than under this chapter has been withdrawn, dismissed, or otherwise terminated. No such separately instituted foreclosure proceeding on the mortgage shall be instituted by the Secretary during the pendency of foreclosure pursuant to this chapter. Nothing in this chapter shall preclude the Secretary from enforcing any right, other than foreclosure, under applicable State law, including any right to obtain a monetary judgment. Nothing in this chapter shall preclude the Secretary from foreclosing under this chapter where the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law or under the mortgage agreement, including, but not limited to, the appointment of a receiver, mortgagee-in-possession status, relief under an assignment of rents, or transfer to a nonprofit entity pursuant to section 1701q of this title or section 8013 of title 42.

(Pub. L. 97–35, title III, § 366, Aug. 13, 1981, 95 Stat. 424; Pub. L. 102–550, title V, § 517(c), Oct. 28, 1992, 106 Stat. 3792.)

AMENDMENTS

1992—Pub. L. 102–550 substituted ''status, relief under an assignment of rents, or transfer to a nonprofit entity pursuant to section 1701q of this title or section 8013 of title 42'' for ''status or relief under an assignment of rents'' in last sentence.

§ 3706. Notice of default and foreclosure sale; condition and term of sale

(a) The notice of default and foreclosure sale to be served in accordance with this chapter shall be subscribed with the name and address of the foreclosure commissioner and the date on which subscribed, and shall set forth the following information:

(1) the names of the Secretary, the original mortgagee and the original mortgagor;

(2) the street address or a description of the location of the security property, and a description of the security property, or so much thereof as is to be offered for sale, sufficient to identify the property to be sold;

(3) the date of the mortgage, the office in which the mortgage is recorded, and the liber and folio or other description of the location of recordation of the mortgage;

(4) the failure to make payment, including the due date of the earliest installment payment remaining wholly unpaid as of the date the notice is subscribed, or the description of other default or defaults upon which foreclosure is based, and the acceleration of the secured indebtedness;

(5) the date, time, and place of the foreclosure sale;

(6) a statement that the foreclosure is being conducted pursuant to this chapter;

(7) the types of costs, if any, to be paid by the purchaser upon transfer of title; and

(8) the amount and method of deposit to be required at the foreclosure sale (except that no deposit shall be required of the Secretary), the time and method of payment of the balance of the foreclosure purchase price and other appropriate terms of sale.

(b)(1) Except as provided in paragraph (2)(A), the Secretary may require, as a condition and term of sale, that the purchaser at a foreclosure sale under this chapter agree to continue to operate the security property in accordance with the terms of the program under which the mortgage insurance or assistance was provided, or

any applicable regulatory or other agreement in effect with respect to such property immediately prior to the time of foreclosure sale.

(2)(A) In any case where the majority of the residential units in a property subject to such a sale are occupied by residential tenants at the time of the sale, the Secretary shall require, as a condition and term of sale, any purchaser (other than the Secretary) to operate the property in accordance with such terms, as appropriate, of the programs referred to in paragraph (1).

(B) In any case where the Secretary is the purchaser of a multifamily project, the Secretary shall manage and dispose of such project in accordance with the provisions of section 203 of the Housing and Community Development Amendments of 1978 [12 U.S.C. 1701z–11].

(Pub. L. 97–35, title III, § 367, Aug. 13, 1981, 95 Stat. 424; Pub. L. 102–550, title V, § 517(d), Oct. 28, 1992, 106 Stat. 3792.)

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102–550 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (2)(A), the Secretary may require, as a condition and term of sale, that the purchaser at a foreclosure sale under this chapter agree to continue to operate the security property in accordance with the terms, as appropriate, of the loan program under section 312 of the Housing Act of 1964, the program under which insurance under title II of the National Housing Act was originally provided with respect to such property, or any applicable regulatory or other agreement in effect with respect to such property immediately prior to the time of foreclosure sale.''

§ 3707. Commencement of foreclosure; powers and duties of foreclosure commissioner or substitute

(a) If the Secretary as holder of a multifamily mortgage determines that the prerequisites to foreclosure set forth in section 3705 of this title are satisfied, the Secretary may request the foreclosure commissioner to commence foreclosure of the mortgage. Upon such request, the foreclosure commissioner shall commence foreclosure of the mortgage, by commencing service of a notice of default and foreclosure sale in accordance with section 3708 of this title.

(b) Subsequent to commencement of a foreclosure under this chapter, the Secretary may designate a substitute foreclosure commissioner at any time up to forty-eight hours prior to the time of foreclosure sale, and the foreclosure shall continue without prejudice, unless the substitute commissioner, in his or her sole discretion, finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. In the event that the substitute commissioner makes such a finding, the substitute commissioner shall cancel the foreclosure sale, or adjourn such sale in the manner provided in section 3710(c) of this title. Upon designation of a substitute foreclosure commissioner, a copy of the written notice of such designation referred to in section 3704 of this title shall be served upon the persons set forth in section 3708(1) of this title (1) by mail as provided in such section 3708 of this title (except that the minimum time periods between mailing and the date of foreclosure sale prescribed in such section shall not apply to notice by mail pursuant to this subsection), or (2) in any other manner, which in the substitute commissioner's sole discretion, is conducive to achieving timely notice of such substitution. In the event a substitute foreclosure commissioner is designated less than forty-eight hours prior to the time of the foreclosure sale, the pending foreclosure shall be terminated and a new foreclosure shall be commenced by commencing service of a new notice of default and foreclosure sale.

(Pub. L. 97–35, title III, § 368, Aug. 13, 1981, 95 Stat. 425.)

§ 3708. Service of notice of default and foreclosure sale

The foreclosure commissioner shall serve the notice of default and foreclosure sale provided for in section 3706 of this title upon the following persons and in the following manner, and no additional notice shall be required to be served notwithstanding any notice requirements of any State or local law—

(1) The notice of default and foreclosure sale, together with the designation required by section 3704 of this title, shall be sent by certified or registered mail, postage prepaid and return receipt requested, to the following persons:

(A) the current security property owner of record, as the record exists forty-five days prior to the date originally set for foreclosure sale, whether or not the notice describes a sale adjourned as provided in this chapter;

(B) the original mortgagor and all subsequent mortgagors of record or other persons who appear of record or in the mortgage agreement to be liable for part or all of the mortgage debt, as the record exists forty-five days prior to the date originally set for foreclosure sale, whether or not the notice describes a sale adjourned as provided in this chapter, except any such mortgagors or persons who have been released; and

(C) all persons holding liens of record upon the security property, as the record exists forty-five days prior to the date originally set for foreclosure sale, whether or not the notice describes a sale adjourned as provided in this chapter.

Notice under clauses (A) and (B) of this paragraph shall be mailed at least twenty-one days prior to the date of foreclosure sale, and shall be mailed to the owner or mortgagor at the address stated in the mortgage agreement, or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such owner or mortgagor. Notice under clause (C) of this paragraph shall be mailed at least ten days prior to the date of foreclosure sale, and shall be mailed to each such lienholder's address as stated of record or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such lienholder. Notice by mail pursuant to this subsection or section 3707(b) of this title shall be deemed duly given upon mailing, whether or not received by the addressee and whether or not a return receipt is received or the letter is returned.

(2) A copy of the notice of default and foreclosure sale shall be published, as provided herein, once a week during three successive calendar weeks, and the date of last publication shall be not less than four nor more than twelve days prior to the sale date. The information included in the notice of default and foreclosure sale pursuant to section 3706(a)(4) of this title may be omitted, in the foreclosure commissioner's discretion, from the published notice. Such publication shall be in a newspaper or newspapers having general circulation in the county or counties in which the security property being sold is located. To the extent practicable, the newspaper or newspapers chosen shall be a newspaper or newspapers, if any is available, having circulation conducive to achieving notice of foreclosure by publication. Should there be no newspaper published at least weekly which has a general circulation in one of the counties in which the security property being sold is located, copies of the notice of default and foreclosure sale shall be posted in at least three public places in each such county at least twenty-one days prior to the date of sale.

(3) A copy of the notice of default and foreclosure sale shall be posted in a prominent place at or on the real property to be sold at least seven days prior to the foreclosure sale, and entry upon the premises for this purpose shall be privileged as against all persons. If the property consists of two or more noncontiguous parcels of land, a copy of the notice of default and foreclosure sale shall be posted in a prominent place on each such parcel. If the security property consists of two or more separate buildings, a copy of the notice of default and foreclosure sale shall be posted in a prominent place on each such building. Posting at or on the premises shall not be required where the foreclosure commissioner, in the commissioner's sole discretion, finds that the act of posting will likely cause a breach of the peace or that posting may result in an increased risk of vandalism or damage to the property.

(Pub. L. 97–35, title III, § 369, Aug. 13, 1981, 95 Stat. 426.)

§ 3709. Presale reinstatement

(a) Grounds

Except as provided in sections 3707(b) and 3710(c) of this title, the foreclosure commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only if—

(1) the Secretary so directs the commissioner prior to or at the time of sale;

(2) the commissioner finds, upon application of the mortgagor at least three days prior to the date of sale, that the default or defaults upon which the foreclosure is based did not exist at the time of service of the notice of default and foreclosure sale; or

(3)(A) in the case of a foreclosure involving a monetary default, there is tendered to the foreclosure commissioner before public auction is completed the entire amount of principal and interest which would be due if payments under the mortgage had not been accelerated; (B) in the case of a foreclosure involving a nonmonetary default, the foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that such default is cured; and (C) there is tendered to the foreclosure commissioner before public auction is completed all amounts due under the mortgage agreement (excluding additional amounts which would have been due if mortgage payments had been accelerated), all amounts of expenditures secured by the mortgage and all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in section 3711 of this title, except that the Secretary shall have discretion to refuse to cancel a foreclosure pursuant to this paragraph (3) if the current mortgagor or owner of record has on one or more previous occasions caused a foreclosure of the mortgage, commenced pursuant to this chapter or otherwise, to be canceled by curing a default.

(b) Views of Secretary

Prior to withdrawing the security property from foreclosure in the circumstances described in subsection (a)(2) or (a)(3) of this section, the foreclosure commissioner shall afford the Secretary a reasonable opportunity to demonstrate why the security property should not be so withdrawn.

(c) Mortgage subsequent to reinstatement

In any case in which a foreclosure commenced under this chapter is canceled, the mortgage shall continue in effect as though acceleration had not occurred.

(d) Subsequent foreclosures

If the foreclosure commissioner cancels a foreclosure sale under this chapter a new foreclosure may be subsequently commenced as provided in this chapter.

(Pub. L. 97–35, title III, § 369A, Aug. 13, 1981, 95 Stat. 427.)

§ 3710. Foreclosure sale

(a) Time of sale; public auction; location

The date of foreclosure sale set forth in the notice of default and foreclosure sale shall not be prior to thirty days after the due date of the earliest installment wholly unpaid or the earliest occurrence of any uncured nonmonetary default upon which foreclosure is based. Foreclosure sale pursuant to this chapter shall be at public auction, and shall be scheduled to begin between the hours of 9 o'clock ante meridian and 4 o'clock post meridian local time on a day other than Sunday or a public holiday as defined by section 6103(a) of title 5 or State law. The foreclosure sale shall be held at a location specified in the notice of default and foreclosure sale, which shall be a location where foreclosure real estate auctions are customarily held in the county or one of the counties in which the property to be sold is located, or at a courthouse therein, or at or on the property to be sold. Sale of security property situated in two or more counties may be held in any one of the counties in which any part of the security property is situated.

(b) Conduct of sale

The foreclosure commissioner shall conduct the foreclosure sale in accordance with the provisions of this chapter and in a manner fair to both the mortgagor and the Secretary. The foreclosure commissioner shall attend the foreclosure sale in person, or, if there are two or more commissioners, at least one shall attend the foreclosure sale. In the event that no foreclosure commissioner is a natural person, the foreclosure commissioner shall cause its duly authorized employee to attend the foreclosure sale to act on its behalf. Written one-price sealed bids shall be accepted by the foreclosure commissioner from the Secretary and other persons for entry by announcement by the commissioner at the sale. The Secretary and any other person may bid at the foreclosure sale, including the Secretary or any other person who has submitted a written one-price bid, except that the foreclosure commissioner or any relative, related business entity or employee of such commissioner or entity shall not be permitted to bid in any manner on the security property subject to foreclosure sale. The foreclosure commissioner may serve as auctioneer, or, in accordance with regulations of the Secretary, may employ an auctioneer to be paid from the commission provided for in section 3711(5) of this title.

(c) Adjournment or cancellation

The foreclosure commissioner shall have discretion, prior to or at the time of sale, to adjourn or cancel the foreclosure sale if the commissioner determines, in the commissioner's sole discretion, that circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary or that additional time is necessary to determine whether the security property should be withdrawn from foreclosure as provided in section 3709 of this title. The foreclosure commissioner may adjourn a sale to a later hour the same day without the giving of further notice, or may adjourn the foreclosure sale for not less than nine nor more than twenty-four days, in which case the commissioner shall serve a notice of default and foreclosure sale revised to recite that the foreclosure sale has been adjourned to a specified date and to include any corrections the foreclosure commissioner deems appropriate. Such notice shall be served by publication, mailing and posting in accordance with section 3708 of this title, except that publication may be made on any of three separate days prior to the revised date of foreclosure sale, and mailing may be made at any time at least seven days prior to the date to which the foreclosure sale has been adjourned.

(Pub. L. 97–35, title III, § 369B, Aug. 13, 1981, 95 Stat. 428.)

§ 3711. Foreclosure costs

The following foreclosure costs shall be paid from the sale proceeds prior to satisfaction of any other claim to such sale proceeds:

(1) necessary advertising costs and postage incurred in giving notice pursuant to sections 3708 and 3710 of this title;

(2) mileage for posting notices and for the foreclosure commissioner's attendance at the sale at the rate provided in section 1921 of title 28 for mileage by the most reasonable road distance;

(3) reasonable and necessary costs actually incurred in connection with any necessary search of title and lien records;

(4) necessary out-of-pocket costs incurred by the foreclosure commissioner to record documents; and

(5) a commission for the foreclosure commissioner for the conduct of the foreclosure to the extent authorized by regulations issued by the Secretary.

(Pub. L. 97–35, title III, § 369C, Aug. 13, 1981, 95 Stat. 429.)

§ 3712. Disposition of sale proceeds

Money realized from a foreclosure sale shall be made available for obligation and expenditure—

(1) first to cover the costs of foreclosure provided for in section 3711 of this title;

(2) then to pay valid tax liens or assessments prior to the mortgage;

(3) then to pay any liens recorded prior to the recording of the mortgage which are required to be paid in conformity with the terms of sale in the notice of default and foreclosure sale;

(4) then to service charges and advancements for taxes, assessments, and property insurance premiums;

(5) then to the interest;

(6) then to the principal balance secured by the mortgage (including expenditures for the necessary protection, preservation, and repair of the security property as authorized under the mortgage agreement and interest thereon if provided for in the mortgage agreement); and

(7) then to late charges.

Any surplus after payment of the foregoing shall be paid to holders of liens recorded after the mortgage and then to the appropriate mortgagor. If the person to whom such surplus is to be paid cannot be located, or if the surplus available is insufficient to pay all claimants and the claimants cannot agree on the allocation of the surplus, or if any person claiming an interest in the mortgage proceeds does not agree that some or all of the sale proceeds should be paid to a claimant as provided in this section, that part of the sale proceeds in question may be deposited by the foreclosure commissioner with an appropriate official or court authorized under law to receive disputed funds in such circumstances. If such a procedure for the deposit of disputed funds is not available, and the foreclosure commissioner files a bill of interpleader or is sued as a stakeholder to determine entitlement to such funds, the foreclosure commissioner's necessary costs in taking or defending such action shall be deductible from the disputed funds.

(Pub. L. 97–35, title III, § 369D, Aug. 13, 1981, 95 Stat. 429.)

§ 3713. Transfer of title and possession

(a) Payment and delivery of deeds

The foreclosure commissioner shall deliver a deed or deeds to the purchaser or purchasers and

obtain the balance of the purchase price in accordance with the terms of sale provided in the notice of default and foreclosure sale.

(b) Quit claim deed

Subject to subsection (c) of this section, the foreclosure deed or deeds shall convey all of the right, title, and interest in the security property covered by the deed which the Secretary as holder, the foreclosure commissioner, the mortgagor, and any other persons claiming by, through, or under them, had on the date of execution of the mortgage, together with all of the right, title, and interest thereafter acquired by any of them in such property up to the hour of sale, and no judicial proceeding shall be required ancillary or supplementary to the procedures provided in this chapter to assure the validity of the conveyance or confirmation of such conveyance.

(c) Possession by purchaser; continuing interests

A purchaser at a foreclosure sale held pursuant to this chapter shall be entitled to possession upon passage of title to the mortgaged property, subject to an interest or interests senior to that of the mortgage and subject to the terms of any lease of a residential tenant for the remaining term of the lease or for one year, whichever period is shorter. Any other person remaining in possession after the sale and any residential tenant remaining in possession after the applicable period shall be deemed a tenant at sufferance.

(d) Right of redemption; right of possession

There shall be no right of redemption, or right of possession based upon right of redemption, in the mortgagor or others subsequent to a foreclosure pursuant to this chapter.

(e) Imposition of tax on conveyance to the Secretary

When conveyance is made to the Secretary, no tax shall be imposed or collected with respect to the foreclosure commissioner's deed, whether as a tax upon the instrument or upon the privilege of conveying or transferring title to the property. Failure to collect or pay a tax of the type and under the circumstances stated in the preceding sentence shall not be grounds for refusing to record such a deed, for failing to recognize such recordation as imparting notice or for denying the enforcement of such a deed and its provisions in any State or Federal court.

(Pub. L. 97–35, title III, § 369E, Aug. 13, 1981, 95 Stat. 430.)

§ 3714. Record of foreclosure and sale

(a) To establish a sufficient record of foreclosure and sale, the foreclosure commissioner shall include in the recitals of the deed to the purchaser or prepare an affidavit or addendum to the deed stating—

(1) that the mortgage was held by the Secretary;

(2) the particulars of the foreclosure commissioner's service of notice of default and foreclosure sale in accordance with sections 3708 and 3710 of this title;

(3) that the foreclosure was conducted in accordance with the provisions of this chapter and with the terms of the notice of default and foreclosure sale;

(4) a correct statement of the costs of foreclosure, calculated in accordance with section 3711 of this title; and

(5) the name of the successful bidder and the amount of the successful bid.

(b) The deed executed by the foreclosure commissioner, the foreclosure commissioner's affidavit and any other instruments submitted for recordation in relation to the foreclosure of the security property under this chapter shall be accepted for recordation by the registrar of deeds or other appropriate official of the county or counties in which the security property is located upon tendering of payment of the usual recording fees for such instruments.

(Pub. L. 97–35, title III, § 369F, Aug. 13, 1981, 95 Stat. 430.)

§ 3715. Computation of time

Periods of time provided for in this chapter shall be calculated in consecutive calendar days including the day or days on which the actions or events occur or are to occur for which the period of time is provided and including the day on which an event occurs or is to occur from which the period is to be calculated.

(Pub. L. 97–35, title III, § 369G, Aug. 13, 1981, 95 Stat. 431.)

§ 3716. Separability

If any clause, sentence, paragraph or part of this chapter shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid or invalid as applied to a class of cases, such judgment shall not affect, impair, or invalidate the remainder thereof and of this chapter, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Pub. L. 97–35, title III, § 369H, Aug. 13, 1981, 95 Stat. 431.)

§ 3717. Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this chapter.

(Pub. L. 97–35, title III, § 369I, Aug. 13, 1981, 95 Stat. 431.)

CHAPTER 38A—SINGLE FAMILY MORTGAGE FORECLOSURE

Sec.

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§ 3751. Findings and purpose

(a) Findings

The Congress finds that—

(1) the disparate State laws under which mortgages are foreclosed on behalf of the Secretary covering 1- to 4-family residential properties—

(A) burden certain programs administered by the Secretary;

(B) increase the costs of collecting obligations; and

(C) generally are a detriment to the community in which the properties are located;

(2) the long periods required to complete the foreclosure of such mortgages under certain State laws—

(A) lead to deterioration in the condition of the properties involved;

(B) necessitate substantial Federal holding expenditures;

(C) increase the risk of vandalism, fire loss, depreciation, damage, and waste with respect to the properties; and

(D) adversely affect the neighborhoods in which the properties are located;

(3) these conditions seriously impair the ability of the Secretary to protect the Federal financial interest in the affected properties and frustrate attainment of the objectives of the underlying Federal program authority;

(4) the availability of uniform and more expeditious procedures, with no right of redemption in the mortgagor or others, for the foreclosure of these mortgages by the Secretary will tend to ameliorate these conditions; and

(5) providing the Secretary with a nonjudicial foreclosure procedure will reduce unnecessary litigation by removing many foreclosures from the courts if they contribute to overcrowded calendars.

(b) Purpose

The purpose of this chapter is to create a uniform Federal foreclosure remedy for single family mortgages that—

(1) are held by the Secretary pursuant to title I or title II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.]; or

(2) secure loans obligated by the Secretary under section 1452b[1] of title 42.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Titles I and II of the Act are classified generally to subchapters I (§1702 et seq.) and II (§1707 et seq.), respectively, of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 1452b of title 42, referred to in subsec. (b)(2), was repealed by Pub. L. 101–625, title II, §289(b)(1), Nov. 28, 1990, 104 Stat. 4128.

[1] See References in Text note below.

CODIFICATION

Section is based on section 802 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

EFFECTIVE DATE

Title II of Pub. L. 103–327, Sept. 28, 1994, 108 Stat. 2316, provided in part that title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which is classified to this chapter, is incorporated into Pub. L. 103–327 and deemed enacted into law upon enactment of Pub. L. 103–327, which was approved Sept. 28, 1994.

SHORT TITLE

Section 801 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by title II of Pub. L. 103–327, Sept. 28, 1994, 108 Stat. 2316, provided in part, that: ''This title [enacting this chapter] may be cited as the 'Single Family Mortgage Foreclosure Act of 1994'.''

§ 3752. Definitions

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

(1) Bona fide purchaser

The term ''bona fide purchaser'' means a purchaser for value in good faith and without notice of any adverse claim, and who acquires the security property free of any adverse claim.

(2) County

The term ''county'' has the same meaning as in section 2 of title 1.

(3) Mortgage

The term ''mortgage'' means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any property (real, personal or mixed), or any interest in property (including leaseholds, life estates, reversionary interests, and any other estates under applicable State law), is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien for the purpose of securing the payment of money or the performance of an obligation.

(4) Mortgage agreement

The term ''mortgage agreement'' means the note or debt instrument and the mortgage instrument, deed of trust instrument, trust deed, or instrument or instruments creating the mortgage, including any instrument incorporated by reference therein and any instrument or agreement amending or modifying any of the foregoing.

(5) Mortgagor

The term ''mortgagor'' means the obligor, grantor, or trustee named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not such owner is personally liable on the mortgage debt.

(6) Owner

The term ''owner'' means any person who has an ownership interest in property and includes heirs, devises, executors, administrators, and other personal representatives, and trustees of testamentary trusts if the owner of record is deceased.

(7) Person

The term ''person'' includes any individual, group of individuals, association, partnership, corporation, or organization.

(8) Record; recorded

The terms ''record'' and ''recorded'' include ''register'' and ''registered'' in the instance of registered land.

(9) Security property

The term ''security property'' means the property (real, personal or mixed) or an interest in property (including leaseholds, life estates, reversionary interests, and any other estates under applicable State law), together with fixtures and other interests subject to the lien of the mortgage under applicable State law.

(10) Single family mortgage

The term ''single family mortgage'' means a mortgage that covers property on which there is located a 1- to 4-family residence, and that—

(A) is held by the Secretary pursuant to title I or title II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.]; or

(B) secures a loan obligated by the Secretary under section 1452b of title 42, as it existed before the repeal of that section by section 12839 of title 42 (except that a mortgage securing such a loan that covers property containing nonresidential space and a 1- to 4-family dwelling shall not be subject to this chapter).

(11) State

The term ''State'' means—

(A) the several States;
(B) the District of Columbia;
(C) the Commonwealth of Puerto Rico;
(D) the United States Virgin Islands;
(E) Guam;
(F) American Samoa;
(G) the Northern Mariana Islands;
(H) the Trust Territory of the Pacific Islands; and
(I) Indian tribes, as defined by the Secretary.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

REFERENCES IN TEXT

The National Housing Act, referred to in par. (10)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Titles I and II of the Act are classified generally to subchapters I (§ 1702 et seq.) and II (§ 1707 et seq.), respectively, of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section is based on section 803 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 3753. Applicability

Single family mortgages encumbering real estate located in any State may be foreclosed by the Secretary in accordance with this chapter, or pursuant to other foreclosure procedures available, at the option of the Secretary.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 804 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3754. Designation of foreclosure commissioner

(a) In general

The Secretary may designate a person or persons to serve as a foreclosure commissioner or commissioners for the purpose of foreclosing upon a single family mortgage.

(b) Power of sale

A foreclosure commissioner designated under this section shall have a nonjudicial power of sale.

(c) Qualifications

The foreclosure commissioner, if a natural person, shall be a resident of the State in which the security property is located and, if not a natural person, the foreclosure commissioner must be duly authorized to transact business under laws of the State in which the security property is located. No person shall be designated as a foreclosure commissioner unless that person is responsible, financially sound, and competent to conduct a foreclosure.

(d) Designation procedure

(1) Written designation

The Secretary may designate a foreclosure commissioner by executing a written designation stating the name and business or residential address of the commissioner, except that if a person is designated in his or her capacity as an official or employee of a government or corporate entity, such person may be designated by his or her unique title or position instead of by name.

(2) Substitute commissioners

The Secretary may, with or without cause, designate a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner.

(3) Number

More than 1 foreclosure commissioner may be designated at any time.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 805 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3755. Prerequisites to foreclosure

(a) In general

(1) Upon breach of covenant or condition

The Secretary is authorized to foreclose a mortgage under this chapter upon the breach of a covenant or condition in the mortgage agreement.

(2) No other pending proceedings

(A) Prior to commencement

No foreclosure may be commenced under this chapter unless any previously pending judicial or nonjudicial proceeding that has been separately instituted by the Secretary to foreclose the mortgage (other than under this chapter), has been withdrawn, dismissed, or otherwise terminated.

(B) After commencement

No separately instituted foreclosure proceeding on a mortgage which is the subject of a foreclosure proceeding under this chapter shall be instituted by the Secretary during the pendency of foreclosure pursuant to this chapter.

(b) Other rights unaffected

Nothing in this chapter shall preclude the Secretary from—

(1) enforcing any right, other than foreclosure, under applicable Federal or State law, including any right to obtain a monetary judgment; or

(2) foreclosing under this chapter if the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law, or under the mortgage agreement, including the appointment of a receiver, mortgagee-in-possession status, or relief under an assignment of rents.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 806 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3756. Commencement of foreclosure

(a) Request to foreclosure commissioner

If the Secretary, as holder of a single family mortgage, determines that the prerequisites to foreclosure set forth in section 3755 of this title are satisfied, the Secretary may request the foreclosure commissioner to commence foreclosure of a single family mortgage. Upon such request, the foreclosure commissioner shall commence foreclosure of the mortgage, by commencing service of a notice of default and foreclosure sale in accordance with sections 3757 and 3758 of this title.

(b) Designation of substitute foreclosure commissioner

After commencement of a foreclosure under this chapter, the Secretary may designate a substitute foreclosure commissioner at any time before the time of the foreclosure sale, and the foreclosure shall continue without prejudice, unless the substitute commissioner, in that commissioner's sole discretion, finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. If the substitute commissioner makes such a finding, the substitute commissioner shall cancel the foreclosure sale, or adjourn such sale in accordance with section 3760(c) of this title.

(c) Written notice

Upon designation of a substitute foreclosure commissioner, a copy of the written notice of such designation described in section 3754 of this title shall be served—

(1) by mail, as provided in section 3758 of this title (except that the minimum time periods between mailing and the date of foreclosure sale prescribed in such section shall not apply); or

(2) in any other manner which, in the substitute commissioner's sole discretion, is conducive to achieving timely notice of such substitution.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 807 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3757. Notice of default and foreclosure sale

The notice of default and foreclosure sale to be served in accordance with this chapter shall set forth—

(1) the name and address of the foreclosure commissioner;

(2) the date on which the notice is issued;

(3) the names of—

(A) the Secretary;

(B) the original mortgagee (if other than the Secretary); and

(C) the original mortgagor;

(4) the street address or a description of the location of the security property, and a description of the security property, sufficient to identify the property to be sold;

(5) the date of the mortgage, the office in which the mortgage is recorded, and the liber number and folio or other appropriate description of the location of recordation of the mortgage;

(6) identification of the failure to make payment, including the due date of the earliest installment payment remaining wholly unpaid as of the date on which the notice is issued upon which the foreclosure is based, or a description of any other default or defaults upon which foreclosure is based, and the acceleration of the secured indebtedness;

(7) the date, time, and location of the foreclosure sale;

(8) a statement that the foreclosure is being conducted pursuant to this chapter;

(9) a description of the types of costs, if any, to be paid by the purchaser upon transfer of title;

(10) the amount and method of deposit to be required at the foreclosure sale (except that no deposit shall be required of the Secretary) and the time and method of payment of the balance of the foreclosure purchase price; and

(11) any other appropriate terms of sale or information, as the Secretary may determine.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 808 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3758. Service of notice of foreclosure sale

The foreclosure commissioner shall serve the notice of default and foreclosure sale described in section 3757 of this title upon the following persons and in the following manner, and no additional notice shall be required to be served, notwithstanding any notice requirements of any State or local law:

(1) Timing

Not less than 21 days before the date of the foreclosure sale, the notice of default and foreclosure sale shall be filed in the manner authorized for filing a notice of an action concerning real property according to the law of the State in which the security property is located or, if none, in the manner authorized by section 3201 of title 28.

(2) Notice by mail

(A) In general

The notice of foreclosure sale shall be sent by certified or registered mail, postage prepaid and return receipt requested, to the following:

(i) Current owner

The current security property owner of record, as the record existed 45 days before the date originally set for the foreclosure sale (whether or not the notice describes a sale adjourned).

(ii) Mortgagors

All mortgagors of record or other persons who appear on the basis of the record to be liable for part or all of the mortgage debt, as the record existed 45 days before the date originally set for the foreclosure sale (whether or not the notice describes a sale adjourned).

(iii) Dwelling units

All dwelling units in the security property (whether or not the notice describes a sale adjourned).

(iv) Other lienholders

All persons holding liens of record upon the security property, as the record existed 45 days before the date originally set for the foreclosure sale (whether or not the notice describes a sale adjourned).

(B) Timing

(i) Notice under clauses (i) and (ii)

Notice under clauses (i) and (ii) of subparagraph (A) shall be mailed not less than 21 days before the date of the foreclosure sale, and shall be mailed to the current owner and mortgagor at the last known address of the current owner and mortgagor, or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such current owner and mortgagor.

(ii) Notice under clause (iii)

Notice under clause (iii) of subparagraph (A) shall be mailed not less than 21 days before the date of the foreclosure sale. If the names of the occupants of the security property are not known to the Secretary, or the security property has more than 1 dwelling, the notice shall be posted at the security property not less than 21 days before the foreclosure sale.

(iii) Notice under clause (iv)

Notice under clause (iv) of subparagraph (A) shall be mailed not less than 21 days before the date of the foreclosure sale, and shall be mailed to each such lienholder's address of record or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such lienholder.

(C) Effectiveness of notice

Notice by mail pursuant to this section or section 3756(c) of this title shall be deemed duly given upon mailing, whether or not received by the addressee and whether or not a return receipt is received or the notice is returned.

(3) Publication

(A) In general

A copy of the notice of default and foreclosure sale shall be published once a week during 3 successive calendar weeks before the date of the foreclosure sale. Such publication shall be in a newspaper or newspapers having general circulation in the county or counties in which the security property being sold is located. To the extent practicable, the newspaper or newspapers chosen shall be a newspaper or newspapers having circulation conducive to achieving notice of foreclosure by publication. A legal newspaper that is accepted as a newspaper of legal record in the county or counties in which the security property being sold is located shall be considered a newspaper having general circulation for the purposes of this paragraph.

(B) Exception

If there is no newspaper published at least weekly which has a general circulation in one of the counties in which the security property being sold is located, copies of the notice of default and foreclosure sale shall be posted not less than 21 days before the date of the foreclosure sale—

(i) at the courthouse of any county or counties in which the security property is located; and

(ii) at the place where the sale is to be held.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 809 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3759. Presale reinstatement

(a) Withdrawal and cancellation

(1) In general

Except as provided in sections 3756(b) and 3760(c) of this title, the foreclosure commis-

sioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only if—

(A) the Secretary directs the foreclosure commissioner to do so before or at the time of the sale;

(B) the foreclosure commissioner finds, upon application of the mortgagor not less than 3 days before the date of the sale, that the default or defaults upon which the foreclosure is based did not exist at the time of service of the notice of default and foreclosure sale; or

(C)(i) in the case of a foreclosure involving a monetary default, there is tendered to the foreclosure commissioner before public auction is completed the entire amount of principal and interest which would be due if payments under the mortgage had not been accelerated;

(ii) in the case of a foreclosure involving a nonmonetary default, the foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that such default is cured; and

(iii) there is tendered to the foreclosure commissioner before public auction is completed—

(I) all amounts due under the mortgage agreement (excluding additional amounts which would have been due if mortgage payments had been accelerated);

(II) all amounts of expenditures secured by the mortgage; and

(III) all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in section 3761 of this title.

(2) Discretionary noncancellation

The Secretary may refuse to cancel a foreclosure sale pursuant to paragraph (1)(C) if the current mortgagor or owner of record has, on one or more previous occasions, caused a foreclosure of the mortgage, commenced pursuant to this chapter or otherwise, to be canceled by curing a default.

(b) Opportunity of Secretary to dispute withdrawal

Before withdrawing the security property from foreclosure under subparagraph (B) or (C) of subsection (a)(1) of this section, the foreclosure commissioner shall afford the Secretary a reasonable opportunity to demonstrate why the security property should not be so withdrawn.

(c) Effect of cancellation

(1) Mortgage unaffected

In any case in which a foreclosure commenced under this chapter is canceled, the mortgage shall continue in effect as though acceleration had not occurred.

(2) Commencement of new foreclosure sale

Cancellation of a foreclosure sale under this chapter shall have no effect on the commencement of a subsequent foreclosure proceeding under this chapter.

(d) Notice of cancellation

The foreclosure commissioner shall file a notice of cancellation in the same place and manner provided for filing the notice of default and foreclosure sale in section 3758 of this title.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 810 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3760. Conduct of sale; adjournment

(a) In general

(1) Manner and time

A foreclosure sale pursuant to this chapter shall be held at public auction and shall be scheduled to begin between the hours of 9 o'clock ante meridian and 4 o'clock post meridian local time.

(2) Location

The foreclosure sale shall be held at a location specified in the notice of default and foreclosure sale and such location shall be at a place where foreclosure real estate auctions are customarily held in the county or counties in which the property to be sold is located, or at a courthouse therein, or at or on the property to be sold. Sale of security property situated in two or more counties may be held in any 1 of the counties in which any part of the security property is situated.

(3) Sale of multiple properties

The foreclosure commissioner may designate the order in which multiple security properties are sold.

(b) Duties of foreclosure commissioner

(1) Conduct of sale

(A) In general

The foreclosure commissioner shall conduct the foreclosure sale in accordance with the provisions of this chapter and in a manner fair to both the mortgagor and the Secretary.

(B) Written bids

Written one-price sealed bids shall be accepted by the foreclosure commissioner from the Secretary and other persons for entry by announcement by the foreclosure commissioner at the sale.

(C) Auctioneer

The foreclosure commissioner may serve as auctioneer, or, in accordance with regulations of the Secretary, may employ an auctioneer to be paid from the commission provided for in section 3761(5) of this title.

(2) Eligible participants

(A) In general

The Secretary, and any other person who has submitted a written one-price bid, may bid at the foreclosure sale.

(B) Prohibited participants

The foreclosure commissioner or any relative, related business entity, or employee of the foreclosure commissioner or a related business entity shall not be permitted to bid

in any manner on the security property subject to foreclosure sale, except that the foreclosure commissioner or an auctioneer may be directed by the Secretary to enter a bid on the Secretary's behalf.

(c) Adjournment or cancellation of sale

(1) General authority

The foreclosure commissioner may, before or at the time of the foreclosure sale, adjourn or cancel the foreclosure sale if the commissioner determines, in the commissioner's discretion, that—

(A) circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary; or

(B) additional time is necessary to determine whether the security property should be withdrawn from foreclosure, as provided in section 3759 of this title.

(2) Adjournment to same or later day

The foreclosure commissioner may adjourn a foreclosure sale to a later hour the same day by announcing or posting the new time and place of the foreclosure sale, or may adjourn the foreclosure sale for not less than 9 and not more than 31 days, in which case the commissioner shall serve a notice of default and foreclosure sale revised to recite the fact that the foreclosure sale has been adjourned to a specified date, as well as any other information the foreclosure commissioner deems appropriate. Such notice shall be served by publication and mailing in accordance with section 3758 of this title, except that publication may be made on any of 3 separate days before the revised date of foreclosure sale, and mailing may be made at any time not less than 7 days before the date to which the foreclosure sale has been adjourned.

(d) Cash deposits

The foreclosure commissioner may require a bidder to make a cash deposit in an amount or percentage set by the foreclosure commissioner and stated in the notice of foreclosure sale before the bid is accepted. A successful bidder at the foreclosure sale who fails to comply with the terms of the sale may be required to forfeit the cash deposit or, at the election of the foreclosure commissioner after consultation with the Secretary, shall be liable to the Secretary for any costs incurred as a result of such failure.

(e) Presumption of validity of sale

Any foreclosure sale held in accordance with this chapter shall be conclusively presumed to have been conducted in a legal, fair, and reasonable manner. The sale price shall be conclusively presumed to be reasonable and equal to the fair market value of the property.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 811 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3761. Foreclosure costs

The following foreclosure costs shall be paid from the sale proceeds before satisfaction of any other claim to such sale proceeds:

(1) Advertising and postage

Necessary advertising costs and postage incurred in giving notice pursuant to sections 3758 and 3760 of this title.

(2) Mileage

Mileage (determined by the most reasonable road distance) for posting notices and for the foreclosure commissioner's or auctioneer's attendance at the sale, as provided in section 1821 of title 28.

(3) Title and lien search

Reasonable and necessary costs incurred in connection with any search of title and lien records.

(4) Recordation fees

Costs incurred to record documents.

(5) Commission

A commission for the foreclosure commissioner (if the foreclosure commissioner is not an employee of the United States) for the conduct of the foreclosure, to the extent such a commission is authorized by the Secretary.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 812 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3762. Disposition of sale proceeds

(a) Priority payments

Money realized from a foreclosure sale shall be made available for obligation and expenditure in the following order:

(1) Costs of foreclosure

To cover the costs of the foreclosure proceeding described in section 3761 of this title.

(2) Tax liens

To pay valid tax liens or assessments if required by the notice of default and foreclosure sale.

(3) Prior liens

To pay any liens recorded before the recording of the mortgage which are required to be paid in conformity with the terms of sale in the notice of default and foreclosure sale.

(4) Service charges and advances

To pay service charges and advances for taxes, assessments, and property insurance premiums.

(5) Interest

To pay any outstanding interest.

(6) Principal

To pay the principal outstanding balance secured by the mortgage (including expenditures for the necessary protection, preservation, and repair of the security property as authorized under the mortgage agreement and interest thereon if provided for in the mortgage agreement).

(7) Late charges or fees

To pay any late charges or fees.

(b) Other payments

(1) Other lienholders and the mortgagor

Any surplus of proceeds from a foreclosure sale, after payment of the items described in subsection (a) of this section shall be paid in the following order:

(A) First, to holders of liens recorded after the mortgage in the order of priority under Federal law or the law of the State in which the security property is located.

(B) Second, to the appropriate mortgagor.

(2) Disputed claims

If the person to whom such surplus is to be paid cannot be located, or if the surplus available is insufficient to pay all claimants and the claimants cannot agree on the allocation of the surplus, or if any person claiming an interest in the mortgage proceeds does not agree that some or all of the sale proceeds should be paid to a claimant as provided in this section, that part of the sale proceeds in question may be deposited by the foreclosure commissioner with an appropriate official or court authorized under law to receive disputed funds in such circumstances. If a procedure for the deposit of disputed funds is not available, and the foreclosure commissioner files a bill of interpleader or is sued as a stakeholder to determine entitlement to such funds, the foreclosure commissioner's necessary costs incurred in taking or defending such action shall be deductible from the disputed funds.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 813 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3763. Transfer of title and possession

(a) Delivery of deeds

The foreclosure commissioner shall, upon delivery of a deed or deeds to the purchaser or purchasers (which shall be without warranty or covenants to the purchaser or purchasers) obtain the balance of the purchase price in accordance with the terms of sale provided in the notice of default and foreclosure sale. Notwithstanding any State law to the contrary, delivery of a deed by the foreclosure commissioner shall be a conveyance of the property, and constitute passage of title to the mortgaged property, and no judicial proceedings shall be required ancillary or supplementary to the procedures provided in this chapter to assure the validity of the conveyance or confirmation of such conveyance.

(b) Right of possession

A purchaser at a foreclosure sale held pursuant to this chapter shall be entitled to possession upon passage of title under subsection (a) of this section to the mortgaged property, subject to any interest or interests not barred under section 3765 of this title. Any person remaining in possession of the mortgaged property after the passage of title shall be deemed a tenant at sufferance subject to eviction under local law.

(c) Death of purchaser

If a purchaser dies before execution and delivery of the deed conveying the property to the purchaser, the foreclosure commissioner shall execute and deliver the deed to a representative of the decedent purchaser's estate upon payment of the purchase price in accordance with the terms of sale. Such delivery to the representative of the purchaser's estate shall have the same effect as if accomplished during the lifetime of the purchaser.

(d) Bona fide purchaser

The purchaser of property under this chapter shall be presumed to be a bona fide purchaser.

(e) No right of redemption

(1) In general

There shall be no right of redemption, or right of possession based upon a right of redemption, in the mortgagor or others subsequent to a foreclosure completed pursuant to this chapter.

(2) Certain provisions

Section 1710(*l*) of this title and section 1452c of title 42 shall not apply to mortgages foreclosed under this chapter.

(f) Taxes

When a mortgage foreclosed pursuant to this chapter is conveyed to the Secretary, no tax shall be imposed or collected with respect to the foreclosure commissioner's deed (including any tax customarily imposed upon the deed instrument or upon the conveyance or transfer of title to the property). Failure to collect or pay a tax of the type and under the circumstances stated in the preceding sentence shall not be grounds for refusing to record such a deed, for failing to recognize such recordation as imparting notice, or for denying the enforcement of such a deed and its provisions in any State or Federal court.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 814 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3764. Record of foreclosure and sale

(a) Statements included

To establish a sufficient record of foreclosure and sale, the foreclosure commissioner shall include in the recitals of the deed to the purchaser, or prepare as an affidavit or addendum to the deed, a statement setting forth—

(1) the date, time, and place of the foreclosure sale;

(2) that the mortgage was held by the Secretary, the date of the mortgage, the office in which the mortgage was recorded, and the liber number and folio or other appropriate description of the recordation of the mortgage;

(3) the particulars of the foreclosure commissioner's service of the notice of default and foreclosure sale in accordance with sections 3758 and 3760 of this title;

(4) the date and place of filing the notice of default and foreclosure sale;

(5) that the foreclosure was conducted in accordance with the provisions of this chapter and with the terms of the notice of default and foreclosure sale; and

(6) the sale amount.

(b) Effect of statements

The items set forth in subsection (a) of this section shall—

(1) be prima facie evidence of the truth of such facts in any Federal or State court; and

(2) evidence a conclusive presumption in favor of bona fide purchasers and encumbrancers for value without notice.

Encumbrancers for value include liens placed by lenders who provide the purchaser with purchase money in exchange for a security interest in the newly-conveyed property.

(c) Recordation of instruments

The deed executed by the foreclosure commissioner, the foreclosure commissioner's affidavit (if prepared) and any other instruments submitted for recordation in relation to the foreclosure of the security property under this chapter shall be accepted for recordation by the registrar of deeds or other appropriate official of the county or counties in which the security property is located upon tendering of payment of the usual recording fees for such instruments, and without regard to the compliance of those instruments with any other local filing requirements.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 815 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3765. Effect of sale

A sale, made and conducted as prescribed in this chapter to a bona fide purchaser, shall bar all claims upon, or with respect to, the property sold, for each of the following persons:

(1) Notice recipients

Any person to whom the notice of default and foreclosure sale was mailed as provided in this chapter, and the heir, devisee, executor, administrator, successor, or assignee claiming under any such person.

(2) Subordinate claimants with knowledge

Any person claiming any interest in the property subordinate to that of the mortgage, if such person had actual knowledge of the foreclosure sale.

(3) Nonrecorded claimants

Any person claiming any interest in the property, whose assignment, mortgage, or other conveyance was not duly recorded or filed in the proper place for recording or filing, or whose judgment or decree was not duly docketed or filed in the proper place for docketing or filing, before the date on which the notice of the foreclosure sale was first served by publication, as required by section 3758(3) of this title, and the executor, administrator, or assignee of such a person.

(4) Other persons

Any person claiming an interest in the property under a statutory lien or encumbrance created subsequent to the recording or filing of the mortgage being foreclosed, and attaching to the title or interest of any person designated in any of the foregoing paragraphs.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 816 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3766. Computation of time

Periods of time provided for in this chapter shall be calculated in consecutive calendar days, including the day or days on which the actions or events occur or are to occur for which the period of time is provided and including the day on which an event occurs or is to occur from which the period is to be calculated.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 817 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3767. Severability

If any part of this chapter shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, or invalid as applied to a class of cases, such judgment shall not affect, impair, or invalidate the remainder thereof, and shall be confined in its operation to the part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 818 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3768. Deficiency judgment

(a) In general

(1) Referral to Attorney General

If after deducting the payments provided for in section 3762 of this title, the price at which the security property is sold at a foreclosure sale is less than the unpaid balance of the debt secured by the security property, resulting in a deficiency, the Secretary may refer the matter to the Attorney General who may commence an action or actions against any or all debtors to recover the deficiency, unless such an action is specifically prohibited by the mortgage.

(2) Other recoveries

In any action instituted pursuant to this section the United States may recover—

(A) any amount authorized by section 3011 of title 28; and

(B) the costs of the action.

(b) Limitation

Any action commenced to recover a deficiency under this section must be brought not later than 6 years after the date of the last sale of the security property.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 819 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

CHAPTER 39—ALTERNATIVE MORTGAGE TRANSACTIONS

Sec.
3801. Findings and purpose.
3802. Definitions.
3803. Alternative mortgage authority.
3804. Applicability of preemption provisions.
3805. Applicability of consumer protection provisions.
3806. Adjustable rate mortgage caps.

§ 3801. Findings and purpose

(a) The Congress hereby finds that—

(1) increasingly volatile and dynamic changes in interest rates have seriously impared[1] the ability of housing creditors to provide consumers with fixed-term, fixed-rate credit secured by interests in real property, cooperative housing, manufactured homes, and other dwellings;

(2) alternative mortgage transactions are essential to the provision of an adequate supply of credit secured by residential property necessary to meet the demand expected during the 1980's; and

(3) the Comptroller of the Currency, the National Credit Union Administration, and the Director of the Office of Thrift Supervision have recognized the importance of alternative mortgage transactions and have adopted regulations authorizing federally chartered depository institutions to engage in alternative mortgage financing.

(b) It is the purpose of this chapter to eliminate the discriminatory impact that those regulations have upon nonfederally chartered housing creditors and provide them with parity with federally chartered institutions by authorizing all housing creditors to make, purchase, and enforce alternative mortgage transactions so long as the transactions are in conformity with the regulations issued by the Federal agencies.

(Pub. L. 97–320, title VIII, § 802, Oct. 15, 1982, 96 Stat. 1545; Pub. L. 101–73, title VII, § 744(c), Aug. 9, 1989, 103 Stat. 438.)

AMENDMENTS

1989—Subsec. (a)(3). Pub. L. 101–73 substituted ''Director of the Office of Thrift Supervision'' for ''Federal Home Loan Bank Board''.

SHORT TITLE

Section 801 of title VIII of Pub. L. 97–320 provided that: ''This title [enacting this chapter] may be cited as the 'Alternative Mortgage Transaction Parity Act of 1982'.''

[1] So in original. Probably should be ''impaired''.

EFFECTIVE DATE

Section 807(a) of Pub. L. 97–320 provided that: ''This title [enacting this chapter] shall be effective upon enactment [Oct. 15, 1982].''

IDENTIFICATION, DESCRIPTION AND PUBLICATION OF REGULATIONS INAPPLICABLE TO, OR CONFORMATION OF REGULATIONS FOR USE OF NONFEDERALLY CHARTERED HOUSING CREDITORS

Section 807(b) of Pub. L. 97–320 provided that: ''Within sixty days of the enactment of this title [Oct. 15, 1982], the Comptroller of the Currency, the National Credit Union Administration, and the Federal Home Loan Bank Board shall identify, describe, and publish those portions or provisions of their respective regulations that are inappropriate for (and thus inapplicable to), or that need to be conformed for the use of, the nonfederally chartered housing creditors to which their respective regulations apply, including without limitation, making necessary changes in terminology to conform the regulatory and disclosure provisions to those more typically associated with various types of transactions including credit sales.''

§ 3802. Definitions

As used in this chapter—

(1) the term ''alternative mortgage transaction'' means a loan or credit sale secured by an interest in residential real property, a dwelling, all stock allocated to a dwelling unit in a residential cooperative housing corporation, or a residential manufactured home (as that term is defined in section 5402(6) of title 42)—

(A) in which the interest rate or finance charge may be adjusted or renegotiated;

(B) involving a fixed-rate, but which implicitly permits rate adjustments by having the debt mature at the end of an interval shorter than the term of the amortization schedule; or

(C) involving any similar type of rate, method of determining return, term, repayment, or other variation not common to traditional fixed-rate, fixed-term transactions, including without limitation, transactions that involve the sharing of equity or appreciation;

described and defined by applicable regulation; and

(2) the term ''housing creditor'' means—

(A) a depository institution, as defined in section 501(a)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980;

(B) a lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act [12 U.S.C. 1701 et seq.];

(C) any person who regularly makes loans, credit sales, or advances secured by interests in properties referred to in paragraph (1); or

(D) any transferee of any of them.

A person is not a ''housing creditor'' with respect to a specific alternative mortgage transaction if, except for this chapter, in order to enter into that transaction, the person would be required to comply with licensing requirements imposed under State law, unless such person is licensed under applicable State law and such person remains, or becomes, subject

to the applicable regulatory requirements and enforcement mechanisms provided by State law.

(Pub. L. 97–320, title VIII, § 803, Oct. 15, 1982, 96 Stat. 1545; Pub. L. 111–203, title X, § 1083(a)(1), July 21, 2010, 124 Stat. 2080.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, § 1083(a)(1), (b), July 21, 2010, 124 Stat. 2080, 2081, provided that, effective on the designated transfer date, this section is amended by substituting ''section 5402(6) of title 42), in which the interest rate or finance charge may be adjusted or renegotiated, described and defined'' for ''section 5402(6) of title 42)'' and all that follows through ''described and defined''. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 501(a)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980, referred to in par. (2)(A), is section 501(a)(2) of Pub. L. 96–221, title V, Mar. 31, 1980, 94 Stat. 161, as amended, which is set out as a note under section 1735f–7 of this title.

The National Housing Act, referred to in par. (2)(B), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title X, § 1083(b), July 21, 2010, 124 Stat. 2081, provided that: ''This section [amending this section and section 3803 of this title and enacting provisions set out as a note under this section] and the amendments made by this section shall become effective on the designated transfer date.''

[For definition of ''designated transfer date'', see section 5481 of this title.]

EFFECTIVE DATE

Section effective Oct. 15, 1982, see section 807(a) of Pub. L. 97–320, set out as a note under section 3801 of this title.

CONSTRUCTION OF 2010 AMENDMENT

Pub. L. 111–203, title X, § 1083(c), July 21, 2010, 124 Stat. 2081, provided that: ''The amendments made by subsection (a) [amending this section and section 3803 of this title] shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on or before the designated transfer date.''

[For definition of ''designated transfer date'', see section 5481 of this title.]

§ 3803. Alternative mortgage authority

(a) General authority; compliance by banks, credit unions and all other housing creditors with applicable regulations

In order to prevent discrimination against State-chartered depository institutions, and other nonfederally chartered housing creditors, with respect to making, purchasing, and enforcing alternative mortgage transactions, housing creditors may make, purchase, and enforce alternative mortgage transactions, except that this section shall apply—

(1) with respect to banks, only to transactions made in accordance with regulations governing alternative mortgage transactions as issued by the Comptroller of the Currency for national banks, to the extent that such regulations are authorized by rulemaking authority granted to the Comptroller of the Currency with regard to national banks under laws other than this section;

(2) with respect to credit unions, only to transactions made in accordance with regulations governing alternative mortgage transactions as issued by the National Credit Union Administration Board for Federal credit unions, to the extent that such regulations are authorized by rulemaking authority granted to the National Credit Union Administration with regard to Federal credit unions under laws other than this section; and

(3) with respect to all other housing creditors, including without limitation, savings and loan associations, mutual savings banks, and savings banks, only to transactions made in accordance with regulations governing alternative mortgage transactions as issued by the Director of the Office of Thrift Supervision for federally chartered savings and loan associations, to the extent that such regulations are authorized by rulemaking authority granted to the Director of the Office of Thrift Supervision with regard to federally chartered savings and loan associations under laws other than this section.

(b) Transactions deemed in compliance with applicable regulations

For the purpose of determining the applicability of this section, an alternative mortgage transaction shall be deemed to be made in accordance with the applicable regulation notwithstanding the housing creditor's failure to comply with the regulation, if—

(1) the transaction is in substantial compliance with the regulation; and

(2) within sixty days of discovering any error, the housing creditor corrects such error, including making appropriate adjustments, if any, to the account.

(c) Preemption of State constitutions, laws or regulations

An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation.

(Pub. L. 97–320, title VIII, § 804, Oct. 15, 1982, 96 Stat. 1546; Pub. L. 101–73, title VII, § 744(c), Aug. 9, 1989, 103 Stat. 438; Pub. L. 111–203, title X, § 1083(a)(2), July 21, 2010, 124 Stat. 2080.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, § 1083(a)(2), (b), July 21, 2010, 124 Stat. 2080, 2081, provided that, effective on the designated transfer date, this section is amended:

(1) in subsection (a)—

(A) in paragraphs (1), (2), and (3), by inserting ''on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010,'' after ''transactions made'' wherever appearing;

(B) in paragraph (2), by striking out ''and'' at the end;

(C) in paragraph (3), by substituting ''; and'' for the period at the end; and

(D) by adding at the end the following new paragraph:

''(4) with respect to transactions made after the designated transfer date, only in accordance with regulations governing alternative mortgage transactions, as issued by the Bureau of Consumer Financial Protection for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Bureau of Consumer Financial Protection with regard to federally chartered housing creditors under provisions of law other than this section.'';

(2) by striking out subsection (c) and adding the following:

''(c) Preemption of State law

''An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation that prohibits an alternative mortgage transaction. For purposes of this subsection, a State constitution, law, or regulation that prohibits an alternative mortgage transaction does not include any State constitution, law, or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.''; and

(3) by adding at the end the following:

''(d) Bureau actions

''The Bureau of Consumer Financial Protection shall—

''(1) review the regulations identified by the Comptroller of the Currency and the National Credit Union Administration, (as those rules exist on the designated transfer date), as applicable under paragraphs (1) through (3) of subsection (a);

''(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of the Consumer Financial Protection Act of 2010; and

''(3) promulgate regulations under subsection (a)(4) after the designated transfer date.

''(e) Designated transfer date

''As used in this section, the term 'designated transfer date' means the date determined under section 1062 of the Consumer Financial Protection Act of 2010.''

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1989—Subsec. (a)(3). Pub. L. 101–73 substituted ''Director of the Office of Thrift Supervision'' for ''Federal Home Loan Bank Board'' wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1083(b) of Pub. L. 111–203, set out as a note under section 3802 of this title.

EFFECTIVE DATE

Section effective Oct. 15, 1982, see section 807(a) of Pub. L. 97–320, set out as a note under section 3801 of this title.

§ 3804. Applicability of preemption provisions

(a) The provisions of section 3803 of this title shall not apply to any alternative mortgage transaction in any State made on or after the effective date (if such effective date occurs on or after October 15, 1982, and prior to a date three years after October 15, 1982) of a State law or a certification that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the preemption provided in section 3803 of this title to apply with respect to alternative mortgage transactions (or to any class or type of alternative mortgage transaction) subject to the laws of such State, except that section 3803 of this title shall continue to apply to—

(1) any alternative mortgage transaction undertaken on or after such date pursuant to an agreement to undertake such alternative mortgage transaction which was entered into on or after October 15, 1982, and prior to such later date (the ''preemption period''); and

(2) any renewal, extension, refinancing, or other modification of an alternative mortgage transaction that was entered into during the preemption period.

(b) An alternative mortgage transaction shall be deemed to have been undertaken during the preemption period to which this section applies if it—

(1) is funded or extended in whole or in part during the preemption period, regardless of whether pursuant to a commitment or other agreement therefor made prior to that period; or

(2) is a renewal, extension, refinancing, or other modification of an alternative mortgage transaction entered into before the preemption period and such renewal, extension, or other modification is made during such period with the written consent of any person obligated to repay such credit.

(Pub. L. 97–320, title VIII, § 805, Oct. 15, 1982, 96 Stat. 1547; Pub. L. 98–181, title IV, § 472, Nov. 30, 1983, 97 Stat. 1237.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–181 inserted ''(or to any class or type of alternative mortgage transaction)''.

EFFECTIVE DATE

Section effective Oct. 15, 1982, see section 807(a) of Pub. L. 97–320, set out as a note under section 3801 of this title.

§ 3805. Applicability of consumer protection provisions

Section 501(c)(1) of the Depository Institutions Deregulation and Monetary Control Act of 1980 shall not apply to transactions which are subject to this chapter.

(Pub. L. 97–320, title VIII, § 806, Oct. 15, 1982, 96 Stat. 1548.)

REFERENCES IN TEXT

Section 501(c)(1) of the Depository Institutions Deregulation and Monetary Control Act of 1980, referred to in text, is section 501(c)(1) of Pub. L. 96–221, title V, Mar. 31, 1980, 94 Stat. 161, as amended, which is set out as a note under section 1735f–7 of this title.

EFFECTIVE DATE

Section effective Oct. 15, 1982, see section 807(a) of Pub. L. 97–320, set out as a note under section 3801 of this title.

§ 3806. Adjustable rate mortgage caps

(a) In general

Any adjustable rate mortgage loan originated by a creditor shall include a limitation on the maximum interest rate that may apply during the term of the mortgage loan.

(b) Regulations

The Board of Governors of the Federal Reserve System shall prescribe regulations to carry out the purposes of this section.

(c) Enforcement

Any violation of this section shall be treated as a violation of the Truth in Lending Act [15 U.S.C. 1601 et seq.] and shall be subject to administrative enforcement under section 108 [15 U.S.C. 1607] or civil damages under section 130 [15 U.S.C. 1640] of such Act, or both.

(d) Definitions

For the purpose of this section—

(1) the term ''creditor'' means a person who regularly extends credit for personal, family, or household purposes; and

(2) the term ''adjustable rate mortgage loan'' means any consumer loan secured by a lien on a one- to four-family dwelling unit, including a condominium unit, cooperative housing unit, or mobile home, where the loan is made pursuant to an agreement under which the creditor may, from time to time, adjust the rate of interest.

(e) Effective date

This section shall take effect upon the expiration of 120 days after August 10, 1987.

(Pub. L. 100–86, title XII, § 1204, Aug. 10, 1987, 101 Stat. 662; Pub. L. 102–550, title IX, § 952, Oct. 28, 1992, 106 Stat. 3893.)

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (c), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, as amended, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Competitive Equality Banking Act of 1987, and not as part of the Alternative Mortgage Transaction Parity Act of 1982 which comprises this chapter.

AMENDMENTS

1992—Subsec. (d)(2). Pub. L. 102–550 substituted ''any consumer loan'' for ''any loan''.

CHAPTER 40—INTERNATIONAL LENDING SUPERVISION

Sec.
3901. Congressional declaration of policy.
3902. Definitions.
3903. Strengthened supervision of international lending.
3904. Reserves.
3904a. Additional reserve requirements.
3905. Accounting for fees on international loans.
3906. Collection and disclosure of international lending data.
3907. Capital adequacy.
3908. Foreign loan evaluations.
3909. General authorities.
3910. Audit authority of Government Accountability Office.
3911. Equal representation for Federal Deposit Insurance Corporation and the Office of Thrift Supervision.
3912. Repealed.

§ 3901. Congressional declaration of policy

(a)(1) It is the policy of the Congress to assure that the economic health and stability of the United States and the other nations of the world shall not be adversely affected or threatened in the future by imprudent lending practices or inadequate supervision.

(2) This shall be achieved by strengthening the bank regulatory framework to encourage prudent private decisionmaking and by enhancing international coordination among bank regulatory authorities.

(b) The Federal banking agencies shall consult with the banking supervisory authorities of other countries to reach understandings aimed at achieving the adoption of effective and consistent supervisory policies and practices with respect to international lending.

(Pub. L. 98–181, title IX, § 902, Nov. 30, 1983, 97 Stat. 1278.)

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–240, title IV, § 401, Dec. 19, 1989, 103 Stat. 2501, provided that: ''This title [enacting section 3904a of this title and enacting provisions set out as notes under section 3904a of this title and section 2291 of Title 22, Foreign Relations and Intercourse] may be cited as the 'Foreign Debt Reserving Act of 1989'.''

SHORT TITLE

Section 901 of title IX of Pub. L. 98–181 provided that: ''This title [enacting this chapter] may be cited as the 'International Lending Supervision Act of 1983'.''

ENCOURAGEMENT OF DEBT-FOR-DEVELOPMENT SWAPS THROUGH LOCAL CURRENCY REPAYMENT

Pub. L. 101–240, title V, § 531, Dec. 19, 1989, 103 Stat. 2513, provided that:

''(a) STATEMENT OF POLICY.—It is the sense of the Congress that—

''(1) debt-for-development swaps, where payment is made in local currency at the free market rate, serve a useful purpose by providing banking institutions with constructive opportunities for the reduction of the external debt of highly indebted developing countries in a process that involves the participation of private, nonprofit groups in providing a stimulus to the economic and social development of such developing countries;

''(2) debt-for-development swaps provide highly indebted developing countries with a creative method of reducing external debt burdens, while promoting their economic growth and restructuring objectives;

''(3) banking institutions should give careful consideration to engaging in such swaps as one means of strengthening overall loan portfolios through the reduction of high external debt burdens while expanding economic opportunities through private sector initiatives; and

''(4) in order to avoid any bias against such swaps in the regulatory framework applicable to the financial reporting of banking institutions, where payment is made in local currency at the free market rate, appropriate recognition of the fair market exchange value of the currency so received should be made.

''(b) NOTIFICATION RELATING TO LOCAL CURRENCY REPAYMENT THROUGH DEBT-FOR-DEVELOPMENT SWAPS.—Before the end of the 6-month period beginning on the date of the enactment of this section [Dec. 19, 1989], each appropriate Federal banking agency shall adopt uniform guidelines that will effectuate the policy set forth in subsection (a) concerning the regulatory framework and accounting treatment of debt-for-development swaps involving repayment in local currency at the free market rate. For the purpose of such guidelines, the impact of such swaps on reported loan loss reserves shall be determined by valuing currency received in such swaps at fair market exchange value.

''(c) DEFINITIONS.—As used in this section:

''(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the meaning given such term in section 903(1) of the International Lending Supervision Act of 1983 [12 U.S.C. 3902(1)].

''(2) BANKING INSTITUTION.—The term 'banking institution' has the meaning given such term in section 903(2) of the International Lending Supervision Act of 1983.

''(3) DEBT-FOR-DEVELOPMENT SWAP.—The term 'debt-for-development swap' has the meaning given such term in section 1608(b)(2) of the International Financial Institutions Act [22 U.S.C. 262p–4c(b)(2)].

''(4) HIGHLY INDEBTED COUNTRY.—The term 'highly indebted country' means any country designated as a 'Highly Indebted Country' in the annual World Debt Tables most recently published by the International Bank for Reconstruction and Development before the date of the enactment of this section [Dec. 19, 1989].''

§ 3902. Definitions

For purposes of this chapter—

(1) the term ''appropriate Federal banking agency'' has the same meaning given such term in section 1813(q) of this title, except that for purposes of this chapter such term means the Board of Governors of the Federal Reserve System for—

(A) bank holding companies and any nonbank subsidiary thereof;

(B) Edge Act corporations organized under section 25(a)[1] of the Federal Reserve Act [12 U.S.C. 611 et seq.]; and

(C) Agreement Corporations operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.]; and

(2) the term ''banking institution'' means—

(A)(i) an insured bank as defined in section 1813(h) of this title or any subsidiary of an insured bank;

(ii) an Edge Act corporation organized under section 25(a)[1] of the Federal Reserve Act [12 U.S.C. 611 et seq.]; and

(iii) an Agreement Corporation operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.]; and

(B) to the extent determined by the appropriate Federal banking agency, any agency or branch of a foreign bank, and any commercial lending company owned or controlled by one or more foreign banks or companies that control a foreign bank as those terms are defined in the International Banking Act of 1978 [12 U.S.C. 3101 et seq.]. The term ''banking institution'' shall not include a foreign bank.

(Pub. L. 98–181, title IX, § 903, Nov. 30, 1983, 97 Stat. 1278.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 25(a) of the Federal Reserve Act, referred to in pars. (1) and (2)(A), which is classified to subchapter II (§ 611 et seq.) of chapter 6 of this title, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§ 601 et seq.) of chapter 6 of this title.

The International Banking Act of 1978, referred to in par. (2)(B), is Pub. L. 95–369, Sept. 17, 1978, 92 Stat. 607, which enacted chapter 32 (§ 3101 et seq.) and sections 347d and 611a of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under sections 247, 611a, and 3101 of this title and formerly set out as notes under sections 36, 247, and 601 of this title. For definitions, see section 3101 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

§ 3903. Strengthened supervision of international lending

(a) Each appropriate Federal banking agency shall evaluate banking institution foreign country exposure and transfer risk for use in banking institution examination and supervision.

(b) Each such agency shall establish examination and supervisory procedures to assure that factors such as foreign country exposure and transfer risk are taken into account in evaluating the adequacy of the capital of banking institutions.

(Pub. L. 98–181, title IX, § 904, Nov. 30, 1983, 97 Stat. 1279.)

§ 3904. Reserves

(a) Establishment and maintenance of special reserves

(1) Each appropriate Federal banking agency shall require a banking institution to establish and maintain a special reserve whenever, in the judgment of such appropriate Federal banking agency—

(A) the quality of such banking institution's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as—

(i) a failure by such public or private borrowers to make full interest payments on external indebtedness;

(ii) a failure to comply with the terms of any restructured indebtedness; or

(iii) a failure by the foreign country to comply with any International Monetary Fund or other suitable adjustment program; or

(B) no definite prospects exist for the orderly restoration of debt service.

(2) Such reserves shall be charged against current income and shall not be considered as part of capital and surplus or allowances for possible loan losses for regulatory, supervisory, or disclosure purposes.

(b) Accommodation of potential losses on foreign loans by United States banks

The appropriate Federal banking agencies shall analyze the results of foreign loan resched-

uling negotiations, assess the loan loss risk reflected in rescheduling agreements, and, using the powers set forth in section 3907 of this title (regarding capital adequacy), ensure that the capital and reserve positions of United States banks are adequate to accommodate potential losses on their foreign loans.

(c) Regulations and orders of Federal banking agencies

The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within one hundred and twenty days after November 30, 1983.

(Pub. L. 98–181, title IX, § 905, Nov. 30, 1983, 97 Stat. 1279.)

§ 3904a. Additional reserve requirements

(a) In general

Each appropriate Federal banking agency shall review the exposure to risk of United States banking institutions arising from the medium- and long-term loans made by such institutions that are outstanding to any highly indebted country. Each agency shall provide direction to such institutions regarding additions to general reserves maintained by each banking institution for potential loan losses and special reserves required by such agency arising from such review.

(b) Determination of institutional exposure to risk

In determining the exposure of an institution to risk for purposes of subsection (a) of this section, the appropriate Federal banking agency—

(1) shall determine whether any country exposure that is, and has been for at least 2 years, rated in the category ''Other Transfer Risk Problems'' or the category ''Substandard'' by the Interagency Country Exposure Review Committee should be reevaluated;

(2) may exempt, in full or in part, from reserve requirements established pursuant to subsection (a) of this section, any loan—

(A) to a country that enters into a debt reduction, debt service reduction, or financing program with its bank creditors that is supported by the International Bank for Reconstruction and Development or the International Monetary Fund; or

(B) secured, in whole or in part, by appropriate collateral for payment of interest or principal;

(3) take into account any other factors which bear on such exposure and the particular circumstances of the institution; and

(4) shall consider as indicators of risk, where appropriate, the average reserve levels maintained by or required of banking institutions in foreign countries and secondary market prices for such loans.

(c) Timing and report

(1) Determined by agency

Except as provided in paragraph (3), each appropriate Federal banking agency shall determine the timing of any addition to reserves required by subsection (a) of this section.

(2) Report

Each appropriate Federal banking agency shall include in each report required to be made under section 3912(d)[1] of this title after 1989 a report on the actions taken pursuant to this section.

(3) Deadline

Each Federal agency required to undertake a review described in subsection (a) of this section shall complete the review not later than December 31, 1990.

(d) "Highly indebted country" defined

As used in this section, the term ''highly indebted country'' means any country designated as a ''Highly Indebted Country'' in the annual World Debt Tables most recently published by the International Bank for Reconstruction and Development before December 19, 1989.

(Pub. L. 98–181, title IX, § 905A, as added Pub. L. 101–240, title IV, § 402(b), Dec. 19, 1989, 103 Stat. 2501.)

REFERENCES IN TEXT

Section 3912(d) of this title, referred to in subsec. (c)(2), was repealed by Pub. L. 104–208, div. A, title II, § 2224(c), Sept. 30, 1996, 110 Stat. 3009–415.

CONGRESSIONAL FINDINGS

Section 402(a) of Pub. L. 101–240 provided that: ''The Congress finds that—

''(1) since the adoption of the International Lending Supervision Act of 1983 [12 U.S.C. 3901 et seq.], the credit quality of loans by United States banking institutions to highly indebted countries has deteriorated and the prospects for full repayment of such loans have diminished;

''(2) in general during this period, the level of country exposure and transfer risk associated with loans by United States banking institutions to highly indebted countries has not been adequately reflected in the reserve levels established by many individual United States banking institutions or the reserve requirements imposed by Federal banking agencies pursuant to such Act;

''(3) during the last 3 years and particularly in recent months, United States banking institutions have increased their reserves for possible losses from loans to highly indebted countries but such reserves remain, in some cases, significantly lower than reserves established by banking institutions in a number of foreign countries and may not be adequate to deal with potential risks; and

''(4) in order to fulfill the purposes of such Act, the Federal banking agencies should take a more active role in reviewing reserve levels established by United States banking institutions for potential losses from loans to highly indebted countries and in requiring appropriate levels of both special and general reserves to reflect the increased risk of such loans.''

§ 3905. Accounting for fees on international loans

(a)(1) In order to avoid excessive debt service burdens on debtor countries, no banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative cost of the restructuring unless it amortizes such fee over the effective life of each such loan.

(2)(A) Each appropriate Federal banking agency shall promulgate such regulations as are nec-

[1] See References in Text note below.

essary to further carry out the provisions of this subsection.

(B) The requirement of paragraph (1) shall take effect on November 30, 1983.

(b)(1) Subject to subsection (a) of this section, the appropriate Federal banking agencies shall promulgate regulations for accounting for agency, commitment, management and other fees charged by a banking institution in connection with an international loan.

(2) Such regulations shall establish the accounting treatment of such fees for regulatory, supervisory, and disclosure purposes to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan.

(3) The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this subsection within one hundred and twenty days after November 30, 1983.

(Pub. L. 98–181, title IX, § 906, Nov. 30, 1983, 97 Stat. 1279.)

§ 3906. Collection and disclosure of international lending data

(a) Submission of information to Federal banking agencies

Each appropriate Federal banking agency shall require, by regulation, each banking institution with foreign country exposure to submit, no fewer than four times each calendar year, information regarding such exposure in a format prescribed by such regulations.

(b) Disclosure of information to the public

Each appropriate Federal banking agency shall require, by regulation, banking institutions to disclose to the public information regarding material foreign country exposure in relation to assets and to capital.

(c) Regulations and orders of Federal banking agencies

The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within one hundred and twenty days after November 30, 1983.

(Pub. L. 98–181, title IX, § 907, Nov. 30, 1983, 97 Stat. 1280.)

§ 3907. Capital adequacy

(a)(1) Each appropriate Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate.

(2) Each appropriate Federal banking agency shall have the authority to establish such minimum level of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution.

(b)(1) Failure of a banking institution to maintain capital at or above its minimum level as established pursuant to subsection (a) of this section may be deemed by the appropriate Federal banking agency, in its discretion, to constitute an unsafe and unsound practice within the meaning of section 1818 of this title.

(2)(A) In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the appropriate Federal banking agency may issue a directive to a banking institution that fails to maintain captial[1] at or above its required level as established pursuant to subsection (a) of this section.

(B)(i) Such directive may require the banking institution to submit and adhere to a plan acceptable to the appropriate Federal banking agency describing the means and timing by which the banking institution shall achieve its required capital level.

(ii) Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 1818(i) of this title to the same extent as an effective and outstanding order issued pursuant to section 1818(b) of this title which has become final.

(3)(A) Each appropriate Federal banking agency may consider such banking institution's progress in adhering to any plan required under this subsection whenever such banking institution, or an affiliate thereof, or the holding company which controls such banking institution, seeks the requisite approval of such appropriate Federal banking agency for any proposal which would divert earnings, diminish capital, or otherwise impede such banking institution's progress in achieving its minimum capital level.

(B) Such appropriate Federal banking agency may deny such approval where it determines that such proposal would adversely affect the ability of the banking institution to comply with such plan.

(C) The Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall encourage governments, central banks, and regulatory authorities of other major banking countries to work toward maintaining and, where appropriate, strengthening the capital bases of banking institutions involved in international lending.

(Pub. L. 98–181, title IX, § 908, Nov. 30, 1983, 97 Stat. 1280; Pub. L. 111–203, title VI, § 616(c), July 21, 2010, 124 Stat. 1615.)

AMENDMENT OF SUBSECTION (a)(1)

Pub. L. 111–203, title VI, § 616(c), (e), July 21, 2010, 124 Stat. 1615, 1616, provided that, effective on the transfer date, subsection (a)(1) of this section is amended by inserting ''Each appropriate Federal banking agency shall seek to make the capital standards required under this section or other provisions of Federal law for insured depository institutions countercyclical so that the amount of capital required to be maintained by an insured depository institution increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the insured depository institution.'' at the end. See Effective Date of 2010 Amendment note below.

[1] So in original. Probably should be ''capital''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 616(e) of Pub. L. 111–203, set out as a note under section 1467a of this title.

§ 3908. Foreign loan evaluations

(a) Projects requiring an economic feasibility evaluation; content of evaluation

(1) In any case in which one or more banking institutions extend credit, whether by loan, lease, guarantee, or otherwise, which individually or in the aggregate exceeds $20,000,000, to finance any project which has as a major objective the construction or operation of any mining operation, any metal or mineral primary processing operation, any fabricating facility or operation, or any metal-making operations (semi and finished) located outside the United States or its territories and possessions, a written economic feasibility evaluation of such foreign project shall be prepared and approved in writing by a senior official of the banking institution, or, if more than one banking institution is involved, the lead banking institution, prior to the extension of such credit.

(2) Such evaluation shall—

(A) take into account the profit potential of the project, the impact of the project on world markets, the inherent competitive advantages and disadvantages of the project over the entire life of the project, and the likely effect of the project upon the overall long-term economic development of the country in which the project is located; and

(B) consider whether the extension of credit can reasonably be expected to be repaid from revenues generated by such foreign project without regard to any subsidy, as defined in international agreements, provided by the government involved or any instrumentality of any country.

(b) Review of evaluation by Federal banking agencies

Such economic feasibility evaluations shall be reviewed by representatives of the appropriate Federal banking agencies whenever an examination by such appropriate Federal banking agency is conducted.

(c) Other statutory authorities applicable

(1) The authorities of the Federal banking agencies contained in section 1818 of this title and in section 3909 of this title, except those contained in section 3909(d) of this title, shall be applicable to this section.

(2) No private right of action or claim for relief may be predicated upon this section.

(Pub. L. 98–181, title IX, § 909, Nov. 30, 1983, 97 Stat. 1281.)

§ 3909. General authorities

(a) Rules and regulations

(1) The appropriate Federal banking agencies are authorized to interpret and define the terms used in this chapter, and each appropriate Federal banking agency shall prescribe rules or regulations or issue orders as necessary to effectuate the purposes of this chapter and to prevent evasions thereof.

(2) The appropriate Federal banking agency is authorized to apply the provisions of this chapter to any affiliate of an insured depository institution, but only to affiliates for which it is the appropriate Federal banking agency, in order to promote uniform application of this chapter or to prevent evasions thereof.

(3) For purposes of this section, the term ''affiliate'' shall have the same meaning as in section 371c of this title, except that the term ''member bank'' in such section shall be deemed to refer to an ''insured depository institution'', as such term is defined in section 1813(c)(2) of this title.

(b) Systems uniformity

The appropriate Federal banking agencies shall establish uniform systems to implement the authorities provided under this chapter.

(c) Existing authorities

(1) The powers and authorities granted in this chapter shall be supplemental to and shall not be deemed in any manner to derogate from or restrict the authority of each appropriate Federal banking agency under section 1818 of this title or any other law including the authority to require additional capital or reserves.

(2) Any such authority may be used by any appropriate Federal banking agency to ensure compliance by a banking institution with the provisions of this chapter and all rules, regulations, or orders issued pursuant thereto.

(d) Civil penalties; assessment and collection

(1) Any banking institution which violates, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such banking institution, who violates any provision of this chapter, or any rule, regulation, or order, issued under this chapter, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues.

(2) Such violations shall be deemed to be a violation of a final order under section 1818(i)(2) of this title and the penalty shall be assessed and collected by the appropriate Federal banking agency under the procedures established by, and subject to the rights afforded to parties in, such section.

(Pub. L. 98–181, title IX, § 910, Nov. 30, 1983, 97 Stat. 1282; Pub. L. 109–351, title VII, § 713(b), Oct. 13, 2006, 120 Stat. 1995.)

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–351, § 713(b)(1), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (a)(3). Pub. L. 109–351, § 713(b)(2), substituted ''an 'insured depository institution', as such term is defined in section 1813(c)(2)'' for ''an 'insured bank', as such term is used in section 1813(h)''.

§ 3910. Audit authority of Government Accountability Office

(a) Scope of audit

(1) Under regulations of the Comptroller General, the Comptroller General shall audit the appropriate Federal banking agencies (as defined in section 3902 of this title), but may carry out an onsite examination of an open insured bank

or bank holding company only if the appropriate Federal banking agency has consented in writing.

(2) An audit under this subsection may include a review or evaluation of the international regulation, supervision, and examination activities of the appropriate Federal banking agency, including the coordination of such activities with similar activities of regulatory authorities of a foreign government or international organization.

(3) Audits of the Federal Reserve Board and Federal Reserve banks may not include—

(A) transactions for, or with, a foreign central bank, government of a foreign country, or nonprivate international financing organization;

(B) deliberations, decisions, or actions on monetary policy matters, including discount window operations, reserves of member banks, securities credit, interest on deposits, or open market operations;

(C) transactions made under the direction of the Federal Open Market Committee; or

(D) a part of a discussion or communication among or between members of the Board of Governors of the Federal Reserve System and officers and employees of the Federal Reserve System related to subparagraphs (A) through (C) of this paragraph.

(b) Limits on disclosure

(1)(A) Except as provided in this subsection, an officer or employee of the Government Accountability Office may not disclose information identifying an open bank, an open bank holding company, or a customer of an open or closed bank or bank holding company.

(B) The Comptroller General may disclose information related to the affairs of a closed bank or closed bank holding company identifying a customer of the closed bank or closed bank holding company only if the Comptroller General believes the customer had a controlling influence in the management of the closed bank or closed bank holding company or was related to or affiliated with a person or group having a controlling influence.

(2) An officer or employee of the Government Accountability Office may discuss a customer, bank, or bank holding company with an official of an appropriate Federal banking agency and may report an apparent criminal violation to an appropriate law enforcement authority of the United States Government or a State.

(3) This subsection does not authorize an officer or employee of an appropriate Federal banking agency to withhold information from a committee of the Congress authorized to have the information.

(c) Records, property, workpapers, correspondence, and documents; accessibility

(1)(A) To carry out this section, all records and property of or used by an appropriate Federal banking agency, including samples of reports of examinations of a bank or bank holding company the Comptroller General considers statistically meaningful and workpapers and correspondence related to the reports shall be made available to the Comptroller General, including such records and property pertaining to the coordination of international regulation, supervisor and examination activities of an appropriate Federal banking agency.

(B) The Comptroller General shall give each appropriate Federal banking agency a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out an audit.

(C) Each appropriate Federal banking agency shall give the Comptroller General suitable and lockable offices and furniture, telephones, and access to copying facilities.

(2) Except for the temporary removal of workpapers of the Comptroller General that do not identify a customer of an open or closed bank or bank holding company, an open bank, or an open bank holding company, all workpapers of the Comptroller General and records and property of or used by an appropriate Federal banking agency that the Comptroller General possesses during an audit, shall remain in such agency. The Comptroller General shall prevent unauthorized access to records or property.

(Pub. L. 98–181, title IX, §911, Nov. 30, 1983, 97 Stat. 1282; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (b)(1)(A), (2). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

§ 3911. Equal representation for Federal Deposit Insurance Corporation and the Office of Thrift Supervision

(a) In general

As one of the 4 Federal bank regulatory and supervisory agencies, and as the insurer of the United States banks involved in international lending, the Federal Deposit Insurance Corporation shall be given equal representation with the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency on the Committee on Banking Regulations and Supervisory Practices of the Group of Ten Countries and Switzerland.

(b) Office of Thrift Supervision

As one of the 4 Federal bank regulatory and supervisory agencies, the Office of Thrift Supervision shall be given equal representation with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation on the Committee on Banking Regulations and Supervisory Practices of the Group of Ten Countries and Switzerland.

(Pub. L. 98–181, title IX, §912, Nov. 30, 1983, 97 Stat. 1284; Pub. L. 109–351, title VII, §713(a), Oct. 13, 2006, 120 Stat. 1995.)

AMENDMENTS

2006—Pub. L. 109–351 inserted ''and the Office of Thrift Supervision'' after ''Federal Deposit Insurance Corporation'' in section catchline, designated existing provisions as subsec. (a), inserted heading, substituted ''As one of the 4'' for ''As one of the three'', and added subsec. (b).

§ 3912. Repealed. Pub. L. 104–208, div. A, title II, § 2224(c), Sept. 30, 1996, 110 Stat. 3009–415

Section, Pub. L. 98–181, title IX, § 913, Nov. 30, 1983, 97 Stat. 1284; Pub. L. 100–418, title III, § 3121(e), Aug. 23, 1988, 102 Stat. 1379, directed Secretary of the Treasury and certain Federal banking agencies to report to Congress, no later than 6 months after Nov. 30, 1983, regarding changes that could improve international lending operations of banking institutions.

CHAPTER 41—EXPEDITED FUNDS AVAILABILITY

Sec.
4001. Definitions.
4002. Expedited funds availability schedules.
4003. Safeguard exceptions.
4004. Disclosure of funds availability policies.
4005. Payment of interest.
4006. Miscellaneous provisions.
4007. Effect on State law.
4008. Regulations and reports by Board.
4009. Administrative enforcement.
4010. Civil liability.

§ 4001. Definitions

For purposes of this chapter—

(1) Account

The term ''account'' means a demand deposit account or other similar transaction account at a depository institution.

(2) Board

The term ''Board'' means the Board of Governors of the Federal Reserve System.

(3) Business day

The term ''business day'' means any day other than a Saturday, Sunday, or legal holiday.

(4) Cash

The term ''cash'' means United States coins and currency, including Federal Reserve notes.

(5) Cashier's check

The term ''cashier's check'' means any check which—

(A) is drawn on a depository institution;

(B) is signed by an officer or employee of such depository institution; and

(C) is a direct obligation of such depository institution.

(6) Certified check

The term ''certified check'' means any check with respect to which a depository institution certifies that—

(A) the signature on the check is genuine; and

(B) such depository institution has set aside funds which—

(i) are equal to the amount of the check; and

(ii) will be used only to pay such check.

(7) Check

The term ''check'' means any negotiable demand draft drawn on or payable through an office of a depository institution located in the United States. Such term does not include noncash items.

(8) Check clearinghouse association

The term ''check clearinghouse association'' means any arrangement by which participant depository institutions exchange deposited checks on a local basis, including an entire metropolitan area, without using the check processing facilities of the Federal Reserve System.

(9) Check processing region

The term ''check processing region'' means the geographical area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations.

(10) Consumer account

The term ''consumer account'' means any account used primarily for personal, family, or household purposes.

(11) Depository check

The term ''depository check'' means any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board.

(12) Depository institution

The term ''depository institution'' has the meaning given such term in clauses (i) through (vi) of section 461(b)(1)(A) of this title. Such term also includes an office, branch, or agency of a foreign bank located in the United States.

(13) Local originating depository institution

The term ''local originating depository institution'' means any originating depository institution which is located in the same check processing region as the receiving depository institution.

(14) Noncash item

The term ''noncash item'' means—

(A) a check or other demand item to which a passbook, certificate, or other document is attached;

(B) a check or other demand item which is accompanied by special instructions, such as a request for special advise of payment or dishonor; or

(C) any similar item which is otherwise classified as a noncash item in regulations of the Board.

(15) Nonlocal originating depository institution

The term ''nonlocal originating depository institution'' means any originating depository institution which is not a local depository institution.

(16) Proprietary ATM

The term ''proprietary ATM'' means an automated teller machine which is—

(A) located—

(i) at or adjacent to a branch of the receiving depository institution; or

(ii) in close proximity, as defined by the Board, to a branch of the receiving depository institution; or

(B) owned by, operated exclusively for, or operated by the receiving depository institution.

(17) Originating depository institution

The term ''originating depository institution'' means the branch of a depository institution on which a check is drawn.

(18) Nonproprietary ATM

The term ''nonproprietary ATM'' means an automated teller machine which is not a proprietary ATM.

(19) Participant

The term ''participant'' means a depository institution which—

(A) is located in the same geographic area as that served by a check clearinghouse association; and

(B) exchanges checks through the check clearinghouse association, either directly or through an intermediary.

(20) Receiving depository institution

The term ''receiving depository institution'' means the branch of a depository institution or the proprietary ATM in which a check is first deposited.

(21) State

The term ''State'' means any State, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands.

(22) Teller's check

The term ''teller's check'' means any check issued by a depository institution and drawn on another depository institution.

(23) United States

The term ''United States'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(24) Unit of general local government

The term ''unit of general local government'' means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

(25) Wire transfer

The term ''wire transfer'' has such meaning as the Board shall prescribe by regulations.

(Pub. L. 100–86, title VI, § 602, Aug. 10, 1987, 101 Stat. 635.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title VI of Pub. L. 100–86, Aug. 10, 1987, 101 Stat. 635, known as the Expedited Funds Availability Act, which enacted this chapter, amended section 248a of this title, and enacted provisions set out as notes under sections 248a and 4001 of this title. For complete classification of this Act to the Code, see Short Title note below and Tables.

EFFECTIVE DATE

Section 613 of title VI of Pub. L. 100–86 provided that: ''(a) DATE OF ENACTMENT.—Except as provided in subsection (b), this title [enacting this chapter, amending section 248a of this title, and enacting provisions set out as notes under this section and section 248a of this title] shall take effect on the date of the enactment of this title [Aug. 10, 1987].

''(b) 1 YEAR AFTER DATE OF ENACTMENT.—Sections 603, 604, 605, 606, 610, and 611 [enacting sections 4002 to 4005, 4009, and 4010 of this title] shall take effect on September 1, 1988.''

SHORT TITLE

Section 601 of title VI of Pub. L. 100–86 provided that: ''This title [enacting this chapter, amending section 248a of this title, and enacting provisions set out as notes under this section and section 248a of this title] may be cited as the 'Expedited Funds Availability Act'.''

SEPARABILITY

If any provision of Pub. L. 100–86 or the application thereof to any person or circumstances is held invalid, the remainder of Pub. L. 100–86 and the application of the provision to other persons not similarly situated or to other circumstances not to be affected thereby, see section 1205 of Pub. L. 100–86, set out as a note under section 226 of this title.

§ 4002. Expedited funds availability schedules

(a) Next business day availability for certain deposits

(1) Cash deposits; wire transfers

Except as provided in subsection (e) of this section and in section 4003 of this title, in any case in which—

(A) any cash is deposited in an account at a receiving depository institution staffed by individuals employed by such institution, or

(B) funds are received by a depository institution by wire transfer for deposit in an account at such institution,

such cash or funds shall be available for withdrawal not later than the business day after the business day on which such cash is deposited or such funds are received for deposit.

(2) Government checks; certain other checks

Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of—

(A) a check which—

(i) is drawn on the Treasury of the United States; and

(ii) is endorsed only by the person to whom it was issued;

(B) a check which—

(i) is drawn by a State;

(ii) is deposited in a receiving depository institution which is located in such State and is staffed by individuals employed by such institution;

(iii) is deposited with a special deposit slip which indicates it is a check drawn by a State; and

(iv) is endorsed only by the person to whom it was issued;

(C) a check which—

(i) is drawn by a unit of general local government;

(ii) is deposited in a receiving depository institution which is located in the same State as such unit of general local government and is staffed by individuals employed by such institution;

(iii) is deposited with a special deposit slip which indicates it is a check drawn by a unit of general local government; and

(iv) is endorsed only by the person to whom it was issued;

(D) the first $100 deposited by check or checks on any one business day;

(E) a check deposited in a branch of a depository institution and drawn on the same

or another branch of the same depository institution if both such branches are located in the same State or the same check processing region;

(F) a cashier's check, certified check, teller's check, or depository check which—

(i) is deposited in a receiving depository institution which is staffed by individuals employed by such institution;

(ii) is deposited with a special deposit slip which indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be; and

(iii) is endorsed only by the person to whom it was issued.

(b) Permanent schedule

(1) Availability of funds deposited by local checks

Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 4003 of this title, not more than 1 business day shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which the funds involved are available for withdrawal.

(2) Availability of funds deposited by nonlocal checks

Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 4003 of this title, not more than 4 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) Time period adjustments for cash withdrawal of certain checks

(A) In general

Except as provided in subparagraph (B), funds deposited in an account in a depository institution by check (other than a check described in subsection (a)(2) of this section) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under paragraph (1) or (2).

(B) 5 p.m. cash availability

Not more than $400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than $400) of funds deposited by one or more checks to which this paragraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under paragraph (1) or (2). If funds deposited by checks described in both paragraph (1) and paragraph (2) become available for cash withdrawal under this paragraph on the same business day, the limitation contained in this subparagraph shall apply to the aggregate amount of such funds.

(C) $100 availability

Any amount available for withdrawal under this paragraph shall be in addition to the amount available under subsection (a)(2)(D) of this section.

(4) Applicability

This subsection shall apply with respect to funds deposited by check in an account at a depository institution on or after September 1, 1990, except that the Board may, by regulation, make this subsection or any part of this subsection applicable earlier than September 1, 1990.

(c) Temporary schedule

(1) Availability of local checks

(A) In general

Subject to subparagraph (B) of this paragraph, subsections (a)(2), (d), and (e) of this section, and section 4003 of this title, not more than 2 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which such funds are available for withdrawal.

(B) Time period adjustment for cash withdrawal of certain checks

(i) In general

Except as provided in clause (ii), funds deposited in an account in a depository institution by check drawn on a local depository institution that is not a participant in the same check clearinghouse association as the receiving depository institution (other than a check described in subsection (a)(2) of this section) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under subparagraph (A).

(ii) 5 p.m. cash availability

Not more than $400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than $400) of funds deposited by one or more checks to which this subparagraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under subparagraph (A).

(iii) $100 availability

Any amount available for withdrawal under this subparagraph shall be in addition to the amount available under subsection (a)(2)(D) of this section.

(2) Availability of nonlocal checks

Subject to subsections (a)(2), (d), and (e) of this section and section 4003 of this title, not more than 6 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) Applicability

This subsection shall apply with respect to funds deposited by check in an account at a

depository institution after August 31, 1988, and before September 1, 1990, except as may be otherwise provided under subsection (b)(4) of this section.

(d) Time period adjustments

(1) Reduction generally

Notwithstanding any other provision of law, the Board shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) of this section to as short a time as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks.

(2) Extension for certain deposits in noncontiguous States or territories

Notwithstanding any other provision of law, any time period established under subsection (b), (c), or (e) of this section shall be extended by 1 business day in the case of any deposit which is both—

(A) deposited in an account at a depository institution which is located in Alaska, Hawaii, Puerto Rico, or the Virgin Islands; and

(B) deposited by a check drawn on an originating depository institution which is not located in the same State, commonwealth, or territory as the receiving depository institution.

(e) Deposits at ATM

(1) Nonproprietary ATM

(A) In general

Not more than 4 business days shall intervene between the business day a deposit described in subparagraph (B) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(B) Deposits described in this paragraph [1]

A deposit is described in this subparagraph if it is—

(i) a cash deposit;

(ii) a deposit made by a check described in subsection (a)(2) of this section;

(iii) a deposit made by a check drawn on a local originating depository institution (other than a check described in subsection (a)(2) of this section); or

(iv) a deposit made by a check drawn on a nonlocal originating depository institution (other than a check described in subsection (a)(2) of this section).

(2) Proprietary ATM—temporary and permanent schedules

The provisions of subsections (a), (b), and (c) of this section shall apply with respect to any funds deposited at a proprietary automated teller machine for deposit in an account at a depository institution.

(3) Study and report on ATM's

The Board shall, either directly or through the Consumer Advisory Council, establish and maintain a dialogue with depository institutions and their suppliers on the computer software and hardware available for use by automated teller machines, and shall, not later than September 1 of each of the first 3 calendar years beginning after August 10, 1987, report to the Congress regarding such software and hardware and regarding the potential for improving the processing of automated teller machine deposits.

(f) Check return; notice of nonpayment

No provision of this section shall be construed as requiring that, with respect to all checks deposited in a receiving depository institution—

(1) such checks be physically returned to such depository institution; or

(2) any notice of nonpayment of any such check be given to such depository institution within the times set forth in subsection (a), (b), (c), or (e) of this section or in the regulations issued under any such subsection.

(Pub. L. 100–86, title VI, §603, Aug. 10, 1987, 101 Stat. 637; Pub. L. 101–625, title X, §1001, Nov. 28, 1990, 104 Stat. 4424; Pub. L. 102–242, title II, §227(a), (b)(1), Dec. 19, 1991, 105 Stat. 2307; Pub. L. 111–203, title X, §1086(a), (e), July 21, 2010, 124 Stat. 2085, 2086.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§1086(a), (e), 1100H, July 21, 2010, 124 Stat. 2085, 2086, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) in subsection (a)(2)(D), by substituting ''$200'' for ''$100'';

(2) in subsections (b)(3)(C) and (c)(1)(B)(iii), in the headings, by substituting ''$200'' for ''$100''; and

(3) in subsection (d)(1), by inserting '', jointly with the Director of the Bureau of Consumer Financial Protection,'' after ''Board''.

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1991—Subsec. (e)(1). Pub. L. 102–242, §227(b)(1)(A), struck out ''—temporary schedule'' after ''ATM'' in heading.

Subsec. (e)(1)(C). Pub. L. 102–242, §227(a), struck out subpar. (C) which read as follows: ''This paragraph shall apply with respect to funds deposited at a nonproprietary automated teller machine after August 31, 1988, and prior to the expiration of the 2-year period beginning on November 28, 1990.''

Subsec. (e)(2) to (4). Pub. L. 102–242, §227(a), (b)(1)(B), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which related to permanent schedule for funds deposited at nonproprietary automated teller machines.

1990—Subsec. (e)(1)(A). Pub. L. 101–625, §1001(1), substituted ''4'' for ''6''.

Subsec. (e)(1)(C). Pub. L. 101–625, §1001(2), substituted ''prior to the expiration of the 2-year period beginning on November 28, 1990'' for ''before September 1, 1990''.

Subsec. (e)(2)(D). Pub. L. 101–625, §1001(3), substituted ''the expiration of the 2-year period beginning on November 28, 1990'' for ''September 1, 1990''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] So in original. Probably should be ''subparagraph''.

EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100–86, set out as a note under section 4001 of this title.

§ 4003. Safeguard exceptions

(a) New accounts

Notwithstanding section 4002 of this title, in the case of any account established at a depository institution by a new depositor, the following provisions shall apply with respect to any deposit in such account during the 30-day period (or such shorter period as the Board may establish) beginning on the date such account is established—

(1) Next business day availability of cash and certain items

Except as provided in paragraph (3), in the case of—

(A) any cash deposited in such account;

(B) any funds received by such depository institution by wire transfer for deposit in such account;

(C) any funds deposited in such account by cashier's check, certified check, teller's check, depository check, or traveler's check; and

(D) any funds deposited by a government check which is described in subparagraph (A), (B), or (C) of section 4002(a)(2) of this title,

such cash or funds shall be available for withdrawal on the business day after the business day on which such cash or funds are deposited or, in the case of a wire transfer, on the business day after the business day on which such funds are received for deposit.

(2) Availability of other items

In the case of any funds deposited in such account by a check (other than a check described in subparagraph (C) or (D) of paragraph (1)), the availability for withdrawal of such funds shall not be subject to the provisions of section 4002(b), 4002(c), or paragraphs[1] (1) of section 4002(e) of this title.

(3) Limitation relating to certain checks in excess of $5,000

In the case of funds deposited in such account during such period by checks described in subparagraph (C) or (D) of paragraph (1) the aggregate amount of which exceeds $5,000—

(A) paragraph (1) shall apply only with respect to the first $5,000 of such aggregate amount; and

(B) not more than 8 business days shall intervene between the business day on which any such funds are deposited and the business day on which such excess amount shall be available for withdrawal.

(b) Large or redeposited checks; repeated overdrafts

The Board may, by regulation, establish reasonable exceptions to any time limitation established under subsection (a)(2), (b), (c), or (e) of section 4002 of this title for—

(1) the amount of deposits by one or more checks that exceeds the amount of $5,000 in any one day;

(2) checks that have been returned unpaid and redeposited; and

(3) deposit accounts which have been overdrawn repeatedly.

(c) Reasonable cause exception

(1) In general

In accordance with regulations which the Board shall prescribe, subsections (a)(2), (b), (c), and (e) of section 4002 of this title shall not apply with respect to any check deposited in an account at a depository institution if the receiving depository institution has reasonable cause to believe that the check is uncollectible from the originating depository institution. For purposes of the preceding sentence, reasonable cause to believe requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. Such reasons shall be included in the notice required under subsection (f) of this section.

(2) Basis for determination

No determination under this subsection may be based on any class of checks or persons.

(3) Overdraft fees

If the receiving depository institution determines that a check deposited in an account is a check described in paragraph (1), the receiving depository institution shall not assess any fee for any subsequent overdraft with respect to such account, if—

(A) the depositor was not provided with the written notice required under subsection (f) of this section (with respect to such determination) at the time the deposit was made;

(B) the overdraft would not have occurred but for the fact that the funds so deposited are not available; and

(C) the amount of the check is collected from the originating depository institution.

(4) Compliance

Each agency referred to in section 4009(a) of this title shall monitor compliance with the requirements of this subsection in each regular examination of a depository institution and shall describe in each report to the Congress the extent to which this subsection is being complied with. For the purpose of this paragraph, each depository institution shall retain a record of each notice provided under subsection (f) of this section as a result of the application of this subsection.

(d) Emergency conditions

Subject to such regulations as the Board may prescribe, subsections (a)(2), (b), (c), and (e) of section 4002 of this title shall not apply to funds deposited by check in any receiving depository institution in the case of—

(1) any interruption of communication facilities;

(2) suspension of payments by another depository institution;

(3) any war; or

[1] So in original. Probably should be ''paragraph''.

(4) any emergency condition beyond the control of the receiving depository institution,

if the receiving depository institution exercises such diligence as the circumstances require.

(e) Prevention of fraud losses

(1) In general

The Board may, by regulation or order, suspend the applicability of this chapter, or any portion thereof, to any classification of checks if the Board determines that—

(A) depository institutions are experiencing an unacceptable level of losses due to check-related fraud, and

(B) suspension of this chapter, or such portion of this chapter, with regard to the classification of checks involved in such fraud is necessary to diminish the volume of such fraud.

(2) Sunset provision

No regulation prescribed or order issued under paragraph (1) shall remain in effect for more than 45 days (excluding Saturdays, Sundays, legal holidays, or any day either House of Congress is not in session).

(3) Report to Congress

(A) Notice of each suspension

Within 10 days of prescribing any regulation or issuing any order under paragraph (1), the Board shall transmit a report of such action to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) Contents of report

Each report under subparagraph (A) shall contain—

(i) the specific reason for prescribing the regulation or issuing the order;

(ii) evidence considered by the Board in making the determination under paragraph (1) with respect to such regulation or order; and

(iii) specific examples of the check-related fraud giving rise to such regulation or order.

(f) Notice of exception; availability within reasonable time

(1) In general

If any exception contained in this section (other than subsection (a) of this section) applies with respect to funds deposited in an account at a depository institution—

(A) the depository institution shall provide notice in the manner provided in paragraph (2) of—

(i) the time period within which the funds shall be made available for withdrawal; and

(ii) the reason the exception was invoked; and

(B) except where other time periods are specifically provided in this chapter, the availability of the funds deposited shall be governed by the policy of the receiving depository institution, but shall not exceed a reasonable period of time as determined by the Board.

(2) Time for notice

The notice required under paragraph (1)(A) with respect to a deposit to which an exception contained in this section applies shall be made by the time provided in the following subparagraphs:

(A) In the case of a deposit made in person by the depositor at the receiving depository institution, the depository institution shall immediately provide such notice in writing to the depositor.

(B) In the case of any other deposit (other than a deposit described in subparagraph (C)), the receiving depository institution shall mail the notice to the depositor not later than the close of the next business day following the business day on which the deposit is received.

(C) In the case of a deposit to which subsection (d) or (e) of this section applies, notice shall be provided by the depository institution in accordance with regulations of the Board.

(D) In the case of a deposit to which subsection (b)(1) or (b)(2) of this section applies, the depository institution may, for nonconsumer accounts and other classes of accounts, as defined by the Board, that generally have a large number of such deposits, provide notice at or before the time it first determines that the subsection applies.

(E) In the case of a deposit to which subsection (b)(3) of this section applies, the depository institution may, subject to regulations of the Board, provide notice at the beginning of each time period it determines that the subsection applies. In addition to the requirements contained in paragraph (1)(A), the notice shall specify the time period for which the exception will apply.

(3) Subsequent determinations

If the facts upon which the determination of the applicability of an exception contained in subsection (b) or (c) of this section to any deposit only become known to the receiving depository institution after the time notice is required under paragraph (2) with respect to such deposit, the depository institution shall mail such notice to the depositor as soon as practicable, but not later than the first business day following the day such facts become known to the depository institution.

(Pub. L. 100–86, title VI, §604, Aug. 10, 1987, 101 Stat. 642; Pub. L. 102–242, title II, §§225, 227(b)(2), Dec. 19, 1991, 105 Stat. 2307, 2308; Pub. L. 111–203, title X, §1086(b), July 21, 2010, 124 Stat. 2085.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§1086(b), 1100H, July 21, 2010, 124 Stat. 2085, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) by inserting '', jointly with the Director of the Bureau of Consumer Financial Protection,'' after ''Board'' wherever appearing, other than in subsection (f); and

(2) in subsection (f), by substituting ''Board, jointly with the Director of the Bureau of Consumer Financial Protection.'' for ''Board.'' wherever appearing.

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1991—Subsec. (a)(2). Pub. L. 102–242, § 227(b)(2), struck out ''and (2)'' after ''paragraphs (1)''.

Subsec. (b). Pub. L. 102–242, § 225(1), inserted ''(a)(2),'' after ''subsection''.

Subsec. (c)(1). Pub. L. 102–242, § 225(2), substituted ''(a)(2)'' for ''(a)(2)(F)''.

Subsec. (d). Pub. L. 102–242, § 225(3), inserted ''(a)(2),'' after ''subsections''.

Subsec. (f)(1)(A)(i). Pub. L. 102–242, § 225(4), substituted ''time period within which'' for ''day''.

Subsec. (f)(2)(D), (E). Pub. L. 102–242, § 225(5), added subpars. (D) and (E).

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100–86, set out as a note under section 4001 of this title.

§ 4004. Disclosure of funds availability policies

(a) Notice for new accounts

Before an account is opened at a depository institution, the depository institution shall provide written notice to the potential customer of the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into the customer's account.

(b) Preprinted deposit slips

All preprinted deposit slips that a depository institution furnishes to its customers shall contain a summary notice, as prescribed by the Board in regulations, that deposited items may not be available for immediate withdrawal.

(c) Mailing of notice

(1) First mailing after enactment

In the first regularly scheduled mailing to customers occurring after September 1, 1988, but not more than 60 days after September 1, 1988, each depository institution shall send a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account, unless the depository institution has provided a disclosure which meets the requirements of this section before September 1, 1988.

(2) Subsequent changes

A depository institution shall send a written notice to customers at least 30 days before implementing any change to the depository institution's policy with respect to when customers may withdraw funds deposited into consumer accounts, except that any change which expedites the availability of such funds shall be disclosed not later than 30 days after implementation.

(3) Upon request

Upon the request of any person, a depository institution shall provide or send such person a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into a customer's account.

(d) Posting of notice

(1) Specific notice at manned teller stations

Each depository institution shall post, in a conspicuous place in each location where deposits are accepted by individuals employed by such depository institution, a specific notice which describes the time periods applicable to the availability of funds deposited in a consumer account.

(2) General notice at automated teller machines

In the case of any automated teller machine at which any funds are received for deposit in an account at any depository institution, the Board shall prescribe, by regulations, that the owner or operator of such automated teller machine shall post or provide a general notice that funds deposited in such machine may not be immediately available for withdrawal.

(e) Notice of interest payment policy

If a depository institution described in section 4005(b) of this title begins the accrual of interest or dividends at a later date than the date described in section 4005(a) of this title with respect to all funds, including cash, deposited in an interest-bearing account at such depository institution, any notice required to be provided under subsections (a) and (c) of this section shall contain a written description of the time at which such depository institution begins to accrue interest or dividends on such funds.

(f) Model disclosure forms

(1) Prepared by Board

The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language.

(2) Use of forms to achieve compliance

A depository institution shall be deemed to be in compliance with the requirements of this section if such institution—

(A) uses any appropriate model form or clause as published by the Board, or

(B) uses any such model form or clause and changes such form or clause by—

(i) deleting any information which is not required by this chapter; or

(ii) rearranging the format.

(3) Voluntary use

Nothing in this chapter requires the use of any such model form or clause prescribed by the Board under this subsection.

(4) Notice and comment

Model disclosure forms and clauses shall be adopted by the Board only after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5.

(Pub. L. 100–86, title VI, § 605, Aug. 10, 1987, 101 Stat. 644; Pub. L. 111–203, title X, § 1086(c), July 21, 2010, 124 Stat. 2086.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1086(c), 1100H, July 21, 2010, 124 Stat. 2085, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) by inserting '', jointly with the Director of the Bureau of Consumer Financial Protection,'' after ''Board'' wherever appearing, other than in the heading for subsection (f)(1); and

(2) in subsection (f)(1), in the heading, by inserting ''and Bureau'' after ''Board''.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

After enactment, referred to in the heading of subsec. (c)(1), probably means after the effective date of this section, which is Sept. 1, 1988.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100–86, set out as a note under section 4001 of this title.

§ 4005. Payment of interest

(a) In general

Except as provided in subsection (b) or (c) of this section and notwithstanding any other provision of law, interest shall accrue on funds deposited in an interest-bearing account at a depository institution beginning not later than the business day on which the depository institution receives provisional credit for such funds.

(b) Special rule for credit unions

Subsection (a) of this section shall not apply to an account at a depository institution described in section 461(b)(1)(A)(iv) of this title if the depository institution—

(1) begins the accrual of interest or dividends at a later date than the date described in subsection (a) of this section with respect to all funds, including cash, deposited in such account; and

(2) provides notice of the interest payment policy in the manner required under section 4004(e) of this title.

(c) Exception for checks returned unpaid

No provision of this chapter shall be construed as requiring the payment of interest or dividends on funds deposited by a check which is returned unpaid.

(Pub. L. 100–86, title VI, § 606, Aug. 10, 1987, 101 Stat. 646.)

EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100–86, set out as a note under section 4001 of this title.

§ 4006. Miscellaneous provisions

(a) After-hours deposits

For purposes of this chapter, any deposit which is made on a Saturday, Sunday, legal holiday, or after the close of business on any business day shall be deemed to have been made on the next business day.

(b) Availability at start of business day

Except as provided in subsections (b)(3) and (c)(1)(B) of section 4002 of this title, if any provision of this chapter requires that funds be available for withdrawal on any business day, such funds shall be available for withdrawal at the start of such business day.

(c) Effect on policies of depository institutions

No provision of this chapter shall be construed as—

(1) prohibiting a depository institution from making funds available for withdrawal in a shorter period of time than the period of time required by this chapter; or

(2) affecting a depository institution's right—

(A) to accept or reject a check for deposit;

(B) to revoke any provisional settlement made by the depository institution with respect to a check accepted by such institution for deposit;

(C) to charge back the depositor's account for the amount of such check; or

(D) to claim a refund of such provisional credit.

(d) Prohibition on freezing certain funds in an account

In any case in which a check is deposited in an account at a depository institution and the funds represented by such check are not yet available for withdrawal pursuant to this chapter, the depository institution may not freeze any other funds in such account (which are otherwise available for withdrawal pursuant to this chapter) solely because the funds so deposited are not yet available for withdrawal.

(e) Employee training on and compliance with requirements of this chapter

Each depository institution shall—

(1) take such actions as may be necessary fully to inform each employee (who performs duties subject to the requirements of this chapter) of the requirements of this chapter; and

(2) establish and maintain procedures reasonably designed to assure and monitor employee compliance with such requirements.

(Pub. L. 100–86, title VI, § 607, Aug. 10, 1987, 101 Stat. 646; Pub. L. 111–203, title X, § 1086(f), July 21, 2010, 124 Stat. 2086.)

ADDITION OF SUBSECTION (f)

Pub. L. 111–203, title X, §§ 1086(f), 1100H, July 21, 2010, 124 Stat. 2086, 2113, provided that, effective on the designated transfer date, this sec-

tion is amended by adding at the end the following:

''(f) Adjustments to dollar amounts for inflation

''The dollar amounts under this chapter shall be adjusted every 5 years after December 31, 2011, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of $25.''

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title VI of Pub. L. 100–86, Aug. 10, 1987, 101 Stat. 635, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 4007. Effect on State law

(a) In general

Any law or regulation of any State in effect on September 1, 1989, which requires that funds deposited or received for deposit in an account at a depository institution chartered by such State be made available for withdrawal in a shorter period of time than the period of time provided in this chapter or in regulations prescribed by the Board under this chapter (as in effect on September 1, 1989) shall—

(1) supersede the provisions of this chapter and any regulations by the Board to the extent such provisions relate to the time by which funds deposited or received for deposit in an account shall be available for withdrawal; and

(2) apply to all federally insured depository institutions located within such State.

(b) Override of certain State laws

Except as provided in subsection (a) of this section, this chapter and regulations prescribed under this chapter shall supersede any provision of the law of any State, including the Uniform Commercial Code as in effect in such State, which is inconsistent with this chapter or such regulations.

(Pub. L. 100–86, title VI, § 608, Aug. 10, 1987, 101 Stat. 647.)

§ 4008. Regulations and reports by Board

(a) In general

After notice and opportunity to submit comment in accordance with section 553(c) of title 5, the Board shall prescribe regulations—

(1) to carry out the provisions of this chapter;

(2) to prevent the circumvention or evasion of such provisions; and

(3) to facilitate compliance with such provisions.

(b) Regulations relating to improvement of check processing system

In order to improve the check processing system, the Board shall consider (among other proposals) requiring, by regulation, that—

(1) depository institutions be charged based upon notification that a check or similar instrument will be presented for payment;

(2) the Federal Reserve banks and depository institutions provide for check truncation;

(3) depository institutions be provided incentives to return items promptly to the depository institution of first deposit;

(4) the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks;

(5) each depository institution and Federal Reserve bank—

(A) place its endorsement, and other notations specified in regulations of the Board, on checks in the positions specified in such regulations; and

(B) take such actions as are necessary to—

(i) automate the process of reading endorsements; and

(ii) eliminate unnecessary endorsements;

(6) within one business day after an originating depository institution is presented a check (for more than such minimum amount as the Board may prescribe)—

(A) such originating depository institution determines whether it will pay such check; and

(B) if such originating depository institution determines that it will not pay such check, such originating depository institution directly notify the receiving depository institution of such determination;

(7) regardless of where a check is cleared initially, all returned checks be eligible to be returned through the Federal Reserve System;

(8) Federal Reserve banks and depository institutions participate in the development and implementation of an electronic clearinghouse process to the extent the Board determines, pursuant to the study under subsection (f) of this section, that such a process is feasible; and

(9) originating depository institutions be permitted to return unpaid checks directly to, and obtain reimbursement for such checks directly from, the receiving depository institution.

(c) Regulatory responsibility of Board for payment system

(1) Responsibility for payment system

In order to carry out the provisions of this chapter, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—

(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and

(B) any related function of the payment system with respect to checks.

(2) Regulations

The Board shall prescribe such regulations as it may determine to be appropriate to carry out its responsibility under paragraph (1).

(d) Reports

(1) Implementation progress reports

(A) Required reports

The Board shall transmit a report to both Houses of the Congress not later than 18, 30, and 48 months after August 10, 1987.

(B) Contents of report

Each such report shall describe—

(i) the actions taken and progress made by the Board to implement the schedules established in section 4002 of this title, and

(ii) the impact of this chapter on consumers and depository institutions.

(2) Evaluation of temporary schedule report

(A) Report required

The Board shall transmit a report to both Houses of the Congress not later than 2 years after August 10, 1987, regarding the effects the temporary schedule established under section 4002(c) of this title have had on depository institutions and the public.

(B) Contents of report

Such report shall also assess the potential impact the implementation of the schedule established in section 4002(b) of this title will have on depository institutions and the public, including an estimate of the risks to and losses of depository institutions and the benefits to consumers. Such report shall also contain such recommendations for legislative or administrative action as the Board may determine to be necessary.

(3) Comptroller General evaluation report

Not later than 6 months after September 1, 1988, the Comptroller General of the United States shall transmit a report to the Congress evaluating the implementation and administration of this chapter.

(e) Consultation

In prescribing regulations under subsections (a) and (b) of this section, the Board shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board.

(f) Electronic clearinghouse study

(1) Study required

The Board shall study the feasibility of modernizing and accelerating the check payment system through the development of an electronic clearinghouse process utilizing existing telecommunications technology to avoid the necessity of actual presentment of the paper instrument to a payor institution before such institution is charged for the item.

(2) Consultation; factors to be studied

In connection with the study required under paragraph (1), the Board shall—

(A) consult with appropriate experts in telecommunications technology; and

(B) consider all practical and legal impediments to the development of an electronic clearinghouse process.

(3) Report required

The Board shall report its conclusions to the Congress within 9 months of August 10, 1987.

(Pub. L. 100–86, title VI, §609, Aug. 10, 1987, 101 Stat. 647; Pub. L. 111–203, title X, §1086(d), July 21, 2010, 124 Stat. 2086.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§1086(d), 1100H, July 21, 2010, 124 Stat. 2086, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) in subsection (a), by inserting '', jointly with the Director of the Bureau of Consumer Financial Protection,'' after ''Board''; and

(2) by striking out subsection (e) and adding the following:

''(e) Consultations

''In prescribing regulations under subsections (a) and (b), the Board and the Director of the Bureau of Consumer Financial Protection, in the case of subsection (a), and the Board, in the case of subsection (b), shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board.''

See Effective Date of 2010 Amendment note below.

CODIFICATION

In subsec. (d)(3), ''September 1, 1988'' substituted for ''section 603(b) takes effect'' on authority of section 613(b) of Pub. L. 100–86, set out as an Effective Date note under section 4001 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

EXCEPTIONS IN AREAS WHERE MAJOR DISASTER EXISTS

Pub. L. 105–18, title V, §50002, June 12, 1997, 111 Stat. 211, provided that:

''(a) TRUTH IN LENDING ACT.—During the 240-day period beginning on the date of enactment of this Act [June 12, 1997], the Board of Governors of the Federal Reserve System may make exceptions to the Truth in Lending Act [15 U.S.C. 1601 et seq.] for transactions within an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170], has determined, on or after February 28, 1997, that a major disaster exists, or within an area determined to be eligible for disaster relief under other Federal law by reason of damage related to the 1997 flooding of the Red River of the North, the Minnesota River, and the tributaries of such rivers, if the Board determines that the exception can reasonably be expected to alleviate hardships to the public resulting from such disaster that outweigh possible adverse effects.

''(b) EXPEDITED FUNDS AVAILABILITY ACT.—During the 240-day period beginning on the date of enactment of this Act [June 12, 1997], the Board of Governors of the Federal Reserve System may make exceptions to the Expedited Funds Availability Act [12 U.S.C. 4001 et seq.] for depository institution offices located within any area referred to in subsection (a) of this section if the Board determines that the exception can reasonably be expected to alleviate hardships to the public resulting from such disaster that outweigh possible adverse effects.

''(c) TIME LIMIT ON EXCEPTIONS.—Any exception made under this section shall expire not later than September 1, 1998.

''(d) PUBLICATION REQUIRED.—The Board of Governors of the Federal Reserve System shall publish in the Federal Register a statement that—

''(1) describes any exception made under this section; and

''(2) explains how the exception can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.''

Similar provisions were contained in the following prior acts:

Pub. L. 103–76, § 2, Aug. 12, 1993, 107 Stat. 752.

Pub. L. 102–485, § 3, Oct. 23, 1992, 106 Stat. 2772.

§ 4009. Administrative enforcement

(a) Administrative enforcement

Compliance with the requirements imposed under this chapter, including regulations prescribed by and orders issued by the Board of Governors of the Federal Reserve System under this chapter, shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the National Credit Union Administration Board with respect to any Federal credit union or insured credit union.

The terms used in paragraph (1) that are not defined in this chapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) Additional powers

(1) Violation of this chapter treated as violation of other Acts

For purposes of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this chapter shall be deemed to be a violation of a requirement imposed under that Act.

(2) Enforcement authority under other Acts

In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in such subsection may exercise, for purposes of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on it by law.

(c) Enforcement by Board

(1) In general

Except to the extent that enforcement of the requirements imposed under this chapter is specifically committed to some other Government agency under subsection (a) of this section, the Board of Governors of the Federal Reserve System shall enforce such requirements.

(2) Additional remedy

If the Board determines that—

(A) any depository institution which is not a depository institution described in subsection (a) of this section, or

(B) any other person subject to the authority of the Board under this chapter, including any person subject to the authority of the Board under section 4004(d)(2) or 4008(c) of this title,

has failed to comply with any requirement imposed by this chapter or by the Board under this chapter, the Board may issue an order prohibiting any depository institution, any Federal Reserve bank, or any other person subject to the authority of the Board from engaging in any activity or transaction which directly or indirectly involves such noncomplying depository institution or person (including any activity or transaction involving the receipt, payment, collection, and clearing of checks and any related function of the payment system with respect to checks).

(d) Procedural rules

The authority of the Board to prescribe regulations under this chapter does not impair the authority of any other agency designated in this section to make rules regarding its own procedures in enforcing compliance with requirements imposed under this chapter.

(Pub. L. 100–86, title VI, § 610, Aug. 10, 1987, 101 Stat. 649; Pub. L. 101–73, title VII, § 744(d), Aug. 9, 1989, 103 Stat. 438; Pub. L. 102–242, title II, § 212(h), Dec. 19, 1991, 105 Stat. 2303.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in subsec. (a)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–242, § 212(h)(2), inserted at end ''The terms used in paragraph (1) that are not defined in this chapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).''

Subsec. (a)(1). Pub. L. 102–242, § 212(h)(1), added par. (1) and struck out former par. (1) which read as follows: ''section 8 of the Federal Deposit Insurance Act in the case of—

''(A) national banks, by the Comptroller of the Currency;

''(B) member banks of the Federal Reserve System (other than national banks), by the Board of Governors of the Federal Reserve System; and

''(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;''.

1989—Subsec. (a)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and section 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and''.

EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100–86, set out as a note under section 4001 of this title.

§ 4010. Civil liability

(a) Civil liability

Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this chapter or any regulation prescribed under this chapter with respect to any person other than another depository institution is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that—

(i) as to each member of the class, no minimum recovery shall be applicable; and

(ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of $500,000 or 1 percent of the net worth of the depository institution involved; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) Class action awards

In determining the amount of any award in any class action, the court shall consider, among other relevant factors—

(1) the amount of any actual damages awarded;

(2) the frequency and persistence of failures of compliance;

(3) the resources of the depository institution;

(4) the number of persons adversely affected; and

(5) the extent to which the failure of compliance was intentional.

(c) Bona fide errors

(1) General rule

A depository institution may not be held liable in any action brought under this section for a violation of this chapter if the depository institution demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) Examples

Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a depository institution's obligation under this chapter is not a bona fide error.

(d) Jurisdiction

Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year after the date of the occurrence of the violation involved.

(e) Reliance on Board rulings

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) Authority to establish rules regarding losses and liability among depository institutions

The Board is authorized to impose on or allocate among depository institutions the risks of loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks. Liability under this subsection shall not exceed the amount of the check giving rise to the loss or liability, and, where there is bad faith, other damages, if any, suffered as a proximate consequence of any act or omission giving rise to the loss or liability.

(Pub. L. 100–86, title VI, § 611, Aug. 10, 1987, 101 Stat. 650.)

EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100–86, set out as a note under section 4001 of this title.

CHAPTER 42—LOW-INCOME HOUSING PRESERVATION AND RESIDENT HOMEOWNERSHIP

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CODIFICATION

Subtitles A and B of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, Pub. L. 100–242, title II, as revised generally by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, comprise subchapter I of this chapter. Prior to the general revision by Pub. L. 101–625 subtitles A and B (§§ 201–235) of the Emergency Low Income Housing Preservation Act of 1987, Pub. L. 100–242, title II, Feb. 5, 1988, 101 Stat. 1877, as amended by Pub. L. 100–628, title X, §§ 1021–1027, Nov. 7, 1988, 102 Stat. 3270, 3271; Pub. L. 101–235, title II, §§ 201, 202(a)–(c), 203(b), Dec. 15, 1989, 103 Stat. 2037, 2038; Pub. L. 101–402, § 1, Oct. 1, 1990, 104 Stat. 866; Pub. L. 101–494, §§ 1(c), 2(a), Oct. 31, 1990, 104 Stat. 1185, were set out as a note under section 1715*l* of this title and amended section 1715z–6 of this title.

Subtitle C of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, Pub. L. 100–242, title II, as added by Pub. L. 102–550, title III, § 312, Oct. 28, 1992, 106 Stat. 3765, comprises subchapter II of this chapter. Another subtitle C of title II of Pub. L. 100–242 amended sections 1472, 1485, and 1487 of Title 42, The Public Health and Welfare.

SUBCHAPTER I—PREPAYMENT OF MORTGAGES INSURED UNDER NATIONAL HOUSING ACT

§ 4101. General prepayment limitation

(a) Prepayment and termination

An owner of eligible low-income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such housing only in accordance with a plan of action approved by the Secretary under this subchapter or in accordance with section 4114 of this title. An insurance contract with respect to eligible low-income housing may be terminated pursuant to section 1715t of this title only in accordance with a plan of action approved by the Secretary under this subchapter or in accordance with section 4114 of this title.

(b) Foreclosure

A mortgagee may foreclose the mortgage on, or acquire by deed in lieu of foreclosure, any eligible low-income housing project only if the mortgagee also conveys title to the project to the Secretary in connection with a claim for insurance benefits.

(c) Effect of unauthorized prepayment

Any prepayment of a mortgage on eligible low-income housing or termination of the mortgage insurance on such housing not in compliance with the provisions of this subchapter shall be null and void and any low-income affordability restrictions on the housing shall continue to apply to the housing.

(Pub. L. 100–242, title II, § 211, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249.)

EFFECTIVE DATE

Section 605 of Pub. L. 101–625 provided that: ''This subtitle [subtitle A (§§ 601–605) of title VI of Pub. L. 101–625, enacting this chapter, amending sections 1715z–6 and 1715z–15 of this title and section 1437f of Title 42, The Public Health and Welfare, and enacting provisions set out below] shall take effect on the date of the enactment of this Act [Nov. 28, 1990].''

SHORT TITLE

Section 201 of title II of Pub. L. 100–242, as added by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, provided that: ''This title [enacting this chapter, amending section 1715z–15 of this title and sections 1437f, 1472, 1485, and 1487 of Title 42, The Public Health and Welfare, and enacting provisions set out below] may be cited as the 'Low-Income Housing Preservation and Resident Homeownership Act of 1990'.''

APPLICABILITY

Section 235 of Pub. L. 100–242, as added by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4274, provided that: ''Subject to section 605 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, set out above], the requirements of this subtitle [subtitle B (§§ 211–235) of title II of Pub. L. 100–242, enacting this subchapter] shall apply to any project that is eligible low-income housing on or after November 1, 1987.''

REGULATIONS

Pub. L. 102–550, title III, § 332, Oct. 28, 1992, 106 Stat. 3773, provided that: ''Except as otherwise provided in this title [enacting sections 4141 to 4147 of this title, amending sections 1715z–1, 1715z–6, 4103, 4105 to 4112, 4116, 4119, 4121, 4122, 4124, and 4125 of this title, enacting provisions set out as notes under this section and sections 1715z–6, 4109, and 4117 of this title, and amending provisions set out as a note under this section], the Secretary of Housing and Urban Development shall issue interim regulations implementing this title and the amendments made by this title not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], which shall take effect upon issuance. The Secretary shall issue final regulations implementing this title and the amendments made by this title after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment shall not be less than 60 days, and the final regulations shall be is-

sued not later than the expiration of the 60-day period beginning upon the conclusion of the comment period and shall take effect upon issuance.''

LOW-INCOME HOUSING PRESERVATION

Pub. L. 104–204, title II, Sept. 26, 1996, 110 Stat. 2883, provided in part: ''That of the total amount provided under this head, $350,000,000 shall be available for use in conjunction with properties that are eligible for assistance under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) [see Short Title note above] or the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) [see Codification note set out preceding this section], of which $75,000,000 shall be available for obligation until March 1, 1997 for projects (1) that are subject to a repayment or settlement agreement that was executed between the owner and the Secretary prior to September 1, 1995; (2) whose submissions were delayed as a result of their location in areas that were designated as a Federal disaster area in a Presidential Disaster Declaration; or (3) whose processing was, in fact or in practical effect, suspended, deferred, or interrupted for a period of twelve months or more because of differing interpretations, by the Secretary and an owner or by the Secretary and a State or local rent regulatory agency, concerning the timing of filing eligibility or the effect of a presumptively applicable State or local rent control law or regulation on the determination of preservation value under section 213 of LIHPRHA, as amended [12 U.S.C. 4103], if the owner of such project filed notice of intent to extend the low-income affordability restrictions of the housing, or transfer to a qualified purchaser who would extend such restrictions, on or before November 1, 1993; and of which, up to $100,000,000 may be used for rental assistance to prevent displacement of families residing in projects whose owners prepay their mortgages; and the balance of which shall be available from the effective date of this Act [Sept. 26, 1996] for sales to preferred priority purchasers: *Provided further*, That with the exception of projects described in clauses (1), (2), or (3) of the preceding proviso, the Secretary shall, notwithstanding any other provision of law, suspend further processing of preservation applications which have not heretofore received approval of a plan of action: *Provided further*, That $150,000,000 of amounts recaptured from interest reduction payment contracts for section 236 [12 U.S.C. 1715z–1] projects whose owners prepay their mortgages during fiscal year 1997 shall be rescinded: *Provided further*, That an owner of eligible low-income housing may prepay the mortgage or request voluntary termination of a mortgage insurance contract, so long as said owner agrees not to raise rents for sixty days after such prepayment: *Provided further*, That such developments have been determined to have preservation equity at least equal to the lesser of $5,000 per unit or $500,000 per project or the equivalent of eight times the most recently published monthly fair market rent for the area in which the project is located as the appropriate unit size for all of the units in the eligible project: *Provided further*, That the Secretary may modify the regulatory agreement to permit owners and priority purchasers to retain rental income in excess of the basic rental charge in projects assisted under section 236 of the National Housing Act, for the purpose of preserving the low- and moderate-income character of the housing: *Provided further*, That eligible low-income housing shall include properties meeting the requirements of this paragraph with mortgages that are held by a State agency as a result of a sale by the Secretary without insurance, which immediately before the sale would have been eligible low-income housing under LIHPRHA: *Provided further*, That notwithstanding any other provision of law, subject to the availability of appropriated funds, each low-income family, and moderate-income family who is elderly or disabled or is residing in a low-vacancy area, residing in the housing on the date of prepayment or voluntary termination, and whose rent, as a result of a rent increase occurring no later than one year after the date of the prepayment, exceeds 30 percent of adjusted income, shall be offered tenant-based assistance in accordance with section 8 [42 U.S.C. 1437f] or any successor program, under which the family shall pay no less for rent than it paid on such date: *Provided further*, That any family receiving tenant-based assistance under the preceding proviso may elect (1) to remain in the unit of the housing and if the rent exceeds the fair market rent or payment standard, as applicable, the rent shall be deemed to be the applicable standard, so long as the administering public housing agency finds that the rent is reasonable in comparison with rents charged for comparable unassisted housing units in the market or (2) to move from the housing and the rent will be subject to the fair market rent of the payment standard, as applicable, under existing program rules and procedures: *Provided further*, That the tenant-based assistance made available under the preceding two provisos are in lieu of benefits provided in subsections [sic] 223(b), (c), and (d) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4113(b), (c), (d)]: *Provided further*, That any sales shall be funded using the capital grant available under section 220(d)(3)(A) of LIHPRHA [12 U.S.C. 4110(d)(3)(A)]: *Provided further*, That any extensions shall be funded using a non-interest-bearing capital (direct) loan by the Secretary not in excess of the amount of the cost of rehabilitation approved in the plan of action plus 65 percent of the property's preservation equity and under such other terms and conditions as the Secretary may prescribe: *Provided further*, That any capital grant shall be limited to seven times, and any capital loan limited to six times, the annual fair market rent for the project, as determined using the fair market rent for fiscal year 1997 for the area in which the project is located, using the appropriate apartment sizes and mix in the eligible project, except where, upon the request of a priority purchaser, the Secretary determines that a greater amount is necessary and appropriate to preserve low-income housing: *Provided further*, That section 241(f) of the National Housing Act [12 U.S.C. 1715z–6(f)] is repealed and insurance under such section shall not be offered as an incentive under LIHPRHA and ELIHPA: *Provided further*, That up to $10,000,000 of the amount of $350,000,000 made available by a preceding proviso in this paragraph may be used at the discretion of the Secretary to reimburse owners of eligible properties for which plans of action were submitted prior to the effective date of this Act [Sept. 26, 1996], but were not executed for lack of available funds, with such reimbursement available only for documented costs directly applicable to the preparation of the plan of action as determined by the Secretary, and shall be made available on terms and conditions to be established by the Secretary: *Provided further*, That, notwithstanding any other provision of law, a priority purchaser may utilize assistance under the HOME Investment Partnerships Act [42 U.S.C. 12721 et seq.] or the Low Income Housing Tax Credit [see 26 U.S.C. 42]: *Provided further*, That projects with approved plans of action which exceed the limitations on eligibility for funding imposed by this Act may submit revised plans of action which conform to these limitations by March 1, 1997, and retain the priority for funding otherwise applicable from the original date of approval of their plan of action, subject to securing any additional necessary funding commitments by August 1, 1997.''

Pub. L. 104–134, title I, §101(e) [title II], Apr. 26, 1996, 110 Stat. 1321–257, 1321–267; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided in part that: ''Of the total amount provided under this head, $624,000,000, plus amounts recaptured from interest reduction payment contracts for section 236 [12 U.S.C. 1715z–1] projects whose owners prepay their mortgages during fiscal year 1996 (which amounts shall be transferred and merged with this account), shall be for use in conjunction with properties that are eligible for assistance under the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) [see Short Title note above] or the Emer-

gency Low-Income Housing Preservation Act of 1987 (ELIHPA) [see Codification note set out preceding this section]: *Provided*, That prior to August 15, 1996, funding to carry out plans of action shall be limited to sales of projects to non-profit organizations, tenant-sponsored organizations, and other priority purchasers: *Provided further*, That of the amount made available by this paragraph, up to $10,000,000 shall be available for preservation technical assistance grants pursuant to section 253 of the Housing and Community Development Act of 1987 [12 U.S.C. 4143], as amended: *Provided further*, That with respect to amounts made available by this paragraph, after August 15, 1996, if the Secretary determines that the demand for funding may exceed amounts available for such funding, the Secretary (1) may determine priorities for distributing available funds, including giving priority funding to tenants displaced due to mortgage prepayment and to projects that have not yet been funded but which have approved plans of action; and (2) may impose a temporary moratorium on applications by potential recipients of such funding: *Provided further*, That an owner of eligible low-income housing may prepay the mortgage or request voluntary termination of a mortgage insurance contract, so long as said owner agrees not to raise rents for sixty days after such prepayment: *Provided further*, That an owner of eligible low-income housing who has not timely filed a second notice under section 216(d) [12 U.S.C. 4106(d)] prior to the effective date of this Act [Apr. 26, 1996] may file such notice by April 15, 1996: *Provided further*, That such developments have been determined to have preservation equity at least equal to the lesser of $5,000 per unit or $500,000 per project or the equivalent of eight times the most recently published fair market rent for the area in which the project is located as the appropriate unit size for all of the units in the eligible project: *Provided further*, That the Secretary may modify the regulatory agreement to permit owners and priority purchasers to retain rental income in excess of the basic rental charge in projects assisted under section 236 of the National Housing Act [12 U.S.C. 1715z–1], for the purpose of preserving the low and moderate income character of the housing: *Provided further*, That the Secretary may give priority to funding and processing the following projects provided that the funding is obligated not later than September 15, 1996: (1) projects with approved plans of action to retain the housing that file a modified plan of action no later than August 15, 1996 to transfer the housing; (2) projects with approved plans of action that are subject to a repayment or settlement agreement that was executed between the owner and the Secretary prior to September 1, 1995; (3) projects for which submissions were delayed as a result of their location in areas that were designated as a Federal disaster area in a Presidential Disaster Declaration; and (4) projects whose processing was, in fact, or in practical effect, suspended, deferred, or interrupted for a period of nine months or more because of differing interpretations, by the Secretary and an owner concerning the time of the ability of an uninsured section 236 [12 U.S.C. 1715z–1] property to prepay or by the Secretary and a State or local rent regulatory agency, concerning the effect of a presumptively applicable State or local rent control law or regulation on the determination of preservation value under section 213 of LIHPRHA, as amended [12 U.S.C. 4103], if the owner of such project filed notice of intent to extend the low-income affordability restrictions of the housing, or transfer to a qualified purchaser who would extend such restrictions, on or before November 1, 1993: *Provided further*, That eligible low-income housing shall include properties meeting the requirements of this paragraph with mortgages that are held by a State agency as a result of a sale by the Secretary without insurance, which immediately before the sale would have been eligible low-income housing under LIHPRHA: *Provided further*, That notwithstanding any other provision of law, subject to the availability of appropriated funds, each unassisted low-income family residing in the housing on the date of prepayment or voluntary termination, and whose rent, as a result of a rent increase occurring no later than one year after the date of the prepayment, exceeds 30 percent of adjusted income, shall be offered tenant-based assistance in accordance with section 8 [42 U.S.C. 1437f] or any successor program, under which the family shall pay no less for rent than it paid on such date: *Provided further*, That any family receiving tenant-based assistance under the preceding proviso may elect (1) to remain in the unit of the housing and if the rent exceeds the fair market rent or payment standard, as applicable, the rent shall be deemed to be the applicable standard, so long as the administering public housing agency finds that the rent is reasonable in comparison with rents charged for comparable unassisted housing units in the market or (2) to move from the housing and the rent will be subject to the fair market rent of the payment standard, as applicable, under existing program rules and procedures: *Provided further*, That rents and rent increases for tenants of projects for which plans of action are funded under section 220(d)(3)(B) of LIHPRHA [12 U.S.C. 4110(d)(3)(B)] shall be governed in accordance with the requirements of the program under which the first mortgage is insured or made (sections 236 or 221(d)(3) BMIR [12 U.S.C. 1715z–1, 4111(d)(3)], as appropriate): *Provided further*, That the immediately foregoing proviso shall apply hereafter to projects for which plans of action are to be funded under such section 220(d)(3)(B) [12 U.S.C. 4110(d)(3)(B)], and shall apply to any project that has been funded under such section starting one year after the date that such project was funded: *Provided further*, That up to $10,000,000 of the amount made available by this paragraph may be used at the discretion of the Secretary to reimburse owners of eligible properties for which plans of action were submitted prior to the effective date of this Act [Apr. 26, 1996], but were not executed for lack of available funds, with such reimbursement available only for documented costs directly applicable to the preparation of the plan of action as determined by the Secretary, and shall be made available on terms and conditions to be established by the Secretary: *Provided further*, That, notwithstanding any other provision of law, effective October 1, 1996, the Secretary shall suspend further processing of preservation applications which do not have approved plans of action.''

For similar provisions see Pub. L. 104–120, § 2(b), Mar. 28, 1996, 110 Stat. 834.

CONDITIONS OF ASSISTANCE

Pub. L. 102–550, title III, § 314, Oct. 28, 1992, 106 Stat. 3770, provided that:

''(a) ELIHPA OF 1987.—The Secretary may not require, as a condition of eligibility for or receipt of technical assistance made available under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102–139 [105 Stat. 736, see Tables for classification]) (including any phase of a grant), that an applicant participate in a training program sponsored or conducted by the Department of Housing and Urban Development for acquisition of eligible low income housing under the provisions of the Emergency Low Income Housing Preservation Act of 1987 [see Codification note above], and may not provide any preference or priority for such assistance for any applicant based on participation in such a program.

''(b) LIHPRHA OF 1990.—The Secretary may require, as a condition of eligibility for or receipt of technical assistance made available under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102–139) (including any phase of a grant), that an applicant participate in a training program sponsored or conducted by the Department of Housing and Urban Development for acquisition of eligible low-income housing under this title [enacting sections 4141 to 4147 of this title, amending sections 1715z–1, 1715z–6, 4103, 4105 to 4112, 4116, 4119, 4121, 4122, 4124, and 4125 of this title, enacting provisions set out as notes under this

section and sections 1715z–6, 4109, and 4117 of this title, and amending provisions set out as a note under this section], and may provide preference or priority for such assistance for applicants based on participation in such a program, but only if the program is made available on a nationwide basis not later than March 1, 1993.''

TRANSITION PROVISIONS

Section 604 of Pub. L. 101–625, as amended by Pub. L. 102–550, title III, §313, Oct. 28, 1992, 106 Stat. 3769, provided that:

''(a) HOUSING ELIGIBLE FOR ELECTION.—Any owner of housing that becomes eligible low-income housing before January 1, 1991 and who, before such date, filed a notice of intent under section 222 of the Emergency Low Income Housing Preservation Act of 1987 [formerly set out in a note under section 1715*l* of this title] (as such section existed before the date of the enactment of this Act [Nov. 28, 1990]) or under section 212 of such Act [12 U.S.C. 4102] (as amended by section 601(a)) may elect to be subject to (1) the provisions of such Act as in effect before the date of the enactment of this Act, or (2) the provisions of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [see Short Title note above], after the date of the enactment of this Act. The Secretary shall establish procedures for owners to make the election under the preceding sentence. An owner that elects to be subject to the provisions of the Emergency Low Income Housing Preservation Act of 1987 shall comply with section 212(b), section 217(a)(2), and section 217(c) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4102(b) and 4107(a)(2), (c)].

''(b) RIGHT OF CONVERSION TO NEW SYSTEM.—Any owner who has filed a plan of action on or before October 11, 1990, shall have the right to convert to the system of incentives and restrictions under this subtitle [subtitle A of title VI of Pub. L. 101–625, see Effective Date note above], with such adjustments as the Secretary determines to be appropriate to compensate for the value of any incentives the owner received under the Emergency Low Income Housing Preservation Act of 1987 [see Codification note preceding this section]. Owners filing plans after such date shall not have any right under this subsection.

''(c) EFFECTIVENESS OF REPEALED PROVISIONS.—Notwithstanding the amendment made by section 601(a) [enacting this chapter], the provisions of the Emergency Low Income Housing Preservation Act of 1987 (as in effect immediately before the date of the enactment of this Act [Nov. 28, 1990]) shall apply with respect to any housing for which the election under subsection (a)(1) is made. With respect to housing for which such an election is made—

''(1) in making incentives under section 224 of such Act [formerly set out in a note under section 1715*l* of this title] available to such housing, the Secretary—

''(A) shall, for approvable plans of action, provide assistance sufficient to enable a nonprofit organization that has purchased or will purchase an eligible low income housing project to meet project oversight costs; and

''(B) may not refuse to offer incentives referred to in such section to any owner who filed a notice of intent under section 222 of such Act before October 15, 1991, based solely on the date of filing of the plan of action for the housing; and

''(2) the provisions of section 233(1)(A)(i) of such Act [formerly set out in a note under section 1715*l* of this title] shall not apply, and the term 'eligible low income housing' shall, for purposes of such Act, shall [sic] include housing financed by a loan or mortgage that is insured or held by the Secretary or a State or State agency under section 221(d)(3) of the National Housing Act [12 U.S.C. 1715*l*(d)(3)] and receiving loan management assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] due to a conversion from section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s].

''(d) REGULATIONS.—Not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Nov. 28, 1990], the Secretary of Housing and Urban Development shall, subject to the provisions of section 553 of title 5, United States Code, publish proposed rules to implement this subtitle and the amendments made by this subtitle. Not later than 45 days after the expiration of the period under the preceding sentence the Secretary shall issue interim or final rules to implement such provisions.''

§ 4102. Notice of intent

(a) Filing with Secretary

An owner of eligible low-income housing that intends to terminate the low-income affordability restrictions through prepayment or voluntary termination in accordance with section 4108 of this title, extend the low-income affordability restrictions of the housing in accordance with section 4109 of this title, or transfer the housing to a qualified purchaser in accordance with section 4110 of this title, shall file with the Secretary a notice indicating such intent in the form and manner as the Secretary shall prescribe.

(b) Filing with State or local government, tenants, and mortgagee

The owner, upon filing a notice of intent under this section, shall simultaneously file the notice of intent with the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located and with the mortgagee, and shall inform the tenants of the housing of the filing.

(c) Ineligibility for filing

An owner shall not be eligible to file a notice of intent under this section if the mortgage covering the housing—

(1) falls into default on or after November 28, 1990; or

(2)(A) fell into default before, but is current as of, November 28, 1990; and

(B) the owner does not agree to recompense the appropriate Insurance Fund, in the amount the Secretary determines appropriate, for any losses sustained by the Fund as a result of any work-out or other arrangement agreed to by the Secretary and the owner with respect to the defaulted mortgage.

The Secretary shall carry out this subsection in a manner consistent with the provisions of section 1701z–11 of this title.

(Pub. L. 100–242, title II, §212, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249.)

§ 4103. Appraisal and preservation value of eligible low-income housing

(a) Appraisal

Upon receiving notice of intent regarding an eligible low-income housing project indicating an intent to extend the low-income affordability restrictions under section 4109 of this title or transfer the housing under section 4110 of this title, the Secretary shall provide for determination of the preservation value of the housing, as follows:

(1) Appraisers

The preservation value shall be determined by 2 independent appraisers, one of whom shall

be selected by the Secretary and one of whom shall be selected by the owner. The appraisals shall be conducted not later than 4 months after filing the notice of intent under section 4102 of this title, and the owner shall submit to the Secretary the appraisal made by the owner's selected appraiser not later than 90 days after receipt of the notice under paragraph (2). If the 2 appraisers fail to agree on the preservation value, and the Secretary and the owner also fail to agree on the preservation value, the Secretary and the owner shall jointly select and jointly compensate a third appraiser, whose appraisal shall be binding on the parties.

(2) Notice

Not later than 30 days after the filing of a notice of intent to seek incentives under section 4109 of this title or transfer the property under section 4110 of this title, the Secretary shall provide written notice to the owner filing the notice of intent of—

(A) the need for the owner to acquire an appraisal of the property under paragraph (1);

(B) the rules and guidelines for such appraisals;

(C) the filing deadline for submission of the appraisal under paragraph (1);

(D) the need for an appraiser retained by the Secretary to inspect the housing and project financial records; and

(E) any delegation to the appropriate State agency by the Secretary of responsibilities regarding the appraisal.

(3) Timeliness

The Secretary may approve a plan of action to receive incentives under section 4109 or 4110 of this title only based upon an appraisal conducted in accordance with this subsection that is not more than 30 months old.

(b) Preservation value

For purposes of this subchapter, the preservation value of eligible low-income housing appraised under this section shall be—

(1) for purposes of extending the low-income affordability restrictions and receiving incentives under section 4109 of this title, the fair market value of the property based on the highest and best use of the property as residential rental housing; and

(2) for purposes of transferring the property under section 4110 or 4111 of this title, the fair market value of the housing based on the highest and best use of the property.

(c) Guidelines

The Secretary shall provide written guidelines for appraisals of preservation value, which shall assume repayment of the existing federally assisted mortgage, termination of the existing low-income affordability restrictions, simultaneous termination of any Federal rental assistance, and costs of compliance with any State or local laws of general applicability. The guidelines may permit reliance upon assessments of rehabilitation needs and other conversion costs determined by an appropriate State agency, as determined by the Secretary. The guidelines shall instruct the appraiser to use the greater of actual project operating expenses at the time of the appraisal (based on the average of the actual project operating expenses during the preceding 3 years) or projected operating expenses after conversion in determining preservation value. The guidelines established by the Secretary shall not be inconsistent with customary appraisal standards. The guidelines shall also meet the following requirements:

(1) Residential rental value

In the case of preservation value determined under subsection (b)(1) of this section, the guidelines shall assume conversion of the housing to market-rate rental housing and shall establish methods for (A) determining rehabilitation expenditures that would be necessary to bring the housing up to quality standards required to attract and sustain a market rate tenancy upon conversion, and (B) assessing other costs that the owner could reasonably be expected to incur if the owner converted the property to market-rate multifamily rental housing.

(2) Highest and best use value

In the case of preservation value determined under subsection (b)(2) of this section, the guidelines shall assume conversion of the housing to highest and best use for the property and shall establish methods for (A) determining any rehabilitation expenditures that would be necessary to convert the housing to such use, and (B) assessing other costs that the owner could reasonably be expected to incur if the owner converted the property to its highest and best use.

(Pub. L. 100–242, title II, § 213, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4250; amended Pub. L. 102–550, title III, § 302, Oct. 28, 1992, 106 Stat. 3763.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–550 inserted ''simultaneous termination of any Federal rental assistance,'' before ''and costs'' in first sentence.

§ 4104. Annual authorized return and preservation rents

(a) Annual authorized return

Pursuant to an appraisal under section 4103 of this title, the Secretary shall determine the annual authorized return on the appraised housing, which shall be equal to 8 percent of the preservation equity (as such term is defined in section 4119(8) of this title).

(b) Preservation rents

The Secretary shall also determine the aggregate preservation rents under this subsection for each project appraised under section 4103 of this title. The aggregate preservation rents shall be used solely for the purposes of comparison with Federal cost limits under section 4105 of this title. Actual rents received by an owner (or a qualified purchaser) shall be determined pursuant to section 4109, 4110, or 4111 of this title. The aggregate preservation rents shall be established as follows:

(1) Extension of affordability limits

The aggregate preservation rent for purposes of receiving incentives pursuant to extension

of the low-income affordability restrictions under section 4109 of this title shall be the gross potential income for the project, determined by the Secretary, that would be required to support the following costs:

(A) The annual authorized return determined under subsection (a) of this section.

(B) Debt service on any rehabilitation loan for the housing.

(C) Debt service on the federally-assisted mortgage for the housing.

(D) Project operating expenses.

(E) Adequate reserves.

(2) Sale

The aggregate preservation rent for purposes of receiving incentives pursuant to sale under section 4110 or 4111 of this title shall be the gross income for the project determined by the Secretary, that would be required to support the following costs:

(A) Debt service on the loan for acquisition of the housing.

(B) Debt service on any rehabilitation loan for the housing.

(C) Debt service on the federally-assisted mortgage for the housing.

(D) Project operating expenses.

(E) Adequate reserves.

(Pub. L. 100–242, title II, § 214, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4251.)

§ 4105. Federal cost limits and limitations on plans of action

(a) Determination of relationship to Federal cost limits

(1) Initial determination

For each eligible low-income housing project appraised under section 4103(a) of this title, the Secretary shall determine whether the aggregate preservation rents for the project determined under paragraph (1) or (2) of section 4104(b) of this title exceed the amount determined by multiplying 120 percent of the fair market rental (established under section 1437f(c) of title 42) for the market area in which the housing is located by the number of dwelling units in the project (according to appropriate unit sizes).

(2) Relevant local markets

If the aggregate preservation rents for a project exceeds the amount determined under paragraph (1), the Secretary shall determine whether such aggregate rents exceed the amount determined by multiplying 120 percent of the prevailing rents in the relevant local market area in which the housing is located by the number of units in the project (according to the appropriate unit sizes). A relevant local market area shall be an area geographically smaller than a market area established by the Secretary under section 1437f(c)(1) of title 42 that is identifiable as a distinct rental market area. The Secretary may rely on the appraisal to determine the relevant local market areas and prevailing rents in such local areas and any other information the Secretary determines is appropriate.

(3) Effect

For purposes of this subchapter, the aggregate preservation rents shall be considered to exceed the Federal cost limits under this subsection only if the aggregate preservation rents exceed the amount determined under paragraph (1) and the amount determined under paragraph (2).

(b) Limitations on action pursuant to Federal cost limits

(1) Housing within Federal cost limits

If the aggregate preservation rents for an eligible low-income housing project do not exceed the Federal cost limit, the owner may not prepay the mortgage on the housing or terminate the insurance contract with respect to the housing, except as permitted under section 4114 of this title. The owner may—

(A) file a plan of action under section 4107 of this title to receive incentives under section 4109 of this title; or

(B) file a second notice of intent under section 4106(d) of this title indicating an intention to transfer the housing under section 4110 of this title and take actions pursuant to such section.

(2) Housing exceeding Federal cost limits

If the aggregate preservation rents for an eligible low-income housing project exceed the Federal cost limit, the owner may—

(A) file a plan of action under section 4107 of this title to receive incentives under section 4109 of this title if the owner agrees to accept incentives under such sections in an amount that shall not exceed the Federal cost limit;

(B) file a second notice of intent under section 4106(d) of this title indicating an intention to transfer the housing under section 4110 of this title and take actions pursuant to such section if the owner agrees to transfer the housing at a price that shall not exceed the Federal cost limit; or

(C) file a second notice of intent under section 4106(d) of this title indicating an intention to prepay the mortgage or voluntarily terminate the insurance, subject to the mandatory sale provisions under section 4111 of this title.

(Pub. L. 100–242, title II, § 215, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4252; amended Pub. L. 102–550, title III, § 317(a)(1), Oct. 28, 1992, 106 Stat. 3772.)

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–550 made technical amendment to reference to section 1437f(c)(1) of title 42 to reflect correction of corresponding provision of original act.

§ 4106. Information from Secretary

(a) Information to owners terminating affordability restrictions

The Secretary shall provide each owner who submits a notice of intent to terminate the low-income affordability restrictions on the housing under section 4108 of this title with information under this section not later than 6 months after

receipt of the notice of intent. The information shall include a description of the criteria for such termination specified under section 4108 of this title and the documentation required to satisfy such criteria.

(b) Information to owners extending low-income affordability restrictions

The Secretary shall provide each owner who submits notice of intent to extend the low-income affordability restrictions on the housing under section 4109 of this title or transfer the housing under section 4110 of this title to a qualified purchaser with information under this subsection not later than 9 months after receipt of the notice of intent. The information shall include any information necessary for the owner to prepare a plan of action under section 4107 of this title, including the following:

(1) Preservation values

A statement of the preservation value of the housing determined under paragraphs (1) and (2) of section 4103(b) of this title.

(2) Preservation rent

A statement of the preservation rent for the housing as calculated under section 4104(b) of this title.

(3) Federal cost limits

A statement of the applicable Federal cost limits for the market area (or relevant local market area, if applicable) in which the housing is located, which shall explain the limitations under sections 4109 and 4110 of this title of the amount of assistance that the Secretary may provide based on such cost limits.

(4) Federal cost limit analysis

A statement of whether the aggregate preservation rents exceed the Federal cost limits and a direction to the owner to file a plan of action under section 4107 of this title or submit a second notice of intent under subsection (d) of this section, whichever is applicable.

(c) Availability to tenants

The Secretary shall make any information provided to the owner under subsections (a) and (b) of this section available to the tenants of the housing, together with other information relating to the rights and opportunities of the tenants.

(d) Second notice of intent

(1) Filing

Each owner of eligible low-income housing that elects to transfer housing under section 4110 of this title shall submit to the Secretary, in such form and manner as the Secretary prescribes, notice of intent to sell the housing under section 4110 of this title. To be eligible to prepay the mortgage or voluntarily terminate the insurance contract on the mortgage, an owner of housing for which the preservation rents exceed the Federal cost limits under section 4105(b) of this title shall submit to the Secretary notice of such intent. The provisions of sections 4111 and 4113 of this title shall apply to any owner submitting a notice under the preceding sentence.

(2) Timing

A second notice of intent under this subsection shall be submitted not later than 30 days after receipt of information from the Secretary under this section. If an owner fails to submit such notice within such period, the notice of intent submitted by the owner under section 4102 of this title shall be void and ineffective for purposes of this subchapter.

(3) Filing with the State or local government, tenants, and mortgagee

Upon filing a second notice of intent under this subsection, the owner shall simultaneously file such notice of the intent with the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located and with the mortgagee, and shall inform the tenants of the housing of the filing.

(Pub. L. 100–242, title II, § 216, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4253; amended Pub. L. 102–550, title III, §§ 303, 317(a)(2), Oct. 28, 1992, 106 Stat. 3763, 3772.)

AMENDMENTS

1992—Subsec. (b)(4). Pub. L. 102–550, § 317(a)(2), substituted ''exceed'' for ''exceeds''.

Subsec. (d)(3). Pub. L. 102–550, § 303, added par. (3).

§ 4107. Plan of action

(a) Submission to Secretary

(1) Timing

Not later than 6 months after receipt of the information from the Secretary under section 4106 of this title an owner seeking to terminate the low-income affordability restrictions through prepayment of the mortgage or voluntary termination under section 4108 of this title, or to extend the low-income affordability restriction on the housing under section 4109 of this title, shall submit a plan of action to the Secretary in such form and manner as the Secretary shall prescribe. Any owner or purchaser seeking a transfer of the housing under section 4110 or 4111 of this title shall submit a plan of action under this section to the Secretary upon acceptance of a bona fide offer under section 4110(b) or (c) of this title or upon making of any bona fide offer under section 4111 of this title.

(2) Copies to tenants

Each owner submitting a plan of action under this section to the Secretary shall also submit a copy to the tenants of the housing. The owner shall simultaneously submit the plan of action to the office of the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located. Each owner and the Secretary shall also, upon request, make available to the tenants of the housing and to the office of the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located all documentation supporting the plan of action, but not including any information that the Secretary determines is proprietary information. An appropriate agency of such State or local government shall review the plan and advise the tenants of the housing of any programs that are available to assist the

tenants in carrying out the purposes of this title.[1]

(3) Failure to submit

If the owner does not submit a plan of action to the Secretary within the 6-month period referred to in paragraph (1) (or the applicable longer period), the notice of intent shall be ineffective for purposes of this subchapter and the owner may not submit another notice of intent under section 4102 of this title until 6 months after the expiration of such period.

(b) Contents

(1) Termination of affordability restrictions

If the plan of action proposes to terminate the low-income affordability restrictions through prepayment or voluntary termination in accordance with section 4108 of this title, the plan shall include—

(A) a description of any proposed changes in the status or terms of the mortgage or regulatory agreement;

(B) a description of any proposed changes in the low-income affordability restrictions;

(C) a description of any change in ownership that is related to prepayment or voluntary termination;

(D) an assessment of the effect of the proposed changes on existing tenants;

(E) an analysis of the effect of the proposed changes on the supply of housing affordable to low- and very low-income families or persons in the community within which the housing is located and in the area that the housing could reasonably be expected to serve; and

(F) any other information that the Secretary determines is necessary to achieve the purposes of this title.[1]

(2) Extension of affordability restrictions

If the plan of action proposes to extend the low-income affordability restrictions of the housing in accordance with section 4109 of this title or transfer the housing to a qualified purchaser in accordance with section 4110 of this title, the plan shall include—

(A) a description of any proposed changes in the status or terms of the mortgage or regulatory agreement;

(B) a description of the Federal incentives requested (including cash flow projections), and analyses of how the owner will address any physical or financial deficiencies and maintain the low-income affordability restrictions of the housing;

(C) a description of any assistance from State or local government agencies, including low-income housing tax credits, that have been offered to the owner or purchaser or for which the owner or purchaser has applied or intends to apply;

(D) a description of any transfer of the property, including the identity of the transferee and a copy of any documents of sale; and

(E) any other information that the Secretary determines is necessary to achieve the purposes of this title.[1]

[1] See References in Text note below.

(c) Revisions

An owner may from time to time revise and amend the plan of action as may be necessary to obtain approval of the plan under this subchapter. The owner shall submit any revision to the Secretary and to the tenants of the housing and make available to the Secretary and tenants all documentation supporting any revision, but not including any information that the Secretary determines is proprietary information.

(Pub. L. 100–242, title II, §217, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4254; amended Pub. L. 102–550, title III, §304, Oct. 28, 1992, 106 Stat. 3763.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(2) and (b)(1)(F), (2)(E), means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–550, §304(a), inserted after second sentence ''Each owner and the Secretary shall also, upon request, make available to the tenants of the housing and to the office of the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located all documentation supporting the plan of action, but not including any information that the Secretary determines is proprietary information.''

Subsec. (c). Pub. L. 102–550, §304(b), inserted before period at end ''and make available to the Secretary and tenants all documentation supporting any revision, but not including any information that the Secretary determines is proprietary information''.

§4108. Prepayment and voluntary termination

(a) Approval

The Secretary may approve a plan of action that provides for termination of the low-income affordability restrictions through prepayment of the mortgage or voluntary termination of the mortgage insurance contract only upon a written finding that—

(1) implementation of the plan of action will not—

(A) materially increase economic hardship for current tenants, and will not in any event result in (i) a monthly rental payment by any current tenant that exceeds 30 percent of the monthly adjusted income of the tenant or an increase in the monthly rental payment in any year that exceeds 10 percent (whichever is lower), or (ii) in the case of a current tenant who already pays more than such percentage, an increase in the monthly rental payment in any year that exceeds the increase in the Consumer Price Index or 10 percent (whichever is lower); or

(B) involuntarily displace current tenants (except for good cause) where comparable and affordable housing is not readily available determined without regard to the availability of Federal housing assistance that would address any such hardship or involuntary displacement; and

(2) the supply of vacant, comparable housing is sufficient to ensure that such prepayment will not materially affect—

(A) the availability of decent, safe, and sanitary housing affordable to low-income and very low-income families or persons in the area that the housing could reasonably be expected to serve;

(B) the ability of low-income and very low-income families or persons to find affordable, decent, safe, and sanitary housing near employment opportunities; or

(C) the housing opportunities of minorities in the community within which the housing is located.

(b) Standards and procedure for written findings

(1) Standards

A written finding under subsection (a) of this section shall be based on an analysis of the evidence considered by the Secretary in reaching such finding and shall contain documentation of such evidence.

(2) Procedure and criteria

The Secretary shall, by regulation, develop (A) a procedure for determining whether the conditions under paragraphs (1) and (2) of subsection (a) of this section exist, (B) requirements for evidence on which such determinations are based, and (C) criteria on which such determinations are based.

(c) Disapproval

If the Secretary determines a plan of action to prepay a mortgage or terminate an insurance contract fails to meet the requirements of subsection (a) of this section, the Secretary shall disapprove the plan, the notice of intent filed under section 4102 of this title by such owner shall not be effective for purposes of this subchapter, and the owner may, in order to receive incentives under this subchapter, file a new notice of intent under such section.

(Pub. L. 100–242, title II, § 218, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4256; amended Pub. L. 102–550, title III, § 305, Oct. 28, 1992, 106 Stat. 3763.)

AMENDMENTS

1992—Subsecs. (b), (c). Pub. L. 102–550 added subsec. (b) and redesignated former subsec. (b) as (c).

§ 4109. Incentives to extend low-income use

(a) Agreements by Secretary

After approving a plan of action from an owner of eligible low-income housing that includes the owner's plan to extend the low-income affordability restrictions of the housing, the Secretary shall, subject to the availability of appropriations for such purpose, enter into such agreements as are necessary to enable the owner to receive (for each year after the approval of the plan of action) the annual authorized return for the housing determined under section 4104(a) of this title, pay debt service on the federally-assisted mortgage covering the housing, pay debt service on any loan for rehabilitation of the housing, and meet project operating expenses and establish adequate reserves. The Secretary shall take into account the Federal cost limits under section 4105(a) of this title for the housing when providing incentives under subsections[1] (b)(2) and (3) of this section. The Secretary shall take such actions as are necessary to ensure that owners receive the annual authorized return for the housing determined under section 4104(a) of this title during the period in which rent increases are phased in as provided in section 4112(a)(2)(E) of this title, including (in order of preference) (1) allowing the owner access to residual receipt accounts (pursuant to subsection (b)(1) of this section), (2) deferring remittance of excess rent payments, and (3) providing an increase in rents permitted under an existing contract under section 1437f of title 42 (pursuant to subsection (b)(2) of this section).

(b) Permissible incentives

Such agreements may include one or more of the following incentives:

(1) Increased access to residual receipts accounts.

(2) Subject to the availability of amounts provided in appropriations Acts—

(A) an increase in the rents permitted under an existing contract under section 1437f of title 42, or

(B) additional assistance under section 1437f of title 42 or an extension of any project-based assistance attached to the housing; and

(3) An increase in the rents on units occupied by current tenants as permitted under section 4112 of this title.

(4) Financing of capital improvements under section 201 of the Housing and Community Development Amendments of 1978.

(5) Financing of capital improvements through provision of insurance for a second mortgage under section 1715z–6 of this title.

(6) In the case of housing defined in section 4119(1)(A)(iii) of this title, redirection of the Interest Reduction Payment subsidies to a second mortgage.

(7) Access by the owner to a portion of the preservation equity in the housing through provision of insurance for a second mortgage loan insured under section 1715z–6(f)[2] of this title or a non-insured mortgage loan approved by the Secretary and the mortgagee.

(8) Other incentives authorized in law.

With respect to any housing with a mortgage insured or otherwise assisted pursuant to section 1715z–1 of this title, the provisions of subsections (f) and (g) of section 1715z–1 of this title notwithstanding, the fair market rental charge for each unit in such housing may be increased in accordance with this subsection, but the owner shall pay to the Secretary all rental charges collected in excess of the basic rental charges, in an amount not greater than the fair market rental charges as such charges would have been established under section 1715z–1(f) of this title absent the requirements of this paragraph.

(Pub. L. 100–242, title II, § 219, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat.

[1] So in original. Probably should be ''subsection''.

[2] See References in Text note below.

4256; amended Pub. L. 102–550, title III, § 306, Oct. 28, 1992, 106 Stat. 3764.)

REFERENCES IN TEXT

Section 201 of the Housing and Community Development Amendments of 1978, referred to in subsec. (b)(4), is section 201 of Pub. L. 95–557, title II, Oct. 31, 1978, 92 Stat. 2084, which enacted section 1715z–1a of this title and amended section 1715z–1 of this title.

Section 1715z–6(f) of this title, referred to in subsec. (b)(7), was repealed by Pub. L. 104–204, title II, Sept. 26, 1996, 110 Stat. 2885.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550 inserted ''(for each year after the approval of the plan of action)'' after ''receive'' and inserted at end ''The Secretary shall take such actions as are necessary to ensure that owners receive the annual authorized return for the housing determined under section 4104(a) of this title during the period in which rent increases are phased in as provided in section 4112(a)(2)(E) of this title, including (in order of preference) (1) allowing the owner access to residual receipt accounts (pursuant to subsection (b)(1) of this section), (2) deferring remittance of excess rent payments, and (3) providing an increase in rents permitted under an existing contract under section 1437f of title 42 (pursuant to subsection (b)(2) of this section).''

STUDY OF PROJECTS ASSISTED UNDER FLEXIBLE SUBSIDY PROGRAM

Section 318 of Pub. L. 102–550 provided that:

''(a) STUDY.—The Secretary shall conduct a study of housing projects that (1) are assisted under section 236 of the National Housing Act [12 U.S.C. 1715z–1] or the proviso of section 221(d)(5) of such Act [12 U.S.C. 1715*l*(d)(5)], and (2) have received or are receiving assistance under section 201 of the Housing and Community Development Amendments of 1978 [see References in Text note above], to determine the cost of providing such projects with incentives under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [see Short Title note set out under section 4101 of this title]. The study shall examine any projects portions of which assisted under such section 236 that are assisted primarily by State agencies.

''(b) REPORT.—The Secretary shall submit a report to the Congress regarding any findings and conclusions of the study under subsection (a) not later than the expiration of the 1-year period beginning on the date of the enactment of this Act [Oct. 28, 1992].''

§ 4110. Incentives for transfer to qualified purchasers

(a) In general

With respect to any eligible low-income housing for which an owner has submitted a second notice of intent under section 4106(d) of this title to transfer the housing to a qualified purchaser, the owner shall offer the housing for transfer to qualified purchasers as provided in this section. The Secretary shall issue regulations describing the means by which potential qualified purchasers shall be notified of the availability of the housing for sale. The Secretary shall take into account the Federal cost limits under section 4105(a) of this title for the housing when providing incentives under section 4109(b)(2) and (b)(3) of this title (pursuant to subsection (d)(3) of this section).

(b) Right of first offer to priority purchasers

(1) Negotiation period

For the 12-month period beginning on the receipt by the Secretary of a second notice of intent under section 4106(d) of this title with respect to such housing, the owner may offer to sell and negotiate a sale of the housing only with priority purchasers. The negotiated sale price may not exceed the preservation value of the housing determined under section 4103(b)(2) of this title. The owner or the purchaser shall submit a plan of action under section 4107 of this title for any sale under this subsection, which shall include any request for assistance under this section, upon the acceptance of any bona fide offer meeting the requirements of this paragraph.

(2) Expression of interest

During such period, priority purchasers may submit written notice to the Secretary stating their interest in acquiring the housing. Such notice shall be made in the form and include such information as the Secretary may prescribe.

(3) Information

Within 30 days of receipt of an expression of interest by a priority purchaser, the Secretary shall provide such purchaser with information on the assistance available from the Federal Government to facilitate a transfer and the owner shall provide appropriate information on the housing, as determined by the Secretary.

(c) Right of refusal for other qualified purchasers

If no bona fide offer to purchase any eligible low-income housing subject to this section that meets the requirements of subsection (b) of this section is made and accepted during the period under such subsection, during the 3-month period beginning upon the expiration of the 12-month period under subsection (b)(1) of this section, the owner of the housing may offer to sell and may sell the housing only to qualified purchasers. The negotiated sale price may not exceed the preservation value of the housing determined under section 4103(b)(2) of this title. The owner or purchaser shall submit a plan of action under section 4107 of this title for any sale under this subsection, which shall include any request for assistance under this section, upon the acceptance of any bona fide offer meeting the requirements of this paragraph.[1]

(d) Assistance

(1) Approval

If the qualified purchaser is a resident council, the Secretary may not approve a plan of action for assistance under this section unless the council's proposed resident homeownership program meets the requirements under section 4116 of this title. For all other qualified purchasers, the Secretary may not approve the plan unless the Secretary finds that the criteria for approval under section 4112 of this title have been satisfied.

(2) Amount

Subject to the availability of amounts approved in appropriations Acts, the Secretary shall, for approvable plans of action, provide

[1] So in original. Probably should be ''subsection.''

assistance sufficient to enable qualified purchasers (including all priority purchasers other than resident councils acquiring under the homeownership program authorized by section 4116 of this title) to—

(A) acquire the eligible low-income housing from the current owner for a purchase price not greater than the preservation equity of the housing;

(B) pay the debt service on the federally-assisted mortgage covering the housing;

(C) pay the debt service on any loan for the rehabilitation of the housing;

(D) meet project operating expenses and establish adequate reserves for the housing, and in the case of a priority purchaser, meet project oversight costs;

(E) receive a distribution equal to an 8 percent annual return on any actual cash investment (from sources other than assistance provided under this title[2]) made to acquire or rehabilitate the project;

(F) in the case of a priority purchaser, receive a reimbursement of all reasonable transaction expenses associated with the acquisition, loan closing, and implementation of an approved plan of action; and

(G) in the case of an approved resident homeownership program, cover the costs of training for the resident council, homeownership counseling and training, the fees for the nonprofit entity or public agency working with the resident council and costs related to relocation of tenants who elect to move.

(3) Incentives

(A) In general

For all qualified purchasers of housing under this subsection, the Secretary may provide assistance for an approved plan of action in the form of 1 or more of the incentives authorized under section 4109(b) of this title, except that the incentive under such section 4109(b)(7) of this title may include an acquisition loan under section 1715z–6(f)[2] of this title.

(B) Priority purchasers

Where the qualified purchaser is a priority purchaser, the Secretary may provide assistance for an approved plan of action (in the form of a grant) for each unit in the housing in an amount, as determined by the Secretary, that does not exceed the present value of the total of the projected published fair market rentals for existing housing (established by the Secretary under section 1437f(c) of title 42) for the next 10 years (or such longer period if additional assistance is necessary to cover the costs referred to in paragraph (2)).

(Pub. L. 100–242, title II, § 220, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4257; amended Pub. L. 102–550, title III, § 307, Oct. 28, 1992, 106 Stat. 3764.)

REFERENCES IN TEXT

This title, referred to in subsec. (d)(2)(E), means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Section 1715z–6(f) of this title, referred to in subsec. (d)(3)(A), was repealed by Pub. L. 104–204, title II, Sept. 26, 1996, 110 Stat. 2885.

AMENDMENTS

1992—Subsec. (d)(2). Pub. L. 102–550, § 307(a), inserted ''(including all priority purchasers other than resident councils acquiring under the homeownership program authorized by section 4116 of this title)'' after ''purchasers''.

Subsec. (d)(2)(D). Pub. L. 102–550, § 307(b), inserted before semicolon at end '', and in the case of a priority purchaser, meet project oversight costs''.

Subsec. (d)(2)(E), (F). Pub. L. 102–550, § 307(c), (d), amended subpars. (E) and (F) generally. Prior to amendment, subpars. (E) and (F) read as follows:

''(E) receive an adequate return (as determined by the Secretary) on any actual cash investment made to acquire the project;

''(F) in the case of a priority purchaser, receive an adequate reimbursement for transaction expenses relating to acquisition of the housing, subject to approval by the Secretary; and''.

Subsec. (d)(3)(A). Pub. L. 102–550, § 307(e), struck out ''any residual receipts for the housing transfered [sic] to the selling owner shall be deducted from the sale price of the housing under subsection (b) or (c) of this section and'' after ''except that''.

§ 4111. Mandatory sale for housing exceeding Federal cost limits

(a) In general

With respect to any eligible low-income housing for which the aggregate preservation rents determined under section 4104(b) of this title exceed the Federal cost limit, the owner shall offer the housing for sale to qualified purchasers as provided in this section.

(b) Right of first refusal to priority purchasers

(1) Duration and required sale

For the 12-month period beginning upon the receipt by the Secretary of the second notice of intent under section 4106(d) of this title with respect to such housing, the owner of the housing may offer to sell and may sell the housing only to priority purchasers. If, during such period, a priority purchaser makes a bona fide offer to purchase the housing for a sale price not less than the preservation value of the housing determined under section 4103(b)(2) of this title, the Secretary shall require the owner to sell the housing pursuant to such offer.

(2) Expression of interest

During the period under paragraph (1), priority purchasers shall have the opportunity to submit written notice to the owner and the Secretary stating their interest in acquiring the housing. Such written notice shall be in such form and include such information as the Secretary may prescribe.

(3) Information from Secretary

Not later than 30 days after receipt of any notice under paragraph (2), the Secretary shall provide such purchaser with information on the assistance available from the Federal Gov-

[2] See References in Text note below.

ernment to facilitate a transfer and the owner shall provide such purchaser with appropriate information on the housing, as determined by the Secretary.

(c) Right of refusal for other qualified purchasers

If no bona fide offer to purchase any eligible low-income housing subject to this section that meets the requirements of subsection (b) of this section is made during the period under such subsection, during the 3-month period beginning upon the expiration of the 12-month period under subsection (b)(1) of this section, the owner of the housing may offer to sell and may sell the housing only to qualified purchasers. If, during such period, a qualified purchaser makes a bona fide offer to purchase the housing for a sale price not less than the preservation value of the housing determined under section 4103(b)(2) of this title, the Secretary shall require the owner to sell the housing pursuant to such offer.

(d) Assistance

(1) Federal cost limit

Subject to the availability of amounts approved in appropriations Acts, the Secretary shall, for approvable plans of action, provide to qualified purchasers assistance under section 1437f of title 42 sufficient to produce a gross income potential equal to the amount determined by multiplying 120 percent of the prevailing rents in the relevant local market area in which the housing is located by the number of units in the project (according to appropriate unit sizes), and any other incentives authorized under section 4109(b) of this title that would have been provided to a qualified purchaser under section 4110 of this title.

(2) Additional assistance

From amounts made available under section 4124(b) of this title, the Secretary may make grants to assist in the completion of sales and transfers under this section to any qualified purchasers. Any grant under this paragraph shall be in an amount not exceeding the difference between the preservation value for the housing (determined under section 4103(b)(2) of this title) and the level of assistance under paragraph (1) of this subsection.

(3) Securing State and local funding

The Secretary shall assist any qualified purchaser of such housing in securing funding and other assistance (including tax and assessment reductions) from State and local governments to facilitate a sale under this section.

(Pub. L. 100–242, title II, § 221, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4259; amended Pub. L. 102–550, title III, § 317(a)(3), Oct. 28, 1992, 106 Stat. 3772.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–550 substituted ''than'' for ''that'' before ''the preservation''.

§ 4112. Criteria for approval of plan of action involving incentives

(a) In general

The Secretary may approve a plan of action for extension of the low-income affordability restrictions on any eligible low-income housing or transfer the housing to a qualified purchaser (other than a resident council) only upon finding that—

(1) due diligence has been given to ensuring that the package of incentives is, for the Federal Government, the least costly alternative that is consistent with the full achievement of the purposes of this title; [1]

(2) binding commitments have been made to ensure that—

(A) the housing will be retained as housing affordable for very low-income families or persons, low-income families or persons, and moderate-income families or persons for the remaining useful life of such housing (as determined under subsection (c) of this section);

(B) throughout such period, adequate expenditures will be made for maintenance and operation of the housing and that the project meets housing standards established by the Secretary under subsection (d) of this section, as determined by inspections conducted under such subsection by the Secretary;

(C) current tenants will not be involuntarily displaced (except for good cause);

(D) any increase in rent contributions for current tenants will be to a level that does not exceed 30 percent of the adjusted income of the tenant or the published existing fair market rent for comparable housing established under section 1437f(c) of title 42, whichever is lower, except that the rent contributions of any tenants occupying the housing at the time of any increase may not be reduced by reason of this subparagraph (except with respect to tenants receiving section 8 [42 U.S.C. 1437f] assistance in accordance with subparagraph (E)(ii) of this paragraph);

(E)(i) any resulting increase in rents for current tenants (except for increases made necessary by increased operating costs)—

(I) shall be phased in equally over a period of not less than 3 years, if such increase is 30 percent or more; and

(II) shall be limited to not more than 10 percent per year if such increase is more than 10 percent but less than 30 percent; and

(ii) assistance under section 1437f of title 42 shall be provided, to the extent available under appropriation Acts, if necessary to mitigate any adverse effect on current income-eligible very low- and low-income tenants; and [2]

(F)(i) rents for units becoming available to new tenants shall be at levels approved by the Secretary that will ensure, to the extent practicable, that the units will be available and affordable to the same proportions of very low-income families or persons, low-income families or persons, and moderate-income families or persons (including families or persons whose incomes are 95 percent or more of area median income) as resided in

[1] See References in Text note below.

[2] So in original. Word ''and'' probably should not appear.

the housing as of January 1, 1987 (based on the area median income limits established by the Secretary in February 1987), or the date the plan of action is approved, whichever date results in the highest proportion of very low-income families, except that this limitation shall not prohibit a higher proportion of very low-income families from occupying the housing; and

(ii) in approving rents under this paragraph, the Secretary shall take into account any additional incentives provided under this subchapter;

(G) future rent adjustments shall be—

(i) made by applying an annual factor (to be determined by the Secretary) to the portion of rent attributable to operating expenses for the housing and, where the owner is a priority purchaser, to the portion of rent attributable to project oversight costs; and

(ii) subject to a procedure, established by the Secretary, for owners to apply for rent increases not adequately compensated by annual adjustment under clause (i), under which the Secretary may increase rents in excess of the amount determined under clause (i) only if the Secretary determines such increases are necessary to reflect extraordinary necessary expenses of owning and maintaining the housing; and

(H) any savings from reductions in operating expenses due to management efficiencies shall be deposited in project reserves for replacement and the owner shall have periodic access to such reserves, to the extent the Secretary determines that the level of reserves is adequate and that the housing is maintained in accordance with the standards established under subsection (d) of this section; and

(3) no incentives under section 4109 of this title (other than to purchasers under section 4110 of this title) may be provided until the Secretary determines the project meets housing standards under subsection (d) of this section, except that incentives under such section and other incentives designed to correct deficiencies in the project may be provided.

(b) Implementation

Any agreement to maintain the low-income affordability restrictions for the remaining useful life of the housing may be made through execution of a new regulatory agreement, modifications to the existing regulatory agreement or mortgage, or, in the case of the prepayment of a mortgage or voluntary termination of mortgage insurance, a recorded instrument.

(c) Determination of remaining useful life

(1) "Remaining useful life" defined

For purposes of this title,[3] the term ''remaining useful life'' means, with respect to eligible low-income housing, the period during which the physical characteristics of the housing remain in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced as becomes necessary.

(2) Standards

The Secretary shall, by rule under section 553 of title 5, establish standards for determining when the useful life of an eligible low-income housing project has expired. The determination shall be made on the record after opportunity for a hearing.

(3) Owner petition

The Secretary shall establish a procedure under which owners of eligible low-income housing may petition the Secretary for a determination that the useful life of such housing has expired. The procedure shall not permit such a petition before the expiration of the 50-year period beginning upon the approval of a plan of action under this subchapter with respect to such housing. In making a determination pursuant to a petition under this paragraph, the Secretary shall presume that the useful life of the housing has not expired, and the owner shall have the burden of proof in establishing such expiration. The Secretary may not determine that the useful life of any housing has expired if such determination results primarily from failure to make regular and reasonable repairs and replacement, as became necessary.

(4) Tenant and community comment and appeal

In making a determination regarding the useful life of any housing pursuant to a petition submitted under paragraph (3), the Secretary shall provide for comment by tenants of the housing and interested persons and organizations with respect to the petition. The Secretary shall also provide the tenants and interested persons and organizations with an opportunity to appeal a determination under this subsection.

(d) Housing standards

(1) Establishment and inspection

The Secretary shall, by regulation, establish standards regarding the physical condition in which any eligible low income housing project receiving incentives under this subchapter shall be maintained. The Secretary shall inspect each such project not less than annually to ensure that the project is in compliance with such standards.

(2) Sanctions

(A) In general

The Secretary shall take any action appropriate to require the owner of any housing not in compliance with such standards to bring such housing into compliance with the standards, including—

(i) directing the mortgagee, with respect to an equity take-out loan under section 1715z–6(f)[3] of this title, to withhold the disbursement to the owner of any escrowed loan proceeds and requiring that such proceeds be used for repair of the housing; and

(ii) reduce the amount of the annual authorized return, as determined by the Sec-

[3] See References in Text note below.

retary, for the period ending upon a determination by the Secretary that the project is in compliance with the standards and requiring that such amounts be used for repair.

(B) Continued compliance

To ensure continued compliance with the standards for a project subject to any action under subparagraph (A), the Secretary may also limit access of the owner to such amounts and use of such amounts for not more than the 2-year period beginning upon the determination that the project is in compliance with the standards.

(C) Removal of assistance

If, upon inspection, the Secretary determines that any eligible low income housing project has failed to comply with the standards established under this subsection for 2 consecutive years, the Secretary may take 1 or more of the following actions:

(i) Subject to availability of amounts provided in appropriations Acts, provide assistance under sections 1437f(b) and 1437f(*o*) of title 42 (other than project-based assistance attached to the housing) for any tenant eligible for such assistance who desires to terminate occupancy in the housing. For each unit in the housing vacated pursuant to the provision of assistance under this clause, the Secretary may, notwithstanding any other law or contract for assistance, cancel the provision of project-based assistance attached to the housing for 1 dwelling unit, if the housing is receiving such assistance.

(ii) In the case of housing for which an equity take-out loan has been made under section 1715z–6(f)[4] of this title, declare such loan to be in default and accelerate the maturity date of the loan.

(iii) Declare any rehabilitation loan insured or provided by the Secretary (with respect to the housing) to be in default and accelerate the maturity date of the loan.

(iv) Suspend payments under or terminate any contract for project-based rental assistance under section 1437f of title 42.

(v) Take any other action authorized by law or the project regulatory agreement to ensure that the housing will be brought into compliance with the standards established under this subsection.

(Pub. L. 100–242, title II, §222, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4260; amended Pub. L. 102–550, title III, §§308, 317(a)(4), Oct. 28, 1992, 106 Stat. 3764, 3772; Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(1) and (c)(1), means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

[4] See References in Text note below.

Section 1715z–6(f) of this title, referred to in subsec. (d)(2)(A)(i), (C)(ii), was repealed by Pub. L. 104–204, title II, Sept. 26, 1996, 110 Stat. 2885.

CODIFICATION

Amendment by Pub. L. 103–327 is based on section 601(a)–(d) of title VI of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

AMENDMENTS

1994—Subsec. (a)(2)(D). Pub. L. 103–327 temporarily amended subpar. (D) to read as follows: ''monthly rent contributions by current and future tenants, including tenants receiving assistance under section 1437f of title 42, shall not exceed the lesser of—

''(i) 30 percent of the adjusted income of the tenant; or

''(ii) 90 percent of the actual rent paid for a comparable unit in comparable unassisted housing in the market area in which the eligible low-income housing is located;

except that the rent contributions of tenants (other than tenants receiving assistance under section 1437f of title 42) occupying the housing at the time of any increase may not be reduced under this subparagraph.'' See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(2)(E)(ii). Pub. L. 103–327, which directed the temporary amendment of par. (1)(E)(ii) by substituting a period for ''; and'' and inserting at end ''For any section 8 assistance provided under this subchapter, whether through the extension of an existing contract or the provision of a new contract for assistance, the Secretary shall have the discretion to adjust contract rents within the limits established under section 4105 of this title, irrespective of the comparable rent requirements set forth in section 1437f(c) of title 42. Notwithstanding any provision of law to the contrary, any conflict pertaining to the computation of contract rents arising from differences between this subchapter and section 1437f of title 42 shall, subject to the prior approval of the Secretary, be resolved in favor of this subchapter; and'', was executed by making the amendments to par. (2)(E)(ii) to reflect the probable intent of Congress. See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(2)(E)(iii). Pub. L. 103–327 temporarily added cl. (iii) which read as follows:

''(iii)(I) to retain the tenant occupancy profile required by subparagraph (F)(i), tenants that are determined by the Secretary to be low-income tenants at initial income certification upon occupancy, or at the time of implementation of a plan of action (whichever occurs last), shall pay for rent an amount that is not less than the lesser of—

''(aa) 30 percent of 45 percent of median income for the area (as determined by the Secretary and adjusted for family size); or

''(bb) 90 percent of the actual rent paid for a comparable unit in comparable unassisted housing in the market area in which the eligible low-income housing is located.

Subject to subclause (II), payment of this minimum rent shall be a condition of continued occupancy and eligibility for section 8 assistance.

''(II) Notwithstanding the rents required under subclause (I), a tenant who occupies a unit designated for occupancy by low-income persons and families, and who becomes a very low-income tenant, shall be provided with the next available unit designated for occupancy by very low-income persons and families, and, until such unit becomes available, shall pay for rent not more than the amount chargeable as rent under section 1437a(a) of title 42. Such tenant shall not be evicted for nonpayment of rent if the rent amounts set forth in this subclause are paid. The costs resulting from the difference between rents required under subclause (I) and the rents permitted under this subclause

shall be incorporated into the section 8 contract for units designated for occupancy by low-income persons or families; and''. See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(2)(F). Pub. L. 103–327, which directed the temporary amendment of par. (1)(F) by substituting ''to the extent practicable, the units becoming available to new tenants shall be'' for ''rents for units becoming available to new tenants shall be at levels approved by the Secretary that will ensure, to the extent practicable, that the units will be'' in cl. (i), adding cl. (ii), and redesignating former cl. (ii) as (iii), was executed by making the amendments to par. (2)(F) to reflect the probable intent of Congress. Cl. (ii) read as follows: ''in order to maintain the proportions of very low- and low-income families and persons required by clause (i), owners shall be required to apply any required Federal preference rules only with respect to tenants within each low- or very low-income category, in accordance with the approved tenant profile; and''. See Effective and Termination Dates of 1994 Amendment note below.

1992—Subsec. (a)(2)(A). Pub. L. 102–550, §317(a)(4)(A), substituted ''low-income'' for ''low income'' after ''families or persons,''.

Subsec. (a)(2)(G)(i). Pub. L. 102–550, §308(b), substituted '', where the owner is a priority purchaser, to the portion of rent attributable to project oversight costs'' for ''by making changes in the annual authorized return under section 4104 of this title''.

Subsec. (c)(2). Pub. L. 102–550, §317(a)(4)(B), substituted ''a hearing'' for ''an hearing''.

Subsec. (d)(2)(B). Pub. L. 102–550, §317(a)(4)(C), inserted ''the'' after ''that''.

Subsec. (d)(2)(C)(ii). Pub. L. 102–550, §317(a)(4)(D), substituted ''in default'' for ''default''.

Subsec. (e). Pub. L. 102–550, §308(a), struck out subsec. (e) which read as follows: ''(e) WINDFALL PROFITS.—The Secretary shall submit a report to the Congress not later than 90 days after November 28, 1990, evaluating the availability, quality, and reliability of data to measure the accessibility of decent, affordable housing in all areas where properties are eligible to submit a notice of intent to prepay under section 4102 of this title. To prevent payment of windfall profits, the Secretary may make available incentive payments under section 4109 or 4110 of this title only to owners in those rental markets where there is an inadequate supply of decent, affordable housing, if the Secretary determines that adequate data can be obtained to permit objective and fair implementation or where necessary to accomplish the other public policy objectives under this chapter. The Secretary shall implement this subsection in a manner consistent with the process established by this chapter.''

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Title II of Pub. L. 103–327, Sept. 28, 1994, 108 Stat. 2316, provided in part that: ''Section 601 [amending this section and section 4119 of this title and enacting provisions set out below] of title VI of S. 2281 (103d Cong., 2d Sess[.]), as reported to the Senate on July 13 (legislative day, July 11), 1994 (S. Rep. 103–307), is hereby incorporated into this Act [Pub. L. 103–327], and such section 601 is deemed enacted into law upon enactment of this Act [Sept. 28, 1994]: *Provided*, That the provisions of such section 601 shall be effective only during fiscal year 1995.''

Section 601(f) of title VI of S. 2281, One-Hundred Third Congress, as reported July 13, 1994, which was enacted into law by title II of Pub. L. 103–327, Sept. 28, 1994, 108 Stat. 2316, provided in part, that:

''(1) IN GENERAL.—Except as provided in paragraph (2), this section [amending this section and section 4119 of this title] shall take effect on the date of enactment of this Act [Sept. 28, 1994].

''(2) EXCEPTION.—If an owner of eligible low-income housing has a plan of action that has been approved by the Secretary and that is being implemented as of the date of enactment of this Act [Sept. 28, 1994], subsections (a), (b), (c), and (d) [amending this section] shall not apply to current tenants of such housing until the first date on which the next annual rent adjustments are made following the date of enactment of this Act.''

§ 4113. Assistance for displaced tenants

(a) Section 1437f assistance

Each low-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low income housing shall, subject to the availability or[1] amounts provided under appropriations Acts, receive tenant-based assistance under section 1437f of title 42. To the extent sufficient amounts are made available under appropriations Acts, in each fiscal year the Secretary shall reserve from amounts made available under section 4124(a) of this title or, if necessary, under section 1437c(c) of title 42, such amounts as the Secretary determines are necessary to provide assistance payments for low-income families displaced during the fiscal year.

(b) Relocation assistance

The Secretary shall coordinate with public housing agencies to ensure that any very low- or low-income family displaced from eligible low-income housing as the result of the prepayment of the mortgage (or termination of the mortgage insurance contract) on such housing is able to acquire a suitable, affordable dwelling unit in the area of the housing from which the family is displaced. The Secretary shall require the owner of such housing to pay 50 percent of the moving expenses of each family relocated, except that such percentage shall be increased to the extent that State or local law of general applicability requires a higher payment by the owner.

(c) Continued occupancy

(1) In general

Each owner that prepays the mortgage (or terminates the mortgage insurance contract) on eligible low-income housing shall, as provided in paragraph (3), allow the tenants occupying units in such housing on the date of the submission of notice of intent under section 4102 of this title to remain in the housing for a period of 3 years, at rent levels (except for increases necessary for increased operating costs) existing at the time of prepayment.

(2) Provision of assistance by owner

In any case in which the Secretary requires an owner to allow tenants to occupy units under paragraph (1), an owner may fulfill the requirements of such paragraph by providing such assistance necessary for the tenant to rent a decent, safe, and sanitary unit in another project for the same period and at a rental cost to the tenant not in excess of the rental amount the tenant would have been required to pay in the housing of the owner, except that the tenant must freely agree to waive the right to occupy the unit in the owner's housing.

[1] So in original. Probably should be ''of''.

(3) Applicability to low-vacancy areas and special needs tenants

The provisions of this subsection shall apply only to—

(A) eligible low income housing located in a low-vacancy area (as such term is defined by the Secretary); and

(B) tenants in any eligible low-income housing in any area who have special needs restricting their ability to relocate (including elderly tenants and tenants with disabilities), as determined under regulations established by the Secretary.

(d) Required acceptance of section 1437f assistance

An owner who prepays the mortgage (or terminates the mortgage insurance contract) on eligible low-income housing and maintains the housing for residential rental occupancy may not refuse to rent, refuse to negotiate for the rental of, or otherwise make unavailable or deny the rent of a dwelling unit in such property to any person, or discriminate against any person in the terms, conditions, or privileges of rental of a dwelling (or in the provision of services or facilities in connection therewith), because the person receives assistance under section 1437f of title 42.

(e) Regional pools

In providing assistance under this section, the Secretary shall allocate the assistance on a regional basis through the regional offices of the Department of Housing and Urban Development. The Secretary shall allocate assistance under this section in a manner so that the total number of assisted units in each such region available for occupancy by, and affordable to, lower income families and persons does not decrease because of the prepayment or payment of a mortgage on eligible low-income housing or the termination of an insurance contract on such housing.

(f) Enhanced voucher assistance for certain tenants

(1) Authority

In lieu of benefits under subsections (b), (c), and (d) of this section, and subject to the availability of appropriated amounts, each family described in paragraph (2) shall be offered enhanced voucher assistance under section 1437f(t) of title 42.

(2) Eligible families

A family described in this paragraph is a family that is—

(A)(i) a low-income family; or

(ii) a moderate-income family that is: (I) an elderly family; (II) a disabled family; or (III) residing in a low-vacancy area; and

(B) residing in eligible low-income housing on the date of the prepayment of the mortgage or voluntary termination of the insurance contract.

(Pub. L. 100–242, title II, § 223, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4264; amended Pub. L. 105–276, title V, § 550(d), Oct. 21, 1998, 112 Stat. 2610; Pub. L. 106–74, title V, § 538(c), Oct. 20, 1999, 113 Stat. 1123.)

AMENDMENTS

1999—Subsec. (f). Pub. L. 106–74 added subsec. (f).

1998—Subsec. (a). Pub. L. 105–276 substituted ''tenant-based assistance under section 1437f of title 42'' for ''assistance under the certificate and voucher programs under sections 1437f(b) and 1437f(*o*)''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of Title 42, The Public Health and Welfare.

§ 4114. Permissible prepayment or voluntary termination and modification of commitments

(a) In general

Notwithstanding any limitations on prepayment or voluntary termination under this subchapter, an owner may terminate the low-income affordability restrictions through prepayment or voluntary termination, subject to compliance with the provisions of section 4113 of this title, under one of the following circumstances:

(1)(A) The Secretary approves a plan of action under section 4109(a) of this title, but does not provide the assistance approved in such plan during the 15-month period beginning on the date of approval.

(B) After the date that the housing would have been eligible for prepayment pursuant to the terms of the mortgage (notwithstanding this subchapter), the Secretary approves a plan of action under section 4110 or 4111 of this title, but does not provide the assistance approved in such plan before the earlier of (i) the expiration of the 2-month period beginning on the commencement of the 1st fiscal year beginning after such approval, or (ii) the expiration of the 6-month period beginning on the date of approval.

(C) The Secretary approves a plan of action under section 4110 or 4111 of this title for any eligible low-income housing not covered by subparagraph (B), but does not provide the assistance approved in such plan before the earlier of (i) the expiration of the 2-month period beginning on the commencement of the 1st fiscal year beginning after such approval, or (ii) the expiration of the 9-month period beginning on the date of approval.

(2) An owner who intended to transfer the housing to a qualified purchaser under section 4110 or 4111 of this title, and fully complied with the provisions of such section, did not receive any bona fide offers from any qualified purchasers within the applicable time periods.

In the event that the purchaser under the plan of action is unable to consummate the purchase for reasons other than the failure of the Secretary to provide incentives, an owner may terminate the low-income affordability restrictions through prepayment or voluntary termination subject to the provisions of sections 4110 and 4111 of this title.

(b) Section 1437f rental assistance

When providing rental assistance under section 1437f of title 42, the Secretary may enter

into a contract with an owner, contingent upon the future availability of appropriations for the purpose of renewing expiring contracts for rental assistance as provided in appropriations Acts, to extend the term of such rental assistance for such additional period or periods necessary to carry out an approved plan of action. The contract and the approved plan of action shall provide that, if the Secretary is unable to extend the term of such rental assistance or is unable to develop a revised package of incentives providing benefits to the owner comparable to those received under the original approved plan of action, the Secretary, upon the request of the owner, shall take the following actions (subject to the limitations under the following paragraphs):

(1) Modification of commitments

Modify the binding commitments made pursuant to section 4112(a)(2) of this title that are dependent on such rental assistance.

(2) Termination of plan of action

Permit the owner to prepay the mortgage and terminate the plan of action and any implementing use agreements or restrictions, but only if the owner agrees in writing to comply with provisions of section 4113 of this title.

At least 30 days before making a request under this subsection, an owner shall notify the Secretary of the owner's intention to submit the request. The Secretary shall have a period of 90 days following receipt of such notice to take action to extend the rental assistance contract and to continue the binding commitments under section 4112(a)(2) of this title.

(Pub. L. 100–242, title II, § 224, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4265.)

§ 4115. Timetable for approval of plan of action

(a) Notification of deficiencies

Not later than 60 days after receipt of a plan of action, the Secretary shall notify the owner in writing of any deficiencies that prevent the plan of action from being approved. If deficiencies are found, such notice shall describe alternative ways in which the plan may be revised to meet the criteria for approval.

(b) Notification of approval

(1) In general

Not later than 180 days after receipt of a plan of action, or such longer period as the owner requests, the Secretary shall notify the owner in writing whether the plan of action, including any revisions, is approved. If approval is withheld, the notice shall describe—

(A) the reasons for withholding approval; and

(B) the actions that could be taken to meet the criteria for approval.

(2) Opportunity to revise

The Secretary shall subsequently give the owner a reasonable opportunity to revise the plan of action and seek approval.

(c) Delayed approval

If the Secretary does not approve a plan of action within the period under subsection (b) of this section, the Secretary shall provide incentives and assistance under this subchapter in the amount that the owner would have received if the Secretary had complied with such time limitations. The preceding sentence shall not apply if the plan of action was not approved because of deficiencies. An owner may bring an action in the appropriate Federal district court to enforce this subsection.

(Pub. L. 100–242, title II, § 225, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4266.)

§ 4116. Resident homeownership program

(a) Formation of resident council

Tenants seeking to purchase eligible low-income housing in accordance with section 4110 of this title shall organize a resident council for the purpose of developing a resident homeownership program in accordance with standards established by the Secretary. The resident council shall work with a public or private nonprofit organization or a public body (including an agency or instrumentality thereof). Such organization or public body shall have experience to enable it to help the tenants consider their options and to develop the capacity necessary to own and manage the housing, where appropriate, and shall be approved by the Secretary.

(b) Other program requirements and limitations

(1) Sales to residents

As a condition of approval of a plan of action involving homeownership program under this subchapter, the resident council shall prepare a workable plan acceptable to the Secretary for giving all residents an opportunity to become owners, which plan shall identify—

(A) the price at which the resident council intends to transfer ownership interests in, or shares representing, units in the housing;

(B) the factors that will influence the establishment of such price;

(C) how such price compares to the estimated appraised value of the ownership interests or shares;

(D) the underwriting standard the resident council plans to use (or reasonably expects a public or private lender to use) for potential tenant purchasers;

(E) the financing arrangements the tenants are expected to pursue or be provided; and

(F) a workable schedule of sale (subject to the limitations of paragraph (8)) based on estimated tenant incomes.

(2) Approval of method of conversion and limitation on conditions of approval

The Secretary shall approve the method for converting the housing to homeownership, which may involve acquisition of ownership interests in, or shares representing, the units in a project under any arrangement determined by the Secretary to be appropriate, such as cooperative ownership (including limited equity cooperative ownership) and fee simple ownership (including condominium ownership). The Secretary may not require the prepayment of the mortgage on eligible

low-income housing for the approval of a plan of action involving a homeownership program for the housing.

(3) Required conditions

The Secretary shall require that the form of homeownership impose appropriate conditions, including conditions to assure that—

(A) the number of initial owners that are very low-income, lower income, or moderate-income persons at initial occupancy meet standards required or approved by the Secretary;

(B) occupancy charges payable by the owners meet requirements established by the Secretary;

(C) the aggregate incomes of initial and subsequent owners and other sources of funds for the project are sufficient to permit occupancy charges to cover the full operating costs of the housing and any debt service;

(D) each initial owner occupies the unit it acquires; and

(E) the low-income affordability restrictions shall continue to apply to any rental units in the housing for any period during which such units remain rental units.

(4) Use of proceeds from sales to eligible families

The entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, may use 50 percent of the proceeds, if any, from the initial sale for costs of the homeownership program, including improvements to the project, operating and replacement reserves for the project, additional homeownership opportunities in the project, and other project-related activities approved by the Secretary. The remaining 50 percent of such proceeds shall be returned to the Secretary for use under section 4110 of this title, subject to availability under appropriations Acts. Such entity shall keep, and make available to the Secretary, all records necessary to calculate accurately payments due the Secretary under this paragraph.

(5) Restrictions on resale by homeowners

(A) In general

(i) Transfer permitted

A homeowner under a homeownership program may transfer the homeowner's ownership interest in, or shares representing, the unit, except that a homeownership program may establish restrictions on the resale of units under the program.

(ii) Right to purchase

Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, the corporation, council, or cooperative shall have the right to purchase the ownership interest in, or shares representing, the unit from the homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer.

(iii) Promissory note required

The homeowner shall execute a promissory note equal to the difference, if any, between the market value and the purchase price, payable to the Secretary, together with a mortgage securing the obligation of the note.

(B) 6 years or less

In the case of a transfer within 6 years of the acquisition under the program, the homeownership program shall provide for appropriate restrictions to assure that an eligible family may not receive any undue profit. The plan shall provide for limiting the family's consideration for its interest in the property to the total of—

(i) the contribution to equity paid by the family;

(ii) the value, as determined by such means as the Secretary shall determine through regulation, of any improvements installed at the expense of the family during the family's tenure as owner; and

(iii) the appreciated value determined by an inflation allowance at a rate which may be based on a cost-of-living index, an income index, or market index as determined by the Secretary through regulation and agreed to by the purchaser and the entity that transfers ownership interests in, or shares representing, units to eligible families (or another entity specified in the approved application), at the time of initial sale, and applied against the contribution to equity.

Such an entity may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(C) 6–20 years

In the case of a transfer during the period beginning 6 years after the acquisition and ending 20 years after the acquisition, the homeownership program shall provide for the recapture by the Secretary or the program of an amount equal to the amount of the declining balance on the note described in subparagraph (A)(iii).

(D) Use of recaptured funds

Any net sales proceeds that may not be retained by the homeowner under the plan approved pursuant to this paragraph shall be paid to the HOME Investment Trust Fund for the unit of general local government in which the housing is located. If the housing is located in a unit of general local government that is not a participating jurisdiction (as such term is defined in section 12704 of title 42), any such net sales proceeds shall be paid to the HOME Investment Trust Fund for the State in which the housing is located. With respect to any proceeds transferred to a HOME Investment Trust Fund under this subparagraph, the Secretary shall take such actions as are necessary to ensure that the proceeds shall be immediately available for eligible activities to expand the supply of affordable housing under section 12742 of title 42. The Secretary shall require the maintenance of any records necessary to calculate accurately payments due under this paragraph.

(6) Protection of nonpurchasing families

(A) Eviction

No tenant residing in a dwelling unit in a property on the date the Secretary approves a plan of action may be evicted by reason of a homeownership program approved under this subchapter.

(B) Rental assistance

If a tenant decides not to purchase a unit, or is not qualified to do so, the Secretary shall ensure that rental assistance under section 1437f of title 42 is available for use by each otherwise qualified tenant (that meets the eligibility requirements under such section) in that or another property. Any system for preferences established under section 1437f(d)(1)(A) or 1437f(*o*)(6)(A) of title 42 shall not apply to the provision of assistance to such families.

(C) Relocation assistance

The resident council shall also inform each such tenant that if the tenant chooses to move, the owner will pay relocation assistance in accordance with the approved homeownership program.

(7) Qualified management

As a condition of approval of a homeownership program under this subchapter, the resident council shall have demonstrated its abilities to manage eligible properties by having done so effectively and efficiently for a period of not less than 3 years or by entering into a contract with a qualified management entity that meets such standards as the Secretary may prescribe to ensure that the property will be maintained in a decent, safe, and sanitary condition.

(8) Timely homeownership

Except in the case of limited equity cooperatives, resident councils shall transfer ownership of the property to tenants within a specified period of time that the Secretary determines to be reasonable. During the interim period when the property continues to be operated and managed as rental housing, the resident council shall utilize written tenant selection policies and criteria that are approved by the Secretary as consistent with the purpose of providing housing for very low-income families. The resident council shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(9) Records and audit of resident councils

(A) Maintenance

Each resident council shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such resident council of the proceeds of assistance received under this subchapter (including any proceeds from sales under paragraphs (4) and (5)(D)), the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit.

(B) Access

The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records of the resident council that are pertinent to assistance received under this subchapter.

(C) Audit

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access for the purpose of audit and examination to any books, documents, papers, and records of the resident council that are pertinent to assistance received under this subchapter.

(10) Assumption conditions

Any entity that assumes a mortgage covering low-income housing in connection with the acquisition of the housing from an owner under this section must comply with any low-income affordability restrictions for the remaining useful life of the housing as determined under section 4112(c) of this title.

(Pub. L. 100–242, title II, § 226, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4267; amended Pub. L. 102–550, title III, § 309, Oct. 28, 1992, 106 Stat. 3765; Pub. L. 105–276, title V, § 514(b)(2)(A), Oct. 21, 1998, 112 Stat. 2548.)

AMENDMENTS

1998—Subsec. (b)(6)(B). Pub. L. 105–276, which directed the substitution of ''Any system for preferences established under section 1437f(d)(1)(A) or 1437f(*o*)(6)(A)'' for ''The requirement for giving preferences to certain categories of eligible families under sections 1437f(d)(1)(A) and 1437f(*o*)(3)'' in second sentence, was executed by making the substitution for text which included the word ''preference'' rather than ''preferences'' to reflect the probable intent of Congress.

1992—Subsec. (b)(2). Pub. L. 102–550, § 309(1), inserted ''and limitation on conditions of approval'' in heading and inserted at end of text ''The Secretary may not require the prepayment of the mortgage on eligible low-income housing for the approval of a plan of action involving a homeownership program for the housing.''

Subsec. (b)(3)(E). Pub. L. 102–550, § 309(2), added subpar. (E).

Subsec. (b)(8). Pub. L. 102–550, § 309(3), substituted ''Except in the case of limited equity cooperatives, resident'' for ''Resident''.

Subsec. (b)(10). Pub. L. 102–550, § 309(4), struck out '', as determined by the Secretary,'' after ''entity that assumes'', substituted ''4112(c)'' for ''4112(d)'', and struck out at end ''This requirement shall only apply to an entity, such as a cooperative association, that, as determined by the Secretary, intends to own the housing on a permanent basis.''

§ 4117. Delegated responsibility to State agencies

(a) In general

In addition to any responsibilities delegated under section 4103(c) of this title, the Secretary shall delegate some or all responsibility for implementing this subchapter to a State housing agency if such agency submits a preservation plan acceptable to the Secretary.

(b) Approval

State preservation plans shall be submitted in such form and in accordance with such procedures as the Secretary shall establish. The Secretary may approve plans that contain—

(1) an inventory of low-income housing located within the State that is or will be eligible low-income housing under this subchapter within 5 years;

(2) a description of the agency's experience in the area of multifamily financing and restructuring;

(3) a description of the administrative resources that the agency will commit to the processing of plans of action in accordance with this subchapter;

(4) a description of the administrative resources that the agency will commit to the monitoring of approved plans of action in accordance with this subchapter;

(5) an independent analysis of the performance of the multifamily housing inventory financed or otherwise monitored by the agency;

(6) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of title 42 that the proposed activities are consistent with the approved housing strategy of the State within which the eligible low-income housing is located; and

(7) such other certifications or information that the Secretary determines to be necessary or appropriate to achieve the purposes of this subchapter.

(c) Implementation agreements

The Secretary may enter into any agreements necessary to implement an approved State preservation plan, which may include incentives that are authorized under other provisions of this subchapter.

(Pub. L. 100–242, title II, §227, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4270.)

REGULATIONS

Pub. L. 102–550, title III, §315, Oct. 28, 1992, 106 Stat. 3770, provided that: ''The Secretary of Housing and Urban Development shall issue interim regulations implementing section 227 of the Housing and Community Development Act of 1987 (as amended by section 601(a) of the Cranston-Gonzalez National Affordable Housing Act) [12 U.S.C. 4117] not later than the expiration of the 30-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], which shall take effect upon issuance. The Secretary shall issue final regulations implementing such section 227 after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment shall not be less than 60 days, and the final regulations shall be issued not later than the expiration of the 60-day period beginning upon the conclusion of the comment period and shall take effect upon issuance.''

§ 4118. Consultations with other interested parties

The Secretary shall confer with any appropriate State or local government agency to confirm any State or local assistance that is available to achieve the purposes of this title[1] and shall give consideration to the views of any such agency when making determinations under this subchapter. The Secretary shall also confer with appropriate interested parties that the Secretary believes could assist in the development of a plan of action that best achieves the purposes of this subchapter.

(Pub. L. 100–242, title II, §228, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4271.)

REFERENCES IN TEXT

This title, referred to in text, means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

§ 4119. Definitions

For purposes of this subchapter:

(1) The term ''eligible low-income housing'' means any housing financed by a loan or mortgage—

(A) that is—

(i) insured or held by the Secretary under section 1715*l*(d)(3) of this title and receiving loan management assistance under section 1437f of title 42 due to a conversion from section 1701s of this title;

(ii) insured or held by the Secretary and bears interest at a rate determined under the proviso of section 1715*l*(d)(5) of this title;

(iii) insured, assisted, or held by the Secretary or a State or State agency under section 1715z–1 of this title; or

(iv) held by the Secretary and formerly insured under a program referred to in clause (i), (ii), or (iii); and

(B) that, under regulation or contract in effect before February 5, 1988, is or will within 24 months become eligible for prepayment without prior approval of the Secretary.

(2) The term ''Federal cost limit'' means, for any eligible low-income housing, the amount determined under section 4105(a) of this title.

(3) The term ''low-income affordability restrictions'' means limits imposed by regulation or regulatory agreement on tenant rents, rent contributions, or income eligibility in eligible low-income housing.

(4) The terms ''low-income families or persons'' and ''very low-income families or persons'' mean families or persons whose incomes do not exceed the respective levels established for low-income families and very low-income families, respectively, under section 1437a(b)(2) of title 42.

(5) The term ''moderate-income families or persons'' means families or persons whose incomes are between 80 percent and 95 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.

(6) The term ''nonprofit organization'' means any private, nonprofit organization that—

(A) is organized or chartered under State or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

[1] See References in Text note below.

(C) complies with standards of financial accountability acceptable to the Secretary; and

(D) has among its principal purposes significant activities related to the provision of decent housing that is affordable to very low-, low-, and moderate-income families.

(7) The term ''owner'' means the current or subsequent owner or owners of eligible low-income housing.

(8) The term ''preservation equity'' means, for any eligible low-income housing—

(A) for purposes of determining the authorized return under section 4104(a) of this title and providing incentives to extend the low-income affordability restrictions on the housing under section 4109 of this title—

(i) the preservation value of the housing determined under section 4103(b)(1) of this title; less

(ii) any debt secured by the property; and

(B) for purposes of determining incentives under section [1] 4110 and 4111 of this title and determining the amount of an acquisition loan under the provisions of section 1715z–6(f)(3) [2] of this title—

(i) the preservation value of the housing determined under section 4103(b)(2) of this title; less

(ii) the outstanding balance of the federally-assisted mortgage or mortgages for the housing.

(9) The term ''preservation value'' means, for any eligible low-income housing, the applicable value determined under paragraph (1) or (2) of section 4103(b) of this title.

(10) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(11) The term ''resident council'' means any incorporated nonprofit organization or association that—

(A) is representative of the residents of the housing;

(B) adopts written procedures providing for the election of officers on a regular basis; and

(C) has a democratically elected governing board, elected by the residents of the housing.

(Pub. L. 100–242, title II, § 229, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4271; amended Pub. L. 102–550, title III, §§ 310, 317(a)(5), Oct. 28, 1992, 106 Stat. 3765, 3772; Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

REFERENCES IN TEXT

Section 1715z–6(f) of this title, referred to in par. (8)(B), was repealed by Pub. L. 104–204, title II, Sept. 26, 1996, 110 Stat. 2885.

CODIFICATION

Amendment by Pub. L. 103–327 is based on section 601(e) of title VI of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

AMENDMENTS

1994—Par. (4). Pub. L. 103–327 temporarily amended par. (4) to read as follows:

''(4)(A) The term 'low-income tenants' means families or persons with incomes that exceed 50 percent of the median income for the area (as determined by the Secretary with adjustments for family size) but do not exceed 80 percent of the median income for the area (as determined by the Secretary with adjustments for family size).

''(B) The term 'very low-income tenants' means families or persons with incomes that are less than or equal to 50 percent of the median income for the area (as determined by the Secretary with adjustments for family size).'' See Effective and Termination Dates of 1994 Amendment note below.

1992—Par. (1)(A)(i). Pub. L. 102–550, § 310, substituted ''receiving loan management assistance under section 1437f of title 42 due to a conversion from section 1701s of this title'' for ''assisted under section 1701s of this title or section 1437f of title 42''.

Par. (11)(A). Pub. L. 102–550, § 317(a)(5), substituted ''residents'' for ''resident''.

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Amendment by Pub. L. 103–327 effective only during fiscal year 1995, see provision of title II of Pub. L. 103–327 set out as a note under section 4112 of this title.

§ 4120. Notice to tenants

Where a provision of this subchapter requires that information or material be given to tenants of the housing, the requirement may be met by (1) posting a copy of the information or material in readily accessible locations within each affected building, or posting notices in each such location describing the information or material and specifying a location, as convenient to the tenants as is reasonably practical, where a copy may be examined, and (2) supplying a copy of the information or material to a representative of the tenants.

(Pub. L. 100–242, title II, § 230, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4273.)

§ 4121. Definitions of qualified and priority purchaser and related party rule

(a) Priority purchaser

The term ''priority purchaser'' means (A) a resident council organized to acquire the housing in accordance with a resident homeownership program that meets the requirements of section 4121 [1] of this title; and (B) any nonprofit organization or State or local agency that agrees to maintain low-income affordability restrictions for the remaining useful life of the housing (as determined under section 4112(d) [2] of this title).

(b) Qualified purchaser

The term ''qualified purchaser'' means any entity that agrees to maintain low-income affordability restrictions for the remaining useful life of the housing (as determined under section 4112(c) of this title), and includes for-profit entities and priority purchasers.

(c) Related parties

Except as provided in subsection (d) of this section, the terms ''qualified purchaser'' and ''priority purchaser'' do not include any entity

[1] So in original. Probably should be ''sections''.

[2] See References in Text note below.

[1] So in original. Probably should be section ''4116''.

[2] So in original. Probably should be section ''4112(c)''.

that, either directly or indirectly, is wholly or partially owned or controlled by the owner of the housing being transferred under this subchapter, is under whole or partial common control with such owner, or has any financial interest in such owner or in which such owner has any financial interest. The Secretary shall issue any regulations appropriate to implement the preceding sentence.

(d) Management exception

A qualified purchaser shall not be precluded from retaining as a property management entity a company that is owned or controlled by the selling owner or a principal thereof if retention of the management company is neither a condition of sale nor part of consideration paid for sale and the property management contract is negotiated by the qualified purchaser on an arm's length basis.

(Pub. L. 100–242, title II, § 231, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4273; amended Pub. L. 102–550, title III, § 317(a)(6), Oct. 28, 1992, 106 Stat. 3772.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–550 substituted ''4112(c)'' for ''4112(d)''.

§ 4122. Preemption of State and local laws

(a) In general

No State or political subdivision of a State may establish, continue in effect, or enforce any law or regulation that—

(1) restricts or inhibits the prepayment of any mortgage described in section 4119(1) of this title (or the voluntary termination of any insurance contract pursuant to section 1715t of this title) on eligible low income housing;

(2) restricts or inhibits an owner of such housing from receiving the authorized annual return provided under section 4104 of this title;

(3) is inconsistent with any provision of this subchapter, including any law, regulation, or other restriction that limits or impairs the ability of any owner of eligible low income housing to receive incentives authorized under this subchapter (including authorization to increase rental rates, transfer the housing, obtain secondary financing, or use the proceeds of any of such incentives); or

(4) in its applicability to low-income housing is limited only to eligible low-income housing for which the owner has prepaid the mortgage or terminated the insurance contract.

Any law, regulation, or restriction described under paragraph (1), (2), (3), or (4) shall be ineffective and any eligible low-income housing exempt from the law, regulation, or restriction, only to the extent that it violates the provisions of this subsection.

(b) Effect

This section shall not prevent the establishment, continuing in effect, or enforcement of any law or regulation of any State or political subdivision of a State not inconsistent with the provisions of this subchapter, such as any law or regulation relating to building standards, zoning limitations, health, safety, or habitability standards for housing, rent control, or conversion of rental housing to condominium or cooperative ownership, to the extent such law or regulation is of general applicability to both housing receiving Federal assistance and nonassisted housing. This section shall not preempt, annul, or alter any contractual restrictions or obligations existing before November 28, 1990, that prevent or limit an owner of eligible low-income housing from prepaying the mortgage on the housing (or terminating the insurance contract on the housing).

(Pub. L. 100–242, title II, § 232, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4273; amended Pub. L. 102–550, title III, § 311, Oct. 28, 1992, 106 Stat. 3765.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–550 substituted '', such as any law or regulation'' for ''and'' after ''subchapter''.

§ 4123. Severability

If any provision of this subchapter, or the application of such provision with respect to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to any other person or circumstance, shall not be affected by such holding.

(Pub. L. 100–242, title II, § 233, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4274.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1815, as amended, known as the Housing and Community Development Act of 1987. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note under section 5301 of Title 42, The Public Health and Welfare, and Tables.

§ 4124. Authorization of appropriations

(a) In general

There are authorized to be appropriated for assistance and incentives authorized under this subchapter $638,252,784 for fiscal year 1993 and $665,059,401 for fiscal year 1994.

(b) Grants

Subject to approval in appropriation Acts, not more than $50,000,000 of the amounts made available under subsection (a) of this section for fiscal year 1993, and not more than $50,000,000 of the amounts made available under subsection (a) of this section for fiscal year 1994, shall be available for grants under section 4111(d)(2) of this title.

(Pub. L. 100–242, title II, § 234, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4274; amended Pub. L. 102–550, title III, § 301, Oct. 28, 1992, 106 Stat. 3762.)

AMENDMENTS

1992—Pub. L. 102–550 amended section generally. Prior to amendment, section read as follows:

''(a) GENERAL.—There are authorized to be appropriated for assistance and incentives authorized under this chapter $425,000,000 for fiscal year 1991 and $858,000,000 for fiscal year 1992.

''(b) GRANTS.—Of the amounts made available under subsection (a) of this section, not more than $100,000,000

for each of fiscal years 1991 and 1992 shall be available for grants under section 4111(d)(2) of this title, subject to approval in appropriations Acts.''

§ 4125. State preservation project assistance

(1) In general

Upon application by a State or local housing authority (including public housing agencies), the Secretary of Housing and Urban Development may make available, from sources of assistance appropriated to preserve the low and moderate income status of projects with expiring Federal use restrictions, assistance to such State or local housing authorities for use in preventing the loss of housing affordable for low and moderate income families that is assisted under a State program under the terms of which the owner may prepay a State assisted or subsidized mortgage on such housing. The application of the State or local housing authority shall demonstrate to the Secretary that the total amount of incentives provided to the owner to induce the owner to preserve the low and moderate income status of the project shall not exceed the level of incentives which may be provided to a similarly situated project with expiring Federal use restrictions under subtitle B of title II of the Housing and Community Development Act of 1987 [12 U.S.C. 4101 et seq.].

(2) Section 1437f

Any assistance under section 1437f of title 42 made available pursuant to this section may be used (i) to supplement any assistance available on existing section 8 [42 U.S.C. 1437f] contracts, or (ii) to provide additional assistance to structures to ensure that all units occupied by tenants who are lower income families (as such term is defined in section 1437a(b) of title 42) pay rents not exceeding 30 percent of their adjusted incomes. Any project receiving assistance hereunder shall be subject to standards, inspections and sanctions established by the Secretary under section 222(d) of the Housing and Community Development Act of 1987 [12 U.S.C. 4112(d)]. Any such section 8 [42 U.S.C. 1437f] assistance shall be provided for a term and at the fair market rent levels or such higher levels used as applicable for eligible low-income housing that receives incentives under subtitle B of title II of the Housing and Community Development Act of 1987 [12 U.S.C. 4101 et seq.].

(3) Restriction

Assistance may be provided under this section only to State and local housing authorities that require any housing receiving such assistance to remain affordable for lower and moderate income tenants for the period during which assistance under this section is received.

(Pub. L. 101–625, title VI, § 613(b), Nov. 28, 1990, 104 Stat. 4280; Pub. L. 102–550, title III, § 317(b), Oct. 28, 1992, 106 Stat. 3772.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1987, referred to in pars. (1) and (2), is Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1815, as amended. Subtitle B of title II of the Act is classified generally to this subchapter (§ 4101 et seq.). For complete classification of this Act to the Code, see Short Title of 1988 Amendment note under section 5301 of Title 42, The Public Health and Welfare, and Tables.

CODIFICATION

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 which comprises this chapter.

AMENDMENTS

1992—Par. (2). Pub. L. 102–550 substituted ''222(d)'' for ''224(e)''.

SUBCHAPTER II—TECHNICAL ASSISTANCE AND CAPACITY BUILDING

§ 4141. Authority

The Secretary of Housing and Urban Development may provide technical assistance and capacity building to further the preservation program established under this title.[1]

(Pub. L. 100–242, title II, § 251, as added Pub. L. 102–550, title III, § 312, Oct. 28, 1992, 106 Stat. 3766.)

REFERENCES IN TEXT

This title, referred to in text, means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

§ 4142. Purposes

The purposes of this subchapter are—

(1) to promote the ability of residents of eligible low-income housing to meaningfully participate in the preservation process established by this title[1] and affect decisions about the future of their housing;

(2) to promote the ability of community-based nonprofit housing developers and resident councils to acquire, rehabilitate, and competently own and manage eligible housing as rental or cooperative housing for low- and moderate-income people; and

(3) to assist the Secretary in discharging the obligation under section 4110 of this title to notify potential qualified purchasers of the availability of properties for sale and to otherwise facilitate the coordination and oversight of the preservation program established under this title.[1]

(Pub. L. 100–242, title II, § 252, as added Pub. L. 102–550, title III, § 312, Oct. 28, 1992, 106 Stat. 3766.)

REFERENCES IN TEXT

This title, referred to in pars. (1) and (3), means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

§ 4143. Grants for building resident capacity and funding predevelopment costs

(a) In general

Assistance made available under this section shall be used for direct assistance grants to resi-

[1] See References in Text note below.

[1] See References in Text note below.

dent organizations and community-based nonprofit housing developers and resident councils to assist the acquisition of specific projects (including the payment of reasonable administrative expenses to participating intermediaries).

(b) Allocation

30 percent of the assistance made available under this section shall be used for resident capacity grants in accordance with subsection (d) of this section. The remainder shall be used for predevelopment grants in connection with specific projects in accordance with subsection (e) of this section.

(c) Limitation on grant amounts

A resident capacity grant under subsection (d) of this section may not exceed $30,000 per project and a grant under subsection (e) of this section for predevelopment costs may not exceed $200,000 per project, exclusive of any fees paid to a participating intermediary by the Secretary for administering the program.

(d) Resident capacity grants

(1) Use

Resident capacity grants under this subsection shall be available to eligible applicants to cover expenses for resident outreach, incorporation of a resident organization or council, conducting democratic elections, training, leadership development, legal and other technical assistance to the board of directors, staff and members of the resident organization or council.

(2) Eligible housing

Grants under this subsection may be provided with respect to eligible low-income housing for which the owner has filed a notice of intent under subchapter I of this chapter or title II of the Emergency Low Income Housing Preservation Act of 1987 (pursuant to section 604 of the Cranston-Gonzalez National Affordable Housing Act).

(e) Predevelopment grants

(1) Use

Predevelopment grants under this subsection shall be made available to community-based nonprofit housing developers and resident councils to cover the cost of organizing a purchasing entity and pursuing an acquisition, including third party costs for training, development consulting, legal, appraisal, accounting, environmental, architectural and engineering, application fees, and sponsor's staff and overhead costs.

(2) Eligible housing

Such grants may only be made available with respect to any eligible low-income housing project for which the owner has filed an initial notice of intent to transfer the housing to a qualified purchaser in accordance with section 4110 of this title, or has filed a notice of intent and entered into a binding agreement to sell the housing to a resident organization or nonprofit organization.

(3) Phase-in of grant payments

Grant payments under this subsection shall be made in phases, based on performance benchmarks established by the Secretary in consultation with intermediaries selected under section 4145(b) of this title.

(f) Grant applications

Grant applications for assistance under subsections (d) and (e) of this section shall be received monthly on a rolling basis and approved or rejected on at least a quarterly basis by intermediaries selected under section 4145(b) of this title.

(g) Appeal

If an application for assistance under subsections[1] (d) or (e) of this section is denied, the applicant shall have the right to appeal the denial to the Secretary and receive a binding determination within 30 days of the appeal.

(Pub. L. 100–242, title II, §253, as added Pub. L. 102–550, title III, §312, Oct. 28, 1992, 106 Stat. 3766.)

REFERENCES IN TEXT

Title II of the Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (d)(2), probably means title II of Pub. L. 100–242, Feb. 5, 1988, 102 Stat. 1877, prior to being amended generally by Pub. L. 101–625, §601(a), which was known as the Emergency Low Income Housing Preservation Act of 1987 and which was classified principally as a note under section 1715*l* of this title. Title II of Pub. L. 100–242 was amended generally by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, and is now known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Section 604 of the Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (d)(2), is section 604 of Pub. L. 101–625, which is set out as a note under section 4101 of this title.

§4144. Grants for other purposes

The Secretary may provide grants under this subchapter—

(1) to resident-controlled or community-based nonprofit organizations with experience in resident education and organizing for the purpose of conducting community, city or county wide outreach and training programs to identify and organize residents of eligible low-income housing; and

(2) to State and local government agencies and nonprofit intermediaries for the purpose of carrying out such activities as the Secretary deems appropriate to further the preservation program established under this title.[1]

(Pub. L. 100–242, title II, §254, as added Pub. L. 102–550, title III, §312, Oct. 28, 1992, 106 Stat. 3767.)

REFERENCES IN TEXT

This title, referred to in par. (2), means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

[1] So in original. Probably should be ''subsection''.

[1] See References in Text note below.

§ 4145. Delivery of assistance through intermediaries

(a) In general

The Secretary shall approve and disburse assistance under section 4143 of this title through eligible intermediaries selected by the Secretary under subsection (b) of this section. If the Secretary does not receive an acceptable proposal from an intermediary offering to administer assistance under this section in a given State, the Secretary shall administer the program in such State directly.

(b) Selection of eligible intermediaries

(1) In general

The Secretary shall develop criteria to select eligible intermediaries, through a competitive process, to administer assistance under this subchapter. The process shall include provision for a reasonable administrative fee.

(2) Priority

With respect to all forms of grants available under section 4143 of this title, such criteria shall give priority to applications from eligible intermediaries with demonstrated expertise or experience with the program established under this title[1] or under the Emergency Low Income Housing Preservation Act of 1987.

(3) Criteria

The criteria developed under this subsection shall—

(A) not assign any preference or priority to applications from eligible intermediaries based on their previous participation in administering or receiving Federal grants or loans (but may exclude applicants who have failed to perform under prior contracts of a similar nature);

(B) require an applicant to prepare a proposal that demonstrates adequate staffing, qualifications, prior experience, and a plan for participation; and

(C) permit an applicant to serve as the administrator of assistance made available under section 4143(d) or (e) of this title, based on the applicant's suitability and interest.

(4) Geographic coverage

The Secretary may select more than 1 State or regional intermediary for a single State or region. The number of intermediaries chosen for each State or region may be based on the number of eligible low-income housing projects in the State or region, provided there is no duplication of geographic coverage by intermediaries in the administration of the direct assistance grant program.

(5) National nonprofit intermediaries

National nonprofit intermediaries shall be selected to administer the assistance made available under section 4143 of this title only with respect to States or regions for which no other eligible intermediary, acceptable to the Secretary, has submitted a proposal to participate.

(6) Preference

With respect to assistance made available under section 4144 of this title, preference shall be given to eligible regional, State, and local intermediaries, over national nonprofit organizations.

(c) Conflicts of interest

Eligible intermediaries selected under subsection (b) of this section to disburse assistance under section 4143 of this title shall certify that they will serve only as delegated program administrators, charged with the responsibility for reviewing and approving grant applications on behalf of the Secretary. Selected intermediaries shall—

(1) establish appropriate procedures for grant administration and fiscal management, pursuant to standards established by the Secretary; and

(2) receive a reasonable administrative fee, except that they may not provide other services to grant recipients with respect to projects that are the subject of the grant application and may not receive payment, directly or indirectly, from the proceeds of grants they have approved.

(d) "Eligible intermediary" defined

For purposes of this section, the term ''eligible intermediary'' means a State, regional, or national organization (including a quasi-public organization) or a State or local housing agency that—

(1) has as a central purpose the preservation of existing affordable housing and the prevention of displacement;

(2) does not receive direct Federal appropriations for operating support;

(3) in the case of a national nonprofit organization, has been in existence for at least 5 years prior to the date of application and has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of title 26;

(4) in the case of a regional or State nonprofit organization, has been in existence for at least 3 years prior to the date of application and has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of title 26 or is otherwise a tax-exempt entity;

(5) has a record of service to low-income individuals or community-based nonprofit housing developers in multiple communities and, with respect to intermediaries administering assistance under section 4143 of this title, has experience with the allocation or administration of grant or loan funds; and

(6) meets standards of fiscal responsibility established by the Secretary.

(Pub. L. 100–242, title II, § 255, as added Pub. L. 102–550, title III, § 312, Oct. 28, 1992, 106 Stat. 3767.)

REFERENCES IN TEXT

This title, referred to in subsec. (b)(2), means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, known as the

[1] See References in Text note below.

Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (b)(2), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, as amended, which was classified principally as a note under section 1715*l* of this title. Title II of Pub. L. 100–242 was amended generally by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, and is now known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

§ 4146. Definitions

For purposes of this subchapter—

(1) the term ''community-based nonprofit housing developer'' means a nonprofit community development corporation that—

(A) has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of title 26;

(B) has been in existence for at least 2 years prior to the date of the grant application;

(C) has a record of service to low- and moderate-income people in the community in which the project is located;

(D) is organized at the neighborhood, city, county or multi-county level; and

(E) in the case of a corporation acquiring eligible housing under subchapter I of this chapter, agrees to form a purchaser entity that conforms to the definition of a community-based nonprofit organization under such subchapter and agrees to use its best efforts to secure majority tenant consent to the acquisition of the project for which grant assistance is requested; and

(2) the terms ''eligible low-income housing'', ''nonprofit organization'', ''owner'', and ''resident council'' have the meanings given such terms in section 4119 of this title.

(Pub. L. 100–242, title II, § 256, as added Pub. L. 102–550, title III, § 312, Oct. 28, 1992, 106 Stat. 3769.)

§ 4147. Funding

The Secretary shall use not more than $25,000,000 of the amounts made available under section 4124(a) of this title for fiscal year 1993, and not more than $25,000,000 of the amounts made available under section 4124(a) of this title for fiscal year 1994, to carry out this subchapter. Of any amounts made available to carry out this subchapter in any appropriation Act, 90 percent shall be set aside for use in accordance with section 4143 of this title and 10 percent shall be set aside for use in accordance with subsection [1] 4144 of this title.

(Pub. L. 100–242, title II, § 257, as added Pub. L. 102–550, title III, § 312, Oct. 28, 1992, 106 Stat. 3769.)

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

CHAPTER 43—ACTIONS AGAINST PERSONS COMMITTING BANK FRAUD CRIMES

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SUBCHAPTER I—DECLARATIONS PROVIDING NEW CLAIMS TO UNITED STATES

§ 4201. Filing of confidential declarations by private persons

(a) In general

Any person may file a declaration of a violation giving rise to an action for civil penalties under section 1833a of this title affecting a depository institution insured by the Federal Deposit Insurance Corporation or any other agency or entity of the United States.

(b) Place of filing

A declaration under subsection (a) of this section shall be filed with the Attorney General of the United States or with an agent designated by the Attorney General for receiving declarations under this section.

(Pub. L. 101–647, title XXV, § 2561, Nov. 29, 1990, 104 Stat. 4894.)

SHORT TITLE

Section 2560 of Pub. L. 101–647 provided that: ''This subtitle [subtitle H (§§ 2560–2594) of title XXV of Pub. L. 101–647, enacting this chapter and section 3059A of Title 18, Crimes and Criminal Procedure, and amending section 1831k of this title] may be cited as the 'Financial Institutions Anti-Fraud Enforcement Act of 1990'.''

§ 4202. Contents of declarations

A declaration filed pursuant to section 4201 of this title shall—

(1) set forth the name and address of the declarant and the basis for the declarant's knowledge of the facts alleged;

(2) allege under oath or affirmation specific facts, relating to a particular transaction or transactions, which constitute a prima facie case of a violation giving rise to an action for civil penalties under section 1833a of this title affecting a depository institution insured by the Federal Deposit Insurance Corporation or any other agency or entity of the United States;

(3) contain at least 1 new factual element necessary to establish a prima facie case that was unknown to the Government at the time of filing; and

(4) set forth all facts supporting the allegation of a violation described in paragraph (2) known to the declarant, along with the names of material witnesses and the nature and location of documentary evidence known to the declarant.

(Pub. L. 101–647, title XXV, § 2562, Nov. 29, 1990, 104 Stat. 4894.)

§ 4203. Confidentiality of declarations

(a) Period of confidentiality

A declarant and the declarant's agents shall not disclose the existence or filing of a declaration filed pursuant to section 4201 of this title until—

(1) the declarant receives notice that the Attorney General has concluded that an action should not be pursued under section 4206(b) of this title;

(2) the declarant receives notice of an award pursuant to section 4206(c) of this title; or

(3) the declarant is granted a contract to pursue an action under section 4205(b) or 4207 of this title.

(b) Maintenance of confidentiality to prevent prejudice

(1) Notwithstanding any other law, the contents of a declaration shall not be disclosed by the declarant if the disclosure would prejudice or compromise in any way the completion of any government investigation or any criminal or civil case that may arise out of, or make use of, information contained in a declaration, but information contained in a declaration may be disclosed as required by duly issued and authorized legal process.

(2) The Attorney General may in a circumstance described in paragraph (1) notify a declarant that continued confidentiality is required under this subsection notwithstanding paragraph (1) or (2) of subsection (a) of this section.

(c) Loss of rights

A declarant who discloses, except as provided by this chapter,[1] the existence or filing of a declaration or the contents thereof to anyone other than a duly authorized Federal or State investigator or the declarant's attorney shall immediately lose all rights under this subchapter.

(Pub. L. 101–647, title XXV, § 2563, Nov. 29, 1990, 104 Stat. 4894.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original ''this title'', and was translated as reading ''this subtitle'', meaning subtitle H of title XXV of Pub. L. 101–647, known as the Financial Institutions Anti-Fraud Enforcement Act of 1990, which is classified principally to this chapter, as the probable intent of Congress. For complete classification of subtitle H to the Code, see Short Title note set out under section 4201 of this title and Tables.

§ 4204. Ineligibility to file valid declarations

(a) In general

A declaration filed pursuant to section 4201[1] of this title and in accordance with sections 4202 and 4203 of this title is valid unless—

(1) the declaration is filed by a current or former officer or employee of a Federal or State government agency or instrumentality who discovered or gathered the information in the declaration, in whole or in part, while acting within the course of the declarant's government employment;

(2) the declaration is filed by a person who knowingly participated in the violation of section 1517 of title 18 or any of the sections of title 18 referred to in section 1833a(c) of this title, or any other fraudulent conduct with respect to which the declaration is made;

(3) the declaration is filed by an institution-affiliated party (as defined in section 1813(u) of this title) who withheld information during the course of any bank examination or investigation authorized pursuant to section 1820 of this title which such party owed a fiduciary duty to disclose;

(4) the declaration is filed by a member of the immediate family of the individual whose activities are the subject of the declaration or where, in the discretion of the Attorney General, it appears the individual could benefit from the award; or

(5) the declaration consists of allegations or transactions that have been disclosed to a member of the public in a criminal, civil, or administrative proceeding, in a congressional, administrative, or Government Accountability Office report, hearing, audit or investigation, by any other government source, or by the news media, unless the person providing the declaration is the original source of the information.

(b) "Original source" defined

For the purposes of subsection (a)(5) of this section, the term ''original source'' means a person who has direct and independent knowledge of the information contained in the declaration

[1] See References in Text note below.

[1] See References in Text note below.

and who voluntarily provided the information to the government prior to the disclosure.

(c) Notice of invalidity

If the Attorney General determines at any time that a declaration is invalid under this section, that a declaration fails to meet the requirements of section 4202 of this title, or that a declaration has been disclosed in violation of section 4203 of this title, the Attorney General shall notify the person who filed the declaration in writing that the declaration is invalid, and the declarant shall not enjoy any of the rights of the declarant listed in section 4205 or 4206 of this title.

(Pub. L. 101–647, title XXV, § 2564, Nov. 29, 1990, 104 Stat. 4895; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

Section 4201 of this title, referred to in subsec. (a), was in the original ''section 811'', and was translated as reading ''section 2561'', meaning section 2561 of Pub. L. 101–647, as the probable intent of Congress, because Pub. L. 101–647 does not contain a section 811.

AMENDMENTS

2004—Subsec. (a)(5). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

§ 4205. Rights of declarants; participation in actions, awards

(a) In general

A person who has filed a declaration that meets the requirements of sections 4201 through 4204 of this title shall have the rights stated in this section.

(b) Civil action

If the Attorney General determines that a cause of action referred to in section 4201 of this title based on the declaration should be referred to private counsel pursuant to subchapter III of this chapter, the declarant, after consultation with the Attorney General, shall have the right to select counsel to prosecute the action, and the declarant and the declarant's counsel shall act in accordance with subchapter III of this chapter.

(c) Criminal conviction

(1) When the United States obtains a criminal conviction and the Attorney General determines that the conviction was based in whole or in part on the information contained in a valid declaration filed under section 4201 of this title the Attorney General may, in his discretion, pay a reward to the declarant[1]

(2) In determining the size of any award under paragraph (1), the Attorney General may, in the Attorney General's discretion, consider any appropriate factor, including—

(A) the seriousness of the offense for which the conviction was obtained;

(B) the extent to which the facts alleged in the declaration contributed to the conviction;

(C) the number of offenders apprehended pursuant to information provided by the declarant;

(D) whether or not the offender was previously under investigation by any law enforcement agency when the declaration was filed;

(E) the extent to which the declarant cooperated in the development of the Government's case and its presentation at trial;

(F) the sentences and fines imposed on the offender and other offenders in related cases;

(G) the extent to which other sources of private information were relied upon; and

(H) the hardship to the declarant and any expenses the declarant incurred in preparing the declaration.

(d) Share of funds and assets

(1) When the United States acquires funds or assets pursuant to the execution of a judgment, order, or settlement and the Attorney General determines that the judgment, order, or settlement was based in whole or in part on the information contained in a valid declaration filed under section 4201 of this title, the declarant shall have the right to share in the recovery as follows:

(A)(i) The declarant shall be entitled to 20 percent to 30 percent of any recovery up to the first $1,000,000 recovered, 10 percent to 20 percent of the next $4,000,000 recovered, and 5 percent to 10 percent of the next $5,000,000 recovered.

(ii) In calculating an award under clause (i), the Attorney General may consider the size of the overall recovery and the usefulness of the information provided by the declarant.

(B) When a declarant has received an award under subsection (c) of this section, the Attorney General may subtract the amount of that reward from any recovery under this subsection.

(2)(A) When more than 1 declarant has provided information leading to a recovery under this subsection, the Attorney General shall first calculate the size of the total award under paragraph (1)(A) and then distribute that amount according to the contribution made by each declarant.

(B) In distributing any such award between 2 or more declarants, the Attorney General may, in the Attorney General's discretion, consider any appropriate factor.

(e) Repealed. Pub. L. 107–273, div. A, title III, § 301(c)(3), Nov. 2, 2002, 116 Stat. 1781

(f) Appropriate Federal banking agency exception

For purposes of this section, funds or assets acquired by the United States shall not include any funds or assets acquired by any appropriate Federal banking agency acting in any capacity or the Resolution Trust Corporation acting in any capacity, except for any civil money penalties recovered by a Federal banking agency through a final judgment, order or settlement.

(Pub. L. 101–647, title XXV, § 2565, Nov. 29, 1990, 104 Stat. 4896; Pub. L. 107–273, div. A, title III, § 301(c)(3), Nov. 2, 2002, 116 Stat. 1781.)

AMENDMENTS

2002—Subsec. (c)(1). Pub. L. 107–273 substituted ''the Attorney General may, in his discretion, pay a reward

[1] So in original. Probably should be followed by a period.

to the declarant'' for '', the declarant shall have the right to receive not less than $5,000 and not more than $100,000, any such award to be paid from the Financial Institution Information Award Fund established under section 4209 of this title.''

Subsec. (e). Pub. L. 107–273 struck out heading and text of subsec. (e). Text read as follows:

''(1) No person shall receive both an award under this section and a reward under either section 1831k of this title or section 3509A of title 18 for providing the same or substantially similar information.

''(2) When a person qualifies for both an award under this section and a reward under either section 1831k of this title or section 3509A of title 18 for providing the same or substantially similar information, the person may notify the Attorney General in writing of the person's election to seek an award under this section or a reward under such other section.''

§ 4206. Rights of declarants; notifications; Government accountability

(a) In general

A person who has filed a declaration that meets the requirements of sections 4201 through 4204 of this title shall have the rights stated in this section.

(b) Notice of decision not to pursue

If, after review, the Attorney General concludes that the information contained in a declaration should not be pursued in a civil or criminal proceeding, the Attorney General shall so notify the declarant in writing and shall provide a brief statement of the reasons that the declaration will not be pursued.

(c) Judgment, order, or settlement

(1) When the United States obtains a judgment, order, or settlement based in whole or in part on a valid declaration filed under section 4201 of this title, the Attorney General shall notify the declarant in writing of such fact.

(2) A notice described in paragraph (1) shall contain—

(A) the Attorney General's determination of the amount of the award due the declarant under subsection (c) or (d) of section 4205 of this title upon recovery by the United States; and

(B) a short statement of reasons for the amount of the award.

(d) Notice of pendency of investigation or proceeding

If the Attorney General has not provided the declarant with notice under subsection (b) of this section or a notice of invalidity pursuant to section 4204 of this title within the time period set forth in subsection (e) of this section, the Attorney General shall notify the declarant in writing that—

(1) there is a pending investigation or proceeding in the course of which the declarant's allegations are being addressed; or

(2) the declarant's allegations have not yet been addressed.

(e) Time for notices

(1) In the case of a valid declaration filed not more than 3 years after November 29, 1990, the Attorney General shall send notification to a declarant pursuant to subsection (d) of this section not later than 3 years after the date of filing of the declaration.

(2)(A) Subject to subparagraph (B), in the case of a declaration filed more than 3 years after November 29, 1990, the Attorney General shall send notification not later than 1 year after the date of filing of the declaration.

(B) If the Attorney General certifies that it is in the interest of the United States to give further consideration to the information provided in the declaration for an additional 90-day period, the Attorney General shall so notify the declarant in writing.

(f) Confidentiality of notices

All notices provided to a declarant under this section shall be kept confidential by the declarant in the same manner, and subject to the same penalties, as the declaration under section 4203 of this title.

(Pub. L. 101–647, title XXV, § 2566, Nov. 29, 1990, 104 Stat. 4897.)

§ 4207. Unreviewed declarations; petition to pursue action as private contractor

(a) Notification

(1) If, pursuant to section 4206(d)(2) of this title, the Attorney General notifies a declarant that the declarant's allegations have not yet been addressed, the declarant may notify the Attorney General to award a contract pursuant to subchapter III of this chapter to pursue the case.

(2) A declarant's notification under paragraph (1) shall be filed with the Attorney General not later than 30 days after the date of service of notice under section 4206(d)(2) of this title, and the Attorney General shall respond to the notification not later than 30 days after receipt.

(b) Contents of response

In response to a notification under subsection (a)(1) of this section, the Attorney General shall—

(1) grant a contract pursuant to subchapter III of this chapter; or

(2) proceed with an action.

(c) Grant of contract

If the Attorney General decides to grant a contract, the declarant, after consultation with the Attorney General, shall have the right to select counsel to prosecute an action, and the declarant and the declarant's counsel shall act in accordance with subchapter III of this chapter.

(Pub. L. 101–647, title XXV, § 2567, Nov. 29, 1990, 104 Stat. 4898.)

§ 4208. Nonreviewability of action by Attorney General

Notwithstanding any other law, no court shall have jurisdiction over any claim based on any action taken by the Attorney General or any refusal to take action under this subchapter, except for failure to provide notification under section 4206 of this title.

(Pub. L. 101–647, title XXV, § 2568, Nov. 29, 1990, 104 Stat. 4898.)

§ 4209. Repealed. Pub. L. 107–273, div. A, title III, § 301(c)(3), Nov. 2, 2002, 116 Stat. 1781

Section, Pub. L. 101–647, title XXV, § 2569, Nov. 29, 1990, 104 Stat. 4898, related to Financial Institution Information Award Fund.

§ 4210. Sources of payments to declarants

Notwithstanding any other law, an award under this chapter[1] may be paid to a declarant, or to an individual providing information, from the amounts recovered through civil actions based in whole or in part on the information provided in a valid declaration under this chapter.[1]

(Pub. L. 101–647, title XXV, § 2570, Nov. 29, 1990, 104 Stat. 4899.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', and was translated as reading ''this subtitle'', meaning subtitle H of title XXV of Pub. L. 101–647, known as the Financial Institutions Anti-Fraud Enforcement Act of 1990, which is classified principally to this chapter, as the probable intent of Congress. For complete classification of subtitle H to the Code, see Short Title note set out under section 4201 of this title and Tables.

§ 4211. Repealed. Pub. L. 105–362, title X, § 1001(e), Nov. 10, 1998, 112 Stat. 3291

Section, Pub. L. 101–647, title XXV, § 2571, Nov. 29, 1990, 104 Stat. 4899, related to Government accountability and public reports on processing of declarations.

§ 4212. Protection for declarants

A declarant under this subchapter shall enjoy the protections of section 3059A(e)[1] of title 18.

(Pub. L. 101–647, title XXV, § 2572, Nov. 29, 1990, 104 Stat. 4899.)

REFERENCES IN TEXT

Section 3059A(e) of title 18, referred to in text, was repealed by Pub. L. 107–273, div. A, title III, § 301(c)(2), Nov. 2, 2002, 116 Stat. 1781.

§ 4213. Promulgation of regulations

The Attorney General may promulgate any rules, regulations, or guidelines that, in the Attorney General's judgment, are necessary and appropriate to the effective administration of this subchapter.

(Pub. L. 101–647, title XXV, § 2573, Nov. 29, 1990, 104 Stat. 4899.)

SUBCHAPTER II—DECLARATIONS PROVIDING UNITED STATES WITH NEW INFORMATION CONCERNING RECOVERY OF ASSETS

§ 4221. Filing of confidential declarations by private persons identifying specific assets

(a) In general

After the United States obtains a final judgment or settlement in any action referred to in section 4201 of this title, any person may file a declaration identifying specific assets which might be recovered by the United States in satisfaction of that judgment or settlement.

(b) Place of filing

A declaration under subsection (a) of this section shall be filed with the Attorney General of the United States or with an agent designated by him for receiving declarations under this section.

(Pub. L. 101–647, title XXV, § 2576, Nov. 29, 1990, 104 Stat. 4899.)

§ 4222. Contents of declarations

A declaration filed pursuant to section 4221 of this title shall—

(1) set forth the name and address of the declarant and the basis for the declarant's knowledge of the facts alleged;

(2) allege under oath or affirmation specific facts indicating the nature, location, and approximate dollar value of the asset or assets and the names of all persons known to the declarant to have possession, custody, or control of the asset or assets; and

(3) allege under oath or affirmation specific facts that establish a prima facie case showing that the asset is legally subject to attachment, garnishment, sequestration, or other proceeding in satisfaction of the judgment referred to in section 4221 of this title.

(Pub. L. 101–647, title XXV, § 2577, Nov. 29, 1990, 104 Stat. 4900.)

§ 4223. Confidentiality of declarations

(a) Period of confidentiality

A declarant and the declarant's agents shall not disclose the existence or filing of a declaration filed pursuant to section 4221 of this title until:

(1) the declarant receives notice that the Attorney General has concluded that an action should not be pursued under section 4226(b) of this title;

(2) the declarant receives notice of an award pursuant to section 4226(c) of this title; or

(3) the declarant is granted a contract to pursue an action under section 4225(b) or 4227 of this title.

(b) Maintenance of confidentiality to prevent prejudice

(1) Notwithstanding any other law, the contents of a declaration shall not be disclosed by the declarant if the disclosure would prejudice or compromise in any way the completion of any government investigation or any criminal or civil case that may arise out of, or make use of, information contained in a declaration, but information contained in a declaration may be disclosed as required by duly issued and authorized legal process.

(2) The Attorney General may in a circumstance described in paragraph (1) notify a declarant that continued confidentiality is required under this subsection notwithstanding paragraph (1) or (2) of subsection (a) of this section.

(c) Loss of rights

A declarant who discloses, except as provided by this subchapter, the existence or filing of a declaration or the contents thereof to anyone other than a duly authorized Federal or State investigator or the declarant's attorney shall immediately lose all rights under this subchapter.

(Pub. L. 101–647, title XXV, § 2578, Nov. 29, 1990, 104 Stat. 4900.)

[1] See References in Text note below.

[1] See References in Text note below.

§ 4224. Ineligibility to file valid declarations

(a) In general

A declaration filed pursuant to section 4221 of this title and in accordance with sections 4222 and 4223 of this title is valid unless—

(1) the declaration is filed by a current or former officer or employee of a Federal or State government agency or instrumentality who discovered or gathered the information in the declaration, in whole or in part, while acting within the course of the declarant's government employment;

(2) the declaration is filed by a person who knowingly participated in the violation of section 1517 of title 18 or any of the sections of title 18 referred to in section 4201[1] of this title, or any other fraudulent conduct with respect to which the declaration is made;

(3) the declaration is filed by an institution-affiliated party (as defined in section 1813(u) of this title) who withheld information during the course of any bank examination or investigation authorized pursuant to section 1820 of this title which such party owed a fiduciary duty to disclose;

(4) the declaration is filed by a member of the immediate family of the individual whose activities are the subject of the declaration or where, in the discretion of the Attorney General, it appears the individual could benefit from the award; or

(5) the declaration identifies an asset or assets the nature, location, or possible recovery of which has been disclosed to a member of the public in a criminal, civil, or administrative proceeding, in a congressional, administrative, or Government Accountability Office report, hearing, audit or investigation, by any other government source, or by the news media, unless the person providing the declaration is the original source of the information.

(b) "Original source" defined

For the purposes of subsection (a)(5) of this section, the term ''original source'' means a person who has direct and independent knowledge of the information contained in the declaration and who voluntarily provided the information to the government prior to the disclosure.

(c) Notice of invalidity

If the Attorney General determines at any time that a declaration is invalid under this section, that a declaration fails to meet the requirements of section 4222 of this title, or that a declaration has been disclosed in violation of section 4223 of this title, the Attorney General shall notify the person who filed the declaration in writing that the declaration is invalid, and the declarant shall not enjoy any of the rights of the declarant listed in section 4225 or 4226 of this title.

(Pub. L. 101–647, title XXV, § 2579, Nov. 29, 1990, 104 Stat. 4900; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (a)(5). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

[1] So in original. Probably should be section ''1833a(c)''.

§ 4225. Rights of declarants; participation in actions, awards

(a) In general

A person who has filed a declaration that meets the requirements of sections 4221 through 4224 of this title shall have the rights stated in this section.

(b) Civil action

If the Attorney General determines that a proceeding to recover the asset or assets identified in the declaration should be referred to private counsel pursuant to subchapter III of this chapter, the declarant, after consultation with the Attorney General, shall have the right to select counsel to prosecute the action, and the declarant and the declarant's counsel shall act in accordance with subchapter III of this chapter.

(c) Share of assets

When the United States recovers any asset or assets specifically identified in a valid declaration filed under section 4221 of this title and the Attorney General determines that the asset or assets would not have been recovered if the declaration had not been filed, the declarant shall have the right to share in the recovery in the amount of 20 percent to 30 percent of any recovery up to the first $1,000,000 recovered, 10 percent to 20 percent of the next $4,000,000 recovered, and 5 percent to 10 percent of the next $5,000,000 recovered.

(d) Prohibition of double awards

(1) No person shall receive both an award under this section and a reward under either section 1831k of this title or section 3509A[1] of title 18 for providing the same or substantially similar information.

(2) When a person qualifies for both an award under this section and a reward under either section 1831k of this title or section 3509A[1] of title 18 for providing the same or substantially similar information, the person may notify the Attorney General in writing of the person's election to seek an award under this section or a reward under such other section.

(e) Appropriate Federal banking agency exception

For purposes of this section, funds or assets acquired by the United States shall not include any funds or assets acquired by any appropriate Federal banking agency acting in any capacity or the Resolution Trust Corporation acting in any capacity, except for any civil money penalties recovered by a Federal banking agency through a final judgement, order, or settlement.

(Pub. L. 101–647, title XXV, § 2580, Nov. 29, 1990, 104 Stat. 4901.)

REFERENCES IN TEXT

Section 3509A of title 18, referred to in subsec. (d)(1), probably is a reference to former section 3059A of title 18, which was repealed by Pub. L. 107–273, div. A, title III, § 301(c)(2), Nov. 2, 2002, 116 Stat. 1781.

[1] See References in Text note below.

§ 4226. Rights of declarants; notifications; Government accountability

(a) In general

A person who has filed a declaration that meets the requirements of sections 4221 through 4224 of this title shall have the rights stated in this section.

(b) Notice of decision not to pursue

If, after review, the Attorney General concludes that the information contained in a declaration should not be pursued in a proceeding to recover the asset or assets, the Attorney General shall so notify the declarant in writing and shall provide a brief statement of the reasons that the declaration will not be pursued.

(c) Judgment, order, or settlement

(1) When the United States obtains a final judgment, order, or settlement transferring to the United States title to an asset or assets identified in a valid declaration filed under section 4221[1] of this title, the Attorney General shall notify the declarant in writing of the entry of the judgment, order, or settlement.

(2) A notice described in paragraph (1) shall contain—

(A) the Attorney General's determination of the amount of the award due the declarant under section 4225(c) of this title upon recovery by the United States; and

(B) a short statement of reasons for the amount of the award.

(d) Notice of pendency of investigation or proceeding

(1) Subject to paragraph (2), if the Attorney General has not provided the declarant with notice under subsection (b) of this section or a notice of invalidity pursuant to section 4224 of this title within 1 year after the date of filing of the declaration, the Attorney General shall notify the declarant in writing that—

(A) there is a pending investigation or proceeding in the course of which the declarant's allegations are being addressed; or

(B) the declarant's allegations have not yet been addressed.

(2) If the Attorney General certifies that it is in the interest of the United States to give further consideration to the information provided in the declaration for an additional 90-day period, the Attorney General shall so notify the declarant in writing.

(e) Confidentiality of notices

All notices provided to a declarant under this section shall be kept confidential by the declarant in the same manner, and subject to the same penalties, as the declaration under section 4223 of this title.

(Pub. L. 101–647, title XXV, § 2581, Nov. 29, 1990, 104 Stat. 4902.)

REFERENCES IN TEXT

Section 4221 of this title, referred to in subsec. (c)(1), was in the original ''section 831'', and was translated as reading ''section 2576'', meaning section 2576 of Pub. L. 101–647, as the probable intent of Congress, because Pub. L. 101–647 does not contain a section 831.

[1] See References in Text note below.

§ 4227. Unreviewed declarations; petition to pursue action as private contractor

(a) Notification

(1) If, pursuant to section 4226(d)(1)(B) of this title, the Attorney General notifies a declarant that the declarant's allegations have not yet been addressed, the declarant may notify the Attorney General to award a contract pursuant to subchapter III of this chapter to pursue the case.

(2) A declarant's notification under paragraph (1) shall be filed with the Attorney General not later than 30 days after the date of service of notice under section 4226(d)(1)(B) of this title, and the Attorney General shall respond to the notification not later than 30 days after receipt.

(b) Contents of response

In response to a notification under subsection (a)(1) of this section, the Attorney General shall—

(1) grant a contract pursuant to subchapter III of this chapter; or

(2) proceed with an action.

(c) Grant of contract

If the Attorney General decides to grant a contract, the declarant, after consultation with the Attorney General, shall have the right to select counsel to prosecute an action, and the declarant and the declarant's counsel shall act in accordance with subchapter III of this chapter.

(Pub. L. 101–647, title XXV, § 2582, Nov. 29, 1990, 104 Stat. 4903.)

§ 4228. Nonreviewability of action by Attorney General

Notwithstanding any other law, no court shall have jurisdiction over any claim based on any action taken by the Attorney General or any refusal to take action under this subchapter, except for failure to provide notification under section 4226 of this title.

(Pub. L. 101–647, title XXV, § 2583, Nov. 29, 1990, 104 Stat. 4903.)

§ 4229. Protection for declarants

A declarant under this subchapter shall enjoy the protections of section 3059A(e)[1] of title 18.

(Pub. L. 101–647, title XXV, § 2584, Nov. 29, 1990, 104 Stat. 4903.)

REFERENCES IN TEXT

Section 3059A(e) of title 18, referred to in text, was repealed by Pub. L. 107–273, div. A, title III, § 301(c)(2), Nov. 2, 2002, 116 Stat. 1781.

§ 4230. Promulgation of regulations

The Attorney General may promulgate any rules, regulations, or guidelines that, in the Attorney General's judgment, are necessary and appropriate to the effective administration of this subchapter.

(Pub. L. 101–647, title XXV, § 2585, Nov. 29, 1990, 104 Stat. 4903.)

[1] See References in Text note below.

SUBCHAPTER III—USE OF PRIVATE LEGAL RESOURCES

§ 4241. Authority to enter into contracts for private counsel

(a) In general

The Attorney General may enter into contracts retaining private counsel to furnish legal services, including representation in investigation, negotiation, compromise, settlement, litigation, and execution of judgments in the case of any civil action referred to in section 4201 of this title or section 4225 of this title.

(b) Terms and conditions

Each contract under subsection (a) of this section shall include the provisions described in section 4244 of this title and such other terms and conditions as the Attorney General considers necessary and appropriate to protect the interests of the United States.

(c) Limitation of fee

The amount of the contingency fee payable for legal services furnished under a contract described in subsection (a) of this section shall not exceed the contingency fee that counsel engaged in the private practice of law in the jurisdiction wherein the legal services are furnished typically charge clients for furnishing the same or comparable legal services.

(d) Contingent fees

Notwithstanding section 3302(b) of title 31, a contract under this section shall provide that a fee that the United States pays private counsel for services is payable from the amount recovered and shall be based on a percentage of the civil penalties or assets recovered.

(Pub. L. 101–647, title XXV, § 2588, Nov. 29, 1990, 104 Stat. 4905.)

§ 4242. Contract decisions nonreviewable

Notwithstanding any other law, no court shall have jurisdiction over any claim based on the Attorney General's decision to refuse to enter into a contract for legal services referred to in section 4241 of this title.

(Pub. L. 101–647, title XXV, § 2589, Nov. 29, 1990, 104 Stat. 4905.)

§ 4243. Representation

Notwithstanding sections 516, 518(b), 519, and 547(2) of title 28, private counsel retained under section 4241 of this title may represent the United States in litigation in connection with legal services furnished pursuant to the contract entered into with that counsel, subject to the requirements specified in section 4244 of this title.

(Pub. L. 101–647, title XXV, § 2590, Nov. 29, 1990, 104 Stat. 4906.)

§ 4244. Contract provisions

A contract made with a private counsel under section 4241 of this title shall include—

(1) a provision permitting the Attorney General to terminate either the contract or the private counsel's representation of the United States in particular cases if the Attorney General finds that such action is in the best interests of the United States;

(2) a provision requiring private counsel to transmit monthly to the Attorney General a report on the services relating to matters handled pursuant to the contract during the preceding month and the progress made during that period; and

(3) a provision requiring that the initiation, settlement, dismissal, or compromise of a claim be approved by a duly appointed officer of the United States.

(Pub. L. 101–647, title XXV, § 2591, Nov. 29, 1990, 104 Stat. 4906.)

§ 4245. Counterclaims

Any counterclaim filed in any action brought on behalf of the United States by private counsel retained under section 4241 of this title may not be asserted unless the counterclaim has been served directly on the Attorney General and the United States Attorney for the judicial district in which, or embracing the place in which, the action is pending. Such service shall be made in accordance with the rules of procedure of the court in which the action on behalf of the United States is pending.

(Pub. L. 101–647, title XXV, § 2592, Nov. 29, 1990, 104 Stat. 4906.)

§ 4246. Awards of costs and fees to prevailing plaintiff

When the United States, through private counsel retained under this subchapter, prevails in any civil action, the court, in its discretion, may allow the United States reasonable attorney's fees and other expenses of litigation as part of the costs.

(Pub. L. 101–647, title XXV, § 2593, Nov. 29, 1990, 104 Stat. 4906.)

§ 4247. Promulgation of regulations

The Attorney General may promulgate any rules, regulations, or guidelines that, in the Attorney General's judgment, are necessary and appropriate to the effective administration of this subchapter.

(Pub. L. 101–647, title XXV, § 2594, Nov. 29, 1990, 104 Stat. 4906.)

CHAPTER 44—TRUTH IN SAVINGS

Sec.
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§ 4301. Findings and purpose

(a) Findings

The Congress hereby finds that economic stability would be enhanced, competition between

depository institutions would be improved, and the ability of the consumer to make informed decisions regarding deposit accounts, and to verify accounts, would be strengthened if there was uniformity in the disclosure of terms and conditions on which interest is paid and fees are assessed in connection with such accounts.

(b) Purpose

It is the purpose of this chapter to require the clear and uniform disclosure of—

(1) the rates of interest which are payable on deposit accounts by depository institutions; and

(2) the fees that are assessable against deposit accounts,

so that consumers can make a meaningful comparison between the competing claims of depository institutions with regard to deposit accounts.

(Pub. L. 102–242, title II, § 262, Dec. 19, 1991, 105 Stat. 2334.)

SHORT TITLE

Section 261 of Pub. L. 102–242 provided that: ''This subtitle [subtitle F (§§ 261–274) of title II of Pub. L. 102–242, enacting this chapter] may be cited as the 'Truth in Savings Act'.''

SEPARABILITY

If any provision of Pub. L. 102–242 or any application of any provision thereof to any person or circumstance is held invalid, the remainder of Pub. L. 102–242 and the application of any remaining provision of such Act to any other person or circumstance not to be affected by such holding, see section 481 of Pub. L. 102–242, set out as a note under section 1811 of this title.

§ 4302. Disclosure of interest rates and terms of accounts

(a) In general

Except as provided in subsections (b) and (c) of this section, each advertisement, announcement, or solicitation initiated by any depository institution or deposit broker relating to any demand or interest-bearing account offered by an insured depository institution which includes any reference to a specific rate of interest payable on amounts deposited in such account, or to a specific yield or rate of earnings on amounts so deposited, shall state the following information, to the extent applicable, in a clear and conspicuous manner:

(1) The annual percentage yield.

(2) The period during which such annual percentage yield is in effect.

(3) All minimum account balance and time requirements which must be met in order to earn the advertised yield (and, in the case of accounts for which more than 1 yield is stated, each annual percentage yield and the account minimum balance requirement associated with each such yield shall be in close proximity and have equal prominence).

(4) The minimum amount of the initial deposit which is required to open the account in order to obtain the yield advertised, if such minimum amount is greater than the minimum balance necessary to earn the advertised yield.

(5) A statement that regular fees or other conditions could reduce the yield.

(6) A statement that an interest penalty is required for early withdrawal.

(b) Broadcast and electronic media and outdoor advertising exception

The Board may, by regulation, exempt advertisements, announcements, or solicitations made by any broadcast or electronic medium or outdoor advertising display not on the premises of the depository institution from any disclosure requirements described in paragraph (4) or (5) of subsection (a) of this section if the Board finds that any such disclosure would be unnecessarily burdensome.

(c) Disclosure required for on-premises displays

The disclosure requirements contained in this section shall not apply to any sign (including a rate board) disclosing a rate or rates of interest which is displayed on the premises of the depository institution if such sign contains—

(1) the accompanying annual percentage yield; and

(2) a statement that the consumer should request further information from an employee of the depository institution concerning the fees and terms applicable to the advertised account.

(d) Misleading descriptions of free or no-cost accounts prohibited

No advertisement, announcement, or solicitation made by any depository institution or deposit broker may refer to or describe an account as a free or no-cost account (or words of similar meaning) if—

(1) in order to avoid fees or service charges for any period—

(A) a minimum balance must be maintained in the account during such period; or

(B) the number of transactions during such period may not exceed a maximum number; or

(2) any regular service or transaction fee is imposed.

(e) Misleading or inaccurate advertisements, etc., prohibited

No depository institution or deposit broker shall make any advertisement, announcement, or solicitation relating to a deposit account that is inaccurate or misleading or that misrepresents its deposit contracts.

(Pub. L. 102–242, title II, § 263, Dec. 19, 1991, 105 Stat. 2334; Pub. L. 102–550, title IX, § 957(a), Oct. 28, 1992, 106 Stat. 3896; Pub. L. 104–208, div. A, title II, § 2604(b), Sept. 30, 1996, 110 Stat. 3009–471; Pub. L. 111–203, title X, § 1100B(1), July 21, 2010, 124 Stat. 2109.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1100B(1), 1100H, July 21, 2010, 124 Stat. 2109, 2113, provided that, effective on the designated transfer date, this section is amended by substituting ''Bureau'' for ''Board'' wherever appearing. See Effective Date of 2010 Amendment note below.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–208 redesignated par. (1) as entire subsec. (c) and subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and struck out

former par. (1) heading and heading and text of former par. (2). Text of former par. (2) read as follows: ''For purposes of paragraph (1), a sign shall only be considered to be displayed on the premises of a depository institution if the sign is designed to be viewed only from the interior of the premises of the depository institution.''

1992—Subsec. (a). Pub. L. 102–550, § 957(a)(1), substituted ''subsections (b) and (c)'' for ''subsection (b)''.

Subsecs. (c) to (e). Pub. L. 102–550, § 957(a)(2), (3), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 4303. Account schedule

(a) In general

Each depository institution shall maintain a schedule of fees, charges, interest rates, and terms and conditions applicable to each class of accounts offered by the depository institution, in accordance with the requirements of this section and regulations which the Board shall prescribe. The Board shall specify, in regulations, which fees, charges, penalties, terms, conditions, and account restrictions must be included in a schedule required under this subsection. A depository institution need not include in such schedule any information not specified in such regulation.

(b) Information on fees and charges

The schedule required under subsection (a) of this section with respect to any account shall contain the following information:

(1) A description of all fees, periodic service charges, and penalties which may be charged or assessed against the account (or against the account holder in connection with such account), the amount of any such fees, charge, or penalty (or the method by which such amount will be calculated), and the conditions under which any such amount will be assessed.

(2) All minimum balance requirements that affect fees, charges, and penalties, including a clear description of how each such minimum balance is calculated.

(3) Any minimum amount required with respect to the initial deposit in order to open the account.

(c) Information on interest rates

The schedule required under subsection (a) of this section with respect to any account shall include the following information:

(1) Any annual percentage yield.

(2) The period during which any such annual percentage yield will be in effect.

(3) Any annual rate of simple interest.

(4) The frequency with which interest will be compounded and credited.

(5) A clear description of the method used to determine the balance on which interest is paid.

(6) The information described in paragraphs (1) through (4) with respect to any period after the end of the period referred to in paragraph (2) (or the method for computing any information described in any such paragraph), if applicable.

(7) Any minimum balance which must be maintained to earn the rates and obtain the yields disclosed pursuant to this subsection and a clear description of how any such minimum balance is calculated.

(8) A clear description of any minimum time requirement which must be met in order to obtain the yields disclosed pursuant to this subsection and any information described in paragraph (1), (2), (3), or (4) that will apply if any time requirement is not met.

(9) A statement, if applicable, that any interest which has accrued but has not been credited to an account at the time of a withdrawal from the account will not be paid by the depository institution or credited to the account by reason of such withdrawal.

(10) Any provision or requirement relating to nonpayment of interest, including any charge or penalty for early withdrawal, and the conditions under which any such charge or penalty may be assessed.

(d) Other information

The schedule required under subsection (a) of this section shall include such other disclosures as the Board may determine to be necessary to allow consumers to understand and compare accounts, including frequency of interest rate adjustments, account restrictions, and renewal policies for time accounts.

(e) Style and format

Schedules required under subsection (a) of this section shall be written in clear and plain language and be presented in a format designed to allow consumers to readily understand the terms of the accounts offered.

(Pub. L. 102–242, title II, § 264, Dec. 19, 1991, 105 Stat. 2335; Pub. L. 111–203, title X, § 1100B(1), July 21, 2010, 124 Stat. 2109.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1100B(1), 1100H, July 21, 2010, 124 Stat. 2109, 2113, provided that, effective on the designated transfer date, this section is amended by substituting ''Bureau'' for ''Board'' wherever appearing. See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 4304. Disclosure requirements for certain accounts

The Board shall require, in regulations which the Board shall prescribe, such modification in the disclosure requirements under this chapter relating to annual percentage yield as may be necessary to carry out the purposes of this chapter in the case of—

(1) accounts with respect to which determination of annual percentage yield is based on an annual rate of interest that is guaranteed for a period of less than 1 year;

(2) variable rate accounts;

(3) accounts which, pursuant to law, do not guarantee payment of a stated rate;

(4) multiple rate accounts; and

(5) accounts with respect to which determination of annual percentage yield is based on an annual rate of interest that is guaranteed for a stated term.

(Pub. L. 102–242, title II, § 265, Dec. 19, 1991, 105 Stat. 2336; Pub. L. 102–550, title XVI, § 1604(e)(2)(A), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 111–203, title X, § 1100B(1), July 21, 2010, 124 Stat. 2109.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1100B(1), 1100H, July 21, 2010, 124 Stat. 2109, 2113, provided that, effective on the designated transfer date, this section is amended by substituting ''Bureau'' for ''Board'' wherever appearing. See Effective Date of 2010 Amendment note below.

AMENDMENTS

1992—Pub. L. 102–550 made technical amendment to references to ''this chapter'' wherever appearing to reflect correction of corresponding provision of original act.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

§ 4305. Distribution of schedules

(a) In general

A schedule required under section 4303 of this title for an appropriate account shall be—

(1) made available to any person upon request;

(2) provided to any potential customer before an account is opened or a service is rendered; and

(3) provided to the depositor, in the case of any time deposit which has a maturity of more than 30 days[1] is renewable at maturity without notice from the depositor, at least 30 days before the date of maturity.

(b) Distribution in case of certain initial deposits

If—

(1) a depositor is not physically present at an office of a depository institution at the time an initial deposit is accepted with respect to an account established by or for such person; and

(2) the schedule required under section 4303(a) of this title has not been furnished previously to such depositor,

the depository institution shall mail the schedule to the depositor at the address shown on the records of the depository institution for such account no later than 10 days after the date of the initial deposit.

(c) Distribution of notice of certain changes

If—

(1) any change is made in any term or condition which is required to be disclosed in the schedule required under section 4303(a) of this title with respect to any account; and

(2) the change may reduce the yield or adversely affect any holder of the account,

all account holders who may be affected by such change shall be notified and provided with a description of the change by mail at least 30 days before the change takes effect.

(d) Distribution in case of accounts established by more than 1 individual or by a group

If an account is established by more than 1 individual or for a person other than an individual, any distribution described in this section with respect to such account meets the requirements of this section if the distribution is made to 1 of the individuals who established the account or 1 individual representative of the person on whose behalf such account was established.

(e) Notice to account holders as of effective date of regulations

For any account for which the depository institution delivers an account statement on a quarterly or more frequent basis, the depository institution shall include on or with the first regularly scheduled mailing sent after the end of the 6-month period beginning on the date of publication of regulations issued by the Board in final form, a statement that the account holder has the right to request an account schedule containing the terms, charges, and interest rates of the account, and that the account holder may wish to request such an account schedule.

(Pub. L. 102–242, title II, § 266, Dec. 19, 1991, 105 Stat. 2337; Pub. L. 102–550, title XVI, § 1604(e)(1), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 104–208, div. A, title II, § 2604(d), Sept. 30, 1996, 110 Stat. 3009–471; Pub. L. 111–203, title X, § 1100B(1), July 21, 2010, 124 Stat. 2109.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1100B(1), 1100H, July 21, 2010, 124 Stat. 2109, 2113, provided that, effective on the designated transfer date, this section is amended by substituting ''Bureau'' for ''Board'' wherever appearing. See Effective Date of 2010 Amendment note below.

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–208 inserted ''has a maturity of more than 30 days'' after ''deposit which''.

1992—Subsec. (e). Pub. L. 102–550 substituted ''on or with the first regularly scheduled mailing sent after the end of the 6-month period beginning on the date of publication'' for ''on or with any regularly scheduled mailing posted or delivered within 180 days after publication''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improve-

[1] So in original. Probably should be followed by ''and''.

ment Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

§ 4306. Payment of interest

(a) Calculated on full amount of principal

Interest on an interest-bearing account at any depository institution shall be calculated by such institution on the full amount of principal in the account for each day of the stated calculation period at the rate or rates of interest disclosed pursuant to this chapter.

(b) No particular method of compounding interest required

Subsection (a) of this section shall not be construed as prohibiting or requiring the use of any particular method of compounding or crediting of interest.

(c) Date by which interest must accrue

Interest on accounts that are subject to this chapter shall begin to accrue not later than the business day specified for interest-bearing accounts in section 4005 of this title, subject to subsections (b) and (c) of such section.

(Pub. L. 102–242, title II, § 267, Dec. 19, 1991, 105 Stat. 2338; Pub. L. 102–550, title XVI, § 1604(e)(2)(B), (C), Oct. 28, 1992, 106 Stat. 4084.)

AMENDMENTS

1992—Subsecs. (a), (c). Pub. L. 102–550 made technical amendment to references to ''this chapter'' to reflect correction of corresponding provision of original act.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

§ 4307. Periodic statements

Each depository institution shall include on or with each periodic statement provided to each account holder at such institution a clear and conspicuous disclosure of the following information with respect to such account:

(1) The annual percentage yield earned.

(2) The amount of interest earned.

(3) The amount of any fees or charges imposed.

(4) The number of days in the reporting period.

(Pub. L. 102–242, title II, § 268, Dec. 19, 1991, 105 Stat. 2338.)

§ 4308. Regulations

(a) In general

(1) Regulations required

Before the end of the 9-month period beginning on December 19, 1991, the Board, after consultation with each agency referred to in section 4309(a) of this title and public notice and opportunity for comment, shall prescribe regulations to carry out the purpose and provisions of this chapter.

(2) Effective date of regulations

The regulations prescribed under paragraph (1) shall take effect not later than 9 months after publication in final form.

(3) Contents of regulations

The regulations prescribed under paragraph (1) may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of accounts as, in the judgment of the Board, are necessary or proper to carry out the purposes of this chapter, to prevent circumvention or evasion of the requirements of this chapter, or to facilitate compliance with the requirements of this chapter.

(4) Date of applicability

The provisions of this chapter shall not apply with respect to any depository institution before the effective date of regulations prescribed by the Board under this subsection (or by the National Credit Union Administration Board under section 4311(b)[1] of this title, in the case of any depository institution described in clause (iv) of section 461(b)(1)(A) of this title).

(b) Model forms and clauses

(1) In general

The Board shall publish model forms and clauses for common disclosures to facilitate compliance with this chapter. In devising such forms, the Board shall consider the use by depository institutions of data processing or similar automated machines.

(2) Use of forms and clauses deemed in compliance

Nothing in this chapter may be construed to require a depository institution to use any such model form or clause prescribed by the Board under this subsection. A depository institution shall be deemed to be in compliance with the disclosure provisions of this chapter if the depository institution—

(A) uses any appropriate model form or clause as published by the Board; or

(B) uses any such model form or clause and changes it by—

(i) deleting any information which is not required by this chapter; or

(ii) rearranging the format,

if in making such deletion or rearranging the format, the depository institution does not affect the substance, clarity, or meaningful sequence of the disclosure.

(3) Public notice and opportunity for comment

Model disclosure forms and clauses shall be adopted by the Board after duly given notice in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5.

(Pub. L. 102–242, title II, § 269, Dec. 19, 1991, 105 Stat. 2338; Pub. L. 102–550, title IX, § 957(b), title XVI, § 1604(e)(2)(D)–(H), Oct. 28, 1992, 106 Stat. 3897, 4084; Pub. L. 111–203, title X, § 1100B(1), July 21, 2010, 124 Stat. 2109.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1100B(1), 1100H, July 21, 2010, 124 Stat. 2109, 2113, provided that, effective on the designated transfer date, this

[1] See References in Text note below.

section is amended by substituting ''Bureau'' for ''Board'' wherever appearing. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 4311(b) of this title, referred to in subsec. (a)(4), was in the original ''section 12(b)'', probably meaning section 12(b) of Pub. L. 102–242, and was translated as meaning section 272(b) of Pub. L. 102–242, to reflect the probable intent of Congress.

AMENDMENTS

1992—Pub. L. 102–550, §1604(e)(2)(D)–(H), made technical amendment to references to ''this chapter'' wherever appearing to reflect correction of corresponding provision of original act.

Subsec. (a)(2). Pub. L. 102–550, §957(b), substituted ''9 months'' for ''6 months''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1604 of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

§ 4309. Administrative enforcement

(a) In general

Compliance with the requirements imposed under this chapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818]—

(A) by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act [12 U.S.C. 1813(q)]) in the case of insured depository institutions (as defined in section 3(c)(2) of such Act [12 U.S.C. 1813(c)(2)]);

(B) by the Federal Deposit Insurance Corporation in the case of depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)] which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)]); and

(C) by the Director of the Office of Thrift Supervision in the case of depository institutions described in clause (v) and or (vi) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)] which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)]); and

(2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the National Credit Union Administration Board in the case of depository institutions described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)].

(b) Additional enforcement powers

(1) Violation of this chapter treated as violation of other Acts

For purposes of the exercise by any agency referred to in subsection (a) of this section of such agency's powers under any Act referred to in such subsection, a violation of a requirement imposed under this chapter shall be deemed to be a violation of a requirement imposed under that Act.

(2) Enforcement authority under other Acts

In addition to the powers of any agency referred to in subsection (a) of this section under any provision of law specifically referred to in such subsection, each such agency may exercise, for purposes of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on such agency by law.

(c) Regulations by agencies other than the Board

The authority of the Board to issue regulations under this chapter does not impair the authority of any other agency referred to in subsection (a) of this section to make rules regarding its own procedures in enforcing compliance with the requirements imposed under this chapter.

(Pub. L. 102–242, title II, §270, Dec. 19, 1991, 105 Stat. 2339; Pub. L. 102–550, title XVI, §1604(e)(2)(I)–(K), (3), (4), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 111–203, title X, §1100B(1), (2), July 21, 2010, 124 Stat. 2109, 2110.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§1100B(1), (2), 1100H, July 21, 2010, 124 Stat. 2109, 2110, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) by substituting ''Bureau'' for ''Board'' wherever appearing; and

(2) in subsection (a)—

(A) in paragraph (1), by striking out ''Compliance'' and all that follows through the end and inserting: ''Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this chapter shall be enforced under—

''(1) section 8 of the Federal Deposit Insurance Act by the appropriate Federal banking agency (as defined in section 3(q) of that Act), with respect to—

''(A) insured depository institutions (as defined in section 3(c)(2) of that Act);

''(B) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

''(C) depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);'';

(B) in paragraph (2), by substituting ''; and'' for the period at the end; and

(C) by adding at the end the following:

''(3) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this chapter.''

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in subsec. (a)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, as

amended, which is classified generally to chapter 14 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–550 made technical amendment to references to ''this chapter'' wherever appearing to reflect correction of corresponding provision of original act.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

§ 4310. Repealed. Pub. L. 104–208, div. A, title II, § 2604(a), Sept. 30, 1996, 110 Stat. 3009–470

Section, Pub. L. 102–242, title II, § 271, Dec. 19, 1991, 105 Stat. 2340; Pub. L. 102–550, title XVI, § 1604(e)(2)(L)–(O), Oct. 28, 1992, 106 Stat. 4084, related to civil liability for depository institutions which failed to comply with any requirements of chapter or regulations with respect to account holders.

EFFECTIVE DATE OF REPEAL

Pub. L. 104–208, div. A, title II, § 2604(a), Sept. 30, 1996, 110 Stat. 3009–470, provided that: ''Effective as of the end of the 5-year period beginning on the date of the enactment of this Act [Sept. 30, 1996], section 271 of the Truth in Savings Act (12 U.S.C. 4310) is repealed.''

§ 4311. Credit unions

(a) In general

No regulation prescribed by the Board under this chapter shall apply directly with respect to any depository institution described in clause (iv) of section 461(b)(1)(A) of this title.

(b) Regulations prescribed by NCUA

Within 90 days of the effective date of any regulation prescribed by the Board under this chapter, the National Credit Union Administration Board shall prescribe a regulation substantially similar to the regulation prescribed by the Board taking into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts.

(Pub. L. 102–242, title II, § 272, Dec. 19, 1991, 105 Stat. 2342; Pub. L. 102–550, title XVI, § 1604(e)(2)(P), (Q), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 111–203, title X, § 1100B(1), (3), July 21, 2010, 124 Stat. 2109, 2110.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1100B(1), (3), 1100H, July 21, 2010, 124 Stat. 2109, 2110, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) by substituting ''Bureau'' for ''Board'' wherever appearing, other than in subsection (b); and

(2) in subsection (b), by substituting ''regulation prescribed by the Bureau'' for ''regulation prescribed by the Board'' wherever appearing.

See Effective Date of 2010 Amendment note below.

AMENDMENTS

1992—Pub. L. 102–550 made technical amendment to references to ''this chapter'' wherever appearing to reflect correction of corresponding provision of original act.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

§ 4312. Effect on State law

The provisions of this chapter do not supersede any provisions of the law of any State relating to the disclosure of yields payable or terms for accounts to the extent such State law requires the disclosure of such yields or terms for accounts, except to the extent that those laws are inconsistent with the provisions of this chapter, and then only to the extent of the inconsistency. The Board may determine whether such inconsistencies exist.

(Pub. L. 102–242, title II, § 273, Dec. 19, 1991, 105 Stat. 2342; Pub. L. 102–550, title XVI, § 1604(e)(2)(R), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 111–203, title X, § 1100B(1), July 21, 2010, 124 Stat. 2109.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1100B(1), 1100H, July 21, 2010, 124 Stat. 2109, 2113, provided that, effective on the designated transfer date, this section is amended by substituting ''Bureau'' for ''Board'' wherever appearing. See Effective Date of 2010 Amendment note below.

AMENDMENTS

1992—Pub. L. 102–550 made technical amendment to references to ''this chapter'' wherever appearing to reflect correction of corresponding provision of original act.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

§ 4313. Definitions

For the purposes of this chapter—

(1) Account

The term ''account'' means any account intended for use by and generally used by consumers primarily for personal, family, or

household purposes that is offered by a depository institution into which a consumer deposits funds, including demand accounts, time accounts, negotiable order of withdrawal accounts, and share draft accounts.

(2) Annual percentage yield

The term ''annual percentage yield'' means the total amount of interest that would be received on a $100 deposit, based on the annual rate of simple interest and the frequency of compounding for a 365-day period, expressed as a percentage calculated by a method which shall be prescribed by the Board in regulations.

(3) Annual rate of simple interest

The term ''annual rate of simple interest''—

(A) means the annualized rate of interest paid with respect to each compounding period, expressed as a percentage; and

(B) may be referred to as the ''annual percentage rate''.

(4) Board

The term ''Board'' means the Board of Governors of the Federal Reserve System.

(5) Deposit broker

The term ''deposit broker''—

(A) has the meaning given to such term in section 1831f(f)(1)[1] of this title; and

(B) includes any person who solicits any amount from any other person for deposit in an insured depository institution.

(6) Depository institution

The term ''depository institution'' has the meaning given such term in clauses (i) through (vi) of section 461(b)(1)(A) of this title, but does not include any nonautomated credit union that was not required to comply with the requirements of this chapter[1] as of September 30, 1996, pursuant to the determination of the National Credit Union Administration Board.

(7) Interest

The term ''interest'' includes dividends paid with respect to share draft accounts which are accounts within the meaning of paragraph (3).

(8) Multiple rate account

The term ''multiple rate account'' means any account that has 2 or more annual rates of simple interest which take effect at the same time or in succeeding periods and which are known at the time of disclosure.

(Pub. L. 102–242, title II, §274, Dec. 19, 1991, 105 Stat. 2342; Pub. L. 102–550, title XVI, §1604(e)(2)(S), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 103–325, title III, §332, Sept. 23, 1994, 108 Stat. 2232; Pub. L. 104–208, div. A, title II, §2604(c), Sept. 30, 1996, 110 Stat. 3009–471; Pub. L. 111–203, title X, §1100B(1), (4), July 21, 2010, 124 Stat. 2109, 2110.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§1100B(1), (4), 1100H, July 21, 2010, 124 Stat. 2109, 2110, 2113, provided that, effective on the designated transfer date, this section is amended by:

(1) by substituting ''Bureau'' for ''Board'' wherever appearing; and

(2) by striking out paragraph (4) and adding the following:

''(4) Bureau

''The term 'Bureau' means the Bureau of Consumer Financial Protection.''

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 1831f(f)(1) of this title, referred to in par. (5)(A), was redesignated section 1831f(g)(1) of this title by Pub. L. 102–242, title III, §301(a)(4), Dec. 19, 1991, 105 Stat. 2344.

This chapter, referred to in par. (6), was in the original ''this title'', and was translated as meaning ''this subtitle'', which is subtitle F of title II of Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2334, which enacted this chapter, to reflect the probable intent of Congress.

AMENDMENTS

1996—Par. (6). Pub. L. 104–208 inserted before period at end '', but does not include any nonautomated credit union that was not required to comply with the requirements of this chapter as of September 30, 1996, pursuant to the determination of the National Credit Union Administration Board''.

1994—Par. (1). Pub. L. 103–325 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'account' means any account offered to 1 or more individuals or an unincorporated nonbusiness association of individuals by a depository institution into which a customer deposits funds, including demand accounts, time accounts, negotiable order of withdrawal accounts, and share draft accounts.''

1992—Pub. L. 102–550 made technical amendment to reference to ''this chapter'' in introductory provisions to reflect correction of corresponding provision of original act.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

CHAPTER 45—PAYMENT SYSTEM RISK REDUCTION

SUBCHAPTER I—BILATERAL AND CLEARING ORGANIZATION NETTING

Sec.
4401. Findings and purpose.
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4403. Bilateral netting.
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SUBCHAPTER II—MULTILATERAL CLEARING ORGANIZATIONS

4421. Definitions.
4422. Multilateral clearing organizations.

[1] See References in Text note below.

SUBCHAPTER I—BILATERAL AND CLEARING ORGANIZATION NETTING

§ 4401. Findings and purpose

The Congress finds that—

(1) many financial institutions engage daily in thousands of transactions with other financial institutions directly and through clearing organizations;

(2) the efficient processing of such transactions is essential to a smoothly functioning economy;

(3) such transactions can be processed most efficiently if, consistent with applicable contractual terms, obligations among financial institutions are netted;

(4) such netting procedures would reduce the systemic risk within the banking system and financial markets; and

(5) the effectiveness of such netting procedures can be assured only if they are recognized as valid and legally binding in the event of the closing of a financial institution participating in the netting procedures.

(Pub. L. 102–242, title IV, § 401, Dec. 19, 1991, 105 Stat. 2371.)

SEPARABILITY

If any provision of Pub. L. 102–242 or any application of any provision thereof to any person or circumstance is held invalid, the remainder of Pub. L. 102–242 and the application of any remaining provision of such Act to any other person or circumstance not to be affected by such holding, see section 481 of Pub. L. 102–242, set out as a note under section 1811 of this title.

§ 4402. Definitions

For purposes of this subchapter—

(1) Broker or dealer

The term ''broker or dealer'' means—

(A) any company that is registered or licensed under Federal or State law to engage in the business of brokering, underwriting, or dealing in securities in the United States; and

(B) to the extent consistent with this title,[1] as determined by the Board of Governors of the Federal Reserve System, any company that is an affiliate of a company described in subparagraph (A) and that is engaged in the business of entering into netting contracts.

(2) Clearing organization

The term ''clearing organization'' means a clearinghouse, clearing association, clearing corporation, or similar organization—

(A) that provides clearing, netting, or settlement services for its members and—

(i) in which all members other than the clearing organization itself are financial institutions or other clearing organizations; or

(ii) which is registered as a clearing agency under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or is exempt from such registration by order of the Securities and Exchange Commission; or

(B) that is registered as a derivatives clearing organization under section 7a–1 of title 7, that has been granted an exemption under section 6(c)(1) of title 7, or that is a multilateral clearing organization (as defined in section 4421 of this title).

(3) Covered clearing obligation

The term ''covered clearing obligation'' means an obligation of a member of a clearing organization to make payment to another member of a clearing organization, subject to a netting contract.

(4) Covered contractual payment entitlement

The term ''covered contractual payment entitlement'' means—

(A) an entitlement of a financial institution to receive a payment, subject to a netting contract from another financial institution; and

(B) an entitlement of a member of a clearing organization to receive payment, subject to a netting contract, from another member of a clearing organization of a covered clearing obligation.

(5) Covered contractual payment obligation

The term ''covered contractual payment obligation'' means—

(A) an obligation of a financial institution to make payment, subject to a netting contract to another financial institution; and

(B) a covered clearing obligation.

(6) Depository institution

The term ''depository institution'' means—

(A) a depository institution as defined in section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)] (other than clause (vii));

(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 1815 of this title;

(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978 [12 U.S.C. 3101];

(D) a corporation chartered under section 25(a)[1] of the Federal Reserve Act [12 U.S.C. 611 et seq.]; or

(E) a corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.].

(7) Failed financial institution

The term ''failed financial institution'' means a financial institution that—

(A) fails to satisfy a covered contractual payment obligation when due;

(B) has commenced or had commenced against it insolvency, liquidation, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings; or

(C) has generally ceased to meet its obligations when due.

[1] See References in Text note below.

(8) Failed member

The term ''failed member'' means any member that—

(A) fails to satisfy a covered clearing obligation when due,

(B) has commenced or had commenced against it insolvency, liquidation, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings, or

(C) has generally ceased to meet its obligations when due.

(9) Financial institution

The term ''financial institution'' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution as determined by the Board of Governors of the Federal Reserve System.

(10) Futures commission merchant

The term ''futures commission merchant'' means a company that is registered or licensed under Federal law to engage in the business of selling futures and options in commodities.

(11) Member

The term ''member'' means a member of or participant in a clearing organization, and includes the clearing organization and any other clearing organization with which such clearing organization has a netting contract.

(12) Net entitlement

The term ''net entitlement'' means the amount by which the covered contractual payment entitlements of a financial institution or member exceed the covered contractual payment obligations of the institution or member after netting under a netting contract.

(13) Net obligation

The term ''net obligation'' means the amount by which the covered contractual payment obligations of a financial institution or member exceed the covered contractual payment entitlements of the institution or member after netting under a netting contract.

(14) Netting contract

(A) In general

The term ''netting contract''—

(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or close out values relating to such obligations or entitlements) among the parties to the agreement; and

(ii) includes the rules of a clearing organization.

(B) Invalid contracts not included

The term ''netting contract'' does not include any contract or agreement that is invalid under or precluded by Federal law.

(15) Payment

The term ''payment'' means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.

(Pub. L. 102–242, title IV, §402, Dec. 19, 1991, 105 Stat. 2372; Pub. L. 102–550, title XVI, §1606(a), Oct. 28, 1992, 106 Stat. 4087; Pub. L. 106–554, §1(a)(5) [title I, §§112(a)(2), 123(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–391, 2763A–411; Pub. L. 109–8, title IX, §906(a), Apr. 20, 2005, 119 Stat. 167.)

REFERENCES IN TEXT

This title, referred to in par. (1)(B), means title IV of Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2371. For complete classification of title IV to the Code, see Tables.

The Securities Exchange Act of 1934, referred to in par. (2)(A)(ii), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Section 25(a) of the Federal Reserve Act, referred to in par. (6), which is classified to subchapter II (§611 et seq.) of chapter 6 of this title, was renumbered section 25A of that act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§601 et seq.) of chapter 6 of this title.

AMENDMENTS

2005—Par. (2)(A)(ii). Pub. L. 109–8, §906(a)(1)(A), inserted before semicolon '', or is exempt from such registration by order of the Securities and Exchange Commission''.

Par. (2)(B). Pub. L. 109–8, §906(a)(1)(B), inserted before period at end '', that has been granted an exemption under section 6(c)(1) of title 7, or that is a multilateral clearing organization (as defined in section 4421 of this title)''.

Par. (6)(B). Pub. L. 109–8, §906(a)(2)(B), added subpar. (B). Former subpar. (B) redesignated (C).

Par. (6)(C). Pub. L. 109–8, §906(a)(2)(A), (C), redesignated subpar. (B) as (C) and amended it generally. Prior to amendment, subpar. (C) read as follows: ''a branch or agency as defined in section 1(b) of the International Banking Act of 1978;''. Former subpar. (C) redesignated (D).

Par. (6)(D), (E). Pub. L. 109–8, §906(a)(2)(A), redesignated subpars. (C) and (D) as (D) and (E), respectively.

Par. (11). Pub. L. 109–8, §906(a)(3), inserted before period at end ''and any other clearing organization with which such clearing organization has a netting contract''.

Par. (14)(A)(i). Pub. L. 109–8, §906(a)(4), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''means a contract or agreement between 2 or more financial institutions or members, that—

''(I) is governed by the laws of the United States, any State, or any political subdivision of any State, and

''(II) provides for netting present or future payment obligations or payment entitlements (including liquidation or close-out values relating to the obligations or entitlements) among the parties to the agreement; and''.

Par. (15). Pub. L. 109–8, §906(a)(5), added par. (15).

2000—Pub. L. 106–554, §1(a)(5) [title I, §112(a)(2)], substituted ''this subchapter'' for ''this chapter'' in introductory provisions.

Par. (2)(B). Pub. L. 106–554, §1(a)(5) [title I, §123(b)], added subpar. (B) and struck out former subpar. (B) which read as follows: ''that performs clearing functions for a contract market designated pursuant to the Commodity Exchange Act.''

1992—Par. (14)(B). Pub. L. 102–550 substituted ''Federal law'' for ''Federal commodities law''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases

commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

§ 4403. Bilateral netting

(a) General rule

Notwithstanding any other provision of State or Federal law (other than section 1821(e) of this title, section 5390(c) of this title, section 4617 of this title, section 1787(c) of this title, or any order authorized under section 78eee(b)(2) of title 15), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be terminated, liquidated, accelerated, and netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11).

(b) Limitation on obligation to make payment

The only obligation, if any, of a financial institution to make payment with respect to covered contractual payment obligations to another financial institution shall be equal to its net obligation to such other financial institution, and no such obligation shall exist if there is no net obligation.

(c) Limitation on right to receive payment

The only right, if any, of a financial institution to receive payments with respect to covered contractual payment entitlements from another financial institution shall be equal to its net entitlement with respect to such other financial institution, and no such right shall exist if there is no net entitlement.

(d) Payment of net entitlement of failed financial institution

The net entitlement of any failed financial institution, if any, shall be paid to the failed financial institution in accordance with, and subject to the conditions of, the applicable netting contract.

(e) Effectiveness notwithstanding status as financial institution

This section shall be given effect notwithstanding that a financial institution is a failed financial institution.

(f) Enforceability of security agreements

The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than section 1821(e) of this title, section 1787(c) of this title, and section 78eee(b)(2) of title 15).

(Pub. L. 102–242, title IV, § 403, Dec. 19, 1991, 105 Stat. 2374; Pub. L. 109–8, title IX, § 906(b), Apr. 20, 2005, 119 Stat. 168; Pub. L. 109–390, § 4(a), Dec. 12, 2006, 120 Stat. 2695; Pub. L. 111–203, title II, § 211(c), July 21, 2010, 124 Stat. 1514.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203 inserted ''section 5390(c) of this title, section 4617 of this title,'' after ''section 1821(e) of this title,''.

2006—Subsec. (a). Pub. L. 109–390 struck out ''paragraphs (8)(E), (8)(F), and (10)(B) of'' before ''section 1821(e)'' and ''section 1787(c)'' and inserted ''terminated, liquidated, accelerated, and'' after ''institutions shall be''.

Subsec. (f). Pub. L. 109–390, § 4(a)(1), struck out ''paragraphs (8)(E), (8)(F), and (10)(B) of'' before ''section 1821(e)'' and ''section 1787(c)''.

2005—Subsec. (a). Pub. L. 109–8, § 906(b)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''Notwithstanding any other provision of law, the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract.''

Subsec. (f). Pub. L. 109–8, § 906(b)(2), added subsec. (f).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–390 not applicable to any cases commenced under Title 11, Bankruptcy, or to appointments made under any Federal or State law, before Dec. 12, 2006, see section 7 of Pub. L. 109–390, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

§ 4404. Clearing organization netting

(a) General rule

Notwithstanding any other provision of State or Federal law (other than section 1821(e) of this title, section 1787(c) of this title, and any order authorized under section 78eee(b)(2) of title 15), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be terminated, liquidated, accelerated, and netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11).

(b) Limitation of obligation to make payment

The only obligation, if any, of a member of a clearing organization to make payment with respect to covered contractual payment obligations arising under a single netting contract to any other member of a clearing organization shall be equal to its net obligation arising under that netting contract, and no such obligation shall exist if there is no net obligation.

(c) Limitation on right to receive payment

The only right, if any, of a member of a clearing organization to receive payment with re-

spect to a covered contractual payment entitlement arising under a single netting contract from other members of a clearing organization shall be equal to its net entitlement arising under that netting contract, and no such right shall exist if there is no net entitlement.

(d) Entitlement of failed members

The net entitlement, if any, of any failed member of a clearing organization shall be paid to the failed member in accordance with, and subject to the conditions of, the applicable netting contract.

(e) Obligations of failed members

The net obligation, if any, of any failed member of a clearing organization shall be determined in accordance with, and subject to the conditions of, the applicable netting contract.

(f) Limitation on claims for entitlement

A failed member of a clearing organization shall have no recognizable claim against any member of a clearing organization for any amount based on such covered contractual payment entitlements other than its net entitlement.

(g) Effectiveness notwithstanding status as member

This section shall be given effect notwithstanding that a member is a failed member.

(h) Enforceability of security agreements

The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than section 1821(e) of this title, section 1787(c) of this title, and section 78eee(b)(2) of title 15).

(Pub. L. 102–242, title IV, § 404, Dec. 19, 1991, 105 Stat. 2374; Pub. L. 109–8, title IX, § 906(c), Apr. 20, 2005, 119 Stat. 168; Pub. L. 109–390, § 4(b), Dec. 12, 2006, 120 Stat. 2695.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–390 struck out ''paragraphs (8)(E), (8)(F), and (10)(B) of'' before ''section 1821(e)'' and ''section 1787(c)'' and inserted ''terminated, liquidated, accelerated, and'' after ''organization shall be''.

Subsec. (h). Pub. L. 109–390, § 4(b)(1), struck out ''paragraphs (8)(E), (8)(F), and (10)(B) of'' before ''section 1821(e)'' and ''section 1787(c)''.

2005—Subsec. (a). Pub. L. 109–8, § 906(c)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''Notwithstanding any other provision of law, the covered contractual payment obligations and covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract.''

Subsec. (h). Pub. L. 109–8, § 906(c)(2), added subsec. (h).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–390 not applicable to any cases commenced under Title 11, Bankruptcy, or to appointments made under any Federal or State law, before Dec. 12, 2006, see section 7 of Pub. L. 109–390, set out as a note under section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

§ 4405. Preemption

No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative agency, or otherwise, shall limit or delay application of otherwise enforceable netting contracts in accordance with sections 4403 and 4404 of this title.

(Pub. L. 102–242, title IV, § 405, Dec. 19, 1991, 105 Stat. 2375.)

§ 4406. Relationship to other payments systems

This chapter shall have no effect by implication or otherwise on the validity or legal enforceability of a netting arrangement of any payment system which is not subject to this chapter.

(Pub. L. 102–242, title IV, § 406, Dec. 19, 1991, 105 Stat. 2375.)

§ 4406a. Treatment of contracts with uninsured national banks, uninsured Federal branches and agencies, certain uninsured State member banks, and Edge Act corporations

(a) In general

Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act [12 U.S.C. 1821(e)] shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.], or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 4422 of this title, except that for such purpose—

(1) any reference to the ''Corporation as receiver'' or ''the receiver or the Corporation'' shall refer to the receiver appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.] or an uninsured State member bank;

(2) any reference to the ''Corporation'' (other than in section 11(e)(8)(D) of such Act [12 U.S.C. 1821(e)(8)(D)]), the ''Corporation, whether acting as such or as conservator or receiver'', a ''receiver'', or a ''conservator'' shall refer to the receiver or conservator appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver or conservator appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.] or an uninsured State member bank; and

(3) any reference to an ''insured depository institution'' or ''depository institution'' shall

refer to an uninsured national bank, an uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.], or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 4422 of this title.

(b) Liability

The liability of a receiver or conservator of an uninsured national bank, uninsured Federal branch or agency, a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.], or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 4422 of this title, shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act [12 U.S.C. 1821(e)].

(c) Regulatory authority

(1) In general

The Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency and the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.], or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 4422 of this title, in consultation with the Federal Deposit Insurance Corporation, may each promulgate regulations solely to implement this section.

(2) Specific requirement

In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act [12 U.S.C. 1821(e)], the Comptroller of the Currency and the Board of Governors of the Federal Reserve System each shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

(d) Definitions

For purposes of this section, the terms ''Federal branch'', ''Federal agency'', and ''foreign bank'' have the same meanings as in section 3101 of this title.

(Pub. L. 102–242, title IV, § 407, as added Pub. L. 109–8, title IX, § 906(d)(2), Apr. 20, 2005, 119 Stat. 169.)

REFERENCES IN TEXT

Section 25A of the Federal Reserve Act, referred to in subsecs. (a), (b), and (c)(1), popularly known as the Edge Act, is classified to subchapter II (§ 611 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 611 of this title and Tables.

Section 11(e)(8)(D) of such Act, referred to in subsec. (a)(2), probably means section 11(e)(8)(D) of the Federal Deposit Insurance Act, which is classified to section 1821(e)(8)(D) of this title.

The Federal Deposit Insurance Act, referred to in subsec. (c)(2), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

PRIOR PROVISIONS

A prior section 407 of Pub. L. 102–242 was renumbered section 407A and is classified to section 4407 of this title.

EFFECTIVE DATE

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of Title 11.

§ 4407. National emergencies

The provisions of this chapter may not be construed to limit the authority of the President under the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.) or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(Pub. L. 102–242, title IV, § 407A, formerly § 407, Dec. 19, 1991, 105 Stat. 2375; renumbered § 407A, Pub. L. 109–8, title IX, § 906(d)(1), Apr. 20, 2005, 119 Stat. 169.)

REFERENCES IN TEXT

The Trading With the Enemy Act, referred to in text, is act Oct. 6, 1917, ch. 106, 40 Stat. 411, as amended, which is classified to sections 1 to 6, 7 to 39 and 41 to 44 of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in text, is Pub. L. 95–223, title II, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§ 1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

SUBCHAPTER II—MULTILATERAL CLEARING ORGANIZATIONS

§ 4421. Definitions

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

(1) Multilateral clearing organization

The term ''multilateral clearing organization'' means a system utilized by more than two participants in which the bilateral credit exposures of participants arising from the transactions cleared are effectively eliminated and replaced by a system of guarantees, insurance, or mutualized risk of loss.

(2) Over-the-counter derivative instrument

The term ''over-the-counter derivative instrument'' includes—

(A) any agreement, contract, or transaction, including the terms and conditions incorporated by reference in any such agreement, contract, or transaction, which is an interest rate swap, option, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, and forward rate agreement; a same day-to-

morrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, or forward agreement; an equity index or equity swap, option, or forward agreement; a debt index or debt swap, option, or forward agreement; a credit spread or credit swap, option, or forward agreement; a commodity index or commodity swap, option, or forward agreement; and a weather swap, weather derivative, or weather option;

(B) any agreement, contract or transaction similar to any other agreement, contract, or transaction referred to in this clause[1] that is presently, or in the future becomes, regularly entered into by parties that participate in swap transactions (including terms and conditions incorporated by reference in the agreement) and that is a forward, swap, or option on one or more occurrences of any event, rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic or other indices or measures of economic or other risk or value;

(C) any agreement, contract, or transaction excluded from the Commodity Exchange Act [7 U.S.C. 1 et seq.] under section 2(c), 2(d), 2(f), or 2(g) of such Act [7 U.S.C. 2(c), (d), (f), (g)], or exempted under section 2(h) or 4(c) of such Act [7 U.S.C. 2(h), 6(c)]; and

(D) any option to enter into any, or any combination of, agreements, contracts or transactions referred to in this subparagraph.[1]

(3) Other definitions

The terms ''insured State nonmember bank'', ''State member bank'', and ''affiliate'' have the same meanings as in section 1813 of this title.

(Pub. L. 102–242, title IV, §408, as added Pub. L. 106–554, §1(a)(5) [title I, §112(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–391; Pub. L. 111–203, title VII, §749(i), July 21, 2010, 124 Stat. 1748.)

AMENDMENT OF PARAGRAPH (2)(C)

Pub. L. 111–203, title VII, §§749(i), 754, July 21, 2010, 124 Stat. 1748, 1754, provided that, effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, paragraph (2)(C) of this section is amended by substituting ''section 2(c), 2(f), or 2(i) of that Act'' for ''section 2(c), 2(d), 2(f), or (2)(g) of such Act'' and striking out ''2(h) or''.

REPEAL OF SECTION

Pub. L. 111–203, title VII, §§740, 754, July 21, 2010, 124 Stat. 1729, 1754, provided that, effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, this section is repealed.

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in par. (2)(C), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

EFFECTIVE DATE OF REPEAL

Repeal effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 note under section 1a of Title 7, Agriculture.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 749(i) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of Title 7, Agriculture.

§ 4422. Multilateral clearing organizations

(a) In general

Except with respect to clearing organizations described in subsection (b) of this section, no person may operate a multilateral clearing organization for over-the-counter derivative instruments, or otherwise engage in activities that constitute such a multilateral clearing organization unless the person is a national bank, a State member bank, an insured State nonmember bank, an affiliate of a national bank, a State member bank, or an insured State nonmember bank, or a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.].

(b) Clearing organizations

Subsection (a) of this section shall not apply to any clearing organization that—

(1) is registered as a clearing agency under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.];

(2) is registered as a derivatives clearing organization under the Commodity Exchange Act [7 U.S.C. 1 et seq.]; or

(3) is supervised by a foreign financial regulator that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as applicable, has determined satisfies appropriate standards.

(Pub. L. 102–242, title IV, §409, as added Pub. L. 106–554, §1(a)(5) [title I, §112(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–392.)

REPEAL OF SECTION

Pub. L. 111–203, title VII, §§740, 754, July 21, 2010, 124 Stat. 1729, 1754, provided that, effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A

[1] So in original. Probably should be ''this paragraph''.

(§§ 711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, this section is repealed.

REFERENCES IN TEXT

Section 25A of the Federal Reserve Act, referred to in subsec. (a), popularly known as the Edge Act, is classified to subchapter II (§ 611 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 611 of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Commodity Exchange Act, referred to in subsec. (b)(2), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

EFFECTIVE DATE OF REPEAL

Repeal effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§ 711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 note under section 1a of Title 7, Agriculture.

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§ 4501. Congressional findings

The Congress finds that—

(1) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (referred to in this section collectively as the ''enterprises''), and the Federal Home Loan Banks (referred to in this section as the ''Banks''), have important public missions that are reflected in the statutes and charter Acts establishing the Banks and the enterprises;

(2) because the continued ability of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to accomplish their public missions is important to providing housing in the United States and the health of the Nation's economy, more effective Federal regulation is needed to reduce the risk of failure of the enterprises;

(3) considering the current operating procedures of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks, the enterprises and the Banks currently pose low financial risk of insolvency;

(4) neither the enterprises nor the Banks, nor any securities or obligations issued by the enterprises or the Banks, are backed by the full faith and credit of the United States;

(5) an entity regulating the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation should have sufficient autonomy from the enterprises and special interest groups;

(6) an entity regulating such enterprises should have the authority to establish capital standards, require financial disclosure, prescribe adequate standards for books and records and other internal controls, conduct examinations when necessary, and enforce compliance with the standards and rules that it establishes;

(7) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return; and

(8) the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.] should be amended to emphasize that providing for financial safety and soundness of the Federal Home Loan Banks is the primary mission of the Federal Housing Finance Board.

(Pub. L. 102–550, title XIII, §1302, Oct. 28, 1992, 106 Stat. 3941.)

REFERENCES IN TEXT

The Federal Home Loan Bank Act, referred to in par. (8), is act July 22, 1932, ch. 522, 47 Stat. 725, as amended, which is classified generally to chapter 11 (§1421 et seq.) of this title. For complete classification of this Act to the Code, see section 1421 of this title and Tables.

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–289, §1(a), July 30, 2008, 122 Stat. 2654, provided that: ''This Act [see Tables for classification] may be cited as the 'Housing and Economic Recovery Act of 2008'.''

Pub. L. 110–289, div. A, §1001, July 30, 2008, 122 Stat. 2659, provided that: ''This division [see Tables for classification] may be cited as the 'Federal Housing Finance Regulatory Reform Act of 2008'.''

SHORT TITLE

Section 1301 of title XIII of Pub. L. 102–550 provided that: ''This title [enacting this chapter, amending sections 1422a, 1430, 1430b, 1451 to 1456, 1716 to 1719, 1723, 1723a, and 1723c of this title, sections 3132 and 5313 of Title 5, Government Organization and Employees, section 1905 of Title 18, Crimes and Criminal Procedure, and section 3534 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 1451, 1452, 1723, and 4562 of this title, and amending provisions set out as a note under section 1451 of this title] may be cited as the 'Federal Housing Enterprises Financial Safety and Soundness Act of 1992'.''

§ 4502. Definitions

For purposes of this chapter:

(1) Affiliate

Except as provided by the Director, the term ''affiliate'' means any entity that controls, is controlled by, or is under common control with, an enterprise.

(2) Agency

The term ''Agency'' means the Federal Housing Finance Agency established under section 4511 of this title.

(3) Authorizing statutes

The term ''authorizing statutes'' means—

(A) the Federal National Mortgage Association Charter Act;

(B) the Federal Home Loan Mortgage Corporation Act; and

(C) the Federal Home Loan Bank Act.

(4) Board

The term ''Board'' means the Federal Housing Finance Oversight Board established under section 4513a of this title.

(5) Capital distribution

(A) In general

The term ''capital distribution'' means—

(i) any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an enterprise, except a dividend consisting only of shares of the enterprise;

(ii) any payment made by an enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an acquisition by the enterprise of such shares; and

(iii) any transaction that the Director determines by regulation to be, in substance, the distribution of capital.

(B) Exception

Any payment made by an enterprise to repurchase its shares for the purpose of fulfilling an obligation of the enterprise under an employee stock ownership plan that is qualified under section 401 of title 26 or any substantially equivalent plan, as determined by the Director, shall not be considered a capital distribution.

(6) Compensation

The term ''compensation'' means any payment of money or the provision of any other

thing of current or potential value in connection with employment.

(7) Core capital

The term ''core capital'' means, with respect to an enterprise, the sum of the following (as determined in accordance with generally accepted accounting principles):

(A) The par or stated value of outstanding common stock.

(B) The par or stated value of outstanding perpetual, noncumulative preferred stock.

(C) Paid-in capital.

(D) Retained earnings.

The core capital of an enterprise shall not include any amounts that the enterprise could be required to pay, at the option of investors, to retire capital instruments.

(8) Default; in danger of default

(A) Default

The term ''default'' means, with respect to a regulated entity, any adjudication or other official determination by any court of competent jurisdiction, or the Agency, pursuant to which a conservator, receiver, limited-life regulated entity, or legal custodian is appointed for a regulated entity.

(B) In danger of default

The term ''in danger of default'' means a regulated entity with respect to which, in the opinion of the Agency—

(i) the regulated entity is not likely to be able to pay the obligations of the regulated entity in the normal course of business; or

(ii) the regulated entity—

(I) has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(II) there is no reasonable prospect that the capital of the regulated entity will be replenished.

(9) Director

The term ''Director'' means the Director of the Federal Housing Finance Agency.

(10) Enterprise

The term ''enterprise'' means—

(A) the Federal National Mortgage Association and any affiliate thereof; and

(B) the Federal Home Loan Mortgage Corporation and any affiliate thereof.

(11) Entity-affiliated party

The term ''entity-affiliated party'' means—

(A) any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

(B) any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Bank solely by virtue of being a shareholder of, and obtaining advances from, that Bank;

(C) any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if—

(i) the independent contractor knowingly or recklessly participates in—

(I) any violation of any law or regulation;

(II) any breach of fiduciary duty; or

(III) any unsafe or unsound practice; and

(ii) such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity;

(D) any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and

(E) the Office of Finance.

(12) Executive officer

The term ''executive officer'' means, with respect to an enterprise, the chairman of the board of directors, chief executive officer, chief financial officer, president, vice chairman, any executive vice president, and any senior vice president in charge of a principal business unit, division, or function.

(13) Limited-life regulated entity

The term ''limited-life regulated entity'' means an entity established by the Agency under section 4617(i) of this title with respect to a Federal Home Loan Bank in default or in danger of default or with respect to an enterprise in default or in danger of default.

(14) Low-income

The term ''low-income'' means—

(A) in the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(B) in the case of rental units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families, as determined by the Director.

(15) Median income

The term ''median income'' means, with respect to an area, the unadjusted median family income for the area, as determined and published annually by the Director.

(16) Moderate-income

The term ''moderate-income'' means—

(A) in the case of owner-occupied units, income not in excess of area median income; and

(B) in the case of rental units, income not in excess of area median income, with adjustments for smaller and larger families, as determined by the Director.

(17) Mortgage purchases

The term ''mortgage purchases'' includes mortgages purchased for portfolio or securitization.

(18) Multifamily housing

The term ''multifamily housing'' means a residence consisting of more than 4 dwelling units.

(19) Office of Finance

The term ''Office of Finance'' means the Office of Finance of the Federal Home Loan Bank System (or any successor thereto).

(20) Regulated entity

The term ''regulated entity'' means—

(A) the Federal National Mortgage Association and any affiliate thereof;

(B) the Federal Home Loan Mortgage Corporation and any affiliate thereof; and

(C) any Federal Home Loan Bank.

(21) Single family housing

The term ''single family housing'' means a residence consisting of 1 to 4 dwelling units.

(22) State

The term ''State'' means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(23) Total capital

The term ''total capital'' means, with respect to an enterprise, the sum of the following:

(A) The core capital of the enterprise;[1]

(B) A general allowance for foreclosure losses, which—

(i) shall include an allowance for portfolio mortgage losses, an allowance for nonreimbursable foreclosure costs on government claims, and an allowance for liabilities reflected on the balance sheet for the enterprise for estimated foreclosure losses on mortgage-backed securities; and

(ii) shall not include any reserves of the enterprise made or held against specific assets.

(C) Any other amounts from sources of funds available to absorb losses incurred by the enterprise, that the Director by regulation determines are appropriate to include in determining total capital.

(24) Very low-income

(A) In general

The term ''very low-income'' means—

(i) in the case of owner-occupied units, families having incomes not greater than 50 percent of the area median income; and

(ii) in the case of rental units, families having incomes not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Director.

(B) Rule of construction

For purposes of section[2] 4568 and 4569 of this title, the term ''very low-income'' means—

(i) in the case of owner-occupied units, income in excess of 30 percent but not greater than 50 percent of the area median income; and

(ii) in the case of rental units, income in excess of 30 percent but not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Director.

(25) Violation

The term ''violation'' includes any action (alone or in combination with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(26) Conforming mortgage

The term ''conforming mortgage'' means, with respect to an enterprise, a conventional mortgage having an original principal obligation that does not exceed the dollar amount limitation in effect at the time of such origination and applicable to such mortgage, under, as applicable—

(A) section 302(b)(2) of the Federal National Mortgage Association Charter Act [12 U.S.C. 1717(b)(2)]; or

(B) section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1454(a)(2)].

(27) Extremely low-income

The term ''extremely low-income'' means—

(A) in the case of owner-occupied units, income not in excess of 30 percent of the area median income; and

(B) in the case of rental units, income not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by the Director.

(28) Low-income area

The term ''low-income area'' means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located, and, for the purposes of section 4562(a)(1)(B) of this title, shall include families having incomes not greater than 100 percent of the area median income who reside in minority census tracts and shall include families having incomes not greater than 100 percent of the area median income who reside in designated disaster areas.

(29) Minority census tract

The term ''minority census tract'' means a census tract that has a minority population of at least 30 percent and a median family income of less than 100 percent of the area family median income.

(30) Shortage of standard rental units both affordable and available to extremely low-income renter households

(A) In general

The term ''shortage of standard rental units both affordable and available to extremely low-income renter households'' means the gap between—

(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 30 percent of the adjusted area median income as de-

[1] So in original. The semicolon probably should be a period.

[2] So in original. Probably should be ''sections''.

termined by the Director that are occupied by extremely low-income renter households or are vacant for rent; and

(ii) the number of extremely low-income renter households.

(B) Rule of construction

If the number of units described in subparagraph (A)(i) exceeds the number of extremely low-income households as described in subparagraph (A)(ii), there is no shortage.

(31) Shortage of standard rental units both affordable and available to very low-income renter households

(A) In general

The term ''shortage of standard rental units both affordable and available to very low-income renter households'' means the gap between—

(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 50 percent of the adjusted area median income as determined by the Director that are occupied by either extremely low- or very low-income renter households or are vacant for rent; and

(ii) the number of extremely low- and very low-income renter households.

(B) Rule of construction

If the number of units described in subparagraph (A)(i) exceeds the number of extremely low- and very low-income households as described in subparagraph (A)(ii), there is no shortage.

(Pub. L. 102–550, title XIII, § 1303, Oct. 28, 1992, 106 Stat. 3942; Pub. L. 110–289, div. A, § 1002(a), title I, § 1128(d), July 30, 2008, 122 Stat. 2659, 2702.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

The Federal National Mortgage Association Charter Act, referred to in par. (3)(A), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, which is classified generally to subchapter III (§ 1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in par. (3)(B), is title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, which is classified generally to chapter 11A (§ 1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

The Federal Home Loan Bank Act, referred to in par. (3)(C), is act July 22, 1932, ch. 522, 47 Stat. 725, which is classified generally to chapter 11 (§ 1421 et seq.) of this title. For complete classification of this Act to the Code, see section 1421 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289, § 1002(a)(2)–(14), added pars. (2) to (4), (8), (11), (13), (19), (20), and (25), redesignated former pars. (2) to (12) and (16) to (19) as (5) to (7), (9), (10), (12), (14) to (18), and (21) to (24), respectively, substituted ''Federal Housing Finance Agency'' for ''Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' in par. (9), and struck out former pars. (13) to (15) which defined the terms ''new program'', ''Office'', and ''Secretary'', respectively.

Pars. (8)(B), (9), (10)(B), (19)(B). Pub. L. 110–289, § 1002(a)(1), substituted ''Director'' for ''Secretary''.

Par. (24). Pub. L. 110–289, § 1128(d)(1), added par. (24) and struck out former par. (24) which defined the term ''very low-income''.

Pars. (26) to (31). Pub. L. 110–289, § 1128(d)(2), added pars. (26) to (31).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 4503. Protection of taxpayers against liability

This chapter may not be construed as obligating the Federal Government, either directly or indirectly, to provide any funds to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Federal Home Loan Banks, or to honor, reimburse, or otherwise guarantee any obligation or liability of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Federal Home Loan Banks. This chapter may not be construed as implying that any such enterprise or Bank, or any obligations or securities of such an enterprise or Bank, are backed by the full faith and credit of the United States.

(Pub. L. 102–550, title XIII, § 1304, Oct. 28, 1992, 106 Stat. 3944.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''This title and the amendments made by this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

SUBCHAPTER I—SUPERVISION AND REGULATION OF ENTERPRISES

PART A—FINANCIAL SAFETY AND SOUNDNESS REGULATOR

§ 4511. Establishment of the Federal Housing Finance Agency

(a) Establishment

There is established the Federal Housing Finance Agency, which shall be an independent agency of the Federal Government.

(b) General supervisory and regulatory authority

(1) In general

Each regulated entity shall, to the extent provided in this chapter, be subject to the supervision and regulation of the Agency.

(2) Authority over Fannie Mae, Freddie Mac, the Federal Home Loan Banks, and the Office of Finance

The Director shall have general regulatory authority over each regulated entity and the Office of Finance, and shall exercise such general regulatory authority, including such duties and authorities set forth under section

4513 of this title, to ensure that the purposes of this Act, the authorizing statutes, and any other applicable law are carried out.

(c) Savings provision

The authority of the Director to take actions under subchapters II and III shall not in any way limit the general supervisory and regulatory authority granted to the Director under subsection (b).

(Pub. L. 102–550, title XIII, §1311, as added Pub. L. 110–289, div. A, title I, §1101, July 30, 2008, 122 Stat. 2661.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

This Act, referred to in subsec. (b)(2), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

PRIOR PROVISIONS

A prior section 4511, Pub. L. 102–550, title XIII, §1311, Oct. 28, 1992, 106 Stat. 3944, related to establishment of the Office of Federal Housing Enterprise Oversight, prior to repeal by Pub. L. 110–289, div. A, title I, §1101, July 30, 2008, 122 Stat. 2661.

TRANSFER AND RIGHTS OF CERTAIN HUD EMPLOYEES

Pub. L. 110–289, div. A, title I, §1133, July 30, 2008, 122 Stat. 2728, provided that:

''(a) TRANSFER.—Each employee of the Department of Housing and Urban Development whose position responsibilities primarily involve the establishment and enforcement of the housing goals under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4561 et seq.) shall be transferred to the Federal Housing Finance Agency for employment, not later than the effective date of the Federal Housing Finance Regulatory Reform Act of 2008 [div. A (§§1001–1605) of Pub. L. 110–289, approved July 30, 2008], and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

''(b) GUARANTEED POSITIONS.—

''(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer.

''(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee transferred under subsection (a) holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, in the case of a temporary employee, separated in accordance with the terms of the appointment of the employee.

''(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

''(1) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such position shall be transferred, subject to paragraph (2).

''(2) DECLINE OF TRANSFER.—The Director may decline a transfer of authority under paragraph (1) to the extent that such authority relates to—

''(A) a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character; or

''(B) a noncareer position in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

''(d) REORGANIZATION.—If the Director determines, after the end of the 1-year period beginning on the effective date of the Federal Housing Finance Regulatory Reform Act of 2008 [div. A (§§1001–1605) of Pub. L. 110–289, approved July 30, 2008], that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

''(e) EMPLOYEE BENEFIT PROGRAMS.—

''(1) IN GENERAL.—Any employee described under subsection (a) accepting employment with the Agency as a result of a transfer under subsection (a) may retain, for 12 months after the date on which such transfer occurs, membership in any employee benefit program of the Agency or the Department of Housing and Urban Development, as applicable, including insurance, to which such employee belongs on such effective date, if—

''(A) the employee does not elect to give up the benefit or membership in the program; and

''(B) the benefit or program is continued by the Director of the Federal Housing Finance Agency.

''(2) COST DIFFERENTIAL.—

''(A) IN GENERAL.—The difference in the costs between the benefits which would have been provided by the Department of Housing and Urban Development and those provided by this section shall be paid by the Director.

''(B) HEALTH INSURANCE.—If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director, the employee shall be permitted to select an alternate Federal health insurance program not later than 30 days after the date of such election or notice, without regard to any other regularly scheduled open season.''

[For definitions of terms used in section 1133 of Pub. L. 110–289, set out above, see section 1002(b) of Pub. L. 110–289, set out below.]

TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFHEO AND THE FEDERAL HOUSING FINANCE BOARD

Pub. L. 110–289, div. A, title III, July 30, 2008, 122 Stat. 2794–2799, provided that:

''SUBTITLE A—OFHEO

''SEC. 1301. ABOLISHMENT OF OFHEO.

''(a) IN GENERAL.—Effective at the end of the 1-year period beginning on the date of enactment of this Act [July 30, 2008], the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and the positions of the Director and Deputy Director of such Office are abolished.

''(b) DISPOSITION OF AFFAIRS.—During the 1-year period beginning on the date of enactment of this Act [July 30, 2008], the Director of the Office of Federal Housing Enterprise Oversight, solely for the purpose of winding up the affairs of the Office of Federal Housing Enterprise Oversight—

''(1) shall manage the employees of such Office and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee under section 1303; and

''(2) may take any other action necessary for the purpose of winding up the affairs of the Office.

''(c) STATUS OF EMPLOYEES BEFORE TRANSFER.—The amendments made by title I [title I (§§1101–1163) of div. A of Pub. L. 110–289, see Tables for classification] and the abolishment of the Office of Federal Housing Enterprise Oversight under subsection (a) of this section may not be construed to affect the status of any employee

of such Office as an employee of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 1303.

''(d) USE OF PROPERTY AND SERVICES.—

''(1) PROPERTY.—The Director may use the property of the Office of Federal Housing Enterprise Oversight to perform functions which have been transferred to the Director for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Act [see Tables for classification] or any amendment made by this Act to any other provision of law.

''(2) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Office of Federal Housing Enterprise Oversight before the expiration of the period under subsection (a) in connection with functions that are transferred to the Director shall—

''(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

''(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

''(e) CONTINUATION OF SERVICES.—The Director may use the services of employees and other personnel of the Office of Federal Housing Enterprise Oversight, on a reimbursable basis, to perform functions which have been transferred to the Director for such time as is reasonable to facilitate the orderly transfer of functions pursuant to any other provision of this Act [see Tables for classification] or any amendment made by this Act to any other provision of law.

''(f) SAVINGS PROVISIONS.—

''(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Federal Housing Enterprise Oversight, or any other person, which—

''(A) arises under—

''(i) the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4501 et seq.];

''(ii) the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.];

''(iii) the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.]; or

''(iv) any other provision of law applicable with respect to such Office; and

''(B) existed on the day before the date of abolishment under subsection (a).

''(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Director of the Office of Federal Housing Enterprise Oversight in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall abate by reason of the enactment of this Act [see Tables for classification], except that the Director of the Federal Housing Finance Agency shall be substituted for the Director of the Office of Federal Housing Enterprise Oversight as a party to any such action or proceeding.

''SEC. 1302. CONTINUATION AND COORDINATION OF CERTAIN ACTIONS.

''(a) IN GENERAL.—All regulations, orders, and determinations described in subsection (b) shall remain in effect according to the terms of such regulations, orders, and determinations, and shall be enforceable by or against the Director or the Secretary of Housing and Urban Development, as the case may be, until modified, terminated, set aside, or superseded in accordance with applicable law by the Director or the Secretary, as the case may be, any court of competent jurisdiction, or operation of law.

''(b) APPLICABILITY.—A regulation, order, or determination is described in this subsection if it—

''(1) was issued, made, prescribed, or allowed to become effective by—

''(A) the Office of Federal Housing Enterprise Oversight;

''(B) the Secretary of Housing and Urban Development, and relates to the authority of the Secretary under—

''(i) the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4501 et seq.];

''(ii) the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.], with respect to the Federal National Mortgage Association; or

''(iii) the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.], with respect to the Federal Home Loan Mortgage Corporation; or

''(C) a court of competent jurisdiction, and relates to functions transferred by this Act [see Tables for classification]; and

''(2) is in effect on the effective date of the abolishment under section 1301(a).

''SEC. 1303. TRANSFER AND RIGHTS OF EMPLOYEES OF OFHEO.

''(a) TRANSFER.—Each employee of the Office of Federal Housing Enterprise Oversight shall be transferred to the Agency for employment, not later than the effective date of the abolishment under section 1301(a), and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

''(b) GUARANTEED POSITIONS.—

''(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer.

''(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee transferred under subsection (a) holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, in the case of a temporary employee, separated in accordance with the terms of the appointment of the employee.

''(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

''(1) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such position shall be transferred, subject to paragraph (2).

''(2) DECLINE OF TRANSFER.—The Director may decline a transfer of authority under paragraph (1) to the extent that such authority relates to—

''(A) a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character; or

''(B) a noncareer position in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

''(d) REORGANIZATION.—If the Director determines, after the end of the 1-year period beginning on the effective date of the abolishment under section 1301(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

''(e) EMPLOYEE BENEFIT PROGRAMS.—

''(1) IN GENERAL.—Any employee of the Office of Federal Housing Enterprise Oversight accepting employment with the Agency as a result of a transfer under subsection (a) may retain, for 12 months after the date on which such transfer occurs, membership in any employee benefit program of the Agency or the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development, as applicable, including insurance, to which such employee belongs on the date of the abolishment under section 1301(a), if—

''(A) the employee does not elect to give up the benefit or membership in the program; and

''(B) the benefit or program is continued by the Director of the Federal Housing Finance Agency.

''(2) COST DIFFERENTIAL.—

''(A) IN GENERAL.—The difference in the costs between the benefits which would have been provided by the Office of Federal Housing Enterprise Oversight and those provided by this section shall be paid by the Director.

''(B) HEALTH INSURANCE.—If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director, the employee shall be permitted to select an alternate Federal health insurance program not later than 30 days after the date of such election or notice, without regard to any other regularly scheduled open season.

''SEC. 1304. TRANSFER OF PROPERTY AND FACILITIES.

''Upon the effective date of its abolishment under section 1301(a), all property of the Office of Federal Housing Enterprise Oversight shall transfer to the Agency.

''SUBTITLE B—FEDERAL HOUSING FINANCE BOARD

''SEC. 1311. ABOLISHMENT OF THE FEDERAL HOUSING FINANCE BOARD.

''(a) IN GENERAL.—Effective at the end of the 1-year period beginning on the date of enactment of this Act [July 30, 2008], the Federal Housing Finance Board (in this subtitle referred to as the 'Board') is abolished.

''(b) DISPOSITION OF AFFAIRS.—During the 1-year period beginning on the date of enactment of this Act [July 30, 2008], the Board, solely for the purpose of winding up the affairs of the Board—

''(1) shall manage the employees of the Board and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee under section 1313; and

''(2) may take any other action necessary for the purpose of winding up the affairs of the Board.

''(c) STATUS OF EMPLOYEES BEFORE TRANSFER.—The amendments made by titles I and II [titles I (§§ 1101–1163) and II (§§ 1201–1218) of div. A of Pub. L. 110–289, see Tables for classification] and the abolishment of the Board under subsection (a) may not be construed to affect the status of any employee of the Board as an employee of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 1313.

''(d) USE OF PROPERTY AND SERVICES.—

''(1) PROPERTY.—The Director may use the property of the Board to perform functions which have been transferred to the Director, for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Act [see Tables for classification] or any amendment made by this Act to any other provision of law.

''(2) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Board before the expiration of the 1-year period under subsection (a) in connection with functions that are transferred to the Director shall—

''(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

''(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

''(e) CONTINUATION OF SERVICES.—The Director may use the services of employees and other personnel of the Board, on a reimbursable basis, to perform functions which have been transferred to the Director for such time as is reasonable to facilitate the orderly transfer of functions pursuant to any other provision of this Act [see Tables for classification] or any amendment made by this Act to any other provision of law.

''(f) SAVINGS PROVISIONS.—

''(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, a member of the Board, or any other person, which—

''(A) arises under the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.], or any other provision of law applicable with respect to the Board; and

''(B) existed on the day before the effective date of the abolishment under subsection (a).

''(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Board in connection with functions that are transferred under this Act [see Tables for classification] to the Director shall abate by reason of the enactment of this Act, except that the Director shall be substituted for the Board or any member thereof as a party to any such action or proceeding.

''SEC. 1312. CONTINUATION AND COORDINATION OF CERTAIN ACTIONS.

''(a) IN GENERAL.—All regulations, orders, determinations, and resolutions described under subsection (b) shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director until modified, terminated, set aside, or superseded in accordance with applicable law by the Director, any court of competent jurisdiction, or operation of law.

''(b) APPLICABILITY.—A regulation, order, determination, or resolution is described under this subsection if it—

''(1) was issued, made, prescribed, or allowed to become effective by—

''(A) the Board; or

''(B) a court of competent jurisdiction, and relates to functions transferred by this Act [see Tables for classification]; and

''(2) is in effect on the effective date of the abolishment under section 1311(a).

''SEC. 1313. TRANSFER AND RIGHTS OF EMPLOYEES OF THE FEDERAL HOUSING FINANCE BOARD.

''(a) TRANSFER.—Each employee of the Board shall be transferred to the Agency for employment, not later than the effective date of the abolishment under section 1311(a), and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

''(b) GUARANTEED POSITIONS.—

''(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer.

''(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, if the employee is a temporary employee, separated in accordance with the terms of the appointment of the employee.

''(c) APPOINTMENT AUTHORITY FOR EXCEPTED EMPLOYEES.—

''(1) IN GENERAL.—In the case of an employee occupying a position in the excepted service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such position shall be transferred, subject to paragraph (2).

''(2) DECLINE OF TRANSFER.—The Director may decline a transfer of authority under paragraph (1), to the extent that such authority relates to a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character.

''(d) REORGANIZATION.—If the Director determines, after the end of the 1-year period beginning on the effective date of the abolishment under section 1311(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

''(e) EMPLOYEE BENEFIT PROGRAMS.—

''(1) IN GENERAL.—Any employee of the Board accepting employment with the Agency as a result of a transfer under subsection (a) may retain, for 12 months after the date on which such transfer occurs, membership in any employee benefit program of the Agency or the Board, as applicable, including insurance, to which such employee belongs on the effective date of the abolishment under section 1311(a) if—

''(A) the employee does not elect to give up the benefit or membership in the program; and

''(B) the benefit or program is continued by the Director.

''(2) COST DIFFERENTIAL.—

''(A) IN GENERAL.—The difference in the costs between the benefits which would have been provided by the Board and those provided by this section shall be paid by the Director.

''(B) HEALTH INSURANCE.—If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director, the employee shall be permitted to select an alternate Federal health insurance program not later than 30 days after the date of such election or notice, without regard to any other regularly scheduled open season.

''SEC. 1314. TRANSFER OF PROPERTY AND FACILITIES.

''Upon the effective date of the abolishment under section 1311(a), all property of the Board shall transfer to the Agency.''

[For definitions of terms used in title III of Pub. L. 110–289, set out above, see section 1002(b) of Pub. L. 110–289, set out below.]

DEFINITIONS

Pub. L. 110–289, div. A, § 1002(b), July 30, 2008, 122 Stat. 2661, provided that: ''As used in this Act [see Tables for classification], unless otherwise specified—

''(1) the term 'Agency' means the Federal Housing Finance Agency;

''(2) the term 'Director' means the Director of the Agency; and

''(3) the terms 'enterprise', 'regulated entity', and 'authorizing statutes' have the same meanings as in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4502], as amended by this Act.''

§ 4512. Director

(a) Establishment of position

There is established the position of the Director of the Agency, who shall be the head of the Agency.

(b) Appointment; term

(1) Appointment

The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of capital markets, including the mortgage securities markets and housing finance.

(2) Term

The Director shall be appointed for a term of 5 years, unless removed before the end of such term for cause by the President.

(3) Vacancy

A vacancy in the position of Director that occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established under paragraph (1), and the Director appointed to fill such vacancy shall be appointed only for the remainder of such term.

(4) Service after end of term

An individual may serve as the Director after the expiration of the term for which appointed until a successor has been appointed.

(5) Transitional provision

Notwithstanding paragraphs (1) and (2), during the period beginning on the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, and ending on the date on which the Director is appointed and confirmed, the person serving as the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development on that effective date shall act for all purposes as, and with the full powers of, the Director.

(c) Deputy Director of the Division of Enterprise Regulation

(1) In general

The Agency shall have a Deputy Director of the Division of Enterprise Regulation, who shall be designated by the Director from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of mortgage securities markets and housing finance.

(2) Functions

The Deputy Director of the Division of Enterprise Regulation shall have such functions, powers, and duties with respect to the oversight of the enterprises as the Director shall prescribe.

(d) Deputy Director of the Division of Federal Home Loan Bank Regulation

(1) In general

The Agency shall have a Deputy Director of the Division of Federal Home Loan Bank Regulation, who shall be designated by the Director from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of the Federal Home Loan Bank System and housing finance.

(2) Functions

The Deputy Director of the Division of Federal Home Loan Bank Regulation shall have such functions, powers, and duties with respect to the oversight of the Federal Home Loan Banks as the Director shall prescribe.

(e) Deputy Director for Housing Mission and Goals

(1) In general

The Agency shall have a Deputy Director for Housing Mission and Goals, who shall be des-

ignated by the Director from among individuals who are citizens of the United States, and have a demonstrated understanding of the housing markets and housing finance.

(2) Functions

The Deputy Director for Housing Mission and Goals shall have such functions, powers, and duties with respect to the oversight of the housing mission and goals of the enterprises, and with respect to oversight of the housing finance and community and economic development mission of the Federal Home Loan Banks, as the Director shall prescribe.

(3) Considerations

In exercising such functions, powers, and duties, the Deputy Director for Housing Mission and Goals shall consider the differences between the enterprises and the Federal Home Loan Banks, including those described in section 4513(d) of this title.

(f) Acting Director

In the event of the death, resignation, sickness, or absence of the Director, the President shall designate either the Deputy Director of the Division of Enterprise Regulation, the Deputy Director of the Division of Federal Home Loan Bank Regulation, or the Deputy Director for Housing Mission and Goals, to serve as acting Director until the return of the Director, or the appointment of a successor pursuant to subsection (b).

(g) Limitations

The Director and each of the Deputy Directors may not—

(1) have any direct or indirect financial interest in any regulated entity or entity-affiliated party;

(2) hold any office, position, or employment in any regulated entity or entity-affiliated party; or

(3) have served as an executive officer or director of any regulated entity or entity-affiliated party at any time during the 3-year period preceding the date of appointment or designation of such individual as Director or Deputy Director, as applicable.

(Pub. L. 102–550, title XIII, §1312, as added Pub. L. 110–289, div. A, title I, §1101, July 30, 2008, 122 Stat. 2662.)

REFERENCES IN TEXT

The effective date of the Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (b)(5), probably means the date of enactment of Pub. L. 110–289, which was approved July 30, 2008.

PRIOR PROVISIONS

A prior section 4512, Pub. L. 102–550, title XIII, §1312, Oct. 28, 1992, 106 Stat. 3945, related to the Director and Deputy Director of the Office of Federal Housing Enterprise Oversight, prior to repeal by Pub. L. 110–289, div. A, title I, §1101, July 30, 2008, 122 Stat. 2661.

§ 4513. Duties and authorities of Director

(a) Duties

(1) Principal duties

The principal duties of the Director shall be—

(A) to oversee the prudential operations of each regulated entity; and

(B) to ensure that—

(i) each regulated entity operates in a safe and sound manner, including maintenance of adequate capital and internal controls;

(ii) the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities);

(iii) each regulated entity complies with this chapter and the rules, regulations, guidelines, and orders issued under this chapter and the authorizing statutes;

(iv) each regulated entity carries out its statutory mission only through activities that are authorized under and consistent with this chapter and the authorizing statutes; and

(v) the activities of each regulated entity and the manner in which such regulated entity is operated are consistent with the public interest.

(2) Scope of authority

The authority of the Director shall include the authority—

(A) to review and, if warranted based on the principal duties described in paragraph (1), reject any acquisition or transfer of a controlling interest in a regulated entity; and

(B) to exercise such incidental powers as may be necessary or appropriate to fulfill the duties and responsibilities of the Director in the supervision and regulation of each regulated entity.

(3) Coordination with the Chairman of the Board of Governors of the Federal Reserve System

(A) Consultation

The Director shall consult with, and consider the views of, the Chairman of the Board of Governors of the Federal Reserve System, with respect to the risks posed by the regulated entities to the financial system, prior to issuing any proposed or final regulations, orders, and guidelines with respect to the exercise of the additional authority provided in this Act regarding prudential management and operations standards, safe and sound operations of, and capital requirements and portfolio standards applicable to the regulated entities (as such term is defined in section 4502 of this title). The Director also shall consult with the Chairman regarding any decision to place a regulated entity into conservatorship or receivership.

(B) Information sharing

To facilitate the consultative process, the Director shall share information with the Board of Governors of the Federal Reserve System on a regular, periodic basis as deter-

mined by the Director and the Board regarding the capital, asset and liabilities, financial condition, and risk management practices of the regulated entities as well as any information related to financial market stability.

(C) Termination of consultation requirement

The requirement of the Director to consult with the Board of Governors of the Federal Reserve System under this paragraph shall expire at the conclusion of December 31, 2009.

(b) Delegation of authority

The Director may delegate to officers and employees of the Agency any of the functions, powers, or duties of the Director, as the Director considers appropriate.

(c) Litigation authority

(1) In general

In enforcing any provision of this chapter, any regulation or order prescribed under this chapter, or any other provision of law, rule, regulation, or order, or in any other action, suit, or proceeding to which the Director is a party or in which the Director is interested, and in the administration of conservatorships and receiverships, the Director may act in the Director's own name and through the Director's own attorneys.

(2) Subject to suit

Except as otherwise provided by law, the Director shall be subject to suit (other than suits on claims for money damages) by a regulated entity with respect to any matter under this chapter or any other applicable provision of law, rule, order, or regulation under this chapter, in the United States district court for the judicial district in which the regulated entity has its principal place of business, or in the United States District Court for the District of Columbia, and the Director may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

(f)[1] Recognition of distinctions between the enterprises and the Federal Home Loan Banks

Prior to promulgating any regulation or taking any other formal or informal agency action of general applicability and future effect relating to the Federal Home Loan Banks (other than any regulation, advisory document, or examination guidance of the Federal Housing Finance Board that the Director reissues after the authority of the Director over the Federal Home Loan Banks takes effect), including the issuance of an advisory document or examination guidance, the Director shall consider the differences between the Federal Home Loan Banks and the enterprises with respect to—

(1) the Banks'—

(A) cooperative ownership structure;

(B) the[2] mission of providing liquidity to members;

(C) affordable housing and community development mission;

(D) capital structure; and

(E) joint and several liability; and

(2) any other differences that the Director considers appropriate.

(Pub. L. 102–550, title XIII, § 1313, Oct. 28, 1992, 106 Stat. 3945; Pub. L. 105–276, title II, § 202(b), Oct. 21, 1998, 112 Stat. 2483; Pub. L. 105–277, div. A, § 122, Oct. 21, 1998, 112 Stat. 2681–546; Pub. L. 110–289, div. A, title I, §§ 1102(a), 1118, title II, § 1201, July 30, 2008, 122 Stat. 2663, 2688, 2782.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(B)(iii), (iv) and (c), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

This Act, referred to in subsec. (a)(3)(A), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (c)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2008—Pub. L. 110–289, § 1102(a), amended section generally. Prior to amendment, section consisted of subsecs. (a) to (e) relating to duty and authority of the Director of Office of Federal Housing Enterprise Oversight.

Subsec. (a)(3). Pub. L. 110–289, § 1118, added par. (3).

Subsec. (f). Pub. L. 110–289, § 1201, added subsec. (f).

1998—Subsec. (b)(9) to (12). Pub. L. 105–276, which directed the amendment of subsec. (b) by redesignating pars. (9) to (11) as (10) to (12), respectively, and adding a new par. (9) which read ''default loss protection levels under section 1454(a)(2)(D) of this title;'' was repealed by Pub. L. 105–277, effective upon enactment of Pub. L. 105–276.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. A, § 122, Oct. 21, 1998, 112 Stat. 2681–546, provided that the amendment made by section 122 is effective upon enactment of Pub. L. 105–276 (Oct. 21, 1998).

§ 4513a. Federal Housing Finance Oversight Board

(a) In general

There is established the Federal Housing Finance Oversight Board, which shall advise the Director with respect to overall strategies and policies in carrying out the duties of the Director under this chapter.

(b) Limitations

The Board may not exercise any executive authority, and the Director may not delegate to the Board any of the functions, powers, or duties of the Director.

(c) Composition

The Board shall be comprised of 4 members, of whom—

(1) 1 member shall be the Secretary of the Treasury;

(2) 1 member shall be the Secretary of Housing and Urban Development;

(3) 1 member shall be the Chairman of the Securities and Exchange Commission; and

[1] So in original. No subsecs. (d) and (e) have been enacted.

[2] So in original. The word ''the'' probably should not appear.

(4) 1 member shall be the Director, who shall serve as the Chairperson of the Board.

(d) Meetings

(1) In general

The Board shall meet upon notice by the Director, but in no event shall the Board meet less frequently than once every 3 months.

(2) Special meetings

Either the Secretary of the Treasury, the Secretary of Housing and Urban Development, or the Chairman of the Securities and Exchange Commission may, upon giving written notice to the Director, require a special meeting of the Board.

(e) Testimony

On an annual basis, the Board shall testify before Congress regarding—

(1) the safety and soundness of the regulated entities;

(2) any material deficiencies in the conduct of the operations of the regulated entities;

(3) the overall operational status of the regulated entities;

(4) an evaluation of the performance of the regulated entities in carrying out their respective missions;

(5) operations, resources, and performance of the Agency; and

(6) such other matters relating to the Agency and its fulfillment of its mission, as the Board determines appropriate.

(Pub. L. 102–550, title XIII, §1313A, as added Pub. L. 110–289, div. A, title I, §1103(a), July 30, 2008, 122 Stat. 2665.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

§ 4513b. Prudential management and operations standards

(a) Standards

The Director shall establish standards, by regulation or guideline, for each regulated entity relating to—

(1) adequacy of internal controls and information systems taking into account the nature and scale of business operations;

(2) independence and adequacy of internal audit systems;

(3) management of interest rate risk exposure;

(4) management of market risk, including standards that provide for systems that accurately measure, monitor, and control market risks and, as warranted, that establish limitations on market risk;

(5) adequacy and maintenance of liquidity and reserves;

(6) management of asset and investment portfolio growth;

(7) investments and acquisitions of assets by a regulated entity, to ensure that they are consistent with the purposes of this chapter and the authorizing statutes;

(8) overall risk management processes, including adequacy of oversight by senior management and the board of directors and of processes and policies to identify, measure, monitor, and control material risks, including reputational risks, and for adequate, well-tested business resumption plans for all major systems with remote site facilities to protect against disruptive events;

(9) management of credit and counterparty risk, including systems to identify concentrations of credit risk and prudential limits to restrict exposure of the regulated entity to a single counterparty or groups of related counterparties;

(10) maintenance of adequate records, in accordance with consistent accounting policies and practices that enable the Director to evaluate the financial condition of the regulated entity; and

(11) such other operational and management standards as the Director determines to be appropriate.

(b) Failure to meet standards

(1) Plan requirement

(A) In general

If the Director determines that a regulated entity fails to meet any standard established under subsection (a)—

(i) if such standard is established by regulation, the Director shall require the regulated entity to submit an acceptable plan to the Director within the time allowed under subparagraph (C); and

(ii) if such standard is established by guideline, the Director may require the regulated entity to submit a plan described in clause (i).

(B) Contents

Any plan required under subparagraph (A) shall specify the actions that the regulated entity will take to correct the deficiency. If the regulated entity is undercapitalized, the plan may be a part of the capital restoration plan for the regulated entity under section 4622 of this title.

(C) Deadlines for submission and review

The Director shall by regulation establish deadlines that—

(i) provide the regulated entities with reasonable time to submit plans required under subparagraph (A), and generally require a regulated entity to submit a plan not later than 30 days after the Director determines that the entity fails to meet any standard established under subsection (a); and

(ii) require the Director to act on plans expeditiously, and generally not later than 30 days after the plan is submitted.

(2) Required order upon failure to submit or implement plan

If a regulated entity fails to submit an acceptable plan within the time allowed under paragraph (1)(C), or fails in any material respect to implement a plan accepted by the Director, the following shall apply:

(A) Required correction of deficiency

The Director shall, by order, require the regulated entity to correct the deficiency.

(B) Other authority

The Director may, by order, take one or more of the following actions until the deficiency is corrected:

(i) Prohibit the regulated entity from permitting its average total assets (as such term is defined in section 4516(b) of this title) during any calendar quarter to exceed its average total assets during the preceding calendar quarter, or restrict the rate at which the average total assets of the entity may increase from one calendar quarter to another.

(ii) Require the regulated entity—

(I) in the case of an enterprise, to increase its ratio of core capital to assets.

(II) in the case of a Federal Home Loan Bank, to increase its ratio of total capital (as such term is defined in section 1426(a)(5) of this title) to assets.

(iii) Require the regulated entity to take any other action that the Director determines will better carry out the purposes of this section than any of the actions described in this subparagraph.

(3) Mandatory restrictions

In complying with paragraph (2), the Director shall take one or more of the actions described in clauses (i) through (iii) of paragraph (2)(B) if—

(A) the Director determines that the regulated entity fails to meet any standard prescribed under subsection (a);

(B) the regulated entity has not corrected the deficiency; and

(C) during the 18-month period before the date on which the regulated entity first failed to meet the standard, the entity underwent extraordinary growth, as defined by the Director.

(c) Other enforcement authority not affected

The authority of the Director under this section is in addition to any other authority of the Director.

(Pub. L. 102–550, title XIII, § 1313B, as added Pub. L. 110–289, div. A, title I, § 1108, July 30, 2008, 122 Stat. 2672.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(7), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

§ 4514. Authority to require reports by regulated entities

(a) Regular and special reports

(1) Regular reports

The Director may require, by general or specific orders, a regulated entity to submit regular reports, including financial statements determined on a fair value basis, on the condition (including financial condition), management, activities, or operations of the regulated entity, as the Director considers appropriate (in addition to the annual and quarterly reports required under section 1723a(k) of this title and section 1456(c) of this title).

(2) Special reports

The Director may also require, by general or specific orders, a regulated entity to submit special reports on any of the topics specified in paragraph (1) or any other relevant topics, if, in the judgment of the Director, such reports are necessary to carry out the purposes of this chapter.

(3) Limitation

The Director may not require the inclusion, in any report pursuant to paragraph (1) or (2), of any information that is not reasonably obtainable by the regulated entity.

(4) Notice and declaration

The Director shall notify the regulated entity, a reasonable period in advance of the date for submission of any report under this subsection, of any specific information to be contained in the report and the date for the submission of the report. Each report under this subsection shall contain a declaration by the president, vice president, treasurer, or any other officer designated by the board of directors of the regulated entity to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief.

(b) Capital distributions

The Director may require a regulated entity to submit a report to the Director after the declaration of any capital distribution by the regulated entity and before making the capital distribution. The report shall be made in such form and under such circumstances and shall contain such information as the Director shall require.

(c) Penalties for failure to make reports

(1) Violations

It shall be a violation of this section for any regulated entity—

(A) to fail to make, transmit, or publish any report or obtain any information required by the Director under this section, section 1723a(k) of this title, section 1456(c) of this title, or section 1440 of this title, within the period of time specified in such provision of law or otherwise by the Director; or

(B) to submit or publish any false or misleading report or information under this section.

(2) Penalties

(A) First tier

(i) In general

A violation described in paragraph (1) shall be subject to a penalty of not more than $2,000 for each day during which such violation continues, in any case in which—

(I) the subject regulated entity maintains procedures reasonably adapted to avoid any inadvertent error and the violation was unintentional and a result of such an error; or

(II) the violation was an inadvertent transmittal or publication of any report which was minimally late.

(ii) Burden of proof

For purposes of this subparagraph, the regulated entity shall have the burden of proving that the error was inadvertent or that a report was inadvertently transmitted or published late.

(B) Second tier

A violation described in paragraph (1) shall be subject to a penalty of not more than $20,000 for each day during which such violation continues or such false or misleading information is not corrected, in any case that is not addressed in subparagraph (A) or (C).

(C) Third tier

A violation described in paragraph (1) shall be subject to a penalty of not more than $1,000,000 per day for each day during which such violation continues or such false or misleading information is not corrected, in any case in which the subject regulated entity committed such violation knowingly or with reckless disregard for the accuracy of any such information or report.

(3) Assessments

Any penalty imposed under this subsection shall be in lieu of a penalty under section 4636 of this title, but shall be assessed and collected by the Director in the manner provided in section 4636 of this title for penalties imposed under that section, and any such assessment (including the determination of the amount of the penalty) shall be otherwise subject to the provisions of section 4636 of this title.

(4) Hearing

A regulated entity against which a penalty is assessed under this section shall be afforded an agency hearing if the regulated entity submits a request for a hearing not later than 20 days after the date of the issuance of the notice of assessment. Section 4634 of this title shall apply to any such proceedings.

(Pub. L. 102–550, title XIII, §1314, Oct. 28, 1992, 106 Stat. 3946; Pub. L. 110–289, div. A, title I, §1104(a), July 30, 2008, 122 Stat. 2666.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289, §1104(a)(1), substituted ''regulated entities'' for ''enterprises'' in section catchline.

Subsec. (a). Pub. L. 110–289, §1104(a)(4)(A), substituted ''Regular and special reports'' for ''Special reports and reports of financial condition'' in subsec. heading, ''Regular reports'' for ''Financial condition'' in par. (1) heading, and ''The Director may require, by general or specific orders, a regulated entity to submit regular reports, including financial statements determined on a fair value basis, on the condition (including financial condition), management, activities, or operations of the regulated entity, as the Director considers appropriate'' for ''The Director may require an enterprise to submit reports of financial condition and operations'' in par. (1).

Subsec. (a)(2). Pub. L. 110–289, §1104(a)(4)(B), inserted '', by general or specific orders,'' after ''may also require'' and substituted ''on any of the topics specified in paragraph (1) or any other relevant topics, if'' for ''whenever''.

Pub. L. 110–289, §1104(a)(2), substituted ''a regulated entity'' for ''an enterprise''.

Subsec. (a)(3), (4). Pub. L. 110–289, §1104(a)(3), which directed amendment of this section by substituting ''the regulated entity'' for ''the enterprise'', was executed by making the substitution wherever appearing to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 110–289, §1104(a)(3), which directed amendment of this section by substituting ''the regulated entity'' for ''the enterprise'', was executed by making the substitution wherever appearing to reflect the probable intent of Congress.

Pub. L. 110–289, §1104(a)(2), substituted ''a regulated entity'' for ''an enterprise''.

Subsec. (c). Pub. L. 110–289, §1104(a)(5), added subsec. (c).

§ 4514a. Study and reports on guarantee fees

(a) Ongoing study of fees

The Director shall conduct an ongoing study of fees charged by enterprises for guaranteeing a mortgage.

(b) Collection of data

The Director shall, by regulation or order, establish procedures for the collection of data from enterprises for purposes of this subsection,[1] including the format and the process for collection of such data.

(c) Reports to Congress

The Director shall annually submit a report to Congress on the results of the study conducted under subsection (a), based on the aggregated data collected under subsection (a) for the subject year, regarding the amount of such fees and the criteria used by the enterprises to determine such fees.

(d) Contents of reports

The reports required under subsection (c) shall identify and analyze—

(1) the factors considered in determining the amount of the guarantee fees charged;

(2) the total revenue earned by the enterprises from guarantee fees;

(3) the total costs incurred by the enterprises for providing guarantees;

(4) the average guarantee fee charged by the enterprises;

(5) an analysis of any increase or decrease in guarantee fees from the preceding year;

(6) a breakdown of the revenue and costs associated with providing guarantees, based on product type and risk classifications; and

(7) a breakdown of guarantee fees charged based on asset size of the originator and the number of loans sold or transferred to an enterprise.

(e) Protection of information

Nothing in this section may be construed to require or authorize the Director to publicly dis-

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

close information that is confidential or proprietary.

(Pub. L. 110–289, div. A, title VI, § 1601, July 30, 2008, 122 Stat. 2824.)

CODIFICATION

Section was enacted as part of the Federal Housing Finance Regulatory Reform Act of 2008, and also as part of the Housing and Economic Recovery Act of 2008, and not as part of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 1002(b) of Pub. L. 110–289, set out as a note under section 4511 of this title.

§ 4515. Personnel

(a) In general

Subject to title III of the Federal Housing Finance Regulatory Reform Act of 2008, the Director may appoint and fix the compensation of such officers and employees of the Agency as the Director considers necessary to carry out the functions of the Director and the Agency. Officers and employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates.

(b) Comparability of compensation with Federal banking agencies

In fixing and directing compensation under subsection (a) of this section, the Director shall consult with, and maintain comparability with compensation of officers and employees of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

(c) Personnel of other Federal agencies

In carrying out the duties of the Agency, the Director may use information, services, staff, and facilities of any executive agency, independent agency, or department on a reimbursable basis, with the consent of such agency or department.

(d) Outside experts and consultants

Notwithstanding any provision of law limiting pay or compensation, the Director may appoint and compensate such outside experts and consultants as the Director determines necessary to assist the work of the Agency.

(Pub. L. 102–550, title XIII, § 1315, Oct. 28, 1992, 106 Stat. 3947; Pub. L. 110–289, div. A, title I, § 1161(a)(1), July 30, 2008, 122 Stat. 2778; Pub. L. 111–203, title III, § 365(1), July 21, 2010, 124 Stat. 1555.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 111–203, title III, §§ 351, 365(1), July 21, 2010, 124 Stat. 1546, 1555, provided that, effective on the transfer date, subsection (b) of this section is amended by substituting ''and the Federal Deposit Insurance Corporation.'' for ''the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.'' See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (a), is div. A of Pub. L. 110–289, July 30, 2008, 122 Stat. 2659. Title III of div. A of the Pub. L. 110–289 is set out as a note under section 4511 of this title. For complete classification of Pub. L. 110–289 to the Code, see Short Title note under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, § 1161(a)(1)(A), substituted ''In General'' for ''Office personnel'' in heading, ''Subject to title III of the Federal Housing Finance Regulatory Reform Act of 2008, the'' for ''The'', and ''the Agency'' for ''the Office'' in two places.

Subsec. (c). Pub. L. 110–289, § 1161(a)(1)(B), substituted ''the Agency'' for ''the Office''.

Subsec. (d). Pub. L. 110–289, § 1161(a)(1)(D), redesignated subsec. (e) as (d) and struck out former subsec. (d). Prior to amendment, text read as follows: ''The Director shall reimburse the Department of Housing and Urban Development for reasonable costs incurred by the Department that are directly related to the operations of the Office.''

Subsec. (e). Pub. L. 110–289, § 1161(a)(1)(C), (D), substituted ''the Agency'' for ''the Office'' and redesignated subsec. (e) as (d).

Subsec. (f). Pub. L. 110–289, § 1161(a)(1)(E), struck out subsec. (f). Text read as follows: ''Not later than the expiration of the 180-day period beginning upon the appointment of the Director under section 4512 of this title, the Director shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

''(1) a complete description of the equal opportunity, affirmative action, and minority business enterprise utilization programs of the Office; and

''(2) such recommendations for administrative and legislative action as the Director determines appropriate to carry out such programs.''

EFFECTIVE DATE OF 2010 AMENDMENT

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

§ 4516. Funding

(a) Annual assessments

The Director shall establish and collect from the regulated entities annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs (including administrative costs) and expenses of the Agency, including—

(1) the expenses of any examinations under section 4517 of this title and under section 1440 of this title;

(2) the expenses of obtaining any reviews and credit assessments under section 4519 of this title;

(3) such amounts in excess of actual expenses for any given year as deemed necessary by the Director to maintain a working capital fund in accordance with subsection (e); and

(4) the windup of the affairs of the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board under title III of the Federal Housing Finance Regulatory Reform Act of 2008.

(b) Allocation of annual assessment to enterprises

(1) Amount of payment

Each enterprise shall pay to the Director a proportion of the annual assessment made

pursuant to subsection (a) of this section that bears the same ratio to the total annual assessment that the total assets of each enterprise bears[1] to the total assets of both enterprises.

(2) Separate treatment of Federal home loan bank and enterprise assessments

Assessments collected from the enterprises shall not exceed the amounts sufficient to provide for the costs and expenses described in subsection (a) relating to the enterprises. Assessments collected from the Federal Home Loan Banks shall not exceed the amounts sufficient to provide for the costs and expenses described in subsection (a) relating to the Federal Home Loan Banks.

(3) Timing of payment

The annual assessment shall be payable semiannually for each fiscal year, on October 1 and April 1.

(4) "Total assets" defined

For the purpose of this section, the term ''total assets'' means, with respect to an enterprise, the sum of—

(A) on-balance-sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(B) the unpaid principal balance of outstanding mortgage-backed securities issued or guaranteed by the enterprise that are not included in subparagraph (A); and

(C) other off-balance-sheet obligations as determined by the Director.

(c) Increased costs of regulation

(1) Increase for inadequate capitalization

The semiannual payments made pursuant to subsection (b) by any regulated entity that is not classified (for purposes of subchapter II) as adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation of the regulated entity.

(2) Adjustment for enforcement activities

The Director may adjust the amounts of any semiannual payments for an assessment under subsection (a) that are to be paid pursuant to subsection (b) by a regulated entity, as necessary in the discretion of the Director, to ensure that the costs of enforcement activities under this Act for a regulated entity are borne only by such regulated entity.

(3) Additional assessment for deficiencies

If at any time, as a result of increased costs of regulation of a regulated entity that is not classified (for purposes of subchapter II) as adequately capitalized or as the result of supervisory or enforcement activities under this Act for a regulated entity, the amount available from any semiannual payment made by such regulated entity pursuant to subsection (b) is insufficient to cover the costs of the Agency with respect to such entity, the Director may make and collect from such regulated entity an immediate assessment to cover the amount of such deficiency for the semiannual period. If, at the end of any semiannual period during which such an assessment is made, any amount remains from such assessment, such remaining amount shall be deducted from the assessment for such regulated entity for the following semiannual period.

(d) Surplus

Except with respect to amounts collected pursuant to subsection (a)(3), if any amount from any annual assessment collected from an enterprise remains unobligated at the end of the year for which the assessment was collected, such amount shall be credited to the assessment to be collected from the enterprise for the following year.

(e) Working capital fund

At the end of each year for which an assessment under this section is made, the Director shall remit to each regulated entity any amount of assessment collected from such regulated entity that is attributable to subsection (a)(3) and is in excess of the amount the Director deems necessary to maintain a working capital fund.

(f) Treatment of assessments

(1) Deposit

Amounts received by the Director from assessments under this section may be deposited by the Director in the manner provided in section 192 of this title for monies deposited by the Comptroller of the Currency.

(2) Not Government funds

The amounts received by the Director from any assessment under this section shall not be construed to be Government or public funds or appropriated money.

(3) No apportionment of funds

Notwithstanding any other provision of law, the amounts received by the Director from any assessment under this section shall not be subject to apportionment for the purpose of chapter 15 of title 31 or under any other authority.

(4) Use of funds

The Director may use any amounts received by the Director from assessments under this section for compensation of the Director and other employees of the Agency and for all other expenses of the Director and the Agency.

(5) Availability of oversight fund amounts

Notwithstanding any other provision of law, any amounts remaining in the Federal Housing Enterprises Oversight Fund established under this section (as in effect before the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, and any amounts remaining from assessments on the Federal Home Loan Banks pursuant to section 1438(b)[2] of this title), shall, upon such effective date, be treated for purposes of this subsection as amounts received from assessments under this section.

(6) Treasury investments

(A) Authority

The Director may request the Secretary of the Treasury to invest such portions of

[1] So in original. Probably should be ''bear''.

[2] See References in Text note below.

amounts received by the Director from assessments paid under this section that, in the Director's discretion, are not required to meet the current working needs of the Agency.

(B) Government obligations

Pursuant to a request under subparagraph (A), the Secretary of the Treasury shall invest such amounts in Government obligations guaranteed as to principal and interest by the United States with maturities suitable to the needs of the Agency and bearing interest at a rate determined by the Secretary of the Treasury taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

(g) Budget and financial management

(1) Financial operating plans and forecasts

The Director shall provide to the Director of the Office of Management and Budget copies of the Director's financial operating plans and forecasts, as prepared by the Director in the ordinary course of the Agency's operations, and copies of the quarterly reports of the Agency's financial condition and results of operations, as prepared by the Director in the ordinary course of the Agency's operations.

(2) Financial statements

The Agency shall prepare annually a statement of—

(A) assets and liabilities and surplus or deficit;

(B) income and expenses; and

(C) sources and application of funds.

(3) Financial management systems

The Agency shall implement and maintain financial management systems that—

(A) comply substantially with Federal financial management systems requirements and applicable Federal accounting standards; and

(B) use a general ledger system that accounts for activity at the transaction level.

(4) Assertion of internal controls

The Director shall provide to the Comptroller General of the United States an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Agency, using the standards established in section 3512(c) of title 31.

(5) Rule of construction

This subsection may not be construed as implying any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information referred to in paragraph (1) or any jurisdiction or oversight over the affairs or operations of the Agency.

(h) Audit of Agency

(1) In general

The Comptroller General shall annually audit the financial transactions of the Agency in accordance with the United States generally accepted government auditing standards as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Agency are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Agency pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Agency shall remain in possession and custody of the Agency. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General and the Comptroller General's right of access to such information shall be enforceable pursuant to section 716(c) of title 31.

(2) Report

The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Agency, together with such recommendations with respect thereto as the Comptroller General may deem advisable. A copy of each report shall be furnished to the President and to the Agency at the time submitted to the Congress.

(3) Assistance and costs

For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 6101 of title 41, professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Agency shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General. The Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.

(Pub. L. 102–550, title XIII, § 1316, Oct. 28, 1992, 106 Stat. 3947; Pub. L. 104–134, title I, § 101(e) [title

II, § 211], Apr. 26, 1996, 110 Stat. 1321–257, 1321–288; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 110–289, div. A, title I, § 1106, July 30, 2008, 122 Stat. 2669.)

REFERENCES IN TEXT

The Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (a)(4), is div. A of Pub. L. 110–289, July 30, 2008, 122 Stat. 2659. Title III of div. A of the Pub. L. 110–289 is set out as a note under section 4511 of this title. For complete classification of Pub. L. 110–289 to the Code, see Short Title note under section 4501 of this title and Tables.

This Act, referred to in subsec. (c)(2), (3), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

The effective date of the Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (f)(5), probably means the date of enactment of div. A of Pub. L. 110–289, which was approved July 30, 2008.

Section 1438(b) of this title, referred to in subsec. (f)(5), was repealed by Pub. L. 110–289, div. A, title II, § 1204(2), July 30, 2008, 122 Stat. 2786.

CODIFICATION

In subsec. (h)(3), ''section 6101 of title 41'' substituted for ''section 3709 of the Revised Statutes of the United States (41 U.S.C. 5)'' on authority of Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, § 1106(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: ''The Director may, to the extent provided in appropriation Acts, establish and collect from the enterprises annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs and expenses of the Office, including the expenses of any examinations under section 4517 of this title. The initial annual assessment shall include any startup costs of the Office and any anticipated costs and expenses of the Office for the following fiscal year.''

Subsec. (b)(2) to (4). Pub. L. 110–289, § 1106(2), realigned margins, added par. (2), and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (c). Pub. L. 110–289, § 1106(3), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: ''The semiannual payments made pursuant to subsection (b) of this section by any enterprise that is not classified (for purposes of subchapter II of this chapter) as adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation of the enterprise.''

Subsec. (d). Pub. L. 110–289, § 1106(4), substituted ''Except with respect to amounts collected pursuant to subsection (a)(3), if'' for ''If''.

Subsecs. (e) to (h). Pub. L. 110–289, § 1106(5), added subsecs. (e) to (h) and struck out former subsecs. (e) to (g) which related, respectively, to initial special assessment, the Federal Housing Enterprises Oversight Fund, and budget and financial reports.

1996—Subsec. (b)(2). Pub. L. 104–134 added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''The annual assessment shall be payable semiannually on September 1 and March 1 of the year for which the assessment is made.''

NON-REDUCTION OF FIRST ANNUAL ASSESSMENT

Pub. L. 103–124, title II, Oct. 28, 1993, 107 Stat. 1290, provided that notwithstanding the last sentence of subsec. (e) of this section, the amount of this first annual assessment was not to be reduced by any part of the amount of the initial special assessment under subsec. (e).

§ 4517. Examinations

(a) Annual examination

The Director shall annually conduct an on-site examination under this section of each regulated entity to determine the condition of the regulated entity for the purpose of ensuring its financial safety and soundness.

(b) Other examinations

In addition to annual examinations under subsection (a) of this section, the Director may conduct an examination under this section of a regulated entity whenever the Director determines that an examination is necessary or appropriate.

(c) Examiners

The Director shall appoint examiners to conduct examinations under this section. The Director may contract with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision for the services of examiners to conduct examinations under this section. The Director shall reimburse such agencies for any costs of providing examiners from amounts available in the Federal Housing Enterprises Oversight Fund.

(d) Inspector General

There shall be within the Agency an Inspector General, who shall be appointed in accordance with section 3(a) of the Inspector General Act of 1978.

(e) Law applicable to examiners

The Director and each examiner shall have the same authority and each examiner shall be subject to the same disclosures, prohibitions, obligations, and penalties as are applicable to examiners employed by the Federal Reserve banks.

(f) Technical experts

The Director may obtain the services of any technical experts the Director considers appropriate to provide temporary technical assistance relating to examinations to the Director, officers, and employees of the Office. The Director shall describe, in the record of each examination, the nature and extent of any such temporary technical assistance.

(g) Oaths, evidence, and subpoena powers

In connection with examinations under this section, the Director shall have the authority provided under section 4641 of this title.

(h) Appointment of accountants, economists, and examiners

(1) Applicability

This section shall apply with respect to any position of examiner, accountant, economist, and specialist in financial markets and in technology at the Agency, with respect to supervision and regulation of the regulated entities, that is in the competitive service.

(2) Appointment authority

The Director may appoint candidates to any position described in paragraph (1)—

(A) in accordance with the statutes, rules, and regulations governing appointments in the excepted service; and

(B) notwithstanding any statutes, rules, and regulations governing appointments in the competitive service.

(i) Ombudsman

The Director shall establish, by regulation, an Office of the Ombudsman within the Agency, which shall be responsible for considering complaints and appeals, from any regulated entity and any person that has a business relationship with a regulated entity, regarding any matter relating to the regulation and supervision of such regulated entity by the Agency. The regulation issued by the Director under this subsection shall specify the authority and duties of the Office of the Ombudsman.

(Pub. L. 102–550, title XIII, § 1317, Oct. 28, 1992, 106 Stat. 3949; Pub. L. 110–289, div. A, title I, §§ 1105(a), (b), (e), 1153(b)(1)(A), July 30, 2008, 122 Stat. 2667, 2668, 2774; Pub. L. 111–203, title III, § 365(2), July 21, 2010, 124 Stat. 1555.)

AMENDMENT OF SUBSECTION (c)

Pub. L. 111–203, title III, §§ 351, 365(2), July 21, 2010, 124 Stat. 1546, 1555, provided that, effective on the transfer date, subsection (c) of this section is amended by substituting ''or the Federal Deposit Insurance Corporation'' for ''the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision''. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 3(a) of the Inspector General Act of 1978, referred to in subsec. (d), is section 3(a) of Pub. L. 95–452, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, § 1105(a)(1), substituted ''regulated entity'' for ''enterprise'' in two places.

Subsec. (b). Pub. L. 110–289, § 1105(a)(2), inserted ''of a regulated entity'' after ''under this section'' and substituted ''or appropriate'' for ''to determine the condition of an enterprise for the purpose of ensuring its financial safety and soundness''.

Subsec. (c). Pub. L. 110–289, § 1105(a)(3), inserted ''to conduct examinations under this section'' after ''services of examiners''.

Subsecs. (d) to (f). Pub. L. 110–289, § 1105(a)(4), (5), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 110–289, § 1153(b)(1)(A), which directed technical amendment in subsec. (f) to reference in original act which appears in text as reference to section 4641 of this title, was executed by making the amendment in subsec. (g), to reflect the probable intent of Congress and the redesignation of subsec. (f) as (g) by Pub. L. 110–289, § 1105(a)(4). See below.

Pub. L. 110–289, § 1105(a)(4), redesignated subsec. (f) as (g).

Subsec. (h). Pub. L. 110–289, § 1105(b), added subsec. (h).

Subsec. (i). Pub. L. 110–289, § 1105(e), added subsec. (i).

EFFECTIVE DATE OF 2010 AMENDMENT

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

§ 4518. Prohibition and withholding of executive compensation

(a) In general

The Director shall prohibit the regulated entities from providing compensation to any executive officer of the regulated entity that is not reasonable and comparable with compensation for employment in other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities.

(b) Factors

In making any determination under subsection (a), the Director may take into consideration any factors the Director considers relevant, including any wrongdoing on the part of the executive officer, and such wrongdoing shall include any fraudulent act or omission, breach of trust or fiduciary duty, violation of law, rule, regulation, order, or written agreement, and insider abuse with respect to the regulated entity. The approval of an agreement or contract pursuant to section 1723a(d)(3)(B) of this title or section 1452(h)(2) of this title shall not preclude the Director from making any subsequent determination under subsection (a).

(c) Withholding of compensation

In carrying out subsection (a), the Director may require a regulated entity to withhold any payment, transfer, or disbursement of compensation to an executive officer, or to place such compensation in an escrow account, during the review of the reasonableness and comparability of compensation.

(d) Prohibition of setting compensation

In carrying out subsection (a) of this section, the Director may not prescribe or set a specific level or range of compensation.

(e) Authority to regulate or prohibit certain forms of benefits to affiliated parties

(1) Golden parachutes and indemnification payments

The Director may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

(2) Factors to be taken into account

The Director shall prescribe, by regulation, the factors to be considered by the Director in taking any action pursuant to paragraph (1), which may include such factors as—

(A) whether there is a reasonable basis to believe that the affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the regulated entity that has had a material effect on the financial condition of the regulated entity;

(B) whether there is a reasonable basis to believe that the affiliated party is substantially responsible for the insolvency of the regulated entity, the appointment of a conservator or receiver for the regulated entity, or the troubled condition of the regulated entity (as defined in regulations prescribed by the Director);

(C) whether there is a reasonable basis to believe that the affiliated party has materi-

ally violated any applicable provision of Federal or State law or regulation that has had a material effect on the financial condition of the regulated entity;

(D) whether the affiliated party was in a position of managerial or fiduciary responsibility; and

(E) the length of time that the party was affiliated with the regulated entity, and the degree to which—

(i) the payment reasonably reflects compensation earned over the period of employment; and

(ii) the compensation involved represents a reasonable payment for services rendered.

(3) Certain payments prohibited

No regulated entity may prepay the salary or any liability or legal expense of any affiliated party if such payment is made—

(A) in contemplation of the insolvency of such regulated entity, or after the commission of an act of insolvency; and

(B) with a view to, or having the result of—

(i) preventing the proper application of the assets of the regulated entity to creditors; or

(ii) preferring one creditor over another.

(4) Golden parachute payment defined

(A) In general

For purposes of this subsection, the term ''golden parachute payment'' means any payment (or any agreement to make any payment) in the nature of compensation by any regulated entity for the benefit of any affiliated party pursuant to an obligation of such regulated entity that—

(i) is contingent on the termination of such party's affiliation with the regulated entity; and

(ii) is received on or after the date on which—

(I) the regulated entity became insolvent;

(II) any conservator or receiver is appointed for such regulated entity; or

(III) the Director determines that the regulated entity is in a troubled condition (as defined in the regulations of the Director).

(B) Certain payments in contemplation of an event

Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

(C) Certain payments not included

For purposes of this subsection, the term ''golden parachute payment'' shall not include—

(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of title 26, or other nondiscriminatory benefit plan;

(ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Director determines, by regulation or order, to be permissible; or

(iii) any payment made by reason of the death or disability of an affiliated party.

(5) Other definitions

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

(A) Indemnification payment

Subject to paragraph (6), the term ''indemnification payment'' means any payment (or any agreement to make any payment) by any regulated entity for the benefit of any person who is or was an affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the Agency which results in a final order under which such person—

(i) is assessed a civil money penalty;

(ii) is removed or prohibited from participating in conduct of the affairs of the regulated entity; or

(iii) is required to take any affirmative action to correct certain conditions resulting from violations or practices, by order of the Director.

(B) Liability or legal expense

The term ''liability or legal expense'' means—

(i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

(ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(C) Payment

The term ''payment'' includes—

(i) any direct or indirect transfer of any funds or any asset; and

(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

(I) the determination, after such date, of the liability for the payment of such amount; or

(II) the liquidation, after such date, of the amount of such payment.

(6) Certain commercial insurance coverage not treated as covered benefit payment

No provision of this subsection shall be construed as prohibiting any regulated entity from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall

not cover any legal or liability expense of the regulated entity which is described in paragraph (5)(A).

(Pub. L. 102–550, title XIII, § 1318, Oct. 28, 1992, 106 Stat. 3949; Pub. L. 110–289, div. A, title I, §§ 1113(a), 1114, July 30, 2008, 122 Stat. 2678, 2679.)

AMENDMENTS

2008—Pub. L. 110–289, § 1113(a)(1), substituted ''and withholding of executive'' for ''of excessive'' in section catchline.

Subsec. (a). Pub. L. 110–289, § 1113(a)(2), substituted ''regulated entity'' for ''enterprise'' and ''regulated entities'' for ''enterprises''.

Subsecs. (b) to (d). Pub. L. 110–289, § 1113(a)(3), (4), added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

Subsec. (e). Pub. L. 110–289, § 1114, added subsec. (e).

§ 4519. Authority to provide for review of regulated entities

The Director may, on such terms and conditions as the Director deems appropriate, contract with any entity that is a nationally recognized statistical rating organization, as such term is defined in section 78c(a) of title 15, to conduct a review of the regulated entities.

(Pub. L. 102–550, title XIII, § 1319, Oct. 28, 1992, 106 Stat. 3950; Pub. L. 109–291, § 4(b)(4), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 110–289, div. A, title I, § 1105(d), July 30, 2008, 122 Stat. 2668; Pub. L. 111–203, title IX, § 939(b), July 21, 2010, 124 Stat. 1886.)

AMENDMENT OF SECTION

Pub. L. 111–203, title IX, § 939(b), (g), July 21, 2010, 124 Stat. 1886, 1887, provided that, effective 2 years after July 21, 2010, this section is amended by striking out ''that is a nationally recognized statistical rating organization, as such term is defined in section 78c(a) of title 15,''. See Effective Date of 2010 Amendment note below.

AMENDMENTS

2008—Pub. L. 110–289 substituted ''regulated entities'' for ''enterprises by rating organization'' in section catchline and ''regulated entities'' for ''enterprises'' in text.

2006—Pub. L. 109–291 substituted ''that is a nationally recognized statistical rating organization, as such term is defined in section 78c(a) of title 15'' for ''effectively recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for the purposes of the capital rules for broker-dealers''.

EFFECTIVE DATE OF 2010 AMENDMENT

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

§ 4520. Minority and women inclusion; diversity requirements

(a) Office of Minority and Women Inclusion

Each regulated entity shall establish an Office of Minority and Women Inclusion, or designate an office of the entity, that shall be responsible for carrying out this section and all matters of the entity relating to diversity in management, employment, and business activities in accordance with such standards and requirements as the Director shall establish.

(b) Inclusion in all levels of business activities

Each regulated entity shall develop and implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)) and women, and minority- and women-owned businesses (as such terms are defined in section 1441a(r)(4) of this title) (including financial institutions, investment banking firms, mortgage banking firms, asset management firms, broker-dealers, financial services firms, underwriters, accountants, brokers, investment consultants, and providers of legal services) in all business and activities of the regulated entity at all levels, including in procurement, insurance, and all types of contracts (including contracts for the issuance or guarantee of any debt, equity, or mortgage-related securities, the management of its mortgage and securities portfolios, the making of its equity investments, the purchase, sale and servicing of single- and multi-family mortgage loans, and the implementation of its affordable housing program and initiatives). The processes established by each regulated entity for review and evaluation for contract proposals and to hire service providers shall include a component that gives consideration to the diversity of the applicant.

(c) Applicability

This section shall apply to all contracts of a regulated entity for services of any kind, including services that require the services of investment banking, asset management entities, broker-dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services.

(d) Inclusion in annual reports

Each regulated entity shall include, in the annual report submitted by the entity to the Director pursuant to section 1723a(k) of this title, section 1456(c) of this title, and section 1440 of this title, as applicable, detailed information describing the actions taken by the entity pursuant to this section, which shall include a statement of the total amounts paid by the entity to third party contractors since the last such report and the percentage of such amounts paid to businesses described in subsection (b) of this section.

(e) Outreach

Each regulated entity shall establish a minority outreach program to ensure the inclusion (to the maximum extent possible) in contracts entered into by the enterprises of minorities and women and businesses owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, brokers, and providers of legal services.

(f) Diversity in Agency workforce

The Agency shall take affirmative steps to seek diversity in its workforce at all levels of the agency consistent with the demographic diversity of the United States, which shall include—

(1) heavily recruiting at historically Black colleges and universities, Hispanic-serving in-

stitutions, women's colleges, and colleges that typically serve majority minority populations;

(2) sponsoring and recruiting at job fairs in urban communities, and placing employment advertisements in newspapers and magazines oriented toward women and people of color;

(3) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions; and

(4) where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring.

(Pub. L. 102–550, title XIII, §1319A, Oct. 28, 1992, 106 Stat. 3950; Pub. L. 110–289, div. A, title I, §§1116, 1161(a)(2), July 30, 2008, 122 Stat. 2681, 2779.)

REFERENCES IN TEXT

Section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (b), is section 1204(c) of Pub. L. 101–73, which is set out as a note under section 1811 of this title.

AMENDMENTS

2008—Pub. L. 110–289, §1116(1), substituted ''Minority and women inclusion; diversity requirements'' for ''Equal opportunity in solicitation of contracts'' in section catchline.

Subsec. (a). Pub. L. 110–289, §1161(a)(2)(A), which directed amendment of this section by striking out subsec. (a) designation and ''In general'' in subsec. (a) heading, could not be executed because of the prior amendment by Pub. L. 110–289, §1116(2), (4). See below.

Pub. L. 110–289, §1116(2), (4), added subsec. (a) and redesignated former subsec. (a) as (e).

Subsec. (b). Pub. L. 110–289, §1161(a)(2)(B), which directed the striking out of subsec. (b), was not executed to reflect the probable intent of Congress. The amendment was probably intended to strike out subsec. (b) as it existed prior to being struck out by Pub. L. 110–289, §1116(3). See below.

Pub. L. 110–289, §1116(3), (4), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: ''Not later than the expiration of the 180-day period beginning on October 28, 1992, each enterprise shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the actions taken by the enterprise pursuant to subsection (a) of this section.''

Subsecs. (c), (d). Pub. L. 110–289, §1116(4), added subsecs. (c) and (d).

Subsec. (e). Pub. L. 110–289, §1116(2), redesignated subsec. (a) as (e) and substituted ''Outreach'' for ''In general'' in heading and ''Each regulated entity'' for ''Each enterprise'' in text.

Subsec. (f). Pub. L. 110–289, §1116(5), added subsec. (f).

§ 4521. Annual reports by Director

(a) General report

The Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than June 15 of each year, a written report, which shall include—

(1) a description of the actions taken, and being undertaken, by the Director to carry out this chapter;

(2) a description of the financial safety and soundness of each regulated entity, including the results and conclusions of the annual examinations of the regulated entities conducted under section 4517(a) of this title;

(3) any recommendations for legislation to enhance the financial safety and soundness of the regulated entities;

(4) a description of—

(A) whether the procedures established by each regulated entity pursuant to section 4012a(b)(3) of title 42 are adequate and being complied with, and

(B) the results and conclusions of any examination, as determined necessary by the Director, to determine the compliance of the regulated entities with the requirements of section 4012a(b)(3) of title 42, which shall include a description of the methods used to determine compliance and the types and sources of deficiencies (if any), and identify any corrective measures that have been taken to remedy any such deficiencies,

except that the information described in this paragraph shall be included only in each of the first, third, and fifth annual reports under this subsection required to be submitted after the expiration of the 1-year period beginning on September 23, 1994; and [1]

(5) the assessment of the Board or any of its members with respect to—

(A) the safety and soundness of the regulated entities;

(B) any material deficiencies in the conduct of the operations of the regulated entities;

(C) the overall operational status of the regulated entities; and

(D) an evaluation of the performance of the regulated entities in carrying out their respective missions;

(6) operations, resources, and performance of the Agency; and

(7) such other matters relating to the Agency and the fulfillment of its mission.

(b) Report on enforcement actions

Not later than March 15 of each year, the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a written report describing, for the preceding calendar year, the requests by the Director to the Attorney General for enforcement actions under subchapter III of this chapter and describing the disposition of each request, which shall include statements of—

(1) the total number of requests made by the Director;

(2) the number of requests that resulted in the commencement of litigation by the Department of Justice;

(3) the number of requests that did not result in the commencement of litigation by the Department of Justice;

(4) with respect to requests that resulted in the commencement of litigation—

[1] So in original. The word ''and'' probably should not appear.

(A) the number of days between the date of the request and the commencement of the litigation; and

(B) the number of days between the date of the commencement and termination of the litigation; and

(5) the number of litigation requests pending at the beginning of the calendar year, the number of requests made during the calendar year, the number of requests for which action was completed during the calendar year, and the number of requests pending at the end of the calendar year.

(Pub. L. 102–550, title XIII, § 1319B, Oct. 28, 1992, 106 Stat. 3950; Pub. L. 103–325, title V, § 529(c), Sept. 23, 1994, 108 Stat. 2267; Pub. L. 110–289, div. A, title I, §§ 1103(b), 1161(a)(6), July 30, 2008, 122 Stat. 2665, 2779.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, § 1161(a)(6), substituted ''Committee on Financial Services'' for ''Committee on Banking, Finance and Urban Affairs'' in introductory provisions.

Subsec. (a)(2) to (4). Pub. L. 110–289, § 1103(b)(1)–(4), substituted ''regulated entity'' for ''enterprise'' and ''regulated entities'' for ''enterprises'' wherever appearing and substituted a semicolon for ''; and'' at end of par. (3) and ''1994; and'' for ''1994.'' at end of par. (4).

Subsec. (a)(5) to (7). Pub. L. 110–289, § 1103(b)(5), added pars. (5) to (7).

Subsec. (b). Pub. L. 110–289, § 1161(a)(6), substituted ''Committee on Financial Services'' for ''Committee on Banking, Finance and Urban Affairs'' in introductory provisions.

1994—Subsec. (a)(4). Pub. L. 103–325 added par. (4).

§ 4522. Public disclosure of final orders and agreements

(a) In general

The Director shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Director's discretion, determines that public disclosure would be contrary to the public interest or determines under subsection (c) of this section that public disclosure would seriously threaten the financial health or security of the enterprise;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under subchapter III of this chapter and that has become final; and

(3) any modification to or termination of any final order made public pursuant to this subsection.

(b) Hearings

All hearings on the record with respect to any action of the Director or notice of charges issued by the Director shall be open to the public, unless the Director, in the Director's discretion, determines that holding an open hearing would be contrary to the public interest.

(c) Delay of public disclosure under exceptional circumstances

If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) of this section would seriously threaten the financial health or security of the enterprise, the Director may delay the public disclosure of such order for a reasonable time.

(d) Documents filed under seal in public enforcement hearings

The Director may file any document or part thereof under seal in any hearing under subchapter III of this chapter if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) Retention of documents

The Director shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) of this section and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Director under subchapter III of this chapter.

(f) Disclosures to Congress

This section may not be construed to authorize the withholding of any information from, or to prohibit the disclosure of any information to, the Congress or any committee or subcommittee thereof.

(Pub. L. 102–550, title XIII, § 1319C, Oct. 28, 1992, 106 Stat. 3951.)

§ 4523. Limitation on subsequent employment

Neither the Director nor any former officer or employee of the Agency who, while employed by the Agency, was compensated at a rate in excess of the lowest rate for a position classified higher than GS–15 of the General Schedule under section 5107 of title 5 may accept compensation from an enterprise during the 2-year period beginning on the date of separation from employment by the Agency.

(Pub. L. 102–550, title XIII, § 1319D, Oct. 28, 1992, 106 Stat. 3951; Pub. L. 110–289, div. A, title I, § 1161(a)(5), July 30, 2008, 122 Stat. 2779.)

AMENDMENTS

2008—Pub. L. 110–289 substituted ''the Agency'' for ''the Office'' wherever appearing.

§ 4524. Audits by GAO

The Comptroller General may audit the operations of the Agency, and any such audit shall be conducted in accordance with generally accepted Government auditing standards. All books, records, accounts, reports, files, and property belonging to, or used by, the Agency shall be made available to the Comptroller General.

(Pub. L. 102–550, title XIII, § 1319E, Oct. 28, 1992, 106 Stat. 3952; Pub. L. 104–316, title I, § 106(h), Oct. 19, 1996, 110 Stat. 3831; Pub. L. 110–289, div.

A, title I, §1161(a)(5), July 30, 2008, 122 Stat. 2779.)

AMENDMENTS

2008—Pub. L. 110–289 substituted ''the Agency'' for ''the Office'' in two places.

1996—Pub. L. 104–316, in first sentence, substituted ''may audit'' for ''shall audit'' and inserted '', and any such audit shall be conducted'' after ''Office'', and struck out at end ''Audits under this section shall be conducted annually for the first 2 fiscal years following October 28, 1992, and as appropriate thereafter.''

§ 4525. Information, records, and meetings

For purposes of subchapter II of chapter 5 of title 5—

(1) the Agency, and

(2) the Department of Housing and Urban Development, with respect to activities under this chapter,

shall be considered agencies responsible for the regulation or supervision of financial institutions.

(Pub. L. 102–550, title XIII, §1319F, Oct. 28, 1992, 106 Stat. 3952; Pub. L. 110–289, div. A, title I, §1161(a)(5), July 30, 2008, 122 Stat. 2779.)

AMENDMENTS

2008—Par. (1). Pub. L. 110–289 substituted ''the Agency'' for ''the Office''.

REFERENCES IN TEXT

This chapter, referred to in par. (2), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

§ 4526. Regulations and orders

(a) Authority

The Director shall issue any regulations, guidelines, or orders necessary to carry out the duties of the Director under this chapter or the authorizing statutes, and to ensure that the purposes of this chapter and the authorizing statutes are accomplished.

(b) Notice and comment

Any regulations issued by the Director under this section shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5.

(Pub. L. 102–550, title XIII, §1319G, Oct. 28, 1992, 106 Stat. 3952; Pub. L. 110–289, div. A, title I, §1107, July 30, 2008, 122 Stat. 2672.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1107(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: ''The Director shall issue any regulations and orders necessary to carry out the duties of the Director and to carry out this chapter before the expiration of the 18-month period beginning on the appointment of the Director under section 4512 of this title. Such regulations and orders shall be subject to the approval of the Secretary only to the extent provided in subsections (b) and (c) of section 4513 of this title.''

Subsec. (c). Pub. L. 110–289, §1107(2), struck out subsec. (c). Text read as follows: ''The Director may not publish any regulation for comment under subsection (b) of this section unless, not less than 15 days before it is published for comment, the Director has submitted a copy of the regulation, in the form it is intended to be proposed, to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.''

PART B—ADDITIONAL AUTHORITIES OF THE DIRECTOR

SUBPART 1—GENERAL AUTHORITY

§ 4541. Prior approval authority for products

(a) In general

The Director shall require each enterprise to obtain the approval of the Director for any product of the enterprise before initially offering the product.

(b) Standard for approval

In considering any request for approval of a product pursuant to subsection (a), the Director shall make a determination that—

(1) in the case of a product of the Federal National Mortgage Association, the product is authorized under paragraph (2), (3), (4), or (5) of section 1717(b) or section 1719 of this title;

(2) in the case of a product of the Federal Home Loan Mortgage Corporation, the product is authorized under paragraph (1), (4), or (5) of section 1454(a) of this title;

(3) the product is in the public interest; and

(4) the product is consistent with the safety and soundness of the enterprise or the mortgage finance system.

(c) Procedure for approval

(1) Submission of request

An enterprise shall submit to the Director a written request for approval of a product that describes the product in such form as prescribed by order or regulation of the Director.

(2) Request for public comment

Immediately upon receipt of a request for approval of a product, as required under paragraph (1), the Director shall publish notice of such request and of the period for public comment pursuant to paragraph (3) regarding the product, and a description of the product proposed by the request. The Director shall give interested parties the opportunity to respond in writing to the proposed product.

(3) Public comment period

During the 30-day period beginning on the date of publication pursuant to paragraph (2) of a request for approval of a product, the Director shall receive public comments regarding the proposed product.

(4) Offering of product

(A) In general

Not later than 30 days after the close of the public comment period described in

paragraph (3), the Director shall approve or deny the product, specifying the grounds for such decision in writing.

(B) Failure to act

If the Director fails to act within the 30-day period described in subparagraph (A), then the enterprise may offer the product.

(C) Temporary approval

The Director may, subject to the rules of the Director, provide for temporary approval of the offering of a product without a public comment period, if the Director finds that the existence of exigent circumstances makes such delay contrary to the public interest.

(d) Conditional approval

If the Director approves the offering of any product by an enterprise, the Director may establish terms, conditions, or limitations with respect to such product with which the enterprise must comply in order to offer such product.

(e) Exclusions

(1) In general

The requirements of subsections (a) through (d) do not apply with respect to—

(A) the automated loan underwriting system of an enterprise in existence as of July 30, 2008, including any upgrade to the technology, operating system, or software to operate the underwriting system;

(B) any modification to the mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by an enterprise, provided that such modifications do not alter the underlying transaction so as to include services or financing, other than residential mortgage financing; or

(C) any other activity that is substantially similar, as determined by rule of the Director to—

(i) the activities described in subparagraphs (A) and (B); and

(ii) other activities that have been approved by the Director in accordance with this section.

(2) Expedited review

(A) Enterprise notice

For any new activity that an enterprise considers not to be a product, the enterprise shall provide written notice to the Director of such activity, and may not commence such activity until the date of receipt of a notice under subparagraph (B) or the expiration of the period described in subparagraph (C). The Director shall establish, by regulation, the form and content of such written notice.

(B) Director determination

Not later than 15 days after the date of receipt of a notice under subparagraph (A), the Director shall determine whether such activity is a product subject to approval under this section. The Director shall, immediately upon so determining, notify the enterprise.

(C) Failure to act

If the Director fails to determine whether such activity is a product within the 15-day period described in subparagraph (B), the enterprise may commence the new activity in accordance with subparagraph (A).

(f) No limitation

Nothing in this section may be construed to restrict—

(1) the safety and soundness authority of the Director over all new and existing products or activities; or

(2) the authority of the Director to review all new and existing products or activities to determine that such products or activities are consistent with the statutory mission of an enterprise.

(Pub. L. 102–550, title XIII, § 1321, as added Pub. L. 110–289, div. A, title I, § 1123, July 30, 2008, 122 Stat. 2689.)

PRIOR PROVISIONS

A prior section 4541, Pub. L. 102–550, title XIII, § 1321, Oct. 28, 1992, 106 Stat. 3952, related to the Secretary of Housing and Urban Development's regulatory authority, prior to repeal by Pub. L. 110–289, div. A, title I, § 1121(2), July 30, 2008, 122 Stat. 2689.

§ 4542. Housing Price Index

The Director shall establish and maintain a method of assessing the national average 1-family house price for use for adjusting the conforming loan limitations of the enterprises. In establishing such method, the Director shall take into consideration the monthly survey of all major lenders conducted by the Federal Housing Finance Agency to determine the national average 1-family house price, the House Price Index maintained by the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development before the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, any appropriate house price indexes of the Bureau of the Census of the Department of Commerce, and any other indexes or measures that the Director considers appropriate.

(Pub. L. 102–550, title XIII, § 1322, as added Pub. L. 110–289, div. A, title I, § 1124(d), July 30, 2008, 122 Stat. 2693.)

REFERENCES IN TEXT

The effective date of the Federal Housing Finance Regulatory Reform Act of 2008, referred to in text, probably means the date of enactment of div. A of Pub. L. 110–289, which was approved July 30, 2008.

PRIOR PROVISIONS

A prior section 4542, Pub. L. 102–550, title XIII, § 1322, Oct. 28, 1992, 106 Stat. 3953, related to the Secretary of Housing and Urban Development's prior approval authority for new programs, prior to repeal by Pub. L. 110–289, div. A, title I, § 1121(2), July 30, 2008, 122 Stat. 2689.

§ 4543. Public access to mortgage information

(a) Availability

(1) In general

The Director shall make available to the public, in forms useful to the public (including

forms accessible by computers), the data submitted by the enterprises in the reports required under section 1723a(m) of this title or section 1456(e) of this title.

(2) Census tract level reporting

Such data shall include the data elements required to be reported under the Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.], at the census tract level.

(b) Access

(1) Proprietary data

Except as provided in paragraph (2), the Director may not make available to the public data that the Director determines pursuant to section 4546 of this title are proprietary information.

(2) Exception

The Director shall not restrict access to the data provided in accordance with section 1723a(m)(1)(A) of this title or section 1456(e)(1)(A) of this title or with subsection (a)(2).

(c) Fees

The Director may charge reasonable fees to cover the cost of making data available under this section to the public.

(d) Timing

Data submitted under this section by an enterprise in connection with a provision referred to in subsection (a) shall be made publicly available in accordance with this section not later than September 30 of the year following the year to which the data relates.

(Pub. L. 102–550, title XIII, §1323, Oct. 28, 1992, 106 Stat. 3954; Pub. L. 110–289, div. A, title I, §§1122(a)(1), 1126, July 30, 2008, 122 Stat. 2689, 2695.)

REFERENCES IN TEXT

The Home Mortgage Disclosure Act of 1975, referred to in subsec. (a)(2), is title III of Pub. L. 94–200, Dec. 31, 1975, 89 Stat. 1125, which is classified principally to chapter 29 (§2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2801 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289, §1122(a)(1), substituted ''Director'' for ''Secretary'' wherever appearing in subsecs. (a) to (c).

Subsec. (a). Pub. L. 110–289, §1126(1), substituted ''Availability'' for ''In general'' in subsec. heading, inserted par. (1) designation and heading, and added par. (2). The amendment was executed to reflect the probable intent of Congress, notwithstanding an error in the directory language which did not take into consideration the prior amendment by Pub. L. 110–289, §1122(a)(1). See above.

Subsec. (b)(2). Pub. L. 110–289, §1126(2), inserted ''or with subsection (a)(2)'' before period at end.

Subsec. (d). Pub. L. 110–289, §1126(3), added subsec. (d).

§ 4544. Annual housing report

(a) In general

After reviewing and analyzing the reports submitted under section 1723a(n) of this title and section 1456(f) of this title, the Director shall submit a report, not later than October 30 of each year, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, on the activities of each enterprise.

(b) Contents

The report required under subsection (a) shall—

(1) discuss—

(A) the extent to and manner in which—

(i) each enterprise is achieving the annual housing goals established under subpart 2;

(ii) each enterprise is complying with its duty to serve underserved markets, as established under section 4565 of this title;

(iii) each enterprise is complying with section 4567 of this title;

(iv) each enterprise received credit towards achieving each of its goals resulting from a transaction or activity pursuant to section 4561(b)(2) of this title; and

(v) each enterprise is achieving the purposes of the enterprise established by law; and

(B) the actions that each enterprise could undertake to promote and expand the purposes of the enterprise;

(2) aggregate and analyze relevant data on income to assess the compliance of each enterprise with the housing goals established under subpart 2;

(3) aggregate and analyze data on income, race, and gender by census tract and other relevant classifications, and compare such data with larger demographic, housing, and economic trends;

(4) identify the extent to which each enterprise is involved in mortgage purchases and secondary market activities involving subprime and nontraditional loans;

(5) compare the characteristics of subprime and nontraditional loans both purchased and securitized by each enterprise to other loans purchased and securitized by each enterprise; and

(6) compare the characteristics of high-cost loans purchased and securitized, where such securities are not held on portfolio to loans purchased and securitized, where such securities are either retained on portfolio or repurchased by the enterprise, including such characteristics as—

(A) the purchase price of the property that secures the mortgage;

(B) the loan-to-value ratio of the mortgage, which shall reflect any secondary liens on the relevant property;

(C) the terms of the mortgage;

(D) the creditworthiness of the borrower; and

(E) any other relevant data, as determined by the Director.

(c) Data collection and reporting

(1) In general

To assist the Director in analyzing the matters described in subsection (b), the Director shall conduct, on a monthly basis, a survey of

mortgage markets in accordance with this subsection.

(2) Data points

Each monthly survey conducted by the Director under paragraph (1) shall collect data on—

(A) the characteristics of individual mortgages that are eligible for purchase by the enterprises and the characteristics of individual mortgages that are not eligible for purchase by the enterprises including, in both cases, information concerning—

(i) the price of the house that secures the mortgage;

(ii) the loan-to-value ratio of the mortgage, which shall reflect any secondary liens on the relevant property;

(iii) the terms of the mortgage;

(iv) the creditworthiness of the borrower or borrowers; and

(v) whether the mortgage, in the case of a conforming mortgage, was purchased by an enterprise;

(B) the characteristics of individual subprime and nontraditional mortgages that are eligible for purchase by the enterprises and the characteristics of borrowers under such mortgages, including the creditworthiness of such borrowers and determination whether such borrowers would qualify for prime lending; and

(C) such other matters as the Director determines to be appropriate.

(3) Public availability

The Director shall make any data collected by the Director in connection with the conduct of a monthly survey available to the public in a timely manner, provided that the Director may modify the data released to the public to ensure that the data—

(A) is not released in an identifiable form; and

(B) is not otherwise obtainable from other publicly available data sets.

(4) Definition

For purposes of this subsection, the term ''identifiable form'' means any representation of information that permits the identity of a borrower to which the information relates to be reasonably inferred by either direct or indirect means.

(Pub. L. 102–550, title XIII, § 1324, as added Pub. L. 110–289, div. A, title I, § 1125(b), July 30, 2008, 122 Stat. 2693.)

PRIOR PROVISIONS

A prior section 4544, Pub. L. 102–550, title XIII, § 1324, Oct. 28, 1992, 106 Stat. 3954, related to annual housing report, prior to repeal by Pub. L. 110–289, div. A, title I, § 1125(a), July 30, 2008, 122 Stat. 2693.

§ 4545. Fair housing

The Secretary of Housing and Urban Development shall—

(1) by regulation, prohibit each enterprise from discriminating in any manner in the purchase of any mortgage because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect;

(2) by regulation, require each enterprise to submit data to the Secretary to assist the Secretary in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Fair Housing Act [42 U.S.C. 3601 et seq.];

(3) by regulation, require each enterprise to submit data to the Secretary to assist in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.], and shall submit any such information received to the appropriate Federal agencies, as provided in section 704 of the Equal Credit Opportunity Act [15 U.S.C. 1691c], for appropriate action;

(4) obtain information from other regulatory and enforcement agencies of the Federal Government and State and local governments regarding violations by lenders of the Fair Housing Act and the Equal Credit Opportunity Act and make such information available to the enterprises;

(5) direct the enterprises to undertake various remedial actions, including suspension, probation, reprimand, or settlement, against lenders that have been found to have engaged in discriminatory lending practices in violation of the Fair Housing Act or the Equal Credit Opportunity Act, pursuant to a final adjudication on the record, and after opportunity for an administrative hearing, in accordance with subchapter II of chapter 5 of title 5; and

(6) periodically review and comment on the underwriting and appraisal guidelines of each enterprise to ensure that such guidelines are consistent with the Fair Housing Act and this section.

(Pub. L. 102–550, title XIII, § 1325, Oct. 28, 1992, 106 Stat. 3955; Pub. L. 110–289, div. A, title I, § 1122(b), July 30, 2008, 122 Stat. 2689.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in pars. (2) and (4) to (6), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

The Equal Credit Opportunity Act, referred to in pars. (3) to (5), is title VII of Pub. L. 90–321, as added by Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1521, as amended, which is classified generally to subchapter IV (§ 1691 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

AMENDMENTS

2008—Pub. L. 110–289 inserted ''of Housing and Urban Development'' after ''The Secretary'' in introductory provisions.

§ 4546. Prohibition of public disclosure of proprietary information

(a) In general

Subject to subsection (d), the Director may, by regulation or order, provide that certain information shall be treated as proprietary information and not subject to disclosure under section 4543 of this title, section 1723a(n)(3) of this title, or section 1456(f)(3) of this title.

(b) Protection of information on housing activities

The Director shall not provide public access to, or disclose to the public, any information required to be submitted by an enterprise under section 1723a(n) of this title or section 1456(f) of this title that the Director determines is proprietary.

(c) Nondisclosure pending consideration

This section may not be construed to authorize the disclosure of information to, or examination of data by, the public or a representative of any person or agency pending the issuance of a final decision under this section.

(d) Mortgage information

Subject to privacy considerations, as described in section 304(j) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(j)), the Director shall, by regulation or order, provide that certain information relating to single family mortgage data of the enterprises shall be disclosed to the public, in order to make available to the public—

(1) the same data from the enterprises that is required of insured depository institutions under the Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.]; and

(2) information collected by the Director under section 4544(b)(6) of this title.

(Pub. L. 102–550, title XIII, § 1326, Oct. 28, 1992, 106 Stat. 3955; Pub. L. 110–289, div. A, title I, §§ 1122(a)(1), 1127, July 30, 2008, 122 Stat. 2689, 2695.)

REFERENCES IN TEXT

The Home Mortgage Disclosure Act of 1975, referred to in subsec. (d)(1), is title III of Pub. L. 94–200, Dec. 31, 1975, 89 Stat. 1125, which is classified principally to chapter 29 (§ 2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2801 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289, § 1122(a)(1), substituted ''Director'' for ''Secretary'' wherever appearing in subsecs. (a) and (b).

Subsec. (a). Pub. L. 110–289, § 1127(1), substituted ''Subject to subsection (d), the Director'' for ''The Director''.

Subsec. (d). Pub. L. 110–289, § 1127(2), added subsec. (d).

§§ 4547, 4548. Repealed. Pub. L. 110–289, div. A , title I, § 1104(b), July 30, 2008, 122 Stat. 2667

Section 4547, Pub. L. 102–550, title XIII, § 1327, Oct. 28, 1992, 106 Stat. 3956; Pub. L. 110–289, div. A, title I, § 1122(a)(1), July 30, 2008, 122 Stat. 2689, related to authority to require reports by enterprises.

Section 4548, Pub. L. 102–550, title XIII, § 1328, Oct. 28, 1992, 106 Stat. 3956; Pub. L. 110–289, div. A, title I, § 1122(a)(1), July 30, 2008, 122 Stat. 2689, related to required annual reports.

SUBPART 2—HOUSING GOALS

§ 4561. Establishment of housing goals

(a) In general

The Director shall, by regulation, establish effective for 2010 and each year thereafter, annual housing goals, with respect to the mortgage purchases by the enterprises, as follows:

(1) Single-family housing goals

Four single-family housing goals under section 4562 of this title.

(2) Multifamily special affordable housing goal

One multifamily special affordable housing goal under section 4563 of this title.

(b) Timing

The Director shall, by regulation, establish an annual deadline by which the Director shall establish the annual housing goals under this subpart for each year, taking into consideration the need for the enterprises to reasonably and sufficiently plan their operations and activities in advance, including operations and activities necessary to meet such annual goals.

(c) Transition

The annual housing goals effective for 2008 pursuant to this subpart, as in effect before July 30, 2008, shall remain in effect for 2009, except that not later than the expiration of the 270-day period beginning on July 30, 2008, the Director shall review such goals applicable for 2009 to determine the feasibility of such goals given the market conditions current at such time and, after seeking public comment for a period not to exceed 30 days, may make appropriate adjustments consistent with such market conditions.

(d) Eliminating interest rate disparities

(1) In general

Upon request by the Director, an enterprise shall provide to the Director, in a form determined by the Director, data the Director may review to determine whether there exist disparities in interest rates charged on mortgages to borrowers who are minorities as compared with comparable mortgages to borrowers of similar creditworthiness who are not minorities.

(2) Remedial actions upon preliminary finding

Upon a preliminary finding by the Director that a pattern of disparities in interest rates with respect to any lender or lenders exists pursuant to the data provided by an enterprise in paragraph (1), the Director shall—[1]

(A) refer the preliminary finding to the appropriate regulatory or enforcement agency for further review; and

(B) require the enterprise to submit additional data with respect to any lender or lenders, as appropriate and to the extent practicable, to the Director who shall submit any such additional data to the regulatory or enforcement agency for appropriate action.

(3) Annual report to Congress

The Director shall submit to the Committee on Financial Services of the House of Rep-

[1] So in original.

resentatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the actions taken, and being taken, by the Director to carry out this subsection. No such report shall identify any lender or lenders who have not been found to have engaged in discriminatory lending practices pursuant to a final adjudication on the record, and after opportunity for an administrative hearing, in accordance with subchapter II of chapter 5 of title 5.

(4) Protection of identity of individuals

In carrying out this subsection, the Director shall ensure that no property-related or financial information that would enable a borrower to be identified shall be made public.

(Pub. L. 102–550, title XIII, § 1331, as added Pub. L. 110–289, div. A, title I, § 1128(b), July 30, 2008, 122 Stat. 2696.)

PRIOR PROVISIONS

A prior section 4561, Pub. L. 102–550, title XIII, § 1331, Oct. 28, 1992, 106 Stat. 3956, related to establishment of housing goals, prior to repeal by Pub. L. 110–289, div. A, title I, § 1128(a), July 30, 2008, 122 Stat. 2696.

§ 4562. Single-family housing goals

(a) In general

The Director shall, by regulation, establish annual goals for the purchase by each enterprise of the following types of mortgages for the following categories of families:

(1) Purchase-money mortgages

A goal for purchase of conventional, conforming, single-family, purchase money mortgages financing owner-occupied housing for each of the following categories of families:

(A) Low-income families.

(B) Families that reside in low-income areas.

(C) Very low-income families.

(2) Refinancing mortgages

A goal for purchase of conventional, conforming mortgages on owner-occupied, single-family housing for low-income families that are given to pay off or prepay an existing loan secured by the same property.

(b) Goals as a percentage of total mortgage purchases

The goals established under paragraphs (1) and (2) of subsection (a) shall be established as a percentage of the total number of conventional, conforming, single-family, owner-occupied, purchase money mortgages purchased by the enterprise, or as percentage of the total number of conventional, single-family, owner-occupied refinance mortgages purchased by the enterprise, as applicable, that are mortgages for the types of families specified in paragraphs (1) and (2) of subsection (a).

(c) Single-family, owner-occupied rental housing units

The Director shall require each enterprise to report the number of rental housing units affordable to low-income families each year which are contained in mortgages purchased by the enterprise financing 2- to 4-unit single-family, owner-occupied properties and may, by regulation, establish additional requirements relating to such units.

(d) Determination of compliance

(1) In general

The Director shall determine, for each year that the housing goals under this section are in effect pursuant to section 4561(a) of this title, whether each enterprise has complied with each such goal established under subsection (a) of this section and any additional requirements which may be established under subsection (c) of this section.

(2) Purchase-money mortgage goals

An enterprise shall be considered to be in compliance with a housing goal under subparagraph (A), (B), or (C) of subsection (a)(1) for a year only if, for the type of family described in such subparagraph, the percentage of the number of conventional, conforming, single-family, owner-occupied, purchase money mortgages purchased by the enterprise in such year that serve such families, meets or exceeds the target for the year for such type of family that is established under subsection (e).

(3) Refinance goal

An enterprise shall be considered to be in compliance with the refinance goal under subsection (a)(2) for a year only if the percentage of the number of conventional, conforming, single-family, owner-occupied refinance mortgages purchased by the enterprise in such year that serve low-income families meets or exceeds the target for the year that is established under subsection (e).

(e) Annual targets

(1) In general

The Director shall, by regulation, establish annual targets for each goal and subgoal under this section, provided that the Director shall not set prospective targets longer than three years. In establishing such targets, the Director shall not consider segments of the market determined to be unacceptable or contrary to good lending practices, inconsistent with safety and soundness, or unauthorized for purchase by the enterprises.

(2) Goals targets

(A) Calculation

The Director shall calculate, for each of the types of families described in subsection (a), the percentage, for each of the three years that most recently precede such year and for which information under the Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.] is publicly available—

(i) of the number of conventional, conforming, single-family, owner-occupied purchase money mortgages originated in such year that serve such type of family, or

(ii) the number of conventional, conforming, single-family, owner-occupied refinance mortgages originated in such year that serve low-income families,

as applicable, as determined by the Director using the information obtained and determined pursuant to paragraphs (4) and (5).

(B) Establishment of goal targets

The Director shall, by regulation, establish targets for each of the goal categories, taking into consideration the calculations under subparagraph (A) and the following factors:

(i) National housing needs.

(ii) Economic, housing, and demographic conditions, including expected market developments.

(iii) The performance and effort of the enterprises toward achieving the housing goals under this section in previous years.

(iv) The ability of the enterprise to lead the industry in making mortgage credit available.

(v) Such other reliable mortgage data as may be available.

(vi) The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described in subsection (a), relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively.

(vii) The need to maintain the sound financial condition of the enterprises.

(3) Authority to adjust targets

The Director may, by regulation, adjust the percentage targets previously established by regulation pursuant to paragraph (2)(B) for any year, to reflect subsequent available data and market developments.

(4) HMDA information

The Director shall annually obtain information submitted in compliance with the Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.] regarding conventional, conforming, single-family, owner-occupied, purchase money and refinance mortgages originated and purchased for the previous year.

(5) Conforming mortgages

In determining whether a mortgage is a conforming mortgage for purposes of this paragraph, the Director shall consider the original principal balance of the mortgage loan to be the principal balance as reported in the information referred to in paragraph (4), as rounded to the nearest thousand dollars.

(f) Notice of determination and enterprise comment

(1) Notice

Within 30 days of making a determination under subsection (d) regarding compliance of an enterprise for a year with a housing goal established under this section and before any public disclosure thereof, the Director shall provide notice of the determination to the enterprise, which shall include an analysis and comparison, by the Director, of the performance of the enterprise for the year and the targets for the year under subsection (e).

(2) Comment period

The Director shall provide each enterprise an opportunity to comment on the determination during the 30-day period beginning upon receipt by the enterprise of the notice.

(g) Use of borrower income

In monitoring the performance of each enterprise pursuant to the housing goals under this section and evaluating such performance (for purposes of section 4566 of this title), the Director shall consider a mortgagor's income to be such income at the time of origination of the mortgage.

(h) Consideration of properties with rental units

Mortgages financing two- to four-unit owner-occupied properties shall count toward the achievement of the single-family housing goals under this section, if such properties otherwise meet the requirements under this section, notwithstanding the use of one or more units for rental purposes.

(i) Goals credit

The Director shall determine whether an enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals established pursuant to section 4562 and 4563 of this title. In making any such determination, the Director shall consider whether a transaction or activity of an enterprise is substantially equivalent to a mortgage purchase and either (1) creates a new market, or (2) adds liquidity to an existing market. No credit toward the achievement of the housing goals and subgoals established under this section may be given to the purchase of mortgages, including any transaction or activity of an enterprise determined to be substantially equivalent to a mortgage purchase, that is determined to be unacceptable or contrary to good lending practices, inconsistent with safety and soundness, or unauthorized for purchase by the enterprises, pursuant to regulations issued by the Director.

(Pub. L. 102–550, title XIII, §1332, as added Pub. L. 110–289, div. A, title I, §1128(b), July 30, 2008, 122 Stat. 2697.)

REFERENCES IN TEXT

The Home Mortgage Disclosure Act of 1975, referred to in subsec. (e)(2)(A), (4), is title III of Pub. L. 94–200, Dec. 31, 1975, 89 Stat. 1125, which is classified principally to chapter 29 (§2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2801 of this title and Tables.

PRIOR PROVISIONS

A prior section 4562, Pub. L. 102–550, title XIII, §1332, Oct. 28, 1992, 106 Stat. 3956, related to low- and moderate-income housing goal, prior to repeal by Pub. L. 110–289, div. A, title I, §1128(a), July 30, 2008, 122 Stat. 2696.

EFFECTIVE DATE

Pub. L. 102–550, title XIII, §1338, Oct. 28, 1992, 106 Stat. 3964, which provided the effective date for housing goals established under former sections 4562(d), 4563(d), and 4564(d) of this title, was repealed by Pub. L. 110–289, div. A, title I, §1122(a)(2), July 30, 2008, 122 Stat. 2689.

§4563. Multifamily special affordable housing goal

(a) Establishment of goal

(1) In general

The Director shall, by regulation, establish a single annual goal, by either unit or dollar

volume, of purchases by each enterprise of mortgages on multifamily housing that finance dwelling units affordable to low-income families.

(2) Additional requirements for units affordable to very low-income families

When establishing the goal under this section, the Director shall establish additional requirements for the purchase by each enterprise of mortgages on multifamily housing that finance dwelling units affordable to very low-income families.

(3) Reporting on smaller properties

The Director shall require each enterprise to report on the purchase by each enterprise of multifamily housing of a smaller or limited size that is affordable to low-income families, which may be based on multifamily projects of 5 to 50 units (as such numbers may be adjusted by the Director) or on mortgages of up to $5,000,000 (as such amount may be adjusted by the Director), and may, by regulation, establish such aditional[1] requirements related to such units.

(4) Factors

In establishing the goal and additional requirements under this section, the Director shall not consider segments of the market determined to be inconsistent with safety and soundness or unauthorized for purchase by the enterprises, and shall take into consideration—

(A) national multifamily mortgage credit needs and the ability of the enterprise to provide additional liquidity and stability for the multifamily mortgage market;

(B) the performance and effort of the enterprise in making mortgage credit available for multifamily housing in previous years;

(C) the size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;

(D) the ability of the enterprise to lead the market in making multifamily mortgage credit available, especially for multifamily housing described in paragraphs (1) and (2);

(E) the availability of public subsidies; and

(F) the need to maintain the sound financial condition of the enterprise.

(b) Units financed by housing finance agency bonds

The Director shall give full credit toward the achievement of the multifamily special affordable housing goal under this section (for purposes of section 4566 of this title) to dwelling units in multifamily housing that otherwise qualifies under such goal and that is financed by tax-exempt or taxable bonds issued by a State or local housing finance agency, if such bonds, in whole or in part—

(1) are secured by a guarantee of the enterprise; or

(2) are purchased by the enterprise, except that the Director may give less than full credit for purchases of investment grade bonds, to the extent that such purchases do not provide a new market or add liquidity to an existing market.

(c) Measurement of performance

The Director shall monitor the performance of each enterprise in meeting the goals established under this section and shall evaluate such performance (for purposes of section 4566 of this title) based on whether the rent levels are affordable. A rent level shall be considered to be affordable for purposes of this subsection for low-income families if it does not exceed 30 percent of the maximum income level of such income category, with appropriate adjustments for unit size as measured by the number of bedrooms.

(d) Determination of compliance

The Director shall determine, for each year that the housing goal under this section is in effect pursuant to section 4561(a) of this title, whether each enterprise has complied with such goal and the additional requirements under subsection (a)(2).

(Pub. L. 102–550, title XIII, § 1333, as added Pub. L. 110–289, div. A, title I, § 1128(b), July 30, 2008, 122 Stat. 2700.)

PRIOR PROVISIONS

A prior section 4563, Pub. L. 102–550, title XIII, § 1333, Oct. 28, 1992, 106 Stat. 3958, related to special affordable housing goal, prior to repeal by Pub. L. 110–289, div. A, title I, § 1128(a), July 30, 2008, 122 Stat. 2696.

§ 4564. Discretionary adjustment of housing goals

(a) Authority

An enterprise may petition the Director in writing at any time during a year to reduce the level of any goal or subgoal for such year established pursuant to this subpart.

(b) Standard for reduction

The Director may reduce the level for a goal or subgoal pursuant to such a petition only if—

(1) market and economic conditions or the financial condition of the enterprise require such action; or

(2) efforts to meet the goal or subgoal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of this subpart, or section 1716(3) of this title or section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note), as applicable.

(c) Determination

The Director shall, promptly upon receipt of a petition regarding a reduction, seek public comment on the reduction for a period of 30 days. The Director shall make a determination regarding any proposed reduction within 30 days after the expiration of such public comment period. The Director may extend such determination period for a single additional 15-day period, but only if the Director requests additional information from the enterprise.

(Pub. L. 102–550, title XIII, § 1334, as added Pub. L. 110–289, div. A, title I, § 1128(b), July 30, 2008, 122 Stat. 2701.)

[1] So in original.

REFERENCES IN TEXT

Section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act, referred to in subsec. (b)(2), is section 301(b)(3) of Pub. L. 91–351, which is set out as a Short Title and Statement of Purpose note under section 1451 of this title.

PRIOR PROVISIONS

A prior section 4564, Pub. L. 102–550, title XIII, § 1334, Oct. 28, 1992, 106 Stat. 3960, related to central cities, rural areas, and other underserved areas housing goal, prior to repeal by Pub. L. 110–289, div. A, title I, § 1128(a), July 30, 2008, 122 Stat. 2696.

§ 4565. Duty to serve underserved markets and other requirements

(a) Duty to serve underserved markets

(1) [1] Duty

To increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets, each enterprise shall provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages for very low-, low-, and moderate-income families with respect to the following underserved markets:

(A) Manufactured housing

The enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low-, low-, and moderate-income families.

(B) Affordable housing preservation

The enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income families, including housing projects subsidized under__ [2]

(i) the project-based and tenant-based rental assistance programs under section 1437f of title 42;

(ii) the program under section 1715z–1 of this title;

(iii) the below-market interest rate mortgage program under section 1715*l*(d)(4) of this title;

(iv) the supportive housing for the elderly program under section 1701q of this title;

(v) the supportive housing program for persons with disabilities under section 8013 of title 42;

(vi) the programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 et seq.), but only permanent supportive housing projects subsidized under such programs;

(vii) the rural rental housing program under section 1485 of title 42;

(viii) the low-income housing tax credit under section 42 of title 26; and

(ix) comparable state [3] and local affordable housing programs.

(C) Rural markets

The enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, and low-, and moderate-income families in rural areas.

(b) In general

To meet the housing goals established under this subpart and to carry out the duty under subsection (a) of this section, each enterprise shall—

(1) design programs and products that facilitate the use of assistance provided by the Federal Government and State and local governments;

(2) develop relationships with nonprofit and for-profit organizations that develop and finance housing and with State and local governments, including housing finance agencies;

(3) take affirmative steps to—

(A) assist primary lenders to make housing credit available in areas with concentrations of low-income and minority families, and

(B) assist insured depository institutions to meet their obligations under the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.],

which shall include developing appropriate and prudent underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures; and

(4) develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers.

(c) Additional categories

The Director may submit recommendations to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate for the establishment of additional categories under subsection (a), provided that the Director makes a preliminary determination that any such category is important to the mission of the enterprises, that the category is an underserved market, and that the establishment of such category is warranted.

(d) Evaluation and reporting of compliance

(1) In general

The Director shall, by regulation, establish effective for 2010 and thereafter a manner for evaluating whether, and the extent to which, the enterprises have complied with the duty under subsection (a) to serve underserved markets and for rating the extent of such compliance. Using such method, the Director shall, for 2010 and each year thereafter, evaluate such compliance and rate the performance of each enterprise as to extent of compliance. The Director shall include such evaluation and rating for each enterprise for a year in the report for that year submitted pursuant to section 4521(a) of this title.

(2) Separate evaluations

In determining whether an enterprise has complied with the duty referred to in paragraph (1), the Director shall separately evaluate whether the enterprise has complied with

[1] So in original. No par. (2) has been enacted.

[2] So in original.

[3] So in original. Probably should be capitalized.

such duty with respect to each of the underserved markets identified in subsection (a), taking into consideration [2]

(A) the development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing to each of such underserved markets;

(B) the extent of outreach to qualified loan sellers and other market participants in each of such underserved markets;

(C) the volume of loans purchased in each of such underserved markets relative to the market opportunities available to the enterprise, except that the Director shall not establish specific quantitative targets nor evaluate the enterprises based solely on the volume of loans purchased; and

(D) the amount of investments and grants in projects which assist in meeting the needs of such underserved markets.

(3) Manufactured housing market

In determining whether an enterprise has complied with the duty under subparagraph (A) of subsection (a)(1), the Director may consider loans secured by both real and personal property.

(4) Prohibition of consideration of affordable housing fund grants for meeting duty to serve

In determining whether an enterprise has complied with the duty referred to in paragraph (1), the Director may not consider any affordable housing fund grant amounts used under section 4567 of this title for eligible activities under subsection (g) of such section.

(Pub. L. 102–550, title XIII, § 1335, Oct. 28, 1992, 106 Stat. 3961; Pub. L. 105–65, title V, § 517(c), Oct. 27, 1997, 111 Stat. 1403; Pub. L. 110–289, div. A, title I, §§ 1128(c)(1), 1129(a), July 30, 2008, 122 Stat. 2701, 2703.)

REFERENCES IN TEXT

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (a)(1)(B)(vi), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482. Title IV of the Act is classified principally to subchapter IV (§ 11360 et seq.) of chapter 119 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

The Community Reinvestment Act of 1977, referred to in subsec. (b)(3)(B), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, which is classified generally to chapter 30 (§ 2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289, § 1129(a)(1), inserted ''Duty to serve underserved markets and'' before ''other'' in section catchline.

Subsec. (a). Pub. L. 110–289, § 1129(a)(4), added subsec. (a). Former subsec. (a) redesignated (b).

Pub. L. 110–289, § 1129(a)(3)(A)–(D), inserted ''and to carry out the duty under subsection (a) of this section'' before '', each enterprise shall'' in introductory provisions and struck out par. (5) which read as follows: ''assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts, as defined under the Multifamily Assisted Housing Reform and Affordability Act of 1997.''

Pub. L. 110–289, § 1128(c)(1), substituted ''housing goals established under this subpart'' for ''low- and moderate-income housing goal under section 4562 of this title, the special affordable housing goal under section 4563 of this title, and the central cities, rural areas, and other underserved areas housing goal under section 4564 of this title'' in introductory provisions.

Subsec. (b). Pub. L. 110–289, § 1129(a)(3)(E), redesignated subsec. (a) as (b).

Pub. L. 110–289, § 1129(a)(2), struck out subsec. (b). Text read as follows: ''Actions taken under subsection (a)(5) of this section shall constitute part of the contribution of each entity in meeting its affordable housing goals under sections 4562, 4563, and 4564 of this title for any fiscal year, as determined by the Secretary.''

Subsecs. (c), (d). Pub. L. 110–289, § 1129(a)(5), added subsecs. (c) and (d).

1997—Subsec. (a). Pub. L. 105–65, § 517(c)(3), designated existing provisions as subsec. (a) and inserted heading.

Subsec. (a)(5). Pub. L. 105–65, § 517(c)(1), (2), (4), added par. (5).

Subsec. (b). Pub. L. 105–65, § 517(c)(4), added subsec. (b).

§ 4566. Monitoring and enforcing compliance with housing goals

(a) In general

(1) Authority

The Director shall monitor and enforce compliance with the housing goals established under this subpart and with the duty under section 4565(a) of this title of each enterprise with respect to underserved markets, as provided in this section.

(2) Guidelines

The Director shall establish guidelines to measure the extent of compliance with the housing goals, which, except as provided in paragraph (5), may assign full credit, partial credit, or no credit toward achievement of the housing goals to different categories of mortgage purchase activities of the enterprises, based on such criteria as the Director deems appropriate.

(3) Extent of compliance

In determining compliance with the housing goals established under this subpart, the Director—

(A) shall consider any single mortgage purchased by an enterprise as contributing to the achievement of each housing goal for which such mortgage purchase qualifies; and

(B) may take into consideration the number of housing units financed by any mortgage on housing purchased by an enterprise.

(4) Enforcement of duty to provide mortgage credit to underserved markets

The duty under section 4565(a) of this title of each enterprise to serve underserved markets (as determined in accordance with section 4565(c) of this title) shall be enforceable under this section to the same extent and under the same provisions that the housing goals established under this subpart are enforceable. Such duty shall be enforceable only under this section, except that such duty shall not be subject to subsection (c)(7) of this section and shall not be enforceable under any other provision of this chapter (including subpart 3 of this part) or under any provision of the Federal National Mortgage Association Charter Act [12

U.S.C. 1716 et seq.] or the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.].

(5) Additional credit

The Director may assign additional credit toward achievement, under this section, of the housing goals for mortgage purchase activities of the enterprises that comply with the requirements of such goals and support housing that includes a licensed childcare center. The availability of additional credit under this paragraph shall not be used to increase any housing goal, subgoal, or target established under this subpart.

(b) Notice and preliminary determination of failure to meet goals

(1) Notice

If the Director preliminarily determines that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal under this subpart, the Director shall provide written notice to the enterprise of such a preliminary determination, the reasons for such determination, and the information on which the Director based the determination.

(2) Response period

(A) In general

During the 30-day period beginning on the date on which an enterprise is provided notice under paragraph (1), the enterprise may submit to the Director any written information that the enterprise considers appropriate for consideration by the Director in finally determining whether such failure has occurred or whether the achievement of such goal was or is feasible.

(B) Extended period

The Director may extend the period under subparagraph (A) for good cause for not more than 30 additional days.

(C) Shortened period

The Director may shorten the period under subparagraph (A) for good cause.

(D) Failure to respond

The failure of an enterprise to provide information during the 30-day period under this paragraph (as extended or shortened) shall waive any right of the enterprise to comment on the proposed determination or action of the Director.

(3) Consideration of information and final determination

(A) In general

After the expiration of the response period under paragraph (2), or upon receipt of information provided during such period by the enterprise, whichever occurs earlier, the Director shall issue a final determination on—

(i) whether the enterprise has failed, or there is a substantial probability that the enterprise will fail, to meet the housing goal; and

(ii) whether (taking into consideration market and economic conditions and the financial condition of the enterprise) the achievement of the housing goal was or is feasible.

(B) Considerations

In making a final determination under subparagraph (A), the Director shall take into consideration any relevant information submitted by the enterprise during the response period.

(C) Notice

The Director shall provide written notice, including a response to any information submitted during the response period, to the enterprise, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, of—

(i) each final determination under this paragraph that an enterprise has failed, or that there is a substantial probability that the enterprise will fail, to meet a housing goal;

(ii) each final determination that the achievement of a housing goal was or is feasible; and

(iii) the reasons for each such final determination.

(c) Cease and desist, civil money penalties, and remedies including housing plans

(1) Requirement

If the Director finds, pursuant to subsection (b), that there is a substantial probability that an enterprise will fail, or has actually failed, to meet any housing goal under this subpart, and that the achievement of the housing goal was or is feasible, the Director may require that the enterprise submit a housing plan under this subsection. If the Director makes such a finding and the enterprise refuses to submit such a plan, submits an unacceptable plan, or fails to comply with the plan, the Director may issue a cease and desist order in accordance with section 4581 of this title and impose civil money penalties in accordance with section 4585 of this title.

(2) Housing plan

If the Director requires a housing plan under this subsection, such a plan shall be—

(A) a feasible plan describing the specific actions the enterprise will take—

(i) to achieve the goal for the next calendar year; and

(ii) if the Director determines that there is a substantial probability that the enterprise will fail to meet a goal in the current year, to make such improvements and changes in its operations as are reasonable in the remainder of such year; and

(B) sufficiently specific to enable the Director to monitor compliance periodically.

(3) Deadline for submission

The Director shall establish a deadline for an enterprise to submit a housing plan to the Director, which may not be more than 45 days after the enterprise is provided notice. The Director may extend the deadline to the extent that the Director determines necessary. Any

extension of the deadline shall be in writing and for a time certain.

(4) Approval

The Director shall review each submission by an enterprise, including a housing plan submitted under this subsection, and, not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines it necessary. The Director shall approve any plan that the Director determines is likely to succeed, and conforms with the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.] or the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.] (as applicable), this chapter, and any other applicable provision of law.

(5) Notice of approval and disapproval

The Director shall provide written notice to any enterprise submitting a housing plan of the approval or disapproval of the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval.

(6) Resubmission

If the initial housing plan submitted by an enterprise under this section is disapproved, the enterprise shall submit an amended plan acceptable to the Director not later than 15 days after such disapproval, or such longer period that the Director determines is in the public interest.

(7) Cease and desist orders; civil money penalties

Solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, if the Director requires an enterprise to submit a housing plan under this subsection and the enterprise refuses to submit such a plan, submits an unacceptable plan, or fails to comply with the plan, the Director may issue a cease and desist order in accordance with section 4581 of this title, impose civil money penalties in accordance with section 4585 of this title, exercise other appropriate enforcement authority or seek other appropriate actions.

(Pub. L. 102–550, title XIII, §1336, Oct. 28, 1992, 106 Stat. 3962; Pub. L. 110–289, div. A, title I, §§1122(a)(1), 1128(c)(2), 1129(b), (c), 1130(a), July 30, 2008, 122 Stat. 2689, 2702, 2705, 2706.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(4) and (c)(4), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

The Federal National Mortgage Association Charter Act, referred to in subsecs. (a)(4) and (c)(4), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, which is classified generally to subchapter III (§1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in subsecs. (a)(4) and (c)(4), is title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, which is classified generally to chapter 11A (§1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1122(a)(1), substituted ''Director'' for ''Secretary'' wherever appearing in pars. (1) to (3).

Subsec. (a)(1). Pub. L. 110–289, §1129(b)(1), inserted ''and with the duty under section 4565(a) of this title of each enterprise with respect to underserved markets,'' before ''as provided in this section''.

Pub. L. 110–289, §1128(c)(2), substituted ''this subpart'' for ''sections 4562, 4563, and 4564 of this title,''.

Subsec. (a)(2). Pub. L. 110–289, §1129(c)(1), inserted '', except as provided in paragraph (5),'' before ''may assign''.

Subsec. (a)(4). Pub. L. 110–289, §1129(b)(2), added par. (4).

Subsec. (a)(5). Pub. L. 110–289, §1129(c)(2), added par. (5).

Subsecs. (b), (c). Pub. L. 110–289, §1130(a), added subsecs. (b) and (c) and struck out former subsecs. (b) and (c) which related to notice and determination of failure to meet housing goals and submission of housing plans, respectively.

§ 4567. Affordable housing allocations

(a) Set aside and allocation of amounts by enterprises

Subject to subsection (b), in each fiscal year—

(1) the Federal Home Loan Mortgage Corporation shall—

(A) set aside an amount equal to 4.2 basis points for each dollar of the unpaid principal balance of its total new business purchases; and

(B) allocate or otherwise transfer—

(i) 65 percent of such amounts to the Secretary of Housing and Urban Development to fund the Housing Trust Fund established under section 4568 of this title; and

(ii) 35 percent of such amounts to fund the Capital Magnet Fund established pursuant to section 4569 of this title; and

(2) the Federal National Mortgage Association shall—

(A) set aside an amount equal to 4.2 basis points for each dollar of unpaid principal balance of its total new business purchases; and

(B) allocate or otherwise transfer—

(i) 65 percent of such amounts to the Secretary of Housing and Urban Development to fund the Housing Trust Fund established under section 4568 of this title; and

(ii) 35 percent of such amounts to fund the Capital Magnet Fund established pursuant to section 4569 of this title.

(b) Suspension of contributions

The Director shall temporarily suspend allocations under subsection (a) by an enterprise upon a finding by the Director that such allocations—

(1) are contributing, or would contribute, to the financial instability of the enterprise;

(2) are causing, or would cause, the enterprise to be classified as undercapitalized; or

(3) are preventing, or would prevent, the enterprise from successfully completing a capital restoration plan under section 4622 of this title.

(c) Prohibition of pass-through of cost of allocations

The Director shall, by regulation, prohibit each enterprise from redirecting the costs of any allocation required under this section, through increased charges or fees, or decreased premiums, or in any other manner, to the originators of mortgages purchased or securitized by the enterprise.

(d) Enforcement of requirements on enterprise

Compliance by the enterprises with the requirements under this section shall be enforceable under subpart 3. Any reference in such subpart to this part or to an order, rule, or regulation under this part specifically includes this section and any order, rule, or regulation under this section.

(e) Required amount for HOPE reserve fund

Of the aggregate amount allocated under subsection (a), 25 percent shall be deposited into a fund established in the Treasury of the United States by the Secretary of the Treasury for such purpose.

(f) Limitation

No funds under this chapter may be used in conjunction with property taken by eminent domain, unless eminent domain is employed only for a public use, except that, for purposes of this section, public use shall not be construed to include economic development that primarily benefits any private entity.

(Pub. L. 102–550, title XIII, §1337, as added Pub. L. 110–289, div. A, title I, §1131(b), July 30, 2008, 122 Stat. 2711.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

PRIOR PROVISIONS

A prior section 4567, Pub. L. 102–550, title XIII, §1337, Oct. 28, 1992, 106 Stat. 3964, related to reports during transition, prior to repeal by Pub. L. 110–289, div. A, title I, §1131(a), July 30, 2008, 122 Stat. 2711.

§ 4568. Housing Trust Fund

(a) Establishment and purpose

(1) In general

The Secretary of Housing and Urban Development (in this section referred to as the ''Secretary'') shall establish and manage a Housing Trust Fund, which shall be funded with amounts allocated by the enterprises under section 4567 of this title and any amounts as are or may be appropriated, transferred, or credited to such Housing Trust Fund under any other provisions of law. The purpose of the Housing Trust Fund under this section is to provide grants to States (as such term is defined in section 4502 of this title) for use—

(A) to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families; and

(B) to increase homeownership for extremely low- and very low-income families.

(2) Federal assistance

For purposes of the application of Federal civil rights laws, all assistance provided from the Housing Trust Fund shall be considered Federal financial assistance.

(b) Allocations for HOPE bond payments

(1) In general

Notwithstanding subsection (c), to help address the mortgage crisis, of the amounts allocated pursuant to clauses (i) and (ii) of section 4567(a)(1)(B) of this title and clauses (i) and (ii) of section 4567(a)(2)(B) of this title in excess of amounts described in section 4567(e) of this title—

(A) 100 percent of such excess shall be used to reimburse the Treasury for payments made pursuant to section 1715z–23(w)(1)(C) of this title in calendar year 2009;

(B) 50 percent of such excess shall be used to reimburse the Treasury for such payments in calendar year 2010; and

(C) 25 percent of such excess shall be used to reimburse the Treasury for such payments in calendar year 2011.

(2) Excess funds

At the termination of the HOPE for Homeowners Program established under section 1715z–23 of this title, if amounts used to reimburse the Treasury under paragraph (1) exceed the total net cost to the Government of the HOPE for Homeowners Program, such amounts shall be used for their original purpose, as described in paragraphs (1)(B) and (2)(B) of section 4567(a) of this title.

(3) Treasury fund

The amounts referred to in subparagraphs (A) through (C) of paragraph (1) shall be deposited into a fund established in the Treasury of the United States by the Secretary of the Treasury for such purpose.

(c) Allocation for Housing Trust Fund in fiscal year 2010 and subsequent years

(1) In general

Except as provided in subsection (b), the Secretary shall distribute the amounts allocated for the Housing Trust Fund under this section to provide affordable housing as described in this subsection.

(2) Permissible designees

A State receiving grant amounts under this subsection may designate a State housing finance agency, housing and community development entity, tribally designated housing entity (as such term is defined in section 4103 of title 25), or any other qualified instrumentality of the State to receive such grant amounts.

(3) Distribution to States by needs-based formula

(A) In general

The Secretary shall, by regulation, establish a formula within 12 months of July 30, 2008, to distribute amounts made available

under this subsection to each State to provide affordable housing to extremely low- and very low-income households.

(B) Basis for formula

The formula required under subparagraph (A) shall include the following:

(i) The ratio of the shortage of standard rental units both affordable and available to extremely low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to extremely low-income renter households in all the States.

(ii) The ratio of the shortage of standard rental units both affordable and available to very low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to very low-income renter households in all the States.

(iii) The ratio of extremely low-income renter households in the State living with either (I) incomplete kitchen or plumbing facilities, (II) more than 1 person per room, or (III) paying more than 50 percent of income for housing costs, to the aggregate number of extremely low-income renter households living with either (IV) incomplete kitchen or plumbing facilities, (V) more than 1 person per room, or (VI) paying more than 50 percent of income for housing costs in all the States.

(iv) The ratio of very low-income renter households in the State paying more than 50 percent of income on rent relative to the aggregate number of very low-income renter households paying more than 50 percent of income on rent in all the States.

(v) The resulting sum calculated from the factors described in clauses (i) through (iv) shall be multiplied by the relative cost of construction in the State. For purposes of this subclause,[1] the term ''cost of construction''—

(I) means the cost of construction or building rehabilitation in the State relative to the national cost of construction or building rehabilitation; and

(II) shall be calculated such that values higher than 1.0 indicate that the State's construction costs are higher than the national average, a value of 1.0 indicates that the State's construction costs are exactly the same as the national average, and values lower than 1.0 indicate that the State's cost of construction are lower than the national average.

(C) Priority

The formula required under subparagraph (A) shall give priority emphasis and consideration to the factor described in subparagraph (B)(i).

(4) Allocation of grant amounts

(A) Notice

Not later than 60 days after the date that the Secretary determines the formula amounts described in paragraph (3), the Secretary shall caused[2] to be published in the Federal Register a notice that such amounts shall be so available.

(B) Grant amount

In each fiscal year other than fiscal year 2009, the Secretary shall make a grant to each State in an amount that is equal to the formula amount determined under paragraph (3) for that State.

(C) Minimum State allocations

If the formula amount determined under paragraph (3) for a fiscal year would allocate less than $3,000,000 to any of the 50 States of the United States or the District of Columbia, the allocation for such State of the United States or the District of Columbia shall be $3,000,000, and the increase shall be deducted pro rata from the allocations made to all other of the States (as such term is defined in section 4502 of this title).

(5) Allocation plans required

(A) In general

For each year that a State or State designated entity receives a grant under this subsection, the State or State designated entity shall establish an allocation plan. Such plan shall—

(i) set forth a plan for the distribution of grant amounts received by the State or State designated entity for such year;

(ii) be based on priority housing needs, as determined by the State or State designated entity in accordance with the regulations established under subsection (g)(2)(D);

(iii) comply with paragraph (6); and

(iv) include performance goals that comply with the requirements established by the Secretary pursuant to subsection (g)(2).

(B) Establishment

In establishing an allocation plan under this paragraph, a State or State designated entity shall—

(i) notify the public of the establishment of the plan;

(ii) provide an opportunity for public comments regarding the plan;

(iii) consider any public comments received regarding the plan; and

(iv) make the completed plan available to the public.

(C) Contents

An allocation plan of a State or State designated entity under this paragraph shall set forth the requirements for eligible recipients under paragraph (8) to apply for such grant amounts, including a requirement that each such application include—

(i) a description of the eligible activities to be conducted using such assistance; and

(ii) a certification by the eligible recipient applying for such assistance that any housing units assisted with such assist-

[1] So in original. Probably should be ''this clause,''.

[2] So in original. Probably should be ''cause''.

ance will comply with the requirements under this section.

(6) Selection of activities funded using Housing Trust Fund grant amounts

Grant amounts received by a State or State designated entity under this subsection may be used, or committed for use, only for activities that—

(A) are eligible under paragraph (7) for such use;

(B) comply with the applicable allocation plan of the State or State designated entity under paragraph (5); and

(C) are selected for funding by the State or State designated entity in accordance with the process and criteria for such selection established pursuant to subsection (g)(2)(D).

(7) Eligible activities

Grant amounts allocated to a State or State designated entity under this subsection shall be eligible for use, or for commitment for use, only for assistance for—

(A) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in section 4565(a)(2)(B) of this title and for operating costs, except that not less than 75 percent of such grant amounts shall be used for the benefit only of extremely low-income families or families with incomes at or below the poverty line (as such term is defined in section 9902 of title 42, including any revision required by such section) applicable to a family of the size involved, and not more than 25 percent for the benefit only of very low-income families; and

(B) the production, preservation, and rehabilitation of housing for homeownership, including such forms as down payment assistance, closing cost assistance, and assistance for interest rate buy-downs, that—

(i) is available for purchase only for use as a principal residence by families that qualify both as—

(I) extremely low- and very low-income families at the times described in subparagraphs (A) through (C) of section 215(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)(2)); and

(II) first-time homebuyers, as such term is defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704), except that any reference in such section to assistance under title II of such Act [42 U.S.C. 12721 et seq.] shall for purposes of this subsection be considered to refer to assistance from affordable housing fund grant amounts;

(ii) has an initial purchase price that meets the requirements of section 215(b)(1) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12745(b)(1)];

(iii) is subject to the same resale restrictions established under section 215(b)(3) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12745(b)(3)] and applicable to the participating jurisdiction that is the State in which such housing is located; and

(iv) is made available for purchase only by, or in the case of assistance under this subsection, is made available only to homebuyers who have, before purchase completed a program of independent financial education and counseling from an eligible organization that meets the requirements of section 132 of the Federal Housing Finance Regulatory Reform Act of 2008.[3]

(8) Tenant protections and public participation

All amounts from the Trust Fund shall be allocated in accordance with, and any eligible activities carried out in whole or in part with grant amounts under this subchapter (including housing provided with such grant amounts) shall comply with and be operated in compliance with—

(A) laws relating to tenant protections and tenant rights to participate in decision making regarding their residences;

(B) laws requiring public participation, including laws relating to Consolidated Plans, Qualified Allocation Plans, and Public Housing Agency Plans; and

(C) fair housing laws and laws regarding accessibility in federally assisted housing, including section 794 of title 29.

(9) Eligible recipients

Grant amounts allocated to a State or State designated entity under this subsection may be provided only to a recipient that is an organization, agency, or other entity (including a for-profit entity or a nonprofit entity) that—

(A) has demonstrated experience and capacity to conduct an eligible activity under paragraph (7), as evidenced by its ability to—

(i) own, construct or rehabilitate, manage, and operate an affordable multifamily rental housing development;

(ii) design, construct or rehabilitate, and market affordable housing for homeownership; or

(iii) provide forms of assistance, such as down payments, closing costs, or interest rate buy-downs for purchasers;

(B) demonstrates the ability and financial capacity to undertake, comply, and manage the eligible activity;

(C) demonstrates its familiarity with the requirements of any other Federal, State, or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

(D) makes such assurances to the State or State designated entity as the Secretary shall, by regulation, require to ensure that the recipient will comply with the requirements of this subsection during the entire period that begins upon selection of the recipient to receive such grant amounts and ending upon the conclusion of all activities under paragraph (8) that are engaged in by

[3] See References in Text note below.

the recipient and funded with such grant amounts.

(10) Limitations on use

(A) Required amount for homeownership activities

Of the aggregate amount allocated to a State or State designated entity under this subsection not more than 10 percent shall be used for activities under subparagraph (B) of paragraph (7).

(B) Deadline for commitment or use

Grant amounts allocated to a State or State designated entity under this subsection shall be used or committed for use within 2 years of the date that such grant amounts are made available to the State or State designated entity. The Secretary shall recapture any such amounts not so used or committed for use and reallocate such amounts under this subsection in the first year after such recapture.

(C) Use of returns

The Secretary shall, by regulation, provide that any return on a loan or other investment of any grant amount used by a State or State designated entity to provide a loan under this subsection shall be treated, for purposes of availability to and use by the State or State designated entity, as a grant amount authorized under this subsection.

(D) Prohibited uses

The Secretary shall, by regulation—

(i) set forth prohibited uses of grant amounts allocated under this subsection, which shall include use for—

(I) political activities;

(II) advocacy;

(III) lobbying, whether directly or through other parties;

(IV) counseling services;

(V) travel expenses; and

(VI) preparing or providing advice on tax returns;

and for the purposes of this subparagraph, the prohibited use of funds for political activities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State or local office as codified in section 501 of title 26;

(ii) provide that, except as provided in clause (iii), grant amounts of a State or State designated entity may not be used for administrative, outreach, or other costs of—

(I) the State or State designated entity; or

(II) any other recipient of such grant amounts; and

(iii) limit the amount of any grant amounts for a year that may be used by the State or State designated entity for administrative costs of carrying out the program required under this subsection, including home ownership counseling, to a percentage of such grant amounts of the State or State designated entity for such year, which may not exceed 10 percent.

(E) Prohibition of consideration of use for meeting housing goals or duty to serve

In determining compliance with the housing goals under this subpart and the duty to serve underserved markets under section 4565 of this title, the Director may not consider any grant amounts used under this section for eligible activities under paragraph (7). The Director shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from such grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

(d) Reduction for failure to obtain return of misused funds

If in any year a State or State designated entity fails to obtain reimbursement or return of the full amount required under subsection (e)(1)(B) to be reimbursed or returned to the State or State designated entity during such year—

(1) except as provided in paragraph (2)—

(A) the amount of the grant for the State or State designated entity for the succeeding year, as determined pursuant to this section, shall be reduced by the amount by which such amounts required to be reimbursed or returned exceed the amount actually reimbursed or returned; and

(B) the amount of the grant for the succeeding year for each other State or State designated entity whose grant is not reduced pursuant to subparagraph (A) shall be increased by the amount determined by applying the formula established pursuant to this section to the total amount of all reductions for all State or State designated entities for such year pursuant to subparagraph (A); or

(2) in any case in which such failure to obtain reimbursement or return occurs during a year immediately preceding a year in which grants under this section will not be made, the State or State designated entity shall pay to the Secretary for reallocation among the other grantees an amount equal to the amount of the reduction for the entity that would otherwise apply under paragraph (1)(A).

(e) Accountability of recipients and grantees

(1) Recipients

(A) Tracking of funds

The Secretary shall—

(i) require each State or State designated entity to develop and maintain a system to ensure that each recipient of assistance under this section uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

(ii) establish minimum requirements for agreements, between the State or State designated entity and recipients, regarding assistance under this section, which shall include—

(I) appropriate periodic financial and project reporting, record retention, and

audit requirements for the duration of the assistance to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and

(II) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

(B) Misuse of funds

(i) Reimbursement requirement

If any recipient of assistance under this section is determined, in accordance with clause (ii), to have used any such amounts in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such amounts were provided, the State or State designated entity shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the State or State designated entity for such misused amounts and return to the State or State designated entity any such amounts that remain unused or uncommitted for use. The remedies under this clause are in addition to any other remedies that may be available under law.

(ii) Determination

A determination is made in accordance with this clause if the determination is made by the Secretary or made by the State or State designated entity, provided that—

(I) the State or State designated entity provides notification of the determination to the Secretary for review, in the discretion of the Secretary, of the determination; and

(II) the Secretary does not subsequently reverse the determination.

(2) Grantees

(A) Report

(i) In general

The Secretary shall require each State or State designated entity receiving grant amounts in any given year under this section to submit a report, for such year, to the Secretary that—

(I) describes the activities funded under this section during such year with such grant amounts; and

(II) the[4] manner in which the State or State designated entity complied during such year with any allocation plan established pursuant to subsection (c).

(ii) Public availability

The Secretary shall make such reports pursuant to this subparagraph publicly available.

(B) Misuse of funds

If the Secretary determines, after reasonable notice and opportunity for hearing, that a State or State designated entity has failed to comply substantially with any provision of this section, and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

(i) reduce the amount of assistance under this section to the State or State designated entity by an amount equal to the amount of grant amounts which were not used in accordance with this section;

(ii) require the State or State designated entity to repay the Secretary any amount of the grant which was not used in accordance with this section;

(iii) limit the availability of assistance under this section to the State or State designated entity to activities or recipients not affected by such failure to comply; or

(iv) terminate any assistance under this section to the State or State designated entity.

(f) Definitions

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

(1) Extremely low-income renter household

The term ''extremely low-income renter household'' means a household whose income is not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(2) Recipient

The term ''recipient'' means an individual or entity that receives assistance from a State or State designated entity from amounts made available to the State or State designated entity under this section.

(3) Shortage of standard rental units both affordable and available to extremely low-income renter households

(A) In general

The term ''shortage of standard rental units both affordable and available to extremely low-income renter households'' means for any State or other geographical area the gap between—

(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 30 percent of the adjusted area median income as determined by the Secretary that are occupied by extremely low-income renter households or are vacant for rent; and

(ii) the number of extremely low-income renter households.

(B) Rule of construction

If the number of units described in subparagraph (A)(i) exceeds the number of extremely low-income households as described in subparagraph (A)(ii), there is no shortage.

(4) Shortage of standard rental units both affordable and available to very low-income renter households

(A) In general

The term ''shortage of standard rental units both affordable and available to very

[4] So in original. A word appears to be missing before ''the''.

low-income renter households'' means for any State or other geographical area the gap between—

(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 50 percent of the adjusted area median income as determined by the Secretary that are occupied by very low-income renter households or are vacant for rent; and

(ii) the number of very low-income renter households.

(B) Rule of construction

If the number of units described in subparagraph (A)(i) exceeds the number of very low-income households as described in subparagraph (A)(ii), there is no shortage.

(5) Very low-income family

The term ''very low-income family'' has the meaning given such term in section 4502 of this title, except that such term includes any family that resides in a rural area that has an income that does not exceed the poverty line (as such term is defined in section 9902(2) of title 42, including any revision required by such section) applicable to a family of the size involved.

(6) Very low-income renter households

The term ''very low-income renter households'' means a household whose income is in excess of 30 percent but not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(g) Regulations

(1) In general

The Secretary shall issue regulations to carry out this section.

(2) Required contents

The regulations issued under this subsection shall include—

(A) a requirement that the Secretary ensure that the use of grant amounts under this section by States or State designated entities is audited not less than annually to ensure compliance with this section;

(B) authority for the Secretary to audit, provide for an audit, or otherwise verify a State or State designated entity's activities to ensure compliance with this section;

(C) a requirement that, for the purposes of subparagraphs (A) and (B), any financial statement submitted by a grantee or recipient to the Secretary shall be reviewed by an independent certified public accountant in accordance with Statements on Standards for Accounting and Review Services, issued by the American Institute of Certified Public Accountants;

(D) requirements for a process for application to, and selection by, each State or State designated entity for activities meeting the State or State designated entity's priority housing needs to be funded with grant amounts under this section, which shall provide for priority in funding to be based upon—

(i) geographic diversity;

(ii) ability to obligate amounts and undertake activities so funded in a timely manner;

(iii) in the case of rental housing projects under subsection (c)(7)(A), the extent to which rents for units in the project funded are affordable, especially for extremely low-income families;

(iv) in the case of rental housing projects under subsection (c)(7)(A), the extent of the duration for which such rents will remain affordable;

(v) the extent to which the application makes use of other funding sources; and

(vi) the merits of an applicant's proposed eligible activity;

(E) requirements to ensure that grant amounts provided to a State or State designated entity under this section that are used for rental housing under subsection (c)(7)(A) are used only for the benefit of extremely low- and very low-income families; and

(F) requirements and standards for establishment, by a State or State designated entity, for use of grant amounts in 2009 and subsequent years of performance goals, benchmarks, and timetables for the production, preservation, and rehabilitation of affordable rental and homeownership housing with such grant amounts.

(h) Affordable housing trust fund

If, after July 30, 2008, in any year, there is enacted any provision of Federal law establishing an affordable housing trust fund other than under this chapter for use only for grants to provide affordable rental housing and affordable homeownership opportunities, and the subsequent year is a year referred to in subsection (c), the Secretary shall in such subsequent year and any remaining years referred to in subsection (c) transfer to such affordable housing trust fund the aggregate amount allocated pursuant to subsection (c) in such year. Notwithstanding any other provision of law, assistance provided using amounts transferred to such affordable housing trust fund pursuant to this subsection may not be used for any of the activities specified in clauses (i) through (vi) of subsection (c)(9)(D).

(i) Funding accountability and transparency

Any grant under this section to a grantee by a State or State designated entity, any assistance provided to a recipient by a State or State designated entity, and any grant, award, or other assistance from an affordable housing trust fund referred to in subsection (h) shall be considered a Federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note). Upon the request of the Director of the Office of Management and Budget, the Secretary shall obtain and provide such information regarding any such grants, assistance, and awards as the Director of the Office of Management and Budget considers necessary to comply with the requirements of such Act, as applicable, pursuant to the preceding sentence.

(Pub. L. 102–550, title XIII, § 1338, as added Pub. L. 110–289, div. A, title I, § 1131(b), July 30, 2008, 122 Stat. 2712.)

REFERENCES IN TEXT

Section 4103 of title 25, referred to in subsec. (c)(2), was in the original ''section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103)'', and was translated as meaning section 4 of the Native American Housing Assistance and Self-Determination Act of 1996, to reflect the probable intent of Congress.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (c)(7)(B)(i)(II), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, known as the HOME Investment Partnerships Act, is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

Section 132 of the Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (c)(7)(B)(iv), probably means section 1132 of Pub. L. 110–289, which is set out as a note under section 1701x of this title.

This chapter, referred to in subsec. (h), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

The Federal Funding Accountability and Transparency Act of 2006, referred to in subsec. (i), is Pub. L. 109–282, Sept. 26, 2006, 120 Stat. 1186, which is set out as a note under section 6101 of Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 1338 of Pub. L. 102–550, title XIII, Oct. 28, 1992, 106 Stat. 3964, was set out as a note under section 4562 of this title, prior to repeal by Pub. L. 110–289, div. A, title I, § 1122(a)(2), July 30, 2008, 122 Stat. 2689.

§ 4569. Capital Magnet Fund

(a) Establishment

There is established in the Treasury of the United States a trust fund to be known as the Capital Magnet Fund, which shall be a special account within the Community Development Financial Institutions Fund.

(b) Deposits to Trust Fund

The Capital Magnet Fund shall consist of—

(1) any amounts transferred to the Fund pursuant to section 4567 of this title; and

(2) any amounts as are or may be appropriated, transferred, or credited to such Fund under any other provisions of law.

(c) Expenditures from Trust Fund

Amounts in the Capital Magnet Fund shall be available to the Secretary of the Treasury to carry out a competitive grant program to attract private capital for and increase investment in—

(1) the development, preservation, rehabilitation, or purchase of affordable housing for primarily extremely low-, very low-, and low-income families; and

(2) economic development activities or community service facilities, such as day care centers, workforce development centers, and health care clinics, which in conjunction with affordable housing activities implement a concerted strategy to stabilize or revitalize a low-income area or underserved rural area.

(d) Federal assistance

For purposes of the application of Federal civil rights laws, all assistance provided using amounts in the Capital Magnet Fund shall be considered Federal financial assistance.

(e) Eligible grantees

A grant under this section may be made, pursuant to such requirements as the Secretary of the Treasury shall establish for experience and success in attracting private financing and carrying out the types of activities proposed under the application of the grantee, only to—

(1) a Treasury certified community development financial institution; or

(2) a nonprofit organization having as 1 of its principal purposes the development or management of affordable housing.

(f) Eligible uses

Grant amounts awarded from the Capital Magnet Fund pursuant to this section may be used for the purposes described in paragraphs (1) and (2) of subsection (c), including for the following uses:

(1) To provide loan loss reserves.

(2) To capitalize a revolving loan fund.

(3) To capitalize an affordable housing fund.

(4) To capitalize a fund to support activities described in subsection (c)(2).

(5) For risk-sharing loans.

(g) Applications

(1) In general

The Secretary of the Treasury shall provide, in a competitive application process established by regulation, for eligible grantees under subsection (e) to submit applications for Capital Magnet Fund grants to the Secretary at such time and in such manner as the Secretary shall determine.

(2) Content of application

The application required under paragraph (1) shall include a detailed description of—

(A) the types of affordable housing, economic, and community revitalization projects that support or sustain residents of an affordable housing project funded by a grant under this section for which such grant amounts would be used, including the proposed use of eligible grants as authorized under this section;

(B) the types, sources, and amounts of other funding for such projects; and

(C) the expected time frame of any grant used for such project.

(h) Grant limitation

(1) In general

Any 1 eligible grantee and its subsidiaries and affiliates may not be awarded more than 15 percent of the aggregate funds available for grants during any year from the Capital Magnet Fund.

(2) Geographic diversity

(A) Goal

The Secretary of the Treasury shall seek to fund activities in geographically diverse

areas of economic distress, including metropolitan and underserved rural areas in every State.

(B) Diversity defined

For purposes of this paragraph, geographic diversity includes those areas that meet objective criteria of economic distress developed by the Secretary of the Treasury, which may include—

(i) the percentage of low-income families or the extent of poverty;

(ii) the rate of unemployment or underemployment;

(iii) extent of blight and disinvestment;

(iv) projects that target extremely low-, very low-, and low-income families in or outside a designated economic distress area; or

(v) any other criteria designated by the Secretary of the Treasury.

(3) Leverage of funds

Each grant from the Capital Magnet Fund awarded under this section shall be reasonably expected to result in eligible housing, or economic and community development projects that support or sustain an affordable housing project funded by a grant under this section whose aggregate costs total at least 10 times the grant amount.

(4) Commitment for use deadline

Amounts made available for grants under this section shall be committed for use within 2 years of the date of such allocation. The Secretary of the Treasury shall recapture into the Capital Magnet Fund any amounts not so used or committed for use and allocate such amounts in the first year after such recapture.

(5) Prohibited uses

The Secretary shall, by regulation, set forth prohibited uses of grant amounts awarded under this section, which shall include use for—

(A) political activities;

(B) advocacy;

(C) lobbying, whether directly or through other parties;

(D) counseling services;

(E) travel expenses; and

(F) preparing or providing advice on tax returns;

and for the purposes of this paragraph, the prohibited use of funds for political activities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State or local office as codified in section 501 of title 26.

(6) Additional lobbying restrictions

No assistance or amounts made available under this section may be expended by an eligible grantee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan, or cooperative agreement as such terms are defined in section 1352 of title 31.

(7) Prohibition of consideration of use for meeting housing goals or duty to serve

In determining the compliance of the enterprises with the housing goals under this section and the duty to serve underserved markets under section 4565 of this title, the Director of the Federal Housing Finance Agency may not consider any Capital Magnet Fund amounts used under this section for eligible activities under subsection (f). The Director of the Federal Housing Finance Agency shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from Capital Magnet Fund grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

(8) Accountability of recipients and grantees

(A) Tracking of funds

The Secretary of the Treasury shall—

(i) require each grantee to develop and maintain a system to ensure that each recipient of assistance from the Capital Magnet Fund uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

(ii) establish minimum requirements for agreements, between the grantee and the Capital Magnet Fund, regarding assistance from the Capital Magnet Fund, which shall include—

(I) appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the grant to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and

(II) any other requirements that the Secretary determines are necessary to ensure appropriate grant administration and compliance.

(B) Misuse of funds

If the Secretary of the Treasury determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of this section and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

(i) reduce the amount of assistance under this section to the grantee by an amount equal to the amount of Capital Magnet Fund grant amounts which were not used in accordance with this section;

(ii) require the grantee to repay the Secretary any amount of the Capital Magnet Fund grant amounts which were not used in accordance with this section;

(iii) limit the availability of assistance under this section to the grantee to activities or recipients not affected by such failure to comply; or

(iv) terminate any assistance under this section to the grantee.

(i) Periodic reports

(1) In general

The Secretary of the Treasury shall submit a report, on a periodic basis, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the activities to be funded under this section.

(2) Reports available to public

The Secretary of the Treasury shall make the reports required under paragraph (1) publicly available.

(j) Regulations

(1) In general

The Secretary of the Treasury shall issue regulations to carry out this section.

(2) Required contents

The regulations issued under this subsection shall include—

(A) authority for the Secretary to audit, provide for an audit, or otherwise verify an enterprise's activities, to ensure compliance with this section;

(B) a requirement that the Secretary ensure that the allocation of each enterprise is audited not less than annually to ensure compliance with this section;

(C) a requirement that, for the purposes of subparagraphs (A) and (B), any financial statement submitted by a grantee to the Secretary shall be reviewed by an independent certified public accountant in accordance with Statements on Standards for Accounting and Review Services, issued by the American Institute of Certified Public Accountants; and

(D) requirements for a process for application to, and selection by, the Secretary for activities to be funded with amounts from the Capital Magnet Fund, which shall provide that—

(i) funds be fairly distributed to urban, suburban, and rural areas; and

(ii) selection shall be based upon specific criteria, including a prioritization of funding based upon—

(I) the ability to use such funds to generate additional investments;

(II) affordable housing need (taking into account the distinct needs of different regions of the country); and

(III) ability to obligate amounts and undertake activities so funded in a timely manner.

(Pub. L. 102–550, title XIII, §1339, as added Pub. L. 110–289, div. A, title I, §1131(b), July 30, 2008, 122 Stat. 2723.)

SUBPART 3—ENFORCEMENT

§ 4581. Cease and desist proceedings

(a) Grounds for issuance

The Director may issue and serve a notice of charges under this section upon an enterprise if the Director determines that—

(1) the enterprise has failed to submit a report under section 4547[1] of this title, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

(2) the enterprise has failed to submit the information required under subsection (m) or (n) of section 1723a of this title, or subsection (e) or (f) of section 1456 of this title;

(3) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, the enterprise has failed to submit a housing plan that complies with section 4566(c) of this title within the applicable period; or

(4) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, the enterprise has failed to comply with a housing plan under section 4566(c) of this title.

(b) Procedure

(1) Notice of charges

Each notice of charges issued under this section shall contain a statement of the facts constituting the alleged conduct and shall fix a time and place at which a hearing will be held to determine on the record whether an order to cease and desist from such conduct should issue.

(2) Issuance of order

If the Director finds on the record made at a hearing described in paragraph (1) that any conduct specified in the notice of charges has been established (or the enterprise consents pursuant to section 4582(a)(4) of this title), the Director may issue and serve upon the enterprise an order requiring the enterprise to—

(A) submit a report under section 4547[1] of this title;

(B) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, submit a housing plan in compliance with section 4566(c) of this title;

(C) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, comply with the housing plan in compliance with section 4566(c) of this title; or

(D) provide the information required under subsection (m) or (n) of section 1723a of this title, or subsection (e) or (f) of section 1456 of this title.

(c) Effective date

An order under this section shall become effective upon the expiration of the 30-day period beginning on the date of service of the order upon the enterprise (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Director or otherwise, as provided in this subpart.

(Pub. L. 102–550, title XIII, §1341, as added Pub. L. 110–289, div. A, title I, §1130(c)(2), July 30, 2008, 122 Stat. 2708.)

REFERENCES IN TEXT

Section 4547 of this title, referred to in subsecs. (a)(1) and (b)(2)(A), was repealed by Pub. L. 110–289, div. A, title I, §1104(b), July 30, 2008, 122 Stat. 2667.

[1] See References in Text note below.

PRIOR PROVISIONS

A prior section 4581, Pub. L. 102–550, title XIII, § 1341, Oct. 28, 1992, 106 Stat. 3964, related to cease-and-desist proceedings, prior to repeal by Pub. L. 110–289, div. A, title I, § 1130(c)(1), July 30, 2008, 122 Stat. 2708.

§ 4582. Hearings

(a) Requirements

(1) Venue and record

Any hearing under section 4581 or 4585 of this title shall be held on the record and in the District of Columbia.

(2) Timing

Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 4581(b)(1) of this title or determination to impose a penalty under section 4585(c)(1) of this title, unless an earlier or a later date is set by the hearing officer at the request of the enterprise served.

(3) Procedure

Any such hearing shall be conducted in accordance with chapter 5 of title 5.

(4) Failure to appear

If the enterprise served fails to appear at the hearing through a duly authorized representative, such enterprise shall be deemed to have consented to the issuance of the cease-and-desist order or the imposition of the penalty for which the hearing is held.

(b) Issuance of order

(1) In general

After any such hearing, and within 90 days after the enterprise has been notified that the case has been submitted to the Director for final decision, the Director shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon the enterprise an order or orders consistent with the provisions of this subpart.

(2) Modification

Judicial review of any such order shall be exclusively as provided in section 4583 of this title. Unless such a petition for review is timely filed as provided in section 4583 of this title, and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Director considers proper. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(Pub. L. 102–550, title XIII, § 1342, Oct. 28, 1992, 106 Stat. 3965; Pub. L. 110–289, div. A, title I, § 1130(e)(3)(A), July 30, 2008, 122 Stat. 2711.)

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–289 substituted ''Director'' for ''Secretary'' wherever appearing.

§ 4583. Judicial review

(a) Commencement

An enterprise that is a party to a proceeding under section 4581 or 4585 of this title may obtain review of any final order issued under such section by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Director.

(b) Filing of record

Upon receiving a copy of a petition, the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(c) Jurisdiction

Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Director shall (except as provided in the last sentence of section 4582(b)(2) of this title) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

(d) Review

Review of such proceedings shall be governed by chapter 7 of title 5.

(e) Order to pay penalty

Such court shall have the authority in any such review to order payment of any penalty imposed by the Director under this subpart.

(f) No automatic stay

The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

(Pub. L. 102–550, title XIII, § 1343, Oct. 28, 1992, 106 Stat. 3966; Pub. L. 110–289, div. A, title I, § 1130(e)(3)(B), July 30, 2008, 122 Stat. 2711.)

AMENDMENTS

2008—Pub. L. 110–289 substituted ''Director'' for ''Secretary'' wherever appearing.

§ 4584. Enforcement and jurisdiction

(a) Enforcement

The Director may bring a civil action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under section 4581 or 4585 of this title. Such court shall have jurisdiction and power to order and require compliance herewith.

(b) Limitation on jurisdiction

Except as otherwise provided in this subpart, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 4581 or 4585 of this title, or to review, modify, suspend, terminate, or set aside any such notice or order.

(Pub. L. 102–550, title XIII, § 1344, Oct. 28, 1992, 106 Stat. 3966; Pub. L. 110–289, div. A, title I, § 1130(e)(1), July 30, 2008, 122 Stat. 2711.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, which directed substitution of ''The Director may bring a civil action'' for ''The Secretary may request the Attorney General of the United States to bring a civil action'', was executed by making the substitution for ''The Secretary may re-

quest the Attorney General of the United States to bring an action'' to reflect the probable intent of Congress.

§ 4585. Civil money penalties

(a) Authority

The Director may impose a civil money penalty, in accordance with the provisions of this section, on any enterprise that has failed to—

(1) submit a report under section 4547[1] of this title, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

(2) submit the information required under subsection (m) or (n) of section 1723a of this title or subsection (e) or (f) of section 1456 of this title;

(3) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, submit a housing plan or perform its responsibilities under a remedial order issued pursuant to section 4566(c) of this title within the required period; or

(4) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, comply with a housing plan for the enterprise under section 4566(c) of this title.

(b) Amount of penalty

The amount of a penalty under this section, as determined by the Director, may not exceed—

(1) for any failure described in paragraph (1), (5), or (6) of subsection (a), $100,000 for each day that the failure occurs; and

(2) for any failure described in paragraph (2), (3), or (4) of subsection (a), $50,000 for each day that the failure occurs.

(c) Procedures

(1) Establishment

The Director shall establish standards and procedures governing the imposition of civil money penalties under this section. Such standards and procedures—

(A) shall provide for the Director to notify the enterprise in writing of the determination of the Director to impose the penalty, which shall be made on the record;

(B) shall provide for the imposition of a penalty only after the enterprise has been given an opportunity for a hearing on the record pursuant to section 4582 of this title; and

(C) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Factors in determining amount of penalty

In determining the amount of a penalty under this section, the Director shall give consideration to factors including—

(A) the gravity of the offense;

(B) any history of prior offenses;

(C) ability to pay the penalty;

(D) injury to the public;

(E) benefits received;

(F) deterrence of future violations;

(G) the length of time that the enterprise should reasonably take to achieve the goal; and

(H) such other factors as the Director may determine, by regulation, to be appropriate.

(d) Action to collect penalty

If an enterprise fails to comply with an order by the Director imposing a civil money penalty under this section, after the order is no longer subject to review, as provided in sections 4582 and 4583 of this title, the Director may bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the enterprise, and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order imposing the penalty shall not be subject to review.

(e) Settlement by Director

The Director may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) Deposit of penalties

The Director shall use any civil money penalties collected under this section to help fund the Housing Trust Fund established under section 4568 of this title.

(Pub. L. 102–550, title XIII, § 1345, as added Pub. L. 110–289, div. A, title I, § 1130(d)(2), July 30, 2008, 122 Stat. 2709.)

REFERENCES IN TEXT

Section 4547 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 110–289, div. A, title I, § 1104(b), July 30, 2008, 122 Stat. 2667.

PRIOR PROVISIONS

A prior section 4585, Pub. L. 102–550, title XIII, § 1345, Oct. 28, 1992, 106 Stat. 3966, related to civil money penalties, prior to repeal by Pub. L. 110–289, div. A, title I, § 1130(d)(1), July 30, 2008, 122 Stat. 2709.

§ 4586. Public disclosure of final orders and agreements

(a) In general

The Director shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Secretary's[1] discretion, determines that public disclosure would be contrary to the public interest or determines under subsection (c) of this section that public disclosure would seriously threaten the financial health or security of the enterprise;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under this subpart and that has become final in accordance with sections 4582 and 4583 of this title; and

(3) any modification to or termination of any final order made public pursuant to this subsection.

(b) Hearings

All hearings with respect to any notice of charges issued by the Director shall be open to

[1] See References in Text note below.

[1] So in original. Probably should be ''Director's''.

the public, unless the Director, in the Secretary's[1] discretion, determines that holding an open hearing would be contrary to the public interest.

(c) Delay of public disclosure under exceptional circumstances

If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) of this section would seriously threaten the financial soundness of the enterprise, the Director may delay the public disclosure of such order for a reasonable time.

(d) Documents filed under seal in public enforcement hearings

The Director may file any document or part thereof under seal in any hearing under this subpart if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) Retention of documents

The Director shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) of this section and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Director under this subpart.

(f) Disclosures to Congress

This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

(Pub. L. 102–550, title XIII, § 1346, Oct. 28, 1992, 106 Stat. 3968; Pub. L. 110–289, div. A, title I, § 1130(e)(3)(C), July 30, 2008, 122 Stat. 2711.)

AMENDMENTS

2008—Subsecs. (a) to (e). Pub. L. 110–289 substituted ''Director'' for ''Secretary'' wherever appearing.

§ 4587. Notice of service

Any service required or authorized to be made by the Director under this subpart may be made by registered mail or in such other manner reasonably calculated to give actual notice, as the Director may by regulation or otherwise provide.

(Pub. L. 102–550, title XIII, § 1347, Oct. 28, 1992, 106 Stat. 3968; Pub. L. 110–289, div. A, title I, § 1130(e)(3)(D), July 30, 2008, 122 Stat. 2711.)

AMENDMENTS

2008—Pub. L. 110–289 substituted ''Director'' for ''Secretary'' in two places in text.

§ 4588. Subpoena authority

(a) In general

In the course of or in connection with any administrative proceeding under this subpart, the Director shall have the authority—

(1) to administer oaths and affirmations;

(2) to take and preserve testimony under oath;

(3) to issue subpoenas and subpoenas duces tecum; and

(4) to revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Director.

(b) Witnesses and documents

The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State at any designated place where such proceeding is being conducted.

(c) Enforcement

The Director may bring an action or may request the Attorney General of the United States to bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section. Such courts shall have jurisdiction and power to order and require compliance therewith.

(d) Fees and expenses

Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an enterprise may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by the enterprise or from its assets.

(Pub. L. 102–550, title XIII, § 1348, Oct. 28, 1992, 106 Stat. 3968; Pub. L. 110–289, div. A, title I, § 1130(e)(2), (3)(E), July 30, 2008, 122 Stat. 2711.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, § 1130(e)(3)(E), substituted ''Director'' for ''Secretary'' in introductory provisions and in par. (4).

Subsec. (c). Pub. L. 110–289, § 1130(e)(3)(E), substituted ''Director'' for ''Secretary''.

Pub. L. 110–289, § 1130(e)(2), inserted ''may bring an action or'' before ''may request''.

§ 4589. Repealed. Pub. L. 110–289, div. A, title I, § 1122(a)(2), July 30, 2008, 122 Stat. 2689

Section, Pub. L. 102–550, title XIII, § 1349, Oct. 28, 1992, 106 Stat. 3969, related to issuance by Secretary of final regulations to implement this part.

PART C—MISCELLANEOUS PROVISIONS

§ 4601. Review of underwriting guidelines

(a) Study

Each of the enterprises shall conduct a study to review the underwriting guidelines of the enterprise. The studies shall examine—

(1) the extent to which the underwriting guidelines prevent or inhibit the purchase or securitization of mortgages for housing located in mixed-use, urban center, and predominantly minority neighborhoods and for housing for low- and moderate-income families;

(2) the standards employed by private mortgage insurers and the extent to which such standards inhibit the purchase and securitization by the enterprises of mortgages described in paragraph (1); and

(3) the implications of implementing underwriting standards that—

(A) establish a downpayment requirement for mortgagors of 5 percent or less;

(B) allow the use of cash on hand as a source for downpayments; and

(C) approve borrowers who have a credit history of delinquencies if the borrower can demonstrate a satisfactory credit history for at least the 12-month period ending on the date of the application for the mortgage.

(b) Report

Not later than the expiration of the 1-year period beginning on October 28, 1992, each enterprise shall submit to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate a report regarding the study conducted by the enterprise under subsection (a) of this section. Each report shall include any recommendations of the enterprise for better meeting the housing needs of low- and moderate-income families.

(Pub. L. 102–550, title XIII, §1354, Oct. 28, 1992, 106 Stat. 3970.)

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4602. Studies of effects of privatization of FNMA and FHLMC

(a) In general

The Comptroller General of the United States, the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Director of the Congressional Budget Office shall each conduct and submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than the expiration of the 2-year period beginning on October 28, 1992, a study regarding the desirability and feasibility of repealing the Federal charters of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, eliminating any Federal sponsorship of the enterprises, and allowing the enterprises to continue to operate as fully private entities.

(b) Requirements

Each study shall particularly examine the effects of such privatization on—

(1) the requirements applicable to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation under Federal law and the costs to the enterprises;

(2) the cost of capital to the enterprises;

(3) housing affordability and availability and the cost of homeownership;

(4) the level of secondary mortgage market competition subsequently available in the private sector;

(5) whether increased amounts of capital would be necessary for the enterprises to continue operation;

(6) the secondary market for residential loans and the liquidity of such loans; and

(7) any other factors that the Comptroller General, the Secretary of Housing and Urban Development, the Secretary of the Treasury, or the Director of the Congressional Budget Office deems appropriate to enable the Congress to evaluate the desirability and feasibility of privatization of the enterprises.

(c) Information

The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall provide full and prompt access to the Comptroller General, the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Director of the Congressional Budget Office to any books, records, and other information requested for the purposes of conducting the studies under this section.

(d) Views of FNMA and FHLMC

(1) Consideration in studies

In conducting the studies under this section, the Comptroller General, the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Director of the Congressional Budget Office shall each consider the views of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) Direct report

The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation may each report directly to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its own analysis of the desirability and feasibility of repealing the Federal charters of the enterprises, eliminating any Federal sponsorship, and allowing the enterprises to continue to operate as fully private entities.

(Pub. L. 102–550, title XIII, §1355, Oct. 28, 1992, 106 Stat. 3970.)

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4603. Transition

Before the expiration of the period ending 18 months after the appointment of the Director

under section 4512 of this title, any rules and regulations promulgated before October 28, 1992, by the Secretary pursuant to the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.] or the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.] shall remain in effect unless modified, terminated, superseded, or revoked by operation of law or in accordance with law. Such rules and regulations shall terminate, effective upon the expiration of such period.

(Pub. L. 102–550, title XIII, § 1356, Oct. 28, 1992, 106 Stat. 3971.)

REFERENCES IN TEXT

The Federal National Mortgage Association Charter Act, referred to in text, is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, as amended, which is classified generally to subchapter III (§ 1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in text, is title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, as amended, which is classified generally to chapter 11A (§ 1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

SUBCHAPTER II—REQUIRED CAPITAL LEVELS FOR REGULATED ENTITIES, SPECIAL ENFORCEMENT POWERS, AND REVIEWS OF ASSETS AND LIABILITIES

§ 4611. Risk-based capital levels for regulated entities

(a) In general

(1) Enterprises

The Director shall, by regulation, establish risk-based capital requirements for the enterprises to ensure that the enterprises operate in a safe and sound manner, maintaining sufficient capital and reserves to support the risks that arise in the operations and management of the enterprises.

(2) Federal Home Loan Banks

The Director shall establish risk-based capital standards under section 1426 of this title for the Federal Home Loan Banks.

(b) No limitation

Nothing in this section shall limit the authority of the Director to require other reports or undertakings, or take other action, in furtherance of the responsibilities of the Director under this Act.

(Pub. L. 102–550, title XIII, § 1361, Oct. 28, 1992, 106 Stat. 3972; Pub. L. 110–289, div. A, title I, § 1110(a), July 30, 2008, 122 Stat. 2675.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

AMENDMENTS

2008—Pub. L. 110–289 amended section generally. Prior to amendment, section related to risk-based capital levels for enterprises.

§ 4612. Minimum capital levels

(a) Enterprises

For purposes of this subchapter, the minimum capital level for each enterprise shall be the sum of—

(1) 2.50 percent of the aggregate on-balance sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(2) 0.45 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and

(3) 0.45 percent of other off-balance sheet obligations of the enterprise not included in paragraph (2) (excluding commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding 4 quarters), except that the Director shall adjust such percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).

(b) Federal Home Loan Banks

For purposes of this subchapter, the minimum capital level for each Federal Home Loan Bank shall be the minimum capital required to be maintained to comply with the leverage requirement for the bank established under section 1426(a)(2) of this title.

(c) Establishment of revised minimum capital levels

Notwithstanding subsections (a) and (b) and notwithstanding the capital classifications of the regulated entities, the Director may, by regulations issued under section 4526 of this title, establish a minimum capital level for the enterprises, for the Federal Home Loan Banks, or for both the enterprises and the banks, that is higher than the level specified in subsection (a) for the enterprises or the level specified in subsection (b) for the Federal Home Loan Banks, to the extent needed to ensure that the regulated entities operate in a safe and sound manner.

(d) Authority to require temporary increase

(1) In general

Notwithstanding subsections (a) and (b) and any minimum capital level established pursuant to subsection (c), the Director may, by order, increase the minimum capital level for a regulated entity on a temporary basis, when the Director determines that such an increase is necessary and consistent with the prudential regulation and the safe and sound operations of a regulated entity.

(2) Rescission

The Director shall rescind any temporary minimum capital level established under paragraph (1) when the Director determines that the circumstances or facts no longer justify the temporary minimum capital level.

(3) Regulations required

The Director shall issue regulations establishing—

(A) standards for the imposition of a temporary increase in minimum capital under paragraph (1);

(B) the standards and procedures that the Director will use to make the determination referred to in paragraph (2); and

(C) a reasonable time frame for periodic review of any temporary increase in minimum capital for the purpose of making the determination referred to in paragraph (2).

(e) Authority to establish additional capital and reserve requirements for particular purposes

The Director may, at any time by order or regulation, establish such capital or reserve requirements with respect to any product or activity of a regulated entity, as the Director considers appropriate to ensure that the regulated entity operates in a safe and sound manner, with sufficient capital and reserves to support the risks that arise in the operations and management of the regulated entity.

(f) Periodic review

The Director shall periodically review the amount of core capital maintained by the enterprises, the amount of capital retained by the Federal Home Loan Banks, and the minimum capital levels established for such regulated entities pursuant to this section.

(Pub. L. 102–550, title XIII, §1362, Oct. 28, 1992, 106 Stat. 3975; Pub. L. 110–289, div. A, title I, §1111, July 30, 2008, 122 Stat. 2676.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1111(1), substituted ''Enterprises'' for ''In general'' in heading.

Subsecs. (b) to (f). Pub. L. 110–289, §1111(2), added subsecs. (b) to (f) and struck out former subsec. (b) which related to minimum capital level during transition period.

§ 4613. Critical capital levels

(a) Enterprises

For purposes of this subchapter, the critical capital level for each enterprise shall be the sum of—

(1) 1.25 percent of the aggregate on-balance sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(2) 0.25 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and

(3) 0.25 percent of other off-balance sheet obligations of the enterprise not included in paragraph (2) (excluding commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding 4 quarters), except that the Director shall adjust such percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).

(b) Federal Home Loan Banks

(1) In general

For purposes of this subchapter, the critical capital level for each Federal Home Loan Bank shall be such amount of capital as the Director shall, by regulation, require.

(2) Consideration of other critical capital levels

In establishing the critical capital level under paragraph (1) for the Federal Home Loan Banks, the Director shall take due consideration of the critical capital level established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises.

(Pub. L. 102–550, title XIII, §1363, Oct. 28, 1992, 106 Stat. 3976; Pub. L. 110–289, div. A, title I, §1141(a), July 30, 2008, 122 Stat. 2730.)

AMENDMENTS

2008—Pub. L. 110–289 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

REGULATIONS

Pub. L. 110–289, div. A, title I, §1141(b), July 30, 2008, 122 Stat. 2730, provided that: ''Not later than the expiration of the 180-day period beginning on the date of enactment of this Act [July 30, 2008], the Director of the Federal Housing Finance Agency shall issue regulations pursuant to section 1363(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4613(b)] (as added by this section) establishing the critical capital level under such section.''

§ 4614. Capital classifications

(a) Enterprises

For purposes of this subchapter, the Director shall classify the enterprises according to the following capital classifications:

(1) Adequately capitalized

An enterprise shall be classified as adequately capitalized if the enterprise—

(A) maintains an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise under section 4611 of this title; and

(B) maintains an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise under section 4612 of this title.

(2) Undercapitalized

An enterprise shall be classified as undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise; and

(ii) maintains an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise; or

(B) the enterprise is otherwise classified as undercapitalized under subsection (b)(1) of this section.

(3) Significantly undercapitalized

An enterprise shall be classified as significantly undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise;

(ii) does not maintain an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise; and

(iii) maintains an amount of core capital that is equal to or exceeds the critical capital level established for the enterprise under section 4613 of this title; or

(B) the enterprise is otherwise classified as significantly undercapitalized under subsection (b)(2) of this section or section 4615(b) of this title.

(4) Critically undercapitalized

An enterprise shall be classified as critically undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise; and

(ii) does not maintain an amount of core capital that is equal to or exceeds the critical capital level for the enterprise; or

(B) is otherwise classified as critically undercapitalized under subsection (b)(3) of this section or section 4616(b)(5)[1] of this title.

(b) Federal Home Loan Banks

(1) Establishment and criteria

For purposes of this subchapter, the Director shall, by regulation—

(A) establish the capital classifications specified under paragraph (2) for the Federal Home Loan Banks;

(B) establish criteria for each such capital classification based on the amount and types of capital held by a bank and the risk-based, minimum, and critical capital levels for the banks and taking due consideration of the capital classifications established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises; and

(C) shall classify the Federal Home Loan Banks according to such capital classifications.

(2) Classifications

The capital classifications specified under this paragraph are—

(A) adequately capitalized;

(B) undercapitalized;

(C) significantly undercapitalized; and

(D) critically undercapitalized.

(c) Discretionary classification

(1) Grounds for reclassification

The Director may reclassify a regulated entity under paragraph (2) if—

(A) at any time, the Director determines in writing that the regulated entity is engaging in conduct that could result in a rapid depletion of core or total capital or the value of collateral pledged as security has decreased significantly or that the value of the property subject to mortgages held by the regulated entity (or securitized in the case of an enterprise) has decreased significantly;

(B) after notice and an opportunity for hearing, the Director determines that the regulated entity is in an unsafe or unsound condition; or

(C) pursuant to section 4631(b) of this title, the Director deems the regulated entity to be engaging in an unsafe or unsound practice.

(2) Reclassification

In addition to any other action authorized under this chapter, including the reclassification of a regulated entity for any reason not specified in this subsection, if the Director takes any action described in paragraph (1), the Director may classify a regulated entity—

(A) as undercapitalized, if the regulated entity is otherwise classified as adequately capitalized;

(B) as significantly undercapitalized, if the regulated entity is otherwise classified as undercapitalized; and

(C) as critically undercapitalized, if the regulated entity is otherwise classified as significantly undercapitalized.

(d) Quarterly determination

The Director shall determine the capital classification of the regulated entities for purposes of this subchapter on not less than a quarterly basis (and as appropriate under subsection (c) of this section).

(e) Restriction on capital distributions

(1) In general

A regulated entity shall make no capital distribution if, after making the distribution, the regulated entity would be undercapitalized.

(2) Exception

Notwithstanding paragraph (1), the Director may permit a regulated entity, to the extent appropriate or applicable, to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

(A) is made in connection with the issuance of additional shares or obligations of the regulated entity in at least an equivalent amount; and

(B) will reduce the financial obligations of the regulated entity or otherwise improve the financial condition of the entity.

(f) Implementation

Notwithstanding any other provision of this section, during the period beginning on October 28, 1992, and ending upon the effective date of section 4615 of this title (as provided in section 4615(c)[1] of this title), an enterprise shall be classified as adequately capitalized if the enterprise maintains an amount of core capital that is equal to or exceeds the minimum capital level for the enterprise under section 4612 of this title.

(Pub. L. 102–550, title XIII, § 1364, Oct. 28, 1992, 106 Stat. 3976; Pub. L. 110–289, div. A, title I, §§ 1142(a), 1161(a)(3), July 30, 2008, 122 Stat. 2730, 2779.)

REFERENCES IN TEXT

Section 4616(b)(5) of this title, referred to in subsec. (a)(4)(B), was redesignated section 4616(b)(6) of this title

[1] See References in Text note below.

by Pub. L. 110–289, div. A, title I, §1144(5)(D), July 30, 2008, 122 Stat. 2733.

This chapter, referred to in subsec. (c)(2), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

Section 4615(c) of this title, referred to in subsec. (f), was repealed and a new section 4615(c) was added by Pub. L. 110–289, div. A, title I, §1143(6), July 30, 2008, 122 Stat. 2734. The new section 4615(c) does not relate to effective date.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1142(a)(1), substituted ''Enterprises'' for ''In general'' in heading.

Subsec. (b). Pub. L. 110–289, §1142(a)(4), added subsec. (b) and struck out former subsec. (b) which related to discretionary classification.

Subsec. (c). Pub. L. 110–289, §1161(a)(3), which directed amendment of subsec. (c) by striking out the last sentence, was not executed as the probable intent of Congress. The amendment was probably intended to strike out the last sentence of former subsec. (c), now subsec. (d), as it existed prior to being struck out by Pub. L. 110–289, §1142(a)(2)(C). See below.

Pub. L. 110–289, §1142(a)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

Pub. L. 110–289, §1142(a)(2)(C), struck out last sentence which read as follows: ''The first such determination shall be made during the 3-month period beginning on the appointment of the Director.''

Pub. L. 110–289, §1142(a)(2)(A), (B), substituted ''regulated entities'' for ''enterprises'' and ''subsection (c)'' for ''subsection (b)''.

Subsec. (d). Pub. L. 110–289, §1142(a)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 110–289, §1142(a)(5), added subsec. (e).

Subsec. (f). Pub. L. 110–289, §1142(a)(3), redesignated subsec. (d) as (f).

REGULATIONS

Pub. L. 110–289, div. A, title I, §1142(b), July 30, 2008, 122 Stat. 2732, provided that: ''Not later than the expiration of the 180-day period beginning on the date of enactment of this Act [July 30, 2008], the Director of the Federal Housing Finance Agency shall issue regulations to carry out section 1364(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4614(b)] (as added by this section), relating to capital classifications for the Federal Home Loan Banks.''

§ 4615. Supervisory actions applicable to undercapitalized regulated entities

(a) Mandatory actions

(1) Required monitoring

The Director shall—

(A) closely monitor the condition of any undercapitalized regulated entity;

(B) closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed on an undercapitalized regulated entity under this section; and

(C) periodically review the plan, restrictions, and requirements applicable to an undercapitalized regulated entity to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.

(2) Capital restoration plan

A regulated entity that is classified as undercapitalized shall, within the time period provided in section 4622(b) and (d) of this title, submit to the Director a capital restoration plan that complies with section 4622 of this title and carry out the plan after approval.

(3) Restriction on capital distributions

A regulated entity that is classified as undercapitalized may not make any capital distribution that would result in the regulated entity being reclassified as significantly undercapitalized or critically undercapitalized.

(4) Restriction of asset growth

An undercapitalized regulated entity shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, unless—

(A) the Director has accepted the capital restoration plan of the regulated entity;

(B) any increase in total assets is consistent with the capital restoration plan; and

(C) the ratio of tangible equity to assets of the regulated entity increases during the calendar quarter at a rate sufficient to enable the regulated entity to become adequately capitalized within a reasonable time.

(5) Prior approval of acquisitions and new activities

An undercapitalized regulated entity shall not, directly or indirectly, acquire any interest in any entity or engage in any new activity, unless—

(A) the Director has accepted the capital restoration plan of the regulated entity, the regulated entity is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan; or

(B) the Director determines that the proposed action will further the purpose of this subchapter.

(b) Reclassification from undercapitalized to significantly undercapitalized

The Director shall reclassify as significantly undercapitalized a regulated entity that is classified as undercapitalized (and the regulated entity shall be subject to the provisions of section 4616 of this title) if—

(1) the regulated entity does not submit a capital restoration plan that is substantially in compliance with section 4622 of this title within the applicable period or the Director does not approve the capital restoration plan submitted by the regulated entity; or

(2) the Director determines that the regulated entity has failed to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director in any material respect.

(c) Other discretionary safeguards

The Director may take, with respect to an undercapitalized regulated entity, any of the actions authorized to be taken under section 4616 of this title with respect to a significantly undercapitalized regulated entity, if the Director determines that such actions are necessary to carry out the purpose of this subchapter.

(Pub. L. 102–550, title XIII, § 1365, Oct. 28, 1992, 106 Stat. 3978; Pub. L. 110–289, div. A, title I, § 1143, July 30, 2008, 122 Stat. 2732.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–289, § 1143(4)(B), added par. (1). Former par. (1) redesignated (2).

Pub. L. 110–289, § 1143(2), substituted ''A regulated entity'' for ''An enterprise''.

Subsec. (a)(2). Pub. L. 110–289, § 1143(4)(A), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Pub. L. 110–289, § 1143(1), (2), substituted ''the regulated entity'' for ''the enterprise'' and ''A regulated entity'' for ''An enterprise''.

Subsec. (a)(3). Pub. L. 110–289, § 1143(4)(A), redesignated par. (2) as (3).

Subsec. (a)(4), (5). Pub. L. 110–289, § 1143(4)(C), added pars. (4) and (5).

Subsec. (b). Pub. L. 110–289, § 1143(5)(A), (B), substituted ''Reclassification'' for ''Discretionary reclassification'' in heading and ''shall'' for ''may'' in introductory provisions.

Pub. L. 110–289, § 1143(1), (3), substituted ''a regulated entity'' for ''an enterprise'' and ''the regulated entity'' for ''the enterprise'' in introductory provisions.

Subsec. (b)(1). Pub. L. 110–289, § 1143(1), substituted ''the regulated entity'' for ''the enterprise'' in two places.

Subsec. (b)(2). Pub. L. 110–289, § 1143(5)(C), struck out ''make, in good faith, reasonable efforts necessary to'' before ''comply with'' and inserted ''in any material respect'' before period at end.

Pub. L. 110–289, § 1143(1), substituted ''the regulated entity'' for ''the enterprise''.

Subsec. (c). Pub. L. 110–289, § 1143(6), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: ''This section shall take effect upon the expiration of the 1-year period beginning on the date of the effectiveness of the regulations issued under section 4611(e) of this title establishing the risk-based capital test.''

§ 4616. Supervisory actions applicable to significantly undercapitalized regulated entities

(a) Mandatory supervisory actions

(1) Capital restoration plan

A regulated entity that is classified as significantly undercapitalized shall, within the time period under section 4622(b) and (d) of this title, submit to the Director a capital restoration plan that complies with section 4622 of this title and carry out the plan after approval.

(2) Restrictions on capital distributions

(A) Prior approval

A regulated entity that is classified as significantly undercapitalized may not make any capital distribution that would result in the regulated entity being reclassified as critically undercapitalized. A regulated entity that is classified as significantly undercapitalized may not make any other capital distribution unless the Director approves the distribution.

(B) Standard for approval

The Director may approve a capital distribution by a regulated entity classified as significantly undercapitalized only if the Director determines that the distribution (i) will enhance the ability of the regulated entity to meet the risk-based capital level and the minimum capital level for the regulated entity promptly, (ii) will contribute to the long-term financial safety and soundness of the regulated entity, or (iii) is otherwise in the public interest.

(b) Specific actions

In addition to any other actions taken by the Director (including actions under subsection (a) of this section), the Director shall carry out this section by taking, at any time, 1 or more of the following actions with respect to a regulated entity that is classified as significantly undercapitalized:

(1) Limitation on increase in obligations

Limit any increase in, or order the reduction of, any obligations of the regulated entity, including off-balance sheet obligations.

(2) Limitation on growth

Limit or prohibit the growth of the assets of the regulated entity or require contraction of the assets of the regulated entity.

(3) Acquisition of new capital

Require the regulated entity to acquire new capital in a form and amount determined by the Director.

(4) Restriction of activities

Require the regulated entity to terminate, reduce, or modify any activity that the Director determines creates excessive risk to the regulated entity.

(5) Improvement of management

Take 1 or more of the following actions:

(A) New election of board

Order a new election for the board of directors of the regulated entity.

(B) Dismissal of directors or executive officers

Require the regulated entity to dismiss from office any director or executive officer who had held office for more than 180 days immediately before the date on which the regulated entity became undercapitalized. Dismissal under this subparagraph shall not be construed to be a removal pursuant to the enforcement powers of the Director under section 4636a of this title.

(C) Employ qualified executive officers

Require the regulated entity to employ qualified executive officers (who, if the Director so specifies, shall be subject to approval by the Director).

(6) Reclassification from significantly to critically undercapitalized

The Director may reclassify as critically undercapitalized a regulated entity that is classified as significantly undercapitalized (and the regulated entity shall be subject to the provisions of section 4617 of this title) if—

(A) the regulated entity does not submit a capital restoration plan that is substantially in compliance with section 4622 of this title within the applicable period or the Director does not approve the capital restoration plan submitted by the regulated entity; or

(B) the Director determines that the regulated entity has failed to make, in good

faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director.

(7) Other action

Require the regulated entity to take any other action that the Director determines will better carry out the purpose of this section than any of the other actions specified in this subsection.

(c) Restriction on compensation of executive officers

A regulated entity that is classified as significantly undercapitalized in accordance with section 4614 of this title may not, without prior written approval by the Director—

(1) pay any bonus to any executive officer; or

(2) provide compensation to any executive officer at a rate exceeding the average rate of compensation of that officer (excluding bonuses, stock options, and profit sharing) during the 12 calendar months preceding the calendar month in which the regulated entity became significantly undercapitalized.

(Pub. L. 102–550, title XIII, §1366, Oct. 28, 1992, 106 Stat. 3978; Pub. L. 110–289, div. A, title I, §1144, July 30, 2008, 122 Stat. 2733.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–289, §1144(3), substituted ''A regulated entity'' for ''An enterprise''.

Subsec. (a)(2)(A). Pub. L. 110–289, §1144(1)–(3), substituted ''A regulated entity'' for ''An enterprise'' in two places, ''the regulated entity'' for ''the enterprise'', and, in second sentence, ''undercapitalized'' for ''undercapitalized enterprise''.

Subsec. (a)(2)(B). Pub. L. 110–289, §1144(2), (4), substituted ''a regulated entity'' for ''an enterprise'' and ''the regulated entity'' for ''the enterprise'' wherever appearing.

Subsec. (b). Pub. L. 110–289, §1144(4), (5)(A), (B), substituted ''Specific'' for ''Discretionary supervisory'' in heading and ''shall carry out this section by taking, at any time, 1 or more'' for ''may, at any time, take any'' and ''a regulated entity'' for ''an enterprise'' in introductory provisions.

Subsec. (b)(1) to (4). Pub. L. 110–289, §1144(2), substituted ''the regulated entity'' for ''the enterprise'' wherever appearing.

Subsec. (b)(5). Pub. L. 110–289, §1144(5)(E), added par. (5). Former par. (5) redesignated (6).

Pub. L. 110–289, §1144(2), (4), substituted ''a regulated entity'' for ''an enterprise'' in introductory provisions and ''the regulated entity'' for ''the enterprise'' wherever appearing.

Subsec. (b)(6). Pub. L. 110–289, §1144(5)(C), (D), redesignated par. (5) as (6) and struck out former par. (6) which permitted the Director to appoint a conservator.

Subsec. (b)(7). Pub. L. 110–289, §1144(5)(F), added par. (7).

Subsec. (c). Pub. L. 110–289, §1144(6), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: ''This section shall take effect upon the first classification of the enterprises within capital classifications that occurs under section 4614 of this title.''

§ 4617. Authority over critically undercapitalized regulated entities

(a) Appointment of the Agency as conservator or receiver

(1) In general

Notwithstanding any other provision of Federal or State law, the Director may appoint the Agency as conservator or receiver for a regulated entity in the manner provided under paragraph (2) or (4). All references to the conservator or receiver under this section are references to the Agency acting as conservator or receiver.

(2) Discretionary appointment

The Agency may, at the discretion of the Director, be appointed conservator or receiver for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity.

(3) Grounds for discretionary appointment of conservator or receiver

The grounds for appointing conservator or receiver for any regulated entity under paragraph (2) are as follows:

(A) Assets insufficient for obligations

The assets of the regulated entity are less than the obligations of the regulated entity to its creditors and others.

(B) Substantial dissipation

Substantial dissipation of assets or earnings due to—

(i) any violation of any provision of Federal or State law; or

(ii) any unsafe or unsound practice.

(C) Unsafe or unsound condition

An unsafe or unsound condition to transact business.

(D) Cease and desist orders

Any willful violation of a cease and desist order that has become final.

(E) Concealment

Any concealment of the books, papers, records, or assets of the regulated entity, or any refusal to submit the books, papers, records, or affairs of the regulated entity, for inspection to any examiner or to any lawful agent of the Director.

(F) Inability to meet obligations

The regulated entity is likely to be unable to pay its obligations or meet the demands of its creditors in the normal course of business.

(G) Losses

The regulated entity has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the regulated entity to become adequately capitalized (as defined in section 4614(a)(1) of this title).

(H) Violations of law

Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

(i) cause insolvency or substantial dissipation of assets or earnings; or

(ii) weaken the condition of the regulated entity.

(I) Consent

The regulated entity, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(J) Undercapitalization

The regulated entity is undercapitalized or significantly undercapitalized (as defined in section 4614(a)(3) of this title), and—

(i) has no reasonable prospect of becoming adequately capitalized;

(ii) fails to become adequately capitalized, as required by—

(I) section 4615(a)(1) of this title with respect to a regulated entity; or

(II) section 4616(a)(1) of this title with respect to a significantly undercapitalized regulated entity;

(iii) fails to submit a capital restoration plan acceptable to the Agency within the time prescribed under section 4622 of this title; or

(iv) materially fails to implement a capital restoration plan submitted and accepted under section 4622 of this title.

(K) Critical undercapitalization

The regulated entity is critically undercapitalized, as defined in section 4614(a)(4) of this title.

(L) Money laundering

The Attorney General notifies the Director in writing that the regulated entity has been found guilty of a criminal offense under section 1956 or 1957 of title 18 or section 5322 or 5324 of title 31.

(4) Mandatory receivership

(A) In general

The Director shall appoint the Agency as receiver for a regulated entity if the Director determines, in writing, that—

(i) the assets of the regulated entity are, and during the preceding 60 calendar days have been, less than the obligations of the regulated entity to its creditors and others; or

(ii) the regulated entity is not, and during the preceding 60 calendar days has not been, generally paying the debts of the regulated entity (other than debts that are the subject of a bona fide dispute) as such debts become due.

(B) Periodic determination required for critically undercapitalized regulated entity

If a regulated entity is critically undercapitalized, the Director shall make a determination, in writing, as to whether the regulated entity meets the criteria specified in clause (i) or (ii) of subparagraph (A)—

(i) not later than 30 calendar days after the regulated entity initially becomes critically undercapitalized; and

(ii) at least once during each succeeding 30-calendar day period.

(C) Determination not required if receivership already in place

Subparagraph (B) does not apply with respect to a regulated entity in any period during which the Agency serves as receiver for the regulated entity.

(D) Receivership terminates conservatorship

The appointment of the Agency as receiver of a regulated entity under this section shall immediately terminate any conservatorship established for the regulated entity under this chapter.

(5) Judicial review

(A) In general

If the Agency is appointed conservator or receiver under this section, the regulated entity may, within 30 days of such appointment, bring an action in the United States district court for the judicial district in which the home office of such regulated entity is located, or in the United States District Court for the District of Columbia, for an order requiring the Agency to remove itself as conservator or receiver.

(B) Review

Upon the filing of an action under subparagraph (A), the court shall, upon the merits, dismiss such action or direct the Agency to remove itself as such conservator or receiver.

(6) Directors not liable for acquiescing in appointment of conservator or receiver

The members of the board of directors of a regulated entity shall not be liable to the shareholders or creditors of the regulated entity for acquiescing in or consenting in good faith to the appointment of the Agency as conservator or receiver for that regulated entity.

(7) Agency not subject to any other Federal agency

When acting as conservator or receiver, the Agency shall not be subject to the direction or supervision of any other agency of the United States or any State in the exercise of the rights, powers, and privileges of the Agency.

(b) Powers and duties of the Agency as conservator or receiver

(1) Rulemaking authority of the agency

The Agency may prescribe such regulations as the Agency determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) General powers

(A) Successor to regulated entity

The Agency shall, as conservator or receiver, and by operation of law, immediately succeed to—

(i) all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity; and

(ii) title to the books, records, and assets of any other legal custodian of such regulated entity.

(B) Operate the regulated entity

The Agency may, as conservator or receiver—

(i) take over the assets of and operate the regulated entity with all the powers of the shareholders, the directors, and the officers of the regulated entity and conduct all business of the regulated entity;

(ii) collect all obligations and money due the regulated entity;

(iii) perform all functions of the regulated entity in the name of the regulated entity which are consistent with the appointment as conservator or receiver;

(iv) preserve and conserve the assets and property of the regulated entity; and

(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Agency as conservator or receiver.

(C) Functions of officers, directors, and shareholders of a regulated entity

The Agency may, by regulation or order, provide for the exercise of any function by any stockholder, director, or officer of any regulated entity for which the Agency has been named conservator or receiver.

(D) Powers as conservator

The Agency may, as conservator, take such action as may be—

(i) necessary to put the regulated entity in a sound and solvent condition; and

(ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity.

(E) Additional powers as receiver

In any case in which the Agency is acting as receiver, the Agency shall place the regulated entity in liquidation and proceed to realize upon the assets of the regulated entity in such manner as the Agency deems appropriate, including through the sale of assets, the transfer of assets to a limited-life regulated entity established under subsection (i), or the exercise of any other rights or privileges granted to the Agency under this paragraph.

(F) Organization of new enterprise

The Agency may, as receiver for an enterprise, organize a successor enterprise that will operate pursuant to subsection (i).

(G) Transfer or sale of assets and liabilities

The Agency may, as conservator or receiver, transfer or sell any asset or liability of the regulated entity in default, and may do so without any approval, assignment, or consent with respect to such transfer or sale.

(H) Payment of valid obligations

The Agency, as conservator or receiver, shall, to the extent of proceeds realized from the performance of contracts or sale of the assets of a regulated entity, pay all valid obligations of the regulated entity that are due and payable at the time of the appointment of the Agency as conservator or receiver, in accordance with the prescriptions and limitations of this section.

(I) Subpoena authority

(i) In general

(I) Agency authority

The Agency may, as conservator or receiver, and for purposes of carrying out any power, authority, or duty with respect to a regulated entity (including determining any claim against the regulated entity and determining and realizing upon any asset of any person in the course of collecting money due the regulated entity), exercise any power established under section 4588 of this title.

(II) Applicability of law

The provisions of section 4588 of this title shall apply with respect to the exercise of any power under this subparagraph, in the same manner as such provisions apply under that section.

(ii) Subpoena

A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Director, or the designee of the Director.

(iii) Rule of construction

This subsection shall not be construed to limit any rights that the Agency, in any capacity, might otherwise have under section 4517 or 4639 of this title.

(J) Incidental powers

The Agency may, as conservator or receiver—

(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this section, and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this section, which the Agency determines is in the best interests of the regulated entity or the Agency.

(K) Other provisions

(i) Shareholders and creditors of failed regulated entity

Notwithstanding any other provision of law, the appointment of the Agency as receiver for a regulated entity pursuant to paragraph (2) or (4) of subsection (a) and its succession, by operation of law, to the rights, titles, powers, and privileges described in subsection (b)(2)(A) shall terminate all rights and claims that the stockholders and creditors of the regulated entity may have against the assets or charter of the regulated entity or the Agency arising as a result of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under subsections (b)(9), (c), and (e).

(ii) Assets of regulated entity

Notwithstanding any other provision of law, for purposes of this section, the charter of a regulated entity shall not be considered an asset of the regulated entity.

(3) Authority of receiver to determine claims

(A) In general

The Agency may, as receiver, determine claims in accordance with the requirements of this subsection and any regulations prescribed under paragraph (4).

(B) Notice requirements

The receiver, in any case involving the liquidation or winding up of the affairs of a closed regulated entity, shall—

(i) promptly publish a notice to the creditors of the regulated entity to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the date of publication of such notice; and

(ii) republish such notice approximately 1 month and 2 months, respectively, after the date of publication under clause (i).

(C) Mailing required

The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the books of the regulated entity—

(i) at the last address of the creditor appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the books of the regulated entity, within 30 days after the discovery of such name and address.

(4) Rulemaking authority relating to determination of claims

Subject to subsection (c), the Director may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

(5) Procedures for determination of claims

(A) Determination period

(i) In general

Before the end of the 180-day period beginning on the date on which any claim against a regulated entity is filed with the Agency as receiver, the Agency shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) Extension of time

The period described in clause (i) may be extended by a written agreement between the claimant and the Agency.

(iii) Mailing of notice sufficient

The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the books of the regulated entity;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) Contents of notice of disallowance

If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) Allowance of proven claim

The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

(C) Disallowance of claims filed after filing period

Claims filed after the date specified in the notice published under paragraph (3)(B)(i), or the date specified under paragraph (3)(C), shall be disallowed and such disallowance shall be final.

(D) Authority to disallow claims

(i) In general

The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

(ii) Payments to less than fully secured creditors

In the case of a claim of a creditor against a regulated entity which is secured by any property or other asset of such regulated entity, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the regulated entity; and

(II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the regulated entity.

(iii) Exceptions

No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal Reserve Bank, Federal Home Loan Bank, or the United States Treasury; or

(II) any security interest in the assets of the regulated entity securing any such extension of credit.

(E) No judicial review of determination pursuant to subparagraph (D)

No court may review the determination of the Agency under subparagraph (D) to disallow a claim.

(F) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of the appointment of the receiver, subject to the determination of claims by the receiver.

(6) Provision for judicial determination of claims

(A) In general

The claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the principal place of business of the regulated entity is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim), before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a regulated entity for which the Agency is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i).

(B) Statute of limitations

A claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver), and such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim, if the claimant fails, before the end of the 60-day period described under subparagraph (A), to file suit on such claim (or continue an action commenced before the appointment of the receiver).

(7) Review of claims

(A) Other review procedures

(i) In general

The Agency shall establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) Criteria

In establishing alternative dispute resolution processes, the Agency shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) Voluntary binding or nonbinding procedures

The Agency may establish both binding and nonbinding processes under this subparagraph, which may be conducted by any government or private party. All parties, including the claimant and the Agency, must agree to the use of the process in a particular case.

(B) Consideration of incentives

The Agency shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) Expedited determination of claims

(A) Establishment required

The Agency shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any regulated entity for which the Agency has been appointed receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) Determination period

Before the end of the 90-day period beginning on the date on which any claim is filed in accordance with the procedures established under subparagraph (A), the Director shall—

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established under paragraph (5); and

(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) Period for filing or renewing suit

Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the date of appointment of the receiver, seeking a determination of the rights of the claimant with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date on which the Agency denies the claim.

(D) Statute of limitations

If an action described under subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed under subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action that was filed before the appointment of the receiver, subject to the determination of claims by the receiver.

(9) Payment of claims

(A) In general

The receiver may, in the discretion of the receiver, and to the extent that funds are

available from the assets of the regulated entity, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

(i) allowed by the receiver;

(ii) approved by the Agency pursuant to a final determination pursuant to paragraph (7) or (8); or

(iii) determined by the final judgment of any court of competent jurisdiction.

(B) Agreements against the interest of the Agency

No agreement that tends to diminish or defeat the interest of the Agency in any asset acquired by the Agency as receiver under this section shall be valid against the Agency unless such agreement is in writing and executed by an authorized officer or representative of the regulated entity.

(C) Payment of dividends on claims

The receiver may, in the sole discretion of the receiver, pay from the assets of the regulated entity dividends on proved claims at any time, and no liability shall attach to the Agency by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(D) Rulemaking authority of the Director

The Director may prescribe such rules, including definitions of terms, as the Director deems appropriate to establish a single uniform interest rate for, or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estates of the regulated entity, following satisfaction by the receiver of the principal amount of all creditor claims.

(10) Suspension of legal actions

(A) In general

After the appointment of a conservator or receiver for a regulated entity, the conservator or receiver may, in any judicial action or proceeding to which such regulated entity is or becomes a party, request a stay for a period not to exceed—

(i) 45 days, in the case of any conservator; and

(ii) 90 days, in the case of any receiver.

(B) Grant of stay by all courts required

Upon receipt of a request by the conservator or receiver under subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(11) Additional rights and duties

(A) Prior final adjudication

The Agency shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Agency as conservator or receiver.

(B) Rights and remedies of conservator or receiver

In the event of any appealable judgment, the Agency as conservator or receiver—

(i) shall have all of the rights and remedies available to the regulated entity (before the appointment of such conservator or receiver) and the Agency, including removal to Federal court and all appellate rights; and

(ii) shall not be required to post any bond in order to pursue such remedies.

(C) No attachment or execution

No attachment or execution may issue by any court upon assets in the possession of the receiver, or upon the charter, of a regulated entity for which the Agency has been appointed receiver.

(D) Limitation on judicial review

Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets or charter of any regulated entity for which the Agency has been appointed receiver; or

(ii) any claim relating to any act or omission of such regulated entity or the Agency as receiver.

(E) Disposition of assets

In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of a regulated entity for which the Agency has been appointed conservator or receiver, the Agency shall conduct its operations in a manner which—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases; and

(iii) ensures adequate competition and fair and consistent treatment of offerors.

(12) Statute of limitations for actions brought by conservator or receiver

(A) In general

Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Agency as conservator or receiver shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law.

(B) Determination of the date on which a claim accrues

For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Agency as conservator or receiver; or

(ii) the date on which the cause of action accrues.

(13) Revival of expired state causes of action

(A) In general

In the case of any tort claim described under clause (ii) for which the statute of limitations applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Agency as conservator or receiver, the Agency may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitations applicable under State law.

(B) Claims described

A tort claim referred to under clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the regulated entity.

(14) Accounting and recordkeeping requirements

(A) In general

The Agency as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Agency, maintain a full accounting of each conservatorship and receivership or other disposition of a regulated entity in default.

(B) Annual accounting or report

With respect to each conservatorship or receivership, the Agency shall make an annual accounting or report available to the Board, the Comptroller General of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

(C) Availability of reports

Any report prepared under subparagraph (B) shall be made available by the Agency upon request to any shareholder of a regulated entity or any member of the public.

(D) Recordkeeping requirement

After the end of the 6-year period beginning on the date on which the conservatorship or receivership is terminated by the Director, the Agency may destroy any records of such regulated entity which the Agency, in the discretion of the Agency, determines to be unnecessary, unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(15) Fraudulent transfers

(A) In general

The Agency, as conservator or receiver, may avoid a transfer of any interest of an entity-affiliated party, or any person determined by the conservator or receiver to be a debtor of the regulated entity, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Agency was appointed conservator or receiver, if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the regulated entity, the Agency, the conservator, or receiver.

(B) Right of recovery

To the extent a transfer is avoided under subparagraph (A), the conservator or receiver may recover, for the benefit of the regulated entity, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the entity-affiliated party or person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(C) Rights of transferee or obligee

The conservator or receiver may not recover under subparagraph (B) from—

(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

(ii) any immediate or mediate good faith transferee of such transferee.

(D) Rights under this paragraph

The rights under this paragraph of the conservator or receiver described under subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11.

(16) Attachment of assets and other injunctive relief

Subject to paragraph (17), any court of competent jurisdiction may, at the request of the conservator or receiver, issue an order in accordance with rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the conservator or receiver under the control of the court, and appointing a trustee to hold such assets.

(17) Standards of proof

Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (16) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(18) Treatment of claims arising from breach of contracts executed by the conservator or receiver

(A) In general

Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the conservator or receiver for the breach of an agreement executed or approved in writing by the conservator or receiver after the date of its appointment, shall be paid as an administrative expense of the conservator or receiver.

(B) No limitation of power

Nothing in this paragraph shall be construed to limit the power of the conservator

or receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(19) General exceptions

(A) Limitations

The rights of the conservator or receiver appointed under this section shall be subject to the limitations on the powers of a receiver under sections 4402 through 4407 of this title.[1]

(B) Mortgages held in trust

(i) In general

Any mortgage, pool of mortgages, or interest in a pool of mortgages held in trust, custodial, or agency capacity by a regulated entity for the benefit of any person other than the regulated entity shall not be available to satisfy the claims of creditors generally, except that nothing in this clause shall be construed to expand or otherwise affect the authority of any regulated entity.

(ii) Holding of mortgages

Any mortgage, pool of mortgages, or interest in a pool of mortgages described in clause (i) shall be held by the conservator or receiver appointed under this section for the beneficial owners of such mortgage, pool of mortgages, or interest in accordance with the terms of the agreement creating such trust, custodial, or other agency arrangement.

(iii) Liability of conservator or receiver

The liability of the conservator or receiver appointed under this section for damages shall, in the case of any contingent or unliquidated claim relating to the mortgages held in trust, be estimated in accordance with the regulations of the Director.

(c) Priority of expenses and unsecured claims

(1) In general

Unsecured claims against a regulated entity, or the receiver therefor, that are proven to the satisfaction of the receiver shall have priority in the following order:

(A) Administrative expenses of the receiver.

(B) Any other general or senior liability of the regulated entity (which is not a liability described under subparagraph (C) or (D).[2]

(C) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (D)).

(D) Any obligation to shareholders or members arising as a result of their status as shareholder or members.

(2) Creditors similarly situated

All creditors that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the receiver may take any action (including making payments) that does not comply with this subsection, if—

(A) the Director determines that such action is necessary to maximize the value of the assets of the regulated entity, to maximize the present value return from the sale or other disposition of the assets of the regulated entity, or to minimize the amount of any loss realized upon the sale or other disposition of the assets of the regulated entity; and

(B) all creditors that are similarly situated under paragraph (1) receive not less than the amount provided in subsection (e)(2).

(3) Definition

As used in this subsection, the term ''administrative expenses of the receiver'' includes—

(A) the actual, necessary costs and expenses incurred by the receiver in preserving the assets of a failed regulated entity or liquidating or otherwise resolving the affairs of a failed regulated entity; and

(B) any obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the regulated entity.

(d) Provisions relating to contracts entered into before appointment of conservator or receiver

(1) Authority to repudiate contracts

In addition to any other rights a conservator or receiver may have, the conservator or receiver for any regulated entity may disaffirm or repudiate any contract or lease—

(A) to which such regulated entity is a party;

(B) the performance of which the conservator or receiver, in its sole discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in its sole discretion, will promote the orderly administration of the affairs of the regulated entity.

(2) Timing of repudiation

The conservator or receiver shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) Claims for damages for repudiation

(A) In general

Except as otherwise provided under subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) No liability for other damages

For purposes of subparagraph (A), the term ''actual direct compensatory damages'' shall not include—

[1] See References in Text note below.

[2] So in original. A second closing parenthesis probably should precede the period.

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) Measure of damages for repudiation of financial contracts

In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (e), except as otherwise specifically provided in this section.

(4) Leases under which the regulated entity is the lessee

(A) In general

If the conservator or receiver disaffirms or repudiates a lease under which the regulated entity was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined under subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) Payments of rent

Notwithstanding subparagraph (A), the lessor under a lease to which that subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date on which—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment, which shall be paid in accordance with this subsection and subsection (e).

(5) Leases under which the regulated entity is the lessor

(A) In general

If the conservator or receiver repudiates an unexpired written lease of real property of the regulated entity under which the regulated entity is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) Provisions applicable to lessee remaining in possession

If any lessee under a lease described under subparagraph (A) remains in possession of a leasehold interest under clause (ii) of subparagraph (A)—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, and any damages which accrue after such date due to the nonperformance of any obligation of the regulated entity under the lease after such date; and

(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II).

(6) Contracts for the sale of real property

(A) In general

If the conservator or receiver repudiates any contract for the sale of real property and the purchaser of such real property under such contract is in possession, and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) Provisions applicable to purchaser remaining in possession

If any purchaser of real property under any contract described under subparagraph (A) remains in possession of such property under clause (ii) of subparagraph (A)—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the regulated entity under the contract; and

(ii) the conservator or receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) Assignment and sale allowed

(i) In general

No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described under subparagraph (A), and sell the property subject to the contract and the provisions of this paragraph.

(ii) No liability after assignment and sale

If an assignment and sale described under clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described under subparagraph (A), or with respect to the real property which was the subject of such contract.

(7) Service contracts

(A) Services performed before appointment

In the case of any contract for services between any person and any regulated entity for which the Agency has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or receiver shall be—

(i) a claim to be paid in accordance with subsections (b) and (e); and

(ii) deemed to have arisen as of the date on which the conservator or receiver was appointed.

(B) Services performed after appointment and prior to repudiation

If, in the case of any contract for services described under subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

(C) Acceptance of performance no bar to subsequent repudiation

The acceptance by the conservator or receiver of services referred to under subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

(8) Certain qualified financial contracts

(A) Rights of parties to contracts

Subject to paragraphs (9) and (10), and notwithstanding any other provision of this chapter (other than subsection (b)(9)(B) of this section), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right of that person to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity that arises upon the appointment of the Agency as receiver for such regulated entity at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more qualified financial contracts; or

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) Applicability of other provisions

Subsection (b)(10) shall apply in the case of any judicial action or proceeding brought against any receiver referred to under subparagraph (A), or the regulated entity for which such receiver was appointed, by any party to a contract or agreement described under subparagraph (A)(i) with such regulated entity.

(C) Certain transfers not avoidable

(i) In general

Notwithstanding paragraph (11), or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Agency, whether acting as such or as conservator or receiver of a regulated entity, may not avoid any transfer of money or other property in connection with any qualified financial contract with a regulated entity.

(ii) Exception for certain transfers

Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a regulated entity if the Agency determines that the transferee had actual intent to hinder, delay, or defraud such regulated entity, the creditors of such regulated entity, or any conservator or receiver appointed for such regulated entity.

(D) Certain contracts and agreements defined

In this subsection the following definitions shall apply:

(i) Qualified financial contract

The term ''qualified financial contract'' means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Agency determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) Securities contract

The term ''securities contract''—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(II) does not include any purchase, sale, or repurchase obligation under a

participation in a commercial mortgage loan, unless the Agency determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(V) means any margin loan;

(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) means any combination of the agreements or transactions referred to in this clause;

(VIII) means any option to enter into any agreement or transaction referred to in this clause;

(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) Commodity contract

The term ''commodity contract'' means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) Forward contract

The term ''forward contract'' means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date on which the contract is entered into, including a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an

agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) Repurchase agreement

The term ''repurchase agreement'' (including a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in section 78c of title 15), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined for purposes of this clause as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development, as determined by regulation or order adopted by the appropriate Federal banking authority), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan, unless the Agency determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vi) Swap agreement

The term ''swap agreement'' means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to

whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vii) Treatment of master agreement as one agreement

Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(viii) Transfer

The term ''transfer'' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the regulated entity.

(E) Certain protections in event of appointment of conservator

Notwithstanding any other provision of this section, any other Federal law, or the law of any State (other than paragraph (10) of this subsection and subsection (b)(9)(B)), no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

(ii) any right under any security agreement or arrangement or other credit enhancement relating to 1 or more such qualified financial contracts; or

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) Clarification

No provision of law shall be construed as limiting the right or power of the Agency, or authorizing any court or agency to limit or delay in any manner, the right or power of the Agency to transfer any qualified financial contract in accordance with paragraphs (9) and (10), or to disaffirm or repudiate any such contract in accordance with subsection (d)(1).

(G) Walkaway clauses not effective

(i) In general

Notwithstanding the provisions of subparagraphs (A) and (E), and sections 4403 and 4404 of this title, no walkaway clause shall be enforceable in a qualified financial contract of a regulated entity in default.

(ii) Walkaway clause defined

For purposes of this subparagraph, the term ''walkaway clause'' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of the status of such party as a nondefaulting party.

(9) Transfer of qualified financial contracts

In making any transfer of assets or liabilities of a regulated entity in default which includes any qualified financial contract, the conservator or receiver for such regulated entity shall either—

(A) transfer to 1 person—

(i) all qualified financial contracts between any person (or any affiliate of such person) and the regulated entity in default;

(ii) all claims of such person (or any affiliate of such person) against such regulated entity under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such regulated entity);

(iii) all claims of such regulated entity against such person (or any affiliate of such person) under any such contract; and

(iv) all property securing, or any other credit enhancement for any contract described in clause (i), or any claim described in clause (ii) or (iii) under any such contract; or

(B) transfer none of the financial contracts, claims, or property referred to under subparagraph (A) (with respect to such person and any affiliate of such person).

(10) Notification of transfer

(A) In general

The conservator or receiver shall notify any person that is a party to a contract or transfer by 5:00 p.m. (Eastern Standard Time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship, if—

(i) the conservator or receiver for a regulated entity in default makes any transfer of the assets and liabilities of such regulated entity; and

(ii) such transfer includes any qualified financial contract.

(B) Certain rights not enforceable

(i) Receivership

A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or under section 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a receiver for the regulated entity (or the insolvency or financial condition of the regulated entity for which the receiver has been appointed)—

(I) until 5:00 p.m. (Eastern Standard Time) on the business day following the date of the appointment of the receiver; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) Conservatorship

A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or under section 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a conservator for the regulated entity (or the insolvency or financial condition of the regulated entity for which the conservator has been appointed).

(iii) Notice

For purposes of this paragraph, the conservator or receiver of a regulated entity shall be deemed to have notified a person who is a party to a qualified financial contract with such regulated entity, if the conservator or receiver has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) Business day defined

For purposes of this paragraph, the term ''business day'' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) Disaffirmance or repudiation of qualified financial contracts

In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which a regulated entity is a party, the conservator or receiver for such institution shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the regulated entity in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) Certain security interests not avoidable

No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any regulated entity, except where such an interest is taken in contemplation of the insolvency of the regulated entity, or with the intent to hinder, delay, or defraud the regulated entity or the creditors of such regulated entity.

(13) Authority to enforce contracts

(A) In general

Notwithstanding any provision of a contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of, or the exercise of rights or powers by, a conservator or receiver, the conservator or receiver may enforce any contract, other than a contract for liability insurance for a director or officer, or a contract or a regulated entity bond, entered into by the regulated entity.

(B) Certain rights not affected

No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a liability insurance contract for an officer or director, or regulated entity bond under other applicable law.

(C) Consent requirement

(i) In general

Except as otherwise provided under this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which a regulated entity is a party, or to obtain possession of or exercise control over any property of the regulated entity, or affect any contractual rights of the regulated entity, without the consent of the conservator or receiver, as appropriate, for a period of—

(I) 45 days after the date of appointment of a conservator; or

(II) 90 days after the date of appointment of a receiver.

(ii) Exceptions

This subparagraph shall not—

(I) apply to a contract for liability insurance for an officer or director;

(II) apply to the rights of parties to certain qualified financial contracts under subsection (d)(8); and

(III) be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contracts.

(14) Savings clause

The meanings of terms used in this subsection are applicable for purposes of this sub-

section only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000 [7 U.S.C. 27 to 27f], the securities laws (as that term is defined in section 78c(a)(47) of title 15), and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(15) Exception for Federal Reserve and Federal Home Loan Banks

No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal Home Loan Bank or Federal Reserve Bank to any regulated entity; or

(B) any security interest in the assets of the regulated entity securing any such extension of credit.

(e) Valuation of claims in default

(1) In general

Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Agency determines to utilize with respect to a regulated entity in default or in danger of default, including transactions authorized under subsection (i), this subsection shall govern the rights of the creditors of such regulated entity.

(2) Maximum liability

The maximum liability of the Agency, acting as receiver or in any other capacity, to any person having a claim against the receiver or the regulated entity for which such receiver is appointed shall be not more than the amount that such claimant would have received if the Agency had liquidated the assets and liabilities of the regulated entity without exercising the authority of the Agency under subsection (i).

(f) Limitation on court action

Except as provided in this section or at the request of the Director, no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator or a receiver.

(g) Liability of directors and officers

(1) In general

A director or officer of a regulated entity may be held personally liable for monetary damages in any civil action described in paragraph (2) brought by, on behalf of, or at the request or direction of the Agency, and prosecuted wholly or partially for the benefit of the Agency—

(A) acting as conservator or receiver of such regulated entity; or

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator.

(2) Actions addressed

Paragraph (1) applies in any civil action for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care than gross negligence, including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) No limitation

Nothing in this subsection shall impair or affect any right of the Agency under other applicable law.

(h) Damages

In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a regulated entity, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the regulated entity shall include principal losses and appropriate interest.

(i) Limited-life regulated entities

(1) Organization

(A) Purpose

The Agency, as receiver appointed pursuant to subsection (a)—

(i) may, in the case of a Federal Home Loan Bank, organize a limited-life regulated entity with those powers and attributes of the Federal Home Loan Bank in default or in danger of default as the Director determines necessary, subject to the provisions of this subsection, and the Director shall grant a temporary charter to that limited-life regulated entity, and that limited-life regulated entity may operate subject to that charter; and

(ii) shall, in the case of an enterprise, organize a limited-life regulated entity with respect to that enterprise in accordance with this subsection.

(B) Authorities

Upon the creation of a limited-life regulated entity under subparagraph (A), the limited-life regulated entity may—

(i) assume such liabilities of the regulated entity that is in default or in danger of default as the Agency may, in its discretion, determine to be appropriate, except that the liabilities assumed shall not exceed the amount of assets purchased or transferred from the regulated entity to the limited-life regulated entity;

(ii) purchase such assets of the regulated entity that is in default, or in danger of default as the Agency may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Agency may, in its discretion, prescribe in accordance with this section.

(2) Charter and establishment

(A) Transfer of charter

(i) Fannie Mae

If the Agency is appointed as receiver for the Federal National Mortgage Association, the limited-life regulated entity established under this subsection with re-

spect to such enterprise shall, by operation of law and immediately upon its organization—

(I) succeed to the charter of the Federal National Mortgage Association, as set forth in the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.]; and

(II) thereafter operate in accordance with, and subject to, such charter, this Act, and any other provision of law to which the Federal National Mortgage Association is subject, except as otherwise provided in this subsection.

(ii) Freddie Mac

If the Agency is appointed as receiver for the Federal Home Loan Mortgage Corporation, the limited-life regulated entity established under this subsection with respect to such enterprise shall, by operation of law and immediately upon its organization—

(I) succeed to the charter of the Federal Home Loan Mortgage Corporation, as set forth in the Federal Home Loan Mortgage Corporation Charter Act[1] [12 U.S.C. 1451 et seq.]; and

(II) thereafter operate in accordance with, and subject to, such charter, this Act, and any other provision of law to which the Federal Home Loan Mortgage Corporation is subject, except as otherwise provided in this subsection.

(B) Interests in and assets and obligations of regulated entity in default

Notwithstanding subparagraph (A) or any other provision of law—

(i) a limited-life regulated entity shall assume, acquire, or succeed to the assets or liabilities of a regulated entity only to the extent that such assets or liabilities are transferred by the Agency to the limited-life regulated entity in accordance with, and subject to the restrictions set forth in, paragraph (1)(B);

(ii) a limited-life regulated entity shall not assume, acquire, or succeed to any obligation that a regulated entity for which a receiver has been appointed may have to any shareholder of the regulated entity that arises as a result of the status of that person as a shareholder of the regulated entity; and

(iii) no shareholder or creditor of a regulated entity shall have any right or claim against the charter of the regulated entity once the Agency has been appointed receiver for the regulated entity and a limited-life regulated entity succeeds to the charter pursuant to subparagraph (A).

(C) Limited-life regulated entity treated as being in default for certain purposes

A limited-life regulated entity shall be treated as a regulated entity in default at such times and for such purposes as the Agency may, in its discretion, determine.

(D) Management

Upon its establishment, a limited-life regulated entity shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Agency.

(E) Bylaws

The board of directors of a limited-life regulated entity shall adopt such bylaws as may be approved by the Agency.

(3) Capital stock

(A) No agency requirement

The Agency is not required to pay capital stock into a limited-life regulated entity or to issue any capital stock on behalf of a limited-life regulated entity established under this subsection.

(B) Authority

If the Director determines that such action is advisable, the Agency may cause capital stock or other securities of a limited-life regulated entity established with respect to an enterprise to be issued and offered for sale, in such amounts and on such terms and conditions as the Director may determine, in the discretion of the Director.

(4) Investments

Funds of a limited-life regulated entity shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Agency, or any Federal reserve bank.

(5) Exempt tax status

Notwithstanding any other provision of Federal or State law, a limited-life regulated entity, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(6) Winding up

(A) In general

Subject to subparagraphs (B) and (C), not later than 2 years after the date of its organization, the Agency shall wind up the affairs of a limited-life regulated entity.

(B) Extension

The Director may, in the discretion of the Director, extend the status of a limited-life regulated entity for 3 additional 1-year periods.

(C) Termination of status as limited-life regulated entity

(i) In general

Upon the sale by the Agency of 80 percent or more of the capital stock of a limited-life regulated entity, as defined in clause (iv), to 1 or more persons (other than the Agency)—

(I) the status of the limited-life regulated entity as such shall terminate; and

(II) the entity shall cease to be a limited-life regulated entity for purposes of this subsection.

(ii) Divestiture of remaining stock, if any

(I) In general

Not later than 1 year after the date on which the status of a limited-life regu-

lated entity is terminated pursuant to clause (i), the Agency shall sell to 1 or more persons (other than the Agency) any remaining capital stock of the former limited-life regulated entity.

(II) Extension authorized

The Director may extend the period referred to in subclause (I) for not longer than an additional 2 years, if the Director determines that such action would be in the public interest.

(iii) Savings clause

Notwithstanding any provision of law, other than clause (ii), the Agency shall not be required to sell the capital stock of an enterprise or a limited-life regulated entity established with respect to an enterprise.

(iv) Applicability

This subparagraph applies only with respect to a limited-life regulated entity that is established with respect to an enterprise.

(7) Transfer of assets and liabilities

(A) In general

(i) Transfer of assets and liabilities

The Agency, as receiver, may transfer any assets and liabilities of a regulated entity in default, or in danger of default, to the limited-life regulated entity in accordance with and subject to the restrictions of paragraph (1).

(ii) Subsequent transfers

At any time after the establishment of a limited-life regulated entity, the Agency, as receiver, may transfer any assets and liabilities of the regulated entity in default, or in danger of default, as the Agency may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

(iii) Effective without approval

The transfer of any assets or liabilities of a regulated entity in default or in danger of default to a limited-life regulated entity shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(iv) Equitable treatment of similarly situated creditors

The Agency shall treat all creditors of a regulated entity in default or in danger of default that are similarly situated under subsection (c)(1) in a similar manner in exercising the authority of the Agency under this subsection to transfer any assets or liabilities of the regulated entity to the limited-life regulated entity established with respect to such regulated entity, except that the Agency may take actions (including making payments) that do not comply with this clause, if—

(I) the Director determines that such actions are necessary to maximize the value of the assets of the regulated entity, to maximize the present value return from the sale or other disposition of the assets of the regulated entity, or to minimize the amount of any loss realized upon the sale or other disposition of the assets of the regulated entity; and

(II) all creditors that are similarly situated under subsection (c)(1) receive not less than the amount provided in subsection (e)(2).

(v) Limitation on transfer of liabilities

Notwithstanding any other provision of law, the aggregate amount of liabilities of a regulated entity that are transferred to, or assumed by, a limited-life regulated entity may not exceed the aggregate amount of assets of the regulated entity that are transferred to, or purchased by, the limited-life regulated entity.

(8) Regulations

The Agency may promulgate such regulations as the Agency determines to be necessary or appropriate to implement this subsection.

(9) Powers of limited-life regulated entities

(A) In general

Each limited-life regulated entity created under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, the regulated entity in default or in danger of default to which it relates, except that—

(i) the Agency may—

(I) remove the directors of a limited-life regulated entity;

(II) fix the compensation of members of the board of directors and senior management, as determined by the Agency in its discretion, of a limited-life regulated entity; and

(III) indemnify the representatives for purposes of paragraph (1)(B), and the directors, officers, employees, and agents of a limited-life regulated entity on such terms as the Agency determines to be appropriate; and

(ii) the board of directors of a limited-life regulated entity—

(I) shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Agency; and

(II) may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Agency.

(B) Stay of judicial action

Any judicial action to which a limited-life regulated entity becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a regulated entity in default shall be stayed from further proceedings for a period of not longer than 45 days, at the request of the limited-life regulated entity. Such period may be modified upon the consent of all parties.

(10) No Federal status

(A) Agency status

A limited-life regulated entity is not an agency, establishment, or instrumentality of the United States.

(B) Employee status

Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a limited-life regulated entity are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Agency or of any Federal instrumentality who serves at the request of the Agency as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a limited-life regulated entity shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5 or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a limited-life regulated entity in addition to such salary or benefits as are obtained through employment with the Agency or such Federal instrumentality.

(11) Authority to obtain credit

(A) In general

A limited-life regulated entity may obtain unsecured credit and issue unsecured debt.

(B) Inability to obtain credit

If a limited-life regulated entity is unable to obtain unsecured credit or issue unsecured debt, the Director may authorize the obtaining of credit or the issuance of debt by the limited-life regulated entity—

(i) with priority over any or all of the obligations of the limited-life regulated entity;

(ii) secured by a lien on property of the limited-life regulated entity that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property of the limited-life regulated entity that is subject to a lien.

(C) Limitations

(i)[3] In general

The Director, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a limited-life regulated entity that is secured by a senior or equal lien on property of the limited-life regulated entity that is subject to a lien (other than mortgages that collateralize the mortgage-backed securities issued or guaranteed by an enterprise) only if—

(I) the limited-life regulated entity is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(D) Burden of proof

In any hearing under this subsection, the Director has the burden of proof on the issue of adequate protection.

(12) Effect on debts and liens

The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(j) Other Agency exemptions

(1) Applicability

The provisions of this subsection shall apply with respect to the Agency in any case in which the Agency is acting as a conservator or a receiver.

(2) Taxation

The Agency, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Agency shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, and the tax thereon, shall be determined as of the period for which such tax is imposed.

(3) Property protection

No property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency.

(4) Penalties and fines

The Agency shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

(k) Prohibition of charter revocation

In no case may the receiver appointed pursuant to this section revoke, annul, or terminate the charter of an enterprise.

(Pub. L. 102–550, title XIII, § 1367, Oct. 28, 1992, 106 Stat. 3980; Pub. L. 110–289, div. A, title I, § 1145(a), July 30, 2008, 122 Stat. 2734.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(4)(D) and (d)(8)(A), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short

[3] So in original. No cl. (ii) has been enacted.

Title note set out under section 4501 of this title and Tables.

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (b)(16), (17), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Sections 4402 through 4407 of this title, referred to in subsec. (b)(19)(A), was in the original ''sections 402 through 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402 through 4407)'', and was translated as reading ''sections 402 through 407A of the Federal Deposit Insurance Corporation Improvement Act of 1991'', meaning sections 402 to 407A of Pub. L. 102–242, which are classified to sections 4402 to 4407 of this title, to reflect the probable intent of Congress and the renumbering of section 407 of the Act as section 407A by Pub. L. 109–8, title IX, §906(d)(1), Apr. 20, 2005, 119 Stat. 169.

The Gramm-Leach-Bliley Act, referred to in subsec. (d)(14), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

The Legal Certainty for Bank Products Act of 2000, referred to in subsec. (d)(14), is title IV of H.R. 5660, as enacted by Pub. L. 106–554, §1(a)(5), Dec. 21, 2000, 114 Stat. 2763, 2763A–457, which is classified to sections 27 to 27f of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of Title 7 and Tables.

The Commodity Exchange Act, referred to in subsec. (d)(14), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Federal National Mortgage Association Charter Act, referred to in subsec. (i)(2)(A)(i)(I), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, which is classified generally to subchapter III (§1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

This Act, referred to in subsec. (i)(2)(A)(i)(II), (ii)(II), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

The Federal Home Loan Mortgage Corporation Charter Act, referred to in subsec. (i)(2)(A)(ii)(I), probably means the Federal Home Loan Mortgage Corporation Act, title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, which is classified generally to chapter 11A (§1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289 amended section generally. Prior to amendment, section related to appointment of conservators for critically undercapitalized enterprises.

§ 4618. Notice of classification and enforcement action

(a) Notice

Before taking any action referred to in subsection (b) of this section, the Director shall provide to the regulated entity written notice of the proposed action, which states the reasons for the proposed action and the information on which the proposed action is based.

(b) Applicability

The requirements of subsection (a) of this section shall apply to the following actions:

(1) Classification or reclassification of a regulated entity within a particular capital classification under section 4614 of this title.

(2) Any discretionary supervisory action pursuant to section 4615 of this title.

(3) Any discretionary supervisory action pursuant to section 4616 of this title except a decision to appoint a conservator under section 4616(b)(6)[1] of this title.

Notice of classification under paragraph (1) and notice of supervisory actions under paragraph (2) or (3) may be provided together in a single notice under subsection (a) of this section.

(c) Response period

(1) In general

During the 30-day period beginning on the date that a regulated entity is provided notice under subsection (a) of this section of a proposed action, the regulated entity may submit to the Director any information relevant to the action that the regulated entity considers appropriate for consideration by the Director in determining whether to take such action. The Director may, at the discretion of the Director, hold an informal administrative hearing to receive and discuss such information and the proposed determination.

(2) Extended period

The Director may extend the period under paragraph (1) for good cause for not more than 30 additional days.

(3) Shortened period

The Director may shorten the period under paragraph (1) if the Director determines that the condition of the regulated entity so requires or the regulated entity consents.

(4) Failure to respond

The failure of a regulated entity to provide information during the response period under this subsection (as extended or shortened) shall waive any right of the regulated entity to comment on the proposed action of the Director.

(d) Consideration of information and determination

After the expiration of the response period under subsection (c) of this section or upon receipt of information provided during such period by the regulated entity, whichever occurs earlier, the Director shall determine whether to take the action proposed, taking into consideration any relevant information submitted by the regulated entity during the response period. The Director shall provide written notice of a determination to take action and the reasons for such determination to the regulated entity, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such notice shall respond to any information submitted during the response period.

(e) Effective date of actions

An action referred to in subsection (b) of this section shall take effect upon receipt by the reg-

[1] See References in Text note below.

ulated entity of notice of the determination of the Director under subsection (d) of this section, unless otherwise provided in such notice.

(Pub. L. 102–550, title XIII, § 1368, Oct. 28, 1992, 106 Stat. 3980; Pub. L. 110–289, div. A, title I, § 1145(b)(1), July 30, 2008, 122 Stat. 2767.)

REFERENCES IN TEXT

Section 4616(b)(6) of this title, referred to in subsec. (b)(3), was repealed and a new par. (6) added by Pub. L. 110–289, div. A, title I, § 1144(5)(C), (D), July 30, 2008, 122 Stat. 2733. The new par. (6) does not relate to appointment of a conservator.

AMENDMENTS

2008—Pub. L. 110–289 substituted ''a regulated entity'' for ''an enterprise'' and ''the regulated entity'' for ''the enterprise'' wherever appearing.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§§ 4619 to 4621. Repealed. Pub. L. 110–289, div. A, title I, § 1145(b)(4), July 30, 2008, 122 Stat. 2767

Section 4619, Pub. L. 102–550, title XIII, § 1369, Oct. 28, 1992, 106 Stat. 3981; Pub. L. 110–289, div. A, title I, § 1161(a)(6), July 30, 2008, 122 Stat. 2779, related to appointment of conservators.

Section 4620, Pub. L. 102–550, title XIII, § 1369A, Oct. 28, 1992, 106 Stat. 3983, related to powers of conservators.

Section 4621, Pub. L. 102–550, title XIII, § 1369B, Oct. 28, 1992, 106 Stat. 3984, related to liability protection for conservators.

§ 4622. Capital restoration plans

(a) Contents

Each capital restoration plan submitted under this subchapter shall set forth a feasible plan for restoring the core capital of the regulated entity subject to the plan to an amount not less than the minimum capital level for the regulated entity and for restoring the total capital of the regulated entity to an amount not less than the risk-based capital level for the regulated entity. Each capital restoration plan shall—

(1) specify the level of capital the regulated entity will achieve and maintain;

(2) describe the actions that the regulated entity will take to become classified as adequately capitalized;

(3) establish a schedule for completing the actions set forth in the plan;

(4) specify the types and levels of activities (including existing and new programs) in which the regulated entity will engage during the term of the plan; and

(5) describe the actions that the regulated entity will take to comply with any mandatory and discretionary requirements imposed under this subchapter.

(b) Deadlines for submission

The Director shall, by regulation, establish a deadline for submission of a capital restoration plan, which may not be more than 45 days after the regulated entity is notified in writing that a plan is required. The regulations shall provide that the Director may extend the deadline to the extent that the Director determines it necessary. Any extension of the deadline shall be in writing and for a time certain.

(c) Approval

The Director shall review each capital restoration plan submitted under this section and, not later than 30 days after submission of the plan, approve or disapprove the plan. The Director may extend the period for approval or disapproval for any plan for a single additional 30-day period if the Director determines it necessary. The Director shall provide written notice to any regulated entity submitting a plan of the approval or disapproval of the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval.

(d) Resubmission

If the Director disapproves the initial capital restoration plan submitted by the regulated entity, the regulated entity shall submit an amended plan acceptable to the Director within 30 days or such longer period that the Director determines is in the public interest.

(Pub. L. 102–550, title XIII, § 1369C, Oct. 28, 1992, 106 Stat. 3985; Pub. L. 110–289, div. A, title I, § 1145(b)(2), July 30, 2008, 122 Stat. 2767.)

AMENDMENTS

2008—Pub. L. 110–289 substituted ''regulated entity'' for ''enterprise'' wherever appearing.

§ 4623. Judicial review of Director action

(a) Jurisdiction

(1) Filing of petition

A regulated entity that is not classified as critically undercapitalized and is the subject of a classification under section 4614 of this title or a discretionary supervisory action taken under this subchapter by the Director (other than action to appoint a conservator under section 4616 or 4617 of this title or action under section 4619[1] of this title) may obtain review of the classification or action by filing, within 10 days after receiving written notice of the Director's action, a written petition requesting that the classification or action of the Director be modified, terminated, or set aside.

(2) Place for filing

A petition filed pursuant to this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit.

(b) Scope of review

The Court may modify, terminate, or set aside an action taken by the Director and reviewed by

[1] See References in Text note below.

the Court pursuant to this section only if the court finds, on the record on which the Director acted, that the action of the Director was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable laws.

(c) Unavailability of stay

The commencement of proceedings for judicial review pursuant to this section shall not operate as a stay of any action taken by the Director. Pending judicial review of the action, the court shall not have jurisdiction to stay, enjoin, or otherwise delay any supervisory action taken by the Director with respect to a regulated entity that is classified as significantly or critically undercapitalized or any action of the Director that results in the classification of a regulated entity as significantly or critically undercapitalized.

(d) Limitation on jurisdiction

Except as provided in this section, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of any classification or action of the Director under this subchapter (other than appointment of a conservator under section 4616 or 4617 of this title or action under section 4619[1] of this title) or to review, modify, suspend, terminate, or set aside such classification or action.

(Pub. L. 102–550, title XIII, §1369D, Oct. 28, 1992, 106 Stat. 3985; Pub. L. 110–289, div. A, title I, §1145(b)(3), July 30, 2008, 122 Stat. 2767.)

REFERENCES IN TEXT

Section 4619 of this title, referred to in subsecs. (a)(1) and (d), was repealed by Pub. L. 110–289, div. A, title I, §1145(b)(4), July 30, 2008, 122 Stat. 2767.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–289, §1145(b)(3)(B), substituted ''A regulated entity'' for ''An enterprise''.

Subsec. (c). Pub. L. 110–289, §1145(b)(3)(A), substituted ''a regulated entity'' for ''an enterprise'' in two places.

§ 4624. Reviews of enterprise assets and liabilities

(a) In general

The Director shall, by regulation, establish criteria governing the portfolio holdings of the enterprises, to ensure that the holdings are backed by sufficient capital and consistent with the mission and the safe and sound operations of the enterprises. In establishing such criteria, the Director shall consider the ability of the enterprises to provide a liquid secondary market through securitization activities, the portfolio holdings in relation to the overall mortgage market, and adherence to the standards specified in section 4513b of this title.

(b) Temporary adjustments

The Director may, by order, make temporary adjustments to the established standards for an enterprise or both enterprises, such as during times of economic distress or market disruption.

(c) Authority to require disposition or acquisition

The Director shall monitor the portfolio of each enterprise. Pursuant to subsection (a) and notwithstanding the capital classifications of the enterprises, the Director may, by order, require an enterprise, under such terms and conditions as the Director determines to be appropriate, to dispose of or acquire any asset, if the Director determines that such action is consistent with the purposes of this Act or any of the authorizing statutes.

(Pub. L. 102–550, title XIII, §1369E, as added Pub. L. 110–289, div. A, title I, §1109(a)(2), July 30, 2008, 122 Stat. 2675.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

REGULATIONS

Pub. L. 110–289, div. A, title I, §1109(b), July 30, 2008, 122 Stat. 2675, provided that: ''Not later than the expiration of the 180-day period beginning on the effective date of this Act [probably means date of enactment of Pub. L. 110–289, approved July 30, 2008], the Director [of the Federal Housing Finance Agency] shall issue regulations pursuant to section 1369E(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4624(a)] (as added by subsection (a) of this section) establishing the portfolio holdings standards under such section.''

SUBCHAPTER III—ENFORCEMENT PROVISIONS

§ 4631. Cease-and-desist proceedings

(a) Issuance for unsafe or unsound practices and violations

(1) Authority of Director

If, in the opinion of the Director, a regulated entity or any entity-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any entity-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the regulated entity or the Office of Finance, or is violating or has violated, or the Director has reasonable cause to believe is about to violate, a law, rule, regulation, or order, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or the Office of Finance or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity or entity-affiliated party a notice of charges in respect thereof.

(2) Limitation

The Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart 2 of part B of subchapter I of this chapter, with section 4566 or 4567 of this title, with subsection (m) or (n) of section 1723a of this title, with subsection (e) or (f) of section 1456 of this title, or with paragraph (5) of section 1430(j) of this title.

(b) Issuance for unsatisfactory rating

If a regulated entity receives, in its most recent report of examination, a less-than-satisfac-

tory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the regulated entity to be engaging in an unsafe or unsound practice for purposes of subsection (a).

(c) Procedure

(1) Notice of charges

Each notice of charges under this section shall contain a statement of the facts constituting the alleged practice or violation and shall fix a time and place at which a hearing will be held to determine on the record whether an order to cease and desist from such practice or violation should issue, unless the party served with a notice of charges shall appear at the hearing personally or by a duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order.

(2) Issuance of order

If the Director finds on the record made at such hearing that any practice or violation specified in the notice of charges has been established (or the regulated entity or entity-affiliated party consents pursuant to section 4633(a)(4) of this title), the Director may issue and serve upon the regulated entity, executive officer, director, or entity-affiliated party an order requiring such party to cease and desist from any such practice or violation and to take affirmative action to correct or remedy the conditions resulting from any such practice or violation.

(d) Affirmative action to correct conditions resulting from violations or activities

The authority under this section and section 4632 of this title to issue any order requiring a regulated entity, executive officer, director, or entity-affiliated party to take affirmative action to correct or remedy any condition resulting from any practice or violation with respect to which such order is issued includes the authority to require a regulated entity or entity-affiliated party—

(1) make[1] restitution to, or provide reimbursement, indemnification, or guarantee against loss, if—

(A) such entity or party or finance facility was unjustly enriched in connection with such practice or violation; or

(B) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Director;

(2) to require a regulated entity to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(3) to restrict the growth of the regulated entity;

(4) to require the regulated entity to dispose of any loan or asset involved;

(5) to require the regulated entity to rescind agreements or contracts;

(6) to require the regulated entity to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director); and

(7) to require the regulated entity to take such other action as the Director determines appropriate.

(e) Authority to limit activities

The authority to issue an order under this section or section 4632 of this title includes the authority to place limitations on the activities or functions of the regulated entity or entity-affiliated party or any executive officer or director of the regulated entity or entity-affiliated party.

(f) Effective date

An order under this section shall become effective upon the expiration of the 30-day period beginning on the service of the order upon the regulated entity, finance facility,,[2] executive officer, director, or entity-affiliated party concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Director or otherwise, as provided in this subchapter.

(Pub. L. 102–550, title XIII, § 1371, Oct. 28, 1992, 106 Stat. 3986; Pub. L. 110–289, div. A, title I, § 1151, July 30, 2008, 122 Stat. 2767.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsecs. (a), (b). Pub. L. 110–289, § 1151(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to grounds for issuance against adequately capitalized enterprises and grounds for issuance against undercapitalized, significantly undercapitalized, and critically undercapitalized enterprises, respectively.

Subsec. (c)(1). Pub. L. 110–289, § 1151(2)(A), (3)(C), substituted ''practice'' for ''conduct'' in two places and inserted '', unless the party served with a notice of charges shall appear at the hearing personally or by a duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order'' before period at end.

Subsec. (c)(2). Pub. L. 110–289, § 1151(2)(B), (3)(A), (C), inserted ''or entity-affiliated party'' before ''consents'' and substituted ''director, or entity-affiliated party'' for ''or director'', ''the regulated entity'' for ''the enterprise'' in two places, and ''practice'' for ''conduct'' wherever appearing.

Subsec. (d). Pub. L. 110–289, § 1151(3)(B), (C), (4)(A), in introductory provisions, substituted ''a regulated entity'' for ''an enterprise'', ''director, or entity-affiliated party'' for ''or director'', and ''practice'' for ''conduct'', and inserted ''to require a regulated entity or entity-affiliated party'' after ''includes the authority''.

Subsec. (d)(1). Pub. L. 110–289, § 1151(4)(B)(i), (ii), in introductory provisions, struck out ''to require an executive officer or a director to'' before ''make restitution'' and substituted ''loss, if'' for ''loss to the enterprise to the extent that such person''.

Subsec. (d)(1)(A). Pub. L. 110–289, § 1151(3)(C), (4)(B)(iii), inserted ''such entity or party or finance facility'' before ''was unjustly'' and substituted ''practice'' for ''conduct''.

[1] So in original. Probably should be ''to make''.

[2] So in original.

Subsec. (d)(1)(B). Pub. L. 110–289, §1151(4)(B)(iv), added subpar. (B) and struck out former subpar. (B) which read as follows: ''engaged in conduct or a violation that would subject such person to a civil penalty pursuant to section 4636(b)(3) of this title;''.

Subsec. (d)(2). Pub. L. 110–289, §1151(3)(B), substituted ''a regulated entity'' for ''an enterprise''.

Subsec. (d)(3). Pub. L. 110–289, §1151(3)(A), substituted ''the regulated entity'' for ''the enterprise''.

Subsec. (d)(4). Pub. L. 110–289, §1151(3)(A), (4)(C), substituted ''the regulated entity'' for ''the enterprise'' and inserted ''loan or'' before ''asset''.

Subsec. (d)(5) to (7). Pub. L. 110–289, §1151(3)(A), substituted ''the regulated entity'' for ''the enterprise''.

Subsec. (e). Pub. L. 110–289, §1151(3)(A), (5), substituted ''the regulated entity'' for ''the enterprise'' in two places and inserted ''or entity-affiliated party'' before ''or any executive'' and before period at end.

Subsec. (f). Pub. L. 110–289, §1151(6), substituted ''regulated entity, finance facility,'' for ''enterprise'' and ''director, or entity-affiliated party'' for ''or director''.

§ 4632. Temporary cease-and-desist orders

(a) Grounds for issuance

(1) In general

If the Director determines that the actions specified in the notice of charges served upon a regulated entity or any entity-affiliated party pursuant to section 4631(a) of this title, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of that entity, or is likely to weaken the condition of that entity prior to the completion of the proceedings conducted pursuant to sections 4631 and 4633 of this title, the Director may—

(A) issue a temporary order requiring that regulated entity or entity-affiliated party to cease and desist from any such violation or practice; and

(B) require that regulated entity or entity-affiliated party to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings.

(2) Additional requirements

An order issued under paragraph (1) may include any requirement authorized under subsection 4631(d) of this title.

(b) Effective date

An order issued pursuant to subsection (a) of this section shall become effective upon service upon the regulated entity, executive officer, director, or entity-affiliated party and, unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d) of this section, shall remain in effect and enforceable pending the completion of the proceedings pursuant to such notice and shall remain effective until the Director dismisses the charges specified in the notice or until superseded by a cease-and-desist order issued pursuant to section 4631 of this title.

(c) Incomplete or inaccurate records

(1) Temporary order

If a notice of charges served under section 4631(a) or (b) of this title specifies on the basis of particular facts and circumstances that the books and records of the regulated entity served are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of the regulated entity or the details or the purpose of any transaction or transactions that may have a material effect on the financial condition of that regulated entity, the Director may issue a temporary order requiring—

(A) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(B) affirmative action to restore the books or records to a complete and accurate state.

(2) Effective period

Any temporary order issued under paragraph (1)—

(A) shall become effective upon service; and

(B) unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d) of this section, shall remain in effect and enforceable until the earlier of—

(i) the completion of the proceeding initiated under section 4631 of this title in connection with the notice of charges; or

(ii) the date the Director determines, by examination or otherwise, that the books and records of the regulated entity are accurate and reflect the financial condition of the regulated entity.

(d) Judicial review

A regulated entity, executive officer, director, or entity-affiliated party that has been served with a temporary order pursuant to this section may apply to the United States District Court for the District of Columbia within 10 days after such service for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the enterprise, executive officer, director, or entity-affiliated party under section 4631(a) or (b) of this title. Such court shall have jurisdiction to issue such injunction.

(e) Enforcement by Attorney General

In the case of violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this section, the Director may bring an action in the United States District Court for the District of Columbia for an injunction to enforce such order. If the court finds any such violation, threatened violation, or failure to obey, the court shall issue such injunction.

(Pub. L. 102–550, title XIII, §1372, Oct. 28, 1992, 106 Stat. 3988; Pub. L. 110–289, div. A, title I, §1152, July 30, 2008, 122 Stat. 2769.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1152(1), added subsec. (a) and struck out former subsec. (a) which related to grounds for issuance and scope of temporary cease-and-desist orders.

Subsec. (b). Pub. L. 110–289, §1152(2), substituted ''director, or entity-affiliated party'' for ''or director'' and ''regulated entity'' for ''enterprise''.

Subsec. (c). Pub. L. 110–289, §1152(3), substituted ''regulated entity'' for ''enterprise'' wherever appearing.

Subsec. (d). Pub. L. 110–289, §1152(4), substituted ''A regulated entity'' for ''An enterprise'' and ''director, or entity-affiliated party'' for ''or director'' in two places.

Subsec. (e). Pub. L. 110–289, §1152(5)(B), which directed the striking of ''or may, under the direction and control of the Attorney General, bring such action'', was executed by striking ''or may, under the direction and control of the Attorney General, bring such an action'' after ''such order'' to reflect the probable intent of Congress.

Pub. L. 110–289, §1152(5)(A), struck out ''request the Attorney General of the United States to'' after ''Director may''.

§ 4633. Hearings

(a) Requirements

(1) Venue and record

Any hearing under section 4631, 4636(c), or 4636a of this title shall be held on the record and in the District of Columbia.

(2) Timing

Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 4631 or 4636a of this title or determination to impose a penalty under section 4636 of this title, unless an earlier or a later date is set by the hearing officer at the request of the party served.

(3) Procedure

Any such hearing shall be conducted in accordance with chapter 5 of title 5.

(4) Failure to appear

If the party served fails to appear at the hearing through a duly authorized representative, such party shall be deemed to have consented to the issuance of the cease-and-desist or removal or prohibition order or the imposition of the penalty for which the hearing is held.

(b) Issuance of order

(1) In general

After any such hearing, and within 90 days after the parties have been notified that the case has been submitted to the Director for final decision, the Director shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this subchapter.

(2) Modification

Judicial review of any such order shall be exclusively as provided in section 4634 of this title. Unless such a petition for review is timely filed as provided in section 4634 of this title, and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Director considers proper. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(Pub. L. 102–550, title XIII, §1373, Oct. 28, 1992, 106 Stat. 3989; Pub. L. 110–289, div. A, title I, §1153(b)(1)(B), July 30, 2008, 122 Stat. 2774.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–289, §1153(b)(1)(B)(i), substituted ''section 4631, 4636(c), or 4636a of this title'' for ''section 4631 or 4636(c) of this title''.

Subsec. (a)(2). Pub. L. 110–289, §1153(b)(1)(B)(ii), inserted ''or 4636a'' after ''section 4631''.

Subsec. (a)(4). Pub. L. 110–289, §1153(b)(1)(B)(iii), which directed amendment of par. (4) by inserting ''or removal or prohibition'' after ''cease and desist'', was executed by making the insertion after ''cease-and-desist'' to reflect the probable intent of Congress.

§ 4634. Judicial review

(a) Commencement

Any party to a proceeding under section 4631[1] 4513b, 4636, or 4636a of this title may obtain review of any final order issued under this chapter by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Director.

(b) Filing of record

Upon receiving a copy of a petition, the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(c) Jurisdiction

Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Director shall (except as provided in the last sentence of section 4633(b)(2) of this title) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

(d) Review

Review of such proceedings shall be governed by chapter 7 of title 5.

(e) Order to pay penalty

Such court shall have the authority in any such review to order payment of any penalty imposed by the Director under this subchapter.

(f) No automatic stay

The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

(Pub. L. 102–550, title XIII, §1374, Oct. 28, 1992, 106 Stat. 3990; Pub. L. 110–289, div. A, title I, §1153(b)(1)(C), July 30, 2008, 122 Stat. 2775.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289 substituted ''4513b, 4636, or 4636a of this title'' for ''or 4636 of this title'' and ''this chapter'' for ''such section''.

§ 4635. Enforcement and jurisdiction

(a) Enforcement

The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United

[1] So in original. Probably should be followed by a comma.

States district court within the jurisdiction of which the headquarters of the regulated entity is located, for the enforcement of any effective and outstanding notice or order issued under this subchapter or subchapter II, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.

(b) Limitation on jurisdiction

Except as otherwise provided in this subchapter and sections 4619[1] and 4623 of this title, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 4631, 4632, 4513b, 4636, or 4636a of this title, or subchapter II of this chapter, or to review, modify, suspend, terminate, or set aside any such notice or order.

(Pub. L. 102–550, title XIII, §1375, Oct. 28, 1992, 106 Stat. 3990; Pub. L. 110–289, div. A, title I, §1154, July 30, 2008, 122 Stat. 2775.)

REFERENCES IN TEXT

Section 4619 of this title, referred to in subsec. (b), was repealed by Pub. L. 110–289, div. A, title I, §1145(b)(4), July 30, 2008, 122 Stat. 2767.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1154(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: ''The Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under this subchapter or subchapter II of this chapter or may, under the direction and control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance herewith.''

Subsec. (b). Pub. L. 110–289, §1154(2), substituted ''4513b, 4636, or 4636a of this title'' for ''or 4636 of this title''.

§ 4636. Civil money penalties

(a) In general

The Director may impose a civil money penalty in accordance with this section on any regulated entity or any entity-affiliated party. The Director shall not impose a civil penalty in accordance with this section on any regulated entity or any entity-affiliated party for any violation that is addressed under section 4585(a) of this title.

(b) Amount of penalty

(1) First tier

A regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than $10,000 for each day during which a violation continues, if such regulated entity or party—

(A) violates any provision of this chapter, the authorizing statutes, or any order, condition, rule, or regulation under this chapter or any authorizing statute;

(B) violates any final or temporary order or notice issued pursuant to this chapter;

(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

(D) violates any written agreement between the regulated entity and the Director.

(2) Second tier

Notwithstanding paragraph (1), a regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than $50,000 for each day during which a violation, practice, or breach continues, if—

(A) the regulated entity or entity-affiliated party, respectively—

(i) commits any violation described in any subparagraph of paragraph (1);

(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of the regulated entity; or

(iii) breaches any fiduciary duty; and

(B) the violation, practice, or breach—

(i) is part of a pattern of misconduct;

(ii) causes or is likely to cause more than a minimal loss to the regulated entity; or

(iii) results in pecuniary gain or other benefit to such party.

(3) Third tier

Notwithstanding paragraphs (1) and (2), any regulated entity or entity-affiliated party shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues, if such regulated entity or entity-affiliated party—

(A) knowingly—

(i) commits any violation described in any subparagraph of paragraph (1);

(ii) engages in any unsafe or unsound practice in conducting the affairs of the regulated entity; or

(iii) breaches any fiduciary duty; and

(B) knowingly or recklessly causes a substantial loss to the regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach.

(4) Maximum amounts of penalties for any violation described in paragraph (3)

The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in paragraph (3) is—

(A) in the case of any entity-affiliated party, an amount not to exceed $2,000,000; and

(B) in the case of any regulated entity, $2,000,000.

(c) Procedures

(1) Establishment

The Director shall establish standards and procedures governing the imposition of civil money penalties under subsections (a) and (b) of this section. Such standards and procedures—

(A) shall provide for the Director to notify the regulated entity or entity-affiliated party in writing of the Director's determina-

[1] See References in Text note below.

tion to impose the penalty, which shall be made on the record;

(B) shall provide for the imposition of a penalty only after the regulated entity, executive officer, or director or entity-affiliated party has been given an opportunity for a hearing on the record pursuant to section 4633 of this title; and

(C) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Factors in determining amount of penalty

In determining the amount of a penalty under this section, the Director shall give consideration to such factors as the gravity of the violation, any history of prior violations, the effect of the penalty on the safety and soundness of the regulated entity, any injury to the public, any benefits received, and deterrence of future violations, and any other factors the Director may determine by regulation to be appropriate.

(3) Review of imposition of penalty

The order of the Director imposing a penalty under this section shall not be subject to review, except as provided in section 4634 of this title.

(d) Action to collect penalty

If a regulated entity, executive officer, director, or entity-affiliated party fails to comply with an order of the Director imposing a civil money penalty under this section, after the order is no longer subject to review as provided under subsection (c)(1), the Director may bring an action in the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, to obtain a monetary judgment against the regulated entity, executive officer, director, or entity-affiliated party and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order of the Director imposing the penalty shall not be subject to review.

(e) Settlement by Director

The Director may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) Availability of other remedies

Any civil money penalty under this section shall be in addition to any other available civil remedy and may be imposed whether or not the Director imposes other administrative sanctions.

(g) Prohibition of reimbursement or indemnification

A regulated entity may not reimburse or indemnify any individual for any penalty imposed under subsection (b)(3) of this section.

(h) Deposit of penalties

The Director shall deposit any civil money penalties collected under this section into the general fund of the Treasury.

(i) Applicability

A penalty under this section may be imposed only for conduct or violations under subsection (a) of this section occurring after October 28, 1992.

(Pub. L. 102–550, title XIII, § 1376, Oct. 28, 1992, 106 Stat. 3991; Pub. L. 110–289, div. A, title I, § 1155, July 30, 2008, 122 Stat. 2775.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1)(A), (B), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, § 1155(1), added subsec. (a) and struck out former subsec. (a) which related to violations or conduct for which the Director could impose a civil money penalty in accordance with this section.

Subsec. (b). Pub. L. 110–289, § 1155(2), added subsec. (b) and struck out former subsec. (b) which related to the amount of penalty the Director could impose for violations or conduct described in former subsection (a).

Subsec. (c)(1)(A). Pub. L. 110–289, § 1155(3)(A), (B), substituted ''regulated entity'' for ''enterprise'' and inserted ''or entity-affiliated party'' before ''in writing''.

Subsec. (c)(1)(B). Pub. L. 110–289, § 1155(3)(A), (C), substituted ''regulated entity'' for ''enterprise'' and inserted ''or entity-affiliated party'' before ''has been given''.

Subsec. (c)(2). Pub. L. 110–289, § 1155(3)(A), substituted ''regulated entity'' for ''enterprise''.

Subsec. (d). Pub. L. 110–289, § 1155(4)(G), struck out ''and section 4634 of this title'' after ''subsection (c)(1)''.

Pub. L. 110–289, § 1155(4)(F), which directed the striking out of '', or may, under the direction and control of the Attorney General of the United States, bring such an action'', was executed by striking out '', or may, under the direction and control of the Attorney General, bring such an action'' after ''may be available'', to reflect the probable intent of Congress.

Pub. L. 110–289, § 1155(4)(A)–(E), substituted ''director, or entity-affiliated party'' for ''or director'' in two places, ''a regulated entity'' for ''an enterprise'', and ''the regulated entity'' for ''the enterprise'', inserted '', or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located,'' after ''District of Columbia'', and struck out ''request the Attorney General of the United States to'' after ''Director may''.

Subsec. (g). Pub. L. 110–289, § 1155(5), substituted ''A regulated entity'' for ''An enterprise''.

§ 4636a. Removal and prohibition authority

(a) Authority to issue order

(1) In general

The Director may serve upon a party described in paragraph (2), or any officer, director, or management of the Office of Finance a written notice of the intention of the Director to suspend or remove such party from office, or prohibit any further participation by such party, in any manner, in the conduct of the affairs of the regulated entity.

(2) Applicability

A party described in this paragraph is an entity-affiliated party or any officer, director, or management of the Office of Finance, if the Director determines that—

(A) that party, officer, or director has, directly or indirectly—

(i) violated—

(I) any law or regulation;

(II) any cease and desist order which has become final;

(III) any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

(IV) any written agreement between such regulated entity and the Director;

(ii) engaged or participated in any unsafe or unsound practice in connection with any regulated entity or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

(B) by reason of the violation, practice, or breach described in subparagraph (A)—

(i) such regulated entity or business institution has suffered or will probably suffer financial loss or other damage; or

(ii) such party has received financial gain or other benefit; and

(C) the violation, practice, or breach described in subparagraph (A)—

(i) involves personal dishonesty on the part of such party; or

(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such regulated entity or business institution.

(b) Suspension order

(1) Suspension or prohibition authority

If the Director serves written notice under subsection (a) upon a party subject to that subsection (a), the Director may, by order, suspend or remove such party from office, or prohibit such party from further participation in any manner in the conduct of the affairs of the regulated entity, if the Director—

(A) determines that such action is necessary for the protection of the regulated entity; and

(B) serves such party with written notice of the order.

(2) Effective period

Any order issued under this subsection—

(A) shall become effective upon service; and

(B) unless a court issues a stay of such order under subsection (g), shall remain in effect and enforceable until—

(i) the date on which the Director dismisses the charges contained in the notice served under subsection (a) with respect to such party; or

(ii) the effective date of an order issued under subsection (b).

(3) Copy of order

If the Director issues an order under subsection (b) to any party, the Director shall serve a copy of such order on any regulated entity with which such party is affiliated at the time such order is issued.

(c) Notice, hearing, and order

(1) Notice

A notice under subsection (a) of the intention of the Director to issue an order under this section shall contain a statement of the facts constituting grounds for such action, and shall fix a time and place at which a hearing will be held on such action.

(2) Timing of hearing

A hearing shall be fixed for a date not earlier than 30 days, nor later than 60 days, after the date of service of notice under subsection (a), unless an earlier or a later date is set by the Director at the request of—

(A) the party receiving such notice, and good cause is shown; or

(B) the Attorney General of the United States.

(3) Consent

Unless the party that is the subject of a notice delivered under subsection (a) appears at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order under this section.

(4) Issuance of order of suspension

The Director may issue an order under this section, as the Director may deem appropriate, if—

(A) a party is deemed to have consented to the issuance of an order under paragraph (3); or

(B) upon the record made at the hearing, the Director finds that any of the grounds specified in the notice have been established.

(5) Effectiveness of order

Any order issued under paragraph (4) shall become effective at the expiration of 30 days after the date of service upon the relevant regulated entity and party (except in the case of an order issued upon consent under paragraph (3), which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

(d) Prohibition of certain specific activities

Any person subject to an order issued under this section shall not—

(1) participate in any manner in the conduct of the affairs of any regulated entity or the Office of Finance;

(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any regulated entity;

(3) violate any voting agreement previously approved by the Director; or

(4) vote for a director, or serve or act as an entity-affiliated party of a regulated entity or as an officer or director of the Office of Finance.

(e) Industry-wide prohibition

(1) In general

Except as provided in paragraph (2), any person who, pursuant to an order issued under

this section, has been removed or suspended from office in a regulated entity or the Office of Finance, or prohibited from participating in the conduct of the affairs of a regulated entity or the Office of Finance, may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any regulated entity or the Office of Finance.

(2) Exception if Director provides written consent

If, on or after the date on which an order is issued under this section which removes or suspends from office any party, or prohibits such party from participating in the conduct of the affairs of a regulated entity or the Office of Finance, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the regulated entity or such Office of Finance described in the written consent. Any such consent shall be publicly disclosed.

(3) Violation of paragraph (1) treated as violation of order

Any violation of paragraph (1) by any person who is subject to an order issued under subsection (h) shall be treated as a violation of the order.

(f) Applicability

This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business entity.

(g) Stay of suspension and prohibition of entity-affiliated party

Not later than 10 days after the date on which any entity-affiliated party has been suspended from office or prohibited from participation in the conduct of the affairs of a regulated entity under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the regulated entity is located, for a stay of such suspension or prohibition pending the completion of the administrative proceedings pursuant to subsection (c). The court shall have jurisdiction to stay such suspension or prohibition.

(h) Suspension or removal of entity-affiliated party charged with felony

(1) Suspension or prohibition

(A) In general

Whenever any entity-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding 1 year under Federal or State law, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any regulated entity.

(B) Provisions applicable to notice

(i) Copy

A copy of any notice under subparagraph (A) shall be served upon the relevant regulated entity.

(ii) Effective period

A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in subparagraph (A) is finally disposed of, or until terminated by the Director.

(2) Removal or prohibition

(A) In general

If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an entity-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity without the prior written consent of the Director.

(B) Provisions applicable to order

(i) Copy

A copy of any order under subparagraph (A) shall be served upon the relevant regulated entity, at which time the entity-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such regulated entity.

(ii) Effect of acquittal

A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove a party from office or to prohibit further participation in the affairs of a regulated entity pursuant to subsection (a) or (b).

(iii) Effective period

Unless terminated by the Director, any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4).

(3) Authority of remaining board members

(A) In general

If at any time, because of the suspension of 1 or more directors pursuant to this section, there shall be on the board of directors of a regulated entity less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors.

(B) Appointment of temporary directors

If all of the directors of a regulated entity are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the regulated entity and their respective successors take office.

(4) Hearing regarding continued participation

(A) In general

Not later than 30 days after the date of service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2), the entity-affiliated party may request in writing an opportunity to appear before the Director to show that the continued service or participation in the conduct of the affairs of the regulated entity by such party does not, or is not likely to, pose a threat to the interests of the regulated entity, or threaten to impair public confidence in the regulated entity.

(B) Timing and form of hearing

Upon receipt of a request for a hearing under subparagraph (A), the Director shall fix a time (not later than 30 days after the date of receipt of such request, unless extended at the request of such party) and place at which the entity-affiliated party may appear, personally or through counsel, before the Director or 1 or more designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument.

(C) Determination

Not later than 60 days after the date of a hearing under subparagraph (B), the Director shall notify the entity-affiliated party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the regulated entity will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for any adverse decision of the Director.

(5) Rules

The Director is authorized to prescribe such rules as may be necessary to carry out this subsection.

(Pub. L. 102–550, title XIII, §1377, as added Pub. L. 110–289, div. A, title I, §1153(a)(2), July 30, 2008, 122 Stat. 2770.)

PRIOR PROVISIONS

A prior section 1377 of Pub. L. 102–550 was renumbered section 1379 and is classified to section 4637 of this title.

§ 4636b. Criminal penalty

Whoever, being subject to an order in effect under section 4636a of this title, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any regulated entity shall, notwithstanding section 3571 of title 18, be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.

(Pub. L. 102–550, title XIII, §1378, as added Pub. L. 110–289, div. A, title I, §1156(a), July 30, 2008, 122 Stat. 2777.)

PRIOR PROVISIONS

A prior section 1378 of Pub. L. 102–550 was renumbered section 1379A and is classified to section 4638 of this title.

§ 4637. Notice after separation from service

The resignation, termination of employment or participation, or separation of an entity-affiliated party shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this subchapter against any such entity-affiliated party, if such notice is served before the end of the 6-year period beginning on the date such entity-affiliated party ceases to be associated with the regulated entity.

(Pub. L. 102–550, title XIII, §1379, formerly §1377, Oct. 28, 1992, 106 Stat. 3992; renumbered §1379 and amended Pub. L. 110–289, div. A, title I, §§1153(a)(1), 1156(b)(1), 1157, July 30, 2008, 122 Stat. 2770, 2777.)

PRIOR PROVISIONS

A prior section 1379 of Pub. L. 102–550 was renumbered section 1379B and is classified to section 4639 of this title.

AMENDMENTS

2008—Pub. L. 110–289, §1157(4), which directed the substitution of ''regulated entity.'' for ''enterprise.'' could not be executed because of the prior amendment by Pub. L. 110–289, §1156(b)(1). See below.

Pub. L. 110–289, §1157(3), which directed the substitution of ''entity-affiliated party'' for ''director or officer'' wherever appearing, was executed by making the substitution for ''director or executive officer'' in two places, to reflect the probable intent of Congress.

Pub. L. 110–289, §1157(2), which directed the substitution of ''an entity-affiliated party'' for ''a director or executive officer of an enterprise'', was executed by making the substitution for ''a director or executive officer of a regulated entity'', to reflect the probable intent of Congress and the prior amendment by Pub. L. 110–289, §1156(b)(1). See below.

Pub. L. 110–289, §1157(1), substituted ''6-year'' for ''2-year''.

Pub. L. 110–289, §1156(b)(1), substituted ''a regulated entity'' for ''an enterprise'' and ''the regulated entity'' for ''the enterprise''.

§ 4638. Private rights of action

This chapter shall not create any private right of action on behalf of any person against a regulated entity, or any director or executive officer of a regulated entity, or impair any existing private right of action under other applicable law.

(Pub. L. 102–550, title XIII, §1379A, formerly §1378, Oct. 28, 1992, 106 Stat. 3993; renumbered §1379A and amended Pub. L. 110–289, div. A, title I, §§1153(a)(1), 1156(b)(2), July 30, 2008, 122 Stat. 2770, 2777.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title and the amendments made by this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

PRIOR PROVISIONS

A prior section 1379A of Pub. L. 102–550 was renumbered section 1379C and is classified to section 4640 of this title.

AMENDMENTS

2008—Pub. L. 110–289, §1156(b)(2), which directed substitution of ''a regulated entity'' for ''an enterprise'', was executed by making the substitution in two places to reflect the probable intent of Congress.

§ 4639. Public disclosure of final orders and agreements

(a) In general

The Director shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Director's discretion, determines that public disclosure would be contrary to the public interest;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under this subchapter and that has become final in accordance with sections 4633 and 4634 of this title; and

(3) any modification to or termination of any final order made public pursuant to this subsection.

(b) Hearings

All hearings on the record with respect to any notice of charges issued by the Director shall be open to the public, unless the Director, in the Director's discretion, determines that holding an open hearing would be contrary to the public interest.

(c) Delay of public disclosure under exceptional circumstances

If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) of this section would seriously threaten the financial health or security of the regulated entity, the Director may delay the public disclosure of such order for a reasonable time.

(d) Documents filed under seal in public enforcement hearings

The Director may file any document or part thereof under seal in any hearing commenced by the Director if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) Retention of documents

The Director shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) of this section and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Director under this subchapter or any other law.

(f) Disclosures to Congress

This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

(Pub. L. 102–550, title XIII, §1379B, formerly §1379, Oct. 28, 1992, 106 Stat. 3993; renumbered §1379B and amended Pub. L. 110–289, div. A, title I, §§1153(a)(1), 1156(b)(3), July 30, 2008, 122 Stat. 2770, 2777.)

PRIOR PROVISIONS

A prior section 1379B of Pub. L. 102–550 was renumbered section 1379D and is classified to section 4641 of this title.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–289, §1156(b)(3), substituted ''regulated entity'' for ''enterprise''.

§ 4640. Notice of service

Any service required or authorized to be made by the Director under this subchapter may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Director may by regulation or otherwise provide.

(Pub. L. 102–550, title XIII, §1379C, formerly §1379A, Oct. 28, 1992, 106 Stat. 3993; renumbered §1379C, Pub. L. 110–289, div. A, title I, §1153(a)(1), July 30, 2008, 122 Stat. 2770.)

§ 4641. Subpoena authority

(a) In general

In the course of or in connection with any proceeding, examination, or investigation under this chapter, the Director or any designated representative thereof, including any person designated to conduct any hearing under this subchapter shall have the authority—

(1) to administer oaths and affirmations;

(2) to take and preserve testimony under oath;

(3) to issue subpoenas and subpoenas duces tecum; and

(4) to revoke, quash, or modify subpoenas and subpoenas duces tecum.

(b) Witnesses and documents

The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted.

(c) Enforcement

(1) In general

The Director, or any party to proceedings under this subchapter, may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district of the United States in any territory in which such proceed-

ing is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section.

(2) Power of court

The courts described under paragraph (1) shall have the jurisdiction and power to order and require compliance with any subpoena issued under paragraph (1).

(d) Fees and expenses

Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an regulated entity enterprise-affiliated party[1] may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by the regulated entity or from its assets.

(e) Penalties

A person shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than 1 year, or both, if that person willfully fails or refuses, in disobedience of a subpoena issued under subsection (c), to—

(1) attend court;

(2) testify in court;

(3) answer any lawful inquiry; or

(4) produce books, papers, correspondence, contracts, agreements, or such other records as requested in the subpoena.

(Pub. L. 102–550, title XIII, §1379D, formerly §1379B, Oct. 28, 1992, 106 Stat. 3994; renumbered §1379D and amended Pub. L. 110–289, div. A, title I, §§1153(a)(1), 1156(b)(4), 1158, July 30, 2008, 122 Stat. 2770, 2777, 2778.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

CODIFICATION

Pub. L. 110–289, §1158, which directed amendment of section ''1379B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4641)'', was executed to this section, which is section 1379D, formerly section 1379B, of the Act, to reflect the probable intent of Congress and the renumbering by Pub. L. 110–289, §1153(a)(1). See 2008 Amendment notes below.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1158(a)(1)(A), in introductory provisions, struck out ''administrative'' after ''with any'', inserted '', examination, or investigation'' after ''proceeding'', substituted ''chapter'' for ''subchapter'', and inserted ''or any designated representative thereof, including any person designated to conduct any hearing under this subchapter'' after ''Director''. See Codification note above.

Subsec. (a)(4). Pub. L. 110–289, §1158(a)(1)(B), struck out ''issued by the Director'' before period at end. See Codification note above.

Subsec. (b). Pub. L. 110–289, §1158(a)(2), inserted ''or in any territory or other place subject to the jurisdiction of the United States'' after ''State''. See Codification note above.

Subsec. (c). Pub. L. 110–289, §1158(a)(3), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: ''The Director may request the Attorney General of the United States to bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section or may, under the direction and control of the Attorney General, bring such an action. Such courts shall have jurisdiction and power to order and require compliance therewith.'' See Codification note above.

Subsec. (d). Pub. L. 110–289, §1158(a)(4), inserted ''enterprise-affiliated party'' before ''may allow''. See Codification note above.

Pub. L. 110–289, §1156(b)(4), which directed substitution of ''regulated entity'' for ''enterprise'', was executed by making the substitution in two places to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 110–289, §1158(a)(5), added subsec. (e). See Codification note above.

§ 4642. Reporting of fraudulent loans

(a) Requirement to report

The Director shall require a regulated entity to submit to the Director a timely report upon discovery by the regulated entity that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. The Director shall require each regulated entity to establish and maintain procedures designed to discover any such transactions.

(b) Protection from liability for reports

Any regulated entity that, in good faith, makes a report pursuant to subsection (a), and any entity-affiliated party, that, in good faith, makes or requires another to make any such report, shall not be liable to any person under any provision of law or regulation, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement) for such report or for any failure to provide notice of such report to the person who is the subject of such report or any other persons identified in the report.

(Pub. L. 102–550, title XIII, §1379E, as added Pub. L. 110–289, div. A, title I, §1115, July 30, 2008, 122 Stat. 2681.)

CHAPTER 47—COMMUNITY DEVELOPMENT BANKING

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SUBCHAPTER I—COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS

§ 4701. Findings and purposes

(a) Findings

The Congress finds that—

(1) many of the Nation's urban, rural, and Native American communities face critical social and economic problems arising in part from the lack of economic growth, people living in poverty, and the lack of employment and other opportunities;

(2) the restoration and maintenance of the economies of these communities will require coordinated development strategies, intensive supportive services, and increased access to equity investments and loans for development activities, including investment in businesses, housing, commercial real estate, human development, and other activities that promote the long-term economic and social viability of the community; and

(3) community development financial institutions have proven their ability to identify and respond to community needs for equity investments, loans, and development services.

(b) Purpose

The purpose of this subchapter is to create a Community Development Financial Institutions Fund to promote economic revitalization and community development through investment in and assistance to community development financial institutions, including enhancing the liquidity of community development financial institutions.

(Pub. L. 103–325, title I, § 102, Sept. 23, 1994, 108 Stat. 2163.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in original ''this subtitle'', meaning subtitle A of title I of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2163, which is classified principally to this subchapter. For complete classification of this subtitle to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 1(a) of Pub. L. 103–325 provided that: ''This Act [see Tables for classification] may be cited as the 'Riegle Community Development and Regulatory Improvement Act of 1994'.''

Section 101 of title I of Pub. L. 103–325 provided that: ''This subtitle [subtitle A (§§ 101–121) of title I of Pub. L. 103–325, enacting this subchapter and section 1772c–1 of this title, amending sections 1766 and 1834a of this title, section 5313 of Title 5, Government Organization and Employees, section 11 of Pub. L. 95–452 set out in the Appendix to Title 5, section 657 of Title 18, Crimes and Criminal Procedure, and section 9101 of Title 31, Money and Finance, and enacting provisions set out as a note under section 11 of Pub. L. 95–452 set out in the Appendix to Title 5] may be cited as the 'Community Development Banking and Financial Institutions Act of 1994'.''

§ 4702. Definitions

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

(1) Administrator

The term ''Administrator'' means the Administrator of the Fund appointed under section 4703(b) of this title.

(2) Appropriate Federal banking agency

The term ''appropriate Federal banking agency'' has the same meaning as in section 1813 of this title, and also includes the National Credit Union Administration Board with respect to insured credit unions.

(3) Affiliate

The term ''affiliate'' has the same meaning as in section 1841(k) of this title.

(4) Board

The term ''Board'' means the Community Development Advisory Board established under section 4703(d) of this title.

(5) Community development financial institution

(A) In general

The term ''community development financial institution'' means a person (other than an individual) that—

(i) has a primary mission of promoting community development;

(ii) serves an investment area or targeted population;

(iii) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate;

(iv) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and

(v) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State.

(B) Conditions for qualification of holding companies

(i) Consolidated treatment

A depository institution holding company may qualify as a community develop-

ment financial institution only if the holding company and the subsidiaries and affiliates of the holding company collectively satisfy the requirements of subparagraph (A).

(ii) Exclusion of subsidiary or affiliate for failure to meet consolidated treatment rule

No subsidiary or affiliate of a depository institution holding company may qualify as a community development financial institution if the holding company and the subsidiaries and affiliates of the holding company do not collectively meet the requirements of subparagraph (A).

(C) Conditions for subsidiaries

No subsidiary of an insured depository institution may qualify as a community development financial institution if the insured depository institution and its subsidiaries do not collectively meet the requirements of subparagraph (A).

(6) Community partner

The term ''community partner'' means a person (other than an individual) that provides loans, equity investments, or development services, including a depository institution holding company, an insured depository institution, an insured credit union, a nonprofit organization, a State or local government agency, a quasi-governmental entity, and an investment company authorized to operate pursuant to the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.].

(7) Community partnership

The term ''community partnership'' means an agreement between a community development financial institution and a community partner to provide development services, loans, or equity investments, to an investment area or targeted population.

(8) Depository institution holding company

The term ''depository institution holding company'' has the same meaning as in section 1813 of this title.

(9) Development services

The term ''development services'' means activities that promote community development and are integral to lending or investment activities, including—

(A) business planning;

(B) financial and credit counseling; and

(C) marketing and management assistance.

(10) Fund

The term ''Fund'' means the Community Development Financial Institutions Fund established under section 4703(a) of this title.

(11) Indian reservation

The term ''Indian reservation'' has the same meaning as in section 1903(10) of title 25, and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], public domain Indian allotments, and former Indian reservations in the State of Oklahoma.

(12) Indian tribe

The term ''Indian tribe'' means any Indian tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(13) Insured community development financial institution

The term ''insured community development financial institution'' means any community development financial institution that is an insured depository institution or an insured credit union.

(14) Insured credit union

The term ''insured credit union'' has the same meaning as in section 1752(7) of this title.

(15) Insured depository institution

The term ''insured depository institution'' has the same meaning as in section 1813 of this title.

(16) Investment area

The term ''investment area'' means a geographic area (or areas) including an Indian reservation that—

(A)(i) meets objective criteria of economic distress developed by the Fund, which may include the percentage of low-income families or the extent of poverty, the rate of unemployment or underemployment, rural population outmigration, lag in population growth, and extent of blight and disinvestment; and

(ii) has significant unmet needs for loans or equity investments; or

(B) encompasses or is located in an empowerment zone or enterprise community designated under section 1391 of title 26.

(17) Low-income

The term ''low-income'' means having an income, adjusted for family size, of not more than—

(A) for metropolitan areas, 80 percent of the area median income; and

(B) for nonmetropolitan areas, the greater of—

(i) 80 percent of the area median income; or

(ii) 80 percent of the statewide nonmetropolitan area median income.

(18) State

The term ''State'' has the same meaning as in section 1813 of this title.

(19) Subsidiary

The term ''subsidiary'' has the same meaning as in section 1813 of this title, except that a community development financial institution that is a corporation shall not be considered to be a subsidiary of any insured deposi-

tory institution or depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation, and does not otherwise control in any manner the election of a majority of the directors of the corporation.

(20) Targeted population

The term ''targeted population'' means individuals, or an identifiable group of individuals, including an Indian tribe, who—

(A) are low-income persons; or

(B) otherwise lack adequate access to loans or equity investments.

(21) Training program

The term ''training program'' means the training program operated by the Fund under section 4708 of this title.

(Pub. L. 103–325, title I, § 103, Sept. 23, 1994, 108 Stat. 2163.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in par. (6), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

The Alaska Native Claims Settlement Act, referred to in pars. (11) and (12), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 4703. Establishment of national Fund for community development banking

(a) Establishment

(1) In general

There is established a corporation to be known as the Community Development Financial Institutions Fund that shall have the duties and responsibilities specified by this subchapter and subchapter II of this chapter. The Fund shall have succession until dissolved. The offices of the Fund shall be in Washington, D.C. The Fund shall not be affiliated with or be within any other agency or department of the Federal Government.

(2) Wholly owned Government corporation

The Fund shall be a wholly owned Government corporation in the executive branch and shall be treated in all respects as an agency of the United States, except as otherwise provided in this subchapter.

(b) Management of Fund

(1) Appointment of Administrator

The management of the Fund shall be vested in an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall not engage in any other business or employment during service as the Administrator.

(2) Chief financial officer

The Administrator shall appoint a chief financial officer, who shall have the authority and functions of an agency Chief Financial Officer under section 902 of title 31. In the event of a vacancy in the position of the Administrator or during the absence or disability of the Administrator, the chief financial officer shall perform the duties of the position of Administrator.

(3) Other officers and employees

The Administrator may appoint such other officers and employees of the Fund as the Administrator determines to be necessary or appropriate.

(4) Expedited hiring

During the 2-year period beginning on September 23, 1994, the Administrator may—

(A) appoint and terminate the individuals referred to in paragraphs (2) and (3) without regard to the civil service laws and regulations; and

(B) fix the compensation of the individuals referred to in paragraph (3) without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(c) General powers

In carrying out the functions of the Fund, the Administrator—

(1) shall have all necessary and proper authority to carry out this subchapter and subchapter II of this chapter;

(2) shall have the power to adopt, alter, and use a corporate seal for the Fund, which shall be judicially noticed;

(3) may adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which business of the Fund may be conducted and such rules and regulations as may be necessary or appropriate to implement this subchapter and subchapter II of this chapter;

(4) may enter into, perform, and enforce such agreements, contracts, and transactions as may be deemed necessary or appropriate to the conduct of activities authorized under this subchapter and subchapter II of this chapter;

(5) may determine the character of and necessity for expenditures of the Fund and the manner in which they shall be incurred, allowed, and paid;

(6) may utilize or employ the services of personnel of any agency or instrumentality of the United States with the consent of the agency or instrumentality concerned on a reimbursable or nonreimbursable basis; and

(7) may execute all instruments necessary or appropriate in the exercise of any of the functions of the Fund under this subchapter and subchapter II of this chapter and may delegate to the officers of the Fund such of the powers and responsibilities of the Administrator as the Administrator deems necessary or appropriate for the administration of the Fund.

(d) Advisory Board

(1) Establishment

There is established an advisory board to the Fund to be known as the Community Develop-

ment Advisory Board, which shall be operated in accordance with the provisions of the Federal Advisory Committee Act, except that section 14 of that Act does not apply to the Board.

(2) Membership

The Board shall consist of 15 members, including—

(A) the Secretary of Agriculture or his or her designee;

(B) the Secretary of Commerce or his or her designee;

(C) the Secretary of Housing and Urban Development or his or her designee;

(D) the Secretary of the Interior or his or her designee;

(E) the Secretary of the Treasury or his or her designee;

(F) the Administrator of the Small Business Administration or his or her designee; and

(G) 9 private citizens, appointed by the President, who shall be selected, to the maximum extent practicable, to provide for national geographic representation and racial, ethnic, and gender diversity, including—

(i) 2 individuals who are officers of existing community development financial institutions;

(ii) 2 individuals who are officers of insured depository institutions;

(iii) 2 individuals who are officers of national consumer or public interest organizations;

(iv) 2 individuals who have expertise in community development; and

(v) 1 individual who has personal experience and specialized expertise in the unique lending and community development issues confronted by Indian tribes on Indian reservations.

(3) Chairperson

The members of the Board specified in paragraph (2)(G) shall select, by majority vote, a chairperson of the Board, who shall serve for a term of 2 years.

(4) Board function

It shall be the function of the Board to advise the Administrator on the policies of the Fund regarding activities under this subchapter. The Board shall not advise the Administrator on the granting or denial of any particular application.

(5) Terms of private members

(A) In general

Each member of the Board appointed under paragraph (2)(G) shall serve for a term of 4 years.

(B) Vacancies

Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the previous member was appointed shall be appointed for the remainder of such term. Members may continue to serve following the expiration of their terms until a successor is appointed.

(6) Meetings

The Board shall meet at least annually and at such other times as requested by the Administrator or the chairperson. A majority of the members of the Board shall constitute a quorum.

(7) Reimbursement for expenses

The members of the Board may receive reimbursement for travel, per diem, and other necessary expenses incurred in the performance of their duties, in accordance with the Federal Advisory Committee Act.

(8) Costs and expenses

The Fund shall provide to the Board all necessary staff and facilities.

(e) Omitted

(f) Government Corporation Control Act exemption

Section 9107(b) of title 31, shall not apply to deposits of the Fund made pursuant to section 4707 of this title.

(g) Limitation of Fund and Federal liability

The liability of the Fund and the United States Government arising out of any investment in a community development financial institution in accordance with this subchapter shall be limited to the amount of the investment. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State, Territory, or the District of Columbia. Nothing in this subsection shall affect the application of any Federal tax law.

(h) Prohibition on issuance of securities

The Fund may not issue stock, bonds, debentures, notes, or other securities.

(i) Omitted

(j) Assisted institutions not United States instrumentalities

A community development financial institution or other organization that receives assistance pursuant to this subchapter shall not be deemed to be an agency, department, or instrumentality of the United States.

(k) Transition period

(1) In general

During the transition period, the Secretary of the Treasury may—

(A) assist in the establishment of the administrative functions of the Fund listed in paragraph (2); and

(B) hire not more than 6 individuals to serve as employees of the Fund during the transition period.

(2) Continued service

Individuals hired in accordance with paragraph (1)(B) may continue to serve as employees of the Fund after the transition period.

(3) Administrative functions

The administrative functions referred to in paragraph (1)(A) shall be limited to—

(A) establishing accounting, information, and recordkeeping systems for the Fund; and

(B) procuring office space, equipment, and supplies.

(4) Expedited hiring

During the transition period, the Secretary of the Treasury may—

(A) appoint and terminate the individuals referred to in paragraph (1)(B) without regard to the civil service laws and regulations; and

(B) fix the compensation of the individuals referred to in paragraph (1)(B) without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(5) Certain employees

During the transition period, employees of the Department of the Treasury may only comprise less than one-half of the total number of individuals hired in accordance with paragraph (1)(B).

(6) Transition expenses

Amounts previously appropriated to the Department of the Treasury may be used to pay obligations and expenses of the Fund incurred under this section, and such amounts may be reimbursed by the Fund to the Department of the Treasury from amounts appropriated to the Fund for fiscal year 1995.

(7) "Transition period" defined

For purposes of this subsection, the term ''transition period'' means the period beginning on September 23, 1994, and ending on the date on which the Administrator is appointed.

(Pub. L. 103–325, title I, § 104, Sept. 23, 1994, 108 Stat. 2166.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d)(1), (7), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

CODIFICATION

Section is comprised of section 104 of Pub. L. 103–325. Subsecs. (e) and (i) of section 104 of Pub. L. 103–325 amended section 9101 of Title 31, Money and Finance, and section 5313 of Title 5, Government Organization and Employees, respectively.

ADMINISTRATION OF FUND BY SECRETARY OF THE TREASURY

Pub. L. 104–134, title I, § 101(e) [title III], Apr. 26, 1996, 110 Stat. 1321–257, 1321–294; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, provided in part: ''That notwithstanding any other provision of law, for purposes of administering the Community Development Financial Institutions Fund, the Secretary of the Treasury shall have all powers and rights of the Administrator of the CDBFI Act [12 U.S.C. 4701 et seq.] and the Fund shall be within the Department of the Treasury.''

Similar provisions were contained in the following prior appropriations act:

Pub. L. 104–19, title I, July 27, 1995, 109 Stat. 237.

§ 4704. Applications for assistance

(a) Form and procedures

An application for assistance under this subchapter shall be submitted in such form and in accordance with such procedures as the Fund shall establish.

(b) Minimum requirements

Except as provided in sections 4705 and 4712 of this title, the Fund shall require an application—

(1) to establish that the applicant is, or will be, a community development financial institution;

(2) to include a comprehensive strategic plan for the organization that contains—

(A) a business plan of not less than 5 years in duration that demonstrates that the applicant will be properly managed and will have the capacity to operate as a community development financial institution that will not be dependent upon assistance from the Fund for continued viability;

(B) an analysis of the needs of the investment area or targeted population and a strategy for how the applicant will attempt to meet those needs;

(C) a plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs, and private sector financial services;

(D) an explanation of how the proposed activities of the applicant are consistent with existing economic, community, and housing development plans adopted by or applicable to an investment area or targeted population; and

(E) a description of how the applicant will coordinate with community organizations and financial institutions which will provide equity investments, loans, secondary markets, or other services to investment areas or targeted populations;

(3) to include a detailed description of the applicant's plans and likely sources of funds to match the amount of assistance requested from the Fund;

(4) in the case of an applicant that has previously received assistance under this subchapter, to demonstrate that the applicant—

(A) has substantially met its performance goals and otherwise carried out its responsibilities under this subchapter and the assistance agreement; and

(B) will expand its operations into a new investment area or serve a new targeted population, offer more products or services, or increase the volume of its business;

(5) in the case of an applicant with a prior history of serving investment areas or targeted populations, to demonstrate that the applicant—

(A) has a record of success in serving investment areas or targeted populations; and

(B) will expand its operations into a new investment area or to serve a new targeted population, offer more products or services, or increase the volume of its current business; and

(6) to include such other information as the Fund deems appropriate.

(c) Preapplication outreach program

The Fund shall provide an outreach program to identify and provide information to potential

applicants and may provide technical assistance to potential applicants, but shall not assist in the preparation of any application.

(Pub. L. 103–325, title I, § 105, Sept. 23, 1994, 108 Stat. 2170.)

§ 4705. Community partnerships

(a) Application

An application for assistance may be filed jointly by a community development financial institution and a community partner to carry out a community partnership.

(b) Application requirements

The Fund shall require a community partnership application—

(1) to meet the minimum requirements established for community development financial institutions under section 4704(b) of this title, except that the criteria specified in paragraphs (1) and (2)(A) of section 4704(b) of this title shall not apply to the community partner;

(2) to describe how each coapplicant will participate in carrying out the community partnership and how the partnership will enhance activities serving the investment area or targeted population; and

(3) to demonstrate that the community partnership activities are consistent with the strategic plan submitted by the community development financial institution coapplicant.

(c) Selection criteria

The Fund shall consider a community partnership application based on—

(1) the community development financial institution coapplicant—

(A) meeting the minimum selection criteria described in section 4704 of this title; and

(B) satisfying the selection criteria of section 4706 of this title;

(2) the extent to which the community partner coapplicant will participate in carrying out the partnership;

(3) the extent to which the community partnership will enhance the likelihood of success of the community development financial institution coapplicant's strategic plan; and

(4) the extent to which service to the investment area or targeted population will be better performed by a partnership as opposed to the individual community development financial institution coapplicant.

(d) Limitation on distribution of assistance

Assistance provided upon approval of an application under this section shall be distributed only to the community development financial institution coapplicant, and shall not be used to fund any activities carried out directly by the community partner or an affiliate or subsidiary thereof.

(e) Other requirements and limitations

All other requirements and limitations imposed by this subchapter on a community development financial institution assisted under this subchapter shall apply (in the manner that the Fund determines to be appropriate) to assistance provided to carry out community partnerships. The Fund may establish additional guidelines and restrictions on the use of Federal funds to carry out community partnerships.

(Pub. L. 103–325, title I, § 106, Sept. 23, 1994, 108 Stat. 2171.)

§ 4706. Selection of institutions

(a) Selection criteria

Except as provided in section 4712 of this title, the Fund shall, in its sole discretion, select community development financial institution applicants meeting the requirements of section 4704 of this title for assistance based on—

(1) the likelihood of success of the applicant in meeting the goals of its comprehensive strategic plan;

(2) the experience and background of the management team;

(3) the extent of need for equity investments, loans, and development services within the investment areas or targeted populations;

(4) the extent of economic distress within the investment areas or the extent of need within the targeted populations, as those factors are measured by objective criteria;

(5) the extent to which the applicant will concentrate its activities on serving its investment areas or targeted populations;

(6) the amount of firm commitments to meet or exceed the matching requirements and the likely success of the plan for raising the balance of the match;

(7) the extent to which the matching funds are derived from private sources;

(8) the extent to which the proposed activities will expand economic opportunities within the investment areas or the targeted populations;

(9) whether the applicant is, or will become, an insured community development financial institution;

(10) the extent of support from the investment areas or targeted populations;

(11) the extent to which the applicant is, or will be, community-owned or community-governed;

(12) the extent to which the applicant will increase its resources through coordination with other institutions or participation in a secondary market;

(13) in the case of an applicant with a prior history of serving investment areas or targeted populations, the extent of success in serving them; and

(14) other factors deemed to be appropriate by the Fund.

(b) Geographic diversity

In selecting applicants for assistance, the Fund shall seek to fund a geographically diverse group of applicants, which shall include applicants from metropolitan, nonmetropolitan, and rural areas.

(Pub. L. 103–325, title I, § 107, Sept. 23, 1994, 108 Stat. 2172.)

§ 4707. Assistance provided by Fund

(a) Forms of assistance

(1) In general

The Fund may provide—

(A) financial assistance through equity investments, deposits, credit union shares, loans, and grants; and

(B) technical assistance—

(i) directly;

(ii) through grants; or

(iii) by contracting with organizations that possess expertise in community development finance, without regard to whether the organizations receive or are eligible to receive assistance under this subchapter.

(2) Equity investments

(A) Limitation on equity investments

The Fund shall not own more than 50 percent of the equity of a community development financial institution and may not control the operations of such institution. The Fund may hold only transferable, nonvoting equity investments in the institution. Such equity investments may provide for convertibility to voting stock upon transfer by the Fund.

(B) Fund deemed not to control

Notwithstanding any other provision of law, the Fund shall not be deemed to control a community development financial institution by reason of any assistance provided under this subchapter for the purpose of any other applicable law to the extent that the Fund complies with subparagraph (A). Nothing in this subparagraph shall affect the application of any Federal tax law.

(3) Deposits

Deposits made pursuant to this section in an insured community development financial institution shall not be subject to any requirement for collateral or security.

(4) Limitations on obligations

Direct loan obligations may be incurred by the Fund only to the extent that appropriations of budget authority to cover their cost, as defined in section 661a(5) of title 2, are made in advance.

(b) Uses of financial assistance

(1) In general

Financial assistance made available under this subchapter may be used by assisted community development financial institutions to serve investment areas or targeted populations by developing or supporting—

(A) commercial facilities that promote revitalization, community stability, or job creation or retention;

(B) businesses that—

(i) provide jobs for low-income people or are owned by low-income people; or

(ii) enhance the availability of products and services to low-income people;

(C) community facilities;

(D) the provision of basic financial services;

(E) housing that is principally affordable to low-income people, except that assistance used to facilitate homeownership shall only be used for services and lending products—

(i) that serve low-income people; and

(ii) that—

(I) are not provided by other lenders in the area; or

(II) complement the services and lending products provided by other lenders that serve the investment area or targeted population; and

(F) other businesses and activities deemed appropriate by the Fund.

(2) Limitations

No assistance made available under this subchapter may be expended by a community development financial institution (or an organization receiving assistance under section 4712 of this title) to pay any person to influence or attempt to influence any agency, elected official, officer, or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan, or cooperative agreement (as such terms are defined in section 1352 of title 31).

(c) Uses of technical assistance

(1) Types of activities

Technical assistance may be used for activities that enhance the capacity of a community development financial institution, such as training of management and other personnel and development of programs and investment or loan products.

(2) Availability of technical assistance

The Fund may provide technical assistance, regardless of whether or not the recipient also receives financial assistance under this section.

(d) Amount of assistance

(1) In general

Except as provided in paragraph (2), the Fund may provide not more than $5,000,000 of assistance, in the aggregate, during any 3-year period to any 1 community development financial institution and its subsidiaries and affiliates.

(2) Exception

The Fund may provide not more than $3,750,000 of assistance in addition to the amount specified in paragraph (1) during the same 3-year period to an existing community development financial institution that proposes to establish a subsidiary or affiliate for the purpose of serving an investment area or targeted population outside of any State and outside of any metropolitan area presently served by the institution, if—

(A) the subsidiary or affiliate—

(i) would be a community development financial institution; and

(ii) independently—

(I) meets the selection criteria described in section 4704 of this title; and

(II) satisfies the selection criteria of section 4706 of this title; and

(B) no other application for assistance to serve the investment area or targeted population has been submitted to the Administrator within a reasonable period of time

preceding the date of receipt of the application at issue.

(3) Timing of assistance

Assistance may be provided as described in paragraphs (1) and (2) in a lump sum or over a period of time, as determined by the Fund.

(e) Matching requirements

(1) In general

Assistance other than technical assistance shall be matched with funds from sources other than the Federal Government on the basis of not less than one dollar for each dollar provided by the Fund. Such matching funds shall be at least comparable in form and value to assistance provided by the Fund. The Fund shall provide no assistance (other than technical assistance) until a community development financial institution has secured firm commitments for the matching funds required.

(2) Exception

In the case of an applicant with severe constraints on available sources of matching funds, the Fund may permit an applicant to comply with the matching requirements of paragraph (1) by—

(A) reducing such matching requirement by 50 percent; or

(B) permitting an applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such applicant—

(i) has total assets of less than $100,000;

(ii) serves nonmetropolitan or rural areas; and

(iii) is not requesting more than $25,000 in assistance.

(3) Limitation

Not more than 25 percent of the total funds disbursed in any fiscal year by the Fund may be matched as authorized under paragraph (2).

(4) Construction of "Federal Government funds"

For purposes of this subsection, notwithstanding section 105(a)(9) of the Housing and Community Development Act of 1974 [42 U.S.C. 5305(a)(9)], funds provided pursuant to such Act shall be considered to be Federal Government funds.

(f) Terms and conditions

(1) Soundness of unregulated institutions

The Fund shall—

(A) ensure, to the maximum extent practicable, that each community development financial institution (other than an insured community development financial institution or depository institution holding company) assisted under this subchapter is financially and managerially sound and maintains appropriate internal controls;

(B) require such institution to submit, not less than once during each 18-month period, a statement of financial condition audited by an independent certified public accountant as part of the report required by section 4714(e)(1) of this title; and

(C) require that all assistance granted under this section is used by the community development financial institution or community development partnership in a manner consistent with the purposes of this subchapter.

(2) Assistance agreement

(A) In general

Before providing any assistance under this subchapter, the Fund and each community development financial institution to be assisted shall enter into an agreement that requires the institution to comply with performance goals and abide by other terms and conditions pertinent to assistance received under this subchapter.

(B) Performance goals

Performance goals shall be negotiated between the Fund and each community development financial institution receiving assistance based upon the strategic plan submitted pursuant to section 4704(b)(2) of this title. Such goals may be modified with the consent of the parties, or as provided in subparagraph (C). Performance goals for insured community development financial institutions shall be determined in consultation with the appropriate Federal banking agency.

(C) Sanctions

The agreement shall provide that, in the event of fraud, mismanagement, noncompliance with this subchapter, or noncompliance with the terms of the agreement, the Fund, in its discretion, may—

(i) require changes to the performance goals imposed pursuant to subparagraph (B);

(ii) require changes to the strategic plan submitted pursuant to section 4704(b)(2) of this title;

(iii) revoke approval of the application;

(iv) reduce or terminate assistance;

(v) require repayment of assistance;

(vi) bar an applicant from reapplying for assistance from the Fund; and

(vii) take such other actions as the Fund deems appropriate.

(D) Consultation with tribal governments

In reviewing the performance of any assisted community development financial institution, the investment area of which includes an Indian reservation, or the targeted population of which includes an Indian tribe, the Fund shall consult with, and seek input from, any appropriate tribal government.

(g) Authority to sell equity investments and loans

The Fund may, at any time, sell its equity investments and loans, but the Fund shall retain the power to enforce limitations on assistance entered into in accordance with the requirements of this subchapter until the performance goals related to the investment or loan have been met.

(h) No authority to limit supervision and regulation

Nothing in this subchapter shall affect any authority of the appropriate Federal banking

agency to supervise and regulate any institution or company.

(Pub. L. 103–325, title I, § 108, Sept. 23, 1994, 108 Stat. 2172.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (e)(4), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

§ 4708. Training

(a) In general

The Fund may operate a training program to increase the capacity and expertise of community development financial institutions and other members of the financial services industry to undertake community development finance activities.

(b) Program activities

The training program shall provide educational programs to assist community development financial institutions and other members of the financial services industry in developing lending and investment products, underwriting and servicing loans, managing equity investments, and providing development services targeted to areas of economic distress, low-income persons, and persons who lack adequate access to loans and equity investments.

(c) Participation

The training program shall be made available to community development financial institutions and other members of the financial services industry that serve or seek to serve areas of economic distress, low-income persons, and persons who lack adequate access to loans and equity investments.

(d) Contracting

The Fund may offer the training program described in this section directly or through a contract with other organizations. The Fund may contract to provide the training program through organizations that possess special expertise in community development, without regard to whether the organizations receive or are eligible to receive assistance under this subchapter.

(e) Coordination

The Fund shall coordinate with other appropriate Federal departments or agencies that operate similar training programs in order to prevent duplicative efforts.

(f) Regulatory fee for providing training services

(1) General rule

The Fund may, at the discretion of the Administrator and in accordance with this subsection, assess and collect regulatory fees solely to cover the costs of the Fund in providing training services under a training program operated in accordance with this section.

(2) Persons subject to fee

Fees may be assessed under paragraph (1) only on persons who participate in the training program.

(3) Limitation on manner of collection

Fees may be assessed and collected under this subsection only in such manner as may reasonably be expected to result in the collection of an aggregate amount of fees during any fiscal year which does not exceed the aggregate costs of the Fund for such year in providing training services under a training program operated in accordance with this section[1]

(4) Limitation on amount of fee

The amount of any fee assessed under this subsection on any person may not exceed the amount which is reasonably based on the proportion of the training services provided under a training program operated in accordance with this section which relate to such person.

(Pub. L. 103–325, title I, § 109, Sept. 23, 1994, 108 Stat. 2176.)

§ 4709. Encouragement of private entities

The Fund may facilitate the organization of corporations in which the Federal Government has no ownership interest. The purpose of any such entity shall be to assist community development financial institutions in a manner that is complementary to the activities of the Fund under this subchapter. Any such entity shall be managed exclusively by persons not employed by the Federal Government or any agency or instrumentality thereof, or by any State or local government or any agency or instrumentality thereof.

(Pub. L. 103–325, title I, § 110, Sept. 23, 1994, 108 Stat. 2177.)

§ 4710. Collection and compilation of information

The Fund shall—

(1) collect and compile information pertinent to community development financial institutions that will assist in creating, developing, expanding, and preserving such institutions; and

(2) make such information available to promote the purposes of this subchapter.

(Pub. L. 103–325, title I, § 111, Sept. 23, 1994, 108 Stat. 2177.)

§ 4711. Investment of receipts and proceeds

(a) Establishment of account

Any dividends on equity investments and proceeds from the disposition of investments, deposits, or credit union shares that are received by the Fund as a result of assistance provided pursuant to section 4707 or 4712 of this title, and any fees received pursuant to section 4708(f) of this title shall be deposited and accredited to an account of the Fund in the United States Treasury (hereafter in this section referred to as ''the account'') established to carry out the purpose of this subchapter.

(b) Investments

Upon request of the Administrator, the Secretary of the Treasury shall invest amounts deposited in the account in public debt securities with maturities suitable to the needs of the

[1] So in original. Probably should be followed by a period.

Fund, as determined by the Administrator, and bearing interest at rates determined by the Secretary of the Treasury, comparable to current market yields on outstanding marketable obligations of the United States of similar maturities.

(c) Availability

Amounts deposited into the account and interest earned on such amounts pursuant to this section shall be available to the Fund until expended.

(Pub. L. 103–325, title I, § 112, Sept. 23, 1994, 108 Stat. 2177.)

§ 4712. Capitalization assistance to enhance liquidity

(a) Assistance

(1) In general

The Fund may provide assistance for the purpose of providing capital to organizations to purchase loans or otherwise enhance the liquidity of community development financial institutions, if—

(A) the primary purpose of such organizations is to promote community development; and

(B) any assistance received is matched with funds—

(i) from sources other than the Federal Government;

(ii) on the basis of not less than one dollar for each dollar provided by the Fund; and

(iii) that are comparable in form and value to the assistance provided by the Fund.

(2) Limitation on other assistance

An organization that receives assistance under this section may not receive other financial or technical assistance under this subchapter.

(3) Construction of Federal Government funds

For purposes of this subsection, notwithstanding section 105(a)(9) of the Housing and Community Development Act of 1974 [42 U.S.C. 5305(a)(9)], funds provided pursuant to such Act shall be considered to be Federal Government funds.

(b) Selection

The selection of organizations to receive assistance under this section shall be at the discretion of the Fund and in accordance with criteria established by the Fund. In establishing such criteria, the Fund shall take into account the criteria contained in sections 4704(b) and 4706 of this title, as appropriate.

(c) Amount of assistance

The Fund may provide a total of not more than $5,000,000 of assistance to an organization or its subsidiaries or affiliates under this section during any 3-year period. Assistance may be provided in a lump sum or over a period of time, as determined by the Fund.

(d) Audit and report requirements

Organizations that receive assistance from the Fund in accordance with this section shall—

(1) submit to the Fund, not less than once in every 18-month period, financial statements audited by an independent certified public accountant, as part of the report required by paragraph (2);

(2) submit an annual report on its activities; and

(3) keep such records as may be necessary to disclose the manner in which any assistance under this section is used.

(e) Limitations on liability

(1) Liability of Fund

The liability of the Fund and the United States Government arising out of the provision of assistance to any organization in accordance with this section shall be limited to the amount of such assistance. The Fund shall be exempt from any assessments and any other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State, or territory. Nothing in this paragraph shall affect the application of Federal tax law.

(2) Liability of Government

This section does not oblige the Federal Government, either directly or indirectly, to provide any funds to any organization assisted pursuant to this section, or to honor, reimburse, or otherwise guarantee any obligation or liability of such an organization. This section shall not be construed to imply that any such organization or any obligations or securities of any such organization are backed by the full faith and credit of the United States.

(f) Use of proceeds

Any proceeds from the sale of loans by an organization assisted under this section shall be used by the seller for community development purposes.

(Pub. L. 103–325, title I, § 113, Sept. 23, 1994, 108 Stat. 2178.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (a)(3), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

§ 4713. Incentives for depository institution participation

(a) Function of Administrator

(1) In general

Of any funds appropriated pursuant to the authorization in section 4718(a) of this title, the funds made available for use in carrying out this section in accordance with section 4718(a)(4) of this title shall be administered by the Administrator of the Fund, in consultation with—

(A) the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) and the National Credit Union Administration;

(B) the individuals named pursuant to clauses (ii) and (iv) of section 4703(d)(2)(G) of this title; and

(C) any other representatives of insured depository institutions or other persons as the Administrator may determine to be appropriate.

(2) Applicability of Bank Enterprise Act of 1991

Subject to subsection (b) of this section and the consultation requirement of paragraph (1)—

(A) section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a] shall be applicable to the Administrator, for purposes of this section, in the same manner and to the same extent that such section is applicable to the Community Enterprise Assessment Credit Board;

(B) the Administrator shall, for purposes of carrying out this section and section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a]—

(i) have all powers and rights of the Community Enterprise Assessment Credit Board under section 233 of the Bank Enterprise Act of 1991 to administer and enforce any provision of such section 233 which is applicable to the Administrator under this section; and

(ii) shall be subject to the same duties and restrictions imposed on the Community Enterprise Assessment Credit Board; and

(C) the Administrator shall—

(i) have all powers and rights of an appropriate Federal banking agency under section 233(b)(2) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(b)(2)] to approve or disapprove the designation of qualified distressed communities for purposes of this section and provide information and assistance with respect to any such designation; and

(ii) shall be subject to the same duties imposed on the appropriate Federal banking agencies under such section 233(b)(2).

(3) Awards

The Administrator shall determine the amount of assessment credits, and shall make awards of those credits.

(4) Regulations and guidelines

The Administrator may prescribe such regulations and issue such guidelines as the Administrator determines to be appropriate to carry out this section.

(5) Exceptions to applicability

Notwithstanding paragraphs (1) through (4) of this subsection, subsections (a)(1) and (e)(2) of section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(a)(1), (e)(2)], and any other provision of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] relating to the Bank Enterprise Act of 1991, do not apply to the Administrator for purposes of this subchapter.

(b) Provisions relating to administration of this section

(1) New lifeline accounts

In applying section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a] for purposes of this section, the Administrator shall treat the provision of new lifeline accounts by an insured depository institution as an activity which is qualified to be taken into account under section 233(a)(2)(A) of such Act.

(2) Determination of assessment credit

For the purpose of this subchapter, section 233(a)(3) of the Bank Enterprise Act of 1991 (12 U.S.C. 1834a(a)(3)) shall be applied by substituting the following text:

"(3) Amount of assessment credit

''The amount of an assessment credit which may be awarded to an insured depository institution to carry out the qualified activities of the institution or of the subsidiaries of the institution pursuant to this section for any semiannual period shall be equal to the sum of—

''(A) with respect to qualifying activities described in paragraph (2)(A), the amount which is equal to—

''(i) 5 percent of the sum of the amounts determined under such subparagraph, in the case of an institution which is not a community development financial institution; or

''(ii) 15 percent of the sum of the amounts determined under such subparagraph, in the case of an institution which is a community development financial institution; and

''(B) with respect to qualifying activities described in paragraph (2)(C), 15 percent of the amounts determined under such subparagraph.''

(3) Adjustment of percentage

Section 233(a)(5) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(a)(5)] shall be applied for purposes of this section by—

(A) substituting ''institutions which are community development financial institutions'' for ''institutions which meet the community development organization requirements under section 234 [12 U.S.C. 1834b]''; and

(B) substituting ''institutions which are not community development financial institutions'' for ''institutions which do not meet such requirements''.

(4) Designation of QDC

Section 233(b)(2) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(b)(2)] shall be applied for purposes of this section without regard to subparagraph (A)(ii) of such section 233(b)(2).

(5) Operation on annual basis

The Administrator may, in the Administrator's discretion, apply section 233 of the Bank Enterprise Act of 1991 for purposes of this section by providing community enterprise assessment credits with respect to annual periods rather than semiannual periods.

(6) Outreach

The Administrator shall ensure that information about the Bank Enterprise Act of 1991 under this section is widely disseminated to all interested parties.

(7) Qualified activities

For the purpose of this subchapter, section 233(a)(2)(A) of the Bank Enterprise Act of 1991

shall be applied by inserting ''of the increase'' after ''the amount''.

(Pub. L. 103–325, title I, §114, Sept. 23, 1994, 108 Stat. 2179.)

REFERENCES IN TEXT

The Bank Enterprise Act of 1991, referred to in subsecs. (a)(2), (5) and (b)(6), is subtitle C (§§231–234) of title II of Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2308–2315, which enacted sections 1834 to 1834b of this title, amended section 1817 of this title, and enacted provisions set out as a note under section 1811 of this title. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of this title and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (a)(5), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section is comprised of section 114 of Pub. L. 103–325. Subsec. (c) of section 114 of Pub. L. 103–325 amended section 1834a of this title.

§ 4713a. Guarantees for bonds and notes issued for community or economic development purposes

(a) Definitions

In this section, the following definitions shall apply:

(1) Eligible community development financial institution

The term ''eligible community development financial institution'' means a community development financial institution (as described in section 1805.201 of title 12, Code of Federal Regulations, or any successor thereto) certified by the Secretary that has applied to a qualified issuer for, or been granted by a qualified issuer, a loan under the Program.

(2) Eligible community or economic development purpose

The term ''eligible community or economic development purpose''—

(A) means any purpose described in section 4707(b) of this title; and

(B) includes the provision of community or economic development in low-income or underserved rural areas.

(3) Guarantee

The term ''guarantee'' means a written agreement between the Secretary and a qualified issuer (or trustee), pursuant to which the Secretary ensures repayment of the verifiable losses of principal, interest, and call premium, if any, on notes or bonds issued by a qualified issuer to finance or refinance loans to eligible community development financial institutions.

(4) Loan

The term ''loan'' means any credit instrument that is extended under the Program for any eligible community or economic development purpose.

(5) Master servicer

(A) In general

The term ''master servicer'' means any entity approved by the Secretary in accordance with subparagraph (B) to oversee the activities of servicers, as provided in subsection (f)(4).

(B) Approval criteria for master servicers

The Secretary shall approve or deny any application to become a master servicer under the Program not later than 90 days after the date on which all required information is submitted to the Secretary, based on the capacity and experience of the applicant in—

(i) loan administration, servicing, and loan monitoring;

(ii) managing regional or national loan intake, processing, or servicing operational systems and infrastructure;

(iii) managing regional or national originator communication systems and infrastructure;

(iv) developing and implementing training and other risk management strategies on a regional or national basis; and

(v) compliance monitoring, investor relations, and reporting.

(6) Program

The term ''Program'' means the guarantee Program for bonds and notes issued for eligible community or economic development purposes established under this section.

(7) Program administrator

The term ''Program administrator'' means an entity designated by the issuer to perform administrative duties, as provided in subsection (f)(2).

(8) Qualified issuer

(A) In general

The term ''qualified issuer'' means a community development financial institution (or any entity designated to issue notes or bonds on behalf of such community development financial institution) that meets the qualification requirements of this paragraph.

(B) Approval criteria for qualified issuers

(i) In general

The Secretary shall approve a qualified issuer for a guarantee under the Program in accordance with the requirements of this paragraph, and such additional requirements as the Secretary may establish, by regulation.

(ii) Terms and qualifications

A qualified issuer shall—

(I) have appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes;

(II) provide to the Secretary—

(aa) an acceptable statement of the proposed sources and uses of the funds; and

(bb) a capital distribution plan that meets the requirements of subsection (c)(1); and

(III) certify to the Secretary that the bonds or notes to be guaranteed are to be

used for eligible community or economic development purposes.

(C) Department opinion; timing

(i) Department opinion

Not later than 30 days after the date of a request by a qualified issuer for approval of a guarantee under the Program, the Secretary shall provide an opinion regarding compliance by the issuer with the requirements of the Program under this section.

(ii) Timing

The Secretary shall approve or deny a guarantee under this section after consideration of the opinion provided to the Secretary under clause (i), and in no case later than 90 days after receipt of all required information by the Secretary with respect to a request for such guarantee.

(9) Secretary

The term ''Secretary'' means the Secretary of the Treasury.

(10) Servicer

The term ''servicer'' means an entity designated by the issuer to perform various servicing duties, as provided in subsection (f)(3).

(b) Guarantees authorized

The Secretary shall guarantee payments on bonds or notes issued by any qualified issuer, if the proceeds of the bonds or notes are used in accordance with this section to make loans to eligible community development financial institutions—

(1) for eligible community or economic development purposes; or

(2) to refinance loans or notes issued for such purposes.

(c) General program requirements

(1) In general

A capital distribution plan meets the requirements of this subsection, if not less than 90 percent of the principal amount of guaranteed bonds or notes (other than costs of issuance fees) are used to make loans for any eligible community or economic development purpose, measured annually, beginning at the end of the 1-year period beginning on the issuance date of such guaranteed bonds or notes.

(2) Relending account

Not more than 10 percent of the principal amount of guaranteed bonds or notes, multiplied by an amount equal to the outstanding principal balance of issued notes or bonds, minus the risk-share pool amount under subsection (d), may be held in a relending account and may be made available for new eligible community or economic development purposes.

(3) Limitations on unpaid principal balances

The proceeds of guaranteed bonds or notes under the Program may not be used to pay fees (other than costs of issuance fees), and shall be held in—

(A) community or economic development loans;

(B) a relending account, to the extent authorized under paragraph (2); or

(C) a risk-share pool established under subsection (d).

(4) Repayment

If a qualified issuer fails to meet the requirements of paragraph (1) by the end of the 90-day period beginning at the end of the annual measurement period, repayment shall be made on that portion of bonds or notes necessary to bring the bonds or notes that remain outstanding after such repayment into compliance with the 90 percent requirement of paragraph (1).

(5) Prohibited uses

The Secretary shall, by regulation—

(A) prohibit, as appropriate, certain uses of amounts from the guarantee of a bond or note under the Program, including the use of such funds for political activities, lobbying, outreach, counseling services, or travel expenses; and

(B) provide that the guarantee of a bond or note under the Program may not be used for salaries or other administrative costs of—

(i) the qualified issuer; or

(ii) any recipient of amounts from the guarantee of a bond or note.

(d) Risk-share pool

Each qualified issuer shall, during the term of a guarantee provided under the Program, establish a risk-share pool, capitalized by contributions from eligible community development financial institution participants an amount equal to 3 percent of the guaranteed amount outstanding on the subject notes and bonds.

(e) Guarantees

(1) In general

A guarantee issued under the Program shall—

(A) be for the full amount of a bond or note, including the amount of principal, interest, and call premiums;

(B) be fully assignable and transferable to the capital market, on terms and conditions that are consistent with comparable Government-guaranteed bonds, and satisfactory to the Secretary;

(C) represent the full faith and credit of the United States; and

(D) not exceed 30 years.

(2) Limitations

(A) Annual number of guarantees

The Secretary shall issue not more than 10 guarantees in any calendar year under the Program.

(B) Guarantee amount

The Secretary may not guarantee any amount under the Program equal to less than $100,000,000, but the total of all such guarantees in any fiscal year may not exceed $1,000,000,000.

(f) Servicing of transactions

(1) In general

To maximize efficiencies and minimize cost and interest rates, loans made under this sec-

tion may be serviced by qualified Program administrators, bond servicers, and a master servicer.

(2) Duties of Program administrator

The duties of a Program administrator shall include—

(A) approving and qualifying eligible community development financial institution applications for participation in the Program;

(B) compliance monitoring;

(C) bond packaging in connection with the Program; and

(D) all other duties and related services that are customarily expected of a Program administrator.

(3) Duties of servicer

The duties of a servicer shall include—

(A) billing and collecting loan payments;

(B) initiating collection activities on past-due loans;

(C) transferring loan payments to the master servicing accounts;

(D) loan administration and servicing;

(E) systematic and timely reporting of loan performance through remittance and servicing reports;

(F) proper measurement of annual outstanding loan requirements; and

(G) all other duties and related services that are customarily expected of servicers.

(4) Duties of master servicer

The duties of a master servicer shall include—

(A) tracking the movement of funds between the accounts of the master servicer and any other servicer;

(B) ensuring orderly receipt of the monthly remittance and servicing reports of the servicer;

(C) monitoring the collection comments and foreclosure actions;

(D) aggregating the reporting and distribution of funds to trustees and investors;

(E) removing and replacing a servicer, as necessary;

(F) loan administration and servicing;

(G) systematic and timely reporting of loan performance compiled from all bond servicers' reports;

(H) proper distribution of funds to investors; and

(I) all other duties and related services that are customarily expected of a master servicer.

(g) Fees

(1) In general

A qualified issuer that receives a guarantee issued under this section on a bond or note shall pay a fee to the Secretary, in an amount equal to 10 basis points of the amount of the unpaid principal of the bond or note guaranteed.

(2) Payment

A qualified issuer shall pay the fee required under this subsection on an annual basis.

(3) Use of fees

Fees collected by the Secretary under this subsection shall be used to reimburse the Department of the Treasury for any administrative costs incurred by the Department in implementing the Program established under this section.

(h) Authorization of appropriations

(1) In general

There are authorized to be appropriated to the Secretary, such sums as are necessary to carry out this section.

(2) Use of fees

To the extent that the amount of funds appropriated for a fiscal year under paragraph (1) are not sufficient to carry out this section, the Secretary may use the fees collected under subsection (g) for the cost of providing guarantees of bonds and notes under this section.

(i) Investment in guaranteed bonds ineligible for Community Reinvestment Act purposes

Notwithstanding any other provision of law, any investment by a financial institution in bonds or notes guaranteed under the Program shall not be taken into account in assessing the record of such institution for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 [et seq.]).

(j) Administration

(1) Regulations

Not later than 1 year after September 27, 2010, the Secretary shall promulgate regulations to carry out this section.

(2) Implementation

Not later than 2 years after September 27, 2010, the Secretary shall implement this section.

(k) Termination

This section is repealed, and the authority provided under this section shall terminate, on September 30, 2014.

(Pub. L. 103–325, title I, § 114A, as added Pub. L. 111–240, title I, § 1134, Sept. 27, 2010, 124 Stat. 2515.)

REFERENCES IN TEXT

The Community Reinvestment Act of 1977, referred to in subsec. (i), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, which is classified generally to chapter 30 (§ 2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

§ 4714. Recordkeeping

(a) In general

A community development financial institution receiving assistance from the Fund shall keep such records, for such periods as may be prescribed by the Fund and necessary to disclose the manner in which any assistance under this subchapter is used and to demonstrate compliance with the requirements of this subchapter.

(b) User profile information

The Fund shall require each community development financial institution or other organization receiving assistance from the Fund to compile such data, as is determined to be appropriate by the Fund, on the gender, race, eth-

nicity, national origin, or other pertinent information concerning individuals that utilize the services of the assisted institution to ensure that targeted populations and low-income residents of investment areas are adequately served.

(c) Access to records

The Fund shall have access on demand, for the purpose of determining compliance with this subchapter, to any records of a community development financial institution or other organization that receives assistance from the Fund.

(d) Review

Not less than annually, the Fund shall review the progress of each assisted community development financial institution in carrying out its strategic plan, meeting its performance goals, and satisfying the terms and conditions of its assistance agreement.

(e) Reporting

(1) Annual reports

The Fund shall require each community development financial institution receiving assistance under this subchapter to submit an annual report to the Fund on its activities, its financial condition, and its success in meeting performance goals, in satisfying the terms and conditions of its assistance agreement, and in complying with other requirements of this subchapter, in such form and manner as the Fund shall specify.

(2) Availability of reports

The Fund, after deleting or redacting any material as appropriate to protect privacy or proprietary interests, shall make such reports submitted under paragraph (1) available for public inspection.

(Pub. L. 103–325, title I, § 115, Sept. 23, 1994, 108 Stat. 2184.)

§ 4715. Special provisions with respect to institutions that are supervised by Federal banking agencies

(a) Consultation with appropriate agencies

The Fund shall consult with and consider the views of the appropriate Federal banking agency prior to providing assistance under this subchapter to—

(1) an insured community development financial institution;

(2) any community development financial institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency; or

(3) any community development financial institution that has as its community partner an institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

(b) Requests for information, reports, or records

(1) In general

Except as provided in paragraph (4), notwithstanding any other provisions of this subchapter, prior to directly requesting information from or imposing reporting or recordkeeping requirements on an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, the Fund shall consult with the appropriate Federal banking agency to determine if the information requested is available from or may be obtained by such agency in the form, format, or detail required by the Fund.

(2) Timing of response from appropriate Federal banking agency

If the information, reports, or records requested by the Fund pursuant to paragraph (1) are not provided by the appropriate Federal banking agency in less than 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the recordkeeping or reporting requirements directly on such institutions with notice to the appropriate Federal banking agency.

(3) Elimination of duplicative information and reporting requirements

The Fund shall use any information provided the appropriate Federal banking agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and recordkeeping by an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

(4) Exception

Notwithstanding paragraphs (1) and (2), the Fund may require an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency to provide information with respect to the institution's implementation of its strategic plan or compliance with the terms of its assistance agreement under this subchapter, after providing notice to the appropriate Federal banking agency.

(c) Exclusion for examination reports

Nothing in this section shall be construed to permit the Fund to require an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, to obtain, maintain, or furnish an examination report of any appropriate Federal banking agency or records contained in or related to such a report.

(d) Sharing of information

The Fund and the appropriate Federal banking agency shall promptly notify each other of material concerns about an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, and share appropriate information relating to such concerns.

(e) Disclosure prohibited

Neither the Fund nor the appropriate Federal banking agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(f) Privilege maintained

The Fund, the appropriate Federal banking agency, and any other party providing information under this section shall not be deemed to have waived any privilege applicable to any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) Exceptions

Nothing in this section shall authorize the Fund or the appropriate Federal banking agency to withhold information from the Congress or prevent it from complying with a request for information from a Federal department or agency in compliance with applicable law.

(h) Sanctions

(1) Notification

The Fund shall notify the appropriate Federal banking agency before imposing any sanction pursuant to the authority in section 4707(f)(2)(C) of this title on an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of that agency.

(2) Exceptions

The Fund shall not impose a sanction referred to in paragraph (1) if the appropriate Federal banking agency, in writing, not later than 30 calendar days after receiving notice from the Fund—

(A) objects to the proposed sanction;

(B) determines that the sanction would—

(i) have a material adverse effect on the safety and soundness of the institution; or

(ii) impede or interfere with an enforcement action against that institution by that agency;

(C) proposes a comparable alternative action; and

(D) specifically explains—

(i) the basis for the determination under subparagraph (B) and, if appropriate, provides documentation to support the determination; and

(ii) how the alternative action suggested pursuant to subparagraph (C) would be as effective as the sanction proposed by the Fund in securing compliance with this subchapter and deterring future noncompliance.

(i) Safety and soundness considerations

The Fund and each appropriate Federal banking agency shall cooperate and respond to requests from each other and from other appropriate Federal banking agencies in a manner that ensures the safety and soundness of the insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

(Pub. L. 103–325, title I, § 116, Sept. 23, 1994, 108 Stat. 2185.)

§ 4716. Studies and reports; examination and audit

(a) Annual report by Fund

The Fund shall conduct an annual evaluation of the activities carried out by the Fund and the community development financial institutions and other organizations assisted pursuant to this subchapter, and shall submit a report of its findings to the President and the Congress not later than 120 days after the end of each fiscal year of the Fund. The report shall include financial statements audited in accordance with subsection (f) of this section.

(b) Optional studies

The Fund may conduct such studies as the Fund determines necessary to further the purpose of this subchapter and to facilitate investment in distressed communities. The findings of any studies conducted pursuant to this subsection shall be included in the report required by subsection (a) of this section.

(c) Native American lending study

(1) In general

The Fund shall conduct a study on lending and investment practices on Indian reservations and other land held in trust by the United States. Such study shall—

(A) identify barriers to private financing on such lands; and

(B) identify the impact of such barriers on access to capital and credit for Native American populations.

(2) Report

Not later than 12 months after the date on which the Administrator is appointed, the Fund shall submit a report to the President and the Congress that—

(A) contains the findings of the study conducted under paragraph (1);

(B) recommends any necessary statutory and regulatory changes to existing Federal programs; and

(C) makes policy recommendations for community development financial institutions, insured depository institutions, secondary market institutions, and other private sector capital institutions to better serve such populations.

(d) Investment, governance, and role of Fund

Thirty months after the appointment and qualification of the Administrator, the Comptroller General of the United States shall submit to the President and the Congress a study evaluating the structure, governance, and performance of the Fund.

(e) Consultation

In the conduct of the studies required under this section, the Fund shall consult, as appropriate, with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, the Farm Credit Administration, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, Indian tribal governments, community reinvestment organiza-

tions, civil rights organizations, consumer organizations, financial organizations, and such representatives of agencies or other persons, at the discretion of the Fund.

(f) Examination and audit

The financial statements of the Fund shall be audited in accordance with section 9105 of title 31, except that audits required by section 9105(a) of such title shall be performed annually.

(Pub. L. 103–325, title I, § 117, Sept. 23, 1994, 108 Stat. 2187; Pub. L. 110–289, div. A, title II, § 1216(b), July 30, 2008, 122 Stat. 2792.)

AMENDMENTS

2008—Subsec. (e). Pub. L. 110–289 substituted ''Federal Housing Finance Agency'' for ''Federal Housing Finance Board''.

§ 4717. Enforcement

(a) Regulations

(1) In general

Not later than 180 days after the appointment and qualification of the Administrator, the Fund shall promulgate such regulations as may be necessary to carry out this subchapter.

(2) Regulations required

The regulations promulgated under paragraph (1) shall include regulations applicable to community development financial institutions that are not insured depository institutions to—

(A) prevent conflicts of interest on the part of directors, officers, and employees of community development financial institutions as the Fund determines to be appropriate; and

(B) establish such standards with respect to loans by a community development financial institution to any director, officer, or employee of such institution as the Fund determines to be appropriate, including loan amount limitations.

(b) Administrative enforcement

The provisions of this subchapter, and regulations prescribed and agreements entered into under this subchapter, shall be enforced under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] by the appropriate Federal banking agency, in the case of an insured community development financial institution. A violation of this subchapter, or any regulation prescribed under or any agreement entered into under this subchapter, shall be treated as a violation of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

(Pub. L. 103–325, title I, § 119, Sept. 23, 1994, 108 Stat. 2188.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (b), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section is comprised of section 119 of Pub. L. 103–325. Subsec. (c) of section 119 of Pub. L. 103–325 amended section 657 of Title 18, Crimes and Criminal Procedure.

§ 4718. Authorization of appropriations

(a) Fund authorization

(1) In general

To carry out this subchapter, there are authorized to be appropriated to the Fund, to remain available until expended—

(A) $60,000,000 for fiscal year 1995;
(B) $104,000,000 for fiscal year 1996;
(C) $107,000,000 for fiscal year 1997; and
(D) $111,000,000 for fiscal year 1998;

or such greater sums as may be necessary to carry out this subchapter.

(2) Administrative expenses

(A) In general

Of amounts authorized to be appropriated to the Fund pursuant to this section, not more than $5,550,000 may be used by the Fund in each fiscal year to pay the administrative costs and expenses of the Fund. Costs associated with the training program established under section 4708 of this title and the technical assistance program established under section 4707 of this title shall not be considered to be administrative expenses for purposes of this paragraph.

(B) Calculations

The amounts referred to in paragraphs (3) and (4) shall be calculated after subtracting the amount referred to in subparagraph (A) of this paragraph from the total amount appropriated to the Fund in accordance with paragraph (1) in any fiscal year.

(3) Capitalization assistance

Not more than 5 percent of the amounts authorized to be appropriated under paragraph (1) may be used as provided in section 4712 of this title.

(4) Availability for funding section 4713 of this title

33⅓ percent of the amounts appropriated to the Fund for any fiscal year pursuant to the authorization in paragraph (1) shall be available for use in carrying out section 4713 of this title.

(5) Support of community development financial institutions

The Administrator shall allocate funds authorized under this section, to the maximum extent practicable, for the support of community development financial institutions.

(b) Community Development Credit Union Revolving Loan Fund

There are authorized to be appropriated for the purposes of the Community Development Credit Union Revolving Loan Fund—

(1) $4,000,000 for fiscal year 1995;
(2) $2,000,000 for fiscal year 1996;
(3) $2,000,000 for fiscal year 1997; and
(4) $2,000,000 for fiscal year 1998.

(c) Budgetary treatment

Amounts authorized to be appropriated under this section shall be subject to discretionary spending caps, as provided in section 665[1] of title

[1] See References in Text note below.

2, and therefore shall reduce by an equal amount funds made available for other discretionary spending programs.

(Pub. L. 103–325, title I, § 121, Sept. 23, 1994, 108 Stat. 2189.)

REFERENCES IN TEXT

Section 665 of title 2, referred to in subsec. (c), was repealed by Pub. L. 105–33, title X, § 10118(a), Aug. 5, 1997, 111 Stat. 695.

§ 4719. Grants to establish loan-loss reserve funds

(a) Purposes

The purposes of this section are—

(1) to make financial assistance available from the Fund in order to help community development financial institutions defray the costs of operating small dollar loan programs, by providing the amounts necessary for such institutions to establish their own loan loss reserve funds to mitigate some of the losses on such small dollar loan programs; and

(2) to encourage community development financial institutions to establish and maintain small dollar loan programs that would help give consumers access to mainstream financial institutions and combat high cost small dollar lending.

(b) Grants

(1) Loan-loss reserve fund grants

The Fund shall make grants to community development financial institutions or to any partnership between such community development financial institutions and any other federally insured depository institution with a primary mission to serve targeted investment areas, as such areas are defined under section 4702(16) of this title, to enable such institutions or any partnership of such institutions to establish a loan-loss reserve fund in order to defray the costs of a small dollar loan program established or maintained by such institution.

(2) Matching requirement

A community development financial institution or any partnership of institutions established pursuant to paragraph (1) shall provide non-Federal matching funds in an amount equal to 50 percent of the amount of any grant received under this section.

(3) Use of funds

Any grant amounts received by a community development financial institution or any partnership between or among such institutions under paragraph (1)—

(A) may not be used by such institution to provide direct loans to consumers;

(B) may be used by such institution to help recapture a portion or all of a defaulted loan made under the small dollar loan program of such institution; and

(C) may be used to designate and utilize a fiscal agent for services normally provided by such an agent.

(4) Technical assistance grants

The Fund shall make technical assistance grants to community development financial institutions or any partnership between or among such institutions to support and maintain a small dollar loan program. Any grant amounts received under this paragraph may be used for technology, staff support, and other costs associated with establishing a small dollar loan program.

(c) Definitions

For purposes of this section—

(1) the term ''consumer reporting agency that compiles and maintains files on consumers on a nationwide basis'' has the same meaning given such term in section 1681a(p) of title 15; and

(2) the term ''small dollar loan program'' means a loan program wherein a community development financial institution or any partnership between or among such institutions offers loans to consumers that—

(A) are made in amounts not exceeding $2,500;

(B) must be repaid in installments;

(C) have no pre-payment penalty;

(D) the institution has to report payments regarding the loan to at least 1 of the consumer reporting agencies that compiles and maintains files on consumers on a nationwide basis; and

(E) meet any other affordability requirements as may be established by the Administrator.

(Pub. L. 103–325, title I, § 122, as added Pub. L. 111–203, title XII, § 1206, July 21, 2010, 124 Stat. 2131.)

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

SUBCHAPTER II—SMALL BUSINESS CAPITAL ENHANCEMENT

§ 4741. Findings and purposes

(a) Findings

The Congress finds that—

(1) small business concerns are a vital part of the economy, accounting for the majority of new jobs, new products, and new services created in the United States;

(2) adequate access to debt capital is a critical component for small business development, productivity, expansion, and success in the United States;

(3) commercial banks are the most important suppliers of debt capital to small business concerns in the United States;

(4) commercial banks and other depository institutions have various incentives to minimize their risk in financing small business concerns;

(5) as a result of such incentives, many small business concerns with economically sound financing needs are unable to obtain access to needed debt capital;

(6) the small business capital access programs implemented by certain States are a flexible and efficient tool to assist financial institutions in providing access to needed debt capital for many small business concerns in a

manner consistent with safety and soundness regulations;

(7) a small business capital access program would complement other programs which assist small business concerns in obtaining access to capital; and

(8) Federal policy can stimulate and accelerate efforts by States to implement small business capital access programs by providing an incentive to States, while leaving the administration of such programs to each participating State.

(b) Purposes

By encouraging States to implement administratively efficient capital access programs that encourage commercial banks and other depository institutions to provide access to debt capital for a broad portfolio of small business concerns, and thereby promote a more efficient and effective debt market, the purposes of this subchapter are—

(1) to promote economic opportunity and growth;

(2) to create jobs;

(3) to promote economic efficiency;

(4) to enhance productivity; and

(5) to spur innovation.

(Pub. L. 103–325, title II, § 251, Sept. 23, 1994, 108 Stat. 2203.)

EFFECTIVE DATE

Section 261 of title II of Pub. L. 103–325 provided that: ''This subtitle [subtitle B (§§ 251–261) of title II of Pub. L. 103–325, enacting this subchapter] shall become effective on January 6, 1996.''

SMALL BUSINESS LENDING FUND

Pub. L. 111–240, title IV, subtitle A, Sept. 27, 2010, 124 Stat. 2582, provided that:

''SEC. 4101. PURPOSE.

''The purpose of this subtitle is to address the ongoing effects of the financial crisis on small businesses by providing temporary authority to the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses.

''SEC. 4102. DEFINITIONS.

''For purposes of this subtitle:

''(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term 'appropriate committees of Congress' means—

''(A) the Committee on Small Business and Entrepreneurship, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and

''(B) the Committee on Small Business, the Committee on Agriculture, the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives.

''(2) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the meaning given such term under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

''(3) BANK HOLDING COMPANY.—The term 'bank holding company' has the meaning given such term under section 2(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(a)(1)).

''(4) CALL REPORT.—The term 'call report' means—

''(A) reports of Condition and Income submitted to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation;

''(B) the Office of Thrift Supervision Thrift Financial Report;

''(C) any report that is designated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision, as applicable, as a successor to any report referred to in subparagraph (A) or (B);

''(D) reports of Condition and Income as designated through guidance developed by the Secretary, in consultation with the Director of the Community Development Financial Institutions Fund; and

''(E) with respect to an eligible institution for which no report exists that is described under subparagraph (A), (B), (C), or (D), such other report or set of information as the Secretary, in consultation with the Administrator of the Small Business Administration, may prescribe.

''(5) CDCI.—The term 'CDCI' means the Community Development Capital Initiative created by the Secretary under the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008 [div. A of Pub. L. 110–343, see Short Title note set out under section 5201 of this title].

''(6) CDCI INVESTMENT.—The term 'CDCI investment' means, with respect to any eligible institution, the principal amount of any investment made by the Secretary in such eligible institution under the CDCI that has not been repaid.

''(7) CDFI; COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The terms 'CDFI' and 'community development financial institution' have the meaning given the term 'community development financial institution' under the Riegle Community Development and Regulatory Improvement Act of 1994 [Pub. L. 103–325, see Tables for classification].

''(8) CDLF; COMMUNITY DEVELOPMENT LOAN FUND.—The terms 'CDLF' and 'community development loan fund' mean any entity that—

''(A) is certified by the Department of the Treasury as a community development financial institution loan fund;

''(B) is exempt from taxation under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.]; and

''(C) had assets less than or equal to $10,000,000,000 as of the end of the fourth quarter of calendar year 2009.

''(9) CPP.—The term 'CPP' means the Capital Purchase Program created by the Secretary under the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008.

''(10) CPP INVESTMENT.—The term 'CPP investment' means, with respect to any eligible institution, the principal amount of any investment made by the Secretary in such eligible institution under the CPP that has not been repaid.

''(11) ELIGIBLE INSTITUTION.—The term 'eligible institution' means—

''(A) any insured depository institution, which—

''(i) is not controlled by a bank holding company or savings and loan holding company that is also an eligible institution;

''(ii) has total assets of equal to or less than $10,000,000,000, as reported in the call report of the insured depository institution as of the end of the fourth quarter of calendar year 2009; and

''(iii) is not directly or indirectly controlled by any company or other entity that has total consolidated assets of more than $10,000,000,000, as so reported;

''(B) any bank holding company which has total consolidated assets of equal to or less than $10,000,000,000, as reported in the call report of the bank holding company as of the end of the fourth quarter of calendar year 2009;

''(C) any savings and loan holding company which has total consolidated assets of equal to or less

than $10,000,000,000, as reported in the call report of the savings and loan holding company as of the end of the fourth quarter of calendar year 2009; and

''(D) any community development financial institution loan fund which has total assets of equal to or less than $10,000,000,000, as reported in audited financial statements for the fiscal year of the community development financial institution loan fund that ends in calendar year 2009.

''(12) FUND.—The term 'Fund' means the Small Business Lending Fund established under section 4103(a)(1).

''(13) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the meaning given such term under section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)).

''(14) MINORITY-OWNED AND WOMEN-OWNED BUSINESS.—The terms 'minority-owned business' and 'women-owned business' shall have the meaning given the terms 'minority-owned business' and 'women's business', respectively, under section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441A(r)(4)).

''(15) PROGRAM.—The term 'Program' means the Small Business Lending Fund Program authorized under section 4103(a)(2).

''(16) SAVINGS AND LOAN HOLDING COMPANY.—The term 'savings and loan holding company' has the meaning given such term under section 10(a)(1)(D) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(D)).

''(17) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(18) SMALL BUSINESS LENDING.—

''(A) IN GENERAL.—The term 'small business lending' means lending, as defined by and reported in an eligible institutions' quarterly call report, where each loan comprising such lending is one of the following types:

''(i) Commercial and industrial loans.

''(ii) Owner-occupied nonfarm, nonresidential real estate loans.

''(iii) Loans to finance agricultural production and other loans to farmers.

''(iv) Loans secured by farmland.

''(B) EXCLUSION.—No loan that has an original amount greater than $10,000,000 or that goes to a business with more than $50,000,000 in revenues shall be included in the measure.

''(C) TREATMENT OF HOLDING COMPANIES.—In the case of eligible institutions that are bank holding companies or savings and loan holding companies having one or more insured depository institution subsidiaries, small business lending shall be measured based on the combined small business lending reported in the call report of the insured depository institution subsidiaries.

''(19) VETERAN-OWNED BUSINESS.—

''(A) The term 'veteran-owned business' means a business—

''(i) more than 50 percent of the ownership or control of which is held by 1 or more veterans;

''(ii) more than 50 percent of the net profit or loss of which accrues to 1 or more veterans; and

''(iii) a significant percentage of senior management positions of which are held by veterans.

''(B) For purposes of this paragraph, the term 'veteran' has the meaning given such term in section 101(2) of title 38, United States Code.

''SEC. 4103. SMALL BUSINESS LENDING FUND.

''(a) FUND AND PROGRAM.—

''(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a fund to be known as the 'Small Business Lending Fund', which shall be administered by the Secretary.

''(2) PROGRAMS AUTHORIZED.—The Secretary is authorized to establish the Small Business Lending Fund Program for using the Fund consistent with this subtitle.

''(b) USE OF FUND.—

''(1) IN GENERAL.—Subject to paragraph (2), the Fund shall be available to the Secretary, without further appropriation or fiscal year limitation, for the costs of purchases (including commitments to purchase), and modifications of such purchases, of preferred stock and other financial instruments from eligible institutions on such terms and conditions as are determined by the Secretary in accordance with this subtitle. For purposes of this paragraph and with respect to an eligible institution, the term 'other financial instruments' shall include only debt instruments for which such eligible institution is fully liable or equity equivalent capital of the eligible institution. Such debt instruments may be subordinated to the claims of other creditors of the eligible institution.

''(2) MAXIMUM PURCHASE LIMIT.—The aggregate amount of purchases (and commitments to purchase) made pursuant to paragraph (1) may not exceed $30,000,000,000.

''(3) PROCEEDS USED TO PAY DOWN PUBLIC DEBT.—All funds received by the Secretary in connection with purchases made pursuant to paragraph (1), including interest payments, dividend payments, and proceeds from the sale of any financial instrument, shall be paid into the general fund of the Treasury for reduction of the public debt.

''(4) LIMITATION ON PURCHASES FROM CDLFS.—

''(A) IN GENERAL.—Not more than 1 percent of the maximum purchase limit of the Program, pursuant to paragraph (2), may be used to make purchases from community development loan funds.

''(B) ELIGIBILITY STANDARDS.—The Secretary, in consultation with the Community Development Financial Institutions Fund, shall develop eligibility criteria to determine the financial ability of a CDLF to participate in the Program and repay the investment. Such criteria shall include the following:

''(i) Ratio of net assets to total assets is at least 20 percent.

''(ii) Ratio of loan loss reserves to loans and leases 90 days or more delinquent (including loans sold with full recourse) is at least 30 percent.

''(iii) Positive net income measured on a 3-year rolling average.

''(iv) Operating liquidity ratio of at least 1.0 for the 4 most recent quarters and for one or both of the two preceding years.

''(v) Ratio of loans and leases 90 days or more delinquent (including loans sold with full recourse) to total equity plus loan loss reserves is less than 40 percent.

''(C) REQUIREMENT TO SUBMIT AUDITED FINANCIAL STATEMENTS.—CDLFs participating in the Program shall submit audited financial statements to the Secretary, have a clean audit opinion, and have at least 3 years of operating experience.

''(c) CREDITS TO THE FUND.—There shall be credited to the Fund amounts made available pursuant to section 4108, to the extent provided by appropriations Acts.

''(d) TERMS.—

''(1) APPLICATION.—

''(A) INSTITUTIONS WITH ASSETS OF $1,000,000,000 OR LESS.—Eligible institutions having total assets equal to or less than $1,000,000,000, as reported in a call report as of the end of the fourth quarter of calendar year 2009, may apply to receive a capital investment from the Fund in an amount not exceeding 5 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

''(B) INSTITUTIONS WITH ASSETS OF MORE THAN $1,000,000,000 AND LESS THAN OR EQUAL TO $10,000,000,000.—Eligible institutions having total assets of more than $1,000,000,000 but less than $10,000,000,000, as of the end of the fourth quarter of calendar year 2009, may apply to receive a capital investment from the Fund in an amount not exceeding 3 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

''(C) TREATMENT OF HOLDING COMPANIES.—In the case of an eligible institution that is a bank holding company or a savings and loan holding company having one or more insured depository institution subsidiaries, total assets shall be measured based on the combined total assets reported in the call report of the insured depository institution subsidiaries as of the end of the fourth quarter of calendar year 2009 and risk-weighted assets shall be measured based on the combined risk-weighted assets of the insured depository institution subsidiaries as reported in the call report immediately preceding the date of application.

''(D) TREATMENT OF APPLICANTS THAT ARE INSTITUTIONS CONTROLLED BY HOLDING COMPANIES.—If an eligible institution that applies to receive a capital investment under the Program is under the control of a bank holding company or a savings and loan holding company, then the Secretary may use the Fund to purchase preferred stock or other financial instruments from the top-tier bank holding company or savings and loan holding company of such eligible institution, as applicable. For purposes of this subparagraph, the term 'control' with respect to a bank holding company shall have the same meaning as in section 2(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(a)(2)). For purposes of this subparagraph, the term 'control' with respect to a savings and loan holding company shall have the same meaning as in 10(a)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(2)).

''(E) REQUIREMENT TO PROVIDE A SMALL BUSINESS LENDING PLAN.—At the time that an applicant submits an application to the Secretary for a capital investment under the Program, the applicant shall deliver to the appropriate Federal banking agency, and, for applicants that are State-chartered banks, to the appropriate State banking regulator, a small business lending plan describing how the applicant's business strategy and operating goals will allow it to address the needs of small businesses in the areas it serves, as well as a plan to provide linguistically and culturally appropriate outreach, where appropriate. In the case of eligible institutions that are community development loan funds, this plan shall be submitted to the Secretary. This plan shall be confidential supervisory information.

''(F) TREATMENT OF APPLICANTS THAT ARE COMMUNITY DEVELOPMENT LOAN FUNDS.—Eligible institutions that are community development loan funds may apply to receive a capital investment from the Fund in an amount not exceeding 5 percent of total assets, as reported in the audited financial statements for the fiscal year of the eligible institution that ends in calendar year 2009.

''(2) CONSULTATION WITH REGULATORS.—For each eligible institution that applies to receive a capital investment under the Program, the Secretary shall—

''(A) consult with the appropriate Federal banking agency or, in the case of an eligible institution that is a nondepository community development financial institution, the Community Development Financial Institution Fund, for the eligible institution, to determine whether the eligible institution may receive such capital investment;

''(B) in the case of an eligible institution that is a State-chartered bank, consider any views received from the State banking regulator of the State of the eligible institution regarding the financial condition of the eligible institution; and

''(C) in the case of a community development financial institution loan fund, consult with the Community Development Financial Institution Fund.

''(3) CONSIDERATION OF MATCHED PRIVATE INVESTMENTS.—

''(A) IN GENERAL.—For an eligible institution that applies to receive a capital investment under the Program, if the entity to be consulted under paragraph (2) would not otherwise recommend the eligible institution to receive the capital investment, the Secretary, in consultation with the entity to be so consulted, may consider whether the entity to be consulted would recommend the eligible institution to receive a capital investment based on the financial condition of the institution if the conditions in subparagraph (B) are satisfied.

''(B) CONDITIONS.—The conditions referred to in subparagraph (A) are as follows:

''(i) CAPITAL SOURCES.—The eligible institution shall receive capital both under the Program and from private, nongovernment investors.

''(ii) AMOUNT OF CAPITAL.—The amount of capital to be received under the Program shall not exceed 3 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

''(iii) TERMS.—The amount of capital to be received from private, nongovernment investors shall be—

''(I) equal to or greater than 100 percent of the capital to be received under the Program; and

''(II) subordinate to the capital investment made by the Secretary under the Program.

''(4) INELIGIBILITY OF INSTITUTIONS ON FDIC PROBLEM BANK LIST.—

''(A) IN GENERAL.—An eligible institution may not receive any capital investment under the Program, if—

''(i) such institution is on the FDIC problem bank list; or

''(ii) such institution has been removed from the FDIC problem bank list for less than 90 days.

''(B) CONSTRUCTION.—Nothing in subparagraph (A) shall be construed as limiting the discretion of the Secretary to deny the application of an eligible institution that is not on the FDIC problem bank list.

''(C) FDIC PROBLEM BANK LIST DEFINED.—For purposes of this paragraph, the term 'FDIC problem bank list' means the list of depository institutions having a current rating of 4 or 5 under the Uniform Financial Institutions Rating System, or such other list designated by the Federal Deposit Insurance Corporation.

''(5) INCENTIVES TO LEND.—

''(A) REQUIREMENTS ON PREFERRED STOCK AND OTHER FINANCIAL INSTRUMENTS.—Any preferred stock or other financial instrument issued to Treasury by an eligible institution receiving a capital investment under the Program shall provide that—

''(i) the rate at which dividends or interest are payable shall be 5 percent per annum initially;

''(ii) within the first 2 years after the date of the capital investment under the Program, the rate may be adjusted based on the amount of an eligible institution's small business lending. Changes in the amount of small business lending shall be measured against the average amount of small business lending reported by the eligible institution in its call reports for the 4 full quarters immediately preceding the date of enactment of this Act [Sept. 27, 2010], minus adjustments from each quarterly balance in respect of—

''(I) net loan charge offs with respect to small business lending; and

''(II) gains realized by the eligible institution resulting from mergers, acquisitions or purchases of loans after origination and syndication; which adjustments shall be determined in accordance with guidance promulgated by the Secretary; and

''(iii) during any calendar quarter during the initial 2-year period referred to in clause (ii), an institution's rate shall be adjusted to reflect the following schedule, based on that institution's change in the amount of small business lending relative to the baseline—

''(I) if the amount of small business lending has increased by less than 2.5 percent, the dividend or interest rate shall be 5 percent;

''(II) if the amount of small business lending has increased by 2.5 percent or greater, but by less than 5.0 percent, the dividend or interest rate shall be 4 percent;

''(III) if the amount of small business lending has increased by 5.0 percent or greater, but by less than 7.5 percent, the dividend or interest rate shall be 3 percent;

''(IV) if the amount of small business lending has increased by 7.5 percent or greater, and but by less than 10.0 percent, the dividend or interest rate shall be 2 percent; or

''(V) if the amount of small business lending has increased by 10 percent or greater, the dividend or interest rate shall be 1 percent.

''(B) BASIS OF INITIAL RATE.—The initial dividend or interest rate shall be based on call report data published in the quarter immediately preceding the date of the capital investment under the Program.

''(C) TIMING OF RATE ADJUSTMENTS.—Any rate adjustment shall occur in the calendar quarter following the publication of call report data, such that the rate based on call report data from any one calendar quarter, which is published in the first following calendar quarter, shall be adjusted in that first following calendar quarter and payable in the second following quarter.

''(D) RATE FOLLOWING INITIAL 2-YEAR PERIOD.—Generally, the rate based on call report data from the eighth calendar quarter after the date of the capital investment under the Program shall be payable until the expiration of the 4½-year period that begins on the date of the investment. In the case where the amount of small business lending has remained the same or decreased relative to the institution's baseline in the eighth quarter after the date of the capital investment under the Program, the rate shall be 7 percent until the expiration of the 4½-year period that begins on the date of the investment.

''(E) RATE FOLLOWING INITIAL 4½-YEAR PERIOD.—The dividend or interest rate paid on any preferred stock or other financial instrument issued by an eligible institution that receives a capital investment under the Program shall increase to 9 percent at the end of the 4½-year period that begins on the date of the capital investment under the Program.

''(F) LIMITATION ON RATE REDUCTIONS WITH RESPECT TO CERTAIN AMOUNT.—The reduction in the dividend or interest rate payable to Treasury by any eligible institution shall be limited such that the rate reduction shall not apply to a dollar amount of the investment made by Treasury that is greater than the dollar amount increase in the amount of small business lending realized under this program. The Secretary may issue guidelines that will apply to new capital investments limiting the amount of capital available to eligible institutions consistent with this limitation.

''(G) RATE ADJUSTMENTS FOR S CORPORATION.—Before making a capital investment in an eligible institution that is an S corporation or a corporation organized on a mutual basis, the Secretary may adjust the dividend or interest rate on the financial instrument to be issued to the Secretary, from the dividend or interest rate that would apply under subparagraphs (A) through (F), to take into account any differential tax treatment of securities issued by such eligible institution. For purpose of this subparagraph, the term 'S corporation' has the same meaning as in section 1361(a) of the Internal Revenue Code of 1986 [26 U.S.C. 1361(a)].

''(H) REPAYMENT DEADLINE.—The capital investment received by an eligible institution under the Program shall be evidenced by preferred stock or other financial instrument that—

''(i) includes, as a term and condition, that the capital investment will—

''(I) be repaid not later than the end of the 10-year period beginning on the date of the capital investment under the Program; or

''(II) at the end of such 10-year period, be subject to such additional terms as the Secretary shall prescribe, which shall include a requirement that the stock or instrument shall carry the highest dividend or interest rate payable; and

''(ii) provides that the term and condition described under clause (i) shall not apply if the application of that term and condition would adversely affect the capital treatment of the stock or financial instrument under current or successor applicable capital provisions compared to a capital instrument with identical terms other than the term and condition described under clause (i).

''(I) REQUIREMENTS ON FINANCIAL INSTRUMENTS ISSUED BY A COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION LOAN FUND.—Any equity equivalent capital issued to the Treasury by a community development loan fund receiving a capital investment under the Program shall provide that the rate at which interest is payable shall be 2 percent per annum for 8 years. After 8 years, the rate at which interest is payable shall be 9 percent.

''(6) ADDITIONAL INCENTIVES TO REPAY.—The Secretary may, by regulation or guidance issued under section 4104(9), establish repayment incentives in addition to the incentive in paragraph (5)(E) that will apply to new capital investments in a manner that the Secretary determines to be consistent with the purposes of this subtitle.

''(7) CAPITAL PURCHASE PROGRAM REFINANCE.—

''(A) IN GENERAL.—The Secretary shall, in a manner that the Secretary determines to be consistent with the purposes of this subtitle, issue regulations and other guidance to permit eligible institutions to refinance securities issued to Treasury under the CDCI and the CPP for securities to be issued under the Program.

''(B) PROHIBITION ON PARTICIPATION BY NON-PAYING CPP PARTICIPANTS.—Subparagraph (A) shall not apply to any eligible institution that has missed more than one dividend payment due under the CPP. For purposes of this subparagraph, a CPP dividend payment that is submitted within 60 days of the due date of such payment shall not be considered a missed dividend payment.

''(8) OUTREACH TO MINORITIES, WOMEN, AND VETERANS.—The Secretary shall require eligible institutions receiving capital investments under the Program to provide linguistically and culturally appropriate outreach and advertising in the applicant pool describing the availability and application process of receiving loans from the eligible institution that are made possible by the Program through the use of print, radio, television or electronic media outlets which target organizations, trade associations, and individuals that—

''(A) represent or work within or are members of minority communities;

''(B) represent or work with or are women; and

''(C) represent or work with or are veterans.

''(9) ADDITIONAL TERMS.—The Secretary may, by regulation or guidance issued under section 4104(9), make modifications that will apply to new capital investments in order to manage risks associated with the administration of the Fund in a manner consistent with the purposes of this subtitle.

''(10) MINIMUM UNDERWRITING STANDARDS.—The appropriate Federal banking agency for an eligible institution that receives funds under the Program shall within 60 days issue guidance regarding prudent underwriting standards that must be used for loans made by the eligible institution using such funds.

''SEC. 4104. ADDITIONAL AUTHORITIES OF THE SECRETARY.

''The Secretary may take such actions as the Secretary deems necessary to carry out the authorities in

this subtitle, including, without limitation, the following:

''(1) The Secretary may use the services of any agency or instrumentality of the United States or component thereof on a reimbursable basis, and any such agency or instrumentality or component thereof is authorized to provide services as requested by the Secretary using all authorities vested in or delegated to that agency, instrumentality, or component.

''(2) The Secretary may enter into contracts, including contracts for services authorized by section 3109 of title 5, United States Code.

''(3) The Secretary may designate any bank, savings association, trust company, security broker or dealer, asset manager, or investment adviser as a financial agent of the Federal Government and such institution shall perform all such reasonable duties related to this subtitle as financial agent of the Federal Government as may be required. The Secretary shall have authority to amend existing agreements with financial agents, entered into during the 2-year period before the date of enactment of this Act [Sept. 27, 2010], to perform reasonable duties related to this subtitle.

''(4) The Secretary may exercise any rights received in connection with any preferred stock or other financial instruments or assets purchased or acquired pursuant to the authorities granted under this subtitle.

''(5) Subject to section 4103(b)(3), the Secretary may manage any assets purchased under this subtitle, including revenues and portfolio risks therefrom.

''(6) The Secretary may sell, dispose of, transfer, exchange or enter into securities loans, repurchase transactions, or other financial transactions in regard to, any preferred stock or other financial instrument or asset purchased or acquired under this subtitle, upon terms and conditions and at a price determined by the Secretary.

''(7) The Secretary may manage or prohibit conflicts of interest that may arise in connection with the administration and execution of the authorities provided under this subtitle.

''(8) The Secretary may establish and use vehicles, subject to supervision by the Secretary, to purchase, hold, and sell preferred stock or other financial instruments and issue obligations.

''(9) The Secretary may, in consultation with the Administrator of the Small Business Administration, issue such regulations and other guidance as may be necessary or appropriate to define terms or carry out the authorities or purposes of this subtitle.

''SEC. 4105. CONSIDERATIONS.

''In exercising the authorities granted in this subtitle, the Secretary shall take into consideration—

''(1) increasing the availability of credit for small businesses;

''(2) providing funding to minority-owned eligible institutions and other eligible institutions that serve small businesses that are minority-, veteran-, and women-owned and that also serve low- and moderate-income, minority, and other underserved or rural communities;

''(3) protecting and increasing American jobs;

''(4) increasing the opportunity for small business development in areas with high unemployment rates that exceed the national average;

''(5) ensuring that all eligible institutions may apply to participate in the program established under this subtitle, without discrimination based on geography;

''(6) providing transparency with respect to use of funds provided under this subtitle;

''(7) minimizing the cost to taxpayers of exercising the authorities;

''(8) promoting and engaging in financial education to would-be borrowers; and

''(9) providing funding to eligible institutions that serve small businesses directly affected by the discharge of oil arising from the explosion on and sinking of the mobile offshore drilling unit Deepwater Horizon and small businesses in communities that have suffered negative economic effects as a result of that discharge with particular consideration to States along the coast of the Gulf of Mexico.

''SEC. 4106. REPORTS.

''The Secretary shall provide to the appropriate committees of Congress—

''(1) within 7 days of the end of each month commencing with the first month in which transactions are made under the Program, a written report describing all of the transactions made during the reporting period pursuant to the authorities granted under this subtitle;

''(2) after the end of March and the end of September, commencing September 30, 2010, a written report on all projected costs and liabilities, all operating expenses, including compensation for financial agents, and all transactions made by the Fund, which shall include participating institutions and amounts each institution has received under the Program; and

''(3) within 7 days of the end of each calendar quarter commencing with the first calendar quarter in which transactions are made under the Program, a written report detailing how eligible institutions participating in the Program have used the funds such institutions received under the Program.

''SEC. 4107. OVERSIGHT AND AUDITS.

''(a) INSPECTOR GENERAL OVERSIGHT.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of the Program through the Office of Small Business Lending Fund Program Oversight established under subsection (b).

''(b) OFFICE OF SMALL BUSINESS LENDING FUND PROGRAM OVERSIGHT.—

''(1) ESTABLISHMENT.—There is hereby established within the Office of the Inspector General of the Department of the Treasury a new office to be named the 'Office of Small Business Lending Fund Program Oversight' to provide oversight of the Program.

''(2) LEADERSHIP.—The Inspector General shall appoint a Special Deputy Inspector General for SBLF Program Oversight to lead the Office, with commensurate staff, who shall report directly to the Inspector General and who shall be responsible for the performance of all auditing and investigative activities relating to the Program.

''(3) REPORTING.—

''(A) IN GENERAL.—The Inspector General shall issue a report no less than two times a year to the Congress and the Secretary devoted to the oversight provided by the Office, including any recommendations for improvements to the Program.

''(B) RECOMMENDATIONS.—With respect to any deficiencies identified in a report under subparagraph (A), the Secretary shall either—

''(i) take actions to address such deficiencies; or

''(ii) certify to the appropriate committees of Congress that no action is necessary or appropriate.

''(4) COORDINATION.—The Inspector General, in maximizing the effectiveness of the Office, shall work with other Offices of Inspector General, as appropriate, to minimize duplication of effort and ensure comprehensive oversight of the Program.

''(5) TERMINATION.—The Office shall terminate at the end of the 6-month period beginning on the date on which all capital investments are repaid under the Program or the date on which the Secretary determines that any remaining capital investments will not be repaid.

''(6) DEFINITIONS.—For purposes of this subsection:

''(A) OFFICE.—The term 'Office' means the Office of Small Business Lending Fund Program Oversight established under paragraph (1).

''(B) INSPECTOR GENERAL.—The term 'Inspector General' means the Inspector General of the Department of the Treasury.

''(c) GAO AUDIT.—The Comptroller General of the United States shall perform an annual audit of the Program and issue a report to the appropriate committees of Congress containing the results of such audit.

''(d) REQUIRED CERTIFICATIONS.—

''(1) ELIGIBLE INSTITUTION CERTIFICATION.—Each eligible institution that participates in the Program must certify that such institution is in compliance with the requirements of section 103.121 of title 31, Code of Federal Regulations, a regulation that, at a minimum, requires financial institutions, as that term is defined in 31 U.S.C. 5312(a)(2) and (c)(1)(A), to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person's identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

''(2) LOAN RECIPIENTS.—With respect to funds received by an eligible institution under the Program, any business receiving a loan from the eligible institution using such funds after the date of the enactment of this Act [Sept. 27, 2010] shall certify to such eligible institution that the principals of such business have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)).

''(e) PROHIBITION ON PORNOGRAPHY.—None of the funds made available under this subtitle may be used to pay the salary of any individual engaged in activities related to the Program who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

''SEC. 4108. CREDIT REFORM; FUNDING.

''(a) CREDIT REFORM.—The cost of purchases of preferred stock and other financial instruments made as capital investments under this subtitle shall be determined as provided under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

''(b) FUNDS MADE AVAILABLE.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the costs of $30,000,000,000 of capital investments in eligible institutions, including the costs of modifying such investments, and reasonable costs of administering the program of making, holding, managing, and selling the capital investments.

''SEC. 4109. TERMINATION AND CONTINUATION OF AUTHORITIES.

''(a) TERMINATION OF INVESTMENT AUTHORITY.—The authority to make capital investments in eligible institutions, including commitments to purchase preferred stock or other instruments, provided under this subtitle shall terminate 1 year after the date of enactment of this Act [Sept. 27, 2010].

''(b) CONTINUATION OF OTHER AUTHORITIES.—The authorities of the Secretary under section 4104 shall not be limited by the termination date in subsection (a).

''SEC. 4110. PRESERVATION OF AUTHORITY.

''Nothing in this subtitle may be construed to limit the authority of the Secretary under any other provision of law.

''SEC. 4111. ASSURANCES.

''(a) SMALL BUSINESS LENDING FUND SEPARATE FROM TARP.—The Small Business Lending Fund Program is established as separate and distinct from the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008 [div. A of Pub. L. 110–343, see Short Title note set out under section 5201 of this title]. An institution shall not, by virtue of a capital investment under the Small Business Lending Fund Program, be considered a recipient of the Troubled Asset Relief Program.

''(b) CHANGE IN LAW.—If, after a capital investment has been made in an eligible institution under the Program, there is a change in law that modifies the terms of the investment or program in a materially adverse respect for the eligible institution, the eligible institution may, after consultation with the appropriate Federal banking agency for the eligible institution, repay the investment without impediment.

''SEC. 4112. STUDY AND REPORT WITH RESPECT TO WOMEN-OWNED, VETERAN-OWNED, AND MINORITY-OWNED BUSINESSES.

''(a) STUDY.—The Secretary shall conduct a study of the impact of the Program on women-owned businesses, veteran-owned businesses, and minority-owned businesses.

''(b) REPORT.—Not later than one year after the date of enactment of this Act [Sept. 27, 2010], the Secretary shall submit to Congress a report on the results of the study conducted pursuant to subsection (a). To the extent possible, the Secretary shall disaggregate the results of such study by ethnic group and gender.

''(c) INFORMATION PROVIDED TO THE SECRETARY.—Eligible institutions that participate in the Program shall provide the Secretary with such information as the Secretary may require to carry out the study required by this section.

''SEC. 4113. SENSE OF CONGRESS.

''It is the sense of Congress that the Federal Deposit Insurance Corporation and other bank regulators are sending mixed messages to banks regarding regulatory capital requirements and lending standards, which is a contributing cause of decreased small business lending and increased regulatory uncertainty at community banks.''

§ 4742. Definitions

For purposes of this subchapter—

(1) the term ''Fund'' means the Community Development Financial Institutions Fund established under section 4703 of this title;

(2) the term ''appropriate Federal banking agency''—

(A) has the same meaning as in section 1813 of this title; and

(B) includes the National Credit Union Administration Board in the case of any credit union the deposits of which are insured in accordance with the Federal Credit Union Act [12 U.S.C. 1751 et seq.];

(3) the term ''early loan'' means a loan enrolled at a time when the aggregate covered amount of loans previously enrolled under the Program by a particular participating financial institution is less than $5,000,000;

(4) the term ''enrolled loan'' means a loan made by a participating financial institution that is enrolled by a participating State in accordance with this subchapter;

(5) the term ''financial institution'' means any federally chartered or State-chartered commercial bank, savings association, savings bank, or credit union;

(6) the term ''participating financial institution'' means any financial institution that has entered into a participation agreement with a participating State in accordance with section 4744 of this title;

(7) the term ''participating State'' means any State that has been approved for participation in the Program in accordance with section 4743 of this title;

(8) the term ''passive real estate ownership'' means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, except that such term shall not include—

(A) the ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate (other than the business of passive ownership of real estate); or

(B) the ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase;

(9) the term ''Program'' means the Small Business Capital Enhancement Program established under this subchapter;

(10) the term ''reserve fund'' means a fund, established by a participating State, earmarked for a particular participating financial institution, for the purposes of—

(A) depositing all required premium charges paid by the participating financial institution and by each borrower receiving a loan under the Program from a participating financial institution;

(B) depositing contributions made by the participating State; and

(C) covering losses on enrolled loans by disbursing accumulated funds; and

(11) the term ''State'' means—

(A) a State of the United States;

(B) the District of Columbia;

(C) any political subdivision of a State of the United States, which subdivision has a population in excess of the population of the least populated State of the United States; and

(D) any other political subdivision of a State of the United States that the Fund determines has the capacity to participate in the program.[1]

(Pub. L. 103–325, title II, § 252, Sept. 23, 1994, 108 Stat. 2204.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in par. (2)(B), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

§ 4743. Approving States for participation

(a) Application

Any State may apply to the Fund for approval to be a participating State under the Program and to be eligible for reimbursement by the Fund pursuant to section 4747 of this title.

(b) Approval criteria

The Fund shall approve a State to be a participating State, if—

(1) a specific department or agency of the State has been designated to implement the Program;

(2) all legal actions necessary to enable such designated department or agency to implement the Program have been accomplished;

(3) funds in the amount of at least $1 for every 2 people residing in the State (as of the last decennial census for which data have been released) are available and have been legally committed to contributions by the State to reserve funds, with such funds being available without time limit and without requiring additional legal action, except that such requirements shall not be construed to limit the authority of the State to take action at a later time that results in the termination of its obligation to enroll loans and make contributions to reserve funds;

(4) the State has prescribed a form of participation agreement to be entered into between it and each participating financial institution that is consistent with the requirements and purposes of this subchapter; and

(5) the State and the Fund have executed a reimbursement agreement that conforms to the requirements of this subchapter.

(c) Existing State programs

(1) In general

A State that is not a participating State, but that has its own capital access program providing portfolio insurance for business loans (based on a separate loss reserve fund for each financial institution), may apply at any time to the Fund to be approved to be a participating State. The Fund shall approve such State to be a participating State, and to be eligible for reimbursements by the Fund pursuant to section 4747 of this title, if the State—

(A) satisfies the requirements of subsections (a) and (b) of this section; and

(B) certifies that each affected financial institution has satisfied the requirements of section 4744 of this title.

(2) Applicable terms of participation

(A) Status of institutions

If a State is approved for participation under paragraph (1), each financial institution with a participation agreement in effect with the participating State shall immediately be considered a participating financial institution. Reimbursements may be made under section 4747[1] of this title in connection with all contributions made to the reserve fund by the State in connection with lending that occurs on or after the date on which the Fund approves the State for participation.

(B) Effective date of participation

If an amended participation agreement that conforms with section 4745 of this title is required in order to secure participation approval by the Fund, contributions subject to reimbursement under section 4747 of this title shall include only those contributions made to a reserve fund with respect to loans enrolled on or after the date that an amended participation agreement between the participating State and the participating financial institution becomes effective.

(C) Use of accumulated reserve funds

A State that is approved for participation in accordance with this subsection may con-

[1] So in original. Probably should be capitalized.

[1] See References in Text note below.

tinue to implement the program[2] utilizing the reserve funds accumulated under the State program.

(d) Prior appropriations requirement

The Fund shall not approve a State for participation in the Program until at least $50,000,000 has been appropriated to the Fund (subject to an appropriations Act), without fiscal year limitation, for the purpose of making reimbursements pursuant to section 4747 of this title and otherwise carrying out this subchapter.

(e) Amendments to agreements

If a State that has been approved to be a participating State wishes to amend its form of participation agreement and continue to be a participating State, such State shall submit such amendment for review by the Fund in accordance with subsection (b)(4) of this section. Any such amendment shall become effective only after it has been approved by the Fund.

(Pub. L. 103–325, title II, § 253, Sept. 23, 1994, 108 Stat. 2205.)

REFERENCES IN TEXT

Section 4747 of this title, referred to in subsec. (c)(2)(A), was in the original ''section 237'' and was translated as reading ''section 257'' meaning section 257 of Pub. L. 103–325, to reflect the probable intent of Congress. Pub. L. 103–325 does not contain a section 237.

§ 4744. Participation agreements

(a) In general

A participating State may enter into a participation agreement with any financial institution determined by the participating State, after consultation with the appropriate Federal banking agency, to have sufficient commercial lending experience and financial and managerial capacity to participate in the Program. The determination by the State shall not be reviewable by the Fund.

(b) Participating financial institutions

Upon entering into the participation agreement with the participating State, the financial institution shall become a participating financial institution eligible to enroll loans under the Program.

(Pub. L. 103–325, title II, § 254, Sept. 23, 1994, 108 Stat. 2207.)

§ 4745. Terms of participation agreements

(a) In general

The participation agreement to be entered into by a participating State and a participating financial institution shall include all provisions required by this section, and shall not include any provisions inconsistent with the provisions of this section.

(b) Establishment of separate reserve funds

A separate reserve fund shall be established by the participating State for each participating financial institution. All funds credited to a reserve fund shall be the exclusive property of the participating State. Each reserve fund shall be an administrative account for the purposes of—

(1) receiving all required premium charges to be paid by the borrower and participating financial institution and contributions by the participating State; and

(2) disbursing funds, either to cover losses sustained by the participating financial institution in connection with loans made under the Program, or as contemplated by subsections (d) and (r) of this section.

(c) Investment authority

Subject to applicable State law, the participating State may invest, or cause to be invested, funds held in a reserve fund by establishing a deposit account at the participating financial institution in the name of the participating State. In the event that funds in the reserve fund are not deposited in such an account, such funds shall be invested in a form that the participating State determines is safe and liquid.

(d) Earned income and interest

Interest or income earned on the funds credited to a reserve fund shall be deemed to be part of the reserve fund, except that a participating State may, as further specified in the participation agreement, provide authority for the participating State to withdraw some or all of such interest or income earned.

(e) Loan terms and conditions

(1) In general

A loan to be filed for enrollment under the Program may be made with such interest rate, fees, and other terms and conditions as agreed upon by the participating financial institution and the borrower, consistent with applicable law.

(2) Lines of credit

If a loan to be filed for enrollment is in the form of a line of credit, the amount of the loan shall be considered to be the maximum amount that can be drawn by the borrower against the line of credit.

(f) Enrollment process

(1) Filing

(A) In general

A participating financial institution shall file each loan made under the Program for enrollment by completing and submitting to the participating State a form prescribed by the participating State.

(B) Form

The form referred to in subparagraph (A) shall include a representation by the participating financial institution that it has complied with the participation agreement in enrolling the loan with the State.

(C) Premium charges

Accompanying the completed form shall be the nonrefundable premium charges paid by the borrower and the participating financial institution, or evidence that such premium charges have been deposited into the deposit account containing the reserve fund, if applicable.

(D) Submission

The participation agreement shall require that the items required by this subsection

[2] So in original. Probably should be capitalized.

shall be submitted to the participating State by the participating financial institutions not later than 10 calendar days after a loan is made.

(2) Enrollment by State

Upon receipt by the participating State of the filing submitted in accordance with paragraph (1), the participating State shall promptly enroll the loan and make a matching contribution to the reserve fund in accordance with subsection (j) of this section, unless the information submitted indicates that the participating financial institution has not complied with the participation agreement in enrolling the loan.

(g) Coverage amount

In filing a loan for enrollment under the Program, the participating financial institution may specify an amount to be covered under the Program that is less than the full amount of the loan.

(h) Premium charges

(1) Minimum and maximum amounts

The premium charges payable to the reserve fund by the borrower and the participating financial institution shall be prescribed by the participating financial institution, within minimum and maximum limits set forth in the participation agreement. The participation agreement shall establish minimum and maximum limits whereby the sum of the premium charges paid in connection with a loan by the borrower and the participating financial institution is not less than 3 percent nor more than 7 percent of the amount of the loan covered under the Program.

(2) Allocation of premium charges

The participation agreement shall specify terms for allocating premium charges between the borrower and the participating financial institution. However, if the participating financial institution is required to pay any of the premium charges, the participation agreement shall authorize the participating financial institution to recover from the borrower the cost of the payment of the participating financial institution, in any manner on which the participating financial institution and the borrower agree.

(i) Restrictions

(1) Actions prohibited

Except as provided in subsection (h) of this section and paragraph (2) of this subsection, the participating State may not—

(A) impose any restrictions or requirements, relating to the interest rate, fees, collateral, or other business terms and conditions of the loan; or

(B) condition enrollment of a loan in the Program on the review by the State of the risk or creditworthiness of a loan.

(2) Effect on other law

Nothing in this subchapter shall affect the applicability of any other law to the conduct by a participating financial institution of its business.

(j) State contributions

In enrolling a loan under the Program, the participating State shall contribute to the reserve fund an amount, as provided for in the participation agreement, which shall not be less than the sum of the amount of premium charges paid by the borrower and the participating financial institution.

(k) Submission of claims

(1) Filing

If a participating financial institution charges off all or part of an enrolled loan, such participating financial institution may file a claim for reimbursement with the participating State by submitting a form that—

(A) includes the representation by the participating financial institution that it is filing the claim in accordance with the terms of the applicable participation agreement; and

(B) contains such other information as may be required by the participating State.

(2) Timing

Any claim filed under paragraph (1) shall be filed contemporaneously with the action of the participating financial institution to charge off all or part of an enrolled loan. The participating financial institution shall determine when and how much to charge off on an enrolled loan, in a manner consistent with its usual method for making such determinations on business loans that are not enrolled loans under this subchapter.

***(l)* Elements of claims**

A claim filed by a participating financial institution may include the amount of principal charged off, not to exceed the covered amount of the loan. Such claim may also include accrued interest and out-of-pocket expenses, if and to the extent provided for under the participation agreement.

(m) Payment of claims

(1) In general

Except as provided in subsection (n) of this section and paragraph (2) of this subsection, upon receipt of a claim filed in accordance with this section and the participation agreement, the participating State shall promptly pay to the participating financial institution, from funds in the reserve fund, the full amount of the claim as submitted.

(2) Insufficient reserve funds

If there are insufficient funds in the reserve fund to cover the entire amount of a claim of a participating financial institution, the participating State shall pay to the participating financial institution an amount equal to the current balance in the reserve fund. If the enrolled loan for which the claim has been filed—

(A) is not an early loan, such payment shall be deemed fully to satisfy the claim, and the participating financial institution shall have no other or further right to receive any amount from the reserve fund with respect to such claim; or

(B) is an early loan, such payment shall not be deemed fully to satisfy the claim of

the participating financial institution, and at such time as the remaining balance of the claim does not exceed 75 percent of the balance in the reserve fund, the participating State shall, upon the request of the participating financial institution, pay any remaining amount of the claim.

(n) Denial of claims

A participating State may deny a claim if a representation or warranty made by the participating financial institution to the participating State at the time that the loan was filed for enrollment or at the time that the claim was submitted was known by the participating financial institution to be false.

(*o*) Subsequent recovery of claim amount

If, subsequent to payment of a claim by the participating State, a participating financial institution recovers from a borrower any amount for which payment of the claim was made, the participating financial institution shall promptly pay to the participating State for deposit into the reserve fund the amount recovered, less any expenses incurred by the institution in collection of such amount.

(p) Participation agreement terms

(1) In general

In connection with the filing of a loan for enrollment in the Program, the participation agreement—

(A) shall require the participating financial institution to obtain an assurance from each borrower that—

(i) the proceeds of the loan will be used for a business purpose;

(ii) the loan will not be used to finance passive real estate ownership; and

(iii) the borrower is not—

(I) an executive officer, director, or principal shareholder of the participating financial institution;

(II) a member of the immediate family of an executive officer, director, or principal shareholder of the participating financial institution; or

(III) a related interest of any such executive officer, director, principal shareholder, or member of the immediate family;

(B) shall require the participating financial institution to provide assurances to the participating State that the loan has not been made in order to place under the protection of the Program prior debt that is not covered under the Program and that is or was owed by the borrower to the participating financial institution or to an affiliate of the participating financial institution;

(C) may provide that if—

(i) a participating financial institution makes a loan to a borrower that is a refinancing of a loan previously made to the borrower by the participating financial institution or an affiliate of the participating financial institution;

(ii) such prior loan was not enrolled in the Program; and

(iii) additional or new financing is extended by the participating financial institution as part of the refinancing,

the participating financial institution may file the loan for enrollment, with the amount to be covered under the Program not to exceed the amount of any additional or new financing; and

(D) may include additional restrictions on the eligibility of loans or borrowers that are not inconsistent with the provisions and purposes of this subchapter.

(2) Definitions

For purposes of this subsection, the terms ''executive officer'', ''director'', ''principal shareholder'', ''immediate family'', and ''related interest'' refer to the same relationship to a participating financial institution as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

(q) Termination clause

In each participation agreement, the participating State shall reserve for itself the ability to terminate its obligation to enroll loans under the Program. Any such termination shall be prospective only, and shall not apply to amounts of loans enrolled under the Program prior to such termination.

(r) Allowable withdrawals from fund

The participation agreement may provide that, if, for any consecutive period of not less than 24 months, the aggregate outstanding balance of all enrolled loans for a participating financial institution is continually less than the outstanding balance in the reserve fund for that participating financial institution, the participating State, in its discretion, may withdraw an amount from the reserve fund to bring the balance in the reserve fund down to the outstanding balance of all such enrolled loans.

(s) Grandfathered provision

(1) Special treatment of premium charges

Notwithstanding subsection (b) or (d) of this section, the participation agreement, if explicitly authorized by a statute enacted by the State before September 23, 1994, may allow a participating financial institution to treat the premium charges paid by the participating financial institution and the borrower into the reserve fund, and interest or income earned on funds in the reserve fund that are deemed to be attributable to such premium charges, as assets of the participating financial institution for accounting purposes, subject to withdrawal by the participating financial institution only—

(A) for the payment of claims approved by the participating State in accordance with this section; and

(B) upon the participating financial institution's withdrawal from authority to make new loans under the Program.

(2) Payment of post-withdrawal claims

After any withdrawal of assets from the reserve fund pursuant to paragraph (1)(B), any future claims filed by the participating financial institution on loans remaining in its capital access program portfolio shall only be paid from funds remaining in the reserve fund

to the extent that, in the aggregate, such claims exceed the sum of the amount of such withdrawn assets, and interest on that amount, imputed at the same rate as income would have accrued had the amount not been withdrawn.

(3) Conditions for terminating special authority

If the Fund determines that the inclusion in a participation agreement of the provisions authorized by this subsection is resulting in the enrollment of loans under the Program that are likely to have been made without assistance provided under this subchapter, the Fund may notify the participating State that henceforth, the Fund will only make reimbursements to the State under section 4747 of this title with respect to a loan if the participation agreement between the participating State and each participating financial institution has been amended to conform with this section, without exercise of the special authority granted by this subsection.

(Pub. L. 103–325, title II, § 255, Sept. 23, 1994, 108 Stat. 2207.)

§ 4746. Reports

(a) Reserve funds report

On or before the last day of each calendar quarter, a participating State shall submit to the Fund a report of contributions to reserve funds made by the participating State during the previous calendar quarter. If the participating State has made contributions to one or more reserve funds during the previous quarter, the report shall—

(1) indicate the total amount of such contributions;

(2) indicate the amount of contributions which is subject to reimbursement, which shall be equal to the total amount of contributions, unless one of the limitations contained in section 4747 of this title is applicable;

(3) if one of the limitations in section 4747 of this title is applicable, provide documentation of the applicability of such limitation for each loan for which the limitation applies; and

(4) include a certification by the participating State that—

(A) the information provided in accordance with paragraphs (1), (2), and (3) is accurate;

(B) funds in an amount meeting the minimum requirements of section 4743(b)(3) of this title continue to be available and legally committed to contributions by the State to reserve funds, less any amount that has been contributed by the State to reserve funds subsequent to the State being approved for participation in the Program;

(C) there has been no unapproved amendment to any participation agreement or the form of participation agreements; and

(D) the participating State is otherwise implementing the Program in accordance with this subchapter and regulations issued pursuant to section 4749 of this title.

(b) Annual data

Not later than March 31 of each year, each participating State shall submit to the Fund annual data indicating the number of borrowers financed under the Program, the total amount of covered loans, and breakdowns by industry type, loan size, annual sales, and number of employees of the borrowers financed.

(c) Form

The reports and data filed pursuant to subsections (a) and (b) of this section shall be in such form as the Fund may require.

(Pub. L. 103–325, title II, § 256, Sept. 23, 1994, 108 Stat. 2212.)

§ 4747. Reimbursement by Fund

(a) Reimbursements

Not later than 30 calendar days after receiving a report filed in compliance with section 4746 of this title, the Fund shall reimburse the participating State in an amount equal to 50 percent of the amount of contributions by the participating State to the reserve funds that are subject to reimbursement by the Fund pursuant to section 4746 of this title and this section. The Fund shall reimburse participating States, as it receives reports pursuant to section 4746(a) of this title, until available funds are expended.

(b) Size of assisted borrower

The Fund shall not provide any reimbursement to a participating State with respect to an enrolled loan made to a borrower that has 500 or more employees at the time that the loan is enrolled in the Program.

(c) Three-year maximum

The amount of reimbursement to be provided by the Fund to a participating State over any 3-year period in connection with loans made to any single borrower or any group of borrowers among which a common enterprise exists shall not exceed $75,000. For purposes of this subsection, ''common enterprise'' shall have the same meaning as in part 32 of title 12 of the Code of Federal Regulations, or any successor to that part.

(d) Loans totaling less than $2,000,000

In connection with a loan in which the covered amount of the loan plus the covered amount of all previous loans enrolled by a participating financial institution does not exceed $2,000,000, the amount of reimbursement by the Fund to the participating State shall not exceed the lesser of—

(1) 75 percent of the sum of the premium charges paid to the reserve fund by the borrower and the participating financial institution; or

(2) 5.25 percent of the covered amount of the loan.

(e) Loans totaling more than $2,000,000

In connection with a loan in which the sum of the covered amounts of all previous loans enrolled by the participating financial institution in the Program equals or exceeds $2,000,000, the amount of reimbursement to be provided by the Fund to the participating State shall not exceed the lesser of—

(1) 50 percent of the sum of the premium charges paid by the borrower and the participating financial institution; or

(2) 3.5 percent of the covered amount of the loan.

(f) Other amounts

In connection with the enrollment of a loan that will cause the aggregate covered amount of all enrolled loans to exceed $2,000,000, the amount of reimbursement by the Fund to the participating State shall be determined—

(1) by applying subsection (d) of this section to the portion of the loan, which when added to the aggregate covered amount of all previously enrolled loans equals $2,000,000; and

(2) by applying subsection (e) of this section to the balance of the loan.

(Pub. L. 103–325, title II, § 257, Sept. 23, 1994, 108 Stat. 2212.)

§ 4748. Reimbursement to Fund

(a) In general

If a participating State withdraws funds from a reserve fund pursuant to terms of the participation agreement permitted by subsection (d) or (r) of section 4745 of this title, such participating State shall, not later than 15 calendar days after such withdrawal, submit to the Fund an amount computed by multiplying the amount withdrawn by the appropriate factor, as determined under subsection (b) of this section.

(b) Factor

The appropriate factor shall be obtained by dividing the total amount of contributions that have been made by the participating State to all reserve funds which were subject to reimbursement—

(1) by 2; and

(2) by the total amount of contributions made by the participating State to all reserve funds, including if applicable, contributions that have been made by the State prior to becoming a participating State if the State continued its own capital access program in accordance with section 4743(b) of this title.

(c) Use of reimbursements

The Fund may use funds reimbursed pursuant to this section to make reimbursements under section 4747 of this title.

(Pub. L. 103–325, title II, § 258, Sept. 23, 1994, 108 Stat. 2213.)

§ 4749. Regulations

The Fund shall promulgate appropriate regulations to implement this subchapter.

(Pub. L. 103–325, title II, § 259, Sept. 23, 1994, 108 Stat. 2214.)

§ 4750. Authorization of appropriations

(a) Amount

There are authorized to be appropriated to the Fund $50,000,000 to carry out this subchapter.

(b) Budgetary treatment

The amount authorized to be appropriated under subsection (a) of this section shall be subject to discretionary spending caps, as provided in section 665[1] of title 2, and therefore shall reduce by an equal amount funds made available for other discretionary spending programs.

(Pub. L. 103–325, title II, § 260, Sept. 23, 1994, 108 Stat. 2214.)

REFERENCES IN TEXT

Section 665 of title 2, referred to in subsec. (b), was repealed by Pub. L. 105–33, title X, § 10118(a), Aug. 5, 1997, 111 Stat. 695.

[1] See References in Text note below.

CHAPTER 48—FINANCIAL INSTITUTIONS REGULATORY IMPROVEMENT

Sec.
4801. Incorporated definitions.
4802. Administrative consideration of burden with new regulations.
4803. Streamlining of regulatory requirements.
4804. Elimination of duplicative filings.
4805. Call report simplification.
4805a. Call report simplification.
4806. Regulatory appeals process, ombudsman, and alternative dispute resolution.
4807. Time limit on agency consideration of completed applications.
4808. Revising regulatory requirements for transfers of all types of assets with recourse.
4809. ''Plain language'' requirement for Federal banking agency rules.

§ 4801. Incorporated definitions

Unless otherwise specifically provided in this chapter, for purposes of this chapter—

(1) the terms ''appropriate Federal banking agency'', ''Federal banking agencies'', ''insured depository institution'', and ''State bank supervisor'' have the same meanings as in section 1813 of this title; and

(2) the term ''insured credit union'' has the same meaning as in section 1752 of this title.

(Pub. L. 103–325, title III, § 301, Sept. 23, 1994, 108 Stat. 2214.)

REFERENCES IN TEXT

This chapter, referred to in text, was in original ''this title'' meaning title III of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2214, which enacted this chapter, sections 633 and 2606 of this title, and section 5329 of Title 31, Money and Finance, amended sections 1, 24, 27, 72, 93, 161, 248, 250, 324, 375a, 375b, 482, 1462a, 1464, 1468, 1813, 1815, 1817, 1819 to 1821, 1823, 1828, 1831f, 1831m, 1831p–1, 1831t, 1842, 1843, 1849, 1865, 1953, 2605, 3201, 3205, 3207, 3351, and 4313 of this title and sections 77c, 78c, 1667c, and 1681g of Title 15, Commerce and Trade, enacted provisions set out as notes under this section, sections 24, 633, 1468, 1820, 1831p–1, and 1831t of this title, and sections 78c and 1667c of Title 15, and amended provisions set out as notes under sections 1825 and 1828 of this title. For complete classification of title III to the Code, see Tables.

USE OF SUBORDINATED DEBT TO PROTECT FINANCIAL SYSTEM AND DEPOSIT FUNDS FROM ''TOO BIG TO FAIL'' INSTITUTIONS

Pub. L. 106–102, title I, § 108, Nov. 12, 1999, 113 Stat. 1361, provided that:

''(a) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall conduct a study of—

''(1) the feasibility and appropriateness of establishing a requirement that, with respect to large insured depository institutions and depository institution holding companies the failure of which could have serious adverse effects on economic conditions or financial stability, such institutions and holding companies maintain some portion of their capital in the form of subordinated debt in order to bring market

forces and market discipline to bear on the operation of, and the assessment of the viability of, such institutions and companies and reduce the risk to economic conditions, financial stability, and any deposit insurance fund;

''(2) if such requirement is feasible and appropriate, the appropriate amount or percentage of capital that should be subordinated debt consistent with such purposes; and

''(3) the manner in which any such requirement could be incorporated into existing capital standards and other issues relating to the transition to such a requirement.

''(b) REPORT.—Before the end of the 18-month period beginning on the date of the enactment of this Act [Nov. 12, 1999], the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall submit a report to the Congress containing the findings and conclusions of the Board and the Secretary in connection with the study required under subsection (a), together with such legislative and administrative proposals as the Board and the Secretary may determine to be appropriate.

''(c) DEFINITIONS.—For purposes of subsection (a), the following definitions shall apply:

''(1) BANK HOLDING COMPANY.—The term 'bank holding company' has the meaning given the term in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841].

''(2) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)].

''(3) SUBORDINATED DEBT.—The term 'subordinated debt' means unsecured debt that—

''(A) has an original weighted average maturity of not less than 5 years;

''(B) is subordinated as to payment of principal and interest to all other indebtedness of the bank, including deposits;

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

''(D) is not held in whole or in part by any affiliate or institution-affiliated party of the insured depository institution or bank holding company.''

STUDY AND REPORT ON ADAPTING EXISTING LEGISLATIVE REQUIREMENTS TO ONLINE BANKING AND LENDING

Pub. L. 106–102, title VII, §729, Nov. 12, 1999, 113 Stat. 1476, provided that:

''(a) STUDY REQUIRED.—The Federal banking agencies shall conduct a study of banking regulations regarding the delivery of financial services, including those regulations that may assume that there will be person-to-person contact during the course of a financial services transaction, and report their recommendations on adapting those existing requirements to online banking and lending.

''(b) REPORT REQUIRED.—Before the end of the 2-year period beginning on the date of the enactment of this Act [Nov. 12, 1999], the Federal banking agencies shall submit a report to the Congress on the findings and conclusions of the agencies with respect to the study required under subsection (a), together with such recommendations for legislative or regulatory action as the agencies may determine to be appropriate.

''(c) DEFINITION.—For purposes of this section, the term 'Federal banking agencies' means each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act [12 U.S.C. 1813(z)]).''

TREASURY REPORT ON REDUCED TAXATION AND VIABILITY OF SMALL BANKS

Pub. L. 105–219, title IV, §403, Aug. 7, 1998, 112 Stat. 935, provided that: ''The Secretary [of the Treasury] shall, not later than 1 year after the date of enactment of this Act [Aug. 7, 1998], submit a report to the Congress containing—

''(1) recommendations for such legislative and administrative action as the Secretary deems appropriate, that would reduce and simplify the tax burden for—

''(A) insured depository institutions having less than $1,000,000,000 in assets; and

''(B) banks having total assets of not less than $1,000,000,000 nor more than $10,000,000,000; and

''(2) any other recommendations that the Secretary deems appropriate that would preserve the viability and growth of small banking institutions in the United States.''

STUDY AND REPORT ON CAPITAL STANDARDS AND THEIR IMPACT ON ECONOMY

Section 328 of Pub. L. 103–325 provided that:

''(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Federal banking agencies, shall conduct a study of the effect that the implementation of risk-based capital standards for depository institutions, including the Basle international capital standards, is having on—

''(1) the safety and soundness of insured depository institutions;

''(2) the availability of credit, particularly to individuals and small businesses; and

''(3) economic growth.

''(b) REPORT.—

''(1) IN GENERAL.—Before the end of the 1-year period beginning on the date of enactment of this Act [Sept. 23, 1994], the Secretary of the Treasury shall submit a report to the Congress on the findings and conclusions of the Secretary with respect to the study conducted under subsection (a).

''(2) RECOMMENDATIONS.—The report shall contain any recommendations with respect to capital standards that the Secretary of the Treasury may determine to be appropriate.''

STUDY ON IMPACT OF PAYMENT OF INTEREST ON RESERVES

Section 329 of Pub. L. 103–325 provided that:

''(a) FEDERAL RESERVE STUDY.—Not later than 180 days after the date of enactment of this Act [Sept. 23, 1994], the Board of Governors of the Federal Reserve System, in consultation with the Federal Deposit Insurance Corporation and the National Credit Union Administration Board, shall conduct a study and report to the Congress on—

''(1) the necessity, for monetary policy purposes, of continuing to require insured depository institutions to maintain sterile reserves;

''(2) the appropriateness of paying a market rate of interest to insured depository institutions on sterile reserves or, in the alternative, providing for payment of such interest into the appropriate deposit insurance fund;

''(3) the monetary impact that the failure to pay interest on sterile reserves has had on insured depository institutions, including an estimate of the total dollar amount of interest and the potential income lost by insured depository institutions; and

''(4) the impact that the failure to pay interest on sterile reserves has had on the ability of the banking industry to compete with nonbanking providers of financial services and with foreign banks.

''(b) BUDGETARY IMPACT STUDY.—Not later than 180 days after the date of enactment of this Act [Sept. 23, 1994], the Director of the Office of Management and Budget and the Director of the Congressional Budget Office, in consultation with the Committees on the Budget of the Senate and the House of Representatives, shall jointly conduct a study and report to the Congress on the budgetary impact of—

''(1) paying a market rate of interest to insured depository institutions on sterile reserves; and

''(2) paying such interest into the respective deposit insurance funds.''

STUDY AND REPORT ON CONSUMER CREDIT SYSTEM

Section 330 of Pub. L. 103–325 provided that:

''(a) STUDY.—The Secretary of the Treasury, in consultation with the Board of Governors of the Federal Reserve System, the Administrator of the Small Business Administration, the Secretary of Housing and Urban Development, and the other Federal banking agencies, shall conduct a study of the process, including any Federal laws, by which credit is made available for consumers and small businesses in order to identify procedures, including any Federal laws, which have the effect of—

''(1) reducing the amount of credit available for such purposes or the number of persons eligible for such credit;

''(2) increasing the level of consumer inconvenience, cost, and time delays in connection with the extension of consumer and small business credit without corresponding benefit with respect to the protection of consumers or small businesses or the safety and soundness of insured depository institutions; and

''(3) increasing costs and burdens on insured depository institutions, insured credit unions, and other lenders without corresponding benefit with respect to the protection of consumers or small business concerns or to the safety and soundness of insured institutions.

''(b) REPORT.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Sept. 23, 1994], the Secretary of the Treasury shall submit a report to the Congress on the findings and conclusions of the Secretary with respect to the study conducted under subsection (a).

''(2) RECOMMENDATIONS.—The report required by paragraph (1) shall contain any recommendations for administrative action or statutory changes that the Secretary of the Treasury may determine to be appropriate.

''(c) PUBLIC PARTICIPATION.—In conducting the study required by subsection (a), comments shall be solicited from consumers, representatives of consumers, insured depository institutions, insured credit unions, other lenders, and other interested parties.''

STUDY ON CHECK-RELATED FRAUD

Section 333 of Pub. L. 103–325 provided that:

''(a) STUDY.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board') shall conduct a study on the advisability of extending the 1-business-day period specified in section 603(b)(1) of the Expedited Funds Availability Act [12 U.S.C. 4002(b)(1)], regarding availability of funds deposited by local checks, to 2 business days.

''(b) CONSIDERATIONS.—In conducting the study under subsection (a), the Board shall consider—

''(1) whether there is a pattern of significant increases in check-related losses at depository institutions attributable to the provisions of the Expedited Funds Availability Act [12 U.S.C. 4001 et seq.]; and

''(2) whether extension of the time period referred to in subsection (a) is necessary to diminish the volume of any such check-related losses.

''(c) REPORT TO THE CONGRESS.—Not later than 2 years after the date of enactment of this Act [Sept. 23, 1994], the Board shall submit a report to the Congress concerning the results of the study conducted under this section and including any recommendations for legislative action.''

FEASIBILITY STUDY OF DATA BANK

Section 341 of Pub. L. 103–325 provided that:

''(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act [Sept. 23, 1994], the Federal Financial Institutions Examination Council shall—

''(1) study the feasibility, including the costs and benefits to insured depository institutions, of establishing and maintaining a data bank for reports submitted by any depository institution to a Federal banking agency; and

''(2) report the results of such study to the Congress.

''(b) ADDITIONAL FACTORS.—The study required under subsection (a) shall consider the feasibility of—

''(1) permitting depository institutions to file reports directly with the data bank; and

''(2) permitting Federal banking agencies, State bank supervisors, and the public to obtain access to any appropriate report on file with the data bank which such agency or supervisor or the public is otherwise authorized to receive.''

TIMELY COMPLETION OF CRA REVIEW

Section 342 of Pub. L. 103–325 provided that: ''The comprehensive regulatory review of the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.] that, as of the date of enactment of this Act [Sept. 23, 1994], is being conducted by the Federal banking agencies, shall be completed at the earliest practicable time.''

WAIVER OF RIGHT OF RESCISSION FOR CERTAIN REFINANCING TRANSACTIONS

Section 344 of Pub. L. 103–325 provided that: ''Not later than 6 months after the date of enactment of this Act [Sept. 23, 1994], the Board of Governors of the Federal Reserve System, in consultation with the consumer advisory council to such Board, consumers, representatives of consumers, lenders, and other interested parties, shall submit recommendations to the Congress regarding whether a waiver or modification, at the option of a consumer, of the right of rescission under section 125 of the Truth in Lending Act [15 U.S.C. 1635] with respect to transactions which constitute a refinancing or consolidation (with no new advances) of the principal balance then due, and any accrued and unpaid finance charges of an existing extension of credit by a different creditor secured by an interest in the same property, would benefit consumers.''

§ 4802. Administrative consideration of burden with new regulations

(a) Agency considerations

In determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency shall consider, consistent with the principles of safety and soundness and the public interest—

(1) any administrative burdens that such regulations would place on depository institutions, including small depository institutions and customers of depository institutions; and

(2) the benefits of such regulations.

(b) Adequate transition period for new regulations

(1) In general

New regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form, unless—

(A) the agency determines, for good cause published with the regulation, that the regulation should become effective before such time;

(B) the regulation is issued by the Board of Governors of the Federal Reserve System in connection with the implementation of monetary policy; or

(C) the regulation is required to take effect on a date other than the date determined under this paragraph pursuant to any other Act of Congress.

(2) Early compliance

Any person who is subject to a regulation described in paragraph (1) may comply with the regulation before the effective date of the regulation.

(Pub. L. 103–325, title III, § 302, Sept. 23, 1994, 108 Stat. 2214.)

§ 4803. Streamlining of regulatory requirements

(a) Review of regulations; regulatory uniformity

During the 2-year period beginning on September 23, 1994, each Federal banking agency shall, consistent with the principles of safety and soundness, statutory law and policy, and the public interest—

(1) conduct a review of the regulations and written policies of that agency to—

(A) streamline and modify those regulations and policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability;

(B) remove inconsistencies and outmoded and duplicative requirements; and

(C) with respect to regulations prescribed pursuant to section 1828(*o*) of this title, consider the impact that such standards have on the availability of credit for small business, residential, and agricultural purposes, and on low- and moderate-income communities;

(2) review the extent to which existing regulations require insured depository institutions and insured credit unions to produce unnecessary internal written policies and eliminate such requirements, where appropriate;

(3) work jointly with the other Federal banking agencies to make uniform all regulations and guidelines implementing common statutory or supervisory policies; and

(4) submit a joint report to the Congress at the end of such 2-year period detailing the progress of the agencies in carrying out this subsection.

(b) Review of disclosures

The Board of Governors of the Federal Reserve System, in consultation with the consumer advisory council to such Board, consumers, representatives of consumers, lenders, and other interested persons, shall—

(1) review the regulations and written policies of the Board with respect to disclosures pursuant to the Truth in Lending Act [15 U.S.C. 1601 et seq.] with regard to variable-rate mortgages in order to simplify the disclosures, if necessary, and make the disclosures more meaningful and comprehensible to consumers;

(2) implement any necessary regulatory changes, consistent with applicable law; and

(3) not later than 2 years after completion of the review required by paragraph (1), submit a report to the Congress on the results of its actions taken in accordance with this subsection and any recommended legislative actions.

(Pub. L. 103–325, title III, § 303, Sept. 23, 1994, 108 Stat. 2215; Pub. L. 104–208, div. A, title II, § 2242, Sept. 30, 1996, 110 Stat. 3009–418.)

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (b)(1), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, as amended, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

AMENDMENTS

1996—Subsec. (a)(2) to (4). Pub. L. 104–208 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

UPDATE ON REVIEW OF REGULATIONS AND PAPERWORK REDUCTIONS

Pub. L. 105–219, title IV, § 402, Aug. 7, 1998, 112 Stat. 935, provided that: ''Not later than 1 year after the date of enactment of this Act [Aug. 7, 1998], the Federal banking agencies [see 12 U.S.C. 1813(z)] shall submit a report to the Congress detailing their progress in carrying out section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 [12 U.S.C. 4803(a)], since their submission of the report dated September 23, 1996, as required by section 303(a)(4) of that Act.''

§ 4804. Elimination of duplicative filings

The Federal banking agencies shall work jointly—

(1) to eliminate, to the extent practicable, duplicative or otherwise unnecessary requests for information in connection with applications or notices to the agencies; and

(2) to harmonize, to the extent practicable, any inconsistent publication and public notice requirements.

(Pub. L. 103–325, title III, § 304, Sept. 23, 1994, 108 Stat. 2215.)

§ 4805. Call report simplification

(a) Modernization of call report filing and disclosure system

In order to reduce the administrative requirements pertaining to bank reports of condition, savings association financial reports, and bank holding company consolidated and parent-only financial statements, and to improve the timeliness of such reports and statements, the Federal banking agencies shall—

(1) work jointly to develop a system under which—

(A) insured depository institutions and their affiliates may file such reports and statements electronically; and

(B) the Federal banking agencies may make such reports and statements available to the public electronically; and

(2) not later than 1 year after September 23, 1994, report to the Congress and make recommendations for legislation that would enhance efficiency for filers and users of such reports and statements.

(b) Uniform reports and simplification of instructions

The Federal banking agencies shall, consistent with the principles of safety and soundness, work jointly—

(1) to adopt a single form for the filing of core information required to be submitted

under Federal law to all such agencies in the reports and statements referred to in subsection (a) of this section; and

(2) to simplify instructions accompanying such reports and statements and to provide an index to the instructions that is adequate to meet the needs of both filers and users.

(c) Review of call report schedule

Each Federal banking agency shall—

(1) review the information required by schedules supplementing the core information referred to in subsection (b) of this section; and

(2) eliminate requirements that are not warranted for reasons of safety and soundness or other public purposes.

(Pub. L. 103–325, title III, § 307, Sept. 23, 1994, 108 Stat. 2217.)

CODIFICATION

Provisions similar to this section are contained in section 4805a of this title.

§ 4805a. Call report simplification

(a) Modernization of call report filing and disclosure system

In order to reduce the administrative requirements pertaining to bank reports of condition, savings association financial reports, and bank holding company consolidated and parent-only financial statements, and to improve the timeliness of such reports and statements, the Federal banking agencies shall—

(1) work jointly to develop a system under which—

(A) insured depository institutions and their affiliates may file such reports and statements electronically; and

(B) the Federal banking agencies may make such reports and statements available to the public electronically; and

(2) not later than 1 year after December 27, 2000, report to the Congress and make recommendations for legislation that would enhance efficiency for filers and users of such reports and statements.

(b) Uniform reports and simplification of instructions

The Federal banking agencies shall, consistent with the principles of safety and soundness, work jointly—

(1) to adopt a single form for the filing of core information required to be submitted under Federal law to all such agencies in the reports and statements referred to in subsection (a) of this section; and

(2) to simplify instructions accompanying such reports and statements and to provide an index to the instructions that is adequate to meet the needs of both filers and users.

(c) Review of call report schedule

Each Federal banking agency shall—

(1) review the information required by schedules supplementing the core information referred to in subsection (b) of this section; and

(2) eliminate requirements that are not warranted for reasons of safety and soundness or other public purposes.

(d) Definition

In this section, the term ''Federal banking agency'' has the same meaning as in section 1813 of this title.

(Pub. L. 106–569, title XII, § 1211, Dec. 27, 2000, 114 Stat. 3035.)

CODIFICATION

Section was enacted as part of the Financial Regulatory Relief and Economic Efficiency Act of 2000, and also as part of the American Homeownership and Economic Opportunity Act of 2000, and not as part of title III of Pub. L. 103–325 which comprises this chapter.

Provisions similar to this section are contained in section 4805 of this title.

§ 4806. Regulatory appeals process, ombudsman, and alternative dispute resolution

(a) In general

Not later than 180 days after September 23, 1994, each appropriate Federal banking agency and the National Credit Union Administration Board shall establish an independent intra-agency appellate process. The process shall be available to review material supervisory determinations made at insured depository institutions or at insured credit unions that the agency supervises.

(b) Review process

In establishing the independent appellate process under subsection (a) of this section, each agency shall ensure that—

(1) any appeal of a material supervisory determination by an insured depository institution or insured credit union is heard and decided expeditiously; and

(2) appropriate safeguards exist for protecting the appellant from retaliation by agency examiners.

(c) Comment period

Not later than 90 days after September 23, 1994, each appropriate Federal banking agency and the National Credit Union Administration Board shall provide public notice and opportunity for comment on proposed guidelines for the establishment of an appellate process under this section.

(d) Agency ombudsman

(1) Establishment required

Not later than 180 days after September 23, 1994, each Federal banking agency and the National Credit Union Administration Board shall appoint an ombudsman.

(2) Duties of ombudsman

The ombudsman appointed in accordance with paragraph (1) for any agency shall—

(A) act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and

(B) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

(e) Alternative dispute resolution pilot program

(1) In general

Not later than 18 months after September 23, 1994, each Federal banking agency and the Na-

tional Credit Union Administration Board shall develop and implement a pilot program for using alternative means of dispute resolution of issues in controversy (hereafter in this section referred to as the ''alternative dispute resolution program'') that is consistent with the requirements of subchapter IV of chapter 5 of title 5 if the parties to the dispute, including the agency, agree to such proceeding.

(2) Standards

An alternative dispute resolution pilot program developed under paragraph (1) shall—

(A) be fair to all interested parties to a dispute;

(B) resolve disputes expeditiously; and

(C) be less costly than traditional means of dispute resolution, including litigation.

(3) Independent evaluation

Not later than 18 months after the date on which a pilot program is implemented under paragraph (1), the Administrative Conference of the United States shall submit to the Congress a report containing—

(A) an evaluation of that pilot program;

(B) the extent to which the pilot programs meet the standards established under paragraph (2);

(C) the extent to which parties to disputes were offered alternative means of dispute resolution and the frequency with which the parties, including the agencies, accepted or declined to use such means; and

(D) any recommendations of the Conference to improve the alternative dispute resolution procedures of the Federal banking agencies and the National Credit Union Administration Board.

(4) Implementation of program

At any time after completion of the evaluation under paragraph (3)(A), any Federal banking agency and the National Credit Union Administration Board may implement an alternative dispute resolution program throughout the agency, taking into account the results of that evaluation.

(5) Coordination with existing agency ADR programs

(A) Evaluation required

If any Federal banking agency or the National Credit Union Administration maintains an alternative dispute resolution program as of September 23, 1994, under any other provision of law, the Administrative Conference of the United States shall include such program in the evaluation conducted under paragraph (3)(A).

(B) Multiple ADR programs

No provision of this section shall be construed as precluding any Federal banking agency or the National Credit Union Administration Board from establishing more than 1 alternative means of dispute resolution.

(f) Definitions

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

(1) Material supervisory determinations

The term ''material supervisory determinations''—

(A) includes determinations relating to—

(i) examination ratings;

(ii) the adequacy of loan loss reserve provisions; and

(iii) loan classifications on loans that are significant to an institution; and

(B) does not include a determination by a Federal banking agency or the National Credit Union Administration Board to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 1831*o* of this title or section 1790a of this title, as appropriate.

(2) Independent appellate process

The term ''independent appellate process'' means a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.

(3) Alternative means of dispute resolution

The term ''alternative means of dispute resolution'' has the meaning given to such term in section 571 of title 5.

(4) Issues in controversy

The term ''issues in controversy'' means—

(A) any final agency decision involving any claim against an insured depository institution or insured credit union for which the agency has been appointed conservator or receiver or for which a liquidating agent has been appointed, as the case may be;

(B) any final action taken by an agency in the agency's capacity as conservator or receiver for an insured depository institution or by the liquidating agent appointed for an insured credit union; and

(C) any other issue for which the appropriate Federal banking agency or the National Credit Union Administration Board determines that alternative means of dispute resolution would be appropriate.

(g) Effect on other authority

Nothing in this section shall affect the authority of an appropriate Federal banking agency or the National Credit Union Administration Board to take enforcement or supervisory action.

(Pub. L. 103–325, title III, § 309, Sept. 23, 1994, 108 Stat. 2218.)

TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

For termination of Administrative Conference of United States, see provision of title IV of Pub. L. 104–52, set out as a note preceding section 591 of Title 5, Government Organization and Employees.

§ 4807. Time limit on agency consideration of completed applications

(a) In general

Each Federal banking agency shall take final action on any application to the agency before the end of the 1-year period beginning on the date on which a completed application is received by the agency.

(b) Waiver by applicant authorized

Any person submitting an application to a Federal banking agency may waive the applica-

bility of subsection (a) of this section with respect to such application at any time.

(Pub. L. 103–325, title III, § 343, Sept. 23, 1994, 108 Stat. 2238.)

§ 4808. Revising regulatory requirements for transfers of all types of assets with recourse

(a) Review and revision of regulations

(1) In general

During the 180-day period beginning on September 23, 1994, each appropriate Federal banking agency shall, consistent with the principles of safety and soundness and the public interest—

(A) review the agency's regulations and written policies relating to transfers of assets with recourse by insured depository institutions; and

(B) in consultation with the other Federal banking agencies, promulgate regulations that better reflect the exposure of an insured depository institution to credit risk from transfers of assets with recourse.

(2) Regulations required

Before the end of the 180-day period beginning on September 23, 1994, each appropriate Federal banking agency shall prescribe the regulations developed pursuant to paragraph (1)(B).

(b) Regulations required

(1) In general

After the end of the 180-day period beginning on September 23, 1994, the amount of risk-based capital required to be maintained, under regulations prescribed by the appropriate Federal banking agency, by any insured depository institution with respect to assets transferred with recourse by such institution may not exceed the maximum amount of recourse for which such institution is contractually liable under the recourse agreement.

(2) Exception for safety and soundness

The appropriate Federal banking agency may require any insured depository institution to maintain risk-based capital in an amount greater than the amount determined under paragraph (1), if the agency determines, by regulation or order, that such higher amount is necessary for safety and soundness reasons.

(c) Coordination with section 1835(b) of this title

This section shall not be construed as superseding the applicability of section 1835(b) of this title.

(d) Definitions

For purposes of this section, the terms ''appropriate Federal banking agency'', ''Federal banking agency'', and ''insured depository institution'' have the same meanings as in section 1813 of this title.

(Pub. L. 103–325, title III, § 350, Sept. 23, 1994, 108 Stat. 2242.)

§ 4809. "Plain language" requirement for Federal banking agency rules

(a) In general

Each Federal banking agency shall use plain language in all proposed and final rulemakings published by the agency in the Federal Register after January 1, 2000.

(b) Report

Not later than March 1, 2001, each Federal banking agency shall submit to the Congress a report that describes how the agency has complied with subsection (a) of this section.

(c) Definition

For purposes of this section, the term ''Federal banking agency'' has the meaning given that term in section 1813 of this title.

(Pub. L. 106–102, title VII, § 722, Nov. 12, 1999, 113 Stat. 1471.)

CODIFICATION

Section was enacted as part of the Gramm-Leach-Bliley Act, and not as part of title III of Pub. L. 103–322 which comprises this chapter.

CHAPTER 49—HOMEOWNERS PROTECTION

Sec.
4901. Definitions.
4902. Termination of private mortgage insurance.
4903. Disclosure requirements.
4904. Notification upon cancellation or termination.
4905. Disclosure requirements for lender paid mortgage insurance.
4906. Fees for disclosures.
4907. Civil liability.
4908. Effect on other laws and agreements.
4909. Enforcement.
4910. Construction.

§ 4901. Definitions

In this chapter, the following definitions shall apply:

(1) Adjustable rate mortgage

The term ''adjustable rate mortgage'' means a residential mortgage that has an interest rate that is subject to change. A residential mortgage that: (A) does not fully amortize over the term of the obligation; and (B) contains a conditional right to refinance or modify the unamortized principal at the maturity date of the term, shall be considered to be an adjustable rate mortgage for purposes of this chapter.

(2) Cancellation date

The term ''cancellation date'' means—

(A) with respect to a fixed rate mortgage, at the option of the mortgagor, the date on which the principal balance of the mortgage—

(i) based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 80 percent of the original value of the property securing the loan; or

(ii) based solely on actual payments, reaches 80 percent of the original value of the property securing the loan; and

(B) with respect to an adjustable rate mortgage, at the option of the mortgagor, the date on which the principal balance of the mortgage—

(i) based solely on the amortization schedule then in effect for that mortgage,

and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 80 percent of the original value of the property securing the loan; or

(ii) based solely on actual payments, first reaches 80 percent of the original value of the property securing the loan.

(3) Fixed rate mortgage

The term ''fixed rate mortgage'' means a residential mortgage that has an interest rate that is not subject to change.

(4) Good payment history

The term ''good payment history'' means, with respect to a mortgagor, that the mortgagor has not—

(A) made a mortgage payment that was 60 days or longer past due during the 12-month period beginning 24 months before the later of (i) the date on which the mortgage reaches the cancellation date, or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title; or

(B) made a mortgage payment that was 30 days or longer past due during the 12-month period preceding the later of (i) the date on which the mortgage reaches the cancellation date, or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title.

(5) Initial amortization schedule

The term ''initial amortization schedule'' means a schedule established at the time at which a residential mortgage transaction is consummated with respect to a fixed rate mortgage, showing—

(A) the amount of principal and interest that is due at regular intervals to retire the principal balance and accrued interest over the amortization period of the loan; and

(B) the unpaid principal balance of the loan after each scheduled payment is made.

(6) Amortization schedule then in effect

The term ''amortization schedule then in effect'' means, with respect to an adjustable rate mortgage, a schedule established at the time at which the residential mortgage transaction is consummated or, if such schedule has been changed or recalculated, is the most recent schedule under the terms of the note or mortgage, which shows—

(A) the amount of principal and interest that is due at regular intervals to retire the principal balance and accrued interest over the remaining amortization period of the loan; and

(B) the unpaid balance of the loan after each such scheduled payment is made.

(7) Midpoint of the amortization period

The term ''midpoint of the amortization period'' means, with respect to a residential mortgage transaction, the point in time that is halfway through the period that begins upon the first day of the amortization period established at the time a residential mortgage transaction is consummated and ends upon the completion of the entire period over which the mortgage is scheduled to be amortized.

(8) Mortgage insurance

The term ''mortgage insurance'' means insurance, including any mortgage guaranty insurance, against the nonpayment of, or default on, an individual mortgage or loan involved in a residential mortgage transaction.

(9) Mortgage insurer

The term ''mortgage insurer'' means a provider of private mortgage insurance, as described in this chapter, that is authorized to transact such business in the State in which the provider is transacting such business.

(10) Mortgagee

The term ''mortgagee'' means the holder of a residential mortgage at the time at which that mortgage transaction is consummated.

(11) Mortgagor

The term ''mortgagor'' means the original borrower under a residential mortgage or his or her successors or assignees.

(12) Original value

The term ''original value'', with respect to a residential mortgage transaction, means the lesser of the sales price of the property securing the mortgage, as reflected in the contract, or the appraised value at the time at which the subject residential mortgage transaction was consummated. In the case of a residential mortgage transaction for refinancing the principal residence of the mortgagor, such term means only the appraised value relied upon by the mortgagee to approve the refinance transaction.

(13) Private mortgage insurance

The term ''private mortgage insurance'' means mortgage insurance other than mortgage insurance made available under the National Housing Act [12 U.S.C. 1701 et seq.], title 38, or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

(14) Residential mortgage

The term ''residential mortgage'' means a mortgage, loan, or other evidence of a security interest created with respect to a single-family dwelling that is the principal residence of the mortgagor.

(15) Residential mortgage transaction

The term ''residential mortgage transaction'' means a transaction consummated on or after the date that is 1 year after July 29, 1998, in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against a single-family dwelling that is the principal residence of the mortgagor to finance the acquisition, initial construction, or refinancing of that dwelling.

(16) Servicer

The term ''servicer'' has the same meaning as in section 2605(i)(2) of this title, with respect to a residential mortgage.

(17) Single-family dwelling

The term ''single-family dwelling'' means a residence consisting of 1 family dwelling unit.

(18) Termination date

The term ''termination date'' means—

(A) with respect to a fixed rate mortgage, the date on which the principal balance of the mortgage, based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the original value of the property securing the loan; and

(B) with respect to an adjustable rate mortgage, the date on which the principal balance of the mortgage, based solely on the amortization schedule then in effect for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the original value of the property securing the loan.

(Pub. L. 105–216, §2, July 29, 1998, 112 Stat. 897; Pub. L. 106–569, title IV, §§402(a)(1), (b), 405(a), 406(b)–(d), Dec. 27, 2000, 114 Stat. 2956, 2958, 2959.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 105–216, July 29, 1998, 112 Stat. 897, known as the Homeowners Protection Act of 1998. For complete classification of this Act to the Code, see Short Title note below and Tables.

The National Housing Act, referred to in par. (13), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in par. (13), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

AMENDMENTS

2000—Par. (1). Pub. L. 106–569, §402(b), inserted at end ''A residential mortgage that: (A) does not fully amortize over the term of the obligation; and (B) contains a conditional right to refinance or modify the unamortized principal at the maturity date of the term, shall be considered to be an adjustable rate mortgage for purposes of this chapter.''

Par. (2)(B)(i). Pub. L. 106–569, §402(a)(1)(A), substituted ''the amortization schedule then in effect'' for ''amortization schedules''.

Par. (4)(A). Pub. L. 106–569, §405(a)(1), inserted ''the later of (i)'' before ''the date on which the mortgage'' and '', or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title'' before the semicolon.

Par. (4)(B). Pub. L. 106–569, §405(a)(2), inserted ''the later of (i)'' before ''the date on which the mortgage'' and '', or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title'' before period at end.

Par. (6). Pub. L. 106–569, §402(a)(1)(D), added par. (6). Former par. (6) redesignated (8).

Par. (7). Pub. L. 106–569, §406(b), added par. (7). Former par. (7) redesignated (9).

Pars. (8) to (11). Pub. L. 106–569, §402(a)(1)(C), redesignated pars. (6) to (9) as (8) to (11), respectively. Former pars. (10) and (11) redesignated (12) and (13), respectively.

Par. (12). Pub. L. 106–569, §406(c), inserted ''transaction'' after ''a residential mortgage'' and inserted at end ''In the case of a residential mortgage transaction for refinancing the principal residence of the mortgagor, such term means only the appraised value relied upon by the mortgagee to approve the refinance transaction.''

Pub. L. 106–569, §402(a)(1)(C), redesignated par. (10) as (12). Former par. (12) redesignated (14).

Par. (13). Pub. L. 106–569, §402(a)(1)(C), redesignated par. (11) as (13). Former par. (13) redesignated (15).

Par. (14). Pub. L. 106–569, §406(d)(1), substituted ''principal residence of the mortgagor'' for ''primary residence of the mortgagor''.

Pub. L. 106–569, §402(a)(1)(C), redesignated par. (12) as (14). Former par. (14) redesignated (16).

Par. (15). Pub. L. 106–569, §406(d)(2), substituted ''principal residence of the mortgagor'' for ''primary residence of the mortgagor''.

Pub. L. 106–569, §402(a)(1)(C), redesignated par. (13) as (15). Former par. (15) redesignated (17).

Par. (16). Pub. L. 106–569, §402(a)(1)(C), redesignated par. (14) as (16). Former par. (16) redesignated (18).

Par. (16)(B). Pub. L. 106–569, §402(a)(1)(B), substituted ''the amortization schedule then in effect'' for ''amortization schedules''.

Pars. (17), (18). Pub. L. 106–569, §402(a)(1)(C), redesignated pars. (15) and (16) as (17) and (18), respectively.

EFFECTIVE DATE

Pub. L. 105–216, §13, July 29, 1998, 112 Stat. 908, provided that: ''This Act [enacting this chapter and amending section 1088 of Title 20, Education], other than section 14 [enacting provisions set out as notes under sections 1441a and 1831q of this title and amending provisions set out as a note under section 1831q of this title], shall become effective 1 year after the date of enactment of this Act [July 29, 1998].''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–569, title IV, §401, Dec. 27, 2000, 114 Stat. 2956, provided that: ''This title [amending this section and sections 4902, 4903, and 4905 of this title] may be cited as the 'Private Mortgage Insurance Technical Corrections and Clarification Act'.''

SHORT TITLE

Pub. L. 105–216, §1(a), July 29, 1998, 112 Stat. 897, provided that: ''This Act [enacting this chapter, amending section 1088 of Title 20, Education, enacting provisions set out as notes under sections 1441a and 1831q of this title, and amending provisions set out as a note under section 1831q of this title] may be cited as the 'Homeowners Protection Act of 1998'.''

§ 4902. Termination of private mortgage insurance

(a) Borrower cancellation

A requirement for private mortgage insurance in connection with a residential mortgage transaction shall be canceled on the cancellation date or any later date that the mortgagor fulfills all of the requirements under paragraphs (1) through (4), if the mortgagor—

(1) submits a request in writing to the servicer that cancellation be initiated;

(2) has a good payment history with respect to the residential mortgage;

(3) is current on the payments required by the terms of the residential mortgage transaction; and

(4) has satisfied any requirement of the holder of the mortgage (as of the date of a request under paragraph (1)) for—

(A) evidence (of a type established in advance and made known to the mortgagor by the servicer promptly upon receipt of a request under paragraph (1)) that the value of the property securing the mortgage has not

declined below the original value of the property; and

(B) certification that the equity of the mortgagor in the residence securing the mortgage is unencumbered by a subordinate lien.

(b) Automatic termination

A requirement for private mortgage insurance in connection with a residential mortgage transaction shall terminate with respect to payments for that mortgage insurance made by the mortgagor—

(1) on the termination date if, on that date, the mortgagor is current on the payments required by the terms of the residential mortgage transaction; or

(2) if the mortgagor is not current on the termination date, on the first day of the first month beginning after the date that the mortgagor becomes current on the payments required by the terms of the residential mortgage transaction.

(c) Final termination

If a requirement for private mortgage insurance is not otherwise canceled or terminated in accordance with subsection (a) or (b) of this section, in no case may such a requirement be imposed on residential mortgage transactions beyond the first day of the month immediately following the date that is the midpoint of the amortization period of the loan if the mortgagor is current on the payments required by the terms of the mortgage.

(d) Treatment of loan modifications

If a mortgagor and mortgagee (or holder of the mortgage) agree to a modification of the terms or conditions of a loan pursuant to a residential mortgage transaction, the cancellation date, termination date, or final termination shall be recalculated to reflect the modified terms and conditions of such loan.

(e) No further payments

No payments or premiums may be required from the mortgagor in connection with a private mortgage insurance requirement terminated or canceled under this section—

(1) in the case of cancellation under subsection (a) of this section, more than 30 days after the later of—

(A) the date on which a request under subsection (a)(1) of this section is received; or

(B) the date on which the mortgagor satisfies any evidence and certification requirements under subsection (a)(4) of this section;

(2) in the case of termination under subsection (b) of this section, more than 30 days after the termination date or the date referred to in subsection (b)(2) of this section, as applicable; and

(3) in the case of termination under subsection (c) of this section, more than 30 days after the final termination date established under that subsection.

(f) Return of unearned premiums

(1) In general

Not later than 45 days after the termination or cancellation of a private mortgage insurance requirement under this section, all unearned premiums for private mortgage insurance shall be returned to the mortgagor by the servicer.

(2) Transfer of funds to servicer

Not later than 30 days after notification by the servicer of termination or cancellation of private mortgage insurance under this chapter with respect to a mortgagor, a mortgage insurer that is in possession of any unearned premiums of that mortgagor shall transfer to the servicer of the subject mortgage an amount equal to the amount of the unearned premiums for repayment in accordance with paragraph (1).

(g) Exceptions for high risk loans

(1) In general

The termination and cancellation provisions in subsections (a) and (b) of this section do not apply to any residential mortgage transaction that, at the time at which the residential mortgage transaction is consummated, has high risks associated with the extension of the loan—

(A) as determined in accordance with guidelines published by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, in the case of a mortgage loan with an original principal balance that does not exceed the applicable annual conforming loan limit for the secondary market established pursuant to section 1454(a)(2) of this title, so as to require the imposition or continuation of a private mortgage insurance requirement beyond the terms specified in subsection (a) or (b) of this section; or

(B) as determined by the mortgagee in the case of any other mortgage, except that termination shall occur—

(i) with respect to a fixed rate mortgage, on the date on which the principal balance of the mortgage, based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 77 percent of the original value of the property securing the loan; and

(ii) with respect to an adjustable rate mortgage, on the date on which the principal balance of the mortgage, based solely on the amortization schedule then in effect for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 77 percent of the original value of the property securing the loan.

(2) Termination at midpoint

A private mortgage insurance requirement in connection with a residential mortgage transaction described in paragraph (1) shall terminate in accordance with subsection (c) of this section.

(3) Rule of construction

Nothing in this subsection may be construed to require a residential mortgage or residential mortgage transaction described in para-

graph (1)(A) to be purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(4) GAO report

Not later than 2 years after July 29, 1998, the Comptroller General of the United States shall submit to the Congress a report describing the volume and characteristics of residential mortgages and residential mortgage transactions that, pursuant to paragraph (1) of this subsection, are exempt from the application of subsections (a) and (b) of this section. The report shall—

(A) determine the number or volume of such mortgages and transactions compared to residential mortgages and residential mortgage transactions that are not classified as high-risk for purposes of paragraph (1); and

(B) identify the characteristics of such mortgages and transactions that result in their classification (for purposes of paragraph (1)) as having high risks associated with the extension of the loan and describe such characteristics, including—

(i) the income levels and races of the mortgagors involved;

(ii) the amount of the downpayments involved and the downpayments expressed as percentages of the acquisition costs of the properties involved;

(iii) the types and locations of the properties involved;

(iv) the mortgage principal amounts; and

(v) any other characteristics of such mortgages and transactions that may contribute to their classification as high risk for purposes of paragraph (1), including whether such mortgages are purchase-money mortgages or refinancings and whether and to what extent such loans are low-documentation loans.

(h) Accrued obligation for premium payments

The cancellation or termination under this section of the private mortgage insurance of a mortgagor shall not affect the rights of any mortgagee, servicer, or mortgage insurer to enforce any obligation of such mortgagor for premium payments accrued prior to the date on which such cancellation or termination occurred.

(Pub. L. 105–216, §3, July 29, 1998, 112 Stat. 899; Pub. L. 106–569, title IV, §§402(a)(2), (c)(1), 403(a), 404, 405(b), (c), Dec. 27, 2000, 114 Stat. 2956–2958.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–569, §404(1)(A), inserted ''or any later date that the mortgagor fulfills all of the requirements under paragraphs (1) through (4)'' after ''cancellation date'' in introductory provisions.

Subsec. (a)(3), (4). Pub. L. 106–569, §404(1)(B)–(D), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(2). Pub. L. 106–569, §405(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''on the date after the termination date on which the mortgagor becomes current on the payments required by the terms of the residential mortgage transaction.''

Subsec. (c). Pub. L. 106–569, §403(a)(1), inserted ''on residential mortgage transactions'' after ''requirement be imposed''.

Subsec. (d). Pub. L. 106–569, §402(c)(1)(B), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 106–569, §402(c)(1)(A), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1)(B). Pub. L. 106–569, §404(2), substituted ''subsection (a)(4) of this section'' for ''subsection (a)(3) of this section''.

Subsec. (f). Pub. L. 106–569, §402(c)(1)(A), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1)(B)(ii). Pub. L. 106–569, §402(a)(2), substituted ''the amortization schedule then in effect'' for ''amortization schedules''.

Subsec. (g). Pub. L. 106–569, §402(c)(1)(A), redesignated subsec. (f) as (g).

Subsec. (g)(1). Pub. L. 106–569, §403(a)(2)(A), struck out ''mortgage or'' after ''do not apply to any residential'' in introductory provisions.

Subsec. (g)(2). Pub. L. 106–569, §403(a)(2)(B), struck out ''mortgage or'' after ''in connection with a residential''.

Subsec. (g)(3). Pub. L. 106–569, §403(a)(2)(C), substituted ''residential mortgage or residential'' for ''mortgage or''.

Subsec. (h). Pub. L. 106–569, §405(c), added subsec. (h).

§ 4903. Disclosure requirements

(a) Disclosures for new mortgages at time of transaction

(1) Disclosures for non-exempted transactions

In any case in which private mortgage insurance is required in connection with a residential mortgage transaction (other than a residential mortgage transaction described in section 4902(g)(1) of this title), at the time at which the transaction is consummated, the mortgagee shall provide to the mortgagor—

(A) if the transaction relates to a fixed rate mortgage—

(i) a written initial amortization schedule; and

(ii) written notice—

(I) that the mortgagor may cancel the requirement in accordance with section 4902(a) of this title indicating the date on which the mortgagor may request cancellation, based solely on the initial amortization schedule;

(II) that the mortgagor may request cancellation in accordance with section 4902(a) of this title earlier than provided for in the initial amortization schedule, based on actual payments;

(III) that the requirement for private mortgage insurance will automatically terminate on the termination date in accordance with section 4902(b) of this title, and what that termination date is with respect to that mortgage; and

(IV) that there are exemptions to the right to cancellation and automatic termination of a requirement for private mortgage insurance in accordance with section 4902(g) of this title, and whether such an exemption applies at that time to that transaction; and

(B) if the transaction relates to an adjustable rate mortgage, a written notice that—

(i) the mortgagor may cancel the requirement in accordance with section 4902(a) of this title on the cancellation date, and that the servicer will notify the mortgagor when the cancellation date is reached;

(ii) the requirement for private mortgage insurance will automatically terminate on the termination date, and that on the termination date, the mortgagor will be notified of the termination or that the requirement will be terminated as soon as the mortgagor is current on loan payments; and

(iii) there are exemptions to the right of cancellation and automatic termination of a requirement for private mortgage insurance in accordance with section 4902(g) of this title, and whether such an exemption applies at that time to that transaction.

(2) Disclosures for excepted transactions

In the case of a residential mortgage transaction described in section 4902(g)(1) of this title, at the time at which the transaction is consummated, the mortgagee shall provide written notice to the mortgagor that in no case may private mortgage insurance be required beyond the date that is the midpoint of the amortization period of the loan, if the mortgagor is current on payments required by the terms of the residential mortgage.

(3) Annual disclosures

If private mortgage insurance is required in connection with a residential mortgage transaction, the servicer shall disclose to the mortgagor in each such transaction in an annual written statement—

(A) the rights of the mortgagor under this chapter to cancellation or termination of the private mortgage insurance requirement; and

(B) an address and telephone number that the mortgagor may use to contact the servicer to determine whether the mortgagor may cancel the private mortgage insurance.

(4) Applicability

Paragraphs (1) through (3) shall apply with respect to each residential mortgage transaction consummated on or after the date that is 1 year after July 29, 1998.

(b) Disclosures for existing mortgages

If private mortgage insurance was required in connection with a residential mortgage entered into at any time before the effective date of this chapter, the servicer shall disclose to the mortgagor in each such transaction in an annual written statement—

(1) that the private mortgage insurance may, under certain circumstances, be canceled by the mortgagor (with the consent of the mortgagee or in accordance with applicable State law); and

(2) an address and telephone number that the mortgagor may use to contact the servicer to determine whether the mortgagor may cancel the private mortgage insurance.

(c) Inclusion in other annual notices

The information and disclosures required under subsection (b) of this section and subsection (a)(3) of this section may be provided on the annual disclosure relating to the escrow account made as required under the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.], or as part of the annual disclosure of interest payments made pursuant to Internal Revenue Service regulations, and on a form promulgated by the Internal Revenue Service for that purpose.

(d) Standardized forms

The mortgagee or servicer may use standardized forms for the provision of disclosures required under this section, which disclosures shall relate to the mortgagor's rights under this chapter.

(Pub. L. 105–216, § 4, July 29, 1998, 112 Stat. 902; Pub. L. 106–569, title IV, §§ 402(c)(2), 403(b), Dec. 27, 2000, 114 Stat. 2957.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b), is 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as an Effective Date note under section 4901 of this title.

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (c), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, as amended, which is classified principally to chapter 27 (§ 2601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–569, §§ 402(c)(2)(A)(i), 403(b)(1)(A), substituted ''residential mortgage transaction (other than a residential mortgage transaction described in section 4902(g)(1) of this title)'' for ''residential mortgage or mortgage transaction (other than a mortgage or mortgage transaction described in section 4902(f)(1) of this title)'' in introductory provisions.

Subsec. (a)(1)(A)(ii)(IV), (B)(iii). Pub. L. 106–569, § 402(c)(2)(A)(ii), (iii), substituted ''section 4902(g) of this title'' for ''section 4902(f) of this title''.

Subsec. (a)(2). Pub. L. 106–569, §§ 402(c)(2)(B), 403(b)(1)(B), substituted ''residential mortgage transaction'' for ''mortgage or mortgage transaction'' and ''section 4902(g)(1) of this title'' for ''section 4902(f)(1) of this title''.

Subsec. (c). Pub. L. 106–569, § 403(b)(2), substituted ''subsection (a)(3) of this section'' for ''paragraphs (1)(B) and (3) of subsection (a) of this section''.

Subsec. (d). Pub. L. 106–569, § 403(b)(3), inserted before period at end '', which disclosures shall relate to the mortgagor's rights under this chapter''.

§ 4904. Notification upon cancellation or termination

(a) In general

Not later than 30 days after the date of cancellation or termination of a private mortgage insurance requirement in accordance with this chapter, the servicer shall notify the mortgagor in writing—

(1) that the private mortgage insurance has terminated and that the mortgagor no longer has private mortgage insurance; and

(2) that no further premiums, payments, or other fees shall be due or payable by the mortgagor in connection with the private mortgage insurance.

(b) Notice of grounds

(1) In general

If a servicer determines that a mortgage did not meet the requirements for termination or cancellation of private mortgage insurance under subsection (a) or (b) of section 4902 of this title, the servicer shall provide written notice to the mortgagor of the grounds relied

on to make the determination (including the results of any appraisal used to make the determination).

(2) Timing

Notice required by paragraph (1) shall be provided—

(A) with respect to cancellation of private mortgage insurance under section 4902(a) of this title, not later than 30 days after the later of—

(i) the date on which a request is received under section 4902(a)(1) of this title; or

(ii) the date on which the mortgagor satisfies any evidence and certification requirements under section 4902(a)(3)[1] of this title; and

(B) with respect to termination of private mortgage insurance under section 4902(b) of this title, not later than 30 days after the scheduled termination date.

(Pub. L. 105–216, § 5, July 29, 1998, 112 Stat. 903.)

REFERENCES IN TEXT

Section 4902(a)(3) of this title, referred to in subsec. (b)(2)(A)(ii), was redesignated section 4902(a)(4) of this title by Pub. L. 106–569, title IV, § 404(1)(C), Dec. 27, 2000, 114 Stat. 2958.

§ 4905. Disclosure requirements for lender paid mortgage insurance

(a) Definitions

For purposes of this section—

(1) the term ''borrower paid mortgage insurance'' means private mortgage insurance that is required in connection with a residential mortgage transaction, payments for which are made by the borrower;

(2) the term ''lender paid mortgage insurance'' means private mortgage insurance that is required in connection with a residential mortgage transaction, payments for which are made by a person other than the borrower; and

(3) the term ''loan commitment'' means a prospective mortgagee's written confirmation of its approval, including any applicable closing conditions, of the application of a prospective mortgagor for a residential mortgage loan.

(b) Exclusion

Sections 4902 through 4904 of this title do not apply in the case of lender paid mortgage insurance.

(c) Notices to mortgagor

In the case of lender paid mortgage insurance that is required in connection with a residential mortgage transaction—

(1) not later than the date on which a loan commitment is made for the residential mortgage transaction, the prospective mortgagee shall provide to the prospective mortgagor a written notice—

(A) that lender paid mortgage insurance differs from borrower paid mortgage insurance, in that lender paid mortgage insurance may not be canceled by the mortgagor, while borrower paid mortgage insurance could be cancelable by the mortgagor in accordance with section 4902(a) of this title, and could automatically terminate on the termination date in accordance with section 4902(b) of this title;

(B) that lender paid mortgage insurance—

(i) usually results in a residential mortgage having a higher interest rate than it would in the case of borrower paid mortgage insurance; and

(ii) terminates only when the residential mortgage is refinanced (under the meaning given such term in the regulations issued by the Board of Governors of the Federal Reserve System to carry out the Truth in Lending Act (15 U.S.C. 1601 et seq.)), paid off, or otherwise terminated; and

(C) that lender paid mortgage insurance and borrower paid mortgage insurance both have benefits and disadvantages, including a generic analysis of the differing costs and benefits of a residential mortgage in the case lender paid mortgage insurance versus borrower paid mortgage insurance over a 10-year period, assuming prevailing interest and property appreciation rates;

(D) that lender paid mortgage insurance may be tax-deductible for purposes of Federal income taxes, if the mortgagor itemizes expenses for that purpose; and

(2) not later than 30 days after the termination date that would apply in the case of borrower paid mortgage insurance, the servicer shall provide to the mortgagor a written notice indicating that the mortgagor may wish to review financing options that could eliminate the requirement for private mortgage insurance in connection with the residential mortgage transaction.

(d) Standard forms

The servicer of a residential mortgage transaction may develop and use a standardized form or forms for the provision of notices to the mortgagor, as required under subsection (c) of this section.

(Pub. L. 105–216, § 6, July 29, 1998, 112 Stat. 904; Pub. L. 106–569, title IV, §§ 403(c), 406(a), Dec. 27, 2000, 114 Stat. 2957, 2959.)

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec.(c)(1)(B)(ii), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, as amended, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

AMENDMENTS

2000—Subsec. (c). Pub. L. 106–569, § 403(c)(1)(A), struck out ''a residential mortgage or'' before ''a residential mortgage transaction'' in introductory provisions.

Subsec. (c)(1)(B)(ii). Pub. L. 106–569, § 406(a), inserted ''(under the meaning given such term in the regulations issued by the Board of Governors of the Federal Reserve System to carry out the Truth in Lending Act (15 U.S.C. 1601 et seq.))'' after ''refinanced''.

Subsec. (c)(2). Pub. L. 106–569, § 403(c)(1)(B), inserted ''transaction'' before period at end.

Subsec. (d). Pub. L. 106–569, § 403(c)(2), inserted ''transaction'' after ''residential mortgage''.

[1] See References in Text note below.

§ 4906. Fees for disclosures

No fee or other cost may be imposed on any mortgagor with respect to the provision of any notice or information to the mortgagor pursuant to this chapter.

(Pub. L. 105–216, § 7, July 29, 1998, 112 Stat. 905.)

§ 4907. Civil liability

(a) In general

Any servicer, mortgagee, or mortgage insurer that violates a provision of this chapter shall be liable to each mortgagor to whom the violation relates for—

(1) in the case of an action by an individual, or a class action in which the liable party is not subject to section 4909 of this title, any actual damages sustained by the mortgagor as a result of the violation, including interest (at a rate determined by the court) on the amount of actual damages, accruing from the date on which the violation commences;

(2) in the case of—

(A) an action by an individual, such statutory damages as the court may allow, not to exceed $2,000; and

(B) in the case of a class action—

(i) in which the liable party is subject to section 4909 of this title, such amount as the court may allow, except that the total recovery under this subparagraph in any class action or series of class actions arising out of the same violation by the same liable party shall not exceed the lesser of $500,000 or 1 percent of the net worth of the liable party, as determined by the court; and

(ii) in which the liable party is not subject to section 4909 of this title, such amount as the court may allow, not to exceed $1,000 as to each member of the class, except that the total recovery under this subparagraph in any class action or series of class actions arising out of the same violation by the same liable party shall not exceed the lesser of $500,000 or 1 percent of the gross revenues of the liable party, as determined by the court;

(3) costs of the action; and

(4) reasonable attorney fees, as determined by the court.

(b) Timing of actions

No action may be brought by a mortgagor under subsection (a) of this section later than 2 years after the date of the discovery of the violation that is the subject of the action.

(c) Limitations on liability

(1) In general

With respect to a residential mortgage transaction, the failure of a servicer to comply with the requirements of this chapter due to the failure of a mortgage insurer or a mortgagee to comply with the requirements of this chapter, shall not be construed to be a violation of this chapter by the servicer.

(2) Rule of construction

Nothing in paragraph (1) shall be construed to impose any additional requirement or liability on a mortgage insurer, a mortgagee, or a holder of a residential mortgage.

(Pub. L. 105–216, § 8, July 29, 1998, 112 Stat. 905.)

§ 4908. Effect on other laws and agreements

(a) Effect on State law

(1) In general

With respect to any residential mortgage or residential mortgage transaction consummated after the effective date of this chapter, and except as provided in paragraph (2), the provisions of this chapter shall supersede any provisions of the law of any State relating to requirements for obtaining or maintaining private mortgage insurance in connection with residential mortgage transactions, cancellation or automatic termination of such private mortgage insurance, any disclosure of information addressed by this chapter, and any other matter specifically addressed by this chapter.

(2) Protection of existing State laws

(A) In general

The provisions of this chapter do not supersede protected State laws, except to the extent that the protected State laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency.

(B) Inconsistencies

A protected State law shall not be considered to be inconsistent with a provision of this chapter if the protected State law—

(i) requires termination of private mortgage insurance or other mortgage guaranty insurance—

(I) at a date earlier than as provided in this chapter; or

(II) when a mortgage principal balance is achieved that is higher than as provided in this chapter; or

(ii) requires disclosure of information—

(I) that provides more information than the information required by this chapter; or

(II) more often or at a date earlier than is required by this chapter.

(C) Protected State laws

For purposes of this paragraph, the term ''protected State law'' means a State law—

(i) regarding any requirements relating to private mortgage insurance in connection with residential mortgage transactions;

(ii) that was enacted not later than 2 years after July 29, 1998; and

(iii) that is the law of a State that had in effect, on or before January 2, 1998, any State law described in clause (i).

(b) Effect on other agreements

The provisions of this chapter shall supersede any conflicting provision contained in any agreement relating to the servicing of a residential mortgage loan entered into by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any pri-

vate investor or note holder (or any successors thereto).

(Pub. L. 105–216, § 9, July 29, 1998, 112 Stat. 906.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(1), is 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as an Effective Date note under section 4901 of this title.

§ 4909. Enforcement

(a) In general

Compliance with the requirements imposed under this chapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818]—

(A) by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act [12 U.S.C. 1813(q)]) in the case of insured depository institutions (as defined in section 3(c)(2) of such Act [12 U.S.C. 1813(c)(2)]);

(B) by the Federal Deposit Insurance Corporation in the case of depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)] that are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)]); and

(C) by the Director of the Office of Thrift Supervision in the case of depository institutions described in clause (v) and or (vi) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)] that are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)]);

(2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the National Credit Union Administration Board in the case of depository institutions described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)]; and

(3) part C of title V of the Farm Credit Act of 1971 (12 U.S.C. 2261 et seq.), by the Farm Credit Administration in the case of an institution that is a member of the Farm Credit System.

(b) Additional enforcement powers

(1) Violation of this chapter treated as violation of other Acts

For purposes of the exercise by any agency referred to in subsection (a) of this section of such agency's powers under any Act referred to in such subsection, a violation of a requirement imposed under this chapter shall be deemed to be a violation of a requirement imposed under that Act.

(2) Enforcement authority under other Acts

In addition to the powers of any agency referred to in subsection (a) of this section under any provision of law specifically referred to in such subsection, each such agency may exercise, for purposes of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on such agency by law.

(c) Enforcement and reimbursement

In carrying out its enforcement activities under this section, each agency referred to in subsection (a) of this section shall—

(1) notify the mortgagee or servicer of any failure of the mortgagee or servicer to comply with 1 or more provisions of this chapter;

(2) with respect to each such failure to comply, require the mortgagee or servicer, as applicable, to correct the account of the mortgagor to reflect the date on which the mortgage insurance should have been canceled or terminated under this chapter; and

(3) require the mortgagee or servicer, as applicable, to reimburse the mortgagor in an amount equal to the total unearned premiums paid by the mortgagor after the date on which the obligation to pay those premiums ceased under this chapter.

(Pub. L. 105–216, § 10, July 29, 1998, 112 Stat. 907; Pub. L. 111–203, title X, § 1095, July 21, 2010, 124 Stat. 2101.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1095, 1100H, July 21, 2010, 124 Stat. 2101, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) in subsection (a)—

(A) by striking out ''Compliance'' and all that follows through the end of paragraph (1) and inserting the following: ''Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this chapter shall be enforced under—

''(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency (as defined in section 3(q) of that Act), with respect to—

''(A) insured depository institutions (as defined in section 3(c)(2) of that Act);

''(B) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

''(C) depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);'';

(B) in paragraph (2), by striking out ''and'' at the end;

(C) in paragraph (3), by substituting ''; and'' for the period at the end; and

(D) by adding at the end the following:

''(4) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection, with respect to any person subject to this chapter.''; and

(2) in subsection (b)(2), by inserting '', subject to subtitle B of the Consumer Financial Protection Act of 2010'' before the period at the end.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 105–216, July 29, 1998, 112

Stat. 897, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Federal Credit Union Act, referred to in subsec. (a)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

The Farm Credit Act of 1971, referred to in subsec. (a)(3), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended. Part C of title V of the Act is classified generally to part C (§ 2261 et seq.) of subchapter V of chapter 23 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 4910. Construction

(a) PMI not required

Nothing in this chapter shall be construed to impose any requirement for private mortgage insurance in connection with a residential mortgage transaction.

(b) No preclusion of cancellation or termination agreements

Nothing in this chapter shall be construed to preclude cancellation or termination, by agreement between a mortgagor and the holder of the mortgage, of a requirement for private mortgage insurance in connection with a residential mortgage transaction before the cancellation or termination date established by this chapter for the mortgage.

(Pub. L. 105–216, § 11, July 29, 1998, 112 Stat. 908.)

CHAPTER 50—CHECK TRUNCATION

Sec.
5001. Findings; purposes.
5002. Definitions.
5003. General provisions governing substitute checks.
5004. Substitute check warranties.
5005. Indemnity.
5006. Expedited recredit for consumers.
5007. Expedited recredit procedures for banks.
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5010. Statute of limitations and notice of claim.
5011. Consumer awareness.
5012. Effect on other law.
5013. Variation by agreement.
5014. Regulations.
5015. Study and report on funds availability.
5016. Statistical reporting of costs and revenues for transporting checks between reserve banks.
5017. Evaluation and report by the Comptroller General.
5018. Depositary services efficiency and cost reduction.

§ 5001. Findings; purposes

(a) Findings

The Congress finds as follows:

(1) In the Expedited Funds Availability Act [12 U.S.C. 4001 et seq.], enacted on August 10, 1987, the Congress directed the Board of Governors of the Federal Reserve System to consider establishing regulations requiring Federal reserve banks and depository institutions to provide for check truncation, in order to improve the check processing system.

(2) In that same Act, the Congress—

(A) provided the Board of Governors of the Federal Reserve System with full authority to regulate all aspects of the payment system, including the receipt, payment, collection, and clearing of checks, and related functions of the payment system pertaining to checks; and

(B) directed that the exercise of such authority by the Board superseded any State law, including the Uniform Commercial Code, as in effect in any State.

(3) Check truncation is no less desirable in 2003 for both financial service customers and the financial services industry, to reduce costs, improve efficiency in check collections, and expedite funds availability for customers than it was over 15 years ago when Congress first directed the Board to consider establishing such a process.

(b) Purposes

The purposes of this chapter are as follows:

(1) To facilitate check truncation by authorizing substitute checks.

(2) To foster innovation in the check collection system without mandating receipt of checks in electronic form.

(3) To improve the overall efficiency of the Nation's payments system.

(Pub. L. 108–100, § 2, Oct. 28, 2003, 117 Stat. 1177.)

REFERENCES IN TEXT

The Expedited Funds Availability Act, referred to in subsec. (a)(1), (2), is title VI of Pub. L. 100–86, Aug. 10, 1987, 101 Stat. 635, as amended, which is classified principally to chapter 41 (§ 4001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE

Pub. L. 108–100, § 20, Oct. 28, 2003, 117 Stat. 1194, provided that: ''This Act [enacting this chapter, amending section 412 of this title, and enacting provisions set out as notes under this section] shall take effect at the end of the 12-month period beginning on the date of the enactment of this Act [Oct. 28, 2003], except as otherwise specifically provided in this Act.''

SHORT TITLE

Pub. L. 108–100, § 1(a), Oct. 28, 2003, 117 Stat. 1177, provided that: ''This Act [enacting this chapter, amending section 412 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Check Clearing for the 21st Century Act' or the 'Check 21 Act'.''

§ 5002. Definitions

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

(1) Account

The term ''account'' means a deposit account at a bank.

(2) Bank

The term ''bank'' means any person that is located in a State and engaged in the business of banking and includes—

(A) any depository institution (as defined in section 461(b)(1)(A) of this title);

(B) any Federal reserve bank;

(C) any Federal home loan bank; or

(D) to the extent it acts as a payor—

(i) the Treasury of the United States;

(ii) the United States Postal Service;

(iii) a State government; or

(iv) a unit of general local government (as defined in section 4001(24) of this title).

(3) Banking terms

(A) Collecting bank

The term ''collecting bank'' means any bank handling a check for collection except the paying bank.

(B) Depositary bank

The term ''depositary bank'' means—

(i) the first bank to which a check is transferred, even if such bank is also the paying bank or the payee; or

(ii) a bank to which a check is transferred for deposit in an account at such bank, even if the check is physically received and indorsed first by another bank.

(C) Paying bank

The term ''paying bank'' means—

(i) the bank by which a check is payable, unless the check is payable at or through another bank and is sent to the other bank for payment or collection; or

(ii) the bank at or through which a check is payable and to which the check is sent for payment or collection.

(D) Returning bank

(i) In general

The term ''returning bank'' means a bank (other than the paying or depositary bank) handling a returned check or notice in lieu of return.

(ii) Treatment as collecting bank

No provision of this chapter shall be construed as affecting the treatment of a returning bank as a collecting bank for purposes of section 4–202(b) of the Uniform Commercial Code.

(4) Board

The term ''Board'' means the Board of Governors of the Federal Reserve System.

(5) Business day

The term ''business day'' has the same meaning as in section 4001(3) of this title.

(6) Check

The term ''check''—

(A) means a draft, payable on demand and drawn on or payable through or at an office of a bank, whether or not negotiable, that is handled for forward collection or return, including a substitute check and a travelers check; and

(B) does not include a noncash item or an item payable in a medium other than United States dollars.

(7) Consumer

The term ''consumer'' means an individual who—

(A) with respect to a check handled for forward collection, draws the check on a consumer account; or

(B) with respect to a check handled for return, deposits the check into, or cashes the check against, a consumer account.

(8) Consumer account

The term ''consumer account'' has the same meaning as in section 4001(10) of this title.

(9) Customer

The term ''customer'' means a person having an account with a bank.

(10) Forward collection

The term ''forward collection'' means the transfer by a bank of a check to a collecting bank for settlement or the paying bank for payment.

(11) Indemnifying bank

The term ''indemnifying bank'' means a bank that is providing an indemnity under section 5005 of this title with respect to a substitute check.

(12) MICR line

The terms ''MICR line'' and ''magnetic ink character recognition line'' mean the numbers, which may include the bank routing number, account number, check number, check amount, and other information, that are printed near the bottom of a check in magnetic ink in accordance with generally applicable industry standards.

(13) Noncash item

The term ''noncash item'' has the same meaning as in section 4001(14) of this title.

(14) Person

The term ''person'' means a natural person, corporation, unincorporated company, partnership, government unit or instrumentality, trust, or any other entity or organization.

(15) Reconverting bank

The term ''reconverting bank'' means—

(A) the bank that creates a substitute check; or

(B) if a substitute check is created by a person other than a bank, the first bank that transfers or presents such substitute check.

(16) Substitute check

The term ''substitute check'' means a paper reproduction of the original check that—

(A) contains an image of the front and back of the original check;

(B) bears a MICR line containing all the information appearing on the MICR line of the original check, except as provided under generally applicable industry standards for substitute checks to facilitate the processing of substitute checks;

(C) conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for substitute checks; and

(D) is suitable for automated processing in the same manner as the original check.

(17) State

The term ''State'' has the same meaning as in section 1813(a) of this title.

(18) Truncate

The term ''truncate'' means to remove an original paper check from the check collection or return process and send to a recipient, in lieu of such original paper check, a substitute check or, by agreement, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without subsequent delivery of the original paper check.

(19) Uniform Commercial Code

The term ''Uniform Commercial Code'' means the Uniform Commercial Code in effect in a State.

(20) Other terms

Unless the context requires otherwise, the terms not defined in this section shall have the same meanings as in the Uniform Commercial Code.

(Pub. L. 108–100, § 3, Oct. 28, 2003, 117 Stat. 1178.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5003. General provisions governing substitute checks

(a) No agreement required

A person may deposit, present, or send for collection or return a substitute check without an agreement with the recipient, so long as a bank has made the warranties in section 5004 of this title with respect to such substitute check.

(b) Legal equivalence

A substitute check shall be the legal equivalent of the original check for all purposes, including any provision of any Federal or State law, and for all persons if the substitute check—

(1) accurately represents all of the information on the front and back of the original check as of the time the original check was truncated; and

(2) bears the legend: ''This is a legal copy of your check. You can use it the same way you would use the original check.''

(c) Endorsements

A bank shall ensure that the substitute check for which the bank is the reconverting bank bears all endorsements applied by parties that previously handled the check (whether in electronic form or in the form of the original paper check or a substitute check) for forward collection or return.

(d) Identification of reconverting bank

A bank shall identify itself as a reconverting bank on any substitute check for which the bank is a reconverting bank so as to preserve any previous reconverting bank identifications in conformance with generally applicable industry standards.

(e) Applicable law

A substitute check that is the legal equivalent of the original check under subsection (b) shall be subject to any provision, including any provision relating to the protection of customers, of part 229 of title 12 of the Code of Federal Regulations, the Uniform Commercial Code, and any other applicable Federal or State law as if such substitute check were the original check, to the extent such provision of law is not inconsistent with this chapter.

(Pub. L. 108–100, § 4, Oct. 28, 2003, 117 Stat. 1180.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e), was in the original ''this Act'', meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5004. Substitute check warranties

A bank that transfers, presents, or returns a substitute check and receives consideration for the check warrants, as a matter of law, to the transferee, any subsequent collecting or returning bank, the depositary bank, the drawee, the drawer, the payee, the depositor, and any endorser (regardless of whether the warrantee receives the substitute check or another paper or electronic form of the substitute check or original check) that—

(1) the substitute check meets all the requirements for legal equivalence under section 5003(b) of this title; and

(2) no depositary bank, drawee, drawer, or endorser will receive presentment or return of the substitute check, the original check, or a copy or other paper or electronic version of the substitute check or original check such that the bank, drawee, drawer, or endorser will be asked to make a payment based on a check that the bank, drawee, drawer, or endorser has already paid.

(Pub. L. 108–100, § 5, Oct. 28, 2003, 117 Stat. 1181.)

§ 5005. Indemnity

(a) Indemnity

A reconverting bank and each bank that subsequently transfers, presents, or returns a substitute check in any electronic or paper form, and receives consideration for such transfer, presentment, or return shall indemnify the transferee, any subsequent collecting or returning bank, the depositary bank, the drawee, the drawer, the payee, the depositor, and any endorser, up to the amount described in subsections (b) and (c), as applicable, to the extent of any loss incurred by any recipient of a substitute check if that loss occurred due to the receipt of a substitute check instead of the original check.

(b) Indemnity amount

(1) Amount in event of breach of warranty

The amount of the indemnity under subsection (a) shall be the amount of any loss (in-

cluding costs and reasonable attorney's fees and other expenses of representation) proximately caused by a breach of a warranty provided under section 5004 of this title.

(2) Amount in absence of breach of warranty

In the absence of a breach of a warranty provided under section 5004 of this title, the amount of the indemnity under subsection (a) shall be the sum of—

(A) the amount of any loss, up to the amount of the substitute check; and

(B) interest and expenses (including costs and reasonable attorney's fees and other expenses of representation).

(c) Comparative negligence

(1) In general

If a loss described in subsection (a) results in whole or in part from the negligence or failure to act in good faith on the part of an indemnified party, then that party's indemnification under this section shall be reduced in proportion to the amount of negligence or bad faith attributable to that party.

(2) Rule of construction

Nothing in this subsection reduces the rights of a consumer or any other person under the Uniform Commercial Code or other applicable provision of Federal or State law.

(d) Effect of producing original check or copy

(1) In general

If the indemnifying bank produces the original check or a copy of the original check (including an image or a substitute check) that accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated) or is otherwise sufficient to determine whether or not a claim is valid, the indemnifying bank shall—

(A) be liable under this section only for losses covered by the indemnity that are incurred up to the time that the original check or copy is provided to the indemnified party; and

(B) have a right to the return of any funds it has paid under the indemnity in excess of those losses.

(2) Coordination of indemnity with implied warranty

The production of the original check, a substitute check, or a copy under paragraph (1) by an indemnifying bank shall not absolve the bank from any liability on a warranty established under this chapter or any other provision of law.

(e) Subrogation of rights

(1) In general

Each indemnifying bank shall be subrogated to the rights of any indemnified party to the extent of the indemnity.

(2) Recovery under warranty

A bank that indemnifies a party under this section may attempt to recover from another party based on a warranty or other claim.

(3) Duty of indemnified party

Each indemnified party shall have a duty to comply with all reasonable requests for assistance from an indemnifying bank in connection with any claim the indemnifying bank brings against a warrantor or other party related to a check that forms the basis for the indemnification.

(Pub. L. 108–100, § 6, Oct. 28, 2003, 117 Stat. 1181.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(2), was in the original ''this Act'', meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5006. Expedited recredit for consumers

(a) Recredit claims

(1) In general

A consumer may make a claim for expedited recredit from the bank that holds the account of the consumer with respect to a substitute check, if the consumer asserts in good faith that—

(A) the bank charged the consumer's account for a substitute check that was provided to the consumer;

(B) either—

(i) the check was not properly charged to the consumer's account; or

(ii) the consumer has a warranty claim with respect to such substitute check;

(C) the consumer suffered a resulting loss; and

(D) the production of the original check or a better copy of the original check is necessary to determine the validity of any claim described in subparagraph (B).

(2) 40-day period

Any claim under paragraph (1) with respect to a consumer account may be submitted by a consumer before the end of the 40-day period beginning on the later of—

(A) the date on which the financial institution mails or delivers, by a means agreed to by the consumer, the periodic statement of account for such account which contains information concerning the transaction giving rise to the claim; or

(B) the date on which the substitute check is made available to the consumer.

(3) Extension under extenuating circumstances

If the ability of the consumer to submit the claim within the 40-day period under paragraph (2) is delayed due to extenuating circumstances, including extended travel or the illness of the consumer, the 40-day period shall be extended by a reasonable amount of time.

(b) Procedures for claims

(1) In general

To make a claim for an expedited recredit under subsection (a) with respect to a substitute check, the consumer shall provide to the bank that holds the account of such consumer—

(A) a description of the claim, including an explanation of—

(i) why the substitute check was not properly charged to the consumer's account; or

(ii) the warranty claim with respect to such check;

(B) a statement that the consumer suffered a loss and an estimate of the amount of the loss;

(C) the reason why production of the original check or a better copy of the original check is necessary to determine the validity of the charge to the consumer's account or the warranty claim; and

(D) sufficient information to identify the substitute check and to investigate the claim.

(2) Claim in writing

(A) In general

The bank holding the consumer account that is the subject of a claim by the consumer under subsection (a) may, in the discretion of the bank, require the consumer to submit the information required under paragraph (1) in writing.

(B) Means of submission

A bank that requires a submission of information under subparagraph (A) may permit the consumer to make the submission electronically, if the consumer has agreed to communicate with the bank in that manner.

(c) Recredit to consumer

(1) Conditions for recredit

The bank shall recredit a consumer account in accordance with paragraph (2) for the amount of a substitute check that was charged against the consumer account if—

(A) a consumer submits a claim to the bank with respect to that substitute check that meets the requirement of subsection (b); and

(B) the bank has not—

(i) provided to the consumer—

(I) the original check; or

(II) a copy of the original check (including an image or a substitute check) that accurately represents all of the information on the front and back of the original check, as of the time at which the original check was truncated; and

(ii) demonstrated to the consumer that the substitute check was properly charged to the consumer account.

(2) Timing of recredit

(A) In general

The bank shall recredit the consumer's account for the amount described in paragraph (1) no later than the end of the business day following the business day on which the bank determines the consumer's claim is valid.

(B) Recredit pending investigation

If the bank has not yet determined that the consumer's claim is valid before the end of the 10th business day after the business day on which the consumer submitted the claim, the bank shall recredit the consumer's account for—

(i) the lesser of the amount of the substitute check that was charged against the consumer account, or $2,500, together with interest if the account is an interest-bearing account, no later than the end of such 10th business day; and

(ii) the remaining amount of the substitute check that was charged against the consumer account, if any, together with interest if the account is an interest-bearing account, not later than the 45th calendar day following the business day on which the consumer submits the claim.

(d) Availability of recredit

(1) Next business day availability

Except as provided in paragraph (2), a bank that provides a recredit to a consumer account under subsection (c) shall make the recredited funds available for withdrawal by the consumer by the start of the next business day after the business day on which the bank recredits the consumer's account under subsection (c).

(2) Safeguard exceptions

A bank may delay availability to a consumer of a recredit provided under subsection (c)(2)(B)(i) until the start of either the business day following the business day on which the bank determines that the consumer's claim is valid or the 45th calendar day following the business day on which the consumer submits a claim for such recredit in accordance with subsection (b), whichever is earlier, in any of the following circumstances:

(A) New accounts

The claim is made during the 30-day period beginning on the business day the consumer account was established.

(B) Repeated overdrafts

Without regard to the charge that is the subject of the claim for which the recredit was made—

(i) on 6 or more business days during the 6-month period ending on the date on which the consumer submits the claim, the balance in the consumer account was negative or would have become negative if checks or other charges to the account had been paid; or

(ii) on 2 or more business days during such 6-month period, the balance in the consumer account was negative or would have become negative in the amount of $5,000 or more if checks or other charges to the account had been paid.

(C) Prevention of fraud losses

The bank has reasonable cause to believe that the claim is fraudulent, based on facts (other than the fact that the check in question or the consumer is of a particular class) that would cause a well-grounded belief in the mind of a reasonable person that the claim is fraudulent.

(3) Overdraft fees

No bank that, in accordance with paragraph (2), delays the availability of a recredit under subsection (c) to any consumer account may impose any overdraft fees with respect to drafts drawn by the consumer on such recred-

ited amount before the end of the 5-day period beginning on the date notice of the delay in the availability of such amount is sent by the bank to the consumer.

(e) Reversal of recredit

A bank may reverse a recredit to a consumer account if the bank—

(1) determines that a substitute check for which the bank recredited a consumer account under subsection (c) was in fact properly charged to the consumer account; and

(2) notifies the consumer in accordance with subsection (f)(3).

(f) Notice to consumer

(1) Notice if consumer claim not valid

If a bank determines that a substitute check subject to the consumer's claim was in fact properly charged to the consumer's account, the bank shall send to the consumer, no later than the business day following the business day on which the bank makes a determination—

(A) the original check or a copy of the original check (including an image or a substitute check) that—

(i) accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated); or

(ii) is otherwise sufficient to determine whether or not the consumer's claim is valid; and

(B) an explanation of the basis for the determination by the bank that the substitute check was properly charged, including a statement that the consumer may request copies of any information or documents on which the bank relied in making the determination.

(2) Notice of recredit

If a bank recredits a consumer account under subsection (c), the bank shall send to the consumer, no later than the business day following the business day on which the bank makes the recredit, a notice of—

(A) the amount of the recredit; and

(B) the date the recredited funds will be available for withdrawal.

(3) Notice of reversal of recredit

In addition to the notice required under paragraph (1), if a bank reverses a recredited amount under subsection (e), the bank shall send to the consumer, no later than the business day following the business day on which the bank reverses the recredit, a notice of—

(A) the amount of the reversal; and

(B) the date the recredit was reversed.

(4) Mode of delivery

A notice described in this subsection shall be delivered by United States mail or by any other means through which the consumer has agreed to receive account information.

(g) Other claims not affected

Providing a recredit in accordance with this section shall not absolve the bank from liability for a claim made under any other law, such as a claim for wrongful dishonor under the Uniform Commercial Code, or from liability for additional damages under section 5005 or 5009 of this title.

(h) Clarification concerning consumer possession

A consumer who was provided a substitute check may make a claim for an expedited recredit under this section with regard to a transaction involving the substitute check whether or not the consumer is in possession of the substitute check.

(i) Scope of application

This section shall only apply to customers who are consumers.

(Pub. L. 108–100, § 7, Oct. 28, 2003, 117 Stat. 1182.)

§ 5007. Expedited recredit procedures for banks

(a) Recredit claims

(1) In general

A bank may make a claim against an indemnifying bank for expedited recredit for which that bank is indemnified if—

(A) the claimant bank (or a bank that the claimant bank has indemnified) has received a claim for expedited recredit from a consumer under section 5006 of this title with respect to a substitute check or would have been subject to such a claim had the consumer's account been charged;

(B) the claimant bank has suffered a resulting loss or is obligated to recredit a consumer account under section 5006 of this title with respect to such substitute check; and

(C) production of the original check, another substitute check, or a better copy of the original check is necessary to determine the validity of the charge to the customer account or any warranty claim connected with such substitute check.

(2) 120-day period

Any claim under paragraph (1) may be submitted by the claimant bank to an indemnifying bank before the end of the 120-day period beginning on the date of the transaction that gave rise to the claim.

(b) Procedures for claims

(1) In general

To make a claim under subsection (a) for an expedited recredit relating to a substitute check, the claimant bank shall send to the indemnifying bank—

(A) a description of—

(i) the claim, including an explanation of why the substitute check cannot be properly charged to the consumer account; or

(ii) the warranty claim;

(B) a statement that the claimant bank has suffered a loss or is obligated to recredit the consumer's account under section 5006 of this title, together with an estimate of the amount of the loss or recredit;

(C) the reason why production of the original check, another substitute check, or a better copy of the original check is nec-

essary to determine the validity of the charge to the consumer account or the warranty claim; and

(D) information sufficient for the indemnifying bank to identify the substitute check and to investigate the claim.

(2) Requirements relating to copies of substitute checks

If the information submitted by a claimant bank pursuant to paragraph (1) in connection with a claim for an expedited recredit includes a copy of any substitute check for which any such claim is made, the claimant bank shall take reasonable steps to ensure that any such copy cannot be—

(A) mistaken for the legal equivalent of the check under section 5003(b) of this title; or

(B) sent or handled by any bank, including the indemnifying bank, as a forward collection or returned check.

(3) Claim in writing

(A) In general

An indemnifying bank may, in the discretion of the bank, require the claimant bank to submit the information required by paragraph (1) in writing, including a copy of the written or electronically submitted claim, if any, that the consumer provided in accordance with section 5006(b) of this title.

(B) Means of submission

An indemnifying bank that requires a submission of information under subparagraph (A) may permit the claimant bank to make the submission electronically, if the claimant bank has agreed to communicate with the indemnifying bank in that manner.

(c) Recredit by indemnifying bank

(1) Prompt action required

No later than 10 business days after the business day on which an indemnifying bank receives a claim under subsection (a) from a claimant bank with respect to a substitute check, the indemnifying bank shall—

(A) provide, to the claimant bank, the original check (with respect to such substitute check) or a copy of the original check (including an image or a substitute check) that—

(i) accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated); or

(ii) is otherwise sufficient to determine the bank's claim is not valid; and

(B) recredit the claimant bank for the amount of the claim up to the amount of the substitute check, plus interest if applicable; or

(C) provide information to the claimant bank as to why the indemnifying bank is not obligated to comply with subparagraph (A) or (B).

(2) Recredit does not abrogate other liabilities

Providing a recredit under this subsection to a claimant bank with respect to a substitute check shall not absolve the indemnifying bank from liability for claims brought under any other law or from additional damages under section 5005 or 5009 of this title with respect to such check.

(3) Refund to indemnifying bank

If a claimant bank reverses, in accordance with section 5006(e) of this title, a recredit previously made to a consumer account under section 5006(c) of this title, or otherwise receives a credit or recredit with regard to such substitute check, the claimant bank shall promptly refund to any indemnifying bank any amount previously advanced by the indemnifying bank in connection with such substitute check.

(d) Production of original check or a sufficient copy governed by section 5005(d)

If the indemnifying bank provides the claimant bank with the original check or a copy of the original check (including an image or a substitute check) under subsection (c)(1)(A), section 5005(d) of this title shall govern any right of the indemnifying bank to any repayment of any funds the indemnifying bank has recredited to the claimant bank pursuant to subsection (c).

(Pub. L. 108–100, § 8, Oct. 28, 2003, 117 Stat. 1186.)

§ 5008. Delays in an emergency

A delay by a bank beyond the time limits prescribed or permitted by this chapter shall be excused if the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of a bank and if the bank uses such diligence as the circumstances require.

(Pub. L. 108–100, § 9, Oct. 28, 2003, 117 Stat. 1188.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5009. Measure of damages

(a) Liability

(1) In general

Except as provided in section 5005 of this title, any person who, in connection with a substitute check, breaches any warranty under this chapter or fails to comply with any requirement imposed by, or regulation prescribed pursuant to, this chapter with respect to any other person shall be liable to such person in an amount equal to the sum of—

(A) the lesser of—

(i) the amount of the loss suffered by the other person as a result of the breach or failure; or

(ii) the amount of the substitute check; and

(B) interest and expenses (including costs and reasonable attorney's fees and other expenses of representation) related to the substitute check.

(2) Offset of recredits

The amount of damages any person receives under paragraph (1), if any, shall be reduced by the amount, if any, that the claimant receives and retains as a recredit under section 5006 or 5007 of this title.

(b) Comparative negligence

(1) In general

If a person incurs damages that resulted in whole or in part from the negligence or failure of that person to act in good faith, then the amount of any liability due to that person under subsection (a) shall be reduced in proportion to the amount of negligence or bad faith attributable to that person.

(2) Rule of construction

Nothing in this subsection reduces the rights of a consumer or any other person under the Uniform Commercial Code or other applicable provision of Federal or State law.

(Pub. L. 108–100, § 10, Oct. 28, 2003, 117 Stat. 1188.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original ''this Act'', meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5010. Statute of limitations and notice of claim

(a) Actions under this chapter

(1) In general

An action to enforce a claim under this chapter may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 1-year period beginning on the date the cause of action accrues.

(2) Accrual

A cause of action accrues as of the date the injured party first learns, or by which such person reasonably should have learned, of the facts and circumstances giving rise to the cause of action.

(b) Discharge of claims

Except as provided in subsection (c), unless a person gives notice of a claim to the indemnifying or warranting bank within 30 days after the person has reason to know of the claim and the identity of the indemnifying or warranting bank, the indemnifying or warranting bank is discharged from liability in an action to enforce a claim under this chapter to the extent of any loss caused by the delay in giving notice of the claim.

(c) Notice of claim by consumer

A timely claim by a consumer under section 5006 of this title for expedited recredit constitutes timely notice of a claim by the consumer for purposes of subsection (b).

(Pub. L. 108–100, § 11, Oct. 28, 2003, 117 Stat. 1188.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b), was in the original ''this Act'', meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5011. Consumer awareness

(a) In general

Each bank shall provide, in accordance with subsection (b), a brief notice about substitute checks that describes—

(1) how a substitute check is the legal equivalent of an original check for all purposes, including any provision of any Federal or State law, and for all persons, if the substitute check—

(A) accurately represents all of the information on the front and back of the original check as of the time at which the original check was truncated; and

(B) bears the legend: ''This is a legal copy of your check. You can use it in the same way you would use the original check.''; and

(2) the consumer recredit rights established under section 5006 of this title when a consumer believes in good faith that a substitute check was not properly charged to the account of the consumer.

(b) Distribution

(1) Existing customers

With respect to consumers who are customers of a bank on the effective date of this chapter and who receive original checks or substitute checks, a bank shall provide the notice described in subsection (a) to each such consumer no later than the first regularly scheduled communication with the consumer after the effective date of this chapter.

(2) New account holders

A bank shall provide the notice described in subsection (a) to each consumer who will receive original checks or substitute checks, other than existing customers referred to in paragraph (1), at the time at which the customer relationship is initiated.

(3) Mode of delivery

A bank may send the notices required by this subsection by United States mail or by any other means through which the consumer has agreed to receive account information.

(4) Consumers who request copies of checks

Notice shall be provided to each consumer of the bank that requests a copy of a check and receives a substitute check, at the time of the request.

(c) Model language

(1) In general

Before the end of the 9-month period beginning on October 28, 2003, the Board shall publish model forms and clauses that a bank may use to describe each of the elements required by subsection (a).

(2) Safe harbor

(A) In general

A bank shall be treated as being in compliance with the requirements of subsection (a)

if the bank's substitute check notice uses a model form or clause published by the Board and such model form or clause accurately describes the bank's policies and practices.

(B) Deletion or rearrangement

A bank may delete any information in the model form or clause that is not required by this chapter or rearrange the format.

(3) Use of model language not required

This section shall not be construed as requiring any bank to use a model form or clause that the Board prepares under this subsection.

(Pub. L. 108–100, § 12, Oct. 28, 2003, 117 Stat. 1189.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b)(1), is at the end of the 12-month period beginning on Oct. 28, 2003, except as otherwise specifically provided in this chapter, see section 20 of Pub. L. 108–100, set out as an Effective Date note under section 5001 of this title.

This chapter, referred to in subsec. (c)(2)(B), was in the original ''this Act'', meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5012. Effect on other law

This chapter shall supersede any provision of Federal or State law, including the Uniform Commercial Code, that is inconsistent with this chapter, but only to the extent of the inconsistency.

(Pub. L. 108–100, § 13, Oct. 28, 2003, 117 Stat. 1190.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5013. Variation by agreement

(a) Section 5007

Any provision of section 5007 of this title may be varied by agreement of the banks involved.

(b) No other provisions may be varied

Except as provided in subsection (a), no provision of this chapter may be varied by agreement of any person or persons.

(Pub. L. 108–100, § 14, Oct. 28, 2003, 117 Stat. 1190.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5014. Regulations

The Board may prescribe such regulations as the Board determines to be necessary to implement, prevent circumvention or evasion of, or facilitate compliance with the provisions of this chapter.

(Pub. L. 108–100, § 15, Oct. 28, 2003, 117 Stat. 1190.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5015. Study and report on funds availability

(a) Study

In order to evaluate the implementation and the impact of this chapter, the Board shall conduct a study of—

(1) the percentage of total checks cleared in which the paper check is not returned to the paying bank;

(2) the extent to which banks make funds available to consumers for local and nonlocal checks prior to the expiration of maximum hold periods;

(3) the length of time within which depositary banks learn of the nonpayment of local and nonlocal checks;

(4) the increase or decrease in check-related losses over the study period; and

(5) the appropriateness of the time periods and amount limits applicable under sections 4002 and 4003 of this title, as in effect on October 28, 2003.

(b) Report to Congress

Before the end of the 30-month period beginning on the effective date of this chapter, the Board shall submit a report to the Congress containing the results of the study conducted under this section, together with recommendations for legislative action.

(Pub. L. 108–100, § 16, Oct. 28, 2003, 117 Stat. 1190.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

The effective date of this chapter, referred to in subsec. (b), is at the end of the 12-month period beginning on Oct. 28, 2003, except as otherwise specifically provided in this chapter, see section 20 of Pub. L. 108–100, set out as an Effective Date note under section 5001 of this title.

§ 5016. Statistical reporting of costs and revenues for transporting checks between reserve banks

In the annual report prepared by the Board for the first full calendar year after October 28, 2003, and in each of the 9 subsequent annual reports by the Board, the Board shall include the amount of operating costs attributable to, and an estimate of the Federal Reserve banks' imputed revenues derived from, the transportation of commercial checks between Federal Reserve bank check processing centers.

(Pub. L. 108–100, § 17, Oct. 28, 2003, 117 Stat. 1191.)

§ 5017. Evaluation and report by the Comptroller General

(a) Study

During the 5-year period beginning on October 28, 2003, the Comptroller General of the United

States shall evaluate the implementation and administration of this chapter, including—

(1) an estimate of the gains in economic efficiency made possible from check truncation;

(2) an evaluation of the benefits accruing to consumers and financial institutions from reduced transportation costs, longer hours for accepting deposits for credit within 1 business day, the impact of fraud losses, and an estimate of consumers' share of the total benefits derived from this chapter; and

(3) an assessment of consumer acceptance of the check truncation process resulting from this chapter, as well as any new costs incurred by consumers who had their original checks returned with their regular monthly statements prior to October 28, 2003.

(b) Report to Congress

Before the end of the 5-year period referred to in subsection (a), the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General in connection with the evaluation conducted pursuant to subsection (a), together with such recommendations for legislative and administrative action as the Comptroller General may determine to be appropriate.

(Pub. L. 108–100, § 18, Oct. 28, 2003, 117 Stat. 1191.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5018. Depositary services efficiency and cost reduction

(a) Findings

The Congress finds as follows:

(1) The Secretary of the Treasury has long compensated financial institutions for various critical depositary and financial agency services provided for or on behalf of the United States by—

(A) placing large balances, commonly referred to as ''compensating balances'', on deposit at such institutions; and

(B) using imputed interest on such funds to offset charges for the various depositary and financial agency services provided to or on behalf of the Government.

(2) As a result of sharp declines in interest rates over the last few years to record low levels, or the public debt outstanding reaching the statutory debt limit, the Department of the Treasury often has had to dramatically increase or decrease the size of the compensating balances on deposit at these financial institutions.

(3) The fluctuation of the compensating balances, and the necessary pledging of collateral by financial institutions to secure the value of compensating balances placed with those institutions, have created unintended financial uncertainty for the Secretary of the Treasury and for the management by financial institutions of their cash and securities.

(4) It is imperative that the process for providing financial services to the Government be transparent, and provide the information necessary for the Congress to effectively exercise its appropriation and oversight responsibilities.

(5) The use of direct payment for services rendered would strengthen cash and debt management responsibilities of the Secretary of the Treasury because the Secretary would no longer need to dramatically increase or decrease the level of such balances when interest rates fluctuate sharply or when the public debt outstanding reaches the statutory debt limit.

(6) An alternative to the use of compensating balances, such as direct payments to financial institutions, would ensure that payments to financial institutions for the services they provide would be made in a more predictable manner and could result in cost savings.

(7) Limiting the use of compensating balances could result in a more direct and cost-efficient method of obtaining those services currently provided under compensating balance arrangements.

(8) A transition from the use of compensating balances to another compensation method must be carefully managed to prevent higher-than-necessary transitional costs and enable participating financial institutions to modify their planned investment of cash and securities.

(b) Authorization of appropriations for services rendered by depositaries and financial agencies of the United States

There are authorized to be appropriated for fiscal years beginning after fiscal year 2003 to the Secretary of the Treasury such sums as may be necessary for reimbursing financial institutions in their capacity as depositaries and financial agents of the United States for all services required or directed by the Secretary of the Treasury, or a designee of the Secretary, to be performed by such financial institutions on behalf of the Secretary of the Treasury or another Federal agency, including services rendered before fiscal year 2004.

(c) Orderly transition

(1) In general

As appropriations authorized in subsection (b) become available, the Secretary of the Treasury shall promptly begin the process of phasing in the use of the appropriations to pay financial institutions serving as depositaries and financial agents of the United States, and transitioning from the use of compensating balances to fund these services.

(2) Post-transition use limited to extraordinary circumstances

(A) In general

Following the transition to the use of the appropriations authorized in subsection (b), the Secretary of the Treasury may use the compensating balances to pay financial institutions serving as depositaries and financial agents of the United States only in extraordinary situations where the Secretary

determines that they are needed to ensure the fiscal operations of the Government continue to function in an efficient and effective manner.

(B) Report

Any use of compensating balances pursuant to subparagraph (A) shall promptly be reported by the Secretary of the Treasury to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(3) Requirements for orderly transition

In transitioning to the use of the appropriations authorized in subsection (b), the Secretary of the Treasury shall take such steps as may be appropriate to—

(A) prevent abrupt financial disruption to the functions of the Department of the Treasury or to the participating financial institutions; and

(B) maintain adequate accounting and management controls to ensure that payments to financial institutions for their banking services provided to the Government as depositaries and financial agents are accurate and that the arrangements last no longer than is necessary.

(4) Reports required

(A) Annual report

(i) In general

For each fiscal year, the Secretary of the Treasury shall submit a report to the Congress on the use of compensating balances and on the use of appropriations authorized in subsection (b) during that fiscal year.

(ii) Inclusion in budget

The report required under clause (i) may be submitted as part of the budget submitted by the President under section 1105 of title 31 for the following fiscal year and if so, the report shall be submitted concurrently to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) Final report following transition

(i) In general

Following completion of the transition from the use of compensating balances to the use of the appropriations authorized in subsection (b) to pay financial institutions for their services as depositaries and financial agents of the United States, the Secretary of the Treasury shall submit a report on the transition to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(ii) Contents of report

The report submitted under clause (i) shall include a detailed analysis of—

(I) the cost of transition;

(II) the direct costs of the services being paid from the appropriations authorized in subsection (b); and

(III) the benefits realized from the use of direct payment for such services, rather than the use of compensating balance arrangements.

(d) Omitted

(e) Effective date

Notwithstanding section 20,[1] this section shall take effect on October 28, 2003.

(Pub. L. 108–100, § 19, Oct. 28, 2003, 117 Stat. 1191.)

REFERENCES IN TEXT

Section 20, referred to in subsec. (e), means section 20 of Pub. L. 108–100, which is set out as an Effective Date note under section 5001 of this title.

CODIFICATION

Section is comprised of section 19 of Pub. L. 108–100. Subsec. (d) of section 19 of Pub. L. 108–100 amended section 412 of this title.

FUNDS FOR REIMBURSEMENT FOR DEPOSITARY AND FINANCIAL AGENCY SERVICES

Pub. L. 108–199, div. F, title II, § 218, Jan. 23, 2004, 118 Stat. 321, provided that: ''For fiscal year 2004 and each fiscal year thereafter, there are appropriated to the Secretary of the Treasury such sums as may be necessary to reimburse financial institutions in their capacity as depositaries and financial agents of the United States for all services required or directed by the Secretary of the Treasury, or the Secretary's designee, to be performed by such financial institutions on behalf of the Department of the Treasury or other Federal agencies, including services rendered prior to fiscal year 2004.''

CHAPTER 51—SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING

Sec.

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§ 5101. Purposes and methods for establishing a mortgage licensing system and registry

In order to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, the States, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, are hereby encouraged to establish a

[1] See References in Text note below.

Nationwide Mortgage Licensing System and Registry for the residential mortgage industry that accomplishes all of the following objectives:

(1) Provides uniform license applications and reporting requirements for State-licensed loan originators.

(2) Provides a comprehensive licensing and supervisory database.

(3) Aggregates and improves the flow of information to and between regulators.

(4) Provides increased accountability and tracking of loan originators.

(5) Streamlines the licensing process and reduces the regulatory burden.

(6) Enhances consumer protections and supports anti-fraud measures.

(7) Provides consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.

(8) Establishes a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.

(9) Facilitates responsible behavior in the subprime mortgage market place and provides comprehensive training and examination requirements related to subprime mortgage lending.

(10) Facilitates the collection and disbursement of consumer complaints on behalf of State and Federal mortgage regulators.

(Pub. L. 110–289, div. A, title V, §1502, July 30, 2008, 122 Stat. 2810.)

SHORT TITLE

Pub. L. 110–289, div. A, title V, §1501, July 30, 2008, 122 Stat. 2810, provided that: ''This title [enacting this chapter] may be cited as the 'Secure and Fair Enforcement for Mortgage Licensing Act of 2008' or 'S.A.F.E. Mortgage Licensing Act of 2008'.''

§ 5102. Definitions

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

(1) Federal banking agencies

The term ''Federal banking agencies'' means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(2) Depository institution

The term ''depository institution'' has the same meaning as in section 1813 of this title, and includes any credit union.

(3) Loan originator

(A) In general

The term ''loan originator''—

(i) means an individual who—

(I) takes a residential mortgage loan application; and

(II) offers or negotiates terms of a residential mortgage loan for compensation or gain;

(ii) does not include any individual who is not otherwise described in clause (i) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause;

(iii) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator; and

(iv) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11.

(B) Other definitions relating to loan originator

For purposes of this subsection, an individual ''assists a consumer in obtaining or applying to obtain a residential mortgage loan'' by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(C) Administrative or clerical tasks

The term ''administrative or clerical tasks'' means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(D) Real estate brokerage activity defined

The term ''real estate brokerage activity'' means any activity that involves offering or providing real estate brokerage services to the public, including—

(i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(iv) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) offering to engage in any activity, or act in any capacity, described in clause (i), (ii), (iii), or (iv).

(4) Loan processor or underwriter

(A) In general

The term ''loan processor or underwriter'' means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of—

(i) a State-licensed loan originator; or
(ii) a registered loan originator.

(B) Clerical or support duties

For purposes of subparagraph (A), the term ''clerical or support duties'' may include—

(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(5) Nationwide mortgage licensing system and registry

The term ''Nationwide Mortgage Licensing System and Registry'' means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed loan originators and the registration of registered loan originators or any system established by the Secretary under section 5108 of this title.

(6) Nontraditional mortgage product

The term ''nontraditional mortgage product'' means any mortgage product other than a 30-year fixed rate mortgage.

(7) Registered loan originator

The term ''registered loan originator'' means any individual who—

(A) meets the definition of loan originator and is an employee of—

(i) a depository institution;

(ii) a subsidiary that is—

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(8) Residential mortgage loan

The term ''residential mortgage loan'' means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 1602(v) of title 15) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(9) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development.

(10) State

The term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(11) State-licensed loan originator

The term ''State-licensed loan originator'' means any individual who—

(A) is a loan originator;

(B) is not an employee of—

(i) a depository institution;

(ii) a subsidiary that is—

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(C) is licensed by a State or by the Secretary under section 5107 of this title and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(12) Unique identifier

(A) In general

The term ''unique identifier'' means a number or other identifier that—

(i) permanently identifies a loan originator;

(ii) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and

(iii) shall not be used for purposes other than those set forth under this chapter.

(B) Responsibility of States

To the greatest extent possible and to accomplish the purpose of this chapter, States shall use unique identifiers in lieu of social security numbers.

(Pub. L. 110–289, div. A, title V, § 1503, July 30, 2008, 122 Stat. 2811; Pub. L. 111–203, title X, § 1100(2)–(4), July 21, 2010, 124 Stat. 2106.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1100(2)–(4), 1100H, July 21, 2010, 124 Stat. 2106, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) by substituting ''Bureau'' for ''Federal banking agencies'' wherever appearing and ''Director'' for ''Secretary'' wherever appearing;

(2) by redesignating paragraphs (2) to (12) as (3) to (13), respectively;

(3) by striking out paragraph (1) and adding the following:

''(1) Bureau

''The term 'Bureau' means the Bureau of Consumer Financial Protection.

''(2) Federal banking agency

''The term 'Federal banking agency' means the Board of Governors of the Federal Reserve Sys-

tem, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.''; and

(4) by striking out paragraph (10), as so redesignated, and adding the following:

''(10) Director

''The term 'Director' means the Director of the Bureau of Consumer Financial Protection.''

See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 5103. License or registration required

(a) In general

Subject to the existence of a licensing or registration regime, as the case may be, an individual may not engage in the business of a loan originator without first—

(1) obtaining, and maintaining annually—

(A) a registration as a registered loan originator; or

(B) a license and registration as a State-licensed loan originator; and

(2) obtaining a unique identifier.

(b) Loan processors and underwriters

(1) Supervised loan processors and underwriters

A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform any of the activities of a loan originator shall not be required to be a State-licensed loan originator.

(2) Independent contractors

An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such independent contractor is a State-licensed loan originator.

(Pub. L. 110–289, div. A, title V, §1504, July 30, 2008, 122 Stat. 2814.)

§ 5104. State license and registration application and issuance

(a) Background checks

In connection with an application to any State for licensing and registration as a State-licensed loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including—

(1) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and

(2) personal history and experience, including authorization for the System to obtain—

(A) an independent credit report obtained from a consumer reporting agency described in section 1681a(p) of title 15; and

(B) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) Issuance of license

The minimum standards for licensing and registration as a State-licensed loan originator shall include the following:

(1) The applicant has never had a loan originator license revoked in any governmental jurisdiction.

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court—

(A) during the 7-year period preceding the date of the application for licensing and registration; or

(B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.

(3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently within the purposes of this chapter.

(4) The applicant has completed the pre-licensing education requirement described in subsection (c).

(5) The applicant has passed a written test that meets the test requirement described in subsection (d).

(6) The applicant has met either a net worth or surety bond requirement, or paid into a State fund, as required by the State pursuant to section 5107(d)(6) of this title.

(c) Pre-licensing education of loan originators

(1) Minimum educational requirements

In order to meet the pre-licensing education requirement referred to in subsection (b)(4), a person shall complete at least 20 hours of education approved in accordance with paragraph (2), which shall include at least—

(A) 3 hours of Federal law and regulations;

(B) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) Approved educational courses

For purposes of paragraph (1), pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

(3) Limitation and standards

(A) Limitation

To maintain the independence of the approval process, the Nationwide Mortgage Li-

censing System and Registry shall not directly or indirectly offer pre-licensure educational courses for loan originators.

(B) Standards

In approving courses under this section, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses.

(d) Testing of loan originators

(1) In general

In order to meet the written test requirement referred to in subsection (b)(5), an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by an approved test provider.

(2) Qualified test

A written test shall not be treated as a qualified written test for purposes of paragraph (1) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including—

(A) ethics;

(B) Federal law and regulation pertaining to mortgage origination;

(C) State law and regulation pertaining to mortgage origination;

(D) Federal and State law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(3) Minimum competence

(A) Passing score

An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(B) Initial retests

An individual may retake a test 3 consecutive times with each consecutive taking occurring at least 30 days after the preceding test.

(C) Subsequent retests

After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.

(D) Retest after lapse of license

A State-licensed loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered loan originator.

(e) Mortgage call reports

Each mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

(Pub. L. 110–289, div. A, title V, §1505, July 30, 2008, 122 Stat. 2814.)

§ 5105. Standards for State license renewal

(a) In general

The minimum standards for license renewal for State-licensed loan originators shall include the following:

(1) The loan originator continues to meet the minimum standards for license issuance.

(2) The loan originator has satisfied the annual continuing education requirements described in subsection (b).

(b) Continuing education for State-licensed loan originators

(1) In general

In order to meet the annual continuing education requirements referred to in subsection (a)(2), a State-licensed loan originator shall complete at least 8 hours of education approved in accordance with paragraph (2), which shall include at least—

(A) 3 hours of Federal law and regulations;

(B) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) Approved educational courses

For purposes of paragraph (1), continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

(3) Calculation of continuing education credits

A State-licensed loan originator—

(A) may only receive credit for a continuing education course in the year in which the course is taken; and

(B) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) Instructor credit

A State-licensed loan originator who is approved as an instructor of an approved continuing education course may receive credit for the originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

(5) Limitation and standards

(A) Limitation

To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer any continuing education courses for loan originators.

(B) Standards

In approving courses under this section, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses.

(Pub. L. 110–289, div. A, title V, §1506, July 30, 2008, 122 Stat. 2816.)

§ 5106. System of registration administration by Federal agencies

(a) Development

(1) In general

The Federal banking agencies shall jointly, through the Federal Financial Institutions Examination Council, and together with the Farm Credit Administration, develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on July 30, 2008.

(2) Registration requirements

In connection with the registration of any loan originator under this subsection, the appropriate Federal banking agency and the Farm Credit Administration shall, at a minimum, furnish or cause to be furnished to the Nationwide Mortgage Licensing System and Registry information concerning the employees's[1] identity, including—

(A) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and

(B) personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) Coordination

(1) Unique identifier

The Federal banking agencies, through the Financial Institutions Examination Council, and the Farm Credit Administration shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each registered loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and publicly adjudicated disciplinary and enforcement actions against loan originators.

(2) Nationwide Mortgage Licensing System and Registry development

To facilitate the transfer of information required by subsection (a)(2), the Nationwide Mortgage Licensing System and Registry shall coordinate with the Federal banking agencies, through the Financial Institutions Examination Council, and the Farm Credit Administration concerning the development and operation, by such System and Registry, of the registration functionality and data requirements for loan originators.

[1] So in original.

(c) Consideration of factors and procedures

In establishing the registration procedures under subsection (a) and the protocols for assigning a unique identifier to a registered loan originator, the Federal banking agencies shall make such de minimis exceptions as may be appropriate to paragraphs (1)(A) and (2) of section 5103(a) of this title, shall make reasonable efforts to utilize existing information to minimize the burden of registering loan originators, and shall consider methods for automating the process to the greatest extent practicable consistent with the purposes of this chapter.

(Pub. L. 110–289, div. A, title V, § 1507, July 30, 2008, 122 Stat. 2817; Pub. L. 111–203, title X, § 1100(2), (5), July 21, 2010, 124 Stat. 2106.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1100(2), (5), 1100H, July 21, 2010, 124 Stat. 2106, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) by substituting ''Bureau'' for ''Federal banking agencies'' wherever appearing;

(2) in subsection (a)—

(A) by striking out paragraph (1) and adding the following:

''(1) In general

''The Bureau shall develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on July 21, 2010.''; and

(B) in paragraph (2), by substituting ''Bureau'' for ''appropriate Federal banking agency and the Farm Credit Administration'' and ''identity of the employee'' for ''employees's identity''; and

(3) in subsection (b), by substituting ''and the Bureau of Consumer Financial Protection'' for ''through the Financial Institutions Examination Council, and the Farm Credit Administration''.

See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 5107. Secretary of Housing and Urban Development backup authority to establish a loan originator licensing system

(a) Backup licensing system

If, by the end of the 1-year period, or the 2-year period in the case of a State whose legislature meets only biennially, beginning on July 30, 2008, or at any time thereafter, the Secretary determines that a State does not have in place by law or regulation a system for licensing and registering loan originators that meets the re-

quirements of sections 5104 and 5105 of this title and subsection (d) of this section, or does not participate in the Nationwide Mortgage Licensing System and Registry, the Secretary shall provide for the establishment and maintenance of a system for the licensing and registration by the Secretary of loan originators operating in such State as State-licensed loan originators.

(b) Licensing and registration requirements

The system established by the Secretary under subsection (a) for any State shall meet the requirements of sections 5104 and 5105 of this title for State-licensed loan originators.

(c) Unique identifier

The Secretary shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each loan originator licensed by the Secretary as a State-licensed loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.

(d) State licensing law requirements

For purposes of this section, the law in effect in a State meets the requirements of this subsection if the Secretary determines the law satisfies the following minimum requirements:

(1) A State loan originator supervisory authority is maintained to provide effective supervision and enforcement of such law, including the suspension, termination, or nonrenewal of a license for a violation of State or Federal law.

(2) The State loan originator supervisory authority ensures that all State-licensed loan originators operating in the State are registered with Nationwide Mortgage Licensing System and Registry.

(3) The State loan originator supervisory authority is required to regularly report violations of such law, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.

(4) The State loan originator supervisory authority has a process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry.

(5) The State loan originator supervisory authority has established a mechanism to assess civil money penalties for individuals acting as mortgage originators in their State without a valid license or registration.

(6) The State loan originator supervisory authority has established minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator, or has established a recovery fund paid into by the loan originators.

(e) Temporary extension of period

The Secretary may extend, by not more than 24 months, the 1-year or 2-year period, as the case may be, referred to in subsection (a) for the licensing of loan originators in any State under a State licensing law that meets the requirements of sections 5104 and 5105 of this title and subsection (d) if the Secretary determines that such State is making a good faith effort to establish a State licensing law that meets such requirements, license mortgage originators under such law, and register such originators with the Nationwide Mortgage Licensing System and Registry.

(Pub. L. 110–289, div. A, title V, § 1508, July 30, 2008, 122 Stat. 2818; Pub. L. 111–203, title X, § 1100(3), (6), July 21, 2010, 124 Stat. 2106.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1100(3), (6), 1100H, July 21, 2010, 124 Stat. 2106, 2113, provided that, effective on the designated transfer date, this section is amended:

(1) by striking out the section catchline and inserting ''Bureau of Consumer Financial Protection backup authority to establish loan originator licensing system'';

(2) by substituting ''Director'' for ''Secretary'' wherever appearing;

(3) by adding at the end the following:

''(f) Regulation authority

''(1) In general

''The Bureau is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

''(2) Considerations

''In issuing regulations under paragraph (1), the Bureau shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans, as well as the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.''

See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 5108. Backup authority to establish a nationwide mortgage licensing and registry system

If at any time the Secretary determines that the Nationwide Mortgage Licensing System and Registry is failing to meet the requirements and purposes of this chapter for a comprehensive licensing, supervisory, and tracking system for loan originators, the Secretary shall establish and maintain such a system to carry out the purposes of this chapter and the effective registration and regulation of loan originators.

(Pub. L. 110–289, div. A, title V, § 1509, July 30, 2008, 122 Stat. 2819; Pub. L. 111–203, title X, § 1100(3), July 21, 2010, 124 Stat. 2106.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1100(3), 1100H, July 21, 2010, 124 Stat. 2106, 2113, provided that, effective on the designated transfer date, this section is amended by substituting ''Director'' for ''Secretary'' wherever appearing. See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 5109. Fees

The Federal banking agencies, the Farm Credit Administration, the Secretary, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.

(Pub. L. 110–289, div. A, title V, § 1510, July 30, 2008, 122 Stat. 2819.)

REPEAL OF SECTION AND ENACTMENT OF NEW SECTION

Pub. L. 111–203, title X, §§ 1100(7), 1100H, July 21, 2010, 124 Stat. 2107, 2113, provided that, effective on the designated transfer date, this section is repealed and a new section is enacted to read as follows:

''§ 5109. Fees

''The Bureau, the Farm Credit Administration, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.''

See Effective Date of Repeal and Enactment of Section note below.

EFFECTIVE DATE OF REPEAL AND ENACTMENT OF SECTION

Repeal and enactment of section effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 552a of Title 5, Government Organization and Employees.

§ 5110. Background checks of loan originators

(a) Access to records

Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide access to all criminal history information to the appropriate State officials responsible for regulating State-licensed loan originators to the extent criminal history background checks are required under the laws of the State for the licensing of such loan originators.

(b) Agent

For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (a), the Conference of State Bank Supervisors or a wholly owned subsidiary may be used as a channeling agent of the States for requesting and distributing information between the Department of Justice and the appropriate State agencies.

(Pub. L. 110–289, div. A, title V, § 1511, July 30, 2008, 122 Stat. 2819.)

§ 5111. Confidentiality of information

(a) System confidentiality

Except as otherwise provided in this section, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 5108 of this title, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

(b) Nonapplicability of certain requirements

Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to—

(1) disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

(2) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or the Secretary with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(c) Coordination with other law

Any State law, including any State open record law, relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of such provision to the extent State law provides less confidentiality or a weaker privilege.

(d) Public access to information

This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in Nationwide Mortgage Licensing System and Registry for access by the public.

(Pub. L. 110–289, div. A, title V, § 1512, July 30, 2008, 122 Stat. 2820; Pub. L. 111–203, title X, § 1100(3), July 21, 2010, 124 Stat. 2106.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1100(3), 1100H, July 21, 2010, 124 Stat. 2106, 2113, provided that, effective on the designated transfer date, this section is amended by substituting ''Director'' for ''Secretary'' wherever appearing. See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L.

111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 5112. Liability provisions

The Secretary, any State official or agency, any Federal banking agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 5108 of this title, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.

(Pub. L. 110–289, div. A, title V, §1513, July 30, 2008, 122 Stat. 2820.)

REPEAL OF SECTION AND ENACTMENT OF NEW SECTION

Pub. L. 111–203, title X, §§1100(8), 1100H, July 21, 2010, 124 Stat. 2107, 2113, provided that, effective on the designated transfer date, this section is repealed and a new section is enacted to read as follows:

''§ 5112. Liability provisions

''The Bureau, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 5108 of this title, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.''

See Effective Date of Repeal and Enactment of Section note below.

EFFECTIVE DATE OF REPEAL AND ENACTMENT OF SECTION

Repeal and enactment of section effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 552a of Title 5, Government Organization and Employees.

§ 5113. Enforcement under HUD backup licensing system

(a) Summons authority

The Secretary may—

(1) examine any books, papers, records, or other data of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 5107 of this title; and

(2) summon any loan originator referred to in paragraph (1) or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before the Secretary or any delegate of the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of this chapter.

(b) Examination authority

(1) In general

If the Secretary establishes a licensing system under section 5107 of this title for any State, the Secretary shall appoint examiners for the purposes of administering such section.

(2) Power to examine

Any examiner appointed under paragraph (1) shall have power, on behalf of the Secretary, to make any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 5107 of this title whenever the Secretary determines an examination of any loan originator is necessary to determine the compliance by the originator with this chapter.

(3) Report of examination

Each examiner appointed under paragraph (1) shall make a full and detailed report of examination of any loan originator examined to the Secretary.

(4) Administration of oaths and affirmations; evidence

In connection with examinations of loan originators operating in any State which is subject to a licensing system established by the Secretary under section 5107 of this title, or with other types of investigations to determine compliance with applicable law and regulations, the Secretary and examiners appointed by the Secretary may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.

(5) Assessments

The cost of conducting any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 5107 of this title shall be assessed by the Secretary against the loan originator to meet the Secretary's expenses in carrying out such examination.

(c) Cease and desist proceeding

(1) Authority of Secretary

If the Secretary finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this chapter, or any regulation thereunder, with respect to a State which is subject to a licensing system established by the Secretary under section 5107 of this title, the Secretary may publish such findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist

from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision or regulation, upon such terms and conditions and within such time as the Secretary may specify in such order. Any such order may, as the Secretary deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Secretary may specify, with such provision or regulation with respect to any loan originator.

(2) Hearing

The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Secretary with the consent of any respondent so served.

(3) Temporary order

Whenever the Secretary determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest prior to the completion of the proceedings, the Secretary may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest as the Secretary deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Secretary determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Secretary or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(4) Review of temporary orders

(A) Review by Secretary

At any time after the respondent has been served with a temporary cease and desist order pursuant to paragraph (3), the respondent may apply to the Secretary to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease and desist order entered without a prior hearing before the Secretary, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Secretary shall hold a hearing and render a decision on such application at the earliest possible time.

(B) Judicial review

Within—

(i) 10 days after the date the respondent was served with a temporary cease and desist order entered with a prior hearing before the Secretary; or

(ii) 10 days after the Secretary renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease and desist order entered without a prior hearing before the Secretary,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease and desist order entered without a prior hearing before the Secretary may not apply to the court except after hearing and decision by the Secretary on the respondent's application under subparagraph (A).

(C) No automatic stay of temporary order

The commencement of proceedings under subparagraph (B) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

(5) Authority of the Secretary to prohibit persons from serving as loan originators

In any cease and desist proceeding under paragraph (1), the Secretary may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as the Secretary shall determine, any person who has violated this chapter or regulations thereunder, from acting as a loan originator if the conduct of that person demonstrates unfitness to serve as a loan originator.

(d) Authority of the Secretary to assess money penalties

(1) In general

The Secretary may impose a civil penalty on a loan originator operating in any State which is subject to a licensing system established by the Secretary under section 5107 of this title, if the Secretary finds, on the record after notice and opportunity for hearing, that such loan originator has violated or failed to comply with any requirement of this chapter or any regulation prescribed by the Secretary under this chapter or order issued under subsection (c).

(2) Maximum amount of penalty

The maximum amount of penalty for each act or omission described in paragraph (1) shall be $25,000.

(Pub. L. 110–289, div. A, title V, §1514, July 30, 2008, 122 Stat. 2821; Pub. L. 111–203, title X, §1100(3), (9), July 21, 2010, 124 Stat. 2106, 2107.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§1100(3), (9), 1100H, July 21, 2010, 124 Stat. 2106, 2107, 2113, provided that, effective on the designated transfer date,

this section is amended by substituting ''by the Bureau'' for ''under HUD backup licensing system'' in the section catchline and ''Director'' for ''Secretary'' wherever appearing. See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 5114. State examination authority

In addition to any authority allowed under State law a State licensing agency shall have the authority to conduct investigations and examinations as follows:

(1) For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the State licensing agency may review, investigate, or examine any loan originator licensed or required to be licensed under this chapter, as often as necessary in order to carry out the purposes of this chapter.

(2) Each such loan originator shall make available upon request to the State licensing agency the books and records relating to the operations of such originator. The State licensing agency may have access to such books and records and interview the officers, principals, loan originators, employees, independent contractors, agents, and customers of the licensee concerning their business.

(3) The authority of this section shall remain in effect, whether such a loan originator acts or claims to act under any licensing or registration law of such State, or claims to act without such authority.

(4) No person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(Pub. L. 110–289, div. A, title V, § 1515, July 30, 2008, 122 Stat. 2823.)

§ 5115. Reports and recommendations to Congress

(a) Annual reports

Not later than 1 year after July 30, 2008, and annually thereafter, the Secretary shall submit a report to Congress on the effectiveness of the provisions of this chapter, including legislative recommendations, if any, for strengthening consumer protections, enhancing examination standards, streamlining communication between all stakeholders involved in residential mortgage loan origination and processing, and establishing performance based bonding requirements for mortgage originators or institutions that employ such brokers.

(b) Legislative recommendations

Not later than 6 months after July 30, 2008, the Secretary shall make recommendations to Congress on legislative reforms to the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.], that the Secretary deems appropriate to promote more transparent disclosures, allowing consumers to better shop and compare mortgage loan terms and settlement costs.

(Pub. L. 110–289, div. A, title V, § 1516, July 30, 2008, 122 Stat. 2824; Pub. L. 111–203, title X, § 1100(3), July 21, 2010, 124 Stat. 2106.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1100(3), 1100H, July 21, 2010, 124 Stat. 2106, 2113, provided that, effective on the designated transfer date, this section is amended by substituting ''Director'' for ''Secretary'' wherever appearing. See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (b), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§ 2601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 5116. Study and reports on defaults and foreclosures

(a) Study required

The Secretary shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as is available.

(b) Preliminary report to Congress

Not later than 6 months after July 30, 2008, the Secretary shall submit to Congress a preliminary report regarding the study required by this section.

(c) Final report to Congress

Not later than 12 months after July 30, 2008, the Secretary shall submit to Congress a final report regarding the results of the study required by this section, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to provide targeted assistance to populations with the highest risk of potential default or foreclosure.

(Pub. L. 110–289, div. A, title V, § 1517, July 30, 2008, 122 Stat. 2824; Pub. L. 111–203, title X, § 1100(3), July 21, 2010, 124 Stat. 2106.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1100(3), 1100H, July 21, 2010, 124 Stat. 2106, 2113, provided that, effective on the designated transfer date, this section is amended by substituting ''Director'' for ''Secretary'' wherever appearing. See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

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§ 5201. Purposes

The purposes of this chapter are—

(1) to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States; and

(2) to ensure that such authority and such facilities are used in a manner that—

(A) protects home values, college funds, retirement accounts, and life savings;

(B) preserves homeownership and promotes jobs and economic growth;

(C) maximizes overall returns to the taxpayers of the United States; and

(D) provides public accountability for the exercise of such authority.

(Pub. L. 110–343, div. A, §2, Oct. 3, 2008, 122 Stat. 3766.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out below and Tables.

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–203, title XIII, §1301, July 21, 2010, 124 Stat. 2133, provided that: ''This title [amending sections 1431, 1455, 1719, 5216, and 5225 of this title and enacting provisions set out as a note under section 1455 of this title] may be cited as the 'Pay It Back Act'.''

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–22, div. A, §1(a), May 20, 2009, 123 Stat. 1632, provided that: ''This division [enacting sections 1715z–25, 1735f–10, 1790e, 5220a, and 5231a of this title, amending sections 1708, 1710, 1715u, 1715z–20, 1715z–23, 1715z–24, 1735f–14, 1782, 1783, 1817, 1823, 1824, 5221, 5225, 5226, 5233, and 5241 of this title, sections 1639a, 1640, and 1641 of Title 15, Commerce and Trade, section 714 of Title 31, Money and Finance, section 3703 of Title 38, Veterans' Benefits, and sections 1437f and 1472 of Title 42, The Public Health and Welfare, repealing section 1735f–10 of this title, enacting provisions set out as notes under this section, sections 1708, 1715u, and 5220 of this title, section 1639a of Title 15, section 3703 of Title 38, and sections 1437f, 1472, and 5301 of Title 42, amending provisions set out as a note under section 5301 of Title 42, and repealing provisions set out as notes under this section and section 5220 of this title] may be cited as the 'Helping Families Save Their Homes Act of 2009'.''

Pub. L. 111–22, div. A, title VII, §701, May 20, 2009, 123 Stat. 1660, provided that: ''This title [amending section 1437f of Title 42, The Public Health and Welfare, enacting provisions set out as notes under section 5220 of this title and section 1437f of Title 42, and repealing provisions set out as notes under this section and section 5220 of this title] may be cited as the 'Protecting Tenants at Foreclosure Act of 2009'.''

[Section 701 of Pub. L. 111–22, set out above, repealed Dec. 31, 2014, see section 704 of Pub. L. 111–22, set out as a Termination Date of 2009 Amendment note under section 1437f of Title 42, The Public Health and Welfare.]

Pub. L. 111–15, §1, Apr. 24, 2009, 123 Stat. 1603, provided that: ''This Act [amending section 5231 of this title and enacting provisions set out as a note under section 11 of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, Government Organization and Employees] may be cited as the 'Special Inspector General for the Troubled Asset Relief Program Act of 2009'.''

SHORT TITLE

Pub. L. 110–343, div. A, §1(a), Oct. 3, 2008, 122 Stat. 3765, provided that: ''This division [enacting this chapter, amending sections 1715z–23, 1818, 1823, and 1828 of this title, section 5315 of Title 5, Government Organization and Employees, section 1638 of Title 15, Commerce and Trade, sections 108, 162, and 280G of Title 26, Internal Revenue Code, and sections 301, 1105, and 3101 of Title 31, Money and Finance, enacting provisions set out as notes under section 1638 of Title 15, sections 108, 162, and 280G of Title 26, and section 1105 of Title 31, and amending provisions set out as a note under section 461 of this title] may be cited as the 'Emergency Economic Stabilization Act of 2008'.''

EX. ORD. NO. 13501. ESTABLISHMENT OF THE PRESIDENT'S ECONOMIC RECOVERY ADVISORY BOARD

Ex. Ord. No. 13501, Feb. 6, 2009, 74 F.R. 6983, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to enhance the strength and competitiveness of the Nation's economy and the prosperity of the American people by ensuring the availability of independent, nonpartisan information, analysis, and advice to the President as he formulates and implements his plans for economic recovery, it is hereby ordered as follows:

SECTION 1. There is hereby established within the Department of the Treasury the President's Economic Recovery Advisory Board (PERAB). The PERAB shall consist of not more than 17 members, who shall be appointed by the President from among distinguished citizens from outside the Government who are qualified on the basis of achievement, experience, independence, and integrity. The overall membership of the PERAB shall reflect a diverse set of perspectives from across the country and from various sectors of the economy. The President shall designate a Chair from among the members. The Chair shall appoint a Staff Director, who shall supervise the staff of the PERAB.

SEC. 2. The functions of the PERAB are advisory only. The PERAB shall meet regularly and shall:

(a) solicit information and ideas from across the country and from all sectors of our economy about the functioning of the economy, the condition of the financial and banking system, and the prosperity of the American people and of American industry that can serve to inform the decisionmaking of the President, and, with respect to matters deemed appropriate by the President, provide information and recommendations to any other agency with responsibilities related to the economy or financial markets or to the National Economic Council;

(b) report directly to the President on the design, implementation, and evaluation of policies to promote the growth of the American economy, establish a stable and sound financial and banking system, create jobs, and improve the long-term prosperity of the American people; and

(c) provide analysis and information with respect to the operation, regulation, and healthy functioning of the economy and of the financial and banking system. As deemed appropriate by the President, this analysis and information shall be provided to the Chairman of the Board of Governors of the Federal Reserve System, to any other agency with responsibilities related to the economy or financial markets, or to the National Economic Council.

SEC. 3. *Administration of the PERAB*. (a) All executive departments and agencies and all entities within the Executive Office of the President shall cooperate with the PERAB and provide such information and assistance to the PERAB as the PERAB may request, to the extent permitted by law.

(b) The Department of the Treasury shall provide funding and administrative support for the PERAB to the extent permitted by law and within existing appropriations.

(c) Members of the PERAB shall serve without compensation but may receive transportation expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government (5 U.S.C. 5701–5707), consistent with the availability of funds.

SEC. 4. *Termination*. The PERAB shall terminate 2 years after the date of this order unless extended by the President.

SEC. 5. *General Provisions*. (a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the ''Act''), may apply to the PERAB, any functions of the President under the Act, except for those in section 6 of the Act, shall be performed by the Secretary of the Treasury in accordance with the guidelines that have been issued by the Administrator of General Services.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

§ 5202. Definitions

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

(1) Appropriate committees of Congress

The term ''appropriate committees of Congress'' means—

(A) the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and

(B) the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives.

(2) Board

The term ''Board'' means the Board of Governors of the Federal Reserve System.

(3) Congressional support agencies

The term ''congressional support agencies'' means the Congressional Budget Office and the Joint Committee on Taxation.

(4) Corporation

The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(5) Financial institution

The term ''financial institution'' means any institution, including, but not limited to, any bank, savings association, credit union, security broker or dealer, or insurance company, established and regulated under the laws of the United States or any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands, and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government.

(6) Fund

The term ''Fund'' means the Troubled Assets Insurance Financing Fund established under section 5212 of this title.

(7) Secretary

The term ''Secretary'' means the Secretary of the Treasury.

(8) TARP

The term ''TARP'' means the Troubled Asset Relief Program established under section 5211 of this title.

(9) Troubled assets

The term ''troubled assets'' means—

(A) residential or commercial mortgages and any securities, obligations, or other instruments that are based on or related to such mortgages, that in each case was originated or issued on or before March 14, 2008, the purchase of which the Secretary determines promotes financial market stability; and

(B) any other financial instrument that the Secretary, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, determines the purchase of which is necessary to promote financial market stability, but only upon transmittal of such determination, in writing, to the appropriate committees of Congress.

(Pub. L. 110–343, div. A, §3, Oct. 3, 2008, 122 Stat. 3766.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

SUBCHAPTER I—TROUBLED ASSETS RELIEF PROGRAM

§ 5211. Purchases of troubled assets

(a) Offices; authority

(1) Authority

The Secretary is authorized to establish the Troubled Asset Relief Program (or ''TARP'') to purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this chapter and the policies and procedures developed and published by the Secretary.

(2) Commencement of program

Establishment of the policies and procedures and other similar administrative requirements imposed on the Secretary by this chapter are not intended to delay the commencement of the TARP.

(3) Establishment of Treasury office

(A) In general

The Secretary shall implement any program under paragraph (1) through an Office of Financial Stability, established for such purpose within the Office of Domestic Finance of the Department of the Treasury, which office shall be headed by an Assistant Secretary of the Treasury, appointed by the President, by and with the advice and consent of the Senate, except that an interim Assistant Secretary may be appointed by the Secretary.

(B) Omitted

(b) Consultation

In exercising the authority under this section, the Secretary shall consult with the Board, the Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairman of the National Credit Union Administration Board, and the Secretary of Housing and Urban Development.

(c) Necessary actions

The Secretary is authorized to take such actions as the Secretary deems necessary to carry out the authorities in this chapter, including, without limitation, the following:

(1) The Secretary shall have direct hiring authority with respect to the appointment of employees to administer this chapter.

(2) Entering into contracts, including contracts for services authorized by section 3109 of title 5.

(3) Designating financial institutions as financial agents of the Federal Government, and such institutions shall perform all such reasonable duties related to this chapter as financial agents of the Federal Government as may be required.

(4) In order to provide the Secretary with the flexibility to manage troubled assets in a manner designed to minimize cost to the taxpayers, establishing vehicles that are authorized, subject to supervision by the Secretary, to purchase, hold, and sell troubled assets and issue obligations.

(5) Issuing such regulations and other guidance as may be necessary or appropriate to define terms or carry out the authorities or purposes of this chapter.

(d) Program guidelines

Before the earlier of the end of the 2-business-day period beginning on the date of the first purchase of troubled assets pursuant to the authority under this section or the end of the 45-day period beginning on October 3, 2008, the Secretary shall publish program guidelines, including the following:

(1) Mechanisms for purchasing troubled assets.

(2) Methods for pricing and valuing troubled assets.

(3) Procedures for selecting asset managers.

(4) Criteria for identifying troubled assets for purchase.

(e) Preventing unjust enrichment

In making purchases under the authority of this chapter, the Secretary shall take such steps as may be necessary to prevent unjust enrichment of financial institutions participating in a program established under this section, including by preventing the sale of a troubled asset to the Secretary at a higher price than what the seller paid to purchase the asset. This subsection does not apply to troubled assets acquired in a merger or acquisition, or a purchase of assets from a financial institution in conservatorship or receivership, or that has initiated bankruptcy proceedings under title 11.

(Pub. L. 110–343, div. A, title I, §101, Oct. 3, 2008, 122 Stat. 3767.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (2), (c), and (e), was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L.

110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

CODIFICATION

Section is comprised of section 101 of div. A of Pub. L. 110–343. Subsec. (a)(3)(B) of section 101 of div. A of Pub. L. 110–343 amended section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance.

§ 5212. Insurance of troubled assets

(a) Authority

(1) In general

If the Secretary establishes the program authorized under section 5211 of this title, then the Secretary shall establish a program to guarantee troubled assets originated or issued prior to March 14, 2008, including mortgage-backed securities.

(2) Guarantees

In establishing any program under this subsection, the Secretary may develop guarantees of troubled assets and the associated premiums for such guarantees. Such guarantees and premiums may be determined by category or class of the troubled assets to be guaranteed.

(3) Extent of guarantee

Upon request of a financial institution, the Secretary may guarantee the timely payment of principal of, and interest on, troubled assets in amounts not to exceed 100 percent of such payments. Such guarantee may be on such terms and conditions as are determined by the Secretary, provided that such terms and conditions are consistent with the purposes of this chapter.

(b) Reports

Not later than 90 days after October 3, 2008, the Secretary shall report to the appropriate committees of Congress on the program established under subsection (a).

(c) Premiums

(1) In general

The Secretary shall collect premiums from any financial institution participating in the program established under subsection (a). Such premiums shall be in an amount that the Secretary determines necessary to meet the purposes of this chapter and to provide sufficient reserves pursuant to paragraph (3).

(2) Authority to base premiums on product risk

In establishing any premium under paragraph (1), the Secretary may provide for variations in such rates according to the credit risk associated with the particular troubled asset that is being guaranteed. The Secretary shall publish the methodology for setting the premium for a class of troubled assets together with an explanation of the appropriateness of the class of assets for participation in the program established under this section. The methodology shall ensure that the premium is consistent with paragraph (3).

(3) Minimum level

The premiums referred to in paragraph (1) shall be set by the Secretary at a level necessary to create reserves sufficient to meet anticipated claims, based on an actuarial analysis, and to ensure that taxpayers are fully protected.

(4) Adjustment to purchase authority

The purchase authority limit in section 5225 of this title shall be reduced by an amount equal to the difference between the total of the outstanding guaranteed obligations and the balance in the Troubled Assets Insurance Financing Fund.

(d) Troubled Assets Insurance Financing Fund

(1) Deposits

The Secretary shall deposit fees collected under this section into the Fund established under paragraph (2).

(2) Establishment

There is established a Troubled Assets Insurance Financing Fund that shall consist of the amounts collected pursuant to paragraph (1), and any balance in such fund shall be invested by the Secretary in United States Treasury securities, or kept in cash on hand or on deposit, as necessary.

(3) Payments from Fund

The Secretary shall make payments from amounts deposited in the Fund to fulfill obligations of the guarantees provided to financial institutions under subsection (a).

(Pub. L. 110–343, div. A, title I, § 102, Oct. 3, 2008, 122 Stat. 3768.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3) and (c)(1), was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5213. Considerations

In exercising the authorities granted in this chapter, the Secretary shall take into consideration—

(1) protecting the interests of taxpayers by maximizing overall returns and minimizing the impact on the national debt;

(2) providing stability and preventing disruption to financial markets in order to limit the impact on the economy and protect American jobs, savings, and retirement security;

(3) the need to help families keep their homes and to stabilize communities;

(4) in determining whether to engage in a direct purchase from an individual financial institution, the long-term viability of the financial institution in determining whether the purchase represents the most efficient use of funds under this chapter;

(5) ensuring that all financial institutions are eligible to participate in the program, without discrimination based on size, geography, form of organization, or the size, type,

and number of assets eligible for purchase under this chapter;

(6) providing financial assistance to financial institutions, including those serving low- and moderate-income populations and other underserved communities, and that have assets less than $1,000,000,000, that were well or adequately capitalized as of June 30, 2008, and that as a result of the devaluation of the preferred government-sponsored enterprises stock will drop one or more capital levels, in a manner sufficient to restore the financial institutions to at least an adequately capitalized level;

(7) the need to ensure stability for United States public instrumentalities, such as counties and cities, that may have suffered significant increased costs or losses in the current market turmoil;

(8) protecting the retirement security of Americans by purchasing troubled assets held by or on behalf of an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B) of title 26, except that such authority shall not extend to any compensation arrangements subject to section 409A of such title; and

(9) the utility of purchasing other real estate owned and instruments backed by mortgages on multifamily properties.

(Pub. L. 110–343, div. A, title I, § 103, Oct. 3, 2008, 122 Stat. 3770.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5214. Financial Stability Oversight Board

(a) Establishment

There is established the Financial Stability Oversight Board, which shall be responsible for—

(1) reviewing the exercise of authority under a program developed in accordance with this chapter, including—

(A) policies implemented by the Secretary and the Office of Financial Stability created under sections 5211 and 5212 of this title, including the appointment of financial agents, the designation of asset classes to be purchased, and plans for the structure of vehicles used to purchase troubled assets; and

(B) the effect of such actions in assisting American families in preserving home ownership, stabilizing financial markets, and protecting taxpayers;

(2) making recommendations, as appropriate, to the Secretary regarding use of the authority under this chapter; and

(3) reporting any suspected fraud, misrepresentation, or malfeasance to the Special Inspector General for the Troubled Assets Relief Program or the Attorney General of the United States, consistent with section 535(b) of title 28.

(b) Membership

The Financial Stability Oversight Board shall be comprised of—

(1) the Chairman of the Board of Governors of the Federal Reserve System;

(2) the Secretary;

(3) the Director of the Federal Housing Finance Agency;

(4) the Chairman of the Securities Exchange Commission; and

(5) the Secretary of Housing and Urban Development.

(c) Chairperson

The chairperson of the Financial Stability Oversight Board shall be elected by the members of the Board from among the members other than the Secretary.

(d) Meetings

The Financial Stability Oversight Board shall meet 2 weeks after the first exercise of the purchase authority of the Secretary under this chapter, and monthly thereafter.

(e) Additional authorities

In addition to the responsibilities described in subsection (a), the Financial Stability Oversight Board shall have the authority to ensure that the policies implemented by the Secretary are—

(1) in accordance with the purposes of this chapter;

(2) in the economic interests of the United States; and

(3) consistent with protecting taxpayers, in accordance with section 5223(a) of this title.

(f) Credit review committee

The Financial Stability Oversight Board may appoint a credit review committee for the purpose of evaluating the exercise of the purchase authority provided under this chapter and the assets acquired through the exercise of such authority, as the Financial Stability Oversight Board determines appropriate.

(g) Reports

The Financial Stability Oversight Board shall report to the appropriate committees of Congress and the Congressional Oversight Panel established under section 5233 of this title, not less frequently than quarterly, on the matters described under subsection (a)(1).

(h) Termination

The Financial Stability Oversight Board, and its authority under this section, shall terminate on the expiration of the 15-day period beginning upon the later of—

(1) the date that the last troubled asset acquired by the Secretary under section 5211 of this title has been sold or transferred out of the ownership or control of the Federal Government; or

(2) the date of expiration of the last insurance contract issued under section 5212 of this title.

(Pub. L. 110–343, div. A, title I, § 104, Oct. 3, 2008, 122 Stat. 3770.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' and was translated as reading ''this divi-

sion'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5215. Reports

(a) In general

Before the expiration of the 60-day period beginning on the date of the first exercise of the authority granted in section 5211(a) of this title, or of the first exercise of the authority granted in section 5212 of this title, whichever occurs first, and every 30-day period thereafter, the Secretary shall report to the appropriate committees of Congress, with respect to each such period—

(1) an overview of actions taken by the Secretary, including the considerations required by section 5213 of this title and the efforts under section 5219 of this title;

(2) the actual obligation and expenditure of the funds provided for administrative expenses by section 5228 of this title during such period and the expected expenditure of such funds in the subsequent period; and

(3) a detailed financial statement with respect to the exercise of authority under this chapter, including—

(A) all agreements made or renewed;

(B) all insurance contracts entered into pursuant to section 5212 of this title;

(C) all transactions occurring during such period, including the types of parties involved;

(D) the nature of the assets purchased;

(E) all projected costs and liabilities;

(F) operating expenses, including compensation for financial agents;

(G) the valuation or pricing method used for each transaction; and

(H) a description of the vehicles established to exercise such authority.

(b) Tranche reports to Congress

(1) Reports

The Secretary shall provide to the appropriate committees of Congress, at the times specified in paragraph (2), a written report, including—

(A) a description of all of the transactions made during the reporting period;

(B) a description of the pricing mechanism for the transactions;

(C) a justification of the price paid for and other financial terms associated with the transactions;

(D) a description of the impact of the exercise of such authority on the financial system, supported, to the extent possible, by specific data;

(E) a description of challenges that remain in the financial system, including any benchmarks yet to be achieved; and

(F) an estimate of additional actions under the authority provided under this chapter that may be necessary to address such challenges.

(2) Timing

The report required by this subsection shall be submitted not later than 7 days after the date on which commitments to purchase troubled assets under the authorities provided in this chapter first reach an aggregate of $50,000,000,000 and not later than 7 days after each $50,000,000,000 interval of such commitments is reached thereafter.

(c) Regulatory modernization report

The Secretary shall review the current state of the financial markets and the regulatory system and submit a written report to the appropriate committees of Congress not later than April 30, 2009, analyzing the current state of the regulatory system and its effectiveness at overseeing the participants in the financial markets, including the over-the-counter swaps market and government-sponsored enterprises, and providing recommendations for improvement, including—

(1) recommendations regarding—

(A) whether any participants in the financial markets that are currently outside the regulatory system should become subject to the regulatory system; and

(B) enhancement of the clearing and settlement of over-the-counter swaps; and

(2) the rationale underlying such recommendations.

(d) Sharing of information

Any report required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(e) Sunset

The reporting requirements under this section shall terminate on the later of—

(1) the date that the last troubled asset acquired by the Secretary under section 5211 of this title has been sold or transferred out of the ownership or control of the Federal Government; or

(2) the date of expiration of the last insurance contract issued under section 5212 of this title.

(Pub. L. 110–343, div. A, title I, § 105, Oct. 3, 2008, 122 Stat. 3771.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3) and (b)(1)(F), (2), was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5216. Rights; management; sale of troubled assets; revenues and sale proceeds

(a) Exercise of rights

The Secretary may, at any time, exercise any rights received in connection with troubled assets purchased under this chapter.

(b) Management of troubled assets

The Secretary shall have authority to manage troubled assets purchased under this chapter, including revenues and portfolio risks therefrom.

(c) Sale of troubled assets

The Secretary may, at any time, upon terms and conditions and at a price determined by the

Secretary, sell, or enter into securities loans, repurchase transactions, or other financial transactions in regard to, any troubled asset purchased under this chapter.

(d) Transfer to Treasury

Revenues of, and proceeds from the sale of troubled assets purchased under this chapter, or from the sale, exercise, or surrender of warrants or senior debt instruments acquired under section 5223 of this title shall be paid into the general fund of the Treasury for reduction of the public debt.

(e) Application of sunset to troubled assets

The authority of the Secretary to hold any troubled asset purchased under this chapter before the termination date in section 5230 of this title, or to purchase or fund the purchase of a troubled asset under a commitment entered into before the termination date in section 5230 of this title, is not subject to the provisions of section 5230 of this title.

(f) Report

The Secretary of the Treasury shall report to Congress every 6 months on amounts received and transferred to the general fund under subsection (d).

(Pub. L. 110–343, div. A, title I, § 106, Oct. 3, 2008, 122 Stat. 3773; Pub. L. 111–203, title XIII, § 1303, July 21, 2010, 124 Stat. 2133.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–203 added subsec. (f).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

§ 5217. Contracting procedures

(a) Streamlined process

For purposes of this chapter, the Secretary may waive specific provisions of the Federal Acquisition Regulation upon a determination that urgent and compelling circumstances make compliance with such provisions contrary to the public interest. Any such determination, and the justification for such determination, shall be submitted to the Committees on Oversight and Government Reform and Financial Services of the House of Representatives and the Committees on Homeland Security and Governmental Affairs and Banking, Housing, and Urban Affairs of the Senate within 7 days.

(b) Additional contracting requirements

In any solicitation or contract where the Secretary has, pursuant to subsection (a), waived any provision of the Federal Acquisition Regulation pertaining to minority contracting, the Secretary shall develop and implement standards and procedures to ensure, to the maximum extent practicable, the inclusion and utilization of minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)) and women, and minority- and women-owned businesses (as such terms are defined in section 1441a(r)(4) of this title), and individuals with disabilities and businesses owned by individuals with disabilities (for purposes of this subsection the term ''individual with disability'' has the same meaning as the term ''handicapped individual'' as that term is defined in section 632(f) of title 15), in that solicitation or contract, including contracts to asset managers, servicers, property managers, and other service providers or expert consultants.

(c) Eligibility of FDIC

Notwithstanding subsections (a) and (b), the Corporation—

(1) shall be eligible for, and shall be considered in, the selection of asset managers for residential mortgage loans and residential mortgage-backed securities; and

(2) shall be reimbursed by the Secretary for any services provided.

(Pub. L. 110–343, div. A, title I, § 107, Oct. 3, 2008, 122 Stat. 3773; Pub. L. 111–5, div. A, title XVI, § 1608, Feb. 17, 2009, 123 Stat. 304.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

Section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (b), is section 1204(c) of Pub. L. 101–73, which is set out as a note under section 1811 of this title.

AMENDMENTS

2009—Subsec. (b). Pub. L. 111–5 inserted ''and individuals with disabilities and businesses owned by individuals with disabilities (for purposes of this subsection the term 'individual with disability' has the same meaning as the term 'handicapped individual' as that term is defined in section 632(f) of title 15),'' after ''section 1441a(r)(4) of this title),''.

§ 5218. Conflicts of interest

(a) Standards required

The Secretary shall issue regulations or guidelines necessary to address and manage or to prohibit conflicts of interest that may arise in connection with the administration and execution of the authorities provided under this chapter, including—

(1) conflicts arising in the selection or hiring of contractors or advisors, including asset managers;

(2) the purchase of troubled assets;

(3) the management of the troubled assets held;

(4) post-employment restrictions on employees; and

(5) any other potential conflict of interest, as the Secretary deems necessary or appropriate in the public interest.

(b) Timing

Regulations or guidelines required by this section shall be issued as soon as practicable after October 3, 2008.

(Pub. L. 110–343, div. A, title I, § 108, Oct. 3, 2008, 122 Stat. 3774.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5219. Foreclosure mitigation efforts

(a) Residential mortgage loan servicing standards

(1) In general

To the extent that the Secretary acquires mortgages, mortgage backed[1] securities, and other assets secured by residential real estate, including multifamily housing, the Secretary shall implement a plan that seeks to maximize assistance for homeowners and use the authority of the Secretary to encourage the servicers of the underlying mortgages, considering net present value to the taxpayer, to take advantage of the HOPE for Homeowners Program under section 1715z–23 of this title or other available programs to minimize foreclosures. In addition, the Secretary may use loan guarantees and credit enhancements to facilitate loan modifications to prevent avoidable foreclosures.

(2) Waiver of certain provisions in connection with loan modifications

The Secretary shall not be required to apply executive compensation restrictions under section 5221 of this title, or to receive warrants or debt instruments under section 5223 of this title, solely in connection with any loan modification under this section.

(b) Coordination

The Secretary shall coordinate with the Corporation, the Board (with respect to any mortgage or mortgage-backed securities or pool of securities held, owned, or controlled by or on behalf of a Federal reserve bank, as provided in section 5220(a)(1)(C) of this title), the Federal Housing Finance Agency, the Secretary of Housing and Urban Development, and other Federal Government entities that hold troubled assets to attempt to identify opportunities for the acquisition of classes of troubled assets that will improve the ability of the Secretary to improve the loan modification and restructuring process and, where permissible, to permit bona fide tenants who are current on their rent to remain in their homes under the terms of the lease. In the case of a mortgage on a residential rental property, the plan required under this section shall include protecting Federal, State, and local rental subsidies and protections, and ensuring any modification takes into account the need for operating funds to maintain decent and safe conditions at the property.

(c) Consent to reasonable loan modification requests

Upon any request arising under existing investment contracts, the Secretary shall consent, where appropriate, and considering net present value to the taxpayer, to reasonable requests for loss mitigation measures, including term extensions, rate reductions, principal write downs, increases in the proportion of loans within a trust or other structure allowed to be modified, or removal of other limitation on modifications.

(Pub. L. 110–343, div. A, title I, § 109, Oct. 3, 2008, 122 Stat. 3774; Pub. L. 111–5, div. B, title VII, § 7002, Feb. 17, 2009, 123 Stat. 521.)

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–5 designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

§ 5219a. Home Affordable Modification Program guidelines

(a) Net present value input data

The Secretary of the Treasury (in this section referred to as the ''Secretary'') shall revise the supplemental directives and other guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343) [12 U.S.C. 5201 et seq.], to require each mortgage servicer participating in such program to provide each borrower under a mortgage whose request for a mortgage modification under the Program is denied with all borrower-related and mortgage-related input data used in any net present value (NPV) analyses performed in connection with the subject mortgage. Such input data shall be provided to the borrower at the time of such denial.

(b) Web-based site for NPV calculator and application

(1) NPV calculator

In carrying out the Home Affordable Modification Program, the Secretary shall establish and maintain a site on the World Wide Web that provides a calculator for net present value analyses of a mortgage, based on the Secretary's methodology for calculating such value, that mortgagors can use to enter information regarding their own mortgages and that provides a determination after entering such information regarding a mortgage of whether such mortgage would be accepted or rejected for modification under the Program, using such methodology.

(2) Disclosure

Such Web site shall also prominently disclose that each mortgage servicer participating in such Program may use a method for calculating net present value of a mortgage that is different than the method used by such calculator.

(3) Application

The Secretary shall make a reasonable effort to include on such World Wide Web site a

[1] So in original. Probably should be ''mortgage-backed''.

method for homeowners to apply for a mortgage modification under the Home Affordable Modification Program.

(c) Public availability of NPV methodology, computer model, and variables

The Secretary shall make publicly available, including by posting on a World Wide Web site of the Secretary—

(1) the Secretary's methodology and computer model, including all formulae used in such computer model, used for calculating net present value of a mortgage that is used by the calculator established pursuant to subsection (b); and

(2) all non-proprietary variables used in such net present value analysis.

(Pub. L. 111–203, title XIV, §1482, July 21, 2010, 124 Stat. 2203.)

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (a), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Mortgage Reform and Anti-Predatory Lending Act, and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Emergency Economic Stabilization Act of 2008 which comprises this chapter.

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

§ 5219b. Public availability of information of Making Home Affordable Program

(a) Revisions to Program guidelines

The Secretary of the Treasury (in this section referred to as the ''Secretary'') shall revise the guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343) [12 U.S.C. 5201 et seq.], to provide that the data being collected by the Secretary from each mortgage servicer and lender participating in the Program is made public in accordance with subsection (b).

(b) Public availability

Data shall be made available according to the following guidelines:

(1) Not more than 14 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, reports shall be made publicly available by means of a World Wide Web site of the Secretary, and by submitting a report to the Congress, that shall includes the following information:

(A) The number of requests for mortgage modifications under the Program that the servicer or lender has received.

(B) The number of requests for mortgage modifications under the Program that the servicer or lender has processed.

(C) The number of requests for mortgage modifications under the Program that the servicer or lender has approved.

(D) The number of requests for mortgage modifications under the Program that the servicer or lender has denied.

(2) Not more than 60 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, the Secretary shall make data tables available to the public at the individual record level. The Secretary shall issue regulations prescribing—

(A) the procedures for disclosing such data to the public; and

(B) such deletions as the Secretary may determine to be appropriate to protect any privacy interest of any mortgage modification applicant, including the deletion or alteration of the applicant's name and identification number.

(Pub. L. 111–203, title XIV, §1483, July 21, 2010, 124 Stat. 2203.)

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (a), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Mortgage Reform and Anti-Predatory Lending Act, and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Emergency Economic Stabilization Act of 2008 which comprises this chapter.

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

§ 5220. Assistance to homeowners

(a) Definitions

As used in this section—

(1) the term ''Federal property manager'' means—

(A) the Federal Housing Finance Agency, in its capacity as conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(B) the Corporation, with respect to residential mortgage loans and mortgage-backed securities held by any bridge depository institution pursuant to section 1821(n) of this title; and

(C) the Board, with respect to any mortgage or mortgage-backed securities or pool of securities held, owned, or controlled by or on behalf of a Federal reserve bank, other than mortgages or securities held, owned, or controlled in connection with open market

operations under sections 348a and 353 to 359 of this title,[1] or as collateral for an advance or discount that is not in default;

(2) the term ''consumer'' has the same meaning as in section 1602 of title 15;

(3) the term ''insured depository institution'' has the same meaning as in section 1813 of this title; and

(4) the term ''servicer'' has the same meaning as in section 2605(i)(2) of this title.

(b) Homeowner assistance by agencies

(1) In general

To the extent that the Federal property manager holds, owns, or controls mortgages, mortgage backed[2] securities, and other assets secured by residential real estate, including multifamily housing, the Federal property manager shall implement a plan that seeks to maximize assistance for homeowners and use its authority to encourage the servicers of the underlying mortgages, and considering net present value to the taxpayer, to take advantage of the HOPE for Homeowners Program under section 1715z–23 of this title or other available programs to minimize foreclosures.

(2) Modifications

In the case of a residential mortgage loan, modifications made under paragraph (1) may include—

(A) reduction in interest rates;

(B) reduction of loan principal; and

(C) other similar modifications.

(3) Tenant protections

In the case of mortgages on residential rental properties, modifications made under paragraph (1) shall ensure—

(A) the continuation of any existing Federal, State, and local rental subsidies and protections; and

(B) that modifications take into account the need for operating funds to maintain decent and safe conditions at the property.

(4) Timing

Each Federal property manager shall develop and begin implementation of the plan required by this subsection not later than 60 days after October 3, 2008.

(5) Reports to Congress

Each Federal property manager shall, 60 days after October 3, 2008, and every 30 days thereafter, report to Congress specific information on the number and types of loan modifications made and the number of actual foreclosures occurring during the reporting period in accordance with this section.

(6) Consultation

In developing the plan required by this subsection, the Federal property managers shall consult with one another and, to the extent possible, utilize consistent approaches to implement the requirements of this subsection.

(c) Actions with respect to servicers

In any case in which a Federal property manager is not the owner of a residential mortgage loan, but holds an interest in obligations or pools of obligations secured by residential mortgage loans, the Federal property manager shall—

(1) encourage implementation by the loan servicers of loan modifications developed under subsection (b); and

(2) assist in facilitating any such modifications, to the extent possible.

(d) Limitation

The requirements of this section shall not supersede any other duty or requirement imposed on the Federal property managers under otherwise applicable law.

(Pub. L. 110–343, div. A, title I, § 110, Oct. 3, 2008, 122 Stat. 3775.)

REFERENCES IN TEXT

Sections 348a and 353 to 359 of this title, referred to in subsec. (a)(1)(C), was in the original a reference to ''section 14 of the Federal Reserve Act (12 U.S.C. 353)''. For classification of section 14 to the Code, see Codification note set out under section 353 of this title.

EFFECT OF FORECLOSURE ON PREEXISTING TENANCY

Pub. L. 111–22, div. A, title VII, § 702, May 20, 2009, 123 Stat. 1660, as amended by Pub. L. 111–203, title XIV, § 1484(1), July 21, 2010, 124 Stat. 2204, provided that:

''(a) IN GENERAL.—In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title [May 20, 2009], any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

''(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

''(2) the rights of any bona fide tenant, as of the date of such notice of foreclosure—

''(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

''(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1),

except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

''(b) BONA FIDE LEASE OR TENANCY.—For purposes of this section, a lease or tenancy shall be considered bona fide only if—

''(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

''(2) the lease or tenancy was the result of an arms-length transaction; and

''(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

''(c) DEFINITION.—For purposes of this section, the term 'federally-related mortgage loan' has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).''

[Pub. L. 111–203, title XIV, §§ 1400(c), 1484(1), July 21, 2010, 124 Stat. 2136, 2204, provided that, section 702 of Pub. L. 111–22, set out above, is amended, effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date (defined in

[1] See References in Text note below.

[2] So in original. Probably should be ''mortgage-backed''.

section 1495 of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade) if such regulations have not been issued by that date, in subsection (a)(2), by striking '', as of the date of such notice of foreclosure'' and, in subsection (c), by inserting after the period the following: ''For purposes of this section, the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.'']

[Section 702 of Pub. L. 111–22, set out above, repealed Dec. 31, 2014, see section 704 of Pub. L. 111–22, set out as a Termination Date of 2009 Amendment note under section 1437f of Title 42, The Public Health and Welfare.]

§ 5220a. Application of GSE conforming loan limit to mortgages assisted with TARP funds

In making any assistance available to prevent and mitigate foreclosures on residential properties, including any assistance for mortgage modifications, using any amounts made available to the Secretary of the Treasury under title I of the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5211 et seq.], the Secretary shall provide that the limitation on the maximum original principal obligation of a mortgage that may be modified, refinanced, made, guaranteed, insured, or otherwise assisted, using such amounts shall not be less than the dollar amount limitation on the maximum original principal obligation of a mortgage that may be purchased by the Federal Home Loan Mortgage Corporation that is in effect, at the time that the mortgage is modified, refinanced, made, guaranteed, insured, or otherwise assisted using such amounts, for the area in which the property involved in the transaction is located.

(Pub. L. 111–22, div. A, title II, § 205, May 20, 2009, 123 Stat. 1654.)

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in text, is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765. Title I of the Act is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Helping Families Save Their Homes Act of 2009, and not as part of the Emergency Economic Stabilization Act of 2008 which comprises this chapter.

§ 5220b. Multifamily mortgage resolution program

(a) Establishment

The Secretary of Housing and Urban Development shall develop a program under this subsection to ensure the protection of current and future tenants and at-risk multifamily properties, where feasible, based on criteria that may include—

(1) creating sustainable financing of such properties, that may take into consideration such factors as—

(A) the rental income generated by such properties; and

(B) the preservation of adequate operating reserves;

(2) maintaining the level of Federal, State, and city subsidies in effect as of July 21, 2010;

(3) providing funds for rehabilitation; and

(4) facilitating the transfer of such properties, when appropriate and with the agreement of owners, to responsible new owners and ensuring affordability of such properties.

(b) Coordination

The Secretary of Housing and Urban Development may, in carrying out the program developed under this section, coordinate with the Secretary of the Treasury, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, and any other Federal Government agency that the Secretary considers appropriate.

(c) Definition

For purposes of this section, the term ''multifamily properties'' means a residential structure that consists of 5 or more dwelling units.

(d) Prevention of qualification for criminal applicants

(1) In general

No person shall be eligible to begin receiving assistance from the Making Home Affordable Program authorized under the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.), or any other mortgage assistance program authorized or funded by that Act, on or after 60 days after July 21, 2010, if such person, in connection with a mortgage or real estate transaction, has been convicted, within the last 10 years, of any one of the following:

(A) Felony larceny, theft, fraud, or forgery.

(B) Money laundering.

(C) Tax evasion.

(2) Procedures

The Secretary shall establish procedures to ensure compliance with this subsection.

(3) Report

The Secretary shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding the implementation of this provision. The report shall also describe the steps taken to implement this subsection.

(Pub. L. 111–203, title XIV, § 1481, July 21, 2010, 124 Stat. 2202.)

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (d)(1), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Mortgage Reform and Anti-Predatory Lending Act, and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Emergency Economic Stabilization Act of 2008 which comprises this chapter.

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the

date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

DEFINITIONS

For definitions of terms contained in this section, see section 5301 of this title.

§ 5221. Executive compensation and corporate governance

(a) Definitions

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

(1) Senior executive officer

The term ''senior executive officer'' means an individual who is 1 of the top 5 most highly paid executives of a public company, whose compensation is required to be disclosed pursuant to the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], and any regulations issued thereunder, and non-public company counterparts.

(2) Golden parachute payment

The term ''golden parachute payment'' means any payment to a senior executive officer for departure from a company for any reason, except for payments for services performed or benefits accrued.

(3) TARP recipient

The term ''TARP recipient'' means any entity that has received or will receive financial assistance under the financial assistance provided under the TARP.

(4) Commission

The term ''Commission'' means the Securities and Exchange Commission.

(5) Period in which obligation is outstanding; rule of construction

For purposes of this section, the period in which any obligation arising from financial assistance provided under the TARP remains outstanding does not include any period during which the Federal Government only holds warrants to purchase common stock of the TARP recipient.

(b) Executive compensation and corporate governance

(1) Establishment of standards

During the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, each TARP recipient shall be subject to—

(A) the standards established by the Secretary under this section; and

(B) the provisions of section 162(m)(5) of title 26, as applicable.

(2) Standards required

The Secretary shall require each TARP recipient to meet appropriate standards for executive compensation and corporate governance.

(3) Specific requirements

The standards established under paragraph (2) shall include the following:

(A) Limits on compensation that exclude incentives for senior executive officers of the TARP recipient to take unnecessary and excessive risks that threaten the value of such recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.

(B) A provision for the recovery by such TARP recipient of any bonus, retention award, or incentive compensation paid to a senior executive officer and any of the next 20 most highly-compensated employees of the TARP recipient based on statements of earnings, revenues, gains, or other criteria that are later found to be materially inaccurate.

(C) A prohibition on such TARP recipient making any golden parachute payment to a senior executive officer or any of the next 5 most highly-compensated employees of the TARP recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.

(D)(i) A prohibition on such TARP recipient paying or accruing any bonus, retention award, or incentive compensation during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, except that any prohibition developed under this paragraph shall not apply to the payment of long-term restricted stock by such TARP recipient, provided that such long-term restricted stock—

(I) does not fully vest during the period in which any obligation arising from financial assistance provided to that TARP recipient remains outstanding;

(II) has a value in an amount that is not greater than ⅓ of the total amount of annual compensation of the employee receiving the stock; and

(III) is subject to such other terms and conditions as the Secretary may determine is[1] in the public interest.

(ii) The prohibition required under clause (i) shall apply as follows:

(I) For any financial institution that received financial assistance provided under the TARP equal to less than $25,000,000, the prohibition shall apply only to the most highly compensated employee of the financial institution.

(II) For any financial institution that received financial assistance provided under the TARP equal to at least $25,000,000, but less than $250,000,000, the prohibition shall apply to at least the 5 most highly-compensated employees of the financial institution, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

(III) For any financial institution that received financial assistance provided under the TARP equal to at least $250,000,000, but less than $500,000,000, the

[1] So in original. Probably should be ''are''.

prohibition shall apply to the senior executive officers and at least the 10 next most highly-compensated employees, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

(IV) For any financial institution that received financial assistance provided under the TARP equal to $500,000,000 or more, the prohibition shall apply to the senior executive officers and at least the 20 next most highly-compensated employees, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

(iii) The prohibition required under clause (i) shall not be construed to prohibit any bonus payment required to be paid pursuant to a written employment contract executed on or before February 11, 2009, as such valid employment contracts are determined by the Secretary or the designee of the Secretary.

(E) A prohibition on any compensation plan that would encourage manipulation of the reported earnings of such TARP recipient to enhance the compensation of any of its employees.

(F) A requirement for the establishment of a Board Compensation Committee that meets the requirements of subsection (c).

(4) Certification of compliance

The chief executive officer and chief financial officer (or the equivalents thereof) of each TARP recipient shall provide a written certification of compliance by the TARP recipient with the requirements of this section—

(A) in the case of a TARP recipient, the securities of which are publicly traded, to the Securities and Exchange Commission, together with annual filings required under the securities laws; and

(B) in the case of a TARP recipient that is not a publicly traded company, to the Secretary.

(c) Board Compensation Committee

(1) Establishment of Board required

Each TARP recipient shall establish a Board Compensation Committee, comprised entirely of independent directors, for the purpose of reviewing employee compensation plans.

(2) Meetings

The Board Compensation Committee of each TARP recipient shall meet at least semiannually to discuss and evaluate employee compensation plans in light of an assessment of any risk posed to the TARP recipient from such plans.

(3) Compliance by non-SEC registrants

In the case of any TARP recipient, the common or preferred stock of which is not registered pursuant to the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], and that has received $25,000,000 or less of TARP assistance, the duties of the Board Compensation Committee under this subsection shall be carried out by the board of directors of such TARP recipient.

(d) Limitation on luxury expenditures

The board of directors of any TARP recipient shall have in place a company-wide policy regarding excessive or luxury expenditures, as identified by the Secretary, which may include excessive expenditures on—

(1) entertainment or events;

(2) office and facility renovations;

(3) aviation or other transportation services; or

(4) other activities or events that are not reasonable expenditures for staff development, reasonable performance incentives, or other similar measures conducted in the normal course of the business operations of the TARP recipient.

(e) Shareholder approval of executive compensation

(1) Annual shareholder approval of executive compensation

Any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding shall permit a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material).

(2) Nonbinding vote

A shareholder vote described in paragraph (1) shall not be binding on the board of directors of a TARP recipient, and may not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

(3) Deadline for rulemaking

Not later than 1 year after February 17, 2009, the Commission shall issue any final rules and regulations required by this subsection.

(f) Review of prior payments to executives

(1) In general

The Secretary shall review bonuses, retention awards, and other compensation paid to the senior executive officers and the next 20 most highly-compensated employees of each entity receiving TARP assistance before February 17, 2009, to determine whether any such payments were inconsistent with the purposes of this section or the TARP or were otherwise contrary to the public interest.

(2) Negotiations for reimbursement

If the Secretary makes a determination described in paragraph (1), the Secretary shall seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses.

(g) No impediment to withdrawal by TARP recipients

Subject to consultation with the appropriate Federal banking agency (as that term is defined

in section 1813 of this title), if any, the Secretary shall permit a TARP recipient to repay any assistance previously provided under the TARP to such financial institution, without regard to whether the financial institution has replaced such funds from any other source or to any waiting period, and when such assistance is repaid, the Secretary, at the market price, may liquidate warrants associated with such assistance.

(h) Regulations

The Secretary shall promulgate regulations to implement this section.

(Pub. L. 110–343, div. A, title I, § 111, Oct. 3, 2008, 122 Stat. 3776; Pub. L. 111–5, div. B, title VII, § 7001, Feb. 17, 2009, 123 Stat. 516; Pub. L. 111–22, div. A, title IV, § 403, May 20, 2009, 123 Stat. 1658.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsecs. (a)(1) and (c)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2009—Pub. L. 111–5 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to applicability of requirements, direct purchases of troubled assets, auction purchases of troubled assets, and sunset of provisions, respectively.

Subsec. (g). Pub. L. 111–22 substituted '', at the market price, may liquidate warrants associated with such assistance'' for ''shall liquidate warrants associated with such assistance at the current market price''.

§ 5222. Coordination with foreign authorities and central banks

The Secretary shall coordinate, as appropriate, with foreign financial authorities and central banks to work toward the establishment of similar programs by such authorities and central banks. To the extent that such foreign financial authorities or banks hold troubled assets as a result of extending financing to financial institutions that have failed or defaulted on such financing, such troubled assets qualify for purchase under section 5211 of this title.

(Pub. L. 110–343, div. A, title I, § 112, Oct. 3, 2008, 122 Stat. 3777.)

§ 5223. Minimization of long-term costs and maximization of benefits for taxpayers

(a) Long-term costs and benefits

(1) Minimizing negative impact

The Secretary shall use the authority under this chapter in a manner that will minimize any potential long-term negative impact on the taxpayer, taking into account the direct outlays, potential long-term returns on assets purchased, and the overall economic benefits of the program, including economic benefits due to improvements in economic activity and the availability of credit, the impact on the savings and pensions of individuals, and reductions in losses to the Federal Government.

(2) Authority

In carrying out paragraph (1), the Secretary shall—

(A) hold the assets to maturity or for resale for and until such time as the Secretary determines that the market is optimal for selling such assets, in order to maximize the value for taxpayers; and

(B) sell such assets at a price that the Secretary determines, based on available financial analysis, will maximize return on investment for the Federal Government.

(3) Private sector participation

The Secretary shall encourage the private sector to participate in purchases of troubled assets, and to invest in financial institutions, consistent with the provisions of this section.

(b) Use of market mechanisms

In making purchases under this chapter, the Secretary shall—

(1) make such purchases at the lowest price that the Secretary determines to be consistent with the purposes of this chapter; and

(2) maximize the efficiency of the use of taxpayer resources by using market mechanisms, including auctions or reverse auctions, where appropriate.

(c) Direct purchases

If the Secretary determines that use of a market mechanism under subsection (b) is not feasible or appropriate, and the purposes of the chapter are best met through direct purchases from an individual financial institution, the Secretary shall pursue additional measures to ensure that prices paid for assets are reasonable and reflect the underlying value of the asset.

(d) Conditions on purchase authority for warrants and debt instruments

(1) In general

The Secretary may not purchase, or make any commitment to purchase, any troubled asset under the authority of this chapter, unless the Secretary receives from the financial institution from which such assets are to be purchased—

(A) in the case of a financial institution, the securities of which are traded on a national securities exchange, a warrant giving the right to the Secretary to receive nonvoting common stock or preferred stock in such financial institution, or voting stock with respect to which,[1] the Secretary agrees not to exercise voting power, as the Secretary determines appropriate; or

(B) in the case of any financial institution other than one described in subparagraph (A), a warrant for common or preferred stock, or a senior debt instrument from such financial institution, as described in paragraph (2)(C).

(2) Terms and conditions

The terms and conditions of any warrant or senior debt instrument required under paragraph (1) shall meet the following requirements:

(A) Purposes

Such terms and conditions shall, at a minimum, be designed—

[1] So in original. The comma probably should not appear.

(i) to provide for reasonable participation by the Secretary, for the benefit of taxpayers, in equity appreciation in the case of a warrant or other equity security, or a reasonable interest rate premium, in the case of a debt instrument; and

(ii) to provide additional protection for the taxpayer against losses from sale of assets by the Secretary under this chapter and the administrative expenses of the TARP.

(B) Authority to sell, exercise, or surrender

The Secretary may sell, exercise, or surrender a warrant or any senior debt instrument received under this subsection, based on the conditions established under subparagraph (A).

(C) Conversion

The warrant shall provide that if, after the warrant is received by the Secretary under this subsection, the financial institution that issued the warrant is no longer listed or traded on a national securities exchange or securities association, as described in paragraph (1)(A), such warrants shall convert to senior debt, or contain appropriate protections for the Secretary to ensure that the Treasury is appropriately compensated for the value of the warrant, in an amount determined by the Secretary.

(D) Protections

Any warrant representing securities to be received by the Secretary under this subsection shall contain anti-dilution provisions of the type employed in capital market transactions, as determined by the Secretary. Such provisions shall protect the value of the securities from market transactions such as stock splits, stock distributions, dividends, and other distributions, mergers, and other forms of reorganization or recapitalization.

(E) Exercise price

The exercise price for any warrant issued pursuant to this subsection shall be set by the Secretary, in the interest of the taxpayers.

(F) Sufficiency

The financial institution shall guarantee to the Secretary that it has authorized shares of nonvoting stock available to fulfill its obligations under this subsection. Should the financial institution not have sufficient authorized shares, including preferred shares that may carry dividend rights equal to a multiple number of common shares, the Secretary may, to the extent necessary, accept a senior debt note in an amount, and on such terms as will compensate the Secretary with equivalent value, in the event that a sufficient shareholder vote to authorize the necessary additional shares cannot be obtained.

(3) Exceptions

(A) De minimis

The Secretary shall establish de minimis exceptions to the requirements of this subsection, based on the size of the cumulative transactions of troubled assets purchased from any one financial institution for the duration of the program, at not more than $100,000,000.

(B) Other exceptions

The Secretary shall establish an exception to the requirements of this subsection and appropriate alternative requirements for any participating financial institution that is legally prohibited from issuing securities and debt instruments, so as not to allow circumvention of the requirements of this section.

(Pub. L. 110–343, div. A, title I, § 113, Oct. 3, 2008, 122 Stat. 3777.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5224. Market transparency

(a) Pricing

To facilitate market transparency, the Secretary shall make available to the public, in electronic form, a description, amounts, and pricing of assets acquired under this chapter, within 2 business days of purchase, trade, or other disposition.

(b) Disclosure

For each type of financial institutions[1] that sells troubled assets to the Secretary under this chapter, the Secretary shall determine whether the public disclosure required for such financial institutions with respect to off-balance sheet transactions, derivatives instruments, contingent liabilities, and similar sources of potential exposure is adequate to provide to the public sufficient information as to the true financial position of the institutions. If such disclosure is not adequate for that purpose, the Secretary shall make recommendations for additional disclosure requirements to the relevant regulators.

(Pub. L. 110–343, div. A, title I, § 114, Oct. 3, 2008, 122 Stat. 3780.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5225. Graduated authorization to purchase

(a) Authority

The authority of the Secretary to purchase troubled assets under this chapter shall be limited as follows:

(1) Effective upon October 3, 2008, such authority shall be limited to $250,000,000,000 outstanding at any one time.

[1] So in original. Probably should be ''institution''.

(2) If at any time, the President submits to the Congress a written certification that the Secretary needs to exercise the authority under this paragraph, effective upon such submission, such authority shall be limited to $350,000,000,000 outstanding at any one time.

(3) If, at any time after the certification in paragraph (2) has been made, the President transmits to the Congress a written report detailing the plan of the Secretary to exercise the authority under this paragraph, unless there is enacted, within 15 calendar days of such transmission, a joint resolution described in subsection (c), effective upon the expiration of such 15-day period, such authority shall be limited to $475,000,000,000.

(4) For purposes of this subsection, the amount of authority considered to be exercised by the Secretary shall not be reduced by—

(A) any amounts received by the Secretary before, on, or after July 21, 2010, from repayment of the principal of financial assistance by an entity that has received financial assistance under the TARP or any other program enacted by the Secretary under the authorities granted to the Secretary under this chapter;

(B) any amounts committed for any guarantees pursuant to the TARP that became or become uncommitted; or

(C) any losses realized by the Secretary.

(5) No authority under this chapter may be used to incur any obligation for a program or initiative that was not initiated prior to June 25, 2010.

(b) Aggregation of purchase prices

The amount of troubled assets purchased by the Secretary outstanding at any one time shall be determined for purposes of the dollar amount limitations under subsection (a) by aggregating the purchase prices of all troubled assets held.

(c) Joint resolution of disapproval

(1) In general

Notwithstanding any other provision of this section, the Secretary may not exercise any authority to make purchases under this chapter with regard to any amount in excess of $350,000,000,000 previously obligated, as described in this section if, within 15 calendar days after the date on which Congress receives a report of the plan of the Secretary described in subsection (a)(3), there is enacted into law a joint resolution disapproving the plan of the Secretary with respect to such additional amount.

(2) Contents of joint resolution

For the purpose of this section, the term ''joint resolution'' means only a joint resolution—

(A) that is introduced not later than 3 calendar days after the date on which the report of the plan of the Secretary referred to in subsection (a)(3) is received by Congress;

(B) which does not have a preamble;

(C) the title of which is as follows: ''Joint resolution relating to the disapproval of obligations under the Emergency Economic Stabilization Act of 2008''; and

(D) the matter after the resolving clause of which is as follows: ''That Congress disapproves the obligation of any amount exceeding the amounts obligated as described in paragraphs (1) and (2) of section 115(a) of the Emergency Economic Stabilization Act of 2008.''.

(d) Fast track consideration in House of Representatives

(1) Reconvening

Upon receipt of a report under subsection (a)(3), the Speaker, if the House would otherwise be adjourned, shall notify the Members of the House that, pursuant to this section, the House shall convene not later than the second calendar day after receipt of such report;[1]

(2) Reporting and discharge

Any committee of the House of Representatives to which a joint resolution is referred shall report it to the House not later than 5 calendar days after the date of receipt of the report described in subsection (a)(3). If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

(3) Proceeding to consideration

After each committee authorized to consider a joint resolution reports it to the House or has been discharged from its consideration, it shall be in order, not later than the sixth day after Congress receives the report described in subsection (a)(3), to move to proceed to consider the joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(4) Consideration

The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

(e) Fast track consideration in Senate

(1) Reconvening

Upon receipt of a report under subsection (a)(3), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

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[1] So in original. The semicolon probably should be a period.

(2) Placement on calendar

Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(3) Floor consideration

(A) In general

Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a report of the plan of the Secretary described in subsection (a)(3) and ending on the 6th day after the date on which Congress receives a report of the plan of the Secretary described in subsection (a)(3) (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

(B) Debate

Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(C) Vote on passage

The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

(D) Rulings of the chair on procedure

Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(f) Rules relating to Senate and House of Representatives

(1) Coordination with action by other House

If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

(A) The joint resolution of the other House shall not be referred to a committee.

(B) With respect to a joint resolution of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(ii) the vote on passage shall be on the joint resolution of the other House.

(2) Treatment of joint resolution of other House

If one House fails to introduce or consider a joint resolution under this section, the joint resolution of the other House shall be entitled to expedited floor procedures under this section.

(3) Treatment of companion measures

If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(4) Consideration after passage

(A) In general

If Congress passes a joint resolution, the period beginning on the date the President is presented with the joint resolution and ending on the date the President takes action with respect to the joint resolution shall be disregarded in computing the 15-calendar day period described in subsection (a)(3).

(B) Vetoes

If the President vetoes the joint resolution—

(i) the period beginning on the date the President vetoes the joint resolution and ending on the date the Congress receives the veto message with respect to the joint resolution shall be disregarded in computing the 15-calendar day period described in subsection (a)(3), and

(ii) debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

(5) Rules of House of Representatives and Senate

This subsection and subsections (c), (d), and (e) are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(Pub. L. 110–343, div. A, title I, §115, Oct. 3, 2008, 122 Stat. 3780; Pub. L. 111–22, div. A, title II, §202(b), title IV, §402(f), May 20, 2009, 123 Stat. 1643, 1658; Pub. L. 111–203, title XIII, §1302, July 21, 2010, 124 Stat. 2133.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c)(1), was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343,

Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (c)(2)(C), (D), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to this chapter. Paragraphs (1) and (2) of section 115(a) of the Act are classified to paragraphs (1) and (2), respectively, of subsec. (a) of this section. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

AMENDMENTS

2010—Subsec. (a)(3). Pub. L. 111–203, § 1302(1)(B), struck out ''outstanding at any one time'' before the period at the end.

Pub. L. 111–203, § 1302(1)(A), which directed substitution of ''$475,000,000,000'' for '', $700,000,000,000, as such amount is reduced by $1,259,000,000, as such amount is reduced by $1,244,000,000'', was executed by making the substitution for ''$700,000,000,000, as such amount is reduced by $1,259,000,000,, as such amount is reduced by $1,244,000,000,'', to reflect the probable intent of Congress.

Subsec. (a)(4), (5). Pub. L. 111–203, § 1302(2), added pars. (4) and (5).

2009—Subsec. (a)(3). Pub. L. 111–22, § 402(f), inserted '', as such amount is reduced by $1,259,000,000,'' after ''$700,000,000,000''.

Pub. L. 111–22, § 202(b), inserted of '', as such amount is reduced by $1,244,000,000,'' after ''$700,000,000,000''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

§ 5226. Oversight and audits

(a) Comptroller General oversight

(1) Scope of oversight

The Comptroller General of the United States shall, upon establishment of the troubled assets relief program[1] under this chapter (in this section referred to as the ''TARP''), commence ongoing oversight of the activities and performance of the TARP and of any agents and representatives of the TARP (as related to the agent or representative's activities on behalf of or under the authority of the TARP), including vehicles established by the Secretary under this chapter. The subjects of such oversight shall include the following:

(A) The performance of the TARP in meeting the purposes of this chapter, particularly those involving—

(i) foreclosure mitigation;

(ii) cost reduction;

(iii) whether it has provided stability or prevented disruption to the financial markets or the banking system;

(iv) whether it has protected taxpayers; and

(v) public accountability for the exercise of such authority, including with respect to actions taken by those entities participating in programs established under this chapter.

(B) The financial condition and internal controls of the TARP, its representatives and agents.

(C) Characteristics of transactions and commitments entered into, including transaction type, frequency, size, prices paid, and all other relevant terms and conditions, and the timing, duration and terms of any future commitments to purchase assets.

(D) Characteristics and disposition of acquired assets, including type, acquisition price, current market value, sale prices and terms, and use of proceeds from sales.

(E) Efficiency of the operations of the TARP in the use of appropriated funds.

(F) Compliance with all applicable laws and regulations by the TARP, its agents and representatives.

(G) The efforts of the TARP to prevent, identify, and minimize conflicts of interest involving any agent or representative performing activities on behalf of or under the authority of the TARP.

(H) The efficacy of contracting procedures pursuant to section 5217(b) of this title, including, as applicable, the efforts of the TARP in evaluating proposals for inclusion and contracting to the maximum extent possible of minorities (as such term is defined in 1204(c)[2] of the Financial Institutions Reform, Recovery, and Enhancement Act of 1989[3] (12 U.S.C. 1811 note), women, and minority- and women-owned businesses, including ascertaining and reporting the total amount of fees paid and other value delivered by the TARP to all of its agents and representatives, and such amounts paid or delivered to such firms that are minority- and women-owned businesses (as such terms are defined in section 1441a of this title).

(2) Conduct and administration of oversight

(A) Definition

In this paragraph, the term ''governmental unit'' has the meaning given under section 101(27) of title 11, and does not include any insured depository institution as defined under section 1813 of this title.

(B) GAO presence

The Secretary shall provide the Comptroller General with appropriate space and facilities in the Department of the Treasury as necessary to facilitate oversight of the TARP until the termination date established in section 5230[3] of this title.

(C) Access to records

(i) In general

Notwithstanding any other provision of law, and for purposes of reviewing the performance of the TARP, the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by the TARP, any entity established

[1] So in original. Probably should be ''Troubled Asset Relief Program''.

[2] So in original. Probably should be preceded by ''section''.

[3] See References in Text note below.

by the Secretary under this chapter, any entity that is established by a Federal reserve bank and receives funding from the TARP, or any entity (other than a governmental unit) participating in a program established under the authority of this chapter, and to the officers, employees, directors, independent public accountants, financial advisors and any and all other agents and representatives thereof, at such time as the Comptroller General may request.

(ii) Verification

The Comptroller General shall be afforded full facilities for verifying transactions with the balances or securities held by, among others, depositories, fiscal agents, and custodians.

(iii) Copies

The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General determines appropriate.

(D) Agreement by entities

Each contract, term sheet, or other agreement between the Secretary or the TARP (or any TARP vehicle, officer, director, employee, independent public accountant, financial advisor, or other TARP agent or representative) and an entity (other than a governmental unit) participating in a program established under this chapter shall provide for access by the Comptroller General in accordance with this section.

(E) Restriction on public disclosure

(i) In general

The Comptroller General may not publicly disclose proprietary or trade secret information obtained under this section.

(ii) Exception for congressional committees

This subparagraph does not limit disclosures to congressional committees or members thereof having jurisdiction over a private or public entity referred to under subparagraph (C).

(iii) Rule of construction

Nothing in this section shall be construed to alter or amend the prohibitions against the disclosure of trade secrets or other information prohibited by section 1905 of title 18, section 714(c) of title 31, or other applicable provisions of law.

(F) Reimbursement of costs

The Treasury shall reimburse the Government Accountability Office for the full cost of any such oversight activities as billed therefor by the Comptroller General of the United States. Such reimbursements shall be credited to the appropriation account ''Salaries and Expenses, Government Accountability Office'' current when the payment is received and remain available until expended.

(3) Reporting

The Comptroller General shall submit reports of findings under this section, regularly and no less frequently than once every 60 days, to the appropriate committees of Congress, and the Special Inspector General for the Troubled Asset Relief Program established under this chapter on the activities and performance of the TARP. The Comptroller may also submit special reports under this subsection as warranted by the findings of its oversight activities.

(b) Comptroller General audits

(1) Annual audit

The TARP shall annually prepare and issue to the appropriate committees of Congress and the public audited financial statements prepared in accordance with generally accepted accounting principles, and the Comptroller General shall annually audit such statements in accordance with generally accepted auditing standards. The Treasury shall reimburse the Government Accountability Office for the full cost of any such audit as billed therefor by the Comptroller General. Such reimbursements shall be credited to the appropriation account ''Salaries and Expenses, Government Accountability Office'' current when the payment is received and remain available until expended. The financial statements prepared under this paragraph shall be on the fiscal year basis prescribed under section 1102 of title 31.

(2) Authority

The Comptroller General may audit the programs, activities, receipts, expenditures, and financial transactions of the TARP and any agents and representatives of the TARP (as related to the agent or representative's activities on behalf of or under the authority of the TARP), including vehicles established by the Secretary under this chapter.

(3) Corrective responses to audit problems

The TARP shall—

(A) take action to address deficiencies identified by the Comptroller General or other auditor engaged by the TARP; or

(B) certify to appropriate committees of Congress that no action is necessary or appropriate.

(c) Internal control

(1) Establishment

The TARP shall establish and maintain an effective system of internal control, consistent with the standards prescribed under section 3512(c) of title 31, that provides reasonable assurance of—

(A) the effectiveness and efficiency of operations, including the use of the resources of the TARP;

(B) the reliability of financial reporting, including financial statements and other reports for internal and external use; and

(C) compliance with applicable laws and regulations.

(2) Reporting

In conjunction with each annual financial statement issued under this section, the TARP shall—

(A) state the responsibility of management for establishing and maintaining adequate

internal control over financial reporting; and

(B) state its assessment, as of the end of the most recent year covered by such financial statement of the TARP, of the effectiveness of the internal control over financial reporting.

(d) Sharing of information

Any report or audit required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(e) Termination

Any oversight, reporting, or audit requirement under this section shall terminate on the later of—

(1) the date that the last troubled asset acquired by the Secretary under section 5211 of this title has been sold or transferred out of the ownership or control of the Federal Government; or

(2) the date of expiration of the last insurance contract issued under section 5212 of this title.

(Pub. L. 110–343, div. A, title I, § 116, Oct. 3, 2008, 122 Stat. 3783; Pub. L. 111–22, div. A, title VI, § 601, May 20, 2009, 123 Stat. 1659.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(2), was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

Section 1204 of the Financial Institutions Reform, Recovery, and Enhancement Act of 1989, referred to in subsec. (a)(1)(H), probably means section 1204 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73, which is set out as a note under section 1811 of this title.

Section 5230 of this title, referred to in subsec. (a)(2)(B), was so in the original, but probably should have been a reference to section 120 of title I of div. A of Pub. L. 110–343, which is classified to section 5230 of this title.

AMENDMENTS

2009—Subsec. (a)(1)(A)(v). Pub. L. 111–22, § 601(1), added cl. (v).

Subsec. (a)(2). Pub. L. 111–22, § 601(2), added subpars. (A) to (E), redesignated former subpar. (C) as (F), and struck out former subpars. (A) and (B) which related to GAO presence and access to records, respectively.

§ 5227. Study and report on margin authority

(a) Study

The Comptroller General shall undertake a study to determine the extent to which leverage and sudden deleveraging of financial institutions was a factor behind the current financial crisis.

(b) Content

The study required by this section shall include—

(1) an analysis of the roles and responsibilities of the Board, the Securities and Exchange Commission, the Secretary, and other Federal banking agencies with respect to monitoring leverage and acting to curtail excessive leveraging;

(2) an analysis of the authority of the Board to regulate leverage, including by setting margin requirements, and what process the Board used to decide whether or not to use its authority;

(3) an analysis of any usage of the margin authority by the Board; and

(4) recommendations for the Board and appropriate committees of Congress with respect to the existing authority of the Board.

(c) Report

Not later than June 1, 2009, the Comptroller General shall complete and submit a report on the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(d) Sharing of information

Any reports required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(Pub. L. 110–343, div. A, title I, § 117, Oct. 3, 2008, 122 Stat. 3786.)

§ 5228. Funding

For the purpose of the authorities granted in this chapter, and for the costs of administering those authorities, the Secretary may use the proceeds of the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include actions authorized by this chapter, including the payment of administrative expenses. Any funds expended or obligated by the Secretary for actions authorized by this chapter, including the payment of administrative expenses, shall be deemed appropriated at the time of such expenditure or obligation.

(Pub. L. 110–343, div. A, title I, § 118, Oct. 3, 2008, 122 Stat. 3786.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5229. Judicial review and related matters

(a) Judicial review

(1) Standard

Actions by the Secretary pursuant to the authority of this chapter shall be subject to chapter 7 of title 5, including that such final actions shall be held unlawful and set aside if found to be arbitrary, capricious, an abuse of discretion, or not in accordance with law.

(2) Limitations on equitable relief

(A) Injunction

No injunction or other form of equitable relief shall be issued against the Secretary

for actions pursuant to section[1] 5211, 5212, 5216, and 5219 of this title, other than to remedy a violation of the Constitution.

(B) Temporary restraining order

Any request for a temporary restraining order against the Secretary for actions pursuant to this chapter shall be considered and granted or denied by the court within 3 days of the date of the request.

(C) Preliminary injunction

Any request for a preliminary injunction against the Secretary for actions pursuant to this chapter shall be considered and granted or denied by the court on an expedited basis consistent with the provisions of rule 65(b)(3) of the Federal Rules of Civil Procedure, or any successor thereto.

(D) Permanent injunction

Any request for a permanent injunction against the Secretary for actions pursuant to this chapter shall be considered and granted or denied by the court on an expedited basis. Whenever possible, the court shall consolidate trial on the merits with any hearing on a request for a preliminary injunction, consistent with the provisions of rule 65(a)(2) of the Federal Rules of Civil Procedure, or any successor thereto.

(3) Limitation on actions by participating companies

No action or claims may be brought against the Secretary by any person that divests its assets with respect to its participation in a program under this chapter, except as provided in paragraph (1), other than as expressly provided in a written contract with the Secretary.

(4) Stays

Any injunction or other form of equitable relief issued against the Secretary for actions pursuant to section[1] 5211, 5212, 5216, and 5219 of this title, shall be automatically stayed. The stay shall be lifted unless the Secretary seeks a stay from a higher court within 3 calendar days after the date on which the relief is issued.

(b) Related matters

(1) Treatment of homeowners' rights

The terms of any residential mortgage loan that is part of any purchase by the Secretary under this chapter shall remain subject to all claims and defenses that would otherwise apply, notwithstanding the exercise of authority by the Secretary under this chapter.

(2) Savings clause

Any exercise of the authority of the Secretary pursuant to this chapter shall not impair the claims or defenses that would otherwise apply with respect to persons other than the Secretary. Except as established in any contract, a servicer of pooled residential mortgages owes any[2] duty to determine whether the net present value of the payments on the loan, as modified, is likely to be greater than the anticipated net recovery that would result from foreclosure to all investors and holders of beneficial interests in such investment, but not to any individual or groups of investors or beneficial interest holders, and shall be deemed to act in the best interests of all such investors or holders of beneficial interests if the servicer agrees to or implements a modification or workout plan when the servicer takes reasonable loss mitigation actions, including partial payments.

(Pub. L. 110–343, div. A, title I, §119, Oct. 3, 2008, 122 Stat. 3787.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (a)(2)(C), (D), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 5230. Termination of authority

(a) Termination

The authorities provided under sections 5211(a), excluding section 5211(a)(3), and 5212 of this title shall terminate on December 31, 2009.

(b) Extension upon certification

The Secretary, upon submission of a written certification to Congress, may extend the authority provided under this chapter to expire not later than 2 years from October 3, 2008. Such certification shall include a justification of why the extension is necessary to assist American families and stabilize financial markets, as well as the expected cost to the taxpayers for such an extension.

(Pub. L. 110–343, div. A, title I, §120, Oct. 3, 2008, 122 Stat. 3788.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5231. Special Inspector General for the Troubled Asset Relief Program

(a) Office of Inspector General

There is hereby established the Office of the Special Inspector General for the Troubled Asset Relief Program.

(b) Appointment of Inspector General; removal

(1) The head of the Office of the Special Inspector General for the Troubled Asset Relief Program is the Special Inspector General for the Troubled Asset Relief Program (in this section referred to as the ''Special Inspector General''), who shall be appointed by the President, by and with the advice and consent of the Senate.

[1] So in original. Probably should be ''sections''.

[2] So in original. Probably should be ''a''.

(2) The appointment of the Special Inspector General shall be made on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(3) The nomination of an individual as Special Inspector General shall be made as soon as practicable after the establishment of any program under sections 5211 and 5212 of this title.

(4) The Special Inspector General shall be removable from office in accordance with the provisions of section 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.).

(5) For purposes of section 7324 of title 5, the Special Inspector General shall not be considered an employee who determines policies to be pursued by the United States in the nationwide administration of Federal law.

(6) The annual rate of basic pay of the Special Inspector General shall be the annual rate of basic pay for an Inspector General under section 3(e) of the Inspector General Act of 1978 (5 U.S.C. App.).

(c) Duties

(1) It shall be the duty of the Special Inspector General to conduct, supervise, and coordinate audits and investigations of the purchase, management, and sale of assets by the Secretary of the Treasury under any program established by the Secretary under section 5211 of this title, and the management by the Secretary of any program established under section 5212 of this title, including by collecting and summarizing the following information:

(A) A description of the categories of troubled assets purchased or otherwise procured by the Secretary.

(B) A listing of the troubled assets purchased in each such category described under subparagraph (A).

(C) An explanation of the reasons the Secretary deemed it necessary to purchase each such troubled asset.

(D) A listing of each financial institution that such troubled assets were purchased from.

(E) A listing of and detailed biographical information on each person or entity hired to manage such troubled assets.

(F) A current estimate of the total amount of troubled assets purchased pursuant to any program established under section 5211 of this title, the amount of troubled assets on the books of the Treasury, the amount of troubled assets sold, and the profit and loss incurred on each sale or disposition of each such troubled asset.

(G) A listing of the insurance contracts issued under section 5212 of this title.

(2) The Special Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Special Inspector General considers appropriate to discharge the duty under paragraph (1).

(3) In addition to the duties specified in paragraphs (1) and (2), the Inspector General shall also have the duties and responsibilities of inspectors general under the Inspector General Act of 1978.

(4)(A) Except as provided under subparagraph (B) and in addition to the duties specified in paragraphs (1), (2), and (3), the Special Inspector General shall have the authority to conduct, supervise, and coordinate an audit or investigation of any action taken under this subchapter as the Special Inspector General determines appropriate.

(B) Subparagraph (A) shall not apply to any action taken under section 5225, 5226, 5227, or 5233 of this title.

(d) Powers and authorities

(1) In carrying out the duties specified in subsection (c), the Special Inspector General shall have the authorities provided in section 6 of the Inspector General Act of 1978.

(2) The Special Inspector General shall carry out the duties specified in subsection (c)(1) and (4) in accordance with section 4(b)(1) of the Inspector General Act of 1978.

(3) The Office of the Special Inspector General for the Troubled Asset Relief Program shall be treated as an office included under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App.) relating to the exemption from the initial determination of eligibility by the Attorney General.

(e) Personnel, facilities, and other resources

(1)(A) The Special Inspector General may select, appoint, and employ such officers and employees as may be necessary for carrying out the duties of the Special Inspector General, subject to the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(B)(i) Subject to clause (ii), the Special Inspector General may exercise the authorities of subsections (b) through (i) of section 3161 of title 5 (without regard to subsection (a) of that section).

(ii) In exercising the employment authorities under subsection (b) of section 3161 of title 5, as provided under clause (i) of this subparagraph—

(I) the Special Inspector General may not make any appointment on and after the date occurring 6 months after April 24, 2009;

(II) paragraph (2) of that subsection (relating to periods of appointments) shall not apply; and

(III) no period of appointment may exceed the date on which the Office of the Special Inspector General terminates under subsection (k).

(2) The Special Inspector General may obtain services as authorized by section 3109 of title 5 at daily rates not to exceed the equivalent rate prescribed for grade GS–15 of the General Schedule by section 5332 of such title.

(3) The Special Inspector General may enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Inspector General.

(4)(A) Upon request of the Special Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contraven-

tion of any existing law, furnish such information or assistance to the Special Inspector General, or an authorized designee.

(B) Whenever information or assistance requested by the Special Inspector General is, in the judgment of the Special Inspector General, unreasonably refused or not provided, the Special Inspector General shall report the circumstances to the appropriate committees of Congress without delay.

(5)(A) Except as provided under subparagraph (B), if an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes employed in a position within the Office of the Special Inspector General for the Troubled Asset Relief Program, his annuity shall continue. An annuitant so reemployed shall not be considered an employee for purposes of chapter 83 or 84.[1]

(B) Subparagraph (A) shall apply to—

(i) not more than 25 employees at any time as designated by the Special Inspector General; and

(ii) pay periods beginning after April 24, 2009.

(f) Corrective responses to audit problems

The Secretary shall—

(1) take action to address deficiencies identified by a report or investigation of the Special Inspector General or other auditor engaged by the TARP; or

(2) certify to appropriate committees of Congress that no action is necessary or appropriate.

(g) Cooperation and coordination with other entities

In carrying out the duties, responsibilities, and authorities of the Special Inspector General under this section, the Special Inspector General shall work with each of the following entities, with a view toward avoiding duplication of effort and ensuring comprehensive oversight of the Troubled Asset Relief Program through effective cooperation and coordination:

(1) The Inspector General of the Department of Treasury.

(2) The Inspector General of the Federal Deposit Insurance Corporation.

(3) The Inspector General of the Securities and Exchange Commission.

(4) The Inspector General of the Federal Reserve Board.

(5) The Inspector General of the Federal Housing Finance Board.

(6) The Inspector General of any other entity as appropriate.

(h) Council of the Inspectors General on Integrity and Efficiency

The Special Inspector General shall be a member of the Council of the Inspectors General on Integrity and Efficiency established under section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) until the date of termination of the Office of the Special Inspector General for the Troubled Asset Relief Program.

(i) Reports

(1) Not later than 60 days after the confirmation of the Special Inspector General, and not later than 30 days following the end of each fiscal quarter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during that fiscal quarter. Each report shall include, for the period covered by such report, a detailed statement of all purchases, obligations, expenditures, and revenues associated with any program established by the Secretary of the Treasury under sections 5211 and 5212 of this title, as well as the information collected under subsection (c)(1).

(2) Not later than September 1, 2009, the Special Inspector General shall submit a report to Congress assessing use of any funds, to the extent practical, received by a financial institution under the TARP and make the report available to the public, including posting the report on the home page of the website of the Special Inspector General within 24 hours after the submission of the report.

(3) Nothing in this subsection shall be construed to authorize the public disclosure of information that is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(4) Any reports required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(5) Except as provided under paragraph (3), all reports submitted under this subsection shall be available to the public.

(j) Funding

(1) Of the amounts made available to the Secretary of the Treasury under section 5228 of this title, $50,000,000 shall be available to the Special Inspector General to carry out this section, not later than 7 days after April 24, 2009.

(2) The amount available under paragraph (1) shall remain available until expended.

(k) Termination

The Office of the Special Inspector General shall terminate on the later of—

(1) the date that the last troubled asset acquired by the Secretary under section 5211 of this title has been sold or transferred out of the ownership or control of the Federal Government; or

(2) the date of expiration of the last insurance contract issued under section 5212 of this title.

(Pub. L. 110–343, div. A, title I, § 121, Oct. 3, 2008, 122 Stat. 3788; Pub. L. 111–15, §§ 2–6, Apr. 24, 2009, 123 Stat. 1603–1605.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsecs. (b)(4), (6), (c)(3), (d), and (h), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

Chapter 83 or 84, referred to in subsec. (e)(5)(A), probably means chapter 83 or 84 of Title 5, Government Organization and Employees.

[1] See References in Text note below.

AMENDMENTS

2009—Subsec. (c)(4). Pub. L. 111–15, §2(1), added par. (4).

Subsec. (d)(2). Pub. L. 111–15, §2(2)(A), substituted ''subsection (c)(1) and (4)'' for ''subsection (c)(1)''.

Subsec. (d)(3). Pub. L. 111–15, §2(2)(B), added par. (3).

Subsec. (e)(1). Pub. L. 111–15, §3(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e)(5). Pub. L. 111–15, §3(2), added par. (5).

Subsecs. (f) to (h). Pub. L. 111–15, §4(2), added subsecs. (f) to (h). Former subsecs. (f) to (h) redesignated (i) to (k), respectively.

Subsec. (i). Pub. L. 111–15, §4(1), redesignated subsec. (f) as (i).

Subsec. (i)(1). Pub. L. 111–15, §5(1), substituted ''Not later than 60 days after the confirmation of the Special Inspector General, and not later than 30 days following the end of each fiscal quarter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during that fiscal quarter.'' for ''Not later than 60 days after the confirmation of the Special Inspector General, and every calendar quarter thereafter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during the 120-day period ending on the date of such report.''

Subsec. (i)(2) to (4). Pub. L. 111–15, §5(2), (3), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (i)(5). Pub. L. 111–15, §5(4), added par. (5).

Subsec. (j). Pub. L. 111–15, §4(1), redesignated subsec. (g) as (j).

Subsec. (j)(1). Pub. L. 111–15, §6, inserted '', not later than 7 days after April 24, 2009'' before period at end.

Subsec. (k). Pub. L. 111–15, §4(1), redesignated subsec. (h) as (k).

§ 5231a. Public-Private Investment Program; additional appropriations for the Special Inspector General for the Troubled Asset Relief Program

(a) Short title

This section may be cited as the ''Public-Private Investment Program Improvement and Oversight Act of 2009''.

(b) Public-Private Investment Program

(1) In general

Any program established by the Federal Government to create a public-private investment fund shall—

(A) in consultation with the Special Inspector General of the Trouble[1] Asset Relief Program (in this section referred to as the ''Special Inspector General''), impose strict conflict of interest rules on managers of public-private investment funds to ensure that securities bought by the funds are purchased in arms-length transactions, that fiduciary duties to public and private investors in the fund are not violated, and that there is full disclosure of relevant facts and financial interests (which conflict of interest rules shall be implemented by the manager of a public-private investment fund prior to such fund receiving Federal Government financing);

(B) require each public-private investment fund to make a quarterly report to the Secretary of the Treasury (in this section referred to as the ''Secretary'') that discloses the 10 largest positions of such fund (which reports shall be publicly disclosed at such time as the Secretary of the Treasury determines that such disclosure will not harm the ongoing business operations of the fund);

(C) allow the Special Inspector General access to all books and records of a public-private investment fund, including all records of financial transactions in machine readable form, and the confidentiality of all such information shall be maintained by the Special Inspector General;

(D) require each manager of a public-private investment fund to retain all books, documents, and records relating to such public-private investment fund, including electronic messages;

(E) require each manager of a public-private investment fund to acknowledge, in writing, a fiduciary duty to both the public and private investors in such fund;

(F) require each manager of a public-private investment fund to develop a robust ethics policy that includes methods to ensure compliance with such policy;

(G) require strict investor screening procedures for public-private investment funds; and

(H) require each manager of a public-private fund to identify for the Secretary, on a periodic basis, each investor that, individually or together with affiliates, directly or indirectly, holds equity interests equal to at least 10 percent of the equity interest of the fund including if such interests are held in a vehicle formed for the purpose of directly or indirectly investing in the fund.

(2) Interaction between public-private investment funds and the Term-Asset Backed Securities Loan Facility

The Secretary shall consult with the Special Inspector General and shall issue regulations governing the interaction of the Public-Private Investment Program, the Term-Asset Backed Securities Loan Facility, and other similar public-private investment programs. Such regulations shall address concerns regarding the potential for excessive leverage that could result from interactions between such programs.

(3) Report

Not later than 60 days after the date of the establishment of a program described in paragraph (1), the Special Inspector General shall submit a report to Congress on the implementation of this section.

(c) Additional appropriations for the Special Inspector General

(1) In general

Of amounts made available under section 115(a) of the Emergency Economic Stabilization Act of 2008 (Public Law 110–343) [12 U.S.C. 5225(a)], $15,000,000 shall be made available to the Special Inspector General, which shall be in addition to amounts otherwise made available to the Special Inspector General.

(2) Priorities

In utilizing funds made available under this section, the Special Inspector General shall

[1] So in original. Probably should be ''Troubled''.

prioritize the performance of audits or investigations of recipients of non-recourse Federal loans made under any program that is funded in whole or in part by funds appropriated under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.], to the extent that such priority is consistent with other aspects of the mission of the Special Inspector General. Such audits or investigations shall determine the existence of any collusion between the loan recipient and the seller or originator of the asset used as loan collateral, or any other conflict of interest that may have led the loan recipient to deliberately overstate the value of the asset used as loan collateral.

(d) Rule of construction

Notwithstanding any other provision of law, nothing in this section shall be construed to apply to any activity of the Federal Deposit Insurance Corporation in connection with insured depository institutions, as described in section 1823(c)(2)(B) of this title.

(e) Definition

In this section, the term ''public-private investment fund'' means a financial vehicle that is—

(1) established by the Federal Government to purchase pools of loans, securities, or assets from a financial institution described in section 101(a)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a)(1)); and

(2) funded by a combination of cash or equity from private investors and funds provided by the Secretary of the Treasury or funds appropriated under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.].

(f) Omitted

(g) Regulations

The Secretary of the Treasury may prescribe such regulations or other guidance as may be necessary or appropriate to define terms or carry out the authorities or purposes of this section.

(Pub. L. 111–22, div. A, title IV, § 402, May 20, 2009, 123 Stat. 1656.)

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsecs. (c)(2) and (e)(2), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Helping Families Save Their Homes Act of 2009, and not as part of the Emergency Economic Stabilization Act of 2008 which comprises this chapter.

Section is comprised of section 402 of Pub. L. 111–22. Subsec. (f) of section 402 of Pub. L. 111–22 amended section 5225 of this title.

§ 5232. Credit reform

(a) In general

Subject to subsection (b), the costs of purchases of troubled assets made under section 5211(a) of this title and guarantees of troubled assets under section 5212 of this title, and any cash flows associated with the activities authorized in section 5212 of this title and subsections (a), (b), and (c) of section 5216 of this title shall be determined as provided under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et.[1] seq.).

(b) Costs

For the purposes of section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))—

(1) the cost of troubled assets and guarantees of troubled assets shall be calculated by adjusting the discount rate in section 502(5)(E) (2 U.S.C. 661a(5)(E)) for market risks; and

(2) the cost of a modification of a troubled asset or guarantee of a troubled asset shall be the difference between the current estimate consistent with paragraph (1) under the terms of the troubled asset or guarantee of the troubled asset and the current estimate consistent with paragraph (1) under the terms of the troubled asset or guarantee of the troubled asset, as modified.

(Pub. L. 110–343, div. A, title I, § 123, Oct. 3, 2008, 122 Stat. 3790.)

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (a), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, § 13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§ 661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

§ 5233. Congressional Oversight Panel

(a) Establishment

There is hereby established the Congressional Oversight Panel (hereafter in this section referred to as the ''Oversight Panel'') as an establishment in the legislative branch.

(b) Duties

The Oversight Panel shall review the current state of the financial markets and the regulatory system and submit the following reports to Congress:

(1) Regular reports

(A) In general

Regular reports of the Oversight Panel shall include the following:

(i) The use by the Secretary of authority under this chapter, including with respect to the use of contracting authority and administration of the program.

(ii) The impact of purchases made under the[1] chapter on the financial markets and financial institutions.

(iii) The extent to which the information made available on transactions under the program has contributed to market transparency.

(iv) The effectiveness of foreclosure mitigation efforts, and the effectiveness of the program from the standpoint of minimizing long-term costs to the taxpayers and maximizing the benefits for taxpayers.

[1] So in original.

[1] So in original. Probably should be ''this''.

(B) Timing

The reports required under this paragraph shall be submitted not later than 30 days after the first exercise by the Secretary of the authority under section 5211(a) or 5212 of this title, and every 30 days thereafter.

(2) Special report on regulatory reform

The Oversight Panel shall submit a special report on regulatory reform not later than January 20, 2009, analyzing the current state of the regulatory system and its effectiveness at overseeing the participants in the financial system and protecting consumers, and providing recommendations for improvement, including recommendations regarding whether any participants in the financial markets that are currently outside the regulatory system should become subject to the regulatory system, the rationale underlying such recommendation, and whether there are any gaps in existing consumer protections.

(3) Special report on farm loan restructuring

Not later than 60 days after May 20, 2009, the Oversight Panel shall submit a special report on farm loan restructuring that—

(A) analyzes the state of the commercial farm credit markets and the use of loan restructuring as an alternative to foreclosure by recipients of financial assistance under the Troubled Asset Relief Program; and

(B) includes an examination of and recommendation on the different methods for farm loan restructuring that could be used as part of a foreclosure mitigation program for farm loans made by recipients of financial assistance under the Troubled Asset Relief Program, including any programs for direct loan restructuring or modification carried out by the Farm Service Agency of the Department of Agriculture, the farm credit system, and the Making Home Affordable Program of the Department of the Treasury.

(c) Membership

(1) In general

The Oversight Panel shall consist of 5 members, as follows:

(A) 1 member appointed by the Speaker of the House of Representatives.

(B) 1 member appointed by the minority leader of the House of Representatives.

(C) 1 member appointed by the majority leader of the Senate.

(D) 1 member appointed by the minority leader of the Senate.

(E) 1 member appointed by the Speaker of the House of Representatives and the majority leader of the Senate, after consultation with the minority leader of the Senate and the minority leader of the House of Representatives.

(2) Pay

Each member of the Oversight Panel shall each[2] be paid at a rate equal to the daily equivalent of the annual rate of basic pay for level I of the Executive Schedule for each day (including travel time) during which such member is engaged in the actual performance of duties vested in the Commission.

(3) Prohibition of compensation of Federal employees

Members of the Oversight Panel who are full-time officers or employees of the United States or Members of Congress may not receive additional pay, allowances, or benefits by reason of their service on the Oversight Panel.

(4) Travel expenses

Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5.

(5) Quorum

Four members of the Oversight Panel shall constitute a quorum but a lesser number may hold hearings.

(6) Vacancies

A vacancy on the Oversight Panel shall be filled in the manner in which the original appointment was made.

(7) Meetings

The Oversight Panel shall meet at the call of the Chairperson or a majority of its members.

(d) Staff

(1) In general

The Oversight Panel may appoint and fix the pay of any personnel as the Commission considers appropriate.

(2) Experts and consultants

The Oversight Panel may procure temporary and intermittent services under section 3109(b) of title 5.

(3) Staff of agencies

Upon request of the Oversight Panel, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Oversight Panel to assist it in carrying out its duties under this chapter.

(e) Powers

(1) Hearings and sessions

The Oversight Panel may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Panel considers appropriate and may administer oaths or affirmations to witnesses appearing before it.

(2) Powers of members and agents

Any member or agent of the Oversight Panel may, if authorized by the Oversight Panel, take any action which the Oversight Panel is authorized to take by this section.

(3) Obtaining official data

The Oversight Panel may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairperson of the Oversight Panel, the head of that department or agency shall furnish that information to the Oversight Panel.

[2] So in original.

(4) Reports

The Oversight Panel shall receive and consider all reports required to be submitted to the Oversight Panel under this chapter.

(f) Termination

The Oversight Panel shall terminate 6 months after the termination date specified in section 5230 of this title.

(g) Funding for expenses

(1) Authorization of appropriations

There is authorized to be appropriated to the Oversight Panel such sums as may be necessary for any fiscal year, half of which shall be derived from the applicable account of the House of Representatives, and half of which shall be derived from the contingent fund of the Senate.

(2) Reimbursement of amounts

An amount equal to the expenses of the Oversight Panel shall be promptly transferred by the Secretary, from time to time upon the presentment of a statement of such expenses by the Chairperson of the Oversight Panel, from funds made available to the Secretary under this chapter to the applicable fund of the House of Representatives and the contingent fund of the Senate, as appropriate, as reimbursement for amounts expended from such account and fund under paragraph (1).

(Pub. L. 110–343, div. A, title I, § 125, Oct. 3, 2008, 122 Stat. 3791; Pub. L. 111–22, div. A, title V, § 501, May 20, 2009, 123 Stat. 1658.)

REFERENCES IN TEXT

This chapter and the chapter, referred to in text, were in the original ''this Act'' and ''the Act'', respectively, and were translated as reading ''this division'' and ''the division'', respectively, meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

Level I of the Executive Schedule, referred to in subsec. (c)(2), is set out in section 5312 of Title 5, Government Organization and Employees.

AMENDMENTS

2009—Subsec. (b)(3). Pub. L. 111–22 added par. (3).

§ 5234. Cooperation with the FBI

Any Federal financial regulatory agency shall cooperate with the Federal Bureau of Investigation and other law enforcement agencies investigating fraud, misrepresentation, and malfeasance with respect to development, advertising, and sale of financial products.

(Pub. L. 110–343, div. A, title I, § 127, Oct. 3, 2008, 122 Stat. 3796.)

§ 5235. Disclosures on exercise of loan authority

(a) In general

Not later than 7 days after the date on which the Board exercises its authority under the third paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343; relating to discounts for individuals, partnerships, and corporations) the Board shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report which includes—

(1) the justification for exercising the authority; and

(2) the specific terms of the actions of the Board, including the size and duration of the lending, available information concerning the value of any collateral held with respect to such a loan, the recipient of warrants or any other potential equity in exchange for the loan, and any expected cost to the taxpayers for such exercise.

(b) Periodic updates

The Board shall provide updates to the Committees specified in subsection (a) not less frequently than once every 60 days while the subject loan is outstanding, including—

(1) the status of the loan;

(2) the value of the collateral held by the Federal reserve bank which initiated the loan; and

(3) the projected cost to the taxpayers of the loan.

(c) Confidentiality

The information submitted to the Congress under this section shall be kept confidential, upon the written request of the Chairman of the Board, in which case it shall be made available only to the Chairpersons and Ranking Members of the Committees described in subsection (a).

(d) Applicability

The provisions of this section shall be in force for all uses of the authority provided under section 13 of the Federal Reserve Act occurring during the period beginning on March 1, 2008 and ending on the after[1] October 3, 2008, and reports described in subsection (a) shall be required beginning not later than 30 days after October 3, 2008, with respect to any such exercise of authority.

(e) Sharing of information

Any reports required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(Pub. L. 110–343, div. A, title I, § 129, Oct. 3, 2008, 122 Stat. 3796.)

REFERENCES IN TEXT

Section 13 of the Federal Reserve Act, referred to in subsecs. (a) and (d), is classified to sections 92, 342 to 347, 347c, 347d, 361, 372, and 373 of this title. The third paragraph (now designated par. (3)) of section 13 of the Act is classified to section 343(3) of this title. For further details, see Codification notes under sections 342 and 343 of this title.

§ 5236. Exchange Stabilization Fund reimbursement

(a) Reimbursement

The Secretary shall reimburse the Exchange Stabilization Fund established under section 5302 of title 31 for any funds that are used for the Treasury Money Market Funds Guaranty Pro-

[1] So in original.

gram for the United States money market mutual fund industry, from funds under this chapter.

(b) Limits on use of Exchange Stabilization Fund

The Secretary is prohibited from using the Exchange Stabilization Fund for the establishment of any future guaranty programs for the United States money market mutual fund industry.

(Pub. L. 110–343, div. A, title I, § 131, Oct. 3, 2008, 122 Stat. 3797.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5237. Authority to suspend mark-to-market accounting

(a) Authority

The Securities and Exchange Commission shall have the authority under the securities laws (as such term is defined in section 78c(a)(47) of title 15) to suspend, by rule, regulation, or order, the application of Statement Number 157 of the Financial Accounting Standards Board for any issuer (as such term is defined in section 78c(a)(8) of such title) or with respect to any class or category of transaction if the Commission determines that is necessary or appropriate in the public interest and is consistent with the protection of investors.

(b) Savings provision

Nothing in subsection (a) shall be construed to restrict or limit any authority of the Securities and Exchange Commission under securities laws as in effect on October 3, 2008.

(Pub. L. 110–343, div. A, title I, § 132, Oct. 3, 2008, 122 Stat. 3798.)

§ 5238. Study on mark-to-market accounting

(a) Study

The Securities and Exchange Commission, in consultation with the Board and the Secretary, shall conduct a study on mark-to-market accounting standards as provided in Statement Number 157 of the Financial Accounting Standards Board, as such standards are applicable to financial institutions, including depository institutions. Such a study shall consider at a minimum—

(1) the effects of such accounting standards on a financial institution's balance sheet;

(2) the impacts of such accounting on bank failures in 2008;

(3) the impact of such standards on the quality of financial information available to investors;

(4) the process used by the Financial Accounting Standards Board in developing accounting standards;

(5) the advisability and feasibility of modifications to such standards; and

(6) alternative accounting standards to those provided in such Statement Number 157.

(b) Report

The Securities and Exchange Commission shall submit to Congress a report of such study before the end of the 90-day period beginning on October 3, 2008, containing the findings and determinations of the Commission, including such administrative and legislative recommendations as the Commission determines appropriate.

(Pub. L. 110–343, div. A, title I, § 133, Oct. 3, 2008, 122 Stat. 3798.)

§ 5239. Recoupment

Upon the expiration of the 5-year period beginning upon October 3, 2008, the Director of the Office of Management and Budget, in consultation with the Director of the Congressional Budget Office, shall submit a report to the Congress on the net amount within the Troubled Asset Relief Program under this chapter. In any case where there is a shortfall, the President shall submit a legislative proposal that recoups from the financial industry an amount equal to the shortfall in order to ensure that the Troubled Asset Relief Program does not add to the deficit or national debt.

(Pub. L. 110–343, div. A, title I, § 134, Oct. 3, 2008, 122 Stat. 3798.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5240. Preservation of authority

With the exception of section 5236 of this title, nothing in this chapter may be construed to limit the authority of the Secretary or the Board under any other provision of law.

(Pub. L. 110–343, div. A, title I, § 135, Oct. 3, 2008, 122 Stat. 3799.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5241. Temporary increase in deposit and share insurance coverage

(a) Federal Deposit Insurance Act; temporary increase in deposit insurance

(1) Increased amount

Effective only during the period beginning on October 3, 2008, and ending on December 31, 2013, section 11(a)(1)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(E)) shall apply with ''$250,000'' substituted for ''$100,000''.

(2) Borrowing limits temporarily lifted

During the period beginning on October 3, 2008, and ending on December 31, 2013, the

Board of Directors of the Corporation may request from the Secretary, and the Secretary shall approve, a loan or loans in an amount or amounts necessary to carry out this subsection, without regard to the limitations on such borrowing under section 14(a) and 15(c) of the Federal Deposit Insurance Act (12 U.S.C. 1824(a), 1825(c)).

(b) Federal Credit Union Act; temporary increase in share insurance

(1) Increased amount

Effective only during the period beginning on October 3, 2008, and ending on December 31, 2013, section 207(k)(5) of the Federal Credit Union Act (12 U.S.C. 1787(k)(5)) shall apply with ''$250,000'' substituted for ''$100,000''.

(2) Borrowing limits temporarily lifted

During the period beginning on October 3, 2008, and ending on December 31, 2013, the National Credit Union Administration Board may request from the Secretary, and the Secretary shall approve, a loan or loans in an amount or amounts necessary to carry out this subsection, without regard to the limitations on such borrowing under section 203(d)(1) of the Federal Credit Union Act (12 U.S.C. 1783(d)(1)).

(c) Not for use in inflation adjustments

The temporary increase in the standard maximum deposit insurance amount made under this section shall not be used to make any inflation adjustment under section 11(a)(1)(F) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(F)) for purposes of that Act [12 U.S.C. 1811 et seq.] or the Federal Credit Union Act [12 U.S.C. 1751 et seq.].

(Pub. L. 110–343, div. A, title I, §136, Oct. 3, 2008, 122 Stat. 3799; Pub. L. 111–22, div. A, title II, §204(a), May 20, 2009, 123 Stat. 1648.)

REFERENCES IN TEXT

That Act, referred to in subsec. (c), means the Federal Deposit Insurance Act, act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

The Federal Credit Union Act, referred to in subsec. (c), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified principally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111–22, §204(a)(1)(A), substituted ''December 31, 2013'' for ''December 31, 2009''.

Subsec. (a)(2), (3). Pub. L. 111–22, §204(a)(1)(B)–(D), redesignated par. (3) as (2), substituted ''December 31, 2013'' for ''December 31, 2009'', and struck out former par. (2). Prior to amendment, text read as follows: ''The temporary increase in the standard maximum deposit insurance amount made under paragraph (1) shall not be taken into account by the Board of Directors of the Corporation for purposes of setting assessments under section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)).''

Subsec. (b)(1). Pub. L. 111–22, §204(a)(2)(A), substituted ''December 31, 2013'' for ''December 31, 2009''.

Subsec. (b)(2), (3). Pub. L. 111–22, §204(a)(2)(B)–(D), redesignated par. (3) as (2), substituted ''December 31, 2013'' for ''December 31, 2009'', and struck out former par. (2). Prior to amendment, text read as follows: ''The temporary increase in the standard maximum share insurance amount made under paragraph (1) shall not be taken into account by the National Credit Union Administration Board for purposes of setting insurance premium charges and share insurance deposit adjustments under section 202(c)(2) of the Federal Credit Union Act (12 U.S.C. 1782(c)(2)).''

SUBCHAPTER II—BUDGET-RELATED PROVISIONS

§ 5251. Information for congressional support agencies

Upon request, and to the extent otherwise consistent with law, all information used by the Secretary in connection with activities authorized under this chapter (including the records to which the Comptroller General is entitled under this chapter) shall be made available to congressional support agencies (in accordance with their obligations to support the Congress as set out in their authorizing statutes) for the purposes of assisting the committees of Congress with conducting oversight, monitoring, and analysis of the activities authorized under this chapter.

(Pub. L. 110–343, div. A, title II, §201, Oct. 3, 2008, 122 Stat. 3800.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5252. Reports by the Office of Management and Budget and the Congressional Budget Office

(a) Reports by the Office of Management and Budget

Within 60 days of the first exercise of the authority granted in section 5211(a) of this title, but in no case later than December 31, 2008, and semiannually thereafter, the Office of Management and Budget shall report to the President and the Congress—

(1) the estimate, notwithstanding section 661a(5)(F) of title 2, as of the first business day that is at least 30 days prior to the issuance of the report, of the cost of the troubled assets, and guarantees of the troubled assets, determined in accordance with section 5232 of this title;

(2) the information used to derive the estimate, including assets purchased or guaranteed, prices paid, revenues received, the impact on the deficit and debt, and a description of any outstanding commitments to purchase troubled assets; and

(3) a detailed analysis of how the estimate has changed from the previous report.

Beginning with the second report under subsection (a), the Office of Management and Budget shall explain the differences between the Congressional Budget Office estimates delivered in accordance with subsection (b) and prior Office of Management and Budget estimates.

(b) Reports by the Congressional Budget Office

Within 45 days of receipt by the Congress of each report from the Office of Management and Budget under subsection (a), the Congressional Budget Office shall report to the Congress the Congressional Budget Office's assessment of the report submitted by the Office of Management and Budget, including—

(1) the cost of the troubled assets and guarantees of the troubled assets,

(2) the information and valuation methods used to calculate such cost, and

(3) the impact on the deficit and the debt.

(c) Financial expertise

In carrying out the duties in this subsection[1] or performing analyses of activities under this chapter, the Director of the Congressional Budget Office may employ personnel and procure the services of experts and consultants.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to produce reports required by this section.

(Pub. L. 110–343, div. A, title II, § 202, Oct. 3, 2008, 122 Stat. 3800.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5253. Emergency treatment

All provisions of this chapter are designated as an emergency requirement and necessary to meet emergency needs pursuant to section 204(a) of S. Con. Res[1] 21 (110th Congress), the concurrent resolution on the budget for fiscal year 2008 and rescissions of any amounts provided in this chapter shall not be counted for purposes of budget enforcement.

(Pub. L. 110–343, div. A, title II, § 204, Oct. 3, 2008, 122 Stat. 3801.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' and was translated as reading ''this division'', meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

S. Con. Res. 21 (110th Congress), referred to in text, is S. Con. Res. 21, May 17, 2007, 121 Stat. 2590, which is not classified to the Code.

SUBCHAPTER III—TAX PROVISIONS

§ 5261. Gain or loss from sale or exchange of certain preferred stock

(a) In general

For purposes of title 26, gain or loss from the sale or exchange of any applicable preferred stock by any applicable financial institution shall be treated as ordinary income or loss.

(b) Applicable preferred stock

For purposes of this section, the term ''applicable preferred stock'' means any stock—

(1) which is preferred stock in—

(A) the Federal National Mortgage Association, established pursuant to the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), or

(B) the Federal Home Loan Mortgage Corporation, established pursuant to the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), and

(2) which—

(A) was held by the applicable financial institution on September 6, 2008, or

(B) was sold or exchanged by the applicable financial institution on or after January 1, 2008, and before September 7, 2008.

(c) Applicable financial institution

For purposes of this section:

(1) In general

Except as provided in paragraph (2), the term ''applicable financial institution'' means—

(A) a financial institution referred to in section 582(c)(2) of title 26, or

(B) a depository institution holding company (as defined in section 1813(w)(1) of this title).

(2) Special rules for certain sales

In the case of—

(A) a sale or exchange described in subsection (b)(2)(B), an entity shall be treated as an applicable financial institution only if it was an entity described in subparagraph (A) or (B) of paragraph (1) at the time of the sale or exchange, and

(B) a sale or exchange after September 6, 2008, of preferred stock described in subsection (b)(2)(A), an entity shall be treated as an applicable financial institution only if it was an entity described in subparagraph (A) or (B) of paragraph (1) at all times during the period beginning on September 6, 2008, and ending on the date of the sale or exchange of the preferred stock.

(d) Special rule for certain property not held on September 6, 2008

The Secretary of the Treasury or the Secretary's delegate may extend the application of this section to all or a portion of the gain or loss from a sale or exchange in any case where—

(1) an applicable financial institution sells or exchanges applicable preferred stock after September 6, 2008, which the applicable financial institution did not hold on such date, but the basis of which in the hands of the applicable financial institution at the time of the sale or exchange is the same as the basis in the hands of the person which held such stock on such date, or

(2) the applicable financial institution is a partner in a partnership which—

(A) held such stock on September 6, 2008, and later sold or exchanged such stock, or

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

[1] So in original. Probably should be followed by a period.

(B) sold or exchanged such stock during the period described in subsection (b)(2)(B).

(e) Regulatory authority

The Secretary of the Treasury or the Secretary's delegate may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this section.

(f) Effective date

This section shall apply to sales or exchanges occurring after December 31, 2007, in taxable years ending after such date.

(Pub. L. 110–343, div. A, title III, § 301, Oct. 3, 2008, 122 Stat. 3802.)

REFERENCES IN TEXT

The Federal National Mortgage Association Charter Act, referred to in subsec. (b)(1)(A), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, which is classified generally to subchapter III (§ 1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in subsec. (b)(1)(B), is title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, which is classified generally to chapter 11A (§ 1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

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§ 5301. Definitions

As used in this Act, the following definitions shall apply, except as the context otherwise requires or as otherwise specifically provided in this Act:

(1) Affiliate

The term ''affiliate'' has the same meaning as in section 1813 of this title.

(2) Appropriate Federal banking agency

On and after the transfer date, the term ''appropriate Federal banking agency'' has the same meaning as in section 1813(q) of this title, as amended by title III.[1]

(3) Board of Governors

The term ''Board of Governors'' means the Board of Governors of the Federal Reserve System.

(4) Bureau

The term ''Bureau'' means the Bureau of Consumer Financial Protection established under title X.[1]

(5) Commission

The term ''Commission'' means the Securities and Exchange Commission, except in the context of the Commodity Futures Trading Commission.

(6) Commodity futures terms

The terms ''futures commission merchant'', ''swap'', ''swap dealer'', ''swap execution facil-

[1] See References in Text note below.

ity'', ''derivatives clearing organization'', ''board of trade'', ''commodity trading advisor'', ''commodity pool'', and ''commodity pool operator'' have the same meanings as given the terms in section 1a of the Commodity Exchange Act (7 U.S.C. 1 et seq.) [7 U.S.C. 1a].

(7) Corporation

The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(8) Council

The term ''Council'' means the Financial Stability Oversight Council established under subchapter I.

(9) Credit union

The term ''credit union'' means a Federal credit union, State credit union, or State-chartered credit union, as those terms are defined in section 1752 of this title.

(10) Federal banking agency

The term—

(A) ''Federal banking agency'' means, individually, the Board of Governors, the Office of the Comptroller of the Currency, and the Corporation; and

(B) ''Federal banking agencies'' means all of the agencies referred to in subparagraph (A), collectively.

(11) Functionally regulated subsidiary

The term ''functionally regulated subsidiary'' has the same meaning as in section 1844(c)(5) of this title.

(12) Primary financial regulatory agency

The term ''primary financial regulatory agency'' means—

(A) the appropriate Federal banking agency, with respect to institutions described in section 1813(q) of this title, except to the extent that an institution is or the activities of an institution are otherwise described in subparagraph (B), (C), (D), or (E);

(B) the Securities and Exchange Commission, with respect to—

(i) any broker or dealer that is registered with the Commission under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], with respect to the activities of the broker or dealer that require the broker or dealer to be registered under that Act;

(ii) any investment company that is registered with the Commission under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], with respect to the activities of the investment company that require the investment company to be registered under that Act;

(iii) any investment adviser that is registered with the Commission under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], with respect to the investment advisory activities of such company and activities that are incidental to such advisory activities;

(iv) any clearing agency registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the clearing agency that require the agency to be registered under such Act;

(v) any nationally recognized statistical rating organization registered with the Commission under the Securities Exchange Act of 1934;

(vi) any transfer agent registered with the Commission under the Securities Exchange Act of 1934;

(vii) any exchange registered as a national securities exchange with the Commission under the Securities Exchange Act of 1934;

(viii) any national securities association registered with the Commission under the Securities Exchange Act of 1934;

(ix) any securities information processor registered with the Commission under the Securities Exchange Act of 1934;

(x) the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934;

(xi) the Public Company Accounting Oversight Board established under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211 et seq.);

(xii) the Securities Investor Protection Corporation established under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

(xiii) any security-based swap execution facility, security-based swap data repository, security-based swap dealer or major security-based swap participant registered with the Commission under the Securities Exchange Act of 1934, with respect to the security-based swap activities of the person that require such person to be registered under such Act;

(C) the Commodity Futures Trading Commission, with respect to—

(i) any futures commission merchant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the futures commission merchant that require the futures commission merchant to be registered under that Act;

(ii) any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the commodity pool operator that require the commodity pool operator to be registered under that Act, or a commodity pool, as defined in that Act;

(iii) any commodity trading advisor or introducing broker registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the commodity trading advisor or introducing broker that require the commodity trading adviser or introducing broker to be registered under that Act;

(iv) any derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.),

with respect to the activities of the derivatives clearing organization that require the derivatives clearing organization to be registered under that Act;

(v) any board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(vi) any futures association registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(vii) any retail foreign exchange dealer registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the retail foreign exchange dealer that require the retail foreign exchange dealer to be registered under that Act;

(viii) any swap execution facility, swap data repository, swap dealer, or major swap participant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to the swap activities of the person that require such person to be registered under that Act; and

(ix) any registered entity under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the registered entity that require the registered entity to be registered under that Act;

(D) the State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities that are incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law; and

(E) the Federal Housing Finance Agency, with respect to Federal Home Loan Banks or the Federal Home Loan Bank System, and with respect to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(13) Prudential standards

The term ''prudential standards'' means enhanced supervision and regulatory standards developed by the Board of Governors under section 5365 of this title.

(14) Secretary

The term ''Secretary'' means the Secretary of the Treasury.

(15) Securities terms

The—

(A) terms ''broker'', ''dealer'', ''issuer'', ''nationally recognized statistical rating organization'', ''security'', and ''securities laws'' have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(B) term ''investment adviser'' has the same meaning as in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2); and

(C) term ''investment company'' has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3).

(16) State

The term ''State'' means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(17) Transfer date

The term ''transfer date'' means the date established under section 5411 of this title.

(18) Other incorporated definitions

(A) Federal Deposit Insurance Act

The terms ''bank'', ''bank holding company'', ''control'', ''deposit'', ''depository institution'', ''Federal depository institution'', ''Federal savings association'', ''foreign bank'', ''including'', ''insured branch'', ''insured depository institution'', ''national member bank'', ''national nonmember bank'', ''savings association'', ''State bank'', ''State depository institution'', ''State member bank'', ''State nonmember bank'', ''State savings association'', and ''subsidiary'' have the same meanings as in section 1813 of this title.

(B) Holding companies

The term—

(i) ''bank holding company'' has the same meaning as in section 1841 of this title;

(ii) ''financial holding company'' has the same meaning as in section 1841(p) of this title; and

(iii) ''savings and loan holding company'' has the same meaning as in section 1467a(a) of this title.

(Pub. L. 111–203, § 2, July 21, 2010, 124 Stat. 1386.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§ 8201 et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note below and Tables.

Title III, referred to in par. (2), is title III of Pub. L. 111–203, July 21, 2010, 124 Stat. 1520. Section 312(c)(1) of title III of Pub. L. 111–203 amended section 1813(q) of this title.

Title X, referred to in par. (4), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted subchapter V (§ 5481 et seq.) of this chapter, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note below and Tables.

Subchapter I, referred to in par. (8), was in the original ''title I'', meaning title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, known as the Financial Stability Act of 2010, which is classified principally to subchapter I (§ 5311 et seq.) of this chapter. For complete classification of title I to the Code, see Short Title note below and Tables.

The Securities Exchange Act of 1934, referred to in par. (12)(B), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et

seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Investment Company Act of 1940, referred to in par. (12)(B)(ii), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in par. (12)(B)(iii), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§ 80b–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Sarbanes-Oxley Act of 2002, referred to in par. (12)(B)(xi), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, which is classified principally to chapter 98 (§ 7201 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 7201 of Title 15 and Tables.

The Securities Investor Protection Act of 1970, referred to in par. (12)(B)(xii), is Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636, which is classified generally to chapter 2B–1 (§ 78aaa et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

The Commodity Exchange Act, referred to in par. (12)(C), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

EFFECTIVE DATE

Pub. L. 111–203, § 4, July 21, 2010, 124 Stat. 1390, provided that: ''Except as otherwise specifically provided in this Act [see Short Title note below] or the amendments made by this Act, this Act and such amendments shall take effect 1 day after the date of enactment of this Act [July 21, 2010].''

SHORT TITLE

Pub. L. 111–203, § 1(a), July 21, 2010, 124 Stat. 1376, provided that: ''This Act [see Tables for classification] may be cited as the 'Dodd-Frank Wall Street Reform and Consumer Protection Act'.''

Pub. L. 111–203, title I, § 101, July 21, 2010, 124 Stat. 1391, provided that: ''This title [enacting subchapter I of this chapter and amending sections 1818, 1820, 1833b, and 3105 of this title, sections 3132 and 5314 of Title 5, Government Organization and Employees, and section 78*o* of Title 15, Commerce and Trade] may be cited as the 'Financial Stability Act of 2010'.''

Pub. L. 111–203, title III, § 300, July 21, 2010, 124 Stat. 1520, provided that: ''This title [enacting subchapter III of this chapter and sections 4b and 16 of this title, amending sections 1, 11, 248, 461, 481, 482, 1438, 1462 to 1464, 1466a to 1468b, 1470, 1701c, 1701p–1, 1708, 1757, 1785, 1786, 1787, 1812, 1813, 1817, 1818, 1820, 1821, 1823, 1828, 1829, 1831e, 1831j, 1833b, 1833e, 1834, 1841, 1843, 1844, 1861, 1867, 1881, 1882, 1884, 1972, 2709, 2902, 2905, 3206 to 3208, 3332, 4515, and 4517 of this title, section 906 of Title 2, The Congress, sections 78c, 78*l*, 78*o*–5, and 78w of Title 15, Commerce and Trade, sections 212, 657, 981, 982, 1006, 1014, and 1032 of Title 18, Crimes and Criminal Procedure, sections 321 and 714 of Title 31, Money and Finance, sections 4003 and 8105 of Title 42, The Public Health and Welfare, and section 3502 of Title 44, Public Printing and Documents, repealing section 1441a of this title, enacting provisions set out as notes under sections 1, 16, 1438, 1787, 1812, 1817, and 1821 of this title and section 906 of Title 2, and amending provisions set out as notes under sections 1437, 1463, 1464, 1467a, 1707, 1812, and 1818 of this title and section 509 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Enhancing Financial Institution Safety and Soundness Act of 2010'.''

Pub. L. 111–203, title VIII, § 801, July 21, 2010, 124 Stat. 1802, provided that: ''This title [enacting subchapter IV of this chapter] may be cited as the 'Payment, Clearing, and Settlement Supervision Act of 2010'.''

Pub. L. 111–203, title X, § 1001, July 21, 2010, 124 Stat. 1955, provided that: ''This title [see Tables for classification] may be cited as the 'Consumer Financial Protection Act of 2010'.''

Pub. L. 111–203, title XII, § 1201, July 21, 2010, 124 Stat. 2129, provided that: ''This title [enacting subchapter VII of this chapter and section 4719 of this title] may be cited as the 'Improving Access to Mainstream Financial Institutions Act of 2010'.''

§ 5302. Severability

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(Pub. L. 111–203, § 3, July 21, 2010, 124 Stat. 1390.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§ 8201 et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

§ 5303. Antitrust savings clause

Nothing in this Act, or any amendment made by this Act, shall be construed to modify, impair, or supersede the operation of any of the antitrust laws, unless otherwise specified. For purposes of this section, the term ''antitrust laws'' has the same meaning as in subsection (a) of section 12 of title 15, except that such term includes section 45 of title 15, to the extent that such section 45 applies to unfair methods of competition.

(Pub. L. 111–203, § 6, July 21, 2010, 124 Stat. 1390.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§ 8201 et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

SUBCHAPTER I—FINANCIAL STABILITY

§ 5311. Definitions

(a) In general

For purposes of this subchapter, unless the context otherwise requires, the following definitions shall apply:

(1) Bank holding company

The term ''bank holding company'' has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], pursuant to section 3106(a) of this title, shall be treated as a bank holding company for purposes of this subchapter.

(2) Chairperson

The term ''Chairperson'' means the Chairperson of the Council.

(3) Member agency

The term ''member agency'' means an agency represented by a voting member of the Council.

(4) Nonbank financial company definitions

(A) Foreign nonbank financial company

The term ''foreign nonbank financial company'' means a company (other than a company that is, or is treated in the United States as, a bank holding company) that is—

(i) incorporated or organized in a country other than the United States; and

(ii) predominantly engaged in, including through a branch in the United States, financial activities, as defined in paragraph (6).

(B) U.S. nonbank financial company

The term ''U.S. nonbank financial company'' means a company (other than a bank holding company, a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), or a national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company), security-based swap execution facility, or security-based swap data repository registered with the Commission, or a board of trade designated as a contract market (or parent thereof), or a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company), swap execution facility or a swap data repository registered with the Commodity Futures Trading Commission), that is—

(i) incorporated or organized under the laws of the United States or any State; and

(ii) predominantly engaged in financial activities, as defined in paragraph (6).

(C) Nonbank financial company

The term ''nonbank financial company'' means a U.S. nonbank financial company and a foreign nonbank financial company.

(D) Nonbank financial company supervised by the Board of Governors

The term ''nonbank financial company supervised by the Board of Governors'' means a nonbank financial company that the Council has determined under section 5323 of this title shall be supervised by the Board of Governors.

(5) Office of Financial Research

The term ''Office of Financial Research'' means the office established under section 5342 of this title.

(6) Predominantly engaged

A company is ''predominantly engaged in financial activities'' if—

(A) the annual gross revenues derived by the company and all of its subsidiaries from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)]) and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the company; or

(B) the consolidated assets of the company and all of its subsidiaries related to activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the company.

(7) Significant institutions

The terms ''significant nonbank financial company'' and ''significant bank holding company'' have the meanings given those terms by rule of the Board of Governors, but in no instance shall the term ''significant nonbank financial company'' include those entities that are excluded under paragraph (4)(B).

(b) Definitional criteria

The Board of Governors shall establish, by regulation, the requirements for determining if a company is predominantly engaged in financial activities, as defined in subsection (a)(6).

(c) Foreign nonbank financial companies

For purposes of the application of parts A and C (other than section 5323(b) of this title) with respect to a foreign nonbank financial company, references in this subchapter to ''company'' or ''subsidiary'' include only the United States activities and subsidiaries of such foreign company, except as otherwise provided.

(Pub. L. 111–203, title I, §102, July 21, 2010, 124 Stat. 1391.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (c), was in the original ''this title'', meaning title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, which is classified principally to this subchapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Bank Holding Company Act of 1956, referred to in subsec. (a)(1), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

The Farm Credit Act of 1971, referred to in subsec. (a)(4)(B), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to chapter 23 (§2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

Part C, referred to in subsec. (c), was in the original ''subtitle C'', meaning subtitle C (§§161–176) of title I of

Pub. L. 111–203, July 21, 2010, 124 Stat. 1420, which is classified principally to part C (§ 5361 et seq.) of this subchapter. For complete classification of subtitle C to the Code, see Tables.

EFFECTIVE DATE

Subchapter effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

SHORT TITLE

This subchapter known as the ''Financial Stability Act of 2010'', see Short Title note set out under section 5301 of this title.

PART A—FINANCIAL STABILITY OVERSIGHT COUNCIL

§ 5321. Financial Stability Oversight Council established

(a) Establishment

Effective on July 21, 2010, there is established the Financial Stability Oversight Council.

(b) Membership

The Council shall consist of the following members:

(1) Voting members

The voting members, who shall each have 1 vote on the Council shall be—

(A) the Secretary of the Treasury, who shall serve as Chairperson of the Council;

(B) the Chairman of the Board of Governors;

(C) the Comptroller of the Currency;

(D) the Director of the Bureau;

(E) the Chairman of the Commission;

(F) the Chairperson of the Corporation;

(G) the Chairperson of the Commodity Futures Trading Commission;

(H) the Director of the Federal Housing Finance Agency;

(I) the Chairman of the National Credit Union Administration Board; and

(J) an independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise.

(2) Nonvoting members

The nonvoting members, who shall serve in an advisory capacity as a nonvoting member of the Council, shall be—

(A) the Director of the Office of Financial Research;

(B) the Director of the Federal Insurance Office;

(C) a State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners;

(D) a State banking supervisor, to be designated by a selection process determined by the State banking supervisors; and

(E) a State securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such State securities commissioners.

(3) Nonvoting member participation

The nonvoting members of the Council shall not be excluded from any of the proceedings, meetings, discussions, or deliberations of the Council, except that the Chairperson may, upon an affirmative vote of the member agencies, exclude the nonvoting members from any of the proceedings, meetings, discussions, or deliberations of the Council when necessary to safeguard and promote the free exchange of confidential supervisory information.

(c) Terms; vacancy

(1) Terms

The independent member of the Council shall serve for a term of 6 years, and each nonvoting member described in subparagraphs (C), (D), and (E) of subsection (b)(2) shall serve for a term of 2 years.

(2) Vacancy

Any vacancy on the Council shall be filled in the manner in which the original appointment was made.

(3) Acting officials may serve

In the event of a vacancy in the office of the head of a member agency or department, and pending the appointment of a successor, or during the absence or disability of the head of a member agency or department, the acting head of the member agency or department shall serve as a member of the Council in the place of that agency or department head.

(d) Technical and professional advisory committees

The Council may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Council, including an advisory committee consisting of State regulators, and the members of such committees may be members of the Council, or other persons, or both.

(e) Meetings

(1) Timing

The Council shall meet at the call of the Chairperson or a majority of the members then serving, but not less frequently than quarterly.

(2) Rules for conducting business

The Council shall adopt such rules as may be necessary for the conduct of the business of the Council. Such rules shall be rules of agency organization, procedure, or practice for purposes of section 553 of title 5.

(f) Voting

Unless otherwise specified, the Council shall make all decisions that it is authorized or required to make by a majority vote of the voting members then serving.

(g) Nonapplicability of FACA

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council, or to any special advisory, technical, or professional committee appointed by the Council, except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States Government, the Council shall publish a list of the names of the members of such committee.

(h) Assistance from Federal agencies

Any department or agency of the United States may provide to the Council and any spe-

cial advisory, technical, or professional committee appointed by the Council, such services, funds, facilities, staff, and other support services as the Council may determine advisable.

(i) Compensation of members

(1) Federal employee members

All members of the Council who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) Omitted

(j) Detail of Government employees

Any employee of the Federal Government may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. An employee of the Federal Government detailed to the Council shall report to and be subject to oversight by the Council during the assignment to the Council, and shall be compensated by the department or agency from which the employee was detailed.

(Pub. L. 111–203, title I, §111, July 21, 2010, 124 Stat. 1392.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (g), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section is comprised of section 111 of Pub. L. 111–203. Subsec. (i)(2) of section 111 of Pub. L. 111–203 amended section 5314 of Title 5, Government Organization and Employees.

§ 5322. Council authority

(a) Purposes and duties of the Council

(1) In general

The purposes of the Council are—

(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace;

(B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and

(C) to respond to emerging threats to the stability of the United States financial system.

(2) Duties

The Council shall, in accordance with this subchapter—

(A) collect information from member agencies, other Federal and State financial regulatory agencies, the Federal Insurance Office and, if necessary to assess risks to the United States financial system, direct the Office of Financial Research to collect information from bank holding companies and nonbank financial companies;

(B) provide direction to, and request data and analyses from, the Office of Financial Research to support the work of the Council;

(C) monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States;

(D) to[1] monitor domestic and international financial regulatory proposals and developments, including insurance and accounting issues, and to advise Congress and make recommendations in such areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets;

(E) facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions;

(F) recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies;

(G) identify gaps in regulation that could pose risks to the financial stability of the United States;

(H) require supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, or because of their activities pursuant to section 5323 of this title;

(I) make recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors;

(J) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in subchapter IV);

(K) make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets;

(L) review and, as appropriate, may submit comments to the Commission and any standard-setting body with respect to an existing or proposed accounting principle, standard, or procedure;

(M) provide a forum for—

(i) discussion and analysis of emerging market developments and financial regulatory issues; and

[1] So in original. The word ''to'' probably should not appear.

(ii) resolution of jurisdictional disputes among the members of the Council; and

(N) annually report to and testify before Congress on—

(i) the activities of the Council;

(ii) significant financial market and regulatory developments, including insurance and accounting regulations and standards, along with an assessment of those developments on the stability of the financial system;

(iii) potential emerging threats to the financial stability of the United States;

(iv) all determinations made under section 5323 of this title or subchapter IV, and the basis for such determinations;

(v) all recommendations made under section 5329 of this title and the result of such recommendations; and

(vi) recommendations—

(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;

(II) to promote market discipline; and

(III) to maintain investor confidence.

(b) Statements by voting members of the Council

At the time at which each report is submitted under subsection (a), each voting member of the Council shall—

(1) if such member believes that the Council, the Government, and the private sector are taking all reasonable steps to ensure financial stability and to mitigate systemic risk that would negatively affect the economy, submit a signed statement to Congress stating such belief; or

(2) if such member does not believe that all reasonable steps described under paragraph (1) are being taken, submit a signed statement to Congress stating what actions such member believes need to be taken in order to ensure that all reasonable steps described under paragraph (1) are taken.

(c) Testimony by the Chairperson

The Chairperson shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at an annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives, and plans of the Council; and

(2) to discuss and answer questions concerning such report.

(d) Authority to obtain information

(1) In general

The Council may receive, and may request the submission of, any data or information from the Office of Financial Research, member agencies, and the Federal Insurance Office, as necessary—

(A) to monitor the financial services marketplace to identify potential risks to the financial stability of the United States; or

(B) to otherwise carry out any of the provisions of this subchapter.

(2) Submissions by the office and member agencies

Notwithstanding any other provision of law, the Office of Financial Research, any member agency, and the Federal Insurance Office, are authorized to submit information to the Council.

(3) Financial data collection

(A) In general

The Council, acting through the Office of Financial Research, may require the submission of periodic and other reports from any nonbank financial company or bank holding company for the purpose of assessing the extent to which a financial activity or financial market in which the nonbank financial company or bank holding company participates, or the nonbank financial company or bank holding company itself, poses a threat to the financial stability of the United States.

(B) Mitigation of report burden

Before requiring the submission of reports from any nonbank financial company or bank holding company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agencies.

(C) Mitigation in case of foreign financial companies

Before requiring the submission of reports from a company that is a foreign nonbank financial company or foreign-based bank holding company, the Council shall, acting through the Office of Financial Research, to the extent appropriate, consult with the appropriate foreign regulator of such company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.

(4) Back-up examination by the Board of Governors

If the Council is unable to determine whether the financial activities of a U.S. nonbank financial company pose a threat to the financial stability of the United States, based on information or reports obtained under paragraphs (1) and (3), discussions with management, and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the U.S. nonbank financial company for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of this subchapter.

(5) Confidentiality

(A) In general

The Council, the Office of Financial Research, and the other member agencies shall maintain the confidentiality of any data, information, and reports submitted under this subchapter.

(B) Retention of privilege

The submission of any nonpublicly available data or information under this sub-

section and part B shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

(C) Freedom of Information Act

Section 552 of title 5, including the exceptions thereunder, shall apply to any data or information submitted under this subsection and part B.

(Pub. L. 111–203, title I, § 112, July 21, 2010, 124 Stat. 1394.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(2) and (d)(1)(B), (4), (5)(A), was in the original ''this title'', meaning title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, which is classified principally to this subchapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5323. Authority to require supervision and regulation of certain nonbank financial companies

(a) U.S. nonbank financial companies supervised by the Board of Governors

(1) Determination

The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, may determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this subchapter, if the Council determines that material financial distress at the U.S. nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the U.S. nonbank financial company, could pose a threat to the financial stability of the United States.

(2) Considerations

In making a determination under paragraph (1), the Council shall consider—

(A) the extent of the leverage of the company;

(B) the extent and nature of the off-balance-sheet exposures of the company;

(C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(D) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(E) the importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;

(F) the extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;

(G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

(H) the degree to which the company is already regulated by 1 or more primary financial regulatory agencies;

(I) the amount and nature of the financial assets of the company;

(J) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding; and

(K) any other risk-related factors that the Council deems appropriate.

(b) Foreign nonbank financial companies supervised by the Board of Governors

(1) Determination

The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, may determine that a foreign nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this subchapter, if the Council determines that material financial distress at the foreign nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the foreign nonbank financial company, could pose a threat to the financial stability of the United States.

(2) Considerations

In making a determination under paragraph (1), the Council shall consider—

(A) the extent of the leverage of the company;

(B) the extent and nature of the United States related off-balance-sheet exposures of the company;

(C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(D) the importance of the company as a source of credit for United States households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(E) the importance of the company as a source of credit for low-income, minority, or underserved communities in the United States, and the impact that the failure of such company would have on the availability of credit in such communities;

(F) the extent to which assets are managed rather than owned by the company and the extent to which ownership of assets under management is diffuse;

(G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

(H) the extent to which the company is subject to prudential standards on a consolidated basis in its home country that are administered and enforced by a comparable foreign supervisory authority;

(I) the amount and nature of the United States financial assets of the company;

(J) the amount and nature of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding; and

(K) any other risk-related factors that the Council deems appropriate.

(c) Antievasion

(1) Determinations

In order to avoid evasion of this subchapter, the Council, on its own initiative or at the request of the Board of Governors, may determine, on a nondelegable basis and by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, that—

(A) material financial distress related to, or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or organized in a country other than the United States would pose a threat to the financial stability of the United States, based on consideration of the factors in subsection (a)(2) or (b)(2), as applicable;

(B) the company is organized or operates in such a manner as to evade the application of this subchapter; and

(C) such financial activities of the company shall be supervised by the Board of Governors and subject to prudential standards in accordance with this subchapter, consistent with paragraph (3).

(2) Report

Upon making a determination under paragraph (1), the Council shall submit a report to the appropriate committees of Congress detailing the reasons for making such determination.

(3) Consolidated supervision of only financial activities; establishment of an intermediate holding company

(A) Establishment of an intermediate holding company

Upon a determination under paragraph (1), the company that is the subject of the determination may establish an intermediate holding company in which the financial activities of such company and its subsidiaries shall be conducted (other than the activities described in section 5367(b)(2) of this title) in compliance with any regulations or guidance provided by the Board of Governors. Such intermediate holding company shall be subject to the supervision of the Board of Governors and to prudential standards under this subchapter as if the intermediate holding company were a nonbank financial company supervised by the Board of Governors.

(B) Action of the Board of Governors

To facilitate the supervision of the financial activities subject to the determination in paragraph (1), the Board of Governors may require a company to establish an intermediate holding company, as provided for in section 5367 of this title, which would be subject to the supervision of the Board of Governors and to prudential standards under this subchapter, as if the intermediate holding company were a nonbank financial company supervised by the Board of Governors.

(4) Notice and opportunity for hearing and final determination; judicial review

Subsections (d) through (h) shall apply to determinations made by the Council pursuant to paragraph (1) in the same manner as such subsections apply to nonbank financial companies.

(5) Covered financial activities

For purposes of this subsection, the term ''financial activities''—

(A) means activities that are financial in nature (as defined in section 1843(k) of this title;[1]

(B) includes the ownership or control of one or more insured depository institutions; and

(C) does not include internal financial activities conducted for the company or any affiliate thereof, including internal treasury, investment, and employee benefit functions.

(6) Only financial activities subject to prudential supervision

Nonfinancial activities of the company shall not be subject to supervision by the Board of Governors and prudential standards of the Board. For purposes of this Act, the financial activities that are the subject of the determination in paragraph (1) shall be subject to the same requirements as a nonbank financial company supervised by the Board of Governors. Nothing in this paragraph shall prohibit or limit the authority of the Board of Governors to apply prudential standards under this subchapter to the financial activities that are subject to the determination in paragraph (1).

(d) Reevaluation and rescission

The Council shall—

(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to such nonbank financial company supervised by the Board of Governors; and

(2) rescind any such determination, if the Council, by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

(e) Notice and opportunity for hearing and final determination

(1) In general

The Council shall provide to a nonbank financial company written notice of a proposed

[1] So in original. The semicolon probably should be preceded by a closing parenthesis.

determination of the Council, including an explanation of the basis of the proposed determination of the Council, that a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this subchapter.

(2) Hearing

Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(3) Final determination

Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

(4) No hearing requested

If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).

(f) Emergency exception

(1) In general

The Council may waive or modify the requirements of subsection (e) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States.

(2) Notice

The Council shall provide notice of a waiver or modification under this subsection to the nonbank financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(3) International coordination

In making a determination under paragraph (1), the Council shall consult with the appropriate home country supervisor, if any, of the foreign nonbank financial company that is being considered for such a determination.

(4) Opportunity for hearing

The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this subsection, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(5) Notice of final determination

Not later than 30 days after the date of any hearing under paragraph (4), the Council shall notify the subject nonbank financial company of the final determination of the Council under this subsection, which shall contain a statement of the basis for the decision of the Council.

(g) Consultation

The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such nonbank financial company under subsection (a), (b), or (c).

(h) Judicial review

If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(2), (e)(3), or (f)(5), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

(i) International coordination

In exercising its duties under this subchapter with respect to foreign nonbank financial companies, foreign-based bank holding companies, and cross-border activities and markets, the Council shall consult with appropriate foreign regulatory authorities, to the extent appropriate.

(Pub. L. 111–203, title I, § 113, July 21, 2010, 124 Stat. 1398.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(1), (b)(1), (c)(1), (3), (6), (e)(1), and (i), was in the original ''this title'', meaning title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, which is classified principally to this subchapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

This Act, referred to in subsec. (c)(6), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§ 8201

et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5324. Registration of nonbank financial companies supervised by the Board of Governors

Not later than 180 days after the date of a final Council determination under section 5323 of this title that a nonbank financial company is to be supervised by the Board of Governors, such company shall register with the Board of Governors, on forms prescribed by the Board of Governors, which shall include such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate to carry out this subchapter.

(Pub. L. 111–203, title I, § 114, July 21, 2010, 124 Stat. 1403.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, which is classified principally to this subchapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5325. Enhanced supervision and prudential standards for nonbank financial companies supervised by the Board of Governors and certain bank holding companies

(a) In general

(1) Purpose

In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress, failure, or ongoing activities of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies, that—

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) Recommended application of required standards

In making recommendations under this section, the Council may—

(A) differentiate among companies that are subject to heightened standards on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Council deems appropriate; or

(B) recommend an asset threshold that is higher than $50,000,000,000 for the application of any standard described in subsections (c) through (g).

(b) Development of prudential standards

(1) In general

The recommendations of the Council under subsection (a) may include—

(A) risk-based capital requirements;

(B) leverage limits;

(C) liquidity requirements;

(D) resolution plan and credit exposure report requirements;

(E) concentration limits;

(F) a contingent capital requirement;

(G) enhanced public disclosures;

(H) short-term debt limits; and

(I) overall risk management requirements.

(2) Prudential standards for foreign financial companies

In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall—

(A) give due regard to the principle of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign nonbank financial company or foreign-based bank holding company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

(3) Considerations

In making recommendations concerning prudential standards under paragraph (1), the Council shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 5323 of this title;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Council determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 5323 of this title would not result in sharp, discontinuous changes in the prudential standards established under section 5365 of this title; and

(C) adapt its recommendations as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

(c) Contingent capital

(1) Study required

The Council shall conduct a study of the feasibility, benefits, costs, and structure of a con-

tingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

(B) an evaluation of the characteristics and amounts of contingent capital that should be required;

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.

(2) Report

The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after July 21, 2010.

(3) Recommendations

(A) In general

Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of contingent capital that is convertible to equity in times of financial stress.

(B) Factors to consider

In making recommendations under this subsection, the Council shall consider—

(i) an appropriate transition period for implementation of a conversion under this subsection;

(ii) the factors described in subsection (b)(3);

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

(iv) results of the study required by paragraph (1); and

(v) any other factor that the Council deems appropriate.

(d) Resolution plan and credit exposure reports

(1) Resolution plan

The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) Credit exposure report

The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(e) Concentration limits

In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 5365 of this title.

(f) Enhanced public disclosures

The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) Short-term debt limits

The Council may make recommendations to the Board of Governors to require short-term debt limits to mitigate the risks that an overaccumulation of such debt could pose to bank holding companies described in subsection (a), nonbank financial companies supervised by the Board of Governors, or the financial system.

(Pub. L. 111–203, title I, § 115, July 21, 2010, 124 Stat. 1403.)

§ 5326. Reports

(a) In general

Subject to subsection (b), the Council, acting through the Office of Financial Research, may require a bank holding company with total consolidated assets of $50,000,000,000 or greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

(1) the financial condition of the company;

(2) systems for monitoring and controlling financial, operating, and other risks;

(3) transactions with any subsidiary that is a depository institution; and

(4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) Use of existing reports

(1) In general

For purposes of compliance with subsection (a), the Council, acting through the Office of Financial Research, shall, to the fullest extent possible, use—

(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies or to a relevant foreign supervisory authority;

(B) information that is otherwise required to be reported publicly; and

(C) externally audited financial statements.

(2) Availability

Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) Confidentiality

The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

(Pub. L. 111–203, title I, §116, July 21, 2010, 124 Stat. 1406.)

§ 5327. Treatment of certain companies that cease to be bank holding companies

(a) Applicability

This section shall apply to—

(1) any entity that—

(A) was a bank holding company having total consolidated assets equal to or greater than $50,000,000,000 as of January 1, 2010; and

(B) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.]; and

(2) any successor entity (as defined by the Board of Governors, in consultation with the Council) to an entity described in paragraph (1).

(b) Treatment

If an entity described in subsection (a) ceases to be a bank holding company at any time after January 1, 2010, then such entity shall be treated as a nonbank financial company supervised by the Board of Governors, as if the Council had made a determination under section 5323 of this title with respect to that entity.

(c) Appeal

(1) Request for hearing

An entity may request, in writing, an opportunity for a written or oral hearing before the Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors in accordance with this section. Upon receipt of the request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such entity may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(2) Decision

(A) Proposed decision

A Council decision to grant an appeal under this subsection shall be made by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson. Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

(B) Notice of final decision

The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

(i) the date of the submission of the report under subparagraph (A); or

(ii) if, not later than 1 year after the date of submission of the report under subparagraph (A), the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of the House of Representatives holds one or more hearings regarding such report, the date of the last such hearing.

(C) Considerations

In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 5323(a) or 5323(b) of this title, as applicable, and the definition of the term ''nonbank financial company'' under section 5311 of this title. The decision of the Council shall be final, subject to the review under paragraph (3).

(3) Review

If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

(Pub. L. 111–203, title I, §117, July 21, 2010, 124 Stat. 1406.)

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (a)(1)(B), is div. A of Pub. L.

110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§ 5201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5328. Council funding

Any expenses of the Council shall be treated as expenses of, and paid by, the Office of Financial Research.

(Pub. L. 111–203, title I, § 118, July 21, 2010, 124 Stat. 1408.)

§ 5329. Resolution of supervisory jurisdictional disputes among member agencies

(a) Request for Council recommendation

The Council shall seek to resolve a dispute among 2 or more member agencies, if—

(1) a member agency has a dispute with another member agency about the respective jurisdiction over a particular bank holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under title X); [1]

(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

(3) any of the member agencies involved in the dispute—

(A) provides all other disputants prior notice of the intent to request dispute resolution by the Council; and

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council seek to resolve the dispute.

(b) Council recommendation

The Council shall seek to resolve each dispute described in subsection (a)—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each agency party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter, or by determining a compromise position.

(c) Form of recommendation

Any Council recommendation under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

(3) be approved by the affirmative vote of ⅔ of the voting members of the Council then serving.

(d) Nonbinding effect

Any recommendation made by the Council under subsection (c) shall not be binding on the Federal agencies that are parties to the dispute.

(Pub. L. 111–203, title I, § 119, July 21, 2010, 124 Stat. 1408.)

REFERENCES IN TEXT

Title X, referred to in subsec. (a)(1), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted subchapter V (§ 5481 et seq.) of this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

[1] See References in Text note below.

§ 5330. Additional standards applicable to activities or practices for financial stability purposes

(a) In general

The Council may provide for more stringent regulation of a financial activity by issuing recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 5325 of this title, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, financial markets of the United States, or low-income, minority, or underserved communities.

(b) Procedure for recommendations to regulators

(1) Notice and opportunity for comment

The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

(2) Criteria

The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

(A) shall take costs to long-term economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk management requirements to the conduct of the activity) or prohibiting the activity or practice.

(c) Implementation of recommended standards

(1) Role of primary financial regulatory agency

(A) In general

Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) Rule of construction

The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes

governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

(2) Imposition of standards

The primary financial regulatory agency shall impose the standards recommended by the Council in accordance with subsection (a), or similar standards that the Council deems acceptable, or shall explain in writing to the Council, not later than 90 days after the date on which the Council issues the recommendation, why the agency has determined not to follow the recommendation of the Council.

(d) Report to Congress

The Council shall report to Congress on—

(1) any recommendations issued by the Council under this section;

(2) the implementation of, or failure to implement, such recommendation on the part of a primary financial regulatory agency; and

(3) in any case in which no primary financial regulatory agency exists for the nonbank financial company conducting financial activities or practices referred to in subsection (a), recommendations for legislation that would prevent such activities or practices from threatening the stability of the financial system of the United States.

(e) Effect of rescission of identification

(1) Notice

The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any standards or safeguards implemented under this section.

(2) Determination of primary financial regulatory agency to continue

(A) In general

Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether such standards should remain in effect.

(B) Appeal process

Each primary financial regulatory agency that has imposed standards under this section shall promulgate regulations to establish a procedure under which entities under its jurisdiction may appeal a determination by such agency under this paragraph that standards imposed under this section should remain in effect.

(Pub. L. 111–203, title I, §120, July 21, 2010, 124 Stat. 1408.)

§5331. Mitigation of risks to financial stability

(a) Mitigatory actions

If the Board of Governors determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, poses a grave threat to the financial stability of the United States, the Board of Governors, upon an affirmative vote of not fewer than ⅔ of the voting members of the Council then serving, shall—

(1) limit the ability of the company to merge with, acquire, consolidate with, or otherwise become affiliated with another company;

(2) restrict the ability of the company to offer a financial product or products;

(3) require the company to terminate one or more activities;

(4) impose conditions on the manner in which the company conducts 1 or more activities; or

(5) if the Board of Governors determines that the actions described in paragraphs (1) through (4) are inadequate to mitigate a threat to the financial stability of the United States in its recommendation, require the company to sell or otherwise transfer assets or off-balance-sheet items to unaffiliated entities.

(b) Notice and hearing

(1) In general

The Board of Governors, in consultation with the Council, shall provide to a company described in subsection (a) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

(2) Hearing

Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Board of Governors to contest the proposed mitigatory action. Upon receipt of a timely request, the Board of Governors shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Board of Governors, in consultation with the Council, oral testimony and oral argument).

(3) Decision

Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing was held, the Board of Governors shall notify the company of the final decision of the Board of Governors, including the results of the vote of the Council, as described in subsection (a).

(c) Factors for consideration

The Board of Governors and the Council shall take into consideration the factors set forth in subsection (a) or (b) of section 5323 of this title, as applicable, in making any determination under subsection (a).

(d) Application to foreign financial companies

The Board of Governors may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies—

(1) giving due regard to the principle of national treatment and equality of competitive opportunity; and

(2) taking into account the extent to which the foreign nonbank financial company or for-

eign-based bank holding company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

(Pub. L. 111–203, title I, §121, July 21, 2010, 124 Stat. 1410.)

§ 5332. GAO audit of Council

(a) Authority to audit

The Comptroller General of the United States may audit the activities of—

(1) the Council; and

(2) any person or entity acting on behalf of or under the authority of the Council, to the extent that such activities relate to work for the Council by such person or entity.

(b) Access to information

(1) In general

Notwithstanding any other provision of law, the Comptroller General shall, upon request and at such reasonable time and in such reasonable form as the Comptroller General may request, have access to—

(A) any records or other information under the control of or used by the Council;

(B) any records or other information under the control of a person or entity acting on behalf of or under the authority of the Council, to the extent that such records or other information is relevant to an audit under subsection (a); and

(C) the officers, directors, employees, financial advisors, staff, working groups, and agents and representatives of the Council (as related to the activities on behalf of the Council of such agent or representative), at such reasonable times as the Comptroller General may request.

(2) Copies

The Comptroller General may make and retain copies of such books, accounts, and other records, access to which is granted under this section, as the Comptroller General considers appropriate.

(Pub. L. 111–203, title I, §122, July 21, 2010, 124 Stat. 1411.)

§ 5333. Study of the effects of size and complexity of financial institutions on capital market efficiency and economic growth

(a) Study required

(1) In general

The Chairperson of the Council shall carry out a study of the economic impact of possible financial services regulatory limitations intended to reduce systemic risk. Such study shall estimate the benefits and costs on the efficiency of capital markets, on the financial sector, and on national economic growth, of—

(A) explicit or implicit limits on the maximum size of banks, bank holding companies, and other large financial institutions;

(B) limits on the organizational complexity and diversification of large financial institutions;

(C) requirements for operational separation between business units of large financial institutions in order to expedite resolution in case of failure;

(D) limits on risk transfer between business units of large financial institutions;

(E) requirements to carry contingent capital or similar mechanisms;

(F) limits on commingling of commercial and financial activities by large financial institutions;

(G) segregation requirements between traditional financial activities and trading or other high-risk operations in large financial institutions; and

(H) other limitations on the activities or structure of large financial institutions that may be useful to limit systemic risk.

(2) Recommendations

The study required by this section shall include recommendations for the optimal structure of any limits considered in subparagraphs (A) through (E), in order to maximize their effectiveness and minimize their economic impact.

(b) Report

Not later than the end of the 180-day period beginning on July 21, 2010, and not later than every 5 years thereafter, the Chairperson shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (a).

(Pub. L. 111–203, title I, §123, July 21, 2010, 124 Stat. 1412.)

PART B—OFFICE OF FINANCIAL RESEARCH

§ 5341. Definitions

For purposes of this part—

(1) the terms ''Office'' and ''Director'' mean the Office of Financial Research established under this part and the Director thereof, respectively;

(2) the term ''financial company'' has the same meaning as in subchapter II, and includes an insured depository institution and an insurance company;

(3) the term ''Data Center'' means the data center established under section 5344 of this title;

(4) the term ''Research and Analysis Center'' means the research and analysis center established under section 5344 of this title;

(5) the term ''financial transaction data'' means the structure and legal description of a financial contract, with sufficient detail to describe the rights and obligations between counterparties and make possible an independent valuation;

(6) the term ''position data''—

(A) means data on financial assets or liabilities held on the balance sheet of a financial company, where positions are created or changed by the execution of a financial transaction; and

(B) includes information that identifies counterparties, the valuation by the financial company of the position, and information that makes possible an independent valuation of the position;

(7) the term ''financial contract'' means a legally binding agreement between 2 or more

counterparties, describing rights and obligations relating to the future delivery of items of intrinsic or extrinsic value among the counterparties; and

(8) the term ''financial instrument'' means a financial contract in which the terms and conditions are publicly available, and the roles of one or more of the counterparties are assignable without the consent of any of the other counterparties (including common stock of a publicly traded company, government bonds, or exchange traded futures and options contracts).

(Pub. L. 111–203, title I, §151, July 21, 2010, 124 Stat. 1412.)

REFERENCES IN TEXT

Subchapter II, referred to in par. (2), was in the original ''title II'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to subchapter II (§5381 et seq.) of this chapter. For complete classification of title II to the Code, see Tables.

§ 5342. Office of Financial Research established

(a) Establishment

There is established within the Department of the Treasury the Office of Financial Research.

(b) Director

(1) In general

The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Term of service

The Director shall serve for a term of 6 years, except that, in the event that a successor is not nominated and confirmed by the end of the term of service of a Director, the Director may continue to serve until such time as the next Director is appointed and confirmed.

(3) Executive level

The Director shall be compensated at Level III of the Executive Schedule.

(4) Prohibition on dual service

The individual serving in the position of Director may not, during such service, also serve as the head of any financial regulatory agency.

(5) Responsibilities, duties, and authority

The Director shall have sole discretion in the manner in which the Director fulfills the responsibilities and duties and exercises the authorities described in this part.

(c) Budget

The Director, in consultation with the Chairperson, shall establish the annual budget of the Office.

(d) Office personnel

(1) In general

The Director, in consultation with the Chairperson, may fix the number of, and appoint and direct, all employees of the Office.

(2) Compensation

The Director, in consultation with the Chairperson, shall fix, adjust, and administer the pay for all employees of the Office, without regard to chapter 51 or subchapter III of chapter 53 of title 5, relating to classification of positions and General Schedule pay rates.

(3), (4) Omitted

(e) Assistance from Federal agencies

Any department or agency of the United States may provide to the Office and any special advisory, technical, or professional committees appointed by the Office, such services, funds, facilities, staff, and other support services as the Office may determine advisable. Any Federal Government employee may be detailed to the Office without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) Procurement of temporary and intermittent services

The Director may procure temporary and intermittent services under section 3109(b) of title 5 at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for Level V of the Executive Schedule under section 5316 of such title.

(g) Post-employment prohibitions

The Secretary, with the concurrence of the Director of the Office of Government Ethics, shall issue regulations prohibiting the Director and any employee of the Office who has had access to the transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to the Office from being employed by or providing advice or consulting services to a financial company, for a period of 1 year after last having had access in the course of official duties to such transaction or position data or business confidential information, regardless of whether that entity is required to report to the Office. For employees whose access to business confidential information was limited, the regulations may provide, on a case-by-case basis, for a shorter period of post-employment prohibition, provided that the shorter period does not compromise business confidential information.

(h) Technical and professional advisory committees

The Office, in consultation with the Chairperson, may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Office, and the members of such committees may be staff of the Office, or other persons, or both.

(i) Fellowship program

The Office, in consultation with the Chairperson, may establish and maintain an academic and professional fellowship program, under which qualified academics and professionals shall be invited to spend not longer than 2 years at the Office, to perform research and to provide advanced training for Office personnel.

(Pub. L. 111–203, title I, §152, July 21, 2010, 124 Stat. 1413.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (b)(3), is set out in section 5314 of Title 5, Government Organization and Employees.

CODIFICATION

Section is comprised of section 152 of Pub. L. 111–203. Subsecs. (d)(3), (4) and (j) of section 152 amended section 1833b of this title and sections 3132 and 5314 of Title 5, Government Organization and Employees, respectively.

§ 5343. Purpose and duties of the Office

(a) Purpose and duties

The purpose of the Office is to support the Council in fulfilling the purposes and duties of the Council, as set forth in part A, and to support member agencies, by—

(1) collecting data on behalf of the Council, and providing such data to the Council and member agencies;

(2) standardizing the types and formats of data reported and collected;

(3) performing applied research and essential long-term research;

(4) developing tools for risk measurement and monitoring;

(5) performing other related services;

(6) making the results of the activities of the Office available to financial regulatory agencies; and

(7) assisting such member agencies in determining the types and formats of data authorized by this Act to be collected by such member agencies.

(b) Administrative authority

The Office may—

(1) share data and information, including software developed by the Office, with the Council, member agencies, and the Bureau of Economic Analysis, which shared data, information, and software—

(A) shall be maintained with at least the same level of security as is used by the Office; and

(B) may not be shared with any individual or entity without the permission of the Council;

(2) sponsor and conduct research projects; and

(3) assist, on a reimbursable basis, with financial analyses undertaken at the request of other Federal agencies that are not member agencies.

(c) Rulemaking authority

(1) Scope

The Office, in consultation with the Chairperson, shall issue rules, regulations, and orders only to the extent necessary to carry out the purposes and duties described in paragraphs (1), (2), and (7) of subsection (a).

(2) Standardization

Member agencies, in consultation with the Office, shall implement regulations promulgated by the Office under paragraph (1) to standardize the types and formats of data reported and collected on behalf of the Council, as described in subsection (a)(2). If a member agency fails to implement such regulations prior to the expiration of the 3-year period following the date of publication of final regulations, the Office, in consultation with the Chairperson, may implement such regulations with respect to the financial entities under the jurisdiction of the member agency. This paragraph shall not supersede or interfere with the independent authority of a member agency under other law to collect data, in such format and manner as the member agency requires.

(d) Testimony

(1) In general

The Director of the Office shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives annually on the activities of the Office, including the work of the Data Center and the Research and Analysis Center, and the assessment of the Office of significant financial market developments and potential emerging threats to the financial stability of the United States.

(2) No prior review

No officer or agency of the United States shall have any authority to require the Director to submit the testimony required under paragraph (1) or other congressional testimony to any officer or agency of the United States for approval, comment, or review prior to the submission of such testimony. Any such testimony to Congress shall include a statement that the views expressed therein are those of the Director and do not necessarily represent the views of the President.

(e) Additional reports

The Director may provide additional reports to Congress concerning the financial stability of the United States. The Director shall notify the Council of any such additional reports provided to Congress.

(f) Subpoena

(1) In general

The Director may require from a financial company, by subpoena, the production of the data requested under subsection (a)(1) and section 5344(b)(1) of this title, but only upon a written finding by the Director that—

(A) such data is required to carry out the functions described under this part; and

(B) the Office has coordinated with the relevant primary financial regulatory agency, as required under section 5344(b)(1)(B)(ii) of this title.

(2) Format

Subpoenas under paragraph (1) shall bear the signature of the Director, and shall be served by any person or class of persons designated by the Director for that purpose.

(3) Enforcement

In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the United States. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(Pub. L. 111–203, title I, § 153, July 21, 2010, 124 Stat. 1415.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(7), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-

Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§ 8201 et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5344. Organizational structure; responsibilities of primary programmatic units

(a) In general

There are established within the Office, to carry out the programmatic responsibilities of the Office—

(1) the Data Center; and

(2) the Research and Analysis Center.

(b) Data Center

(1) General duties

(A) Data collection

The Data Center, on behalf of the Council, shall collect, validate, and maintain all data necessary to carry out the duties of the Data Center, as described in this part. The data assembled shall be obtained from member agencies, commercial data providers, publicly available data sources, and financial entities under subparagraph (B).

(B) Authority

(i) In general

The Office may, as determined by the Council or by the Director in consultation with the Council, require the submission of periodic and other reports from any financial company for the purpose of assessing the extent to which a financial activity or financial market in which the financial company participates, or the financial company itself, poses a threat to the financial stability of the United States.

(ii) Mitigation of report burden

Before requiring the submission of a report from any financial company that is regulated by a member agency, any primary financial regulatory agency, a foreign supervisory authority, or the Office shall coordinate with such agencies or authority, and shall, whenever possible, rely on information available from such agencies or authority.

(iii) Collection of financial transaction and position data

The Office shall collect, on a schedule determined by the Director, in consultation with the Council, financial transaction data and position data from financial companies.

(C) Rulemaking

The Office shall promulgate regulations pursuant to subsections (a)(1), (a)(2), (a)(7), and (c)(1) of section 5343 of this title regarding the type and scope of the data to be collected by the Data Center under this paragraph.

(2) Responsibilities

(A) Publication

The Data Center shall prepare and publish, in a manner that is easily accessible to the public—

(i) a financial company reference database;

(ii) a financial instrument reference database; and

(iii) formats and standards for Office data, including standards for reporting financial transaction and position data to the Office.

(B) Confidentiality

The Data Center shall not publish any confidential data under subparagraph (A).

(3) Information security

The Director shall ensure that data collected and maintained by the Data Center are kept secure and protected against unauthorized disclosure.

(4) Catalog of financial entities and instruments

The Data Center shall maintain a catalog of the financial entities and instruments reported to the Office.

(5) Availability to the Council and member agencies

The Data Center shall make data collected and maintained by the Data Center available to the Council and member agencies, as necessary to support their regulatory responsibilities.

(6) Other authority

The Office shall, after consultation with the member agencies, provide certain data to financial industry participants and to the general public to increase market transparency and facilitate research on the financial system, to the extent that intellectual property rights are not violated, business confidential information is properly protected, and the sharing of such information poses no significant threats to the financial system of the United States.

(c) Research and Analysis Center

(1) [1] General duties

The Research and Analysis Center, on behalf of the Council, shall develop and maintain independent analytical capabilities and computing resources—

(A) to develop and maintain metrics and reporting systems for risks to the financial stability of the United States;

(B) to monitor, investigate, and report on changes in systemwide risk levels and patterns to the Council and Congress;

(C) to conduct, coordinate, and sponsor research to support and improve regulation of financial entities and markets;

(D) to evaluate and report on stress tests or other stability-related evaluations of financial entities overseen by the member agencies;

(E) to maintain expertise in such areas as may be necessary to support specific requests for advice and assistance from financial regulators;

(F) to investigate disruptions and failures in the financial markets, report findings,

[1] So in original. No par. (2) has been enacted.

and make recommendations to the Council based on those findings;

(G) to conduct studies and provide advice on the impact of policies related to systemic risk; and

(H) to promote best practices for financial risk management.

(d) Reporting responsibilities

(1) Required reports

Not later than 2 years after July 21, 2010, and not later than 120 days after the end of each fiscal year thereafter, the Office shall prepare and submit a report to Congress.

(2) Content

Each report required by this subsection shall assess the state of the United States financial system, including—

(A) an analysis of any threats to the financial stability of the United States;

(B) the status of the efforts of the Office in meeting the mission of the Office; and

(C) key findings from the research and analysis of the financial system by the Office.

(Pub. L. 111–203, title I, § 154, July 21, 2010, 124 Stat. 1416.)

§ 5345. Funding

(a) Financial Research Fund

(1) Fund established

There is established in the Treasury of the United States a separate fund to be known as the ''Financial Research Fund''.

(2) Fund receipts

All amounts provided to the Office under subsection (c),[1] and all assessments that the Office receives under subsection (d) shall be deposited into the Financial Research Fund.

(3) Investments authorized

(A) Amounts in fund may be invested

The Director may request the Secretary to invest the portion of the Financial Research Fund that is not, in the judgment of the Director, required to meet the needs of the Office.

(B) Eligible investments

Investments shall be made by the Secretary in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Financial Research Fund, as determined by the Director.

(4) Interest and proceeds credited

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Financial Research Fund shall be credited to and form a part of the Financial Research Fund.

(b) Use of funds

(1) In general

Funds obtained by, transferred to, or credited to the Financial Research Fund shall be immediately available to the Office, and shall remain available until expended, to pay the expenses of the Office in carrying out the duties and responsibilities of the Office.

(2) Fees, assessments, and other funds not Government funds

Funds obtained by, transferred to, or credited to the Financial Research Fund shall not be construed to be Government funds or appropriated moneys.

(3) Amounts not subject to apportionment

Notwithstanding any other provision of law, amounts in the Financial Research Fund shall not be subject to apportionment for purposes of chapter 15 of title 31, or under any other authority, or for any other purpose.

(c) Interim funding

During the 2-year period following July 21, 2010, the Board of Governors shall provide to the Office an amount sufficient to cover the expenses of the Office.

(d) Permanent self-funding

Beginning 2 years after July 21, 2010, the Secretary shall establish, by regulation, and with the approval of the Council, an assessment schedule, including the assessment base and rates, applicable to bank holding companies with total consolidated assets of $50,000,000,000 or greater and nonbank financial companies supervised by the Board of Governors, that takes into account differences among such companies, based on the considerations for establishing the prudential standards under section 5325 of this title, to collect assessments equal to the total expenses of the Office.

(Pub. L. 111–203, title I, § 155, July 21, 2010, 124 Stat. 1418.)

§ 5346. Transition oversight

(a) Purpose

The purpose of this section is to ensure that the Office—

(1) has an orderly and organized startup;

(2) attracts and retains a qualified workforce; and

(3) establishes comprehensive employee training and benefits programs.

(b) Reporting requirement

(1) In general

The Office shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

(2) Plans

The plans described in this paragraph are as follows:

(A) Training and workforce development plan

The Office shall submit a training and workforce development plan that includes, to the extent practicable—

(i) identification of skill and technical expertise needs and actions taken to meet those requirements;

[1] So in original. Comma probably should not appear.

(ii) steps taken to foster innovation and creativity;

(iii) leadership development and succession planning; and

(iv) effective use of technology by employees.

(B) Workplace flexibility plan

The Office shall submit a workforce flexibility plan that includes, to the extent practicable—

(i) telework;

(ii) flexible work schedules;

(iii) phased retirement;

(iv) reemployed annuitants;

(v) part-time work;

(vi) job sharing;

(vii) parental leave benefits and childcare assistance;

(viii) domestic partner benefits;

(ix) other workplace flexibilities; or

(x) any combination of the items described in clauses (i) through (ix).

(C) Recruitment and retention plan

The Office shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—

(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;

(ii) streamlined employment application processes;

(iii) the provision of timely notification of the status of employment applications to applicants; and

(iv) the collection of information to measure indicators of hiring effectiveness.

(c) Expiration

The reporting requirement under subsection (b) shall terminate 5 years after July 21, 2010.

(d) Rule of construction

Nothing in this section may be construed to affect—

(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, that is in effect on July 21, 2010; or

(2) the rights of employees under chapter 71 of title 5.

(Pub. L. 111–203, title I, §156, July 21, 2010, 124 Stat. 1419.)

PART C—ADDITIONAL BOARD OF GOVERNORS AUTHORITY FOR CERTAIN NONBANK FINANCIAL COMPANIES AND BANK HOLDING COMPANIES

§ 5361. Reports by and examinations of nonbank financial companies by the Board of Governors

(a) Reports

(1) In general

The Board of Governors may require each nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit reports under oath, to keep the Board of Governors informed as to—

(A) the financial condition of the company or subsidiary, systems of the company or subsidiary for monitoring and controlling financial, operating, and other risks, and the extent to which the activities and operations of the company or subsidiary pose a threat to the financial stability of the United States; and

(B) compliance by the company or subsidiary with the requirements of this subchapter.

(2) Use of existing reports and information

In carrying out subsection (a), the Board of Governors shall, to the fullest extent possible, use—

(A) reports and supervisory information that a nonbank financial company or subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

(B) information otherwise obtainable from Federal or State regulatory agencies;

(C) information that is otherwise required to be reported publicly; and

(D) externally audited financial statements of such company or subsidiary.

(3) Availability

Upon the request of the Board of Governors, a nonbank financial company supervised by the Board of Governors, or a subsidiary thereof, shall promptly provide to the Board of Governors any information described in paragraph (2).

(b) Examinations

(1) In general

Subject to paragraph (2), the Board of Governors may examine any nonbank financial company supervised by the Board of Governors and any subsidiary of such company, to inform the Board of Governors of—

(A) the nature of the operations and financial condition of the company and such subsidiary;

(B) the financial, operational, and other risks of the company or such subsidiary that may pose a threat to the safety and soundness of such company or subsidiary or to the financial stability of the United States;

(C) the systems for monitoring and controlling such risks; and

(D) compliance by the company or such subsidiary with the requirements of this subchapter.

(2) Use of examination reports and information

For purposes of this subsection, the Board of Governors shall, to the fullest extent possible, rely on reports of examination of any subsidiary depository institution or functionally regulated subsidiary made by the primary financial regulatory agency for that subsidiary, and on information described in subsection (a)(2).

(c) Coordination with primary financial regulatory agency

The Board of Governors shall—

(1) provide reasonable notice to, and consult with, the primary financial regulatory agency for any subsidiary before requiring a report or commencing an examination of such subsidiary under this section; and

(2) avoid duplication of examination activities, reporting requirements, and requests for information, to the fullest extent possible.

(Pub. L. 111–203, title I, § 161, July 21, 2010, 124 Stat. 1420.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(1)(B) and (b)(1)(D), was in the original ''this title'', meaning title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, which is classified principally to this subchapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5362. Enforcement

(a) In general

Except as provided in subsection (b), a nonbank financial company supervised by the Board of Governors and any subsidiaries of such company (other than any depository institution subsidiary) shall be subject to the provisions of subsections (b) through (n) of section 1818 of this title, in the same manner and to the same extent as if the company were a bank holding company, as provided in section 1818(b)(3) of this title.

(b) Enforcement authority for functionally regulated subsidiaries

(1) Referral

If the Board of Governors determines that a condition, practice, or activity of a depository institution subsidiary or functionally regulated subsidiary of a nonbank financial company supervised by the Board of Governors does not comply with the regulations or orders prescribed by the Board of Governors under this Act, or otherwise poses a threat to the financial stability of the United States, the Board of Governors may recommend, in writing, to the primary financial regulatory agency for the subsidiary that such agency initiate a supervisory action or enforcement proceeding. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) Back-up authority of the Board of Governors

If, during the 60-day period beginning on the date on which the primary financial regulatory agency receives a recommendation under paragraph (1), the primary financial regulatory agency does not take supervisory or enforcement action against a subsidiary that is acceptable to the Board of Governors, the Board of Governors (upon a vote of its members) may take the recommended supervisory or enforcement action, as if the subsidiary were a bank holding company subject to supervision by the Board of Governors.

(Pub. L. 111–203, title I, § 162, July 21, 2010, 124 Stat. 1421.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§ 8201 et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5363. Acquisitions

(a) Acquisitions of banks; treatment as a bank holding company

For purposes of section 1842 of this title, a nonbank financial company supervised by the Board of Governors shall be deemed to be, and shall be treated as, a bank holding company.

(b) Acquisition of nonbank companies

(1) Prior notice for large acquisitions

Notwithstanding section 1843(k)(6)(B) of this title, a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors shall not acquire direct or indirect ownership or control of any voting shares of any company (other than an insured depository institution) that is engaged in activities described in section 1843(k) of this title having total consolidated assets of $10,000,000,000 or more, without providing written notice to the Board of Governors in advance of the transaction.

(2) Exemptions

The prior notice requirement in paragraph (1) shall not apply with regard to the acquisition of shares that would qualify for the exemptions in section 1843(c) of this title or section 1843(k)(4)(E) of this title.

(3) Notice procedures

The notice procedures set forth in section 1843(j)(1) of this title, without regard to section 1843(j)(3) of this title, shall apply to an acquisition of any company (other than an insured depository institution) by a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors, as described in paragraph (1), including any such company engaged in activities described in section 1843(k) of this title.

(4) Standards for review

In addition to the standards provided in section 1843(j)(2) of this title, the Board of Governors shall consider the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.

(5) Hart-Scott-Rodino filing requirement

Solely for purposes of section 18a(c)(8) of title 15, the transactions subject to the requirements of paragraph (1) shall be treated as if Board of Governors approval is not required.

(Pub. L. 111–203, title I, § 163, July 21, 2010, 124 Stat. 1422.)

§ 5364. Prohibition against management interlocks between certain financial companies

A nonbank financial company supervised by the Board of Governors shall be treated as a bank holding company for purposes of the Depository Institutions[1] Management Interlocks Act (12 U.S.C. 3201 et seq.), except that the

[1] So in original. Probably should be ''Institution''.

Board of Governors shall not exercise the authority provided in section 7 of that Act (12 U.S.C. 3207) to permit service by a management official of a nonbank financial company supervised by the Board of Governors as a management official of any bank holding company with total consolidated assets equal to or greater than $50,000,000,000, or other nonaffiliated nonbank financial company supervised by the Board of Governors (other than to provide a temporary exemption for interlocks resulting from a merger, acquisition, or consolidation).

(Pub. L. 111–203, title I, §164, July 21, 2010, 124 Stat. 1423.)

REFERENCES IN TEXT

The Depository Institution Management Interlocks Act, referred to in text, is title II of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3672, which is classified principally to chapter 33 (§3201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of this title and Tables.

§ 5365. Enhanced supervision and prudential standards for nonbank financial companies supervised by the Board of Governors and certain bank holding companies

(a) In general

(1) Purpose

In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 5325 of this title, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies with total consolidated assets equal to or greater than $50,000,000,000 that—

(A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) Tailored application

(A) In general

In prescribing more stringent prudential standards under this section, the Board of Governors may, on its own or pursuant to a recommendation by the Council in accordance with section 5325 of this title, differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate.

(B) Adjustment of threshold for application of certain standards

The Board of Governors may, pursuant to a recommendation by the Council in accordance with section 5325 of this title, establish an asset threshold above $50,000,000,000 for the application of any standard established under subsections (c) through (g).

(b) Development of prudential standards

(1) In general

(A) Required standards

The Board of Governors shall establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements and leverage limits, unless the Board of Governors, in consultation with the Council, determines that such requirements are not appropriate for a company subject to more stringent prudential standards because of the activities of such company (such as investment company activities or assets under management) or structure, in which case, the Board of Governors shall apply other standards that result in similarly stringent risk controls;

(ii) liquidity requirements;

(iii) overall risk management requirements;

(iv) resolution plan and credit exposure report requirements; and

(v) concentration limits.

(B) Additional standards authorized

The Board of Governors may establish additional prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that include—

(i) a contingent capital requirement;

(ii) enhanced public disclosures;

(iii) short-term debt limits; and

(iv) such other prudential standards as the Board or Governors, on its own or pursuant to a recommendation made by the Council in accordance with section 5325 of this title, determines are appropriate.

(2) Standards for foreign financial companies

In applying the standards set forth in paragraph (1) to any foreign nonbank financial company supervised by the Board of Governors or foreign-based bank holding company, the Board of Governors shall—

(A) give due regard to the principle of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

(3) Considerations

In prescribing prudential standards under paragraph (1), the Board of Governors shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 5323 of this title;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other risk-related factors that the Board of Governors determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 5323 of this title would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1) of this subsection;

(C) take into account any recommendations of the Council under section 5325 of this title; and

(D) adapt the required standards as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

(4) Consultation

Before imposing prudential standards or any other requirements pursuant to this section, including notices of deficiencies in resolution plans and more stringent requirements or divestiture orders resulting from such notices, that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors shall consult with each Council member that primarily supervises any such subsidiary with respect to any such standard or requirement.

(5) Report

The Board of Governors shall submit an annual report to Congress regarding the implementation of the prudential standards required pursuant to paragraph (1), including the use of such standards to mitigate risks to the financial stability of the United States.

(c) Contingent capital

(1) In general

Subsequent to submission by the Council of a report to Congress under section 5325(c) of this title, the Board of Governors may issue regulations that require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to maintain a minimum amount of contingent capital that is convertible to equity in times of financial stress.

(2) Factors to consider

In issuing regulations under this subsection, the Board of Governors shall consider—

(A) the results of the study undertaken by the Council, and any recommendations of the Council, under section 5325(c) of this title;

(B) an appropriate transition period for implementation of contingent capital under this subsection;

(C) the factors described in subsection (b)(3)(A);

(D) capital requirements applicable to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof; and

(E) any other factor that the Board of Governors deems appropriate.

(d) Resolution plan and credit exposure reports

(1) Resolution plan

The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation the plan of such company for rapid and orderly resolution in the event of material financial distress or failure, which shall include—

(A) information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company;

(B) full descriptions of the ownership structure, assets, liabilities, and contractual obligations of the company;

(C) identification of the cross-guarantees tied to different securities, identification of major counterparties, and a process for determining to whom the collateral of the company is pledged; and

(D) any other information that the Board of Governors and the Corporation jointly require by rule or order.

(2) Credit exposure report

The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(3) Review

The Board of Governors and the Corporation shall review the information provided in accordance with this subsection by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a).

(4) Notice of deficiencies

If the Board of Governors and the Corporation jointly determine, based on their review under paragraph (3), that the resolution plan of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11—

(A) the Board of Governors and the Corporation shall notify the company of the deficiencies in the resolution plan; and

(B) the company shall resubmit the resolution plan within a timeframe determined by

the Board of Governors and the Corporation, with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, including any proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) Failure to resubmit credible plan

(A) In general

If a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors and the Corporation may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof, until such time as the company resubmits a plan that remedies the deficiencies.

(B) Divestiture

The Board of Governors and the Corporation, in consultation with the Council, may jointly direct a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Governors and the Corporation, to facilitate an orderly resolution of such company under title 11, in the event of the failure of such company, in any case in which—

(i) the Board of Governors and the Corporation have jointly imposed more stringent requirements on the company pursuant to subparagraph (A); and

(ii) the company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolution plan with such revisions as were required under paragraph (4)(B).

(6) No limiting effect

A resolution plan submitted in accordance with this subsection shall not be binding on a bankruptcy court, a receiver appointed under subchapter II, or any other authority that is authorized or required to resolve the nonbank financial company supervised by the Board, any bank holding company, or any subsidiary or affiliate of the foregoing.

(7) No private right of action

No private right of action may be based on any resolution plan submitted in accordance with this subsection.

(8) Rules

Not later than 18 months after July 21, 2010, the Board of Governors and the Corporation shall jointly issue final rules implementing this subsection.

(e) Concentration limits

(1) Standards

In order to limit the risks that the failure of any individual company could pose to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors, by regulation, shall prescribe standards that limit such risks.

(2) Limitation on credit exposure

The regulations prescribed by the Board of Governors under paragraph (1) shall prohibit each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus (or such lower amount as the Board of Governors may determine by regulation to be necessary to mitigate risks to the financial stability of the United States) of the company.

(3) Credit exposure

For purposes of paragraph (2), ''credit exposure'' to a company means—

(A) all extensions of credit to the company, including loans, deposits, and lines of credit;

(B) all repurchase agreements and reverse repurchase agreements with the company, and all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a);

(C) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(D) all purchases of or investment in securities issued by the company;

(E) counterparty credit exposure to the company in connection with a derivative transaction between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the company; and

(F) any other similar transactions that the Board of Governors, by regulation, determines to be a credit exposure for purposes of this section.

(4) Attribution rule

For purposes of this subsection, any transaction by a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) Rulemaking

The Board of Governors may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out this subsection.

(6) Exemptions

This subsection shall not apply to any Federal home loan bank. The Board of Governors may, by regulation or order, exempt transactions, in whole or in part, from the defini-

tion of the term ''credit exposure'' for purposes of this subsection, if the Board of Governors finds that the exemption is in the public interest and is consistent with the purpose of this subsection.

(7) Transition period

(A) In general

This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after July 21, 2010.

(B) Extension authorized

The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) Enhanced public disclosures

The Board of Governors may prescribe, by regulation, periodic public disclosures by nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) Short-term debt limits

(1) In general

In order to mitigate the risks that an over-accumulation of short-term debt could pose to financial companies and to the stability of the United States financial system, the Board of Governors may, by regulation, prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any bank holding company described in subsection (a) and any nonbank financial company supervised by the Board of Governors.

(2) Basis of limit

Any limit prescribed under paragraph (1) shall be based on the short-term debt of the company described in paragraph (1) as a percentage of capital stock and surplus of the company or on such other measure as the Board of Governors considers appropriate.

(3) Short-term debt defined

For purposes of this subsection, the term ''short-term debt'' means such liabilities with short-dated maturity that the Board of Governors identifies, by regulation, except that such term does not include insured deposits.

(4) Rulemaking authority

In addition to prescribing regulations under paragraphs (1) and (3), the Board of Governors may prescribe such regulations, including definitions consistent with this subsection, and issue such orders, as may be necessary to carry out this subsection.

(5) Authority to issue exemptions and adjustments

Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board of Governors may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a company described in paragraph (1) that does not control an insured depository institution, issue to such company an exemption from or adjustment to the limit prescribed under paragraph (1).

(h) Risk committee

(1) Nonbank financial companies supervised by the Board of Governors

The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 5323(e)(3) of this title with respect to such nonbank financial company supervised by the Board of Governors.

(2) Certain bank holding companies

(A) Mandatory regulations

The Board of Governors shall issue regulations requiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3).

(B) Permissive regulations

The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

(3) Risk committee

A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) Rulemaking

The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(i) Stress tests

(1) By the Board of Governors

(A) Annual tests required

The Board of Governors, in coordination with the appropriate primary financial regu-

latory agencies and the Federal Insurance Office, shall conduct annual analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

(B) Test parameters and consequences

The Board of Governors—

(i) shall provide for at least 3 different sets of conditions under which the evaluation required by this subsection shall be conducted, including baseline, adverse, and severely adverse;

(ii) may require the tests described in subparagraph (A) at bank holding companies and nonbank financial companies, in addition to those for which annual tests are required under subparagraph (A);

(iii) may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States;

(iv) shall require the companies described in subparagraph (A) to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses; and

(v) shall publish a summary of the results of the tests required under subparagraph (A) or clause (ii) of this subparagraph.

(2) By the company

(A) Requirement

A nonbank financial company supervised by the Board of Governors and a bank holding company described in subsection (a) shall conduct semiannual stress tests. All other financial companies that have total consolidated assets of more than $10,000,000,000 and are regulated by a primary Federal financial regulatory agency shall conduct annual stress tests. The tests required under this subparagraph shall be conducted in accordance with the regulations prescribed under subparagraph (C).

(B) Report

A company required to conduct stress tests under subparagraph (A) shall submit a report to the Board of Governors and to its primary financial regulatory agency at such time, in such form, and containing such information as the primary financial regulatory agency shall require.

(C) Regulations

Each Federal primary financial regulatory agency, in coordination with the Board of Governors and the Federal Insurance Office, shall issue consistent and comparable regulations to implement this paragraph that shall—

(i) define the term ''stress test'' for purposes of this paragraph;

(ii) establish methodologies for the conduct of stress tests required by this paragraph that shall provide for at least 3 different sets of conditions, including baseline, adverse, and severely adverse;

(iii) establish the form and content of the report required by subparagraph (B); and

(iv) require companies subject to this paragraph to publish a summary of the results of the required stress tests.

(j) Leverage limitation

(1) Requirement

The Board of Governors shall require a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors to maintain a debt to equity ratio of no more than 15 to 1, upon a determination by the Council that such company poses a grave threat to the financial stability of the United States and that the imposition of such requirement is necessary to mitigate the risk that such company poses to the financial stability of the United States. Nothing in this paragraph shall apply to a Federal home loan bank.

(2) Considerations

In making a determination under this subsection, the Council shall consider the factors described in subsections (a) and (b) of section 5323 of this title and any other risk-related factors that the Council deems appropriate.

(3) Regulations

The Board of Governors shall promulgate regulations to establish procedures and timelines for complying with the requirements of this subsection.

(k) Inclusion of off-balance-sheet activities in computing capital requirements

(1) In general

In the case of any bank holding company described in subsection (a) or nonbank financial company supervised by the Board of Governors, the computation of capital for purposes of meeting capital requirements shall take into account any off-balance-sheet activities of the company.

(2) Exemptions

If the Board of Governors determines that an exemption from the requirement under paragraph (1) is appropriate, the Board of Governors may exempt a company, or any transaction or transactions engaged in by such company, from the requirements of paragraph (1).

(3) Off-balance-sheet activities defined

For purposes of this subsection, the term ''off-balance-sheet activities'' means an existing liability of a company that is not currently a balance sheet liability, but may become one upon the happening of some future event, including the following transactions, to the extent that they may create a liability:

(A) Direct credit substitutes in which a bank substitutes its own credit for a third party, including standby letters of credit.

(B) Irrevocable letters of credit that guarantee repayment of commercial paper or tax-exempt securities.

(C) Risk participations in bankers' acceptances.

(D) Sale and repurchase agreements.

(E) Asset sales with recourse against the seller.

(F) Interest rate swaps.

(G) Credit swaps.

(H) Commodities contracts.

(I) Forward contracts.

(J) Securities contracts.

(K) Such other activities or transactions as the Board of Governors may, by rule, define.

(Pub. L. 111–203, title I, § 165, July 21, 2010, 124 Stat. 1423.)

REFERENCES IN TEXT

Subchapter II, referred to in subsec. (d)(6), was in the original ''title II'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to subchapter II (§ 5381 et seq.) of this chapter. For complete classification of title II to the Code, see Tables.

The Bank Holding Company Act of 1956, referred to in subsec. (g)(5), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

§ 5366. Early remediation requirements

(a) In general

The Board of Governors, in consultation with the Council and the Corporation, shall prescribe regulations establishing requirements to provide for the early remediation of financial distress of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 5365(a) of this title, except that nothing in this subsection authorizes the provision of financial assistance from the Federal Government.

(b) Purpose of the early remediation requirements

The purpose of the early remediation requirements under subsection (a) shall be to establish a series of specific remedial actions to be taken by a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 5365(a) of this title that is experiencing increasing financial distress, in order to minimize the probability that the company will become insolvent and the potential harm of such insolvency to the financial stability of the United States.

(c) Remediation requirements

The regulations prescribed by the Board of Governors under subsection (a) shall—

(1) define measures of the financial condition of the company, including regulatory capital, liquidity measures, and other forward-looking indicators; and

(2) establish requirements that increase in stringency as the financial condition of the company declines, including—

(A) requirements in the initial stages of financial decline, including limits on capital distributions, acquisitions, and asset growth; and

(B) requirements at later stages of financial decline, including a capital restoration plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales.

(Pub. L. 111–203, title I, § 166, July 21, 2010, 124 Stat. 1432.)

§ 5367. Affiliations

(a) Affiliations

Nothing in this part shall be construed to require a nonbank financial company supervised by the Board of Governors, or a company that controls a nonbank financial company supervised by the Board of Governors, to conform the activities thereof to the requirements of section 1843 of this title.

(b) Requirement

(1) In general

(A) Board authority

If a nonbank financial company supervised by the Board of Governors conducts activities other than those that are determined to be financial in nature or incidental thereto under section 1843(k) of this title, the Board of Governors may require such company to establish and conduct all or a portion of such activities that are determined to be financial in nature or incidental thereto in or through an intermediate holding company established pursuant to regulation of the Board of Governors, not later than 90 days (or such longer period as the Board of Governors may deem appropriate) after the date on which the nonbank financial company supervised by the Board of Governors is notified of the determination of the Board of Governors under this section.

(B) Necessary actions

Notwithstanding subparagraph (A), the Board of Governors shall require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company if the Board of Governors makes a determination that the establishment of such intermediate holding company is necessary to—

(i) appropriately supervise activities that are determined to be financial in nature or incidental thereto; or

(ii) to[1] ensure that supervision by the Board of Governors does not extend to the commercial activities of such nonbank financial company.

(2) Internal financial activities

For purposes of this subsection, activities that are determined to be financial in nature or incidental thereto under section 1843(k) of this title, as described in paragraph (1), shall not include internal financial activities, including internal treasury, investment, and employee benefit functions. With respect to any internal financial activity engaged in for the company or an affiliate and a non-affiliate of such company during the year prior to July 21, 2010, such company (or an affiliate that is not an intermediate holding company or sub-

[1] So in original. The word ''to'' probably should not appear.

sidiary of an intermediate holding company) may continue to engage in such activity, as long as not less than 2/3 of the assets or 2/3 of the revenues generated from the activity are from or attributable to such company or an affiliate, subject to review by the Board of Governors, to determine whether engaging in such activity presents undue risk to such company or to the financial stability of the United States.

(3) Source of strength

A company that directly or indirectly controls an intermediate holding company established under this section shall serve as a source of strength to its subsidiary intermediate holding company.

(4) Parent company reports

The Board of Governors may, from time to time, require reports under oath from a company that controls an intermediate holding company, and from the appropriate officers or directors of such company, solely for purposes of ensuring compliance with the provisions of this section, including assessing the ability of the company to serve as a source of strength to its subsidiary intermediate holding company pursuant to paragraph (3) and enforcing such compliance.

(5) Limited parent company enforcement

(A) In general

In addition to any other authority of the Board of Governors, the Board of Governors may enforce compliance with the provisions of this subsection that are applicable to any company described in paragraph (1) that controls an intermediate holding company under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], and such company shall be subject to such section (solely for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

(B) Application of other Act

Any violation of this subsection by any company that controls an intermediate holding company may also be treated as a violation of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] for purposes of subparagraph (A).

(C) No effect on other authority

No provision of this paragraph shall be construed as limiting any authority of the Board of Governors or any other Federal agency under any other provision of law.

(c) Regulations

The Board of Governors—

(1) shall promulgate regulations to establish the criteria for determining whether to require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company under subsection (b); and

(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a nonbank financial company supervised by the Board of Governors and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between such company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of such company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

(Pub. L. 111–203, title I, §167, July 21, 2010, 124 Stat. 1432.)

REFERENCES IN TEXT

This part, referred to in subsec. (a), was in the original ''this subtitle'', meaning subtitle C (§§161–176) of title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1420, which is classified principally to this part. For complete classification of subtitle C to the Code, see Tables.

The Federal Deposit Insurance Act, referred to in subsec. (b)(5)(B), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

§ 5368. Regulations

The Board of Governors shall have authority to issue regulations to implement parts A and C and the amendments made thereunder. Except as otherwise specified in part A or C, not later than 18 months after the effective date of this Act, the Board of Governors shall issue final regulations to implement parts A and C, and the amendments made thereunder.

(Pub. L. 111–203, title I, §168, July 21, 2010, 124 Stat. 1434.)

REFERENCES IN TEXT

Part C, referred to in text, was in the original ''subtitle C'', meaning subtitle C (§§161–176) of title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1420, which is classified principally to this part. For complete classification of subtitle C to the Code, see Tables.

The effective date of this Act, referred to in text, is 1 day after July 21, 2010, except as otherwise specifically provided in Pub. L. 111–203, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

§ 5369. Avoiding duplication

The Board of Governors shall take any action that the Board of Governors deems appropriate to avoid imposing requirements under this part that are duplicative of requirements applicable to bank holding companies and nonbank financial companies under other provisions of law.

(Pub. L. 111–203, title I, §169, July 21, 2010, 124 Stat. 1434.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle C (§§161–176) of title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1420, which is classified principally to this part. For complete classification of subtitle C to the Code, see Tables.

§ 5370. Safe harbor

(a) Regulations

The Board of Governors shall promulgate regulations on behalf of, and in consultation with,

the Council setting forth the criteria for exempting certain types or classes of U.S. nonbank financial companies or foreign nonbank financial companies from supervision by the Board of Governors.

(b) Considerations

In developing the criteria under subsection (a), the Board of Governors shall take into account the factors for consideration described in subsections (a) and (b) of section 5323 of this title in determining whether a U.S. nonbank financial company or foreign nonbank financial company shall be supervised by the Board of Governors.

(c) Rule of construction

Nothing in this section shall be construed to require supervision by the Board of Governors of a U.S. nonbank financial company or foreign nonbank financial company, if such company does not meet the criteria for exemption established under subsection (a).

(d) Revisions

(1) In general

The Board of Governors shall, in consultation with the Council, review the regulations promulgated under subsection (a), not less frequently than every 5 years, and based upon the review, the Board of Governors may revise such regulations on behalf of, and in consultation with, the Council to update as necessary the criteria set forth in such regulations.

(2) Transition period

No revisions under paragraph (1) shall take effect before the end of the 2-year period after the date of publication of such revisions in final form.

(e) Report

The Chairman of the Board of Governors and the Chairperson of the Council shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 30 days after the date of the issuance in final form of regulations under subsection (a), or any subsequent revision to such regulations under subsection (d), as applicable. Such report shall include, at a minimum, the rationale for exemption and empirical evidence to support the criteria for exemption.

(Pub. L. 111–203, title I, § 170, July 21, 2010, 124 Stat. 1435.)

§ 5371. Leverage and risk-based capital requirements

(a) Definitions

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

(1) Generally applicable leverage capital requirements

The term ''generally applicable leverage capital requirements'' means—

(A) the minimum ratios of tier 1 capital to average total assets, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 1831*o* of this title, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of that capital requirement, average total assets in the denominator of that capital requirement, and the required ratio of the numerator to the denominator.

(2) Generally applicable risk-based capital requirements

The term ''generally applicable risk-based capital requirements'' means—

(A) the risk-based capital requirements, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 1831*o* of this title, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.

(3) Definition of depository institution holding company

The term ''depository institution holding company'' means a bank holding company or a savings and loan holding company (as those terms are defined in section 1813 of this title) that is organized in the United States, including any bank or savings and loan holding company that is owned or controlled by a foreign organization, but does not include the foreign organization.

(b) Minimum capital requirements

(1) Minimum leverage capital requirements

The appropriate Federal banking agencies shall establish minimum leverage capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum leverage capital requirements established under this paragraph shall not be less than the generally applicable leverage capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable leverage capital requirements that were in effect for insured depository institutions as of July 21, 2010.

(2) Minimum risk-based capital requirements

The appropriate Federal banking agencies shall establish minimum risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum risk-based capital requirements established under this paragraph shall not be less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable

risk-based capital requirements that were in effect for insured depository institutions as of July 21, 2010.

(3) Investments in financial subsidiaries

For purposes of this section, investments in financial subsidiaries that insured depository institutions are required to deduct from regulatory capital under section 24a of this title or section 1831w(a)(2) of this title need not be deducted from regulatory capital by depository institution holding companies or nonbank financial companies supervised by the Board of Governors, unless such capital deduction is required by the Board of Governors or the primary financial regulatory agency in the case of nonbank financial companies supervised by the Board of Governors.

(4) Effective dates and phase-in periods

(A) Debt or equity instruments on or after May 19, 2010

For debt or equity instruments issued on or after May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, this section shall be deemed to have become effective as of May 19, 2010.

(B) Debt or equity instruments issued before May 19, 2010

For debt or equity instruments issued before May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, any regulatory capital deductions required under this section shall be phased in incrementally over a period of 3 years, with the phase-in period to begin on January 1, 2013, except as set forth in subparagraph (C).

(C) Debt or equity instruments of smaller institutions

For debt or equity instruments issued before May 19, 2010, by depository institution holding companies with total consolidated assets of less than $15,000,000,000 as of December 31, 2009, and by organizations that were mutual holding companies on May 19, 2010, the capital deductions that would be required for other institutions under this section are not required as a result of this section.

(D) Depository institution holding companies not previously supervised by the Board of Governors

For any depository institution holding company that was not supervised by the Board of Governors as of May 19, 2010, the requirements of this section, except as set forth in subparagraphs (A) and (B), shall be effective 5 years after July 21, 2010[1]

(E) Certain bank holding company subsidiaries of foreign banking organizations

For bank holding company subsidiaries of foreign banking organizations that have relied on Supervision and Regulation Letter SR-01-1 issued by the Board of Governors (as in effect on May 19, 2010), the requirements of this section, except as set forth in subparagraph (A), shall be effective 5 years after July 21, 2010.

(5) Exceptions

This section shall not apply to—

(A) debt or equity instruments issued to the United States or any agency or instrumentality thereof pursuant to the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.], and prior to October 4, 2010;

(B) any Federal home loan bank; or

(C) any small bank holding company that is subject to the Small Bank Holding Company Policy Statement of the Board of Governors, as in effect on May 19, 2010.

(6) Study and report on small institution access to capital

(A) Study required

The Comptroller General of the United States, after consultation with the Federal banking agencies, shall conduct a study of access to capital by smaller insured depository institutions.

(B) Scope

For purposes of this study required by subparagraph (A), the term ''smaller insured depository institution'' means an insured depository institution with total consolidated assets of $5,000,000,000 or less.

(C) Report to Congress

Not later than 18 months after July 21, 2010, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report summarizing the results of the study conducted under subparagraph (A), together with any recommendations for legislative or regulatory action that would enhance the access to capital of smaller insured depository institutions, in a manner that is consistent with safe and sound banking operations.

(7) Capital requirements to address activities that pose risks to the financial system

(A) In general

Subject to the recommendations of the Council, in accordance with section 5330 of this title, the Federal banking agencies shall develop capital requirements applicable to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors that address the risks that the activities of such institutions pose, not only to the institution engaging in the activity, but to other public and private stakeholders in the event of adverse performance, disruption, or failure of the institution or the activity.

(B) Content

Such rules shall address, at a minimum, the risks arising from—

(i) significant volumes of activity in derivatives, securitized products purchased

[1] So in original. Probably should be followed by a period.

and sold, financial guarantees purchased and sold, securities borrowing and lending, and repurchase agreements and reverse repurchase agreements;

(ii) concentrations in assets for which the values presented in financial reports are based on models rather than historical cost or prices deriving from deep and liquid 2-way markets; and

(iii) concentrations in market share for any activity that would substantially disrupt financial markets if the institution is forced to unexpectedly cease the activity.

(Pub. L. 111–203, title I, § 171, July 21, 2010, 124 Stat. 1435.)

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (b)(5)(A), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§ 5201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5372.Rule of construction

Nothing in this Act shall be construed to limit or curtail the Corporation's current authority to examine or bring enforcement actions with respect to any insured depository institution or institution-affiliated party.

(Pub. L. 111–203, title I, § 172(c), July 21, 2010, 124 Stat. 1439.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§ 8201 et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5373. International policy coordination

(a) By the President

The President, or a designee of the President, may coordinate through all available international policy channels, similar policies as those found in United States law relating to limiting the scope, nature, size, scale, concentration, and interconnectedness of financial companies, in order to protect financial stability and the global economy.

(b) By the Council

The Chairperson of the Council, in consultation with the other members of the Council, shall regularly consult with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to systemic risk to the international financial system.

(c) By the Board of Governors and the Secretary

The Board of Governors and the Secretary shall consult with their foreign counterparts and through appropriate multilateral organizations to encourage comprehensive and robust prudential supervision and regulation for all highly leveraged and interconnected financial companies.

(Pub. L. 111–203, title I, § 175, July 21, 2010, 124 Stat. 1442.)

§ 5374. Rule of construction

No regulation or standard imposed under this subchapter may be construed in a manner that would lessen the stringency of the requirements of any applicable primary financial regulatory agency or any other Federal or State agency that are otherwise applicable. This subchapter, and the rules and regulations or orders prescribed pursuant to this subchapter, do not divest any such agency of any authority derived from any other applicable law.

(Pub. L. 111–203, title I, § 176, July 21, 2010, 124 Stat. 1442.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, which is classified principally to this subchapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

SUBCHAPTER II—ORDERLY LIQUIDATION AUTHORITY

§ 5381. Definitions

(a) In general

In this subchapter, the following definitions shall apply:

(1) Administrative expenses of the receiver

The term ''administrative expenses of the receiver'' includes—

(A) the actual, necessary costs and expenses incurred by the Corporation as receiver for a covered financial company in liquidating a covered financial company; and

(B) any obligations that the Corporation as receiver for a covered financial company determines are necessary and appropriate to facilitate the smooth and orderly liquidation of the covered financial company.

(2) Bankruptcy Code

The term ''Bankruptcy Code'' means title 11.

(3) Bridge financial company

The term ''bridge financial company'' means a new financial company organized by the Corporation in accordance with section 5390(h) of this title for the purpose of resolving a covered financial company.

(4) Claim

The term ''claim'' means any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(5) Company

The term ''company'' has the same meaning as in section 1841(b) of this title, except that such term includes any company described in paragraph (11), the majority of the securities of which are owned by the United States or any State.

(6) Court

The term ''Court'' means the United States District Court for the District of Columbia, unless the context otherwise requires.

(7) Covered broker or dealer

The term ''covered broker or dealer'' means a covered financial company that is a broker or dealer that—

(A) is registered with the Commission under section 78*o*(b) of title 15; and

(B) is a member of SIPC.

(8) Covered financial company

The term ''covered financial company''—

(A) means a financial company for which a determination has been made under section 5383(b) of this title; and

(B) does not include an insured depository institution.

(9) Covered subsidiary

The term ''covered subsidiary'' means a subsidiary of a covered financial company, other than—

(A) an insured depository institution;

(B) an insurance company; or

(C) a covered broker or dealer.

(10) Definitions relating to covered brokers and dealers

The terms ''customer'', ''customer name securities'', ''customer property'', and ''net equity'' in the context of a covered broker or dealer, have the same meanings as in section 78*lll* of title 15.

(11) Financial company

The term ''financial company'' means any company that—

(A) is incorporated or organized under any provision of Federal law or the laws of any State;

(B) is—

(i) a bank holding company, as defined in section 1841(a) of this title;

(ii) a nonbank financial company supervised by the Board of Governors;

(iii) any company that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 1843(k) of this title other than a company described in clause (i) or (ii); or

(iv) any subsidiary of any company described in any of clauses (i) through (iii) that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 1843(k) of this title (other than a subsidiary that is an insured depository institution or an insurance company); and

(C) is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.), a governmental entity, or a regulated entity, as defined under section 4502(20) of this title.

(12) Fund

The term ''Fund'' means the Orderly Liquidation Fund established under section 5390(n) of this title.

(13) Insurance company

The term ''insurance company'' means any entity that is—

(A) engaged in the business of insurance;

(B) subject to regulation by a State insurance regulator; and

(C) covered by a State law that is designed to specifically deal with the rehabilitation, liquidation, or insolvency of an insurance company.

(14) Nonbank financial company

The term ''nonbank financial company'' has the same meaning as in section 5311(a)(4)(C) of this title.

(15) Nonbank financial company supervised by the Board of Governors

The term ''nonbank financial company supervised by the Board of Governors'' has the same meaning as in section 5311(a)(4)(D) of this title.

(16) SIPC

The term ''SIPC'' means the Securities Investor Protection Corporation.

(b) Definitional criteria

For purpose of the definition of the term ''financial company'' under subsection (a)(11), no company shall be deemed to be predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 1843(k) of this title, if the consolidated revenues of such company from such activities constitute less than 85 percent of the total consolidated revenues of such company, as the Corporation, in consultation with the Secretary, shall establish by regulation. In determining whether a company is a financial company under this subchapter, the consolidated revenues derived from the ownership or control of a depository institution shall be included.

(Pub. L. 111–203, title II, §201, July 21, 2010, 124 Stat. 1442.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

The Farm Credit Act of 1971, referred to in subsec. (a)(11)(C), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to chapter 23 (§2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

EFFECTIVE DATE

Subchapter effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

§ 5382. Judicial review

(a) Commencement of orderly liquidation

(1) Petition to District Court

(A) District Court review

(i) Petition to District Court

Subsequent to a determination by the Secretary under section 5383 of this title that a financial company satisfies the criteria in section 5383(b) of this title, the Secretary shall notify the Corporation and

the covered financial company. If the board of directors (or body performing similar functions) of the covered financial company acquiesces or consents to the appointment of the Corporation as receiver, the Secretary shall appoint the Corporation as receiver. If the board of directors (or body performing similar functions) of the covered financial company does not acquiesce or consent to the appointment of the Corporation as receiver, the Secretary shall petition the United States District Court for the District of Columbia for an order authorizing the Secretary to appoint the Corporation as receiver.

(ii) Form and content of order

The Secretary shall present all relevant findings and the recommendation made pursuant to section 5383(a) of this title to the Court. The petition shall be filed under seal.

(iii) Determination

On a strictly confidential basis, and without any prior public disclosure, the Court, after notice to the covered financial company and a hearing in which the covered financial company may oppose the petition, shall determine whether the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 5381(a)(11) of this title is arbitrary and capricious.

(iv) Issuance of order

If the Court determines that the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 5381(a)(11) of this title—

(I) is not arbitrary and capricious, the Court shall issue an order immediately authorizing the Secretary to appoint the Corporation as receiver of the covered financial company; or

(II) is arbitrary and capricious, the Court shall immediately provide to the Secretary a written statement of each reason supporting its determination, and afford the Secretary an immediate opportunity to amend and refile the petition under clause (i).

(v) Petition granted by operation of law

If the Court does not make a determination within 24 hours of receipt of the petition—

(I) the petition shall be granted by operation of law;

(II) the Secretary shall appoint the Corporation as receiver; and

(III) liquidation under this subchapter shall automatically and without further notice or action be commenced and the Corporation may immediately take all actions authorized under this subchapter.

(B) Effect of determination

The determination of the Court under subparagraph (A) shall be final, and shall be subject to appeal only in accordance with paragraph (2). The decision shall not be subject to any stay or injunction pending appeal. Upon conclusion of its proceedings under subparagraph (A), the Court shall provide immediately for the record a written statement of each reason supporting the decision of the Court, and shall provide copies thereof to the Secretary and the covered financial company.

(C) Criminal penalties

A person who recklessly discloses a determination of the Secretary under section 5383(b) of this title or a petition of the Secretary under subparagraph (A), or the pendency of court proceedings as provided for under subparagraph (A), shall be fined not more than $250,000, or imprisoned for not more than 5 years, or both.

(2) Appeal of decisions of the District Court

(A) Appeal to Court of Appeals

(i) In general

Subject to clause (ii), the United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction of an appeal of a final decision of the Court filed by the Secretary or a covered financial company, through its board of directors, notwithstanding section 5390(a)(1)(A)(i) of this title, not later than 30 days after the date on which the decision of the Court is rendered or deemed rendered under this subsection.

(ii) Condition of jurisdiction

The Court of Appeals shall have jurisdiction of an appeal by a covered financial company only if the covered financial company did not acquiesce or consent to the appointment of a receiver by the Secretary under paragraph (1)(A).

(iii) Expedition

The Court of Appeals shall consider any appeal under this subparagraph on an expedited basis.

(iv) Scope of review

For an appeal taken under this subparagraph, review shall be limited to whether the determination of the Secretary that a covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 5381(a)(11) of this title is arbitrary and capricious.

(B) Appeal to the Supreme Court

(i) In general

A petition for a writ of certiorari to review a decision of the Court of Appeals under subparagraph (A) may be filed by the Secretary or the covered financial company, through its board of directors, notwithstanding section 5390(a)(1)(A)(i) of this title, with the Supreme Court of the United States, not later than 30 days after the date of the final decision of the Court of Appeals, and the Supreme Court shall have discretionary jurisdiction to review such decision.

(ii) Written statement

In the event of a petition under clause (i), the Court of Appeals shall immediately provide for the record a written statement of each reason for its decision.

(iii) Expedition

The Supreme Court shall consider any petition under this subparagraph on an expedited basis.

(iv) Scope of review

Review by the Supreme Court under this subparagraph shall be limited to whether the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 5381(a)(11) of this title is arbitrary and capricious.

(b) Establishment and transmittal of rules and procedures

(1) In general

Not later than 6 months after July 21, 2010, the Court shall establish such rules and procedures as may be necessary to ensure the orderly conduct of proceedings, including rules and procedures to ensure that the 24-hour deadline is met and that the Secretary shall have an ongoing opportunity to amend and refile petitions under subsection (a)(1).

(2) Publication of rules

The rules and procedures established under paragraph (1), and any modifications of such rules and procedures, shall be recorded and shall be transmitted to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(C) the Committee on the Judiciary of the House of Representatives; and

(D) the Committee on Financial Services of the House of Representatives.

(c) Provisions applicable to financial companies

(1) Bankruptcy Code

Except as provided in this subsection, the provisions of the Bankruptcy Code and rules issued thereunder or otherwise applicable insolvency law, and not the provisions of this subchapter, shall apply to financial companies that are not covered financial companies for which the Corporation has been appointed as receiver.

(2) This subchapter

The provisions of this subchapter shall exclusively apply to and govern all matters relating to covered financial companies for which the Corporation is appointed as receiver, and no provisions of the Bankruptcy Code or the rules issued thereunder shall apply in such cases, except as expressly provided in this subchapter.

(d) Time limit on receivership authority

(1) Baseline period

Any appointment of the Corporation as receiver under this section shall terminate at the end of the 3-year period beginning on the date on which such appointment is made.

(2) Extension of time limit

The time limit established in paragraph (1) may be extended by the Corporation for up to 1 additional year, if the Chairperson of the Corporation determines and certifies in writing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that continuation of the receivership is necessary—

(A) to—

(i) maximize the net present value return from the sale or other disposition of the assets of the covered financial company; or

(ii) minimize the amount of loss realized upon the sale or other disposition of the assets of the covered financial company; and

(B) to protect the stability of the financial system of the United States.

(3) Second extension of time limit

(A) In general

The time limit under this subsection, as extended under paragraph (2), may be extended for up to 1 additional year, if the Chairperson of the Corporation, with the concurrence of the Secretary, submits the certifications described in paragraph (2).

(B) Additional report required

Not later than 30 days after the date of commencement of the extension under subparagraph (A), the Corporation shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the need for the extension and the specific plan of the Corporation to conclude the receivership before the end of the second extension.

(4) Ongoing litigation

The time limit under this subsection, as extended under paragraph (3), may be further extended solely for the purpose of completing ongoing litigation in which the Corporation as receiver is a party, provided that the appointment of the Corporation as receiver shall terminate not later than 90 days after the date of completion of such litigation, if—

(A) the Council determines that the Corporation used its best efforts to conclude the receivership in accordance with its plan before the end of the time limit described in paragraph (3);

(B) the Council determines that the completion of longer-term responsibilities in the form of ongoing litigation justifies the need for an extension; and

(C) the Corporation submits a report approved by the Council not later than 30 days after the date of the determinations by the Council under subparagraphs (A) and (B) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, describing—

(i) the ongoing litigation justifying the need for an extension; and

(ii) the specific plan of the Corporation to complete the litigation and conclude the receivership.

(5) Regulations

The Corporation may issue regulations governing the termination of receiverships under this subchapter.

(6) No liability

The Corporation and the Deposit Insurance Fund shall not be liable for unresolved claims arising from the receivership after the termination of the receivership.

(e) Study of bankruptcy and orderly liquidation process for financial companies

(1) Study

(A) In general

The Administrative Office of the United States Courts and the Comptroller General of the United States shall each monitor the activities of the Court, and each such Office shall conduct separate studies regarding the bankruptcy and orderly liquidation process for financial companies under the Bankruptcy Code.

(B) Issues to be studied

In conducting the study under subparagraph (A), the Administrative Office of the United States Courts and the Comptroller General of the United States each shall evaluate—

(i) the effectiveness of chapter 7 or chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies;

(ii) ways to maximize the efficiency and effectiveness of the Court; and

(iii) ways to make the orderly liquidation process under the Bankruptcy Code for financial companies more effective.

(2) Reports

Not later than 1 year after July 21, 2010, in each successive year until the third year, and every fifth year after that date, the Administrative Office of the United States Courts and the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives separate reports summarizing the results of the studies conducted under paragraph (1).

(f) Study of international coordination relating to bankruptcy process for financial companies

(1) Study

(A) In general

The Comptroller General of the United States shall conduct a study regarding international coordination relating to the orderly liquidation of financial companies under the Bankruptcy Code.

(B) Issues to be studied

In conducting the study under subparagraph (A), the Comptroller General of the United States shall evaluate, with respect to the bankruptcy process for financial companies—

(i) the extent to which international coordination currently exists;

(ii) current mechanisms and structures for facilitating international cooperation;

(iii) barriers to effective international coordination; and

(iv) ways to increase and make more effective international coordination.

(2) Report

Not later than 1 year after July 21, 2010, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Secretary a report summarizing the results of the study conducted under paragraph (1).

(g) Study of prompt corrective action implementation by the appropriate Federal agencies

(1) Study

The Comptroller General of the United States shall conduct a study regarding the implementation of prompt corrective action by the appropriate Federal banking agencies.

(2) Issues to be studied

In conducting the study under paragraph (1), the Comptroller General shall evaluate—

(A) the effectiveness of implementation of prompt corrective action by the appropriate Federal banking agencies and the resolution of insured depository institutions by the Corporation; and

(B) ways to make prompt corrective action a more effective tool to resolve the insured depository institutions at the least possible long-term cost to the Deposit Insurance Fund.

(3) Report to Council

Not later than 1 year after July 21, 2010, the Comptroller General shall submit a report to the Council on the results of the study conducted under this subsection.

(4) Council report of action

Not later than 6 months after the date of receipt of the report from the Comptroller General under paragraph (3), the Council shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations made to the Federal primary financial regulatory agencies under section 5330 of this title.

(Pub. L. 111–203, title II, § 202, July 21, 2010, 124 Stat. 1444.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(1)(A)(v)(III), (c), and (d)(5), was in the original ''this title'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to this

subchapter. For complete classification of title II to the Code, see Tables.

§ 5383. Systemic risk determination

(a) Written recommendation and determination

(1) Vote required

(A) In general

On their own initiative, or at the request of the Secretary, the Corporation and the Board of Governors shall consider whether to make a written recommendation described in paragraph (2) with respect to whether the Secretary should appoint the Corporation as receiver for a financial company. Such recommendation shall be made upon a vote of not fewer than ⅔ of the members of the Board of Governors then serving and ⅔ of the members of the board of directors of the Corporation then serving.

(B) Cases involving brokers or dealers

In the case of a broker or dealer, or in which the largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) of a financial company is a broker or dealer, the Commission and the Board of Governors, at the request of the Secretary, or on their own initiative, shall consider whether to make the written recommendation described in paragraph (2) with respect to the financial company. Subject to the requirements in paragraph (2), such recommendation shall be made upon a vote of not fewer than ⅔ of the members of the Board of Governors then serving and ⅔ of the members of the Commission then serving, and in consultation with the Corporation.

(C) Cases involving insurance companies

In the case of an insurance company, or in which the largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) of a financial company is an insurance company, the Director of the Federal Insurance Office and the Board of Governors, at the request of the Secretary or on their own initiative, shall consider whether to make the written recommendation described in paragraph (2) with respect to the financial company. Subject to the requirements in paragraph (2), such recommendation shall be made upon a vote of not fewer than ⅔ of the Board of Governors then serving and the affirmative approval of the Director of the Federal Insurance Office, and in consultation with the Corporation.

(2) Recommendation required

Any written recommendation pursuant to paragraph (1) shall contain—

(A) an evaluation of whether the financial company is in default or in danger of default;

(B) a description of the effect that the default of the financial company would have on financial stability in the United States;

(C) a description of the effect that the default of the financial company would have on economic conditions or financial stability for low income, minority, or underserved communities;

(D) a recommendation regarding the nature and the extent of actions to be taken under this subchapter regarding the financial company;

(E) an evaluation of the likelihood of a private sector alternative to prevent the default of the financial company;

(F) an evaluation of why a case under the Bankruptcy Code is not appropriate for the financial company;

(G) an evaluation of the effects on creditors, counterparties, and shareholders of the financial company and other market participants; and

(H) an evaluation of whether the company satisfies the definition of a financial company under section 5381 of this title.

(b) Determination by the Secretary

Notwithstanding any other provision of Federal or State law, the Secretary shall take action in accordance with section 5382(a)(1)(A) of this title, if, upon the written recommendation under subsection (a), the Secretary (in consultation with the President) determines that—

(1) the financial company is in default or in danger of default;

(2) the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States;

(3) no viable private sector alternative is available to prevent the default of the financial company;

(4) any effect on the claims or interests of creditors, counterparties, and shareholders of the financial company and other market participants as a result of actions to be taken under this subchapter is appropriate, given the impact that any action taken under this subchapter would have on financial stability in the United States;

(5) any action under section 5384 of this title would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the action in mitigating potential adverse effects on the financial system, the cost to the general fund of the Treasury, and the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the financial company;

(6) a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the regulatory order; and

(7) the company satisfies the definition of a financial company under section 5381 of this title.

(c) Documentation and review

(1) In general

The Secretary shall—

(A) document any determination under subsection (b);

(B) retain the documentation for review under paragraph (2); and

(C) notify the covered financial company and the Corporation of such determination.

(2) Report to Congress

Not later than 24 hours after the date of appointment of the Corporation as receiver for a covered financial company, the Secretary shall provide written notice of the recommendations and determinations reached in accordance with subsections (a) and (b) to the Majority Leader and the Minority Leader of the Senate and the Speaker and the Minority Leader of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, which shall consist of a summary of the basis for the determination, including, to the extent available at the time of the determination—

(A) the size and financial condition of the covered financial company;

(B) the sources of capital and credit support that were available to the covered financial company;

(C) the operations of the covered financial company that could have had a significant impact on financial stability, markets, or both;

(D) identification of the banks and financial companies which may be able to provide the services offered by the covered financial company;

(E) any potential international ramifications of resolution of the covered financial company under other applicable insolvency law;

(F) an estimate of the potential effect of the resolution of the covered financial company under other applicable insolvency law on the financial stability of the United States;

(G) the potential effect of the appointment of a receiver by the Secretary on consumers;

(H) the potential effect of the appointment of a receiver by the Secretary on the financial system, financial markets, and banks and other financial companies; and

(I) whether resolution of the covered financial company under other applicable insolvency law would cause banks or other financial companies to experience severe liquidity distress.

(3) Reports to Congress and the public

(A) In general

Not later than 60 days after the date of appointment of the Corporation as receiver for a covered financial company, the Corporation shall file a report with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(i) setting forth information on the financial condition of the covered financial company as of the date of the appointment, including a description of its assets and liabilities;

(ii) describing the plan of, and actions taken by, the Corporation to wind down the covered financial company;

(iii) explaining each instance in which the Corporation waived any applicable requirements of part 366 of title 12, Code of Federal Regulations (or any successor thereto) with respect to conflicts of interest by any person in the private sector who was retained to provide services to the Corporation in connection with such receivership;

(iv) describing the reasons for the provision of any funding to the receivership out of the Fund;

(v) setting forth the expected costs of the orderly liquidation of the covered financial company;

(vi) setting forth the identity of any claimant that is treated in a manner different from other similarly situated claimants under subsection (b)(4), (d)(4), or (h)(5)(E), the amount of any additional payment to such claimant under subsection (d)(4), and the reason for any such action; and

(vii) which report the Corporation shall publish on an online website maintained by the Corporation, subject to maintaining appropriate confidentiality.

(B) Amendments

The Corporation shall, on a timely basis, not less frequently than quarterly, amend or revise and resubmit the reports prepared under this paragraph, as necessary.

(C) Congressional testimony

The Corporation and the primary financial regulatory agency, if any, of the financial company for which the Corporation was appointed receiver under this subchapter shall appear before Congress, if requested, not later than 30 days after the date on which the Corporation first files the reports required under subparagraph (A).

(4) Default or in danger of default

For purposes of this subchapter, a financial company shall be considered to be in default or in danger of default if, as determined in accordance with subsection (b)—

(A) a case has been, or likely will promptly be, commenced with respect to the financial company under the Bankruptcy Code;

(B) the financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

(C) the assets of the financial company are, or are likely to be, less than its obligations to creditors and others; or

(D) the financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

(5) GAO review

The Comptroller General of the United States shall review and report to Congress on any determination under subsection (b), that results in the appointment of the Corporation as receiver, including—

(A) the basis for the determination;

(B) the purpose for which any action was taken pursuant thereto;

(C) the likely effect of the determination and such action on the incentives and con-

duct of financial companies and their creditors, counterparties, and shareholders; and

(D) the likely disruptive effect of the determination and such action on the reasonable expectations of creditors, counterparties, and shareholders, taking into account the impact any action under this subchapter would have on financial stability in the United States, including whether the rights of such parties will be disrupted.

(d) Corporation policies and procedures

As soon as is practicable after July 21, 2010, the Corporation shall establish policies and procedures that are acceptable to the Secretary governing the use of funds available to the Corporation to carry out this subchapter, including the terms and conditions for the provision and use of funds under sections 5384(d), 5390(h)(2)(G)(iv), and 5390(h)(9) of this title.

(e) Treatment of insurance companies and insurance company subsidiaries

(1) In general

Notwithstanding subsection (b), if an insurance company is a covered financial company or a subsidiary or affiliate of a covered financial company, the liquidation or rehabilitation of such insurance company, and any subsidiary or affiliate of such company that is not excepted under paragraph (2), shall be conducted as provided under applicable State law.

(2) Exception for subsidiaries and affiliates

The requirement of paragraph (1) shall not apply with respect to any subsidiary or affiliate of an insurance company that is not itself an insurance company.

(3) Backup authority

Notwithstanding paragraph (1), with respect to a covered financial company described in paragraph (1), if, after the end of the 60-day period beginning on the date on which a determination is made under section 5382(a) of this title with respect to such company, the appropriate regulatory agency has not filed the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State, the Corporation shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State.

(Pub. L. 111–203, title II, § 203, July 21, 2010, 124 Stat. 1450.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) to (d), was in the original ''this title'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

§ 5384. Orderly liquidation of covered financial companies

(a) Purpose of orderly liquidation authority

It is the purpose of this subchapter to provide the necessary authority to liquidate failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard. The authority provided in this subchapter shall be exercised in the manner that best fulfills such purpose, so that—

(1) creditors and shareholders will bear the losses of the financial company;

(2) management responsible for the condition of the financial company will not be retained; and

(3) the Corporation and other appropriate agencies will take all steps necessary and appropriate to assure that all parties, including management, directors, and third parties, having responsibility for the condition of the financial company bear losses consistent with their responsibility, including actions for damages, restitution, and recoupment of compensation and other gains not compatible with such responsibility.

(b) Corporation as receiver

Upon the appointment of the Corporation under section 5382 of this title, the Corporation shall act as the receiver for the covered financial company, with all of the rights and obligations set forth in this subchapter.

(c) Consultation

The Corporation, as receiver—

(1) shall consult with the primary financial regulatory agency or agencies of the covered financial company and its covered subsidiaries for purposes of ensuring an orderly liquidation of the covered financial company;

(2) may consult with, or under subsection (a)(1)(B)(v) or (a)(1)(L) of section 5390 of this title, acquire the services of, any outside experts, as appropriate to inform and aid the Corporation in the orderly liquidation process;

(3) shall consult with the primary financial regulatory agency or agencies of any subsidiaries of the covered financial company that are not covered subsidiaries, and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate; and

(4) shall consult with the Commission and the Securities Investor Protection Corporation in the case of any covered financial company for which the Corporation has been appointed as receiver that is a broker or dealer registered with the Commission under section 78*o*(b) of title 15 and is a member of the Securities Investor Protection Corporation, for the purpose of determining whether to transfer to a bridge financial company organized by the Corporation as receiver, without consent of any customer, customer accounts of the covered financial company.

(d) Funding for orderly liquidation

Upon its appointment as receiver for a covered financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or appropriate, the Corporation may make available to the receivership, subject to the conditions set forth in section 5386 of this title and subject to the plan described in section

5390(n)(9) of this title, funds for the orderly liquidation of the covered financial company. All funds provided by the Corporation under this subsection shall have a priority of claims under subparagraph (A) or (B) of section 5390(b)(1) of this title, as applicable, including funds used for—

(1) making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary;

(2) purchasing or guaranteeing against loss the assets of the covered financial company or any covered subsidiary, directly or through an entity established by the Corporation for such purpose;

(3) assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to 1 or more third parties;

(4) taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted under this subsection;

(5) selling or transferring all, or any part, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary; and

(6) making payments pursuant to subsections (b)(4), (d)(4), and (h)(5)(E) of section 5390 of this title.

(Pub. L. 111–203, title II, § 204, July 21, 2010, 124 Stat. 1454.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (b), was in the original ''this title'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

§ 5385. Orderly liquidation of covered brokers and dealers

(a) Appointment of SIPC as trustee

(1) Appointment

Upon the appointment of the Corporation as receiver for any covered broker or dealer, the Corporation shall appoint, without any need for court approval, the Securities Investor Protection Corporation to act as trustee for the liquidation under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) of the covered broker or dealer.

(2) Actions by SIPC

(A) Filing

Upon appointment of SIPC under paragraph (1), SIPC shall promptly file with any Federal district court of competent jurisdiction specified in section 78u or 78aa of title 15, an application for a protective decree under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) as to the covered broker or dealer. The Federal district court shall accept and approve the filing, including outside of normal business hours, and shall immediately issue the protective decree as to the covered broker or dealer.

(B) Administration by SIPC

Following entry of the protective decree, and except as otherwise provided in this section, the determination of claims and the liquidation of assets retained in the receivership of the covered broker or dealer and not transferred to the bridge financial company shall be administered under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) by SIPC, as trustee for the covered broker or dealer.

(C) Definition of filing date

For purposes of the liquidation proceeding, the term ''filing date'' means the date on which the Corporation is appointed as receiver of the covered broker or dealer.

(D) Determination of claims

As trustee for the covered broker or dealer, SIPC shall determine and satisfy, consistent with this subchapter and with the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), all claims against the covered broker or dealer arising on or before the filing date.

(b) Powers and duties of SIPC

(1) In general

Except as provided in this section, upon its appointment as trustee for the liquidation of a covered broker or dealer, SIPC shall have all of the powers and duties provided by the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), including, without limitation, all rights of action against third parties, and shall conduct such liquidation in accordance with the terms of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), except that SIPC shall have no powers or duties with respect to assets and liabilities transferred by the Corporation from the covered broker or dealer to any bridge financial company established in accordance with this subchapter.

(2) Limitation of powers

The exercise by SIPC of powers and functions as trustee under subsection (a) shall not impair or impede the exercise of the powers and duties of the Corporation with regard to—

(A) any action, except as otherwise provided in this subchapter—

(i) to make funds available under section 5384(d) of this title;

(ii) to organize, establish, operate, or terminate any bridge financial company;

(iii) to transfer assets and liabilities;

(iv) to enforce or repudiate contracts; or

(v) to take any other action relating to such bridge financial company under section 5390 of this title; or

(B) determining claims under subsection (e).

(3) Protective decree

SIPC and the Corporation, in consultation with the Commission, shall jointly determine the terms of the protective decree to be filed by SIPC with any court of competent jurisdiction under section 78u or 78aa of title 15, as required by subsection (a).

(4) Qualified financial contracts

Notwithstanding any provision of the Securities Investor Protection Act of 1970 (15 U.S.C.

78aaa et seq.) to the contrary (including section 5(b)(2)(C) of that Act (15 U.S.C. 78eee(b)(2)(C))), the rights and obligations of any party to a qualified financial contract (as that term is defined in section 5390(c)(8) of this title) to which a covered broker or dealer for which the Corporation has been appointed receiver is a party shall be governed exclusively by section 5390 of this title, including the limitations and restrictions contained in section 5390(c)(10)(B) of this title.

(c) Limitation on court action

Except as otherwise provided in this subchapter, no court may take any action, including any action pursuant to the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) or the Bankruptcy Code, to restrain or affect the exercise of powers or functions of the Corporation as receiver for a covered broker or dealer and any claims against the Corporation as such receiver shall be determined in accordance with subsection (e) and such claims shall be limited to money damages.

(d) Actions by Corporation as receiver

(1) In general

Notwithstanding any other provision of this subchapter, no action taken by the Corporation as receiver with respect to a covered broker or dealer shall—

(A) adversely affect the rights of a customer to customer property or customer name securities;

(B) diminish the amount or timely payment of net equity claims of customers; or

(C) otherwise impair the recoveries provided to a customer under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

(2) Net proceeds

The net proceeds from any transfer, sale, or disposition of assets of the covered broker or dealer, or proceeds thereof by the Corporation as receiver for the covered broker or dealer shall be for the benefit of the estate of the covered broker or dealer, as provided in this subchapter.

(e) Claims against the Corporation as receiver

Any claim against the Corporation as receiver for a covered broker or dealer for assets transferred to a bridge financial company established with respect to such covered broker or dealer—

(1) shall be determined in accordance with section 5390(a)(2) of this title; and

(2) may be reviewed by the appropriate district or territorial court of the United States in accordance with section 5390(a)(5) of this title.

(f) Satisfaction of customer claims

(1) Obligations to customers

Notwithstanding any other provision of this subchapter, all obligations of a covered broker or dealer or of any bridge financial company established with respect to such covered broker or dealer to a customer relating to, or net equity claims based upon, customer property or customer name securities shall be promptly discharged by SIPC, the Corporation, or the bridge financial company, as applicable, by the delivery of securities or the making of payments to or for the account of such customer, in a manner and in an amount at least as beneficial to the customer as would have been the case had the actual proceeds realized from the liquidation of the covered broker or dealer under this subchapter been distributed in a proceeding under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) without the appointment of the Corporation as receiver and without any transfer of assets or liabilities to a bridge financial company, and with a filing date as of the date on which the Corporation is appointed as receiver.

(2) Satisfaction of claims by SIPC

SIPC, as trustee for a covered broker or dealer, shall satisfy customer claims in the manner and amount provided under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), as if the appointment of the Corporation as receiver had not occurred, and with a filing date as of the date on which the Corporation is appointed as receiver. The Corporation shall satisfy customer claims, to the extent that a customer would have received more securities or cash with respect to the allocation of customer property had the covered financial company been subject to a proceeding under the Securities Investor Protection Act (15 U.S.C. 78aaa et seq.) without the appointment of the Corporation as receiver, and with a filing date as of the date on which the Corporation is appointed as receiver.

(g) Priorities

(1) Customer property

As trustee for a covered broker or dealer, SIPC shall allocate customer property and deliver customer name securities in accordance with section 8(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–2(c)).

(2) Other claims

All claims other than those described in paragraph (1) (including any unpaid claim by a customer for the allowed net equity claim of such customer from customer property) shall be paid in accordance with the priorities in section 5390(b) of this title.

(h) Rulemaking

The Commission and the Corporation, after consultation with SIPC, shall jointly issue rules to implement this section.

(Pub. L. 111–203, title II, §205, July 21, 2010, 124 Stat. 1456.)

REFERENCES IN TEXT

The Securities Investor Protection Act of 1970, referred to in text, is Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636, which is classified generally to chapter 2B–1 (§78aaa et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

This subchapter, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

§ 5386. Mandatory terms and conditions for all orderly liquidation actions

In taking action under this subchapter, the Corporation shall—

(1) determine that such action is necessary for purposes of the financial stability of the United States, and not for the purpose of preserving the covered financial company;

(2) ensure that the shareholders of a covered financial company do not receive payment until after all other claims and the Fund are fully paid;

(3) ensure that unsecured creditors bear losses in accordance with the priority of claim provisions in section 5390 of this title;

(4) ensure that management responsible for the failed condition of the covered financial company is removed (if such management has not already been removed at the time at which the Corporation is appointed receiver);

(5) ensure that the members of the board of directors (or body performing similar functions) responsible for the failed condition of the covered financial company are removed, if such members have not already been removed at the time the Corporation is appointed as receiver; and

(6) not take an equity interest in or become a shareholder of any covered financial company or any covered subsidiary.

(Pub. L. 111–203, title II, § 206, July 21, 2010, 124 Stat. 1459.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

§ 5387. Directors not liable for acquiescing in appointment of receiver

The members of the board of directors (or body performing similar functions) of a covered financial company shall not be liable to the shareholders or creditors thereof for acquiescing in or consenting in good faith to the appointment of the Corporation as receiver for the covered financial company under section 5383 of this title.

(Pub. L. 111–203, title II, § 207, July 21, 2010, 124 Stat. 1459.)

§ 5388. Dismissal and exclusion of other actions

(a) In general

Effective as of the date of the appointment of the Corporation as receiver for the covered financial company under section 5382 of this title or the appointment of SIPC as trustee for a covered broker or dealer under section 5385 of this title, as applicable, any case or proceeding commenced with respect to the covered financial company under the Bankruptcy Code or the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) shall be dismissed, upon notice to the bankruptcy court (with respect to a case commenced under the Bankruptcy Code), and upon notice to SIPC (with respect to a covered broker or dealer) and no such case or proceeding may be commenced with respect to a covered financial company at any time while the orderly liquidation is pending.

(b) Revesting of assets

Effective as of the date of appointment of the Corporation as receiver, the assets of a covered financial company shall, to the extent they have vested in any entity other than the covered financial company as a result of any case or proceeding commenced with respect to the covered financial company under the Bankruptcy Code, the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), or any similar provision of State liquidation or insolvency law applicable to the covered financial company, revest in the covered financial company.

(c) Limitation

Notwithstanding subsections (a) and (b), any order entered or other relief granted by a bankruptcy court prior to the date of appointment of the Corporation as receiver shall continue with the same validity as if an orderly liquidation had not been commenced.

(Pub. L. 111–203, title II, § 208, July 21, 2010, 124 Stat. 1459.)

REFERENCES IN TEXT

The Securities Investor Protection Act of 1970, referred to in subsecs. (a) and (b), is Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636, which is classified generally to chapter 2B–1 (§ 78aaa et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

§ 5389. Rulemaking; non-conflicting law

The Corporation shall, in consultation with the Council, prescribe such rules or regulations as the Corporation considers necessary or appropriate to implement this subchapter, including rules and regulations with respect to the rights, interests, and priorities of creditors, counterparties, security entitlement holders, or other persons with respect to any covered financial company or any assets or other property of or held by such covered financial company, and address the potential for conflicts of interest between or among individual receiverships established under this subchapter or under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]. To the extent possible, the Corporation shall seek to harmonize applicable rules and regulations promulgated under this section with the insolvency laws that would otherwise apply to a covered financial company.

(Pub. L. 111–203, title II, § 209, July 21, 2010, 124 Stat. 1460.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

The Federal Deposit Insurance Act, referred to in text, is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

§ 5390. Powers and duties of the Corporation

(a) Powers and authorities

(1) General powers

(A) Successor to covered financial company

The Corporation shall, upon appointment as receiver for a covered financial company under this subchapter, succeed to—

(i) all rights, titles, powers, and privileges of the covered financial company and its assets, and of any stockholder, member, officer, or director of such company; and

(ii) title to the books, records, and assets of any previous receiver or other legal custodian of such covered financial company.

(B) Operation of the covered financial company during the period of orderly liquidation

The Corporation, as receiver for a covered financial company, may—

(i) take over the assets of and operate the covered financial company with all of the powers of the members or shareholders, the directors, and the officers of the covered financial company, and conduct all business of the covered financial company;

(ii) collect all obligations and money owed to the covered financial company;

(iii) perform all functions of the covered financial company, in the name of the covered financial company;

(iv) manage the assets and property of the covered financial company, consistent with maximization of the value of the assets in the context of the orderly liquidation; and

(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Corporation as receiver.

(C) Functions of covered financial company officers, directors, and shareholders

The Corporation may provide for the exercise of any function by any member or stockholder, director, or officer of any covered financial company for which the Corporation has been appointed as receiver under this subchapter.

(D) Additional powers as receiver

The Corporation shall, as receiver for a covered financial company, and subject to all legally enforceable and perfected security interests and all legally enforceable security entitlements in respect of assets held by the covered financial company, liquidate, and wind-up[1] the affairs of a covered financial company, including taking steps to realize upon the assets of the covered financial company, in such manner as the Corporation deems appropriate, including through the sale of assets, the transfer of assets to a bridge financial company established under subsection (h), or the exercise of any other rights or privileges granted to the receiver under this section.

(E) Additional powers with respect to failing subsidiaries of a covered financial company

(i) In general

In any case in which a receiver is appointed for a covered financial company under section 5382 of this title, the Corporation may appoint itself as receiver of any covered subsidiary of the covered financial company that is organized under Federal law or the laws of any State, if the Corporation and the Secretary jointly determine that—

(I) the covered subsidiary is in default or in danger of default;

(II) such action would avoid or mitigate serious adverse effects on the financial stability or economic conditions of the United States; and

(III) such action would facilitate the orderly liquidation of the covered financial company.

(ii) Treatment as covered financial company

If the Corporation is appointed as receiver of a covered subsidiary of a covered financial company under clause (i), the covered subsidiary shall thereafter be considered a covered financial company under this subchapter, and the Corporation shall thereafter have all the powers and rights with respect to that covered subsidiary as it has with respect to a covered financial company under this subchapter.

(F) Organization of bridge companies

The Corporation, as receiver for a covered financial company, may organize a bridge financial company under subsection (h).

(G) Merger; transfer of assets and liabilities

(i) In general

Subject to clauses (ii) and (iii), the Corporation, as receiver for a covered financial company, may—

(I) merge the covered financial company with another company; or

(II) transfer any asset or liability of the covered financial company (including any assets and liabilities held by the covered financial company for security entitlement holders, any customer property, or any assets and liabilities associated with any trust or custody business) without obtaining any approval, assignment, or consent with respect to such transfer.

(ii) Federal agency approval; antitrust review

With respect to a transaction described in clause (i)(I) that requires approval by a Federal agency—

(I) the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval;

(II) if, in connection with any such approval, a report on competitive factors is

[1] So in original. Probably should be ''wind up''.

required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the United States of the proposed transaction, and the Attorney General shall provide the required report not later than 10 days after the date of the request; and

(III) if notification under section 18a of title 15 is required with respect to such transaction, then the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under subsection (b)(2) of such section 18a, or is extended pursuant to subsection (e)(2) of such section 18a.

(iii) Setoff

Subject to the other provisions of this subchapter, any transferee of assets from a receiver, including a bridge financial company, shall be subject to such claims or rights as would prevail over the rights of such transferee in such assets under applicable noninsolvency law.

(H) Payment of valid obligations

The Corporation, as receiver for a covered financial company, shall, to the extent that funds are available, pay all valid obligations of the covered financial company that are due and payable at the time of the appointment of the Corporation as receiver, in accordance with the prescriptions and limitations of this subchapter.

(I) Applicable noninsolvency law

Except as may otherwise be provided in this subchapter, the applicable noninsolvency law shall be determined by the noninsolvency choice of law rules otherwise applicable to the claims, rights, titles, persons, or entities at issue.

(J) Subpoena authority

(i) In general

The Corporation, as receiver for a covered financial company, may, for purposes of carrying out any power, authority, or duty with respect to the covered financial company (including determining any claim against the covered financial company and determining and realizing upon any asset of any person in the course of collecting money due the covered financial company), exercise any power established under section 1818(n) of this title, as if the Corporation were the appropriate Federal banking agency for the covered financial company, and the covered financial company were an insured depository institution.

(ii) Rule of construction

This subparagraph may not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have to exercise any powers described in clause (i) or under any other provision of law.

(K) Incidental powers

The Corporation, as receiver for a covered financial company, may exercise all powers and authorities specifically granted to receivers under this subchapter, and such incidental powers as shall be necessary to carry out such powers under this subchapter.

(L) Utilization of private sector

In carrying out its responsibilities in the management and disposition of assets from the covered financial company, the Corporation, as receiver for a covered financial company, may utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if such services are available in the private sector, and the Corporation determines that utilization of such services is practicable, efficient, and cost effective.

(M) Shareholders and creditors of covered financial company

Notwithstanding any other provision of law, the Corporation, as receiver for a covered financial company, shall succeed by operation of law to the rights, titles, powers, and privileges described in subparagraph (A), and shall terminate all rights and claims that the stockholders and creditors of the covered financial company may have against the assets of the covered financial company or the Corporation arising out of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under this section. The Corporation shall ensure that shareholders and unsecured creditors bear losses, consistent with the priority of claims provisions under this section.

(N) Coordination with foreign financial authorities

The Corporation, as receiver for a covered financial company, shall coordinate, to the maximum extent possible, with the appropriate foreign financial authorities regarding the orderly liquidation of any covered financial company that has assets or operations in a country other than the United States.

(O) Restriction on transfers

(i) Selection of accounts for transfer

If the Corporation establishes one or more bridge financial companies with respect to a covered broker or dealer, the Corporation shall transfer to one of such bridge financial companies, all customer accounts of the covered broker or dealer, and all associated customer name securities and customer property, unless the Corporation, after consulting with the Commission and SIPC, determines that—

(I) the customer accounts, customer name securities, and customer property are likely to be promptly transferred to another broker or dealer that is registered with the Commission under section 78*o*(b) of title 15 and is a member of SIPC; or

(II) the transfer of the accounts to a bridge financial company would materially interfere with the ability of the Corporation to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States.

(ii) Transfer of property

SIPC, as trustee for the liquidation of the covered broker or dealer, and the Commission shall provide any and all reasonable assistance necessary to complete such transfers by the Corporation.

(iii) Customer consent and court approval not required

Neither customer consent nor court approval shall be required to transfer any customer accounts or associated customer name securities or customer property to a bridge financial company in accordance with this section.

(iv) Notification of SIPC and sharing of information

The Corporation shall identify to SIPC the customer accounts and associated customer name securities and customer property transferred to the bridge financial company. The Corporation and SIPC shall cooperate in the sharing of any information necessary for each entity to discharge its obligations under this subchapter and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) including by providing access to the books and records of the covered financial company and any bridge financial company established in accordance with this subchapter.

(2) Determination of claims

(A) In general

The Corporation, as receiver for a covered financial company, shall report on claims, as set forth in section 5383(c)(3) of this title. Subject to paragraph (4) of this subsection, the Corporation, as receiver for a covered financial company, shall determine claims in accordance with the requirements of this subsection and regulations prescribed under section 5389 of this title.

(B) Notice requirements

The Corporation, as receiver for a covered financial company, in any case involving the liquidation or winding up of the affairs of a covered financial company, shall—

(i) promptly publish a notice to the creditors of the covered financial company to present their claims, together with proof, to the receiver by a date specified in the notice, which shall be not earlier than 90 days after the date of publication of such notice; and

(ii) republish such notice 1 month and 2 months, respectively, after the date of publication under clause (i).

(C) Mailing required

The Corporation as receiver shall mail a notice similar to the notice published under clause (i) or (ii) of subparagraph (B), at the time of such publication, to any creditor shown on the books and records of the covered financial company—

(i) at the last address of the creditor appearing in such books;

(ii) in any claim filed by the claimant; or

(iii) upon discovery of the name and address of a claimant not appearing on the books and records of the covered financial company, not later than 30 days after the date of the discovery of such name and address.

(3) Procedures for resolution of claims

(A) Decision period

(i) In general

Prior to the 180th day after the date on which a claim against a covered financial company is filed with the Corporation as receiver, or such later date as may be agreed as provided in clause (ii), the Corporation shall notify the claimant whether it allows or disallows the claim, in accordance with subparagraphs (B), (C), and (D).

(ii) Extension of time

By written agreement executed not later than 180 days after the date on which a claim against a covered financial company is filed with the Corporation, the period described in clause (i) may be extended by written agreement between the claimant and the Corporation. Failure to notify the claimant of any disallowance within the time period set forth in clause (i), as it may be extended by agreement under this clause, shall be deemed to be a disallowance of such claim, and the claimant may file or continue an action in court, as provided in paragraph (4).

(iii) Mailing of notice sufficient

The requirements of clause (i) shall be deemed to be satisfied if the notice of any decision with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the books, records, or both of the covered financial company;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) Contents of notice of disallowance

If the Corporation as receiver disallows any claim filed under clause (i), the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures required to file or continue an action in court, as provided in paragraph (4).

(B) Allowance of proven claim

The receiver shall allow any claim received by the receiver on or before the date specified in the notice under paragraph (2)(B)(i), which is proved to the satisfaction of the receiver.

(C) Disallowance of claims filed after end of filing period

(i) In general

Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (2)(B)(i) shall be disallowed, and such disallowance shall be final.

(ii) Certain exceptions

Clause (i) shall not apply with respect to any claim filed by a claimant after the date specified in the notice published under paragraph (2)(B)(i), and such claim may be considered by the receiver under subparagraph (B), if—

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) Authority to disallow claims

(i) In general

The Corporation may disallow any portion of any claim by a creditor or claim of a security, preference, setoff, or priority which is not proved to the satisfaction of the Corporation.

(ii) Payments to undersecured creditors

In the case of a claim against a covered financial company that is secured by any property or other asset of such covered financial company, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim; and

(II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the covered financial company.

(iii) Exceptions

No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal reserve bank, or the Corporation, to any covered financial company; or

(II) subject to clause (ii), any legally enforceable and perfected security interest in the assets of the covered financial company securing any such extension of credit.

(E) Legal effect of filing

(i) Statute of limitations tolled

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of appointment of the receiver for the covered financial company.

(4) Judicial determination of claims

(A) In general

Subject to subparagraph (B), a claimant may file suit on a claim (or continue an action commenced before the date of appointment of the Corporation as receiver) in the district or territorial court of the United States for the district within which the principal place of business of the covered financial company is located (and such court shall have jurisdiction to hear such claim).

(B) Timing

A claim under subparagraph (A) may be filed before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (3)(A)(i) (or, if extended by agreement of the Corporation and the claimant, the period described in paragraph (3)(A)(ii)) with respect to any claim against a covered financial company for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (3)(A)(i).

(C) Statute of limitations

If any claimant fails to file suit on such claim (or to continue an action on such claim commenced before the date of appointment of the Corporation as receiver) prior to the end of the 60-day period described in subparagraph (B), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(5) Expedited determination of claims

(A) Procedure required

The Corporation shall establish a procedure for expedited relief outside of the claims process established under paragraph (3), for any claimant that alleges—

(i) having a legally valid and enforceable or perfected security interest in property of a covered financial company or control of any legally valid and enforceable security entitlement in respect of any asset held by the covered financial company for which the Corporation has been appointed receiver; and

(ii) that irreparable injury will occur if the claims procedure established under paragraph (3) is followed.

(B) Determination period

Prior to the end of the 90-day period beginning on the date on which a claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

(I) whether to allow or disallow such claim, or any portion thereof; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (3);

(ii) notify the claimant of the determination; and

(iii) if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining a judicial determination.

(C) Period for filing or renewing suit

Any claimant who files a request for expedited relief shall be permitted to file suit (or continue a suit filed before the date of appointment of the Corporation as receiver[2] seeking a determination of the rights of the claimant with respect to such security interest (or such security entitlement) after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date on which the Corporation denies the claim or a portion thereof.

(D) Statute of limitations

If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (C), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) Legal effect of filing

(i) Statute of limitations tolled

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

(6) Agreements against interest of the receiver

No agreement that tends to diminish or defeat the interest of the Corporation as receiver in any asset acquired by the receiver under this section shall be valid against the receiver, unless such agreement—

(A) is in writing;

(B) was executed by an authorized officer or representative of the covered financial company, or confirmed in the ordinary course of business by the covered financial company; and

(C) has been, since the time of its execution, an official record of the company or the party claiming under the agreement provides documentation, acceptable to the receiver, of such agreement and its authorized execution or confirmation by the covered financial company.

[2] So in original. A closing parenthesis probably should appear after ''receiver''.

(7) Payment of claims

(A) In general

Subject to subparagraph (B), the Corporation as receiver may, in its discretion and to the extent that funds are available, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

(i) allowed by the receiver;

(ii) approved by the receiver pursuant to a final determination pursuant to paragraph (3) or (5), as applicable; or

(iii) determined by the final judgment of a court of competent jurisdiction.

(B) Limitation

A creditor shall, in no event, receive less than the amount that the creditor is entitled to receive under paragraphs (2) and (3) of subsection (d), as applicable.

(C) Payment of dividends on claims

The Corporation as receiver may, in its sole discretion, and to the extent otherwise permitted by this section, pay dividends on proven claims at any time, and no liability shall attach to the Corporation as receiver, by reason of any such payment or for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(D) Rulemaking by the Corporation

The Corporation may prescribe such rules, including definitions of terms, as the Corporation deems appropriate to establish an interest rate for or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estate of a covered financial company, except that no such interest shall be paid until the Corporation as receiver has satisfied the principal amount of all creditor claims.

(8) Suspension of legal actions

(A) In general

After the appointment of the Corporation as receiver for a covered financial company, the Corporation may request a stay in any judicial action or proceeding in which such covered financial company is or becomes a party, for a period of not to exceed 90 days.

(B) Grant of stay by all courts required

Upon receipt of a request by the Corporation pursuant to subparagraph (A), the court shall grant such stay as to all parties.

(9) Additional rights and duties

(A) Prior final adjudication

The Corporation shall abide by any final, non-appealable judgment of any court of competent jurisdiction that was rendered before the appointment of the Corporation as receiver.

(B) Rights and remedies of receiver

In the event of any appealable judgment, the Corporation as receiver shall—

(i) have all the rights and remedies available to the covered financial company (before the date of appointment of the Cor-

poration as receiver under section 5382 of this title) and the Corporation, including removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) No attachment or execution

No attachment or execution may be issued by any court upon assets in the possession of the Corporation as receiver for a covered financial company.

(D) Limitation on judicial review

Except as otherwise provided in this subchapter, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such covered financial company or the Corporation as receiver.

(E) Disposition of assets

In exercising any right, power, privilege, or authority as receiver in connection with any covered financial company for which the Corporation is acting as receiver under this section, the Corporation shall, to the greatest extent practicable, conduct its operations in a manner that—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases;

(iii) mitigates the potential for serious adverse effects to the financial system;

(iv) ensures timely and adequate competition and fair and consistent treatment of offerors; and

(v) prohibits discrimination on the basis of race, sex, or ethnic group in the solicitation and consideration of offers.

(10) Statute of limitations for actions brought by receiver

(A) In general

Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as receiver for a covered financial company shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law.

(B) Date on which a claim accrues

For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in subparagraph (A) shall be the later of—

(i) the date of the appointment of the Corporation as receiver under this subchapter; or

(ii) the date on which the cause of action accrues.

(C) Revival of expired State causes of action

(i) In general

In the case of any tort claim described in clause (ii) for which the applicable statute of limitations under State law has expired not more than 5 years before the date of appointment of the Corporation as receiver for a covered financial company, the Corporation may bring an action as receiver on such claim without regard to the expiration of the statute of limitations.

(ii) Claims described

A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the covered financial company.

(11) Avoidable transfers

(A) Fraudulent transfers

The Corporation, as receiver for any covered financial company, may avoid a transfer of any interest of the covered financial company in property, or any obligation incurred by the covered financial company, that was made or incurred at or within 2 years before the date on which the Corporation was appointed receiver, if—

(i) the covered financial company voluntarily or involuntarily—

(I) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the covered financial company was or became, on or after the date on which such transfer was made or such obligation was incurred, indebted; or

(II) received less than a reasonably equivalent value in exchange for such transferor obligation; and

(ii) the covered financial company voluntarily or involuntarily—

(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the covered financial company was an unreasonably small capital;

(III) intended to incur, or believed that the covered financial company would incur, debts that would be beyond the ability of the covered financial company to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

(B) Preferential transfers

The Corporation as receiver for any covered financial company may avoid a transfer of an interest of the covered financial company in property—

(i) to or for the benefit of a creditor;

(ii) for or on account of an antecedent debt that was owed by the covered financial company before the transfer was made;

(iii) that was made while the covered financial company was insolvent;

(iv) that was made—

(I) 90 days or less before the date on which the Corporation was appointed receiver; or

(II) more than 90 days, but less than 1 year before the date on which the Corporation was appointed receiver, if such creditor at the time of the transfer was an insider; and

(v) that enables the creditor to receive more than the creditor would receive if—

(I) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code;

(II) the transfer had not been made; and

(III) the creditor received payment of such debt to the extent provided by the provisions of chapter 7 of the Bankruptcy Code.

(C) Post-receivership transactions

The Corporation as receiver for any covered financial company may avoid a transfer of property of the receivership that occurred after the Corporation was appointed receiver that was not authorized under this subchapter by the Corporation as receiver.

(D) Right of recovery

To the extent that a transfer is avoided under subparagraph (A), (B), or (C), the Corporation may recover, for the benefit of the covered financial company, the property transferred or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(E) Rights of transferee or obligee

The Corporation may not recover under subparagraph (D)(ii) from—

(i) any transferee that takes for value, including in satisfaction of or to secure a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(ii) any immediate or mediate good faith transferee of such transferee.

(F) Defenses

Subject to the other provisions of this subchapter—

(i) a transferee or obligee from which the Corporation seeks to recover a transfer or to avoid an obligation under subparagraph (A), (B), (C), or (D) shall have the same defenses available to a transferee or obligee from which a trustee seeks to recover a transfer or avoid an obligation under sections 547, 548, and 549 of the Bankruptcy Code; and

(ii) the authority of the Corporation to recover a transfer or avoid an obligation shall be subject to subsections (b) and (c) of section 546, section 547(c), and section 548(c) of the Bankruptcy Code.

(G) Rights under this section

The rights of the Corporation as receiver under this section shall be superior to any rights of a trustee or any other party (other than a Federal agency) under the Bankruptcy Code.

(H) Rules of construction; definitions

For purposes of—

(i) subparagraphs (A) and (B)—

(I) the term ''insider'' has the same meaning as in section 101(31) of the Bankruptcy Code;

(II) a transfer is made when such transfer is so perfected that a bona fide purchaser from the covered financial company against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the date on which the Corporation is appointed as receiver for the covered financial company, such transfer is made immediately before the date of such appointment; and

(III) the term ''value'' means property, or satisfaction or securing of a present or antecedent debt of the covered financial company, but does not include an unperformed promise to furnish support to the covered financial company; and

(ii) subparagraph (B)—

(I) the covered financial company is presumed to have been insolvent on and during the 90-day period immediately preceding the date of appointment of the Corporation as receiver; and

(II) the term ''insolvent'' has the same meaning as in section 101(32) of the Bankruptcy Code.

(12) Setoff

(A) Generally

Except as otherwise provided in this subchapter, any right of a creditor to offset a mutual debt owed by the creditor to any covered financial company that arose before the Corporation was appointed as receiver for the covered financial company against a claim of such creditor may be asserted if enforceable under applicable noninsolvency law, except to the extent that—

(i) the claim of the creditor against the covered financial company is disallowed;

(ii) the claim was transferred, by an entity other than the covered financial company, to the creditor—

(I) after the Corporation was appointed as receiver of the covered financial company; or

(II)(aa) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company; and

(bb) while the covered financial company was insolvent (except for a setoff in connection with a qualified financial contract); or

(iii) the debt owed to the covered financial company was incurred by the covered financial company—

(I) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company;

(II) while the covered financial company was insolvent; and

(III) for the purpose of obtaining a right of setoff against the covered financial company (except for a setoff in connection with a qualified financial contract).

(B) Insufficiency

(i) In general

Except with respect to a setoff in connection with a qualified financial contract, if a creditor offsets a mutual debt owed to the covered financial company against a claim of the covered financial company on or within the 90-day period preceding the date on which the Corporation is appointed as receiver for the covered financial company, the Corporation may recover from the creditor the amount so offset, to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

(I) the date that is 90 days before the date on which the Corporation is appointed as receiver for the covered financial company; or

(II) the first day on which there is an insufficiency during the 90-day period preceding the date on which the Corporation is appointed as receiver for the covered financial company.

(ii) Definition of insufficiency

In this subparagraph, the term ''insufficiency'' means the amount, if any, by which a claim against the covered financial company exceeds a mutual debt owed to the covered financial company by the holder of such claim.

(C) Insolvency

The term ''insolvent'' has the same meaning as in section 101(32) of the Bankruptcy Code.

(D) Presumption of insolvency

For purposes of this paragraph, the covered financial company is presumed to have been insolvent on and during the 90-day period preceding the date of appointment of the Corporation as receiver.

(E) Limitation

Nothing in this paragraph (12) shall be the basis for any right of setoff where no such right exists under applicable noninsolvency law.

(F) Priority claim

Except as otherwise provided in this subchapter, the Corporation as receiver for the covered financial company may sell or transfer any assets free and clear of the setoff rights of any party, except that such party shall be entitled to a claim, subordinate to the claims payable under subparagraphs (A), (B), (C), and (D) of subsection (b)(1), but senior to all other unsecured liabilities defined in subsection (b)(1)(E), in an amount equal to the value of such setoff rights.

(13) Attachment of assets and other injunctive relief

Subject to paragraph (14), any court of competent jurisdiction may, at the request of the Corporation as receiver for a covered financial company, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation under the control of the court and appointing a trustee to hold such assets.

(14) Standards

(A) Showing

Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (13), without regard to the requirement that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) State proceeding

If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of the State provide substantially similar protections of the right of the parties to due process as provided under Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation pursuant to paragraph (14) may be requested under the laws of such State.

(15) Treatment of claims arising from breach of contracts executed by the Corporation as receiver

Notwithstanding any other provision of this subchapter, any final and non-appealable judgment for monetary damages entered against the Corporation as receiver for a covered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver. Nothing in this paragraph shall be construed to limit the power of a receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(16) Accounting and recordkeeping requirements

(A) In general

The Corporation as receiver for a covered financial company shall, consistent with the

accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each receivership or other disposition of any covered financial company.

(B) Annual accounting or report

With respect to each receivership to which the Corporation is appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.

(C) Availability of reports

Any report prepared pursuant to subparagraph (B) and section 5383(c)(3) of this title shall be made available to the public by the Corporation.

(D) Recordkeeping requirement

(i) In general

The Corporation shall prescribe such regulations and establish such retention schedules as are necessary to maintain the documents and records of the Corporation generated in exercising the authorities of this subchapter and the records of a covered financial company for which the Corporation is appointed receiver, with due regard for—

(I) the avoidance of duplicative record retention; and

(II) the expected evidentiary needs of the Corporation as receiver for a covered financial company and the public regarding the records of covered financial companies.

(ii) Retention of records

Unless otherwise required by applicable Federal law or court order, the Corporation may not, at any time, destroy any records that are subject to clause (i).

(iii) Records defined

As used in this subparagraph, the terms ''records'' and ''records of a covered financial company'' mean any document, book, paper, map, photograph, microfiche, microfilm, computer or electronically-created record generated or maintained by the covered financial company in the course of and necessary to its transaction of business.

(b) Priority of expenses and unsecured claims

(1) In general

Unsecured claims against a covered financial company, or the Corporation as receiver for such covered financial company under this section, that are proven to the satisfaction of the receiver shall have priority in the following order:

(A) Administrative expenses of the receiver.

(B) Any amounts owed to the United States, unless the United States agrees or consents otherwise.

(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in subparagraph (G)), but only to the extent of $11,725 for each individual (as indexed for inflation, by regulation of the Corporation) earned not later than 180 days before the date of appointment of the Corporation as receiver.

(D) Contributions owed to employee benefit plans arising from services rendered not later than 180 days before the date of appointment of the Corporation as receiver, to the extent of the number of employees covered by each such plan, multiplied by $11,725 (as indexed for inflation, by regulation of the Corporation), less the aggregate amount paid to such employees under subparagraph (C), plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan.

(E) Any other general or senior liability of the covered financial company (which is not a liability described under subparagraph (F), (G), or (H)).

(F) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (G) or (H)).

(G) Any wages, salaries, or commissions, including vacation, severance, and sick leave pay earned, owed to senior executives and directors of the covered financial company.

(H) Any obligation to shareholders, members, general partners, limited partners, or other persons, with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company.

(2) Post-receivership financing priority

In the event that the Corporation, as receiver for a covered financial company, is unable to obtain unsecured credit for the covered financial company from commercial sources, the Corporation as receiver may obtain credit or incur debt on the part of the covered financial company, which shall have priority over any or all administrative expenses of the receiver under paragraph (1)(A).

(3) Claims of the United States

Unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities of the covered financial company that count as regulatory capital.

(4) Creditors similarly situated

All claimants of a covered financial company that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the Corporation may take any action (including making payments, subject to subsection (*o*)(1)(D)(i)) that does not comply with this subsection, if—

(A) the Corporation determines that such action is necessary—

(i) to maximize the value of the assets of the covered financial company;

(ii) to initiate and continue operations essential to implementation of the receivership or any bridge financial company;

(iii) to maximize the present value return from the sale or other disposition of

the assets of the covered financial company; or

(iv) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; and

(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in paragraphs (2) and (3) of subsection (d).

(5) Secured claims unaffected

This section shall not affect secured claims or security entitlements in respect of assets or property held by the covered financial company, except to the extent that the security is insufficient to satisfy the claim, and then only with regard to the difference between the claim and the amount realized from the security.

(6) Priority of expenses and unsecured claims in the orderly liquidation of SIPC member

Where the Corporation is appointed as receiver for a covered broker or dealer, unsecured claims against such covered broker or dealer, or the Corporation as receiver for such covered broker or dealer under this section, that are proven to the satisfaction of the receiver under section 5385(e) of this title, shall have the priority prescribed in paragraph (1), except that—

(A) SIPC shall be entitled to recover administrative expenses incurred in performing its responsibilities under section 5385 of this title on an equal basis with the Corporation, in accordance with paragraph (1)(A);

(B) the Corporation shall be entitled to recover any amounts paid to customers or to SIPC pursuant to section 5385(f) of this title, in accordance with paragraph (1)(B);

(C) SIPC shall be entitled to recover any amounts paid out of the SIPC Fund to meet its obligations under section 5385 of this title and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), which claim shall be subordinate to the claims payable under subparagraphs (A) and (B) of paragraph (1), but senior to all other claims; and

(D) the Corporation may, after paying any proven claims to customers under section 5385 of this title and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), and as provided above, pay dividends on other proven claims, in its discretion, and to the extent that funds are available, in accordance with the priorities set forth in paragraph (1).

(c) Provisions relating to contracts entered into before appointment of receiver

(1) Authority to repudiate contracts

In addition to any other rights that a receiver may have, the Corporation as receiver for any covered financial company may disaffirm or repudiate any contract or lease—

(A) to which the covered financial company is a party;

(B) the performance of which the Corporation as receiver, in the discretion of the Corporation, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the Corporation as receiver determines, in the discretion of the Corporation, will promote the orderly administration of the affairs of the covered financial company.

(2) Timing of repudiation

The Corporation, as receiver for any covered financial company, shall determine whether or not to exercise the rights of repudiation under this section within a reasonable period of time.

(3) Claims for damages for repudiation

(A) In general

Except as provided in paragraphs (4), (5), and (6) and in subparagraphs (C), (D), and (E) of this paragraph, the liability of the Corporation as receiver for a covered financial company for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the Corporation as receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) No liability for other damages

For purposes of subparagraph (A), the term ''actual direct compensatory damages'' does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) Measure of damages for repudiation of qualified financial contracts

In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this paragraph and subsection (d), except as otherwise specifically provided in this subsection.

(D) Measure of damages for repudiation or disaffirmance of debt obligation

In the case of any debt for borrowed money or evidenced by a security, actual direct compensatory damages shall be no less than the amount lent plus accrued interest plus any accreted original issue discount as of the date the Corporation was appointed receiver of the covered financial company and, to the extent that an allowed secured claim is secured by property the value of which is greater than the amount of such claim and any accrued interest through the date of repudiation or disaffirmance, such accrued interest pursuant to paragraph (1).

(E) Measure of damages for repudiation or disaffirmance of contingent obligation

In the case of any contingent obligation of a covered financial company consisting of any obligation under a guarantee, letter of credit, loan commitment, or similar credit obligation, the Corporation may, by rule or regulation, prescribe that actual direct compensatory damages shall be no less than the estimated value of the claim as of the date the Corporation was appointed receiver of the covered financial company, as such value is measured based on the likelihood that such contingent claim would become fixed and the probable magnitude thereof.

(4) Leases under which the covered financial company is the lessee

(A) In general

If the Corporation as receiver disaffirms or repudiates a lease under which the covered financial company is the lessee, the receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) Payments of rent

Notwithstanding subparagraph (A), the lessor under a lease to which subparagraph (A) would otherwise apply shall—

(i) be entitled to the contractual rent accruing before the later of the date on which—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this paragraph and subsection (d).

(5) Leases under which the covered financial company is the lessor

(A) In general

If the Corporation as receiver for a covered financial company repudiates an unexpired written lease of real property of the covered financial company under which the covered financial company is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) Provisions applicable to lessee remaining in possession

If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of subparagraph (A)—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the covered financial company under the lease after such date; and

(ii) the Corporation as receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II).

(6) Contracts for the sale of real property

(A) In general

If the receiver repudiates any contract (which meets the requirements of subsection (a)(6)) for the sale of real property, and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) Provisions applicable to purchaser remaining in possession

If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of subparagraph (A)—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the covered financial company under the contract; and

(ii) the Corporation as receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) Assignment and sale allowed

(i) In general

No provision of this paragraph shall be construed as limiting the right of the Corporation as receiver to assign the contract described in subparagraph (A) and sell the

property, subject to the contract and the provisions of this paragraph.

(ii) No liability after assignment and sale

If an assignment and sale described in clause (i) is consummated, the Corporation as receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) Provisions applicable to service contracts

(A) Services performed before appointment

In the case of any contract for services between any person and any covered financial company for which the Corporation has been appointed receiver, any claim of such person for services performed before the date of appointment shall be—

(i) a claim to be paid in accordance with subsections (a), (b), and (d); and

(ii) deemed to have arisen as of the date on which the receiver was appointed.

(B) Services performed after appointment and prior to repudiation

If, in the case of any contract for services described in subparagraph (A), the Corporation as receiver accepts performance by the other person before making any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the receivership.

(C) Acceptance of performance no bar to subsequent repudiation

The acceptance by the Corporation as receiver for services referred to in subparagraph (B) in connection with a contract described in subparagraph (B) shall not affect the right of the Corporation as receiver to repudiate such contract under this section at any time after such performance.

(8) Certain qualified financial contracts

(A) Rights of parties to contracts

Subject to subsection (a)(8) and paragraphs (9) and (10) of this subsection, and notwithstanding any other provision of this section, any other provision of Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right that such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which arises upon the date of appointment of the Corporation as receiver for such covered financial company or at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); or

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts or agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) Applicability of other provisions

Subsection (a)(8) shall apply in the case of any judicial action or proceeding brought against the Corporation as receiver referred to in subparagraph (A), or the subject covered financial company, by any party to a contract or agreement described in subparagraph (A)(i) with such covered financial company.

(C) Certain transfers not avoidable

(i) In general

Notwithstanding subsection (a)(11), (a)(12), or (c)(12), section 91 of this title, or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as the Corporation or as receiver for a covered financial company, may not avoid any transfer of money or other property in connection with any qualified financial contract with a covered financial company.

(ii) Exception for certain transfers

Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a covered financial company if the transferee had actual intent to hinder, delay, or defraud such company, the creditors of such company, or the Corporation as receiver appointed for such company.

(D) Certain contracts and agreements defined

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

(i) Qualified financial contract

The term ''qualified financial contract'' means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) Securities contract

The term ''securities contract''—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (wheth-

er or not such repurchase or reverse repurchase transaction is a ''repurchase agreement'', as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit or mortgage loans or interests therein (including any interest therein or based on the value thereof) or an option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II)));

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (X), other than subclause (II), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (X), other than subclause (II); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) Commodity contract

The term ''commodity contract'' means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) Forward contract

The term ''forward contract'' means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date that is more than 2 days after the date on which

the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a ''repurchase agreement'', as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) Repurchase agreement

The term ''repurchase agreement'' (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as such term is defined in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c]), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (which, for purposes of this clause, means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development, as determined by regulation or order adopted by the Board of Governors), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan, unless the Corporation determines, by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vi) Swap agreement

The term ''swap agreement'' means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and

that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in any of subclauses (I) through (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such clause.

(vii) Definitions relating to default

When used in this paragraph and paragraphs (9) and (10)—

(I) the term ''default'' means, with respect to a covered financial company, any adjudication or other official decision by any court of competent jurisdiction, or other public authority pursuant to which the Corporation has been appointed receiver; and

(II) the term ''in danger of default'' means a covered financial company with respect to which the Corporation or appropriate State authority has determined that—

(aa) in the opinion of the Corporation or such authority—

(AA) the covered financial company is not likely to be able to pay its obligations in the normal course of business; and

(BB) there is no reasonable prospect that the covered financial company will be able to pay such obligations without Federal assistance; or

(bb) in the opinion of the Corporation or such authority—

(AA) the covered financial company has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(BB) there is no reasonable prospect that the capital will be replenished without Federal assistance.

(viii) Treatment of master agreement as one agreement

Any master agreement for any contract or agreement described in any of clauses (i) through (vi) (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(ix) Transfer

The term ''transfer'' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the covered financial company.

(x) Person

The term ''person'' includes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1.

(E) Clarification

No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract or to disaffirm or repudiate any such contract in accordance with this subsection.

(F) Walkaway clauses not effective

(i) In general

Notwithstanding the provisions of subparagraph (A) of this paragraph and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 [12 U.S.C. 4403, 4404], no walkaway clause shall be enforceable in a qualified financial contract of a covered financial company in default.

(ii) Limited suspension of certain obligations

In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time at which the Corporation is appointed as receiver until the earlier of—

(I) the time at which such party receives notice that such contract has been transferred pursuant to paragraph (10)(A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the Corporation as receiver.

(iii) Walkaway clause defined

For purposes of this subparagraph, the term ''walkaway clause'' means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of the status of such party as a nondefaulting party in connection with the insolvency of a covered financial company that is a party to the contract or the appointment of or the exercise of rights or powers by the Corporation as receiver for such covered financial company, and not as a result of the exercise by a party of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(G) Certain obligations to clearing organizations

In the event that the Corporation has been appointed as receiver for a covered financial company which is a party to any qualified financial contract cleared by or subject to the rules of a clearing organization (as defined in paragraph (9)(D)), the receiver shall use its best efforts to meet all margin, collateral, and settlement obligations of the covered financial company that arise under qualified financial contracts (other than any margin, collateral, or settlement obligation that is not enforceable against the receiver under paragraph (8)(F)(i) or paragraph (10)(B)), as required by the rules of the clearing organization when due. Notwithstanding any other provision of this subchapter, if the receiver fails to satisfy any such margin, collateral, or settlement obligations under the rules of the clearing organization, the clearing organization shall have the immediate right to exercise, and shall not be stayed from exercising, all of its rights and remedies under its rules and applicable law with respect to any qualified financial contract of the covered financial company, including, without limitation, the right to liquidate all positions and collateral of such covered financial company under the company's qualified financial contracts, and suspend or cease to act for such covered financial company, all in accordance with the rules of the clearing organization.

(H) Recordkeeping

(i) Joint rulemaking

The Federal primary financial regulatory agencies shall jointly prescribe regulations requiring that financial companies maintain such records with respect to qualified financial contracts (including market valuations) that the Federal primary financial regulatory agencies determine to be necessary or appropriate in order to assist the Corporation as receiver for a covered financial company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraph (9) or (10).

(ii) Time frame

The Federal primary financial regulatory agencies shall prescribe joint final or interim final regulations not later than 24 months after July 21, 2010.

(iii) Back-up rulemaking authority

If the Federal primary financial regulatory agencies do not prescribe joint final or interim final regulations within the time frame in clause (ii), the Chairperson of the Council shall prescribe, in consultation with the Corporation, the regulations required by clause (i).

(iv) Categorization and tiering

The joint regulations prescribed under clause (i) shall, as appropriate, differentiate among financial companies by taking into consideration their size, risk, complexity, leverage, frequency and dollar amount of qualified financial contracts, interconnectedness to the financial system, and any other factors deemed appropriate.

(9) Transfer of qualified financial contracts

(A) In general

In making any transfer of assets or liabilities of a covered financial company in default, which includes any qualified financial contract, the Corporation as receiver for such covered financial company shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the covered financial company in default;

(II) all claims of such person or any affiliate of such person against such covered financial company under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such company);

(III) all claims of such covered financial company against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other

credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) Transfer to foreign bank, financial institution, or branch or agency thereof

In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the Corporation as receiver for the covered financial company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) Transfer of contracts subject to the rules of a clearing organization

In the event that the Corporation as receiver for a financial institution transfers any qualified financial contract and related claims, property, or credit enhancement pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) Definitions

For purposes of this paragraph—

(i) the term ''financial institution'' means a broker or dealer, a depository institution, a futures commission merchant, a bridge financial company, or any other institution determined by the Corporation, by regulation, to be a financial institution; and

(ii) the term ''clearing organization'' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 [12 U.S.C. 4402].

(10) Notification of transfer

(A) In general

(i) Notice

The Corporation shall provide notice in accordance with clause (ii), if—

(I) the Corporation as receiver for a covered financial company in default or in danger of default transfers any assets or liabilities of the covered financial company; and

(II) the transfer includes any qualified financial contract.

(ii) Timing

The Corporation as receiver for a covered financial company shall notify any person who is a party to any contract described in clause (i) of such transfer not later than 5:00 p.m. (eastern time) on the business day following the date of the appointment of the Corporation as receiver.

(B) Certain rights not enforceable

(i) Receivership

A person who is a party to a qualified financial contract with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) solely by reason of or incidental to the appointment under this section of the Corporation as receiver for the covered financial company (or the insolvency or financial condition of the covered financial company for which the Corporation has been appointed as receiver)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) Notice

For purposes of this paragraph, the Corporation as receiver for a covered financial company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered financial company, if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) Treatment of bridge financial company

For purposes of paragraph (9), a bridge financial company shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(D) Business day defined

For purposes of this paragraph, the term ''business day'' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) Disaffirmance or repudiation of qualified financial contracts

In exercising the rights of disaffirmance or repudiation of the Corporation as receiver with respect to any qualified financial contract to which a covered financial company is a party, the Corporation shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the covered financial company in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) Certain security and customer interests not avoidable

No provision of this subsection shall be construed as permitting the avoidance of any—

(A) legally enforceable or perfected security interest in any of the assets of any covered financial company, except in accordance with subsection (a)(11); or

(B) legally enforceable interest in customer property, security entitlements in respect of assets or property held by the covered financial company for any security entitlement holder.

(13) Authority to enforce contracts

(A) In general

The Corporation, as receiver for a covered financial company, may enforce any contract, other than a liability insurance contract of a director or officer, a financial institution bond entered into by the covered financial company, notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency, the appointment of or the exercise of rights or powers by the Corporation as receiver, the filing of the petition pursuant to section 5382(a)(1) of this title, or the issuance of the recommendations or determination, or any actions or events occurring in connection therewith or as a result thereof, pursuant to section 5383 of this title.

(B) Certain rights not affected

No provision of this paragraph may be construed as impairing or affecting any right of the Corporation as receiver to enforce or recover under a liability insurance contract of a director or officer or financial institution bond under other applicable law.

(C) Consent requirement and ipso facto clauses

(i) In general

Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the covered financial company is a party (and no provision in any such contract providing for such default, termination, or acceleration shall be enforceable), or to obtain possession of or exercise control over any property of the covered financial company or affect any contractual rights of the covered financial company, without the consent of the Corporation as receiver for the covered financial company during the 90 day period beginning from the appointment of the Corporation as receiver.

(ii) Exceptions

No provision of this subparagraph shall apply to a director or officer liability insurance contract or a financial institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the Corporation as receiver to fail to comply with otherwise enforceable provisions of such contract.

(D) Contracts to extend credit

Notwithstanding any other provision in this subchapter, if the Corporation as receiver enforces any contract to extend credit to the covered financial company or bridge financial company, any valid and enforceable obligation to repay such debt shall be paid by the Corporation as receiver, as an administrative expense of the receivership.

(14) Exception for Federal reserve banks and Corporation security interest

No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal reserve bank or the Corporation to any covered financial company; or

(B) any security interest in the assets of the covered financial company securing any such extension of credit.

(15) Savings clause

The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000 [7 U.S.C. 27 to 27f], the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)]), and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(16) Enforcement of contracts guaranteed by the covered financial company

(A) In general

The Corporation, as receiver for a covered financial company or as receiver for a subsidiary of a covered financial company (including an insured depository institution) shall have the power to enforce contracts of subsidiaries or affiliates of the covered financial company, the obligations under which are guaranteed or otherwise supported by or linked to the covered financial company, notwithstanding any contractual right to cause the termination, liquidation, or acceleration of such contracts based solely on the insolvency, financial condition, or receivership of the covered financial company, if—

(i) such guaranty or other support and all related assets and liabilities are transferred to and assumed by a bridge financial company or a third party (other than a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding) within the same period of time as the Corporation is entitled to transfer the qualified financial contracts of such covered financial company; or

(ii) the Corporation, as receiver, otherwise provides adequate protection with respect to such obligations.

(B) Rule of construction

For purposes of this paragraph, a bridge financial company shall not be considered to

be a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(d) Valuation of claims in default

(1) In general

Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method utilized by the Corporation for a covered financial company, including transactions authorized under subsection (h), this subsection shall govern the rights of the creditors of any such covered financial company.

(2) Maximum liability

The maximum liability of the Corporation, acting as receiver for a covered financial company or in any other capacity, to any person having a claim against the Corporation as receiver or the covered financial company for which the Corporation is appointed shall equal the amount that such claimant would have received if—

(A) the Corporation had not been appointed receiver with respect to the covered financial company; and

(B) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code, or any similar provision of State insolvency law applicable to the covered financial company.

(3) Special provision for orderly liquidation by SIPC

The maximum liability of the Corporation, acting as receiver or in its corporate capacity for any covered broker or dealer to any customer of such covered broker or dealer, with respect to customer property of such customer, shall be—

(A) equal to the amount that such customer would have received with respect to such customer property in a case initiated by SIPC under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

(B) determined as of the close of business on the date on which the Corporation is appointed as receiver.

(4) Additional payments authorized

(A) In general

Subject to subsection (*o*)(1)(D)(i), the Corporation, with the approval of the Secretary, may make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of the covered financial company, if the Corporation determines that such payments or credits are necessary or appropriate to minimize losses to the Corporation as receiver from the orderly liquidation of the covered financial company under this section.

(B) Limitations

(i) Prohibition

The Corporation shall not make any payments or credit amounts to any claimant or category of claimants that would result in any claimant receiving more than the face value amount of any claim that is proven to the satisfaction of the Corporation.

(ii) No obligation

Notwithstanding any other provision of Federal or State law, or the Constitution of any State, the Corporation shall not be obligated, as a result of having made any payment under subparagraph (A) or credited any amount described in subparagraph (A) to or with respect to, or for the account, of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(C) Manner of payment

The Corporation may make payments or credit amounts under subparagraph (A) directly to the claimants or may make such payments or credit such amounts to a company other than a covered financial company or a bridge financial company established with respect thereto in order to induce such other company to accept liability for such claims.

(e) Limitation on court action

Except as provided in this subchapter, no court may take any action to restrain or affect the exercise of powers or functions of the receiver hereunder, and any remedy against the Corporation or receiver shall be limited to money damages determined in accordance with this subchapter.

(f) Liability of directors and officers

(1) In general

A director or officer of a covered financial company may be held personally liable for monetary damages in any civil action described in paragraph (2) by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

(A) acting as receiver for such covered financial company;

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by the Corporation as receiver; or

(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a covered financial company or its affiliate in connection with assistance provided under this subchapter.

(2) Actions covered

Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) Savings clause

Nothing in this subsection shall impair or affect any right of the Corporation under other applicable law.

(g) Damages

In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company, or any other party employed by or providing services to a covered financial company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the covered financial company shall include principal losses and appropriate interest.

(h) Bridge financial companies

(1) Organization

(A) Purpose

The Corporation, as receiver for one or more covered financial companies or in anticipation of being appointed receiver for one or more covered financial companies, may organize one or more bridge financial companies in accordance with this subsection.

(B) Authorities

Upon the creation of a bridge financial company under subparagraph (A) with respect to a covered financial company, such bridge financial company may—

(i) assume such liabilities (including liabilities associated with any trust or custody business, but excluding any liabilities that count as regulatory capital) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate;

(ii) purchase such assets (including assets associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this section.

(2) Charter and establishment

(A) Establishment

Except as provided in subparagraph (H), where the covered financial company is a covered broker or dealer, the Corporation, as receiver for a covered financial company, may grant a Federal charter to and approve articles of association for one or more bridge financial company or companies, with respect to such covered financial company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate in accordance with, and subject to, such charter, articles, and this section.

(B) Management

Upon its establishment, a bridge financial company shall be under the management of a board of directors appointed by the Corporation.

(C) Articles of association

The articles of association and organization certificate of a bridge financial company shall have such terms as the Corporation may provide, and shall be executed by such representatives as the Corporation may designate.

(D) Terms of charter; rights and privileges

Subject to and in accordance with the provisions of this subsection, the Corporation shall—

(i) establish the terms of the charter of a bridge financial company and the rights, powers, authorities, and privileges of a bridge financial company granted by the charter or as an incident thereto; and

(ii) provide for, and establish the terms and conditions governing, the management (including the bylaws and the number of directors of the board of directors) and operations of the bridge financial company.

(E) Transfer of rights and privileges of covered financial company

(i) In general

Notwithstanding any other provision of Federal or State law, the Corporation may provide for a bridge financial company to succeed to and assume any rights, powers, authorities, or privileges of the covered financial company with respect to which the bridge financial company was established and, upon such determination by the Corporation, the bridge financial company shall immediately and by operation of law succeed to and assume such rights, powers, authorities, and privileges.

(ii) Effective without approval

Any succession to or assumption by a bridge financial company of rights, powers, authorities, or privileges of a covered financial company under clause (i) or otherwise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(F) Corporate governance and election and designation of body of law

To the extent permitted by the Corporation and consistent with this section and any rules, regulations, or directives issued by the Corporation under this section, a bridge financial company may elect to follow the corporate governance practices and procedures that are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the State of incorporation or organization of the covered financial company with respect to which the bridge financial company was established, as such law may be amended from time to time.

(G) Capital

(i) Capital not required

Notwithstanding any other provision of Federal or State law, a bridge financial company may, if permitted by the Corporation, operate without any capital or surplus, or with such capital or surplus as the Corporation may in its discretion determine to be appropriate.

(ii) No contribution by the Corporation required

The Corporation is not required to pay capital into a bridge financial company or to issue any capital stock on behalf of a bridge financial company established under this subsection.

(iii) Authority

If the Corporation determines that such action is advisable, the Corporation may cause capital stock or other securities of a bridge financial company established with respect to a covered financial company to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(iv) Operating funds in lieu of capital and implementation plan

Upon the organization of a bridge financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge financial company, subject to the plan described in subsection (n)(9), funds for the operation of the bridge financial company in lieu of capital.

(H) Bridge brokers or dealers

(i) In general

The Corporation, as receiver for a covered broker or dealer, may approve articles of association for one or more bridge financial companies with respect to such covered broker or dealer, which bridge financial company or companies shall, by operation of law and immediately upon approval of its articles of association—

(I) be established and deemed registered with the Commission under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] and a member of SIPC;

(II) operate in accordance with such articles and this section; and

(III) succeed to any and all registrations and memberships of the covered financial company with or in any self-regulatory organizations.

(ii) Other requirements

Except as provided in clause (i), and notwithstanding any other provision of this section, the bridge financial company shall be subject to the Federal securities laws and all requirements with respect to being a member of a self-regulatory organization, unless exempted from any such requirements by the Commission, as is necessary or appropriate in the public interest or for the protection of investors.

(iii) Treatment of customers

Except as otherwise provided by this subchapter, any customer of the covered broker or dealer whose account is transferred to a bridge financial company shall have all the rights, privileges, and protections under section 5385(f) of this title and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), that such customer would have had if the account were not transferred from the covered financial company under this subparagraph.

(iv) Operation of bridge brokers or dealers

Notwithstanding any other provision of this subchapter, the Corporation shall not operate any bridge financial company created by the Corporation under this subchapter with respect to a covered broker or dealer in such a manner as to adversely affect the ability of customers to promptly access their customer property in accordance with applicable law.

(3) Interests in and assets and obligations of covered financial company

Notwithstanding paragraph (1) or (2) or any other provision of law—

(A) a bridge financial company shall assume, acquire, or succeed to the assets or liabilities of a covered financial company (including the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Corporation to the bridge financial company in accordance with, and subject to the restrictions set forth in, paragraph (1)(B); and

(B) a bridge financial company shall not assume, acquire, or succeed to any obligation that a covered financial company for which the Corporation has been appointed receiver may have to any shareholder, member, general partner, limited partner, or other person with an interest in the equity of the covered financial company that arises as a result of the status of that person having an equity claim in the covered financial company.

(4) Bridge financial company treated as being in default for certain purposes

A bridge financial company shall be treated as a covered financial company in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(5) Transfer of assets and liabilities

(A) Authority of Corporation

The Corporation, as receiver for a covered financial company, may transfer any assets and liabilities of a covered financial company (including any assets or liabilities associated with any trust or custody business) to one or more bridge financial companies, in accordance with and subject to the restrictions of paragraph (1).

(B) Subsequent transfers

At any time after the establishment of a bridge financial company with respect to a covered financial company, the Corporation, as receiver, may transfer any assets and liabilities of such covered financial company as the Corporation may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

(C) Treatment of trust or custody business

For purposes of this paragraph, the trust or custody business, including fiduciary ap-

pointments, held by any covered financial company is included among its assets and liabilities.

(D) Effective without approval

The transfer of any assets or liabilities, including those associated with any trust or custody business of a covered financial company, to a bridge financial company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(E) Equitable treatment of similarly situated creditors

The Corporation shall treat all creditors of a covered financial company that are similarly situated under subsection (b)(1), in a similar manner in exercising the authority of the Corporation under this subsection to transfer any assets or liabilities of the covered financial company to one or more bridge financial companies established with respect to such covered financial company, except that the Corporation may take any action (including making payments, subject to subsection (*o*)(1)(D)(i)) that does not comply with this subparagraph, if—

(i) the Corporation determines that such action is necessary—

(I) to maximize the value of the assets of the covered financial company;

(II) to maximize the present value return from the sale or other disposition of the assets of the covered financial company; or

(III) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; and

(ii) all creditors that are similarly situated under subsection (b)(1) receive not less than the amount provided under paragraphs (2) and (3) of subsection (d).

(F) Limitation on transfer of liabilities

Notwithstanding any other provision of law, the aggregate amount of liabilities of a covered financial company that are transferred to, or assumed by, a bridge financial company from a covered financial company may not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or purchased by, the bridge financial company from the covered financial company.

(6) Stay of judicial action

Any judicial action to which a bridge financial company becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a covered financial company shall be stayed from further proceedings for a period of not longer than 45 days (or such longer period as may be agreed to upon the consent of all parties) at the request of the bridge financial company.

(7) Agreements against interest of the bridge financial company

No agreement that tends to diminish or defeat the interest of the bridge financial company in any asset of a covered financial company acquired by the bridge financial company shall be valid against the bridge financial company, unless such agreement—

(A) is in writing;

(B) was executed by an authorized officer or representative of the covered financial company or confirmed in the ordinary course of business by the covered financial company; and

(C) has been on the official record of the company, since the time of its execution, or with which, the party claiming under the agreement provides documentation of such agreement and its authorized execution or confirmation by the covered financial company that is acceptable to the receiver.

(8) No Federal status

(A) Agency status

A bridge financial company is not an agency, establishment, or instrumentality of the United States.

(B) Employee status

Representatives for purposes of paragraph (1)(B), directors, officers, employees, or agents of a bridge financial company are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge financial company shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5 or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge financial company in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(9) Funding authorized

The Corporation may, subject to the plan described in subsection (n)(9), provide funding to facilitate any transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13) with respect to any bridge financial company, or facilitate the acquisition by a bridge financial company of any assets, or the assumption of any liabilities, of a covered financial company for which the Corporation has been appointed receiver.

(10) Exempt tax status

Notwithstanding any other provision of Federal or State law, a bridge financial company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(11) Federal agency approval; antitrust review

If a transaction involving the merger or sale of a bridge financial company requires ap-

proval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the Attorney General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a notification is required under section 18a of title 15 with respect to such transaction, the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under section 18a(b)(2) of title 15, or extended under section 18a(e)(2) of title 15.

(12) Duration of bridge financial company

Subject to paragraphs (13) and (14), the status of a bridge financial company as such shall terminate at the end of the 2-year period following the date on which it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for no more than 3 additional 1-year periods.

(13) Termination of bridge financial company status

The status of any bridge financial company as such shall terminate upon the earliest of—

(A) the date of the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge financial company to a company other than the Corporation and other than another bridge financial company;

(C) the sale of 80 percent, or more, of the capital stock of the bridge financial company to a person other than the Corporation and other than another bridge financial company;

(D) at the election of the Corporation, either the assumption of all or substantially all of the liabilities of the bridge financial company by a company that is not a bridge financial company, or the acquisition of all or substantially all of the assets of the bridge financial company by a company that is not a bridge financial company, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (12), or the earlier dissolution of the bridge financial company, as provided in paragraph (15).

(14) Effect of termination events

(A) Merger or consolidation

A merger or consolidation, described in paragraph (13)(A) shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge financial company shall be treated as a corporation organized under the laws of the State of Delaware (unless the law of another State has been selected by the bridge financial company in accordance with paragraph (2)(F)), and the Corporation shall be treated as the sole shareholder thereof, notwithstanding any other provision of State or Federal law.

(B) Charter conversion

Following the sale of a majority of the capital stock of the bridge financial company, as provided in paragraph (13)(B), the Corporation may amend the charter of the bridge financial company to reflect the termination of the status of the bridge financial company as such, whereupon the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, such State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers, and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(C) Sale of stock

Following the sale of 80 percent or more of the capital stock of a bridge financial company, as provided in paragraph (13)(C), the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, the State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(D) Assumption of liabilities and sale of assets

Following the assumption of all or substantially all of the liabilities of the bridge financial company, or the sale of all or substantially all of the assets of the bridge financial company, as provided in paragraph (13)(D), at the election of the Corporation, the bridge financial company may retain its status as such for the period provided in paragraph (12) or may be dissolved at the election of the Corporation.

(E) Amendments to charter

Following the consummation of a transaction described in subparagraph (A), (B),

(C), or (D) of paragraph (13), the charter of the resulting company shall be amended to reflect the termination of bridge financial company status, if appropriate.

(15) Dissolution of bridge financial company

(A) In general

Notwithstanding any other provision of Federal or State law, if the status of a bridge financial company as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (13)—

(i) the Corporation may, in its discretion, dissolve the bridge financial company in accordance with this paragraph at any time; and

(ii) the Corporation shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date on which the bridge financial company was chartered, or any extension thereof, as provided in paragraph (12).

(B) Procedures

The Corporation shall remain the receiver for a bridge financial company for the purpose of dissolving the bridge financial company. The Corporation as receiver for a bridge financial company shall wind up the affairs of the bridge financial company in conformity with the provisions of law relating to the liquidation of covered financial companies under this subchapter. With respect to any such bridge financial company, the Corporation as receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to the Corporation as receiver for a covered financial company under this subchapter and, notwithstanding any other provision of law, in the exercise of such rights, powers, and privileges, the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(16) Authority to obtain credit

(A) In general

A bridge financial company may obtain unsecured credit and issue unsecured debt.

(B) Inability to obtain credit

If a bridge financial company is unable to obtain unsecured credit or issue unsecured debt, the Corporation may authorize the obtaining of credit or the issuance of debt by the bridge financial company—

(i) with priority over any or all of the obligations of the bridge financial company;

(ii) secured by a lien on property of the bridge financial company that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property of the bridge financial company that is subject to a lien.

(C) Limitations

(i) In general

The Corporation, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge financial company that is secured by a senior or equal lien on property of the bridge financial company that is subject to a lien, only if—

(I) the bridge financial company is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(ii) Hearing

The hearing required pursuant to this subparagraph shall be before a court of the United States, which shall have jurisdiction to conduct such hearing and to authorize a bridge financial company to obtain secured credit under clause (i).

(D) Burden of proof

In any hearing under this paragraph, the Corporation has the burden of proof on the issue of adequate protection.

(E) Qualified financial contracts

No credit or debt obtained or issued by a bridge financial company may contain terms that impair the rights of a counterparty to a qualified financial contract upon a default by the bridge financial company, other than the priority of such counterparty's unsecured claim (after the exercise of rights) relative to the priority of the bridge financial company's obligations in respect of such credit or debt, unless such counterparty consents in writing to any such impairment.

(17) Effect on debts and liens

The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(i) Sharing records

If the Corporation has been appointed as receiver for a covered financial company, other Federal regulators shall make all records relating to the covered financial company available to the Corporation, which may be used by the Corporation in any manner that the Corporation determines to be appropriate.

(j) Expedited procedures for certain claims

(1) Time for filing notice of appeal

The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of the covered financial company, or any other person employed by or providing services to a covered financial company, shall be filed not later than 30 days after the date of entry of the order. The hearing of

the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) Scheduling

The court shall expedite the consideration of any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company or any other person employed by or providing services to a covered financial company. As far as practicable, the court shall give such case priority on its docket.

(3) Judicial discretion

The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(k) Foreign investigations

The Corporation, as receiver for any covered financial company, and for purposes of carrying out any power, authority, or duty with respect to a covered financial company—

(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 1818(v) of this title, as if the covered financial company were an insured depository institution, the Corporation were the appropriate Federal banking agency for the company, and any foreign financial authority were the foreign banking authority; and

(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign financial authorities.

(*l*) Prohibition on entering secrecy agreements and protective orders

The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as receiver for a covered financial company.

(m) Liquidation of certain covered financial companies or bridge financial companies

(1) In general

Except as specifically provided in this section, and notwithstanding any other provision of law, the Corporation, in connection with the liquidation of any covered financial company or bridge financial company with respect to which the Corporation has been appointed as receiver, shall—

(A) in the case of any covered financial company or bridge financial company that is a stockbroker, but is not a member of the Securities Investor Protection Corporation, apply the provisions of subchapter III of chapter 7 of the Bankruptcy Code, in respect of the distribution to any customer of all customer name security and customer property and member property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter; or

(B) in the case of any covered financial company or bridge financial company that is a commodity broker, apply the provisions of subchapter IV of chapter 7[3] the Bankruptcy Code, in respect of the distribution to any customer of all customer property and member property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter.

(2) Definitions

For purposes of this subsection—

(A) the terms ''customer'', ''customer name security'', and ''customer property and member property'' have the same meanings as in sections 741 and 761 of title 11; and

(B) the terms ''commodity broker'' and ''stockbroker'' have the same meanings as in section 101 of the Bankruptcy Code.

(n) Orderly Liquidation Fund

(1) Establishment

There is established in the Treasury of the United States a separate fund to be known as the ''Orderly Liquidation Fund'', which shall be available to the Corporation to carry out the authorities contained in this subchapter, for the cost of actions authorized by this subchapter, including the orderly liquidation of covered financial companies, payment of administrative expenses, the payment of principal and interest by the Corporation on obligations issued under paragraph (5), and the exercise of the authorities of the Corporation under this subchapter.

(2) Proceeds

Amounts received by the Corporation, including assessments received under subsection (*o*), proceeds of obligations issued under paragraph (5), interest and other earnings from investments, and repayments to the Corporation by covered financial companies, shall be deposited into the Fund.

(3) Management

The Corporation shall manage the Fund in accordance with this subsection and the policies and procedures established under section 5383(d) of this title.

(4) Investments

At the request of the Corporation, the Secretary may invest such portion of amounts held in the Fund that are not, in the judgment of the Corporation, required to meet the current needs of the Corporation, in obligations of the United States having suitable maturities, as determined by the Corporation. The interest on and the proceeds from the sale or redemption of such obligations shall be credited to the Fund.

(5) Authority to issue obligations

(A) Corporation authorized to issue obligations

Upon appointment by the Secretary of the Corporation as receiver for a covered finan-

[3] So in original. Probably should be followed by ''of''.

cial company, the Corporation is authorized to issue obligations to the Secretary.

(B) Secretary authorized to purchase obligations

The Secretary may, under such terms and conditions as the Secretary may require, purchase or agree to purchase any obligations issued under subparagraph (A), and for such purpose, the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include such purchases.

(C) Interest rate

Each purchase of obligations by the Secretary under this paragraph shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity, plus an interest rate surcharge to be determined by the Secretary, which shall be greater than the difference between—

(i) the current average rate on an index of corporate obligations of comparable maturity; and

(ii) the current average rate on outstanding marketable obligations of the United States of comparable maturity.

(D) Secretary authorized to sell obligations

The Secretary may sell, upon such terms and conditions as the Secretary shall determine, any of the obligations acquired under this paragraph.

(E) Public debt transactions

All purchases and sales by the Secretary of such obligations under this paragraph shall be treated as public debt transactions of the United States, and the proceeds from the sale of any obligations acquired by the Secretary under this paragraph shall be deposited into the Treasury of the United States as miscellaneous receipts.

(6) Maximum obligation limitation

The Corporation may not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obligations outstanding under this subsection for each covered financial company would exceed—

(A) an amount that is equal to 10 percent of the total consolidated assets of the covered financial company, based on the most recent financial statement available, during the 30-day period immediately following the date of appointment of the Corporation as receiver (or a shorter time period if the Corporation has calculated the amount described under subparagraph (B)); and

(B) the amount that is equal to 90 percent of the fair value of the total consolidated assets of each covered financial company that are available for repayment, after the time period described in subparagraph (A).

(7) Rulemaking

The Corporation and the Secretary shall jointly, in consultation with the Council, prescribe regulations governing the calculation of the maximum obligation limitation defined in this paragraph.

(8) Rule of construction

(A) In general

Nothing in this section shall be construed to affect the authority of the Corporation under subsection (a) or (b) of section 1824 of this title or section 1825(c)(5) of this title, the management of the Deposit Insurance Fund by the Corporation, or the resolution of insured depository institutions, provided that—

(i) the authorities of the Corporation contained in this subchapter shall not be used to assist the Deposit Insurance Fund or to assist any financial company under applicable law other than this Act;

(ii) the authorities of the Corporation relating to the Deposit Insurance Fund, or any other responsibilities of the Corporation under applicable law other than this subchapter, shall not be used to assist a covered financial company pursuant to this subchapter; and

(iii) the Deposit Insurance Fund may not be used in any manner to otherwise circumvent the purposes of this subchapter.

(B) Valuation

For purposes of determining the amount of obligations under this subsection—

(i) the Corporation shall include as an obligation any contingent liability of the Corporation pursuant to this subchapter; and

(ii) the Corporation shall value any contingent liability at its expected cost to the Corporation.

(9) Orderly liquidation and repayment plans

(A) Orderly liquidation plan

Amounts in the Fund shall be available to the Corporation with regard to a covered financial company for which the Corporation is appointed receiver after the Corporation has developed an orderly liquidation plan that is acceptable to the Secretary with regard to such covered financial company, including the provision and use of funds, including taking any actions specified under section 5384(d) of this title and subsection (h)(2)(G)(iv) and (h)(9) of this section, and payments to third parties. The orderly liquidation plan shall take into account actions to avoid or mitigate potential adverse effects on low income, minority, or underserved communities affected by the failure of the covered financial company, and shall provide for coordination with the primary financial regulatory agencies, as appropriate, to ensure that such actions are taken. The Corporation may, at any time, amend any orderly liquidation plan approved by the Secretary with the concurrence of the Secretary.

(B) Mandatory repayment plan

(i) In general

No amount authorized under paragraph (6)(B) may be provided by the Secretary to the Corporation under paragraph (5), unless an agreement is in effect between the Secretary and the Corporation that—

(I) provides a specific plan and schedule to achieve the repayment of the outstanding amount of any borrowing under paragraph (5); and

(II) demonstrates that income to the Corporation from the liquidated assets of the covered financial company and assessments under subsection (*o*) will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance within the time provided in subsection (*o*)(1)(B).

(ii) Consultation with and report to Congress

The Secretary and the Corporation shall—

(I) consult with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the terms of any repayment schedule agreement; and

(II) submit a copy of the repayment schedule agreement to the Committees described in subclause (I) before the end of the 30-day period beginning on the date on which any amount is provided by the Secretary to the Corporation under paragraph (5).

(10) Implementation expenses

(A) In general

Reasonable implementation expenses of the Corporation incurred after July 21, 2010, shall be treated as expenses of the Council.

(B) Requests for reimbursement

The Corporation shall periodically submit a request for reimbursement for implementation expenses to the Chairperson of the Council, who shall arrange for prompt reimbursement to the Corporation of reasonable implementation expenses.

(C) Definition

As used in this paragraph, the term ''implementation expenses''—

(i) means costs incurred by the Corporation beginning on July 21, 2010, as part of its efforts to implement this subchapter that do not relate to a particular covered financial company; and

(ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the Corporation consistent with carrying out this subchapter.

(*o*) Assessments

(1) Risk-based assessments

(A) Eligible financial companies defined

For purposes of this subsection, the term ''eligible financial company'' means any bank holding company with total consolidated assets equal to or greater than $50,000,000,000 and any nonbank financial company supervised by the Board of Governors.

(B) Assessments

The Corporation shall charge one or more risk-based assessments in accordance with the provisions of subparagraph (D), if such assessments are necessary to pay in full the obligations issued by the Corporation to the Secretary under this subchapter within 60 months of the date of issuance of such obligations.

(C) Extensions authorized

The Corporation may, with the approval of the Secretary, extend the time period under subparagraph (B), if the Corporation determines that an extension is necessary to avoid a serious adverse effect on the financial system of the United States.

(D) Application of assessments

To meet the requirements of subparagraph (B), the Corporation shall—

(i) impose assessments, as soon as practicable, on any claimant that received additional payments or amounts from the Corporation pursuant to subsection (b)(4), (d)(4), or (h)(5)(E), except for payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company, to recover on a cumulative basis, the entire difference between—

(I) the aggregate value the claimant received from the Corporation on a claim pursuant to this subchapter (including pursuant to subsection[4] (b)(4), (d)(4), and (h)(5)(E)), as of the date on which such value was received; and

(II) the value the claimant was entitled to receive from the Corporation on such claim solely from the proceeds of the liquidation of the covered financial company under this subchapter; and

(ii) if the amounts to be recovered on a cumulative basis under clause (i) are insufficient to meet the requirements of subparagraph (B), after taking into account the considerations set forth in paragraph (4), impose assessments on—

(I) eligible financial companies; and

(II) financial companies with total consolidated assets equal to or greater than $50,000,000,000 that are not eligible financial companies.

(E) Provision of financing

Payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company described in subparagraph (D)(i) shall not include the provision of financing, as defined by rule of the Corporation, to third parties.

[4] So in original. Probably should be ''subsections''.

(2) Graduated assessment rate

The Corporation shall impose assessments on a graduated basis, with financial companies having greater assets and risk being assessed at a higher rate.

(3) Notification and payment

The Corporation shall notify each financial company of that company's assessment under this subsection. Any financial company subject to assessment under this subsection shall pay such assessment in accordance with the regulations prescribed pursuant to paragraph (6).

(4) Risk-based assessment considerations

In imposing assessments under paragraph (1)(D)(ii), the Corporation shall use a risk matrix. The Council shall make a recommendation to the Corporation on the risk matrix to be used in imposing such assessments, and the Corporation shall take into account any such recommendation in the establishment of the risk matrix to be used to impose such assessments. In recommending or establishing such risk matrix, the Council and the Corporation, respectively, shall take into account—

(A) economic conditions generally affecting financial companies so as to allow assessments to increase during more favorable economic conditions and to decrease during less favorable economic conditions;

(B) any assessments imposed on a financial company or an affiliate of a financial company that—

(i) is an insured depository institution, assessed pursuant to section 1817 or 1823(c)(4)(G) of this title;

(ii) is a member of the Securities Investor Protection Corporation, assessed pursuant to section 4 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd);

(iii) is an insured credit union, assessed pursuant to section 1782(c)(1)(A)(i) of this title; or

(iv) is an insurance company, assessed pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of the rehabilitation, liquidation, or other State insolvency proceeding with respect to 1 or more insurance companies;

(C) the risks presented by the financial company to the financial system and the extent to which the financial company has benefitted, or likely would benefit, from the orderly liquidation of a financial company under this subchapter, including—

(i) the amount, different categories, and concentrations of assets of the financial company and its affiliates, including both on-balance sheet and off-balance sheet assets;

(ii) the activities of the financial company and its affiliates;

(iii) the relevant market share of the financial company and its affiliates;

(iv) the extent to which the financial company is leveraged;

(v) the potential exposure to sudden calls on liquidity precipitated by economic distress;

(vi) the amount, maturity, volatility, and stability of the company's financial obligations to, and relationship with, other financial companies;

(vii) the amount, maturity, volatility, and stability of the liabilities of the company, including the degree of reliance on short-term funding, taking into consideration existing systems for measuring a company's risk-based capital;

(viii) the stability and variety of the company's sources of funding;

(ix) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system;

(x) the extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse; and

(xi) the amount, different categories, and concentrations of liabilities, both insured and uninsured, contingent and noncontingent, including both on-balance sheet and off-balance sheet liabilities, of the financial company and its affiliates;

(D) any risks presented by the financial company during the 10-year period immediately prior to the appointment of the Corporation as receiver for the covered financial company that contributed to the failure of the covered financial company; and

(E) such other risk-related factors as the Corporation, or the Council, as applicable, may determine to be appropriate.

(5) Collection of information

The Corporation may impose on covered financial companies such collection of information requirements as the Corporation deems necessary to carry out this subsection after the appointment of the Corporation as receiver under this subchapter.

(6) Rulemaking

(A) In general

The Corporation shall prescribe regulations to carry out this subsection. The Corporation shall consult with the Secretary in the development and finalization of such regulations.

(B) Equitable treatment

The regulations prescribed under subparagraph (A) shall take into account the differences in risks posed to the financial stability of the United States by financial companies, the differences in the liability structures of financial companies, and the different bases for other assessments that such financial companies may be required to pay, to ensure that assessed financial companies are treated equitably and that assessments under this subsection reflect such differences.

(p) Unenforceability of certain agreements

(1) In general

No provision described in paragraph (2) shall be enforceable against or impose any liability

on any person, as such enforcement or liability shall be contrary to public policy.

(2) Prohibited provisions

A provision described in this paragraph is any term contained in any existing or future standstill, confidentiality, or other agreement that, directly or indirectly—

(A) affects, restricts, or limits the ability of any person to offer to acquire or acquire;

(B) prohibits any person from offering to acquire or acquiring; or

(C) prohibits any person from using any previously disclosed information in connection with any such offer to acquire or acquisition of,

all or part of any covered financial company, including any liabilities, assets, or interest therein, in connection with any transaction in which the Corporation exercises its authority under this subchapter.

(q) Other exemptions

(1) In general

When acting as a receiver under this subchapter—

(A) the Corporation, including its franchise, its capital, reserves and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed;

(B) no property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation, nor shall any involuntary lien attach to the property of the Corporation; and

(C) the Corporation shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due; and

(D) the Corporation shall be exempt from all prosecution by the United States or any State, county, municipality, or local authority for any criminal offense arising under Federal, State, county, municipal, or local law, which was allegedly committed by the covered financial company, or persons acting on behalf of the covered financial company, prior to the appointment of the Corporation as receiver.

(2) Limitation

Paragraph (1) shall not apply with respect to any tax imposed (or other amount arising) under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.].

(r) Certain sales of assets prohibited

(1) Persons who engaged in improper conduct with, or caused losses to, covered financial companies

The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a covered financial company by the Corporation to—

(A) any person who—

(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations, the aggregate amount of which exceeds $1,000,000, to such covered financial company;

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any covered financial company;

(B) any person who participated, as an officer or director of such covered financial company or of any affiliate of such company, in a material way in any transaction that resulted in a substantial loss to such covered financial company; or

(C) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such covered financial company.

(2) Convicted debtors

Except as provided in paragraph (3), a person may not purchase any asset of such institution from the receiver, if that person—

(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343, or 1344 of title 18, or of conspiring to commit such an offense, affecting any covered financial company; and

(B) is in default on any loan or other extension of credit from such covered financial company which, if not paid, will cause substantial loss to the Fund or the Corporation.

(3) Settlement of claims

Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any covered financial company to any person, if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of 1 or more claims that have been, or could have been, asserted by the Corporation against the person.

(4) Definition of default

For purposes of this subsection, the term ''default'' means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

(s) Recoupment of compensation from senior executives and directors

(1) In general

The Corporation, as receiver of a covered financial company, may recover from any current or former senior executive or director

substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply.

(2) Cost considerations

In seeking to recover any such compensation, the Corporation shall weigh the financial and deterrent benefits of such recovery against the cost of executing the recovery.

(3) Rulemaking

The Corporation shall promulgate regulations to implement the requirements of this subsection, including defining the term ''compensation'' to mean any financial remuneration, including salary, bonuses, incentives, benefits, severance, deferred compensation, or golden parachute benefits, and any profits realized from the sale of the securities of the covered financial company.

(Pub. L. 111–203, title II, § 210, July 21, 2010, 124 Stat. 1460.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

The Securities Investor Protection Act of 1970, referred to in subsecs. (a)(1)(O)(iv), (b)(6)(C), (D), (d)(3)(A), and (h)(2)(H)(iii), is Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636, which is classified generally to chapter 2B–1 (§ 78aaa et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (a)(13), (14), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsec. (c)(13)(C)(ii), is Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2236. Subtitle A of title IV of the Act is classified generally to subchapter I (§ 4401 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of this title and Tables.

The Gramm-Leach-Bliley Act, referred to in subsec. (c)(15), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

The Legal Certainty for Bank Products Act of 2000, referred to in subsec. (c)(15), is title IV of H.R. 5660, as enacted by Pub. L. 106–554, § 1(a)(5), Dec. 21, 2000, 114 Stat. 2763, 2763A–457, which is classified to sections 27 to 27f of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of Title 7 and Tables.

The Commodity Exchange Act, referred to in subsec. (c)(15), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (h)(2)(H)(i)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

This Act, referred to in subsec. (n)(8)(A)(i), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§ 8201 et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (q)(2), is classified generally to Title 26, Internal Revenue Code.

§ 5391. Inspector General reviews

(a) to (c) Omitted

(d) FDIC Inspector General reviews

(1) Scope

The Inspector General of the Corporation shall conduct, supervise, and coordinate audits and investigations of the liquidation of any covered financial company by the Corporation as receiver under this subchapter, including collecting and summarizing—

(A) a description of actions taken by the Corporation as receiver;

(B) a description of any material sales, transfers, mergers, obligations, purchases, and other material transactions entered into by the Corporation;

(C) an evaluation of the adequacy of the policies and procedures of the Corporation under section 5383(d) of this title and orderly liquidation plan under section 5390(n)(14)[1] of this title;

(D) an evaluation of the utilization by the Corporation of the private sector in carrying out its functions, including the adequacy of any conflict-of-interest reviews; and

(E) an evaluation of the overall performance of the Corporation in liquidating the covered financial company, including administrative costs, timeliness of liquidation process, and impact on the financial system.

(2) Frequency

Not later than 6 months after the date of appointment of the Corporation as receiver under this subchapter and every 6 months thereafter, the Inspector General of the Corporation shall conduct the audit and investigation described in paragraph (1).

(3) Reports and testimony

The Inspector General of the Corporation shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and evaluations under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) Funding

(A) Initial funding

The expenses of the Inspector General of the Corporation in carrying out this subsection shall be considered administrative expenses of the receivership.

(B) Additional funding

If the maximum amount available to the Corporation as receiver under this sub-

[1] See References in Text note below.

chapter is insufficient to enable the Inspector General of the Corporation to carry out the duties under this subsection, the Corporation shall pay such additional amounts from assessments imposed under section 5390 of this title.

(5) Termination of responsibilities

The duties and responsibilities of the Inspector General of the Corporation under this subsection shall terminate 1 year after the date of termination of the receivership under this subchapter.

(e) Treasury Inspector General reviews

(1) Scope

The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of actions taken by the Secretary related to the liquidation of any covered financial company under this subchapter, including collecting and summarizing—

(A) a description of actions taken by the Secretary under this subchapter;

(B) an analysis of the approval by the Secretary of the policies and procedures of the Corporation under section 5383 of this title and acceptance of the orderly liquidation plan of the Corporation under section 5390 of this title; and

(C) an assessment of the terms and conditions underlying the purchase by the Secretary of obligations of the Corporation under section 5390 of this title.

(2) Frequency

Not later than 6 months after the date of appointment of the Corporation as receiver under this subchapter and every 6 months thereafter, the Inspector General of the Department of the Treasury shall conduct the audit and investigation described in paragraph (1).

(3) Reports and testimony

The Inspector General of the Department of the Treasury shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and assessments under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) Termination of responsibilities

The duties and responsibilities of the Inspector General of the Department of the Treasury under this subsection shall terminate 1 year after the date on which the obligations purchased by the Secretary from the Corporation under section 5390 of this title are fully redeemed.

(f) Primary financial regulatory agency Inspector General reviews

(1) Scope

Upon the appointment of the Corporation as receiver for a covered financial company supervised by a Federal primary financial regulatory agency or the Board of Governors under section 5365 of this title, the Inspector General of the agency or the Board of Governors shall make a written report reviewing the supervision by the agency or the Board of Governors of the covered financial company, which shall—

(A) evaluate the effectiveness of the agency or the Board of Governors in carrying out its supervisory responsibilities with respect to the covered financial company;

(B) identify any acts or omissions on the part of agency or Board of Governors officials that contributed to the covered financial company being in default or in danger of default;

(C) identify any actions that could have been taken by the agency or the Board of Governors that would have prevented the company from being in default or in danger of default; and

(D) recommend appropriate administrative or legislative action.

(2) Reports and testimony

Not later than 1 year after the date of appointment of the Corporation as receiver under this subchapter, the Inspector General of the Federal primary financial regulatory agency or the Board of Governors shall provide the report required by paragraph (1) to such agency or the Board of Governors, and along with such agency or the Board of Governors, as applicable, shall appear before the appropriate committees of Congress, if requested, to present the report required by paragraph (1). Not later than 90 days after the date of receipt of the report required by paragraph (1), such agency or the Board of Governors, as applicable, shall provide a written report to Congress describing any actions taken in response to the recommendations in the report, and if no such actions were taken, describing the reasons why no actions were taken.

(Pub. L. 111–203, title II, §211, July 21, 2010, 124 Stat. 1514.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (d)(1), (2), (4)(B), (5), (e)(1), (2), and (f)(2), was in the original ''this title'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

Section 5390(n)(14) of this title, referred to in subsec. (d)(1)(C), probably means section 5390(n)(9), because section 5390(n) of this title does not contain a par. (14) and section 5390(n)(9) of this title relates to orderly liquidation plans.

The Inspector General Act of 1978, referred to in subsecs. (d)(3) and (e)(3), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section is comprised of section 211 of Pub. L. 111–203. Subsecs. (a) to (c) of section 211 of Pub. L. 111–203 amended section 4403 of this title and section 1032 of title 18, Crimes and Criminal Procedure.

§5392. Prohibition of circumvention and prevention of conflicts of interest

(a) No other funding

Funds for the orderly liquidation of any covered financial company under this subchapter

shall only be provided as specified under this subchapter.

(b) Limit on governmental actions

No governmental entity may take any action to circumvent the purposes of this subchapter.

(c) Conflict of interest

In the event that the Corporation is appointed receiver for more than 1 covered financial company or is appointed receiver for a covered financial company and receiver for any insured depository institution that is an affiliate of such covered financial company, the Corporation shall take appropriate action, as necessary to avoid any conflicts of interest that may arise in connection with multiple receiverships.

(Pub. L. 111–203, title II, § 212, July 21, 2010, 124 Stat. 1516.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (b), was in the original ''this title'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

§ 5393. Ban on certain activities by senior executives and directors

(a) Prohibition authority

The Board of Governors or, if the covered financial company was not supervised by the Board of Governors, the Corporation, may exercise the authority provided by this section.

(b) Authority to issue order

The appropriate agency described in subsection (a) may take any action authorized by subsection (c), if the agency determines that—

(1) a senior executive or a director of the covered financial company, prior to the appointment of the Corporation as receiver, has, directly or indirectly—

(A) violated—

(i) any law or regulation;

(ii) any cease-and-desist order which has become final;

(iii) any condition imposed in writing by a Federal agency in connection with any action on any application, notice, or request by such company or senior executive; or

(iv) any written agreement between such company and such agency;

(B) engaged or participated in any unsafe or unsound practice in connection with any financial company; or

(C) committed or engaged in any act, omission, or practice which constitutes a breach of the fiduciary duty of such senior executive or director;

(2) by reason of the violation, practice, or breach described in any subparagraph of paragraph (1), such senior executive or director has received financial gain or other benefit by reason of such violation, practice, or breach and such violation, practice, or breach contributed to the failure of the company; and

(3) such violation, practice, or breach—

(A) involves personal dishonesty on the part of such senior executive or director; or

(B) demonstrates willful or continuing disregard by such senior executive or director for the safety or soundness of such company.

(c) Authorized actions

(1) In general

The appropriate agency for a financial company, as described in subsection (a), may serve upon a senior executive or director described in subsection (b) a written notice of the intention of the agency to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any financial company for a period of time determined by the appropriate agency to be commensurate with such violation, practice, or breach, provided such period shall be not less than 2 years.

(2) Procedures

The due process requirements and other procedures under section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) shall apply to actions under this section as if the covered financial company were an insured depository institution and the senior executive or director were an institution-affiliated party, as those terms are defined in that Act [12 U.S.C. 1811 et seq.].

(d) Regulations

The Corporation and the Board of Governors, in consultation with the Council, shall jointly prescribe rules or regulations to administer and carry out this section, including rules, regulations, or guidelines to further define the term senior executive for the purposes of this section.

(Pub. L. 111–203, title II, § 213, July 21, 2010, 124 Stat. 1517.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (c)(2), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. The terms ''insured depository institution'' and ''institution-affiliated party'' are defined in section 3 of the Act, which is classified to section 1813 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

§ 5394. Prohibition on taxpayer funding

(a) Liquidation required

All financial companies put into receivership under this subchapter shall be liquidated. No taxpayer funds shall be used to prevent the liquidation of any financial company under this subchapter.

(b) Recovery of funds

All funds expended in the liquidation of a financial company under this subchapter shall be recovered from the disposition of assets of such financial company, or shall be the responsibility of the financial sector, through assessments.

(c) No losses to taxpayers

Taxpayers shall bear no losses from the exercise of any authority under this subchapter.

(Pub. L. 111–203, title II, § 214, July 21, 2010, 124 Stat. 1518.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 111–203, July

21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

SUBCHAPTER III—TRANSFER OF POWERS TO THE COMPTROLLER OF THE CURRENCY, THE CORPORATION, AND THE BOARD OF GOVERNORS

§ 5401. Purposes

The purposes of this title[1] are—

(1) to provide for the safe and sound operation of the banking system of the United States;

(2) to preserve and protect the dual system of Federal and State-chartered depository institutions;

(3) to ensure the fair and appropriate supervision of each depository institution, regardless of the size or type of charter of the depository institution; and

(4) to streamline and rationalize the supervision of depository institutions and the holding companies of depository institutions.

(Pub. L. 111–203, title III, § 301, July 21, 2010, 124 Stat. 1520.)

REFERENCES IN TEXT

This title, referred to in text, is title III of Pub. L. 111–203, July 21, 2010, 124 Stat. 1520, known as the Enhancing Financial Institution Safety and Soundness Act of 2010, which enacted this subchapter and sections 4b and 16 of this title, amended sections 1, 11, 248, 461, 481, 482, 1438, 1462, 1462a, 1463, to 1464, 1466a, 1467, 1467a, 1468, 1468a, to 1468b, 1470, 1701c, 1701p–1, 1708, 1757, 1785, 1786, 1787, 1812, 1813, 1817, 1818, 1820, 1821, 1823, 1828, 1829, 1831e, 1831j, 1833b, 1833e, 1834, 1841, 1843, 1844, 1861, 1867, 1881, 1882, 1884, 1972, 2709, 2902, 2905, 3206 to 3208, 3332, 4515, and 4517 of this title, section 906 of Title 2, The Congress, sections 78c, 78*l*, 78*o*–5, and 78w of Title 15, Commerce and Trade, sections 212, 657, 981, 982, 1006, 1014, and 1032 of Title 18, Crimes and Criminal Procedure, sections 321 and 714 of Title 31, Money and Finance, sections 4003 and 8105 of Title 42, The Public Health and Welfare, and section 3502 of Title 44, Public Printing and Documents, repealed section 1441a of this title, enacted provisions set out as notes under sections 1, 16, 1438, 1787, 1812, 1817, and 1821 of this title and section 906 of Title 2, and amended provisions set out as notes under sections 1437, 1463, 1464, 1467a, 1707, 1812, and 1818 of this title and section 509 of Title 28, Judiciary and Judicial Procedure. For complete classification of title III to the Code, see Short title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Subchapter effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

§ 5402. Definition

In this title,[1] the term ''transferred employee'' means, as the context requires, an employee transferred to the Office of the Comptroller of the Currency or the Corporation under section 5432 of this title.

(Pub. L. 111–203, title III, § 302, July 21, 2010, 124 Stat. 1520.)

REFERENCES IN TEXT

This title, where footnoted in text, is title III of Pub. L. 111–203, July 21, 2010, 124 Stat. 1520, known as the Enhancing Financial Institution Safety and Soundness Act of 2010, which enacted this subchapter and sections 4b and 16 of this title, amended sections 1, 11, 248, 461, 481, 482, 1438, 1462, 1462a, 1463, to 1464, 1466a, 1467, 1467a, 1468, 1468a, to 1468b, 1470, 1701c, 1701p–1, 1708, 1757, 1785, 1786, 1787, 1812, 1813, 1817, 1818, 1820, 1821, 1823, 1828, 1829, 1831e, 1831j, 1833b, 1833e, 1834, 1841, 1843, 1844, 1861, 1867, 1881, 1882, 1884, 1972, 2709, 2902, 2905, 3206 to 3208, 3332, 4515, and 4517 of this title, section 906 of Title 2, The Congress, sections 78c, 78*l*, 78*o*–5, and 78w of Title 15, Commerce and Trade, sections 212, 657, 981, 982, 1006, 1014, and 1032 of Title 18, Crimes and Criminal Procedure, sections 321 and 714 of Title 31, Money and Finance, sections 4003 and 8105 of Title 42, The Public Health and Welfare, and section 3502 of Title 44, Public Printing and Documents, repealed section 1441a of this title, enacted provisions set out as notes under sections 1, 16, 1438, 1787, 1812, 1817, and 1821 of this title and section 906 of Title 2, and amended provisions set out as notes under sections 1437, 1463, 1464, 1467a, 1707, 1812, and 1818 of this title and section 509 of Title 28, Judiciary and Judicial Procedure. For complete classification of title III to the Code, see Short title note set out under section 5301 of this title and Tables.

[1] See References in Text note below.

PART A—TRANSFER OF POWERS AND DUTIES

§ 5411. Transfer date

(a) Transfer date

Except as provided in subsection (b), the term ''transfer date'' means the date that is 1 year after July 21, 2010.

(b) Extension permitted

(1) Notice required

The Secretary, in consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairman of the Board of Governors, and the Chairperson of the Corporation, may extend the period under subsection (a) and designate a transfer date that is not later than 18 months after July 21, 2010, if the Secretary transmits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(A) a written determination that commencement of the orderly process to implement this title[1] is not feasible by the date that is 1 year after July 21, 2010;

(B) an explanation of why an extension is necessary to commence the process of orderly implementation of this title;[1]

(C) the transfer date designated under this subsection; and

(D) a description of the steps that will be taken to initiate the process of an orderly and timely implementation of this title[1] within the extended time period.

(2) Publication of notice

Not later than 270 days after July 21, 2010, the Secretary shall publish in the Federal Register notice of any transfer date designated under paragraph (1).

(Pub. L. 111–203, title III, § 311, July 21, 2010, 124 Stat. 1520.)

REFERENCES IN TEXT

This title, referred to in subsec. (b)(1)(B), (D), is title III of Pub. L. 111–203, July 21, 2010, 124 Stat. 1520, known

[1] See References in Text note below.

as the Enhancing Financial Institution Safety and Soundness Act of 2010, which enacted this subchapter and sections 4b and 16 of this title, amended sections 1, 11, 248, 461, 481, 482, 1438, 1462, 1462a, 1463, to 1464, 1466a, 1467, 1467a, 1468, 1468a, to 1468b, 1470, 1701c, 1701p–1, 1708, 1757, 1785, 1786, 1787, 1812, 1813, 1817, 1818, 1820, 1821, 1823, 1828, 1829, 1831e, 1831j, 1833b, 1833e, 1834, 1841, 1843, 1844, 1861, 1867, 1881, 1882, 1884, 1972, 2709, 2902, 2905, 3206 to 3208, 3332, 4515, and 4517 of this title, section 906 of Title 2, The Congress, sections 78c, 78*l*, 78*o*–5, and 78w of Title 15, Commerce and Trade, sections 212, 657, 981, 982, 1006, 1014, and 1032 of Title 18, Crimes and Criminal Procedure, sections 321 and 714 of Title 31, Money and Finance, sections 4003 and 8105 of Title 42, The Public Health and Welfare, and section 3502 of Title 44, Public Printing and Documents, repealed section 1441a of this title, enacted provisions set out as notes under sections 1, 16, 1438, 1787, 1812, 1817, and 1821 of this title and section 906 of Title 2, and amended provisions set out as notes under sections 1437, 1463, 1464, 1467a, 1707, 1812, and 1818 of this title and section 509 of Title 28, Judiciary and Judicial Procedure. For complete classification of title III to the Code, see Short title note set out under section 5301 of this title and Tables.

§ 5412. Powers and duties transferred

(a) Effective date

This section, and the amendments made by this section, shall take effect on the transfer date.

(b) Functions of the Office of Thrift Supervision

(1) Savings and loan holding company functions transferred

(A) Transfer of functions

There are transferred to the Board of Governors all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision (including the authority to issue orders) relating to—

(i) the supervision of—

(I) any savings and loan holding company; and

(II) any subsidiary (other than a depository institution) of a savings and loan holding company; and

(ii) all rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to savings and loan holding companies.

(B) Powers, authorities, rights, and duties

The Board of Governors shall succeed to all powers, authorities, rights, and duties that were vested in the Office of Thrift Supervision and the Director of the Office of Thrift Supervision on the day before the transfer date relating to the functions and authority transferred under subparagraph (A).

(2) All other functions transferred

(A) Board of Governors

All rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision under section 1468 of this title relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders and under section 1464(q) of this title relating to tying arrangements is transferred to the Board of Governors.

(B) Comptroller of the Currency

Except as provided in paragraph (1) and subparagraph (A)—

(i) there are transferred to the Office of the Comptroller of the Currency and the Comptroller of the Currency—

(I) all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision, respectively, relating to Federal savings associations; and

(II) all rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision, respectively, relating to savings associations; and

(ii) the Office of the Comptroller of the Currency and the Comptroller of the Currency shall succeed to all powers, authorities, rights, and duties that were vested in the Office of Thrift Supervision and the Director of the Office of Thrift Supervision, respectively, on the day before the transfer date relating to the functions and authority transferred under clause (i).

(C) Corporation

Except as provided in paragraph (1) and subparagraphs (A) and (B)—

(i) all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to State savings associations are transferred to the Corporation; and

(ii) the Corporation shall succeed to all powers, authorities, rights, and duties that were vested in the Office of Thrift Supervision and the Director of the Office of Thrift Supervision on the day before the transfer date relating to the functions transferred under clause (i).

(c) Omitted

(d) Consumer protection

Nothing in this section may be construed to limit or otherwise affect the transfer of powers under title X.[1]

(Pub. L. 111–203, title III, § 312, July 21, 2010, 124 Stat. 1521.)

REFERENCES IN TEXT

Title X, referred to in subsec. (d), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted subchapter V (§ 5481 et seq.) of this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section is comprised of section 312 of Pub. L. 111–203. Subsec. (c) of section 312 of Pub. L. 111–203 amended section 1813 of this title.

§ 5413. Abolishment

Effective 90 days after the transfer date, the Office of Thrift Supervision and the position of Director of the Office of Thrift Supervision are abolished.

(Pub. L. 111–203, title III, § 313, July 21, 2010, 124 Stat. 1523.)

[1] See References in Text note below.

§ 5414. Savings provisions

(a) Office of Thrift Supervision

(1) Existing rights, duties, and obligations not affected

Sections 5412(b) and 5413 of this title shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that existed on the day before the transfer date.

(2) Continuation of suits

This title[1] shall not abate any action or proceeding commenced by or against the Director of the Office of Thrift Supervision or the Office of Thrift Supervision before the transfer date, except that—

(A) for any action or proceeding arising out of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Board of Governors by this title,[1] the Board of Governors shall be substituted for the Office of Thrift Supervision or the Director of the Office of Thrift Supervision as a party to the action or proceeding on and after the transfer date;

(B) for any action or proceeding arising out of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Office of the Comptroller of the Currency or the Comptroller of the Currency by this title,[1] the Office of the Comptroller of the Currency or the Comptroller of the Currency shall be substituted for the Office of Thrift Supervision or the Director of the Office of Thrift Supervision, as the case may be, as a party to the action or proceeding on and after the transfer date; and

(C) for any action or proceeding arising out of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Corporation by this title,[1] the Corporation shall be substituted for the Office of Thrift Supervision or the Director of the Office of Thrift Supervision as a party to the action or proceeding on and after the transfer date.

(b) Continuation of existing OTS orders, resolutions, determinations, agreements, regulations, etc.

All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, that have been issued, made, prescribed, or allowed to become effective by the Office of Thrift Supervision or the Director of the Office of Thrift Supervision, or by a court of competent jurisdiction, in the performance of functions that are transferred by this title[1] and that are in effect on the day before the transfer date, shall continue in effect according to the terms of such orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against—

(1) the Board of Governors, in the case of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Board of Governors, until modified, terminated, set aside, or superseded in accordance with applicable law by the Board of Governors, by any court of competent jurisdiction, or by operation of law;

(2) the Office of the Comptroller of the Currency or the Comptroller of the Currency, in the case of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Office of the Comptroller of the Currency or the Comptroller of the Currency, respectively, until modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency or the Comptroller of the Currency, by any court of competent jurisdiction, or by operation of law; and

(3) the Corporation, in the case of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Corporation, until modified, terminated, set aside, or superseded in accordance with applicable law by the Corporation, by any court of competent jurisdiction, or by operation of law.

(c) Identification of regulations continued

(1) By the Board of Governors

Not later than the transfer date, the Board of Governors shall—

(A) identify the regulations continued under subsection (b) that will be enforced by the Board of Governors; and

(B) publish a list of the regulations identified under subparagraph (A) in the Federal Register.

(2) By Office of the Comptroller of the Currency

Not later than the transfer date, the Office of the Comptroller of the Currency shall—

(A) after consultation with the Corporation, identify the regulations continued under subsection (b) that will be enforced by the Office of the Comptroller of the Currency; and

(B) publish a list of the regulations identified under subparagraph (A) in the Federal Register.

(3) By the Corporation

Not later than the transfer date, the Corporation shall—

(A) after consultation with the Office of the Comptroller of the Currency, identify the regulations continued under subsection (b) that will be enforced by the Corporation; and

(B) publish a list of the regulations identified under subparagraph (A) in the Federal Register.

(d) Status of regulations proposed or not yet effective

(1) Proposed regulations

Any proposed regulation of the Office of Thrift Supervision, which the Office of Thrift

[1] See References in Text note below.

Supervision in performing functions transferred by this title,[1] has proposed before the transfer date but has not published as a final regulation before such date, shall be deemed to be a proposed regulation of the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, according to the terms of the proposed regulation.

(2) Regulations not yet effective

Any interim or final regulation of the Office of Thrift Supervision, which the Office of Thrift Supervision, in performing functions transferred by this title,[1] has published before the transfer date but which has not become effective before that date, shall become effective as a regulation of the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, according to the terms of the interim or final regulation, unless modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, by any court of competent jurisdiction, or by operation of law.

(Pub. L. 111–203, title III, § 316, July 21, 2010, 124 Stat. 1524.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(2), (b), and (d), is title III of Pub. L. 111–203, July 21, 2010, 124 Stat. 1520, known as the Enhancing Financial Institution Safety and Soundness Act of 2010, which enacted this subchapter and sections 4b and 16 of this title, amended sections 1, 11, 248, 461, 481, 482, 1438, 1462, 1462a, 1463, to 1464, 1466a, 1467, 1467a, 1468, 1468a, to 1468b, 1470, 1701c, 1701p–1, 1708, 1757, 1785, 1786, 1787, 1812, 1813, 1817, 1818, 1820, 1821, 1823, 1828, 1829, 1831e, 1831j, 1833b, 1833e, 1834, 1841, 1843, 1844, 1861, 1867, 1881, 1882, 1884, 1972, 2709, 2902, 2905, 3206 to 3208, 3332, 4515, and 4517 of this title, section 906 of Title 2, The Congress, sections 78c, 78*l*, 78*o*–5, and 78w of Title 15, Commerce and Trade, sections 212, 657, 981, 982, 1006, 1014, and 1032 of Title 18, Crimes and Criminal Procedure, sections 321 and 714 of Title 31, Money and Finance, sections 4003 and 8105 of Title 42, The Public Health and Welfare, and section 3502 of Title 44, Public Printing and Documents, repealed section 1441a of this title, enacted provisions set out as notes under sections 1, 16, 1438, 1787, 1812, 1817, and 1821 of this title and section 906 of Title 2, and amended provisions set out as notes under sections 1437, 1463, 1464, 1467a, 1707, 1812, and 1818 of this title and section 509 of Title 28, Judiciary and Judicial Procedure. For complete classification of title III to the Code, see Short title note set out under section 5301 of this title and Tables.

§ 5415. References in Federal law to Federal banking agencies

On and after the transfer date, any reference in Federal law to the Director of the Office of Thrift Supervision or the Office of Thrift Supervision, in connection with any function of the Director of the Office of Thrift Supervision or the Office of Thrift Supervision transferred under section 5412(b) of this title or any other provision of this subtitle, shall be deemed to be a reference to the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, the Corporation, the Chairman of the Board of Governors, or the Board of Governors, as appropriate and consistent with the amendments made in subtitle E.

(Pub. L. 111–203, title III, § 317, July 21, 2010, 124 Stat. 1526.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle A (§§ 311–319) of title III of Pub. L. 111–203, July 21, 2010, 124 Stat. 1520, which enacted this part and sections 4b and 16 of this title, amended sections 1, 11, 248, 481, 482, 1813, and 1820 of this title and section 3502 of Title 44, Public Printing and Documents, and enacted provisions set out as notes under sections 1 and 16 of this title. For complete classification of subtitle A to the Code, see Tables.

Subtitle E, referred to in text, is subtitle E (§ 351–378) of title III of Pub. L. 111–203, July 21, 2010, 124 Stat. 1546. For complete classification of subtitle E to the Code, see Tables.

§ 5416. Contracting and leasing authority

Notwithstanding chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 or any other provision of law (except the full and open competition requirements of the Competition in Contracting Act), the Office of the Comptroller of the Currency may—

(1) enter into and perform contracts, execute instruments, and acquire real property (or property interest) as the Comptroller deems necessary to carry out the duties and responsibilities of the Office of the Comptroller of the Currency; and

(2) hold, maintain, sell, lease, or otherwise dispose of the property (or property interest) acquired under paragraph (1).

(Pub. L. 111–203, title III, § 319, July 21, 2010, 124 Stat. 1528.)

REFERENCES IN TEXT

The Competition in Contracting Act, referred to in text, probably means the Competition in Contracting Act of 1984, which is title VII of Pub. L. 98–369, div. B, July 18, 1984, 98 Stat. 1175. For complete classification of this Act to the Code, see Short Title of 1984 Act note set out under section 101 of Title 41, Public Contracts, and Tables.

CODIFICATION

In text, ''chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' substituted for ''the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

PART B—TRANSITIONAL PROVISIONS

§ 5431. Interim use of funds, personnel, and property of the Office of Thrift Supervision

(a) In general

Before the transfer date, the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors shall—

(1) consult and cooperate with the Office of Thrift Supervision to facilitate the orderly transfer of functions to the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors in accordance with this title;[1]

[1] See References in Text note below.

(2) determine jointly, from time to time—

(A) the amount of funds necessary to pay any expenses associated with the transfer of functions (including expenses for personnel, property, and administrative services) during the period beginning on July 21, 2010, and ending on the transfer date;

(B) which personnel are appropriate to facilitate the orderly transfer of functions by this title;[1] and

(C) what property and administrative services are necessary to support the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors during the period beginning on July 21, 2010, and ending on the transfer date; and

(3) take such actions as may be necessary to provide for the orderly implementation of this title.[1]

(b) Agency consultation

When requested jointly by the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors to do so before the transfer date, the Office of Thrift Supervision shall—

(1) pay to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, from funds obtained by the Office of Thrift Supervision through assessments, fees, or other charges that the Office of Thrift Supervision is authorized by law to impose, such amounts as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be necessary under subsection (a);

(2) detail to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such personnel as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be appropriate under subsection (a); and

(3) make available to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such property and provide to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such administrative services as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be necessary under subsection (a).

(c) Notice required

The Office of the Comptroller of the Currency, the Corporation, and the Board of Governors shall jointly give the Office of Thrift Supervision reasonable prior notice of any request that the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly intend to make under subsection (b).

(Pub. L. 111–203, title III, § 321, July 21, 2010, 124 Stat. 1528.)

REFERENCES IN TEXT

This title, referred to in subsec. (a), is title III of Pub. L. 111–203, July 21, 2010, 124 Stat. 1520, known as the Enhancing Financial Institution Safety and Soundness Act of 2010, which enacted this subchapter and sections 4b and 16 of this title, amended sections 1, 11, 248, 461, 481, 482, 1438, 1462, 1462a, 1463, to 1464, 1466a, 1467, 1467a, 1468, 1468a, to 1468b, 1470, 1701c, 1701p–1, 1708, 1757, 1785, 1786, 1787, 1812, 1813, 1817, 1818, 1820, 1821, 1823, 1828, 1829, 1831e, 1831j, 1833b, 1833e, 1834, 1841, 1843, 1844, 1861, 1867, 1881, 1882, 1884, 1972, 2709, 2902, 2905, 3206 to 3208, 3332, 4515, and 4517 of this title, section 906 of Title 2, The Congress, sections 78c, 78*l*, 78*o*–5, and 78w of Title 15, Commerce and Trade, sections 212, 657, 981, 982, 1006, 1014, and 1032 of Title 18, Crimes and Criminal Procedure, sections 321 and 714 of Title 31, Money and Finance, sections 4003 and 8105 of Title 42, The Public Health and Welfare, and section 3502 of Title 44, Public Printing and Documents, repealed section 1441a of this title, enacted provisions set out as notes under sections 1, 16, 1438, 1787, 1812, 1817, and 1821 of this title and section 906 of Title 2, and amended provisions set out as notes under sections 1437, 1463, 1464, 1467a, 1707, 1812, and 1818 of this title and section 509 of Title 28, Judiciary and Judicial Procedure. For complete classification of title III to the Code, see Short title note set out under section 5301 of this title and Tables.

§ 5432. Transfer of employees

(a) In general

(1) Office of Thrift Supervision employees

(A) In general

Except as provided in section 5584 of this title, all employees of the Office of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency or the Corporation for employment in accordance with this section.

(B) Allocating employees for transfer to receiving agencies

The Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chairperson of the Corporation shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support the functions that are transferred to the Office of the Comptroller of the Currency or the Corporation by this title;[1] and

(ii) consistent with the determination under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Office of the Comptroller of the Currency or the Corporation.

(2) Employees transferred; service periods credited

For purposes of this section, periods of service with a Federal home loan bank, a joint office of Federal home loan banks, or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(3) Appointment authority for excepted service transferred

(A) In general

Except as provided in subparagraph (B), any appointment authority of the Office of Thrift Supervision under Federal law that relates to the functions transferred under section 5412 of this title, including the regulations of the Office of Personnel Management, for filling the positions of employees in the excepted service shall be transferred to the Comptroller of the Currency or the

[1] See References in Text note below.

Chairperson of the Corporation, as appropriate.

(B) Declining transfers allowed

The Comptroller of the Currency or the Chairperson of the Corporation may decline to accept a transfer of authority under subparagraph (A) (and the employees appointed under that authority) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character.

(4) Additional appointment authority

Notwithstanding any other provision of law, the Office of the Comptroller of the Currency and the Corporation may appoint transferred employees to positions in the Office of the Comptroller of the Currency or the Corporation, respectively.

(b) Timing of transfers and position assignments

Each employee to be transferred under subsection (a)(1) shall—

(1) be transferred not later than 90 days after the transfer date; and

(2) receive notice of the position assignment of the employee not later than 120 days after the effective date of the transfer of the employee.

(c) Transfer of functions

(1) In general

Notwithstanding any other provision of law, the transfer of employees under this part shall be deemed a transfer of functions for the purpose of section 3503 of title 5.

(2) Priority

If any provision of this part conflicts with any protection provided to a transferred employee under section 3503 of title 5, the provisions of this part shall control.

(d) Employee status and eligibility

The transfer of functions and employees under this part, and the abolishment of the Office of Thrift Supervision under section 5413 of this title, shall not affect the status of the transferred employees as employees of an agency of the United States under any provision of law.

(e) Equal status and tenure positions

(1) Status and tenure

Each transferred employee from the Office of Thrift Supervision shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation with the same status and tenure as the transferred employee held on the day before the date on which the employee was transferred.

(2) Functions

To the extent practicable, each transferred employee shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation, as applicable, responsible for the same functions and duties as the transferred employee had on the day before the date on which the employee was transferred, in accordance with the expertise and preferences of the transferred employee.

(f) No additional certification requirements

An examiner who is a transferred employee shall not be subject to any additional certification requirements before being placed in a comparable position at the Office of the Comptroller of the Currency or the Corporation, if the examiner carries out examinations of the same type of institutions as an employee of the Office of the Comptroller of the Currency or the Corporation as the employee was responsible for carrying out before the date on which the employee was transferred.

(g) Personnel actions limited

(1) Protection

(A) In general

Except as provided in paragraph (2), each affected employee shall not, during the 30-month period beginning on the transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area.

(B) Affected employees

For purposes of this paragraph, the term ''affected employee'' means—

(i) an employee transferred from the Office of Thrift Supervision holding a permanent position on the day before the transfer date; and

(ii) an employee of the Office of the Comptroller of the Currency or the Corporation holding a permanent position on the day before the transfer date.

(2) Exceptions

Paragraph (1) does not limit the right of the Office of the Comptroller of the Currency or the Corporation to—

(A) separate an employee for cause or for unacceptable performance;

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) reassign an employee outside such employee's locality pay area when the Office of the Comptroller of the Currency or the Corporation determines that the reassignment is necessary for the efficient operation of the agency.

(h) Pay

(1) 30-month protection

Except as provided in paragraph (2), during the 30-month period beginning on the date on which the employee was transferred under this part, a transferred employee shall be paid at a rate that is not less than the basic rate of pay, including any geographic differential, that the transferred employee received during the pay period immediately preceding the date on which the employee was transferred. Notwithstanding the preceding sentence, if the employee was receiving a higher rate of basic pay on a temporary basis (because of a temporary assignment, temporary promotion, or other temporary action) immediately before the transfer, the Agency may reduce the rate of basic pay on the date the rate would have been

reduced but for the transfer, and the protected rate for the remainder of the 30-month period will be the reduced rate that would have applied but for the transfer.

(2) Exceptions

The Comptroller of the Currency or the Corporation may reduce the rate of basic pay of a transferred employee—

(A) for cause, including for unacceptable performance; or

(B) with the consent of the transferred employee.

(3) Protection only while employed

This subsection shall apply to a transferred employee only during the period that the transferred employee remains employed by Office of the Comptroller of the Currency or the Corporation.

(4) Pay increases permitted

Nothing in this subsection shall limit the authority of the Comptroller of the Currency or the Chairperson of the Corporation to increase the pay of a transferred employee.

(i) Benefits

(1) Retirement benefits for transferred employees

(A) In general

(i) Continuation of existing retirement plan

Each transferred employee shall remain enrolled in the retirement plan of the transferred employee, for as long as the transferred employee is employed by the Office of the Comptroller of the Currency or the Corporation.

(ii) Employer's contribution

The Comptroller of the Currency or the Chairperson of the Corporation, as appropriate, shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under each such existing retirement plan.

(B) Definition

In this paragraph, the term ''existing retirement plan'' means, with respect to a transferred employee, the retirement plan (including the Financial Institutions Retirement Fund), and any associated thrift savings plan, of the agency from which the employee was transferred in which the employee was enrolled on the day before the date on which the employee was transferred.

(2) Benefits other than retirement benefits

(A) During first year

(i) Existing plans continue

During the 1-year period following the transfer date, each transferred employee may retain membership in any employee benefit program (other than a retirement benefit program) of the agency from which the employee was transferred under this title,[1] including any dental, vision, long term care, or life insurance program to which the employee belonged on the day before the transfer date.

(ii) Employer's contribution

The Office of the Comptroller of the Currency or the Corporation, as appropriate, shall pay any employer cost required to extend coverage in the benefit program to the transferred employee as required under that program or negotiated agreements.

(B) Dental, vision, or life insurance after first year

If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as the case may be, will not continue to participate in any dental, vision, or life insurance program of an agency from which an employee was transferred, a transferred employee who is a member of the program may, before the decision takes effect and without regard to any regularly scheduled open season, elect to enroll in—

(i) the enhanced dental benefits program established under chapter 89A of title 5;

(ii) the enhanced vision benefits established under chapter 89B of title 5; and

(iii) the Federal Employees' Group Life Insurance Program established under chapter 87 of title 5, without regard to any requirement of insurability.

(C) Long term care insurance after 1st year

If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as appropriate, will not continue to participate in any long term care insurance program of an agency from which an employee transferred, a transferred employee who is a member of such a program may, before the decision takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established under chapter 90 of title 5 under the underwriting requirements applicable to a new active workforce member, as described in part 875 of title 5, Code of Federal Regulations (or any successor thereto).

(D) Contribution of transferred employee

(i) In general

Subject to clause (ii), a transferred employee who is enrolled in a plan under the Federal Employees Health Benefits Program shall pay any employee contribution required under the plan.

(ii) Cost differential

The Office of the Comptroller of the Currency or the Corporation, as applicable, shall pay any difference in cost between the employee contribution required under the plan provided to transferred employees by the agency from which the employee transferred on July 21, 2010, and the plan provided by the Office of the Comptroller of the Currency or the Corporation, as the case may be, under this section.

(iii) Funds transfer

The Office of the Comptroller of the Currency or the Corporation, as the case may

be, shall transfer to the Employees Health Benefits Fund established under section 8909 of title 5, an amount determined by the Director of the Office of Personnel Management, after consultation with the Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing any benefits under this subparagraph that are not otherwise paid for by a transferred employee under clause (i).

(E) Special provisions to ensure continuation of life insurance benefits

(i) In general

An annuitant, as defined in section 8901 of title 5, who is enrolled in a life insurance plan administered by an agency from which employees are transferred under this title[1] on the day before the transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, or 8714c of title 5, or by a life insurance plan established by the Office of the Comptroller of the Currency or the Corporation, as applicable, without regard to any regularly scheduled open season or any requirement of insurability.

(ii) Contribution of transferred employee

(I) In general

Subject to subclause (II), a transferred employee enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(II) Cost differential

The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall pay any difference in cost between the benefits provided by the agency from which the employee transferred on July 21, 2010, and the benefits provided under this section.

(III) Funds transfer

The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the Federal Employees' Group Life Insurance Fund established under section 8714 of title 5, an amount determined by the Director of the Office of Personnel Management, after consultation with the Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Federal Employees' Group Life Insurance Fund for the cost to the Federal Employees' Group Life Insurance Fund of providing benefits under this subparagraph not otherwise paid for by a transferred employee under subclause (I).

(IV) Credit for time enrolled in other plans

For any transferred employee, enrollment in a life insurance plan administered by the agency from which the employee transferred, immediately before enrollment in a life insurance plan under chapter 87 of title 5, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5.

(j) Incorporation into agency pay system

Not later than 30 months after the transfer date, the Comptroller of the Currency and the Chairperson of the Corporation shall place each transferred employee into the established pay system and structure of the appropriate employing agency.

(k) Equitable treatment

In administering the provisions of this section, the Comptroller of the Currency and the Chairperson of the Corporation—

(1) may not take any action that would unfairly disadvantage a transferred employee relative to any other employee of the Office of the Comptroller of the Currency or the Corporation on the basis of prior employment by the Office of Thrift Supervision;

(2) may take such action as is appropriate in an individual case to ensure that a transferred employee receives equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time for prior periods of service with any Federal agency of the transferred employee;

(3) shall, jointly with the Director of the Office of Thrift Supervision, develop and adopt procedures and safeguards designed to ensure that the requirements of this subsection are met; and

(4) shall conduct a study detailing the position assignments of all employees transferred pursuant to subsection (a), describing the procedures and safeguards adopted pursuant to paragraph (3), and demonstrating that the requirements of this subsection have been met; and shall, not later than 365 days after the transfer date, submit a copy of such study to Congress.

***(l)* Reorganization**

(1) In general

If the Comptroller of the Currency or the Chairperson of the Corporation determines, during the 2-year period beginning 1 year after the transfer date, that a reorganization of the staff of the Office of the Comptroller of the Currency or the Corporation, respectively, is required, the reorganization shall be deemed a ''major reorganization'' for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5.

(2) Service credit

For purposes of this subsection, periods of service with a Federal home loan bank or a joint office of Federal home loan banks shall be credited as periods of service with a Federal agency.

(Pub. L. 111–203, title III, § 322, July 21, 2010, 124 Stat. 1529.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(1)(B)(i) and (i)(2)(A)(i), (E)(i), is title III of Pub. L. 111–203, July 21, 2010, 124 Stat. 1520, known as the Enhancing Financial Institution Safety and Soundness Act of 2010, which enacted this subchapter and sections 4b and 16 of this title, amended sections 1, 11, 248, 461, 481, 482, 1438, 1462, 1462a, 1463, to 1464, 1466a, 1467, 1467a, 1468, 1468a, to 1468b, 1470, 1701c, 1701p–1, 1708, 1757, 1785, 1786, 1787, 1812, 1813, 1817, 1818, 1820, 1821, 1823, 1828, 1829, 1831e, 1831j, 1833b, 1833e, 1834, 1841, 1843, 1844, 1861, 1867, 1881, 1882, 1884, 1972, 2709, 2902, 2905, 3206 to 3208, 3332, 4515, and 4517 of this title, section 906 of Title 2, The Congress, sections 78c, 78*l*, 78*o*–5, and 78w of Title 15, Commerce and Trade, sections 212, 657, 981, 982, 1006, 1014, and 1032 of Title 18, Crimes and Criminal Procedure, sections 321 and 714 of Title 31, Money and Finance, sections 4003 and 8105 of Title 42, The Public Health and Welfare, and section 3502 of Title 44, Public Printing and Documents, repealed section 1441a of this title, enacted provisions set out as notes under sections 1, 16, 1438, 1787, 1812, 1817, and 1821 of this title and section 906 of Title 2, and amended provisions set out as notes under sections 1437, 1463, 1464, 1467a, 1707, 1812, and 1818 of this title and section 509 of Title 28, Judiciary and Judicial Procedure. For complete classification of title III to the Code, see Short title note set out under section 5301 of this title and Tables.

§ 5433. Property transferred

(a) Property defined

For purposes of this section, the term ''property'' includes all real property (including leaseholds) and all personal property, including computers, furniture, fixtures, equipment, books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers, and correspondence related to such reports, and any other information or materials.

(b) Property of the Office of Thrift Supervision

(1) In general

No later than 90 days after the transfer date, all property of the Office of Thrift Supervision (other than property described under paragraph (b)(2)) that the Comptroller of the Currency and the Chairperson of the Corporation jointly determine is used, on the day before the transfer date, to perform or support the functions of the Office of Thrift Supervision transferred to the Office of the Comptroller of the Currency or the Corporation under this title,[1] shall be transferred to the Office of the Comptroller of the Currency or the Corporation in a manner consistent with the transfer of employees under this part.

(2) Personal property

All books, accounts, records, reports, files, memoranda, papers, documents, reports of examination, work papers, and correspondence of the Office of Thrift Supervision that the Comptroller of the Currency, the Chairperson of the Corporation, and the Chairman of the Board of Governors jointly determine is used, on the day before the transfer date, to perform or support the functions of the Office of Thrift Supervision transferred to the Board of Governors under this title[1] shall be transferred to the Board of Governors in a manner consistent with the purposes of this title.[1]

[1] See References in Text note below.

(c) Contracts related to property transferred

Each contract, agreement, lease, license, permit, and similar arrangement relating to property transferred to the Office of the Comptroller of the Currency or the Corporation by this section shall be transferred to the Office of the Comptroller of the Currency or the Corporation, as appropriate, together with the property to which it relates.

(d) Preservation of property

Property identified for transfer under this section shall not be altered, destroyed, or deleted before transfer under this section.

(Pub. L. 111–203, title III, § 323, July 21, 2010, 124 Stat. 1535.)

REFERENCES IN TEXT

This title, referred to in subsec. (b), is title III of Pub. L. 111–203, July 21, 2010, 124 Stat. 1520, known as the Enhancing Financial Institution Safety and Soundness Act of 2010, which enacted this subchapter and sections 4b and 16 of this title, amended sections 1, 11, 248, 461, 481, 482, 1438, 1462, 1462a, 1463, to 1464, 1466a, 1467, 1467a, 1468, 1468a, to 1468b, 1470, 1701c, 1701p–1, 1708, 1757, 1785, 1786, 1787, 1812, 1813, 1817, 1818, 1820, 1821, 1823, 1828, 1829, 1831e, 1831j, 1833b, 1833e, 1834, 1841, 1843, 1844, 1861, 1867, 1881, 1882, 1884, 1972, 2709, 2902, 2905, 3206 to 3208, 3332, 4515, and 4517 of this title, section 906 of Title 2, The Congress, sections 78c, 78*l*, 78*o*–5, and 78w of Title 15, Commerce and Trade, sections 212, 657, 981, 982, 1006, 1014, and 1032 of Title 18, Crimes and Criminal Procedure, sections 321 and 714 of Title 31, Money and Finance, sections 4003 and 8105 of Title 42, The Public Health and Welfare, and section 3502 of Title 44, Public Printing and Documents, repealed section 1441a of this title, enacted provisions set out as notes under sections 1, 16, 1438, 1787, 1812, 1817, and 1821 of this title and section 906 of Title 2, and amended provisions set out as notes under sections 1437, 1463, 1464, 1467a, 1707, 1812, and 1818 of this title and section 509 of Title 28, Judiciary and Judicial Procedure. For complete classification of title III to the Code, see Short title note set out under section 5301 of this title and Tables.

§ 5434. Funds transferred

The funds that, on the day before the transfer date, the Director of the Office of Thrift Supervision (in consultation with the Comptroller of the Currency, the Chairperson of the Corporation, and the Chairman of the Board of Governors) determines are not necessary to dispose of the affairs of the Office of Thrift Supervision under section 5435 of this title and are available to the Office of Thrift Supervision to pay the expenses of the Office of Thrift Supervision—

(1) relating to the functions of the Office of Thrift Supervision transferred under section 5412(b)(2)(B) of this title, shall be transferred to the Office of the Comptroller of the Currency on the transfer date;

(2) relating to the functions of the Office of Thrift Supervision transferred under section 5412(b)(2)(C) of this title, shall be transferred to the Corporation on the transfer date; and

(3) relating to the functions of the Office of Thrift Supervision transferred under section 5412(b)(1)(A) of this title, shall be transferred to the Board of Governors on the transfer date.

(Pub. L. 111–203, title III, § 324, July 21, 2010, 124 Stat. 1536.)

§ 5435. Disposition of affairs

(a) Authority of Director

During the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision—

(1) shall, solely for the purpose of winding up the affairs of the Office of Thrift Supervision relating to any function transferred to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors under this title—[1]

(A) manage the employees of the Office of Thrift Supervision who have not yet been transferred and provide for the payment of the compensation and benefits of the employees that accrue before the date on which the employees are transferred under this title;[1] and

(B) manage any property of the Office of Thrift Supervision, until the date on which the property is transferred under section 5433 of this title; and

(2) may take any other action necessary to wind up the affairs of the Office of Thrift Supervision.

(b) Status of Director

(1) In general

Notwithstanding the transfer of functions under this part, during the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision shall retain and may exercise any authority vested in the Director of the Office of Thrift Supervision on the day before the transfer date, only to the extent necessary—

(A) to wind up the Office of Thrift Supervision; and

(B) to carry out the transfer under this part during such 90-day period.

(2) Other provisions

For purposes of paragraph (1), the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the transfer date, continue to be—

(A) treated as an officer of the United States; and

(B) entitled to receive compensation at the same annual rate of basic pay that the Director of the Office of Thrift Supervision received on the day before the transfer date.

(Pub. L. 111–203, title III, § 325, July 21, 2010, 124 Stat. 1536.)

REFERENCES IN TEXT

This title, where footnoted in subsec. (a)(1), is title III of Pub. L. 111–203, July 21, 2010, 124 Stat. 1520, known as the Enhancing Financial Institution Safety and Soundness Act of 2010, which enacted this subchapter and sections 4b and 16 of this title, amended sections 1, 11, 248, 461, 481, 482, 1438, 1462, 1462a, 1463, to 1464, 1466a, 1467, 1467a, 1468, 1468a, to 1468b, 1470, 1701c, 1701p–1, 1708, 1757, 1785, 1786, 1787, 1812, 1813, 1817, 1818, 1820, 1821, 1823, 1828, 1829, 1831e, 1831j, 1833b, 1833e, 1834, 1841, 1843, 1844, 1861, 1867, 1881, 1882, 1884, 1972, 2709, 2902, 2905, 3206 to 3208, 3332, 4515, and 4517 of this title, section 906 of Title 2, The Congress, sections 78c, 78*l*, 78*o*–5, and 78w of Title 15, Commerce and Trade, sections 212, 657, 981, 982, 1006, 1014, and 1032 of Title 18, Crimes and Criminal Procedure, sections 321 and 714 of Title 31, Money and Finance, sections 4003 and 8105 of Title 42, The Public Health and Welfare, and section 3502 of Title 44, Public Printing and Documents, repealed section 1441a of this title, enacted provisions set out as notes under sections 1, 16, 1438, 1787, 1812, 1817, and 1821 of this title and section 906 of Title 2, and amended provisions set out as notes under sections 1437, 1463, 1464, 1467a, 1707, 1812, and 1818 of this title and section 509 of Title 28, Judiciary and Judicial Procedure. For complete classification of title III to the Code, see Short title note set out under section 5301 of this title and Tables.

[1] See References in Text note below.

§ 5436. Continuation of services

Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, that was, before the transfer date, providing support services to the Office of Thrift Supervision in connection with functions transferred to the Office of the Comptroller of the Currency, the Corporation or the Board of Governors under this title,[1] shall—

(1) continue to provide such services, subject to reimbursement by the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, until the transfer of functions under this title[1] is complete; and

(2) consult with the Comptroller of the Currency, the Chairperson of the Corporation, or the Chairman of the Board of Governors, as appropriate, to coordinate and facilitate a prompt and orderly transition.

(Pub. L. 111–203, title III, § 326, July 21, 2010, 124 Stat. 1537.)

REFERENCES IN TEXT

This title, referred to in text, is title III of Pub. L. 111–203, July 21, 2010, 124 Stat. 1520, known as the Enhancing Financial Institution Safety and Soundness Act of 2010, which enacted this subchapter and sections 4b and 16 of this title, amended sections 1, 11, 248, 461, 481, 482, 1438, 1462, 1462a, 1463, to 1464, 1466a, 1467, 1467a, 1468, 1468a, to 1468b, 1470, 1701c, 1701p–1, 1708, 1757, 1785, 1786, 1787, 1812, 1813, 1817, 1818, 1820, 1821, 1823, 1828, 1829, 1831e, 1831j, 1833b, 1833e, 1834, 1841, 1843, 1844, 1861, 1867, 1881, 1882, 1884, 1972, 2709, 2902, 2905, 3206 to 3208, 3332, 4515, and 4517 of this title, section 906 of Title 2, The Congress, sections 78c, 78*l*, 78*o*–5, and 78w of Title 15, Commerce and Trade, sections 212, 657, 981, 982, 1006, 1014, and 1032 of Title 18, Crimes and Criminal Procedure, sections 321 and 714 of Title 31, Money and Finance, sections 4003 and 8105 of Title 42, The Public Health and Welfare, and section 3502 of Title 44, Public Printing and Documents, repealed section 1441a of this title, enacted provisions set out as notes under sections 1, 16, 1438, 1787, 1812, 1817, and 1821 of this title and section 906 of Title 2, and amended provisions set out as notes under sections 1437, 1463, 1464, 1467a, 1707, 1812, and 1818 of this title and section 509 of Title 28, Judiciary and Judicial Procedure. For complete classification of title III to the Code, see Short title note set out under section 5301 of this title and Tables.

[1] See References in Text note below.

§ 5437. Implementation plan and reports

(a) Plan submission

Within 180 days of July 21, 2010, the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, shall jointly submit a plan to the Committee on Banking, Housing, and

Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, and the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors detailing the steps the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision will take to implement the provisions of sections 301 through 326,[1] and the provisions of the amendments made by such sections.

(b) Inspectors General review of the plan

Within 60 days of receiving the plan required under subsection (a), the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors shall jointly provide a written report to the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision and shall submit a copy to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives detailing whether the plan conforms with the provisions of sections 301 through 326,[1] and the provisions of the amendments made by such sections, including—

(1) whether the plan sufficiently takes into consideration the orderly transfer of personnel;

(2) whether the plan describes procedures and safeguards to ensure that the Office of Thrift Supervision employees are not unfairly disadvantaged relative to employees of the Office of the Comptroller of the Currency and the Corporation;

(3) whether the plan sufficiently takes into consideration the orderly transfer of authority and responsibilities;

(4) whether the plan sufficiently takes into consideration the effective transfer of funds;

(5) whether the plan sufficiently takes in[2] consideration the orderly transfer of property; and

(6) any additional recommendations for an orderly and effective process.

(c) Implementation reports

Not later than 6 months after the date on which the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives receives the report required under subsection (b), and every 6 months thereafter until all aspects of the plan have been implemented, the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors shall jointly provide a written report on the status of the implementation of the plan to the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision and shall submit a copy to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(Pub. L. 111–203, title III, §327, July 21, 2010, 124 Stat. 1537.)

[1] See References in Text note below.

[2] So in original. Probably should be ''into''.

REFERENCES IN TEXT

Sections 301 through 326, referred to in subsecs. (a) and (b), are sections 301 to 326 of Pub. L. 111–203, which enacted sections 4b, 16, and 5401 to 5436 of this title, amended sections 1, 11, 248, 481, 482, 1813, and 1820 of this title and section 3502 of Title 44, Public Printing and Documents, and enacted provisions set out as notes under sections 1 and 16 of this title.

PART C—OTHER MATTERS

§ 5451. Branching

Notwithstanding the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any other provision of Federal or State law, a savings association that becomes a bank may—

(1) continue to operate any branch or agency that the savings association operated immediately before the savings association became a bank; and

(2) establish, acquire, and operate additional branches and agencies at any location within any State in which the savings association operated a branch immediately before the savings association became a bank, if the law of the State in which the branch is located, or is to be located, would permit establishment of the branch if the bank were a State bank chartered by such State.

(Pub. L. 111–203, title III, §341, July 21, 2010, 124 Stat. 1540.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in text, is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

The Bank Holding Company Act of 1956, referred to in text, is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

§ 5452. Office of Minority and Women Inclusion

(a) Office of Minority and Women Inclusion

(1) Establishment

(A) In general

Except as provided in subparagraph (B), not later than 6 months after July 21, 2010, each agency shall establish an Office of Minority and Women Inclusion that shall be responsible for all matters of the agency relating to diversity in management, employment, and business activities.

(B) Bureau

The Bureau shall establish an Office of Minority and Women Inclusion not later than 6 months after the designated transfer date established under section 5582 of this title.

(2) Transfer of responsibilities

Each agency that, on the day before July 21, 2010, assigned the responsibilities described in paragraph (1) (or comparable responsibilities) to another office of the agency shall ensure that such responsibilities are transferred to the Office.

(3) Duties with respect to civil rights laws

The responsibilities described in paragraph (1) do not include enforcement of statutes, regulations, or executive orders pertaining to civil rights, except each Director shall coordinate with the agency administrator, or the designee of the agency administrator, regarding the design and implementation of any remedies resulting from violations of such statutes, regulations, or executive orders.

(b) Director

(1) In general

The Director of each Office shall be appointed by, and shall report to, the agency administrator. The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined in section 3132 of title 5, or an equivalent designation.

(2) Duties

Each Director shall develop standards for—

(A) equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the agency;

(B) increased participation of minority-owned and women-owned businesses in the programs and contracts of the agency, including standards for coordinating technical assistance to such businesses; and

(C) assessing the diversity policies and practices of entities regulated by the agency.

(3) Other duties

Each Director shall advise the agency administrator on the impact of the policies and regulations of the agency on minority-owned and women-owned businesses.

(4) Rule of construction

Nothing in paragraph (2)(C) may be construed to mandate any requirement on or otherwise affect the lending policies and practices of any regulated entity, or to require any specific action based on the findings of the assessment.

(c) Inclusion in all levels of business activities

(1) In general

The Director of each Office shall develop and implement standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts.

(2) Contracts

The procedures established by each agency for review and evaluation of contract proposals and for hiring service providers shall include, to the extent consistent with applicable law, a component that gives consideration to the diversity of the applicant. Such procedure shall include a written statement, in a form and with such content as the Director shall prescribe, that a contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors.

(3) Termination

(A) Determination

The standards and procedures developed and implemented under this subsection shall include a procedure for the Director to make a determination whether an agency contractor, and, as applicable, a subcontractor has failed to make a good faith effort to include minorities and women in their workforce.

(B) Effect of determination

(i) Recommendation to agency administrator

Upon a determination described in subparagraph (A), the Director shall make a recommendation to the agency administrator that the contract be terminated.

(ii) Action by agency administrator

Upon receipt of a recommendation under clause (i), the agency administrator may—

(I) terminate the contract;

(II) make a referral to the Office of Federal Contract Compliance Programs of the Department of Labor; or

(III) take other appropriate action.

(d) Applicability

This section shall apply to all contracts of an agency for services of any kind, including the services of financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services. The contracts referred to in this subsection include all contracts for all business and activities of an agency, at all levels, including contracts for the issuance or guarantee of any debt, equity, or security, the sale of assets, the management of the assets of the agency, the making of equity investments by the agency, and the implementation by the agency of programs to address economic recovery.

(e) Reports

Each Office shall submit to Congress an annual report regarding the actions taken by the agency and the Office pursuant to this section, which shall include—

(1) a statement of the total amounts paid by the agency to contractors since the previous report;

(2) the percentage of the amounts described in paragraph (1) that were paid to contractors described in subsection (c)(1);

(3) the successes achieved and challenges faced by the agency in operating minority and women outreach programs;

(4) the challenges the agency may face in hiring qualified minority and women employees and contracting with qualified minority-owned and women-owned businesses; and

(5) any other information, findings, conclusions, and recommendations for legislative or agency action, as the Director determines appropriate.

(f) Diversity in agency workforce

Each agency shall take affirmative steps to seek diversity in the workforce of the agency at all levels of the agency in a manner consistent with applicable law. Such steps shall include—

(1) recruiting at historically black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve majority minority populations;

(2) sponsoring and recruiting at job fairs in urban communities;

(3) placing employment advertisements in newspapers and magazines oriented toward minorities and women;

(4) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions;

(5) where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring; and

(6) any other mass media communications that the Office determines necessary.

(g) Definitions

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

(1) Agency

The term ''agency'' means—

(A) the Departmental Offices of the Department of the Treasury;

(B) the Corporation;

(C) the Federal Housing Finance Agency;

(D) each of the Federal reserve banks;

(E) the Board;

(F) the National Credit Union Administration;

(G) the Office of the Comptroller of the Currency;

(H) the Commission; and

(I) the Bureau.

(2) Agency administrator

The term ''agency administrator'' means the head of an agency.

(3) Minority

The term ''minority'' has the same meaning as in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note).

(4) Minority-owned business

The term ''minority-owned business'' has the same meaning as in section 1441a(r)(4)(A) of this title, as in effect on the day before the transfer date.

(5) Office

The term ''Office'' means the Office of Minority and Women Inclusion established by an agency under subsection (a).

(6) Women-owned business

The term ''women-owned business'' has the meaning given the term ''women's business'' in section 1441a(r)(4)(B) of this title, as in effect on the day before the transfer date.

(Pub. L. 111–203, title III, § 342, July 21, 2010, 124 Stat. 1541.)

REFERENCES IN TEXT

Section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (g)(3), is section 1204(c) of Pub. L. 101–73, which is set out as a note under section 1811 of this title.

SUBCHAPTER IV—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

§ 5461. Findings and purposes

(a) Findings

Congress finds the following:

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing and settlement of payment, securities, and other financial transactions.

(2) Financial market utilities that conduct or support multilateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing, and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary—

(A) to provide consistency;

(B) to promote robust risk management and safety and soundness;

(C) to reduce systemic risks; and

(D) to support the stability of the broader financial system.

(b) Purpose

The purpose of this subchapter is to mitigate systemic risk in the financial system and promote financial stability by—

(1) authorizing the Board of Governors to promote uniform standards for the—

(A) management of risks by systemically important financial market utilities; and

(B) conduct of systemically important payment, clearing, and settlement activities by financial institutions;

(2) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important financial market utilities;

(3) strengthening the liquidity of systemically important financial market utilities; and

(4) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important payment, clearing, and settlement activities by financial institutions.

(Pub. L. 111–203, title VIII, § 802, July 21, 2010, 124 Stat. 1802.)

EFFECTIVE DATE

Pub. L. 111–203, title VIII, § 814, July 21, 2010, 124 Stat. 1822, provided that: ''This title [enacting this sub-

chapter] is effective as of the date of enactment of this Act [July 21, 2010].''

SHORT TITLE

This subchapter known as the ''Payment, Clearing, and Settlement Supervision Act of 2010'', see Short Title note set out under section 5301 of this title.

§ 5462. Definitions

In this subchapter, the following definitions shall apply:

(1) Appropriate financial regulator

The term ''appropriate financial regulator'' means—

(A) the primary financial regulatory agency, as defined in section 5301 of this title;

(B) the National Credit Union Administration, with respect to any insured credit union under the Federal Credit Union Act (12 U.S.C. 1751 et seq.); and

(C) the Board of Governors, with respect to organizations operating under section 25A of the Federal Reserve Act (12 U.S.C. 611), and any other financial institution engaged in a designated activity.

(2) Designated activity

The term ''designated activity'' means a payment, clearing, or settlement activity that the Council has designated as systemically important under section 5463 of this title.

(3) Designated clearing entity

The term ''designated clearing entity'' means a designated financial market utility that is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) or a clearing agency registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1).

(4) Designated financial market utility

The term ''designated financial market utility'' means a financial market utility that the Council has designated as systemically important under section 5463 of this title.

(5) Financial institution

(A) In general

The term ''financial institution'' means—

(i) a depository institution, as defined in section 1813 of this title;

(ii) a branch or agency of a foreign bank, as defined in section 3101 of this title;

(iii) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a and 611 through 631);

(iv) a credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);[1]

(v) a broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(vi) an investment company, as defined in section 80a–3 of title 15;

(vii) an insurance company, as defined in section 80a–2 of title 15;

(viii) an investment adviser, as defined in section 80b–2 of title 15;

(ix) a futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and

(x) any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(B) Exclusions

The term ''financial institution'' does not include designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or national securities exchanges, national securities associations, alternative trading systems, securities information processors solely with respect to the activities of the entity as a securities information processor, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or designated clearing entities, provided that the exclusions in this subparagraph apply only with respect to the activities that require the entity to be so registered.

(6) Financial market utility

(A) Inclusion

The term ''financial market utility'' means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.

(B) Exclusions

The term ''financial market utility'' does not include—

(i) designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), solely by reason of their providing facilities for comparison of data respecting the terms of settlement of securities or futures transactions effected on such exchange or by means of any electronic system operated or controlled by such entities, provided that the exclusions in this clause apply only with respect to the activities that require the entity to be so registered; and

(ii) any broker, dealer, transfer agent, or investment company, or any futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator, solely by reason of functions performed by such institution as part of brokerage, dealing, transfer agency, or investment company activities, or solely

[1] See References in Text note below.

by reason of acting on behalf of a financial market utility or a participant therein in connection with the furnishing by the financial market utility of services to its participants or the use of services of the financial market utility by its participants, provided that services performed by such institution do not constitute critical risk management or processing functions of the financial market utility.

(7) Payment, clearing, or settlement activity

(A) In general

The term ''payment, clearing, or settlement activity'' means an activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions, but shall not include any offer or sale of a security under the Securities Act of 1933 (15 U.S.C. 77a et seq.), or any quotation, order entry, negotiation, or other pre-trade activity or execution activity.

(B) Financial transaction

For the purposes of subparagraph (A), the term ''financial transaction'' includes—

(i) funds transfers;

(ii) securities contracts;

(iii) contracts of sale of a commodity for future delivery;

(iv) forward contracts;

(v) repurchase agreements;

(vi) swaps;

(vii) security-based swaps;

(viii) swap agreements;

(ix) security-based swap agreements;

(x) foreign exchange contracts;

(xi) financial derivatives contracts; and

(xii) any similar transaction that the Council determines to be a financial transaction for purposes of this subchapter.

(C) Included activities

When conducted with respect to a financial transaction, payment, clearing, and settlement activities may include—

(i) the calculation and communication of unsettled financial transactions between counterparties;

(ii) the netting of transactions;

(iii) provision and maintenance of trade, contract, or instrument information;

(iv) the management of risks and activities associated with continuing financial transactions;

(v) transmittal and storage of payment instructions;

(vi) the movement of funds;

(vii) the final settlement of financial transactions; and

(viii) other similar functions that the Council may determine.

(D) Exclusion

Payment, clearing, and settlement activities shall not include public reporting of swap transaction data under section 727 or 763(i) of the Wall Street Transparency and Accountability Act of 2010.

(8) Supervisory Agency

(A) In general

The term ''Supervisory Agency'' means the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws, as follows:

(i) The Securities and Exchange Commission, with respect to a designated financial market utility that is a clearing agency registered with the Securities and Exchange Commission.

(ii) The Commodity Futures Trading Commission, with respect to a designated financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission.

(iii) The appropriate Federal banking agency, with respect to a designated financial market utility that is an institution described in section 1813(q) of this title.

(iv) The Board of Governors, with respect to a designated financial market utility that is otherwise not subject to the jurisdiction of any agency listed in clauses (i), (ii), and (iii).

(B) Multiple agency jurisdiction

If a designated financial market utility is subject to the jurisdictional supervision of more than 1 agency listed in subparagraph (A), then such agencies should agree on 1 agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which agency is the Supervisory Agency for purposes of this subchapter.

(9) Systemically important and systemic importance

The terms ''systemically important'' and ''systemic importance'' mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States.

(Pub. L. 111–203, title VIII, § 803, July 21, 2010, 124 Stat. 1803.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in par. (1)(B), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified principally to chapter 14 (§ 1751 et seq.) of this title. Section 101 of the Act, classified to section 1752 of this title, does not contain a definition of ''credit union''. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

Sections 25 and 25A of the Federal Reserve Act, referred to in pars. (1)(C) and (5)(A)(iii), are classified to subchapters I (§ 601 et seq.) and II (§ 611 et seq.), respectively, of chapter 6 of this title.

The Commodity Exchange Act, referred to in pars. (5)(B) and (6)(B)(i), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Exchange Act of 1934, referred to in pars. (5)(B) and (6)(B)(i), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Securities Act of 1933, referred to in par. (7)(A), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

Sections 727 and 763(i) of the Wall Street Transparency and Accountability Act of 2010, referred to in par. (7)(D), are sections 727 and 763(i) of Pub. L. 111–203, which amended section 2 of Title 7, Agriculture, and section 78m of Title 15, Commerce and Trade, respectively, effective on the later of 360 days after July 21, 2010, or, to the extent it requires a rulemaking, not less than 60 days after publication of the final rule or regulation.

§ 5463. Designation of systemic importance

(a) Designation

(1) Financial stability oversight council

The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson of the Council, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.

(2) Considerations

In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Council shall take into consideration the following:

(A) The aggregate monetary value of transactions processed by the financial market utility or carried out through the payment, clearing, or settlement activity.

(B) The aggregate exposure of the financial market utility or a financial institution engaged in payment, clearing, or settlement activities to its counterparties.

(C) The relationship, interdependencies, or other interactions of the financial market utility or payment, clearing, or settlement activity with other financial market utilities or payment, clearing, or settlement activities.

(D) The effect that the failure of or a disruption to the financial market utility or payment, clearing, or settlement activity would have on critical markets, financial institutions, or the broader financial system.

(E) Any other factors that the Council deems appropriate.

(b) Rescission of designation

(1) In general

The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson of the Council, shall rescind a designation of systemic importance for a designated financial market utility or designated activity if the Council determines that the utility or activity no longer meets the standards for systemic importance.

(2) Effect of rescission

Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to the provisions of this subchapter or any rules or orders prescribed under this subchapter.

(c) Consultation and notice and opportunity for hearing

(1) Consultation

Before making any determination under subsection (a) or (b), the Council shall consult with the relevant Supervisory Agency and the Board of Governors.

(2) Advance notice and opportunity for hearing

(A) In general

Before making any determination under subsection (a) or (b), the Council shall provide the financial market utility or, in the case of a payment, clearing, or settlement activity, financial institutions with advance notice of the proposed determination of the Council.

(B) Notice in Federal Register

The Council shall provide such advance notice to financial institutions by publishing a notice in the Federal Register.

(C) Requests for hearing

Within 30 days from the date of any notice of the proposed determination of the Council, the financial market utility or, in the case of a payment, clearing, or settlement activity, a financial institution engaged in the designated activity may request, in writing, an opportunity for a written or oral hearing before the Council to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

(D) Written submissions

Upon receipt of a timely request, the Council shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Council, oral testimony or oral argument.

(3) Emergency exception

(A) Waiver or modification by vote of the Council

The Council may waive or modify the requirements of paragraph (2) if the Council determines, by an affirmative vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson of the Council, that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

(B) Notice of waiver or modification

The Council shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as prac-

ticable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and 3 business days in the case of financial institutions. The Council shall provide the notice to financial institutions by posting a notice on the website of the Council and by publishing a notice in the Federal Register.

(d) Notification of final determination

(1) After hearing

Within 60 days of any hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing, which shall include findings of fact upon which the determination of the Council is based.

(2) When no hearing requested

If the Council does not receive a timely request for a hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing not later than 30 days after the expiration of the date by which a financial market utility or a financial institution could have requested a hearing. All notices to financial institutions under this subsection shall be published in the Federal Register.

(e) Extension of time periods

The Council may extend the time periods established in subsections (c) and (d) as the Council determines to be necessary or appropriate.

(Pub. L. 111–203, title VIII, § 804, July 21, 2010, 124 Stat. 1807.)

§ 5464. Standards for systemically important financial market utilities and payment, clearing, or settlement activities

(a) Authority to prescribe standards

(1) Board of Governors

Except as provided in paragraph (2), the Board of Governors, by rule or order, and in consultation with the Council and the Supervisory Agencies, shall prescribe risk management standards, taking into consideration relevant international standards and existing prudential requirements, governing—

(A) the operations related to the payment, clearing, and settlement activities of designated financial market utilities; and

(B) the conduct of designated activities by financial institutions.

(2) Special procedures for designated clearing entities and designated activities of certain financial institutions

(A) CFTC and Commission

The Commodity Futures Trading Commission and the Commission may each prescribe regulations, in consultation with the Council and the Board of Governors, containing risk management standards, taking into consideration relevant international standards and existing prudential requirements, for those designated clearing entities and financial institutions engaged in designated activities for which each is the Supervisory Agency or the appropriate financial regulator, governing—

(i) the operations related to payment, clearing, and settlement activities of such designated clearing entities; and

(ii) the conduct of designated activities by such financial institutions.

(B) Review and determination

The Board of Governors may determine that existing prudential requirements of the Commodity Futures Trading Commission, the Commission, or both (including requirements prescribed pursuant to subparagraph (A)) with respect to designated clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency or the appropriate financial regulator are insufficient to prevent or mitigate significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States.

(C) Written determination

Any determination by the Board of Governors under subparagraph (B) shall be provided in writing to the Commodity Futures Trading Commission or the Commission, as applicable, and the Council, and shall explain why existing prudential requirements, considered as a whole, are insufficient to ensure that the operations and activities of the designated clearing entities or the activities of financial institutions described in subparagraph (B) will not pose significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States. The Board of Governors' determination shall contain a detailed analysis supporting its findings and identify the specific prudential requirements that are insufficient.

(D) CFTC and Commission response

The Commodity Futures Trading Commission or the Commission, as applicable, shall within 60 days either object to the Board of Governors' determination with a detailed analysis as to why existing prudential requirements are sufficient, or submit an explanation to the Council and the Board of Governors describing the actions to be taken in response to the Board of Governors' determination.

(E) Authorization

Upon an affirmative vote by not fewer than 2/3 of members then serving on the Council, the Council shall either find that the response submitted under subparagraph (D) is sufficient, or require the Commodity Futures Trading Commission, or the Commission, as applicable, to prescribe such risk management standards as the Council determines is necessary to address the specific prudential requirements that are determined to be insufficient.'' [1]

[1] So in original. The closing quotation marks probably should not appear.

(b) Objectives and principles

The objectives and principles for the risk management standards prescribed under subsection (a) shall be to—

(1) promote robust risk management;

(2) promote safety and soundness;

(3) reduce systemic risks; and

(4) support the stability of the broader financial system.

(c) Scope

The standards prescribed under subsection (a) may address areas such as—

(1) risk management policies and procedures;

(2) margin and collateral requirements;

(3) participant or counterparty default policies and procedures;

(4) the ability to complete timely clearing and settlement of financial transactions;

(5) capital and financial resource requirements for designated financial market utilities; and

(6) other areas that are necessary to achieve the objectives and principles in subsection (b).

(d) Limitation on scope

Except as provided in subsections (e) and (f) of section 5466 of this title, nothing in this subchapter shall be construed to permit the Council or the Board of Governors to take any action or exercise any authority granted to the Commodity Futures Trading Commission under section 2(h) of title 7 or the Securities and Exchange Commission under section 78c–3(a) of title 15, including—

(1) the approval of, disapproval of, or stay of the clearing requirement for any group, category, type, or class of swaps that a designated clearing entity may accept for clearing;

(2) the determination that any group, category, type, or class of swaps shall be subject to the mandatory clearing requirement of section 2(h)(1) of title 7 or section 78c–3(a)(1) of title 15;

(3) the determination that any person is exempt from the mandatory clearing requirement of section 2(h)(1) of title 7 or section 78c–3(a)(1) of title 15; or

(4) any authority granted to the Commodity Futures Trading Commission or the Securities and Exchange Commission with respect to transaction reporting or trade execution.

(e) Threshold level

The standards prescribed under subsection (a) governing the conduct of designated activities by financial institutions shall, where appropriate, establish a threshold as to the level or significance of engagement in the activity at which a financial institution will become subject to the standards with respect to that activity.

(f) Compliance required

Designated financial market utilities and financial institutions subject to the standards prescribed under subsection (a) for a designated activity shall conduct their operations in compliance with the applicable risk management standards.

(Pub. L. 111–203, title VIII, § 805, July 21, 2010, 124 Stat. 1809.)

§ 5465. Operations of designated financial market utilities

(a) Federal Reserve account and services

The Board of Governors may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide the services listed in section 11A(b) of the Federal Reserve Act (12 U.S.C. 248a(b)) and deposit accounts under the first undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 342) to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act [12 U.S.C. 221 et seq.] to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(b) Advances

The Board of Governors may authorize a Federal Reserve bank under section 10B of the Federal Reserve Act (12 U.S.C. 347b) to provide to a designated financial market utility discount and borrowing privileges only in unusual or exigent circumstances, upon the affirmative vote of a majority of the Board of Governors then serving (or such other number in accordance with the provisions of section 11(r)(2) of the Federal Reserve Act (12 U.S.C. 248(r)(2))[1] after consultation with the Secretary, and upon a showing by the designated financial market utility that it is unable to secure adequate credit accommodations from other banking institutions. All such discounts and borrowing privileges shall be subject to such other limitations, restrictions, and regulations as the Board of Governors may prescribe. Access to discount and borrowing privileges under section 10B of the Federal Reserve Act as authorized in this section does not require a designated financial market utility to be or become a bank or bank holding company.

(c) Earnings on Federal Reserve balances

A Federal Reserve Bank may pay earnings on balances maintained by or on behalf of a designated financial market utility in the same manner and to the same extent as the Federal Reserve Bank may pay earnings to a depository institution under the Federal Reserve Act [12 U.S.C. 221 et seq.], subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(d) Reserve requirements

The Board of Governors may exempt a designated financial market utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act (12 U.S.C. 461) applicable to a designated financial market utility.

(e) Changes to rules, procedures, or operations

(1) Advance notice

(A) Advance notice of proposed changes required

A designated financial market utility shall provide notice 60 days in advance notice[2] to its Supervisory Agency of any proposed

[1] So in original. Another closing parenthesis probably should appear.

[2] So in original. The word ''notice'' probably should not appear.

change to its rules, procedures, or operations that could, as defined in rules of each Supervisory Agency, materially affect, the nature or level of risks presented by the designated financial market utility.

(B) Terms and standards prescribed by the Supervisory Agencies

Each Supervisory Agency, in consultation with the Board of Governors, shall prescribe regulations that define and describe the standards for determining when notice is required to be provided under subparagraph (A).

(C) Contents of notice

The notice of a proposed change shall describe—

(i) the nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

(ii) how the designated financial market utility plans to manage any identified risks.

(D) Additional information

The Supervisory Agency may require a designated financial market utility to provide any information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated financial market utility's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(E) Notice of objection

The Supervisory Agency shall notify the designated financial market utility of any objection regarding the proposed change within 60 days from the later of—

(i) the date that the notice of the proposed change is received; or

(ii) the date any further information requested for consideration of the notice is received.

(F) Change not allowed if objection

A designated financial market utility shall not implement a change to which the Supervisory Agency has an objection.

(G) Change allowed if no objection within 60 days

A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

(i) the date that the Supervisory Agency receives the notice of proposed change; or

(ii) the date the Supervisory Agency receives any further information it requests for consideration of the notice.

(H) Review extension for novel or complex issues

The Supervisory Agency may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Supervisory Agency providing the designated financial market utility with prompt written notice of the extension. Any extension under this subparagraph will extend the time periods under subparagraphs (E) and (G).

(I) Change allowed earlier if notified of no objection

A designated financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency, or the date the Supervisory Agency receives any further information it requested, if the Supervisory Agency notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Supervisory Agency.

(2) Emergency changes

(A) In general

A designated financial market utility may implement a change that would otherwise require advance notice under this subsection if it determines that—

(i) an emergency exists; and

(ii) immediate implementation of the change is necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(B) Notice required within 24 hours

The designated financial market utility shall provide notice of any such emergency change to its Supervisory Agency, as soon as practicable, which shall be no later than 24 hours after implementation of the change.

(C) Contents of emergency notice

In addition to the information required for changes requiring advance notice, the notice of an emergency change shall describe—

(i) the nature of the emergency; and

(ii) the reason the change was necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(D) Modification or rescission of change may be required

The Supervisory Agency may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any applicable rules, orders, or standards prescribed under section 5464(a) of this title.

(3) Copying the Board of Governors

The Supervisory Agency shall provide the Board of Governors concurrently with a complete copy of any notice, request, or other information it issues, submits, or receives under this subsection.

(4) Consultation with Board of Governors

Before taking any action on, or completing its review of, a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board of Governors.

(Pub. L. 111–203, title VIII, § 806, July 21, 2010, 124 Stat. 1811.)

REFERENCES IN TEXT

The Federal Reserve Act, referred to in subsecs. (a) and (c), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

This Act, referred to in subsec. (e)(2)(D), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§ 8201 et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5466. Examination of and enforcement actions against designated financial market utilities

(a) Examination

Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of a designated financial market utility at least once annually in order to determine the following:

(1) The nature of the operations of, and the risks borne by, the designated financial market utility.

(2) The financial and operational risks presented by the designated financial market utility to financial institutions, critical markets, or the broader financial system.

(3) The resources and capabilities of the designated financial market utility to monitor and control such risks.

(4) The safety and soundness of the designated financial market utility.

(5) The designated financial market utility's compliance with—

(A) this subchapter; and

(B) the rules and orders prescribed under this subchapter.

(b) Service providers

Whenever a service integral to the operation of a designated financial market utility is performed for the designated financial market utility by another entity, whether an affiliate or non-affiliate and whether on or off the premises of the designated financial market utility, the Supervisory Agency may examine whether the provision of that service is in compliance with applicable law, rules, orders, and standards to the same extent as if the designated financial market utility were performing the service on its own premises.

(c) Enforcement

For purposes of enforcing the provisions of this subchapter, a designated financial market utility shall be subject to, and the appropriate Supervisory Agency shall have authority under the provisions of subsections (b) through (n) of section 1818 of this title in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Supervisory Agency was the appropriate Federal banking agency for such insured depository institution.

(d) Board of Governors involvement in examinations

(1) Board of Governors consultation on examination planning

The Supervisory Agency shall consult annually with the Board of Governors regarding the scope and methodology of any examination conducted under subsections (a) and (b). The Supervisory Agency shall lead all examinations conducted under subsections (a) and (b)[1]

(2) Board of Governors participation in examination

The Board of Governors may, in its discretion, participate in any examination led by a Supervisory Agency and conducted under subsections (a) and (b).

(e) Board of Governors enforcement recommendations

(1) Recommendation

The Board of Governors may, after consulting with the Council and the Supervisory Agency, at any time recommend to the Supervisory Agency that such agency take enforcement action against a designated financial market utility in order to prevent or mitigate significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States. Any such recommendation for enforcement action shall provide a detailed analysis supporting the recommendation of the Board of Governors.

(2) Consideration

The Supervisory Agency shall consider the recommendation of the Board of Governors and submit a response to the Board of Governors within 60 days.

(3) Binding arbitration

If the Supervisory Agency rejects, in whole or in part, the recommendation of the Board of Governors, the Board of Governors may refer the recommendation to the Council for a binding decision on whether an enforcement action is warranted.

(4) Enforcement action

Upon an affirmative vote by a majority of the Council in favor of the Board of Governors' recommendation under paragraph (3), the Council may require the Supervisory Agency to—

(A) exercise the enforcement authority referenced in subsection (c); and

(B) take enforcement action against the designated financial market utility.

(f) Emergency enforcement actions by the Board of Governors

(1) Imminent risk of substantial harm

The Board of Governors may, after consulting with the Supervisory Agency and upon an affirmative vote by a majority the Council, take enforcement action against a designated financial market utility if the Board of Governors has reasonable cause to conclude that—

(A) either—

[1] So in original. Probably should be followed by a period.

(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 5465(e) of this title) poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system of the United States; or

(ii) the condition of a designated financial market utility poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

(B) the imminent risk of substantial harm precludes the Board of Governors' use of the procedures in subsection (e).

(2) Enforcement authority

For purposes of taking enforcement action under paragraph (1), a designated financial market utility shall be subject to, and the Board of Governors shall have authority under[2] the provisions of subsections (b) through (n) of section 1818 of this title in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

(Pub. L. 111–203, title VIII, § 807, July 21, 2010, 124 Stat. 1814.)

§ 5467. Examination of and enforcement actions against financial institutions subject to standards for designated activities

(a) Examination

The appropriate financial regulator is authorized to examine a financial institution subject to the standards prescribed under section 5464(a) of this title for a designated activity in order to determine the following:

(1) The nature and scope of the designated activities engaged in by the financial institution.

(2) The financial and operational risks the designated activities engaged in by the financial institution may pose to the safety and soundness of the financial institution.

(3) The financial and operational risks the designated activities engaged in by the financial institution may pose to other financial institutions, critical markets, or the broader financial system.

(4) The resources available to and the capabilities of the financial institution to monitor and control the risks described in paragraphs (2) and (3).

(5) The financial institution's compliance with this subchapter and the rules and orders prescribed under section 5464(a) of this title.

(b) Enforcement

For purposes of enforcing the provisions of this subchapter, and the rules and orders prescribed under this section, a financial institution subject to the standards prescribed under section 5464(a) of this title for a designated activity shall be subject to, and the appropriate financial regulator shall have authority under[1] the provisions of subsections (b) through (n) of section 1818 of this title in the same manner and to the same extent as if the financial institution was an insured depository institution and the appropriate financial regulator was the appropriate Federal banking agency for such insured depository institution.

(c) Technical assistance

The Board of Governors shall consult with and provide such technical assistance as may be required by the appropriate financial regulators to ensure that the rules and orders prescribed under this subchapter are interpreted and applied in as consistent and uniform a manner as practicable.

(d) Delegation

(1) Examination

(A) Request to Board of Governors

The appropriate financial regulator may request the Board of Governors to conduct or participate in an examination of a financial institution subject to the standards prescribed under section 5464(a) of this title for a designated activity in order to assess the compliance of such financial institution with—

(i) this subchapter; or

(ii) the rules or orders prescribed under this subchapter.

(B) Examination by Board of Governors

Upon receipt of an appropriate written request, the Board of Governors will conduct the examination under such terms and conditions to which the Board of Governors and the appropriate financial regulator mutually agree.

(2) Enforcement

(A) Request to Board of Governors

The appropriate financial regulator may request the Board of Governors to enforce this subchapter or the rules or orders prescribed under this subchapter against a financial institution that is subject to the standards prescribed under section 5464(a) of this title for a designated activity.

(B) Enforcement by Board of Governors

Upon receipt of an appropriate written request, the Board of Governors shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this subchapter or the rules or orders prescribed under this subchapter and, if so, the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of[1] subsections (b) through (n) of section 1818 of this title in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

[1] So in original. Probably should be followed by a comma.

[2] So in original. Probably should be followed by a comma.

(e) Back-up authority of the Board of Governors

(1) Examination and enforcement

Notwithstanding any other provision of law, the Board of Governors may—

(A) conduct an examination of the type described in subsection (a) of any financial institution that is subject to the standards prescribed under section 5464(a) of this title for a designated activity; and

(B) enforce the provisions of this subchapter or any rules or orders prescribed under this subchapter against any financial institution that is subject to the standards prescribed under section 5464(a) of this title for a designated activity.

(2) Limitations

(A) Examination

The Board of Governors may exercise the authority described in paragraph (1)(A) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this subchapter or the rules or orders prescribed under this subchapter with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included;

(iii) requested the appropriate financial regulator to conduct a prompt examination of the financial institution;

(iv) either—

(I) not been afforded a reasonable opportunity to participate in an examination of the financial institution by the appropriate financial regulator within 30 days after the date of the Board's notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this subchapter or the rules or orders prescribed under this subchapter poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors affording the appropriate financial regulator a reasonable opportunity to participate in the examination; and

(v) obtained the approval of the Council upon an affirmative vote by a majority of the Council.

(B) Enforcement

The Board of Governors may exercise the authority described in paragraph (1)(B) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this subchapter or the rules or orders prescribed under this subchapter with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included and with a recommendation that the appropriate financial regulator take 1 or more specific enforcement actions against the financial institution;

(iii) either—

(I) not been notified, in writing, by the appropriate financial regulator of the commencement of an enforcement action recommended by the Board of Governors against the financial institution within 60 days from the date of the notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this subchapter or the rules or orders prescribed under this subchapter poses significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States, subject to the Board of Governors notifying the appropriate financial regulator of the Board's enforcement action; and

(iv) obtained the approval of the Council upon an affirmative vote by a majority of the Council.

(3) Enforcement provisions

For purposes of taking enforcement action under paragraph (1), the financial institution shall be subject to, and the Board of Governors shall have authority under[1] the provisions of subsections (b) through (n) of section 1818 of this title in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

(Pub. L. 111–203, title VIII, § 808, July 21, 2010, 124 Stat. 1816.)

§ 5468. Requests for information, reports, or records

(a) Information to assess systemic importance

(1) Financial market utilities

The Council is authorized to require any financial market utility to submit such information as the Council may require for the sole purpose of assessing whether that financial market utility is systemically important, but only if the Council has reasonable cause to believe that the financial market utility meets the standards for systemic importance set forth in section 5463 of this title.

(2) Financial institutions engaged in payment, clearing, or settlement activities

The Council is authorized to require any financial institution to submit such information as the Council may require for the sole purpose of assessing whether any payment, clearing, or settlement activity engaged in or supported by a financial institution is systemically important, but only if the Council has reasonable cause to believe that the activity meets the standards for systemic importance set forth in section 5463 of this title.

(b) Reporting after designation

(1) Designated financial market utilities

The Board of Governors and the Council may each require a designated financial market

utility to submit reports or data to the Board of Governors and the Council in such frequency and form as deemed necessary by the Board of Governors or the Council in order to assess the safety and soundness of the utility and the systemic risk that the utility's operations pose to the financial system.

(2) Financial institutions subject to standards for designated activities

The Board of Governors and the Council may each require 1 or more financial institutions subject to the standards prescribed under section 5464(a) of this title for a designated activity to submit, in such frequency and form as deemed necessary by the Board of Governors or the Council, reports and data to the Board of Governors and the Council solely with respect to the conduct of the designated activity and solely to assess whether—

(A) the rules, orders, or standards prescribed under section 5464(a) of this title with respect to the designated activity appropriately address the risks to the financial system presented by such activity; and

(B) the financial institutions are in compliance with this subchapter and the rules and orders prescribed under section 5464(a) of this title with respect to the designated activity.

(3) Limitation

The Board of Governors may, upon an affirmative vote by a majority of the Council, prescribe regulations under this section that impose a recordkeeping or reporting requirement on designated clearing entities or financial institutions engaged in designated activities that are subject to standards that have been prescribed under section 5464(a)(2) of this title.

(c) Coordination with appropriate Federal Supervisory Agency

(1) Advance coordination

Before requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity, the Board of Governors or the Council shall coordinate with the Supervisory Agency for a financial market utility or the appropriate financial regulator for a financial institution to determine if the information is available from or may be obtained by the agency in the form, format, or detail required by the Board of Governors or the Council.

(2) Supervisory reports

Notwithstanding any other provision of law, the Supervisory Agency, the appropriate financial regulator, and the Board of Governors are authorized to disclose to each other and the Council copies of its examination reports or similar reports regarding any financial market utility or any financial institution engaged in payment, clearing, or settlement activities.

(d) Timing of response from appropriate Federal Supervisory Agency

If the information, report, records, or data requested by the Board of Governors or the Council under subsection (c)(1) are not provided in full by the Supervisory Agency or the appropriate financial regulator in less than 15 days after the date on which the material is requested, the Board of Governors or the Council may request the information or impose recordkeeping or reporting requirements directly on such persons as provided in subsections (a) and (b) with notice to the agency.

(e) Sharing of information

(1) Material concerns

Notwithstanding any other provision of law, the Board of Governors, the Council, the appropriate financial regulator, and any Supervisory Agency are authorized to—

(A) promptly notify each other of material concerns about a designated financial market utility or any financial institution engaged in designated activities; and

(B) share appropriate reports, information, or data relating to such concerns.

(2) Other information

Notwithstanding any other provision of law, the Board of Governors, the Council, the appropriate financial regulator, or any Supervisory Agency may, under such terms and conditions as it deems appropriate, provide confidential supervisory information and other information obtained under this subchapter to each other, and to the Secretary, Federal Reserve Banks, State financial institution supervisory agencies, foreign financial supervisors, foreign central banks, and foreign finance ministries, subject to reasonable assurances of confidentiality, provided, however, that no person or entity receiving information pursuant to this section may disseminate such information to entities or persons other than those listed in this paragraph without complying with applicable law, including section 12 of title 7.

(f) Privilege maintained

The Board of Governors, the Council, the appropriate financial regulator, and any Supervisory Agency providing reports or data under this section shall not be deemed to have waived any privilege applicable to those reports or data, or any portion thereof, by providing the reports or data to the other party or by permitting the reports or data, or any copies thereof, to be used by the other party.

(g) Disclosure exemption

Information obtained by the Board of Governors, the Supervisory Agencies, or the Council under this section and any materials prepared by the Board of Governors, the Supervisory Agencies, or the Council regarding their assessment of the systemic importance of financial market utilities or any payment, clearing, or settlement activities engaged in by financial institutions, and in connection with their supervision of designated financial market utilities and designated activities, shall be confidential supervisory information exempt from disclosure under section 552 of title 5. For purposes of such section 552, this subsection shall be considered a statute described in subsection (b)(3) of such section 552.

(Pub. L. 111–203, title VIII, § 809, July 21, 2010, 124 Stat. 1818.)

§ 5469. Rulemaking

The Board of Governors, the Supervisory Agencies, and the Council are authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out their respective authorities and duties granted under this subchapter and prevent evasions thereof.

(Pub. L. 111–203, title VIII, § 810, July 21, 2010, 124 Stat. 1820.)

§ 5470. Other authority

Unless otherwise provided by its terms, this subchapter does not divest any appropriate financial regulator, any Supervisory Agency, or any other Federal or State agency, of any authority derived from any other applicable law, except that any standards prescribed by the Board of Governors under section 5464 of this title shall supersede any less stringent requirements established under other authority to the extent of any conflict.

(Pub. L. 111–203, title VIII, § 811, July 21, 2010, 124 Stat. 1821.)

§ 5471. Consultation

(a) CFTC

The Commodity Futures Trading Commission shall consult with the Board of Governors—

(1) prior to exercising its authorities under sections 2(h)(2)(C), 2(h)(3)(A), 2(h)(3)(C), 2(h)(4)(A), and 2(h)(4)(B) of title 7, as amended by the Wall Street Transparency and Accountability Act of 2010;

(2) with respect to any rule or rule amendment of a derivatives clearing organization for which a stay of certification has been issued under section 745(b)(3)[1] of the Wall Street Transparency and Accountability Act of 2010; and

(3) prior to exercising its rulemaking authorities under section 728 of the Wall Street Transparency and Accountability Act of 2010 [7 U.S.C. 24a].

(b) SEC

The Commission shall consult with the Board of Governors—

(1) prior to exercising its authorities under sections 78c–3(a)(2)(C), 78c–3(a)(3)(A), 78c–3(a)(3)(C), 78c–3(a)(4)(A), and 78c–3(a)(4)(B) of title 15, as amended by the Wall Street Transparency and Accountability Act of 2010;

(2) with respect to any proposed rule change of a clearing agency for which an extension of the time for review has been designated under section 78s(b)(2) of title 15; and

(3) prior to exercising its rulemaking authorities under section 78m(n) of title 15, as added by section 763(i) of the Wall Street Transparency and Accountability Act of 2010.

(Pub. L. 111–203, title VIII, § 812, July 21, 2010, 124 Stat. 1821.)

REFERENCES IN TEXT

The Wall Street Transparency and Accountability Act of 2010, referred to in subsecs. (a) and (b), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641. Section 728 of the Act amended the act of Sept. 21, 1922, ch. 369, to add a new section 21 which is classified to section 24a of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of Title 15, Commerce and Trade, and Tables.

Section 745(b)(3) of the Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (a)(2), probably means section 5c(c)(3) of the Commodity Exchange Act, which is classified to section 7a–2(c)(3) of Title 7, Agriculture. Section 745(b) of the Wall Street Transparency and Accountability Act of 2010, which is section 745(b) of Pub. L. 111–203, added subsec. (c) of section 7a–2 of Title 7 and struck out former subsec. (c) of that section. Section 7a–2(c)(3) of Title 7 relates to stays of the certification for rules. Section 745(b) of Pub. L. 111–203 does not contain a par. (3).

[1] See References in Text note below.

§ 5472. Common framework for designated clearing entity risk management

The Commodity Futures Trading Commission and the Commission shall coordinate with the Board of Governors to jointly develop risk management supervision programs for designated clearing entities. Not later than 1 year after July 21, 2010, the Commodity Futures Trading Commission, the Commission, and the Board of Governors shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Financial Services and the Committee on Agriculture of the House of Representatives recommendations[1] for—

(1) improving consistency in the designated clearing entity oversight programs of the Commission and the Commodity Futures Trading Commission;

(2) promoting robust risk management by designated clearing entities;

(3) promoting robust risk management oversight by regulators of designated clearing entities; and

(4) improving regulators' ability to monitor the potential effects of designated clearing entity risk management on the stability of the financial system of the United States.

(Pub. L. 111–203, title VIII, § 813, July 21, 2010, 124 Stat. 1821.)

SUBCHAPTER V—BUREAU OF CONSUMER FINANCIAL PROTECTION

§ 5481. Definitions

Except as otherwise provided in this title,[1] for purposes of this title,[1] the following definitions shall apply:

(1) Affiliate

The term ''affiliate'' means any person that controls, is controlled by, or is under common control with another person.

(2) Bureau

The term ''Bureau'' means the Bureau of Consumer Financial Protection.

(3) Business of insurance

The term ''business of insurance'' means the writing of insurance or the reinsuring of risks

[1] So in original. Probably should be preceded by ''with''.

[1] See References in Text note below.

by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(4) Consumer

The term ''consumer'' means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) Consumer financial product or service

The term ''consumer financial product or service'' means any financial product or service that is described in one or more categories under—

(A) paragraph (15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(B) clause (i), (iii), (ix), or (x) of paragraph (15)(A), and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (A).

(6) Covered person

The term ''covered person'' means—

(A) any person that engages in offering or providing a consumer financial product or service; and

(B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.

(7) Credit

The term ''credit'' means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(8) Deposit-taking activity

The term ''deposit-taking activity'' means—

(A) the acceptance of deposits, maintenance of deposit accounts, or the provision of services related to the acceptance of deposits or the maintenance of deposit accounts;

(B) the acceptance of funds, the provision of other services related to the acceptance of funds, or the maintenance of member share accounts by a credit union; or

(C) the receipt of funds or the equivalent thereof, as the Bureau may determine by rule or order, received or held by a covered person (or an agent for a covered person) for the purpose of facilitating a payment or transferring funds or value of funds between a consumer and a third party.

(9) Designated transfer date

The term ''designated transfer date'' means the date established under section 5582 of this title.

(10) Director

The term ''Director'' means the Director of the Bureau.

(11) Electronic conduit services

The term ''electronic conduit services''—

(A) means the provision, by a person, of electronic data transmission, routing, intermediate or transient storage, or connections to a telecommunications system or network; and

(B) does not include a person that provides electronic conduit services if, when providing such services, the person—

(i) selects or modifies the content of the electronic data;

(ii) transmits, routes, stores, or provides connections for electronic data, including financial data, in a manner that such financial data is differentiated from other types of data of the same form that such person transmits, routes, or stores, or with respect to which, provides connections; or

(iii) is a payee, payor, correspondent, or similar party to a payment transaction with a consumer.

(12) Enumerated consumer laws

Except as otherwise specifically provided in section 5519 of this title, subtitle G or subtitle H, the term ''enumerated consumer laws'' means—

(A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);

(B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);

(C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that Act [15 U.S.C. 1693*o*–2];

(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);

(F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);

(G) the Home Owners[2] Protection Act of 1998 (12 U.S.C. 4901 et seq.);

(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

(I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)[(b)]–(f));

(J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809) except for section 505 [15 U.S.C. 6805] as it applies to section 501(b) [15 U.S.C. 6801(b)];

(K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);

(O) the Truth in Lending Act (15 U.S.C. 1601 et seq.);

(P) the Truth in Savings Act (12 U.S.C. 4301 et seq.);

(Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8) [12 U.S.C. 5538]; and

(R) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).

(13) Fair lending

The term ''fair lending'' means fair, equitable, and nondiscriminatory access to credit for consumers.

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[2] So in original. Probably should be ''Homeowners''.

(14) Federal consumer financial law

The term ''Federal consumer financial law'' means the provisions of this title,[1] the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title,[1] an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H. The term does not include the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(15) Financial product or service

(A) In general

The term ''financial product or service'' means—

(i) extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);

(ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if—

(I) the lease is on a non-operating basis;

(II) the initial term of the lease is at least 90 days; and

(III) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Bureau;

(iii) providing real estate settlement services, except such services excluded under subparagraph (C), or performing appraisals of real estate or personal property;

(iv) engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer;

(v) selling, providing, or issuing stored value or payment instruments, except that, in the case of a sale of, or transaction to reload, stored value, only if the seller exercises substantial control over the terms or conditions of the stored value provided to the consumer where, for purposes of this clause—

(I) a seller shall not be found to exercise substantial control over the terms or conditions of the stored value if the seller is not a party to the contract with the consumer for the stored value product, and another person is principally responsible for establishing the terms or conditions of the stored value; and

(II) advertising the nonfinancial goods or services of the seller on the stored value card or device is not in itself an exercise of substantial control over the terms or conditions;

(vi) providing check cashing, check collection, or check guaranty services;

(vii) providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network, except that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person—

(I) is a merchant, retailer, or seller of any nonfinancial good or service who engages in financial data processing by transmitting or storing payments data about a consumer exclusively for purpose of initiating payments instructions by the consumer to pay such person for the purchase of, or to complete a commercial transaction for, such nonfinancial good or service sold directly by such person to the consumer; or

(II) provides access to a host server to a person for purposes of enabling that person to establish and maintain a website;

(viii) providing financial advisory services (other than services relating to securities provided by a person regulated by the Commission or a person regulated by a State securities Commission, but only to the extent that such person acts in a regulated capacity) to consumers on individual financial matters or relating to proprietary financial products or services (other than by publishing any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer), including—

(I) providing credit counseling to any consumer; and

(II) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;

(ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that—

(I) a person—

(aa) collects, analyzes, or maintains information that relates solely to the transactions between a consumer and such person;

(bb) provides the information described in item (aa) to an affiliate of such person; or

(cc) provides information that is used or expected to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service, including a decision for employment, government licensing, or a residential lease or tenancy involving a consumer; and

(II) the information described in subclause (I)(aa) is not used by such person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or service to the consumer, other than credit described in section 5517(a)(2)(A) of this title;

(x) collecting debt related to any consumer financial product or service; and

(xi) such other financial product or service as may be defined by the Bureau, by regulation, for purposes of this title,[1] if the Bureau finds that such financial product or service is—

(I) entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law; or

(II) permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers.

(B) Rule of construction

(i) In general

For purposes of subparagraph (A)(xi)(II), and subject to clause (ii) of this subparagraph, the following activities provided to a covered person shall not, for purposes of this title,[1] be considered incidental or complementary to a financial activity permissible for a financial holding company to engage in under any provision of a Federal law or regulation applicable to a financial holding company:

(I) Providing information products or services to a covered person for identity authentication.

(II) Providing information products or services for fraud or identify theft detection, prevention, or investigation.

(III) Providing document retrieval or delivery services.

(IV) Providing public records information retrieval.

(V) Providing information products or services for anti-money laundering activities.

(ii) Limitation

Nothing in clause (i) may be construed as modifying or limiting the authority of the Bureau to exercise any—

(I) examination or enforcement powers authority under this title[1] with respect to a covered person or service provider engaging in an activity described in subparagraph (A)(ix); or

(II) powers authorized by this title[1] to prescribe rules, issue orders, or take other actions under any enumerated consumer law or law for which the authorities are transferred under subtitle F or H.

(C) Exclusions

The term ''financial product or service'' does not include—

(i) the business of insurance; or

(ii) electronic conduit services.

(16) Foreign exchange

The term ''foreign exchange'' means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(17) Insured credit union

The term ''insured credit union'' has the same meaning as in section 1752 of this title.

(18) Payment instrument

The term ''payment instrument'' means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency).

(19) Person

The term ''person'' means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(20) Person regulated by the Commodity Futures Trading Commission

The term ''person regulated by the Commodity Futures Trading Commission'' means any person that is registered, or required by statute or regulation to be registered, with the Commodity Futures Trading Commission, but only to the extent that the activities of such person are subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(21) Person regulated by the Commission

The term ''person regulated by the Commission'' means a person who is—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.];

(B) an investment adviser that is registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.];

(C) an investment company that is required to be registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], and any company that has elected to be regulated as a business development company under that Act;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

(G) any self-regulatory organization that is required to be registered with the Commission;

(H) any nationally recognized statistical rating organization that is required to be registered with the Commission;

(I) any securities information processor that is required to be registered with the Commission;

(J) any municipal securities dealer that is required to be registered with the Commission;

(K) any other person that is required to be registered with the Commission under the Securities Exchange Act of 1934; and

(L) any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any person described in any of subparagraphs (A) through (K), but only to the extent that any person described in any of subparagraphs (A) through (K), or the employee, agent, or contractor of such person, acts in a regulated capacity.

(22) Person regulated by a State insurance regulator

The term ''person regulated by a State insurance regulator'' means any person that is engaged in the business of insurance and subject to regulation by any State insurance regulator, but only to the extent that such person acts in such capacity.

(23) Person that performs income tax preparation activities for consumers

The term ''person that performs income tax preparation activities for consumers'' means—

(A) any tax return preparer (as defined in section 7701(a)(36) of title 26), regardless of whether compensated, but only to the extent that the person acts in such capacity;

(B) any person regulated by the Secretary under section 330 of title 31, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of title 26), but only to the extent that the person acts in such capacity.

(24) Prudential regulator

The term ''prudential regulator'' means—

(A) in the case of an insured depository institution or depository institution holding company (as defined in section 1813 of this title, or subsidiary of such institution or company, the appropriate Federal banking agency, as that term is defined in section 1813 of this title; and

(B) in the case of an insured credit union, the National Credit Union Administration.

(25) Related person

The term ''related person''—

(A) shall apply only with respect to a covered person that is not a bank holding company (as that term is defined in section 1841 of this title), credit union, or depository institution;

(B) shall be deemed to mean a covered person for all purposes of any provision of Federal consumer financial law; and

(C) means—

(i) any director, officer, or employee charged with managerial responsibility for, or controlling shareholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, or other person, as determined by the Bureau (by rule or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any—

(I) violation of any provision of law or regulation; or

(II) breach of a fiduciary duty.

(26) Service provider

(A) In general

The term ''service provider'' means any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—

(i) participates in designing, operating, or maintaining the consumer financial product or service; or

(ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes).

(B) Exceptions

The term ''service provider'' does not include a person solely by virtue of such person offering or providing to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service; or

(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(C) Rule of construction

A person that is a service provider shall be deemed to be a covered person to the extent that such person engages in the offering or provision of its own consumer financial product or service.

(27) State

The term ''State'' means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe, as defined by the Secretary of the Interior under section 479a–1(a) of title 25.

(28) Stored value

(A) In general

The term ''stored value'' means funds or monetary value represented in any elec-

tronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(B) Exclusion

Notwithstanding subparagraph (A), the term ''stored value'' does not include a special purpose card or certificate, which shall be defined for purposes of this paragraph as funds or monetary value represented in any electronic format, whether or not specially encrypted, that is—

(i) issued by a merchant, retailer, or other seller of nonfinancial goods or services;

(ii) redeemable only for transactions with the merchant, retailer, or seller of nonfinancial goods or services or with an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services;

(iii) issued in a specified amount that, except in the case of a card or product used solely for telephone services, may not be increased or reloaded;

(iv) purchased on a prepaid basis in exchange for payment; and

(v) honored upon presentation to such merchant, retailer, or seller of nonfinancial goods or services or an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services, only for any nonfinancial goods or services.

(29) Transmitting or exchanging funds

The term ''transmitting or exchanging funds'' means receiving currency, monetary value, or payment instruments from a consumer for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or through other businesses that facilitate third-party transfers within the United States or to or from the United States.

(Pub. L. 111–203, title X, §1002, July 21, 2010, 124 Stat. 1955.)

REFERENCES IN TEXT

This title, where footnoted in text, is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

Subtitle G, referred to in par. (12), is subtitle G (§§1071–1079A) of title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 2056. For complete classification of subtitle G to the Code, see Tables.

Subtitle H, referred to in pars. (12) and (15)(B)(ii)(II), is subtitle H (§§1081–1100H) of title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 2080. For complete classification of subtitle H to the Code, see Tables.

The Alternative Mortgage Transaction Parity Act of 1982, referred to in par. (12)(A), is title VIII of Pub. L. 97–320, Oct. 15, 1982, 96 Stat. 1545, which is classified generally to chapter 39 (§3801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of this title and Tables.

The Consumer Leasing Act of 1976, referred to in par. (12)(B), is Pub. L. 94–240, Mar. 23, 1976, 90 Stat. 257. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 1601 of Title 15, Commerce and Trade, and Tables.

The Electronic Fund Transfer Act, referred to in par. (12)(C), is title IX of Pub. L. 90–321, as added by Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3728, which is classified generally to subchapter VI (§1693 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Equal Credit Opportunity Act, referred to in par. (12)(D), is title VII of Pub. L. 90–321, as added by Pub. L. 93–495, title V, §503, Oct. 28, 1974, 88 Stat. 1521, which is classified generally to subchapter IV (§1691 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Fair Credit Billing Act, referred to in par. (12)(E), is title III of Pub. L. 93–495, Oct. 28, 1974, 88 Stat. 1511, which enacted sections 1666 to 1666i and 1666j of Title 15, Commerce and Trade, amended sections 1601, 1602, 1610, 1631, 1632, and 1637 of Title 15, and enacted provisions set out as a note under section 1666 of Title 15. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 1601 of Title 15 and Tables.

The Fair Credit Reporting Act, referred to in par. (12)(F), is title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Homeowners Protection Act of 1998, referred to in par. (12)(G), is Pub. L. 105–216, July 29, 1998, 112 Stat. 897, which is classified principally to chapter 49 (§4901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4901 of this title and Tables.

The Fair Debt Collection Practices Act, referred to in par. (12)(H), is title VIII of Pub. L. 90–321, as added by Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 874, which is classified generally to subchapter V (§1692 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Home Mortgage Disclosure Act of 1975, referred to in par. (12)(K), is title III of Pub. L. 94–200, Dec. 31, 1975, 89 Stat. 1125, which is classified principally to chapter 29 (§2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2801 of this title and Tables.

The Home Ownership and Equity Protection Act of 1994, referred to in par. (12)(L), is subtitle B (§§151–158) of title I of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2190, which enacted sections 1639 and 1648 of Title 15, Commerce and Trade, amended sections 1602, 1604, 1610, 1640, 1641, and 1647 of Title 15, and enacted provisions set out as notes under sections 1601 and 1602 of Title 15. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 1601 of Title 15 and Tables.

The Real Estate Settlement Procedures Act of 1974, referred to in par. (12)(M), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

The S.A.F.E. Mortgage Licensing Act of 2008, referred to in par. (12)(N), is title V of div. A of Pub. L. 110–289,

July 30, 2008, 122 Stat. 2810, also known as the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, which is classified generally to chapter 51 (§ 5101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of this title and Tables.

The Truth in Lending Act, referred to in par. (12)(O), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Truth in Savings Act, referred to in par. (12)(P), is subtitle F (§§ 261–274) of title II of Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2334, which is classified generally to chapter 44 (§ 4301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4301 of this title and Tables.

Section 626 of the Omnibus Appropriations Act, 2009, referred to in par. (12)(Q), is section 626 of div. D of Pub. L. 111–8. Subsecs. (a) and (b) of section 626 are classified to section 5538 of this title, and subsec. (c) of section 626 amended section 1639 of Title 15, Commerce and Trade.

The Interstate Land Sales Full Disclosure Act, referred to in par. (12)(R), is title XIV of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 590, which is classified generally to chapter 42 (§ 1701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 15 and Tables.

Subtitle F, referred to in pars. (14) and (15)(B)(ii)(II), is subtitle F (§§ 1061–1067) of title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 2035, which is classified generally to part F (§ 5581 et seq.) of this subchapter. For complete classification of subtitle F to the Code, see Tables.

The Federal Trade Commission Act, referred to in par. (14), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

The Commodity Exchange Act, referred to in par. (20), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Exchange Act of 1934, referred to in par. (21)(A), (D) to (F), and (K), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in par. (21)(B), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§ 80b–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Investment Company Act of 1940, referred to in par. (21)(C), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

DESIGNATION AS ENUMERATED CONSUMER LAW UNDER THE PURVIEW OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION

Pub. L. 111–203, title XIV, § 1400(b), July 21, 2010, 124 Stat. 2136, provided that: ''Subtitles A, B, C, and E [subtitles A (§§ 1401–1406), B (§§ 1411–1422), C (§§ 1431–1433), and E (§§ 1461–1465) of title XIV of Pub. L. 111–203, enacting sections 1638a, 1639b to 1639d, 1639f, and 1639g of Title 15, Commerce and Trade, amending section 2605 of this title, sections 1602, 1607, 1638, 1639 to 1639d, and 1640 of Title 15, and enacting provisions set out as notes under sections 1601 and 1639b to 1639d of Title 15] and sections 1471 [enacting section 1639h of Title 15], 1472 [enacting section 1639e of Title 15 and amending section 1604 of Title 15], 1475 [amending section 2603 of this title], and 1476 [not classified to the Code], and the amendments made by such subtitles and sections, shall be enumerated consumer laws, as defined in section 1002 [12 U.S.C. 5481], and come under the purview of the Bureau of Consumer Financial Protection for purposes of title X [see Short Title note set out under section 5301 of this title], including the transfer of functions and personnel under subtitle F of title X [§§ 1061–1067, enacting part F of this subchapter] and the savings provisions of such subtitle.''

PART A—BUREAU OF CONSUMER FINANCIAL PROTECTION

§ 5491. Establishment of the Bureau of Consumer Financial Protection

(a) Bureau established

There is established in the Federal Reserve System, an independent bureau to be known as the ''Bureau of Consumer Financial Protection'', which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws. The Bureau shall be considered an Executive agency, as defined in section 105 of title 5. Except as otherwise provided expressly by law, all Federal laws dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Bureau.

(b) Director and Deputy Director

(1) In general

There is established the position of the Director, who shall serve as the head of the Bureau.

(2) Appointment

Subject to paragraph (3), the Director shall be appointed by the President, by and with the advice and consent of the Senate.

(3) Qualification

The President shall nominate the Director from among individuals who are citizens of the United States.

(4) Compensation

The Director shall be compensated at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5.

(5) Deputy Director

There is established the position of Deputy Director, who shall—

(A) be appointed by the Director; and

(B) serve as acting Director in the absence or unavailability of the Director.

(c) Term

(1) In general

The Director shall serve for a term of 5 years.

(2) Expiration of term

An individual may serve as Director after the expiration of the term for which ap-

pointed, until a successor has been appointed and qualified.

(3) Removal for cause

The President may remove the Director for inefficiency, neglect of duty, or malfeasance in office.

(d) Service restriction

No Director or Deputy Director may hold any office, position, or employment in any Federal reserve bank, Federal home loan bank, covered person, or service provider during the period of service of such person as Director or Deputy Director.

(e) Offices

The principal office of the Bureau shall be in the District of Columbia. The Director may establish regional offices of the Bureau, including in cities in which the Federal reserve banks, or branches of such banks, are located, in order to carry out the responsibilities assigned to the Bureau under the Federal consumer financial laws.

(Pub. L. 111–203, title X, §1011, July 21, 2010, 124 Stat. 1964.)

EFFECTIVE DATE

Pub. L. 111–203, title X, §1018, July 21, 2010, 124 Stat. 1979, provided that: ''This subtitle [subtitle A (§§1011–1018), enacting this part and amending section 9702 of Title 20, Education] shall become effective on the date of enactment of this Act [July 21, 2010].''

§ 5492. Executive and administrative powers

(a) Powers of the Bureau

The Bureau is authorized to establish the general policies of the Bureau with respect to all executive and administrative functions, including—

(1) the establishment of rules for conducting the general business of the Bureau, in a manner not inconsistent with this title;[1]

(2) to bind the Bureau and enter into contracts;

(3) directing the establishment and maintenance of divisions or other offices within the Bureau, in order to carry out the responsibilities under the Federal consumer financial laws, and to satisfy the requirements of other applicable law;

(4) to coordinate and oversee the operation of all administrative, enforcement, and research activities of the Bureau;

(5) to adopt and use a seal;

(6) to determine the character of and the necessity for the obligations and expenditures of the Bureau;

(7) the appointment and supervision of personnel employed by the Bureau;

(8) the distribution of business among personnel appointed and supervised by the Director and among administrative units of the Bureau;

(9) the use and expenditure of funds;

(10) implementing the Federal consumer financial laws through rules, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and

(11) performing such other functions as may be authorized or required by law.

(b) Delegation of authority

The Director of the Bureau may delegate to any duly authorized employee, representative, or agent any power vested in the Bureau by law.

(c) Autonomy of the Bureau

(1) Coordination with the Board of Governors

Notwithstanding any other provision of law applicable to the supervision or examination of persons with respect to Federal consumer financial laws, the Board of Governors may delegate to the Bureau the authorities to examine persons subject to the jurisdiction of the Board of Governors for compliance with the Federal consumer financial laws.

(2) Autonomy

Notwithstanding the authorities granted to the Board of Governors under the Federal Reserve Act [12 U.S.C. 221 et seq.], the Board of Governors may not—

(A) intervene in any matter or proceeding before the Director, including examinations or enforcement actions, unless otherwise specifically provided by law;

(B) appoint, direct, or remove any officer or employee of the Bureau; or

(C) merge or consolidate the Bureau, or any of the functions or responsibilities of the Bureau, with any division or office of the Board of Governors or the Federal reserve banks.

(3) Rules and orders

No rule or order of the Bureau shall be subject to approval or review by the Board of Governors. The Board of Governors may not delay or prevent the issuance of any rule or order of the Bureau.

(4) Recommendations and testimony

No officer or agency of the United States shall have any authority to require the Director or any other officer of the Bureau to submit legislative recommendations, or testimony or comments on legislation, to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to the Congress, if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the Director or such officer, and do not necessarily reflect the views of the Board of Governors or the President.

(5) Clarification of autonomy of the Bureau in legal proceedings

The Bureau shall not be liable under any provision of law for any action or inaction of the Board of Governors, and the Board of Governors shall not be liable under any provision of law for any action or inaction of the Bureau.

(Pub. L. 111–203, title X, §1012, July 21, 2010, 124 Stat. 1965.)

REFERENCES IN TEXT

This title, referred to in subsec. (a)(1), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as

[1] See References in Text note below.

the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Federal Reserve Act, referred to in subsec. (c)(2), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

§ 5493. Administration

(a) Personnel

(1) Appointment

(A) In general

The Director may fix the number of, and appoint and direct, all employees of the Bureau, in accordance with the applicable provisions of title 5.

(B) Employees of the Bureau

The Director is authorized to employ attorneys, compliance examiners, compliance supervision analysts, economists, statisticians, and other employees as may be deemed necessary to conduct the business of the Bureau. Unless otherwise provided expressly by law, any individual appointed under this section shall be an employee as defined in section 2105 of title 5 and subject to the provisions of such title and other laws generally applicable to the employees of an Executive agency.

(C) Waiver authority

(i) In general

In making any appointment under subparagraph (A), the Director may waive the requirements of chapter 33 of title 5, and the regulations implementing such chapter, to the extent necessary to appoint employees on terms and conditions that are consistent with those set forth in section 11(1) of the Federal Reserve Act (12 U.S.C. 248(1)),[1] while providing for—

(I) fair, credible, and transparent methods of establishing qualification requirements for, recruitment for, and appointments to positions;

(II) fair and open competition and equitable treatment in the consideration and selection of individuals to positions;

(III) fair, credible, and transparent methods of assigning, reassigning, detailing, transferring, and promoting employees.

(ii) Veterans preferences

In implementing this subparagraph, the Director shall comply with the provisions of section 2302(b)(11),[1] regarding veterans' preference requirements, in a manner consistent with that in which such provisions are applied under chapter 33 of title 5. The authority under this subparagraph to waive the requirements of that chapter 33 shall expire 5 years after July 21, 2010.

[1] See References in Text note below.

(2) Compensation

Notwithstanding any otherwise applicable provision of title 5 concerning compensation, including the provisions of chapter 51 and chapter 53, the following provisions shall apply with respect to employees of the Bureau:

(A) The rates of basic pay for all employees of the Bureau may be set and adjusted by the Director.

(B) The Director shall at all times provide compensation (including benefits) to each class of employees that, at a minimum, are comparable to the compensation and benefits then being provided by the Board of Governors for the corresponding class of employees.

(C) All such employees shall be compensated (including benefits) on terms and conditions that are consistent with the terms and conditions set forth in section 248(*l*) of this title.

(3) Bureau participation in Federal Reserve System Retirement Plan and Federal Reserve System Thrift Plan

(A) Employee election

Employees appointed to the Bureau may elect to participate in either—

(i) both the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, under the same terms on which such participation is offered to employees of the Board of Governors who participate in such plans and under the terms and conditions specified under section 5584(i)(1)(C) of this title; or

(ii) the Civil Service Retirement System under chapter 83 of title 5 or the Federal Employees Retirement System under chapter 84 of title 5, if previously covered under one of those Federal employee retirement systems.

(B) Election period

Bureau employees shall make an election under this paragraph not later than 1 year after the date of appointment by, or transfer under part F to, the Bureau. Participation in, and benefit accruals under, any other retirement plan established or maintained by the Federal Government shall end not later than the date on which participation in, and benefit accruals under, the Federal Reserve System Retirement Plan and Federal Reserve System Thrift Plan begin.

(C) Employer contribution

The Bureau shall pay an employer contribution to the Federal Reserve System Retirement Plan, in the amount established as an employer contribution under the Federal Employees Retirement System, as established under chapter 84 of title 5 for each Bureau employee who elects to participate in the Federal Reserve System Retirement Plan. The Bureau shall pay an employer contribution to the Federal Reserve System Thrift Plan for each Bureau employee who elects to participate in such plan, as required under the terms of such plan.

(D) Controlled group status

The Bureau is the same employer as the Federal Reserve System (as comprised of the Board of Governors and each of the 12 Federal reserve banks prior to July 21, 2010) for purposes of subsections (b), (c), (m), and (*o*) of section 414 of title 26.

(4) Labor-management relations

Chapter 71 of title 5 shall apply to the Bureau and the employees of the Bureau.

(5) Agency ombudsman

(A) Establishment required

Not later than 180 days after the designated transfer date, the Bureau shall appoint an ombudsman.

(B) Duties of ombudsman

The ombudsman appointed in accordance with subparagraph (A) shall—

(i) act as a liaison between the Bureau and any affected person with respect to any problem that such party may have in dealing with the Bureau, resulting from the regulatory activities of the Bureau; and

(ii) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

(b) Specific functional units

(1) Research

The Director shall establish a unit whose functions shall include researching, analyzing, and reporting on—

(A) developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates and areas of risk to consumers;

(B) access to fair and affordable credit for traditionally underserved communities;

(C) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(D) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services;

(E) consumer behavior with respect to consumer financial products or services, including performance on mortgage loans; and

(F) experiences of traditionally underserved consumers, including un-banked and under-banked consumers.

(2) Community affairs

The Director shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the offering and provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) Collecting and tracking complaints

(A) In general

The Director shall establish a unit whose functions shall include establishing a single, toll-free telephone number, a website, and a database or utilizing an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services. The Director shall coordinate with the Federal Trade Commission or other Federal agencies to route complaints to such agencies, where appropriate.

(B) Routing calls to States

To the extent practicable, State agencies may receive appropriate complaints from the systems established under subparagraph (A), if—

(i) the State agency system has the functional capacity to receive calls or electronic reports routed by the Bureau systems;

(ii) the State agency has satisfied any conditions of participation in the system that the Bureau may establish, including treatment of personally identifiable information and sharing of information on complaint resolution or related compliance procedures and resources; and

(iii) participation by the State agency includes measures necessary to provide for protection of personally identifiable information that conform to the standards for protection of the confidentiality of personally identifiable information and for data integrity and security that apply to the Federal agencies described in subparagraph (D).

(C) Reports to the Congress

The Director shall present an annual report to Congress not later than March 31 of each year on the complaints received by the Bureau in the prior year regarding consumer financial products and services. Such report shall include information and analysis about complaint numbers, complaint types, and, where applicable, information about resolution of complaints.

(D) Data sharing required

To facilitate preparation of the reports required under subparagraph (C), supervision and enforcement activities, and monitoring of the market for consumer financial products and services, the Bureau shall share consumer complaint information with prudential regulators, the Federal Trade Commission, other Federal agencies, and State agencies, subject to the standards applicable to Federal agencies for protection of the confidentiality of personally identifiable information and for data security and integrity. The prudential regulators, the Federal Trade Commission, and other Federal agencies shall share data relating to consumer complaints regarding consumer financial products and services with the Bureau, subject to the standards applicable to Federal agencies for protection of confidentiality of personally identifiable information and for data security and integrity.

(c) Office of Fair Lending and Equal Opportunity

(1) Establishment

The Director shall establish within the Bureau the Office of Fair Lending and Equal Opportunity.

(2) Functions

The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate to the Office, including—

(A) providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.] and the Home Mortgage Disclosure Act [12 U.S.C. 2801 et seq.];

(B) coordinating fair lending efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement of Federal fair lending laws;

(C) working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education; and

(D) providing annual reports to Congress on the efforts of the Bureau to fulfill its fair lending mandate.

(3) Administration of Office

There is established the position of Assistant Director of the Bureau for Fair Lending and Equal Opportunity, who—

(A) shall be appointed by the Director; and

(B) shall carry out such duties as the Director may delegate to such Assistant Director.

(d) Office of Financial Education

(1) Establishment

The Director shall establish an Office of Financial Education, which shall be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions.

(2) Other duties

The Office of Financial Education shall develop and implement a strategy to improve the financial literacy of consumers that includes measurable goals and objectives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Literacy, through activities including providing opportunities for consumers to access—

(A) financial counseling, including community-based financial counseling, where practicable;

(B) information to assist with the evaluation of credit products and the understanding of credit histories and scores;

(C) savings, borrowing, and other services found at mainstream financial institutions;

(D) activities intended to—

(i) prepare the consumer for educational expenses and the submission of financial aid applications, and other major purchases;

(ii) reduce debt; and

(iii) improve the financial situation of the consumer;

(E) assistance in developing long-term savings strategies; and

(F) wealth building and financial services during the preparation process to claim earned income tax credits and Federal benefits.

(3) Coordination

The Office of Financial Education shall coordinate with other units within the Bureau in carrying out its functions, including—

(A) working with the Community Affairs Office to implement the strategy to improve financial literacy of consumers; and

(B) working with the research unit established by the Director to conduct research related to consumer financial education and counseling.

(4) Report

Not later than 24 months after the designated transfer date, and annually thereafter, the Director shall submit a report on its financial literacy activities and strategy to improve financial literacy of consumers to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

(5), (6) Omitted

(7) Study and report on financial literacy program

(A) In general

The Comptroller General of the United States shall conduct a study to identify—

(i) the feasibility of certification of persons providing the programs or performing the activities described in paragraph (2), including recognizing outstanding programs, and developing guidelines and resources for community-based practitioners, including—

(I) a potential certification process and standards for certification;

(II) appropriate certifying entities;

(III) resources required for funding such a process; and

(IV) a cost-benefit analysis of such certification;

(ii) technological resources intended to collect, analyze, evaluate, or promote financial literacy and counseling programs;

(iii) effective methods, tools, and strategies intended to educate and empower consumers about personal finance management; and

(iv) recommendations intended to encourage the development of programs that effectively improve financial education outcomes and empower consumers to make better informed financial decisions based on findings.

(B) Report

Not later than 1 year after July 21, 2010, the Comptroller General of the United States shall submit a report on the results of the study conducted under this paragraph to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(e) Office of Service Member Affairs

(1) In general

The Director shall establish an Office of Service Member Affairs, which shall be responsible for developing and implementing initiatives for service members and their families intended to—

(A) educate and empower service members and their families to make better informed decisions regarding consumer financial products and services;

(B) coordinate with the unit of the Bureau established under subsection (b)(3), in order to monitor complaints by service members and their families and responses to those complaints by the Bureau or other appropriate Federal or State agency; and

(C) coordinate efforts among Federal and State agencies, as appropriate, regarding consumer protection measures relating to consumer financial products and services offered to, or used by, service members and their families.

(2) Coordination

(A) Regional services

The Director is authorized to assign employees of the Bureau as may be deemed necessary to conduct the business of the Office of Service Member Affairs, including by establishing and maintaining the functions of the Office in regional offices of the Bureau located near military bases, military treatment facilities, or other similar military facilities.

(B) Agreements

The Director is authorized to enter into memoranda of understanding and similar agreements with the Department of Defense, including any branch or agency as authorized by the department, in order to carry out the business of the Office of Service Member Affairs.

(3) Definition

As used in this subsection, the term ''service member'' means any member of the United States Armed Forces and any member of the National Guard or Reserves.

(f) Timing

The Office of Fair Lending and Equal Opportunity, the Office of Financial Education, and the Office of Service Member Affairs shall each be established not later than 1 year after the designated transfer date.

(g) Office of Financial Protection for Older Americans

(1) Establishment

Before the end of the 180-day period beginning on the designated transfer date, the Director shall establish the Office of Financial Protection for Older Americans, the functions of which shall include activities designed to facilitate the financial literacy of individuals who have attained the age of 62 years or more (in this subsection, referred to as ''seniors'') on protection from unfair, deceptive, and abusive practices and on current and future financial choices, including through the dissemination of materials to seniors on such topics.

(2) Assistant director

The Office of Financial Protection for Older Americans (in this subsection referred to as the ''Office'') shall be headed by an assistant director.

(3) Duties

The Office shall—

(A) develop goals for programs that provide seniors financial literacy and counseling, including programs that—

(i) help seniors recognize warning signs of unfair, deceptive, or abusive practices, protect themselves from such practices;

(ii) provide one-on-one financial counseling on issues including long-term savings and later-life economic security; and

(iii) provide personal consumer credit advocacy to respond to consumer problems caused by unfair, deceptive, or abusive practices;

(B) monitor certifications or designations of financial advisors who advise seniors and alert the Commission and State regulators of certifications or designations that are identified as unfair, deceptive, or abusive;

(C) not later than 18 months after the date of the establishment of the Office, submit to Congress and the Commission any legislative and regulatory recommendations on the best practices for—

(i) disseminating information regarding the legitimacy of certifications of financial advisers who advise seniors;

(ii) methods in which a senior can identify the financial advisor most appropriate for the senior's needs; and

(iii) methods in which a senior can verify a financial advisor's credentials;

(D) conduct research to identify best practices and effective methods, tools, technology and strategies to educate and counsel seniors about personal finance management with a focus on—

(i) protecting themselves from unfair, deceptive, and abusive practices;

(ii) long-term savings; and

(iii) planning for retirement and long-term care;

(E) coordinate consumer protection efforts of seniors with other Federal agencies and State regulators, as appropriate, to promote consistent, effective, and efficient enforcement; and

(F) work with community organizations, non-profit organizations, and other entities that are involved with educating or assisting seniors (including the National Education and Resource Center on Women and Retirement Planning).

(Pub. L. 111–203, title X, §1013, July 21, 2010, 124 Stat. 1966.)

REFERENCES IN TEXT

Section 11(1) of the Federal Reserve Act, referred to in subsec. (a)(1)(C)(i), probably means section 11(*l*) of the Federal Reserve Act, which is classified to section 248(*l*) of this title.

Section 2302(b)(11), referred to in subsec. (a)(1)(C)(ii), probably means section 2302(b)(11) of Title 5, Government Organization and Employees.

The Equal Credit Opportunity Act, referred to in subsec. (c)(2)(A), is title VII of Pub. L. 90–321, as added by Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1521, which is classified generally to subchapter IV (§ 1691 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Home Mortgage Disclosure Act, referred to in subsec. (c)(2)(A), probably means the Home Mortgage Disclosure Act of 1975, which is title III of Pub. L. 94–200, Dec. 31, 1975, 89 Stat. 1125, and is classified principally to chapter 29 (§ 2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2801 of this title and Tables.

CODIFICATION

Section is comprised of section 1013 of Pub. L. 111–203. Subsec. (d)(5), (6) of section 1013 of Pub. L. 111–203 amended section 9702 of Title 20, Education.

§ 5494. Consumer Advisory Board

(a) Establishment required

The Director shall establish a Consumer Advisory Board to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.

(b) Membership

In appointing the members of the Consumer Advisory Board, the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation. Not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.

(c) Meetings

The Consumer Advisory Board shall meet from time to time at the call of the Director, but, at a minimum, shall meet at least twice in each year.

(d) Compensation and travel expenses

Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

(1) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Consumer Advisory Board, including travel time; and

(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

(Pub. L. 111–203, title X, § 1014, July 21, 2010, 124 Stat. 1974.)

§ 5495. Coordination

The Bureau shall coordinate with the Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, and other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.

(Pub. L. 111–203, title X, § 1015, July 21, 2010, 124 Stat. 1974.)

§ 5496. Appearances before and reports to Congress

(a) Appearances before Congress

The Director of the Bureau shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b).

(b) Reports required

The Bureau shall, concurrent with each semi-annual hearing referred to in subsection (a), prepare and submit to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives, a report, beginning with the session following the designated transfer date. The Bureau may also submit such report to the Committee on Commerce, Science, and Transportation of the Senate.

(c) Contents

The reports required by subsection (b) shall include—

(1) a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services;

(2) a justification of the budget request of the previous year;

(3) a list of the significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period;

(4) an analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year;

(5) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Bureau was a party during the preceding year;

(6) the actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions;

(7) an assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law;

(8) an analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau; and

(9) an analysis of the efforts of the Bureau to increase workforce and contracting diversity

consistent with the procedures established by the Office of Minority and Women Inclusion.

(Pub. L. 111–203, title X, § 1016, July 21, 2010, 124 Stat. 1974.)

§ 5497. Funding; penalties and fines

(a) Transfer of funds from Board Of Governors

(1) In general

Each year (or quarter of such year), beginning on the designated transfer date, and each quarter thereafter, the Board of Governors shall transfer to the Bureau from the combined earnings of the Federal Reserve System, the amount determined by the Director to be reasonably necessary to carry out the authorities of the Bureau under Federal consumer financial law, taking into account such other sums made available to the Bureau from the preceding year (or quarter of such year).

(2) Funding cap

(A) In general

Notwithstanding paragraph (1), and in accordance with this paragraph, the amount that shall be transferred to the Bureau in each fiscal year shall not exceed a fixed percentage of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2009, of the Board of Governors, equal to—

(i) 10 percent of such expenses in fiscal year 2011;

(ii) 11 percent of such expenses in fiscal year 2012; and

(iii) 12 percent of such expenses in fiscal year 2013, and in each year thereafter.

(B) Adjustment of amount

The dollar amount referred to in subparagraph (A)(iii) shall be adjusted annually, using the percent increase, if any, in the employment cost index for total compensation for State and local government workers published by the Federal Government, or the successor index thereto, for the 12-month period ending on September 30 of the year preceding the transfer.

(C) Reviewability

Notwithstanding any other provision in this title,[1] the funds derived from the Federal Reserve System pursuant to this subsection shall not be subject to review by the Committees on Appropriations of the House of Representatives and the Senate.

(3) Transition period

Beginning on July 21, 2010, and until the designated transfer date, the Board of Governors shall transfer to the Bureau the amount estimated by the Secretary needed to carry out the authorities granted to the Bureau under Federal consumer financial law, from July 21, 2010 until the designated transfer date.

(4) Budget and financial management

(A) Financial operating plans and forecasts

The Director shall provide to the Director of the Office of Management and Budget copies of the financial operating plans and forecasts of the Director, as prepared by the Director in the ordinary course of the operations of the Bureau, and copies of the quarterly reports of the financial condition and results of operations of the Bureau, as prepared by the Director in the ordinary course of the operations of the Bureau.

(B) Financial statements

The Bureau shall prepare annually a statement of—

(i) assets and liabilities and surplus or deficit;

(ii) income and expenses; and

(iii) sources and application of funds.

(C) Financial management systems

The Bureau shall implement and maintain financial management systems that comply substantially with Federal financial management systems requirements and applicable Federal accounting standards.

(D) Assertion of internal controls

The Director shall provide to the Comptroller General of the United States an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Bureau, using the standards established in section 3512(c) of title 31.

(E) Rule of construction

This subsection may not be construed as implying any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information referred to in subparagraph (A) or any jurisdiction or oversight over the affairs or operations of the Bureau.

(F) Financial statements

The financial statements of the Bureau shall not be consolidated with the financial statements of either the Board of Governors or the Federal Reserve System.

(5) Audit of the Bureau

(A) In general

The Comptroller General shall annually audit the financial transactions of the Bureau in accordance with the United States generally accepted government auditing standards, as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Bureau are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Bureau pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, ac-

[1] See References in Text note below.

counts, documents, records, reports, files, papers, and property of the Bureau shall remain in possession and custody of the Bureau. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General, and the right of access of the Comptroller General to such information shall be enforceable pursuant to section 716(c) of title 31.

(B) Report

The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Bureau, together with such recommendations with respect thereto as the Comptroller General may deem advisable. A copy of each report shall be furnished to the President and to the Bureau at the time submitted to the Congress.

(C) Assistance and costs

For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 6101 of title 41, professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Bureau shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General. The Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.

(b) Consumer Financial Protection Fund

(1) Separate fund in Federal Reserve established

There is established in the Federal Reserve a separate fund, to be known as the ''Bureau of Consumer Financial Protection Fund'' (referred to in this section as the ''Bureau Fund''). The Bureau Fund shall be maintained and established at a Federal reserve bank, in accordance with such requirements as the Board of Governors may impose.

(2) Fund receipts

All amounts transferred to the Bureau under subsection (a) shall be deposited into the Bureau Fund.

(3) Investment authority

(A) Amounts in Bureau Fund may be invested

The Bureau may request the Board of Governors to direct the investment of the portion of the Bureau Fund that is not, in the judgment of the Bureau, required to meet the current needs of the Bureau.

(B) Eligible investments

Investments authorized by this paragraph shall be made in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Bureau Fund, as determined by the Bureau.

(C) Interest and proceeds credited

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Bureau Fund shall be credited to the Bureau Fund.

(c) Use of funds

(1) In general

Funds obtained by, transferred to, or credited to the Bureau Fund shall be immediately available to the Bureau and under the control of the Director, and shall remain available until expended, to pay the expenses of the Bureau in carrying out its duties and responsibilities. The compensation of the Director and other employees of the Bureau and all other expenses thereof may be paid from, obtained by, transferred to, or credited to the Bureau Fund under this section.

(2) Funds that are not Government funds

Funds obtained by or transferred to the Bureau Fund shall not be construed to be Government funds or appropriated monies.

(3) Amounts not subject to apportionment

Notwithstanding any other provision of law, amounts in the Bureau Fund and in the Civil Penalty Fund established under subsection (d) shall not be subject to apportionment for purposes of chapter 15 of title 31 or under any other authority.

(d) Penalties and fines

(1) Establishment of victims relief fund

There is established in the Federal Reserve a separate fund, to be known as the ''Consumer Financial Civil Penalty Fund'' (referred to in this section as the ''Civil Penalty Fund''). The Civil Penalty Fund shall be maintained and established at a Federal reserve bank, in accordance with such requirements as the Board of Governors may impose. If the Bureau obtains a civil penalty against any person in any judicial or administrative action under Federal consumer financial laws, the Bureau shall deposit into the Civil Penalty Fund, the amount of the penalty collected.

(2) Payment to victims

Amounts in the Civil Penalty Fund shall be available to the Bureau, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been im-

posed under the Federal consumer financial laws. To the extent that such victims cannot be located or such payments are otherwise not practicable, the Bureau may use such funds for the purpose of consumer education and financial literacy programs.

(e) Authorization of appropriations; annual report

(1) Determination regarding need for appropriated funds

(A) In general

The Director is authorized to determine that sums available to the Bureau under this section will not be sufficient to carry out the authorities of the Bureau under Federal consumer financial law for the upcoming year.

(B) Report required

When making a determination under subparagraph (A), the Director shall prepare a report regarding the funding of the Bureau, including the assets and liabilities of the Bureau, and the extent to which the funding needs of the Bureau are anticipated to exceed the level of the amount set forth in subsection (a)(2). The Director shall submit the report to the President and to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives.

(2) Authorization of appropriations

If the Director makes the determination and submits the report pursuant to paragraph (1), there are hereby authorized to be appropriated to the Bureau, for the purposes of carrying out the authorities granted in Federal consumer financial law, $200,000,000 for each of fiscal years 2010, 2011, 2012, 2013, and 2014.

(3) Apportionment

Notwithstanding any other provision of law, the amounts in paragraph (2) shall be subject to apportionment under section 1517 of title 31 and restrictions that generally apply to the use of appropriated funds in title 31 and other laws.

(4) Annual report

The Director shall prepare and submit a report, on an annual basis, to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives regarding the financial operating plans and forecasts of the Director, the financial condition and results of operations of the Bureau, and the sources and application of funds of the Bureau, including any funds appropriated in accordance with this subsection.

(Pub. L. 111–203, title X, §1017, July 21, 2010, 124 Stat. 1975.)

REFERENCES IN TEXT

This title, referred to in subsec. (a)(2)(C), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

In subsec. (a)(5)(C), ''section 6101 of title 41'' substituted for ''section 3709 of the Revised Statutes of the United States (41 U.S.C. 5)'' on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

PART B—GENERAL POWERS OF THE BUREAU

§ 5511. Purpose, objectives, and functions

(a) Purpose

The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.

(b) Objectives

The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services—

(1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

(3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

(4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and

(5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

(c) Functions

The primary functions of the Bureau are—

(1) conducting financial education programs;

(2) collecting, investigating, and responding to consumer complaints;

(3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;

(4) subject to sections 5514 through 5516 of this title, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;

(5) issuing rules, orders, and guidance implementing Federal consumer financial law; and

(6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.

(Pub. L. 111–203, title X, §1021, July 21, 2010, 124 Stat. 1979.)

EFFECTIVE DATE

Pub. L. 111–203, title X, §1029A, July 21, 2010, 124 Stat. 2005, provided that: ''This subtitle [subtitle B

(§§ 1021–1029A), enacting this part] shall become effective on the designated transfer date, except that sections 1022, 1024, and 1025(e) [12 U.S.C. 5512, 5514, and 5515(e)] shall become effective on the date of enactment of this Act [July 21, 2010].''

[The term ''designated transfer date'' is defined in section 5481(9) of this title as the date established under section 5582 of this title.]

§ 5512. Rulemaking authority

(a) In general

The Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.

(b) Rulemaking, orders, and guidance

(1) General authority

The Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

(2) Standards for rulemaking

In prescribing a rule under the Federal consumer financial laws—

(A) the Bureau shall consider—

(i) the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; and

(ii) the impact of proposed rules on covered persons, as described in section 5516 of this title, and the impact on consumers in rural areas;

(B) the Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies; and

(C) if, during the consultation process described in subparagraph (B), a prudential regulator provides the Bureau with a written objection to the proposed rule of the Bureau or a portion thereof, the Bureau shall include in the adopting release a description of the objection and the basis for the Bureau decision, if any, regarding such objection, except that nothing in this clause shall be construed as altering or limiting the procedures under section 5513 of this title that may apply to any rule prescribed by the Bureau.

(3) Exemptions

(A) In general

The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title,[1] or from any rule issued under this title,[1] as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title,[1] taking into consideration the factors in subparagraph (B).

(B) Factors

In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration—

(i) the total assets of the class of covered persons;

(ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and

(iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.

(4) Exclusive rulemaking authority

(A) In general

Notwithstanding any other provisions of Federal law and except as provided in section 5581(b)(5) of this title, to the extent that a provision of Federal consumer financial law authorizes the Bureau and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules subject to those provisions of law.

(B) Deference

Notwithstanding any power granted to any Federal agency or to the Council under this title,[1] and subject to section 5581(b)(5)(E) of this title, the deference that a court affords to the Bureau with respect to a determination by the Bureau regarding the meaning or interpretation of any provision of a Federal consumer financial law shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of such Federal consumer financial law.

(c) Monitoring

(1) In general

In order to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.

(2) Considerations

In allocating its resources to perform the monitoring required by this section, the Bureau may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) understanding by consumers of the risks of a type of consumer financial product or service;

(C) the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

[1] See References in Text note below.

(D) rates of growth in the offering or provision of a consumer financial product or service;

(E) the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers; or

(F) the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.

(3) Significant findings

(A) In general

The Bureau shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year, beginning with the first calendar year that begins at least 1 year after the designated transfer date.

(B) Confidential information

The Bureau may make public such information obtained by the Bureau under this section as is in the public interest, through aggregated reports or other appropriate formats designed to protect confidential information in accordance with paragraphs (4), (6), (8), and (9).

(4) Collection of information

(A) In general

In conducting any monitoring or assessment required by this section, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.

(B) Methodology

In order to gather information described in subparagraph (A), the Bureau may—

(i) gather and compile information from a variety of sources, including examination reports concerning covered persons or service providers, consumer complaints, voluntary surveys and voluntary interviews of consumers, surveys and interviews with covered persons and service providers, and review of available databases; and

(ii) require covered persons and service providers participating in consumer financial services markets to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions, furnishing information described in paragraph (4), as necessary for the Bureau to fulfill the monitoring, assessment, and reporting responsibilities imposed by Congress.

(C) Limitation

The Bureau may not use its authorities under this paragraph to obtain records from covered persons and service providers participating in consumer financial services markets for purposes of gathering or analyzing the personally identifiable financial information of consumers.

(5) Limited information gathering

In order to assess whether a nondepository is a covered person, as defined in section 5481 of this title, the Bureau may require such nondepository to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions.

(6) Confidentiality rules

(A) Rulemaking

The Bureau shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

(B) Access by the Bureau to reports of other regulators

(i) Examination and financial condition reports

Upon providing reasonable assurances of confidentiality, the Bureau shall have access to any report of examination or financial condition made by a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider, and to all revisions made to any such report.

(ii) Provision of other reports to the Bureau

In addition to the reports described in clause (i), a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider may, in its discretion, furnish to the Bureau any other report or other confidential supervisory information concerning any insured depository institution, credit union, or other entity examined by such agency under authority of any provision of Federal law.

(C) Access by other regulators to reports of the Bureau

(i) Examination reports

Upon providing reasonable assurances of confidentiality, a prudential regulator, a State regulator, or any other Federal agency having jurisdiction over a covered person or service provider shall have access to any report of examination made by the Bureau with respect to such person, and to all revisions made to any such report.

(ii) Provision of other reports to other regulators

In addition to the reports described in clause (i), the Bureau may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law.

(7) Registration

(A) In general

The Bureau may prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.

(B) Registration information

Subject to rules prescribed by the Bureau, the Bureau may publicly disclose registration information to facilitate the ability of consumers to identify covered persons that are registered with the Bureau.

(C) Consultation with State agencies

In developing and implementing registration requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(8) Privacy considerations

In collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5 or any other provision of law, is not made public under this title.[1]

(9) Consumer privacy

(A) In general

The Bureau may not obtain from a covered person or service provider any personally identifiable financial information about a consumer from the financial records of the covered person or service provider, except—

(i) if the financial records are reasonably described in a request by the Bureau and the consumer provides written permission for the disclosure of such information by the covered person or service provider to the Bureau; or

(ii) as may be specifically permitted or required under other applicable provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).

(B) Treatment of covered person or service provider

With respect to the application of any provision of the Right to Financial Privacy Act of 1978,[2] to a disclosure by a covered person or service provider subject to this subsection, the covered person or service provider shall be treated as if it were a ''financial institution'', as defined in section 1101 of that Act (12 U.S.C. 3401).

(d) Assessment of significant rules

(1) In general

The Bureau shall conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The assessment shall address, among other relevant factors, the effectiveness of the rule or order in meeting the purposes and objectives of this title[1] and the specific goals stated by the Bureau. The assessment shall reflect available evidence and any data that the Bureau reasonably may collect.

(2) Reports

The Bureau shall publish a report of its assessment under this subsection not later than 5 years after the effective date of the subject rule or order.

(3) Public comment required

Before publishing a report of its assessment, the Bureau shall invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

(Pub. L. 111–203, title X, § 1022, July 21, 2010, 124 Stat. 1980.)

REFERENCES IN TEXT

This title, where footnoted in subsecs. (b)(3)(A), (4)(B), (c)(8), and (d)(1), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Right to Financial Privacy Act of 1978, referred to in subsec. (c)(9)(A)(ii), (B), is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to chapter 35 (§ 3401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

EFFECTIVE DATE

Section effective July 21, 2010, see section 1029A of Pub. L. 111–203, set out as a note under section 5511 of this title.

§ 5513. Review of Bureau regulations

(a) Review of Bureau regulations

On the petition of a member agency of the Council, the Council may set aside a final regulation prescribed by the Bureau, or any provision thereof, if the Council decides, in accordance with subsection (c), that the regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

(b) Petition

(1) Procedure

An agency represented by a member of the Council may petition the Council, in writing, and in accordance with rules prescribed pursuant to subsection (f), to stay the effectiveness of, or set aside, a regulation if the member agency filing the petition—

(A) has in good faith attempted to work with the Bureau to resolve concerns regarding the effect of the rule on the safety and soundness of the United States banking system or the stability of the financial system of the United States; and

(B) files the petition with the Council not later than 10 days after the date on which the regulation has been published in the Federal Register.

[2] So in original. The comma probably should not appear.

(2) Publication

Any petition filed with the Council under this section shall be published in the Federal Register and transmitted contemporaneously with filing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(c) Stays and set asides

(1) Stay

(A) In general

Upon the request of any member agency, the Chairperson of the Council may stay the effectiveness of a regulation for the purpose of allowing appropriate consideration of the petition by the Council.

(B) Expiration

A stay issued under this paragraph shall expire on the earlier of—

(i) 90 days after the date of filing of the petition under subsection (b); or

(ii) the date on which the Council makes a decision under paragraph (3).

(2) No adverse inference

After the expiration of any stay imposed under this section, no inference shall be drawn regarding the validity or enforceability of a regulation which was the subject of the petition.

(3) Vote

(A) In general

The decision to issue a stay of, or set aside, any regulation under this section shall be made only with the affirmative vote in accordance with subparagraph (B) of ⅔ of the members of the Council then serving.

(B) Authorization to vote

A member of the Council may vote to stay the effectiveness of, or set aside, a final regulation prescribed by the Bureau only if the agency or department represented by that member has—

(i) considered any relevant information provided by the agency submitting the petition and by the Bureau; and

(ii) made an official determination, at a public meeting where applicable, that the regulation which is the subject of the petition would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

(4) Decisions to set aside

(A) Effect of decision

A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall render such regulation, or provision thereof, unenforceable.

(B) Timely action required

The Council may not issue a decision to set aside a regulation, or provision thereof, which is the subject of a petition under this section after the expiration of the later of—

(i) 45 days following the date of filing of the petition, unless a stay is issued under paragraph (1); or

(ii) the expiration of a stay issued by the Council under this section.

(C) Separate authority

The issuance of a stay under this section does not affect the authority of the Council to set aside a regulation.

(5) Dismissal due to inaction

A petition under this section shall be deemed dismissed if the Council has not issued a decision to set aside a regulation, or provision thereof, within the period for timely action under paragraph (4)(B).

(6) Publication of decision

Any decision under this subsection to issue a stay of, or set aside, a regulation or provision thereof shall be published by the Council in the Federal Register as soon as practicable after the decision is made, with an explanation of the reasons for the decision.

(7) Rulemaking procedures inapplicable

The notice and comment procedures under section 553 of title 5 shall not apply to any decision under this section of the Council to issue a stay of, or set aside, a regulation.

(8) Judicial review of decisions by the Council

A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall be subject to review under chapter 7 of title 5.

(d) Application of other law

Nothing in this section shall be construed as altering, limiting, or restricting the application of any other provision of law, except as otherwise specifically provided in this section, including chapter 5 and chapter 7 of title 5, to a regulation which is the subject of a petition filed under this section.

(e) Savings clause

Nothing in this section shall be construed as limiting or restricting the Bureau from engaging in a rulemaking in accordance with applicable law.

(f) Implementing rules

The Council shall prescribe procedural rules to implement this section.

(Pub. L. 111–203, title X, § 1023, July 21, 2010, 124 Stat. 1985.)

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1029A of Pub. L. 111–203, set out as a note under section 5511 of this title.

§ 5514. Supervision of nondepository covered persons

(a) Scope of coverage

(1) Applicability

Notwithstanding any other provision of this title,[1] and except as provided in paragraph (3), this section shall apply to any covered person who—

(A) offers or provides origination, brokerage, or servicing of loans secured by real es-

[1] See References in Text note below.

tate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans;

(B) is a larger participant of a market for other consumer financial products or services, as defined by rule in accordance with paragraph (2);

(C) the Bureau has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond, based on complaints collected through the system under section 5493(b)(3) of this title or information from other sources, that such covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services;

(D) offers or provides to a consumer any private education loan, as defined in section 1650 of title 15, notwithstanding section 5517(a)(2)(A) of this title and subject to section 5517(a)(2)(C) of this title; or

(E) offers or provides to a consumer a payday loan.

(2) Rulemaking to define covered persons subject to this section

The Bureau shall consult with the Federal Trade Commission prior to issuing a rule, in accordance with paragraph (1)(B), to define covered persons subject to this section. The Bureau shall issue its initial rule not later than 1 year after the designated transfer date.

(3) Rules of construction

(A) Certain persons excluded

This section shall not apply to persons described in section 5515(a) or 5516(a) of this title.

(B) Activity levels

For purposes of computing activity levels under paragraph (1) or rules issued thereunder, activities of affiliated companies (other than insured depository institutions or insured credit unions) shall be aggregated.

(b) Supervision

(1) In general

The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) for purposes of—

(A) assessing compliance with the requirements of Federal consumer financial law;

(B) obtaining information about the activities and compliance systems or procedures of such person; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) Risk-based supervision program

The Bureau shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to persons described in subsection (a)(1), is based on the assessment by the Bureau of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable—

(A) the asset size of the covered person;

(B) the volume of transactions involving consumer financial products or services in which the covered person engages;

(C) the risks to consumers created by the provision of such consumer financial products or services;

(D) the extent to which such institutions are subject to oversight by State authorities for consumer protection; and

(E) any other factors that the Bureau determines to be relevant to a class of covered persons.

(3) Coordination

To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including establishing their respective schedules for examining persons described in subsection (a)(1) and requirements regarding reports to be submitted by such persons.

(4) Use of existing reports

The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to persons described in subsection (a)(1) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(5) Preservation of authority

Nothing in this title[1] may be construed as limiting the authority of the Director to require reports from persons described in subsection (a)(1), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(6) Reports of tax law noncompliance

The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(7) Registration, recordkeeping and other requirements for certain persons

(A) In general

The Bureau shall prescribe rules to facilitate supervision of persons described in subsection (a)(1) and assessment and detection of risks to consumers.

(B) Recordkeeping

The Bureau may require a person described in subsection (a)(1), to generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.

(C) Requirements concerning obligations

The Bureau may prescribe rules regarding a person described in subsection (a)(1), to ensure that such persons are legitimate entities and are able to perform their obliga-

tions to consumers. Such requirements may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements.

(D) Consultation with State agencies

In developing and implementing requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(c) Enforcement authority

(1) The Bureau to have enforcement authority

Except as provided in paragraph (3) and section 5581 of this title, with respect to any person described in subsection (a)(1), to the extent that Federal law authorizes the Bureau and another Federal agency to enforce Federal consumer financial law, the Bureau shall have exclusive authority to enforce that Federal consumer financial law.

(2) Referral

Any Federal agency authorized to enforce a Federal consumer financial law described in paragraph (1) may recommend in writing to the Bureau that the Bureau initiate an enforcement proceeding, as the Bureau is authorized by that Federal law or by this title.[1]

(3) Coordination with the Federal Trade Commission

(A) In general

The Bureau and the Federal Trade Commission shall negotiate an agreement for coordinating with respect to enforcement actions by each agency regarding the offering or provision of consumer financial products or services by any covered person that is described in subsection (a)(1), or service providers thereto. The agreement shall include procedures for notice to the other agency, where feasible, prior to initiating a civil action to enforce any Federal law regarding the offering or provision of consumer financial products or services.

(B) Civil actions

Whenever a civil action has been filed by, or on behalf of, the Bureau or the Federal Trade Commission for any violation of any provision of Federal law described in subparagraph (A), or any regulation prescribed under such provision of law—

(i) the other agency may not, during the pendency of that action, institute a civil action under such provision of law against any defendant named in the complaint in such pending action for any violation alleged in the complaint; and

(ii) the Bureau or the Federal Trade Commission may intervene as a party in any such action brought by the other agency, and, upon intervening—

(I) be heard on all matters arising in such enforcement action; and

(II) file petitions for appeal in such actions.

(C) Agreement terms

The terms of any agreement negotiated under subparagraph (A) may modify or supersede the provisions of subparagraph (B).

(D) Deadline

The agencies shall reach the agreement required under subparagraph (A) not later than 6 months after the designated transfer date.

(d) Exclusive rulemaking and examination authority

Notwithstanding any other provision of Federal law and except as provided in section 5581 of this title, to the extent that Federal law authorizes the Bureau and another Federal agency to issue regulations or guidance, conduct examinations, or require reports from a person described in subsection (a)(1) under such law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules, issue guidance, conduct examinations, require reports, or issue exemptions with regard to a person described in subsection (a)(1), subject to those provisions of law.

(e) Service providers

A service provider to a person described in subsection (a)(1) shall be subject to the authority of the Bureau under this section, to the same extent as if such service provider were engaged in a service relationship with a bank, and the Bureau were an appropriate Federal banking agency under section 1867(c) of this title. In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator, as applicable.

(f) Preservation of Farm Credit Administration authority

No provision of this title[1] may be construed as modifying, limiting, or otherwise affecting the authority of the Farm Credit Administration.

(Pub. L. 111–203, title X, § 1024, July 21, 2010, 124 Stat. 1987.)

REFERENCES IN TEXT

This title, where footnoted in subsecs. (a)(1), (b)(5), (c)(2), and (f), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Section effective July 21, 2010, see section 1029A of Pub. L. 111–203, set out as a note under section 5511 of this title.

§ 5515. Supervision of very large banks, savings associations, and credit unions

(a) Scope of coverage

This section shall apply to any covered person that is—

(1) an insured depository institution with total assets of more than $10,000,000,000 and any affiliate thereof; or

(2) an insured credit union with total assets of more than $10,000,000,000 and any affiliate thereof.

(b) Supervision

(1) In general

The Bureau shall have exclusive authority to require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of—

(A) assessing compliance with the requirements of Federal consumer financial laws;

(B) obtaining information about the activities subject to such laws and the associated compliance systems or procedures of such persons; and

(C) detecting and assessing associated risks to consumers and to markets for consumer financial products and services.

(2) Coordination

To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including consultation regarding their respective schedules for examining such persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

(3) Use of existing reports

The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(4) Preservation of authority

Nothing in this title[1] may be construed as limiting the authority of the Director to require reports from a person described in subsection (a), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(5) Reports of tax law noncompliance

The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) Primary enforcement authority

(1) The Bureau to have primary enforcement authority

To the extent that the Bureau and another Federal agency are authorized to enforce a Federal consumer financial law, the Bureau shall have primary authority to enforce that Federal consumer financial law with respect to any person described in subsection (a).

(2) Referral

Any Federal agency, other than the Federal Trade Commission, that is authorized to enforce a Federal consumer financial law may recommend, in writing, to the Bureau that the Bureau initiate an enforcement proceeding with respect to a person described in subsection (a), as the Bureau is authorized to do by that Federal consumer financial law.

(3) Backup enforcement authority of other Federal agency

If the Bureau does not, before the end of the 120-day period beginning on the date on which the Bureau receives a recommendation under paragraph (2), initiate an enforcement proceeding, the other agency referred to in paragraph (2) may initiate an enforcement proceeding, including performing follow up supervisory and support functions incidental thereto, to assure compliance with such proceeding.

(d) Service providers

A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if the Bureau were an appropriate Federal banking agency under section 1867(c) of this title. In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

(e) Simultaneous and coordinated supervisory action

(1) Examinations

A prudential regulator and the Bureau shall, with respect to each insured depository institution, insured credit union, or other covered person described in subsection (a) that is supervised by the prudential regulator and the Bureau, respectively—

(A) coordinate the scheduling of examinations of the insured depository institution, insured credit union, or other covered person described in subsection (a);

(B) conduct simultaneous examinations of each insured depository institution or insured credit union, unless such institution requests examinations to be conducted separately;

(C) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the date of receipt) to comment on the draft report before such report is made final; and

(D) prior to issuing a final report of examination or taking supervisory action, take into consideration concerns, if any, raised in the comments made by the other agency.

(2) Coordination with State bank supervisors

The Bureau shall pursue arrangements and agreements with State bank supervisors to coordinate examinations, consistent with paragraph (1).

(3) Avoidance of conflict in supervision

(A) Request

If the proposed supervisory determinations of the Bureau and a prudential regulator (in this section referred to collectively as the ''agencies'') are conflicting, an insured depository institution, insured credit union, or

[1] See References in Text note below.

other covered person described in subsection (a) may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

(B) Joint statement

The agencies shall provide a joint statement under subparagraph (A), not later than 30 days after the date of receipt of the request of the insured depository institution, credit union, or covered person described in subsection (a).

(4) Appeals to governing panel

(A) In general

If the agencies do not resolve the conflict or issue a joint statement required by subparagraph (B), or if either of the agencies takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, an insured depository institution, insured credit union, or other covered person described in subsection (a) may institute an appeal to a governing panel, as provided in this subsection, not later than 30 days after the expiration of the period during which a joint statement is required to be filed under paragraph (3)(B).

(B) Composition of governing panel

The governing panel for an appeal under this paragraph shall be composed of—

(i) a representative from the Bureau and a representative of the prudential regulator, both of whom—

(I) have not participated in the material supervisory determinations under appeal; and

(II) do not directly or indirectly report to the person who participated materially in the supervisory determinations under appeal; and

(ii) one individual representative, to be determined on a rotating basis, from among the Board of Governors, the Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency, other than any agency involved in the subject dispute.

(C) Conduct of appeal

In an appeal under this paragraph—

(i) the insured depository institution, insured credit union, or other covered person described in subsection (a)—

(I) shall include in its appeal all the facts and legal arguments pertaining to the matter; and

(II) may, through counsel, employees, or representatives, appear before the governing panel in person or by telephone; and

(ii) the governing panel—

(I) may request the insured depository institution, insured credit union, or other covered person described in subsection (a), the Bureau, or the prudential regulator to produce additional information relevant to the appeal; and

(II) by a majority vote of its members, shall provide a final determination, in writing, not later than 30 days after the date of filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, insured credit union, or other covered person described in subsection (a) may jointly agree.

(D) Public availability of determinations

A governing panel shall publish all information contained in a determination by the governing panel, with appropriate redactions of information that would be subject to an exemption from disclosure under section 552 of title 5.

(E) Prohibition against retaliation

The Bureau and the prudential regulators shall prescribe rules to provide safeguards from retaliation against the insured depository institution, insured credit union, or other covered person described in subsection (a) instituting an appeal under this paragraph, as well as their officers and employees.

(F) Limitation

The process provided in this paragraph shall not apply to a determination by a prudential regulator to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 1831*o* of this title or section 1790a of this title, as applicable.

(G) Effect on other authority

Nothing in this section shall modify or limit the authority of the Bureau to interpret, or take enforcement action under, any Federal consumer financial law, or the authority of a prudential regulator to interpret or take enforcement action under any other provision of Federal law for safety and soundness purposes.

(Pub. L. 111–203, title X, § 1025, July 21, 2010, 124 Stat. 1990.)

REFERENCES IN TEXT

This title, referred to in subsec. (b)(4), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, except that subsec. (e) of this section is effective July 21, 2010, see section 1029A of Pub. L. 111–203, set out as a note under section 5511 of this title.

§ 5516. Other banks, savings associations, and credit unions

(a) Scope of coverage

This section shall apply to any covered person that is—

(1) an insured depository institution with total assets of $10,000,000,000 or less; or

(2) an insured credit union with total assets of $10,000,000,000 or less.

(b) Reports

The Director may require reports from a person described in subsection (a), as necessary to support the role of the Bureau in implementing Federal consumer financial law, to support its examination activities under subsection (c), and to assess and detect risks to consumers and consumer financial markets.

(1) Use of existing reports

The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(2) Preservation of authority

Nothing in this subsection may be construed as limiting the authority of the Director from requiring from a person described in subsection (a), as permitted under paragraph (1), information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(3) Reports of tax law noncompliance

The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) Examinations

(1) In general

The Bureau may, at its discretion, include examiners on a sampling basis of the examinations performed by the prudential regulator to assess compliance with the requirements of Federal consumer financial law of persons described in subsection (a).

(2) Agency coordination

The prudential regulator shall—

(A) provide all reports, records, and documentation related to the examination process for any institution included in the sample referred to in paragraph (1) to the Bureau on a timely and continual basis;

(B) involve such Bureau examiner in the entire examination process for such person; and

(C) consider input of the Bureau concerning the scope of an examination, conduct of the examination, the contents of the examination report, the designation of matters requiring attention, and examination ratings.

(d) Enforcement

(1) In general

Except for requiring reports under subsection (b), the prudential regulator is authorized to enforce the requirements of Federal consumer financial laws and, with respect to a covered person described in subsection (a), shall have exclusive authority (relative to the Bureau) to enforce such laws.

(2) Coordination with prudential regulator

(A) Referral

When the Bureau has reason to believe that a person described in subsection (a) has engaged in a material violation of a Federal consumer financial law, the Bureau shall notify the prudential regulator in writing and recommend appropriate action to respond.

(B) Response

Upon receiving a recommendation under subparagraph (A), the prudential regulator shall provide a written response to the Bureau not later than 60 days thereafter.

(e) Service providers

A service provider to a substantial number of persons described in subsection (a) shall be subject to the authority of the Bureau under section 5515 of this title to the same extent as if the Bureau were an appropriate Federal bank agency under section 1867(c) of this title. When conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

(Pub. L. 111–203, title X, § 1026, July 21, 2010, 124 Stat. 1993.)

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1029A of Pub. L. 111–203, set out as a note under section 5511 of this title.

§ 5517. Limitations on authorities of the Bureau; preservation of authorities

(a) Exclusion for merchants, retailers, and other sellers of nonfinancial goods or services

(1) Sale or brokerage of nonfinancial good or service

The Bureau may not exercise any rulemaking, supervisory, enforcement or other authority under this title[1] with respect to a person who is a merchant, retailer, or seller of any nonfinancial good or service and is engaged in the sale or brokerage of such nonfinancial good or service, except to the extent that such person is engaged in offering or providing any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(2) Offering or provision of certain consumer financial products or services in connection with the sale or brokerage of nonfinancial good or service

(A) In general

Except as provided in subparagraph (B), and subject to subparagraph (C), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title[1] with respect to a merchant, retailer, or seller of nonfinancial goods or services, but only to the extent that such person—

(i) extends credit directly to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service (other than credit described in this subparagraph), exclusively for the purpose of enabling that

[1] See References in Text note below.

consumer to purchase such nonfinancial good or service directly from the merchant, retailer, or seller;

(ii) directly, or through an agreement with another person, collects debt arising from credit extended as described in clause (i); or

(iii) sells or conveys debt described in clause (i) that is delinquent or otherwise in default.

(B) Applicability

Subparagraph (A) does not apply to any credit transaction or collection of debt, other than as described in subparagraph (C)(i), arising from a transaction described in subparagraph (A)—

(i) in which the merchant, retailer, or seller of nonfinancial goods or services assigns, sells or otherwise conveys to another person such debt owed by the consumer (except for a sale of debt that is delinquent or otherwise in default, as described in subparagraph (A)(iii));

(ii) in which the credit extended significantly exceeds the market value of the nonfinancial good or service provided, or the Bureau otherwise finds that the sale of the nonfinancial good or service is done as a subterfuge, so as to evade or circumvent the provisions of this title;[1] or

(iii) in which the merchant, retailer, or seller of nonfinancial goods or services regularly extends credit and the credit is subject to a finance charge.

(C) Limitations

(i) In general

Notwithstanding subparagraph (B), subparagraph (A) shall apply with respect to a merchant, retailer, or seller of nonfinancial goods or services that is not engaged significantly in offering or providing consumer financial products or services.

(ii) Exception

Subparagraph (A) and clause (i) of this subparagraph do not apply to any merchant, retailer, or seller of nonfinancial goods or services—

(I) if such merchant, retailer, or seller of nonfinancial goods or services is engaged in a transaction described in subparagraph (B)(i) or (B)(ii); or

(II) to the extent that such merchant, retailer, or seller is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, but the Bureau may exercise such authority only with respect to that law.

(D) Rules

(i) Authority of other agencies

No provision of this title[1] shall be construed as modifying, limiting, or superseding the supervisory or enforcement authority of the Federal Trade Commission or any other agency (other than the Bureau) with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase nonfinancial goods or services directly from the merchant or retailer.

(ii) Small businesses

A merchant, retailer, or seller of nonfinancial goods or services that would otherwise be subject to the authority of the Bureau solely by virtue of the application of subparagraph (B)(iii) shall be deemed not to be engaged significantly in offering or providing consumer financial products or services under subparagraph (C)(i), if such person—

(I) only extends credit for the sale of nonfinancial goods or services, as described in subparagraph (A)(i);

(II) retains such credit on its own accounts (except to sell or convey such debt that is delinquent or otherwise in default); and

(III) meets the relevant industry size threshold to be a small business concern, based on annual receipts, pursuant to section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder.

(iii) Initial year

A merchant, retailer, or seller of nonfinancial goods or services shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) during the first year of operations of that business concern if, during that year, the receipts of that business concern reasonably are expected to meet that size threshold.

(iv) Other standards for small business

With respect to a merchant, retailer, or seller of nonfinancial goods or services that is a classified on a basis other than annual receipts for the purposes of section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder, such merchant, retailer, or seller shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) if such merchant, retailer, or seller meets the relevant industry size threshold to be a small business concern based on the number of employees, or other such applicable measure, established under that Act [15 U.S.C. 631 et seq.].

(E) Exception from State enforcement

To the extent that the Bureau may not exercise authority under this subsection with respect to a merchant, retailer, or seller of nonfinancial goods or services, no action by a State attorney general or State regulator with respect to a claim made under this title[1] may be brought under subsection 5552(a) of this title, with respect to an activity described in any of clauses (i) through (iii) of subparagraph (A) by such merchant, retailer, or seller of nonfinancial goods or services.

(b) Exclusion for real estate brokerage activities

(1) Real estate brokerage activities excluded

Without limiting subsection (a), and except as permitted in paragraph (2), the Bureau may

not exercise any rulemaking, supervisory, enforcement, or other authority under this title[1] with respect to a person that is licensed or registered as a real estate broker or real estate agent, in accordance with State law, to the extent that such person—

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiates, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with the provision of financing with respect to any such transaction); or

(D) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), or (C).

(2) Description of activities

The Bureau may exercise rulemaking, supervisory, enforcement, or other authority under this title[1] with respect to a person described in paragraph (1) when such person is—

(A) engaged in an activity of offering or providing any consumer financial product or service, except that the Bureau may exercise such authority only with respect to that activity; or

(B) otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, but the Bureau may exercise such authority only with respect to that law.

(c) Exclusion for manufactured home retailers and modular home retailers

(1) In general

The Director may not exercise any rulemaking, supervisory, enforcement, or other authority over a person to the extent that—

(A) such person is not described in paragraph (2); and

(B) such person—

(i) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(ii) facilitates the purchase by a consumer of a manufactured home or modular home, by negotiating the purchase price or terms of the sales contract (other than providing financing with respect to such transaction); or

(iii) offers to engage in any activity described in clause (i) or (ii).

(2) Description of activities

A person is described in this paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(3) Definitions

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

(A) Manufactured home

The term ''manufactured home'' has the same meaning as in section 5402 of title 42.

(B) Modular home

The term ''modular home'' means a house built in a factory in 2 or more modules that meet the State or local building codes where the house will be located, and where such modules are transported to the building site, installed on foundations, and completed.

(d) Exclusion for accountants and tax preparers

(1) In general

Except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority over—

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph, when such person is performing or offering to perform—

(i) customary and usual accounting activities, including the provision of accounting, tax, advisory, or other services that are subject to the regulatory authority of a State board of accountancy or a Federal authority; or

(ii) other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided—

(I) by the person separate and apart from such customary and usual accounting activities; or

(II) to consumers who are not receiving such customary and usual accounting activities; or

(B) any person, other than a person described in subparagraph (A)[2] that performs income tax preparation activities for consumers.

(2) Description of activities

(A) In general

Paragraph (1) shall not apply to any person described in paragraph (1)(A) or (1)(B) to the extent that such person is engaged in any activity which is not a customary and usual accounting activity described in paragraph (1)(A) or incidental thereto but which is the offering or provision of any consumer financial product or service, except to the extent that a person described in paragraph (1)(A) is engaged in an activity which is a customary and usual accounting activity described in paragraph (1)(A), or incidental thereto.

(B) Not a customary and usual accounting activity

For purposes of this subsection, extending or brokering credit is not a customary and usual accounting activity, or incidental thereto.

(C) Rule of construction

For purposes of subparagraphs (A) and (B), a person described in paragraph (1)(A) shall

[2] So in original. Probably should be followed by a comma.

not be deemed to be extending credit, if such person is only extending credit directly to a consumer, exclusively for the purpose of enabling such consumer to purchase services described in clause (i) or (ii) of paragraph (1)(A) directly from such person, and such credit is—

(i) not subject to a finance charge; and

(ii) not payable by written agreement in more than 4 installments.

(D) Other limitations

Paragraph (1) does not apply to any person described in paragraph (1)(A) or (1)(B) that is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(e) Exclusion for practice of law

(1) In general

Except as provided under paragraph (2), the Bureau may not exercise any supervisory or enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law.

(2) Rule of construction

Paragraph (1) shall not be construed so as to limit the exercise by the Bureau of any supervisory, enforcement, or other authority regarding the offering or provision of a consumer financial product or service described in any subparagraph of section 5481(5) of this title—

(A) that is not offered or provided as part of, or incidental to, the practice of law, occurring exclusively within the scope of the attorney-client relationship; or

(B) that is otherwise offered or provided by the attorney in question with respect to any consumer who is not receiving legal advice or services from the attorney in connection with such financial product or service.

(3) Existing authority

Paragraph (1) shall not be construed so as to limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(f) Exclusion for persons regulated by a State insurance regulator

(1) In general

No provision of this title[1] shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by a State insurance regulator. Except as provided in paragraph (2), the Bureau shall have no authority to exercise any power to enforce this title[1] with respect to a person regulated by a State insurance regulator.

(2) Description of activities

Paragraph (1) does not apply to any person described in such paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(3) State insurance authority under Gramm-Leach-Bliley

Notwithstanding paragraph (2), the Bureau shall not exercise any authorities that are granted a State insurance authority under section 6805(a)(6) of title 15 with respect to a person regulated by a State insurance authority.

(g) Exclusion for employee benefit and compensation plans and certain other arrangements under title 26

(1) Preservation of authority of other agencies

No provision of this title[1] shall be construed as altering, amending, or affecting the authority of the Secretary of the Treasury, the Secretary of Labor, or the Commissioner of Internal Revenue to adopt regulations, initiate enforcement proceedings, or take any actions with respect to any specified plan or arrangement.

(2) Activities not constituting the offering or provision of any consumer financial product or service

For purposes of this title,[1] a person shall not be treated as having engaged in the offering or provision of any consumer financial product or service solely because such person is—

(A) a specified plan or arrangement;

(B) engaged in the activity of establishing or maintaining, for the benefit of employees of such person (or for members of an employee organization), any specified plan or arrangement; or

(C) engaged in the activity of establishing or maintaining a qualified tuition program under section 529(b)(1) of title 26 offered by a State or other prepaid tuition program offered by a State.

(3) Limitation on Bureau authority

(A) In general

Except as provided under subparagraphs (B) and (C), the Bureau may not exercise any rulemaking or enforcement authority with respect to products or services that relate to any specified plan or arrangement.

(B) Bureau action pursuant to agency request

(i) Agency request

The Secretary and the Secretary of Labor may jointly issue a written request to the Bureau regarding implementation of appropriate consumer protection standards under this title[1] with respect to the provision of services relating to any specified plan or arrangement.

(ii) Agency response

In response to a request by the Bureau, the Secretary and the Secretary of Labor shall jointly issue a written response, not later than 90 days after receipt of such request, to grant or deny the request of the Bureau regarding implementation of appropriate consumer protection standards under this title[1] with respect to the provi-

sion of services relating to any specified plan or arrangement.

(iii) Scope of Bureau action

Subject to a request or response pursuant to clause (i) or clause (ii) by the agencies made under this subparagraph, the Bureau may exercise rulemaking authority, and may act to enforce a rule prescribed pursuant to such request or response, in accordance with the provisions of this title.[1] A request or response made by the Secretary and the Secretary of Labor under this subparagraph shall describe the basis for, and scope of, appropriate consumer protection standards to be implemented under this title[1] with respect to the provision of services relating to any specified plan or arrangement.

(C) Description of products or services

To the extent that a person engaged in providing products or services relating to any specified plan or arrangement is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, subparagraph (A) shall not apply with respect to that law.

(4) Specified plan or arrangement

For purposes of this subsection, the term ''specified plan or arrangement'' means any plan, account, or arrangement described in section 220, 223, 401(a), 403(a), 403(b), 408, 408A, 529, or 530 of title 26, or any employee benefit or compensation plan or arrangement, including a plan that is subject to title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.], or any prepaid tuition program offered by a State.

(h) Persons regulated by a State securities commission

(1) In general

No provision of this title[1] shall be construed as altering, amending, or affecting the authority of any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State. Except as permitted in paragraph (2) and subsection (f), the Bureau shall have no authority to exercise any power to enforce this title[1] with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State, but only to the extent that the person acts in such regulated capacity.

(2) Description of activities

Paragraph (1) shall not apply to any person to the extent such person is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(i) Exclusion for persons regulated by the Commission

(1) In general

No provision of this title[1] may be construed as altering, amending, or affecting the authority of the Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commission. The Bureau shall have no authority to exercise any power to enforce this title[1] with respect to a person regulated by the Commission.

(2) Consultation and coordination

Notwithstanding paragraph (1), the Commission shall consult and coordinate, where feasible, with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title[1] or under any other law. In carrying out this paragraph, the agencies shall negotiate an agreement to establish procedures for such coordination, including procedures for providing advance notice to the Bureau when the Commission is initiating a rulemaking.

(j) Exclusion for persons regulated by the Commodity Futures Trading Commission

(1) In general

No provision of this title[1] shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commodity Futures Trading Commission. The Bureau shall have no authority to exercise any power to enforce this title[1] with respect to a person regulated by the Commodity Futures Trading Commission.

(2) Consultation and coordination

Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title[1] or under any other law.

(k) Exclusion for persons regulated by the Farm Credit Administration

(1) In general

No provision of this title[1] shall be construed as altering, amending, or affecting the authority of the Farm Credit Administration to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Farm Credit Administration. The Bureau shall have no authority to exercise any power to enforce this title[1] with respect to a person regulated by the Farm Credit Administration.

(2) Definition

For purposes of this subsection, the term ''person regulated by the Farm Credit Admin-

istration'' means any Farm Credit System institution that is chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(*l*) Exclusion for activities relating to charitable contributions

(1) In general

The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order penalties, over any activities related to the solicitation or making of voluntary contributions to a tax-exempt organization as recognized by the Internal Revenue Service, by any agent, volunteer, or representative of such organizations to the extent the organization, agent, volunteer, or representative thereof is soliciting or providing advice, information, education, or instruction to any donor or potential donor relating to a contribution to the organization.

(2) Limitation

The exclusion in paragraph (1) does not apply to other activities not described in paragraph (1) that are the offering or provision of any consumer financial product or service, or are otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(m) Insurance

The Bureau may not define as a financial product or service, by regulation or otherwise, engaging in the business of insurance.

(n) Limited authority of the Bureau

Notwithstanding subsections (a) through (h) and (*l*), a person subject to or described in one or more of such provisions—

(1) may be a service provider; and

(2) may be subject to requests from, or requirements imposed by, the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with section 5512, 5562, or 5563 of this title.

(*o*) No authority to impose usury limit

No provision of this title[1] shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law.

(p) Attorney General

No provision of this title,[1] including section 5514(c)(1) of this title, shall affect the authorities of the Attorney General under otherwise applicable provisions of law.

(q) Secretary of the Treasury

No provision of this title[1] shall affect the authorities of the Secretary, including with respect to prescribing rules, initiating enforcement proceedings, or taking other actions with respect to a person that performs income tax preparation activities for consumers.

(r) Deposit insurance and share insurance

Nothing in this title[1] shall affect the authority of the Corporation under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] or the National Credit Union Administration Board under the Federal Credit Union Act [12 U.S.C. 1751 et seq.] as to matters related to deposit insurance and share insurance, respectively.

(s) Fair Housing Act

No provision of this title[1] shall be construed as affecting any authority arising under the Fair Housing Act [42 U.S.C. 3601 et seq.].

(Pub. L. 111–203, title X, §1027, July 21, 2010, 124 Stat. 1995.)

REFERENCES IN TEXT

This title, where footnoted in text, is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

Subtitle F, referred to in text, is subtitle F (§§1061–1067) of title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 2035, which is classified generally to part F (§5581 et seq.) of this subchapter. For complete classification of subtitle F to the Code, see Tables.

Subtitle H, referred to in text, is subtitle H (§§1081–1100H) of title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 2080. For complete classification of subtitle H to the Code, see Tables.

The Small Business Act, referred to in subsec. (a)(2)(D)(iv), is Pub. L. 85–536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (g)(4), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Title I of the Act is classified generally to subchapter I (§1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Farm Credit Act of 1971, referred to in subsec. (k)(2), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to chapter 23 (§2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (r), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

The Federal Credit Union Act, referred to in subsec. (r), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified principally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

The Fair Housing Act, referred to in subsec. (s), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1029A of Pub. L. 111–203, set out as a note under section 5511 of this title.

§ 5518. Authority to restrict mandatory pre-dispute arbitration

(a) Study and report

The Bureau shall conduct a study of, and shall provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

(b) Further authority

The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau finds that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The findings in such rule shall be consistent with the study conducted under subsection (a).

(c) Limitation

The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

(d) Effective date

Notwithstanding any other provision of law, any regulation prescribed by the Bureau under subsection (b) shall apply, consistent with the terms of the regulation, to any agreement between a consumer and a covered person entered into after the end of the 180-day period beginning on the effective date of the regulation, as established by the Bureau.

(Pub. L. 111–203, title X, § 1028, July 21, 2010, 124 Stat. 2003.)

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1029A of Pub. L. 111–203, set out as a note under section 5511 of this title.

§ 5519. Exclusion for auto dealers

(a) Sale, servicing, and leasing of motor vehicles excluded

Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement or any other authority, including any authority to order assessments, over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(b) Certain functions excepted

Subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property;

(2) operates a line of business—

(A) that involves the extension of retail credit or retail leases involving motor vehicles; and

(B) in which—

(i) the extension of retail credit or retail leases are provided directly to consumers; and

(ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or

(3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.

(c) Preservation of authorities of other agencies

Except as provided in subsections (b) and (d), nothing in this title,[1] including subtitle F, shall be construed as modifying, limiting, or superseding the operation of any provision of Federal law, or otherwise affecting the authority of the Board of Governors, the Federal Trade Commission, or any other Federal agency, with respect to a person described in subsection (a).

(d) Federal Trade Commission authority

Notwithstanding section 57a of title 15, the Federal Trade Commission is authorized to prescribe rules under sections 45 and 57a(a)(1)(B) of title 15.[2] in accordance with section 553 of title 5, with respect to a person described in subsection (a).

(e) Coordination with Office of Service Member Affairs

The Board of Governors and the Federal Trade Commission shall coordinate with the Office of Service Member Affairs, to ensure that—

(1) service members and their families are educated and empowered to make better informed decisions regarding consumer financial products and services offered by motor vehicle dealers, with a focus on motor vehicle dealers in the proximity of military installations; and

(2) complaints by service members and their families concerning such motor vehicle dealers are effectively monitored and responded to, and where appropriate, enforcement action is pursued by the authorized agencies.

(f) Definitions

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

(1) Motor vehicle

The term ''motor vehicle'' means—

(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

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[1] See References in Text note below.

[2] So in original. The period probably should be a comma.

(2) Motor vehicle dealer

The term ''motor vehicle dealer'' means any person or resident in the United States, or any territory of the United States, who—

(A) is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles; and

(B) takes title to, holds an ownership in, or takes physical custody of motor vehicles.

(Pub. L. 111–203, title X, § 1029, July 21, 2010, 124 Stat. 2004.)

REFERENCES IN TEXT

This title, referred to in subsec. (c), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

Subtitle F, referred to in subsec. (c), is subtitle F (§§ 1061–1067) of title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 2035, which is classified generally to part F (§ 5581 et seq.) of this subchapter. For complete classification of subtitle F to the Code, see Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1029A of Pub. L. 111–203, set out as a note under section 5511 of this title.

PART C—SPECIFIC BUREAU AUTHORITIES

§ 5531. Prohibiting unfair, deceptive, or abusive acts or practices

(a) In general

The Bureau may take any action authorized under part E to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

(b) Rulemaking

The Bureau may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing such acts or practices.

(c) Unfairness

(1) In general

The Bureau shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that—

(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and

(B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) Consideration of public policies

In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

(d) Abusive

The Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—

(1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

(2) takes unreasonable advantage of—

(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

(B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

(C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

(e) Consultation

In prescribing rules under this section, the Bureau shall consult with the Federal banking agencies, or other Federal agencies, as appropriate, concerning the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.

(f) Consideration of seasonal income

The rules of the Bureau under this section shall provide, with respect to an extension of credit secured by residential real estate or a dwelling, if documented income of the borrower, including income from a small business, is a repayment source for an extension of credit secured by residential real estate or a dwelling, the creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

(Pub. L. 111–203, title X, § 1031, July 21, 2010, 124 Stat. 2005.)

EFFECTIVE DATE

Pub. L. 111–203, title X, § 1037, July 21, 2010, 124 Stat. 2011, provided that: ''This subtitle [subtitle C (§§ 1031–1037), enacting this part] shall take effect on the designated transfer date.''

[The term ''designated transfer date'' is defined in section 5481(9) of this title as the date established under section 5582 of this title.]

§ 5532. Disclosures

(a) In general

The Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs,

benefits, and risks associated with the product or service, in light of the facts and circumstances.

(b) Model disclosures

(1) In general

Any final rule prescribed by the Bureau under this section requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.

(2) Format

A model form issued pursuant to paragraph (1) shall contain a clear and conspicuous disclosure that, at a minimum—

(A) uses plain language comprehensible to consumers;

(B) contains a clear format and design, such as an easily readable type font; and

(C) succinctly explains the information that must be communicated to the consumer.

(3) Consumer testing

Any model form issued pursuant to this subsection shall be validated through consumer testing.

(c) Basis for rulemaking

In prescribing rules under this section, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(d) Safe harbor

Any covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.

(e) Trial disclosure programs

(1) In general

The Bureau may permit a covered person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumers that are designed to improve upon any model form issued pursuant to subsection (b)(1), or any other model form issued to implement an enumerated statute, as applicable.

(2) Safe harbor

The standards and procedures issued by the Bureau shall be designed to encourage covered persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Bureau may establish a limited period during which a covered person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer law.

(3) Public disclosure

The rules of the Bureau shall provide for public disclosure of trial disclosure programs, which public disclosure may be limited, to the extent necessary to encourage covered persons to conduct effective trials.

(f) Combined mortgage loan disclosure

Not later than 1 year after the designated transfer date, the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act [15 U.S.C. 1601 et seq.] and sections 2603 and 2604 of this title, into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the Board of Governors and the Secretary of Housing and Urban Development carries out the same purpose.

(Pub. L. 111–203, title X, § 1032, July 21, 2010, 124 Stat. 2006.)

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (f), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1037 of Pub. L. 111–203, set out as a note under section 5531 of this title.

§ 5533. Consumer rights to access information

(a) In general

Subject to rules prescribed by the Bureau, a covered person shall make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data. The information shall be made available in an electronic form usable by consumers.

(b) Exceptions

A covered person may not be required by this section to make available to the consumer—

(1) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(2) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct;

(3) any information required to be kept confidential by any other provision of law; or

(4) any information that the covered person cannot retrieve in the ordinary course of its business with respect to that information.

(c) No duty to maintain records

Nothing in this section shall be construed to impose any duty on a covered person to maintain or keep any information about a consumer.

(d) Standardized formats for data

The Bureau, by rule, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section.

(e) Consultation

The Bureau shall, when prescribing any rule under this section, consult with the Federal banking agencies and the Federal Trade Commission to ensure, to the extent appropriate, that the rules—

(1) impose substantively similar requirements on covered persons;

(2) take into account conditions under which covered persons do business both in the United States and in other countries; and

(3) do not require or promote the use of any particular technology in order to develop systems for compliance.

(Pub. L. 111–203, title X, § 1033, July 21, 2010, 124 Stat. 2008.)

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1037 of Pub. L. 111–203, set out as a note under section 5531 of this title.

§ 5534. Response to consumer complaints and inquiries

(a) Timely regulator response to consumers

The Bureau shall establish, in consultation with the appropriate Federal regulatory agencies, reasonable procedures to provide a timely response to consumers, in writing where appropriate, to complaints against, or inquiries concerning, a covered person, including—

(1) steps that have been taken by the regulator in response to the complaint or inquiry of the consumer;

(2) any responses received by the regulator from the covered person; and

(3) any follow-up actions or planned follow-up actions by the regulator in response to the complaint or inquiry of the consumer.

(b) Timely response to regulator by covered person

A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 5515 of this title shall provide a timely response, in writing where appropriate, to the Bureau, the prudential regulators, and any other agency having jurisdiction over such covered person concerning a consumer complaint or inquiry, including—

(1) steps that have been taken by the covered person to respond to the complaint or inquiry of the consumer;

(2) responses received by the covered person from the consumer; and

(3) follow-up actions or planned follow-up actions by the covered person to respond to the complaint or inquiry of the consumer.

(c) Provision of information to consumers

(1) In general

A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 5515 of this title shall, in a timely manner, comply with a consumer request for information in the control or possession of such covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including supporting written documentation, concerning the account of the consumer.

(2) Exceptions

A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 5515 of this title, a prudential regulator, and any other agency having jurisdiction over a covered person subject to supervision and primary enforcement by the Bureau pursuant to section 5515 of this title may not be required by this section to make available to the consumer—

(A) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(B) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting or making any report regarding other unlawful or potentially unlawful conduct;

(C) any information required to be kept confidential by any other provision of law; or

(D) any nonpublic or confidential information, including confidential supervisory information.

(d) Agreements with other agencies

The Bureau shall enter into a memorandum of understanding with any affected Federal regulatory agency regarding procedures by which any covered person, and the prudential regulators, and any other agency having jurisdiction over a covered person, including the Secretary of the Department of Housing and Urban Development and the Secretary of Education, shall comply with this section.

(Pub. L. 111–203, title X, § 1034, July 21, 2010, 124 Stat. 2008.)

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1037 of Pub. L. 111–203, set out as a note under section 5531 of this title.

§ 5535. Private Education Loan Ombudsman

(a) Establishment

The Secretary, in consultation with the Director, shall designate a Private Education Loan Ombudsman (in this section referred to as the ''Ombudsman'') within the Bureau, to provide timely assistance to borrowers of private education loans.

(b) Public information

The Secretary and the Director shall disseminate information about the availability and functions of the Ombudsman to borrowers and potential borrowers, as well as institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education student loan programs.

(c) Functions of Ombudsman

The Ombudsman designated under this subsection shall—

(1) in accordance with regulations of the Director, receive, review, and attempt to resolve informally complaints from borrowers of loans described in subsection (a), including, as appropriate, attempts to resolve such complaints in collaboration with the Department of Edu-

cation and with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education loan programs;

(2) not later than 90 days after the designated transfer date, establish a memorandum of understanding with the student loan ombudsman established under section 1018(f) of title 20, to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans;

(3) compile and analyze data on borrower complaints regarding private education loans; and

(4) make appropriate recommendations to the Director, the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(d) Annual reports

(1) In general

The Ombudsman shall prepare an annual report that describes the activities, and evaluates the effectiveness of the Ombudsman during the preceding year.

(2) Submission

The report required by paragraph (1) shall be submitted on the same date annually to the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(e) Definitions

For purposes of this section, the terms ''private education loan'' and ''institution of higher education'' have the same meanings as in section 1650 of title 15.

(Pub. L. 111–203, title X, § 1035, July 21, 2010, 124 Stat. 2009.)

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1037 of Pub. L. 111–203, set out as a note under section 5531 of this title.

§ 5536. Prohibited acts

(a) In general

It shall be unlawful for—

(1) any covered person or service provider—

(A) to offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law; or

(B) to engage in any unfair, deceptive, or abusive act or practice;

(2) any covered person or service provider to fail or refuse, as required by Federal consumer financial law, or any rule or order issued by the Bureau thereunder—

(A) to permit access to or copying of records;

(B) to establish or maintain records; or

(C) to make reports or provide information to the Bureau; or

(3) any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the provisions of section 5531 of this title, or any rule or order issued thereunder, and notwithstanding any provision of this title,[1] the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

(b) Exception

No person shall be held to have violated subsection (a)(1) solely by virtue of providing or selling time or space to a covered person or service provider placing an advertisement.

(Pub. L. 111–203, title X, § 1036, July 21, 2010, 124 Stat. 2010.)

REFERENCES IN TEXT

This title, where footnoted in subsec. (a)(3), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1037 of Pub. L. 111–203, set out as a note under section 5531 of this title.

§ 5537. Senior investor protections

(a) Definitions

As used in this section—

(1) the term ''eligible entity'' means—

(A) a securities commission (or any agency or office performing like functions) of a State that the Office determines has adopted rules on the appropriate use of designations in the offer or sale of securities or the provision of investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto);

(B) the insurance commission (or any agency or office performing like functions) of any State that the Office determines has—

(i) adopted rules on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(ii) adopted rules with respect to fiduciary or suitability requirements in the

[1] See References in Text note below.

sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto); or

(C) a consumer protection agency of any State, if—

(i) the securities commission (or any agency or office performing like functions) of the State is eligible under subparagraph (A); or

(ii) the insurance commission (or any agency or office performing like functions) of the State is eligible under subparagraph (B);

(2) the term ''financial product'' means a security, an insurance product (including an insurance product that pays a return, whether fixed or variable), a bank product, and a loan product;

(3) the term ''misleading designation''—

(A) means a certification, professional designation, or other purported credential that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

(B) does not include a certification, professional designation, license, or other credential that—

(i) was issued by or obtained from an academic institution having regional accreditation;

(ii) meets the standards for certifications and professional designations outlined by the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto) or by the Model Regulations on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, adopted by the National Association of Insurance Commissioners (or any successor thereto); or

(iii) was issued by or obtained from a State;

(4) the term ''misleading or fraudulent marketing'' means the use of a misleading designation by a person that sells to or advises a senior in connection with the sale of a financial product;

(5) the term ''NASAA'' means the North American Securities Administrators Association;

(6) the term ''Office'' means the Office of Financial Literacy of the Bureau;

(7) the term ''senior'' means any individual who has attained the age of 62 years or older; and

(8) the term ''State'' has the same meaning as in section 78c(a) of title 15.

(b) Grants to States for enhanced protection of seniors from being misled by false designations

The Office shall establish a program under which the Office may make grants to States or eligible entities—

(1) to hire staff to identify, investigate, and prosecute (through civil, administrative, or criminal enforcement actions) cases involving misleading or fraudulent marketing;

(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement officers, in order to identify salespersons and advisers who target seniors through the use of misleading designations;

(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of salespersons and advisers who target seniors with the use of misleading designations;

(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers in connection with the sale and marketing of financial products;

(5) to provide educational materials and training to seniors to increase awareness and understanding of misleading or fraudulent marketing;

(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors; and

(7) to enhance provisions of State law to provide protection for seniors against misleading or fraudulent marketing.

(c) Applications

A State or eligible entity desiring a grant under this section shall submit an application to the Office, in such form and in such a manner as the Office may determine, that includes—

(1) a proposal for activities to protect seniors from misleading or fraudulent marketing that are proposed to be funded using a grant under this section, including—

(A) an identification of the scope of the problem of misleading or fraudulent marketing in the State;

(B) a description of how the proposed activities would—

(i) protect seniors from misleading or fraudulent marketing in the sale of financial products, including by proactively identifying victims of misleading and fraudulent marketing who are seniors;

(ii) assist in the investigation and prosecution of those using misleading or fraudulent marketing; and

(iii) discourage and reduce cases of misleading or fraudulent marketing; and

(C) a description of how the proposed activities would be coordinated with other State efforts; and

(2) any other information, as the Office determines is appropriate.

(d) Performance objectives and reporting requirements

The Office may establish such performance objectives and reporting requirements for States and eligible entities receiving a grant under this section as the Office determines are necessary to carry out and assess the effectiveness of the program under this section.

(e) Maximum amount

The amount of a grant under this section may not exceed—

(1) $500,000 for each of 3 consecutive fiscal years, if the recipient is a State, or an eligible entity of a State, that has adopted rules—

(A) on the appropriate use of designations in the offer or sale of securities or investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto);

(B) on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(C) with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto); and

(2) $100,000 for each of 3 consecutive fiscal years, if the recipient is a State, or an eligible entity of a State, that has adopted—

(A) rules on the appropriate use of designations in the offer or sale of securities or investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto); or

(B) rules—

(i) on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(ii) with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto).

(f) Subgrants

A State or eligible entity that receives a grant under this section may make a subgrant, as the State or eligible entity determines is necessary to carry out the activities funded using a grant under this section.

(g) Reapplication

A State or eligible entity that receives a grant under this section may reapply for a grant under this section, notwithstanding the limitations on grant amounts under subsection (e).

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $8,000,000 for each of fiscal years 2011 through 2015.

(Pub. L. 111–203, title IX, § 989A, July 21, 2010, 124 Stat. 1941.)

CODIFICATION

Section was not enacted as part of subtitle C of title X of Pub. L. 111–203, which comprises this part.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

§ 5538. Mortgages loans; rulemaking procedures; enforcement

(a)(1) Within 90 days after March 11, 2009, the Federal Trade Commission shall initiate a rulemaking proceeding with respect to mortgage loans in accordance with section 553 of title 5. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this subsection shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

(2) Paragraph (1) shall not be construed to authorize the Federal Trade Commission to promulgate a rule with respect to an entity that is not subject to enforcement of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Commission.

(3) Before issuing a final rule pursuant to the proceeding initiated under paragraph (1), the Federal Trade Commission shall consult with the Federal Reserve Board concerning any portion of the proposed rule applicable to acts or practices to which the provisions of the Truth in Lending Act (15 U.S.C. 1601 et seq.) may apply.

(4) The Federal Trade Commission shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made part of this section.

(b)(1) Except as provided in paragraph (6), in any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person subject to a rule prescribed under subsection (a) in a practice that violates such rule, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in an appropriate district court of the United States or other court of competent jurisdiction—

(A) to enjoin that practice;

(B) to enforce compliance with the rule;

(C) to obtain damages, restitution, or other compensation on behalf of residents of the State; or

(D) to obtain penalties and relief provided by the Federal Trade Commission Act [15 U.S.C. 41 et seq.] and such other relief as the court considers appropriate.

(2) The State shall serve written notice to the primary Federal regulator of any civil action under paragraph (1) at least 60 days prior to initiating such civil action. The notice shall in-

clude a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide notice immediately upon instituting such civil action.

(3) Upon receiving the notice required by paragraph (2), the primary Federal regulator may intervene in such civil action and upon intervening—

(A) be heard on all matters arising in such civil action;

(B) remove the action to the appropriate United States district court; and

(C) file petitions for appeal of a decision in such civil action.

(4) Nothing in this subsection shall prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence. Nothing in this section shall prohibit the attorney general of a State, or other authorized State officer, from proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.

(5) In a civil action brought under paragraph (1)—

(A) the venue shall be a judicial district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28; and

(B) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted.

(6) Whenever a civil action or an administrative action has been instituted by or on behalf of the primary Federal regulator for violation of any provision of law or rule described in paragraph (1), no State may, during the pendency of such action instituted by or on behalf of the primary Federal regulator, institute a civil action under that paragraph against any defendant named in the complaint in such action for violation of any law or rule as alleged in such complaint.

(7) If the attorney general of a State prevails in any civil action under paragraph (1), the State can recover reasonable costs and attorney fees from the lender or related party.

(Pub. L. 111–8, div. D, title VI, §626(a), (b), Mar. 11, 2009, 123 Stat. 678; Pub. L. 111–24, title V, §511(a), May 22, 2009, 123 Stat. 1763; Pub. L. 111–203, title X, §1097, July 21, 2010, 124 Stat. 2102.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§1097, 1100H, July 21, 2010, 124 Stat. 2102, 2113, provided that, effective on the designated transfer date, this section is amended as follows:

(1) by striking subsection (a) and inserting:

''(a)(1) The Bureau of Consumer Financial Protection shall have authority to prescribe rules with respect to mortgage loans in accordance with section 553 of title 5. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this paragraph shall be treated as a violation of a rule prohibiting unfair, deceptive, or abusive acts or practices under the Consumer Financial Protection Act of 2010 and a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

''(2) The Bureau of Consumer Financial Protection shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties, as though all applicable terms and provisions of the Consumer Financial Protection Act of 2010 were incorporated into and made part of this subsection.

''(3) Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce the rules issued under paragraph (1), in the same manner, by the same means, and with the same jurisdiction, as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made part of this section.''; and

(2) in subsection (b)—

(A) by striking paragraph (1) and inserting:

''(1) Except as provided in paragraph (6), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to a rule prescribed under subsection (a) in practices that violate such rule, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States or other court of competent jurisdiction—

''(A) to enjoin that practice;

''(B) to enforce compliance with the rule;

''(C) to obtain damages, restitution, or other compensation on behalf of the residents of the State; or

''(D) to obtain penalties and relief provided under the Consumer Financial Protection Act of 2010, the Federal Trade Commission Act, and such other relief as the court deems appropriate.'';

(B) in paragraphs (2) and (3), by striking ''the primary Federal regulator'' each time the term appears and inserting ''the Bureau of Consumer Financial Protection or the Commission, as appropriate'';

(C) in paragraph (3), by inserting ''and subject to subtitle B of the Consumer Financial Protection Act of 2010,'' after ''paragraph (2),''; and

(D) in paragraph (6), by striking ''the primary Federal regulator'' each place that term appears and inserting ''the Bureau of Consumer Financial Protection or the Commission''.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a)(2), (4), and (b)(1)(D), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

The Truth in Lending Act, referred to in subsec. (a)(3), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of Title 15, Commerce and Trade.

For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Omnibus Appropriations Act, 2009, and not as part of subtitle C of title X of Pub. L. 111–203, which comprises this part.

Section was formerly set out as a note under section 1638 of Title 15, Commerce and Trade.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–24, § 511(a), designated existing provisions as par. (1), inserted ''Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services.'', and added pars. (2) to (4).

Subsec. (b)(1). Pub. L. 111–24, § 511(a)(2)(A), added par. (1) and struck out former par. (1) which read as follows: ''Except as provided in paragraph (6), a State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate State or district court of the United States to enforce the provisions of section 128 of the Truth in Lending Act (15 U.S.C. 1638), any other provision of the Truth in Lending Act, or any mortgage loan rule promulgated by the Federal Trade Commission to obtain penalties and relief provided under such Act or rule whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a violation of such Act or rule.''

Subsec. (b)(2), (3), (6). Pub. L. 111–24, § 511(a)(2)(B), substituted ''primary Federal regulator'' for ''Commission'' wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–24, title V, § 511(b), May 22, 2009, 123 Stat. 1764, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on March 12, 2009.''

PART D—PRESERVATION OF STATE LAW

§ 5551. Relation to State law

(a) In general

(1) Rule of construction

This title,[1] other than sections 1044 through 1048,[1] may not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title[1] from complying with, the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that any such provision of law is inconsistent with the provisions of this title,[1] and then only to the extent of the inconsistency.

(2) Greater protection under State law

For purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title[1] if the protection that such statute, regulation, order, or interpretation affords to consumers is greater than the protection provided under this title.[1] A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title[1] may be made by the Bureau on its own motion or in response to a nonfrivolous petition initiated by any interested person.

(b) Relation to other provisions of enumerated consumer laws that relate to State law

No provision of this title,[1] except as provided in section 1083,[1] shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

(c) Additional consumer protection regulations in response to State action

(1) Notice of proposed rule required

The Bureau shall issue a notice of proposed rulemaking whenever a majority of the States has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Bureau.

(2) Bureau considerations required for issuance of final regulation

Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Bureau shall take into account whether—

(A) the proposed regulation would afford greater protection to consumers than any existing regulation;

(B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and

(C) a Federal banking agency has advised that the proposed regulation is likely to present an unacceptable safety and soundness risk to insured depository institutions.

(3) Explanation of considerations

The Bureau—

(A) shall include a discussion of the considerations required in paragraph (2) in the Federal Register notice of a final regulation prescribed pursuant to this subsection; and

(B) whenever the Bureau determines not to prescribe a final regulation, shall publish an explanation of such determination in the Federal Register, and provide a copy of such explanation to each State that enacted a resolution in support of the proposed regulation, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

(4) Reservation of authority

No provision of this subsection shall be construed as limiting or restricting the authority of the Bureau to enhance consumer protection standards established pursuant to this title[1] in response to its own motion or in response to a request by any other interested person.

(5) Rule of construction

No provision of this subsection shall be construed as exempting the Bureau from complying with subchapter II of chapter 5 of title 5.

[1] See References in Text note below.

(6) Definition

For purposes of this subsection, the term ''consumer protection regulation'' means a regulation that the Bureau is authorized to prescribe under the Federal consumer financial laws.

(Pub. L. 111–203, title X, § 1041, July 21, 2010, 124 Stat. 2011.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a), (b), and (c)(4), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

Sections 1044 through 1048, referred to in subsec. (a)(1), are sections 1044 to 1048 of Pub. L. 111–203, which enacted and amended sections 25b and 1465 of this title and enacted provisions set out as a note below.

Section 1083, referred to in subsec. (b), is section 1083 of Pub. L. 111–203, which amended sections 3802 and 3803 of this title and enacted provisions set out as notes under section 3802 of this title.

EFFECTIVE DATE

Pub. L. 111–203, title X, § 1048, July 21, 2010, 124 Stat. 2018, provided that: ''This subtitle [subtitle D (§§ 1041–1048) of title X of Pub. L. 111–203, enacting this part and enacting and amending sections 25b and 1465 of this title] shall become effective on the designated transfer date.''

[The term ''designated transfer date'' is defined in section 5481(9) of this title as the date established under section 5582 of this title.]

§ 5552. Preservation of enforcement powers of States

(a) In general

(1) Action by State

Except as provided in paragraph (2), the attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State in any district court of the United States in that State or in State court that is located in that State and that has jurisdiction over the defendant, to enforce provisions of this title[1] or regulations issued under this title,[1] and to secure remedies under provisions of this title[1] or remedies otherwise provided under other law. A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title[1] or regulations issued under this title[1] with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law (except as provided in paragraph (2)), and to secure remedies under provisions of this title[1] or remedies otherwise provided under other provisions of law with respect to such an entity.

(2) Action by State against national bank or Federal savings association to enforce rules

(A) In general

Except as permitted under subparagraph (B), the attorney general (or equivalent thereof) of any State may not bring a civil action in the name of such State against a national bank or Federal savings association to enforce a provision of this title.[1]

(B) Enforcement of rules permitted

The attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State against a national bank or Federal savings association in any district court of the United States in the State or in State court that is located in that State and that has jurisdiction over the defendant to enforce a regulation prescribed by the Bureau under a provision of this title[1] and to secure remedies under provisions of this title[1] or remedies otherwise provided under other law.

(3) Rule of construction

No provision of this title[1] shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) Consultation required

(1) Notice

(A) In general

Before initiating any action in a court or other administrative or regulatory proceeding against any covered person as authorized by subsection (a) to enforce any provision of this title,[1] including any regulation prescribed by the Bureau under this title,[1] a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Bureau and the prudential regulator, if any, or the designee thereof.

(B) Emergency action

If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Bureau and the prudential regulator, if any, immediately upon instituting the action or proceeding.

(C) Contents of notice

The notification required under this paragraph shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding; and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Bureau, a prudential regulator, or another Federal agency.

(2) Bureau response

In any action described in paragraph (1), the Bureau may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

[1] See References in Text note below.

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment, to the same extent as any other party in the proceeding may.

(c) Regulations

The Bureau shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) Preservation of State authority

(1) State claims

No provision of this section shall be construed as altering, limiting, or affecting the authority of a State attorney general or any other regulatory or enforcement agency or authority to bring an action or other regulatory proceeding arising solely under the law in effect in that State.

(2) State securities regulators

No provision of this title[1] shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or authority.

(3) State insurance regulators

No provision of this title[1] shall be construed as altering, limiting, or affecting the authority of a State insurance commission or State insurance regulator under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or regulator.

(Pub. L. 111–203, title X, § 1042, July 21, 2010, 124 Stat. 2012.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a), (b)(1)(A), and (d)(2), (3), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1048 of Pub. L. 111–203, set out as a note under section 5551 of this title.

§ 5553. Preservation of existing contracts

This title,[1] and regulations, orders, guidance, and interpretations prescribed, issued, or established by the Bureau, shall not be construed to alter or affect the applicability of any regulation, order, guidance, or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before July 21, 2010, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.

(Pub. L. 111–203, title X, § 1043, July 21, 2010, 124 Stat. 2014.)

REFERENCES IN TEXT

This title, referred to in text, is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1048 of Pub. L. 111–203, set out as a note under section 5551 of this title.

PART E—ENFORCEMENT POWERS

§ 5561. Definitions

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

(1) Bureau investigation

The term ''Bureau investigation'' means any inquiry conducted by a Bureau investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that is a violation, as defined in this section.

(2) Bureau investigator

The term ''Bureau investigator'' means any attorney or investigator employed by the Bureau who is charged with the duty of enforcing or carrying into effect any Federal consumer financial law.

(3) Custodian

The term ''custodian'' means the custodian or any deputy custodian designated by the Bureau.

(4) Documentary material

The term ''documentary material'' includes the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, logs, electronic files, or other data or data compilations stored in any medium.

(5) Violation

The term ''violation'' means any act or omission that, if proved, would constitute a violation of any provision of Federal consumer financial law.

(Pub. L. 111–203, title X, § 1051, July 21, 2010, 124 Stat. 2018.)

EFFECTIVE DATE

Pub. L. 111–203, title X, § 1058, July 21, 2010, 124 Stat. 2035, provided that: ''This subtitle [subtitle E (§§ 1051–1058), enacting this part] shall become effective on the designated transfer date.''

[The term ''designated transfer date'' is defined in section 5481(9) of this title as the date established under section 5582 of this title.]

[1] See References in Text note below.

§ 5562. Investigations and administrative discovery

(a) Joint investigations

(1) In general

The Bureau or, where appropriate, a Bureau investigator, may engage in joint investigations and requests for information, as authorized under this title.[1]

(2) Fair lending

The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations with, and requests for information from, the Secretary of Housing and Urban Development, the Attorney General of the United States, or both.

(b) Subpoenas

(1) In general

The Bureau or a Bureau investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.[1]

(2) Failure to obey

In the case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Bureau or a Bureau investigator and after notice to such person, may issue an order requiring such person to appear and give testimony or to appear and produce documents or other material.

(3) Contempt

Any failure to obey an order of the court under this subsection may be punished by the court as a contempt thereof.

(c) Demands

(1) In general

Whenever the Bureau has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, the Bureau may, before the institution of any proceedings under the Federal consumer financial law, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the Bureau;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material, tangible things, or other information; or

(E) furnish any combination of such material, answers, or testimony.

(2) Requirements

Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) Production of documents

Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) Production of things

Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) Demand for written reports or answers

Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) Oral testimony

Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a Bureau investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) Service

Any civil investigative demand issued, and any enforcement petition filed, under this section may be served—

(A) by any Bureau investigator at any place within the territorial jurisdiction of any court of the United States; and

(B) upon any person who is not found within the territorial jurisdiction of any court of the United States—

(i) in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation; and

(ii) to the extent that the courts of the United States have authority to assert jurisdiction over such person, consistent with due process, the United States Dis-

[1] See References in Text note below.

trict Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(8) Method of service

Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a person, including any legal entity, by—

(A) delivering a duly executed copy of such demand or petition to the individual or to any partner, executive officer, managing agent, or general agent of such person, or to any agent of such person authorized by appointment or by law to receive service of process on behalf of such person;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the person to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at the principal office or place of business of such person.

(9) Proof of service

(A) In general

A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service.

(B) Return receipts

In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(10) Production of documentary material

The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(11) Submission of tangible things

The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(12) Separate answers

Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(13) Testimony

(A) In general

(i) Oath and recordation

The examination of any person pursuant to a demand for oral testimony served under this subsection shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place at which the examination is held. The officer before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under the direction of and in the presence of the officer, record the testimony of the witness.

(ii) Transcription

The testimony shall be taken stenographically and transcribed.

(iii) Transmission to custodian

After the testimony is fully transcribed, the officer investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) Parties present

Any Bureau investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons, except the person giving the testimony, the attorney for that person, the officer before whom the testimony is to be taken, an investigator or representative of an agency with which the Bureau is engaged in a joint investigation, and any stenographer taking such testimony.

(C) Location

The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Bureau investigator before whom the oral testimony of such person is to be taken and such person.

(D) Attorney representation

(i) In general

Any person compelled to appear under a civil investigative demand for oral testi-

mony pursuant to this section may be accompanied, represented, and advised by an attorney.

(ii) Authority

The attorney may advise a person described in clause (i), in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(iii) Objections

A person described in clause (i), or the attorney for that person, may object on the record to any question, in whole or in part, and such person shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but such person shall not otherwise object to or refuse to answer any question, and such person or attorney shall not otherwise interrupt the oral examination.

(iv) Refusal to answer

If a person described in clause (i) refuses to answer any question—

(I) the Bureau may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question; and

(II) if the refusal is on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18.

(E) Transcripts

For purposes of this subsection—

(i) after the testimony of any witness is fully transcribed, the Bureau investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript;

(ii) the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness;

(iii) any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Bureau investigator, with a statement of the reasons given by the witness for making such changes;

(iv) the transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign; and

(v) if the transcript is not signed by the witness during the 30-day period following the date on which the witness is first afforded a reasonable opportunity to examine the transcript, the Bureau investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) Certification by investigator

The Bureau investigator shall certify on the transcript that the witness was duly sworn by him or her and that the transcript is a true record of the testimony given by the witness, and the Bureau investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) Copy of transcript

The Bureau investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the Bureau may for good cause limit such witness to inspection of the official transcript of his testimony.

(H) Witness fees

Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(d) Confidential treatment of demand material

(1) In general

Documentary materials and tangible things received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with rules established by the Bureau.

(2) Disclosure to Congress

No rule established by the Bureau regarding the confidentiality of materials submitted to, or otherwise obtained by, the Bureau shall be intended to prevent disclosure to either House of Congress or to an appropriate committee of the Congress, except that the Bureau is permitted to adopt rules allowing prior notice to any party that owns or otherwise provided the material to the Bureau and had designated such material as confidential.

(e) Petition for enforcement

(1) In general

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Bureau, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

(2) Service of process

All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(f) Petition for order modifying or setting aside demand

(1) In general

Not later than 20 days after the service of any civil investigative demand upon any per-

son under subsection (b), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Bureau investigator named in the demand, such person may file with the Bureau a petition for an order by the Bureau modifying or setting aside the demand.

(2) Compliance during pendency

The time permitted for compliance with the demand in whole or in part, as determined proper and ordered by the Bureau, shall not run during the pendency of a petition under paragraph (1) at the Bureau, except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(3) Specific grounds

A petition under paragraph (1) shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) Custodial control

At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section or rule promulgated by the Bureau.

(h) Jurisdiction of court

(1) In general

Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section.

(2) Appeal

Any final order entered as described in paragraph (1) shall be subject to appeal pursuant to section 1291 of title 28.

(Pub. L. 111–203, title X, § 1052, July 21, 2010, 124 Stat. 2019.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(1) and (b)(1), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1058 of Pub. L. 111–203, set out as a note under section 5561 of this title.

§ 5563. Hearings and adjudication proceedings

(a) In general

The Bureau is authorized to conduct hearings and adjudication proceedings with respect to any person in the manner prescribed by chapter 5 of title 5 in order to ensure or enforce compliance with—

(1) the provisions of this title,[1] including any rules prescribed by the Bureau under this title;[1] and

(2) any other Federal law that the Bureau is authorized to enforce, including an enumerated consumer law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the Bureau from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(b) Special rules for cease-and-desist proceedings

(1) Orders authorized

(A) In general

If, in the opinion of the Bureau, any covered person or service provider is engaging or has engaged in an activity that violates a law, rule, or any condition imposed in writing on the person by the Bureau, the Bureau may, subject to sections 5514, 5515, and 5516 of this title, issue and serve upon the covered person or service provider a notice of charges in respect thereof.

(B) Content of notice

The notice under subparagraph (A) shall contain a statement of the facts constituting the alleged violation or violations, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the covered person or service provider, such hearing to be held not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Bureau, at the request of any party so served.

(C) Consent

Unless the party or parties served under subparagraph (B) appear at the hearing personally or by a duly authorized representative, such person shall be deemed to have consented to the issuance of the cease-and-desist order.

(D) Procedure

In the event of consent under subparagraph (C), or if, upon the record, made at any such hearing, the Bureau finds that any violation specified in the notice of charges has been established, the Bureau may issue and serve upon the covered person or service provider an order to cease and desist from the violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the covered person or service provider to cease and desist from the subject activity, and to take affirmative action to correct the conditions resulting from any such violation.

[1] See References in Text note below.

(2) Effectiveness of order

A cease-and-desist order shall become effective at the expiration of 30 days after the date of service of an order under paragraph (1) upon the covered person or service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as the order is stayed, modified, terminated, or set aside by action of the Bureau or a reviewing court.

(3) Decision and appeal

Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or principal office or place of business of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. After such hearing, and within 90 days after the Bureau has notified the parties that the case has been submitted to the Bureau for final decision, the Bureau shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (4), and thereafter until the record in the proceeding has been filed as provided in paragraph (4), the Bureau may at any time, upon such notice and in such manner as the Bureau shall determine proper, modify, terminate, or set aside any such order. Upon filing of the record as provided, the Bureau may modify, terminate, or set aside any such order with permission of the court.

(4) Appeal to court of appeals

Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Bureau be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Bureau, and thereupon the Bureau shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of paragraph (3) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Bureau. Review of such proceedings shall be had as provided in chapter 7 of title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court of the United States, upon certiorari, as provided in section 1254 of title 28.

(5) No stay

The commencement of proceedings for judicial review under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Bureau.

(c) Special rules for temporary cease-and-desist proceedings

(1) In general

Whenever the Bureau determines that the violation specified in the notice of charges served upon a person, including a service provider, pursuant to subsection (b), or the continuation thereof, is likely to cause the person to be insolvent or otherwise prejudice the interests of consumers before the completion of the proceedings conducted pursuant to subsection (b), the Bureau may issue a temporary order requiring the person to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of such proceedings. Such order may include any requirement authorized under this part. Such order shall become effective upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Bureau shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(2) Appeal

Not later than 10 days after the covered person or service provider concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district court for the judicial district in which the residence or principal office or place of business of the person is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the person under subsection (b), and such court shall have jurisdiction to issue such injunction.

(3) Incomplete or inaccurate records

(A) Temporary order

If a notice of charges served under subsection (b) specifies, on the basis of particular facts and circumstances, that the books and records of a covered person or service provider are so incomplete or inaccurate that the Bureau is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the Bureau may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) Effective period

Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b) in connection with the notice of charges; or

(II) the date the Bureau determines, by examination or otherwise, that the books and records of the covered person or service provider are accurate and reflect the financial condition thereof.

(d) Special rules for enforcement of orders

(1) In general

The Bureau may in its discretion apply to the United States district court within the jurisdiction of which the principal office or place of business of the person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court shall have jurisdiction and power to order and require compliance herewith.

(2) Exception

Except as otherwise provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order.

(e) Rules

The Bureau shall prescribe rules establishing such procedures as may be necessary to carry out this section.

(Pub. L. 111–203, title X, § 1053, July 21, 2010, 124 Stat. 2025.)

REFERENCES IN TEXT

This title, referred to in subsec. (a)(1), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1058 of Pub. L. 111–203, set out as a note under section 5561 of this title.

§ 5564. Litigation authority

(a) In general

If any person violates a Federal consumer financial law, the Bureau may, subject to sections 5514, 5515, and 5516 of this title, commence a civil action against such person to impose a civil penalty or to seek all appropriate legal and equitable relief including a permanent or temporary injunction as permitted by law.

(b) Representation

The Bureau may act in its own name and through its own attorneys in enforcing any provision of this title,[1] rules thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Bureau is a party.

(c) Compromise of actions

The Bureau may compromise or settle any action if such compromise is approved by the court.

(d) Notice to the Attorney General

(1) In general

When commencing a civil action under Federal consumer financial law, or any rule thereunder, the Bureau shall notify the Attorney General and, with respect to a civil action against an insured depository institution or insured credit union, the appropriate prudential regulator.

(2) Notice and coordination

(A) Notice of other actions

In addition to any notice required under paragraph (1), the Bureau shall notify the Attorney General concerning any action, suit, or proceeding to which the Bureau is a party, except an action, suit, or proceeding that involves the offering or provision of consumer financial products or services.

(B) Coordination

In order to avoid conflicts and promote consistency regarding litigation of matters under Federal law, the Attorney General and the Bureau shall consult regarding the coordination of investigations and proceedings, including by negotiating an agreement for coordination by not later than 180 days after the designated transfer date. The agreement under this subparagraph shall include provisions to ensure that parallel investigations and proceedings involving the Federal consumer financial laws are conducted in a manner that avoids conflicts and does not impede the ability of the Attorney General to prosecute violations of Federal criminal laws.

(C) Rule of construction

Nothing in this paragraph shall be construed to limit the authority of the Bureau under this title,[1] including the authority to interpret Federal consumer financial law.

(e) Appearance before the Supreme Court

The Bureau may represent itself in its own name before the Supreme Court of the United States, provided that the Bureau makes a written request to the Attorney General within the 10-day period which begins on the date of entry of the judgment which would permit any party to file a petition for writ of certiorari, and the Attorney General concurs with such request or

[1] See References in Text note below.

fails to take action within 60 days of the request of the Bureau.

(f) Forum

Any civil action brought under this title[1] may be brought in a United States district court or in any court of competent jurisdiction of a state in a district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to enjoin such person and to require compliance with any Federal consumer financial law.

(g) Time for bringing action

(1) In general

Except as otherwise permitted by law or equity, no action may be brought under this title[1] more than 3 years after the date of discovery of the violation to which an action relates.

(2) Limitations under other Federal laws

(A) In general

An action arising under this title[1] does not include claims arising solely under enumerated consumer laws.

(B) Bureau authority

In any action arising solely under an enumerated consumer law, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

(C) Transferred authority

In any action arising solely under laws for which authorities were transferred under subtitles F and H, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

(Pub. L. 111–203, title X, §1054, July 21, 2010, 124 Stat. 2028.)

REFERENCES IN TEXT

This title, referred to in subsecs. (b), (d)(2)(C), (f), and (g)(1), (2)(A), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

Subtitle F, referred to in subsec. (g)(2)(C), is subtitle F (§§1061–1067) of title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 2035, which is classified generally to part F (§5581 et seq.) of this subchapter. For complete classification of subtitle F to the Code, see Tables.

Subtitle H, referred to in subsec. (g)(2)(C), is subtitle H (§§1081–1100H) of title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 2080. For complete classification of subtitle H to the Code, see Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1058 of Pub. L. 111–203, set out as a note under section 5561 of this title.

§ 5565. Relief available

(a) Administrative proceedings or court actions

(1) Jurisdiction

The court (or the Bureau, as the case may be) in an action or adjudication proceeding brought under Federal consumer financial law, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law, including a violation of a rule or order prescribed under a Federal consumer financial law.

(2) Relief

Relief under this section may include, without limitation—

(A) rescission or reformation of contracts;

(B) refund of moneys or return of real property;

(C) restitution;

(D) disgorgement or compensation for unjust enrichment;

(E) payment of damages or other monetary relief;

(F) public notification regarding the violation, including the costs of notification;

(G) limits on the activities or functions of the person; and

(H) civil money penalties, as set forth more fully in subsection (c).

(3) No exemplary or punitive damages

Nothing in this subsection shall be construed as authorizing the imposition of exemplary or punitive damages.

(b) Recovery of costs

In any action brought by the Bureau, a State attorney general, or any State regulator to enforce any Federal consumer financial law, the Bureau, the State attorney general, or the State regulator may recover its costs in connection with prosecuting such action if the Bureau, the State attorney general, or the State regulator is the prevailing party in the action.

(c) Civil money penalty in court and administrative actions

(1) In general

Any person that violates, through any act or omission, any provision of Federal consumer financial law shall forfeit and pay a civil penalty pursuant to this subsection.

(2) Penalty amounts

(A) First tier

For any violation of a law, rule, or final order or condition imposed in writing by the Bureau, a civil penalty may not exceed $5,000 for each day during which such violation or failure to pay continues.

(B) Second tier

Notwithstanding paragraph (A), for any person that recklessly engages in a violation of a Federal consumer financial law, a civil penalty may not exceed $25,000 for each day during which such violation continues.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates a Federal consumer financial law, a civil penalty may not exceed $1,000,000 for each day during which such violation continues.

(3) Mitigating factors

In determining the amount of any penalty assessed under paragraph (2), the Bureau or

the court shall take into account the appropriateness of the penalty with respect to—

(A) the size of financial resources and good faith of the person charged;

(B) the gravity of the violation or failure to pay;

(C) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;

(D) the history of previous violations; and

(E) such other matters as justice may require.

(4) Authority to modify or remit penalty

The Bureau may compromise, modify, or remit any penalty which may be assessed or had already been assessed under paragraph (2). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted from any sums owing by the United States to the person charged.

(5) Notice and hearing

No civil penalty may be assessed under this subsection with respect to a violation of any Federal consumer financial law, unless—

(A) the Bureau gives notice and an opportunity for a hearing to the person accused of the violation; or

(B) the appropriate court has ordered such assessment and entered judgment in favor of the Bureau.

(Pub. L. 111–203, title X, § 1055, July 21, 2010, 124 Stat. 2029.)

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1058 of Pub. L. 111–203, set out as a note under section 5561 of this title.

§ 5566. Referrals for criminal proceedings

If the Bureau obtains evidence that any person, domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Bureau shall transmit such evidence to the Attorney General of the United States, who may institute criminal proceedings under appropriate law. Nothing in this section affects any other authority of the Bureau to disclose information.

(Pub. L. 111–203, title X, § 1056, July 21, 2010, 124 Stat. 2031.)

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1058 of Pub. L. 111–203, set out as a note under section 5561 of this title.

§ 5567. Employee protection

(a) In general

No covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees by reason of the fact that such employee or representative, whether at the initiative of the employee or in the ordinary course of the duties of the employee (or any person acting pursuant to a request of the employee), has—

(1) provided, caused to be provided, or is about to provide or cause to be provided, information to the employer, the Bureau, or any other State, local, or Federal, government authority or law enforcement agency relating to any violation of, or any act or omission that the employee reasonably believes to be a violation of, any provision of this title[1] or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(2) testified or will testify in any proceeding resulting from the administration or enforcement of any provision of this title[1] or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(3) filed, instituted, or caused to be filed or instituted any proceeding under any Federal consumer financial law; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Bureau.

(b) Definition of covered employee

For the purposes of this section, the term ''covered employee'' means any individual performing tasks related to the offering or provision of a consumer financial product or service.

(c) Procedures and timetables

(1) Complaint

(A) In general

A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such alleged violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act.

(B) Actions of Secretary of Labor

Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint who is alleged to have committed the violation, of—

(i) the filing of the complaint;

(ii) the allegations contained in the complaint;

(iii) the substance of evidence supporting the complaint; and

(iv) opportunities that will be afforded to such person under paragraph (2).

(2) Investigation by Secretary of Labor

(A) In general

Not later than 60 days after the date of receipt of a complaint filed under paragraph

[1] See References in Text note below.

(1), and after affording the complainant and the person named in the complaint who is alleged to have committed the violation that is the basis for the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall—

(i) initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit; and

(ii) notify the complainant and the person alleged to have committed the violation of subsection (a), in writing, of such determination.

(B) Notice of relief available

If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall, together with the notice under subparagraph (A)(ii), issue a preliminary order providing the relief prescribed by paragraph (4)(B).

(C) Request for hearing

Not later than 30 days after the date of receipt of notification of a determination of the Secretary of Labor under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously, and if a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(3) Grounds for determination of complaints

(A) In general

The Secretary of Labor shall dismiss a complaint filed under this subsection, and shall not conduct an investigation otherwise required under paragraph (2), unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) Rebuttal evidence

Notwithstanding a finding by the Secretary of Labor that the complainant has made the showing required under subparagraph (A), no investigation otherwise required under paragraph (2) shall be conducted, if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(C) Evidentiary standards

The Secretary of Labor may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(4) Issuance of final orders; review procedures

(A) Timing

Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) Penalties

(i) Order of Secretary of Labor

If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation—

(I) to take affirmative action to abate the violation;

(II) to reinstate the complainant to his or her former position, together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(III) to provide compensatory damages to the complainant.

(ii) Penalty

If an order is issued under clause (i), the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued, a sum equal to the aggregate amount of all costs and expenses (including attorney fees and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) Penalty for frivolous claims

If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney fee, not exceeding $1,000, to be paid by the complainant.

(D) De novo review

(i) Failure of the Secretary to act

If the Secretary of Labor has not issued a final order within 210 days after the date of filing of a complaint under this subsection, or within 90 days after the date of receipt of a written determination, the complainant may bring an action at law or

equity for de novo review in the appropriate district court of the United States having jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(ii) Procedures

A proceeding under clause (i) shall be governed by the same legal burdens of proof specified in paragraph (3). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

(I) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(II) the amount of back pay, with interest; and

(III) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(E) Other appeals

Unless the complainant brings an action under subparagraph (D), any person adversely affected or aggrieved by a final order issued under subparagraph (A) may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation, not later than 60 days after the date of the issuance of the final order of the Secretary of Labor under subparagraph (A). Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order. An order of the Secretary of Labor with respect to which review could have been obtained under this subparagraph shall not be subject to judicial review in any criminal or other civil proceeding.

(5) Failure to comply with order

(A) Actions by the Secretary

If any person has failed to comply with a final order issued under paragraph (4), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to have occurred, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including injunctive relief and compensatory damages.

(B) Civil actions to compel compliance

A person on whose behalf an order was issued under paragraph (4) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(C) Award of costs authorized

The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(D) Mandamus proceedings

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(d) Unenforceability of certain agreements

(1) No waiver of rights and remedies

Except as provided under paragraph (3), and notwithstanding any other provision of law, the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) No predispute arbitration agreements

Except as provided under paragraph (3), and notwithstanding any other provision of law, no predispute arbitration agreement shall be valid or enforceable to the extent that it requires arbitration of a dispute arising under this section.

(3) Exception

Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under subsection (a)(4), unless the Bureau determines, by rule, that such provision is inconsistent with the purposes of this title.[1]

(Pub. L. 111–203, title X, § 1057, July 21, 2010, 124 Stat. 2031.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(1), (2), and (d)(3), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1058 of Pub. L. 111–203, set out as a note under section 5561 of this title.

PART F—TRANSFER OF FUNCTIONS AND PERSONNEL; TRANSITIONAL PROVISIONS

§ 5581. Transfer of consumer financial protection functions

(a) Defined terms

For purposes of this part—

(1) the term ''consumer financial protection functions'' means—

(A) all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines; and

(B) the examination authority described in subsection (c)(1), with respect to a person described in section 5515(a) of this title; and

(2) the terms ''transferor agency'' and ''transferor agencies'' mean, respectively—

(A) the Board of Governors (and any Federal reserve bank, as the context requires), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of Housing and Urban Development, and the heads of those agencies; and

(B) the agencies listed in subparagraph (A), collectively.

(b) In general

Except as provided in subsection (c), consumer financial protection functions are transferred as follows:

(1) Board of Governors

(A) Transfer of functions

All consumer financial protection functions of the Board of Governors are transferred to the Bureau.

(B) Board of Governors authority

The Bureau shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(2) Comptroller of the Currency

(A) Transfer of functions

All consumer financial protection functions of the Comptroller of the Currency are transferred to the Bureau.

(B) Comptroller authority

The Bureau shall have all powers and duties that were vested in the Comptroller of the Currency, relating to consumer financial protection functions, on the day before the designated transfer date.

(3) Director of the Office of Thrift Supervision

(A) Transfer of functions

All consumer financial protection functions of the Director of the Office of Thrift Supervision are transferred to the Bureau.

(B) Director authority

The Bureau shall have all powers and duties that were vested in the Director of the Office of Thrift Supervision, relating to consumer financial protection functions, on the day before the designated transfer date.

(4) Federal Deposit Insurance Corporation

(A) Transfer of functions

All consumer financial protection functions of the Federal Deposit Insurance Corporation are transferred to the Bureau.

(B) Corporation authority

The Bureau shall have all powers and duties that were vested in the Federal Deposit Insurance Corporation, relating to consumer financial protection functions, on the day before the designated transfer date.

(5) Federal Trade Commission

(A) Transfer of functions

The authority of the Federal Trade Commission under an enumerated consumer law to prescribe rules, issue guidelines, or conduct a study or issue a report mandated under such law shall be transferred to the Bureau on the designated transfer date. Nothing in this title[1] shall be construed to require a mandatory transfer of any employee of the Federal Trade Commission.

(B) Bureau authority

(i) In general

The Bureau shall have all powers and duties under the enumerated consumer laws to prescribe rules, issue guidelines, or to conduct studies or issue reports mandated by such laws, that were vested in the Federal Trade Commission on the day before the designated transfer date.

(ii) Federal Trade Commission Act

Subject to part B, the Bureau may enforce a rule prescribed under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] by the Federal Trade Commission with respect to an unfair or deceptive act or practice to the extent that such rule applies to a covered person or service provider with respect to the offering or provision of a consumer financial product or service as if it were a rule prescribed under section 5531 of this title.

(C) Authority of the Federal Trade Commission

(i) In general

No provision of this title[1] shall be construed as modifying, limiting, or otherwise affecting the authority of the Federal Trade Commission (including its authority with respect to affiliates described in section 5515(a)(1) of this title) under the Federal Trade Commission Act or any other law, other than the authority under an enumerated consumer law to prescribe rules, issue official guidelines, or conduct a study or issue a report mandated under such law.

(ii) Commission authority relating to rules prescribed by the Bureau

Subject to part B, the Federal Trade Commission shall have authority to enforce under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) a rule prescribed by the Bureau under this title[1] with respect to a covered person subject to the jurisdiction of the Federal Trade Commission under that Act, and a violation of such a rule by such a person shall be treat-

[1] See References in Text note below.

ed as a violation of a rule issued under section 18 of that Act (15 U.S.C. 57a) with respect to unfair or deceptive acts or practices.

(D) Coordination

To avoid duplication of or conflict between rules prescribed by the Bureau under section 5531 of this title and the Federal Trade Commission under section 18(a)(1)(B) of the Federal Trade Commission Act [15 U.S.C. 57a(a)(1)(B)] that apply to a covered person or service provider with respect to the offering or provision of consumer financial products or services, the agencies shall negotiate an agreement with respect to rulemaking by each agency, including consultation with the other agency prior to proposing a rule and during the comment period.

(E) Deference

No provision of this title[1] shall be construed as altering, limiting, expanding, or otherwise affecting the deference that a court affords to the—

(i) Federal Trade Commission in making determinations regarding the meaning or interpretation of any provision of the Federal Trade Commission Act, or of any other Federal law for which the Commission has authority to prescribe rules; or

(ii) Bureau in making determinations regarding the meaning or interpretation of any provision of a Federal consumer financial law (other than any law described in clause (i)).

(6) National Credit Union Administration

(A) Transfer of functions

All consumer financial protection functions of the National Credit Union Administration are transferred to the Bureau.

(B) National Credit Union Administration authority

The Bureau shall have all powers and duties that were vested in the National Credit Union Administration, relating to consumer financial protection functions, on the day before the designated transfer date.

(7) Department of Housing and Urban Development

(A) Transfer of functions

All consumer protection functions of the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102 [5101] et seq.), and the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.) are transferred to the Bureau.

(B) Authority of the Department of Housing and Urban Development

The Bureau shall have all powers and duties that were vested in the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.), and the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.), on the day before the designated transfer date.

(c) Authorities of the prudential regulators

(1) Examination

A transferor agency that is a prudential regulator shall have—

(A) authority to require reports from and conduct examinations for compliance with Federal consumer financial laws with respect to a person described in section 5515(a) of this title, that is incidental to the backup and enforcement procedures provided to the regulator under section 5515(c) of this title; and

(B) exclusive authority (relative to the Bureau) to require reports from and conduct examinations for compliance with Federal consumer financial laws with respect to a person described in section 5516(a) of this title, except as provided to the Bureau under subsections (b) and (c) of section 5516 of this title.

(2) Enforcement

(A) Limitation

The authority of a transferor agency that is a prudential regulator to enforce compliance with Federal consumer financial laws with respect to a person described in section 5515(a) of this title, shall be limited to the backup and enforcement procedures in[2] described in section 5515(c) of this title.

(B) Exclusive authority

A transferor agency that is a prudential regulator shall have exclusive authority (relative to the Bureau) to enforce compliance with Federal consumer financial laws with respect to a person described in section 5516(a) of this title, except as provided to the Bureau under subsections (b) and (c) of section 5516 of this title.

(C) Statutory enforcement

For purposes of carrying out the authorities under, and subject to the limitations of, part B, each prudential regulator may enforce compliance with the requirements imposed under this title,[1] and any rule or order prescribed by the Bureau under this title,[1] under—

(i) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the National Credit Union Administration Board with respect to any covered person or service provider that is an insured credit union, or service provider thereto, or any affiliate of an insured credit union, who is subject to the jurisdiction of the Board under that Act; and

(ii) section 1818 of this title, by the appropriate Federal banking agency, as defined in section 1813(q) of this title, with respect to a covered person or service provider that is a person described in section

[2] So in original. The word ''in'' probably should not appear.

1813(q) of this title and who is subject to the jurisdiction of that agency, as set forth in sections 1813(q) and 1818 of this title; or

(iii) the Bank Service Company Act (12 U.S.C. 1861 et seq.).

(d) Effective date

Subsections (b) and (c) shall become effective on the designated transfer date.

(Pub. L. 111–203, title X, § 1061, July 21, 2010, 124 Stat. 2035.)

REFERENCES IN TEXT

This title, where footnoted in subsecs. (b)(5)(A), (C), (E) and (c)(2)(C), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (b)(5)(B)(ii), (C), (E)(i), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (b)(7), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§ 2601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008, referred to in subsec. (b)(7), is title V of div. A of Pub. L. 110–289, July 30, 2008, 122 Stat. 2810, also known as the S.A.F.E. Mortgage Licensing Act of 2008, which is classified generally to chapter 51 (§ 5101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of this title and Tables.

The Interstate Land Sales Full Disclosure Act, referred to in subsec. (b)(7), is title XIV of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 590, which is classified generally to chapter 42 (§ 1701 et seq.) of Title 15, Commerce and Trade. For complete classification of this title to the Code, see Short Title note set out under section 1701 of Title 15 and Tables.

The Federal Credit Union Act, referred to in subsec. (c)(2)(C)(i), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified principally to chapter 14 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

The Bank Service Company Act, referred to in subsec. (c)(2)(C)(iii), is Pub. L. 87–856, Oct. 23, 1962, 76 Stat. 1132, which is classified generally to chapter 18 (§ 1861 et seq.) of this title. For complete classification of this Act to the Code, see section 1861 of this title and Tables.

EFFECTIVE DATE

Part effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

§ 5582. Designated transfer date

(a) In general

Not later than 60 days after July 21, 2010, the Secretary shall—

(1) in consultation with the Chairman of the Board of Governors, the Chairperson of the Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, designate a single calendar date for the transfer of functions to the Bureau under section 5581 of this title; and

(2) publish notice of that designated date in the Federal Register.

(b) Changing designation

The Secretary—

(1) may, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, change the date designated under subsection (a); and

(2) shall publish notice of any changed designated date in the Federal Register.

(c) Permissible dates

(1) In general

Except as provided in paragraph (2), any date designated under this section shall be not earlier than 180 days, nor later than 12 months, after July 21, 2010.

(2) Extension of time

The Secretary may designate a date that is later than 12 months after July 21, 2010, if the Secretary transmits to appropriate committees of Congress—

(A) a written determination that orderly implementation of this title[1] is not feasible before the date that is 12 months after July 21, 2010;

(B) an explanation of why an extension is necessary for the orderly implementation of this title;[1] and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title[1] within the extended time period.

(3) Extension limited

In no case may any date designated under this section be later than 18 months after July 21, 2010.

(Pub. L. 111–203, title X, § 1062, July 21, 2010, 124 Stat. 2039.)

REFERENCES IN TEXT

This title, referred to in subsec. (c)(2), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

[1] See References in Text note below.

§ 5583. Savings provisions

(a) Board of Governors

(1) Existing rights, duties, and obligations not affected

Section 5581(b)(1) of this title does not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection function of the Board of Governors transferred to the Bureau by this title;[1] and

(B) existed on the day before the designated transfer date.

(2) Continuation of suits

No provision of this Act shall abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the Bureau by this title,[1] except that the Bureau, subject to sections 5514, 5515, and 5516 of this title, shall be substituted for the Board of Governors (or Federal reserve bank) as a party to any such proceeding as of the designated transfer date.

(b) Federal Deposit Insurance Corporation

(1) Existing rights, duties, and obligations not affected

Section 5581(b)(4) of this title does not affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance Corporation, the Board of Directors of that Corporation, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title;[1] and

(B) existed on the day before the designated transfer date.

(2) Continuation of suits

No provision of this Act shall abate any proceeding commenced by or against the Federal Deposit Insurance Corporation (or the Board of Directors of that Corporation) before the designated transfer date with respect to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title,[1] except that the Bureau, subject to sections 5514, 5515, and 5516 of this title, shall be substituted for the Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such proceeding as of the designated transfer date.

(c) Federal Trade Commission

Section 5581(b)(5) of this title does not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(1) arises under any provision of law relating to any consumer financial protection function of the Federal Trade Commission transferred to the Bureau by this title;[1] and

(2) existed on the day before the designated transfer date.

(d) National Credit Union Administration

(1) Existing rights, duties, and obligations not affected

Section 5581(b)(6) of this title does not affect the validity of any right, duty, or obligation of the United States, the National Credit Union Administration, the National Credit Union Administration Board, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title;[1] and

(B) existed on the day before the designated transfer date.

(2) Continuation of suits

No provision of this Act shall abate any proceeding commenced by or against the National Credit Union Administration (or the National Credit Union Administration Board) before the designated transfer date with respect to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title,[1] except that the Bureau, subject to sections 5514, 5515, and 5516 of this title, shall be substituted for the National Credit Union Administration (or National Credit Union Administration Board) as a party to any such proceeding as of the designated transfer date.

(e) Office of the Comptroller of the Currency

(1) Existing rights, duties, and obligations not affected

Section 5581(b)(2) of this title does not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title;[1] and

(B) existed on the day before the designated transfer date.

(2) Continuation of suits

No provision of this Act shall abate any proceeding commenced by or against the Comptroller of the Currency (or the Office of the Comptroller of the Currency) with respect to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title[1] before the designated transfer date, except that the Bureau, subject to sections 5514, 5515, and 5516 of this title, shall be substituted for the Comptroller of the Currency (or the Office of the Comptroller of the Currency) as a party to any such proceeding as of the designated transfer date.

(f) Office of Thrift Supervision

(1) Existing rights, duties, and obligations not affected

Section 5581(b)(3) of this title does not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of

[1] See References in Text note below.

Thrift Supervision, the Office of Thrift Supervision, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title;[1] and

(B) that[2] existed on the day before the designated transfer date.

(2) Continuation of suits

No provision of this Act shall abate any proceeding commenced by or against the Director of the Office of Thrift Supervision (or the Office of Thrift Supervision) with respect to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title[1] before the designated transfer date, except that the Bureau, subject to sections 5514, 5515, and 5516 of this title, shall be substituted for the Director (or the Office of Thrift Supervision) as a party to any such proceeding as of the designated transfer date.

(g) Department of Housing and Urban Development

(1) Existing rights, duties, and obligations not affected

Section 5581(b)(7) of this title shall not affect the validity of any right, duty, or obligation of the United States, the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development), or any other person, that—

(A) arises under any provision of law relating to any function of the Secretary of the Department of Housing and Urban Development with respect to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [12 U.S.C. 5101 et seq.], or the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq)[3] transferred to the Bureau by this title;[1] and

(B) existed on the day before the designated transfer date.

(2) Continuation of suits

This title[1] shall not abate any proceeding commenced by or against the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) with respect to any consumer financial protection function of the Secretary of the Department of Housing and Urban Development transferred to the Bureau by this title[1] before the designated transfer date, except that the Bureau, subject to sections 5514, 5515, and 5516 of this title, shall be substituted for the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) as a party to any such proceeding as of the designated transfer date.

(h) Continuation of existing orders, rulings, determinations, agreements, and resolutions

(1) In general

Except as provided in paragraph (2) and under subsection (i), all orders, resolutions, determinations, agreements, and rulings that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title[1] and that are in effect on the day before the designated transfer date, shall continue in effect, and shall continue to be enforceable by the appropriate transferor agency, according to the terms of those orders, resolutions, determinations, agreements, and rulings, and shall not be enforceable by or against the Bureau.

(2) Exception for orders applicable to persons described in section 5515(a) of this title

All orders, resolutions, determinations, agreements, and rulings that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title[1] and that are in effect on the day before the designated transfer date with respect to any person described in section 5515(a) of this title, shall continue in effect, according to the terms of those orders, resolutions, determinations, agreements, and rulings, and shall be enforceable by or against the Bureau or transferor agency.

(i) Identification of rules and orders continued

Not later than the designated transfer date, the Bureau—

(1) shall, after consultation with the head of each transferor agency, identify the rules and orders that will be enforced by the Bureau; and

(2) shall publish a list of such rules and orders in the Federal Register.

(j) Status of rules proposed or not yet effective

(1) Proposed rules

Any proposed rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title,[1] has proposed before the designated transfer date, but has not been published as a final rule before that date, shall be deemed to be a proposed rule of the Bureau.

(2) Rules not yet effective

Any interim or final rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title,[1] has published before the designated transfer date, but which has not become effective before that date, shall become effective as a rule of the Bureau according to its terms.

(Pub. L. 111–203, title X, §1063, July 21, 2010, 124 Stat. 2040.)

REFERENCES IN TEXT

This title, where footnoted in text, is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

[2] So in original. The word ''that'' probably should not appear.

[3] So in original. Probably should be a period after ''seq''.

This Act, referred to in subsecs. (a)(2), (b)(2), (d)(2), (e)(2), and (f)(2), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§ 8201 et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (g)(1)(A), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§ 2601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008, referred to in subsec. subsec. (g)(1)(A), is title V of div. A of Pub. L. 110–289, July 30, 2008, 122 Stat. 2810, also known as the S.A.F.E. Mortgage Licensing Act of 2008, which is classified generally to chapter 51 (§ 5101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of this title and Tables.

The Interstate Land Sales Full Disclosure Act, referred to in subsec. (g)(1)(A), is title XIV of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 590, which is classified generally to chapter 42 (§ 1701 et seq.) of Title 15, Commerce and Trade. For complete classification of this title to the Code, see Short Title note set out under section 1701 of Title 15 and Tables.

§ 5584. Transfer of certain personnel

(a) In general

(1) Certain Federal Reserve System employees transferred

(A) Identifying employees for transfer

The Bureau and the Board of Governors shall—

(i) jointly determine the number of employees of the Board of Governors necessary to perform or support the consumer financial protection functions of the Board of Governors that are transferred to the Bureau by this title;[1] and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the Bureau, in a manner that the Bureau and the Board of Governors, in their sole discretion, determine equitable.

(B) Identified employees transferred

All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(C) Federal reserve bank employees

Employees of any Federal reserve bank who are performing consumer financial protection functions on behalf of the Board of Governors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) Certain FDIC employees transferred

(A) Identifying employees for transfer

The Bureau and the Board of Directors of the Federal Deposit Insurance Corporation shall—

(i) jointly determine the number of employees of that Corporation necessary to perform or support the consumer financial protection functions of the Corporation that are transferred to the Bureau by this title;[1] and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Corporation for transfer to the Bureau, in a manner that the Bureau and the Board of Directors of the Corporation, in their sole discretion, determine equitable.

(B) Identified employees transferred

All employees of the Corporation identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(3) Certain NCUA employees transferred

(A) Identifying employees for transfer

The Bureau and the National Credit Union Administration Board shall—

(i) jointly determine the number of employees of the National Credit Union Administration necessary to perform or support the consumer financial protection functions of the National Credit Union Administration that are transferred to the Bureau by this title;[1] and

(ii) consistent with the number determined under clause (i), jointly identify employees of the National Credit Union Administration for transfer to the Bureau, in a manner that the Bureau and the National Credit Union Administration Board, in their sole discretion, determine equitable.

(B) Identified employees transferred

All employees of the National Credit Union Administration identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(4) Certain Office of the Comptroller of the Currency employees transferred

(A) Identifying employees for transfer

The Bureau and the Comptroller of the Currency shall—

(i) jointly determine the number of employees of the Office of the Comptroller of the Currency necessary to perform or support the consumer financial protection functions of the Office of the Comptroller of the Currency that are transferred to the Bureau by this title;[1] and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Office of the Comptroller of the Currency for transfer to the Bureau, in a manner that the Bureau and the Office of the Comptroller of the Currency, in their sole discretion, determine equitable.

(B) Identified employees transferred

All employees of the Office of the Comptroller of the Currency identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(5) Certain Office of Thrift Supervision employees transferred

(A) Identifying employees for transfer

The Bureau and the Director of the Office of Thrift Supervision shall—

[1] See References in Text note below.

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support the consumer financial protection functions of the Office of Thrift Supervision that are transferred to the Bureau by this title; [1] and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Bureau, in a manner that the Bureau and the Office of Thrift Supervision, in their sole discretion, determine equitable.

(B) Identified employees transferred

All employees of the Office of Thrift Supervision identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(6) Certain employees of Department of Housing and Urban Development transferred

(A) Identifying employees for transfer

The Bureau and the Secretary of the Department of Housing and Urban Development shall—

(i) jointly determine the number of employees of the Department of Housing and Urban Development necessary to perform or support the consumer protection functions of the Department that are transferred to the Bureau by this title; [1] and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Department of Housing and Urban Development for transfer to the Bureau in a manner that the Bureau and the Secretary of the Department of Housing and Urban Development, in their sole discretion, deem equitable.

(B) Identified employees transferred

All employees of the Department of Housing and Urban Development identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(7) Consumer education, financial literacy, consumer complaints, and research functions

The Bureau and each of the transferor agencies (except the Federal Trade Commission) shall jointly determine the number of employees and the types and grades of employees necessary to perform the functions of the Bureau under part A, including consumer education, financial literacy, policy analysis, responses to consumer complaints and inquiries, research, and similar functions. All employees jointly identified under this paragraph shall be transferred to the Bureau for employment.

(8) Authority of the President to resolve disputes

(A) Action authorized

In the event that the Bureau and a transferor agency are unable to reach an agreement under paragraphs (1) through (7) by the designated transfer date, the President, or the designee thereof, may issue an order or directive to the transferor agency to effect the transfer of personnel and property under this part.

(B) Transmittal to Congress required

If an order or directive is issued under subparagraph (A), the President shall transmit a copy of the written determination made with respect to such order or directive, including an explanation for the need for the order or directive, to the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Financial Services and the Committee on Appropriations of the House of Representatives.

(C) Sunset

The authority provided in this paragraph shall terminate 3 years after the designated transfer date.

(9) Appointment authority for excepted service and senior executive service transferred

(A) In general

In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) Declining transfers allowed

An agency or entity may decline to make a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and non-career positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5).

(b) Timing of transfers and position assignments

Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the designated transfer date; and

(2) receive notice of a position assignment not later than 120 days after the effective date of his or her transfer.

(c) Transfer of function

(1) In general

Notwithstanding any other provision of law, the transfer of employees shall be deemed a transfer of functions for the purpose of section 3503 of title 5.

(2) Priority of this title [1]

If any provisions of this title [1] conflict with any protection provided to transferred employees under section 3503 of title 5, the provisions of this title [1] shall control.

(d) Equal status and tenure positions

(1) Employees transferred from the Federal Reserve System, FDIC, HUD, NCUA, OCC, and OTS

Each employee transferred to the Bureau from the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, the Department of Housing and

Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision shall be placed in a position at the Bureau with the same status and tenure as that employee held on the day before the designated transfer date.

(2) Employees transferred from the Federal Reserve System

For purposes of determining the status and position placement of a transferred employee, any period of service with the Board of Governors or a Federal reserve bank shall be credited as a period of service with a Federal agency.

(e) Additional certification requirements limited

Examiners transferred to the Bureau are not subject to any additional certification requirements before being placed in a comparable examiner position at the Bureau examining the same types of institutions as they examined before they were transferred.

(f) Personnel actions limited

(1) 2-year protection

Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the designated transfer date may not, during the 2-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area.

(2) Exceptions

Paragraph (1) does not limit the right of the Bureau—

(A) to separate an employee for cause or for unacceptable performance;

(B) to terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) to reassign a supervisory employee outside of his or her locality pay area when the Bureau determines that the reassignment is necessary for the efficient operation of the Bureau.

(g) Pay

(1) 2-year protection

(A) In general

Except as provided in paragraph (2), each transferred employee shall, during the 2-year period beginning on the designated transfer date, receive pay at a rate equal to not less than the basic rate of pay (including any geographic differential) that the employee received during the pay period immediately preceding the date of transfer.

(B) Limitation

Notwithstanding subparagraph (A), if the employee was receiving a higher rate of basic pay on a temporary basis (because of a temporary assignment, temporary promotion, or other temporary action) immediately before the date of transfer, the Bureau may reduce the rate of basic pay on the date on which the rate would have been reduced but for the transfer, and the protected rate for the remainder of the 2-year period shall be the reduced rate that would have applied, but for the transfer.

(2) Exceptions

Paragraph (1) does not limit the right of the Bureau to reduce the rate of basic pay of a transferred employee—

(A) for cause;

(B) for unacceptable performance; or

(C) with the consent of the employee.

(3) Protection only while employed

Paragraph (1) applies to a transferred employee only while that employee remains employed by the Bureau.

(4) Pay increases permitted

Paragraph (1) does not limit the authority of the Bureau to increase the pay of a transferred employee.

(h) Reorganization

(1) Between 1st and 3rd year

(A) In general

If the Bureau determines, during the 2-year period beginning 1 year after the designated transfer date, that a reorganization of the staff of the Bureau is required—

(i) that reorganization shall be deemed a ''substantial reorganization'' for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Office of Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, except that the Bureau shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to whether the particular employees have been appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Bureau as employees appointed to positions in the competitive service.

(B) Service credit for reductions in force

For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks,

the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) After 3rd year

(A) In general

If the Bureau determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Bureau is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, except that the Bureau shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) Service credit for reductions in force

For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(i) Benefits

(1) Retirement benefits for transferred employees

(A) In general

(i) Continuation of existing retirement plan

Unless an election is made under clause (iii) or subparagraph (B), each employee transferred pursuant to this part shall remain enrolled in the existing retirement plan of that employee as of the date of transfer, through any period of continuous employment with the Bureau.

(ii) Employer contribution

The Bureau shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under that plan.

(iii) Option to elect into the Federal Reserve System Retirement Plan and Federal Reserve System Thrift Plan

Any employee transferred pursuant to this part may, during the 1-year period beginning 6 months after the designated transfer date, elect to end their participation and benefit accruals under their existing retirement plan or plans and elect to participate in both the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, through any period of continuous employment with the Bureau, under the same terms as are applicable to Federal Reserve System transferred employees, as provided in subparagraph (C). An election of coverage by the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan shall begin on the day following the end of the 18-month period beginning on the designated transfer date, and benefit accruals under the existing retirement plan of the transferred employee shall end on the last day of the 18-month period beginning on the designated transfer date[2] If an employee elects to participate in the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, all of the service of the employee that was creditable under their existing retirement plan shall be transferred to the Federal Reserve System Retirement Plan on the day following the end of the 18-month period beginning on the designated transfer date.

(iv) Bureau contribution

The Bureau shall pay an employer contribution to the Federal Reserve System Retirement Plan, in the amount established as an employer contribution under the Federal Employees Retirement System, as established under chapter 84 of title 5, for each Bureau employee who elects to participate in the Federal Reserve System Retirement Plan under this subparagraph. The Bureau shall pay an employer contribution to the Federal Reserve System Thrift Plan for each Bureau employee who elects to participate in such plan, as required under the terms of the Federal Reserve System Thrift Plan.

(v) Additional funding

The Bureau shall transfer to the Federal Reserve System Retirement Plan an amount determined by the Board of Governors, in consultation with the Bureau, to be necessary to reimburse the Federal Reserve System Retirement Plan for the costs to such plan of providing benefits to employees electing coverage under the Federal Reserve System Retirement Plan under subparagraph (iii), and who were transferred to the Bureau from outside of the Federal Reserve System.

(vi) Option to elect into thrift plan created by the Bureau

If the Bureau chooses to establish a thrift plan, the employees transferred pursuant to this part shall have the option to elect, under such terms and conditions as the Bureau may establish, coverage under such a thrift plan established by the Bureau. Transferred employees may not remain in the thrift plan of the agency from which the employee transferred under this part, if the employee elects to participate in a thrift plan established by the Bureau.

(B) Option for employees transferred from Federal Reserve System to be subject to the Federal Employee Retirement Program

(i) Election

Any Federal Reserve System transferred employee who was enrolled in the Federal Reserve System Retirement Plan on the day before the date of his or her transfer

[2] So in original. Probably should be followed by a period.

to the Bureau may, during the 1-year period beginning 6 months after the designated transfer date, elect to be subject to the Federal Employee Retirement Program.

(ii) Effective date of coverage

An election of coverage by the Federal Employee Retirement Program under this subparagraph shall begin on the day following the end of the 18-month period beginning on the designated transfer date, and benefit accruals under the existing retirement plan of the Federal Reserve System transferred employee shall end on the last day of the 18-month period beginning on the designated transfer date.

(C) Bureau participation in Federal Reserve System Retirement Plan

(i) Benefits provided

Federal Reserve System employees transferred pursuant to this part shall continue to be eligible to participate in the Federal Reserve System Retirement Plan and Federal Reserve System Thrift Plan through any period of continuous employment with the Bureau, unless the employee makes an election under subparagraph (A)(vi) or (B). The retirement benefits, formulas, and features offered to the Federal Reserve System transferred employees shall be the same as those offered to employees of the Board of Governors who participate in the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, as amended from time to time.

(ii) Limitation

The Bureau shall not have responsibility or authority—

(I) to amend an existing retirement plan (including the Federal Reserve System Retirement Plan or Federal Reserve System Thrift Plan);

(II) for administering an existing retirement plan (including the Federal Reserve System Retirement Plan or Federal Reserve System Thrift Plan); or

(III) for ensuring the plans comply with applicable laws, fiduciary rules, and related responsibilities.

(iii) Tax qualified status

Notwithstanding any other provision of law, providing benefits to Federal Reserve System employees transferred to the Bureau pursuant to this part, and to employees who elect coverage pursuant to subparagraph (A)(iii) or under section 5493(a)(2)(B) of this title, shall not cause any existing retirement plan (including the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan) to lose its tax-qualified status under sections 401(a) and 501(a) of title 26.

(iv) Bureau contribution

The Bureau shall pay any employer contributions to the existing retirement plan (including the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan) for each Federal Reserve System transferred employee participating in those plans, as required under the plan, after the designated transfer date.

(v) Controlled group status

The Bureau is the same employer as the Federal Reserve System (as comprised of the Board of Governors and each of the 12 Federal reserve banks prior to July 21, 2010) for purposes of subsections (b), (c), (m), and (*o*) of section 414 of title 26.

(D) Definitions

For purposes of this paragraph—

(i) the term ''existing retirement plan'' means, with respect to an employee transferred pursuant to this part, the retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan, of the agency from which the employee was transferred under this part, in which the employee was enrolled on the day before the date on which the employee was transferred;

(ii) the term ''Federal Employee Retirement Program'' means either the Civil Service Retirement System established under chapter 83 of title 5 or the Federal Employees Retirement System established under chapter 84 of title 5, depending upon the service history of the individual;

(iii) the term ''Federal Reserve System transferred employee'' means a transferred employee who is an employee of the Board of Governors or a Federal reserve bank on the day before the designated transfer date, and who is transferred to the Bureau on the designated transfer date pursuant to this part;

(iv) the term ''Federal Reserve System Retirement Plan'' means the Retirement Plan for Employees of the Federal Reserve System; and

(v) the term ''Federal Reserve System Thrift Plan'' means the Thrift Plan for Employees of the Federal Reserve System.

(2) Benefits other than retirement benefits for transferred employees

(A) During 1st year

(i) Existing plans continue

Each employee transferred pursuant to this part may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which the employee transferred, including a medical, dental, vision, long term care, or life insurance program, to which the employee belonged on the day before the designated transfer date.

(ii) Employer contribution

The Bureau shall reimburse the agency or bank from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in the benefit program to the employee, as required under that program or negotiated agreements.

(B) Medical, dental, vision, or life insurance after first year

If, at the end of the 1-year period beginning on the designated transfer date, the Bureau has not established its own, or arranged for participation in another entity's, medical, dental, vision, or life insurance program, an employee transferred pursuant to this part who was a member of such a program at the agency or Federal reserve bank from which the employee transferred may, before the coverage of that employee ends under subparagraph (A)(i), elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits program established under chapter 89A of title 5;

(ii) the enhanced vision benefits established under chapter 89B of title 5;

(iii) the Federal Employees Group Life Insurance Program established under chapter 87 of title 5, without regard to any requirement of insurability; and

(iv) the Federal Employees Health Benefits Program established under chapter 89 of title 5.

(C) Long term care insurance after 1st year

If, at the end of the 1-year period beginning on the designated transfer date, the Bureau has not established its own, or arranged for participation in another entity's, long term care insurance program, an employee transferred pursuant to this part who was a member of such a program at the agency or Federal reserve bank from which the employee transferred may, before the coverage of that employee ends under subparagraph (A)(i), elect to apply for coverage under the Federal Long Term Care Insurance Program established under chapter 90 of title 5, under the underwriting requirements applicable to a new active workforce member (as defined in part 875 of title 5, Code of Federal Regulations).

(D) Employee contribution

An individual enrolled in the Federal Employees Health Benefits program shall pay any employee contribution required by the plan.

(E) Additional funding

The Bureau shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5 an amount determined by the Director of the Office of Personnel Management, after consultation with the Bureau and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this paragraph.

(F) Credit for time enrolled in other plans

For employees transferred under this title,[1] enrollment in a health benefits plan administered by a transferor agency or a Federal reserve bank, as the case may be, immediately before enrollment in a health benefits plan under chapter 89 of title 5 shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5.

(G) Special provisions to ensure continuation of life insurance benefits

(i) In general

An annuitant (as defined in section 8901(3) of title 5) who is enrolled in a life insurance plan administered by a transferor agency on the day before the designated transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of title 5 or in a life insurance plan established by the Bureau, without regard to any regularly scheduled open season and requirement of insurability.

(ii) Employee contribution

An individual enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(iii) Additional funding

The Bureau shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5 an amount determined by the Director of the Office of Personnel Management, after consultation with the Bureau and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (ii).

(iv) Credit for time enrolled in other plans

For employees transferred under this title,[1] enrollment in a life insurance plan administered by a transferor agency immediately before enrollment in a life insurance plan under chapter 87 of title 5 shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5.

(3) OPM rules

The Office of Personnel Management shall issue such rules as are necessary to carry out this subsection.

(j) Implementation of uniform pay and classification system

Not later than 2 years after the designated transfer date, the Bureau shall implement a uniform pay and classification system for all employees transferred under this title.[1]

(k) Equitable treatment

In administering the provisions of this section, the Bureau—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred

under this section receive equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time of those employees, for prior periods of service with any Federal agency, including the Board of Governors, the Corporation, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks.

(*l*) Implementation

In implementing the provisions of this section, the Bureau shall coordinate with the Office of Personnel Management and other entities having expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

(Pub. L. 111–203, title X, § 1064, July 21, 2010, 124 Stat. 2043.)

REFERENCES IN TEXT

This title, where footnoted in subsecs. (a), (c)(2), (i)(2)(F), (G)(iv), and (j), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5585. Incidental transfers

(a) Incidental transfers authorized

The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional incidental transfers and dispositions of assets and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title,[1] as the Director may determine necessary to accomplish the purposes of this title.[1]

(b) Sunset

The authority provided in this section shall terminate 5 years after July 21, 2010.

(Pub. L. 111–203, title X, § 1065, July 21, 2010, 124 Stat. 2055.)

REFERENCES IN TEXT

This title, referred to in subsec. (a), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5586. Interim authority of the Secretary

(a) In general

The Secretary is authorized to perform the functions of the Bureau under this part until the Director of the Bureau is confirmed by the Senate in accordance with section 5491 of this title.

[1] See References in Text note below.

(b) Interim administrative services by the Department of the Treasury

The Department of the Treasury may provide administrative services necessary to support the Bureau before the designated transfer date.

(Pub. L. 111–203, title X, § 1066, July 21, 2010, 124 Stat. 2055.)

§ 5587. Transition oversight

(a) Purpose

The purpose of this section is to ensure that the Bureau—

(1) has an orderly and organized startup;

(2) attracts and retains a qualified workforce; and

(3) establishes comprehensive employee training and benefits programs.

(b) Reporting requirement

(1) In general

The Bureau shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

(2) Plans

The plans described in this paragraph are as follows:

(A) Training and workforce development plan

The Bureau shall submit a training and workforce development plan that includes, to the extent practicable—

(i) identification of skill and technical expertise needs and actions taken to meet those requirements;

(ii) steps taken to foster innovation and creativity;

(iii) leadership development and succession planning; and

(iv) effective use of technology by employees.

(B) Workplace flexibilities plan

The Bureau shall submit a workforce flexibility plan that includes, to the extent practicable—

(i) telework;

(ii) flexible work schedules;

(iii) phased retirement;

(iv) reemployed annuitants;

(v) part-time work;

(vi) job sharing;

(vii) parental leave benefits and childcare assistance;

(viii) domestic partner benefits;

(ix) other workplace flexibilities; or

(x) any combination of the items described in clauses (i) through (ix).

(C) Recruitment and retention plan

The Bureau shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—

(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;

(ii) streamlined employment application processes;

(iii) the provision of timely notification of the status of employment applications to applicants; and

(iv) the collection of information to measure indicators of hiring effectiveness.

(c) Expiration

The reporting requirement under subsection (b) shall terminate 5 years after July 21, 2010.

(d) Rule of construction

Nothing in this section may be construed to affect—

(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, that is in effect on July 21, 2010; or

(2) the rights of employees under chapter 71 of title 5.

(e) Participation in examinations

In order to prepare the Bureau to conduct examinations under section 5515 of this title upon the designated transfer date, the Bureau and the applicable prudential regulator may agree to include, on a sampling basis, examiners on examinations of the compliance with Federal consumer financial law of institutions described in section 5515(a) of this title conducted by the prudential regulators prior to the designated transfer date.

(Pub. L. 111–203, title X, § 1067, July 21, 2010, 124 Stat. 2055.)

PART G—REGULATORY IMPROVEMENTS

§ 5601. Remittance transfers

(a) Omitted

(b) Automated clearinghouse system

(1) Expansion of system

The Board of Governors shall work with the Federal reserve banks and the Department of the Treasury to expand the use of the automated clearinghouse system and other payment mechanisms for remittance transfers to foreign countries, with a focus on countries that receive significant remittance transfers from the United States, based on—

(A) the number, volume, and size of such transfers;

(B) the significance of the volume of such transfers relative to the external financial flows of the receiving country, including—

(i) the total amount transferred; and

(ii) the total volume of payments made by United States Government agencies to beneficiaries and retirees living abroad;

(C) the feasibility of such an expansion; and

(D) the ability of the Federal Reserve System to establish payment gateways in different geographic regions and currency zones to receive remittance transfers and route them through the payments systems in the destination countries.

(2) Report to Congress

Not later than one calendar year after July 21, 2010, and on April 30 biennially thereafter during the 10-year period beginning on July 21, 2010, the Board of Governors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the status of the automated clearinghouse system and its progress in complying with the requirements of this subsection. The report shall include an analysis of adoption rates of International ACH Transactions rules and formats, the efficacy of increasing adoption rates, and potential recommendations to increase adoption.

(c) Expansion of financial institution provision of remittance transfers

(1) Provision of guidelines to institutions

Each of the Federal banking agencies and the National Credit Union Administration shall provide guidelines to financial institutions under the jurisdiction of the agency regarding the offering of low-cost remittance transfers and no-cost or low-cost basic consumer accounts, as well as agency services to remittance transfer providers.

(2) Assistance to Financial Literacy Commission [1]

As part of its [2] duties as members of the Financial Literacy and Education Commission, the Bureau, the Federal banking agencies, and the National Credit Union Administration shall assist the Financial Literacy and Education Commission in executing the Strategy for Assuring Financial Empowerment (or the ''SAFE Strategy''), as it relates to remittances.

(d) Omitted

(e) Report on feasibility of and impediments to use of remittance history in calculation of credit score

Before the end of the 365-day period beginning on July 21, 2010, the Director shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives regarding—

(1) the manner in which the remittance history of a consumer could be used to enhance the credit score of the consumer;

(2) the current legal and business model barriers and impediments that impede the use of the remittance history of the consumer to enhance the credit score of the consumer; and

(3) recommendations on the manner in which maximum transparency and disclosure to consumers of exchange rates for remittance transfers subject to this title [3] and the amendments made by this title [3] may be accomplished, whether or not such exchange rates are known at the time of origination or payment by the consumer for the remittance transfer, including disclosure to the sender of the actual exchange rate used and the amount of currency that the recipient of the remittance transfer received, using the values of the currency into which the funds were exchanged,

[1] So in original. Probably should be ''Financial Literacy and Education Commission''.

[2] So in original. Probably should be ''their''.

[3] See References in Text note below.

as contained in sections 1693*o*–1(a)(2)(D)[3] and 1693*o*–1(a)(3) of title 15 (as amended by this section).

(Pub. L. 111–203, title X, § 1073, July 21, 2010, 124 Stat. 2060.)

REFERENCES IN TEXT

This title, where footnoted in subsec. (e)(3), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 1693*o*–1(a)(2) of title 15, referred to in subsec. (e)(3), does not contain a subpar. (D).

CODIFICATION

Section is comprised of section 1073 of Pub. L. 111–203. Subsecs. (a) and (d) of section 1073 of Pub. L. 111–203 enacted section 1693*o*–1 of Title 15, Commerce and Trade, amended section 1757 of this title and sections 1693, 1693b, 1693p, 1693q, and 1693r of Title 15, and amended provisions set out as a note under section 1693 of Title 15.

EFFECTIVE DATE

Part effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

§ 5602. Reverse mortgage study and regulations

(a) Study

Not later than 1 year after the designated transfer date, the Bureau shall conduct a study on reverse mortgage transactions.

(b) Regulations

(1) In general

If the Bureau determines through the study required under subsection (a) that conditions or limitations on reverse mortgage transactions are necessary or appropriate for accomplishing the purposes and objectives of this title,[1] including protecting borrowers with respect to the obtaining of reverse mortgage loans for the purpose of funding investments, annuities, and other investment products and the suitability of a borrower in obtaining a reverse mortgage for such purpose.[2]

(2) Identified practices and integrated disclosures

The regulations prescribed under paragraph (1) may, as the Bureau may so determine—

(A) identify any practice as unfair, deceptive, or abusive in connection with a reverse mortgage transaction; and

(B) provide for an integrated disclosure standard and model disclosures for reverse mortgage transactions, consistent with section 4302(d),[1] that combines the relevant disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the Real Estate Settlement Procedures Act [12 U.S.C. 2601 et seq.], with the disclosures required to be provided to consumers for Home Equity Conversion Mortgages under section 1715z–20 of this title.

[1] See References in Text note below.

[2] So in original. Sentence does not appear to be complete.

(c) Rule of construction

This section shall not be construed as limiting the authority of the Bureau to issue regulations, orders, or guidance that apply to reverse mortgages prior to the completion of the study required under subsection (a).

(Pub. L. 111–203, title X, § 1076, July 21, 2010, 124 Stat. 2075.)

REFERENCES IN TEXT

This title, referred to in subsec. (b)(1), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted this subchapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 4302(d), referred to in subsec. (b)(2)(B), probably was a reference to section 4302(d) of the House Engrossed version of H.R. 4173, 111th Congress. A later version of H.R. 4173 was enacted as Pub. L. 111–203, and as so enacted, doesn't contain a section 4302. However, section 1032(f) of Pub. L. 111–203, which is classified to section 5532(f) of this title, contains substantially similar provisions to the section 4302(d) that was probably referred to.

The Truth in Lending Act, referred to in subsec. (b)(2)(B), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Real Estate Settlement Procedures Act, referred to in subsec. (b)(2)(B), probably means the Real Estate Settlement Procedures Act of 1974, Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§ 2601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

§ 5603. Review, report, and program with respect to exchange facilitators

(a) Review

The Director shall review all Federal laws and regulations relating to the protection of consumers who use exchange facilitators for transactions primarily for personal, family, or household purposes.

(b) Report

Not later than 1 year after the designated transfer date, the Director shall submit to Congress a report describing—

(1) recommendations for legislation to ensure the appropriate protection of consumers who use exchange facilitators for transactions primarily for personal, family, or household purposes;

(2) recommendations for updating the regulations of Federal departments and agencies to ensure the appropriate protection of such consumers; and

(3) recommendations for regulations to ensure the appropriate protection of such consumers.

(c) Program

Not later than 2 years after the date of the submission of the report under subsection (b), the Bureau shall, consistent with part B, propose regulations or otherwise establish a program to protect consumers who use exchange facilitators.

(d) Exchange facilitator defined

In this section, the term ''exchange facilitator'' means a person that—

(1) facilitates, for a fee, an exchange of like kind property by entering into an agreement with a taxpayer by which the exchange facilitator acquires from the taxpayer the contractual rights to sell the taxpayer's relinquished property and transfers a replacement property to the taxpayer as a qualified intermediary (within the meaning of Treasury Regulations section 1.1031(k)–1(g)(4)) or enters into an agreement with the taxpayer to take title to a property as an exchange accommodation titleholder (within the meaning of Revenue Procedure 2000–37) or enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder (within the meaning of Treasury Regulations section 1.1031(k)–1(g)(3));

(2) maintains an office for the purpose of soliciting business to perform the services described in paragraph (1); or

(3) advertises any of the services described in paragraph (1) or solicits clients in printed publications, direct mail, television or radio advertisements, telephone calls, facsimile transmissions, or other electronic communications directed to the general public for purposes of providing any such services.

(Pub. L. 111–203, title X, §1079, July 21, 2010, 124 Stat. 2077.)

SUBCHAPTER VI—FEDERAL RESERVE SYSTEM PROVISIONS

§ 5611. Liquidity event determination

(a) Determination and written recommendation

(1) Determination request

The Secretary may request the Corporation and the Board of Governors to determine whether a liquidity event exists that warrants use of the guarantee program authorized under section 5612 of this title.

(2) Requirements of determination

Any determination pursuant to paragraph (1) shall—

(A) be written; and

(B) contain an evaluation of the evidence that—

(i) a liquidity event exists;

(ii) failure to take action would have serious adverse effects on financial stability or economic conditions in the United States; and

(iii) actions authorized under section 5612 of this title are needed to avoid or mitigate potential adverse effects on the United States financial system or economic conditions.

(b) Procedures

Notwithstanding any other provision of Federal or State law, upon the determination of both the Corporation (upon a vote of not fewer than ⅔ of the members of the Corporation then serving) and the Board of Governors (upon a vote of not fewer than ⅔ of the members of the Board of Governors then serving) under subsection (a) that a liquidity event exists that warrants use of the guarantee program authorized under section 5612 of this title, and with the written consent of the Secretary—

(1) the Corporation shall take action in accordance with section 5612(a) of this title; and

(2) the Secretary (in consultation with the President) shall take action in accordance with section 5612(c) of this title.

(c) Documentation and review

(1) Documentation

The Secretary shall—

(A) maintain the written documentation of each determination of the Corporation and the Board of Governors under this section; and

(B) provide the documentation for review under paragraph (2).

(2) GAO review

The Comptroller General of the United States shall review and report to Congress on any determination of the Corporation and the Board of Governors under subsection (a), including—

(A) the basis for the determination; and

(B) the likely effect of the actions taken.

(d) Report to Congress

On the earlier of the date of a submission made to Congress under section 5612(c) of this title, or within 30 days of the date of a determination under subsection (a), the Secretary shall provide written notice of the determination of the Corporation and the Board of Governors to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, including a description of the basis for the determination.

(Pub. L. 111–203, title XI, §1104, July 21, 2010, 124 Stat. 2120.)

EFFECTIVE DATE

Subchapter effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

§ 5612. Emergency financial stabilization

(a) In general

Upon the written determination of the Corporation and the Board of Governors under section 5611 of this title, the Corporation shall create a widely available program to guarantee obligations of solvent insured depository institutions or solvent depository institution holding companies (including any affiliates thereof) during times of severe economic distress, except that a guarantee of obligations under this section may not include the provision of equity in any form.

(b) Rulemaking and terms and conditions

(1) Policies and procedures

As soon as is practicable after July 21, 2010, the Corporation shall establish, by regulation, and in consultation with the Secretary, policies and procedures governing the issuance of guarantees authorized by this section. Such policies and procedures may include a requirement of collateral as a condition of any such guarantee.

(2) Terms and conditions

The terms and conditions of any guarantee program shall be established by the Corporation, with the concurrence of the Secretary.

(c) Determination of guaranteed amount

(1) In general

In connection with any program established pursuant to subsection (a) and subject to paragraph (2) of this subsection, the Secretary (in consultation with the President) shall determine the maximum amount of debt outstanding that the Corporation may guarantee under this section, and the President may transmit to Congress a written report on the plan of the Corporation to exercise the authority under this section to issue guarantees up to that maximum amount and a request for approval of such plan. The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.

(2) Additional debt guarantee authority

If the Secretary (in consultation with the President) determines, after a submission to Congress under paragraph (1), that the maximum guarantee amount should be raised, and the Council concurs with that determination, the President may transmit to Congress a written report on the plan of the Corporation to exercise the authority under this section to issue guarantees up to the increased maximum debt guarantee amount. The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.

(d) Resolution of approval

(1) Additional debt guarantee authority

A request by the President under this section shall be considered granted by Congress upon adoption of a joint resolution approving such request. Such joint resolution shall be considered in the Senate under expedited procedures.

(2) Fast track consideration in Senate

(A) Reconvening

Upon receipt of a request under subsection (c), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

(B) Placement on calendar

Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(C) Floor consideration

(i) In general

Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a request under subsection (c), and ending on the 7th day after that date (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

(ii) Debate

Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(iii) Vote on passage

The vote on passage shall occur immediately following the conclusion of the debate on the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

(iv) Rulings of the Chair on procedure

Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(3) Rules

(A) Coordination with action by House of Representatives

If, before the passage by the Senate of a joint resolution of the Senate, the Senate receives a joint resolution, from the House of Representatives, then the following procedures shall apply:

(i) The joint resolution of the House of Representatives shall not be referred to a committee.

(ii) With respect to a joint resolution of the Senate—

(I) the procedure in the Senate shall be the same as if no joint resolution had been received from the other House; but

(II) the vote on passage shall be on the joint resolution of the House of Representatives.

(B) Treatment of joint resolution of House of Representatives

If the Senate fails to introduce or consider a joint resolution under this section, the

joint resolution of the House of Representatives shall be entitled to expedited floor procedures under this subsection.

(C) Treatment of companion measures

If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(D) Rules of the Senate

This subsection is enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate, and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a joint resolution, and it supersedes other rules, only to the extent that it is inconsistent with such rules; and

(ii) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

(4) Definition

As used in this subsection, the term ''joint resolution'' means only a joint resolution—

(A) that is introduced not later than 3 calendar days after the date on which the request referred to in subsection (c) is received by Congress;

(B) that does not have a preamble;

(C) the title of which is as follows: ''Joint resolution relating to the approval of a plan to guarantee obligations under section 1105 of the Dodd-Frank Wall Street Reform and Consumer Protection Act''; and

(D) the matter after the resolving clause of which is as follows: ''That Congress approves the obligation of any amount described in section 1105(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.''.

(e) Funding

(1) Fees and other charges

The Corporation shall charge fees and other assessments to all participants in the program established pursuant to this section, in such amounts as are necessary to offset projected losses and administrative expenses, including amounts borrowed pursuant to paragraph (3), and such amounts shall be available to the Corporation.

(2) Excess funds

If, at the conclusion of the program established under this section, there are any excess funds collected from the fees associated with such program, the funds shall be deposited in the General Fund of the Treasury.

(3) Authority of Corporation

The Corporation—

(A) may borrow funds from the Secretary of the Treasury and issue obligations of the Corporation to the Secretary for amounts borrowed, and the amounts borrowed shall be available to the Corporation for purposes of carrying out a program established pursuant to this section, including the payment of reasonable costs of administering the program, and the obligations issued shall be repaid in full with interest through fees and charges paid by participants in accordance with paragraphs (1) and (4), as applicable; and

(B) may not borrow funds from the Deposit Insurance Fund established pursuant to section 1821(a)(4) of this title.

(4) Backup special assessments

To the extent that the funds collected pursuant to paragraph (1) are insufficient to cover any losses or expenses, including amounts borrowed pursuant to paragraph (3), arising from a program established pursuant to this section, the Corporation shall impose a special assessment solely on participants in the program, in amounts necessary to address such insufficiency, and which shall be available to the Corporation to cover such losses or expenses.

(5) Authority of the Secretary

The Secretary may purchase any obligations issued under paragraph (3)(A). For such purpose, the Secretary may use the proceeds of the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter 31 are extended to include such purchases, and the amount of any securities issued under that chapter 31 for such purpose shall be treated in the same manner as securities issued under section 208(n)(5)(E).[1]

(f) Rule of construction

For purposes of this section, a guarantee of deposits held by insured depository institutions shall not be treated as a debt guarantee program.

(g) Definitions

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

(1) Company

The term ''company'' means any entity other than a natural person that is incorporated or organized under Federal law or the laws of any State.

(2) Depository institution holding company

The term ''depository institution holding company'' has the same meaning as in section 1813 of this title.

(3) Liquidity event

The term ''liquidity event'' means—

(A) an exceptional and broad reduction in the general ability of financial market participants—

(i) to sell financial assets without an unusual and significant discount; or

(ii) to borrow using financial assets as collateral without an unusual and significant increase in margin; or

(B) an unusual and significant reduction in the ability of financial market participants to obtain unsecured credit.

[1] See References in Text note below.

(4) Solvent

The term ''solvent'' means that the value of the assets of an entity exceed its obligations to creditors.

(Pub. L. 111–203, title XI, § 1105, July 21, 2010, 124 Stat. 2121.)

REFERENCES IN TEXT

Section 1105 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (d)(4)(C), (D), is section 1105 of Pub. L. 111–203, which is classified to this section.

Section 208(n)(5)(E), referred to in subsec. (e)(5), probably means section 210(n)(5)(E) of Pub. L. 111–203, which is classified to section 5390(n)(5)(E) of this title, because section 208 does not contain a subsec. (n) and section 210(n)(5)(E) relates to treatment of certain purchases and sales of obligations by the Secretary as public debt.

§ 5613. Additional related matters

(a) Suspension of parallel Federal Deposit Insurance Act authority

Effective upon July 21, 2010, the Corporation may not exercise its authority under section 1823(c)(4)(G)(i) of this title to establish any widely available debt guarantee program for which section 5612 of this title would provide authority.

(b) Omitted

(c) Effect of default on an FDIC guarantee

If an insured depository institution or depository institution holding company (as those terms are defined in section 1813 of this title) participating in a program under section 5612 of this title, or any participant in a debt guarantee program established pursuant to section 1823(c)(4)(G)(i) of this title defaults on any obligation guaranteed by the Corporation after July 21, 2010, the Corporation shall—

(1) appoint itself as receiver for the insured depository institution that defaults; and

(2) with respect to any other participating company that is not an insured depository institution that defaults—

(A) require—

(i) consideration of whether a determination shall be made, as provided in section 5383 of this title to resolve the company under section 5382 of this title; and

(ii) the company to file a petition for bankruptcy under section 301 of title 11 if the Corporation is not appointed receiver pursuant to section 5382 of this title within 30 days of the date of default; or

(B) file a petition for involuntary bankruptcy on behalf of the company under section 303 of title 11.

(Pub. L. 111–203, title XI, § 1106, July 21, 2010, 124 Stat. 2125.)

CODIFICATION

Section is comprised of section 1106 of Pub. L. 111–203. Subsec. (b) of section 1106 of Pub. L. 111–203 amended section 1823 of this title.

§ 5614. Exercise of Federal Reserve authority

(1) No decisions by Federal reserve bank presidents

No provision of subchapter I relating to the authority of the Board of Governors shall be construed as conferring any decision-making authority on presidents of Federal reserve banks.

(2) Voting decisions by Board

The Board of Governors shall not delegate the authority to make any voting decision that the Board of Governors is authorized or required to make under subchapter I of this chapter in contravention of section 248(k) of this title.

(Pub. L. 111–203, title XI, § 1108(d), July 21, 2010, 124 Stat. 2127.)

REFERENCES IN TEXT

Subchapter I, referred to in text, was in the original ''title I'', meaning title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, known as the Financial Stability Act of 2010, which is classified principally to subchapter I (§ 5311 et seq.) of this chapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

SUBCHAPTER VII—IMPROVING ACCESS TO MAINSTREAM FINANCIAL INSTITUTIONS

§ 5621. Purpose

The purpose of this subchapter is to encourage initiatives for financial products and services that are appropriate and accessible for millions of Americans who are not fully incorporated into the financial mainstream.

(Pub. L. 111–203, title XII, § 1202, July 21, 2010, 124 Stat. 2129.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title XII of Pub. L. 111–203, July 21, 2010, 124 Stat. 2129, known as the Improving Access to Mainstream Financial Institutions Act of 2010, which is classified principally to this subchapter. For complete classification of title XII to the Code, see Short Title note set out under section 5301 of this title and Tables.

EFFECTIVE DATE

Subchapter effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

SHORT TITLE

This subchapter known as the ''Improving Access to Mainstream Financial Institutions Act of 2010'', see Short Title note set out under section 5301 of this title.

§ 5622. Definitions

In this subchapter, the following definitions shall apply:

(1) Account

The term ''account'' means an agreement between an individual and an eligible entity under which the individual obtains from or through the entity 1 or more banking products and services, and includes a deposit account, a savings account (including a money market savings account), an account for a closed-end loan, and other products or services, as the Secretary deems appropriate.

(2) Community development financial institution

The term ''community development financial institution'' has the same meaning as in section 4702(5) of this title.

(3) Eligible entity

The term ''eligible entity'' means—

(A) an organization described in section 501(c)(3) of title 26, and exempt from tax under section 501(a) of such title;

(B) a federally insured depository institution;

(C) a community development financial institution;

(D) a State, local, or tribal government entity; or

(E) a partnership or other joint venture comprised of 1 or more of the entities described in subparagraphs (A) through (D), in accordance with regulations prescribed by the Secretary under this subchapter.

(4) Federally insured depository institution

The term ''federally insured depository institution'' means any insured depository institution (as that term is defined in section 1813 of this title) and any insured credit union (as that term is defined in section 1752) of this title.

(Pub. L. 111–203, title XII, §1203, July 21, 2010, 124 Stat. 2129.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title XII of Pub. L. 111–203, July 21, 2010, 124 Stat. 2129, known as the Improving Access to Mainstream Financial Institutions Act of 2010, which is classified principally to this subchapter. For complete classification of title XII to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5623. Expanded access to mainstream financial institutions

(a) In general

The Secretary is authorized to establish a multiyear program of grants, cooperative agreements, financial agency agreements, and similar contracts or undertakings to promote initiatives designed—

(1) to enable low- and moderate-income individuals to establish one or more accounts in a federally insured depository institution that are appropriate to meet the financial needs of such individuals; and

(2) to improve access to the provision of accounts, on reasonable terms, for low- and moderate-income individuals.

(b) Program eligibility and activities

(1) In general

The Secretary shall restrict participation in any program established under subsection (a) to an eligible entity. Subject to regulations prescribed by the Secretary under this subchapter, 1 or more eligible entities may participate in 1 or several programs established under subsection (a).

(2) Account activities

Subject to regulations prescribed by the Secretary, an eligible entity may, in participating in a program established under subsection (a), offer or provide to low- and moderate-income individuals products and services relating to accounts, including—

(A) small-dollar value loans; and

(B) financial education and counseling relating to conducting transactions in and managing accounts.

(Pub. L. 111–203, title XII, §1204, July 21, 2010, 124 Stat. 2130.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(1), was in the original ''this title'', meaning title XII of Pub. L. 111–203, July 21, 2010, 124 Stat. 2129, known as the Improving Access to Mainstream Financial Institutions Act of 2010, which is classified principally to this subchapter. For complete classification of title XII to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5624. Low-cost alternatives to small dollar loans

(a) Grants authorized

The Secretary is authorized to establish multiyear demonstration programs by means of grants, cooperative agreements, financial agency agreements, and similar contracts or undertakings, with eligible entities to provide low-cost, small loans to consumers that will provide alternatives to more costly small dollar loans.

(b) Terms and conditions

(1) In general

Loans under this section shall be made on terms and conditions, and pursuant to lending practices, that are reasonable for consumers.

(2) Financial literacy and education opportunities

(A) In general

Each eligible entity awarded a grant under this section shall promote and take appropriate steps to ensure the provision of financial literacy and education opportunities, such as relevant counseling services, educational courses, or wealth building programs, to each consumer provided with a loan pursuant to this section.

(B) Authority to expand access

As part of the grants, agreements, and undertakings established under this section, the Secretary may implement reasonable measures or programs designed to expand access to financial literacy and education opportunities, including relevant counseling services, educational courses, or wealth building programs to be provided to individuals who obtain loans from eligible entities under this section.

(Pub. L. 111–203, title XII, §1205, July 21, 2010, 124 Stat. 2130.)

§ 5625. Procedural provisions

An eligible entity desiring to participate in a program or obtain a grant under this subchapter shall submit an application to the Secretary, in such form and containing such information as the Secretary may require.

(Pub. L. 111–203, title XII, §1207, July 21, 2010, 124 Stat. 2132.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title XII of Pub. L. 111–203,

July 21, 2010, 124 Stat. 2129, known as the Improving Access to Mainstream Financial Institutions Act of 2010, which is classified principally to this subchapter. For complete classification of title XII to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5626. Authorization of appropriations

(a) Authorization to the Secretary

There are authorized to be appropriated to the Secretary, such sums as are necessary to both administer and fund the programs and projects authorized by this subchapter, to remain available until expended.

(b) Authorization to the Fund

There is authorized to be appropriated to the Fund for each fiscal year beginning in fiscal year 2010, an amount equal to the amount of the administrative costs of the Fund for the operation of the grant program established under this subchapter.

(Pub. L. 111–203, title XII, § 1208, July 21, 2010, 124 Stat. 2132.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title XII of Pub. L. 111–203, July 21, 2010, 124 Stat. 2129, known as the Improving Access to Mainstream Financial Institutions Act of 2010, which is classified principally to this subchapter. For complete classification of title XII to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5627. Regulations

(a) In general

The Secretary is authorized to promulgate regulations to implement and administer the grant programs and undertakings authorized by this subchapter.

(b) Regulatory authority

Regulations prescribed under this section may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of grant programs, undertakings, or eligible entities, as, in the judgment of the Secretary, are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion of this subchapter, or to facilitate compliance with this subchapter.

(Pub. L. 111–203, title XII, § 1209, July 21, 2010, 124 Stat. 2132.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title XII of Pub. L. 111–203, July 21, 2010, 124 Stat. 2129, known as the Improving Access to Mainstream Financial Institutions Act of 2010, which is classified principally to this subchapter. For complete classification of title XII to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5628. Evaluation and reports to Congress

For each fiscal year in which a program or project is carried out under this subchapter, the Secretary shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives containing a description of the activities funded, amounts distributed, and measurable results, as appropriate and available.

(Pub. L. 111–203, title XII, § 1210, July 21, 2010, 124 Stat. 2133.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title XII of Pub. L. 111–203, July 21, 2010, 124 Stat. 2129, known as the Improving Access to Mainstream Financial Institutions Act of 2010, which is classified principally to this subchapter. For complete classification of title XII to the Code, see Short Title note set out under section 5301 of this title and Tables.

SUBCHAPTER VIII—MISCELLANEOUS

§ 5641. Enhanced compensation structure reporting

(a) Enhanced disclosure and reporting of compensation arrangements

(1) In general

Not later than 9 months after July 21, 2010, the appropriate Federal regulators jointly shall prescribe regulations or guidelines to require each covered financial institution to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure—

(A) provides an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

(B) could lead to material financial loss to the covered financial institution.

(2) Rules of construction

Nothing in this section shall be construed as requiring the reporting of the actual compensation of particular individuals. Nothing in this section shall be construed to require a covered financial institution that does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

(b) Prohibition on certain compensation arrangements

Not later than 9 months after July 21, 2010, the appropriate Federal regulators shall jointly prescribe regulations or guidelines that prohibit any types of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions—

(1) by providing an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

(2) that could lead to material financial loss to the covered financial institution.

(c) Standards

The appropriate Federal regulators shall—

(1) ensure that any standards for compensation established under subsections (a) or (b) are comparable to the standards established

under section 1831p–1[1] of this title for insured depository institutions; and

(2) in establishing such standards under such subsections, take into consideration the compensation standards described in section 1831p–1(c) of this title.

(d) Enforcement

The provisions of this section and the regulations issued under this section shall be enforced under section 505 of the Gramm-Leach-Bliley Act [15 U.S.C. 6805] and, for purposes of such section, a violation of this section or such regulations shall be treated as a violation of subtitle A of title V of such Act [15 U.S.C. 6801 et seq.].

(e) Definitions

As used in this section—

(1) the term ''appropriate Federal regulator'' means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Securities and Exchange Commission, the Federal Housing Finance Agency; and

(2) the term ''covered financial institution'' means—

(A) a depository institution or depository institution holding company, as such terms are defined in section 1813 of this title;

(B) a broker-dealer registered under section 78*o* of title 15;

(C) a credit union, as described in section 461(b)(1)(A)(iv) of title 12;

(D) an investment advisor, as such term is defined in section 80b–2(a)(11) of title 15;

(E) the Federal National Mortgage Association;

(F) the Federal Home Loan Mortgage Corporation; and

(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

(f) Exemption for certain financial institutions

The requirements of this section shall not apply to covered financial institutions with assets of less than $1,000,000,000.

(Pub. L. 111–203, title IX, § 956, July 21, 2010, 124 Stat. 1905.)

REFERENCES IN TEXT

Section 1831p–1 of this title, referred to in subsec. (c)(1), was in the original ''section of the Federal Deposit Insurance Act (12 U.S.C. 2 1831p–1)'', and was translated as reading ''section 39 of the Federal Deposit Insurance Act'', which is classified to section 1831p–1 of this title, to reflect the probable intent of Congress.

The Gramm-Leach-Bliley Act, referred to in subsec. (d), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338. Subtitle A (§§ 501–510) of title V of the Act is classified principally to subchapter I (§ 6801 et seq.) of chapter 94 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

[1] See References in Text note below.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

CHAPTER 54—STATE SMALL BUSINESS CREDIT INITIATIVE

Sec.
5701. Definitions.
5702. Federal funds allocated to States.
5703. Approving States for participation.
5704. Approving State capital access programs.
5705. Approving collateral support and other innovative credit access and guarantee initiatives for small businesses and manufacturers.
5706. Reports.
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§ 5701. Definitions

In this chapter, the following definitions shall apply:

(1) Appropriate committees of Congress

The term ''appropriate committees of Congress'' means—

(A) the Committee on Small Business and Entrepreneurship, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and

(B) the Committee on Small Business, the Committee on Agriculture, the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives.

(2) Appropriate Federal banking agency

The term ''appropriate Federal banking agency''—

(A) has the same meaning as in section 1813(q) of this title; and

(B) includes the National Credit Union Administration Board in the case of any credit union the deposits of which are insured in accordance with the Federal Credit Union Act [12 U.S.C. 1751 et seq.].

(3) Enrolled loan

The term ''enrolled loan'' means a loan made by a financial institution lender that is enrolled by a participating State in an approved State capital access program in accordance with this chapter.

(4) Federal contribution

The term ''Federal contribution'' means the portion of the contribution made by a participating State to, or for the account of, an approved State program that is made with Federal funds allocated to the State by the Secretary under section 5702 of this title.

(5) Financial institution

The term ''financial institution'' means any insured depository institution, insured credit union, or community development financial

institution, as those terms are each defined in section 4702 of this title.

(6) Participating State

The term ''participating State'' means any State that has been approved for participation in the Program under section 5703 of this title.

(7) Program

The term ''Program'' means the State Small Business Credit Initiative established under this chapter.

(8) Qualifying loan or swap funding facility

The term ''qualifying loan or swap funding facility'' means a contractual arrangement between a participating State and a private financial entity under which—

(A) the participating State delivers funds to the entity as collateral;

(B) the entity provides funding from the arrangement back to the participating State; and

(C) the full amount of resulting funding from the arrangement, less any fees and other costs of the arrangement, is contributed to, or for the account of, an approved State program.

(9) Reserve fund

The term ''reserve fund'' means a fund, established by a participating State, dedicated to a particular financial institution lender, for the purposes of—

(A) depositing all required premium charges paid by the financial institution lender and by each borrower receiving a loan under an approved State program from that financial institution lender;

(B) depositing contributions made by the participating State, including State contributions made with Federal contributions; and

(C) covering losses on enrolled loans by disbursing accumulated funds.

(10) State

The term ''State'' means—

(A) a State of the United States;

(B) the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, and the United States Virgin Islands;

(C) when designated by a State of the United States, a political subdivision of that State that the Secretary determines has the capacity to participate in the Program; and

(D) under the circumstances described in section 5703(d) of this title, a municipality of a State of the United States to which the Secretary has given a special permission under section 5703(d) of this title.

(11) State capital access program

The term ''State capital access program'' means a program of a State that—

(A) uses public resources to promote private access to credit; and

(B) meets the eligibility criteria in section 5704(c) of this title.

(12) State other credit support program

The term ''State other credit support program''—

(A) means a program of a State that—

(i) uses public resources to promote private access to credit;

(ii) is not a State capital access program; and

(iii) meets the eligibility criteria in section 5705(c) of this title; and

(B) includes, collateral support programs, loan participation programs, State-run venture capital fund programs, and credit guarantee programs.

(13) State program

The term ''State program'' means a State capital access program or a State other credit support program.

(14) Secretary

The term ''Secretary'' means the Secretary of the Treasury.

(Pub. L. 111–240, title III, § 3002, Sept. 27, 2010, 124 Stat. 2568.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in par. (2)(B), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified principally to chapter 14 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

SHORT TITLE

Pub. L. 111–240, title III, § 3001, Sept. 27, 2010, 124 Stat. 2568, provided that: ''This title [enacting this chapter] may be cited as the 'State Small Business Credit Initiative Act of 2010'.''

§ 5702. Federal funds allocated to States

(a) Program established; purpose

There is established the State Small Business Credit Initiative, to be administered by the Secretary. Under the Program, the Secretary shall allocate Federal funds to participating States and make the allocated funds available to the participating States as provided in this section for the uses described in this section.

(b) Allocation formula

(1) In general

Not later than 30 days after September 27, 2010, the Secretary shall allocate Federal funds to participating States so that each State is eligible to receive an amount equal to the average of the respective amounts that the State—

(A) would receive under the 2009 allocation, as determined under paragraph (2); and

(B) would receive under the 2010 allocation, as determined under paragraph (3).

(2) 2009 allocation formula

(A) In general

The Secretary shall determine the 2009 allocation by allocating Federal funds among the States in the proportion that each such State's 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all States.

(B) Minimum allocation

The Secretary shall adjust the allocations under subparagraph (A) for each State to the

extent necessary to ensure that no State receives less than 0.9 percent of the Federal funds.

(C) 2008 state employment decline defined

In this paragraph and with respect to a State, the term ''2008 State employment decline'' means the excess (if any) of—

(i) the number of individuals employed in such State determined for December 2007; over

(ii) the number of individuals employed in such State determined for December 2008.

(3) 2010 allocation formula

(A) In general

The Secretary shall determine the 2010 allocation by allocating Federal funds among the States in the proportion that each such State's 2009 unemployment number bears to the aggregate of the 2009 unemployment numbers for all of the States.

(B) Minimum allocation

The Secretary shall adjust the allocations under subparagraph (A) for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the Federal funds.

(C) 2009 unemployment number defined

In this paragraph and with respect to a State, the term ''2009 unemployment number'' means the number of individuals within such State who were determined to be unemployed by the Bureau of Labor Statistics for December 2009.

(c) Availability of allocated amount

The amount allocated by the Secretary to each participating State under subsection (b) shall be made available to the State as follows:

(1) Allocated amount generally to be available to State in one-thirds

(A) In general

The Secretary shall—

(i) apportion the participating State's allocated amount into thirds;

(ii) transfer to the participating State the first ⅓ when the Secretary approves the State for participation under section 5703 of this title; and

(iii) transfer to the participating State each successive ⅓ when the State has certified to the Secretary that it has expended, transferred, or obligated 80 percent of the last transferred ⅓ for Federal contributions to, or for the account of, State programs.

(B) Authority to withhold pending audit

The Secretary may withhold the transfer of any successive ⅓ pending results of a financial audit.

(C) Inspector General audits

(i) In general

The Inspector General of the Department of the Treasury shall carry out an audit of the participating State's use of allocated Federal funds transferred to the State.

(ii) Recoupment of misused transferred funds required

The allocation agreement between the Secretary and the participating State shall provide that the Secretary shall recoup any allocated Federal funds transferred to the participating State if the results of the an audit include a finding that there was an intentional or reckless misuse of transferred funds by the State.

(iii) Penalty for misstatement

Any participating State that is found to have intentionally misstated any report issued to the Secretary under the Program shall be ineligible to receive any additional funds under the Program. Funds that had been allocated or that would otherwise have been allocated to such participating State shall be paid into the general fund of the Treasury for reduction of the public debt.

(iv) Municipalities

In this subparagraph, the term ''participating State'' shall include a municipality given special permission to participate in the Program, under section 5703(d) of this title.

(D) Exception

The Secretary may, in the Secretary's discretion, transfer the full amount of the participating State's allocated amount to the State in a single transfer if the participating State applies to the Secretary for approval to use the full amount of the allocation as collateral for a qualifying loan or swap funding facility.

(2) Transferred amounts

Each amount transferred to a participating State under this section shall remain available to the State until used by the State as permitted under paragraph (3).

(3) Use of transferred funds

Each participating State may use funds transferred to it under this section only—

(A) for making Federal contributions to, or for the account of, an approved State program;

(B) as collateral for a qualifying loan or swap funding facility;

(C) in the case of the first ⅓ transferred, for paying administrative costs incurred by the State in implementing an approved State program in an amount not to exceed 5 percent of that first ⅓; or

(D) in the case of each successive ⅓ transferred, for paying administrative costs incurred by the State in implementing an approved State program in an amount not to exceed 3 percent of that successive ⅓.

(4) Termination of availability of amounts not transferred within 2 years of participation

Any portion of a participating State's allocated amount that has not been transferred to the State under this section by the end of the 2-year period beginning on the date that the Secretary approves the State for participation may be deemed by the Secretary to be no

longer allocated to the State and no longer available to the State and shall be returned to the General Fund of the Treasury.

(5) Transferred amounts not assistance

The amounts transferred to a participating State under this section shall not be considered assistance for purposes of subtitle V of title 31.

(6) Definitions

In this section—

(A) the term ''allocated amount'' means the total amount of Federal funds allocated by the Secretary under subsection (b) to the participating State; and

(B) the term ''⅓'' means—

(i) in the case of the first ⅓ and second ⅓, an amount equal to 33 percent of a participating State's allocated amount; and

(ii) in the case of the last ⅓, an amount equal to 34 percent of a participating State's allocated amount.

(Pub. L. 111–240, title III, § 3003, Sept. 27, 2010, 124 Stat. 2570.)

§ 5703. Approving States for participation

(a) Application

Any State may apply to the Secretary for approval to be a participating State under the Program and to be eligible for an allocation of Federal funds under the Program.

(b) General approval criteria

The Secretary shall approve a State to be a participating State, if—

(1) a specific department, agency, or political subdivision of the State has been designated to implement a State program and participate in the Program;

(2) all legal actions necessary to enable such designated department, agency, or political subdivision to implement a State program and participate in the Program have been accomplished;

(3) the State has filed an application with the Secretary for approval of a State capital access program under section 5704 of this title or approval as a State other credit support program under section 5705 of this title, in each case within the time period provided in the respective section; and

(4) the State and the Secretary have executed an allocation agreement that—

(A) conforms to the requirements of this chapter;

(B) ensures that the State program complies with such national standards as are established by the Secretary under section 5708(a)(2) of this title;

(C) sets forth internal control, compliance, and reporting requirements as established by the Secretary, and such other terms and conditions necessary to carry out the purposes of this chapter, including an agreement by the State to allow the Secretary to audit State programs;

(D) requires that the State program be fully positioned, within 90 days of the State's execution of the allocation agreement with the Secretary, to act on providing the kind of credit support that the State program was established to provide; and

(E) includes an agreement by the State to deliver to the Secretary, and update annually, a schedule describing how the State intends to apportion among its State programs the Federal funds allocated to the State.

(c) Contractual arrangements for implementation of State programs

A State may be approved to be a participating State, and be eligible for an allocation of Federal funds under the Program, if the State has contractual arrangements for the implementation and administration of its State program with—

(1) an existing, approved State program administered by another State; or

(2) an authorized agent of, or entity supervised by, the State, including for-profit and not-for-profit entities.

(d) Special permission

(1) Circumstances when a municipality may apply directly

If a State does not, within 60 days after September 27, 2010, file with the Secretary a notice of its intent to apply for approval by the Secretary of a State program or within 9 months after September 27, 2010, file with the Secretary a complete application for approval of a State program, the Secretary may grant to municipalities of that State a special permission that will allow them to apply directly to the Secretary without the State for approval to be participating municipalities.

(2) Timing requirements applicable to municipalities applying directly

To qualify for the special permission, a municipality of a State shall be required, within 12 months after September 27, 2010, to file with the Secretary a complete application for approval by the Secretary of a State program.

(3) Notices of intent and applications from more than 1 municipality

A municipality of a State may combine with 1 or more other municipalities of that State to file a joint notice of intent to file and a joint application.

(4) Approval criteria

The general approval criteria in paragraphs (2) and (4) shall apply.

(5) Allocation to municipalities

(A) If more than 3

If more than 3 municipalities, or combination of municipalities as provided in paragraph (3), of a State apply for approval by the Secretary to be participating municipalities under this subsection, and the applications meet the approval criteria in paragraph (4), the Secretary shall allocate Federal funds to the 3 municipalities with the largest populations.

(B) If 3 or fewer

If 3 or fewer municipalities, or combination of municipalities as provided in paragraph (3), of a State apply for approval by the Secretary to be participating munici-

palities under this subsection, and the applications meet the approval criteria in paragraph (4), the Secretary shall allocate Federal funds to each applicant municipality or combination of municipalities.

(6) Apportionment of allocated amount among participating municipalities

If the Secretary approves municipalities to be participating municipalities under this subsection, the Secretary shall apportion the full amount of the Federal funds that are allocated to that State to municipalities that are approved under this subsection in amounts proportionate to the population of those municipalities, based on the most recent available decennial census.

(7) Approving State programs for municipalities

If the Secretary approves municipalities to be participating municipalities under this subsection, the Secretary shall take into account the additional considerations in section 5705(d) of this title in making the determination under section 5704 or 5705 of this title that the State program or programs to be implemented by the participating municipalities, including a State capital access program, is eligible for Federal contributions to, or for the account of, the State program.

(Pub. L. 111–240, title III, §3004, Sept. 27, 2010, 124 Stat. 2573.)

§ 5704. Approving State capital access programs

(a) Application

A participating State that establishes a new, or has an existing, State capital access program that meets the eligibility criteria in subsection (c) may apply to Secretary to have the State capital access program approved as eligible for Federal contributions to the reserve fund.

(b) Approval

The Secretary shall approve such State capital access program as eligible for Federal contributions to the reserve fund if—

(1) within 60 days after September 27, 2010, the State has filed with the Secretary a notice of intent to apply for approval by the Secretary of a State capital access program;

(2) within 9 months after September 27, 2010, the State has filed with the Secretary a complete application for approval by the Secretary of a capital access program;

(3) the State satisfies the requirements of subsections (a) and (b) of section 5703 of this title; and

(4) the State capital access program meets the eligibility criteria in subsection (c).

(c) Eligibility criteria for State capital access programs

For a State capital access program to be approved under this section, that program shall be required to be a program of the State that—

(1) provides portfolio insurance for business loans based on a separate loan-loss reserve fund for each financial institution;

(2) requires insurance premiums to be paid by the financial institution lenders and by the business borrowers to the reserve fund to have their loans enrolled in the reserve fund;

(3) provides for contributions to be made by the State to the reserve fund in amounts at least equal to the sum of the amount of the insurance premium charges paid by the borrower and the financial institution to the reserve fund for any newly enrolled loan; and

(4) provides its portfolio insurance solely for loans that meet both the following requirements:

(A) The borrower has 500 employees or less at the time that the loan is enrolled in the Program.

(B) The loan amount does not exceed $5,000,000.

(d) Federal contributions to approved State capital access programs

A State capital access program approved under this section will be eligible for receiving Federal contributions to the reserve fund in an amount equal to the sum of the amount of the insurance premium charges paid by the borrowers and by the financial institution to the reserve fund for loans that meet the requirements in subsection (c)(4). A participating State may use the Federal contribution to make its contribution to the reserve fund of an approved State capital access program.

(e) Minimum program requirements for State capital access programs

The Secretary shall, by regulation or other guidance, prescribe Program requirements that meet the following minimum requirements:

(1) Experience and capacity

The participating State shall determine for each financial institution that participates in the State capital access program, after consultation with the appropriate Federal banking agency or, in the case of a financial institution that is a nondepository community development financial institution, the Community Development Financial Institution Fund, that the financial institution has sufficient commercial lending experience and financial and managerial capacity to participate in the approved State capital access program. The determination by the State shall not be reviewable by the Secretary.

(2) Investment authority

Subject to applicable State law, the participating State may invest, or cause to be invested, funds held in a reserve fund by establishing a deposit account at the financial institution lender in the name of the participating State. In the event that funds in the reserve fund are not deposited in such an account, such funds shall be invested in a form that the participating State determines is safe and liquid.

(3) Loan terms and conditions to be determined by agreement

A loan to be filed for enrollment in an approved State capital access program may be made with such interest rate, fees, and other terms and conditions, and the loan may be enrolled in the approved State capital access program and claims may be filed and paid, as

agreed upon by the financial institution lender and the borrower, consistent with applicable law.

(4) Lender capital at-risk

A loan to be filed for enrollment in the State capital access program shall require the financial institution lender to have a meaningful amount of its own capital resources at risk in the loan.

(5) Premium charges minimum and maximum amounts

The insurance premium charges payable to the reserve fund by the borrower and the financial institution lender shall be prescribed by the financial institution lender, within minimum and maximum limits that require that the sum of the insurance premium charges paid in connection with a loan by the borrower and the financial institution lender may not be less than 2 percent nor more than 7 percent of the amount of the loan enrolled in the approved State capital access program.

(6) State contributions

In enrolling a loan in an approved State capital access program, the participating State may make a contribution to the reserve fund to supplement Federal contributions made under this Program.

(7) Loan purpose

(A) Particular loan purpose requirements and prohibitions

In connection with the filing of a loan for enrollment in an approved State capital access program, the financial institution lender—

(i) shall obtain an assurance from each borrower that—

(I) the proceeds of the loan will be used for a business purpose;

(II) the loan will not be used to finance such business activities as the Secretary, by regulation, may proscribe as prohibited loan purposes for enrollment in an approved State capital access program; and

(III) the borrower is not—

(aa) an executive officer, director, or principal shareholder of the financial institution lender;

(bb) a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lender; or

(cc) a related interest of any such executive officer, director, principal shareholder, or member of the immediate family;

(ii) shall provide assurances to the participating State that the loan has not been made in order to place under the protection of the approved State capital access program prior debt that is not covered under the approved State capital access program and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender;

(iii) shall not allow the enrollment of a loan to a borrower that is a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender; and

(iv) may include additional restrictions on the eligibility of loans or borrowers that are not inconsistent with the provisions and purposes of this chapter, including compliance with all applicable Federal and State laws, regulations, ordinances, and Executive orders.

(B) Definitions

In this paragraph, the terms ''executive officer'', ''director'', ''principal shareholder'', ''immediate family'', and ''related interest'' refer to the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

(8) Capital access for small businesses in underserved communities

At the time that a State applies to the Secretary to have the State capital access program approved as eligible for Federal contributions, the State shall deliver to the Secretary a report stating how the State plans to use the Federal contributions to the reserve fund to provide access to capital for small businesses in low- and moderate-income, minority, and other underserved communities, including women- and minority-owned small businesses.

(Pub. L. 111–240, title III, § 3005, Sept. 27, 2010, 124 Stat. 2574.)

§ 5705. Approving collateral support and other innovative credit access and guarantee initiatives for small businesses and manufacturers

(a) Application

A participating State that establishes a new, or has an existing, credit support program that meets the eligibility criteria in subsection (c) may apply to the Secretary to have the State other credit support program approved as eligible for Federal contributions to, or for the account of, the State program.

(b) Approval

The Secretary shall approve such State other credit support program as eligible for Federal contributions to, or for the account of, the program if—

(1) the Secretary determines that the State satisfies the requirements of paragraphs (1) through (3) of section 5704(b) of this title;

(2) the Secretary determines that the State other credit support program meets the eligibility criteria in subsection (c);

(3) the Secretary determines the State other credit support program to be eligible based on the additional considerations in subsection (d); and

(4) within 9 months after September 27, 2010, the State has filed with Treasury a complete application for Treasury approval.

(c) Eligibility criteria for State other credit support programs

For a State other credit support program to be approved under this section, that program shall be required to be a program of the State that—

(1) can demonstrate that, at a minimum, $1 of public investment by the State program will cause and result in $1 of new private credit;

(2) can demonstrate a reasonable expectation that, when considered with all other State programs of the State, such State programs together have the ability to use amounts of new Federal contributions to, or for the account of, all such programs in the State to cause and result in amounts of new small business lending at least 10 times the new Federal contribution amount;

(3) for those State other credit support programs that provide their credit support through 1 or more financial institution lenders, requires the financial institution lenders to have a meaningful amount of their own capital resources at risk in their small business lending; and

(4) uses Federal funds allocated under this chapter to extend credit support that—

(A) targets an average borrower size of 500 employees or less;

(B) does not extend credit support to borrowers that have more than 750 employees;

(C) targets support towards loans with an average principal amount of $5,000,000 or less; and

(D) does not extend credit support to loans that exceed a principal amount of $20,000,000.

(d) Additional considerations

In making a determination that a State other credit support program is eligible for Federal contributions to, or for the account of, the State program, the Secretary shall take into account the following additional considerations:

(1) The anticipated benefits to the State, its businesses, and its residents to be derived from the Federal contributions to, or for the account of, the approved State other credit support program, including the extent to which resulting small business lending will expand economic opportunities.

(2) The operational capacity, skills, and experience of the management team of the State other credit support program.

(3) The capacity of the State other credit support program to manage increases in the volume of its small business lending.

(4) The internal accounting and administrative controls systems of the State other credit support program, and the extent to which they can provide reasonable assurance that funds of the State program are safeguarded against waste, loss, unauthorized use, or misappropriation.

(5) The soundness of the program design and implementation plan of the State other credit support program.

(e) Federal contributions to approved State other credit support programs

A State other credit support program approved under this section will be eligible for receiving Federal contributions to, or for the account of, the State program in an amount consistent with the schedule describing the apportionment of allocated Federal funds among State programs delivered by the State to the Secretary under the allocation agreement.

(f) Minimum Program Requirements for State other credit support programs

(1) Fund [1] to prescribe

The Secretary shall, by regulation or other guidance, prescribe Program requirements for approved State other credit support programs.

(2) Considerations for fund

In prescribing minimum Program requirements for approved State other credit support programs, the Secretary shall take into consideration, to the extent the Secretary determines applicable and appropriate, the minimum Program requirements for approved State capital access programs in section 5704(e) of this title.

(Pub. L. 111–240, title III, § 3006, Sept. 27, 2010, 124 Stat. 2577.)

§ 5706. Reports

(a) Quarterly use-of-funds report

(1) In general

Not later than 30 days after the beginning of each calendar quarter, beginning after the first full calendar quarter to occur after the date the Secretary approves a State for participation, the participating State shall submit to the Secretary a report on the use of Federal funding by the participating State during the previous calendar quarter.

(2) Report contents

Each report under this subsection shall—

(A) indicate the total amount of Federal funding used by the participating State; and

(B) include a certification by the participating State that—

(i) the information provided in accordance with subparagraph (A) is accurate;

(ii) funds continue to be available and legally committed to contributions by the State to, or for the account of, approved State programs, less any amount that has been contributed by the State to, or for the account of, approved State programs subsequent to the State being approved for participation in the Program; and

(iii) the participating State is implementing its approved State program or programs in accordance with this chapter and regulations issued under section 5709 of this title.

(b) Annual report

Not later than March 31 of each year, beginning March 31, 2011, each participating State shall submit to the Secretary an annual report that shall include the following information:

(1) The number of borrowers that received new loans originated under the approved State program or programs after the State program

[1] So in original. Probably should be ''Secretary''.

was approved as eligible for Federal contributions.

(2) The total amount of such new loans.

(3) Breakdowns by industry type, loan size, annual sales, and number of employees of the borrowers that received such new loans.

(4) The zip code of each borrower that received such a new loan.

(5) Such other data as the Secretary, in the Secretary's sole discretion, may require to carry out the purposes of the Program.

(c) Form

The reports and data filed under subsections (a) and (b) shall be in such form as the Secretary, in the Secretary's sole discretion, may require.

(d) Termination of reporting requirements

The requirement to submit reports under subsections (a) and (b) shall terminate for a participating State with the submission of the completed reports due on the first March 31 to occur after 5 complete 12-month periods after the State is approved by the Secretary to be a participating State.

(Pub. L. 111–240, title III, § 3007, Sept. 27, 2010, 124 Stat. 2579.)

§ 5707. Remedies for State program termination or failures

(a) Remedies

(1) In general

If any of the events listed in paragraph (2) occur, the Secretary, in the Secretary's discretion, may—

(A) reduce the amount of Federal funds allocated to the State under the Program; or

(B) terminate any further transfers of allocated amounts that have not yet been transferred to the State.

(2) Causal events

The events referred to in paragraph (1) are—

(A) termination by a participating State of its participation in the Program;

(B) failure on the part of a participating State to submit complete reports under section 5706 of this title on a timely basis; or

(C) noncompliance by the State with the terms of the allocation agreement between the Secretary and the State.

(b) Deallocated amounts to be reallocated

If, after 13 months, any portion of the amount of Federal funds allocated to a participating State is deemed by the Secretary to be no longer allocated to the State after actions taken by the Secretary under subsection (a)(1), the Secretary shall reallocate that portion among the participating States, excluding the State whose allocated funds were deemed to be no longer allocated, as provided in section 5702(b) of this title.

(Pub. L. 111–240, title III, § 3008, Sept. 27, 2010, 124 Stat. 2580.)

§ 5708. Implementation and administration

(a) General authorities and duties

The Secretary shall—

(1) consult with the Administrator of the Small Business Administration and the appropriate Federal banking agencies on the administration of the Program;

(2) establish minimum national standards for approved State programs;

(3) provide technical assistance to States for starting State programs and generally disseminate best practices;

(4) manage, administer, and perform necessary program integrity functions for the Program; and

(5) ensure adequate oversight of the approved State programs, including oversight of the cash flows, performance, and compliance of each approved State program.

(b) Appropriations

There is hereby appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, $1,500,000,000 to carry out the Program, including to pay reasonable costs of administering the Program.

(c) Termination of Secretary's Program administration functions

The authorities and duties of the Secretary to implement and administer the Program shall terminate at the end of the 7-year period beginning on September 27, 2010.

(d) Expedited contracting

During the 1-year period beginning on September 27, 2010, the Secretary may enter into contracts without regard to any other provision of law regarding public contracts, for purposes of carrying out this chapter.

(Pub. L. 111–240, title III, § 3009, Sept. 27, 2010, 124 Stat. 2580.)

§ 5709. Regulations

The Secretary, in consultation with the Administrator of the Small Business Administration, shall issue such regulations and other guidance as the Secretary determines necessary or appropriate to implement this chapter including to define terms, to establish compliance and reporting requirements, and such other terms and conditions necessary to carry out the purposes of this chapter.

(Pub. L. 111–240, title III, § 3010, Sept. 27, 2010, 124 Stat. 2581.)

§ 5710. Oversight and audits

(a) Inspector General oversight

The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of the use of funds made available under the Program.

(b) GAO audit

The Comptroller General of the United States shall perform an annual audit of the Program and issue a report to the appropriate committees of Congress containing the results of such audit.

(c) Required certification

(1) Financial institutions certification

With respect to funds received by a participating State under the Program, any financial institution that receives a loan, a loan guar-

antee, or other financial assistance using such funds after September 27, 2010, shall certify that such institution is in compliance with the requirements of section 103.121 of title 31, Code of Federal Regulations, a regulation that, at a minimum, requires financial institutions, as that term is defined in section 5312(a)(2) and (c)(1)(A) of title 31, to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person's identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

(2) Sex offense certification

With respect to funds received by a participating State under the Program, any private entity that receives a loan, a loan guarantee, or other financial assistance using such funds after September 27, 2010, shall certify to the participating State that the principals of such entity have not been convicted of a sex offense against a minor (as such terms are defined in section 16911 of title 42).

(d) Prohibition on pornography

None of the funds made available under this chapter may be used to pay the salary of any individual engaged in activities related to the Program who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

(Pub. L. 111–240, title III, § 3011, Sept. 27, 2010, 124 Stat. 2581.)